

CHAPTER 51—DESIGN AND CONSTRUCTION OF PUBLIC BUILDINGS TO ACCOMMODATE PHYSICALLY HANDICAPPED

Sec.	
4151.	“Building” defined.
4152.	Standards for design, construction, and alteration of buildings; Administrator of General Services.
4153.	Standards for design, construction, and alteration of buildings; Secretary of Housing and Urban Development.
4154.	Standards for design, construction, and alteration of buildings; Secretary of Defense.
4154a.	Standards for design, construction, and alteration of buildings; United States Postal Service.
4155.	Effective date of standards.
4156.	Waiver and modification of standards.
4157.	Omitted.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 6705 of this title; title 29 sections 721, 792; title 39 section 410.

§ 4151. “Building” defined

As used in this chapter, the term “building” means any building or facility (other than (A) a privately owned residential structure not leased by the Government for subsidized housing programs and (B) any building or facility on a military installation designed and constructed primarily for use by able bodied military personnel) the intended use for which either will require that such building or facility be accessible to the public, or may result in the employment or residence therein of physically handicapped persons, which building or facility is—

(1) to be constructed or altered by or on behalf of the United States;

(2) to be leased in whole or in part by the United States after August 12, 1968;

(3) to be financed in whole or in part by a grant or a loan made by the United States after August 12, 1968, if such building or facility is subject to standards for design, construction, or alteration issued under authority of the law authorizing such grant or loan; or

(4) to be constructed under authority of the National Capital Transportation Act of 1960, the National Capital Transportation Act of 1965, or title III of the Washington Metropolitan Area Transit Regulation Compact.

(Pub. L. 90-480, §1, Aug. 12, 1968, 82 Stat. 718; Pub. L. 91-205, Mar. 5, 1970, 84 Stat. 49; Pub. L. 94-541, title II, §201(1), Oct. 18, 1976, 90 Stat. 2507.)

REFERENCES IN TEXT

The National Capital Transportation Act of 1960, referred to in par. (4), is Pub. L. 86-669, July 14, 1960, 74 Stat. 537, which enacted sections 651, 652, 661 to 665, and 671 of former Title 40, Public Buildings, Property, and Works, and enacted provisions set out as notes under section 651 of former Title 40 and which was repealed by Pub. L. 91-143, §8(a)(1), Dec. 9, 1969, 83 Stat. 322.

The National Capital Transportation Act of 1965, referred to in par. (4), is Pub. L. 89-173, Sept. 8, 1965, 79

Stat. 663, as amended. Section 1 of the Act, which was classified to a note under section 681 of former Title 40, Public Buildings, Property, and Works, was repealed by Pub. L. 107-217, §6(b), Aug. 21, 2002, 116 Stat. 1304. Section 2 of the Act, which was classified to section 681 of former Title 40, has been omitted from the Code. Sections 3 and 4 of the Act, which were classified to sections 682 and 683, respectively, of former Title 40, were repealed by Pub. L. 91-143, §8(a)(2), Dec. 9, 1969, 83 Stat. 323. Sections 5(a) (no subsec. (b) was enacted) and 6 of the Act, which were classified to sections 684 and 685, respectively, of former Title 40, were repealed by Pub. L. 107-217, §6(b), Aug. 21, 2002, 116 Stat. 1304. Section 7 of the Act amended provisions classified to section 662 of former Title 40, which was repealed by Pub. L. 89-774, §5(b), Nov. 6, 1966, 80 Stat. 1353. Section 8 of the Act, which was classified to a note under section 681 of former Title 40, has been omitted from the Code.

AMENDMENTS

1976—Pub. L. 94-541 inserted in parenthetical text “not leased by the Government for subsidized housing programs” after “structure” and struck out from par. (2) “, after construction or alteration in accordance with plans and specifications of the United States” after “August 12, 1968”.

1970—Par. (4). Pub. L. 91-205 added par. (4).

SHORT TITLE

Pub. L. 90-480, Aug. 12, 1968, 82 Stat. 718, which enacted this chapter, is popularly known as the “Architectural Barriers Act of 1968”.

APPLICABILITY OF 1976 AMENDMENT TO LEASES ENTERED INTO BEFORE, ON, OR AFTER JANUARY 1, 1977

Section 202 of Pub. L. 94-541 provided that: “The amendment made by paragraph (1) of section 201 of this Act [amending this section] shall not apply to any lease entered into before January 1, 1977. It shall apply to every lease entered into on or after January 1, 1977, including any renewal of a lease entered into before such date which renewal is on or after such date.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 3 section 421.

§ 4152. Standards for design, construction, and alteration of buildings; Administrator of General Services

The Administrator of General Services, in consultation with the Secretary of Health and Human Services, shall prescribe standards for the design, construction, and alteration of buildings (other than residential structures subject to this chapter and buildings, structures, and facilities of the Department of Defense and of the United States Postal Service subject to this chapter) to insure whenever possible that physically handicapped persons will have ready access to, and use of, such buildings.

(Pub. L. 90-480, §2, Aug. 12, 1968, 82 Stat. 719; Pub. L. 94-541, title II, §201(2), Oct. 18, 1976, 90 Stat. 2507; Pub. L. 96-88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695.)

AMENDMENTS

1976—Pub. L. 94-541 substituted “shall prescribe” and “to insure whenever possible” for “is authorized to pre-

scribe such” and “as may be necessary to insure”, respectively, and inserted in parenthetical text “and of the United States Postal Service” after “Department of Defense”.

CHANGE OF NAME

“Secretary of Health and Human Services” substituted in text for “Secretary of Health, Education, and Welfare” pursuant to section 509(b) of Pub. L. 96-88, which is classified to section 3508(b) of Title 20, Education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4156 of this title; title 3 section 421.

§ 4153. Standards for design, construction, and alteration of buildings; Secretary of Housing and Urban Development

The Secretary of Housing and Urban Development, in consultation with the Secretary of Health and Human Services, shall prescribe standards for the design, construction, and alteration of buildings which are residential structures subject to this chapter to insure whenever possible that physically handicapped persons will have ready access to, and use of, such buildings.

(Pub. L. 90-480, § 3, Aug. 12, 1968, 82 Stat. 719; Pub. L. 94-541, title II, § 201(3), Oct. 18, 1976, 90 Stat. 2507; Pub. L. 96-88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

AMENDMENTS

1976—Pub. L. 94-541 substituted “shall prescribe” and “to insure whenever possible” for “is authorized to prescribe such” and “as may be necessary to insure”, respectively.

CHANGE OF NAME

“Secretary of Health and Human Services” substituted in text for “Secretary of Health, Education, and Welfare” pursuant to section 509(b) of Pub. L. 96-88, which is classified to section 3508(b) of Title 20, Education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4156 of this title; title 3 section 421.

§ 4154. Standards for design, construction, and alteration of buildings; Secretary of Defense

The Secretary of Defense, in consultation with the Secretary of Health and Human Services, shall prescribe standards for the design, construction, and alteration of buildings, structures, and facilities of the Department of Defense subject to this chapter to insure whenever possible that physically handicapped persons will have ready access to, and use of, such buildings.

(Pub. L. 90-480, § 4, Aug. 12, 1968, 82 Stat. 719; Pub. L. 94-541, title II, § 201(4), Oct. 18, 1976, 90 Stat. 2507; Pub. L. 96-88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

AMENDMENTS

1976—Pub. L. 94-541 substituted “shall prescribe” and “to insure whenever possible” for “is authorized to prescribe such” and “as may be necessary to insure”, respectively.

CHANGE OF NAME

“Secretary of Health and Human Services” substituted in text for “Secretary of Health, Education,

and Welfare” pursuant to section 509(b) of Pub. L. 96-88, which is classified to section 3508(b) of Title 20, Education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4156 of this title.

§ 4154a. Standards for design, construction, and alteration of buildings; United States Postal Service

The United States Postal Service, in consultation with the Secretary of Health and Human Services, shall prescribe such standards for the design, construction, and alteration of its buildings to insure whenever possible that physically handicapped persons will have ready access to, and use of, such buildings.

(Pub. L. 90-480, § 4a, as added Pub. L. 94-541, title II, § 201(5), Oct. 18, 1976, 90 Stat. 2508; amended Pub. L. 96-88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

CHANGE OF NAME

“Secretary of Health and Human Services” substituted in text for “Secretary of Health, Education, and Welfare” pursuant to section 509(b) of Pub. L. 96-88, which is classified to section 3508(b) of Title 20, Education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4156 of this title.

§ 4155. Effective date of standards

Every building designed, constructed, or altered after the effective date of a standard issued under this chapter which is applicable to such building, shall be designed, constructed, or altered in accordance with such standard.

(Pub. L. 90-480, § 5, Aug. 12, 1968, 82 Stat. 719.)

§ 4156. Waiver and modification of standards

The Administrator of General Services, with respect to standards issued under section 4152 of this title, and the Secretary of Housing and Urban Development, with respect to standards issued under section 4153 of this title, and the Secretary of Defense with respect to standards issued under section 4154 of this title, and the United States Postal Service with respect to standards issued under section 4154a of this title—

(1) is authorized to modify or waive any such standard, on a case-by-case basis, upon application made by the head of the department, agency, or instrumentality of the United States concerned, and upon a determination by the Administrator or Secretary, as the case may be, that such modification or waiver is clearly necessary, and

(2) shall establish a system of continuing surveys and investigations to insure compliance with such standards.

(Pub. L. 90-480, § 6, Aug. 12, 1968, 82 Stat. 719; Pub. L. 94-541, title II, § 201(6), Oct. 18, 1976, 90 Stat. 2508.)

AMENDMENTS

1976—Pub. L. 94-541, in introductory text, inserted reference to the United States Postal Service with respect to standards issued under section 4154a of this

title and struck out “is authorized” at end; in par. (1), inserted introductory words “is authorized”; and in par. (2), substituted “shall establish a system of continuing surveys and investigations” for “to conduct such surveys and investigations as he deems necessary”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 3 section 421.

§ 4157. Omitted

CODIFICATION

Section, Pub. L. 90-480, §7, as added Pub. L. 94-541, title II, §201(7), Oct. 18, 1976, 90 Stat. 2508; amended Pub. L. 103-437, §15(n), Nov. 2, 1994, 108 Stat. 4593, which required the Administrator of General Services to report to Congress during the first week of January of each year on his activities and those of other departments, agencies, and instrumentalities of the Federal Government under this chapter during the preceding fiscal year and required the Architectural and Transportation Barriers Compliance Board established by section 792 of title 29 to report to the Public Works and Transportation Committee of the House of Representatives and the Environment and Public Works Committee of the Senate during the first week of January of each year on its activities and actions to insure compliance with the standards prescribed under this chapter, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, item 6 on page 155 and item 10 on page 173 of House Document No. 103-7.

CHAPTER 52—INTERGOVERNMENTAL COOPERATION

SUBCHAPTER I—GENERAL PROVISIONS

§ 4201. Repealed. Pub. L. 97-258, § 5(b), Sept. 13, 1982, 96 Stat. 1068

Section, Pub. L. 90-577, title I, §§101-110, Oct. 16, 1968, 82 Stat. 1098-1101, defined terms used in this chapter. See sections 6501 and 6505(a) of Title 31, Money and Finance.

SHORT TITLE

Pub. L. 90-577, §1, Oct. 16, 1968, 82 Stat. 1098, which provided that Pub. L. 90-577 could be cited as the “Intergovernmental Cooperation Act of 1968”, was repealed by Pub. L. 97-258, § 5(b), Sept. 13, 1982, 96 Stat. 1068, 1080.

SUBCHAPTER II—GRANTS-IN-AID TO THE STATES; IMPROVED ADMINISTRATION

§§ 4211 to 4214. Repealed. Pub. L. 97-258, § 5(b), Sept. 13, 1982, 96 Stat. 1068

Section 4211, Pub. L. 90-577, title II, §201, Oct. 16, 1968, 82 Stat. 1101, required the Federal Government to provide to States full information on grant-in-aid funds. See section 6502 of Title 31, Money and Finance.

Section 4212, Pub. L. 90-577, title II, §202, Oct. 16, 1968, 82 Stat. 1101, related to deposit of grants-in-aid. See section 6503(b) of Title 31.

Section 4213, Pub. L. 90-577, title II, §203, Oct. 16, 1968, 82 Stat. 1101, related to scheduling of Federal grant-in-aid transfers to States. See section 6503(a) of Title 31.

Section 4214, Pub. L. 90-577, title II, §204, Oct. 16, 1968, 82 Stat. 1101, related to eligibility of State agencies to administer a grant-in-aid program. See section 6504 of Title 31.

SUBCHAPTER III—SPECIAL OR TECHNICAL SERVICES PROVIDED FOR STATE AND LOCAL UNITS OF GOVERNMENT BY FEDERAL DEPARTMENTS AND AGENCIES

§§ 4221 to 4223. Repealed. Pub. L. 97-258, § 5(b), Sept. 13, 1982, 96 Stat. 1068

Section 4221, Pub. L. 90-577, title III, §301, Oct. 16, 1968, 82 Stat. 1102, set out the statement of purpose for the provision of special or technical services to State and local units of government by Federal departments and agencies.

Section 4222, Pub. L. 90-577, title III, §302, Oct. 16, 1968, 82 Stat. 1102; 1970 Reorg. Plan No. 2, §102, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085, authorized Federal departments and agencies to provide specialized or technical services to States or their political subdivisions. See section 6505(a), (b) of Title 31, Money and Finance.

Section 4223, Pub. L. 90-577, title III, §303, Oct. 16, 1968, 82 Stat. 1102, related to reimbursement of appropriations to Federal departments and agencies. See section 6505(c) of Title 31.

§ 4224. Repealed. Pub. L. 96-470, title I, § 101(b), Oct. 19, 1980, 94 Stat. 2237

Section, Pub. L. 90-577, title III, §304, Oct. 16, 1968, 82 Stat. 1102, provided that the Secretary of any department or the administrative head of any agency of the executive branch of the Federal Government furnish annually to the respective Committees on Government Operations of the Senate and House of Representatives a summary report on the scope of the services provided under the administration of this subchapter.

§ 4225. Repealed. Pub. L. 97-258, § 5(b), Sept. 13, 1982, 96 Stat. 1068

Section, Pub. L. 90-577, title III, §305, Oct. 16, 1968, 82 Stat. 1103, provided for the reservation of existing authority of Federal departments and agencies with respect to furnishing services to State and local units of government. See section 6505(d) of Title 31, Money and Finance.

SUBCHAPTER IV—DEVELOPMENT ASSISTANCE PROGRAMS; COORDINATED INTERGOVERNMENTAL POLICY AND ADMINISTRATION

§§ 4231 to 4233. Repealed. Pub. L. 97-258, § 5(b), Sept. 13, 1982, 96 Stat. 1068

Section 4231, Pub. L. 90-577, title IV, §401, Oct. 16, 1968, 82 Stat. 1103, set out the declaration of a development assistance policy. See section 6506(a)-(e) of Title 31, Money and Finance.

Section 4232, Pub. L. 90-577, title IV, §402, Oct. 16, 1968, 82 Stat. 1104, related to the favoring of units of general local government in the provision of loans or grants-in-aid. See section 6506(f) of Title 31.

Section 4233, Pub. L. 90-577, title IV, §403, Oct. 16, 1968, 82 Stat. 1104; 1970 Reorg. Plan No. 2, §102, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085, related to rules and regulations for the effective administration of this subchapter. See section 6506(g) of Title 31.

SUBCHAPTER V—REVIEW OF FEDERAL GRANT-IN-AID PROGRAMS

§§ 4241 to 4244. Repealed. Pub. L. 97-258, § 5(b), Sept. 13, 1982, 96 Stat. 1068

Section 4241, Pub. L. 90-577, title VI, §601, Oct. 16, 1968, 82 Stat. 1106, related to Congressional review of grant-in-aid programs. See section 6507 of Title 31, Money and Finance.

Section 4242, Pub. L. 90-577, title VI, §602, Oct. 16, 1968, 82 Stat. 1107, related to studies by the Comptroller

General of Federal grant-in-aid programs and reports to Congress. See section 6508(a) of Title 31.

Section 4243, Pub. L. 90-577, title VI, §603, Oct. 16, 1968, 82 Stat. 1107, related to studies by the Advisory Commission on Intergovernmental Relations and a report of its findings to Congress. See section 6508(b) of Title 31.

Section 4244, Pub. L. 90-577, title VI, §604, Oct. 16, 1968, 82 Stat. 1107, provided for preservation of House and Senate committee jurisdiction.

CHAPTER 52A—JOINT FUNDING SIMPLIFICATION

§§ 4251 to 4261. Repealed. Pub. L. 97-258, §5(b), Sept. 13, 1982, 96 Stat. 1068

Section 4251, Pub. L. 93-510, §2, Dec. 5, 1974, 88 Stat. 1604, set out Congressional statement of purpose. See section 7101 of Title 31, Money and Finance.

Section 4252, Pub. L. 93-510, §3, Dec. 5, 1974, 88 Stat. 1604, related to implementation of joint funding provisions by Federal officials. See section 7103 of Title 31.

Section 4253, Pub. L. 93-510, §4, Dec. 5, 1974, 88 Stat. 1605, related to activities by heads of Federal agencies relating to application processing or assistance requests under two or more Federal programs supporting any project. See section 7104 of Title 31.

Section 4254, Pub. L. 93-510, §5, Dec. 5, 1974, 88 Stat. 1605, related to special authorities of heads of Federal agencies with respect to projects assisted under more than one Federal assistance program and exercise of these authorities pursuant to regulations prescribed by President. See section 7108 of Title 31.

Section 4255, Pub. L. 93-510, §6, Dec. 5, 1974, 88 Stat. 1606, provided for establishment by heads of Federal agencies of uniform technical and administrative provisions. See section 7105 of Title 31.

Section 4256, Pub. L. 93-510, §7, Dec. 5, 1974, 88 Stat. 1606, related to delegation by Federal agency heads of powers and functions relating to supervision, etc., of Federal assistance with the approval of President. See section 7106 of Title 31.

Section 4257, Pub. L. 93-510, §8, Dec. 5, 1974, 88 Stat. 1606, provided for a joint management fund for financing of projects under this chapter. See section 7107 of Title 31.

Section 4258, Pub. L. 93-510, §9, Dec. 5, 1974, 88 Stat. 1607, related to availability of appropriations for joint funding of programs under this chapter. See section 7109 of Title 31.

Section 4259, Pub. L. 93-510, §10, Dec. 5, 1974, 88 Stat. 1607, provided for agreements between Federal agencies and States extending joint funding provisions to assisted projects subject to Presidential regulations. See section 7110 of Title 31.

Section 4260, Pub. L. 93-510, §11, Dec. 5, 1974, 88 Stat. 1608, provided for a report by the President to Congress concerning actions taken under this chapter and the contents of such report. See section 7111 of Title 31.

Section 4261, Pub. L. 93-510, §12, Dec. 5, 1974, 88 Stat. 1608, provided definitions for use in this chapter. See section 7102 of Title 31.

EFFECTIVE AND EXPIRATION DATES

Pub. L. 93-510, §13, Dec. 5, 1974, 88 Stat. 1608, as amended by Pub. L. 96-534, Dec. 16, 1980, 94 Stat. 3164, which provided for the effective and expiration dates of that Act, was repealed by Pub. L. 97-258, §5(b), Sept. 13, 1982, 96 Stat. 1068. See section 7112 of Title 31, Money and Finance.

SHORT TITLE

Pub. L. 93-510, §1, Dec. 5, 1974, 88 Stat. 1604, which provided that Pub. L. 93-510 could be cited as the "Joint Funding Simplification Act of 1974", was repealed by Pub. L. 97-258, §5(b), Sept. 13, 1982, 96 Stat. 1068.

CHAPTER 53—ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

- Sec. 4271. Establishment.
- 4272. Declaration of purpose.
- 4273. Membership of Commission; appointment of members; term.
 - (a) Number of members; appointment; qualifications.
 - (b) Political and geographical composition.
 - (c) Term of office; reappointment; period of service.
- 4274. Organization of Commission.
 - (a) Initial meeting.
 - (b) Chairman and Vice Chairman.
 - (c) Vacancies in membership.
 - (d) Termination of service in official position from which originally appointed.
 - (e) Quorum.
- 4275. Duties of Commission.
- 4276. Powers and administrative provisions.
 - (a) Hearings; oaths and affirmations.
 - (b) Cooperation by Federal agencies.
 - (c) Executive director.
 - (d) Appointment and compensation of other personnel; temporary and intermittent services.
 - (e) Applicability of other laws to employees.
 - (f) Maximum compensation of employees.
- 4277. Compensation of members.
- 4278. Authorization of appropriations.
- 4279. Receipt of funds; consideration by Congress.

CONTINUATION AND TERMINATION OF COMMISSION TO PERFORM CONTRACTS FOR RESEARCH ON SOCIAL AND ECONOMIC IMPACTS OF GAMBLING

Pub. L. 104-328, §1, Oct. 19, 1996, 110 Stat. 4004, provided that the Advisory Commission on Intergovernmental Relations could continue in existence solely for the purpose of performing any contract entered into under section 7(a) of the National Gambling Impact Study Commission Act, Pub. L. 104-169, Aug. 3, 1996, 110 Stat. 1487, formerly set out in a note under section 1955 of Title 18, Crimes and Criminal Procedure, and would terminate on the date of the completion of such contract.

APPROPRIATIONS; UNFUNDED MANDATES; TERMINATION OF ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

Pub. L. 104-52, title IV, Nov. 19, 1995, 109 Stat. 480, provided in part that: "For necessary expenses of the Advisory Commission on Intergovernmental Relations, \$784,000, of which \$334,000 is to carry out the provisions of Public Law 104-4 [see Short Title note set out under section 1501 of Title 2, The Congress], and of which \$450,000 shall be available only for the purposes of the prompt and orderly termination of the Advisory Commission on Intergovernmental Relations."

§ 4271. Establishment

There is established a permanent bipartisan commission to be known as the Advisory Commission on Intergovernmental Relations, hereinafter referred to as the "Commission".

(Pub. L. 86-380, §1, Sept. 24, 1959, 73 Stat. 703.)

CODIFICATION

Section was formerly classified to section 2371 of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89-554, §1, Sept. 6, 1966, 80 Stat. 378.

EXECUTIVE ORDER NO. 11455

Ex. Ord. No. 11455, eff. Feb. 14, 1969, 34 F.R. 2299, which established the Office of Intergovernmental Relations, was revoked by Ex. Ord. No. 11690, eff. Dec. 14, 1972, 37 F.R. 26815, set out as a note under section 301 of Title 3, The President.

OFFICE OF INTERGOVERNMENTAL RELATIONS; AUTHORIZATION OF APPROPRIATIONS; COMPENSATION OF DIRECTOR; APPOINTMENT OF PERSONNEL; EXPERTS AND CONSULTANTS

Pub. L. 91-186, Dec. 30, 1969, 83 Stat. 849, authorized the appropriation of such sums as may be necessary for the expenses of the Office of Intergovernmental Relations, established by Ex. Ord. No. 11455, formerly set out above, prescribed the compensation of the Director of the Office, and authorized the Director to appoint such personnel as he deems necessary and to obtain the services of experts and consultants.

EXECUTIVE ORDER NO. 12303

Ex. Ord. No. 12303, Apr. 8, 1981, 46 F.R. 21341, which established the Presidential Advisory Committee on Federalism and provided for its membership, functions, etc., was revoked by Ex. Ord. No. 12399, §4(e), Dec. 31, 1982, 48 F.R. 380, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

§ 4272. Declaration of purpose

Because the complexity of modern life intensifies the need in a federal form of government for the fullest cooperation and coordination of activities between the levels of government, and because population growth and scientific developments portend an increasingly complex society in future years, it is essential that an appropriate agency be established to give continuing attention to intergovernmental problems.

It is intended that the Commission, in the performance of its duties, will—

- (1) bring together representatives of the Federal, State, and local governments for the consideration of common problems;
- (2) provide a forum for discussing the administration and coordination of Federal grant and other programs requiring intergovernmental cooperation;
- (3) give critical attention to the conditions and controls involved in the administration of Federal grant programs;
- (4) make available technical assistance to the executive and legislative branches of the Federal Government in the review of proposed legislation to determine its overall effect on the Federal system;
- (5) encourage discussion and study at an early stage of emerging public problems that are likely to require intergovernmental cooperation;
- (6) recommend, within the framework of the Constitution, the most desirable allocation of governmental functions, responsibilities, and revenues among the several levels of government; and
- (7) recommend methods of coordinating and simplifying tax laws and administrative practices to achieve a more orderly and less competitive fiscal relationship between the levels of government and to reduce the burden of compliance for taxpayers.

(Pub. L. 86-380, §2, Sept. 24, 1959, 73 Stat. 703.)

CODIFICATION

Section was formerly classified to section 2372 of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89-554, §1, Sept. 6, 1966, 80 Stat. 378.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4275 of this title.

§ 4273. Membership of Commission; appointment of members; term**(a) Number of members; appointment; qualifications**

The Commission shall be composed of twenty-six members, as follows:

- (1) Six appointed by the President of the United States, three of whom shall be officers of the executive branch of the Government, and three private citizens, all of whom shall have had experience or familiarity with relations between the levels of government;
- (2) Three appointed by the President of the Senate, who shall be Members of the Senate;
- (3) Three appointed by the Speaker of the House of Representatives, who shall be Members of the House;
- (4) Four appointed by the President from a panel of at least eight Governors submitted by the Governors' Conference;
- (5) Three appointed by the President from a panel of at least six members of State legislative bodies submitted by the board of managers of the Council of State Governments;
- (6) Four appointed by the President from a panel of at least eight mayors submitted jointly by the National League of Cities and the United States Conference of Mayors; and
- (7) Three appointed by the President from a panel of at least six elected county officers submitted by the National Association of Counties.

(b) Political and geographical composition

The members appointed from private life under paragraph (1) of subsection (a) of this section shall be appointed without regard to political affiliation; of each class of members enumerated in paragraphs (2) and (3) of subsection (a) of this section, two shall be from the majority party of the respective houses; of each class of members enumerated in paragraphs (4), (5), (6), and (7) of subsection (a) of this section, not more than two shall be from any one political party; of each class of members enumerated in paragraphs (5), (6) and (7) of subsection (a) of this section, not more than one shall be from any one State; at least two of the appointees under paragraph (6) of subsection (a) of this section shall be from cities under five hundred thousand population.

(c) Term of office; reappointment; period of service

The term of office of each member of the Commission shall be two years; members shall be eligible for reappointment; and, except as provided in section 4274(d) of this title, members shall serve until their successors are appointed.

(Pub. L. 86-380, §3, Sept. 24, 1959, 73 Stat. 704; Pub. L. 89-733, §§1, 2, Nov. 2, 1966, 80 Stat. 1162.)

CODIFICATION

Section was formerly classified to section 2373 of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89-554, §1, Sept. 6, 1966, 80 Stat. 378.

AMENDMENTS

1966—Subsec. (a)(6). Pub. L. 89-733, §1, substituted “National League of Cities” for “American Municipal Association”.

Subsec. (a)(7). Pub. L. 89-733, §1, substituted “National Association of Counties” for “National Association of County Officials”.

Subsec. (c). Pub. L. 89-733, §2, inserted provision that members shall serve until their successors are appointed, except as provided in section 4274(d) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4274 of this title.

§ 4274. Organization of Commission**(a) Initial meeting**

The President shall convene the Commission within ninety days following September 24, 1959 at such time and place as he may designate for the Commission’s initial meeting.

(b) Chairman and Vice Chairman

The President shall designate a Chairman and a Vice Chairman from among members of the Commission.

(c) Vacancies in membership

Any vacancy in the membership of the Commission shall be filed in the same manner in which the original appointment was made; except that where the number of vacancies is fewer than the number of members specified in paragraphs (4), (5), (6), and (7) of section 4273(a) of this title, each panel of names submitted in accordance with the aforementioned paragraphs shall contain at least two names for each vacancy.

(d) Termination of service in official position from which originally appointed

Where any member ceases to serve in the official position from which originally appointed under section 4273(a) of this title, his place on the Commission shall be deemed to be vacant.

(e) Quorum

Thirteen members of the Commission shall constitute a quorum, but two or more members shall constitute a quorum for the purpose of conducting hearings.

(Pub. L. 86-380, §4, Sept. 24, 1959, 73 Stat. 705.)

CODIFICATION

Section was formerly classified to section 2374 of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89-554, §1, Sept. 6, 1966, 80 Stat. 378.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4273 of this title.

§ 4275. Duties of Commission

It shall be the duty of the Commission—

(1) to engage in such activities and to make such studies and investigations as are necessary or desirable in the accomplishment of

the purposes set forth in section 4272 of this title;

(2) to consider, on its own initiative, ways and means for fostering better relations between the levels of government;

(3) to submit an annual report to the President and the Congress on or before January 31 of each year. The Commission may also submit such additional reports to the President, to the Congress or any committee of the Congress, and to any unit of government or organization as the Commission may deem appropriate.

(Pub. L. 86-380, §5, Sept. 24, 1959, 73 Stat. 705.)

CODIFICATION

Section was formerly classified to section 2375 of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89-554, §1, Sept. 6, 1966, 80 Stat. 378.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in cl. (3) of this section relating to submittal of an annual report to Congress, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and item 12 on page 153 of House Document No. 103-7.

STUDY AND REPORT TO CONGRESS OF EFFECT ON FUNDS AVAILABLE FOR HOUSING AND STATE AND LOCAL BOND MARKETS OF FULL DEPOSIT INSURANCE FOR PUBLIC FUNDS; SUBMISSION DATE; AUTHORIZATION OF APPROPRIATIONS

Pub. L. 93-495, title I, §101(f), Oct. 28, 1974, 88 Stat. 1502, required the Advisory Commission on Intergovernmental Relations to conduct a study of the impact of section 101 of Pub. L. 93-495 [amending sections 1464, 1724, 1728, 1757, 1787, 1813, 1817 and 1821 of Title 12, Banks and Banking, and enacting provision set out as a note under section 1813 of Title 12] on funds available for housing and on State and local bond markets, and to make a report to the Congress of the results of its study not later than two years after Oct. 28, 1974, and authorized the appropriation of such sums as may be necessary to carry out section 101(f) of Pub. L. 93-495.

§ 4276. Powers and administrative provisions**(a) Hearings; oaths and affirmations**

The Commission or, on the authorization of the Commission, any subcommittee or members thereof, may, for the purpose of carrying out the provisions of this chapter, hold such hearings, take such testimony, and sit and act at such times and places as the Commission deems advisable. Any member authorized by the Commission may administer oaths or affirmations to witnesses appearing before the Commission or any subcommittee or members thereof.

(b) Cooperation by Federal agencies

Each department, agency, and instrumentality of the executive branch of the Government, including independent agencies, is authorized and directed to furnish to the Commission, upon request made by the Chairman or Vice Chairman, such information as the Commission deems necessary to carry out its functions under this chapter.

(c) Executive director

The Commission shall have power to appoint, fix the compensation of, and remove an execu-

tive director without regard to the civil service laws and chapter 51 and subchapter III of chapter 53 of title 5. Such appointment shall be made solely on the basis of fitness to perform the duties of the position and without regard to political affiliation.

(d) Appointment and compensation of other personnel; temporary and intermittent services

Subject to such rules and regulations as may be adopted by the Commission, the Chairman, without regard to the civil service laws and chapter 51 and subchapter III of chapter 53 of title 5, and without reference to political affiliation, shall have the power—

(1) to appoint, fix the compensation of, and remove such other personnel as he deems necessary,

(2) to procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5 but at rates not to exceed \$50 a day for individuals.

(e) Applicability of other laws to employees

Except as otherwise provided in this chapter, persons in the employ of the Commission under subsections (c) and (d)(1) of this section shall be considered to be Federal employees for all purposes, including—

(1) subchapter III of chapter 83 of title 5,

(2) chapter 87 of title 5,

(3) annual and sick leave, and

(4) subchapter I of chapter 57 of this title 5.

(f) Maximum compensation of employees

No individual employed in the service of the Commission shall be paid compensation for such employment at a rate in excess of the highest rate provided for grade 18 under the General Schedule, except that the executive director of the Commission may be paid compensation at any rate not exceeding the rate prescribed for level V in the Executive Schedule of subchapter II of chapter 53 of title 5.

(Pub. L. 86-380, §6, Sept. 24, 1959, 73 Stat. 705; Pub. L. 88-426, title III, §306(e), Aug. 14, 1964, 78 Stat. 429; Pub. L. 89-733, §§3, 4, Nov. 2, 1966, 80 Stat. 1162.)

REFERENCES IN TEXT

The civil service laws, referred to in subsections (c) and (d), are set out in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

Annual and sick leave, referred to in subsection (e)(3), is covered generally by section 6301 et seq. of Title 5.

CODIFICATION

The following substitutions were made on authority of Pub. L. 89-554, §7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees:

In subsections (c) and (d), "chapter 51 and subchapter III of chapter 53 of title 5" substituted for "the Classification Act of 1949".

In subsection (d)(2), "section 3109 of title 5" substituted for "section 15 of the Administrative Expenses Act of 1946 (5 U.S.C. 55a)".

In subsection (e), "subchapter III of chapter 83 of title 5", "chapter 87 of title 5", and "subchapter I of chapter 57 of title 5" substituted for "the Civil Service Retirement Act, as amended", "the Federal Employees' Group Life Insurance Act of 1954, as amended", and "the Travel Expense Act of 1949, as amended", respectively.

In subsection (f), "the Executive Schedule of subchapter II of chapter 53 of title 5" substituted for "the Federal Executive Salary Schedule of the Federal Executive Salary Act of 1964".

Section was formerly classified to section 2376 of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89-554, §1, Sept. 6, 1966, 80 Stat. 378.

AMENDMENTS

1966—Subsec. (c). Pub. L. 89-733, §3, substituted "executive director" for "staff director".

Subsec. (f). Pub. L. 89-733, §4, authorized the executive director of the Commission to be paid compensation at any rate not exceeding the rate prescribed for level V in the Federal Executive Salary Schedule.

1964—Subsec. (f). Pub. L. 88-426 substituted "at a rate in excess of the highest rate of grade 18 of the General Schedule of the Classification Act of 1949, as amended" for "at a rate in excess of \$20,000 per annum".

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-426 effective on first day of first pay period which begins on or after July 1, 1964, except to the extent provided in section 501(c) of Pub. L. 88-426.

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

§ 4277. Compensation of members

(a) Members of the Commission who are Members of Congress, officers of the executive branch of the Federal Government, Governors, or full-time salaries officers of city and county governments shall serve without compensation in addition to that received in their regular public employment, but shall be allowed necessary travel expenses (or, in the alternative, a per diem in lieu of subsistence and mileage not to exceed the rates prescribed in subchapter I of chapter 57 of title 5), without regard to subchapter I of chapter 57 of title 5, the Standardized Government Travel Regulations, or section 5731(a) of title 5, and other necessary expenses incurred by them in the performance of duties vested in the Commission.

(b) Unless prohibited by State or local law, members of the Commission, other than those to whom subsection (a) of this section is applicable, shall receive compensation at the rate of \$50 per day for each day they are engaged in the performance of their duties as members of the Commission and shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties as members of the Commission, as provided for in subsection (a) of this section.

(Pub. L. 86-380, §7, Sept. 24, 1959, 73 Stat. 706; Pub. L. 89-733, §5, Nov. 2, 1966, 80 Stat. 1162.)

CODIFICATION

In subsection (a), "subchapter I of chapter 57 of title 5" substituted for "the Travel Expense Act of 1949, as amended" and for "the Travel Expense Act of 1949, as amended (5 U.S.C. 835-842)", and "section 5731(a) of title 5" substituted for "section 10 of the Act of March 3,

1933, (5 U.S.C. 73(b))”, on authority of Pub. L. 89-554, §7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

Section was formerly classified to section 2377 of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89-554, §1, Sept. 6, 1966, 80 Stat. 378.

AMENDMENTS

1966—Subsec. (b). Pub. L. 89-733 inserted “Unless prohibited by State or local law”.

§ 4278. Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this chapter.

(Pub. L. 86-380, §8, Sept. 24, 1959, 73 Stat. 706.)

CODIFICATION

Section was formerly classified to section 2378 of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89-554, §1, Sept. 6, 1966, 80 Stat. 378.

§ 4279. Receipt of funds; consideration by Congress

The Commission is authorized to receive funds through grants, contracts, and contributions from State and local governments and organizations thereof, and from nonprofit organizations. Such funds may be received and expended by the Commission only for purposes of this chapter. In making appropriations to the Commission the Congress shall consider the amount of any funds received by the Commission in addition to those funds appropriated to it by the Congress.

(Pub. L. 86-380, §9, as added Pub. L. 89-733, §6, Nov. 2, 1966, 80 Stat. 1162.)

CODIFICATION

Section was formerly classified to section 2379 of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89-554, §1, Sept. 6, 1966, 80 Stat. 378.

CHAPTER 54—CABINET COMMITTEE ON OPPORTUNITIES FOR SPANISH-SPEAKING PEOPLE

§§ 4301 to 4312. Omitted

CODIFICATION

Sections 4301 to 4312 of this title, Pub. L. 91-181, §§1-12, Dec. 30, 1969, 83 Stat. 838, were omitted pursuant to section 4312 of this title which provided that Pub. L. 91-181 shall expire five years after Dec. 30, 1969.

Section 4301, Pub. L. 91-181, §1, Dec. 30, 1969, 83 Stat. 838, related to Congressional declaration of purpose.

Section 4302, Pub. L. 91-181, §2, Dec. 30, 1969, 83 Stat. 838, related to establishment of Cabinet Committee on Opportunities for Spanish-Speaking People, its composition, appointment of Chairman.

Section 4303, Pub. L. 91-181, §3, Dec. 30, 1969, 83 Stat. 838, related to functions of Committee.

Section 4304, Pub. L. 91-181, §4, Dec. 30, 1969, 83 Stat. 839, related to administrative powers of the Committee.

Section 4305, Pub. L. 91-181, §5, Dec. 30, 1969, 83 Stat. 839, related to utilization of services and facilities of governmental agencies.

Section 4306, Pub. L. 91-181, §6, Dec. 30, 1969, 83 Stat. 839, related to compensation of personnel and transfer of personnel from other Federal departments and agencies.

Section 4307, Pub. L. 91-181, §7, Dec. 30, 1969, 83 Stat. 839, related to establishment of an Advisory Council on Spanish-Speaking Americans.

Section 4308, Pub. L. 91-181, §8, Dec. 30, 1969, 83 Stat. 840, related to nonimpairment of existing powers of other Federal departments and agencies.

Section 4309, Pub. L. 91-181, §9, Dec. 30, 1969, 93 Stat. 840, related to restrictions on political activities of Committee and Advisory Council.

Section 4310, Pub. L. 91-181, §10, Dec. 30, 1969, 83 Stat. 840; Pub. L. 92-122, Aug. 16, 1971, 85 Stat. 342, related to authorization of appropriations.

Section 4311, Pub. L. 91-181, §11, Dec. 30, 1969, 83 Stat. 840, related to submission of reports to the President and Congress.

Section 4312, Pub. L. 91-181, §12, Dec. 30, 1969, 83 Stat. 840, provided that this chapter shall expire five years after Dec. 30, 1969.

CHAPTER 55—NATIONAL ENVIRONMENTAL POLICY

Sec. 4321. Congressional declaration of purpose.

SUBCHAPTER I—POLICIES AND GOALS

4331. Congressional declaration of national environmental policy.

4332. Cooperation of agencies; reports; availability of information; recommendations; international and national coordination of efforts.

4333. Conformity of administrative procedures to national environmental policy.

4334. Other statutory obligations of agencies.

4335. Efforts supplemental to existing authorizations.

SUBCHAPTER II—COUNCIL ON ENVIRONMENTAL QUALITY

4341. Omitted.

4342. Establishment; membership; Chairman; appointments.

4343. Employment of personnel, experts and consultants.

4344. Duties and functions.

4345. Consultation with Citizens' Advisory Committee on Environmental Quality and other representatives.

4346. Tenure and compensation of members.

4346a. Travel reimbursement by private organizations and Federal, State, and local governments.

4346b. Expenditures in support of international activities.

4347. Authorization of appropriations.

SUBCHAPTER III—MISCELLANEOUS PROVISIONS

4361, 4361a. Repealed.

4361b. Implementation by Administrator of Environmental Protection Agency of recommendations of “CHESS” Investigative Report; waiver; inclusion of status of implementation requirements in annual revisions of plan for research, development, and demonstration.

4361c. Staff management.
 (a) Appointments for educational programs.
 (b) Post-doctoral research fellows.
 (c) Non-Government research associates.
 (d) Women and minority groups.

4362. Interagency cooperation on prevention of environmental cancer and heart and lung disease.

4362a. Membership of Task Force on Environmental Cancer and Heart and Lung Disease.

4363. Continuing and long-term environmental research and development.

4363a. Pollution control technologies demonstrations.

- Sec.
4364. Expenditure of funds for research and development related to regulatory program activities.
(a) Coordination, etc., with research needs and priorities of program offices and Environmental Protection Agency.
(b) Program offices subject to coverage.
(c) Report to Congress; contents.
4365. Science Advisory Board.
(a) Establishment; requests for advice by Administrator of Environmental Protection Agency and Congressional committees.
(b) Membership; Chairman; meetings; qualifications of members.
(c) Proposed environmental criteria document, standard, limitation, or regulation; functions respecting in conjunction with Administrator.
(d) Utilization of technical and scientific capabilities of Federal agencies and national environmental laboratories for determining adequacy of scientific and technical basis of proposed criteria document, etc.
(e) Member committees and investigative panels; establishment; chairmanship.
(f) Appointment and compensation of secretary and other personnel; compensation of members.
(g) Consultation and coordination with Scientific Advisory Panel.
4366. Identification and coordination of research, development, and demonstration activities.
(a) Consultation and cooperation of Administrator of Environmental Protection Agency with heads of Federal agencies; inclusion of activities in annual revisions of plan for research, etc.
(b) Coordination of programs by Administrator.
(c) Joint study by Council on Environmental Quality in consultation with Office of Science and Technology Policy for coordination of activities; report to President and Congress; report by President to Congress on implementation of joint study and report.
- 4366a. Omitted.
4367. Reporting requirements of financial interests of officers and employees of Environmental Protection Agency.
(a) Covered officers and employees.
(b) Implementation of requirements by Administrator.
(c) Exemption of positions by Administrator.
(d) Violations; penalties.
4368. Grants to qualified citizens groups.
- 4368a. Utilization of talents of older Americans in projects of pollution prevention, abatement, and control.
(a) Technical assistance to environmental agencies.
(b) Pre-award certifications.
(c) Prior appropriation Acts.
- 4368b. General assistance program.
(a) Short title.
(b) Purposes.
(c) Definitions.
(d) General assistance program.
(e) No reduction in amounts.
(f) Expenditure of general assistance.
(g) Procedures.
(h) Authorization.
- Sec.
4369. Miscellaneous reports.
(a) Availability to Congressional committees.
(b) Transmittal of jurisdictional information.
(c) Comment by Government agencies and the public.
(d) Transmittal of research information to the Department of Energy.
- 4369a. Reports on environmental research and development activities of Agency.
(a) Reports to keep Congressional committees fully and currently informed.
(b) Omitted.
4370. Reimbursement for use of facilities.
(a) Authority to allow outside groups or individuals to use research and test facilities; reimbursement.
(b) Rules and regulations.
(c) Waiver of reimbursement by Administrator.
- 4370a. Assistant Administrators of Environmental Protection Agency; appointment; duties.
- 4370b. Availability of fees and charges to carry out Agency programs.
- 4370c. Environmental Protection Agency fees.
(a) Assessment and collection.
(b) Amount of fees and charges.
(c) Limitation on fees and charges.
(d) Rule of construction.
(e) Uses of fees.
- 4370d. Percentage of Federal funding for organizations owned by socially and economically disadvantaged individuals.
- 4370e. Working capital fund in Treasury.
- 4370f. Availability of funds after expiration of period for liquidating obligations.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1437x, 2243, 3547, 4374, 4852, 5159, 5304, 6508, 7276c, 7616, 7916, 8302, 10133, 10134, 10161, 10165, 10168, 10196, 10247, 12838 of this title; title 7 section 2814; title 10 sections 2391, 2667, 7439; title 12 sections 1715z-13a, 1715z-22; title 15 sections 719f, 719h, 793; title 16 sections 1a-5, 410hh, 460ii-4, 460qq, 460lll, 470h-2, 471j, 497b, 497c, 539m-1, 544o, 797d, 839d, 1434, 1455, 1536, 1602, 1604, 2403a, 2705, 3164, 3232, 3233, 3636, 4403, 4404, 6236, 6513, 6514, 6517, 6554; title 22 section 277d-45; title 23 sections 108, 134, 135, 182, 206, 323; title 25 sections 458aaa-8, 640d-26, 4115, 4226; title 30 sections 185, 1292; title 33 sections 59c-2, 59c-3, 59j-1, 59k, 59n, 59o, 59y, 59bb, 59bb-1, 59cc, 59dd, 59ff, 59gg, 59hh, 59jj, 701b-13, 1293a, 1344, 1371, 1504, 1505; title 43 sections 390h-1, 421h, 1351, 1577, 1597, 1638, 1652, 1723, 1866, 1904, 2006, 2223, 7276c; title 45 sections 917, 1010, 1207, 1212; title 49 sections 5304, 5305, 5309, 47171, 70304; title 50 section 2566.

§ 4321. Congressional declaration of purpose

The purposes of this chapter are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

(Pub. L. 91-190, § 2, Jan. 1, 1970, 83 Stat. 852.)

SHORT TITLE

Section 1 Pub. L. 91-190 provided: "That this Act [enacting this chapter] may be cited as the 'National Environmental Policy Act of 1969'."

TRANSFER OF FUNCTIONS

Enforcement functions of Secretary or other official in Department of the Interior related to compliance with system activities requiring coordination and approval under this chapter, and enforcement functions of Secretary or other official in Department of Agriculture, insofar as they involve lands and programs under jurisdiction of that Department, related to compliance with this chapter with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas transferred to Federal Inspector, Office of Federal Inspector for Alaska Natural Gas Transportation System, until first anniversary of date of initial operation of Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§102(e), (f), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out in the Appendix to Title 5, Government Organization and Employees, Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102-486, set out as an Abolition of Office of Federal Inspector note under section 719e of Title 15, Commerce and Trade.

EMERGENCY PREPAREDNESS FUNCTIONS

For assignment of certain emergency preparedness functions to Administrator of Environmental Protection Agency, see Parts 1, 2, and 16 of Ex. Ord. No. 12656, Nov. 18, 1988, 53 F.R. 47491, set out as a note under section 5195 of this title.

NECESSITY OF MILITARY LOW-LEVEL FLIGHT TRAINING TO PROTECT NATIONAL SECURITY AND ENHANCE MILITARY READINESS

Pub. L. 106-398, §1 [[div. A], title III, §317], Oct. 30, 2000, 114 Stat. 1654, 1654A-57, provided that: "Nothing in the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) or the regulations implementing such law shall require the Secretary of Defense or the Secretary of a military department to prepare a programmatic, nation-wide environmental impact statement for low-level flight training as a precondition to the use by the Armed Forces of an airspace for the performance of low-level training flights."

POLLUTION PROSECUTION

Pub. L. 101-593, title II, Nov. 16, 1990, 104 Stat. 2962, provided that:

"SEC. 201. SHORT TITLE.

"This title may be cited as the 'Pollution Prosecution Act of 1990'.

"SEC. 202. EPA OFFICE OF CRIMINAL INVESTIGATION.

"(a) The Administrator of the Environmental Protection Agency (hereinafter referred to as the 'Administrator') shall increase the number of criminal investigators assigned to the Office of Criminal Investigations by such numbers as may be necessary to assure that the number of criminal investigators assigned to the office—

"(1) for the period October 1, 1991, through September 30, 1992, is not less than 72;

"(2) for the period October 1, 1992, through September 30, 1993, is not less than 110;

"(3) for the period October 1, 1993, through September 30, 1994, is not less than 123;

"(4) for the period October 1, 1994, through September 30, 1995, is not less than 160;

"(5) beginning October 1, 1995, is not less than 200.

"(b) For fiscal year 1991 and in each of the following 4 fiscal years, the Administrator shall, during each such fiscal year, provide increasing numbers of additional support staff to the Office of Criminal Investigations.

"(c) The head of the Office of Criminal Investigations shall be a position in the competitive service as defined

in 2102 of title 5 U.S.C. or a career reserve position as defined in 3132(A) of title 5 U.S.C. and the head of such office shall report directly, without intervening review or approval, to the Assistant Administrator for Enforcement.

"SEC. 203. CIVIL INVESTIGATORS.

"The Administrator, as soon as practicable following the date of the enactment of this Act [Nov. 16, 1990], but no later than September 30, 1991, shall increase by fifty the number of civil investigators assigned to assist the Office of Enforcement in developing and prosecuting civil and administrative actions and carrying out its other functions.

"SEC. 204. NATIONAL TRAINING INSTITUTE.

"The Administrator shall, as soon as practicable but no later than September 30, 1991 establish within the Office of Enforcement the National Enforcement Training Institute. It shall be the function of the Institute, among others, to train Federal, State, and local lawyers, inspectors, civil and criminal investigators, and technical experts in the enforcement of the Nation's environmental laws.

"SEC. 205. AUTHORIZATION.

"For the purposes of carrying out the provisions of this Act [probably should be "this title"], there is authorized to be appropriated to the Environmental Protection Agency \$13,000,000 for fiscal year 1991, \$18,000,000 for fiscal year 1992, \$20,000,000 for fiscal year 1993, \$26,000,000 for fiscal year 1994, and \$33,000,000 for fiscal year 1995."

REORGANIZATION PLAN NO. 3 OF 1970

Eff. Dec. 2, 1970, 35 F.R. 15623, 84 Stat. 2086, as amended Pub. L. 98-80, §2(a)(2), (b)(2), (c)(2)(C), Aug. 23, 1983, 97 Stat. 485, 486

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, July 9, 1970, pursuant to the provisions of Chapter 9 of Title 5 of the United States Code.

ENVIRONMENTAL PROTECTION AGENCY

SECTION 1. ESTABLISHMENT OF AGENCY

(a) There is hereby established the Environmental Protection Agency, hereinafter referred to as the "Agency."

(b) There shall be at the head of the Agency the Administrator of the Environmental Protection Agency, hereinafter referred to as the "Administrator." The Administrator shall be appointed by the President, by and with the advice and consent of the Senate.

(c) There shall be in the Agency a Deputy Administrator of the Environmental Protection Agency who shall be appointed by the President, by and with the advice and consent of the Senate. The Deputy Administrator shall perform such functions as the Administrator shall from time to time assign or delegate, and shall act as Administrator during the absence or disability of the Administrator or in the event of a vacancy in the office of Administrator.

(d) There shall be in the Agency not to exceed five Assistant Administrators of the Environmental Protection Agency who shall be appointed by the President, by and with the advice and consent of the Senate. Each Assistant Administrator shall perform such functions as the Administrator shall from time to time assign or delegate. [As amended Pub. L. 98-80, §2(a)(2), (b)(2), (c)(2)(C), Aug. 23, 1983, 97 Stat. 485, 486.]

SEC. 2. TRANSFERS TO ENVIRONMENTAL PROTECTION AGENCY

(a) There are hereby transferred to the Administrator:

(1) All functions vested by law in the Secretary of the Interior and the Department of the Interior which are administered through the Federal Water Quality Administration, all functions which were transferred to

the Secretary of the Interior by Reorganization Plan No. 2 of 1966 (80 Stat. 1608), and all functions vested in the Secretary of the Interior or the Department of the Interior by the Federal Water Pollution Control Act or by provisions of law amendatory or supplementary thereof [see 33 U.S.C. 1251 et seq.].

(2)(i) The functions vested in the Secretary of the Interior by the Act of August 1, 1958, 72 Stat. 479, 16 U.S.C. 742d-1 (being an Act relating to studies on the effects of insecticides, herbicides, fungicides, and pesticides upon the fish and wildlife resources of the United States), and (ii) the functions vested by law in the Secretary of the Interior and the Department of the Interior which are administered by the Gulf Breeze Biological Laboratory of the Bureau of Commercial Fisheries at Gulf Breeze, Florida.

(3) The functions vested by law in the Secretary of Health, Education, and Welfare or in the Department of Health, Education, and Welfare which are administered through the Environmental Health Service, including the functions exercised by the following components thereof:

- (i) The National Air Pollution Control Administration,
- (ii) The Environmental Control Administration:
 - (A) Bureau of Solid Waste Management,
 - (B) Bureau of Water Hygiene,
 - (C) Bureau of Radiological Health,

except that functions carried out by the following components of the Environmental Control Administration of the Environmental Health Service are not transferred: (i) Bureau of Community Environmental Management, (ii) Bureau of Occupational Safety and Health, and (iii) Bureau of Radiological Health, insofar as the functions carried out by the latter Bureau pertain to (A) regulation of radiation from consumer products, including electronic product radiation, (B) radiation as used in the healing arts, (C) occupational exposures to radiation, and (D) research, technical assistance, and training related to clauses (A), (B), and (C).

(4) The functions vested in the Secretary of Health, Education, and Welfare of establishing tolerances for pesticide chemicals under the Federal Food, Drug, and Cosmetic Act, as amended, 21 U.S.C. 346, 346a, and 348, together with authority, in connection with the functions transferred, (i) to monitor compliance with the tolerances and the effectiveness of surveillance and enforcement, and (ii) to provide technical assistance to the States and conduct research under the Federal Food, Drug, and Cosmetic Act, as amended [21 U.S.C. 301 et seq.], and the Public Health Service Act, as amended [42 U.S.C. 201 et seq.].

(5) So much of the functions of the Council on Environmental Quality under section 204(5) of the National Environmental Policy Act of 1969 (Public Law 91-190, approved January 1, 1970, 83 Stat. 855) [42 U.S.C. 4344(5)], as pertains to ecological systems.

(6) The functions of the Atomic Energy Commission under the Atomic Energy Act of 1954, as amended [42 U.S.C. 2011 et seq.], administered through its Division of Radiation Protection Standards, to the extent that such functions of the Commission consist of establishing generally applicable environmental standards for the protection of the general environment from radioactive material. As used herein, standards mean limits on radiation exposures or levels, or concentrations or quantities of radioactive material, in the general environment outside the boundaries of locations under the control of persons possessing or using radio-active material.

(7) All functions of the Federal Radiation Council (42 U.S.C. 2021(h)).

(8)(i) The functions of the Secretary of Agriculture and the Department of Agriculture under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 135-135k) [7 U.S.C. 136 et seq.], (ii) the functions of the Secretary of Agriculture and the Department of Agriculture under section 408(l) of the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C.

346a(l)), and (iii) the functions vested by law in the Secretary of Agriculture and the Department of Agriculture which are administered through the Environmental Quality Branch of the Plant Protection Division of the Agricultural Research Service.

(9) So much of the functions of the transferor officers and agencies referred to in or affected by the foregoing provisions of this section as is incidental to or necessary for the performance by or under the Administrator of the functions transferred by those provisions or relates primarily to those functions. The transfers to the Administrator made by this section shall be deemed to include the transfer of (1) authority, provided by law, to prescribe regulations relating primarily to the transferred functions, and (2) the functions vested in the Secretary of the Interior and the Secretary of Health, Education, and Welfare by section 169(d)(1)(B) and (3) of the Internal Revenue Code of 1954 (as enacted by section 704 of the Tax Reform Act of 1969, 83 Stat. 668); but shall be deemed to exclude the transfer of the functions of the Bureau of Reclamation under section 3(b)(1) of the Water Pollution Control Act (33 U.S.C. [former] 466a(b)(1)).

(b) There are hereby transferred to the Agency:

(1) From the Department of the Interior, (i) the Water Pollution Control Advisory Board (33 U.S.C. [former] 466f) [see 33 U.S.C. 1363], together with its functions, and (ii) the hearing boards provided for in sections 10(c)(4) and 10(f) of the Federal Water Pollution Control Act, as amended (33 U.S.C. [former] 466g(c)(4); 466g(f)). The functions of the Secretary of the Interior with respect to being or designating the Chairman of the Water Pollution Control Advisory Board are hereby transferred to the Administrator.

(2) From the Department of Health, Education, and Welfare, the Air Quality Advisory Board (42 U.S.C. 1857e) [42 U.S.C. 7417], together with its functions. The functions of the Secretary of Health, Education, and Welfare with respect to being a member and the Chairman of that Board are hereby transferred to the Administrator.

SEC. 3. PERFORMANCE OF TRANSFERRED FUNCTIONS

The Administrator may from time to time make such provisions as he shall deem appropriate authorizing the performance of any of the functions transferred to him by the provisions of this reorganization plan by any other officer, or by any organizational entity or employee, of the Agency.

SEC. 4. INCIDENTAL TRANSFERS

(a) So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available or to be made available in connection with the functions transferred to the Administrator or the Agency by this reorganization plan as the Director of the Office of Management and Budget shall determine shall be transferred to the Agency at such time or times as the Director shall direct.

(b) Such further measures and dispositions as the Director of Office of Management and Budget shall deem to be necessary in order to effectuate the transfers referred to in subsection (a) of this section shall be carried out in such manner as he shall direct and by such agencies as he shall designate.

SEC. 5. INTERIM OFFICERS

(a) The President may authorize any person who immediately prior to the effective date of this reorganization plan held a position in the executive branch of the Government to act as Administrator until the office of Administrator is for the first time filled pursuant to the provisions of this reorganization plan or by recess appointment, as the case may be.

(b) The President may similarly authorize any such person to act as Deputy Administrator, authorize any such person to act as Assistant Administrator, and authorize any such person to act as the head of any prin-

principal constituent organizational entity of the Administration.

(c) The President may authorize any person who serves in an acting capacity under the foregoing provisions of this section to receive the compensation attached to the office in respect of which he so serves. Such compensation, if authorized, shall be in lieu of, but not in addition to, other compensation from the United States to which such person may be entitled.

SEC. 6. ABOLITIONS

(a) Subject to the provisions of this reorganization plan, the following, exclusive of any functions, are hereby abolished:

(1) The Federal Water Quality Administration in the Department of the Interior (33 U.S.C. [former] 466-1).

(2) The Federal Radiation Council (73 Stat. 690; 42 U.S.C. 2021(h)).

(b) Such provisions as may be necessary with respect to terminating any outstanding affairs shall be made by the Secretary of the Interior in the case of the Federal Water Quality Administration and by the Administrator of General Services in the case of the Federal Radiation Council.

SEC. 7. EFFECTIVE DATE

The provisions of this reorganization plan shall take effect sixty days after the date they would take effect under 5 U.S.C. 906(a) in the absence of this section.

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

I transmit herewith Reorganization Plan No. 3 of 1970, prepared in accordance with chapter 9 of title 5 of the United States Code and providing for an Environmental Protection Agency. My reasons for transmitting this plan are stated in a more extended accompanying message.

After investigation, I have found and hereby declare that each reorganization included in Reorganization Plan No. 3 of 1970 is necessary to accomplish one or more of the purposes set forth in section 901(a) of title 5 of the United States Code. In particular, the plan is responsive to section 901(a)(1), "to promote the better execution of the laws, the more effective management of the executive branch and of its agencies and functions, and the expeditious administration of the public business;" and section 901(a)(3), "to increase the efficiency of the operations of the Government to the fullest extent practicable."

The reorganizations provided for in the plan make necessary the appointment and compensation of new officers as specified in section 1 of the plan. The rates of compensation fixed for these officers are comparable to those fixed for other officers in the executive branch who have similar responsibilities.

Section 907 of title 5 of the United States Code will operate to preserve administrative proceedings, including any public hearing proceedings, related to the transferred functions, which are pending immediately prior to the taking effect of the reorganization plan.

The reorganization plan should result in more efficient operation of the Government. It is not practical, however, to itemize or aggregate the exact expenditure reductions which will result from this action.

RICHARD NIXON.

THE WHITE HOUSE, July 9, 1970.

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

As concern with the condition of our physical environment has intensified, it has become increasingly clear that we need to know more about the total environment—land, water and air. It also has become increasingly clear that only by reorganizing our Federal efforts can we develop that knowledge, and effectively ensure the protection, development and enhancement of the total environment itself.

The Government's environmentally-related activities have grown up piecemeal over the years. The time has

come to organize them rationally and systematically. As a major step in this direction, I am transmitting today two reorganization plans: one to establish an Environmental Protection Agency, and one to establish, within the Department of Commerce, a National Oceanic and Atmospheric Administration.

ENVIRONMENTAL PROTECTION AGENCY (EPA)

Our national government today is not structured to make a coordinated attack on the pollutants which debase the air we breathe, the water we drink, and the land that grows our food. Indeed, the present governmental structure for dealing with environmental pollution often defies effective and concerted action.

Despite its complexity, for pollution control purposes the environment must be perceived as a single, inter-related system. Present assignments of departmental responsibilities do not reflect this interrelatedness.

Many agency missions, for example, are designed primarily along media lines—air, water, and land. Yet the sources of air, water, and land pollution are inter-related and often interchangeable. A single source may pollute the air with smoke and chemicals, the land with solid wastes, and a river or lake with chemical and other wastes. Control of the air pollution may produce more solid wastes, which then pollute the land or water. Control of the water-polluting effluent may convert it into solid wastes, which must be disposed of on land.

Similarly, some pollutants—chemicals, radiation, pesticides—appear in all media. Successful control of them at present requires the coordinated efforts of a variety of separate agencies and departments. The results are not always successful.

A far more effective approach to pollution control would:

- identify pollutants.
- trace them through the entire ecological chain, observing and recording changes in form as they occur.
- Determine the total exposure of man his environment.
- Examine interactions among forms of pollution.
- Identify where in the ecological chain interdiction would be most appropriate.

In organizational terms, this requires pulling together into one agency a variety of research, monitoring, standard-setting and enforcement activities now scattered through several departments and agencies. It also requires that the new agency include sufficient support elements—in research and in aids to State and local anti-pollution programs, for example—to give it the needed strength and potential for carrying out its mission. The new agency would also, of course, draw upon the results of research conducted by other agencies.

COMPONENTS OF THE EPA

Under the terms of Reorganization Plan No. 3, the following would be moved to the new Environmental Protection Agency:

- The functions carried out by the Federal Water Quality Administration (from the Department of the Interior).
- Functions with respect to pesticides studies now vested in the Department of the Interior.
- The functions carried out by the National Air Pollution Control Administration (from the Department of Health, Education, and Welfare).
- The functions carried out by the Bureau of Solid Waste Management and the Bureau of Water Hygiene, and portions of the functions carried out by the Bureau of Radiological Health of the Environmental Control Administration (from the Department of Health, Education, and Welfare).
- Certain functions with respect to pesticides carried out by the Food and Drug Administration (from the Department of Health, Education, and Welfare).
- Authority to perform studies relating to ecological systems now vested in the Council on Environmental Quality.

—Certain functions respecting radiation criteria and standards now vested in the Atomic Energy Commission and the Federal Radiation Council.

—Functions respecting pesticides registration and related activities now carried out by the Agricultural Research Service (from the Department of Agriculture).

With its broad mandate, EPA would also develop competence in areas of environmental protection that have not previously been given enough attention, such, for example, as the problem of noise, and it would provide an organization to which new programs in these areas could be added.

In brief, these are the principal functions to be transferred:

Federal Water Quality Administration.—Charged with the control of pollutants which impair water quality, it is broadly concerned with the impact of degraded water quality. It performs a wide variety of functions, including research, standard-setting and enforcement, and provides construction grants and technical assistance.

Certain pesticides research authority from the Department of the Interior.—Authority for research on the effects of pesticides on fish and wildlife would be provided to the EPA through transfer of the specialized research authority of the pesticides act enacted in 1958. Interior would retain its responsibility to do research on all factors affecting fish and wildlife. Under this provision, only one laboratory would be transferred to the EPA—the Gulf Breeze Biological Laboratory of the Bureau of Commercial Fisheries. The EPA would work closely with the fish and wildlife laboratories remaining with the Bureau of Sport Fisheries and Wildlife.

National Air Pollution Control Administration.—As the principal Federal agency concerned with air pollution, it conducts research on the effects of air pollution, operates a monitoring network, and promulgates criteria which serve as the basis for setting air quality standards. Its regulatory functions are similar to those of the Federal Water Quality Administration. NAPCA is responsible for administering the Clean Air Act, which involves designating air quality regions, approving State standards and providing financial and technical assistance to State Control agencies to enable them to comply with the Act's provisions. It also sets and enforces Federal automotive emission standards.

Elements of the Environmental Control Administration.—ECA is the focal point within HEW for evaluation and control of a broad range of environmental health problems, including water quality, solid wastes, and radiation. Programs in the ECA involve research, development of criteria and standards, and the administration of planning and demonstration grants. From the ECA, the activities of the Bureaus of Water Hygiene and Solid Waste Management and portions of the activities of the Bureau of Radiological Health would be transferred. Other functions of the ECA including those related to the regulation of radiation from consumer products and occupational safety and health would remain in HEW.

Pesticides research and standard-setting programs of the Food and Drug Administration.—FDA's pesticides program consists of setting and enforcing standards which limit pesticide residues in food. EPA would have the authority to set pesticide standards and to monitor compliance with them, as well as to conduct related research. However, as an integral part of its food protection activities, FDA would retain its authority to remove from the market food with excess pesticide residues.

General ecological research from the Council on Environmental Quality.—This authority to perform studies and research relating to ecological systems would be in addition to EPA's other specific research authorities, and it would help EPA to measure the impact of pollutants. The Council on Environmental Quality would retain its authority to conduct studies and research relating to environmental quality.

Environmental radiation standards programs.—The Atomic Energy Commission is now responsible for es-

tablating environmental radiation standards and emission limits for radioactivity. Those standards have been based largely on broad guidelines recommended by the Federal Radiation Council. The Atomic Energy Commission's authority to set standards for the protection of the general environment from radioactive material would be transferred to the Environmental Protection Agency. The functions of the Federal Radiation Council would also be transferred. AEC would retain responsibility for the implementation and enforcement of radiation standards through its licensing authority.

Pesticides registration program of the Agricultural Research Service.—The Department of Agriculture is currently responsible for several distinct functions related to pesticides use. It conducts research on the efficacy of various pesticides as related to other pest control methods and on the effects of pesticides on non-target plants, livestock, and poultry. It registers pesticides, monitors their persistence and carries out an educational program on pesticide use through the extension service. It conducts extensive pest control programs which utilize pesticides.

By transferring the Department of Agriculture's pesticides registration and monitoring function to the EPA and merging it with the pesticides programs being transferred from HEW and Interior, the new agency would be given a broad capability for control over the introduction of pesticides into the environment.

The Department of Agriculture would continue to conduct research on the effectiveness of pesticides. The Department would furnish this information to the EPA, which would have the responsibility for actually licensing pesticides for use after considering environmental and health effects. Thus the new agency would be able to make use of the expertise of the Department.

ADVANTAGES OF REORGANIZATION

This reorganization would permit response to environmental problems in a manner beyond the previous capability of our pollution control programs. The EPA would have the capacity to do research on important pollutants irrespective of the media in which they appear, and on the impact of these pollutants on the total environment. Both by itself and together with other agencies, the EPA would monitor the condition of the environment—biological as well as physical. With these data, the EPA would be able to establish quantitative "environmental baselines"—critical if we are to measure adequately the success or failure of our pollution abatement efforts.

As no disjointed array of separate programs can, the EPA would be able—in concert with the States—to set and enforce standards for air and water quality and for individual pollutants. This consolidation of pollution control authorities would help assure that we do not create new environmental problems in the process of controlling existing ones. Industries seeking to minimize the adverse impact of their activities on the environment would be assured of consistent standards covering the full range of their waste disposal problems. As the States develop and expand their own pollution control programs, they would be able to look to one agency to support their efforts with financial and technical assistance and training.

In proposing that the Environmental Protection Agency be set up as a separate new agency, I am making an exception to one of my own principles: that, as a matter of effective and orderly administration, additional new independent agencies normally should not be created. In this case, however, the arguments against placing environmental protection activities under the jurisdiction of one or another of the existing departments and agencies are compelling.

In the first place, almost every part of government is concerned with the environment in some way, and affects it in some way. Yet each department also has its own primary mission—such as resource development, transportation, health, defense, urban growth or agriculture—which necessarily affects its own view of environmental questions.

In the second place, if the critical standard-setting functions were centralized within any one existing department, it would require that department constantly to make decisions affecting other departments—in which, whether fairly or unfairly, its own objectivity as an impartial arbiter could be called into question.

Because environmental protection cuts across so many jurisdictions, and because arresting environmental deterioration is of great importance to the quality of life in our country and the world, I believe that in this case a strong, independent agency is needed. That agency would, of course, work closely with and draw upon the expertise and assistance of other agencies having experience in the environmental area.

ROLES AND FUNCTIONS OF EPA

The principal roles and functions of the EPA would include:

- The establishment and enforcement of environmental protection standards consistent with national environmental goals.
- The conduct of research on the adverse effects of pollution and on methods and equipment for controlling it, the gathering of information on pollution, and the use of this information in strengthening environmental protection programs and recommending policy changes.
- Assisting others, through grants, technical assistance and other means in arresting pollution of the environment.
- Assisting the Council on Environmental Quality in developing and recommending to the President new policies for the protection of the environment.

One natural question concerns the relationship between the EPA and the Council on Environmental Quality, recently established by Act of Congress.

It is my intention and expectation that the two will work in close harmony, reinforcing each other's mission. Essentially, the Council is a top-level advisory group (which might be compared with the Council of Economic Advisers), while the EPA would be an operating, "line" organization. The Council will continue to be a part of the Executive Office of the President and will perform its overall coordinating and advisory roles with respect to all Federal programs related to environmental quality.

The Council, then, is concerned with all aspects of environmental quality—wildlife preservation, parklands, land use, and population growth, as well as pollution. The EPA would be charged with protecting the environment by abating pollution. In short, the Council focuses on what our broad policies in the environment field should be; the EPA would focus on setting and enforcing pollution control standards. The two are not competing, but complementary—and taken together, they should give us, for the first time, the means to mount an effectively coordinated campaign against environmental degradation in all of its many forms.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

The oceans and the atmosphere are interacting parts of the total environmental system upon which we depend not only for the quality of our lives, but for life itself.

We face immediate and compelling needs for better protection of life and property from natural hazards, and for a better understanding of the total environment—and understanding which will enable us more effectively to monitor and predict its actions, and ultimately, perhaps to exercise some degree of control over them.

We also face a compelling need for exploration and development leading to the intelligent use of our marine resources. The global oceans, which constitute nearly three-fourths of the surface of our planet, are today the least-understood, the least-developed, and the least-protected part of our earth. Food from the oceans will increasingly be a key element in the

world's fight against hunger. The mineral resources of the ocean beds and of the oceans themselves, are being increasingly tapped to meet the growing world demand. We must understand the nature of these resources, and assure their development without either contaminating the marine environment or upsetting its balance.

Establishment of the National Oceanic and Atmospheric Administration—NOAA—within the Department of Commerce would enable us to approach these tasks in a coordinated way. By employing a unified approach to the problems of the oceans and atmosphere, we can increase our knowledge and expand our opportunities not only in those areas, but in the third major component of our environment, the solid earth, as well.

Scattered through various Federal departments and agencies, we already have the scientific, technological, and administrative resources to make an effective, unified approach possible. What we need is to bring them together. Establishment of NOAA would do so.

By far the largest of the components being merged would be the Commerce Department's Environmental Science Services Administration (ESSA), with some 10,000 employees (70 percent of NOAA's total personnel strength) and estimated Fiscal 1970 expenditures of almost \$200 million. Placing NOAA within the Department of Commerce therefore entails the least dislocation, while also placing it within a Department which has traditionally been a center for service activities in the scientific and technological area.

COMPONENTS OF NOAA

Under terms of Reorganization Plan No. 4, the programs of the following organizations would be moved into NOAA:

- The Environmental Science Services Administration (from within the Department of Commerce).
- Elements of the Bureau of Commercial Fisheries (from the Department of the Interior).
- The marine sport fish program of the Bureau of Sport Fisheries and Wildlife (from the Department of the Interior).
- The Marine Minerals Technology Center of the Bureau of Mines (from the Department of the Interior).
- The Office of Sea Grant Programs (from the National Science Foundation).
- Elements of the United States Lake Survey (from the Department of the Army).

In addition, by executive action, the programs of the following organizations would be transferred to NOAA:

- The National Oceanographic Data Center (from the Department of the Navy).
- The National Oceanographic Instrumentation Center (from the Department of the Navy).
- The National Data Buoy Project (from the Department of Transportation).

In brief, these are the principal functions of the programs and agencies to be combined:

THE ENVIRONMENTAL SCIENCE SERVICES ADMINISTRATION

(ESSA) comprises the following components:

- The Weather Bureau (weather, marine, river and flood forecasting and warning).
- The Coast and Geodetic Survey (earth and marine description, mapping and charting).
- The Environmental Data Service (storage and retrieval of environmental data).
- The National Environmental Satellite Center (observation of the global environment from earth-orbiting satellites).
- The ESSA Research Laboratories (research on physical environmental problems).

ESSA's activities include observing and predicting the state of the oceans, the state of the lower and upper atmosphere, and the size and shape of the earth. It maintains the nation's warning systems for such natural hazards as hurricanes, tornadoes, floods, earthquakes and seismic sea waves. It provides information

for national defense, agriculture, transportation and industry.

ESSA monitors atmospheric, oceanic and geophysical phenomena on a global basis, through an unparalleled complex of air, ocean, earth and space facilities. It also prepares aeronautical and marine maps and charts.

Bureau of Commercial Fisheries and marine sport fish activities.—Those fishery activities of the Department of the Interior's U.S. Fish and Wildlife Service which are ocean related and those which are directed toward commercial fishing would be transferred. The Fish and Wildlife Service's Bureau of Commercial Fisheries has the dual function of strengthening the fishing industry and promoting conservation of fishery stocks. It conducts research on important marine species and on fundamental oceanography, and operates a fleet of oceanographic vessels and a number of laboratories. Most of its activities would be transferred. From the Fish and Wildlife Service's Bureau of Sport Fisheries and Wildlife, the marine sport fishing program would be transferred. This involves five supporting laboratories and three ships engaged in activities to enhance marine sport fishing opportunities.

The Marine Minerals Technology Center is concerned with the development of marine mining technology.

Office of Sea Grant Programs.—The Sea Grant Program was authorized in 1966 to permit the Federal Government to assist the academic and industrial communities in developing marine resources and technology. It aims at strengthening education and training of marine specialists, supporting applied research in the recovery and use of marine resources, and developing extension and advisory services. The Office carries out these objectives by making grants to selected academic institutions.

The U.S. Lake Survey has two primary missions. It prepares and publishes navigation charts of the Great Lakes and tributary waters and conducts research on a variety of hydraulic and hydrologic phenomena of the Great Lakes' waters. Its activities are very similar to those conducted along the Atlantic and Pacific coasts by ESSA's Coast and Geodetic Survey.

The National Oceanographic Data Center is responsible for the collection and dissemination of oceanographic data accumulated by all Federal agencies.

The National Oceanographic Instrumentation Center provides a central Federal service for the calibration and testing of oceanographic instruments.

The National Data Buoy Development Project was established to determine the feasibility of deploying a system of automatic ocean buoys to obtain oceanic and atmospheric data.

ROLE OF NOAA

Drawing these activities together into a single agency would make possible a balanced Federal program to improve our understanding of the resources of the sea, and permit their development and use while guarding against the sort of thoughtless exploitation that in the past laid waste to so many of our precious natural assets. It would make possible a consolidated program for achieving a more comprehensive understanding of oceanic and atmospheric phenomena, which so greatly affect our lives and activities. It would facilitate the cooperation between public and private interests that can best serve the interests of all.

I expect that NOAA would exercise leadership in developing a national oceanic and atmospheric program of research and development. It would coordinate its own scientific and technical resources with the technical and operational capabilities of other government agencies and private institutions. As important, NOAA would continue to provide those services to other agencies of government, industry and private individuals which have become essential to the efficient operation of our transportation systems, our agriculture and our national security. I expect it to maintain continuing and close liaison with the new Environmental Protection Agency and the Council on Environmental Quality as part of an effort to ensure that environmental ques-

tions are dealt with in their totality and they benefit from the full range of the government's technical and human resources.

Authorities who have studied this matter, including the Commission on Marine Science, Engineering and Resources, strongly recommended the creation of a National Advisory Committee for the Oceans. I agree. Consequently, I will request, upon approval of the plan, that the Secretary of Commerce establish a National Advisory Committee for the Oceans and the Atmosphere to advise him on the progress of governmental and private programs in achieving the nation's oceanic and atmospheric objectives.

AN ON-GOING PROCESS

The reorganizations which I am here proposing afford both the Congress and the Executive Branch an opportunity to re-evaluate the adequacy of existing program authorities involved in these consolidations. As these two new organizations come into being, we may well find that supplementary legislation to perfect their authorities will be necessary. I look forward to working with the Congress in this task.

In formulating these reorganization plans, I have been greatly aided by the work of the President's Advisory Council on Executive Organization (the Ash Council), the Commission on Marine Science, Engineering and Resources (the Stratton Commission, appointed by President Johnson), my special task force on oceanography headed by Dr. James Wakelin, and by the information developed during both House and Senate hearings on proposed NOAA legislation.

Many of those who have advised me have proposed additional reorganizations, and it may well be that in the future I shall recommend further changes. For the present, however, I think the two reorganizations transmitted today represent a sound and significant beginning. I also think that in practical terms, in this sensitive and rapidly developing area, it is better to proceed a step at a time—and thus to be sure that we are not caught up in a form of organizational indigestion from trying to rearrange too much at once. As we see how these changes work out, we will gain a better understanding of what further changes—in addition to these—might be desirable.

Ultimately, our objective should be to insure that the nation's environmental and resource protection activities are so organized as to maximize both the effective coordination of all and the effective functioning of each.

The Congress, the Administration and the public all share a profound commitment to the rescue of our natural environment, and the preservation of the Earth as a place both habitable by and hospitable to man. With its acceptance of these reorganization plans, the Congress will help us fulfill that commitment.

RICHARD NIXON.

THE WHITE HOUSE, July 9, 1970.

EX. ORD. NO. 11472. CABINET COMMITTEE ON THE ENVIRONMENT AND CITIZENS' ADVISORY COMMITTEE ON ENVIRONMENTAL QUALITY

Ex. Ord. No. 11472, May 29, 1969, 34 F.R. 8693, as amended by Ex. Ord. No. 11514, Mar. 5, 1970, 35 F.R. 4247; Ex. Ord. No. 12007, Aug. 22, 1977, 42 F.R. 42839, provided:

By virtue of the authority vested in me as President of the United States, it is ordered as follows:

PART I—CABINET COMMITTEE ON THE ENVIRONMENT

SECTION 101. *Establishment of the Cabinet Committee.* (a) There is hereby established the Cabinet Committee on the Environment (hereinafter referred to as "the Cabinet Committee").

(b) The President of the United States shall preside over meetings of the Cabinet Committee. The Vice President shall preside in the absence of the President.

(c) The Cabinet Committee shall be composed of the following members:

The Vice President of the United States

Secretary of Agriculture
 Secretary of Commerce
 Secretary of Health, Education, and Welfare
 Secretary of Housing and Urban Development
 Secretary of the Interior
 Secretary of Transportation

and such other heads of departments and agencies and others as the President may from time to time direct.

(d) Each member of the Cabinet Committee may designate an alternate, who shall serve as a member of the Cabinet Committee whenever the regular member is unable to attend any meeting of the Cabinet Committee.

(e) When matters which affect the interest of Federal agencies the heads of which are not members of the Cabinet Committee are to be considered by the Cabinet Committee, the President or his representative may invite such agency heads or their alternates to participate in the deliberations of the Cabinet Committee.

(f) The Director of the Bureau of the Budget [now the Director of the Office of Management and Budget], the Director of the Office of Science and Technology, the Chairman of the Council of Economic Advisers, and the Executive Secretary of the Council for Urban Affairs or their representatives may participate in the deliberations of the Cabinet Committee on the Environment as observers.

(g) The Chairman of the Council on Environmental Quality (established by Public Law 91-190) [this chapter] shall assist the President in directing the affairs of the Cabinet Committee.

SEC. 102. *Functions of the Cabinet Committee.* (a) The Cabinet Committee shall advise and assist the President with respect to environmental quality matters and shall perform such other related duties as the President may from time to time prescribe. In addition thereto, the Cabinet Committee is directed to:

(1) Recommend measures to ensure that Federal policies and programs, including those for development and conservation of natural resources, take adequate account of environmental effects.

(2) Review the adequacy of existing systems for monitoring and predicting environmental changes so as to achieve effective coverage and efficient use of facilities and other resources.

(3) Foster cooperation between the Federal Government, State and local governments, and private organizations in environmental programs.

(4) Seek advancement of scientific knowledge of changes in the environment and encourage the development of technology to prevent or minimize adverse effects that endanger man's health and well-being.

(5) Stimulate public and private participation in programs and activities to protect against pollution of the Nation's air, water, and land and its living resources.

(6) Encourage timely public disclosure by all levels of government and by private parties of plans that would affect the quality of environment.

(7) Assure assessment of new and changing technologies for their potential effects on the environment.

(8) Facilitate coordination among departments and agencies of the Federal Government in protecting and improving the environment.

(b) The Cabinet Committee shall review plans and actions of Federal agencies affecting outdoor recreation and natural beauty. The Cabinet Committee may conduct studies and make recommendations to the President on matters of policy in the fields of outdoor recreation and natural beauty. In carrying out the foregoing provisions of this subsection, the Cabinet Committee shall, as far as may be practical, advise Federal agencies with respect to the effect of their respective plans and programs on recreation and natural beauty, and may suggest to such agencies ways to accomplish the purposes of this order. For the purposes of this order, plans and programs may include, but are not limited to, those for or affecting: (1) Development, restoration, and preservation of the beauty of the countryside, urban and suburban areas, water resources, wild rivers, scenic roads, parkways and highways, (2) the protection

and appropriate management of scenic or primitive areas, natural wonders, historic sites, and recreation areas, (3) the management of Federal land and water resources, including fish and wildlife, to enhance natural beauty and recreational opportunities consistent with other essential uses, (4) cooperation with the States and their local subdivisions and private organizations and individuals in areas of mutual interest, (5) interstate arrangements, including Federal participation where authorized and necessary, and (6) leadership in a nationwide recreation and beautification effort.

SEC. 103. *Coordination.* The Secretary of the Interior may make available to the Cabinet Committee for coordination of outdoor recreation the authorities and resources available to him under the Act of May 28, 1963, 77 Stat. 49 [16 U.S.C. 4601 et seq.], to the extent permitted by law, he may make such authorities and resources available to the Cabinet Committee also for promoting such coordination of other matters assigned to the Cabinet Committee by this order.

SEC. 104. *Assistance for the Cabinet Committee.* In compliance with provisions of applicable law, and as necessary to serve the purposes of this order, (1) the Council on Environmental Quality (established by Public Law 91-190) [this chapter] shall provide or arrange for necessary administrative and staff services, support, and facilities for the Cabinet Committee, and (2) each department and agency which has membership on the Cabinet Committee under Section 101(c) hereof shall furnish the Cabinet Committee such information and other assistance as may be available.

PART II—CITIZENS' ADVISORY COMMITTEE ON ENVIRONMENTAL QUALITY

[Revoked. Ex. Ord. No. 12007, Aug. 22, 1977, 42 F.R. 42839.]

PART III—GENERAL PROVISIONS

SEC. 301. *Construction.* Nothing in this order shall be construed as subjecting any department, establishment, or other instrumentality of the executive branch of the Federal Government or the head thereof, or any function vested by law in or assigned pursuant to law to any such agency or head, to the authority of any other such agency or head or as abrogating, modifying, or restricting any such function in any manner.

SEC. 302. *Prior bodies and orders.* The President's Council on Recreation and Natural Beauty and the Citizens' Advisory Committee on Recreation and Natural Beauty are hereby terminated and the following are revoked:

- (1) Executive Order No. 11278 of May 4, 1966.
- (2) Executive Order No. 11359A of June 29, 1967.
- (3) Executive Order No. 11402 of March 29, 1968.

TERMINATION OF CABINET COMMITTEE ON THE ENVIRONMENT

The Cabinet Committee on the Environment was terminated and its functions transferred to the Domestic Council, see section 2(b) of Ex. Ord. No. 11541, eff. July 1, 1970, 35 F.R. 10737, set out as a note under section 501 of Title 31, Money and Finance.

The Domestic Council was abolished by Reorg. Plan No. 1 of 1977, § 3, 42 F.R. 56101, 91 Stat. 1633, set out in the Appendix to Title 5, Government Organization and Employees, effective on or before Apr. 1, 1978, at such time as specified by the President. Section 5D of Reorg. Plan No. 1 of 1977 transferred all functions vested in the Domestic Council to the President with power to delegate the performance of such transferred functions within the Executive Office of the President.

TERMINATION OF CITIZENS' ADVISORY COMMITTEE ON ENVIRONMENTAL QUALITY

For provisions relating to termination of Citizens' Advisory Committee on Environmental Quality see Ex. Ord. No. 12007, Aug. 22, 1977, 42 F.R. 42839, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

EX. ORD. NO. 11514. PROTECTION AND ENHANCEMENT OF ENVIRONMENTAL QUALITY

Ex. Ord. No. 11514, Mar. 5, 1970, 35 F.R. 4247, as amended by Ex. Ord. No. 11991, May 24, 1977, 42 F.R. 26967, provided:

By virtue of the authority vested in me as President of the United States and in furtherance of the purpose and policy of the National Environmental Policy Act of 1969 (Public Law No. 91-190, approved January 1, 1970) [this chapter], it is ordered as follows:

SECTION 1. Policy. The Federal Government shall provide leadership in protecting and enhancing the quality of the Nation's environment to sustain and enrich human life. Federal agencies shall initiate measures needed to direct their policies, plans and programs so as to meet national environmental goals. The Council on Environmental Quality, through the Chairman, shall advise and assist the President in leading this national effort.

SEC. 2. Responsibilities of Federal agencies. Consonant with Title I of the National Environmental Policy Act of 1969 [42 U.S.C. 4331 et seq.], hereafter referred to as the "Act", the heads of Federal agencies shall:

(a) Monitor, evaluate, and control on a continuing basis their agencies' activities so as to protect and enhance the quality of the environment. Such activities shall include those directed to controlling pollution and enhancing the environment and those designed to accomplish other program objectives which may affect the quality of the environment. Agencies shall develop programs and measures to protect and enhance environmental quality and shall assess progress in meeting the specific objectives of such activities. Heads of agencies shall consult with appropriate Federal, State and local agencies in carrying out their activities as they affect the quality of the environment.

(b) Develop procedures to ensure the fullest practicable provision of timely public information and understanding of Federal plans and programs with environmental impact in order to obtain the views of interested parties. These procedures shall include, whenever appropriate, provision for public hearings, and shall provide the public with relevant information, including information on alternative courses of action. Federal agencies shall also encourage State and local agencies to adopt similar procedures for informing the public concerning their activities affecting the quality of the environment.

(c) Insure that information regarding existing or potential environmental problems and control methods developed as part of research, development, demonstration, test, or evaluation activities is made available to Federal agencies, States, counties, municipalities, institutions, and other entities, as appropriate.

(d) Review their agencies' statutory authority, administrative regulations, policies, and procedures, including those relating to loans, grants, contracts, leases, licenses, or permits, in order to identify any deficiencies or inconsistencies therein which prohibit or limit full compliance with the purposes and provisions of the Act. A report on this review and the corrective actions taken or planned, including such measures to be proposed to the President as may be necessary to bring their authority and policies into conformance with the intent, purposes, and procedures of the Act, shall be provided to the Council on Environmental Quality not later than September 1, 1970.

(e) Engage in exchange of data and research results, and cooperate with agencies of other governments to foster the purposes of the Act.

(f) Proceed, in coordination with other agencies, with actions required by section 102 of the Act [42 U.S.C. 4332].

(g) In carrying out their responsibilities under the Act and this Order, comply with the regulations issued by the Council except where such compliance would be inconsistent with statutory requirements.

SEC. 3. Responsibilities of Council on Environmental Quality. The Council on Environmental Quality shall:

(a) Evaluate existing and proposed policies and activities of the Federal Government directed to the control of pollution and the enhancement of the environment and to the accomplishment of other objectives which affect the quality of the environment. This shall include continuing review of procedures employed in the development and enforcement of Federal standards affecting environmental quality. Based upon such evaluations the Council shall, where appropriate, recommend to the President policies and programs to achieve more effective protection and enhancement of environmental quality and shall, where appropriate, seek resolution of significant environmental issues.

(b) Recommend to the President and to the agencies priorities among programs designed for the control of pollution and for enhancement of the environment.

(c) Determine the need for new policies and programs for dealing with environmental problems not being adequately addressed.

(d) Conduct, as it determines to be appropriate, public hearings or conferences on issues of environmental significance.

(e) Promote the development and use of indices and monitoring systems (1) to assess environmental conditions and trends, (2) to predict the environmental impact of proposed public and private actions, and (3) to determine the effectiveness of programs for protecting and enhancing environmental quality.

(f) Coordinate Federal programs related to environmental quality.

(g) Advise and assist the President and the agencies in achieving international cooperation for dealing with environmental problems, under the foreign policy guidance of the Secretary of State.

(h) Issue regulations to Federal agencies for the implementation of the procedural provisions of the Act (42 U.S.C. 4332(2)). Such regulations shall be developed after consultation with affected agencies and after such public hearings as may be appropriate. They will be designed to make the environmental impact statement process more useful to decisionmakers and the public; and to reduce paperwork and the accumulation of extraneous background data, in order to emphasize the need to focus on real environmental issues and alternatives. They will require impact statements to be concise, clear, and to the point, and supported by evidence that agencies have made the necessary environmental analyses. The Council shall include in its regulations procedures (1) for the early preparation of environmental impact statements, and (2) for the referral to the Council of conflicts between agencies concerning the implementation of the National Environmental Policy Act of 1969, as amended [this chapter], and Section 309 of the Clean Air Act, as amended [42 U.S.C. 7609], for the Council's recommendation as to their prompt resolution.

(i) Issue such other instructions to agencies, and request such reports and other information from them, as may be required to carry out the Council's responsibilities under the Act.

(j) Assist the President in preparing the annual Environmental Quality Report provided for in section 201 of the Act [42 U.S.C. 4341].

(k) Foster investigations, studies, surveys, research, and analyses relating to (i) ecological systems and environmental quality, (ii) the impact of new and changing technologies thereon, and (iii) means of preventing or reducing adverse effects from such technologies.

SEC. 4. Amendments of E.O. 11472. Executive Order No. 11472 of May 29, 1969, including the heading thereof, is hereby amended:

(1) By substituting for the term "the Environmental Quality Council", wherever it occurs, the following: "the Cabinet Committee on the Environment".

(2) By substituting for the term "the Council", wherever it occurs, the following: "the Cabinet Committee".

(3) By inserting in subsection (f) of section 101, after "Budget," the following: "the Director of the Office of Science and Technology,".

(4) By substituting for subsection (g) of section 101 the following:

“(g) The Chairman of the Council on Environmental Quality (established by Public Law 91-190) [this chapter] shall assist the President in directing the affairs of the Cabinet Committee.”

(5) By deleting subsection (c) of section 102.

(6) By substituting for “the Office of Science and Technology”, in section 104, the following: “the Council on Environmental Quality (established by Public Law 91-190) [this chapter]”.

(7) By substituting for “(hereinafter referred to as the ‘Committee’)”, in section 201, the following: “(hereinafter referred to as the ‘Citizens’ Committee’)”.

(8) By substituting for the term “the Committee”, wherever it occurs, the following: “the Citizens’ Committee”.

EX. ORD. NO. 11523. NATIONAL INDUSTRIAL POLLUTION CONTROL COUNCIL

Ex. Ord. No. 11523, eff. Apr. 9, 1970, 35 F.R. 5993, provided:

By virtue of the authority vested in me as President of the United States, and in furtherance of the purpose and policy of the National Environmental Policy Act of 1969 (Public Law 91-190, approved January 1, 1970) [this chapter], it is ordered as follows:

SECTION 1. *Establishment of the Council.* (a) There is hereby established the National Industrial Pollution Control Council (hereinafter referred to as “the Industrial Council”) which shall be composed of a Chairman, a Vice-chairman, and other representatives of business and industry appointed by the Secretary of Commerce (hereinafter referred to as “the Secretary”).

(b) The Secretary, with the concurrence of the Chairman, shall appoint an Executive Director of the Industrial Council.

SEC. 2. *Functions of the Industrial Council.* The Industrial Council shall advise the President and the Chairman of the Council on Environmental Quality, through the Secretary, on programs of industry relating to the quality of the environment. In particular, the Industrial Council may—

(1) Survey and evaluate the plans and actions of industry in the field of environmental quality.

(2) Identify and examine problems of the effects on the environment of industrial practices and the needs of industry for improvements in the quality of the environment, and recommend solutions to those problems.

(3) Provide liaison among members of the business and industrial community on environmental quality matters.

(4) Encourage the business and industrial community to improve the quality of the environment.

(5) Advise on plans and actions of Federal, State, and local agencies involving environmental quality policies affecting industry which are referred to it by the Secretary, or by the Chairman of the Council on Environmental Quality through the Secretary.

SEC. 3. *Subordinate Committees.* The Industrial Council may establish, with the concurrence of the Secretary, such subordinate committees as it may deem appropriate to assist in the performance of its functions. Each subordinate committee shall be headed by a chairman appointed by the Chairman of the Industrial Council with the concurrence of the Secretary.

SEC. 4. *Assistance for the Industrial Council.* In compliance with applicable law, and as necessary to serve the purposes of this order, the Secretary shall provide or arrange for administrative and staff services, support, and facilities for the Industrial Council and any of its subordinate committees.

SEC. 5. *Expenses.* Members of the Industrial Council or any of its subordinate committees shall receive no compensation from the United States by reason of their services hereunder, but may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law (5 U.S.C. 5703) for persons in the Government service employed intermittently.

SEC. 6. *Regulations.* The provisions of Executive Order No. 11007 of February 26, 1962 (3 CFR 573) [see 5 U.S.C. 901 note] prescribing regulations for the formation and

use of advisory committees, are hereby made applicable to the Industrial Council and each of its subordinate committees. The Secretary may exercise the discretionary powers set forth in that order.

SEC. 7. *Construction.* Nothing in this order shall be construed as subjecting any Federal agency, or any function vested by law in, or assigned pursuant to law to, any Federal agency to the authority of any other Federal agency or of the Industrial Council or of any of its subordinate committees, or as abrogating or restricting any such function in any manner.

RICHARD NIXON.

EXECUTIVE ORDER NO. 11643

Ex. Ord. No. 11643, eff. Feb. 8, 1972, 37 F.R. 2875, as amended by Ex. Ord. No. 11870, eff. July 18, 1975, 40 F.R. 30611; Ex. Ord. No. 11917, eff. May 28, 1976, 41 F.R. 22239, which related to environmental safeguards on activities for animal damage control on Federal lands, was revoked by Ex. Ord. No. 12342, Jan. 27, 1982, 47 F.R. 4223.

EX. ORD. NO. 11644. USE OF OFF-ROAD VEHICLES ON PUBLIC LANDS

Ex. Ord. No. 11644, Feb. 8, 1972, 37 F.R. 2877, as amended by Ex. Ord. No. 11989, May 24, 1977, 42 F.R. 26959; Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617, provided:

An estimated 5 million off-road recreational vehicles—motorcycles, minibikes, trail bikes, snowmobiles, dunebuggies, all-terrain vehicles, and others—are in use in the United States today, and their popularity continues to increase rapidly. The widespread use of such vehicles on the public lands—often for legitimate purposes but also in frequent conflict with wise land and resource management practices, environmental values, and other types of recreational activity—has demonstrated the need for a unified Federal policy toward the use of such vehicles on the public lands.

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States by the Constitution of the United States and in furtherance of the purpose and policy of the National Environmental Policy Act of 1969 (42 U.S.C. 4321), it is hereby ordered as follows:

SECTION 1. *Purpose.* It is the purpose of this order to establish policies and provide for procedures that will ensure that the use of off-road vehicles on public lands will be controlled and directed so as to protect the resources of those lands, to promote the safety of all users of those lands, and to minimize conflicts among the various uses of those lands.

SEC. 2. *Definitions.* As used in this order, the term:

(1) “public lands” means (A) all lands under the custody and control of the Secretary of the Interior and the Secretary of Agriculture, except Indian lands, (B) lands under the custody and control of the Tennessee Valley Authority that are situated in western Kentucky and Tennessee and are designated as “Land Between the Lakes,” and (C) lands under the custody and control of the Secretary of Defense;

(2) “respective agency head” means the Secretary of the Interior, the Secretary of Defense, the Secretary of Agriculture, and the Board of Directors of the Tennessee Valley Authority, with respect to public lands under the custody and control of each;

(3) “off-road vehicle” means any motorized vehicle designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland, or other natural terrain; except that such term excludes (A) any registered motorboat, (B) any fire, military, emergency or law enforcement vehicle when used for emergency purposes, and any combat or combat support vehicle when used for national defense purposes, and (C) any vehicle whose use is expressly authorized by the respective agency head under a permit, lease, license, or contract; and

(4) “official use” means use by an employee, agent, or designated representative of the Federal Government or one of its contractors in the course of his employment, agency, or representation.

SEC. 3. *Zones of Use.* (a) Each respective agency head shall develop and issue regulations and administrative instructions, within six months of the date of this order, to provide for administrative designation of the specific areas and trails on public lands on which the use of off-road vehicles may be permitted, and areas in which the use of off-road vehicles may not be permitted, and set a date by which such designation of all public lands shall be completed. Those regulations shall direct that the designation of such areas and trails will be based upon the protection of the resources of the public lands, promotion of the safety of all users of those lands, and minimization of conflicts among the various uses of those lands. The regulations shall further require that the designation of such areas and trails shall be in accordance with the following—

(1) Areas and trails shall be located to minimize damage to soil, watershed, vegetation, or other resources of the public lands.

(2) Areas and trails shall be located to minimize harassment of wildlife or significant disruption of wildlife habitats.

(3) Areas and trails shall be located to minimize conflicts between off-road vehicle use and other existing or proposed recreational uses of the same or neighboring public lands, and to ensure the compatibility of such uses with existing conditions in populated areas, taking into account noise and other factors.

(4) Areas and trails shall not be located in officially designated Wilderness Areas or Primitive Areas. Areas and trails shall be located in areas of the National Park system, Natural Areas, or National Wildlife Refuges and Game Ranges only if the respective agency head determines that off-road vehicle use in such locations will not adversely affect their natural, aesthetic, or scenic values.

(b) The respective agency head shall ensure adequate opportunity for public participation in the promulgation of such regulations and in the designation of areas and trails under this section.

(c) The limitations on off-road vehicle use imposed under this section shall not apply to official use.

SEC. 4. *Operating Conditions.* Each respective agency head shall develop and publish, within one year of the date of this order, regulations prescribing operating conditions for off-road vehicles on the public lands. These regulations shall be directed at protecting resource values, preserving public health, safety, and welfare, and minimizing use conflicts.

SEC. 5. *Public Information.* The respective agency head shall ensure that areas and trails where off-road vehicle use is permitted are well marked and shall provide for the publication and distribution of information, including maps, describing such areas and trails and explaining the conditions on vehicle use. He shall seek cooperation of relevant State agencies in the dissemination of this information.

SEC. 6. *Enforcement.* The respective agency head shall, where authorized by law, prescribe appropriate penalties for violation of regulations adopted pursuant to this order, and shall establish procedures for the enforcement of those regulations. To the extent permitted by law, he may enter into agreements with State or local governmental agencies for cooperative enforcement of laws and regulations relating to off-road vehicle use.

SEC. 7. *Consultation.* Before issuing the regulations or administrative instructions required by this order or designating areas or trails as required by this order and those regulations and administrative instructions, the Secretary of the Interior shall, as appropriate, consult with the Secretary of Energy and the Nuclear Regulatory Commission.

SEC. 8. *Monitoring of Effects and Review.* (a) The respective agency head shall monitor the effects of the use of off-road vehicles on lands under their jurisdictions. On the basis of the information gathered, they shall from time to time amend or rescind designation of areas or other actions taken pursuant to this order as necessary to further the policy of this order.

(b) The Council on Environmental Quality shall maintain a continuing review of the implementation of this order.

SEC. 9. *Special Protection of the Public Lands.* (a) Notwithstanding the provisions of Section 3 of this Order, the respective agency head shall, whenever he determines that the use of off-road vehicles will cause or is causing considerable adverse effects on the soil, vegetation, wildlife, wildlife habitat or cultural or historic resources of particular areas or trails of the public lands, immediately close such areas or trails to the type of off-road vehicle causing such effects, until such time as he determines that such adverse effects have been eliminated and that measures have been implemented to prevent future recurrence.

(b) Each respective agency head is authorized to adopt the policy that portions of the public lands within his jurisdiction shall be closed to use by off-road vehicles except those areas or trails which are suitable and specifically designated as open to such use pursuant to Section 3 of this Order.

EXECUTIVE ORDER NO. 11987

Ex. Ord. No. 11987, May 24, 1977, 42 F.R. 26949, which directed executive agencies, and encouraged States, local governments, and private citizens, to restrict the introduction of exotic species into the natural ecosystems on lands and waters under their control, and which directed executive agencies to restrict the exportation of native species for introduction of such species into ecosystems outside the United States where they do not naturally occur, unless such introduction or exportation was found not to have an adverse effect on natural ecosystems, was revoked by Ex. Ord. No. 13112, §(b), Feb. 3, 1999, 64 F.R. 6186, set out below.

EX. ORD. NO. 11988. FLOODPLAIN MANAGEMENT

Ex. Ord. No. 11988, May 24, 1977, 42 F.R. 26951, as amended by Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239, provided:

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in furtherance of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.), the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001 et seq.), and the Flood Disaster Protection Act of 1973 (Public Law 93-234, 87 Stat. 975) [see Short Title of 1973 Amendment note set out under 42 U.S.C. 4001], in order to avoid to the extent possible the long and short term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct or indirect support of floodplain development wherever there is a practicable alternative, it is hereby ordered as follows:

SECTION 1. Each agency shall provide leadership and shall take action to reduce the risk of flood loss, to minimize the impact of floods on human safety, health and welfare, and to restore and preserve the natural and beneficial values served by floodplains in carrying out its responsibilities for (1) acquiring, managing, and disposing of Federal lands and facilities; (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities.

SEC. 2. In carrying out the activities described in Section 1 of this Order, each agency has a responsibility to evaluate the potential effects of any actions it may take in a floodplain; to ensure that its planning programs and budget requests reflect consideration of flood hazards and floodplain management; and to prescribe procedures to implement the policies and requirements of this Order, as follows:

(a)(1) Before taking an action, each agency shall determine whether the proposed action will occur in a floodplain—for major Federal actions significantly affecting the quality of the human environment, the

evaluation required below will be included in any statement prepared under Section 102(2)(C) of the National Environmental Policy Act [42 U.S.C. 4332(2)(C)]. This determination shall be made according to a Department of Housing and Urban Development (HUD) floodplain map or a more detailed map of an area, if available. If such maps are not available, the agency shall make a determination of the location of the floodplain based on the best available information. The Water Resources Council shall issue guidance on this information not later than October 1, 1977.

(2) If an agency has determined to, or proposes to, conduct, support, or allow an action to be located in a floodplain, the agency shall consider alternatives to avoid adverse effects and incompatible development in the floodplains. If the head of the agency finds that the only practicable alternative consistent with the law and with the policy set forth in this Order requires siting in a floodplain, the agency shall, prior to taking action, (i) design or modify its action in order to minimize potential harm to or within the floodplain, consistent with regulations issued in accord with Section 2(d) of this Order, and (ii) prepare and circulate a notice containing an explanation of why the action is proposed to be located in the floodplain.

(3) For programs subject to the Office of Management and Budget Circular A-95, the agency shall send the notice, not to exceed three pages in length including a location map, to the state and area-wide A-95 clearing-houses for the geographic areas affected. The notice shall include: (i) the reasons why the action is proposed to be located in a floodplain; (ii) a statement indicating whether the action conforms to applicable state or local floodplain protection standards and (iii) a list of the alternatives considered. Agencies shall endeavor to allow a brief comment period prior to taking any action.

(4) Each agency shall also provide opportunity for early public review of any plans or proposals for actions in floodplains, in accordance with Section 2(b) of Executive Order No. 11514, as amended [set out above], including the development of procedures to accomplish this objective for Federal actions whose impact is not significant enough to require the preparation of an environmental impact statement under Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended [42 U.S.C. 4332(2)(C)].

(b) Any requests for new authorizations or appropriations transmitted to the Office of Management and Budget shall indicate, if an action to be proposed will be located in a floodplain, whether the proposed action is in accord with this Order.

(c) Each agency shall take floodplain management into account when formulating or evaluating any water and land use plans and shall require land and water resources use appropriate to the degree of hazard involved. Agencies shall include adequate provision for the evaluation and consideration of flood hazards in the regulations and operating procedures for the licenses, permits, loan or grants-in-aid programs that they administer. Agencies shall also encourage and provide appropriate guidance to applicants to evaluate the effects of their proposals in floodplains prior to submitting applications for Federal licenses, permits, loans or grants.

(d) As allowed by law, each agency shall issue or amend existing regulations and procedures within one year to comply with this Order. These procedures shall incorporate the Unified National Program for Floodplain Management of the Water Resources Council, and shall explain the means that the agency will employ to pursue the nonhazardous use of riverine, coastal and other floodplains in connection with the activities under its authority. To the extent possible, existing processes, such as those of the Council on Environmental Quality and the Water Resources Council, shall be utilized to fulfill the requirements of this Order. Agencies shall prepare their procedures in consultation with the Water Resources Council, the Director of the Federal Emergency Management Agency, and the

Council on Environmental Quality, and shall update such procedures as necessary.

SEC. 3. In addition to the requirements of Section 2, agencies with responsibilities for Federal real property and facilities shall take the following measures:

(a) The regulations and procedures established under Section 2(d) of this Order shall, at a minimum, require the construction of Federal structures and facilities to be in accordance with the standards and criteria and to be consistent with the intent of those promulgated under the National Flood Insurance Program. They shall deviate only to the extent that the standards of the Flood Insurance Program are demonstrably inappropriate for a given type of structure or facility.

(b) If, after compliance with the requirements of this Order, new construction of structures or facilities are to be located in a floodplain, accepted floodproofing and other flood protection measures shall be applied to new construction or rehabilitation. To achieve flood protection, agencies shall, wherever practicable, elevate structures above the base flood level rather than filling in land.

(c) If property used by the general public has suffered flood damage or is located in an identified flood hazard area, the responsible agency shall provide on structures, and other places where appropriate, conspicuous delineation of past and probable flood height in order to enhance public awareness of and knowledge about flood hazards.

(d) When property in floodplains is proposed for lease, easement, right-of-way, or disposal to non-Federal public or private parties, the Federal agency shall (1) reference in the conveyance those uses that are restricted under identified Federal, State or local floodplain regulations; and (2) attach other appropriate restrictions to the uses of properties by the grantee or purchaser and any successors, except where prohibited by law; or (3) withhold such properties from conveyance.

SEC. 4. In addition to any responsibilities under this Order and Sections 202 and 205 of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4106 and 4128), agencies which guarantee, approve, regulate, or insure any financial transaction which is related to an area located in a floodplain shall, prior to completing action on such transaction, inform any private parties participating in the transaction of the hazards of locating structures in the floodplain.

SEC. 5. The head of each agency shall submit a report to the Council on Environmental Quality and to the Water Resources Council on June 30, 1978, regarding the status of their procedures and the impact of this Order on the agency's operations. Thereafter, the Water Resources Council shall periodically evaluate agency procedures and their effectiveness.

SEC. 6. As used in this Order:

(a) The term "agency" shall have the same meaning as the term "Executive agency" in Section 105 of Title 5 of the United States Code and shall include the military departments; the directives contained in this Order, however, are meant to apply only to those agencies which perform the activities described in Section 1 which are located in or affecting floodplains.

(b) The term "base flood" shall mean that flood which has a one percent or greater chance of occurrence in any given year.

(c) The term "floodplain" shall mean the lowland and relatively flat areas adjoining inland and coastal waters including floodprone areas of offshore islands, including at a minimum, that area subject to a one percent or greater chance of flooding in any given year.

SEC. 7. Executive Order No. 11296 of August 10, 1966, is hereby revoked. All actions, procedures, and issuances taken under that Order and still in effect shall remain in effect until modified by appropriate authority under the terms of this Order.

SEC. 8. Nothing in this Order shall apply to assistance provided for emergency work essential to save lives and protect property and public health and safety, performed pursuant to Sections 305 and 306 of the Disaster Relief Act of 1974 (88 Stat. 148, 42 U.S.C. 5145 and 5146).

SEC. 9. To the extent the provisions of Section 2(a) of this Order are applicable to projects covered by Section 104(h) of the Housing and Community Development Act of 1974, as amended (88 Stat. 640, 42 U.S.C. 5304(h)), the responsibilities under those provisions may be assumed by the appropriate applicant, if the applicant has also assumed, with respect to such projects, all of the responsibilities for environmental review, decision-making, and action pursuant to the National Environmental Policy Act of 1969, as amended [42 U.S.C. 4321].

JIMMY CARTER.

EX. ORD. NO. 11990. PROTECTION OF WETLANDS

Ex. Ord. No. 11990, May 24, 1977, 42 F.R. 26961, as amended by Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617, provided:

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in furtherance of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), in order to avoid to the extent possible the long and short term adverse impacts associated with the destruction or modification of wetlands and to avoid direct or indirect support of new construction in wetlands wherever there is a practicable alternative, it is hereby ordered as follows:

SECTION 1. (a) Each agency shall provide leadership and shall take action to minimize the destruction, loss or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands in carrying out the agency's responsibilities for (1) acquiring, managing, and disposing of Federal lands and facilities; and (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities.

(b) This Order does not apply to the issuance by Federal agencies of permits, licenses, or allocations to private parties for activities involving wetlands on non-Federal property.

SEC. 2. (a) In furtherance of Section 101(b)(3) of the National Environmental Policy Act of 1969 (42 U.S.C. 4331(b)(3)) to improve and coordinate Federal plans, functions, programs and resources to the end that the Nation may attain the widest range of beneficial uses of the environment without degradation and risk to health or safety, each agency, to the extent permitted by law, shall avoid undertaking or providing assistance for new construction located in wetlands unless the head of the agency finds (1) that there is no practicable alternative to such construction, and (2) that the proposed action includes all practicable measures to minimize harm to wetlands which may result from such use. In making this finding the head of the agency may take into account economic, environmental and other pertinent factors.

(b) Each agency shall also provide opportunity for early public review of any plans or proposals for new construction in wetlands, in accordance with Section 2(b) of Executive Order No. 11514, as amended [set out above], including the development of procedures to accomplish this objective for Federal actions whose impact is not significant enough to require the preparation of an environmental impact statement under Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended [42 U.S.C. 4332(2)(C)].

SEC. 3. Any requests for new authorizations or appropriations transmitted to the Office of Management and Budget shall indicate, if an action to be proposed will be located in wetlands, whether the proposed action is in accord with this Order.

SEC. 4. When Federally-owned wetlands or portions of wetlands are proposed for lease, easement, right-of-way or disposal to non-Federal public or private parties, the Federal agency shall (a) reference in the conveyance those uses that are restricted under identified Federal,

State or local wetlands regulations; and (b) attach other appropriate restrictions to the uses of properties by the grantee or purchaser and any successor, except where prohibited by law; or (c) withhold such properties from disposal.

SEC. 5. In carrying out the activities described in Section 1 of this Order, each agency shall consider factors relevant to a proposal's effect on the survival and quality of the wetlands. Among these factors are:

(a) public health, safety, and welfare, including water supply, quality, recharge and discharge; pollution; flood and storm hazards; and sediment and erosion;

(b) maintenance of natural systems, including conservation and long term productivity of existing flora and fauna, species and habitat diversity and stability, hydrologic utility, fish, wildlife, timber, and food and fiber resources; and

(c) other uses of wetlands in the public interest, including recreational, scientific, and cultural uses.

SEC. 6. As allowed by law, agencies shall issue or amend their existing procedures in order to comply with this Order. To the extent possible, existing processes, such as those of the Council on Environmental Quality, shall be utilized to fulfill the requirements of this Order.

SEC. 7. As used in this Order:

(a) The term "agency" shall have the same meaning as the term "Executive agency" in Section 105 of Title 5 of the United States Code and shall include the military departments; the directives contained in this Order, however, are meant to apply only to those agencies which perform the activities described in Section 1 which are located in or affecting wetlands.

(b) The term "new construction" shall include draining, dredging, channelizing, filling, diking, impounding, and related activities and any structures or facilities begun or authorized after the effective date of this Order.

(c) The term "wetlands" means those areas that are inundated by surface or ground water with a frequency sufficient to support and under normal circumstances does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds.

SEC. 8. This Order does not apply to projects presently under construction, or to projects for which all of the funds have been appropriated through Fiscal Year 1977, or to projects and programs for which a draft or final environmental impact statement will be filed prior to October 1, 1977. The provisions of Section 2 of this Order shall be implemented by each agency not later than October 1, 1977.

SEC. 9. Nothing in this Order shall apply to assistance provided for emergency work, essential to save lives and protect property and public health and safety, performed pursuant to Sections 305 and 306 of the Disaster Relief Act of 1974 (88 Stat. 148, 42 U.S.C. 5145 and 5146).

SEC. 10. To the extent the provisions of Sections 2 and 5 of this Order are applicable to projects covered by Section 104(h) of the Housing and Community Development Act of 1974, as amended (88 Stat. 640, 42 U.S.C. 5304(h)), the responsibilities under those provisions may be assumed by the appropriate applicant, if the applicant has also assumed, with respect to such projects, all of the responsibilities for environmental review, decisionmaking, and action pursuant to the National Environmental Policy Act of 1969, as amended [42 U.S.C. 4321 *et seq.*].

EX. ORD. NO. 12088. FEDERAL COMPLIANCE WITH POLLUTION CONTROL STANDARDS

Ex. Ord. No. 12088, Oct. 13, 1978, 43 F.R. 47707, as amended by Ex. Ord. No. 12580, Jan. 23, 1987, 52 F.R. 2928; Ex. Ord. No. 13148, §901, Apr. 21, 2000, 65 F.R. 24604, provided:

By the authority vested in me as President by the Constitution and statutes of the United States of

America, including Section 22 of the Toxic Substances Control Act (15 U.S.C. 2621), Section 313 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1323), Section 1447 of the Public Health Service Act, as amended by the Safe Drinking Water Act [now Safe Drinking Water Act of 1974] (42 U.S.C. 300j-6), Section 118 of the Clean Air Act, as amended (42 U.S.C. 7418(b)), Section 4 of the Noise Control Act of 1972 (42 U.S.C. 4903), Section 6001 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6961), and Section 301 of Title 3 of the United States Code, and to ensure Federal compliance with applicable pollution control standards, it is hereby ordered as follows:

1-1. APPLICABILITY OF POLLUTION CONTROL STANDARDS

1-101. The head of each Executive agency is responsible for ensuring that all necessary actions are taken for the prevention, control, and abatement of environmental pollution with respect to Federal facilities and activities under the control of the agency.

1-102. The head of each Executive agency is responsible for compliance with applicable pollution control standards, including those established pursuant to, but not limited to, the following:

(a) Toxic Substances Control Act (15 U.S.C. 2601 et seq.).

(b) Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq.).

(c) Public Health Service Act, as amended by the Safe Drinking Water Act [now Safe Drinking Water Act of 1974] (42 U.S.C. 300f et seq.).

(d) Clean Air Act, as amended (42 U.S.C. 7401 et seq.).

(e) Noise Control Act of 1972 (42 U.S.C. 4901 et seq.).

(f) Solid Waste Disposal Act, as amended (42 U.S.C. 6901 et seq.).

(g) Radiation guidance pursuant to Section 274(h) of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2021(h); see also, the Radiation Protection Guidance to Federal Agencies for Diagnostic X Rays approved by the President on January 26, 1978 and published at page 4377 of the Federal Register on February 1, 1978).

(h) Marine Protection, Research, and Sanctuaries Act of 1972, as amended (33 U.S.C. 1401, 1402, 1411-1421, 1441-1444 and 16 U.S.C. 1431-1434) [16 U.S.C. 1431 et seq., 1447 et seq.; 33 U.S.C. 1401 et seq., 2801 et seq.].

(i) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 et seq.).

1-103. "Applicable pollution control standards" means the same substantive, procedural, and other requirements that would apply to a private person.

1-2. AGENCY COORDINATION

1-201. Each Executive agency shall cooperate with the Administrator of the Environmental Protection Agency, hereinafter referred to as the Administrator, and State, interstate, and local agencies in the prevention, control, and abatement of environmental pollution.

1-202. Each Executive agency shall consult with the Administrator and with State, interstate, and local agencies concerning the best techniques and methods available for the prevention, control, and abatement of environmental pollution.

1-3. TECHNICAL ADVICE AND OVERSIGHT

1-301. The Administrator shall provide technical advice and assistance to Executive agencies in order to ensure their cost effective and timely compliance with applicable pollution control standards.

1-302. The administrator shall conduct such reviews and inspections as may be necessary to monitor compliance with applicable pollution control standards by Federal facilities and activities.

1-4. POLLUTION CONTROL PLAN

[Revoked by Ex. Ord. No. 13148, §901, Apr. 21, 2000, 65 F.R. 24604.]

1-5. FUNDING

1-501. The head of each Executive agency shall ensure that sufficient funds for compliance with applicable

pollution control standards are requested in the agency budget.

1-502. The head of each Executive agency shall ensure that funds appropriated and apportioned for the prevention, control and abatement of environmental pollution are not used for any other purpose unless permitted by law and specifically approved by the Office of Management and Budget.

1-6. COMPLIANCE WITH POLLUTION CONTROLS

1-601. Whenever the Administrator or the appropriate State, interstate, or local agency notifies an Executive agency that it is in violation of an applicable pollution control standard (see Section 1-102 of this Order), the Executive agency shall promptly consult with the notifying agency and provide for its approval a plan to achieve and maintain compliance with the applicable pollution control standard. This plan shall include an implementation schedule for coming into compliance as soon as practicable.

1-602. The Administrator shall make every effort to resolve conflicts regarding such violation between Executive agencies and, on request of any party, such conflicts between an Executive agency and a State, interstate, or a local agency. If the Administrator cannot resolve a conflict, the Administrator shall request the Director of the Office of Management and Budget to resolve the conflict.

1-603. The Director of the Office of Management and Budget shall consider unresolved conflicts at the request of the Administrator. The Director shall seek the Administrator's technological judgment and determination with regard to the applicability of statutes and regulations.

1-604. These conflict resolution procedures are in addition to, not in lieu of, other procedures, including sanctions, for the enforcement of applicable pollution control standards.

1-605. Except as expressly provided by a Presidential exemption under this Order, nothing in this Order, nor any action or inaction under this Order, shall be construed to revise or modify any applicable pollution control standard.

1-7. LIMITATION ON EXEMPTIONS

1-701. Exemptions from applicable pollution control standards may only be granted under statutes cited in Section 1-102(a) through 1-102(f) if the President makes the required appropriate statutory determination: that such exemption is necessary (a) in the interest of national security, or (b) in the paramount interest of the United States.

1-702. The head of an Executive agency may, from time to time, recommend to the President through the Director of the Office of Management and Budget, that an activity or facility, or uses thereof, be exempt from an applicable pollution control standard.

1-703. The Administrator shall advise the President, through the Director of the Office of Management and Budget, whether he agrees or disagrees with a recommendation for exemption and his reasons therefor.

1-704. The Director of the Office of Management and Budget must advise the President within sixty days of receipt of the Administrator's views.

1-8. GENERAL PROVISIONS

1-801. The head of each Executive agency that is responsible for the construction or operation of Federal facilities outside the United States shall ensure that such construction or operation complies with the environmental pollution control standards of general applicability in the host country or jurisdiction.

1-802. Nothing in this Order shall create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

1-803. Executive Order No. 11752 of December 17, 1973, is revoked.

EX. ORD. NO. 12114. ENVIRONMENTAL EFFECTS ABROAD OF MAJOR FEDERAL ACTIONS

Ex. Ord. No. 12114, Jan. 4, 1979, 44 F.R. 1957, provided:

By virtue of the authority vested in me by the Constitution and the laws of the United States, and as President of the United States, in order to further environmental objectives consistent with the foreign policy and national security policy of the United States, it is ordered as follows:

SECTION 1

1-1. *Purpose and Scope.* The purpose of this Executive Order is to enable responsible officials of Federal agencies having ultimate responsibility for authorizing and approving actions encompassed by this Order to be informed of pertinent environmental considerations and to take such considerations into account, with other pertinent considerations of national policy, in making decisions regarding such actions. While based on independent authority, this Order furthers the purpose of the National Environmental Policy Act [42 U.S.C. 4321 et seq.] and the Marine Protection Research and Sanctuaries Act [16 U.S.C. 1431 et seq. and 33 U.S.C. 1401 et seq.] and the Deepwater Port Act [33 U.S.C. 1501 et seq.] consistent with the foreign policy and national security policy of the United States, and represents the United States government's exclusive and complete determination of the procedural and other actions to be taken by Federal agencies to further the purpose of the National Environmental Policy Act, with respect to the environment outside the United States, its territories and possessions.

SECTION 2

2-1. *Agency Procedures.* Every Federal agency taking major Federal actions encompassed hereby and not exempted herefrom having significant effects on the environment outside the geographical borders of the United States and its territories and possessions shall within eight months after the effective date of this Order have in effect procedures to implement this Order. Agencies shall consult with the Department of State and the Council on Environmental Quality concerning such procedures prior to placing them in effect.

2-2. *Information Exchange.* To assist in effectuating the foregoing purpose, the Department of State and the Council on Environmental Quality in collaboration with other interested Federal agencies and other nations shall conduct a program for exchange on a continuing basis of information concerning the environment. The objectives of this program shall be to provide information for use by decisionmakers, to heighten awareness of and interest in environmental concerns and, as appropriate, to facilitate environmental cooperation with foreign nations.

2-3. *Actions Included.* Agencies in their procedures under Section 2-1 shall establish procedures by which their officers having ultimate responsibility for authorizing and approving actions in one of the following categories encompassed by this Order, take into consideration in making decisions concerning such actions, a document described in Section 2-4(a):

(a) major Federal actions significantly affecting the environment of the global commons outside the jurisdiction of any nation (e.g., the oceans or Antarctica);

(b) major Federal actions significantly affecting the environment of a foreign nation not participating with the United States and not otherwise involved in the action;

(c) major Federal actions significantly affecting the environment of a foreign nation which provide to that nation:

(1) a product, or physical project producing a principal product or an emission or effluent, which is prohibited or strictly regulated by Federal law in the United States because its toxic effects on the environment create a serious public health risk; or

(2) a physical project which in the United States is prohibited or strictly regulated by Federal law to protect the environment against radioactive substances.

(d) major Federal actions outside the United States, its territories and possessions which significantly af-

fect natural or ecological resources of global importance designated for protection under this subsection by the President, or, in the case of such a resource protected by international agreement binding on the United States, by the Secretary of State. Recommendations to the President under this subsection shall be accompanied by the views of the Council on Environmental Quality and the Secretary of State.

2-4. *Applicable Procedures.* (a) There are the following types of documents to be used in connection with actions described in Section 2-3:

(i) environmental impact statements (including generic, program and specific statements);

(ii) bilateral or multilateral environmental studies, relevant or related to the proposed action, by the United States and one [or more] more foreign nations, or by an international body or organization in which the United States is a member or participant; or

(iii) concise reviews of the environmental issues involved, including environmental assessments, summary environmental analyses or other appropriate documents.

(b) Agencies shall in their procedures provide for preparation of documents described in Section 2-4(a), with respect to actions described in Section 2-3, as follows:

(i) for effects described in Section 2-3(a), an environmental impact statement described in Section 2-4(a)(i);

(ii) for effects described in Section 2-3(b), a document described in Section 2-4(a)(ii) or (iii), as determined by the agency;

(iii) for effects described in Section 2-3(c), a document described in Section 2-4(a)(ii) or (iii), as determined by the agency;

(iv) for effects described in Section 2-3(d), a document described in Section 2-4(a)(i), (ii) or (iii), as determined by the agency.

Such procedures may provide that an agency need not prepare a new document when a document described in Section 2-4(a) already exists.

(c) Nothing in this Order shall serve to invalidate any existing regulations of any agency which have been adopted pursuant to court order or pursuant to judicial settlement of any case or to prevent any agency from providing in its procedures for measures in addition to those provided for herein to further the purpose of the National Environmental Policy Act [43 U.S.C. 4321 et seq.] and other environmental laws, including the Marine Protection Research and Sanctuaries Act [16 U.S.C. 1431 et seq. and 33 U.S.C. 1401 et seq.], and the Deepwater Port Act [33 U.S.C. 1501 et seq.], consistent with the foreign and national security policies of the United States.

(d) Except as provided in Section 2-5(b), agencies taking action encompassed by this Order shall, as soon as feasible, inform other Federal agencies with relevant expertise of the availability of environmental documents prepared under this Order.

Agencies in their procedures under Section 2-1 shall make appropriate provision for determining when an affected nation shall be informed in accordance with Section 3-2 of this Order of the availability of environmental documents prepared pursuant to those procedures.

In order to avoid duplication of resources, agencies in their procedures shall provide for appropriate utilization of the resources of other Federal agencies with relevant environmental jurisdiction or expertise.

2-5. *Exemptions and Considerations.* (a) Notwithstanding Section 2-3, the following actions are exempt from this Order:

(i) actions not having a significant effect on the environment outside the United States as determined by the agency;

(ii) actions taken by the President;

(iii) actions taken by or pursuant to the direction of the President or Cabinet officer when the national security or interest is involved or when the action occurs in the course of an armed conflict;

(iv) intelligence activities and arms transfers;

(v) export licenses or permits or export approvals, and actions relating to nuclear activities except actions providing to a foreign nation a nuclear production or utilization facility as defined in the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.], as amended, or a nuclear waste management facility;

(vi) votes and other actions in international conferences and organizations;

(vii) disaster and emergency relief action.

(b) Agency procedures under Section 2-1 implementing Section 2-4 may provide for appropriate modifications in the contents, timing and availability of documents to other affected Federal agencies and affected nations, where necessary to:

(i) enable the agency to decide and act promptly as and when required;

(ii) avoid adverse impacts on foreign relations or infringement in fact or appearance of other nations' sovereign responsibilities, or

(iii) ensure appropriate reflection of:

(1) diplomatic factors;

(2) international commercial, competitive and export promotion factors;

(3) needs for governmental or commercial confidentiality;

(4) national security considerations;

(5) difficulties of obtaining information and agency ability to analyze meaningfully environmental effects of a proposed action; and

(6) the degree to which the agency is involved in or able to affect a decision to be made.

(c) Agency procedure under Section 2-1 may provide for categorical exclusions and for such exemptions in addition to those specified in subsection (a) of this Section as may be necessary to meet emergency circumstances, situations involving exceptional foreign policy and national security sensitivities and other such special circumstances. In utilizing such additional exemptions agencies shall, as soon as feasible, consult with the Department of State and the Council on Environmental Quality.

(d) The provisions of Section 2-5 do not apply to actions described in Section 2-3(a) unless permitted by law.

SECTION 3

3-1. *Rights of Action.* This Order is solely for the purpose of establishing internal procedures for Federal agencies to consider the significant effects of their actions on the environment outside the United States, its territories and possessions, and nothing in this Order shall be construed to create a cause of action.

3-2. *Foreign Relations.* The Department of State shall coordinate all communications by agencies with foreign governments concerning environmental agreements and other arrangements in implementation of this Order.

3-3. *Multi-Agency Actions.* Where more than one Federal agency is involved in an action or program, a lead agency, as determined by the agencies involved, shall have responsibility for implementation of this Order.

3-4. *Certain Terms.* For purposes of this Order, "environment" means the natural and physical environment and excludes social, economic and other environments; and an action significantly affects the environment if it does significant harm to the environment even though on balance the agency believes the action to be beneficial to the environment. The term "export approvals" in Section 2-5(a)(v) does not mean or include direct loans to finance exports.

3-5. *Multiple Impacts.* If a major Federal action having effects on the environment of the United States or the global commons requires preparation of an environmental impact statement, and if the action also has effects on the environment of a foreign nation, an environmental impact statement need not be prepared with respect to the effects on the environment of the foreign nation.

JIMMY CARTER.

EXECUTIVE ORDER NO. 12194

Ex. Ord. No. 12194, Feb. 21, 1980, 45 F.R. 12209, which established the Radiation Policy Council and provided for its membership, functions, etc., was revoked by Ex. Ord. No. 12379, §23, Aug. 17, 1982, 47 F.R. 36100, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

EXECUTIVE ORDER NO. 12737

Ex. Ord. No. 12737, Dec. 12, 1990, 55 F.R. 51681, which established President's Commission on Environmental Quality and provided for its functions and administration, was revoked by Ex. Ord. No. 12852, §4(c), June 29, 1993, 58 F.R. 35841, formerly set out below.

EX. ORD. NO. 12761. ESTABLISHMENT OF PRESIDENT'S ENVIRONMENT AND CONSERVATION CHALLENGE AWARDS

Ex. Ord. No. 12761, May 21, 1991, 56 F.R. 23645, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish, in accordance with the goals and purposes of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), and the National Environmental Education Act, Public Law 101-619, 104 Stat. 3325 (1990) [20 U.S.C. 5501 *et seq.*], an awards program to raise environmental awareness and to recognize outstanding achievements in the United States and in its territories in the areas of conservation and environmental protection by both the public and private sectors, it is hereby ordered as follows:

SECTION 1. *Establishment.* The President's Environment and Conservation Challenge Awards program is established for the purposes of recognizing outstanding environmental achievements by U.S. citizens, enterprises, or programs; providing an incentive for environmental accomplishment; promoting cooperative partnerships between diverse groups working together to achieve common environmental goals; and identifying successful environmental programs that can be replicated.

SEC. 2. *Administration.* (a) The Council on Environmental Quality, with the assistance of the President's Commission on Environmental Quality, shall organize, manage, and administer the awards program, including the development of selection criteria, the nomination of eligible individuals to receive the award, and the selection of award recipients.

(b) Any expenses of the program shall be paid from funds available for the expenses of the Council on Environmental Quality.

SEC. 3. *Awards.* (a) Up to three awards in each of the following four categories shall be made annually to eligible individuals, organizations, groups, or entities:

(i) Quality Environmental Management Awards (incorporation of environmental concerns into management decisions and practices);

(ii) Partnership Awards (successful coalition building efforts);

(iii) Innovation Awards (innovative technology programs, products, or processes); and

(iv) Education and Communication Awards (education and information programs contributing to the development of an ethic fostering conservation and environmental protection).

(b) Presidential citations shall be given to eligible program finalists who demonstrate notable or unique achievements, but who are not selected to receive awards.

SEC. 4. *Eligibility.* Only residents of the United States and organizations, groups, or entities doing business in the United States are eligible to receive an award under this program. An award under this program shall be given only for achievements in the United States or its territories. Organizations, groups, or entities may be profit or nonprofit, public or private entities.

SEC. 5. *Information System.* The Council on Environmental Quality shall establish and maintain a data bank with information about award nominees to catalogue and publicize model conservation or environmental protection programs which could be replicated.

GEORGE BUSH.

EXECUTIVE ORDER NO. 12852

Ex. Ord. No. 12852, June 29, 1993, 58 F.R. 35841, as amended by Ex. Ord. No. 12855, July 19, 1993, 58 F.R. 39107; Ex. Ord. No. 12965, June 27, 1995, 60 F.R. 34087; Ex. Ord. No. 12980, Nov. 17, 1995, 60 F.R. 57819; Ex. Ord. No. 13053, June 30, 1997, 62 F.R. 39945 [35945]; Ex. Ord. No. 13114, Feb. 25, 1999, 64 F.R. 10099, which established the President's Council on Sustainable Development, was revoked by Ex. Ord. No. 13138, §3(f), Sept. 30, 1999, 64 F.R. 53880, formerly set out as a note under section 14 of the Appendix to Title 5, Government Organization and Employees.

EX. ORD. NO. 12898. FEDERAL ACTIONS TO ADDRESS ENVIRONMENTAL JUSTICE IN MINORITY POPULATIONS AND LOW-INCOME POPULATIONS

Ex. Ord. No. 12898, Feb. 11, 1994, 59 F.R. 7629, as amended by Ex. Ord. No. 12948, Jan. 30, 1995, 60 F.R. 6381, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

SECTION 1-1. IMPLEMENTATION.

1-101. *Agency Responsibilities.* To the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Mariana Islands.

1-102. *Creation of an Interagency Working Group on Environmental Justice.* (a) Within 3 months of the date of this order, the Administrator of the Environmental Protection Agency ("Administrator") or the Administrator's designee shall convene an interagency Federal Working Group on Environmental Justice ("Working Group"). The Working Group shall comprise the heads of the following executive agencies and offices, or their designees: (a) Department of Defense; (b) Department of Health and Human Services; (c) Department of Housing and Urban Development; (d) Department of Labor; (e) Department of Agriculture; (f) Department of Transportation; (g) Department of Justice; (h) Department of the Interior; (i) Department of Commerce; (j) Department of Energy; (k) Environmental Protection Agency; (l) Office of Management and Budget; (m) Office of Science and Technology Policy; (n) Office of the Deputy Assistant to the President for Environmental Policy; (o) Office of the Assistant to the President for Domestic Policy; (p) National Economic Council; (q) Council of Economic Advisers; and (r) such other Government officials as the President may designate. The Working Group shall report to the President through the Deputy Assistant to the President for Environmental Policy and the Assistant to the President for Domestic Policy.

(b) The Working Group shall: (1) provide guidance to Federal agencies on criteria for identifying disproportionately high and adverse human health or environmental effects on minority populations and low-income populations;

(2) coordinate with, provide guidance to, and serve as a clearinghouse for, each Federal agency as it develops an environmental justice strategy as required by section 1-103 of this order, in order to ensure that the administration, interpretation and enforcement of programs, activities and policies are undertaken in a consistent manner;

(3) assist in coordinating research by, and stimulating cooperation among, the Environmental Protection Agency, the Department of Health and Human Services, the Department of Housing and Urban Development, and other agencies conducting research or other activities in accordance with section 3-3 of this order;

(4) assist in coordinating data collection, required by this order;

(5) examine existing data and studies on environmental justice;

(6) hold public meetings as required in section 5-502(d) of this order; and

(7) develop interagency model projects on environmental justice that evidence cooperation among Federal agencies.

1-103. *Development of Agency Strategies.* (a) Except as provided in section 6-605 of this order, each Federal agency shall develop an agency-wide environmental justice strategy, as set forth in subsections (b)-(e) of this section that identifies and addresses disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations. The environmental justice strategy shall list programs, policies, planning and public participation processes, enforcement, and/or rulemakings related to human health or the environment that should be revised to, at a minimum: (1) promote enforcement of all health and environmental statutes in areas with minority populations and low-income populations; (2) ensure greater public participation; (3) improve research and data collection relating to the health of and environment of minority populations and low-income populations; and (4) identify differential patterns of consumption of natural resources among minority populations and low-income populations. In addition, the environmental justice strategy shall include, where appropriate, a timetable for undertaking identified revisions and consideration of economic and social implications of the revisions.

(b) Within 4 months of the date of this order, each Federal agency shall identify an internal administrative process for developing its environmental justice strategy, and shall inform the Working Group of the process.

(c) Within 6 months of the date of this order, each Federal agency shall provide the Working Group with an outline of its proposed environmental justice strategy.

(d) Within 10 months of the date of this order, each Federal agency shall provide the Working Group with its proposed environmental justice strategy.

(e) By March 24, 1995, each Federal agency shall finalize its environmental justice strategy and provide a copy and written description of its strategy to the Working Group. From the date of this order through March 24, 1995, each Federal agency, as part of its environmental justice strategy, shall identify several specific projects that can be promptly undertaken to address particular concerns identified during the development of the proposed environmental justice strategy, and a schedule for implementing those projects.

(f) Within 24 months of the date of this order, each Federal agency shall report to the Working Group on its progress in implementing its agency-wide environmental justice strategy.

(g) Federal agencies shall provide additional periodic reports to the Working Group as requested by the Working Group.

1-104. *Reports to the President.* Within 14 months of the date of this order, the Working Group shall submit to the President, through the Office of the Deputy Assistant to the President for Environmental Policy and the Office of the Assistant to the President for Domestic Policy, a report that describes the implementation of this order, and includes the final environmental justice strategies described in section 1-103(e) of this order.

SEC. 2-2. FEDERAL AGENCY RESPONSIBILITIES FOR FEDERAL PROGRAMS. Each Federal agency shall conduct its programs, policies, and activities that

substantially affect human health or the environment, in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under, such programs, policies, and activities, because of their race, color, or national origin.

SEC. 3-3. RESEARCH, DATA COLLECTION, AND ANALYSIS.

3-301. *Human Health and Environmental Research and Analysis.* (a) Environmental human health research, whenever practicable and appropriate, shall include diverse segments of the population in epidemiological and clinical studies, including segments at high risk from environmental hazards, such as minority populations, low-income populations and workers who may be exposed to substantial environmental hazards.

(b) Environmental human health analyses, whenever practicable and appropriate, shall identify multiple and cumulative exposures.

(c) Federal agencies shall provide minority populations and low-income populations the opportunity to comment on the development and design of research strategies undertaken pursuant to this order.

3-302. *Human Health and Environmental Data Collection and Analysis.* To the extent permitted by existing law, including the Privacy Act, as amended (5 U.S.C. section 552a): (a) each Federal agency, whenever practicable and appropriate, shall collect, maintain, and analyze information assessing and comparing environmental and human health risks borne by populations identified by race, national origin, or income. To the extent practical and appropriate, Federal agencies shall use this information to determine whether their programs, policies, and activities have disproportionately high and adverse human health or environmental effects on minority populations and low-income populations;

(b) In connection with the development and implementation of agency strategies in section 1-103 of this order, each Federal agency, whenever practicable and appropriate, shall collect, maintain and analyze information on the race, national origin, income level, and other readily accessible and appropriate information for areas surrounding facilities or sites expected to have a substantial environmental, human health, or economic effect on the surrounding populations, when such facilities or sites become the subject of a substantial Federal environmental administrative or judicial action. Such information shall be made available to the public, unless prohibited by law; and

(c) Each Federal agency, whenever practicable and appropriate, shall collect, maintain, and analyze information on the race, national origin, income level, and other readily accessible and appropriate information for areas surrounding Federal facilities that are: (1) subject to the reporting requirements under the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. section 11001-11050 as mandated in Executive Order No. 12856 [former 42 U.S.C. 11001 note]; and (2) expected to have a substantial environmental, human health, or economic effect on surrounding populations. Such information shall be made available to the public, unless prohibited by law.

(d) In carrying out the responsibilities in this section, each Federal agency, whenever practicable and appropriate, shall share information and eliminate unnecessary duplication of efforts through the use of existing data systems and cooperative agreements among Federal agencies and with State, local, and tribal governments.

SEC. 4-4. SUBSISTENCE CONSUMPTION OF FISH AND WILDLIFE.

4-401. *Consumption Patterns.* In order to assist in identifying the need for ensuring protection of populations with differential patterns of subsistence consumption of fish and wildlife, Federal agencies, whenever practicable and appropriate, shall collect, maintain, and analyze information on the consumption patterns of populations who principally rely on fish and/or wildlife

for subsistence. Federal agencies shall communicate to the public the risks of those consumption patterns.

4-402. *Guidance.* Federal agencies, whenever practicable and appropriate, shall work in a coordinated manner to publish guidance reflecting the latest scientific information available concerning methods for evaluating the human health risks associated with the consumption of pollutant-bearing fish or wildlife. Agencies shall consider such guidance in developing their policies and rules.

SEC. 5-5. PUBLIC PARTICIPATION AND ACCESS TO INFORMATION. (a) The public may submit recommendations to Federal agencies relating to the incorporation of environmental justice principles into Federal agency programs or policies. Each Federal agency shall convey such recommendations to the Working Group.

(b) Each Federal agency may, whenever practicable and appropriate, translate crucial public documents, notices, and hearings relating to human health or the environment for limited English speaking populations.

(c) Each Federal agency shall work to ensure that public documents, notices, and hearings relating to human health or the environment are concise, understandable, and readily accessible to the public.

(d) The Working Group shall hold public meetings, as appropriate, for the purpose of fact-finding, receiving public comments, and conducting inquiries concerning environmental justice. The Working Group shall prepare for public review a summary of the comments and recommendations discussed at the public meetings.

SEC. 6-6. GENERAL PROVISIONS.

6-601. *Responsibility for Agency Implementation.* The head of each Federal agency shall be responsible for ensuring compliance with this order. Each Federal agency shall conduct internal reviews and take such other steps as may be necessary to monitor compliance with this order.

6-602. *Executive Order No. 12250.* This Executive order is intended to supplement but not supersede Executive Order No. 12250 [42 U.S.C. 2000d-1 note], which requires consistent and effective implementation of various laws prohibiting discriminatory practices in programs receiving Federal financial assistance. Nothing herein shall limit the effect or mandate of Executive Order No. 12250.

6-603. *Executive Order No. 12875.* This Executive order is not intended to limit the effect or mandate of Executive Order No. 12875 [former 5 U.S.C. 601 note].

6-604. *Scope.* For purposes of this order, Federal agency means any agency on the Working Group, and such other agencies as may be designated by the President, that conducts any Federal program or activity that substantially affects human health or the environment. Independent agencies are requested to comply with the provisions of this order.

6-605. *Petitions for Exemptions.* The head of a Federal agency may petition the President for an exemption from the requirements of this order on the grounds that all or some of the petitioning agency's programs or activities should not be subject to the requirements of this order.

6-606. *Native American Programs.* Each Federal agency responsibility set forth under this order shall apply equally to Native American programs. In addition, the Department of the Interior, in coordination with the Working Group, and, after consultation with tribal leaders, shall coordinate steps to be taken pursuant to this order that address Federally-recognized Indian Tribes.

6-607. *Costs.* Unless otherwise provided by law, Federal agencies shall assume the financial costs of complying with this order.

6-608. *General.* Federal agencies shall implement this order consistent with, and to the extent permitted by, existing law.

6-609. *Judicial Review.* This order is intended only to improve the internal management of the executive branch and is not intended to, nor does it create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party

against the United States, its agencies, its officers, or any person. This order shall not be construed to create any right to judicial review involving the compliance or noncompliance of the United States, its agencies, its officers, or any other person with this order.

WILLIAM J. CLINTON.

EX. ORD. NO. 13045. PROTECTION OF CHILDREN FROM ENVIRONMENTAL HEALTH RISKS AND SAFETY RISKS

Ex. Ord. No. 13045, Apr. 21, 1997, 62 F.R. 19885, as amended by Ex. Ord. No. 13229, Oct. 9, 2001, 66 F.R. 52013; Ex. Ord. No. 13296, Apr. 18, 2003, 68 F.R. 19931, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

SECTION 1. *Policy.*

1-101. A growing body of scientific knowledge demonstrates that children may suffer disproportionately from environmental health risks and safety risks. These risks arise because: children's neurological, immunological, digestive, and other bodily systems are still developing; children eat more food, drink more fluids, and breathe more air in proportion to their body weight than adults; children's size and weight may diminish their protection from standard safety features; and children's behavior patterns may make them more susceptible to accidents because they are less able to protect themselves. Therefore, to the extent permitted by law and appropriate, and consistent with the agency's mission, each Federal agency:

(a) shall make it a high priority to identify and assess environmental health risks and safety risks that may disproportionately affect children; and

(b) shall ensure that its policies, programs, activities, and standards address disproportionate risks to children that result from environmental health risks or safety risks.

1-102. Each independent regulatory agency is encouraged to participate in the implementation of this order and comply with its provisions.

SEC. 2. *Definitions.* The following definitions shall apply to this order.

2-201. "Federal agency" means any authority of the United States that is an agency under 44 U.S.C. 3502(1) other than those considered to be independent regulatory agencies under 44 U.S.C. 3502(5). For purposes of this order, "military departments," as defined in 5 U.S.C. 102, are covered under the auspices of the Department of Defense.

2-202. "Covered regulatory action" means any substantive action in a rulemaking, initiated after the date of this order or for which a Notice of Proposed Rulemaking is published 1 year after the date of this order, that is likely to result in a rule that may:

(a) be "economically significant" under Executive Order 12866 [5 U.S.C. 601 note] (a rulemaking that has an annual effect on the economy of \$100 million or more or would adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities); and

(b) concern an environmental health risk or safety risk that an agency has reason to believe may disproportionately affect children.

2-203. "Environmental health risks and safety risks" mean risks to health or to safety that are attributable to products or substances that the child is likely to come in contact with or ingest (such as the air we breathe, the food we eat, the water we drink or use for recreation, the soil we live on, and the products we use or are exposed to).

SEC. 3. *Task Force on Environmental Health Risks and Safety Risks to Children.*

3-301. There is hereby established the Task Force on Environmental Health Risks and Safety Risks to Children ("Task Force").

3-302. The Task Force will report to the President in consultation with the Domestic Policy Council, the Na-

tional Science and Technology Council, the Council on Environmental Quality, and the Office of Management and Budget (OMB).

3-303. *Membership.* The Task Force shall be composed of the:

(a) Secretary of Health and Human Services, who shall serve as a Co-Chair of the Council;

(b) Administrator of the Environmental Protection Agency, who shall serve as a Co-Chair of the Council;

(c) Secretary of Education;

(d) Secretary of Labor;

(e) Attorney General;

(f) Secretary of Energy;

(g) Secretary of Housing and Urban Development;

(h) Secretary of Agriculture;

(i) Secretary of Transportation;

(j) Director of the Office of Management and Budget;

(k) Chair of the Council on Environmental Quality;

(l) Chair of the Consumer Product Safety Commission;

(m) Assistant to the President for Economic Policy;

(n) Assistant to the President for Domestic Policy;

(o) Director of the Office of Science and Technology Policy;

(p) Chair of the Council of Economic Advisers; and

(q) Such other officials of executive departments and agencies as the President may, from time to time, designate.

Members of the Task Force may delegate their responsibilities under this order to subordinates.

3-304. *Functions.* The Task Force shall recommend to the President Federal strategies for children's environmental health and safety, within the limits of the Administration's budget, to include the following elements:

(a) statements of principles, general policy, and targeted annual priorities to guide the Federal approach to achieving the goals of this order;

(b) a coordinated research agenda for the Federal Government, including steps to implement the review of research databases described in section 4 of this order;

(c) recommendations for appropriate partnerships among Federal, State, local, and tribal governments and the private, academic, and nonprofit sectors;

(d) proposals to enhance public outreach and communication to assist families in evaluating risks to children and in making informed consumer choices;

(e) an identification of high-priority initiatives that the Federal Government has undertaken or will undertake in advancing protection of children's environmental health and safety; and

(f) a statement regarding the desirability of new legislation to fulfill or promote the purposes of this order.

3-305. The Task Force shall prepare a biennial report on research, data, or other information that would enhance our ability to understand, analyze, and respond to environmental health risks and safety risks to children. For purposes of this report, executive departments, the Environmental Protection Agency, and other agencies identified by the Task Force shall identify and specifically describe for the Task Force key data needs related to environmental health risks and safety risks to children that have arisen in the course of the agency's programs and activities. Each report shall also detail the accomplishments of the Task Force from the date of the preceding report. The Task Force shall incorporate agency submissions into its report and ensure that this report is publicly available and widely disseminated. The Office of Science and Technology Policy and the National Science and Technology Council shall ensure that this report is fully considered in establishing research priorities.

3-306. The Task Force shall exist for 8 years from the date of this order.

SEC. 4. *Research Coordination and Integration.*

4-401. Within 6 months of the date of this order, the Task Force shall develop or direct to be developed a review of existing and planned data resources and a proposed plan for ensuring that researchers and Federal

research agencies have access to information on all research conducted or funded by the Federal Government that is related to adverse health risks in children resulting from exposure to environmental health risks or safety risks. The National Science and Technology Council shall review the plan.

4-402. The plan shall promote the sharing of information on academic and private research. It shall include recommendations to encourage that such data, to the extent permitted by law, is available to the public, the scientific and academic communities, and all Federal agencies.

SEC. 5. Agency Environmental Health Risk or Safety Risk Regulations.

5-501. For each covered regulatory action submitted to OMB's Office of Information and Regulatory Affairs (OIRA) for review pursuant to Executive Order 12866 [5 U.S.C. 601 note], the issuing agency shall provide to OIRA the following information developed as part of the agency's decisionmaking process, unless prohibited by law:

- (a) an evaluation of the environmental health or safety effects of the planned regulation on children; and
- (b) an explanation of why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the agency.

5-502. In emergency situations, or when an agency is obligated by law to act more quickly than normal review procedures allow, the agency shall comply with the provisions of this section to the extent practicable. For those covered regulatory actions that are governed by a court-imposed or statutory deadline, the agency shall, to the extent practicable, schedule any rule-making proceedings so as to permit sufficient time for completing the analysis required by this section.

5-503. The analysis required by this section may be included as part of any other required analysis, and shall be made part of the administrative record for the covered regulatory action or otherwise made available to the public, to the extent permitted by law.

SEC. 6. Interagency Forum on Child and Family Statistics.

6-601. The Director of the OMB ("Director") shall convene an Interagency Forum on Child and Family Statistics ("Forum"), which will include representatives from the appropriate Federal statistics and research agencies. The Forum shall produce a biennial compendium ("Report") of the most important indicators of the well-being of the Nation's children.

6-602. The Forum shall determine the indicators to be included in each Report and identify the sources of data to be used for each indicator. The Forum shall provide an ongoing review of Federal collection and dissemination of data on children and families, and shall make recommendations to improve the coverage and coordination of data collection and to reduce duplication and overlap.

6-603. The Report shall be published by the Forum in collaboration with the National Institute of Child Health and Human Development. The Forum shall present the first annual Report to the President, through the Director, by July 31, 1997. The Report shall be published biennially thereafter, using the most recently available data.

SEC. 7. General Provisions.

7-701. This order is intended only for internal management of the executive branch. This order is not intended, and should not be construed to create, any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or its employees. This order shall not be construed to create any right to judicial review involving the compliance or noncompliance with this order by the United States, its agencies, its officers, or any other person.

7-702. Executive Order 12606 of September 2, 1987 is revoked.

7-703. Nothing in this order shall be construed to impair or otherwise affect the functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.

EX. ORD. NO. 13061. FEDERAL SUPPORT OF COMMUNITY EFFORTS ALONG AMERICAN HERITAGE RIVERS

Ex. Ord. No. 13061, Sept. 11, 1997, 62 F.R. 48445, as amended by Ex. Ord. No. 13093, July 27, 1998, 63 F.R. 40357, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Environmental Policy Act of 1969 (Public Law 91-190) [42 U.S.C. 4321 et seq.], and in order to protect and restore rivers and their adjacent communities, it is hereby ordered as follows:

SECTION 1. Policies.

(a) The American Heritage Rivers initiative has three objectives: natural resource and environmental protection, economic revitalization, and historic and cultural preservation.

(b) Executive agencies ("agencies"), to the extent permitted by law and consistent with their missions and resources, shall coordinate Federal plans, functions, programs, and resources to preserve, protect, and restore rivers and their associated resources important to our history, culture, and natural heritage.

(c) Agencies shall develop plans to bring increased efficiencies to existing and authorized programs with goals that are supportive of protection and restoration of communities along rivers.

(d) In accordance with Executive Order 12630 [5 U.S.C. 601 note], agencies shall act with due regard for the protection of private property provided for by the Fifth Amendment to the United States Constitution. No new regulatory authority is created as a result of the American Heritage Rivers initiative. This initiative will not interfere with matters of State, local, and tribal government jurisdiction.

(e) In furtherance of these policies, the President will designate rivers that meet certain criteria as "American Heritage Rivers."

(f) It is the policy of the Federal Government that communities shall nominate rivers as American Heritage Rivers and the Federal role will be solely to support community-based efforts to preserve, protect, and restore these rivers and their communities.

(g) Agencies should, to the extent practicable, help identify resources in the private and nonprofit sectors to aid revitalization efforts.

(h) Agencies are encouraged, to the extent permitted by law, to develop partnerships with State, local, and tribal governments and community and nongovernmental organizations. Agencies will be responsive to the diverse needs of different kinds of communities from the core of our cities to remote rural areas and shall seek to ensure that the role played by the Federal Government is complementary to the plans and work being carried out by State, local, and tribal governments. To the extent possible, Federal resources will be strategically directed to complement resources being spent by these governments.

(i) Agencies shall establish a method for field offices to assess the success of the American Heritage River initiative and provide a means to recommend changes that will improve the delivery and accessibility of Federal services and programs. Agencies are directed, where appropriate, to reduce and make more flexible procedural requirements and paperwork related to providing assistance to communities along designated rivers.

(j) Agencies shall commit to a policy under which they will seek to ensure that their actions have a positive effect on the natural, historic, economic, and cultural resources of American Heritage River communities. The policy will require agencies to consult with American Heritage River communities early in the planning stages of Federal actions, take into account the communities' goals and objectives and ensure that actions are compatible with the overall character of these communities. Agencies shall seek to ensure that their help for one community does not adversely affect neighboring communities. Additionally, agencies are encouraged to develop formal and informal partner-

ships to assist communities. Local Federal facilities, to the extent permitted by law and consistent with the agencies' missions and resources, should provide public access, physical space, technical assistance, and other support for American Heritage River communities.

(k) In addition to providing support to designated rivers, agencies will work together to provide information and services to all communities seeking support.

SEC. 2. Process for Nominating an American Heritage River.

(a) *Nomination.* Communities, in coordination with their State, local, or tribal governments, can nominate their river, river stretch, or river confluence for designation as an American Heritage River. When several communities are involved in the nomination of the same river, nominations will detail the coordination among the interested communities and the role each will play in the process. Individuals living outside the community may not nominate a river.

(b) *Selection Criteria.* Nominations will be judged based on the following:

(1) the characteristics of the natural, economic, agricultural, scenic, historic, cultural, or recreational resources of the river that render it distinctive or unique;

(2) the effectiveness with which the community has defined its plan of action and the extent to which the plan addresses, either through planned actions or past accomplishments, all three American Heritage Rivers objectives, which are set forth in section 1(a) of this order;

(3) the strength and diversity of community support for the nomination as evidenced by letters from elected officials; landowners; private citizens; businesses; and especially State, local, and tribal governments. Broad community support is essential to receiving the American Heritage River designation; and

(4) willingness and capability of the community to forge partnerships and agreements to implement their plan to meet their goals and objectives.

(c) *Recommendation Process.*

The Chair of the Council on Environmental Quality ("CEQ") shall develop a fair and objective procedure to obtain the views of a diverse group of experts for the purpose of making recommendations to the President as to which rivers shall be designated. These experts shall reflect a variety of viewpoints, such as those representing natural, cultural, and historic resources; scenic, environmental, and recreation interests; tourism, transportation, and economic development interests; and industries such as agriculture, hydropower, manufacturing, mining, and forest management. The Chair of the CEQ will ensure that the rivers recommended represent a variety of stream sizes, diverse geographical locations, and a wide range of settings from urban to rural and ensure that relatively pristine, successful revitalization efforts are considered as well as degraded rivers in need of restoration.

(d) *Designation.*

(1) The President will designate certain rivers as American Heritage Rivers. Based on the receipt of a sufficient number of qualified nominations, up to 20 rivers will be designated in the first phase of the initiative.

(2) The Interagency Committee provided for in section 3 of this order shall develop a process by which any community that nominates and has its river designated may have this designation terminated at its request.

(3) Upon a determination by the Chair of the CEQ that a community has failed to implement its plan, the Chair may recommend to the President that a designation be revoked. The Chair shall notify the community at least 30 days prior to making such a recommendation to the President. Based on that recommendation, the President may revoke the designation.

SEC. 3. Establishment of an Interagency Committee. There is hereby established the American Heritage Rivers Interagency Committee ("Committee"). The Committee shall have two co-chairs. The Chair of the CEQ shall be a permanent co-chair. The other co-chair will rotate among the heads of the agencies listed below.

(a) The Committee shall be composed of the following members or their designees at the Assistant Secretary level or equivalent:

(1) The Secretary of Defense;

(2) The Attorney General;

(3) The Secretary of the Interior;

(4) The Secretary of Agriculture;

(5) The Secretary of Commerce;

(6) The Secretary of Housing and Urban Development;

(7) The Secretary of Transportation;

(8) The Secretary of Energy;

(9) The Administrator of the Environmental Protection Agency;

(10) The Chair of the Advisory Council on Historic Preservation;

(11) The Chairperson of the National Endowment for the Arts; and

(12) The Chairperson of the National Endowment for the Humanities.

The Chair of the CEQ may invite to participate in meetings of the Committee, representatives of other agencies, as appropriate.

(b) The Committee shall:

(1) establish formal guidelines for designation as an American Heritage River;

(2) periodically review the actions of agencies in support of the American Heritage Rivers;

(3) report to the President on the progress, accomplishments, and effectiveness of the American Heritage Rivers initiative; and

(4) perform other duties as directed by the Chair of the CEQ.

SEC. 4. Responsibilities of the Federal Agencies. Consistent with Title I of the National Environmental Policy Act of 1969 [42 U.S.C. 4331 et seq.], agencies shall:

(a) identify their existing programs and plans that give them the authority to offer assistance to communities involved in river conservation and community health and revitalization;

(b) to the extent practicable and permitted by law and regulation, refocus programs, grants, and technical assistance to provide support for communities adjacent to American Heritage Rivers;

(c) identify all technical tools, including those developed for purposes other than river conservation, that can be applied to river protection, restoration, and community revitalization;

(d) provide access to existing scientific data and information to the extent permitted by law and consistent with the agencies mission and resources;

(e) cooperate with State, local, and tribal governments and communities with respect to their activities that take place in, or affect the area around, an American Heritage River;

(f) commit to a policy, as set forth in section 1(j) of this order, in making decisions affecting the quality of an American Heritage River;

(g) select from among all the agencies a single individual called the "River Navigator," for each river that is designated an American Heritage River, with whom the communities can communicate goals and needs and who will facilitate community-agency interchange;

(h) allow public access to the river, for agencies with facilities along American Heritage Rivers, to the extent practicable and consistent with their mission; and

(i) cooperate, as appropriate, with communities on projects that protect or preserve stretches of the river that are on Federal property or adjacent to a Federal facility.

SEC. 5. Responsibilities of the Committee and the Council on Environmental Quality. The CEQ shall serve as Executive agent for the Committee, and the CEQ and the Committee shall ensure the implementation of the policies and purposes of this initiative.

SEC. 6. Definition. For the purposes of this order, Executive agency means any agency on the Committee and such other agency as may be designated by the President.

SEC. 7. Judicial Review. This order does not create any right or benefit, substantive or procedural, enforceable

by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

WILLIAM J. CLINTON.

EXECUTIVE ORDER NO. 13080

Ex. Ord. No. 13080, Apr. 7, 1998, 63 F.R. 17667, as amended by Ex. Ord. No. 13093, July 27, 1998, 63 F.R. 40357, which established the American Heritage Rivers Initiative Advisory Committee, was revoked by Ex. Ord. No. 13225, §3(b), Sept. 28, 2001, 66 F.R. 50292, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

PROC. NO. 7112. DESIGNATION OF AMERICAN HERITAGE RIVERS

Proc. No. 7112, July 30, 1998, 63 F.R. 41949, provided:

In celebration of America's rivers, and to recognize and reward grassroots efforts to restore them, last year I announced the American Heritage Rivers initiative. My goal was to help communities realize their visions for their rivers by making it easier for them to tap existing programs and resources of the Federal Government. From across the country, hundreds of communities answered my call for nominations, asking that their rivers be designated American Heritage Rivers. I applaud all of the communities that have drawn together and dedicated themselves to the goal of healthy rivers, now and forever.

Having reviewed the recommendations of the American Heritage Rivers Initiative Advisory Committee, I am pleased to be able to recognize a select group of rivers and communities that reflect the true diversity and splendor of America's natural endowment, and the tremendous energy and commitment of its citizenry.

Pursuant to Executive Orders 13061 [set out above], 13080, and 13093 [set out above], I hereby designate the following American Heritage Rivers:

- The Blackstone and Woonasquatucket Rivers, in the States of Massachusetts and Rhode Island;
- The Connecticut River, in the States of Connecticut, Massachusetts, New Hampshire, and Vermont;
- The Cuyahoga River, in the State of Ohio;
- The Detroit River, in the State of Michigan;
- The Hanalei River, in the State of Hawaii;
- The Hudson River, in the State of New York;
- The Upper Mississippi River, in the States of Illinois, Iowa, Minnesota, Missouri, and Wisconsin;
- The Lower Mississippi River, in the States of Louisiana and Tennessee;
- The New River, in the States of North Carolina, Virginia, and West Virginia;
- The Rio Grande, in the State of Texas;
- The Potomac River, in the District of Columbia and the States of Maryland, Pennsylvania, Virginia, and West Virginia;
- The St. Johns River, in the State of Florida;
- The Upper Susquehanna and Lackawanna Rivers, in the State of Pennsylvania;
- The Willamette River, in the State of Oregon.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of July, in the year of our Lord nineteen hundred and ninety-eight, and of the Independence of the United States of America the two hundred and twenty-third.

WILLIAM J. CLINTON.

EX. ORD. NO. 13112. INVASIVE SPECIES

Ex. Ord. No. 13112, Feb. 3, 1999, 64 F.R. 6183, as amended by Ex. Ord. No. 13286, §15, Feb. 28, 2003, 68 F.R. 10623, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), Non-indigenous Aquatic Nuisance Prevention and Control Act of 1990, as amended (16 U.S.C. 4701 *et seq.*), Lacey Act, as amended (18 U.S.C. 42), Federal Plant Pest Act

(7 U.S.C. 150aa *et seq.*), Federal Noxious Weed Act of 1974, as amended (7 U.S.C. 2801 *et seq.*), Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and other pertinent statutes, to prevent the introduction of invasive species and provide for their control and to minimize the economic, ecological, and human health impacts that invasive species cause, it is ordered as follows:

SECTION 1. *Definitions.*

(a) "Alien species" means, with respect to a particular ecosystem, any species, including its seeds, eggs, spores, or other biological material capable of propagating that species, that is not native to that ecosystem.

(b) "Control" means, as appropriate, eradicating, suppressing, reducing, or managing invasive species populations, preventing spread of invasive species from areas where they are present, and taking steps such as restoration of native species and habitats to reduce the effects of invasive species and to prevent further invasions.

(c) "Ecosystem" means the complex of a community of organisms and its environment.

(d) "Federal agency" means an executive department or agency, but does not include independent establishments as defined by 5 U.S.C. 104.

(e) "Introduction" means the intentional or unintentional escape, release, dissemination, or placement of a species into an ecosystem as a result of human activity.

(f) "Invasive species" means an alien species whose introduction does or is likely to cause economic or environmental harm or harm to human health.

(g) "Native species" means, with respect to a particular ecosystem, a species that, other than as a result of an introduction, historically occurred or currently occurs in that ecosystem.

(h) "Species" means a group of organisms all of which have a high degree of physical and genetic similarity, generally interbreed only among themselves, and show persistent differences from members of allied groups of organisms.

(i) "Stakeholders" means, but is not limited to, State, tribal, and local government agencies, academic institutions, the scientific community, nongovernmental entities including environmental, agricultural, and conservation organizations, trade groups, commercial interests, and private landowners.

(j) "United States" means the 50 States, the District of Columbia, Puerto Rico, Guam, and all possessions, territories, and the territorial sea of the United States.

SEC. 2. *Federal Agency Duties.* (a) Each Federal agency whose actions may affect the status of invasive species shall, to the extent practicable and permitted by law,

(1) identify such actions;

(2) subject to the availability of appropriations, and within Administration budgetary limits, use relevant programs and authorities to: (i) prevent the introduction of invasive species; (ii) detect and respond rapidly to and control populations of such species in a cost-effective and environmentally sound manner; (iii) monitor invasive species populations accurately and reliably; (iv) provide for restoration of native species and habitat conditions in ecosystems that have been invaded; (v) conduct research on invasive species and develop technologies to prevent introduction and provide for environmentally sound control of invasive species; and (vi) promote public education on invasive species and the means to address them; and

(3) not authorize, fund, or carry out actions that it believes are likely to cause or promote the introduction or spread of invasive species in the United States or elsewhere unless, pursuant to guidelines that it has prescribed, the agency has determined and made public its determination that the benefits of such actions clearly outweigh the potential harm caused by invasive species; and that all feasible and prudent measures to minimize risk of harm will be taken in conjunction with the actions.

(b) Federal agencies shall pursue the duties set forth in this section in consultation with the Invasive Spe-

cies Council, consistent with the Invasive Species Management Plan and in cooperation with stakeholders, as appropriate, and, as approved by the Department of State, when Federal agencies are working with international organizations and foreign nations.

SEC. 3. *Invasive Species Council.* (a) An Invasive Species Council (Council) is hereby established whose members shall include the Secretary of State, the Secretary of the Treasury, the Secretary of Defense, the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Transportation, the Secretary of Homeland Security, and the Administrator of the Environmental Protection Agency. The Council shall be Co-Chaired by the Secretary of the Interior, the Secretary of Agriculture, and the Secretary of Commerce. The Council may invite additional Federal agency representatives to be members, including representatives from subcabinet bureaus or offices with significant responsibilities concerning invasive species, and may prescribe special procedures for their participation. The Secretary of the Interior shall, with concurrence of the Co-Chairs, appoint an Executive Director of the Council and shall provide the staff and administrative support for the Council.

(b) The Secretary of the Interior shall establish an advisory committee under the Federal Advisory Committee Act, 5 U.S.C. App., to provide information and advice for consideration by the Council, and shall, after consultation with other members of the Council, appoint members of the advisory committee representing stakeholders. Among other things, the advisory committee shall recommend plans and actions at local, tribal, State, regional, and ecosystem-based levels to achieve the goals and objectives of the Management Plan in section 5 of this order. The advisory committee shall act in cooperation with stakeholders and existing organizations addressing invasive species. The Department of the Interior shall provide the administrative and financial support for the advisory committee.

SEC. 4. *Duties of the Invasive Species Council.* The Invasive Species Council shall provide national leadership regarding invasive species, and shall:

(a) oversee the implementation of this order and see that the Federal agency activities concerning invasive species are coordinated, complementary, cost-efficient, and effective, relying to the extent feasible and appropriate on existing organizations addressing invasive species, such as the Aquatic Nuisance Species Task Force, the Federal Interagency Committee for the Management of Noxious and Exotic Weeds, and the Committee on Environment and Natural Resources;

(b) encourage planning and action at local, tribal, State, regional, and ecosystem-based levels to achieve the goals and objectives of the Management Plan in section 5 of this order, in cooperation with stakeholders and existing organizations addressing invasive species;

(c) develop recommendations for international cooperation in addressing invasive species;

(d) develop, in consultation with the Council on Environmental Quality, guidance to Federal agencies pursuant to the National Environmental Policy Act on prevention and control of invasive species, including the procurement, use, and maintenance of native species as they affect invasive species;

(e) facilitate development of a coordinated network among Federal agencies to document, evaluate, and monitor impacts from invasive species on the economy, the environment, and human health;

(f) facilitate establishment of a coordinated, up-to-date information-sharing system that utilizes, to the greatest extent practicable, the Internet; this system shall facilitate access to and exchange of information concerning invasive species, including, but not limited to, information on distribution and abundance of invasive species; life histories of such species and invasive characteristics; economic, environmental, and human health impacts; management techniques, and laws and programs for management, research, and public education; and

(g) prepare and issue a national Invasive Species Management Plan as set forth in section 5 of this order.

SEC. 5. *Invasive Species Management Plan.* (a) Within 18 months after issuance of this order, the Council shall prepare and issue the first edition of a National Invasive Species Management Plan (Management Plan), which shall detail and recommend performance-oriented goals and objectives and specific measures of success for Federal agency efforts concerning invasive species. The Management Plan shall recommend specific objectives and measures for carrying out each of the Federal agency duties established in section 2(a) of this order and shall set forth steps to be taken by the Council to carry out the duties assigned to it under section 4 of this order. The Management Plan shall be developed through a public process and in consultation with Federal agencies and stakeholders.

(b) The first edition of the Management Plan shall include a review of existing and prospective approaches and authorities for preventing the introduction and spread of invasive species, including those for identifying pathways by which invasive species are introduced and for minimizing the risk of introductions via those pathways, and shall identify research needs and recommend measures to minimize the risk that introductions will occur. Such recommended measures shall provide for a science-based process to evaluate risks associated with introduction and spread of invasive species and a coordinated and systematic risk-based process to identify, monitor, and interdict pathways that may be involved in the introduction of invasive species. If recommended measures are not authorized by current law, the Council shall develop and recommend to the President through its Co-Chairs legislative proposals for necessary changes in authority.

(c) The Council shall update the Management Plan biennially and shall concurrently evaluate and report on success in achieving the goals and objectives set forth in the Management Plan. The Management Plan shall identify the personnel, other resources, and additional levels of coordination needed to achieve the Management Plan's identified goals and objectives, and the Council shall provide each edition of the Management Plan and each report on it to the Office of Management and Budget. Within 18 months after measures have been recommended by the Council in any edition of the Management Plan, each Federal agency whose action is required to implement such measures shall either take the action recommended or shall provide the Council with an explanation of why the action is not feasible. The Council shall assess the effectiveness of this order no less than once each 5 years after the order is issued and shall report to the Office of Management and Budget on whether the order should be revised.

SEC. 6. *Judicial Review and Administration.* (a) This order is intended only to improve the internal management of the executive branch and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any other person.

(b) Executive Order 11987 of May 24, 1977, is hereby revoked.

(c) The requirements of this order do not affect the obligations of Federal agencies under 16 U.S.C. 4713 with respect to ballast water programs.

(d) The requirements of section 2(a)(3) of this order shall not apply to any action of the Department of State or Department of Defense if the Secretary of State or the Secretary of Defense finds that exemption from such requirements is necessary for foreign policy or national security reasons.

EX. ORD. NO. 13148. GREENING THE GOVERNMENT THROUGH LEADERSHIP IN ENVIRONMENTAL MANAGEMENT

Ex. Ord. No. 13148, Apr. 21, 2000, 65 F.R. 24595, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Emergency Planning and Com-

munity Right-to-Know Act of 1986 (42 U.S.C. 11001–11050) (EPCRA), the Pollution Prevention Act of 1990 (42 U.S.C. 13101–13109) (PPA), the Clean Air Act (42 U.S.C. 7401–7671q) (CAA), and section 301 of title 3, United States Code, it is hereby ordered as follows:

PART 1—PREAMBLE

SECTION 101. *Federal Environmental Leadership.* The head of each Federal agency is responsible for ensuring that all necessary actions are taken to integrate environmental accountability into agency day-to-day decisionmaking and long-term planning processes, across all agency missions, activities, and functions. Consequently, environmental management considerations must be a fundamental and integral component of Federal Government policies, operations, planning, and management. The head of each Federal agency is responsible for meeting the goals and requirements of this order.

PART 2—GOALS

SEC. 201. *Environmental Management.* Through development and implementation of environmental management systems, each agency shall ensure that strategies are established to support environmental leadership programs, policies, and procedures and that agency senior level managers explicitly and actively endorse these strategies.

SEC. 202. *Environmental Compliance.* Each agency shall comply with environmental regulations by establishing and implementing environmental compliance audit programs and policies that emphasize pollution prevention as a means to both achieve and maintain environmental compliance.

SEC. 203. *Right-to-Know and Pollution Prevention.* Through timely planning and reporting under the EPCRA, Federal facilities shall be leaders and responsible members of their communities by informing the public and their workers of possible sources of pollution resulting from facility operations. Each agency shall strive to reduce or eliminate harm to human health and the environment from releases of pollutants to the environment. Each agency shall advance the national policy that, whenever feasible and cost-effective, pollution should be prevented or reduced at the source. Funding for regulatory compliance programs shall emphasize pollution prevention as a means to address environmental compliance.

SEC. 204. *Release Reduction: Toxic Chemicals.* Through innovative pollution prevention, effective facility management, and sound acquisition and procurement practices, each agency shall reduce its reported Toxic Release Inventory (TRI) releases and off-site transfers of toxic chemicals for treatment and disposal by 10 percent annually, or by 40 percent overall by December 31, 2006.

SEC. 205. *Use Reduction: Toxic Chemicals and Hazardous Substances and Other Pollutants.* Through identification of proven substitutes and established facility management practices, including pollution prevention, each agency shall reduce its use of selected toxic chemicals, hazardous substances, and pollutants, or its generation of hazardous and radioactive waste types at its facilities by 50 percent by December 31, 2006. If an agency is unable to reduce the use of selected chemicals, that agency will reduce the use of selected hazardous substances or its generation of other pollutants, such as hazardous and radioactive waste types, at its facilities by 50 percent by December 31, 2006.

SEC. 206. *Reductions in Ozone-Depleting Substances.* Through evaluating present and future uses of ozone-depleting substances and maximizing the purchase and the use of safe, cost effective, and environmentally preferable alternatives, each agency shall develop a plan to phase out the procurement of Class I ozone-depleting substances for all nonexcepted uses by December 31, 2010.

SEC. 207. *Environmentally and Economically Beneficial Landscaping.* Each agency shall strive to promote the

sustainable management of Federal facility lands through the implementation of cost-effective, environmentally sound landscaping practices, and programs to reduce adverse impacts to the natural environment.

PART 3—PLANNING AND ACCOUNTABILITY

SEC. 301. *Annual Budget Submission.* Federal agencies shall place high priority on obtaining funding and resources needed for implementation of the Greening the Government Executive Orders, including funding to address findings and recommendations from environmental management system audits or facility compliance audits conducted under sections 401 and 402 of this order. Federal agencies shall make such requests as required in Office of Management and Budget (OMB) Circular A–11.

SEC. 302. *Application of Life Cycle Assessment Concepts.* Each agency with facilities shall establish a pilot program to apply life cycle assessment and environmental cost accounting principles. To the maximum extent feasible and cost-effective, agencies shall apply those principles elsewhere in the agency to meet the goals and requirements of this order. Such analysis shall be considered in the process established in the OMB Capital Programming Guide and OMB Circular A–11. The Environmental Protection Agency (EPA), in coordination with the Workgroup established in section 306 of this order, shall, to the extent feasible, assist agencies in identifying, applying, and developing tools that reflect life cycle assessment and environmental cost accounting principles and provide technical assistance to agencies in developing life cycle assessments and environmental cost accounting assessments under this Part.

SEC. 303. *Pollution Prevention to Address Compliance.* Each agency shall ensure that its environmental regulatory compliance funding policies promote the use of pollution prevention to achieve and maintain environmental compliance at the agency's facilities. Agencies shall adopt a policy to preferentially use pollution prevention projects and activities to correct and prevent noncompliance with environmental regulatory requirements. Agency funding requests for facility compliance with Federal, State, and local environmental regulatory requirements shall emphasize pollution prevention through source reduction as the means of first choice to ensure compliance, with reuse and recycling alternatives having second priority as a means of compliance.

SEC. 304. *Pollution Prevention Return-on-Investment Programs.* Each agency shall develop and implement a pollution prevention program at its facilities that compares the life cycle costs of treatment and/or disposal of waste and pollutant streams to the life cycle costs of alternatives that eliminate or reduce toxic chemicals or pollutants at the source. Each agency shall implement those projects that are life-cycle cost-effective, or otherwise offer substantial environmental or economic benefits.

SEC. 305. *Policies, Strategies, and Plans.*

(a) Within 12 months of the date of this order, each agency shall ensure that the goals and requirements of this order are incorporated into existing agency environmental directives, policies, and documents affected by the requirements and goals of this order. Where such directives and policies do not already exist, each agency shall, within 12 months of the date of this order, prepare and endorse a written agency environmental management strategy to achieve the requirements and goals of this order. Agency preparation of directives, policies, and documents shall reflect the nature, scale, and environmental impacts of the agency's activities, products, or services. Agencies are encouraged to include elements of relevant agency policies or strategies developed under this part in agency planning documents prepared under the Government Performance and Results Act of 1993, Public Law 103–62 [see Short Title of 1993 Amendment note set out under 31 U.S.C. 1101].

(b) By March 31, 2002, each agency shall ensure that its facilities develop a written plan that sets forth the

facility's contribution to the goals and requirements established in this order. The plan should reflect the size and complexity of the facility. Where pollution prevention plans or other formal environmental planning instruments have been prepared for agency facilities, an agency may elect to update those plans to meet the requirements and goals of this section.

(c) The Federal Acquisition Regulation (FAR) Council shall develop acquisition policies and procedures for contractors to supply agencies with all information necessary for compliance with this order. Once the appropriate FAR clauses have been published, agencies shall use them in all applicable contracts. In addition, to the extent that compliance with this order is made more difficult due to lack of information from existing contractors, or concessioners, each agency shall take practical steps to obtain the information needed to comply with this order from such contractors or concessioners.

SEC. 306. *Interagency Environmental Leadership Workgroup.* Within 4 months of the date of this order, EPA shall convene and chair an Interagency Environmental Leadership Workgroup (the Workgroup) with senior-level representatives from all executive agencies and other interested independent Government agencies affected by this order. The Workgroup shall develop policies and guidance required by this order and member agencies shall facilitate implementation of the requirements of this order in their respective agencies. Workgroup members shall coordinate with their Agency Environmental Executive (AEE) designated under section 301(d) of Executive Order 13101 [42 U.S.C. 6961 note] and may request the assistance of their AEE in resolving issues that may arise among members in developing policies and guidance related to this order. If the AEEs are unable to resolve the issues, they may request the assistance of the Chair of the Council on Environmental Quality (CEQ).

SEC. 307. *Annual Reports.* Each agency shall submit an annual progress report to the Administrator on implementation of this order. The reports shall include a description of the progress that the agency has made in complying with all aspects of this order, including, but not limited to, progress in achieving the reduction goals in sections 502, 503, and 505 of this order. Each agency may prepare and submit the annual report in electronic format. A copy of the report shall be submitted to the Federal Environmental Executive (FEE) by EPA for use in the biennial Greening the Government Report to the President prepared in accordance with Executive Order 13101 [42 U.S.C. 6961 note]. Within 9 months of the date of this order, EPA, in coordination with the Workgroup established under section 306 of this order, shall prepare guidance regarding the information and timing for the annual report. The Workgroup shall coordinate with those agencies responsible for Federal agency reporting guidance under the Greening the Government Executive orders to streamline reporting requirements and reduce agency and facility-level reporting burdens. The first annual report shall cover calendar year 2000 activities.

PART 4—PROMOTING ENVIRONMENTAL MANAGEMENT AND LEADERSHIP

SEC. 401. *Agency and Facility Environmental Management Systems.* To attain the goals of section 201 of this order:

(a) Within 18 months of the date of this order, each agency shall conduct an agency-level environmental management system self assessment based on the Code of Environmental Management Principles for Federal Agencies developed by the EPA (61 Fed. Reg. 54062) and/or another appropriate environmental management system framework. Each assessment shall include a review of agency environmental leadership goals, objectives, and targets. Where appropriate, the assessments may be conducted at the service, bureau, or other comparable level.

(b) Within 24 months of the date of this order, each agency shall implement environmental management

systems through pilot projects at selected agency facilities based on the Code of Environmental Management Principles for Federal Agencies and/or another appropriate environmental management system framework. By December 31, 2005, each agency shall implement an environmental management system at all appropriate agency facilities based on facility size, complexity, and the environmental aspects of facility operations. The facility environmental management system shall include measurable environmental goals, objectives, and targets that are reviewed and updated annually. Once established, environmental management system performance measures shall be incorporated in agency facility audit protocols.

SEC. 402. *Facility Compliance Audits.* To attain the goals of section 202 of this order:

(a) Within 12 months of the date of this order, each agency that does not have an established regulatory environmental compliance audit program shall develop and implement a program to conduct facility environmental compliance audits and begin auditing at its facilities within 6 months of the development of that program.

(b) An agency with an established regulatory environmental compliance audit program may elect to conduct environmental management system audits in lieu of regulatory environmental compliance audits at selected facilities.

(c) Facility environmental audits shall be conducted periodically. Each agency is encouraged to conduct audits not less than every 3 years from the date of the initial or previous audit. The scope and frequency of audits shall be based on facility size, complexity, and the environmental aspects of facility operations. As appropriate, each agency shall include tenant, contractor, and concessioner activities in facility audits.

(d) Each agency shall conduct internal reviews and audits and shall take such other steps, as may be necessary, to monitor its facilities' compliance with sections 501 and 504 of this order.

(e) Each agency shall consider findings from the assessments or audits conducted under Part 4 in program planning under section 301 of this order and in the preparation and revisions to facility plans prepared under section 305 of this order.

(f) Upon request and to the extent practicable, the EPA shall provide technical assistance in meeting the requirements of Part 4 by conducting environmental management reviews at Federal facilities and developing policies and guidance for conducting environmental compliance audits and implementing environmental management systems at Federal facilities.

SEC. 403. *Environmental Leadership and Agency Awards Programs.*

(a) Within 12 months of the date of this order, the Administrator shall establish a Federal Government environmental leadership program to promote and recognize outstanding environmental management performance in agencies and facilities.

(b) Each agency shall develop an internal agency-wide awards program to reward and highlight innovative programs and individuals showing outstanding environmental leadership in implementing this order. In addition, based upon criteria developed by the EPA in coordination with the Workgroup established in section 306 of this order, Federal employees who demonstrate outstanding leadership in implementation of this order may be considered for recognition under the White House awards program set forth in section 803 of Executive Order 13101 of September 14, 1998 [42 U.S.C. 6961 note].

SEC. 404. *Management Leadership and Performance Evaluations.*

(a) To ensure awareness of and support for the environmental requirements of this order, each agency shall include training on the provisions of the Greening the Government Executive orders in standard senior level management training as well as training for program managers, contracting personnel, procurement and acquisition personnel, facility managers, contrac-

tors, concessioners, and other personnel as appropriate. In coordination with the Workgroup established under section 306 of this order, the EPA shall prepare guidance on implementation of this section.

(b) To recognize and reinforce the responsibilities of facility and senior headquarters program managers, regional environmental coordinators and officers, their superiors, and, to the extent practicable and appropriate, others vital to the implementation of this order, each agency shall include successful implementation of pollution prevention, community awareness, and environmental management into its position descriptions and performance evaluations for those positions.

SEC. 405. Compliance Assistance.

(a) Upon request and to the extent practicable, the EPA shall provide technical advice and assistance to agencies to foster full compliance with environmental regulations and all aspects of this order.

(b) Within 12 months of the date of this order, the EPA shall develop a compliance assistance center to provide technical assistance for Federal facility compliance with environmental regulations and all aspects of this order.

(c) To enhance landscaping options and awareness, the United States Department of Agriculture (USDA) shall provide information on the suitability, propagation, and the use of native plants for landscaping to all agencies and the general public by USDA in conjunction with the center under subsection (b) of this section. In implementing Part 6 of this order, agencies are encouraged to develop model demonstration programs in coordination with the USDA.

SEC. 406. Compliance Assurance.

(a) In consultation with other agencies, the EPA may conduct such reviews and inspections as may be necessary to monitor compliance with sections 501 and 504 of this order. Each agency is encouraged to cooperate fully with the efforts of the EPA to ensure compliance with those sections.

(b) Whenever the Administrator notifies an agency that it is not in compliance with section 501 or 504 of this order, the agency shall provide the EPA a detailed plan for achieving compliance as promptly as practicable.

(c) The Administrator shall report annually to the President and the public on agency compliance with the provisions of sections 501 and 504 of this order.

SEC. 407. Improving Environmental Management. To ensure that government-wide goals for pollution prevention are advanced, each agency is encouraged to incorporate its environmental leadership goals into its Strategic and Annual Performance Plans required by the Government Performance and Results Act of 1993, Public Law 103-62 [see Short Title of 1993 Amendment note set out under 31 U.S.C. 1101], starting with performance plans accompanying the FY 2002 budget.

PART 5—EMERGENCY PLANNING, COMMUNITY RIGHT-TO-KNOW, AND POLLUTION PREVENTION

SEC. 501. Toxics Release Inventory/Pollution Prevention Act Reporting. To attain the goals of section 203 of this order:

(a) Each agency shall comply with the provisions set forth in section 313 of EPCRA [42 U.S.C. 11023], section 6607 of PPA [42 U.S.C. 13106], all implementing regulations, and future amendments to these authorities, in light of applicable EPA guidance.

(b) Each agency shall comply with these provisions without regard to the Standard Industrial Classification (SIC) or North American Industrial Classification System (NAICS) delineations. Except as described in subsection (d) of this section, all other existing statutory or regulatory limitations or exemptions on the application of EPCRA section 313 to specific activities at specific agency facilities apply to the reporting requirements set forth in subsection (a) of this section.

(c) Each agency required to report under subsection (a) of this section shall do so using electronic reporting as provided in EPA's EPCRA section 313 guidance.

(d) Within 12 months of the date of this order, the Administrator shall review the impact on reporting of ex-

isting regulatory exemptions on the application of EPCRA section 313 at Federal facilities. Where feasible, this review shall include pilot studies at Federal facilities. If the review indicates that application of existing exemptions to Federal Government reporting under this section precludes public reporting of substantial amounts of toxic chemicals under subsection 501(a), the EPA shall prepare guidance, in coordination with the Workgroup established under section 306 of this order, clarifying application of the exemptions at Federal facilities. In developing the guidance, the EPA should consider similar application of such regulatory limitations and exemptions by the private sector. To the extent feasible, the guidance developed by the EPA shall be consistent with the reasonable application of such regulatory limitations and exemptions in the private sector. The guidance shall ensure reporting consistent with the goal of public access to information under section 313 of EPCRA and section 6607 of PPA. The guidance shall be submitted to the AEEs established under section 301(d) of Executive Order 13101 [42 U.S.C. 6961 note] for review and endorsement. Each agency shall apply any guidance to reporting at its facilities as soon as practicable but no later than for reporting for the next calendar year following release of the guidance.

(e) The EPA shall coordinate with other interested Federal agencies to carry out pilot projects to collect and disseminate information about the release and other waste management of chemicals associated with the environmental response and restoration at their facilities and sites. The pilot projects will focus on releases and other waste management of chemicals associated with environmental response and restoration at facilities and sites where the activities generating wastes do not otherwise meet EPCRA section 313 thresholds for manufacture, process, or other use. Each agency is encouraged to identify applicable facilities and voluntarily report under subsection (a) of this section the releases and other waste management of toxic chemicals managed during environmental response and restoration, regardless of whether the facility otherwise would report under subsection (a). The releases and other waste management of chemicals associated with environmental response and restoration voluntarily reported under this subsection will not be included in the accounting established under sections 503(a) and (c) of this order.

SEC. 502. Release Reduction: Toxic Chemicals. To attain the goals of section 204 of this order:

(a) Beginning with reporting for calendar year 2001 activities, each agency reporting under section 501 of this order shall adopt a goal of reducing, where cost effective, the agency's total releases of toxic chemicals to the environment and off-site transfers of such chemicals for treatment and disposal by at least 10 percent annually, or by 40 percent overall by December 31, 2006. Beginning with activities for calendar year 2001, the baseline for measuring progress in meeting the reduction goal will be the aggregate of all such releases and off-site transfers of such chemicals for treatment and disposal as reported by all of the agency's facilities under section 501 of this order. The list of toxic chemicals applicable to this goal is the EPCRA section 313 [42 U.S.C. 11023] list as of December 1, 2000. If an agency achieves the 40 percent reduction goal prior to December 31, 2006, that agency shall establish a new baseline and reduction goal based on agency priorities.

(b) Where an agency is unable to pursue the reduction goal established in subsection (a) for certain chemicals that are mission critical and/or needed to protect human health and the environment or where agency off-site transfer of toxic chemicals for treatment is directly associated with environmental restoration activities, that agency may request a waiver from the EPA for all or part of the requirement in subsection (a) of this section. As appropriate, waiver requests must provide: (1) an explanation of the mission critical use of the chemical; (2) an explanation of the nature of the need for the chemical to protect human health; (3) a description of efforts to identify a less harmful substitute

chemical or alternative processes to reduce the release and transfer of the chemical in question; and (4) a description of the off-site transfers of toxic chemicals for treatment directly associated with environmental restoration activities. The EPA shall respond to the waiver request within 90 days and may grant such a waiver for no longer than 2 years. An agency may resubmit a request for waiver at the end of that period. The waiver under this section shall not alter requirements to report under section 501 of this order.

(c) Where a specific component (e.g., bureau, service, or command) within an agency achieves a 75 percent reduction in its 1999 reporting year publicly reported total releases of toxic chemicals to the environment and off-site transfers of such chemicals for treatment and disposal, based on the 1994 baseline established in Executive Order 12856 [former 42 U.S.C. 11001 note], that agency may independently elect to establish a reduction goal for that component lower than the 40 percent target established in subsection (a) of this section. The agency shall formally notify the Workgroup established in section 306 of this order of the elected reduction target.

SEC. 503. *Use Reduction: Toxic Chemicals, Hazardous Substances, and Other Pollutants.* To attain the goals of section 205 of this order:

(a) Within 18 months of the date of this order, each agency with facilities shall develop and support goals to reduce the use at such agencies' facilities of the priority chemicals on the list under subsection (b) of this section for identified applications and purposes, or alternative chemicals and pollutants the agency identifies under subsection (c) of this section, by at least 50 percent by December 31, 2006.

(b) Within 9 months of the date of this order the Administrator, in coordination with the Workgroup established in section 306 of this order, shall develop a list of not less than 15 priority chemicals used by the Federal Government that may result in significant harm to human health or the environment and that have known, readily available, less harmful substitutes for identified applications and purposes. In addition to identifying the applications and purposes to which such reductions apply, the Administrator, in coordination with the Workgroup shall identify a usage threshold below which this section shall not apply. The chemicals will be selected from listed EPCRA section 313 [42 U.S.C. 11023] toxic chemicals and, where appropriate, other regulated hazardous substances or pollutants. In developing the list, the Administrator, in coordination with the Workgroup shall consider: (1) environmental factors including toxicity, persistence, and bio-accumulation; (2) availability of known, less environmentally harmful substitute chemicals that can be used in place of the priority chemical for identified applications and purposes; (3) availability of known, less environmentally harmful processes that can be used in place of the priority chemical for identified applications and purposes; (4) relative costs of alternative chemicals or processes; and (5) potential risk and environmental and human exposure based upon applications and uses of the chemicals by Federal agencies and facilities. In identifying alternatives, the Administrator should take into consideration the guidance issued under section 503 of Executive Order 13101 [42 U.S.C. 6961 note].

(c) If an agency, which has facilities required to report under EPCRA, uses at its facilities less than five of the priority chemicals on the list developed in subsection (b) of this section for the identified applications and purposes, the agency shall develop, within 12 months of the date of this order, a list of not less than five chemicals that may include priority chemicals under subsection (b) of this section or other toxic chemicals, hazardous substances, and/or other pollutants the agency uses or generates, the release, transfer or waste management of which may result in significant harm to human health or the environment.

(d) In lieu of requirements under subsection (a) of this section, an agency may, upon concurrence with the Workgroup established under section 306 of this order,

develop within 12 months of the date of this order, a list of not less than five priority hazardous or radioactive waste types generated by its facilities. Within 18 months of the date of this order, the agency shall develop and support goals to reduce the agency's generation of these wastes by at least 50 percent by December 31, 2006. To the maximum extent possible, such reductions shall be achieved by implementing source reduction practices.

(e) The baseline for measuring reductions for purposes of achieving the 50 percent reduction goal in subsections (a) and (d) of this section for each agency is the first calendar year following the development of the list of priority chemicals under subsection (b) of this section.

(f) Each agency shall undertake pilot projects at selected facilities to gather and make publicly available materials accounting data related to the toxic chemicals, hazardous substances, and/or other pollutants identified under subsections (b), (c), or (d) of this section.

(g) Within 12 months of the date of this order, the Administrator shall develop guidance on implementing this section in coordination with the Workgroup. The EPA shall develop technical assistance materials to assist agencies in meeting the 50 percent reduction goal of this section.

(h) Where an agency can demonstrate to the Workgroup that it has previously reduced the use of a priority chemical identified in subsection 503(b) by 50 percent, then the agency may elect to waive the 50 percent reduction goal for that chemical.

SEC. 504. *Emergency Planning and Reporting Responsibilities.* Each agency shall comply with the provisions set forth in sections 301 through 312 of the EPCRA [42 U.S.C. 11001-11022], all implementing regulations, and any future amendments to these authorities, in light of any applicable guidance as provided by the EPA.

SEC. 505. *Reductions in Ozone-Depleting Substances.* To attain the goals of section 206 of this order:

(a) Each agency shall ensure that its facilities: (1) maximize the use of safe alternatives to ozone-depleting substances, as approved by the EPA's Significant New Alternatives Policy (SNAP) program; (2) consistent with subsection (b) of this section, evaluate the present and future uses of ozone-depleting substances, including making assessments of existing and future needs for such materials, and evaluate use of, and plans for recycling, refrigerants, and halons; and (3) exercise leadership, develop exemplary practices, and disseminate information on successful efforts in phasing out ozone-depleting substances.

(b) Within 12 months of the date of this order, each agency shall develop a plan to phase out the procurement of Class I ozone-depleting substances for all non-excepted uses by December 31, 2010. Plans should target cost effective reduction of environmental risk by phasing out Class I ozone depleting substance applications as the equipment using those substances reaches its expected service life. Exceptions to this requirement include all exceptions found in current or future applicable law, treaty, regulation, or Executive order.

(c) Each agency shall amend its personal property management policies and procedures to preclude disposal of ozone depleting substances removed or reclaimed from its facilities or equipment, including disposal as part of a contract, trade, or donation, without prior coordination with the Department of Defense (DoD). Where the recovered ozone-depleting substance is a critical requirement for DoD missions, the agency shall transfer the materials to the DoD. The DoD will bear the costs of such transfer.

PART 6—LANDSCAPING MANAGEMENT PRACTICES

SEC. 601. *Implementation.*

(a) Within 12 months from the date of this order, each agency shall incorporate the Guidance for Presidential Memorandum on Environmentally and Economically Beneficial Landscape Practices on Federal Landscaped

Grounds (60 Fed. Reg. 40837) developed by the FEE into landscaping programs, policies, and practices.

(b) Within 12 months of the date of this order, the FEE shall form a workgroup of appropriate Federal agency representatives to review and update the guidance in subsection (a) of this section, as appropriate.

(c) Each agency providing funding for nonfederal projects involving landscaping projects shall furnish funding recipients with information on environmentally and economically beneficial landscaping practices and work with the recipients to support and encourage application of such practices on Federally funded projects.

SEC. 602. *Technical Assistance and Outreach.* The EPA, the General Services Administration (GSA), and the USDA shall provide technical assistance in accordance with their respective authorities on environmentally and economically beneficial landscaping practices to agencies and their facilities.

PART 7—ACQUISITION AND PROCUREMENT

SEC. 701. *Limiting Procurement of Toxic Chemicals, Hazardous Substances, and Other Pollutants.*

(a) Within 12 months of the date of this order, each agency shall implement training programs to ensure that agency procurement officials and acquisition program managers are aware of the requirements of this order and its applicability to those individuals.

(b) Within 24 months of the date of this order, each agency shall determine the feasibility of implementing centralized procurement and distribution (e.g., “pharmacy”) programs at its facilities for tracking, distribution, and management of toxic or hazardous materials and, where appropriate, implement such programs.

(c) Under established schedules for review of standardized documents, DoD and GSA, and other agencies, as appropriate, shall review their standardized documents and identify opportunities to eliminate or reduce their use of chemicals included on the list of priority chemicals developed by the EPA under subsection 503(b) of this order, and make revisions as appropriate.

(d) Each agency shall follow the policies and procedures for toxic chemical release reporting in accordance with FAR section 23.9 effective as of the date of this order and policies and procedures on Federal compliance with right-to-know laws and pollution prevention requirements in accordance with FAR section 23.10 effective as of the date of this order.

SEC. 702. *Environmentally Benign Adhesives.* Within 12 months after environmentally benign pressure sensitive adhesives for paper products become commercially available, each agency shall revise its specifications for paper products using adhesives and direct the purchase of paper products using those adhesives, whenever technically practicable and cost effective. Each agency should consider products using the environmentally benign pressure sensitive adhesives approved by the U.S. Postal Service (USPS) and listed on the USPS Qualified Products List for pressure sensitive recyclable adhesives.

SEC. 703. *Ozone-Depleting Substances.* Each agency shall follow the policies and procedures for the acquisition of items that contain, use, or are manufactured with ozone-depleting substances in accordance with FAR section 23.8 and other applicable FAR provisions.

SEC. 704. *Environmentally and Economically Beneficial Landscaping Practices.*

(a) Within 18 months of the date of this order, each agency shall have in place acquisition and procurement practices, including provision of landscaping services that conform to the guidance referred to in section 601 of this order, for the use of environmentally and economically beneficial landscaping practices. At a minimum, such practices shall be consistent with the policies in the guidance referred to in section 601 of this order.

(b) In implementing landscaping policies, each agency shall purchase environmentally preferable and recycled content products, including EPA-designated items such as compost and mulch, that contribute to environmentally and economically beneficial practices.

PART 8—EXEMPTIONS

SEC. 801. *National Security Exemptions.* Subject to subsection 902(c) of this order and except as otherwise required by applicable law, in the interest of national security, the head of any agency may request from the President an exemption from complying with the provisions of any or all provisions of this order for particular agency facilities, provided that the procedures set forth in section 120(j)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9620(j)(1)), are followed, with the following exceptions: (a) an exemption issued under this section will be for a specified period of time that may exceed 1 year; (b) notice of any exemption granted under this section for provisions not otherwise required by law is only required to the Director of OMB, the Chair of the CEQ, and the Director of the National Security Council; and (c) an exemption under this section may be issued due to lack of appropriations, provided that the head of the agency requesting the exemption shows that necessary funds were requested by the agency in its budget submission and agency plan under Executive Order 12088 of October 13, 1978 [set out as a note above], and were not contained in the President’s budget request or the Congress failed to make available the requested appropriation. To the maximum extent practicable, and without compromising national security, each agency shall strive to comply with the purposes, goals, and implementation steps in this order. Nothing in this order affects limitations on the dissemination of classified information pursuant to law, regulation, or Executive order.

SEC. 802. *Compliance.* After January 1, 2002, OMB, in consultation with the Chair of the Workgroup established by section 306 of this order, may modify the compliance requirements for an agency under this order, if the agency is unable to comply with the requirements of the order. An agency requesting modification must show that it has made substantial good faith efforts to comply with the order. The cost-effectiveness of implementation of the order can be a factor in OMB’s decision to modify the requirements for that agency’s compliance with the order.

PART 9—GENERAL PROVISIONS

SEC. 901. *Revocation.* Executive Order 12843 of April 21, 1993 [former 42 U.S.C. 7671l note], Executive Order 12856 of August 3, 1993 [former 42 U.S.C. 11001 note], the Executive Memorandum on Environmentally Beneficial Landscaping of April 26, 1994 [not classified to the Code], Executive Order 12969 of August 8, 1995 [former 41 U.S.C. 401 note], and section 1-4. “Pollution Control Plan” of Executive Order 12088 of October 13, 1978 [set out as a note above], are revoked.

SEC. 902. *Limitations.*

(a) This order is intended only to improve the internal management of the executive branch and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any other person.

(b) This order applies to Federal facilities in any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, and any other territory or possession over which the United States has jurisdiction. Each agency with facilities outside of these areas, however, is encouraged to make best efforts to comply with the goals of this order for those facilities.

(c) Nothing in this order alters the obligations under EPCRA, PPA, and CAA independent of this order for Government-owned, contractor-operated facilities and Government corporations owning or operating facilities or subjects such facilities to EPCRA, PPA, or CAA if they are otherwise excluded. However, each agency shall include the releases and other waste management of chemicals for all such facilities to meet the agency’s reporting responsibilities under section 501 of this order.

(d) Nothing in this order shall be construed to make the provisions of CAA sections [sic] 304 [42 U.S.C. 7604] and EPCRA sections 325 and 326 [42 U.S.C. 11045, 11046] applicable to any agency or facility, except to the extent that an agency or facility would independently be subject to such provisions.

SEC. 903. *Community Outreach.* Each agency is encouraged to establish a process for local community advice and outreach for its facilities relevant to aspects of this and other related Greening the Government Executive orders. All strategies and plans developed under this order shall be made available to the public upon request.

PART 10—DEFINITIONS

For purposes of this order:

SEC. 1001. *General.* Terms that are not defined in this part but that are defined in Executive Orders 13101 [42 U.S.C. 6961 note] and 13123 [42 U.S.C. 8251 note] have the meaning given in those Executive orders. For the purposes of Part 5 of this order all definitions in EPCRA and PPA and implementing regulations at 40 CFR Parts 370 and 372 apply.

SEC. 1002. “Administrator” means the Administrator of the EPA.

SEC. 1003. “Environmental cost accounting” means the modification of cost attribution systems and financial analysis practices specifically to directly track environmental costs that are traditionally hidden in overhead accounts to the responsible products, processes, facilities or activities.

SEC. 1004. “Facility” means any building, installation, structure, land, and other property owned or operated by, or constructed or manufactured and leased to, the Federal Government, where the Federal Government is formally accountable for compliance under environmental regulation (e.g., permits, reports/records and/or planning requirements) with requirements pertaining to discharge, emission, release, spill, or management of any waste, contaminant, hazardous chemical, or pollutant. This term includes a group of facilities at a single location managed as an integrated operation, as well as government owned contractor operated facilities.

SEC. 1005. “Environmentally benign pressure sensitive adhesives” means adhesives for stamps, labels, and other paper products that can be easily treated and removed during the paper recycling process.

SEC. 1006. “Ozone-depleting substance” means any substance designated as a Class I or Class II substance by EPA in 40 CFR Part 82.

SEC. 1007. “Pollution prevention” means “source reduction,” as defined in the PPA, and other practices that reduce or eliminate the creation of pollutants through: (a) increased efficiency in the use of raw materials, energy, water, or other resources; or (b) protection of natural resources by conservation.

SEC. 1008. “Greening the Government Executive orders” means this order and the series of orders on greening the government including Executive Order 13101 of September 14, 1998 [42 U.S.C. 6961 note], Executive Order 13123 of June 3, 1999 [42 U.S.C. 8251 note], Executive Order 13134 of August 12, 1999 [7 U.S.C. 7624 note], and other future orders as appropriate.

SEC. 1009. “Environmental aspects” means the elements of an organization’s activities, products, or services that can interact with the environment.

WILLIAM J. CLINTON.

SUBCHAPTER I—POLICIES AND GOALS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 4342, 4344 of this title.

§ 4331. Congressional declaration of national environmental policy

(a) The Congress, recognizing the profound impact of man’s activity on the interrelations of

all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this chapter, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may—

(1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(2) assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;

(3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life’s amenities; and

(6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

(Pub. L. 91-190, title I, §101, Jan. 1, 1970, 83 Stat. 852.)

COMMISSION ON POPULATION GROWTH AND THE AMERICAN FUTURE

Pub. L. 91-213, §§1-9, Mar. 16, 1970, 84 Stat. 67-69, established the Commission on Population Growth and the American Future to conduct and sponsor such studies and research and make such recommendations as might be necessary to provide information and education to all levels of government in the United States, and to our people regarding a broad range of problems associated with population growth and their implications for America’s future; prescribed the composition of the Commission; provided for the appointment of its members, and the designation of a Chairman and Vice Chairman; required a majority of the members of the Commission to constitute a quorum, but allowed a less-

er number to conduct hearings; prescribed the compensation of members of the Commission; required the Commission to conduct an inquiry into certain prescribed aspects of population growth in the United States and its foreseeable social consequences; provided for the appointment of an Executive Director and other personnel and prescribed their compensation; authorized the Commission to enter into contracts with public agencies, private firms, institutions, and individuals for the conduct of research and surveys, the preparation of reports, and other activities necessary to the discharge of its duties, and to request from any Federal department or agency any information and assistance it deems necessary to carry out its functions; required the General Services Administration to provide administrative services for the Commission on a reimbursable basis; required the Commission to submit an interim report to the President and the Congress one year after it was established and to submit its final report two years after Mar. 16, 1970; terminated the Commission sixty days after the date of the submission of its final report; and authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such amounts as might be necessary to carry out the provisions of Pub. L. 91-213.

EXECUTIVE ORDER NO. 11507

Ex. Ord. No. 11507, eff. Feb. 4, 1970, 35 F.R. 2573, which related to prevention, control, and abatement of air and water pollution at Federal facilities was superseded by Ex. Ord. No. 11752, eff. Dec. 17, 1973, 38 F.R. 34793, formerly set out below.

EXECUTIVE ORDER NO. 11752

Ex. Ord. No. 11752, Dec. 17, 1973, 38 F.R. 34793, which related to the prevention, control, and abatement of environmental pollution at Federal facilities, was revoked by Ex. Ord. No. 12088, Oct. 13, 1978, 43 F.R. 47707, set out as a note under section 4321 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 20 section 5604.

§ 4332. Cooperation of agencies; reports; availability of information; recommendations; international and national coordination of efforts

The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this chapter, and (2) all agencies of the Federal Government shall—

(A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by subchapter II of this chapter, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on—

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of title 5, and shall accompany the proposal through the existing agency review processes;

(D) Any detailed statement required under subparagraph (C) after January 1, 1970, for any major Federal action funded under a program of grants to States shall not be deemed to be legally insufficient solely by reason of having been prepared by a State agency or official, if:

(i) the State agency or official has statewide jurisdiction and has the responsibility for such action,

(ii) the responsible Federal official furnishes guidance and participates in such preparation,

(iii) the responsible Federal official independently evaluates such statement prior to its approval and adoption, and

(iv) after January 1, 1976, the responsible Federal official provides early notification to, and solicits the views of, any other State or any Federal land management entity of any action or any alternative thereto which may have significant impacts upon such State or affected Federal land management entity and, if there is any disagreement on such impacts, prepares a written assessment of such impacts and views for incorporation into such detailed statement.

The procedures in this subparagraph shall not relieve the Federal official of his responsibilities for the scope, objectivity, and content of the entire statement or of any other responsibility under this chapter; and further, this subparagraph does not affect the legal sufficiency of statements prepared by State agencies with less than statewide jurisdiction.¹

(E) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(F) recognize the worldwide and long-range character of environmental problems and,

¹ So in original. The period probably should be a semicolon.

where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(G) make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(H) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(I) assist the Council on Environmental Quality established by subchapter II of this chapter.

(Pub. L. 91-190, title I, § 102, Jan. 1, 1970, 83 Stat. 853; Pub. L. 94-83, Aug. 9, 1975, 89 Stat. 424.)

AMENDMENTS

1975—Subpars. (D) to (I), Pub. L. 94-83 added subpar. (D) and redesignated former subpars. (D) to (H) as (E) to (I), respectively.

CERTAIN COMMERCIAL SPACE LAUNCH ACTIVITIES

Pub. L. 104-88, title IV, § 401, Dec. 29, 1995, 109 Stat. 955, provided that: "The licensing of a launch vehicle or launch site operator (including any amendment, extension, or renewal of the license) under chapter 701 of title 49, United States Code, shall not be considered a major Federal action for purposes of section 102(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)) if—

"(1) the Department of the Army has issued a permit for the activity; and

"(2) the Army Corps of Engineers has found that the activity has no significant impact."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2242, 2297h-5, 4334, 6508, 7153, 7274g, 7609, 8473, 9117, 10132, 10133, 10134, 10141, 10155, 10161, 10165, 10196, 10197 of this title; title 15 section 793; title 16 sections 410hh, 544o, 1379, 1536, 1604, 2403a, 3120, 3149, 3232, 6514; title 21 section 379o; title 23 sections 112, 133; title 25 sections 2103, 2104; title 30 sections 185, 226, 1147, 1292, 1419; title 33 section 1504; title 43 sections 1331, 1344, 1751, 2005, 2006; title 45 sections 791, 1116; title 49 sections 40128, 44715; title 50 App. sections 2095, 2096.

§ 4333. Conformity of administrative procedures to national environmental policy

All agencies of the Federal Government shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of this chapter and shall propose to the President not later than July 1, 1971, such measures as may be necessary to bring their authority and policies into conformity with the intent, purposes, and procedures set forth in this chapter.

(Pub. L. 91-190, title I, § 103, Jan. 1, 1970, 83 Stat. 854.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4334 of this title.

§ 4334. Other statutory obligations of agencies

Nothing in section 4332 or 4333 of this title shall in any way affect the specific statutory ob-

ligations of any Federal agency (1) to comply with criteria or standards of environmental quality, (2) to coordinate or consult with any other Federal or State agency, or (3) to act, or refrain from acting contingent upon the recommendations or certification of any other Federal or State agency.

(Pub. L. 91-190, title I, § 104, Jan. 1, 1970, 83 Stat. 854.)

§ 4335. Efforts supplemental to existing authorizations

The policies and goals set forth in this chapter are supplementary to those set forth in existing authorizations of Federal agencies.

(Pub. L. 91-190, title I, § 105, Jan. 1, 1970, 83 Stat. 854.)

SUBCHAPTER II—COUNCIL ON ENVIRONMENTAL QUALITY

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 4332 of this title.

§ 4341. Omitted

CODIFICATION

Section, Pub. L. 91-190, title II, § 201, Jan. 1, 1970, 83 Stat. 854, which required the President to transmit to Congress annually an Environmental Quality Report, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, item 1 on page 41 of House Document No. 103-7.

§ 4342. Establishment; membership; Chairman; appointments

There is created in the Executive Office of the President a Council on Environmental Quality (hereinafter referred to as the "Council"). The Council shall be composed of three members who shall be appointed by the President to serve at his pleasure, by and with the advice and consent of the Senate. The President shall designate one of the members of the Council to serve as Chairman. Each member shall be a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the Federal Government in the light of the policy set forth in subchapter I of this chapter; to be conscious of and responsive to the scientific, economic, social, esthetic, and cultural needs and interests of the Nation; and to formulate and recommend national policies to promote the improvement of the quality of the environment.

(Pub. L. 91-190, title II, § 202, Jan. 1, 1970, 83 Stat. 854.)

COUNCIL ON ENVIRONMENTAL QUALITY; REDUCTION OF MEMBERS

Pub. L. 108-7, div. K, title III, Feb. 20, 2003, 117 Stat. 514, provided in part: "That, notwithstanding section 202 of the National Environmental Policy Act of 1970 [1969, 42 U.S.C. 4342], the Council shall consist of one member, appointed by the President, by and with the advice and consent of the Senate, serving as chairman and exercising all powers, functions, and duties of the Council."

Similar provisions were contained in the following prior appropriation acts:

- Pub. L. 107-73, title III, Nov. 26, 2001, 115 Stat. 686.
 Pub. L. 106-377, §1(a)(1) [title III], Oct. 27, 2000, 114 Stat. 1441, 1441A-45.
 Pub. L. 106-74, title III, Oct. 20, 1999, 113 Stat. 1084.
 Pub. L. 105-276, title III, Oct. 21, 1998, 112 Stat. 2500.
 Pub. L. 105-65, title III, Oct. 27, 1997, 111 Stat. 1375.

§ 4343. Employment of personnel, experts and consultants

(a) The Council may employ such officers and employees as may be necessary to carry out its functions under this chapter. In addition, the Council may employ and fix the compensation of such experts and consultants as may be necessary for the carrying out of its functions under this chapter, in accordance with section 3109 of title 5 (but without regard to the last sentence thereof).

(b) Notwithstanding section 1342 of title 31, the Council may accept and employ voluntary and uncompensated services in furtherance of the purposes of the Council.

(Pub. L. 91-190, title II, §203, Jan. 1, 1970, 83 Stat. 855; Pub. L. 94-52, §2, July 3, 1975, 89 Stat. 258.)

CODIFICATION

In subsec. (b), "section 1342 of title 31" substituted for "section 3679(b) of the Revised Statutes (31 U.S.C. 665(b))" on authority of Pub. L. 97-258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

1975—Pub. L. 94-52 designated existing provisions as subsec. (a) and added subsec. (b).

§ 4344. Duties and functions

It shall be the duty and function of the Council—

(1) to assist and advise the President in the preparation of the Environmental Quality Report required by section 4341¹ of this title;

(2) to gather timely and authoritative information concerning the conditions and trends in the quality of the environment both current and prospective, to analyze and interpret such information for the purpose of determining whether such conditions and trends are interfering, or are likely to interfere, with the achievement of the policy set forth in subchapter I of this chapter, and to compile and submit to the President studies relating to such conditions and trends;

(3) to review and appraise the various programs and activities of the Federal Government in the light of the policy set forth in subchapter I of this chapter for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy, and to make recommendations to the President with respect thereto;

(4) to develop and recommend to the President national policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the Nation;

(5) to conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;

(6) to document and define changes in the natural environment, including the plant and animal systems, and to accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;

(7) to report at least once each year to the President on the state and condition of the environment; and

(8) to make and furnish such studies, reports thereon, and recommendations with respect to matters of policy and legislation as the President may request.

(Pub. L. 91-190, title II, §204, Jan. 1, 1970, 83 Stat. 855.)

REFERENCES IN TEXT

Section 4341 of this title, referred to in par. (1), was omitted from the Code.

TRANSFER OF FUNCTIONS

So much of functions of Council on Environmental Quality under par. (4) of this section as pertains to ecological systems transferred to Administrator of Environmental Protection Agency by Reorg. Plan No. 3 of 1970, §2(a)(5), eff. Dec. 2, 1970, 35 F.R. 15623, 84 Stat. 2086, set out under section 4321 of this title.

§ 4345. Consultation with Citizens' Advisory Committee on Environmental Quality and other representatives

In exercising its powers, functions, and duties under this chapter, the Council shall—

(1) consult with the Citizens' Advisory Committee on Environmental Quality established by Executive Order numbered 11472, dated May 29, 1969, and with such representatives of science, industry, agriculture, labor, conservation organizations, State and local governments and other groups, as it deems advisable; and

(2) utilize, to the fullest extent possible, the services, facilities, and information (including statistical information) of public and private agencies and organizations, and individuals, in order that duplication of effort and expense may be avoided, thus assuring that the Council's activities will not unnecessarily overlap or conflict with similar activities authorized by law and performed by established agencies.

(Pub. L. 91-190, title II, §205, Jan. 1, 1970, 83 Stat. 855.)

REFERENCES IN TEXT

Executive Order numbered 11472, dated May 29, 1969, referred to in par. (1), is set out as a note under section 4321 of this title.

CITIZENS' ADVISORY COMMITTEE ON ENVIRONMENTAL QUALITY

For provisions relating to termination of Citizens' Advisory Committee on Environmental Quality, see Ex. Ord. No. 12007, Aug. 22, 1977, 42 F.R. 42839, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

§ 4346. Tenure and compensation of members

Members of the Council shall serve full time and the Chairman of the Council shall be com-

¹ See References in Text note below.

pensated at the rate provided for Level II of the Executive Schedule Pay Rates (5 U.S.C. 5313). The other members of the Council shall be compensated at the rate provided for Level IV or¹ the Executive Schedule Pay Rates (5 U.S.C. 5315).

(Pub. L. 91-190, title II, §206, Jan. 1, 1970, 83 Stat. 856.)

§ 4346a. Travel reimbursement by private organizations and Federal, State, and local governments

The Council may accept reimbursements from any private nonprofit organization or from any department, agency, or instrumentality of the Federal Government, any State, or local government, for the reasonable travel expenses incurred by an officer or employee of the Council in connection with his attendance at any conference, seminar, or similar meeting conducted for the benefit of the Council.

(Pub. L. 91-190, title II, §207, as added Pub. L. 94-52, §3, July 3, 1975, 89 Stat. 258.)

§ 4346b. Expenditures in support of international activities

The Council may make expenditures in support of its international activities, including expenditures for: (1) international travel; (2) activities in implementation of international agreements; and (3) the support of international exchange programs in the United States and in foreign countries.

(Pub. L. 91-190, title II, §208, as added Pub. L. 94-52, §3, July 3, 1975, 89 Stat. 258.)

§ 4347. Authorization of appropriations

There are authorized to be appropriated to carry out the provisions of this chapter not to exceed \$300,000 for fiscal year 1970, \$700,000 for fiscal year 1971, and \$1,000,000 for each fiscal year thereafter.

(Pub. L. 91-190, title II, §209, formerly §207, Jan. 1, 1970, 83 Stat. 856, renumbered §209, Pub. L. 94-52, §3, July 3, 1975, 89 Stat. 258.)

SUBCHAPTER III—MISCELLANEOUS PROVISIONS

§§ 4361, 4361a. Repealed. Pub. L. 104-66, title II, § 2021(k)(1), (2), Dec. 21, 1995, 109 Stat. 728

Section 4361, Pub. L. 94-475, §5, Oct. 11, 1976, 90 Stat. 2071, related to 5-year plan for research, development, and demonstration.

Section 4361a, Pub. L. 95-155, §4, Nov. 8, 1977, 91 Stat. 1258, related to budget projections in annual revisions of the plan for research, development, and demonstration.

§ 4361b. Implementation by Administrator of Environmental Protection Agency of recommendations of “CHESS” Investigative Report; waiver; inclusion of status of implementation requirements in annual revisions of plan for research, development, and demonstration

The Administrator of the Environmental Protection Agency shall implement the recom-

mendations of the report prepared for the House Committee on Science and Technology entitled “The Environmental Protection Agency Research Program with primary emphasis on the Community Health and Environmental Surveillance System (CHESS): An Investigative Report”, unless for any specific recommendation he determines (1) that such recommendation has been implemented, (2) that implementation of such recommendation would not enhance the quality of the research, or (3) that implementation of such recommendation will require funding which is not available. Where such funding is not available, the Administrator shall request the required authorization or appropriation for such implementation. The Administrator shall report the status of such implementation in each annual revision of the five-year plan transmitted to the Congress under section 4361¹ of this title.

(Pub. L. 95-155, §10, Nov. 8, 1977, 91 Stat. 1262.)

REFERENCES IN TEXT

Section 4361 of this title, referred to in text, was repealed by Pub. L. 104-66, title II, §2021(k)(1), Dec. 21, 1995, 109 Stat. 728.

CODIFICATION

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1978, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

CHANGE OF NAME

Committee on Science and Technology of House of Representatives changed to Committee on Science, Space, and Technology of House of Representatives by House Resolution No. 5, One Hundredth Congress, Jan. 6, 1987. Committee on Science, Space, and Technology of House of Representatives treated as referring to Committee on Science of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

§ 4361c. Staff management

(a) Appointments for educational programs

(1) The Administrator is authorized to select and appoint up to 75 full-time permanent staff members in the Office of Research and Development to pursue full-time educational programs for the purpose of (A) securing an advanced degree or (B) securing academic training, for the purpose of making a career change in order to better carry out the Agency’s research mission.

(2) The Administrator shall select and appoint staff members for these assignments according to rules and criteria promulgated by him. The Agency may continue to pay the salary and benefits of the appointees as well as reasonable and appropriate relocation expenses and tuition.

(3) The term of each appointment shall be for up to one year, with a single renewal of up to one year in appropriate cases at the discretion of the Administrator.

(4) Staff members appointed to this program shall not count against any Agency personnel ceiling during the term of their appointment.

(b) Post-doctoral research fellows

(1) The Administrator is authorized to appoint up to 25 Post-doctoral Research Fellows in ac-

¹ So in original. Probably should be “of”.

¹ See References in Text note below.

cordance with the provisions of section 213.3102(aa) of title 5 of the Code of Federal Regulations.

(2) Persons holding these appointments shall not count against any personnel ceiling of the Agency.

(c) Non-Government research associates

(1) The Administrator is authorized and encouraged to utilize research associates from outside the Federal Government in conducting the research, development, and demonstration programs of the Agency.

(2) These persons shall be selected and shall serve according to rules and criteria promulgated by the Administrator.

(d) Women and minority groups

For all programs in this section, the Administrator shall place special emphasis on providing opportunities for education and training of women and minority groups.

(Pub. L. 95-477, §6, Oct. 18, 1978, 92 Stat. 1510.)

CODIFICATION

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1979, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

CONTRACTS BY OFFICE OF RESEARCH AND DEVELOPMENT OF THE ENVIRONMENTAL PROTECTION AGENCY

Pub. L. 108-7, div. K, title III, Feb. 20, 2003, 117 Stat. 509, provided in part: "That the Office of Research and Development of the Environmental Protection Agency may hereafter contract directly with individuals or indirectly with institutions or nonprofit organizations, without regard to 41 U.S.C. 5, for the temporary or intermittent personal services of students or recent graduates, who shall be considered employees for the purposes of chapters 57 and 81 of title 5, United States Code, relating to compensation for travel and work injuries, and chapter 171 of title 28, United States Code, relating to tort claims, but shall not be considered to be Federal employees for any other purposes."

§ 4362. Interagency cooperation on prevention of environmental cancer and heart and lung disease

(a) Not later than three months after August 7, 1977, there shall be established a Task Force on Environmental Cancer and Heart and Lung Disease (hereinafter referred to as the "Task Force"). The Task Force shall include representatives of the Environmental Protection Agency, the National Cancer Institute, the National Heart, Lung, and Blood Institute, the National Institute of Occupational Safety and Health, and the National Institute on Environmental Health Sciences, and shall be chaired by the Administrator (or his delegate).

(b) The Task Force shall—

(1) recommend a comprehensive research program to determine and quantify the relationship between environmental pollution and human cancer and heart and lung disease;

(2) recommend comprehensive strategies to reduce or eliminate the risks of cancer or such other diseases associated with environmental pollution;

(3) recommend research and such other measures as may be appropriate to prevent or

reduce the incidence of environmentally related cancer and heart and lung diseases;

(4) coordinate research by, and stimulate cooperation between, the Environmental Protection Agency, the Department of Health and Human Services, and such other agencies as may be appropriate to prevent environmentally related cancer and heart and lung diseases; and

(5) report to Congress, not later than one year after August 7, 1977, and annually thereafter, on the problems and progress in carrying out this section.

(Pub. L. 95-95, title IV, §402, Aug. 7, 1977, 91 Stat. 791; Pub. L. 96-88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695.)

CODIFICATION

Section was enacted as part of the Clean Air Act Amendments of 1977, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

CHANGE OF NAME

"Department of Health and Human Services" substituted for "Department of Health, Education, and Welfare" in subsec. (b)(4) pursuant to section 507(b) of Pub. L. 96-88, which is classified to section 3508(b) of Title 20, Education.

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (b)(5) of this section relating to annual report to Congress, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and item 18 on page 164 of House Document No. 103-7.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4362a of this title.

§ 4362a. Membership of Task Force on Environmental Cancer and Heart and Lung Disease

The Director of the National Center for Health Statistics and the head of the Center for Disease Control (or the successor to such entity) shall each serve as members of the Task Force on Environmental Cancer and Heart and Lung Disease established under section 4362 of this title.

(Pub. L. 95-623, §9, Nov. 9, 1978, 92 Stat. 3455.)

CODIFICATION

Section was enacted as part of the Health Services Research, Health Statistics, and Health Care Technology Act of 1978, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

CHANGE OF NAME

Centers for Disease Control changed to Centers for Disease Control and Prevention by Pub. L. 102-531, title III, §312, Oct. 27, 1992, 106 Stat. 3504.

§ 4363. Continuing and long-term environmental research and development

The Administrator of the Environmental Protection Agency shall establish a separately iden-

tified program of continuing, long-term environmental research and development for each activity listed in section 2(a) of this Act. Unless otherwise specified by law, at least 15 per centum of funds appropriated to the Administrator for environmental research and development for each activity listed in section 2(a) of this Act shall be obligated and expended for such long-term environmental research and development under this section.

(Pub. L. 96-569, § 2(f), Dec. 22, 1980, 94 Stat. 3337.)

REFERENCES IN TEXT

Section 2(a) of this Act, referred to in text, is section 2(a) of Pub. L. 96-569, Dec. 22, 1980, 94 Stat. 3335, which is not classified to the Code.

CODIFICATION

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1981, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in the following prior authorization acts:

1980—Pub. L. 96-229, § 2(e), Apr. 7, 1980, 94 Stat. 327.

1977—Pub. L. 95-155, § 6, Nov. 8, 1977, 91 Stat. 1259.

§ 4363a. Pollution control technologies demonstrations

(1) The Administrator shall continue to be responsible for conducting and shall continue to conduct full-scale demonstrations of energy-related pollution control technologies as necessary in his judgment to fulfill the provisions of the Clean Air Act as amended [42 U.S.C. 7401 et seq.], the Federal Water Pollution Control Act as amended [33 U.S.C. 1251 et seq.], and other pertinent pollution control statutes.

(2) Energy-related environmental protection projects authorized to be administered by the Environmental Protection Agency under this Act shall not be transferred administratively to the Department of Energy or reduced through budget amendment. No action shall be taken through administrative or budgetary means to diminish the ability of the Environmental Protection Agency to initiate such projects.

(Pub. L. 96-229, § 2(d), Apr. 7, 1980, 94 Stat. 327.)

REFERENCES IN TEXT

The Clean Air Act as amended, referred to in par. (1), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§ 7401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

The Federal Water Pollution Control Act as amended, referred to in par. (1), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92-500, § 2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§ 1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

This Act, referred to in par. (2), is Pub. L. 96-229, Apr. 7, 1980, 94 Stat. 325, known as the Environmental, Research, Development, and Demonstration Authorization Act of 1980, which enacted sections 4363, 4363a, 4369a, and 4370 of this title. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1980, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in the following prior authorization act:

1979—Pub. L. 95-477, § 2(d), Oct. 18, 1978, 92 Stat. 1508.

§ 4364. Expenditure of funds for research and development related to regulatory program activities

(a) Coordination, etc., with research needs and priorities of program offices and Environmental Protection Agency

The Administrator of the Environmental Protection Agency shall assure that the expenditure of any funds appropriated pursuant to this Act or any other provision of law for environmental research and development related to regulatory program activities shall be coordinated with and reflect the research needs and priorities of the program offices, as well as the overall research needs and priorities of the Agency, including those defined in the five-year research plan.

(b) Program offices subject to coverage

For purposes of subsection (a) of this section, the appropriate program offices are—

- (1) the Office of Air and Waste Management, for air quality activities;
- (2) the Office of Water and Hazardous Materials, for water quality activities and water supply activities;
- (3) the Office of Pesticides, for environmental effects of pesticides;
- (4) the Office of Solid Waste, for solid waste activities;
- (5) the Office of Toxic Substances, for toxic substance activities;
- (6) the Office of Radiation Programs, for radiation activities; and
- (7) the Office of Noise Abatement and Control, for noise activities.

(c) Report to Congress; contents

The Administrator shall submit to the President and the Congress a report concerning the most appropriate means of assuring, on a continuing basis, that the research efforts of the Agency reflect the needs and priorities of the regulatory program offices, while maintaining a high level of scientific quality. Such report shall be submitted on or before March 31, 1978.

(Pub. L. 95-155, § 7, Nov. 8, 1977, 91 Stat. 1259.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a), is Pub. L. 95-155, Nov. 8, 1977, 91 Stat. 1257, as amended, known as the Environmental Research, Development, and Demonstration Authorization Act of 1978, which to the extent classified to the Code enacted sections 300j-3a, 4361a, 4361b, and 4363 to 4367 of this title. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was enacted as part of the Environmental Research, Development, and Demonstration Authoriza-

tion Act of 1978, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

§ 4365. Science Advisory Board

(a) Establishment; requests for advice by Administrator of Environmental Protection Agency and Congressional committees

The Administrator of the Environmental Protection Agency shall establish a Science Advisory Board which shall provide such scientific advice as may be requested by the Administrator, the Committee on Environment and Public Works of the United States Senate, or the Committee on Science, Space, and Technology, on Energy and Commerce, or on Public Works and Transportation of the House of Representatives.

(b) Membership; Chairman; meetings; qualifications of members

Such Board shall be composed of at least nine members, one of whom shall be designated Chairman, and shall meet at such times and places as may be designated by the Chairman of the Board in consultation with the Administrator. Each member of the Board shall be qualified by education, training, and experience to evaluate scientific and technical information on matters referred to the Board under this section.

(c) Proposed environmental criteria document, standard, limitation, or regulation; functions respecting in conjunction with Administrator

(1) The Administrator, at the time any proposed criteria document, standard, limitation, or regulation under the Clean Air Act [42 U.S.C. 7401 et seq.], the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.], the Resource Conservation and Recovery Act of 1976 [42 U.S.C. 6901 et seq.], the Noise Control Act [42 U.S.C. 4901 et seq.], the Toxic Substances Control Act [15 U.S.C. 2601 et seq.], or the Safe Drinking Water Act [42 U.S.C. 300f et seq.], or under any other authority of the Administrator, is provided to any other Federal agency for formal review and comment, shall make available to the Board such proposed criteria document, standard, limitation, or regulation, together with relevant scientific and technical information in the possession of the Environmental Protection Agency on which the proposed action is based.

(2) The Board may make available to the Administrator, within the time specified by the Administrator, its advice and comments on the adequacy of the scientific and technical basis of the proposed criteria document, standard, limitation, or regulation, together with any pertinent information in the Board's possession.

(d) Utilization of technical and scientific capabilities of Federal agencies and national environmental laboratories for determining adequacy of scientific and technical basis of proposed criteria document, etc.

In preparing such advice and comments, the Board shall avail itself of the technical and scientific capabilities of any Federal agency, including the Environmental Protection Agency and any national environmental laboratories.

(e) Member committees and investigative panels; establishment; chairmanship

The Board is authorized to constitute such member committees and investigative panels as the Administrator and the Board find necessary to carry out this section. Each such member committee or investigative panel shall be chaired by a member of the Board.

(f) Appointment and compensation of secretary and other personnel; compensation of members

(1) Upon the recommendation of the Board, the Administrator shall appoint a secretary, and such other employees as deemed necessary to exercise and fulfill the Board's powers and responsibilities. The compensation of all employees appointed under this paragraph shall be fixed in accordance with chapter 51 and subchapter III of chapter 53 of title 5.

(2) Members of the Board may be compensated at a rate to be fixed by the President but not in excess of the maximum rate of pay for grade GS-18, as provided in the General Schedule under section 5332 of title 5.

(g) Consultation and coordination with Scientific Advisory Panel

In carrying out the functions assigned by this section, the Board shall consult and coordinate its activities with the Scientific Advisory Panel established by the Administrator pursuant to section 136w(d) of title 7.

(Pub. L. 95-155, §8, Nov. 8, 1977, 91 Stat. 1260; Pub. L. 96-569, §3, Dec. 22, 1980, 94 Stat. 3337; Pub. L. 103-437, §15(o), Nov. 2, 1994, 108 Stat. 4593; Pub. L. 104-66, title II, §2021(k)(3), Dec. 21, 1995, 109 Stat. 728.)

REFERENCES IN TEXT

The Clean Air Act, referred to in subsec. (c)(1), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§7401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

The Federal Water Pollution Control Act, referred to in subsec. (c)(1), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92-500, §2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Resource Conservation and Recovery Act of 1976, referred to in subsec. (c)(1), is Pub. L. 94-580, Oct. 21, 1976, 90 Stat. 2796, as amended, which is classified generally to chapter 82 (§6901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title of 1976 Amendment note set out under section 6901 of this title and Tables.

The Noise Control Act, referred to in subsec. (c)(1), probably means the Noise Control Act of 1972, Pub. L. 92-574, Oct. 27, 1972, 86 Stat. 1234, as amended, which is classified principally to chapter 65 (§4901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4901 of this title and Tables.

The Toxic Substances Control Act, referred to in subsec. (c)(1), is Pub. L. 94-469, Oct. 11, 1976, 90 Stat. 2003, as amended, which is classified generally to chapter 53 (§2601 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 15 and Tables.

The Safe Drinking Water Act, referred to in subsec. (c)(1), is title XIV of act July 1, 1944, as added Dec. 16, 1974, Pub. L. 93-523, §2(a), 88 Stat. 1660, as amended, which is classified generally to subchapter XII (§300f et seq.) of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

CODIFICATION

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1978, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

AMENDMENTS

1995—Subsecs. (c) to (i). Pub. L. 104-66 redesignated subsecs. (e) to (i) as (c) to (g), respectively, and struck out former subsec. (c) which read as follows: “In addition to providing scientific advice when requested by the Administrator under subsection (a) of this section, the Board shall review and comment on the Administration’s five-year plan for environmental research, development, and demonstration provided for by section 4361 of this title and on each annual revision thereof. Such review and comment shall be transmitted to the Congress by the Administrator, together with his comments thereon, at the time of the transmission to the Congress of the annual revision involved.”

1994—Subsec. (a). Pub. L. 103-437, §15(o)(1), substituted “Committee on Science, Space, and Technology, on Energy and Commerce, or on” for “Committees on Science and Technology, Interstate and Foreign Commerce, or”.

Subsec. (d). Pub. L. 103-437, §15(o)(2), struck out subsec. (d) which related to review and report to Administrator, President, and Congress on health effects research.

1980—Subsec. (a). Pub. L. 96-569 inserted provisions relating to requests by the enumerated Congressional committees.

CHANGE OF NAME

Committee on Science, Space, and Technology of House of Representatives treated as referring to Committee on Science of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

Committee on Public Works and Transportation of House of Representatives treated as referring to Committee on Transportation and Infrastructure of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2.

TERMINATION OF ADVISORY BOARDS

Advisory boards established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a board established by the Congress, its duration is otherwise provided for by law. See sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 section 136w; title 21 section 346a.

§ 4366. Identification and coordination of research, development, and demonstration activities

(a) Consultation and cooperation of Administrator of Environmental Protection Agency with heads of Federal agencies; inclusion of activities in annual revisions of plan for research, etc.

The Administrator of the Environmental Protection Agency, in consultation and cooperation with the heads of other Federal agencies, shall take such actions on a continuing basis as may be necessary or appropriate—

(1) to identify environmental research, development, and demonstration activities, within and outside the Federal Government, which may need to be more effectively coordinated in order to minimize unnecessary duplication of programs, projects, and research facilities;

(2) to determine the steps which might be taken under existing law, by him and by the heads of such other agencies, to accomplish or promote such coordination, and to provide for or encourage the taking of such steps; and

(3) to determine the additional legislative actions which would be needed to assure such coordination to the maximum extent possible.

The Administrator shall include in each annual revision of the five-year plan provided for by section 4361¹ of this title a full and complete report on the actions taken and determinations made during the preceding year under this subsection, and may submit interim reports on such actions and determinations at such other times as he deems appropriate.

(b) Coordination of programs by Administrator

The Administrator of the Environmental Protection Agency shall coordinate environmental research, development, and demonstration programs of such Agency with the heads of other Federal agencies in order to minimize unnecessary duplication of programs, projects, and research facilities.

(c) Joint study by Council on Environmental Quality in consultation with Office of Science and Technology Policy for coordination of activities; report to President and Congress; report by President to Congress on implementation of joint study and report

(1) In order to promote the coordination of environmental research and development activities, and to assure that the action taken and

¹ See References in Text note below.

methods used (under subsection (a) of this section and otherwise) to bring about such coordination will be as effective as possible for that purpose, the Council on Environmental Quality in consultation with the Office of Science and Technology Policy shall promptly undertake and carry out a joint study of all aspects of the coordination of environmental research and development. The Chairman of the Council shall prepare a report on the results of such study, together with such recommendations (including legislative recommendations) as he deems appropriate, and shall submit such report to the President and the Congress not later than May 31, 1978.

(2) Not later than September 30, 1978, the President shall report to the Congress on steps he has taken to implement the recommendations included in the report under paragraph (1), including any recommendations he may have for legislation.

(Pub. L. 95-155, §9, Nov. 8, 1977, 91 Stat. 1261.)

REFERENCES IN TEXT

Section 4361 of this title, referred to in subsec. (a), was repealed by Pub. L. 104-66, title II, §202(k)(1), Dec. 21, 1995, 109 Stat. 728.

CODIFICATION

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1978, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

COORDINATION OF ENVIRONMENTAL RESEARCH, DEVELOPMENT, AND DEMONSTRATION EFFORTS; STUDY AND REPORT

Pub. L. 95-477, §3(c), Oct. 18, 1978, 92 Stat. 1509, authorized to be appropriated to the Environmental Protection Agency for the fiscal year 1979, \$1,000,000, and for the fiscal year 1980, \$1,000,000, for a study and report, under a contract let by the Administrator, to be conducted outside the Federal Government, on coordination of the Federal Government's efforts in environmental research, development, and demonstration, and the application of the results of such efforts to environmental problems, with the report on the study submitted to the President, the Administrator, and the Congress within two years after Oct. 18, 1978, accompanied by recommendations for action by the President, the Administrator, other agencies, or the Congress, as may be appropriate.

§ 4366a. Omitted

CODIFICATION

Section, Pub. L. 101-617, §4, Nov. 16, 1990, 104 Stat. 3287, which related to development of data base of environmental research articles indexed by geographic location, expired 10 years after Nov. 16, 1990, pursuant to section 6 of Pub. L. 101-617, formerly set out as a Termination Date note under this section.

TERMINATION DATE

Pub. L. 101-617, §6, Nov. 16, 1990, 104 Stat. 3287, provided that Pub. L. 101-617, which enacted this section and provisions formerly set out under this section, was to expire 10 years after Nov. 16, 1990.

SHORT TITLE; FINDINGS; PURPOSE; AUTHORIZATION

Pub. L. 101-617, §§1-3, 5, Nov. 16, 1990, 104 Stat. 3287, which provided that Pub. L. 101-617, which enacted this section and provisions formerly set out under this section, could be cited as the "Environmental Research

Geographic Location Information Act", and further provided for findings, purpose to develop data base of environmental research articles indexed by geographic location, and authorization of appropriations, expired 10 years after Nov. 16, 1990, pursuant to section 6 of Pub. L. 101-617, formerly set out as a note under this section.

§ 4367. Reporting requirements of financial interests of officers and employees of Environmental Protection Agency

(a) Covered officers and employees

Each officer or employee of the Environmental Protection Agency who—

- (1) performs any function or duty under this Act; and
- (2) has any known financial interest in any person who applies for or receives grants, contracts, or other forms of financial assistance under this Act,

shall, beginning on February 1, 1978, annually file with the Administrator a written statement concerning all such interests held by such officer or employee during the preceding calendar year. Such statement shall be available to the public.

(b) Implementation of requirements by Administrator

The Administrator shall—

- (1) act within ninety days after November 8, 1977—

(A) to define the term "known financial interest" for purposes of subsection (a) of this section; and

(B) to establish the methods by which the requirement to file written statements specified in subsection (a) of this section will be monitored and enforced, including appropriate provision for the filing by such officers and employees of such statements and the review by the Administrator of such statements; and

- (2) Omitted.

(c) Exemption of positions by Administrator

In the rules prescribed under subsection (b) of this section, the Administrator may identify specific positions of a nonpolicymaking nature within the Administration and provide that officers or employees occupying such positions shall be exempt from the requirements of this section.

(d) Violations; penalties

Any officer or employee who is subject to, and knowingly violates, this section, shall be fined not more than \$2,500 or imprisoned not more than one year, or both.

(Pub. L. 95-155, §12, Nov. 8, 1977, 91 Stat. 1263.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a)(1), (2), is Pub. L. 95-155, Nov. 8, 1977, 91 Stat. 1257, as amended, known as the Environmental Research, Development, and Demonstration Authorization Act of 1978, which to the extent classified to the Code enacted sections 300j-3a, 4361a, 4361b, and 4363 to 4367 of this title. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Subsec. (b)(2) of this section, which required the Administrator to report to Congress on June 1 of each cal-

endar year with respect to such disclosures and the actions taken in regard thereto during the preceding calendar year, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, item 9 on page 164 of House Document No. 103-7.

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1978, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

§ 4368. Grants to qualified citizens groups

(1) There is authorized to be appropriated to the Environmental Protection Agency, for grants to qualified citizens groups in States and regions, \$3,000,000.

(2) Grants under this section may be made for the purpose of supporting and encouraging participation by qualified citizens groups in determining how scientific, technological, and social trends and changes affect the future environment and quality of life of an area, and for setting goals and identifying measures for improvement.

(3) The term "qualified citizens group" shall mean a nonprofit organization of citizens having an area based focus, which is not single-issue oriented and which can demonstrate a prior record of interest and involvement in goal-setting and research concerned with improving the quality of life, including plans to identify, protect and enhance significant natural and cultural resources and the environment.

(4) A citizens group shall be eligible for assistance only if certified by the Governor in consultation with the State legislature as a bona-fide organization entitled to receive Federal assistance to pursue the aims of this program. The group shall further demonstrate its capacity to employ usefully the funds for the purposes of this program and its broad-based representative nature.

(5) After an initial application for assistance under this section has been approved, the Administrator may make grants on an annual basis, on condition that the Governor recertify the group and that the applicant submits to the Administrator annually—

(A) an evaluation of the progress made during the previous year in meeting the objectives for which the grant was made;

(B) a description of any changes in the objectives of the activities; and

(C) a description of the proposed activities for the succeeding one year period.

(6) A grant made under this program shall not exceed 75 per centum of the estimated cost of the project or program for which the grant is made, and no group shall receive more than \$50,000 in any one year.

(7) No financial assistance provided under this section shall be used to support lobbying or litigation by any recipient group.

(Pub. L. 95-477, §3(d), Oct. 18, 1978, 92 Stat. 1509.)

REFERENCES IN TEXT

This section, referred to in par. (5), means section 3 of Pub. L. 95-477, in its entirety, subsec. (d) of which enacted this section, subsecs. (a) and (b) of which were

not classified to the Code, and subsec. (c) of which is set out as a note under section 4366 of this title.

CODIFICATION

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1979, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

§ 4368a. Utilization of talents of older Americans in projects of pollution prevention, abatement, and control

(a) Technical assistance to environmental agencies

Notwithstanding any other provision of law relating to Federal grants and cooperative agreements, the Administrator of the Environmental Protection Agency is authorized to make grants to, or enter into cooperative agreements with, private nonprofit organizations designated by the Secretary of Labor under title V of the Older Americans Act of 1965 [42 U.S.C. 3056 et seq.] to utilize the talents of older Americans in programs authorized by other provisions of law administered by the Administrator (and consistent with such provisions of law) in providing technical assistance to Federal, State, and local environmental agencies for projects of pollution prevention, abatement, and control. Funding for such grants or agreements may be made available from such programs or through title V of the Older Americans Act of 1965 and subtitle D of title I of the Workforce Investment Act of 1998 [29 U.S.C. 2911 et seq.].

(b) Pre-award certifications

Prior to awarding any grant or agreement under subsection (a) of this section, the applicable Federal, State, or local environmental agency shall certify to the Administrator that such grants or agreements will not—

(1) result in the displacement of individuals currently employed by the environmental agency concerned (including partial displacement through reduction of nonovertime hours, wages, or employment benefits);

(2) result in the employment of any individual when any other person is in a layoff status from the same or substantially equivalent job within the jurisdiction of the environmental agency concerned; or

(3) affect existing contracts for services.

(c) Prior appropriation Acts

Grants or agreements awarded under this section shall be subject to prior appropriation Acts.

(Pub. L. 98-313, §2, June 12, 1984, 98 Stat. 235; Pub. L. 105-277, div. A, §101(f) [title VIII, §405(d)(35), (f)(27)], Oct. 21, 1998, 112 Stat. 2681-337, 2681-426, 2681-434.)

REFERENCES IN TEXT

The Older Americans Act of 1965, referred to in subsec. (a), is Pub. L. 89-73, July 14, 1965, 79 Stat. 218, as amended. Title V of the Act, known as the "Older American Community Service Employment Act", is classified generally to subchapter IX (§3056 et seq.) of chapter 35 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

The Workforce Investment Act of 1998, referred to in subsec. (a), is Pub. L. 105-220, Aug. 7, 1998, 112 Stat. 936,

as amended. Subtitle D of title I of the Act is classified generally to subchapter IV (§2911 et seq.) of chapter 30 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

CODIFICATION

Section was enacted as part of the Environmental Programs Assistance Act of 1984, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105-277, §101(f) [title VIII, §405(f)(27)], struck out “title IV of the Job Training Partnership Act or” after “title V of the Older Americans Act of 1965 and” in last sentence.

Pub. L. 105-277, §101(f) [title VIII, §405(d)(35)], substituted “and title IV of the Job Training Partnership Act or subtitle D of title I of the Workforce Investment Act of 1998” for “and title IV of the Job Training Partnership Act” in second sentence.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 101(f) [title VIII, §405(d)(35)] of Pub. L. 105-277 effective Oct. 21, 1998, and amendment by section 101(f) [title VIII, §405(f)(27)] of Pub. L. 105-277 effective July 1, 2000, see section 101(f) [title VIII, §405(g)(1), (2)(B)] of Pub. L. 105-277, set out as a note under section 3502 of Title 5, Government Organization and Employees.

SHORT TITLE

Section 1 of Pub. L. 98-313 provided that: “This Act [enacting this section] may be cited as the ‘Environmental Programs Assistance Act of 1984.’”

§ 4368b. General assistance program

(a) Short title

This section may be cited as the “Indian Environmental General Assistance Program Act of 1992”.

(b) Purposes

The purposes of this section are to—

(1) provide general assistance grants to Indian tribal governments and intertribal consortia to build capacity to administer environmental regulatory programs that may be delegated by the Environmental Protection Agency on Indian lands; and

(2) provide technical assistance from the Environmental Protection Agency to Indian tribal governments and intertribal consortia in the development of multimedia programs to address environmental issues on Indian lands.

(c) Definitions

For purposes of this section:

(1) The term “Indian tribal government” means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C.A. 1601, et seq.)), which is recognized as eligible for the special services provided by the United States to Indians because of their status as Indians.

(2) The term “intertribal consortia” or “intertribal consortium” means a partnership between two or more Indian tribal governments authorized by the governing bodies of those tribes to apply for and receive assistance pursuant to this section.

(3) The term “Administrator” means the Administrator of the Environmental Protection Agency.

(d) General assistance program

(1) The Administrator of the Environmental Protection Agency shall establish an Indian Environmental General Assistance Program that provides grants to eligible Indian tribal governments or intertribal consortia to cover the costs of planning, developing, and establishing environmental protection programs consistent with other applicable provisions of law providing for enforcement of such laws by Indian tribes on Indian lands.

(2) Each grant awarded for general assistance under this subsection for a fiscal year shall be no less than \$75,000, and no single grant may be awarded to an Indian tribal government or intertribal consortium for more than 10 percent of the funds appropriated under subsection (h) of this section.

(3) The term of any general assistance award made under this subsection may exceed one year. Any awards made pursuant to this section shall remain available until expended. An Indian tribal government or intertribal consortium may receive a general assistance grant for a period of up to four years in each specific media area.

(e) No reduction in amounts

In no case shall the award of a general assistance grant to an Indian tribal government or intertribal consortium under this section result in a reduction of Environmental Protection Agency grants for environmental programs to that tribal government or consortium. Nothing in this section shall preclude an Indian tribal government or intertribal consortium from receiving individual media grants or cooperative agreements. Funds provided by the Environmental Protection Agency through the general assistance program shall be used by an Indian tribal government or intertribal consortium to supplement other funds provided by the Environmental Protection Agency through individual media grants or cooperative agreements.

(f) Expenditure of general assistance

Any general assistance under this section shall be expended for the purpose of planning, developing, and establishing the capability to implement programs administered by the Environmental Protection Agency and specified in the assistance agreement. Purposes and programs authorized under this section shall include the development and implementation of solid and hazardous waste programs for Indian lands. An Indian tribal government or intertribal consortium receiving general assistance pursuant to this section shall utilize such funds for programs and purposes to be carried out in accordance with the terms of the assistance agreement. Such programs and general assistance shall be carried out in accordance with the purposes and requirements of applicable provisions of law, including the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).

(g) Procedures

(1) Within 12 months following October 24, 1992, the Administrator shall promulgate regula-

tions establishing procedures under which an Indian tribal government or intertribal consortium may apply for general assistance grants under this section.

(2) The Administrator shall publish regulations issued pursuant to this section in the Federal Register.

(3) The Administrator shall establish procedures for accounting, auditing, evaluating, and reviewing any programs or activities funded in whole or in part for a general assistance grant under this section.

(h) Authorization

There are authorized to be appropriated to carry out the provisions of this section, such sums as may be necessary for each of the fiscal years 1993, 1994, 1995, 1996, 1997, and 1998.

(i) Report to Congress

The Administrator shall transmit an annual report to the appropriate Committees of the Congress with jurisdiction over the applicable environmental laws and Indian tribes describing which Indian tribes or intertribal consortia have been granted approval by the Administrator pursuant to law to enforce certain environmental laws and the effectiveness of any such enforcement.

(Pub. L. 95-134, title V, §502, as added Pub. L. 102-497, §11, Oct. 24, 1992, 106 Stat. 3258; amended Pub. L. 103-155, Nov. 24, 1993, 107 Stat. 1523; Pub. L. 104-233, §1, Oct. 2, 1996, 110 Stat. 3057.)

REFERENCES IN TEXT

The Alaska Native Claims Settlement Act, referred to in subsec. (c)(1), is Pub. L. 92-203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

The Solid Waste Disposal Act, referred to in subsec. (f), is title II of Pub. L. 89-272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§6901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

CODIFICATION

Section was enacted as the Indian Environmental General Assistance Program Act of 1992 and as part of the Omnibus Territories Act of 1977, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

AMENDMENTS

1996—Subsec. (h). Pub. L. 104-233 substituted “such sums as may be necessary” for “\$15,000,000”.

1993—Subsec. (d)(1). Pub. L. 103-155, §3(a), inserted “consistent with other applicable provisions of law providing for enforcement of such laws by Indian tribes” after “programs”.

Subsec. (f). Pub. L. 103-155, §3(b), inserted at end “Such programs and general assistance shall be carried out in accordance with the purposes and requirements of applicable provisions of law, including the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).”

Subsec. (h). Pub. L. 103-155, §1, substituted “, 1994, 1995, 1996, 1997, and 1998” for “and 1994”.

Subsec. (i). Pub. L. 103-155, §2, added subsec. (i).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 29 section 708.

§ 4369. Miscellaneous reports

(a) Availability to Congressional committees

All reports to or by the Administrator relevant to the Agency’s program of research, development, and demonstration shall promptly be made available to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Environment and Public Works of the Senate, unless otherwise prohibited by law.

(b) Transmittal of jurisdictional information

The Administrator shall keep the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Environment and Public Works of the Senate fully and currently informed with respect to matters falling within or related to the jurisdiction of the committees.

(c) Comment by Government agencies and the public

The reports provided for in section 5910¹ of this title shall be made available to the public for comment, and to the heads of affected agencies for comment and, in the case of recommendations for action, for response.

(d) Transmittal of research information to the Department of Energy

For the purpose of assisting the Department of Energy in planning and assigning priorities in research development and demonstration activities related to environmental control technologies, the Administrator shall actively make available to the Department all information on research activities and results of research programs of the Environmental Protection Agency.

(Pub. L. 95-477, §5, Oct. 18, 1978, 92 Stat. 1510; Pub. L. 103-437, §15(c)(6), Nov. 2, 1994, 108 Stat. 4592.)

REFERENCES IN TEXT

Section 5910 of this title, referred to in subsec. (c), was repealed by Pub. L. 104-66, title II, §2021(i), Dec. 21, 1995, 109 Stat. 727.

CODIFICATION

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1979, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

AMENDMENTS

1994—Subsecs. (a), (b). Pub. L. 103-437 substituted “Science, Space, and Technology” for “Science and Technology”.

CHANGE OF NAME

Committee on Science, Space, and Technology of House of Representatives treated as referring to Committee on Science of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

§ 4369a. Reports on environmental research and development activities of Agency

(a) Reports to keep Congressional committees fully and currently informed

The Administrator shall keep the appropriate committees of the House and the Senate fully

¹ See References in Text note below.

and currently informed about all aspects of the environmental research and development activities of the Environmental Protection Agency.

(b) Omitted

(Pub. L. 96-229, § 4, Apr. 7, 1980, 94 Stat. 328.)

CODIFICATION

Subsec. (b) of this section, which required the Administrator to annually make available to the appropriate committees of Congress sufficient copies of a report fully describing funds requested and the environmental research and development activities to be carried out with these funds, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, item 24 on page 163 of House Document No. 103-7.

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1980, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

§ 4370. Reimbursement for use of facilities

(a) Authority to allow outside groups or individuals to use research and test facilities; reimbursement

The Administrator is authorized to allow appropriate use of special Environmental Protection Agency research and test facilities by outside groups or individuals and to receive reimbursement or fees for costs incurred thereby when he finds this to be in the public interest. Such reimbursement or fees are to be used by the Agency to defray the costs of use by outside groups or individuals.

(b) Rules and regulations

The Administrator may promulgate regulations to cover such use of Agency facilities in accordance with generally accepted accounting, safety, and laboratory practices.

(c) Waiver of reimbursement by Administrator

When he finds it is in the public interest the Administrator may waive reimbursement or fees for outside use of Agency facilities by nonprofit private or public entities.

(Pub. L. 96-229, § 5, Apr. 7, 1980, 94 Stat. 328.)

CODIFICATION

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1980, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

§ 4370a. Assistant Administrators of Environmental Protection Agency; appointment; duties

(a) The President, by and with the advice and consent of the Senate, may appoint three Assistant Administrators of the Environmental Protection Agency in addition to—

(1) the five Assistant Administrators provided for in section 1(d) of Reorganization Plan Numbered 3 of 1970 (5 U.S.C. Appendix);

(2) the Assistant Administrator provided by section 2625(g) of title 15; and

(3) the Assistant Administrator provided by section 6911a of this title.

(b) Each Assistant Administrator appointed under subsection (a) of this section shall per-

form such duties as the Administrator of the Environmental Protection Agency may prescribe.

(Pub. L. 98-80, § 1, Aug. 23, 1983, 97 Stat. 485.)

REFERENCES IN TEXT

Reorganization Plan Numbered 3 of 1970, referred to in subsec. (a)(1), is set out under section 4321 of this title.

CODIFICATION

Section was not enacted as part of the National Environmental Policy Act of 1969 which comprises this chapter.

§ 4370b. Availability of fees and charges to carry out Agency programs

Notwithstanding any other provision of law, after September 30, 1990, amounts deposited in the Licensing and Other Services Fund from fees and charges assessed and collected by the Administrator for services and activities carried out pursuant to the statutes administered by the Environmental Protection Agency shall thereafter be available to carry out the Agency's activities in the programs for which the fees or charges are made.

(Pub. L. 101-144, title III, Nov. 9, 1989, 103 Stat. 858.)

CODIFICATION

Section was enacted as part of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1990, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

§ 4370c. Environmental Protection Agency fees

(a) Assessment and collection

The Administrator of the Environmental Protection Agency shall, by regulation, assess and collect fees and charges for services and activities carried out pursuant to laws administered by the Environmental Protection Agency.

(b) Amount of fees and charges

Fees and charges assessed pursuant to this section shall be in such amounts as may be necessary to ensure that the aggregate amount of fees and charges collected pursuant to this section, in excess of the amount of fees and charges collected under current law—

(1) in fiscal year 1991, is not less than \$28,000,000; and

(2) in each of fiscal years 1992, 1993, 1994, and 1995, is not less than \$38,000,000.

(c) Limitation on fees and charges

(1) The maximum aggregate amount of fees and charges in excess of the amounts being collected under current law which may be assessed and collected pursuant to this section in a fiscal year—

(A) for services and activities carried out pursuant to¹ the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.] is \$10,000,000; and

(B) for services and activities in programs within the jurisdiction of the House Committee on Energy and Commerce and adminis-

¹ So in original. Probably should be "to".

tered by the Environmental Protection Agency through the Administrator, shall be limited to such sums collected as of November 5, 1990, pursuant to sections 2625(b) and 2665(e)(2)² of title 15, and such sums specifically authorized by the Clean Air Act Amendments of 1990.

(2) Any remaining amounts required to be collected under this section shall be collected from services and programs administered by the Environmental Protection Agency other than those specified in subparagraphs (A) and (B) of paragraph (1).

(d) Rule of construction

Nothing in this section increases or diminishes the authority of the Administrator to promulgate regulations pursuant to section 9701 of title 31.

(e) Uses of fees

Fees and charges collected pursuant to this section shall be deposited into a special account for environmental services in the Treasury of the United States. Subject to appropriation Acts, such funds shall be available to the Environmental Protection Agency to carry out the activities for which such fees and charges are collected. Such funds shall remain available until expended.

(Pub. L. 101-508, title VI, § 6501, Nov. 5, 1990, 104 Stat. 1388-320.)

REFERENCES IN TEXT

The Federal Water Pollution Control Act, referred to in subsec. (c)(1)(A), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92-500, § 2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

Section 2665(e)(2) of title 15, referred to in subsec. (c)(1)(B), was redesignated section 2665(d)(2) of Title 15, Commerce and Trade, by Pub. L. 104-66, title II, § 2021(l)(2), Dec. 21, 1995, 109 Stat. 728.

The Clean Air Act Amendments of 1990, referred to in subsec. (c)(1)(B), means Pub. L. 101-549, Nov. 15, 1990, 104 Stat. 2399. For complete classification of this Act to the Code, see Short Title of 1990 Amendment note set out under section 7401 of this title and Tables.

CODIFICATION

In subsec. (d), “section 9701 of title 31” was in the original “the Independent Office Appropriations Act (31 U.S.C. 9701)” and substitution was made as if it read for “title V of the Independent Offices Appropriation Act of 1952” on authority of Pub. L. 97-258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

Section was enacted as part of the Omnibus Budget Reconciliation Act of 1990, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and ex-

changes and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 4370d. Percentage of Federal funding for organizations owned by socially and economically disadvantaged individuals

The Administrator of the Environmental Protection Agency shall, on and after October 6, 1992, to the fullest extent possible, ensure that at least 8 per centum of Federal funding for prime and subcontracts awarded in support of authorized programs, including grants, loans, and contracts for wastewater treatment and leaking underground storage tanks grants, be made available to business concerns or other organizations owned or controlled by socially and economically disadvantaged individuals (within the meaning of section 637(a)(5) and (6) of title 15), including historically black colleges and universities. For purposes of this section, economically and socially disadvantaged individuals shall be deemed to include women.

(Pub. L. 102-389, title III, Oct. 6, 1992, 106 Stat. 1602.)

CODIFICATION

Section was enacted as part of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1993, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

§ 4370e. Working capital fund in Treasury

There is hereby established in the Treasury a “Working capital fund”, to be available without fiscal year limitation for expenses and equipment necessary for the maintenance and operation of such administrative services as the Administrator determines may be performed more advantageously as central services: *Provided*, That any inventories, equipment, and other assets pertaining to the services to be provided by such fund, either on hand or on order, less the related liabilities or unpaid obligations, and any appropriations made hereafter for the purpose of providing capital, shall be used to capitalize such fund: *Provided further*, That such fund shall be paid in advance or reimbursed from funds available to the Agency and other Federal agencies for which such centralized services are performed, at rates which will return in full all expenses of operation, including accrued leave, depreciation of fund plant and equipment, amortization of automated data processing (ADP) software and systems (either acquired or donated), and an amount necessary to maintain a reasonable operating reserve, as determined by the Administrator: *Provided further*, That such fund shall provide services on a competitive basis: *Provided further*, That an amount not to exceed four percent of the total annual income to such fund may be retained in the fund for fiscal year 1997 and each fiscal year thereafter, to remain available until expended, to be used for the acquisition of capital equipment and for the improvement and implementation of Agency financial management, ADP, and other support systems: *Provided further*, That no later than thirty days after the end of each fiscal year amounts in

² See References in Text note below.

excess of this reserve limitation shall be transferred to the Treasury.

(Pub. L. 104-204, title III, Sept. 26, 1996, 110 Stat. 2912; Pub. L. 105-65, title III, Oct. 27, 1997, 111 Stat. 1374; Pub. L. 105-276, title III, Oct. 21, 1998, 112 Stat. 2499.)

CODIFICATION

Section was formerly set out as a note under section 501 of Title 31, Money and Finance.

Section was enacted as part of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

AMENDMENTS

1998—Pub. L. 105-276, which directed the insertion of “or reimbursed” after “that such fund shall be paid in advance”, was executed by making the insertion after “That such fund shall be paid in advance”, to reflect the probable intent of Congress.

1997—Pub. L. 105-65 substituted “a ‘Working capital fund’ to be available without fiscal year limitation for expenses and equipment” for “a franchise fund pilot to be known as the ‘Working capital fund’, as authorized by section 403 of Public Law 103-356, to be available as provided in such section for expenses and equipment” and struck out proviso at end which read “: *Provided further*, That such franchise fund pilot shall terminate pursuant to section 403(f) of Public Law 103-356”.

§ 4370f. Availability of funds after expiration of period for liquidating obligations

For fiscal year 2001 and thereafter, the obligated balances of sums available in multiple-year appropriations accounts shall remain available through the seventh fiscal year after their period of availability has expired for liquidating obligations made during the period of availability.

(Pub. L. 106-377, §1(a)(1) [title III], Oct. 27, 2000, 114 Stat. 1441, 1441A-44.)

CODIFICATION

Section was enacted as part of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2001, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

CHAPTER 56—ENVIRONMENTAL QUALITY IMPROVEMENT

- Sec.
- 4371. Congressional findings, declarations, and purposes.
- 4372. Office of Environmental Quality.
 - (a) Establishment; Director; Deputy Director.
 - (b) Compensation of Deputy Director.
 - (c) Employment of personnel, experts, and consultants; compensation.
 - (d) Duties and functions of Director.
 - (e) Authority of Director to contract.
- 4373. Referral of Environmental Quality Reports to standing committees having jurisdiction.
- 4374. Authorization of appropriations.
- 4375. Office of Environmental Quality Management Fund.
 - (a) Establishment; financing of study contracts and Federal interagency environmental projects.
 - (b) Study contract or project initiative.
 - (c) Regulations.

§ 4371. Congressional findings, declarations, and purposes

- (a) The Congress finds—
 - (1) that man has caused changes in the environment;
 - (2) that many of these changes may affect the relationship between man and his environment; and
 - (3) that population increases and urban concentration contribute directly to pollution and the degradation of our environment.

(b)(1) The Congress declares that there is a national policy for the environment which provides for the enhancement of environmental quality. This policy is evidenced by statutes heretofore enacted relating to the prevention, abatement, and control of environmental pollution, water and land resources, transportation, and economic and regional development.

(2) The primary responsibility for implementing this policy rests with State and local government.

(3) The Federal Government encourages and supports implementation of this policy through appropriate regional organizations established under existing law.

(c) The purposes of this chapter are—

(1) to assure that each Federal department and agency conducting or supporting public works activities which affect the environment shall implement the policies established under existing law; and

(2) to authorize an Office of Environmental Quality, which, notwithstanding any other provision of law, shall provide the professional and administrative staff for the Council on Environmental Quality established by Public Law 91-190.

(Pub. L. 91-224, title II, §202, Apr. 3, 1970, 84 Stat. 114.)

REFERENCES IN TEXT

Public Law 91-190, referred to in subsec. (c)(2), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, known as the National Environmental Policy Act of 1969, which is classified generally to chapter 55 (§ 4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

SHORT TITLE

Section 201 of Pub. L. 91-224 provided that: “This title [enacting this chapter] may be cited as the ‘Environmental Quality Improvement Act of 1970’.”

§ 4372. Office of Environmental Quality

(a) Establishment; Director; Deputy Director

There is established in the Executive Office of the President an office to be known as the Office of Environmental Quality (hereafter in this chapter referred to as the “Office”). The Chairman of the Council on Environmental Quality established by Public Law 91-190 shall be the Director of the Office. There shall be in the Office a Deputy Director who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) Compensation of Deputy Director

The compensation of the Deputy Director shall be fixed by the President at a rate not in

excess of the annual rate of compensation payable to the Deputy Director of the Office of Management and Budget.

(c) Employment of personnel, experts, and consultants; compensation

The Director is authorized to employ such officers and employees (including experts and consultants) as may be necessary to enable the Office to carry out its functions under this chapter and Public Law 91-190, except that he may employ no more than ten specialists and other experts without regard to the provisions of title 5, governing appointments in the competitive service, and pay such specialists and experts without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but no such specialist or expert shall be paid at a rate in excess of the maximum rate for GS-18 of the General Schedule under section 5332 of title 5.

(d) Duties and functions of Director

In carrying out his functions the Director shall assist and advise the President on policies and programs of the Federal Government affecting environmental quality by—

(1) providing the professional and administrative staff and support for the Council on Environmental Quality established by Public Law 91-190.

(2) assisting the Federal agencies and departments in appraising the effectiveness of existing and proposed facilities, programs, policies, and activities of the Federal Government, and those specific major projects designated by the President which do not require individual project authorization by Congress, which affect environmental quality;

(3) reviewing the adequacy of existing systems for monitoring and predicting environmental changes in order to achieve effective coverage and efficient use of research facilities and other resources;

(4) promoting the advancement of scientific knowledge of the effects of actions and technology on the environment and encourage the development of the means to prevent or reduce adverse effects that endanger the health and well-being of man;

(5) assisting in coordinating among the Federal departments and agencies those programs and activities which affect, protect, and improve environmental quality;

(6) assisting the Federal departments and agencies in the development and interrelationship of environmental quality criteria and standards established through the Federal Government;

(7) collecting, collating, analyzing, and interpreting data and information on environmental quality, ecological research, and evaluation.

(e) Authority of Director to contract

The Director is authorized to contract with public or private agencies, institutions, and organizations and with individuals without regard to section 3324(a) and (b) of title 31 and section 5 of title 41 in carrying out his functions.

(Pub. L. 91-224, title II, § 203, Apr. 3, 1970, 84 Stat. 114; 1970 Reorg. Plan No. 2, § 102, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085.)

REFERENCES IN TEXT

Public Law 91-190, referred to in subsecs. (a), (c), and (d), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, known as the National Environmental Policy Act of 1969, which is classified generally to chapter 55 (§ 4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

The provisions of title 5, governing appointments in the competitive service, referred to in subsec. (c), are classified to section 3301 et seq. of Title 5, Government Organization and Employees.

The General Schedule, referred to in subsec. (c), is set out under section 5332 of Title 5.

CODIFICATION

In subsec. (e), "section 3324(a) and (b) of title 31" substituted for reference to section 3648 of the Revised Statutes (31 U.S.C. 529) on authority of Pub. L. 97-258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

TRANSFER OF FUNCTIONS

Functions vested by law (including reorganization plan) in Bureau of the Budget or Director of Bureau of the Budget transferred to President by section 101 of Reorg. Plan No. 2 of 1970, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085, set out in the Appendix to Title 5, Government Organization and Employees. Section 102 of Reorg. Plan No. 2 of 1970, redesignated Bureau of the Budget as Office of Management and Budget.

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

§ 4373. Referral of Environmental Quality Reports to standing committees having jurisdiction

Each Environmental Quality Report required by Public Law 91-190 shall, upon transmittal to Congress, be referred to each standing committee having jurisdiction over any part of the subject matter of the Report.

(Pub. L. 91-224, title II, § 204, Apr. 3, 1970, 84 Stat. 115.)

REFERENCES IN TEXT

Public Law 91-190, referred to in text, is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, known as the National Environmental Policy Act of 1969, which is classified generally to chapter 55 (§ 4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

§ 4374. Authorization of appropriations

There are hereby authorized to be appropriated for the operations of the Office of Environmental Quality and the Council on Environmental Quality not to exceed the following sums for the following fiscal years which sums are in addition to those contained in Public Law 91-190:

(a) \$2,126,000 for the fiscal year ending September 30, 1979.

(b) \$3,000,000 for each of the fiscal years ending September 30, 1980, and September 30, 1981.

(c) \$44,000 for the fiscal years ending September 30, 1982, 1983, and 1984.

(d) \$480,000 for each of the fiscal years ending September 30, 1985 and September 30, 1986.

(Pub. L. 91-224, title II, §205, Apr. 3, 1970, 84 Stat. 115; Pub. L. 93-36, May 18, 1973, 87 Stat. 72; Pub. L. 94-52, §1, July 3, 1975, 89 Stat. 258; Pub. L. 94-298, May 29, 1976, 90 Stat. 587; Pub. L. 95-300, June 26, 1978, 92 Stat. 342; Pub. L. 97-350, §1, Oct. 18, 1982, 96 Stat. 1661; Pub. L. 98-581, §1, Oct. 30, 1984, 98 Stat. 3093.)

REFERENCES IN TEXT

Public Law 91-190, referred to in text, is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, known as the National Environmental Policy Act of 1969, which is classified generally to chapter 55 (§4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

AMENDMENTS

1984—Cl. (d). Pub. L. 98-581 added cl. (d).

1982—Cl. (c). Pub. L. 97-350 added cl. (c).

1978—Pub. L. 95-300 added cls. (a) and (b). Former cls. (a) to (d), which authorized appropriations of \$2,000,000 for fiscal year ending June 30, 1976, \$500,000 for transition period of July 1, 1976 to Sept. 30, 1976, \$3,000,000 for fiscal year ending Sept. 30, 1977, and \$3,000,000 for fiscal year ending Sept. 30, 1978, respectively, were struck out.

1976—Pub. L. 94-298 made changes in structure by designating existing provisions as cls. (a) and (b) and adding cls. (c) and (d).

1975—Pub. L. 94-52 substituted “\$2,000,000 for the fiscal year ending June 30, 1976, and not to exceed \$500,000 for the transition period (July 1, 1976 to September 30, 1976)” for “\$1,500,000 for the fiscal year ending June 30, 1974, and \$2,000,000 for the fiscal year ending June 30, 1975”.

1973—Pub. L. 93-36 substituted provisions authorizing to be appropriated for operations of the Office of Environmental Quality and the Council on Environmental Quality \$1,500,000 for fiscal year ending June 30, 1974, and \$2,000,000 for fiscal year ending June 30, 1975, for provisions authorizing to be appropriated not to exceed \$500,000 for fiscal year ending June 30, 1970, not to exceed \$750,000 for fiscal year ending June 30, 1971, not to exceed \$1,250,000 for fiscal year ending June 30, 1972, and not to exceed \$1,500,000 for fiscal year ending June 30, 1973.

§ 4375. Office of Environmental Quality Management Fund

(a) Establishment; financing of study contracts and Federal interagency environmental projects

There is established an Office of Environmental Quality Management Fund (hereinafter referred to as the “Fund”) to receive advance payments from other agencies or accounts that may be used solely to finance—

(1) study contracts that are jointly sponsored by the Office and one or more other Federal agencies; and

(2) Federal interagency environmental projects (including task forces) in which the Office participates.

(b) Study contract or project initiative

Any study contract or project that is to be financed under subsection (a) of this section may

be initiated only with the approval of the Director.

(c) Regulations

The Director shall promulgate regulations setting forth policies and procedures for operation of the Fund.

(Pub. L. 91-224, title II, §206, as added Pub. L. 98-581, §2, Oct. 30, 1984, 98 Stat. 3093.)

CHAPTER 57—ENVIRONMENTAL POLLUTION STUDY

Sec.

4391. Congressional statement of findings.

4392. Presidential study.

4393. Report to Congress by President.

4394. Omitted.

4395. Authorization of appropriations.

§ 4391. Congressional statement of findings

The Congress finds that there is general agreement that air, water, and other common environmental pollution may be hazardous to the health of individuals resident in the United States, but that despite the existence of various research papers and other technical reports on the health hazards of such pollution, there is no authoritative source of information about (1) the nature and gravity of these hazards, (2) the availability of medical and other assistance to persons affected by such pollution, especially when such pollution reaches emergency levels, and (3) the measures, other than those relating solely to abatement of the pollution, that may be taken to avoid or reduce the effects of such pollution on the health of individuals.

(Pub. L. 91-515, title V, §501(a), Oct. 30, 1970, 84 Stat. 1309.)

§ 4392. Presidential study

The President shall immediately commence (1) a study of the nature and gravity of the hazards to human health and safety created by air, water, and other common environmental pollution, (2) a survey of the medical and other assistance available to persons affected by such pollution, especially when such pollution reaches emergency levels, and (3) a survey of the measures, other than those relating solely to abatement of the pollution, that may be taken to avoid or reduce the effects of such pollution on the health of individuals.

(Pub. L. 91-515, title V, §501(b), Oct. 30, 1970, 84 Stat. 1310.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4393 of this title.

§ 4393. Report to Congress by President

The President shall, within nine months of October 30, 1970, transmit to the Congress a report of the study and surveys required by section 4392 of this title, including (1) his conclusions regarding the nature and gravity of the hazards to human health and safety created by environmental pollution, (2) his evaluation of the medical and other assistance available to persons affected by such pollution, especially when such pollution reaches emergency levels, (3) his as-

assessment of the measures, other than those relating solely to abatement of the pollution, that may be taken to avoid or reduce the effects of such pollution on the health of individuals, and (4) such legislative or other recommendations as he may deem appropriate.

(Pub. L. 91-515, title V, § 501(c), Oct. 30, 1970, 84 Stat. 1310.)

§ 4394. Omitted

CODIFICATION

Section, Pub. L. 91-515, title V, § 501(d), Oct. 30, 1970, 84 Stat. 1310, which required the President, within one year of his transmittal to Congress of the report required by section 4393 of this title, and annually thereafter, to supplement that report with such new data, evaluations, or recommendations as he may deem appropriate, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, item 6 on page 20 of House Document No. 103-7.

§ 4395. Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this chapter.

(Pub. L. 91-515, title V, § 501(e), Oct. 30, 1970, 84 Stat. 1310.)

CHAPTER 58—DISASTER RELIEF

SUBCHAPTER I—GENERALLY

§§ 4401, 4402. Repealed. Pub. L. 93-288, title VII, § 703, formerly title VI, § 603, May 22, 1974, 88 Stat. 164; renumbered title VII, § 703, Pub. L. 103-337, div. C, title XXXIV, § 3411(a)(1), (2), Oct. 5, 1994, 108 Stat. 3100

Section 4401, Pub. L. 91-606, title I, § 101, Dec. 31, 1970, 84 Stat. 1744, related to Congressional findings and declarations.

Section 4402, Pub. L. 91-606, title I, § 102, Dec. 31, 1970, 84 Stat. 1745, related to definitions.

EFFECTIVE DATE OF REPEAL

Repeal of sections 4401 and 4402 effective Apr. 1, 1974, see section 605 of Pub. L. 93-288, set out as an Effective Date note under section 5121 of this title.

SHORT TITLE

Pub. L. 91-606, § 1, Dec. 31, 1970, 84 Stat. 1744, provided that Pub. L. 91-606 which enacted this chapter, amended section 1926 of Title 7, Agriculture, sections 1706c, 1709, and 1715f of Title 12, Banks and Banking, sections 241-1, 646, and 758 of Title 20, Education, sections 165, 5064, and 5708 of Title 26, Internal Revenue Code, section 1820 [now 3720] of Title 38, Veterans' Benefits, and section 461 of former Title 40, Public Buildings, Property, and Works, repealed sections 1855 to 1855g, 1855aa, 1855aa note, 1855bb to 1855ii, 1855aaa, 1855aaa note, 1855bbb to 1855nnn of this title, and enacted provisions set out as notes under sections 4401 and 4434 of this title, and amended provisions set out as a note under section 1681 of Title 48, Territories and Insular Possessions, may be cited as the "Disaster Relief Act of 1970".

SAVINGS PROVISION

Section 703, formerly section 603, of Pub. L. 93-288, as renumbered by Pub. L. 103-337, div. C, title XXXIV, § 3411(a)(1), (2), Oct. 5, 1994, 108 Stat. 3100, provided in part that notwithstanding repeal of the provisions of Disaster Relief Act of 1970, such provisions should con-

tinue in effect with respect to any major disaster declared prior to May 22, 1974.

DELEGATION OF FUNCTIONS

Functions of President under the Disaster Relief Acts of 1970 and 1974 delegated, with certain exceptions, to Secretary of Homeland Security, see sections 4-201 and 4-203 of Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239, as amended, set out as a note under section 5195 of this title.

REFERENCES TO DISASTER RELIEF ACT OF 1970

Section 702(m), formerly section 602(m), of Pub. L. 93-288, as renumbered by Pub. L. 103-337, div. C, title XXXIV, § 3411(a)(1), (2), Oct. 5, 1994, 108 Stat. 3100, provided that: "Whenever reference is made in any provision of law (other than this Act [the Disaster Relief Act of 1974, see Short Title note set out under section 5121 of this title]), regulation rule, record, or documents of the United States to provisions of the Disaster Relief Act of 1970 (84 Stat. 1744) [see Short Title note above], repealed by this Act such reference shall be deemed to be a reference to the appropriate provision of this Act."

REFERENCES TO ACT OF SEPTEMBER 30, 1950

Pub. L. 91-606, title III, § 301(f), Dec. 31, 1970, 84 Stat. 1758, provided that whenever reference is made in any provision of law (other than this chapter), regulation, rule, record, or document of the United States to the Act of Sept. 30, 1950, ch. 1125, 64 Stat. 1109, (classified to sections 1855 to 1855g of this title), or to any provision of such Act, such reference shall be deemed to be a reference to the Disaster Relief Act of 1970 or to the appropriate provision of the Disaster Relief Act of 1970 unless no such provision was included therein, prior to repeal by Pub. L. 93-288, title VII, § 703, formerly title VI, § 603, May 22, 1974, 88 Stat. 164, renumbered title VII, § 703, Pub. L. 103-337, div. C, title XXXIV, § 3411(a)(1), (2), Oct. 5, 1994, 108 Stat. 3100.

AVAILABILITY OF FUNDS APPROPRIATED UNDER THIS CHAPTER FOR USE UNDER CHAPTER 68

Section 704, formerly section 604, of Pub. L. 93-288, as renumbered by Pub. L. 103-337, div. C, title XXXIV, § 3411(a)(1), (2), Oct. 5, 1994, 108 Stat. 3100, provided that: "Funds heretofore appropriated and available under Public Laws 91-606, as amended [this chapter], and 92-385 [amending section 4451 of this title and sections 633 and 636 of Title 15, Commerce and Trade, repealing section 1969 of Title 7, Agriculture, enacting provisions set out as notes under section 4401 of this title and section 636 of Title 15] shall continue to be available for the purpose of providing assistance under those Acts as well as for the purposes of this Act [see Short Title note set out under section 5121 of this title]."

USE OF FUNDS ALLOCATED BEFORE DECEMBER 31, 1970

Pub. L. 91-606, title III, § 303, Dec. 31, 1970, 84 Stat. 1759, provided that funds allocated before Dec. 31, 1970, under a Federal-State Disaster Agreement for the relief of a major disaster and not expended on Dec. 31, 1970, may be used by the state to make payments to any person for reimbursement of expenses actually incurred by such person in the removal of debris from community areas, but not to exceed the amount that such expenses exceed the salvage value of such debris, or in otherwise carrying out the act of Sept. 30, 1950, or this chapter.

REPORT TO CONGRESS; PROPOSALS FOR LEGISLATION

Pub. L. 92-385, § 3, Aug. 16, 1972, 86 Stat. 556, required President to conduct a thorough review of existing disaster relief legislation and to submit a report to Congress not later than Jan. 1, 1973.

EXECUTIVE ORDER NO. 11526

Ex. Ord. No. 11526, eff. Apr. 22, 1970, 35 F.R. 6569, which provided for establishment of National Council on Federal Disaster Assistance, was superseded by Ex. Ord. No. 11749, formerly set out below.

EXECUTIVE ORDER NO. 11575

Ex. Ord. No. 11575, eff. Dec. 31, 1970, 36 F.R. 37, which related to administration of this chapter, was superseded by Ex. Ord. No. 11749, formerly set out below.

EXECUTIVE ORDER NO. 11749

Ex. Ord. No. 11749, Dec. 10, 1973, 38 F.R. 34177, which related to consolidation of functions assigned to Secretary of Housing and Urban Development, was revoked by Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239, set out as a note under section 5195 of this title. See Delegation of Functions note above.

SUBCHAPTER II—ADMINISTRATION OF
DISASTER ASSISTANCE

§§ 4411 to 4413. Repealed. Pub. L. 93-288, title VII, § 703, formerly title VI, § 603, May 22, 1974, 88 Stat. 164; renumbered title VII, § 703, Pub. L. 103-337, div. C, title XXXIV, § 3411(a)(1), (2), Oct. 5, 1994, 108 Stat. 3100

Section 4411, Pub. L. 91-606, title II, § 201, Dec. 31, 1970, 84 Stat. 1746, related to cooperation of Federal agencies of a Federal coordinating officer.

Section 4412, Pub. L. 91-606, title II, § 202, Dec. 31, 1970, 84 Stat. 1746, related to formation of emergency support teams of Federal personnel.

Section 4413, Pub. L. 91-606, title II, § 203, Dec. 31, 1970, 84 Stat. 1747, related to cooperation of Federal agencies in rendering emergency assistance, the scope of services, non-liability of the Federal government, employment of temporary personnel, rules and regulations, review of programs, and reports to Congress.

EFFECTIVE DATE OF REPEAL

Repeal effective Apr. 1, 1974, see section 605 of Pub. L. 93-288, set out as an Effective Date note under section 5121 of this title.

§ 4413a. Transferred

CODIFICATION

Section, Pub. L. 92-383, title IV, § 406, Aug. 14, 1972, 86 Stat. 553, which related to Housing and Urban Development Disaster Assistance Fund, and which was enacted as part of the Department of Housing and Urban Development; Space, Science, Veterans' and Certain Other Independent Agencies Appropriation Act, 1973, and not as part of the Disaster Relief Act of 1970, was transferred to section 3539 of this title.

§§ 4414 to 4420. Repealed. Pub. L. 93-288, title VII, § 703, formerly title VI, § 603, May 22, 1974, 88 Stat. 164; renumbered title VII, § 703, Pub. L. 103-337, div. C, title XXXIV, § 3411(a)(1), (2), Oct. 5, 1994, 108 Stat. 3100

Section 4414, Pub. L. 91-606, title II, § 204, Dec. 31, 1970, 84 Stat. 1748, related to use of local firms and individuals.

Section 4415, Pub. L. 91-606, title II, § 205, Dec. 31, 1970, 84 Stat. 1748, related to Federal grant-in-aid programs.

Section 4416, Pub. L. 91-606, title II, § 206, Dec. 31, 1970, 84 Stat. 1749, related to State disaster plans.

Section 4417, Pub. L. 91-606, title II, § 207, Dec. 31, 1970, 84 Stat. 1749, related to use and coordination of relief organizations.

Section 4418, Pub. L. 91-606, title II, § 208, Dec. 31, 1970, 84 Stat. 1750, related to restriction on duplication of benefits.

Section 4419, Pub. L. 91-606, title II, § 209, Dec. 31, 1970, 84 Stat. 1750, related to nondiscrimination restrictions in disaster assistance.

Section 4420, Pub. L. 91-606, title II, § 210, Dec. 31, 1970, 84 Stat. 1750, related to disaster warnings.

EFFECTIVE DATE OF REPEAL

Repeal effective Apr. 1, 1974, see section 605 of Pub. L. 93-288, set out as an Effective Date note under section 5121 of this title.

§§ 4431 to 4436. Repealed. Pub. L. 93-288, title VII, § 703, formerly title VI, § 603, May 22, 1974, 88 Stat. 164; renumbered title VII, § 703, Pub. L. 103-337, div. C, title XXXIV, § 3411(a)(1), (2), Oct. 5, 1994, 108 Stat. 3100

Section 4431, Pub. L. 91-606, title II, § 221, Dec. 31, 1970, 84 Stat. 1751, related to predisaster assistance.

Section 4432, Pub. L. 91-606, title II, § 222, Dec. 31, 1970, 84 Stat. 1751, related to emergency communications.

Section 4433, Pub. L. 91-606, title II, § 223, Dec. 31, 1970, 84 Stat. 1751, related to emergency transportation.

Section 4434, Pub. L. 91-606, title II, § 224, Dec. 31, 1970, 84 Stat. 1751, related to removal of debris.

Section 4435, Pub. L. 91-606, title II, § 225, Dec. 31, 1970, 84 Stat. 1751, related to fire suppression.

Section 4436, Pub. L. 91-606, title II, § 226, Dec. 31, 1970, 84 Stat. 1751, related to temporary housing assistance.

EFFECTIVE DATE OF REPEAL

Repeal effective Apr. 1, 1974, see section 605 of Pub. L. 93-288, set out as an Effective Date note under section 5121 of this title.

§ 4451. Transferred

CODIFICATION

Section, Pub. L. 91-606, title II, § 231, Dec. 31, 1970, 84 Stat. 1752; Pub. L. 92-385, § 6, Aug. 16, 1972, 86 Stat. 559, which related to small business disaster loans, was transferred to section 636a of Title 15, Commerce and Trade, and subsequently repealed.

§ 4452. Repealed. Pub. L. 93-24, § 7, Apr. 20, 1973, 87 Stat. 25

Section, Pub. L. 91-606, title II, § 232, Dec. 31, 1970, 84 Stat. 1753, provided for emergency farm loans. See section 1961 of Title 7, Agriculture.

§§ 4453 to 4456. Transferred

CODIFICATION

Section 4453, Pub. L. 91-606, title II, § 234, Dec. 31, 1970, 84 Stat. 1754, which related to disaster loan interest rates, was transferred to section 636b of Title 15, Commerce and Trade.

Section 4454, Pub. L. 91-606, title II, § 235, Dec. 31, 1970, 84 Stat. 1754, which related to prohibition on consideration of age of applicant for disaster loans, was transferred to section 636c of Title 15.

Section 4455(a), Pub. L. 91-606, title II, § 236(a), Dec. 31, 1970, 84 Stat. 1754, which related to authority of the Secretary of Agriculture to reschedule and refinance Federal loans under the Rural Electrification Administration, was transferred to section 912a of Title 7, Agriculture.

Section 4455(b), Pub. L. 91-606, title II, § 236(b), Dec. 31, 1970, 84 Stat. 1754, which related to authority of the Secretary of Housing and Urban Development to reschedule and refinance Federal loans, was transferred to section 3538 of this title.

Section 4456, Pub. L. 91-606, title II, § 237, Dec. 31, 1970, 84 Stat. 1754, which related to disaster aid to major sources of employment, was transferred to section 636d of Title 15, Commerce and Trade.

§§ 4457 to 4462. Repealed. Pub. L. 93-288, title VII, § 703, formerly title VI, § 603, May 22, 1974, 88 Stat. 164; renumbered title VII, § 703, Pub. L. 103-337, div. C, title XXXIV, § 3411(a)(1), (2), Oct. 5, 1994, 108 Stat. 3100

Section 4457, Pub. L. 91-606, title II, § 238, Dec. 31, 1970, 84 Stat. 1755, related to food stamp and surplus commodities programs.

Section 4458, Pub. L. 91-606, title II, § 239, Dec. 31, 1970, 84 Stat. 1755, related to legal services.

Section 4459, Pub. L. 91-606, title II, § 240, Dec. 31, 1970, 84 Stat. 1755, related to unemployment assistance.

Section 4460, Pub. L. 91-606, title II, § 241, Dec. 31, 1970, 84 Stat. 1756, related to community disaster grants to local governments.

Section 4461, Pub. L. 91-606, title II, § 242, Dec. 31, 1970, 84 Stat. 1756, related to timber sale contracts.

Section 4462, Pub. L. 91-606, title II, § 243, Dec. 31, 1970, 84 Stat. 1757, related to standards for residential structure restoration.

EFFECTIVE DATE OF REPEAL

Repeal effective Apr. 1, 1974, see section 605 of Pub. L. 93-288, set out as an Effective Date note under section 5121 of this title.

§§ 4481 to 4485. Repealed. Pub. L. 93-288, title VII, § 703, formerly title VI, § 603, May 22, 1974, 88 Stat. 164; renumbered title VII, § 703, Pub. L. 103-337, div. C, title XXXIV, § 3411(a)(1), (2), Oct. 5, 1994, 108 Stat. 3100

Section 4481, Pub. L. 91-606, title II, § 251, Dec. 31, 1970, 84 Stat. 1757, related to repair and restoration of damaged United States facilities.

Section 4482, Pub. L. 91-606, title II, § 252, Dec. 31, 1970, 84 Stat. 1757; Pub. L. 93-251 title I, § 45(a), Mar. 7, 1974, 88 Stat. 24, related to restoration of State and local public facilities.

Section 4483, Pub. L. 91-606, title II, § 253, Dec. 31, 1970, 84 Stat. 1758, related to priority to applications for public facility and public housing assistance in major disaster areas.

Section 4484, Pub. L. 91-606, title II, § 254, Dec. 31, 1970, 84 Stat. 1758, related to relocation assistance.

Section 4485, Pub. L. 91-606, title II, § 255, as added Pub. L. 92-209, § 1, Dec. 18, 1971, 85 Stat. 742, related to private medical care facilities grants for repair, reconstruction, or replacement of damaged or destroyed facilities.

EFFECTIVE DATE OF REPEAL

Repeal effective Apr. 1, 1974, see section 605 of Pub. L. 93-288, set out as an Effective Date note under section 5121 of this title.

CHAPTER 59—NATIONAL URBAN POLICY AND NEW COMMUNITY DEVELOPMENT

Sec.

4501. Congressional statement of purpose.

PART A—DEVELOPMENT OF A NATIONAL URBAN POLICY

4502. Congressional findings and declaration of policy.

4503. National Urban Policy Report.
 (a) Transmittal to Congress; contents.
 (b) Supplementary reports.
 (c) Advisory board.
 (d) Referral.

PART B—DEVELOPMENT OF NEW COMMUNITIES

4511 to 4524. Repealed.

4525. Real property taxation.

4526. Audit by General Accounting Office; records, access.

4527. General powers of Secretary.

4528 to 4532. Repealed.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 1439 of this title; title 12 section 1701g-5b.

§ 4501. Congressional statement of purpose

It is the policy of the Congress and the purpose of this chapter to provide for the development of a national urban policy and to encourage the rational, orderly, efficient, and economic growth, development, and redevelopment

of our States, metropolitan areas, cities, counties, towns, and communities in predominantly rural areas which demonstrate a special potential for accelerated growth; to encourage the prudent use and conservation of energy and our natural resources; and to encourage and support development which will assure our communities and their residents of adequate tax bases, community services, job opportunities, and good housing in well-balanced neighborhoods in socially, economically, and physically attractive living environments.

(Pub. L. 91-609, title VII, § 701(b), Dec. 31, 1970, 84 Stat. 1791; Pub. L. 95-128, title VI, § 601(a)(2)-(5), Oct. 12, 1977, 91 Stat. 1143.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this title", meaning title VII of Pub. L. 91-609, Dec. 31, 1970, 84 Stat. 1791, as amended, known as the Urban Growth and New Community Development Act of 1970, which enacted this chapter, amended sections 1453, 1460, and 1492 of this title, sections 371 and 1464 of Title 12, Banks and Banking, and section 461 of former Title 40, Public Buildings, Property, and Works, and enacted provisions set out as notes under sections 1453 and 4501 of this title. For complete classification of title VII to the Code, see Short Title note set out below and Tables.

AMENDMENTS

1977—Pub. L. 95-128 substituted "national urban policy" for "national urban growth policy", encouraged prudent use and conservation of energy, and provided for the assurance of the residents of the communities, and of good housing.

SHORT TITLE

Section 701(a) of title VII of Pub. L. 91-609, as amended by Pub. L. 95-128, title VI, § 601(a)(1), Oct. 12, 1977, 91 Stat. 1142, provided that: "This title [enacting this chapter, amending sections 1453, 1460, and 1492, of this title, sections 371 and 1464 of Title 12, Banks and Banking, and section 461 of former Title 40, Public Buildings, Property, and Works, and enacting provisions set out as notes under section 1453 of this title] may be cited as the 'National Urban Policy and New Community Development Act of 1970'."

PART A—DEVELOPMENT OF A NATIONAL URBAN POLICY

§ 4502. Congressional findings and declaration of policy

(a) The Congress finds that rapid changes in patterns of urban settlement, including change in population distribution and economic bases of urban areas, have created an imbalance between the Nation's needs and resources and seriously threaten our physical and social environment, and the financial viability of our cities, and that the economic and social development of the Nation, the proper conservation of our energy and other natural resources, and the achievement of satisfactory living standards depend upon the sound, orderly, and more balanced development of all areas of the Nation.

(b) The Congress further finds that Federal programs affect the location of population, economic growth, and the character of urban development; that such programs frequently conflict and result in undesirable and costly patterns of urban development and redevelopment which adversely affect the environment and wastefully

use energy and other natural resources; and that existing and future programs must be inter-related and coordinated within a system of orderly development and established priorities consistent with a national urban policy.

(c) To promote the general welfare and properly apply the resources of the Federal Government in strengthening the economic and social health of all areas of the Nation and more adequately protect the physical environment and conserve energy and other natural resources, the Congress declares that the Federal Government, consistent with the responsibilities of State and local government and the private sector, must assume responsibility for the development of a national urban policy which shall incorporate social, economic, and other appropriate factors. Such policy shall serve as a guide in making specific decisions at the national level which affect the pattern of urban development and redevelopment and shall provide a framework for development of interstate, State, and local urban policy.

(d) The Congress further declares that the national urban policy should—

(1) favor patterns of urbanization and economic development and stabilization which offer a range of alternative locations and encourage the wise and balanced use of physical and human resources in metropolitan and urban regions as well as in smaller urban places which have a potential for accelerated growth;

(2) foster the continued economic strength of all parts of the United States, including central cities, suburbs, smaller communities, local neighborhoods, and rural areas;

(3) encourage patterns of development and redevelopment which minimize disparities among States, regions, and cities;

(4) treat comprehensively the problems of poverty and employment (including the erosion of tax bases, and the need for better community services and job opportunities) which are associated with disorderly urbanization and rural decline;

(5) develop means to encourage good housing for all Americans without regard to race or creed;

(6) refine the role of the Federal Government in revitalizing existing communities and encouraging planned, large-scale urban and new community development;

(7) strengthen the capacity of general governmental institutions to contribute to balanced urban growth and stabilization; and

(8) increase coordination among Federal programs that seek to promote job opportunities and skills, decent and affordable housing, public safety, access to health care, educational opportunities, and fiscal soundness for urban communities and their residents.

(Pub. L. 91-609, title VII, §702, Dec. 31, 1970, 84 Stat. 1791; Pub. L. 95-128, title VI, §601(b), Oct. 12, 1977, 91 Stat. 1143; Pub. L. 98-479, title II, §204(i), Oct. 17, 1984, 98 Stat. 2233; Pub. L. 102-550, title IX, §921(1), Oct. 28, 1992, 106 Stat. 3883.)

AMENDMENTS

1992—Subsec. (d)(8). Pub. L. 102-550 added par. (8) and struck out former par. (8) which read as follows: “facili-

tate increased coordination in the administration of Federal programs so as to encourage desirable patterns of urban development and redevelopment, encourage the prudent use of energy and other natural resources, and protect the physical environment.”

1984—Subsec. (d)(8). Pub. L. 98-479 struck out “of” before “the physical environment”.

1977—Subsec. (a). Pub. L. 95-128, §601(b)(1), substituted “rapid changes in patterns of urban settlement, including change in population distribution and economic bases of urban areas, have created” for “the rapid growth of urban population and uneven expansion of urban development in the United States, together with a decline in farm population, slower growth in rural areas, and migration to the cities, has created” and included the threat to “social” environment and the financial viability of our cities, and conservation of “energy”.

Subsec. (b). Pub. L. 95-128, §601(b)(2), included findings respecting costly urban redevelopment and wasteful use of energy and struck out “growth” after “national urban”.

Subsec. (c). Pub. L. 95-128, §601(b)(3), included conservation of “energy”, struck out “growth” after “national urban” in first sentence and substituted in second sentence “urban development and redevelopment” for “urban growth” and “urban policy” for “growth and stabilization policy”.

Subsec. (d). Pub. L. 95-128, §601(b)(4)–(6), struck out “growth” before “policy” in introductory text; substituted in par. (3) “encourage patterns of development and redevelopment which minimize” for “help reverse trends of migration and physical growth which reinforce”; and in par. (8) substituted “urban development and redevelopment” for “urban growth and stabilization” and “protect” for “the protection” and required the national urban policy to “encourage” prudent use of resources, including “energy”.

§ 4503. National Urban Policy Report

(a) Transmittal to Congress; contents

The President shall transmit to the Congress, not later than June 1, 1993, and not later than the first day of June of every odd-numbered year thereafter, a Report on National Urban Policy which shall contribute to the formulation of such a policy, and in addition shall include—

(1) information, statistics, and significant trends relating to the pattern of urban development for the preceding two years;

(2) a summary of significant problems facing the United States as a result of urban trends and developments affecting the well-being of urban areas;

(3) an examination of the housing and related community development problems experienced by cities undergoing a growth rate which equals or exceeds the national average;

(4) an evaluation of the progress and effectiveness of Federal efforts designed to meet such problems and to carry out the national urban policy;

(5) an assessment of the policies and structure of existing and proposed interstate planning and developments affecting such policy;

(6) a review of State, local, and private policies, plans, and programs relevant to such policy;

(7) current and foreseeable needs in the areas served by policies, plans, and programs designed to carry out such policy, and the steps being taken to meet such needs; and

(8) recommendations for programs and policies for carrying out such policy, including legislative or administrative proposals—

(A) to promote coordination among Federal programs to assist urban areas;

(B) to enhance the fiscal capacity of fiscally distressed urban areas;

(C) to promote job opportunities in economically distressed urban areas and to enhance the job skills of residents of such areas;

(D) to generate decent and affordable housing;

(E) to reduce racial tensions and to combat racial and ethnic violence in urban areas;

(F) to combat urban drug abuse and drug-related crime and violence;

(G) to promote the delivery of health care to low-income communities in urban areas;

(H) to expand educational opportunities in urban areas; and

(I) to achieve the goals of the national urban policy.

(b) Supplementary reports

The President may transmit from time to time to the Congress supplementary reports on urban policy which shall include such supplementary and revised recommendations as may be appropriate.

(c) Advisory board

To assist in the preparation of the National Urban Policy Report and any supplementary reports, the President may establish an advisory board, or seek the advice from time to time of temporary advisory boards, the members of whom shall be drawn from among private citizens familiar with the problems of urban areas and from among Federal officials, Governors of States, mayors, county officials, members of State and local legislative bodies, and others qualified to assist in the preparation of such reports.

(d) Referral

The National Urban Policy Report shall, when transmitted to Congress, be referred in the Senate to the Committee on Banking, Housing, and Urban Affairs, and in the House of Representatives to the Committee on Banking, Finance and Urban Affairs.

(Pub. L. 91-609, title VII, §703, Dec. 31, 1970, 84 Stat. 1792; Pub. L. 95-128, title VI, §601(c), Oct. 12, 1977, 91 Stat. 1143; Pub. L. 102-550, title IX, §921(2), (3), Oct. 28, 1992, 106 Stat. 3883, 3884.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102-550, §921(2)(A), substituted “, not later than June 1, 1993, and not later than the first day of June of every odd-numbered year thereafter,” for “during February 1978, and during February of every even-numbered year thereafter,” in introductory provisions.

Subsec. (a)(8). Pub. L. 102-550, §921(2)(B), which directed the substitution of “legislative or administrative proposals—” and subpars. (A) to (I) for “‘such’ and all that follows through the end of the sentence”, was executed by making the substitution for “such legislation and administrative actions as may be deemed necessary and desirable.” which followed “such” the second place it appeared to reflect the probable intent of Congress.

Subsec. (d). Pub. L. 102-550, §921(3), added subsec. (d).
1977—Subsec. (a). Pub. L. 95-128, §601(c)(1), inserted provisions in introductory text respecting transmittal

of a Report on National Urban Policy to the Congress and struck out prior similar provisions which required the President to utilize the capacity of his office, adequately organized and staffed for the purpose, through an identified unit of the Domestic Council, and of the departments and agencies within the executive branch to collect, analyze, and evaluate such statistics, data, and other information (including demographic, economic, social, land use, environmental, and governmental information) as would enable the President to transmit to the Congress during the month of February 1972 and every other year thereafter a Report on Urban Growth for the preceding two calendar years.

Subsec. (a)(1) to (8). Pub. L. 95-128, §601(c)(2)-(6), in amending paragraphs, provided as follows:

par. (1), substituted “, statistics, and significant trends relating to the pattern of urban development for the preceding two years” for “and statistics, describing characteristics of urban growth and stabilization and identifying significant trends and developments”;

par. (2), struck out “growth” after “urban” and inserted end text “affecting the well-being of urban areas”;

par. (3), inserted provisions respecting problems experienced by cities with a growth rate equalling or exceeding the national average and redesignated former par. (3) as (4);

par. (4), redesignated former par. (3) as (4), and as so redesignated struck out “growth” before “policy”, and redesignated former par. (4) as (5); and

pars. (5) to (8), redesignated former pars. (4) to (7) as (5) to (8), respectively.

Subsec. (b). Pub. L. 95-128, §601(c)(7), substituted “urban policy” for “urban growth”.

Subsec. (c). Pub. L. 95-128, §601(c)(8), substituted “National Urban Policy Report” and “urban areas” for “Report on Urban Growth” and “urban growth”, respectively.

CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of reporting provisions in subsec. (a) of this section, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and item 1 on page 40 of House Document No. 103-7.

PART B—DEVELOPMENT OF NEW COMMUNITIES

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in title 12 section 1464.

§§ 4511 to 4524. Repealed. Pub. L. 98-181, title IV, § 474(e), Nov. 30, 1983, 97 Stat. 1239

The new communities program was liquidated and its assets and liabilities transferred pursuant to sections 1701g-5a and 1701g-5b of Title 12, Banks and Banking.

Section 4511, Pub. L. 91-609, title VII, §710, Dec. 31, 1970, 84 Stat. 1793, set out Congressional findings and purpose in setting up program for development of new communities.

Section 4512, Pub. L. 91-609, title VII, §711, Dec. 31, 1970, 84 Stat. 1795; Pub. L. 93-383, title VIII, §803(a)(1),

(e), Aug. 22, 1974, 88 Stat. 725, defined terms used in this part.

Section 4513, Pub. L. 91-609, title VII, §712, Dec. 31, 1970, 84 Stat. 1796, set out conditions under which a new community development program qualified for assistance under this part.

Section 4514, Pub. L. 91-609, title VII, §713, Dec. 31, 1970, 84 Stat. 1796; Pub. L. 93-117, §12, Oct. 2, 1973, 87 Stat. 423; Pub. L. 93-383, title VIII, §803(a)(1), (c), Aug. 22, 1974, 88 Stat. 725, authorized guarantee of bonds, notes, debentures, and other obligations in connection with approved new community developments.

Section 4515, Pub. L. 91-609, title VII, §714, Dec. 31, 1970, 84 Stat. 1797; Pub. L. 93-383, title VIII, §803(a)(1), Aug. 22, 1974, 88 Stat. 725, authorized making of loans by Secretary in connection with new community developments.

Section 4516, Pub. L. 91-609, title VII, §715, Dec. 31, 1970, 84 Stat. 1798; Pub. L. 93-383, title VIII, §803(a)(1), Aug. 22, 1974, 88 Stat. 725, provided for public service grants and authorized appropriations therefor.

Section 4517, Pub. L. 91-609, title VII, §716, Dec. 31, 1970, 84 Stat. 1798, set limitations on guarantees and loans.

Section 4518, Pub. L. 91-609, title VII, §717, Dec. 31, 1970, 84 Stat. 1798; Pub. L. 97-35, title III, §339F, Aug. 13, 1981, 95 Stat. 418, created a revolving fund for use in connection with the new communities development program.

Section 4519, Pub. L. 91-609, title VII, §718, Dec. 31, 1970, 84 Stat. 1799; Pub. L. 92-213, §7, Dec. 22, 1971, 85 Stat. 776; Pub. L. 93-383, title VIII, §803(d), Aug. 22, 1974, 88 Stat. 725, provided for supplementary grants for carrying out new community assistance projects.

Section 4520, Pub. L. 91-609, title VII, §719, Dec. 31, 1970, 84 Stat. 1800, authorized Secretary to provide technical assistance to private and public bodies in carrying out new community development programs.

Section 4521, Pub. L. 91-609, title VII, §720, Dec. 31, 1970, 84 Stat. 1800; Pub. L. 94-375, §19, Aug. 3, 1976, 90 Stat. 1077; Pub. L. 95-128, title II, §208, Oct. 12, 1977, 91 Stat. 1130; Pub. L. 95-406, §4, Sept. 30, 1978, 92 Stat. 880; Pub. L. 95-557, title III, §306, Oct. 31, 1978, 92 Stat. 2097, provided for financial assistance for planning new community development programs.

Section 4522, Pub. L. 91-609, title VII, §721, Dec. 31, 1970, 84 Stat. 1801, authorized establishment and collection of fees and charges for the guarantees and other assistance provided in the new communities development program.

Section 4523, Pub. L. 91-609, title VII, §722, Dec. 31, 1970, 84 Stat. 1801, directed Secretary to develop methods of encouraging involvement of small builders in new communities development program.

Section 4524, Pub. L. 91-609, title VII, §723, Dec. 31, 1970, 84 Stat. 1801, provided authority for new communities demonstration projects.

SAVINGS PROVISION

Section 474(e) of Pub. L. 98-181 provided in part that: "Section 717 of title VII [42 U.S.C. 4518] shall remain in effect until completion of the transfer required in title I of the Department of Housing and Urban Development-Independent Agencies Appropriation Act, 1984 [12 U.S.C. 1701g-5a]."

Any actions taken, prior to repeal, under the authority of sections 4511 to 4524 and 4528 to 4532 of this title to continue to be valid, with nothing in the repeal impairing the validity of any guarantees which have been made pursuant to this chapter and with such guarantees continuing to be governed by the provisions of this chapter, as it existed immediately before Nov. 30, 1983, see section 474(e) of Pub. L. 98-181, set out in part as a note under section 3901 of this title.

§ 4525. Real property taxation

Nothing in this part shall be construed to exempt any real property that may be acquired and held by the Secretary as a result of the ex-

ercise of lien or subrogation rights from real property taxation to the same extent, according to its value, as other real property is taxed.

(Pub. L. 91-609, title VII, §724, Dec. 31, 1970, 84 Stat. 1801.)

§ 4526. Audit by General Accounting Office; records, access

Insofar as they relate to any guarantees, loans, or grants made pursuant to this part, the financial transactions of recipients of Federal assistance may be audited by the General Accounting Office under such rules and regulations as may be prescribed by the Comptroller General of the United States. The representatives of the General Accounting Office shall have access to all books, accounts, records, reports, files and all other papers, things, or property belonging to or in use by such recipients pertaining to such financial transactions and necessary to facilitate the audit.

(Pub. L. 91-609, title VII, §725, Dec. 31, 1970, 84 Stat. 1801.)

§ 4527. General powers of Secretary

In the performance of, and with respect to, the functions, powers, and duties vested in him by this part, the Secretary, in addition to any authority otherwise vested in him, shall—

(1) have the functions, powers, and duties (including the authority to issue rules and regulations) set forth in section 1749a,¹ except subsections (c)(2), (c)(4), (d), and (f), of title 12: *Provided*, That subsection (a)(1) of section 1749a¹ of title 12 shall not apply with respect to functions, powers, and duties under section 4520¹ of this title;

(2) have the power, notwithstanding any other provision of law, in connection with any assistance under this part, whether before or after any default, to provide by contract for the extinguishment upon default of any redemption, equitable, legal, or other right, title, or interest of the private new community developer or State land development agency in any mortgage, deed, trust, or other instrument held by or on behalf of the Secretary for the protection of the security interests of the United States; and

(3) have the power to foreclose on any property or commence any action to protect or enforce any right conferred upon him by law, contract, or other agreement, and bid for and purchase at any foreclosure or other sale any property in connection with which he has provided assistance pursuant to this part. In the event of any such acquisition, the Secretary may, notwithstanding any other provision of law relating to the acquisition, handling, or disposal of real property by the United States, complete, administer, remodel and convert, dispose of, lease, and otherwise deal with, such property. Notwithstanding any other provision of law, the Secretary shall also have power to pursue to final collection by way of compromise or otherwise all claims acquired by him in connection with any security, subroga-

¹ See References in Text note below.

tion, or other rights obtained by him in administering this part.

(Pub. L. 91-609, title VII, § 726, Dec. 31, 1970, 84 Stat. 1801.)

REFERENCES IN TEXT

Section 1749a of title 12, referred to in par. (1), was repealed by Pub. L. 99-498, title VII, § 702, Oct. 17, 1986, 100 Stat. 1545.

Section 4520 of this title, referred to in par. (1), was repealed by Pub. L. 98-181, title IV, § 474(e), Nov. 30, 1983, 97 Stat. 1239.

§§ 4528 to 4532. Repealed. Pub. L. 98-181, title IV, § 474(e), Nov. 30, 1983, 97 Stat. 1239

Section 4528, Pub. L. 91-609, title VII, § 727(a), Dec. 31, 1970, 84 Stat. 1802, provided for termination of new community development projects under chapter 48 (§ 3901 et seq.) of this title and transition provisions for projects under this part.

Section 4529, Pub. L. 91-609, title VII, § 727(f), Dec. 31, 1970, 84 Stat. 1803, provided for application of Federal labor standards for laborers and mechanics employed by contractors and subcontractors in new communities development program.

Section 4530, Pub. L. 91-609, title VII, § 727(g), Dec. 31, 1970, 84 Stat. 1803, directed that the interest paid on obligations issued by State land development agencies be included as gross income for purposes of chapter 1 of title 26.

Section 4531, Pub. L. 91-609, title VII, § 728, Dec. 31, 1970, 84 Stat. 1803, authorized use of funds under the new communities development program jointly with funds available under other Federal assistance programs.

Section 4532, Pub. L. 91-609, title VII, § 729, Dec. 31, 1970, 84 Stat. 1804; Pub. L. 93-383, title VIII, § 803(a), (b), Aug. 22, 1974, 88 Stat. 725, provided for establishment and operation of New Community Development Corporation within Department of Housing and Urban Development.

CHAPTER 60—COMPREHENSIVE ALCOHOL ABUSE AND ALCOHOLISM PREVENTION, TREATMENT, AND REHABILITATION PROGRAM

Sec.

4541. Congressional findings and declaration of purpose.

4542. Congressional declaration for utilization of programs under other Federal laws in fields of health and social services.

SUBCHAPTER I—NATIONAL INSTITUTE ON, AND INTERAGENCY COMMITTEE ON FEDERAL ACTIVITIES FOR, ALCOHOL ABUSE AND ALCOHOLISM; REPORTS AND RECOMMENDATIONS

4551 to 4553. Repealed or Transferred.

SUBCHAPTER II—ALCOHOL ABUSE AND ALCOHOLISM PREVENTION, TREATMENT, AND REHABILITATION PROGRAMS FOR GOVERNMENT AND OTHER EMPLOYEES

4561. Transferred.

SUBCHAPTER III—TECHNICAL ASSISTANCE AND FEDERAL GRANTS AND CONTRACTS

PART A—TECHNICAL ASSISTANCE

4571 to 4574. Repealed or Transferred.

PART B—IMPLEMENTATION AND PROJECT GRANTS AND CONTRACTS

4576. Repealed.

4577. Grants and contracts for demonstration of new and more effective drug and alcohol abuse prevention, treatment, and rehabilitation programs.

Sec.

(a) Projects and programs.

(b) Community participation.

(c) Application, coordination of applications in State, evaluation of projects and programs; review and recommendation by Council; criteria for approval; special consideration for underserved populations; authorization from chief executive officer required; maximum amount and duration of grants; applicant to provide proposed performance standards; drug abuse programs included.

4578. Authorizations of appropriations.

PART C—ADMISSION TO HOSPITALS AND OUTPATIENT FACILITIES; CONFIDENTIALITY OF RECORDS

4581, 4582. Transferred.

SUBCHAPTER IV—RESEARCH

4585 to 4588. Repealed or Transferred.

SUBCHAPTER V—GENERAL PROVISIONS

4591. Separability.

4592. Recordkeeping for audit.

4593. Payments.

4594. Contract authority in appropriation Acts.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 217a-1, 4542 of this title; title 38 section 7334.

§ 4541. Congressional findings and declaration of purpose

(a) The Congress finds that—

(1) alcohol is one of the most dangerous drugs and the drug most frequently abused in the United States;

(2) approximately ten million, or 7 percent, of the adults in the United States are alcoholics or problem drinkers;

(3) it is estimated that alcoholism and other alcohol related problems cost the United States over \$43,000,000,000 annually in lost production, medical and public assistance expenditures, police and court costs, and motor vehicle and other accidents;

(4) alcohol abuse is found with increasing frequency among persons who are multiple-drug abusers and among former heroin users who are being treated in methadone maintenance programs;

(5) alcohol abuse is being discovered among growing numbers of youth;

(6) alcohol abuse and alcoholism have a substantial impact on the families of alcohol abusers and alcoholics and contributes to domestic violence;

(7) alcohol abuse and alcoholism, together with abuse of other legal and illegal drugs, present a need for prevention and intervention programs designed to reach the general population and members of high risk populations such as youth, women, the elderly, and families of alcohol abusers and alcoholics; and

(8) alcoholism is an illness requiring treatment and rehabilitation through the assistance of a broad range of community health and social services and with the cooperation of law enforcement agencies, employers, employee associations, and associations of concerned individuals.

(b) It is the policy of the United States and the purpose of this chapter to approach alcohol abuse and alcoholism from a comprehensive community care standpoint, and to meet the problems of alcohol abuse and alcoholism through—

(1) comprehensive Federal, State, and local planning for, and effective use of, Federal assistance to States, and direct Federal assistance to community-based programs to meet the urgent needs of special populations, in coordination with all other governmental and nongovernmental sources of assistance;

(2) the development of methods for diverting problem drinkers from criminal justice systems into prevention and treatment programs;

(3) the development and encouragement of prevention programs designed to combat the spread of alcoholism, alcohol abuse, and abuse of other legal and illegal drugs;

(4) the development and encouragement of effective occupational prevention and treatment programs within government and in cooperation with the private sector; and

(5) increased Federal commitment to research into the behavioral and biomedical etiology of, the treatment of, and the mental and physical health and social and economic consequences of, alcohol abuse and alcoholism.

(Pub. L. 91-616, §2, as added Pub. L. 93-282, title I, §102(a), May 14, 1974, 88 Stat. 126; amended Pub. L. 94-371, §2, July 26, 1976, 90 Stat. 1035; Pub. L. 95-622, title II, §268(a), Nov. 9, 1978, 92 Stat. 3437; Pub. L. 96-180, §2, Jan. 2, 1980, 93 Stat. 1301.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original “this Act”, meaning Pub. L. 91-616, Dec. 31, 1970, 84 Stat. 1848, as amended, known as the “Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970”. For complete classification of this Act to the Code, see Short Title note below and Tables.

AMENDMENTS

1980—Subsec. (a)(2). Pub. L. 96-180, §2(a), substituted current findings of number of alcoholics or problem drinkers in the country (approximately ten million or 7 percent of the adults) for 1974 findings of number of alcohol abusers and alcoholics of estimated number of ninety-five million drinkers in the Nation (minimum of nine million or 7 per centum of the adults).

Subsec. (a)(3). Pub. L. 96-180, §2(a), substituted current findings respecting annual cost of over \$43,000,000,000 to the United States for alcoholism and other related problems in lost production, motor vehicle and other accidents, and other items, for 1974 findings respecting minimum annual problem drinking costs of \$15,000,000 to the national economy in lost working time and identical other items.

Subsec. (a)(6). Pub. L. 96-180, §2(b)(1), inserted congressional finding respecting contribution of alcohol abuse and alcoholism to domestic violence.

Subsec. (a)(7). Pub. L. 96-180, §2(b)(3), added par. (7). Former par. (7) redesignated (8).

Subsec. (a)(8). Pub. L. 96-180, §2(b)(2), redesignated former par. (7) as (8) and enlisted cooperation of employers, employee associations, and associations of concerned individuals in treatment and rehabilitation of alcoholics.

Subsec. (b)(2). Pub. L. 96-180, §2(c)(1), struck out “and” at end.

Subsec. (b)(3) to (5). Pub. L. 96-180, §2(c)(3), added pars. (3) and (4) and redesignated former par. (3) as (5).

1978—Subsec. (a)(6), (7). Pub. L. 95-622 added par. (6) and redesignated former par. (6) as (7).

1976—Subsec. (b). Pub. L. 94-371 restructured provisions and inserted authorization for increased Federal commitment to research into the behavioral and biomedical etiology of alcohol abuse and alcoholism and the treatment and consequences of alcohol abuse and alcoholism.

SHORT TITLE OF 1980 AMENDMENT

Section 1(a) of Pub. L. 96-180 provided that: “This Act [enacting section 4594, amending this section and sections 4551 to 4553, 4561, 4571 to 4573, 4576 to 4578, 4585, 4587, and 4588 of this title, and enacting provisions set out as notes under this section and section 4552 of this title] may be cited as the ‘Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act Amendments of 1979’.”

SHORT TITLE OF 1976 AMENDMENT

Section 1 of Pub. L. 94-371 provided: “That this Act [enacting sections 4578 and 4585 to 4588 of this title, amending this section, sections 218, 3511, 4571 to 4573, 4576, 4577, and 4581 of this title, and sections 1176 and 1177 of Title 21, Food and Drugs, and enacting provisions set out as notes under sections 4573 and 4577 of this title, and sections 1176 and 1177 of Title 21] may be cited as the ‘Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act Amendments of 1976’.”

SHORT TITLE OF 1974 AMENDMENT

Section 101 of title I of Pub. L. 93-282 provided that: “This title [enacting this section and sections 4542, 4553, 4576, and 4577 of this title, amending sections 242a, 4571, 4572, 4573, 4581, and 4582 of this title, and enacting provisions set out as notes under sections 4581 and 4582 of this title] may be cited as the ‘Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act Amendments of 1974’.”

SHORT TITLE

Section 1 of Pub. L. 91-616 provided that: “This Act [enacting this chapter and section 2688j-2 of this title and amending sections 218, 246, 2688h and 2688t of this title] may be cited as the ‘Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970’.”

NATIONAL COMMISSION ON ALCOHOLISM AND OTHER ALCOHOL-RELATED PROBLEMS; ESTABLISHMENT; EXECUTIVE SECRETARY; INTERIM AND FINAL REPORTS OF STUDY; TERMINATION; AUTHORIZATION OF APPROPRIATIONS

Section 18 of Pub. L. 96-180 as amended by Pub. L. 96-88, title V, §509(b), Oct. 17, 1979; Pub. L. 98-24, §5(a)(2), Apr. 26, 1983, 97 Stat. 183, 93 Stat. 695, provided that:

“(a)(1) There is established a Commission to be known as the National Commission on Alcoholism and Other Alcohol-Related Problems (hereinafter in this section referred to as the ‘Commission’). The Commission shall be composed of—

“(A) four Members of the Senate appointed by the President of the Senate upon the recommendation of the majority and minority leaders;

“(B) four Members of the House of Representatives appointed by the Speaker of the House of Representatives upon the recommendation of the majority and minority leaders;

“(C) nine public members appointed by the President; and

“(D) not more than four nonvoting members appointed by the President from individuals employed in the administration of programs of the Federal Government which affect the prevention and treatment of alcoholism and the rehabilitation of alcoholics and alcohol abusers.

At no time shall more than two members appointed under subparagraph (A), more than two of the members

appointed under subparagraph (B), or more than five of the members appointed under subparagraph (C) be members of the same political party.

“(2)(A) The President shall designate one of the members of the Commission as Chairman, and one as Vice Chairman. Nine members of the Commission shall constitute a quorum, but a lesser number may conduct hearings. Members appointed under paragraph (1)(D) shall not be considered in determining a quorum of the Commission.

“(B) Members of the Commission shall serve without compensation, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of the duties vested in the Commission.

“(C) The Commission shall meet at the call of the Chairman or at the call of the majority of the members thereof.

“(3)(A) The Commission may appoint, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, an executive secretary to assist the Commission in carrying out its functions.

“(B) The Secretary shall provide the Commission with such additional professional and clerical staff, such information, and the services of such consultants as the Secretary determines necessary for the Commission to carry out effectively its functions.

“(C) The Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out its duties under this section. Upon request of the Chairman of the Commission, the head of such department or agency shall furnish such information to the Commission consistent with applicable laws and regulations with respect to the privacy of medical records.

“(b) The Commission shall conduct a study of alcoholism and alcohol-related problems and shall include in the study—

“(1) an assessment of unmet treatment and rehabilitation needs of alcoholics and their families;

“(2) an assessment of personnel needs in the fields of research, treatment, rehabilitation, and prevention;

“(3) an assessment of the integration and financing of alcoholism treatment and rehabilitation into health and social health care services within communities;

“(4) a study of the relationship of alcohol use to aggressive behavior and crime;

“(5) a study of the relationship of alcohol use to family violence;

“(6) a study of the relationship of alcoholism to illnesses, particularly those illnesses with a high stress component, among family members of alcoholics;

“(7) an evaluation of the effectiveness of prevention programs, including the relevance of alcohol control laws and regulations to alcoholism and alcohol-related problems;

“(8) a survey of the unmet research needs in the area of alcoholism and alcohol-related problems;

“(9) a survey of the prevalence of occupational alcoholism and alcohol abuse programs offered by Federal contractors; and

“(10) an evaluation of the needs of special and underserved population groups, including American Indians, Alaskan Natives, Native Hawaiians, Native American Pacific Islanders, youth, the elderly, women, and the handicapped and assess the adequacy of existing services to fulfill such needs.

“(c) The Commission shall submit to the President and the Congress such interim reports as it deems advisable and shall within two years after the date on which funds first become available to carry out this section submit to the President and the Congress a final report which shall contain a detailed statement of its findings and conclusions and also such recommendations for legislation and administrative actions as it deems appropriate. The Commission shall cease to exist sixty days after the final report is submitted under this subsection.

“(d) The Secretary of Health and Human Services shall be responsible for the coordination of the activities of the Commission.

“(e) There are authorized to be appropriated for the purposes of this section \$1,000,000 to remain available until the expiration of the Commission.”

§ 4542. Congressional declaration for utilization of programs under other Federal laws in fields of health and social services

The Congress declares that, in addition to the programs under the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 [42 U.S.C. 4541 et seq.], programs under other Federal laws which provide Federal or federally assisted research, prevention, treatment, or rehabilitation in the fields of health and social services should be appropriately utilized to help eradicate alcohol abuse and alcoholism as a major problem.

(Pub. L. 93-282, title I, §102(b), May 14, 1974, 88 Stat. 126.)

REFERENCES IN TEXT

The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970, referred to in text, is Pub. L. 91-616, Dec. 31, 1970, 84 Stat. 1848, as amended, which is classified principally to this chapter (§4541 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 4541 of this title and Tables.

CODIFICATION

Section was not enacted as part of the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 which comprises this chapter.

SUBCHAPTER I—NATIONAL INSTITUTE ON, AND INTERAGENCY COMMITTEE ON FEDERAL ACTIVITIES FOR, ALCOHOL ABUSE AND ALCOHOLISM; REPORTS AND RECOMMENDATIONS

§ 4551. Transferred

CODIFICATION

Section, Pub. L. 91-616, title I, §101, Dec. 31, 1970, 84 Stat. 1848; Pub. L. 93-282, title II, §203(a), May 14, 1974, 88 Stat. 135; Pub. L. 96-180, §3, Jan. 2, 1980, 93 Stat. 1302; Pub. L. 97-35, title IX, §966(a), Aug. 13, 1981, 95 Stat. 595, which established the National Institute on Alcohol Abuse and Alcoholism, was redesignated section 502 of the Public Health Service Act by Pub. L. 98-24, §2(b)(3), Apr. 26, 1983, 97 Stat. 177, and is classified to section 290aa-1 of this title.

§§ 4552, 4553. Repealed. Pub. L. 98-24, §2(c)(1), Apr. 26, 1983, 97 Stat. 182

Section 4552, Pub. L. 91-616, title I, §102, Dec. 31, 1970, 84 Stat. 1848; Pub. L. 93-282, title II, §203(b)(1), (2)(A), May 14, 1974, 88 Stat. 136; Pub. L. 96-180, §4, Jan. 2, 1980, 93 Stat. 1302; Pub. L. 97-35, title IX, §966(b), Aug. 13, 1981, 95 Stat. 595, required reports and recommendations by the Secretary to the Congress and to the President on programs of alcohol abuse and alcoholism. See section 290aa-4 of this title.

Section 4553, Pub. L. 91-616, title I, §103, as added Pub. L. 93-282, title I, §131, May 14, 1974, 88 Stat. 133; amended Pub. L. 96-180, §5, Jan. 2, 1980, 93 Stat. 1302; Pub. L. 97-35, title IX, §966(c), Aug. 13, 1981, 95 Stat. 595, established the Interagency Committee on Federal Activities for Alcohol Abuse and Alcoholism.

SUBCHAPTER II—ALCOHOL ABUSE AND ALCOHOLISM PREVENTION, TREATMENT, AND REHABILITATION PROGRAMS FOR GOVERNMENT AND OTHER EMPLOYEES

§ 4561. Transferred

CODIFICATION

Section, Pub. L. 91-616, title II, §201, Dec. 31, 1970, 84 Stat. 1849; Pub. L. 96-180, §6(a), (b)(1), Jan. 2, 1980, 93 Stat. 1302; Pub. L. 97-35, title IX, §§961, 966(d), (e), Aug. 13, 1981, 95 Stat. 592, 595, which provided for programs of alcohol abuse and alcoholism prevention for government and other employees, was redesignated section 521 of the Public Health Service Act by Pub. L. 98-24, §2(b)(13), Apr. 26, 1983, 97 Stat. 181, and is classified to section 290dd-1 of this title.

SUBCHAPTER III—TECHNICAL ASSISTANCE AND FEDERAL GRANTS AND CONTRACTS

PART A—TECHNICAL ASSISTANCE

§ 4571. Transferred

CODIFICATION

Section, Pub. L. 91-616, title III, §301, Dec. 31, 1970, 84 Stat. 1849; Pub. L. 92-554, Oct. 25, 1972, 86 Stat. 1167; Pub. L. 93-282, title I, §105(a), May 14, 1974, 88 Stat. 127; Pub. L. 94-371, §3(a), July 26, 1976, 90 Stat. 1035; Pub. L. 96-180, §7, Jan. 2, 1980, 93 Stat. 1303; Pub. L. 97-35, title IX, §962(a), Aug. 13, 1981, 95 Stat. 592, which provided for a program of technical assistance to States, was redesignated section 520 of the Public Health Service Act by Pub. L. 98-24, §2(b)(13), Apr. 26, 1983, 97 Stat. 181, and is classified to section 290dd of this title.

§§ 4572, 4573. Repealed. Pub. L. 97-35, title IX, § 962(b), Aug. 13, 1981, 95 Stat. 593

Section 4572, Pub. L. 91-616, title III, §302, Dec. 31, 1970, 84 Stat. 1849; Pub. L. 93-282, title I, §106(a), May 14, 1974, 88 Stat. 127; Pub. L. 94-371, §3(b), July 26, 1976, 90 Stat. 1035; Pub. L. 95-83, title III, §311(b), Aug. 1, 1977, 91 Stat. 397; Pub. L. 96-180, §8, Jan. 2, 1980, 93 Stat. 1303, related to amounts, criteria, etc., for State allotments.

Section 4573, Pub. L. 91-616, title III, §303, Dec. 31, 1970, 84 Stat. 1850; Pub. L. 93-282, title I, §106(b), May 14, 1974, 88 Stat. 127; Pub. L. 94-371, §5(a), (b)(1), (c), July 26, 1976, 90 Stat. 1036; Pub. L. 95-83, title III, §311(a)(1), (2), Aug. 1, 1977, 91 Stat. 397; Pub. L. 95-622, title II, §268(b), Nov. 9, 1978, 92 Stat. 3437; Pub. L. 96-79, title I, §115(j)(1), Oct. 4, 1979, 93 Stat. 610; Pub. L. 96-180, §9, Jan. 2, 1980, 93 Stat. 1303, related to submission, contents, etc., for State plans.

§ 4574. Transferred

CODIFICATION

Section, Pub. L. 91-616, title III, §304, as added Pub. L. 93-282, title I, §107, May 14, 1974, 88 Stat. 127, which related to special grants for implementation of the Uniform Alcoholism and Intoxication Treatment Act, was transferred to section 4576 of this title and subsequently repealed.

PART B—IMPLEMENTATION AND PROJECT GRANTS AND CONTRACTS

§ 4576. Repealed. Pub. L. 97-35, title IX, § 962(b), Aug. 13, 1981, 95 Stat. 593

Section, Pub. L. 91-616, title III, §310, formerly §304, as added Pub. L. 93-282, title I, §107, May 14, 1974, 88 Stat. 127; amended Pub. L. 94-273, §2(26), Apr. 21, 1976, 90 Stat. 376; renumbered and amended Pub. L. 94-371, §4(a), (b), (c)(1), (2), (d), July 26, 1976, 90 Stat. 1035, 1036; Pub. L. 96-180, §10, Jan. 2, 1980, 93 Stat. 1304, related to special grants for implementation of Uniform Alcoholism and Intoxication Treatment Act.

§ 4577. Grants and contracts for demonstration of new and more effective drug and alcohol abuse prevention, treatment, and rehabilitation programs

(a) Projects and programs

The Secretary, acting through the Institute, may make grants to public and nonprofit private entities and may enter into contracts with public and private entities and with individuals—

(1) to conduct demonstration and evaluation projects, with a high priority on prevention and early intervention projects in occupational and educational settings and on modified community living and work-care arrangements such as halfway houses, recovery homes, and supervised home care, and with particular emphasis on developing new and more effective alcohol abuse and alcoholism prevention, treatment, and rehabilitation programs,

(2) to support projects of a demonstrable value in developing methods for the effective coordination of all alcoholism treatment, training, prevention, and research resources available within a health service area established under section 300¹ of this title, and

(3) to provide education and training, which may include additional training to enable treatment personnel to meet certification requirements of public or private accreditation or licensure, or requirements of third-party payors,

for the prevention and treatment of alcohol abuse and alcoholism and for the rehabilitation of alcohol abusers and alcoholics.

(b) Community participation

Projects and programs for which grants and contracts are made under this section shall (1) be responsive to special requirements of handicapped individuals in receiving such services; (2) whenever possible, be community based, seek (in the case of prevention and treatment services) to insure care of good quality in general community care facilities and under health insurance plans, and be integrated with, and provide for the active participation of, a wide range of public and nongovernmental agencies, organizations, institutions, and individuals; (3) where a substantial number of the individuals in the population served by the project or program are of limited English-speaking ability, utilize the services of outreach workers fluent in the language spoken by a predominant number of such individuals and develop a plan and make arrangements responsive to the needs of such population for providing services to the extent practicable in the language and cultural context most appropriate to such individuals, and identify an individual employed by the project or program, or who is available to the project or program on a full-time basis, who is fluent both in that language and English and whose responsibilities shall include providing guidance to the individuals of limited English speaking ability and to appropriate staff members with respect to cultural sensitivities and bridging linguistic

¹ See References in Text note below.

and cultural differences; and (4) where appropriate utilize existing community resources (including community mental health centers).

(c) Application, coordination of applications in State, evaluation of projects and programs; review and recommendation by Council; criteria for approval; special consideration for underserved populations; authorization from chief executive officer required; maximum amount and duration of grants; applicant to provide proposed performance standards; drug abuse programs included

(1) In administering this section, the Secretary shall require coordination of all applications for projects and programs in a State.

(2)(A) Each applicant from within a State, upon filing its application with the Secretary for a grant or contract under this section, shall submit a copy of its application for review by the State agency responsible for the administration of alcohol abuse and alcoholism prevention, treatment, and rehabilitation activities. Such State agency shall be given not more than thirty days from the date of receipt of the application to submit to the Secretary, in writing, an evaluation of the project or program set forth in the application. Such evaluation shall include comments on the relationship of the project to other projects and programs pending and approved and to any State comprehensive plan for treatment and prevention of alcohol abuse and alcoholism. The State shall furnish the applicant a copy of any such evaluation.

(B)(i) Except as provided in clause (ii), each application for a grant under this section shall be submitted by the Secretary to the National Advisory Council on Alcohol Abuse and Alcoholism for its review. The Secretary may approve an application for a grant under this section only if it is recommended for approval by such Council.

(ii) Clause (i) shall not apply to an application for a grant under this section for a project or program for any period of 12 consecutive months for which period payments under such grant will be less than \$250,000, if an application for a grant under this section for such project or program and for a period of time which includes such 12-month period has been submitted to, and approved by, the Secretary.

(3) Approval of any application for a grant or contract by the Secretary, including the earmarking of financial assistance for a program or project, may be granted only if the application substantially meets a set of criteria established by the Secretary that—

(A) provides that the projects and programs for which assistance under this section is sought will be substantially administered by or under the supervision of the applicant;

(B) provides for such methods of administration as are necessary for the proper and efficient operation of such programs and projects; and

(C) provides for such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of and accounting for Federal funds paid to the applicant.

(4) The Secretary shall encourage the submission of and give special consideration to applica-

tions under this section for programs and projects aimed at underserved populations such as racial and ethnic minorities, Native Americans (including Native Hawaiians and Native American Pacific Islanders), youth, the elderly, women, handicapped individuals, public inebriates, and families of alcoholics.

(5)(A) No grant may be made under this section to a State or to any entity within the government of a State unless the grant application has been duly authorized by the chief executive officer of such State.

(B) No grant or contract may be made under this section for a period in excess of five years.

(C)(i) The amount of any grant or contract under this section may not exceed 100 per centum of the cost of carrying out the grant or contract in the first fiscal year for which the grant or contract is made under this section, 80 per centum of such cost in the second fiscal year for which the grant or contract is made under this section, 70 per centum of such cost in the third fiscal year for which the grant or contract is made under this section, and 60 per centum of such cost in each of the fourth and fifth fiscal years for which the grant or contract is made under this section.

(ii) For purposes of this subparagraph, no grant or contract shall be considered to have been made under this section for a fiscal year ending before September 30, 1981.

(6) Each applicant, upon filing its application with the Secretary for a grant or contract to provide prevention or treatment services, shall provide a proposed performance standard or standards to measure, or research protocol to determine, the effectiveness of such services.

(7) Nothing shall prevent the use of funds provided under this section for programs and projects aimed at the prevention, treatment, or rehabilitation of drug abuse as well as alcohol abuse and alcoholism.

(Pub. L. 91-616, title III, §311, as added Pub. L. 93-282, title I, §111, May 14, 1974, 88 Stat. 129; amended Pub. L. 94-371, §§4(c)(1), 6, 12(a), July 26, 1976, 90 Stat. 1035, 1037, 1041; Pub. L. 94-573, §19(a), Oct. 21, 1976, 90 Stat. 2720; Pub. L. 95-83, title III, §311(c), Aug. 1, 1977, 91 Stat. 398; Pub. L. 96-180, §11, Jan. 2, 1980, 93 Stat. 1304; Pub. L. 97-35, title IX, §963(b), (c), Aug. 13, 1981, 95 Stat. 593; Pub. L. 97-414, §9(d), Jan. 4, 1983, 96 Stat. 2064; Pub. L. 98-24, §5(a)(1), Apr. 26, 1983, 97 Stat. 183.)

REFERENCES IN TEXT

Section 300f of this title, referred to in subsec. (a)(2), was repealed effective Jan. 1, 1987, by Pub. L. 99-660, title VII, §701(a), Nov. 14, 1986, 100 Stat. 3799.

PRIOR PROVISIONS

A prior section 311 of Pub. L. 91-616, title III, Dec. 31, 1970, 84 Stat. 1851, amended former section 2688j-2 of this title, which was repealed by Pub. L. 93-282, §302, and is incorporated in this section.

Provisions similar to those comprising this section were contained in Pub. L. 88-164, title II, §247, formerly §246, as added Pub. L. 90-574, title III, §301, Oct. 15, 1968, 82 Stat. 1009; renumbered §247, Pub. L. 91-211, title III, §304, Mar. 13, 1970, 84 Stat. 59; amended Pub. L. 91-616, title III, §311, Dec. 31, 1970, 84 Stat. 1851; Pub. L. 93-45, title II, §204(b), June 18, 1973, 87 Stat. 94, which was classified to section 2688j-2 of this title prior to repeal by Pub. L. 93-282, §302.

AMENDMENTS

1983—Subsec. (a). Pub. L. 97-414, §9(d)(1), amended directory language of Pub. L. 97-35, §963(b)(4), to correct a typographical error, and did not involve any change in text. See 1981 Amendment note below.

Subsec. (a)(3). Pub. L. 97-414, §9(d)(2), substituted a comma for the period at end.

Subsec. (c)(4). Pub. L. 98-24 inserted parenthetical reference to Native Hawaiians and Native American Pacific Islanders.

1981—Subsec. (a). Pub. L. 97-35, §963(b), as amended by Pub. L. 97-414, §9(d)(1), restructured and revised provisions and in par. (1) inserted provisions respecting program emphasis, struck out pars. (3) and (5), relating to services for underserved populations and programs and services for law enforcement personnel, etc., respectively, and redesignated former par. (4) as (3).

Subsec. (c). Pub. L. 97-35, §963(c), revised and restructured provisions and, among changes, in pars. (2), (3), and (4) made changes in phraseology, added pars. (5) and (7), and redesignated former par. (5) as (6).

1980—Subsec. (a). Pub. L. 96-180, §11(a), added par. (1), redesignated as pars. (2) to (5) former pars. (1) to (4), and substituted in par. (2) "support projects of a demonstrable value in developing" for "conduct demonstration and evaluation projects, including projects designed to develop" and in par. (3) "the elderly, women, the handicapped, families of alcoholics, and victims of alcohol-related domestic violence" for "female alcoholics, and individuals in geographic areas where such services are not otherwise adequately available".

Subsec. (b). Pub. L. 96-180, §11(b), added cl. (1), redesignated as cls. (2) to (4) former cls. (1) to (3), and in cl. (2) inserted "(in the case of prevention and treatment services)" after "seek".

Subsec. (c)(4). Pub. L. 96-180, §11(c), required Secretary to encourage submission of applications, incorporated existing provisions in cls. (A) and (C), and inserted cl. (B).

1977—Subsec. (c)(2)(B)(i). Pub. L. 95-83 substituted "its" for "his".

1976—Subsec. (a). Pub. L. 94-371, §6(a), inserted provisions which authorized development of effective coordination of all alcoholism treatment resources available, emphasis in treatment projects of those of the population currently underserved, and, training of personnel to enable them to meet certification requirements of public and private accreditation.

Subsec. (b). Pub. L. 94-371, §6(b), added cl. (2). Former cl. (2) redesignated (3).

Subsec. (c)(2). Pub. L. 94-573 inserted provision that requirements for submission of applications to the Council for review and approval not apply to a grant application for a project or program for any period of 12 consecutive months for which period payments under such grant will be less than \$250,000, if a grant application for a project or program and for a period of time which includes such 12 month period has been submitted to, and approved by, the Secretary.

Pub. L. 94-371, §12(a), inserted provision that each grant application be submitted by the Secretary to the Council for review and could not be approved by the Secretary unless recommended for approval by the Council.

Subsec. (c)(4), (5). Pub. L. 94-371, §6(c), added pars. (4) and (5).

Subsec. (d). Pub. L. 94-371, §4(c)(1), struck out subsec. (d) which related to authorization of appropriations for fiscal year ending June 30, 1975 and fiscal year ending June 30, 1976. Provisions are now covered by section 4578 of this title.

EFFECTIVE DATE OF 1976 AMENDMENTS

Section 4(c) of Pub. L. 94-371 provided that the amendment made by section 4(c)(1) of Pub. L. 94-371 is effective July 1, 1976.

Section 12(b) of Pub. L. 94-371 provided that: "The amendment made by subsection (a) [amending this sec-

tion] shall apply with respect to applications for grants under section 311 of the Act [this section] after June 30, 1976."

Section 19(b) of Pub. L. 94-573 provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to applications for grants under section 311 of such Act [this section] after June 30, 1976."

TERMINATION OF ADVISORY COMMITTEES

Pub. L. 93-641, §6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4578 of this title.

§ 4578. Authorizations of appropriations

For purposes of section 4577 of this title, there are authorized to be appropriated \$85,000,000 for the fiscal year ending September 30, 1977, \$91,000,000 for the fiscal year ending September 30, 1978, \$102,500,000 for the fiscal year ending September 30, 1979, \$102,500,000 for the fiscal year ending September 30, 1980, \$115,000,000 for the fiscal year ending September 30, 1981, and \$15,000,000 for the fiscal year ending September 30, 1982. Of the funds appropriated under this section for the fiscal year ending September 30, 1980, at least 8 percent of the funds shall be obligated for grants for projects, programs, and services to prevent (through outreach, intervention, and education) the occurrence of alcoholism and alcohol abuse; of the funds appropriated under this section for the next fiscal year at least 10 percent of the funds shall be obligated for such grants; and of the funds appropriated under this section for the fiscal year ending September 30, 1982, at least 25 per centum of the funds shall be obligated for such grants.

(Pub. L. 91-616, title III, §312, as added Pub. L. 94-371, §4(c)(3), July 26, 1976, 90 Stat. 1036; amended Pub. L. 96-180, §12, Jan. 2, 1980, 93 Stat. 1304; Pub. L. 97-35, title IX, §964, Aug. 13, 1981, 95 Stat. 594.)

AMENDMENTS

1981—Pub. L. 97-35 inserted provisions respecting authorization and obligation of funds for fiscal year ending Sept. 30, 1982, and struck out reference to section 4576 of this title.

1980—Pub. L. 96-180 authorized appropriation of \$102,500,000 and \$115,000,000 and prescribed minimum of 8 and 10 percent of the funds for preventative projects, programs, and services for fiscal years ending Sept. 30, 1980, and 1981.

EFFECTIVE DATE

Section 4(c) of Pub. L. 94-371 provided in part that this section is effective July 1, 1976.

PART C—ADMISSION TO HOSPITALS AND OUTPATIENT FACILITIES; CONFIDENTIALITY OF RECORDS

CODIFICATION

Part consists of part C and portions of part D of title III of Pub. L. 91-616. Part B of such title enacted section 2688j-2 of this title. Part D, in addition to enacting section 4582 of this title, amended sections 246 and 2688h of this title.

§§ 4581, 4582. Transferred

CODIFICATION

Section 4581, Pub. L. 91-616, title III, §321, Dec. 31, 1970, 84 Stat. 1852; Pub. L. 93-282, title I, §121(a), May 14, 1974, 88 Stat. 130; Pub. L. 94-371, §11(a), (b), July 26, 1976, 90 Stat. 1041; Pub. L. 94-581, title I, §111(c)(1), Oct. 21, 1976, 90 Stat. 2852, which provided for the admission of alcohol abusers and alcoholics to general hospitals and outpatient facilities, was redesignated section 522 of the Public Health Service Act by Pub. L. 98-24, §2(b)(13), Apr. 26, 1983, 97 Stat. 181, and is classified to section 290dd-2 of this title.

Section 4582, Pub. L. 91-616, title III, §333, Dec. 31, 1970, 84 Stat. 1853; Pub. L. 93-282, title I, §122(a), May 14, 1974, 88 Stat. 131; Pub. L. 94-581, title I, §111(c)(4), Oct. 21, 1976, 90 Stat. 2852, which provided for confidentiality of patient records, was redesignated section 523 of the Public Health Service Act by Pub. L. 98-24, §2(b)(13), Apr. 26, 1983, 97 Stat. 181, and is classified to section 290dd-3 of this title.

SUBCHAPTER IV—RESEARCH

§ 4585. Transferred

CODIFICATION

Section, Pub. L. 91-616, title V, §501, as added Pub. L. 94-371, §7, July 26, 1976, 90 Stat. 1038; amended Pub. L. 95-622, title II, §268(c), (d), Nov. 9, 1978, 92 Stat. 3437; Pub. L. 96-180, §14, Jan. 2, 1980, 93 Stat. 1305, which directed Secretary to take certain steps to encourage research, was redesignated section 510 of the Public Health Service Act by Pub. L. 98-24, §2(b)(9), Apr. 26, 1983, 97 Stat. 179, and is classified to section 290bb of this title.

A prior section 501 of Pub. L. 91-616, title V, Dec. 31, 1970, 84 Stat. 1854, was renumbered 601 by section 7 of Pub. L. 94-371, and is classified to section 4591 of this title.

§ 4586. Repealed. Pub. L. 98-24, §2(c)(1), Apr. 26, 1983, 97 Stat. 182

Section, Pub. L. 91-616, title V, §502, as added Pub. L. 94-371, §7, July 26, 1976, 90 Stat. 1039, provided for scientific peer review of grants and contracts. See section 290aa-5 of this title.

A prior section 502 of Pub. L. 91-616, title V, Dec. 31, 1970, 84 Stat. 1854, was renumbered 602 by section 7 of Pub. L. 94-371, and is classified to section 4592 of this title.

§§ 4587, 4588. Transferred

CODIFICATION

Section 4587, Pub. L. 91-616, title V, §503, formerly §504, as added Pub. L. 94-371, §7, July 26, 1976, 90 Stat. 1039; amended Pub. L. 95-622, title I, §110(d), Nov. 9, 1978, 92 Stat. 3420; Pub. L. 96-180, §16, Jan. 2, 1980, 93 Stat. 1305; renumbered and amended Pub. L. 97-35, title IX, §965(b), (c), Aug. 13, 1981, 95 Stat. 594, which provided for designation of National Alcohol Research Centers, was redesignated section 511 of the Public Health Service Act by Pub. L. 98-24, §2(b)(9), Apr. 26, 1983, 97 Stat. 179, and is classified to section 290bb-1 of this title.

A prior section 4587, Pub. L. 91-616, title V, §503, as added Pub. L. 94-371, §7, July 26, 1976, 90 Stat. 1039; amended Pub. L. 96-180, §15, Jan. 2, 1980, 93 Stat. 1305, which related to authorization of appropriations, was renumbered section 504 of Pub. L. 91-616 and classified to section 4588 of this title.

A prior section 503 of Pub. L. 91-616, title V, Dec. 31, 1970, 84 Stat. 1855, was renumbered 603 by section 7 of Pub. L. 94-371, and is classified to section 4593 of this title.

Section 4588, Pub. L. 91-616, title V, §504, formerly §503, as added Pub. L. 94-371, §7, July 26, 1976, 90 Stat.

1039; amended Pub. L. 96-180, §15, Jan. 2, 1980, 93 Stat. 1305; renumbered and amended Pub. L. 97-35, title IX, §965(a), (c), Aug. 13, 1981, 95 Stat. 594; Pub. L. 97-414, §9(e), Jan. 4, 1983, 96 Stat. 2064, which authorized appropriations for carrying out research on alcohol abuse and alcoholism, was redesignated section 512 of the Public Health Service Act by Pub. L. 98-24, §2(b)(9), Apr. 26, 1983, 97 Stat. 179, and is classified to section 290bb-2 of this title.

A prior section 4588, Pub. L. 91-616, title V, §504, as added Pub. L. 94-371, §7, July 26, 1976, 90 Stat. 1039; amended Pub. L. 95-622, title I, §110(d), Nov. 9, 1978, 92 Stat. 3420; Pub. L. 96-180, §16, Jan. 2, 1980, 93 Stat. 1305, relating to National Alcohol Research Centers, was renumbered section 503 of Pub. L. 91-616 and classified to section 4587 of this title.

SUBCHAPTER V—GENERAL PROVISIONS

§ 4591. Separability

If any section, provision, or term of this chapter is adjudged invalid for any reason, such judgment shall not affect, impair, or invalidate any other section, provision, or term of this chapter, and the remaining sections, provisions, and terms shall be and remain in full force and effect.

(Pub. L. 91-616, title VI, §601, formerly title V, §501, Dec. 31, 1970, 84 Stat. 1854, renumbered Pub. L. 94-371, §7, July 26, 1976, 90 Stat. 1038.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 91-616, Dec. 31, 1970, 84 Stat. 1848, as amended, known as the “Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970”, which enacted this chapter and section 2688j-2 of this title and amended sections 218, 246, 2688h, and 2688t of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4541 of this title and Tables.

CODIFICATION

Pub. L. 94-371, §7, July 26, 1976, 90 Stat. 1038, redesignated title V of Pub. L. 91-616, which was classified to subchapter IV of this chapter, as title VI without renumbering the sections therein. Section 501 of Pub. L. 91-616 was renumbered 601, as the probable intent of Congress.

§ 4592. Recordkeeping for audit

(a) Each recipient of assistance under this chapter pursuant to grants or contracts entered into under other than competitive bidding procedures shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such grant or contract, the total cost of the project or undertaking in connection with which such grant or contract is given or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(b) The Secretary and Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of such recipients that are pertinent to the grants or contracts entered into under the provisions of this chapter under other than competitive bidding procedures.

(Pub. L. 91-616, title VI, §602, formerly title V, §502, Dec. 31, 1970, 84 Stat. 1854, renumbered Pub. L. 94-371, §7, July 26, 1976, 90 Stat. 1038.)

CODIFICATION

Pub. L. 94-371, §7, July 26, 1976, 90 Stat. 1038, redesignated title V of Pub. L. 91-616, which was classified to subchapter IV of this chapter, as title VI without renumbering the sections therein. Section 502 of Pub. L. 91-616 was renumbered 602, as the probable intent of Congress.

§ 4593. Payments

Payments under this chapter may be made in advance or by way of reimbursement and in such installments as the Secretary may determine.

(Pub. L. 91-616, title VI, §603, formerly title V, §503, Dec. 31, 1970, 84 Stat. 1855, renumbered Pub. L. 94-371, §7, July 26, 1976, 90 Stat. 1038.)

CODIFICATION

Pub. L. 94-371, §7, July 26, 1976, 90 Stat. 1038, redesignated title V of Pub. L. 91-616, which was classified to subchapter IV of this chapter, as title VI without renumbering the sections therein. Section 503 of Pub. L. 91-616 was renumbered 603, as the probable intent of Congress.

§ 4594. Contract authority in appropriation Acts

The authority of the Secretary to enter into contracts under this chapter shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance by appropriation Acts.

(Pub. L. 91-616, title VI, §604, as added Pub. L. 96-180, §17, Jan. 2, 1980, 93 Stat. 1306.)

CHAPTER 61—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

SUBCHAPTER I—GENERAL PROVISIONS

- Sec.
- 4601. Definitions.
- 4602. Effect upon property acquisition.
- 4603. Additional appropriations for moving costs, relocation benefits and other expenses incurred in acquisition of lands for National Park System; waiver of benefits.
- 4604. Certification.
 - (a) Acceptance of State agency certification.
 - (b) Promulgation of regulations; notice and comment; consultation with local governments.
 - (c) Effect of noncompliance with certification or with applicable law.
- 4605. Displaced persons not eligible for assistance.
 - (a) In general.
 - (b) Determinations of eligibility.
 - (c) Exceptional and extremely unusual hardship.
 - (d) Limitation on statutory construction.

SUBCHAPTER II—UNIFORM RELOCATION ASSISTANCE

- 4621. Declaration of findings and policy.
 - (a) Findings.
 - (b) Policy.
 - (c) Congressional intent.
- 4622. Moving and related expenses.
 - (a) General provision.

- Sec.
- (b) Displacement from dwelling; election of payments: expense and dislocation allowance.
- (c) Displacement from business or farm operation; election of payments; minimum and maximum amounts; eligibility.
- (d) Certain utility relocation expenses.
- 4623. Replacement housing for homeowner; mortgage insurance.
- 4624. Replacement housing for tenants and certain others.
- 4625. Relocation planning, assistance coordination, and advisory services.
 - (a) Planning of programs or projects undertaken by Federal agencies or with Federal financial assistance.
 - (b) Availability of advisory services.
 - (c) Measures, facilities, or services; description.
 - (d) Coordination of relocation activities with other Federal, State, or local governmental actions.
 - (e) Selection of implementation procedures.
 - (f) Tenants occupying property acquired for programs or projects; eligibility for advisory services.
- 4626. Housing replacement by Federal agency as last resort.
- 4627. State required to furnish real property incident to Federal assistance (local cooperation).
- 4628. State acting as agent for Federal program.
- 4629. Public works programs and projects of District of Columbia government and Washington Metropolitan Area Transit Authority.
- 4630. Requirements for relocation payments and assistance of federally assisted program; assurances of availability of housing.
- 4631. Federal share of costs.
 - (a) Cost to displacing agency; eligibility.
 - (b) Comparable payments under other laws.
 - (c) Agreements prior to January 2, 1971; advancements.
- 4632. Administration; relocation assistance in programs receiving Federal financial assistance.
- 4633. Duties of lead agency.
 - (a) General provisions.
 - (b) Regulations and procedures.
 - (c) Applicability to Tennessee Valley Authority and Rural Electrification Administration.
- 4634. Repealed.
- 4635. Planning and other preliminary expenses for additional housing.
- 4636. Payments not to be considered as income for revenue purposes or for eligibility for assistance under Social Security Act or other Federal law.
- 4637. Repealed.
- 4638. Transfers of surplus property.

SUBCHAPTER III—UNIFORM REAL PROPERTY ACQUISITION POLICY

- 4651. Uniform policy on real property acquisition practices.
- 4652. Buildings, structures, and improvements.
- 4653. Expenses incidental to transfer of title to United States.
- 4654. Litigation expenses.
 - (a) Judgment for owner or abandonment of proceedings.
 - (b) Payment.
 - (c) Claims against United States.
- 4655. Requirements for uniform land acquisition policies; payments of expenses incidental to transfer of real property to State; payment of litigation expenses in certain cases.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1437e, 1437p, 5181, 5304, 11503, 12821 of this title; title 16 sections 410uu-1, 460o-1, 429b-2; title 23 sections 108, 133, 182; title 25 section 640d-14; title 40 sections 6702, 6714; title 43 sections 1578, 1598; title 49 section 70304.

SUBCHAPTER I—GENERAL PROVISIONS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 4633 of this title.

§ 4601. Definitions

As used in this chapter—

(1) The term “Federal agency” means any department, agency, or instrumentality in the executive branch of the Government, any wholly owned Government corporation, the Architect of the Capitol, the Federal Reserve banks and branches thereof, and any person who has the authority to acquire property by eminent domain under Federal law.

(2) The term “State” means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, the Trust Territory of the Pacific Islands, and any political subdivision thereof.

(3) The term “State agency” means any department, agency, or instrumentality of a State or of a political subdivision of a State, any department, agency, or instrumentality of 2 or more States or of 2 or more political subdivisions of a State or States, and any person who has the authority to acquire property by eminent domain under State law.

(4) The term “Federal financial assistance” means a grant, loan, or contribution provided by the United States, except any Federal guarantee or insurance, any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual, and any annual payment or capital loan to the District of Columbia.

(5) The term “person” means any individual, partnership, corporation, or association.

(6)(A) The term “displaced person” means, except as provided in subparagraph (B)—

(i) any person who moves from real property, or moves his personal property from real property—

(I) as a direct result of a written notice of intent to acquire or the acquisition of such real property in whole or in part for a program or project undertaken by a Federal agency or with Federal financial assistance; or

(II) on which such person is a residential tenant or conducts a small business, a farm operation, or a business defined in paragraph (7)(D), as a direct result of rehabilitation, demolition, or such other displacing activity as the lead agency may prescribe, under a program or project undertaken by a Federal agency or with Federal financial assistance in any case in which the head of the displacing agency determines that such displacement is permanent; and

(ii) solely for the purposes of sections 4622(a) and (b) and 4625 of this title, any person who

moves from real property, or moves his personal property from real property—

(I) as a direct result of a written notice of intent to acquire or the acquisition of other real property, in whole or in part, on which such person conducts a business or farm operation, for a program or project undertaken by a Federal agency or with Federal financial assistance; or

(II) as a direct result of rehabilitation, demolition, or such other displacing activity as the lead agency may prescribe, of other real property on which such person conducts a business or a farm operation, under a program or project undertaken by a Federal agency or with Federal financial assistance where the head of the displacing agency determines that such displacement is permanent.

(B) The term “displaced person” does not include—

(i) a person who has been determined, according to criteria established by the head of the lead agency, to be either in unlawful occupancy of the displacement dwelling or to have occupied such dwelling for the purpose of obtaining assistance under this chapter;

(ii) in any case in which the displacing agency acquires property for a program or project, any person (other than a person who was an occupant of such property at the time it was acquired) who occupies such property on a rental basis for a short term or a period subject to termination when the property is needed for the program or project.

(7) The term “business” means any lawful activity, excepting a farm operation, conducted primarily—

(A) for the purchase, sale, lease and rental of personal and real property, and for the manufacture, processing, or marketing of products, commodities, or any other personal property;

(B) for the sale of services to the public;

(C) by a nonprofit organization; or

(D) solely for the purposes of section 4622 of this title, for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of the above activities are conducted.

(8) The term “farm operation” means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator’s support.

(9) The term “mortgage” means such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of the State in which the real property is located, together with the credit instruments, if any, secured thereby.

(10) The term “comparable replacement dwelling” means any dwelling that is (A) decent, safe, and sanitary; (B) adequate in size to accommo-

date the occupants; (C) within the financial means of the displaced person; (D) functionally equivalent; (E) in an area not subject to unreasonable adverse environmental conditions; and (F) in a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities, facilities, services, and the displaced person's place of employment.

(11) The term "displacing agency" means any Federal agency carrying out a program or project, and any State, State agency, or person carrying out a program or project with Federal financial assistance, which causes a person to be a displaced person.

(12) The term "lead agency" means the Department of Transportation.

(13) The term "appraisal" means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

(Pub. L. 91-646, title I, § 101, Jan. 2, 1971, 84 Stat. 1894; Pub. L. 100-17, title IV, § 402, Apr. 2, 1987, 101 Stat. 246.)

REFERENCES IN TEXT

This chapter, referred to in introductory provision and par. (6)(B)(i), was in the original "this Act", meaning Pub. L. 91-646, Jan. 2, 1971, 84 Stat. 1894, known as the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

AMENDMENTS

1987—Par. (1). Pub. L. 100-17, § 402(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "The term 'Federal agency' means any department, agency, or instrumentality in the executive branch of the Government (except the National Capital Housing Authority), any wholly owned Government corporation (except the District of Columbia Redevelopment Land Agency), and the Architect of the Capitol, the Federal Reserve banks and branches thereof."

Par. (3). Pub. L. 100-17, § 402(b), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "The term 'State agency' means the National Capital Housing Authority, the District of Columbia Redevelopment Land Agency, and any department, agency, or instrumentality of a State or of a political subdivision of a State, or any department, agency, or instrumentality of two or more States or of two or more political subdivisions of a State or States."

Par. (4). Pub. L. 100-17, § 402(c), inserted ", any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual," after "insurance".

Par. (6). Pub. L. 100-17, § 402(d), amended par. (6) generally. Prior to amendment, par. (6) read as follows: "The term 'displaced person' means any person who, on or after January 2, 1971, moves from real property, or moves his personal property from real property, as a result of the acquisition of such real property, in whole or in part, or as the result of the written order of the acquiring agency to vacate real property, for a program or project undertaken by a Federal agency, or with Federal financial assistance; and solely for the purposes of sections 4622(a) and (b) and 4625 of this title, as a result of the acquisition of or as the result of the written order of the acquiring agency to vacate other real property, on which such person conducts a business or farm operation, for such program or project."

Par. (7)(D). Pub. L. 100-17, § 402(f), substituted "section 4622" for "section 4622(a)".

Pars. (10) to (13). Pub. L. 100-17, § 402(e), added pars. (10) to (13).

EFFECTIVE DATE OF 1987 AMENDMENT

Section 418 of title IV of Pub. L. 100-17 provided that: "The amendment made by section 412 of this title [amending section 4633 of this title] (to the extent such amendment prescribes authority to develop, publish, and issue regulations) shall take effect on the date of the enactment of this title [Apr. 2, 1987]. This title and the amendments made by this title [enacting section 4604 of this title, amending this section and sections 4621 to 4626, 4630, 4631, 4633, 4636, 4638, 4651, and 4655 of this title, repealing sections 4634 and 4637 of this title, and enacting provisions set out as a note under this section] (other than the amendment made by section 412 to such extent) shall take effect on the effective date provided in such regulations but not later than 2 years after such date of enactment."

EFFECTIVE DATE

Section 221 of Pub. L. 91-646 provided that:

"(a) Except as provided in subsections (b) and (c) of this section, this Act and the amendments made by this Act [see Short Title note below] shall take effect on the date of its enactment [Jan. 2, 1971].

"(b) Until July 1, 1972, sections 210 and 305 [sections 4630 and 4655 of this title] shall be applicable to a State only to the extent that such State is able under its laws to comply with such sections. After July 1, 1972, such sections [sections 4630 and 4655 of this title] shall be completely applicable to all States.

"(c) The repeals made by paragraphs (4) [repealing section 1606(b) of former Title 49, Transportation], (5) [repealing section 1465 of this title], (6) [repealing section 1415(7)(b)(iii) and (8) second sentence of this title], (8) [repealing section 3074 of this title], (9) [repealing section 3307(b), (c) of this title], (10) [repealing chapter 5 (sections 501-511) of Title 23, Highways], (11) [repealing provisions set out as notes under sections 501 and 510 of Title 23], and (12) of section 220(a) of this title and section 306 of title III [repealing sections 3071 to 3073 of this title, section 141 of Title 23, and section 596 of Title 33, Navigation and Navigable Waters] shall not apply to any State so long as sections 210 and 305 [sections 4630 and 4655 of this title] are not applicable in such State."

SHORT TITLE OF 1987 AMENDMENT

Section 401 of title IV of Pub. L. 100-17 provided that: "This title [enacting section 4604 of this title, amending this section and sections 4621 to 4626, 4630, 4631, 4633, 4636, 4638, 4651, and 4655 of this title, repealing sections 4634 and 4637 of this title, and enacting provisions set out as a note under this section] may be cited as the 'Uniform Relocation Act Amendments of 1987'."

SHORT TITLE

Section 1 of Pub. L. 91-646 provided: "That this Act [enacting this chapter, amending sections 1415, 2473, and 3307 of this title and section 1606 of former Title 49, Transportation, repealing sections 1465 and 3071 to 3074 of this title, section 2680 of Title 10, Armed Forces, sections 141 and 501 to 512 of Title 23, Highways, section 596 of Title 33, Navigation and Navigable Waters, sections 1231 to 1234 of Title 43, Public Lands, and enacting provisions set out as notes under this section and sections 4621 and 4651 of this title, and repealing provisions set out as notes under sections 501 and 510 of Title 23] may be cited as the 'Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970'."

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

TREATMENT OF REAL PROPERTY BUYOUT PROGRAMS

Pub. L. 103-181, § 4, Dec. 3, 1993, 107 Stat. 2055, provided that:

“(a) INAPPLICABILITY OF URA.—The purchase of any real property under a qualified buyout program shall not constitute the making of Federal financial assistance available to pay all or part of the cost of a program or project resulting in the acquisition of real property or in any owner of real property being a displaced person (within the meaning of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 [42 U.S.C. 4601 et seq.]).

“(b) DEFINITION OF ‘QUALIFIED BUYOUT PROGRAM’.—For purposes of this section, the term ‘qualified buyout program’ means any program that—

“(1) provides for the purchase of only property damaged by the major, widespread flooding in the Midwest during 1993;

“(2) provides for such purchase solely as a result of such flooding;

“(3) provides for such acquisition without the use of the power of eminent domain and notification to the seller that acquisition is without the use of such power;

“(4) is carried out by or through a State or unit of general local government; and

“(5) is being assisted with amounts made available for—

“(A) disaster relief by the Federal Emergency Management Agency; or

“(B) other Federal financial assistance programs.”

[For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 313(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.]

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4603, 4625, 4655 of this title; title 16 sections 429b-2, 460e-1, 460l-8, 460bb-2, 698b, 698h.

§ 4602. Effect upon property acquisition

(a) The provisions of section 4651 of this title create no rights or liabilities and shall not affect the validity of any property acquisitions by purchase or condemnation.

(b) Nothing in this chapter shall be construed as creating in any condemnation proceedings brought under the power of eminent domain, any element of value or of damage not in existence immediately prior to January 2, 1971.

(Pub. L. 91-646, title I, § 102, Jan. 2, 1971, 84 Stat. 1895.)

§ 4603. Additional appropriations for moving costs, relocation benefits and other expenses incurred in acquisition of lands for National Park System; waiver of benefits

(a) In all instances where authorizations of appropriations for the acquisition of lands for the National Park System enacted prior to January 9, 1971, do not include provisions therefor, there are authorized to be appropriated such additional sums as may be necessary to provide for moving costs, relocation benefits, and other expenses incurred pursuant to the applicable provisions of this chapter. There are also author-

ized to be appropriated not to exceed \$8,400,000 in addition to those authorized in Public Law 92-272 (86 Stat. 120) to provide for such moving costs, relocation benefits, and other related expenses in connection with the acquisition of lands authorized by Public Law 92-272.

(b) Whenever an owner of property elects to retain a right of use and occupancy pursuant to any statute authorizing the acquisition of property for purposes of a unit of the National Park System, such owner shall be deemed to have waived any benefits under sections 4623, 4624, 4625, and 4626 of this title, and for the purposes of those sections such owner shall not be considered a displaced person as defined in section 4601(6) of this title.

(Pub. L. 93-477, title IV, § 405, Oct. 26, 1974, 88 Stat. 1448.)

REFERENCES IN TEXT

Public Law 92-272, referred to in subsec. (a), is Pub. L. 92-272, Apr. 11, 1972, 86 Stat. 120, which to the extent classified to the Code, amended sections 284b, 428m, 459f-10, 460m-1, 460m-7 and 460t-4 of Title 16, Conservation, and amended a provision set out as a note under section 450ll of Title 16. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was not enacted as part of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 which comprises this chapter.

§ 4604. Certification**(a) Acceptance of State agency certification**

Notwithstanding sections 4630 and 4655 of this title, the head of a Federal agency may discharge any of his responsibilities under this chapter by accepting a certification by a State agency that it will carry out such responsibility, if the head of the lead agency determines that such responsibility will be carried out in accordance with State laws which will accomplish the purpose and effect of this chapter.

(b) Promulgation of regulations; notice and comment; consultation with local governments

(1) The head of the lead agency shall issue regulations to carry out this section.

(2) Repealed. Pub. L. 104-66, title I, § 1121(f), Dec. 21, 1995, 109 Stat. 724.

(3) Before making a determination regarding any State law under subsection (a) of this section, the head of the lead agency shall provide interested parties with an opportunity for public review and comment. In particular, the head of the lead agency shall consult with interested local general purpose governments within the State on the effects of such State law on the ability of local governments to carry out their responsibilities under this chapter.

(c) Effect of noncompliance with certification or with applicable law

(1) The head of a Federal agency may withhold his approval of any Federal financial assistance to or contract or cooperative agreement with any displacing agency found by the Federal agency to have failed to comply with the laws described in subsection (a) of this section.

(2) After consultation with the head of the lead agency, the head of a Federal agency may

rescind his acceptance of any certification under this section, in whole or in part, if the State agency fails to comply with such certification or with State law.

(Pub. L. 91-646, title I, §103, as added Pub. L. 100-17, title IV, §403, Apr. 2, 1987, 101 Stat. 248; amended Pub. L. 104-66, title I, §1121(f), Dec. 21, 1995, 109 Stat. 724.)

AMENDMENTS

1995—Subsec. (b)(2). Pub. L. 104-66 struck out par. (2) which read as follows: “The head of the lead agency shall, in coordination with other Federal agencies, monitor from time to time, and report biennially to the Congress on, State agency implementation of this section. A State agency shall make available any information required for such purpose.”

EFFECTIVE DATE

Section effective on effective date provided in regulations promulgated under section 4633 of this title (as amended by section 412 of Pub. L. 100-17), but not later than 2 years after Apr. 2, 1987, see section 418 of Pub. L. 100-17, set out as an Effective Date of 1987 Amendment note under section 4601 of this title.

§ 4605. Displaced persons not eligible for assistance

(a) In general

Except as provided in subsection (c) of this section, a displaced person shall not be eligible to receive relocation payments or any other assistance under this chapter if the displaced person is an alien not lawfully present in the United States.

(b) Determinations of eligibility

(1) Promulgation of regulations

Not later than 1 year after November 21, 1997, after providing notice and an opportunity for public comment, the head of the lead agency shall promulgate regulations to carry out subsection (a) of this section.

(2) Contents of regulations

Regulations promulgated under paragraph (1) shall—

(A) prescribe the processes, procedures, and information that a displacing agency must use in determining whether a displaced person is an alien not lawfully present in the United States;

(B) prohibit a displacing agency from discriminating against any displaced person;

(C) ensure that each eligibility determination is fair and based on reliable information; and

(D) prescribe standards for a displacing agency to apply in making determinations relating to exceptional and extremely unusual hardship under subsection (c) of this section.

(c) Exceptional and extremely unusual hardship

If a displacing agency determines by clear and convincing evidence that a determination of the ineligibility of a displaced person under subsection (a) of this section would result in exceptional and extremely unusual hardship to an individual who is the displaced person's spouse, parent, or child and who is a citizen of the United States or an alien lawfully admitted for

permanent residence in the United States, the displacing agency shall provide relocation payments and other assistance to the displaced person under this chapter if the displaced person would be eligible for the assistance but for subsection (a) of this section.

(d) Limitation on statutory construction

Nothing in this section affects any right available to a displaced person under any other provision of Federal or State law.

(Pub. L. 91-646, title I, §104, as added Pub. L. 105-117, §1, Nov. 21, 1997, 111 Stat. 2384.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4633 of this title.

SUBCHAPTER II—UNIFORM RELOCATION ASSISTANCE

§ 4621. Declaration of findings and policy

(a) Findings

The Congress finds and declares that—

(1) displacement as a direct result of programs or projects undertaken by a Federal agency or with Federal financial assistance is caused by a number of activities, including rehabilitation, demolition, code enforcement, and acquisition;

(2) relocation assistance policies must provide for fair, uniform, and equitable treatment of all affected persons;

(3) the displacement of businesses often results in their closure;

(4) minimizing the adverse impact of displacement is essential to maintaining the economic and social well-being of communities; and

(5) implementation of this chapter has resulted in burdensome, inefficient, and inconsistent compliance requirements and procedures which will be improved by establishing a lead agency and allowing for State certification and implementation.

(b) Policy

This subchapter establishes a uniform policy for the fair and equitable treatment of persons displaced as a direct result of programs or projects undertaken by a Federal agency or with Federal financial assistance. The primary purpose of this subchapter is to ensure that such persons shall not suffer disproportionate injuries as a result of programs and projects designed for the benefit of the public as a whole and to minimize the hardship of displacement on such persons.

(c) Congressional intent

It is the intent of Congress that—

(1) Federal agencies shall carry out this subchapter in a manner which minimizes waste, fraud, and mismanagement and reduces unnecessary administrative costs borne by States and State agencies in providing relocation assistance;

(2) uniform procedures for the administration of relocation assistance shall, to the maximum extent feasible, assure that the unique circumstances of any displaced person are taken into account and that persons in essen-

tially similar circumstances are accorded equal treatment under this chapter;

(3) the improvement of housing conditions of economically disadvantaged persons under this subchapter shall be undertaken, to the maximum extent feasible, in coordination with existing Federal, State, and local governmental programs for accomplishing such goals; and

(4) the policies and procedures of this chapter will be administered in a manner which is consistent with fair housing requirements and which assures all persons their rights under title VIII of the Act of April 11, 1968 (Public Law 90-284), commonly known as the Civil Rights Act of 1968 [42 U.S.C. 3601 et seq.], and title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.].

(Pub. L. 91-646, title II, § 201, Jan. 2, 1971, 84 Stat. 1895; Pub. L. 100-17, title IV, § 404, Apr. 2, 1987, 101 Stat. 248.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(5) and (c)(2), (4), was in the original "this Act", meaning Pub. L. 91-646, Jan. 2, 1971, 84 Stat. 1894, known as the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, which enacted this chapter, amended sections 1415, 2473, and 3307 of this title and section 1606 of former Title 49, Transportation, repealed sections 1465 and 3071 to 3074 of this title, section 2680 of Title 10, Armed Forces, sections 141 and 501 to 512 of Title 23, Highways, section 596 of Title 33, Navigation and Navigable Waters, sections 1231 to 1234 of Title 43, Public Lands, and enacted provisions set out as notes under sections 4601, 4621, and 4651 of this title and under section 501 of Title 23. For complete classification of this Act to the Code, see Short Title note set out under section 4601 of this title and Tables.

This subchapter, referred to in subsecs. (b) and (c)(1), (3), was in the original "this title", meaning title II of Pub. L. 91-646, Jan. 2, 1971, 84 Stat. 1895, which enacted this subchapter, amended sections 1415, 2473, and 3307 of this title and section 1606 of former Title 49, repealed sections 1465 and 3074 of this title, section 2680 of Title 10, sections 501 to 512 of Title 23, sections 1231 to 1234 of Title 43, and enacted provisions set out as notes under sections 4601 and 4621 of this title and under sections 501 to 512 of Title 23. For complete classification of title II to the Code, see Tables.

Title VIII of the Act of April 11, 1968 (Public Law 90-284), commonly known as the Civil Rights Act of 1968, referred to in subsec. (c)(4), is title VIII of Pub. L. 90-284, Apr. 11, 1968, 82 Stat. 81, as amended, known as the Fair Housing Act, which is classified principally to subchapter I (§ 3601 et seq.) of chapter 45 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

The Civil Rights Act of 1964, referred to in subsec. (c)(4), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Civil Rights Act of 1964 is classified generally to subchapter V (§ 2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

AMENDMENTS

1987—Pub. L. 100-17 substituted "Declaration of findings and policy" for "Declaration of policy" in section catchline and amended text generally. Prior to amendment, text read as follows: "The purpose of this subchapter is to establish a uniform policy for the fair and equitable treatment of persons displaced as a result of Federal and federally assisted programs in order that such persons shall not suffer disproportionate injuries

as a result of programs designed for the benefit of the public as a whole."

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-17 effective on effective date provided in regulations promulgated under section 4633 of this title (as amended by section 412 of Pub. L. 100-17), but not later than 2 years after Apr. 2, 1987, see section 418 of Pub. L. 100-17, set out as a note under section 4601 of this title.

SAVINGS PROVISION

Section 220(b) of Pub. L. 91-646 provided that: "Any rights or liabilities now existing under prior Acts or portions thereof shall not be affected by the repeal of such prior Acts or portions thereof under subsection (a) of this section [repealing sections 1415(7)(b)(iii), (8) second sentence, 1465, 2473(b)(14), 3074, and 3307(b), (c) of this title, section 2680 of Title 10, Armed Forces, sections 501 to 512 of Title 23, Highways, sections 1231 to 1234 of Title 43, Public Lands, and section 1606(b) of former Title 49, Transportation, and provisions set out as notes under sections 501 and 511 of Title 23]."

§ 4622. Moving and related expenses

(a) General provision

Whenever a program or project to be undertaken by a displacing agency will result in the displacement of any person, the head of the displacing agency shall provide for the payment to the displaced person of—

(1) actual reasonable expenses in moving himself, his family, business, farm operation, or other personal property;

(2) actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the head of the agency;

(3) actual reasonable expenses in searching for a replacement business or farm; and

(4) actual reasonable expenses necessary to reestablish a displaced farm, nonprofit organization, or small business at its new site, but not to exceed \$10,000.

(b) Displacement from dwelling; election of payments; expense and dislocation allowance

Any displaced person eligible for payments under subsection (a) of this section who is displaced from a dwelling and who elects to accept the payments authorized by this subsection in lieu of the payments authorized by subsection (a) of this section may receive an expense and dislocation allowance, which shall be determined according to a schedule established by the head of the lead agency.

(c) Displacement from business or farm operation; election of payments; minimum and maximum amounts; eligibility

Any displaced person eligible for payments under subsection (a) of this section who is displaced from the person's place of business or farm operation and who is eligible under criteria established by the head of the lead agency may elect to accept the payment authorized by this subsection in lieu of the payment authorized by subsection (a) of this section. Such payment shall consist of a fixed payment in an amount to be determined according to criteria established

by the head of the lead agency, except that such payment shall not be less than \$1,000 nor more than \$20,000. A person whose sole business at the displacement dwelling is the rental of such property to others shall not qualify for a payment under this subsection.

(d) Certain utility relocation expenses

(1) Except as otherwise provided by Federal law—

(A) if a program or project (i) which is undertaken by a displacing agency, and (ii) the purpose of which is not to relocate or reconstruct any utility facility, results in the relocation of a utility facility;

(B) if the owner of the utility facility which is being relocated under such program or project has entered into, with the State or local government on whose property, easement, or right-of-way such facility is located, a franchise or similar agreement with respect to the use of such property, easement, or right-of-way; and

(C) if the relocation of such facility results in such owner incurring an extraordinary cost in connection with such relocation;

the displacing agency may, in accordance with such regulations as the head of the lead agency may issue, provide to such owner a relocation payment which may not exceed the amount of such extraordinary cost (less any increase in the value of the new utility facility above the value of the old utility facility and less any salvage value derived from the old utility facility).

(2) For purposes of this subsection, the term—

(A) “extraordinary cost in connection with a relocation” means any cost incurred by the owner of a utility facility in connection with relocation of such facility which is determined by the head of the displacing agency, under such regulations as the head of the lead agency shall issue—

- (i) to be a non-routine relocation expense;
- (ii) to be a cost such owner ordinarily does not include in its annual budget as an expense of operation; and
- (iii) to meet such other requirements as the lead agency may prescribe in such regulations; and

(B) “utility facility” means—

- (i) any electric, gas, water, steam power, or materials transmission or distribution system;
- (ii) any transportation system;
- (iii) any communications system (including cable television); and
- (iv) any fixtures, equipment, or other property associated with the operation, maintenance, or repair of any such system;

located on property which is owned by a State or local government or over which a State or local government has an easement or right-of-way. A utility facility may be publicly, privately, or cooperatively owned.

(Pub. L. 91-646, title II, §202, Jan. 2, 1971, 84 Stat. 1895; Pub. L. 100-17, title IV, §405, Apr. 2, 1987, 101 Stat. 249.)

AMENDMENTS

1987—Subsec. (a). Pub. L. 100-17, §405(a)(1), inserted introductory provisions and struck out former intro-

ductory provisions which read as follows: “Whenever the acquisition of real property for a program or project undertaken by a Federal agency in any State will result in the displacement of any person on or after January 2, 1971, the head of such agency shall make a payment to any displaced person, upon proper application as approved by such agency head, for—”.

Subsec. (a)(4). Pub. L. 100-17, §405(a)(2)-(4), added par. (4).

Subsec. (b). Pub. L. 100-17, §405(b), substituted “an expense and dislocation allowance, which shall be determined according to a schedule established by the head of the lead agency” for “a moving expense allowance, determined according to a schedule established by the head of the Federal agency, not to exceed \$300; and a dislocation allowance of \$200”.

Subsec. (c). Pub. L. 100-17, §405(c), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “Any displaced person eligible for payments under subsection (a) of this section who is displaced from his place of business or from his farm operation and who elects to accept the payment authorized by this subsection in lieu of the payment authorized by subsection (a) of this section, may receive a fixed payment in an amount equal to the average annual net earnings of the business or farm operation, except that such payment shall be not less than \$2,500 nor more than \$10,000. In the case of a business no payment shall be made under this subsection unless the head of the Federal agency is satisfied that the business (1) cannot be relocated without a substantial loss of its existing patronage, and (2) is not a part of a commercial enterprise having at least one other establishment not being acquired by the United States, which is engaged in the same or similar business. For purposes of this subsection, the term ‘average annual net earnings’ means one-half of any net earnings of the business or farm operation, before Federal, State, and local income taxes, during the two taxable years immediately preceding the taxable year in which such business or farm operation moves from the real property acquired for such project, or during such other period as the head of such agency determines to be more equitable for establishing such earnings, and includes any compensation paid by the business or farm operation to the owner, his spouse, or his dependents during such period.”

Subsec. (d). Pub. L. 100-17, §405(d), added subsec. (d).

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-17 effective on effective date provided in regulations promulgated under section 4633 of this title (as amended by section 412 of Pub. L. 100-17), but not later than 2 years after Apr. 2, 1987, see section 418 of Pub. L. 100-17, set out as a note under section 4601 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4601, 4630 of this title; title 25 section 640d-14.

§4623. Replacement housing for homeowner; mortgage insurance

(a)(1) In addition to payments otherwise authorized by this subchapter, the head of the displacing agency shall make an additional payment not in excess of \$22,500 to any displaced person who is displaced from a dwelling actually owned and occupied by such displaced person for not less than one hundred and eighty days prior to the initiation of negotiations for the acquisition of the property. Such additional payment shall include the following elements:

(A) The amount, if any, which when added to the acquisition cost of the dwelling acquired by the displacing agency, equals the reasonable cost of a comparable replacement dwelling.

(B) The amount, if any, which will compensate such displaced person for any increased interest

costs and other debt service costs which such person is required to pay for financing the acquisition of any such comparable replacement dwelling. Such amount shall be paid only if the dwelling acquired by the displacing agency was encumbered by a bona fide mortgage which was a valid lien on such dwelling for not less than 180 days immediately prior to the initiation of negotiations for the acquisition of such dwelling.

(C) Reasonable expenses incurred by such displaced person for evidence of title, recording fees, and other closing costs incident to the purchase of the replacement dwelling, but not including prepaid expenses.

(2) The additional payment authorized by this section shall be made only to a displaced person who purchases and occupies a decent, safe, and sanitary replacement dwelling within 1 year after the date on which such person receives final payment from the displacing agency for the acquired dwelling or the date on which the displacing agency's obligation under section 4625(c)(3) of this title is met, whichever is later, except that the displacing agency may extend such period for good cause. If such period is extended, the payment under this section shall be based on the costs of relocating the person to a comparable replacement dwelling within 1 year of such date.

(b) The head of any Federal agency may, upon application by a mortgagee, insure any mortgage (including advances during construction) on a comparable replacement dwelling executed by a displaced person assisted under this section, which mortgage is eligible for insurance under any Federal law administered by such agency notwithstanding any requirements under such law relating to age, physical condition, or other personal characteristics of eligible mortgagors, and may make commitments for the insurance of such mortgage prior to the date of execution of the mortgage.

(Pub. L. 91-646, title II, §203, Jan. 2, 1971, 84 Stat. 1896; Pub. L. 100-17, title IV, §406, Apr. 2, 1987, 101 Stat. 251.)

AMENDMENTS

1987—Subsec. (a)(1). Pub. L. 100-17, §406(1)-(3), substituted "displacing agency" for "Federal agency" and "\$22,500" for "\$15,000" in introductory provisions, and in subpar. (A) "acquired by the displacing agency, equals the reasonable cost of a comparable replacement dwelling" for "acquired by the Federal agency, equals the reasonable cost of a comparable replacement dwelling which is a decent, safe, and sanitary dwelling adequate to accommodate such displaced person, reasonably accessible to public services and places of employment and available on the private market. All determinations required to carry out this subparagraph shall be made in accordance with standards established by the head of the Federal agency making the additional payment".

Subsec. (a)(1)(B). Pub. L. 100-17, §406(4), added subpar. (B) and struck out former subpar. (B) which read as follows: "The amount, if any, which will compensate such displaced person for any increased interest costs which such person is required to pay for financing the acquisition of any such comparable replacement dwelling. Such amount shall be paid only if the dwelling acquired by the Federal agency was encumbered by a bona fide mortgage which was a valid lien on such dwelling for not less than one hundred and eighty days prior to the

initiation of negotiations for the acquisition of such dwelling. Such amount shall be equal to the excess in the aggregate interest and other debt service costs of that amount of the principal of the mortgage on the replacement dwelling which is equal to the unpaid balance of the mortgage on the acquired dwelling, over the remainder term of the mortgage on the acquired dwelling, reduced to discounted present value. The discount rate shall be the prevailing interest rate paid on savings deposits by commercial banks in the general area in which the replacement dwelling is located."

Subsec. (a)(2). Pub. L. 100-17, §406(5), added par. (2) and struck out former par. (2) which read as follows: "The additional payment authorized by this subsection shall be made only to such a displaced person who purchases and occupies a replacement dwelling which is decent, safe, and sanitary not later than the end of the one year period beginning on the date on which he receives from the Federal agency final payment of all costs of the acquired dwelling, or on the date on which he moves from the acquired dwelling, whichever is the later date."

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-17 effective on effective date provided in regulations promulgated under section 4633 of this title (as amended by section 412 of Pub. L. 100-17), but not later than 2 years after Apr. 2, 1987, see section 418 of Pub. L. 100-17, set out as a note under section 4601 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4603, 4624, 4626, 4630 of this title; title 16 sections 429b-2, 450e-1, 4607-8, 4608b-2, 698b, 698h.

§ 4624. Replacement housing for tenants and certain others

(a) In addition to amounts otherwise authorized by this subchapter, the head of a displacing agency shall make a payment to or for any displaced person displaced from any dwelling not eligible to receive a payment under section 4623 of this title which dwelling was actually and lawfully occupied by such displaced person for not less than 90 days immediately prior to (1) the initiation of negotiations for acquisition of such dwelling, or (2) in any case in which displacement is not a direct result of acquisition, such other event as the head of the lead agency shall prescribe. Such payment shall consist of the amount necessary to enable such person to lease or rent for a period not to exceed 42 months, a comparable replacement dwelling, but not to exceed \$5,250. At the discretion of the head of the displacing agency, a payment under this subsection may be made in periodic installments. Computation of a payment under this subsection to a low-income displaced person for a comparable replacement dwelling shall take into account such person's income.

(b) Any person eligible for a payment under subsection (a) of this section may elect to apply such payment to a down payment on, and other incidental expenses pursuant to, the purchase of a decent, safe, and sanitary replacement dwelling. Any such person may, at the discretion of the head of the displacing agency, be eligible under this subsection for the maximum payment allowed under subsection (a) of this section, except that, in the case of a displaced homeowner who has owned and occupied the displacement dwelling for at least 90 days but not more than 180 days immediately prior to the initiation of

negotiations for the acquisition of such dwelling, such payment shall not exceed the payment such person would otherwise have received under section 4623(a) of this title had the person owned and occupied the displacement dwelling 180 days immediately prior to the initiation of such negotiations.

(Pub. L. 91-646, title II, §204, Jan. 2, 1971, 84 Stat. 1897; Pub. L. 100-17, title IV, §407, Apr. 2, 1987, 101 Stat. 251.)

AMENDMENTS

1987—Pub. L. 100-17 amended section generally, revising and restating as subsecs. (a) and (b) provisions formerly contained in introductory provisions and in pars. (1) and (2).

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-17 effective on effective date provided in regulations promulgated under section 4633 of this title (as amended by section 412 of Pub. L. 100-17), but not later than 2 years after Apr. 2, 1987, see section 418 of Pub. L. 100-17, set out as a note under section 4601 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4603, 4626, 4630 of this title; title 16 sections 429b-2, 450e-1, 460l-8, 460bb-2, 698b, 698h.

§ 4625. Relocation planning, assistance coordination, and advisory services

(a) Planning of programs or projects undertaken by Federal agencies or with Federal financial assistance

Programs or projects undertaken by a Federal agency or with Federal financial assistance shall be planned in a manner that (1) recognizes, at an early stage in the planning of such programs or projects and before the commencement of any actions which will cause displacements, the problems associated with the displacement of individuals, families, businesses, and farm operations, and (2) provides for the resolution of such problems in order to minimize adverse impacts on displaced persons and to expedite program or project advancement and completion.

(b) Availability of advisory services

The head of any displacing agency shall ensure that the relocation assistance advisory services described in subsection (c) of this section are made available to all persons displaced by such agency. If such agency head determines that any person occupying property immediately adjacent to the property where the displacing activity occurs is caused substantial economic injury as a result thereof, the agency head may make available to such person such advisory services.

(c) Measures, facilities, or services; description

Each relocation assistance advisory program required by subsection (b) of this section shall include such measures, facilities, or services as may be necessary or appropriate in order to—

(1) determine, and make timely recommendations on, the needs and preferences, if any, of displaced persons for relocation assistance;

(2) provide current and continuing information on the availability, sales prices, and rental charges of comparable replacement dwell-

ings for displaced homeowners and tenants and suitable locations for businesses and farm operations;

(3) assure that a person shall not be required to move from a dwelling unless the person has had a reasonable opportunity to relocate to a comparable replacement dwelling, except in the case of—

(A) a major disaster as defined in section 5122(2) of this title;

(B) a national emergency declared by the President; or

(C) any other emergency which requires the person to move immediately from the dwelling because continued occupancy of such dwelling by such person constitutes a substantial danger to the health or safety of such person;

(4) assist a person displaced from a business or farm operation in obtaining and becoming established in a suitable replacement location;

(5) supply (A) information concerning other Federal and State programs which may be of assistance to displaced persons, and (B) technical assistance to such persons in applying for assistance under such programs; and

(6) provide other advisory services to displaced persons in order to minimize hardships to such persons in adjusting to relocation.

(d) Coordination of relocation activities with other Federal, State, or local governmental actions

The head of a displacing agency shall coordinate the relocation activities performed by such agency with other Federal, State, or local governmental actions in the community which could affect the efficient and effective delivery of relocation assistance and related services.

(e) Selection of implementation procedures

Whenever two or more Federal agencies provide financial assistance to a displacing agency other than a Federal agency, to implement functionally or geographically related activities which will result in the displacement of a person, the heads of such Federal agencies may agree that the procedures of one of such agencies shall be utilized to implement this subchapter with respect to such activities. If such agreement cannot be reached, then the head of the lead agency shall designate one of such agencies as the agency whose procedures shall be utilized to implement this subchapter with respect to such activities. Such related activities shall constitute a single program or project for purposes of this chapter.

(f) Tenants occupying property acquired for programs or projects; eligibility for advisory services

Notwithstanding section 4601(1) of this title, in any case in which a displacing agency acquires property for a program or project, any person who occupies such property on a rental basis for a short term or a period subject to termination when the property is needed for the program or project shall be eligible for advisory services to the extent determined by the displacing agency.

(Pub. L. 91-646, title II, §205, Jan. 2, 1971, 84 Stat. 1897; Pub. L. 100-17, title IV, §408, Apr. 2, 1987, 101 Stat. 252.)

AMENDMENTS

1987—Pub. L. 100-17, substituted “Relocation planning, assistance coordination, and advisory services” for “Relocation assistance advisory services” in catchline and amended text generally, revising and restating as subsecs. (a) to (f) provisions formerly contained in subsecs. (a) to (d).

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-17 effective on effective date provided in regulations promulgated under section 4633 of this title (as amended by section 412 of Pub. L. 100-17), but not later than 2 years after Apr. 2, 1987, see section 418 of Pub. L. 100-17, set out as a note under section 4601 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4601, 4603, 4623, 4630 of this title; title 16 sections 429b-2, 450e-1, 460l-8, 460bb-2, 698b, 698h.

§ 4626. Housing replacement by Federal agency as last resort

(a) If a program or project undertaken by a Federal agency or with Federal financial assistance cannot proceed on a timely basis because comparable replacement dwellings are not available, and the head of the displacing agency determines that such dwellings cannot otherwise be made available, the head of the displacing agency may take such action as is necessary or appropriate to provide such dwellings by use of funds authorized for such project. The head of the displacing agency may use this section to exceed the maximum amounts which may be paid under sections 4623 and 4624 of this title on a case-by-case basis for good cause as determined in accordance with such regulations as the head of the lead agency shall issue.

(b) No person shall be required to move from his dwelling on account of any program or project undertaken by a Federal agency or with Federal financial assistance, unless the head of the displacing agency is satisfied that comparable replacement housing is available to such person.

(Pub. L. 91-646, title II, § 206, Jan. 2, 1971, 84 Stat. 1898; Pub. L. 100-17, title IV, § 409, Apr. 2, 1987, 101 Stat. 253.)

AMENDMENTS

1987—Subsec. (a). Pub. L. 100-17 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “If a Federal project cannot proceed to actual construction because comparable replacement sale or rental housing is not available, and the head of the Federal agency determines that such housing cannot otherwise be made available he may take such action as is necessary or appropriate to provide such housing by use of funds authorized for such project.”

Subsec. (b). Pub. L. 100-17 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “No person shall be required to move from his dwelling on or after January 2, 1971, on account of any Federal project, unless the Federal agency head is satisfied that replacement housing, in accordance with section 4625(c)(3) of this title, is available to such person.”

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-17 effective on effective date provided in regulations promulgated under section 4633 of this title (as amended by section 412 of Pub. L. 100-17), but not later than 2 years after Apr. 2, 1987, see section 418 of Pub. L. 100-17, set out as a note under section 4601 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4603, 4632 of this title; title 16 sections 429b-2, 450e-1, 460l-8, 460bb-2, 698b, 698h.

§ 4627. State required to furnish real property incident to Federal assistance (local cooperation)

Whenever real property is acquired by a State agency and furnished as a required contribution incident to a Federal program or project, the Federal agency having authority over the program or project may not accept such property unless such State agency has made all payments and provided all assistance and assurances, as are required of a State agency by sections 4630 and 4655 of this title. Such State agency shall pay the cost of such requirements in the same manner and to the same extent as the real property acquired for such project, except that in the case of any real property acquisition or displacement occurring prior to July 1, 1972, such Federal agency shall pay 100 per centum of the first \$25,000 of the cost of providing such payments and assistance.

(Pub. L. 91-646, title II, § 207, Jan. 2, 1971, 84 Stat. 1898.)

§ 4628. State acting as agent for Federal program

Whenever real property is acquired by a State agency at the request of a Federal agency for a Federal program or project, such acquisition shall, for the purposes of this chapter, be deemed an acquisition by the Federal agency having authority over such program or project.

(Pub. L. 91-646, title II, § 208, Jan. 2, 1971, 84 Stat. 1899.)

§ 4629. Public works programs and projects of District of Columbia government and Washington Metropolitan Area Transit Authority

Whenever real property is acquired by the government of the District of Columbia or the Washington Metropolitan Area Transit Authority for a program or project which is not subject to sections 4630 and 4631 of this title, and such acquisition will result in the displacement of any person on or after January 2, 1971, the Mayor of the District of Columbia or the Washington Metropolitan Area Transit Authority, as the case may be, shall make all relocation payments and provide all assistance required of a Federal agency by this chapter. Whenever real property is acquired for such a program or project on or after such effective date, such Mayor or Authority, as the case may be, shall make all payments and meet all requirements prescribed for a Federal agency by subchapter III of this chapter.

(Pub. L. 91-646, title II, § 209, Jan. 2, 1971, 84 Stat. 1899; Pub. L. 93-198, title IV, § 421, Dec. 24, 1973, 87 Stat. 789.)

REFERENCES IN TEXT

Subchapter III of this chapter, referred to in text, was in the original “title III of this Act”, meaning title III of Pub. L. 91-646, Jan. 2, 1971, 84 Stat. 1904, which enacted subchapter III of this chapter, repealed sections 3071 to 3073 of this title, section 141 of Title 23, High-

ways, and section 596 of Title 33, Navigation and Navigable Waters, and enacted provisions set out as a note under section 4651 of this title. For complete classification of title III to the Code, see Tables.

CODIFICATION

Section is also set out in D.C. Code, § 5-834(a).

TRANSFER OF FUNCTIONS

“Mayor” substituted for “Commissioner” pursuant to section 421 of Pub. L. 93-198, Office of Commissioner of District of Columbia, as established by Reorg. Plan No. 3 of 1967, abolished as of noon Jan. 2, 1975, by Pub. L. 93-198, title VII, § 711, Dec. 24, 1973, 87 Stat. 818, and replaced by Office of Mayor of District of Columbia by section 421 of Pub. L. 93-198.

§ 4630. Requirements for relocation payments and assistance of federally assisted program; assurances of availability of housing

Notwithstanding any other law, the head of a Federal agency shall not approve any grant to, or contract or agreement with, a displacing agency (other than a Federal agency), under which Federal financial assistance will be available to pay all or part of the cost of any program or project which will result in the displacement of any person on or after January 2, 1971, unless he receives satisfactory assurances from such displacing agency that—

- (1) fair and reasonable relocation payments and assistance shall be provided to or for displaced persons, as are required to be provided by a Federal agency under sections 4622, 4623, and 4624 of this title;
- (2) relocation assistance programs offering the services described in section 4625 of this title shall be provided to such displaced persons;
- (3) within a reasonable period of time prior to displacement, comparable replacement dwellings will be available to displaced persons in accordance with section 4625(c)(3) of this title.

(Pub. L. 91-646, title II, § 210, Jan. 2, 1971, 84 Stat. 1899; Pub. L. 100-17, title IV, § 410, Apr. 2, 1987, 101 Stat. 254.)

AMENDMENTS

1987—Pub. L. 100-17 in introductory provisions substituted “displacing agency (other than a Federal agency)” for “State agency” and “assurances from such displacing agency” for “assurances from such State agency”, and in par. (3) substituted “comparable replacement dwellings” for “decent, safe, and sanitary replacement dwellings”.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-17 effective on effective date provided in regulations promulgated under section 4633 of this title (as amended by section 412 of Pub. L. 100-17), but not later than 2 years after Apr. 2, 1987, see section 418 of Pub. L. 100-17, set out as a note under section 4601 of this title.

EFFECTIVE DATE

Section as completely applicable to all States after July 1, 1972, but until such date applicable to a State to extent the State is able under its laws to comply with this section, see section 221(b) of Pub. L. 91-646, set out as a note under section 4601 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4604, 4627, 4629, 4632 of this title.

§ 4631. Federal share of costs

(a) Cost to displacing agency; eligibility

The cost to a displacing agency of providing payments and assistance under this subchapter and subchapter III of this chapter shall be included as part of the cost of a program or project undertaken by a Federal agency or with Federal financial assistance. A displacing agency, other than a Federal agency, shall be eligible for Federal financial assistance with respect to such payments and assistance in the same manner and to the same extent as other program or project costs.

(b) Comparable payments under other laws

No payment or assistance under this subchapter or subchapter III of this chapter shall be required to be made to any person or included as a program or project cost under this section, if such person receives a payment required by Federal, State, or local law which is determined by the head of the Federal agency to have substantially the same purpose and effect as such payment under this section.

(c) Agreements prior to January 2, 1971; advancements

Any grant to, or contract or agreement with, a State agency executed before January 2, 1971, under which Federal financial assistance is available to pay all or part of the cost of any program or project which will result in the displacement of any person on or after January 2, 1971, shall be amended to include the cost of providing payments and services under sections 4630 and 4655 of this title. If the head of a Federal agency determines that it is necessary for the expeditious completion of a program or project he may advance to the State agency the Federal share of the cost of any payments or assistance by such State agency pursuant to sections 4626, 4630, 4635, and 4655 of this title.

(Pub. L. 91-646, title II, § 211, Jan. 2, 1971, 84 Stat. 1900; Pub. L. 100-17, title IV, § 411, Apr. 2, 1987, 101 Stat. 254.)

REFERENCES IN TEXT

Subchapter III of this chapter, referred to in subsecs. (a) and (b), was in the original “title III of this Act”, meaning title III of Pub. L. 91-646, Jan. 2, 1971, 84 Stat. 1904, which enacted subchapter III of this chapter, repealed sections 3071 to 3073 of this title, section 141 of Title 23, Highways, and section 596 of Title 33, Navigation and Navigable Waters, and enacted provisions set out as a note under section 4651 of this title. For complete classification of title III to the Code, see Tables.

AMENDMENTS

1987—Subsec. (a). Pub. L. 100-17, § 411(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “The cost to a State agency of providing payments and assistance pursuant to sections 4626, 4630, 4635, and 4655 of this title, shall be included as part of the cost of a program or project for which Federal financial assistance is available to such State agency, and such State agency shall be eligible for Federal financial assistance with respect to such payments and assistance in the same manner and to the same extent as other program or project costs, except that, notwithstanding any other law in the case where the Federal financial assistance is by grant or contribution the Federal agency shall pay the full amount of the first \$25,000 of the cost to a State agency of providing pay-

ments and assistance for a displaced person under sections 4626, 4630, 4635, and 4655 of this title, on account of any acquisition or displacement occurring prior to July 1, 1972, and in any case where such Federal financial assistance is by loan, the Federal agency shall loan such State agency the full amount of the first \$25,000 of such cost."

Subsec. (b). Pub. L. 100-17, §411(b), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "No payment or assistance under section 4630 or 4655 of this title shall be required or included as a program or project cost under this section, if the displaced person receives a payment required by the State law of eminent domain which is determined by such Federal agency head to have substantially the same purpose and effect as such payment under this section, and to be part of the cost of the program or project for which Federal financial assistance is available."

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-17 effective on effective date provided in regulations promulgated under section 4633 of this title (as amended by section 412 of Pub. L. 100-17), but not later than 2 years after Apr. 2, 1987, see section 418 of Pub. L. 100-17, set out as a note under section 4601 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4629 of this title.

§ 4632. Administration; relocation assistance in programs receiving Federal financial assistance

In order to prevent unnecessary expenses and duplications of functions, and to promote uniform and effective administration of relocation assistance programs for displaced persons under sections 4626, 4630, and 4635 of this title, a State agency may enter into contracts with any individual, firm, association, or corporation for services in connection with such programs, or may carry out its functions under this subchapter through any Federal or State governmental agency or instrumentality having an established organization for conducting relocation assistance programs. Such State agency shall, in carrying out the relocation assistance activities described in section 4626 of this title, whenever practicable, utilize the services of State or local housing agencies, or other agencies having experience in the administration or conduct of similar housing assistance activities.

(Pub. L. 91-646, title II, §212, Jan. 2, 1971, 84 Stat. 1900.)

§ 4633. Duties of lead agency

(a) General provisions

The head of the lead agency shall—

(1) develop, publish, and issue, with the active participation of the Secretary of Housing and Urban Development and the heads of other Federal agencies responsible for funding relocation and acquisition actions, and in coordination with State and local governments, such regulations as may be necessary to carry out this chapter;

(2) provide, in consultation with the Attorney General (acting through the Commissioner of the Immigration and Naturalization Service), through training and technical assistance activities for displacing agencies, information developed with the Attorney Gen-

eral (acting through the Commissioner) on proper implementation of section 4605 of this title;

(3) ensure that displacing agencies implement section 4605 of this title fairly and without discrimination in accordance with section 4605(b)(2)(B) of this title;

(4) ensure that relocation assistance activities under this chapter are coordinated with low-income housing assistance programs or projects by a Federal agency or a State or State agency with Federal financial assistance;

(5) monitor, in coordination with other Federal agencies, the implementation and enforcement of this chapter and report to the Congress, as appropriate, on any major issues or problems with respect to any policy or other provision of this chapter; and

(6) perform such other duties as may be necessary to carry out this chapter.

(b) Regulations and procedures

The head of the lead agency is authorized to issue such regulations and establish such procedures as he may determine to be necessary to assure—

(1) that the payments and assistance authorized by this chapter shall be administered in a manner which is fair and reasonable and as uniform as practicable;

(2) that a displaced person who makes proper application for a payment authorized for such person by this subchapter shall be paid promptly after a move or, in hardship cases, be paid in advance; and

(3) that any aggrieved person may have his application reviewed by the head of the Federal agency having authority over the applicable program or project or, in the case of a program or project receiving Federal financial assistance, by the State agency having authority over such program or project or the Federal agency having authority over such program or project if there is no such State agency.

(c) Applicability to Tennessee Valley Authority and Rural Electrification Administration

The regulations and procedures issued pursuant to this section shall apply to the Tennessee Valley Authority and the Rural Electrification Administration only with respect to relocation assistance under this subchapter and subchapter I of this chapter.

(Pub. L. 91-646, title II, §213, Jan. 2, 1971, 84 Stat. 1900; Pub. L. 100-17, title IV, §412, Apr. 2, 1987, 101 Stat. 254; Pub. L. 102-240, title I, §1055, Dec. 18, 1991, 105 Stat. 2002; Pub. L. 105-117, §2, Nov. 21, 1997, 111 Stat. 2385.)

AMENDMENTS

1997—Subsec. (a)(2) to (6). Pub. L. 105-117 added pars. (2) and (3) and redesignated former pars. (2) to (4) as (4) to (6), respectively.

1991—Subsec. (c). Pub. L. 102-240 inserted "and the Rural Electrification Administration" after "Tennessee Valley Authority".

1987—Pub. L. 100-17 in amending section generally, substituted "Duties of lead agency" for "Regulations and procedures" in section catchline.

Subsec. (a). Pub. L. 100-17 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows:

“In order to promote uniform and effective administration of relocation assistance and land acquisition of State or local housing agencies, or other agencies having programs or projects by Federal agencies or programs or projects by State agencies receiving Federal financial assistance, the heads of Federal agencies shall consult together on the establishment of regulations and procedures for the implementation of such programs.”

Subsec. (b). Pub. L. 100-17 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “The head of each Federal agency is authorized to establish such regulations and procedures as he may determine to be necessary to assure—

“(1) that the payments and assistance authorized by this chapter shall be administered in a manner which is fair and reasonable, and as uniform as practicable;

“(2) that a displaced person who makes proper application for a payment authorized for such person by this subchapter shall be paid promptly after a move or, in hardship cases, be paid in advance; and

“(3) that any person aggrieved by a determination as to eligibility for a payment authorized by this chapter, or the amount of a payment, may have his application reviewed by the head of the Federal agency having authority over the applicable program or project, or in the case of a program or project receiving Federal financial assistance, by the head of the State agency.”

Subsec. (c). Pub. L. 100-17 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “The head of each Federal agency may prescribe such other regulations and procedures, consistent with the provisions of this chapter, as he deems necessary or appropriate to carry out this chapter.”

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-240 effective Dec. 18, 1991, and applicable to funds authorized to be appropriated or made available after Sept. 30, 1991, and, with certain exceptions, not applicable to funds appropriated or made available on or before Sept. 30, 1991, see section 1100 of Pub. L. 102-240, set out as a note under section 104 of Title 23, Highways.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-17 effective Apr. 2, 1987, to the extent such amendment prescribes authority to develop, publish, and issue regulations, and otherwise to take effect on effective date provided in such regulations but not later than 2 years after Apr. 2, 1987, see section 418 of Pub. L. 100-17, set out as a note under section 4601 of this title.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of Title 8, Aliens and Nationality.

IMPROVEMENT OF ADMINISTRATION AND IMPLEMENTATION OF THIS CHAPTER

Memorandum of the President dated February 27, 1985, 50 F.R. 8953, provided:

The purpose of this Memorandum is to improve administration and implementation of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 [42 U.S.C. 4601 et seq.].

Specifically, I hereby direct the following actions:

1. The Presidential Memorandum of September 6, 1973 on this subject is superseded.

2. As with other Administration management improvement initiatives, a lead agency, the Department of Transportation (DOT), is designated to coordinate and monitor implementation of the Act, and consult

periodically with State and local governments and other organizations and interest groups affected by administration of the Act.

3. DOT, jointly with the Department of Housing and Urban Development, shall interact with the principal executive departments and agencies affected by the Act in developing Administration policy.

4. Within 90 days of the date of this Memorandum, all affected executive departments and agencies shall propose common regulations under the Act. Within one year of the date of this Memorandum, such departments and agencies shall issue common regulations under the Act. Such regulations shall be consistent with the model policy promulgated by DOT, in consultation and coordination with other affected agencies, and published in final form in the Federal Register simultaneously with this Memorandum.

5. DOT shall report annually to the President's Council on Management Improvement, through the Office of Management and Budget, on implementation of the Act.

§ 4634. Repealed. Pub. L. 100-17, title IV, § 415, Apr. 2, 1987, 100 Stat. 255

Section, Pub. L. 91-646, title II, § 214, Jan. 2, 1971, 84 Stat. 1901, required head of each Federal agency to submit an annual report to the President respecting programs and policies established or authorized by this chapter, and the President to submit such reports to Congress.

EFFECTIVE DATE OF REPEAL

Repeal effective on effective date provided in regulations promulgated under section 4633 of this title (as amended by section 412 of Pub. L. 100-17), but not later than 2 years after Apr. 2, 1987, see section 418 of Pub. L. 100-17, set out as an Effective Date of 1987 Amendment note under section 4601 of this title.

§ 4635. Planning and other preliminary expenses for additional housing

In order to encourage and facilitate the construction or rehabilitation of housing to meet the needs of displaced persons who are displaced from dwellings because of any Federal or Federal financially assisted project, the head of the Federal agency administering such project is authorized to make loans as a part of the cost of any such project, or to approve loans as a part of the cost of any such project receiving Federal financial assistance, to nonprofit, limited dividend, or cooperative organizations or to public bodies, for necessary and reasonable expenses, prior to construction, for planning and obtaining federally insured mortgage financing for the rehabilitation or construction of housing for such displaced persons. Notwithstanding the preceding sentence, or any other law, such loans shall be available for not to exceed 80 per centum of the reasonable costs expected to be incurred in planning, and in obtaining financing for, such housing, prior to the availability of such financing, including, but not limited to, preliminary surveys and analyses of market needs, preliminary site engineering, preliminary architectural fees, site acquisition, application and mortgage commitment fees, and construction loan fees and discounts. Loans to an organization established for profit shall bear interest at a market rate established by the head of such Federal agency. All other loans shall be without interest. Such Federal agency head shall require repayment of loans made under this section, under such terms and conditions as he may re-

quire, upon completion of the project or sooner, and except in the case of a loan to an organization established for profit, may cancel any part or all of a loan if he determines that a permanent loan to finance the rehabilitation or the construction of such housing cannot be obtained in an amount adequate for repayment of such loan. Upon repayment of any such loan, the Federal share of the sum repaid shall be credited to the account from which such loan was made, unless the Secretary of the Treasury determines that such account is no longer in existence, in which case such sum shall be returned to the Treasury and credited to miscellaneous receipts. (Pub. L. 91-646, title II, §215, Jan. 2, 1971, 84 Stat. 1901.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4632 of this title.

§ 4636. Payments not to be considered as income for revenue purposes or for eligibility for assistance under Social Security Act or other Federal law

No payment received under this subchapter shall be considered as income for the purposes of title 26; or for the purposes of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act [42 U.S.C. 301 et seq.] or any other Federal law (except for any Federal law providing low-income housing assistance).

(Pub. L. 91-646, title II, §216, Jan. 2, 1971, 84 Stat. 1902; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100-17, title IV, §413, Apr. 2, 1987, 101 Stat. 255.)

REFERENCES IN TEXT

The Social Security Act, referred to in text, is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§301 et seq.) of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

AMENDMENTS

1987—Pub. L. 100-17 inserted “(except for any Federal law providing low-income housing assistance)” before period at end.

1986—Pub. L. 99-514 substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”, which for purposes of codification was translated as “title 26” thus requiring no change in text.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-17 effective on effective date provided in regulations promulgated under section 4633 of this title (as amended by section 412 of Pub. L. 100-17), but not later than 2 years after Apr. 2, 1987, see section 418 of Pub. L. 100-17, set out as a note under section 4601 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1382a, 1382b of this title.

§ 4637. Repealed. Pub. L. 100-17, title IV, § 415, Apr. 2, 1987, 101 Stat. 255

Section, Pub. L. 91-646, title II, §217, Jan. 2, 1971, 84 Stat. 1902, related to displacement by code enforcement, rehabilitation, and demolition programs receiving Federal assistance.

EFFECTIVE DATE OF REPEAL

Repeal effective on effective date provided in regulations promulgated under section 4633 of this title (as

amended by section 412 of Pub. L. 100-17), but not later than 2 years after Apr. 2, 1987, see section 418 of Pub. L. 100-17, set out as an Effective Date of 1987 Amendment note under section 4601 of this title.

§ 4638. Transfers of surplus property

The Administrator of General Services is authorized to transfer to a State agency for the purpose of providing replacement housing required by this subchapter, any real property surplus to the needs of the United States within the meaning of the Federal Property and Administrative Services Act of 1949, as amended.¹ Such transfer shall be subject to such terms and conditions as the Administrator determines necessary to protect the interests of the United States and may be made without monetary consideration, except that such State agency shall pay to the United States all net amounts received by such agency from any sale, lease, or other disposition of such property for such housing.

(Pub. L. 91-646, title II, §218, Jan. 2, 1971, 84 Stat. 1902; Pub. L. 100-17, title IV, §414, Apr. 2, 1987, 101 Stat. 255.)

REFERENCES IN TEXT

The Federal Property and Administrative Services Act of 1949, as amended, referred to in text, is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Except for title III of the Act, which is classified generally to subchapter IV (§251 et seq.) of chapter 4 of Title 41, Public Contracts, the Act was repealed and reenacted by Pub. L. 107-217, §§1, 6(b), Aug. 21, 2002, 116 Stat. 1062, 1304, as chapters 1 to 11 of Title 40, Public Buildings, Property, and Works.

AMENDMENTS

1987—Pub. L. 100-17 inserted “net” after “all”.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-17 effective on effective date provided in regulations promulgated under section 4633 of this title (as amended by section 412 of Pub. L. 100-17), but not later than 2 years after Apr. 2, 1987, see section 418 of Pub. L. 100-17, set out as a note under section 4601 of this title.

SUBCHAPTER III—UNIFORM REAL PROPERTY ACQUISITION POLICY

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 4631 of this title.

§ 4651. Uniform policy on real property acquisition practices

In order to encourage and expedite the acquisition of real property by agreements with owners, to avoid litigation and relieve congestion in the courts, to assure consistent treatment for owners in the many Federal programs, and to promote public confidence in Federal land acquisition practices, heads of Federal agencies shall, to the greatest extent practicable, be guided by the following policies:

(1) The head of a Federal agency shall make every reasonable effort to acquire expeditiously real property by negotiation.

(2) Real property shall be appraised before the initiation of negotiations, and the owner or his

¹ See References in Text note below.

designated representative shall be given an opportunity to accompany the appraiser during his inspection of the property, except that the head of the lead agency may prescribe a procedure to waive the appraisal in cases involving the acquisition by sale or donation of property with a low fair market value.

(3) Before the initiation of negotiations for real property, the head of the Federal agency concerned shall establish an amount which he believes to be just compensation therefor and shall make a prompt offer to acquire the property for the full amount so established. In no event shall such amount be less than the agency's approved appraisal of the fair market value of such property. Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, will be disregarded in determining the compensation for the property. The head of the Federal agency concerned shall provide the owner of real property to be acquired with a written statement of, and summary of the basis for, the amount he established as just compensation. Where appropriate the just compensation for the real property acquired and for damages to remaining real property shall be separately stated.

(4) No owner shall be required to surrender possession of real property before the head of the Federal agency concerned pays the agreed purchase price, or deposits with the court in accordance with section 3114(a) to (d) of title 40, for the benefit of the owner, an amount not less than the agency's approved appraisal of the fair market value of such property, or the amount of the award of compensation in the condemnation proceeding for such property.

(5) The construction or development of a public improvement shall be so scheduled that, to the greatest extent practicable, no person lawfully occupying real property shall be required to move from a dwelling (assuming a replacement dwelling as required by subchapter II of this chapter will be available), or to move his business or farm operation, without at least ninety days' written notice from the head of the Federal agency concerned, of the date by which such move is required.

(6) If the head of a Federal agency permits an owner or tenant to occupy the real property acquired on a rental basis for a short term or for a period subject to termination by the Government on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.

(7) In no event shall the head of a Federal agency either advance the time of condemnation, or defer negotiations or condemnation and the deposit of funds in court for the use of the owner, or take any other action coercive in nature, in order to compel an agreement on the price to be paid for the property.

(8) If any interest in real property is to be acquired by exercise of the power of eminent domain, the head of the Federal agency concerned shall institute formal condemnation proceed-

ings. No Federal agency head shall intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his real property.

(9) If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant, the head of the Federal agency concerned shall offer to acquire that remnant. For the purposes of this chapter, an uneconomic remnant is a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property and which the head of the Federal agency concerned has determined has little or no value or utility to the owner.

(10) A person whose real property is being acquired in accordance with this subchapter may, after the person has been fully informed of his right to receive just compensation for such property, donate such property, and part thereof, any interest therein, or any compensation paid therefor to a Federal agency, as such person shall determine.

(Pub. L. 91-646, title III, §301, Jan. 2, 1971, 84 Stat. 1904; Pub. L. 100-17, title IV, §416, Apr. 2, 1987, 101 Stat. 255.)

REFERENCES IN TEXT

Subchapter II of this chapter, referred to in par. (5), was in the original "title II of this Act", meaning title II of Pub. L. 91-646, Jan. 2, 1971, 84 Stat. 1895, which enacted subchapter II of this chapter, amended sections 1415, 2473, and 3307 of this title and section 1606 of former Title 49, Transportation, repealed sections 1465 and 3074 of this title, section 2680 of Title 10, Armed Forces, sections 501 to 512 of Title 23, Highways, sections 1231 to 1234 of Title 43, Public Lands, and enacted provisions set out as notes under sections 4601 and 4621 of this title and under sections 501 to 512 of Title 23. For complete classification of title II to the Code, see Short Title note set out under section 4601 of this title and Tables.

This chapter, referred to in par. (9), was in the original "this Act", meaning Pub. L. 91-646, Jan. 2, 1971, 84 Stat. 1894, known as the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, which enacted this chapter, amended sections 1415, 2473, and 3307 of this title and section 1606 of former Title 49, repealed sections 1465 and 3071 to 3074 of this title, section 2680 of Title 10, sections 141 and 501 to 512 of Title 23, section 596 of Title 33, Navigation and Navigable Waters, sections 1231 to 1234 of Title 43, and enacted provisions set out as notes under sections 4601, 4621, and 4651 of this title and under section 501 of Title 23. For complete classification of this Act to the Code, see Short Title note set out under section 4601 of this title and Tables.

This subchapter, referred to in par. (10), was in the original "this title", meaning title III of Pub. L. 91-646, Jan. 2, 1971, 84 Stat. 1904, which enacted this subchapter, repealed sections 3071 to 3073 of this title, section 141 of Title 23, and section 596 of Title 33, and enacted provisions set out as a note under section 4651 of this title. For complete classification of title III to the Code, see Tables.

CODIFICATION

In par. (4), "section 3114(a) to (d) of title 40" substituted for "section 1 of the Act of February 26, 1931 (46 Stat. 1421; 40 U.S.C. 258a)" on authority of Pub. L. 107-217, §5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

AMENDMENTS

1987—Par. (2). Pub. L. 100-17, §416(a), inserted provision respecting the waiver of appraisal in cases involv-

ing the acquisition of property with a low fair market value.

Par. (9). Pub. L. 100-17, §416(b), amended par. (9) generally. Prior to amendment, par. (9) read as follows: "If the acquisition of only part of a property would leave its owner with an uneconomic remnant, the head of the Federal agency concerned shall offer to acquire the entire property."

Par. (10). Pub. L. 100-17, §416(c), added par. (10).

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-17 effective on effective date provided in regulations promulgated under section 4633 of this title (as amended by section 412 of Pub. L. 100-17), but not later than 2 years after Apr. 2, 1987, see section 418 of Pub. L. 100-17, set out as a note under section 4601 of this title.

SAVINGS PROVISION

Section 306 of Pub. L. 91-646 provided in part that: "Any rights or liabilities now existing under prior Acts or portions thereof shall not be affected by the repeal of such prior Act or portions thereof under this section [repealing sections 3071 to 3073 of this title, section 141 of Title 23, Highways, and section 596 of Title 33, Navigation and Navigable Waters]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4602, 4655 of this title; title 10 section 2684a; title 16 section 698f.

§ 4652. Buildings, structures, and improvements

(a) Notwithstanding any other provision of law, if the head of a Federal agency acquires any interest in real property in any State, he shall acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property so acquired and which he requires to be removed from such real property or which he determines will be adversely affected by the use to which such real property will be put.

(b)(1) For the purpose of determining the just compensation to be paid for any building, structure, or other improvement required to be acquired by subsection (a) of this section, such building, structure, or other improvement shall be deemed to be a part of the real property to be acquired notwithstanding the right or obligation of a tenant, as against the owner of any other interest in the real property, to remove such building, structure, or improvement at the expiration of his term, and the fair market value which such building, structure, or improvement contributes to the fair market value of the real property to be acquired, or the fair market value of such building, structure, or improvement for removal from the real property, whichever is the greater, shall be paid to the tenant therefor.

(2) Payment under this subsection shall not result in duplication of any payments otherwise authorized by law. No such payment shall be made unless the owner of the land involved disclaims all interest in the improvements of the tenant. In consideration for any such payment, the tenant shall assign, transfer, and release to the United States all his right, title, and interest in and to such improvements. Nothing in this subsection shall be construed to deprive the tenant of any rights to reject payment under this subsection and to obtain payment for such property interests in accordance with applicable law, other than this subsection.

(Pub. L. 91-646, title III, §302, Jan. 2, 1971, 84 Stat. 1905.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4655 of this title.

§ 4653. Expenses incidental to transfer of title to United States

The head of a Federal agency, as soon as practicable after the date of payment of the purchase price or the date of deposit in court of funds to satisfy the award of compensation in a condemnation proceeding to acquire real property, whichever is the earlier, shall reimburse the owner, to the extent the head of such agency deems fair and reasonable, for expenses he necessarily incurred for—

(1) recording fees, transfer taxes, and similar expenses incidental to conveying such real property to the United States;

(2) penalty costs for prepayment of any pre-existing recorded mortgage entered into in good faith encumbering such real property; and

(3) the pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the United States, or the effective date of possession of such real property by the United States, whichever is the earlier.

(Pub. L. 91-646, title III, §303, Jan. 2, 1971, 84 Stat. 1906.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4655 of this title.

§ 4654. Litigation expenses

(a) Judgment for owner or abandonment of proceedings

The Federal court having jurisdiction of a proceeding instituted by a Federal agency to acquire real property by condemnation shall award the owner of any right, or title to, or interest in, such real property such sum as will in the opinion of the court reimburse such owner for his reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of the condemnation proceedings, if—

(1) the final judgment is that the Federal agency cannot acquire the real property by condemnation; or

(2) the proceeding is abandoned by the United States.

(b) Payment

Any award made pursuant to subsection (a) of this section shall be paid by the head of the Federal agency for whose benefit the condemnation proceedings was instituted.

(c) Claims against United States

The court rendering a judgment for the plaintiff in a proceeding brought under section 1346(a)(2) or 1491 of title 28, awarding compensation for the taking of property by a Federal agency, or the Attorney General effecting a settlement of any such proceeding, shall determine and award or allow to such plaintiff, as a part of such judgment or settlement, such sum as will

in the opinion of the court or the Attorney General reimburse such plaintiff for his reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of such proceeding.

(Pub. L. 91-646, title III, §304, Jan. 2, 1971, 84 Stat. 1906.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4655 of this title.

§ 4655. Requirements for uniform land acquisition policies; payments of expenses incidental to transfer of real property to State; payment of litigation expenses in certain cases

(a) Notwithstanding any other law, the head of a Federal agency shall not approve any program or project or any grant to, or contract or agreement with, an acquiring agency under which Federal financial assistance will be available to pay all or part of the cost of any program or project which will result in the acquisition of real property on and after January 2, 1971, unless he receives satisfactory assurances from such acquiring agency that—

(1) in acquiring real property it will be guided, to the greatest extent practicable under State law, by the land acquisition policies in section 4651 of this title and the provisions of section 4652 of this title, and

(2) property owners will be paid or reimbursed for necessary expenses as specified in sections 4653 and 4654 of this title.

(b) For purposes of this section, the term “acquiring agency” means—

(1) a State agency (as defined in section 4601(3) of this title) which has the authority to acquire property by eminent domain under State law, and

(2) a State agency or person which does not have such authority, to the extent provided by the head of the lead agency by regulation.

(Pub. L. 91-646, title III, §305, Jan. 2, 1971, 84 Stat. 1906; Pub. L. 100-17, title IV, §417, Apr. 2, 1987, 101 Stat. 256.)

AMENDMENTS

1987—Pub. L. 100-17 designated existing provisions as subsec. (a), substituted “an acquiring agency” for “a State agency” and “such acquiring agency” for “such State agency”, and added subsec. (b).

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-17 effective on effective date provided in regulations promulgated under section 4633 of this title (as amended by section 412 of Pub. L. 100-17), but not later than 2 years after Apr. 2, 1987, see section 418 of Pub. L. 100-17, set out as a note under section 4601 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4604, 4627 of this title.

CHAPTER 62—INTERGOVERNMENTAL PERSONNEL PROGRAM

- Sec. 4701. Congressional findings and declaration of policy.
- 4702. Administration of authorities.

Sec. SUBCHAPTER I—DEVELOPMENT OF POLICIES AND STANDARDS

4711 to 4713. Omitted.

SUBCHAPTER II—STRENGTHENING STATE AND LOCAL PERSONNEL ADMINISTRATION

- 4721. Declaration of purpose.
- 4722. State government and statewide programs and grants.
 - (a) Amount of grants; executive certification; systems of personnel administration; innovation and diversity in design, execution, and management.
 - (b) Application; time of making; information; terms and conditions; personnel administration improvement.
- 4723. Local government programs and grants.
 - (a) Population served; amount of grants; executive certification; State grant, conditions.
 - (b) Application; time of making; information; terms and conditions; waiver; development costs; population served.
 - (c) Gubernatorial review of application; disapproval explanation.
- 4724. Intergovernmental cooperation in recruiting and examining activities; potential employees, certification; payments for costs; credits to appropriation or fund for payment of expenses.
- 4725. Technical assistance; waiver of payments for costs; credits to appropriation or fund for payment of expenses.
- 4726. Coordination of Federal programs.
- 4727. Interstate compacts.
- 4728. Transfer of functions.
 - (a) Prescription of personnel standards on a merit basis.
 - (b) Standards for systems of personnel administration.
 - (c) Powers and duties of Office.
 - (d) Transfer of personnel, property, records, and funds; time of transfer.
 - (e) Modification or superseding of personnel standards.
 - (f) Systems of personnel administration; innovation and diversity in design, execution, and management.
 - (g) Interpretation of certain provisions; limitation.
 - (h) Grants-in-aid; abolition of certain requirements.

SUBCHAPTER III—TRAINING AND DEVELOPING STATE AND LOCAL EMPLOYEES

- 4741. Declaration of purpose.
- 4742. Admission to Federal employee training programs.
 - (a) State and local government officers and employees.
 - (b) Waiver of payments for training costs.
 - (c) Initial costs; reimbursement of other Federal agencies.
- 4743. Grants to State and local governments for training.
 - (a) Amount of grants; executive certification; use restrictions; uses for non-Federal share; personnel training and education programs; innovation and diversity in development and execution.
 - (b) Application; time of making; information; terms and conditions; waiver; development costs.

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- (c) Population served; amount of grants; executive certification; State grant, conditions; terms and conditions; waiver.
 - (d) Gubernatorial review of application; disapproval explanation.
4744. Grants to other organizations.
- (a) Amount of grants; conditions.
 - (b) "Other organization" defined.
4745. Government Service Fellowships.
- (a) Diverse payments.
 - (b) Period of fellowships; eligibility criteria.
 - (c) Selection of fellows; continuation of salary and employment benefits; public service plans upon completion of study; outline of plans in application for grant.
4746. Coordination of Federal programs.

SUBCHAPTER IV—GENERAL PROVISIONS

4761. Declaration of purpose.
4762. Definitions.
4763. General administrative provisions.
- (a) Administration by Office.
 - (b) Advice and assistance.
 - (c) Regulations and standards; contracts; modification, covenants, conditions, and provisions; utilization of other agencies.
 - (d) Information: collection and availability; research and evaluation; administration report; coordination of Federal programs.
 - (e) Additional authority.
4764. Reporting and recordkeeping requirements for State or local governments and other organizations.
4765. Review and audit.
4766. Distribution of grants.
- (a) State and local government allocations; equitable distribution.
 - (b) Weighted formula; minimum allocation; reallocation; "State" defined.
 - (c) Payment limitation.
4767. Termination of grants.
4768. Advisory committees; appointment; compensation and travel expenses.
4769. Authorization of appropriations.
4770. Limitations on availability of funds for cost sharing.
4771. Method of payment; installments; advances or reimbursement; adjustments.
4772. Effective date of grant provisions.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 15 section 278h; title 25 section 3417.

§ 4701. Congressional findings and declaration of policy

The Congress hereby finds and declares—

That effective State and local governmental institutions are essential in the maintenance and development of the Federal system in an increasingly complex and interdependent society.

That, since numerous governmental activities administered by the State and local governments are related to national purpose and are financed in part by Federal funds, a national interest exists in a high caliber of public service in State and local governments.

That the quality of public service at all levels of government can be improved by the development of systems of personnel administration consistent with such merit principles as—

(1) recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment;

(2) providing equitable and adequate compensation;

(3) training employees, as needed, to assure high-quality performance;

(4) retaining employees on the basis of the adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected;

(5) assuring fair treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, national origin, sex, or religious creed and with proper regard for their privacy and constitutional rights as citizens; and

(6) assuring that employees are protected against coercion for partisan political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office.

That Federal financial and technical assistance to State and local governments for strengthening their personnel administration in a manner consistent with these principles is in the national interest.

(Pub. L. 91-648, § 2, Jan. 5, 1971, 84 Stat. 1909.)

SHORT TITLE

Section 1 of Pub. L. 91-648 provided: "That this Act [enacting this chapter and sections 3371 to 3376 of Title 5, Government Organization and Employees, amending section 246(f) of this title, section 1304 of Title 5, repealing sections 1881 to 1888 of Title 7, Agriculture, and section 869b of Title 20, Education, and enacting provisions set out as notes under section 3371 of Title 5] may be cited as the 'Intergovernmental Personnel Act of 1970'."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4722, 4723, 4728, 4743 of this title.

§ 4702. Administration of authorities

The authorities provided by this chapter shall be administered in such manner as (1) to recognize fully the rights, powers, and responsibilities of State and local governments, and (2) to encourage innovation and allow for diversity on the part of State and local governments in the design, execution, and management of their own systems of personnel administration.

(Pub. L. 91-648, § 3, Jan. 5, 1971, 84 Stat. 1909.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 91-648, Jan. 5, 1971, 84 Stat. 1909, as amended, known as the Intergovernmental Personnel Act of 1970, which enacted this chapter and sections 3371 to 3376 of Title 5, Government Organization and Employees, amended section 246(f) of this title, section 1304 of Title 5, repealed sections 1881 to 1888 of Title 7, Agriculture, and section 869b of Title 20, Education, and enacted provisions set out as notes under section 3371 of Title 5. For complete classification of this Act to the Code, see Short Title note set out under section 4701 of this title and Tables.

SUBCHAPTER I—DEVELOPMENT OF
POLICIES AND STANDARDS

§§ 4711 to 4713. Omitted

CODIFICATION

Section 4711, Pub. L. 91-648, title I, §101, Jan. 5, 1971, 84 Stat. 1910, declared the purpose of this subchapter to provide intergovernmental cooperation in the development of policies and standards for the administration of programs authorized by this Act.

Section 4712, Pub. L. 91-648, title I, §102, Jan. 5, 1971, 84 Stat. 1910, which provided for the establishment of an Advisory Council on Intergovernmental Personnel Policy by the President, membership, duties, compensation and travel expenses of the council and termination of the council by the President at any time after the expiration of three years following its establishment, was omitted in view of the revocation of Ex. Ord. No. 11607, July 20, 1971, 36 F.R. 13317, which established the Council, by Ex. Ord. No. 11792, June 25, 1974, 39 F.R. 23191.

Section 4713, Pub. L. 91-648, title I, §103, Jan. 5, 1971, 84 Stat. 1910, which provided that the Council report to the President and Congress, from time to time, its recommendations and findings, was omitted in view of the abolishment of the Council.

SUBCHAPTER II—STRENGTHENING STATE
AND LOCAL PERSONNEL ADMINISTRATION

§ 4721. Declaration of purpose

The purpose of this subchapter is to assist State and local governments to strengthen their staffs by improving their personnel administration.

(Pub. L. 91-648, title II, §201, Jan. 5, 1971, 84 Stat. 1911.)

§ 4722. State government and statewide programs and grants

(a) Amount of grants; executive certification; systems of personnel administration; innovation and diversity in design, execution, and management

The Office of Personnel Management (hereinafter referred to as the "Office") is authorized to make grants to a State for up to 75 per centum (or, with respect to fiscal years commencing after the expiration of three years following the effective date of the grant provisions of this chapter, for up to 50 per centum) of the costs of developing and carrying out programs or projects, on the certification of the Governor of that State that the programs or projects contained within the State's application are consistent with the applicable principles set forth in clauses (1)–(6) of the third paragraph of section 4701 of this title, to strengthen personnel administration in that State government or in local governments of that State. The authority provided by this section shall be employed in such a manner as to encourage innovation and allow for diversity on the part of State and local governments in the design, execution, and management of their own systems of personnel administration.

(b) Application; time of making; information; terms and conditions; personnel administration improvement

An application for a grant shall be made at such time or times, and contain such informa-

tion, as the Office may prescribe. The Office may make a grant under subsection (a) of this section only if the application therefor—

(1) provides for designation, by the Governor or chief executive authority, of the State office that will have primary authority and responsibility for the development and administration of the approved program or project at the State level;

(2) provides for the establishment of merit personnel administration where appropriate and the further improvement of existing systems based on merit principles;

(3) provides for specific personnel administration improvement needs of the State government and, to the extent appropriate, of the local governments in that State, including State personnel administration services for local governments;

(4) provides assurance that the making of a Federal Government grant will not result in a reduction in relevant State or local government expenditures or the substitution of Federal funds for State or local funds previously made available for these purposes; and

(5) sets forth clear and practicable actions for the improvement of particular aspects of personnel administration such as—

(A) establishment of statewide personnel systems of general or special functional coverage to meet the needs of urban, suburban, or rural governmental jurisdictions that are not able to provide sound career services, opportunities for advancement, adequate retirement and leave systems, and other career inducements to well-qualified professional, administrative, and technical personnel;

(B) making State grants to local governments to strengthen their staffs by improving their personnel administration;

(C) assessment of State and local government needs for professional, administrative, and technical manpower, and the initiation of timely and appropriate action to meet such needs;

(D) strengthening one or more major areas of personnel administration, such as recruitment and selection, training and development, and pay administration;

(E) undertaking research and demonstration projects to develop and apply better personnel administration techniques, including both projects conducted by State and local government staffs and projects conducted by colleges or universities or other appropriate nonprofit organizations under grants or contracts;

(F) strengthening the recruitment, selection, assignment, and development of handicapped persons, women, and members of disadvantaged groups whose capacities are not being utilized fully;

(G) training programs related directly to upgrading within the agency for nonprofessional employees who show promise of developing a capacity for assuming professional responsibility;

(H) achieving the most effective use of scarce professional, administrative, and technical manpower; and

(I) increasing intergovernmental cooperation in personnel administration, with respect to such matters as recruiting, examining, pay studies, training, education, personnel interchange, manpower utilization, and fringe benefits.

(Pub. L. 91-648, title II, §202, Jan. 5, 1971, 84 Stat. 1911; 1978 Reorg. Plan No. 2, §102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783.)

REFERENCES IN TEXT

For effective date of the grant provisions of this chapter, referred to in subsec. (a), as being 180 days after Jan. 5, 1971, see section 4772 of this title.

This chapter, referred to in subsec. (a), was in the original "this Act", meaning Pub. L. 91-648, Jan. 5, 1971, 84 Stat. 1909, as amended, known as the Intergovernmental Personnel Act of 1970, which enacted this chapter and sections 3371 to 3376 of Title 5, Government Organization and Employees, amended section 246(f) of this title, section 1304 of Title 5, repealed sections 1881 to 1888 of Title 7, Agriculture, and section 869b of Title 20, Education, and enacted provisions set out as notes under section 3371 of Title 5. For complete classification of this Act to the Code, see Short Title note set out section 4701 of this title and Tables.

TRANSFER OF FUNCTIONS

"Office of Personnel Management" and "Office" substituted in text for "United States Civil Service Commission" and "Commission", respectively, pursuant to Reorg. Plan No. 2 of 1978, §102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred all functions vested by statute in United States Civil Service Commission and Chairman thereof to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4723, 4728 of this title.

§ 4723. Local government programs and grants

(a) Population served; amount of grants; executive certification; State grant, conditions

The Office is authorized to make grants to a general local government, or a combination of general local governments, that serve a population of fifty thousand or more, for up to 75 per centum (or, with respect to fiscal years commencing after the expiration of three years following the effective date of the grant provisions of this chapter, for up to 50 per centum) of the costs of developing and carrying out programs or projects, on the certification of the mayor(s), or chief executive officer(s), of the general local government or combination of local governments that the programs or projects are consistent with the applicable principles set forth in clauses (1)-(6) of the third paragraph of section 4701 of this title, to strengthen the personnel administration of such governments. Such a grant may not be made—

(1) if, at the time of submission of an application, the State concerned has an approved plan which, with the agreement of the particular local government concerned, provides for strengthening one or more aspects of personnel administration in that local government, unless the local government concerned has

problems which are not met by the previously approved plan and for which, with the agreement of the State government concerned with respect to those aspects of personnel administration covered in the approved plan, it is submitting an application; or

(2) after the State concerned has a statewide plan which has been developed by an appropriate State agency designated or established pursuant to State law which provides such agency with adequate authority, administrative organization, and staffing to develop and administer such a statewide plan, and to provide technical assistance and other appropriate support in carrying out the local components of the plan, and which provides procedures insuring adequate involvement of officials of affected local governments in the development and administration of such a statewide plan, unless the local government concerned has special, unique, or urgent problems which are not met by the approved statewide plan and for which it submits an application for funds to be distributed under section 4766(a) of this title.

Upon the request of a Governor or chief executive authority, a grant to a general local government or combination of such governments in that State may not be made during a period not to exceed ninety days commencing with the date provided in section 4772 of this title, or the date on which official regulations for this chapter are promulgated, whichever date is later: *Provided*, That the request of the Governor or chief executive authority indicates that he is developing a plan under (1) above, or during a period not to exceed one hundred and eighty days commencing with the date provided in section 4772 of this title, or the date on which official regulations for this chapter are promulgated, whichever date is later, provided the request of the Governor or chief executive authority indicates that he is developing a statewide plan under (2) above.

(b) Application; time of making; information; terms and conditions; waiver; development costs; population served

An application for a grant from a general local government or a combination of general local governments shall be made at such time or times and shall contain such information as the Office may prescribe. The Office may make a grant under subsection (a) of this section only if the application therefor meets requirements similar to those established in section 4722(b) of this title for a State application for a grant, unless any such requirement is specifically waived by the Office, and the requirements of subsection (c) of this section. Such a grant may cover the costs of developing the program or project covered by the application. The Office may make grants to general local governments, or combinations of such governments, that serve a population of less than fifty thousand, if it finds that such grants will help meet essential needs in programs or projects of national interest and will assist general local governments experiencing special problems in personnel administration related to such programs or projects.

(c) Gubernatorial review of application; disapproval explanation

An application to be submitted to the Office under subsection (b) of this section shall first be submitted by the general local government or combination of such governments to the Governor for review, comments, and recommendations. The Governor may refer the application to the State office designated under section 4722(b)(1) of this title for review. Comments and recommendations (if any) made as a result of the review, and a statement by the general local government or combination of such governments that it has considered the comments and recommendations of the Governor shall accompany the application to the Office. The application need not be accompanied by the comments and recommendations of the Governor if the general local government or combination of such governments certifies to the Office that the application has been before the Governor for review and comment for a period of sixty days without comment by the Governor. An explanation in writing shall be sent to the Governor of a State by the Office whenever the Office does not concur with recommendations of the Governor in approving any local government applications.

(Pub. L. 91-648, title II, §203, Jan. 5, 1971, 84 Stat. 1912; 1978 Reorg. Plan No. 2, §102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783.)

REFERENCES IN TEXT

For effective date of the grant provisions of this chapter, referred to in subsec. (a), as being 180 days after Jan. 5, 1971, see section 4772 of this title.

TRANSFER OF FUNCTIONS

“Office”, meaning Office of Personnel Management, substituted in text for “Commission”, meaning Civil Service Commission, pursuant to Reorg. Plan No. 2 of 1978, §102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred functions vested by statute in Civil Service Commission and Chairman thereof to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4728, 4762 of this title.

§ 4724. Intergovernmental cooperation in recruiting and examining activities; potential employees, certification; payments for costs; credits to appropriation or fund for payment of expenses

(a) The Office may join, on a shared-costs basis, with State and local governments in cooperative recruiting and examining activities under such procedures and regulations as may jointly be agreed upon.

(b) The Office also may, on the written request of a State or local government and under such procedures as may be jointly agreed upon, certify to such governments from appropriate Federal registers the names of potential employees. The State or local government making the request shall pay the Office for the costs, as determined by the Office, of performing the service,

and such payments shall be credited to the appropriation or fund from which the expenses were or are to be paid.

(Pub. L. 91-648, title II, §204, Jan. 5, 1971, 84 Stat. 1914; 1978 Reorg. Plan No. 2, §102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783.)

TRANSFER OF FUNCTIONS

“Office”, meaning Office of Personnel Management, substituted in text for “Commission”, meaning Civil Service Commission, pursuant to Reorg. Plan No. 2 of 1978, §102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred functions vested by statute in Civil Service Commission and Chairman thereof to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

§ 4725. Technical assistance; waiver of payments for costs; credits to appropriation or fund for payment of expenses

The Office may furnish technical advice and assistance, on request, to State and general local governments seeking to improve their systems of personnel administration. The Office may waive, in whole or in part, payments from such governments for the costs of furnishing such assistance. All such payments shall be credited to the appropriation or fund from which the expenses were or are to be paid.

(Pub. L. 91-648, title II, §205, Jan. 5, 1971, 84 Stat. 1914; 1978 Reorg. Plan. No. 2, §102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783.)

TRANSFER OF FUNCTIONS

“Office”, meaning Office of Personnel Management, substituted in text for “Commission”, meaning Civil Service Commission, pursuant to Reorg. Plan No. 2 of 1978, §102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred functions vested by statute in Civil Service Commission and Chairman thereof to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

§ 4726. Coordination of Federal programs

The Office, after consultation with other agencies concerned, shall—

(1) coordinate the personnel administration support and technical assistance given to State and local governments and the support given State programs or projects to strengthen local government personnel administration, including the furnishing of needed personnel administration services and technical assistance, under authority of this chapter with any such support given under other Federal programs; and

(2) make such arrangements, including the collection, maintenance, and dissemination of data on grants for strengthening State and local government personnel administration and on grants to States for furnishing needed personnel administration services and technical assistance to local governments, as needed to avoid duplication and insure consistent administration of related Federal activities.

(Pub. L. 91-648, title II, §206, Jan. 5, 1971, 84 Stat. 1914; 1978 Reorg. Plan No. 2, §102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783.)

TRANSFER OF FUNCTIONS

“Office”, meaning Office of Personnel Management, substituted in text for “Commission”, meaning Civil Service Commission, pursuant to Reorg. Plan No. 2 of 1978, §102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred functions vested by statute in Civil Service Commission and Chairman thereof to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

§ 4727. Interstate compacts

The consent of the Congress is hereby given to any two or more States to enter into compacts or other agreements, not in conflict with any law of the United States, for cooperative efforts and mutual assistance (including the establishment of appropriate agencies) in connection with the development and administration of personnel and training programs for employees and officials of State and local governments.

(Pub. L. 91-648, title II, §207, Jan. 5, 1971, 84 Stat. 1915.)

§ 4728. Transfer of functions

(a) Prescription of personnel standards on a merit basis

There are hereby transferred to the Office all functions, powers, and duties of—

- (1) the Secretary of Agriculture under section 2019(e)(2) of title 7;
- (2) the Secretary of Labor under—
 - (A) the Act of June 6, 1933, as amended (29 U.S.C. 49 et seq.); and
 - (B) section 503(a)(1) of this title;
- (3) the Secretary of Health and Human Services under—
 - (A) sections 2674(a)(6) and 2684(a)(6) of this title;
 - (B) section 3023(a)(6) of this title;
 - (C) sections 246(a)(2)(F) and (d)(2)(F) and 291d(a)(8) of this title; and
 - (D) sections 302(a)(5)(A), 602(a)(5)(A), 705(a)(3)(A), 1202(a)(5)(A), 1352(a)(5)(A), 1382(a)(5)(A), and 1396a(a)(4)(A) of this title; and
- (4) any other department, agency, office, or officer (other than the President) under any other provision of law or regulation applicable to a program of grant-in-aid that specifically requires the establishment and maintenance of personnel standards on a merit basis with respect to the program;

insofar as the functions, powers, and duties relate to the prescription of personnel standards on a merit basis.

(b) Standards for systems of personnel administration

In accordance with regulations of the Office of Personnel Management, Federal agencies may require as a condition of participation in assistance programs, systems of personnel administration consistent with personnel standards pre-

scribed by the Office for positions engaged in carrying out such programs. The standards shall—

(1) include the merit principles in section 4701 of this title;

(2) be prescribed in such a manner as to minimize Federal intervention in State and local personnel administration.

(c) Powers and duties of Office

The Office shall—

(1) provide consultation and technical advice and assistance to State and local governments to aid them in complying with standards prescribed by the Office under subsection (a) of this section; and

(2) advise Federal agencies administering programs of grants or financial assistance as to the application of required personnel administration standards, and recommend and coordinate the taking of such actions by the Federal agencies as the Office considers will most effectively carry out the purpose of this subchapter.

(d) Transfer of personnel, property, records, and funds; time of transfer

So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds of any Federal agency employed, used, held, available, or to be made available in connection with the functions, powers, and duties vested in the Office by this section as the Director of the Management and Budget shall determine shall be transferred to the Office at such time or times as the Director shall direct.

(e) Modification or supersedure of personnel standards

Personnel standards prescribed by Federal agencies under laws and regulations referred to in subsection (a) of this section shall continue in effect until modified or superseded by standards prescribed by the Office under subsection (a) of this section.

(f) Systems of personnel administration; innovation and diversity in design, execution, and management

Any standards or regulations established pursuant to the provisions of this section shall be such as to encourage innovation and allow for diversity on the part of State and local governments in the design, execution, and management of their own individual systems of personnel administration.

(g) Interpretation of certain provisions; limitation

Nothing in this section or in section 4722 or 4723 of this title shall be construed to—

(1) authorize any agency or official of the Federal Government to exercise any authority, direction, or control over the selection, assignment, advancement, retention, compensation, or other personnel action with respect to any individual State or local employee;

(2) authorize the application of personnel standards on a merit basis to the teaching personnel of educational institutions or school systems;

(3) prevent participation by employees or employee organizations in the formulation of policies and procedures affecting the conditions of their employment, subject to the laws and ordinances of the State or local government concerned;

(4) require or request any State or local government employee to disclose his race, religion, or national origin, or the race, religion, or national origin, of any of his forebears;

(5) require or request any State or local government employee, or any person applying for employment as a State or local government employee, to submit to any interrogation or examination or to take any psychological test or any polygraph test which is designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters; or

(6) require or request any State or local government employee to participate in any way in any activities or undertakings unless such activities or undertakings are related to the performance of official duties to which he is or may be assigned or to the development of skills, knowledge, or abilities which qualify him for the performance of such duties.

(h) Grants-in-aid; abolition of certain requirements

Effective one year after October 13, 1978, all statutory personnel requirements established as a condition of the receipt of Federal grants-in-aid by State and local governments are hereby abolished, except—

(1) requirements prescribed under laws and regulations referred to in subsection (a) of this section;

(2) requirements that generally prohibit discrimination in employment or require equal employment opportunity;

(3) sections 3141–3144, 3146, and 3147 of title 40; and

(4) chapter 15 of title 5, relating to political activities of certain State and local employees.

(Pub. L. 91–648, title II, § 208, Jan. 5, 1971, 84 Stat. 1915; Pub. L. 95–454, § 602(a)(2), (3), Oct. 13, 1978, 92 Stat. 1188, 1189; 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

REFERENCES IN TEXT

Section 2019(e)(2) of title 7, referred to in subsec. (a)(1), is a reference to section 2019 of title 7 prior to the general amendment of that section by Pub. L. 95–113, § 1301, Sept. 29, 1977, 91 Stat. 969. Provisions formerly contained in section 2019(e)(2) of title 7 are covered by section 2020(e)(6) of title 7.

Act of June 6, 1933, as amended, referred to in subsec. (a)(2)(A), is act June 6, 1933, ch. 49, 48 Stat. 113, as amended, known as the “Wagner-Peyser Act”, which is classified generally to chapter 4B (§ 49 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 49 of Title 29 and Tables.

Sections 2674(a)(6) and 2684(a)(6) of this title, referred to in subsec. (a)(3)(A), was in the original a reference to sections 134(a)(6) and 204(a)(6) of the Mental Retardation Facilities and Community Mental Health Centers

Construction Act of 1963. Section 134 of the Act was renumbered “133” and amended by Pub. L. 94–103, and is classified to section 6063 of this title. Provisions relating to personnel standards on a merit basis appeared in section 6063(b)(7) of this title, and were subsequently deleted in a general amendment of subsec. (b). Title II of the Act was amended generally by Pub. L. 94–63, and provisions relating to personnel standards on a merit basis appeared in section 237(a)(1)(D) of the Act, which was classified to section 2689t(a)(1)(D) of this title. Section 2689t was repealed by Pub. L. 97–35, title IX, § 902(e)(2)(B), Aug. 13, 1981, 95 Stat. 560.

Section 3023(a)(6) of this title, referred to in subsec. (a)(3)(B), was in the original a reference to section 303(a)(6) of the Older Americans Act of 1965. Section 301 of Pub. L. 93–29 amended the Older Americans Act of 1965 by striking out title III and inserting in lieu thereof a new title III. Provisions relating to personnel standards on a merit basis appeared in section 305(a)(2) of the Act, which was classified to section 3025(a)(2) of this title prior to the general revision and reorganization of title III by Pub. L. 95–478, § 103(b). Provisions similar to those comprising section 3025 of this title are contained in section 3027 of this title.

Section 246(d) of this title, referred to in subsec. (a)(3)(C), was repealed by Pub. L. 97–35, title IX, § 902(b), Aug. 13, 1981, 95 Stat. 559.

Section 602 of this title, referred to in subsec. (a)(3)(D), was repealed and a new section 602 enacted by Pub. L. 104–193, title I, § 103(a)(1), Aug. 22, 1996, 110 Stat. 2112, and, as so enacted, no longer contains a subsec. (a)(5)(A).

Section 705 of this title, referred to in subsec. (a)(3)(D), was amended by Pub. L. 97–35, title XXI, § 2192(a), Aug. 13, 1981, 95 Stat. 822, and, as so amended, did not contain a subsec. (a). Section 705 was subsequently amended by Pub. L. 101–239, title VI, § 6503(b)(2), (4), Dec. 19, 1989, 103 Stat. 2276, which inserted a subsec. “(a)” designation at the beginning of the section and added a par. (3) to subsec. (a).

Section 1382(a)(5)(A) of this title, referred to in subsec. (a)(3)(D), was in the original a reference to section 1602(a)(5)(A) of the Social Security Act. Title XVI of the Social Security Act (section 1381 et seq. of this title) was amended generally by Pub. L. 92–603, title III, § 301, Oct. 30, 1972, 86 Stat. 1465, and the provisions formerly contained in section 1382 of this title appeared in section 602 of the Act, which was classified to section 802 of this title, and was repealed by Pub. L. 93–647, § 3(b), Jan. 4, 1975, 88 Stat. 2349.

CODIFICATION

In subsec. (h)(3), “sections 3141–3144, 3146, and 3147 of title 40” substituted for “the Davis-Bacon Act (40 U.S.C. 276 et seq.)”, meaning 40 U.S.C. 276a et seq., on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

AMENDMENTS

1978—Subsecs. (b) to (h). Pub. L. 95–454 added subsec. (b), redesignated former subsecs. (b) to (g) as (c) to (h), respectively, and in subsec. (h), as so redesignated, substituted provisions respecting abolition of certain requirements respecting grants-in-aid, for provisions setting forth effective date of this section as 60 days after Jan. 5, 1971.

CHANGE OF NAME

“Secretary of Health and Human Services” substituted for “Secretary of Health, Education, and Welfare” in subsec. (a)(3) pursuant to section 509(b) of Pub. L. 96–88, which is classified to section 3508(b) of Title 20, Education.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of Title 5, Government Organization and Employees.

TRANSFER OF FUNCTIONS

“Office”, meaning Office of Personnel Management, substituted for “Commission”, meaning Civil Service Commission, in subsecs. (a) and (c) to (e) pursuant to Reorg. Plan No. 2 of 1978, §102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred functions vested by statute in Civil Service Commission and Chairman thereof to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 section 2020.

SUBCHAPTER III—TRAINING AND DEVELOPING STATE AND LOCAL EMPLOYEES

§ 4741. Declaration of purpose

The purpose of this subchapter is to strengthen the training and development of State and local government employees and officials, particularly in professional, administrative, and technical fields.

(Pub. L. 91-648, title III, §301, Jan. 5, 1971, 84 Stat. 1916.)

§ 4742. Admission to Federal employee training programs**(a) State and local government officers and employees**

In accordance with such conditions as may be prescribed by the head of the Federal agency concerned, a Federal agency may admit State and local government employees and officials to agency training programs established for Federal professional, administrative, or technical personnel.

(b) Waiver of payments for training costs

Federal agencies may waive, in whole or in part, payments from, or on behalf of, State and local governments for the costs of training provided under this section. Payments received by the Federal agency concerned for training under this section shall be credited to the appropriation or fund used for paying the training costs.

(c) Initial costs; reimbursement of other Federal agencies

The Office may use appropriations authorized by this chapter to pay the initial additional developmental or overhead costs that are incurred by reason of admittance of State and local government employees to Federal training courses and to reimburse other Federal agencies for such costs.

(Pub. L. 91-648, title III, §302, Jan. 5, 1971, 84 Stat. 1916; 1978 Reorg. Plan No. 2, 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (c), was in the original “this Act”, meaning Pub. L. 91-648, Jan. 5, 1971, 84 Stat. 1909, as amended, known as the Intergovernmental Personnel Act of 1970, which enacted this chapter and sections 3371 to 3376 of Title 5, Government Organization and Employees, amended section 246(f) of this title, section 1304 of Title 5, repealed sections 1881 to 1888 of Title 7, Agriculture, and section 869b of Title

20, Education, and enacted provisions set out as notes under section 3371 of Title 5. For complete classification of this Act to the Code, see Short Title note set out section 4701 of this title and Tables.

TRANSFER OF FUNCTIONS

“Office”, meaning Office of Personnel Management, substituted for “Commission”, meaning Civil Service Commission, in subsec. (c) pursuant to Reorg. Plan No. 2 of 1978, §102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred functions vested by statute in Civil Service Commission and Chairman thereof to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

§ 4743. Grants to State and local governments for training**(a) Amount of grants; executive certification; use restrictions; uses for non-Federal share; personnel training and education programs; innovation and diversity in development and execution**

If in its judgment training is not adequately provided for under grant-in-aid or other statutes, the Office is authorized to make grants to State and general local governments for up to 75 per centum (or, with respect to fiscal years commencing after the expiration of three years following the effective date of the grant provisions of this chapter, for up to 50 per centum) of the costs of developing and carrying out programs, on the certification of the Governor of that State, or the mayor or chief executive officer of the general local government, that the programs are consistent with the applicable principles set forth in clauses (1)-(6) of the third paragraph of section 4701 of this title, to train and educate their professional, administrative, and technical employees and officials. Such grants may not be used to cover costs of full-time graduate-level study, provided for in section 4745 of this title, or the costs of the construction or acquisition of training facilities. The State and local government share of the cost of developing and carrying out training and education plans and programs may include, but shall not consist solely of, the reasonable value of facilities and of supervisory and other personal services made available by such governments. The authority provided by this section shall be employed in such a manner as to encourage innovation and allow for diversity on the part of State and local governments in developing and carrying out training and education programs for their personnel.

(b) Application; time of making; information; terms and conditions; waiver; development costs

An application for a grant from a State or general local government shall be made at such time or times, and shall contain such information, as the Office may prescribe. The Office may make a grant under subsection (a) of this section, only if the application therefor meets requirements established by this subsection unless any requirement is specifically waived by the Office. Such grant to a State, or to a general local government under subsection (c) of this

section, may cover the costs of developing the program covered by the application. The program covered by the application shall—

(1) provide for designation, by the Governor or chief executive authority, of the State office that will have primary authority and responsibility for the development and administration of the program at the State level;

(2) provide, to the extent feasible, for coordination with relevant training available under or supported by other Federal Government programs or grants;

(3) provide for training needs of the State government and of local governments in that State;

(4) provide, to the extent feasible, for inter-governmental cooperation in employee training matters, especially within metropolitan or regional areas; and

(5) provide assurance that the making of a Federal Government grant will not result in a reduction in relevant State or local government expenditures or the substitution of Federal funds for State or local funds previously made available for these purposes.

(c) Population served; amount of grants; executive certification; State grant, conditions; terms and conditions; waiver

A grant authorized by subsection (a) of this section may be made to a general local government, or a combination of such governments, that serve a population of fifty thousand or more, for up to 75 per centum (or, with respect to fiscal years commencing after the expiration of three years following the effective date of the grant provisions of this chapter, for up to 50 per centum) of the costs of developing and carrying out programs or projects, on the certification of the mayor(s), or chief executive officer(s), of the general local government or combination of local governments that the programs or projects are consistent with the applicable principles set forth in clauses (1)–(6) of the third paragraph of section 4701 of this title to train and educate their professional, administrative, and technical employees and officials. Such a grant may not be made—

(1) if, at the time of submission of an application, the State concerned has an approved plan which, with the agreement of the particular local government concerned, provides for strengthening one or more aspects of training in that local government, unless the local government concerned has problems which are not met by the previously approved plan and for which, with the agreement of the State government concerned with respect to those aspects of training covered in the approved plan, it is submitting an application; or

(2) after the State concerned has a statewide plan which has been developed by an appropriate State agency designated or established pursuant to State law which provides such agency with adequate authority, administrative organization, and staffing to develop and administer such a statewide plan, and to provide technical assistance and other appropriate support in carrying out the local components of the plan, and which provides procedures insuring adequate involvement of offi-

cial of affected local governments in the development and administration of such a statewide plan, unless the local government concerned has special, unique, or urgent problems which are not met by the approved statewide plan and for which it submits an application for funds to be distributed under section 4766(a) of this title.

Upon the request of a Governor or chief executive authority, a grant to a general local government or combination of such governments in that State may not be made during a period not to exceed ninety days commencing with the date provided in section 4772 of this title, or the date on which official regulations for this chapter are promulgated, whichever date is later: *Provided*, That the request of the Governor or chief executive authority indicates that he is developing a plan under (1) above, or during a period not to exceed one hundred and eighty days commencing with the date provided in section 4772 of this title, or the date on which official regulations for this chapter are promulgated, whichever date is later, provided the request of the Governor or chief executive authority indicates that he is developing a statewide plan under (2) above. To be approved, an application for a grant under this subsection must meet requirements similar to those established in subsection (b) of this section for State applications, unless any such requirement is specifically waived by the Office, and the requirements of subsection (d) of this section. The Office may make grants to general local governments, or combinations of such governments that serve a population of less than fifty thousand if it finds that such grants will help meet essential needs in programs or projects of national interest and will assist general local governments experiencing special needs for personnel training and education related to such programs or projects.

(d) Gubernatorial review of application; disapproval explanation

An application to be submitted to the Office under subsection (c) of this section shall first be submitted by the general local government or combination of such governments to the Governor for review, comments, and recommendations. The Governor may refer the application to the State office designated under subsection (b)(1) of this section for review. Comments and recommendations (if any) made as a result of the review and a statement by the general local government or combination of such governments that it has considered the comments and recommendations of the Governor shall accompany the application to the Office. The application need not be accompanied by the comments and recommendations of the Governor if the general local government or combination of such governments certifies to the Office that the application has been before the Governor for review and comment for a period of sixty days without comment by the Governor. An explanation in writing shall be sent to the Governor of a State by the Office whenever the Office does not concur with recommendations of the Governor in approving any local government applications.

(Pub. L. 91-648, title III, §303, Jan. 5, 1971, 84 Stat. 1917; 1978 Reorg. Plan No. 2, §102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783.)

REFERENCES IN TEXT

For effective date of the grant provisions of this chapter, referred to in subsecs. (a) and (c), as being 180 days after Jan. 5, 1971, see section 4772 of this title.

TRANSFER OF FUNCTIONS

“Office”, meaning Office of Personnel Management, substituted in text for “Commission”, meaning Civil Service Commission, pursuant to Reorg. Plan No. 2 of 1978, §102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred functions vested by statute in Civil Service Commission and Chairman thereof to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4762 of this title.

§ 4744. Grants to other organizations

(a) Amount of grants; conditions

The Office is authorized to make grants to other organizations to pay up to 75 per centum (or, with respect to fiscal years commencing after the expiration of three years following the effective date of the grant provisions of this chapter, up to 50 per centum) of the costs of providing training to professional, administrative, or technical employees and officials of State or local governments if the Office—

- (1) finds that State or local governments have requested the proposed program;
- (2) determines that the capability to provide such training does not exist, or is not readily available, within the Federal or the State or local governments requesting such program or within associations of State or local governments, or if such capability does exist that such government or association is not disposed to provide such training; and
- (3) approves the program as meeting such requirements as may be prescribed by the Office in its regulations pursuant to this chapter.

(b) “Other organization” defined

For the purpose of this section “other organization” means—

- (1) a national, regional, statewide, areawide, or metropolitan organization, representing member State or local governments;
- (2) an association of State or local public officials; or
- (3) a nonprofit organization one of whose principal functions is to offer professional advisory, research, development, educational or related services to governments.

(Pub. L. 91-648, title III, §304, Jan. 5, 1971, 84 Stat. 1919; 1978 Reorg. Plan No. 2, §102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783.)

REFERENCES IN TEXT

For effective date of the grant provisions of this chapter, referred to in subsec. (a), as being 180 days after Jan. 5, 1971, see section 4772 of this title.

TRANSFER OF FUNCTIONS

“Office”, meaning Office of Personnel Management, substituted for “Commission”, meaning Civil Service

Commission, in subsec. (a) pursuant to Reorg. Plan No. 2 of 1978, §102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred functions vested by statute in Civil Service Commission and Chairman thereof to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4764 of this title.

§ 4745. Government Service Fellowships

(a) Diverse payments

The Office is authorized to make grants to State and general local governments to support programs approved by the Office for providing Government Service Fellowships for State and local government personnel. The grants may cover—

- (1) the necessary costs of the fellowship recipient’s books, travel, and transportation, and such related expenses as may be authorized by the Office;
- (2) reimbursement to the State or local government for not to exceed one-fourth of the salary of each fellow during the period of the fellowship; and
- (3) payment to the educational institutions involved of such amounts as the Office determines to be consistent with prevailing practices under comparable federally supported programs for each fellow, less any amount charged the fellow for tuition and nonrefundable fees and deposits.

(b) Period of fellowships; eligibility criteria

Fellowships awarded under this section may not exceed two years of full-time graduate-level study for professional, administrative, and technical employees. The regulations of the Office shall include eligibility criteria for the selection of fellowship recipients by State and local governments.

(c) Selection of fellows; continuation of salary and employment benefits; public service plans upon completion of study; outline of plans in application for grant

The State or local government concerned shall—

- (1) select the individual recipients of the fellowships;
- (2) during the period of the fellowship, continue the full salary of the recipient and normal employment benefits such as credit for seniority, leave accrual, retirement, and insurance; and
- (3) make appropriate plans for the utilization and continuation in public service of employees completing fellowships and outline such plans in the application for the grant.

(Pub. L. 91-648, title III, §305, Jan. 5, 1971, 84 Stat. 1919; 1978 Reorg. Plan No. 2, §102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783.)

TRANSFER OF FUNCTIONS

“Office”, meaning Office of Personnel Management, substituted for “Commission”, meaning Civil Service Commission, in subsecs. (a) and (b) pursuant to Reorg. Plan No. 2 of 1978, §102, 43 F.R. 36037, 92 Stat. 3783, set

out under section 1101 of Title 5, Government Organization and Employees, which transferred functions vested by statute in Civil Service Commission and Chairman thereof to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4743 of this title.

§ 4746. Coordination of Federal programs

The Office, after consultation with other agencies concerned, shall—

(1) prescribe regulations concerning administration of training for employees and officials of State and local governments provided for in this subchapter, including requirements for coordination of and reasonable consistency in such training programs;

(2) coordinate the training support given to State and local governments under authority of this chapter with training support given such governments under other Federal programs; and

(3) make such arrangements, including the collection and maintenance of data on training grants and programs, as may be necessary to avoid duplication of programs providing for training and to insure consistent administration of related Federal training activities, with particular regard to title IX of the Higher Education Act of 1965.

(Pub. L. 91-648, title III, §306, Jan. 5, 1971, 84 Stat. 1920; 1978 Reorg. Plan No. 2, §102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783.)

REFERENCES IN TEXT

The Higher Education Act of 1965, referred to in par. (3), is Pub. L. 89-329, Nov. 8, 1965, 79 Stat. 1219, as amended. Title IX of the Act was classified generally to subchapter IX (§1134 et seq.) of chapter 28 of Title 20, Education, prior to repeal by Pub. L. 105-244, title VII, §702, Oct. 7, 1998, 112 Stat. 1803. Title IX as originally added by Pub. L. 89-329 related to education for the public service. Pub. L. 92-318 struck out title IX and inserted in lieu thereof a new title IX relating to graduate programs. Subsequently Pub. L. 99-498 extensively revised title IX relating to graduate programs. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

TRANSFER OF FUNCTIONS

“Office”, meaning Office of Personnel Management, substituted in text for “Commission”, meaning Civil Service Commission, pursuant to Reorg. Plan No. 2 of 1978, §102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred functions vested by statute in Civil Service Commission and Chairman thereof to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

SUBCHAPTER IV—GENERAL PROVISIONS

§ 4761. Declaration of purpose

The purpose of this subchapter is to provide for the general administration of subchapters I, II, III, and IV of this chapter (hereinafter referred to as “this chapter”), and to provide for the establishment of certain advisory committees.

(Pub. L. 91-648, title V, §501, Jan. 5, 1971, 84 Stat. 1925.)

§ 4762. Definitions

For the purpose of this chapter—

(1) “Office” means the Office of Personnel Management;

(2) “Federal agency” means an executive department, military department, independent establishment, or agency in the executive branch of the Government of the United States, including Government owned or controlled corporations;

(3) “State” means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and a territory or possession of the United States, and includes interstate and Federal-interstate agencies but does not include the governments of the political subdivisions of a State;

(4) “local government” means a city, town, county, or other subdivision or district of a State, including agencies, instrumentalities, and authorities of any of the foregoing and any combination of such units or combination of such units and a State. A “general local government” means a city, town, county, or comparable general-purpose political subdivision of a State; and

(5) Notwithstanding the population requirements of sections 4723(a) and 4743(c) of this title, a “local government” and a “general local government” also mean the recognized governing body of an Indian tribe, band, pueblo, or other organized group or community, including any Alaska Native village, as defined in the Alaska Native Claims Settlement Act (85 Stat. 688) [43 U.S.C. 1601 et seq.], which performs substantial governmental functions. The requirements of sections 4723(c) and 4743(d) of this title, relating to reviews by the Governor of a State, do not apply to grant applications from the governing body of an Indian tribe, although nothing in this chapter is intended to discourage or prohibit voluntary communication and cooperation between Indian tribes and State and local governments.

(Pub. L. 91-648, title V, §502, Jan. 5, 1971, 84 Stat. 1925; Pub. L. 93-638, title I, §104(d), formerly §105(d), Jan. 4, 1975, 88 Stat. 2208, renumbered §104(d), Pub. L. 100-472, title II, §203(a), Oct. 5, 1988, 102 Stat. 2290; Pub. L. 95-454, title VI, §602(d), Oct. 13, 1978, 92 Stat. 1189; 1978 Reorg. Plan No. 2, §102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783.)

REFERENCES IN TEXT

This chapter, referred to in text, means the provisions of subchapters I, II, III, and IV of this chapter. See section 4761 of this title.

The Alaska Native Claims Settlement Act, referred to in par. (5), is Pub. L. 92-203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

AMENDMENTS

1978—Par. (3). Pub. L. 95-454 inserted reference to Trust Territory of the Pacific Islands.

1975—Par. (5). Pub. L. 93-638 added par. (5).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of Title 5, Government Organization and Employees.

TRANSFER OF FUNCTIONS

“Office” and “Office of Personnel Management” substituted for “Commission” and “Civil Service Commission”, respectively, in par. (1), pursuant to Reorg. Plan No. 2 of 1978, §102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred all functions vested by statute in Civil Service Commission and Chairman thereof to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 4763. General administrative provisions

(a) Administration by Office

Unless otherwise specifically provided, the Office shall administer this chapter.

(b) Advice and assistance

The Office shall furnish such advice and assistance to State and local governments as may be necessary to carry out the purposes of this chapter.

(c) Regulations and standards; contracts: modification, covenants, conditions, and provisions; utilization of other agencies

In the performance of, and with respect to, the functions, powers, and duties vested in it by this chapter, the Office may—

(1) issue such standards and regulations as may be necessary to carry out the purposes of this chapter;

(2) consent to the modification of any contract entered into pursuant to this chapter, such consent being subject to any specific limitations of this chapter;

(3) include in any contract made pursuant to this chapter such covenants, conditions, or provisions as it deems necessary to assure that the purposes of this chapter will be achieved; and

(4) utilize the services and facilities of any Federal agency, any State or local government, and any other public or nonprofit agency or institution, on a reimbursable basis or otherwise, in accordance with agreements between the Office and the head thereof.

(d) Information: collection and availability; research and evaluation; administration report; coordination of Federal programs

In the performance of, and with respect to, the functions, powers, and duties vested in it by this chapter, the Office—

(1) may collect information from time to time with respect to State and local government training programs and personnel administration improvement programs and projects under this chapter, and make such informa-

tion available to interested groups, organizations, or agencies, public or private;

(2) may conduct such research and make such evaluation as needed for the efficient administration of this chapter;

(3) shall include in its annual report a report of the administration of this chapter; and

(4) shall make such arrangements as may be necessary to avoid duplication of programs providing for training and to insure consistent administration of the related Federal training activities, with particular regard to title I of the Higher Education Act of 1965 [20 U.S.C. 1001 et seq.].

(e) Additional authority

The provisions of this chapter are not a limitation on existing authorities under other statutes but are in addition to any such authorities, unless otherwise specifically provided in this chapter.

(Pub. L. 91-648, title V, §503, Jan. 5, 1971, 84 Stat. 1926; 1978 Reorg. Plan No. 2, §102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783.)

REFERENCES IN TEXT

This chapter, referred to in text, means the provisions of subchapters I, II, III, and IV of this chapter. See section 4761 of this title.

The Higher Education Act of 1965, referred to in subsec. (d)(4), is Pub. L. 89-329, Nov. 8, 1965, 79 Stat. 1219, as amended. Title I of the Higher Education Act of 1965 is classified generally to subchapter I (§1001 et seq.) of chapter 28 of Title 20, Education. Title I as originally enacted by Pub. L. 89-329 related to community service and continuing education programs. Title I was amended generally by Pub. L. 96-374, Pub. L. 99-498, Pub. L. 102-325, and Pub. L. 105-244, and now contains general provisions. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

TRANSFER OF FUNCTIONS

“Office”, meaning Office of Personnel Management, substituted for “Commission”, meaning Civil Service Commission, in subsecs. (a) to (d) pursuant to Reorg. Plan No. 2 of 1978, §102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred functions vested by statute in Civil Service Commission and Chairman thereof to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

§ 4764. Reporting and recordkeeping requirements for State or local governments and other organizations

(a) A State or local government office designated to administer a program or project under this chapter shall make reports and evaluations in such form, at such times, and containing such information concerning the status and application of Federal funds and the operation of the approved program or project as the Office may require, and shall keep and make available such records as may be required by the Office for the verification of such reports and evaluations.

(b) An organization which receives a training grant under section 4744 of this title shall make reports and evaluations in such form, at such times, and containing such information concern-

ing the status and application of Federal grant funds and the operation of the training program as the Office may require, and shall keep and make available such records as may be required by the Office for the verification of such reports and evaluations.

(Pub. L. 91-648, title V, §504, Jan. 5, 1971, 84 Stat. 1926; 1978 Reorg. Plan No. 2, §102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), means the provisions of subchapters I, II, III, and IV of this chapter. See section 4761 of this title.

TRANSFER OF FUNCTIONS

“Office”, meaning Office of Personnel Management, substituted in text for “Commission”, meaning Civil Service Commission, pursuant to Reorg. Plan No. 2 of 1978, §102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred functions vested by statute in Civil Service Commission and Chairman thereof to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

§ 4765. Review and audit

The Office, the head of the Federal agency concerned, and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access, for the purpose of audit and examination, to any books, documents, papers, and records of a grant recipient that are pertinent to the grant received.

(Pub. L. 91-648, title V, §505, Jan. 5, 1971, 84 Stat. 1927; 1978 Reorg. Plan No. 2, §102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783.)

TRANSFER OF FUNCTIONS

“Office”, meaning Office of Personnel Management, substituted in text for “Commission”, meaning Civil Service Commission, pursuant to Reorg. Plan No. 2 of 1978, §102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred functions vested by statute in Civil Service Commission and Chairman thereof to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

§ 4766. Distribution of grants

(a) State and local government allocations; equitable distribution

The Office shall allocate 20 per centum of the total amount available for grants under this chapter in such manner as will most nearly provide an equitable distribution of the grants among States and between State and local governments, taking into consideration such factors as the size of the population, number of employees affected, the urgency of the programs or projects, the need for funds to carry out the purposes of this chapter, and the potential of the governmental jurisdictions concerned to use the funds most effectively.

(b) Weighted formula; minimum allocation; re-allocation; “State” defined

(1) The Office shall allocate 80 per centum of the total amount available for grants under this

chapter among the States on a weighted formula taking into consideration such factors as the size of population and the number of State and local government employees affected.

(2) The amount allocated for each State under paragraph (1) of this subsection shall be further allocated by the Office to meet the needs of both the State government and the local governments within the State on a weighted formula taking into consideration such factors as the number of State and local government employees and the amount of State and local government expenditures. The Office shall determine the categories of employees and expenditures to be included or excluded, as the case may be, in the number of employees and amount of expenditures. The minimum allocation for meeting needs of local governments in each State (other than the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, and the Virgin Islands) shall be 50 per centum of the amount allocated for the State under paragraph (1) of this subsection.

(3) The amount of any allocation under paragraph (2) of this subsection which the Office determines, on the basis of information available to it, will not be used to meet needs for which allocated shall be available for use to meet the needs of the State government or local governments in that State, as the case may be, on such date or dates as the Office may fix.

(4) The amount allocated for any State under paragraph (1) of this subsection which the Office determines, on the basis of information available to it, will not be used shall be available for reallocation by the Office from time to time, on such date or dates as it may fix, among other States with respect to which such a determination has not been made, in accordance with the formula set forth in paragraph (1) of this subsection, but with such amount for any of such other States being reduced to the extent it exceeds the sum the Office estimates said State needs and will be able to use; and the total of such reductions shall be similarly reallocated among the States whose proportionate amounts were not so reduced.

(5) For the purposes of this subsection, “State” means the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, and the Virgin Islands.

(c) Payment limitation

Notwithstanding the other provisions of this section, the total of the payments from the appropriations for any fiscal year under this chapter made with respect to programs or projects in any one State may not exceed an amount equal to 12½ per centum of such appropriation.

(Pub. L. 91-648, title V, §506, Jan. 5, 1971, 84 Stat. 1927; Pub. L. 95-454, title VI, §602(e), Oct. 13, 1978, 92 Stat. 1189; 1978 Reorg. Plan No. 2, §102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (b)(1), and (c), means the provisions of subchapters I, II, III, and IV of this chapter. See section 4761 of this title.

AMENDMENTS

1978—Subsec. (b)(2), (5). Pub. L. 95-454 inserted references to Commonwealth of Puerto Rico, Guam, American Samoa, and the Virgin Islands.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of Title 5, Government Organization and Employees.

TRANSFER OF FUNCTIONS

“Office”, meaning Office of Personnel Management, substituted for “Commission”, meaning Civil Service Commission, in subsecs. (a) and (b), pursuant to Reorg. Plan No. 2 of 1978, §102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred functions vested by statute in Civil Service Commission and Chairman thereof to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4723, 4743 of this title.

§ 4767. Termination of grants

Whenever the Office, after giving reasonable notice and opportunity for hearing to the State or general local government concerned, finds—

- (1) that a program or project has been so changed that it no longer complies with the provisions of this chapter; or
- (2) that in the operation of the program or project there is a failure to comply substantially with any such provision;

the Office shall notify the State or general local government of its findings and no further payments may be made to such government by the Office until it is satisfied that such noncompliance has been, or will promptly be, corrected. However, the Office may authorize the continuance of payments to those projects approved under this chapter which are not involved in the noncompliance.

(Pub. L. 91-648, title V, §507, Jan. 5, 1971, 84 Stat. 1928; 1978 Reorg. Plan No. 2, §102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783.)

REFERENCES IN TEXT

This chapter, referred to in text, means the provisions of subchapters I, II, III, and IV of this chapter. See section 4761 of this title.

TRANSFER OF FUNCTIONS

“Office”, meaning Office of Personnel Management, substituted in text for “Commission”, meaning Civil Service Commission, pursuant to Reorg. Plan No. 2 of 1978, §102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred functions vested by statute in Civil Service Commission and Chairman thereof to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

§ 4768. Advisory committees; appointment; compensation and travel expenses

(a) The Office may appoint, without regard to the provisions of title 5 governing appointments

in the competitive service, such advisory committee or committees as it may determine to be necessary to facilitate the administration of this chapter.

(b) Members of advisory committees who are not regular full-time employees of the United States, while serving on the business of the committees including traveltime may receive compensation at rates not exceeding the daily rate for GS-18; and while so serving away from their homes or regular places of business may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 for individuals in the Government service employed intermittently.

(Pub. L. 91-648, title V, §508, Jan. 5, 1971, 84 Stat. 1928; 1978 Reorg. Plan No. 2, §102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783.)

REFERENCES IN TEXT

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (a), are classified to section 3301 et seq. of Title 5, Government Organization and Employees.

This chapter, referred to in subsec. (a), means the provisions of subchapters I, II, III, and IV of this chapter. See section 4761 of this title.

TRANSFER OF FUNCTIONS

“Office”, meaning Office of Personnel Management, substituted for “Commission”, meaning Civil Service Commission, in subsec. (a) pursuant to Reorg. Plan No. 2 of 1978, §102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred functions vested by statute in Civil Service Commission and Chairman thereof to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

§ 4769. Authorization of appropriations

There are authorized to be appropriated, without fiscal year limitation, such sums as may be

necessary to carry out the programs authorized by this chapter.

(Pub. L. 91-648, title V, § 509, Jan. 5, 1971, 84 Stat. 1928.)

REFERENCES IN TEXT

This chapter, referred to in text, means the provisions of subchapters I, II, III, and IV of this chapter. See section 4761 of this title.

§ 4770. Limitations on availability of funds for cost sharing

Federal funds made available to State or local governments under other programs may not be used by the State or local government for cost-sharing purposes under grant provisions of this chapter, except that Federal funds of a program financed wholly by Federal funds may be used to pay a pro-rata share of such cost sharing. State or local government funds used for cost sharing on other federally assisted programs may not be used for cost sharing under grant provisions of this chapter.

(Pub. L. 91-648, title V, § 511, Jan. 5, 1971, 84 Stat. 1928.)

REFERENCES IN TEXT

This chapter, referred to in text, means the provisions of subchapters I, II, III, and IV of this chapter. See section 4761 of this title.

§ 4771. Method of payment; installments; advances or reimbursement; adjustments

Payments under this chapter may be made in installments, and in advance or by way of reimbursement, as the Office may determine, with necessary adjustments on account of overpayments or underpayments.

(Pub. L. 91-648, title V, § 512, Jan. 5, 1971, 84 Stat. 1929; 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783.)

REFERENCES IN TEXT

This chapter, referred to in text, means the provisions of subchapters I, II, III, and IV of this chapter. See section 4761 of this title.

TRANSFER OF FUNCTIONS

“Office”, meaning Office of Personnel Management, substituted in text for “Commission”, meaning Civil Service Commission, pursuant to Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred functions vested by statute in Civil Service Commission and Chairman thereof to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

§ 4772. Effective date of grant provisions

Grant provisions of this chapter shall become effective one hundred and eighty days following January 5, 1971.

(Pub. L. 91-648, title V, § 513, Jan. 5, 1971, 84 Stat. 1929.)

REFERENCES IN TEXT

This chapter, referred to in text, means the provisions of subchapters I, II, III, and IV of this chapter. See section 4761 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4723, 4743 of this title.

CHAPTER 63—LEAD-BASED PAINT POISONING PREVENTION

SUBCHAPTER I—GRANTS FOR DETECTION AND TREATMENT OF LEAD-BASED PAINT POISONING

Sec.

4801. Repealed.

SUBCHAPTER II—GRANTS FOR ELIMINATION OF LEAD-BASED PAINT POISONING

4811. Repealed.

SUBCHAPTER III—FEDERAL DEMONSTRATION AND RESEARCH PROGRAM: FEDERAL HOUSING ADMINISTRATION REQUIREMENTS

4821. Development of program; consultation; nature of program; safe level of lead; report to Congress.

4822. Requirements for housing receiving Federal assistance.

- (a) General requirements.
- (b) Measurement criteria.
- (c) Inspection requirements.
- (d) Abatement required.
- (e) Exceptions.
- (f) Funding.
- (g) Interpretation of section.

SUBCHAPTER IV—PROHIBITION AGAINST FUTURE USE OF LEAD-BASED PAINT

4831. Use of lead-based paint.

- (a) Prohibition by Secretary of Health and Human Services in application to cooking, drinking, or eating utensils.
- (b) Prohibition by Secretary of Housing and Urban Development of use in residential structures constructed or rehabilitated by Federal Government or with Federal assistance.
- (c) Prohibition by Consumer Product Safety Commission in application to toys or furniture articles.

SUBCHAPTER V—GENERAL PROVISIONS

4841. Definitions.

4842. Consultation by Secretary with other departments and agencies.

4843. Authorization of appropriations.

4844, 4845. Repealed.

4846. State laws superseded, and null and void.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 12 section 1715z-22.

SUBCHAPTER I—GRANTS FOR DETECTION AND TREATMENT OF LEAD-BASED PAINT POISONING

§ 4801. Repealed. Pub. L. 95-626, title II, § 208(b), Nov. 10, 1978, 92 Stat. 3588

Section, Pub. L. 91-695, title I, § 101, Jan. 13, 1971, 84 Stat. 2078; Pub. L. 93-151, § 1, Nov. 9, 1973, 87 Stat. 565; Pub. L. 94-317, title II, 204(a), June 23, 1976, 90 Stat. 705, related to the development of local programs with respect to detection and treatment of lead-based paint poisoning.

EFFECTIVE DATE OF REPEAL

Section 208(b) of Pub. L. 95-626 provided that the repeal of this section is effective Oct. 1, 1979.

SHORT TITLE

Section 1 of Pub. L. 91-695 provided: “That this Act [enacting this chapter] may be cited as the ‘Lead-Based Paint Poisoning Prevention Act.’”

SUBCHAPTER II—GRANTS FOR ELIMINATION OF LEAD-BASED PAINT POISONING

§ 4811. Repealed. Pub. L. 95-626, title II, § 208(b), Nov. 10, 1978, 92 Stat. 3588

Section, Pub. L. 91-695, title II, § 201, Jan. 13, 1971, 84 Stat. 2078; Pub. L. 93-151, § 2, Nov. 9, 1973, 87 Stat. 565, related to the development of local programs for the elimination of lead-based paint poisoning.

EFFECTIVE DATE OF REPEAL

Section 208(b) of Pub. L. 95-626 provided that the repeal of this section is effective Oct. 1, 1979.

SUBCHAPTER III—FEDERAL DEMONSTRATION AND RESEARCH PROGRAM: FEDERAL HOUSING ADMINISTRATION REQUIREMENTS

§ 4821. Development of program; consultation; nature of program; safe level of lead; report to Congress

(a) The Secretary of Housing and Urban Development, in consultation with the Secretary of Health and Human Services, shall develop and carry out a demonstration and research program to determine the nature and extent of the problem of lead based paint poisoning in the United States, particularly in urban areas, including the methods by which the lead based paint hazard can most effectively be removed from interior surfaces, porches, and exterior surfaces of residential housing to which children may be exposed.

(b) The Chairman of the Consumer Product Safety Commission shall conduct appropriate research on multiple layers of dried paint film, containing the various lead compounds commonly used, in order to ascertain the safe level of lead in residential paint products. No later than December 31, 1974, the Chairman shall submit to Congress a full and complete report of his findings and recommendations as developed pursuant to such programs, together with a statement of any legislation which should be enacted or any changes in existing law which should be made in order to carry out such recommendations.

(Pub. L. 91-695, title III, § 301, Jan. 13, 1971, 84 Stat. 2079; Pub. L. 93-151, § 3, Nov. 9, 1973, 87 Stat. 566; Pub. L. 96-88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

AMENDMENTS

1973—Subsec. (a). Pub. L. 93-151 incorporated existing first sentence in provisions designated as subsec. (a).

Subsec. (b). Pub. L. 93-151 required the Chairman of the Consumer Product Safety Commission to conduct research to ascertain the safe level of lead in provisions designated as subsec. (b), incorporated existing second sentence as the second sentence of the subsection, substituting requirement of submission of report by the Chairman no later than Dec. 31, 1974, for former similar requirement for submission of a report by the Secretary within one year after Jan. 13, 1971.

CHANGE OF NAME

“Secretary of Health and Human Services” substituted for “Secretary of Health, Education, and Welfare” in subsec. (a) pursuant to section 509(b) of Pub. L. 96-88, which is classified to section 3508(b) of Title 20, Education.

§ 4822. Requirements for housing receiving Federal assistance

(a) General requirements

(1) Elimination of hazards

The Secretary of Housing and Urban Development (hereafter in this section referred to as the “Secretary”) shall establish procedures to eliminate as far as practicable the hazards of lead based paint poisoning with respect to any existing housing which may present such hazards and which is covered by an application for mortgage insurance or housing assistance payments under a program administered by the Secretary or otherwise receives more than \$5,000 in project-based assistance under a Federal housing program. Beginning on January 1, 1995, such procedures shall apply to all such housing that constitutes target housing, as defined in section 4851b of this title, and shall provide for appropriate measures to conduct risk assessments, inspections, interim controls, and abatement of lead-based paint hazards. At a minimum, such procedures shall require—

(A) the provision of lead hazard information pamphlets, developed pursuant to section 2686 of title 15, to purchasers and tenants;

(B) periodic risk assessments and interim controls in accordance with a schedule determined by the Secretary, the initial risk assessment of each unit constructed prior to 1960 to be conducted not later than January 1, 1996, and, for units constructed between 1960 and 1978—

(i) not less than 25 percent shall be performed by January 1, 1998;

(ii) not less than 50 percent shall be performed by January 1, 2000; and

(iii) the remainder shall be performed by January 1, 2002;

(C) inspection for the presence of lead-based paint prior to federally-funded renovation or rehabilitation that is likely to disturb painted surfaces;

(D) reduction of lead-based paint hazards in the course of rehabilitation projects receiving less than \$25,000 per unit in Federal funds;

(E) abatement of lead-based paint hazards in the course of substantial rehabilitation projects receiving more than \$25,000 per unit in Federal funds;

(F) where risk assessment, inspection, or reduction activities have been undertaken, the provision of notice to occupants describing the nature and scope of such activities and the actual risk assessment or inspection reports (including available information on the location of any remaining lead-based paint on a surface-by-surface basis); and

(G) such other measures as the Secretary deems appropriate.

(2) Additional measures

The Secretary may establish such other procedures as may be appropriate to carry out the purposes of this section.

(3) Disposition of federally owned housing**(A) Pre-1960 target housing**

Beginning on January 1, 1995, procedures established under paragraphs (1) and (2) shall require the inspection and abatement of lead-based paint hazards in all federally owned target housing constructed prior to 1960.

(B) Target housing constructed between 1960 and 1978

Beginning on January 1, 1995, procedures established under paragraphs (1) and (2) shall require an inspection for lead-based paint and lead-based paint hazards in all federally owned target housing constructed between 1960 and 1978. The results of such inspections shall be made available to prospective purchasers, identifying the presence of lead-based paint and lead-based paint hazards on a surface-by-surface basis. The Secretary shall have the discretion to waive the requirement of this subparagraph for housing in which a federally funded risk assessment, performed by a certified contractor, has determined no lead-based paint hazards are present.

(C) Budget authority

To the extent that subparagraphs (A) and (B) increase the cost to the Government of outstanding direct loan obligations or loan guarantee commitments, such activities shall be treated as modifications under section 661c(e) of title 2 and shall be subject to the availability of appropriations. To the extent that paragraphs (A) and (B) impose additional costs to the Resolution Trust Corporation and the Federal Deposit Insurance Corporation, its requirements shall be carried out only if appropriations are provided in advance in an appropriations Act. In the absence of appropriations sufficient to cover the costs of subparagraphs (A) and (B), these requirements shall not apply to the affected agency or agencies.

(D) Definitions

For the purposes of this subsection, the terms "inspection", "abatement", "lead-based paint hazard", "federally owned housing", "target housing", "risk assessment", and "certified contractor" have the same meaning given such terms in section 4851b of this title.

(4) Definitions

For purposes of this subsection, the terms "risk assessment", "inspection", "interim control", "abatement", "reduction", and "lead-based paint hazard" have the same meaning given such terms in section 4851b of this title.

(b) Measurement criteria

The procedures established by the Secretary under this section for the risk assessment, interim control, inspection, and abatement of lead-based paint hazards in housing covered by this section shall be based upon guidelines developed pursuant to section 4852c of this title.

(c) Inspection requirements

The Secretary shall require the inspection of all intact and nonintact interior and exterior painted surfaces of housing subject to this section for lead-based paint using an approved x-ray fluorescence analyzer, atomic absorption spectroscopy, or comparable approved sampling or testing technique. A certified inspector or laboratory shall certify in writing the precise results of the inspection. If the results equal or exceed a level of 1.0 milligrams per centimeter squared or 0.5 percent by weight, the results shall be provided to any potential purchaser or tenant of the housing. The Secretary shall periodically review and reduce the level below 1.0 milligram per centimeter squared or 0.5 percent by weight to the extent that reliable technology makes feasible the detection of a lower level and medical evidence supports the imposition of a lower level. The requirements of this subsection shall apply as provided in subsection (d) of this section.

(d) Abatement required**(1) Transitional testing and abatement in public housing receiving modernization assistance**

In the case of public housing assisted with capital assistance provided under section 1437g of this title, the Secretary shall require the inspection described in subsection (c) of this section for—

(A) a random sample of dwellings and common areas in all public housing projects assisted under such section; and

(B) each dwelling in any public housing project in which there is a dwelling determined under subparagraph (A) to have lead-based paint hazards, except that the Secretary shall not require the inspection of each dwelling if the Secretary requires the abatement of the lead-based paint hazards for the surfaces of each dwelling in the public housing project that correspond to the surfaces in the sample determined to have such hazards under subparagraph (A).

The Secretary shall require the inspection of all housing subject to this paragraph in accordance with the modernization schedule. A public housing agency may elect to test for lead-based paint using atomic absorption spectroscopy and may elect to abate lead-based paint and dust containing lead under standards more stringent than that in subsection (c) of this section, including the abatement of lead-based paint and dust which exceeds the standard of lead permitted in paints by the Consumer Product Safety Commission under this chapter, and such abatement shall qualify for capital assistance provided under section 1437g of this title. The Secretary shall require abatement of lead-based paint and lead-based paint hazards in housing in which the test results equal or exceed the standard established by or under subsection (c) of this section. Final inspection and certification after abatement shall be made by a qualified inspector, industrial hygienist, or local public health official.

(2) Abatement demonstration program**(A) Abatement demonstration program**

In carrying out the requirements of this subsection with respect to single-family and multifamily properties owned by the Department of Housing and Urban Development and public housing, the Secretary shall utilize a sufficient variety of abatement methods in a sufficient number of areas and circumstances to demonstrate their relative cost-effectiveness and their applicability to various types of housing. For purposes of the demonstration, a public housing agency may elect to test for lead-based paint using atomic absorption spectroscopy and may elect to abate lead-based paint and dust containing lead under standards more stringent than that in subsection (c) of this section, including the abatement of lead-based paint and dust which exceeds the standard of lead permitted in paints by the Consumer Product Safety Commission under this chapter, and such abatement shall qualify for assistance under section 1437¹ of this title.

(B) Report

Not later than 18 months after the effective date of the regulations issued to carry out this subsection, the Secretary shall transmit to the Congress the findings and recommendations of the Secretary as a result of the demonstration program, including any recommendations of the Secretary for legislation to revise the requirements of this subsection. Based on the demonstration, the Secretary shall prepare and include in the report a comprehensive and workable plan for the cost-effective inspection and abatement of public housing in accordance with paragraph (3), including an estimate of the total cost of abatement in accordance with paragraph (3)(B). In preparing such report, the Secretary shall examine—

- (i) the most reliable technology available for detecting lead-based paint, including X-ray fluorescence and atomic absorption spectroscopy;
- (ii) the most efficient and cost-effective methods for abatement, including removal, containment, or encapsulation of the contaminated components, procedures which minimize the generation of dust (including the high efficiency vacuum removal of leaded dust), and procedures that provide for offsite disposal of the removed components, in compliance with all applicable regulatory standards and procedures;
- (iii) safety considerations in testing, abatement, and worker protection;
- (iv) the overall accuracy and reliability of laboratory testing of physical samples, x-ray fluorescence machines, and other available testing procedures;
- (v) availability of qualified samplers and testers;
- (vi) an estimate of the amount, characteristics, and regional distribution of housing in the United States that contains lead-based paint hazards at differing levels of contamination; and

(vii) the merits of an interim containment protocol for public housing dwellings that are determined to have lead-based paint hazards but for which comprehensive improvement assistance under section 1437¹ of this title is not available.

(3) Testing and abatement of other public housing**(A) Required inspection**

The Secretary shall require the inspection described in subsection (c) of this section for—

- (i) a random sample of dwellings and common areas in all public housing that is not subject to paragraph (1); and
- (ii) each dwelling in any public housing project in which there is a dwelling determined under clause (i) to have lead-based paint hazards, except that the Secretary shall not require the inspection of each dwelling if the Secretary requires the abatement of the lead-based paint hazards for the surfaces of each dwelling in the public housing project that correspond to the surfaces in the sample determined to have such hazards under clause (i).

(B) Schedule

The Secretary shall require the inspection of all housing subject to this paragraph prior to the expiration of 5 years after the report is required to be transmitted under paragraph (2)(B). The Secretary may prioritize, within such 5-year period, inspections on the basis of vacancy, age of housing, or projected modernization or rehabilitation. The Secretary shall require abatement and final inspection and certification of such housing in accordance with the last two sentences of paragraph (1).

(4) Report required

Not later than 9 months after completion of the demonstration required by paragraph (2), the Secretary shall, based on the demonstration, prepare and transmit to the Congress, a comprehensive and workable plan, including any recommendations for changes in legislation, for the prompt and cost effective inspection and abatement of privately owned single family and multifamily housing, including housing assisted under section 1437f of this title. After the expiration of the 9-month period referred to in the preceding sentence, the Secretary may not obligate or expend any funds or otherwise carry out activities related to any other policy development and research project until the report is transmitted.

(e) Exceptions

The provisions of this section shall not apply to—

- (1) housing for the elderly or handicapped, except for any dwelling in such housing in which any child who is less than 7 years of age resides or is expected to reside;
- (2) any project for which an application for insurance is submitted under section 1715v, 1715w, 1715z-6, or 1715z-7 of title 12; or
- (3) any 0-bedroom dwelling.

(f) Funding

The Secretary shall carry out the provisions of this section utilizing available Federal funding

¹ See References in Text note below.

sources. The Secretary shall use funds available under the Capital Fund under section 1437g of this title to carry out this section in public housing. The Secretary shall submit annually to the Congress an estimate of the funds required to carry out the provisions of this section with the reports required by paragraphs (2)(B) and (4).

(g) Interpretation of section

This section may not be construed to affect the responsibilities of the Environmental Protection Agency with respect to the protection of the public health from hazards posed by lead-based paint.

(Pub. L. 91-695, title III, §302, as added Pub. L. 93-151, §4(a)(1), Nov. 9, 1973, 87 Stat. 566; amended Pub. L. 100-242, title V, §566(a), Feb. 5, 1988, 101 Stat. 1945; Pub. L. 100-628, title X, §1088(a)-(f), (h), Nov. 7, 1988, 102 Stat. 3280-3282; Pub. L. 102-550, title X, §§1012(a)-(d), 1013, Oct. 28, 1992, 106 Stat. 3904, 3905, 3907; Pub. L. 105-276, title V, §522(b)(4), Oct. 21, 1998, 112 Stat. 2564.)

REFERENCES IN TEXT

Section 1437l of this title, referred to in subsec. (d)(2)(A), (B)(vii), was repealed by Pub. L. 105-276, title V, §522(a), Oct. 21, 1998, 112 Stat. 2564.

For effective date of the regulations issued to carry out this subsection, referred to in subsec. (d)(2)(B), see section 566(b) of Pub. L. 100-242, set out as a note below.

AMENDMENTS

1998—Subsec. (d)(1). Pub. L. 105-276, §522(b)(4)(A), in introductory provisions, substituted “assisted with capital assistance provided under section 1437g of this title” for “assisted under section 1437l of this title” and, in concluding provisions, substituted “capital assistance provided under section 1437g of this title” for “assistance under section 1437l of this title”.

Subsec. (f). Pub. L. 105-276, §522(b)(4)(B), substituted “under the Capital Fund under section 1437g of this title” for “for comprehensive improvement assistance under section 1437l of this title”.

1992—Pub. L. 102-550, §1012(a)(1), amended section catchline generally.

Subsec. (a). Pub. L. 102-550, §1012(a)(2)-(4), designated first sentence of subsec. (a) as par. (1), inserted heading, inserted before period at end of first sentence “or otherwise receives more than \$5,000 in project-based assistance under a Federal housing program”, substituted “Beginning on January 1, 1995, such procedures shall apply to all such housing that constitutes target housing, as defined in section 4851b of this title, and shall provide for appropriate measures to conduct risk assessments, inspections, interim controls, and abatement of lead-based paint hazards. At a minimum, such procedures shall require—” and subpars. (A) to (G) for former second sentence of subsec. (a) which read as follows: “Such procedures shall apply to all such housing constructed or substantially rehabilitated prior to 1978 and shall as a minimum provide for (1) appropriate measures to eliminate as far as practicable immediate hazards due to the presence of accessible intact, intact, and nonintact interior and exterior painted surfaces that may contain lead in any such housing in which any child who is less than 7 years of age resides or is expected to reside, and (2) assured notification (using a brochure developed after consultation with the National Institute of Building Sciences) to purchasers and tenants of such housing of the hazards of lead based paint, of the symptoms and treatment of lead based paint poisoning, and of the importance and availability of maintenance and removal techniques for eliminating such hazards.”, and designated former third sentence of subsec. (a) as par. (2) and inserted heading.

Pub. L. 102-550, §1013, added pars. (3) and (4) and struck out former fourth sentence of subsec. (a) which

read as follows: “Further, the Secretary shall establish and implement procedures to eliminate the hazards of lead based paint poisoning in all federally owned properties prior to the sale of such properties when their use is intended for residential habitation.”

Subsec. (b). Pub. L. 102-550, §1012(b), substituted “for the risk assessment, interim control, inspection, and abatement of lead-based paint hazards in housing covered by this section shall be based upon guidelines developed pursuant to section 4852c of this title.” for “for the detection and abatement of lead-based paint poisoning hazards in any housing, including housing assisted under section 1437f of this title—

“(1) shall be based upon criteria that measure the condition of the housing; and

“(2) shall not be based upon criteria that measure the health of the residents of the housing.”

Subsec. (c). Pub. L. 102-550, §1012(c), substituted “certified inspector” for “qualified inspector” and substituted “centimeter squared or 0.5 percent by weight” for “centimeter squared” in two places.

Subsec. (d)(1). Pub. L. 102-550, §1012(d), in heading, substituted “modernization” for “CIAP” and in fourth sentence, substituted “of lead-based paint and lead-based paint hazards” for “to eliminate the lead-based paint poisoning hazards”.

1988—Pub. L. 100-242 designated existing provisions as subsec. (a) “General requirements”, substituted “housing constructed or substantially rehabilitated prior to 1978” for “housing constructed prior to 1950”, in cl. (1), substituted “accessible intact, intact, and nonintact interior and exterior painted surfaces that may contain lead in any such housing in which any child who is less than 7 years of age resides or is expected to reside” for “paint which may contain lead and to which children may be exposed”, in cl. (2), inserted “(using a brochure developed after consultation with the National Institute of Building Sciences)” after “notification”, and struck out after second sentence “Such procedures may apply to housing constructed during or after 1950 if the Secretary determines, in his discretion, that such housing presents hazards of lead based paint.”, and added subsecs. (b) to (f).

Subsec. (c). Pub. L. 100-628, §1088(f), inserted “, atomic absorption spectroscopy,” after “fluorescence analyzer” in first sentence, and “or laboratory” after “inspector” in second sentence.

Subsec. (d)(1). Pub. L. 100-628, §1088(a), substituted “Transitional testing and abatement in public housing receiving CIAP assistance” for “Public housing” in heading, substituted “section 1437l of this title” for “section 1437g of this title” in first sentence, added subpars. (A) and (B) and second and third sentences, inserted “, industrial hygienist, or local public health official” before period at end of last sentence, and struck out former subpars. (A) to (C) and second and third sentences which read as follows:

“(A) each vacant dwelling prior to rerenting;

“(B) a random sample of all occupied dwellings; and

“(C) each dwelling in any housing in which there is a dwelling determined under subparagraph (A) or (B) to have lead-based paint hazards.

The Secretary shall require the inspection of all housing subject to this paragraph prior to the expiration of 5 years from the date of the publication of final regulations pursuant to this subsection. The Secretary shall prioritize, within such 5-year period, inspections on the basis of vacancy, age of housing, or projected modernization or rehabilitation.”

Subsec. (d)(2). Pub. L. 100-628, §1088(b)(1), substituted “Abatement demonstration program” for “HUD-owned properties” in heading.

Subsec. (d)(2)(A). Pub. L. 100-628, §1088(b)(2), inserted “and public housing” after “Urban Development”, and inserted at end “For purposes of the demonstration, a public housing agency may elect to test for lead-based paint using atomic absorption spectroscopy and may elect to abate lead-based paint and dust containing lead under standards more stringent than that in subsection (c) of this section, including the abatement of

lead-based paint and dust which exceeds the standard of lead permitted in paints by the Consumer Product Safety Commission under this chapter, and such abatement shall qualify for assistance under section 1437f of this title.”

Subsec. (d)(2)(B). Pub. L. 100-628, §1088(b)(3), in introductory provisions, inserted after first sentence “Based on the demonstration, the Secretary shall prepare and include in the report a comprehensive and workable plan for the cost-effective inspection and abatement of public housing in accordance with paragraph (3), including an estimate of the total cost of abatement in accordance with paragraph (3)(B).”

Subsec. (d)(2)(B)(i). Pub. L. 100-628, §1088(c)(1), inserted “, including X-ray fluorescence and atomic absorption spectroscopy” after “lead-based paint”.

Subsec. (d)(2)(B)(ii). Pub. L. 100-628, §1088(c)(2), inserted “, including removal, containment, or encapsulation of the contaminated components, procedures which minimize the generation of dust (including the high efficiency vacuum removal of leaded dust), and procedures that provide for offsite disposal of the removed components, in compliance with all applicable regulatory standards and procedures” after “methods for abatement”.

Subsec. (d)(2)(B)(iii). Pub. L. 100-628, §1088(c)(3), inserted “, abatement, and worker protection” after “in testing”.

Subsec. (d)(2)(B)(vii). Pub. L. 100-628, §1088(c)(4)-(6), added cl. (vii).

Subsec. (d)(3), (4). Pub. L. 100-628, §1088(d), added par. (3) and redesignated former par. (3) as (4).

Subsec. (f). Pub. L. 100-628, §1088(e), inserted at end “The Secretary shall submit annually to the Congress an estimate of the funds required to carry out the provisions of this section with the reports required by paragraphs (2)(B) and (4).”

Subsec. (g). Pub. L. 100-628, §1088(h), added subsec. (g).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by title V of Pub. L. 105-276 effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement amendment before such date, except to extent that such amendment provides otherwise, and with savings provision, see section 503 of Pub. L. 105-276, set out as a note under section 1437 of this title.

EFFECTIVE DATE

Section 4(b) of Pub. L. 93-151 provided that: “The amendments made by subsection (a) of this section [enacting this section] become effective upon the expiration of ninety days following the date of enactment of this Act [Nov. 9, 1973].”

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (f) of this section relating to annual submittal to Congress of estimate of funds, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and item 22 on page 97 of House Document No. 103-7.

LEAD-BASED PAINT ABATEMENT TRAINING AND CERTIFICATION REQUIREMENTS AND TRAINING GRANTS

Pub. L. 102-139, title III, Oct. 28, 1991, 105 Stat. 765, 766, which provided for regulations governing lead-based paint abatement activities to ensure that individuals engaged in such activities are properly trained, that training programs are accredited, that contractors are certified, and that laboratories engaged in testing for substances are certified, and which also provided for grants for training and education of workers who are or may be directly engaged in lead-based paint abatement activities, was omitted as superseded by section 2682(a)(1) of Title 15, Commerce and Trade, which provided in part that on Oct. 28, 1992, the provisions of law formerly set out in this note would cease to have any force and effect.

LEAD-BASED PAINT TECHNICAL GUIDELINES; DRAFT GUIDELINES

Pub. L. 101-144, title II, Nov. 9, 1989, 103 Stat. 853, provided that: “If the Secretary of the Department of Housing and Urban Development has not issued the lead-based paint technical guidelines on reliable testing protocols, safe and effective abatement techniques, cleanup methods and acceptable post-abatement lead dust levels by April 1, 1990, the Department’s September 29, 1989, draft guidelines shall take effect and remain in force until revised by the Secretary.”

PREREQUISITES TO IMPLEMENTATION OF REGULATIONS REGARDING TESTING AND ABATEMENT OF LEAD-BASED PAINT IN PUBLIC HOUSING

Pub. L. 100-404, title I, Aug. 19, 1988, 102 Stat. 1021, provided that: “None of the funds provided in this Act [see Tables for classification] or heretofore provided may be used to implement or enforce the regulations promulgated by the Department of Housing and Urban Development on June 6, 1988, with respect to the testing and abatement of lead-based paint in public housing until the Secretary develops comprehensive technical guidelines on reliable testing protocols, safe and effective abatement techniques, cleanup methods, and acceptable post-abatement lead dust levels.”

REGULATIONS AND CONSULTATION

Section 566(b) of Pub. L. 100-242, as amended by Pub. L. 100-418, title V, §5115(c), Aug. 23, 1988, 102 Stat. 1433; Pub. L. 100-628, title X, §1088(g), Nov. 7, 1988, 102 Stat. 3282, provided that:

“(1) PROPOSED REGULATIONS.—Not later than the expiration of the 60-day period following the date of the enactment of this Act [Feb. 5, 1988], the Secretary of Housing and Urban Development shall publish proposed regulations to carry out the amendments made by this section [amending this section].

“(2) FINAL REGULATIONS.—The Secretary shall publish final regulations to carry out the amendments made by this section, which shall become effective not later than the expiration of the 120-day period following the date of the enactment of this Act.

“(3) REQUIRED CONSULTATIONS.—Before issuing proposed regulations and in preparing reports under this section, the Secretary shall consult with—

“(A) the National Institute of Building Sciences, the Environmental Protection Agency, the National Institute of Environmental Health Sciences, the Centers for Disease Control [now Centers for Disease Control and Prevention], the Consumer Product Safety Commission, major public housing organizations, other major housing organizations, and the National Institute of Standards and Technology with respect to the most cost-effective methods of detecting and abating lead-based paint poisoning hazards; and

“(B) public housing agencies to develop a cost-efficient plan for detecting and abating lead-based paint poisoning hazards in dwelling assisted under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f] and dwellings in public housing assisted under such Act [42 U.S.C. 1437 et seq.]”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1437aaa-1, 1437aaa-2, 4851b, 12872, 12873, 12892, 12893 of this title; title 12 section 1715z-22; title 15 section 2681.

SUBCHAPTER IV—PROHIBITION AGAINST FUTURE USE OF LEAD-BASED PAINT

§ 4831. Use of lead-based paint

(a) Prohibition by Secretary of Health and Human Services in application to cooking, drinking, or eating utensils

The Secretary of Health and Human Services shall take such steps and impose such condi-

tions as may be necessary or appropriate to prohibit the application of lead-based paint to any cooking utensil, drinking utensil, or eating utensil manufactured and distributed after January 13, 1971.

(b) Prohibition by Secretary of Housing and Urban Development of use in residential structures constructed or rehabilitated by Federal Government or with Federal assistance

The Secretary of Housing and Urban Development shall take steps and impose such conditions as may be necessary or appropriate to prohibit the use of lead-based paint in residential structures constructed or rehabilitated by the Federal Government, or with Federal assistance in any form after January 13, 1971.

(c) Prohibition by Consumer Product Safety Commission in application to toys or furniture articles

The Consumer Product Safety Commission shall take such steps and impose such conditions as may be necessary or appropriate to prohibit the application of lead-based paint to any toy or furniture article.

(Pub. L. 91-695, title IV, §401, Jan. 13, 1971, 84 Stat. 2079; Pub. L. 93-151, §5, Nov. 9, 1973, 87 Stat. 566; Pub. L. 94-317, title II, §204(b), June 23, 1976, 90 Stat. 705; Pub. L. 96-88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695.)

REFERENCES IN TEXT

January 13, 1971, referred to in subsecs. (a) and (b), was in the original "the date of enactment of this Act".

AMENDMENTS

1976—Pub. L. 94-317 amended section generally, designating existing provisions as subsec. (a), striking out requirement of consultation with Secretary of Housing and Urban Development and provisions relating to prohibition of use of lead based paint in residential structures constructed or rehabilitated by Federal Government or with Federal assistance, and adding subsecs. (b) and (c).

1973—Pub. L. 93-151 amended section generally, providing for consultation of the Secretaries, incorporating existing provisions as cl. (1), and adding cl. (2).

CHANGE OF NAME

"Secretary of Health and Human Services" substituted for "Secretary of Health, Education, and Welfare" in subsec. (a) pursuant to section 509(b) of Pub. L. 96-88, which is classified to section 3508(b) of Title 20, Education.

SUBCHAPTER V—GENERAL PROVISIONS

§ 4841. Definitions

As used in this chapter—

(1) The term "State" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

(2) The term "units of general local government" means (A) any city, county, township, town, borough, parish, village, or other general purpose political subdivision of a State, (B) any combination of units of general local government in one or more States, (C) an Indian tribe, or (D) with respect to lead-based paint poisoning elimination activities in their

urban areas, the territories and possessions of the United States.

(3)(A) Except as provided in subparagraph (B), the term "lead-based paint" means any paint containing more than five-tenths of 1 per centum lead by weight (calculated as lead metal) in the total nonvolatile content of the paint, or the equivalent measure of lead in the dried film of paint already applied, or both.

(B)(i) The Consumer Product Safety Commission shall, during the six-month period beginning on the date of the enactment of the National Health Promotion and Disease Prevention Act of 1976, determine, on the basis of available data and information and after providing opportunity for an oral hearing and considering recommendations of the Secretary of Health and Human Services (including those of the Centers for Disease Control and Prevention) and of the National Academy of Sciences, whether or not a level of lead in paint which is greater than six one-hundredths of 1 per centum but not in excess of five-tenths of 1 per centum is safe. If the Commission determines, in accordance with the preceding sentence, that another level of lead is safe, the term "lead-based paint" means, with respect to paint which is manufactured after the expiration of the six-month period beginning on the date of the Commission's determination, paint containing by weight (calculated as lead metal) in the total nonvolatile content of the paint more than the level of lead determined by the Commission to be safe or the equivalent measure of lead in the dried film of paint already applied, or both.

(ii) Unless the definition of the term "lead-based paint" has been established by a determination of the Consumer Product Safety Commission pursuant to clause (i) of this subparagraph, the term "lead-based paint" means, with respect to paint which is manufactured after the expiration of the twelve-month period beginning on such date of enactment, paint containing more than six one-hundredths of 1 per centum lead by weight (calculated as lead metal) in the total nonvolatile content of the paint, or the equivalent measure of lead in the dried film of paint already applied, or both.

(Pub. L. 91-695, title V, §501, Jan. 13, 1971, 84 Stat. 2080; Pub. L. 93-151, §6, Nov. 9, 1973, 87 Stat. 567; Pub. L. 94-317, title II, §204(c), June 23, 1976, 90 Stat. 706; Pub. L. 96-88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 102-531, title III, §312(g), Oct. 27, 1992, 106 Stat. 3506.)

REFERENCES IN TEXT

The National Health Promotion and Disease Prevention Act of 1976, referred to in par. (3)(B)(i), probably means Pub. L. 94-317, June 23, 1976, 90 Stat. 695, as amended, which enacted sections 300u to 300u-5 of this title, amended sections 201, 243, 247b, 247c, 264, 300f, 4801, 4831, and 4841 to 4843 of this title, and enacted provisions set out as notes under sections 201, 247b, and 247c of this title. For complete classification of this Act to the Code, see Tables.

Such date of enactment, referred to in par. (3)(B)(ii), probably means the date of approval of Pub. L. 94-317, which was June 23, 1976.

AMENDMENTS

1992—Par. (3)(B)(i). Pub. L. 102-531 substituted “Centers for Disease Control and Prevention” for “Center for Disease Control”.

1976—Par. (3). Pub. L. 94-317 substituted provisions redefining standards for lead in paint and procedures used to determine such standards, for provisions defining standards of lead-based paint to be paint containing more than five-tenths of 1 per centum of lead by weight prior to Dec. 31, 1974, and after such date, paint containing more than six one-hundredths of 1 per centum of lead by weight, except where the Chairman of the Consumer Product Safety Commission determined that the pre-1974 level was safe, then such level to become effective.

1973—Par. (3). Pub. L. 93-151 amended par. (3). Prior to amendment, par. (3) defined “lead-based paint” to mean any paint containing more than 1 per centum lead by weight (calculated as lead metal) in the total non-volatile content of liquid paints or in the dried film of paint already applied.

CHANGE OF NAME

“Secretary of Health and Human Services” substituted for “Secretary of Health, Education, and Welfare” in par. (3)(B)(i) pursuant to section 509(b) of Pub. L. 96-88, which is classified to section 3508(b) of Title 20, Education.

§ 4842. Consultation by Secretary with other departments and agencies

In carrying out their respective authorities under this chapter, the Secretary of Housing and Urban Development and the Secretary of Health and Human Services shall each cooperate with and seek the advice of the heads of any other departments or agencies regarding any programs under their respective responsibilities which are related to, or would be affected by, such authority.

(Pub. L. 91-695, title V, § 502, Jan. 13, 1971, 84 Stat. 2080; Pub. L. 94-317, title II, § 204(d), June 23, 1976, 90 Stat. 706; Pub. L. 96-88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

AMENDMENTS

1976—Pub. L. 94-317 substituted “In carrying out their respective authorities under this chapter, the Secretary of Housing and Urban Development and the Secretary of Health, Education, and Welfare shall each” for “In carrying out the authority under this chapter, the Secretary of Health, Education, and Welfare shall”.

CHANGE OF NAME

“Secretary of Health and Human Services” substituted for “Secretary of Health, Education, and Welfare” in text pursuant to section 509(b) of Pub. L. 96-88, which is classified to section 3508(b) of Title 20, Education.

§ 4843. Authorization of appropriations

(a) There are authorized to be appropriated to carry out this chapter \$10,000,000 for the fiscal year 1976, \$12,000,000 for the fiscal year 1977, and \$14,000,000 for the fiscal year 1978.

(b) Any amounts appropriated under this section shall remain available until expended when so provided in appropriation Acts; and any amounts authorized for one fiscal year but not appropriated may be appropriated for the succeeding fiscal year.

(Pub. L. 91-695, title V, § 503, Jan. 13, 1971, 84 Stat. 2080; Pub. L. 93-151, § 7(a)-(d), Nov. 9, 1973,

87 Stat. 567; Pub. L. 94-317, title II, § 204(e), June 23, 1976, 90 Stat. 706.)

AMENDMENTS

1976—Subsec. (a). Pub. L. 94-317, § 204(e)(1), substituted provisions authorizing appropriations for this chapter of \$10,000,000 for fiscal year 1976, \$12,000,000 for fiscal year 1977, and \$14,000,000 for fiscal year 1978 for provisions authorizing appropriations for subchapter I of this chapter not to exceed \$3,330,000 for fiscal year 1971, \$6,660,000 for fiscal year 1972, and \$25,000,000 for each of fiscal years 1974 and 1975.

Subsec. (b). Pub. L. 94-317, § 204(e)(1), (2), redesignated subsec. (d) as (b). Former subsec. (b), which provided authorization of appropriations for subchapter II of this chapter not to exceed \$5,000,000 for fiscal year 1971, \$10,000,000 for fiscal year 1972, and \$35,000,000 for each of fiscal years 1974 and 1975, was struck out.

Subsec. (c). Pub. L. 94-317, § 204(e)(1), struck out subsec. (c) which provided for authorization of appropriations for subchapter III of this chapter not to exceed \$1,670,000 for fiscal year 1971, \$3,340,000 for fiscal year 1972, and \$3,000,000 for each of fiscal years 1974 and 1975.

Subsec. (d). Pub. L. 94-317, § 204(e)(2), redesignated subsec. (d) as (b).

1973—Subsec. (a). Pub. L. 93-151, § 7(a), provided for appropriations authorization of \$25,000,000 for fiscal years 1974 and 1975 for carrying out subchapter I provisions.

Subsec. (b). Pub. L. 93-151, § 7(b), provided for appropriations authorization of \$35,000,000 for fiscal years 1974 and 1975 for carrying out subchapter II provisions.

Subsec. (c). Pub. L. 93-151, § 7(c), provided for appropriations authorization of \$3,000,000 for fiscal years 1974 and 1975 for carrying out subchapter III provisions.

Subsec. (d). Pub. L. 93-151, § 7(d), substituted “amounts authorized for one fiscal year but not appropriated may be appropriated for the succeeding fiscal year” for “amounts authorized for the fiscal year 1971 but not appropriated may be appropriated for the fiscal year 1972”.

§§ 4844, 4845. Repealed. Pub. L. 95-626, title II, § 208(b), Nov. 10, 1978, 92 Stat. 3588

Section 4844, Pub. L. 91-695, title V, § 504, as added Pub. L. 93-151, § 7(e), Nov. 9, 1973, 87 Stat. 567, related to the eligibility of certain State agencies with respect to grants made under former sections 4801 and 4811 of this title.

Section 4845, Pub. L. 91-695, title V, § 505, as added Pub. L. 93-151, § 7(e), Nov. 9, 1973, 87 Stat. 568, provided for the establishment of a National Childhood Lead Based Paint Poisoning Advisory Board.

EFFECTIVE DATE OF REPEAL

Section 208(b) of Pub. L. 95-626 provided that the repeal is effective Oct. 1, 1979.

§ 4846. State laws superseded, and null and void

It is hereby expressly declared that it is the intent of the Congress to supersede any and all laws of the States and units of local government insofar as they may now or hereafter provide for a requirement, prohibition, or standard relating to the lead content in paints or other similar surface-coating materials which differs from the provisions of this chapter or regulations issued pursuant to this chapter. Any law, regulation, or ordinance purporting to establish such different requirement, prohibition, or standard shall be null and void.

(Pub. L. 91-695, title V, § 504, formerly § 506, as added Pub. L. 93-151, § 7(e), Nov. 9, 1973, 87 Stat. 568; renumbered § 504, Pub. L. 95-626, title II, § 208(b), Nov. 10, 1978, 92 Stat. 3588.)

PRIOR PROVISIONS

A prior section 504 of Pub. L. 91-695 was classified to section 4844 of this title prior to repeal by Pub. L. 95-626.

CHAPTER 63A—RESIDENTIAL LEAD-BASED PAINT HAZARD REDUCTION

- Sec.
- 4851. Findings.
- 4851a. Purposes.
- 4851b. Definitions.

SUBCHAPTER I—LEAD-BASED PAINT HAZARD REDUCTION

- 4852. Grants for lead-based paint hazard reduction in target housing.
 - (a) General authority.
 - (b) Eligible applicants.
 - (c) Form of applications.
 - (d) Selection criteria.
 - (e) Eligible activities.
 - (f) Forms of assistance.
 - (g) Technical assistance and capacity building.
 - (h) Matching requirement.
 - (i) Prohibition of substitution of funds.
 - (j) Limitation on use.
 - (k) Financial records.
 - (l) Report.
 - (m) Notice of Funding Availability.
 - (n) Relationship to other law.
 - (o) Environmental review.
 - (p) Authorization of appropriations.
- 4852a. Task force on lead-based paint hazard reduction and financing.
 - (a) In general.
 - (b) Membership.
 - (c) Responsibilities.
 - (d) Compensation.
- 4852b. National consultation on lead-based paint hazard reduction.
- 4852c. Guidelines for lead-based paint hazard evaluation and reduction activities.
- 4852d. Disclosure of information concerning lead upon transfer of residential property.
 - (a) Lead disclosure in purchase and sale or lease of target housing.
 - (b) Penalties for violations.
 - (c) Validity of contracts and liens.
 - (d) Effective date.

SUBCHAPTER II—WORKER PROTECTION

- 4853. Worker protection.
- 4853a. Coordination between Environmental Protection Agency and Department of Labor.

SUBCHAPTER III—RESEARCH AND DEVELOPMENT

PART 1—HUD RESEARCH

- 4854. Research on lead exposure from other sources.
- 4854a. Testing technologies.
- 4854b. Authorization.

PART 2—GAO REPORT

- 4855. Federal implementation and insurance study.
 - (a) Federal implementation study.
 - (b) Insurance study.

SUBCHAPTER IV—REPORTS

- 4856. Reports of Secretary of Housing and Urban Development.
 - (a) Annual report.
 - (b) Biennial report.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 15 section 2683.

§ 4851. Findings

The Congress finds that—

(1) low-level lead poisoning is widespread among American children, afflicting as many as 3,000,000 children under age 6, with minority and low-income communities disproportionately affected;

(2) at low levels, lead poisoning in children causes intelligence quotient deficiencies, reading and learning disabilities, impaired hearing, reduced attention span, hyperactivity, and behavior problems;

(3) pre-1980 American housing stock contains more than 3,000,000 tons of lead in the form of lead-based paint, with the vast majority of homes built before 1950 containing substantial amounts of lead-based paint;

(4) the ingestion of household dust containing lead from deteriorating or abraded lead-based paint is the most common cause of lead poisoning in children;

(5) the health and development of children living in as many as 3,800,000 American homes is endangered by chipping or peeling lead paint, or excessive amounts of lead-contaminated dust in their homes;

(6) the danger posed by lead-based paint hazards can be reduced by abating lead-based paint or by taking interim measures to prevent paint deterioration and limit children's exposure to lead dust and chips;

(7) despite the enactment of laws in the early 1970's requiring the Federal Government to eliminate as far as practicable lead-based paint hazards in federally owned, assisted, and insured housing, the Federal response to this national crisis remains severely limited; and

(8) the Federal Government must take a leadership role in building the infrastructure—including an informed public, State and local delivery systems, certified inspectors, contractors, and laboratories, trained workers, and available financing and insurance—necessary to ensure that the national goal of eliminating lead-based paint hazards in housing can be achieved as expeditiously as possible.

(Pub. L. 102-550, title X, §1002, Oct. 28, 1992, 106 Stat. 3897.)

SHORT TITLE

Section 1001 of title X of Pub. L. 102-550 provided that: "This title [enacting this chapter and sections 2681 to 2692 of Title 15, Commerce and Trade, amending sections 1437f, 1437aaa-1, 1437aaa-2, 1471, 4822, 5305, 12705, 12742, 12872, 12873, 12892, and 12893 of this title, sections 1703, 1709, and 1715f of Title 12, Banks and Banking, sections 2606, 2610, 2612, 2615, 2616, 2618, and 2619 of Title 15, and section 671 of Title 29, Labor, and enacting provisions set out as a note under section 2601 of Title 15] may be cited as the 'Residential Lead-Based Paint Hazard Reduction Act of 1992'."

§ 4851a. Purposes

The purposes of this chapter are—

(1) to develop a national strategy to build the infrastructure necessary to eliminate lead-based paint hazards in all housing as expeditiously as possible;

(2) to reorient the national approach to the presence of lead-based paint in housing to implement, on a priority basis, a broad program to evaluate and reduce lead-based paint hazards in the Nation's housing stock;

(3) to encourage effective action to prevent childhood lead poisoning by establishing a workable framework for lead-based paint hazard evaluation and reduction and by ending the current confusion over reasonable standards of care;

(4) to ensure that the existence of lead-based paint hazards is taken into account in the development of Government housing policies and in the sale, rental, and renovation of homes and apartments;

(5) to mobilize national resources expeditiously, through a partnership among all levels of government and the private sector, to develop the most promising, cost-effective methods for evaluating and reducing lead-based paint hazards;

(6) to reduce the threat of childhood lead poisoning in housing owned, assisted, or transferred by the Federal Government; and

(7) to educate the public concerning the hazards and sources of lead-based paint poisoning and steps to reduce and eliminate such hazards.

(Pub. L. 102-550, title X, §1003, Oct. 28, 1992, 106 Stat. 3897.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning title X of Pub. L. 102-550, Oct. 28, 1992, 106 Stat. 3897, known as the Residential Lead-Based Paint Hazard Reduction Act of 1992. For complete classification of this Act to the Code, see Short Title note set out under section 4851 of this title and Tables.

§ 4851b. Definitions

For the purposes of this chapter, the following definitions shall apply:

(1) Abatement

The term “abatement” means any set of measures designed to permanently eliminate lead-based paint hazards in accordance with standards established by appropriate Federal agencies. Such term includes—

(A) the removal of lead-based paint and lead-contaminated dust, the permanent containment or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures, and the removal or covering of lead contaminated soil; and

(B) all preparation, cleanup, disposal, and postabatement clearance testing activities associated with such measures.

(2) Accessible surface

The term “accessible surface” means an interior or exterior surface painted with lead-based paint that is accessible for a young child to mouth or chew.

(3) Certified contractor

The term “certified contractor” means—

(A) a contractor, inspector, or supervisor who has completed a training program certified by the appropriate Federal agency and has met any other requirements for certification or licensure established by such agency or who has been certified by any State through a program which has been found by such Federal agency to be at least as rigor-

ous as the Federal certification program; and

(B) workers or designers who have fully met training requirements established by the appropriate Federal agency.

(4) Contract for the purchase and sale of residential real property

The term “contract for the purchase and sale of residential real property” means any contract or agreement in which one party agrees to purchase an interest in real property on which there is situated 1 or more residential dwellings used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of 1 or more persons.

(5) Deteriorated paint

The term “deteriorated paint” means any interior or exterior paint that is peeling, chipping, chalking or cracking or any paint located on an interior or exterior surface or fixture that is damaged or deteriorated.

(6) Evaluation

The term “evaluation” means risk assessment, inspection, or risk assessment and inspection.

(7) Federally assisted housing

The term “federally assisted housing” means residential dwellings receiving project-based assistance under programs including—

(A) section 1715(d)(3) or 1715z-1 of title 12;

(B) section 1 of the Housing and Urban Development Act of 1965;

(C) section 1437f of this title; or

(D) sections 1472(a), 1474, 1484, 1485, 1486 and 1490m of this title.

(8) Federally owned housing

The term “federally owned housing” means residential dwellings owned or managed by a Federal agency, or for which a Federal agency is a trustee or conservator. For the purpose of this paragraph, the term “Federal agency” includes the Department of Housing and Urban Development, the Farmers Home Administration, the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, the General Services Administration, the Department of Defense, the Department of Veterans Affairs, the Department of the Interior, the Department of Transportation, and any other Federal agency.

(9) Federally supported work

The term “federally supported work” means any lead hazard evaluation or reduction activities conducted in federally owned or assisted housing or funded in whole or in part through any financial assistance program of the Department of Housing and Urban Development, the Farmers Home Administration, or the Department of Veterans Affairs.

(10) Friction surface

The term “friction surface” means an interior or exterior surface that is subject to abrasion or friction, including certain window, floor, and stair surfaces.

(11) Impact surface

The term “impact surface” means an interior or exterior surface that is subject to dam-

age by repeated impacts, for example, certain parts of door frames.

(12) Inspection

The term “inspection” means a surface-by-surface investigation to determine the presence of lead-based paint as provided in section 4822(c) of this title and the provision of a report explaining the results of the investigation.

(13) Interim controls

The term “interim controls” means a set of measures designed to reduce temporarily human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs.

(14) Lead-based paint

The term “lead-based paint” means paint or other surface coatings that contain lead in excess of limits established under section 4822(c) of this title.

(15) Lead-based paint hazard

The term “lead-based paint hazard” means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as established by the appropriate Federal agency.

(16) Lead-contaminated dust

The term “lead-contaminated dust” means surface dust in residential dwellings that contains an area or mass concentration of lead in excess of levels determined by the appropriate Federal agency to pose a threat of adverse health effects in pregnant women or young children.

(17) Lead-contaminated soil

The term “lead-contaminated soil” means bare soil on residential real property that contains lead at or in excess of the levels determined to be hazardous to human health by the appropriate Federal agency.

(18) Mortgage loan

The term “mortgage loan” includes any loan (other than temporary financing such as a construction loan) that—

- (A) is secured by a first lien on any interest in residential real property; and
- (B) either—
 - (i) is insured, guaranteed, made, or assisted by the Department of Housing and Urban Development, the Department of Veterans Affairs, or the Farmers Home Administration, or by any other agency of the Federal Government; or
 - (ii) is intended to be sold by each originating mortgage institution to any federally chartered secondary mortgage market institution.

(19) Originating mortgage institution

The term “originating mortgage institution” means a lender that provides mortgage loans.

(20) Priority housing

The term “priority housing” means target housing that qualifies as affordable housing under section 12745 of this title, including housing that receives assistance under subsection (b) or (o) of section 1437f of this title.

(21) Public housing

The term “public housing” has the same meaning given the term in section 1437a(b) of this title.

(22) Reduction

The term “reduction” means measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods including interim controls and abatement.

(23) Residential dwelling

The term “residential dwelling” means—

- (A) a single-family dwelling, including attached structures such as porches and stoops; or
- (B) a single-family dwelling unit in a structure that contains more than 1 separate residential dwelling unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of 1 or more persons.

(24) Residential real property

The term “residential real property” means real property on which there is situated 1 or more residential dwellings used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of 1 or more persons.

(25) Risk assessment

The term “risk assessment” means an on-site investigation to determine and report the existence, nature, severity and location of lead-based paint hazards in residential dwellings, including—

- (A) information gathering regarding the age and history of the housing and occupancy by children under age 6;
- (B) visual inspection;
- (C) limited wipe sampling or other environmental sampling techniques;
- (D) other activity as may be appropriate; and
- (E) provision of a report explaining the results of the investigation.

(26) Secretary

The term “Secretary” means the Secretary of Housing and Urban Development.

(27) Target housing

The term “target housing” means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing for the elderly or persons with disabilities) or any 0-bedroom dwelling. In the case of jurisdictions which banned the sale or use of lead-

based paint prior to 1978, the Secretary, at the Secretary's discretion, may designate an earlier date.

(Pub. L. 102-550, title X, §1004, Oct. 28, 1992, 106 Stat. 3898.)

REFERENCES IN TEXT

Section 1 of the Housing and Urban Development Act of 1965, referred to in par. (7)(B), is section 1 of Pub. L. 89-117, which is set out as a Short Title of 1965 Amendment note under section 1701 of Title 12, Banks and Banking.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1437f, 1471, 4822, 5305, 12705, 12742 of this title; title 12 sections 1703, 1709, 1715f; title 15 section 2682.

SUBCHAPTER I—LEAD-BASED PAINT HAZARD REDUCTION

§ 4852. Grants for lead-based paint hazard reduction in target housing

(a) General authority

The Secretary is authorized to provide grants to eligible applicants to evaluate and reduce lead-based paint hazards in housing that is not federally assisted housing, federally owned housing, or public housing, in accordance with the provisions of this section. Grants shall only be made under this section to provide assistance for housing which meets the following criteria—

(1) for grants made to assist rental housing, at least 50 percent of the units must be occupied by or made available to families with incomes at or below 50 percent of the area median income level and the remaining units shall be occupied or made available to families with incomes at or below 80 percent of the area median income level, and in all cases the landlord shall give priority in renting units assisted under this section, for not less than 3 years following the completion of lead abatement activities, to families with a child under the age of six years, except that buildings with five or more units may have 20 percent of the units occupied by families with incomes above 80 percent of area median income level;

(2) for grants made to assist housing owned by owner-occupants, all units assisted with grants under this section shall be the principal residence of families with income at or below 80 percent of the area median income level, and not less than 90 percent of the units assisted with grants under this section shall be occupied by a child under the age of six years or shall be units where a child under the age of six years spends a significant amount of time visiting; and

(3) notwithstanding paragraphs (1) and (2), Round II grantees who receive assistance under this section may use such assistance for priority housing.

(b) Eligible applicants

A State or unit of local government that has an approved comprehensive housing affordability strategy under section 12705 of this title is eligible to apply for a grant under this section.

(c) Form of applications

To receive a grant under this section, a State or unit of local government shall submit an ap-

plication in such form and in such manner as the Secretary shall prescribe. An application shall contain—

(1) a copy of that portion of an applicant's comprehensive housing affordability strategy required by section 12705(b)(16)¹ of this title;

(2) a description of the amount of assistance the applicant seeks under this section;

(3) a description of the planned activities to be undertaken with grants under this section, including an estimate of the amount to be allocated to each activity;

(4) a description of the forms of financial assistance to owners and occupants of housing that will be provided through grants under this section; and

(5) such assurances as the Secretary may require regarding the applicant's capacity to carry out the activities.

(d) Selection criteria

The Secretary shall award grants under this section on the basis of the merit of the activities proposed to be carried out and on the basis of selection criteria, which shall include—

(1) the extent to which the proposed activities will reduce the risk of lead-based paint poisoning to children under the age of 6 who reside in housing;

(2) the degree of severity and extent of lead-based paint hazards in the jurisdiction to be served;

(3) the ability of the applicant to leverage State, local, and private funds to supplement the grant under this section;

(4) the ability of the applicant to carry out the proposed activities; and

(5) such other factors as the Secretary determines appropriate to ensure that grants made available under this section are used effectively and to promote the purposes of this chapter.

(e) Eligible activities

A grant under this section may be used to—

(1) perform risk assessments and inspections in housing;

(2) provide for the interim control of lead-based paint hazards in housing;

(3) provide for the abatement of lead-based paint hazards in housing;

(4) provide for the additional cost of reducing lead-based paint hazards in units undergoing renovation funded by other sources;

(5) ensure that risk assessments, inspections, and abatements are carried out by certified contractors in accordance with section 2682 of title 15;

(6) monitor the blood-lead levels of workers involved in lead hazard reduction activities funded under this section;

(7) assist in the temporary relocation of families forced to vacate housing while lead hazard reduction measures are being conducted;

(8) educate the public on the nature and causes of lead poisoning and measures to reduce exposure to lead, including exposure due to residential lead-based paint hazards;

(9) test soil, interior surface dust, and the blood-lead levels of children under the age of 6

¹ See References in Text note below.

residing in housing after lead-based paint hazard reduction activity has been conducted, to assure that such activity does not cause excessive exposures to lead; and

(10) carry out such other activities that the Secretary determines appropriate to promote the purposes of this chapter.

(f) Forms of assistance

The applicant may provide the services described in this section through a variety of programs, including grants, loans, equity investments, revolving loan funds, loan funds, loan guarantees, interest write-downs, and other forms of assistance approved by the Secretary.

(g) Technical assistance and capacity building

(1) In general

The Secretary shall develop the capacity of eligible applicants to carry out the requirements of section 12705(b)(16)¹ of this title and to carry out activities under this section. In fiscal years 1993 and 1994, the Secretary may make grants of up to \$200,000 for the purpose of establishing State training, certification or accreditation programs that meet the requirements of section 2682 of title 15.

(2) Set-aside

Of the total amount approved in appropriation Acts under subsection (o) of this section, there shall be set aside to carry out this subsection \$3,000,000 for fiscal year 1993 and \$3,000,000 for fiscal year 1994.

(h) Matching requirement

Each recipient of a grant under this section shall make contributions toward the cost of activities that receive assistance under this section in an amount not less than 10 percent of the total grant amount under this section.

(i) Prohibition of substitution of funds

Grants under this subchapter may not be used to replace other amounts made available or designated by State or local governments for use for the purposes under this subchapter.

(j) Limitation on use

An applicant shall ensure that not more than 10 percent of the grant will be used for administrative expenses associated with the activities funded.

(k) Financial records

An applicant shall maintain and provide the Secretary with financial records sufficient, in the determination of the Secretary, to ensure proper accounting and disbursing of amounts received from a grant under this section.

(l) Report

An applicant under this section shall submit to the Secretary, for any fiscal year in which the applicant expends grant funds under this section, a report that—

(1) describes the use of the amounts received;

(2) states the number of risk assessments and the number of inspections conducted in residential dwellings;

(3) states the number of residential dwellings in which lead-based paint hazards have been reduced through interim controls;

(4) states the number of residential dwellings in which lead-based paint hazards have been abated; and

(5) provides any other information that the Secretary determines to be appropriate.

(m) Notice of Funding Availability

The Secretary shall publish a Notice of Funding Availability pursuant to this section not later than 120 days after funds are appropriated for this section.

(n) Relationship to other law

Effective 2 years after the date of promulgation of regulations under section 2682 of title 15, no grants for lead-based paint hazard evaluation or reduction may be awarded to a State under this section unless such State has an authorized program under section 2684 of title 15.

(o) Environmental review

(1) In general

For purposes of environmental review, decisionmaking, and action pursuant to the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] and other provisions of law that further the purposes of such Act, a grant under this section shall be treated as assistance under the HOME Investment Partnership² Act, established under title II of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12721 et seq.], and shall be subject to the regulations promulgated by the Secretary to implement section 288 of such Act [42 U.S.C. 12838].

(2) Applicability

This subsection shall apply to—

(A) grants awarded under this section; and

(B) grants awarded to States and units of general local government for the abatement of significant lead-based paint and lead dust hazards in low- and moderate-income owner-occupied units and low-income privately owned rental units pursuant to title II of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1992 (Public Law 102-139, 105 Stat. 736).

(p) Authorization of appropriations

For the purposes of carrying out this chapter, there are authorized to be appropriated \$125,000,000 for fiscal year 1993 and \$250,000,000 for fiscal year 1994.

(Pub. L. 102-550, title X, §1011, Oct. 28, 1992, 106 Stat. 3901; Pub. L. 103-233, title III, §305(a), Apr. 11, 1994, 108 Stat. 370; Pub. L. 104-134, title I, §101(e) [title II, §217], Apr. 26, 1996, 110 Stat. 1321-257, 1321-290; renumbered title I, Pub. L. 104-140, §1(a), May 2, 1996, 110 Stat. 1327.)

REFERENCES IN TEXT

Section 12705(b)(16) of this title, referred to in subsecs. (c)(1) and (g)(1), probably means section 12705(b)(16) relating to housing units that contain lead-based paint hazards which was redesignated section 12705(b)(17) by Pub. L. 105-276, title V, §583(5)(B), Oct. 21, 1998, 112 Stat. 2644.

This chapter, referred to in subsecs. (d)(5), (e)(10), and (p), was in the original "this Act", meaning title X of

² So in original. Probably should be "Partnerships".

Pub. L. 102-550, Oct. 28, 1992, 106 Stat. 3897, known as the Residential Lead-Based Paint Hazard Reduction Act of 1992. For complete classification of this Act to the Code, see Short Title note set out under section 4851 of this title and Tables.

This subchapter, referred to in subsec. (i), was in the original "this subtitle", meaning subtitle A of title X of Pub. L. 102-550, Oct. 28, 1992, 106 Stat. 3901, which enacted this subchapter and amended sections 1437f, 1437aaa-1, 1437aaa-2, 1471, 4822, 5305, 12705, 12742, 12872, 12873, 12892, and 12893 of this title and sections 1703, 1709, and 1715f of Title 12, Banks and Banking.

The National Environmental Policy Act of 1969, referred to in subsec. (o)(1), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

The Cranston-Gonzalez National Affordable Housing Act, referred to in subsec. (o)(1), is Pub. L. 101-625, Nov. 28, 1990, 104 Stat. 4079, as amended. Title II of the Act, known as the HOME Investment Partnerships Act, is classified generally to subchapter II (§12721 et seq.) of chapter 130 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 12701 of this title and Tables.

The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1992, referred to in subsec. (o)(2)(B), is Pub. L. 102-139, Oct. 28, 1991, 105 Stat. 736. Title II of the Act relates to appropriations for the Department of Housing and Urban Development. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104-134, §101(e) [title II, §217], substituted "hazards in housing" for "hazards in priority housing" and inserted at end "Grants shall only be made under this section to provide assistance for housing which meets the following criteria—" and pars. (1) to (3).

Subsecs. (c)(4), (d)(1), (e)(1) to (3), (7), (9). Pub. L. 104-134, §101(e) [title II, §217(a)], substituted "housing" for "priority housing".

1994—Subsecs. (o), (p). Pub. L. 103-233 added subsec. (o) and redesignated former subsec. (o) as (p).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4854b of this title.

§ 4852a. Task force on lead-based paint hazard reduction and financing

(a) In general

The Secretary, in consultation with the Administrator of the Environmental Protection Agency, shall establish a task force to make recommendations on expanding resources and efforts to evaluate and reduce lead-based paint hazards in private housing.

(b) Membership

The task force shall include individuals representing the Department of Housing and Urban Development, the Farmers Home Administration, the Department of Veterans Affairs, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Environmental Protection Agency, employee organizations in the building and construction trades industry, landlords, tenants, primary lending institutions, private mortgage insurers, single-family and multifamily real estate interests, nonprofit housing developers, property liability insurers, public housing agencies, low-income housing advocacy organizations, national,

State and local lead-poisoning prevention advocates and experts, and community-based organizations located in areas with substantial rental housing.

(c) Responsibilities

The task force shall make recommendations to the Secretary and the Administrator of the Environmental Protection Agency concerning—

(1) incorporating the need to finance lead-based paint hazard reduction into underwriting standards;

(2) developing new loan products and procedures for financing lead-based paint hazard evaluation and reduction activities;

(3) adjusting appraisal guidelines to address lead safety;

(4) incorporating risk assessments or inspections for lead-based paint as a routine procedure in the origination of new residential mortgages;

(5) revising guidelines, regulations, and educational pamphlets issued by the Department of Housing and Urban Development and other Federal agencies relating to lead-based paint poisoning prevention;

(6) reducing the current uncertainties of liability related to lead-based paint in rental housing by clarifying standards of care for landlords and lenders, and by exploring the "safe harbor" concept;

(7) increasing the availability of liability insurance for owners of rental housing and certified contractors and establishing alternative systems to compensate victims of lead-based paint poisoning; and

(8) evaluating the utility and appropriateness of requiring risk assessments or inspections and notification to prospective lessees of rental housing.

(d) Compensation

The members of the task force shall not receive Federal compensation for their participation.

(Pub. L. 102-550, title X, §1015, Oct. 28, 1992, 106 Stat. 3908.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4852b of this title.

§ 4852b. National consultation on lead-based paint hazard reduction

In carrying out this chapter, the Secretary shall consult on an ongoing basis with the Administrator of the Environmental Protection Agency, the Director of the Centers for Disease Control, other Federal agencies concerned with lead poisoning prevention, and the task force established pursuant to section 4852a of this title.

(Pub. L. 102-550, title X, §1016, Oct. 28, 1992, 106 Stat. 3909.)

CHANGE OF NAME

Centers for Disease Control changed to Centers for Disease Control and Prevention by Pub. L. 102-531, title III, §312, Oct. 27, 1992, 106 Stat. 3504.

§ 4852c. Guidelines for lead-based paint hazard evaluation and reduction activities

Not later than 12 months after October 28, 1992, the Secretary, in consultation with the Ad-

ministrator of the Environmental Protection Agency, the Secretary of Labor, and the Secretary of Health and Human Services (acting through the Director of the Centers for Disease Control), shall issue guidelines for the conduct of federally supported work involving risk assessments, inspections, interim controls, and abatement of lead-based paint hazards. Such guidelines shall be based upon criteria that measure the condition of the housing (and the presence of children under age 6 for the purposes of risk assessments) and shall not be based upon criteria that measure the health of the residents of the housing.

(Pub. L. 102-550, title X, §1017, Oct. 28, 1992, 106 Stat. 3909.)

CHANGE OF NAME

Centers for Disease Control changed to Centers for Disease Control and Prevention by Pub. L. 102-531, title III, §312, Oct. 27, 1992, 106 Stat. 3504.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4822 of this title.

§ 4852d. Disclosure of information concerning lead upon transfer of residential property

(a) Lead disclosure in purchase and sale or lease of target housing

(1) Lead-based paint hazards

Not later than 2 years after October 28, 1992, the Secretary and the Administrator of the Environmental Protection Agency shall promulgate regulations under this section for the disclosure of lead-based paint hazards in target housing which is offered for sale or lease. The regulations shall require that, before the purchaser or lessee is obligated under any contract to purchase or lease the housing, the seller or lessor shall—

(A) provide the purchaser or lessee with a lead hazard information pamphlet, as prescribed by the Administrator of the Environmental Protection Agency under section 406 of the Toxic Substances Control Act [15 U.S.C. 2686];

(B) disclose to the purchaser or lessee the presence of any known lead-based paint, or any known lead-based paint hazards, in such housing and provide to the purchaser or lessee any lead hazard evaluation report available to the seller or lessor; and

(C) permit the purchaser a 10-day period (unless the parties mutually agree upon a different period of time) to conduct a risk assessment or inspection for the presence of lead-based paint hazards.

(2) Contract for purchase and sale

Regulations promulgated under this section shall provide that every contract for the purchase and sale of any interest in target housing shall contain a Lead Warning Statement and a statement signed by the purchaser that the purchaser has—

(A) read the Lead Warning Statement and understands its contents;

(B) received a lead hazard information pamphlet; and

(C) had a 10-day opportunity (unless the parties mutually agreed upon a different pe-

riod of time) before becoming obligated under the contract to purchase the housing to conduct a risk assessment or inspection for the presence of lead-based paint hazards.

(3) Contents of lead warning statement

The Lead Warning Statement shall contain the following text printed in large type on a separate sheet of paper attached to the contract:

“Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller’s possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.”.

(4) Compliance assurance

Whenever a seller or lessor has entered into a contract with an agent for the purpose of selling or leasing a unit of target housing, the regulations promulgated under this section shall require the agent, on behalf of the seller or lessor, to ensure compliance with the requirements of this section.

(5) Promulgation

A suit may be brought against the Secretary of Housing and Urban Development and the Administrator of the Environmental Protection Agency under section 20 of the Toxic Substances Control Act [15 U.S.C. 2619] to compel promulgation of the regulations required under this section and the Federal district court shall have jurisdiction to order such promulgation.

(b) Penalties for violations

(1) Monetary penalty

Any person who knowingly violates any provision of this section shall be subject to civil money penalties in accordance with the provisions of section 3545 of this title.

(2) Action by Secretary

The Secretary is authorized to take such lawful action as may be necessary to enjoin any violation of this section.

(3) Civil liability

Any person who knowingly violates the provisions of this section shall be jointly and severally liable to the purchaser or lessee in an amount equal to 3 times the amount of damages incurred by such individual.

(4) Costs

In any civil action brought for damages pursuant to paragraph (3), the appropriate court

may award court costs to the party commencing such action, together with reasonable attorney fees and any expert witness fees, if that party prevails.

(5) Prohibited act

It shall be a prohibited act under section 409 of the Toxic Substances Control Act [15 U.S.C. 2689] for any person to fail or refuse to comply with a provision of this section or with any rule or order issued under this section. For purposes of enforcing this section under the Toxic Substances Control Act [15 U.S.C. 2601 et seq.], the penalty for each violation applicable under section 16 of that Act [15 U.S.C. 2615] shall not be more than \$10,000.

(c) Validity of contracts and liens

Nothing in this section shall affect the validity or enforceability of any sale or contract for the purchase and sale or lease of any interest in residential real property or any loan, loan agreement, mortgage, or lien made or arising in connection with a mortgage loan, nor shall anything in this section create a defect in title.

(d) Effective date

The regulations under this section shall take effect 3 years after October 28, 1992.

(Pub. L. 102-550, title X, § 1018, Oct. 28, 1992, 106 Stat. 3910.)

REFERENCES IN TEXT

The Toxic Substances Control Act, referred to in sec. (b)(5), is Pub. L. 94-469, Oct. 11, 1976, 90 Stat. 2003, as amended, which is classified generally to chapter 53 (§ 2601 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 15 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4856 of this title; title 15 section 2686.

SUBCHAPTER II—WORKER PROTECTION

§ 4853. Worker protection

Not later than 180 days after October 28, 1992, the Secretary of Labor shall issue an interim final regulation regulating occupational exposure to lead in the construction industry. Such interim final regulation shall provide employment and places of employment to employees which are as safe and healthful as those which would prevail under the Department of Housing and Urban Development guidelines published at Federal Register 55, page 38973 (September 28, 1990) (Revised Chapter 8). Such interim final regulations shall take effect upon issuance (except that such regulations may include a reasonable delay in the effective date), shall have the legal effect of an Occupational Safety and Health Standard, and shall apply until a final standard becomes effective under section 655 of title 29.

(Pub. L. 102-550, title X, § 1031, Oct. 28, 1992, 106 Stat. 3924.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4853a of this title.

§ 4853a. Coordination between Environmental Protection Agency and Department of Labor

The Secretary of Labor, in promulgating regulations under section 4853 of this title, shall consult and coordinate with the Administrator of the Environmental Protection Agency for the purpose of achieving the maximum enforcement of title IV of the Toxic Substances Control Act [15 U.S.C. 2681 et seq.] and the Occupational Safety and Health Act of 1970 [29 U.S.C. 651 et seq.] while imposing the least burdens of duplicative requirements on those subject to such title and Act and for other purposes.

(Pub. L. 102-550, title X, § 1032, Oct. 28, 1992, 106 Stat. 3924.)

REFERENCES IN TEXT

The Toxic Substances Control Act, referred to in text, is Pub. L. 94-469, Oct. 11, 1976, 90 Stat. 2003, as amended. Title IV of the Act is classified generally to subchapter IV (§ 2681 et seq.) of chapter 53 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 15 and Tables.

The Occupational Safety and Health Act of 1970, referred to in text, is Pub. L. 91-596, Dec. 29, 1970, 84 Stat. 1590, as amended, which is classified principally to chapter 15 (§ 651 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 651 of Title 29 and Tables.

SUBCHAPTER III—RESEARCH AND DEVELOPMENT

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 4856 of this title.

PART 1—HUD RESEARCH

§ 4854. Research on lead exposure from other sources

The Secretary, in cooperation with other Federal agencies, shall conduct research on strategies to reduce the risk of lead exposure from other sources, including exterior soil and interior lead dust in carpets, furniture, and forced air ducts.

(Pub. L. 102-550, title X, § 1051, Oct. 28, 1992, 106 Stat. 3925.)

§ 4854a. Testing technologies

The Secretary, in cooperation with other Federal agencies, shall conduct research to—

- (1) develop improved methods for evaluating lead-based paint hazards in housing;
- (2) develop improved methods for reducing lead-based paint hazards in housing;
- (3) develop improved methods for measuring lead in paint films, dust, and soil samples;
- (4) establish performance standards for various detection methods, including spot test kits;
- (5) establish performance standards for lead-based paint hazard reduction methods, including the use of encapsulants;
- (6) establish appropriate cleanup standards;
- (7) evaluate the efficacy of interim controls in various hazard situations;
- (8) evaluate the relative performance of various abatement techniques;

(9) evaluate the long-term cost-effectiveness of interim control and abatement strategies; and

(10) assess the effectiveness of hazard evaluation and reduction activities funded by this chapter.

(Pub. L. 102-550, title X, §1052, Oct. 28, 1992, 106 Stat. 3925.)

REFERENCES IN TEXT

This chapter, referred to in par. (10), was in the original "this Act", meaning title X of Pub. L. 102-550, Oct. 28, 1992, 106 Stat. 3897, known as the Residential Lead-Based Paint Hazard Reduction Act of 1992. For complete classification of this Act to the Code, see Short Title note set out under section 4851 of this title and Tables.

§ 4854b. Authorization

Of the total amount approved in appropriation Acts under section 4852(o)¹ of this title, there shall be set aside to carry out this part \$5,000,000 for fiscal year 1993, and \$5,000,000 for fiscal year 1994.

(Pub. L. 102-550, title X, §1053, Oct. 28, 1992, 106 Stat. 3926.)

REFERENCES IN TEXT

Section 4852(o) of this title, referred to in text, was redesignated section 4852(p) of this title by Pub. L. 103-233, title III, §305(a)(1), Apr. 11, 1994, 108 Stat. 370.

PART 2—GAO REPORT

§ 4855. Federal implementation and insurance study

(a) Federal implementation study

The Comptroller General of the United States shall assess the effectiveness of Federal enforcement and compliance with lead safety laws and regulations, including any changes needed in annual inspection procedures to identify lead-based paint hazards in units receiving assistance under subsections (b) and (o) of section 1437f of this title.

(b) Insurance study

The Comptroller General of the United States shall assess the availability of liability insurance for owners of residential housing that contains lead-based paint and persons engaged in lead-based paint hazard evaluation and reduction activities. In carrying out the assessment, the Comptroller General shall—

(1) analyze any precedents in the insurance industry for the containment and abatement of environmental hazards, such as asbestos, in federally assisted housing;

(2) provide an assessment of the recent insurance experience in the public housing lead hazard identification and reduction program; and

(3) recommend measures for increasing the availability of liability insurance to owners and contractors engaged in federally supported work.

(Pub. L. 102-550, title X, §1056, Oct. 28, 1992, 106 Stat. 3926.)

¹ See References in Text note below.

SUBCHAPTER IV—REPORTS

§ 4856. Reports of Secretary of Housing and Urban Development

(a) Annual report

The Secretary shall transmit to the Congress an annual report that—

(1) sets forth the Secretary's assessment of the progress made in implementing the various programs authorized by this chapter;

(2) summarizes the most current health and environmental studies on childhood lead poisoning, including studies that analyze the relationship between interim control and abatement activities and the incidence of lead poisoning in resident children;

(3) recommends legislative and administrative initiatives that may improve the performance by the Department of Housing and Urban Development in combating lead hazards through the expansion of lead hazard evaluation and reduction activities;

(4) describes the results of research carried out in accordance with subchapter III of this chapter; and

(5) estimates the amount of Federal assistance annually expended on lead hazard evaluation and reduction activities.

(b) Biennial report

(1) In general

24 months after October 28, 1992, and at the end of every 24-month period thereafter, the Secretary shall report to the Congress on the progress of the Department of Housing and Urban Development in implementing expanded lead-based paint hazard evaluation and reduction activities.

(2) Contents

The report shall—

(A) assess the effectiveness of section 4852d of this title in making the public aware of lead-based paint hazards;

(B) estimate the extent to which lead-based paint hazard evaluation and reduction activities are being conducted in the various categories of housing;

(C) monitor and report expenditures for lead-based paint hazard evaluation and reduction for programs within the jurisdiction of the Department of Housing and Urban Development;

(D) identify the infrastructure needed to eliminate lead-based paint hazards in all housing as expeditiously as possible, including cost-effective technology, standards and regulations, trained and certified contractors, certified laboratories, liability insurance, private financing techniques, and appropriate Government subsidies;

(E) assess the extent to which the infrastructure described in subparagraph (D) exists, make recommendations to correct shortcomings, and provide estimates of the costs of measures needed to build an adequate infrastructure; and

(F) include any additional information that the Secretary deems appropriate.

(Pub. L. 102-550, title X, §1061, Oct. 28, 1992, 106 Stat. 3926.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(1), was in the original "this title", meaning title X of Pub. L. 102-550, Oct. 28, 1992, 106 Stat. 3897, known as the Residential Lead-Based Paint Hazard Reduction Act of 1992. For complete classification of this title to the Code, see Short Title note set out under section 4851 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3536 of this title.

CHAPTER 64—PUBLIC SERVICE EMPLOYMENT PROGRAMS

§§ 4871 to 4883. Omitted

CODIFICATION

The public service employment programs covered by this chapter and authorized pursuant to the Emergency Employment Act of 1971, Pub. L. 92-54, July 12, 1971, 85 Stat. 146, which enacted this chapter, are omitted because appropriations were not authorized after June 30, 1973. Similar public service employment programs were included in the Comprehensive Employment and Training Act of 1973, Pub. L. 93-203, title II, §§ 201-211, Dec. 28, 1973, 87 Stat. 850-857, which was classified to section 841 et seq. of Title 29, Labor, and was repealed by section 184(a)(1) of the Job Training Partnership Act, Pub. L. 97-300, title I, Oct. 13, 1982, 96 Stat. 1357. The Job Training Partnership Act was classified principally to chapter 19 (§ 1501 et seq.) of Title 29 and was repealed by Pub. L. 105-220, title I, § 199(b)(2), 112 Stat. 1059, effective July 1, 2000.

Section 4871, Pub. L. 92-54, § 2, July 12, 1971, 85 Stat. 146, set forth Congressional statement of findings and purpose.

Section 4872, Pub. L. 92-54, § 3, July 12, 1971, 85 Stat. 147, related to financial assistance.

Section 4873, Pub. L. 92-54, § 4, July 12, 1971, 85 Stat. 147, related to eligibility of applicants.

Section 4874, Pub. L. 92-54, § 5, July 12, 1971, 85 Stat. 148, related to authorization of appropriations and the national unemployment rate.

Section 4875, Pub. L. 92-54, § 6, July 12, 1971, 85 Stat. 148, related to special employment assistance.

Section 4876, Pub. L. 92-54, § 7, July 12, 1971, 85 Stat. 149, related to applications for financial assistance.

Section 4877, Pub. L. 92-54, § 8, July 12, 1971, 85 Stat. 151, related to approval of applications and non-Federal contributions.

Section 4878, Pub. L. 92-54, § 9, July 12, 1971, 85 Stat. 151, related to interstate and intrastate allocation of funds.

Section 4879, Pub. L. 92-54, § 10, July 12, 1971, 85 Stat. 152, related to training and manpower services.

Section 4880, Pub. L. 92-54, § 11, July 12, 1971, 85 Stat. 152, related to periodic review and evaluation by the Secretary.

Section 4881, Pub. L. 92-54, § 12, July 12, 1971, 85 Stat. 153, set forth special provisions relating to programs.

Section 4882, Pub. L. 92-54, § 13, July 12, 1971, 85 Stat. 155, related to a special report to Congress.

Section 4883, Pub. L. 92-54, § 14, July 12, 1971, 85 Stat. 155, set forth definitions.

CHAPTER 65—NOISE CONTROL

Sec. 4901. Congressional findings and statement of policy.
4902. Definitions.
4903. Federal programs.
(a) Furtherance of Congressional policy.
(b) Presidential authority to exempt activities or facilities from compliance requirements.
(c) Coordination of programs of Federal agencies; standards and regulations; status reports.

Sec. 4904. Identification of major noise sources.
(a) Development and publication of criteria.
(b) Compilation and publication of reports on noise sources and control technology.
(c) Supplemental criteria and reports.
(d) Publication in Federal Register.
4905. Noise emission standards for products distributed in commerce.
(a) Proposed regulations.
(b) Authority to publish regulations not otherwise required.
(c) Contents of regulations; appropriate consideration of other standards; participation by interested persons; revision.
(d) Warranty by manufacturer of conformity of product with regulations; transfer of cost obligation from manufacturer to dealer prohibited.
(e) State and local regulations.
(f) Publication of notice of receipt of revision petitions and proposed revised regulations.
4906. Omitted.
4907. Labeling.
(a) Regulations.
(b) Manner of notice; form; methods and units of measurement.
(c) State regulation of product labeling.
4908. Imports.
4909. Prohibited acts.
4910. Enforcement.
(a) Criminal penalties.
(b) Separate violations.
(c) Actions to restrain violations.
(d) Orders issued to protect public health and welfare; notice; opportunity for hearing.
(e) "Person" defined.
4911. Citizen suits.
(a) Authority to commence suits.
(b) Notice.
(c) Intervention.
(d) Litigation costs.
(e) Other common law or statutory rights of action.
(f) "Noise control requirement" defined.
4912. Records, reports, and information.
(a) Duties of manufacturers of products.
(b) Confidential information; disclosure.
(c) Violations and penalties.
4913. Quiet communities, research, and public information.
4914. Development of low-noise-emission products.
(a) Definitions.
(b) Certification of products; Low-Noise-Emission Product Advisory Committee.
(c) Federal procurement of low-noise-emission products.
(d) Product selection.
(e) Waiver of statutory price limitations.
(f) Tests of noise emissions from products purchased by Federal Government.
(g) Authorization of appropriations.
(h) Promulgation of procedures.
4915. Judicial review.
(a) Petition for review.
(b) Additional evidence.
(c) Stay of agency action.
(d) Subpenas.
4916. Railroad noise emission standards.
(a) Regulations; standards; consultation with Secretary of Transportation.
(b) Regulations to insure compliance with noise emission standards.

Sec.

- (c) State and local standards and controls.
- (d) "Carrier" and "railroad" defined.
- 4917. Motor carrier noise emission standards.
 - (a) Regulations; standards; consultation with Secretary of Transportation.
 - (b) Regulations to insure compliance with noise emission standards.
 - (c) State and local standards and controls.
 - (d) "Motor carrier" defined.
- 4918. Authorization of appropriations.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 4365 of this title; title 15 section 2706; title 16 section 228g.

§ 4901. Congressional findings and statement of policy

(a) The Congress finds—

(1) that inadequately controlled noise presents a growing danger to the health and welfare of the Nation's population, particularly in urban areas;

(2) that the major sources of noise include transportation vehicles and equipment, machinery, appliances, and other products in commerce; and

(3) that, while primary responsibility for control of noise rests with State and local governments, Federal action is essential to deal with major noise sources in commerce control of which require national uniformity of treatment.

(b) The Congress declares that it is the policy of the United States to promote an environment for all Americans free from noise that jeopardizes their health or welfare. To that end, it is the purpose of this chapter to establish a means for effective coordination of Federal research and activities in noise control, to authorize the establishment of Federal noise emission standards for products distributed in commerce, and to provide information to the public respecting the noise emission and noise reduction characteristics of such products.

(Pub. L. 92-574, §2, Oct. 27, 1972, 86 Stat. 1234.)

SHORT TITLE OF 1978 AMENDMENT

Pub. L. 95-609, §1, Nov. 8, 1978, 92 Stat. 3079, provided: "That this Act [amending sections 4905, 4910, 4913, 4918, 6901, 6903, 6907, 6913, 6922, 6923, 6925, to 6928, 6947, 6961, 6962, 6964, 6972, 6973, 6977, and 6981 to 6984 of this title and section 1431 of former Title 49, Transportation, and enacting provision set out as a note under section 1431 of former Title 49] may be cited as the 'Quiet Communities Act of 1978'."

SHORT TITLE

Section 1 of Pub. L. 92-574 provided that: "This Act [enacting this chapter, amending section 1431 of former Title 49, Transportation, and enacting provisions set out as notes under this section and section 1431 of former Title 49] may be cited as the 'Noise Control Act of 1972'."

FEDERAL COMPLIANCE WITH POLLUTION CONTROL STANDARDS

For provisions relating to the responsibility of the head of each Executive agency for compliance with applicable pollution control standards, see Ex. Ord. No. 12088, Oct. 13, 1978, 43 F.R. 47707, set out as a note under section 4321 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4903 of this title.

§ 4902. Definitions

For purposes of this chapter:

(1) The term "Administrator" means the Administrator of the Environmental Protection Agency.

(2) The term "person" means an individual, corporation, partnership, or association, and (except as provided in sections 4910(e) and 4911(a) of this title) includes any officer, employee, department, agency, or instrumentality of the United States, a State, or any political subdivision of a State.

(3) The term "product" means any manufactured article or goods or component thereof; except that such term does not include—

(A) any aircraft, aircraft engine, propeller, or appliance, as such terms are defined in section 40102(a) of title 49; or

(B)(i) any military weapons or equipment which are designed for combat use; (ii) any rockets or equipment which are designed for research, experimental, or developmental work to be performed by the National Aeronautics and Space Administration; or (iii) to the extent provided by regulations of the Administrator, any other machinery or equipment designed for use in experimental work done by or for the Federal Government.

(4) The term "ultimate purchaser" means the first person who in good faith purchases a product for purposes other than resale.

(5) The term "new product" means (A) a product the equitable or legal title of which has never been transferred to an ultimate purchaser, or (B) a product which is imported or offered for importation into the United States and which is manufactured after the effective date of a regulation under section 4905 or 4907 of this title which would have been applicable to such product had it been manufactured in the United States.

(6) The term "manufacturer" means any person engaged in the manufacturing or assembling of new products, or the importing of new products for resale, or who acts for, and is controlled by, any such person in connection with the distribution of such products.

(7) The term "commerce" means trade, traffic, commerce, or transportation—

(A) between a place in a State and any place outside thereof, or

(B) which affects trade, traffic, commerce, or transportation described in subparagraph (A).

(8) The term "distribute in commerce" means sell in, offer for sale in, or introduce or deliver for introduction into, commerce.

(9) The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands.

(10) The term "Federal agency" means an executive agency (as defined in section 105 of title 5) and includes the United States Postal Service.

(11) The term “environmental noise” means the intensity, duration, and the character of sounds from all sources.

(Pub. L. 92-574, § 3, Oct. 27, 1972, 86 Stat. 1234.)

CODIFICATION

In par. (3)(A), “section 40102(a) of title 49” substituted for “section 101 of the Federal Aviation Act of 1958” on authority of Pub. L. 103-272, § 6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4903 of this title.

§ 4903. Federal programs

(a) Furtherance of Congressional policy

The Congress authorizes and directs that Federal agencies shall, to the fullest extent consistent with their authority under Federal laws administered by them, carry out the programs within their control in such a manner as to further the policy declared in section 4901(b) of this title.

(b) Presidential authority to exempt activities or facilities from compliance requirements

Each department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government—

(1) having jurisdiction over any property or facility, or

(2) engaged in any activity resulting, or which may result, in the emission of noise,

shall comply with Federal, State, interstate, and local requirements respecting control and abatement of environmental noise to the same extent that any person is subject to such requirements. The President may exempt any single activity or facility, including noise emission sources or classes thereof, of any department, agency, or instrumentality in the executive branch from compliance with any such requirement if he determines it to be in the paramount interest of the United States to do so; except that no exemption, other than for those products referred to in section 4902(3)(B) of this title, may be granted from the requirements of sections 4905, 4916, and 4917 of this title. No such exemption shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation. Any exemption shall be for a period not in excess of one year, but additional exemptions may be granted for periods of not to exceed one year upon the President’s making a new determination. The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with his reason for granting such exemption.

(c) Coordination of programs of Federal agencies; standards and regulations; status reports

(1) The Administrator shall coordinate the programs of all Federal agencies relating to noise research and noise control. Each Federal agency shall, upon request, furnish to the Administrator such information as he may reasonably require to determine the nature, scope, and results of the noise-research and noise-control programs of the agency.

(2) Each Federal agency shall consult with the Administrator in prescribing standards or regulations respecting noise. If at any time the Administrator has reason to believe that a standard or regulation, or any proposed standard or regulation, of any Federal agency respecting noise does not protect the public health and welfare to the extent he believes to be required and feasible, he may request such agency to review and report to him on the advisability of revising such standard or regulation to provide such protection. Any such request may be published in the Federal Register and shall be accompanied by a detailed statement of the information on which it is based. Such agency shall complete the requested review and report to the Administrator within such time as the Administrator specifies in the request, but such time specified may not be less than ninety days from the date the request was made. The report shall be published in the Federal Register and shall be accompanied by a detailed statement of the findings and conclusions of the agency respecting the revision of its standard or regulation. With respect to the Federal Aviation Administration, section 44715 of title 49 shall apply in lieu of this paragraph.

(3) On the basis of regular consultation with appropriate Federal agencies, the Administrator shall compile and publish, from time to time, a report on the status and progress of Federal activities relating to noise research and noise control. This report shall describe the noise-control programs of each Federal agency and assess the contributions of those programs to the Federal Government’s overall efforts to control noise.

(Pub. L. 92-574, § 4, Oct. 27, 1972, 86 Stat. 1235.)

CODIFICATION

In subsec. (c)(2), “section 44715 of title 49” substituted for “section 611 of the Federal Aviation Act of 1958 (as amended by section 7 of this Act)” on authority of Pub. L. 103-272, § 6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (b) of this section relating to annual report to Congress, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and item 7 on page 20 of House Document No. 103-7.

§ 4904. Identification of major noise sources

(a) Development and publication of criteria

(1) The Administrator shall, after consultation with appropriate Federal agencies and within nine months of October 27, 1972, develop and publish criteria with respect to noise. Such criteria

shall reflect the scientific knowledge most useful in indicating the kind and extent of all identifiable effects on the public health or welfare which may be expected from differing quantities and qualities of noise.

(2) The Administrator shall, after consultation with appropriate Federal agencies and within twelve months of October 27, 1972, publish information on the levels of environmental noise the attainment and maintenance of which in defined areas under various conditions are requisite to protect the public health and welfare with an adequate margin of safety.

(b) Compilation and publication of reports on noise sources and control technology

The Administrator shall, after consultation with appropriate Federal agencies, compile and publish a report or series of reports (1) identifying products (or classes of products) which in his judgment are major sources of noise, and (2) giving information on techniques for control of noise from such products, including available data on the technology, costs, and alternative methods of noise control. The first such report shall be published not later than eighteen months after October 27, 1972.

(c) Supplemental criteria and reports

The Administrator shall from time to time review and, as appropriate, revise or supplement any criteria or reports published under this section.

(d) Publication in Federal Register

Any report (or revision thereof) under subsection (b)(1) of this section identifying major noise sources shall be published in the Federal Register. The publication or revision under this section of any criteria or information on control techniques shall be announced in the Federal Register, and copies shall be made available to the general public.

(Pub. L. 92-574, § 5, Oct. 27, 1972, 86 Stat. 1236.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4905 of this title.

§ 4905. Noise emission standards for products distributed in commerce

(a) Proposed regulations

(1) The Administrator shall publish proposed regulations, meeting the requirements of subsection (c) of this section, for each product—

(A) which is identified (or is part of a class identified) in any report published under section 4904(b)(1) of this title as a major source of noise,

(B) for which, in his judgment, noise emission standards are feasible, and

(C) which falls in one of the following categories:

(i) Construction equipment.

(ii) Transportation equipment (including recreational vehicles and related equipment).

(iii) Any motor or engine (including any equipment of which an engine or motor is an integral part).

(iv) Electrical or electronic equipment.

(2)(A) Initial proposed regulations under paragraph (1) shall be published not later than eight-

een months after October 27, 1972, and shall apply to any product described in paragraph (1) which is identified (or is a part of a class identified) as a major source of noise in any report published under section 4904(b)(1) of this title on or before the date of publication of such initial proposed regulations.

(B) In the case of any product described in paragraph (1) which is identified (or is part of a class identified) as a major source of noise in a report published under section 4904(b)(1) of this title after publication of the initial proposed regulations under subparagraph (A) of this paragraph, regulations under paragraph (1) for such product shall be proposed and published by the Administrator not later than eighteen months after such report is published.

(3) After proposed regulations respecting a product have been published under paragraph (2), the Administrator shall, unless in his judgment noise emission standards are not feasible for such product, prescribe regulations, meeting the requirements of subsection (c) of this section, for such product—

(A) not earlier than six months after publication of such proposed regulations, and

(B) not later than—

(i) twenty-four months after October 27, 1972, in the case of a product subject to proposed regulations published under paragraph (2)(A), or

(ii) in the case of any other product, twenty-four months after the publication of the report under section 4904(b)(1) of this title identifying it (or a class of products of which it is a part) as a major source of noise.

(b) Authority to publish regulations not otherwise required

The Administrator may publish proposed regulations, meeting the requirements of subsection (c) of this section, for any product for which he is not required by subsection (a) of this section to prescribe regulations but for which, in his judgment, noise emission standards are feasible and are requisite to protect the public health and welfare. Not earlier than six months after the date of publication of such proposed regulations respecting such product, he may prescribe regulations, meeting the requirements of subsection (c) of this section, for such product.

(c) Contents of regulations; appropriate consideration of other standards; participation by interested persons; revision

(1) Any regulation prescribed under subsection (a) or (b) of this section (and any revision thereof) respecting a product shall include a noise emission standard which shall set limits on noise emissions from such product and shall be a standard which in the Administrator's judgment, based on criteria published under section 4904 of this title, is requisite to protect the public health and welfare, taking into account the magnitude and conditions of use of such product (alone or in combination with other noise sources), the degree of noise reduction achievable through the application of the best available technology, and the cost of compliance. In establishing such a standard for any product, the Administrator shall give appropriate consideration to standards under other laws designed

to safeguard the health and welfare of persons, including any standards under chapter 301 of title 49, the Clean Air Act [42 U.S.C. 7401 et seq.], and the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.]. Any such noise emission standards shall be a performance standard. In addition, any regulation under subsection (a) or (b) of this section (and any revision thereof) may contain testing procedures necessary to assure compliance with the emission standard in such regulation, and may contain provisions respecting instructions of the manufacturer for the maintenance, use, or repair of the product.

(2) After publication of any proposed regulations under this section, the Administrator shall allow interested persons an opportunity to participate in rulemaking in accordance with the first sentence of section 553(c) of title 5.

(3) The Administrator may revise any regulation prescribed by him under this section by (A) publication of proposed revised regulations, and (B) the promulgation, not earlier than six months after the date of such publication, of regulations making the revision; except that a revision which makes only technical or clerical corrections in a regulation under this section may be promulgated earlier than six months after such date if the Administrator finds that such earlier promulgation is in the public interest.

(d) Warranty by manufacturer of conformity of product with regulations; transfer of cost obligation from manufacturer to dealer prohibited

(1) On and after the effective date of any regulation prescribed under subsection (a) or (b) of this section, the manufacturer of each new product to which such regulation applies shall warrant to the ultimate purchaser and each subsequent purchaser that such product is designed, built, and equipped so as to conform at the time of sale with such regulation.

(2) Any cost obligation of any dealer incurred as a result of any requirement imposed by paragraph (1) of this subsection shall be borne by the manufacturer. The transfer of any such cost obligation from a manufacturer to any dealer through franchise or other agreement is prohibited.

(3) If a manufacturer includes in any advertisement a statement respecting the cost or value of noise emission control devices or systems, such manufacturer shall set forth in such statement the cost or value attributed to such devices or systems by the Secretary of Labor (through the Bureau of Labor Statistics). The Secretary of Labor, and his representatives, shall have the same access for this purpose to the books, documents, papers, and records of a manufacturer as the Comptroller General has to those of a recipient of assistance for purposes of section 311 of the Clean Air Act [42 U.S.C. 7611].

(e) State and local regulations

(1) No State or political subdivision thereof may adopt or enforce—

(A) with respect to any new product for which a regulation has been prescribed by the Administrator under this section, any law or regulation which sets a limit on noise emissions from such new product and which is not

identical to such regulation of the Administrator; or

(B) with respect to any component incorporated into such new product by the manufacturer of such product, any law or regulation setting a limit on noise emissions from such component when so incorporated.

(2) Subject to sections 4916 and 4917 of this title, nothing in this section precludes or denies the right of any State or political subdivision thereof to establish and enforce controls on environmental noise (or one or more sources thereof) through the licensing, regulation, or restriction of the use, operation, or movement of any product or combination of products.

(f) Publication of notice of receipt of revision petitions and proposed revised regulations

At any time after the promulgation of regulations respecting a product under this section, a State or political subdivision thereof may petition the Administrator to revise such standard on the grounds that a more stringent standard under subsection (c) of this section is necessary to protect the public health and welfare. The Administration shall publish notice of receipt of such petition in the Federal Register and shall within ninety days of receipt of such petition respond by (1) publication of proposed revised regulations in accordance with subsection (c)(3) of this section, or (2) publication in the Federal Register of a decision not to publish such proposed revised regulations at that time, together with a detailed explanation for such decision.

(Pub. L. 92-574, § 6, Oct. 27, 1972, 86 Stat. 1237; Pub. L. 95-609, § 5, Nov. 8, 1978, 92 Stat. 3081.)

REFERENCES IN TEXT

The Clean Air Act, referred to in subsec. (c)(1), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§ 7401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

The Federal Water Pollution Control Act, referred to in subsec. (c)(1), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92-500, § 2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§ 1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

CODIFICATION

In subsec. (c)(1), “chapter 301 of title 49” substituted for “the National Traffic and Motor Vehicle Safety Act of 1966 [15 U.S.C. 1381 et seq.]” on authority of Pub. L. 103-272, § 6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

AMENDMENTS

1978—Subsec. (f). Pub. L. 95-609 added subsec. (f).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4902, 4903, 4907, 4909, 4912, 4913, 4914, 4915, 4916, 4917 of this title.

§ 4906. Omitted

CODIFICATION

Section, Pub. L. 92-574, § 7(a), Oct. 27, 1972, 86 Stat. 1239, related to a study by the Administrator of the

adequacy of noise controls, noise emission standards, and measures available to control such noise, the results of such study to be reported to the appropriate committees of Congress within nine months after Oct. 27, 1972.

§ 4907. Labeling

(a) Regulations

The Administrator shall by regulation designate any product (or class thereof)—

- (1) which emits noise capable of adversely affecting the public health or welfare; or
- (2) which is sold wholly or in part on the basis of its effectiveness in reducing noise.

(b) Manner of notice; form; methods and units of measurement

For each product (or class thereof) designated under subsection (a) of this section the Administrator shall by regulation require that notice be given to the prospective user of the level of the noise the product emits, or of its effectiveness in reducing noise, as the case may be. Such regulations shall specify (1) whether such notice shall be affixed to the product or to the outside of its container, or to both, at the time of its sale to the ultimate purchaser or whether such notice shall be given to the prospective user in some other manner, (2) the form of the notice, and (3) the methods and units of measurement to be used. Section 4905(c)(2) of this title shall apply to the prescribing of any regulation under this section.

(c) State regulation of product labeling

This section does not prevent any State or political subdivision thereof from regulating product labeling or information respecting products in any way not in conflict with regulations prescribed by the Administrator under this section. (Pub. L. 92-574, § 8, Oct. 27, 1972, 86 Stat. 1241.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4902, 4909, 4912, 4913, 4915 of this title.

§ 4908. Imports

The Secretary of the Treasury shall, in consultation with the Administrator, issue regulations to carry out the provisions of this chapter with respect to new products imported or offered for importation.

(Pub. L. 92-574, § 9, Oct. 27, 1972, 86 Stat. 1242.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4909 of this title.

§ 4909. Prohibited acts

(a) Except as otherwise provided in subsection (b) of this section, the following acts or the causing thereof are prohibited:

(1) In the case of a manufacturer, to distribute in commerce any new product manufactured after the effective date of a regulation prescribed under section 4905 of this title which is applicable to such product, except in conformity with such regulation.

(2)(A) The removal or rendering inoperative by any person, other than for purposes of maintenance, repair, or replacement, of any

device or element of design incorporated into any product in compliance with regulations under section 4905 of this title, prior to its sale or delivery to the ultimate purchaser or while it is in use, or (B) the use of a product after such device or element of design has been removed or rendered inoperative by any person.

(3) In the case of a manufacturer, to distribute in commerce any new product manufactured after the effective date of a regulation prescribed under section 4907(b) of this title (requiring information respecting noise) which is applicable to such product, except in conformity with such regulation.

(4) The removal by any person of any notice affixed to a product or container pursuant to regulations prescribed under section 4907(b) of this title, prior to sale of the product to the ultimate purchaser.

(5) The importation into the United States by any person of any new product in violation of a regulation prescribed under section 4908 of this title which is applicable to such product.

(6) The failure or refusal by any person to comply with any requirement of section 4910(d) or 4912(a) of this title or regulations prescribed under section 4912(a), 4916, or 4917 of this title.

(b)(1) For the purpose of research, investigations, studies, demonstrations, or training, or for reasons of national security, the Administrator may exempt for a specified period of time any product, or class thereof, from paragraphs (1), (2), (3), and (5) of subsection (a) of this section, upon such terms and conditions as he may find necessary to protect the public health or welfare.

(2) Paragraphs (1), (2), (3), and (4) of subsection (a) of this section shall not apply with respect to any product which is manufactured solely for use outside any State and which (and the container of which) is labeled or otherwise marked to show that it is manufactured solely for use outside any State; except that such paragraphs shall apply to such product if it is in fact distributed in commerce for use in any State.

(Pub. L. 92-574, § 10, Oct. 27, 1972, 86 Stat. 1242.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4910, 4911, 4916, 4917 of this title.

§ 4910. Enforcement

(a) Criminal penalties

(1) Any person who willfully or knowingly violates paragraph (1), (3), (5), or (6) of subsection (a) of section 4909 of this title shall be punished by a fine of not more than \$25,000 per day of violation, or by imprisonment for not more than one year, or by both. If the conviction is for a violation committed after a first conviction of such person under this subsection, punishment shall be by a fine of not more than \$50,000 per day of violation, or by imprisonment for not more than two years, or by both.

(2) Any person who violates paragraph (1), (3), (5), or (6) of subsection (a) of section 4909 of this title shall be subject to a civil penalty not to exceed \$10,000 per day of such violation.

(b) Separate violations

For the purpose of this section, each day of violation of any paragraph of section 4909(a) of this title shall constitute a separate violation of that section.

(c) Actions to restrain violations

The district courts of the United States shall have jurisdiction of actions brought by and in the name of the United States to restrain any violations of section 4909(a) of this title.

(d) Orders issued to protect public health and welfare; notice; opportunity for hearing

(1) Whenever any person is in violation of section 4909(a) of this title, the Administrator may issue an order specifying such relief as he determines is necessary to protect the public health and welfare.

(2) Any order under this subsection shall be issued only after notice and opportunity for a hearing in accordance with section 554 of title 5.

(e) "Person" defined

The term "person," as used in this section, does not include a department, agency, or instrumentality of the United States.

(Pub. L. 92-574, §11, Oct. 27, 1972, 86 Stat. 1242; Pub. L. 95-609, §4, Nov. 8, 1978, 92 Stat. 3081.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-609 redesignated existing provisions as par. (1) and added par. (2).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4902, 4909, 4916, 4917 of this title.

§ 4911. Citizen suits**(a) Authority to commence suits**

Except as provided in subsection (b) of this section, any person (other than the United States) may commence a civil action on his own behalf—

(1) against any person (including (A) the United States, and (B) any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of any noise control requirement (as defined in subsection (e)¹ of this section), or

(2) against—

(A) the Administrator of the Environmental Protection Agency where there is alleged a failure of such Administrator to perform any act or duty under this chapter which is not discretionary with such Administrator, or

(B) the Administrator of the Federal Aviation Administration where there is alleged a failure of such Administrator to perform any act or duty under section 44715 of title 49 which is not discretionary with such Administrator.

The district courts of the United States shall have jurisdiction, without regard to the amount in controversy, to restrain such person from violating such noise control requirement or to

order such Administrator to perform such act or duty, as the case may be.

(b) Notice

No action may be commenced—

(1) under subsection (a)(1) of this section—

(A) prior to sixty days after the plaintiff has given notice of the violation (i) to the Administrator of the Environmental Protection Agency (and to the Federal Aviation Administrator in the case of a violation of a noise control requirement under such section 44715 of title 49) and (ii) to any alleged violator of such requirement, or

(B) if an Administrator has commenced and is diligently prosecuting a civil action to require compliance with the noise control requirement, but in any such action in a court of the United States any person may intervene as a matter of right, or

(2) under subsection (a)(2) of this section prior to sixty days after the plaintiff has given notice to the defendant that he will commence such action.

Notice under this subsection shall be given in such manner as the Administrator of the Environmental Protection Agency shall prescribe by regulation.

(c) Intervention

In an action under this section, the Administrator of the Environmental Protection Agency, if not a party, may intervene as a matter of right. In an action under this section respecting a noise control requirement under section 44715 of title 49, the Administrator of the Federal Aviation Administration, if not a party, may also intervene as a matter of right.

(d) Litigation costs

The court, in issuing any final order in any action brought pursuant to subsection (a) of this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such an award is appropriate.

(e) Other common law or statutory rights of action

Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any noise control requirement or to seek any other relief (including relief against an Administrator).

(f) "Noise control requirement" defined

For purposes of this section, the term "noise control requirement" means paragraph (1), (2), (3), (4), or (5) of section 4909(a) of this title, or a standard, rule, or regulation issued under section 4916 or 4917 of this title or under section 44715 of title 49.

(Pub. L. 92-574, §12, Oct. 27, 1972, 86 Stat. 1243.)

CODIFICATION

In subsecs. (a)(2)(B), (b)(1)(A), (c), and (f), "section 44715 of title 49" substituted for "section 611 of the Federal Aviation Act of 1958" and "such section 611" on authority of Pub. L. 103-272, §6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

¹ So in original. Probably should be subsection "(f)".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4902, 4916, 4917 of this title.

§ 4912. Records, reports, and information**(a) Duties of manufacturers of products**

Each manufacturer of a product to which regulations under section 4905 or 4907 of this title apply shall—

(1) establish and maintain such records, make such reports, provide such information, and make such tests, as the Administrator may reasonably require to enable him to determine whether such manufacturer has acted or is acting in compliance with this chapter,

(2) upon request of an officer or employee duly designated by the Administrator, permit such officer or employee at reasonable times to have access to such information and the results of such tests and to copy such records, and

(3) to the extent required by regulations of the Administrator, make products coming off the assembly line or otherwise in the hands of the manufacturer available for testing by the Administrator.

(b) Confidential information; disclosure

(1) All information obtained by the Administrator or his representatives pursuant to subsection (a) of this section, which information contains or relates to a trade secret or other matter referred to in section 1905 of title 18, shall be considered confidential for the purpose of that section, except that such information may be disclosed to other Federal officers or employees, in whose possession it shall remain confidential, or when relevant to the matter in controversy in any proceeding under this chapter.

(2) Nothing in this subsection shall authorize the withholding of information by the Administrator, or by any officers or employees under his control, from the duly authorized committees of the Congress.

(c) Violations and penalties

Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter, shall upon conviction be punished by a fine of not more than \$10,000, or by imprisonment for not more than six months, or by both.

(Pub. L. 92-574, §13, Oct. 27, 1972, 86 Stat. 1244.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4909 of this title.

§ 4913. Quiet communities, research, and public information

To promote the development of effective State and local noise control programs, to provide an adequate Federal noise control research program designed to meet the objectives of this chapter, and to otherwise carry out the policy of this chapter, the Administrator shall, in co-

operation with other Federal agencies and through the use of grants, contracts, and direct Federal actions—

(a) develop and disseminate information and educational materials to all segments of the public on the public health and other effects of noise and the most effective means for noise control, through the use of materials for school curricula, volunteer organizations, radio and television programs, publication, and other means;

(b) conduct or finance research directly or with any public or private organization or any person on the effects, measurement, and control of noise, including but not limited to—

(1) investigation of the psychological and physiological effects of noise on humans and the effects of noise on domestic animals, wildlife, and property, and the determination of dose/response relationships suitable for use in decisionmaking, with special emphasis on the nonauditory effects of noise;

(2) investigation, development, and demonstration of noise control technology for products subject to possible regulation under sections 4905 and 4907 of this title and section 44715 of title 49;

(3) investigation, development, and demonstration of monitoring equipment and other technology especially suited for use by State and local noise control programs;

(4) investigation of the economic impact of noise on property and human activities; and

(5) investigation and demonstration of the use of economic incentives (including emission charges) in the control of noise;

(c) administer a nationwide Quiet Communities Program which shall include, but not be limited to—

(1) grants to States, local governments, and authorized regional planning agencies for the purpose of—

(A) identifying and determining the nature and extent of the noise problem within the subject jurisdiction;

(B) planning, developing, and establishing a noise control capacity in such jurisdiction, including purchasing initial equipment;

(C) developing abatement plans for areas around major transportation facilities (including airports, highways, and rail yards) and other major stationary sources of noise, and, where appropriate, for the facility or source itself; and,

(D) evaluating techniques for controlling noise (including institutional arrangements) and demonstrating the best available techniques in such jurisdiction;

(2) purchase of monitoring and other equipment for loan to State and local noise control programs to meet special needs or assist in the beginning implementation of a noise control program or project;

(3) development and implementation of a quality assurance program for equipment and monitoring procedures of State and local noise control programs to help communities assure that their data collection activities are accurate;

(4) conduct of studies and demonstrations to determine the resource and personnel needs of States and local governments required for the establishment and implementation of effective noise abatement and control programs; and

(5) development of education and training materials and programs, including national and regional workshops, to support State and local noise abatement and control programs;

except that no actions, plans or programs hereunder shall be inconsistent with existing Federal authority under this chapter to regulate sources of noise in interstate commerce;

(d) develop and implement a national noise environmental assessment program to identify trends in noise exposure and response, ambient levels, and compliance data and to determine otherwise the effectiveness of noise abatement actions through the collection of physical, social, and human response data;

(e) establish regional technical assistance centers which use the capabilities of university and private organizations to assist State and local noise control programs;

(f) provide technical assistance to State and local governments to facilitate their development and enforcement of noise control, including direct onsite assistance of agency or other personnel with technical expertise, and preparation of model State or local legislation for noise control; and

(g) provide for the maximum use in programs assisted under this section of senior citizens and persons eligible for participation in programs under the Older Americans Act [42 U.S.C. 3001 et seq.].

(Pub. L. 92-574, §14, Oct. 27, 1972, 86 Stat. 1244; Pub. L. 95-609, §2, Nov. 8, 1978, 92 Stat. 3079.)

REFERENCES IN TEXT

The Older Americans Act, referred to in subsec. (g), probably means the Older Americans Act of 1965, Pub. L. 89-73, July 14, 1965, 79 Stat. 218, as amended, which is classified generally to chapter 35 (§3001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

CODIFICATION

In subsec. (b)(2), "section 44715 of title 49" substituted for reference to section 7 of this Act, meaning section 7 of Pub. L. 92-574, which generally amended section 611 of the Federal Aviation Act of 1958 (49 App. U.S.C. 1431), on authority of Pub. L. 103-272, §6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

AMENDMENTS

1978—Pub. L. 95-609 completely revised and restructured existing provisions, inserting provisions relating to authorized use of grants and direct action, investigation of economic impact of noise, administration of Quiet Communities Program, development of noise assessment program, establishment of regional centers, technical assistance to State and local governments, and use by senior citizens of these programs.

§ 4914. Development of low-noise-emission products

(a) Definitions

For the purpose of this section:

(1) The term "Committee" means the Low-Noise-Emission Product Advisory Committee.

(2) The term "Federal Government" includes the legislative, executive, and judicial branches of the Government of the United States, and the government of the District of Columbia.

(3) The term "low-noise-emission product" means any product which emits noise in amounts significantly below the levels specified in noise emission standards under regulations applicable under section 4905 of this title at the time of procurement to that type of product.

(4) The term "retail price" means (A) the maximum statutory price applicable to any type of product; or (B) in any case where there is no applicable maximum statutory price, the most recent procurement price paid for any type of product.

(b) Certification of products; Low-Noise-Emission Product Advisory Committee

(1) The Administrator shall determine which products qualify as low-noise-emission products in accordance with the provisions of this section.

(2) The Administrator shall certify any product—

(A) for which a certification application has been filed in accordance with paragraph (5)(A) of this subsection;

(B) which is a low-noise-emission product as determined by the Administrator; and

(C) which he determines is suitable for use as a substitute for a type of product at that time in use by agencies of the Federal Government.

(3) The Administrator may establish a Low-Noise-Emission Product Advisory Committee to assist him in determining which products qualify as low-noise-emission products for purposes of this section. The Committee shall include the Administrator or his designee, a representative of the National Institute of Standards and Technology, and representatives of such other Federal agencies and private individuals as the Administrator may deem necessary from time to time. Any member of the Committee not employed on a full-time basis by the United States may receive the daily equivalent of the annual rate of basic pay in effect for Grade GS-18 of the General Schedule for each day such member is engaged upon work of the Committee. Each member of the Committee shall be reimbursed for travel expenses, including per diem in lieu of subsistence as authorized by section 5703 of title 5 for persons in the Government service employed intermittently.

(4) Certification under this section shall be effective for a period of one year from the date of issuance.

(5)(A) Any person seeking to have a class or model of product certified under this section shall file a certification application in accordance with regulations prescribed by the Administrator.

(B) The Administrator shall publish in the Federal Register a notice of each application received.

(C) The Administrator shall make determinations for the purpose of this section in accord-

ance with procedures prescribed by him by regulation.

(D) The Administrator shall conduct whatever investigation is necessary, including actual inspection of the product at a place designated in regulations prescribed under subparagraph (A).

(E) The Administrator shall receive and evaluate written comments and documents from interested persons in support of, or in opposition to, certification of the class or model of product under consideration.

(F) Within ninety days after the receipt of a properly filed certification application the Administrator shall determine whether such product is a low-noise-emission product for purposes of this section. If the Administrator determines that such product is a low-noise-emission product, then within one hundred and eighty days of such determination the Administrator shall reach a decision as to whether such product is a suitable substitute for any class or classes of products presently being purchased by the Federal Government for use by its agencies.

(G) Immediately upon making any determination or decision under subparagraph (F), the Administrator shall publish in the Federal Register notice of such determination or decision, including reasons therefor.

(c) Federal procurement of low-noise-emission products

(1) Certified low-noise-emission products shall be acquired by purchase or lease by the Federal Government for use by the Federal Government in lieu of other products if the Administrator of General Services determines that such certified products have procurement costs which are no more than 125 per centum of the retail price of the least expensive type of product for which they are certified substitutes.

(2) Data relied upon by the Administrator in determining that a product is a certified low-noise-emission product shall be incorporated in any contract for the procurement of such product.

(d) Product selection

The procuring agency shall be required to purchase available certified low-noise-emission products which are eligible for purchase to the extent they are available before purchasing any other products for which any low-noise-emission product is a certified substitute. In making purchasing selections between competing eligible certified low-noise-emission products, the procuring agency shall give priority to any class or model which does not require extensive periodic maintenance to retain its low-noise-emission qualities or which does not involve operating costs significantly in excess of those products for which it is a certified substitute.

(e) Waiver of statutory price limitations

For the purpose of procuring certified low-noise-emission products any statutory price limitations shall be waived.

(f) Tests of noise emissions from products purchased by Federal Government

The Administrator shall, from time to time as he deems appropriate, test the emissions of noise from certified low-noise-emission products

purchased by the Federal Government. If at any time he finds that the noise-emission levels exceed the levels on which certification under this section was based, the Administrator shall give the supplier of such product written notice of this finding, issue public notice of it, and give the supplier an opportunity to make necessary repairs, adjustments, or replacements. If no such repairs, adjustments, or replacements are made within a period to be set by the Administrator, he may order the supplier to show cause why the product involved should be eligible for recertification.

(g) Authorization of appropriations

There are authorized to be appropriated for paying additional amounts for products pursuant to, and for carrying out the provisions of, this section, \$1,000,000 for the fiscal year ending June 30, 1973, and \$2,000,000 for each of the two succeeding fiscal years, \$2,200,000 for the fiscal year ending June 30, 1976, \$550,000 for the transition period of July 1, 1976, through September 30, 1976, and \$2,420,000 for the fiscal year ending September 30, 1977.

(h) Promulgation of procedures

The Administrator shall promulgate the procedures required to implement this section within one hundred and eighty days after October 27, 1972.

(Pub. L. 92-574, §15, Oct. 27, 1972, 86 Stat. 1245; Pub. L. 94-301, §1, May 31, 1976, 90 Stat. 590; Pub. L. 100-418, title V, §5115(c), Aug. 23, 1988, 102 Stat. 1433.)

AMENDMENTS

1988—Subsec. (b)(3). Pub. L. 100-418 substituted “National Institute of Standards and Technology” for “National Bureau of Standards”.

1976—Subsec. (g). Pub. L. 94-301 inserted authorization of appropriations for fiscal year ending June 30, 1976, the transition period, and fiscal year ending September 30, 1977.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. A committee established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of its establishment unless in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the end of such period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4918 of this title.

§ 4915. Judicial review**(a) Petition for review**

A petition for review of action of the Administrator of the Environmental Protection Agency in promulgating any standard or regulation under sections 4905, 4916, or 4917 of this title or any labeling regulation under section 4907 of this title may be filed only in the United States Court of Appeals for the District of Columbia Circuit, and a petition for review of action of the Administrator of the Federal Aviation Administration in promulgating any standard or regulation under section 44715 of title 49 may be filed only in such court. Any such petition shall be filed within ninety days from the date of such promulgation, or after such date if such petition is based solely on grounds arising after such ninetieth day. Action of either Administrator with respect to which review could have been obtained under this subsection shall not be subject to judicial review in civil or criminal proceedings for enforcement.

(b) Additional evidence

If a party seeking review under this chapter applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that the information is material and was not available at the time of the proceeding before the Administrator of such Agency or Administration (as the case may be), the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before such Administrator, and to be adduced upon the hearing, in such manner and upon such terms and conditions as the court may deem proper. Such Administrator may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file with the court such modified or new findings, and his recommendation, if any, for the modification or setting aside of his original order, with the return of such additional evidence.

(c) Stay of agency action

With respect to relief pending review of an action by either Administrator, no stay of an agency action may be granted unless the reviewing court determines that the party seeking such stay is (1) likely to prevail on the merits in the review proceeding and (2) will suffer irreparable harm pending such proceeding.

(d) Subpenas

For the purpose of obtaining information to carry out this chapter, the Administrator of the Environmental Protection Agency may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and he may administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In cases of contumacy or refusal to obey a subpoena served upon any person under this subsection, the district court of the United States for any district in which such person is found or resides or trans-

acts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Administrator, to appear and produce papers, books, and documents before the Administrator, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(Pub. L. 92-574, §16, Oct. 27, 1972, 86 Stat. 1247.)

CODIFICATION

In subsec. (a), "section 44715 of title 49" substituted for "section 611 of the Federal Aviation Act of 1958" on authority of Pub. L. 103-272, §6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4916, 4917 of this title.

§ 4916. Railroad noise emission standards**(a) Regulations; standards; consultation with Secretary of Transportation**

(1) Within nine months after October 27, 1972, the Administrator shall publish proposed noise emission regulations for surface carriers engaged in interstate commerce by railroad. Such proposed regulations shall include noise emission standards setting such limits on noise emissions resulting from operation of the equipment and facilities of surface carriers engaged in interstate commerce by railroad which reflect the degree of noise reduction achievable through the application of the best available technology, taking into account the cost of compliance. These regulations shall be in addition to any regulations that may be proposed under section 4905 of this title.

(2) Within ninety days after the publication of such regulations as may be proposed under paragraph (1) of this subsection, and subject to the provisions of section 4915 of this title, the Administrator shall promulgate final regulations. Such regulations may be revised, from time to time, in accordance with this subsection.

(3) Any standard or regulation, or revision thereof, proposed under this subsection shall be promulgated only after consultation with the Secretary of Transportation in order to assure appropriate consideration for safety and technological availability.

(4) Any regulation or revision thereof promulgated under this subsection shall take effect after such period as the Administrator finds necessary, after consultation with the Secretary of Transportation, to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period.

(b) Regulations to insure compliance with noise emission standards

The Secretary of Transportation, after consultation with the Administrator, shall promulgate regulations to insure compliance with all standards promulgated by the Administrator under this section. The Secretary of Transportation shall carry out such regulations through the use of his powers and duties of enforcement

and inspection authorized by the Safety Appliance Acts [45 U.S.C. 1 et seq.], subtitle IV of title 49, and the Department of Transportation Act. Regulations promulgated under this section shall be subject to the provisions of sections 4909, 4910, 4911, and 4915 of this title.

(c) State and local standards and controls

(1) Subject to paragraph (2) but notwithstanding any other provision of this chapter, after the effective date of a regulation under this section applicable to noise emissions resulting from the operation of any equipment or facility of a surface carrier engaged in interstate commerce by railroad, no State or political subdivision thereof may adopt or enforce any standard applicable to noise emissions resulting from the operation of the same equipment or facility of such carrier unless such standard is identical to a standard applicable to noise emissions resulting from such operation prescribed by any regulation under this section.

(2) Nothing in this section shall diminish or enhance the rights of any State or political subdivision thereof to establish and enforce standards or controls on levels of environmental noise, or to control, license, regulate, or restrict the use, operation, or movement of any product if the Administrator, after consultation with the Secretary of Transportation, determines that such standard, control, license, regulation, or restriction is necessitated by special local conditions and is not in conflict with regulations promulgated under this section.

(d) “Carrier” and “railroad” defined

The terms “carrier” and “railroad” as used in this section shall have the same meaning as the term “railroad carrier” has in section 20102 of title 49.

(Pub. L. 92-574, §17, Oct. 27, 1972, 86 Stat. 1248; Pub. L. 104-287, §6(i), Oct. 11, 1996, 110 Stat. 3399.)

REFERENCES IN TEXT

The Safety Appliance Acts, referred to in subsec. (b), are acts Mar. 2, 1893, ch. 196, 27 Stat. 531; Mar. 2, 1903, ch. 976, 32 Stat. 943; and Apr. 14, 1910, ch. 160, 36 Stat. 298, which were classified to sections 1 to 16 of Title 45, Railroads, and were repealed and reenacted in sections 20102, 20301 to 20304, 21302, and 21304 of Title 49, Transportation, by Pub. L. 103-272, §§1(e), 7(b), July 5, 1994, 108 Stat. 863, 881, 892, 893, 1379, the first section of which enacted subtitles II, III, and V to X of Title 49. Section 6 of act Apr. 14, 1910, which was classified to section 15 of Title 45, was repealed and reenacted as section 501(b) of Title 49 by Pub. L. 97-449, Jan. 12, 1983, 96 Stat. 2413.

The Department of Transportation Act, referred to in subsec. (b), is Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931, as amended, which was classified principally to sections 1651 to 1660 of former Title 49, Transportation. The Act was repealed and the provisions thereof reenacted in Title 49, Transportation, by Pub. L. 97-449, Jan. 12, 1983, 96 Stat. 2413, and Pub. L. 103-272, July 5, 1994, 108 Stat. 745. The Act was also repealed by Pub. L. 104-287, §7(5), Oct. 11, 1996, 110 Stat. 3400. For disposition of sections of former Title 49, see Table at the beginning of Title 49.

CODIFICATION

In subsec. (b), “subtitle IV of title 49” substituted for “the Interstate Commerce Act [49 U.S.C. 1 et seq.]”, on authority of Pub. L. 95-473, §3(b), Oct. 17, 1978, 92 Stat. 1466, the first section of which enacted subtitle IV of Title 49, Transportation.

AMENDMENTS

1996—Subsec. (d). Pub. L. 104-287 substituted “the term ‘railroad carrier’ has in section 20102 of title 49” for “such terms have under the first section of the Act of February 17, 1911 (45 U.S.C. 22)”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4903, 4905, 4909, 4911, 4915 of this title.

§ 4917. Motor carrier noise emission standards

(a) Regulations; standards; consultation with Secretary of Transportation

(1) Within nine months after October 27, 1972, the Administrator shall publish proposed noise emission regulations for motor carriers engaged in interstate commerce. Such proposed regulations shall include noise emission standards setting such limits on noise emissions resulting from operation of motor carriers engaged in interstate commerce which reflect the degree of noise reduction achievable through the application of the best available technology, taking into account the cost of compliance. These regulations shall be in addition to any regulations that may be proposed under section 4905 of this title.

(2) Within ninety days after the publication of such regulations as may be proposed under paragraph (1) of this subsection, and subject to the provisions of section 4915 of this title, the Administrator shall promulgate final regulations. Such regulations may be revised from time to time, in accordance with this subsection.

(3) Any standard or regulation, or revision thereof, proposed under this subsection shall be promulgated only after consultation with the Secretary of Transportation in order to assure appropriate consideration for safety and technological availability.

(4) Any regulation or revision thereof promulgated under this subsection shall take effect after such period as the Administrator finds necessary, after consultation with the Secretary of Transportation, to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period.

(b) Regulations to insure compliance with noise emission standards

The Secretary of Transportation, after consultation with the Administrator shall promulgate regulations to insure compliance with all standards promulgated by the Administrator under this section. The Secretary of Transportation shall carry out such regulations through the use of his powers and duties of enforcement and inspection authorized by subtitle IV of title 49 and the Department of Transportation Act. Regulations promulgated under this section shall be subject to the provisions of sections 4909, 4910, 4911, and 4915 of this title.

(c) State and local standards and controls

(1) Subject to paragraph (2) of this subsection but notwithstanding any other provision of this chapter, after the effective date of a regulation under this section applicable to noise emissions resulting from the operation of any motor carrier engaged in interstate commerce, no State

or political subdivision thereof may adopt or enforce any standard applicable to the same operation of such motor carrier, unless such standard is identical to a standard applicable to noise emissions resulting from such operation prescribed by any regulation under this section.

(2) Nothing in this section shall diminish or enhance the rights of any State or political subdivision thereof to establish and enforce standards or controls on levels of environmental noise, or to control, license, regulate, or restrict the use, operation, or movement of any product if the Administrator, after consultation with the Secretary of Transportation, determines that such standard, control, license, regulation, or restriction is necessitated by special local conditions and is not in conflict with regulations promulgated under this section.

(d) "Motor carrier" defined

For purposes of this section, the term "motor carrier" includes a motor carrier and motor private carrier as those terms are defined in section 13102 of title 49.

(Pub. L. 92-574, §18, Oct. 27, 1972, 86 Stat. 1249.; Pub. L. 104-88, title III, §339, Dec. 29, 1995, 109 Stat. 955.)

REFERENCES IN TEXT

The Department of Transportation Act, referred to in subsec. (b), is Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931, as amended, which was classified principally to sections 1651 to 1660 of former Title 49, Transportation. The Act was repealed and the provisions thereof reenacted in Title 49, Transportation, by Pub. L. 97-449, Jan. 12, 1983, 96 Stat. 2413, and Pub. L. 103-272, July 5, 1994, 108 Stat. 745. The Act was also repealed by Pub. L. 104-287, §7(5), Oct. 11, 1996, 110 Stat. 3400. For disposition of sections of former Title 49, see Table at the beginning of Title 49.

CODIFICATION

In subsec. (b), "subtitle IV of title 49" substituted for "the Interstate Commerce Act [49 U.S.C. 1 et seq.]" on authority of Pub. L. 95-473, §3(b), Oct. 17, 1978, 92 Stat. 1466, the first section of which enacted subtitle IV of Title 49, Transportation.

AMENDMENTS

1995—Subsec. (d). Pub. L. 104-88 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: "For purposes of this section, the term 'motor carrier' includes a common carrier by motor vehicle, a contract carrier by motor vehicle, and a private carrier of property by motor vehicle as those terms are defined by section 10102 of title 49."

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104-88 effective Jan. 1, 1996, see section 2 of Pub. L. 104-88, set out as an Effective Date note under section 701 of Title 49, Transportation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4903, 4905, 4909, 4911, 4915 of this title; title 49 section 113.

§ 4918. Authorization of appropriations

There are authorized to be appropriated to carry out this chapter (other than for research and development) \$15,000,000 for the fiscal year ending September 30, 1979.

(Pub. L. 92-574, §19, Oct. 27, 1972, 86 Stat. 1250; Pub. L. 94-301, §2, May 31, 1976, 90 Stat. 590; Pub. L. 95-609, §6, Nov. 8, 1978, 92 Stat. 3081.)

AMENDMENTS

1978—Pub. L. 95-609 substituted provisions authorizing appropriations of \$15,000,000 for 1979 for provisions authorizing appropriations for fiscal years 1973 to 1977 and struck out restriction on expenditures for research and development.

1976—Pub. L. 94-301 inserted authorization of appropriations for fiscal year ending June 30, 1976, the transition period, and fiscal year ending September 30, 1977, and provisions excepting appropriations for research and development use.

CHAPTER 66—DOMESTIC VOLUNTEER SERVICES

- Sec. 4950. Volunteerism policy.
- SUBCHAPTER I—NATIONAL VOLUNTEER ANTIPOVERTY PROGRAMS
- PART A—VOLUNTEERS IN SERVICE TO AMERICA
4951. Congressional statement of purpose.
4952. Authority to operate VISTA program.
4953. Selection and assignment of volunteers.
- (a) Covered projects and programs.
 - (b) Recruitment and placement procedures for local and national placement of volunteers; establishment, requirements, etc.
 - (c) Public awareness and recruit activities; dissemination of information; reimbursement of costs; coordination; obligation of funds.
 - (d) Provision of plans to volunteers for job advancement; coordination with private industry councils or local workforce investment boards.
 - (e) Educational and vocational counseling for volunteers; Director to provide.
 - (f) Terms and conditions; restrictions on political activities; place of service.
 - (g) Program or project submittal to Governor; commencement and termination of service.
 - (h) Interagency agreements.
4954. Terms and periods of service.
- (a) Personal commitment; scope of commitment.
 - (b) Minimum period of service; critical scarce-skill needs exception; reenrollment; limitation.
 - (c) Oath or affirmation.
 - (d) Grievance and personal view presentation procedure; notice and hearing; information.
 - (e) Summer associates.
4955. Support services.
- (a) Stipend; limitation; volunteer leaders; payment upon completion of term; advancement of accrued stipend; beneficiary of deceased volunteer.
 - (b) Description of allowances and support services; determination of allowance; adjustments; methodology.
 - (c) Child care.
4956. Participation of program beneficiaries.
4957. Participation of younger and older persons.
4958. Limitation on funds appropriated for grants and contracts for direct cost of supporting volunteers in programs or projects.
4959. VISTA Literacy Corps.
- (a) Establishment.
 - (b) Assignment of volunteers to projects and programs meeting antipoverty criteria and providing assistance to illiterates who are underserved by education programs.

- Sec.
- (c) Assignment of volunteers to projects and programs utilizing volunteers to address needs of illiterate individuals; administration of programs by public or private nonprofit organizations; considerations governing assignment of volunteers.
 - (d) Assignment of volunteers to projects and programs utilizing volunteers to tutor illiterate individuals; administration of programs by local public or private nonprofit organizations; considerations in assignment of volunteers.
 - (e) Equitable distribution of volunteers.
 - (f) Membership of VISTA Literacy Corps.
 - (g) Proportionate reduction of services.
 - (h) Assignment of individual to service in general program regarding literacy; priority.
4960. Applications for assistance.
- PART B—UNIVERSITY YEAR FOR VISTA
4971. Congressional statement of purpose.
4972. Authority to operate University Year for VISTA program.
4973. Special conditions.
- (a) Academic credit.
 - (b) Participation of student volunteers and educational institutions.
 - (c) Financial assistance limitation; commitment stipulations; monitoring of compliance with commitment; compliance information to Secretary.
4974. Repealed.
- PART C—SPECIAL VOLUNTEER PROGRAMS
4991. Congressional statement of purpose.
4992. Authority to establish and operate special volunteer and demonstration programs.
- (a) In general.
 - (b) Assignment and support of volunteers.
 - (c) Criteria and priorities.
4993. Technical and financial assistance.
4994. Repealed.
4995. Literacy challenge grants.
- (a) Authorization of grants.
 - (b) Application.
 - (c) Federal share.
- SUBCHAPTER II—NATIONAL SENIOR VOLUNTEER CORPS
5000. Statement of purposes.
- PART A—RETIRED AND SENIOR VOLUNTEER PROGRAM
5001. Grants and contracts for volunteer service projects.
- (a) Approval of projects; rules and regulations.
 - (b) Proportion of required local contribution; exceptions.
 - (c) Conditions upon award of grant or contract.
 - (d) Volunteer service as employment.
- PART B—FOSTER GRANDPARENT PROGRAM
5011. Grants and contracts for individual service projects.
- (a) Foster Grandparent projects; amount.
 - (b) Person-to-person services to children in an individual service project by public or private nonprofit agency; authority and criteria for determinations; mutual agreements between parties.
 - (c) “Child” and “children” defined.

- Sec.
- (d) Domestic Volunteer Service; allowances, stipends, and other support.
 - (e) “Low-income person” and “person of low income” defined.
 - (f) Persons entitled to serve as volunteers; application of regulations to volunteers; equal treatment to all volunteers by recipients of grants; conditions of grants; use of funds; payment of costs.
5012. Repealed.
- PART C—SENIOR COMPANION PROGRAM
5013. Grants and contracts for volunteer service projects.
- (a) Costs of project development and operation.
 - (b) Application of other laws.
 - (c) Senior companion projects to assist homebound elderly.
- PART D—GENERAL PROVISIONS
5021. Promotion of National Senior Volunteer Corps.
5022. Payments; adjustments; advances or reimbursement; installments; conditions.
5023. Minority group participation.
5024. Use of locally generated contributions in National Senior Volunteer Corps.
5025. Programs of national significance.
- (a) Program grants for national problems of local concern; minimum amounts available; scope; implementation.
 - (b) Program grants for problems concerning Nation.
 - (c) Eligibility of applicant; supplemental nature of funds available.
 - (d) Amount of funds available for grants.
 - (e) Dissemination of information respecting grants.
5026. Adjustments to Federal financial assistance.
5027. Multiyear grants or contracts.
- (a) Maximum period; compliance requirements where period exceeds 1 year; pro rata reductions where funding below prior fiscal year amounts.
 - (b) Documentation, etc., by applicant of meaningful administrative savings from multiyear grant or contract.
 - (c) Single-year grant or contract.
 - (d) Projects for multiyear periods to be treated as single-year projects for specified purposes.
- PART E—DEMONSTRATION PROGRAMS
5028. Authority of Director.
- (a) In general.
 - (b) Activities.
- 5028a. Prohibition.
- SUBCHAPTER III—NATIONAL VOLUNTEER PROGRAMS TO ASSIST SMALL BUSINESSES AND PROMOTE VOLUNTEER SERVICE BY PERSONS WITH BUSINESS EXPERIENCE
- 5031, 5032. Repealed.
- SUBCHAPTER IV—ADMINISTRATION AND COORDINATION
- 5041, 5042. Repealed.
5043. Political activities.
- (a) Funds use prohibition; “election” and “Federal office” defined.
 - (b) Prohibition on program identification.
 - (c) Prohibition on influencing passage or defeat of legislation.
 - (d) Enforcement; rules and regulations.
5044. Special limitations.

- Sec.
- (a) Volunteer activities; limitation.
 - (b) Support costs.
 - (c) Compensation of supervising agencies or organizations.
 - (d) Labor or antilabor organization activities; funds use prohibition.
 - (e) Selection procedure.
 - (f) Government assistance; eligibility; special limitations.
5045. Repealed.
5046. Labor standards for federally assisted projects, buildings, and works.
5047. Repealed.
5048. Joint funding; single non-Federal share requirement; grant or contract requirement waiver.
5049. Prohibition of Federal control of educational institution or school system.
5050. Coordination with other programs.
5051. Performance of functions by existing departments or offices rather than new departments or offices.
5052. Suspension and termination of financial assistance; procedures; notice and hearing; emergency situations; refunding applications.
5053. Repealed.
5054. Distribution of benefits between rural and urban areas.
5055. Application of Federal law.
 - (a) General rule.
 - (b) Specific Federal legislation.
 - (c) Subsequent Government employment.
 - (d) Competitive service.
 - (e) References in other laws to service under provisions relating to Volunteers in Service to America deemed references to service under subchapter I of this chapter.
 - (f) Civil actions.
5056. Evaluation of programs and projects.
 - (a) General objectives; persons conducting the evaluation.
 - (b) General standards; publication; reports of ensuing actions.
 - (c) Opinions of participants.
 - (d) Summaries of results; publication.
 - (e) Federal property.
 - (f) Evaluation of programs that relate to services that assist families caring for frail and disabled adult family members; evaluation of impact by volunteers on such programs; report to committees of Congress
 - (g) Funds limitation; reduction of allotments.
5057. Nondiscrimination provisions.
 - (a) In general.
 - (b) Federal financial assistance.
 - (c) Religious discrimination.
 - (d) Rules and regulations.
5058. Eligibility for other benefits.
5059. Legal expenses.
5060. Repealed.
5061. Definitions.
5062. Audit.
 - (a) Recordkeeping.
 - (b) Access to books, documents, papers, and records; limitations.
5063. Reduction of paperwork.
5064. Review of project renewals.
5065. Protection against improper use.
- SUBCHAPTER V—AUTHORIZATION OF APPROPRIATIONS**
5081. National Volunteer Antipoverty Programs.
 - (a) Authorizations.
 - (b) Subsistence.
 - (c) Limitation.

- Sec.
- (d) Availability.
 - (e) Volunteer service requirement.
5082. National Senior Volunteer Corps.
 - (a) Retired and Senior Volunteer Program.
 - (b) Foster Grandparent Program.
 - (c) Senior Companion Program.
 - (d) Demonstration programs.
5083. Repealed.
5084. Administration and coordination.
 - (a) In general.
 - (b) Evaluation.
5085. Availability of appropriations.

SUBCHAPTER VI—YOUTHBUILD PROJECTS

5091 to 5091n. Repealed.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 3056a, 12511, 12638, 12639, 12651b, 12651d, 12651f of this title; title 20 sections 1087ee, 1092.

§ 4950. Volunteerism policy

(a) Because of the long-standing importance of volunteerism throughout American history, it is the policy of the Congress to foster the tradition of volunteerism through greater involvement on the part of both young and older citizens.

(b) The purpose of this chapter is to foster and expand voluntary citizen service in communities throughout the Nation in activities designed to help the poor, the disadvantaged, the vulnerable, and the elderly. In carrying out this purpose, the Corporation for National and Community Service shall utilize to the fullest extent the programs authorized under this chapter, coordinate with other Federal, State, and local agencies and utilize the energy, innovative spirit, experience, and skills of all Americans.

(Pub. L. 93-113, § 2, as added Pub. L. 99-551, § 2(a), Oct. 27, 1986, 100 Stat. 3071; amended Pub. L. 103-82, title IV, § 405(a)(1), Sept. 21, 1993, 107 Stat. 920.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original “this Act”, meaning Pub. L. 93-113, Oct. 1, 1973, 87 Stat. 396, as amended, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

AMENDMENTS

1993—Subsec. (b). Pub. L. 103-82 substituted “of this chapter” for “of ACTION, the Federal domestic volunteer agency,” and “the Corporation for National and Community Service shall” for “ACTION shall”.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Apr. 4, 1994, see section 406(b) of Pub. L. 103-82, set out as a note under section 8332 of Title 5, Government Organization and Employees.

EFFECTIVE DATE

Section 11 of Pub. L. 99-551 provided that: “Except as otherwise provided, the amendments made by this Act [enacting this section and section 4959 of this title, amending sections 4953, 4955, 4971, 4972, 4974, 4992, 5011, 5013, 5024, 5041 to 5044, 5047, 5052, 5055, 5056, 5059, 5061, 5081, 5082, and 5084 of this title, and amending provisions set out as a note under section 5041 of this title] shall take effect October 1, 1986.”

SHORT TITLE OF 1993 AMENDMENT

Section 311(a) of title III of Pub. L. 103-82, provided that: “This subtitle [subtitle B (§§311, 392) of title III of

Pub. L. 103–82, enacting sections 5028, 5028a, and 5065 of this title, amending sections 4951 to 4955, 4957, 4959, 4960, 4971 to 4973, 4992, 4993, 5000, 5001, 5011, 5013, 5021, 5024 to 5026, 5041 to 5044, 5055, 5057, 5062, 5081, 5082, and 5084 of this title and sections 8143, 8332, 8334, 8411, and 8422 of Title 5, Government Organization and Employees, repealing sections 4974, 4994, 5012, 5047, 5060, and 5091 of this title, enacting provisions set out as notes under sections 4951 and 4952 of this title, and section 8332 of Title 5, and amending provisions set out as notes under this section and section 5001 of this title] may be cited as the ‘Domestic Volunteer Service Act Amendments of 1993’.”

SHORT TITLE OF 1989 AMENDMENT

Pub. L. 101–204, §1(a), Dec. 7, 1989, 103 Stat. 1806, provided that: “This Act [enacting sections 4960, 5000, 5025, 5026, and 5027 of this title, amending sections 4952 to 4955, 4958, 4959, 4971, 4974, 4992 to 4994, 5001, 5011 to 5013, 5021, 5024, 5041, 5047, 5056, 5061, 5081, 5082, 5084, 5671, 5715, 5751, 5773, 5775, 5777, 9910b, 11803, 11825, 11842, and 11851 of this title, enacting provisions set out as a note under section 4954 of this title, and amending provisions set out as a note under section 5601 of this title] may be cited as the ‘Domestic Volunteer Service Act Amendments of 1989’.”

SHORT TITLE OF 1986 AMENDMENT

Section 1 of Pub. L. 99–551 provided that: “This Act [enacting this section and section 4959 of this title, amending sections 4953, 4955, 4971, 4972, 4974, 4992, 5011, 5013, 5024, 5041 to 5044, 5047, 5052, 5055, 5056, 5059, 5061, 5081, 5082, and 5084 of this title, enacting provisions set out as notes under this section and section 5011 of this title, and amending provisions set out as a note under section 5041 of this title] may be cited as the ‘Domestic Volunteer Service Act Amendments of 1986’.”

SHORT TITLE OF 1984 AMENDMENT

Section 1 of Pub. L. 98–288 provided: “That this Act [enacting section 5024 of this title, amending sections 4951 to 4956, 4958, 4971, 4972, 4974, 4991 to 4993, 5001, 5011, 5013, 5041 to 5044, 5047, 5052, 5056 to 5060, 5081, 5082, 5084, 9902, and 9912 of this title, repealing section 5045 of this title, and enacting provisions set out as notes under sections 5042 and 5045 of this title] may be cited as the ‘Domestic Volunteer Service Act Amendments of 1984’.”

SHORT TITLE OF 1979 AMENDMENT

Pub. L. 96–143, §1, Dec. 13, 1979, 93 Stat. 1074, provided: “That this Act [enacting sections 5063 and 5064 of this title, amending sections 4953, 4955, 4958, 4973, 4974, 4992, 5021, 5043, 5044, 5050, 5055, 5057, 5058, 5060, 5081, and 5084 of this title, enacting provisions set out as notes under sections 4992 and 5084 of this title, and amending provisions set out as a note under section 4955 of this title] may be cited as the ‘Domestic Volunteer Service Act Amendments of 1979’.”

SHORT TITLE OF 1976 AMENDMENT

Pub. L. 94–293, §1, May 27, 1976, 90 Stat. 525, provided: “That this Act [enacting sections 4958 and 4993 of this title, amending sections 4974, 4992, 5011, 5042, 5045, 5081, 5083, and 5084 of this title, repealing section 5053 of this title, and enacting provision set out as a note under section 4958 of this title] may be cited as the ‘Domestic Volunteer Service Act Amendments of 1976’.”

SHORT TITLE

Section 1(a), formerly section 1, of Pub. L. 93–113, as renumbered §1 and amended by Pub. L. 103–82, title III, §391, Sept. 21, 1993, 107 Stat. 915, provided that: “This Act [enacting this chapter, amending section 3067 of this title and section 8332(b)(7) of Title 5, Government Organization and Employees, and repealing sections 2991, 2992 to 2992b, 2993 to 2993b, 2994 to 2994d, and 3044 to 3044e of this title, and enacting provisions set out as

notes under this section and section 5041 of this title] may be cited as the ‘Domestic Volunteer Service Act of 1973’.”

SUBCHAPTER I—NATIONAL VOLUNTEER ANTIPOVERTY PROGRAMS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 292d, 5044, 5055, 5081, 12573, 12581, 12592, 12605, 12651e, 12653 of this title.

PART A—VOLUNTEERS IN SERVICE TO AMERICA

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 4972, 5055, 5061, 5081, 12576, 12651e of this title; title 5 sections 8332, 8334, 8411, 8422; title 22 section 4071c.

§ 4951. Congressional statement of purpose

This part provides for the Volunteers in Service to America (VISTA) program of full-time volunteer service, together with appropriate powers and responsibilities designed to assist in the development and coordination of such program. The purpose of this part is to strengthen and supplement efforts to eliminate and alleviate poverty and poverty-related problems in the United States by encouraging and enabling persons from all walks of life, all geographical areas, and all age groups, including low-income individuals, elderly and retired Americans, to perform meaningful and constructive volunteer service in agencies, institutions, and situations where the application of human talent and dedication may assist in the solution of poverty and poverty-related problems and secure and exploit opportunities for self-advancement by persons afflicted with such problems. In addition, the objectives of this part are to generate the commitment of private sector resources, to encourage volunteer service at the local level, and to strengthen local agencies and organizations to carry out the purpose of this part.

(Pub. L. 93–113, title I, §101, Oct. 1, 1973, 87 Stat. 396; Pub. L. 98–288, §2, May 21, 1984, 98 Stat. 189; Pub. L. 103–82, title III, §321, Sept. 21, 1993, 107 Stat. 899.)

AMENDMENTS

1993—Pub. L. 103–82 amended last sentence generally. Prior to amendment last sentence read as follows: “In addition the objective of this part is to generate the commitment of private sector resources and to encourage volunteer service at the local level to carry out the purposes set forth in this section.”

1984—Pub. L. 98–288, in second sentence, inserted “and alleviate” after “eliminate”, struck out “human, social, and environmental” after “poverty-related”, inserted “, all geographical areas,” after “all walks of life” and “low-income individuals,” before “elderly”, and inserted at end “In addition the objective of this part is to generate the commitment of private sector resources and to encourage volunteer service at the local level to carry out the purposes set forth in this section.”

EFFECTIVE DATE OF 1993 AMENDMENT

Section 392 of title III of Pub. L. 103–82 provided that: “This subtitle [subtitle B (§§311–392) of title III of Pub. L. 103–82, enacting sections 5028, 5028a, and 5065 of this title, amending this section, sections 4952 to 4955, 4957, 4959, 4960, 4971 to 4973, 4992, 4993, 5000, 5001, 5011, 5013, 5021, 5024 to 5026, 5041 to 5044, 5055, 5057, 5062, 5081, 5082,

and 5084 of this title, and sections 8143, 8332, 8334, 8411, and 8422 of Title 5, Government Organization and Employees, repealing sections 4974, 4994, 5012, 5047, 5060, and 5091n of this title, enacting provisions set out as notes under sections 4950 and 4952 of this title and section 8332 of Title 5, and amending provisions set out as notes under sections 4950 and 5001 of this title] shall become effective on October 1, 1993."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4953 of this title.

§ 4952. Authority to operate VISTA program

This part shall be administered by one of the Assistant Directors appointed pursuant to section 12651e(d)(1)(A) of this title. Such Director may recruit, select, and train persons to serve in full-time volunteer programs consistent with the provisions and to carry out the purpose of this part.

(Pub. L. 93-113, title I, §102, Oct. 1, 1973, 87 Stat. 396; Pub. L. 98-288, §3, May 21, 1984, 98 Stat. 189; Pub. L. 101-204, title I, §101(d)(1), Dec. 7, 1989, 103 Stat. 1811; Pub. L. 103-82, title III, §322(a), Sept. 21, 1993, 107 Stat. 899.)

AMENDMENTS

1993—Pub. L. 103-82 substituted "This part shall be administered by one of the Assistant Directors appointed pursuant to section 12651e(d)(1)(A) of this title. Such Director" for "The Director".

1989—Pub. L. 101-204 struck out subsec. (a) designation before "The Director may", struck out subsec. (b) which related to replacement of applicants who become unavailable for service, and struck out subsec. (c) which related to age quotas.

1984—Subsec. (a). Pub. L. 98-288 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

EFFECTIVE DATE OF 1993 AMENDMENT

Section 322(b) of Pub. L. 103-82 provided that: "The amendments made by subsection (a) [amending this section] shall take effect on the effective date of section 203(b)." [Section 203(b) of Pub. L. 103-82 is effective 18 months after Sept. 21, 1993, or on such earlier date as the President shall determine to be appropriate and announce by proclamation in the Federal Register, see section 203(d) of Pub. L. 103-82, set out as a note under section 12651 of this title.]

§ 4953. Selection and assignment of volunteers

(a) Covered projects and programs

The Director, on the receipt of applications by public or nonprofit private organizations to receive volunteers under this part, may assign volunteers selected under subsection (b) of this section to work in appropriate projects and programs sponsored by such organizations, including work—

(1) in meeting the health, education, welfare, or related needs of Indians living on reservations or Federal trust lands, of migratory and seasonal farmworkers and their families, and of residents of the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, or the Virgin Islands;

(2) in the care and rehabilitation of mentally ill, developmentally disabled, and other handicapped individuals, especially those with severe handicaps;

(3) in addressing the problems of the homeless, the jobless, the hungry, and low-income youths;

(4) in addressing the special needs connected with alcohol and drug abuse prevention, education, and related activities, consistent with the purpose of this part;

(5) in addressing significant health care problems, including chronic and life-threatening illnesses and health care for homeless individuals (especially homeless children) through prevention, treatment, and community-based care activities;

(6) in connection with programs or activities authorized, supported, or of a character eligible for assistance under this chapter or the Community Service Block Grant Act [42 U.S.C. 9901 et seq.], titles VIII and X of the Economic Opportunity Act of 1964 [42 U.S.C. 2991 et seq., 2996 et seq.], the Headstart Act [42 U.S.C. 9831 et seq.], the Community Economic Development Act of 1981 [42 U.S.C. 9801 et seq.], or other similar Acts, in furtherance of the purpose of this subchapter; and

(7) in strengthening, supplementing, and expanding efforts to address the problem of illiteracy throughout the United States.

(b) Recruitment and placement procedures for local and national placement of volunteers; establishment, requirements, etc.

(1) The Director shall establish recruitment and placement procedures that offer opportunities for both local and national placement of volunteers for service under this part.

(2)(A) The Director shall establish and maintain within the national headquarters of the Corporation (or any successor entity of such agency) a volunteer placement office which shall be responsible for all functions related to the recruitment and placement of volunteers under this part. Such functions and activities shall be carried out in coordination or in conjunction with recruitment and placement activities carried out under the National and Community Service Trust Act of 1993. Upon the transfer of the functions of the ACTION Agency to the Corporation for National and Community Service, the office established under this subparagraph shall be merged with the recruitment office of such Corporation. At no time after such transfer of functions shall more than one office responsible primarily for recruitment exist within the Corporation.

(B) Such volunteer placement office shall develop, operate, and maintain a current and comprehensive central information system that shall, on request, promptly provide information—

(i) to individuals, with respect to specific opportunities for service as a volunteer with approved projects or programs to which no volunteer has been assigned; and

(ii) to approved projects or programs, with respect to the availability of individuals whose applications for service as a volunteer have been approved and who are awaiting an assignment with a specific project or program.

(C) The Director shall assign or hire as necessary, such additional national, regional, and State personnel to carry out the functions described in this subsection and subsection (c) of this section as may be necessary to ensure that such functions are carried out in a timely and

effective manner. The Director shall give priority in the hiring of such additional personnel to individuals who have formerly served as volunteers under this part and to individuals who have specialized experience in the recruitment of volunteers.

(3) Volunteers shall be selected from among qualified individuals submitting an application for such service at such time, in such form, and containing such information as may be necessary to evaluate the suitability of each individual for such service and to determine, in accordance with paragraph (7),¹ the most appropriate assignment for each such volunteer. The Director shall approve the application of each individual who applies in conformance with this subsection and who, on the basis of the information provided in the application, is determined by the Director to be qualified to serve as a volunteer under this part.

(4) The Director shall ensure that applications for service as a volunteer under this part are available to the public on request to the Corporation (including any State or regional offices of the Agency)² and that an individual making such request is informed of the manner in which such application is required to be submitted. A completed application may be submitted by any interested individual to, and shall be accepted by, any office of the Corporation.

(5)(A) The Director shall provide for the assignment of each applicant approved as a volunteer under this part to a project or program that is, to the maximum extent practicable, consistent with the abilities, experiences, and preferences of such applicant that are set forth in the application described in paragraph (4) and the needs and preferences of projects or programs approved for the assignment of such volunteers.

(B) In carrying out subparagraph (A), the Director shall utilize the information system established under paragraph (2)(B).

(C) A sponsoring organization of VISTA may recruit volunteers for service under this part. The Director shall give a locally recruited volunteer priority for placement in the sponsoring organization of VISTA that recruited such volunteer.

(D) A volunteer under this part shall not be assigned to any project or program without the express approval and consent of such project or program.

(E) If an applicant under this part who is recruited locally becomes unavailable for service prior to the commencement of service, the recipient of the project grant or contract that was designated to receive the services of such applicant may replace such applicant with another qualified applicant approved by the Director.

(F) If feasible and appropriate, low-income community volunteers shall be given the option of serving in the home communities of such volunteers in teams with nationally recruited specialist volunteers. The Director shall attempt to assign such volunteers to serve in the home or nearby communities of such volunteers and shall make national efforts to attract other in-

dividuals to serve in the VISTA program. The Director shall also, in the assignment of volunteers under this subparagraph, recognize that community-identified needs that cannot be met in the local area and the individual desires of VISTA volunteers in regard to the service in various geographical areas of the United States should be taken into consideration.

(c) Public awareness and recruit activities; dissemination of information; reimbursement of costs; coordination; obligation of funds

(1) The Director, in conjunction with the personnel described in subsection (b)(2)(C) of this section, shall engage in public awareness and recruitment activities. Such activities may include—

(A) public service announcements through radio, television, and the print media;

(B) advertising through the print media, direct mail, and other means;

(C) disseminating information about opportunities for service as a volunteer under this part to relevant entities including institutions of higher education and other educational institutions (including libraries), professional associations, community-based agencies, youth service and volunteer organizations, business organizations, labor unions, senior citizens organizations, and other institutions and organizations from or through which potential volunteers may be recruited;

(D) disseminating such information through presentations made personally by employees of the Corporation or other designees of the Director, to students and faculty at institutions of higher education and to other entities described in subparagraph (C), including presentations made at the facilities, conventions, or other meetings of such entities;

(E) publicizing the student loan deferment and forgiveness opportunities available to VISTA volunteers under parts B and E of title IV of the Higher Education Act of 1965 [20 U.S.C. 1071 et seq., 1087aa et seq.] and including such information in all applications and recruitment materials;

(F) publicizing national service educational awards available under the National and Community Service Trust Act of 1993;

(G) providing, on request, technical assistance with the recruitment of volunteers under this part to programs and projects receiving assistance under this part; and

(H) maintaining and publicizing a national toll-free telephone number through which individuals may obtain information about opportunities for service as a volunteer under this part and request and receive an application for such service.

(2) In designing and implementing the activities authorized under this section, the Director shall seek to involve individuals who have formerly served as volunteers under this part to assist in the dissemination of information concerning the program established under this part. The Director may reimburse the costs incurred by such former volunteers for such participation, including expenses incurred for travel.

(3) The Director shall consult with the Director of the Peace Corps to coordinate the recruit-

¹ So in original. Probably should be paragraph "(5)".

² So in original. Probably should be "the Corporation".

ment and public awareness activities carried out under this subsection with those of the Peace Corps and to develop joint procedures and activities for the recruitment of volunteers to serve under this part.

(4) Beginning in fiscal year 1991 and for each fiscal year thereafter, for the purpose of carrying out this subsection, the Director shall obligate not less than 1.5 percent of the amounts appropriated for each fiscal year under section 5081(a) of this title.

(d) Provision of plans to volunteers for job advancement; coordination with private industry councils or local workforce investment boards

The Director shall provide each low-income community volunteer with an individual plan for job advancement or for transition to a situation leading to gainful employment. Whenever feasible, such efforts shall be coordinated with an appropriate local workforce investment board established under section 2832 of title 29.³

(e) Educational and vocational counseling for volunteers; Director to provide

The Director may provide or arrange for educational and vocational counseling of volunteers and recent former volunteers under this part to (1) encourage them to use, in the national interest, the skills and experience which they have derived from their training and service, particularly working in combating poverty as members of the helping professions, and (2) promote the development of appropriate opportunities for the use of such skills and experience, and the placement therein of such volunteers.

(f) Terms and conditions; restrictions on political activities; place of service

Except as provided in subsection (e) of this section, the assignment of volunteers under this section shall be on such terms and conditions (including restrictions on political activities that appropriately recognize the special status of volunteers living among the persons or groups served by programs to which they have been assigned) as the Director may determine, including work assignments in their own or nearby communities.

(g) Program or project submittal to Governor; commencement and termination of service

Volunteers under this part shall not be assigned to work in a program or project in any community unless the application for such program or project contains evidence of local support and has been submitted to the Governor or other chief executive officer of the State concerned, and such Governor or other chief executive officer has not, within 45 days of the date of such submission, notified the Director in writing, supported by a statement of reasons, that such Governor or other chief executive officer disapproves such program or project. In the event of a timely request in writing, supported by a statement of reasons, by the Governor or other chief executive officer of the State concerned, the Director shall terminate a program or project or the assignment of a volunteer to a

program or project not later than 30 days after the date such request is received by the Director, or at such later date as is agreed upon by the Director and such Governor or other chief executive officer.

(h) Interagency agreements

The Director is encouraged to enter into agreements with other Federal agencies to use VISTA volunteers in furtherance of program objectives that are consistent with the purposes described in section 4951 of this title.

(Pub. L. 93-113, title I, §103, Oct. 1, 1973, 87 Stat. 396; Pub. L. 96-143, §2, Dec. 13, 1979, 93 Stat. 1074; Pub. L. 98-288, §4(a)-(c)(1), (d), May 21, 1984, 98 Stat. 189, 190; Pub. L. 99-551, §3(a), Oct. 27, 1986, 100 Stat. 3071; Pub. L. 101-204, title I, §101(a), (b), (d)(2), title VII, §701, Dec. 7, 1989, 103 Stat. 1807, 1809, 1811, 1820; Pub. L. 103-82, title III, §323, title IV, §405(a)(2)-(4), Sept. 21, 1993, 107 Stat. 899, 920; Pub. L. 103-304, §3(b)(7), (8), Aug. 23, 1994, 108 Stat. 1568; Pub. L. 105-277, div. A, §101(f) [title VIII, §405(d)(36)(A), (f)(28)(A)], Oct. 21, 1998, 112 Stat. 2681-337, 2681-427, 2681-434.)

REFERENCES IN TEXT

The Community Service Block Grant Act, referred to in subsec. (a)(6), probably means the Community Services Block Grant Act, which is subtitle B (§671 et seq.) of title VI of Pub. L. 97-35, Aug. 13, 1981, 95 Stat. 511, as amended, which is classified generally to chapter 106 (§9901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9901 of this title and Tables.

The Economic Opportunity Act of 1964, referred to in subsec. (a)(6), is Pub. L. 88-452, Aug. 20, 1964, 78 Stat. 508, as amended. Titles VIII and X of the Act are classified generally to subchapters VIII (§2991 et seq.) and X (§2996 et seq.), respectively, of chapter 34 of this title. For complete classification of this Act to the Code, see Tables.

The Headstart Act, referred to in subsec. (a)(6), probably means the Head Start Act, subchapter B (§§635-657) of chapter 8 of subtitle A of title VI of Pub. L. 97-35, Aug. 13, 1981, 95 Stat. 499, as amended, which is classified generally to subchapter II (§9831 et seq.) of chapter 105 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9801 of this title and Tables.

The Community Economic Development Act of 1981, referred to in subsec. (a)(6), is subchapter A (§§611-633) of chapter 8 of subtitle A of title VI of Pub. L. 97-35, Aug. 13, 1981, 95 Stat. 489, as amended, which is classified generally to subchapter I (§9801 et seq.) of chapter 105 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9801 of this title and Tables.

The National and Community Service Trust Act of 1993, referred to in subsecs. (b)(2)(A) and (c)(1)(F), is Pub. L. 103-82, Sept. 21, 1993, 107 Stat. 785. For complete classification of this Act to the Code, see Short Title note set out under section 12501 of this title and Tables.

The Higher Education Act of 1965, referred to in subsec. (c)(1)(E), is Pub. L. 89-329, Nov. 8, 1965, 79 Stat. 1219, as amended. Parts B and E of title IV of the Higher Education Act of 1965 are classified to parts B (§1071 et seq.) and D (§1087aa et seq.), respectively, of subchapter IV of chapter 28 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

AMENDMENTS

1998—Subsec. (d). Pub. L. 105-277, §101(f) [title VIII, §405(f)(28)(A)], which directed the amendment of the second sentence of subsec. (d) to read as follows: “private industry council established under the Job Train-

³ See 1998 Amendment note below.

ing Partnership Act or", was executed by amending the second sentence by striking "private industry council established under the Job Training Partnership Act or" after "coordinated with an appropriate" to reflect the probable intent of Congress.

Pub. L. 105-277, § 101(f) [title VIII, § 405(d)(36)(A)], substituted "Whenever feasible, such efforts shall be coordinated with an appropriate private industry council established under the Job Training Partnership Act or local workforce investment board established under section 2832 of title 29." for "Whenever feasible, such efforts shall be coordinated with an appropriate private industry council under the Job Training Partnership Act."

1994—Subsec. (b)(5), (6). Pub. L. 103-304, § 3(b)(7), redesignated par. (6) as (5).

Subsec. (c)(1)(F). Pub. L. 103-304, § 3(b)(8), realigned margin.

1993—Subsec. (a). Pub. L. 103-82, § 323(a)(1), substituted "public" for "a public" in introductory provisions.

Subsec. (a)(2). Pub. L. 103-82, § 323(a)(2), directed amendment of par. (2) by striking "and" at end. See 1984 Amendment note below.

Subsec. (a)(3). Pub. L. 103-82, § 323(a)(3), struck out "illiterate or functionally illiterate youth and other individuals," after "the hungry."

Subsec. (a)(5). Pub. L. 103-82, § 323(a)(4), struck out "and" at end.

Subsec. (a)(6). Pub. L. 103-82, § 323(a)(5), struck out "or" before "the Community Economic", inserted "or other similar Acts," before "in furtherance of", and substituted "; and" for period at end.

Subsec. (a)(7). Pub. L. 103-82, § 323(a)(6), added par. (7).

Subsec. (b)(2)(A). Pub. L. 103-82, § 405(a)(2), substituted "the Corporation (or any)" for "the ACTION Agency (or any)".

Pub. L. 103-82, § 323(b)(1)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "The Director shall establish and maintain within the national headquarters of the ACTION Agency a volunteer placement office. The office shall be headed by an individual designated by the Director to be the national Administrator of Recruitment and Placement, who shall be responsible for carrying out the functions described in this subsection and subsection (c) of this section and all other functions delegated by the Director relating to the recruitment and placement of volunteers under this part."

Subsec. (b)(2)(C), (D). Pub. L. 103-82, § 323(b)(1)(B), (C), redesignated subpar. (D) as (C) and struck out former subpar. (C) which read as follows: "The Director shall, at a minimum, designate one employee of the ACTION Agency in each region of the United States whose primary duties and responsibilities shall be to assist the Administrator in carrying out the functions described in this subsection and subsection (c) of this section."

Subsec. (b)(4). Pub. L. 103-82, § 405(a)(3), substituted "the Corporation" for "the ACTION Agency" in two places.

Pub. L. 103-82, § 323(b)(2), (3), redesignated par. (5) as (4) and struck out former par. (4) which read as follows: "Each application for service as a volunteer under this part shall—

"(A) indicate the period of time during which the applicant is available to serve as a volunteer under this part;

"(B) describe the previous education, training, military and work experience, and any other relevant skills or interests of the applicant;

"(C) specify the State or geographic region in which the applicant prefers to be assigned; and

"(D) specify—

"(i) the type of project or program to which the applicant prefers to be assigned; or

"(ii) the particular project or program to which the applicant prefers to be assigned."

Subsec. (b)(5) to (7). Pub. L. 103-82, § 323(b)(2), (3), redesignated pars. (5) and (7) as (4) and (6), respectively, and struck out former par. (6) which read as follows:

"Completed applications received by the ACTION Agency shall be forwarded to the regional ACTION office representing the State in which such applicant resides. The regional or State employees designated in subparagraphs (C) and (D) of paragraph (2) shall assist in evaluating such applications and, to the extent feasible and appropriate, interviewing applicants."

Subsec. (c)(1). Pub. L. 103-82, § 323(c)(1)(A), (B), in introductory provisions, substituted "personnel described in subsection (b)(2)(C)" for "regional or State employees designated in subparagraphs (C) and (D) of subsection (b)(2)" and "Such activities may include" for "Such activities shall include".

Subsec. (c)(1)(D). Pub. L. 103-82, § 405(a)(4), substituted "the Corporation" for "the ACTION Agency".

Subsec. (c)(1)(F) to (H). Pub. L. 103-82, § 323(c)(1)(C), (D), added subpar. (F) and redesignated former subpars. (F) and (G) as (G) and (H), respectively.

Subsec. (c)(4) to (6). Pub. L. 103-82, § 323(c)(2), (3), redesignated par. (6) as (4) and struck out former par. (4) which required Director to develop annual plan for recruitment of volunteers under this part and former par. (5) which required that at least 20 percent of volunteers under this part be between ages 18 and 27 and that at least 20 percent be 55 or older.

Subsec. (h). Pub. L. 103-82, § 323(d), added subsec. (h).

1989—Pub. L. 101-204, § 101(d)(2)(A), substituted "Selection and assignment" for "Assignment" in section catchline.

Subsec. (a). Pub. L. 101-204, § 101(d)(2)(B), inserted introductory provisions and struck out former introductory provisions which read as follows: "The Director, upon request of Federal, State, or local agencies, or private nonprofit organizations, may assign such volunteers to work in the several States in the local communities in which the volunteers were recruited in appropriate projects and programs, including work—"

Subsec. (a)(5), (6). Pub. L. 101-204, § 701, added par. (5) and redesignated former par. (5) as (6).

Subsec. (b). Pub. L. 101-204, § 101(a), amended subsec. (b) generally. Prior to amendment subsec. (b) read as follows: "The Director shall establish, at a cost not to exceed \$250,000, procedures to recruit and place individuals from all walks of life, age groups, economic levels, and geographic areas to serve as VISTA volunteers. The procedures shall include an information system to ensure that potential applicants are made aware of the broad range of VISTA volunteer opportunities and a system to identify and place qualified volunteers where their skills are most needed. The Director shall also establish procedures for national and local recruitment, media and public awareness efforts, and specialized campaigns designed to recruit recent college graduates, special skilled volunteers, and individuals 55 years of age and older. The Director, wherever feasible and appropriate, shall assign low-income community volunteers to serve in their home communities in teams with nationally recruited specialist volunteers. The Director shall make efforts to assign volunteers to serve in their home or nearby communities and shall make national efforts to attract other volunteers to serve in the VISTA program. The Director shall also, in the assignment of volunteers, recognize that the community identified needs which cannot be met in the local area, and the individual desires of VISTA volunteers in regard to placement in various geographic areas of the Nation, should be taken into consideration."

Subsecs. (c) to (e). Pub. L. 101-204, § 101(b), added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

Subsec. (f). Pub. L. 101-204, § 101(b)(1), (d)(2)(C), redesignated subsec. (e) as (f) and substituted reference to subsec. (e) of this section for reference to subsec. (d) of this section. Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 101-204, § 101(b)(1), redesignated former subsec. (f) as (g).

1986—Subsec. (b). Pub. L. 99-551 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "The Director, wherever feasible and appropriate, shall assign low-income community volunteers to serve

in their home communities in teams with nationally recruited specialist volunteers. The Director shall make efforts to assign volunteers to serve in their home communities or in nearby communities and shall make national efforts to attract other volunteers to serve in the VISTA program.”

1984—Subsec. (a). Pub. L. 98-288, §4(a)(1), inserted “in the local communities in which the volunteers were recruited” and inserted “, including work” in provisions before par. (1).

Subsec. (a)(2). Pub. L. 98-288, §4(a)(2), which directed substitution of a semicolon for “, under the supervision of nonprofit institutions or facilities, and”, was executed by making the substitution for “, under the supervision of nonprofit institutions or facilities; and” to reflect the probable intent of Congress.

Subsec. (a)(3), (4). Pub. L. 98-288, §4(a)(4), added pars. (3) and (4). Former par. (3) redesignated (5).

Subsec. (a)(5). Pub. L. 98-288, §4(a)(3), (4), redesignated par. (3) as (5), and substituted “the Community Service Block Grant Act, titles VIII and X of the Economic Opportunity Act of 1964, the Headstart Act, or the Community Economic Development Act of 1981,” for “the Economic Opportunity Act of 1964, as amended”.

Subsec. (b). Pub. L. 98-288, §4(b), substituted “The Director shall make efforts to assign volunteers to serve in their home communities or in nearby communities and shall make national efforts to attract other volunteers to serve in the VISTA program” for “Not later than 30 days after the assignment of any such community volunteer, the Director shall insure that each such volunteer is provided an individual plan designed to provide an opportunity for job advancement or for transition to a situation leading to gainful employment. One hundred and twenty days prior to the completion of such community volunteer’s term of service, the Director shall insure that such plan is updated and reviewed with the volunteer. The Director shall offer to provide each volunteer enrolled for a period of full-time service of not less than one year under this subchapter, and, upon the request of such volunteer, provide such volunteer with an individual and updated plan as described in the preceding two sentences”.

Subsecs. (c), (d). Pub. L. 98-288, §4(c)(1)(B), added subsecs. (c) and (d). Former subsecs. (c) and (d) redesignated subsecs. (e) and (f), respectively.

Subsec. (e). Pub. L. 98-288, §4(c)(1)(A), redesignated subsec. (c) as (e).

Subsec. (f). Pub. L. 98-288, §4(c)(1)(A), (d), redesignated subsec. (d) as (f), and substituted “work in a program or project in any community unless the application for such program or project contains evidence of local support and” for “duties or work in a program or project in any State unless such program or project”.

1979—Subsec. (b). Pub. L. 96-143, §2(a), substituted “Not later than 30 days after” for “Prior to” and inserted provisions that the Director offer to provide each volunteer enrolled for a period of full-time service of not less than one year under this subchapter, and, upon the request of such volunteer, provide such volunteer with an individual and updated plan as described in the preceding two sentences.

Subsec. (d). Pub. L. 96-143, §2(b), inserted “in a program or project” after “work” and “or project” after “program” and inserted provisions requiring notification by a Governor or other chief executive officer to the Director that such Governor or other chief executive officer has disapproved a program or project under this section and requiring the Director to terminate a program or project under this section in the event of a timely request by the Governor or other chief executive officer not later than 30 days after the date such request is received or at such date agreed upon by the Director and such Governor or other chief executive officer.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 101(f) [title VIII, §405(d)(36)(A)] of Pub. L. 105-277 effective Oct. 21, 1998,

and amendment by section 101(f) [title VIII, §405(f)(28)(A)] of Pub. L. 105-277 effective July 1, 2000, see section 101(f) [title VIII, §405(g)(1), (2)(B)] of Pub. L. 105-277, set out as a note under section 3502 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 3(b)(10) of Pub. L. 103-304 provided that:

“(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this subsection [amending this section and sections 5024, 12591, 12602, 12615, 12619, 12622, 12651d, 12653, and 12655n of this title] shall take effect on the date of the enactment of this Act [Aug. 23, 1994].

“(B) RETROACTIVE EFFECTIVE DATE.—The amendments made by paragraphs (1) and (2) [amending sections 12651d and 12655n of this title] shall take effect as of October 1, 1993.”

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 323 of Pub. L. 103-82 effective Oct. 1, 1993, see section 392 of Pub. L. 103-82, set out as a note under section 4951 of this title.

Amendment by section 405(a)(2) to (4) of Pub. L. 103-82 effective Apr. 4, 1994, see section 406(b) of Pub. L. 103-82, set out as a note under section 8332 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-551 effective Oct. 1, 1986, except as otherwise provided, see section 11 of Pub. L. 99-551, set out as an Effective Date note under section 4950 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4954, 4972 of this title.

§ 4954. Terms and periods of service

(a) Personal commitment; scope of commitment

Volunteers serving under this part shall be required to make a full-time personal commitment to combating poverty and poverty-related problems. To the maximum extent practicable, the requirement for full-time commitment shall include a commitment to live among and at the economic level of the people served, and to remain available for service without regard to regular working hours, at all times during their periods of service, except for authorized periods of leave.

(b) Minimum period of service; critical scarce-skill needs exception; reenrollment; limitation

(1) Volunteers serving under this part may be enrolled initially for periods of service of not less than 1 year, nor more than 2 years, except as provided in paragraph (2) or subsection (e) of this section.

(2) Volunteers serving under this part may be enrolled for periods of service of less than 1 year if the Director determines, on an individual basis, that a period of service of less than 1 year is necessary to meet a critical scarce skill need.

(3) Volunteers serving under this part may be reenrolled for periods of service in a manner to be determined by the Director. No volunteer shall serve for more than a total of 5 years under this part.

(c) Oath or affirmation

Volunteers under this part shall, upon enrollment, take the oath of office as prescribed for

persons appointed to any office of honor or profit by section 3331 of title 5, and shall swear (or affirm) that the volunteer does not advocate the overthrow of the constitutional form of government of the United States and that the volunteer is not a member of an organization that advocates the overthrow of the constitutional form of government of the United States, knowing that such organization so advocates, except that persons legally residing within a State but who are not citizens or nationals of the United States, may serve under this part without taking or subscribing to such oath, if the Director determines that the service of such persons will further the interests of the United States. Such persons shall take such alternative oath or affirmation as the Director shall deem appropriate.

(d) Grievance and personal view presentation procedure; notice and hearing; information

The Director shall establish a procedure, including notice and opportunity to be heard, for volunteers under this part to present and obtain resolution of grievances and to present their views in connection with the terms and conditions of their service. The Director shall promptly provide to each volunteer in service on October 1, 1973, and to each such volunteer beginning service thereafter, information regarding such procedure and the terms and conditions of their service.

(e) Summer associates

(1) Notwithstanding any other provision of this part, the Director may enroll full-time VISTA summer associates in a program for the summer months only, under such terms and conditions as the Director shall determine to be appropriate. Such individuals shall be assigned to projects that meet the criteria set forth in section 4953(a) of this title.

(2) In preparing reports relating to programs under this chapter, the Director shall report on participants, costs, and accomplishments under the summer program separately.

(3) The limitation on funds appropriated for grants and contracts, as contained in section 4958 of this title, shall not apply to the summer program.

(Pub. L. 93-113, title I, § 104, Oct. 1, 1973, 87 Stat. 397; Pub. L. 98-288, § 5, May 21, 1984, 98 Stat. 190; Pub. L. 101-204, title VII, § 702, Dec. 7, 1989, 103 Stat. 1821; Pub. L. 103-82, title III, § 324, Sept. 21, 1993, 107 Stat. 900.)

AMENDMENTS

1993—Subsec. (b). Pub. L. 103-82, § 324(a), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “Volunteers serving under this part may be enrolled for periods of service not exceeding two years, but for not less than one-year periods of service, except that volunteers serving under this part may be enrolled for periods of service of less than one year when the Director determines, on an individual basis, that a period of service of less than one year is necessary to meet a critical scarce-skill need. Volunteers serving under this part may be reenrolled for periods of service totaling not more than two years. No volunteer shall serve for more than a total of five years under this part.”

Subsec. (e). Pub. L. 103-82, § 324(b), added subsec. (e).
1989—Subsec. (c). Pub. L. 101-204 substituted “for persons appointed to any office of honor or profit by section 3331 of title 5, and shall swear (or affirm) that the

volunteer does not advocate the overthrow of the constitutional form of government of the United States and that the volunteer is not a member of an organization that advocates the overthrow of the constitutional form of government of the United States, knowing that such organization so advocates, except” for “in section 2504(j) of title 22, except”.

1984—Subsec. (a). Pub. L. 98-288 struck out “human, social, and environmental” in first sentence after “poverty-related”, and substituted “the requirement for full-time commitment” for “this” in second sentence.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Oct. 1, 1993, see section 392 of Pub. L. 103-82, set out as a note under section 4951 of this title.

TEMPORARY AUTHORITY FOR EXTENSIONS OF PERIOD OF SERVICE

Section 101(c) of Pub. L. 101-204, as amended by Pub. L. 103-82, title IV, § 405(h), Sept. 21, 1993, 107 Stat. 921, provided that:

“(1) IN GENERAL.—Notwithstanding the limitations established in section 104(b) of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4954(b)) for the maximum period of service as a volunteer under part A of title I of such Act (42 U.S.C. 4951 et seq.), the Chief Executive Officer of the Corporation for National and Community Service may, subject to paragraphs (2) and (3), extend beyond such maximum the period of service for such volunteer in any case in which—

“(A) such extension is requested by the project or program to which such volunteer involved is assigned; and

“(B) such Director determines that such extension is appropriate with respect to meeting the goals of such project or program.

“(2) LIMITATIONS ON EXTENSIONS.—With respect to extensions under paragraph (1) for volunteers described in such paragraph—

“(A) such an extension shall not exceed a 1-year period;

“(B) not more than two of such extensions may be made for any one volunteer; and

“(C) not more than 1 percent of the total number of such volunteers serving for the fiscal year involved may receive such extensions.

“(2) [(3)] DURATION OF AUTHORITY.—The authority established in paragraph (1) shall be effective only for fiscal years 1990 through 1993.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4972, 4973, 5081 of this title.

§ 4955. Support services

(a) Stipend; limitation; volunteer leaders; payment upon completion of term; advancement of accrued stipend; beneficiary of deceased volunteer

(1)(A) The Director may provide a stipend to volunteers, while they are in training and during their assignments, enrolled for periods of service of not less than one year under this part, except that the Director may, on an individual basis, make an exception to provide a stipend to a volunteer enrolled under this part for an extended period of service not totaling one year.

(B) Such stipend shall not exceed \$95 per month in fiscal year 1994, but shall be set at a minimum of \$100 per month, and a maximum of \$125 per month assuming the availability of funds to accomplish such maximum, during the service of the volunteer after October 1, 1994. The Director may provide a stipend of a maximum of \$200 per month in the case of persons

who have served as volunteers under this part for at least 1 year and who, in accordance with standards established in such regulations as the Director shall prescribe, have been designated volunteer leaders on the basis of experience and special skills and a demonstrated leadership among volunteers.

(C) The Director shall not provide a stipend under this subsection to an individual who elects to receive a national service educational award under subtitle D of title I of the National and Community Service Act of 1990 [42 U.S.C. 12601 et seq.].

(2) Stipends shall be payable only upon completion of a period of service, except that under such circumstances as the Director shall determine, in accordance with regulations which the Director shall prescribe, the accrued stipend, or any part of the accrued stipend, may be paid to the volunteer, or, on behalf of the volunteer, to members of the volunteer's family or others during the period of the volunteer's service. In the event of the death of a volunteer during service, the amount of any unpaid stipend shall be paid in accordance with the provisions of section 5582 of title 5.

(b) Description of allowances and support services; determination of allowance; adjustments; methodology

(1) The Director shall also provide volunteers such living, travel (including travel to and from places of training and to and from locations to which volunteers are assigned during periods of service) and leave allowances, and such housing, supplies, equipment, subsistence, clothing, health and dental care, transportation, supervision, pre-service training and where appropriate in-service training, technical assistance, and such other support as the Director deems necessary and appropriate to carry out the purpose and provisions of this part, and shall insure that each such volunteer has available such allowances and support as will enable the volunteer to carry out the purpose and provisions of this part and to effectively perform the work to which such volunteer is assigned.

(2) The Director shall set the subsistence allowance for volunteers under paragraph (1) for each fiscal year so that—

(A) the minimum allowance is not less than an amount equal to 95 percent of such poverty line (as defined in section 9902(2) of this title) for a single individual as expected for each fiscal year; and

(B) the average subsistence allowance, excluding allowances for Hawaii, Guam, American Samoa, and Alaska, is no less than 105 percent of such poverty line.

(3) The Director shall adjust the subsistence allowances for volunteers serving in areas that have a higher cost of living than the national average to reflect such higher cost. The Director shall review such adjustments on an annual basis to ensure that the adjustments are current.

(c) Child care

(1) The Director shall—

(A) make child care available for children of each volunteer enrolled under this part who

need such child care in order to participate as volunteers; or

(B) provide a child care allowance to each such volunteer who needs such assistance in order to participate as volunteers.

(2) The Corporation shall establish guidelines regarding the circumstances under which child care shall be made available under this subsection and the value of any child care allowance to be provided.

(Pub. L. 93-113, title I, §105, Oct. 1, 1973, 87 Stat. 398; Pub. L. 94-130, §5(a), Nov. 14, 1975, 89 Stat. 684; Pub. L. 96-143, §3, Dec. 13, 1979, 93 Stat. 1074; Pub. L. 98-288, §6, May 21, 1984, 98 Stat. 191; Pub. L. 99-551, §10(i)(1), Oct. 27, 1986, 100 Stat. 3078; Pub. L. 101-204, title I, §102, Dec. 7, 1989, 103 Stat. 1811; Pub. L. 103-82, title III, §325, Sept. 21, 1993, 107 Stat. 901.)

REFERENCES IN TEXT

The National and Community Service Act of 1990, referred to in subsec. (a)(1)(C), is Pub. L. 101-610, Nov. 16, 1990, 104 Stat. 3127, as amended. Subtitle D of title I of the Act is classified generally to division D (§12601 et seq.) of subchapter I of chapter 129 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 12501 of this title and Tables.

AMENDMENTS

1993—Subsec. (a)(1). Pub. L. 103-82, §325(a), designated first sentence as subpar. (A), added subpars. (B) and (C), and struck out former second sentence which read as follows: "Such stipend shall not exceed \$75 per month in fiscal year 1990, \$90 per month in fiscal year 1991, and \$95 per month in subsequent fiscal years during the volunteer's service, except that the Director may provide a stipend not to exceed \$75 per month in fiscal year 1990, \$90 per month in fiscal year 1991, and \$95 per month in subsequent fiscal years in the case of persons who have served for at least one year and who, in accordance with standards established in regulations which the Director shall prescribe, have been designated volunteer leaders on the basis of experience and special skills and a demonstrated leadership among volunteers."

Subsec. (b)(3). Pub. L. 103-82, §325(b)(1), struck out subpar. (A), struck out subpar. (B) designation before "The Director shall adjust", and inserted at end: "The Director shall review such adjustments on an annual basis to ensure that the adjustments are current." Prior to amendment, subpar. (A) read as follows: "The Director shall consult with regional and State offices of the ACTION Agency to make a determination of the cost of living within each State and whether there are significant local price differentials within the State."

Subsec. (b)(4). Pub. L. 103-82, §325(b)(2), struck out par. (4) which read as follows: "The Director, in coordination with regional and State offices of the ACTION Agency and taking into account paragraphs (2) and (3), shall establish a method for setting subsistence allowances. The Director shall submit a report on such methods to the appropriate authorizing committees of Congress not later than 90 days after the date of enactment of the fiscal year 1990 appropriation."

Subsec. (c). Pub. L. 103-82, §325(c), added subsec. (c). 1989—Subsec. (a)(1). Pub. L. 101-204, §102(1), substituted "\$75 per month in fiscal year 1990, \$90 per month in fiscal year 1991, and \$95 per month in subsequent fiscal years" for "\$75 per month" in two places.

Subsec. (b). Pub. L. 101-204, §102(2), designated existing provisions as par. (1), substituted "places of training and to and from locations to which volunteers are assigned during periods of service)" for "places of training)", and added pars. (2) to (4).

1986—Subsec. (b). Pub. L. 99-551 substituted "the Director" for "he" before "deems".

1984—Subsec. (b). Pub. L. 98-288 inserted “pre-service training and where appropriate in-service training.”

1979—Subsec. (a)(2). Pub. L. 96-143 substituted “under such circumstances as the Director shall determine, in accordance with regulations which the director shall prescribe, the accrued stipend, or any part of the accrued stipend, may be paid to the volunteer, or, on behalf of the volunteer, to members of the volunteer’s family or others during the period of the volunteer’s service” for “in extraordinary circumstances the Director may from time to time advance all or a portion of the accrued stipend to or on behalf of a volunteer”.

1975—Subsec. (a)(1). Pub. L. 94-130 substituted “shall not exceed \$75” for “shall not exceed \$50”.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Oct. 1, 1993, see section 392 of Pub. L. 103-82, set out as a note under section 4951 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-551 effective Oct. 1, 1986, except as otherwise provided, see section 11 of Pub. L. 99-551, set out as an Effective Date note under section 4950 of this title.

ADDITIONAL APPROPRIATIONS AUTHORIZATION

Section 5(b) of Pub. L. 94-130, as amended by Pub. L. 96-143, §17, Dec. 13, 1979, 93 Stat. 1082, provided that: “There are authorized to be appropriated, in addition to the sums authorized to be appropriated pursuant to section 501 of such Act [section 5081 of this title], such additional sums as may be necessary to carry out the amendments made by subsection (a) of this section [amending this section].”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4973, 4992, 5081, 12594, 12595, 12653c, 12655f of this title.

§ 4956. Participation of program beneficiaries

To the maximum extent practicable, the people of the communities to be served by volunteers under this subchapter shall participate in planning, developing, and implementing programs thereunder, and the Director, after consultation with sponsoring agencies (including volunteers assigned to them) and the people served by such agencies, shall establish in regulations, a continuing mechanism for the meaningful participation of such program beneficiaries.

(Pub. L. 93-113, title I, §106, Oct. 1, 1973, 87 Stat. 398; Pub. L. 98-288, §7, May 21, 1984, 98 Stat. 191.)

AMENDMENTS

1984—Pub. L. 98-288 substituted “establish in regulations” for “take all necessary steps to establish, in regulations he shall prescribe”.

§ 4957. Participation of younger and older persons

In carrying out this part and part C of this subchapter, the Director shall take necessary steps, including the development of special projects, where appropriate, to encourage the fullest participation of individuals 18 through 27 years of age, and individuals 55 years of age and older, in the various programs and activities authorized under such parts.

(Pub. L. 93-113, title I, §107, Oct. 1, 1973, 87 Stat. 399; Pub. L. 103-82, title III, §326, Sept. 21, 1993, 107 Stat. 901.)

AMENDMENTS

1993—Pub. L. 103-82 amended section generally. Prior to amendment, section read as follows: “In carrying out this part and part C of this subchapter, the Director shall take necessary steps, including the development of special projects, where appropriate, to encourage the fullest participation of older persons and older persons membership groups as volunteers and participant agencies in the various programs and activities authorized under such parts and, because of the high proportion of older persons within the poverty group, shall encourage the development of a variety of volunteer services to older persons, including special projects, to assure that such persons are served in proportion to their need.”

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Oct. 1, 1993, see section 392 of Pub. L. 103-82, set out as a note under section 4951 of this title.

§ 4958. Limitation on funds appropriated for grants and contracts for direct cost of supporting volunteers in programs or projects

(a) Of funds appropriated for the purpose of this part under section 5081 of this title, not more than 30 percent for the fiscal year ending September 30, 1984, and for each fiscal year thereafter, may be obligated for the direct cost of supporting volunteers in programs or projects carried out pursuant to grants and contracts made under section 5042(12)¹ of this title.

(b) No funds shall be obligated under this part pursuant to grants or contracts made after December 13, 1979, for new projects for the direct cost of supporting volunteers unless the recipient of each such grant or contract has been selected through a competitive process which includes—

(1) public announcements of the availability of funds for such grants or contracts, general criteria for the selection of new recipients, and a description of the application process and the application review process; and

(2) a requirement that each applicant for any such grant or contract identify, with sufficient particularity to assure that the assignments of volunteers under such grants and contracts will carry out the purpose of this part, the particular poverty or poverty-related problems on which the grant or contract will focus, and any such grant or contract shall specifically so identify such problems.

(Pub. L. 93-113, title I, §108, as added Pub. L. 94-293, §4(a)(1), May 27, 1976, 90 Stat. 525; amended Pub. L. 96-143, §4, Dec. 13, 1979, 93 Stat. 1075; Pub. L. 98-288, §8, May 21, 1984, 98 Stat. 191; Pub. L. 101-204, title VII, §703, Dec. 7, 1989, 103 Stat. 1821.)

REFERENCES IN TEXT

Section 5042 of this title, referred to in subsec. (a), was repealed by Pub. L. 103-82, title II, §203(b), Sept. 21, 1993, 107 Stat. 892.

AMENDMENTS

1989—Subsec. (a). Pub. L. 101-204 substituted “30 percent” for “16 per centum”.

1984—Subsec. (a). Pub. L. 98-288, §8(1), (2), substituted “1984” for “1977”, and struck out “During the fiscal

¹ See References in Text note below.

year ending September 30, 1980—(1) in no event may in excess of \$5,800,000 be used pursuant to grants and contracts under this part for the direct cost of supporting such volunteers; and (2) funds obligated pursuant to such grants and contracts for such cost may be used to support no greater number of years of volunteer service than the number of such years supported during the fiscal year ending September 30, 1979, pursuant to grants and contracts for such cost.”

Subsec. (b)(2). Pub. L. 98-288, §8(3), struck out “human, social, or environmental” after “poverty-related”.

1979—Subsec. (a). Pub. L. 96-143, §4, designated existing provisions as subsec. (a) and, in subsec. (a) as so designated, substituted “16” for “20”, inserted “During the fiscal year ending September 30, 1980”, and added pars. (1) and (2).

Subsec. (b). Pub. L. 96-143, §4(b), added subsec. (b).

EFFECTIVE DATE

Section 4(c) of Pub. L. 94-293 provided that: “The amendments made by subsection (a) and subsection (b) of this section [enacting this section and amending section 5042 of this title] shall be effective on October 1, 1976, and shall not apply to any agreement for the assignment of volunteers entered into before such date during the period of any such agreement.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4954, 12651b of this title.

§ 4959. VISTA Literacy Corps

(a) Establishment

As part of the Volunteers in Service to America program established under this part, the Director shall establish a VISTA Literacy Corps for the purpose of developing, strengthening, supplementing, and expanding efforts of both public and nonprofit organizations at the local, State, and Federal level to mobilize local, State, Federal, and private sector financial and volunteer resources to address the problem of illiteracy throughout the United States.

(b) Assignment of volunteers to projects and programs meeting antipoverty criteria and providing assistance to illiterates who are underserved by education programs

The Director shall assign volunteers to projects and programs that meet the antipoverty criteria of this part that provide assistance to functionally illiterate and illiterate individuals who are unserved or underserved by literacy education programs, with special emphasis upon disadvantaged individuals having the highest risk of illiteracy, and individuals with the lowest reading and educational level of competence.

(c) Assignment of volunteers to projects and programs utilizing volunteers to address needs of illiterate individuals; administration of programs by public or private nonprofit organizations; considerations governing assignment of volunteers

(1) The Director shall assign volunteers under this subsection to projects and programs that utilize volunteers to address the needs of illiterate individuals.

(2) Programs and projects under this subsection may be administered by public or private nonprofit agencies and organizations including local, State, and national literacy coun-

cils and organizations; community-based nonprofit organizations; local and State education agencies; local and State agencies administering adult basic education programs; educational institutions; libraries; antipoverty organizations; local, municipal, and State governmental entities, and eligible providers of employment and training activities under subtitle B of title I of the Workforce Investment Act of 1998 [29 U.S.C. 2811 et seq.].

(3) In the assignment of volunteers under this subsection the Director shall give priority consideration to—

(A) programs and projects that assist illiterate individuals in greatest need of assistance residing in unserved or underserved areas with the highest concentrations of illiteracy and of low income individuals and families;

(B) projects and programs serving individuals reading at the zero to fourth grade levels;

(C) projects and programs focusing on providing literacy services to high risk populations;

(D) projects and programs operating in areas with the highest concentration of individuals and families living at or below the poverty level;

(E) projects and programs providing literacy services to parents of disadvantaged children between the ages of two and eight, who may be educationally at risk; and

(F) Statewide programs and projects that encourage the creation of new literacy efforts, encourage the coordination of intrastate literacy efforts and provide technical assistance to local literacy efforts.

(d) Assignment of volunteers to projects and programs utilizing volunteers to tutor illiterate individuals; administration of programs by local public or private nonprofit organizations; considerations in assignment of volunteers

(1) The Director shall assign volunteers under this subsection to projects and programs that primarily utilize volunteers to tutor illiterate individuals.

(2) Programs and projects under this subsection may be administered by local public or private nonprofit agencies and organizations including local literacy councils and organizations, community-based nonprofit organizations, local educational agencies, local agencies administering adult basic education programs, local educational institutions, libraries, antipoverty organizations, local and municipal governmental entities, and eligible providers of employment and training activities under subtitle B of title I of the Workforce Investment Act of 1998 [29 U.S.C. 2811 et seq.].

(3) In the assignment of volunteers under this subsection the Director shall give priority consideration to local programs and projects that assist illiterate individuals in greatest need of assistance residing in unserved or underserved areas with the highest concentrations of illiteracy and of low income individuals and families.

(e) Equitable distribution of volunteers

The Director shall ensure an equitable distribution of volunteers under this section in ac-

cordance with the equitable distribution requirement of section 5054 of this title.

(f) Membership of VISTA Literacy Corps

The VISTA Literacy Corps shall consist of all volunteers serving under this part working on literacy projects and programs.

(g) Proportionate reduction of services

In any fiscal year in which the services provided under this part are reduced, the services provided under this section shall be proportionately reduced.

(h) Assignment of individual to service in general program regarding literacy; priority

(1) Subject to paragraph (2), with respect to any individual providing volunteer services in the program under this section regarding literacy, the Director may, with the written consent of the individual, assign the individual to serve in the general program under this part regarding literacy.

(2) To the extent practicable and without undue delay, the Director shall ensure that a volunteer under this section is assigned to the vacancy created within the relevant literacy project or program established under this section.

(Pub. L. 93-113, title I, §109, as added Pub. L. 99-551, §4(a), Oct. 27, 1986, 100 Stat. 3072; amended Pub. L. 101-204, title VI, §601, Dec. 7, 1989, 103 Stat. 1819; Pub. L. 103-82, title III, §327, Sept. 21, 1993, 107 Stat. 902; Pub. L. 105-277, div. A, §101(f) [title VIII, §405(d)(36)(B), (f)(28)(B)], Oct. 21, 1998, 112 Stat. 2681-337, 2681-427, 2681-434.)

REFERENCES IN TEXT

The Workforce Investment Act of 1998, referred to in subsecs. (c)(2) and (d)(2), is Pub. L. 105-220, Aug. 7, 1998, 112 Stat. 936, as amended. Subtitle B of title I of the Act is classified generally to subchapter II (§2811 et seq.) of chapter 30 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

AMENDMENTS

1998—Subsecs. (c)(2), (d)(2). Pub. L. 105-277, §101(f) [title VIII, §405(f)(28)(B)], struck out “administrative entities designated to administer job training plans under the Job Training Partnership Act and” before “eligible providers of employment and training”.

Pub. L. 105-277, §101(f) [title VIII, §405(d)(36)(B)], substituted “administrative entities designated to administer job training plans under the Job Training Partnership Act and eligible providers of employment and training activities under subtitle B of title I of the Workforce Investment Act of 1998” for “administrative entities designated to administer job training plans under the Job Training Partnership Act”.

1993—Subsec. (g). Pub. L. 103-82, §327(1), struck out par. (1) and struck out par. (2) designation before “In any fiscal”. Prior to amendment, par. (1) read as follows: “Funds made available under section 5081(a) of this title for the purposes of this section shall be used to supplement and not supplant the level of services provided under this part in fiscal year 1986 to address the problem of illiteracy. The Director shall ensure that records are maintained to indicate the degree of compliance with this requirement.”

Subsec. (h)(1), (3). Pub. L. 103-82, §327(2), substituted “paragraph (2)” for “paragraphs (2) and (3)” in par. (1) and struck out par. (3) which read as follows: “Nothing in this subsection shall diminish or otherwise affect the

requirement in subsection (g)(1) of this section that funds made available for this section shall be used to supplement and not to supplant the 1986 level of literacy services provided under this part.”

1989—Subsec. (g)(1). Pub. L. 101-204, §601(1), inserted at end “The Director shall ensure that records are maintained to indicate the degree of compliance with this requirement.”

Subsec. (h). Pub. L. 101-204, §601(2), added subsec. (h).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 101(f) [title VIII, §405(d)(36)(B)] of Pub. L. 105-277 effective Oct. 21, 1998, and amendment by section 101(f) [title VIII, §405(f)(28)(B)] of Pub. L. 105-277 effective July 1, 2000, see section 101(f) [title VIII, §405(g)(1), (2)(B)] of Pub. L. 105-277, set out as a note under section 3502 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Oct. 1, 1993, see section 392 of Pub. L. 103-82, set out as a note under section 4951 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1986, except as otherwise provided, see section 11 of Pub. L. 99-551, set out as a note under section 4950 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5081 of this title.

§ 4960. Applications for assistance

In reviewing an application for assistance under this part, the Director shall not deny such assistance to any project or program, or any public or private nonprofit organization, solely on the basis of the duration of the assistance such project, program, or organization has received under this part prior to the date of submission of the application. The Director shall grant assistance under this part on the basis of merit and to accomplish the goals of the VISTA program, and shall consider the needs and requirements of projects in existence on such date as well as potential new projects.

(Pub. L. 93-113, title I, §110, as added Pub. L. 101-204, title I, §103, Dec. 7, 1989, 103 Stat. 1812; amended Pub. L. 103-82, title III, §328, Sept. 21, 1993, 107 Stat. 902.)

AMENDMENTS

1993—Pub. L. 103-82 amended section generally, substituting present provisions for provisions which related to: in subsec. (a), duration; in subsec. (b), consideration of application; in subsec. (c), new project or program; in subsec. (d), renewal of assistance; in subsec. (e), eligibility; and in subsec. (f), notice.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Oct. 1, 1993, see section 392 of Pub. L. 103-82, set out as a note under section 4951 of this title.

PART B—UNIVERSITY YEAR FOR VISTA

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 5055, 5081, 12651e of this title; title 5 sections 8332, 8334, 8411, 8422; title 22 section 4071c.

§ 4971. Congressional statement of purpose

(a) The purpose of this part is to assist students, through service-learning and community

service programs, to undertake volunteer service in such a way as to enhance the educational value of the service experience, through participation in activities that strengthen and supplement efforts to eliminate and alleviate poverty and poverty-related problems. Its purpose further is to provide technical assistance and training to encourage other students and faculty to engage in volunteer service on a part-time, self-supporting basis, to meet the needs of the poor in the surrounding community through expansion of service-learning and community service programs and otherwise.

(b) This part provides for the University Year for VISTA (UYV) program of full-time volunteer service by students enrolled in institutions of higher education. The purpose of the UYV program is to strengthen and supplement efforts to eliminate poverty and poverty-related human, social, and environmental problems by enabling students at cooperating institutions to perform meaningful and constructive volunteer service in connection with the satisfaction of coursework while attending such institutions. Volunteer service under this part is conducted in agencies, institutions, and situations where the application of human talent and dedication may assist in the solution of poverty and poverty-related problems and secure and exploit opportunities for self-advancement by individuals experiencing such problems.

(Pub. L. 93-113, title I, § 111, Oct. 1, 1973, 87 Stat. 399; Pub. L. 98-288, § 9, May 21, 1984, 98 Stat. 191; Pub. L. 99-551, § 5, Oct. 27, 1986, 100 Stat. 3073; Pub. L. 101-204, title II, § 201(2), Dec. 7, 1989, 103 Stat. 1813; Pub. L. 103-82, title III, § 330(a)(2), (3), Sept. 21, 1993, 107 Stat. 902.)

AMENDMENTS

1993—Subsec. (b). Pub. L. 103-82 substituted “University Year for VISTA (UYV)” for “University Year for ACTION (UYA)” and “purpose of the UYV” for “purpose of the UYA”.

1989—Subsec. (a). Pub. L. 101-204, which directed the amendment of the first sentence of subsec. (a) by inserting “and community service” after “service-learning” both places it appears, was executed by making the insertion once in each of the first and second sentences of subsec. (a), as the probable intent of Congress.

1986—Subsec. (a). Pub. L. 99-551, § 5(1), (2), designated existing provisions as subsec. (a) and struck out “This part provides for the University Year for ACTION (UYA) program of full-time volunteer service by students enrolled in institutions of higher education, together with appropriate powers and responsibilities designed to assist in the development and coordination of such programs. The purpose of this part is to strengthen and supplement efforts to eliminate poverty and poverty-related human, social, and environmental problems by enabling students at such cooperating institutions to perform meaningful and constructive volunteer service in connection with the satisfaction of such students’ course work during their periods of service while attending such institutions, in agencies, institutions, and situations where the application of human talent and dedication may assist in the solution of poverty and poverty-related problems and secure and exploit opportunities for self-advancement by persons afflicted with such problems.”

Subsec. (b). Pub. L. 99-551, § 5(3), added subsec. (b).

1984—Pub. L. 98-288 inserted after first sentence “The purpose of this part is to assist students, through service-learning programs, to undertake volunteer service in such a way as to enhance the educational value of

the service experience, through participation in activities that strengthen and supplement efforts to eliminate and alleviate poverty and poverty-related problems.” and substituted “provide technical assistance and training to encourage other students and faculty to engage in volunteer service on a part-time, self-supporting basis, to meet the needs of the poor in the surrounding community through expansion of service-learning programs and otherwise” for “encourage other students and faculty members to engage, on a part-time, self-supporting basis, in such volunteer service and work along with volunteers serving under this part; and to promote participation by such institutions in meeting the needs of the poor in the surrounding community through expansion of service-learning programs and otherwise. Its purpose further is to provide for a program of part-time or short-term service—learning by secondary and post-secondary school students to strengthen and supplement efforts to eliminate poverty and poverty-related human, social, and environmental problems”.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Oct. 1, 1993, see section 392 of Pub. L. 103-82, set out as a note under section 4951 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-551 effective Oct. 1, 1986, except as otherwise provided, see section 11 of Pub. L. 99-551, set out as an Effective Date note under section 4950 of this title.

§ 4972. Authority to operate University Year for VISTA program

Except as otherwise provided in this part, the Director is authorized to conduct or make grants and contracts for, or both, programs to carry out the purposes of this part in accordance with the authorities and subject to the restrictions in the provisions of part A of this subchapter, except for the provisions of sections 4953(f)¹ and 4954(d) of this title, and except that the Director may, in accordance with regulations the Director shall prescribe, determine to reduce or eliminate the stipend for volunteers serving under this part on the basis of the value of benefits provided such volunteers by the institution in question (including the reduction or waiver of tuition).

(Pub. L. 93-113, title I, § 112, Oct. 1, 1973, 87 Stat. 399; Pub. L. 98-288, § 30(b)(1), May 21, 1984, 98 Stat. 197; Pub. L. 99-551, § 10(i)(2), Oct. 27, 1986, 100 Stat. 3078; Pub. L. 103-82, title III, § 330(a)(4), Sept. 21, 1993, 107 Stat. 902.)

REFERENCES IN TEXT

Section 4953(f) of this title, referred to in text, was redesignated section 4953(g) of this title by Pub. L. 101-204, title I, § 101(b)(1), Dec. 7, 1989, 103 Stat. 1809.

AMENDMENTS

1993—Pub. L. 103-82 amended section catchline generally.

1986—Pub. L. 99-551 substituted “the Director” for “he” before “shall prescribe”.

1984—Pub. L. 98-288 substituted “4953(f)” for “4953(d)”.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Oct. 1, 1993, see section 392 of Pub. L. 103-82, set out as a note under section 4951 of this title.

¹ See References in Text note below.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-551 effective Oct. 1, 1986, except as otherwise provided, see section 11 of Pub. L. 99-551, set out as an Effective Date note under section 4950 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4973 of this title.

§ 4973. Special conditions**(a) Academic credit**

Volunteers serving under this part shall be enrolled for periods of service as provided for in subsection (b) of section 4954 of this title, except that volunteers serving in the University Year for VISTA program may be enrolled for periods of service of not less than the duration of an academic semester or its equivalent, but volunteers enrolled for less than 12 months shall not receive stipends under section 4955(a)(1) of this title. Volunteers serving under this part may receive academic credit for such service in accordance with the regulations of the sponsoring institution of higher education. Volunteers may receive a living allowance and such other support or allowances as the Director determines to be appropriate.

(b) Participation of student volunteers and educational institutions

Grants to and contracts with institutions to administer programs under this part shall provide that prospective student volunteers shall participate substantially in the planning of such programs and that such institutions shall make available to the poor in the surrounding community all available facilities, including human resources, of such institutions in order to assist in meeting the needs of such poor persons.

(c) Financial assistance limitation; commitment stipulations; monitoring of compliance with commitment; compliance information to Secretary

(1) In making grants or contracts for the administration of UYV programs under this part, the Director shall insure that financial assistance under this chapter to programs carried out pursuant to section 4972 of this title shall not exceed 90 per centum of the total cost (including planning costs) of such program during the first year and such amounts less than 90 per centum as the Director, in consultation with the institution, may determine for not more than four additional years, including years in which support was received under title VIII of the Economic Opportunity Act of 1964, as amended (42 U.S.C. 2991-2994d). Each such grant or contract shall stipulate that the institution will make every effort to (A) assume an increasing proportion of the cost of continuing a program carrying out the purpose of this part while the institution receives support under this part; (B) waive or otherwise reduce tuition for participants in such program, where such waiver is not prohibited by law; (C) utilize students and faculty at such institution to carry out, on a self-supporting basis, appropriate planning for such programs; and (D) maintain similar service-learning programs after such institution no longer receives support under this part.

(2) The Director shall take necessary steps to monitor the extent of compliance by such institutions with commitments entered into under paragraph (1) of this subsection and shall advise the Secretary of Health and Human Services of the extent of each such institution's compliance.

(Pub. L. 93-113, title I, § 113, Oct. 1, 1973, 87 Stat. 399; Pub. L. 96-143, § 5, Dec. 13, 1979, 93 Stat. 1075; Pub. L. 97-35, title VI, § 608(f)(1), Aug. 13, 1981, 95 Stat. 488; Pub. L. 103-82, title III, § 330(a)(2), (3), (b), Sept. 21, 1993, 107 Stat. 902.)

REFERENCES IN TEXT

The Economic Opportunity Act of 1964, as amended, referred to in subsec. (c)(1), is Pub. L. 88-452, Aug. 20, 1964, 78 Stat. 508, as amended. Title VIII of such Act probably means title VIII of Pub. L. 88-452 as added by Pub. L. 89-794, title VIII, § 801, Nov. 8, 1966, 80 Stat. 1472, and generally revised and amended by Pub. L. 90-222, title I, § 110, Dec. 23, 1967, 81 Stat. 722, which was classified generally to subchapter VIII (§2991 et seq.) of chapter 34 of this title. Title VIII of the Economic Opportunity Act of 1964 as so added and amended was repealed by Pub. L. 93-113, title VI, § 603, and its provisions are covered by this chapter. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1993—Subsec. (a). Pub. L. 103-82, § 330(a)(2), (b), substituted "VISTA program" for "ACTION program" and "semester or its equivalent" for "year" after "duration of an academic" and inserted at end "Volunteers may receive a living allowance and such other support or allowances as the Director determines to be appropriate."

Subsec. (c)(1). Pub. L. 103-82, § 330(a)(3), substituted "UYV programs" for "UYA programs".

1981—Subsec. (c)(2). Pub. L. 97-35 substituted reference to Secretary of Health and Human Services, for reference to Secretary of Health, Education, and Welfare.

1979—Subsec. (a). Pub. L. 96-143 substituted "except that volunteers serving in the University Year for ACTION program may be enrolled for periods of service of not less than the duration of an academic year, but volunteers enrolled for less than 12 months shall not receive stipends under section 4955(a)(1) of this title. Volunteers serving under this part" for "and".

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Oct. 1, 1993, see section 392 of Pub. L. 103-82, set out as a note under section 4951 of this title.

§ 4974. Repealed. Pub. L. 103-82, title III, § 329, Sept. 21, 1993, 107 Stat. 902

Section, Pub. L. 93-113, title I, § 114, Oct. 1, 1973, 87 Stat. 400; Pub. L. 94-293, § 2, May 27, 1976, 90 Stat. 525; Pub. L. 96-143, § 6, Dec. 13, 1979, 93 Stat. 1075; Pub. L. 97-35, title VI, § 608(a), Aug. 13, 1981, 95 Stat. 487; Pub. L. 98-288, § 10, May 21, 1984, 98 Stat. 191; Pub. L. 99-551, § 10(i)(3), Oct. 27, 1986, 100 Stat. 3078; Pub. L. 101-204, title II, § 201(3), Dec. 7, 1989, 103 Stat. 1813, related to student community service programs.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1993, see section 392 of Pub. L. 103-82, set out as an Effective Date of 1993 Amendment note under section 4951 of this title.

PART C—SPECIAL VOLUNTEER PROGRAMS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 4957, 5055, 5081 of this title; title 5 sections 8332, 8334, 8411, 8422; title 22 section 4071c.

§ 4991. Congressional statement of purpose

This part provides for special emphasis and demonstration volunteer programs, together with appropriate powers and responsibilities designed to assist in the development and coordination of such programs. The purpose of this part is to strengthen and supplement efforts to meet a broad range of needs, particularly those related to poverty, by encouraging and enabling persons from all walks of life and from all age groups to perform meaningful and constructive volunteer service in agencies, institutions, and situations where the application of human talent and dedication may help to meet such needs. It is the further purpose of this part to provide technical and financial assistance to encourage voluntary organizations and volunteer efforts at the national, State, and local level.

(Pub. L. 93-113, title I, §121, Oct. 1, 1973, 87 Stat. 400; Pub. L. 98-288, §11, May 21, 1984, 98 Stat. 191.)

AMENDMENTS

1984—Pub. L. 98-288 struck out “human, social, and environmental” after “broad range of”, and inserted at end “It is the further purpose of this part to provide technical and financial assistance to encourage voluntary organizations and volunteer efforts at the national, State, and local level.”

§ 4992. Authority to establish and operate special volunteer and demonstration programs

(a) In general

The Director is authorized to conduct special volunteer programs for demonstration programs, or award grants to or enter into contracts with public or nonprofit organizations to carry out such programs. Such programs shall encourage wider volunteer participation on a full-time, part-time, or short-term basis to further the purpose of this part, and identify particular segments of the poverty community that could benefit from volunteer and other anti-poverty efforts.

(b) Assignment and support of volunteers

The assignment of volunteers under this section, and the provision of support for such volunteers, including any subsistence allowances and stipends, shall be on such terms and conditions as the Director shall determine to be appropriate, but shall not exceed the level of support provided under section 4955 of this title. Projects using volunteers who do not receive stipends may also be supported under this section.

(c) Criteria and priorities

In carrying out this section and section 4993 of this title, the Director shall establish criteria and priorities for awarding grants and entering into contracts under this part in each fiscal year. No grant or contract exceeding \$100,000 shall be made under this part unless the recipient of the grant or contractor has been selected by a competitive process that includes public announcement of the availability of funds for such grant or contract, general criteria for the selection of recipients or contractors, and a description of the application process and application review process.

(Pub. L. 93-113, title I, §122, Oct. 1, 1973, 87 Stat. 401; Pub. L. 94-293, §3(a), May 27, 1976, 90 Stat.

525; Pub. L. 96-143, §7(a)-(c), Dec. 13, 1979, 93 Stat. 1075, 1076; Pub. L. 98-288, §§12, 30(b)(2), May 21, 1984, 98 Stat. 192, 197; Pub. L. 99-551, §§6(a), 10(d), (i)(4), Oct. 27, 1986, 100 Stat. 3074, 3077, 3078; Pub. L. 101-204, title III, §301, Dec. 7, 1989, 103 Stat. 1813; Pub. L. 103-82, title III, §331, Sept. 21, 1993, 107 Stat. 903.)

AMENDMENTS

1993—Pub. L. 103-82 amended section generally, substituting present provisions for provisions which related to: in subsec. (a), youthful offender incarceration alternatives, veterans educational opportunities, drug abusers counseling, assistance to victims of domestic violence, periods of service, and identification of segments of poverty community which could benefit from volunteer and other antipoverty efforts; in subsec. (b), assignment of volunteers, and terms and conditions; in subsec. (c), allowances, supports, services, and stipends for part-time and full-time volunteers; in subsec. (d), establishment of criteria for grants and contracts, competitive process, maximum amount, and multiple grants or contracts; and in subsec. (e), prohibition on use of funds for certain State offices.

1989—Subsec. (d)(3), (4). Pub. L. 101-204, §301(a), added par. (3) and redesignated former par. (3) as (4).

Subsec. (e). Pub. L. 101-204, §301(b), added subsec. (e).

1986—Subsec. (a)(1). Pub. L. 99-551, §§6(a), 10(d), inserted “(including Indian reservations)” and substituted “offenders, a program” and “veterans, a program” for “offenders; a program” and “veterans; a program”, respectively.

Subsec. (b). Pub. L. 99-551, §10(i)(4), substituted “the Director” for “he” before “shall prescribe”.

1984—Subsec. (c)(2)(B). Pub. L. 98-288, §30(b)(2), substituted “4953(f)” for “4953(d)”.

Subsec. (d). Pub. L. 98-288, §12, added subsec. (d).

1979—Subsec. (a). Pub. L. 96-143, §7(a), (b), designated existing provisions as par. (1), inserted “in urban and rural areas” after “volunteer programs” and “, a program of assistance to victims of domestic violence, a program to provide technical and management assistance to distressed communities, a program designed to provide personal and group financial counseling to low-income and fixed-income individuals (utilizing volunteers with specialized or technical expertise), and a Helping Hand program” after “drug abusers”, inserted provisions authorizing the Director to provide for the recruitment, selection, and training of volunteers in carrying out programs authorized by this part, and added par. (2).

Subsec. (c). Pub. L. 96-143, §7(c), inserted provisions permitting support payments to part-time volunteers enrolled for at least 20 hours of service per week for at least 26 consecutive weeks and provisions applying sections 4953(b), (d), 4954(d), and 4955(a) of this title to full-time full-year volunteers whose service is similar in character to that of VISTA volunteers.

1976—Subsec. (c). Pub. L. 94-293 inserted provision authorizing the Director to undertake and support volunteer service programs, and recruit, etc., volunteers to carry out this part.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Oct. 1, 1993, see section 392 of Pub. L. 103-82, set out as a note under section 4951 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-551 effective Oct. 1, 1986, except as otherwise provided, see section 11 of Pub. L. 99-551, set out as an Effective Date note under section 4950 of this title.

REPORT ON PROGRAMS, ACTIVITIES, GRANTS, AND CONTRACTS RESULTING FROM AMENDMENT BY SECTION 7 OF PUB. L. 96-143

Section 7(d) of Pub. L. 96-143 directed Director of ACTION Agency, not later than 18 months after funds

were first made available to carry out activities under the amendments to this part made by section 7 of Pub. L. 96-143, to submit to appropriate committees of Congress a report on programs, activities, grants, and contracts so carried out.

EXECUTIVE ORDER NO. 12034

Ex. Ord. No. 12034, Jan. 10, 1978, 43 F.R. 1917, which provided for appointment of ACTION Community Volunteers to the Civilian Career Service, was revoked by Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617.

§ 4993. Technical and financial assistance

The Director may provide technical and financial assistance to Federal agencies, State and local governments and agencies, private non-profit organizations, employers, and other private organizations that utilize or desire to utilize volunteers in carrying out the purpose of this part.

(Pub. L. 93-113, title I, §123, as added Pub. L. 94-293, §3(b)(1), May 27, 1976, 90 Stat. 525; amended Pub. L. 98-288, §13, May 21, 1984, 98 Stat. 192; Pub. L. 101-204, title VI, §602, Dec. 7, 1989, 103 Stat. 1820; Pub. L. 103-82, title III, §332, Sept. 21, 1993, 107 Stat. 903.)

AMENDMENTS

1993—Pub. L. 103-82 amended section generally, substituting single sentence authorizing technical and financial assistance for former subsections. (a) and (b) which contained similar general authority and provisions detailing use of the general authority.

1989—Pub. L. 101-204 designated existing provisions as subsec. (a) and added subsec. (b).

1984—Pub. L. 98-288 substituted “(2) technical assistance and training programs, including the creation or expansion of private capabilities where possible and the development of voluntary organizations, with particular emphasis on low-income, minority, and community-based groups, or (3)” for “or (2)”.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Oct. 1, 1993, see section 392 of Pub. L. 103-82, set out as a note under section 4951 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4992 of this title.

§ 4994. Repealed. Pub. L. 103-82, title III, § 333(1), Sept. 21, 1993, 107 Stat. 903

Section, Pub. L. 93-113, title I, §124, as added Pub. L. 99-570, title IV, §4301(1), Oct. 27, 1986, 100 Stat. 3207-152; amended Pub. L. 100-690, title III, §3401(a)(1), Nov. 18, 1988, 102 Stat. 4252; Pub. L. 101-204, title III, §302, title VI, §603, Dec. 7, 1989, 103 Stat. 1813, 1820, related to drug abuse education and prevention services and activities.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1993, see section 392 of Pub. L. 103-82, set out as an Effective Date of 1993 Amendment note under section 4951 of this title.

§ 4995. Literacy challenge grants

(a) Authorization of grants

The Director is authorized to award challenge grants to eligible public agencies and private organizations to pay the Federal share of the costs of establishing, operating or expanding community or employee literacy programs or projects that include the use of full-time or part-time volunteers as one method of addressing illiteracy.

(b) Application

Each eligible organization desiring a grant under this section shall submit to the Corporation an application in such form and accompanied by such information as the Director may reasonably require. Each such application shall—

(1) describe the activities for which assistance is sought,

(2) contain assurances that the eligible organization will provide from non-Federal sources the non-Federal share of the cost of the program or project,

(3) provide assurances, satisfactory to the Director, that the literacy project will be operated in cooperation with other public and private agencies and organizations interested in, and qualified to, combat illiteracy in the community where the project is to be conducted, and

(4) contain such other information and assurances as the Director may reasonably require.

(c) Federal share

(1)(A) The Federal share of the cost of a program or project authorized by this section administered by a public agency, a nonprofit organization other than an organization described in paragraph (2), or a private, for-profit organization shall not exceed—

(i) 80 percent in the first fiscal year;

(ii) 70 percent in the second fiscal year; and

(iii) 60 percent in the third fiscal year.

(B) The non-Federal share paid by a private, for-profit organization shall be in cash.

(2) The Federal share of the cost of a program or project administered by a nonprofit or community-based organization shall not exceed—

(A) 90 percent in the first fiscal year;

(B) 80 percent in the second fiscal year; and

(C) 70 percent in the third fiscal year.

(3) The non-Federal share provided by a public agency or a nonprofit or community-based organization may be provided in cash, or in kind, fairly evaluated, and may include the use of plant, equipment, and services.

(Pub. L. 93-113, title I, §124, formerly §125, as added Pub. L. 102-73, title VII, §701(a)(1), July 25, 1991, 105 Stat. 358; renumbered §124 and amended Pub. L. 103-82, title III, §333(2), title IV, §405(a)(5), Sept. 21, 1993, 107 Stat. 903, 920.)

PRIOR PROVISIONS

A prior section 124 of Pub. L. 93-113 was classified to section 4994 of this title prior to repeal by Pub. L. 103-82.

AMENDMENTS

1993—Subsec. (b). Pub. L. 103-82, §405(a)(5), substituted “the Corporation” for “the ACTION Agency” in introductory provisions.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 405(a)(5) of Pub. L. 103-82 effective Apr. 4, 1994, see section 406(b) of Pub. L. 103-82, set out as a note under section 8332 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5081 of this title.

SUBCHAPTER II—NATIONAL SENIOR
VOLUNTEER CORPS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 3013, 5056, 5058, 5061, 5081, 12592 of this title.

§ 5000. Statement of purposes

It is the purpose of—

(1) this subchapter to provide for National Senior Volunteer Corps, comprised of the Retired and Senior Volunteer Program, the foster grandparent program, and the senior companion program, that empower older individuals to contribute to their communities through volunteer service, enhance the lives of the volunteers and those whom they serve, and provide communities with valuable services;

(2) part A of this subchapter, the Retired and Senior Volunteer Program, to utilize the vast talents of older individuals willing to share their experiences, abilities, and skills in responding to a wide variety of community needs;

(3) part B of this subchapter, the foster grandparent program, to afford low-income older individuals an opportunity to provide supportive, individualized services to children with exceptional or special needs; and

(4) part C of this subchapter, the senior companion program, to afford low-income older individuals the opportunity to provide personal assistance and companionship to other older individuals through volunteer service.

(Pub. L. 93-113, title II, § 200, as added Pub. L. 101-204, title V, § 501, Dec. 7, 1989, 103 Stat. 1815; amended Pub. L. 103-82, title III, §§ 341(b)(1), 342(b), Sept. 21, 1993, 107 Stat. 904.)

AMENDMENTS

1993—Par. (1). Pub. L. 103-82, §§ 341(b)(1), 342(b), substituted “National Senior Volunteer Corps” for “Older American Volunteer Programs” and “Retired and Senior Volunteer Program” for “retired senior volunteer program”.

Par. (2). Pub. L. 103-82, § 342(b), substituted “Retired and Senior Volunteer Program” for “retired senior volunteer program”.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Oct. 1, 1993, see section 392 of Pub. L. 103-82, set out as a note under section 4951 of this title.

PART A—RETIRED AND SENIOR VOLUNTEER
PROGRAM

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 5000, 5011, 5021, 5025, 5027, 5028, 5061, 5082, 12651e of this title.

§ 5001. Grants and contracts for volunteer service projects

(a) Approval of projects; rules and regulations

In order to help retired individuals and working older individuals to avail themselves of opportunities for volunteer service in their community, the Director is authorized to make grants to State agencies (established or designated pursuant to section 3025(a)(1) of this title) or grants to or contracts with other public

and nonprofit private agencies and organizations to pay part or all of the costs for the development or operation, or both, of volunteer service projects under this section, if the Director determines, in accordance with regulations the Director shall prescribe, that—

(1) volunteers will not be reimbursed for other than transportation, meals, and other out-of-pocket expenses incident to the provision of services under this part;

(2) only individuals 55 years of age or older will be enrolled, and individuals 60 years of age or older will be given priority for enrollment, as volunteers to provide services under this part (except for administrative purposes), and such services will be performed in the community where such individuals reside or in nearby communities either (A) on publicly owned and operated facilities or projects, or (B) on local projects sponsored by private nonprofit organizations (other than political parties), other than projects involving the construction, operation, or maintenance of so much of any facility used or to be used for sectarian instruction or as a place for religious worship;

(3) the project includes such short-term training as may be necessary to make the most effective use of the skills and talents of participating volunteers and individuals, and provide for the payment of the reasonable expenses of such volunteers while undergoing such training; and

(4) the project is being established and will be carried out with the advice of persons competent in the field of service involved, and of persons with interest in and knowledge of the needs of older persons.

(b) Proportion of required local contribution; exceptions

In no event shall the required proportion of the local contribution (including in-kind contributions) for a grant or contract made under this section be more than 10 per centum in the first year of assistance under this section, 20 per centum in the second such year, and 30 per centum in any subsequent such years: *Provided, however,* That the Director may make exceptions in cases of demonstrated need, determined (in accordance with regulations which the Director shall prescribe) on the basis of the financial capability of a particular recipient of assistance under this section, to permit a lesser local contribution proportion than any required contribution proportion established by the Director in generally applicable regulations.

(c) Conditions upon award of grant or contract

The Director shall not award any grant or contract under this part for a project in any State to any agency or organization unless, if such State has a State agency established or designated pursuant to section 3025(a)(1) of this title, such agency itself is the recipient of the award or such agency has been afforded at least forty-five days in which to review the project application and make recommendations thereon.

(d) Volunteer service as employment

Notwithstanding any other provision of law, volunteer service under this part shall not be

deemed employment for any purpose which the Director finds is not fully consistent with the provisions and in furtherance of the purpose of this part.

(Pub. L. 93-113, title II, §201, Oct. 1, 1973, 87 Stat. 401; Pub. L. 93-351, §4, July 12, 1974, 88 Stat. 357; Pub. L. 95-478, title IV, §402(a), Oct. 18, 1978, 92 Stat. 1556; Pub. L. 98-288, §14(a), (b), May 21, 1984, 98 Stat. 192; Pub. L. 101-204, title IX, §902(2), Dec. 7, 1989, 103 Stat. 1826; Pub. L. 103-82, title III, §343, Sept. 21, 1993, 107 Stat. 904.)

AMENDMENTS

1993—Subsec. (a). Pub. L. 103-82, §343(1), substituted “retired individuals and working older individuals” for “retired persons” in introductory provisions.

Subsec. (a)(2). Pub. L. 103-82, §343(2), substituted “55 years of age or older” for “aged sixty or over” and inserted “, and individuals 60 years of age or older will be given priority for enrollment,” after “will be enrolled”.

1989—Subsec. (a). Pub. L. 101-204, §902(2)(A), substituted “projects” for “programs” in introductory provisions.

Subsec. (a)(3), (4). Pub. L. 101-204, §902(2)(B), substituted “project” for “program”.

1984—Subsec. (a). Pub. L. 98-288, §14(a), substituted “the Director” for “he” in two places in provisions before par. (1).

Subsec. (b). Pub. L. 98-288, §14(b), substituted “and 30 per centum in any subsequent such years” for “30 per centum in the third such year, 40 per centum in the fourth such year, and 50 per centum in any subsequent such years”.

1978—Subsec. (a). Pub. L. 95-478, §402(a)(1), substituted reference to section “3025(a)(1)” for “3024(a)(1)” of this title.

Subsec. (c). Pub. L. 95-478, §402(a)(1), (2), substituted reference to section “3025(a)(1)” for “3024(a)(1)” of this title and decreased period for review to “forty-five” from “sixty” days.

Subsec. (d). Pub. L. 95-478, §402(a)(3), added subsec. (d).

1974—Subsecs. (b), (c). Pub. L. 93-351 added subsec. (b) and redesignated former subsec. (b) as (c).

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Oct. 1, 1993, see section 392 of Pub. L. 103-82, set out as a note under section 4951 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-478 effective at close of Sept. 30, 1978, see section 504 of Pub. L. 95-478, set out as a note under section 3001 of this title.

AGING RESOURCE SPECIALISTS FOR COORDINATION OF NATIONAL OLDER AMERICAN VOLUNTEER PROGRAMS WITH STATE AND COMMUNITY PROGRAMS ON AGING AND NUTRITION PROGRAMS FOR ELDERLY; DESIGNATION; DUTIES; DEFINITIONS

Pub. L. 94-135, title II, §205(c), Nov. 28, 1975, 89 Stat. 727, as amended by Pub. L. 103-82, title III, §341(b)(4), title IV, §405(i), Sept. 21, 1993, 107 Stat. 904, 921, provided that:

“(1) In order to provide maximum coordination between programs carried out under title III and title VII of the Older Americans Act of 1965 (42 U.S.C. 3021 et seq.; 42 U.S.C. 3045 et seq.) and National Senior Volunteer Corps programs carried out under title II of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 5001 et seq.) [42 U.S.C. 5000 et seq.], in order to enhance the effectiveness of the support provided to such National Senior Volunteer Corps programs by the Corporation for National and Community Service, the Chief Executive Officer of the Corporation shall designate an aging resource specialist with respect to programs carried out in each State under title II of the Domestic Volunteer Service Act of 1973 [this subchapter].

“(2)(A) Each aging resource specialist designated under paragraph (1) shall be qualified to serve in such capacity by appropriate experience and training, and shall be stationed in a State office of the Corporation.

“(B) The primary responsibility of each aging resource specialist shall be—

“(i) to support programs carried out under title II of the Domestic Volunteer Service Act of 1973 [this subchapter] in any State or other jurisdiction served by the State office involved; and

“(ii) to seek to coordinate such programs with programs carried out under title III and title VII of the Older Americans Act of 1965 [sections 3021 et seq. and 3045 et seq. of this title] in any such State or other jurisdiction.

“(3) For purposes of this subsection—

“(A) the term ‘Corporation’ means the Corporation for National and Community Service established by section 191 of the National and Community Service Act of 1990 [42 U.S.C. 12651].[:]

“(B) the term ‘primary responsibility’ means the devotion of more than one-half of regular working hours to the performance of duties described in paragraph (2)(B); and

“(C) the term ‘State’ means the several States, the District of Columbia, the Virgin Islands, Puerto Rico, Guam, American Samoa, and the Trust Territory of the Pacific Islands.”

[For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.]

PART B—FOSTER GRANDPARENT PROGRAM

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 5000, 5013, 5021, 5025, 5027, 5028, 5056, 5061, 5082, 12651e, 12653 of this title.

§ 5011. Grants and contracts for individual service projects

(a) Foster Grandparent projects; amount

The Director is authorized to make grants to or contracts with public and nonprofit private agencies and organizations to pay part or all of the cost of development and operation of projects (including direct payments to individuals serving under this part) designed for the purpose of providing opportunities for low-income persons aged sixty or over to provide supportive person-to-person services in health, education, welfare, and related settings to children having exceptional needs. Such services may include services by individuals serving as foster grandparents to children who are individuals with disabilities, who have chronic health conditions, who are receiving care in hospitals, who are residing in homes for dependent and neglected children, or who are receiving services provided by day care centers, schools, early intervention programs under part H¹ of the Individuals with Disabilities Education Act (20 U.S.C. 1471 et seq.), Head Start agencies under the Head Start Act [42 U.S.C. 9831 et seq.], or any of a variety of other programs, establishments, and institutions providing services for children with special or exceptional needs. Individual foster grandparents may provide person-to-person services to one or more children, depending on the needs of the project and local site. The Director may approve assistance in excess of 90 per centum of the costs of the development and operation of such projects only if the

¹ See References in Text note below.

Director determines, in accordance with regulations the Director shall prescribe establishing objective criteria, that such action is required in furtherance of the purpose of this section. Provision for such assistance shall be effective as of September 19, 1972. In the case of any project with respect to which, prior to such date, a grant or contract has been made under section 3044b(a)¹ of this title or with respect to any project under the Foster Grandparent program in effect prior to September 17, 1969, contributions in cash or in kind from the Bureau of Indian Affairs, Department of the Interior, toward the cost of the project may be counted as part of the cost thereof which is met from non-Federal sources.

(b) Person-to-person services to children in an individual service project by public or private nonprofit agency; authority and criteria for determinations; mutual agreements between parties

(1) Any public or private nonprofit agency or organization responsible for providing person-to-person services to a child in a project carried out under subsection (a) of this section shall have the exclusive authority to determine, pursuant to the provisions of paragraph (2) of this subsection—

(A) which children may receive supportive person-to-person services under such project; and

(B) the period of time during which such services shall be continued in the case of each individual child.

(2) In the event that such an agency or organization determines that it is in the best interests of a mentally retarded child receiving, and of a particular foster grandparent providing, services in such a project, such relationship may be continued after the child reaches the chronological age of 21: *Provided*, That such child was receiving such services prior to attaining the chronological age of 21. If the particular foster grandparent subject to the determination under this paragraph becomes unavailable to serve after such determination is made, the agency or organization may select another foster grandparent.

(3) Any determination made by a public or nonprofit private agency or organization under paragraphs (1) and (2) of this subsection shall be made through mutual agreement by all parties involved with respect to the provision of services to the child involved.

(c) "Child" and "children" defined

For the purposes of this section, the terms "child" and "children" mean any individual or individuals who are less than 21 years of age.

(d) Domestic Volunteer Service; allowances, stipends, and other support

The Director, in accordance with regulations the Director shall prescribe, may provide to low-income persons serving as volunteers under this part, such allowances, stipends, and other support as the Director determines are necessary to carry out the purpose of this part. Any stipend or allowance provided under this section shall not be less than \$2.45 per hour on and after October 1, 1993, and shall be adjusted once prior to December 31, 1997, to account for inflation, as

determined by the Director and rounded to the nearest five cents, except that (1) such stipend or allowance shall not be increased as a result of an amendment made to this sentence unless the funds appropriated for carrying out this part are sufficient to maintain for the fiscal year in question a number of participants to serve under this part at least equal to the number of such participants serving during the preceding fiscal year, and (2) in the event that sufficient appropriations for any fiscal year are not available to increase any such stipend or allowance provided to the minimum hourly rate specified in this sentence, the Director shall increase the stipend or allowance to such amount as appropriations for such year permit consistent with clause (1) of this exception. In establishing the amount of, and the effective date for, such adjustment, the Director, in consultation with the State Commissions on National and Community Service (as established under section 12638 of this title) and the heads of the State offices established under section 12651f of this title, shall consider the effect such adjustment will have on the ability of non-federally funded volunteer programs similar to the programs under this subchapter to maintain their current level of volunteer hours.

(e) "Low-income person" and "person of low income" defined

For purposes of this part, the terms "low-income person" and "person of low income" mean—

(1) any person whose income is not more than 125 per centum of the poverty line defined in section 9902(2) of this title and adjusted by the Director in the manner described in such section; and

(2) any person whose income is not more than 100 per centum of such poverty line, as so adjusted and determined by the Director after taking into consideration existing poverty guidelines as appropriate to local situations.

Persons described in paragraph (2) shall be given special consideration for participation in projects under this part.

(f) Persons entitled to serve as volunteers; application of regulations to volunteers; equal treatment to all volunteers by recipients of grants; conditions of grants; use of funds; payment of costs

(1)(A) Except as provided in subparagraphs (B) and (C), individuals who are not low-income persons may serve as volunteers under this part, in accordance with such regulations as the Director shall issue, if such individuals serve without receiving any allowance, stipend, or other financial support under this part except reimbursement for transportation, meals, and out-of-pocket expenses incident to serving under this part.

(B) The regulations issued by the Director to carry out this part (other than any regulations relating to allowances, stipends, and other financial support authorized by subsection (d) of this section to be paid under this part to low-income persons) shall apply to all volunteers under this part, without regard to whether such volunteers are eligible to receive a stipend under subsection (d) of this section.

(C) Individuals who are not low-income persons may not serve as volunteers under this part in any community in which there are volunteers serving under part A of this subchapter unless such individuals have been referred previously for possible placement as volunteers under part A of this subchapter and such placement did not occur.

(2)(A) Except as provided in subparagraph (B), each recipient of a grant or contract to carry out a project under this part shall give equal treatment to all volunteers who participate in such project, without regard to whether such volunteers are eligible to receive a stipend under subsection (d) of this section.

(B) An individual who is not a low-income person may not become a volunteer under this part if allowing such individual to become a volunteer under this part would prevent a low-income individual from becoming a volunteer under this part or would displace a low-income person from being such a volunteer.

(3) The Director may not take into consideration or require as a condition of receiving a grant or contract to carry out a project under this part, any applicant for such grant or contract—

(A) to accept or recruit individuals who are not low-income persons to serve as volunteers under this part; or

(B) to solicit locally generated contributions, in cash or in kind, to support such individuals.

The Director may not coerce any applicant for, or recipient of, such grant or contract to engage in conduct described in subparagraph (A) or (B).

(4) Funds appropriated to carry out this part may not be used to pay any cost, including any administrative cost, incurred in connection with volunteers under this part who do not receive a stipend under subsection (d) of this section. Such cost incurred with respect to a volunteer may be paid with—

(A) funds received by the Director as unrestricted gifts;

(B) funds received by the Director as gifts to pay such cost;

(C) funds contributed by such volunteer; or

(D) locally generated contributions in excess of the amount required to be contributed under subsection (a) of this section, in the discretion of the recipient of a grant or contract under such subsection.

(Pub. L. 93-113, title II, §211, Oct. 1, 1973, 87 Stat. 402; Pub. L. 94-135, title II, §205(b)(1), (2), Nov. 28, 1975, 89 Stat. 727; Pub. L. 94-293, §7, May 27, 1976, 90 Stat. 526; Pub. L. 95-478, title IV, §402(b), Oct. 18, 1978, 92 Stat. 1557; Pub. L. 97-35, title VI, §608(b), Aug. 13, 1981, 95 Stat. 487; Pub. L. 98-288, §14(c), May 21, 1984, 98 Stat. 192; Pub. L. 99-551, §7(a)(1), Oct. 27, 1986, 100 Stat. 3074; Pub. L. 101-204, title V, §§503, 504, Dec. 7, 1989, 103 Stat. 1817; Pub. L. 103-82, title III, §§344, 345, Sept. 21, 1993, 107 Stat. 904, 905.)

REFERENCES IN TEXT

The Individuals with Disabilities Education Act, referred to in subsec. (a), is title VI of Pub. L. 91-230, Apr. 13, 1970, 84 Stat. 175, as amended. Part H of the Act was classified generally to subchapter VIII (§1471 et seq.) of chapter 33 of Title 20, Education, prior to repeal by

Pub. L. 105-17, title II, §203(b), June 4, 1997, 111 Stat. 157, effective July 1, 1998. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

The Head Start Act, referred to in subsec. (a), is subchapter B (§§635-657) of chapter 8 of subtitle A of title VI of Pub. L. 97-35, Aug. 13, 1981, 95 Stat. 499, as amended, which is classified generally to subchapter II (§9831 et seq.) of chapter 105 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9801 of this title and Tables.

Section 3044b of this title, referred to in subsec. (a), related to grants and contracts for Foster Grandparent projects and for services as senior health aides and senior companions, amount of award, method of payment, and exclusion as income of compensation to individual volunteers, was repealed by section 604(a) of Pub. L. 93-113, and is covered by this section and sections 5022 and 5058 of this title.

AMENDMENTS

1993—Subsec. (a). Pub. L. 103-82, §344, struck out “, including services by individuals serving as ‘foster grandparents’ to children receiving care in hospitals, homes for dependent and neglected children, or other establishments providing care for children with special needs” after “having exceptional needs” in first sentence and inserted after first sentence “Such services may include services by individuals serving as foster grandparents to children who are individuals with disabilities, who have chronic health conditions, who are receiving care in hospitals, who are residing in homes for dependent and neglected children, or who are receiving services provided by day care centers, schools, early intervention programs under part H of the Individuals with Disabilities Education Act (20 U.S.C. 1471 et seq.), Head Start agencies under the Head Start Act, or any of a variety of other programs, establishments, and institutions providing services for children with special or exceptional needs. Individual foster grandparents may provide person-to-person services to one or more children, depending on the needs of the project and local site.”

Subsec. (d). Pub. L. 103-82, §345, in second sentence substituted “Any stipend or allowance provided under this section shall not be less than \$2.45 per hour on and after October 1, 1993, and shall be adjusted once prior to December 31, 1997, to account for inflation, as determined by the Director and rounded to the nearest five cents,” for “Any stipend or allowance provided under this subsection shall not be less than \$2.20 per hour until October 1, 1990, \$2.35 per hour during fiscal year 1991, and \$2.50 per hour on and after October 1, 1992,” and inserted sentence at end relating to consideration of effect of adjustment on non-federally funded volunteer programs.

1989—Subsec. (d). Pub. L. 101-204, §503, inserted “until October 1, 1990, \$2.35 per hour during fiscal year 1991, and \$2.50 per hour on and after October 1, 1992” after “\$2.20 per hour” in introductory provisions, substituted “such stipend or allowance shall not be increased as a result of an amendment made” for “no increase in the stipend of allowance shall be made pursuant” in cl. (1), and substituted “the minimum hourly rate specified in this sentence” for “\$2.20 per hour” in cl. (2).

Subsec. (f)(1)(C). Pub. L. 101-204, §504(1), inserted before period at end “unless such individuals have been referred previously for possible placement as volunteers under part A of this subchapter and such placement did not occur”.

Subsec. (f)(3). Pub. L. 101-204, §504(2), inserted “take into consideration or” after “may not”, inserted “or recruit” after “accept” in subpar. (A), and inserted at end “The Director may not coerce any applicant for, or recipient of, such grant or contract to engage in conduct described in subparagraph (A) or (B).”

1986—Subsec. (d). Pub. L. 99-551, §7(a)(1)(A), inserted “low-income” after “may provide to”.

Subsec. (f). Pub. L. 99-551, §7(a)(1)(B), added subsec. (f).

1984—Subsec. (a). Pub. L. 98-288, §14(c)(1), substituted “the Director” for “he” in two places.

Subsec. (b)(2). Pub. L. 98-288, §14(c)(2), inserted at end “If the particular foster grandparent subject to the determination under this paragraph becomes unavailable to serve after such determination is made, the agency or organization may select another foster grandparent.”

Subsec. (d). Pub. L. 98-288, §14(c)(3), substituted “the Director” for “he” in two places and “\$2.20” for “\$2” in two places.

Subsec. (e). Pub. L. 98-288, §14(c)(4), in amending subsec. (e) generally, substituted “poverty line defined in section 9902(2) of this title and adjusted by the Director in the manner described in such section” for “poverty line set forth in section 2971d of this title” and “any person whose income is not more than 100 per centum of such poverty line, as so adjusted and determined by the Director after taking into consideration existing poverty guidelines as appropriate to local situations” for “any person considered a poor or low-income person under section 5061(4) of this title”.

1981—Subsecs. (b) to (f). Pub. L. 97-35, §608(b), struck out subsec. (b) which related to service as senior health aides and senior companions, and redesignated subsecs. (c) to (f) as (b) to (e), respectively.

1978—Subsecs. (e), (f). Pub. L. 95-478 added subsecs. (e) and (f).

1976—Subsecs. (c), (d). Pub. L. 94-293 added subsecs. (c) and (d).

1975—Subsec. (a). Pub. L. 94-135, §205(b)(1), substituted “individuals” for “volunteers” where appearing first and third places and struck out “serve as volunteers to” before “provide supportive person-to-person services”.

Subsec. (b). Pub. L. 94-135, §205(b)(2), substituted “individuals” for “volunteers”.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Oct. 1, 1993, see section 392 of Pub. L. 103-82, set out as a note under section 4951 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-551 effective Oct. 1, 1986, except as otherwise provided, see section 11 of Pub. L. 99-551, set out as an Effective Date note under section 4950 of this title.

Section 7(a)(2) of Pub. L. 99-551 provided that: “Section 211(f)(3) of the Domestic Volunteer Service Act of 1973 [subsec. (f)(3) of this section], as added by paragraph (1), shall apply with respect to grants and contracts made under section 211(a) of such Act before the date of the enactment of this Act [Oct. 27, 1986].”

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-478 effective at close of Sept. 30, 1978, see section 504 of Pub. L. 95-478, set out as a note under section 3001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5013, 12653 of this title.

§ 5012. Repealed. Pub. L. 103-82, title III, § 346, Sept. 21, 1993, 107 Stat. 905

Section, Pub. L. 93-113, title II, §212, Oct. 1, 1973, 87 Stat. 402; Pub. L. 94-135, title II, §205(b)(3), Nov. 28, 1975, 89 Stat. 727; Pub. L. 95-478, title IV, §402(c), Oct. 18, 1978, 92 Stat. 1557; Pub. L. 101-204, title IX, §902(4), Dec. 7, 1989, 103 Stat. 1826, set forth conditions of grants and contracts and defined “community action agency”.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1993, see section 392 of Pub. L. 103-82, set out as an Effective Date of 1993 Amendment note under section 4951 of this title.

PART C—SENIOR COMPANION PROGRAM

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 5000, 5021, 5025, 5027, 5028, 5056, 5061, 5082, 12651e of this title.

§ 5013. Grants and contracts for volunteer service projects

(a) Costs of project development and operation

The Director is authorized to make grants to or contracts with public and nonprofit private agencies and organizations to pay part or all of the cost of development and operation of projects (including direct payments to individuals serving under this part in the same manner as provided in section 5011(a) of this title) designed for the purpose of providing opportunities for low-income persons aged 60 or over to serve as “senior companions” to persons with exceptional needs. Senior companions may provide services designed to help older persons requiring long-term care, including services to persons receiving home health care, nursing care, home-delivered meals or other nutrition services; services designed to help persons deinstitutionalized from mental hospitals, nursing homes, and other institutions; and services designed to assist persons having developmental disabilities and other special needs for companionship.

(b) Application of other laws

Subsections (d), (e), and (f) of section 5011 of this title, and such other provisions of part B as the Director determines to be necessary, shall apply to this part, except that for purposes of this part any reference in such subsections and such provisions to part B shall be deemed to be a reference to this part.

(c) Senior companion projects to assist homebound elderly

(1) The Director is authorized to make grants or contracts after¹ subsection (a) of this section for senior companion projects to assist homebound elderly individuals to remain in their own homes and to enable institutionalized elderly individuals to return to home care settings.

(2)(A) The Director is authorized to recruit, subject to subparagraph (B), senior companion volunteer trainers who on the basis of experience (such as, doctors, nurses, home economists, social workers) will be used to train senior companion volunteers to participate in and monitor initial and continuing needs assessments and appropriate in-home services for senior companion volunteer recipients. The needs assessments and in-home services shall be coordinated with and supplement existing community based home health and long-term care systems. The Director may also use senior companion volunteer leaders, who on the basis of experience as volunteers, special skills, and demonstrated leadership abilities may spend time in the program (in addition to their regular assignment) to assist newer senior companion volunteers in performing their assignments and in coordinating activities of such volunteers.

(B) Senior companion volunteer trainers recruited under subparagraph (A) of this paragraph shall not be paid stipends.

¹ So in original. Probably should be “under”.

(Pub. L. 93-113, title II, §213, as added Pub. L. 97-35, title VI, §608(c)(2), Aug. 13, 1981, 95 Stat. 487; amended Pub. L. 98-288, §15, May 21, 1984, 98 Stat. 193; Pub. L. 99-551, §§7(b), 10(c)(1), Oct. 27, 1986, 100 Stat. 3075, 3077; Pub. L. 101-204, title IX, §902(5), Dec. 7, 1989, 103 Stat. 1826; Pub. L. 103-82, title III, §347, Sept. 21, 1993, 107 Stat. 905.)

AMENDMENTS

1993—Subsec. (c)(3). Pub. L. 103-82 struck out par. (3) which required an evaluation of, and report on, impact of senior companion projects to assist homebound elderly.

1989—Subsec. (c)(1). Pub. L. 101-204 inserted “after subsection (a) of this section” after “grants or contracts”, and “individuals” after “elderly” in two places.

1986—Pub. L. 99-551 inserted “for volunteer service projects” in section catchline and amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “The provisions of section 5011(d) of this title and section 5011(e) of this title and such other provisions of part B as the Director determines to be necessary shall apply to the provisions of this part.”

1984—Subsec. (c). Pub. L. 98-288 added subsec. (c).

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Oct. 1, 1993, see section 392 of Pub. L. 103-82, set out as a note under section 4951 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-551 effective Oct. 1, 1986, except as otherwise provided, see section 11 of Pub. L. 99-551, set out as an Effective Date note under section 4950 of this title.

PART D—GENERAL PROVISIONS

§ 5021. Promotion of National Senior Volunteer Corps

(a)(1) In carrying out this subchapter, the Director shall consult with the Departments of Labor and Health and Human Services, and any other Federal agencies administering relevant programs with a view to achieving optimal coordination with such other programs, and shall promote the coordination of projects under this subchapter with other public or private programs or projects carried out at State and local levels. Such Federal agencies shall cooperate with the Director in disseminating information about the availability of assistance under this subchapter and in promoting the identification and interest of low-income and other older persons whose services may be utilized in projects under this subchapter.

(2) To the maximum extent practicable, the Director shall enter into agreements with—

(A) the Department of Health and Human Services to—

(i) involve retired and senior volunteers, and foster grandparents, in Head Start programs;

(ii) involve retired and senior volunteers, and senior companions, in providing services authorized by title III of the Older Americans Act of 1965 [42 U.S.C. 3021 et seq.]; and

(iii) promote the recognition of such volunteers who are qualified to provide in-home services for reimbursement under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.] for providing such services;

(B) the Department of Education to promote intergenerational tutoring and mentoring for at-risk children; and

(C) the Environmental Protection Agency to support conservation efforts.

(b)(1) In carrying out this subchapter, the Director shall encourage and facilitate the efforts of private organizations to promote the programs established in parts A, B, and C of this subchapter and the involvement of older individuals as volunteers in such programs.

(2) The Director shall take appropriate actions to ensure that special efforts are made to publicize the programs established in parts A, B, and C of this subchapter, in order to facilitate recruitment efforts, to encourage greater participation of volunteers, and to emphasize the value of volunteering to the health and well-being of volunteers and the communities of such volunteers. Such actions shall include informing recipients of grants and contracts under this subchapter of all informational materials available from the Director.

(3) From funds appropriated under section 5082 of this title, the Director shall expend not less than \$375,000 in each fiscal year to carry out paragraph (2).

(Pub. L. 93-113, title II, §221, Oct. 1, 1973, 87 Stat. 403; Pub. L. 96-143, §18(b), Dec. 13, 1979, 93 Stat. 1083; Pub. L. 97-35, title VI, §608(f)(2), Aug. 13, 1981, 95 Stat. 488; Pub. L. 101-204, title V, §505, Dec. 7, 1989, 103 Stat. 1817; Pub. L. 103-82, title III, §§341(b)(2), 348, Sept. 21, 1993, 107 Stat. 904, 905.)

REFERENCES IN TEXT

The Older Americans Act of 1965, referred to in subsec. (a)(2)(A)(ii), is Pub. L. 89-73, July 14, 1965, 79 Stat. 218, as amended. Title III of the Act is classified generally to subchapter III (§3021 et seq.) of chapter 35 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

The Social Security Act, referred to in subsec. (a)(2)(A)(iii), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XVIII of the Act is classified generally to subchapter XVIII (§1395 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

AMENDMENTS

1993—Pub. L. 103-82, §341(b)(2), substituted “National Senior Volunteer Corps” for “older American volunteer programs” in section catchline.

Subsec. (a). Pub. L. 103-82, §348(a), designated existing provisions as par. (1) and added par. (2).

Subsec. (b)(3). Pub. L. 103-82, §348(b), substituted “\$375,000” for “\$250,000”.

1989—Pub. L. 101-204 substituted “Promotion of older American volunteer” for “Coordination with other Federal” in section catchline, designated existing provisions as subsec. (a), and added subsec. (b).

1981—Pub. L. 97-35 substituted “Health and Human Services” for “Health, Education, and Welfare” and struck out reference to Community Services Administration.

1979—Pub. L. 96-143 substituted “Community Services Administration” for “Office of Economic Opportunity”.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Oct. 1, 1993, see section 392 of Pub. L. 103-82, set out as a note under section 4951 of this title.

§ 5022. Payments; adjustments; advances or reimbursement; installments; conditions

Payments under this subchapter pursuant to a grant or contract may be made (after necessary adjustment, in the case of grants, on account of previously made overpayments or underpayments) in advance or by way of reimbursement, in such installments and on such conditions, as the Director may determine.

(Pub. L. 93-113, title II, §222, Oct. 1, 1973, 87 Stat. 403.)

§ 5023. Minority group participation

The Director shall take appropriate steps to insure that special efforts are made to recruit, select, and assign qualified individuals sixty years and older from minority groups to serve as volunteers under this subchapter.

(Pub. L. 93-113, title II, §223, Oct. 1, 1973, 87 Stat. 404.)

§ 5024. Use of locally generated contributions in National Senior Volunteer Corps

Whenever locally generated contributions made to National Senior Volunteer Corps projects under this subchapter are in excess of the amount required by the Director, the Director may not restrict the manner in which such contributions are expended if expenditures from locally generated contributions are not inconsistent with the provisions of this chapter.

(Pub. L. 93-113, title II, §224, as added Pub. L. 98-288, §16(a), May 21, 1984, 98 Stat. 194; amended Pub. L. 99-551, §10(b)(1), Oct. 27, 1986, 100 Stat. 3077; Pub. L. 101-204, title IX, §902(6), Dec. 7, 1989, 103 Stat. 1826; Pub. L. 103-82, title III, §341(b)(3), Sept. 21, 1993, 107 Stat. 904; Pub. L. 103-304, §3(b)(9), Aug. 23, 1994, 108 Stat. 1568.)

AMENDMENTS

1994—Pub. L. 103-304 substituted “National Senior Volunteer Corps projects” for “volunteer projects for older Americans”.

1993—Pub. L. 103-82 amended section catchline and in text directed substitution of “National Senior Volunteer Corps projects” for “volunteer projects for Older Americans”, which could not be executed because the phrase “volunteer projects for Older Americans” did not appear in text.

1989—Pub. L. 101-204 substituted “projects” for “programs”.

1986—Pub. L. 99-551 amended directory language of Pub. L. 98-288 to correct an error, and did not involve any change in text.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Oct. 1, 1993, see section 392 of Pub. L. 103-82, set out as a note under section 4951 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-551 effective Oct. 1, 1986, except as otherwise provided, see section 11 of Pub. L. 99-551, set out as an Effective Date note under section 4950 of this title.

§ 5025. Programs of national significance

(a) Program grants for national problems of local concern; minimum amounts available; scope; implementation

(1) With not less than one-third of the funds made available under subsection (d) of this sec-

tion in each fiscal year, the Director shall make grants under the programs authorized in parts A, B, and C of this subchapter to support programs that address national problems of local concern.

(2) Except as provided in paragraph (3), the Director may make such grants—

(A) under the program authorized in part A of this subchapter, to support programs that address the national problems specified in subsection (b) of this section;

(B) under the program authorized in part B of this subchapter, to support programs that address the national problems specified in subsection (b) of this section, other than paragraphs (10), (12), (15), and (16) of such subsection; and

(C) under the program authorized in part C of this subchapter, to support programs that address the national problems referred to in paragraphs (1), (2), (5), (6), and (10) of subsection (b) of this section.

(3) Each program for which a grant is received under this subsection shall be carried out in accordance with the requirements applicable to the program under part A, B, or C of this subchapter under which the program supported by such grant is to be carried out.

(b) Program grants for problems concerning Nation

The Director shall make grants under subsection (a) of this section to support one or more of the following programs to address problems that concern the Nation:

(1) Programs that assist individuals with chronic and debilitating illnesses, such as acquired immune deficiency syndrome.

(2) Programs designed to decrease drug and alcohol abuse.

(3) Programs that work with teenage parents.

(4) Programs that match volunteer mentors with youth who need guidance.

(5) Programs that provide adult and school-based literacy assistance.

(6) Programs that provide respite care, including care for frail elderly individuals and for disabled or chronically ill children living at home.

(7) Programs that provide before- and after-school activities that are sponsored by organizations, such as libraries, that serve children of working parents.

(8) Programs that work with boarder babies.

(9) Programs that serve children who are enrolled in child care programs, giving priority to such programs that serve children with special needs.

(10) Programs that provide care to developmentally disabled adults who reside at home and in community-based settings, including programs that, when appropriate, involve older developmentally disabled individuals as volunteers under this subchapter.

(11) Programs that provide volunteer tutors to assist educationally disadvantaged children, on a one-to-one basis, to improve the basic skills of such children.

(12) Programs that address environmental needs.

(13) Programs that reach out to organizations (such as labor unions and profitmaking organizations) not previously involved in addressing national problems of local concern.

(14) Programs that provide for outreach to increase participation of members of ethnic groups who have limited English proficiency.

(15) Programs that support criminal justice activities and juvenile justice activities.

(16) Programs that involve older volunteers working with young people in apprenticeship programs.

(17) Programs that support the community integration of individuals with disabilities.

(18) Programs that provide health, education, and welfare services that augment the activities of State and local agencies, to be carried out in a fiscal year for which the aggregate amount of funds available to such agencies is not less than the annual average aggregate amount of funds available to such agencies for the period of 3 fiscal years preceding such fiscal year.

(c) Eligibility of applicant; supplemental nature of funds available

(1) In order for an applicant to be eligible to receive a grant under subsection (a) of this section, such applicant shall demonstrate to the Director that such grant will be used to increase the total number of volunteers supported by such applicant.

(2) Funds made available under subsection (d) of this section shall be used to supplement and not supplant the number of volunteers engaged in activities under parts A, B, and C of this subchapter (without regard to this section) addressing the problem for which such funds are awarded unless such sums are an extension of funds previously provided under this section.

(d) Amount of funds available for grants

(1) Except as provided in paragraph (2), from the amounts appropriated under subsection (a), (b), (c), or (d) of section 5082 of this title, for each fiscal year there shall be available to the Director such sums as may be necessary to make grants under subsection (a) of this section.

(2) No funds shall be available to the Director to make grants under subsection (a) of this section for a fiscal year unless the amounts appropriated under subsections (a), (b), and (c) of section 5082 of this title and available for such fiscal year to carry out parts A, B, and C of this subchapter (without regard to this section) are sufficient to maintain the number of projects and volunteers funded under parts A, B, and C of this subchapter, respectively, in the preceding fiscal year.

(e) Dissemination of information respecting grants

The Director shall disseminate information on grants that may be made under subsection (a) of this section to field personnel of the Corporation and to community volunteer organizations that request such information.

(Pub. L. 93-113, title II, § 225, as added Pub. L. 101-204, title V, § 502(a), Dec. 7, 1989, 103 Stat. 1815; amended Pub. L. 103-82, title III, § 349, title IV, § 405(a)(6), Sept. 21, 1993, 107 Stat. 906, 920.)

AMENDMENTS

1993—Subsec. (a)(2)(B). Pub. L. 103-82, § 349(1), substituted “paragraphs (10), (12), (15), and (16)” for “paragraph (10)”.

Subsec. (b)(12) to (18). Pub. L. 103-82, § 349(2), added pars. (12) to (18).

Subsec. (c)(1). Pub. L. 103-82, § 349(3), struck out “under this subchapter” after “supported by such applicant”.

Subsec. (d)(1). Pub. L. 103-82, § 349(4), added par. (1) and struck out former par. (1) which read as follows: “Except as provided in paragraph (2), in each fiscal year there shall be available to the Director to make grants under subsection (a) of this section not more than—

“(A) \$6,000,000 from funds appropriated under section 5082(a) of this title;

“(B) \$9,000,000 from funds appropriated under section 5082(b) of this title; and

“(C) \$9,000,000 from funds appropriated under section 5082(c) of this title.”

Subsec. (e). Pub. L. 103-82, § 405(a)(6), substituted “the Corporation” for “the ACTION Agency”.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 349 of Pub. L. 103-82 effective Oct. 1, 1993, see section 392 of Pub. L. 103-82, set out as a note under section 4951 of this title.

Amendment by section 405(a)(6) of Pub. L. 103-82 effective Apr. 4, 1994, see section 406(b) of Pub. L. 103-82, set out as a note under section 8332 of Title 5, Government Organization and Employees.

§ 5026. Adjustments to Federal financial assistance

(a)(1) In determining the amount of Federal financial assistance to be provided under this subchapter to applicants, the Director shall consider the impact of changes in the Consumer Price Index For All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor on the administrative costs of operating the projects for which such assistance will be provided.

(2) The Director shall, to the fullest extent practicable, make appropriate adjustments in the amount referred to in paragraph (1) to ensure the effective administration of such projects.

(b) The Director shall take reasonable actions to inform applicants for such assistance that such adjustments may be available.

(Pub. L. 93-113, title II, § 226, as added Pub. L. 101-204, title V, § 506, Dec. 7, 1989, 103 Stat. 1818; amended Pub. L. 103-82, title III, § 350, Sept. 21, 1993, 107 Stat. 906; Pub. L. 104-66, title II, § 2011, Dec. 21, 1995, 109 Stat. 726.)

AMENDMENTS

1995—Pub. L. 104-66 in subsec. (a), redesignated par. (1)(A) as (1), redesignated par. (1)(B) as (2) and substituted “paragraph (1)” for “subparagraph (A)” after “referred to in”, redesignated former par. (2) as subsec. (b), and struck out former subsec. (b) which read as follows: “The Director shall submit, once every 2 years, to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate, a report on the extent to which adjustments are made under subsection (a) of this section.”

1993—Subsec. (b). Pub. L. 103-82 struck out par. (1) designation before “The Director shall”, substituted “, once every 2 years” for “annually”, and struck out par. (2) which read as follows: “With respect to each of parts A, B, and C of this subchapter, the Director shall include in such report—

“(A) a summary of the number of, and purposes for which, such adjustments are requested by the recipients of grants and contracts under parts A, B, and C of this subchapter, respectively;

“(B) a description of the extent that such requests are accommodated; and

“(C) a statement explaining the decisions made by the Director with respect to the requested adjustments.”

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Oct. 1, 1993, see section 392 of Pub. L. 103-82, set out as a note under section 4951 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5027 of this title.

§ 5027. Multiyear grants or contracts

(a) Maximum period; compliance requirements where period exceeds 1 year; pro rata reductions where funding below prior fiscal year amounts

(1) Subject to paragraph (2) and the availability of funds, the Director may make a grant or enter into a contract under part A, B, or C of this subchapter for a period not to exceed 3 years. Each applicant who receives a grant, or enters into a contract, under such part for a period exceeding 1 year shall comply with such regulations as the Director may issue to require such applicant—

(A) to demonstrate that such applicant is in compliance with such part and with the terms and conditions of such grant or contract; and

(B) to provide information to update the application submitted to obtain such grant or contract.

(2) If the amount appropriated for any fiscal year to carry out part A, B, or C of this subchapter in a period during which multiyear grants or contracts are in effect under such part is less than the amount appropriated to carry out such part in the first fiscal year in such period, then the amounts payable under all such grants and contracts in effect in such period under such part shall be reduced pro rata.

(b) Documentation, etc., by applicant of meaningful administrative savings from multiyear grant or contract

The Director shall require each applicant for a multiyear grant or contract under this section, to document or describe in the application any meaningful administrative savings that will result from such multiyear grant or contract.

(c) Single-year grant or contract

If an applicant does not receive a multiyear grant or contract under this section, the Director shall consider such applicant for a single-year grant or contract.

(d) Projects for multiyear periods to be treated as single-year projects for specified purposes

If the Director approves an application for a contract or grant to carry out a project for a multiyear period as referred to in subsection (a) of this section, the Director shall ensure that such project shall be treated in the same manner as a single-year contract or grant with respect to—

(1) the overall level of funding for such project;

(2) any adjustments to Federal financial assistance that may be available under section 5026 of this title; and

(3) the renewal of funding on the expiration of the term of such contract or grant.

(Pub. L. 93-113, title II, §227, as added Pub. L. 101-204, title V, §507, Dec. 7, 1989, 103 Stat. 1818.)

PART E—DEMONSTRATION PROGRAMS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 5061, 5082 of this title.

§ 5028. Authority of Director

(a) In general

The Director is authorized to make grants to or enter into contracts with public or nonprofit organizations, including organizations funded under part A, B, or C of this subchapter, for the purposes of demonstrating innovative activities involving older Americans as volunteers. The Director may support under this part both volunteers receiving stipends and volunteers not receiving stipends.

(b) Activities

An organization that receives a grant or enters into a contract under subsection (a) of this section may use funds made available through the grant or contract for activities such as—

(1) linking youth groups and older American organizations in volunteer activities;

(2) involving older volunteers in programs and activities different from programs and activities supported in the community; and

(3) testing whether older American volunteer programs may contribute to new objectives or certain national priorities.

(Pub. L. 93-113, title II, §231, as added Pub. L. 103-82, title III, §351, Sept. 21, 1993, 107 Stat. 906.)

EFFECTIVE DATE

Part effective Oct. 1, 1993, see section 392 of Pub. L. 103-82, set out as an Effective Date of 1993 Amendment note under section 4951 of this title.

§ 5028a. Prohibition

The Director may not reduce the activities, projects, or volunteers funded under the other parts of this subchapter in order to support projects under this part.

(Pub. L. 93-113, title II, §232, as added Pub. L. 103-82, title III, §351, Sept. 21, 1993, 107 Stat. 907.)

SUBCHAPTER III—NATIONAL VOLUNTEER PROGRAMS TO ASSIST SMALL BUSINESSES AND PROMOTE VOLUNTEER SERVICE BY PERSONS WITH BUSINESS EXPERIENCE

§§ 5031, 5032. Repealed. Pub. L. 95-510, §102(a), Oct. 24, 1978, 92 Stat. 1781

Section 5031, Pub. L. 93-113, title III, §301, Oct. 1, 1973, 87 Stat. 404, set out Congressional statement of purpose in enacting this subchapter.

Section 5032, Pub. L. 93-113, title III, §302, Oct. 1, 1973, 87 Stat. 404, authorized Director to establish, coordi-

nate, and operate national volunteer programs. See section 637 of Title 15, Commerce and Trade.

EFFECTIVE DATE OF REPEAL

Repeal of sections 5031 and 5032 effective Oct. 1, 1979, see section 105 of Pub. L. 95-510, set out as an Effective Date of 1978 Amendment note under section 634 of Title 15, Commerce and Trade.

SUBCHAPTER IV—ADMINISTRATION AND COORDINATION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 5084 of this title.

§§ 5041, 5042. Repealed. Pub. L. 103-82, title II, § 203(b), Sept. 21, 1993, 107 Stat. 892

Section 5041, Pub. L. 93-113, title IV, § 401, Oct. 1, 1973, 87 Stat. 405; Pub. L. 96-533, title VI, § 602(a), Dec. 16, 1980, 94 Stat. 3155; Pub. L. 98-288, § 17, May 21, 1984, 98 Stat. 194; Pub. L. 99-551, § 10(e), Oct. 27, 1986, 100 Stat. 3078; Pub. L. 101-204, title VII, § 704, Dec. 7, 1989, 103 Stat. 1821; Pub. L. 103-82, title II, § 202(b), title III, § 361, Sept. 21, 1993, 107 Stat. 887, 907, related to establishment of ACTION Agency and appointment, compensation, and functions of Director and other officials. See section 12651 of this title and notes thereunder.

Section 5042, Pub. L. 93-113, title IV, § 402, Oct. 1, 1973, 87 Stat. 406; Pub. L. 94-293, § 4(b), May 27, 1976, 90 Stat. 526; Pub. L. 97-214, § 10(b)(2), July 12, 1982, 96 Stat. 175; Pub. L. 98-288, §§ 4(c)(2), 18(a), May 21, 1984, 98 Stat. 190, 194; Pub. L. 99-551, § 10(f), (i)(5), Oct. 27, 1986, 100 Stat. 3078; Pub. L. 103-82, title III, § 362, Sept. 21, 1993, 107 Stat. 907, related to authority of Director of ACTION Agency. See section 12651 of this title and notes thereunder.

EFFECTIVE DATE OF REPEAL

Repeal by Pub. L. 103-82 effective Apr. 4, 1994, see section 203(d) of Pub. L. 103-82, set out as an Effective Date of 1993 Amendment note under section 12651 of this title.

§ 5043. Political activities

(a) Funds use prohibition; “election” and “Federal office” defined

No part of any funds appropriated to carry out this chapter, or any program administered by the Corporation under this chapter, shall be used to finance, directly or indirectly, any activity designed to influence the outcome of any election to Federal office, or the outcome of any election to any State or local public office, or any voter registration activity, or to pay the salary of any officer or employee of the Corporation, who, in an official capacity as such an officer or employee, engages in any such activity. As used in this section, the term “election” (when referring to an election for Federal office) has the same meaning given such term by section 431(1) of title 2, and the term “Federal office” has the same meaning given such term by section 431(3) of title 2.

(b) Prohibition on program identification

(1) Programs assisted under this chapter shall not be carried on in a manner involving the use of funds, the provision of services, or the employment or assignment of personnel in a manner supporting or resulting in the identification of such programs with—

(A) any partisan or nonpartisan political activity associated with a candidate, or a con-

tending faction or group, in an election for public or party office;

(B) any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any such election; or

(C) any voter registration activity;

except that programs assisted under this chapter may make voter registration applications and nonpartisan voter registration information available to the public on the premises of such programs.

(2) In carrying out any voter registration activity permitted under paragraph (1), an individual who is affiliated with, or employed to carry out, a program assisted under this chapter shall not—

(A) indicate a preference with respect to any candidate, political party, or election issue; or

(B) seek to influence the political or party affiliation, or voting decision, of any individual.

(c) Prohibition on influencing passage or defeat of legislation

No funds appropriated to carry out this chapter shall be used by any program assisted under this chapter in any activity for the purpose of influencing the passage or defeat of legislation or proposals by initiative petition, except—

(1) in any case in which a legislative body, a committee of a legislative body, or a member of a legislative body requests any volunteer in, or employee of, such a program to draft, review, or testify regarding measures or to make representations to such legislative body, committee, or member; or

(2) in connection with an authorization or appropriations measure directly affecting the operation of the program.

(d) Enforcement; rules and regulations

The Director, after consultation with the Office of Personnel Management, shall issue rules and regulations to provide for the enforcement of this section, which shall include provisions for summary suspension of assistance for no more than thirty days until notice and an opportunity to be heard can be provided or other action necessary to permit enforcement on an emergency basis.

(Pub. L. 93-113, title IV, § 403, Oct. 1, 1973, 87 Stat. 408; Pub. L. 96-143, §§ 8, 18(c)(1), Dec. 13, 1979, 93 Stat. 1077, 1083; Pub. L. 96-187, title I, § 112(e)(1), Jan. 8, 1980, 93 Stat. 1366; Pub. L. 99-551, § 10(i)(6), Oct. 27, 1986, 100 Stat. 3078; Pub. L. 103-82, title III, § 363, title IV, § 405(a)(7), Sept. 21, 1993, 107 Stat. 907, 920.)

AMENDMENTS

1993—Subsec. (a). Pub. L. 103-82, § 405(a)(7), substituted “administered by the Corporation under this chapter” for “administered by the ACTION Agency” and “of the Corporation” for “of the ACTION Agency”.

Subsec. (b)(1). Pub. L. 103-82, § 363(3), added par. (1) and struck out former par. (1) which read as follows: “Programs assisted under this chapter shall not be carried on in a manner involving the use of funds, the provision of services, or the employment or assignment of personnel in a manner supporting or resulting in the identification of such programs with (A) any partisan or non-partisan political activity or any other political

activity associated with a candidate, or contending faction or group, in an election for public or party office, (B) any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any such election, or (C) any voter registration activity."

Subsec. (b)(2). Pub. L. 103-82, §363(3), added par. (2). Former par. (2) redesignated subsec. (c).

Subsec. (c). Pub. L. 103-82, §363(1), (2), redesignated subsec. (b)(2) as subsec. (c) and subpars. (A) and (B) as pars. (1) and (2), respectively. Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 103-82, §363(1), redesignated subsec. (c) as (d).

1986—Subsec. (a). Pub. L. 99-551 substituted "an official capacity" for "his official capacity".

1980—Subsec. (a). Pub. L. 96-187 substituted "section 431(1) of title 2" and "section 431(3) of title 2" for "section 431(a) of title 2" and "section 431(c) of title 2", respectively.

1979—Pub. L. 96-143, §8(a), inserted "or the outcome of any election to any State or local public office," after "Federal office," and "(when referring to an election for Federal office)" before "has the same meaning".

Subsec. (b). Pub. L. 96-143, §8(b), designated existing provisions as par. (1), cls. (1) to (3) thereof as cls. (A) to (C), and last sentence thereof as subsec. (c), and added par. (2).

Subsec. (c). Pub. L. 96-143, §§8(b)(3), 18(c)(1), designated as subsec. (c) provisions formerly contained in last sentence of subsec. (b) and, as so designated, substituted "Office of Personnel Management" for "Civil Service Commission".

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 363 of Pub. L. 103-82 effective Oct. 1, 1993, see section 392 of Pub. L. 103-82, set out as a note under section 4951 of this title.

Amendment by section 405(a)(7) of Pub. L. 103-82 effective Apr. 4, 1994, see section 406(b) of Pub. L. 103-82, set out as a note under section 8332 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-551 effective Oct. 1, 1986, except as otherwise provided, see section 11 of Pub. L. 99-551, set out as an Effective Date note under section 4950 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-187 effective Jan. 8, 1980, see section 301(a) of Pub. L. 96-187, set out as a note under section 431 of Title 2, The Congress.

§ 5044. Special limitations

(a) Volunteer activities; limitation

The Director shall prescribe regulations and shall carry out the provisions of this chapter so as to assure that the service of volunteers assigned, referred, or serving pursuant to grants, contracts, or agreements made under this chapter is limited to activities which would not otherwise be performed by employed workers and which will not supplant the hiring of or result in the displacement of employed workers, or impair existing contracts for service.

(b) Support costs

All support, including transportation provided to volunteers under this chapter, shall be furnished at the lowest possible costs consistent with the effective operation of volunteer programs.

(c) Compensation of supervising agencies or organizations

No agency or organization to which volunteers are assigned hereunder, or which operates or su-

pervises any volunteer program hereunder, shall request or receive any compensation from such volunteers or from beneficiaries for services of volunteers supervised by such agency or organization.

(d) Labor or antilabor organization activities; funds use prohibition

No funds authorized to be appropriated herein shall be directly or indirectly utilized to finance labor or antilabor organization or related activity.

(e) Selection procedure

Persons serving as volunteers under this chapter shall provide such information concerning their qualifications, including their ability to perform their assigned tasks, and their integrity, as the Director shall prescribe and shall be subject to such procedures for selection and approval as the Director determines are necessary to carry out the purposes of this chapter. The Director may establish such special procedures for the recruitment, selection, training, and assignment of low-income residents of the area to be served by a program under this chapter who wish to become volunteers as the Director determines will further the purposes of this chapter.

(f) Government assistance; eligibility; special limitations

(1) Notwithstanding any other provision of law except as may be provided expressly in limitation of this subsection, payments to volunteers under this chapter shall not in any way reduce or eliminate the level of or eligibility for assistance or services any such volunteers may be receiving under any governmental program, except that this paragraph shall not apply in the case of such payments when the Director determines that the value of all such payments, adjusted to reflect the number of hours such volunteers are serving, is equivalent to or greater than the minimum wage then in effect under the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) or the minimum wage, under the laws of the State where such volunteers are serving, whichever is the greater.

(2) Notwithstanding any other provision of law, a person enrolled for full-time service as a volunteer under subchapter I of this chapter who was otherwise entitled to receive assistance or services under any governmental program prior to such volunteer's enrollment shall not be denied such assistance or services because of such volunteer's failure or refusal to register for, seek, or accept employment or training during the period of such service.

(Pub. L. 93-113, title IV, §404, Oct. 1, 1973, 87 Stat. 408; Pub. L. 96-143, §9, Dec. 13, 1979, 93 Stat. 1077; Pub. L. 98-288, §19, May 21, 1984, 98 Stat. 195; Pub. L. 99-551, §10(i)(7), Oct. 27, 1986, 100 Stat. 3078; Pub. L. 103-82, title III, §364, Sept. 21, 1993, 107 Stat. 908.)

REFERENCES IN TEXT

The Fair Labor Standards Act of 1938, referred to in subsec. (f)(1), is act June 25, 1938, ch. 676, 52 Stat. 1060, as amended, which is classified generally to chapter 8 (§201 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see section 201 of Title 29 and Tables.

AMENDMENTS

1993—Subsec. (c). Pub. L. 103-82, §364(1), inserted “from such volunteers or from beneficiaries” after “compensation”.

Subsecs. (f), (g). Pub. L. 103-82, §364(2), (3), redesignated subsec. (g) as (f) and struck out former subsec. (f) which read as follows: “Notwithstanding any other provision of law, the Director shall assign or delegate any substantial responsibility for carrying out programs under this chapter only to persons appointed or employed pursuant to clauses (1) and (2) of section 5042 of this title, and persons assigned or delegated such substantial responsibilities on October 1, 1973, and who are receiving compensation in accordance with provisions of law other than the applicable provisions of title 5 on such date shall, by operation of law on such date, be assigned a grade level pursuant to such latter provisions so as to fix the compensation of such persons under such authority at no less than their compensation rate on the day preceding such date.”

1986—Subsec. (e). Pub. L. 99-551 substituted “the Director” for “he” before “determines will”.

1984—Subsec. (f). Pub. L. 98-288 struck out “and except as provided in the second sentence of this subsection” after “Notwithstanding any other provision of law” and struck out “The Director may personally make exceptions to the requirements set forth in the first sentence of this subsection for persons he finds will be assigned to carrying out functions under the Peace Corps Act (22 U.S.C. 2501 et seq.) within six months after October 1, 1973.”

1979—Subsec. (g). Pub. L. 96-143 designated existing provisions as par. (1), inserted “, except that this paragraph shall not apply in the case of such payments when the Director determines that the value of all such payments, adjusted to reflect the number of hours such volunteers are serving, is equivalent to or greater than the minimum wage then in effect under the Fair Labor Standards Act of 1938 or the minimum wage, under the laws of the State where such volunteers are serving, whichever is the greater” after “governmental program”, and added par. (2).

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Oct. 1, 1993, see section 392 of Pub. L. 103-82, set out as a note under section 4951 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-551 effective Oct. 1, 1986, except as otherwise provided, see section 11 of Pub. L. 99-551, set out as an Effective Date note under section 4950 of this title.

§ 5045. Repealed. Pub. L. 98-288, §20(a), May 21, 1984, 98 Stat. 195

Section, Pub. L. 93-113, title IV, §405, Oct. 1, 1973, 87 Stat. 409; Pub. L. 94-293, §5(a), May 27, 1976, 90 Stat. 526; Pub. L. 96-470, title I, §113, Oct. 19, 1980, 94 Stat. 2240; Pub. L. 96-533, title VI, §602(b), Dec. 16, 1980, 94 Stat. 3156, provided for a National Voluntary Service Advisory Council.

EFFECTIVE DATE OF REPEAL

Section 20(a) of Pub. L. 98-288 provided that the repeal of this section is effective Jan. 1, 1986.

§ 5046. Labor standards for federally assisted projects, buildings, and works

All laborers and mechanics employed by contractors or subcontractors in the construction, alteration or repair, including painting and decorating of projects, buildings and works which are federally assisted under this chapter shall be paid wages at rates not less than those prevailing on similar construction in the local-

ity as determined by the Secretary of Labor in accordance with sections 3141-3144, 3146, and 3147 of title 40. The Secretary of Labor shall have, with respect to such labor standards, the authority and functions set forth in Reorganization Plan Number 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and in section 3145 of title 40.

(Pub. L. 93-113, title IV, §406, Oct. 1, 1973, 87 Stat. 410.)

REFERENCES IN TEXT

Reorganization Plan Numbered 14 of 1950, referred to in text, is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

In text, “sections 3141-3144, 3146, and 3147 of title 40” substituted for “the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5)” and “section 3145 of title 40” substituted for “section 2 of the Act of June 13, 1934, as amended (48 Stat. 948, ch. 492, as amended; 40 U.S.C. 276c)”, on authority of Pub. L. 107-217, §5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

§ 5047. Repealed. Pub. L. 103-82, title III, §365, Sept. 21, 1993, 107 Stat. 908

Section, Pub. L. 93-113, title IV, §407, Oct. 1, 1973, 87 Stat. 410; Pub. L. 98-288, §21, May 21, 1984, 98 Stat. 195; Pub. L. 99-551, §3(b), Oct. 27, 1986, 100 Stat. 3072; Pub. L. 101-204, title IV, §401, Dec. 7, 1989, 103 Stat. 1814, required annual report on activities under section 4953 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1993, see section 392 of Pub. L. 103-82, set out as an Effective Date of 1993 Amendment note under section 4951 of this title.

§ 5048. Joint funding; single non-Federal share requirement; grant or contract requirement waiver

Pursuant to regulations prescribed by the President, and to the extent consistent with the other provisions of this chapter, where funds are provided for a single project by more than one Federal agency to an agency or organization assisted under this chapter, the Federal agency principally involved may be designated to act for all in administering the funds provided, and, notwithstanding any other provision of law, in such cases, a single non-Federal share requirement may be established according to the proportion of funds advanced by each agency. When the principal agency involved is the Corporation, it may waive any grant or contract requirement (as defined by such regulations) under or pursuant to any law other than this chapter, which requirement is inconsistent with the similar requirements under or pursuant to this chapter.

(Pub. L. 93-113, title IV, §408, Oct. 1, 1973, 87 Stat. 410; Pub. L. 103-82, title IV, §405(a)(8), Sept. 21, 1993, 107 Stat. 920.)

AMENDMENTS

1993—Pub. L. 103-82 substituted “the Corporation” for “the ACTION Agency”.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Apr. 4, 1994, see section 406(b) of Pub. L. 103-82, set out as a note

under section 8332 of Title 5, Government Organization and Employees.

DELEGATION OF FUNCTIONS

Authority of President under this section delegated to Director of Office of Management and Budget, see section 1 of Ex. Ord. No. 11893, eff. Dec. 31, 1975, 41 F.R. 1040, set out as a note under section 7103 of Title 31, Money and Finance.

§ 5049. Prohibition of Federal control of educational institution or school system

Nothing contained in this chapter shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any education institution or school system.

(Pub. L. 93-113, title IV, § 409, Oct. 1, 1973, 87 Stat. 410.)

§ 5050. Coordination with other programs

The Director shall take necessary steps to coordinate volunteer programs authorized under this chapter with one another, with community action programs, and with other related Federal, State, and local programs. The Director shall also consult with the heads of other Federal, State, and local agencies responsible for programs related to the purposes of this chapter with a view to encouraging greater use of volunteer services in those programs and establishing in connection with them systematic procedures for the recruitment, referral, or necessary pre-service orientation or training of volunteers serving pursuant to this chapter. The Director, in consultation with the Director of the Office of Personnel Management and the Secretaries of Labor, Commerce, and the Treasury and officials of other appropriate departments and agencies, shall take all appropriate steps to encourage State and local governments, charitable and service organizations, and private employers (1) to take into account experience in volunteer work in the consideration of applicants for employment; and (2) to make provisions for the listing and description of volunteer work on all employment application forms.

(Pub. L. 93-113, title IV, § 410, Oct. 1, 1973, 87 Stat. 410; Pub. L. 96-143, § 10, Dec. 13, 1979, 93 Stat. 1078.)

AMENDMENTS

1979—Pub. L. 96-143 inserted provisions requiring the Director in consultation with the Director of the Office of Personnel Management and the Secretaries of Labor, Commerce, and the Treasury and officials of other appropriate departments and agencies to take steps to encourage employers to review the consideration they give volunteer service in the information requested on their standard application forms.

§ 5051. Performance of functions by existing departments or offices rather than new departments or offices

In order to assure that existing Federal agencies are used to the fullest extent possible in carrying out the purposes of this chapter, no funds appropriated to carry out this chapter shall be used to establish any new department or

office when the intended function is being performed by an existing department or office.

(Pub. L. 93-113, title IV, § 411, Oct. 1, 1973, 87 Stat. 411.)

§ 5052. Suspension and termination of financial assistance; procedures; notice and hearing; emergency situations; refunding applications

(a) The Director is authorized, in accordance with the provisions of this section, to suspend further payments or to terminate payments under any contract or grant providing assistance under this chapter, whenever the Director determines there is a material failure to comply with the applicable terms and conditions of any such grant or contract. The Director shall prescribe procedures to insure that—

(1) assistance under this chapter shall not be suspended for failure to comply with applicable terms and conditions, except in emergency situations for thirty days;

(2) an application for refunding under this chapter may not be denied unless the recipient has been given (A) notice at least 75 days before the denial of such application of the possibility of such denial and the grounds for any such denial, and (B) opportunity to show cause why such action should not be taken;

(3) in any case where an application for refunding is denied for failure to comply with the terms and conditions of the grant or contract award, the recipient shall be afforded an opportunity for an informal hearing before an impartial hearing officer, who has been agreed to by the recipient and the Agency; and

(4) assistance under this chapter shall not be terminated for failure to comply with applicable terms and conditions unless the recipient has been afforded reasonable notice and opportunity for a full and fair hearing.

(b) In order to assure equal access to all recipients, such hearings or other meetings as may be necessary to fulfill the requirements of this section shall be held at locations convenient to the recipient agency.

(Pub. L. 93-113, title IV, § 412, Oct. 1, 1973, 87 Stat. 411; Pub. L. 98-288, § 22, May 21, 1984, 98 Stat. 195; Pub. L. 99-551, § 10(i)(8), Oct. 27, 1986, 100 Stat. 3078.)

AMENDMENTS

1986—Subsec. (a). Pub. L. 99-551 substituted “the Director” for “he” before “determines” in first sentence. 1984—Subsec. (a). Pub. L. 98-288 designated existing provisions as subsec. (a), substituted a semicolon for “nor shall an application for refunding under this chapter be denied, unless the recipient has been given reasonable notice and opportunity to show why such action should not be taken; and” in par. (1), added pars. (2) and (3), redesignated former par. (2) as (4), and added subsec. (b).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-551 effective Oct. 1, 1986, except as otherwise provided, see section 11 of Pub. L. 99-551, set out as an Effective Date note under section 4950 of this title.

§ 5053. Repealed. Pub. L. 94-293, § 5(b)(1), May 27, 1976, 90 Stat. 526

Section, Pub. L. 93-113, title IV, § 413, Oct. 1, 1973, 87 Stat. 411, authorized Director to carry out programs of

this chapter during fiscal year ending June 30, 1974, and three succeeding fiscal years, and authorizing Congress to appropriate such sums as necessary for each fiscal year.

§ 5054. Distribution of benefits between rural and urban areas

The Director shall adopt appropriate administrative measures to assure that the benefits of and services under this chapter will be distributed equitably between residents of rural and urban areas.

(Pub. L. 93-113, title IV, §414, Oct. 1, 1973, 87 Stat. 411.)

RURAL PROGRAM REPORT

Section 16 of Pub. L. 96-143 provided that not later than Feb. 1, 1980, the Director of the ACTION Agency was to submit to appropriate committees of Congress a report specifying special needs and circumstances to be addressed in designing programs under Domestic Volunteer Service Act of 1973 [this chapter] for implementation in rural areas, such report to include a detailed statement of manner in which Director intended to address such needs and circumstances, together with a timetable for designing and implementing such programs.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4959, 5056 of this title.

§ 5055. Application of Federal law

(a) General rule

Except as provided in subsections (b), (c), (d), and (e) of this section, volunteers under this chapter shall not be deemed Federal employees and shall not be subject to the provisions of laws relating to Federal officers and employees and Federal employment.

(b) Specific Federal legislation

Individuals enrolled as volunteers for periods of full-time service, or, as the Director deems appropriate in accordance with regulations, for periods of part-time service of not less than 20 hours per week for not less than 26 consecutive weeks, under subchapter I of this chapter shall, with respect to such service or training, (1) for the purposes of subchapter III of chapter 73 of title 5, be deemed persons employed in the executive branch of the Federal Government, (2) for the purposes of the Internal Revenue Code of 1986 (26 U.S.C. 1 et seq.) and title II of the Social Security Act (42 U.S.C. 401 et seq.), be deemed employees of the United States, and any service performed by an individual as a volunteer (including training) shall be deemed to be performed in the employ of the United States, (3) for the purposes of the Federal Tort Claims provisions of title 28, be deemed employees of the United States, (4) for the purposes of subchapter I of chapter 81 of title 5 (relative to compensation to Federal employees for work injuries), shall be deemed civil employees of the United States within the meaning of the term "employee" as defined in section 8101 of title 5, and the provisions of that subchapter shall apply except as follows: (A) in computing compensation benefits for disability or death, the annual rate of pay of a volunteer enrolled for a period of full-time service under such subchapter I of this

chapter shall be deemed to be that received under the entrance salary for an employee at grade GS-5 of the General Schedule under section 5332 of title 5, and the annual rate of pay of a volunteer enrolled for a period of part-time service under such subchapter I of this chapter shall be deemed to be such entry salary or an appropriate portion thereof as determined by the Director, and subsections (a) and (b) of section 8113 of title 5 shall apply, and (B) compensation for disability shall not begin to accrue until the day following the date on which the injured volunteer is terminated, and (5) be deemed employees of the United States for the purposes of section 5584 of title 5 (and stipends and allowances paid under this chapter shall be considered as pay for such purposes).

(c) Subsequent Government employment

Any period of service of a volunteer enrolled in a program for a period of service of at least one year under part A of subchapter I of this chapter, and any period of full-time service of a volunteer enrolled in a program for a period of service of at least one year under part B or C of subchapter I of this chapter, shall be credited in connection with subsequent employment in the same manner as a like period of civilian employment by the United States Government—

(1) for the purposes of any Act establishing a retirement system for civilian employees of any United States Government agency; and

(2) except as otherwise determined by the President, for the purposes of determining seniority, reduction in force, and layoff rights, leave entitlement, and other rights and privileges based upon length of service under the laws administered by the Office of Personnel Management, the Foreign Service Act of 1980 [22 U.S.C. 3901 et seq.], and every other Act establishing or governing terms and conditions of service of civilian employees of the United States Government: *Provided*, That service of a volunteer shall not be credited toward completion of any probationary or trial period or completion of any service requirement for career appointment.

(d) Competitive service

Volunteers serving in programs for periods of service of at least one year under part A of subchapter I of this chapter, and volunteers serving for such periods under title VIII of the Economic Opportunity Act of 1964, as amended (42 U.S.C. 2991-2994d), including those whose service was completed under such Act, who the Director determines, in accordance with regulations the Director shall prescribe, have successfully completed their periods of service, shall be eligible for appointment in the competitive service in the same manner as Peace Corps volunteers as prescribed in Executive Order Number 11103 (April 10, 1963).

(e) References in other laws to service under provisions relating to Volunteers in Service to America deemed references to service under subchapter I of this chapter

Notwithstanding any other provision of law, all references in any other law to persons serving as volunteers under title VIII of the Economic Opportunity Act of 1964, as amended [42

U.S.C. 2991 et seq.], shall be deemed to be references to persons serving as full-time volunteers in a program of at least one year's duration under part A, B, or C of subchapter I of this chapter.

(f) Civil actions

(1) The remedy—

(A) against the United States provided by sections 1346(b) and 2672 of title 28 or

(B) through proceedings for compensation or other benefits from the United States as provided by any other law, where the availability of such benefits precludes a remedy under section 1346(b) or 2672 of such title 28,

for damages for personal injury, including death, allegedly arising from malpractice or negligence of a physician, dentist, podiatrist, optometrist, nurse, physician assistant, expanded-function dental auxiliary, pharmacist, or paramedical (for example, medical and dental technicians, nursing assistants, and therapists) or other supporting personnel in furnishing medical care or treatment while in the exercise of such person's duties as a volunteer enrolled under subchapter I of this chapter shall be exclusive of any other civil action or proceeding by reason of the same subject matter against such person (or such person's estate) whose action or omission gave rise to such claim.

(2) The Attorney General of the United States shall defend any civil action or proceeding brought in any court against any person referred to in paragraph (1) of this subsection (or such person's estate) for any such damage or injury. Any such person against whom such civil action or proceeding is brought shall deliver, within such time after date of service or knowledge of service as determined by the Attorney General, all process served upon such person or an attested true copy thereof to such person's immediate supervisor or to whomever is designated by the Director to receive such papers, and such person shall promptly furnish copies of the pleading and process therein to the United States attorney for the district embracing the place wherein the proceeding is brought and to the Attorney General.

(3) Upon a certification by the Attorney General that the defendant was acting in the scope of such person's volunteer assignment at the time of the incident out of which the suit arose, any such civil action or proceeding commenced in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States of the district and division embracing the place wherein it is pending and the proceeding deemed a tort action brought against the United States under the provisions of title 28 and all references thereto. After removal the United States shall have available all defenses to which it would have been entitled if the action had originally been commenced against the United States. Should a district court of the United States determine on a hearing on a motion to remand held before a trial on the merits that the volunteer whose act or omission gave rise to the suit was not acting within the scope of such person's volunteer assignment, the case shall be remanded to the State court.

(4) The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner provided in section 2677 of title 28 and with the same effect.

(Pub. L. 93-113, title IV, §415, Oct. 1, 1973, 87 Stat. 411; Pub. L. 96-143, §§11, 18(c)(2), Dec. 13, 1979, 93 Stat. 1078, 1083; Pub. L. 96-465, title II, §2206(h), Oct. 17, 1980, 94 Stat. 2163; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 99-551, §10(i)(9), Oct. 27, 1986, 100 Stat. 3078; Pub. L. 103-82, title III, §366, Sept. 21, 1993, 107 Stat. 908.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b)(2), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Social Security Act is classified generally to subchapter II (§401 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Federal Tort Claims provisions of title 28, referred to in subsec. (b)(3), are the provisions of the Federal Tort Claims Act, which is classified generally to section 1346(b) and to chapter 171 (§2671 et seq.) of Title 28, Judiciary and Judicial Procedure.

The Foreign Service Act of 1980, referred to in subsec. (c)(2), is Pub. L. 96-465, Oct. 17, 1980, 94 Stat. 2071, as amended, which is classified principally to chapter 52 (§3901 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 3901 of Title 22 and Tables.

The Economic Opportunity Act of 1964, as amended, referred to in subsecs. (d) and (e), is Pub. L. 88-452, Aug. 20, 1964, 78 Stat. 508, as amended. Title VIII of such Act, probably means title VIII of Pub. L. 88-452 as added by Pub. L. 89-794, title VIII, §801, Nov. 8, 1966, 80 Stat. 1472, and generally revised and amended by Pub. L. 90-222, title I, §110, Dec. 23, 1967, 81 Stat. 722, which was classified generally to subchapter VIII (§2991 et seq.) of chapter 34 of this title. Title VIII of the Economic Opportunity Act of 1964 as so added and amended was repealed by Pub. L. 93-113, title VI, 603, and its provisions are covered by this chapter. For complete classification of this Act to the Code, see Tables.

Executive Order Number 11103 (April 10, 1963), referred to in subsec. (d), is set out under section 2504 of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

1993—Subsec. (b)(4)(A). Pub. L. 103-82 substituted “an employee at grade GS-5 of the General Schedule under section 5332 of title 5” for “a grade GS-7 employee”.

1986—Subsec. (b)(2). Pub. L. 99-514 substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”.

Subsec. (d). Pub. L. 99-551 substituted “the Director” for “he” before “shall prescribe”.

1980—Subsec. (c)(1). Pub. L. 96-465, §2206(h)(1), substituted “any” for “section 1092(a)(1) of title 22 and every other”.

Subsec. (c)(2). Pub. L. 96-465, §2206(h)(2), substituted “Foreign Service Act of 1980” for “Foreign Service Act of 1946”.

1979—Subsec. (b). Pub. L. 96-143, §11(a), substituted in provisions preceding cl. (1) “as volunteers for periods of full-time service, or, as the Director deems appropriate in accordance with regulations, for periods of part-time service of not less than 20 hours per week for not less than 26 consecutive weeks, under subchapter I of this chapter” for “in programs under subchapter I of this chapter for periods of service of at least one year” and in cl. (4)(A) “the annual rate of pay of a volunteer enrolled for a period of full-time service under such subchapter I of this chapter shall be deemed to be that received under the entrance salary for a grade GS-7 employee, and the annual rate of pay of a volunteer en-

rolled for a period of part-time service under such subchapter I of this chapter shall be deemed to be such entry salary or an appropriate portion thereof as determined by the Director" for "the monthly pay of a volunteer shall be deemed that received under the entrance salary for a grade GS-7 employee" and added cl. (5).

Subsec. (c)(2). Pub. L. 96-143, §18(c)(2), substituted "Office of Personnel Management" for "Civil Service Commission".

Subsec. (f). Pub. L. 96-143, §11(b), added subsec. (f).

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Oct. 1, 1993, see section 392 of Pub. L. 103-82, set out as a note under section 4951 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-551 effective Oct. 1, 1986, except as otherwise provided, see section 11 of Pub. L. 99-551, set out as an Effective Date note under section 4950 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-465 effective Feb. 15, 1981, except as otherwise provided, see section 2403 of Pub. L. 96-465, set out as an Effective Date note under section 3901 of Title 22, Foreign Relations and Intercourse.

EX. ORD. NO. 11561. DELEGATION OF AUTHORITY

Ex. Ord. No. 11561, Sept. 25, 1970, 35 F.R. 14981, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055; Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617, provided:

By virtue of the authority vested in me by section 301 of title 3 of the United States Code, and as President of the United States, the authority conferred upon the President by that portion of section 833(c)(2) of the Economic Opportunity Act of 1964 (42 U.S.C. 2994b(c)(2)) [former section 2994b(c)(2) of this title, now subsec. (c)(2) of this section] which reads "except as otherwise determined by the President" is hereby delegated as follows: (1) To the Office of Personnel Management to the extent that such authority is with respect to the laws administered by the Commission, and (2) to the Secretary of State to the extent that such authority is with respect to the Foreign Service Act of 1980, as amended [22 U.S.C. 3901 et seq.].

§ 5056. Evaluation of programs and projects

(a) General objectives; persons conducting the evaluation

The Director shall measure and evaluate the impact of all programs authorized by this chapter (including the VISTA Literacy Corps which shall be evaluated as a separate program at least once every 3 years), their effectiveness in achieving stated goals, in general, and in relation to their cost, their impact on related programs, and their structure and mechanism for delivery of services. Each program shall be evaluated at least once every three years. Evaluations shall be conducted by persons not immediately involved in the administration of the program or project evaluated. Such evaluation shall also measure and evaluate compliance with the equitable distribution requirement of section 5054 of this title.

(b) General standards; publication; reports of ensuing actions

The Director shall develop and publish general standards for evaluation of program and project effectiveness in achieving the objectives of this chapter. Reports submitted pursuant to section

5047¹ of this title shall describe the actions taken as a result of evaluations carried out under this section.

(c) Opinions of participants

In carrying out evaluations under this subchapter, the Director shall, whenever possible, arrange to obtain the opinions of program and project participants about the strengths and weaknesses of such programs and projects.

(d) Summaries of results; publication

The Director shall publish summaries of the results of evaluations of program and project impact and effectiveness no later than sixty days after the completion thereof.

(e) Federal property

The Director shall take the necessary action to assure that all studies, evaluations, proposals, and data produced or developed with Federal funds shall become the property of the United States.

(f) Evaluation of programs that relate to services that assist families caring for frail and disabled adult family members; evaluation of impact by volunteers on such programs; report to committees of Congress

Not later than December 31, 1988, the Director shall—

(1) evaluate the impact of Corporation programs carried out under subchapter II of this chapter that relate to services that assist families caring for frail and disabled adult family members and shall include in such evaluation information on—

(A) the range and extent of service needs of, and the services provided to, family caregivers assisted by volunteers;

(B) the characteristics of volunteers and the skills, training, and supervision necessary to provide various types of volunteer assistance to family caregivers;

(C) administrative costs, including recruitment, training, and supervision costs, associated with volunteer assistance to family caregivers; and

(D) such other issues as may be relevant to provide services to assist family caregivers;

(2) evaluate the impact that volunteers who participate in programs under parts B and C of subchapter II of this chapter without receiving a stipend have on such programs and shall include in such evaluation—

(A) information on administrative² costs associated with such volunteers;

(B) a comparison of the quality of services provided by such volunteers and the quality of services provided by volunteers who receive a stipend under such parts, including the rate of absenteeism and turnover; and

(C) a review of the effect that participation by volunteers who do not receive such stipend have on the administration of such programs; and

(3) submit to the Committee on Education and Labor of the House of Representatives and

¹ See References in Text note below.

² So in original. Probably should be "administrative".

the Committee on Labor and Human Resources of the Senate a report summarizing in detail the results of the evaluations made under paragraphs (1) and (2).

(g) Funds limitation; reduction of allotments

The Director is authorized to use such sums as are required, but not to exceed 1 per centum of the funds appropriated under this chapter, to conduct program and project evaluations (directly, or by grants or contracts) as required by this chapter. In the case of allotments from such an appropriation, the amount available for such allotments (and the amount deemed appropriate therefor) shall be reduced accordingly.

(Pub. L. 93-113, title IV, §416, Oct. 1, 1973, 87 Stat. 412; Pub. L. 98-288, §23, May 21, 1984, 98 Stat. 195; Pub. L. 99-551, §8, Oct. 27, 1986, 100 Stat. 3075; Pub. L. 101-204, title IV, §402, Dec. 7, 1989, 103 Stat. 1815; Pub. L. 103-82, title IV, §405(a)(9), Sept. 21, 1993, 107 Stat. 920.)

REFERENCES IN TEXT

Section 5047 of this title, referred to in subsec. (b), was repealed by Pub. L. 103-82, title III, §365, Sept. 21, 1993, 107 Stat. 908.

AMENDMENTS

1993—Subsec. (f)(1). Pub. L. 103-82 substituted “Corporation” for “ACTION Agency” in introductory provisions.

1989—Subsec. (a). Pub. L. 101-204 inserted “(including the VISTA Literacy Corps which shall be evaluated as a separate program at least once every 3 years)” after “this chapter” in first sentence.

1986—Subsec. (a). Pub. L. 99-551, §8(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “The Director shall biennially measure and evaluate the impact of all programs authorized by this chapter, their effectiveness in achieving stated goals in general, and in relation to their cost, their impact on related programs, and their structure and mechanisms for delivery of services. Evaluations shall be conducted by persons not immediately involved in the administration of the program or any project of such program being evaluated. Such evaluation shall also measure and evaluate compliance with the equitable distribution requirement of section 5054 of this title.”

Subsecs. (f), (g). Pub. L. 99-551, §8(b), added subsec. (f) and redesignated former subsec. (f) as (g).

1984—Subsec. (a). Pub. L. 98-288 substituted “biennially” for “periodically” in first sentence, and substituted “or any project of such program being evaluated. Such evaluation shall also measure and evaluate compliance with the equitable distribution requirement of section 5054 of this title” for “or project evaluated”.

CHANGE OF NAME

Committee on Education and Labor of House of Representatives treated as referring to Committee on Economic and Educational Opportunities of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Economic and Educational Opportunities of House of Representatives changed to Committee on Education and the Workforce of House of Representatives by House Resolution No. 5, One Hundred Fifth Congress, Jan. 7, 1997.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Apr. 4, 1994, see section 406(b) of Pub. L. 103-82, set out as a note under section 8332 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-551 effective Oct. 1, 1986, except as otherwise provided, see section 11 of Pub. L.

99-551, set out as an Effective Date note under section 4950 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5084 of this title.

§ 5057. Nondiscrimination provisions

(a) In general

(1) Basis

An individual with responsibility for the operation of a program that receives assistance under this chapter shall not discriminate against a participant in, or member of the staff of, such program on the basis of race, color, national origin, sex, age, or political affiliation of such participant or member, or on the basis of disability, if the participant or member is a qualified individual with a disability.

(2) Definition

As used in paragraph (1), the term “qualified individual with a disability” has the meaning given the term in section 12111(8) of this title.

(b) Federal financial assistance

Any assistance provided under this chapter shall constitute Federal financial assistance for purposes of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.).

(c) Religious discrimination

(1) In general

Except as provided in paragraph (2), an individual with responsibility for the operation of a program that receives assistance under this chapter shall not discriminate on the basis of religion against a participant in such program or a member of the staff of such program who is paid with funds received under this chapter.

(2) Exception

Paragraph (1) shall not apply to the employment, with assistance provided under this chapter, of any member of the staff, of a program that receives assistance under this chapter, who was employed with the organization operating the program on the date the grant under this chapter was awarded.

(d) Rules and regulations

The Director shall promulgate rules and regulations to provide for the enforcement of this section that shall include provisions for summary suspension of assistance for not more than 30 days, on an emergency basis, until notice and an opportunity to be heard can be provided.

(Pub. L. 93-113, title IV, §417, Oct. 1, 1973, 87 Stat. 413; Pub. L. 96-143, §12, Dec. 13, 1979, 93 Stat. 1079; Pub. L. 97-35, title VI, §608(f)(3), Aug. 13, 1981, 95 Stat. 488; Pub. L. 98-288, §30(a), May 21, 1984, 98 Stat. 197; Pub. L. 103-82, title III, §367, Sept. 21, 1993, 107 Stat. 908.)

REFERENCES IN TEXT

The Civil Rights Act of 1964, referred to in subsec. (b), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended.

Title VI of the Act is classified generally to subchapter V (§2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

The Education Amendments of 1972, referred to in subsec. (b), is Pub. L. 92-318, June 23, 1972, 86 Stat. 235, as amended. Title IX of the Act, known as the Patsy Takemoto Mink Equal Opportunity in Education Act, is classified principally to chapter 38 (§1681 et seq.) of Title 20, Education. For complete classification of title IX to the Code, see Short Title note set out under section 1681 of Title 20 and Tables.

The Age Discrimination Act of 1975, referred to in subsec. (b), is title III of Pub. L. 94-135, Nov. 28, 1975, 78 Stat. 728, as amended, which is classified generally to chapter 76 (§6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

AMENDMENTS

1993—Pub. L. 103-82 amended section generally, substituting present provisions for former provisions relating to nondiscrimination, which set forth: in subsec. (a), general rule; in subsec. (b), special rule against sex discrimination; and in subsec. (c), applicability of nondiscrimination authorities of certain statutes and requirement for regulations.

1984—Subsec. (c)(1). Pub. L. 98-288 struck out “and the Peace Corps Act (22 U.S.C. 2501 et seq.)” after “under this chapter”.

1981—Subsec. (c)(2). Pub. L. 97-35 substituted reference to the Secretary of Health and Human Services for references to the Secretary of Health and Human Resources and the Secretary of Health, Education, and Welfare.

1979—Subsec. (a). Pub. L. 96-143, §12(a), inserted “handicap,” after “age,” and inserted provisions requiring that for purposes of this subsection, and for purposes of title VI of the Civil Rights Act of 1964, section 794 of title 29, and the Age Discrimination Act of 1975, any program, project, or activity to which volunteers are assigned under this chapter be deemed to be receiving Federal financial assistance.

Subsec. (c). Pub. L. 96-143, §12(b), added subsec. (c).

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Oct. 1, 1993, see section 392 of Pub. L. 103-82, set out as a note under section 4951 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5061 of this title.

§ 5058. Eligibility for other benefits

Notwithstanding any other provision of law, no payment for supportive services or reimbursement of out-of-pocket expenses made to persons serving pursuant to subchapter II of this chapter shall be subject to any tax or charge or be treated as wages or compensation for the purposes of unemployment, temporary disability, retirement, public assistance, workers' compensation, or similar benefit payments, or minimum wage laws. This section shall become effective with respect to all payments made after October 1, 1973.

(Pub. L. 93-113, title IV, §418, Oct. 1, 1973, 87 Stat. 413; Pub. L. 96-143, §18(a)(2), Dec. 13, 1979, 93 Stat. 1083; Pub. L. 98-288, §24, May 21, 1984, 98 Stat. 196.)

AMENDMENTS

1984—Pub. L. 98-288 inserted “workers' compensation,” after “public assistance,”.

1979—Pub. L. 96-143 substituted “subchapter II of this chapter” for “subchapters II and III of this chapter”.

§ 5059. Legal expenses

Notwithstanding any other provision of law and pursuant to regulations which the Director shall prescribe, counsel may be employed and counsel fees, court costs, bail, and other expenses incidental to the defense of volunteers may be paid in judicial or administrative proceedings to which full-time volunteers (or part-time volunteers when such proceeding arises directly out of the performance of activities pursuant to this chapter) serving under this chapter have been made parties.

(Pub. L. 93-113, title IV, §419, Oct. 1, 1973, 87 Stat. 413; Pub. L. 98-288, §25, May 21, 1984, 98 Stat. 196; Pub. L. 99-551, §10(g), Oct. 27, 1986, 100 Stat. 3078.)

AMENDMENTS

1986—Pub. L. 99-551 substituted “to this chapter)” for “to this chapter”.

1984—Pub. L. 98-288 struck out “or section 637(b)(1) of title 15” after “pursuant to this chapter”.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-551 effective Oct. 1, 1986, except as otherwise provided, see section 11 of Pub. L. 99-551, set out as an Effective Date note under section 4950 of this title.

§ 5060. Repealed. Pub. L. 103-82, title III, § 368, Sept. 21, 1993, 107 Stat. 909

Section, Pub. L. 93-113, title IV, §420, Oct. 1, 1973, 87 Stat. 414; Pub. L. 96-143, §13(a), Dec. 13, 1979, 93 Stat. 1080; Pub. L. 98-288, §26, May 21, 1984, 98 Stat. 196, set out requirements for prescribing regulations.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1993, see section 392 of Pub. L. 103-82, set out as an Effective Date of 1993 Amendment note under section 4951 of this title.

§ 5061. Definitions

For the purposes of this chapter—

(1) the term “Director” means the Chief Executive Officer of the Corporation for National and Community Service appointed under section 12651c of this title;

(2) the terms “United States” and “States” mean the several States, the District of Columbia, the Virgin Islands, Puerto Rico, Guam, and American Samoa and, for the purposes of subchapter II of this chapter, the Trust Territory of the Pacific Islands;

(3) the term “nonprofit” as applied to any agency, institution, or organization means an agency, institution, or organization which is, or is owned and operated by, one or more corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual;

(4) the term “poor” or “low-income” persons, individuals, or volunteers means such individuals whose incomes fall at or below the poverty line as set forth in section 625 of the Economic Opportunity Act of 1964, as amended by Public Law 92-424 (42 U.S.C. 2971d):¹ *Provided*, That in determining who is “poor” or “low-income”, the Director shall take into

¹ See References in Text note below.

consideration existing poverty guidelines as appropriate to local situations;

(5) the terms “public agencies or organizations” and “Federal, State, or local agencies” shall include any Indian tribe, band, nation, or other organized group or community (including any Alaskan native village or regional village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.]) which is recognized by the United States or the State in which it resides as eligible for special programs and services provided to Indians because of their status as Indians;

(6) the term “poverty line for a single individual” means such poverty line as established by the Director of the Office of Management and Budget in accordance with section 9902(2) of this title;

(7) the term “boarder baby” means an infant who is abandoned, as defined in section 301 of the Abandoned Infants Assistance Act of 1988 (Public Law 100-505; 42 U.S.C. 670 note);

(8) the term “Corporation” means the Corporation for National and Community Service established under section 12651 of this title;

(9) the term “foster grandparent” means a volunteer in the Foster Grandparent Program;

(10) the term “Foster Grandparent Program” means the program established under part B of subchapter II of this chapter;

(11) except as provided in section 5057 of this title, the term “individual with a disability” has the meaning given the term in section 705(20)(B) of title 29;

(12) the term “Inspector General” means the Inspector General of the Corporation;

(13) the term “national senior volunteer” means a volunteer in the National Senior Volunteer Corps;

(14) the term “National Senior Volunteer Corps” means the programs established under parts A, B, C, and E of subchapter II of this chapter;

(15) the term “Retired and Senior Volunteer Program” means the program established under part A of subchapter II of this chapter;

(16) the term “retired or senior volunteer” means a volunteer in the Retired and Senior Volunteer Program;

(17) the term “senior companion” means a volunteer in the Senior Companion Program;

(18) the term “Senior Companion Program” means the program established under part C of subchapter II of this chapter;

(19) the terms “VISTA” and “Volunteers in Service to America” mean the program established under part A of subchapter I of this chapter; and

(20) the term “VISTA volunteer” means a volunteer in VISTA.

(Pub. L. 93-113, title IV, §421, Oct. 1, 1973, 87 Stat. 414; Pub. L. 99-551, §§6(b), 10(h), Oct. 27, 1986, 100 Stat. 3074, 3078; Pub. L. 101-204, title IV, §403, title V, §502(b), Dec. 7, 1989, 103 Stat. 1815, 1817; Pub. L. 103-82, title IV, §§401, 404, 405(a)(10), Sept. 21, 1993, 107 Stat. 917, 920, 921; Pub. L. 105-220, title IV, §414(e), Aug. 7, 1998, 112 Stat. 1242; Pub. L. 108-36, title III, §306, June 25, 2003, 117 Stat. 825.)

REFERENCES IN TEXT

Section 625 of the Economic Opportunity Act of 1964, as amended by Public Law 92-424 (42 U.S.C. 2971d), referred to in par. (4), was repealed by Pub. L. 97-35, title VI, §683(a), Aug. 13, 1981, 95 Stat. 519. Section 9924 of this title provides that any reference in any provision of law to the poverty line set forth in section 625 of the Economic Opportunity Act of 1964 is to be construed to be a reference to the poverty line defined in section 9902 of this title.

The Alaska Native Claims Settlement Act, referred to in par. (5), is Pub. L. 92-203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

AMENDMENTS

2003—Par. (7). Pub. L. 108-36 substituted “infant who is abandoned, as defined in section 301” for “infant described in section 103”.

1998—Par. (11). Pub. L. 105-220 substituted “section 705(20)(B) of title 29” for “section 706(8)(B) of title 29”.

1993—Par. (1). Pub. L. 103-82, §404, added par. (1) and struck out former par. (1) which read as follows: “the term ‘Director’ means the Director of the ACTION Agency”.

Pars. (8) to (11). Pub. L. 103-82, §401, added pars. (8) to (11).

Par. (12). Pub. L. 103-82, §405(a)(10), substituted “the Corporation” for “ACTION”.

Pub. L. 103-82, §401, added par. (12).

Pars. (13) to (20). Pub. L. 103-82, §401, added pars. (13) to (20).

1989—Par. (6). Pub. L. 101-204, §403, added par. (6).

Par. (7). Pub. L. 101-204, §502(b), added par. (7).

1986—Par. (1). Pub. L. 99-551, §10(h), substituted “Agency” for “agency”.

Par. (5). Pub. L. 99-551, §6(b), added par. (5).

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by sections 404 and 405(a)(10) of Pub. L. 103-82 effective Apr. 4, 1994, see section 406(b) of Pub. L. 103-82, set out as a note under section 8332 of Title 5, Government Organization and Employees.

Section 406(a) of Pub. L. 103-82 provided that: “The amendments made by sections 401 through 402 [amending this section, sections 12612, 12617, 12619, 12622 to 12626, 12632, 12636, 12637, 12639, and 12662 of this title, and provisions set out as notes under section 12612 of this title] will take effect on October 1, 1993.”

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-551 effective Oct. 1, 1986, except as otherwise provided, see section 11 of Pub. L. 99-551, set out as an Effective Date note under section 4950 of this title.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 5062. Audit

(a) Recordkeeping

Each recipient of Federal grants, subgrants, contracts, subcontracts, or loans entered into under this chapter other than by formal advertising, and which are otherwise authorized by this chapter, shall keep such records as the Director or the Inspector General shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which

such assistance is given or used, the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(b) Access to books, documents, papers, and records; limitations

The Director, the Inspector General, and the Comptroller General of the United States, or any of their duly authorized representatives, shall, until the expiration of three years after completion of the project or undertaking referred to in subsection (a) of this section, have access for the purpose of audit and examination to any books, documents, papers, and records of such recipients which in the opinion of the Director, the Inspector General, or the Comptroller General may be related or pertinent to the grants, contracts, subcontracts, subgrants, or loans referred to in subsection (a) of this section.

(Pub. L. 93-113, title IV, §422, Oct. 1, 1973, 87 Stat. 414; Pub. L. 103-82, title III, §369, Sept. 21, 1993, 107 Stat. 909.)

AMENDMENTS

1993—Subsec. (a). Pub. L. 103-82, §369(1), inserted “or the Inspector General” after “Director”.

Subsec. (b). Pub. L. 103-82, §369(2), inserted “, the Inspector General,” after “Director” in two places.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Oct. 1, 1993, see section 392 of Pub. L. 103-82, set out as a note under section 4951 of this title.

§ 5063. Reduction of paperwork

In order to reduce unnecessary, duplicative, or disruptive demands for information, the Director, in consultation with other appropriate agencies and organizations, shall continually review and evaluate all requests for information made under this chapter and take such action as may be necessary to reduce the paperwork required under this chapter. The Director shall request only such information as the Director deems essential to carry out the purposes and provisions of this chapter.

(Pub. L. 93-113, title IV, §423, as added Pub. L. 96-143, §14(a), Dec. 13, 1979, 93 Stat. 1081.)

§ 5064. Review of project renewals

If the executive authority of any State or local government submits to the Director, not later than 30 days before the expiration of any contract or grant to carry out any project under this chapter, a statement which objects to the renewal of such contract or grant, then the Director shall (1) review such statement and take it into account in determining whether to renew such contract or grant; and (2) submit to such executive authority a written statement of reasons regarding the Director's determination with respect to such renewal and specifically with respect to any objection so submitted.

(Pub. L. 93-113, title IV, §424, as added Pub. L. 96-143, §14(a), Dec. 13, 1979, 93 Stat. 1081.)

§ 5065. Protection against improper use

Whoever falsely—

(1) advertises or represents; or

(2) publishes or displays any sign, symbol, or advertisement, reasonably calculated to convey the impression,

that an entity is affiliated with, funded by, or operating under the authority of the Corporation, VISTA, or any of the programs of the National Senior Volunteer Corps may be enjoined under an action filed by the Attorney General, on a complaint by the Director.

(Pub. L. 93-113, title IV, §425, as added and amended Pub. L. 103-82, title III, §370, title IV, §405(a)(11), Sept. 21, 1993, 107 Stat. 909, 921.)

AMENDMENTS

1993—Pub. L. 103-82, §405(a)(11), substituted “the Corporation” for “ACTION” in concluding provisions.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 405(a)(11) of Pub. L. 103-82 effective Apr. 4, 1994, see section 406(b) of Pub. L. 103-82, set out as a note under section 8332 of Title 5, Government Organization and Employees.

EFFECTIVE DATE

Section effective Oct. 1, 1993, see section 392 of Pub. L. 103-82, set out as an Effective Date of 1993 Amendment note under section 4951 of this title.

SUBCHAPTER V—AUTHORIZATION OF APPROPRIATIONS

§ 5081. National Volunteer Antipoverty Programs

(a) Authorizations

(1) Volunteers in Service to America

There are authorized to be appropriated to carry out parts A and B of subchapter I of this chapter, excluding section 4959 of this title, \$56,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 and 1996.

(2) Literacy activities

There are authorized to be appropriated to carry out section 4959 of this title, \$5,600,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 and 1996.

(3) Special volunteer programs

There are authorized to be appropriated to carry out part C of subchapter I of this chapter, excluding section 4995¹ of this title, such sums as may be necessary for each of the fiscal years 1994 through 1996.

(4) Literacy challenge grants

There are authorized to be appropriated to carry out section 4995¹ of this title, such sums as may be necessary for each of the fiscal years 1994 through 1996.

(5) Specification of budget function

The authorizations of appropriations contained in this subsection shall be considered to be a component of budget function 500 as used by the Office of Management and Budget to cover education, training, employment, and social services, and, as such, shall be considered to be related to the programs of the De-

¹ See References in Text note below.

partments of Labor, Health and Human Services, and Education for budgetary purposes.

(b) Subsistence

The minimum level of an allowance for subsistence required under section 4955(b)(2) of this title, to be provided to each volunteer under subchapter I of this chapter, may not be reduced or limited in order to provide for an increase in the number of volunteer service years under part A of subchapter I of this chapter.

(c) Limitation

No part of the funds appropriated to carry out part A of subchapter I of this chapter may be used to provide volunteers or assistance to any program or project authorized under part B or C of subchapter I of this chapter, or under subchapter II of this chapter, unless the program or project meets the antipoverty criteria of part A of subchapter I of this chapter.

(d) Availability

Amounts appropriated for part A of subchapter I of this chapter shall remain available for obligation until the end of the fiscal year following the fiscal year for which the amounts were appropriated.

(e) Volunteer service requirement

(1) Volunteer service years

Of the amounts appropriated under this section for parts A, B, and C of subchapter I of this chapter, including section 4995 of this title, there shall first be available for part A of subchapter I of this chapter, including sections 4954(e) and 4959 of this title, an amount not less than the amount necessary to provide 3,700 volunteer service years in fiscal year 1994, 4,000 volunteer service years in fiscal year 1995, and 4,500 volunteer service years in fiscal year 1996.

(2) Plan

If the Director determines that funds appropriated to carry out part A, B, or C of subchapter I of this chapter are insufficient to provide for the years of volunteer service required by paragraph (1), the Director shall submit a plan to the relevant authorizing and appropriations committees of Congress that will detail what is necessary to fully meet this requirement.

(Pub. L. 93-113, title V, §501, Oct. 1, 1973, 87 Stat. 415; Pub. L. 94-293, §6(a), May 27, 1976, 90 Stat. 526; Pub. L. 96-143, §15(a), (b), Dec. 13, 1979, 93 Stat. 1082; Pub. L. 97-35, title VI, §607(a), Aug. 13, 1981, 95 Stat. 486; Pub. L. 98-288, §27(a), May 21, 1984, 98 Stat. 196; Pub. L. 99-551, §9(a), Oct. 27, 1986, 100 Stat. 3076; Pub. L. 99-570, title IV, §4301(2), Oct. 27, 1986, 100 Stat. 3207-153; Pub. L. 100-690, title III, §3402, Nov. 18, 1988, 102 Stat. 4253; Pub. L. 101-204, title VIII, §§801, 802, Dec. 7, 1989, 103 Stat. 1823, 1824; Pub. L. 102-73, title VII, §701(b), July 25, 1991, 105 Stat. 359; Pub. L. 103-82, title III, §381, Sept. 21, 1993, 107 Stat. 913.)

REFERENCES IN TEXT

Section 4995 of this title, referred to in subsec. (a)(3), (4), was in the original a reference to section 125, meaning section 125 of Pub. L. 93-113, which has been translated as reading section 124 of Pub. L. 93-113 to reflect

the probable intent of Congress and the renumbering of section 125 of Pub. L. 93-113 as section 124 by Pub. L. 103-82, title III, §333(2), Sept. 21, 1993, 107 Stat. 903. Pub. L. 93-113 does not contain a section 125.

AMENDMENTS

1993—Pub. L. 103-82 amended section generally, substituting provisions authorizing appropriations for parts A, B, and C of subchapter I of this chapter for fiscal years 1994 through 1996 for provisions authorizing appropriations for such parts for fiscal years 1987 through 1993.

1991—Subsec. (c). Pub. L. 102-73 designated existing provisions as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, of par. (1), and added pars. (2) and (3).

1989—Subsec. (a)(1). Pub. L. 101-204, §801(a), inserted provision authorizing appropriations for fiscal years 1990 through 1993.

Subsec. (a)(2). Pub. L. 101-204, §801(b)(1), inserted provision authorizing appropriations for fiscal years 1990 through 1993.

Subsec. (a)(3). Pub. L. 101-204, §801(b)(2), substituted “1987 through 1993” for “1987, 1988, and 1989”.

Subsec. (b). Pub. L. 101-204, §801(c), inserted provision authorizing appropriations for fiscal years 1990 through 1993.

Subsec. (c). Pub. L. 101-204, §801(d)(1), inserted provision authorizing appropriations for fiscal years 1990 through 1993 to carry out part C of subchapter I of this chapter.

Pub. L. 101-204, §801(d)(2), inserted provision authorizing appropriations for fiscal years 1992 and 1993 for support of drug abuse prevention.

Subsec. (d)(1)(D) to (G). Pub. L. 101-204, §801(e), added subpars. (D) to (G).

Subsec. (d)(4). Pub. L. 101-204, §802, added par. (4).

1988—Subsec. (c). Pub. L. 100-690, §3402(1), inserted “(other than section 4994(b) of this title)” after “of this chapter” and inserted provisions at end relating to additional authorization of appropriations for support of drug abuse prevention in fiscal years 1989 through 1991.

Subsec. (d)(1). Pub. L. 100-690, §3402(2), substituted “subchapter I of this chapter (other than section 4994(b) of this title)” for “subchapter I of this chapter”.

1986—Subsecs. (a), (b). Pub. L. 99-551 added subsecs. (a) and (b) and struck out former subsecs. (a) and (b) which read as follows:

“(a) There is authorized to be appropriated to carry out part A of subchapter I of this chapter \$17,000,000 for fiscal year 1984, \$20,000,000 for fiscal year 1985, and \$25,000,000 for fiscal year 1986.

“(b) There is authorized to be appropriated to carry out part B of subchapter I of this chapter \$1,800,000 for the fiscal year 1984 and for each of the fiscal years 1985 and 1986.”

Subsec. (c). Pub. L. 99-570 inserted at end “In addition to the amounts authorized to be appropriated by the preceding sentence, there is authorized to be appropriated the aggregate sum of \$5,500,000 for fiscal years 1987 and 1988 to be made available for drug abuse prevention.”

Pub. L. 99-551 added subsec. (c) and struck out former subsec. (c) which read as follows: “There is authorized to be appropriated to carry out part C of subchapter I of this chapter \$1,984,000 for the fiscal year 1984 and for each of the fiscal years 1985 and 1986.”

Subsec. (d)(1). Pub. L. 99-551 added par. (1) and struck out former par. (1) which read as follows: “Of the amounts appropriated under this section for parts A, B, and C of subchapter I of this chapter, there shall first be available for part A of subchapter I of this chapter an amount not less than the amount necessary to provide—

“(A) 2,000 years of volunteer service in fiscal year 1984;

“(B) 2,200 years of volunteer service in fiscal year 1985; and

“(C) 2,400 years of volunteer service in fiscal year 1986.”

1984—Pub. L. 98-288 designated existing provisions as subsec. (a), substituted “There is authorized to be appropriated to carry out part A of subchapter I of this chapter \$17,000,000 for fiscal year 1984, \$20,000,000 for fiscal year 1985, and \$25,000,000 for fiscal year 1986” for “There is authorized to be appropriated to carry out subchapter I of this chapter \$25,763,000 for fiscal year 1982 and \$15,391,000 for fiscal year 1983. Of the amounts appropriated under this section, not less than \$16,000,000 shall first be available for carrying out part A of subchapter I of this chapter for fiscal year 1982, and not less than \$8,000,000 shall first be available for carrying out part A of subchapter I of this chapter for fiscal year 1983”, and added subsecs. (b) to (e).

1981—Pub. L. 97-35 substituted provisions relating to authorization and availability of funds for fiscal years 1982 and 1983, for provisions relating to authorization and availability of funds for fiscal year ending June 30, 1974, through fiscal year ending Sept. 30, 1981.

1979—Subsec. (a). Pub. L. 96-143, §15(a), inserted “September 30, 1979, September 30, 1980, and September 30, 1981,” after “September 30, 1978,” and substituted “this section for the purpose of carrying out subchapter I of this chapter” for “this subchapter”.

Subsec. (c). Pub. L. 96-143, §15(b), added subsec. (c).

1976—Subsec. (a). Pub. L. 94-293 inserted “September 30, 1977, and September 30, 1978,” after “June 30, 1976”.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Oct. 1, 1993, see section 392 of Pub. L. 103-82, set out as a note under section 4951 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-551 effective Oct. 1, 1986, except as otherwise provided, see section 11 of Pub. L. 99-551, set out as an Effective Date note under section 4950 of this title.

ADDITIONAL APPROPRIATIONS AUTHORIZATION

Additional appropriations authorization for meeting increase in stipend to volunteers under section 4955(a)(1) of this title, see section 5(b) of Pub. L. 94-130, set out as a note under section 4955 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4953, 4958, 5084, 12651d of this title.

§ 5082. National Senior Volunteer Corps

(a) Retired and Senior Volunteer Program

There are authorized to be appropriated to carry out part A of subchapter II of this chapter, \$45,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 and 1996.

(b) Foster Grandparent Program

There are authorized to be appropriated to carry out part B of subchapter II of this chapter, \$85,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 and 1996.

(c) Senior Companion Program

There are authorized to be appropriated to carry out part C of subchapter II of this chapter, \$40,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 and 1996.

(d) Demonstration programs

There are authorized to be appropriated to carry out part E of subchapter II of this chapter, such sums as may be necessary for each of the fiscal years 1994 through 1996.

(Pub. L. 93-113, title V, §502, Oct. 1, 1973, 87 Stat. 415; Pub. L. 94-135, title II, §205(a), Nov. 28, 1975, 89 Stat. 727; Pub. L. 95-478, title IV, §402(d), Oct. 18, 1978, 92 Stat. 1558; Pub. L. 97-35, title VI, §607(b), Aug. 13, 1981, 95 Stat. 486; Pub. L. 98-288, §28, May 21, 1984, 98 Stat. 197; Pub. L. 99-551, §9(b)-(d), Oct. 27, 1986, 100 Stat. 3077; Pub. L. 101-204, title VIII, §804, title IX, §902(7), Dec. 7, 1989, 103 Stat. 1824, 1826; Pub. L. 103-82, title III, §382, Sept. 21, 1993, 107 Stat. 914.)

AMENDMENTS

1993—Pub. L. 103-82 amended section generally, substituting subsecs. (a) to (d) authorizing appropriations for parts A, B, C, and E of subchapter II of this chapter for fiscal years 1994 through 1996 for former subsecs. (a) to (c) authorizing appropriations for parts A, B, and C of such subchapter for fiscal years 1989 through 1993.

1989—Pub. L. 101-204, §902(7), struck out “National” before “Older Americans” in section catchline.

Subsec. (a). Pub. L. 101-204, §804(a), inserted “not less than the amount appropriated in the previous fiscal year and not more than” after “to be appropriated”, struck out provisions authorizing appropriations for fiscal years 1986 through 1988, and inserted provisions authorizing appropriations for fiscal years 1990 through 1993.

Subsec. (b). Pub. L. 101-204, §804(b), inserted “not less than the amount appropriated in the previous fiscal year and not more than” after “to be appropriated”, struck out provisions authorizing appropriations for fiscal years 1986 through 1988, and inserted provisions authorizing appropriations for fiscal years 1990 through 1993.

Subsec. (c). Pub. L. 101-204, §804(c), inserted “not less than the amount appropriated in the previous fiscal year and not more than” after “to be appropriated”, struck out provisions authorizing appropriations for fiscal years 1986 through 1988, and inserted provisions authorizing appropriations for fiscal years 1990 through 1993.

1986—Subsec. (a). Pub. L. 99-551, §9(b), inserted “, \$32,000,000 for fiscal year 1987, \$33,280,000 for fiscal year 1988, and \$34,610,000 for fiscal year 1989” and struck out “\$30,412,000 for fiscal year 1983, \$29,700,000 for fiscal year 1984, \$30,400,000 for fiscal year 1985, and” after “to be appropriated”.

Subsec. (b). Pub. L. 99-551, §9(c), inserted “, \$60,000,000 for fiscal year 1987, \$62,400,000 for fiscal year 1988, and \$64,900,000 for fiscal year 1989” and struck out “\$52,650,000 for fiscal year 1983, \$54,300,000 for fiscal year 1984, \$56,700,000 for fiscal year 1985, and” after “to be appropriated”.

Subsec. (c). Pub. L. 99-551, §9(d), inserted “, \$29,740,000 for fiscal year 1987, \$30,930,000 for fiscal year 1988, and \$32,170,000 for fiscal year 1989” and struck out “\$17,607,000 for fiscal year 1983, \$27,800,000 for fiscal year 1984, \$28,200,000 for fiscal year 1985, and” after “to be appropriated”.

1984—Subsec. (a). Pub. L. 98-288, §28(a), struck out “\$28,691,000 for fiscal year 1982 and” after “to be appropriated”, and inserted “\$29,700,000 for fiscal year 1984, \$30,400,000 for fiscal year 1985, and \$31,100,000 for fiscal year 1986”.

Subsec. (b). Pub. L. 98-288, §28(b), struck out “\$49,670,000 for fiscal year 1982 and” after “to be appropriated”, and inserted “\$54,300,000 for fiscal year 1984, \$56,700,000 for fiscal year 1985, and \$58,700,000 for fiscal year 1986”.

Subsec. (c). Pub. L. 98-288, §28(c), struck out “\$16,610,000 for fiscal year 1982 and” after “to be appropriated”, and inserted “\$27,800,000 for fiscal year 1984, \$28,200,000 for fiscal year 1985, and \$28,600,000 for fiscal year 1986”.

1981—Subsec. (a). Pub. L. 97-35, §607(b)(1), substituted provisions authorizing appropriations for fiscal years 1982 and 1983, for provisions authorizing appropriations for fiscal year ending June 30, 1974, through fiscal year ending Sept. 30, 1981.

Subsec. (b). Pub. L. 97-35, §607(b)(2), substituted provisions authorizing appropriations for fiscal years 1982 and 1983, for provisions relating to authorization, availability, and allocation of appropriations from fiscal year ending June 30, 1974, through fiscal year ending Sept. 30, 1981.

Subsec. (c). Pub. L. 97-35, §607(b)(3), added subsec. (c). 1978—Subsec. (a). Pub. L. 95-478, §402(d)(1), authorized appropriations of \$25,000,000; \$30,000,000; and \$35,000,000 for fiscal years ending Sept. 30, 1979, through 1981.

Subsec. (b)(2). Pub. L. 95-478, §402(d)(2), authorized appropriations of \$55,000,000; \$62,500,000; and \$70,000,000 for fiscal years ending Sept. 30, 1979, through 1981, for carrying out part B programs of the subchapter.

1975—Subsec. (a). Pub. L. 94-135, §205(a)(1), authorized appropriations of \$6,000,000 for period beginning July 1, 1976, and ending Sept. 30, 1976, and \$22,000,000 for fiscal years ending Sept. 30, 1977, and 1978.

Subsec. (b). Pub. L. 94-135, §205(a)(2), authorized appropriations of \$10,750,000 for period beginning July 1, 1976, and ending Sept. 30, 1976, and \$43,000,000 for fiscal years ending Sept. 30, 1977, and 1978, in introductory text; \$8,750,000 for period beginning July 1, 1976, and ending Sept. 30, 1976, and \$35,000,000 for fiscal years ending Sept. 30, 1977, and 1978, in cl. (A); and \$2,000,000 for period beginning July 1, 1976, and ending Sept. 30, 1976, and \$8,000,000 for fiscal years ending Sept. 30, 1977, and 1978, in cl. (B).

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Oct. 1, 1993, see section 392 of Pub. L. 103-82, set out as a note under section 4951 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-551 effective Oct. 1, 1986, except as otherwise provided, see section 11 of Pub. L. 99-551, set out as an Effective Date note under section 4950 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-478 effective at the close of Sept. 30, 1978, see section 504 of Pub. L. 95-478, set out as a note under section 3001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5021, 5025, 5084 of this title.

§ 5083. Repealed. Pub. L. 95-510, § 102(b), Oct. 24, 1978, 92 Stat. 1781

Section, Pub. L. 93-113, title V, §503, Oct. 1, 1973, 87 Stat. 415; Pub. L. 94-293, §6(b), May 27, 1976, 90 Stat. 526, authorized appropriations for national volunteer programs to assist small businesses and promote volunteer service by persons with business experience.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1979, see section 105 of Pub. L. 95-510, set out as an Effective Date of 1978 Amendment note under section 634 of Title 15, Commerce and Trade.

§ 5084. Administration and coordination

(a) In general

For each of the fiscal years 1994 through 1996, there are authorized to be appropriated for the administration of this chapter as provided for in subchapter IV of this chapter, 18 percent of the total amount appropriated under sections 5081 and 5082 of this title with respect to such year.

(b) Evaluation

For each of the fiscal years 1994 through 1996, the Director is authorized to expend not less than 2½ percent, and not more than 5 percent, of the amount appropriated under subsection (a) of

this section, for the purposes prescribed in section 5056 of this title.

(Pub. L. 93-113, title V, §504, Oct. 1, 1973, 87 Stat. 416; Pub. L. 94-293, §6(c), May 27, 1976, 90 Stat. 526; Pub. L. 96-143, §15(c), Dec. 13, 1979, 93 Stat. 1082; Pub. L. 97-35, title VI, §607(c), Aug. 13, 1981, 95 Stat. 487; Pub. L. 98-288, §29, May 21, 1984, 98 Stat. 197; Pub. L. 99-551, §9(e), Oct. 27, 1986, 100 Stat. 3077; Pub. L. 99-570, title IV, §4301(3), Oct. 27, 1986, 100 Stat. 3207-153; Pub. L. 101-204, title VIII, §803, Dec. 7, 1989, 103 Stat. 1824; Pub. L. 103-82, title III, §383, Sept. 21, 1993, 107 Stat. 915.)

AMENDMENTS

1993—Pub. L. 103-82 amended section generally. Prior to amendment, section read as follows:

“(a) There is authorized to be appropriated for the administration of this chapter, as authorized in subchapter IV of this chapter, \$25,312,000 for each of the fiscal years 1987, 1988, and 1989. In addition to the amounts authorized to be appropriated for the administration of this chapter by the preceding sentence, there is authorized to be appropriated the aggregate sum of \$500,000 for fiscal years 1987 and 1988 to be available for support of drug abuse prevention.

“(b) For each of the fiscal years 1990 through 1993, there is authorized to be appropriated for the administration of this chapter, as authorized in subchapter IV of this chapter, 20 percent of the total amount appropriated under sections 5081 and 5082 of this title.”

1989—Pub. L. 101-204 designated existing provisions as subsec. (a) and added subsec. (b).

1986—Pub. L. 99-570 inserted at end “In addition to the amounts authorized to be appropriated for the administration of this chapter by the preceding sentence, there is authorized to be appropriated the aggregate sum of \$500,000 for fiscal years 1987 and 1988 to be available for support of drug abuse prevention.”

Pub. L. 99-551 substituted “\$25,312,000 for each of the fiscal years 1987, 1988, and 1989” for “\$25,800,000 for fiscal year 1984, \$27,000,000 for fiscal year 1985, and \$28,000,000 for fiscal year 1986”.

1984—Pub. L. 98-288 substituted “\$25,800,000 for fiscal year 1984, \$27,000,000 for fiscal year 1985, and \$28,000,000 for fiscal year 1986” for “\$30,091,000 for fiscal year 1982 and \$29,348,000 for fiscal year 1983”.

1981—Pub. L. 97-35 substituted provisions authorizing appropriations for fiscal years 1982 and 1983, for provisions authorizing appropriations for fiscal year ending June 30, 1974, through fiscal year ending Sept. 30, 1981.

1979—Pub. L. 96-143 inserted “September 30, 1979, September 30, 1980, and September 30, 1981,” after “September 30, 1978.”

1976—Pub. L. 94-293 inserted “September 30, 1977, and September 30, 1978,” after “June 30, 1976.”

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Oct. 1, 1993, see section 392 of Pub. L. 103-82, set out as a note under section 4951 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-551 effective Oct. 1, 1986, except as otherwise provided, see section 11 of Pub. L. 99-551, set out as an Effective Date note under section 4950 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 20 section 3142.

§ 5085. Availability of appropriations

Notwithstanding any other provision of law, unless enacted in express and specific limitation of the provisions of this section, funds appropriated for any fiscal year to carry out any program under this chapter or any predecessor au-

thority shall remain available, in accordance with the provisions of this chapter, for obligation and expenditure until expended.

(Pub. L. 93-113, title V, §505, Oct. 1, 1973, 87 Stat. 416.)

SUBCHAPTER VI—YOUTHBUILD PROJECTS

§§ 5091 to 5091n. Repealed. Pub. L. 103-82, title III, § 385, Sept. 21, 1993, 107 Stat. 915

Section 5091, Pub. L. 93-113, title VII, § 701, as added Pub. L. 101-610, title II, § 211, Nov. 16, 1990, 104 Stat. 3172, set forth purpose of this subchapter.

Section 5091a, Pub. L. 93-113, title VII, § 702, as added Pub. L. 101-610, title II, § 211, Nov. 16, 1990, 104 Stat. 3173, authorized Federal grants for Youthbuild projects.

Section 5091b, Pub. L. 93-113, title VII, § 703, as added Pub. L. 101-610, title II, § 211, Nov. 16, 1990, 104 Stat. 3173, related to service in construction and rehabilitation projects.

Section 5091c, Pub. L. 93-113, title VII, § 704, as added Pub. L. 101-610, title II, § 211, Nov. 16, 1990, 104 Stat. 3174, related to education and job training services.

Section 5091d, Pub. L. 93-113, title VII, § 705, as added Pub. L. 101-610, title II, § 211, Nov. 16, 1990, 104 Stat. 3174, set forth permitted uses of funds provided under this subchapter.

Section 5091e, Pub. L. 93-113, title VII, § 706, as added Pub. L. 101-610, title II, § 211, Nov. 16, 1990, 104 Stat. 3175, set forth eligibility requirements for participants.

Section 5091f, Pub. L. 93-113, title VII, § 707, as added Pub. L. 101-610, title II, § 211, Nov. 16, 1990, 104 Stat. 3175, provided living allowance for full-time program participants.

Section 5091g, Pub. L. 93-113, title VII, § 708, as added Pub. L. 101-610, title II, § 211, Nov. 16, 1990, 104 Stat. 3176, directed that services and activities be carried out through arrangements or under contracts with certain entities.

Section 5091h, Pub. L. 93-113, title VII, § 709, as added Pub. L. 101-610, title II, § 211, Nov. 16, 1990, 104 Stat. 3176, directed prescribing of standards for evaluating performance of projects.

Section 5091i, Pub. L. 93-113, title VII, § 710, as added Pub. L. 101-610, title II, § 211, Nov. 16, 1990, 104 Stat. 3176, related to applications for grants.

Section 5091j, Pub. L. 93-113, title VII, § 711, as added Pub. L. 101-610, title II, § 211, Nov. 16, 1990, 104 Stat. 3177, set forth criteria for selection of projects.

Section 5091k, Pub. L. 93-113, title VII, § 712, as added Pub. L. 101-610, title II, § 211, Nov. 16, 1990, 104 Stat. 3177, authorized management and technical assistance for projects.

Section 5091l, Pub. L. 93-113, title VII, § 713, as added Pub. L. 101-610, title II, § 211, Nov. 16, 1990, 104 Stat. 3178, defined terms for purposes of this subchapter.

Section 5091m, Pub. L. 93-113, title VII, § 715, as added Pub. L. 101-610, title II, § 211, Nov. 16, 1990, 104 Stat. 3179; amended Pub. L. 102-10, § 10, Mar. 12, 1991, 105 Stat. 32, directed issuance of necessary regulations.

Section 5091n, Pub. L. 93-113, title VII, § 716, as added Pub. L. 101-610, title II, § 211, Nov. 16, 1990, 104 Stat. 3179, authorized appropriations to carry out this subchapter.

EFFECTIVE DATE OF REPEAL

Subchapter repealed effective Oct. 1, 1993, see section 392 of Pub. L. 103-82, set out as an Effective Date of 1993 Amendment note under section 4951 of this title.

CHAPTER 67—CHILD ABUSE PREVENTION AND TREATMENT AND ADOPTION REFORM

SUBCHAPTER I—GENERAL PROGRAM

- Sec. 5101. Office on Child Abuse and Neglect.
 - (a) Establishment.
 - (b) Purpose.

- Sec. 5102. Advisory board on child abuse and neglect.
 - (a) Appointment.
 - (b) Solicitation of nominations.
 - (c) Composition.
 - (d) Vacancies.
 - (e) Election of officers.
 - (f) Duties.
- 5103. Repealed.
- 5104. National clearinghouse for information relating to child abuse.
 - (a) Establishment.
 - (b) Functions.
 - (c) Coordination with available resources.
- 5105. Research and assistance activities.
 - (a) Research.
 - (b) Provision of technical assistance.
 - (c) Authority to make grants or enter into contracts.
 - (d) Peer review for grants.
 - (e) Demonstration programs and projects.
- 5106. Grants to States and public or private agencies and organizations.
 - (a) Grants for programs and projects.
 - (b) Discretionary grants.
 - (c) Evaluation.
- 5106a. Grants to States for child abuse and neglect prevention and treatment programs.
 - (a) Development and operation grants.
 - (b) Eligibility requirements.
 - (c) Citizen review panels.
 - (d) Annual State data reports.
 - (e) Annual report by Secretary.
- 5106a-1, 5106b. Repealed.
- 5106c. Grants to States for programs relating to investigation and prosecution of child abuse and neglect cases.
 - (a) Grants to States.
 - (b) Eligibility requirements.
 - (c) State task forces.
 - (d) State task force study.
 - (e) Adoption of State task force recommendations.
 - (f) Funds available.
- 5106d. Miscellaneous requirements relating to assistance.
 - (a) Construction of facilities.
 - (b) Geographical distribution.
 - (c) Limitation.
 - (d) Sense of Congress.
 - (e) Annual report.
- 5106e. Coordination of child abuse and neglect programs.
- 5106f. Reports.
 - (a) Omitted.
 - (b) Effectiveness of State programs.
 - (c) Study and report relating to citizen review panels.
- 5106f-1. Report concerning voluntary reporting system.
- 5106g. Definitions.
- 5106h. Authorization of appropriations.
 - (a) In general.
 - (b) Availability of funds without fiscal year limitation.
- 5106i. Rule of construction.
 - (a) In general.
 - (b) State requirement.
- 5107. Discretionary programs; authorization of appropriations.

SUBCHAPTER II—ADOPTION OPPORTUNITIES

- 5111. Congressional findings and declaration of purpose.
 - (a) Findings.
 - (b) Purpose.
- 5112. Repealed.
- 5113. Information and services.

- Sec.
- (a) In general.
 - (b) Required activities.
 - (c) Services for families adopting special needs children.
 - (d) Improving placement rate of children in foster care.
 - (e) Elimination of barriers to adoptions across jurisdictional boundaries.
5114. Study and report of unlicensed or unregulated adoption placements.
- (a) In general.
 - (b) Dynamics of successful adoption.
 - (c) Interjurisdictional adoption.
5115. Authorization of appropriations.
- 5115a. Repealed.
- SUBCHAPTER III—COMMUNITY-BASED GRANTS FOR THE PREVENTION OF CHILD ABUSE AND NEGLECT**
5116. Purpose and authority.
- (a) Purpose.
 - (b) Authority.
- 5116a. Eligibility.
- 5116b. Amount of grant.
- (a) Reservation.
 - (b) Remaining amounts.
 - (c) Allocation.
- 5116c. Repealed.
- 5116d. Application.
- 5116e. Local program requirements.
- (a) In general.
 - (b) Priority.
- 5116f. Performance measures.
- 5116g. National network for community-based family resource programs.
- 5116h. Definitions.
- 5116i. Authorization of appropriations.
- SUBCHAPTER IV—TEMPORARY CHILD CARE FOR CHILDREN WITH DISABILITIES AND CRISIS NURSERIES**
- 5117 to 5117d. Repealed.
- SUBCHAPTER V—CERTAIN PREVENTIVE SERVICES REGARDING CHILDREN OF HOMELESS FAMILIES OR FAMILIES AT RISK OF HOMELESSNESS**
- 5118 to 5118e. Repealed.
- SUBCHAPTER VI—CHILD ABUSE CRIME INFORMATION AND BACKGROUND CHECKS**
5119. Reporting child abuse crime information.
- (a) In general.
 - (b) Provision of State child abuse crime records through national criminal history background check system.
 - (c) Liaison.
 - (d) Annual summary.
 - (e) Annual report.
 - (f) Study of child abuse offenders.
- 5119a. Background checks.
- (a) In general.
 - (b) Guidelines.
 - (c) Regulations.
 - (d) Liability.
 - (e) Fees.
- 5119b. Funding for improvement of child abuse crime information.
- (a) Omitted.
 - (b) Additional funding grants for improvement of child abuse crime information.
 - (c) Withholding State funds.
- 5119c. Definitions.

**SUBCHAPTER I—GENERAL PROGRAM
CODIFICATION**

This subchapter is comprised of title I of the Child Abuse Prevention and Treatment Act, Pub. L. 93-247.

Title II of that Act is classified to subchapter III (§5116 et seq.) of this chapter.

§ 5101. Office on Child Abuse and Neglect

(a) Establishment

The Secretary of Health and Human Services may establish an office to be known as the Office on Child Abuse and Neglect.

(b) Purpose

The purpose of the Office established under subsection (a) of this section shall be to execute and coordinate the functions and activities of this subchapter and subchapter III of this chapter. In the event that such functions and activities are performed by another entity or entities within the Department of Health and Human Services, the Secretary shall ensure that such functions and activities are executed with the necessary expertise and in a fully coordinated manner involving regular intradepartmental and interdepartmental consultation with all agencies involved in child abuse and neglect activities.

(Pub. L. 93-247, title I, §101, formerly §2, Jan. 31, 1974, 88 Stat. 5; Pub. L. 93-644, §8(d)(1), Jan. 4, 1975, 88 Stat. 2310; Pub. L. 95-266, title I, §101, Apr. 24, 1978, 92 Stat. 205; Pub. L. 98-457, title I, §101, Oct. 9, 1984, 98 Stat. 1749; Pub. L. 99-401, title I, §103(a), Aug. 27, 1986, 100 Stat. 906; Pub. L. 100-294, title I, §101, Apr. 25, 1988, 102 Stat. 103; renumbered title I, §101, Pub. L. 101-126, §3(a)(1), (2), Oct. 25, 1989, 103 Stat. 764; Pub. L. 104-235, title I, §101, Oct. 3, 1996, 110 Stat. 3064.)

AMENDMENTS

1996—Pub. L. 104-235 amended section generally, substituting provisions relating to Office on Child Abuse and Neglect for provisions relating to National Center on Child Abuse and Neglect.

1988—Pub. L. 100-294 amended section generally, substituting provisions relating to establishment, appointment of Director, and other staff and resources of National Center on Child Abuse and Neglect for provisions relating to establishment, functions, grant and contract authority, staff and resource availability, and use of funds of National Center on Child Abuse and Neglect. See sections 5105 to 5106d of this title.

1986—Subsec. (b)(2). Pub. L. 99-401, §103(a)(2), added par. (2). Former par. (2) redesignated (3).

Subsec. (b)(3), (4). Pub. L. 99-401, §103(a)(1), redesignated former pars. (2) and (3) as (3) and (4), respectively. Former par. (4) redesignated (6).

Subsec. (b)(5). Pub. L. 99-401, §103(a)(3), added par. (5). Former par. (5) redesignated (7).

Subsec. (b)(6). Pub. L. 99-401, §103(a)(1), redesignated former par. (4) as (6). Former par. (6) redesignated (8).

Subsec. (b)(7). Pub. L. 99-401, §103(a)(1), (4), redesignated former par. (5) as (7) and amended it generally, substituting "conduct research on the causes, prevention, identification, and treatment of child abuse and neglect, and on appropriate and effective investigative, administrative, and judicial procedures in cases of child abuse" for "conduct research into the causes of child abuse and neglect, and into the prevention, identification, and treatment thereof". Former par. (7) redesignated (9).

Subsec. (b)(8), (9). Pub. L. 99-401, §103(a)(1), redesignated former pars. (6) and (7) as (8) and (9), respectively.

Subsec. (b)(10). Pub. L. 99-401, §103(a)(5), added par. (10).

1984—Subsec. (a). Pub. L. 98-457, §101(a), substituted "Health and Human Services" for "Health, Education, and Welfare".

Subsec. (b)(6). Pub. L. 98-457, §101(b), amended par. (6) generally. Prior to amendment, par. (6) read as follows:

“make a complete and full study and investigation of the national incidence of child abuse and neglect, including a determination of the extent to which incidents of child abuse and neglect are increasing in number or severity; and”.

Subsec. (b)(7). Pub. L. 98-457, §101(b), amended par. (7) generally. Prior to amendment, par. (7) read as follows: “in consultation with Federal agencies serving on the Advisory Board on Child Abuse and Neglect (established by section 5105 of this title), prepare a comprehensive plan for seeking to bring about maximum coordination of the goals, objectives, and activities of all agencies and organizations which have responsibilities for programs and activities related to child abuse and neglect, and submit such plan to such Advisory Board not later than twelve months after April 24, 1978.”

Subsec. (c). Pub. L. 98-457, §101(c), substituted “The functions of the Secretary under subsection (b) of this section may be carried out” for “The Secretary may carry out his functions under subsection (b) of this section”.

Subsec. (e). Pub. L. 98-457, §101(d), added subsec. (e). 1978—Subsec. (b). Pub. L. 95-266, §101(1), in pars. (1) and (3) inserted requirement of dissemination of annual summary and training materials, respectively, and added par. (7).

Subsec. (c). Pub. L. 95-266, §101(2), inserted provisions relating to duration and review of grants under subsec. (b)(5) of this section.

Subsec. (d). Pub. L. 95-266, §101(3), added subsec. (d). 1975—Subsec. (c). Pub. L. 93-644 added subsec. (c).

SHORT TITLE OF 2003 AMENDMENT

Pub. L. 108-36, §1(a), June 25, 2003, 117 Stat. 800, provided that: “This Act [see Tables for classification] may be cited as the ‘Keeping Children and Families Safe Act of 2003’.”

SHORT TITLE OF 1998 AMENDMENT

Pub. L. 105-251, title II, §221, Oct. 9, 1998, 112 Stat. 1885, provided that: “This subtitle [subtitle B (§§221, 222) of title II of Pub. L. 105-251, amending sections 5119a and 5119b of this title] may be cited as the ‘Volunteers for Children Act’.”

SHORT TITLE OF 1996 AMENDMENT

Section 1(a) of Pub. L. 104-235 provided that: “This Act [enacting sections 5106i and 5116 to 5116i of this title, amending this section and sections 5102, 5104 to 5106, 5106a, 5106c to 5106f, 5106g to 5106i, 5111, 5113, 5115, 5777, 10402, 10403, 10409, 10603a, and 13004 of this title, repealing sections 5103, 5106b, 5117 to 5117d, 5118 to 5118e, 5778, and 11481 to 11489 of this title, amending provisions set out as notes under this section and section 670 of this title, and repealing provisions set out as notes under section 5117 of this title] may be cited as the ‘Child Abuse Prevention and Treatment Act Amendments of 1996’.”

SHORT TITLE OF 1994 AMENDMENT

For short title of subpart 1 of part E of title V of Pub. L. 103-381, which enacted section 5115a of this title, as the “Howard M. Metzbaum Multiethnic Placement Act of 1994”, see section 551 of Pub. L. 103-382, set out as a note under section 1305 of this title.

SHORT TITLE OF 1993 AMENDMENT

Pub. L. 103-209, §1, Dec. 20, 1993, 107 Stat. 2490, provided that: “This Act [enacting sections 5119 to 5119c of this title and amending section 3759 of this title] may be cited as the ‘National Child Protection Act of 1993’.”

SHORT TITLE OF 1992 AMENDMENT

Pub. L. 102-295, §1(a), May 28, 1992, 106 Stat. 187, provided that: “This Act [enacting sections 5106f-1, 10414, and 10415 of this title, amending sections 5102, 5105, 5106, 5106a, 5106a-1, 5106c, 5106h, 5111, 5113, 5115, 5116, 5116b to 5116d, 5117c, 5117d, 5118e, 10401 to 10405, 10407 to 10410,

10412, and 10413 of this title, repealing section 5112 of this title, and enacting provisions set out as notes under this section and sections 5106a, 5106h, 5117, 10401, and 10402 of this title] may be cited as the ‘Child Abuse, Domestic Violence, Adoption and Family Services Act of 1992’.”

SHORT TITLE OF 1989 AMENDMENT

Section 1 of Pub. L. 101-126 provided that: “This Act [amending this section and sections 5102 to 5106h and 5116 to 5116g of this title and enacting provisions set out as notes under section 5102 and 5116b of this title] may be cited as the ‘Child Abuse Prevention Challenge Grants Reauthorization Act of 1989’.”

SHORT TITLE OF 1988 AMENDMENT

Section 1 of Pub. L. 100-294 provided that: “This Act [enacting sections 5106a to 5106h and 10413 of this title, amending this section and sections 5102 to 5106, 5113, 5115, 10402, 10409, and 10410 of this title, repealing section 10411 of this title, and enacting provisions set out as notes under this section and section 5105 of this title] may be referred to as the ‘Child Abuse Prevention, Adoption, and Family Services Act of 1988’.”

SHORT TITLE OF 1986 AMENDMENT

Section 1 of Pub. L. 99-401 provided that: “This Act [enacting subchapter IV of this chapter and section 10603a of this title, amending this section and sections 290dd-3, 290ee-3, 5103, 5105, 10601, and 10603 of this title, and enacting provisions set out as notes under this section and section 5117 of this title] may be cited as the ‘Children’s Justice and Assistance Act of 1986’.”

Section 101 of title I of Pub. L. 99-401 provided that: “This title [enacting section 10603a of this title, amending this section and sections 290dd-3, 290ee-3, 5103, 5105, 10601, and 10603 of this title, and enacting provisions set out as notes under this section] may be cited as the ‘Children’s Justice Act’.”

For short title of title II of Pub. L. 99-401, which enacted subchapter IV of this chapter, as the “Temporary Child Care for Handicapped Children and Crisis Nurseries Act of 1986”, see section 201 of Pub. L. 99-401, set out as a Short Title note under section 5117 of this title.

SHORT TITLE OF 1984 AMENDMENT

Section 1 of Pub. L. 98-457 provided: “That this Act [enacting chapter 110 of this title, amending this section and sections 5102 to 5106, 5111 to 5113, and 5115 of this title, and enacting provisions set out as notes under this section and sections 5102, 5103, and 10401 of this title] may be cited as the ‘Child Abuse Amendments of 1984’.”

SHORT TITLE OF 1978 AMENDMENT

Section 1 of Pub. L. 95-266 provided: “That this Act [enacting subchapter II of this chapter and amending this section and sections 5102 to 5105 of this title] may be cited as the ‘Child Abuse Prevention and Treatment and Adoption Reform Act of 1978’.”

SHORT TITLE

Section 1(a), formerly §1, of Pub. L. 93-247, as renumbered §1(a) and amended by Pub. L. 100-294, title I, §101, Apr. 25, 1988, 102 Stat. 102, provided that: “This Act [enacting this subchapter and subchapters III and V of this chapter] may be cited as the ‘Child Abuse Prevention and Treatment Act’.”

REGULATIONS

Section 401(a) of Pub. L. 100-294 provided that: “For any rule or regulation needed to implement this Act [see Short Title of 1988 Amendment note above], the Secretary of Health and Human Services shall—

“(1) publish proposed regulations for purposes of implementing the amendments made by this Act before the expiration of the 90-day period beginning on the date of the enactment of this Act [Apr. 25, 1988];

“(2) allow not less than 45 days for public comment on such proposed regulations; and

“(3) publish final regulations for purposes of implementing the amendments made by this Act before the end of the 195-day period beginning on the date of the enactment of this Act.”

CONSTRUCTION OF CHILD ABUSE AMENDMENTS OF 1984 WITH OTHER LAWS; SEPARABILITY

Section 127 of Pub. L. 98-457 provided that:

“(a) No provision of this Act or any amendment made by this Act [See Short Title of 1984 Amendment note above] is intended to affect any right or protection under section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794].

“(b) No provision of this Act or any amendment made by this Act may be so construed as to authorize the Secretary or any other governmental entity to establish standards prescribing specific medical treatments for specific conditions, except to the extent that such standards are authorized by other laws.

“(c) If the provisions of any part of this Act or any amendment made by this Act or the application thereof to any person or circumstances be held invalid, the provisions of the other parts and their application to other persons or circumstances shall not be affected thereby.”

PRESIDENTIAL COMMISSION ON CHILD AND YOUTH DEATHS

Section 106 of Pub. L. 100-294 established a National Commission on Child and Youth Deaths to study and evaluate comprehensively Federal, State, and local public and private resources which affect child and youth deaths and to prepare and transmit to President and appropriate committees of Congress a report within 12 months after appointment of the Commission, and provided that the Commission terminates 90 days after transmitting the report.

ACQUISITION OF STATISTICAL DATA

Section 105 of Pub. L. 99-401 provided that:

“(a) DATA ACQUISITION FOR 1987 AND 1988.—The Attorney General shall acquire from criminal justice agencies statistical data, for the calendar years 1987 and 1988, about the incidence of child abuse, including child sexual abuse, and shall publish annually a summary of such data.

“(b) MODIFICATION OF UNIFORM CRIME REPORTING PROGRAM.—(1) As soon as practicable, but in no case later than January 1, 1989, the Attorney General shall modify the uniform crime reporting program in the Federal Bureau of Investigation to include data on the age of the victim of the offense and the relationship, if any, of the victim to the offender, for types of offenses that may involve child abuse, including child sexual abuse.

“(2) The modification, once made, shall remain in effect until the later of—

“(A) 10 years after the date it is made; or

“(B) such ending date as may be set by the Attorney General.”

CONGRESSIONAL FINDINGS

Section 2 of Pub. L. 93-247, as added by Pub. L. 102-295, title I, §102(a), May 28, 1992, 106 Stat. 188, and amended by Pub. L. 104-235, title I, §100, Oct. 3, 1996, 110 Stat. 3064; Pub. L. 108-36, title I, §101, June 25, 2003, 117 Stat. 801, provided that: “Congress finds that—

“(1) each year, approximately 900,000 American children are victims of abuse and neglect;

“(2)(A) more children suffer neglect than any other form of maltreatment; and

“(B) investigations have determined that approximately 60 percent of children who were victims of maltreatment in 2001 suffered neglect, 19 percent suffered physical abuse, 10 percent suffered sexual abuse, and 7 percent suffered emotional maltreatment;

“(3)(A) child abuse can result in the death of a child;

“(B) in 2001, an estimated 1,300 children were counted by child protection services to have died as a result of abuse or neglect; and

“(C) children younger than 1 year old comprised 41 percent of child abuse fatalities and 85 percent of child abuse fatalities were younger than 6 years of age;

“(4)(A) many of these children and their families fail to receive adequate protection and treatment; and

“(B) slightly less than half of these children (42 percent in 2001) and their families fail to receive adequate protection or treatment;

“(5) the problem of child abuse and neglect requires a comprehensive approach that—

“(A) integrates the work of social service, legal, health, mental health, education, and substance abuse agencies and community-based organizations;

“(B) strengthens coordination among all levels of government, and with private agencies, civic, religious, and professional organizations, and individual volunteers;

“(C) emphasizes the need for abuse and neglect prevention, assessment, investigation, and treatment at the neighborhood level;

“(D) recognizes the need for properly trained staff with the qualifications needed, to carry out their child protection duties; and

“(E) is sensitive to ethnic and cultural diversity, which may impact child rearing patterns, while at the same time, not allowing those differences to enable abuse;

“(6) the failure to coordinate and comprehensively prevent and treat child abuse and neglect threatens the futures of thousands of children and results in a cost to the Nation of billions of dollars in tangible expenditures, as well as significant intangible costs;

“(7) all elements of American society have a shared responsibility in responding to child abuse and neglect;

“(8) substantial reductions in the prevalence and incidence of child abuse and neglect and the alleviation of its consequences are matters of the highest national priority;

“(9) national policy should strengthen families to prevent child abuse and neglect, provide support for needed services to prevent the unnecessary removal of children from families, and promote the reunification of families where appropriate;

“(10) the child protection system should be comprehensive, child-centered, family-focused, and community-based, should incorporate all appropriate measures to prevent the occurrence or recurrence of child abuse and neglect, and should promote physical and psychological recovery and social re-integration in an environment that fosters the health, safety, self-respect, and dignity of the child;

“(11) because of the limited resources available in low-income communities, Federal aid for the child protection system should be distributed with due regard to the relative financial need of the communities;

“(12) the Federal government should assist States and communities with the fiscal, human, and technical resources necessary to develop and implement a successful and comprehensive child and family protection strategy;

“(13) the Federal government should provide leadership and assist communities in their child and family protection efforts by—

“(A) promoting coordinated planning among all levels of government;

“(B) generating and sharing knowledge relevant to child and family protection, including the development of models for service delivery;

“(C) strengthening the capacity of States to assist communities;

“(D) allocating financial resources to assist States in implementing community plans;

“(E) helping communities to carry out their child and family protection plans by promoting the competence of professional, paraprofessional, and volunteer resources; and

“(F) providing leadership to end the abuse and neglect of the nation’s children and youth.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5107 of this title.

§ 5102. Advisory board on child abuse and neglect

(a) Appointment

The Secretary may appoint an advisory board to make recommendations to the Secretary and to the appropriate committees of Congress concerning specific issues relating to child abuse and neglect.

(b) Solicitation of nominations

The Secretary shall publish a notice in the Federal Register soliciting nominations for the appointment of members of the advisory board under subsection (a) of this section.

(c) Composition

In establishing the board under subsection (a) of this section, the Secretary shall appoint members from the general public who are individuals knowledgeable in child abuse and neglect prevention, intervention, treatment, or research, and with due consideration to representation of ethnic or racial minorities and diverse geographic areas, and who represent—

- (1) law (including the judiciary);
- (2) psychology (including child development);
- (3) social services (including child protective services);
- (4) medicine (including pediatrics);
- (5) State and local government;
- (6) organizations providing services to disabled persons;
- (7) organizations providing services to adolescents;
- (8) teachers;
- (9) parent self-help organizations;
- (10) parents’ groups;
- (11) voluntary groups;
- (12) family rights groups; and
- (13) children’s rights advocates.

(d) Vacancies

Any vacancy in the membership of the board shall be filled in the same manner in which the original appointment was made.

(e) Election of officers

The board shall elect a chairperson and vice-chairperson at its first meeting from among the members of the board.

(f) Duties

Not later than 1 year after the establishment of the board under subsection (a) of this section, the board shall submit to the Secretary and the appropriate committees of Congress a report, or interim report, containing—

- (1) recommendations on coordinating Federal, State, and local child abuse and neglect activities with similar activities at the Federal, State, and local level pertaining to family violence prevention;

(2) specific modifications needed in Federal and State laws and programs to reduce the number of unfounded or unsubstantiated reports of child abuse or neglect while enhancing the ability to identify and substantiate legitimate cases of abuse or neglect which place a child in danger; and

(3) recommendations for modifications needed to facilitate coordinated national data collection with respect to child protection and child welfare.

(Pub. L. 93–247, title I, §102, formerly §3, Jan. 31, 1974, 88 Stat. 5; Pub. L. 95–266, title I, §102, Apr. 24, 1978, 92 Stat. 206; Pub. L. 98–457, title I, §§102, 121, Oct. 9, 1984, 98 Stat. 1750, 1752; Pub. L. 100–294, title I, §101, Apr. 25, 1988, 102 Stat. 103; renumbered title I, §102, and amended Pub. L. 101–126, §3(a)(1), (2), (b)(1), Oct. 25, 1989, 103 Stat. 764; Pub. L. 102–295, title I, §111, May 28, 1992, 106 Stat. 190; Pub. L. 104–235, title I, §102, Oct. 3, 1996, 110 Stat. 3065.)

AMENDMENTS

1996—Pub. L. 104–235 amended section generally, substituting present provisions for provisions which related to appointment of Advisory Board on Child Abuse and Neglect in subsec. (a); solicitation of nominations in subsec. (b); composition of Advisory Board in subsec. (c); election of officers in subsec. (d); meetings in subsec. (e); duties in subsec. (f); compensation in subsec. (g); and authorization of appropriations in subsec. (h).

1992—Subsec. (f)(4). Pub. L. 102–295, §111(a), added par. (4).

Subsec. (h). Pub. L. 102–295, §111(b), added subsec. (h). 1989—Subsecs. (c)(1)(A), (e), (f)(2)(E). Pub. L. 101–126, §3(b)(1), made technical amendments to references to sections 5103, 5105, and 5106 of this title to reflect renumbering of corresponding sections of original act.

1988—Pub. L. 100–294 amended section generally, substituting provisions relating to Advisory Board on Child Abuse and Neglect for provisions relating to definitions. See section 5106g of this title.

1984—Cl. (1). Pub. L. 98–457, §121(1), designated provisions after opening phrase as cl. (1).

Pub. L. 98–457, §102(1), inserted “(including any employee of a residential facility or any staff person providing out-of-home care)”.

Cl. (2). Pub. L. 98–457, §102(2), (3), added cl. (2).

Cl. (3). Pub. L. 98–457, §121(2), (3), added cl. (3).

1978—Pub. L. 95–266 inserted “or exploitation” after “sexual abuse” and “, or the age specified by the child protection law of the State in question,” after “eighteen”.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 8 of Pub. L. 101–126 provided that: “This Act and the amendments made by this Act [see Short Title of 1989 Amendment note set out under section 5101 of this title] shall take effect October 1, 1989, or upon the date of the enactment of this Act [Oct. 25, 1989], whichever occurs later.”

EFFECTIVE DATE OF 1984 AMENDMENT

Section 128 of Pub. L. 98–457 provided that:

“(a) Except as provided in subsection (b), the provisions of this part or any amendment made by this part [part B (§§121–128) of title I of Pub. L. 98–457, amending this section and section 5103 of this title and enacting provisions set out as notes under sections 5101 and 5103 of this title] shall be effective on the date of the enactment of this Act [Oct. 9, 1984].

“(b)(1) Except as provided in paragraph (2), the amendments made by sections 122 and 123(b) of this Act [amending section 5103 of this title] shall become effective one year after the date of such enactment [Oct. 9, 1984].

“(2) In the event that, prior to such effective date, funds have not been appropriated pursuant to section 5 of the Act (as amended by section 104 of this Act) [section 5104 of this title] for the purpose of grants under section 4(c)(1) of the Act (as added by section 123(a) of this Act) [section 5103(c)(1) of this title], any State which has not met any requirement of section 4(b)(2)(K) of the Act (as added by section 122(3) of this Act) may be granted a waiver of such requirements for a period of not more than one year, if the Secretary finds that such State is making a good-faith effort to comply with such requirements.”

TERMINATION OF ADVISORY BOARDS

Advisory boards established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of its establishment, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the end of such period, or in the case of a board established by the Congress, its duration is otherwise provided by law, see sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

LIMITATIONS ON USE OF APPROPRIATED FUNDS

Pub. L. 105-277, div. A, §101(f) [title II, §206], Oct. 21, 1998, 112 Stat. 2681-337, 2681-359, provided that: “None of the funds appropriated in this Act or subsequent Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Acts, may be obligated or expended for the Federal Council on Aging under the Older Americans Act [of 1965, 42 U.S.C. 3001 et seq.] or the Advisory Board on Child Abuse and Neglect under the Child Abuse Prevention and Treatment Act [42 U.S.C. 5101 et seq.]”

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 105-78, title II, §206, Nov. 13, 1997, 111 Stat. 1489.

Pub. L. 104-208, div. A, §101(e) [title II, §208], Sept. 30, 1996, 110 Stat. 3009-233, 3009-254.

Pub. L. 104-134, title I, §101(d) [title II, §209], Apr. 26, 1996, 110 Stat. 1321-211, 1321-228; renumbered title I, Pub. L. 104-140, §1(a), May 2, 1996, 110 Stat. 1327.

§ 5103. Repealed. Pub. L. 104-235, title I, § 103, Oct. 3, 1996, 110 Stat. 3066

Section, Pub. L. 93-247, title I, § 103, formerly § 4, Jan. 31, 1974, 88 Stat. 5; Pub. L. 93-644, §8(d)(2), Jan. 4, 1975, 88 Stat. 2310; Pub. L. 95-266, title I, § 103, Apr. 24, 1978, 92 Stat. 206; Pub. L. 98-457, title I, §§103, 122, 123, Oct. 9, 1984, 98 Stat. 1750, 1752, 1753; Pub. L. 99-401, title I, §102(a), Aug. 27, 1986, 100 Stat. 903; Pub. L. 100-117, §1, Sept. 28, 1987, 101 Stat. 751; Pub. L. 100-294, title I, § 101, Apr. 25, 1988, 102 Stat. 105; renumbered title I, § 103, Pub. L. 101-126, §3(a)(1), (2), Oct. 25, 1989, 103 Stat. 764, related to the Inter-Agency Task Force on Child Abuse and Neglect.

§ 5104. National clearinghouse for information relating to child abuse

(a) Establishment

The Secretary shall through the Department, or by one or more contracts of not less than 3 years duration let through a competition, establish a national clearinghouse for information relating to child abuse.

(b) Functions

The Secretary shall, through the clearinghouse established by subsection (a) of this section—

(1) maintain, coordinate, and disseminate information on all effective programs, including

private and community-based programs, that show promise of success with respect to the prevention, assessment, identification, and treatment of child abuse and neglect and hold the potential for broad scale implementation and replication;

(2) maintain information about the best practices used for achieving improvements in child protective systems;

(3) maintain and disseminate information relating to—

(A) the incidence of cases of child abuse and neglect in the United States;

(B) the incidence of such cases in populations determined by the Secretary under section 105(a)(1) of the Child Abuse Prevention, Adoption, and Family Services Act of 1988; and

(C) the incidence of any such cases related to alcohol or drug abuse;

(4) provide technical assistance upon request that may include an evaluation or identification of—

(A) various methods and procedures for the investigation, assessment, and prosecution of child physical and sexual abuse cases;

(B) ways to mitigate psychological trauma to the child victim; and

(C) effective programs carried out by the States under this subchapter and subchapter III of this chapter; and

(5) collect and disseminate information relating to various training resources available at the State and local level to—

(A) individuals who are engaged, or who intend to engage, in the prevention, identification, and treatment of child abuse and neglect; and

(B) appropriate State and local officials to assist in training law enforcement, legal, judicial, medical, mental health, education, and child welfare personnel.

(c) Coordination with available resources

(1) In general

In establishing a national clearinghouse as required by subsection (a) of this section, the Secretary shall—

(A) consult with other Federal agencies that operate similar clearinghouses;

(B) consult with the head of each agency involved with child abuse and neglect and mechanisms for the sharing of such information among other Federal agencies and clearinghouses on the development of the components for information collection and management of such clearinghouse;

(C) develop a Federal data system involving the elements under subsection (b) of this section which, to the extent practicable, coordinates existing Federal, State, regional, and local child welfare data systems which shall include—

(i) standardized data on false, unfounded, unsubstantiated, and substantiated reports; and

(ii) information on the number of deaths due to child abuse and neglect;

(D) through a national data collection and analysis program and in consultation with

appropriate State and local agencies and experts in the field, collect, compile, and make available State child abuse and neglect reporting information which, to the extent practical, shall be universal and case specific and integrated with other case-based foster care and adoption data collected by the Secretary;

(E) compile, analyze, and publish a summary of the research conducted under section 5105(a) of this title;

(F) collect and disseminate information that describes best practices being used throughout the Nation for making appropriate referrals related to, and addressing, the physical, developmental, and mental health needs of abused and neglected children; and

(G) solicit public comment on the components of such clearinghouse.

(2) Confidentiality requirement

In carrying out paragraph (1)(D), the Secretary shall ensure that methods are established and implemented to preserve the confidentiality of records relating to case specific data.

(Pub. L. 93-247, title I, §103, formerly §5, Jan. 31, 1974, 88 Stat. 7; Pub. L. 95-266, title I, §104, Apr. 24, 1978, 92 Stat. 206; Pub. L. 98-457, title I, §104, Oct. 9, 1984, 98 Stat. 1751; Pub. L. 100-294, title I, §101, Apr. 25, 1988, 102 Stat. 105; renumbered title I, §104, and amended Pub. L. 101-126, §§3(a)(1), (2), (b)(2), 6, Oct. 25, 1989, 103 Stat. 764, 765, 768; renumbered §103 and amended Pub. L. 104-235, title I, §§104, 113(a)(1)(A), Oct. 3, 1996, 110 Stat. 3066, 3079; Pub. L. 108-36, title I, §111, June 25, 2003, 117 Stat. 802.)

REFERENCES IN TEXT

Section 105(a)(1) of the Child Abuse Prevention, Adoption, and Family Services Act of 1988, referred to in subsec. (b)(3)(B), is section 105(a)(1) of Pub. L. 100-294, which is set out as a note under section 5105 of this title.

PRIOR PROVISIONS

A prior section 103 of Pub. L. 93-247 was classified to section 5103 of this title prior to repeal by Pub. L. 104-235.

AMENDMENTS

2003—Subsec. (b)(1). Pub. L. 108-36, §111(a)(1), substituted “all effective programs, including private and community-based programs, that show promise of success with respect to the prevention, assessment, identification, and treatment of child abuse and neglect and hold the potential for broad scale implementation and replication;” for “all programs, including private programs, that show promise of success with respect to the prevention, assessment, identification, and treatment of child abuse and neglect; and”.

Subsec. (b)(2), (3). Pub. L. 108-36, §111(a)(2)–(4), added par. (2) and redesignated former par. (2) as (3) and substituted a semicolon for period at end.

Subsec. (b)(4), (5). Pub. L. 108-36, §111(a)(5), added pars. (4) and (5).

Subsec. (c)(1)(E). Pub. L. 108-36, §111(b)(1), made technical amendment to reference to section 5105(a) of this title to reflect renumbering of corresponding section of original act and struck out “and” at end.

Subsec. (c)(1)(F), (G). Pub. L. 108-36, §111(b)(2), (3), added subpar. (F) and redesignated former subpar. (F) as (G).

1996—Subsec. (a). Pub. L. 104-235, §104(1), amended heading and text generally. Prior to amendment, text read as follows: “Before the end of the 2-year period beginning on April 25, 1988, the Secretary shall through the Center, or by contract of no less than 3 years duration let through a competition, establish a national clearinghouse for information relating to child abuse.”

Subsec. (b). Pub. L. 104-235, §104(2)(A), substituted “Secretary” for “Director” in introductory provisions.

Subsec. (b)(1). Pub. L. 104-235, §104(2)(B)(ii), which directed striking out “, including” and all that followed and inserting “; and”, was executed to reflect the probable intent of Congress by substituting “; and” for “, including the information provided by the National Center for Child Abuse and Neglect under section 5105(b) of this title;” which was all that followed “, including” the second place it appeared.

Pub. L. 104-235, §104(2)(B)(ii), inserted “assessment,” after “prevention.”

Subsec. (b)(2). Pub. L. 104-235, §104(2)(C), substituted “United States” for “general population” in subpar. (A) and struck out subpar. (D) which read as follows: “State and local recordkeeping with respect to such cases; and”.

Subsec. (b)(3). Pub. L. 104-235, §104(2)(D), struck out par. (3) which read as follows: “directly or through contract, identify effective programs carried out by the States pursuant to subchapter III of this chapter and provide technical assistance to the States in the implementation of such programs.”

Subsec. (c)(1). Pub. L. 104-235, §104(3)(A), designated existing provisions as par. (1), inserted heading, and substituted “Secretary” for “Director” in introductory provisions. Former par. (1) redesignated (1)(A).

Subsec. (c)(1)(A). Pub. L. 104-235, §104(3)(B), redesignated par. (1) as (1)(A) and realigned margin.

Subsec. (c)(1)(B). Pub. L. 104-235, §104(3)(B), (C), redesignated par. (2) as (1)(B), realigned margin, and substituted “involved with child abuse and neglect and mechanisms for the sharing of such information among other Federal agencies and clearinghouses” for “that is represented on the task force”.

Subsec. (c)(1)(C). Pub. L. 104-235, §104(3)(B), (C), redesignated par. (3) as (1)(C), realigned margin, and substituted “Federal, State, regional, and local child welfare data systems which shall include—

“(i) standardized data on false, unfounded, unsubstantiated, and substantiated reports; and

“(ii) information on the number of deaths due to child abuse and neglect;”

for “State, regional, and local data systems; and”.

Subsec. (c)(1)(D). Pub. L. 104-235, §104(3)(F), added subpar. (D). Former subpar. (D) redesignated (F).

Pub. L. 104-235, §104(3)(B), redesignated par. (4) as (1)(D) and realigned margin.

Subsec. (c)(1)(E). Pub. L. 104-235, §104(3)(F), added subpar. (E).

Subsec. (c)(1)(F). Pub. L. 104-235, §104(3)(E), redesignated subpar. (D) as (F).

Subsec. (c)(2). Pub. L. 104-235, §104(3)(G), added par. (2). Former par. (2) redesignated (1)(B).

Subsec. (c)(3), (4). Pub. L. 104-235, §104(3)(B), redesignated pars. (3) and (4) as (1)(C) and (1)(D), respectively.

1989—Subsec. (b)(1). Pub. L. 101-126, §3(b)(2)(A), made technical amendment to reference to section 5105(b) of this title to reflect renumbering of corresponding section of original act.

Subsec. (b)(2)(B). Pub. L. 101-126, §3(b)(2)(B), inserted “of the Child Abuse Prevention, Adoption, and Family Services Act of 1988” after “section 105(a)(1)”.

Subsec. (b)(3). Pub. L. 101-126, §6, added par. (3).

1988—Pub. L. 100-294 amended section generally, substituting provisions relating to national clearinghouse for information relating to child abuse for provisions relating to authorization of appropriations and funding requirements for child abuse and neglect and sexual abuse programs and projects. See section 5106h of this title.

1984—Pub. L. 98-457, §104(a), struck out designation “(a)” before “There are hereby authorized”, inserted

provisions authorizing appropriations of \$33,500,000 for fiscal year 1984, \$40,000,000 for fiscal year 1985, \$41,500,000 for fiscal year 1986, and \$43,100,000 for fiscal year 1987, and substituted "this section except as provided in the succeeding sentence, (A) not less than \$9,000,000 shall be available in each fiscal year to carry out section 5103(b) of this title (relating to State grants), (B) not less than \$11,000,000 shall be available in each fiscal year to carry out sections 5103(a) (relating to demonstration or service projects), 5101(b)(1) and 5101(b)(3) (relating to information dissemination), 5101(b)(5) (relating to research), and 5103(c)(2) (relating to training, technical assistance, and information dissemination) of this title, giving special consideration to continued funding of child abuse and neglect programs or projects (previously funded by the Department of Health and Human Services) of national or regional scope and demonstrated [sic] effectiveness, (C) \$5,000,000 shall be available in each such year for grants and contracts under section 5103(a) of this title for identification, treatment, and prevention of sexual abuse, and (D) \$5,000,000 shall be available in each such year for the purpose of making additional grants to the States to carry out the provisions of section 5103(c)(1) of this title. With respect to any fiscal year in which the total amount appropriated under this section is less than \$30,000,000, funds shall first be available as provided in clauses (A) and (B) in the preceding sentence and of the remainder one-half shall be available as provided for in clause (C) and one-half as provided for in clause (D) in the preceding sentence" for "this section, not less than 50 per centum shall be used for making grants or contracts under sections 5101(b)(5) of this title (relating to research) and 5103(a) of this title (relating to demonstration or service projects), giving special consideration to continued Federal funding of child abuse and neglect programs or projects (previously funded by the Department of Health, Education, and Welfare) of national or regional scope and demonstrated effectiveness, of not less than 25 per centum shall be used for making grants or contracts under section 5103(b)(1) of this title (relating to grants to States) for the fiscal years ending September 30, 1978, and September 30, 1979, respectively, and not less than 30 per centum shall be used for making grants or contracts under section 5103(b)(1) of this title (relating to grants to States) for each of the fiscal years ending September 30, 1980, and September 30, 1981, respectively".

Pub. L. 98-457, § 104(b), struck out subsec. (b) which authorized appropriations for fiscal years ending Sept. 30, 1978, Sept. 30, 1979, Sept. 30, 1980, and Sept. 30, 1981, respectively, for purpose of making grants and entering into contracts for programs and projects designed to prevent, identify, and treat sexual abuse of children.

1978—Pub. L. 95-266 designated existing provisions as subsec. (a), inserted provisions authorizing appropriations for fiscal year ending Sept. 30, 1978, through fiscal year ending Sept. 30, 1981, and provisions setting forth funding requirements for child abuse and neglect programs and projects, and added subsec. (b).

§ 5105. Research and assistance activities

(a) Research

(1) Topics

The Secretary shall, in consultation with other Federal agencies and recognized experts in the field, carry out a continuing interdisciplinary program of research, including longitudinal research, that is designed to provide information needed to better protect children from abuse or neglect and to improve the well-being of abused or neglected children, with at least a portion of such research being field initiated. Such research program may focus on—

(A) the nature and scope of child abuse and neglect;

(B) causes, prevention, assessment, identification, treatment, cultural and socio-economic distinctions, and the consequences of child abuse and neglect, including the effects of abuse and neglect on a child's development and the identification of successful early intervention services or other services that are needed;

(C) appropriate, effective and culturally sensitive investigative, administrative, and judicial systems, including multidisciplinary, coordinated decisionmaking procedures with respect to cases of child abuse;

(D) the evaluation and dissemination of best practices consistent with the goals of achieving improvements in the child protective services systems of the States in accordance with paragraphs (1) through (12) of section 5106a(a) of this title;

(E) effective approaches to interagency collaboration between the child protection system and the juvenile justice system that improve the delivery of services and treatment, including methods for continuity of treatment plan and services as children transition between systems;

(F) an evaluation of the redundancies and gaps in the services in the field of child abuse and neglect prevention in order to make better use of resources;

(G) the nature, scope, and practice of voluntary relinquishment for foster care or State guardianship of low income children who need health services, including mental health services;

(H) the information on the national incidence of child abuse and neglect specified in clauses (i) through (xi) of subparagraph (H);¹ and

(I) the national incidence of child abuse and neglect, including—

(i) the extent to which incidents of child abuse are increasing or decreasing in number and severity;

(ii) the incidence of substantiated and unsubstantiated reported child abuse cases;

(iii) the number of substantiated cases that result in a judicial finding of child abuse or neglect or related criminal court convictions;

(iv) the extent to which the number of unsubstantiated, unfounded and false reported cases of child abuse or neglect have contributed to the inability of a State to respond effectively to serious cases of child abuse or neglect;

(v) the extent to which the lack of adequate resources and the lack of adequate training of individuals required by law to report suspected cases of child abuse have contributed to the inability of a State to respond effectively to serious cases of child abuse and neglect;

(vi) the number of unsubstantiated, false, or unfounded reports that have resulted in a child being placed in substitute care, and the duration of such placement;

¹ So in original. Probably should refer to clauses (i) through (x) of subparagraph (I).

(vii) the extent to which unsubstantiated reports return as more serious cases of child abuse or neglect;

(viii) the incidence and prevalence of physical, sexual, and emotional abuse and physical and emotional neglect in substitute care;

(ix) the incidence and prevalence of child maltreatment by a wide array of demographic characteristics such as age, sex, race, family structure, household relationship (including the living arrangement of the resident parent and family size), school enrollment and education attainment, disability, grandparents as caregivers, labor force status, work status in previous year, and income in previous year; and

(x) the incidence and outcomes of abuse allegations reported within the context of divorce, custody, or other family court proceedings, and the interaction between this venue and the child protective services system.

(2) Research

The Secretary shall conduct research on the national incidence of child abuse and neglect, including the information on the national incidence on child abuse and neglect specified in subparagraphs (i) through (ix) of paragraph (1)(I).

(3) Report

Not later than 4 years after June 25, 2003, the Secretary shall prepare and submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor and Pensions of the Senate a report that contains the results of the research conducted under paragraph (2).

(4) Priorities

(A) The Secretary shall establish research priorities for making grants or contracts for purposes of carrying out paragraph (1).

(B) Not later than 2 years after June 25, 2003, and every 2 years thereafter, the Secretary shall provide an opportunity for public comment concerning the priorities proposed under subparagraph (A) and maintain an official record of such public comment.

(b) Provision of technical assistance

(1) In general

The Secretary shall provide technical assistance to State and local public and private agencies and community-based organizations, including disability organizations and persons who work with children with disabilities, to assist such agencies and organizations in planning, improving, developing, and carrying out programs and activities, including replicating successful program models, relating to the prevention, assessment, identification, and treatment of child abuse and neglect.

(2) Evaluation

Such technical assistance may include an evaluation or identification of—

(A) various methods and procedures for the investigation, assessment, and prosecution of child physical and sexual abuse cases;

(B) ways to mitigate psychological trauma to the child victim;

(C) effective programs carried out by the States under this subchapter and subchapter III of this chapter; and

(D) effective approaches being utilized to link child protective service agencies with health care, mental health care, and developmental services to improve forensic diagnosis and health evaluations, and barriers and shortages to such linkages.

(3) Dissemination

The Secretary may provide for and disseminate information relating to various training resources available at the State and local level to—

(A) individuals who are engaged, or who intend to engage, in the prevention, identification, and treatment of child abuse and neglect; and

(B) appropriate State and local officials to assist in training law enforcement, legal, judicial, medical, mental health, education, and child welfare personnel in appropriate methods of interacting during investigative, administrative, and judicial proceedings with children who have been subjected to abuse.

(c) Authority to make grants or enter into contracts

(1) In general

The functions of the Secretary under this section may be carried out either directly or through grant or contract.

(2) Duration

Grants under this section shall be made for periods of not more than 5 years.

(3) Preference for long-term studies

In making grants for purposes of conducting research under subsection (a) of this section, the Secretary shall give special consideration to applications for long-term projects.

(d) Peer review for grants

(1) Establishment of peer review process

(A) The Secretary shall, in consultation with experts in the field and other federal² agencies, establish a formal, rigorous, and meritorious peer review process for purposes of evaluating and reviewing applications for grants under this section and determining the relative merits of the projects for which such assistance is requested. The purpose of this process is to enhance the quality and usefulness of research in the field of child abuse and neglect.

(B) In establishing the process required by subparagraph (A), the Secretary shall appoint to the peer review panels only members who are experts in the field of child abuse and neglect or related disciplines, with appropriate expertise in the application to be reviewed, and who are not individuals who are officers or employees of the Administration on Children and Families. The panels shall meet as often as is necessary to facilitate the expeditious re-

² So in original. Probably should be capitalized.

view of applications for grants and contracts under this section, but may not meet less than once a year. The Secretary shall ensure that the peer review panel utilizes scientifically valid review criteria and scoring guidelines for review committees.

(2) Review of applications for assistance

Each peer review panel established under paragraph (1)(A) that reviews any application for a grant shall—

(A) determine and evaluate the merit of each project described in such application;

(B) rank such application with respect to all other applications it reviews in the same priority area for the fiscal year involved, according to the relative merit of all of the projects that are described in such application and for which financial assistance is requested; and

(C) make recommendations to the Secretary concerning whether the application for the project shall be approved.

The Secretary shall award grants under this section on the basis of competitive review.

(3) Notice of approval

(A) The Secretary shall provide grants and contracts under this section from among the projects which the peer review panels established under paragraph (1)(A) have determined to have merit.

(B) In the instance in which the Secretary approves an application for a program without having approved all applications ranked above such application (as determined under paragraph (2)(B)), the Secretary shall append to the approved application a detailed explanation of the reasons relied on for approving the application and for failing to approve each pending application that is superior in merit, as indicated on the list under paragraph (2)(B).

(e) Demonstration programs and projects

The Secretary may award grants to, and enter into contracts with, States or public or private agencies or organizations (or combinations of such agencies or organizations) for time-limited, demonstration projects for the following:

(1) Promotion of safe, family-friendly physical environments for visitation and exchange

The Secretary may award grants under this subsection to entities to assist such entities in establishing and operating safe, family-friendly physical environments—

(A) for court-ordered, supervised visitation between children and abusing parents; and

(B) to safely facilitate the exchange of children for visits with noncustodial parents in cases of domestic violence.

(2) Education identification, prevention, and treatment

The Secretary may award grants under this subsection to entities for projects that provide educational identification, prevention, and treatment services in cooperation with preschool and elementary and secondary schools.

(3) Risk and safety assessment tools

The Secretary may award grants under this subsection to entities for projects that provide

for the development of research-based strategies for risk and safety assessments relating to child abuse and neglect.

(4) Training

The Secretary may award grants under this subsection to entities for projects that involve research-based strategies for innovative training for mandated child abuse and neglect reporters.

(Pub. L. 93-247, title I, §104, formerly §6, Jan. 31, 1974, 88 Stat. 7; Pub. L. 95-266, title I, §105, Apr. 24, 1978, 92 Stat. 207; Pub. L. 98-457, title I, §105, Oct. 9, 1984, 98 Stat. 1751; Pub. L. 99-401, title I, §104, Aug. 27, 1986, 100 Stat. 906; Pub. L. 100-294, title I, §101, Apr. 25, 1988, 102 Stat. 106; renumbered title I, §105, and amended Pub. L. 101-126, §3(a)(1), (2), (b)(3), Oct. 25, 1989, 103 Stat. 764, 765; Pub. L. 102-295, title I, §§112, 141(5), May 28, 1992, 106 Stat. 190, 200; renumbered §104 and amended Pub. L. 104-235, title I, §§105, 113(a)(1)(A), Oct. 3, 1996, 110 Stat. 3067, 3079; Pub. L. 108-36, title I, §112, June 25, 2003, 117 Stat. 803.)

PRIOR PROVISIONS

A prior section 104 of Pub. L. 93-247 was renumbered section 103 and is classified to section 5104 of this title.

AMENDMENTS

2003—Subsec. (a)(1). Pub. L. 108-36, §112(a)(1)(A), inserted “, including longitudinal research,” after “interdisciplinary program of research” in introductory provisions.

Subsec. (a)(1)(B). Pub. L. 108-36, §112(a)(1)(B), inserted before semicolon “, including the effects of abuse and neglect on a child’s development and the identification of successful early intervention services or other services that are needed”.

Subsec. (a)(1)(C). Pub. L. 108-36, §112(a)(1)(C), substituted “judicial systems, including multidisciplinary, coordinated decisionmaking procedures” for “judicial procedures” and struck out “and” at end.

Subsec. (a)(1)(D). Pub. L. 108-36, §112(a)(1)(F), added subpar. (D). Former subpar. (D) redesignated (I).

Subsec. (a)(1)(D)(ix), (x). Pub. L. 108-36, §112(a)(1)(D), added cl. (ix) and redesignated former cl. (ix) as (x).

Subsec. (a)(1)(E) to (H). Pub. L. 108-36, §112(a)(1)(F), added subpars. (E) to (H).

Subsec. (a)(1)(I). Pub. L. 108-36, §112(a)(1)(E), redesignated subpar. (D) as (I).

Subsec. (a)(2). Pub. L. 108-36, §112(a)(4), added par. (2). Former par. (2) redesignated (4).

Subsec. (a)(2)(B). Pub. L. 108-36, §112(a)(2), added subpar. (B) and struck out former subpar. (B) which read as follows: “In establishing research priorities as required by subparagraph (A), the Secretary shall—

“(i) publish proposed priorities in the Federal Register for public comment; and

“(ii) allow not less than 60 days for public comment on such proposed priorities.”

Subsec. (a)(3). Pub. L. 108-36, §112(a)(4), added par. (3).

Subsec. (a)(4). Pub. L. 108-36, §112(a)(3), redesignated par. (2) as (4).

Subsec. (b)(1). Pub. L. 108-36, §112(b)(1), substituted “private agencies and community-based” for “non-profit private agencies and” and inserted “, including replicating successful program models,” after “programs and activities”.

Subsec. (b)(2)(D). Pub. L. 108-36, §112(b)(2), added subpar. (D).

Subsec. (e). Pub. L. 108-36, §112(c), added subsec. (e). 1996—Pub. L. 104-235, §105(f), struck out “of the National Center on Child Abuse and Neglect” after “activities” in section catchline.

Subsec. (a)(1). Pub. L. 104-235, §105(a)(1)(A), in introductory provisions, substituted “, in consultation with

other Federal agencies and recognized experts in the field, carry out a continuing interdisciplinary program of research that is designed to provide information needed to better protect children from abuse or neglect and to improve the well-being of abused or neglected children, with at least a portion of such research being field initiated. Such research program may focus on” for “, through the Center, conduct research on”.

Subsec. (a)(1)(A). Pub. L. 104-235, §105(a)(1)(C), added subpar. (A). Former subpar. (A) redesignated (B).

Subsec. (a)(1)(B). Pub. L. 104-235, §105(a)(1)(B), (D), redesignated subpar. (A) as (B) and amended it generally. Prior to amendment, subpar. (B) read as follows: “the causes, prevention, identification,, treatment and cultural distinctions of child abuse and neglect;”. Former subpar. (B) redesignated (C).

Subsec. (a)(1)(C). Pub. L. 104-235, §105(a)(1)(B), redesignated subpar. (B) as (C). Former subpar. (C) redesignated (D).

Subsec. (a)(1)(D). Pub. L. 104-235, §105(a)(1)(B), (E), redesignated subpar. (C) as (D), struck out cl. (ii), redesignated cl. (iii) as (i) and amended it generally, and added cls. (iii) to (ix). Prior to amendment, cls. (ii) and (iii) read as follows:

“(ii) the relationship of child abuse and neglect to nonpayment of child support, cultural diversity, disabilities, and various other factors; and

“(iii) the incidence of substantiated reported child abuse cases that result in civil child protection proceedings or criminal proceedings, including the number of such cases with respect to which the court makes a finding that abuse or neglect exists and the disposition of such cases.”

Subsec. (a)(2). Pub. L. 104-235, §105(a)(2), struck out “and demonstration” after “research”, substituted “paragraph (1)” for “paragraph (1)(A) and activities under section 5106 of this title” in subpar. (A) and struck out “and demonstration” after “research” in introductory provisions of subpar. (B).

Subsec. (b). Pub. L. 104-235, §105(b), (c), redesignated subsec. (c) as (b)(1), inserted par. heading, struck out “, through the Center,” after “Secretary shall”, inserted “State and local” before “public and nonprofit” and “assessment,” before “identification”, added pars. (2) and (3), and struck out heading and text of former subsec. (b) consisting of pars. (1) to (5) which related to publication and dissemination of information.

Subsec. (c). Pub. L. 104-235, §105(d), redesignated subsec. (d) as (c) and in par. (2) struck out at end “The Secretary shall review each such grant at least annually, utilizing peer review mechanisms to assure the quality and progress of research conducted under such grant.” Former subsec. (c) redesignated (b).

Subsec. (d). Pub. L. 104-235, §105(e), redesignated subsec. (e) as (d), in par. (1)(A) substituted “, in consultation with experts in the field and other federal agencies, establish a formal, rigorous, and meritorious” for “establish a formal”, struck out “and contracts” after “for grants”, and inserted at end “The purpose of this process is to enhance the quality and usefulness of research in the field of child abuse and neglect.”, in par. (1)(B) substituted “Administration on Children and Families” for “Office of Human Development” and inserted at end “The Secretary shall ensure that the peer review panel utilizes scientifically valid review criteria and scoring guidelines for review committees.”, in par. (2) struck out “, contract, or other financial assistance” after “grant” in introductory provisions and inserted “The Secretary shall award grants under this section on the basis of competitive review.” as concluding provisions, and in par. (3)(B) substituted “paragraph (2)(B)” for “subsection (e)(2)(B) of this section” in two places. Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 104-235, §105(e)(1), redesignated subsec. (e) as (d).

1992—Subsec. (a)(1)(A). Pub. L. 102-295, §112(a)(1), substituted “, treatment and cultural distinctions of” for “and treatment of”.

Subsec. (a)(1)(B). Pub. L. 102-295, §112(a)(2), substituted “appropriate, effective and culturally sensitive” for “appropriate and effective”.

Subsec. (a)(1)(C)(ii). Pub. L. 102-295, §§112(a)(3), 141(5), substituted “child support, cultural diversity, disabilities” for “child support, handicaps”.

Subsec. (b)(1). Pub. L. 102-295, §112(b), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “as a part of research activities establish a national data collection and analysis program, which, to the extent practical, coordinates existing State child abuse and neglect reports and which shall include—

“(A) standardized data on false, unfounded, or unsubstantiated reports; and

“(B) information on the number of deaths due to child abuse and neglect;”.

Subsec. (c). Pub. L. 102-295, §141(5), substituted “disabilities” for “handicaps”.

Subsec. (e)(1)(A). Pub. L. 102-295, §112(c)(1)(A), inserted “and reviewing” after “evaluating”.

Subsec. (e)(1)(B). Pub. L. 102-295, §112(c)(1)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “Members of peer review panels shall be appointed by the Secretary from among individuals who are not officers or employees of the Office of Human Development Services. In making appointments to such panels, the Secretary shall include only experts in the field of child abuse and neglect.”

Subsec. (e)(2)(A). Pub. L. 102-295, §112(c)(2)(A), inserted “and evaluate” after “determine”.

Subsec. (e)(2)(C). Pub. L. 102-295, §112(c)(2)(B), added subpar. (C).

Subsec. (e)(3)(A). Pub. L. 102-295, §112(c)(3), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “At the end of each application process, the Secretary shall make available upon request, no later than 14 days after the request, to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate the list which identifies all applications reviewed by such panel and arranges such applications according to rank determined under paragraph (2) and a list of all applications funded.”

1989—Subsecs. (a)(2)(A), (b)(3). Pub. L. 101-126, §3(b)(3), made technical amendments to references to sections 5104, 5106, and 5106c of this title to reflect renumbering of corresponding sections of original act.

1988—Pub. L. 100-294 amended section generally, substituting provisions relating to research and assistance activities of the National Center on Child Abuse and Neglect for provisions relating to Advisory Board on Child Abuse and Neglect. See section 5102 of this title.

1986—Subsec. (a). Pub. L. 99-401, §104(1), inserted after first sentence “The Advisory Board shall meet at least every six months.”

Pub. L. 99-401, §104(2), which directed that subsec. (a) be amended by inserting “in order to prevent unnecessary duplication of such programs, to ensure efficient allocation of resources, and to assure that programs effectively address all aspects of the child abuse problem” after “Board” in second sentence, was executed by inserting provision after “Advisory Board” the first time that term appeared in what constituted the second sentence before a new second sentence was added by section 104(1) of Pub. L. 99-401.

1984—Subsec. (a). Pub. L. 98-457, §105(a), (b), struck out “, including the Office of Child Development, the Department of Education, the National Institute of Education, the National Institute of Mental Health, the National Institute of Child Health and Human Development, the Social and Rehabilitation Service, and the Health Services Administration,” before “and not less than three members”, and inserted provision that the Advisory Board may be available, at the Secretary’s request, to assist the Secretary in coordinating adoption-related activities of the Federal Government.

Subsecs. (b), (c). Pub. L. 98-457, §105(c), redesignated subsec. (c) as (b) and struck out former subsec. (b) which required the Board to review the comprehensive plan submitted to it by the Center pursuant to section 5101(b)(7) of this title, make such changes as it deemed appropriate, and submit to the President and the Congress a final such plan not later than eighteen months after April 24, 1978.

1978—Subsec. (a). Pub. L. 95-266, §105(1), (2), inserted requirement for representation from the general public, and “planned,” before “administered” in two places.

Subsec. (b). Pub. L. 95-266, §105(3), substituted provisions relating to review of the plan by the Advisory Board and submission to the President and Congress of a final plan, for provisions relating to a report by the Advisory Board on assisted programs, etc., and submission to the President and Congress.

Subsec. (c). Pub. L. 95-266, §105(3), substituted provisions setting forth compensation and travel expense allowance authorizations for members of the Board, for provisions authorizing use of appropriated funds for required report.

CHILD ABUSE AND DISABILITY

Section 102 of Pub. L. 100-294 directed Director of National Center on Child Abuse and Neglect to conduct a study of incidence of child abuse among children with handicaps, including children in out-of-home placements, the relationship between child abuse and children's handicapping conditions, and incidence of children who have developed handicapping conditions as a result of child abuse or neglect, and not later than 2 years after Apr. 25, 1988, to report to appropriate committees of Congress with respect to the study, such report to include information and data gathered, an analysis of such information and data, and recommendations on how to prevent abuse of disabled children.

CHILD ABUSE AND ALCOHOLIC FAMILIES

Section 103 of Pub. L. 100-294 directed Director of National Center on Child Abuse and Neglect to conduct a study of incidence of child abuse in alcoholic families and relationship between child abuse and familial alcoholism, and not later than 2 years after Apr. 25, 1988, to report to appropriate committees of Congress with respect to the study, such report to include information and data gathered, an analysis of such information and data, and recommendations on how to prevent child abuse in alcoholic families.

STUDY OF GUARDIAN-AD-LITEM

Section 104 of Pub. L. 100-294 directed Director of National Center on Child Abuse and Neglect to conduct a study of how individual legal representation of children in cases of child abuse or neglect has been provided in each State, and effectiveness of legal representation of children in cases of abuse or neglect through use of guardian-ad-litem and court appointed special advocates, and not later than 2 years after Apr. 25, 1988, to report to appropriate committees of Congress with respect to the study, such report to include information and data gathered, an analysis of such information and data, and recommendations on how to improve legal representation of children in cases of abuse or neglect.

HIGH RISK STUDY

Section 105 of Pub. L. 100-294 directed the Director of National Center on Child Abuse and Neglect to conduct a study to identify groups which have been historically underserved or unserved by programs relating to child abuse and neglect, and to report incidence of child abuse and neglect among children who are members of such groups, and not later than 2 years after Apr. 25, 1988, to report to appropriate committees of Congress with respect to the study, such report to include information and data gathered, an analysis of such information and data, and recommendations on how to better meet needs of underserved or unserved groups.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5106h of this title.

§ 5106. Grants to States and public or private agencies and organizations

(a) Grants for programs and projects

The Secretary may make grants to, and enter into contracts with, States, public agencies or private agencies or organizations (or combinations of such agencies or organizations) for programs and projects for the following purposes:

(1) Training programs

The Secretary may award grants to public or private organizations under this section—

(A) for the training of professional and paraprofessional personnel in the fields of medicine, law enforcement, judiciary, social work and child protection, education, and other relevant fields, or individuals such as court appointed special advocates (CASAs) and guardian ad litem, who are engaged in, or intend to work in, the field of prevention, identification, and treatment of child abuse and neglect, including the links between domestic violence and child abuse;

(B) to improve the recruitment, selection, and training of volunteers serving in public and private children, youth and family service organizations in order to prevent child abuse and neglect;

(C) for the establishment of resource centers for the purpose of providing information and training to professionals working in the field of child abuse and neglect;

(D) for training to support the enhancement of linkages between child protective service agencies and health care agencies, including physical and mental health services, to improve forensic diagnosis and health evaluations and for innovative partnerships between child protective service agencies and health care agencies that offer creative approaches to using existing Federal, State, local, and private funding to meet the health evaluation needs of children who have been subjects of substantiated cases of child abuse or neglect;

(E) for the training of personnel in best practices to promote collaboration with the families from the initial time of contact during the investigation through treatment;

(F) for the training of personnel regarding the legal duties of such personnel and their responsibilities to protect the legal rights of children and families;

(G) for improving the training of supervisory and nonsupervisory child welfare workers;

(H) for enabling State child welfare agencies to coordinate the provision of services with State and local health care agencies, alcohol and drug abuse prevention and treatment agencies, mental health agencies, and other public and private welfare agencies to promote child safety, permanence, and family stability;

(I) for cross training for child protective service workers in research-based strategies for recognizing situations of substance abuse, domestic violence, and neglect; and

(J) for developing, implementing, or operating information and education programs

or training programs designed to improve the provision of services to disabled infants with life-threatening conditions for—

- (i) professionals and paraprofessional personnel concerned with the welfare of disabled infants with life-threatening conditions, including personnel employed in child protective services programs and health care facilities; and
- (ii) the parents of such infants.

(2) Triage procedures

The Secretary may award grants under this subsection to public and private agencies that demonstrate innovation in responding to reports of child abuse and neglect, including programs of collaborative partnerships between the State child protective services agency, community social service agencies and family support programs, law enforcement agencies, developmental disability agencies, substance abuse treatment entities, health care entities, domestic violence prevention entities, mental health service entities, schools, churches and synagogues, and other community agencies, to allow for the establishment of a triage system that—

- (A) accepts, screens, and assesses reports received to determine which such reports require an intensive intervention and which require voluntary referral to another agency, program, or project;
- (B) provides, either directly or through referral, a variety of community-linked services to assist families in preventing child abuse and neglect; and
- (C) provides further investigation and intensive intervention where the child's safety is in jeopardy.

(3) Mutual support programs

The Secretary may award grants to private organizations to establish or maintain a national network of mutual support and self-help programs as a means of strengthening families in partnership with their communities.

(4) Kinship care

(A)¹ In general

The Secretary may award grants to public and private entities in not more than 10 States to assist such entities in developing or implementing procedures using adult relatives as the preferred placement for children removed from their home, where such relatives are determined to be capable of providing a safe nurturing environment for the child and where such relatives comply with the State child protection standards.

(5) Linkages between child protective service agencies and public health, mental health, and developmental disabilities agencies

The Secretary may award grants to entities that provide linkages between State or local child protective service agencies and public health, mental health, and developmental disabilities agencies, for the purpose of establishing linkages that are designed to help assure that a greater number of substantiated vic-

tims of child maltreatment have their physical health, mental health, and developmental needs appropriately diagnosed and treated, in accordance with all applicable Federal and State privacy laws.

(b) Discretionary grants

In addition to grants or contracts made under subsection (a) of this section, grants or contracts under this section may be used for the following:

(1) Respite and crisis nursery programs provided by community-based organizations under the direction and supervision of hospitals.

(2) Respite and crisis nursery programs provided by community-based organizations.

(3) Programs based within children's hospitals or other pediatric and adolescent care facilities, that provide model approaches for improving medical diagnosis of child abuse and neglect and for health evaluations of children for whom a report of maltreatment has been substantiated.

(4)(A) Providing hospital-based information and referral services to—

- (i) parents of children with disabilities; and
- (ii) children who have been neglected or abused and their parents.

(B) Except as provided in subparagraph (C)(iii), services provided under a grant received under this paragraph shall be provided at the hospital involved—

- (i) upon the birth or admission of a child with disabilities; and
- (ii) upon the treatment of a child for abuse or neglect.

(C) Services, as determined as appropriate by the grantee, provided under a grant received under this paragraph shall be hospital-based and shall consist of—

- (i) the provision of notice to parents that information relating to community services is available;
- (ii) the provision of appropriate information to parents of a child with disabilities regarding resources in the community, particularly parent training resources, that will assist such parents in caring for their child;
- (iii) the provision of appropriate information to parents of a child who has been neglected or abused regarding resources in the community, particularly parent training resources, that will assist such parents in caring for their child and reduce the possibility of abuse or neglect;
- (iv) the provision of appropriate follow-up services to parents of a child described in subparagraph (B) after the child has left the hospital; and
- (v) where necessary, assistance in coordination of community services available to parents of children described in subparagraph (B).

The grantee shall assure that parental involvement described in this subparagraph is voluntary.

(D) For purposes of this paragraph, a qualified grantee is a² acute care hospital that—

¹ So in original. There is no subpar. (B).

² So in original. Probably should be "an".

- (i) is in a combination with—
- (I) a health-care provider organization;
 - (II) a child welfare organization;
 - (III) a disability organization; and
 - (IV) a State child protection agency;
- (ii) submits an application for a grant under this paragraph that is approved by the Secretary;
- (iii) maintains an office in the hospital involved for purposes of providing services under such grant;
- (iv) provides assurances to the Secretary that in the conduct of the project the confidentiality of medical, social, and personal information concerning any person described in subparagraph (A) or (B) shall be maintained, and shall be disclosed only to qualified persons providing required services described in subparagraph (C) for purposes relating to conduct of the project; and
- (v) assumes legal responsibility for carrying out the terms and conditions of the grant.

(E) In awarding grants under this paragraph, the Secretary shall—

- (i) give priority under this section for two grants under this paragraph, provided that one grant shall be made to provide services in an urban setting and one grant shall be made to provide services in rural setting; and
 - (ii) encourage qualified grantees to combine the amounts received under the grant with other funds available to such grantees.
- (5) Such other innovative programs and projects that show promise of preventing and treating cases of child abuse and neglect as the Secretary may approve.

(c) Evaluation

In making grants for projects under this section, the Secretary shall require all such projects to be evaluated for their effectiveness. Funding for such evaluations shall be provided either as a stated percentage of a demonstration grant or as a separate grant or contract entered into by the Secretary for the purpose of evaluating a particular demonstration project or group of projects. In the case of an evaluation performed by the recipient of a grant, the Secretary shall make available technical assistance for the evaluation, where needed, including the use of a rigorous application of scientific evaluation techniques.

(Pub. L. 93-247, title I, §105, formerly §7, Jan. 31, 1974, 88 Stat. 8; Pub. L. 98-457, title I, §106, Oct. 9, 1984, 98 Stat. 1751; Pub. L. 100-294, title I, §101, Apr. 25, 1988, 102 Stat. 108; renumbered title I, §106, Pub. L. 101-126, §3(a)(1), (2), Oct. 25, 1989, 103 Stat. 764; Pub. L. 102-295, title I, §§113, 141(1), (2), (5), May 28, 1992, 106 Stat. 191, 199, 200; renumbered §105 and amended Pub. L. 104-235, title I, §§106, 113(a)(1)(A), Oct. 3, 1996, 110 Stat. 3069, 3079; Pub. L. 108-36, title I, §113, June 25, 2003, 117 Stat. 805.)

PRIOR PROVISIONS

A prior section 105 of Pub. L. 93-247 was renumbered section 104 and is classified to section 5105 of this title.

AMENDMENTS

2003—Pub. L. 108-36, §113(d), substituted “Grants to States and public or private agencies and organizations” for “Grants to public agencies and nonprofit private organizations for demonstration programs and projects” as section catchline.

Subsec. (a). Pub. L. 108-36, §113(a)(2), in introductory provisions, inserted “States,” after “contracts with,” and struck out “nonprofit” after “private” and “time limited, demonstration” after “organizations) for”.

Pub. L. 108-36, §113(a)(1), substituted “Grants for” for “Demonstration” in heading.

Subsec. (a)(1). Pub. L. 108-36, §113(a)(3)(A), struck out “nonprofit” after “public or private” in introductory provisions.

Subsec. (a)(1)(A). Pub. L. 108-36, §113(a)(3)(B), substituted “law enforcement, judiciary, social work and child protection, education, and other relevant fields, or individuals such as court appointed special advocates (CASAs) and guardian ad litem,” for “law, education, social work, and other relevant fields”.

Subsec. (a)(1)(B). Pub. L. 108-36, §113(a)(3)(C), substituted “children, youth and family service organizations in order to prevent child abuse and neglect;” for “nonprofit children, youth and family service organizations in order to prevent child abuse and neglect through collaborative analysis of current recruitment, selection, and training programs and development of model programs for dissemination and replication nationally; and”.

Subsec. (a)(1)(D) to (J). Pub. L. 108-36, §113(a)(3)(D), (E), added subpars. (D) to (J).

Subsec. (a)(2). Pub. L. 108-36, §113(a)(5), added par. (2). Former par. (2) redesignated (3).

Subsec. (a)(3). Pub. L. 108-36, §113(a)(6), substituted “organizations” for “nonprofit organizations (such as Parents Anonymous)”.

Pub. L. 108-36, §113(a)(4), redesignated par. (2) as (3). Former par. (3) redesignated (4).

Subsec. (a)(4). Pub. L. 108-36, §113(a)(7), added par. heading and struck out former heading “Other innovative programs and projects”, redesignated subpar. (B) as (A), substituted “In general” for “Kinship care” in subpar. heading, and struck out “nonprofit” before “entities” and former subpars. (A) and (C), which related, respectively, to general issues of awarding grants and grants to promote safe, family-friendly physical environments for visitation and exchange.

Pub. L. 108-36, §113(a)(4), redesignated par. (3) as (4).

Subsec. (a)(5). Pub. L. 108-36, §113(a)(8), added par. (5).

Subsec. (b). Pub. L. 108-36, §113(b)(1), substituted “subsection (a)” for “subsection (b)” in introductory provisions.

Subsec. (b)(1) to (3). Pub. L. 108-36, §113(b)(2)–(4), added par. (3), redesignated former pars. (2) and (3) as (1) and (2), respectively, and struck out former par. (1) which read as follows: “Projects which provide educational identification, prevention, and treatment services in cooperation with preschool and elementary and secondary schools.”

Subsec. (b)(4)(D). Pub. L. 108-36, §113(b)(5), struck out “nonprofit” before “acute care hospital” in introductory provisions.

Subsec. (c). Pub. L. 108-36, §113(c), struck out “demonstration” before “projects” in first sentence, inserted “or contract” after “or as a separate grant” in second sentence, and inserted at end “In the case of an evaluation performed by the recipient of a grant, the Secretary shall make available technical assistance for the evaluation, where needed, including the use of a rigorous application of scientific evaluation techniques.”

1996—Pub. L. 104-235, §106(1), struck out “or service” after “demonstration” in section catchline.

Subsec. (a). Pub. L. 104-235, §106(2), amended heading and text of subsec. (a) generally. Prior to amendment, text consisted of pars. (1) and (2) which related to general authority of Secretary to make grants and enter into contracts for demonstration or service programs

and projects and to evaluate the effectiveness of those demonstration projects.

Subsec. (b). Pub. L. 104-235, § 106(3), (4), redesignated subsec. (c) as (b) and pars. (3) to (7) thereof as (1) to (5), respectively, struck out former pars. (1) and (2) which related to training programs and other innovative programs, respectively, and struck out heading and text of former subsec. (b). Text read as follows: "The Secretary shall, directly or through grants or contracts with public or private nonprofit organizations under this section, provide for the establishment of resource centers—

"(1) serving defined geographic areas;

"(2) staffed by multidisciplinary teams of personnel trained in the prevention, identification, and treatment of child abuse and neglect; and

"(3) providing advice and consultation to individuals, agencies, and organizations which request such services."

Subsec. (c). Pub. L. 104-235, § 106(6), added subsec. (c). Former subsec. (c) redesignated (b).

1992—Subsec. (a). Pub. L. 102-295, § 113(a), designated existing provisions as par. (1), inserted heading, and added par. (2).

Subsec. (c)(1)(B). Pub. L. 102-295, § 141(5), substituted "disabilities" for "handicaps".

Pub. L. 102-295, § 113(b)(1), inserted "culturally specific" before "instruction".

Subsec. (c)(1)(C). Pub. L. 102-295, § 113(b)(2), added subpar. (C).

Subsec. (c)(6)(A)(i). Pub. L. 102-295, § 141(5), substituted "children with disabilities" for "children with handicaps".

Subsec. (c)(6)(B)(i). Pub. L. 102-295, § 141(1), substituted "child with disabilities" for "handicapped child".

Subsec. (c)(6)(C)(ii). Pub. L. 102-295, § 141(2), substituted "child with disabilities" for "child with handicaps".

1988—Pub. L. 100-294 amended section generally, substituting provision authorizing grants to public agencies and nonprofit private organizations for demonstration or service programs and projects for provision directing the Secretary to ensure coordination among Federal programs related to child abuse and neglect. See section 5106e of this title.

1984—Pub. L. 98-457 substituted "among programs" for "between programs".

§ 5106a. Grants to States for child abuse and neglect prevention and treatment programs

(a) Development and operation grants

The Secretary shall make grants to the States, based on the population of children under the age of 18 in each State that applies for a grant under this section, for purposes of assisting the States in improving the child protective services system of each such State in—

(1) the intake, assessment, screening, and investigation of reports of abuse and neglect;

(2)(A) creating and improving the use of multidisciplinary teams and interagency protocols to enhance investigations; and

(B) improving legal preparation and representation, including—

(i) procedures for appealing and responding to appeals of substantiated reports of abuse and neglect; and

(ii) provisions for the appointment of an individual appointed to represent a child in judicial proceedings;

(3) case management, including ongoing case monitoring, and delivery of services and treatment provided to children and their families;

(4) enhancing the general child protective system by developing, improving, and imple-

menting risk and safety assessment tools and protocols;

(5) developing and updating systems of technology that support the program and track reports of child abuse and neglect from intake through final disposition and allow interstate and intrastate information exchange;

(6) developing, strengthening, and facilitating training including—

(A) training regarding research-based strategies to promote collaboration with the families;

(B) training regarding the legal duties of such individuals; and

(C) personal safety training for case workers;¹

(7) improving the skills, qualifications, and availability of individuals providing services to children and families, and the supervisors of such individuals, through the child protection system, including improvements in the recruitment and retention of caseworkers;

(8) developing and facilitating training protocols for individuals mandated to report child abuse or neglect;

(9) developing and facilitating research-based strategies for training for individuals mandated to report child abuse or neglect;

(10) developing, implementing, or operating programs to assist in obtaining or coordinating necessary services for families of disabled infants with life-threatening conditions, including—

(A) existing social and health services;

(B) financial assistance; and

(C) services necessary to facilitate adoptive placement of any such infants who have been relinquished for adoption;

(11) developing and delivering information to improve public education relating to the role and responsibilities of the child protection system and the nature and basis for reporting suspected incidents of child abuse and neglect;

(12) developing and enhancing the capacity of community-based programs to integrate shared leadership strategies between parents and professionals to prevent and treat child abuse and neglect at the neighborhood level;

(13) supporting and enhancing interagency collaboration between the child protection system and the juvenile justice system for improved delivery of services and treatment, including methods for continuity of treatment plan and services as children transition between systems; or

(14) supporting and enhancing collaboration among public health agencies, the child protection system, and private community-based programs to provide child abuse and neglect prevention and treatment services (including linkages with education systems) and to address the health needs, including mental health needs, of children identified as abused or neglected, including supporting prompt, comprehensive health and developmental evaluations for children who are the subject of substantiated child maltreatment reports.

¹ So in original.

(b) Eligibility requirements**(1) State plan****(A) In general**

To be eligible to receive a grant under this section, a State shall, at the time of the initial grant application and every 5 years thereafter, prepare and submit to the Secretary a State plan that specifies the areas of the child protective services system described in subsection (a) of this section that the State intends to address with amounts received under the grant.

(B) Additional requirement

After the submission of the initial grant application under subparagraph (A), the State shall provide notice to the Secretary—

- (i) of any substantive changes; and to any State law relating to the prevention of child abuse and neglect that may affect the eligibility of the State under this section; and
- (ii) any significant changes to how funds provided under this section are used to support the activities which may differ from the activities as described in the current State application.

(2) Coordination

A State plan submitted under paragraph (1) shall, to the maximum extent practicable, be coordinated with the State plan under part B of title IV of the Social Security Act [42 U.S.C. 620 et seq.] relating to child welfare services and family preservation and family support services, and shall contain an outline of the activities that the State intends to carry out using amounts received under the grant to achieve the purposes of this subchapter, including—

(A) an assurance in the form of a certification by the chief executive officer of the State that the State has in effect and is enforcing a State law, or has in effect and is operating a Statewide program, relating to child abuse and neglect that includes—

- (i) provisions or procedures for the reporting of known and suspected instances of child abuse and neglect;
- (ii) policies and procedures (including appropriate referrals to child protection service systems and for other appropriate services) to address the needs of infants born and identified as being affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure, including a requirement that health care providers involved in the delivery or care of such infants notify the child protective services system of the occurrence of such condition in such infants, except that such notification shall not be construed to—
 - (I) establish a definition under Federal law of what constitutes child abuse; or
 - (II) require prosecution for any illegal action;
- (iii) the development of a plan of safe care for the infant born and identified as being affected by illegal substance abuse or withdrawal symptoms;

(iv) procedures for the immediate screening, risk and safety assessment, and prompt investigation of such reports;

(v) triage procedures for the appropriate referral of a child not at risk of imminent harm to a community organization or voluntary preventive service;

(vi) procedures for immediate steps to be taken to ensure and protect the safety of the abused or neglected child and of any other child under the same care who may also be in danger of abuse or neglect and ensuring their placement in a safe environment;

(vii) provisions for immunity from prosecution under State and local laws and regulations for individuals making good faith reports of suspected or known instances of child abuse or neglect;

(viii) methods to preserve the confidentiality of all records in order to protect the rights of the child and of the child's parents or guardians, including requirements ensuring that reports and records made and maintained pursuant to the purposes of this subchapter and subchapter III of this chapter shall only be made available to—

(I) individuals who are the subject of the report;

(II) Federal, State, or local government entities, or any agent of such entities, as described in clause (ix);

(III) child abuse citizen review panels;

(IV) child fatality review panels;

(V) a grand jury or court, upon a finding that information in the record is necessary for the determination of an issue before the court or grand jury; and

(VI) other entities or classes of individuals statutorily authorized by the State to receive such information pursuant to a legitimate State purpose;

(ix) provisions to require a State to disclose confidential information to any Federal, State, or local government entity, or any agent of such entity, that has a need for such information in order to carry out its responsibilities under law to protect children from abuse and neglect;

(x) provisions which allow for public disclosure of the findings or information about the case of child abuse or neglect which has resulted in a child fatality or near fatality;

(xi) the cooperation of State law enforcement officials, court of competent jurisdiction, and appropriate State agencies providing human services in the investigation, assessment, prosecution, and treatment of child abuse or neglect;

(xii) provisions requiring, and procedures in place that facilitate the prompt expungement of any records that are accessible to the general public or are used for purposes of employment or other background checks in cases determined to be unsubstantiated or false, except that nothing in this section shall prevent State child protective services agencies from keeping information on unsubstantiated

reports in their casework files to assist in future risk and safety assessment;

(xiii) provisions and procedures requiring that in every case involving an abused or neglected child which results in a judicial proceeding, a guardian ad litem, who has received training appropriate to the role, and who may be an attorney or a court appointed special advocate who has received training appropriate to that role (or both), shall be appointed to represent the child in such proceedings—

(I) to obtain first-hand, a clear understanding of the situation and needs of the child; and

(II) to make recommendations to the court concerning the best interests of the child;

(xiv) the establishment of citizen review panels in accordance with subsection (c) of this section;

(xv) provisions, procedures, and mechanisms—

(I) for the expedited termination of parental rights in the case of any infant determined to be abandoned under State law; and

(II) by which individuals who disagree with an official finding of abuse or neglect can appeal such finding;

(xvi) provisions, procedures, and mechanisms that assure that the State does not require reunification of a surviving child with a parent who has been found by a court of competent jurisdiction—

(I) to have committed murder (which would have been an offense under section 111(a) of title 18 if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of such parent;

(II) to have committed voluntary manslaughter (which would have been an offense under section 112(a) of title 18 if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of such parent;

(III) to have aided or abetted, attempted, conspired, or solicited to commit such murder or voluntary manslaughter; or

(IV) to have committed a felony assault that results in the serious bodily injury to the surviving child or another child of such parent;

(xvii) an assurance that, upon the implementation by the State of the provisions, procedures, and mechanisms under clause (xvi), conviction of any one of the felonies listed in clause (xvi) constitute grounds under State law for the termination of parental rights of the convicted parent as to the surviving children (although case-by-case determinations of whether or not to seek termination of parental rights shall be within the sole discretion of the State);

(xviii) provisions and procedures to require that a representative of the child protective services agency shall, at the

initial time of contact with the individual subject to a child abuse and neglect investigation, advise the individual of the complaints or allegations made against the individual, in a manner that is consistent with laws protecting the rights of the informant;

(xix) provisions addressing the training of representatives of the child protective services system regarding the legal duties of the representatives, which may consist of various methods of informing such representatives of such duties, in order to protect the legal rights and safety of children and families from the initial time of contact during investigation through treatment;

(xx) provisions and procedures for improving the training, retention, and supervision of caseworkers;

(xxi) provisions and procedures for referral of a child under the age of 3 who is involved in a substantiated case of child abuse or neglect to early intervention services funded under part C of the Individuals with Disabilities Education Act [20 U.S.C. 1431 et seq.]; and

(xxii) not later than 2 years after June 25, 2003, provisions and procedures for requiring criminal background record checks for prospective foster and adoptive parents and other adult relatives and non-relatives residing in the household;

(B) an assurance that the State has in place procedures for responding to the reporting of medical neglect (including instances of withholding of medically indicated treatment from disabled infants with life-threatening conditions), procedures or programs, or both (within the State child protective services system), to provide for—

(i) coordination and consultation with individuals designated by and within appropriate health-care facilities;

(ii) prompt notification by individuals designated by and within appropriate health-care facilities of cases of suspected medical neglect (including instances of withholding of medically indicated treatment from disabled infants with life-threatening conditions); and

(iii) authority, under State law, for the State child protective services system to pursue any legal remedies, including the authority to initiate legal proceedings in a court of competent jurisdiction, as may be necessary to prevent the withholding of medically indicated treatment from disabled infants with life threatening² conditions;

(C) a description of—

(i) the services to be provided under the grant to individuals, families, or communities, either directly or through referrals aimed at preventing the occurrence of child abuse and neglect;

(ii) the training to be provided under the grant to support direct line and super-

² So in original. Probably should be "life-threatening".

visory personnel in report taking, screening, assessment, decision making, and referral for investigating suspected instances of child abuse and neglect; and

(iii) the training to be provided under the grant for individuals who are required to report suspected cases of child abuse and neglect; and

(D) an assurance or certification that the programs or projects relating to child abuse and neglect carried out under part B of title IV of the Social Security Act [42 U.S.C. 620 et seq.] comply with the requirements set forth in paragraph (1) and this paragraph.

Nothing in subparagraph (A) shall be construed to limit the State's flexibility to determine State policies relating to public access to court proceedings to determine child abuse and neglect, except that such policies shall, at a minimum, ensure the safety and well-being of the child, parents, and families.

(3) Limitation

With regard to clauses (vi) and (vii) of paragraph (2)(A), nothing in this section shall be construed as restricting the ability of a State to refuse to disclose identifying information concerning the individual initiating a report or complaint alleging suspected instances of child abuse or neglect, except that the State may not refuse such a disclosure where a court orders such disclosure after such court has reviewed, in camera, the record of the State related to the report or complaint and has found it has reason to believe that the reporter knowingly made a false report.

(4) Definitions

For purposes of this subsection—

(A) the term “near fatality” means an act that, as certified by a physician, places the child in serious or critical condition; and

(B) the term “serious bodily injury” means bodily injury which involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(c) Citizen review panels

(1) Establishment

(A) In general

Except as provided in subparagraph (B), each State to which a grant is made under this section shall establish not less than 3 citizen review panels.

(B) Exceptions

(i) Establishment of panels by States receiving minimum allotment

A State that receives the minimum allotment of \$175,000 under section 5116b(b)(1)(A) of this title for a fiscal year shall establish not less than 1 citizen review panel.

(ii) Designation of existing entities

A State may designate as panels for purposes of this subsection one or more existing entities established under State or Federal law, such as child fatality panels

or foster care review panels, if such entities have the capacity to satisfy the requirements of paragraph (4) and the State ensures that such entities will satisfy such requirements.

(2) Membership

Each panel established pursuant to paragraph (1) shall be composed of volunteer members who are broadly representative of the community in which such panel is established, including members who have expertise in the prevention and treatment of child abuse and neglect.

(3) Meetings

Each panel established pursuant to paragraph (1) shall meet not less than once every 3 months.

(4) Functions

(A) In general

Each panel established pursuant to paragraph (1) shall, by examining the policies, procedures, and practices of State and local agencies and where appropriate, specific cases, evaluate the extent to which State and local child protection system agencies are effectively discharging their child protection responsibilities in accordance with—

(i) the State plan under subsection (b) of this section;

(ii) the child protection standards set forth in subsection (b) of this section; and

(iii) any other criteria that the panel considers important to ensure the protection of children, including—

(I) a review of the extent to which the State and local child protective services system is coordinated with the foster care and adoption programs established under part E of title IV of the Social Security Act [42 U.S.C. 670 et seq.]; and

(II) a review of child fatalities and near fatalities (as defined in subsection (b)(4) of this section).

(B) Confidentiality

(i) In general

The members and staff of a panel established under paragraph (1)—

(I) shall not disclose to any person or government official any identifying information about any specific child protection case with respect to which the panel is provided information; and

(II) shall not make public other information unless authorized by State statute.

(ii) Civil sanctions

Each State that establishes a panel pursuant to paragraph (1) shall establish civil sanctions for a violation of clause (i).

(C) Public outreach

Each panel shall provide for public outreach and comment in order to assess the impact of current procedures and practices upon children and families in the community and in order to meet its obligations under subparagraph (A).

(5) State assistance

Each State that establishes a panel pursuant to paragraph (1)—

(A) shall provide the panel access to information on cases that the panel desires to review if such information is necessary for the panel to carry out its functions under paragraph (4); and

(B) shall provide the panel, upon its request, staff assistance for the performance of the duties of the panel.

(6) Reports

Each panel established under paragraph (1) shall prepare and make available to the State and the public, on an annual basis, a report containing a summary of the activities of the panel and recommendations to improve the child protection services system at the State and local levels. Not later than 6 months after the date on which a report is submitted by the panel to the State, the appropriate State agency shall submit a written response to State and local child protection systems and the citizen review panel that describes whether or how the State will incorporate the recommendations of such panel (where appropriate) to make measurable progress in improving the State and local child protective system.

(d) Annual State data reports

Each State to which a grant is made under this section shall annually work with the Secretary to provide, to the maximum extent practicable, a report that includes the following:

(1) The number of children who were reported to the State during the year as abused or neglected.

(2) Of the number of children described in paragraph (1), the number with respect to whom such reports were—

- (A) substantiated;
- (B) unsubstantiated; or
- (C) determined to be false.

(3) Of the number of children described in paragraph (2)—

(A) the number that did not receive services during the year under the State program funded under this section or an equivalent State program;

(B) the number that received services during the year under the State program funded under this section or an equivalent State program; and

(C) the number that were removed from their families during the year by disposition of the case.

(4) The number of families that received preventive services from the State during the year.

(5) The number of deaths in the State during the year resulting from child abuse or neglect.

(6) Of the number of children described in paragraph (5), the number of such children who were in foster care.

(7) The number of child protective services workers responsible for the intake and screening of reports filed in the previous year.

(8) The agency response time with respect to each such report with respect to initial investigation of reports of child abuse or neglect.

(9) The response time with respect to the provision of services to families and children where an allegation of abuse or neglect has been made.

(10) The number of child protective services workers responsible for intake, assessment, and investigation of child abuse and neglect reports relative to the number of reports investigated in the previous year.

(11) The number of children reunited with their families or receiving family preservation services that, within five years, result in subsequent substantiated reports of child abuse and neglect, including the death of the child.

(12) The number of children for whom individuals were appointed by the court to represent the best interests of such children and the average number of out of court contacts between such individuals and children.

(13) The annual report containing the summary of the activities of the citizen review panels of the State required by subsection (c)(6) of this section.

(14) The number of children under the care of the State child protection system who are transferred into the custody of the State juvenile justice system.

(e) Annual report by Secretary

Within 6 months after receiving the State reports under subsection (d) of this section, the Secretary shall prepare a report based on information provided by the States for the fiscal year under such subsection and shall make the report and such information available to the Congress and the national clearinghouse for information relating to child abuse.

(Pub. L. 93-247, title I, §106, formerly §8, as added Pub. L. 100-294, title I, §101, Apr. 25, 1988, 102 Stat. 110; renumbered title I, §107, Pub. L. 101-126, §3(a)(1), (2), Oct. 25, 1989, 103 Stat. 764; amended Pub. L. 102-295, title I, §114(a)-(c), May 28, 1992, 106 Stat. 192, 195; Pub. L. 102-586, §9(b), Nov. 4, 1992, 106 Stat. 5037; renumbered §106 and amended Pub. L. 104-235, title I, §§107, 113(a)(1)(A), Oct. 3, 1996, 110 Stat. 3071, 3079; Pub. L. 108-36, title I, §114(a)-(d), June 25, 2003, 117 Stat. 808-812.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (b)(2) and (c)(4)(A), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Parts B and E of title IV of the Act are classified generally to part B (§620 et seq.) and part E (§670 et seq.), respectively, of subchapter IV of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Individuals with Disabilities Education Act, referred to in subsec. (b)(2)(A)(xxi), is title VI of Pub. L. 91-230, Apr. 13, 1970, 84 Stat. 175, as amended. Part C of the Act is classified generally to subchapter III (§1431 et seq.) of chapter 33 of Title 20, Education. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

PRIOR PROVISIONS

A prior section 106 of Pub. L. 93-247 was renumbered section 105 and is classified to section 5106 of this title.

AMENDMENTS

2003—Subsec. (a)(3). Pub. L. 108-36, §114(a)(1), inserted “, including ongoing case monitoring,” after “case management” and “and treatment” after “and delivery of services”.

Subsec. (a)(4). Pub. L. 108-36, § 114(a)(2), substituted “developing, improving, and implementing risk and safety assessment tools and protocols” for “improving risk and safety assessment tools and protocols, automation systems that support the program and track reports of child abuse and neglect from intake through final disposition and information referral systems”.

Subsec. (a)(5). Pub. L. 108-36, § 114(a)(5), added par. (5). Former par. (5) redesignated (6).

Subsec. (a)(6). Pub. L. 108-36, § 114(a)(6), substituted “including—” and subpars. (A) to (C) for “opportunities and requirements for individuals overseeing and providing services to children and their families through the child protection system”.

Pub. L. 108-36, § 114(a)(4), redesignated par. (5) as (6). Former par. (6) redesignated (8).

Subsec. (a)(7). Pub. L. 108-36, § 114(a)(3), (7), added par. (7) and struck out former par. (7) which read as follows: “developing, strengthening, and supporting child abuse and neglect prevention, treatment, and research programs in the public and private sectors;”.

Subsec. (a)(8). Pub. L. 108-36, § 114(a)(4), redesignated par. (6) as (8). Former par. (8) redesignated (9).

Subsec. (a)(9). Pub. L. 108-36, § 114(a)(8), added par. (9) and struck out former par. (9) which related to programs to improve the provision of services for disabled infants with life-threatening conditions.

Pub. L. 108-36, § 114(a)(4), redesignated par. (8) as (9). Former par. (9) redesignated (12).

Subsec. (a)(10), (11). Pub. L. 108-36, § 114(a)(8), added pars. (10) and (11).

Subsec. (a)(12). Pub. L. 108-36, § 114(a)(4), (9), redesignated par. (9) as (12) and substituted a semicolon for period at end.

Subsec. (a)(13), (14). Pub. L. 108-36, § 114(a)(10), added pars. (13) and (14).

Subsec. (b)(1)(B). Pub. L. 108-36, § 114(b)(1)(A), substituted “Secretary—” for “Secretary”, “(i) of any substantive changes; and” for “of any substantive changes”, and “under this section; and” for “under this section.” and added cl. (ii).

Subsec. (b)(2). Pub. L. 108-36, § 114(b)(1)(C), inserted concluding provisions.

Subsec. (b)(2)(A)(ii), (iii). Pub. L. 108-36, § 114(b)(1)(B)(ii), added cls. (ii) and (iii). Former cls. (ii) and (iii) redesignated (iv) and (vi), respectively.

Subsec. (b)(2)(A)(iv). Pub. L. 108-36, § 114(b)(1)(B)(iii), inserted “risk and” before “safety assessment”.

Pub. L. 108-36, § 114(b)(1)(B)(i), redesignated cl. (ii) as (iv). Former cl. (iv) redesignated (vii).

Subsec. (b)(2)(A)(v). Pub. L. 108-36, § 114(b)(1)(B)(iv), added cl. (v). Former cl. (v) redesignated (viii).

Subsec. (b)(2)(A)(vi), (vii). Pub. L. 108-36, § 114(b)(1)(B)(i), redesignated cls. (iii) and (iv) as (vi) and (vii), respectively. Former cls. (vi) and (vii) redesignated (x) and (xi), respectively.

Subsec. (b)(2)(A)(viii). Pub. L. 108-36, § 114(b)(1)(B)(i), redesignated cl. (v) as (viii). Former cl. (viii) redesignated (xii).

Subsec. (b)(2)(A)(viii)(II). Pub. L. 108-36, § 114(b)(1)(B)(v), substituted “, as described in clause (ix)” for “, having a need for such information in order to carry out its responsibilities under law to protect children from abuse and neglect”.

Subsec. (b)(2)(A)(ix). Pub. L. 108-36, § 114(b)(1)(B)(vi), added cl. (ix). Former cl. (ix) redesignated (xiii).

Subsec. (b)(2)(A)(x) to (xii). Pub. L. 108-36, § 114(b)(1)(B)(i), redesignated cls. (vi) to (viii) as (x) to (xii), respectively. Former cls. (x) to (xii) redesignated (xiv) to (xvi), respectively.

Subsec. (b)(2)(A)(xiii). Pub. L. 108-36, § 114(b)(1)(B)(vii), inserted “who has received training appropriate to the role, and” after “guardian ad litem,” and “who has received training appropriate to that role” after “advocate”.

Pub. L. 108-36, § 114(b)(1)(B)(i), redesignated cl. (ix) as (xiii). Former cl. (xiii) redesignated (xvii).

Subsec. (b)(2)(A)(xiv). Pub. L. 108-36, § 114(b)(1)(B)(i), redesignated cl. (x) as (xiv).

Subsec. (b)(2)(A)(xv). Pub. L. 108-36, § 114(b)(1)(B)(viii), struck out “to be effective not later than 2 years after

October 3, 1996” before dash at end of introductory provisions.

Pub. L. 108-36, § 114(b)(1)(B)(i), redesignated cl. (xi) as (xv).

Subsec. (b)(2)(A)(xvi). Pub. L. 108-36, § 114(b)(1)(B)(ix)(I), struck out “to be effective not later than 2 years after October 3, 1996,” after “mechanisms” in introductory provisions.

Pub. L. 108-36, § 114(b)(1)(B)(i), redesignated cl. (xii) as (xvi).

Subsec. (b)(2)(A)(xvi)(IV). Pub. L. 108-36, § 114(b)(1)(B)(ix)(II), struck out “and” at end.

Subsec. (b)(2)(A)(xvii). Pub. L. 108-36, § 114(b)(1)(B)(x), substituted “clause (xvi)” for “clause (xii)” in two places.

Pub. L. 108-36, § 114(b)(1)(B)(i), redesignated cl. (xiii) as (xvii).

Subsec. (b)(2)(A)(xviii) to (xxii). Pub. L. 108-36, § 114(b)(1)(B)(xi), added cls. (xviii) to (xxii).

Subsec. (b)(3). Pub. L. 108-36, § 114(b)(2), substituted “With regard to clauses (vi) and (vii) of paragraph (2)(A)” for “With regard to clauses (v) and (vi) of paragraph (2)(A)”.

Subsec. (c)(4)(A). Pub. L. 108-36, § 114(c)(1)(A)(i), in introductory provisions, substituted “, procedures, and practices” for “and procedures” and “State and local child protection system agencies” for “the agencies”.

Subsec. (c)(4)(A)(iii)(I). Pub. L. 108-36, § 114(c)(1)(A)(ii), substituted “State and local” for “State”.

Subsec. (c)(4)(C). Pub. L. 108-36, § 114(c)(1)(B), added subpar. (C).

Subsec. (c)(6). Pub. L. 108-36, § 114(c)(2), substituted “State and the public” for “public” and inserted before period at end “and recommendations to improve the child protection services system at the State and local levels. Not later than 6 months after the date on which a report is submitted by the panel to the State, the appropriate State agency shall submit a written response to State and local child protection systems and the citizen review panel that describes whether or how the State will incorporate the recommendations of such panel (where appropriate) to make measurable progress in improving the State and local child protective system”.

Subsec. (d)(13), (14). Pub. L. 108-36, § 114(d), added pars. (13) and (14).

1996—Pub. L. 104-235 reenacted section catchline without change and amended text generally, revising and restating subsecs. (a) and (b), substituting provisions relating to citizen review panels for provisions relating to State program plan in subsec. (c), provisions relating to annual State data reports for provisions relating to waivers in subsec. (d), provisions relating to annual report by Secretary for provisions relating to reduction of funds in case of failure to obligate in subsec. (e), and striking out subsecs. (f) and (g) which related to child welfare services and compliance and education grants, respectively.

1992—Subsec. (a). Pub. L. 102-295, § 114(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “The Secretary, through the Center, is authorized to make grants to the States for purposes of assisting the States in developing, strengthening, and carrying out child abuse and neglect prevention and treatment programs.”

Subsec. (b)(4). Pub. L. 102-586 amended par. (4) generally. Prior to amendment, par. (4) read as follows: “provide for methods to preserve the confidentiality of all records in order to protect the rights of the child and of the child’s parents or guardians;”.

Subsec. (c). Pub. L. 102-295, § 114(b), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 102-295, § 114(b)(1), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (d)(1). Pub. L. 102-295, § 114(c), which directed the amendment of subsec. (d) by substituting “subsection (a) of this section” for “this subsection” in provisions preceding subparagraph (A), was executed by making the substitution the second place that phrase appeared in introductory provisions of par. (1) of subsec. (d) to reflect the probable intent of Congress.

Subsecs. (e) to (g). Pub. L. 102-295, § 114(b)(1), redesignated subsecs. (d) to (f) as (e) to (g), respectively.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 114(d) of Pub. L. 102-295, as amended by Pub. L. 103-171, § 9(a), Dec. 2, 1993, 107 Stat. 1994, provided that: "The amendments described in subsections (a) and (b) [amending this section] are made upon the date of the enactment of this Act [May 28, 1992]. Such amendments take effect on October 1 of the first fiscal year for which \$40,000,000 or more is made available under subsection (a)(2)(B)(ii) of section 114 of the Child Abuse Prevention and Treatment Act [section 5106h(a)(2)(B)(ii) of this title] (as amended by section 117 of this Act). Prior to such amendments taking effect, section 107(a) of the Child Abuse Prevention and Treatment Act [subsec. (a) of this section], as in effect on the day before the date of the enactment of this Act, continues to be in effect."

[Pub. L. 103-171, § 9(b), Dec. 2, 1993, 107 Stat. 1994, provided that: "The amendments made by subsection (a) [amending section 114(d) of Pub. L. 102-295, set out above] take effect on September 30, 1993."]

REPORT

Pub. L. 108-36, title I, § 114(e), June 25, 2003, 117 Stat. 812, provided that: "Not later than 2 years after the date of enactment of this Act [June 25, 2003], the Secretary of Health and Human Services shall prepare and submit to Congress a report that describes the extent to which States are implementing the policies and procedures required under section 106(b)(2)(B)(ii) of the Child Abuse Prevention and Treatment Act [42 U.S.C. 5106a(b)(2)(B)(ii)]."

CONGRESSIONAL FINDINGS

Section 9(a) of Pub. L. 102-586 provided that: "The Congress finds that—

"(1) circumstances surrounding the death of a young boy named Adam Mann in New York City prompted a shocking documentary focusing on the inability of child protection services to protect suffering children;

"(2) the documentary described in paragraph (1) showed the serious need for systemic changes in our child welfare protection system;

"(3) thorough, coordinated, and comprehensive investigation will, it is hoped, lead to the prevention of abuse, neglect, or death in the future;

"(4) an undue burden is placed on investigation due to strict Federal and State laws and regulations regarding confidentiality;

"(5) while the Congress recognizes the importance of maintaining the confidentiality of records pertaining to child abuse, neglect, and death, often the purpose of confidentiality laws and regulations are [sic] defeated when they have the effect of protecting those responsible;

"(6) comprehensive and coordinated interagency communication needs to be established, with adequate provisions to protect against the public disclosure of any detrimental information need to be established [sic];

"(7) certain States, including Georgia, North Carolina, California, Missouri, Arizona, Minnesota, Oklahoma, and Oregon, have taken steps to establish by statute interagency, multidisciplinary fatality review teams to fully investigate incidents of death believed to be caused by child abuse or neglect;

"(8) teams such as those described in paragraph (7) should be established in every State, and their scope of review should be expanded to include egregious incidents of child abuse and neglect before the child in question dies; and

"(9) teams such as those described in paragraph (7) will increase the accountability of child protection services."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5105, 5106c, 5106d, 5106f of this title.

§ 5106a-1. Repealed. Pub. L. 103-252, title IV, § 401(b)(2), May 18, 1994, 108 Stat. 672

Section, Pub. L. 93-247, title I, § 107A, as added Pub. L. 101-226, § 21, Dec. 12, 1989, 103 Stat. 1937; amended Pub. L. 102-295, title I, § 115(a), May 28, 1992, 106 Stat. 195, related to emergency child abuse prevention services grants.

§ 5106b. Repealed. Pub. L. 104-235, title I, § 108, Oct. 3, 1996, 110 Stat. 3078

Section, Pub. L. 93-247, title I, § 108, formerly § 9, as added Pub. L. 100-294, title I, § 101, Apr. 25, 1988, 102 Stat. 113; renamed title I, § 108, and amended Pub. L. 101-126, § 3(a)(1), (2), (b)(4), Oct. 25, 1989, 103 Stat. 764, 765, related to technical assistance to States for child abuse prevention and treatment programs.

§ 5106c. Grants to States for programs relating to investigation and prosecution of child abuse and neglect cases

(a) Grants to States

The Secretary, in consultation with the Attorney General, is authorized to make grants to the States for the purpose of assisting States in developing, establishing, and operating programs designed to improve—

(1) the handling of child abuse and neglect cases, particularly cases of child sexual abuse and exploitation, in a manner which limits additional trauma to the child victim;

(2) the handling of cases of suspected child abuse or neglect related fatalities;

(3) the investigation and prosecution of cases of child abuse and neglect, particularly child sexual abuse and exploitation; and

(4) the handling of cases involving children with disabilities or serious health-related problems who are victims of abuse or neglect.

(b) Eligibility requirements

In order for a State to qualify for assistance under this section, such State shall—

(1) fulfill the requirements of section 5106a(b)¹ of this title;

(2) establish a task force as provided in subsection (c) of this section;

(3) fulfill the requirements of subsection (d) of this section;

(4) submit annually an application to the Secretary at such time and containing such information and assurances as the Secretary considers necessary, including an assurance that the State will—

(A) make such reports to the Secretary as may reasonably be required; and

(B) maintain and provide access to records relating to activities under subsections (a) and (b) of this section; and

(5) submit annually to the Secretary a report on the manner in which assistance received under this program was expended throughout the State, with particular attention focused on the areas described in paragraphs (1) through (3) of subsection (a) of this section.

(c) State task forces

(1) General rule

Except as provided in paragraph (2), a State requesting assistance under this section shall

¹ See References in Text note below.

establish or designate, and maintain, a State multidisciplinary task force on children's justice (hereinafter referred to as "State task force") composed of professionals with knowledge and experience relating to the criminal justice system and issues of child physical abuse, child neglect, child sexual abuse and exploitation, and child maltreatment related fatalities. The State task force shall include—

(A) individuals representing the law enforcement community;

(B) judges and attorneys involved in both civil and criminal court proceedings related to child abuse and neglect (including individuals involved with the defense as well as the prosecution of such cases);

(C) child advocates, including both attorneys for children and, where such programs are in operation, court appointed special advocates;

(D) health and mental health professionals;

(E) individuals representing child protective service agencies;

(F) individuals experienced in working with children with disabilities;

(G) parents; and

(H) representatives of parents' groups.

(2) Existing task force

As determined by the Secretary, a State commission or task force established after January 1, 1983, with substantially comparable membership and functions, may be considered the State task force for purposes of this subsection.

(d) State task force study

Before a State receives assistance under this section, and at three year intervals thereafter, the State task force shall comprehensively—

(1) review and evaluate State investigative, administrative and both civil and criminal judicial handling of cases of child abuse and neglect, particularly child sexual abuse and exploitation, as well as cases involving suspected child maltreatment related fatalities and cases involving a potential combination of jurisdictions, such as interstate, Federal-State, and State-Tribal; and

(2) make policy and training recommendations in each of the categories described in subsection (e) of this section.

The task force may make such other comments and recommendations as are considered relevant and useful.

(e) Adoption of State task force recommendations

(1) General rule

Subject to the provisions of paragraph (2), before a State receives assistance under this section, a State shall adopt recommendations of the State task force in each of the following categories—

(A) investigative, administrative, and judicial handling of cases of child abuse and neglect, particularly child sexual abuse and exploitation, as well as cases involving suspected child maltreatment related fatalities and cases involving a potential combination

of jurisdictions, such as interstate, Federal-State, and State-Tribal, in a manner which reduces the additional trauma to the child victim and the victim's family and which also ensures procedural fairness to the accused;

(B) experimental, model and demonstration programs for testing innovative approaches and techniques which may improve the prompt and successful resolution of civil and criminal court proceedings or enhance the effectiveness of judicial and administrative action in child abuse and neglect cases, particularly child sexual abuse and exploitation cases, including the enhancement of performance of court-appointed attorneys and guardians ad litem for children, and which also ensure procedural fairness to the accused; and

(C) reform of State laws, ordinances, regulations, protocols and procedures to provide comprehensive protection for children from abuse, particularly child sexual abuse and exploitation, while ensuring fairness to all affected persons.

(2) Exemption

As determined by the Secretary, a State shall be considered to be in fulfillment of the requirements of this subsection if—

(A) the State adopts an alternative to the recommendations of the State task force, which carries out the purpose of this section, in each of the categories under paragraph (1) for which the State task force's recommendations are not adopted; or

(B) the State is making substantial progress toward adopting recommendations of the State task force or a comparable alternative to such recommendations.

(f) Funds available

For grants under this section, the Secretary shall use the amount authorized by section 10603a of this title.

(Pub. L. 93-247, title I, §107, formerly §10, as added Pub. L. 100-294, title I, §101, Apr. 25, 1988, 102 Stat. 113; renumbered title I, §109, and amended Pub. L. 101-126, §3(a)(1), (2), (b)(5), Oct. 25, 1989, 103 Stat. 764, 765; Pub. L. 102-295, title I, §116(a), May 28, 1992, 106 Stat. 195; renumbered §107 and amended Pub. L. 104-235, title I, §113(a)(1)(B), (2), Oct. 3, 1996, 110 Stat. 3079; Pub. L. 108-36, title I, §115, June 25, 2003, 117 Stat. 812.)

REFERENCES IN TEXT

Section 5106a(b) of this title, referred to in subsec. (b)(1), was in the original a reference to section 107(b), meaning section 107(b) of Pub. L. 93-247. Section 107 of Pub. L. 93-247 was renumbered section 106 by Pub. L. 104-235, title I, §113(a)(1)(A), Oct. 3, 1996, 110 Stat. 3079. Section 109 of Pub. L. 93-247 was renumbered section 107 and is classified to this section.

PRIOR PROVISIONS

A prior section 107 of Pub. L. 93-247 was renumbered section 106 and is classified to section 5106a of this title.

AMENDMENTS

2003—Subsec. (a)(4). Pub. L. 108-36 added par. (4).

1996—Subsec. (a). Pub. L. 104-235, §113(a)(2)(A), substituted “The Secretary, in consultation” for “The Secretary, acting through the Center and in consultation” in introductory provisions.

Subsec. (b)(1). Pub. L. 104-235, §113(a)(2)(B), substituted “section” for “sections”.

Subsec. (c)(1). Pub. L. 104-235, §113(a)(2)(C), inserted comma after “maintain” in introductory provisions and semicolon at end of subpar. (F).

Subsec. (d)(1). Pub. L. 104-235, §113(a)(2)(D), inserted “and” at end.

1992—Pub. L. 102-295, §116(a)(1), in section catchline inserted “and neglect” after “child abuse”.

Subsec. (a). Pub. L. 102-295, §116(a)(2), added pars. (1) to (3) and struck out former pars. (1) and (2) which read as follows:

“(1) the handling of child abuse cases, particularly cases of child sexual abuse, in a manner which limits additional trauma to the child victim; and

“(2) the investigation and prosecution of cases of child abuse, particularly child sexual abuse.”

Subsec. (b)(1). Pub. L. 102-295, §116(a)(3)(A), substituted “sections 5106a(b) of this title” for “sections 5106a(b) and 5106a(e) of this title or receive a waiver under section 5106a(c) of this title”.

Subsec. (b)(4). Pub. L. 102-295, §116(a)(3)(C), inserted “annually” after “submit”.

Subsec. (b)(5). Pub. L. 102-295, §116(a)(3)(B), (D), added par. (5).

Subsec. (c)(1). Pub. L. 102-295, §116(a)(4), in introductory provisions inserted “, and maintain” after “designate” and substituted “child physical abuse, child neglect, child sexual abuse and exploitation, and child maltreatment related fatalities” for “child abuse”, in subpar. (B) substituted “judges and attorneys involved in both civil and criminal court proceedings related to child abuse and neglect” for “judicial and legal officers”, in subpar. (C) inserted “, including both attorneys for children and, where such programs are in operation, court appointed special advocates”, and in subpar. (F) substituted “disabilities” for “handicaps”.

Subsec. (d). Pub. L. 102-295, §116(a)(5), in introductory provisions substituted “and at three year intervals thereafter, the State task force shall comprehensively” for “the State task force shall”, in par. (1) substituted “both civil and criminal judicial handling of cases of child abuse and neglect, particularly child sexual abuse and exploitation, as well as cases involving suspected child maltreatment related fatalities and cases involving a potential combination of jurisdictions, such as interstate, Federal-State, and State-Tribal;” for “judicial handling of cases of child abuse, particularly child sexual abuse; and” and in par. (2) inserted “policy and training” before “recommendations”.

Subsec. (e)(1)(A). Pub. L. 102-295, §116(a)(6)(A), substituted “child abuse and neglect, particularly child sexual abuse and exploitation, as well as cases involving suspected child maltreatment related fatalities and cases involving a potential combination of jurisdictions, such as interstate, Federal-State, and State-Tribal, in a manner which reduces the additional trauma to the child victim and the victim’s family” for “child abuse, particularly child sexual abuse cases, in a manner which reduces the additional trauma to the child victim”.

Subsec. (e)(1)(B). Pub. L. 102-295, §116(a)(6)(B), which directed substitution of “improve the prompt and successful resolution of civil and criminal court proceedings or enhance the effectiveness of judicial and administrative action in child abuse and neglect cases, particularly child sexual abuse and exploitation cases, including the enhancement of performance of court-appointed attorneys and guardians ad litem for children” for “improve the rate” and all that followed through “abuse cases”, was executed by making the substitution for “improve the rate of successful prosecution or enhance the effectiveness of judicial and administrative action in child abuse cases, particularly child sexual abuse cases” to reflect the probable intent of Congress and the fact that “abuse cases” appeared twice.

Subsec. (e)(1)(C). Pub. L. 102-295, §116(a)(6)(C), inserted “, protocols” after “regulations” and “and exploitation” after “sexual abuse”.

1989—Subsec. (b)(1). Pub. L. 101-126, §3(b)(5), made technical amendments to references to section 5106a of this title to reflect renumbering of corresponding section of original act.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5106f, 10603a of this title.

§ 5106d. Miscellaneous requirements relating to assistance

(a) Construction of facilities

(1) Restriction on use of funds

Assistance provided under this subchapter and subchapter III of this chapter may not be used for construction of facilities.

(2) Lease, rental, or repair

The Secretary may authorize the use of funds received under this subchapter and subchapter III of this chapter—

(A) where adequate facilities are not otherwise available, for the lease or rental of facilities; or

(B) for the repair or minor remodeling or alteration of existing facilities.

(b) Geographical distribution

The Secretary shall establish criteria designed to achieve equitable distribution of assistance under this subchapter and subchapter III of this chapter among the States, among geographic areas of the Nation, and among rural and urban areas of the Nation. To the extent possible, the Secretary shall ensure that the citizens of each State receive assistance from at least one project under this subchapter and subchapter III of this chapter.

(c) Limitation

No funds appropriated for any grant or contract pursuant to authorizations made in this subchapter and subchapter III of this chapter may be used for any purpose other than that for which such funds were authorized to be appropriated.

(d) Sense of Congress

It is the sense of Congress that the Secretary should encourage all States and public and private agencies or organizations that receive assistance under this subchapter to ensure that children and families with limited English proficiency who participate in programs under this subchapter are provided materials and services under such programs in an appropriate language other than English.

(e) Annual report

A State that receives funds under section 5106a(a) of this title shall annually prepare and submit to the Secretary a report describing the manner in which funds provided under this subchapter and subchapter III of this chapter, alone or in combination with other Federal funds, were used to address the purposes and achieve the objectives of section 5106a of this title.

(Pub. L. 93-247, title I, §108, formerly §11, as added Pub. L. 100-294, title I, §101, Apr. 25, 1988,

102 Stat. 115; renumbered title I, § 110, Pub. L. 101-126, § 3(a)(1), (2), Oct. 25, 1989, 103 Stat. 764; renumbered § 108 and amended Pub. L. 104-235, title I, §§ 109, 113(a)(1)(B), Oct. 3, 1996, 110 Stat. 3078, 3079; Pub. L. 108-36, title I, § 116, June 25, 2003, 117 Stat. 812.)

PRIOR PROVISIONS

A prior section 108 of Pub. L. 93-247 was classified to section 5106b of this title prior to repeal by Pub. L. 104-235.

AMENDMENTS

2003—Subsecs. (d), (e). Pub. L. 108-36 added subsecs. (d) and (e).

1996—Subsecs. (c), (d). Pub. L. 104-235 redesignated subsec. (d) as (c) and struck out heading and text of former subsec. (c). Text read as follows: “The Secretary, in consultation with the task force and the board, shall ensure that a majority share of assistance under this subchapter and subchapters III and V of this chapter is available for discretionary research and demonstration grants.”

§ 5106e. Coordination of child abuse and neglect programs

The Secretary shall prescribe regulations and make such arrangements as may be necessary or appropriate to ensure that there is effective coordination among programs related to child abuse and neglect under this subchapter and subchapter III of this chapter and other such programs which are assisted by Federal funds.

(Pub. L. 93-247, title I, § 109, formerly § 12, as added Pub. L. 100-294, title I, § 101, Apr. 25, 1988, 102 Stat. 116; renumbered title I, § 111, Pub. L. 101-126, § 3(a)(1), (2), Oct. 25, 1989, 103 Stat. 764; renumbered § 109, Pub. L. 104-235, title I, § 113(a)(1)(B), Oct. 3, 1996, 110 Stat. 3079.)

PRIOR PROVISIONS

A prior section 109 of Pub. L. 93-247 was renumbered section 107 and is classified to section 5106c of this title.

§ 5106f. Reports

(a) Omitted

(b) Effectiveness of State programs

Not later than two years after the first fiscal year for which funds are obligated under section 10603a of this title, the Secretary shall submit to the appropriate committees of Congress a report evaluating the effectiveness of assisted programs in achieving the objectives of section 5106c of this title.

(c) Study and report relating to citizen review panels

(1) Study

The Secretary shall conduct a study by random sample of the effectiveness of the citizen review panels established under section 5106a(c) of this title.

(2) Report

Not later than 3 years after June 25, 2003, the Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate a report that contains the results of the study conducted under paragraph (1).

(Pub. L. 93-247, title I, § 110, formerly § 13, as added Pub. L. 100-294, title I, § 101, Apr. 25, 1988, 102 Stat. 116; renumbered title I, § 112, and amended Pub. L. 101-126, § 3(a)(1), (2), (b)(6), Oct. 25, 1989, 103 Stat. 764, 765; renumbered § 110 and amended Pub. L. 104-235, title I, § 113(a)(1)(B), (3), Oct. 3, 1996, 110 Stat. 3079; Pub. L. 108-36, title I, § 118, June 25, 2003, 117 Stat. 813.)

CODIFICATION

Subsec. (a) of this section, which required the Secretary to submit to the appropriate committees of Congress a biennial report on efforts to coordinate the objectives and activities of agencies and organizations which are responsible for programs and activities related to child abuse and neglect, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, item 9 on page 100 of House Document No. 103-7.

PRIOR PROVISIONS

A prior section 110 of Pub. L. 93-247 was renumbered section 108 and is classified to section 5106d of this title.

AMENDMENTS

2003—Subsec. (c). Pub. L. 108-36 added subsec. (c).

1996—Subsec. (b). Pub. L. 104-235 substituted “effectiveness of assisted programs in achieving the objectives of section 5106c of this title” for “effectiveness of—

“(1) assisted programs in achieving the objectives of section 5106c of this title; and

“(2) the technical assistance provided under section 5106b of this title”.

1989—Subsec. (b). Pub. L. 101-126, § 3(b)(6), made technical amendments to references to sections 5106b and 5106c of this title to reflect renumbering of corresponding sections of original act.

§ 5106f-1. Report concerning voluntary reporting system

Not later than April 30, 1993, and annually thereafter, the Secretary of Health and Human Services, acting through the Director of the National Center on Child Abuse and Neglect, shall prepare and submit to the appropriate committees of Congress a report concerning the measures being taken to assist States in implementing a voluntary reporting system for child abuse and neglect. Such reports shall contain information concerning the extent to which the child abuse and neglect reporting systems developed by the States are coordinated with the automated foster care and adoption reporting system required under section 679 of this title.

(Pub. L. 102-295, title I, § 142, May 28, 1992, 106 Stat. 200.)

CODIFICATION

Section was enacted as part of the Child Abuse, Domestic Violence, Adoption and Family Services Act of 1992, and not as part of title I of the Child Abuse Prevention and Treatment Act which comprises this subchapter.

§ 5106g. Definitions

For purposes of this subchapter—

(1) the term “child” means a person who has not attained the lesser of—

(A) the age of 18; or

(B) except in the case of sexual abuse, the age specified by the child protection law of the State in which the child resides;

(2) the term “child abuse and neglect” means, at a minimum, any recent act or failure to act on the part of a parent or caretaker, which results in death, serious physical or emotional harm, sexual abuse or exploitation, or an act or failure to act which presents an imminent risk of serious harm;

(3) the term “Secretary” means the Secretary of Health and Human Services;

(4) the term “sexual abuse” includes—

(A) the employment, use, persuasion, inducement, enticement, or coercion of any child to engage in, or assist any other person to engage in, any sexually explicit conduct or simulation of such conduct for the purpose of producing a visual depiction of such conduct; or

(B) the rape, and in cases of caretaker or inter-familial relationships, statutory rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with children;

(5) the term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands;

(6) the term “withholding of medically indicated treatment” means the failure to respond to the infant’s life-threatening conditions by providing treatment (including appropriate nutrition, hydration, and medication) which, in the treating physician’s or physicians’ reasonable medical judgment, will be most likely to be effective in ameliorating or correcting all such conditions, except that the term does not include the failure to provide treatment (other than appropriate nutrition, hydration, or medication) to an infant when, in the treating physician’s or physicians’ reasonable medical judgment—

(A) the infant is chronically and irreversibly comatose;

(B) the provision of such treatment would—

- (i) merely prolong dying;
- (ii) not be effective in ameliorating or correcting all of the infant’s life-threatening conditions; or
- (iii) otherwise be futile in terms of the survival of the infant; or

(C) the provision of such treatment would be virtually futile in terms of the survival of the infant and the treatment itself under such circumstances would be inhumane.

(Pub. L. 93-247, title I, §111, formerly §14, as added Pub. L. 100-294, title I, §101, Apr. 25, 1988, 102 Stat. 116; renumbered title I, §113, and amended Pub. L. 101-126, §3(a)(1), (2), (b)(7), Oct. 25, 1989, 103 Stat. 764, 765; renumbered §111 and amended Pub. L. 104-235, title I, §§110, 113(a)(1)(B), Oct. 3, 1996, 110 Stat. 3078, 3079.)

PRIOR PROVISIONS

A prior section 111 of Pub. L. 93-247 was renumbered section 109 and is classified to section 5106e of this title.

AMENDMENTS

1996—Par. (1). Pub. L. 104-235, §110(1), (2)(A), redesignated par. (3) as (1) and struck out former par. (1) which

read as follows: “the term ‘board’ means the Advisory Board on Child Abuse and Neglect established under section 5102 of this title;”.

Par. (2). Pub. L. 104-235, §110(2)(A), (3), redesignated par. (4) as (2) and amended it generally. Prior to amendment, par. (2) read as follows: “the term ‘child abuse and neglect’ means the physical or mental injury, sexual abuse or exploitation, negligent treatment, or maltreatment of a child by a person who is responsible for the child’s welfare, under circumstances which indicate that the child’s health or welfare is harmed or threatened thereby, as determined in accordance with regulations prescribed by the Secretary;”.

Pub. L. 104-235, §110(1) struck out par. (2) which read as follows: “the term ‘Center’ means the National Center on Child Abuse and Neglect established under section 5101 of this title;”.

Par. (3). Pub. L. 104-235, §110(2)(A), redesignated par. (6) as (3). Former par. (3) redesignated (1).

Par. (4). Pub. L. 104-235, §110(2)(A), (4), redesignated par. (7) as (4) and in subpar. (B) inserted “, and in cases of caretaker or inter-familial relationships, statutory rape” after “rape”. Former par. (4) redesignated (2).

Par. (5). Pub. L. 104-235, §110(1), (2)(A), redesignated par. (8) as (5) and struck out former par. (5) which read as follows: “the term ‘person who is responsible for the child’s welfare’ includes—

- “(A) any employee of a residential facility; and
- “(B) any staff person providing out-of-home care;”.

Par. (6). Pub. L. 104-235, §110(2)(B), redesignated par. (10) as (6). Former par. (6) redesignated (3).

Pars. (7), (8). Pub. L. 104-235, §110(2)(A), redesignated pars. (7) and (8) as (4) and (5), respectively.

Par. (9). Pub. L. 104-235, §110(1), struck out par. (9) which read as follows: “the term ‘task force’ means the Inter-Agency Task Force on Child Abuse and Neglect established under section 5103 of this title; and”.

Par. (10). Pub. L. 104-235, §110(2)(B), redesignated par. (10) as (6).

1989—Pub. L. 101-126, §3(b)(7)(A), made technical amendment to reference to this subchapter to reflect the insertion of title designations in the original act.

Pars. (1), (2), (9). Pub. L. 101-126, §3(b)(7)(B)–(D), made technical amendments to references to sections 5101, 5102, and 5103 of this title to reflect renumbering of corresponding sections of original act.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 5106h. Authorization of appropriations

(a) In general

(1) General authorization

There are authorized to be appropriated to carry out this subchapter \$120,000,000 for fiscal year 2004 and such sums as may be necessary for each of the fiscal years 2005 through 2008.

(2) Discretionary activities

(A) In general

Of the amounts appropriated for a fiscal year under paragraph (1), the Secretary shall make available 30 percent of such amounts to fund discretionary activities under this subchapter.

(B) Demonstration projects

Of the amounts made available for a fiscal year under subparagraph (A), the Secretary shall make available not more than 40 percent of such amounts to carry out section 5105 of this title.

(b) Availability of funds without fiscal year limitation

The Secretary shall ensure that funds appropriated pursuant to authorizations in this subchapter shall remain available until expended for the purposes for which they were appropriated.

(Pub. L. 93-247, title I, §112, formerly §15, as added Pub. L. 100-294, title I, §101, Apr. 25, 1988, 102 Stat. 117; renumbered title I, §114, and amended Pub. L. 101-126, §3(a)(1), (2), (b)(8), Oct. 25, 1989, 103 Stat. 764, 765; Pub. L. 102-295, title I, §117(a), May 28, 1992, 106 Stat. 197; renumbered §112 and amended Pub. L. 104-235, title I, §§111, 113(a)(1)(B), Oct. 3, 1996, 110 Stat. 3078, 3079; Pub. L. 108-36, title I, §117, June 25, 2003, 117 Stat. 812.)

PRIOR PROVISIONS

A prior section 112 of Pub. L. 93-247 was renumbered section 110 and is classified to section 5106f of this title.

AMENDMENTS

2003—Subsec. (a)(1). Pub. L. 108-36, §117(a), amended heading and text of par. (1) generally. Prior to amendment, text read as follows: “There are authorized to be appropriated to carry out this subchapter, \$100,000,000 for fiscal year 1997, and such sums as may be necessary for each of the fiscal years 1998 through 2001.”

Subsec. (a)(2)(B). Pub. L. 108-36, §117(b), substituted “Secretary shall make” for “Secretary make” and “section 5105” for “section 5106a”.

1996—Subsec. (a). Pub. L. 104-235 amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows:

“(1) AUTHORIZATION.—There are authorized to be appropriated to carry out this subchapter, except for section 5106a-1 of this title, \$100,000,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993 through 1995.

“(2) ALLOCATIONS.—

“(A) Of the amounts appropriated under paragraph (1) for a fiscal year, \$5,000,000 shall be available for the purpose of making additional grants to the States to carry out the provisions of section 5106a(g) of this title.

“(B) Of the amounts appropriated under paragraph (1) for a fiscal year and available after compliance with subparagraph (A)—

“(i) 33½ percent shall be available for activities under sections 5104, 5105, and 5106 of this title; and

“(ii) 66½ percent of such amounts shall be made available in each such fiscal year for activities under sections 5106a and 5106b of this title.”

1992—Subsec. (a). Pub. L. 102-295 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “There are authorized to be appropriated for purposes of carrying out this subchapter \$48,000,000 for fiscal year 1988, and such sums as may be necessary for fiscal years 1989, 1990, and 1991. Of the funds appropriated for any fiscal year under this section, except as provided in the succeeding sentence (1)(A) \$11,000,000 shall be available for activities under sections 5104, 5105, and 5106 of this title, and (B), \$9,000,000 shall be available in each fiscal year for activities under sections 5106a(a) and 5106b of this title, giving special consideration to continued funding of child abuse and neglect programs or projects (previously funded by the Department of Health and Human Services) of national or regional scope and demonstrated effectiveness, (2) \$5,000,000 shall be available in each such year for grants and contracts under section 5106(a) of this title, for identification, treatment, and prevention of sexual abuse, and (3) \$5,000,000 shall be available in each such year for the purpose of making additional grants to the States to carry out the provisions of section 5106a(f) of

this title. With respect to any fiscal year in which the total amount appropriated under this section is less than \$30,000,000, no less than \$20,000,000 of the funds appropriated in such fiscal year shall be available as provided in clause (1) in the preceding sentence and of the remainder, one-half shall be available as provided for in clause (2) and one-half as provided for in clause (3) in the preceding sentence.”

1989—Pub. L. 101-126, §3(b)(8), made technical amendments to references to this subchapter and to sections 5104, 5105, 5106, 5106a, and 5106b of this title to reflect the insertion of title designations and renumbering of corresponding sections in original act.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 117(b) of Pub. L. 102-295 provided that: “Paragraph (2) of section 114(a) [42 U.S.C. 5106h(a)(2)], as amended by subsection (a), shall become effective on October 1 of the first fiscal year for which \$30,000,000 or more would be available under subsection (a)(2)(B)(ii) of such section 114 (if such subsection were in effect), and until such fiscal year, the second and third sentences of section 114(a) [see 1992 Amendment note above] (as in effect prior to the amendment made by such subsection (a)) shall continue in effect.”

§ 5106i. Rule of construction

(a) In general

Nothing in this subchapter and subchapter III of this chapter shall be construed—

(1) as establishing a Federal requirement that a parent or legal guardian provide a child any medical service or treatment against the religious beliefs of the parent or legal guardian; and

(2) to require that a State find, or to prohibit a State from finding, abuse or neglect in cases in which a parent or legal guardian relies solely or partially upon spiritual means rather than medical treatment, in accordance with the religious beliefs of the parent or legal guardian.

(b) State requirement

Notwithstanding subsection (a) of this section, a State shall, at a minimum, have in place authority under State law to permit the child protective services system of the State to pursue any legal remedies, including the authority to initiate legal proceedings in a court of competent jurisdiction, to provide medical care or treatment for a child when such care or treatment is necessary to prevent or remedy serious harm to the child, or to prevent the withholding of medically indicated treatment from children with life threatening conditions. Except with respect to the withholding of medically indicated treatments from disabled infants with life threatening conditions, case by case determinations concerning the exercise of the authority of this subsection shall be within the sole discretion of the State.

(Pub. L. 93-247, title I, §113, formerly §115, as added and renumbered §113, Pub. L. 104-235, title I, §§112, 113(a)(1)(C), Oct. 3, 1996, 110 Stat. 3078, 3079.)

§ 5107. Discretionary programs; authorization of appropriations

(a)(1) The Secretary of Health and Human Services, either directly, through grants to States and public and private, nonprofit organi-

zations and agencies, or through jointly financed cooperative arrangements with States, public agencies, and other agencies and organizations, is authorized to provide for activities of national significance related to child abuse prevention and treatment and adoption reform, including operation of a national center to collect and disseminate information regarding child abuse and neglect, and operation of a national adoption information exchange system to facilitate the adoptive placement of children.

(2) The Secretary, in carrying out the provisions of this subsection, shall provide for the continued operation of the National Center on Child Abuse and Neglect in accordance with section 5101(a) of this title for each of the fiscal years 1982 and 1983.

(3) If the Secretary determines, in fiscal year 1982 or 1983, to carry out any of the activities described in section 5101(b) of this title, the Secretary shall carry out such activities through the National Center on Child Abuse and Neglect.

(b) There is authorized to be appropriated to carry out this section \$12,000,000 for each of the fiscal years 1982 and 1983. Of the amounts appropriated under this subsection for any fiscal year, not less than \$2,000,000 shall be available to carry out title II of the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978 [42 U.S.C. 5111 et seq.].

(Pub. L. 97-35, title VI, §610, Aug. 13, 1981, 95 Stat. 488.)

REFERENCES IN TEXT

The Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, referred to in subsec. (b), is Pub. L. 95-266, Apr. 24, 1978, 92 Stat. 205, as amended. Title II of the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978 is classified generally to subchapter II (§5111 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title of 1978 Amendment note set out under section 5101 of this title and Tables.

CODIFICATION

Section was enacted as part of the Omnibus Budget Reconciliation Act of 1981, and not as part of title I of the Child Abuse Prevention and Treatment Act which comprises this subchapter.

SUBCHAPTER II—ADOPTION OPPORTUNITIES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 5107 of this title.

§ 5111. Congressional findings and declaration of purpose

(a) Findings

Congress finds that—

(1) the number of children in substitute care has increased by nearly 24 percent since 1994, as our Nation's foster care population included more than 565,000 as of September of 2001;

(2) children entering foster care have complex problems that require intensive services, with many such children having special needs because they are born to mothers who did not receive prenatal care, are born with life threatening conditions or disabilities, are born addicted to alcohol or other drugs, or have

been exposed to infection with the etiologic agent for the human immunodeficiency virus;

(3) each year, thousands of children are in need of placement in permanent, adoptive homes;

(4) many thousands of children remain in institutions or foster homes solely because of legal and other barriers to their placement in permanent, adoptive homes;

(5)(A) currently, there are 131,000 children waiting for adoption;

(B) such children are typically school aged, in sibling groups, have experienced neglect or abuse, or have a physical, mental, or emotional disability; and

(C) while the children are of all races, children of color and older children (over the age of 10) are over represented in such group;

(6) adoption may be the best alternative for assuring the healthy development of such children;

(7) there are qualified persons seeking to adopt such children who are unable to do so because of barriers to their placement; and

(8) in order both to enhance the stability and love of the child's home environment and to avoid wasteful expenditures of public funds, such children should not have medically indicated treatment withheld from them nor be maintained in foster care or institutions when adoption is appropriate and families can be found for such children.

(b) Purpose

It is the purpose of this subchapter to facilitate the elimination of barriers, including geographic barriers, to adoption and to provide permanent and loving home environments for children who would benefit from adoption, particularly children with special needs, including disabled infants with life-threatening conditions, by providing a mechanism to—

(1) promote quality standards for adoption services, pre-placement, post-placement, and post-legal adoption counseling, and standards to protect the rights of children in need of adoption;

(2) maintain an Internet-based national adoption information exchange system to bring together children who would benefit from adoption and qualified prospective adoptive parents who are seeking such children, and conduct national recruitment efforts in order to reach prospective parents for children awaiting adoption; and

(3) demonstrate expeditious ways to free children for adoption for whom it has been determined that adoption is the appropriate plan.

(Pub. L. 95-266, title II, §201, Apr. 24, 1978, 92 Stat. 208; Pub. L. 98-457, title II, §201, Oct. 9, 1984, 98 Stat. 1755; Pub. L. 102-295, title IV, §401, May 28, 1992, 106 Stat. 211; Pub. L. 104-235, title II, §211, Oct. 3, 1996, 110 Stat. 3090; Pub. L. 108-36, title II, §201, June 25, 2003, 117 Stat. 818.)

AMENDMENTS

2003—Subsec. (a)(1) to (3). Pub. L. 108-36, §201(1)(A), added pars. (1) to (3) and struck out former pars. (1) to (3) which read as follows:

“(1) the number of children in substitute care increased by nearly 61 percent between 1986 and 1994, as

our Nation's foster care population included more than 452,000 as of June 1994;

"(2) increasingly children entering foster care have complex problems which require intensive services;

"(3) an increasing number of infants are born to mothers who did not receive prenatal care, are born addicted to alcohol and other drugs, and exposed to infection with the etiologic agent for the human immunodeficiency virus, are medically fragile, and technology dependent;"

Subsec. (a)(4). Pub. L. 108-36, §201(1)(A), (D), redesignated par. (5) as (4) and struck out former par. (4) which read as follows: "the welfare of thousands of children in institutions and foster homes and disabled infants with life-threatening conditions may be in serious jeopardy and some such children are in need of placement in permanent, adoptive homes;"

Subsec. (a)(5). Pub. L. 108-36, §201(1)(D), redesignated par. (7) as (5). Former par. (5) redesignated (4).

Subsec. (a)(6). Pub. L. 108-36, §201(1)(B), (D), redesignated par. (8) as (6) and struck out former par. (6) which read as follows: "the majority of such children are of school age, members of sibling groups or disabled;"

Subsec. (a)(7). Pub. L. 108-36, §201(1)(D), redesignated par. (9) as (7). Former par. (7) redesignated (5).

Subsec. (a)(7)(A). Pub. L. 108-36, §201(1)(C), added subpar. (A) and struck out former subpar. (A) which read as follows: "currently, 40,000 children are free for adoption and awaiting placement;"

Subsec. (a)(8) to (10). Pub. L. 108-36, §201(1)(D), redesignated pars. (8) to (10) as (6) to (8), respectively.

Subsec. (b). Pub. L. 108-36, §201(2)(A), inserted ", including geographic barriers," after "barriers" in introductory provisions.

Subsec. (b)(2). Pub. L. 108-36, §201(2)(B), substituted "an Internet-based national" for "a national".

1996—Subsec. (a)(1). Pub. L. 104-235, §211(1)(A), substituted "61 percent between 1986 and 1994" for "50 percent between 1985 and 1990" and "452,000 as of June 1994" for "400,000 children at the end of June, 1990".

Subsec. (a)(5). Pub. L. 104-235, §211(1)(B), substituted "legal" for "local".

Subsec. (a)(7). Pub. L. 104-235, §211(1)(C), amended par. (7) generally. Prior to amendment, par. (7) read as follows: "currently one-half of children free for adoption and awaiting placement are minorities;"

Subsec. (b). Pub. L. 104-235, §211(2), substituted "conditions, by providing a mechanism to—" for "conditions, by—

"(1) promoting model adoption legislation and procedures in the States and territories of the United States in order to eliminate jurisdictional and legal obstacles to adoption; and

"(2) providing a mechanism for the Department of Health and Human Services to—", redesignated subpars. (A) to (C) of former par. (2) as pars. (1) to (3), respectively, and realigned margins.

1992—Pub. L. 102-295 amended section generally, designating existing provisions as subsecs. (a) and (b), inserting findings relating to the number of children in substitute care, foster care children with complex problems which require intensive services, infants born without prenatal care, addicted to alcohol or other drugs, or exposed to infection with the etiologic agent for human immunodeficiency virus, and percentage of children awaiting adoption who are minorities, inserting as purposes of this subchapter to provide a mechanism to recruit prospective parents for children awaiting adoption and to demonstrate expeditious ways to free children for adoption, and striking out as a purpose to provide a mechanism to coordinate with Federal departments and agencies to provide national adoption and foster care information data-gathering and analysis system.

1984—Pub. L. 98-457, §201(a), (b)(1), in provisions before par. (1), inserted "the welfare of thousands of children in institutions and foster homes and disabled infants with life-threatening conditions may be in serious jeopardy and that some such children are in need of placement in permanent, adoptive homes, that" and

substituted "should not have medically indicated treatment withheld from them, nor be maintained in foster care" for "should not be maintained in foster care" and "children with special needs, including disabled infants with life-threatening conditions, by" for "children with special needs by".

Par. (2). Pub. L. 98-457, §201(b)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "providing a mechanism for the Department of Health and Human Services to (A) promote quality standards for adoption services (including pre-placement, post-placement, and post-adoption counseling and standards to protect the rights of children in need of adoption), and (B) provide for a national adoption and foster care information data gathering and analysis system and a national adoption information exchange system to bring together children who would benefit by adoption and qualified prospective adoptive parents who are seeking such children."

STUDY OF INTERJURISDICTIONAL ADOPTION ISSUES

Pub. L. 105-89, title II, §202(c), Nov. 19, 1997, 111 Stat. 2126, provided that:

"(1) IN GENERAL.—The Comptroller General of the United States shall—

"(A) study and consider how to improve procedures and policies to facilitate the timely and permanent adoptions of children across State and county jurisdictions; and

"(B) examine, at a minimum, interjurisdictional adoption issues—

"(i) concerning the recruitment of prospective adoptive families from other States and counties;

"(ii) concerning the procedures to grant reciprocity to prospective adoptive family home studies from other States and counties;

"(iii) arising from a review of the comity and full faith and credit provided to adoption decrees and termination of parental rights orders from other States; and

"(iv) concerning the procedures related to the administration and implementation of the Interstate Compact on the Placement of Children.

"(2) REPORT TO THE CONGRESS.—Not later than 1 year after the date of the enactment of this Act [Nov. 19, 1997], the Comptroller General shall submit to the appropriate committees of the Congress a report that includes—

"(A) the results of the study conducted under paragraph (1); and

"(B) recommendations on how to improve procedures to facilitate the interjurisdictional adoption of children, including interstate and intercounty adoptions, so that children will be assured timely and permanent placements."

§ 5112. Repealed. Pub. L. 102-295, title IV, § 402, May 28, 1992, 106 Stat. 213

Section, Pub. L. 95-266, title II, §202, Apr. 24, 1978, 92 Stat. 208; Pub. L. 98-457, title II, §202, Oct. 9, 1984, 98 Stat. 1756, related to model adoption legislation and procedures.

§ 5113. Information and services

(a) In general

The Secretary shall establish in the Department of Health and Human Services an appropriate administrative arrangement to provide a centralized focus for planning and coordinating of all departmental activities affecting adoption and foster care and for carrying out the provisions of this subchapter. The Secretary shall make available such consultant services, on-site technical assistance and personnel, together with appropriate administrative expenses, including salaries and travel costs, as are nec-

essary for carrying out such purposes, including services to facilitate the adoption of children with special needs and particularly of disabled infants with life-threatening conditions and services to couples considering adoption of children with special needs.

(b) Required activities

In connection with carrying out the provisions of this subchapter, the Secretary shall—

- (1) conduct (directly or by grant to or contract with public or private agencies or organizations) an education and training program on adoption, and prepare, publish, and disseminate (directly or by grant to or contract with public or private agencies and organizations) to all interested parties, public and private agencies and organizations (including, but not limited to, hospitals, health care and family planning clinics, and social services agencies), and governmental bodies, information and education and training materials regarding adoption and adoption assistance programs;
- (2) conduct, directly or by grant or contract with public or private organizations, ongoing, extensive recruitment efforts on a national level, develop national public awareness efforts to unite children in need of adoption with appropriate adoptive parents, and establish a coordinated referral system of recruited families with appropriate State or regional adoption resources to ensure that families are served in a timely fashion;
- (3) notwithstanding any other provision of law, provide (directly or by grant to or contract with public or private agencies or organizations) for (A) the operation of a national adoption information exchange system (including only such information as is necessary to facilitate the adoptive placement of children, utilizing computers and data processing methods to assist in the location of children who would benefit by adoption and in the placement in adoptive homes of children awaiting adoption); and (B) the coordination of such system with similar State and regional systems;
- (4) provide (directly or by grant to or contract with public or private agencies or organizations, including adoptive family groups and minority groups) for the provision of technical assistance in the planning, improving, developing, and carrying out of programs and activities relating to adoption, and to promote professional leadership training of minorities in the adoption field;
- (5) encourage involvement of corporations and small businesses in supporting adoption as a positive family-strengthening option, including the establishment of adoption benefit programs for employees who adopt children;
- (6) support the placement of children in kinship care arrangements, pre-adoptive, or adoptive homes;
- (7) study the efficacy of States contracting with public or private agencies (including community-based and other organizations), or sectarian institutions for the recruitment of potential adoptive and foster families and to provide assistance in the placement of children for adoption;

(8) consult with other appropriate Federal departments and agencies in order to promote maximum coordination of the services and benefits provided under programs carried out by such departments and agencies with those carried out by the Secretary, and provide for the coordination of such aspects of all programs within the Department of Health and Human Services relating to adoption;

(9) maintain (directly or by grant to or contract with public or private agencies or organizations) a National Resource Center for Special Needs Adoption to—

(A) promote professional leadership development of minorities in the adoption field;

(B) provide training and technical assistance to service providers and State agencies to improve professional competency in the field of adoption and the adoption of children with special needs; and

(C) facilitate the development of interdisciplinary approaches to meet the needs of children who are waiting for adoption and the needs of adoptive families;

(10) provide (directly or by grant to or contract with States, local government entities, public or private licensed child welfare or adoption agencies or adoptive family groups and community-based organizations with experience in working with minority populations) for the provision of programs aimed at increasing the number of minority children (who are in foster care and have the goal of adoption) placed in adoptive families, with a special emphasis on recruitment of minority families—

(A) which may include such activities as—

(i) outreach, public education, or media campaigns to inform the public of the needs and numbers of such children;

(ii) recruitment of prospective adoptive families for such children;

(iii) expediting, where appropriate, the legal availability of such children;

(iv) expediting, where appropriate, the agency assessment of prospective adoptive families identified for such children;

(v) formation of prospective adoptive family support groups;

(vi) training of personnel of—

(I) public agencies;

(II) private child welfare and adoption agencies that are licensed by the State; and

(III) adoptive parents organizations and community-based organizations with experience in working with minority populations;

(vii) use of volunteers and adoptive parent groups; and

(viii) any other activities determined by the Secretary to further the purposes of this subchapter; and

(B) shall be subject to the condition that such grants or contracts may be renewed if documentation is provided to the Secretary demonstrating that appropriate and sufficient placements of such children have occurred during the previous funding period; and

(11) provide (directly or by grant to or contract with States, local government entities, or public or private licensed child welfare or adoption agencies) for the implementation of programs that are intended to increase the number of older children (who are in foster care and with the goal of adoption) placed in adoptive families, with a special emphasis on child-specific recruitment strategies, including—

(A) outreach, public education, or media campaigns to inform the public of the needs and numbers of older youth available for adoption;

(B) training of personnel in the special needs of older youth and the successful strategies of child-focused, child-specific recruitment efforts; and

(C) recruitment of prospective families for such children.

(c) Services for families adopting special needs children

(1) In general

The Secretary shall provide (directly or by grant to or contract with States, local government entities, public or private licensed child welfare or adoption agencies or adoptive family groups) for the provision of post legal adoption services for families who have adopted special needs children.

(2) Services

Services provided under grants made under this subsection shall supplement, not supplant, services from any other funds available for the same general purposes, including—

(A) individual counseling;

(B) group counseling;

(C) family counseling;

(D) case management;

(E) training public agency adoption personnel, personnel of private, child welfare and adoption agencies licensed by the State to provide adoption services, mental health services professionals, and other support personnel to provide services under this subsection;

(F) assistance to adoptive parent organizations;

(G) assistance to support groups for adoptive parents, adopted children, and siblings of adopted children;

(H) day treatment; and

(I) respite care.

(d) Improving placement rate of children in foster care

(1) In general

The Secretary shall make grants for improving State efforts to increase the placement of foster care children legally free for adoption, according to a pre-established plan and goals for improvement. Grants funded by this section must include a strong evaluation component which outlines the innovations used to improve the placement of special needs children who are legally free for adoption, and the successes and failures of the initiative. The evaluations will be submitted to the Secretary who will compile the results of projects funded

by this section and submit a report to the appropriate committees of Congress. The emphasis of this program must focus on the improvement of the placement rate—not the aggregate number of special needs children placed in permanent homes. The Secretary, when reviewing grant applications¹ shall give priority to grantees who propose improvements designed to continue in the absence of Federal funds.

(2) Applications; technical and other assistance

(A) Applications

Each State entering into an agreement under this subsection shall submit an application to the Secretary that describes the manner in which the State will use funds during the 3 fiscal years subsequent to the date of the application to accomplish the purposes of this section. Such application shall be in a form and manner determined to be appropriate by the Secretary. Each application shall include verification of the placements described in paragraph (1).

(B) Technical and other assistance

The Secretary shall provide, directly or by grant to or contract with public or private agencies or organizations—

(i) technical assistance and resource and referral information to assist State or local governments with termination of parental rights issues, in recruiting and retaining adoptive families, in the successful placement of children with special needs, and in the provision of pre- and post-placement services, including post-legal adoption services; and

(ii) other assistance to help State and local governments replicate successful adoption-related projects from other areas in the United States.

(3) Payments

(A) In general

Payments under this subsection shall begin during fiscal year 1989. Payments under this section during any fiscal year shall not exceed \$1,000,000. No payment may be made under this subsection unless an amount in excess of \$5,000,000 is appropriated for such fiscal year under section 5115(a) of this title.

(B) Reversion of unused funds

Any payment made to a State under this subsection which is not used by such State for the purpose provided in paragraph (1) during the fiscal year payment is made shall revert to the Secretary on October 1st of the next fiscal year and shall be used to carry out the purposes of this subchapter.

(e) Elimination of barriers to adoptions across jurisdictional boundaries

(1) In general

The Secretary shall award grants to, or enter into contracts with, States, local government entities, public or private child welfare or adoption agencies, adoption exchanges, or adoption family groups to carry out initia-

¹ So in original. Probably should be followed by a comma.

tives to improve efforts to eliminate barriers to placing children for adoption across jurisdictional boundaries.

(2) Services to supplement not supplant

Services provided under grants made under this subsection shall supplement, not supplant, services provided using any other funds made available for the same general purposes including—

(A) developing a uniform homestudy standard and protocol for acceptance of homestudies between States and jurisdictions;

(B) developing models of financing cross-jurisdictional placements;

(C) expanding the capacity of all adoption exchanges to serve increasing numbers of children;

(D) developing training materials and training social workers on preparing and moving children across State lines; and

(E) developing and supporting initiative models for networking among agencies, adoption exchanges, and parent support groups across jurisdictional boundaries.

(Pub. L. 95-266, title II, §203, Apr. 24, 1978, 92 Stat. 209; Pub. L. 98-457, title II, §203, Oct. 9, 1984, 98 Stat. 1756; Pub. L. 100-294, title II, §202, Apr. 25, 1988, 102 Stat. 122; Pub. L. 102-295, title IV, §403, May 28, 1992, 106 Stat. 213; Pub. L. 104-235, title II, §212, Oct. 3, 1996, 110 Stat. 3090; Pub. L. 108-36, title II, §202, June 25, 2003, 117 Stat. 819.)

AMENDMENTS

2003—Pub. L. 108-36, §202(1), added section catchline and struck out former catchline.

Subsec. (a). Pub. L. 108-36, §202(2), inserted heading.

Subsec. (b). Pub. L. 108-36, §202(3)(A), inserted heading.

Subsec. (b)(1). Pub. L. 108-36, §202(3)(B), struck out “nonprofit” before “agencies or” in two places.

Subsec. (b)(2). Pub. L. 108-36, §202(3)(C), struck out “nonprofit” before “organizations.”

Subsec. (b)(3). Pub. L. 108-36, §202(3)(D), struck out “nonprofit” before “agencies or organizations.”

Subsec. (b)(4). Pub. L. 108-36, §202(3)(E), struck out “nonprofit” before “agencies or organizations.”

Subsec. (b)(6). Pub. L. 108-36, §202(3)(F), substituted “support” for “study the nature, scope, and effects of”.

Subsec. (b)(7). Pub. L. 108-36, §202(3)(G), struck out “nonprofit” before “agencies (including)”.

Subsec. (b)(9). Pub. L. 108-36, §202(3)(H), struck out “nonprofit” before “agencies or organizations” in introductory provisions and “and” at end.

Subsec. (b)(10). Pub. L. 108-36, §202(3)(I), struck out “nonprofit” before “licensed child” in introductory provisions and before “child welfare and adoption” in subpar. (A)(vi)(II), and substituted “; and” for period at end.

Subsec. (b)(11). Pub. L. 108-36, §202(3)(J), added par. (11).

Subsec. (c). Pub. L. 108-36, §202(4)(A), inserted heading.

Subsec. (c)(1). Pub. L. 108-36, §202(4)(A), (D), inserted heading and struck out “nonprofit” before “licensed child” in text.

Subsec. (c)(2). Pub. L. 108-36, §202(4)(B)–(D), inserted heading, realigned margins, struck out “nonprofit” before “child welfare” in subpar. (E), and added subpars. (H) and (I).

Subsec. (d). Pub. L. 108-36, §202(5), inserted subsec., par., and subpar. headings and, in par. (2)(B), struck out “nonprofit” before “agencies” and realigned cl. margins.

Subsec. (e). Pub. L. 108-36, §202(6), added subsec. (e). 1996—Subsec. (a). Pub. L. 104-235, §212(1), struck out at end “The Secretary shall, not later than 12 months after May 28, 1992, prepare and submit to the committees of Congress having jurisdiction over such services reports, as appropriate, containing appropriate data concerning the manner in which activities were carried out under this subchapter, and such reports shall be made available to the public.”

Subsec. (b)(6). Pub. L. 104-235, §212(2)(A), amended par. (6) generally. Prior to amendment, par. (6) read as follows: “continue to study the nature, scope, and effects of the placement of children in adoptive homes (not including the homes of stepparents or relatives of the child in question) by persons or agencies which are not licensed by or subject to regulation by any governmental entity;”

Subsec. (b)(7) to (10). Pub. L. 104-235, §212(2)(B), (C), added par. (7) and redesignated former pars. (7) to (9) as (8) to (10), respectively.

Subsec. (d)(2). Pub. L. 104-235, §212(3), designated existing provisions as subpar. (A), substituted “that describes the manner in which the State will use funds during the 3 fiscal years subsequent to the date of the application to accomplish the purposes of this section. Such application shall be” for “for each fiscal year”, and added subpar. (B).

1992—Subsec. (a). Pub. L. 102-295, §403(1), inserted “, on-site technical assistance” after “consultant services” and “including salaries and travel costs,” after “administrative expenses,” and inserted at end “The Secretary shall, not later than 12 months after May 28, 1992, prepare and submit to the committees of Congress having jurisdiction over such services reports, as appropriate, containing appropriate data concerning the manner in which activities were carried out under this subchapter, and such reports shall be made available to the public.”

Subsec. (b)(1), (2). Pub. L. 102-295, §403(2)(A), (B), added par. (2), redesignated former par. (2) as (1), and struck out former par. (1) which read as follows: “provide (after consultation with other appropriate Federal departments and agencies, including the Bureau of the Census and appropriate State and local agencies) for the establishment and operation of a Federal adoption and foster care data-gathering and analysis system;”

Subsec. (b)(4). Pub. L. 102-295, §403(2)(C), inserted “, and to promote professional leadership training of minorities in the adoption field”.

Subsec. (b)(8), (9). Pub. L. 102-295, §403(2)(D), added par. (8) and redesignated former par. (8) as (9).

1988—Subsec. (b)(8). Pub. L. 100-294, §202(a), added par. (8).

Subsecs. (c), (d). Pub. L. 100-294, §202(b), (c), added subsecs. (c) and (d).

1984—Subsec. (a). Pub. L. 98-457, §203(a), (b)(1), substituted “Health and Human Services” for “Health, Education, and Welfare” and inserted provision requiring the Secretary to make available services to facilitate the adoption of children with special needs and particularly of disabled infants with life-threatening conditions and services to couples considering adoption of children with special needs.

Subsec. (b). Pub. L. 98-457, §203(c)(1), substituted “this subchapter” for “subsection (a) of this section” in provisions preceding par. (1).

Subsec. (b)(1). Pub. L. 98-457, §203(c)(2), substituted “provide (after consultation with other appropriate Federal departments and agencies, including the Bureau of the Census and appropriate State and local agencies) for the establishment and operation of a Federal adoption and foster care data-gathering and analysis system” for “provide (directly or by grant to or contract with public or private nonprofit agencies and organizations) for the establishment and operation of a national adoption and foster care data gathering and analysis system utilizing data collected by States pursuant to requirements of law”.

Subsec. (b)(4). Pub. L. 98-457, §203(c)(3)(A), substituted “adoptive family groups and minority groups” for “parent groups”.

Subsec. (b)(5), (6). Pub. L. 98-457, §203(c)(3)(B), (C), added pars. (5) and (6). Former par. (5) redesignated (7).

Subsec. (b)(7). Pub. L. 98-457, §203(c)(3)(C), (D), redesignated former par. (5) as (7) and substituted "Health and Human Services" for "Health, Education, and Welfare".

KINSHIP CARE

Pub. L. 105-89, title III, §303, Nov. 19, 1997, 111 Stat. 2129, provided that:

"(a) REPORT.—

"(1) IN GENERAL.—The Secretary of Health and Human Services shall—

"(A) not later than June 1, 1998, convene the advisory panel provided for in subsection (b)(1) and prepare and submit to the advisory panel an initial report on the extent to which children in foster care are placed in the care of a relative (in this section referred to as 'kinship care'); and

"(B) not later than June 1, 1999, submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a final report on the matter described in subparagraph (A), which shall—

"(i) be based on the comments submitted by the advisory panel pursuant to subsection (b)(2) and other information and considerations; and

"(ii) include the policy recommendations of the Secretary with respect to the matter.

"(2) REQUIRED CONTENTS.—Each report required by paragraph (1) shall—

"(A) include, to the extent available for each State, information on—

"(i) the policy of the State regarding kinship care;

"(ii) the characteristics of the kinship care providers (including age, income, ethnicity, and race, and the relationship of the kinship care providers to the children);

"(iii) the characteristics of the household of such providers (such as number of other persons in the household and family composition);

"(iv) how much access to the child is afforded to the parent from whom the child has been removed;

"(v) the cost of, and source of funds for, kinship care (including any subsidies such as medicaid and cash assistance);

"(vi) the permanency plan for the child and the actions being taken by the State to achieve the plan;

"(vii) the services being provided to the parent from whom the child has been removed; and

"(viii) the services being provided to the kinship care provider; and

"(B) specifically note the circumstances or conditions under which children enter kinship care.

"(b) ADVISORY PANEL.—

"(1) ESTABLISHMENT.—The Secretary of Health and Human Services, in consultation with the Chairman of the Committee on Ways and Means of the House of Representatives and the Chairman of the Committee on Finance of the Senate, shall convene an advisory panel which shall include parents, foster parents, relative caregivers, former foster children, State and local public officials responsible for administering child welfare programs, private persons involved in the delivery of child welfare services, representatives of tribal governments and tribal courts, judges, and academic experts.

"(2) DUTIES.—The advisory panel convened pursuant to paragraph (1) shall review the report prepared pursuant to subsection (a), and, not later than October 1, 1998, submit to the Secretary comments on the report."

§ 5114. Study and report of unlicensed or unregulated adoption placements

(a) In general

The Secretary shall provide for a study (the results of which shall be reported to the appro-

priate committees of the Congress not later than eighteen months after June 25, 2003) designed to determine—

(1) the nature, scope, and effects of the interstate (and, to the extent feasible, intrastate) placement of children in adoptive homes (not including the homes of stepparents or relatives of the child in question) by persons or agencies.¹

(2) how interstate placements are being financed across State lines;

(3) recommendations on best practice models for both interstate and intrastate adoptions; and

(4) how State policies in defining special needs children differentiate or group similar categories of children.

(b) Dynamics of successful adoption

The Secretary shall conduct research (directly or by grant to, or contract with, public or private nonprofit research agencies or organizations) about adoption outcomes and the factors affecting those outcomes. The Secretary shall submit a report containing the results of such research to the appropriate committees of the Congress not later than the date that is 36 months after June 25, 2003.

(c) Interjurisdictional adoption

Not later than 1 year after June 25, 2003, the Secretary shall submit to the appropriate committees of the Congress a report that contains recommendations for an action plan to facilitate the interjurisdictional adoption of foster children.

(Pub. L. 95-266, title II, §204, Apr. 24, 1978, 92 Stat. 210; Pub. L. 108-36, title II, §§203, 204, June 25, 2003, 117 Stat. 821.)

AMENDMENTS

2003—Pub. L. 108-36 designated existing provisions as subsec. (a), inserted subsec. heading and par. (1) designation, substituted "June 25, 2003" for "April 24, 1978" and "to determine—" for "to determine", struck out "which are not licensed by or subject to regulation by any governmental entity" after "by persons or agencies", and added pars. (2) to (4) and subsecs. (b) and (c).

§ 5115. Authorization of appropriations

(a) There are authorized to be appropriated \$40,000,000 for fiscal year 2004 and such sums as may be necessary for fiscal years 2005 through 2008 to carry out programs and activities authorized under this subchapter.

(b) The Secretary shall ensure that funds appropriated pursuant to authorizations in this subchapter shall remain available until expended for the purposes for which they were appropriated.

(Pub. L. 95-266, title II, §205, Apr. 24, 1978, 92 Stat. 211; Pub. L. 98-457, title II, §204, Oct. 9, 1984, 98 Stat. 1757; Pub. L. 100-294, title II, §201, Apr. 25, 1988, 102 Stat. 122; Pub. L. 102-295, title IV, §404, May 28, 1992, 106 Stat. 214; Pub. L. 104-235, title II, §213, Oct. 3, 1996, 110 Stat. 3091; Pub. L. 108-36, title II, §205, June 25, 2003, 117 Stat. 822.)

¹ So in original. The period probably should be a semicolon.

REFERENCES IN TEXT

This subchapter, referred to in subsec. (a), was in the original “this subtitle”, and was translated as reading “this title”, meaning title II of Pub. L. 95-266, to reflect the probable intent of Congress, because Pub. L. 95-266 does not contain subtitles.

AMENDMENTS

2003—Subsec. (a). Pub. L. 108-36 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “There are authorized to be appropriated, \$20,000,000 for fiscal year 1997, and such sums as may be necessary for each of the fiscal years 1998 through 2001 to carry out programs and activities authorized.”

1996—Subsec. (a). Pub. L. 104-235, §213(1), substituted “\$20,000,000 for fiscal year 1997, and such sums as may be necessary for each of the fiscal years 1998 through 2001 to carry out programs and activities authorized” for “\$10,000,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993 through 1995, to carry out programs and activities under this subchapter except for programs and activities authorized under sections 5113(b)(9) and 5113(c)(1) of this title”.

Subsecs. (b), (c). Pub. L. 104-235, §213(2), (3), redesignated subsec. (c) as (b) and struck out former subsec. (b) which read as follows: “For any fiscal year in which appropriations under subsection (a) of this section exceeds \$5,000,000, there are authorized to be appropriated \$10,000,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993 through 1995, to carry out section 5113(b)(9) of this title, and there are authorized to be appropriated \$10,000,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993 through 1995, to carry out section 5113(c)(1) of this title.”

1992—Subsec. (a). Pub. L. 102-295, §404(1), added subsec. (a) and struck out former subsec. (a) which read as follows: “There are hereby authorized to be appropriated \$6,000,000 for the fiscal year 1988, and such sums as may be necessary for each of the fiscal years 1989, 1990, and 1991 to carry out programs and activities under this subchapter except for programs and activities authorized under sections 5113(b)(8) and 5113(c)(1) of this title.”

Subsec. (b). Pub. L. 102-295, §404(2), substituted “\$10,000,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993 through 1995, to carry out section 5113(b)(9) of this title, and there are authorized to be appropriated \$10,000,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993 through 1995, to carry out section 5113(c)(1) of this title” for “\$3,000,000 for fiscal year 1988, and such sums as may be necessary for fiscal years 1989, 1990, and 1991 for the purpose of carrying out section 5113(b)(8) of this title, and there are authorized to be appropriated \$3,000,000 for fiscal year 1988, and such sums as may be necessary for fiscal years 1989, 1990, and 1991 for the purpose of carrying out section 5113(c)(1) of this title”.

1988—Pub. L. 100-294 amended section generally. Prior to amendment, section read as follows: “There are authorized to be appropriated \$5,000,000 for the fiscal year ending September 30, 1978, such sums as may be necessary for the succeeding three fiscal years, and \$5,000,000 for each of the fiscal years 1984, 1985, 1986, and 1987, to carry out this subchapter.”

1984—Pub. L. 98-457 inserted provisions authorizing appropriations of \$5,000,000 for each of fiscal years 1984, 1985, 1986, and 1987.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5113 of this title.

§ 5115a. Repealed. Pub. L. 104-188, title I, § 1808(d), Aug. 20, 1996, 110 Stat. 1904

Section, Pub. L. 103-382, title V, §553, Oct. 20, 1994, 108 Stat. 4056, related to multiethnic placements.

SUBCHAPTER III—COMMUNITY-BASED GRANTS FOR THE PREVENTION OF CHILD ABUSE AND NEGLECT

CODIFICATION

Subchapter is comprised of title II of the Child Abuse Prevention and Treatment Act, Pub. L. 93-247. Title I of that Act is classified to subchapter I (§5101 et seq.) of this chapter.

AMENDMENTS

2003—Pub. L. 108-36, title I, §121(c), June 25, 2003, 117 Stat. 814, substituted “COMMUNITY-BASED GRANTS FOR THE PREVENTION OF CHILD ABUSE AND NEGLECT” for “COMMUNITY-BASED FAMILY RESOURCE AND SUPPORT GRANTS” in subchapter heading.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 5101, 5104, 5105, 5106a, 5106d, 5106e, 5106i of this title; title 31 section 6703.

§ 5116. Purpose and authority

(a) Purpose

It is the purpose of this subchapter—

(1) to support community-based efforts to develop, operate, expand, enhance, and, where appropriate to network, initiatives aimed at the prevention of child abuse and neglect, and to support networks of coordinated resources and activities to better strengthen and support families to reduce the likelihood of child abuse and neglect; and

(2) to foster an understanding, appreciation, and knowledge of diverse populations in order to be effective in preventing and treating child abuse and neglect.

(b) Authority

The Secretary shall make grants under this subchapter on a formula basis to the entity designated by the State as the lead entity (hereafter referred to in this subchapter as the “lead entity”) under section 5116a(1) of this title for the purpose of—

(1) developing, operating, expanding and enhancing community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect (through networks where appropriate) that are accessible, effective, culturally appropriate, and build upon existing strengths that—

(A) offer assistance to families;

(B) provide early, comprehensive support for parents;

(C) promote the development of parenting skills, especially in young parents and parents with very young children;

(D) increase family stability;

(E) improve family access to other formal and informal resources and opportunities for assistance available within communities;

(F) support the additional needs of families with children with disabilities through respite care and other services;

(G) demonstrate a commitment to meaningful parent leadership, including among parents of children with disabilities, parents with disabilities, racial and ethnic minorities, and members of other underrepresented or underserved groups; and

(H) provide referrals to early health and developmental services;

(2) fostering the development of a continuum of preventive services for children and families through State and community-based collaborations and partnerships both public and private;

(3) financing the start-up, maintenance, expansion, or redesign of specific family resource and support program services (such as respite care services, child abuse and neglect prevention activities, disability services, mental health services, housing services, transportation, adult education, home visiting and other similar services) identified by the inventory and description of current services required under section 5116d(3)¹ of this title as an unmet need, and integrated with the network of community-based family resource and support program to the extent practicable given funding levels and community priorities;

(4) maximizing funding through leveraging of funds for the financing, planning, community mobilization, collaboration, assessment, information and referral, startup, training and technical assistance, information management, reporting and evaluation costs for establishing, operating, or expanding community-based and prevention-focused, programs and activities designed to strengthen and support families to prevent child abuse and neglect (through networks where appropriate); and

(5) financing public information activities that focus on the healthy and positive development of parents and children and the promotion of child abuse and neglect prevention activities.

(Pub. L. 93-247, title II, § 201, as added Pub. L. 104-235, title I, § 121, Oct. 3, 1996, 110 Stat. 3080; amended Pub. L. 108-36, title I, § 121(a), (b), June 25, 2003, 117 Stat. 813.)

REFERENCES IN TEXT

Section 5116d(3) of this title, referred to in subsec. (b)(3), was in the original "section 205(a)(3)" and was translated as reading "section 205(3)", meaning section 205(3) of Pub. L. 93-247, to reflect the probable intent of Congress, because section 205 does not contain subsections.

PRIOR PROVISIONS

A prior section 5116, Pub. L. 93-247, title II, § 201, as added Pub. L. 103-252, title IV, § 401(a), May 18, 1994, 108 Stat. 666, related to community-based family resource programs, prior to the general amendment of this subchapter by Pub. L. 104-235, § 121.

Another prior section 5116, Pub. L. 93-247, title II, § 201, formerly Pub. L. 98-473, title IV, § 402, Oct. 12, 1984, 98 Stat. 2197; renumbered § 201 of Pub. L. 93-247, and amended Pub. L. 101-126, §§ 2(a), 3(a)(3), (c)(1), 4(a), Oct. 25, 1989, 103 Stat. 764, 766; Pub. L. 102-295, title I, § 121(b), May 28, 1992, 106 Stat. 198, set forth purpose of subchapter to assist States in supporting child abuse and neglect prevention activities through community based grants, prior to the general amendment of this subchapter by Pub. L. 103-252, § 401(a).

AMENDMENTS

2003—Subsec. (a)(1). Pub. L. 108-36, § 121(a), amended par. (1) generally. Prior to amendment, par. (1) read as

follows: "to support State efforts to develop, operate, expand and enhance a network of community-based, prevention-focused, family resource and support programs that coordinate resources among existing education, vocational rehabilitation, disability, respite care, health, mental health, job readiness, self-sufficiency, child and family development, community action, Head Start, child care, child abuse and neglect prevention, juvenile justice, domestic violence prevention and intervention, housing, and other human service organizations within the State; and".

Subsec. (b)(1). Pub. L. 108-36, § 121(b)(1)(A), in introductory provisions, substituted "community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect (through networks where appropriate) that are accessible, effective, culturally appropriate, and build upon existing strengths that" for "Statewide networks of community-based, prevention-focused, family resource and support programs that".

Subsec. (b)(1)(G), (H). Pub. L. 108-36, § 121(b)(1)(B), (C), added subpars. (G) and (H) and struck out former subpar. (G) which read as follows: "decrease the risk of homelessness";.

Subsec. (b)(4). Pub. L. 108-36, § 121(b)(2), inserted "through leveraging of funds" after "maximizing funding" and substituted "community-based and prevention-focused" for "a Statewide network of community-based, prevention-focused" and "programs and activities designed to strengthen and support families to prevent child abuse and neglect (through networks where appropriate)" for "family resource and support program".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 31 section 6703.

§ 5116a. Eligibility

A State shall be eligible for a grant under this subchapter for a fiscal year if—

(1)(A) the chief executive officer of the State has designated a lead entity to administer funds under this subchapter for the purposes identified under the authority of this subchapter, including to develop, implement, operate, enhance or expand community-based and prevention-focused, programs and activities designed to strengthen and support families to prevent child abuse and neglect (through networks where appropriate);

(B) such lead entity is an existing public, quasi-public, or nonprofit private entity (which may be an entity that has not been established pursuant to State legislation, executive order, or any other written authority of the State) that exists to strengthen and support families to prevent child abuse and neglect with a demonstrated ability to work with other State and community-based agencies to provide training and technical assistance, and that has the capacity and commitment to ensure the meaningful involvement of parents who are consumers and who can provide leadership in the planning, implementation, and evaluation of programs and policy decisions of the applicant agency in accomplishing the desired outcomes for such efforts;

(C) in determining which entity to designate under subparagraph (A), the chief executive officer should give priority consideration equally to a trust fund advisory board of the State or to an existing entity that leverages Federal, State, and private funds for a broad range of child abuse and neglect prevention activi-

¹ See References in Text note below.

ties and family resource programs, and that is directed by an interdisciplinary, public-private structure, including participants from communities; and

(D) in the case of a State that has designated a State trust fund advisory board for purposes of administering funds under this subchapter (as such subchapter was in effect on October 3, 1996) and in which one or more entities that leverage Federal, State, and private funds (as described in subparagraph (C)) exist, the chief executive officer shall designate the lead entity only after full consideration of the capacity and expertise of all entities desiring to be designated under subparagraph (A);

(2) the chief executive officer of the State provides assurances that the lead entity will provide or will be responsible for providing—

(A) community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect (through networks where appropriate) composed of local, collaborative, public-private partnerships directed by interdisciplinary structures with balanced representation from private and public sector members, parents, and public and private nonprofit service providers and individuals and organizations experienced in working in partnership with families with children with disabilities;

(B) direction through an interdisciplinary, collaborative, public-private structure with balanced representation from private and public sector and private nonprofit sector service providers, and parents with disabilities; and

(C) direction and oversight through identified goals and objectives, clear lines of communication and accountability, the provision of leveraged or combined funding from Federal, State and private sources, centralized assessment and planning activities, the provision of training and technical assistance, and reporting and evaluation functions; and

(3) the chief executive officer of the State provides assurances that the lead entity—

(A) has a demonstrated commitment to parental participation in the development, operation, and oversight of the community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect (through networks where appropriate);

(B) has a demonstrated ability to work with State and community-based public and private nonprofit organizations to develop a continuum of preventive, family centered, comprehensive services for children and families through the community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect (through networks where appropriate);

(C) has the capacity to provide operational support (both financial and programmatic)¹ training, technical assistance, and evalua-

tion assistance, to community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect (through networks where appropriate), through innovative, interagency funding and interdisciplinary service delivery mechanisms; and

(D) will integrate its efforts with individuals and organizations experienced in working in partnership with families with children with disabilities, parents with disabilities, and with the child abuse and neglect prevention activities of the State, and demonstrate a financial commitment to those activities.

(Pub. L. 93-247, title II, §202, as added Pub. L. 104-235, title I, §121, Oct. 3, 1996, 110 Stat. 3081; amended Pub. L. 108-36, title I, §122, June 25, 2003, 117 Stat. 814.)

PRIOR PROVISIONS

A prior section 5116a, Pub. L. 93-247, title II, §202, formerly Pub. L. 98-473, title IV, §403, Oct. 12, 1984, 98 Stat. 2197; renumbered §202 of Pub. L. 93-247, and amended Pub. L. 101-126, §§2(a), 3(a)(3), (c)(1), 4(b), Oct. 25, 1989, 103 Stat. 764, 766, defined “Secretary” and “State” as used in this subchapter, prior to the general amendment of this subchapter by Pub. L. 103-252, §401(a).

AMENDMENTS

2003—Par. (1)(A). Pub. L. 108-36, §122(1)(A), substituted “community-based and prevention-focused” for “a Statewide network of community-based, prevention-focused” and “programs and activities designed to strengthen and support families to prevent child abuse and neglect (through networks where appropriate)” for “family resource and support programs, child abuse and neglect prevention activities and access to respite care services integrated with the Statewide network”.

Par. (1)(B). Pub. L. 108-36, §122(1)(B), inserted “that exists to strengthen and support families to prevent child abuse and neglect” after “written authority of the State”.

Par. (2)(A). Pub. L. 108-36, §122(2)(A), substituted “community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect (through networks where appropriate)” for “a network of community-based family resource and support programs”.

Par. (2)(B). Pub. L. 108-36, §122(2)(B), struck out “to the network” after “direction” and inserted “, and parents with disabilities” before semicolon.

Par. (2)(C). Pub. L. 108-36, §122(2)(C), struck out “to the network” after “direction and oversight”.

Par. (3)(A). Pub. L. 108-36, §122(3)(A), substituted “community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect (through networks where appropriate)” for “Statewide network of community-based, prevention-focused, family resource and support programs”.

Par. (3)(B). Pub. L. 108-36, §122(3)(B), substituted “community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect (through networks where appropriate)” for “Statewide network of community-based, prevention-focused, family resource and support programs”.

Par. (3)(C). Pub. L. 108-36, §122(3)(C), substituted “training, technical assistance, and evaluation assistance, to community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect (through networks where appropriate)” for “and training and technical assistance, to the Statewide network

¹ So in original. Probably should be followed by a comma.

of community-based, prevention-focused, family resource and support programs”.

Par. (3)(D). Pub. L. 108-36, §122(3)(D), inserted “, parents with disabilities,” after “children with disabilities”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5116, 5116d, 5116f of this title.

§ 5116b. Amount of grant

(a) Reservation

The Secretary shall reserve 1 percent of the amount appropriated under section 5116i of this title for a fiscal year to make allotments to Indian tribes and tribal organizations and migrant programs.

(b) Remaining amounts

(1) In general

The Secretary shall allot the amount appropriated under section 5116i of this title for a fiscal year and remaining after the reservation under subsection (a) of this section among the States as follows:

(A) 70 percent of such amount appropriated shall be allotted among the States by allotting to each State an amount that bears the same proportion to such amount appropriated as the number of children under the age of 18 residing in the State bears to the total number of children under the age of 18 residing in all States (except that no State shall receive less than \$175,000 under this subparagraph).

(B) 30 percent of such amount appropriated shall be allotted among the States by allotting to each State an amount that bears the same proportion to such amount appropriated as the amount of private, State or other non-Federal funds leveraged and directed through the currently designated State lead entity in the preceding fiscal year bears to the aggregate of the amounts leveraged by all States from private, State, or other non-Federal sources and directed through the current lead entity of such States in the preceding fiscal year.

(2) Additional requirement

The Secretary shall provide allotments under paragraph (1) to the State lead entity.

(c) Allocation

Funds allotted to a State under this section—

(1) shall be for a 3-year period; and

(2) shall be provided by the Secretary to the State on an annual basis, as described in subsection (b) of this section.

(Pub. L. 93-247, title II, §203, as added Pub. L. 104-235, title I, §121, Oct. 3, 1996, 110 Stat. 3082; amended Pub. L. 108-36, title I, §123, June 25, 2003, 117 Stat. 815.)

PRIOR PROVISIONS

A prior section 5116b, Pub. L. 93-247, title II, §203, formerly Pub. L. 98-473, title IV, §404, Oct. 12, 1984, 98 Stat. 2197; renumbered §203 of Pub. L. 93-247, and amended Pub. L. 101-126, §§2(a), 3(a)(3), (c)(1), 4(c), 5, Oct. 25, 1989, 103 Stat. 764, 766-768; Pub. L. 102-295, title I, §122, May 28, 1992, 106 Stat. 198, authorized Secretary to make grants and authorized appropriations to carry out this

subchapter, prior to the general amendment of this subchapter by Pub. L. 103-252, §401(a).

AMENDMENTS

2003—Subsec. (b)(1)(B). Pub. L. 108-36, §123(1), substituted “as the amount of private, State or other non-Federal funds leveraged and directed through the currently designated” for “as the amount leveraged by the State from private, State, or other non-Federal sources and directed through the”, “State lead entity” for “State lead agency”, and “the current lead entity” for “the lead agency”.

Subsec. (c)(2). Pub. L. 108-36, §123(2), substituted “subsection (b)” for “subsection (a)”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5106a of this title.

§ 5116c. Repealed. Pub. L. 108-36, title I, § 124, June 25, 2003, 117 Stat. 815

Section, Pub. L. 93-247, title II, §204, as added Pub. L. 104-235, title I, §121, Oct. 3, 1996, 110 Stat. 3083; amended Pub. L. 106-400, §2, Oct. 30, 2000, 114 Stat. 1675, related to continuation of grants and agreements in effect on October 3, 1996.

A prior section 5116c, Pub. L. 93-247, title II, §204, formerly Pub. L. 98-473, title IV, §405, Oct. 12, 1984, 98 Stat. 2198; renumbered §204 of Pub. L. 93-247, and amended Pub. L. 101-126, §§2(a), 3(a)(3), (c)(1), 4(d), Oct. 25, 1989, 103 Stat. 764, 766, 767; Pub. L. 102-295, title I, §123, May 28, 1992, 106 Stat. 198, established requirement for State grant eligibility, prior to the general amendment of this subchapter by Pub. L. 103-252, §401(a).

§ 5116d. Application

A grant may not be made to a State under this subchapter unless an application therefor is submitted by the State to the Secretary and such application contains the types of information specified by the Secretary as essential to carrying out the provisions of section 5116a of this title, including—

(1) a description of the lead entity that will be responsible for the administration of funds provided under this subchapter and the oversight of programs funded through the community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect (through networks where appropriate) which meets the requirements of section 5116a of this title;

(2) a description of how the community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect (through networks where appropriate) will operate and how family resource and support services provided by public and private, non-profit organizations will be integrated into a developing continuum of family centered, holistic, preventive services for children and families;

(3) a description of the inventory of current unmet needs and current community-based and prevention-focused programs and activities to prevent child abuse and neglect, and other family resource services operating in the State;

(4) a budget for the development, operation and expansion of the community-based and prevention-focused programs and activities de-

signed to strengthen and support families to prevent child abuse and neglect that verifies that the State will expend in non-Federal funds an amount equal to not less than 20 percent of the amount received under this subchapter (in cash, not in-kind) for activities under this subchapter;

(5) an assurance that funds received under this subchapter will supplement, not supplant, other State and local public funds designated for the start up, maintenance, expansion, and redesign of community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect;

(6) an assurance that the State has the capacity to ensure the meaningful involvement of parents who are consumers and who can provide leadership in the planning, implementation, and evaluation of the programs and policy decisions of the applicant agency in accomplishing the desired outcomes for such efforts;

(7) a description of the criteria that the entity will use to develop, or select and fund, community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect as part of network development, expansion or enhancement;

(8) a description of outreach activities that the entity and the community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect will undertake to maximize the participation of racial and ethnic minorities, children and adults with disabilities, homeless families and those at risk of homelessness, and members of other underserved or underrepresented groups;

(9) a plan for providing operational support, training and technical assistance to community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect for development, operation, expansion and enhancement activities;

(10) a description of how the applicant entity's activities and those of the network and its members (where appropriate) will be evaluated;

(11) a description of the actions that the applicant entity will take to advocate systemic changes in State policies, practices, procedures and regulations to improve the delivery of community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect services to children and families; and

(12) an assurance that the applicant entity will provide the Secretary with reports at such time and containing such information as the Secretary may require.

(Pub. L. 93-247, title II, § 205, as added Pub. L. 104-235, title I, § 121, Oct. 3, 1996, 110 Stat. 3083; amended Pub. L. 108-36, title I, § 125, June 25, 2003, 117 Stat. 815.)

PRIOR PROVISIONS

A prior section 5116d, Pub. L. 93-247, title II, § 205, formerly Pub. L. 98-473, title IV, § 406, Oct. 12, 1984, 98 Stat.

2198; renumbered § 205 of Pub. L. 93-247, and amended Pub. L. 101-126, §§ 2(a), 3(a)(3), (c)(1), (2), 4(e), Oct. 25, 1989, 103 Stat. 764, 766, 767; Pub. L. 102-295, title I, § 124, May 28, 1992, 106 Stat. 198, related to grant allotments, required use of grants, and grant application requirements, prior to the general amendment of this subchapter by Pub. L. 103-252, § 401(a).

AMENDMENTS

2003—Par. (1). Pub. L. 108-36, § 125(1), substituted “community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect (through networks where appropriate)” for “Statewide network of community-based, prevention-focused, family resource and support programs”.

Par. (2). Pub. L. 108-36, § 125(2), substituted “community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect (through networks where appropriate)” for “network of community-based, prevention-focused, family resource and support programs” and struck out “, including those funded by programs consolidated under this subchapter and subchapter I of this chapter,” before “will be integrated”.

Par. (3). Pub. L. 108-36, § 125(3), added par. (3) and struck out former par. (3) which read as follows: “an assurance that an inventory of current family resource programs, respite care, child abuse and neglect prevention activities, and other family resource services operating in the State, and a description of current unmet needs, will be provided;”.

Par. (4). Pub. L. 108-36, § 125(4), substituted “community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect” for “State’s network of community-based, prevention-focused, family resource and support programs”.

Par. (5). Pub. L. 108-36, § 125(5), substituted “start up, maintenance, expansion, and redesign of community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect” for “Statewide network of community-based, prevention-focused, family resource and support programs”.

Par. (7). Pub. L. 108-36, § 125(6), substituted “community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect” for “individual community-based, prevention-focused, family resource and support programs”.

Par. (8). Pub. L. 108-36, § 125(7), substituted “community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect” for “community-based, prevention-focused, family resource and support programs”.

Par. (9). Pub. L. 108-36, § 125(8), substituted “community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect” for “community-based, prevention-focused, family resource and support programs”.

Par. (10). Pub. L. 108-36, § 125(9), inserted “(where appropriate)” after “members”.

Par. (11). Pub. L. 108-36, § 125(10), substituted “community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect” for “prevention-focused, family resource and support program”.

Par. (12), (13). Pub. L. 108-36, § 125(11), redesignated par. (13) as (12).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5116, 5116f of this title.

§ 5116e. Local program requirements

(a) In general

Grants made under this subchapter shall be used to develop, implement, operate, expand and

enhance community-based, and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect that—

(1) assess community assets and needs through a planning process that involves parents and local public agencies, local nonprofit organizations, and private sector representatives;

(2) develop a strategy to provide, over time, a continuum of preventive, family centered services to children and families, especially to young parents and parents with young children, through public-private partnerships;

(3) provide—

(A) core family resource and support services such as—

(i) parent education, mutual support and self help, and leadership services;

(ii) outreach services;

(iii) community and social service referrals; and

(iv) follow-up services;

(B) other core services, which must be provided or arranged for through contracts or agreements with other local agencies, including voluntary home visiting and all forms of respite care services to the extent practicable; and

(C) access to optional services, including—

(i) referral to and counseling for adoption services for individuals interested in adopting a child or relinquishing their child for adoption;

(ii) child care, early childhood development and intervention services;

(iii) referral to services and supports to meet the additional needs of families with children with disabilities;

(iv) referral to job readiness services;

(v) referral to educational services, such as scholastic tutoring, literacy training, and General Educational Degree services;

(vi) self-sufficiency and life management skills training;

(vii) community referral services, including early developmental screening of children; and

(viii) peer counseling;

(4) develop leadership roles for the meaningful involvement of parents in the development, operation, evaluation, and oversight of the programs and services;

(5) provide leadership in mobilizing local public and private resources to support the provision of needed family resource and support program services; and

(6) participate with other community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect in the development, operation and expansion of networks where appropriate.

(b) Priority

In awarding local grants under this subchapter, a lead entity shall give priority to effective community-based programs serving low income communities and those serving young parents or parents with young children, includ-

ing community-based family resource and support programs.

(Pub. L. 93-247, title II, §206, as added Pub. L. 104-235, title I, §121, Oct. 3, 1996, 110 Stat. 3085; amended Pub. L. 108-36, title I, §126, June 25, 2003, 117 Stat. 816.)

PRIOR PROVISIONS

A prior section 5116e, Pub. L. 93-247, title II, §206, formerly Pub. L. 98-473, title IV, §407, Oct. 12, 1984, 98 Stat. 2199; renumbered §206 of Pub. L. 93-247, and amended Pub. L. 101-126, §§2(a), 3(a)(3), (c)(1), 4(f), Oct. 25, 1989, 103 Stat. 764, 766, 768, related to withholding of grant payments upon failure to comply with provisions of this subchapter, prior to the general amendment of this subchapter by Pub. L. 103-252, §401(a).

AMENDMENTS

2003—Subsec. (a). Pub. L. 108-36, §126(1), substituted “and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect” for “prevention-focused, family resource and support programs” in introductory provisions.

Subsec. (a)(3)(B). Pub. L. 108-36, §126(2), inserted “voluntary home visiting and” after “including”.

Subsec. (a)(6). Pub. L. 108-36, §126(3), added par. (6) and struck out former par. (6) which read as follows: “participate with other community-based, prevention-focused, family resource and support program grantees in the development, operation and expansion of the Statewide network.”

§ 5116f. Performance measures

A State receiving a grant under this subchapter, through reports provided to the Secretary—

(1) shall demonstrate the effective development, operation and expansion of community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect that meets the requirements of this subchapter;

(2) shall supply an inventory and description of the services provided to families by local programs that meet identified community needs, including core and optional services as described in section 5116a of this title;

(3) shall demonstrate that they will have addressed unmet needs identified by the inventory and description of current services required under section 5116d(3) of this title;

(4) shall describe the number of families served, including families with children with disabilities, and parents with disabilities, and the involvement of a diverse representation of families in the design, operation, and evaluation of community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect, and in the design, operation and evaluation of the networks of such community-based and prevention-focused programs;

(5) shall demonstrate a high level of satisfaction among families who have used the services of the community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect;

(6) shall demonstrate the establishment or maintenance of innovative funding mecha-

nisms, at the State or community level, that blend Federal, State, local and private funds, and innovative, interdisciplinary service delivery mechanisms, for the development, operation, expansion and enhancement of the community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect;

(7) shall describe the results of a peer review process conducted under the State program; and

(8) shall demonstrate an implementation plan to ensure the continued leadership of parents in the on-going planning, implementation, and evaluation of such community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect.

(Pub. L. 93-247, title II, §207, as added Pub. L. 104-235, title I, §121, Oct. 3, 1996, 110 Stat. 3086; amended Pub. L. 108-36, title I, §127, June 25, 2003, 117 Stat. 817.)

PRIOR PROVISIONS

A prior section 5116f, Pub. L. 93-247, title II, §207, formerly Pub. L. 98-473, title IV, §408, Oct. 12, 1984, 98 Stat. 2199; renumbered §207 of Pub. L. 93-247, and amended Pub. L. 101-126, §§2(a), 3(a)(3), (c)(1), 4(g), Oct. 25, 1989, 103 Stat. 764, 766, 768, related to audits of grant recipients, prior to the general amendment of this subchapter by Pub. L. 103-252, §401(a).

AMENDMENTS

2003—Par. (1). Pub. L. 108-36, §127(1), substituted “community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect” for “a Statewide network of community-based, prevention-focused, family resource and support programs”.

Par. (3). Pub. L. 108-36, §127(2), added par. (3) and struck out former par. (3) which read as follows: “shall demonstrate the establishment of new respite care and other specific new family resources services, and the expansion of existing services, to address unmet needs identified by the inventory and description of current services required under section 5116d(3) of this title;”.

Par. (4). Pub. L. 108-36, §127(3), inserted “and parents with disabilities,” after “children with disabilities,” and substituted “evaluation of community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect, and in the design, operation and evaluation of the networks of such community-based and prevention-focused programs” for “evaluation of the Statewide network of community-based, prevention-focused, family resource and support programs, and in the design, operation and evaluation of the individual community-based family resource and support programs that are part of the Statewide network funded under this subchapter”.

Par. (5). Pub. L. 108-36, §127(4), substituted “and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect” for “, prevention-focused, family resource and support programs”.

Par. (6). Pub. L. 108-36, §127(5), substituted “community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect” for “Statewide network of community-based, prevention-focused, family resource and support programs”.

Par. (8). Pub. L. 108-36, §127(6), substituted “community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect” for “community based,

prevention-focused, family resource and support programs”.

§ 5116g. National network for community-based family resource programs

The Secretary may allocate such sums as may be necessary from the amount provided under the State allotment to support the activities of the lead entity in the State—

(1) to create, operate and maintain a peer review process;

(2) to create, operate and maintain an information clearinghouse;

(3) to fund a yearly symposium on State system change efforts that result from the operation of the community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect;

(4) to create, operate and maintain a computerized communication system between lead entities; and

(5) to fund State-to-State technical assistance through bi-annual conferences.

(Pub. L. 93-247, title II, §208, as added Pub. L. 104-235, title I, §121, Oct. 3, 1996, 110 Stat. 3086; amended Pub. L. 108-36, title I, §128, June 25, 2003, 117 Stat. 817.)

PRIOR PROVISIONS

A prior section 5116g, Pub. L. 93-247, title II, §208, formerly Pub. L. 98-473, title IV, §409, Oct. 12, 1984, 98 Stat. 2199; renumbered §208 of Pub. L. 93-247, and amended Pub. L. 101-126, §§2(a), 3(a)(3), (c)(3), 4(h), Oct. 25, 1989, 103 Stat. 764, 766, 768, related to reports to Congress, prior to the general amendment of this subchapter by Pub. L. 103-252, §401(a).

AMENDMENTS

2003—Par. (3). Pub. L. 108-36 substituted “community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect” for “Statewide networks of community-based, prevention-focused, family resource and support programs”.

§ 5116h. Definitions

For purposes of this subchapter:

(1) Children with disabilities

The term “children with disabilities” has the same meaning given the term “child with a disability” in section 1401(3) or “infant or toddler with a disability” in section 1432(5) of title 20.

(2) Community referral services

The term “community referral services” means services provided under contract or through interagency agreements to assist families in obtaining needed information, mutual support and community resources, including respite care services, health and mental health services, employability development and job training, and other social services, including early developmental screening of children, through help lines or other methods.

(3) Community-based and prevention-focused programs and activities to prevent child abuse and neglect

The term “community-based and prevention-focused programs and activities designed

to strengthen and support families to prevent child abuse and neglect” includes organizations such as family resource programs, family support programs, voluntary home visiting programs, respite care programs, parenting education, mutual support programs, and other community programs or networks of such programs that provide activities that are designed to prevent or respond to child abuse and neglect.

(4) Repealed. Pub. L. 108-36, title I, § 129(b), June 25, 2003, 117 Stat. 817

(5) Respite care services

The term ‘respite care services’ means short term care services provided in the temporary absence of the regular caregiver (parent, other relative, foster parent, adoptive parent, or guardian) to children who—

- (A) are in danger of abuse or neglect;
- (B) have experienced abuse or neglect; or
- (C) have disabilities, chronic, or terminal illnesses.

Such services shall be provided within or outside the home of the child, be short-term care (ranging from a few hours to a few weeks of time, per year), and be intended to enable the family to stay together and to keep the child living in the home and community of the child.

(Pub. L. 93-247, title II, § 209, as added Pub. L. 104-235, title I, § 121, Oct. 3, 1996, 110 Stat. 3087; amended Pub. L. 108-36, title I, § 129, June 25, 2003, 117 Stat. 817.)

AMENDMENTS

2003—Par. (1). Pub. L. 108-36, § 129(a), substituted ‘given the term ‘child with a disability’ in section 1401(3) or ‘infant or toddler with a disability’ in section 1432(5) of title 20” for ‘given such term in section 1401(a)(2) of title 20’.

Pars. (3), (4). Pub. L. 108-36, § 129(b), added par. (3) and struck out former pars. (3) and (4), which related, respectively, to family resource and support programs and outreach services.

§ 5116i. Authorization of appropriations

There are authorized to be appropriated to carry out this subchapter \$80,000,000 for fiscal year 2004 and such sums as may be necessary for each of the fiscal years 2005 through 2008.

(Pub. L. 93-247, title II, § 210, as added Pub. L. 104-235, title I, § 121, Oct. 3, 1996, 110 Stat. 3088; amended Pub. L. 108-36, title I, § 130, June 25, 2003, 117 Stat. 818.)

AMENDMENTS

2003—Pub. L. 108-36 amended section catchline and text generally. Prior to amendment, text read as follows: ‘‘There are authorized to be appropriated to carry out this subchapter, \$66,000,000 for fiscal year 1997 and such sums as may be necessary for each of the fiscal years 1998 through 2001.’’

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5116b of this title.

SUBCHAPTER IV—TEMPORARY CHILD CARE FOR CHILDREN WITH DISABILITIES AND CRISIS NURSERIES

§§ 5117 to 5117d. Repealed. Pub. L. 104-235, title I, § 142(a), Oct. 3, 1996, 110 Stat. 3089

Section 5117, Pub. L. 99-401, title II, § 202, Aug. 27, 1986, 100 Stat. 907, related to congressional findings for this subchapter.

Section 5117a, Pub. L. 99-401, title II, § 203, Aug. 27, 1986, 100 Stat. 907; Pub. L. 101-127, § 2(1), Oct. 25, 1989, 103 Stat. 770, related to temporary child care for children with disabilities and chronically ill children.

Section 5117b, Pub. L. 99-401, title II, § 204, Aug. 27, 1986, 100 Stat. 907, related to crisis nurseries for children who are abused and neglected, at high risk of abuse and neglect, or who are in families receiving child protective services.

Section 5117c, Pub. L. 99-401, title II, § 205, Aug. 27, 1986, 100 Stat. 908; Pub. L. 101-127, §§ 2(2), 3, 4, Oct. 25, 1989, 103 Stat. 770, 771; Pub. L. 101-476, title IX, § 901(a)(3), (g), Oct. 30, 1990, 104 Stat. 1142, 1151; Pub. L. 102-295, title II, § 202, May 28, 1992, 106 Stat. 200, related to administrative provisions.

Section 5117d, Pub. L. 99-401, title II, § 206, Aug. 27, 1986, 100 Stat. 909; Pub. L. 100-403, § 1, Aug. 19, 1988, 102 Stat. 1013; Pub. L. 101-127, § 5, Oct. 25, 1989, 103 Stat. 771; Pub. L. 102-295, title II, § 203, May 28, 1992, 106 Stat. 200, related to authorization of appropriations for carrying out this subchapter.

EFFECTIVE DATE

Section 207 of title II of Pub. L. 99-401 which provided that title II of Pub. L. 99-401 was effective Oct. 1, 1986, was repealed by Pub. L. 104-235, title I, § 142(a), Oct. 3, 1996, 110 Stat. 3089.

SHORT TITLE

Section 201 of title II of Pub. L. 99-401, as amended by Pub. L. 101-127, § 6, Oct. 25, 1989, 103 Stat. 772, which provided that title II of Pub. L. 99-401 be cited as the ‘‘Temporary Child Care for Children With Disabilities and Crisis Nurseries Act of 1986’’, was repealed by Pub. L. 104-235, title I, § 142(a), Oct. 3, 1996, 110 Stat. 3089.

SUBCHAPTER V—CERTAIN PREVENTIVE SERVICES REGARDING CHILDREN OF HOMELESS FAMILIES OR FAMILIES AT RISK OF HOMELESSNESS

§§ 5118 to 5118e. Repealed. Pub. L. 104-235, title I, § 131, Oct. 3, 1996, 110 Stat. 3088

Section 5118, Pub. L. 93-247, title III, § 301, as added Pub. L. 101-645, title VI, § 661(b), Nov. 29, 1990, 104 Stat. 4755, related to demonstration grants for prevention of inappropriate separation from family and for prevention of child abuse and neglect.

Section 5118a, Pub. L. 93-247, title III, § 302, as added Pub. L. 101-645, title VI, § 661(b), Nov. 29, 1990, 104 Stat. 4757, related to joint training of appropriate service personnel with respect to certain subjects and additional authorized activities for which a grantee may expend grant funds.

Section 5118b, Pub. L. 93-247, title III, § 303, as added Pub. L. 101-645, title VI, § 661(b), Nov. 29, 1990, 104 Stat. 4757, related to additional agreements required of agencies, evaluations of effectiveness of demonstration programs, report to Congress, and restriction on use of grant to purchase or improve real property.

Section 5118c, Pub. L. 93-247, title III, § 304, as added Pub. L. 101-645, title VI, § 661(b), Nov. 29, 1990, 104 Stat. 4759, related to required submission of description of intended uses of grant.

Section 5118d, Pub. L. 93-247, title III, § 305, as added Pub. L. 101-645, title VI, § 661(b), Nov. 29, 1990, 104 Stat. 4759, related to requirement of submission of application for grant.

Section 5118e, Pub. L. 93-247, title III, §306, as added Pub. L. 101-645, title VI, §661(b), Nov. 29, 1990, 104 Stat. 4760; amended Pub. L. 102-295, title I, §131, May 28, 1992, 106 Stat. 199, related to authorization of appropriations for carrying out this subchapter.

SUBCHAPTER VI—CHILD ABUSE CRIME INFORMATION AND BACKGROUND CHECKS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 3759, 14614 of this title.

§ 5119. Reporting child abuse crime information

(a) In general

In each State, an authorized criminal justice agency of the State shall report child abuse crime information to, or index child abuse crime information in, the national criminal history background check system. A criminal justice agency may satisfy the requirement of this subsection by reporting or indexing all felony and serious misdemeanor arrests and dispositions.

(b) Provision of State child abuse crime records through national criminal history background check system

(1) Not later than 180 days after December 20, 1993, the Attorney General shall, subject to availability of appropriations—

(A) investigate the criminal history records system of each State and determine for each State a timetable by which the State should be able to provide child abuse crime records on an on-line basis through the national criminal history background check system;

(B) in consultation with State officials, establish guidelines for the reporting or indexing of child abuse crime information, including guidelines relating to the format, content, and accuracy of criminal history records and other procedures for carrying out this subchapter; and

(C) notify each State of the determinations made pursuant to subparagraphs (A) and (B).

(2) The Attorney General shall require as a part of each State timetable that the State—

(A) by not later than the date that is 5 years after December 20, 1993, have in a computerized criminal history file at least 80 percent of the final dispositions that have been rendered in all identifiable child abuse crime cases in which there has been an event of activity within the last 5 years;

(B) continue to maintain a reporting rate of at least 80 percent for final dispositions in all identifiable child abuse crime cases in which there has been an event of activity within the preceding 5 years; and

(C) take steps to achieve 100 percent disposition reporting, including data quality audits and periodic notices to criminal justice agencies identifying records that lack final dispositions and requesting those dispositions.

(c) Liaison

An authorized agency of a State shall maintain close liaison with the National Center on Child Abuse and Neglect, the National Center for Missing and Exploited Children, and the National Center for the Prosecution of Child Abuse for the exchange of technical assistance in cases of child abuse.

(d) Annual summary

(1) The Attorney General shall publish an annual statistical summary of child abuse crimes.

(2) The annual statistical summary described in paragraph (1) shall not contain any information that may reveal the identity of any particular victim or alleged violator.

(e) Annual report

The Attorney General shall, subject to the availability of appropriations, publish an annual summary of each State's progress in reporting child abuse crime information to the national criminal history background check system.

(f) Study of child abuse offenders

(1) Not later than 180 days after December 20, 1993, the Administrator of the Office of Juvenile Justice and Delinquency Prevention shall begin a study based on a statistically significant sample of convicted child abuse offenders and other relevant information to determine—

(A) the percentage of convicted child abuse offenders who have more than 1 conviction for an offense involving child abuse;

(B) the percentage of convicted child abuse offenders who have been convicted of an offense involving child abuse in more than 1 State; and

(C) the extent to which and the manner in which instances of child abuse form a basis for convictions for crimes other than child abuse crimes.

(2) Not later than 2 years after December 20, 1993, the Administrator shall submit a report to the Chairman of the Committee on the Judiciary of the Senate and the Chairman of the Committee on the Judiciary of the House of Representatives containing a description of and a summary of the results of the study conducted pursuant to paragraph (1).

(Pub. L. 103-209, §2, Dec. 20, 1993, 107 Stat. 2490; Pub. L. 103-322, title XXXII, §320928(b), (h), (i), Sept. 13, 1994, 108 Stat. 2132, 2133.)

REFERENCES IN TEXT

This subchapter, referred to in subsec. (b)(1)(B), was in the original "this Act", meaning Pub. L. 103-209, Dec. 20, 1993, 107 Stat. 2490, which is classified generally to this subchapter. For complete classification of this Act to the Code, see Short Title of 1993 Amendment note set out under section 5101 of this title and Tables.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103-322, §320928(b), inserted at end "A criminal justice agency may satisfy the requirement of this subsection by reporting or indexing all felony and serious misdemeanor arrests and dispositions."

Subsec. (b)(2)(A). Pub. L. 103-322, §320928(i), substituted "5 years after" for "3 years after".

Subsec. (f)(2). Pub. L. 103-322, §320928(h), substituted "2 years" for "1 year".

GUIDELINES FOR ADOPTION OF SAFEGUARDS BY CARE PROVIDERS AND STATES FOR PROTECTING CHILDREN, THE ELDERLY, OR INDIVIDUALS WITH DISABILITIES FROM ABUSE

Section 320928(g) of Pub. L. 103-322 provided that:

"(1) IN GENERAL.—The Attorney General, in consultation with Federal, State, and local officials, including officials responsible for criminal history record systems, and representatives of public and private care or-

ganizations and health, legal, and social welfare organizations, shall develop guidelines for the adoption of appropriate safeguards by care providers and by States for protecting children, the elderly, or individuals with disabilities from abuse.

“(2) MATTERS TO BE ADDRESSED.—In developing guidelines under paragraph (1), the Attorney General shall address the availability, cost, timeliness, and effectiveness of criminal history background checks and recommend measures to ensure that fees for background checks do not discourage volunteers from participating in care programs.

“(3) DISSEMINATION.—The Attorney General shall, subject to the availability of appropriations, disseminate the guidelines to State and local officials and to public and private care providers.”

§ 5119a. Background checks

(a) In general

(1) A State may have in effect procedures (established by State statute or regulation) that require qualified entities designated by the State to contact an authorized agency of the State to request a nationwide background check for the purpose of determining whether a provider has been convicted of a crime that bears upon the provider's fitness to have responsibility for the safety and well-being of children, the elderly, or individuals with disabilities.

(2) The authorized agency shall access and review State and Federal criminal history records through the national criminal history background check system and shall make reasonable efforts to respond to the inquiry within 15 business days.

(3) In the absence of State procedures referred to in paragraph (1), a qualified entity designated under paragraph (1) may contact an authorized agency of the State to request national criminal fingerprint background checks. Qualified entities requesting background checks under this paragraph shall comply with the guidelines set forth in subsection (b) of this section and with procedures for requesting national criminal fingerprint background checks, if any, established by the State.

(b) Guidelines

The procedures established under subsection (a) of this section shall require—

(1) that no qualified entity may request a background check of a provider under subsection (a) of this section unless the provider first provides a set of fingerprints and completes and signs a statement that—

(A) contains the name, address, and date of birth appearing on a valid identification document (as defined in section 1028 of title 18) of the provider;

(B) the provider has not been convicted of a crime and, if the provider has been convicted of a crime, contains a description of the crime and the particulars of the conviction;

(C) notifies the provider that the entity may request a background check under subsection (a) of this section;

(D) notifies the provider of the provider's rights under paragraph (2); and

(E) notifies the provider that prior to the completion of the background check the qualified entity may choose to deny the pro-

vider unsupervised access to a person to whom the qualified entity provides care;

(2) that each provider who is the subject of a background check is entitled—

(A) to obtain a copy of any background check report; and

(B) to challenge the accuracy and completeness of any information contained in any such report and obtain a prompt determination as to the validity of such challenge before a final determination is made by the authorized agency;

(3) that an authorized agency, upon receipt of a background check report lacking disposition data, shall conduct research in whatever State and local recordkeeping systems are available in order to obtain complete data;

(4) that the authorized agency shall make a determination whether the provider has been convicted of, or is under pending indictment for, a crime that bears upon the provider's fitness to have responsibility for the safety and well-being of children, the elderly, or individuals with disabilities and shall convey that determination to the qualified entity; and

(5) that any background check under subsection (a) of this section and the results thereof shall be handled in accordance with the requirements of Public Law 92-544, except that this paragraph does not apply to any request by a qualified entity for a national criminal fingerprint background check pursuant to subsection (a)(3) of this section.

(c) Regulations

(1) The Attorney General may by regulation prescribe such other measures as may be required to carry out the purposes of this subchapter, including measures relating to the security, confidentiality, accuracy, use, misuse, and dissemination of information, and audits and recordkeeping.

(2) The Attorney General shall, to the maximum extent possible, encourage the use of the best technology available in conducting background checks.

(d) Liability

A qualified entity shall not be liable in an action for damages solely for failure to conduct a criminal background check on a provider, nor shall a State or political subdivision thereof nor any agency, officer or employee thereof, be liable in an action for damages for the failure of a qualified entity (other than itself) to take action adverse to a provider who was the subject of a background check.

(e) Fees

In the case of a background check pursuant to a State requirement adopted after December 20, 1993, conducted with fingerprints on a person who volunteers with a qualified entity, the fees collected by authorized State agencies and the Federal Bureau of Investigation may not exceed eighteen dollars, respectively, or the actual cost, whichever is less, of the background check conducted with fingerprints. The States shall establish fee systems that insure that fees to non-profit entities for background checks do not discourage volunteers from participating in child care programs.

(Pub. L. 103-209, § 3, Dec. 20, 1993, 107 Stat. 2491; Pub. L. 103-322, title XXXII, § 320928(a)(1), (2), (c), (e), Sept. 13, 1994, 108 Stat. 2131, 2132; Pub. L. 105-251, title II, § 222(a), (b), Oct. 9, 1998, 112 Stat. 1885.)

REFERENCES IN TEXT

Public Law 92-544, referred to in subsec. (b)(5), is Pub. L. 92-544, Oct. 25, 1972, 86 Stat. 1109. Provisions relating to use of funds for the exchange of identification records are contained in section 201 of Pub. L. 92-544, which is set out as a note under section 534 of Title 28, Judiciary and Judicial Procedure. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1998—Subsec. (a)(3). Pub. L. 105-251, § 222(a), added par. (3).

Subsec. (b)(5). Pub. L. 105-251, § 222(b), inserted before period at end “, except that this paragraph does not apply to any request by a qualified entity for a national criminal fingerprint background check pursuant to subsection (a)(3) of this section”.

1994—Subsec. (a)(1). Pub. L. 103-322, § 320928(a)(1), substituted “the provider’s fitness to have responsibility for the safety and well-being of children, the elderly, or individuals with disabilities” for “an individual’s fitness to have responsibility for the safety and well-being of children”.

Subsec. (b)(1)(E). Pub. L. 103-322, § 320928(a)(2)(A), substituted “to a person to whom the qualified entity provides care” for “to a child to whom the qualified entity provides child care”.

Subsec. (b)(4). Pub. L. 103-322, § 320928(a)(2)(B), substituted “the provider’s fitness to have responsibility for the safety and well-being of children, the elderly, or individuals with disabilities” for “an individual’s fitness to have responsibility for the safety and well-being of children”.

Subsec. (d). Pub. L. 103-322, § 320928(c), inserted “(other than itself)” after “failure of a qualified entity”.

Subsec. (e). Pub. L. 103-322, § 320928(e), substituted “eighteen dollars, respectively, or the actual cost, whichever is less,” for “the actual cost”.

PILOT PROGRAM FOR NATIONAL CRIMINAL HISTORY BACKGROUND CHECKS AND FEASIBILITY STUDY

Pub. L. 108-21, title I, § 108, Apr. 30, 2003, 117 Stat. 655, as amended by Pub. L. 108-68, § 1, Aug. 1, 2003, 117 Stat. 883, provided that:

“(a) ESTABLISHMENT OF PILOT PROGRAM.—

“(1) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act [Apr. 30, 2003], the Attorney General shall establish a pilot program for volunteer groups to obtain national and State criminal history background checks through a 10-fingerprint check to be conducted utilizing State criminal records and the Integrated Automated Fingerprint Identification System of the Federal Bureau of Investigation.

“(2) STATE PILOT PROGRAM.—

“(A) IN GENERAL.—The Attorney General shall designate 3 States as participants in an 18-month State pilot program.

“(B) VOLUNTEER ORGANIZATION REQUESTS.—A volunteer organization in one of the 3 States participating in the State pilot program under this paragraph that is part of the Boys and Girls Clubs of America, the National Mentoring Partnerships, or the National Council of Youth Sports may submit a request for a 10-fingerprint check from the participating State. A volunteer organization in a participating State may not submit background check requests under paragraph (3).

“(C) STATE CHECK.—The participating State under this paragraph after receiving a request under subparagraph (B) shall conduct a State background

check and submit a request that a Federal check be performed through the Integrated Automated Fingerprint Identification System of the Federal Bureau of Investigation, to the Attorney General, in a manner to be determined by the Attorney General.

“(D) INFORMATION PROVIDED.—Under procedures established by the Attorney General, any criminal history record information resulting from the State and Federal check under subparagraph (C) shall be provided to the State or National Center for Missing and Exploited Children consistent with the National Child Protection Act [of 1993, 42 U.S.C. 5119 et seq.].

“(E) COSTS.—A State may collect a fee to perform a criminal background check under this paragraph which may not exceed the actual costs to the State to perform such a check.

“(F) TIMING.—For any background check performed under this paragraph, the State shall provide the State criminal record information to the Attorney General within 7 days after receiving the request from the organization, unless the Attorney General determines during the feasibility study that such a check cannot reasonably be performed within that time period. The Attorney General shall provide the criminal history records information to the National Center for Missing and Exploited Children within 7 business days after receiving the request from the State.

“(3) CHILD SAFETY PILOT PROGRAM.—

“(A) IN GENERAL.—The Attorney General shall establish an 18-month Child Safety Pilot Program that shall provide for the processing of 100,000 10-fingerprint check requests from organizations described in subparagraph (B) conducted through the Integrated Automated Fingerprint Identification System of the Federal Bureau of Investigation.

“(B) ELIGIBLE ORGANIZATIONS.—An organization described in this subparagraph is an organization in a State not designated under paragraph (2) that has received a request allotment pursuant to subparagraph (C).

“(C) REQUEST ALLOTMENTS.—The following organizations may allot requests as follows:

“(i) 33,334 for the Boys and Girls Clubs of America.

“(ii) 33,333 for the National Mentoring Partnership.

“(iii) 33,333 for the National Council of Youth Sports.

“(D) PROCEDURES.—The Attorney General shall notify the organizations described in subparagraph (C) of a process by which the organizations may provide fingerprint cards to the Attorney General.

“(E) VOLUNTEER INFORMATION REQUIRED.—An organization authorized to request a background check under this paragraph shall—

“(i) forward to the Attorney General the volunteer’s fingerprints; and

“(ii) obtain a statement completed and signed by the volunteer that—

“(I) sets out the provider or volunteer’s name, address, date of birth appearing on a valid identification document as defined in section 1028 of title 18, United States Code, and a photocopy of the valid identifying document;

“(II) states whether the volunteer has a criminal record, and, if so, sets out the particulars of such record;

“(III) notifies the volunteer that the Attorney General may perform a criminal history background check and that the volunteer’s signature to the statement constitutes an acknowledgment that such a check may be conducted;

“(IV) notifies the volunteer that prior to and after the completion of the background check, the organization may choose to deny the provider access to children; and

“(V) notifies the volunteer of his right to correct an erroneous record held by the Attorney General.

“(F) TIMING.—For any background checks performed under this paragraph, the Attorney General shall provide the criminal history records information to the National Center for Missing and Exploited Children within 14 business days after receiving the request from the organization.

“(G) DETERMINATIONS OF FITNESS.—

“(i) IN GENERAL.—Consistent with the privacy protections delineated in the National Child Protection Act [of 1993] (42 U.S.C. 5119 [et seq.]), the National Center for Missing and Exploited Children may make a determination whether the criminal history record information received in response to the criminal history background checks conducted under this paragraph indicates that the provider or volunteer has a criminal history record that renders the provider or volunteer unfit to provide care to children based upon criteria established jointly by, the National Center for Missing and Exploited Children, the Boys and Girls Clubs of America, the National Mentoring Partnership, and the National Council of Youth Sports.

“(ii) CHILD SAFETY PILOT PROGRAM.—The National Center for Missing and Exploited Children shall convey that determination to the organizations making requests under this paragraph.

“(4) FEES COLLECTED BY ATTORNEY GENERAL.—The Attorney General may collect a fee which may not exceed \$18 to cover the cost to the Federal Bureau of Investigation to conduct the background check under paragraph (2) or (3).

“(b) RIGHTS OF VOLUNTEERS.—Each volunteer who is the subject of a criminal history background check under this section is entitled to contact the Attorney General to initiate procedures to—

“(1) obtain a copy of their criminal history record report; and

“(2) challenge the accuracy and completeness of the criminal history record information in the report.

“(c) AUTHORIZATION OF APPROPRIATIONS.—

“(1) IN GENERAL.—There is authorized to be appropriated such sums as may be necessary to the National Center for Missing and Exploited Children for fiscal years 2004 and 2005 to carry out the requirements of this section.

“(2) STATE PROGRAM.—There is authorized to be appropriated such sums as may be necessary to the Attorney General for the States designated in subsection (a)(1) for fiscal years 2004 and 2005 to establish and enhance fingerprint technology infrastructure of the participating State.

“(d) FEASIBILITY STUDY FOR A SYSTEM OF BACKGROUND CHECKS FOR EMPLOYEES AND VOLUNTEERS.—

“(1) STUDY REQUIRED.—The Attorney General shall conduct a feasibility study within 180 days after the date of the enactment of this Act [Apr. 30, 2003]. The study shall examine, to the extent discernible, the following:

“(A) The current state of fingerprint capture and processing at the State and local level, including the current available infrastructure, State system capacities, and the time for each State to process a civil or volunteer print from the time of capture to submission to the Federal Bureau of Investigation (FBI).

“(B) The intent of the States concerning participation in a nationwide system of criminal background checks to provide information to qualified entities.

“(C) The number of volunteers, employees, and other individuals that would require a fingerprint-based criminal background check.

“(D) The impact on the Integrated Automated Fingerprint Identification System (IAFIS) of the Federal Bureau of Investigation in terms of capacity and impact on other users of the system, including the effect on Federal Bureau of Investigation work practices and staffing levels.

“(E) The current fees charged by the Federal Bureau of Investigation, States and local agencies,

and private companies to process fingerprints and conduct background checks.

“(F) The existence of ‘model’ or best practice programs which could easily be expanded and duplicated in other States.

“(G) The extent to which private companies are currently performing background checks and the possibility of using private companies in the future to perform any of the background check process, including, but not limited to, the capture and transmission of fingerprints and fitness determinations.

“(H) The cost of development and operation of the technology and the infrastructure necessary to establish a nationwide fingerprint-based and other criminal background check system.

“(I) The extent of State participation in the procedures for background checks authorized in the National Child Protection Act [of 1993] (Public Law 103-209), as amended by the Volunteers for Children Act (sections 221 and 222 of Public Law 105-251).

“(J) The extent to which States currently provide access to nationwide criminal history background checks to organizations that serve children.

“(K) The extent to which States currently permit volunteers to appeal adverse fitness determinations, and whether similar procedures are required at the Federal level.

“(L) The implementation of the 2 pilot programs created in subsection (a).

“(M) Any privacy concerns that may arise from nationwide criminal background checks.

“(N) Any other information deemed relevant by the Department of Justice.

“(2) INTERIM REPORT.—Based on the findings of the feasibility study under paragraph (1), the Attorney General shall, not later than 180 days after the date of the enactment of this Act [Apr. 30, 2003], submit to Congress an interim report, which may include recommendations for a pilot project to develop or improve programs to collect fingerprints and perform background checks on individuals that seek to volunteer with organizations that work with children, the elderly, or the disabled.

“(3) FINAL REPORT.—Based on the findings of the pilot project, the Attorney General shall, not later than 60 days after completion of the pilot project under this section, submit to Congress a final report, including recommendations, which may include a proposal for grants to the States to develop or improve programs to collect fingerprints and perform background checks on individuals that seek to volunteer with organizations that work with children, the elderly, or the disabled, and which may include recommendations for amendments to the National Child Protection Act [of 1993] and the Volunteers for Children Act [see Short Title of 1998 Amendment note set out under section 5101 of this title] so that qualified entities can promptly and affordably conduct nationwide criminal history background checks on their employees and volunteers.

“(e) LIMITATION ON LIABILITY.—In connection with the Pilot Programs established under this section, in reliance upon the fitness criteria established under section 108(a)(3)(G)(i), and except upon proof of actual malice or intentional misconduct, the National Center for Missing and Exploited Children, or a director, officer, employee, or agent of the Center shall not be liable in any civil action for damages—

“(1) arising from any act or communication by the Center, the director, officer, employee, or agent that results in or contributes to a decision that an individual is unfit to serve as a volunteer for any volunteer organization;

“(2) alleging harm arising from a decision based on the information in an individual’s criminal history record that an individual is fit to serve as a volunteer for any volunteer organization unless the Center, the director, officer, employee, or agent is furnished with an individual’s criminal history records which they know to be inaccurate or incomplete, or which they

know reflect a lesser crime than that for which the individual was arrested; and

“(3) alleging harm arising from a decision that, based on the absence of criminal history information, an individual is fit to serve as a volunteer for any volunteer organization unless the Center, the director, officer, employee, or agent knows that criminal history records exist and have not been furnished as required under this section.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14072 of this title.

§ 5119b. Funding for improvement of child abuse crime information

(a) Omitted

(b) Additional funding grants for improvement of child abuse crime information

(1) The Attorney General shall, subject to appropriations and with preference to States that, as of December 20, 1993, have in computerized criminal history files the lowest percentages of charges and dispositions of identifiable child abuse cases, make a grant to each State to be used—

(A) for the computerization of criminal history files for the purposes of this subchapter;

(B) for the improvement of existing computerized criminal history files for the purposes of this subchapter;

(C) to improve accessibility to the national criminal history background check system for the purposes of this subchapter;

(D) to assist the State in the transmittal of criminal records to, or the indexing of criminal history record in, the national criminal history background check system for the purposes of this subchapter; and

(E) to assist the State in paying all or part of the cost to the State of conducting background checks on persons who are employed by or volunteer with a public, not-for-profit, or voluntary qualified entity to reduce the amount of fees charged for such background checks.

(2) There are authorized to be appropriated for grants under paragraph (1) a total of \$20,000,000 for fiscal years 1999, 2000, 2001, and 2002.

(c) Withholding State funds

Effective 1 year after December 20, 1993, the Attorney General may reduce, by up to 10 percent, the allocation to a State for a fiscal year under title I of the Omnibus Crime Control and Safe Streets Act of 1968 [42 U.S.C. 3701 et seq.] that is not in compliance with the requirements of this subchapter.

(Pub. L. 103-209, § 4, Dec. 20, 1993, 107 Stat. 2493; Pub. L. 103-322, title XXXII, § 320928(d), Sept. 13, 1994, 108 Stat. 2132; Pub. L. 105-251, title II, § 222(c), Oct. 9, 1998, 112 Stat. 1885.)

REFERENCES IN TEXT

The Omnibus Crime Control and Safe Streets Act of 1968, referred to in subsec. (c), is Pub. L. 90-351, June 19, 1968, 82 Stat. 197, as amended. Title I of the Act is classified principally to chapter 46 (§ 3701 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3711 of this title and Tables.

CODIFICATION

Section is comprised of section 4 of Pub. L. 103-209. Subsec. (a) of section 4 of Pub. L. 103-209 amended section 3759(b) of this title.

AMENDMENTS

1998—Subsec. (b)(2). Pub. L. 105-251 substituted “1999, 2000, 2001, and 2002” for “1994, 1995, 1996, and 1997”.

1994—Subsec. (b)(1)(E). Pub. L. 103-322, which directed the amendment of subsec. (b) by adding subpar. (E) at the end, was executed by adding subpar. (E) at the end of par. (1) of subsec. (b) to reflect the probable intent of Congress.

AVAILABILITY OF VIOLENT CRIME REDUCTION TRUST FUND TO FUND ACTIVITIES AUTHORIZED BY THE BRADY HANDGUN VIOLENCE PREVENTION ACT AND THE NATIONAL CHILD PROTECTION ACT OF 1993

For appropriations for amounts authorized in subsec. (b) of this section from the Violent Crime Reduction Trust Fund established by section 14211 of this title, see section 210603(a) of Pub. L. 103-322, set out as a note under section 922 of Title 18, Crimes and Criminal Procedure.

§ 5119c. Definitions

For the purposes of this subchapter—

(1) the term “authorized agency” means a division or office of a State designated by a State to report, receive, or disseminate information under this subchapter;

(2) the term “child” means a person who is a child for purposes of the criminal child abuse law of a State;

(3) the term “child abuse crime” means a crime committed under any law of a State that involves the physical or mental injury, sexual abuse or exploitation, negligent treatment, or maltreatment of a child by any person;

(4) the term “child abuse crime information” means the following facts concerning a person who has been arrested for, or has been convicted of, a child abuse crime: full name, race, sex, date of birth, height, weight, fingerprints, a brief description of the child abuse crime or offenses for which the person has been arrested or has been convicted, the disposition of the charge, and any other information that the Attorney General determines may be useful in identifying persons arrested for, or convicted of, a child abuse crime;

(5) the term “care” means the provision of care, treatment, education, training, instruction, supervision, or recreation to children, the elderly, or individuals with disabilities;

(6) the term “identifiable child abuse crime case” means a case that can be identified by the authorized criminal justice agency of the State as involving a child abuse crime by reference to the statutory citation or descriptive label of the crime as it appears in the criminal history record;

(7) the term “individuals with disabilities” means persons with a mental or physical impairment who require assistance to perform one or more daily living tasks;

(8) the term “national criminal history background check system” means the criminal history record system maintained by the Federal Bureau of Investigation based on fingerprint identification or any other method of positive identification;

- (9) the term “provider” means—
 (A) a person who—
 (i) is employed by or volunteers with a qualified entity (including an individual who is employed by a school in any capacity, including as a child care provider, a teacher, or another member of school personnel);
 (ii) who owns or operates a qualified entity; or
 (iii) who has or may have unsupervised access to a child to whom the qualified entity provides child care; and
 (B) a person who—
 (i) seeks to be employed by or volunteer with a qualified entity (including an individual who seeks to be employed by a school in any capacity, including as a child care provider, a teacher, or another member of school personnel);
 (ii) seeks to own or operate a qualified entity; or
 (iii) seeks to have or may have unsupervised access to a child to whom the qualified entity provides child care;

(10) the term “qualified entity” means a business or organization, whether public, private, for-profit, not-for-profit, or voluntary, that provides care or care placement services, including a business or organization that licenses or certifies others to provide care or care placement services; and

(11) the term “State” means a State, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territories of the Pacific.

(Pub. L. 103-209, § 5, Dec. 20, 1993, 107 Stat. 2493; Pub. L. 103-322, title XXXII, § 320928(a)(3), (j), Sept. 13, 1994, 108 Stat. 2132, 2133; Pub. L. 107-110, title X, § 1075, Jan. 8, 2002, 115 Stat. 2090.)

AMENDMENTS

2002—Par. (9)(A)(i). Pub. L. 107-110, § 1075(1), inserted before semicolon at end “(including an individual who is employed by a school in any capacity, including as a child care provider, a teacher, or another member of school personnel)”.

Par. (9)(B)(i). Pub. L. 107-110, § 1075(2), inserted before semicolon at end “(including an individual who seeks to be employed by a school in any capacity, including as a child care provider, a teacher, or another member of school personnel)”.

1994—Par. (5). Pub. L. 103-322, § 320928(a)(3)(A), amended par. (5) generally. Prior to amendment, par. (5) read as follows: “the term ‘child care’ means the provision of care, treatment, education, training, instruction, supervision, or recreation to children by persons having unsupervised access to a child;”.

Pars. (6), (7). Pub. L. 103-322, § 320928(j)(2), added pars. (6) and (7). Former pars. (6) and (7) redesignated (8) and (9), respectively.

Par. (8). Pub. L. 103-322, § 320928(j)(1), redesignated par. (6) as (8). Former par. (8) redesignated (10).

Pub. L. 103-322, § 320928(a)(3)(B), substituted “care” for “child care” wherever appearing.

Pars. (9) to (11). Pub. L. 103-322, § 320928(j)(1), redesignated pars. (7) to (9) as (9) to (11), respectively.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-110 effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub.

L. 107-110, set out as an Effective Date note under section 6301 of Title 20, Education.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

CHAPTER 68—DISASTER RELIEF

SUBCHAPTER I—FINDINGS, DECLARATIONS, AND DEFINITIONS

- Sec.
 5121. Congressional findings and declarations.
 5122. Definitions.

SUBCHAPTER II—DISASTER PREPAREDNESS AND MITIGATION ASSISTANCE

5131. Federal and State disaster preparedness programs.
 (a) Utilization of services of other agencies.
 (b) Technical assistance for the development of plans and programs.
 (c) Grants to States for development of plans and programs.
 (d) Grants for improvement, maintenance, and updating of State plans.
 5132. Disaster warnings.
 (a) Readiness of Federal agencies to issue warnings to State and local officials.
 (b) Technical assistance to State and local governments for effective warnings.
 (c) Warnings to governmental authorities and public endangered by disaster.
 (d) Agreements with commercial communications systems for use of facilities.
 5133. Predisaster hazard mitigation.
 (a) Definition of small impoverished community.
 (b) Establishment of program.
 (c) Approval by President.
 (d) State recommendations.
 (e) Uses of technical and financial assistance.
 (f) Allocation of funds.
 (g) Criteria for assistance awards.
 (h) Federal share.
 (i) National Predisaster Mitigation Fund.
 (j) Limitation on total amount of financial assistance.
 (k) Multihazard advisory maps.
 (l) Report on Federal and State administration.
 (m) Termination of authority.

5134. Interagency task force.

- (a) In general.
 (b) Chairperson.
 (c) Membership.

SUBCHAPTER III—MAJOR DISASTER AND EMERGENCY ASSISTANCE ADMINISTRATION

5141. Waiver of administrative conditions.
 5142. Repealed.
 5143. Coordinating officers.
 (a) Appointment of Federal coordinating officer.
 (b) Functions of Federal coordinating officer.
 (c) State coordinating officer.
 5144. Emergency support teams.
 5145, 5146. Repealed.
 5147. Reimbursement of Federal agencies.

- Sec. 5148. Nonliability of Federal Government.
- 5149. Performance of services.
 - (a) Utilization of services or facilities of State and local governments.
 - (b) Appointment of temporary personnel, experts, and consultants; acquisition, rental, or hire of equipment, services, materials and supplies.
- 5150. Use of local firms and individuals.
- 5151. Nondiscrimination in disaster assistance.
 - (a) Regulations for equitable and impartial relief operations.
 - (b) Compliance with regulations as prerequisite to participation by other bodies in relief operations.
- 5152. Use and coordination of relief organizations.
- 5153. Priority to certain applications for public facility and public housing assistance.
 - (a) Priority.
 - (b) Obligation of certain discretionary funds.
- 5154. Insurance.
 - (a) Applicants for replacement of damaged facilities.
 - (b) Maintenance of insurance.
 - (c) State acting as self-insurer.
- 5154a. Prohibited flood disaster assistance.
 - (a) General prohibition.
 - (b) Transfer of property.
 - (c) Omitted.
 - (d) "Flood disaster area" defined.
 - (e) Effective date.
- 5155. Duplication of benefits.
 - (a) General prohibition.
 - (b) Special rules.
 - (c) Recovery of duplicative benefits.
 - (d) Assistance not income.
- 5156. Standards and reviews.
- 5157. Penalties.
 - (a) Misuse of funds.
 - (b) Civil enforcement.
 - (c) Referral to Attorney General.
 - (d) Civil penalty.
- 5158. Availability of materials.
- 5159. Protection of environment.
- 5160. Recovery of assistance.
 - (a) Party liable.
 - (b) Rendering of care.
- 5161. Audits and investigations.
 - (a) In general.
 - (b) Access to records.
 - (c) State and local audits.
- 5162. Advance of non-Federal share.
 - (a) In general.
 - (b) Terms of loans and advances.
 - (c) Regulations.
- 5163. Limitation on use of sliding scales.
- 5164. Rules and regulations.
- 5165. Mitigation planning.
 - (a) Requirement of mitigation plan.
 - (b) Local and tribal plans.
 - (c) State plans.
 - (d) Funding.
 - (e) Increased Federal share for hazard mitigation measures.
- 5165a. Minimum standards for public and private structures.
 - (a) In general.
 - (b) Evidence of compliance.
- 5165b. Management costs.
 - (a) Definition of management cost.
 - (b) Establishment of management cost rates.
 - (c) Review.
- 5165c. Public notice, comment, and consultation requirements.
 - (a) Public notice and comment concerning new or modified policies.
 - (b) Consultation concerning interim policies.

- Sec. (c) Public access.
- SUBCHAPTER IV—MAJOR DISASTER ASSISTANCE PROGRAMS
- 5170. Procedure for declaration.
- 5170a. General Federal assistance.
- 5170b. Essential assistance.
 - (a) In general.
 - (b) Federal share.
 - (c) Utilization of DOD resources.
- 5170c. Hazard mitigation.
 - (a) In general.
 - (b) Property acquisition and relocation assistance.
 - (c) Program administration by States.
- 5171. Federal facilities.
 - (a) Repair, reconstruction, restoration, or replacement of United States facilities.
 - (b) Availability of funds appropriated to agency for repair, reconstruction, restoration, or replacement of agency facilities.
 - (c) Steps for mitigation of hazards.
- 5172. Repair, restoration, and replacement of damaged facilities.
 - (a) Contributions.
 - (b) Federal share.
 - (c) Large in-lieu contributions.
 - (d) Flood insurance.
 - (e) Eligible cost.
- 5173. Debris removal.
 - (a) Presidential authority.
 - (b) Authorization by State or local government; indemnification agreement.
 - (c) Rules relating to large lots.
 - (d) Federal share.
- 5174. Federal assistance to individuals and households.
 - (a) In general.
 - (b) Housing assistance.
 - (c) Types of housing assistance.
 - (d) Terms and conditions relating to housing assistance.
 - (e) Financial assistance to address other needs.
 - (f) State role.
 - (g) Cost sharing.
 - (h) Maximum amount of assistance.
 - (i) Rules and regulations.
- 5175, 5176. Repealed.
- 5177. Unemployment assistance.
 - (a) Benefit assistance.
 - (b) Reemployment assistance.
- 5177a. Emergency grants to assist low-income migrant and seasonal farmworkers.
 - (a) In general.
 - (b) "Low-income migrant or seasonal farmworker" defined.
 - (c) Authorization of appropriations.
- 5178. Repealed.
- 5179. Food coupons and distribution.
 - (a) Persons eligible; terms and conditions.
 - (b) Duration of assistance; factors considered.
 - (c) Food Stamp Act provisions unaffected.
- 5180. Food commodities.
 - (a) Emergency mass feeding.
 - (b) Funds for purchase of food commodities.
- 5181. Relocation assistance.
- 5182. Legal services.
- 5183. Crisis counseling assistance and training.
- 5184. Community disaster loans.
 - (a) In general.
 - (b) Amount.

- Sec. (c) Repayment.
(d) Effect on other assistance.
5185. Emergency communications.
5186. Emergency public transportation.
5187. Fire management assistance.
(a) In general.
(b) Coordination with State and tribal departments of forestry.
(c) Essential assistance.
(d) Rules and regulations.
5188. Timber sale contracts.
(a) Cost-sharing arrangement.
(b) Cancellation of authority.
(c) Public notice of sale.
(d) State grants for removal of damaged timber; reimbursement of expenses limited to salvage value of removed timber.
5189. Simplified procedure.
- 5189a. Appeals of assistance decisions.
(a) Right of appeal.
(b) Period for decision.
(c) Rules.
- 5189b. Date of eligibility; expenses incurred before date of disaster.
- SUBCHAPTER IV—A—EMERGENCY ASSISTANCE PROGRAMS
5191. Procedure for declaration.
(a) Request and declaration.
(b) Certain emergencies involving Federal primary responsibility.
5192. Federal emergency assistance.
(a) Specified.
(b) General.
5193. Amount of assistance.
(a) Federal share.
(b) Limit on amount of assistance.
- SUBCHAPTER IV—B—EMERGENCY PREPAREDNESS
5195. Declaration of policy.
- 5195a. Definitions.
(a) Definitions.
(b) Cross reference.
- 5195b. Administration of subchapter.
- 5195c. Critical infrastructures protection.
(a) Short title.
(b) Findings.
(c) Policy of the United States.
(d) Establishment of national competence for critical infrastructure protection.
(e) Critical infrastructure defined.
(f) Authorization of appropriations.
- PART A—POWERS AND DUTIES
5196. Detailed functions of administration.
(a) In general.
(b) Federal emergency response plans and programs.
(c) Delegation of emergency preparedness responsibilities.
(d) Communications and warnings.
(e) Emergency preparedness measures.
(f) Training programs.
(g) Public dissemination of emergency preparedness information.
(h) Interstate emergency preparedness compacts.
(i) Materials and facilities.
(j) Financial contributions.
(k) Sale or disposal of certain materials and facilities.
- 5196a. Mutual aid pacts between States and neighboring countries.
- 5196b. Contributions for personnel and administrative expenses.
(a) General authority.
(b) Plan requirements.
- Sec. (c) Terms and conditions.
(d) Application of other provisions.
(e) Allocation of funds.
(f) Submission of plan.
(g) Annual reports.
- 5196c. Requirement for State matching funds for construction of emergency operating centers.
- 5196d. Use of funds to prepare for and respond to hazards.
- 5196e. Radiological Emergency Preparedness Fund.
- PART B—GENERAL PROVISIONS
5197. Administrative authority.
(a) In general.
(b) Advisory personnel.
(c) Services of other agency personnel and volunteers.
(d) Gifts.
(e) Reimbursement.
(f) Printing.
(g) Rules and regulations.
(h) Failure to expend contributions correctly.
- 5197a. Security regulations.
(a) Establishment.
(b) Limitations on employee access to information.
(c) National security positions.
(d) Employee oaths.
- 5197b. Use of existing facilities.
- 5197c. Annual report to Congress.
- 5197d. Applicability of subchapter.
- 5197e. Authorization of appropriations and transfers of funds.
(a) Authorization of appropriations.
(b) Transfer authority.
- 5197f. Relation to Atomic Energy Act of 1954.
- 5197g. Federal Bureau of Investigation.
- 5197h. Minority emergency preparedness demonstration program.
(a) In general.
(b) Activities supported.
(c) Eligible organizations.
(d) Use of funds.
(e) Application and review procedure.
(f) Authorization of appropriation.
- SUBCHAPTER V—MISCELLANEOUS
5201. Rules and regulations.
5202. Repealed.
5203. Excess disaster assistance payments as budgetary emergency requirements.
5204. Insular areas disaster survival and recovery; definitions.
- 5204a. Authorization of appropriations for insular areas.
- 5204b. Technical assistance for insular areas.
- 5204c. Hazard mitigation for insular areas.
5205. Disaster grant closeout procedures.
(a) Statute of limitations.
(b) Rebuttal of presumption of record maintenance.
(c) Binding nature of grant requirements.
5206. Buy American.
(a) Compliance with Buy American Act.
(b) Debarment of persons convicted of fraudulent use of “Made in America” labels.
- CHAPTER REFERRED TO IN OTHER SECTIONS
- This chapter is referred to in sections 1320b-5, 1382a, 1490q, 3030, 3149, 3796b, 4003, 4104c, 5154a, 5203, 5206, 5306, 8623, 9601, 12750 of this title; title 2 section 59-1; title 6 sections 317, 466; title 7 sections 1421, 1427, 1427a, 1942, 1961, 1964, 1981e, 2008h, 7285; title 10 section 2662; title 12 sections 1709, 1715; title 15 section 636; title 16 sections 1536, 1723; title 23 section 125; title 26 sections 143, 165,

1033, 5064, 5708; title 33 section 701n; title 38 sections 1785, 3720, 8111A; title 43 section 1600e; title 48 section 1921d.

SUBCHAPTER I—FINDINGS,
DECLARATIONS, AND DEFINITIONS

§ 5121. Congressional findings and declarations

(a) The Congress hereby finds and declares that—

(1) because disasters often cause loss of life, human suffering, loss of income, and property loss and damage; and

(2) because disasters often disrupt the normal functioning of governments and communities, and adversely affect individuals and families with great severity;

special measures, designed to assist the efforts of the affected States in expediting the rendering of aid, assistance, and emergency services, and the reconstruction and rehabilitation of devastated areas, are necessary.

(b) It is the intent of the Congress, by this chapter, to provide an orderly and continuing means of assistance by the Federal Government to State and local governments in carrying out their responsibilities to alleviate the suffering and damage which result from such disasters by—

(1) revising and broadening the scope of existing disaster relief programs;

(2) encouraging the development of comprehensive disaster preparedness and assistance plans, programs, capabilities, and organizations by the States and by local governments;

(3) achieving greater coordination and responsiveness of disaster preparedness and relief programs;

(4) encouraging individuals, States, and local governments to protect themselves by obtaining insurance coverage to supplement or replace governmental assistance;

(5) encouraging hazard mitigation measures to reduce losses from disasters, including development of land use and construction regulations; and

(6) providing Federal assistance programs for both public and private losses sustained in disasters¹

(Pub. L. 93-288, title I, §101, May 22, 1974, 88 Stat. 143; Pub. L. 100-707, title I, §103(a), Nov. 23, 1988, 102 Stat. 4689.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original “this Act”, meaning Pub. L. 93-288, May 22, 1974, 88 Stat. 143, as amended. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

AMENDMENTS

1988—Subsec. (b)(7). Pub. L. 100-707 struck out par. (7) expressing Congressional intent to provide disaster assistance through a long-range economic recovery program for major disaster areas.

EFFECTIVE DATE

Section 605 of Pub. L. 93-288 provided that Pub. L. 93-288 was effective Apr. 1, 1974, with the exception of

¹ So in original. Probably should be followed by a period.

section 5178 of this title, prior to repeal by Pub. L. 100-707, title I, §108(b), Nov. 23, 1988, 102 Stat. 4708.

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106-390, §1(a), Oct. 30, 2000, 114 Stat. 1552, provided that: “This Act [enacting sections 5133, 5134, 5165 to 5165c, 5205, and 5206 of this title, amending sections 3796b, 5122, 5154, 5170c, 5172, 5174, 5184, 5187, and 5192 of this title, repealing sections 5176 and 5178 of this title, and enacting provisions set out as notes under this section and sections 3796b, 5133, 5165b, 5172, 5174, and 5187 of this title] may be cited as the ‘Disaster Mitigation Act of 2000’.”

SHORT TITLE OF 1993 AMENDMENT

Pub. L. 103-181, §1, Dec. 3, 1993, 107 Stat. 2054, provided that: “This Act [amending section 5170c of this title and enacting provisions set out as notes under sections 4601 and 5170c of this title] may be cited as the ‘Hazard Mitigation and Relocation Assistance Act of 1993’.”

SHORT TITLE OF 1988 AMENDMENT

Section 101(a) of title I of Pub. L. 100-707 provided that: “This title [enacting sections 5141, 5153 to 5157, 5159 to 5164, 5170 to 5170c, 5172, 5174, 5178, 5189 to 5189b, and 5191 to 5193 of this title, amending this section, sections 1382a, 3030, 3231, 3232, 3539, 4003, 4013, 5122, 5131, 5143, 5144, 5147 to 5152, 5158, 5171, 5173, 5176, 5177, 5179 to 5188, 5201, 7704, and 9601 of this title, sections 1421, 1427, 1427a, 1961, 1964, and 2014 of Title 7, Agriculture, sections 1706c, 1709, and 1715/ of Title 12, Banks and Banking, section 636 of Title 15, Commerce and Trade, sections 1536 and 3505 of Title 16, Conservation, sections 241-1 and 646 of Title 20, Education, section 125 of Title 23, Highways, sections 165, 5064, and 5708 of Title 26, Internal Revenue Code, section 701n of Title 33, Navigation and Navigable Waters, and section 1820 [now 3720] of Title 38, Veterans’ Benefits, repealing sections 5142, 5145, 5146, 5175, and 5202 of this title and former sections 5141, 5153 to 5157, 5172, 5174, 5178, and 5189 of this title, enacting provisions set out as notes under this section and sections 3231, 5122, and 5201 of this title, amending provisions set out as a note under this section and section 1681 of Title 48, Territories and Insular Possessions, and repealing provisions set out as notes under this section and former section 5178 of this title] may be cited as ‘The Disaster Relief and Emergency Assistance Amendments of 1988’.”

SHORT TITLE OF 1980 AMENDMENT

Pub. L. 96-568, §1, Dec. 23, 1980, 94 Stat. 3334, provided: “That this Act [amending section 5202 of this title] may be cited as the ‘Disaster Relief Act Amendments of 1980’.”

SHORT TITLE

Section 1 of Pub. L. 93-288, as amended by Pub. L. 100-707, title I, §102(a), Nov. 23, 1988, 102 Stat. 4689; Pub. L. 106-390, title III, §301, Oct. 30, 2000, 114 Stat. 1572, provided: “That this Act [enacting this section, sections 3231 to 3236, 5122, 5131, 5132, 5141 to 5158, 5171 to 5189, 5201, and 5202 of this title, and section 1264 of former Title 31, Money and Finance, amending sections 1706c, 1709, 1715/ of Title 12, Banks and Banking, sections 241-1, 646, 758 of Title 20, Education, sections 165, 5064, 5708 of Title 26, Internal Revenue Code, section 1820 [now 3720] of Title 38, Veterans’ Benefits, section 461 of former Title 40, Public Buildings, Property, and Works, repealing sections 4401, 4402, 4411 to 4413, 4414 to 4420, 4431 to 4436, 4457 to 4462, 4481 to 4485 of this title, enacting provisions set out as notes under this section, sections 4401 and 5178 of this title, and section 1264 of former Title 31, and amending provisions set out as a note under section 1681 of Title 48, Territories and Insular Possessions] may be cited as the ‘Robert T. Stafford Disaster Relief and Emergency Assistance Act’.”

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agen-

cy, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 313(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

DELEGATION OF FUNCTIONS

Functions of the President under the Disaster Relief Acts of 1970 and 1974, with certain exceptions, were delegated to the Secretary of Homeland Security, see sections 4-201 and 4-203 of Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239, as amended, set out as a note under section 5195 of this title.

REFERENCES TO DISASTER RELIEF ACT OF 1974

Section 102(b) of title I of Pub. L. 100-707 provided that: "Whenever any reference is made in any law (other than this Act [see Tables for classification]), regulation, document, rule, record, or other paper of the United States to a section or provision of the Disaster Relief Act of 1974 [former short title of Pub. L. 93-288], such reference shall be deemed to be a reference to such section or provision of the Robert T. Stafford Disaster Relief and Emergency Assistance Act [Pub. L. 93-288, see Short Title note above]."

REFERENCES TO DISASTER RELIEF ACT OF 1970

Section 702(m), formerly section 602(m), of Pub. L. 93-288, as renumbered by Pub. L. 103-337, div. C, title XXXIV, §3411(a)(1), (2), Oct. 5, 1994, 108 Stat. 3100, provided that: "Whenever reference is made in any provision of law (other than this Act [see Short Title note set out above]), regulation, rule, record, or documents of the United States to provisions of the Disaster Relief Act of 1970 (84 Stat. 1744), repealed by this Act such reference shall be deemed to be a reference to the appropriate provision of this Act."

REPORT ON STATE MANAGEMENT OF SMALL DISASTERS INITIATIVE

Pub. L. 106-390, title II, §208, Oct. 30, 2000, 114 Stat. 1571, provided that: "Not later than 3 years after the date of the enactment of this Act [Oct. 30, 2000], the President shall submit to Congress a report describing the results of the State Management of Small Disasters Initiative, including—

- "(1) identification of any administrative or financial benefits of the initiative; and
- "(2) recommendations concerning the conditions, if any, under which States should be allowed the option to administer parts of the assistance program under section 406 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5172)."

STUDY REGARDING COST REDUCTION

Pub. L. 106-390, title II, §209, Oct. 30, 2000, 114 Stat. 1571, provided that: "Not later than 3 years after the date of the enactment of this Act [Oct. 30, 2000], the Director of the Congressional Budget Office shall complete a study estimating the reduction in Federal disaster assistance that has resulted and is likely to result from the enactment of this Act [see Short Title of 2000 Amendment note above]."

STUDY OF PARTICIPATION BY INDIAN TRIBES IN EMERGENCY MANAGEMENT

Pub. L. 106-390, title III, §308, Oct. 30, 2000, 114 Stat. 1575, provided that:

"(a) DEFINITION OF INDIAN TRIBE.—In this section, the term 'Indian tribe' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

"(b) STUDY.—

"(1) IN GENERAL.—The Director of the Federal Emergency Management Agency shall conduct a

study of participation by Indian tribes in emergency management.

"(2) REQUIRED ELEMENTS.—The study shall—

"(A) survey participation by Indian tribes in training, predisaster and postdisaster mitigation, disaster preparedness, and disaster recovery programs at the Federal and State levels; and

"(B) review and assess the capacity of Indian tribes to participate in cost-shared emergency management programs and to participate in the management of the programs.

"(3) CONSULTATION.—In conducting the study, the Director shall consult with Indian tribes.

"(c) REPORT.—Not later than 1 year after the date of the enactment of this Act [Oct. 30, 2000], the Director shall submit a report on the study under subsection (b) to—

"(1) the Committee on Environment and Public Works of the Senate;

"(2) the Committee on Transportation and Infrastructure of the House of Representatives;

"(3) the Committee on Appropriations of the Senate; and

"(4) the Committee on Appropriations of the House of Representatives."

NATIONAL DROUGHT POLICY

Pub. L. 105-199, July 16, 1998, 112 Stat. 641, as amended by Pub. L. 106-78, title VII, §753, Oct. 22, 1999, 113 Stat. 1170, provided that:

"SECTION 1. SHORT TITLE.

"This Act may be cited as the 'National Drought Policy Act of 1998'.

"SEC. 2. FINDINGS.

"Congress finds that—

"(1) the United States often suffers serious economic and environmental losses from severe regional droughts and there is no coordinated Federal strategy to respond to such emergencies;

"(2) at the Federal level, even though historically there have been frequent, significant droughts of national consequences, drought is addressed mainly through special legislation and ad hoc action rather than through a systematic and permanent process as occurs with other natural disasters;

"(3) there is an increasing need, particularly at the Federal level, to emphasize preparedness, mitigation, and risk management (rather than simply crisis management) when addressing drought and other natural disasters or emergencies;

"(4) several Federal agencies have a role in drought from predicting, forecasting, and monitoring of drought conditions to the provision of planning, technical, and financial assistance;

"(5) there is no single Federal agency in a lead or coordinating role with regard to drought;

"(6) State, local, and tribal governments have had to deal individually and separately with each Federal agency involved in drought assistance; and

"(7) the President should appoint an advisory commission to provide advice and recommendations on the creation of an integrated, coordinated Federal policy designed to prepare for, mitigate the impacts of, respond to, and recover from serious drought emergencies.

"SEC. 3. ESTABLISHMENT OF COMMISSION.

"(a) ESTABLISHMENT.—There is established a commission to be known as the National Drought Policy Commission (hereafter in this Act referred to as the 'Commission').

"(b) MEMBERSHIP.—

"(1) COMPOSITION.—The Commission shall be composed of 16 members. The members of the Commission shall include—

"(A) the Secretary of Agriculture, or the designee of the Secretary, who shall chair the Commission;

"(B) the Secretary of the Interior, or the designee of the Secretary;

“(C) the Secretary of the Army, or the designee of the Secretary;

“(D) the Secretary of Commerce, or the designee of the Secretary;

“(E) the Director of the Federal Emergency Management Agency, or the designee of the Director;

“(F) the Administrator of the Small Business Administration, or the designee of the Administrator;

“(G) two governors, who may be represented on the Commission by their respective designees, nominated by the National Governors’ Association and appointed by the President, of whom—

“(i) one shall be the governor of a State east of the Mississippi River; and

“(ii) one shall be a governor of a State west of the Mississippi River;

“(H) a person nominated by the National Association of Counties and appointed by the President;

“(I) a person nominated by the United States Conference of Mayors and appointed by the President; and

“(J) six persons, appointed by the Secretary of Agriculture in coordination with the Secretary of the Interior and the Secretary of the Army, who shall be representative of groups acutely affected by drought emergencies, such as the agricultural production community, the credit community, rural and urban water associations, Native Americans, and fishing and environmental interests.

“(2) DATE.—The appointments of the members of the Commission shall be made no later than 60 days after the date of the enactment of this Act [July 16, 1998].

“(c) PERIOD OF APPOINTMENT; VACANCIES.—Members shall be appointed for the life of the Commission. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment.

“(d) INITIAL MEETING.—No later than 30 days after the date on which all members of the Commission have been appointed, the Commission shall hold its first meeting.

“(e) MEETINGS.—The Commission shall meet at the call of the chair.

“(f) QUORUM.—A majority of the members of the Commission shall constitute a quorum, but a lesser number of members may hold hearings.

“(g) VICE CHAIR.—The Commission shall select a vice chair from among the members who are not Federal officers or employees.

“SEC. 4. DUTIES OF THE COMMISSION.

“(a) STUDY AND REPORT.—The Commission shall conduct a thorough study and submit a report on national drought policy in accordance with this section.

“(b) CONTENT OF STUDY AND REPORT.—In conducting the study and report, the Commission shall—

“(1) determine, in consultation with the National Drought Mitigation Center in Lincoln, Nebraska, and other appropriate entities, what needs exist on the Federal, State, local, and tribal levels to prepare for and respond to drought emergencies;

“(2) review all existing Federal laws and programs relating to drought;

“(3) review State, local, and tribal laws and programs relating to drought that the Commission finds pertinent;

“(4) determine what differences exist between the needs of those affected by drought and the Federal laws and programs designed to mitigate the impacts of and respond to drought;

“(5) collaborate with the Western Drought Coordination Council and other appropriate entities in order to consider regional drought initiatives and the application of such initiatives at the national level;

“(6) make recommendations on how Federal drought laws and programs can be better integrated with ongoing State, local, and tribal programs into a comprehensive national policy to mitigate the impacts of and respond to drought emergencies without

diminishing the rights of States to control water through State law and considering the need for protection of the environment;

“(7) make recommendations on improving public awareness of the need for drought mitigation, and prevention; and response on developing a coordinated approach to drought mitigation, prevention, and response by governmental and nongovernmental entities, including academic, private, and nonprofit interests; and

“(8) include a recommendation on whether all Federal drought preparation and response programs should be consolidated under one existing Federal agency and, if so, identify such agency.

“(c) SUBMISSION OF REPORT.—

“(1) IN GENERAL.—No later than 18 months after the date of the enactment of this Act [July 16, 1998], the Commission shall submit a report to the President and Congress which shall contain a detailed statement of the findings and conclusions of the Commission, together with its recommendations for such legislation and administrative actions as it considers appropriate.

“(2) APPROVAL OF REPORT.—Before submission of the report, the contents of the report shall be approved by unanimous consent or majority vote. If the report is approved by majority vote, members voting not to approve the contents shall be given the opportunity to submit dissenting views with the report.

“SEC. 5. POWERS OF THE COMMISSION.

“(a) HEARINGS.—The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers necessary to carry out the purposes of this Act.

“(b) INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out the provisions of this Act. Upon request of the chair of the Commission, the head of such department or agency shall furnish such information to the Commission.

“(c) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

“(d) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

“SEC. 6. COMMISSION PERSONNEL MATTERS.

“(a) COMPENSATION OF MEMBERS.—Each member of the Commission who is not an officer or employee of the Federal Government shall not be compensated for service on the Commission, except as provided under subsection (b). All members of the Commission who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

“(b) TRAVEL EXPENSES.—The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

“(c) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

“(d) ADMINISTRATIVE SUPPORT.—The Secretary of Agriculture shall provide all financial, administrative, and staff support services for the Commission.

“SEC. 7. TERMINATION OF THE COMMISSION.

“The Commission shall terminate 90 days after the date on which the Commission submits its report under section 4.”

RECOMMENDATIONS CONCERNING IMPROVEMENT OF RELATIONSHIPS AMONG DISASTER MANAGEMENT OFFICIALS

Section 110 of Pub. L. 100-707 provided that: “Not later than 1 year after the date of the enactment of this Act [Nov. 23, 1988], the President shall recommend to the Congress proposals to improve the operational and fiscal relationships that exist among Federal, State, and local major disaster and emergency management officials. Such proposals should include provisions which—

“(1) decrease the amount of time for processing requests for major disaster and emergency declarations and providing Federal assistance for major disasters and emergencies;

“(2) provide for more effective utilization of State and local resources in major disaster and emergency relief efforts; and

“(3) improve the timeliness of reimbursement of State and local governments after the submission of necessary documentation.”

[Functions of President under section 110 of Pub. L. 100-707 delegated to Director of Federal Emergency Management Agency by section 4 of Ex. Ord. No. 12673, Mar. 23, 1989, 54 F.R. 12571, set out as a note under section 5195 of this title.]

DECLARED DISASTERS AND EMERGENCIES NOT AFFECTED

Section 112 of title I of Pub. L. 100-707 provided that: “This title [see Short Title of 1988 Amendment note above] shall not affect the administration of any assistance for a major disaster or emergency declared by the President before the date of the enactment of this Act [Nov. 23, 1988].”

EXECUTIVE ORDER NO. 11749

Ex. Ord. No. 11749, Dec. 10, 1973, 38 F.R. 34177, which related to consolidation of functions assigned to Secretary of Housing and Urban Development, was revoked by Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239, set out as a note under section 5195 of this title.

EX. ORD. NO. 11795. DELEGATION OF PRESIDENTIAL FUNCTIONS

Ex. Ord. No. 11795, July 11, 1974, 39 F.R. 25939, as amended by Ex. Ord. No. 11910, Apr. 13, 1976, 41 F.R. 15681; Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239; Ex. Ord. No. 12673, Mar. 23, 1989, 54 F.R. 12571, provided:

By virtue of the authority vested in me by the Disaster Relief Act of 1974 (Public Law 93-288; 88 Stat. 143) [see References to Disaster Relief Act of 1974 note above], section 301 of title 3 of the United States Code, and as President of the United States of America, it is hereby ordered as follows:

[SECTIONS 1 and 2. Revoked by Ex. Ord. No. 12148, § 5-111, July 20, 1979, 44 F.R. 43239.]

SEC. 3. The Secretary of Agriculture is designated and empowered to exercise, without the approval, ratification, or other action of the President, all of the authority vested in the President by section 412 of the act [section 5179 of this title] concerning food coupons and distribution.

[SEC. 4. Revoked by Ex. Ord. No. 12148, § 5-111, July 20, 1979, 44 F.R. 43239.]

SEISMIC SAFETY OF FEDERAL AND FEDERALLY ASSISTED OR REGULATED NEW BUILDING CONSTRUCTION

For provisions relating to seismic safety requirements for new construction or total replacement of a building under this chapter after a presidentially declared major disaster or emergency, see Ex. Ord. No. 12699, Jan. 5, 1990, 55 F.R. 835, set out as a note under section 7704 of this title.

§ 5122. Definitions

As used in this chapter—

(1) EMERGENCY.—“Emergency” means any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.

(2) MAJOR DISASTER.—“Major disaster” means any natural catastrophe (including any hurricane, tornado, storm, high water, winddriven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under this chapter to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

(3) “United States” means the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(4) “State” means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(5) “Governor” means the chief executive of any State.

(6) LOCAL GOVERNMENT.—The term “local government” means—

(A) a county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments (regardless of whether the council of governments is incorporated as a nonprofit corporation under State law), regional or interstate government entity, or agency or instrumentality of a local government;

(B) an Indian tribe or authorized tribal organization, or Alaska Native village or organization; and

(C) a rural community, unincorporated town or village, or other public entity, for which an application for assistance is made by a State or political subdivision of a State.

(7) “Federal agency” means any department, independent establishment, Government corporation, or other agency of the executive branch of the Federal Government, including the United States Postal Service, but shall not include the American National Red Cross.

(8) PUBLIC FACILITY.—“Public facility” means the following facilities owned by a State or local government:

(A) Any flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, watershed development, or airport facility.

(B) Any non-Federal-aid street, road, or highway.

(C) Any other public building, structure, or system, including those used for educational, recreational, or cultural purposes.

(D) Any park.

(9) PRIVATE NONPROFIT FACILITY.—“Private nonprofit facility” means private nonprofit edu-

cational, utility, irrigation, emergency, medical, rehabilitational, and temporary or permanent custodial care facilities (including those for the aged and disabled), other private non-profit facilities which provide essential services of a governmental nature to the general public, and facilities on Indian reservations as defined by the President.

(Pub. L. 93-288, title I, § 102, May 22, 1974, 88 Stat. 144; Pub. L. 100-707, title I, § 103(b)-(d), (f), Nov. 23, 1988, 102 Stat. 4689, 4690; Pub. L. 102-247, title II, § 205, Feb. 24, 1992, 106 Stat. 38; Pub. L. 106-390, title III, § 302, Oct. 30, 2000, 114 Stat. 1572.)

AMENDMENTS

2000—Par. (3). Pub. L. 106-390, § 302(1), substituted “and the Commonwealth of the Northern Mariana Islands” for “the Northern Mariana Islands, and the Trust Territory of the Pacific Islands”.

Par. (4). Pub. L. 106-390, § 302(1), substituted “and the Commonwealth of the Northern Mariana Islands” for “the Northern Mariana Islands, or the Trust Territory of the Pacific Islands”.

Par. (6). Pub. L. 106-390, § 302(2), added par. (6) and struck out former par. (6) which read as follows: “‘Local government’ means (A) any county, city, village, town, district, or other political subdivision of any State, any Indian tribe or authorized tribal organization, or Alaska Native village or organization, and (B) includes any rural community or unincorporated town or village or any other public entity for which an application for assistance is made by a State or political subdivision thereof.”

Par. (9). Pub. L. 106-390, § 302(3), inserted “irrigation,” after “utility.”

1992—Pars. (3), (4). Pub. L. 102-247 inserted “the Northern Mariana Islands,” after “American Samoa.”

1988—Par. (1). Pub. L. 100-707, § 103(b), inserted heading and amended text generally. Prior to amendment, text read as follows: “‘Emergency’ means any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe in any part of the United States which requires Federal emergency assistance to supplement State and local efforts to save lives and protect property, public health and safety or to avert or lessen the threat of a disaster.”

Par. (2). Pub. L. 100-707, § 103(c), inserted heading and amended text generally. Prior to amendment, text read as follows: “‘Major disaster’ means any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe in any part of the United States which, in the determination of the President, causes damage of sufficient severity and magnitude to warrant major disaster assistance under this chapter, above and beyond emergency services by the Federal Government, to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.”

Pars. (3), (4). Pub. L. 100-707, § 103(d), struck out “the Canal Zone,” after “American Samoa.”

Pars. (8), (9). Pub. L. 100-707, § 103(f), added pars. (8) and (9).

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

LOCAL GOVERNMENT

Section 103(e) of Pub. L. 100-707 provided that: “(1) IN GENERAL.—The term ‘local government’ is deemed to have the same meaning in the Disaster Re-

lief and Emergency Assistance Act [Pub. L. 93-288, see Short Title note set out under section 5121 of this title], as amended by this Act [see Short Title of 1988 Amendment note set out under section 5121 of this title], as that term had on October 1, 1988, under section 102(6) of the Disaster Relief Act of 1974 [par. (6) of this section] and regulations implementing the Disaster Relief Act of 1974.

“(2) TERMINATION OF EFFECTIVENESS.—Paragraph (1) shall not be effective on and after the 90th day after the President transmits to the Committee on Public Works and Transportation of the House of Representatives and to the Committee on Environment and Public Works of the Senate a report which includes an interpretation of the term ‘local government’ for purposes of the Disaster Relief and Emergency Assistance Act, as amended by this Act.”

[Functions of President under section 103(e)(2) of Pub. L. 100-707 delegated to Director of Federal Emergency Management Agency by section 3 of Ex. Ord. No. 12673, Mar. 23, 1989, 54 F.R. 12571, set out as a note under section 5195 of this title.]

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4625 of this title; title 6 section 101; title 12 section 1706c; title 19 section 1313; title 29 section 2918.

SUBCHAPTER II—DISASTER PREPAREDNESS AND MITIGATION ASSISTANCE

§ 5131. Federal and State disaster preparedness programs

(a) Utilization of services of other agencies

The President is authorized to establish a program of disaster preparedness that utilizes services of all appropriate agencies and includes—

- (1) preparation of disaster preparedness plans for mitigation, warning, emergency operations, rehabilitation, and recovery;
- (2) training and exercises;
- (3) postdisaster critiques and evaluations;
- (4) annual review of programs;
- (5) coordination of Federal, State, and local preparedness programs;
- (6) application of science and technology;
- (7) research.

(b) Technical assistance for the development of plans and programs

The President shall provide technical assistance to the States in developing comprehensive plans and practicable programs for preparation against disasters, including hazard reduction, avoidance, and mitigation; for assistance to individuals, businesses, and State and local governments following such disasters; and for recovery of damaged or destroyed public and private facilities.

(c) Grants to States for development of plans and programs

Upon application by a State, the President is authorized to make grants, not to exceed in the aggregate to such State \$250,000, for the development of plans, programs, and capabilities for disaster preparedness and prevention. Such grants shall be applied for within one year from May 22, 1974. Any State desiring financial assistance under this section shall designate or create an agency to plan and administer such a disaster preparedness program, and shall, through such agency, submit a State plan to the President, which shall—

(1) set forth a comprehensive and detailed State program for preparation against and assistance following, emergencies and major disasters, including provisions for assistance to individuals, businesses, and local governments; and

(2) include provisions for appointment and training of appropriate staffs, formulation of necessary regulations and procedures and conduct of required exercises.

(d) Grants for improvement, maintenance, and updating of State plans

The President is authorized to make grants not to exceed 50 per centum of the cost of improving, maintaining and updating State disaster assistance plans, including evaluations of natural hazards and development of the programs and actions required to mitigate such hazards; except that no such grant shall exceed \$50,000 per annum to any State.

(Pub. L. 93-288, title II, §201, May 22, 1974, 88 Stat. 145; Pub. L. 100-707, title I, §104, Nov. 23, 1988, 102 Stat. 4690.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100-707, §104(b)(1), struck out “(including the Defense Civil Preparedness Agency)” after “agencies”.

Subsec. (d). Pub. L. 100-707, §104(a), (b)(2), inserted “including evaluations of natural hazards and development of the programs and actions required to mitigate such hazards;” after “plans,” and substituted “\$50,000” for “\$25,000”.

§ 5132. Disaster warnings

(a) Readiness of Federal agencies to issue warnings to State and local officials

The President shall insure that all appropriate Federal agencies are prepared to issue warnings of disasters to State and local officials.

(b) Technical assistance to State and local governments for effective warnings

The President shall direct appropriate Federal agencies to provide technical assistance to State and local governments to insure that timely and effective disaster warning is provided.

(c) Warnings to governmental authorities and public endangered by disaster

The President is authorized to utilize or to make available to Federal, State, and local agencies the facilities of the civil defense communications system established and maintained pursuant to section 5196(c) of this title or any other Federal communications system for the purpose of providing warning to governmental authorities and the civilian population in areas endangered by disasters.

(d) Agreements with commercial communications systems for use of facilities

The President is authorized to enter into agreements with the officers or agents of any private or commercial communications systems who volunteer the use of their systems on a reimbursable or nonreimbursable basis for the purpose of providing warning to governmental authorities and the civilian population endangered by disasters.

(Pub. L. 93-288, title II, §202, May 22, 1974, 88 Stat. 145; Pub. L. 103-337, div. C, title XXXIV, §3412(b)(1), Oct. 5, 1994, 108 Stat. 3111.)

AMENDMENTS

1994—Subsec. (c). Pub. L. 103-337 substituted “section 5196(c) of this title” for “section 2281(c) of title 50, Appendix.”

§ 5133. Predisaster hazard mitigation

(a) Definition of small impoverished community

In this section, the term “small impoverished community” means a community of 3,000 or fewer individuals that is economically disadvantaged, as determined by the State in which the community is located and based on criteria established by the President.

(b) Establishment of program

The President may establish a program to provide technical and financial assistance to States and local governments to assist in the implementation of predisaster hazard mitigation measures that are cost-effective and are designed to reduce injuries, loss of life, and damage and destruction of property, including damage to critical services and facilities under the jurisdiction of the States or local governments.

(c) Approval by President

If the President determines that a State or local government has identified natural disaster hazards in areas under its jurisdiction and has demonstrated the ability to form effective public-private natural disaster hazard mitigation partnerships, the President, using amounts in the National Predisaster Mitigation Fund established under subsection (i) of this section (referred to in this section as the “Fund”), may provide technical and financial assistance to the State or local government to be used in accordance with subsection (e) of this section.

(d) State recommendations

(1) In general

(A) Recommendations

The Governor of each State may recommend to the President not fewer than five local governments to receive assistance under this section.

(B) Deadline for submission

The recommendations under subparagraph (A) shall be submitted to the President not later than October 1, 2001, and each October 1st thereafter or such later date in the year as the President may establish.

(C) Criteria

In making recommendations under subparagraph (A), a Governor shall consider the criteria specified in subsection (g) of this section.

(2) Use

(A) In general

Except as provided in subparagraph (B), in providing assistance to local governments under this section, the President shall select from local governments recommended by the Governors under this subsection.

(B) Extraordinary circumstances

In providing assistance to local governments under this section, the President may select a local government that has not been

recommended by a Governor under this subsection if the President determines that extraordinary circumstances justify the selection and that making the selection will further the purpose of this section.

(3) Effect of failure to nominate

If a Governor of a State fails to submit recommendations under this subsection in a timely manner, the President may select, subject to the criteria specified in subsection (g) of this section, any local governments of the State to receive assistance under this section.

(e) Uses of technical and financial assistance

(1) In general

Technical and financial assistance provided under this section—

(A) shall be used by States and local governments principally to implement predisaster hazard mitigation measures that are cost-effective and are described in proposals approved by the President under this section; and

(B) may be used—

(i) to support effective public-private natural disaster hazard mitigation partnerships;

(ii) to improve the assessment of a community's vulnerability to natural hazards; or

(iii) to establish hazard mitigation priorities, and an appropriate hazard mitigation plan, for a community.

(2) Dissemination

A State or local government may use not more than 10 percent of the financial assistance received by the State or local government under this section for a fiscal year to fund activities to disseminate information regarding cost-effective mitigation technologies.

(f) Allocation of funds

The amount of financial assistance made available to a State (including amounts made available to local governments of the State) under this section for a fiscal year—

(1) shall be not less than the lesser of—

(A) \$500,000; or

(B) the amount that is equal to 1.0 percent of the total funds appropriated to carry out this section for the fiscal year;

(2) shall not exceed 15 percent of the total funds described in paragraph (1)(B); and

(3) shall be subject to the criteria specified in subsection (g) of this section.

(g) Criteria for assistance awards

In determining whether to provide technical and financial assistance to a State or local government under this section, the President shall take into account—

(1) the extent and nature of the hazards to be mitigated;

(2) the degree of commitment of the State or local government to reduce damages from future natural disasters;

(3) the degree of commitment by the State or local government to support ongoing non-Federal support for the hazard mitigation measures to be carried out using the technical and financial assistance;

(4) the extent to which the hazard mitigation measures to be carried out using the technical and financial assistance contribute to the mitigation goals and priorities established by the State;

(5) the extent to which the technical and financial assistance is consistent with other assistance provided under this chapter;

(6) the extent to which prioritized, cost-effective mitigation activities that produce meaningful and definable outcomes are clearly identified;

(7) if the State or local government has submitted a mitigation plan under section 5165 of this title, the extent to which the activities identified under paragraph (6) are consistent with the mitigation plan;

(8) the opportunity to fund activities that maximize net benefits to society;

(9) the extent to which assistance will fund mitigation activities in small impoverished communities; and

(10) such other criteria as the President establishes in consultation with State and local governments.

(h) Federal share

(1) In general

Financial assistance provided under this section may contribute up to 75 percent of the total cost of mitigation activities approved by the President.

(2) Small impoverished communities

Notwithstanding paragraph (1), the President may contribute up to 90 percent of the total cost of a mitigation activity carried out in a small impoverished community.

(i) National Predisaster Mitigation Fund

(1) Establishment

The President may establish in the Treasury of the United States a fund to be known as the "National Predisaster Mitigation Fund", to be used in carrying out this section.

(2) Transfers to Fund

There shall be deposited in the Fund—

(A) amounts appropriated to carry out this section, which shall remain available until expended; and

(B) sums available from gifts, bequests, or donations of services or property received by the President for the purpose of predisaster hazard mitigation.

(3) Expenditures from Fund

Upon request by the President, the Secretary of the Treasury shall transfer from the Fund to the President such amounts as the President determines are necessary to provide technical and financial assistance under this section.

(4) Investment of amounts

(A) In general

The Secretary of the Treasury shall invest such portion of the Fund as is not, in the judgment of the Secretary of the Treasury, required to meet current withdrawals. Investments may be made only in interest-bearing obligations of the United States.

(B) Acquisition of obligations

For the purpose of investments under subparagraph (A), obligations may be acquired—

- (i) on original issue at the issue price; or
- (ii) by purchase of outstanding obligations at the market price.

(C) Sale of obligations

Any obligation acquired by the Fund may be sold by the Secretary of the Treasury at the market price.

(D) Credits to Fund

The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to and form a part of the Fund.

(E) Transfers of amounts**(i) In general**

The amounts required to be transferred to the Fund under this subsection shall be transferred at least monthly from the general fund of the Treasury to the Fund on the basis of estimates made by the Secretary of the Treasury.

(ii) Adjustments

Proper adjustment shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

(j) Limitation on total amount of financial assistance

The President shall not provide financial assistance under this section in an amount greater than the amount available in the Fund.

(k) Multihazard advisory maps**(1) Definition of multihazard advisory map**

In this subsection, the term “multihazard advisory map” means a map on which hazard data concerning each type of natural disaster is identified simultaneously for the purpose of showing areas of hazard overlap.

(2) Development of maps

In consultation with States, local governments, and appropriate Federal agencies, the President shall develop multihazard advisory maps for areas, in not fewer than five States, that are subject to commonly recurring natural hazards (including flooding, hurricanes and severe winds, and seismic events).

(3) Use of technology

In developing multihazard advisory maps under this subsection, the President shall use, to the maximum extent practicable, the most cost-effective and efficient technology available.

(4) Use of maps**(A) Advisory nature**

The multihazard advisory maps shall be considered to be advisory and shall not require the development of any new policy by, or impose any new policy on, any government or private entity.

(B) Availability of maps

The multihazard advisory maps shall be made available to the appropriate State and local governments for the purposes of—

- (i) informing the general public about the risks of natural hazards in the areas described in paragraph (2);
- (ii) supporting the activities described in subsection (e) of this section; and
- (iii) other public uses.

(l) Report on Federal and State administration

Not later than 18 months after October 30, 2000, the President, in consultation with State and local governments, shall submit to Congress a report evaluating efforts to implement this section and recommending a process for transferring greater authority and responsibility for administering the assistance program established under this section to capable States.

(m) Termination of authority

The authority provided by this section terminates December 31, 2003.

(Pub. L. 93-288, title II, §203, as added Pub. L. 106-390, title I, §102(a), Oct. 30, 2000, 114 Stat. 1553.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (g)(5), was in the original “this Act”, meaning Pub. L. 93-288, May 22, 1974, 88 Stat. 143, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables.

FINDINGS AND PURPOSE

Pub. L. 106-390, title I, §101, Oct. 30, 2000, 114 Stat. 1552, provided that:

“(a) FINDINGS.—Congress finds that—

“(1) natural disasters, including earthquakes, tsunamis, tornadoes, hurricanes, flooding, and wildfires, pose great danger to human life and to property throughout the United States;

“(2) greater emphasis needs to be placed on—

“(A) identifying and assessing the risks to States and local governments (including Indian tribes) from natural disasters;

“(B) implementing adequate measures to reduce losses from natural disasters; and

“(C) ensuring that the critical services and facilities of communities will continue to function after a natural disaster;

“(3) expenditures for postdisaster assistance are increasing without commensurate reductions in the likelihood of future losses from natural disasters;

“(4) in the expenditure of Federal funds under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), high priority should be given to mitigation of hazards at the local level; and

“(5) with a unified effort of economic incentives, awareness and education, technical assistance, and demonstrated Federal support, States and local governments (including Indian tribes) will be able to—

“(A) form effective community-based partnerships for hazard mitigation purposes;

“(B) implement effective hazard mitigation measures that reduce the potential damage from natural disasters;

“(C) ensure continued functionality of critical services;

“(D) leverage additional non-Federal resources in meeting natural disaster resistance goals; and

“(E) make commitments to long-term hazard mitigation efforts to be applied to new and existing structures.

“(b) PURPOSE.—The purpose of this title [enacting this section and sections 5134, 5165 and 5165a of this title, amending section 5170c of this title, and repealing section 5176 of this title] is to establish a national disaster hazard mitigation program—

“(1) to reduce the loss of life and property, human suffering, economic disruption, and disaster assistance costs resulting from natural disasters; and

“(2) to provide a source of predisaster hazard mitigation funding that will assist States and local governments (including Indian tribes) in implementing effective hazard mitigation measures that are designed to ensure the continued functionality of critical services and facilities after a natural disaster.”

§ 5134. Interagency task force

(a) In general

The President shall establish a Federal interagency task force for the purpose of coordinating the implementation of predisaster hazard mitigation programs administered by the Federal Government.

(b) Chairperson

The Director of the Federal Emergency Management Agency shall serve as the chairperson of the task force.

(c) Membership

The membership of the task force shall include representatives of—

- (1) relevant Federal agencies;
- (2) State and local government organizations (including Indian tribes); and
- (3) the American Red Cross.

(Pub. L. 93–288, title II, §204, as added Pub. L. 106–390, title I, §103, Oct. 30, 2000, 114 Stat. 1557.)

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 313(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

SUBCHAPTER III—MAJOR DISASTER AND EMERGENCY ASSISTANCE ADMINISTRATION

§ 5141. Waiver of administrative conditions

Any Federal agency charged with the administration of a Federal assistance program may, if so requested by the applicant State or local authorities, modify or waive, for a major disaster, such administrative conditions for assistance as would otherwise prevent the giving of assistance under such programs if the inability to meet such conditions is a result of the major disaster.

(Pub. L. 93–288, title III, §301, as added Pub. L. 100–707, title I, §105(a)(2), Nov. 23, 1988, 102 Stat. 4691.)

PRIOR PROVISIONS

A prior section 5141, Pub. L. 93–288, title III, §301, May 22, 1974, 88 Stat. 146, set out procedure for determination of existence of emergency or major disaster, prior to repeal by Pub. L. 100–707, §105(a)(2).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5154 of this title.

§ 5142. Repealed. Pub. L. 100–707, title I, § 105(a)(2), Nov. 23, 1988, 102 Stat. 4691

Section, Pub. L. 93–288, title III, §302, May 22, 1974, 88 Stat. 146, related to Federal assistance and its coordination with State and local disaster assistance.

§ 5143. Coordinating officers

(a) Appointment of Federal coordinating officer

Immediately upon his declaration of a major disaster or emergency, the President shall appoint a Federal coordinating officer to operate in the affected area.

(b) Functions of Federal coordinating officer

In order to effectuate the purposes of this chapter, the Federal coordinating officer, within the affected area, shall—

(1) make an initial appraisal of the types of relief most urgently needed;

(2) establish such field offices as he deems necessary and as are authorized by the President;

(3) coordinate the administration of relief, including activities of the State and local governments, the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, and other relief or disaster assistance organizations, which agree to operate under his advice or direction, except that nothing contained in this chapter shall limit or in any way affect the responsibilities of the American National Red Cross under chapter 3001 of title 36; and

(4) take such other action, consistent with authority delegated to him by the President, and consistent with the provisions of this chapter, as he may deem necessary to assist local citizens and public officials in promptly obtaining assistance to which they are entitled.

(c) State coordinating officer

When the President determines assistance under this chapter is necessary, he shall request that the Governor of the affected State designate a State coordinating officer for the purpose of coordinating State and local disaster assistance efforts with those of the Federal Government.

(Pub. L. 93–288, title III, §302, formerly §303, May 22, 1974, 88 Stat. 147; renumbered §302 and amended Pub. L. 100–707, title I, §105(b), Nov. 23, 1988, 102 Stat. 4691.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (b) and (c), was in the original “this Act”, meaning Pub. L. 93–288, May 22, 1974, 88 Stat. 143, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables.

CODIFICATION

In subsec. (b)(3), “chapter 3001 of title 36” substituted for “the Act of January 5, 1905, as amended (33 Stat. 599)” on authority of Pub. L. 105–225, §5(b), Aug. 12, 1998, 112 Stat. 1499, the first section of which enacted Title 36, Patriotic and National Observances, Ceremonies, and Organizations.

PRIOR PROVISIONS

A prior section 302 of Pub. L. 93–288 was classified to section 5142 of this title prior to repeal by Pub. L. 100–707.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100-707 inserted “or emergency” after “major disaster”.

§ 5144. Emergency support teams

The President shall form emergency support teams of Federal personnel to be deployed in an area affected by a major disaster or emergency. Such emergency support teams shall assist the Federal coordinating officer in carrying out his responsibilities pursuant to this chapter. Upon request of the President, the head of any Federal agency is directed to detail to temporary duty with the emergency support teams on either a reimbursable or nonreimbursable basis, as is determined necessary by the President, such personnel within the administrative jurisdiction of the head of the Federal agency as the President may need or believe to be useful for carrying out the functions of the emergency support teams, each such detail to be without loss of seniority, pay, or other employee status.

(Pub. L. 93-288, title III, § 303, formerly § 304, May 22, 1974, 88 Stat. 148; renumbered § 303, Pub. L. 100-707, title I, § 105(c), Nov. 23, 1988, 102 Stat. 4691.)

PRIOR PROVISIONS

A prior section 303 of Pub. L. 93-288 was renumbered section 302 by Pub. L. 100-707 and is classified to section 5143 of this title.

§§ 5145, 5146. Repealed. Pub. L. 100-707, title I, § 105(d), Nov. 23, 1988, 102 Stat. 4691

Section 5145, Pub. L. 93-288, title III, § 305, May 22, 1974, 88 Stat. 148, related to authority of President to provide assistance in an emergency.

Section 5146, Pub. L. 93-288, title III, § 306, May 22, 1974, 88 Stat. 148, related to cooperation of Federal agencies in rendering disaster assistance.

§ 5147. Reimbursement of Federal agencies

Federal agencies may be reimbursed for expenditures under this chapter from funds appropriated for the purposes of this chapter. Any funds received by Federal agencies as reimbursement for services or supplies furnished under the authority of this chapter shall be deposited to the credit of the appropriation or appropriations currently available for such services or supplies.

(Pub. L. 93-288, title III, § 304, formerly § 307, May 22, 1974, 88 Stat. 149; renumbered § 304, Pub. L. 100-707, title I, § 105(d), Nov. 23, 1988, 102 Stat. 4691.)

PRIOR PROVISIONS

A prior section 304 of Pub. L. 93-288 was renumbered section 303 by Pub. L. 100-707 and is classified to section 5144 of this title.

§ 5148. Nonliability of Federal Government

The Federal Government shall not be liable for any claim based upon the exercise or performance of or the failure to exercise or perform a discretionary function or duty on the part of a Federal agency or an employee of the Federal Government in carrying out the provisions of this chapter.

(Pub. L. 93-288, title III, § 305, formerly § 308, May 22, 1974, 88 Stat. 149; renumbered § 305, Pub. L.

100-707, title I, § 105(d), Nov. 23, 1988, 102 Stat. 4691.)

PRIOR PROVISIONS

A prior section 305 of Pub. L. 93-288 was classified to section 5145 of this title prior to repeal by Pub. L. 100-707.

§ 5149. Performance of services**(a) Utilization of services or facilities of State and local governments**

In carrying out the purposes of this chapter, any Federal agency is authorized to accept and utilize the services or facilities of any State or local government, or of any agency, office, or employee thereof, with the consent of such government.

(b) Appointment of temporary personnel, experts, and consultants; acquisition, rental, or hire of equipment, services, materials and supplies

In performing any services under this chapter, any Federal agency is authorized—

(1) to appoint and fix the compensation of such temporary personnel as may be necessary, without regard to the provisions of title 5 governing appointments in competitive service;

(2) to employ experts and consultants in accordance with the provisions of section 3109 of such title, without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates; and

(3) to incur obligations on behalf of the United States by contract or otherwise for the acquisition, rental, or hire of equipment, services, materials, and supplies for shipping, drayage, travel, and communications, and for the supervision and administration of such activities. Such obligations, including obligations arising out of the temporary employment of additional personnel, may be incurred by an agency in such amount as may be made available to it by the President.

(Pub. L. 93-288, title III, § 306, formerly § 309, May 22, 1974, 88 Stat. 149; renumbered § 306, Pub. L. 100-707, title I, § 105(d), Nov. 23, 1988, 102 Stat. 4691.)

REFERENCES IN TEXT

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (b)(1), are classified to section 3301 et seq. of Title 5, Government Organization and Employees.

PRIOR PROVISIONS

A prior section 306 of Pub. L. 93-288 was classified to section 5146 of this title prior to repeal by Pub. L. 100-707.

§ 5150. Use of local firms and individuals

In the expenditure of Federal funds for debris clearance, distribution of supplies, reconstruction, and other major disaster or emergency assistance activities which may be carried out by contract or agreement with private organizations, firms, or individuals, preference shall be given, to the extent feasible and practicable, to those organizations, firms, and individuals re-

siding or doing business primarily in the area affected by such major disaster or emergency. This section shall not be considered to restrict the use of Department of Defense resources in the provision of major disaster assistance under this chapter.

(Pub. L. 93-288, title III, §307, formerly §310, May 22, 1974, 88 Stat. 150; renumbered §307 and amended Pub. L. 100-707, title I, §105(e), Nov. 23, 1988, 102 Stat. 4691.)

PRIOR PROVISIONS

A prior section 307 of Pub. L. 93-288 was renumbered section 304 by Pub. L. 100-707 and is classified to section 5147 of this title.

AMENDMENTS

1988—Pub. L. 100-707, §105(e)(2), (3), inserted “or emergency” after “major disaster” in two places and inserted at end “This section shall not be considered to restrict the use of Department of Defense resources in the provision of major disaster assistance under this chapter.”

§ 5151. Nondiscrimination in disaster assistance

(a) Regulations for equitable and impartial relief operations

The President shall issue, and may alter and amend, such regulations as may be necessary for the guidance of personnel carrying out Federal assistance functions at the site of a major disaster or emergency. Such regulations shall include provisions for insuring that the distribution of supplies, the processing of applications, and other relief and assistance activities shall be accomplished in an equitable and impartial manner, without discrimination on the grounds of race, color, religion, nationality, sex, age, or economic status.

(b) Compliance with regulations as prerequisite to participation by other bodies in relief operations

As a condition of participation in the distribution of assistance or supplies under this chapter or of receiving assistance under this chapter, governmental bodies and other organizations shall be required to comply with regulations relating to nondiscrimination promulgated by the President, and such other regulations applicable to activities within an area affected by a major disaster or emergency as he deems necessary for the effective coordination of relief efforts.

(Pub. L. 93-288, title III, §308, formerly §311, May 22, 1974, 88 Stat. 150; renumbered §308 and amended Pub. L. 100-707, title I, §105(f), Nov. 23, 1988, 102 Stat. 4691.)

PRIOR PROVISIONS

A prior section 308 of Pub. L. 93-288 was renumbered section 305 by Pub. L. 100-707 and is classified to section 5148 of this title.

AMENDMENTS

1988—Subsec. (b). Pub. L. 100-707 substituted “this chapter” for “section 5172 or 5174 of this title” after “assistance under”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5174 of this title.

§ 5152. Use and coordination of relief organizations

(a) In providing relief and assistance under this chapter, the President may utilize, with their consent, the personnel and facilities of the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, and other relief or disaster assistance organizations, in the distribution of medicine, food, supplies, or other items, and in the restoration, rehabilitation, or reconstruction of community services housing and essential facilities, whenever the President finds that such utilization is necessary.

(b) The President is authorized to enter into agreements with the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, and other relief or disaster assistance organizations under which the disaster relief activities of such organizations may be coordinated by the Federal coordinating officer whenever such organizations are engaged in providing relief during and after a major disaster or emergency. Any such agreement shall include provisions assuring that use of Federal facilities, supplies, and services will be in compliance with regulations prohibiting duplication of benefits and guaranteeing nondiscrimination promulgated by the President under this chapter, and such other regulation as the President may require.

(Pub. L. 93-288, title III, §309, formerly §312, May 22, 1974, 88 Stat. 150; renumbered §309, Pub. L. 100-707, title I, §105(f), Nov. 23, 1988, 102 Stat. 4691.)

PRIOR PROVISIONS

A prior section 309 of Pub. L. 93-288 was renumbered section 306 by Pub. L. 100-707 and is classified to section 5149 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 15 section 636.

§ 5153. Priority to certain applications for public facility and public housing assistance

(a) Priority

In the processing of applications for assistance, priority and immediate consideration shall be given by the head of the appropriate Federal agency, during such period as the President shall prescribe, to applications from public bodies situated in areas affected by major disasters under the following Acts:

(1) The United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] for the provision of low-income housing.

(2) Sections 3502 to 3505 of title 40 for assistance in public works planning.

(3) The Community Development Block Grant Program under title I of the Housing and Community Development Act of 1974 [42 U.S.C. 5301 et seq.].

(4) Section 1926 of title 7.

(5) The Public Works and Economic Development Act of 1965 [42 U.S.C. 3121 et seq.].

(6) Subtitle IV of title 40.

(7) The Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.].

(b) Obligation of certain discretionary funds

In the obligation of discretionary funds or funds which are not allocated among the States or political subdivisions of a State, the Secretary of Housing and Urban Development and the Secretary of Commerce shall give priority to applications for projects for major disaster areas.

(Pub. L. 93-288, title III, §310, as added Pub. L. 100-707, title I, §105(g), Nov. 23, 1988, 102 Stat. 4691.)

REFERENCES IN TEXT

The United States Housing Act of 1937, referred to in subsec. (a)(1), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93-383, title II, §201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§1437 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of this title and Tables.

The Housing and Community Development Act of 1974, referred to in subsec. (a)(3), is Pub. L. 93-383, Aug. 22, 1974, 88 Stat. 633, as amended. Title I of the Housing and Community Development Act of 1974 is classified principally to chapter 69 (§5301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

The Public Works and Economic Development Act of 1965, as amended, referred to in subsec. (a)(5), is Pub. L. 89-136, Aug. 26, 1965, 79 Stat. 552, as amended, which is classified principally to chapter 38 (§3121 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3121 of this title and Tables.

The Federal Water Pollution Control Act, referred to in subsec. (a)(7), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92-500, §2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

CODIFICATION

“Sections 3502 to 3505 of title 40” substituted for “Section 702 of the Housing Act of 1954” in subsec. (a)(2) and “Subtitle IV of title 40” substituted for “The Appalachian Regional Development Act of 1965” in subsec. (a)(6) on authority of Pub. L. 107-217, §5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

PRIOR PROVISIONS

A prior section 5153, Pub. L. 93-288, title III, §313, May 22, 1974, 88 Stat. 150, related to same subject matter as present section but with references to different acts and provisions, prior to repeal by Pub. L. 100-707, §105(g).

A prior section 310 of Pub. L. 93-288 was renumbered section 307 by Pub. L. 100-707 and is classified to section 5150 of this title.

§ 5154. Insurance**(a) Applicants for replacement of damaged facilities****(1) Compliance with certain regulations**

An applicant for assistance under section 5172 of this title (relating to repair, restoration, and replacement of damaged facilities), section 5189 of this title (relating to simplified procedure) or section 3149(c)(2) of this title shall comply with regulations prescribed by the President to assure that, with respect to

any property to be replaced, restored, repaired, or constructed with such assistance, such types and extent of insurance will be obtained and maintained as may be reasonably available, adequate, and necessary, to protect against future loss to such property.

(2) Determination

In making a determination with respect to availability, adequacy, and necessity under paragraph (1), the President shall not require greater types and extent of insurance than are certified to him as reasonable by the appropriate State insurance commissioner responsible for regulation of such insurance.

(b) Maintenance of insurance

No applicant for assistance under section 5172 of this title (relating to repair, restoration, and replacement of damaged facilities), section 5189 of this title (relating to simplified procedure), or section 3149(c)(2) of this title may receive such assistance for any property or part thereof for which the applicant has previously received assistance under this chapter unless all insurance required pursuant to this section has been obtained and maintained with respect to such property. The requirements of this subsection may not be waived under section 5141 of this title.

(c) State acting as self-insurer

A State may elect to act as a self-insurer with respect to any or all of the facilities owned by the State. Such an election, if declared in writing at the time of acceptance of assistance under section 5172 or 5189 of this title or section 3149(c)(2) of this title or subsequently and accompanied by a plan for self-insurance which is satisfactory to the President, shall be deemed compliance with subsection (a) of this section. No such self-insurer may receive assistance under section 5172 or 5189 of this title for any property or part thereof for which it has previously received assistance under this chapter, to the extent that insurance for such property or part thereof would have been reasonably available.

(Pub. L. 93-288, title III, §311, as added Pub. L. 100-707, title I, §105(h), Nov. 23, 1988, 102 Stat. 4692; amended Pub. L. 103-325, title V, §521, Sept. 23, 1994, 108 Stat. 2257; Pub. L. 106-390, title II, §201, Oct. 30, 2000, 114 Stat. 1559.)

PRIOR PROVISIONS

A prior section 5154, Pub. L. 93-288, title III, §314, May 22, 1974, 88 Stat. 151, consisted of similar provisions, prior to repeal by Pub. L. 100-707, §105(h).

A prior section 311 of Pub. L. 93-288 was renumbered section 308 by Pub. L. 100-707 and is classified to section 5151 of this title.

AMENDMENTS

2000—Subsecs. (a)(1), (b), (c). Pub. L. 106-390 substituted “section 3149(c)(2) of this title” for “section 3233 of this title”.

1994—Subsec. (b). Pub. L. 103-325 inserted at end “The requirements of this subsection may not be waived under section 5141 of this title.”

§ 5154a. Prohibited flood disaster assistance**(a) General prohibition**

Notwithstanding any other provision of law, no Federal disaster relief assistance made avail-

able in a flood disaster area may be used to make a payment (including any loan assistance payment) to a person for repair, replacement, or restoration for damage to any personal, residential, or commercial property if that person at any time has received flood disaster assistance that was conditional on the person first having obtained flood insurance under applicable Federal law and subsequently having failed to obtain and maintain flood insurance as required under applicable Federal law on such property.

(b) Transfer of property

(1) Duty to notify

In the event of the transfer of any property described in paragraph (3), the transferor shall, not later than the date on which such transfer occurs, notify the transferee in writing of the requirements to—

(A) obtain flood insurance in accordance with applicable Federal law with respect to such property, if the property is not so insured as of the date on which the property is transferred; and

(B) maintain flood insurance in accordance with applicable Federal law with respect to such property.

Such written notification shall be contained in documents evidencing the transfer of ownership of the property.

(2) Failure to notify

If a transferor described in paragraph (1) fails to make a notification in accordance with such paragraph and, subsequent to the transfer of the property—

(A) the transferee fails to obtain or maintain flood insurance in accordance with applicable Federal law with respect to the property,

(B) the property is damaged by a flood disaster, and

(C) Federal disaster relief assistance is provided for the repair, replacement, or restoration of the property as a result of such damage,

the transferor shall be required to reimburse the Federal Government in an amount equal to the amount of the Federal disaster relief assistance provided with respect to the property.

(3) Property described

For purposes of paragraph (1), a property is described in this paragraph if it is personal, commercial, or residential property for which Federal disaster relief assistance made available in a flood disaster area has been provided, prior to the date on which the property is transferred, for repair, replacement, or restoration of the property, if such assistance was conditioned upon obtaining flood insurance in accordance with applicable Federal law with respect to such property.

(c) Omitted

(d) “Flood disaster area” defined

For purposes of this section, the term “flood disaster area” means an area with respect to which—

(1) the Secretary of Agriculture finds, or has found, to have been substantially affected by a

natural disaster in the United States pursuant to section 1961(a) of title 7; or

(2) the President declares, or has declared, the existence of a major disaster or emergency pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), as a result of flood conditions existing in or affecting that area.

(e) Effective date

This section and the amendments made by this section shall apply to disasters declared after September 23, 1994.

(Pub. L. 103-325, title V, §582, Sept. 23, 1994, 108 Stat. 2286.)

REFERENCES IN TEXT

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in subsec. (d)(2), is Pub. L. 93-288, May 22, 1974, 88 Stat. 143, as amended, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables.

The amendments made by this section, referred to in subsec. (e), means the amendments made by section 582(c) of Pub. L. 103-325, which amended section 4012a of this title. See Codification note below.

CODIFICATION

Section is comprised of section 582 of Pub. L. 103-325. Subsec. (c) of section 582 of Pub. L. 103-325 amended section 4012a of this title.

Section was enacted as part of the National Flood Insurance Reform Act of 1994 and as part of the Riegle Community Development and Regulatory Improvement Act of 1994, and not as part of the Robert T. Stafford Disaster Relief and Emergency Assistance Act which comprises this chapter.

§ 5155. Duplication of benefits

(a) General prohibition

The President, in consultation with the head of each Federal agency administering any program providing financial assistance to persons, business concerns, or other entities suffering losses as a result of a major disaster or emergency, shall assure that no such person, business concern, or other entity will receive such assistance with respect to any part of such loss as to which he has received financial assistance under any other program or from insurance or any other source.

(b) Special rules

(1) Limitation

This section shall not prohibit the provision of Federal assistance to a person who is or may be entitled to receive benefits for the same purposes from another source if such person has not received such other benefits by the time of application for Federal assistance and if such person agrees to repay all duplicative assistance to the agency providing the Federal assistance.

(2) Procedures

The President shall establish such procedures as the President considers necessary to ensure uniformity in preventing duplication of benefits.

(3) Effect of partial benefits

Receipt of partial benefits for a major disaster or emergency shall not preclude provision

of additional Federal assistance for any part of a loss or need for which benefits have not been provided.

(c) Recovery of duplicative benefits

A person receiving Federal assistance for a major disaster or emergency shall be liable to the United States to the extent that such assistance duplicates benefits available to the person for the same purpose from another source. The agency which provided the duplicative assistance shall collect such duplicative assistance from the recipient in accordance with chapter 37 of title 31, relating to debt collection, when the head of such agency considers it to be in the best interest of the Federal Government.

(d) Assistance not income

Federal major disaster and emergency assistance provided to individuals and families under this chapter, and comparable disaster assistance provided by States, local governments, and disaster assistance organizations, shall not be considered as income or a resource when determining eligibility for or benefit levels under federally funded income assistance or resource-tested benefit programs.

(Pub. L. 93-288, title III, §312, as added Pub. L. 100-707, title I, §105(i), Nov. 23, 1988, 102 Stat. 4693.)

PRIOR PROVISIONS

A prior section 5155, Pub. L. 93-288, title III, §315, May 22, 1974, 88 Stat. 152, consisted of similar provisions, prior to repeal by Pub. L. 100-707, §105(i).

A prior section 312 of Pub. L. 93-288 was renumbered section 309 by Pub. L. 100-707 and is classified to section 5152 of this title.

§ 5156. Standards and reviews

The President shall establish comprehensive standards which shall be used to assess the efficiency and effectiveness of Federal major disaster and emergency assistance programs administered under this chapter. The President shall conduct annual reviews of the activities of Federal agencies and State and local governments in major disaster and emergency preparedness and in providing major disaster and emergency assistance in order to assure maximum coordination and effectiveness of such programs and consistency in policies for reimbursement of States under this chapter.

(Pub. L. 93-288, title III, §313, as added Pub. L. 100-707, title I, §105(j), Nov. 23, 1988, 102 Stat. 4694.)

PRIOR PROVISIONS

A prior section 5156, Pub. L. 93-288, title III, §316, May 22, 1974, 88 Stat. 152, related to reviews and reports by President, prior to repeal by Pub. L. 100-707, §105(j).

A prior section 313 of Pub. L. 93-288 was classified to section 5153 of this title prior to repeal by Pub. L. 100-707.

§ 5157. Penalties

(a) Misuse of funds

Any person who knowingly misapplies the proceeds of a loan or other cash benefit obtained under this chapter shall be fined an amount equal to one and one-half times the misapplied amount of the proceeds or cash benefit.

(b) Civil enforcement

Whenever it appears that any person has violated or is about to violate any provision of this chapter, including any civil penalty imposed under this chapter, the Attorney General may bring a civil action for such relief as may be appropriate. Such action may be brought in an appropriate United States district court.

(c) Referral to Attorney General

The President shall expeditiously refer to the Attorney General for appropriate action any evidence developed in the performance of functions under this chapter that may warrant consideration for criminal prosecution.

(d) Civil penalty

Any individual who knowingly violates any order or regulation issued under this chapter shall be subject to a civil penalty of not more than \$5,000 for each violation.

(Pub. L. 93-288, title III, §314, as added Pub. L. 100-707, title I, §105(k), Nov. 23, 1988, 102 Stat. 4694.)

PRIOR PROVISIONS

A prior section 5157, Pub. L. 93-288, title III, §317, May 22, 1974, 88 Stat. 152, related to criminal and civil penalties, prior to repeal by Pub. L. 100-707, §105(k).

A prior section 314 of Pub. L. 93-288 was classified to section 5154 of this title prior to repeal by Pub. L. 100-707.

§ 5158. Availability of materials

The President is authorized, at the request of the Governor of an affected State, to provide for a survey of construction materials needed in the area affected by a major disaster on an emergency basis for housing repairs, replacement housing, public facilities repairs and replacement, farming operations, and business enterprises and to take appropriate action to assure the availability and fair distribution of needed materials, including, where possible, the allocation of such materials for a period of not more than one hundred and eighty days after such major disaster. Any allocation program shall be implemented by the President to the extent possible, by working with and through those companies which traditionally supply construction materials in the affected area. For the purposes of this section "construction materials" shall include building materials and materials required for repairing housing, replacement housing, public facilities repairs and replacement, and for normal farm and business operations.

(Pub. L. 93-288, title III, §315, formerly §318, May 22, 1974, 88 Stat. 152; renumbered §315, Pub. L. 100-707, title I, §105(l), Nov. 23, 1988, 102 Stat. 4694.)

PRIOR PROVISIONS

A prior section 315 of Pub. L. 93-288 was classified to section 5155 of this title prior to repeal by Pub. L. 100-707.

§ 5159. Protection of environment

An action which is taken or assistance which is provided pursuant to section 5170a, 5170b, 5172, 5173, or 5192 of this title, including such assistance provided pursuant to the procedures pro-

vided for in section 5189 of this title, which has the effect of restoring a facility substantially to its condition prior to the disaster or emergency, shall not be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (83 Stat. 852) [42 U.S.C. 4321 et seq.]. Nothing in this section shall alter or affect the applicability of the National Environmental Policy Act of 1969 to other Federal actions taken under this chapter or under any other provisions of law.

(Pub. L. 93-288, title III, §316, as added Pub. L. 100-707, title I, §105(m)(1), Nov. 23, 1988, 102 Stat. 4694.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in text, is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

PRIOR PROVISIONS

A prior section 316 of Pub. L. 93-288 was classified to section 5156 of this title prior to repeal by Pub. L. 100-707.

§ 5160. Recovery of assistance

(a) Party liable

Any person who intentionally causes a condition for which Federal assistance is provided under this chapter or under any other Federal law as a result of a declaration of a major disaster or emergency under this chapter shall be liable to the United States for the reasonable costs incurred by the United States in responding to such disaster or emergency to the extent that such costs are attributable to the intentional act or omission of such person which caused such condition. Such action for reasonable costs shall be brought in an appropriate United States district court.

(b) Rendering of care

A person shall not be liable under this section for costs incurred by the United States as a result of actions taken or omitted by such person in the course of rendering care or assistance in response to a major disaster or emergency.

(Pub. L. 93-288, title III, §317, as added Pub. L. 100-707, title I, §105(m)(1), Nov. 23, 1988, 102 Stat. 4695.)

PRIOR PROVISIONS

A prior section 317 of Pub. L. 93-288 was classified to section 5157 of this title prior to repeal by Pub. L. 100-707.

§ 5161. Audits and investigations

(a) In general

Subject to the provisions of chapter 75 of title 31, relating to requirements for single audits, the President shall conduct audits and investigations as necessary to assure compliance with this chapter, and in connection therewith may question such persons as may be necessary to carry out such audits and investigations.

(b) Access to records

For purposes of audits and investigations under this section, the President and Comptrol-

ler General may inspect any books, documents, papers, and records of any person relating to any activity undertaken or funded under this chapter.

(c) State and local audits

The President may require audits by State and local governments in connection with assistance under this chapter when necessary to assure compliance with this chapter or related regulations.

(Pub. L. 93-288, title III, §318, as added Pub. L. 100-707, title I, §105(m)(1), Nov. 23, 1988, 102 Stat. 4695.)

PRIOR PROVISIONS

A prior section 318 of Pub. L. 93-288 was renumbered section 315 by Pub. L. 100-707 and is classified to section 5158 of this title.

§ 5162. Advance of non-Federal share

(a) In general

The President may lend or advance to an eligible applicant or a State the portion of assistance for which the State is responsible under the cost-sharing provisions of this chapter in any case in which—

(1) the State is unable to assume its financial responsibility under such cost-sharing provisions—

(A) with respect to concurrent, multiple major disasters in a jurisdiction, or

(B) after incurring extraordinary costs as a result of a particular disaster; and

(2) the damages caused by such disasters or disaster are so overwhelming and severe that it is not possible for the applicant or the State to assume immediately their financial responsibility under this chapter.

(b) Terms of loans and advances

(1) In general

Any loan or advance under this section shall be repaid to the United States.

(2) Interest

Loans and advances under this section shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the reimbursement period of the loan or advance.

(c) Regulations

The President shall issue regulations describing the terms and conditions under which any loan or advance authorized by this section may be made.

(Pub. L. 93-288, title III, §319, as added Pub. L. 100-707, title I, §105(m)(1), Nov. 23, 1988, 102 Stat. 4695.)

§ 5163. Limitation on use of sliding scales

No geographic area shall be precluded from receiving assistance under this chapter solely by virtue of an arithmetic formula or sliding scale based on income or population.

(Pub. L. 93-288, title III, §320, as added Pub. L. 100-707, title I, §105(m)(1), Nov. 23, 1988, 102 Stat. 4696.)

§ 5164. Rules and regulations

The President may prescribe such rules and regulations as may be necessary and proper to carry out the provisions of this chapter, and may exercise, either directly or through such Federal agency as the President may designate, any power or authority conferred to the President by this chapter.

(Pub. L. 93-288, title III, §321, as added Pub. L. 100-707, title I, §105(m)(1), Nov. 23, 1988, 102 Stat. 4696.)

§ 5165. Mitigation planning

(a) Requirement of mitigation plan

As a condition of receipt of an increased Federal share for hazard mitigation measures under subsection (e) of this section, a State, local, or tribal government shall develop and submit for approval to the President a mitigation plan that outlines processes for identifying the natural hazards, risks, and vulnerabilities of the area under the jurisdiction of the government.

(b) Local and tribal plans

Each mitigation plan developed by a local or tribal government shall—

- (1) describe actions to mitigate hazards, risks, and vulnerabilities identified under the plan; and
- (2) establish a strategy to implement those actions.

(c) State plans

The State process of development of a mitigation plan under this section shall—

- (1) identify the natural hazards, risks, and vulnerabilities of areas in the State;
- (2) support development of local mitigation plans;
- (3) provide for technical assistance to local and tribal governments for mitigation planning; and
- (4) identify and prioritize mitigation actions that the State will support, as resources become available.

(d) Funding

(1) In general

Federal contributions under section 5170c of this title may be used to fund the development and updating of mitigation plans under this section.

(2) Maximum Federal contribution

With respect to any mitigation plan, a State, local, or tribal government may use an amount of Federal contributions under section 5170c of this title not to exceed 7 percent of the amount of such contributions available to the government as of a date determined by the government.

(e) Increased Federal share for hazard mitigation measures

(1) In general

If, at the time of the declaration of a major disaster, a State has in effect an approved mitigation plan under this section, the President may increase to 20 percent, with respect to the major disaster, the maximum percent-

age specified in the last sentence of section 5170c(a) of this title.

(2) Factors for consideration

In determining whether to increase the maximum percentage under paragraph (1), the President shall consider whether the State has established—

- (A) eligibility criteria for property acquisition and other types of mitigation measures;
- (B) requirements for cost effectiveness that are related to the eligibility criteria;
- (C) a system of priorities that is related to the eligibility criteria; and
- (D) a process by which an assessment of the effectiveness of a mitigation action may be carried out after the mitigation action is complete.

(Pub. L. 93-288, title III, §322, as added Pub. L. 106-390, title I, §104(a), Oct. 30, 2000, 114 Stat. 1558.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5133, 5170c of this title.

§ 5165a. Minimum standards for public and private structures

(a) In general

As a condition of receipt of a disaster loan or grant under this chapter—

- (1) the recipient shall carry out any repair or construction to be financed with the loan or grant in accordance with applicable standards of safety, decency, and sanitation and in conformity with applicable codes, specifications, and standards; and
- (2) the President may require safe land use and construction practices, after adequate consultation with appropriate State and local government officials.

(b) Evidence of compliance

A recipient of a disaster loan or grant under this chapter shall provide such evidence of compliance with this section as the President may require by regulation.

(Pub. L. 93-288, title III, §323, as added Pub. L. 106-390, title I, §104(a), Oct. 30, 2000, 114 Stat. 1559.)

§ 5165b. Management costs

(a) Definition of management cost

In this section, the term “management cost” includes any indirect cost, any administrative expense, and any other expense not directly chargeable to a specific project under a major disaster, emergency, or disaster preparedness or mitigation activity or measure.

(b) Establishment of management cost rates

Notwithstanding any other provision of law (including any administrative rule or guidance), the President shall by regulation establish management cost rates, for grantees and subgrantees, that shall be used to determine contributions under this chapter for management costs.

(c) Review

The President shall review the management cost rates established under subsection (b) of

this section not later than 3 years after the date of establishment of the rates and periodically thereafter.

(Pub. L. 93-288, title III, §324, as added Pub. L. 106-390, title II, §202(a), Oct. 30, 2000, 114 Stat. 1560.)

EFFECTIVE DATE

Pub. L. 106-390, title II, §202(b), Oct. 30, 2000, 114 Stat. 1560, provided that:

“(1) IN GENERAL.—Subject to paragraph (2), subsections (a) and (b) of section 324 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act [42 U.S.C. 5165b(a), (b)] (as added by subsection (a)) shall apply to major disasters declared under that Act [42 U.S.C. 5121 et seq.] on or after the date of the enactment of this Act [Oct. 30, 2000].

“(2) INTERIM AUTHORITY.—Until the date on which the President establishes the management cost rates under section 324 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (as added by subsection (a)), section 406(f) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5172(f)) (as in effect on the day before the date of the enactment of this Act) shall be used to establish management cost rates.”

§ 5165c. Public notice, comment, and consultation requirements

(a) Public notice and comment concerning new or modified policies

(1) In general

The President shall provide for public notice and opportunity for comment before adopting any new or modified policy that—

(A) governs implementation of the public assistance program administered by the Federal Emergency Management Agency under this chapter; and

(B) could result in a significant reduction of assistance under the program.

(2) Application

Any policy adopted under paragraph (1) shall apply only to a major disaster or emergency declared on or after the date on which the policy is adopted.

(b) Consultation concerning interim policies

(1) In general

Before adopting any interim policy under the public assistance program to address specific conditions that relate to a major disaster or emergency that has been declared under this chapter, the President, to the maximum extent practicable, shall solicit the views and recommendations of grantees and subgrantees with respect to the major disaster or emergency concerning the potential interim policy, if the interim policy is likely—

(A) to result in a significant reduction of assistance to applicants for the assistance with respect to the major disaster or emergency; or

(B) to change the terms of a written agreement to which the Federal Government is a party concerning the declaration of the major disaster or emergency.

(2) No legal right of action

Nothing in this subsection confers a legal right of action on any party.

(c) Public access

The President shall promote public access to policies governing the implementation of the public assistance program.

(Pub. L. 93-288, title III, §325, as added Pub. L. 106-390, title II, §203, Oct. 30, 2000, 114 Stat. 1560.)

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 313(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

SUBCHAPTER IV—MAJOR DISASTER ASSISTANCE PROGRAMS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 5321, 12840 of this title.

§ 5170. Procedure for declaration

All requests for a declaration by the President that a major disaster exists shall be made by the Governor of the affected State. Such a request shall be based on a finding that the disaster is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local governments and that Federal assistance is necessary. As part of such request, and as a prerequisite to major disaster assistance under this chapter, the Governor shall take appropriate response action under State law and direct execution of the State's emergency plan. The Governor shall furnish information on the nature and amount of State and local resources which have been or will be committed to alleviating the results of the disaster, and shall certify that, for the current disaster, State and local government obligations and expenditures (of which State commitments must be a significant proportion) will comply with all applicable cost-sharing requirements of this chapter. Based on the request of a Governor under this section, the President may declare under this chapter that a major disaster or emergency exists.

(Pub. L. 93-288, title IV, §401, as added Pub. L. 100-707, title I, §106(a)(3), Nov. 23, 1988, 102 Stat. 4696.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 93-288, May 22, 1974, 88 Stat. 143, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables.

PRIOR PROVISIONS

A prior section 401 of Pub. L. 93-288 was renumbered section 405 by Pub. L. 100-707 and is classified to section 5171 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5204 of this title; title 10 section 1064; title 12 sections 1706c, 3352.

§ 5170a. General Federal assistance

In any major disaster, the President may—

(1) direct any Federal agency, with or without reimbursement, to utilize its authorities and the resources granted to it under Federal law (including personnel, equipment, supplies, facilities, and managerial, technical, and advisory services) in support of State and local assistance efforts;

(2) coordinate all disaster relief assistance (including voluntary assistance) provided by Federal agencies, private organizations, and State and local governments;

(3) provide technical and advisory assistance to affected State and local governments for—

(A) the performance of essential community services;

(B) issuance of warnings of risks and hazards;

(C) public health and safety information, including dissemination of such information;

(D) provision of health and safety measures; and

(E) management, control, and reduction of immediate threats to public health and safety; and

(4) assist State and local governments in the distribution of medicine, food, and other consumable supplies, and emergency assistance.

(Pub. L. 93-288, title IV, § 402, as added Pub. L. 100-707, title I, § 106(a)(3), Nov. 23, 1988, 102 Stat. 4696.)

PRIOR PROVISIONS

A prior section 402 of Pub. L. 93-288 was classified to section 5172 of this title prior to repeal by Pub. L. 100-707.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5159 of this title; title 7 section 2014; title 16 section 3505.

§ 5170b. Essential assistance

(a) In general

Federal agencies may on the direction of the President, provide assistance essential to meeting immediate threats to life and property resulting from a major disaster, as follows:

(1) Federal resources, generally

Utilizing, lending, or donating to State and local governments Federal equipment, supplies, facilities, personnel, and other resources, other than the extension of credit, for use or distribution by such governments in accordance with the purposes of this chapter.

(2) Medicine, food, and other consumables

Distributing or rendering through State and local governments, the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, and other relief and disaster assistance organizations medicine, food, and other consumable supplies, and other services and assistance to disaster victims.

(3) Work and services to save lives and protect property

Performing on public or private lands or waters any work or services essential to saving lives and protecting and preserving property or public health and safety, including—

(A) debris removal;

(B) search and rescue, emergency medical care, emergency mass care, emergency shelter, and provision of food, water, medicine, and other essential needs, including movement of supplies or persons;

(C) clearance of roads and construction of temporary bridges necessary to the performance of emergency tasks and essential community services;

(D) provision of temporary facilities for schools and other essential community services;

(E) demolition of unsafe structures which endanger the public;

(F) warning of further risks and hazards;

(G) dissemination of public information and assistance regarding health and safety measures;

(H) provision of technical advice to State and local governments on disaster management and control; and

(I) reduction of immediate threats to life, property, and public health and safety.

(4) Contributions

Making contributions to State or local governments or owners or operators of private nonprofit facilities for the purpose of carrying out the provisions of this subsection.

(b) Federal share

The Federal share of assistance under this section shall be not less than 75 percent of the eligible cost of such assistance.

(c) Utilization of DOD resources

(1) General rule

During the immediate aftermath of an incident which may ultimately qualify for assistance under this subchapter or subchapter IV-A of this chapter, the Governor of the State in which such incident occurred may request the President to direct the Secretary of Defense to utilize the resources of the Department of Defense for the purpose of performing on public and private lands any emergency work which is made necessary by such incident and which is essential for the preservation of life and property. If the President determines that such work is essential for the preservation of life and property, the President shall grant such request to the extent the President determines practicable. Such emergency work may only be carried out for a period not to exceed 10 days.

(2) Rules applicable to debris removal

Any removal of debris and wreckage carried out under this subsection shall be subject to section 5173(b) of this title, relating to unconditional authorization and indemnification for debris removal.

(3) Expenditures out of disaster relief funds

The cost of any assistance provided pursuant to this subsection shall be reimbursed out of funds made available to carry out this chapter.

(4) Federal share

The Federal share of assistance under this subsection shall be not less than 75 percent.

(5) Guidelines

Not later than 180 days after November 23, 1988, the President shall issue guidelines for carrying out this subsection. Such guidelines shall consider any likely effect assistance under this subsection will have on the availability of other forms of assistance under this chapter.

(6) Definitions

For purposes of this section—

(A) Department of Defense

The term “Department of Defense” has the meaning the term “department” has under section 101 of title 10.

(B) Emergency work

The term “emergency work” includes clearance and removal of debris and wreckage and temporary restoration of essential public facilities and services.

(Pub. L. 93-288, title IV, §403, as added Pub. L. 100-707, title I, §106(a)(3), Nov. 23, 1988, 102 Stat. 4697.)

PRIOR PROVISIONS

A prior section 403 of Pub. L. 93-288 was renumbered section 407 by Pub. L. 100-707 and is classified to section 5173 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5159, 5187, 5189, 5204a, 5204c of this title; title 16 section 3505.

§ 5170c. Hazard mitigation**(a) In general**

The President may contribute up to 75 percent of the cost of hazard mitigation measures which the President has determined are cost-effective and which substantially reduce the risk of future damage, hardship, loss, or suffering in any area affected by a major disaster. Such measures shall be identified following the evaluation of natural hazards under section 5165 of this title and shall be subject to approval by the President. Subject to section 5165 of this title, the total of contributions under this section for a major disaster shall not exceed 7.5 percent of the estimated aggregate amount of grants to be made (less any associated administrative costs) under this chapter with respect to the major disaster.

(b) Property acquisition and relocation assistance**(1) General authority**

In providing hazard mitigation assistance under this section in connection with flooding, the Director of the Federal Emergency Management Agency may provide property acquisition and relocation assistance for projects that meet the requirements of paragraph (2).

(2) Terms and conditions

An acquisition or relocation project shall be eligible to receive assistance pursuant to paragraph (1) only if—

(A) the applicant for the assistance is otherwise eligible to receive assistance under the hazard mitigation grant program

established under subsection (a) of this section; and

(B) on or after December 3, 1993, the applicant for the assistance enters into an agreement with the Director that provides assurances that—

(i) any property acquired, accepted, or from which a structure will be removed pursuant to the project will be dedicated and maintained in perpetuity for a use that is compatible with open space, recreational, or wetlands management practices;

(ii) no new structure will be erected on property acquired, accepted or from which a structure was removed under the acquisition or relocation program other than—

(I) a public facility that is open on all sides and functionally related to a designated open space;

(II) a rest room; or

(III) a structure that the Director approves in writing before the commencement of the construction of the structure; and

(iii) after receipt of the assistance, with respect to any property acquired, accepted or from which a structure was removed under the acquisition or relocation program—

(I) no subsequent application for additional disaster assistance for any purpose will be made by the recipient to any Federal entity; and

(II) no assistance referred to in subclause (I) will be provided to the applicant by any Federal source.

(3) Statutory construction

Nothing in this subsection is intended to alter or otherwise affect an agreement for an acquisition or relocation project carried out pursuant to this section that was in effect on the day before December 3, 1993.

(c) Program administration by States**(1) In general**

A State desiring to administer the hazard mitigation grant program established by this section with respect to hazard mitigation assistance in the State may submit to the President an application for the delegation of the authority to administer the program.

(2) Criteria

The President, in consultation and coordination with States and local governments, shall establish criteria for the approval of applications submitted under paragraph (1). The criteria shall include, at a minimum—

(A) the demonstrated ability of the State to manage the grant program under this section;

(B) there being in effect an approved mitigation plan under section 5165 of this title; and

(C) a demonstrated commitment to mitigation activities.

(3) Approval

The President shall approve an application submitted under paragraph (1) that meets the criteria established under paragraph (2).

(4) Withdrawal of approval

If, after approving an application of a State submitted under paragraph (1), the President determines that the State is not administering the hazard mitigation grant program established by this section in a manner satisfactory to the President, the President shall withdraw the approval.

(5) Audits

The President shall provide for periodic audits of the hazard mitigation grant programs administered by States under this subsection.

(Pub. L. 93-288, title IV, § 404, as added Pub. L. 100-707, title I, § 106(a)(3), Nov. 23, 1988, 102 Stat. 4698; amended Pub. L. 103-181, §§ 2(a), 3, Dec. 3, 1993, 107 Stat. 2054; Pub. L. 106-390, title I, § 104(c)(1), title II, § 204, Oct. 30, 2000, 114 Stat. 1559, 1561; Pub. L. 108-7, div. K, title IV, § 417, Feb. 20, 2003, 117 Stat. 525.)

PRIOR PROVISIONS

A prior section 404 of Pub. L. 93-288 was classified to section 5174 of this title prior to repeal by Pub. L. 100-707.

AMENDMENTS

2003—Subsec. (a). Pub. L. 108-7 substituted “7.5 percent” for “15 percent”.

2000—Subsec. (a). Pub. L. 106-390, § 104(c)(1), substituted “section 5165” for “section 5176” in second sentence and “Subject to section 5165 of this title, the total” for “The total” in third sentence.

Subsec. (c). Pub. L. 106-390, § 204, added subsec. (c).

1993—Pub. L. 103-181 designated existing provisions as subsec. (a), inserted heading, substituted “75 percent” for “50 percent” in first sentence, substituted “15 percent of the estimated aggregate amount of grants to be made (less any associated administrative costs) under this chapter with respect to the major disaster” for “10 percent of the estimated aggregate amounts of grants to be made under section 5172 of this title with respect to such major disaster” in last sentence, and added subsec. (b).

EFFECTIVE DATE OF 1993 AMENDMENT

Section 2(b) of Pub. L. 103-181 provided that: “The amendments made by this section [amending this section] shall apply to any major disaster declared by the President pursuant to The [the] Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) on or after June 10, 1993.”

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 313(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5165, 5204c of this title.

§ 5171. Federal facilities**(a) Repair, reconstruction, restoration, or replacement of United States facilities**

The President may authorize any Federal agency to repair, reconstruct, restore, or replace

any facility owned by the United States and under the jurisdiction of such agency which is damaged or destroyed by any major disaster if he determines that such repair, reconstruction, restoration, or replacement is of such importance and urgency that it cannot reasonably be deferred pending the enactment of specific authorizing legislation or the making of an appropriation for such purposes, or the obtaining of congressional committee approval.

(b) Availability of funds appropriated to agency for repair, reconstruction, restoration, or replacement of agency facilities

In order to carry out the provisions of this section, such repair, reconstruction, restoration, or replacement may be begun notwithstanding a lack or an insufficiency of funds appropriated for such purpose, where such lack or insufficiency can be remedied by the transfer, in accordance with law, of funds appropriated to that agency for another purpose.

(c) Steps for mitigation of hazards

In implementing this section, Federal agencies shall evaluate the natural hazards to which these facilities are exposed and shall take appropriate action to mitigate such hazards, including safe land-use and construction practices, in accordance with standards prescribed by the President.

(Pub. L. 93-288, title IV, § 405, formerly § 401, May 22, 1974, 88 Stat. 153; renumbered § 405, Pub. L. 100-707, title I, § 106(a)(2), Nov. 23, 1988, 102 Stat. 4696.)

PRIOR PROVISIONS

A prior section 405 of Pub. L. 93-288 was classified to section 5175 of this title prior to repeal by Pub. L. 100-707.

§ 5172. Repair, restoration, and replacement of damaged facilities**(a) Contributions****(1) In general**

The President may make contributions—

(A) to a State or local government for the repair, restoration, reconstruction, or replacement of a public facility damaged or destroyed by a major disaster and for associated expenses incurred by the government; and

(B) subject to paragraph (3), to a person that owns or operates a private nonprofit facility damaged or destroyed by a major disaster for the repair, restoration, reconstruction, or replacement of the facility and for associated expenses incurred by the person.

(2) Associated expenses

For the purposes of this section, associated expenses shall include—

(A) the costs of mobilizing and employing the National Guard for performance of eligible work;

(B) the costs of using prison labor to perform eligible work, including wages actually paid, transportation to a worksite, and extraordinary costs of guards, food, and lodging; and

(C) base and overtime wages for the employees and extra hires of a State, local gov-

ernment, or person described in paragraph (1) that perform eligible work, plus fringe benefits on such wages to the extent that such benefits were being paid before the major disaster.

(3) Conditions for assistance to private nonprofit facilities

(A) In general

The President may make contributions to a private nonprofit facility under paragraph (1)(B) only if—

(i) the facility provides critical services (as defined by the President) in the event of a major disaster; or

(ii) the owner or operator of the facility—

(I) has applied for a disaster loan under section 636(b) of title 15; and

(II)(aa) has been determined to be ineligible for such a loan; or

(bb) has obtained such a loan in the maximum amount for which the Small Business Administration determines the facility is eligible.

(B) Definition of critical services

In this paragraph, the term “critical services” includes power, water (including water provided by an irrigation organization or facility), sewer, wastewater treatment, communications, and emergency medical care.

(4) Notification to Congress

Before making any contribution under this section in an amount greater than \$20,000,000, the President shall notify—

(A) the Committee on Environment and Public Works of the Senate;

(B) the Committee on Transportation and Infrastructure of the House of Representatives;

(C) the Committee on Appropriations of the Senate; and

(D) the Committee on Appropriations of the House of Representatives.

(b) Federal share

(1) Minimum Federal share

Except as provided in paragraph (2), the Federal share of assistance under this section shall be not less than 75 percent of the eligible cost of repair, restoration, reconstruction, or replacement carried out under this section.

(2) Reduced Federal share

The President shall promulgate regulations to reduce the Federal share of assistance under this section to not less than 25 percent in the case of the repair, restoration, reconstruction, or replacement of any eligible public facility or private nonprofit facility following an event associated with a major disaster—

(A) that has been damaged, on more than one occasion within the preceding 10-year period, by the same type of event; and

(B) the owner of which has failed to implement appropriate mitigation measures to address the hazard that caused the damage to the facility.

(c) Large in-lieu contributions

(1) For public facilities

(A) In general

In any case in which a State or local government determines that the public welfare would not best be served by repairing, restoring, reconstructing, or replacing any public facility owned or controlled by the State or local government, the State or local government may elect to receive, in lieu of a contribution under subsection (a)(1)(A) of this section, a contribution in an amount equal to 75 percent of the Federal share of the Federal estimate of the cost of repairing, restoring, reconstructing, or replacing the facility and of management expenses.

(B) Areas with unstable soil

In any case in which a State or local government determines that the public welfare would not best be served by repairing, restoring, reconstructing, or replacing any public facility owned or controlled by the State or local government because soil instability in the disaster area makes repair, restoration, reconstruction, or replacement infeasible, the State or local government may elect to receive, in lieu of a contribution under subsection (a)(1)(A) of this section, a contribution in an amount equal to 90 percent of the Federal share of the Federal estimate of the cost of repairing, restoring, reconstructing, or replacing the facility and of management expenses.

(C) Use of funds

Funds contributed to a State or local government under this paragraph may be used—

(i) to repair, restore, or expand other selected public facilities;

(ii) to construct new facilities; or

(iii) to fund hazard mitigation measures that the State or local government determines to be necessary to meet a need for governmental services and functions in the area affected by the major disaster.

(D) Limitations

Funds made available to a State or local government under this paragraph may not be used for—

(i) any public facility located in a regulatory floodway (as defined in section 59.1 of title 44, Code of Federal Regulations (or a successor regulation)); or

(ii) any uninsured public facility located in a special flood hazard area identified by the Director of the Federal Emergency Management Agency under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.).

(2) For private nonprofit facilities

(A) In general

In any case in which a person that owns or operates a private nonprofit facility determines that the public welfare would not best be served by repairing, restoring, reconstructing, or replacing the facility, the person may elect to receive, in lieu of a con-

tribution under subsection (a)(1)(B) of this section, a contribution in an amount equal to 75 percent of the Federal share of the Federal estimate of the cost of repairing, restoring, reconstructing, or replacing the facility and of management expenses.

(B) Use of funds

Funds contributed to a person under this paragraph may be used—

- (i) to repair, restore, or expand other selected private nonprofit facilities owned or operated by the person;
- (ii) to construct new private nonprofit facilities to be owned or operated by the person; or
- (iii) to fund hazard mitigation measures that the person determines to be necessary to meet a need for the person's services and functions in the area affected by the major disaster.

(C) Limitations

Funds made available to a person under this paragraph may not be used for—

- (i) any private nonprofit facility located in a regulatory floodway (as defined in section 59.1 of title 44, Code of Federal Regulations (or a successor regulation)); or
- (ii) any uninsured private nonprofit facility located in a special flood hazard area identified by the Director of the Federal Emergency Management Agency under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.).

(d) Flood insurance

(1) Reduction of Federal assistance

If a public facility or private nonprofit facility located in a special flood hazard area identified for more than 1 year by the Director pursuant to the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.) is damaged or destroyed, after the 180th day following November 23, 1988, by flooding in a major disaster and such facility is not covered on the date of such flooding by flood insurance, the Federal assistance which would otherwise be available under this section with respect to repair, restoration, reconstruction, and replacement of such facility and associated expenses shall be reduced in accordance with paragraph (2).

(2) Amount of reduction

The amount of a reduction in Federal assistance under this section with respect to a facility shall be the lesser of—

- (A) the value of such facility on the date of the flood damage or destruction, or
- (B) the maximum amount of insurance proceeds which would have been payable with respect to such facility if such facility had been covered by flood insurance under the National Flood Insurance Act of 1968 on such date.

(3) Exception

Paragraphs (1) and (2) shall not apply to a private nonprofit facility which is not covered by flood insurance solely because of the local government's failure to participate in the flood insurance program established by the National Flood Insurance Act.

(4) Dissemination of information

The President shall disseminate information regarding the reduction in Federal assistance provided for by this subsection to State and local governments and the owners and operators of private nonprofit facilities who may be affected by such a reduction.

(e) Eligible cost

(1) Determination

(A) In general

For the purposes of this section, the President shall estimate the eligible cost of repairing, restoring, reconstructing, or replacing a public facility or private nonprofit facility—

- (i) on the basis of the design of the facility as the facility existed immediately before the major disaster; and
- (ii) in conformity with codes, specifications, and standards (including floodplain management and hazard mitigation criteria required by the President or under the Coastal Barrier Resources Act (16 U.S.C. 3501 et seq.)) applicable at the time at which the disaster occurred.

(B) Cost estimation procedures

(i) In general

Subject to paragraph (2), the President shall use the cost estimation procedures established under paragraph (3) to determine the eligible cost under this subsection.

(ii) Applicability

The procedures specified in this paragraph and paragraph (2) shall apply only to projects the eligible cost of which is equal to or greater than the amount specified in section 5189 of this title.

(2) Modification of eligible cost

(A) Actual cost greater than ceiling percentage of estimated cost

In any case in which the actual cost of repairing, restoring, reconstructing, or replacing a facility under this section is greater than the ceiling percentage established under paragraph (3) of the cost estimated under paragraph (1), the President may determine that the eligible cost includes a portion of the actual cost of the repair, restoration, reconstruction, or replacement that exceeds the cost estimated under paragraph (1).

(B) Actual cost less than estimated cost

(i) Greater than or equal to floor percentage of estimated cost

In any case in which the actual cost of repairing, restoring, reconstructing, or replacing a facility under this section is less than 100 percent of the cost estimated under paragraph (1), but is greater than or equal to the floor percentage established under paragraph (3) of the cost estimated under paragraph (1), the State or local government or person receiving funds under this section shall use the excess funds to carry out cost-effective activities that re-

duce the risk of future damage, hardship, or suffering from a major disaster.

(ii) Less than floor percentage of estimated cost

In any case in which the actual cost of repairing, restoring, reconstructing, or replacing a facility under this section is less than the floor percentage established under paragraph (3) of the cost estimated under paragraph (1), the State or local government or person receiving assistance under this section shall reimburse the President in the amount of the difference.

(C) No effect on appeals process

Nothing in this paragraph affects any right of appeal under section 5189a of this title.

(3) Expert panel

(A) Establishment

Not later than 18 months after October 30, 2000, the President, acting through the Director of the Federal Emergency Management Agency, shall establish an expert panel, which shall include representatives from the construction industry and State and local government.

(B) Duties

The expert panel shall develop recommendations concerning—

- (i) procedures for estimating the cost of repairing, restoring, reconstructing, or replacing a facility consistent with industry practices; and
- (ii) the ceiling and floor percentages referred to in paragraph (2).

(C) Regulations

Taking into account the recommendations of the expert panel under subparagraph (B), the President shall promulgate regulations that establish—

- (i) cost estimation procedures described in subparagraph (B)(i); and
- (ii) the ceiling and floor percentages referred to in paragraph (2).

(D) Review by President

Not later than 2 years after the date of promulgation of regulations under subparagraph (C) and periodically thereafter, the President shall review the cost estimation procedures and the ceiling and floor percentages established under this paragraph.

(E) Report to Congress

Not later than 1 year after the date of promulgation of regulations under subparagraph (C), 3 years after that date, and at the end of each 2-year period thereafter, the expert panel shall submit to Congress a report on the appropriateness of the cost estimation procedures.

(4) Special rule

In any case in which the facility being repaired, restored, reconstructed, or replaced under this section was under construction on the date of the major disaster, the cost of repairing, restoring, reconstructing, or replacing

the facility shall include, for the purposes of this section, only those costs that, under the contract for the construction, are the owner's responsibility and not the contractor's responsibility.

(Pub. L. 93-288, title IV, §406, as added Pub. L. 100-707, title I, §106(b), Nov. 23, 1988, 102 Stat. 4699; amended Pub. L. 106-390, title II, §205(a)-(d)(1), (e), Oct. 30, 2000, 114 Stat. 1562-1564, 1566.)

REFERENCES IN TEXT

The National Flood Insurance Act of 1968, referred to in subsecs. (c)(1)(D)(ii), (2)(C)(ii) and (d)(1), (2)(B), is title XIII of Pub. L. 90-448, Aug. 1, 1968, 82 Stat. 572, as amended, which is classified principally to chapter 50 (§4001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4001 of this title and Tables.

The National Flood Insurance Act, referred to in subsec. (d)(3), probably means the National Flood Insurance Act of 1968. See above.

The Coastal Barrier Resources Act, referred to in subsec. (e)(1)(A)(ii), is Pub. L. 97-348, Oct. 18, 1982, 96 Stat. 1653, as amended, which is classified principally to chapter 55 (§3501 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 3501 of Title 16 and Tables.

PRIOR PROVISIONS

A prior section 5172, Pub. L. 93-288, title IV, §402, May 22, 1974, 88 Stat. 153, related to repair and restoration of damaged facilities, prior to repeal by Pub. L. 100-707, §106(b).

A prior section 406 of Pub. L. 93-288 was renumbered section 409 by Pub. L. 100-707 and is classified to section 5176 of this title.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106-390, §205(a), added subsec. (a) and struck out heading and text of former subsec. (a). Text read as follows: "The President may make contributions—

"(1) to a State or local government for the repair, restoration, reconstruction, or replacement of a public facility which is damaged or destroyed by a major disaster and for associated expenses incurred by such government; and

"(2) to a person who owns or operates a private non-profit facility damaged or destroyed by a major disaster for the repair, restoration, reconstruction, or replacement of such facility and for associated expenses incurred by such person."

Subsec. (b). Pub. L. 106-390, §205(b), added subsec. (b) and struck out heading and text of former subsec. (b). Text read as follows: "The Federal share of assistance under this section shall be not less than—

"(1) 75 percent of the net eligible cost of repair, restoration, reconstruction, or replacement carried out under this section;

"(2) 100 percent of associated expenses described in subsections (f)(1) and (f)(2) of this section; and

"(3) 75 percent of associated expenses described in subsections (f)(3), (f)(4), and (f)(5) of this section."

Subsec. (c). Pub. L. 106-390, §205(c), added subsec. (c) and struck out heading and text of former subsec. (c) which provided that, upon a determination that the public welfare would not be best served by repairing, restoring, reconstructing, or replacing either a public facility or a private nonprofit facility, an election could be made to receive, in lieu of a contribution under subsec. (a), a contribution of not to exceed 90 percent of the Federal share of the Federal estimate of the cost of repairing, restoring, reconstructing, or replacing the facility and of associated expenses, with the restriction that such funds not be used for any State or

local government cost-sharing contribution required under this chapter.

Subsec. (e). Pub. L. 106-390, §205(d)(1), added subsec. (e) and struck out heading and text of former subsec. (e). Text read as follows:

“(1) GENERAL RULE.—For purposes of this section, the cost of repairing, restoring, reconstructing, or replacing a public facility or private nonprofit facility on the basis of the design of such facility as it existed immediately prior to the major disaster and in conformity with current applicable codes, specifications, and standards (including floodplain management and hazard mitigation criteria required by the President or by the Coastal Barrier Resources Act (16 U.S.C. 3501 et seq.)) shall, at a minimum, be treated as the net eligible cost of such repair, restoration, reconstruction, or replacement.

“(2) SPECIAL RULE.—In any case in which the facility being repaired, restored, reconstructed, or replaced under this section was under construction on the date of the major disaster, the cost of repairing, restoring, reconstructing, or replacing such facility shall include, for purposes of this section, only those costs which, under the contract for such construction, are the owner’s responsibility and not the contractor’s responsibility.”

Subsec. (f). Pub. L. 106-390, §205(e), struck out subsec. (f) which set out various associated expenses, including necessary and extraordinary costs, and costs of using the National Guard and prison labor.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-390, title II, §205(d)(2), Oct. 30, 2000, 114 Stat. 1566, provided that: “The amendment made by paragraph (1) [amending this section] takes effect on the date of the enactment of this Act [Oct. 30, 2000] and applies to funds appropriated after the date of the enactment of this Act, except that paragraph (1) of section 406(e) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act [subsec. (e)(1) of this section] (as amended by paragraph (1)) takes effect on the date on which the cost estimation procedures established under paragraph (3) of that section take effect.”

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 313(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5154, 5159, 5189, 5204a, 5204c of this title; title 16 section 1536.

§ 5173. Debris removal

(a) Presidential authority

The President, whenever he determines it to be in the public interest, is authorized—

(1) through the use of Federal departments, agencies, and instrumentalities, to clear debris and wreckage resulting from a major disaster from publicly and privately owned lands and waters; and

(2) to make grants to any State or local government or owner or operator of a private nonprofit facility for the purpose of removing debris or wreckage resulting from a major disaster from publicly or privately owned lands and waters.

(b) Authorization by State or local government; indemnification agreement

No authority under this section shall be exercised unless the affected State or local government shall first arrange an unconditional authorization for removal of such debris or wreckage from public and private property, and, in the case of removal of debris or wreckage from private property, shall first agree to indemnify the Federal Government against any claim arising from such removal.

(c) Rules relating to large lots

The President shall issue rules which provide for recognition of differences existing among urban, suburban, and rural lands in implementation of this section so as to facilitate adequate removal of debris and wreckage from large lots.

(d) Federal share

The Federal share of assistance under this section shall be not less than 75 percent of the eligible cost of debris and wreckage removal carried out under this section.

(Pub. L. 93-288, title IV, §407, formerly §403, May 22, 1974, 88 Stat. 154; renumbered §407 and amended Pub. L. 100-707, title I, §106(c), Nov. 23, 1988, 102 Stat. 4701.)

PRIOR PROVISIONS

A prior section 407 of Pub. L. 93-288 was renumbered section 410 by Pub. L. 100-707 and is classified to section 5177 of this title.

AMENDMENTS

1988—Subsec. (a)(2). Pub. L. 100-707, §106(c)(2), inserted “or owner or operator of a private nonprofit facility” after “local government”.

Subsecs. (c), (d). Pub. L. 100-707, §106(c)(3), added subsecs. (c) and (d).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5159, 5170b, 5189, 5192, 5204c of this title.

§ 5174. Federal assistance to individuals and households

(a) In general

(1) Provision of assistance

In accordance with this section, the President, in consultation with the Governor of a State, may provide financial assistance, and, if necessary, direct services, to individuals and households in the State who, as a direct result of a major disaster, have necessary expenses and serious needs in cases in which the individuals and households are unable to meet such expenses or needs through other means.

(2) Relationship to other assistance

Under paragraph (1), an individual or household shall not be denied assistance under paragraph (1), (3), or (4) of subsection (c) of this section solely on the basis that the individual or household has not applied for or received any loan or other financial assistance from the Small Business Administration or any other Federal agency.

(b) Housing assistance

(1) Eligibility

The President may provide financial or other assistance under this section to individ-

uals and households to respond to the disaster-related housing needs of individuals and households who are displaced from their predisaster primary residences or whose predisaster primary residences are rendered uninhabitable as a result of damage caused by a major disaster.

(2) Determination of appropriate types of assistance

(A) In general

The President shall determine appropriate types of housing assistance to be provided under this section to individuals and households described in subsection (a)(1) of this section based on considerations of cost effectiveness, convenience to the individuals and households, and such other factors as the President may consider appropriate.

(B) Multiple types of assistance

One or more types of housing assistance may be made available under this section, based on the suitability and availability of the types of assistance, to meet the needs of individuals and households in the particular disaster situation.

(c) Types of housing assistance

(1) Temporary housing

(A) Financial assistance

(i) In general

The President may provide financial assistance to individuals or households to rent alternate housing accommodations, existing rental units, manufactured housing, recreational vehicles, or other readily fabricated dwellings.

(ii) Amount

The amount of assistance under clause (i) shall be based on the fair market rent for the accommodation provided plus the cost of any transportation, utility hook-ups, or unit installation not provided directly by the President.

(B) Direct assistance

(i) In general

The President may provide temporary housing units, acquired by purchase or lease, directly to individuals or households who, because of a lack of available housing resources, would be unable to make use of the assistance provided under subparagraph (A).

(ii) Period of assistance

The President may not provide direct assistance under clause (i) with respect to a major disaster after the end of the 18-month period beginning on the date of the declaration of the major disaster by the President, except that the President may extend that period if the President determines that due to extraordinary circumstances an extension would be in the public interest.

(iii) Collection of rental charges

After the end of the 18-month period referred to in clause (ii), the President may

charge fair market rent for each temporary housing unit provided.

(2) Repairs

(A) In general

The President may provide financial assistance for—

(i) the repair of owner-occupied private residences, utilities, and residential infrastructure (such as a private access route) damaged by a major disaster to a safe and sanitary living or functioning condition; and

(ii) eligible hazard mitigation measures that reduce the likelihood of future damage to such residences, utilities, or infrastructure.

(B) Relationship to other assistance

A recipient of assistance provided under this paragraph shall not be required to show that the assistance can be met through other means, except insurance proceeds.

(C) Maximum amount of assistance

The amount of assistance provided to a household under this paragraph shall not exceed \$5,000, as adjusted annually to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

(3) Replacement

(A) In general

The President may provide financial assistance for the replacement of owner-occupied private residences damaged by a major disaster.

(B) Maximum amount of assistance

The amount of assistance provided to a household under this paragraph shall not exceed \$10,000, as adjusted annually to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

(C) Applicability of flood insurance requirement

With respect to assistance provided under this paragraph, the President may not waive any provision of Federal law requiring the purchase of flood insurance as a condition of the receipt of Federal disaster assistance.

(4) Permanent housing construction

The President may provide financial assistance or direct assistance to individuals or households to construct permanent housing in insular areas outside the continental United States and in other remote locations in cases in which—

(A) no alternative housing resources are available; and

(B) the types of temporary housing assistance described in paragraph (1) are unavailable, infeasible, or not cost-effective.

(d) Terms and conditions relating to housing assistance

(1) Sites

(A) In general

Any readily fabricated dwelling provided under this section shall, whenever practicable, be located on a site that—

(i) is complete with utilities; and

(ii) is provided by the State or local government, by the owner of the site, or by the occupant who was displaced by the major disaster.

(B) Sites provided by the President

A readily fabricated dwelling may be located on a site provided by the President if the President determines that such a site would be more economical or accessible.

(2) Disposal of units

(A) Sale to occupants

(i) In general

Notwithstanding any other provision of law, a temporary housing unit purchased under this section by the President for the purpose of housing disaster victims may be sold directly to the individual or household who is occupying the unit if the individual or household lacks permanent housing.

(ii) Sale price

A sale of a temporary housing unit under clause (i) shall be at a price that is fair and equitable.

(iii) Deposit of proceeds

Notwithstanding any other provision of law, the proceeds of a sale under clause (i) shall be deposited in the appropriate Disaster Relief Fund account.

(iv) Hazard and flood insurance

A sale of a temporary housing unit under clause (i) shall be made on the condition that the individual or household purchasing the housing unit agrees to obtain and maintain hazard and flood insurance on the housing unit.

(v) Use of GSA services

The President may use the services of the General Services Administration to accomplish a sale under clause (i).

(B) Other methods of disposal

If not disposed of under subparagraph (A), a temporary housing unit purchased under this section by the President for the purpose of housing disaster victims—

(i) may be sold to any person; or

(ii) may be sold, transferred, donated, or otherwise made available directly to a State or other governmental entity or to a voluntary organization for the sole purpose of providing temporary housing to disaster victims in major disasters and emergencies if, as a condition of the sale, transfer, or donation, the State, other governmental agency, or voluntary organization agrees—

(I) to comply with the nondiscrimination provisions of section 5151 of this title; and

(II) to obtain and maintain hazard and flood insurance on the housing unit.

(e) Financial assistance to address other needs

(1) Medical, dental, and funeral expenses

The President, in consultation with the Governor of a State, may provide financial assist-

ance under this section to an individual or household in the State who is adversely affected by a major disaster to meet disaster-related medical, dental, and funeral expenses.

(2) Personal property, transportation, and other expenses

The President, in consultation with the Governor of a State, may provide financial assistance under this section to an individual or household described in paragraph (1) to address personal property, transportation, and other necessary expenses or serious needs resulting from the major disaster.

(f) State role

(1) Financial assistance to address other needs

(A) Grant to State

Subject to subsection (g) of this section, a Governor may request a grant from the President to provide financial assistance to individuals and households in the State under subsection (e) of this section.

(B) Administrative costs

A State that receives a grant under subparagraph (A) may expend not more than 5 percent of the amount of the grant for the administrative costs of providing financial assistance to individuals and households in the State under subsection (e) of this section.

(2) Access to records

In providing assistance to individuals and households under this section, the President shall provide for the substantial and ongoing involvement of the States in which the individuals and households are located, including by providing to the States access to the electronic records of individuals and households receiving assistance under this section in order for the States to make available any additional State and local assistance to the individuals and households.

(g) Cost sharing

(1) Federal share

Except as provided in paragraph (2), the Federal share of the costs eligible to be paid using assistance provided under this section shall be 100 percent.

(2) Financial assistance to address other needs

In the case of financial assistance provided under subsection (e) of this section—

(A) the Federal share shall be 75 percent; and

(B) the non-Federal share shall be paid from funds made available by the State.

(h) Maximum amount of assistance

(1) In general

No individual or household shall receive financial assistance greater than \$25,000 under this section with respect to a single major disaster.

(2) Adjustment of limit

The limit established under paragraph (1) shall be adjusted annually to reflect changes in the Consumer Price Index for All Urban

Consumers published by the Department of Labor.

(i) Rules and regulations

The President shall prescribe rules and regulations to carry out this section, including criteria, standards, and procedures for determining eligibility for assistance.

(Pub. L. 93-288, title IV, § 408, as added Pub. L. 100-707, title I, § 106(d), Nov. 23, 1988, 102 Stat. 4702; amended Pub. L. 106-390, title II, § 206(a), Oct. 30, 2000, 114 Stat. 1566.)

PRIOR PROVISIONS

A prior section 5174, Pub. L. 93-288, title IV, § 404, May 22, 1974, 88 Stat. 154, related to temporary housing assistance, prior to repeal by Pub. L. 100-707, § 106(d).

A prior section 408 of Pub. L. 93-288 was classified to section 5178 of this title and to a note set out under section 5178 of this title prior to repeal by Pub. L. 100-707.

AMENDMENTS

2000—Pub. L. 106-390 amended section catchline and text generally. Prior to amendment, text provided for temporary housing assistance through provision of temporary housing, temporary mortgage and rental payment assistance, expenditures to repair or restore owner-occupied private residential structures made uninhabitable by a major disaster which are capable of being restored quickly, and transfer of temporary housing to occupants or to States, local governments, and voluntary organizations, required notification to applicants for assistance, and set out location factors to be given consideration in the provision of assistance.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-390, title II, § 206(d), Oct. 30, 2000, 114 Stat. 1571, provided that: “The amendments made by this section [amending this section and section 5192 of this title and repealing section 5178 of this title] take effect 18 months after the date of the enactment of this Act [Oct. 30, 2000].”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5192, 5204c of this title.

§ 5175. Repealed. Pub. L. 100-707, title I, § 105(m)(2), Nov. 23, 1988, 102 Stat. 4696

Section, Pub. L. 93-288, title IV, § 405, May 22, 1974, 88 Stat. 155, related to protection of environment.

§ 5176. Repealed. Pub. L. 106-390, title I, § 104(c)(2), Oct. 30, 2000, 114 Stat. 1559

Section, Pub. L. 93-288, title IV, § 409, formerly § 406, May 22, 1974, 88 Stat. 155; renumbered § 409, Pub. L. 100-707, title I, § 106(e), Nov. 23, 1988, 102 Stat. 4703, related to minimum standards for public and private structures.

A prior section 409 of Pub. L. 93-288 was renumbered section 412 by Pub. L. 100-707 and is classified to section 5179 of this title.

§ 5177. Unemployment assistance

(a) Benefit assistance

The President is authorized to provide to any individual unemployed as a result of a major disaster such benefit assistance as he deems appropriate while such individual is unemployed for the weeks of such unemployment with respect to which the individual is not entitled to any other unemployment compensation (as that term is defined in section 85(b) of title 26) or

waiting period credit. Such assistance as the President shall provide shall be available to an individual as long as the individual's unemployment caused by the major disaster continues or until the individual is reemployed in a suitable position, but no longer than 26 weeks after the major disaster is declared. Such assistance for a week of unemployment shall not exceed the maximum weekly amount authorized under the unemployment compensation law of the State in which the disaster occurred. The President is directed to provide such assistance through agreements with States which, in his judgment, have an adequate system for administering such assistance through existing State agencies.

(b) Reemployment assistance

(1) State assistance

A State shall provide, without reimbursement from any funds provided under this chapter, reemployment assistance services under any other law administered by the State to individuals receiving benefits under this section.

(2) Federal assistance

The President may provide reemployment assistance services under other laws to individuals who are unemployed as a result of a major disaster and who reside in a State which does not provide such services.

(Pub. L. 93-288, title IV, § 410, formerly § 407, May 22, 1974, 88 Stat. 156; renumbered § 410 and amended Pub. L. 100-707, title I, § 106(e), (f), Nov. 23, 1988, 102 Stat. 4703, 4704.)

PRIOR PROVISIONS

A prior section 410 of Pub. L. 93-288 was renumbered section 413 by Pub. L. 100-707 and is classified to section 5180 of this title.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100-707, § 106(f)(1)–(3), inserted “for the weeks of such unemployment with respect to which the individual is not entitled to any other unemployment compensation (as that term is defined in section 85(b) of title 26) or waiting period credit” for “is unemployed” before period at end of first sentence, substituted “26 weeks” for “one year” in second sentence, and substituted “occurred” for “occurred, and the amount of assistance under this section to any such individual for a week of unemployment shall be reduced by any amount of unemployment compensation or of private income protection insurance compensation available to such individual for such week of unemployment” in third sentence.

Subsec. (b). Pub. L. 100-707, § 106(f)(4), inserted heading and amended text generally. Prior to amendment, text read as follows: “The President is further authorized for the purposes of this chapter to provide reemployment assistance services under other laws to individuals who are unemployed as a result of a major disaster.”

§ 5177a. Emergency grants to assist low-income migrant and seasonal farmworkers

(a) In general

The Secretary of Agriculture may make grants to public agencies or private organizations with tax exempt status under section 501(c)(3) of title 26, that have experience in providing emergency services to low-income migrant and seasonal farmworkers where the Secretary determines that a local, State or national

emergency or disaster has caused low-income migrant or seasonal farmworkers to lose income, to be unable to work, or to stay home or return home in anticipation of work shortages. Emergency services to be provided with assistance received under this section may include such types of assistance as the Secretary of Agriculture determines to be necessary and appropriate.

(b) “Low-income migrant or seasonal farmworker” defined

For the purposes of this section, the term “low-income migrant or seasonal farmworker” means an individual—

(1) who has, during any consecutive 12 month period within the preceding 24 month period, performed farm work for wages;

(2) who has received not less than one-half of such individual’s total income, or been employed at least one-half of total work time in farm work; and

(3) whose annual family income within the 12 month period referred to in paragraph (1) does not exceed the higher of the poverty level or 70 percent of the lower living standard income level.

(c) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out this section.

(Pub. L. 101-624, title XXII, §2281, Nov. 28, 1990, 104 Stat. 3978; Pub. L. 107-171, title X, §10102, May 13, 2002, 116 Stat. 488.)

CODIFICATION

Section was enacted as part of the Food, Agriculture, Conservation, and Trade Act of 1990, and not as part of the Robert T. Stafford Disaster Relief and Emergency Assistance Act which comprises this chapter.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107-171 struck out “, not to exceed \$20,000,000 annually,” after “Secretary of Agriculture may make grants”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 section 917; title 19 section 3391.

§ 5178. Repealed. Pub. L. 106-390, title II, § 206(c), Oct. 30, 2000, 114 Stat. 1571

Section, Pub. L. 93-288, title IV, §411, as added Pub. L. 100-707, title I, §106(g), Nov. 23, 1988, 102 Stat. 4704, related to individual and family grant programs.

EFFECTIVE DATE OF REPEAL

Repeal effective 18 months after Oct. 30, 2000, see section 206(d) of Pub. L. 106-390, set out as an Effective Date of 2000 Amendment note under section 5174 of this title.

PRIOR PROVISIONS

A prior section 5178, Pub. L. 93-288, title IV, §408, May 22, 1974, 88 Stat. 156, related to individual and family grant programs, prior to repeal by Pub. L. 100-707, §106(g).

A prior section 411 of Pub. L. 93-288 was renumbered section 414 by Pub. L. 100-707 and is classified to section 5181 of this title.

§ 5179. Food coupons and distribution

(a) Persons eligible; terms and conditions

Whenever the President determines that, as a result of a major disaster, low-income house-

holds are unable to purchase adequate amounts of nutritious food, he is authorized, under such terms and conditions as he may prescribe, to distribute through the Secretary of Agriculture or other appropriate agencies coupon allotments to such households pursuant to the provisions of the Food Stamp Act of 1964 (P.L. 91-671; 84 Stat. 2048) [7 U.S.C. 2011 et seq.] and to make surplus commodities available pursuant to the provisions of this chapter.

(b) Duration of assistance; factors considered

The President, through the Secretary of Agriculture or other appropriate agencies, is authorized to continue to make such coupon allotments and surplus commodities available to such households for so long as he determines necessary, taking into consideration such factors as he deems appropriate, including the consequences of the major disaster on the earning power of the households, to which assistance is made available under this section.

(c) Food Stamp Act provisions unaffected

Nothing in this section shall be construed as amending or otherwise changing the provisions of the Food Stamp Act of 1964 [7 U.S.C. 2011 et seq.] except as they relate to the availability of food stamps in an area affected by a major disaster.

(Pub. L. 93-288, title IV, §412, formerly §409, May 22, 1974, 88 Stat. 157; renumbered §412, Pub. L. 100-707, title I, §106(h), Nov. 23, 1988, 102 Stat. 4705.)

REFERENCES IN TEXT

The Food Stamp Act of 1964, referred to in subsecs. (a) and (c), is Pub. L. 88-525, Aug. 31, 1964, 78 Stat. 703, as amended, known as the Food Stamp Act of 1977, which is classified generally to chapter 51 (§2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

PRIOR PROVISIONS

A prior section 412 of Pub. L. 93-288 was renumbered section 415 by Pub. L. 100-707 and is classified to section 5182 of this title.

DELEGATION OF FUNCTIONS

Secretary of Agriculture designated and empowered to exercise, without approval, ratification, or other action of President, all authority vested in President by this section concerning food coupons and distribution, see section 3 of Ex. Ord. No. 11795, as amended, set out as a note under section 5121 of this title.

§ 5180. Food commodities

(a) Emergency mass feeding

The President is authorized and directed to assure that adequate stocks of food will be ready and conveniently available for emergency mass feeding or distribution in any area of the United States which suffers a major disaster or emergency.

(b) Funds for purchase of food commodities

The Secretary of Agriculture shall utilize funds appropriated under section 612c of title 7, to purchase food commodities necessary to provide adequate supplies for use in any area of the United States in the event of a major disaster or emergency in such area.

(Pub. L. 93-288, title IV, § 413, formerly § 410, May 22, 1974, 88 Stat. 157; renumbered § 413, Pub. L. 100-707, title I, § 106(h), Nov. 23, 1988, 102 Stat. 4705.)

PRIOR PROVISIONS

A prior section 413 of Pub. L. 93-288 was renumbered section 416 by Pub. L. 100-707 and is classified to section 5183 of this title.

§ 5181. Relocation assistance

Notwithstanding any other provision of law, no person otherwise eligible for any kind of replacement housing payment under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) [42 U.S.C. 4601 et seq.] shall be denied such eligibility as a result of his being unable, because of a major disaster as determined by the President, to meet the occupancy requirements set by such Act.

(Pub. L. 93-288, title IV, § 414, formerly § 411, May 22, 1974, 88 Stat. 157; renumbered § 414, Pub. L. 100-707, title I, § 106(h), Nov. 23, 1988, 102 Stat. 4705.)

REFERENCES IN TEXT

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, referred to in text, is Pub. L. 91-646, Jan. 2, 1971, 84 Stat. 1894, as amended, which is classified principally to chapter 61 (§ 4601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4601 of this title and Tables.

PRIOR PROVISIONS

A prior section 414(a), (b) of Pub. L. 93-288 was renumbered section 417(a), (b) by Pub. L. 100-707 and is classified to section 5184 of this title.

§ 5182. Legal services

Whenever the President determines that low-income individuals are unable to secure legal services adequate to meet their needs as a consequence of a major disaster, consistent with the goals of the programs authorized by this chapter, the President shall assure that such programs are conducted with the advice and assistance of appropriate Federal agencies and State and local bar associations.

(Pub. L. 93-288, title IV, § 415, formerly § 412, May 22, 1974, 88 Stat. 157; renumbered § 415, Pub. L. 100-707, title I, § 106(h), Nov. 23, 1988, 102 Stat. 4705.)

PRIOR PROVISIONS

A prior section 415 of Pub. L. 93-288 was renumbered section 418 by Pub. L. 100-707 and is classified to section 5185 of this title.

§ 5183. Crisis counseling assistance and training

The President is authorized to provide professional counseling services, including financial assistance to State or local agencies or private mental health organizations to provide such services or training of disaster workers, to victims of major disasters in order to relieve mental health problems caused or aggravated by such major disaster or its aftermath.

(Pub. L. 93-288, title IV, § 416, formerly § 413, May 22, 1974, 88 Stat. 157; renumbered § 416 and

amended Pub. L. 100-707, title I, § 106(i), Nov. 23, 1988, 102 Stat. 4705.)

PRIOR PROVISIONS

A prior section 416 of Pub. L. 93-288 was renumbered section 419 by Pub. L. 100-707 and is classified to section 5186 of this title.

AMENDMENTS

1988—Pub. L. 100-707 struck out “(through the National Institute of Mental Health)” after “authorized”.

§ 5184. Community disaster loans

(a) In general

The President is authorized to make loans to any local government which may suffer a substantial loss of tax and other revenues as a result of a major disaster, and has demonstrated a need for financial assistance in order to perform its governmental functions.

(b) Amount

The amount of any such loan shall be based on need, shall not exceed 25 per centum of the annual operating budget of that local government for the fiscal year in which the major disaster occurs, and shall not exceed \$5,000,000.

(c) Repayment

(1) Cancellation

Repayment of all or any part of such loan to the extent that revenues of the local government during the three full fiscal year period following the major disaster are insufficient to meet the operating budget of the local government, including additional disaster-related expenses of a municipal operation character shall be cancelled.

(2) Condition on continuing eligibility

A local government shall not be eligible for further assistance under this section during any period in which the local government is in arrears with respect to a required repayment of a loan under this section.

(d) Effect on other assistance

Any loans made under this section shall not reduce or otherwise affect any grants or other assistance under this chapter.

(Pub. L. 93-288, title IV, § 417, formerly § 414(a), (b), May 22, 1974, 88 Stat. 158; renumbered § 417, Pub. L. 100-707, title I, § 106(j), Nov. 23, 1988, 102 Stat. 4705; Pub. L. 106-390, title II, § 207, Oct. 30, 2000, 114 Stat. 1571.)

CODIFICATION

Prior to renumbering as section 417, section 414 of Pub. L. 93-288 contained a subsec. (c) which was repealed by Pub. L. 97-258, § 5(b), Sept. 13, 1982, 96 Stat. 1082.

PRIOR PROVISIONS

A prior section 417 of Pub. L. 93-288 was renumbered section 420 by Pub. L. 100-707 and is classified to section 5187 of this title.

AMENDMENTS

2000—Pub. L. 106-390, § 207(1)-(3), designated first sentence of subsec. (a) as subsec. (a) and inserted subsec. heading, designated second sentence of subsec. (a) as subsec. (b) and inserted subsec. heading, and designated third sentence of subsec. (a) as subsec. (c)(1) and in-

serted subsec. and par. headings. Former subsec. (b) redesignated (d).

Subsec. (b). Pub. L. 106-390, §207(5), substituted "shall not exceed" for "and shall not exceed" and inserted before period at end ", and shall not exceed \$5,000,000".

Subsec. (c)(2). Pub. L. 106-390, §207(6), added par. (2).
Subsec. (d). Pub. L. 106-390, §207(4), redesignated subsec. (b) as (d) and inserted subsec. heading.

COMMUNITY EMERGENCY DROUGHT RELIEF

Pub. L. 95-31, title I, May 23, 1977, 91 Stat. 169, provided: "That this Act be cited as the 'Community Emergency Drought Relief Act of 1977'.

"SEC. 101. (a) Upon the application of any State, political subdivision of a State, Indian tribe, or public or private nonprofit organization, the Secretary of Commerce is authorized to make grants and loans to applicants in drought impacted areas for projects that implement short-term actions to augment community water supplies where there are severe problems due to water shortages. Such assistance may be for the improvement, expansion, or construction of water supplies, and purchase and transportation of water, which in the opinion of the Secretary of Commerce will make a substantial contribution to the relief of an existing or threatened drought condition in a designated area.

"(b) The Secretary of Commerce may designate any area in the United States as an emergency drought impact area if he or she finds that a major and continuing adverse drought condition exists and is expected to continue, and such condition is causing significant hardships on the affected areas.

"(c) Eligible applicants shall be those States or political subdivisions of States with a population of ten thousand or more, Indian tribes, or public or private nonprofit organizations within areas designated pursuant to subsection (b) of this section.

"(d) Projects assisted under this Act shall be only those with respect to which assurances can be given to the satisfaction of the Secretary of Commerce that the work can be completed by April 30, 1978, or within such extended time as the Secretary may approve in exceptional circumstances.

"SEC. 102. Grants hereunder shall be in an amount not to exceed 50 per centum of allowable project costs. Loans shall be for a term not to exceed 40 years at a per annum interest rate of 5 per centum and shall be on such terms and conditions as the Secretary of Commerce shall determine. In determining the amount of a grant assistance for any project, the Secretary of Commerce may take into consideration such factors as are established by regulation and are consistent with the purposes of this Act.

"SEC. 103. In extending assistance under this Act the Secretary shall take into consideration the relative needs of applicant areas for the projects for which assistance is requested, and the appropriateness of the project for relieving the conditions intended to be alleviated by this Act.

"SEC. 104. The Secretary of Commerce shall have such powers and authorities under this Act as are vested in the Secretary by sections 701 and 708 of the Public Works and Economic Development Act of 1965, as amended [sections 3211 and 3218 of this title], with respect to that Act [section 3121 et seq. of this title].

"SEC. 105. The National Environmental Protection Act of 1969, as amended [section 4321 et seq. of this title], shall be implemented to the fullest extent consistent with but subject to the time constraints imposed by this Act, and the Secretary of Commerce when making the final determination regarding an application for assistance hereunder shall give consideration to the environmental consequences determined within that period.

"SEC. 106. (a) There is hereby authorized to be appropriated for the fiscal year ending September 30, 1977, \$225,000,000 of which sum \$150,000,000 is to be for the loan program herein, including administration thereof, and \$75,000,000 of which is to be used for the grant program herein, including administration thereof, and

such additional amounts for the fiscal year ending September 30, 1978, as may be reasonably needed for administrative expenses in monitoring and closing out the program authorized by the Act. Funds authorized by this Act shall be obligated by December 31, 1977.

"(b) Funds available to the Secretary for this Act shall be available for expenditure for drought impact projects conducted heretofore by eligible applicants during fiscal year 1977 if such projects are found to be compatible with the broad purposes of this Act."

§ 5185. Emergency communications

The President is authorized during, or in anticipation of, an emergency or major disaster to establish temporary communications systems and to make such communications available to State and local government officials and other persons as he deems appropriate.

(Pub. L. 93-288, title IV, §418, formerly §415, May 22, 1974, 88 Stat. 158; renumbered §418, Pub. L. 100-707, title I, §106(j), Nov. 23, 1988, 102 Stat. 4705.)

PRIOR PROVISIONS

A prior section 418 of Pub. L. 93-288 was renumbered section 421 by Pub. L. 100-707 and is classified to section 5188 of this title.

§ 5186. Emergency public transportation

The President is authorized to provide temporary public transportation service in an area affected by a major disaster to meet emergency needs and to provide transportation to governmental offices, supply centers, stores, post offices, schools, major employment centers, and such other places as may be necessary in order to enable the community to resume its normal pattern of life as soon as possible.

(Pub. L. 93-288, title IV, §419, formerly §416, May 22, 1974, 88 Stat. 158; renumbered §419, Pub. L. 100-707, title I, §106(j), Nov. 23, 1988, 102 Stat. 4705.)

PRIOR PROVISIONS

A prior section 419 of Pub. L. 93-288 was classified to section 5189 of this title prior to repeal by Pub. L. 100-707.

§ 5187. Fire management assistance

(a) In general

The President is authorized to provide assistance, including grants, equipment, supplies, and personnel, to any State or local government for the mitigation, management, and control of any fire on public or private forest land or grassland that threatens such destruction as would constitute a major disaster.

(b) Coordination with State and tribal departments of forestry

In providing assistance under this section, the President shall coordinate with State and tribal departments of forestry.

(c) Essential assistance

In providing assistance under this section, the President may use the authority provided under section 5170b of this title.

(d) Rules and regulations

The President shall prescribe such rules and regulations as are necessary to carry out this section.

(Pub. L. 93-288, title IV, § 420, formerly § 417, May 22, 1974, 88 Stat. 158; renumbered § 420, Pub. L. 100-707, title I, § 106(j), Nov. 23, 1988, 102 Stat. 4705; Pub. L. 106-390, title III, § 303(a), Oct. 30, 2000, 114 Stat. 1572.)

AMENDMENTS

2000—Pub. L. 106-390 amended section catchline and text generally. Prior to amendment, text read as follows: “The President is authorized to provide assistance, including grants, equipment, supplies, and personnel, to any State for the suppression of any fire on publicly or privately owned forest or grassland which threatens such destruction as would constitute a major disaster.”

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-390, title III, § 303(b), Oct. 30, 2000, 114 Stat. 1573, provided that: “The amendment made by subsection (a) [amending this section] takes effect 1 year after the date of the enactment of this Act [Oct. 30, 2000].”

§ 5188. Timber sale contracts

(a) Cost-sharing arrangement

Where an existing timber sale contract between the Secretary of Agriculture or the Secretary of the Interior and a timber purchaser does not provide relief from major physical change not due to negligence of the purchaser prior to approval of construction of any section of specified road or of any other specified development facility and, as a result of a major disaster, a major physical change results in additional construction work in connection with such road or facility by such purchaser with an estimated cost, as determined by the appropriate Secretary, (1) of more than \$1,000 for sales under one million board feet, (2) of more than \$1 per thousand board feet for sales of one to three million board feet, or (3) of more than \$3,000 for sales over three million board feet, such increased construction cost shall be borne by the United States.

(b) Cancellation of authority

If the appropriate Secretary determines that damages are so great that restoration, reconstruction, or construction is not practical under the cost-sharing arrangement authorized by subsection (a) of this section, he may allow cancellation of a contract entered into by his Department notwithstanding contrary provisions therein.

(c) Public notice of sale

The Secretary of Agriculture is authorized to reduce to seven days the minimum period of advance public notice required by section 476¹ of title 16, in connection with the sale of timber from national forests, whenever the Secretary determines that (1) the sale of such timber will assist in the construction of any area of a State damaged by a major disaster, (2) the sale of such timber will assist in sustaining the economy of such area, or (3) the sale of such timber is necessary to salvage the value of timber damaged in such major disaster or to protect undamaged timber.

¹ See References in Text note below.

(d) State grants for removal of damaged timber; reimbursement of expenses limited to salvage value of removed timber

The President, when he determines it to be in the public interest, is authorized to make grants to any State or local government for the purpose of removing from privately owned lands timber damaged as a result of a major disaster, and such State or local government is authorized upon application, to make payments out of such grants to any person for reimbursement of expenses actually incurred by such person in the removal of damaged timber, not to exceed the amount that such expenses exceed the salvage value of such timber.

(Pub. L. 93-288, title IV, § 421, formerly § 418, May 22, 1974, 88 Stat. 158; renumbered § 421, Pub. L. 100-707, title I, § 106(j), Nov. 23, 1988, 102 Stat. 4705.)

REFERENCES IN TEXT

Section 476 of title 16, referred to in subsec. (c), was repealed by Pub. L. 94-588, § 13, Oct. 22, 1976, 90 Stat. 2958.

§ 5189. Simplified procedure

If the Federal estimate of the cost of—

(1) repairing, restoring, reconstructing, or replacing under section 5172 of this title any damaged or destroyed public facility or private nonprofit facility,

(2) emergency assistance under section 5170b or 5192 of this title, or

(3) debris removed under section 5173 of this title,

is less than \$35,000, the President (on application of the State or local government or the owner or operator of the private nonprofit facility) may make the contribution to such State or local government or owner or operator under section 5170b, 5172, 5173, or 5192 of this title, as the case may be, on the basis of such Federal estimate. Such \$35,000 amount shall be adjusted annually to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

(Pub. L. 93-288, title IV, § 422, as added Pub. L. 100-707, title I, § 106(k), Nov. 23, 1988, 102 Stat. 4705.)

PRIOR PROVISIONS

A prior section 5189, Pub. L. 93-288, title IV, § 419, May 22, 1974, 88 Stat. 159, related to alternate contributions, prior to repeal by Pub. L. 100-707, § 106(k).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5154, 5159, 5172 of this title.

§ 5189a. Appeals of assistance decisions

(a) Right of appeal

Any decision regarding eligibility for, from, or amount of assistance under this subchapter may be appealed within 60 days after the date on which the applicant for such assistance is notified of the award or denial of award of such assistance.

(b) Period for decision

A decision regarding an appeal under subsection (a) of this section shall be rendered with-

in 90 days after the date on which the Federal official designated to administer such appeals receives notice of such appeal.

(c) Rules

The President shall issue rules which provide for the fair and impartial consideration of appeals under this section.

(Pub. L. 93-288, title IV, § 423, as added Pub. L. 100-707, title I, § 106(l), Nov. 23, 1988, 102 Stat. 4705.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5172 of this title.

§ 5189b. Date of eligibility; expenses incurred before date of disaster

Eligibility for Federal assistance under this subchapter shall begin on the date of the occurrence of the event which results in a declaration by the President that a major disaster exists; except that reasonable expenses which are incurred in anticipation of and immediately preceding such event may be eligible for Federal assistance under this chapter.

(Pub. L. 93-288, title IV, § 424, as added Pub. L. 100-707, title I, § 106(l), Nov. 23, 1988, 102 Stat. 4706.)

SUBCHAPTER IV—A—EMERGENCY ASSISTANCE PROGRAMS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 5170b of this title.

§ 5191. Procedure for declaration

(a) Request and declaration

All requests for a declaration by the President that an emergency exists shall be made by the Governor of the affected State. Such a request shall be based on a finding that the situation is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local governments and that Federal assistance is necessary. As a part of such request, and as a prerequisite to emergency assistance under this chapter, the Governor shall take appropriate action under State law and direct execution of the State's emergency plan. The Governor shall furnish information describing the State and local efforts and resources which have been or will be used to alleviate the emergency, and will define the type and extent of Federal aid required. Based upon such Governor's request, the President may declare that an emergency exists.

(b) Certain emergencies involving Federal primary responsibility

The President may exercise any authority vested in him by section 5192 of this title or section 5193 of this title with respect to an emergency when he determines that an emergency exists for which the primary responsibility for response rests with the United States because the emergency involves a subject area for which, under the Constitution or laws of the United States, the United States exercises exclusive or preeminent responsibility and authority. In de-

termining whether or not such an emergency exists, the President shall consult the Governor of any affected State, if practicable. The President's determination may be made without regard to subsection (a) of this section.

(Pub. L. 93-288, title V, § 501, as added Pub. L. 100-707, title I, § 107(a), Nov. 23, 1988, 102 Stat. 4706.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this Act", meaning Pub. L. 93-288, May 22, 1974, 88 Stat. 143, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables.

PRIOR PROVISIONS

A prior section 501 of Pub. L. 93-288 enacted subchapter VIII (§3231 et seq.) of chapter 38 of this title.

§ 5192. Federal emergency assistance

(a) Specified

In any emergency, the President may—

(1) direct any Federal agency, with or without reimbursement, to utilize its authorities and the resources granted to it under Federal law (including personnel, equipment, supplies, facilities, and managerial, technical and advisory services) in support of State and local emergency assistance efforts to save lives, protect property and public health and safety, and lessen or avert the threat of a catastrophe;

(2) coordinate all disaster relief assistance (including voluntary assistance) provided by Federal agencies, private organizations, and State and local governments;

(3) provide technical and advisory assistance to affected State and local governments for—

(A) the performance of essential community services;

(B) issuance of warnings of risks or hazards;

(C) public health and safety information, including dissemination of such information;

(D) provision of health and safety measures; and

(E) management, control, and reduction of immediate threats to public health and safety;

(4) provide emergency assistance through Federal agencies;

(5) remove debris in accordance with the terms and conditions of section 5173 of this title;

(6) provide assistance in accordance with section 5174 of this title; and

(7) assist State and local governments in the distribution of medicine, food, and other consumable supplies, and emergency assistance.

(b) General

Whenever the Federal assistance provided under subsection (a) of this section with respect to an emergency is inadequate, the President may also provide assistance with respect to efforts to save lives, protect property and public health and safety, and lessen or avert the threat of a catastrophe.

(Pub. L. 93-288, title V, § 502, as added Pub. L. 100-707, title I, § 107(a), Nov. 23, 1988, 102 Stat.

4706; amended Pub. L. 106-390, title II, §206(b), Oct. 30, 2000, 114 Stat. 1570.)

AMENDMENTS

2000—Subsec. (a)(6). Pub. L. 106-390 struck out “temporary housing” after “provide”.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-390 effective 18 months after Oct. 30, 2000, see section 206(d) of Pub. L. 106-390, set out as a note under section 5174 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5159, 5189, 5191 of this title; title 7 section 2014; title 16 section 3505.

§ 5193. Amount of assistance

(a) Federal share

The Federal share for assistance provided under this subchapter shall be equal to not less than 75 percent of the eligible costs.

(b) Limit on amount of assistance

(1) In general

Except as provided in paragraph (2), total assistance provided under this subchapter for a single emergency shall not exceed \$5,000,000.

(2) Additional assistance

The limitation described in paragraph (1) may be exceeded when the President determines that—

- (A) continued emergency assistance is immediately required;
- (B) there is a continuing and immediate risk to lives, property, public health or safety; and
- (C) necessary assistance will not otherwise be provided on a timely basis.

(3) Report

Whenever the limitation described in paragraph (1) is exceeded, the President shall report to the Congress on the nature and extent of emergency assistance requirements and shall propose additional legislation if necessary.

(Pub. L. 93-288, title V, §503, as added Pub. L. 100-707, title I, §107(a), Nov. 23, 1988, 102 Stat. 4707.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5191 of this title.

SUBCHAPTER IV-B—EMERGENCY PREPAREDNESS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 7 section 1427a; title 50 App. section 2152.

§ 5195. Declaration of policy

The purpose of this subchapter is to provide a system of emergency preparedness for the protection of life and property in the United States from hazards and to vest responsibility for emergency preparedness jointly in the Federal Government and the States and their political subdivisions. The Congress recognizes that the organizational structure established jointly by the Federal Government and the States and their political subdivisions for emergency pre-

paredness purposes can be effectively utilized to provide relief and assistance to people in areas of the United States struck by a hazard. The Federal Government shall provide necessary direction, coordination, and guidance, and shall provide necessary assistance, as authorized in this subchapter so that a comprehensive emergency preparedness system exists for all hazards.

(Pub. L. 93-288, title VI, §601, as added Pub. L. 103-337, div. C, title XXXIV, §3411(a)(3), Oct. 5, 1994, 108 Stat. 3100.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 2251 of Title 50, Appendix, War and National Defense, prior to repeal by Pub. L. 103-337, §3412(a).

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 313(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

MULTIHAZARD PREPAREDNESS AND MITIGATION

Pub. L. 106-74, title III, Oct. 20, 1999, 113 Stat. 1086, provided in part: “That beginning in fiscal year 2000 and each fiscal year thereafter, and notwithstanding any other provision of law, the Director of FEMA is authorized to provide assistance from funds appropriated under this heading [EMERGENCY MANAGEMENT PLANNING AND ASSISTANCE], subject to terms and conditions as the Director of FEMA shall establish, to any State for multi-hazard preparedness and mitigation through consolidated emergency management performance grants”.

MULTIHAZARD RESEARCH, PLANNING, AND MITIGATION; FUNCTIONS, ETC., OF FEDERAL EMERGENCY MANAGEMENT AGENCY

Pub. L. 96-472, title III, §§301, 302, Oct. 19, 1980, 94 Stat. 2260, as amended by Pub. L. 97-80, title III, §301, Nov. 20, 1981, 95 Stat. 1083; Pub. L. 97-464, title II, §201, Jan. 12, 1983, 96 Stat. 2533, provided that:

“SEC. 301. It is recognized that natural and manmade hazards may not be independent of one another in any given disaster, and it is also recognized that emergency personnel are often called upon to meet emergencies outside of their primary field of service. Furthermore, planning for and responding to different hazards have certain common elements. To make maximum use of these commonalities, the Director of the Federal Emergency Management Agency (hereinafter referred to as the ‘Director’) is authorized and directed to:

- “(1) initiate, within one year after the date of enactment of this Act [Oct. 19, 1980], studies with the objective of defining and developing a multihazard research, planning, and implementation process within the Agency;
- “(2) develop, within one year after the date of enactment of this Act [Oct. 19, 1980], in cooperation with State and local governments, prototypical multihazard mitigation projects which can be used to evaluate several approaches to the varying hazard mitigation needs of State and local governments and to assess the applicability of these prototypes to other jurisdictions with similar needs;
- “(3) investigate and evaluate, within one year after the date of enactment of this Act [Oct. 19, 1980], the effectiveness of a range of incentives for hazard re-

ductions that can be applied at the State and local government levels;

“(4) prepare recommendations as to the need for legislation that will limit the legal liability of those third party persons or groups which are called upon to provide technical assistance and advice to public employees, including policemen, firemen, and transportation employees, who are generally the first to respond to a hazardous incident; which recommendations shall be provided to the appropriate committees of Congress within one hundred and eighty days after the date of enactment of this Act [Oct. 19, 1980];

“(5) prepare, within one hundred and eighty days after the date of enactment of this Act [Oct. 19, 1980], a report on the status of the Agency’s emergency information and communications systems which will provide recommendations on—

“(A) the advisability of developing a single, unified emergency information and communication system for use by the Agency in carrying out its emergency management activities;

“(B) the potential for using communication and remote sensing satellites as part of the Agency’s emergency information and communication system; and

“(C) the type of system to be developed, if needed, including the relationship of the proposed system and its needs to the existing and emerging information and communication systems in other Federal agencies;

“(6) conduct a program of multihazard research, planning, and mitigation in coordination with those studies and evaluations authorized in paragraphs (1) through (5), as well as other hazard research, planning, and mitigation deemed necessary by the Director;

“(7) conduct emergency first response programs so as to better train and prepare emergency personnel to meet emergencies outside of their primary field of service; and

“(8) conduct a program of planning, preparedness, and mitigation related to the multiple direct and indirect hazards resulting from the occurrence of large earthquakes.

“SEC. 302. (a) For the fiscal year ending September 30, 1981, there are authorized to be appropriated to the Director \$1,000,000 to carry out paragraphs (1) through (5) of section 301 and such sums as may be necessary to carry out paragraph (6) of such section.

“(b) For the fiscal year ending September 30, 1982, there are authorized to be appropriated to the Director—

“(1) \$4,939,000 to carry out section 301, which amount shall include—

“(A) not less than \$700,000 to carry out the purposes of paragraphs (1) through (6) of such section;

“(B) such sums as may be necessary, but in any case not less than \$939,000, for use by the United States Fire Administration in carrying out paragraph (7) of such section; and

“(C) not less than \$3,300,000 to carry out paragraph (8) of such section with respect to those large California earthquakes which were identified by the National Security Council’s Ad Hoc Committee on Assessment of Consequences and Preparations for a Major California Earthquake; and

“(2) such further sums as may be necessary for adjustments required by law in salaries, pay, retirement, and employee benefits incurred in the conduct of activities for which funds are authorized by paragraph (1) of this subsection.

“(c) For the fiscal year ending September 30, 1983, there are authorized to be appropriated to the Director—

“(1) \$2,774,000 to carry out section 301, which amount shall include—

“(A) not less than \$300,000 to carry out the purposes of paragraphs (1) through (6) of such section;

“(B) such sums as may be necessary, but in any case not less than \$939,000, for use by the United

States Fire Administration in carrying out paragraph (7) of such section; and

“(C) not less than \$1,535,000 to carry out paragraph (8) of such section with respect to those large California earthquakes which were identified by the National Security Council’s Ad Hoc Committee on Assessment of Consequences and Preparations for a Major California Earthquake and with respect to other high seismic risk areas in the United States; and

“(2) such further sums as may be necessary for adjustments required by law in salaries, pay, retirement, and employee benefits incurred in the conduct of activities for which funds are authorized by paragraph (1) of this subsection.”

REORGANIZATION PLAN NO. 1 OF 1958

Eff. July 1, 1958, 23 F.R. 4991, 72 Stat. 1799, as amended Pub. L. 85-763, Aug. 26, 1958, 72 Stat. 861; Pub. L. 87-296, §1, Sept. 22, 1961, 75 Stat. 630; Pub. L. 87-367, title I, §103(10), Oct. 4, 1961, 75 Stat. 788; Pub. L. 88-426, title III, §305(11), Aug. 14, 1964, 78 Stat. 423; Pub. L. 90-608, ch. IV, §402, Oct. 21, 1968, 82 Stat. 1194; Reorg. Plan No. 1 of 1973, §3(a), eff. July 1, 1973, 38 F.R. 9579, 87 Stat. 1089

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, April 24, 1958, pursuant to the provisions of the Reorganization Act of 1949, approved June 20, 1949, as amended [see 5 U.S.C. 901 et seq.].

CIVILIAN MOBILIZATION

SECTION 1. TRANSFER OF FUNCTIONS TO THE PRESIDENT

(a) There are hereby transferred to the President of the United States all functions vested by law (including reorganization plan) in the following: The Office of Defense Mobilization, the Director of the Office of Defense Mobilization, the Federal Civil Defense Administration, and the Federal Civil Defense Administrator.

(b) The President may from time to time delegate any of the functions transferred to him by subsection (a) of this section to any officer, agency, or employee of the executive branch of the Government, and may authorize such officer, agency, or employee to redelegate any of such functions delegated to him.

SEC. 2. OFFICE OF EMERGENCY PREPAREDNESS

[The Office of Emergency Preparedness including the offices of Director and Deputy Director, and all offices of Assistant Director, were abolished by Reorg. Plan No. 1 of 1973, §3(a)(1), eff. July 1, 1973, 38 F.R. 9579, 87 Stat. 1089, set out below.]

SEC. 3. REGIONAL DIRECTORS

[All offices of Regional Director of the Office of Emergency Preparedness were abolished by Reorg. Plan No. 1 of 1973, §3(a)(1), eff. July 1, 1973, 38 F.R. 9579, 87 Stat. 1089, set out below.]

SEC. 4. MEMBERSHIP ON NATIONAL SECURITY COUNCIL

[The functions of the Director of the Office of Emergency Preparedness as a member of the National Security Council were abolished by Reorg. Plan No. 1 of 1973, §3(a)(2), eff. July 1, 1973, 38 F.R. 9579, 87 Stat. 1089, set out below.]

SEC. 5. CIVIL DEFENSE ADVISORY COUNCIL

[The Civil Defense Advisory Council, together with its functions, was abolished by Reorg. Plan No. 1 of 1973, §3(a)(3), eff. July 1, 1973, 38 F.R. 9579, 87 Stat. 1089, set out below.]

SEC. 6. ABOLITIONS

The offices of Federal Civil Defense Administrator and Deputy Administrator provided for in section 101 of the Federal Civil Defense Act (50 U.S.C. App. 2271) and the offices of the Director of the Office of Defense Mo-

bilization and Deputy Director of the Office of Defense Mobilization provided for in section 1 of Reorganization Plan Numbered 3 of 1953 (67 Stat. 634) are hereby abolished. The Director of the Office of Emergency Preparedness shall make such provisions as may be necessary in order to wind up any outstanding affairs of the offices abolished by this section which are not otherwise provided for in this reorganization plan. [As amended Pub. L. 90-608, ch. IV, §402, Oct. 21, 1968, 82 Stat. 1194.]

SEC. 7. RECORDS, PROPERTY, PERSONNEL, AND FUNDS

(a) The records, property, personnel, and unexpended balances, available or to be made available, of appropriations, allocations, and other funds of the Office of Defense Mobilization and of the Federal Civil Defense Administration shall, upon the taking effect of the provisions of this reorganization plan, become records, property, personnel, and unexpended balances of the Office of Emergency Preparedness.

(b) Records, property, personnel, and unexpended balances, available or to be made available, of appropriations, allocations, and other funds of any agency (including the Office of Emergency Preparedness), relating to functions vested in or delegated or assigned to the Office of Defense Mobilization or the Federal Civil Defense Administration immediately prior to the taking effect of the provisions of this reorganization plan, may be transferred from time to time to any other agency of the Government by the Director of the Bureau of the Budget under authority of this subsection for use, subject to the provisions of the Reorganization Act of 1949, as amended, in connection with any of the said functions authorized at time of transfer under this subsection to be performed by the transferee agency.

(c) Such further measures and dispositions as the Director of the Bureau of the Budget shall determine to be necessary in connection with the provisions of subsections (a) and (b) of this section shall be carried out in such manner as he shall direct and by such agencies as he shall designate. [As amended Pub. L. 90-608, ch. IV, §402, Oct. 21, 1968, 82 Stat. 1194.]

SEC. 8. INTERIM PROVISIONS

The President may authorize any person who immediately prior to the effective date of this reorganization plan holds an office abolished by section 6 hereof to hold any office established by section 2 of this reorganization plan until the latter office is filled pursuant to the said section 2 or by recess appointment, as the case may be, but in no event for any period extending more than 120 days after the said effective date.

SEC. 9. EFFECTIVE DATE

The provisions of this reorganization plan shall take effect at the time determined under the provisions of section 6(a) of the Reorganization Act of 1949, as amended, or on July 1, 1958, whichever is later.

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

I transmit herewith Reorganization Plan No. 1 of 1958, prepared in accordance with the Reorganization Act of 1949, as amended. The reorganization plan provides new arrangements for the conduct of Federal defense mobilization and civil defense functions.

In formulating Reorganization Plan No. 1, I have had the benefit of several studies made by the executive branch as well as those conducted by the Congress. The reorganization plan will overcome the major difficulties revealed by those studies and mentioned in my 1959 budget message where I made the following statement:

The structure of Federal organization for the planning, coordination, and conduct of our nonmilitary defense programs has been reviewed, and I have concluded that the existing statutes assigning responsibilities for the central coordination and direction of these programs are out of date. The rapid technical advances of military science have led to a serious overlap among

agencies carrying on these leadership and planning functions. Because the situation will continue to change and because these functions transcend the responsibility of any single department or agency, I have concluded that they should be vested in no one short of the President. I will make recommendations to the Congress on this subject.

The principal effects of the organization plan are—

First, it transfers to the President the functions vested by law in the Federal Civil Defense Administration and those so vested in the Office of Defense Mobilization. The result is to establish a single pattern with respect to the vesting of defense mobilization and civil defense functions. At the present time disparity exists in that civil defense functions are vested in the President only to a limited degree while a major part of the functions administered by the Office of Defense Mobilization are vested by law in the President and delegated by him to that Office. Under the plan, the broad program responsibilities for coordinating and conducting the interrelated defense mobilization and civil defense functions will be vested in the President for appropriate delegation as the rapidly changing character of the nonmilitary preparedness program warrants.

Second, the reorganization plan consolidates the Office of Defense Mobilization and the Federal Civil Defense Administration to form a new Office of Defense and Civilian Mobilization in the Executive Office of the President. I have concluded that, in many instances, the interests and activities of the Office of Defense Mobilization and the Federal Civil Defense Administration overlap to such a degree that it is not possible to work out a satisfactory division of those activities and interests between the two agencies. I have also concluded that a single civilian mobilization agency of appropriate stature and authority is needed and that such an agency will ensue from the consolidation and from the granting of suitable authority to that agency for directing and coordinating the preparedness activities of the Federal departments and agencies and for providing unified guidance and assistance to the State and local governments.

Third, the reorganization plan transfers the membership of the Director of the Office of Defense Mobilization on the National Security Council to the Director of the Office of Defense and Civilian Mobilization and also transfers the Civil Defense Advisory Council to the Office of Defense and Civilian Mobilization.

Initially, the Office of Defense and Civilian Mobilization will perform the civil defense and defense mobilization functions now performed by the Office of Defense Mobilization and the Federal Civil Defense Administration. One of its first tasks will be to advise me with respect to the actions to be taken to clarify and expand the roles of the Federal departments and agencies in carrying out nonmilitary defense preparedness functions. After such actions are taken, the direction and coordination of the civil defense and defense mobilization activities assigned to the departments and agencies will comprise a principal remaining responsibility of the Office of Defense and Civilian Mobilization.

After investigation, I have found and hereby declare that each reorganization included in Reorganization Plan No. 1 of 1958 is necessary to accomplish one or more of the purposes set forth in section 2(a) of the Reorganization Act of 1949, as amended.

I have also found and hereby declare that it is necessary to include in the accompanying reorganization plan, by reason of reorganizations made thereby, provisions for the appointment and compensation of new officers specified in sections 2 and 3 of the plan. The rates of compensation fixed for these officers are, respectively those which I have found to prevail in respect of comparable officers in the executive branch of the Government.

The taking effect of the reorganizations included in Reorganization Plan No. 1 of 1958 will immediately reduce the number of Federal agencies by one and, by providing sounder organizational arrangements for the administration of the affected functions, should pro-

mote the increased economy and effectiveness of the Federal expenditures concerned. It is, however, impracticable to itemize at this time the reduction of expenditures which it is probable will be brought about by such taking effect.

I urge that the Congress allow the reorganization plan to become effective.

DWIGHT D. EISENHOWER.

THE WHITE HOUSE, April 24, 1958.

REORGANIZATION PLAN NO. 1 OF 1973

Eff. July 1, 1973, 38 F.R. 9579, 87 Stat. 1089, as amended May 11, 1976, Pub. L. 94-282, title V, §502, 90 Stat. 472

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, January 26, 1973, pursuant to the provisions of Chapter 9 of Title 5 of the United States Code.

EXECUTIVE OFFICE OF THE PRESIDENT

SECTION 1. TRANSFER OF FUNCTIONS TO THE PRESIDENT

Except as provided in section 3(a)(2) of this reorganization plan, there are hereby transferred to the President of the United States all functions vested by law in the Office of Emergency Preparedness or the Director of the Office of Emergency Preparedness after the effective date of Reorganization Plan No. 1 of 1958.

SEC. 2. [Repealed. Pub. L. 94-282, title V, §502, May 11, 1976, 90 Stat. 472. Section transferred to the Director of the National Science Foundation all functions vested by law in the Office of Science and Technology or the Director or Deputy Director of the Office of Science and Technology.]

SEC. 3. ABOLITIONS

(a) The following are hereby abolished:

(1) The Office of Emergency Preparedness including the offices of Director, Deputy Director, and all offices of Assistant Director, and Regional Director of the Office of Emergency Preparedness provided for by sections 2 and 3 of Reorganization Plan No. 1 of 1958 (5 U.S.C., App.).

(2) The functions of the Director of the Office of Emergency Preparedness with respect to being a member of the National Security Council.

(3) The Civil Defense Advisory Council, created by section 102(a) of the Federal Civil Defense Act of 1950 (50 U.S.C. App. 2272(a)), together with its functions.

(4) The National Aeronautics and Space Council, created by section 201 of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2471), including the office of Executive Secretary of the Council, together with its functions.

(5) The Office of Science and Technology, including the offices of Director and Deputy Director, provided for by sections 1 and 2 of Reorganization Plan No. 2 of 1962 (5 U.S.C., App.).

(b) The Director of the Office of Management and Budget shall make such provisions as he shall deem necessary respecting the winding up of any outstanding affairs of the agencies abolished by the provisions of this section.

SEC. 4. INCIDENTAL TRANSFERS

(a) So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with the functions transferred by sections 1 and 2 of this reorganization plan as the Director of the Office of Management and Budget shall determine shall be transferred at such time or times as he shall direct for use in connection with the functions transferred.

(b) Such further measures and dispositions as the Director of the Office of Management and Budget shall deem to be necessary in order to effectuate the transfers referred to in subsection (a) of this section shall be carried out in such manner as he shall direct and by such agencies as he shall designate.

SEC. 5. EFFECTIVE DATE

The provisions of this reorganization plan shall take effect as provided by section 906(a) of title 5 of the United States Code, or on July 1, 1973, whichever is later.

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

On January 5 I announced a three-part program to streamline the executive branch of the Federal Government. By concentrating less responsibility in the President's immediate staff and more in the hands of the departments and agencies, this program should significantly improve the services of the Government. I believe these reforms have become so urgently necessary that I intend, with the cooperation of the Congress, to pursue them with all of the resources of my office during the coming year.

The first part of this program is a renewed drive to achieve passage of my legislative proposals to overhaul the Cabinet departments. Secondly, I have appointed three Cabinet Secretaries as Counsellors to the President with coordinating responsibilities in the broad areas of human resources, natural resources, and community development, and five Assistants to the President with special responsibilities in the areas of domestic affairs, economic affairs, foreign affairs, executive management, and operations of the White House.

The third part of this program is a sharp reduction in the overall size of the Executive Office of the President and a reorientation of that office back to its original mission as a staff for top-level policy formation and monitoring of policy execution in broad functional areas. The Executive Office of the President should no longer be encumbered with the task of managing or administering programs which can be run more effectively by the departments and agencies. I have therefore concluded that a number of specialized operational and program functions should be shifted out of the Executive Office into the line departments and agencies of the Government. Reorganization Plan No. 1 of 1973, transmitted herewith, would effect such changes with respect to emergency preparedness functions and scientific and technological affairs.

STREAMLINING THE FEDERAL SCIENCE ESTABLISHMENT

When the National Science Foundation was established by an act of the Congress in 1950, its statutory responsibilities included evaluation of the Government's scientific research programs and development of basic science policy. In the late 1950's, however, with the effectiveness of the U.S. science effort under serious scrutiny as a result of sputnik, the post of Science Advisor to the President was established. The White House became increasingly involved in the evaluation and coordination of research and development programs and in science policy matters, and that involvement was institutionalized in 1962 when a reorganization plan established the Office of Science and Technology within the Executive Office of the President, through transfer of authorities formerly vested in the National Science Foundation.

With advice and assistance from OST during the past decade; the scientific and technological capability of the Government has been markedly strengthened. This administration is firmly committed to a sustained, broadbased national effort in science and technology, as I made plain last year in the first special message on the subject ever sent by a President to the Congress. The research and development capability of the various executive departments and agencies, civilian as well as defense, has been upgraded. The National Science Foundation has broadened from its earlier concentration on basic research support to take on a significant role in applied research as well. It has matured in its ability to play a coordinating and evaluative role within the Government and between the public and private sectors.

I have therefore concluded that it is timely and appropriate to transfer to the Director of the National Science Foundation all functions presently vested in the Office of Science and Technology, and to abolish that office. Reorganization Plan No. 1 would effect these changes.

The multi-disciplinary staff resources of the Foundation will provide analytic capabilities for performance of the transferred functions. In addition, the Director of the Foundation will be able to draw on expertise from all of the Federal agencies, as well as from outside the Government, for assistance in carrying out his new responsibilities.

It is also my intention, after the transfer of responsibilities is effected, to ask Dr. H. Guyford Stever, the current Director of the Foundation, to take on the additional post of Science Adviser. In this capacity, he would advise and assist the White House, Office of Management and Budget, Domestic Council, and other entities within the Executive Office of the President on matters where scientific and technological expertise is called for, and would act as the President's representative in selected cooperative programs in international scientific affairs, including chairing such joint bodies as the U.S.—U.S.S.R. Joint Commission on Scientific and Technical Cooperation.

In the case of national security, the Department of Defense has strong capabilities for assessing weapons needs and for undertaking new weapons development, and the President will continue to draw primarily on this source for advice regarding military technology. The President in special situations also may seek independent studies or assessments concerning military technology from within or outside the Federal establishment, using the machinery of the National Security Council for this purpose, as well as the Science Adviser when appropriate.

In one special area of technology—space and aeronautics—a coordinating council has existed within the Executive Office of the President since 1958. This body, the National Aeronautics and Space Council, met a major need during the evolution of our nation's space program. Vice President Agnew has served with distinction as its chairman for the past four years. At my request, beginning in 1969, the Vice President also chaired a special Space Task Group charged with developing strategy alternatives for a balanced U.S. space program in the coming years.

As a result of this work, basic policy issues in the United States space effort have been resolved, and the necessary interagency relationships have been established. I have therefore concluded, with the Vice President's concurrence, that the Council can be discontinued. Needed policy coordination can now be achieved through the resources of the executive departments and agencies, such as the National Aeronautics and Space Administration, augmented by some of the former Council staff. Accordingly, my reorganization plan proposes the abolition of the National Aeronautics and Space Council.

A NEW APPROACH TO EMERGENCY PREPAREDNESS

The organization within the Executive Office of the President which has been known in recent years as the Office of Emergency Preparedness dates back, through its numerous predecessor agencies, more than 20 years. It has performed valuable functions in developing plans for emergency preparedness, in administering Federal disaster relief, and in overseeing and assisting the agencies in this area.

OEP's work as a coordinating and supervisory authority in this field has in fact been so effective—particularly under the leadership of General George A. Lincoln, its director for the past four years, who retired earlier this month after an exceptional military and public service career—that the line departments and agencies which in the past have shared in the performance of the various preparedness functions now possess the capability to assume full responsibility for

those functions. In the interest of efficiency and economy, we can now further streamline the Executive Office of the President by formally relocating those responsibilities and closing the Office of Emergency Preparedness.

I propose to accomplish this reform in two steps. First, Reorganization Plan No. 1 would transfer to the President all functions previously vested by law in the Office or its Director, except the Director's role as a member of the National Security Council, which would be abolished; and it would abolish the Office of Emergency Preparedness.

The functions to be transferred to the President from OEP are largely incidental to emergency authorities already vested in him. They include functions under the Disaster Relief Act of 1970 [42 U.S.C. 4401 et seq.]; the function of determining whether a major disaster has occurred within the meaning of (1) Section 7 of the Act of September 30, 1950, as amended, 20 U.S.C. 241-1, or (2) Section 762(a) of the Higher Education Act of 1965, as added by Section 161(a) of the Education Amendments of 1972, Public Law 92-318, 86 Stat. 288 at 299 (relating to the furnishing by the Commissioner of Education of disaster relief assistance for educational purposes) [20 U.S.C. 1132d-1]; and functions under Section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862), with respect to the conduct of investigations to determine the effects on national security of the importation of certain articles.

The Civil Defense Advisory Council within OEP would also be abolished by this plan, as changes in domestic and international conditions since its establishment in 1950 have now obviated the need for a standing council of this type. Should advice of the kind the Council has provided be required again in the future, State and local officials and experts in the field can be consulted on an ad hoc basis.

Second, as soon as the plan became effective, I would delegate OEP's former functions as follows:

All OEP responsibilities having to do with preparedness for and relief of civil emergencies and disasters would be transferred to the Department of Housing and Urban Development. This would provide greater field capabilities for coordination of Federal disaster assistance with that provided by States and local communities, and would be in keeping with the objective of creating a broad, new Department of Community Development.

OEP's responsibilities for measures to ensure the continuity of civil government operations in the event of major military attack would be reassigned to the General Services Administration, as would responsibility for resource mobilization including the management of national security stockpiles, with policy guidance in both cases to be provided by the National Security Council, and with economic considerations relating to changes in stockpile levels to be coordinated by the Council on Economic Policy.

Investigations of imports which might threaten the national security—assigned to OEP by Section 232 of the Trade Expansion Act of 1962 [19 U.S.C. 1862]—would be reassigned to the Treasury Department, whose other trade studies give it a readymade capability in this field; the National Security Council would maintain its supervisory role over strategic imports.

Those disaster relief authorities which have been reserved to the President in the past, such as the authority to declare major disasters, will continue to be exercised by him under these new arrangements. In emergency situations calling for rapid interagency coordination, the Federal response will be coordinated by the Executive Office of the President under the general supervision of the Assistant to the President in charge of executive management.

The Oil Policy Committee will continue to function as in the past, unaffected by this reorganization, except that I will designate the Deputy Secretary of the Treasury as chairman in place of the Director of OEP. The committee will operate under the general super-

vision of the Assistant to the President in charge of economic affairs.

DECLARATIONS

After investigation, I have found that each action included in the accompanying plan is necessary to accomplish one or more of the purposes set forth in Section 901(a) of title 5 of the United States Code. In particular, the plan is responsive to the intention of the Congress as expressed in Section 901(a)(1), "to promote better execution of the laws, more effective management of the executive branch and of its agencies and functions, and expeditious administration of the public business;" and in Section 901(a)(3), "to increase the efficiency of the operations of the Government to the fullest extent practicable;" and in Section 901(a)(5), "to reduce the number of agencies by consolidating those having similar functions under a single head, and to abolish such agencies or functions as may not be necessary for the efficient conduct of the Government."

While it is not practicable to specify all of the expenditure reductions and other economies which will result from the actions proposed, personnel and budget savings from abolition of the National Aeronautics and Space Council and the Office of Science and Technology alone will exceed \$2 million annually, and additional savings should result from a reduction of Executive Pay Schedule positions now associated with other transferred and delegated functions.

The plan has as its one logically consistent subject matter the streamlining of the Executive Office of the President and the disposition of major responsibilities currently conducted in the Executive Office of the President, which can better be performed elsewhere or abolished.

The functions which would be abolished by this plan, and the statutory authorities for each, are:

- (1) the functions of the Director of the Office of Emergency Preparedness with respect to being a member of the National Security Council (Sec. 101, National Security Act of 1947, as amended, 50 U.S.C. 402; and Sec. 4, Reorganization Plan No. 1 of 1958);
- (2) the functions of the Civil Defense Advisory Council (Sec. 102(a) Federal Civil Defense Act of 1950; 50 U.S.C. App. 2272(a)); and
- (3) the functions of the National Aeronautics and Space Council (Sec. 201, National Aeronautics and Space Act of 1958; 42 U.S.C. 2471).

The proposed reorganization is a necessary part of the restructuring of the Executive Office of the President. It would provide through the Director of the National Science Foundation a strong focus for Federal efforts to encourage the development and application of science and technology to meet national needs. It would mean better preparedness for and swifter response to civil emergencies, and more reliable precautions against threats to the national security. The leaner and less diffuse Presidential staff structure which would result would enhance the President's ability to do his job and would advance the interests of the Congress as well.

I am confident that this reorganization plan would significantly increase the overall efficiency and effectiveness of the Federal Government. I urge the Congress to allow it to become effective.

RICHARD NIXON.

THE WHITE HOUSE, January 26, 1973.

EXECUTIVE ORDER No. 10186

Ex. Ord. No. 10186, Dec. 1, 1950, 15 F.R. 8557, established the Federal Civil Defense Administration in the Office for Emergency Management of the Executive Office of the President, provided for the appointment of an Administrator and a Deputy Administrator, and delineated the purposes, functions, and authority of the Administration and the Administrator.

EXECUTIVE ORDER No. 10222

Ex. Ord. No. 10222, Mar. 8, 1951, 16 F.R. 2247, which transferred to Federal Civil Defense Administration

functions of Health Resources Office of National Security Resources Board, was revoked by section 904(a)(2) of Ex. Ord. No. 12919, June 3, 1994, 59 F.R. 29533, set out as a note under section 2153 of Title 50, Appendix, War and National Defense.

EXECUTIVE ORDER No. 10346

Ex. Ord. No. 10346, Apr. 17, 1952, 17 F.R. 3477, as amended by Ex. Ord. No. 10438, Mar. 13, 1953, 18 F.R. 1491; Ex. Ord. No. 10773, July 1, 1958, 23 F.R. 5061; Ex. Ord. No. 10782, Sept. 6, 1958, 23 F.R. 6971; Ex. Ord. No. 11051, Sept. 27, 1962, 27 F.R. 9683, which related to the preparation by Federal agencies of civil defense emergency plans, was revoked by Ex. Ord. No. 11490, Oct. 28, 1969, 34 F.R. 17567, see below.

EXECUTIVE ORDER No. 10529

Ex. Ord. No. 10529, Apr. 22, 1954, 19 F.R. 2397, as amended by Ex. Ord. No. 10773, July 1, 1958, 23 F.R. 5061; Ex. Ord. No. 10782, Sept. 6, 1958, 23 F.R. 6971; Ex. Ord. No. 11051, Sept. 27, 1962, 27 F.R. 9683, which related to Federal employee participation in State and local civil defense programs, was revoked by section 5-104 of Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43243, set out below.

EXECUTIVE ORDER No. 10611

Ex. Ord. No. 10611, May 11, 1955, 20 F.R. 3245, which related to establishment of the Civil Defense Coordinating Board, was revoked by section 7(7) of Ex. Ord. No. 10773.

EXECUTIVE ORDER No. 10773

Ex. Ord. No. 10773, July 1, 1958, 23 F.R. 5061, as amended by Ex. Ord. No. 10782, Sept. 6, 1958, 23 F.R. 6971, which related to the delegation and transfer of functions to the Office of Civil and Defense Mobilization, was superseded by Ex. Ord. No. 11051, Sept. 27, 1962, 27 F.R. 9683, see below.

EXECUTIVE ORDER No. 10902

Ex. Ord. No. 10902, Jan. 9, 1961, 26 F.R. 217, which related to the issuance of emergency preparedness orders, was superseded by Ex. Ord. No. 11051, Sept. 27, 1962, 27 F.R. 9683, see below.

EXECUTIVE ORDER No. 10952

Ex. Ord. No. 10952, July 20, 1961, 26 F.R. 6577, as amended by Ex. Ord. No. 11051, Sept. 27, 1962, 27 F.R. 9683, which related to the assignment of civil defense responsibilities, was revoked by section 5-108 of Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43243, set out below.

EXECUTIVE ORDER No. 10958

Ex. Ord. No. 10958, Aug. 14, 1961, 26 F.R. 7571, as amended by Ex. Ord. No. 11051, Sept. 27, 1962, 27 F.R. 9683, which provided for the delegation of functions respecting stockpiles of medical supplies and equipment and food, was revoked by Ex. Ord. No. 11794, July 11, 1974, 39 F.R. 25937.

EXECUTIVE ORDER No. 10997

Ex. Ord. No. 10997, Feb. 16, 1962, 27 F.R. 1522, which related to assignment of emergency preparedness functions to Secretary of the Interior, was revoked by Ex. Ord. No. 11490, Oct. 28, 1969, 34 F.R. 17567, see below.

EXECUTIVE ORDER No. 10998

Ex. Ord. No. 10998, Feb. 16, 1962, 27 F.R. 1524, which related to assignment of emergency preparedness functions to Secretary of Agriculture, was revoked by Ex. Ord. No. 11490, Oct. 28, 1969, 34 F.R. 17567, see below.

EXECUTIVE ORDER No. 10999

Ex. Ord. No. 10999, Feb. 16, 1962, 27 F.R. 1527, which related to assignment of emergency preparedness functions to Secretary of Commerce, was revoked by Ex. Ord. No. 11490, Oct. 28, 1969, 34 F.R. 17567, see below.

EXECUTIVE ORDER NO. 11000

Ex. Ord. No. 11000, Feb. 16, 1962, 27 F.R. 1532, which related to assignment of emergency preparedness functions to Secretary of Labor, was revoked by Ex. Ord. No. 11490, Oct. 28, 1969, 34 F.R. 17567, see below.

EXECUTIVE ORDER NO. 11001

Ex. Ord. No. 11001, Feb. 16, 1962, 27 F.R. 1534, which related to assignment of emergency preparedness functions to Secretary of Health, Education, and Welfare, was revoked by Ex. Ord. No. 11490, Oct. 28, 1969, 34 F.R. 17567, see below.

EXECUTIVE ORDER NO. 11002

Ex. Ord. No. 11002, Feb. 16, 1962, 27 F.R. 1539, which related to assignment of emergency preparedness functions to Postmaster General, was revoked by Ex. Ord. No. 11490, Oct. 28, 1969, 34 F.R. 17567, see below.

EXECUTIVE ORDER NO. 11003

Ex. Ord. No. 11003, Feb. 16, 1962, 27 F.R. 1540, which related to assignment of emergency preparedness functions to Administrator of Federal Aviation Agency, was revoked by Ex. Ord. No. 11490, Oct. 28, 1969, 34 F.R. 17567, see below.

EXECUTIVE ORDER NO. 11004

Ex. Ord. No. 11004, Feb. 16, 1962, 27 F.R. 1542, which related to assignment of emergency preparedness functions to Housing and Home Finance Administrator, was revoked by Ex. Ord. No. 11490, Oct. 28, 1969, 34 F.R. 17567, see below.

EXECUTIVE ORDER NO. 11005

Ex. Ord. No. 11005, Feb. 16, 1962, 27 F.R. 1544, which related to assignment of emergency preparedness functions to Interstate Commerce Commission, was revoked by Ex. Ord. No. 11490, Oct. 28, 1969, 34 F.R. 17567, see below.

EXECUTIVE ORDER NO. 11051

Ex. Ord. No. 11051, Sept. 27, 1962, 27 F.R. 9683, as amended by Ex. Ord. No. 11075, Jan. 15, 1963, 28 F.R. 473; Ex. Ord. No. 11556, Sept. 4, 1970, 35 F.R. 14193; Ex. Ord. No. 11725, June 27, 1973, 38 F.R. 17175; Ex. Ord. No. 12046, Mar. 27, 1978, 43 F.R. 13349, which related to responsibility of the Office of Emergency Preparedness, was revoked by section 5-109 of Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43243, set out below.

EXECUTIVE ORDER NO. 11087

Ex. Ord. No. 11087, Feb. 26, 1963, 28 F.R. 1835, which related to assignment of emergency preparedness functions to Secretary of State, was revoked by Ex. Ord. No. 11490, Oct. 28, 1969, 34 F.R. 17567, see below.

EXECUTIVE ORDER NO. 11088

Ex. Ord. No. 11088, Feb. 26, 1963, 28 F.R. 1837, which related to assignment of emergency preparedness functions to Secretary of the Treasury, was revoked by Ex. Ord. No. 11490, Oct. 28, 1969, 34 F.R. 17567, see below.

EXECUTIVE ORDER NO. 11089

Ex. Ord. No. 11089, Feb. 26, 1963, 28 F.R. 1839, which related to assignment of emergency preparedness functions to Atomic Energy Commission, was revoked by Ex. Ord. No. 11490, Oct. 28, 1969, 34 F.R. 17567, see below.

EXECUTIVE ORDER NO. 11090

Ex. Ord. No. 11090, Feb. 26, 1963, 28 F.R. 1841, which related to assignment of emergency preparedness functions to Civil Aeronautics Board, was revoked by Ex. Ord. No. 11490, Oct. 28, 1969, 34 F.R. 17567, see below.

EXECUTIVE ORDER NO. 11091

Ex. Ord. No. 11091, Feb. 26, 1963, 28 F.R. 1843, which related to assignment of emergency preparedness func-

tions to Civil Service Commission, was revoked by Ex. Ord. No. 11490, Oct. 28, 1969, 34 F.R. 17567, see below.

EXECUTIVE ORDER NO. 11092

Ex. Ord. No. 11092, Feb. 26, 1963, 28 F.R. 1847, which related to assignment of emergency preparedness functions to Federal Communications Commission, was revoked by Ex. Ord. No. 11490, Oct. 28, 1969, 34 F.R. 17567, see below.

EXECUTIVE ORDER NO. 11093

Ex. Ord. No. 11093, Feb. 26, 1963, 28 F.R. 1851, which related to assignment of emergency preparedness functions to Administrator of General Services, was revoked by Ex. Ord. No. 11490, Oct. 28, 1969, 34 F.R. 17567, see below.

EXECUTIVE ORDER NO. 11094

Ex. Ord. No. 11094, Feb. 26, 1963, 28 F.R. 1855, which related to assignment of emergency preparedness functions to Board of Governors of Federal Reserve System, Federal Home Loan Bank Board, Farm Credit Administration, Export-Import Bank of Washington, Board of Directors of Federal Deposit Insurance Corporation, Securities and Exchange Commission, Administrator of Small Business Administration, and Administrator of Veterans Affairs, was revoked by Ex. Ord. No. 11490, Oct. 28, 1969, 34 F.R. 17567, see below.

EXECUTIVE ORDER NO. 11095

Ex. Ord. No. 11095, Feb. 26, 1963, 28 F.R. 1859, which related to assignment of emergency preparedness functions to Board of Directors of Tennessee Valley Authority, Railroad Retirement Board, Administrator of National Aeronautics and Space Administration, Federal Power Commission, and Director of National Science Foundation, was revoked by Ex. Ord. No. 11490, Oct. 28, 1969, 34 F.R. 17567, see below.

EXECUTIVE ORDER NO. 11426

Ex. Ord. No. 11426, Aug. 31, 1968, 33 F.R. 12615, which provided for Federal-State liaison and cooperation, was superseded by Ex. Ord. No. 11455, Feb. 14, 1969, 34 F.R. 2299.

EXECUTIVE ORDER NO. 11490

Ex. Ord. No. 11490, Oct. 28, 1969, 34 F.R. 17567, as amended by Ex. Ord. No. 11522, Apr. 6, 1970, 35 F.R. 5659; Ex. Ord. No. 11556, Sept. 4, 1970, 35 F.R. 14193; Ex. Ord. No. 11746, Nov. 7, 1973, 38 F.R. 30991; Ex. Ord. No. 11921, June 11, 1976, 41 F.R. 24294; Ex. Ord. No. 11953, Jan. 7, 1977, 42 F.R. 2492; Ex. Ord. No. 12038, Feb. 3, 1978, 43 F.R. 4957; Ex. Ord. No. 12046, Mar. 27, 1978, 43 F.R. 13349; Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055; Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239; Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617, which related to assignment of emergency preparedness functions to Federal agencies and departments, was revoked by section 2901 of Ex. Ord. No. 12656, Nov. 18, 1988, 53 F.R. 47491, set out below.

EXECUTIVE ORDER NO. 11522

Ex. Ord. No. 11522, Apr. 6, 1970, 35 F.R. 5659, which related to the assignment of emergency preparedness functions to the United States Information Agency, was superseded by Ex. Ord. No. 11921, June 11, 1976, 41 F.R. 24294.

EXECUTIVE ORDER NO. 11725

Ex. Ord. No. 11725, June 27, 1973, 38 F.R. 17175, as amended by Ex. Ord. No. 11749, Dec. 10, 1973, 38 F.R. 34177; Ex. Ord. No. 12046, Mar. 27, 1978, 43 F.R. 13349, which related to transfer of certain functions of the Office of Emergency Preparedness, was revoked by section 5-112 of Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43243, set out below.

EXECUTIVE ORDER NO. 11746

Ex. Ord. No. 11746, Nov. 7, 1973, 38 F.R. 30991, which related to the assignment of emergency preparedness

functions to the Department of the Treasury, was superseded by Ex. Ord. No. 11921, June 11, 1976, 41 F.R. 24294.

EX. ORD. NO. 12148. FEDERAL EMERGENCY MANAGEMENT

Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239, as amended by Ex. Ord. No. 12155, Sept. 10, 1979, 44 F.R. 53071; Ex. Ord. No. 12156, Sept. 10, 1979, 44 F.R. 53073; Ex. Ord. No. 12381, Sept. 8, 1982, 47 F.R. 39795; Ex. Ord. No. 12673, Mar. 23, 1989, 54 F.R. 12571; Ex. Ord. No. 12919, § 904(a)(8), June 3, 1994, 59 F.R. 29533; Ex. Ord. No. 13286, § 52, Feb. 28, 2003, 68 F.R. 10628, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2251 et seq.), the Disaster Relief Act of 1970, as amended (42 U.S.C. Chapter 58 note), the Disaster Relief Act of 1974 (88 Stat. 143; 42 U.S.C. 5121 et seq.), the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7701 et seq.), Section 4 of Public Law 92-385 (86 Stat. 556), Section 43 of the Act of August 10, 1956, as amended (50 U.S.C. App. 2285), the National Security Act of 1947, as amended [see Short Title note set out under 50 U.S.C. 401], the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 et seq.), Reorganization Plan No. 1 of 1958 [set out above], Reorganization Plan No. 1 of 1973 [set out above], the Strategic and Critical Materials Stock Piling Act, as amended (50 U.S.C. 98 et seq.), Section 202 of the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 581c) [31 U.S.C. 1531], and Section 301 of Title 3 of the United States Code, and in order to transfer emergency functions to the Department of Homeland Security, it is hereby ordered as follows:

SECTION 1. TRANSFERS OR REASSIGNMENTS

1-1. *Transfer or Reassignment of Existing Functions.*

1-101. All functions vested in the President that have been delegated or assigned to the Defense Civil Preparedness Agency, Department of Defense, are transferred or reassigned to the Secretary of Homeland Security.

1-102. All functions vested in the President that have been delegated or assigned to the Federal Disaster Assistance Administration, Department of Housing and Urban Development, are transferred or reassigned to the Secretary of Homeland Security, including any of those functions redelegated or reassigned to the Department of Commerce with respect to assistance to communities in the development of readiness plans for severe weather-related emergencies.

1-103. All functions vested in the President that have been delegated or assigned to the Federal Preparedness Agency, General Services Administration, are transferred or reassigned to the Secretary of Homeland Security.

1-104. All functions vested in the President by the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7701 et seq.), including those functions performed by the Office of Science and Technology Policy, are delegated, transferred, or reassigned to the Secretary of Homeland Security.

1-2. *Transfer or Reassignment of Resources.*

1-201. The records, property, personnel and positions, and unexpended balances of appropriations, available or to be made available, which relate to the functions transferred, reassigned, or redelegated by this Order are hereby transferred to the Secretary of Homeland Security.

1-202. The Director of the Office of Management and Budget shall make such determinations, issue such orders, and take all actions necessary or appropriate to effectuate the transfers or reassignments provided by this Order, including the transfer of funds, records, property, and personnel.

SEC. 2. MANAGEMENT OF EMERGENCY PLANNING AND ASSISTANCE

2-1. *General.*

2-101. The Director of the Federal Emergency Management Agency [Secretary of Homeland Security] shall establish Federal policies for, and coordinate, all civil defense and civil emergency planning, management, mitigation, and assistance functions of Executive agencies.

2-102. The Director [Secretary] shall periodically review and evaluate the civil defense and civil emergency functions of the Executive agencies. In order to improve the efficiency and effectiveness of those functions, the Director [Secretary] shall recommend to the President alternative methods of providing Federal planning, management, mitigation, and assistance.

2-103. The Director [Secretary] shall be responsible for the coordination of efforts to promote dam safety, for the coordination of natural and nuclear disaster warning systems, and for the coordination of preparedness and planning to reduce the consequences of major terrorist incidents.

2-104. The Director [Secretary] shall represent the President in working with State and local governments and private sector to stimulate vigorous participation in civil emergency preparedness, mitigation, response, and recovery programs.

2-105. The Director [Secretary] shall provide an annual report to the President for subsequent transmittal to the Congress on the functions of the Department of Homeland Security. The report shall assess the current overall state of effectiveness of Federal civil defense and civil emergency functions, organizations, resources, and systems and recommend measures to be taken to improve planning, management, assistance, and relief by all levels of government, the private sector, and volunteer organizations.

2-2. *Implementation.*

2-201. In executing the functions under this Order, the Director [Secretary] shall develop policies which provide that all civil defense and civil emergency functions, resources, and systems of Executive agencies are:

(a) founded on the use of existing organizations, resources, and systems to the maximum extent practicable;

(b) integrated effectively with organizations, resources, and programs of State and local governments, the private sector and volunteer organizations; and

(c) developed, tested and utilized to prepare for, mitigate, respond to and recover from the effects on the population of all forms of emergencies.

2-202. Assignments of civil emergency functions shall, whenever possible, be based on extensions (under emergency conditions) of the regular missions of the Executive agencies.

2-203. For purposes of this Order, "civil emergency" means any accidental, natural, man-caused, or wartime emergency or threat thereof, which causes or may cause substantial injury or harm to the population or substantial damage to or loss of property.

2-204. In order that civil defense planning continues to be fully compatible with the Nation's overall strategic policy, and in order to maintain an effective link between strategic nuclear planning and nuclear attack preparedness planning, the development of civil defense policies and programs by the Secretary of Homeland Security shall be subject to oversight by the Secretary of Defense and the National Security Council.

2-205. To the extent authorized by law and within available resources, the Secretary of Defense shall provide the Secretary of Homeland Security with support for civil defense programs in the areas of program development and administration, technical support, research, communications, transportation, intelligence, and emergency operations.

2-206. All Executive agencies shall cooperate with and assist the Director [Secretary] in the performance of his functions.

2-3. *Transition Provisions.*

2-301. The functions which have been transferred, reassigned, or redelegated by Section 1 of this Order are recodified and revised as set forth in this Order at Section 4, and as provided by the amendments made at Section 5 to the provisions of other Orders.

2-302. Notwithstanding the revocations, revisions, codifications, and amendments made by this Order, the Director [Secretary] may continue to perform the functions transferred to him by Section 1 of this Order, except where they may otherwise be inconsistent with the provisions of this Order.

SEC. 3. FEDERAL EMERGENCY MANAGEMENT COUNCIL

[Revoked by Ex. Ord. No. 12919, §904(a)(8), June 3, 1994, 59 F.R. 29533.]

SEC. 4. DELEGATIONS

4-1. *Delegation of Functions Transferred to the President.*

4-101. [Revoked by Ex. Ord. No. 12155, Sept. 10, 1979, 44 F.R. 53071.]

4-102. The functions vested in the Director of the Office of Defense Mobilization by Sections 103 and 303 of the National Security Act of 1947, as amended by Sections 8 and 50 of the Act of September 3, 1954 (Public Law 779; 68 Stat. 1228 and 1244) (50 U.S.C. 404 and 405), were transferred to the President by Section 1(a) of Reorganization Plan No. 1 of 1958, as amended (50 U.S.C. App. 2271 note) [now set out above], and they are hereby delegated to the Secretary of Homeland Security.

4-103. (a) The functions vested in the Federal Civil Defense Administration or its Administrator by the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2251 et seq.), were transferred to the President by Reorganization Plan No. 1 of 1958, and they are hereby delegated to the Secretary of Homeland Security.

(b) Excluded from the delegation in subsection (a) is the function under Section 205(a)(4) of the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2286(a)(4)), relating to the establishment and maintenance of personnel standards on the merit basis that was delegated to the Director of the Office of Personnel Management by Section 1(b) of Executive Order No. 11589, as amended (Section 2-101(b) of Executive Order No. 12107) [5 U.S.C. 3376 note].

4-104. The Secretary of Homeland Security is authorized to redelegate, in accord with the provisions of Section 1(b) of Reorganization Plan No. 1 of 1958 (50 U.S.C. App. 2271 note) [now set out above], any of the functions delegated by Sections 4-101, 4-102, and 4-103 of this Order.

4-105. The functions vested in the Administrator of the Federal Civil Defense Administration by Section 43 of the Act of August 10, 1956 (70A Stat. 636) [50 U.S.C. App. 2285], were transferred to the President by Reorganization Plan No. 1 of 1958, as amended (50 U.S.C. App. 2271 note) [now set out above], were subsequently re-vested in the Director of the Office of Civil and Defense Mobilization by Section 512 of Public Law 86-500 (50 U.S.C. App. 2285) [the office was changed to Office of Emergency Planning by Public Law 87-296 (75 Stat. 630) and then to the Office of Emergency Preparedness by Section 402 of Public Law 90-608 (82 Stat. 1194)], were again transferred to the President by Section 1 of Reorganization Plan No. 1 of 1973 (50 U.S.C. App. 2271 note) [now set out above], and they are hereby delegated to the Secretary of Homeland Security.

4-106. The functions vested in the Director of the Office of Emergency Preparedness by Section 16 of the Act of September 23, 1950, as amended (20 U.S.C. 646), and by Section 7 of the Act of September 30, 1950, as amended (20 U.S.C. 241-1), were transferred to the President by Section 1 of Reorganization Plan No. 1 of 1973 (50 U.S.C. App. 2271 note) [now set out above], and they are hereby delegated to the Secretary of Homeland Security.

4-107. That function vested in the Director of the Office of Emergency Preparedness by Section 762(a) of the Higher Education Act of 1965, as added by Section 161(a) of the Education Amendments of 1972, and as further amended (20 U.S.C. 1132d-1(a)), to the extent transferred to the President by Reorganization Plan No. 1 of 1973 (50 U.S.C. App. 2271 note) [now set out above], is hereby delegated to the Secretary of Homeland Security.

4-2. *Delegation of Functions Vested in the President.*

4-201. The functions vested in the President by the Disaster Relief Act of 1970, as amended (42 U.S.C. Chapter 58 note), are hereby delegated to the Secretary of Homeland Security.

4-202. The functions (related to grants for damages resulting from hurricane and tropical storm Agnes) vested in the President by Section 4 of Public Law 92-335 (86 Stat. 556) are hereby delegated to the Secretary of Homeland Security.

Section [sic] 4-203. The functions vested in the President by the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5121 et seq.), except those functions vested in the President by Section 401 (relating to the declaration of major disasters and emergencies) [42 U.S.C. 5170], Section 501 (relating to the declaration of emergencies) [42 U.S.C. 5191], Section 405 (relating to the repair, reconstruction, restoration, or replacement of Federal facilities) [42 U.S.C. 5171], and Section 412 (relating to food coupons and distribution) [42 U.S.C. 5179], are hereby delegated to the Secretary of Homeland Security.

4-204. The functions vested in the President by the Earthquake Hazards Reduction Act of 1977, as amended (42 U.S.C. 7701 et seq.) are delegated to the Secretary of Homeland Security.

4-205. Effective July 30, 1979, the functions vested in the President by Section 4(h) of the Commodity Credit Corporation Charter Act, as amended (15 U.S.C. 714b(h)), are hereby delegated to the Secretary of Homeland Security.

4-206. Effective July 30, 1979, the functions vested in the President by Section 204(f) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 485(f) [now 40 U.S.C. 574(d)], are hereby delegated to the Secretary of Homeland Security.

4-207. The functions vested in the President by Section 502 of the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2302), are delegated to the Secretary of Homeland Security.

SEC. 5. OTHER EXECUTIVE ORDERS

5-1. *Revocations.*

5-101. Executive Order No. 10242, as amended, entitled "Prescribing Regulations Governing the Exercise by the Federal Civil Defense Administrator of Certain Administrative Authority Granted by the Federal Civil Defense Act of 1950", is revoked.

5-102. Sections 1 and 2 of Executive Order No. 10296, as amended, entitled "Providing for the Performance of Certain Defense Housing and Community Facilities and Service Functions", are revoked.

5-103. Executive Order No. 10494, as amended, relating to the disposition of remaining functions, is revoked.

5-104. Executive Order No. 10529, as amended, relating to federal employee participation in State and local civil defense programs, is revoked.

5-105. Section 3 of Executive Order No. 10601, as amended, which concerns the Commodity Set Aside, is revoked.

5-106. Executive Order No. 10634, as amended, relating to loans for facilities destroyed or damaged by a major disaster, is revoked.

5-107. Section 4(d)(2) of Executive Order No. 10900, as amended, which concerns foreign currencies made available to make purchases for the supplemental stockpile, is revoked.

5-108. Executive Order No. 10952, as amended, entitled "Assigning Civil Defense Responsibilities to the Secretary of Defense and Others", is revoked.

5-109. Executive Order No. 11051, as amended, relating to responsibilities of the Office of Emergency Preparedness, is revoked.

5-110. Executive Order No. 11415, as amended, relating to the Health Resources Advisory Committee, is revoked.

5-111. Executive Order No. 11795, as amended, entitled "Delegating Disaster Relief Functions Pursuant to the Disaster Relief Act of 1974", is revoked, except for Section 3 thereof.

5-112. Executive Order No. 11725, as amended, entitled "Transfer of Certain Functions of the Office of Emergency Preparedness", is revoked.

5-113. Executive Order No. 11749, as amended, entitled "Consolidating Disaster Relief Functions Assigned to the Secretary of Housing and Urban Development" is revoked.

5-2. *Amendments.*

5-201. Executive Order No. 10421, as amended, relating to physical security of defense facilities [formerly set out as a note under 50 U.S.C. 404] is further amended by (a) substituting the "Director of the Federal Emergency Management Agency" for "Director of the Office of Emergency Planning" in Sections 1(a), 1(c), and 6(b); and, (b) substituting "Federal Emergency Management Agency" for "Office of Emergency Planning" in Sections 6(b) and 7(b).

5-202. Executive Order No. 10480, as amended [50 U.S.C. App. 2153 note], is further amended by (a) substituting "Director of the Federal Emergency Management Agency" for "Director of the Office of Emergency Planning" in Sections 101(a), 101(b), 201(a), 201(b), 301, 304, 307, 308, 310(b), 311(b), 312, 313, 401(b), 401(e), and 605; and, (b) substituting "Director of the Federal Emergency Management Agency" for "Administrator of General Services" in Sections 305, 501, and 610.

5-203. Section 3(d) of Executive Order No. 10582, as amended, which relates to determinations under the Buy American Act [41 U.S.C. 10d note] is amended by deleting "Director of the Office of Emergency Planning" and substituting therefor "Director of the Federal Emergency Management Agency".

5-204. Paragraph 21 of Executive Order No. 10789, as amended [50 U.S.C. 1431 note], is further amended by adding "The Federal Emergency Management Agency" after "Government Printing Office".

5-205. Executive Order No. 11179, as amended, concerning the National Defense Executive Reserve [50 U.S.C. App. 2153 note], is further amended by deleting "Director of the Office of Emergency Planning" in Section 2 and substituting therefor "Director of the Federal Emergency Management Agency".

5-206. Section 7 of Executive Order No. 11912, as amended, concerning energy policy and conservation [42 U.S.C. 6201 note], is further amended by deleting "Administrator of General Services" and substituting therefor "Director of the Federal Emergency Management Agency".

5-207. Section 2(d) of Executive Order No. 11988 entitled "Floodplain Management" [42 U.S.C. 4321 note] is amended by deleting "Federal Insurance Administration" and substituting therefor "Director of the Federal Emergency Management Agency".

5-208. Section 5-3 of Executive Order No. 12046 of March 29, 1978 [47 U.S.C. 305 note], is amended by deleting "General Services Administration" and substituting therefor "Federal Emergency Management Agency" and by deleting "Administrator of General Services" and substituting therefor "Director of the Federal Emergency Management Agency".

5-209. Section 1-201 of Executive Order No. 12065 [50 U.S.C. 435 note] is amended by adding "The Director of the Federal Emergency Management Agency" after "The Administrator, National Aeronautics and Space Administration" and by deleting "Director, Federal Preparedness Agency and to the" from the parentheses after "The Administrator of General Services".

5-210. Section 1-102 of Executive Order No. 12075 of August 16, 1978 [42 U.S.C. 1450 note], is amended by adding in alphabetical order "(p) Federal Emergency Management Agency".

5-211. Section 1-102 of Executive Order No. 12083 of September 27, 1978 [42 U.S.C. 7101 note] is amended by adding in alphabetical order "(z) the Director of the Federal Emergency Management Agency".

5-212. Section 9.11(b) of Civil Service Rule IX (5 CFR Part 9) [5 U.S.C. 3301 note] is amended by deleting "the Defense Civil Preparedness Agency and".

5-213. [Revoked by Ex. Ord. No. 12381, Sept. 8, 1982, 47 F.R. 39795.]

5-214. Executive Order No. 11490, as amended [see note above] is further amended as follows:

(a) Delete the last sentence of Section 102(a) and substitute therefor the following: "The activities undertaken by the departments and agencies pursuant to this Order, except as provided in Section 3003, shall be in accordance with guidance provided by, and subject to, evaluation by the Director of the Federal Emergency Management Agency."

(b) Delete Section 103 entitled "Presidential Assistance" and substitute the following new Section 103: "*Sec. 103 General Coordination.* The Director of the Federal Emergency Management Agency (FEMA) shall determine national preparedness goals and policies for the performance of functions under this Order and coordinate the performance of such functions with the total national preparedness programs."

(c) Delete the portion of the first sentence of Section 401 prior to the colon and insert the following: "The Secretary of Defense shall perform the following emergency preparedness functions"

(d) Delete "Director of the Federal Preparedness Agency (GSA)" or "the Federal Preparedness Agency (GSA)" and substitute therefor "Director, FEMA", in Sections 401(3), 401(4), 401(5), 401(9), 401(10), 401(14), 401(15), 401(16), 401(19), 401(21), 401(22), 501(8), 601(2), 904(2), 1102(2), 1204(2), 1401(a), 1701, 1702, 2003, 2004, 2801(5), 3001, 3002(2), 3004, 3005, 3006, 3008, 3010, and 3013.

(e) The number assigned to this Order shall be substituted for "11051 of September 27, 1962" in Section 3001, and for "11051" in Sections 1802, 2002(3), 3002 and 3008(1).

(f) The number assigned to this Order shall be substituted for "10952" in Sections 1103, 1104, 1205, and 3002.

(g) Delete "Department of Defense" in Sections 502, 601(1), 804, 905, 1103, 1104, 1106(4), 1205, 2002(8), the first sentence of Section 3002, and Sections 3008(1) and 3010 and substitute therefor "Director of the Federal Emergency Management Agency."

SEC. 6.

This Order is effective July 15, 1979.

[Section 1-106 of Ex. Ord. No. 12155, which enacted sections 4-205 and 4-206 of Ex. Ord. No. 12148, was revoked by Pub. L. 100-180, div. C, title II, §3203(b), Dec. 4, 1987, 101 Stat. 1247.]

EX. ORD. NO. 12472. ASSIGNMENT OF NATIONAL SECURITY AND EMERGENCY PREPAREDNESS TELECOMMUNICATIONS FUNCTIONS

Ex. Ord. No. 12472, Apr. 3, 1984, 49 F.R. 13471, as amended by Ex. Ord. No. 13286, §46, Feb. 28, 2003, 68 F.R. 10627, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Communications Act of 1934, as amended (47 U.S.C. 151), the National Security Act of 1947, as amended, the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061), the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2251), the Disaster Relief Act of 1974 (42 U.S.C. 5121), Section 5 of Reorganization Plan No. 1 of 1977 (3 C.F.R. 197, 1978 Comp.) [5 U.S.C. App.], and Section 203 of Reorganization Plan No. 3 of 1978 (3 C.F.R. 389, 1978 Comp.) [5 U.S.C. App.], and in order to provide for the consolidation of assignment and responsibility for improved execution of national security and emergency preparedness telecommunications functions, it is hereby ordered as follows:

SECTION 1. *The National Communications System.* (a) There is hereby established the National Communications System (NCS). The NCS shall consist of the telecommunications assets of the entities represented on the NCS Committee of Principals and an administrative structure consisting of the Executive Agent, the NCS Committee of Principals and the Manager. The NCS Committee of Principals shall consist of representatives from those Federal departments, agencies or entities, designated by the President, which lease or

own telecommunications facilities or services of significance to national security or emergency preparedness, and, to the extent permitted by law, other Executive entities which bear policy, regulatory or enforcement responsibilities of importance to national security or emergency preparedness telecommunications capabilities.

(b) The mission of the NCS shall be to assist the President, the National Security Council, the Homeland Security Council, the Director of the Office of Science and Technology Policy and the Director of the Office of Management and Budget in:

(1) the exercise of the telecommunications functions and responsibilities set forth in Section 2 of this Order; and

(2) the coordination of the planning for and provision of national security and emergency preparedness communications for the Federal government under all circumstances, including crisis or emergency, attack, recovery and reconstitution.

(c) The NCS shall seek to ensure that a national telecommunications infrastructure is developed which:

(1) Is responsive to the national security and emergency preparedness needs of the President and the Federal departments, agencies and other entities, including telecommunications in support of national security leadership and continuity of government;

(2) Is capable of satisfying priority telecommunications requirements under all circumstances through use of commercial, government and privately owned telecommunications resources;

(3) Incorporates the necessary combination of hardness, redundancy, mobility, connectivity, interoperability, restorability and security to obtain, to the maximum extent practicable, the survivability of national security and emergency preparedness telecommunications in all circumstances, including conditions of crisis or emergency; and

(4) Is consistent, to the maximum extent practicable, with other national telecommunications policies.

(d) To assist in accomplishing its mission, the NCS shall:

(1) serve as a focal point for joint industry-government national security and emergency preparedness telecommunications planning; and

(2) establish a joint industry-government National Coordinating Center which is capable of assisting in the initiation, coordination, restoration and reconstitution of national security or emergency preparedness telecommunications services or facilities under all conditions of crisis or emergency.

(e) The Secretary of Homeland Security is designated as the Executive Agent for the NCS. The Executive Agent shall:

(1) Designate the Manager of the NCS;

(2) Ensure that the NCS conducts unified planning and operations, in order to coordinate the development and maintenance of an effective and responsive capability for meeting the domestic and international national security and emergency preparedness telecommunications needs of the Federal government;

(3) Ensure that the activities of the NCS are conducted in conjunction with the emergency management activities of the Department of Homeland Security;

(4) Recommend, in consultation with the NCS Committee of Principals, to the National Security Council, the Homeland Security Council, the Director of the Office of Science and Technology Policy, or the Director of the Office of Management and Budget, as appropriate:

a. The assignment of implementation or other responsibilities to NCS member entities;

b. New initiatives to assist in the exercise of the functions specified in Section 2; and

c. Changes in the composition or structure of the NCS;

(5) Oversee the activities of and provide personnel and administrative support to the Manager of the NCS;

(6) Provide staff support and technical assistance to the National Security Telecommunications Advisory

Committee established by Executive Order No. 12382, as amended [47 U.S.C. 901 note]; and

(7) Perform such other duties as are from time to time assigned by the President or his authorized designee.

(f) The NCS Committee of Principals shall:

(1) Serve as the forum in which each member of the Committee may review, evaluate, and present views, information and recommendations concerning ongoing or prospective national security or emergency preparedness telecommunications programs or activities of the NCS and the entities represented on the Committee;

(2) Serve as the forum in which each member of the Committee shall report on and explain ongoing or prospective telecommunications plans and programs developed or designed to achieve national security or emergency preparedness telecommunications objectives;

(3) Provide comments or recommendations, as appropriate, to the National Security Council, the Homeland Security Council, the Director of the Office of Science and Technology Policy, the Director of the Office of Management and Budget, the Executive Agent, or the Manager of the NCS, regarding ongoing or prospective activities of the NCS; and

(4) Perform such other duties as are from time to time assigned by the President or his authorized designee.

(g) The Manager of the NCS shall:

(1) Develop for consideration by the NCS Committee of Principals and the Executive Agent:

a. A recommended evolutionary telecommunications architecture designed to meet current and future Federal government national security and emergency preparedness telecommunications requirements;

b. Plans and procedures for the management, allocation and use, including the establishment of priorities or preferences, of Federally owned or leased telecommunications assets under all conditions of crisis or emergency;

c. Plans, procedures and standards for minimizing or removing technical impediments to the interoperability of government-owned and/or commercially-provided telecommunications systems;

d. Test and exercise programs and procedures for the evaluation of the capability of the Nation's telecommunications resources to meet national security or emergency preparedness telecommunications requirements; and

e. Alternative mechanisms for funding, through the budget review process, national security or emergency preparedness telecommunications initiatives which benefit multiple Federal departments, agencies, or entities. Those mechanisms recommended by the NCS Committee of Principals and the Executive Agent shall be submitted to the Director of the Office of Management and Budget.

(2) Implement and administer any approved plans or programs as assigned, including any system of priorities and preferences for the provision of communications service, in consultation with the NCS Committee of Principals and the Federal Communications Commission, to the extent practicable or otherwise required by law or regulation;

(3) Chair the NCS Committee of Principals and provide staff support and technical assistance thereto;

(4) Serve as a focal point for joint industry-government planning, including the dissemination of technical information, concerning the national security or emergency preparedness telecommunications requirements of the Federal government;

(5) Conduct technical studies or analyses, and examine research and development programs, for the purpose of identifying, for consideration by the NCS Committee of Principals and the Executive Agent, improved approaches which may assist Federal entities in fulfilling national security or emergency preparedness telecommunications objectives;

(6) Pursuant to the Federal Standardization Program of the General Services Administration, and in con-

sultation with other appropriate entities of the Federal government including the NCS Committee of Principals, manage the Federal Telecommunications Standards Program, ensuring wherever feasible that existing or evolving industry, national, and international standards are used as the basis for Federal telecommunications standards; and

(7) Provide such reports and perform such other duties as are from time to time assigned by the President or his authorized designee, the Executive Agent, or the NCS Committee of Principals. Any such assignments of responsibility to, or reports made by, the Manager shall be transmitted through the Executive Agent.

SEC. 2. *Executive Office Responsibilities.* (a) *Wartime Emergency Functions.* (1) The National Security Council shall provide policy direction for the exercise of the war power functions of the President under Section 606 of the Communications Act of 1934, as amended (47 U.S.C. 606), should the President issue implementing instructions in accordance with the National Emergencies Act (50 U.S.C. 1601).

(2) The Director of the Office of Science and Technology Policy shall direct the exercise of the war power functions of the President under Section 606(a), (c)-(e), of the Communications Act of 1934, as amended (47 U.S.C. 606), should the President issue implementing instructions in accordance with the National Emergencies Act (50 U.S.C. 1601).

(b) *Non-Wartime Emergency Functions.* (1) The National Security Council, in consultation with the Homeland Security Council, shall:

a. Advise and assist the President in coordinating the development of policy, plans, programs and standards within the Federal government for the identification, allocation, and use of the Nation's telecommunications resources by the Federal government, and by State and local governments, private industry and volunteer organizations upon request, to the extent practicable and otherwise consistent with law, during those crises or emergencies in which the exercise of the President's war power functions is not required or permitted by law; and

b. Provide policy direction for the exercise of the President's non-wartime emergency telecommunications functions, should the President so instruct.

(2) The Director of the Office of Science and Technology Policy shall provide information, advice, guidance and assistance, as appropriate, to the President and to those Federal departments and agencies with responsibilities for the provision, management, or allocation of telecommunications resources, during those crises or emergencies in which the exercise of the President's war power functions is not required or permitted by law;

(3) The Director of the Office of Science and Technology Policy shall establish a Joint Telecommunications Resources Board (JTRB) to assist him in the exercise of the functions specified in this subsection. The Director of the Office of Science and Technology Policy shall serve as chairman of the JTRB; select those Federal departments, agencies, or entities which shall be members of the JTRB; and specify the functions it shall perform.

(c) *Planning and Oversight Responsibilities.* (1) The National Security Council shall advise and assist the President in:

a. Coordinating the development of policy, plans, programs and standards for the mobilization and use of the Nation's commercial, government, and privately owned telecommunications resources, in order to meet national security or emergency preparedness requirements;

b. Providing policy oversight and direction of the activities of the NCS; and

c. Providing policy oversight and guidance for the execution of the responsibilities assigned to the Federal departments and agencies by this Order.

(2) The Director of the Office of Science and Technology Policy shall make recommendations to the President with respect to the test, exercise and evalua-

tion of the capability of existing and planned communications systems, networks or facilities to meet national security or emergency preparedness requirements and report the results of any such tests or evaluations and any recommended remedial actions to the President and to the National Security Council;

(3) The Director of the Office of Science and Technology Policy or his designee shall advise and assist the President in the administration of a system of radio spectrum priorities for those spectrum dependent telecommunications resources of the Federal government which support national security or emergency preparedness functions. The Director also shall certify or approve priorities for radio spectrum use by the Federal government, including the resolution of any conflicts in or among priorities, under all conditions of crisis or emergency; and

(4) The National Security Council, the Homeland Security Council, the Director of the Office of Science and Technology Policy and the Director of the Office of Management and Budget shall, in consultation with the Executive Agent for the NCS and the NCS Committee of Principals, determine what constitutes national security and emergency preparedness telecommunications requirements.

(d) *Consultation with Federal Departments and Agencies.* In performing the functions assigned under this Order, the National Security Council, the Homeland Security Council, and the Director of the Office of Science and Technology Policy, in consultation with each other, shall:

(1) Consult, as appropriate, with the Director of the Office of Management and Budget; the Secretary of Homeland Security with respect to the emergency management responsibilities assigned pursuant to Executive Order No. 12148, as amended [set out above]; the Secretary of Commerce, with respect to responsibilities assigned pursuant to Executive Order No. 12046 [47 U.S.C. 305 note]; the Secretary of Defense, with respect to communications security responsibilities assigned pursuant to Executive Order No. 12333 [50 U.S.C. 401 note]; and the Chairman of the Federal Communications Commission or his authorized designee; and

(2) Establish arrangements for consultation among all interested Federal departments, agencies or entities to ensure that the national security and emergency preparedness communications needs of all Federal government entities are identified; that mechanisms to address such needs are incorporated into pertinent plans and procedures; and that such needs are met in a manner consistent, to the maximum extent practicable, with other national telecommunications policies.

(e) *Budgetary Guidelines.* The Director of the Office of Management and Budget, in consultation with the National Security Council, the Homeland Security Council, and the NCS, will prescribe general guidelines and procedures for reviewing the financing of the NCS within the budgetary process and for preparation of budget estimates by participating agencies. These guidelines and procedures may provide for mechanisms for funding, through the budget review process, national security and emergency preparedness telecommunications initiatives which benefit multiple Federal departments, agencies, or entities.

SEC. 3. *Assignment of Responsibilities to Other Departments and Agencies.* In order to support and enhance the capability to satisfy the national security and emergency preparedness telecommunications needs of the Federal government, State and local governments, private industry and volunteer organizations, under all circumstances including those of crisis or emergency, the Federal departments and agencies shall perform the following functions:

(a) *Department of Commerce.* The Secretary of Commerce shall, for all conditions of crisis or emergency: (1) Develop plans and procedures concerning radio spectrum assignments, priorities and allocations for use by Federal departments, agencies and entities; and

(2) Develop, maintain and publish policy, plans, and procedures for the control and allocation of frequency

assignments, including the authority to amend, modify or revoke such assignments, in those parts of the electromagnetic spectrum assigned to the Federal government.

(b) *Department of Homeland Security.* The Secretary of Homeland Security shall:

(1) Plan for and provide, operate and maintain telecommunications services and facilities, as part of its National Emergency Management System, adequate to support its assigned emergency management responsibilities;

(2) Advise and assist State and local governments and volunteer organizations, upon request and to the extent consistent with law, in developing plans and procedures for identifying and satisfying their national security or emergency preparedness telecommunications requirements;

(3) Ensure, to the maximum extent practicable, that national security and emergency preparedness telecommunications planning by State and local governments and volunteer organizations is mutually supportive and consistent with the planning of the Federal government; and

(4) Develop, upon request and to the extent consistent with law and in consonance with regulations promulgated by and agreements with the Federal Communications Commission, plans and capabilities for, and provide policy and management oversight of, the Emergency Broadcast System, and advise and assist private radio licensees of the Commission in developing emergency communications plans, procedures and capabilities.

(c) *Department of State.* The Secretary of State, in accordance with assigned responsibilities within the Diplomatic Telecommunications System, shall plan for and provide, operate and maintain rapid, reliable and secure telecommunications services to those Federal entities represented at United States diplomatic missions and consular offices overseas. This responsibility shall include the provision and operation of domestic telecommunications in support of assigned national security or emergency preparedness responsibilities.

(d) *Department of Defense.* In addition to the other responsibilities assigned by this Order, the Secretary of Defense shall:

(1) Plan for and provide, operate and maintain telecommunications services and facilities adequate to support the National Command Authorities and to execute the responsibilities assigned by Executive Order No. 12333 [50 U.S.C. 401 note]; and

(2) Ensure that the Director of the National Security Agency provides the technical support necessary to develop and maintain plans adequate to provide for the security and protection of national security and emergency preparedness telecommunications.

(3) Nothing in this order shall be construed to impair or otherwise affect the authority of the Secretary of Defense with respect to the Department of Defense, including the chain of command for the armed forces of the United States under section 162(b) of title 10, United States Code, and the authority of the Secretary of Defense with respect to the Department of Defense under section 113(b) of that title.

(e) *Department of Justice.* The Attorney General shall, as necessary, review for legal sufficiency, including consistency with the antitrust laws, all policies, plans or procedures developed pursuant to responsibilities assigned by this Order.

(f) *Central Intelligence Agency.* The Director of Central Intelligence shall plan for and provide, operate, and maintain telecommunications services adequate to support its assigned responsibilities, including the dissemination of intelligence within the Federal government.

(g) *General Services Administration.* Except as otherwise assigned by this Order, the Administrator of General Services, consistent with policy guidance provided by the Director of the Office of Management and Budget, shall ensure that Federally owned or managed domestic communications facilities and services meet the

national security and emergency preparedness requirements of the Federal civilian departments, agencies and entities.

(h) *Federal Communications Commission.* The Federal Communications Commission shall, consistent with Section 4(c) of this Order:

(1) Review the policies, plans and procedures of all entities licensed or regulated by the Commission that are developed to provide national security or emergency preparedness communications services, in order to ensure that such policies, plans and procedures are consistent with the public interest, convenience and necessity;

(2) Perform such functions as required by law with respect to all entities licensed or regulated by the Commission, including (but not limited to) the extension, discontinuance or reduction of common carrier facilities or services; the control of common carrier rates, charges, practices and classifications; the construction, authorization, activation, deactivation or closing of radio stations, services and facilities; the assignment of radio frequencies to Commission licensees; the investigation of violations of pertinent law and regulation; and the initiation of appropriate enforcement actions;

(3) Develop policy, plans and procedures adequate to execute the responsibilities assigned in this Order under all conditions or crisis or emergency; and

(4) Consult as appropriate with the Executive Agent for the NCS and the NCS Committee of Principals to ensure continued coordination of their respective national security and emergency preparedness activities.

(i) All Federal departments and agencies, to the extent consistent with law (including those authorities and responsibilities set forth in Section 4(c) of this Order), shall:

(1) Determine their national security and emergency preparedness telecommunications requirements, and provide information regarding such requirements to the Manager of the NCS;

(2) Prepare policies, plans and procedures concerning telecommunications facilities, services or equipment under their management or operational control to maximize their capability of responding to the national security or emergency preparedness needs of the Federal government;

(3) Provide, after consultation with the Director of the Office of Management and Budget, resources to support their respective requirements for national security and emergency preparedness telecommunications; and provide personnel and staff support to the Manager of the NCS as required by the President;

(4) Make information available to, and consult with, the Manager of the NCS regarding agency telecommunications activities in support of national security or emergency preparedness;

(5) Consult, consistent with the provisions of Executive Order No. 12046, as amended [47 U.S.C. 305 note], and in conjunction with the Manager of the NCS, with the Federal Communications Commission regarding execution of responsibilities assigned by this Order;

(6) Submit reports annually, or as otherwise requested, to the Manager of the NCS, regarding agency national security or emergency preparedness telecommunications activities; and

(7) Cooperate with and assist the Executive Agent for the NCS, the NCS Committee of Principals, the Manager of the NCS, and other departments and agencies in the execution of the functions set forth in this Order, furnishing them such information, support and assistance as may be required.

(j) Each Federal department or agency shall execute the responsibilities assigned by this Order in conjunction with the emergency management activities of the Department of Homeland Security, and in regular consultation with the Executive Agent for the NCS and the NCS Committee of Principals to ensure continued coordination of NCS and individual agency telecommunications activities.

SEC. 4. *General Provisions.* (a) All Executive departments and agencies may issue such rules and regula-

tions as may be necessary to carry out the functions assigned under this Order.

(b) In order to reflect the assignments of responsibility provided by this Order,

(1) Sections 2-414, 4-102, 4-103, 4-202, 4-302, 5-3, and 6-101 of Executive Order No. 12046, as amended [47 U.S.C. 305], are revoked;

(2) The Presidential Memorandum of August 21, 1963, as amended, entitled "Establishment of the National Communications System", is hereby superseded; and

(3) Section 2-411 of Executive Order No. 12046, as amended [47 U.S.C. 305], is further amended by deleting the period and inserting " , except as otherwise provided by Executive Order No." and inserting the number assigned to this Order.

(c) Nothing in this Order shall be deemed to affect the authorities or responsibilities of the Director of the Office of Management and Budget, or any Office or official thereof; or reassign any function assigned any agency under the Federal Property and Administrative Services Act of 1949, as amended; or under any other law; or any function vested by law in the Federal Communications Commission.

SEC. 5. This Order shall be effective upon publication in the Federal Register.

EX. ORD. NO. 12656. ASSIGNMENT OF EMERGENCY PREPAREDNESS RESPONSIBILITIES

Ex. Ord. No. 12656, Nov. 18, 1988, 53 F.R. 47491, as amended by Ex. Ord. No. 13074, Feb. 9, 1998, 63 F.R. 7277; Ex. Ord. No. 13228, § 9, Oct. 8, 2001, 66 F.R. 51816; Ex. Ord. No. 13286, § 42, Feb. 28, 2003, 68 F.R. 10626, provided:

WHEREAS our national security is dependent upon our ability to assure continuity of government, at every level, in any national security emergency situation that might confront the Nation; and

WHEREAS effective national preparedness planning to meet such an emergency, including a massive nuclear attack, is essential to our national survival; and

WHEREAS effective national preparedness planning requires the identification of functions that would have to be performed during such an emergency, the assignment of responsibility for developing plans for performing these functions, and the assignment of responsibility for developing the capability to implement those plans; and

WHEREAS the Congress has directed the development of such national security emergency preparedness plans and has provided funds for the accomplishment thereof;

NOW, THEREFORE, by virtue of the authority vested in me as President by the Constitution and laws of the United States of America, and pursuant to Reorganization Plan No. 1 of 1958 (72 Stat. 1799) [set out above], the National Security Act of 1947, as amended [50 U.S.C. 401 et seq.], the Defense Production Act of 1950, as amended [see 50 U.S.C. App. 2061], and the Federal Civil Defense Act, as amended, it is hereby ordered that the responsibilities of the Federal departments and agencies in national security emergencies shall be as follows:

PART 1—PREAMBLE

SECTION 101. *National Security Emergency Preparedness Policy.*

(a) The policy of the United States is to have sufficient capabilities at all levels of government to meet essential defense and civilian needs during any national security emergency. A national security emergency is any occurrence, including natural disaster, military attack, technological emergency, or other emergency, that seriously degrades or seriously threatens the national security of the United States. Policy for national security emergency preparedness shall be established by the President. Pursuant to the President's direction, the National Security Council shall be responsible for developing and administering such policy, except that the Homeland Security Council shall be responsible for administering such policy with respect to terrorist threats and attacks within the United

States. All national security emergency preparedness activities shall be consistent with the Constitution and laws of the United States and with preservation of the constitutional government of the United States.

(b) Effective national security emergency preparedness planning requires: identification of functions that would have to be performed during such an emergency; development of plans for performing these functions; and development of the capability to execute those plans.

SEC. 102. *Purpose.*

(a) The purpose of this Order is to assign national security emergency preparedness responsibilities to Federal departments and agencies. These assignments are based, whenever possible, on extensions of the regular missions of the departments and agencies.

(b) This Order does not constitute authority to implement the plans prepared pursuant to this Order. Plans so developed may be executed only in the event that authority for such execution is authorized by law.

SEC. 103. *Scope.*

(a) This Order addresses national security emergency preparedness functions and activities. As used in this Order, preparedness functions and activities include, as appropriate, policies, plans, procedures, and readiness measures that enhance the ability of the United States Government to mobilize for, respond to, and recover from a national security emergency.

(b) This Order does not apply to those natural disasters, technological emergencies, or other emergencies, the alleviation of which is normally the responsibility of individuals, the private sector, volunteer organizations, State and local governments, and Federal departments and agencies unless such situations also constitute a national security emergency.

(c) This Order does not require the provision of information concerning, or evaluation of, military policies, plans, programs, or states of military readiness.

(d) This Order does not apply to national security emergency preparedness telecommunications functions and responsibilities that are otherwise assigned by Executive Order 12472 [set out above].

SEC. 104. *Management of National Security Emergency Preparedness.*

(a) The National Security Council is the principal forum for consideration of national security emergency preparedness policy, except that the Homeland Security Council is the principal forum for consideration of policy relating to terrorist threats and attacks within the United States.

(b) The National Security Council and the Homeland Security Council shall arrange for Executive branch liaison with, and assistance to, the Congress and the Federal judiciary on national security-emergency preparedness matters.

(c) The Secretary of Homeland Security shall serve as an advisor to the National Security Council and the Homeland Security Council on issues of national security emergency preparedness, including mobilization preparedness, civil defense, continuity of government, technological disasters, and other issues, as appropriate. Pursuant to such procedures for the organization and management of the National Security Council and Homeland Security Council processes as the President may establish, the Secretary of Homeland Security also shall assist in the implementation of and management of those processes as the President may establish. The Secretary of Homeland Security also shall assist in the implementation of national security emergency preparedness policy by coordinating with the other Federal departments and agencies and with State and local governments, and by providing periodic reports to the National Security Council and the Homeland Security Council on implementation of national security emergency preparedness policy.

(d) National security emergency preparedness functions that are shared by more than one agency shall be coordinated by the head of the Federal department or agency having primary responsibility and shall be supported by the heads of other departments and agencies having related responsibilities.

(e) There shall be a national security emergency exercise program that shall be supported by the heads of all appropriate Federal departments and agencies.

(f) Plans and procedures will be designed and developed to provide maximum flexibility to the President for his implementation of emergency actions.

SEC. 105. *Interagency Coordination.*

(a) All appropriate Cabinet members and agency heads shall be consulted regarding national security emergency preparedness programs and policy issues. Each department and agency shall support interagency coordination to improve preparedness and response to a national security emergency and shall develop and maintain decentralized capabilities wherever feasible and appropriate.

(b) Each Federal department and agency shall work within the framework established by, and cooperate with those organizations assigned responsibility in, Executive Order No. 12472 [set out above], to ensure adequate national security emergency preparedness telecommunications in support of the functions and activities addressed by this Order.

PART 2—GENERAL PROVISIONS

SEC. 201. *General.* The head of each Federal department and agency, as appropriate, shall:

(1) Be prepared to respond adequately to all national security emergencies, including those that are international in scope, and those that may occur within any region of the Nation;

(2) Consider national security emergency preparedness factors in the conduct of his or her regular functions, particularly those functions essential in time of emergency. Emergency plans and programs, and an appropriate state of readiness, including organizational infrastructure, shall be developed as an integral part of the continuing activities of each Federal department and agency;

(3) Appoint a senior policy official as Emergency Coordinator, responsible for developing and maintaining a multi-year, national security emergency preparedness plan for the department or agency to include objectives, programs, and budgetary requirements;

(4) Design preparedness measures to permit a rapid and effective transition from routine to emergency operations, and to make effective use of the period following initial indication of a probable national security emergency. This will include:

(a) Development of a system of emergency actions that defines alternatives, processes, and issues to be considered during various stages of national security emergencies;

(b) Identification of actions that could be taken in the early stages of a national security emergency or pending national security emergency to mitigate the impact of or reduce significantly the lead times associated with full emergency action implementation;

(5) Base national security emergency preparedness measures on the use of existing authorities, organizations, resources, and systems to the maximum extent practicable;

(6) Identify areas where additional legal authorities may be needed to assist management and, consistent with applicable Executive orders, take appropriate measures toward acquiring those authorities;

(7) Make policy recommendations to the National Security Council and the Homeland Security Council regarding national security emergency preparedness activities and functions of the Federal Government;

(8) Coordinate with State and local government agencies and other organizations, including private sector organizations, when appropriate. Federal plans should include appropriate involvement of and reliance upon private sector organizations in the response to national security emergencies;

(9) Assist State, local, and private sector entities in developing plans for mitigating the effects of national security emergencies and for providing services that are essential to a national response;

(10) Cooperate, to the extent appropriate, in compiling, evaluating, and exchanging relevant data related

to all aspects of national security emergency preparedness;

(11) Develop programs regarding congressional relations and public information that could be used during national security emergencies;

(12) Ensure a capability to provide, during a national security emergency, information concerning Acts of Congress, presidential proclamations, Executive orders, regulations, and notices of other actions to the Archivist of the United States, for publication in the Federal Register, or to each agency designated to maintain the Federal Register in an emergency;

(13) Develop and conduct training and education programs that incorporate emergency preparedness and civil defense information necessary to ensure an effective national response;

(14) Ensure that plans consider the consequences for essential services provided by State and local governments, and by the private sector, if the flow of Federal funds is disrupted;

(15) Consult and coordinate with the Secretary of Homeland Security to ensure that those activities and plans are consistent with current Presidential guidelines and policies.

SEC. 202. *Continuity of Government.* The head of each Federal department and agency shall ensure the continuity of essential functions in any national security emergency by providing for: succession to office and emergency delegation of authority in accordance with applicable law; safekeeping of essential resources, facilities, and records; and establishment of emergency operating capabilities.

SEC. 203. *Resource Management.* The head of each Federal department and agency, as appropriate within assigned areas of responsibility, shall:

(1) Develop plans and programs to mobilize personnel (including reservist programs), equipment, facilities, and other resources;

(2) Assess essential emergency requirements and plan for the possible use of alternative resources to meet essential demands during and following national security emergencies;

(3) Prepare plans and procedures to share between and among the responsible agencies resources such as energy, equipment, food, land, materials, minerals, services, supplies, transportation, water, and workforce needed to carry out assigned responsibilities and other essential functions, and cooperate with other agencies in developing programs to ensure availability of such resources in a national security emergency;

(4) Develop plans to set priorities and allocate resources among civilian and military claimants;

(5) Identify occupations and skills for which there may be a critical need in the event of a national security emergency.

SEC. 204. *Protection of Essential Resources and Facilities.* The head of each Federal department and agency, within assigned areas of responsibility, shall:

(1) Identify facilities and resources, both government and private, essential to the national defense and national welfare, and assess their vulnerabilities and develop strategies, plans, and programs to provide for the security of such facilities and resources, and to avoid or minimize disruptions of essential services during any national security emergency;

(2) Participate in interagency activities to assess the relative importance of various facilities and resources to essential military and civilian needs and to integrate preparedness and response strategies and procedures;

(3) Maintain a capability to assess promptly the effect of attack and other disruptions during national security emergencies.

SEC. 205. *Federal Benefit, Insurance, and Loan Programs.* The head of each Federal department and agency that administers a loan, insurance, or benefit program that relies upon the Federal Government payment system shall coordinate with the Secretary of the Treasury in developing plans for the continuation or restoration, to the extent feasible, of such programs in national security emergencies.

SEC. 206. *Research.* The Director of the Office of Science and Technology Policy and the heads of Federal departments and agencies having significant research and development programs shall advise the National Security Council and the Homeland Security Council of scientific and technological developments that should be considered in national security emergency preparedness planning.

SEC. 207. *Redelegation.* The head of each Federal department and agency is hereby authorized, to the extent otherwise permitted by law, to redelegate the functions assigned by this Order, and to authorize successive redelegations to organizations, officers, or employees within that department or agency.

SEC. 208. *Transfer of Functions.* Recommendations for interagency transfer of any emergency preparedness function assigned under this Order or for assignment of any new emergency preparedness function shall be coordinated with all affected Federal departments and agencies before submission to the National Security Council or the Homeland Security Council.

SEC. 209. *Retention of Existing Authority.* Nothing in this Order shall be deemed to derogate from assignments of functions to any Federal department or agency or officer thereof made by law.

PART 3—DEPARTMENT OF AGRICULTURE

SEC. 301. *Lead Responsibilities.* In addition to the applicable responsibilities covered in Parts 1 and 2, the Secretary of Agriculture shall:

(1) Develop plans to provide for the continuation of agriculture production, food processing, storage, and distribution through the wholesale level in national security emergencies, and to provide for the domestic distribution of seed, feed, fertilizer, and farm equipment to agricultural producers;

(2) Develop plans to provide food and agricultural products to meet international responsibilities in national security emergencies;

(3) Develop plans and procedures for administration and use of Commodity Credit Corporation inventories of food and fiber resources in national security emergencies;

(4) Develop plans for the use of resources under the jurisdiction of the Secretary of Agriculture and, in cooperation with the Secretaries of Commerce, Defense, and the Interior, the Board of Directors of the Tennessee Valley Authority, and the heads of other government entities, plan for the national security emergency management, production, and processing of forest products;

(5) Develop, in coordination with the Secretary of Defense, plans and programs for water to be used in agricultural production and food processing in national security emergencies;

(6) In cooperation with Federal, State, and local agencies, develop plans for a national program relating to the prevention and control of fires in rural areas of the United States caused by the effects of enemy attack or other national security emergencies;

(7) Develop plans to help provide the Nation's farmers with production resources, including national security emergency financing capabilities;

(8) Develop plans, in consonance with those of the Department of Health and Human Services, the Department of the Interior, and the Environmental Protection Agency, for national security emergency agricultural health services and forestry, including:

(a) Diagnosis and control or eradication of diseases, pests, or hazardous agents (biological, chemical, or radiological) against animals, crops, timber, or products thereof;

(b) Protection, treatment, and handling of livestock and poultry, or products thereof, that have been exposed to or affected by hazardous agents;

(c) Use and handling of crops, agricultural commodities, timber, and agricultural lands that have been exposed to or affected by hazardous agents; and

(d) Assuring the safety and wholesomeness, and minimizing losses from hazards, of animals and animal

products and agricultural commodities and products subject to continuous inspection by the Department of Agriculture or owned by the Commodity Credit Corporation or by the Department of Agriculture;

(9) In consultation with the Secretary of State and the Secretary of Homeland Security, represent the United States in agriculture-related international civil emergency preparedness planning and related activities.

SEC. 302. *Support Responsibilities.* The Secretary of Agriculture shall assist the Secretary of Defense in formulating and carrying out plans for stockpiling strategic and critical agricultural materials.

PART 4—DEPARTMENT OF COMMERCE

SEC. 401. *Lead Responsibilities.* In addition to the applicable responsibilities covered in Parts 1 and 2, the Secretary of Commerce shall:

(1) Develop control systems for priorities, allocation, production, and distribution of materials and other resources that will be available to support both national defense and essential civilian programs in a national security emergency;

(2) In cooperation with the Secretary of Defense and other departments and agencies, identify those industrial products and facilities that are essential to mobilization readiness, national defense, or post-attack survival and recovery;

(3) In cooperation with the Secretary of Defense and other Federal departments and agencies, analyze potential effects of national security emergencies on actual production capability, taking into account the entire production complex, including shortages of resources, and develop preparedness measures to strengthen capabilities for production increases in national security emergencies;

(4) In cooperation with the Secretary of Defense, perform industry analyses to assess capabilities of the commercial industrial base to support the national defense, and develop policy alternatives to improve the international competitiveness of specific domestic industries and their abilities to meet defense program needs;

(5) In cooperation with the Secretary of the Treasury, develop plans for providing emergency assistance to the private sector through direct or participation loans for the financing of production facilities and equipment;

(6) In cooperation with the Secretaries of State, Defense, Transportation, and the Treasury, prepare plans to regulate and control exports and imports in national security emergencies;

(7) Provide for the collection and reporting of census information on human and economic resources, and maintain a capability to conduct emergency surveys to provide information on the status of these resources as required for national security purposes;

(8) Develop overall plans and programs to ensure that the fishing industry continues to produce and process essential protein in national security emergencies;

(9) Develop plans to provide meteorological, hydrologic, marine weather, geodetic, hydrographic, climatic, seismic, and oceanographic data and services to Federal, State, and local agencies, as appropriate;

(10) In coordination with the Secretary of State and the Secretary of Homeland Security, represent the United States in industry-related international (NATO and allied) civil emergency preparedness planning and related activities.

SEC. 402. *Support Responsibilities.* The Secretary of Commerce shall:

(1) Assist the Secretary of Defense in formulating and carrying out plans for stockpiling strategic and critical materials;

(2) Support the Secretary of Agriculture in planning for the national security management, production, and processing of forest and fishery products;

(3) Assist, in consultation with the Secretaries of State and Defense, the Secretary of the Treasury in the formulation and execution of economic measures affecting other nations.

PART 5—DEPARTMENT OF DEFENSE

SEC. 501. *Lead Responsibilities.* In addition to the applicable responsibilities covered in Parts 1 and 2, the Secretary of Defense shall:

(1) Ensure military preparedness and readiness to respond to national security emergencies;

(2) In coordination with the Secretary of Commerce, develop, with industry, government, and the private sector, reliable capabilities for the rapid increase of defense production to include industrial resources required for that production;

(3) Develop and maintain, in cooperation with the heads of other departments and agencies, national security emergency plans, programs, and mechanisms to ensure effective mutual support between and among the military, civil government, and the private sector;

(4) Develop and maintain damage assessment capabilities and assist the Secretary of Homeland Security and the heads of other departments and agencies in developing and maintaining capabilities to assess attack damage and to estimate the effects of potential attack on the Nation;

(5) Arrange, through agreements with the heads of other Federal departments and agencies, for the transfer of certain Federal resources to the jurisdiction and/or operational control of the Department of Defense in national security emergencies;

(6) Acting through the Secretary of the Army, develop, with the concurrence of the heads of all affected departments and agencies, overall plans for the management, control, and allocation of all usable waters from all sources within the jurisdiction of the United States. This includes:

(a) Coordination of national security emergency water resource planning at the national, regional, State, and local levels;

(b) Development of plans to assure emergency provision of water from public works projects under the jurisdiction of the Secretary of the Army to public water supply utilities and critical defense production facilities during national security emergencies;

(c) Development of plans to assure emergency operation of waterways and harbors; and

(d) Development of plans to assure the provision of potable water;

(7) In consultation with the Secretaries of State and Energy, the Secretary of Homeland Security, and others, as required, develop plans and capabilities for identifying, analyzing, mitigating, and responding to hazards related to nuclear weapons, materials, and devices; and maintain liaison, as appropriate, with the Secretary of Energy and the Members of the Nuclear Regulatory Commission to ensure the continuity of nuclear weapons production and the appropriate allocation of scarce resources, including the recapture of special nuclear materials from Nuclear Regulatory Commission licensees when appropriate;

(8) Coordinate with the Administrator of the National Aeronautics and Space Administration [sic] and the Secretary of Energy, as appropriate, to prepare for the use, maintenance, and development of technologically advanced aerospace and aeronautical-related systems, equipment, and methodologies applicable to national security emergencies;

(9) Develop, in coordination with the Secretaries of Labor and Homeland Security, the Directors of the Selective Service System, the Office of Personnel Management, and the Federal Emergency Management Agency, plans and systems to ensure that the Nation's human resources are available to meet essential military and civilian needs in national security emergencies;

(10) Develop national security emergency operational procedures, and coordinate with the Secretary of Housing and Urban Development with respect to residential property, for the control, acquisition, leasing, assignment and priority of occupancy of real property within the jurisdiction of the Department of Defense;

(11) Review the priorities and allocations systems developed by other departments and agencies to ensure

that they meet Department of Defense needs in a national security emergency; and develop and maintain the Department of Defense programs necessary for effective utilization of all priorities and allocations systems;

(12) Develop, in coordination with the Attorney General of the United States, specific procedures by which military assistance to civilian law enforcement authorities may be requested, considered, and provided;

(13) In cooperation with the Secretary of Commerce and other departments and agencies, identify those industrial products and facilities that are essential to mobilization readiness, national defense, or post-attack survival and recovery;

(14) In cooperation with the Secretary of Commerce and other Federal departments and agencies, analyze potential effects of national security emergencies on actual production capability, taking into account the entire production complex, including shortages of resources, and develop preparedness measures to strengthen capabilities for production increases in national security emergencies;

(15) With the assistance of the heads of other Federal departments and agencies, provide management direction for the stockpiling of strategic and critical materials, conduct storage, maintenance, and quality assurance operations for the stockpile of strategic and critical materials, and formulate plans, programs, and reports relating to the stockpiling of strategic and critical materials.[:]

(16) Subject to the direction of the President, and pursuant to procedures to be developed jointly by the Secretary of Defense and the Secretary of State, be responsible for the deployment and use of military forces for the protection of United States citizens and nationals and, in connection therewith, designated other persons or categories of persons, in support of their evacuation from threatened areas overseas.

SEC. 502. *Support Responsibilities.* The Secretary of Defense shall:

(1) Advise and assist the heads of other Federal departments and agencies in the development of plans and programs to support national mobilization. This includes providing, as appropriate:

(a) Military requirements, prioritized and time-phased to the extent possible, for selected end-items and supporting services, materials, and components;

(b) Recommendations for use of financial incentives and other methods to improve defense production as provided by law; and

(c) Recommendations for export and import policies;

(2) Advise and assist the Secretary of State and the heads of other Federal departments and agencies, as appropriate, in planning for the protection, evacuation, and repatriation of United States citizens in threatened areas overseas;

(3) Support the Secretary of Housing and Urban Development and the heads of other agencies, as appropriate, in the development of plans to restore community facilities;

(4) Support the Secretary of Energy in international liaison activities pertaining to nuclear materials facilities;

(5) In consultation with the Secretaries of State and Commerce, assist the Secretary of the Treasury in the formulation and execution of economic measures that affect other nations;

(6) Support the Secretary of State and the heads of other Federal departments and agencies as appropriate in the formulation and implementation of foreign policy, and the negotiation of contingency and post-emergency plans, intergovernmental agreements, and arrangements with allies and friendly nations, which affect national security;

(7) Coordinate with the Secretary of Homeland Security the development of plans for mutual civil-military support during national security emergencies;

(8) Develop plans to support the Secretary of Labor in providing education and training to overcome shortages of critical skills.

PART 6—DEPARTMENT OF EDUCATION

SEC. 601. *Lead Responsibilities.* In addition to the applicable responsibilities covered in Parts 1 and 2, the Secretary of Education shall:

- (1) Assist school systems in developing their plans to provide for the earliest possible resumption of activities following national security emergencies;
- (2) Develop plans to provide assistance, including efforts to meet shortages of critical educational personnel, to local educational agencies;
- (3) Develop plans, in coordination with the Secretary of Homeland Security, for dissemination of emergency preparedness instructional material through educational institutions and the media during national security emergencies.

SEC. 602. *Support Responsibilities.* The Secretary of Education shall:

- (1) Develop plans to support the Secretary of Labor in providing education and training to overcome shortages of critical skills;
- (2) Support the Secretary of Health and Human Services in the development of human services educational and training materials, including self-help program materials for use by human service organizations and professional schools.

PART 7—DEPARTMENT OF ENERGY

SEC. 701. *Lead Responsibilities.* In addition to the applicable responsibilities covered in Parts 1 and 2, the Secretary of Energy shall:

- (1) Conduct national security emergency preparedness planning, including capabilities development, and administer operational programs for all energy resources, including:
 - (a) Providing information, in cooperation with Federal, State, and energy industry officials, on energy supply and demand conditions and on the requirements for and the availability of materials and services critical to energy supply systems;
 - (b) In coordination with appropriate departments and agencies and in consultations with the energy industry, develop implementation plans and operational systems for priorities and allocation of all energy resource requirements for national defense and essential civilian needs to assure national security emergency preparedness;
 - (c) Developing, in consultation with the Board of Directors of the Tennessee Valley Authority, plans necessary for the integration of its power system into the national supply system;
- (2) Identify energy facilities essential to the mobilization, deployment, and sustainment of resources to support the national security and national welfare, and develop energy supply and demand strategies to ensure continued provision of minimum essential services in national security emergencies;
- (3) In coordination with the Secretary of Defense, ensure continuity of nuclear weapons production consistent with national security requirements;
- (4) Assure the security of nuclear materials, nuclear weapons, or devices in the custody of the Department of Energy, as well as the security of all other Department of Energy programs and facilities;
- (5) In consultation with the Secretaries of State and Defense and the Secretary of Homeland Security, conduct appropriate international liaison activities pertaining to matters within the jurisdiction of the Department of Energy;
- (6) In consultation with the Secretaries of State, Defense, and Homeland Security, the Members of the Nuclear Regulatory Commission, and others, as required, develop plans and capabilities for identification, analysis, damage assessment, and mitigation of hazards from nuclear weapons, materials, and devices;
- (7) Coordinate with the Secretary of Transportation in the planning and management of transportation resources involved in the bulk movement of energy;
- (8) At the request of or with the concurrence of the Nuclear Regulatory Commission and in consultation

with the Secretary of Defense, recapture special nuclear materials from Nuclear Regulatory Commission licensees where necessary to assure the use, preservation, or safeguarding of such material for the common defense and security;

(9) Develop national security emergency operational procedures for the control, utilization, acquisition, leasing, assignment, and priority of occupancy of real property within the jurisdiction of the Department of Energy;

(10) Manage all emergency planning and response activities pertaining to Department of Energy nuclear facilities.

SEC. 702. *Support Responsibilities.* The Secretary of Energy shall:

- (1) Provide advice and assistance, in coordination with appropriate agencies, to Federal, State, and local officials and private sector organizations to assess the radiological impact associated with national security emergencies;
- (2) Coordinate with the Secretaries of Defense and the Interior regarding the operation of hydroelectric projects to assure maximum energy output;
- (3) Support the Secretary of Housing and Urban Development and the heads of other agencies, as appropriate, in the development of plans to restore community facilities;
- (4) Coordinate with the Secretary of Agriculture regarding the emergency preparedness of the rural electric supply systems throughout the Nation and the assignment of emergency preparedness responsibilities to the Rural Electrification Administration.

PART 8—DEPARTMENT OF HEALTH AND HUMAN SERVICES

SEC. 801. *Lead Responsibilities.* In addition to the applicable responsibilities covered in Parts 1 and 2, the Secretary of Health and Human Services shall:

- (1) Develop national plans and programs to mobilize the health industry and health resources for the provision of health, mental health, and medical services in national security emergencies;
- (2) Promote the development of State and local plans and programs for provision of health, mental health, and medical services in national security emergencies;
- (3) Develop national plans to set priorities and allocate health, mental health, and medical services' resources among civilian and military claimants;
- (4) Develop health and medical survival information programs and a nationwide program to train health and mental health professionals and paraprofessionals in special knowledge and skills that would be useful in national security emergencies;
- (5) Develop programs to reduce or eliminate adverse health and mental health effects produced by hazardous agents (biological, chemical, or radiological), and, in coordination with appropriate Federal agencies, develop programs to minimize property and environmental damage associated with national security emergencies;
- (6) Develop guidelines that will assure reasonable and prudent standards of purity and/or safety in the manufacture and distribution of food, drugs, biological products, medical devices, food additives, and radiological products in national security emergencies;
- (7) Develop national plans for assisting State and local governments in rehabilitation of persons injured or disabled during national security emergencies;
- (8) Develop plans and procedures to assist State and local governments in the provision of emergency human services, including lodging, feeding, clothing, registration and inquiry, social services, family reunification and mortuary services and interment;
- (9) Develop, in coordination with the Secretary of Education, human services educational and training materials for use by human service organizations and professional schools; and develop and distribute, in coordination with the Secretary of Homeland Security, civil defense information relative to emergency human services;
- (10) Develop plans and procedures, in coordination with the heads of Federal departments and agencies,

for assistance to United States citizens or others evacuated from overseas areas.

SEC. 802. *Support Responsibilities.* The Secretary of Health and Human Services shall support the Secretary of Agriculture in the development of plans related to national security emergency agricultural health services.

PART 9—DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SEC. 901. *Lead Responsibilities.* In addition to the applicable responsibilities covered in Parts 1 and 2, the Secretary of Housing and Urban Development shall:

(1) Develop plans for provision and management of housing in national security emergencies, including:

(a) Providing temporary housing using Federal financing and other arrangements;

(b) Providing for radiation protection by encouraging voluntary construction of shelters and voluntary use of cost-efficient design and construction techniques to maximize population protection;

(2) Develop plans, in cooperation with the heads of other Federal departments and agencies and State and local governments, to restore community facilities, including electrical power, potable water, and sewage disposal facilities, damaged in national security emergencies.

PART 10—DEPARTMENT OF THE INTERIOR

SEC. 1001. *Lead Responsibilities.* In addition to the applicable responsibilities covered in Parts 1 and 2, the Secretary of the Interior shall:

(1) Develop programs and encourage the exploration, development, and mining of strategic and critical and other nonfuel minerals for national security emergency purposes;

(2) Provide guidance to mining industries in the development of plans and programs to ensure continuity of production during national security emergencies;

(3) Develop and implement plans for the management, control, allocation, and use of public land under the jurisdiction of the Department of the Interior in national security emergencies and coordinate land emergency planning at the Federal, State, and local levels.

SEC. 1002. *Support Responsibilities.* The Secretary of the Interior shall:

(1) Assist the Secretary of Defense in formulating and carrying out plans for stockpiling strategic and critical minerals;

(2) Cooperate with the Secretary of Commerce in the identification and evaluation of facilities essential for national security emergencies;

(3) Support the Secretary of Agriculture in planning for the national security management, production, and processing of forest products.

PART 11—DEPARTMENT OF JUSTICE

SEC. 1101. *Lead Responsibilities.* In addition to the applicable responsibilities covered in Parts 1 and 2, the Attorney General of the United States shall:

(1) Provide legal advice to the President and the heads of Federal departments and agencies and their successors regarding national security emergency powers, plans, and authorities;

(2) Coordinate Federal Government domestic law enforcement activities related to national security emergency preparedness, including Federal law enforcement liaison with, and assistance to, State and local governments;

(3) Coordinate contingency planning for national security emergency law enforcement activities that are beyond the capabilities of State and local agencies;

(4) Develop national security emergency plans for regulation of immigration, regulation of nationals of enemy countries, and plans to implement laws for the control of persons entering or leaving the United States;

(5) Develop plans and procedures for the custody and protection of prisoners and the use of Federal penal and

correctional institutions and resources during national security emergencies;

(6) Provide information and assistance to the Federal Judicial branch and the Federal Legislative branch concerning law enforcement, continuity of government, and the exercise of legal authority during national security emergencies;

(7) Develop intergovernmental and interagency law enforcement plans and counterterrorism programs to interdict and respond to terrorism incidents in the United States that may result in a national security emergency or that occur during such an emergency;

(8) Develop intergovernmental and interagency law enforcement plans to respond to civil disturbances that may result in a national security emergency or that occur during such an emergency.

SEC. 1102. *Support Responsibilities.* The Attorney General of the United States shall:

(1) Assist the heads of Federal departments and agencies, State and local governments, and the private sector in the development of plans to physically protect essential resources and facilities;

(2) Support the Secretaries of State and the Treasury in plans for the protection of international organizations and foreign diplomatic, consular, and other official personnel, property, and other assets within the jurisdiction of the United States;

(3) Support the Secretary of the Treasury in developing plans to control the movement of property entering and leaving the United States;

(4) Support the heads of other Federal departments and agencies and State and local governments in developing programs and plans for identifying fatalities and reuniting families in national security emergencies;

(5) Support the intelligence community in the planning of its counterintelligence and counterterrorism programs.

PART 12—DEPARTMENT OF LABOR

SEC. 1201. *Lead Responsibilities.* In addition to the applicable responsibilities covered in Parts 1 and 2, the Secretary of Labor shall:

(1) Develop plans and issue guidance to ensure effective use of civilian workforce resources during national security emergencies. Such plans shall include, but not necessarily be limited to:

(a) Priorities and allocations, recruitment, referral, training, employment stabilization including appeals procedures, use assessment, and determination of critical skill categories; and

(b) Programs for increasing the availability of critical workforce skills and occupations;

(2) In consultation with the Secretary of the Treasury, develop plans and procedures for wage, salary, and benefit costs stabilization during national security emergencies;

(3) Develop plans and procedures for protecting and providing incentives for the civilian labor force during national security emergencies;

(4) In consultation with other appropriate government agencies and private entities, develop plans and procedures for effective labor-management relations during national security emergencies.

SEC. 1202. *Support Responsibilities.* The Secretary of Labor shall:

(1) Support planning by the Secretary of Defense and the private sector for the provision of human resources to critical defense industries during national security emergencies;

(2) Support planning by the Secretary of Defense and the Director of Selective Service for the institution of conscription in national security emergencies.

PART 13—DEPARTMENT OF STATE

SEC. 1301. *Lead Responsibilities.* In addition to the applicable responsibilities covered in Parts 1 and 2, the Secretary of State shall:

(1) Provide overall foreign policy coordination in the formulation and execution of continuity of government

and other national security emergency preparedness activities that affect foreign relations;

(2) Prepare to carry out Department of State responsibilities in the conduct of the foreign relations of the United States during national security emergencies, under the direction of the President and in consultation with the heads of other appropriate Federal departments and agencies, including, but not limited to:

(a) Formulation and implementation of foreign policy and negotiation regarding contingency and post-emergency plans, intergovernmental agreements, and arrangements with United States' allies;

(b) Formulation, negotiation, and execution of policy affecting the relationships of the United States with neutral states;

(c) Formulation and execution of political strategy toward hostile or enemy states;

(d) Conduct of mutual assistance activities;

(e) Provision of foreign assistance, including continuous supervision and general direction of authorized economic and military assistance programs;

(f) Protection or evacuation of United States citizens and nationals abroad and safeguarding their property abroad, in consultation with the Secretaries of Defense and Health and Human Services;

(g) Protection of international organizations and foreign diplomatic, consular, and other official personnel and property, or other assets, in the United States, in coordination with the Attorney General and the Secretary of the Treasury;

(h) Formulation of policies and provisions for assistance to displaced persons and refugees abroad;

(i) Maintenance of diplomatic and consular representation abroad; and

(j) Reporting of and advising on conditions overseas that bear upon national security emergencies.

SEC. 1302. *Support Responsibilities.* The Secretary of State shall:

(1) Assist appropriate agencies in developing planning assumptions concerning accessibility of foreign sources of supply;

(2) Support the Secretary of the Treasury, in consultation, as appropriate, with the Secretaries of Commerce and Defense, in the formulation and execution of economic measures with respect to other nations;

(3) Support the Secretary of Energy in international liaison activities pertaining to nuclear materials facilities;

(4) Support the Secretary of Homeland Security in the coordination and integration of United States policy regarding the formulation and implementation of civil emergency resources and preparedness planning;

(5) Assist the Attorney General of the United States in the formulation of national security emergency plans for the control of persons entering or leaving the United States.

PART 14—DEPARTMENT OF TRANSPORTATION

SEC. 1401. *Lead Responsibilities.* In addition to the applicable responsibilities covered in Parts 1 and 2, the Secretary of Transportation shall:

(1) Develop plans to promulgate and manage overall national policies, programs, procedures, and systems to meet essential civil and military transportation needs in national security emergencies;

(2) Be prepared to provide direction to all modes of civil transportation in national security emergencies, including air, surface, water, pipelines, and public storage and warehousing, to the extent such responsibility is vested in the Secretary of Transportation. This direction may include:

(a) Implementation of priorities for all transportation resource requirements for service, equipment, facilities, and systems;

(b) Allocation of transportation resource capacity; and

(c) Emergency management and control of civil transportation resources and systems, including privately owned automobiles, urban mass transit, intermodal transportation systems, the National Railroad

Passenger Corporation and the St. Lawrence Seaway Development Corporation;

(3) Develop plans to provide for the smooth transition of the Coast Guard as a service to the Department of the Navy during national security emergencies. These plans shall be compatible with the Department of Defense planning systems, especially in the areas of port security and military readiness;

(4) In coordination with the Secretary of State and the Secretary of Homeland Security, represent the United States in transportation-related international (including NATO and allied) civil emergency preparedness planning and related activities;

(5) Coordinate with State and local highway agencies in the management of all Federal, State, city, local, and other highways, roads, streets, bridges, tunnels, and publicly owned highway maintenance equipment to assure efficient and safe use of road space during national security emergencies;

(6) Develop plans and procedures in consultation with appropriate agency officials for maritime and port safety, law enforcement, and security over, upon, and under the high seas and waters subject to the jurisdiction of the United States to assure operational readiness for national security emergency functions;

(7) Develop plans for the emergency operation of U.S. ports and facilities, use of shipping resources (U.S. and others), provision of government war risks insurance, and emergency construction of merchant ships for military and civil use;

(8) Develop plans for emergency management and control of the National Airspace System, including provision of war risk insurance and for transfer of the Federal Aviation Administration, in the event of war, to the Department of Defense;

(9) Coordinate the Interstate Commerce Commission's development of plans and preparedness programs for the reduction of vulnerability, maintenance, restoration, and operation of privately owned railroads, motor carriers, inland waterway transportation systems, and public storage facilities and services in national security emergencies.

SEC. 1402. *Support Responsibility.* The Secretary of Transportation shall coordinate with the Secretary of Energy in the planning and management of transportation resources involved in the bulk movement of energy materials.

PART 15—DEPARTMENT OF THE TREASURY

SEC. 1501. *Lead Responsibilities.* In addition to the applicable responsibilities covered in Parts 1 and 2, the Secretary of the Treasury shall:

(1) Develop plans to maintain stable economic conditions and a market economy during national security emergencies; emphasize measures to minimize inflation and disruptions; and, minimize reliance on direct controls of the monetary, credit, and financial systems. These plans will include provisions for:

(a) Increasing capabilities to minimize economic dislocations by carrying out appropriate fiscal, monetary, and regulatory policies and reducing susceptibility to manipulated economic pressures;

(b) Providing the Federal Government with efficient and equitable financing sources and payment mechanisms;

(c) Providing fiscal authorities with adequate legal authority to meet resource requirements;

(d) Developing, in consultation with the Board of Governors of the Federal Reserve System, and in cooperation with the Board of Directors of the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, the National Credit Union Administration Board, the Farm Credit Administration Board and other financial institutions, plans for the continued or resumed operation and liquidity of banks, savings and loans, credit unions, and farm credit institutions, measures for the reestablishment of evidence of assets or liabilities, and provisions for currency withdrawals and deposit insurance;

(2) Provide for the protection of United States financial resources including currency and coin production

and redemption facilities, Federal check disbursement facilities, and precious monetary metals;

(3) Provide for the preservation of, and facilitate emergency operations of, public and private financial institution systems, and provide for their restoration during or after national security emergencies;

(4) Provide, in coordination with the Secretary of State, for participation in bilateral and multilateral financial arrangements with foreign governments;

(5) Maintain the Federal Government accounting and financial reporting system in national security emergencies;

(6) Develop plans to protect the President, the Vice President, other officers in the order of presidential succession, and other persons designated by the President;

(7) Develop plans for restoration of the economy following an attack; for the development of emergency monetary, credit, and Federal benefit payment programs of those Federal departments and agencies that have responsibilities dependent on the policies or capabilities of the Department of the Treasury; and for the implementation of national policy on sharing war losses;

(8) Develop plans for initiating tax changes, waiving regulations, and, in conjunction with the Secretary of Commerce or other guaranteeing agency, granting or guaranteeing loans for the expansion of industrial capacity, the development of technological processes, or the production or acquisition of essential materials;

(9) Develop plans, in coordination with the heads of other appropriate Federal departments and agencies, to acquire emergency imports, make foreign barter arrangements, or otherwise provide for essential material from foreign sources using, as appropriate, the resources of the Export-Import Bank or resources available to the Bank;

(10) Develop plans for encouraging capital inflow and discouraging the flight of capital from the United States and, in coordination with the Secretary of State, for the seizure and administration of assets of enemy aliens during national security emergencies;

(11) Develop plans, in consultation with the heads of appropriate Federal departments and agencies, to regulate financial and commercial transactions with other countries;

(12) Develop plans, in coordination with the Secretary of Commerce and the Attorney General of the United States, to control the movement of property entering or leaving the United States;

(13) Cooperate and consult with the Chairman of the Securities and Exchange Commission, the Chairman of the Federal Reserve Board, the Chairman of the Commodities Futures Trading Commission in the development of emergency financial control plans and regulations for trading of stocks and commodities, and in the development of plans for the maintenance and restoration of stable and orderly markets;

(14) Develop plans, in coordination with the Secretary of State, for the formulation and execution of economic measures with respect to other nations in national security emergencies.

SEC. 1502. *Support Responsibilities.* The Secretary of the Treasury shall:

(1) Cooperate with the Attorney General of the United States on law enforcement activities, including the control of people entering and leaving the United States;

(2) Support the Secretary of Labor in developing plans and procedures for wage, salary, and benefit costs stabilization;

(3) Support the Secretary of State in plans for the protection of international organizations and foreign diplomatic, consular, and other official personnel and property or other assets in the United States.

PART 16—ENVIRONMENTAL PROTECTION AGENCY

SEC. 1601. *Lead Responsibilities.* In addition to the applicable responsibilities covered in Parts 1 and 2, the Administrator of the Environmental Protection Agency shall:

(1) Develop Federal plans and foster development of State and local plans designed to prevent or minimize the ecological impact of hazardous agents (biological, chemical, or radiological) introduced into the environment in national security emergencies;

(2) Develop, for national security emergencies, guidance on acceptable emergency levels of nuclear radiation, assist in determining acceptable emergency levels of biological agents, and help to provide detection and identification of chemical agents;

(3) Develop, in coordination with the Secretary of Defense, plans to assure the provision of potable water supplies to meet community needs under national security emergency conditions, including claimancy for materials and equipment for public water systems.

SEC. 1602. *Support Responsibilities.* The Administrator of the Environmental Protection Agency shall:

(1) Assist the heads of other Federal agencies that are responsible for developing plans for the detection, reporting, assessment, protection against, and reduction of effects of hazardous agents introduced into the environment;

(2) Advise the heads of Federal departments and agencies regarding procedures for assuring compliance with environmental restrictions and for expeditious review of requests for essential waivers.

PART 17—DEPARTMENT OF HOMELAND SECURITY

SEC. 1701. *Lead Responsibilities.* In addition to the applicable responsibilities covered in Parts 1 and 2, the Secretary of Homeland Security shall:

(1) Coordinate and support the initiation, development, and implementation of national security emergency preparedness programs and plans among Federal departments and agencies;

(2) Coordinate the development and implementation of plans for the operation and continuity of essential domestic emergency functions of the Federal Government during national security emergencies;

(3) Coordinate the development of plans, in cooperation with the Secretary of Defense, for mutual civil-military support during national security emergencies;

(4) Guide and assist State and local governments and private sector organizations in achieving preparedness for national security emergencies, including development of plans and procedures for assuring continuity of government, and support planning for prompt and coordinated Federal assistance to States and localities in responding to national security emergencies;

(5) Provide the President a periodic assessment of Federal, State, and local capabilities to respond to national security emergencies;

(6) Coordinate the implementation of policies and programs for efficient mobilization of Federal, State, local, and private sector resources in response to national security emergencies;

(7) Develop and coordinate with all appropriate agencies civil defense programs to enhance Federal, State, local, and private sector capabilities for national security emergency crisis management, population protection, and recovery in the event of an attack on the United States;

(8) Develop and support public information, education and training programs to assist Federal, State, and local government and private sector entities in planning for and implementing national security emergency preparedness programs;

(9) Coordinate among the heads of Federal, State, and local agencies the planning, conduct, and evaluation of national security emergency exercises;

(10) With the assistance of the heads of other appropriate Federal departments and agencies, develop and maintain capabilities to assess actual attack damage and residual recovery capabilities as well as capabilities to estimate the effects of potential attacks on the Nation;

(11) Provide guidance to the heads of Federal departments and agencies on the appropriate use of defense production authorities, including resource claimancy, in order to improve the capability of industry and in-

infrastructure systems to meet national security emergency needs;

(12) Assist the Secretary of State in coordinating the formulation and implementation of United States policy for NATO and other allied civil emergency planning, including the provision of:

(a) advice and assistance to the departments and agencies in alliance civil emergency planning matters;

(b) support to the United States Mission to NATO in the conduct of day-to-day civil emergency planning activities; and

(c) support facilities for NATO Civil Wartime Agencies in cooperation with the Departments of Agriculture, Commerce, Energy, State, and Transportation.

SEC. 1702. *Support Responsibilities.* The Secretary of Homeland Security shall:

(1) Support the heads of other Federal departments and agencies in preparing plans and programs to discharge their national security emergency preparedness responsibilities, including, but not limited to, such programs as mobilization preparedness, continuity of government planning, and continuance of industry and infrastructure functions essential to national security;

(2) Support the Secretary of Energy, the Secretary of Defense, and the Members of the Nuclear Regulatory Commission in developing plans and capabilities for identifying, analyzing, mitigating, and responding to emergencies related to nuclear weapons, materials, and devices, including mobile and fixed nuclear facilities, by providing, inter alia, off-site coordination;

(3) Support the Administrator of General Services in efforts to promote a government-wide program with respect to Federal buildings and installations to minimize the effects of attack and establish shelter management organizations.

PART 18—GENERAL SERVICES ADMINISTRATION

SEC. 1801. *Lead Responsibilities.* In addition to the applicable responsibilities covered in Parts 1 and 2, the Administrator of General Services shall:

(1) Develop national security emergency plans and procedures for the operation, maintenance, and protection of federally owned and occupied buildings managed by the General Services Administration, and for the construction, alteration, and repair of such buildings;

(2) Develop national security emergency operating procedures for the control, acquisition, leasing, assignment, and priority of occupancy of real property by the Federal Government, and by State and local governments acting as agents of the Federal Government, except for the military facilities and facilities with special nuclear materials within the jurisdiction of the Departments of Defense and Energy;

(3) Develop national security emergency operational plans and procedures for the use of public utility services (other than telecommunications services) by Federal departments and agencies, except for Department of Energy-operated facilities;

(4) Develop plans and operating procedures of government-wide supply programs to meet the requirements of Federal departments and agencies during national security emergencies;

(5) Develop plans and operating procedures for the use, in national security emergencies, of excess and surplus real and personal property by Federal, State, and local governmental entities;

(6) Develop plans, in coordination with the Director of the Federal Emergency Management Agency [the Secretary of Homeland Security], with respect to Federal buildings and installations, to minimize the effects of attack and establish shelter management organizations;

SEC. 1802. *Support Responsibility.* The Administrator of General Services shall develop plans to assist Federal departments and agencies in operation and maintenance of essential automated information processing facilities during national security emergencies:[]

PART 19—NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

SEC. 1901. *Lead Responsibility.* In addition to the applicable responsibilities covered in Parts 1 and 2, the Ad-

ministrator of the National Aeronautics and Space Administration shall coordinate with the Secretary of Defense to prepare for the use, maintenance, and development of technologically advanced aerospace and aeronautical-related systems, equipment, and methodologies applicable to national security emergencies.

PART 20—NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

SEC. 2001. *Lead Responsibilities.* In addition to the applicable responsibilities covered in Parts 1 and 2, the Archivist of the United States shall:

(1) Develop procedures for publication during national security emergencies of the Federal Register for as broad public dissemination as is practicable of presidential proclamations and Executive orders, Federal administrative regulations, Federal emergency notices and actions, and Acts of Congress;

(2) Develop emergency procedures for providing instructions and advice on the handling and preservation of records critical to the operation of the Federal Government in national security emergencies.

PART 21—NUCLEAR REGULATORY COMMISSION

SEC. 2101. *Lead Responsibilities.* In addition to the applicable responsibilities covered in Parts 1 and 2, the Members of the Nuclear Regulatory Commission shall:

(1) Promote the development and maintenance of national security emergency preparedness programs through security and safeguards programs by licensed facilities and activities;

(2) Develop plans to suspend any licenses granted by the Commission; to order the operations of any facility licensed under Section 103 or 104; Atomic Energy Act of 1954, as amended (42 U.S.C. 2133 or 2134); to order the entry into any plant or facility in order to recapture special nuclear material as determined under Subsection (3) below; and operate such facilities;

(3) Recapture or authorize recapture of special nuclear materials from licensees where necessary to assure the use, preservation, or safeguarding of such materials for the common defense and security, as determined by the Commission or as requested by the Secretary of Energy.

SEC. 2102. *Support Responsibilities.* The Members of the Nuclear Regulatory Commission shall:

(1) Assist the Secretary of Energy in assessing damage to Commission-licensed facilities, identifying useable facilities, and estimating the time and actions necessary to restart inoperative facilities;

(2) Provide advice and technical assistance to Federal, State, and local officials and private sector organizations regarding radiation hazards and protective actions in national security emergencies.

PART 22—OFFICE OF PERSONNEL MANAGEMENT

SEC. 2201. *Lead Responsibilities.* In addition to the applicable responsibilities covered in Parts 1 and 2, the Director of the Office of Personnel Management shall:

(1) Prepare plans to administer the Federal civilian personnel system in national security emergencies, including plans and procedures for the rapid mobilization and reduction of an emergency Federal workforce;

(2) Develop national security emergency work force policies for Federal civilian personnel;

(3) Develop plans to accommodate the surge of Federal personnel security background and pre-employment investigations during national security emergencies.

SEC. 2202. *Support Responsibilities.* The Director of the Office of Personnel Management shall:

(1) Assist the heads of other Federal departments and agencies with personnel management and staffing in national security emergencies, including facilitating transfers between agencies of employees with critical skills;

(2) In consultation with the Secretary of Defense and the Director of Selective Service, develop plans and procedures for a system to control any conscription of

Federal civilian employees during national security emergencies.

PART 23—SELECTIVE SERVICE SYSTEM

SEC. 2301. *Lead Responsibilities.* In addition to the applicable responsibilities covered in Parts 1 and 2, the Director of Selective Service shall:

- (1) Develop plans to provide by induction, as authorized by law, personnel that would be required by the armed forces during national security emergencies;
- (2) Develop plans for implementing an alternative service program.

PART 24—TENNESSEE VALLEY AUTHORITY

SEC. 2401. *Lead Responsibility.* In addition to the applicable responsibilities covered in Parts 1 and 2, the Board of Directors of the Tennessee Valley Authority shall develop plans and maintain river control operations for the prevention or control of floods affecting the Tennessee River System during national security emergencies.

SEC. 2402. *Support Responsibilities.* The Board of Directors of the Tennessee Valley Authority shall:

- (1) Assist the Secretary of Energy in the development of plans for the integration of the Tennessee Valley Authority power system into nationwide national security emergency programs;
- (2) Assist the Secretaries of Defense, Interior, and Transportation and the Chairman of the Interstate Commerce Commission in the development of plans for operation and maintenance of inland waterway transportation in the Tennessee River System during national security emergencies.

PART 25—UNITED STATES INFORMATION AGENCY

SEC. 2501. *Lead Responsibilities.* In addition to the applicable responsibilities covered in Parts 1 and 2, the Director of the United States Information Agency shall:

- (1) Plan for the implementation of information programs to promote an understanding abroad of the status of national security emergencies within the United States;
- (2) In coordination with the Secretary of State's exercise of telecommunications functions affecting United States diplomatic missions and consular offices overseas, maintain the capability to provide television and simultaneous direct radio broadcasting in major languages to all areas of the world, and the capability to provide wireless file to all United States embassies during national security emergencies.

SEC. 2502. *Support Responsibility.* The Director of the United States Information Agency shall assist the heads of other Federal departments and agencies in planning for the use of media resources and foreign public information programs during national security emergencies.

PART 26—UNITED STATES POSTAL SERVICE

SEC. 2601. *Lead Responsibility.* In addition to the applicable responsibilities covered in Parts 1 and 2, the Postmaster General shall prepare plans and programs to provide essential postal services during national security emergencies.

SEC. 2602. *Support Responsibilities.* The Postmaster General shall:

- (1) Develop plans to assist the Attorney General of the United States in the registration of nationals of enemy countries residing in the United States;
- (2) Develop plans to assist the Secretary of Health and Human Services in registering displaced persons and families;
- (3) Develop plans to assist the heads of other Federal departments and agencies in locating and leasing privately owned property for Federal use during national security emergencies.

PART 27—VETERANS' ADMINISTRATION

SEC. 2701. *Lead Responsibilities.* In addition to the applicable responsibilities covered in Parts 1 and 2, the

Administrator of Veterans' Affairs [now Secretary of Veterans Affairs] shall:

- (1) Develop plans for provision of emergency health care services to veteran beneficiaries in Veterans' Administration [now Department of Veterans Affairs] medical facilities, to active duty military personnel and, as resources permit, to civilians in communities affected by national security emergencies;
- (2) Develop plans for mortuary services for eligible veterans, and advise on methods for interment of the dead during national security emergencies.

SEC. 2702. *Support Responsibilities.* The Administrator of Veterans' Affairs [now Secretary of Veterans Affairs] shall:

- (1) Assist the Secretary of Health and Human Services in promoting the development of State and local plans for the provision of medical services in national security emergencies, and develop appropriate plans to support such State and local plans;
- (2) Assist the Secretary of Health and Human Services in developing national plans to mobilize the health care industry and medical resources during national security emergencies;
- (3) Assist the Secretary of Health and Human Services in developing national plans to set priorities and allocate medical resources among civilian and military claimants.

PART 28—OFFICE OF MANAGEMENT AND BUDGET

SEC. 2801. In addition to the applicable responsibilities covered in Parts 1 and 2, the Director of the Office of Management and Budget shall prepare plans and programs to maintain its functions during national security emergencies. In connection with these functions, the Director of the Office of Management and Budget shall:

- (1) Develop plans to ensure the preparation, clearance, and coordination of proposed Executive orders and proclamations;
- (2) Prepare plans to ensure the preparation, supervision, and control of the budget and the formulation of the fiscal program of the Government;
- (3) Develop plans to coordinate and communicate Executive branch views to the Congress regarding legislation and testimony by Executive branch officials;
- (4) Develop plans for keeping the President informed of the activities of government agencies, continuing the Office of Management and Budget's management functions, and maintaining presidential supervision and direction with respect to legislation and regulations in national security emergencies.

PART 29—GENERAL

SEC. 2901. Executive Order Nos. 10421 and 11490, as amended, are hereby revoked. This Order shall be effective immediately.

[Responsibilities assigned to specific Federal officials pursuant to Ex. Ord. No. 12656, set out above, that are substantially the same as any responsibility assigned to, or function transferred to, the Secretary of Homeland Security pursuant to the Homeland Security Act of 2002, 6 U.S.C. 101 et seq., or intended or required to be carried out by an agency or an agency component transferred to the Department of Homeland Security pursuant to such Act, reassigned to the Secretary of Homeland Security by section 42 of Ex. Ord. No. 13286, Feb. 28, 2003, 68 F.R. 10626, set out as a note under section 111 of Title 6, Domestic Security.]

[For abolition of United States Information Agency (other than Broadcasting Board of Governors and International Broadcasting Bureau), transfer of functions, and treatment of references thereto, see sections 6531, 6532, and 6551 of Title 22, Foreign Relations and Inter-course.]

EX. ORD. NO. 12657. DEPARTMENT OF HOMELAND SECURITY ASSISTANCE IN EMERGENCY PREPAREDNESS PLANNING AT COMMERCIAL NUCLEAR POWER PLANTS

Ex. Ord. No. 12657, Nov. 18, 1988, 53 F.R. 47513, as amended by Ex. Ord. No. 13286, §41, Feb. 28, 2003, 68 F.R. 10626, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2251 *et seq.*), the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*), the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*), Reorganization Plan No. 1 of 1958 [set out above], Reorganization Plan No. 1 of 1973 [set out above], and Section 301 of Title 3 of the United States Code, and in order to ensure that plans and procedures are in place to respond to radiological emergencies at commercial nuclear power plants in operation or under construction, it is hereby ordered as follows:

SECTION 1. *Scope.* (a) This Order applies whenever State or local governments, either individually or together, decline or fail to prepare commercial nuclear power plant radiological emergency preparedness plans that are sufficient to satisfy Nuclear Regulatory Commission ("NRC") licensing requirements or to participate adequately in the preparation, demonstration, testing, exercise, or use of such plans.

(b) In order to request the assistance of the Department of Homeland Security ("DHS") provided for in this Order, an affected nuclear power plant applicant or licensee ("licensee") shall certify in writing to DHS that the situation described in Subsection (a) exists.

SEC. 2. *Generally Applicable Principles and Directives.* (a) Subject to the principles articulated in this Section, the Secretary of Homeland Security is hereby authorized and directed to take the actions specified in Sections 3 through 6 of this Order.

(b) In carrying out any of its responsibilities under this Order, DHS:

(1) shall work actively with the licensee, and, before relying upon its resources or those of any other Department or agency within the Executive branch, shall make maximum feasible use of the licensee's resources;

(2) shall take care not to supplant State and local resources. DHS shall substitute its own resources for those of the State and local governments only to the extent necessary to compensate for the nonparticipation or inadequate participation of those governments, and only as a last resort after appropriate consultation with the Governors and responsible local officials in the affected area regarding State and local participation;

(3) is authorized, to the extent permitted by law, to enter into interagency Memoranda of Understanding providing for utilization of the resources of other Executive branch Departments and agencies and for delegation to other Executive branch Departments and agencies of any of the functions and duties assigned to DHS under this Order; however, any such Memorandum of Understanding shall be subject to approval by the Director of the Office of Management and Budget ("OMB") and published in final form in the Federal Register; and

(4) shall assume for purposes of Sections 3 and 4 of this Order that, in the event of an actual radiological emergency or disaster, State and local authorities would contribute their full resources and exercise their authorities in accordance with their duties to protect the public from harm and would act generally in conformity with the licensee's radiological emergency preparedness plan.

(c) The Director of OMB shall resolve any issue concerning the obligation of Federal funds arising from the implementation of this Order. In resolving issues under this Subsection, the Director of OMB shall ensure:

(1) that DHS has utilized to the maximum extent possible the resources of the licensee and State and local governments before it relies upon its appropriated and lawfully available resources or those of any Department or agency in the Executive branch;

(2) that DHS shall use its existing resources to coordinate and manage, rather than duplicate, other available resources;

(3) that implementation of this Order is accomplished with an economy of resources; and

(4) that full reimbursement to the Federal Government is provided, to the extent permitted by law.

SEC. 3. *DHS Participation in Emergency Preparedness Planning.* (a) DHS assistance in emergency preparedness planning shall include advice, technical assistance, and arrangements for facilities and resources as needed to satisfy the emergency planning requirements under the Atomic Energy Act of 1954, as amended [42 U.S.C. 2011 *et seq.*], and any other Federal legislation or regulations pertaining to issuance or retention of a construction permit or an operating license for a nuclear power plant.

(b) DHS shall make all necessary plans and arrangements to ensure that the Federal Government is prepared to assume any and all functions and undertakings necessary to provide adequate protection to the public in cases within the scope of this Order. In making such plans and arrangements,

(1) DHS shall focus planning of Federal response activities to ensure that:

(A) adequate resources and arrangements will exist, as of the time when an initial response is needed, given the absence or inadequacy of advance State and local commitments; and

(B) attention has been given to coordinating (including turning over) response functions when State and local governments do exercise their authority, with specific attention to the areas where prior State and local participation has been insufficient or absent;

(2) FEMA's [DHS's] planning for Federal participation in responding to a radiological emergency within the scope of this Order shall include, but not be limited to, arrangements for using existing Federal resources to provide prompt notification of the emergency to the general public; to assist in any necessary evacuation; to provide reception centers or shelters and related facilities and services for evacuees; to provide emergency medical services at Federal hospitals, including those operated by the military services and by the Veterans' Administration [now Department of Veterans Affairs]; and to ensure the creation and maintenance of channels of communication from commercial nuclear power plant licensees or applicants to State and local governments and to surrounding members of the public.

SEC. 4. *Evaluation of Plans.* (a) DHS shall consider and evaluate all plans developed under the authority of this Order as though drafted and submitted by a State or local government.

(b) DHS shall take all actions necessary to carry out the evaluation referred to in the preceding Subsection and to permit the NRC to conduct its evaluation of radiological emergency preparedness plans including, but not limited to, planning, participating in, and evaluating exercises, drills, and tests, on a timely basis, as necessary to satisfy NRC requirements for demonstrations of off-site radiological emergency preparedness.

SEC. 5. *Response to a Radiological Emergency.* (a) In the event of an actual radiological emergency or disaster, DHS shall take all steps necessary to ensure the implementation of the plans developed under this Order and shall coordinate the actions of other Federal agencies to achieve the maximum effectiveness of Federal efforts in responding to the emergency.

(b) DHS shall coordinate Federal response activities to ensure that adequate resources are directed, when an initial response is needed, to activities hindered by the absence or inadequacy of advance State and local commitments. DHS shall also coordinate with State and local governmental authorities and turn over response functions as appropriate when State and local governments do exercise their authority.

(c) DHS shall assume any necessary command-and-control function, or delegate such function to another Federal agency, in the event that no competent State and local authority is available to perform such function.

(d) In any instance in which Federal personnel may be called upon to fill a command-and-control function during a radiological emergency, in addition to any other powers it may have, DHS or its designee is au-

thorized to accept volunteer assistance from utility employees and other nongovernmental personnel for any purpose necessary to implement the emergency response plan and facilitate off-site emergency response.

SEC. 6. *Implementation of Order.* (a) DHS shall issue interim and final directives and procedures implementing this Order as expeditiously as is feasible and in any event shall issue interim directives and procedures not more than 90 days following the effective date of this Order and shall issue final directives and procedures not more than 180 days following the effective date of this Order.

(b) Immediately upon the effective date of this Order, DHS shall review, and initiate necessary revisions of, all DHS regulations, directives, and guidance to conform them to the terms and policies of this Order.

(c) Immediately upon the effective date of this Order, DHS shall review, and initiate necessary renegotiations of, all interagency agreements to which DHS is a party, so as to conform them to the terms and policies of this Order. This directive shall include, but not be limited to, the Federal Radiological Emergency Response Plan (50 *Fed. Reg.* 46542 (November 8, 1985)).

(d) To the extent permitted by law, DHS is directed to obtain full reimbursement, either jointly or severally, for services performed by DHS or other Federal agencies pursuant to this Order from any affected licensee and from any affected nonparticipating or inadequately participating State or local government.

SEC. 7. *Amendments.* This Executive Order amends Executive Order Nos. 11490 (34 *Fed. Reg.* 17567 (October 28, 1969)) [see note above], 12148 (44 *Fed. Reg.* 43239 (July 20, 1979)) [set out above], and 12241 (45 *Fed. Reg.* 64879 (September 29, 1980)), and the same are hereby superseded to the extent that they are inconsistent with this Order.

SEC. 8. *Judicial Review.* This Order is intended only to improve the internal management of the Executive branch, and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

SEC. 9. *Effective Date.* This Order shall be effective November 18, 1988.

EX. ORD. NO. 12673. DELEGATION OF DISASTER RELIEF AND EMERGENCY ASSISTANCE FUNCTIONS

Ex. Ord. No. 12673, Mar. 23, 1989, 54 F.R. 12571, provided:

By virtue of the authority vested in me as President by the Constitution and laws of the United States of America, including the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5121 *et seq.*), and in order to conform delegations of authority to recent legislation, it is hereby ordered as follows:

SECTION 1. Section 4-203 of Executive Order No. 12148 [set out above] is amended to read:

Section 4-203. The functions vested in the President by the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5121 *et seq.*), except those functions vested in the President by Section 401 (relating to the declaration of major disasters and emergencies), Section 501 (relating to the declaration of emergencies), Section 405 (relating to the repair, reconstruction, restoration, or replacement of Federal facilities), and Section 412 (relating to food coupons and distribution), are hereby delegated to the Director of the Federal Emergency Management Agency.

SEC. 2. Section 3 of Executive Order No. 11795 [42 U.S.C. 5121 note] is amended by removing the words "Section 409" and inserting "Section 412" in place thereof.

SEC. 3. The functions vested in the President by Section 103(e)(2) of the Disaster Relief and Emergency Assistance Amendments of 1988, Public Law 100-707 [42 U.S.C. 5122 note] (relating to the transmission of a report to the Committee on Public Works and Transportation of the House of Representatives and to the Committee on Environment and Public Works of the Sen-

ate), are hereby delegated to the Director of the Federal Emergency Management Agency.

SEC. 4. The functions vested in the President by Section 110 of the Disaster Relief and Emergency Assistance Amendments of 1988, Public Law 100-707 [42 U.S.C. 5121 note], are hereby delegated to the Director of the Federal Emergency Management Agency.

SEC. 5. The functions vested in the President by Section 113 of the Disaster Relief and Emergency Assistance Amendments of 1988, Public Law 100-707 [42 U.S.C. 5201 note], are hereby delegated to the Director of the Federal Emergency Management Agency.

SEC. 6. The amendments to Executive Order No. 12148 that are made by Section 1 of this Executive Order shall not affect the administration of any assistance for major disasters or emergencies declared by the President before the effective date of "The Disaster Relief and Emergency Assistance Amendments of 1988 [probably means date of enactment of Pub. L. 100-707, which was approved Nov. 23, 1988]."

GEORGE BUSH.

EX. ORD. NO. 13010. CRITICAL INFRASTRUCTURE PROTECTION

Ex. Ord. No. 13010, July 15, 1996, 61 F.R. 37347, as amended by Ex. Ord. No. 13025, Nov. 13, 1996, 61 F.R. 58623; Ex. Ord. No. 13041, Apr. 3, 1997, 62 F.R. 17039; Ex. Ord. No. 13064, Oct. 11, 1997, 62 F.R. 53711; Ex. Ord. No. 13077, Mar. 10, 1998, 63 F.R. 12381; Ex. Ord. No. 13138, §3(c), Sept. 30, 1999, 64 F.R. 53880, provided:

Certain national infrastructures are so vital that their incapacity or destruction would have a debilitating impact on the defense or economic security of the United States. These critical infrastructures include telecommunications, electrical power systems, gas and oil storage and transportation, banking and finance, transportation, water supply systems, emergency services (including medical, police, fire, and rescue), and continuity of government. Threats to these critical infrastructures fall into two categories: physical threats to tangible property ("physical threats"), and threats of electronic, radio-frequency, or computer-based attacks on the information or communications components that control critical infrastructures ("cyber threats"). Because many of these critical infrastructures are owned and operated by the private sector, it is essential that the government and private sector work together to develop a strategy for protecting them and assuring their continued operation.

NOW, THEREFORE, by the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

SECTION 1. *Establishment.* There is hereby established the President's Commission on Critical Infrastructure Protection ("Commission").

(a) *Chair.* A qualified individual from outside the Federal Government shall be designated by the President from among the members to serve as Chair of the Commission. The Commission Chair shall be employed on a full-time basis.

(b) *Members.* The head of each of the following executive branch departments and agencies shall nominate not more than two full-time members of the Commission:

- (i) Department of the Treasury;
- (ii) Department of Justice;
- (iii) Department of Defense;
- (iv) Department of Commerce;
- (v) Department of Transportation;
- (vi) Department of Energy;
- (vii) Central Intelligence Agency;
- (viii) Federal Emergency Management Agency;
- (ix) Federal Bureau of Investigation;
- (x) National Security Agency.

One of the nominees of each agency may be an individual from outside the Federal Government who shall be employed by the agency on a full-time basis. Each nominee must be approved by the Steering Committee.

SEC. 2. *The Principals Committee.* The Commission shall report to the President through a Principals Committee ("Principals Committee"), which shall review any reports or recommendations before submission to the President. The Principals Committee shall comprise the:

- (i) Secretary of the Treasury;
- (ii) Secretary of Defense;
- (iii) Attorney General;
- (iv) Secretary of Commerce;
- (v) Secretary of Transportation;
- (vi) Secretary of Energy;
- (vii) Director of Central Intelligence;
- (viii) Director of the Office of Management and Budget;
- (ix) Director of the Federal Emergency Management Agency;
- (x) Assistant to the President for National Security Affairs;
- (xi) Assistant to the Vice President for National Security Affairs.[]
- (xii) Assistant to the President for Economic Policy and Director of the National Economic Council; and
- (xiii) Assistant to the President and Director of the Office of Science and Technology Policy.

SEC. 3. *The Steering Committee of the President's Commission on Critical Infrastructure Protection.* A Steering Committee ("Steering Committee") shall oversee the work of the Commission on behalf of the Principals Committee. The Steering Committee shall comprise [sic] five members. Four of the members shall be appointed by the President, and the fifth member shall be the Chair of the Commission. Two of the members of the Committee shall be employees of the Executive Office of the President. The Steering Committee will receive regular reports on the progress of the Commission's work and approve the submission of reports to the Principals Committee.

SEC. 4. *Mission.* The Commission shall: (a) within 30 days of this order, produce a statement of its mission objectives, which will elaborate the general objectives set forth in this order, and a detailed schedule for addressing each mission objective, for approval by the Steering Committee;

(b) identify and consult with: (i) elements of the public and private sectors that conduct, support, or contribute to infrastructure assurance; (ii) owners and operators of the critical infrastructures; and (iii) other elements of the public and private sectors, including the Congress, that have an interest in critical infrastructure assurance issues and that may have differing perspectives on these issues;

(c) assess the scope and nature of the vulnerabilities of, and threats to, critical infrastructures;

(d) determine what legal and policy issues are raised by efforts to protect critical infrastructures and assess how these issues should be addressed;

(e) recommend a comprehensive national policy and implementation strategy for protecting critical infrastructures from physical and cyber threats and assuring their continued operation;

(f) propose any statutory or regulatory changes necessary to effect its recommendations; and

(g) produce reports and recommendations to the Steering Committee as they become available; it shall not limit itself to producing one final report.

SEC. 5. [Revoked by Ex. Ord. No. 13138, §3(c), Sept. 30, 1999, 64 F.R. 53880.]

SEC. 6. *Administration.* (a) All executive departments and agencies shall cooperate with the Commission and provide such assistance, information, and advice to the Commission as it may request, to the extent permitted by law.

(b) The Commission and the Advisory Committee may hold open and closed hearings, conduct inquiries, and establish subcommittees, as necessary.

(c) Members of the Advisory Committee shall serve without compensation for their work on the Advisory Committee. While engaged in the work of the Advisory Committee, members may be allowed travel expenses,

including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the government service.

(d) To the extent permitted by law, and subject to the availability of appropriations, the Department of Defense shall provide the Commission and the Advisory Committee with administrative services, staff, other support services, and such funds as may be necessary for the performance of its functions and shall reimburse the executive branch components that provide representatives to the Commission for the compensation of those representatives.

(e) In order to augment the expertise of the Commission, the Department of Defense may, at the Commission's request, contract for the services of nongovernmental consultants who may prepare analyses, reports, background papers, and other materials for consideration by the Commission. In addition, at the Commission's request, executive departments and agencies shall request that existing Federal advisory committees consider and provide advice on issues of critical infrastructure protection, to the extent permitted by law.

(f) The Commission shall terminate 1 year and 90 days from the date of this order, unless extended by the President prior to that date. The Principals Committee, the Steering Committee, and the Advisory Committee shall terminate no later than September 30, 1998, and, upon submission of the Commission's report, shall review the report and prepare appropriate recommendations to the President.

(g) The person who served as Chair of the Commission may continue to be a member of the Steering Committee after termination of the Commission.

SEC. 7. *Review of Commission's Report.* (a) Upon the termination of the Commission as set out in section 6(f) of this order, certain of the Commission's staff may be retained no later than September 30, 1998, solely to assist the Principals, Steering, and Advisory Committees in reviewing the Commission's report and preparing recommendations to the President. They shall act under the direction of the Steering Committee or its designated agent. The Department of Defense shall continue to provide funding and administrative support for the retained Commission staff.

(b) Pursuant to Executive Order 12958 [50 U.S.C. 435 note], I hereby designate the Executive Secretary of the National Security Council to exercise the authority to classify information originally as "Top Secret" with respect to the work of the Commission staff, the Principals Committee, the Steering Committee, the Advisory Committee, and the Infrastructure Protection Task Force.

SEC. 8. *Interim Coordinating Mission.* (a) While the Commission is conducting its analysis and until the President has an opportunity to consider and act on its recommendations, there is a need to increase coordination of existing infrastructure protection efforts in order to better address, and prevent, crises that would have a debilitating regional or national impact. There is hereby established an Infrastructure Protection Task Force ("IPTF") within the Department of Justice, chaired by the Federal Bureau of Investigation, to undertake this interim coordinating mission.

(b) The IPTF will not supplant any existing programs or organizations.

(c) The Steering Committee shall oversee the work of the IPTF.

(d) The IPTF shall include at least one full-time member each from the Federal Bureau of Investigation, the Department of Defense, and the National Security Agency. It shall also receive part-time assistance from other executive branch departments and agencies. Members shall be designated by their departments or agencies on the basis of their expertise in the protection of critical infrastructures. IPTF members' compensation shall be paid by their parent agency or department.

(e) The IPTF's function is to identify and coordinate existing expertise, inside and outside of the Federal Government, to:

(i) provide, or facilitate and coordinate the provision of, expert guidance to critical infrastructures to detect, prevent, halt, or confine an attack and to recover and restore service;

(ii) issue threat and warning notices in the event advance information is obtained about a threat;

(iii) provide training and education on methods of reducing vulnerabilities and responding to attacks on critical infrastructures;

(iv) conduct after-action analysis to determine possible future threats, targets, or methods of attack; and

(v) coordinate with the pertinent law enforcement authorities during or after an attack to facilitate any resulting criminal investigation.

(f) All executive departments and agencies shall cooperate with the IPTF and provide such assistance, information, and advice as the IPTF may request, to the extent permitted by law.

(g) All executive departments and agencies shall share with the IPTF information about threats and warning of attacks, and about actual attacks on critical infrastructures, to the extent permitted by law.

(h) The IPTF shall terminate no later than 180 days after the termination of the Commission, unless extended by the President prior to that date.

SEC. 9. *General.* (a) This order is not intended to change any existing statutes or Executive orders.

(b) This order is not intended to create any right, benefit, trust, or responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any person.

WILLIAM J. CLINTON.

[Ex. Ord. No. 13138, §3(c), Sept. 30, 1999, 64 F.R. 53880, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees, revoked "Section 5 and that part of section 6(f) of Executive Order 13010, as amended by section 3 of Executive Order 13025, Executive Order 13041, sections 1, 2, and that part of section 3 of Executive Order 13064, and Executive Order 13077, establishing the Advisory Committee to the President's Commission on Critical Infrastructure Protection".]

EXECUTIVE ORDER NO. 13130

Ex. Ord. No. 13130, July 14, 1999, 64 F.R. 38535, which established the National Infrastructure Assurance Council, was revoked by Ex. Ord. No. 13231, §10(e)(iii), Oct. 16, 2001, 66 F.R. 53070, set out as a note under section 121 of Title 6, Domestic Security.

EX. ORD. NO. 13151. GLOBAL DISASTER INFORMATION NETWORK

Ex. Ord. No. 13151, Apr. 27, 2000, 65 F.R. 25619, as amended by Ex. Ord. No. 13284, §5, Jan. 23, 2003, 68 F.R. 4075, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish a Global Disaster Information Network to use information technology more effectively to reduce loss of life and property from natural and man-made disasters, it is hereby ordered as follows:

SECTION 1. *Policy.* (a) It is the policy of this Administration to use information technology more effectively to coordinate the Federal Government's collection and dissemination of information to appropriate response agencies and State governments to prepare for and respond to natural and man-made disasters (disasters). As a result of changing population demographics in our coastal, rural, and urban areas over the past decades, the loss of life and property (losses) from disasters has nearly doubled. One of the ways the Federal Government can reduce these losses is to use technology more effectively to coordinate its collection and dissemination (hereafter referred to collectively as "provision") of information which can be used in both planning for and recovering from disasters. While many agencies

provide disaster-related information, they may not always provide it in a coordinated manner. To improve the provision of disaster-related information, the agencies shall, as set out in this order, use information technology to coordinate the Federal Government's provision of information to prepare for, respond to, and recover from domestic disasters.

(b) It is also the policy of this Administration to use information technology and existing channels of disaster assistance to improve the Federal Government's provision of information that could be helpful to foreign governments preparing for or responding to foreign disasters. Currently, the United States Government provides disaster-related information to foreign governments and relief organizations on humanitarian grounds at the request of foreign governments and where appropriate. This information is supplied by Federal agencies on an ad hoc basis. To increase the effectiveness of our response to foreign disasters, agencies shall, where appropriate, use information technology to coordinate the Federal Government's provision of disaster-related information to foreign governments.

(c) To carry out the policies in this order, there is established the Global Disaster Information Network (Network). The Network is defined as the coordinated effort by Federal agencies to develop a strategy and to use existing technical infrastructure, to the extent permitted by law and subject to the availability of appropriations and under the guidance of the Interagency Coordinating Committee and the Committee Support Office, to make more effective use of information technology to assist our Government, and foreign governments where appropriate, by providing disaster-related information to prepare for and respond to disasters.

SEC. 2. *Establishment.* (a) There is established an Interagency Coordinating Committee (Committee) to provide leadership and oversight for the development of the Network. The Office of the Vice President, the Department of Commerce through the National Oceanic and Atmospheric Administration, and the Department of State, respectively, shall designate a representative to serve as Co-chairpersons of the Committee. The Committee membership shall comprise representatives from the following departments and agencies:

- (1) Department of State;
- (2) Department of Defense;
- (3) Department of the Interior;
- (4) Department of Agriculture;
- (5) Department of Commerce;
- (6) Department of Transportation;
- (7) Department of Energy;
- (8) Department of Homeland Security;
- (9) Office of Management and Budget;
- (10) Environmental Protection Agency;
- (11) National Aeronautics and Space Administration;
- (12) United States Agency for International Development;
- (13) Federal Emergency Management Agency; and
- (14) Central Intelligence Agency.

At the discretion of the Co-chairpersons of the Committee, other agencies may be added to the Committee membership. The Committee shall include an Executive Secretary to effect coordination between the Co-chairpersons of the Committee and the Committee Support Office.

(b) There is established a Committee Support Office (Support Office) to assist the Committee by developing plans and projects that would further the creation of the Network. The Support Office shall, at the request of the Co-chairpersons of the Committee, carry out tasks taken on by the Committee.

(c) The National Oceanic and Atmospheric Administration shall provide funding and administrative support for the Committee and the Support Office. To the extent permitted by law, agencies may provide support to the Committee and the Support Office to assist them in their work.

SEC. 3. *Responsibilities.* (a) The Committee shall:

- (1) serve as the United States Government's single entity for all matters, both national and inter-

national, pertaining to the development and establishment of the Network;

(2) provide leadership and high-level coordination of Network activities;

(3) provide guidance for the development of Network strategies, goals, objectives, policies, and legislation;

(4) represent and advocate Network goals, objectives, and processes to their respective agencies and departments;

(5) provide manpower and material support for Network development activities;

(6) develop, delegate, and monitor interagency opportunities and ideas supporting the development of the Network; and

(7) provide reports, through the Co-chairpersons of the Committee, to the President as requested or at least annually.

(b) The Support Office shall:

(1) provide management and administrative support for the Committee;

(2) develop Network strategies, goals, objectives, policies, plans, and legislation in accordance with guidance provided by the Committee;

(3) consult with agencies, States, nongovernment organizations, and international counterparts in developing Network development tasks;

(4) develop and make recommendations concerning Network activities to the agencies as approved by the Committee; and

(5) participate in projects that promote the goals and objectives of the Network.

SEC. 4. *Implementation.* (a) The Committee, with the assistance of the Support Office, shall address national and international issues associated with the development of the Network within the context of:

(1) promoting the United States as an example and leader in the development and dissemination of disaster information, both domestically and abroad, and, to this end, seeking cooperation with foreign governments and international organizations;

(2) striving to include all appropriate stakeholders in the development of the Network; and

(3) facilitating the creation of a framework that involves public and private stakeholders in a partnership for sustained operations of the Network.

(b) Intelligence activities, as determined by the Director of the Central Intelligence Agency, as well as national security-related activities of the Department of Defense and of the Department of Energy, are exempt from compliance with this order.

SEC. 5. *Tribal Governments.* This order does not impose any requirements on tribal governments.

SEC. 6. *Judicial Review.* This order does not create any right or benefit, substantive or procedural, enforceable by law, by a party against the United States, its officers, its employees, or any other person.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5196 of this title.

§ 5195a. Definitions

(a) Definitions

For purposes of this subchapter only:

(1) Hazard

The term “hazard” means an emergency or disaster resulting from—

(A) a natural disaster; or

(B) an accidental or man-caused event.

(2) Natural disaster

The term “natural disaster” means any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, or other catastrophe

in any part of the United States which causes, or which may cause, substantial damage or injury to civilian property or persons.

(3) Emergency preparedness

The term “emergency preparedness” means all those activities and measures designed or undertaken to prepare for or minimize the effects of a hazard upon the civilian population, to deal with the immediate emergency conditions which would be created by the hazard, and to effectuate emergency repairs to, or the emergency restoration of, vital utilities and facilities destroyed or damaged by the hazard. Such term includes the following:

(A) Measures to be undertaken in preparation for anticipated hazards (including the establishment of appropriate organizations, operational plans, and supporting agreements, the recruitment and training of personnel, the conduct of research, the procurement and stockpiling of necessary materials and supplies, the provision of suitable warning systems, the construction or preparation of shelters, shelter areas, and control centers, and, when appropriate, the non-military evacuation of the civilian population).

(B) Measures to be undertaken during a hazard (including the enforcement of passive defense regulations prescribed by duly established military or civil authorities, the evacuation of personnel to shelter areas, the control of traffic and panic, and the control and use of lighting and civil communications).

(C) Measures to be undertaken following a hazard (including activities for fire fighting, rescue, emergency medical, health and sanitation services, monitoring for specific dangers of special weapons, unexploded bomb reconnaissance, essential debris clearance, emergency welfare measures, and immediately essential emergency repair or restoration of damaged vital facilities).

(4) Organizational equipment

The term “organizational equipment” means equipment determined by the Director to be necessary to an emergency preparedness organization, as distinguished from personal equipment, and of such a type or nature as to require it to be financed in whole or in part by the Federal Government. Such term does not include those items which the local community normally uses in combating local disasters, except when required in unusual quantities dictated by the requirements of the emergency preparedness plans.

(5) Materials

The term “materials” includes raw materials, supplies, medicines, equipment, component parts and technical information and processes necessary for emergency preparedness.

(6) Facilities

The term “facilities”, except as otherwise provided in this subchapter, includes buildings, shelters, utilities, and land.

(7) Director

The term “Director” means the Director of the Federal Emergency Management Agency.

(8) Neighboring countries

The term “neighboring countries” includes Canada and Mexico.

(9) United States and States

The terms “United States” and “States” includes¹ the several States, the District of Columbia, and territories and possessions of the United States.

(10) State

The term “State” includes interstate emergency preparedness authorities established under section 5196(h) of this title.

(b) Cross reference

The terms “national defense” and “defense”, as used in the Defense Production Act of 1950 (50 U.S.C. App. 2061 et seq.), includes¹ emergency preparedness activities conducted pursuant to this subchapter.

(Pub. L. 93-288, title VI, §602, as added Pub. L. 103-337, div. C, title XXXIV, §3411(a)(3), Oct. 5, 1994, 108 Stat. 3101.)

REFERENCES IN TEXT

The Defense Production Act of 1950, referred to in subsec. (b), is act Sept. 8, 1950, ch. 932, 64 Stat. 798, as amended, which is classified to section 2061 et seq. of Title 50, Appendix, War and National Defense. For complete classification of this Act to the Code, see section 2061 of Title 50, Appendix, and Tables.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 2252 and 2282 of Title 50, Appendix, War and National Defense, prior to repeal by Pub. L. 103-337, §3412(a).

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 313(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 5195b. Administration of subchapter

This subchapter shall be carried out by the Director of the Federal Emergency Management Agency.

(Pub. L. 93-288, title VI, §603, as added Pub. L. 103-337, div. C, title XXXIV, §3411(a)(3), Oct. 5, 1994, 108 Stat. 3102.)

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 313(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

¹ So in original. Probably should be “include”.

§ 5195c. Critical infrastructures protection**(a) Short title**

This section may be cited as the “Critical Infrastructures Protection Act of 2001”.

(b) Findings

Congress makes the following findings:

(1) The information revolution has transformed the conduct of business and the operations of government as well as the infrastructure relied upon for the defense and national security of the United States.

(2) Private business, government, and the national security apparatus increasingly depend on an interdependent network of critical physical and information infrastructures, including telecommunications, energy, financial services, water, and transportation sectors.

(3) A continuous national effort is required to ensure the reliable provision of cyber and physical infrastructure services critical to maintaining the national defense, continuity of government, economic prosperity, and quality of life in the United States.

(4) This national effort requires extensive modeling and analytic capabilities for purposes of evaluating appropriate mechanisms to ensure the stability of these complex and interdependent systems, and to underpin policy recommendations, so as to achieve the continuous viability and adequate protection of the critical infrastructure of the Nation.

(c) Policy of the United States

It is the policy of the United States—

(1) that any physical or virtual disruption of the operation of the critical infrastructures of the United States be rare, brief, geographically limited in effect, manageable, and minimally detrimental to the economy, human and government services, and national security of the United States;

(2) that actions necessary to achieve the policy stated in paragraph (1) be carried out in a public-private partnership involving corporate and non-governmental organizations; and

(3) to have in place a comprehensive and effective program to ensure the continuity of essential Federal Government functions under all circumstances.

(d) Establishment of national competence for critical infrastructure protection**(1) Support of critical infrastructure protection and continuity by National Infrastructure Simulation and Analysis Center**

There shall be established the National Infrastructure Simulation and Analysis Center (NISAC) to serve as a source of national competence to address critical infrastructure protection and continuity through support for activities related to counterterrorism, threat assessment, and risk mitigation.

(2) Particular support

The support provided under paragraph (1) shall include the following:

(A) Modeling, simulation, and analysis of the systems comprising critical infrastructures, including cyber infrastructure, telecommunications infrastructure, and phys-

ical infrastructure, in order to enhance understanding of the large-scale complexity of such systems and to facilitate modification of such systems to mitigate the threats to such systems and to critical infrastructures generally.

(B) Acquisition from State and local governments and the private sector of data necessary to create and maintain models of such systems and of critical infrastructures generally.

(C) Utilization of modeling, simulation, and analysis under subparagraph (A) to provide education and training to policymakers on matters relating to—

(i) the analysis conducted under that subparagraph;

(ii) the implications of unintended or unintentional disturbances to critical infrastructures; and

(iii) responses to incidents or crises involving critical infrastructures, including the continuity of government and private sector activities through and after such incidents or crises.

(D) Utilization of modeling, simulation, and analysis under subparagraph (A) to provide recommendations to policymakers, and to departments and agencies of the Federal Government and private sector persons and entities upon request, regarding means of enhancing the stability of, and preserving, critical infrastructures.

(3) Recipient of certain support

Modeling, simulation, and analysis provided under this subsection shall be provided, in particular, to relevant Federal, State, and local entities responsible for critical infrastructure protection and policy.

(e) Critical infrastructure defined

In this section, the term “critical infrastructure” means systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems and assets would have a debilitating impact on security, national economic security, national public health or safety, or any combination of those matters.

(f) Authorization of appropriations

There is hereby authorized for the Department of Defense for fiscal year 2002, \$20,000,000 for the Defense Threat Reduction Agency for activities of the National Infrastructure Simulation and Analysis Center under this section in that fiscal year.

(Pub. L. 107-56, title X, §1016, Oct. 26, 2001, 115 Stat. 400.)

CODIFICATION

Section was enacted as the Critical Infrastructures Protection Act of 2001 and also as part of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, and not as part of the Robert T. Stafford Disaster Relief and Emergency Assistance Act which comprises this chapter.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the National Infrastructure Simulation and

Analysis Center of the Department of Energy, including the functions of the Secretary of Energy relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 121(g)(4), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 6 section 101.

PART A—POWERS AND DUTIES

§ 5196. Detailed functions of administration

(a) In general

In order to carry out the policy described in section 5195 of this title, the Director shall have the authorities provided in this section.

(b) Federal emergency response plans and programs

The Director may prepare Federal response plans and programs for the emergency preparedness of the United States and sponsor and direct such plans and programs. To prepare such plans and programs and coordinate such plans and programs with State efforts, the Director may request such reports on State plans and operations for emergency preparedness as may be necessary to keep the President, Congress, and the States advised of the status of emergency preparedness in the United States.

(c) Delegation of emergency preparedness responsibilities

With the approval of the President, the Director may delegate to other departments and agencies of the Federal Government appropriate emergency preparedness responsibilities and review and coordinate the emergency preparedness activities of the departments and agencies with each other and with the activities of the States and neighboring countries.

(d) Communications and warnings

The Director may make appropriate provision for necessary emergency preparedness communications and for dissemination of warnings to the civilian population of a hazard.

(e) Emergency preparedness measures

The Director may study and develop emergency preparedness measures designed to afford adequate protection of life and property, including—

(1) research and studies as to the best methods of treating the effects of hazards;

(2) developing shelter designs and materials for protective covering or construction; and

(3) developing equipment or facilities and effecting the standardization thereof to meet emergency preparedness requirements.

(f) Training programs

(1) The Director may—

(A) conduct or arrange, by contract or otherwise, for training programs for the instruction of emergency preparedness officials and other persons in the organization, operation, and techniques of emergency preparedness;

(B) conduct or operate schools or including the payment of travel expenses, in accordance

with subchapter I of chapter 57 of title 5 and the Standardized Government Travel Regulations, and per diem allowances, in lieu of subsistence for trainees in attendance or the furnishing of subsistence and quarters for trainees and instructors on terms prescribed by the Director; and

(C) provide instructors and training aids as necessary.

(2) The terms prescribed by the Director for the payment of travel expenses and per diem allowances authorized by this subsection shall include a provision that such payment shall not exceed one-half of the total cost of such expenses.

(3) The Director may lease real property required for the purpose of carrying out this subsection, but may not acquire fee title to property unless specifically authorized by law.

(g) Public dissemination of emergency preparedness information

The Director may publicly disseminate appropriate emergency preparedness information by all appropriate means.

(h) Interstate emergency preparedness compacts

(1) The Director may—

(A) assist and encourage the States to negotiate and enter into interstate emergency preparedness compacts;

(B) review the terms and conditions of such proposed compacts in order to assist, to the extent feasible, in obtaining uniformity between such compacts and consistency with Federal emergency response plans and programs;

(C) assist and coordinate the activities under such compacts; and

(D) aid and assist in encouraging reciprocal emergency preparedness legislation by the States which will permit the furnishing of mutual aid for emergency preparedness purposes in the event of a hazard which cannot be adequately met or controlled by a State or political subdivision thereof threatened with or experiencing a hazard.

(2) A copy of each interstate emergency preparedness compact shall be transmitted promptly to the Senate and the House of Representatives. The consent of Congress is deemed to be granted to each such compact upon the expiration of the 60-day period beginning on the date on which the compact is transmitted to Congress.

(3) Nothing in this subsection shall be construed as preventing Congress from disapproving, or withdrawing at any time its consent to, any interstate emergency preparedness compact.

(i) Materials and facilities

(1) The Director may procure by condemnation or otherwise, construct, lease, transport, store, maintain, renovate or distribute materials and facilities for emergency preparedness, with the right to take immediate possession thereof.

(2) Facilities acquired by purchase, donation, or other means of transfer may be occupied, used, and improved for the purposes of this subchapter before the approval of title by the At-

torney General as required by sections 3111 and 3112 of title 40.

(3) The Director may lease real property required for the purpose of carrying out the provisions of this subsection, but shall not acquire fee title to property unless specifically authorized by law.

(4) The Director may procure and maintain under this subsection radiological, chemical, bacteriological, and biological agent monitoring and decontamination devices and distribute such devices by loan or grant to the States for emergency preparedness purposes, under such terms and conditions as the Director shall prescribe.

(j) Financial contributions

(1) The Director may make financial contributions, on the basis of programs or projects approved by the Director, to the States for emergency preparedness purposes, including the procurement, construction, leasing, or renovating of materials and facilities. Such contributions shall be made on such terms or conditions as the Director shall prescribe, including the method of purchase, the quantity, quality, or specifications of the materials or facilities, and such other factors or care or treatment to assure the uniformity, availability, and good condition of such materials or facilities.

(2) No contribution may be made under this subsection for the procurement of land or for the purchase of personal equipment for State or local emergency preparedness workers.

(3) The amounts authorized to be contributed by the Director to each State for organizational equipment shall be equally matched by such State from any source it determines is consistent with its laws.

(4) Financial contributions to the States for shelters and other protective facilities shall be determined by taking the amount of funds appropriated or available to the Director for such facilities in each fiscal year and apportioning such funds among the States in the ratio which the urban population of the critical target areas (as determined by the Director) in each State, at the time of the determination, bears to the total urban population of the critical target areas of all of the States.

(5) The amounts authorized to be contributed by the Director to each State for such shelters and protective facilities shall be equally matched by such State from any source it determines is consistent with its laws and, if not matched within a reasonable time, the Director may reallocate such amounts to other States under the formula described in paragraph (4). The value of any land contributed by any State or political subdivision thereof shall be excluded from the computation of the State share under this subsection.

(6) The amounts paid to any State under this subsection shall be expended solely in carrying out the purposes set forth herein and in accordance with State emergency preparedness programs or projects approved by the Director. The Director shall make no contribution toward the cost of any program or project for the procurement, construction, or leasing of any facility which (A) is intended for use, in whole or in

part, for any purpose other than emergency preparedness, and (B) is of such kind that upon completion it will, in the judgment of the Director, be capable of producing sufficient revenue to provide reasonable assurance of the retirement or repayment of such cost; except that (subject to the preceding provisions of this subsection) the Director may make a contribution to any State toward that portion of the cost of the construction, reconstruction, or enlargement of any facility which the Director determines to be directly attributable to the incorporation in such facility of any feature of construction or design not necessary for the principal intended purpose thereof but which is, in the judgment of the Director necessary for the use of such facility for emergency preparedness purposes.

(7) The Director shall submit to Congress a report, at least annually, regarding all contributions made pursuant to this subsection.

(8) All laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed with the assistance of any contribution of Federal funds made by the Director under this subsection shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with sections 3141-3144, 3146, and 3147 of title 40, and every such employee shall receive compensation at a rate not less than one and ½ times the basic rate of pay of the employee for all hours worked in any workweek in excess of eight hours in any workday or 40 hours in the workweek, as the case may be. The Director shall make no contribution of Federal funds without first obtaining adequate assurance that these labor standards will be maintained upon the construction work. The Secretary of Labor shall have, with respect to the labor standards specified in this subsection, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (5 U.S.C. App.) and section 3145 of title 40.

(k) Sale or disposal of certain materials and facilities

The Director may arrange for the sale or disposal of materials and facilities found by the Director to be unnecessary or unsuitable for emergency preparedness purposes in the same manner as provided for excess property under the Federal Property and Administrative Services Act of 1949.¹ Any funds received as proceeds from the sale or other disposition of such materials and facilities shall be deposited into the Treasury as miscellaneous receipts.

(Pub. L. 93-288, title VI, §611, as added Pub. L. 103-337, div. C, title XXXIV, §3411(a)(3), Oct. 5, 1994, 108 Stat. 3102; amended Pub. L. 104-66, title II, §2071, Dec. 21, 1995, 109 Stat. 729.)

REFERENCES IN TEXT

Reorganization Plan Numbered 14 of 1950, referred to in subsec. (j)(8), is Reorg. Plan No. 14 of 1950, eff. May 24, 1950, 15 F.R. 3176, 64 Stat. 1267, which is set out in the Appendix to Title 5, Government Organization and Employees.

¹ See References in Text note below.

The Federal Property and Administrative Services Act of 1949, referred to in subsec. (k), is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Except for title III of the Act, which is classified generally to subchapter IV (§251 et seq.) of chapter 4 of Title 41, Public Contracts, the Act was repealed and reenacted by Pub. L. 107-217, §§1, 6(b), Aug. 21, 2002, 116 Stat. 1062, 1304, as chapters 1 to 11 of Title 40, Public Buildings, Property, and Works.

CODIFICATION

In subsec. (i)(2), "sections 3111 and 3112 of title 40" substituted for "section 355 of the Revised Statutes (40 U.S.C. 255)" and, in subsec. (j)(8), "sections 3141-3144, 3146, and 3147 of title 40" substituted for "the Act of March 3, 1931 (commonly known as the Davis-Bacon Act (40 U.S.C. 276a-276a-5))" and "section 3145 of title 40" substituted for "section 2 of the Act of June 13, 1934 (40 U.S.C. 276(c))", meaning 276c, on authority of Pub. L. 107-217, §5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 2281 of Title 50, Appendix, War and National Defense, prior to repeal by Pub. L. 103-337, §3412(a).

AMENDMENTS

1995—Subsec. (i)(3) to (5). Pub. L. 104-66 redesignated pars. (4) and (5) as (3) and (4), respectively, and struck out former par. (3) which read as follows: "The Director shall submit to Congress a report, at least quarterly, describing all property acquisitions made pursuant to this subsection."

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 313(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

PILOT PROGRAM TO STUDY DESIGN AND CONSTRUCTION OF BUILDINGS TO MINIMIZE EFFECTS OF NUCLEAR EXPLOSIONS

Pub. L. 96-342, title VII, §704, Sept. 8, 1980, 94 Stat. 1090, provided that:

"(a) The Director of the Federal Emergency Management Agency shall establish a pilot program of designing and constructing buildings to enhance the ability of the buildings to withstand nuclear explosions and to minimize the damage to such buildings caused by a nuclear explosion. Such program shall include the designing and constructing of at least two building projects chosen by the Director so that the buildings in the projects will be able to better withstand nuclear explosions and so that any damage to the buildings in the project caused by a nuclear explosion will be minimized.

"(b) The Director of the Federal Emergency Management Agency shall submit a report to the Senate and the House of Representatives not later than April 1, 1981, on the establishment under subsection (a) of the pilot program.

"(c) Of the sums authorized to be appropriated under section 701 [which authorized an appropriation of \$120,000,000 for fiscal year 1981 to carry out the Federal Civil Defense Act of 1950, 50 U.S.C. App. 2251-2303], \$400,000 shall be available to carry out the pilot program established pursuant to subsection (a).

"(d) This section shall take effect on October 1, 1980."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5132, 5195a, 5195b of this title; title 50 sections 2314, 2317.

§ 5196a. Mutual aid pacts between States and neighboring countries

The Director shall give all practicable assistance to States in arranging, through the Department of State, mutual emergency preparedness aid between the States and neighboring countries.

(Pub. L. 93-288, title VI, §612, as added Pub. L. 103-337, div. C, title XXXIV, §3411(a)(3), Oct. 5, 1994, 108 Stat. 3105.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 2283 of Title 50, Appendix, War and National Defense, prior to repeal by Pub. L. 103-337, §3412(a).

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 313(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 5196b. Contributions for personnel and administrative expenses**(a) General authority**

To further assist in carrying out the purposes of this subchapter, the Director may make financial contributions to the States (including interstate emergency preparedness authorities established pursuant to section 5196(h) of this title) for necessary and essential State and local emergency preparedness personnel and administrative expenses, on the basis of approved plans (which shall be consistent with the Federal emergency response plans for emergency preparedness) for the emergency preparedness of the States. The financial contributions to the States under this section may not exceed one-half of the total cost of such necessary and essential State and local emergency preparedness personnel and administrative expenses.

(b) Plan requirements

A plan submitted under this section shall—

(1) provide, pursuant to State law, that the plan shall be in effect in all political subdivisions of the State and be mandatory on them and be administered or supervised by a single State agency;

(2) provide that the State shall share the financial assistance with that provided by the Federal Government under this section from any source determined by it to be consistent with State law;

(3) provide for the development of State and local emergency preparedness operational plans, pursuant to standards approved by the Director;

(4) provide for the employment of a full-time emergency preparedness director, or deputy director, by the State;

(5) provide that the State shall make such reports in such form and content as the Director may require;

(6) make available to duly authorized representatives of the Director and the Comptroller General, books, records, and papers necessary to conduct audits for the purposes of this section; and

(7) include a plan for providing information to the public in a coordinated manner.

(c) Terms and conditions

The Director shall establish such other terms and conditions as the Director considers necessary and proper to carry out this section.

(d) Application of other provisions

In carrying out this section, the provisions of section¹ 5196(h) and 5197(h) of this title shall apply.

(e) Allocation of funds

For each fiscal year concerned, the Director shall allocate to each State, in accordance with regulations and the total sum appropriated under this subchapter, amounts to be made available to the States for the purposes of this section. Regulations governing allocations to the States under this subsection shall give due regard to (1) the criticality of the areas which may be affected by hazards with respect to the development of the total emergency preparedness readiness of the United States, (2) the relative state of development of emergency preparedness readiness of the State, (3) population, and (4) such other factors as the Director shall prescribe. The Director may reallocate the excess of any allocation not used by a State in a plan submitted under this section. Amounts paid to any State or political subdivision under this section shall be expended solely for the purposes set forth in this section.

(f) Submission of plan

If a State fails to submit a plan for approval as required by this section within 60 days after the Director notifies the States of the allocations under this section, the Director may reallocate such funds, or portions thereof, among the other States in such amounts as, in the judgment of the Director, will best assure the adequate development of the emergency preparedness capability of the United States.

(g) Annual reports

The Director shall report annually to the Congress all contributions made pursuant to this section.

(Pub. L. 93-288, title VI, §613, as added Pub. L. 103-337, div. C, title XXXIV, §3411(a)(3), Oct. 5, 1994, 108 Stat. 3106; amended Pub. L. 107-188, title I, §151, June 12, 2002, 116 Stat. 630.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 2286 of Title 50, Appendix, War and National Defense, prior to repeal by Pub. L. 103-337, §3412(a).

AMENDMENTS

2002—Subsec. (b)(7). Pub. L. 107-188 added par. (7).

¹ So in original. Probably should be "sections".

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 313(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 5196c. Requirement for State matching funds for construction of emergency operating centers

Notwithstanding any other provision of this subchapter, funds appropriated to carry out this subchapter may not be used for the purpose of constructing emergency operating centers (or similar facilities) in any State unless such State matches in an equal amount the amount made available to such State under this subchapter for such purpose.

(Pub. L. 93-288, title VI, §614, as added Pub. L. 103-337, div. C, title XXXIV, §3411(a)(3), Oct. 5, 1994, 108 Stat. 3107.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 2288 of Title 50, Appendix, War and National Defense, prior to repeal by Pub. L. 103-337, §3412(a).

NON-FEDERAL COST SHARE

Pub. L. 108-7, div. K, title IV, §419, Feb. 20, 2003, 117 Stat. 526, provided that: "Notwithstanding 42 U.S.C. 5196c, amounts provided in Public Law 107-117 [see Tables for classification] and subsequent appropriations Acts for the construction of emergency operations centers (or similar facilities) shall only require a 25 percent non-Federal cost share."

§ 5196d. Use of funds to prepare for and respond to hazards

Funds made available to the States under this subchapter may be used by the States for the purposes of preparing for hazards and providing emergency assistance in response to hazards. Regulations prescribed to carry out this section shall authorize the use of emergency preparedness personnel, materials, and facilities supported in whole or in part through contributions under this subchapter for emergency preparedness activities and measures related to hazards.

(Pub. L. 93-288, title VI, §615, as added Pub. L. 103-337, div. C, title XXXIV, §3411(a)(3), Oct. 5, 1994, 108 Stat. 3107.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 2289 of Title 50, Appendix, War and National Defense, prior to repeal by Pub. L. 103-337, §3412(a).

§ 5196e. Radiological Emergency Preparedness Fund

There is hereby established in the Treasury a Radiological Emergency Preparedness Fund, which shall be available under the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.], as amended, and Executive Order 12657, for offsite radiological emergency planning, preparedness,

and response. Beginning in fiscal year 1999 and thereafter, the Director of the Federal Emergency Management Agency (FEMA) shall promulgate through rulemaking fees to be assessed and collected, applicable to persons subject to FEMA's radiological emergency preparedness regulations. The aggregate charges assessed pursuant to this section during fiscal year 1999 shall not be less than 100 percent of the amounts anticipated by FEMA necessary for its radiological emergency preparedness program for such fiscal year. The methodology for assessment and collection of fees shall be fair and equitable; and shall reflect costs of providing such services, including administrative costs of collecting such fees. Fees received pursuant to this section shall be deposited in the Fund as offsetting collections and will become available for authorized purposes on October 1, 1999, and remain available until expended.

(Pub. L. 105-276, title III, Oct. 21, 1998, 112 Stat. 2502.)

REFERENCES IN TEXT

The Atomic Energy Act of 1954, referred to in text, is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

Executive Order 12657, referred to in text, is Ex. Ord. No. 12657, Nov. 18, 1988, 53 F.R. 47513, which is set out as a note under section 5195 of this title.

CODIFICATION

Section was enacted as part of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999, and not as part of the Robert T. Stafford Disaster Relief and Emergency Assistance Act which comprises this chapter.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 313(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

PART B—GENERAL PROVISIONS

§ 5197. Administrative authority

(a) In general

For the purpose of carrying out the powers and duties assigned to the Director under this subchapter, the Director may exercise the administrative authorities provided under this section.

(b) Advisory personnel

(1) The Director may employ not more than 100 part-time or temporary advisory personnel (including not to exceed 25 subjects of the United Kingdom or citizens of Canada) as the Director considers to be necessary in carrying out the provisions of this subchapter.

(2) Persons holding other offices or positions under the United States for which they receive

compensation, while serving as advisory personnel, shall receive no additional compensation for such service. Other part-time or temporary advisory personnel so employed may serve without compensation or may receive compensation at a rate not to exceed \$180 for each day of service, plus authorized subsistence and travel, as determined by the Director.

(c) Services of other agency personnel and volunteers

The Director may—

(1) use the services of Federal agencies and, with the consent of any State or local government, accept and use the services of State and local agencies;

(2) establish and use such regional and other offices as may be necessary; and

(3) use such voluntary and uncompensated services by individuals or organizations as may from time to time be needed.

(d) Gifts

Notwithstanding any other provision of law, the Director may accept gifts of supplies, equipment, and facilities and may use or distribute such gifts for emergency preparedness purposes in accordance with the provisions of this subchapter.

(e) Reimbursement

The Director may reimburse any Federal agency for any of its expenditures or for compensation of its personnel and use or consumption of its materials and facilities under this subchapter to the extent funds are available.

(f) Printing

The Director may purchase such printing, binding, and blank-book work from public, commercial, or private printing establishments or binderies as the Director considers necessary upon orders placed by the Public Printer or upon waivers issued in accordance with section 504 of title 44.

(g) Rules and regulations

The Director may prescribe such rules and regulations as may be necessary and proper to carry out any of the provisions of this subchapter and perform any of the powers and duties provided by this subchapter. The Director may perform any of the powers and duties provided by this subchapter through or with the aid of such officials of the Federal Emergency Management Agency as the Director may designate.

(h) Failure to expend contributions correctly

(1) When, after reasonable notice and opportunity for hearing to the State or other person involved, the Director finds that there is a failure to expend funds in accordance with the regulations, terms, and conditions established under this subchapter for approved emergency preparedness plans, programs, or projects, the Director may notify such State or person that further payments will not be made to the State or person from appropriations under this subchapter (or from funds otherwise available for the purposes of this subchapter for any approved plan, program, or project with respect to which there is such failure to comply) until the Director is satisfied that there will no longer be any such failure.

(2) Until so satisfied, the Director shall either withhold the payment of any financial contribution to such State or person or limit payments to those programs or projects with respect to which there is substantial compliance with the regulations, terms, and conditions governing plans, programs, or projects hereunder.

(3) As used in this subsection, the term “person” means the political subdivision of any State or combination or group thereof or any person, corporation, association, or other entity of any nature whatsoever, including instrumentalities of States and political subdivisions.

(Pub. L. 93-288, title VI, § 621, as added Pub. L. 103-337, div. C, title XXXIV, § 3411(a)(3), Oct. 5, 1994, 108 Stat. 3107.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 2253 of Title 50, Appendix, War and National Defense, prior to repeal by Pub. L. 103-337, § 3412(a).

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 313(l), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5196b, 5197a of this title.

§ 5197a. Security regulations

(a) Establishment

The Director shall establish such security requirements and safeguards, including restrictions with respect to access to information and property as the Director considers necessary.

(b) Limitations on employee access to information

No employee of the Federal Emergency Management Agency shall be permitted to have access to information or property with respect to which access restrictions have been established under this section, until it shall have been determined that no information is contained in the files of the Federal Bureau of Investigation or any other investigative agency of the Government indicating that such employee is of questionable loyalty or reliability for security purposes, or if any such information is so disclosed, until the Federal Bureau of Investigation shall have conducted a full field investigation concerning such person and a report thereon shall have been evaluated in writing by the Director.

(c) National security positions

No employee of the Federal Emergency Management Agency shall occupy any position determined by the Director to be of critical importance from the standpoint of national security until a full field investigation concerning such employee shall have been conducted by the Director of the Office of Personnel Management

and a report thereon shall have been evaluated in writing by the Director of the Federal Emergency Management Agency. In the event such full field investigation by the Director of the Office of Personnel Management develops any data reflecting that such applicant for a position of critical importance is of questionable loyalty or reliability for security purposes, or if the Director of the Federal Emergency Management Agency for any other reason considers it to be advisable, such investigation shall be discontinued and a report thereon shall be referred to the Director of the Federal Emergency Management Agency for evaluation in writing. Thereafter, the Director of the Federal Emergency Management Agency may refer the matter to the Federal Bureau of Investigation for the conduct of a full field investigation by such Bureau. The result of such latter investigation by such Bureau shall be furnished to the Director of the Federal Emergency Management Agency for action.

(d) Employee oaths

Each Federal employee of the Federal Emergency Management Agency acting under the authority of this subchapter, except the subjects of the United Kingdom and citizens of Canada specified in section 5197(b) of this title, shall execute the loyalty oath or appointment affidavits prescribed by the Director of the Office of Personnel Management. Each person other than a Federal employee who is appointed to serve in a State or local organization for emergency preparedness shall before entering upon duties, take an oath in writing before a person authorized to administer oaths, which oath shall be substantially as follows:

“I, _____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.

“And I do further swear (or affirm) that I do not advocate, nor am I a member or an affiliate of any organization, group, or combination of persons that advocates the overthrow of the Government of the United States by force or violence; and that during such time as I am a member of _____ (name of emergency preparedness organization), I will not advocate nor become a member or an affiliate of any organization, group, or combination of persons that advocates the overthrow of the Government of the United States by force or violence.”

After appointment and qualification for office, the director of emergency preparedness of any State, and any subordinate emergency preparedness officer within such State designated by the director in writing, shall be qualified to administer any such oath within such State under such regulations as the director shall prescribe. Any person who shall be found guilty of having falsely taken such oath shall be punished as provided in section 1621 of title 18.

(Pub. L. 93-288, title VI, §622, as added Pub. L. 103-337, div. C, title XXXIV, §3411(a)(3), Oct. 5, 1994, 108 Stat. 3108.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 2255 of Title 50, Appendix, War and National Defense, prior to repeal by Pub. L. 103-337, §3412(a).

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 313(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 5197b. Use of existing facilities

In performing duties under this subchapter, the Director—

(1) shall cooperate with the various departments and agencies of the Federal Government;

(2) shall use, to the maximum extent, the existing facilities and resources of the Federal Government and, with their consent, the facilities and resources of the States and political subdivisions thereof, and of other organizations and agencies; and

(3) shall refrain from engaging in any form of activity which would duplicate or parallel activity of any other Federal department or agency unless the Director, with the written approval of the President, shall determine that such duplication is necessary to accomplish the purposes of this subchapter.

(Pub. L. 93-288, title VI, §623, as added Pub. L. 103-337, div. C, title XXXIV, §3411(a)(3), Oct. 5, 1994, 108 Stat. 3110.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 2257 of Title 50, Appendix, War and National Defense, prior to repeal by Pub. L. 103-337, §3412(a).

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 313(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 5197c. Annual report to Congress

The Director shall annually submit a written report to the President and Congress covering expenditures, contributions, work, and accomplishments of the Federal Emergency Management Agency pursuant to this subchapter, accompanied by such recommendations as the Director considers appropriate.

(Pub. L. 93-288, title VI, §624, as added Pub. L. 103-337, div. C, title XXXIV, §3411(a)(3), Oct. 5, 1994, 108 Stat. 3110.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 2258 of Title 50, Appendix, War and National Defense, prior to repeal by Pub. L. 103-337, §3412(a).

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 313(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 5197d. Applicability of subchapter

The provisions of this subchapter shall be applicable to the United States, its States, Territories and possessions, and the District of Columbia, and their political subdivisions.

(Pub. L. 93-288, title VI, §625, as added Pub. L. 103-337, div. C, title XXXIV, §3411(a)(3), Oct. 5, 1994, 108 Stat. 3110.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 2259 of Title 50, Appendix, War and National Defense, prior to repeal by Pub. L. 103-337, §3412(a).

§ 5197e. Authorization of appropriations and transfers of funds**(a) Authorization of appropriations**

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this subchapter.

(b) Transfer authority

Funds made available for the purposes of this subchapter may be allocated or transferred for any of the purposes of this subchapter, with the approval of the Director of the Office of Management and Budget, to any agency or government corporation designated to assist in carrying out this subchapter. Each such allocation or transfer shall be reported in full detail to the Congress within 30 days after such allocation or transfer.

(Pub. L. 93-288, title VI, §626, as added Pub. L. 103-337, div. C, title XXXIV, §3411(a)(3), Oct. 5, 1994, 108 Stat. 3110.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 2260 of Title 50, Appendix, War and National Defense, prior to repeal by Pub. L. 103-337, §3412(a).

§ 5197f. Relation to Atomic Energy Act of 1954

Nothing in this subchapter shall be construed to alter or modify the provisions of the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).

(Pub. L. 93-288, title VI, §627, as added Pub. L. 103-337, div. C, title XXXIV, §3411(a)(3), Oct. 5, 1994, 108 Stat. 3110.)

REFERENCES IN TEXT

The Atomic Energy Act of 1954, referred to in text, is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954,

ch. 1073, §1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 2262 of Title 50, Appendix, War and National Defense, prior to repeal by Pub. L. 103-337, §3412(a).

§ 5197g. Federal Bureau of Investigation

Nothing in this subchapter shall be construed to authorize investigations of espionage, sabotage, or subversive acts by any persons other than personnel of the Federal Bureau of Investigation.

(Pub. L. 93-288, title VI, §628, as added Pub. L. 103-337, div. C, title XXXIV, §3411(a)(3), Oct. 5, 1994, 108 Stat. 3110.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 2263 of Title 50, Appendix, War and National Defense, prior to repeal by Pub. L. 103-337, §3412(a).

§ 5197h. Minority emergency preparedness demonstration program**(a) In general**

The Director shall establish a minority emergency preparedness demonstration program to research and promote the capacity of minority communities to provide data, information, and awareness education by providing grants to or executing contracts or cooperative agreements with eligible nonprofit organizations to establish and conduct such programs.

(b) Activities supported

An eligible nonprofit organization may use a grant, contract, or cooperative agreement awarded under this section—

(1) to conduct research into the status of emergency preparedness and disaster response awareness in African American and Hispanic households located in urban, suburban, and rural communities, particularly in those States and regions most impacted by natural and manmade disasters and emergencies; and

(2) to develop and promote awareness of emergency preparedness education programs within minority communities, including development and preparation of culturally competent educational and awareness materials that can be used to disseminate information to minority organizations and institutions.

(c) Eligible organizations

A nonprofit organization is eligible to be awarded a grant, contract, or cooperative agreement under this section with respect to a program if the organization is a nonprofit organization that is described in section 501(c)(3) of title 26 and exempt from tax under section 501(a) of such title, whose primary mission is to provide services to communities predominately populated by minority citizens, and that can demonstrate a partnership with a minority-owned business enterprise or minority business located in a HUBZone (as defined in section 632(p) of title 15) with respect to the program.

(d) Use of funds

A recipient of a grant, contract, or cooperative agreement awarded under this section may only use the proceeds of the grant, contract, or agreement to—

(1) acquire expert professional services necessary to conduct research in communities predominately populated by minority citizens, with a primary emphasis on African American and Hispanic communities;

(2) develop and prepare informational materials to promote awareness among minority communities about emergency preparedness and how to protect their households and communities in advance of disasters;

(3) establish consortia with minority national organizations, minority institutions of higher education, and faith-based institutions to disseminate information about emergency preparedness to minority communities; and

(4) implement a joint project with a minority serving institution, including a part B institution (as defined in section 1061(2) of title 20), an institution described in subparagraph (A), (B), or (C) of section 1063b(e)(1)¹ of title 20, and a Hispanic-serving institution (as defined in section 1101a(a)(5) of title 20).

(e) Application and review procedure

To be eligible to receive a grant, contract, or cooperative agreement under this section, an organization must submit an application to the Director at such time, in such manner, and accompanied by such information as the Director may reasonably require. The Director shall establish a procedure by which to accept such applications.

(f) Authorization of appropriation

There is authorized to be appropriated to carry out this section \$1,500,000 for fiscal year 2002 and such funds as may be necessary for fiscal years 2003 through 2007. Such sums shall remain available until expended.

(Pub. L. 93-288, title VI, § 629, as added Pub. L. 107-73, title IV, § 431, Nov. 26, 2001, 115 Stat. 697.)

REFERENCES IN TEXT

Subparagraph (A), (B), or (C) of section 1063b(e)(1) of title 20, referred to in subsec. (d)(4), was in the original “subparagraph (A), (B), or (C) of section 326 of that Act (20 U.S.C. 1063b(e)(1)(A), (B), or (C))”, which was translated as reading “subparagraph (A), (B), or (C) of section 326(e)(1) of that Act (20 U.S.C. 1063b(e)(1)(A), (B), or (C))” to reflect the probable intent of Congress.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 313(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

SUBCHAPTER V—MISCELLANEOUS

§ 5201. Rules and regulations

(a)(1) The President may prescribe such rules and regulations as may be necessary and proper

¹ See References in Text note below.

to carry out any of the provisions of this chapter, and he may exercise any power or authority conferred on him by any section of this chapter either directly or through such Federal agency or agencies as he may designate.

(2) DEADLINE FOR PAYMENT OF ASSISTANCE.—Rules and regulations authorized by paragraph (1) shall provide that payment of any assistance under this chapter to a State shall be completed within 60 days after the date of approval of such assistance.

(b) In furtherance of the purposes of this chapter, the President or his delegate may accept and use bequests, gifts, or donations of service, money, or property, real, personal, or mixed, tangible, or intangible. All sums received under this subsection shall be deposited in a separate fund on the books of the Treasury and shall be available for expenditure upon the certification of the President or his delegate. At the request of the President or his delegate, and the Secretary of the Treasury may invest and reinvest excess monies in the fund. Such investments shall be in public debt securities with maturities suitable for the needs of the fund and shall bear interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities. The interest on such investments shall be credited to, and form a part of, the fund.

(Pub. L. 93-288, title VII, § 701, formerly title VI, § 601, May 22, 1974, 88 Stat. 163; Pub. L. 96-446, Oct. 13, 1980, 94 Stat. 1893; Pub. L. 100-707, title I, § 108(a), Nov. 23, 1988, 102 Stat. 4707; renumbered title VII, § 701, Pub. L. 103-337, div. C, title XXXIV, § 3411(a)(1), (2), Oct. 5, 1994, 108 Stat. 3100.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 93-288, May 22, 1974, 88 Stat. 143, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100-707 designated existing provision as par. (1) and added par. (2).

1980—Pub. L. 96-446 designated existing provisions as subsec. (a) and added subsec. (b).

DEADLINE FOR ISSUANCE OF REGULATIONS

Section 113 of title I of Pub. L. 100-707 provided that: “Regulations necessary to carry out this title and the amendments made by this title [see Short Title of 1988 Amendment note set out under section 5121 of this title] shall be issued no later than the 180th day following the date of the enactment of this Act [Nov. 23, 1988].”

[Functions of President under section 113 of Pub. L. 100-707 delegated to Director of Federal Emergency Management Agency by section 5 of Ex. Ord. No. 12673, Mar. 23, 1989, 54 F.R. 12571, set out as a note under section 5195 of this title.]

§ 5202. Repealed. Pub. L. 100-707, title I, § 108(c), Nov. 23, 1988, 102 Stat. 4708

Section, Pub. L. 93-288, title VI, § 606, May 22, 1974, 88 Stat. 164; Pub. L. 95-51, § 1, June 20, 1977, 91 Stat. 233; Pub. L. 96-568, § 2, Dec. 22, 1980, 94 Stat. 3334, authorized appropriations of such sums as necessary to carry out this chapter through the close of Sept. 30, 1981.

§ 5203. Excess disaster assistance payments as budgetary emergency requirements

Beginning in fiscal year 1993, and in each year thereafter, notwithstanding any other provision of law, all amounts appropriated for disaster assistance payments under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) that are in excess of either the historical annual average obligation of \$320,000,000, or the amount submitted in the President's initial budget request, whichever is lower, shall be considered as "emergency requirements" pursuant to section 901(b)(2)(D)¹ of title 2, and such amounts shall on and after December 12, 1991, be so designated.

(Pub. L. 102-229, title I, Dec. 12, 1991, 105 Stat. 1711.)

REFERENCES IN TEXT

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in text, is Pub. L. 93-288, May 22, 1974, 88 Stat. 143, as amended, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables.

Section 901 of title 2, referred to in text, was amended by Pub. L. 105-33, title X, §10203(a)(4), Aug. 5, 1997, 111 Stat. 699, by striking out subsec. (b) and adding a new subsec. (b). As so amended, section 901(b)(2)(D) of title 2 no longer refers to "emergency requirements". However, "emergency requirements" are referred to elsewhere in section 901.

CODIFICATION

Section was enacted as part of the Dire Emergency Supplemental Appropriations and Transfers for Relief From the Effects of Natural Disasters, for Other Urgent Needs, and for Incremental Cost of "Operation Desert Shield/Desert Storm" Act of 1992, and not as a part of the Robert T. Stafford Disaster Relief and Emergency Assistance Act which comprises this chapter.

§ 5204. Insular areas disaster survival and recovery; definitions

As used in sections 5204 to 5204c of this title—

(1) the term "insular area" means any of the following: American Samoa, the Federated States of Micronesia, Guam, the Marshall Islands, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Virgin Islands;

(2) the term "disaster" means a declaration of a major disaster by the President after September 1, 1989, pursuant to section 5170 of this title; and

(3) the term "Secretary" means the Secretary of the Interior.

(Pub. L. 102-247, title II, §201, Feb. 24, 1992, 106 Stat. 37.)

REFERENCES IN TEXT

Sections 5204 to 5204c of this title, referred to in text, was in the original "this title", meaning title II of Pub. L. 102-247, Feb. 24, 1992, 106 Stat. 37, which enacted sections 5204 to 5204c of this title and amended section 5122 of this title.

CODIFICATION

Section was enacted as part of the Omnibus Insular Areas Act of 1992, and not as part of the Robert T. Staf-

¹ See References in Text note below.

ford Disaster Relief and Emergency Assistance Act which comprises this chapter.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 5204a. Authorization of appropriations for insular areas

There are hereby authorized to be appropriated to the Secretary such sums as may be necessary to—

(1) reconstruct essential public facilities damaged by disasters in the insular areas that occurred prior to February 24, 1992; and

(2) enhance the survivability of essential public facilities in the event of disasters in the insular areas,

except that with respect to the disaster declared by the President in the case of Hurricane Hugo, September 1989, amounts for any fiscal year shall not exceed 25 percent of the estimated aggregate amount of grants to be made under sections 5170b and 5172 of this title for such disaster. Such sums shall remain available until expended.

(Pub. L. 102-247, title II, §202, Feb. 24, 1992, 106 Stat. 37.)

CODIFICATION

Section was enacted as part of the Omnibus Insular Areas Act of 1992, and not as part of the Robert T. Stafford Disaster Relief and Emergency Assistance Act which comprises this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5204 of this title.

§ 5204b. Technical assistance for insular areas

(a) Upon the declaration by the President of a disaster in an insular area, the President, acting through the Director of the Federal Emergency Management Agency, shall assess, in cooperation with the Secretary and chief executive of such insular area, the capability of the insular government to respond to the disaster, including the capability to assess damage; coordinate activities with Federal agencies, particularly the Federal Emergency Management Agency; develop recovery plans, including recommendations for enhancing the survivability of essential infrastructure; negotiate and manage reconstruction contracts; and prevent the misuse of funds. If the President finds that the insular government lacks any of these or other capabilities essential to the recovery effort, then the President shall provide technical assistance to the insular area which the President deems necessary for the recovery effort.

(b) One year following the declaration by the President of a disaster in an insular area, the Secretary, in consultation with the Director of the Federal Emergency Management Agency, shall submit to the Senate Committee on Energy and Natural Resources and the House Committee on Natural Resources a report on the status of the recovery effort, including an audit of Federal funds expended in the recovery effort and recommendations on how to improve public

health and safety, survivability of infrastructure, recovery efforts, and effective use of funds in the event of future disasters.

(Pub. L. 102-247, title II, §203, Feb. 24, 1992, 106 Stat. 37; Pub. L. 103-437, §15(p), Nov. 2, 1994, 108 Stat. 4594.)

CODIFICATION

Section was enacted as part of the Omnibus Insular Areas Act of 1992, and not as part of the Robert T. Stafford Disaster Relief and Emergency Assistance Act which comprises this chapter.

AMENDMENTS

1994—Subsec. (b). Pub. L. 103-437 substituted “House Committee on Natural Resources” for “House Committee on Interior and Insular Affairs”.

CHANGE OF NAME

Committee on Natural Resources of House of Representatives treated as referring to Committee on Resources of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 313(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5204 of this title.

§ 5204c. Hazard mitigation for insular areas

The total of contributions under the last sentence of section 5170c of this title for the insular areas shall not exceed 10 percent of the estimated aggregate amounts of grants to be made under sections 5170b, 5172, 5173, 5174, and 5178¹ of this title for any disaster: *Provided*, That the President shall require a 50 percent local match for assistance in excess of 10 percent of the estimated aggregate amount of grants to be made under section 5172 of this title for any disaster. (Pub. L. 102-247, title II, §204, Feb. 24, 1992, 106 Stat. 38.)

REFERENCES IN TEXT

Section 5178 of this title, referred to in text, was repealed by Pub. L. 106-390, title II, §206(c), Oct. 30, 2000, 114 Stat. 1571, effective 18 months after Oct. 30, 2000.

CODIFICATION

Section was enacted as part of the Omnibus Insular Areas Act of 1992, and not as part of the Robert T. Stafford Disaster Relief and Emergency Assistance Act which comprises this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5204 of this title.

§ 5205. Disaster grant closeout procedures

(a) Statute of limitations

(1) In general

Except as provided in paragraph (2), no administrative action to recover any payment

made to a State or local government for disaster or emergency assistance under this chapter shall be initiated in any forum after the date that is 3 years after the date of transmission of the final expenditure report for the disaster or emergency.

(2) Fraud exception

The limitation under paragraph (1) shall apply unless there is evidence of civil or criminal fraud.

(b) Rebuttal of presumption of record maintenance

(1) In general

In any dispute arising under this section after the date that is 3 years after the date of transmission of the final expenditure report for the disaster or emergency, there shall be a presumption that accounting records were maintained that adequately identify the source and application of funds provided for financially assisted activities.

(2) Affirmative evidence

The presumption described in paragraph (1) may be rebutted only on production of affirmative evidence that the State or local government did not maintain documentation described in that paragraph.

(3) Inability to produce documentation

The inability of the Federal, State, or local government to produce source documentation supporting expenditure reports later than 3 years after the date of transmission of the final expenditure report shall not constitute evidence to rebut the presumption described in paragraph (1).

(4) Right of access

The period during which the Federal, State, or local government has the right to access source documentation shall not be limited to the required 3-year retention period referred to in paragraph (3), but shall last as long as the records are maintained.

(c) Binding nature of grant requirements

A State or local government shall not be liable for reimbursement or any other penalty for any payment made under this chapter if—

- (1) the payment was authorized by an approved agreement specifying the costs;
- (2) the costs were reasonable; and
- (3) the purpose of the grant was accomplished.

(Pub. L. 93-288, title VII, §705, as added Pub. L. 106-390, title III, §304, Oct. 30, 2000, 114 Stat. 1573.)

§ 5206. Buy American

(a) Compliance with Buy American Act

No funds authorized to be appropriated under this Act or any amendment made by this Act may be expended by an entity unless the entity, in expending the funds, complies with the Buy American Act (41 U.S.C. 10a et seq.).

(b) Debarment of persons convicted of fraudulent use of “Made in America” labels

(1) In general

If the Director of the Federal Emergency Management Agency determines that a person

¹ See References in Text note below.

has been convicted of intentionally affixing a label bearing a “Made in America” inscription to any product sold in or shipped to the United States that is not made in America, the Director shall determine, not later than 90 days after determining that the person has been so convicted, whether the person should be debarred from contracting under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

(2) Definition of debar

In this subsection, the term “debar” has the meaning given the term in section 2393(c) of title 10.

(Pub. L. 106-390, title III, §306, Oct. 30, 2000, 114 Stat. 1574.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a), is Pub. L. 106-390, Oct. 30, 2000, 114 Stat. 1552, known as the Disaster Mitigation Act of 2000. For complete classification of this Act to the Code, see Short Title of 2000 Amendment note set out under section 5121 of this title and Tables.

The Buy American Act, referred to in subsec. (a), is title III of act Mar. 3, 1933, ch. 212, 47 Stat. 1520, as amended, which is classified generally to sections 10a, 10b, and 10c of Title 41, Public Contracts. For complete classification of this Act to the Code, see Short Title note set out under section 10a of Title 41 and Tables.

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in subsec. (b)(1), is Pub. L. 93-288, May 22, 1974, 88 Stat. 143, as amended, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables.

CODIFICATION

Section was enacted as part of the Disaster Mitigation Act of 2000, and not as part of the Robert T. Stafford Disaster Relief and Emergency Assistance Act which comprises this chapter.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 313(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

CHAPTER 69—COMMUNITY DEVELOPMENT

- Sec.
5301. Congressional findings and declaration of purpose.
- (a) Critical social, economic, and environmental problems facing Nation’s urban communities.
 - (b) Establishment and maintenance of viable urban communities; systematic and sustained action by Federal, State, and local governments; expansion of and continuity in Federal assistance; increased private investment; streamlining programs and improvement of functioning of agencies; action to address consequences of scarce fuel supplies.

- Sec.
- (c) Decent housing, suitable living environment, and economic opportunities for persons of low and moderate income; community development activities which may be supported by Federal assistance.
 - (d) Consolidation of complex and overlapping Federal assistance programs into consistent system of Federal aid.
5302. General provisions.
- (a) Definitions.
 - (b) Basis and modification of definitions.
 - (c) Designation of public agencies.
 - (d) Local governments, inclusion in urban county population.
 - (e) Exclusion of local governments from urban county population; notification of election.
5303. Grants to States, units of general local government and Indian tribes; authorizations.
5304. Statement of activities and review.
- (a) Statement of objectives and projected use of funds by grantee prerequisite to receipt of grant; publication of proposals by grantees; notice and comment; citizen participation plan.
 - (b) Certification of enumerated criteria by grantee to Secretary.
 - (c) Special certifications required for certain grants.
 - (d) Residential antidisplacement and relocation assistance plan; certification of adherence; contents.
 - (e) Submission of performance and evaluation report by grantee to Secretary; contents; availability for citizen comment; annual review and audit by Secretary of program implementation; adjustments in amount of annual grants.
 - (f) Audit of grantees by General Accounting Office; access to books, accounts, records, etc., by representatives of General Accounting Office.
 - (g) Environmental protection measures applicable for release of funds to applicants for projects; issuance of regulations by Secretary subsequent to consultation with Council on Environmental Quality; request and certification to Secretary for approval of release of funds; form, contents and effect of certification.
 - (h) Payments; revolving loan fund: establishment in private financial institution for rehabilitation activities; standards for payments; criteria.
 - (i) Metropolitan city as part of urban county.
 - (j) Retention of program income; condition of distribution.
 - (k) Provision of benefits to displaced persons.
 - (l) Protection of individuals engaging in nonviolent civil rights demonstrations.
 - (m) Community development plans.
5305. Activities eligible for assistance.
- (a) Enumeration of eligible activities.
 - (b) Reimbursement of Secretary for administrative services connected with rehabilitation of properties.
 - (c) Activities benefiting persons of low and moderate income.
 - (d) Training program.
 - (e) Guidelines for evaluating and selecting economic development projects.

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| Sec. | <ul style="list-style-type: none"> (f) Assistance to for-profit entities. (g) Microenterprise and small business program requirements. (h) Prohibition on use of assistance for employment relocation activities. | Sec. | <ul style="list-style-type: none"> (i) Omitted. (j) Inclusion within gross income for purpose of chapter 1 of title 26 of interest paid on taxable obligations. (k) Outstanding obligations; limitation; monitoring use of guarantees under this section. (l) Purchase of guaranteed obligations by Federal Financing Bank. (m) Limitation on imposition of fee or charge. (n) State assistance in submission of applications. (o) "Eligible public entity" defined. (p) Training and information activities relating to home guarantee program. (q) Economic development grants. (r) Guarantee of obligations backed by loans. |
| 5306. | <p>Allocation and distribution of funds.</p> <ul style="list-style-type: none"> (a) Amounts allocated to Indian tribes, discretionary fund, and metropolitan cities and urban counties; limitations on amount of annual grants. (b) Computation of amount allocated to metropolitan cities and urban counties. (c) Reallocation of undistributed funds within same metropolitan area as original allocation; amount and calculation of reallocation grant; disaster relief. (d) Allocation among States for non-entitlement areas; amount and calculation of grants; distributions by State or Secretary; certain distributions made pursuant to prior provisions; certifications required by Governor enumerated; responsibility for administration and administrative expenses; reallocation; certifications required of units of general local government in nonentitlement areas; applicability of this chapter and other law. (e) Qualification or submission dates, and finality and conclusiveness of computations and determinations. (f) Pro rata adjustment of entitlement amounts. | 5309. | <p>Nondiscrimination in programs and activities.</p> <ul style="list-style-type: none"> (a) Prohibited conduct. (b) Compliance procedures available to Secretary. (c) Civil action by Attorney General. (d) Waiver of race discrimination prohibitions regarding assistance to Hawaiian Home Lands. |
| 5307. | <p>Special purpose grants.</p> <ul style="list-style-type: none"> (a) Set-aside. (b) Permissible uses of funds. (c) Assistance to economically disadvantaged and minority students participating in community development work study programs. (d) Continued availability of unused funds. (e) Satisfactory assurances required, special assurances required of Indian tribes. (f) Criteria for selection of recipients. | 5310. | <p>Labor standards; rate of wages; exceptions; enforcement powers.</p> |
| 5308. | <p>Guarantee and commitment to guarantee loans for acquisition of property.</p> <ul style="list-style-type: none"> (a) Authority of Secretary; issuance of obligations by eligible public entities or designated public agencies; form, denomination, maturity, and conditions of notes or other obligations; percentage allocation requirements. (b) Prerequisites. (c) Payment of principal, interest and costs. (d) Repayment contract; security; pledge by State. (e) Pledged grants for repayments. (f) Full faith and credit of United States pledged for payment; conclusiveness and validity of guarantee. (g) Issuance of obligations by Secretary to Secretary of the Treasury to satisfy authorized guarantee obligations; establishment of maturities and rates of interest and purchase of obligations by Secretary of the Treasury. (h) Federal taxation of guaranteed obligations; grants to borrowing entity or agency of taxable obligations for net interest costs, etc.; limitation on amount of grant; assistance to issuer in hardship cases. | 5311. | <p>Remedies for noncompliance with community development requirements.</p> <ul style="list-style-type: none"> (a) Notice and hearing; termination, reduction, or limitation of payments by Secretary. (b) Referral of matters to Attorney General; institution of civil action by Attorney General. (c) Petition for review of action of Secretary in Court of Appeals; filing of record of proceedings in court by Secretary; affirmance, etc., of findings of Secretary; exclusiveness of jurisdiction of court; review by Supreme Court on writ of certiorari or certification. |
| | | 5312. | <p>Use of grants for settlement of outstanding urban renewal loans of units of general local government.</p> <ul style="list-style-type: none"> (a) Limitation on amounts; prerequisites. (b) Approval by Secretary of financial settlement of urban renewal project. |
| | | 5313. | <p>Reporting requirements.</p> |
| | | 5314. | <p>Consultation by Secretary with other Federal departments, etc.</p> |
| | | 5315. | <p>Interstate agreements or compacts; purposes.</p> |
| | | 5316. | <p>Transition provisions.</p> <ul style="list-style-type: none"> (a) Prohibition on new grants or loans after January 1, 1975; exceptions. (b) Final date in fiscal year for submission of application for grant; establishment by Secretary. |
| | | 5317. | <p>Liquidation of superseded or inactive programs.</p> |
| | | 5318. | <p>Urban development action grants.</p> <ul style="list-style-type: none"> (a) Authorization; purpose; amount. (b) Eligibility of cities and urban counties; criteria and standards; regulations. (c) Applications; documentation of eligibility; proposed plan; assurance of notice and comment; assurance of consideration on historical landmarks. (d) Mandatory selection criteria; award of points; distribution of funds; number of competitions per year; use of distress conditions data by urban counties. |

Sec.

- (e) Limitations on power of Secretary to approve grants; waiver.
- (f) Permissibility of consistent but unenumerated activities; report on use of repaid grant funds for economic development activities.
- (g) Annual review and audit; adjustments, withdrawals and reduction permitted.
- (h) Limitations on grants for industrial or commercial relocations or expansions; appeal of denial or cancellation of assistance; grants to adversely affected individuals.
- (i) Minimum percentage of funds to be allocated to certain noncentral cities; application by consortia of cities of less than 50,000 population.
- (j) Grant contingent on factors related to non-Federal funds.
- (k) Duty of Secretary to minimize amount.
- (l) Power of Secretary to waive requirement that town or township be closely settled.
- (m) Notice to State historic preservation officer and Secretary of the Interior required with regard to affected landmark property; opportunity for comment.
- (n) Territories, tribes, and certain Hawaiian counties included in term "city".
- (o) Special provisions for years after 1983.
- (p) Unincorporated portions of urban counties.
- (q) Technical assistance grants.
- (r) Nondiscrimination by Secretary against type of activity or applicant.
- (s) Maximum grant amount for fiscal years 1988 and 1989.
- (t) UDAG retention program.
- 5318a. John Heinz Neighborhood Development Program.
 - (a) Definitions.
 - (b) Duties of Secretary.
 - (c) Criteria for awarding grants.
 - (d) Consultation with informal working group.
 - (e) Matching funds for participating organizations.
 - (f) Authorization.
 - (g) Short title.
- 5319. Community participation in programs.
- 5320. Historic preservation requirements.
 - (a) Regulations.
 - (b) Actions by State historic preservation officer and Secretary of the Interior.
 - (c) Regulations by Advisory Council on Historic Preservation providing for expeditious action.
- 5321. Suspension of requirements for disaster areas.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1437d, 1439, 1440, 3013, 3533, 3535, 5133, 9816, 11505 of this title; title 7 section 2008n; title 12 sections 1464, 1701x, 1715z, 1715z-13, 1834a; title 25 section 4104; title 40 section 14507.

§ 5301. Congressional findings and declaration of purpose

(a) Critical social, economic, and environmental problems facing Nation's urban communities

The Congress finds and declares that the Nation's cities, towns, and smaller urban commu-

nities face critical social, economic, and environmental problems arising in significant measure from—

- (1) the growth of population in metropolitan and other urban areas, and the concentration of persons of lower income in central cities;
- (2) inadequate public and private investment and reinvestment in housing and other physical facilities, and related public and social services, resulting in the growth and persistence of urban slums and blight and the marked deterioration of the quality of the urban environment; and
- (3) increasing energy costs which have seriously undermined the quality and overall effectiveness of local community and housing development activities.

(b) Establishment and maintenance of viable urban communities; systematic and sustained action by Federal, State, and local governments; expansion of and continuity in Federal assistance; increased private investment; streamlining programs and improvement of functioning of agencies; action to address consequences of scarce fuel supplies

The Congress further finds and declares that the future welfare of the Nation and the well-being of its citizens depend on the establishment and maintenance of viable urban communities as social, economic, and political entities, and require—

- (1) systematic and sustained action by Federal, State, and local governments to eliminate blight, to conserve and renew older urban areas, to improve the living environment of low- and moderate-income families, and to develop new centers of population growth and economic activity;
- (2) substantial expansion of and greater continuity in the scope and level of Federal assistance, together with increased private investment in support of community development activities;
- (3) continuing effort at all levels of government to streamline programs and improve the functioning of agencies responsible for planning, implementing, and evaluating community development efforts; and
- (4) concerted action by Federal, State, and local governments to address the economic and social hardships borne by communities as a consequence of scarce fuel supplies.

(c) Decent housing, suitable living environment, and economic opportunities for persons of low and moderate income; community development activities which may be supported by Federal assistance

The primary objective of this chapter and of the community development program of each grantee under this chapter is the development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income. Consistent with this primary objective, not less than 70 percent of the aggregate of the Federal assistance provided to States and units of general local government under section 5306 of this title and, if applicable, the funds received as a result of a guarantee or a grant under section

5308 of this title, shall be used for the support of activities that benefit persons of low and moderate income, and the Federal assistance provided in this chapter is for the support of community development activities which are directed toward the following specific objectives—

(1) the elimination of slums and blight and the prevention of blighting influences and the deterioration of property and neighborhood and community facilities of importance to the welfare of the community, principally persons of low and moderate income;

(2) the elimination of conditions which are detrimental to health, safety, and public welfare, through code enforcement, demolition, interim rehabilitation assistance, and related activities;

(3) the conservation and expansion of the Nation's housing stock in order to provide a decent home and a suitable living environment for all persons, but principally those of low and moderate income;

(4) the expansion and improvement of the quantity and quality of community services, principally for persons of low and moderate income, which are essential for sound community development and for the development of viable urban communities;

(5) a more rational utilization of land and other natural resources and the better arrangement of residential, commercial, industrial, recreational, and other needed activity centers;

(6) the reduction of the isolation of income groups within communities and geographical areas and the promotion of an increase in the diversity and vitality of neighborhoods through the spatial deconcentration of housing opportunities for persons of lower income and the revitalization of deteriorating or deteriorated neighborhoods;

(7) the restoration and preservation of properties of special value for historic, architectural, or esthetic reasons;

(8) the alleviation of physical and economic distress through the stimulation of private investment and community revitalization in areas with population outmigration or a stagnating or declining tax base; and

(9) the conservation of the Nation's scarce energy resources, improvement of energy efficiency, and the provision of alternative and renewable energy sources of supply.

It is the intent of Congress that the Federal assistance made available under this chapter not be utilized to reduce substantially the amount of local financial support for community development activities below the level of such support prior to the availability of such assistance.

(d) Consolidation of complex and overlapping Federal assistance programs into consistent system of Federal aid

It is also the purpose of this chapter to further the development of a national urban growth policy by consolidating a number of complex and overlapping programs of financial assistance to communities of varying sizes and needs into a consistent system of Federal aid which—

(1) provides assistance on an annual basis, with maximum certainty and minimum delay,

upon which communities can rely in their planning;

(2) encourages community development activities which are consistent with comprehensive local and areawide development planning;

(3) furthers achievement of the national housing goal of a decent home and a suitable living environment for every American family; and

(4) fosters the undertaking of housing and community development activities in a coordinated and mutually supportive manner by Federal agencies and programs, as well as by communities.

(Pub. L. 93-383, title I, §101, Aug. 22, 1974, 88 Stat. 633; Pub. L. 95-128, title I, §101, Oct. 12, 1977, 91 Stat. 1111; Pub. L. 96-399, title I, §104(a), Oct. 8, 1980, 94 Stat. 1616; Pub. L. 98-181, title I, §101(a), Nov. 30, 1983, 97 Stat. 1159; Pub. L. 100-242, title V, §502(a), (b), Feb. 5, 1988, 101 Stat. 1923; Pub. L. 101-625, title IX, §§902(a), 913(a), Nov. 28, 1990, 104 Stat. 4385, 4392; Pub. L. 103-233, title II, §232(a)(2)(A), Apr. 11, 1994, 108 Stat. 367.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (c) and (d), was in the original "this title", meaning title I of Pub. L. 93-383, Aug. 22, 1974, 88 Stat. 633, as amended, which enacted this chapter and amended sections 1452b, 1453, and 3311 of this title, section 1701u of Title 12, Banks and Banking, and section 711 of former Title 31, Money and Finance. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

AMENDMENTS

1994—Subsec. (c). Pub. L. 103-233 inserted "or a grant" after "guarantee" in second sentence.

1990—Subsec. (c). Pub. L. 101-625, §913(a), inserted "to States and units of general local government" after first reference to "Federal assistance provided" in second sentence.

Pub. L. 101-625, §902(a), substituted "70 percent" for "60 percent" in second sentence.

1988—Subsec. (c). Pub. L. 100-242, §502(a), substituted "60" for "51".

Subsec. (c)(6). Pub. L. 100-242, §502(b), struck out "to attract persons of higher income" before semicolon at end.

1983—Subsec. (c). Pub. L. 98-181, §101(a)(1), inserted "and of the community development program of each grantee under this chapter" in provisions preceding par. (1).

Pub. L. 98-181, §101(a)(2), inserted "not less than 51 percent of the aggregate of the Federal assistance provided under section 5306 of this title and, if applicable, the funds received as a result of a guarantee under section 5308 of this title, shall be used for the support of activities that benefit persons of low and moderate income, and" in provisions preceding par. (1).

1980—Subsec. (a)(3). Pub. L. 96-399, §104(a)(1)-(3), added par. (3).

Subsec. (b)(4). Pub. L. 96-399, §104(a)(4)-(6), added par. (4).

Subsec. (c)(9). Pub. L. 96-399, §104(a)(7)-(9), added par. (9).

1977—Subsec. (c)(8). Pub. L. 95-128, §101(a), added par. (8).

Subsec. (d)(4). Pub. L. 95-128, §101(b), provided that the development activities be undertaken by Federal agencies and programs as well as by communities.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 209 of title II of Pub. L. 103-233 provided that: "The amendments made by this title [enacting sections 5321 and 12840 of this title and amending this section and sections 5304, 5305, 5308, 5318, 12704, 12744, 12745,

12750, 12833, 12838, and 12893 of this title] shall apply with respect to any amounts made available to carry out title II of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12721 et seq.] after the date of the enactment of this Act [Apr. 11, 1994] and any amounts made available to carry out such title before such date of enactment that remain uncommitted on such date. The Secretary shall issue any regulations necessary to carry out the amendments made by this title not later than the expiration of the 45-day period beginning on the date of the enactment of this Act.”

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102-550, §2, Oct. 28, 1992, 106 Stat. 3681, provided that: “The provisions of this Act [see Tables for classification] and the amendments made by this Act shall take effect and shall apply upon the date of the enactment of this Act [Oct. 28, 1992], unless such provisions or amendments specifically provide for effectiveness or applicability upon another date certain.”

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 913(a) of Pub. L. 101-625 applicable to amounts approved in any appropriation Act under section 5303 of this title for fiscal year 1990 and each fiscal year thereafter, see section 913(f) of Pub. L. 101-625, set out as a note under section 5306 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-181 applicable only to funds available for fiscal year 1984 and thereafter, see section 110(b) of Pub. L. 98-181, as amended, set out as a note under section 5316 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 114 of title I of Pub. L. 95-128 provided that: “The amendments made by this title [enacting section 5318 of this title, amending this section, sections 1452b, 5302 to 5308, and 5313 of this title, and section 461 of former Title 40, Public Buildings, Property, and Works, and enacting provisions set out as a note under section 5313 of this title] shall become effective October 1, 1977.”

SHORT TITLE OF 2003 AMENDMENT

Pub. L. 108-146, §1, Dec. 3, 2003, 117 Stat. 1883, provided that: “This Act [amending section 5305 of this title] may be cited as the ‘Tornado Shelters Act’.”

SHORT TITLE OF 1992 AMENDMENT

Pub. L. 102-550, §1(a), Oct. 28, 1992, 106 Stat. 3672, provided that: “This Act [see Tables for classification] may be cited as the ‘Housing and Community Development Act of 1992’.”

SHORT TITLE OF 1988 AMENDMENT

Section 1(a) of Pub. L. 100-242 provided that: “This Act [see Tables for classification] may be cited as the ‘Housing and Community Development Act of 1987’.”

SHORT TITLE OF 1986 AMENDMENT

Pub. L. 99-272, title III, §3001(a), Apr. 7, 1986, 100 Stat. 101, provided that: “This title [amending sections 1437b, 1437g, 1452b, 1483, 1485, 1487, 1490, 1490c, 4026, 4056, 4101, 5302, and 5308 of this title, and sections 1703, 1715h, 1715f, 1715z, 1715z-9, 1715z-10, 1715z-14, 1748h-1, 1748h-2, 1749bb, 1749aaa, 1749bbb, and 2811 of Title 12, Banks and Banking, enacting provisions set out as notes under section 5308 of this title, and amending provisions set out as a note under section 1701q of Title 12] may be cited as the ‘Housing and Community Development Reconciliation Amendments of 1985’.”

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98-479, §1, Oct. 17, 1984, 98 Stat. 2218, provided: “That this Act [amending sections 1437a, 1437b, 1437d, 1437f, 1437h, 1437j, 1437o, 1438 to 1440, 1452, 1455, 1456, 1471, 1472, 1480, 1481, 1483, 1485, 1487, 1490, 1490a to 1490c, 1493,

2414, 3337, 3535, 3541, 3936, 3938, 4016, 4017, 4101, 4105, 4124, 4502, 5302, 5304 to 5306, 5308, 5312, 5317, 5318, 5403, 6863, 8004, 8010, and 8107 of this title, sections 1425a, 1457, 1701c, 1701h, 1701q, 1701s, 1701x, 1701z-2, 1701z-13, 1702, 1705, 1706e, 1709, 1713, 1715d, 1715h, 1715f, 1715n, 1715y, 1715z, 1715z-1, 1715z-1a, 1715z-5 to 1715z-9, 1717, 1719, 1721, 1723a, 1723g, 1723h, 1732, 1735f-5, 1735f-9, 1749, 1749a, 1749c, 1749aaa, 1749aaa-3, 1749bbb-8, 1749bbb-13, 1749bbb-17, 1750c, 1757, 2706, 2709, 3612, and 3618 of Title 12, Banks and Banking, and sections 1635 and 1715 of Title 15, Commerce and Trade, enacting provisions set out as notes under sections 1472 and 5305 of this title and sections 1715b, 1732 and 3618 of Title 12, and amending provisions set out as notes under sections 602, 5316, and 5318 of this title and section 1701z-6 of Title 12] may be cited as the ‘Housing and Community Development Technical Amendments Act of 1984’.”

SHORT TITLE OF 1981 AMENDMENT

Pub. L. 97-35, title III, §300, Aug. 13, 1981, 95 Stat. 384, provided that: “This subtitle [subtitle A (§§300-371) of title III of Pub. L. 97-35, enacting sections 1437j-1, 1437n, and 4028 of this title and sections 1701z-14, 1735f-9, 1735f-10, 2294a, and 3701 to 3717 of Title 12, Banks and Banking, amending sections 1436a, 1437 to 1437d, 1437f, 1437g, 1437i, 1437j, 1437l, 1439, 1452b, 1483, 1485, 1487, 1490a, 1490c, 4017, 4026, 4056, 4081, 4127, 4518, 5302 to 5313, 5316, 5318, 5320, and 8107 of this title and sections 1701s, 1701j-2, 1701q, 1701x, 1701z-1, 1701z-14, 1703, 1706e, 1709-1, 1713, 1715e, 1715h, 1715k, 1715l, 1715n, 1715v, 1715y, 1715z, 1715z-1, 1715z-1a, 1715z-1b, 1715z-7, 1715z-9, 1715z-10, 1720, 1721, 1735c, 1748h-1, 1748h-2, 1749bb, 1749aaa, 1749bbb, and 1749bbb-3 of Title 12, repealing sections 8121 to 8124 of this title and section 461 of former Title 40, Public Buildings, Property, and Works, enacting provisions set out as notes under 1436a, 1437a, 1437f, 4028, 5304, 5305, 5306, 5318 of this title and sections 1703, 1720, and 3701 of Title 12, and repealing provisions set out as notes under section 8121 of this title and section 1701s of Title 12] may be cited as the ‘Housing and Community Development Amendments of 1981’.”

SHORT TITLE OF 1980 AMENDMENT

Section 1 of Pub. L. 96-399 provided: “That this Act [enacting sections 1436a, 1436b, 1437l, 1437m, 1490j and 5320 of this title, sections 1735f-8 and 2809 to 2811 of Title 12, Banks and Banking, and sections 3601 to 3616 of Title 15, Commerce and Trade, amending this section, sections 1437c, 1437d, 1437f, 1437g, 1437k, 1439, 1441c, 1452b, 1471, 1472, 1480, 1483 to 1487, 1490a, 1490c to 1490e, 3535, 4127, 5302 to 5308, 5316 to 5318, 5401 to 5404, 5406 to 5416, 5419, 5421 to 5423, 5425, 6833, 6835, 8004, 8102, 8105, 8107, and 8124 of this title, sections 86a, 1425a, 1454, 1701q, 1701s, 1701u, 1701z-1, 1701z-11, 1703, 1706e, 1707, 1709, 1709-1, 1713, 1715d, 1715e, 1715h, 1715k, 1715l to 1715n, 1715u to 1715w, 1715y to 1715z-1, 1715z-1a, 1715z-5 to 1715z-7, 1715z-9, 1715z-10, 1717, 1720, 1721, 1723e, 1735c, 1735f-7a, 1748h-1, 1748h-2, 1749bb, 1749aaa and 2803 of Title 12 and sections 461 and 484b of former Title 40, Public Buildings, Property and Works, repealing section 2809 of Title 12, enacting provisions set out as notes under sections 1472, 3535, 5302, 5313, 5401, 5424 and 8106 of this title, sections 86a, 1701z-6, 1703, 1715d, 1715z, 1717, 1723a, 1723e and 3305 of Title 12, section 3601 of Title 15, and section 461 of former Title 40, and amending provisions set out as notes under section 5401 of this title and sections 86a, 1701z-6, 1723e, and 1735f-4 of Title 12] may be cited as the ‘Housing and Community Development Act of 1980’.”

SHORT TITLE OF 1979 AMENDMENT

Pub. L. 96-153, §1, Dec. 21, 1979, 93 Stat. 1101, provided: “That this Act [enacting section 1735f-7 of Title 12, Banks and Banking, section 1719a of Title 15, Commerce and Trade, and section 1437k of this title, amending section 5315 of Title 5, Government Organization and Employees, sections 90, 1426, 1431, 1451, 1452, 1455, 1464, 1701q, 1701s, 1701z-1, 1701z-11, 1703, 1706e, 1709, 1709-1, 1713, 1715e, 1715h, 1715k, 1715l, 1715m, 1715v, 1715y, 1715z,

1715z-1, 1715z-1a, 1715z-6, 1715z-7, 1715z-9, 1715z-10, 1717, 1728, 1735c, 1748h-1, 1748h-2, 1749bb, 1749aaa, 1749bbb, 1757, 1787, and 1821 of Title 12, sections 1701, 1702, 1703, 1708, 1709, 1711, 1715, and 1717 of Title 15, section 461 of former Title 40, Public Buildings, Property, and Works, and sections 1437a, 1437c, 1437d, 1437f, 1437g, 1439, 1452b, 1471, 1472, 1474, 1479, 1480, 1483, 1484, 1485, 1486, 1487, 1490a, 1490c, 3533a, 3541, 4026, 4056, 4127, 5302, 5303, 5304, 5306, 5318, 5419, 8107, 8123, 8124, and 8146 of this title, and enacting provisions set out as notes under sections 1701, 1701q, 1701s, 1703, 1709, 1723e, and 1728 of Title 12, section 1701 of Title 15, and sections 1437a, 1437f, and 5304 of this title] may be cited as the 'Housing and Community Development Amendments of 1979'."

SHORT TITLE OF 1978 AMENDMENT

Pub. L. 95-557, §1, Oct. 31, 1978, 92 Stat. 2080, provided that: "This Act [enacting sections 3541, 5319, 8001 to 8010, 8101 to 8107, 8121 to 8124, and 8141 to 8146 of this title and sections 1701z-9 to 1701z-13, 1715z-1a, 1715z-1b, 1735f-6, of Title 12, Banks and Banking, amending sections 1437a, 1437c, 1437e, 1437f, 1437g, 1441c, 1452b, 1476, 1480, 1483 to 1487, 1490a, 1490c, 1490e, 3371, 3535, 4026, 4056, 4127, 4521, 5304, 5305, 5307, 5318 and 5425, of this title, sections 1454, 1701j-2, 1701q, 1701z-1, 1703, 1706e, 1709, 1709-1, 1713, 1715h, 1715i, 1715m, 1715y, 1715z, 1715z-1, 1715z-5, 1715z-6, 1715z-9, 1715z-10, 1715z-11, 1715w, 1717, 1720, 1735c, 1748h-1, 1748h-2, 1749bb, 1749aaa, 1749bbb, and 1749bbb-3 of Title 12, section 1702 of Title 15, Commerce and Trade, and sections 461 and 484b of former Title 40, Public Buildings, Property, and Works, and enacting provisions set out as notes under sections 1437c, 1437f, 1441, 1476, 1480, 5313, 8001, 8101, 8121, and 8141 of this title and sections 1454, 1701z-6, 1701z-9, 1709, 1715z-1, and 1723e of Title 12] may be cited as the 'Housing and Community Development Amendments of 1978'."

SHORT TITLE OF 1977 AMENDMENT

Section 1 of Pub. L. 95-128 provided that: "This Act [enacting sections 3540 and 5318 of this title and sections 2901 to 2905 of Title 12, Banks and Banking, amending this section, sections 1437c, 1437f, 1437g, 1439, 1452b, 1471, 1472, 1476, 1479, 1483 to 1485, 1487, 1490a, 1490c, 1490h, 3533, 4003, 4013, 4026, 4056, 4103 to 4106, 4127, 4501 to 4503, 4521, 5302 to 5308, 5313, 5403, and 5409 of this title, sections 355, 1430, 1454, 1464, 1701q, 1701x, 1701z-1, 1703, 1706e, 1709, 1709-1, 1715h, 1715k to 1715m, 1715w, 1715y, 1715z, 1715z-1, 1715z-3, 1715z-7, 1715z-9, 1715z-10, 1717, 1723a, 1723e, 1748h-1, 1748h-2, 1749bb, and 1749aaa of Title 12, and section 461 of former Title 40, Public Buildings, Property, and Works, and enacting provisions set out as notes under this section, sections 1421b, 1437d, 1490h, 4501, and 5313 of this title, and sections 1715z-1, 1723e of Title 12] may be cited as the 'Housing and Community Development Act of 1977'."

SHORT TITLE

Section 1 of Pub. L. 93-383 provided: "That this Act [enacting this chapter, sections 1701j-2, 1701l-1, 1701z-5, 1701z-6, 1706e, 1715z-9 to 1715z-11, and 1735f-3 to 1735f-5 of Title 12, Banks and Banking, section 803a of Title 20, Education, and sections 1437 to 1437j, 1438 to 1440, 1490e to 1490g, 4104a, and 5401 to 5426 of this title, amending sections 5315 and 5316 of Title 5, Government Organization and Employees, sections 24, 371, 1431, 1436, 1454, 1464, 1701q, 1701u, 1701x, 1701z-3, 1703, 1709, 1709-1, 1713, 1715e, 1715h, 1715k to 1715n, 1715v, 1715w, 1715y, 1715z, 1715z-1, 1715z-3, 1715z-6, 1715z-7, 1717, 1718, 1719, 1723a, 1735b, 1748h-1, 1748h-2, 1749bb, 1749aaa, 1749aaa-4, 1749aaa-5, 1757, 1759, 1761b, 1761d, 1763, 1772, 1782, 1786, and 1788 of Title 12, sections 1701 to 1703 of Title 15, Commerce and Trade, sections 801, 802, and 806 of Title 20, section 711 of former Title 31, Money and Finance, sections 460 and 461 of former Title 40, Public Buildings, Property, and Works, sections 1441a, 1441c, 1452b, 1453, 1471, 1472, 1474, 1476 to 1478, 1483, 1485, 1487, 1490, 1490a, 1490c, 1490d, 1586, 3311, 3533, 3604 to 3606, 3631, 4014, 4512, 4514 to 4516, 4519, and 4532 of this title, and sections 1602 and 1602a of former Title 49, Transportation, repealing

sections 1411d and 1455a of this title, and enacting provisions set out as notes under this section, sections 1464, 1701q, 1715f, 1715z-1, 1716b, and 1723a of Title 12, section 1703 of Title 15, sections 1410, 1421b, 1437, 1437a, 1437f, 3532, and 5401 of this title, and section 1602a of former Title 49] may be cited as the 'Housing and Community Development Act of 1974'."

INCOME ELIGIBILITY FOR HOME AND CDBG PROGRAMS

Pub. L. 105-276, title V, §590, Oct. 21, 1998, 112 Stat. 2651, provided that:

"(a) IN GENERAL.—The Secretary of Housing and Urban Development shall, for not less than 10 jurisdictions that are metropolitan cities or urban counties for purposes of title I of the Housing and Community Development Act of 1974 [42 U.S.C. 5301 et seq.], grant exceptions not later than 90 days after the date of the enactment of this Act [Oct. 21, 1998] for such jurisdictions that provide that—

"(1) for purposes of the HOME investment partnerships program under title II of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12721 et seq.], the limitation based on percentage of median income that is applicable under section 104(10), 214(1)(A), or 215(a)(1)(A) [42 U.S.C. 12704(10), 12744(1)(A), 12745(a)(1)(A)] for any area of the jurisdiction shall be the numerical percentage that is specified in such section; and

"(2) for purposes of the community development block grant program under title I of the Housing and Community Development Act of 1974 [42 U.S.C. 5301 et seq.], the limitation based on percentage of median income that is applicable pursuant to section 102(a)(20) [42 U.S.C. 5302(a)(20)] for any area within the State or unit of general local government shall be the numerical percentage that is specified in subparagraph (A) of such section.

"(b) EFFECTIVE DATE.—This section shall take effect on the date of the enactment of this Act [Oct. 21, 1998]."

FINDINGS AND PURPOSE

Section 2 of Pub. L. 100-242 provided that:

"(a) FINDINGS.—The Congress finds that—

"(1) for the past 50 years, the Federal Government has taken the leading role in enabling the people of the Nation to be the best housed in the world, and recent reductions in Federal assistance have contributed to a deepening housing crisis for low- and moderate-income families;

"(2) the efforts of the Federal Government have included a system of specialized lending institutions, favorable tax policies, construction assistance, mortgage insurance, loan guarantees, secondary markets, and interest and rental subsidies, that have enabled people to rent or buy affordable, decent, safe, and sanitary housing; and

"(3) the tragedy of homelessness in urban and suburban communities across the Nation, involving a record number of people, dramatically demonstrates the lack of affordable residential shelter, and people living on the economic margins of our society (lower income families, the elderly, the working poor, and the deinstitutionalized) have few available alternatives for shelter.

"(b) PURPOSE.—The purpose of this Act [see Short Title of 1988 Amendment note above], therefore, is—

"(1) to reaffirm the principle that decent and affordable shelter is a basic necessity, and the general welfare of the Nation and the health and living standards of its people require the addition of new housing units to remedy a serious shortage of housing units for all Americans, particularly for persons of low and moderate income;

"(2) to make the distribution of direct and indirect housing assistance more equitable by providing Federal assistance for the less affluent people of the Nation;

"(3) to provide needed housing assistance for homeless people and for persons of low and moderate in-

come who lack affordable, decent, safe, and sanitary housing; and

“(4) to reform existing programs to ensure that such assistance is delivered in the most efficient manner possible.”

BUDGET COMPLIANCE

Section 3 of Pub. L. 100-242 provided that:

“(a) IN GENERAL.—This Act and the amendments made by this Act [see Short Title of 1988 Amendment note above] may not be construed to provide for new budget authority, budget outlays, or new entitlement authority, for fiscal year 1988 in excess of the appropriate aggregate levels established by the concurrent resolution on the budget for such fiscal year for the programs authorized by this Act and the amendments made by this Act.

“(b) DEFINITIONS.—For purposes of this section, the terms ‘budget authority’, ‘budget outlays’, ‘concurrent resolution on the budget’, and ‘entitlement authority’ have the meanings given such terms in section 3 of the Congressional Budget Act of 1974 (2 U.S.C. 622).”

CREDIT LIMITATION

Section 4 of Pub. L. 100-242 provided that: “Any new credit authority (as defined in section 3 of the Congressional Budget Act of 1974 [2 U.S.C. 622]) which is provided by this Act [see Short Title of 1988 Amendment note above], or by an amendment made by this Act, shall be effective only to such extent or in such amounts as are provided in appropriation Acts.”

LIMITATION ON SPENDING AUTHORITY

Section 5 of Pub. L. 100-242 provided that: “Any new spending authority (as defined in section 401(c) of the Congressional Budget Act of 1974 [2 U.S.C. 651(c)]) which is provided by this Act, or by an amendment made by this Act [see Short Title of 1988 Amendment note above], shall be effective only to such extent or in such amounts as are provided in appropriation Acts.”

LIMITATION ON WITHHOLDING OR CONDITIONING OF ASSISTANCE

Section 817 of Pub. L. 93-383, as amended by Pub. L. 98-181, title III, §302(c), Nov. 30, 1983, 97 Stat. 1206, provided that: “Assistance provided for in this Act [see Short Title note above] the National Housing Act, [12 U.S.C. 1701 et seq.], the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.], the Housing Act of 1949 [42 U.S.C. 1441 et seq.], the Demonstration Cities and Metropolitan Development Act of 1966 [see Short Title note set out under section 3331 of this title], the Housing and Urban Development Acts of 1965, 1968, 1969, and 1970 [see Short Title notes set out under section 1701 of Title 12, Banks and Banking], and section 17 of the United States Housing Act of 1937 [42 U.S.C. 1437o] shall not be withheld or made subject to conditions or preference by reason of the tax-exempt status of bonds or other obligations issued or to be issued to provide financing for use in connection with such assistance, except where otherwise expressly provided or authorized by law.”

ACT REFERRED TO IN OTHER SECTIONS

The Housing and Community Development Act of 1974 is referred to in sections 12705, 12706 of this title; title 12 sections 4707, 4712; title 25 section 1632; title 40 section 3162.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5305 of this title.

§ 5302. General provisions

(a) Definitions

As used in this chapter—

(1) The term “unit of general local government” means any city, county, town, township, parish, village, or other general purpose

political subdivision of a State; Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa, or a general purpose political subdivision thereof; a combination of such political subdivisions that, except as provided in section 5306(d)(4) of this title, is recognized by the Secretary; and the District of Columbia. Such term also includes a State or a local public body or agency (as defined in section 4512¹ of this title), community association, or other entity, which is approved by the Secretary for the purpose of providing public facilities or services to a new community as part of a program meeting the eligibility standards of section 4513¹ of this title or title IV of the Housing and Urban Development Act of 1968 [42 U.S.C. 3901 et seq.].

(2) The term “State” means any State of the United States, or any instrumentality thereof approved by the Governor; and the Commonwealth of Puerto Rico.

(3) The term “metropolitan area” means a standard metropolitan statistical area as established by the Office of Management and Budget.

(4) The term “metropolitan city” means (A) a city within a metropolitan area which is the central city of such area, as defined and used by the Office of Management and Budget, or (B) any other city, within a metropolitan area, which has a population of fifty thousand or more. Any city that was classified as a metropolitan city for at least 2 years pursuant to the first sentence of this paragraph shall remain classified as a metropolitan city. Any unit of general local government that becomes eligible to be classified as a metropolitan city, and was not classified as a metropolitan city in the immediately preceding fiscal year, may, upon submission of written notification to the Secretary, defer its classification as a metropolitan city for all purposes under this chapter, if it elects to have its population included in an urban county under subsection (d) of this section. Notwithstanding the second sentence of this paragraph, a city may elect not to retain its classification as a metropolitan city. Any city classified as a metropolitan city pursuant to this paragraph, and that no longer qualifies as a metropolitan city in a fiscal year beginning after fiscal year 1989, shall retain its classification as a metropolitan city for such fiscal year and the succeeding fiscal year, except that in such succeeding fiscal year (A) the amount of the grant to such city shall be 50 percent of the amount calculated under section 5306(b) of this title; and (B) the remaining 50 percent shall be added to the amount allocated under section 5306(d) of this title to the State in which the city is located and the city shall be eligible in such succeeding fiscal year to receive a distribution from the State allocation under section 5306(d) of this title as increased by this sentence. Any unit of general local government that was classified as a metropolitan city in any fiscal year, may, upon submission of written notification to the Secretary, relinquish such classification for all purposes under this chapter if

¹ See References in Text note below.

it elects to have its population included with the population of a county for purposes of qualifying for assistance (for such following fiscal year) under section 5306 of this title as an urban county under paragraph (6)(D). Any metropolitan city that elects to relinquish its classification under the preceding sentence and whose port authority shipped at least 35,000,000 tons of cargo in 1988, of which iron ore made up at least half, shall not receive, in any fiscal year, a total amount of assistance under section 5306 of this title from the urban county recipient that is less than the city would have received if it had not relinquished the classification under the preceding sentence.

(5) The term "city" means (A) any unit of general local government which is classified as a municipality by the United States Bureau of the Census or (B) any other unit of general local government which is a town or township and which, in the determination of the Secretary, (i) possesses powers and performs functions comparable to those associated with municipalities, (ii) is closely settled, and (iii) contains within its boundaries no incorporated places as defined by the United States Bureau of the Census which have not entered into cooperation agreements with such town or township to undertake or to assist in the undertaking of essential community development and housing assistance activities.

(6)(A) The term "urban county" means any county within a metropolitan area which—

(i) is authorized under State law to undertake essential community development and housing assistance activities in its unincorporated areas, if any, which are not units of general local government; and

(ii) either—

(I) has a population of 200,000 or more (excluding the population of metropolitan cities therein) and has a combined population of 100,000 or more (excluding the population of metropolitan cities therein) in such unincorporated areas and in its included units of general local government (and in the case of counties having a combined population of less than 200,000, the areas and units of general local government must include the areas and units of general local government which in the aggregate have the preponderance of the persons of low and moderate income who reside in the county) (a) in which it has authority to undertake essential community development and housing assistance activities and which do not elect to have their population excluded, or (b) with which it has entered into cooperation agreements to undertake or to assist in the undertaking of essential community development and housing assistance activities; or

(II) has a population in excess of 100,000, a population density of at least 5,000 persons per square mile, and contains within its boundaries no incorporated places as defined by the United States Bureau of the Census.

(B) Any county that was classified as an urban county for at least 2 years pursuant to

subparagraph (A), (C), or (D) shall remain classified as an urban county, unless it fails to qualify as an urban county pursuant to subparagraph (A) by reason of the election of any unit of general local government included in such county to have its population excluded under clause (ii)(I)(a) of subparagraph (A) or not to renew a cooperation agreement under clause (ii)(I)(b) of such subparagraph.

(C) Notwithstanding the combined population amount set forth in clause (ii) of subparagraph (A), a county shall also qualify as an urban county for purposes of assistance under section 5306 of this title if such county—

(i) complies with all other requirements set forth in the first sentence;

(ii) has, according to the most recent available decennial census data, a combined population between 190,000 and 199,999, inclusive (excluding the population of metropolitan cities therein) in all its unincorporated areas that are not units of general local government and in all units of general local government located within such county;

(iii) had a population growth rate of not less than 15 percent during the most recent 10-year period measured by applicable censuses; and

(iv) has submitted data satisfactory to the Secretary that it has a combined population of not less than 200,000 (excluding the population of metropolitan cities therein) in all its unincorporated areas that are not units of general local government and in all units of general local government located within such county.

(D) Such term also includes a county that—

(i) has a combined population in excess of 175,000, has more than 50 percent of the housing units of the area unsewered, and has an aquifer that was designated before March 1, 1987, a sole source aquifer by the Environmental Protection Agency;

(ii) has taken steps, which include at least one public referendum, to consolidate substantial public services with an adjoining metropolitan city, and in the opinion of the Secretary, has consolidated these services with the city in an effort that is expected to result in the unification of the two governments within 6 years of February 5, 1988;

(iii) had a population between 180,000 and 200,000 on October 1, 1987, was eligible for assistance under section 5318 of this title in fiscal year 1986, and does not contain any metropolitan cities;

(iv) has entered into a local cooperation agreement with a metropolitan city that received assistance under section 5306 of this title because of such classification, and has elected under paragraph (4) to have its population included with the population of the county for purposes of qualifying as an urban county; except that to qualify as an urban county under this clause (I) the county must have a combined population of not less than 195,000, (II) more than 15 percent of the residents of the county shall be 60 years of age or older (according to the most recent decennial census data), (III) not less than 20 percent of the total personal income in the

county shall be from pensions, social security, disability, and other transfer programs, and (IV) not less than 40 percent of the land within the county shall be publicly owned and not subject to property tax levies;

(v)(I) has a population of 175,000 or more (including the population of metropolitan cities therein), (II) before January 1, 1975, was designated by the Secretary of Defense pursuant to section 608 of the Military Construction Authorization Act, 1975 (Public Law 93-552; 88 Stat. 1763), as a Trident Defense Impact Area, and (III) has located therein not less than 1 unit of general local government that was classified as a metropolitan city and (a) for which county each such unit of general local government therein has relinquished its classification as a metropolitan city under the 6th sentence of paragraph (4), or (b) that has entered into cooperative agreements with each metropolitan city therein to undertake or to assist in the undertaking of essential community development and housing assistance activities;

(vi) has entered into a local cooperation agreement with a metropolitan city that received assistance under section 5306 of this title because of such classification, and has elected under paragraph (4) to have its population included with the population of the county for the purposes of qualifying as an urban county, except that to qualify as an urban county under this clause, the county must—

(I) have a combined population of not less than 210,000, excluding any metropolitan city located in the county that is not relinquishing its metropolitan city classification, according to the 1990 decennial census of the Bureau of the Census of the Department of Commerce;

(II) including any metropolitan cities located in the county, have had a decrease in population of 10,061 from 1992 to 1994, according to the estimates of the Bureau of the Census of the Department of Commerce; and

(III) have had a Federal naval installation that was more than 100 years old closed by action of the Base Closure and Realignment Commission appointed for 1993 under the Base Closure and Realignment Act of 1990, directly resulting in a loss of employment by more than 7,000 Federal Government civilian employees and more than 15,000 active duty military personnel, which naval installation was located within one mile of an enterprise community designated by the Secretary pursuant to section 1391 of title 26, which enterprise community has a population of not less than 20,000, according to the 1990 decennial census of the Bureau of the Census of the Department of Commerce²

(vii)(I) has consolidated its government with one or more municipal governments, such that within the county boundaries

there are no unincorporated areas; (II) has a population of not less than 650,000; (III) for more than 10 years, has been classified as a metropolitan city for purposes of allocating and distributing funds under section 5306 of this title; and (IV) as of October 27, 2000, has over 90 percent of the county's population within the jurisdiction of the consolidated government; or

(viii) notwithstanding any other provision of this section, any county that was classified as an urban county pursuant to subparagraph (A) for fiscal year 1999, at the option of the county, may hereafter remain classified as an urban county for purposes of this Act.

(E) Any county classified as an urban county pursuant to subparagraph (A), (B), or (C) of this paragraph, and that no longer qualifies as an urban county under such subparagraph in a fiscal year beginning after fiscal year 1989, shall retain its classification as an urban county for such fiscal year and the succeeding fiscal year, except that in such succeeding fiscal year (i) the amount of the grant to such an urban county shall be 50 percent of the amount calculated under section 5306(b) of this title; and (ii) the remaining 50 percent shall be added to the amount allocated under section 5306(d) of this title to the State in which the urban county is located and the urban county shall be eligible in such succeeding fiscal year to receive a distribution from the State allocation under section 5306(d) of this title as increased by this sentence.

(7) The term "nonentitlement area" means an area which is not a metropolitan city or part of an urban county and does not include Indian tribes.

(8) The term "population" means total resident population based on data compiled by the United States Bureau of the Census and referable to the same point or period in time.

(9) The term "extent of poverty" means the number of persons whose incomes are below the poverty level. Poverty levels shall be determined by the Secretary pursuant to criteria provided by the Office of Management and Budget, taking into account and making adjustments, if feasible and appropriate and in the sole discretion of the Secretary, for regional or area variations in income and cost of living, and shall be based on data referable to the same point or period in time.

(10) The term "extent of housing overcrowding" means the number of housing units with 1.01 or more persons per room based on data compiled by the United States Bureau of the Census and referable to the same point or period in time.

(11) The term "age of housing" means the number of existing housing units constructed in 1939 or earlier based on data compiled by the United States Bureau of the Census and referable to the same point or period in time.

(12) The term "extent of growth lag" means the number of persons who would have been residents in a metropolitan city or urban county, in excess of the current population of such metropolitan city or urban county, if such metropolitan city or urban county had

² So in original. Probably should be followed by a semicolon.

had a population growth rate between 1960 and the date of the most recent population count referable to the same point or period in time equal to the population growth rate for such period of all metropolitan cities. Where the boundaries for a metropolitan city or urban county used for the 1980 census have changed as a result of annexation, the current population used to compute extent of growth lag shall be adjusted by multiplying the current population by the ratio of the population based on the 1980 census within the boundaries used for the 1980 census to the population based on the 1980 census within the current boundaries.

(13) The term "housing stock" means the number of existing housing units based on data compiled by the United States Bureau of the Census and referable to the same point or period in time.

(14) The term "adjustment factor" means the ratio between the age of housing in the metropolitan city or urban county and the predicted age of housing in such city or county.

(15) The term "predicted age of housing" means the arithmetic product of the housing stock in the metropolitan city or urban county multiplied times the ratio between the age of housing in all metropolitan areas and the housing stock in all metropolitan areas.

(16) The term "adjusted age of housing" means the arithmetic product of the age of housing in the metropolitan city or urban county multiplied times the adjustment factor.

(17) The term "Indian tribe" means any Indian tribe, band, group, and nation, including Alaska Indians, Aleuts, and Eskimos, and any Alaskan Native Village, of the United States, which is considered an eligible recipient under the Indian Self-Determination and Education Assistance Act (Public Law 93-638) [25 U.S.C. 450 et seq.] or was considered an eligible recipient under chapter 67 of title 31 prior to the repeal of such chapter.

(18) The term "Federal grant-in-aid program" means a program of Federal financial assistance other than loans and other than the assistance provided by this chapter.

(19) The term "Secretary" means the Secretary of Housing and Urban Development.

(20)(A) The terms "persons of low and moderate income" and "low- and moderate-income persons" mean families and individuals whose incomes do not exceed 80 percent of the median income of the area involved, as determined by the Secretary with adjustments for smaller and larger families. The term "persons of low income" means families and individuals whose incomes do not exceed 50 percent of the median income of the area involved, as determined by the Secretary with adjustments for smaller and larger families. The term "persons of moderate income" means families and individuals whose incomes exceed 50 percent, but do not exceed 80 percent, of the median income of the area involved, as determined by the Secretary with adjustments for smaller and larger families. For purposes of such terms, the area involved shall be determined in the same man-

ner as such area is determined for purposes of assistance under section 1437f of this title.

(B) The Secretary may establish percentages of median income for any area that are higher or lower than the percentages set forth in subparagraph (A), if the Secretary finds such variations to be necessary because of unusually high or low family incomes in such area.

(21) The term "buildings for the general conduct of government" means city halls, county administrative buildings, State capitol or office buildings, or other facilities in which the legislative or general administrative affairs of the government are conducted. Such term does not include such facilities as neighborhood service centers or special purpose buildings located in low- and moderate-income areas that house various nonlegislative functions or services provided by government at decentralized locations.

(22) The term "microenterprise" means a commercial enterprise that has 5 or fewer employees, 1 or more of whom owns the enterprise.

(23) The term "small business" means a business that meets the criteria set forth in section 632(a) of title 15.

(24) The term "insular area" means each of Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa.

(b) Basis and modification of definitions

Where appropriate, the definitions in subsection (a) of this section shall be based, with respect to any fiscal year, on the most recent data compiled by the United States Bureau of the Census and the latest published reports of the Office of Management and Budget available ninety days prior to the beginning of such fiscal year. The Secretary may by regulation change or otherwise modify the meaning of the terms defined in subsection (a) of this section in order to reflect any technical change or modification thereof made subsequent to such date by the United States Bureau of the Census or the Office of Management and Budget.

(c) Designation of public agencies

One or more public agencies, including existing local public agencies, may be designated by the chief executive officer of a State or a unit of general local government to undertake activities assisted under this chapter.

(d) Local governments, inclusion in urban county population

With respect to program years beginning with the program year for which grants are made available from amounts appropriated for fiscal year 1982 under section 5303 of this title, the population of any unit of general local government which is included in that of an urban county as provided in subparagraph (A)(ii) or (D) of subsection (a)(6) of this section shall be included in the population of such urban county for three program years beginning with the program year in which its population was first so included and shall not otherwise be eligible for a grant under section 5306 of this title as a separate entity, unless the urban county does not receive a grant for any year during such three-year period.

(e) Exclusion of local governments from urban county population; notification of election

Any county seeking qualification as an urban county, including any urban county seeking to continue such qualification, shall notify, as provided in this subsection, each unit of general local government, which is included therein and is eligible to elect to have its population excluded from that of an urban county under subsection (a)(6)(A)(ii)(I)(a) of this section, of its opportunity to make such an election. Such notification shall, at a time and in a manner prescribed by the Secretary, be provided so as to provide a reasonable period for response prior to the period for which such qualification is sought. The population of any unit of general local government which is provided such notification and which does not inform, at a time and in a manner prescribed by the Secretary, the county of its election to exclude its population from that of the county shall, if the county qualifies as an urban county, be included in the population of such urban county as provided in subsection (d) of this section.

(Pub. L. 93-383, title I, §102, Aug. 22, 1974, 88 Stat. 635; Pub. L. 95-128, title I, §102, Oct. 12, 1977, 91 Stat. 1111; Pub. L. 96-153, title I, §103(f), Dec. 21, 1979, 93 Stat. 1102; Pub. L. 96-399, title I, §§101(a), (b)(1), (c), 111(a), Oct. 8, 1980, 94 Stat. 1614, 1620; Pub. L. 97-35, title III, §§309(a)-(c), 310, Aug. 13, 1981, 95 Stat. 396, 397; Pub. L. 97-289, §5, Oct. 6, 1982, 96 Stat. 1231; Pub. L. 98-181, title I, §102, Nov. 30, 1983, 97 Stat. 1159; Pub. L. 98-479, title I, §101(a)(1)-(4), title II, §203(l)(1), Oct. 17, 1984, 98 Stat. 2218, 2219, 2231; Pub. L. 99-120, §5(a), Oct. 8, 1985, 99 Stat. 504; Pub. L. 99-156, §5(a), Nov. 15, 1985, 99 Stat. 816; Pub. L. 99-219, §5(a), Dec. 26, 1985, 99 Stat. 1731; Pub. L. 99-267, §5(a), Mar. 27, 1986, 100 Stat. 74; Pub. L. 99-272, title III, §3011(a), title XIV, §14001(b)(3), Apr. 7, 1986, 100 Stat. 106, 328; Pub. L. 99-289, §1(b), May 2, 1986, 100 Stat. 412; Pub. L. 99-345, §1, June 24, 1986, 100 Stat. 673; Pub. L. 99-430, Sept. 30, 1986, 100 Stat. 986; Pub. L. 100-77, title IV, §442, July 22, 1987, 101 Stat. 509; Pub. L. 100-122, §1, Sept. 30, 1987, 101 Stat. 793; Pub. L. 100-154, Nov. 5, 1987, 101 Stat. 890; Pub. L. 100-170, Nov. 17, 1987, 101 Stat. 914; Pub. L. 100-179, Dec. 3, 1987, 101 Stat. 1018; Pub. L. 100-200, Dec. 21, 1987, 101 Stat. 1327; Pub. L. 100-202, §101(f) [title I, §101], Dec. 22, 1987, 101 Stat. 1329-187, 1329-193; Pub. L. 100-242, title V, §503, Feb. 5, 1988, 101 Stat. 1923; Pub. L. 100-628, title X, §§1081, 1082(a), Nov. 7, 1988, 102 Stat. 3276, 3277; Pub. L. 101-235, title VII, §702(a), Dec. 15, 1989, 103 Stat. 2056; Pub. L. 101-507, title II, Nov. 5, 1990, 104 Stat. 1370; Pub. L. 101-625, title IX, §§903(a)-(c)(2), 904(a), Nov. 28, 1990, 104 Stat. 4385-4387; Pub. L. 102-550, title VIII, §§802(a), 803, 807(c)(2), Oct. 28, 1992, 106 Stat. 3845, 3849; Pub. L. 104-204, title II, §216, Sept. 26, 1996, 110 Stat. 2904; Pub. L. 106-377, §1(a)(1) [title II, §217], Oct. 27, 2000, 114 Stat. 1441, 1441A-28; Pub. L. 108-186, title V, §501(a), (b), Dec. 16, 2003, 117 Stat. 2696.)

REFERENCES IN TEXT

Sections 4512 and 4513 of this title, referred to in subsec. (a)(1), were repealed by Pub. L. 98-181, title IV, §474(e), Nov. 30, 1983, 97 Stat. 1239.

The Housing and Urban Development Act of 1968, referred to in subsec. (a)(1), is Pub. L. 90-448, Aug. 1, 1968, 82 Stat. 476, as amended. Title IV of the Housing and

Urban Development Act of 1968, which was classified principally to chapter 48 (§3901 et seq.) of this title, was repealed, with certain exceptions which were omitted from the Code, by Pub. L. 98-181, title IV, §474(e), Nov. 30, 1983, 97 Stat. 1239. For complete classification of this Act to the Code, see Short Title of 1968 Amendment note set out under section 1701 of Title 12, Banks and Banking, and Tables.

Section 608 of the Military Construction Authorization Act, 1975, referred to in subsec. (a)(6)(D)(v)(II), is not classified to the Code.

The Base Closure and Realignment Act of 1990, referred to in subsec. (a)(6)(D)(vi)(III), probably means the Defense Base Closure and Realignment Act of 1990, which is part A of title XXIX of div. B of Pub. L. 101-510, Nov. 5, 1990, 104 Stat. 1808, as amended, and which is set out as a note under section 2687 of Title 10, Armed Forces. For complete classification of this Act to the Code, see Tables.

This Act, referred to in subsec. (a)(6)(D)(viii), is Pub. L. 93-383, Aug. 22, 1974, 88 Stat. 633, as amended, known as the Housing and Community Development Act of 1974. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

The Indian Self-Determination and Education Assistance Act, referred to in subsec. (a)(17), is Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, as amended, which is classified principally to subchapter II (§450 et seq.) of chapter 14 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 450 of Title 25 and Tables.

Chapter 67 of title 31, referred to in subsec. (a)(17), was repealed by Pub. L. 99-272, title XIV, §14001(a)(1), Apr. 7, 1986, 100 Stat. 327.

AMENDMENTS

2003—Subsec. (a)(1). Pub. L. 108-186, §501(b), in first sentence, inserted “and” after “Secretary;” and struck out “; and the Trust Territory of the Pacific Islands” after “the District of Columbia”.

Subsec. (a)(24). Pub. L. 108-186, §501(a), added par. (24).

2000—Subsec. (a)(6)(D)(vii), (viii). Pub. L. 106-377 added cls. (vii) and (viii).

1996—Subsec. (a)(6)(D)(vi). Pub. L. 104-204 added cl. (vi).

1992—Subsec. (a)(1). Pub. L. 102-550, §802(a), substituted “that, except as provided in section 5306(d)(4) of this title, is recognized by the Secretary” for “recognized by the Secretary”.

Subsec. (a)(6)(D)(v). Pub. L. 102-550, §803, added cl. (v).

Subsec. (a)(22), (23). Pub. L. 102-550, §807(c)(2), added pars. (22) and (23).

1990—Subsec. (a)(4). Pub. L. 101-625, §903(c)(1), inserted at end “Any unit of general local government that was classified as a metropolitan city in any fiscal year, may, upon submission of written notification to the Secretary, relinquish such classification for all purposes under this chapter if it elects to have its population included with the population of a county for purposes of qualifying for assistance (for such following fiscal year) under section 5306 of this title as an urban county under paragraph (6)(D). Any metropolitan city that elects to relinquish its classification under the preceding sentence and whose port authority shipped at least 35,000,000 tons of cargo in 1988, of which iron ore made up at least half, shall not receive, in any fiscal year, a total amount of assistance under section 5306 of this title from the urban county recipient that is less than the city would have received if it had not relinquished the classification under the preceding sentence.”

Pub. L. 101-625, §903(a), substituted “Any city that was classified as a metropolitan city for at least 2 years pursuant to the first sentence of this paragraph shall remain classified as a metropolitan city.” for “In order to permit an orderly transition of each city losing its classification as a metropolitan city by reason of a decrease in population or revisions in the designation of metropolitan areas or central cities, any city classified

as or deemed by law to be a metropolitan city for purposes of assistance under any section of this chapter for fiscal year 1983 or any subsequent fiscal year shall retain such qualification for purposes of receiving such assistance through September 30, 1989," struck out "for fiscal year 1988 or 1989" before period at end of fourth sentence, and in last sentence struck out "the first or second sentence of" before "this paragraph" and "under such first or second sentence" after "qualifies as a metropolitan city".

Subsec. (a)(6)(B). Pub. L. 101-625, §903(b), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "In order to permit an orderly transition of each county losing its classification as an urban county by reason of a decrease in population, any county classified as or deemed to be an urban county under this paragraph for purposes of receiving assistance under any section of this chapter for fiscal year 1983 or subsequent years shall retain such qualification for purposes of receiving such assistance through September 30, 1989, or for such longer period covered by a cooperation agreement entered into during fiscal year 1984, except that the provisions of this subparagraph shall not apply with respect to any county losing its classification as an urban county by reason of the election of any unit of general local government included in such county to have its population excluded under clause (ii)(I)(a) of subparagraph (A) or to not renew a cooperation agreement under clause (ii)(I)(b) of such subparagraph."

Subsec. (a)(6)(D)(iv). Pub. L. 101-625, §903(c)(2), added cl. (iv).

Subsec. (a)(12). Pub. L. 101-507 and Pub. L. 101-625, §904(a), amended par. (12) identically, inserting at end "Where the boundaries for a metropolitan city or urban county used for the 1980 census have changed as a result of annexation, the current population used to compute extent of growth lag shall be adjusted by multiplying the current population by the ratio of the population based on the 1980 census within the boundaries used for the 1980 census to the population based on the 1980 census within the current boundaries."

1989—Subsec. (a)(7). Pub. L. 101-235 inserted before period at end "and does not include Indian tribes".

1988—Subsec. (a)(4). Pub. L. 100-628, §1081(a)(1), substituted "a decrease in population" for "the population data of the 1980 decennial census" and inserted "or any subsequent fiscal year" after "1983" in second sentence.

Pub. L. 100-628, §1081(a)(2), directed that subsec. (a)(4) of this section as similarly amended first by Pub. L. 100-202 [see 1987 Amendment note below] and later by section 503(a)(2) of Pub. L. 100-242 [see below] is amended to read as if the amendment by Pub. L. 100-242 had not been enacted.

Pub. L. 100-242, §503(a)(1), substituted "September 30, 1989" for "March 15, 1988".

Pub. L. 100-242, §503(a)(2), made amendment identical to amendment by Pub. L. 100-202. See 1987 Amendment note below.

Pub. L. 100-242, §503(a)(3), inserted at end "Any city classified as a metropolitan city pursuant to the first or second sentence of this paragraph, and that no longer qualifies as a metropolitan city under such first or second sentence in a fiscal year beginning after fiscal year 1989, shall retain its classification as a metropolitan city for such fiscal year and the succeeding fiscal year, except that in such succeeding fiscal year (A) the amount of the grant to such city shall be 50 percent of the amount calculated under section 5306(b) of this title; and (B) the remaining 50 percent shall be added to the amount allocated under section 5306(d) of this title to the State in which the city is located and the city shall be eligible in such succeeding fiscal year to receive a distribution from the State allocation under section 5306(d) of this title as increased by this sentence."

Subsec. (a)(6). Pub. L. 100-628, §1081(b), substituted a semicolon for last comma in cls. (i) and (ii)(I) of subpar. (A).

Pub. L. 100-242, §503(b), amended par. (6) generally. Prior to amendment, par. (6) read as follows: "The term

'urban county' means any county within a metropolitan area which (A) is authorized under State law to undertake essential community development and housing assistance activities in its unincorporated areas, if any, which are not units of general local government, and either (B) has a combined population of two hundred thousand or more (excluding the population of metropolitan cities therein) in such unincorporated areas and in its included units of general local government (i) in which it has authority to undertake essential community development and housing assistance activities and which do not elect to have their population excluded or (ii) with which it has entered into cooperation agreements to undertake or to assist in the undertaking of essential community development and housing assistance activities or (C) has a population in excess of one hundred thousand, a population density of at least five thousand persons per square mile, and contains within its boundaries no incorporated places as defined by the United States Bureau of Census. In order to permit an orderly transition of each county losing its classification as an urban county by reason of a decrease in population, any county classified as or deemed to be an urban county under this paragraph for purposes of receiving assistance under any section of this chapter for fiscal year 1983 or 1984 shall retain such qualification for purposes of receiving such assistance through March 15, 1988, or for such longer period covered by a cooperation agreement entered into during fiscal year 1984, except that the provisions of this sentence shall not apply with respect to any county losing its classification as an urban county by reason of the election of any unit of general local government included in such county to have its population excluded under clause (B)(i) of the first sentence or to not renew a cooperation agreement under clause (B)(ii) of such sentence. Notwithstanding the combined population amount set forth in clause (B) of the first sentence, a county shall also qualify as an urban county for purposes of assistance under section 5306 of this title if such county (A) complies with all other requirements set forth in the first sentence; (B) has, according to the most recent available decennial census data, a combined population between 190,000 and 199,999, inclusive, (excluding the population of metropolitan cities therein) in all its unincorporated areas that are not units of general local government and in all units of general local government located within such county; (C) had a population growth rate of not less than 15 percent during the most recent 10-year period measured by applicable censuses; and (D) has submitted data satisfactory to the Secretary that it has a combined population of not less than 200,000 (excluding the population of metropolitan cities therein) in all its unincorporated areas that are not units of general local government and in all units of general local government located within such county."

Subsec. (d). Pub. L. 100-628, §1082(a)(1), substituted "subparagraph (A)(ii) or (D) of subsection (a)(6)" for "subsection (a)(6)(B)".

Pub. L. 100-242, §503(c), struck out at end "During any such three-year period, the population of any unit of general local government which is not included in that of the urban county for the first year shall not be eligible for such inclusion in the second or third year, except where the unit of general local government loses the designation of metropolitan city."

Subsec. (e). Pub. L. 100-628, §1082(a)(2), substituted "subsection (a)(6)(A)(ii)(I)(a)" for "subsection (a)(6)(B)(1)".

1987—Subsec. (a)(4). Pub. L. 100-202 inserted third sentence and struck out former third sentence which read as follows: "Any unit of general local government that becomes eligible to be classified as a metropolitan city for fiscal year 1984 or 1985 may, upon submission of written notification to the Secretary, defer its classification as a metropolitan city for all purposes under this chapter for fiscal years 1984, 1985, and 1986 if such unit of general local government elects to have its population included in an urban county under subsection (d) of this section."

Pub. L. 100-200 substituted "March 15, 1988" for "December 16, 1987".

Pub. L. 100-179 substituted "December 16, 1987" for "December 2, 1987".

Pub. L. 100-170 substituted "December 2, 1987" for "November 15, 1987".

Pub. L. 100-154 substituted "November 15, 1987" for "October 31, 1987".

Pub. L. 100-122 substituted "October 31, 1987" for "September 30, 1987".

Subsec. (a)(6). Pub. L. 100-200 substituted "March 15, 1988" for "December 16, 1987".

Pub. L. 100-179 substituted "December 16, 1987" for "December 2, 1987".

Pub. L. 100-170 substituted "December 2, 1987" for "November 15, 1987".

Pub. L. 100-154 substituted "November 15, 1987" for "October 31, 1987".

Pub. L. 100-122 substituted "October 31, 1987" for "September 30, 1987".

Pub. L. 100-77 inserted "or 1984".

1986—Subsec. (a)(4), (6). Pub. L. 99-430 substituted "September 30, 1987" for "September 30, 1986".

Pub. L. 99-345 substituted "September 30, 1986" for "June 6, 1986".

Pub. L. 99-289 substituted "June 6, 1986" for "April 30, 1986".

Pub. L. 99-272, §3011(a), directed amendment of pars. (4) and (6) identical to Pub. L. 99-216 substituting "March 17, 1986" for "December 15, 1985".

Pub. L. 99-267 substituted "April 30, 1986" for "March 17, 1986".

Subsec. (a)(17). Pub. L. 99-272, §14001(b)(3), substituted "or was considered an eligible recipient under chapter 67 of title 31 prior to the repeal of such chapter" for "or under chapter 67 of title 31".

1985—Subsec. (a)(4). Pub. L. 99-219, §5(a)(1), substituted "March 17, 1986" for "December 15, 1985".

Pub. L. 99-156, §5(a)(1), substituted "December 15, 1985" for "November 14, 1985".

Pub. L. 99-120, §5(a)(1), substituted "through November 14, 1985" for "for fiscal years 1984 and 1985".

Subsec. (a)(6). Pub. L. 99-219, §5(a)(2), substituted "March 17, 1986" for "December 15, 1985".

Pub. L. 99-156, §5(a)(2), substituted "December 15, 1985" for "November 14, 1985".

Pub. L. 99-120, §5(a)(2), substituted "through November 14, 1985" for "for fiscal years 1984 and 1985".

1984—Subsec. (a)(4). Pub. L. 98-479, §101(a)(1), in last sentence, struck out "while its population is included in an urban county for such fiscal year" after "fiscal year 1984 or 1985", and substituted "elects" for "continues" and "an" for "such" before "urban county".

Subsec. (a)(6). Pub. L. 98-479, §101(a)(2), inserted "except that the provisions of this sentence shall not apply with respect to any county losing its classification as an urban county by reason of the election of any unit of general local government included in such county to have its population excluded under clause (B)(i) of the first sentence or to not renew a cooperation agreement under clause (B)(ii) of such sentence" at end of second sentence, ", (excluding the population of metropolitan cities therein) in all its unincorporated areas that are not units of general local government and in all units of general local government located within such county" at end of cl. (B) in last sentence, and "(excluding the population of metropolitan cities therein) in all its unincorporated areas that are not units of general local government and in all units of general local government located within such county" at end of cl. (D) in last sentence.

Subsec. (a)(17). Pub. L. 98-479, §203(l)(1), substituted "chapter 67 of title 31" for "the State and Local Fiscal Assistance Act of 1972 (Public Law 92-512)".

Subsec. (a)(20). Pub. L. 98-479, §101(a)(3), in amending par. (20) generally, designated existing provisions as subpar. (A) and substituted "mean families and individuals whose incomes do not exceed 80 percent of the median income of the area involved, as determined by the Secretary with adjustments for smaller and larger fam-

ilies" for "have the meaning given the term 'lower income families' in section 1437a(b)(2) of this title", substituted "whose incomes do not exceed 50 percent of the median income of the area involved, as determined by the Secretary with adjustments for smaller and larger families" for "has the meaning given the term 'very low-income families' in such section", inserted "The term 'persons of moderate income' means families and individuals whose incomes exceed 50 percent, but do not exceed 80 percent, of the median income of the area involved, as determined by the Secretary with adjustments for smaller and larger families", and added subpar. (B).

Subsec. (a)(21). Pub. L. 98-479, §101(a)(4), substituted "capitol" for "capital", and added a comma after "or office buildings".

1983—Subsec. (a)(3). Pub. L. 98-181, §102(d), substituted "Office of Management and Budget" for "Department of Commerce".

Subsec. (a)(4). Pub. L. 98-181, §102(d), substituted "Office of Management and Budget" for "Department of Commerce".

Pub. L. 98-181, §102(a), substituted provision authorizing retention of classification as metropolitan cities through fiscal year 1985 of any cities classified as deemed to be such for purposes of assistance for fiscal year 1983 for provision that any city which had been classified as a metropolitan city under this paragraph because the population of such city exceeded fifty thousand would be so classified until the decennial census indicated that the population of such city was less than fifty thousand or until September 30, 1983, whichever was later, and inserted provision permitting any units of general local government which become eligible to be classified as metropolitan cities for fiscal years 1984 and 1985 while their population is included in an urban county for such fiscal year to defer such classification through fiscal year 1986 if such unit of general local government continues to have its population included in such urban county under subsec. (d) of this section.

Subsec. (a)(6). Pub. L. 98-181, §102(b), substituted provision permitting retention of classification as urban counties through fiscal year 1985 of any counties classified or deemed to be such for purposes of assistance under this chapter for fiscal year 1983, and allowing a county to qualify as an urban county upon meeting certain conditions despite failing to meet the requirements of cl. (B) of the first sentence for provision that any urban county qualifying as such in fiscal year 1981 which did not meet the population requirements of cl. (B) of the first sentence would be considered to meet such requirements through Sept. 30, 1983, and would not be subject to subsec. (d) of this section through such date.

Subsec. (a)(9). Pub. L. 98-181, §102(d), substituted "Office of Management and Budget" for "Department of Commerce".

Subsec. (a)(20), (21). Pub. L. 98-181, §102(c), added pars. (20) and (21).

Subsec. (b). Pub. L. 98-181, §102(d), substituted "Office of Management and Budget" for "Department of Commerce" in two places.

Pub. L. 98-181, §102(e), struck out provisions that no data from the 1980 Decennial Census, except those relating to population and poverty, would be taken into account for purposes of sections 5306 and 5318 of this title and that no revision to the criteria for establishing a metropolitan area or defining a central city of such an area published after January 1, 1983, would be taken into account for purposes of this chapter, except that any area or city which would newly qualify as a metropolitan area or central city of such an area by reason of such revision would be so qualified.

Subsec. (d). Pub. L. 98-181, §102(f), inserted exception where the unit of general local government loses the designation of metropolitan city.

1982—Subsec. (a)(4). Pub. L. 97-289, §5(1), (2), substituted "under this paragraph because the population of such city exceeded fifty thousand shall" for "under clause (B) of this paragraph shall continue to", and substituted "1983" for "1982".

Subsec. (a)(6). Pub. L. 97-289, §5(3)(A)-(C), substituted "before October 1, 1983," for "for fiscal year 1982" after "population of which", "through September 30, 1983," for "for fiscal year 1982" after "requirements of such clause", and "through such date" for "that fiscal year".

1981—Subsec. (a). Pub. L. 97-35, §§309(a), 310, in par. (4) inserted applicability of Sept. 30, 1982, date to provisions, in par. (6) inserted provisions relating to urban county qualifying in fiscal year 1981, added par. (7), struck out pars. (18) and (19), which defined "program period" and "Community Development Program", respectively, and redesignated former pars. (7) to (17) and (20) as (8) to (18) and (19), respectively.

Subsec. (c). Pub. L. 97-35, §309(b), substituted "activities assisted under this chapter" for "a Community Development Program in whole or in part".

Subsec. (d). Pub. L. 97-35, §309(c), substituted provisions relating to nonreceipt of a grant, for provisions relating to disapproval or withdrawal of an application, and struck out "(a)(1)" after "5303".

1980—Subsec. (a)(3), (4), (8). Pub. L. 96-399, §111(a), substituted "Department of Commerce" for "Office of Management and Budget" wherever appearing.

Subsec. (b). Pub. L. 96-399, §§101(a), 111(a), inserted provisions relating to prohibition of use, in fiscal years 1981 to 1983, of data from the 1980 Decennial Census, except those relating to population and poverty, for purposes of section 5318 and 5306, and prohibition on revision to criteria for establishment of a metropolitan area or definition of a central city, except for those newly qualifying, and substituted "Department of Commerce" for "Office of Management and Budget", wherever appearing.

Subsec. (d). Pub. L. 96-399, §101(b)(1), substituted provisions relating to inclusion of the population of any unit of general local government in the population of such urban county for three program years, such unit to be ineligible for a grant under section 5306 as a separate entity, and prohibiting eligibility for second and third years if not included for the first year, for provisions relating to notification of units of general local government of their opportunity to exclude their populations from such urban county, and inclusion in such urban county unless exclusion is elected by notification.

Subsec. (e). Pub. L. 96-399, §101(c), added subsec. (e).
1979—Subsec. (a)(1). Pub. L. 96-153, inserted reference to Northern Mariana Islands in definition of unit of general local government.

1977—Subsec. (a)(1). Pub. L. 95-128, §102(a)(1), excluded from term "unit of general local government" Indian tribes, bands, groups, and nations, including Alaska Indians, Aleuts, and Eskimos of the United States.

Subsec. (a)(4). Pub. L. 95-128, §102(a)(2), clarified term "metropolitan city" to continue the classification of any city classified as a metropolitan city under cl. (B) as such city until the decennial census indicates the population of such city is less than fifty thousand.

Subsec. (a)(5). Pub. L. 95-128, §102(a)(3), limited the meaning of "city" to a town or township without any incorporated places within its boundaries which have entered into cooperation agreements with such town or township to undertake or to assist in the undertaking of essential community development and housing assistance activities.

Subsec. (a)(6). Pub. L. 95-128, §102(a)(4), inserted "either" before "(B)" and added cl. (C).

Subsec. (a)(10) to (20). Pub. L. 95-128, §102(a)(5), (6), added pars. (10) to (16) and redesignated former pars. (10) to (13) as (17) to (20).

Subsec. (d). Pub. L. 95-128, §102(b), added subsec. (d).

EFFECTIVE DATE OF 1990 AMENDMENTS

Section 903(c)(3) of Pub. L. 101-625 provided that: "The amendments made by this subsection [amending this section] shall apply with respect to assistance under title I of the Housing and Community Development Act of 1974 [this chapter] for fiscal year 1991 and any fiscal year thereafter."

Section 904(b) of Pub. L. 101-625 provided that: "The amendment made by subsection (a) [amending this section] shall apply to the first allocation of assistance under section 106 [section 5306 of this title] that is made after the date of the enactment of this Act [Nov. 28, 1990] and to each allocation thereafter."

Title II of Pub. L. 101-507, 104 Stat. 1370, provided in part that: "The amendment made by this paragraph [amending this section] shall apply to the first allocation of assistance under section 106 [section 5306 of this title] that is made after the date of the enactment of this Act [Nov. 5, 1990] and to each allocation thereafter."

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-235 applicable to amounts approved in any appropriation Act under section 5303 of this title for fiscal year 1990 and each fiscal year thereafter, see section 702(e) of Pub. L. 101-235, as amended, set out as a note under section 5306 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 14001(b)(3) of Pub. L. 99-272 effective Oct. 18, 1986, see section 14001(e) of Pub. L. 99-272.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-181 applicable only to funds available for fiscal year 1984 and thereafter, see section 110(b) of Pub. L. 98-181, as amended, set out as a note under section 5316 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective Oct. 1, 1981, see section 371 of Pub. L. 97-35, set out as an Effective Date note under section 3701 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 101(b)(2) of Pub. L. 96-399 provided that: "The amendment made by paragraph (1) [amending this section] shall take effect on October 1, 1981."

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-128 effective Oct. 1, 1977, see section 114 of Pub. L. 95-128, set out as a note under section 5301 of this title.

REGULATIONS

Pub. L. 108-186, title V, §501(g), Dec. 16, 2003, 117 Stat. 2698, provided that: "The Secretary of Housing and Urban Development shall issue regulations to carry out the amendments made by this section [amending this section and sections 5304, 5306, and 5307 of this title], which shall take effect not later than the expiration of the 90-day period beginning on the date of the enactment of this Act [Dec. 16, 2003]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1437v, 1479, 5306, 5318, 5318a, 11332, 11371, 11382, 11392, 11403g, 12704, 12899f, 12902 of this title; title 12 sections 1715z-11a, 1715z-22, 1834b.

§5303. Grants to States, units of general local government and Indian tribes; authorizations

The Secretary is authorized to make grants to States, units of general local government, and Indian tribes to carry out activities in accordance with the provisions of this chapter. For purposes of assistance under section 5306 of this title, there are authorized to be appropriated \$4,000,000,000 for fiscal year 1993 and \$4,168,000,000 for fiscal year 1994. Sums authorized pursuant to this section shall remain available until expended.

(Pub. L. 93-383, title I, §103, Aug. 22, 1974, 88 Stat. 637; Pub. L. 94-375, §15(a), Aug. 3, 1976, 90 Stat. 1076; Pub. L. 95-128, title I, §103, Oct. 12, 1977, 91 Stat. 1113; Pub. L. 96-153, title I, §103(a), (b), Dec. 21, 1979, 93 Stat. 1101, 1102; Pub. L. 96-399, title I, §§106, 111(b), Oct. 8, 1980, 94 Stat. 1618, 1621; Pub. L. 97-35, title III, §301, Aug. 13, 1981, 95 Stat. 384; Pub. L. 98-181, title I, §103, Nov. 30, 1983, 97 Stat. 1161; Pub. L. 100-242, title V, §501(a), Feb. 5, 1988, 101 Stat. 1922; Pub. L. 101-625, title IX, §901(a), Nov. 28, 1990, 104 Stat. 4384; Pub. L. 102-550, title VIII, §801(a), Oct. 28, 1992, 106 Stat. 3843.)

AMENDMENTS

1992—Pub. L. 102-550 substituted provisions authorizing appropriations of \$4,000,000,000 for fiscal year 1993 and \$4,168,000,000 for fiscal year 1994 for provisions authorizing appropriations of \$3,137,000,000 for fiscal year 1991 and \$3,272,000,000 for fiscal year 1992, and struck out provisions requiring Secretary to make available, to extent approved in appropriation Acts (1) not less than \$3,000,000 in each of fiscal years 1991 and 1992 for assistance to economically disadvantaged and minority students participating in community development work study programs and enrolled in full-time programs in community and economic development, community planning, or community management, (2) not less than \$6,500,000 for each of fiscal years 1991 and 1992 for historically black colleges, (3) not less than \$7,000,000 for each of fiscal years 1991 and 1992 for Guam, the Virgin Islands, American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, and (4) not less than \$500,000 in fiscal year 1991 to demonstrate feasibility of database system and computer mapping tool for compliance, programming, and evaluation of community development block grants.

1990—Pub. L. 101-625 substituted provisions authorizing appropriations for purposes of assistance under section 5306 of this title of \$3,137,000,000 for fiscal year 1991 and \$3,272,000,000 for fiscal year 1992, along with provisions mandating certain minimum allotments of such appropriations as specified in pars. (1) to (4) for provisions authorizing appropriations for the purposes of assistance under sections 5306 and 5307 of this title of \$3,000,000,000 for fiscal year 1988, and \$3,000,000,000 for fiscal year 1989.

1988—Pub. L. 100-242 amended second sentence generally, substituting “\$3,000,000,000 for fiscal year 1988, and \$3,000,000,000 for fiscal year 1989” for “not to exceed \$3,468,000,000 for each of the fiscal years 1984, 1985, and 1986”.

1983—Pub. L. 98-181 substituted provisions authorizing appropriations for purposes of assistance under sections 5306 and 5307 of this title of not to exceed \$3,468,000,000 for each of fiscal years 1984, 1985, and 1986 for provision which had authorized appropriations of not to exceed \$4,166,000,000 for each of fiscal years 1982 and 1983.

1981—Pub. L. 97-35 completely restructured and revised provisions and substituted provisions relating to authorization of appropriations for fiscal years 1982 and 1983 to carry out activities under this chapter, for provisions relating to authorization of appropriations for fiscal years 1981 and 1982 to finance Community Development Programs, additional authorizations, supplemental assistance, and availability of funds.

1980—Subsec. (a)(1). Pub. L. 96-399, §106(a), substituted provisions authorizing appropriations not to exceed \$3,810,000,000, \$3,960,000,000, and \$4,110,000,000 for fiscal years 1981, 1982 and 1983, respectively, for provisions authorizing appropriations not to exceed \$3,500,000,000, \$3,650,000,000, and \$3,800,000,000 for fiscal years 1978, 1979, and 1980, respectively.

Subsec. (a)(2). Pub. L. 96-399, §106(b), substituted “\$275,000,000 for the fiscal year 1981 shall be added to the amount available for allocation under section 5306(c) of this title” for “\$50,000,000 for each of the fis-

cal years 1975 and 1976, \$200,000,000 for the fiscal year 1977 (not more than 50 per centum of which amount may be used under section 5306(d)(1) of this title), \$350,000,000 for the fiscal year 1978 (of which not more than \$175,000,000 may be used under such section), \$265,000,000 for the fiscal year 1979 (of which not more than \$25,000,000 may be used under such section), and \$275,000,000 for the fiscal year 1980 (none of which may be used under such section) shall be added to the amount available for allocation under section 5306(d) of this title”.

Subsec. (c). Pub. L. 96-399, §106(c), substituted “amounts aggregating not to exceed \$1,475,000,000 for fiscal years prior to the fiscal year 1981, and an additional amount not to exceed \$675,000,000 for each of the fiscal years 1981, 1982, and 1983.” for “a sum not to exceed \$400,000,000 for each of the fiscal years 1978 and 1979, and not to exceed \$675,000,000 for the fiscal year 1980, except that no funds shall be made available for such purpose (1) for fiscal year 1978 unless the amount appropriated under subsections (a) and (b) of this section for fiscal year 1978 is at least \$3,600,000,000; (2) for fiscal year 1979 unless the amount appropriated under subsections (a) and (b) of this section for fiscal year 1979 is at least \$3,750,000,000; or (3) for fiscal year 1980 unless the amount appropriated under subsections (a) and (b) of this section for fiscal year 1980 is at least \$3,900,000,000”.

Subsec. (e). Pub. L. 96-399, §111(b), struck out subsec. (e) which related to submission to Congress of timely requests for additional appropriations for fiscal years 1978 through 1980.

1979—Subsec. (a)(2). Pub. L. 96-153, §103(b), increased authorization of appropriation from \$250,000,000 to \$275,000,000 for fiscal year 1980.

Subsec. (c). Pub. L. 96-153, §103(a), increased authorization of appropriation for fiscal year 1980 from \$400,000,000 to \$675,000,000.

1977—Subsec. (a)(1). Pub. L. 95-128, §103(a), (b), authorized: grants to Indian tribes, appropriation authorizations for fiscal years 1978 through 1980, and unappropriated funds to be appropriated for any succeeding fiscal year; and deleted provisions which: prescribed \$8,400,000,000 as the limitation on amount of obligations incurred, authorized appropriation of \$2,500,000,000 for fiscal year 1975, increased to \$5,450,000,000 and \$8,400,000,000 for fiscal years 1976 and 1977 for liquidation of obligations, and made available for liquidation of contracts entered into hereunder appropriations for grants under title VII of the Housing Act of 1961 and sections 3102 and 3103 of this title, and supplemental grants under title I of the Demonstration Cities and Metropolitan Development Act of 1966, not otherwise obligated prior to Jan. 1, 1975.

Subsec. (a)(2). Pub. L. 95-128, §103(c), inserted use of additional money authorization provisions for fiscal years 1978 through 1980.

Subsec. (b). Pub. L. 95-128, §103(d), authorized appropriations for fiscal years 1978 through 1980, substituted “for the financial settlement and, to the extent feasible, the completion of projects and programs assisted under the categorical programs terminated in section 5316(a) of this title, primarily urban renewal projects assisted under the Housing Act of 1949, to units of general local government which require supplemental assistance which cannot be provided” for “to units of general local government having urgent community development needs which cannot be met” and inserted provision respecting requirement of prior appropriation of a minimum amount.

Subsecs. (c) to (e). Pub. L. 95-128, §103(e), added subsec. (c) and redesignated existing subsecs. (c) and (d) as (d) and (e), respectively.

1976—Subsec. (a)(2). Pub. L. 94-375 inserted “, and \$200,000,000 for the fiscal year 1977, not more than 50 per centum of which amount may be used under section 5306(d)(1) of this title,” after “1976”.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-181 applicable only to funds available for fiscal year 1984 and thereafter, see section

110(b) of Pub. L. 98-181, as amended, set out as a note under section 5316 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective Oct. 1, 1981, see section 371 of Pub. L. 97-35, set out as an Effective Date note under section 3701 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-128 effective Oct. 1, 1977, see section 114 of Pub. L. 95-128, set out as a note under section 5301 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5302, 5304, 5306, 5307, 5312, 5318, 5318a of this title.

§ 5304. Statement of activities and review

(a) Statement of objectives and projected use of funds by grantee prerequisite to receipt of grant; publication of proposals by grantees; notice and comment; citizen participation plan

(1) Prior to the receipt in any fiscal year of a grant under section 5306(b) of this title by any metropolitan city or urban county, under section 5306(d) of this title by any State, under section 5306(d)(2)(B) of this title by any unit of general local government, or under section 5306(a)(3) of this title by any insular area, the grantee shall have prepared a final statement of community development objectives and projected use of funds and shall have provided the Secretary with the certifications required in subsection (b) of this section and, where appropriate, subsection (c) of this section. In the case of metropolitan cities and urban counties receiving grants pursuant to section 5306(b) of this title, units of general local government receiving grants pursuant to section 5306(d)(2)(B) of this title, and insular areas receiving grants pursuant to section 5306(a)(3) of this title, the statement of projected use of funds shall consist of proposed community development activities. In the case of States receiving grants pursuant to section 5306(d) of this title, the statement of projected use of funds shall consist of the method by which the States will distribute funds to units of general local government.

(2) In order to permit public examination and appraisal of such statements, to enhance the public accountability of grantees, and to facilitate coordination of activities with different levels of government, the grantee shall in a timely manner—

(A) furnish citizens or, as appropriate, units of general local government information concerning the amount of funds available for proposed community development and housing activities and the range of activities that may be undertaken, including the estimated amount proposed to be used for activities that will benefit persons of low and moderate income and the plans of the grantee for minimizing displacement of persons as a result of activities assisted with such funds and to assist persons actually displaced as a result of such activities;

(B) publish a proposed statement in such manner to afford affected citizens or, as appropriate, units of general local government an

opportunity to examine its content and to submit comments on the proposed statement and on the community development performance of the grantee;

(C) hold one or more public hearings to obtain the views of citizens on community development and housing needs;

(D) provide citizens or, as appropriate, units of general local government with reasonable access to records regarding the past use of funds received under section 5306 of this title by the grantee; and

(E) provide citizens or, as appropriate, units of general local government with reasonable notice of, and opportunity to comment on, any substantial change proposed to be made in the use of funds received under section 5306 of this title from one eligible activity to another or in the method of distribution of such funds.

In preparing the final statement, the grantee shall consider any such comments and views and may, if deemed appropriate by the grantee, modify the proposed statement. The final statement shall be made available to the public, and a copy shall be furnished to the Secretary together with the certifications required under subsection (b) of this section and, where appropriate, subsection (c) of this section. Any final statement of activities may be modified or amended from time to time by the grantee in accordance with the same procedures required in this paragraph for the preparation and submission of such statement.

(3) A grant under section 5306 of this title may be made only if the grantee certifies that it is following a detailed citizen participation plan which—

(A) provides for and encourages citizen participation, with particular emphasis on participation by persons of low and moderate income who are residents of slum and blight areas and of areas in which section 106 [42 U.S.C. 5306] funds are proposed to be used, and in the case of a grantee described in section 5306(a) of this title, provides for participation of residents in low and moderate income neighborhoods as defined by the local jurisdiction;

(B) provides citizens with reasonable and timely access to local meetings, information, and records relating to the grantee's proposed use of funds, as required by regulations of the Secretary, and relating to the actual use of funds under this chapter;

(C) provides for technical assistance to groups representative of persons of low and moderate income that request such assistance in developing proposals with the level and type of assistance to be determined by the grantee;

(D) provides for public hearings to obtain citizen views and to respond to proposals and questions at all stages of the community development program, including at least the development of needs, the review of proposed activities, and review of program performance, which hearings shall be held after adequate notice, at times and locations convenient to potential or actual beneficiaries, and with accommodation for the handicapped;

(E) provides for a timely written answer to written complaints and grievances, within 15 working days where practicable; and

(F) identifies how the needs of non-English speaking residents will be met in the case of public hearings where a significant number of non-English speaking residents can be reasonably expected to participate.

This paragraph may not be construed to restrict the responsibility or authority of the grantee for the development and execution of its community development program.

(b) Certification of enumerated criteria by grantee to Secretary

Any grant under section 5306 of this title shall be made only if the grantee certifies to the satisfaction of the Secretary that—

(1) the grantee is in full compliance with the requirements of subsection (a)(2)(A), (B), and (C) of this section and has made the final statement available to the public;

(2) the grant will be conducted and administered in conformity with the Civil Rights Act of 1964 [42 U.S.C. 2000a et seq.] and the Fair Housing Act [42 U.S.C. 3601 et seq.], and the grantee will affirmatively further fair housing;

(3) the projected use of funds has been developed so as to give maximum feasible priority to activities which will benefit low- and moderate-income families or aid in the prevention or elimination of slums or blight, and the projected use of funds may also include activities which the grantee certifies are designed to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet such needs, except that (A) the aggregate use of funds received under section 5306 of this title and, if applicable, as a result of a guarantee or a grant under section 5308 of this title, during a period specified by the grantee of not more than 3 years, shall principally benefit persons of low and moderate income in a manner that ensures that not less than 70 percent of such funds are used for activities that benefit such persons during such period; and (B) a grantee that borders on the Great Lakes and that experiences significant adverse financial and physical effects due to lakefront erosion or flooding may include in the projected use of funds activities that are clearly designed to alleviate the threat posed, and rectify the damage caused, by such erosion or flooding if such activities will principally benefit persons of low and moderate income and the grantee certifies that such activities are necessary to meet other needs having a particular urgency;

(4) it has developed a community development plan pursuant to subsection (m) of this section, for the period specified by the grantee under paragraph (3), that identifies community development needs and specifies both short- and long-term community development objectives that have been developed in accordance with the primary objective and requirements of this chapter;

(5) the grantee will not attempt to recover any capital costs of public improvements assisted in whole or part under section 5306 of this title or with amounts resulting from a guarantee under section 5308 of this title by assessing any amount against properties owned and occupied by persons of low and moderate income, including any fee charged or assessment made as a condition of obtaining access to such public improvements, unless (A) funds received under section 5306 of this title are used to pay the proportion of such fee or assessment that relates to the capital costs of such public improvements that are financed from revenue sources other than under this chapter; or (B) for purposes of assessing any amount against properties owned and occupied by persons of moderate income, the grantee certifies to the Secretary that it lacks sufficient funds received under section 5306 of this title to comply with the requirements of subparagraph (A); and

(6) the grantee will comply with the other provisions of this chapter and with other applicable laws.

(c) Special certifications required for certain grants

A grant may be made under section 5306(b) of this title only if the unit of general local government certifies that it is following—

(1) a current housing affordability strategy which has been approved by the Secretary in accordance with section 12705 of this title, or

(2) a housing assistance plan which was approved by the Secretary during the 180-day period beginning on November 28, 1990, or during such longer period as may be prescribed by the Secretary in any case for good cause.

(d) Residential antidisplacement and relocation assistance plan; certification of adherence; contents

(1) A grant under section 5306 or 5318 of this title may be made only if the grantee certifies that it is following a residential antidisplacement and relocation assistance plan. A grantee receiving a grant under section 5306(a) of this title or section 5318 of this title shall so certify to the Secretary. A unit of general local government receiving amounts from a State under section 5306(d) of this title shall so certify to the State, and a unit of general local government receiving amounts from the Secretary under section 5306(d) of this title shall so certify to the Secretary.

(2) The residential antidisplacement and relocation assistance plan shall in connection with a development project assisted under section 5306 or 5318 of this title—

(A) in the event of such displacement, provide that—

(i) governmental agencies or private developers shall provide within the same community comparable replacement dwellings for the same number of occupants as could have been housed in the occupied and vacant occupiable low and moderate income dwelling units demolished or converted to a use other than for housing for low and moderate income persons, and provide that such replacement housing may include existing housing

assisted with project based assistance provided under section 1437f of this title;

(ii) such comparable replacement dwellings shall be designed to remain affordable to persons of low and moderate income for 10 years from the time of initial occupancy;

(iii) relocation benefits shall be provided for all low or moderate income persons who occupied housing demolished or converted to a use other than for low or moderate income housing, including reimbursement for actual and reasonable moving expenses, security deposits, credit checks, and other moving-related expenses, including any interim living costs; and in the case of displaced persons of low and moderate income, provide either—

(I) compensation sufficient to ensure that, for a 5-year period, the displaced families shall not bear, after relocation, a ratio of shelter costs to income that exceeds 30 percent; or

(II) if elected by a family, a lump-sum payment equal to the capitalized value of the benefits available under subclause (I) to permit the household to secure participation in a housing cooperative or mutual housing association; and

(iv) persons displaced shall be relocated into comparable replacement housing that is—

(I) decent, safe, and sanitary;

(II) adequate in size to accommodate the occupants;

(III) functionally equivalent; and

(IV) in an area not subject to unreasonably adverse environmental conditions;

(B) provide that persons displaced shall have the right to elect, as an alternative to the benefits under this subsection, to receive benefits under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.) if such persons determine that it is in their best interest to do so; and

(C) provide that where a claim for assistance under subparagraph (A)(iv) is denied by a grantee, the claimant may appeal to the Secretary in the case of a grant under section 5306 or 5318 of this title or to the appropriate State official in the case of a grant under section 5306(d) of this title, and that the decision of the Secretary or the State official shall be final unless a court determines the decision was arbitrary and capricious.

(3) Paragraphs (2)(A)(i) and (2)(A)(ii) shall not apply in any case in which the Secretary finds, on the basis of objective data, that there is available in the area an adequate supply of habitable affordable housing for low and moderate income persons. A determination under this paragraph is final and nonreviewable.

(e) Submission of performance and evaluation report by grantee to Secretary; contents; availability for citizen comment; annual review and audit by Secretary of program implementation; adjustments in amount of annual grants

Each grantee shall submit to the Secretary, at a time determined by the Secretary, a perform-

ance and evaluation report concerning the use of funds made available under section 5306 of this title, together with an assessment by the grantee of the relationship of such use to the objectives identified in the grantee's statement under subsection (a) of this section and to the requirements of subsection (b)(3) of this section. Such report shall also be made available to the citizens in each grantee's jurisdiction in sufficient time to permit such citizens to comment on such report prior to its submission, and in such manner and at such times as the grantee may determine. The grantee's report shall indicate its programmatic accomplishments, the nature of and reasons for changes in the grantee's program objectives, indications of how the grantee would change its programs as a result of its experiences, and an evaluation of the extent to which its funds were used for activities that benefited low- and moderate-income persons. The report shall include a summary of any comments received by the grantee from citizens in its jurisdiction respecting its program. The Secretary shall encourage and assist national associations of grantees eligible under section 5306(d)(2)(B) of this title, national associations of States, and national associations of units of general local government in nonentitlement areas to develop and recommend to the Secretary, within one year after November 30, 1983, uniform recordkeeping, performance reporting, and evaluation reporting, and auditing requirements for such grantees, States, and units of general local government, respectively. Based on the Secretary's approval of these recommendations, the Secretary shall establish such requirements for use by such grantees, States, and units of general local government. The Secretary shall, at least on an annual basis, make such reviews and audits as may be necessary or appropriate to determine—

(1) in the case of grants made under subsection (a)(3), (b), or (d)(2)(B) of section 5306 of this title, whether the grantee has carried out its activities and, where applicable, its housing assistance plan in a timely manner, whether the grantee has carried out those activities and its certifications in accordance with the requirements and the primary objectives of this chapter and with other applicable laws, and whether the grantee has a continuing capacity to carry out those activities in a timely manner; and

(2) in the case of grants to States made under section 5306(d) of this title, whether the State has distributed funds to units of general local government in a timely manner and in conformance to the method of distribution described in its statement, whether the State has carried out its certifications in compliance with the requirements of this chapter and other applicable laws, and whether the State has made such reviews and audits of the units of general local government as may be necessary or appropriate to determine whether they have satisfied the applicable performance criteria described in paragraph (1) of this subsection.

The Secretary may make appropriate adjustments in the amount of the annual grants in accordance with the Secretary's findings under

this subsection. With respect to assistance made available to units of general local government under section 5306(d) of this title, the Secretary may adjust, reduce, or withdraw such assistance, or take other action as appropriate in accordance with the Secretary's reviews and audits under this subsection, except that funds already expended on eligible activities under this chapter shall not be recaptured or deducted from future assistance to such units of general local government.

(f) Audit of grantees by General Accounting Office; access to books, accounts, records, etc., by representatives of General Accounting Office

Insofar as they relate to funds provided under this chapter, the financial transactions of recipients of such funds may be audited by the General Accounting Office under such rules and regulations as may be prescribed by the Comptroller General of the United States. The representatives of the General Accounting Office shall have access to all books, accounts, records, reports, files, and other papers, things, or property belonging to or in use by such recipients pertaining to such financial transactions and necessary to facilitate the audit.

(g) Environmental protection measures applicable for release of funds to applicants for projects; issuance of regulations by Secretary subsequent to consultation with Council on Environmental Quality; request and certification to Secretary for approval of release of funds; form, contents and effect of certification

(1) In order to assure that the policies of the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] and other provisions of law which further the purposes of such Act (as specified in regulations issued by the Secretary) are most effectively implemented in connection with the expenditure of funds under this chapter, and to assure to the public undiminished protection of the environment, the Secretary, in lieu of the environmental protection procedures otherwise applicable, may under regulations provide for the release of funds for particular projects to recipients of assistance under this chapter who assume all of the responsibilities for environmental review, decisionmaking, and action pursuant to such Act, and such other provisions of law as the regulations of the Secretary specify, that would apply to the Secretary were he to undertake such projects as Federal projects. The Secretary shall issue regulations to carry out this subsection only after consultation with the Council on Environmental Quality.

(2) The Secretary shall approve the release of funds for projects subject to the procedures authorized by this subsection only if, at least fifteen days prior to such approval and prior to any commitment of funds to such projects other than for purposes authorized by section 5305(a)(12) of this title or for environmental studies, the recipient of assistance under this chapter has submitted to the Secretary a request for such release accompanied by a certification which meets the requirements of paragraph (3). The Secretary's approval of any such

certification shall be deemed to satisfy his responsibilities under the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] and such other provisions of law as the regulations of the Secretary specify insofar as those responsibilities relate to the releases of funds for projects to be carried out pursuant thereto which are covered by such certification.

(3) A certification under the procedures authorized by this subsection shall—

(A) be in a form acceptable to the Secretary,

(B) be executed by the chief executive officer or other officer of the recipient of assistance under this chapter qualified under regulations of the Secretary,

(C) specify that the recipient of assistance under this chapter has fully carried out its responsibilities as described under paragraph (1) of this subsection, and

(D) specify that the certifying officer (i) consents to assume the status of a responsible Federal official under the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] and each provision of law specified in regulations issued by the Secretary insofar as the provisions of such Act or other such provision of law apply pursuant to paragraph (1) of this subsection, and (ii) is authorized and consents on behalf of the recipient of assistance under this chapter and himself to accept the jurisdiction of the Federal courts for the purpose of enforcement of his responsibilities as such an official.

(4) In the case of grants made to States pursuant to section 5306(d) of this title, the State shall perform those actions of the Secretary described in paragraph (2) and the performance of such actions shall be deemed to satisfy the Secretary's responsibilities referred to in the second sentence of such paragraph.

(h) Payments; revolving loan fund: establishment in private financial institution for rehabilitation activities; standards for payments: criteria

(1) Units of general local government receiving assistance under this chapter may receive funds, in one payment, in an amount not to exceed the total amount designated in the grant (or, in the case of a unit of general local government receiving a distribution from a State pursuant to section 5306(d) of this title, not to exceed the total amount of such distribution) for use in establishing a revolving loan fund which is to be established in a private financial institution and which is to be used to finance rehabilitation activities assisted under this chapter. Rehabilitation activities authorized under this section shall begin within 45 days after receipt of such payment and substantial disbursements from such fund must begin within 180 days after receipt of such payment.

(2) The Secretary shall establish standards for such cash payments which will insure that the deposits result in appropriate benefits in support of the recipient's rehabilitation program. These standards shall be designed to assure that the benefits to be derived from the local program include, at a minimum, one or more of the following elements, or such other criteria as determined by the Secretary—

(A) leverage of community development block grant funds so that participating financial institutions commit private funds for loans in the rehabilitation program in amounts substantially in excess of deposit of community development funds;

(B) commitment of private funds for rehabilitation loans at below-market interest rates or with repayment periods lengthened or at higher risk than would normally be taken;

(C) provision of administrative services in support of the rehabilitation program by the participating lending institutions; and

(D) interest earned on such cash deposits shall be used in a manner which supports the community rehabilitation program.

(i) Metropolitan city as part of urban county

In any case in which a metropolitan city is located, in whole or in part, within an urban county, the Secretary may, upon the joint request of such city and county, approve the inclusion of the metropolitan city as part of the urban county for purposes of submitting a statement under subsection (a) of this section and carrying out activities under this chapter.

(j) Retention of program income; condition of distribution

Notwithstanding any other provision of law, any unit of general local government may retain any program income that is realized from any grant made by the Secretary, or any amount distributed by a State, under section 5306 of this title if (1) such income was realized after the initial disbursement of the funds received by such unit of general local government under such section; and (2) such unit of general local government has agreed that it will utilize the program income for eligible community development activities in accordance with the provisions of this chapter; except that the Secretary may, by regulation, exclude from consideration as program income any amounts determined to be so small that compliance with this subsection creates an unreasonable administrative burden on the unit of general local government. A State may require as a condition of any amount distributed by such State under section 5306(d) of this title that a unit of general local government shall pay to such State any such income to be used by such State to fund additional eligible community development activities, except that such State shall waive such condition to the extent such income is applied to continue the activity from which such income was derived.

(k) Provision of benefits to displaced persons

Each grantee shall provide for reasonable benefits to any person involuntarily and permanently displaced as a result of the use of assistance received under this chapter to acquire or substantially rehabilitate property.

(l) Protection of individuals engaging in non-violent civil rights demonstrations

No funds authorized to be appropriated under section 5303 of this title may be obligated or expended to any unit of general local government that—

(1) fails to adopt and enforce a policy prohibiting the use of excessive force by law enforce-

ment agencies within its jurisdiction against any individuals engaged in nonviolent civil rights demonstrations; or

(2) fails to adopt and enforce a policy of enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location which is the subject of such nonviolent civil rights demonstration within its jurisdiction.

(m) Community development plans

(1) In general

Prior to the receipt in any fiscal year of a grant from the Secretary under subsection (a)(2), (b), (d)(1), or (d)(2)(B) of section 5306 of this title, each recipient shall have prepared and submitted in accordance with this subsection and in such standardized form as the Secretary shall, by regulation, prescribe a description of its priority nonhousing community development needs eligible for assistance under this chapter.

(2) Local governments

In the case of a recipient that is a unit of general local government other than an insular area—

(A) prior to the submission required by paragraph (1), the recipient shall, to the extent practicable, notify adjacent units of general local government and solicit the views of citizens on priority nonhousing community development needs; and

(B) the description required under paragraph (1) shall be submitted to the Secretary, the State, and any other unit of general local government within which the recipient is located, in such standardized form as the Secretary shall, by regulation, prescribe.

(3) States

In the case of a recipient that is a State, the description required by paragraph (1)—

(A) shall include only the needs within the State that affect more than one unit of general local government and involve activities typically funded by such States under this chapter; and

(B) shall be submitted to the Secretary in such standard form as the Secretary, by regulation, shall prescribe.

(4) Effect of submission

A submission under this subsection shall not be binding with respect to the use or distribution of amounts received under section 5306 of this title.

(Pub. L. 93-383, title I, §104, Aug. 22, 1974, 88 Stat. 638; Pub. L. 95-128, title I, §§104, 110(a), Oct. 12, 1977, 91 Stat. 1114, 1125; Pub. L. 95-557, title I, §103(a)-(d), Oct. 31, 1978, 92 Stat. 2083; Pub. L. 96-153, title I, §§103(c), (g), 109(a), Dec. 21, 1979, 93 Stat. 1102, 1105; Pub. L. 96-399, title I, §§101(d), 104(b), 105(a), 109, 111(c), Oct. 8, 1980, 94 Stat. 1615, 1616, 1618, 1619, 1621; Pub. L. 97-35, title III, §§302(b), (c)(1), (d)-(f), 309(d), Aug. 13, 1981, 95 Stat. 384, 386, 387, 396; Pub. L. 98-181, title I, §§101(b), 104, Nov. 30, 1983, 97 Stat. 1159, 1161; Pub. L. 98-479, title I, §101(a)(5)-(7), Oct. 17, 1984, 98 Stat. 2219; Pub. L. 100-242, title V, §§502(c), 505-509(a), Feb. 5, 1988, 101 Stat. 1923, 1926, 1927;

Pub. L. 100-628, title X, §1083, Nov. 7, 1988, 102 Stat. 3277; Pub. L. 101-625, title IX, §§902(b), 905, 906, 922, Nov. 28, 1990, 104 Stat. 4385, 4387, 4402; Pub. L. 102-550, title VIII, §§804, 808, 812, Oct. 28, 1992, 106 Stat. 3845, 3850; Pub. L. 103-233, title II, §232(a)(2)(B), Apr. 11, 1994, 108 Stat. 367; Pub. L. 108-186, title V, §501(c), Dec. 16, 2003, 117 Stat. 2697.)

REFERENCES IN TEXT

The Civil Rights Act of 1964, referred to in subsec. (b)(2), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended, which is classified principally to subchapters II to IX (§2000a et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

The Fair Housing Act, referred to in subsec. (b)(2), is title VIII of Pub. L. 90-284, Apr. 11, 1968, 82 Stat. 81, as amended, which is classified principally to subchapter I (§3601 et seq.) of chapter 45 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, referred to in subsec. (d)(2)(B), is Pub. L. 91-646, Jan. 2, 1971, 84 Stat. 1894, as amended, which is classified principally to chapter 61 (§4601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4601 of this title and Tables.

The National Environmental Policy Act of 1969, referred to in subsec. (g)(1), (2), (3)(D), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

AMENDMENTS

2003—Subsec. (a)(1). Pub. L. 108-186, §501(c)(1), in first sentence, struck out “or” after “State,” and inserted “or under section 5306(a)(3) of this title by any insular area,” after “government,” and, in second sentence, substituted a comma for “and in the case of” before “units” and inserted “and insular areas receiving grants pursuant to section 5306(a)(3) of this title,” after “section 5306(d)(2)(B) of this title.”

Subsec. (e)(1). Pub. L. 108-186, §501(c)(2), substituted “subsection (a)(3), (b), or (d)(2)(B) of section 5306 of this title” for “section 5306(b) or section 5306(d)(2)(B) of this title”.

Subsec. (m)(1). Pub. L. 108-186, §501(c)(3)(A), inserted “(a)(2),” after “under subsection”.

Subsec. (m)(2). Pub. L. 108-186, §501(c)(3)(B), substituted “government other than an insular area” for “government” in introductory provisions.

1994—Subsec. (b)(3)(A). Pub. L. 103-233 inserted “or a grant” after “guarantee”.

1992—Subsec. (b)(2). Pub. L. 102-550, §808, substituted “the Civil Rights Act of 1964 and the Fair Housing Act” for “Public Law 88-352 and Public Law 90-284”.

Subsec. (b)(4). Pub. L. 102-550, §812(b), inserted “pursuant to subsection (m) of this section” after “plan” and struck out “and housing” before “needs and”.

Subsec. (j). Pub. L. 102-550, §804, in first sentence, struck out “while the unit of general local government is participating in a community development program under this chapter” after “has agreed that” and inserted before period at end “; except that the Secretary may, by regulation, exclude from consideration as program income any amounts determined to be so small that compliance with this subsection creates an unreasonable administrative burden on the unit of general local government”.

Subsecs. (l), (m). Pub. L. 102-550, §812(a), redesignated subsec. (l), relating to community development plans, as (m) and amended it generally, substituting present provisions for provisions requiring recipients to have

submitted a description of its nonhousing community development needs and strategies for meeting those needs, providing for special requirements for such plans where the recipient was a State or a unit of general local government, and providing that a submission of a plan would not be binding with respect to the use or distribution of amounts received under section 5306 of this title.

1990—Subsec. (b)(3). Pub. L. 101-625, §902(b), substituted “70 percent” for “60 percent”.

Subsec. (c). Pub. L. 101-625, §905, amended subsec. (c) generally, substituting present provisions for provisions authorizing grants under section 5306(b) of this title only if the unit of local government certified that it followed a current housing assistance plan approved by the Secretary which (1) accurately surveyed the condition of the housing stock in the community, (2) specified a realistic annual goal for the number of dwelling units or persons of low and moderate income to be assisted, (3) indicated the general locations of proposed low and moderate income housing, and (4) specified activities that would be undertaken annually to minimize displacement and preserve or expand the availability of low and moderate income housing, and which required the establishment of dates and manner for the submission of housing assistance plans.

Subsec. (l). Pub. L. 101-625, §922, added subsec. (l) relating to community development plans.

Pub. L. 101-625, §906, added subsec. (l) relating to protection of individuals engaging in nonviolent civil rights demonstrations.

1988—Subsec. (a)(1). Pub. L. 100-242, §505, struck out at end “In all cases, beginning in fiscal year 1984, the statement required in this subsection shall include a description of the use of funds made available under section 5306 of this title in fiscal year 1982 and thereafter (or, beginning in fiscal year 1985, such use since preparation of the last statement prepared pursuant to this subsection) together with an assessment of the relationship of such use to the community development objectives identified in the statement prepared pursuant to this subsection for such previous fiscal years and to the requirements of subsection (b)(3) of this section.”

Subsec. (a)(3). Pub. L. 100-242, §508, added par. (3).

Subsec. (b)(3). Pub. L. 100-242, §506, designated provision after “except that” as cl. (A) and added cl. (B).

Pub. L. 100-242, §502(c), substituted “60” for “51”.

Subsec. (c)(1)(A), (B). Pub. L. 100-242, §507(b)(1), substituted “persons of low and moderate income” for “lower income persons” wherever appearing.

Subsec. (c)(1)(C). Pub. L. 100-242, §507(b), substituted “persons of low and moderate income” for “lower income persons” and “low-income persons”.

Subsec. (c)(1)(D). Pub. L. 100-242, §507(a), added subpar. (D).

Subsec. (d). Pub. L. 100-242, §509(a)(2), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (d)(1). Pub. L. 100-628, §1083(a), amended third sentence generally. Prior to amendment, third sentence read as follows: “A grantee receiving a grant under section 5306(d) of this title shall so certify to the State”.

Subsec. (d)(2)(A)(iii)(II). Pub. L. 100-628, §1083(b), inserted “and” after “mutual housing association”.

Subsecs. (e) to (k). Pub. L. 100-242, §509(a)(1), redesignated subsecs. (d) to (j) as (e) to (k), respectively.

1984—Subsec. (a)(2)(E). Pub. L. 98-479, §101(a)(5), inserted “or in the method of distribution of such funds”.

Subsec. (b)(5)(B). Pub. L. 98-479, §101(a)(6), substituted “moderate” for “low and moderate income who are not persons of very low” before “income, the grantee certifies”.

Subsec. (d). Pub. L. 98-479, §101(a)(7), struck out the comma between “which” and “its funds” in third sentence, and inserted “general” before “local” after “and units of” in fifth sentence, and before “local” in sixth sentence.

1983—Subsec. (a)(1). Pub. L. 98-181, §104(a), inserted sentence at end that the statement must include a de-

scription of the use of funds made available under section 5306 of this title in fiscal year 1982 and thereafter (or, beginning with fiscal year 1985, such use since preparation of the last statement under this subsection) together with an assessment of the relationship of such use to the community development objectives identified in the statement prepared pursuant to this subsection for previous fiscal years and to the requirements of subsec. (b)(3) of this section.

Subsec. (a)(2). Pub. L. 98-181, §104(b)(1), in provisions preceding subpar. (A) substituted "shall in a timely manner" for "shall".

Pub. L. 98-181, §104(b)(6), inserted at end "Any final statement of activities may be modified or amended from time to time by the grantee in accordance with the same procedures required in this paragraph for the preparation and submission of such statement."

Subsec. (a)(2)(A). Pub. L. 98-181, §104(b)(2), substituted "citizens or, as appropriate, units of general local government" for "citizens", and inserted "including the estimated amount proposed to be used for activities that will benefit persons of low and moderate income and the plans of the grantee for minimizing displacement of persons as a result of activities assisted with such funds and to assist persons actually displaced as a result of such activities".

Subsec. (a)(2)(D), (E). Pub. L. 98-181, §104(b)(3)-(5), added subpars. (D) and (E).

Subsec. (b)(2). Pub. L. 98-181, §104(c)(1), inserted requirement that the grantee affirmatively further fair housing.

Subsec. (b)(3). Pub. L. 98-181, §101(b), inserted provision that the aggregate use of funds received under section 5306 of this title and, if applicable, as a result of a guarantee under section 5308 of this title, during a period specified by the grantee of not more than 3 years, shall principally benefit persons of low and moderate income in a manner that ensures that not less than 51 percent of such funds are used for activities that benefit such persons during such period.

Subsec. (b)(4) to (6). Pub. L. 98-181, §104(c)(2)-(4), added pars. (4) and (5) and redesignated former par. (4) as (6).

Subsec. (c)(1)(A). Pub. L. 98-181, §104(d), inserted "(including the number of vacant and abandoned dwelling units)".

Subsec. (d). Pub. L. 98-181, §104(e), in provisions preceding par. (1), substituted "performance and evaluation report" for "performance report"; substituted "subsection (a) of this section and to the requirements of subsection (b)(3) of this section" for "subsection (a) of this section"; and inserted provision requiring that the report be made available for citizen comment prior to submission, that the report summarize such comments and indicate programmatic accomplishments, changes in programs and objectives, and an evaluation of the extent to which funds were used to benefit low- and moderate-income persons, and requiring the Secretary to establish uniform recordkeeping, performance and evaluation reporting, and requirements for grantees, States, and local governments, based on the Secretary's approval of recommendations made by such grantees and State and local governments.

Subsec. (g)(1). Pub. L. 98-181, §104(f), inserted "and substantial disbursements from such fund must begin within 180 days after receipt of such payment".

Subsecs. (i), (j). Pub. L. 98-181, §104(g), added subsecs. (i) and (j).

1981—Subsec. (a). Pub. L. 97-35, §302(b), substituted provisions relating to statement of objectives and projected use of funds by grantee, publication of proposals by grantees, and procedures applicable for provisions relating to contents and statements required in application.

Subsec. (b). Pub. L. 97-35, §302(b), substituted provisions relating to certifications of enumerated criteria by grantee to Secretary for provisions relating to additional requirements for application, certifications to Secretary, and waiver of required program contents.

Subsec. (c). Pub. L. 97-35, §302(b), substituted provisions relating to certifications by the unit of general

local government respecting enumerated grants for provisions relating to approval of applications.

Subsec. (d). Pub. L. 97-35, §302(c)(1), substituted provisions relating to performance and assessment reports by grantee to the Secretary concerning use of funds under section 5306 of this title, and reviews, audits and adjustments by the Secretary, for provisions relating to performance and assessment reports by grantee to the Secretary concerning activities carried out under this chapter, and reviews, audits, and adjustments by Secretary.

Subsec. (e). Pub. L. 97-35, §302(d), redesignated subsec. (g) as (e). Former subsec. (e), which related to review and comment on application by areawide agency under procedures established by President, was struck out.

Subsec. (f). Pub. L. 97-35, §302(d), (e), redesignated subsec. (h) as (f), in par. (1) substituted "recipients of assistance under this chapter" for "applicants", in par. (2) "recipient of assistance under this chapter" for "applicant" and "the releases of funds" for "the applications and releases of funds" and in par. (3)(B) to (D) "recipient of assistance under this chapter" for "applicant", and added par. (4). Former subsec. (f), which related to approval date of application and adjustment of grant subsequent to approval of application, was struck out.

Subsec. (g). Pub. L. 97-35, §302(d), (f), redesignated subsec. (i) as (g), in par. (1) substituted provision relating to units of general local government as recipients for provision relating to recipients of funds and in par. (2) struck out provision relating to review and approval of agreements. Former subsec. (g) redesignated (e).

Subsec. (h). Pub. L. 97-35, §§302(d), 309(d), redesignated subsec. (j) as (h) and substituted provisions relating to submission of a statement and carrying out activities for provisions relating to program planning, meeting application requirements, and program implementation. Former subsec. (h) redesignated (f).

Subsecs. (i), (j). Pub. L. 97-35, §302(d), redesignated subsecs. (i) and (j) as (g) and (h), respectively.

1980—Subsec. (a). Pub. L. 96-399, §104(b), inserted provision following par. (6) relating to discretionary inclusion in program summary comparable information with respect to applicant's energy conservation and renewable energy resource needs and objectives.

Subsec. (a)(2). Pub. L. 96-399, §105(a), in cl. (B) substituted "activities, and objectives, including activities" for "including activities", struck out "and objectives" after "moderate-income persons", and in cl. (C) inserted provisions respecting activities in the involuntary displacement of low- and moderate-income persons.

Subsec. (c). Pub. L. 96-399, §111(c)(1), substituted "5306(b)" for "5306(a)".

Subsec. (d). Pub. L. 96-399, §§109, 111(c)(2), substituted "Each" for "Prior to the beginning of fiscal year 1977 and each fiscal year thereafter, each", inserted provision relating to the annual submission of the performance report, prior to the beginning of each fiscal year, and less frequently for a grantee receiving a grant not funding a comprehensive development program, inserted provisions respecting determinations by the Secretary in the case of a grant for which a report is submitted less frequently than annually in accordance with the second sentence of this paragraph, and substituted "5306(c)" for "5306(d)(2)" and "5306(e)" for "5306(f)(1)(B)".

Subsec. (e). Pub. L. 96-399, §111(c)(2), substituted "5306(c)" for "5306(d)(2)" and "5306(e)" for "5306(f)(1)(B)".

Subsec. (j). Pub. L. 96-399, §101(d), added subsec. (j). 1979—Subsec. (a)(4)(A). Pub. L. 96-153, §109(a), inserted reference to impact of conversion of rental housing to condominium or cooperative ownership on housing needs.

Subsec. (b)(3). Pub. L. 96-153, §103(c), struck out cl. (A) and redesignated cls. (B) and (C) as (A) and (B), respectively.

Subsec. (h)(1). Pub. L. 96-153, §103(g)(1), substituted "Act of 1969 and other provisions of law which further

the purposes of such Act (as specified in regulations issued by the Secretary) are most” for “Act of 1969 are most”, and “such Act, and such other provisions of law as the regulations of the Secretary specify that would apply” for “such Act that would apply”.

Subsec. (h)(2). Pub. L. 96-153, §103(g)(2), substituted “National Environmental Policy Act of 1969 and such other provisions of law as the regulations of the Secretary specify” for “National Environmental Policy Act”.

Subsec. (h)(3)(D). Pub. L. 96-153, §103(g)(3), substituted “Act of 1969 and each provision of law specified in regulations issued by the Secretary insofar as the provisions of such Act or other provision of law” for “Act of 1969 insofar as the provisions of such Act” in cl. (i).

1978—Subsec. (a)(3)(C). Pub. L. 95-557, §103(c), inserted “as a result of existing or projected employment opportunities in the community (and those elderly persons residing in or expected to reside in the community), or as estimated in a community accepted State or regional housing opportunity plan approved by the Secretary” after “expected to reside in the community”.

Subsec. (a)(4)(A). Pub. L. 95-557, §103(a), (c), inserted “owners of homes requiring rehabilitation assistance” after “large families” and inserted “as a result of existing or projected employment opportunities in the community (and those elderly persons residing in or expected to reside in the community), or as estimated in a community accepted State or regional housing opportunity plan approved by the Secretary” after “expected to reside in the community”.

Subsec. (a)(4)(B)(i). Pub. L. 95-557, §103(b), inserted “including existing rental and owner occupied dwelling units to be upgraded and thereby preserved” after “existing dwelling units”.

Subsec. (c). Pub. L. 95-557, §103(d), inserted provisions relating to approval or disapproval of any application on the basis that such application addresses any one of the primary purposes described in par. (3) to a greater or lesser extent than any other, unless such purpose is plainly inappropriate, in which case the application may be disapproved.

1977—Subsec. (a). Pub. L. 95-128, §110(a), inserted reference to section 5318 of this title.

Subsec. (a)(1). Pub. L. 95-128, §104(a)(1), inserted “and housing” before “needs”.

Subsec. (a)(2)(B). Pub. L. 95-128, §104(a)(2), included provision activities designed to revitalize neighborhoods for benefit of low- and moderate-income persons.

Subsec. (a)(3). Pub. L. 95-128, §104(a)(3), inserted subpar. (B) requirement for a program designed to insure fully opportunity for participation by, and benefits to, the handicapped and added subpar. (C).

Subsec. (a)(4). Pub. L. 95-128, §104(a)(4), inserted subpar. (A) provision for identification of housing stock in a deteriorated condition; inserted in subpar. (B) “lower-income” before “persons” and added cl. (iii); and inserted subpar. (C)(i) provision respecting reclamation of housing stock where feasible through use of a broad range of techniques for housing restoration by local government, the private sector, or community organizations, including provision of a reasonable opportunity for tenants displaced as a result of such activities to relocate in their immediate neighborhood.

Subsec. (a)(6). Pub. L. 95-128, §104(a)(5), added cl. (A), redesignated former cls. (A) and (B) as (B) and (C), and redesignated former cl. (C) as (D) and substituted “with an opportunity to submit comments concerning the community development performance of the applicant; but nothing in this paragraph” for “an adequate opportunity to participate in the development of the application; but no part of this paragraph”.

Subsec. (b)(2). Pub. L. 95-128, §104(b), substituted in first sentence “low- and moderate-income” for “low- or moderate-income” and in second sentence after “urgency” the clause “because existing conditions pose a serious and immediate threat to the health or welfare of the community, and other financial resources are not available” for “as specifically described in the application”.

Subsec. (b)(3). Pub. L. 95-128, §104(c), added cl. (B), struck out former cl. “(B) the application relates to the first community development activity to be carried out by such locality with assistance under this chapter”, redesignated cl. (D) as (C) and struck out former cl. “(C) the assistance requested is for a single development activity under this chapter of a type eligible for assistance under title VII of the Housing Act of 1961 or title VII of the Housing and Urban Development Act of 1965”.

Subsec. (c)(3). Pub. L. 95-128, §104(d), inserted “, with specific regard to the primary purposes of principally benefiting persons of low- and moderate-income or aiding in the prevention or elimination of slums or blight or meeting other community development needs having a particular urgency,” before “or other applicable law”.

Subsec. (d). Pub. L. 95-128, §104(e), inserted requirement for inclusion of citizen comments in the performance reports and Secretary’s consideration of the comments and inserted provision for adjustment of grants under section 5306(d)(2) and (f)(1)(B) of this title without recapture of expended funds or deduction from future grants.

Subsec. (e). Pub. L. 95-128, §104(f), inserted provisions respecting State participation in selection process for funding the grants.

Subsec. (i). Pub. L. 95-128, §104(g), added subsec. (i).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-233 applicable with respect to any amounts made available to carry out subchapter II (§12721 et seq.) of chapter 130 of this title after Apr. 11, 1994, and any amounts made available to carry out that subchapter before that date that remain uncommitted on that date, with Secretary to issue any regulations necessary to carry out such amendment not later than end of 45-day period beginning on that date, see section 209 of Pub. L. 103-233, set out as a note under section 5301 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 509(b) of Pub. L. 100-242 provided that: “The amendment made by subsection (a) [amending this section] shall take effect on October 1, 1988.”

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-181 applicable only to funds available for fiscal year 1984 and thereafter, see section 110(b) of Pub. L. 98-181, as amended, set out as a note under section 5316 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by sections 302(b), (d)–(f) and 309(d) of Pub. L. 97-35 effective Oct. 1, 1981, see section 371 of Pub. L. 97-35, set out as an Effective Date note under section 3701 of Title 12, Banks and Banking.

Section 302(c)(2) of Pub. L. 97-35 provided that: “The amendment made by paragraph (1) [amending this section] shall take effect on October 1, 1982.”

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-557 effective Oct. 1, 1978, see section 104 of Pub. L. 95-557, set out as a note under section 1709 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-128 effective Oct. 1, 1977, see section 114 of Pub. L. 95-128, set out as a note under section 5301 of this title.

COMPUTERIZED DATABASE OF COMMUNITY DEVELOPMENT NEEDS

Section 852 of Pub. L. 102-550 provided that:

“(a) ESTABLISHMENT OF DEMONSTRATION PROGRAM.—Not later than the expiration of the 1-year period beginning on the date appropriations for the purposes of this section are made available, the Secretary of Hous-

ing and Urban Development (hereafter in this section referred to as the 'Secretary') shall establish and implement a demonstration program to determine the feasibility of assisting States and units of general local government to develop methods, utilizing contemporary computer technology, to—

“(1) monitor, inventory, and maintain current listings of the community development needs of the States and units of general local government; and

“(2) coordinate strategies within States (especially among various units of general local government) for meeting such needs.

“(b) INTEGRATED DATABASE SYSTEM AND COMPUTER MAPPING TOOL.—

“(1) DEVELOPMENT AND PURPOSES.—In carrying out the program under this section, the Secretary shall provide for the development of an integrated database system and computer mapping tool designed to efficiently (A) collect, store, process, and retrieve information relating to priority nonhousing community development needs within States, and (B) coordinate strategies for meeting such needs. The integrated database system and computer mapping tool shall be designed in a manner to coordinate and facilitate the preparation of community development plans under section 104(m)(1) of the Housing and Community Development Act of 1974 [42 U.S.C. 5304(m)(1)] and to process any information necessary for such plans.

“(2) AVAILABILITY TO STATES.—The Secretary shall make the integrated database system and computer mapping tool developed pursuant to this subsection available to States without charge.

“(3) COORDINATION WITH EXISTING TECHNOLOGY.—The Secretary shall, to the extent practicable, utilize existing technologies and coordinate such activities with existing data systems to prevent duplication.

“(c) TECHNICAL ASSISTANCE.—Under the program under this section, the Secretary shall provide consultation and advice to States and units of general local government regarding the capabilities and advantages of the integrated database system and computer mapping tool developed pursuant to subsection (b) and assistance in installing and using the database system and mapping tool.

“(d) GRANTS.—

“(1) AUTHORITY AND PURPOSE.—The Secretary shall, to the extent amounts are made available under appropriation Acts pursuant to subsection (g), make grants to States for capital costs relating to installation and use of the integrated database system and computer mapping tool developed pursuant to subsection (b).

“(2) LIMITATIONS.—The Secretary may not make more than one grant under this subsection to any single State. The Secretary may not make a grant under this subsection to any single State in an amount exceeding \$1,000,000.

“(3) APPLICATION AND SELECTION.—The Secretary shall provide for the form and manner of applications for grants under this subsection. The Secretary shall establish criteria for the selection of States which have submitted applications to receive grants under this section and shall select recipients according to such criteria, which shall give priority to States having, on a long-term basis (as determined by the Secretary), levels of unemployment above the national average level.

“(e) STATE COORDINATION OF LOCAL NEEDS.—Each State that receives a grant under subsection (d) shall annually submit to the Secretary a report containing a summary of the priority nonhousing community development needs within the State.

“(f) REPORTS BY SECRETARY.—The Secretary shall annually submit to the Committees on Banking, Finance and Urban Affairs [now Committee on Financial Services] of the House of Representatives and Banking, Housing, and Urban Affairs of the Senate, a report containing a summary of the information submitted for the year by States pursuant to subsection (e), which

shall describe the priority nonhousing community development needs within such States.

“(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for each of the fiscal years 1993 and 1994, \$10,000,000 to carry out the program established under this section.”

AUTHORITY TO PROVIDE LUMP-SUM PAYMENTS TO REVOLVING LOAN FUNDS

Section 909 of Pub. L. 101-625 provided that:

“(a) IN GENERAL.—Notwithstanding any other provision of law, units of general local government receiving assistance under title I of the Housing and Community Development Act of 1974 [42 U.S.C. 5301 et seq.] may receive funds in one payment for use in establishing or supplementing revolving loan funds in the manner provided under section 104(h) of such Act (42 U.S.C. 5304(h)).

“(b) APPLICABILITY.—This section shall apply to funds approved in appropriations Acts for use under title I of the Housing and Community Development Act of 1974 for fiscal year 1992 and any fiscal year thereafter.”

REVOLVING LOAN FUNDS

Pub. L. 102-139, title II, Oct. 28, 1991, 105 Stat. 752, provided: “That after September 30, 1991, notwithstanding section 909 of the Cranston-Gonzalez National Affordable Housing Act (Public Law 101-625) [set out above], no funds provided or heretofore provided in this or any other appropriations Act shall be used to establish or supplement a revolving fund under section 104(h) of the Housing and Community Development Act of 1974 [42 U.S.C. 5304(h)], as amended.”

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 101-507, title II, Nov. 5, 1990, 104 Stat. 1365.

Pub. L. 101-144, title II, Nov. 9, 1989, 103 Stat. 850.

REPORT TO CONGRESS CONCERNING CONVERSION OF RENTAL HOUSING TO CONDOMINIUM OR COOPERATIVE OWNERSHIP

Section 109(b) of Pub. L. 96-153 directed Secretary of Housing and Urban Development, not later than six months after Dec. 12, 1979, to submit a report to Congress concerning conversion of rental housing to condominium or cooperative ownership, which report was to include an estimate of number of such conversions which have occurred since 1970, a projection of number of such conversions estimated to occur during period 1980 through 1985, an assessment of impact that such conversions have had or are likely to have on availability of housing to lower income persons, an assessment of extent to which such conversions are concentrated in certain areas or types of areas of country, and an assessment of factors contributing to increase in such conversions, and which report was also to include recommendations concerning alternative means to minimize the adverse impact that such conversions may have on lower income persons.

FLOODPLAIN MANAGEMENT

For provisions relating to reduction of risk of flood loss, minimization of impact of floods on human safety, health and welfare, and management of floodplains, see Ex. Ord. No. 11988, May 24, 1977, 42 F.R. 26951, set out as a note under section 4321 of this title.

PROTECTION OF WETLANDS

For provisions relating to protection of wetlands, see Ex. Ord. No. 11990, May 24, 1977, 42 F.R. 26961, set out as a note under section 4321 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1439, 5306, 5309, 5316, 5318a, 12705 of this title.

§ 5305. Activities eligible for assistance

(a) Enumeration of eligible activities

Activities assisted under this chapter may include only—

(1) the acquisition of real property (including air rights, water rights, and other interests therein) which is (A) blighted, deteriorated, deteriorating, undeveloped, or inappropriately developed from the standpoint of sound community development and growth; (B) appropriate for rehabilitation or conservation activities; (C) appropriate for the preservation or restoration of historic sites, the beautification of urban land, the conservation of open spaces, natural resources, and scenic areas, the provision of recreational opportunities, or the guidance of urban development; (D) to be used for the provision of public works, facilities, and improvements eligible for assistance under this chapter; or (E) to be used for other public purposes;

(2) the acquisition, construction, reconstruction, or installation (including design features and improvements with respect to such construction, reconstruction, or installation that promote energy efficiency) of public works, facilities (except for buildings for the general conduct of government), and site or other improvements;

(3) code enforcement in deteriorated or deteriorating areas in which such enforcement, together with public or private improvements or services to be provided, may be expected to arrest the decline of the area;

(4) clearance, demolition, removal, reconstruction, and rehabilitation (including rehabilitation which promotes energy efficiency) of buildings and improvements (including interim assistance, and financing public or private acquisition for reconstruction or rehabilitation, and reconstruction or rehabilitation, of privately owned properties, and including the renovation of closed school buildings);

(5) special projects directed to the removal of material and architectural barriers which restrict the mobility and accessibility of elderly and handicapped persons;

(6) payments to housing owners for losses of rental income incurred in holding for temporary periods housing units to be utilized for the relocation of individuals and families displaced by activities under this chapter;

(7) disposition (through sale, lease, donation, or otherwise) of any real property acquired pursuant to this chapter or its retention for public purposes;

(8) provision of public services, including but not limited to those concerned with employment, crime prevention, child care, health, drug abuse, education, energy conservation, welfare or recreation needs, if such services have not been provided by the unit of general local government (through funds raised by such unit, or received by such unit from the State in which it is located) during any part of the twelve-month period immediately preceding the date of submission of the statement with respect to which funds are to be made available under this chapter, and which are to be used for such services, unless the Secretary finds that the discontinuation of such services was the result of events not within the control of the unit of general local government, except that not more than 15 per centum of the amount of any assistance to a unit of general

local government (or in the case of nonentitled communities not more than 15 per centum statewide) under this chapter including program income may be used for activities under this paragraph unless such unit of general local government used more than 15 percent of the assistance received under this chapter for fiscal year 1982 or fiscal year 1983 for such activities (excluding any assistance received pursuant to Public Law 98-8), in which case such unit of general local government may use not more than the percentage or amount of such assistance used for such activities for such fiscal year, whichever method of calculation yields the higher amount, except that of any amount of assistance under this chapter (including program income) in each of fiscal years 1993 through 2003 to the City of Los Angeles and County of Los Angeles, each such unit of general government may use not more than 25 percent in each such fiscal year for activities under this paragraph, and except that of any amount of assistance under this chapter (including program income) in each of fiscal years 1999, 2000, and 2001, to the City of Miami, such city may use not more than 25 percent in each fiscal year for activities under this paragraph;

(9) payment of the non-Federal share required in connection with a Federal grant-in-aid program undertaken as part of activities assisted under this chapter;

(10) payment of the cost of completing a project funded under title I of the Housing Act of 1949 [42 U.S.C. 1450 et seq.];

(11) relocation payments and assistance for displaced individuals, families, businesses, organizations, and farm operations, when determined by the grantee to be appropriate;

(12) activities necessary (A) to develop a comprehensive community development plan, and (B) to develop a policy-planning-management capacity so that the recipient of assistance under this chapter may more rationally and effectively (i) determine its needs, (ii) set long-term goals and short-term objectives, (iii) devise programs and activities to meet these goals and objectives, (iv) evaluate the progress of such programs in accomplishing these goals and objectives, and (v) carry out management, coordination, and monitoring of activities necessary for effective planning implementation;

(13) payment of reasonable administrative costs related to establishing and administering federally approved enterprise zones and payment of reasonable administrative costs and carrying charges related to (A) administering the HOME program under title II of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12721 et seq.]; and (B) the planning and execution of community development and housing activities, including the provision of information and resources to residents of areas in which community development and housing activities are to be concentrated with respect to the planning and execution of such activities, and including the carrying out of activities as described in sec-

tion 701(e) of the Housing Act of 1954¹ on August 12, 1981;

(14) provision of assistance including loans (both interim and long-term) and grants for activities which are carried out by public or private nonprofit entities, including (A) acquisition of real property; (B) acquisition, construction, reconstruction, rehabilitation, or installation of (i) public facilities (except for buildings for the general conduct of government), site improvements, and utilities, and (ii) commercial or industrial buildings or structures and other commercial or industrial real property improvements; and (C) planning;

(15) assistance to neighborhood-based nonprofit organizations, local development corporations, nonprofit organizations serving the development needs of the communities in non-entitlement areas, or entities organized under section 681(d)¹ of title 15 to carry out a neighborhood revitalization or community economic development or energy conservation project in furtherance of the objectives of section 5301(c) of this title, and assistance to neighborhood-based nonprofit organizations, or other private or public nonprofit organizations, for the purpose of assisting, as part of neighborhood revitalization or other community development, the development of shared housing opportunities (other than by construction of new facilities) in which elderly families (as defined in section 1437a(b)(3) of this title) benefit as a result of living in a dwelling in which the facilities are shared with others in a manner that effectively and efficiently meets the housing needs of the residents and thereby reduces their cost of housing;

(16) activities necessary to the development of energy use strategies related to a recipient's development goals, to assure that those goals are achieved with maximum energy efficiency, including items such as—

(A) an analysis of the manner in, and the extent to, which energy conservation objectives will be integrated into local government operations, purchasing and service delivery, capital improvements budgeting, waste management, district heating and cooling, land use planning and zoning, and traffic control, parking, and public transportation functions; and

(B) a statement of the actions the recipient will take to foster energy conservation and the use of renewable energy resources in the private sector, including the enactment and enforcement of local codes and ordinances to encourage or mandate energy conservation or use of renewable energy resources, financial and other assistance to be provided (principally for the benefit of low- and moderate-income persons) to make energy conserving improvements to residential structures, and any other proposed energy conservation activities;

(17) provision of assistance to private, for-profit entities, when the assistance is appropriate to carry out an economic development project (that shall minimize, to the extent

practicable, displacement of existing businesses and jobs in neighborhoods) that—

(A) creates or retains jobs for low- and moderate-income persons;

(B) prevents or eliminates slums and blight;

(C) meets urgent needs;

(D) creates or retains businesses owned by community residents;

(E) assists businesses that provide goods or services needed by, and affordable to, low- and moderate-income residents; or

(F) provides technical assistance to promote any of the activities under subparagraphs (A) through (E);

(18) the rehabilitation or development of housing assisted under section 1437o² of this title;

(19) provision of technical assistance to public or nonprofit entities to increase the capacity of such entities to carry out eligible neighborhood revitalization or economic development activities, which assistance shall not be considered a planning cost as defined in paragraph (12) or administrative cost as defined in paragraph (13);

(20) housing services, such as housing counseling in connection with tenant-based rental assistance and affordable housing projects assisted under title II of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12721 et seq.], energy auditing, preparation of work specifications, loan processing, inspections, tenant selection, management of tenant-based rental assistance, and other services related to assisting owners, tenants, contractors, and other entities, participating or seeking to participate in housing activities assisted under title II of the Cranston-Gonzalez National Affordable Housing Act;

(21) provision of assistance by recipients under this chapter to institutions of higher education having a demonstrated capacity to carry out eligible activities under this subsection for carrying out such activities;

(22) provision of assistance to public and private organizations, agencies, and other entities (including nonprofit and for-profit entities) to enable such entities to facilitate economic development by—

(A) providing credit (including providing direct loans and loan guarantees, establishing revolving loan funds, and facilitating peer lending programs) for the establishment, stabilization, and expansion of microenterprises;

(B) providing technical assistance, advice, and business support services (including assistance, advice, and support relating to developing business plans, securing funding, conducting marketing, and otherwise engaging in microenterprise activities) to owners of microenterprises and persons developing microenterprises; and

(C) providing general support (such as peer support programs and counseling) to owners of microenterprises and persons developing microenterprises;

¹ See References in Text note below.

² See References in Text note below.

(23) activities necessary to make essential repairs and to pay operating expenses necessary to maintain the habitability of housing units acquired through tax foreclosure proceedings in order to prevent abandonment and deterioration of such housing in primarily low- and moderate-income neighborhoods;

(24)³ the construction or improvement of tornado-safe shelters for residents of manufactured housing, and the provision of assistance (including loans and grants) to nonprofit and for-profit entities (including owners of manufactured housing parks) for such construction or improvement, except that—

(A) a shelter assisted with amounts provided pursuant to this paragraph may be located only in a neighborhood (including a manufactured housing park) that—

(i) contains not less than 20 manufactured housing units that are within such proximity to the shelter that the shelter is available to the residents of such units in the event of a tornado;

(ii) consists predominantly of persons of low and moderate income; and

(iii) is located within a State in which a tornado has occurred during the fiscal year for which the amounts to be used under this paragraph were made available or any of the 3 preceding fiscal years, as determined by the Secretary after consultation with the Director of the Federal Emergency Management Agency;

(B) such a shelter shall comply with standards for construction and safety as the Secretary, after consultation with the Director of the Federal Emergency Management Agency, shall provide to ensure protection from tornadoes;

(C) such a shelter shall be of a size sufficient to accommodate, at a single time, all occupants of manufactured housing units located within the neighborhood in which the shelter is located; and

(D) amounts may not be used for a shelter as provided under this paragraph unless there is located, within the neighborhood in which the shelter is located (or, in the case of a shelter located in a manufactured housing park, within 1,500 feet of such park), a warning siren that is operated in accordance with such local, regional, or national disaster warning programs or systems as the Secretary, after consultation with the Director of the Federal Emergency Management Agency, considers appropriate to ensure adequate notice of occupants of manufactured housing located in such neighborhood or park of a tornado; and

(24)³ provision of direct assistance to facilitate and expand homeownership among persons of low and moderate income (except that such assistance shall not be considered a public service for purposes of paragraph (8)) by using such assistance to—

(A) subsidize interest rates and mortgage principal amounts for low- and moderate-income homebuyers;

(B) finance the acquisition by low- and moderate-income homebuyers of housing that is occupied by the homebuyers;

(C) acquire guarantees for mortgage financing obtained by low- and moderate-income homebuyers from private lenders (except that amounts received under this chapter may not be used under this subparagraph to directly guarantee such mortgage financing and grantees under this chapter may not directly provide such guarantees);

(D) provide up to 50 percent of any downpayment required from low- or moderate-income homebuyer; or

(E) pay reasonable closing costs (normally associated with the purchase of a home) incurred by a low- or moderate-income homebuyer; and

(25) lead-based paint hazard evaluation and reduction, as defined in section 4851b of this title.

(b) Reimbursement of Secretary for administrative services connected with rehabilitation of properties

Upon the request of the recipient of assistance under this chapter, the Secretary may agree to perform administrative services on a reimbursable basis on behalf of such recipient in connection with loans or grants for the rehabilitation of properties as authorized under subsection (a)(4) of this section.

(c) Activities benefiting persons of low and moderate income

(1) In any case in which an assisted activity described in paragraph (14) or (17) of subsection (a) of this section is identified as principally benefiting persons of low and moderate income, such activity shall—

(A) be carried out in a neighborhood consisting predominately of persons of low and moderate income and provide services for such persons; or

(B) involve facilities designed for use predominately by persons of low and moderate income; or

(C) involve employment of persons, a majority of whom are persons of low and moderate income.

(2)(A) In any case in which an assisted activity described in subsection (a) of this section is designed to serve an area generally and is clearly designed to meet identified needs of persons of low and moderate income in such area, such activity shall be considered to principally benefit persons of low and moderate income if (i) not less than 51 percent of the residents of such area are persons of low and moderate income; (ii) in any metropolitan city or urban county, the area served by such activity is within the highest quartile of all areas within the jurisdiction of such city or county in terms of the degree of concentration of persons of low and moderate income; or (iii) the assistance for such activity is limited to paying assessments (including any charge made as a condition of obtaining access) levied against properties owned and occupied by persons of low and moderate income to recover the capital cost for a public improvement.

(B) The requirements of subparagraph (A) do not prevent the use of assistance under this

³So in original. Two pars. (24) have been enacted.

chapter for the development, establishment, and operation for not to exceed 2 years after its establishment of a uniform emergency telephone number system if the Secretary determines that—

(i) such system will contribute substantially to the safety of the residents of the area served by such system;

(ii) not less than 51 percent of the use of the system will be by persons of low and moderate income; and

(iii) other Federal funds received by the grantee are not available for the development, establishment, and operation of such system due to the insufficiency of the amount of such funds, the restrictions on the use of such funds, or the prior commitment of such funds for other purposes by the grantee.

The percentage of the cost of the development, establishment, and operation of such a system that may be paid from assistance under this chapter and that is considered to benefit low and moderate income persons is the percentage of the population to be served that is made up of persons of low and moderate income.

(3) Any assisted activity under this chapter that involves the acquisition or rehabilitation of property to provide housing shall be considered to benefit persons of low and moderate income only to the extent such housing will, upon completion, be occupied by such persons.

(4) For the purposes of subsection (c)(1)(C) of this section—

(A) if an employee resides in, or the assisted activity through which he or she is employed, is located in a census tract that meets the Federal enterprise zone eligibility criteria, the employee shall be presumed to be a person of low- or moderate-income; or

(B) if an employee resides in a census tract where not less than 70 percent of the residents have incomes at or below 80 percent of the area median, the employee shall be presumed to be a person of low or moderate income.

(d) Training program

The Secretary shall implement, using funds recaptured pursuant to section 5318(o) of this title, an on-going education and training program for officers and employees of the Department, especially officers and employees of area and other field offices of the Department, who are responsible for monitoring and administering activities pursuant to paragraphs (14), (15), and (17) of subsection (a) of this section for the purpose of ensuring that (A) such personnel possess a thorough understanding of such activities; and (B) regulations and guidelines are implemented in a consistent fashion.

(e) Guidelines for evaluating and selecting economic development projects

(1) Establishment

The Secretary shall establish, by regulation, guidelines to assist grant recipients under this chapter to evaluate and select activities described in subsection (a)(14), (15), and (17) of this section for assistance with grant amounts. The Secretary shall not base a determination of eligibility of the use of funds under this chapter for such assistance solely

on the basis that the recipient fails to achieve one or more of the guidelines' objectives as stated in paragraph (2).

(2) Project costs and financial requirements

The guidelines established under this subsection shall include the following objectives:

(A) The project costs of such activities are reasonable.

(B) To the extent practicable, reasonable financial support has been committed for such activities from non-Federal sources prior to disbursement of Federal funds.

(C) To the extent practicable, any grant amounts to be provided for such activities do not substantially reduce the amount of non-Federal financial support for the activity.

(D) Such activities are financially feasible.

(E) To the extent practicable, such activities provide not more than a reasonable return on investment to the owner.

(F) To the extent practicable, grant amounts used for the costs of such activities are disbursed on a pro rata basis with amounts from other sources.

(3) Public benefit

The guidelines established under this subsection shall provide that the public benefit provided by the activity is appropriate relative to the amount of assistance provided with grant amounts under this chapter.

(f) Assistance to for-profit entities

In any case in which an activity described in paragraph (17) of subsection (a) of this section is provided assistance such assistance shall not be limited to activities for which no other forms of assistance are available or could not be accomplished but for that assistance.

(g) Microenterprise and small business program requirements

In developing program requirements and providing assistance pursuant to paragraph (17) of subsection (a) of this section to a microenterprise or small business, the Secretary shall—

(1) take into account the special needs and limitations arising from the size of the entity; and

(2) not consider training, technical assistance, or other support services costs provided to small businesses or microenterprises or to grantees and subgrantees to develop the capacity to provide such assistance, as a planning cost pursuant to subsection (a)(12) of this section or an administrative cost pursuant to subsection (a)(13) of this section.

(h) Prohibition on use of assistance for employment relocation activities

Notwithstanding any other provision of law, no amount from a grant under section 5306 of this title made in fiscal year 1999 or any succeeding fiscal year may be used to assist directly in the relocation of any industrial or commercial plant, facility, or operation, from 1 area to another area, if the relocation is likely to result in a significant loss of employment in the labor market area from which the relocation occurs.

(Pub. L. 93-383, title I, §105, Aug. 22, 1974, 88 Stat. 641; Pub. L. 94-375, §15(b), Aug. 3, 1976, 90

Stat. 1076; Pub. L. 95-128, title I, §105, Oct. 12, 1977, 91 Stat. 1116; Pub. L. 95-557, title I, §103(e), Oct. 31, 1978, 92 Stat. 2084; Pub. L. 96-399, title I, §104(c)-(e), Oct. 8, 1980, 94 Stat. 1616-1618; Pub. L. 97-35, title III, §§303(a), 309(e)-(g), Aug. 13, 1981, 95 Stat. 387, 396; Pub. L. 98-181, title I, §105(a), (b)(1), (c)-(e), title III, §302(a), Nov. 30, 1983, 97 Stat. 1163, 1164, 1206; Pub. L. 98-479, title I, §101(a)(8), (9)(A), Oct. 17, 1984, 98 Stat. 2219; Pub. L. 100-242, title V, §§504, 510, 511, Feb. 5, 1988, 101 Stat. 1925, 1929; Pub. L. 100-404, title I, Aug. 19, 1988, 102 Stat. 1019; Pub. L. 101-625, title IX, §§907, 908, Nov. 28, 1990, 104 Stat. 4387, 4389; Pub. L. 102-550, title VIII, §§805, 806(a), (b), (c), 807(a), (b)(3), (c)(1), (d)-(f), 809, title X, §1012(f), Oct. 28, 1992, 106 Stat. 3846, 3847, 3849, 3850, 3905; Pub. L. 103-195, §2(a), Dec. 14, 1993, 107 Stat. 2297; Pub. L. 103-233, title II, §207, Apr. 11, 1994, 108 Stat. 365; Pub. L. 104-134, title I, §101(e) [title II, §225], Apr. 26, 1996, 110 Stat. 1321-257, 1321-291; renumbered title I, Pub. L. 104-140, §1(a), May 2, 1996, 110 Stat. 1327; Pub. L. 104-204, title II, §220, Sept. 26, 1996, 110 Stat. 2906; Pub. L. 105-276, title II, §§218, 232, title V, §§588, 596(a), Oct. 21, 1998, 112 Stat. 2487, 2492, 2651, 2659; Pub. L. 106-377, §1(a)(1) [title II, §224], Oct. 27, 2000, 114 Stat. 1441, 1441A-30; Pub. L. 107-116, title VI, §631, Jan. 10, 2002, 115 Stat. 2227; Pub. L. 108-146, §2, Dec. 3, 2003, 117 Stat. 1883.)

REFERENCES IN TEXT

Public Law 98-8, referred to in subsec. (a)(8), is Pub. L. 98-8, Mar. 24, 1983, 97 Stat. 13. Provisions of that Act relating to assistance under this chapter are not classified to the Code. For complete classification of this Act to the Code, see Tables.

The Housing Act of 1949, referred to in subsec. (a)(10), is act July 15, 1949, ch. 338, 63 Stat. 413, as amended. Title I of the Housing Act of 1949 was classified generally to subchapter II (§1450 et seq.) of chapter 8A of this title, and was omitted from the Code pursuant to section 5316 of this title which terminated authority to make grants and loans under such title I after Jan. 1, 1975. For complete classification of this Act to the Code, see Short Title note set out under section 1441 of this title and Tables.

The Cranston-Gonzalez National Affordable Housing Act, referred to in subsec. (a)(13)(A), (20), is Pub. L. 101-625, Nov. 28, 1990, 104 Stat. 4079. Title II of the Act, known as the HOME Investment Partnerships Act, is classified principally to subchapter II (§12721 et seq.) of chapter 130 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 12701 of this title and Tables.

Section 701(e) of the Housing Act of 1954, referred to in subsec. (a)(13)(B), is section 701(e) of act Aug. 2, 1954, ch. 649, 68 Stat. 640, as amended, which was classified to section 461(e) of former Title 40, Public Buildings, Property, and Works, and was repealed by Pub. L. 97-35, title III, §313(b), Aug. 13, 1981, 95 Stat. 398.

Section 681(d) of title 15, referred to in subsec. (a)(15), was repealed by Pub. L. 104-208, div. D, title II, §208(b)(3)(A), Sept. 30, 1996, 110 Stat. 3009-742.

Section 1437o of this title, referred to in subsec. (a)(18), was repealed by Pub. L. 101-625, title II, §289(b), Nov. 28, 1990, 104 Stat. 4128.

CODIFICATION

In subsec. (a)(13), "August 12, 1981" substituted for "the date prior to the date of enactment of the Housing and Community Development Amendments of 1981".

AMENDMENTS

2003—Subsec. (a)(22). Pub. L. 108-146, §2(1), which directed amendment of par. (22) by striking out "and" at

end, could not be executed because that word had been previously stricken.

Subsec. (a)(23). Pub. L. 108-146, §2(2), which directed amendment of par. (23) by substituting a semicolon for period at end, could not be executed because par. (23) did not have a period at end.

2003—Subsec. (a)(24). Pub. L. 108-146, §2(2), added par. (24) relating to tornado-safe shelters.

2002—Subsec. (a)(8). Pub. L. 107-116 substituted "through 2003" for "through 2001".

2000—Subsec. (a)(8). Pub. L. 106-377 substituted "1993 through 2001 to the City of Los Angeles" for "1993 through 2000 to the City of Los Angeles".

1998—Subsec. (a)(8). Pub. L. 105-276, §596(a), which directed the substitution of "2000" for "1998", was executed by substituting "2000" for "1999", to reflect the probable intent of Congress and the amendment by Pub. L. 105-276, §218, see below.

Pub. L. 105-276, §232, substituted "each of fiscal years 1999, 2000, and 2001, to the City of Miami, such city may use not more than 25 percent in each fiscal year for activities under this paragraph;" for "fiscal year 1994 to the City of Pittsburgh, Pennsylvania, such city may use not more than 20 percent in each such fiscal year for activities under this paragraph;".

Pub. L. 105-276, §218, substituted "1999" for "1998".

Subsec. (h). Pub. L. 105-276, §588, added subsec. (h).

1996—Subsec. (a)(4). Pub. L. 104-134, §101[(e)] [title II, §225(1)], inserted "reconstruction," after "removal," and substituted "acquisition for reconstruction or rehabilitation, and reconstruction or rehabilitation" for "acquisition for rehabilitation, and rehabilitation".

Subsec. (a)(8). Pub. L. 104-204 substituted "through 1998" for "through 1997".

Subsec. (a)(13). Pub. L. 104-134, §101(e) [title II, §225(2)], struck out "and" at end.

Subsec. (a)(19). Pub. L. 104-134, §101(e) [title II, §225(3), (6)], redesignated par. (20) as (19) and struck out former par. (19) which read as follows: "provision of assistance to facilitate substantial reconstruction of housing owned and occupied by low and moderate income persons (A) where the need for the reconstruction was not determinable until after rehabilitation under this section had already commenced, or (B) where the reconstruction is part of a neighborhood rehabilitation effort and the grantee (i) determines the housing is not suitable for rehabilitation, and (ii) demonstrates to the satisfaction of the Secretary that the cost of substantial reconstruction is significantly less than the cost of new construction and less than the fair market value of the property after substantial reconstruction;".

Subsec. (a)(20). Pub. L. 104-134, §101(e) [title II, §225(6)], redesignated par. (21) relating to housing services as (20). Former par. (20) redesignated (19).

Subsec. (a)(21). Pub. L. 104-134, §101(e) [title II, §225(6)], redesignated par. (22) as (21). Former par. (21), relating to housing services, redesignated (20). Another former par. (21), relating to lead-based paint hazard evaluation and reduction, redesignated (25).

Subsec. (a)(22). Pub. L. 104-134, §101(e) [title II, §225(6)], redesignated par. (23) as (22). Former par. (22) redesignated (21).

Subsec. (a)(23). Pub. L. 104-134, §101(e) [title II, §225(4), (6)], redesignated par. (24) as (23) and struck out "and" at end. Former par. (23) redesignated (22).

Subsec. (a)(24). Pub. L. 104-134, §101(e) [title II, §225(5), (6)], redesignated par. (25) as (24) and substituted ";" and" for period at end. Former par. (24) redesignated (23).

Subsec. (a)(25). Pub. L. 104-134, §101(e) [title II, §225(7)], redesignated par. (21) relating to lead-based paint hazard evaluation and reduction as (25). Former par. (25) redesignated (24).

1994—Subsec. (a)(13). Pub. L. 103-233, §207(a), inserted cl. (A) and designated provisions after cl. (A) as cl. (B).

Subsec. (a)(21). Pub. L. 103-233, §207(b), inserted "in connection with tenant-based rental assistance and affordable housing projects assisted under title II of the Cranston-Gonzalez National Affordable Housing Act" after "housing counseling" and substituted "assisted

under title II of the Cranston-Gonzalez National Affordable Housing Act” for “authorized under this section, or under title II of the Cranston-Gonzalez National Affordable Housing Act, except that activities under this paragraph shall be subject to any limitation on administrative expenses imposed by any law”.

1993—Subsec. (a)(8). Pub. L. 103-195 struck out “and” after “higher amount,” and inserted before semicolon at end “, and except that of any amount of assistance under this chapter (including program income) in fiscal year 1994 to the City of Pittsburgh, Pennsylvania, such city may use not more than 20 percent in each such fiscal year for activities under this paragraph”.

1992—Subsec. (a)(3). Pub. L. 102-550, § 807(e), substituted “public or private improvements or” for “public improvements and”.

Subsec. (a)(8). Pub. L. 102-550, § 807(a)(1), inserted before semicolon at end “, and except that of any amount of assistance under this chapter (including program income) in each of fiscal years 1993 through 1997 to the City of Los Angeles and County of Los Angeles, each such unit of general government may use not more than 25 percent in each such fiscal year for activities under this paragraph”.

Subsec. (a)(13). Pub. L. 102-550, § 809, inserted “payment of reasonable administrative costs related to establishing and administering federally approved enterprise zones and” after “(13)”.

Subsec. (a)(14). Pub. L. 102-550, § 807(d), inserted “provision of assistance including loans (both interim and long-term) and grants for” before “activities”.

Subsec. (a)(15). Pub. L. 102-550, § 807(f), inserted “non-profit organizations serving the development needs of the communities in nonentitlement areas,” after “corporations,”.

Subsec. (a)(20). Pub. L. 102-550, § 807(a)(2)-(4), added par. (20) and redesignated former par. (20) as (25).

Subsec. (a)(21). Pub. L. 102-550, § 1012(f), added par. (21) relating to lead-based paint hazard evaluation and reduction.

Pub. L. 102-550, § 807(a)(2)-(4), added par. (21) relating to housing services.

Subsec. (a)(22). Pub. L. 102-550, § 807(a)(2)-(4), added par. (22).

Subsec. (a)(23) to (25). Pub. L. 102-550, § 807(b)(3), amended directory language of Pub. L. 101-625, § 907(b)(2). See 1990 Amendment note below.

Pub. L. 102-550, § 807(a)(2)-(4), added pars. (23) and (24) and redesignated former par. (20) as (25).

Subsec. (c)(4). Pub. L. 102-550, § 806(e), added par. (4).

Subsec. (d). Pub. L. 102-550, § 805, added subsec. (d).

Subsec. (e). Pub. L. 102-550, § 806(a), added subsec. (e).

Subsec. (f). Pub. L. 102-550, § 806(b), added subsec. (f).

Subsec. (g). Pub. L. 102-550, § 807(c)(1), added subsec. (g).

1990—Subsec. (a)(8). Pub. L. 101-625, § 908, inserted “(or in the case of nonentitled communities not more than 15 per centum statewide)” after “assistance to a unit of general local government” and “including program income” before “may be used for activities”.

Subsec. (a)(17). Pub. L. 101-625, § 907(a), amended par. (17) generally. Prior to amendment, par. (17) read as follows: “provision of assistance to private, for-profit entities, when the assistance is necessary or appropriate to carry out an economic development project;”.

Subsec. (a)(20). Pub. L. 101-625, § 907(b)(1), added par. (20).

Subsec. (a)(23) to (25). Pub. L. 101-625, § 907(b)(2), as amended by Pub. L. 102-550, § 807(b)(3), directed the amendment of subsec. (a) by inserting “and” at end of par. (23), substituting a period for “; and” at end of par. (24), and striking out par. (25). This amendment was not executed pursuant to Pub. L. 104-204 which provided that subsec. (a)(25) shall continue to be effective and the termination and conforming provisions of section 907(b)(2) of Pub. L. 101-625 shall not be effective. See Effective Date of 1990 Amendments note below.

1988—Subsec. (a)(15). Pub. L. 100-242, § 504(a), substituted “assistance” for “grants” in two places.

Subsec. (a)(16). Pub. L. 100-242, § 504(b), amended par. (16) generally, revising and restating as subpars. (A) and (B) provisions of former subpars. (A) to (I).

Subsec. (a)(19). Pub. L. 100-242, § 510, added par. (19).

Subsec. (c)(2). Pub. L. 100-242, § 511, designated existing provision as subpar. (A), redesignated subpars. (A) and (B) as cls. (i) and (ii), respectively, and added subpar. (B).

Subsec. (c)(2)(A)(iii). Pub. L. 100-404 added cl. (iii).

1984—Subsec. (a)(8). Pub. L. 98-479, § 101(a)(8)(A), inserted “fiscal year 1982 or”.

Subsec. (a)(15). Pub. L. 98-479, § 101(a)(8)(B), substituted “and” for “including” before “grants to neighborhood-based nonprofit organizations”.

Subsec. (c)(2)(B). Pub. L. 98-479, § 101(a)(9)(A), substituted “in any metropolitan city or urban county, the area served by such activity is within the highest quartile of all areas within the jurisdiction of such city or county in terms of the degree of concentration of persons of low and moderate income” for “in any jurisdiction having no areas meeting the requirements of subparagraph (A), the area served by such activity has a larger proportion of persons of low and moderate income than not less than 75 percent of the other areas in the jurisdiction of the recipient”.

1983—Subsec. (a)(2). Pub. L. 98-181, § 105(a), amended par. (2) generally, inserting exception for buildings for the general conduct of government, and striking out provisions which enumerated types of public works, facilities, and site or other improvements, including neighborhood facilities, centers for the handicapped, senior centers, historic properties, etc.

Subsec. (a)(8). Pub. L. 98-181, § 105(b)(1), substituted “not more than 15 per centum” for “not more than 10 per centum” and inserted at the end thereof “unless such unit of general local government used more than 15 percent of the assistance received under this chapter for fiscal year 1983 for such activities (excluding any assistance received pursuant to Public Law 98-8), in which case such unit of general local government may use not more than the percentage or amount of such assistance used for such activities for such fiscal year, whichever method of calculation yields the higher amount”.

Subsec. (a)(14). Pub. L. 98-181, § 105(c), substituted “public facilities (except for buildings for the general conduct of government)” for “public facilities”.

Subsec. (a)(15). Pub. L. 98-181, § 105(d), inserted provision for assistance for shared housing facilities for elderly families, as defined in section 1437a(b)(3) of this title.

Subsec. (a)(18). Pub. L. 98-181, § 302(a), added par. (18).

Subsec. (c). Pub. L. 98-181, § 105(e), added subsec. (c).

1981—Subsec. (a). Pub. L. 97-35, § 309(f)(1), in provisions preceding par. (1) substituted provisions relating to activities eligible for assistance for provisions relating to activities of a Community Development Program eligible for assistance.

Subsec. (a)(6). Pub. L. 97-35, § 309(f)(2), struck out “program” after “displaced by”.

Subsec. (a)(8). Pub. L. 97-35, § 303(a)(1), added new par. (8) which generally revised and restructured provisions relating to provision of public services if such services have not been provided by the relevant unit of local government or State in which such unit is located, and limited amount of assistance under this paragraph to not more than 10 per centum of the amount of any assistance to a unit of general local government under this chapter.

Subsec. (a)(9). Pub. L. 97-35, § 309(f)(3), substituted “activities assisted under this chapter” for “Community Development Program”.

Subsec. (a)(11). Pub. L. 97-35, § 309(f)(4), struck out “to the community development program” after “appropriate”.

Subsec. (a)(13). Pub. L. 97-35, § 303(a)(2), inserted reference to the carrying out of activities as described in section 701(e) of the Housing Act of 1954 on Aug. 12, 1981.

Subsec. (a)(14). Pub. L. 97-35, § 309(f)(5), substituted “which are carried out by public or private non-profit entities” for “(as specifically described in the application submitted pursuant to section 5304 of this title)

which are carried out by public or private non-profit entities when such activities are necessary or appropriate to meeting the needs and objectives of the community development plan described in section 5304(a)(1) of this title”.

Subsec. (a)(15). Pub. L. 97-35, §309(f)(6), struck out “(as specifically described in the application submitted pursuant to section 5304 of this title)” after “conservation project”.

Subsec. (a)(17). Pub. L. 97-35, §303(a)(5), added par. (17).

Subsec. (b). Pub. L. 97-35, §309(g), substituted “assistance” for “a grant”.

1980—Subsec. (a)(2). Pub. L. 96-399, §104(c)(1), inserted provisions respecting design features and improvements, power generation and distribution facilities, park, etc., facilities, and recycling and conversion facilities.

Subsec. (a)(4). Pub. L. 96-399, §104(c)(2), (d), inserted provisions respecting rehabilitation which promotes energy efficiency and the renovation of closed school buildings.

Subsec. (a)(8). Pub. L. 96-399, §104(c)(3), inserted reference to energy conservation.

Subsec. (a)(14). Pub. L. 96-399, §104(c)(5), (e)(1), inserted provision respecting the application pursuant to section 5304 of this title.

Subsec. (a)(15). Pub. L. 96-399, §104(c)(4), (5), (e)(2), inserted provisions respecting energy conservation, and the application submitted pursuant to section 5304 of this title.

Subsec. (a)(16). Pub. L. 96-399, §104(c)(5), added par. (16).

1978—Subsec. (a)(11). Pub. L. 95-557 inserted “displaced” after “payments and assistance for” and substituted “when determined by the grantee to be appropriate to the community development program” for “displaced by activities assisted under this chapter”.

1977—Subsec. (a). Pub. L. 95-128, §105(a), inserted in introductory text description of activities covered including the words “These activities”.

Subsec. (a)(4). Pub. L. 95-128, §105(b), substituted “(including interim assistance, and financing public or private acquisition for rehabilitation, and rehabilitation, of privately owned properties)” for “(including interim assistance and financing rehabilitation of privately owned properties when incidental to other activities)”.

Subsec. (a)(8). Pub. L. 95-128, §105(c), struck out from cl. (A) “economic development,” before “crime prevention” and authorized the program to provide public services only if such services have not been provided by the unit of general local government during any part of the twelve-month period preceding the date of application submission for funds to be made available under this chapter, and to be utilized for such services, unless the Secretary finds that the discontinuation of such services was the result of events not within the control of the applicant.

Subsec. (a)(14), (15). Pub. L. 95-128, §105(d), added pars. (14) and (15).

1976—Subsec. (a)(2). Pub. L. 94-375 inserted “centers for the handicapped,” after “neighborhood facilities,”.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-116 effective Sept. 30, 2001, see section 603 of Pub. L. 107-116, set out as a note under section 1715n of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by title V of Pub. L. 105-276 effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement amendment before such date, except to extent that such amendment provides otherwise, and with savings provision, see section 503 of Pub. L. 105-276, set out as a note under section 1437 of this title.

Pub. L. 105-276, title V, §596(b), Oct. 21, 1998, 112 Stat. 2659, provided that: “The amendment made by this section [amending this section] is made on, and shall

apply beginning upon, the date of the enactment of this Act [Oct. 21, 1998].”

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-233 applicable with respect to any amounts made available to carry out subchapter II (§12721 et seq.) of chapter 130 of this title after Apr. 11, 1994, and any amounts made available to carry out that subchapter before that date that remain uncommitted on that date, with Secretary to issue any regulations necessary to carry out such amendment not later than end of 45-day period beginning on that date, see section 209 of Pub. L. 103-233, set out as a note under section 5301 of this title.

EFFECTIVE DATE OF 1990 AMENDMENTS

Title II of Pub. L. 104-204, Sept. 26, 1996, 110 Stat. 2882, 2887, provided in part: “That for fiscal year 1997 and thereafter, section 105(a)(25) of such Act [section 105(a)(25) [now (24)] of Pub. L. 93-383, classified to subsec. (a)(24) of this section], shall continue to be effective and the termination and conforming provisions of section 907(b)(2) of the Cranston-Gonzalez National Affordable Housing Act [Pub. L. 101-625, set out below] shall not be effective”.

Section 101(e) [title II] of Pub. L. 104-134, Apr. 26, 1996, 110 Stat. 1321-257, 1321-265, 1321-272, provided in part: “That section 105(a)(25) of such Act [section 105(a)(25) [now (24)] of Pub. L. 93-383, classified to subsec. (a)(24) of this section], as added by section 907(b)(1) of the Cranston-Gonzalez National Affordable Housing Act [Pub. L. 101-625], shall continue to be effective after September 30, 1995, notwithstanding section 907(b)(2) of such Act [set out below].”

Pub. L. 104-120, §3(a), Mar. 28, 1996, 110 Stat. 835, provided that: “Notwithstanding the amendments made by section 907(b)(2) of the Cranston-Gonzalez National Affordable Housing Act [Pub. L. 101-625, set out below], section 105(a)(25) of the Housing and Community Development Act of 1974 [subsec. (a)(25) [now (24)] of this section], as in existence on September 30, 1995, shall apply to the use of assistance made available under title I of the Housing and Community Development Act of 1974 [42 U.S.C. 5301 et seq.] during fiscal year 1996.”

Amendment by section 907(b)(2) of Pub. L. 101-625, as amended by Pub. L. 102-550, title VIII, §807(b)(1), (2), Oct. 28, 1992, 106 Stat. 3849, effective “October 1, 1994 (or October 1, 1995, if the Secretary determines that such later date is necessary to continue to provide homeownership assistance until homeownership assistance is available under title II of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12721 et seq.]”. [Date extended by Secretary to Oct. 1, 1995, see 59 F.R. 49954, Sept. 30, 1994.]

EFFECTIVE DATE OF 1984 AMENDMENT

Section 101(a)(9)(B) of Pub. L. 98-479 provided that: “The amendment made by subparagraph (A) [amending this section] shall take effect upon the enactment of this Act [Oct. 17, 1984] and shall be implemented through an interim instruction issued by the Secretary of Housing and Urban Development. Not later than June 1, 1985, the Secretary of Housing and Urban Development shall issue a final regulation regarding the provisions of such amendment.”

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-181 applicable only to funds available for fiscal year 1984 and thereafter, see section 110(b) of Pub. L. 98-181, as amended, set out as a note under section 5316 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective Oct. 1, 1981, see section 371 of Pub. L. 97-35, set out as an Effective Date note under section 3701 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-557 effective Oct. 1, 1978, see section 104 of Pub. L. 95-557, set out as a note under section 1709 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-128 effective Oct. 1, 1977, see section 114 of Pub. L. 95-128, set out as a note under section 5301 of this title.

NON-FEDERAL COST SHARING OF ARMY CORPS OF ENGINEERS PROJECTS

Pub. L. 105-276, title II, Oct. 21, 1998, 112 Stat. 2478, provided in part that: "For any fiscal year, of the amounts made available as emergency funds under the heading 'Community Development Block Grants Fund' and notwithstanding any other provision of law, not more than \$250,000 may be used for the non-Federal cost-share of any project funded by the Secretary of the Army through the Corps of Engineers."

BROWNFIELDS PROJECTS AS ELIGIBLE CDBG ACTIVITY

Pub. L. 105-276, title II, §205, Oct. 21, 1998, 112 Stat. 2484, provided that: "For fiscal years 1998, 1999, and all fiscal years thereafter, States and entitlement communities may use funds allocated under the community development block grants program under title I of the Housing and Community Development Act of 1974 [42 U.S.C. 5301 et seq.] for environmental cleanup and economic development activities related to Brownfields projects in conjunction with the appropriate environmental regulatory agencies, as if such activities were eligible under section 105(a) of such Act [42 U.S.C. 5305(a)]."

Similar provisions were contained in the following prior appropriation act:

Pub. L. 105-65, title II, §209, Oct. 27, 1997, 111 Stat. 1366.

GAO STUDY OF USE OF GRANTS FOR ECONOMIC DEVELOPMENT PROJECTS

Section 806(c) of Pub. L. 102-550 directed Comptroller General to conduct a study of use of grant amounts under this chapter for activities described in paragraphs (14), (15), and (17) of subsec. (a) of this section, including an evaluation of whether the activities for which such amounts are being used under such paragraphs further the goals and objectives of such program, as established in section 5301 of this title, and directed Comptroller General to submit a report to Congress regarding the findings of the study and recommendations not later than the expiration of the 18-month period beginning on Oct. 28, 1992.

ENHANCING JOB QUALITY; REPORT TO CONGRESS

Section 806(d) of Pub. L. 102-550 directed Comptroller General, not later than 1 year after Oct. 28, 1992, to submit to Congress a report on types and quality of jobs created or retained through assistance provided pursuant to this chapter and the extent to which projects and activities assisted under this chapter enhance the upward mobility and future earning capacity of low- and moderate-income persons who are benefited by such projects and activities.

REPORT TO CONGRESS ON EFFECTIVENESS OF ASSISTANCE IN PROMOTING DEVELOPMENT OF MICROENTERPRISES

Section 807(c)(4) of Pub. L. 102-550 directed Secretary, not later than 18 months after Oct. 28, 1992, to submit to Congress a report on effectiveness of assistance provided through this chapter in promoting development of microenterprises, including a review of any statutory or regulatory provision that impedes development of microenterprises.

COMMUNITY INVESTMENT CORPORATION DEMONSTRATION

Section 853 of Pub. L. 102-550 provided for establishment of a demonstration program to develop ways to improve access to capital for initiatives which would benefit specific targeted geographic areas and to test new models for bringing credit and investment capital to low-income persons in targeted geographic areas,

using depository institution holding companies and eligible local nonprofit organizations selected by Secretary of Housing and Urban Development to provide capital assistance, grants, and training under direction of an advisory board. Funds for the program were authorized for fiscal years 1993 and 1994 to remain available until expended.

WAIVER OF LIMITATION ON AMOUNT OF FUNDS WHICH MAY BE USED IN FISCAL YEARS 1982, 1983, AND 1984 FOR PUBLIC SERVICE ACTIVITIES

Section 303(b) of Pub. L. 97-35, as amended Pub. L. 98-181, title I, §105(b)(2), Nov. 30, 1983, 97 Stat. 1164, authorized Secretary, in fiscal years 1982 and 1983, to waive the limitation on amount of funds which could be used for public services activities under subsec. (a)(8) of this section, in the case of a unit of general local government which, during fiscal year 1981, allocated more than 10 per centum of funds received under this chapter for such activities.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5304, 5306, 5307, 5308, 5318 of this title; title 12 sections 4707, 4712.

§ 5306. Allocation and distribution of funds

(a) Amounts allocated to Indian tribes, discretionary fund, and metropolitan cities and urban counties; limitations on amount of annual grants

(1) For each fiscal year, of the amount approved in appropriation Acts under section 5303 of this title for grants for such fiscal year (excluding the amounts provided for use in accordance with section 5307 of this title), the Secretary shall reserve for grants to Indian tribes 1 percent of the amount appropriated under such section. The Secretary shall provide for distribution of amounts under this paragraph to Indian tribes on the basis of a competition conducted pursuant to specific criteria for the selection of Indian tribes to receive such amounts. The criteria shall be contained in a regulation promulgated by the Secretary after notice and public comment. Notwithstanding any other provision of this Act, such grants to Indian tribes shall not be subject to the requirements of section 5304 of this title, except subsections (f), (g), and (k) of such section.

(2) For each fiscal year, of the amount approved in appropriation Acts under section 5303 of this title for grants for such fiscal year (excluding the amounts provided for use in accordance with section 5307 of this title), the Secretary shall reserve for grants to insular areas \$7,000,000. The Secretary shall provide for distribution of amounts under this paragraph to insular areas on the basis of the ratio of the population of each insular area to the population of all insular areas. In determining the distribution of amounts to insular areas, the Secretary may also include other statistical criteria as data become available from the Bureau of the Census, but only if such criteria are contained in a regulation promulgated by the Secretary after notice and public comment.

(3) After reserving such amounts for Indian tribes under paragraph (1) and after reserving such amounts for insular areas under paragraph (2), the Secretary shall allocate amounts provided for use under section 5307 of this title.

(4) Of the amount remaining after allocations pursuant to paragraphs (1), (2), and (3), 70 per-

cent shall be allocated by the Secretary to metropolitan cities and urban counties. Except as otherwise specifically authorized, each metropolitan city and urban county shall be entitled to an annual grant from such allocation in an amount not exceeding its basic amount computed pursuant to paragraph (1) or (2) of subsection (b) of this section.

(b) Computation of amount allocated to metropolitan cities and urban counties

(1) The Secretary shall determine the amount to be allocated to each metropolitan city which shall be the greater of an amount that bears the same ratio to the allocation for all metropolitan areas as either—

(A) the average of the ratios between—

(i) the population of that city and the population of all metropolitan areas;

(ii) the extent of poverty in that city and the extent of poverty in all metropolitan areas; and

(iii) the extent of housing overcrowding in that city and the extent of housing overcrowding in all metropolitan areas; or

(B) the average of the ratios between—

(i) the extent of growth lag in that city and the extent of growth lag in all metropolitan cities;

(ii) the extent of poverty in that city and the extent of poverty in all metropolitan areas; and

(iii) the age of housing in that city and the age of housing in all metropolitan areas.

(2) The Secretary shall determine the amount to be allocated to each urban county, which shall be the greater of an amount that bears the same ratio to the allocation for all metropolitan areas as either—

(A) the average of the ratios between—

(i) the population of that urban county and the population of all metropolitan areas;

(ii) the extent of poverty in that urban county and the extent of poverty in all metropolitan areas; and

(iii) the extent of housing overcrowding in that urban county and the extent of housing overcrowding in all metropolitan areas; or

(B) the average of the ratios between—

(i) the extent of growth lag in that urban county and the extent of growth lag in all metropolitan cities and urban counties;

(ii) the extent of poverty in that urban county and the extent of poverty in all metropolitan areas; and

(iii) the age of housing in that urban county and the age of housing in all metropolitan areas.

(3) In determining the average of ratios under paragraphs (1)(A) and (2)(A), the ratio involving the extent of poverty shall be counted twice, and each of the other ratios shall be counted once; and in determining the average of ratios under paragraphs (1)(B) and (2)(B), the ratio involving the extent of growth lag shall be counted once, the ratio involving the extent of poverty shall be counted one and one-half times, and the ratio involving the age of housing shall be counted two and one-half times.

(4) In computing amounts or exclusions under this section with respect to any urban county,

there shall be excluded units of general local government located in the county the populations of which are not counted in determining the eligibility of the urban county to receive a grant under this subsection, except that there shall be included any independent city (as defined by the Bureau of the Census) which—

(A) is not part of any county;

(B) is not eligible for a grant pursuant to subsection (b)(1) of this section;

(C) is contiguous to the urban county;

(D) has entered into cooperation agreements with the urban county which provide that the urban county is to undertake or to assist in the undertaking of essential community development and housing assistance activities with respect to such independent city; and

(E) is not included as a part of any other unit of general local government for purposes of this section.

Any independent city which is included in any fiscal year for purposes of computing amounts pursuant to the preceding sentence shall not be eligible to receive assistance under subsection (d) of this section with respect to such fiscal year.

(5) In computing amounts under this section with respect to any urban county, there shall be included all of the area of any unit of local government which is part of, but is not located entirely within the boundaries of, such urban county if the part of such unit of local government which is within the boundaries of such urban county would otherwise be included in computing the amount for such urban county under this section, and if the part of such unit of local government which is not within the boundaries of such urban county is not included as a part of any other unit of local government for the purpose of this section. Any amount received by such urban county under this section may be used with respect to the part of such unit of local government which is outside the boundaries of such urban county.

(6)(A) Where data are available, the amount determined under paragraph (1) for a metropolitan city that has been formed by the consolidation of one or more metropolitan cities with an urban county shall be equal to the sum of the amounts that would have been determined under paragraph (1) for the metropolitan city or cities and the balance of the consolidated government, if such consolidation had not occurred. This paragraph shall apply only to any consolidation that—

(i) included all metropolitan cities that received grants under this section for the fiscal year preceding such consolidation and that were located within the urban county;

(ii) included the entire urban county that received a grant under this section for the fiscal year preceding such consolidation; and

(iii) took place on or after January 1, 1983.

(B) The population growth rate of all metropolitan cities referred to in section 5302(a)(12) of this title shall be based on the population of (i) metropolitan cities other than consolidated governments the grant for which is determined under this paragraph; and (ii) cities that were metropolitan cities before their incorporation

into consolidated governments. For purposes of calculating the entitlement share for the balance of the consolidated government under this paragraph, the entire balance shall be considered to have been an urban county.

(c) Reallocation of undistributed funds within same metropolitan area as original allocation; amount and calculation of reallocation grant; disaster relief

(1) Except as provided in paragraphs (2) and (4), any amounts allocated to a metropolitan city or an urban county pursuant to the preceding provisions of this section which are not received by the city or county for a fiscal year because of failure to meet the requirements of subsection (a), (b), (c), or (d) of section 5304 of this title, or which become available as a result of actions under section 5304(e) or 5311 of this title, shall be reallocated in the succeeding fiscal year to the other metropolitan cities and urban counties in the same metropolitan area which certify to the satisfaction of the Secretary that they would be adversely affected by the loss of such amounts from the metropolitan area. The amount of the share of funds reallocated under this paragraph for any metropolitan city or urban county shall bear the same ratio to the total of such reallocated funds in the metropolitan area as the amount of funds awarded to the city or county for the fiscal year in which the reallocated funds become available bears to the total amount of funds awarded to all metropolitan cities and urban counties in the same metropolitan area for that fiscal year, except that—

(A) in determining the amounts awarded to cities or counties for purposes of calculating shares pursuant to this sentence, there shall be excluded from the award of any city or county any amounts which become available as a result of actions against such city or county under section 5311 of this title;

(B) in reallocating amounts resulting from an action under section 5304(e) of this title or section 5311 of this title, a city or county against whom any such action was taken in a fiscal year shall be excluded from a calculation of share for purposes of reallocating, in the succeeding year, the amounts becoming available as a result of such action; and

(C) in no event may the share of reallocated funds for any metropolitan city or urban county exceed 25 per centum of the amount awarded to the city or county under subsection (b) of this section for the fiscal year in which the reallocated funds under this paragraph become available.

Any amounts allocated under subsection (b) of this section which become available for reallocation and for which no metropolitan city or urban county qualifies under this paragraph shall be added to amounts available for allocation under such subsection (b) of this section in the succeeding fiscal year.

(2) Notwithstanding any other provision of this chapter, the Secretary shall make grants from amounts authorized for use under subsection (b) of this section by the Department of Housing and Urban Development—Independent Agencies Appropriation Act, 1981, in accordance with the provisions of this chapter which gov-

erned grants with respect to such amounts, as such provisions existed prior to October 1, 1981, except that any such amounts which are not obligated before January 1, 1982, shall be reallocated in accordance with paragraph (1).

(3) Notwithstanding the provisions of paragraph (1), the Secretary may upon request transfer responsibility to any metropolitan city for the administration of any amounts received, but not obligated, by the urban county in which such city is located if (A) such city was an included unit of general local government in such county prior to the qualification of such city as a metropolitan city; (B) such amounts were designated and received by such county for use in such city prior to the qualification of such city as a metropolitan city; and (C) such city and county agree to such transfer of responsibility for the administration of such amounts.

(4)(A) Notwithstanding paragraph (1), in the event of a major disaster declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act [42 U.S.C. 5121 et seq.], the Secretary shall make available, to metropolitan cities and urban counties located or partially located in the areas affected by the disaster, any amounts that become available as a result of actions under section 5304(e) or 5311 of this title.

(B) In using any amounts that become available as a result of actions under section 5304(e) or 5311 of this title, the Secretary shall give priority to providing emergency assistance under this paragraph.

(C) The Secretary may provide assistance to any metropolitan city or urban county under this paragraph only to the extent necessary to meet emergency community development needs, as the Secretary shall determine (subject to subparagraph (D)), of the city or county resulting from the disaster that are not met with amounts otherwise provided under this chapter, the Robert T. Stafford Disaster Relief and Emergency Assistance Act [42 U.S.C. 5121 et seq.], and other sources of assistance.

(D) Amounts provided to metropolitan cities and urban counties under this paragraph may be used only for eligible activities under section 5305 of this title, and in implementing this section, the Secretary shall evaluate the natural hazards to which any permanent replacement housing is exposed and shall take appropriate action to mitigate such hazards.

(E) The Secretary shall provide for applications (or amended applications and statements under section 5304 of this title) for assistance under this paragraph.

(F) A metropolitan city or urban county eligible for assistance under this paragraph may receive such assistance only in each of the fiscal years ending during the 3-year period beginning on the date of the declaration of the disaster by the President.

(G) This paragraph may not be construed to require the Secretary to reserve any amounts that become available as a result of actions under section 5304(e) or 5311 of this title for assistance under this paragraph if, when such amounts are to be reallocated under paragraph (1), no metropolitan city or urban county qualifies for assistance under this paragraph.

(d) Allocation among States for nonentitlement areas; amount and calculation of grants; distributions by State or Secretary; certain distributions made pursuant to prior provisions; certifications required by Governor enumerated; responsibility for administration and administrative expenses; reallocation; certifications required of units of general local government in nonentitlement areas; applicability of this chapter and other law

(1) Of the amount approved in an appropriation Act under section 5303 of this title that remains after allocations pursuant to paragraphs (1), (2), and (3) of subsection (a) of this section, 30 per centum shall be allocated among the States for use in nonentitlement areas. The allocation for each State shall be the greater of an amount that bears the same ratio to the allocation for such areas of all States available under this subparagraph as either—

(A) the average of the ratios between—

(i) the population of the nonentitlement areas in that State and the population of the nonentitlement areas of all States;

(ii) the extent of poverty in the nonentitlement areas in that State and the extent of poverty in the nonentitlement areas of all States; and

(iii) the extent of housing overcrowding in the nonentitlement areas in that State and the extent of housing overcrowding in the nonentitlement areas of all States; or

(B) the average of the ratios between—

(i) the age of housing in the nonentitlement areas in that State and the age of housing in the nonentitlement areas of all States;

(ii) the extent of poverty in the nonentitlement areas in that States and the extent of poverty in the nonentitlement areas of all States; and

(iii) the population of the nonentitlement areas in that State and the population of the nonentitlement areas of all States.

In determining the average of the ratios under subparagraph (A) the ratio involving the extent of poverty shall be counted twice and each of the other ratios shall be counted once; and in determining the average of the ratios under subparagraph (B), the ratio involving the age of housing shall be counted two and one-half times, the ratio involving the extent of poverty shall be counted one and one-half times, and the ratio involving population shall be counted once. The Secretary shall, in order to compensate for the discrepancy between the total of the amounts to be allocated under this paragraph and the total of the amounts available under such paragraph, make a pro rata reduction of each amount allocated to the nonentitlement areas in each State under such paragraph so that the nonentitlement areas in each State will receive an amount which represents the same percentage of the total amount available under such paragraph as the percentage which the nonentitlement areas of the same State would have received under such paragraph if the total amount available under such paragraph had equaled the total amount which was allocated under such paragraph.

(2)(A) Amounts allocated under paragraph (1) shall be distributed to units of general local government located in nonentitlement areas of the State to carry out activities in accordance with the provisions of this chapter—

(i) by a State that has elected, in such manner and at such time as the Secretary shall prescribe, to distribute such amounts, consistent with the statement submitted under section 5304(a) of this title; or

(ii) by the Secretary, in any case described in subparagraph (B), for use by units of general local government in accordance with paragraph (3)(B).

Any election to distribute funds made after the close of fiscal year 1984 is permanent and final. Notwithstanding any provision of this chapter, the Secretary shall make grants from amounts authorized for use in nonentitlement areas by the Department of Housing and Urban Development—Independent Agencies Appropriation Act, 1981, in accordance with the provisions of this chapter which governed grants with respect to such amounts, as such provisions existed prior to October 1, 1981. Any amounts under the preceding sentence (except amounts for which preapplications have been approved by the Secretary prior to October 1, 1981, and which have been obligated by January 1, 1982) which are or become available for obligation after fiscal year 1981 shall be available for distribution in the State in which the grants from such amounts were made, by the State or by the Secretary, whichever is distributing the State allocation in the fiscal year in which such amounts are or become available.

(B) The Secretary shall distribute amounts allocated under paragraph (1) if the State has not elected to distribute such amounts.

(C) To receive and distribute amounts allocated under paragraph (1), the State must certify that it, with respect to units of general local government in nonentitlement areas—

(i) engages or will engage in planning for community development activities;

(ii) provides or will provide technical assistance to units of general local government in connection with community development programs;

(iii) will not refuse to distribute such amounts to any unit of general local government on the basis of the particular eligible activity selected by such unit of general local government to meet its community development needs, except that this clause may not be considered to prevent a State from establishing priorities in distributing such amounts on the basis of the activities selected; and

(iv) has consulted with local elected officials from among units of general local government located in nonentitlement areas of that State in determining the method of distribution of funds required by subparagraph (A).

(D) To receive and distribute amounts allocated under paragraph (1), the State shall certify that each unit of general local government to be distributed funds will be required to identify its community development and housing needs, including the needs of low and moderate income persons, and the activities to be undertaken to meet such needs.

(3)(A) If the State receives and distributes such amounts, it shall be responsible for the administration of funds so distributed. The State shall pay from its own resources all administrative expenses incurred by the State in carrying out its responsibilities under this chapter or section 1437o(e)(1)¹ of this title, except that from the amounts received for distribution in non-entitlement areas, the State may deduct an amount to cover such expenses and its administrative expenses under section 1706e¹ of title 12 not to exceed the sum of \$100,000 plus 50 percent of any such expenses under this chapter in excess of \$100,000. Amounts deducted in excess of \$100,000 shall not exceed 2 percent of the amount so received.

(B) If the Secretary distributes such amounts, the distribution shall be made in accordance with determinations of the Secretary pursuant to statements submitted and the other requirements of section 5304 of this title (other than subsection (c)) and in accordance with regulations and procedures prescribed by the Secretary.

(C) Any amounts allocated for use in a State under paragraph (1) that are not received by the State for any fiscal year because of failure to meet the requirements of subsection (a), (b), or (d) of section 5304 of this title or to make the certifications required in subparagraphs (C) and (D) of paragraph (2), or that become available as a result of actions against the State under section 5304(e) or 5311 of this title, shall be added to amounts allocated to all States under paragraph (1) for the succeeding fiscal year.

(D) Any amounts allocated for use in a State under paragraph (1) that become available as a result of actions under section 5304(e) or 5311 of this title against units of general local government in nonentitlement areas of the State or as a result of the closeout of a grant made by the Secretary under this section in nonentitlement areas of the State shall be added to amounts allocated to the State under paragraph (1) for the fiscal year in which the amounts become so available.

(4) Any combination of units of general local governments may not be required to obtain recognition by the Secretary pursuant to section 5302(a)(1) of this title to be treated as a single unit of general local government for purposes of this subsection.

(5)² From the amounts received under paragraph (1) for distribution in nonentitlement areas, the State may deduct an amount, not to exceed 1 percent of the amount so received, to provide technical assistance to local governments and nonprofit program recipients.

(5)² No amount may be distributed by any State or the Secretary under this subsection to any unit of general local government located in a nonentitlement area unless such unit of general local government certifies that—

(A) it will minimize displacement of persons as a result of activities assisted with such amounts;

(B) its program will be conducted and administered in conformity with the Civil Rights

Act of 1964 [42 U.S.C. 2000a et seq.] and the Fair Housing Act [42 U.S.C. 3601 et seq.], and that it will affirmatively further fair housing;

(C) it will provide for opportunities for citizen participation, hearings, and access to information with respect to its community development program that are comparable to those required of grantees under section 5304(a)(2) of this title; and

(D) it will not attempt to recover any capital costs of public improvements assisted in whole or part under this section or with amounts resulting from a guarantee under section 5308 of this title by assessing any amount against properties owned and occupied by persons of low and moderate income, including any fee charged or assessment made as a condition of obtaining access to such public improvements, unless (i) funds received under this section are used to pay the proportion of such fee or assessment that relates to the capital costs of such public improvements that are financed from revenue sources other than under this chapter; or (ii) for purposes of assessing any amount against properties owned and occupied by persons of moderate income, the grantee certifies to the Secretary or such State, as the case may be, that it lacks sufficient funds received under this section to comply with the requirements of clause (i).

(6) Any activities conducted with amounts received by a unit of general local government under this subsection shall be subject to the applicable provisions of this chapter and other Federal law in the same manner and to the same extent as activities conducted with amounts received by a unit of general local government under subsection (a) of this section.

(e) Qualification or submission dates, and finality and conclusiveness of computations and determinations

The Secretary may fix such qualification or submission dates as he determines are necessary to permit the computations and determinations required by this section to be made in a timely manner, and all such computations and determinations shall be final and conclusive.

(f) Pro rata adjustment of entitlement amounts

If the total amount available for distribution in any fiscal year to metropolitan cities and urban counties under this section is insufficient to provide the amounts to which metropolitan cities and urban counties would be entitled under subsection (b) of this section, and funds are not otherwise appropriated to meet the deficiency, the Secretary shall meet the deficiency through a pro rata reduction of all amounts determined under subsection (b) of this section. If the total amount available for distribution in any fiscal year to metropolitan cities and urban counties under this section exceeds the amounts to which metropolitan cities and urban counties would be entitled under subsection (b) of this section, the Secretary shall distribute the excess through a pro rata increase of all amounts determined under subsection (b) of this section.

(Pub. L. 93-383, title I, §106, Aug. 22, 1974, 88 Stat. 642; Pub. L. 95-128, title I, §106, Oct. 12, 1977, 91 Stat. 1117; Pub. L. 96-153, title I, §103(d),

¹ See References in Text note below.

² So in original. Two pars. (5) have been enacted.

(e), Dec. 21, 1979, 93 Stat. 1102; Pub. L. 96-399, title I, §§102, 103, 111(d)-(g), 112, Oct. 8, 1980, 94 Stat. 1615, 1621, 1622; Pub. L. 97-35, title III, §§304, 309(h), Aug. 13, 1981, 95 Stat. 388, 396; Pub. L. 98-181, title I, §106, Nov. 30, 1983, 97 Stat. 1164; Pub. L. 98-479, title I, §101(a)(10)-(12), Oct. 17, 1984, 98 Stat. 2219, 2220; Pub. L. 100-242, title V, §§512, 513, 517(b)(1), Feb. 5, 1988, 101 Stat. 1930, 1936; Pub. L. 100-628, title X, §1082(b), (c), Nov. 7, 1988, 102 Stat. 3277; Pub. L. 101-235, title VII, §702(b), Dec. 15, 1989, 103 Stat. 2056; Pub. L. 101-625, title IX, §§913(b), 933, Nov. 28, 1990, 104 Stat. 4392, 4403; Pub. L. 102-550, title VIII, §§802(b), 808, 811, title XII, §1204(i), Oct. 28, 1992, 106 Stat. 3845, 3850, 3940; Pub. L. 108-186, title V, §501(d), (e), Dec. 16, 2003, 117 Stat. 2697.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a)(1), is Pub. L. 93-383, Aug. 22, 1974, 88 Stat. 633, as amended, known as the Housing and Community Development Act of 1974. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

The Department of Housing and Urban Development—Related Agencies Appropriation Act, 1981, referred to in subssecs. (c)(2) and (d)(2)(A), is Pub. L. 96-526, Dec. 15, 1980, 94 Stat. 3044. For complete classification of this Act to the Code, see Tables.

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in subsec. (c)(4)(A), (C), is Pub. L. 93-288, May 22, 1974, 88 Stat. 143, as amended, which is classified principally to chapter 68 (§5121 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables.

This subparagraph, referred to in subsec. (d)(1), probably should be a reference to this paragraph, meaning par. (1) of subsec. (d) of this section.

Section 1437o of this title and section 1706e of title 12, referred to in subsec. (d)(3)(A), was repealed by Pub. L. 101-625, title II, §289(b), Nov. 28, 1990, 104 Stat. 4128.

The Civil Rights Act of 1964, referred to in subsec. (d)(5)(B), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended, which is classified principally to subchapters II to IX (§2000a et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

The Fair Housing Act, referred to in subsec. (d)(5)(B), is title VIII of Pub. L. 90-284, Apr. 11, 1968, 82 Stat. 81, as amended, which is classified principally to subchapter I (§3601 et seq.) of chapter 45 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

CODIFICATION

In subssecs. (c)(2) and (d)(2)(A), “October 1, 1981” substituted for “the effective date of the Housing and Community Development Amendments of 1981” meaning the effective date of subtitle A of title III of Pub. L. 97-35, Aug. 13, 1981, 95 Stat. 384, which was generally effective Oct. 1, 1981. See Effective Date of 1981 Amendment note below.

AMENDMENTS

2003—Subsec. (a)(1). Pub. L. 108-186, §501(d)(1), in first sentence, substituted “appropriation Acts” for “an appropriation Act” and “for such fiscal year” for “in any year”.

Subsec. (a)(2). Pub. L. 108-186, §501(d)(5), added par. (2). Former par. (2) redesignated (3).

Pub. L. 108-186, §501(d)(2), inserted “under paragraph (1) and after reserving such amounts for insular areas under paragraph (2)” after “tribes”.

Subsec. (a)(3). Pub. L. 108-186, §501(d)(4), redesignated par. (2) as (3). Former par. (3) redesignated (4).

Pub. L. 108-186, §501(d)(3), substituted “paragraphs (1), (2), and (3)” for “paragraphs (1) and (2)”.

Subsec. (a)(4). Pub. L. 108-186, §501(d)(4), redesignated par. (3) as (4).

Subsec. (d)(1). Pub. L. 108-186, §501(e), substituted “paragraphs (1), (2), and (3)” for “paragraphs (1) and (2)” in first sentence.

1992—Subsec. (d)(1). Pub. L. 102-550, §1204(i), in first sentence, substituted “that remains after allocations pursuant to paragraphs (1) and (2) of subsection (a) of this section” for “for grants in any year (excluding the amounts provided for use in accordance with subsection (a)(1) and (2) of this section)”.

Subsec. (d)(4). Pub. L. 102-550, §802(b), added par. (4).

Subsec. (d)(5). Pub. L. 102-550, §811, added par. (5) relating to State deductions for technical assistance.

Subsec. (d)(5)(B). Pub. L. 102-550, §808, substituted “the Civil Rights Act of 1964 and the Fair Housing Act” for “Public Law 88-352 and Public Law 90-284”.

1990—Subsec. (a). Pub. L. 101-625, §913(b)(1)(B), added subsec. (a) and struck out former subsec. (a) which read as follows: “Of the amount approved in an appropriation Act under section 5303 of this title for grants in any year (excluding the amounts provided for use in accordance with section 5307 of this title and section 5318 of this title), 70 per centum shall be allocated by the Secretary to metropolitan cities and urban counties and Indian tribes. Except as otherwise specifically authorized, each metropolitan city and urban county shall be entitled to an annual grant from such allocation in an amount not exceeding its basic amount computed pursuant to paragraph (1) or (2) of subsection (b) of this section Indian tribes shall receive grants from such allocation pursuant to subsection (b)(7) of this section.”

Subsec. (b)(1), (2). Pub. L. 101-625, §913(b)(2), substituted “The” for “After taking into account the set-aside for Indian tribes under paragraph (7), the” in introductory provisions of pars. (1) and (2).

Subsec. (b)(7). Pub. L. 101-625, §913(b)(1)(A), struck out par. (7), which read as follows:

“(A) For each fiscal year, the Secretary shall reserve for grants to Indian tribes, from amounts approved in appropriation Acts under section 5303 of this title for grants for the year under subsection (a) of this section, not more than 1 percent of the amounts appropriated under such section.

“(B) The Secretary shall provide for distribution of amounts under this paragraph to Indian tribes on the basis of a competition conducted pursuant to specific criteria for the selection of Indian tribes to receive such amounts. The criteria shall be contained in a regulation promulgated by the Secretary after notice and public comment.”

Subsec. (c)(1). Pub. L. 101-625, §933(1), substituted “paragraphs (2) and (4)” for “paragraph (2)” in introductory provisions.

Subsec. (c)(4). Pub. L. 101-625, §933(2), added par. (4).

Subsec. (d)(1). Pub. L. 101-625, §913(b)(3), substituted “subsection (a)(1) and (2) of this section” for “section 5307 of this title and section 5318 of this title” in introductory provisions.

1989—Subsec. (a). Pub. L. 101-235, §702(b)(1), inserted “and Indian tribes” after “urban counties” in first sentence and inserted “Indian tribes shall receive grants from such allocation pursuant to subsection (b)(7) of this section” before period at end of second sentence.

Subsec. (b)(1). Pub. L. 101-235, §702(b)(2), substituted “After taking into account the set-aside for Indian tribes under paragraph (7), the” for “The”.

Subsec. (b)(2). Pub. L. 101-235, §702(b)(3), substituted “After taking into account the set-aside for Indian tribes under paragraph (7), the” for “The”.

Subsec. (b)(7). Pub. L. 101-235, §702(b)(4), added par. (7).

Subsec. (d)(4). Pub. L. 101-235, §702(b)(5), struck out par. (4) which excluded Indian tribes in computing amounts under par. (1).

1988—Subsec. (c)(1). Pub. L. 100-628, §1082(b), substituted “subsection (a), (b), (c), or (d) of section 5304”

for "section 5304(a), (b), or (c)" in introductory provisions and substituted "section 5304(e)" for "section 5304(d)" in introductory provisions and in subpar. (B).

Subsec. (d)(2)(C). Pub. L. 100-242, § 512(1), substituted "the State must certify that it" for "the Governor must certify that the State".

Subsec. (d)(2)(D). Pub. L. 100-242, § 512(2), substituted "the State" for "the Governor of each State".

Subsec. (d)(3)(A). Pub. L. 100-242, § 517(b)(1), inserted "its administrative expenses under section 1706e of title 12" after first reference to "such expenses", and "under this chapter" after second reference to "such expenses".

Pub. L. 100-242, § 513, substituted "\$100,000" for "\$102,000" after "the sum of".

Subsec. (d)(3)(C). Pub. L. 100-628, § 1082(c), substituted "subsection (a), (b), or (d) of section 5304" for "subsection (a) or (b) of section 5304" and "section 5304(e)" for "section 5304(d)".

Subsec. (d)(3)(D). Pub. L. 100-628, § 1082(c)(2), substituted "section 5304(e)" for "section 5304(d)".

1984—Subsec. (d)(2)(A). Pub. L. 98-479, § 101(a)(10)(A), substituted "the State" for "a State that has elected, in such manner and at such time as the Secretary shall prescribe" in provisions preceding cl. (i).

Subsec. (d)(2)(A)(i). Pub. L. 98-479, § 101(a)(10)(B), substituted "a State that has elected, in such manner and at such time as the Secretary shall prescribe, to distribute such amounts" for "the State".

Subsec. (d)(3)(A). Pub. L. 98-479, § 101(a)(11)(A), inserted "or section 1437o(e)(1) of this title".

Subsec. (d)(3)(C). Pub. L. 98-479, § 101(a)(11)(B), inserted "or to make the certifications required in subparagraphs (C) and (D) of paragraph (2)".

Subsec. (d)(5)(D)(ii). Pub. L. 98-479, § 101(a)(12), substituted "moderate" for "low and moderate income who are not persons of very low" before "income, the grantee certifies".

1983—Subsec. (b)(6). Pub. L. 98-181, § 106(a), added par. (6).

Subsec. (c)(1)(B). Pub. L. 98-181, § 106(b), substituted "a city or county against whom any such action was taken in a fiscal year shall be excluded from a calculation of share for purposes of reallocating in the succeeding year," for "the city or county against whom any such action was taken shall be excluded from the calculation of shares for purposes of reallocating".

Subsec. (c)(3). Pub. L. 98-181, § 106(c), added par. (3).

Subsec. (d)(2)(A). Pub. L. 98-181, § 106(d)(1), substituted "a State that has elected, in such manner and at such time as the Secretary shall prescribe" for "the State" in provisions preceding cl. (i), and inserted, following cl. (ii), "Any election to distribute funds made after the close of fiscal year 1984 is permanent and final."

Subsec. (d)(2)(B). Pub. L. 98-181, § 106(d)(2), substituted provisions requiring the Secretary to distribute amounts allocated under par. (1) if the State has not elected to distribute such amounts, for provisions which required the Secretary to distribute such amounts where the State had elected, in such manner and before such time as prescribed by the Secretary, not to distribute such amounts, or the State had failed to submit the certifications described in subpar. (C).

Subsec. (d)(2)(C)(iii). Pub. L. 98-181, § 106(e), amended cl. (iii) generally, substituting provisions requiring certification by the Governor that the State will not refuse to distribute funds to any local government unit on the basis of the particular activity selected to meet its community development needs, except that a State may establish priorities in distributing such amounts, for provisions requiring the Governor to certify that the State would provide funds for community development activities in an amount of at least 10 per centum of the amounts allocated for use in the State pursuant to par. (1).

Subsec. (d)(2)(D). Pub. L. 98-181, § 106(f), added subpar. (D).

Subsec. (d)(3)(A). Pub. L. 98-181, § 106(g), substituted provisions that the State may deduct an amount to

cover such expenses not to exceed the sum of \$102,000 plus 50 percent of any such expenses in excess of \$100,000, and that the amounts deducted in excess of \$100,000 shall not exceed 2 percent of the amount so received, for provisions that the State could deduct an amount not to exceed 50 per centum of the costs incurred by the State in carrying out such responsibilities, and that amounts so deducted could not exceed 2 per centum of the amount so received.

Subsec. (d)(3)(C), (D). Pub. L. 98-181, § 106(h), amended subpar. (C) generally, substituting provisions requiring that amounts which are to be reallocated because of failure to meet requirements of section 5304(a), (b) of this title or because of action under section 5304(d) or 5311 of this title be added to amounts allocated to all States for the succeeding fiscal year for provisions that amounts reallocated because of action under section 5304(d) or section 5311 of this title were to be added to amounts available for distribution in the State in the same fiscal year, in the case of actions against units of general local government, or to amounts available for distribution in the succeeding fiscal year, in the case of action against the State, and struck out provision for distribution of such funds by either the State or the Secretary and adding subpar. (D).

Subsec. (d)(5), (6). Pub. L. 98-181, § 106(i), added pars. (5) and (6).

Subsec. (f). Pub. L. 98-181, § 106(j), amended subsec. (f) generally, substituting provisions for pro rata reduction of all amounts determined under subsec. (b) in the event of a deficiency for provisions for reduction of all basic grant entitlement funds provided pursuant to this section in the event of a deficiency, and inserted provision for distribution of excess amounts.

1981—Subsec. (a). Pub. L. 97-35, § 304(a), substituted provisions relating to amounts allocated to metropolitan areas and urban counties and limitations on amount of annual grants for provisions relating to amounts allocated to metropolitan areas, annual grants for metropolitan cities and urban counties, and limitations.

Subsec. (b)(4). Pub. L. 97-35, § 309(h), substituted provision respecting assistance under subsec. (d) of this section for provision respecting grants under subsec. (c) or (e) of this section.

Subsec. (c). Pub. L. 97-35, § 304(b), (c), redesignated subsec. (d) as (c) and substituted provisions relating to reallocation of undistributed funds within same metropolitan area as original allocation, for provisions relating to reallocation of amounts allocated to metropolitan cities, urban counties, and metropolitan areas for use by States, metropolitan cities, etc. Former subsec. (c), which related to additional allocations of amount allocated to metropolitan areas and added amounts for grants for metropolitan cities, urban counties, specified units of general local government, and States, was struck out.

Subsec. (d). Pub. L. 97-35, § 304(b), (d), (e), redesignated subsec. (e) as (d) and substituted provisions relating to allocation among nonentitlement areas, amount and calculation of grants, distributions, certifications, etc., for provisions relating to amounts allocated to units of general local government of metropolitan areas and States, calculations, multiyear commitments, annual grants, reallocation of amounts to non-metropolitan areas of other States, and review by Secretary. Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 97-35, § 304(b), redesignated subsec. (f) as (e). Former subsec. (e) redesignated (d).

Subsecs. (f), (g). Pub. L. 97-35, § 304(b), (f), redesignated subsec. (g) as (f) and substituted "all basic grant entitlement amounts" for "(1) all basic grant entitlement amounts, and (2) funds available under subsection (c) of this section (including amounts provided for use under section 5303(a)(2) of this title) and subsection (e) of this section". Former subsec. (f) redesignated (e).

1980—Subsec. (a). Pub. L. 96-399, § 111(e), substituted "subsection (d) of this section" for "subsections (c) and (e) of this section", struck out "aggregate" after "allocation in an", "the greater of" after "not exceeding",

and “or its hold-harmless amount computed pursuant to subsection (g) of this section” after “subsection (b) of this section”.

Subsec. (b)(4). Pub. L. 96-399, §103, substituted “the populations of which are not counted in determining the eligibility of the urban county to receive a grant under this subsection, except that there shall be included any independent city (as defined by the Bureau of the Census) which—” for “(A) which are entitled to hold-harmless grants pursuant to subsection (h) of this section, or (B) the populations of which are not counted in determining the eligibility of the urban county to receive a grant under this subsection”, and added subpars. (A) to (E) and provision following subpar. (E).

Subsec. (c). Pub. L. 96-399, §111(d), (f), redesignated former subsec. (d) as (c) and struck out in par. (1) “allocated by the Secretary, first, for grants to metropolitan cities, urban counties, and other units of general local government within metropolitan areas to meet their hold-harmless needs as determined under subsections (g) and (h), and second, in accordance with the provisions of paragraph (2)” after “section 5303(a)(2) of this title”, struck out “(2) Any portion of such amounts which remains after applying the provision of paragraph (1) shall be” before “utilized by the Secretary”, redesignated former par. (3) as (2) and in par. (2) as so redesignated, substituted “paragraph (1)” for “paragraph (2)” wherever appearing, struck out “In determining whether to make such a commitment to a unit of general local government, the Secretary shall give special consideration to those communities presently carrying out comprehensive community development programs which are subject to the provisions of subsection (h)(2), before making new commitments.” after “availability of appropriations.”, and substituted “and Indian tribes” for “Indian tribes, and units of general local government which are entitled to hold-harmless grants pursuant to subsection (h) of this section”. Former subsec. (c), relating to adjustment of amounts for metropolitan cities and urban counties, was struck out.

Subsec. (d). Pub. L. 96-399, §§111(d), 112, redesignated former subsec. (e) as (d) and inserted provisions relating to preferences for units of general local government in the same metropolitan area. Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 96-399, §111(d), (g), redesignated former subsec. (f) as (e) and in par. (1) struck out “allocated by the Secretary—(A) first, for grants to units of general local government outside of metropolitan areas to meet their hold-harmless needs as determined under subsection (h) of this section; and (B) second, any portion of such amount which remains after applying the provisions of subparagraph (A) shall be” after “20 per centum shall be”, redesignated former cls. (1)(B)(i) and (ii) as (1)(A) and (B), respectively, redesignated former subcls. (1)(B)(i)(I) to (III) and (1)(B)(ii)(I) to (III) as (1)(A)(i) to (iii) and (1)(B)(i) to (iii), respectively, substituted “subparagraph (A)” for “clause (i) of subparagraph (B)” and “subparagraph (B)” for “clause (ii) of subparagraph (B)”, substituted “allocated under this paragraph” for “allocated under subparagraph (B)”, substituted “such paragraph” for “such subparagraph” wherever appearing, in par. (2) struck out “In determining whether to make such a commitment to a unit of general local government, the Secretary shall give special consideration to those communities presently carrying out comprehensive community development programs, which are subject to the provisions of subsection (h)(2) of this section, before making new commitments.” after “availability of appropriations.”, substituted “paragraph (1)” for “paragraph (1)(B)” wherever appearing, struck out “units of general local government which are entitled to hold-harmless grants pursuant to subsection (h) of this section and” after “shall be excluded”, and in par. (3) substituted “paragraph (1)” for “paragraph (1)(B)”. Former subsec. (e) was redesignated as (d).

Subsec. (f). Pub. L. 96-399, §111(d), redesignated subsec. (k) as (f). Former subsec. (f) redesignated (e).

Subsec. (g). Pub. L. 96-399, §§102, 111(d), redesignated subsec. (m) as (g) and substituted “any fiscal year” for “fiscal year 1978, fiscal year 1979, or fiscal year 1980”, struck out “and hold-harmless” after “all basic grant” in two places, and substituted “subsection (c)” for “subsection (d)(2)” and “subsection (e)” for “subsection (f)(1)(B)”. Former subsec. (g), relating to hold-harmless amounts for metropolitan cities and urban counties, was struck out.

Subsec. (h). Pub. L. 96-399, §111(d), struck out subsec. (h) which related to hold-harmless grants to units of general local government not metropolitan cities or urban counties.

Subsec. (i). Pub. L. 96-399, §111(d), struck out subsec. (i) which related to percentages excluded from data in computation of hold-harmless grants for units of general local government.

Subsec. (j). Pub. L. 96-399, §111(d), struck out subsec. (j) which related to waiver of eligibility by units of general local government for hold-harmless grants.

Subsec. (k). Pub. L. 96-399, §111(d), redesignated subsec. (k) as (f).

Subsec. (l). Pub. L. 96-399, §111(d), struck out subsec. (l) which related to reports to Congress with respect to adequacy and effectiveness of formula for allocation of funds.

Subsec. (m). Pub. L. 96-399, §111(d), redesignated subsec. (m) as (g).

1979—Subsec. (b)(5). Pub. L. 96-153, §103(e), added par. (5).

Subsec. (m). Pub. L. 96-153, §103(d), inserted reference to fiscal year 1980.

1977—Subsec. (a). Pub. L. 95-128, §106(a), substituted in second sentence reference to pars. “(1) or (2)” for pars. “(2) or (3)” of subsec. (b) of this section.

Subsec. (b)(1). Pub. L. 95-128, §106(b), added par. (1), and struck out former par. (1) provisions stating that “The Secretary shall determine the amount to be allocated to all metropolitan cities which shall be an amount that bears the same ratio to the allocation for all metropolitan areas as the average of the ratios between—

“(A) the population of all metropolitan cities and the population of all metropolitan areas;

“(B) the extent of poverty in all metropolitan cities and the extent of poverty in all metropolitan areas; and

“(C) the extent of housing overcrowding in all metropolitan cities and the extent of housing overcrowding in all metropolitan areas.”, now incorporated in this paragraph.

Subsec. (b)(2). Pub. L. 95-128, §106(b), added par. (2) and struck out former par. (2) provisions declaring that “From the amount allocated to all metropolitan cities the Secretary shall determine for each metropolitan city a basic grant amount which shall equal an amount that bears the same ratio to the allocation for all metropolitan cities as the average of the ratios between—

“(A) the population of that city and the population of all metropolitan cities;

“(B) the extent of poverty in that city and the extent of poverty in all metropolitan cities; and

“(C) the extent of housing overcrowding in that city and the extent of housing overcrowding in all metropolitan cities.”, now incorporated in subsec. (b)(1) of this section.

Subsec. (b)(3). Pub. L. 95-128, §106(b), added par. (3) and struck out former par. (3) provisions for determination of basic grant amount of each urban county, now covered in subsec. (b)(2) of this section and formerly providing that “The Secretary shall determine the basic grant amount of each urban county by—

“(A) calculating the total amount that would have been allocated to metropolitan cities and urban counties together under paragraph (1) of this subsection if data pertaining to the population, extent of poverty, and extent of housing overcrowding in all urban counties were included in the numerator of each of the fractions described in such paragraph; and

“(B) determining for each county the amount which bears the same ratio to the total amount calculated

under subparagraph (A) of this paragraph as the average of the ratios between—

“(i) the population of that urban county and the population of all metropolitan cities and urban counties;

“(ii) the extent of poverty in that urban county and the extent of poverty in all metropolitan cities and urban counties; and

“(iii) the extent of housing overcrowding in that urban county and the extent of housing overcrowding in all metropolitan cities and urban counties.”

Subsec. (b)(4), (5). Pub. L. 95-128, §106(b), (c), struck out par. “(4) In determining the average of ratios under paragraphs (1), (2), and (3), the ratio involving the extent of poverty shall be counted twice.”, now incorporated in par. (3), redesignated par. (5) as (4), and substituted “are entitled to” for “receive”.

Subsec. (c). Pub. L. 95-128, §106(d), in first sentence, substituted “With respect to funds approved for distribution to a metropolitan city or urban county under this section during fiscal years 1975, 1976, and 1977” for “During the first three years for which funds are approved for distribution to a metropolitan city or urban county under this section” and inserted “only for such funds approved for distribution in fiscal years 1975, 1976, and 1977” after “adjusted”.

Subsec. (d). Pub. L. 95-128, §106(e), incorporated existing introductory text and provisions of former par. (1) in provisions now designated par. (1); added par. (2), incorporating provisions of former par. (2) respecting additional allocations by the Secretary “for grants to units of general local government (other than metropolitan cities and urban counties) and States for use in metropolitan areas, allocating for each such metropolitan area an amount which bears the same ratio to the allocation for all metropolitan areas available under this paragraph as the average of the ratios between—

“(A) the population of that metropolitan area and the population of all metropolitan areas,

“(B) the extent of poverty in that metropolitan area and the extent of poverty in all metropolitan areas, and

“(C) the extent of housing overcrowding in that metropolitan area and the extent of housing overcrowding in all metropolitan areas.” and declaring that “In determining the average of ratios under paragraph (2), the ratio involving the extent of poverty shall be counted twice”; struck out end clause providing that “in computing amounts under such paragraph there shall be excluded any metropolitan cities, urban counties, and units of general local government which receive hold-harmless grants pursuant to subsection (h) of this section”, now constituting last sentence of par. (3); and added par. (3) provisions.

Subsec. (e). Pub. L. 95-128, §106(f), in first sentence, substituted “within a reasonable time” for “during such program period” and struck out “during the same period” after “shall be reallocated”.

Subsec. (f)(1). Pub. L. 95-128, §106(g)(1), inserted in subpar. (B) “any portion of such amount which remains after applying the provisions of subparagraph (A) shall be utilized by the Secretary” after “second,” and “the greater of” before “an amount”; reenacted existing provisions in cl. (i); added cl. (ii); inserted provision respecting determination of average of ratios under cl. (ii) of subpar. (B) and provision for pro rata reduction, to compensate for the discrepancy between the total of the amounts to be allocated under subpar. (B) and the total of the amounts available under such subparagraph, of each amount allocated to the nonmetropolitan areas in each State under such subparagraph; and struck out end clause providing that in computing amounts under such subpar. (B) there shall be excluded units of general local government which receive hold-harmless grants pursuant to subsec. (h) of this section, now constituting end sentence of subsec. (f)(2) of this section.

Subsec. (f)(2). Pub. L. 95-128, §106(g)(1), (2), added par. (2) and redesignated former par. (2) as (3).

Subsec. (f)(3). Pub. L. 95-128, §106(g)(2)-(4), redesignated former par. (2) as (3), substituted “within a reasonable time” for “during such period”, and struck out “during the same period” after “as soon as practicable”.

Subsec. (g)(2). Pub. L. 95-128, §106(h), substituted reference to “subsection (b)(1)(A) or (B), or (2)(A) or (B) of this section” for “subsection (b)(2) or (3) of this section” and inserted in cls. (i) and (ii) “, as computed under subsection (b)(1)(A) or (B), or (2)(A) or (B) of this section,” before “shall”.

Subsec. (i). Pub. L. 95-128, §106(i), struck out “population, poverty, and housing overcrowding” before “data” and substituted “are entitled to” for “receive” and reference to subsec. (b)(4) for (b)(5) of this section.

Subsec. (j). Pub. L. 95-128, §106(j), substituted “by such date as the Secretary shall determine” for “not later than thirty days prior to the beginning of any program period” and reference to subsec. (b)(4) for (b)(5) of this section and inserted “for a hold-harmless grant for a single year” after “eligibility”.

Subsec. (l). Pub. L. 95-128, §106(k), substituted provisions for submission of a report to Congress not later than Sept. 30, 1978, respecting adequacy of funds allocation formula and defining “impaction” for prior requirement of a report to Congress not later than Mar. 31, 1977, setting forth recommendations to further purposes and policies of this chapter, for modifying or expanding the provisions of this section relating to the method of funding and the allocation of funds and the determination of basic grant entitlement, and for application of the provisions in the further distribution of funds under this chapter and the conduct of a study by the Secretary respecting manner of distributing funds under this chapter in accordance with community development needs, objectives, and capacities, measured to the maximum extent feasible by objective standards.

Subsec. (m). Pub. L. 95-128, §106(l), added subsec. (m).

EFFECTIVE DATE OF 1990 AMENDMENT

Section 913(f) of Pub. L. 101-625 provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 5301 and 5307 of this title] shall apply to amounts approved in any appropriation Act under section 103 of the Housing and Community Development Act of 1974 [section 5303 of this title] for fiscal year 1990 and each fiscal year thereafter.

“(2) GRANTS IN FISCAL YEAR 1990.—The Secretary of Housing and Urban Development may make grants to Indian tribes pursuant to the amendments made by this section with any amounts approved in any appropriation Act under section 103 for fiscal year 1990 for grants to Indian tribes, and the first sentence of section 106(a)(1) of the Housing and Community Development Act of 1974 [subsec. (a)(1) of this section] (as amended by this Act) shall not apply to such grants.”

EFFECTIVE DATE OF 1989 AMENDMENT

Section 702(e) of Pub. L. 101-235, as amended by Pub. L. 101-625, title IX, §913(e), Nov. 28, 1990, 104 Stat. 4393, provided that: “The amendments made by this section [amending this section and section 5302 of this title] shall apply to amounts approved in any appropriation Act under section 103 of the Housing and Community Development Act of 1974 [section 5303 of this title] for fiscal year 1990 and each fiscal year thereafter.”

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-181 applicable only to funds available for fiscal year 1984 and thereafter, see section 110(b) of Pub. L. 98-181, as amended, set out as a note under section 5316 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective Oct. 1, 1981, see section 371 of Pub. L. 97-35, set out as an Effective Date note under section 3701 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-128 effective Oct. 1, 1977, see section 114 of Pub. L. 95-128, set out as a note under section 5301 of this title.

REGULATIONS

Section 702(d) of Pub. L. 101-235 provided that: "The Secretary shall issue any regulations necessary to carry out this section and the amendments made by this section [amending this section and section 5302 of this title and enacting provisions set out as notes above] in a manner and by such time to provide for the effectiveness of such regulations with respect to amounts appropriated for fiscal year 1991 under section 103 of the Housing and Community Development Act of 1974 [section 5303 of this title]."

TRANSITIONAL PROVISIONS

Section 307 of Pub. L. 97-35 provided that:

"(a) Any amounts appropriated for any fiscal year before fiscal year 1982 in a Department of Housing and Urban Development—Independent Agencies Appropriation Act or a Supplemental Appropriation Act under the head 'COMMUNITY DEVELOPMENT GRANTS' which are or become available for obligation on or after October 1, 1981, shall remain available as provided by law, and shall be used in accordance with the following:

"(1) funds authorized for use under section 106(b) [subsec. (b) of this section] of the Housing and Community Development Act of 1974 ('such Act') before October 1, 1981, shall be available for use as provided by section 106(c) of such Act as amended by this Act [subsec. (c) of this section];

"(2) funds authorized for use under section 107 of such Act [section 5307 of this title] before October 1, 1981, shall be available for use as provided by section 107(a) of such Act as amended by this Act [section 5307(a) of this title]; and

"(3) funds authorized for use under section 106(c) or (e) of such Act [subsec. (c) or (e) of this section] before October 1, 1981, shall be available for use as provided by section 106(d)(2)(A) of such Act as amended by this Act [subsec. (d)(2)(A) of this section].

"(b) Any grant or loan which, prior to the effective date of any provision of this part [see Effective Date note set out under section 3701 of Title 12, Banks and Banking], was obligated and governed by any authority amended by any provision of this part [Pub. L. 97-35, title III, §§301-315, Aug. 13, 1981, 95 Stat. 384-398] shall continue to be governed by the provisions of such authority as they existed immediately before such effective date."

CDBG ASSISTANCE FOR UNITED STATES-MEXICO BORDER REGION

Pub. L. 104-134, title I, §101(e) [title II], Apr. 26, 1996, 110 Stat. 1321-257, 1321-272; renumbered title I, Pub. L. 104-140, §1(a), May 2, 1996, 110 Stat. 1327, provided in part: "That section 916 of the Cranston-Gonzalez National Affordable Housing Act [set out below] shall apply with respect to fiscal year 1996, notwithstanding section 916(f) of that Act."

Section 916 of Pub. L. 101-625, as amended by Pub. L. 102-550, title VIII, §810, Oct. 28, 1992, 106 Stat. 3850; Pub. L. 104-204, title II, Sept. 26, 1996, 110 Stat. 2887, provided that:

"(a) SET-ASIDE FOR COLONIAS.—The States of Arizona, California, New Mexico, and Texas shall each make available, for activities designed to meet the needs of the residents of colonias in the State relating to water, sewage, and housing, the following percentage of the amount allocated for the State under section 106(d) of the Housing and Community Development Act of 1974 (42 U.S.C. 5306(d)):

"(1) FIRST FISCAL YEAR.—For the first fiscal year to which this section applies, 10 percent.

"(2) SUCCEEDING FISCAL YEARS.—For each of the succeeding fiscal years to which this section applies, a percentage (not to exceed 10 percent) that is deter-

mined by the Secretary of Housing and Urban Development to be appropriate after consultation with representatives of the interests of the residents of colonias.

"(b) ELIGIBLE ACTIVITIES.—Assistance distributed pursuant to this section may be used only to carry out the following activities:

"(1) PLANNING.—Payment of the cost of planning community development (including water and sewage facilities) and housing activities, including the cost of—

"(A) the provision of information and technical assistance to residents of the area in which the activities are to be concentrated and to appropriate nonprofit organizations and public agencies acting on behalf of the residents; and

"(B) preliminary surveys and analyses of market needs, preliminary site engineering and architectural services, site options, applications, mortgage commitments, legal services, and obtaining construction loans.

"(2) ASSESSMENTS FOR PUBLIC IMPROVEMENTS.—The payment of assessments (including any charge made as a condition of obtaining access) levied against properties owned and occupied by persons of low and moderate income to recover the capital cost for a public improvement.

"(3) OTHER IMPROVEMENTS.—Other activities eligible under section 105 of the Housing and Community Development Act of 1974 [42 U.S.C. 5305] designed to meet the needs of residents of colonias.

"(c) DISTRIBUTION OF ASSISTANCE.—Assistance shall be made available pursuant to this section in accordance with a distribution plan that gives priority to colonias having the greatest need for such assistance.

"(d) APPLICABLE LAW.—Except to the extent inconsistent with this section, assistance provided pursuant to this section shall be subject to the provisions of title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.).

"(e) DEFINITIONS.—For purposes of this section:

"(1) COLONIA.—The term 'colonia' means any identifiable community that—

"(A) is in the State of Arizona, California, New Mexico, or Texas;

"(B) is in the United States-Mexico border region;

"(C) is determined to be a colonia on the basis of objective criteria, including lack of potable water supply, lack of adequate sewage systems, and lack of decent, safe, and sanitary housing; and

"(D) was in existence as a colonia before the date of the enactment of the Cranston-Gonzalez National Affordable Housing Act [Nov. 28, 1990].

"(2) NONPROFIT ORGANIZATION.—The term 'nonprofit organization' means an organization described in section 501(c) of the Internal Revenue Code of 1986 [26 U.S.C. 501(c)] and exempt from taxation under section 501(a) of such Code.

"(3) PERSONS OF LOW AND MODERATE INCOME.—The term 'persons of low and moderate income' has the meaning given the term in section 102(a) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)).

"(4) UNITED STATES-MEXICO BORDER REGION.—The term 'United States-Mexico border region' means the area of the United States within 150 miles of the border between the United States and Mexico, except that the term does not include any standard metropolitan statistical area that has a population exceeding 1,000,000."

OFFICE OF INDIAN AND ALASKA NATIVE PROGRAMS

Section 702(c) of Pub. L. 101-235, which required Secretary of Housing and Urban Development to administer grants to Indian tribes under this chapter through the Office of Indian and Alaska Native Programs of the Department of Housing and Urban Development, was repealed by Pub. L. 101-625, title IX, §913(d), Nov. 28, 1990, 104 Stat. 4393.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1437aaa-2, 5301, 5302, 5303, 5304, 5305, 5307, 5308, 5312, 5321, 11373, 12705, 12750, 12873, 12893, 12899c of this title; title 26 section 42.

§ 5307. Special purpose grants**(a) Set-aside****(1) In general**

For each fiscal year (except as otherwise provided in this paragraph), of the total amount provided in appropriation Acts under section 5303 of this title for the fiscal year, \$60,000,000 shall be set aside for grants under subsection (b) of this section for such year for the following purposes:

(A) \$6,500,000 shall be available for grants under subsection (b)(3)¹ of this section;

(B) \$6,000,000 shall be available for grants under subsection (b)(5)¹ of this section;

(C) \$6,000,000 shall be available in fiscal year 1993 for grants under subsection (b)(7)¹ of this section;

(D) \$3,000,000 shall be available for grants under subsection (c) of this section;

(E) such sums as may be necessary shall be available for grants under paragraphs (2), (4), and (6)¹ of subsection (b) of this section;

(F) \$2,000,000 shall be available in fiscal year 1993 for a grant to the City of Bridgeport, Connecticut, subject to the approval of sufficient amounts in an appropriation Act and to binding commitments made by the City of Bridgeport and the State of Connecticut that the city and State, respectively, will supplement such amount with \$2,000,000 of additional funds; and

(G) \$7,500,000 shall be available to carry out the Community Outreach Partnership Act of 1992.

(2) Treatment of grants

Any grants made under this section shall be in addition to any other grants that may be made under this chapter to the same entities for the same purposes.

(b) Permissible uses of funds

From amounts set aside under subsection (a) of this section, the Secretary is authorized to make grants—

(1) to States and units of general local government for the purpose of allocating amounts to any such State or unit of general local government that is determined by the Secretary to have received insufficient amounts under section 5306 of this title as a result of a miscalculation of its share of funds under such section;

(2) to historically Black colleges;

(3) to States, units of general local government, Indian tribes, or areawide planning organizations for the purpose of providing technical assistance in planning, developing, and administering assistance under this chapter and section 1706e¹ of title 12; to groups designated by such governmental units to assist them in carrying out assistance under this chapter; to qualified groups for the purpose of assisting more than one such governmental

unit to carry out assistance under this chapter; the Secretary may also provide technical assistance, directly or through contracts, to such governmental units and groups; for purposes of this paragraph the term “technical assistance” means the facilitating of skills and knowledge in planning, developing, and administering activities under this chapter in entities that may need but do not possess such skills and knowledge, and includes assessing programs and activities under this chapter; except that any recipient of a grant under this paragraph that provides technical assistance pursuant to this paragraph shall provide for the notification of the availability of such assistance and shall have specific criteria for selection of recipients of such assistance that are published and publicly available;

(4) to States and units of general local government and institutions of higher education having a demonstrated capacity to carry out eligible activities under this chapter, except that the Secretary may make a grant under this paragraph only to a State or unit of general local government that jointly, with an institution of higher education, has prepared and submitted to the Secretary an application for such grant, as the Secretary shall by regulation require;

(5) to units of general local government in nonentitlement areas for planning community adjustments and economic diversification activities, which may include any eligible activities under section 5305 of this title, required—

(A) by the proposed or actual establishment, realignment, or closure of a military installation,

(B) by the cancellation or termination of a Department of Defense contract or the failure to proceed with an approved major weapon system program, or

(C) by a publicly announced planned major reduction in Department of Defense spending that would directly and adversely affect a unit of general local government and will result in the loss of 1,000 or more full-time Department of Defense and contractor employee positions over a 5-year period in the unit of general local government and the surrounding area, or

if the Secretary (in consultation with the Secretary of Defense) determines that an action described in subparagraph (A), (B), or (C) is likely to have a direct and significant adverse consequence on the unit of general local government; and

(6) for the purposes of rebuilding and revitalizing distressed areas of the Los Angeles metropolitan area.

(c) Assistance to economically disadvantaged and minority students participating in community development work study programs

Of the amount set aside for use under subsection (b) of this section in any fiscal year, the Secretary shall,² make grants to institutions of higher education, either directly or through areawide planning organizations or States, for the purpose of providing assistance to economi-

¹ See References in Text note below.

² So in original. The comma probably should not appear.

cally disadvantaged and minority students who participate in community development work study programs and are enrolled in full-time graduate or undergraduate programs in community and economic development, community planning, or community management.

(d) Continued availability of unused funds

Amounts set aside for use under subsection (b) of this section in any fiscal year but not used in that year shall remain available for use in subsequent fiscal years in accordance with the provisions of that subsection.

(e) Satisfactory assurances required, special assurances required of Indian tribes

(1) Except as provided in paragraph (2), no grant may be made under this section or section 5318 of this title and no assistance may be made available under section 1437o³ of this title unless the grantee provides satisfactory assurances that its program will be conducted and administered in conformity with the Civil Rights Act of 1964 [42 U.S.C. 2000a et seq.] and the Fair Housing Act [42 U.S.C. 3601 et seq.].

(2) No grant may be made to an Indian tribe under this section, section 5306(a)(1) of this title, or section 5318 of this title unless the applicant provides satisfactory assurances that its program will be conducted and administered in conformity with title II of Public Law 90-284 [25 U.S.C. 1301 et seq.]. The Secretary may waive, in connection with grants to Indian tribes, the provisions of section 5309 of this title and section 5310 of this title.

(3) The Secretary may accept a certification from the grantee or applicant that it has complied with the requirements of paragraph (1) or (2), as appropriate.

(f) Criteria for selection of recipients

Any grant made under this section shall be made pursuant to criteria for selection of recipients of such grants that the Secretary shall by regulation establish and which the Secretary shall publish together with any notification of availability of amounts under this section.

(Pub. L. 93-383, title I, §107, Aug. 22, 1974, 88 Stat. 647; Pub. L. 94-375, §15(c), Aug. 3, 1976, 90 Stat. 1076; Pub. L. 95-128, title I, §107, Oct. 12, 1977, 91 Stat. 1123; Pub. L. 95-557, title I, §103(f), Oct. 31, 1978, 92 Stat. 2084; Pub. L. 96-399, title I, §§107, 117(b), Oct. 8, 1980, 94 Stat. 1618, 1624; Pub. L. 97-35, title III, §305, Aug. 13, 1981, 95 Stat. 391; Pub. L. 98-181, title I, §107, title III, §302(b), Nov. 30, 1983, 97 Stat. 1167, 1206; Pub. L. 100-242, title V, §§501(b), 517(b)(2), 522(b), Feb. 5, 1988, 101 Stat. 1922, 1936, 1939; Pub. L. 101-235, title I, §105(a)-(c), (e), Dec. 15, 1989, 103 Stat. 1998, 1999; Pub. L. 101-625, title IX, §§901(c), 913(c), Nov. 28, 1990, 104 Stat. 4385, 4393; Pub. L. 102-550, title VIII, §§801(c)(1), (2), (4), 808, Oct. 28, 1992, 106 Stat. 3843-3845, 3850; Pub. L. 106-569, title I, §102(f), Dec. 27, 2000, 114 Stat. 2947; Pub. L. 108-186, title V, §501(f), Dec. 16, 2003, 117 Stat. 2697.)

REFERENCES IN TEXT

Paragraphs (2), (3), (4), (6), and (7) of subsection (b) of this section, referred to in subsec. (a)(1)(A) to (C) and (E), were redesignated as paragraphs (1), (2), (3), (5), and

(6), respectively, of subsection (b) by Pub. L. 108-186, title V, §501(f)(2)(B), Dec. 16, 2003, 117 Stat. 2697.

The Community Outreach Partnership Act of 1992, referred to in subsec. (a)(1)(G), is section 851 of Pub. L. 102-550, which is set out below.

Section 1706e of title 12, referred to in subsec. (b)(3), was repealed by Pub. L. 101-625, title II, §289(b), Nov. 28, 1990, 104 Stat. 4128.

Section 1437o of this title, referred to in subsec. (e)(1), was repealed by Pub. L. 101-625, title II, §289(b), Nov. 28, 1990, 104 Stat. 4128.

The Civil Rights Act of 1964, referred to in subsec. (e)(1), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended, which is classified principally to subchapters II to IX (§2000a et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

The Fair Housing Act, referred to in subsec. (e)(1), is title VIII of Pub. L. 90-284, Apr. 11, 1968, 82 Stat. 81, as amended, which is classified principally to subchapter I (§3601 et seq.) of chapter 45 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

Public Law 90-284, referred to in subsec. (e)(2), is Pub. L. 90-284, Apr. 11, 1968, 82 Stat. 73, as amended, known as the Civil Rights Act of 1968. Title II of Pub. L. 90-284 is classified generally to subchapter I (§1301 et seq.) of chapter 15 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

AMENDMENTS

2003—Subsec. (a)(1). Pub. L. 108-186, §501(f)(1), redesignated subpars. (B) to (H) as (A) to (G), respectively, and struck out former subpar. (A) which read as follows: “\$7,000,000 shall be available for grants under subsection (b)(1) of this section;”.

Subsec. (b). Pub. L. 108-186, §501(f)(2), redesignated pars. (2) to (7) as (1) to (6), respectively, and struck out former par. (1) which read as follows: “in Guam, the Virgin Islands, American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands;”.

2000—Subsec. (a)(1)(G). Pub. L. 106-569, §102(f)(1), inserted “and” after semicolon at end.

Subsec. (a)(1)(H), (I). Pub. L. 106-569, §102(f)(2), (3), redesignated subpar. (I) as (H) and struck out former subpar. (H) which read as follows: “\$15,000,000 shall be available for grants under the Removal of Regulatory Barriers to Affordable Housing Act of 1992; and”.

1992—Subsec. (a). Pub. L. 102-550, §801(c)(1), added heading and subsec. (a) and struck out former subsec. (a) which read as follows: “Of the total amount provided in appropriation Acts under section 5303 of this title for fiscal years 1988 and 1989, \$60,000,000 may be set aside in each year for grants under subsection (b) of this section. Grants under this section are in addition to any other grants which may be made under this chapter to the same entities for the same purposes.”

Subsec. (b)(5) to (7). Pub. L. 102-550, §801(c)(2), added pars. (5) to (7).

Subsec. (c). Pub. L. 102-550, §801(c)(4), substituted “make” for “to the extent approved in appropriation Acts, make available not less than \$3,000,000 in the form of”.

Subsec. (e)(1). Pub. L. 102-550, §808, substituted “the Civil Rights Act of 1964 and the Fair Housing Act” for “Public Law 88-352 and Public Law 90-284”.

1990—Subsec. (a). Pub. L. 101-625, §901(c), directed the amendment of subsec. (a), which did not contain designated pars., by adding par. (3) and redesignating former pars. (3) and (4) as (4) and (5), respectively.

Subsec. (e)(2). Pub. L. 101-625, §913(c), inserted “, section 5306(a)(1) of this title,” after “this section”.

1989—Pub. L. 101-235, §105(e), substituted “Special purpose grants” for “Discretionary fund” in section catchline.

Subsec. (a). Pub. L. 101-235, §105(a), struck out “in a special discretionary fund” after “in each year” and

³ See References in Text note below.

struck out at end "Of the amount set aside for grants under subsection (b) of this section for fiscal year 1988, \$5,000,000 shall be made available by the Secretary for purposes of grants under subsection (b)(1) of this section for the Park Central New Community Project."

Subsec. (b)(1). Pub. L. 101-235, §105(b)(1), (3), redesignated former par. (2) as (1) and struck out former par. (1) which read as follows: "in behalf of new communities assisted under title VII of the Housing and Urban Development Act of 1970 or title IV of the Housing and Urban Development Act of 1968 or in behalf of new community projects assisted under title X of the National Housing Act which meet the eligibility standards set forth in title VII of the Housing and Urban Development Act of 1970 and which were the subject of an application or preapplication under such title prior to January 14, 1975;"

Subsec. (b)(2). Pub. L. 101-235, §105(b)(3), redesignated par. (5) as (2). Former par. (2) redesignated (1).

Subsec. (b)(3). Pub. L. 101-235, §105(b)(1), (4), added par. (3) and struck out former par. (3) which related to grants to Indian tribes.

Subsec. (b)(4). Pub. L. 101-235, §105(b)(5), struck out "and to States and units of general local government for implementing special projects otherwise authorized under this chapter; and" after "to carry out assistance under this chapter;" and substituted "for purposes of this paragraph the term 'technical assistance' means the facilitating of skills and knowledge in planning, developing, and administering activities under this chapter in entities that may need but do not possess such skills and knowledge, and includes assessing programs and activities under this chapter; except that any recipient of a grant under this paragraph that provides technical assistance pursuant to this paragraph shall provide for the notification of the availability of such assistance and shall have specific criteria for selection of recipients of such assistance that are published and publicly available." for "and" after "such governmental units and groups;"

Subsec. (b)(5). Pub. L. 101-235, §105(b)(3), redesignated par. (5) as (2).

Subsec. (f). Pub. L. 101-235, §105(c), added subsec. (f). 1988—Subsec. (a). Pub. L. 100-242, §522(b), inserted sentence at end making \$5,000,000 of grant moneys available for the Park Central New Community Project.

Pub. L. 100-242, §501(b)(1), amended first sentence generally. Prior to amendment, first sentence read as follows: "Of the total amount approved in appropriation Acts under section 5303 of this title for each of the fiscal years 1984, 1985, and 1986, not more than \$68,200,000 for each such fiscal year may be set aside in a special discretionary fund for grants under subsection (b) of this section."

Subsec. (b)(4). Pub. L. 100-242, §517(b)(2), inserted "and section 1706e of title 12" before first semicolon.

Subsecs. (c) to (e). Pub. L. 100-242, §501(b)(2), added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

1983—Subsec. (a). Pub. L. 98-181, §107(a), substituted provisions permitting not more than \$68,200,000 for each of fiscal years 1984, 1985, and 1986 to be set aside in a special discretionary fund for grants under subsection (b) of this section, for provisions permitting not more than \$60,000,000 to be set aside for each of fiscal years 1982 and 1983 in such a fund.

Subsec. (b)(4). Pub. L. 98-181, §107(b), amended par. (4) generally, inserting provisions authorizing the Secretary to provide assistance to groups designated by certain enumerated governmental units to assist in carrying out this chapter, to qualified groups for the purpose of assisting more than one such governmental unit and to provide technical assistance, directly or through contracts, to such governmental units and groups.

Subsec. (b)(5). Pub. L. 98-181, §107(c), added par. (5).

Subsec. (d)(1). Pub. L. 98-181, §302(b)(1), inserted provisions relating to section 1437o of this title, and substituted "grantee" for "applicant".

Subsec. (d)(3). Pub. L. 98-181, §302(b)(2), inserted "grantee or" before "applicant".

1981—Subsec. (a). Pub. L. 97-35 substituted provisions relating to authorization of appropriations under section 5303 of this title for fiscal years 1982 and 1983, and supplemental nature of grants, for provisions relating to authorization of appropriations under section 5303(a)(1) of this title for fiscal years 1981 to 1983, and purposes for expenditures from fund.

Subsec. (b). Pub. L. 97-35 substituted provisions relating to permissible uses of funds for provisions relating to limitations on amounts reserved for emergency disaster needs.

Subsec. (c). Pub. L. 97-35 substituted provisions relating to amounts set aside for use under subsec. (b) of this section for provisions relating to amounts set aside and reserved in the special fund under subsec. (b) of this section.

Subsec. (d). Pub. L. 97-35 substituted provisions relating to assurances required for provisions relating to Indian tribal eligibility for grant as dependent upon conformity of program with prescribed constitutional rights and habeas corpus.

1980—Subsec. (a). Pub. L. 96-399, §107, substituted "approved in appropriation Acts under section 5303(a)(1) of this title for each of the fiscal years 1981, 1982, and 1983, not more than \$104,000,000 for fiscal year 1981, not more than \$104,000,000 for fiscal year 1982, and not more than \$107,000,000 for fiscal year 1983 may" for "of authority to enter into contracts approved in appropriation Acts under section 5303(a)(1) of this title for each of the fiscal years 1975, 1976, 1977, 1978, 1979, and 1980, an amount equal to 3 per centum thereof shall".

Subsec. (d). Pub. L. 96-399, §117(b), inserted "under this chapter" after "Indian tribe".

1978—Subsec. (a)(8). Pub. L. 95-557 substituted "The Secretary may also provide, directly or through contracts, technical assistance under this paragraph to such governmental units, or to a group designated by such a governmental unit for the purpose of assisting that governmental unit to carry out its Community Development Program" for "The Secretary may also provide such technical assistance under this paragraph directly or through contracts".

1977—Subsec. (a). Pub. L. 95-128, §107(1), (2), extended provisions to fiscal years 1978 through 1980 and increased rate to 3 from 2 per centum.

Subsec. (a)(5). Pub. L. 95-128, §107(3), provided for grants to Indian tribes.

Subsec. (a)(7), (8). Pub. L. 95-128, §107(4), added pars. (7) and (8).

Subsec. (b). Pub. L. 95-128, §107(5), substituted "15 per centum" for "one-fourth".

Subsec. (d). Pub. L. 95-128, §107(6), added subsec. (d).

1976—Subsec. (a)(1). Pub. L. 94-375 included new community projects assisted under title X of the National Housing Act as within the authority of the Secretary to make grants from the special discretionary fund.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 913(c) of Pub. L. 101-625 applicable to amounts approved in any appropriation Act under section 5303 of this title for fiscal year 1990 and each fiscal year thereafter, see section 913(f) of Pub. L. 101-625, set out as a note under section 5306 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 105(d) of Pub. L. 101-235 provided that:

"(1) IN GENERAL.—Except as provided in this paragraph and paragraph (2), the amendments made by this section [amending this section] shall apply with respect to any grants made under section 107 of the Housing and Community Development Act of 1974 [this section] on or after the date of the enactment of this Act [Dec. 15, 1989], except a grant made under the third sentence of section 107(a) of [the] Housing and Community Development Act of 1974, as such sentence existed immediately before such date, and grants for specific activities (referred to in House Report Number 101-297)

pursuant to the amount appropriated for use under section 107 by the enactment of the bill, H.R. 2916, of the One Hundred First Congress [Pub. L. 101-144, Nov. 9, 1989, 103 Stat. 850].

“(2) PRIOR GRANTS.—Any grant made under section 107 of the Housing and Community Development Act of 1974 [this section] before the date of the enactment of this Act [Dec. 15, 1989] or pursuant to a grant award notification made before such date shall be governed by the provisions of such section as it existed immediately before the date of the enactment of this Act.”

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-181 applicable only to funds available for fiscal year 1984 and thereafter, see section 110(b) of Pub. L. 98-181, as amended, set out as a note under section 5316 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective Oct. 1, 1981, see section 371 of Pub. L. 97-35, set out as an Effective Date note under section 3701 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-557 effective Oct. 1, 1978, see section 104 of Pub. L. 95-557, set out as a note under section 1709 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-128 effective Oct. 1, 1977, see section 114 of Pub. L. 95-128, set out as a note under section 5301 of this title.

REGULATIONS

Pub. L. 102-550, title VIII, §801(c)(3), Oct. 28, 1992, 106 Stat. 3844, provided that, not later than the expiration of the 60-day period beginning on Oct. 28, 1992, the Secretary of Housing and Urban Development was to issue proposed regulations to carry out subsec. (b)(6) of this section and to issue final regulations to carry out subsec. (b)(6) not later than the expiration of the 120-day period beginning on Oct. 28, 1992.

COMMUNITY OUTREACH PARTNERSHIP

Section 851 of Pub. L. 102-550 directed Secretary to carry out a 5-year demonstration program to determine feasibility of facilitating partnerships between institutions of higher education and communities to solve urban problems through research, outreach, and exchange of information, established program of grants to public and private nonprofit institutions of higher education to assist in establishing or carrying out such activities and to establish and operate Community Outreach Partnership Centers which were to focus on problems associated with housing, economic development, neighborhood revitalization, infrastructure, health care, job training, education, crime prevention, planning, community organizing, and other areas deemed appropriate by the Secretary, further provided for establishment of national advisory council to assist Secretary in these areas and a national clearinghouse to disseminate information resulting from these activities, and further provided for appropriations for the demonstration program as well as for an annual report to Congress by the Secretary.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5306, 5308 of this title; title 26 section 42.

§ 5308. Guarantee and commitment to guarantee loans for acquisition of property

(a) Authority of Secretary; issuance of obligations by eligible public entities or designated public agencies; form, denomination, maturity, and conditions of notes or other obligations; percentage allocation requirements

The Secretary is authorized, upon such terms and conditions as the Secretary may prescribe,

to guarantee and make commitments to guarantee, only to such extent or in such amounts as provided in appropriation Acts, the notes or other obligations issued by eligible public entities, or by public agencies designated by such eligible public entities, for the purposes of financing (1) acquisition of real property or the rehabilitation of real property owned by the eligible public entity (including such related expenses as the Secretary may permit by regulation); (2) housing rehabilitation; (3) economic development activities permitted under paragraphs (14), (15), and (17) of section 5305(a) of this title; (4) construction of housing by nonprofit organizations for homeownership under section 1437o(d)¹ of this title or title VI of the Housing and Community Development Act of 1987; (5) the acquisition, construction, reconstruction, or installation of public facilities (except for buildings for the general conduct of government); or (6) in the case of colonias (as such term is defined in section 916 of the Cranston-Gonzalez National Affordable Housing Act), public works and site or other improvements. A guarantee under this section may be used to assist a grantee in obtaining financing only if the grantee has made efforts to obtain such financing without the use of such guarantee and cannot complete such financing consistent with the timely execution of the program plans without such guarantee. Notes or other obligations guaranteed pursuant to this section shall be in such form and denominations, have such maturities, and be subject to such conditions as may be prescribed by regulations issued by the Secretary. The Secretary may not deny a guarantee under this section on the basis of the proposed repayment period for the note or other obligation, unless the period is more than 20 years or the Secretary determines that the period causes the guarantee to constitute an unacceptable financial risk. Notwithstanding any other provision of law and subject only to the absence of qualified applicants or proposed activities and to the authority provided in this section, to the extent approved or provided in appropriation Acts, the Secretary shall enter into commitments to guarantee notes and obligations under this section with an aggregate principal amount of \$2,000,000,000 for fiscal year 1993 and \$2,000,000,000 for fiscal year 1994. Of the amount approved in any appropriation Act for guarantees under this section in any fiscal year, the Secretary shall allocate 70 percent for guarantees for metropolitan cities, urban counties, and Indian tribes and 30 percent for guarantees for units of general local government in nonentitlement areas. The Secretary may waive the percentage requirements of the preceding sentence in any fiscal year only to the extent that there is an absence of qualified applicants or proposed activities from metropolitan cities, urban counties, and Indian tribes or units of general local government in nonentitlement areas.

(b) Prerequisites

No guarantee or commitment to guarantee shall be made with respect to any note or other obligation if the issuer's total outstanding notes

¹ See References in Text note below.

or obligations guaranteed under this section (excluding any amount defeased under the contract entered into under subsection (d)(1)(A) of this section) would thereby exceed an amount equal to 5 times the amount of the grant approval for the issuer pursuant to section 5306 or 5307 of this title.

(c) Payment of principal, interest and costs

Notwithstanding any other provision of this chapter, grants allocated to an issuer pursuant to this chapter (including program income derived therefrom) are authorized for use in the payment of principal and interest due (including such servicing, underwriting, or other costs as may be specified in regulations of the Secretary) on the notes or other obligations guaranteed pursuant to this section.

(d) Repayment contract; security; pledge by State

(1) To assure the repayment of notes or other obligations and charges incurred under this section and as a condition for receiving such guarantees, the Secretary shall require the issuer to—

(A) enter into a contract, in a form acceptable to the Secretary, for repayment of notes or other obligations guaranteed hereunder;

(B) pledge any grant for which the issuer may become eligible under this chapter; and

(C) furnish, at the discretion of the Secretary, such other security as may be deemed appropriate by the Secretary in making such guarantees, including increments in local tax receipts generated by the activities assisted under this chapter or dispositions proceeds from the sale of land or rehabilitated property.

(2) To assist in assuring the repayment of notes or other obligations and charges incurred under this section, a State shall pledge any grant for which the State may become eligible under this chapter as security for notes or other obligations and charges issued under this section by any unit of general local government in a nonentitlement area in the State.

(e) Pledged grants for repayments

The Secretary is authorized, notwithstanding any other provision of this chapter, to apply grants pledged pursuant to paragraphs (1)(B) and (2) of subsection (d) of this section to any repayments due the United States as a result of such guarantees.

(f) Full faith and credit of United States pledged for payment; conclusiveness and validity of guarantee

The full faith and credit of the United States is pledged to the payment of all guarantees made under this section. Any such guarantee made by the Secretary shall be conclusive evidence of the eligibility of the obligations for such guarantee with respect to principal and interest, and the validity of any such guarantee so made shall be incontestable in the hands of a holder of the guaranteed obligations.

(g) Issuance of obligations by Secretary to Secretary of the Treasury to satisfy authorized guarantee obligations; establishment of maturities and rates of interest and purchase of obligations by Secretary of the Treasury

The Secretary may issue obligations to the Secretary of the Treasury in an amount outstanding at any one time sufficient to enable the Secretary to carry out his obligations under guarantees authorized by this section. The obligations issued under this subsection shall have such maturities and bear such rate or rates of interest as shall be determined by the Secretary of the Treasury. The Secretary of the Treasury is authorized and directed to purchase any obligations of the Secretary issued under this section, and for such purposes is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, and the purposes for which such securities may be issued under such chapter are extended to include the purchases of the Secretary's obligations hereunder.

(h) Federal taxation of guaranteed obligations; grants to borrowing entity or agency of taxable obligations for net interest costs, etc.; limitation on amount of grant; assistance to issuer in hardship cases

Obligations guaranteed under this section shall be subject to Federal taxation as provided in subsection (j) of this section. The Secretary is authorized to make, and to contract to make, grants, in such amounts as may be approved in appropriations Acts, to or on behalf of the issuing eligible public entity or public agency to cover not to exceed 30 per centum of the net interest cost (including such servicing, underwriting, or other costs as may be specified in regulations of the Secretary) to the borrowing entity or agency of such obligations. The Secretary may also, to the extent approved in appropriation Acts, assist the issuer of a note or other obligation guaranteed under this section in the payment of all or a portion of the principal and interest amount due under the note or other obligation, if the Secretary determines that the issuer is unable to pay the amount because of circumstances of extreme hardship beyond the control of the issuer.

(i) Omitted

(j) Inclusion within gross income for purpose of chapter 1 of title 26 of interest paid on taxable obligations

With respect to any obligation issued by a² eligible public entity or designated agency which is guaranteed pursuant to this section, the interest paid on such obligation shall be included in gross income for the purpose of chapter 1 of title 26.

(k) Outstanding obligations; limitation; monitoring use of guarantees under this section

(1) The total amount of outstanding obligations guaranteed on a cumulative basis by the Secretary pursuant to subsection (a) of this section shall not at any time exceed \$4,500,000,000 or such higher amount as may be authorized to be

² So in original. Probably should be "an".

appropriated for sections 5306 and 5307 of this title for any fiscal year.

(2) The Secretary shall monitor the use of guarantees under this section by eligible public entities. If the Secretary finds that 50 percent of the aggregate guarantee authority has been committed, the Secretary may—

(A) impose limitations on the amount of guarantees any one entity may receive in any fiscal year of \$35,000,000 for units of general local government receiving grants under section 5306(b) of this title and \$7,000,000 for units of general local government receiving grants under section 5306(d) of this title; or

(B) request the enactment of legislation increasing the aggregate limitation on guarantees under this section.

(l) Purchase of guaranteed obligations by Federal Financing Bank

Notes or other obligations guaranteed under this section may not be purchased by the Federal Financing Bank.

(m) Limitation on imposition of fee or charge

No fee or charge may be imposed by the Secretary or any other Federal agency on or with respect to a guarantee made by the Secretary under this section after February 5, 1988.

(n) State assistance in submission of applications

Any State that has elected under section 5306(d)(2)(A) of this title to distribute funds to units of general local government in nonentitlement areas may assist such units in the submission of applications for guarantees under this section.

(o) “Eligible public entity” defined

For purposes of this section, the term “eligible public entity” means any unit of general local government, including units of general local government in nonentitlement areas.

(p) Training and information activities relating to home guarantee program

(1) The Secretary, in cooperation with eligible public entities, shall carry out training and information activities with respect to the guarantee program under this section. Such activities shall commence not later than 1 year after November 28, 1990.³

(2) The Secretary may use amounts set aside under section 5307 of this title to carry out this subsection.

(q) Economic development grants

(1) Authorization

The Secretary may make grants in connection with notes or other obligations guaranteed under this section to eligible public entities for the purpose of enhancing the security of loans guaranteed under this section or improving the viability of projects financed with loans guaranteed under this section.

(2) Eligible activities

Assistance under this subsection may be used only for the purposes of and in conjunction with projects and activities assisted under subsection (a) of this section.

(3) Applications

Applications for assistance under this subsection may be submitted only by eligible public entities, and shall be in the form and in accordance with the procedures established by the Secretary. Eligible public entities may apply for grants only in conjunction with requests for guarantees under subsection (a) of this section.

(4) Selection criteria

The Secretary shall establish criteria for awarding assistance under this subsection. Such criteria shall include—

(A) the extent of need for such assistance;

(B) the level of distress in the community to be served and in the jurisdiction applying for assistance;

(C) the quality of the plan proposed and the capacity or potential capacity of the applicant to successfully carry out the plan; and

(D) such other factors as the Secretary determines to be appropriate.

(r) Guarantee of obligations backed by loans

(1) Authority

The Secretary may, upon such terms and conditions as the Secretary considers appropriate, guarantee the timely payment of the principal of and interest on such trust certificates or other obligations as may—

(A) be offered by the Secretary or by any other offeror approved for purposes of this subsection by the Secretary; and

(B) be based on and backed by a trust or pool composed of notes or other obligations guaranteed or eligible for guarantee by the Secretary under this section.

(2) Full faith and credit

To the same extent as provided in subsection (f) of this section, the full faith and credit of the United States is pledged to the payment of all amounts that may be required to be paid under any guarantee made by the Secretary under this subsection.

(3) Subrogation

If the Secretary pays a claim under a guarantee made under this section, the Secretary shall be subrogated for all the rights of the holder of the guaranteed certificate or obligation with respect to such certificate or obligation.

(4) Effect of laws

No State or local law, and no Federal law, shall preclude or limit the exercise by the Secretary of—

(A) the power to contract with respect to public offerings and other sales of notes, trust certificates, and other obligations guaranteed under this section upon such terms and conditions as the Secretary deems appropriate;

(B) the right to enforce any such contract by any means deemed appropriate by the Secretary; and

(C) any ownership rights of the Secretary, as applicable, in notes, certificates, or other obligations guaranteed under this section, or

³ See Codification note below.

constituting the trust or pool against which trust certificates, or other obligations guaranteed under this section, are offered.

(Pub. L. 93-383, title I, §108, Aug. 22, 1974, 88 Stat. 647; Pub. L. 95-128, title I, §108, Oct. 12, 1977, 91 Stat. 1123; Pub. L. 96-399, title I, §108, Oct. 8, 1980, 94 Stat. 1619; Pub. L. 97-35, title III, §309(i), Aug. 13, 1981, 95 Stat. 397; Pub. L. 98-181, title I, §108, Nov. 30, 1983, 97 Stat. 1168; Pub. L. 98-479, title II, §§203(l)(2), 204(k)(1), Oct. 17, 1984, 98 Stat. 2231, 2233; Pub. L. 99-272, title III, §3002(a), Apr. 7, 1986, 100 Stat. 102; Pub. L. 100-242, title V, §514, Feb. 5, 1988, 101 Stat. 1930; Pub. L. 101-625, title IX, §§901(b), 910(b)-(g), Nov. 28, 1990, 104 Stat. 4385, 4389-4391; Pub. L. 102-550, title VIII, §801(b), Oct. 28, 1992, 106 Stat. 3843; Pub. L. 103-233, title II, §§231, 232(a)(1), 233, Apr. 11, 1994, 108 Stat. 366, 368; Pub. L. 104-120, §3(b), Mar. 28, 1996, 110 Stat. 835.)

REFERENCES IN TEXT

Section 1437o of this title, referred to in subsec. (a)(4), was repealed by Pub. L. 101-625, title II, §289(b), Nov. 28, 1990, 104 Stat. 4128.

Title VI of the Housing Community Development Act of 1987, referred to in subsec. (a)(4), is title VI of Pub. L. 100-242, Feb. 5, 1988, 101 Stat. 1951, which was set out as a note under section 1715l of Title 12, Banks and Banking, and was repealed by Pub. L. 101-625, title II, §289(b), Nov. 28, 1990, 104 Stat. 4128.

Section 916 of the Cranston-Gonzalez National Affordable Housing Act, referred to in subsec. (a)(6), is section 916 of Pub. L. 101-625, as amended, which is set out as a note under section 5306 of this title.

CODIFICATION

Subsec. (i) of this section amended section 711(22) of former Title 31, Money and Finance. Subsec. (i) was originally enacted as subsec. (f) of this section, and was redesignated as subsec. (i) by Pub. L. 95-128, §108(2).

November 28, 1990, referred to in subsec. (p)(1), was in the original "the date of the enactment of the Housing and Community Development Act of 1990", and was translated as meaning the date of enactment of the Cranston-Gonzalez National Affordable Housing Act, Pub. L. 101-625, which enacted subsec. (p) of this section, to reflect the probable intent of Congress and because no "Housing and Community Development Act of 1990" has been enacted.

AMENDMENTS

1996—Subsec. (k)(1). Pub. L. 104-120 substituted "\$4,500,000,000" for "\$3,500,000,000".

1994—Subsec. (a). Pub. L. 103-233, §231, added cls. (5) and (6).

Subsec. (q). Pub. L. 103-233, §232(a)(1), added subsec. (q).

Subsec. (r). Pub. L. 103-233, §233, added subsec. (r).

1992—Subsec. (a). Pub. L. 102-550 amended fifth sentence generally. Prior to amendment, fifth sentence read as follows: "Notwithstanding any other provision of law and subject only to the absence of qualified applicants or proposed activities and to the authority provided in this section, to the extent approved or provided in appropriation Acts, the Secretary shall enter into commitments to guarantee notes and obligations under this section with an aggregate principal amount of \$300,000,000 during fiscal year 1991 and \$300,000,000 during fiscal year 1992."

1990—Subsec. (a). Pub. L. 101-625, §910(e)(1), inserted at end "Of the amount approved in any appropriation Act for guarantees under this section in any fiscal year, the Secretary shall allocate 70 percent for guarantees for metropolitan cities, urban counties, and Indian tribes and 30 percent for guarantees for units of general local government in nonentitlement areas. The

Secretary may waive the percentage requirements of the preceding sentence in any fiscal year only to the extent that there is an absence of qualified applicants or proposed activities from metropolitan cities, urban counties, and Indian tribes or units of general local government in nonentitlement areas."

Pub. L. 101-625, §910(c), inserted "The Secretary may not deny a guarantee under this section on the basis of the proposed repayment period for the note or other obligation, unless the period is more than 20 years or the Secretary determines that the period causes the guarantee to constitute an unacceptable financial risk."

Pub. L. 101-625, §910(b)(2), substituted a semicolon for "; or" before "(3)" and added cl. (4).

Pub. L. 101-625, §910(b)(1)(A), substituted "eligible public entity" and "eligible public entities" for "unit of general local government" and "units of general local government", respectively, wherever appearing.

Pub. L. 101-625, §901(b), amended last sentence generally. Prior to amendment, last sentence read as follows: "Notwithstanding any other provision of law and subject only to the absence of qualified applicants or proposed activities, to the authority provided in this section, and to any funding limitation approved in appropriation Acts, the Secretary shall enter into commitments to guarantee notes and obligations under this section with an aggregate principal amount of \$150,000,000 during fiscal year 1988, and \$153,000,000 during fiscal year 1989."

Subsec. (b). Pub. L. 101-625, §910(d), inserted "(excluding any amount defeased under the contract entered into under subsection (d)(1)(A) of this section)" after "this section", substituted "5" for "three", and inserted reference to section 5307 of this title.

Subsec. (d). Pub. L. 101-625, §910(b)(4)(A), designated existing provisions as par. (1), redesignated former pars. (1) to (3) as subpars. (A) to (C), respectively, and added par. (2).

Subsec. (e). Pub. L. 101-625, §910(b)(4)(B), substituted "paragraphs (1)(B) and (2) of subsection (d)" for "subsection (d)(2)".

Subsec. (h). Pub. L. 101-625, §910(f), inserted at end "The Secretary may also, to the extent approved in appropriation Acts, assist the issuer of a note or other obligation guaranteed under this section in the payment of all or a portion of the principal and interest amount due under the note or other obligation, if the Secretary determines that the issuer is unable to pay the amount because of circumstances of extreme hardship beyond the control of the issuer."

Pub. L. 101-625, §910(b)(1), substituted "entity or agency" for "unit or agency" and "eligible public entity" for "unit of general local government".

Subsec. (j). Pub. L. 101-625, §910(b)(1)(A), substituted "eligible public entity" for "unit of general local government".

Subsec. (k). Pub. L. 101-625, §910(e)(2), designated existing provisions as par. (1) and added par. (2).

Subsec. (n). Pub. L. 101-625, §910(b)(3), added subsec. (n).

Subsec. (o). Pub. L. 101-625, §910(b)(5), added subsec. (o).

Subsec. (p). Pub. L. 101-625, §910(g), added subsec. (p).

1988—Subsec. (a). Pub. L. 100-242, §514(c), in first sentence inserted cl. (1) designation and added cls. (2) and (3).

Pub. L. 100-242, §514(a), in last sentence struck out "during fiscal year 1984" after "commitment" and substituted "\$150,000,000 during fiscal year 1988, and \$153,000,000 during fiscal year 1989" for "\$225,000,000".

Subsec. (m). Pub. L. 100-242, §514(b), added subsec. (m).

1986—Subsec. (l). Pub. L. 99-272 added subsec. (l).

1984—Subsec. (g). Pub. L. 98-479, §203(l)(2), substituted "chapter 31 of title 31" for "the Second Liberty Bond Act, as now or hereafter in force" and "such chapter" for "such Act".

Subsec. (h). Pub. L. 98-479, §204(k)(1), substituted "subsection (j)" for "subsection (g)".

1983—Subsec. (a). Pub. L. 98-181 inserted provision that a guarantee under this section may be used to as-

sist a grantee in obtaining financing only if the grantee has made efforts to obtain such financing without the use of such guarantee and cannot complete such financing consistent with the timely execution of the program plans without such guarantee, and substituted provisions requiring the Secretary to enter into commitments during fiscal year 1984 to guarantee notes and obligations under this section with an aggregate principal amount of \$225,000,000, notwithstanding any other provision of law and subject only to the absence of qualified applicants or proposed activities, for provisions prohibiting the Secretary from entering into commitments during fiscal year 1981 to guarantee under this section notes and other obligations with an aggregate principal amount in excess of \$300,000,000.

1981—Subsec. (d)(2). Pub. L. 97-35 struck out “approved or” after “grant”.

1980—Subsec. (a). Pub. L. 96-399, §108(1), (2), inserted provision respecting amounts as provided in appropriation Acts, and provision relating to limitation of \$300,000,000 the amount the Secretary is authorized to guarantee during fiscal year 1981.

Subsec. (j). Pub. L. 96-399, §108(3), struck out “Notwithstanding any other provision of this section” before “The total amount”.

1977—Subsec. (a). Pub. L. 95-128, §108(1), (3), reenacted substantially existing provisions and struck out “or assembly” after “acquisition of”, included rehabilitation of real property owned by the unit of general local government, inserted provision respecting form, denominations, maturities, and conditions of notes or other obligations to be guaranteed, and struck out after parenthetical text “to serve or be used in carrying out activities which are eligible for assistance under section 5305 of this title and are identified in the application under section 5304 of this title, and with respect to which grants have been or are to be made under section 5303 of this title, but no such guarantee shall be issued in behalf of any agency designed to benefit, in or by the flotation of any issue, a private individual or corporation”.

Subsec. (b). Pub. L. 95-128, §108(1), (3), added subsec. (b) and struck out prior provisions respecting: reservation and withholding of prescribed amount for purpose of paying guaranteed obligations, subject to being increased because of any unanticipated, major reduction in estimated disposition proceeds; pledge of full faith and credit of unit of general local government to the Secretary for repayment of any amount required to be paid by the United States pursuant to any guarantee; and pledge of repayment of proceeds of grants in event of failure of repayment as hereinbefore provided.

Subsecs. (c) to (e). Pub. L. 95-128, §108(3), added subsecs. (c) to (e). Former subsecs. (c) to (e) redesignated (f) to (h).

Subsecs. (f), (g). Pub. L. 95-128, §108(2), redesignated former subsecs. (c) and (d) as (f) and (g).

Subsec. (h). Pub. L. 95-128, §108(2), (4), (5), redesignated former subsec. (e) as (h) and substituted in first sentence “subsection (j)” for “subsection (g)”; substituted in first sentence “shall” for “may, at the option of the issuing unit of general local government or designated agency,”; and in second sentence “The Secretary is authorized to make, and to contract to make, grants, in such amounts as may be approved in appropriations Acts,” for “In the event that taxable obligations are issued and guaranteed, the Secretary is authorized to make, and to contract to make, grants”.

Subsec. (j). Pub. L. 95-128, §108(2), (6), redesignated former subsec. (g) as (j) and substituted “is guaranteed pursuant to” for “such unit or agency has elected to issue as a taxable obligation pursuant to subsection (e) of”.

Subsec. (k). Pub. L. 95-128, §108(7), added subsec. (k).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-120 to be construed to have become effective Oct. 1, 1995, see section 13(a) of Pub. L. 104-120, set out as an Effective and Termination Dates of 1996 Amendments note under section 1437d of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-233 applicable with respect to any amounts made available to carry out subchapter II (§12721 et seq.) of chapter 130 of this title after Apr. 11, 1994, and any amounts made available to carry out that subchapter before that date that remain uncommitted on that date, with Secretary to issue any regulations necessary to carry out such amendment not later than end of 45-day period beginning on that date, see section 209 of Pub. L. 103-233, set out as a note under section 5301 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 3002(b) of Pub. L. 99-272 provided that: “The amendment made by subsection (a) [amending this section] shall take effect on July 1, 1986.”

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-181 applicable only to funds available for fiscal year 1984 and thereafter, see section 110(b) of Pub. L. 98-181, as amended, set out as a note under section 5316 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective Oct. 1, 1981, see section 371 of Pub. L. 97-35, set out as an Effective Date note under section 3701 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-128 effective Oct. 1, 1977, see section 114 of Pub. L. 95-128, set out as a note under section 5301 of this title.

REGULATIONS

Section 910(i) of Pub. L. 101-625 provided that: “To carry out the amendments made by this section [amending this section and section 5313 of this title], the Secretary of Housing and Urban Development shall—

“(1) issue proposed regulations not later than 90 days after the date of the enactment of this Act [Nov. 28, 1990]; and

“(2) issue final regulations not later than 180 days after the date of the enactment of this Act.”

COMMUNITY DEVELOPMENT LOAN GUARANTEES

Section 910(a) of Pub. L. 101-625 provided that:

“(1) PURPOSES.—The purposes of the amendments made by this section [amending this section and section 5313 of this title] are—

“(A) to reaffirm the commitment of the Federal Government to assist local governments in their efforts in stimulating economic and community development activities needed to combat severe economic distress and to help in promoting economic development activities needed to aid in economic recovery; and

“(B) to promote revitalization and development projects undertaken by local governments that principally benefit persons of low and moderate income, the elimination of slums and blight, and to meet urgent community needs, with special priority for projects located in areas designated as enterprise zones by the Federal Government or by any State.

“(2) OBJECTIVES.—In order to further the purpose described in paragraph (1), activities undertaken pursuant to the amendments made by this section shall be directed toward meeting the objectives set forth in sections 101(c) and 104(b)(3) of the Housing and Community Development Act of 1974 (42 U.S.C. 5301(c) and 5304(b)(3)) and the additional objectives of—

“(A) encouraging local governments to establish public-private partnerships;

“(B) preserving housing affordable for persons of low and moderate income; and

“(C) creating permanent employment opportunities, primarily for persons of low and moderate income.”

ADMINISTRATIVE ACTIONS FOR PROVISION OF PRIVATE
SECTOR FINANCING OF GUARANTEED LOANS

Section 3002(c) of Pub. L. 99-272 provided that: "The Secretary of Housing and Urban Development shall take such administrative actions as are necessary to provide by the effective date of subsection (a) [July 1, 1986] private sector financing of loans guaranteed under section 108 of the Housing and Community Development Act of 1974 [this section]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5301, 5304, 5306, 5313, 5318 of this title; title 26 section 42; title 31 section 1305.

§ 5309. Nondiscrimination in programs and activities

(a) Prohibited conduct

No person in the United States shall on the ground of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this chapter. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.] or with respect to an otherwise qualified handicapped individual as provided in section 794 of title 29 shall also apply to any such program or activity.

(b) Compliance procedures available to Secretary

Whenever the Secretary determines that a State or unit of general local government which is a recipient of assistance under this chapter has failed to comply with subsection (a) of this section or an applicable regulation, he shall notify the Governor of such State or the chief executive officer of such unit of local government of the noncompliance and shall request the Governor or the chief executive officer to secure compliance. If within a reasonable period of time, not to exceed sixty days, the Governor or the chief executive officer fails or refuses to secure compliance, the Secretary is authorized to (1) refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted; (2) exercise the powers and functions provided by title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d); (3) exercise the powers and functions provided for in section 5311(a) of this title; or (4) take such other action as may be provided by law.

(c) Civil action by Attorney General

When a matter is referred to the Attorney General pursuant to subsection (b) of this section, or whenever he has reason to believe that a State government or unit of general local government is engaged in a pattern or practice in violation of the provisions of this section, the Attorney General may bring a civil action in any appropriate United States district court for such relief as may be appropriate, including injunctive relief.

(d) Waiver of race discrimination prohibitions regarding assistance to Hawaiian Home Lands

The provisions of this section and section 5304(b)(2) of this title which relate to discrimina-

tion on the basis of race shall not apply to the provision of assistance by grantees under this chapter to the Hawaiian Home Lands.

(Pub. L. 93-383, title I, §109, Aug. 22, 1974, 88 Stat. 649; Pub. L. 97-35, title III, §306, Aug. 13, 1981, 95 Stat. 392; Pub. L. 101-625, title IX, §§911, 912(a), Nov. 28, 1990, 104 Stat. 4392.)

REFERENCES IN TEXT

The Age Discrimination Act of 1975, referred to in subsec. (a), is title III of Pub. L. 94-135, Nov. 28, 1975, 89 Stat. 728, as amended, which is classified generally to chapter 76 (§6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

The Civil Rights Act of 1964, referred to in subsec. (b), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Civil Rights Act of 1964 is classified generally to subchapter V (§2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

AMENDMENTS

1990—Subsec. (a). Pub. L. 101-625, §912(a), inserted "religion," after "national origin,".

Subsec. (d). Pub. L. 101-625, §911, added subsec. (d).

1981—Subsec. (a). Pub. L. 97-35 inserted provisions respecting age discrimination.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 912(b) of Pub. L. 101-625 provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to conduct relating to discrimination occurring after the date of the enactment of this Act [Nov. 28, 1990]."

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective Oct. 1, 1981, see section 371 of Pub. L. 97-35, set out as an Effective Date note under section 3701 of Title 12, Banks and Banking.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3608, 5307 of this title.

§ 5310. Labor standards; rate of wages; exceptions; enforcement powers

(a) All laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with assistance received under this chapter shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with sections 3141-3144, 3146, and 3147 of title 40: *Provided*, That this section shall apply to the rehabilitation of residential property only if such property contains not less than 8 units. The Secretary of Labor shall have, with respect to such labor standards, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 3145 of title 40.

(b) Subsection (a) of this section shall not apply to any individual that—

(1) performs services for which the individual volunteered;

(2)(A) does not receive compensation for such services; or

(B) is paid expenses, reasonable benefits, or a nominal fee for such services; and

(3) is not otherwise employed at any time in the construction work.

(Pub. L. 93-383, title I, §110, Aug. 22, 1974, 88 Stat. 649; Pub. L. 97-35, title III, §309(j), Aug. 13, 1981, 95 Stat. 397; Pub. L. 100-242, title V, §523, Feb. 5, 1988, 101 Stat. 1939; Pub. L. 101-625, title IX, §955(a), Nov. 28, 1990, 104 Stat. 4420.)

REFERENCES IN TEXT

Reorganization Plan Numbered 14 of 1950, referred to in subsec. (a), is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

In subsec. (a), "sections 3141-3144, 3146, and 3147 of title 40" substituted for "the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5)" and "section 3145 of title 40" substituted for "section 2 of the Act of June 13, 1934, as amended (48 Stat. 948; 40 U.S.C. 276(c))", meaning 276c, on authority of Pub. L. 107-217, §5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

AMENDMENTS

1990—Pub. L. 101-625 designated existing provisions as subsec. (a) and added subsec. (b).

1988—Pub. L. 100-242, which directed the substitution of "contains not less than 8 units" for "is designed for residential use of eight or more families", was executed by making the substitution for "is designed for residential use for eight or more families" as the probable intent of Congress.

1981—Pub. L. 97-35 substituted "assistance" for "grants".

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-625 applicable to any volunteer services provided before, on, or after Nov. 28, 1990, except that such amendment may not be construed to require repayment of any wages paid before Nov. 28, 1990, for services provided before such date, see section 955(d) of Pub. L. 101-625, set out as a note under section 1437j of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective Oct. 1, 1981, see section 371 of Pub. L. 97-35, set out as an Effective Date note under section 3701 of Title 12, Banks and Banking.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5307 of this title.

§ 5311. Remedies for noncompliance with community development requirements

(a) Notice and hearing; termination, reduction, or limitation of payments by Secretary

If the Secretary finds after reasonable notice and opportunity for hearing that a recipient of assistance under this chapter has failed to comply substantially with any provision of this chapter, the Secretary, until he is satisfied that there is no longer any such failure to comply, shall—

- (1) terminate payments to the recipient under this chapter, or
- (2) reduce payments to the recipient under this chapter by an amount equal to the amount of such payments which were not expended in accordance with this chapter, or
- (3) limit the availability of payments under this chapter to programs, projects, or activities not affected by such failure to comply.

(b) Referral of matters to Attorney General; institution of civil action by Attorney General

(1) In lieu of, or in addition to, any action authorized by subsection (a) of this section, the

Secretary may, if he has reason to believe that a recipient has failed to comply substantially with any provision of this chapter, refer the matter to the Attorney General of the United States with a recommendation that an appropriate civil action be instituted.

(2) Upon such a referral the Attorney General may bring a civil action in any United States district court having venue thereof for such relief as may be appropriate, including an action to recover the amount of the assistance furnished under this chapter which was not expended in accordance with it, or for mandatory or injunctive relief.

(c) Petition for review of action of Secretary in Court of Appeals; filing of record of proceedings in court by Secretary; affirmance, etc., of findings of Secretary; exclusiveness of jurisdiction of court; review by Supreme Court on writ of certiorari or certification

(1) Any recipient which receives notice under subsection (a) of this section of the termination, reduction, or limitation of payments under this chapter may, within sixty days after receiving such notice, file with the United States Court of Appeals for the circuit in which such State is located, or in the United States Court of Appeals for the District of Columbia, a petition for review of the Secretary's action. The petitioner shall forthwith transmit copies of the petition to the Secretary and the Attorney General of the United States, who shall represent the Secretary in the litigation.

(2) The Secretary shall file in the court record of the proceeding on which he based his action, as provided in section 2112 of title 28. No objection to the action of the Secretary shall be considered by the court unless such objection has been urged before the Secretary.

(3) The court shall have jurisdiction to affirm or modify the action of the Secretary or to set it aside in whole or in part. The findings of fact by the Secretary, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The court may order additional evidence to be taken by the Secretary, and to be made part of the record. The Secretary may modify his findings of fact, or make new findings, by reason of the new evidence so taken and filed with the court, and he shall also file such modified or new findings, which findings with respect to questions of fact shall be conclusive if supported by substantial evidence on the record considered as a whole, and shall also file his recommendation, if any, for the modification or setting aside of his original action.

(4) Upon the filing of the record with the court, the jurisdiction of the court shall be exclusive and its judgment shall be final, except that such judgment shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28.

(Pub. L. 93-383, title I, §111, Aug. 22, 1974, 88 Stat. 650.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5306, 5309 of this title.

§ 5312. Use of grants for settlement of outstanding urban renewal loans of units of general local government

(a) Limitation on amounts; prerequisites

The Secretary is authorized, notwithstanding any other provision of this chapter, to apply a portion of the grants, not to exceed 20 per centum thereof without the request of the recipient, made or to be made under section 5303 of this title in any fiscal year pursuant to an allocation under section 5306 of this title to any unit of general local government toward payment of the principal of, and accrued interest on, any temporary loan made in connection with urban renewal projects under title I of the Housing Act of 1949 [42 U.S.C. 1450 et seq.] being carried out within the jurisdiction of such unit of general local government if—

(1) the Secretary determines, after consultation with the local public agency carrying out the project and the chief executive of such unit of general local government, that the project cannot be completed without additional capital grants, or

(2) the local public agency carrying out the project submits to the Secretary an appropriate request which is concurred in by the governing body of such unit of general local government.

In determining the amounts to be applied to the payment of temporary loans, the Secretary shall make an accounting for each project taking into consideration the costs incurred or to be incurred, the estimated proceeds upon any sale or disposition of property, and the capital grants approved for the project.

(b) Approval by Secretary of financial settlement of urban renewal project

Upon application by any local public agency carrying out an urban renewal project under title I of the Housing Act of 1949 [42 U.S.C. 1450 et seq.], which application is approved by the governing body of the unit of general local government in which the project is located, the Secretary may approve a financial settlement of such project if he finds that a surplus of capital grant funds after full repayment of temporary loan indebtedness will result and may authorize the unit of general local government to use such surplus funds, without deduction or offset, in accordance with the provisions of this chapter.

(Pub. L. 93-383, title I, §112, Aug. 22, 1974, 88 Stat. 650; Pub. L. 97-35, title III, §309(k), Aug. 13, 1981, 95 Stat. 397; Pub. L. 98-181, title I, §109, Nov. 30, 1983, 97 Stat. 1168; Pub. L. 98-479, title I, §101(a)(13)(A), Oct. 17, 1984, 98 Stat. 2220.)

REFERENCES IN TEXT

The Housing Act of 1949, referred to in subssecs. (a) and (b), is act July 15, 1949, ch. 338, 63 Stat. 413, as amended. Title I of the Housing Act of 1949 was classified generally to subchapter II (§1450 et seq.) of chapter 8A of this title, and was omitted from the Code pursuant to section 5316 of this title which terminated authority to make grants or loans under such title I after Jan. 1, 1975. For complete classification of this Act to the Code, see Short Title note set out under section 1441 of this title and Tables.

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-479 struck out subsec. (c) which related to retention of program income and prerequisites.

1983—Subsec. (c). Pub. L. 98-181 added subsec. (c).

1981—Subsec. (a). Pub. L. 97-35 substituted “5303” for “5303(a)”.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-181 applicable only to funds available for fiscal year 1984 and thereafter, see section 110(b) of Pub. L. 98-181, as amended, set out as a note under section 5316 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective Oct. 1, 1981, see section 371 of Pub. L. 97-35, set out as an Effective Date note under section 3701 of Title 12, Banks and Banking.

§ 5313. Reporting requirements

(a) Not later than 180 days after the close of each fiscal year in which assistance under this chapter is furnished, the Secretary shall submit to the Congress a report which shall contain—

(1) a description of the progress made in accomplishing the objectives of this chapter;

(2) a summary of the use of such funds during the preceding fiscal year;

(3) with respect to the action grants authorized under section 5318 of this title, a listing of each unit of general local government receiving funds and the amount of such grants, as well as a brief summary of the projects funded for each such unit, the extent of financial participation by other public or private entities, and the impact on employment and economic activity of such projects during the previous fiscal year; and

(4) a description of the activities carried out under section 5308 of this title.

(b) The Secretary is authorized to require recipients of assistance under this chapter to submit to him such reports and other information as may be necessary in order for the Secretary to make the report required by subsection (a) of this section.

(Pub. L. 93-383, title I, §113, Aug. 22, 1974, 88 Stat. 651; Pub. L. 95-128, title I, §109, Oct. 12, 1977, 91 Stat. 1124; Pub. L. 97-35, title III, §309(l), Aug. 13, 1981, 95 Stat. 397; Pub. L. 101-625, title IX, §910(h), Nov. 28, 1990, 104 Stat. 4392.)

AMENDMENTS

1990—Subsec. (a)(4). Pub. L. 101-625 added par. (4).

1981—Subsec. (a)(2). Pub. L. 97-35 struck out requirement respecting approval by the Secretary.

1977—Subsec. (a)(3). Pub. L. 95-128 added par. (3).

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective Oct. 1, 1981, see section 371 of Pub. L. 97-35, set out as an Effective Date note under section 3701 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-128 effective Oct. 1, 1977, see section 114 of Pub. L. 95-128, set out as a note under section 5301 of this title.

STUDY REGARDING AVAILABILITY OF HOUSING PROXIMATE TO PLACES OF EMPLOYMENT

Section 919 of Pub. L. 101-625 directed Secretary of Housing and Urban Development to conduct a study re-

garding availability of housing within reasonable proximity of places of employment and to submit a report not later than expiration of 1-year period beginning on Nov. 28, 1990, to appropriate committees of Congress containing results and conclusions of such study, as well as proposed strategies to increase availability of housing for low- and moderate-income families within reasonable proximity of places of employment for working members of such families to and prevent geographical divergence of such housing and places of employment.

STUDY ON INVOLUNTARY HOUSING DISPLACEMENT;
REPORT TO CONGRESS

Pub. L. 96-399, title I, §105(b), Oct. 8, 1980, 94 Stat. 1618, directed Secretary of Housing and Urban Development to continue study on involuntary displacement conducted under Pub. L. 95-557, title IX, §902, Oct. 31, 1978, 92 Stat. 2125, set out below, and transmit, not later than Mar. 30, 1981, a report to Congress containing data collected since initial report submitted under such section 902, and further recommendations on minimizing involuntary displacement and alleviating problems caused by such displacement.

ADEQUACY, EFFECTIVENESS, AND EQUITY OF FORMULA
FOR ALLOCATION OF FUNDS; REPORT TO CONGRESS

Pub. L. 96-399, title I, §113, Oct. 8, 1980, 94 Stat. 1622, directed Secretary of Housing and Urban Development, not later than Jan. 1, 1983, to report to Congress with respect to adequacy, effectiveness, and equity of formula used for allocation of funds under title I of the Housing and Community Development Act of 1974 (this chapter), with specific analysis and recommendations concerning manner in which such formula is or could be affected by data derived from 1980 decennial census.

STATEMENT OF POLICY AND STUDY ON HOUSING
DISPLACEMENT

Pub. L. 95-557, title IX, §902, Oct. 31, 1978, 92 Stat. 2125, declared it to be the policy of Congress that in administration of Federal housing and development programs, involuntary displacement of persons from homes and neighborhoods should be minimized and in keeping with such stated policy, authorized Secretary of Housing and Urban Development to conduct a study on nature and extent of such displacement and, not later than Jan. 31, 1979, report to Congress on recommendations for formulation of a national policy to minimize such displacement.

STUDY ON SMALL CITIES; REPORT TO PRESIDENT AND
CONGRESS; ALTERNATIVE FORMULAE

Pub. L. 95-128, title I, §113, Oct. 12, 1977, 91 Stat. 1111, directed Secretary of Housing and Urban Development to conduct a study and, not later than one year after Oct. 12, 1977, report to President and Congress recommendations on formation of a national policy on developmental needs of small cities and, among other things, include in such report alternative verifiable formulae to be used in distribution of discretionary balance funds available for allocation to such small cities under this chapter.

§ 5314. Consultation by Secretary with other Federal departments, etc.

In carrying out the provisions of this chapter including the issuance of regulations, the Secretary shall consult with other Federal departments and agencies administering Federal grant-in-aid programs.

(Pub. L. 93-383, title I, §114, Aug. 22, 1974, 88 Stat. 651.)

§ 5315. Interstate agreements or compacts; purposes

The consent of the Congress is hereby given to any two or more States to enter into agree-

ments or compacts, not in conflict with any law of the United States, for cooperative effort and mutual assistance in support of community development planning and programs carried out under this chapter as they pertain to interstate areas and to localities within such States, and to establish such agencies, joint or otherwise, as they may deem desirable for making such agreements and compacts effective.

(Pub. L. 93-383, title I, §115, Aug. 22, 1974, 88 Stat. 651.)

§ 5316. Transition provisions

(a) Prohibition on new grants or loans after January 1, 1975; exceptions

Except with respect to projects and programs for which funds have been previously committed, no new grants or loans shall be made after January 1, 1975, under (1) title I of the Demonstration Cities and Metropolitan Development Act of 1966 [42 U.S.C. 3301 et seq.], (2) title I of the Housing Act of 1949 [42 U.S.C. 1450 et seq.] (3) section 702 or section 703 of the Housing and Urban Development Act of 1965 [42 U.S.C. 3102 or 3103], (4) title II of the Housing Amendments of 1955 [42 U.S.C. 1491 et seq.], or (5) title VII of the Housing Act of 1961 [42 U.S.C. 1500 et seq.].

(b) Final date in fiscal year for submission of application for grant; establishment by Secretary

In the case of funds available for any fiscal year, the Secretary shall not consider any statement under section 5304(a) of this title, unless such statement is submitted on or prior to such date as the Secretary shall establish as the final date for submission of statements for that year.

(Pub. L. 93-383, title I, §116, Aug. 22, 1974, 88 Stat. 652; Pub. L. 94-375, §15(d), Aug. 3, 1976, 90 Stat. 1076; Pub. L. 96-399, title I, §111(h), Oct. 8, 1980, 94 Stat. 1622; Pub. L. 97-35, title III, §309(m), Aug. 13, 1981, 95 Stat. 397; Pub. L. 98-181, title I, §110(a), Nov. 30, 1983, 97 Stat. 1168.)

REFERENCES IN TEXT

The Demonstration Cities and Metropolitan Development Act of 1966, referred to in subsec. (a), is Pub. L. 89-754, Nov. 3, 1966, 80 Stat. 1255, as amended. Title I of the Act was classified principally to subchapter I (§3301 et seq.) of chapter 41 of this title, and was omitted from the Code pursuant to this section which terminated authority to make grants or loans under such title I after Jan. 1, 1975. For complete classification of this Act to the Code, see Short Title note set out under section 3331 of this title and Tables.

The Housing Act of 1949, referred to in subsec. (a), is act July 15, 1949, ch. 338, 63 Stat. 413, as amended. Title I of the Housing Act of 1949 was classified generally to subchapter II (§1450 et seq.) of chapter 8A of this title, and was omitted from the Code pursuant to this section which terminated authority to make grants or loans under such title I after Jan. 1, 1975. For complete classification of this Act to the Code, see Short Title note set out under section 1441 of this title and Tables.

Sections 702 and 703 of the Housing and Urban Development Act of 1965 [42 U.S.C. 3102, 3103], referred to in subsec. (a), were omitted from the Code pursuant to this section which terminated the authority to make grants or loans under those sections after Jan. 1, 1975.

The Housing Amendments of 1955, referred to in subsec. (a), is act Aug. 11, 1955, ch. 783, 69 Stat. 645, as amended. Title II of the Housing Amendments of 1955 was classified generally to chapter 8B (§1491 et seq.) of

this title, and was omitted from the Code pursuant to this section which terminated authority to make grants or loans under such title II after Jan. 1, 1975. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of Title 12, Banks and Banking, and Tables.

The Housing Act of 1961, referred to in subsec. (a), is Pub. L. 87-70, June 30, 1961, 87 Stat. 149, as amended. Title VII of the Housing Act of 1961 was classified generally to chapter 8C (§1500 et seq.) of this title, and was omitted from the Code pursuant to this section which terminated authority to make grants or loans under such title VII after Jan. 1, 1975. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of Title 12, Banks and Banking, and Tables.

CODIFICATION

Subsecs. (c), (d), and (e) of section 116 of Pub. L. 93-383 were omitted from this section. Subsec. (c) amended section 1453(b) of this title, subsec. (d) amended section 3311(b) and (c) of this title, and subsec. (e) amended section 1452b(a) and (h) of this title.

AMENDMENTS

1983—Subsec. (b). Pub. L. 98-181 substituted “prior to such date” for “prior to such date (in that fiscal year)”, and “for that year” for “in that year”.

1981—Subsec. (b). Pub. L. 97-35 substituted provisions relating to submission of required statement for provisions relating to submission of required application.

1980—Subsec. (b). Pub. L. 96-399, §111(h), redesignated subsec. (g) as (b) and struck out “or from a unit of general local government for a grant pursuant to section 5306(h) of this title” after “section 5306(a) of this title”. Former subsec. (b), relating to deductions from grants for fiscal year 1975, was struck out.

Subsec. (f). Pub. L. 96-399, §111(h)(1), struck out subsec. (f) relating to advances for program period beginning Jan. 1, 1975.

Subsec. (g). Pub. L. 96-399, §111(h)(1), redesignated subsec. (g) as (b).

Subsec. (h). Pub. L. 96-399, §111(h)(1), struck out subsec. (h) relating to sources of funds to meet deficiency in fiscal year 1977.

1976—Subsec. (h). Pub. L. 94-375 added subsec. (h).

EFFECTIVE DATE OF 1983 AMENDMENT

Section 110(b) of Pub. L. 98-181, as amended by Pub. L. 98-479, title I, §101(b)(1), Oct. 17, 1984, 98 Stat. 2220, provided that: “The amendments made by this part [part A (§§101-110) of title I of Pub. L. 98-181, amending this section, sections 5301 to 5308 and 5312 of this title, and provisions set out as a note under section 5305 of this title] shall apply only to funds available for fiscal year 1984 and thereafter.”

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective Oct. 1, 1981, see section 371 of Pub. L. 97-35, set out as an Effective Date note under section 3701 of Title 12, Banks and Banking.

§ 5317. Liquidation of superseded or inactive programs

The Secretary is authorized to transfer the assets and liabilities of any program which is superseded or inactive by reason of this chapter to the revolving fund for liquidating programs established pursuant to title II of the Independent Offices Appropriation Act, 1955 (Public Law 83-428; 68 Stat. 272, 295) [12 U.S.C. 1701g-5].

(Pub. L. 93-383, title I, §117(b), Aug. 22, 1974, 88 Stat. 653; Pub. L. 98-479, title II, §204(k)(2), Oct. 17, 1984, 98 Stat. 2233.)

AMENDMENTS

1984—Pub. L. 98-479 substituted “title II of the Independent Offices Appropriation Act, 1955 (Public Law

83-428; 68 Stat. 272, 295)” for “title II of the Independent Offices Appropriation Act of 1965 (Public Law 81-428; 68 Stat. 272, 295)”.

§ 5318. Urban development action grants

(a) Authorization; purpose; amount

The Secretary is authorized to make urban development action grants to cities and urban counties which are experiencing severe economic distress to help stimulate economic development activity needed to aid in economic recovery. There are authorized to be appropriated to carry out this section \$225,000,000 for fiscal year 1988, and \$225,000,000 for fiscal year 1989. Any amount appropriated under this subsection shall remain available until expended.

(b) Eligibility of cities and urban counties; criteria and standards; regulations

(1) Urban development action grants shall be made only to cities and urban counties which have, in the determination of the Secretary, demonstrated results in providing housing for low- and moderate-income persons and in providing equal opportunity in housing and employment for low- and moderate-income persons and members of minority groups. The Secretary shall issue regulations establishing criteria in accordance with the preceding sentence and setting forth minimum standards for determining the level of economic distress of cities and urban counties for eligibility for such grants. These standards shall take into account factors such as the age of housing; the extent of poverty; the extent of population lag; growth of per capita income; and the extent of unemployment, job lag, or surplus labor. Any city that has a population of less than 50,000 persons and is not the central city of a metropolitan area, and that was eligible for fiscal year 1983 under this paragraph for assistance under this section, shall continue to be eligible for such assistance until the Secretary revises the standards for eligibility for such cities under this paragraph and includes the extent of unemployment, job lag, or labor surplus as a standard of distress for such cities. The Secretary shall make such revision as soon as practicable following November 30, 1983.

(2) A city or urban county which fails to meet the minimum standards established pursuant to paragraph (1) shall be eligible for assistance under this section if it meets the requirements of the first sentence of such paragraph and—

(A) in the case of a city with a population of fifty thousand persons or more or an urban county, contains an area (i) composed of one or more contiguous census tracts, enumeration districts, neighborhood statistics areas, or block groups, as defined by the United States Bureau of the Census, having at least a population of ten thousand persons or 10 per centum of the population of the city or urban county; (ii) in which at least 70 per centum of the residents have incomes below 80 per centum of the median income of the city or urban county; and (iii) in which at least 30 per centum of the residents have incomes below the national poverty level; or

(B) in the case of a city with a population of less than fifty thousand persons, contains an

area (i) composed of one or more contiguous census tracts, enumeration districts, neighborhood statistics areas, or block groups or other areas defined by the United States Bureau of the Census or for which data certified by the United States Bureau of the Census are available having at least a population of two thousand five hundred persons or 10 per centum of the population of the city, whichever is greater; (ii) in which at least 70 per centum of the residents have incomes below 80 per centum of the median income of the city; and (iii) in which at least 30 per centum of the residents have incomes below the national poverty level.

The Secretary shall use up to, but not more than, 20 per centum of the funds appropriated for use in any fiscal year under this section for the purpose of making grants to cities and urban counties eligible under this paragraph.

(c) Applications; documentation of eligibility; proposed plan; assurance of notice and comment; assurance of consideration on historical landmarks

Applications for assistance under this section shall—

(1) in the case of an application for a grant under subsection (b)(2) of this section, include documentation of grant eligibility in accordance with the standards described in that subsection;

(2) set forth the activities for which assistance is sought, including (A) an estimate of the costs and general location of the activities; (B) a summary of the public and private resources which are expected to be made available in connection with the activities, including how the activities will take advantage of unique opportunities to attract private investment; and (C) an analysis of the economic benefits which the activities are expected to produce;

(3) contain a certification satisfactory to the Secretary that the applicant, prior to submission of its application, (A) has held public hearings to obtain the views of citizens, particularly residents of the area in which the proposed activities are to be carried out; (B) has analyzed the impact of these proposed activities on the residents, particularly those of low and moderate income, of the residential neighborhood, and on the neighborhood in which they are to be carried out; and (C) has made available the analysis described in clause (B) to any interested person or organization residing or located in the neighborhood in which the proposed activities are to be carried out; and

(4) contain a certification satisfactory to the Secretary that the applicant, prior to submission of its application, (A) has identified all properties, if any, which are included on the National Register of Historic Places and which, as determined by the applicant, will be affected by the project for which the application is made; (B) has identified all other properties, if any, which will be affected by such project and which, as determined by the applicant, may meet the criteria established by the Secretary of the Interior for inclusion on such

Register, together with documentation relating to the inclusion of such properties on the Register; (C) has determined the effect, as determined by the applicant, of the project on the properties identified pursuant to clauses (A) and (B); and (D) will comply with the requirements of section 5320 of this title.

(d) Mandatory selection criteria; award of points; distribution of funds; number of competitions per year; use of distress conditions data by urban counties

(1) Except in the case of a city or urban county eligible under subsection (b)(2) of this section, the Secretary shall establish selection criteria for a national competition for grants under this section which must include—

(A) the comparative degree of economic distress among applicants, as measured (in the case of a metropolitan city or urban county) by the differences in the extent of growth lag, the extent of poverty, and the adjusted age of housing in the metropolitan city or urban county;

(B) other factors determined to be relevant by the Secretary in assessing the comparative degree of economic deterioration in cities and urban counties;

(C) the following other criteria:

(i) the extent to which the grant will stimulate economic recovery by leveraging private investment;

(ii) the number of permanent jobs to be created and their relation to the amount of grant funds requested;

(iii) the proportion of permanent jobs accessible to lower income persons and minorities, including persons who are unemployed;

(iv) the extent to which the project will retain jobs that will be lost without the provision of a grant under this section;

(v) the extent to which the project will relieve the most pressing employment or residential needs of the applicant by—

(I) reemploying workers in a skill that has recently suffered a sharp increase in unemployment locally;

(II) retraining recently unemployed residents in new skills;

(III) providing training to increase the local pool of skilled labor; or

(IV) producing decent housing for low- and moderate-income persons in cases where such housing is in severe shortage in the area of the applicant, except that an application shall be considered to produce housing for low- and moderate-income persons under this clause only if such application proposes that (a) not less than 51 per cent of all funds available for the project shall be used for dwelling units and related facilities; and (b) not less than 30 per cent of all funds used for dwelling units and related facilities shall be used for dwelling units to be occupied by persons of low and moderate income, or not less than 20 per cent of all dwelling units made available to occupancy using such funds shall be occupied by persons of low and moderate income, whichever results in the occupancy of more dwelling units by persons of low and moderate income;

(vi) the impact of the proposed activities on the fiscal base of the city or urban county and its relation to the amount of grant funds requested;

(vii) the extent to which State or local Government¹ funding or special economic incentives have been committed; and

(viii) the extent to which the project will have a substantial impact on physical and economic development of the city or urban county, the proposed activities are likely to be accomplished in a timely fashion with the grant amount available, and the city or urban county has demonstrated performance in housing and community development programs; and

(D) additional consideration for projects with the following characteristics:

(i) projects to be located within a city or urban county which did not receive a preliminary grant approval under this section during the 12-month period preceding the date on which applications are required to be submitted for the grant competition involved; and

(ii) twice the amount of the additional consideration provided under clause (i) for projects to be located in cities or urban counties which did not receive a preliminary grant approval during the 24-month period preceding the date on which applications under this section are required to be submitted for the grant competition involved.

If a city or urban county has submitted and has pending more than one application, the additional consideration provided by subparagraph (D) of the preceding sentence shall be available only to the project in such city or urban county which received the highest number of points under subparagraph (C) of such sentence.

(2) For the purpose of making grants with respect to areas described in subsection (b)(2) of this section, the Secretary shall establish selection criteria, which must include (A) factors determined to be relevant by the Secretary in assessing the comparative degree of economic deterioration among eligible areas, and (B) such other criteria as the Secretary may determine, including at a minimum the criteria listed in paragraph (1)(C) of this subsection.

(3) The Secretary shall award points to each application as follows:

(A) not more than 35 points on the basis of the criteria referred to in paragraph (1)(A);

(B) not more than 35 points on the basis of the criteria referred to in paragraph (1)(B);

(C) not more than 33 points on the basis of the criteria referred to in paragraph (1)(C); and

(D)(i) 1 additional point on the basis of the criterion referred to in paragraph (1)(D)(i); or
(ii) 2 additional points on the basis of the criterion referred to in paragraph (1)(D)(ii).

(4) The Secretary shall distribute grant funds under this section so that to the extent practicable during each funding cycle—

(A) 65 percent of the funds is first made available utilizing all of the criteria set forth in paragraph (1); and

(B) 35 percent of the funds is then made available solely on the basis of the factors referred to in subparagraphs (C) and (D) of paragraph (1).

(5)(A) Within 30 days of the start of each fiscal year, the Secretary shall announce the number of competitions for grants to be held in that fiscal year. The number of competitions shall be not less than two nor more than three.

(B) Each competition for grants described in any clause of subparagraph (A) shall be for an amount equal to the sum of—

(i) approximately the amount of the funds available for such grants for the fiscal year divided by the number of competitions for those funds;

(ii) any funds available for such grants in any previous competition that are not awarded; and

(iii) any funds available for such grants in any previous competition that are recaptured.

(C) Notwithstanding any other provision of this section, in each competition for grants under this section, no city or urban county may be awarded a grant or grants in an amount in excess of \$10,000,000 until all cities and urban counties which submitted fundable applications have been awarded a grant. If funds are available for additional grants after each city and urban county submitting a fundable application is awarded one or more grants under the preceding sentence, then additional grants shall be made so that each city or urban county that has submitted multiple applications is awarded one additional grant in order of ranking, with no single city or urban county receiving more than one grant approval in any subsequent series of grant determinations within the same competition.

(D) All grants under this section, including grants to cities and urban counties described in subsection (b)(2) of this section, shall be awarded in accordance with subparagraph (C) so that all grants under this section are made in order of ranking.

(e) Limitations on power of Secretary to approve grants; waiver

The Secretary may not approve any grant to a city or urban county eligible under subsection (b)(2) of this section unless—

(1) the grant will be used in connection with a project located in an area described in subsection (b)(2) of this section, except that the Secretary may waive this requirement where the Secretary determines (A) that there is no suitable site for the project within that area, (B) the project will be located directly adjacent to that area, and (C) the project will contribute substantially to the economic development of that area;

(2) the city or urban county has demonstrated to the satisfaction of the Secretary that basic services supplied by the city or urban county to the area described in subsection (b)(2) of this section are at least equivalent, as measured by per capita expenditures, to those supplied to other areas within the city or urban county which are similar in population size and physical characteristics and

¹ So in original. Probably should not be capitalized.

which have median incomes above the median income for the city or urban county;

(3) the grant will be used in connection with a project which will directly benefit the low- and moderate-income families and individuals residing in the area described in subsection (b)(2) of this section; and

(4) the city or urban county makes available, from its own funds or from funds received from the State or under any Federal program which permits the use of financial assistance to meet the non-Federal share requirements of Federal grant-in-aid programs, an amount equal to 20 per centum of the grant to be available under this section to be used in carrying out the activities described in the application.

(f) Permissibility of consistent but unenumerated activities; report on use of repaid grant funds for economic development activities

Activities assisted under this section may include such activities, in addition to those authorized under section 5305(a) of this title, as the Secretary determines to be consistent with the purposes of this section. In any case in which the project proposes the repayment to the applicant of the grant funds, such funds shall be made available by the applicant for economic development activities that are eligible activities under this section or section 5305 of this title. The applicant shall annually provide the Secretary with a statement of the projected receipt and use of repaid grant funds during the next year together with a report acceptable to the Secretary on the use of such funds during the most recent preceding full fiscal year of the applicant.

(g) Annual review and audit; adjustments, withdrawals and reduction permitted

The Secretary shall, at least on an annual basis, make reviews and audits of recipients of grants under this section as necessary to determine the progress made in carrying out activities substantially in accordance with approved plans and timetables. The Secretary may adjust, reduce, or withdraw grant funds, or take other action as appropriate in accordance with the findings of these reviews and audits, except that funds already expended on eligible activities under this chapter shall not be recaptured or deducted from future grants made to the recipient.

(h) Limitations on grants for industrial or commercial relocations or expansions; appeal of denial or cancellation of assistance; grants to adversely affected individuals

(1) Speculative projects

No assistance may be provided under this section for projects intended to facilitate the relocation of industrial or commercial plants or facilities from one area to another, unless the Secretary finds that the relocation does not significantly and adversely affect the unemployment or economic base of the area from which the industrial or commercial plant or facility is to be relocated. The provisions of this paragraph shall apply only to projects that do not have identified intended occupants.

(2) Projects with identified intended occupants

No assistance may be provided or utilized under this section for any project with identified intended occupants that is likely to facilitate—

(A) a relocation of any operation of an industrial or commercial plant or facility or other business establishment—

(i) from any city, urban county, or identifiable community described in subsection (p) of this section, that is eligible for assistance under this section; and

(ii) to the city, urban county, or identifiable community described in subsection (p) of this section, in which the project is located; or

(B) an expansion of any such operation that results in a reduction of any such operation in any city, county, or community described in subparagraph (A)(i).

(3) Significant and adverse effect

The restrictions established in paragraph (2) shall not apply if the Secretary determines that the relocation or expansion does not significantly and adversely affect the employment or economic base of the city, county, or community from which the relocation or expansion occurs.

(4) Appeal of adverse determination

Following notice of intent to withhold, deny, or cancel assistance under paragraph (1) or (2), the Secretary shall provide a period of not less than 90 days in which the applicant can appeal to the Secretary the withholding, denial, or cancellation of assistance. Notwithstanding any other provision of this section, nothing in this section or in any legislative history related to the enactment of this section may be construed to permit an inference or conclusion that the policy of the Congress in the urban development action grant program is to facilitate the relocation of businesses from one area to another.

(5) Assistance for individuals adversely affected by prohibited relocations

(A) Any amount withdrawn by, recaptured by, or paid to the Secretary due to a violation (or a settlement of an alleged violation) of this subsection (or of any regulation issued or contractual provision entered into to carry out this subsection) by a project with identified intended occupants shall be made available by the Secretary as a grant to the city, county, or community described in subsection (p) of this section, from which the operation of an industrial or commercial plant or facility or other business establishment relocated or in which the operation was reduced.

(B)(i) Any amount made available under this paragraph shall be used by the grantee to assist individuals who were employed by the operation involved prior to the relocation or reduction and whose employment or terms of employment were adversely affected by the relocation or reduction. The assistance shall include job training, job retraining, and job placement.

(ii) If any amount made available to a grantee under this paragraph is more than is re-

quired to provide assistance under clause (i), the grantee shall use the excess amount to carry out community development activities eligible under section 5305(a) of this title.

(C)(i) The provisions of this paragraph shall be applicable to any amount withdrawn by, recaptured by, or paid to the Secretary under this section, including any amount withdrawn, recaptured, or paid before the effective date of this paragraph.

(ii) Grants may be made under this paragraph only to the extent of amounts provided in appropriation Acts.

(6) Definition

For purposes of this subsection, the term "operation" includes any plant, equipment, facility, position, employment opportunity, production capacity, or product line.

(7) Regulations

Not later than 60 days after February 5, 1988, the Secretary shall issue such regulations as may be necessary to carry out the provisions of this subsection. Such regulations shall include specific criteria to be used by the Secretary in determining whether there is a significant and adverse effect under paragraph (3).

(i) Minimum percentage of funds to be allocated to certain noncentral cities; application by consortia of cities of less than 50,000 population

Not less than 25 per centum of the funds made available for grants under this section shall be used for cities with populations of less than fifty thousand persons which are not central cities of a metropolitan statistical area. The Secretary shall encourage cooperation by geographically proximate cities of less than 50,000 population by permitting consortia of such cities, which may also include county governments that are not urban counties, to apply for grants on behalf of a city that is otherwise eligible for assistance under this section. Any grants awarded to such consortia shall be administered in compliance with eligibility requirements applicable to individual cities.

(j) Grant contingent on factors related to non-Federal funds

A grant may be made under this section only where the Secretary determines that there is a strong probability that (1) the non-Federal investment in the project would not be made without the grant, and (2) the grant would not substitute for non-Federal funds which are otherwise available to the project.

(k) Duty of Secretary to minimize amount

In making grants under this section, the Secretary shall take such steps as the Secretary deems appropriate to assure that the amount of the grant provided is the least necessary to make the project feasible.

(l) Power of Secretary to waive requirement that town or township be closely settled

For purposes of this section, the Secretary may reduce or waive the requirement in section 5302(a)(5)(B)(ii) of this title that a town or township be closely settled.

(m) Notice to State historic preservation officer and Secretary of the Interior required with regard to affected landmark property; opportunity for comment

In the case of any application which identifies any property in accordance with subsection (c)(4)(B) of this section, the Secretary may not commit funds with respect to an approved application unless the applicant has certified to the Secretary that the appropriate State historic preservation officer and the Secretary of the Interior have been provided an opportunity to take action in accordance with the provisions of section 5320(b) of this title.

(n) Territories, tribes, and certain Hawaiian counties included in term "city"

(1) For the purposes of this section, the term "city" includes Guam, American Samoa, the Northern Mariana Islands, the Virgin Islands, and Indian tribes. Such term also includes the counties of Kauai, Maui and Hawaii in the State of Hawaii.

(2) The Secretary may not approve a grant to an Indian tribe under this section unless the tribe (A) is located on a reservation, or on former Indian reservations in Oklahoma as determined by the Secretary of the Interior, or in an Alaskan Native Village, and (B) was an eligible recipient under chapter 67 of title 31 prior to the repeal of such chapter.

(o) Special provisions for years after 1983

If no amounts are set aside under, or amounts are precluded from being appropriated for this section for fiscal years after fiscal year 1983, any amount which is or becomes available for use under this section after fiscal year 1983 shall be added to amounts appropriated under section 5303 of this title, except that amounts available to the Secretary for use under this subsection as of October 1, 1993, and amounts released to the Secretary pursuant to subsection (t) of this section may be used to provide grants under section 5308(q) of this title.²

(p) Unincorporated portions of urban counties

An unincorporated portion of an urban county that is approved by the Secretary as an identifiable community for purposes of this section is eligible for a grant under subsection (b)(2) of this section if such portion meets the eligibility requirements contained in the first sentence of subsection (b)(1) of this section and the requirements of subsection (b)(2)(B) of this section (applied to the population of the portion of the urban county) and if it otherwise complies with the provisions of this section.

(q) Technical assistance grants

Of the amounts appropriated for purposes of this section for any fiscal year, not more than \$2,500,000 may be used by the Secretary to make technical assistance grants to States or their agencies, municipal technical advisory services operated by universities, or State associations of counties or municipalities, to enable such entities to assist units of general local government described in subsection (i) of this section in developing, applying for assistance for, and imple-

² So in original.

menting programs eligible for assistance under this section.

(r) Nondiscrimination by Secretary against type of activity or applicant

In utilizing the discretion of the Secretary when providing assistance and applying selection criteria under this section, the Secretary may not discriminate against applications on the basis of (1) the type of activity involved, whether such activity is primarily housing, industrial, or commercial; or (2) the type of applicant, whether such applicant is a city or urban county.

(s) Maximum grant amount for fiscal years 1988 and 1989

For fiscal years 1988 and 1989, the maximum grant amount for any project under this section is \$10,000,000.

(t) UDAG retention program

If a grant or a portion of a grant under this section remains unexpended upon the issuance of a notice implementing this subsection, the grantee may enter into an agreement, as provided under this subsection, with the Secretary to receive a percentage of the grant amount and relinquish all claims to the balance of the grant within 90 days of the issuance of notice implementing this subsection (or such later date as the Secretary may approve). The Secretary shall not recapture any funds obligated pursuant to this section during a period beginning on April 11, 1994, until 90 days after the issuance of a notice implementing this subsection. A grantee may receive as a grant under this subsection—

(1) 33 percent of such unexpended amounts if—

(A) the grantee agrees to expend not less than one-half of the amount received for activities authorized pursuant to section 5308(q) of this title and to expend such funds in conjunction with a loan guarantee made under section 5308 of this title at least equal to twice the amount of the funds received; and

(B)(i) the remainder of the amount received is used for economic development activities eligible under this chapter; and

(ii) except when waived by the Secretary in the case of a severely distressed jurisdiction, not more than one-half of the costs of activities under subparagraph (B) are derived from such unexpended amounts; or

(2) 25 percent of such unexpended amounts if—

(A) the grantee agrees to expend such funds for economic development activities eligible under this chapter; and

(B) except when waived by the Secretary in the case of a severely distressed jurisdiction, not more than one-half of the costs of such activities are derived from such unexpended amount.

(Pub. L. 93-383, title I, §119, as added Pub. L. 95-128, title I, §110(b), Oct. 12, 1977, 91 Stat. 1125; amended Pub. L. 95-557, title I, §103(g), (h), Oct. 31, 1978, 92 Stat. 2084; Pub. L. 96-153, title I, §§104, 105, Dec. 21, 1979, 93 Stat. 1102, 1104; Pub. L. 96-399, title I, §§110(a), (b), 117(a), Oct. 8, 1980, 94

Stat. 1619, 1623; Pub. L. 97-35, title III, §308(a), Aug. 13, 1981, 95 Stat. 392; Pub. L. 98-181, title I, §121, Nov. 30, 1983, 97 Stat. 1168; Pub. L. 98-454, title VI, §601(c), Oct. 5, 1984, 98 Stat. 1736; Pub. L. 98-479, title II, §203(l)(3), Oct. 17, 1984, 98 Stat. 2231; Pub. L. 99-272, title XIV, §14001(b)(6), Apr. 7, 1986, 100 Stat. 329; Pub. L. 99-500, §101(g), Oct. 18, 1986, 100 Stat. 1783-242, and Pub. L. 99-591, §101(g), Oct. 30, 1986, 100 Stat. 3341-242; Pub. L. 100-202, §§101(f) [title I, §101], 106, Dec. 22, 1987, 101 Stat. 1329-187, 1329-193, 1329-433; Pub. L. 100-242, title V, §§501(c), 515(a)-(d), (g)(2)-(i), 516(a), Feb. 5, 1988, 101 Stat. 1923, 1930-1934; Pub. L. 100-404, title I, Aug. 19, 1988, 102 Stat. 1020; Pub. L. 100-628, title X, §1084, Nov. 7, 1988, 102 Stat. 3277; Pub. L. 103-233, title II, §232(b), (c)(1), Apr. 11, 1994, 108 Stat. 367.)

REFERENCES IN TEXT

For effective date of this paragraph, referred to in subsec. (h)(5)(C)(i), see section 516(b) of Pub. L. 100-242, set out as an Effective Date of 1988 Amendment note below.

Chapter 67 of title 31, referred to in subsec. (n)(2)(B), was repealed by Pub. L. 99-272, title XIV, §14001(a)(1), Apr. 7, 1986, 100 Stat. 327.

CODIFICATION

Pub. L. 99-591 is a corrected version of Pub. L. 99-500. Amendment of subsec. (n)(1) by Pub. L. 99-500 and 99-591 is based on provisions under the headings "Management and Administration" and "Administrative Provision" in title I of H.R. 5313 [Department of Housing and Urban Development—Independent Agencies Appropriations Act, 1987], as incorporated by reference by section 101(g) of Pub. L. 99-500 and 99-591, and enacted into law by section 106 of Pub. L. 100-202.

AMENDMENTS

1994—Subsec. (o). Pub. L. 103-233, §232(b), inserted before period at end “, except that amounts available to the Secretary for use under this subsection as of October 1, 1993, and amounts released to the Secretary pursuant to subsection (t) of this section may be used to provide grants under section 5308(q) of this title.”

Subsec. (t). Pub. L. 103-233, §232(c)(1), added subsec. (t).

1988—Subsec. (a). Pub. L. 100-242, §501(c), substituted “There are authorized to be appropriated to carry out this section \$225,000,000 for fiscal year 1988, and \$225,000,000 for fiscal year 1989. Any amount appropriated under this subsection shall remain available until expended.” for “Of the total amount approved in appropriation Acts under section 5303 of this title for each of the fiscal years 1982 and 1983, not more than \$500,000,000 shall be available for each of the fiscal years 1982 and 1983 for grants under this section. There are authorized to be appropriated to carry out the provisions of this section not to exceed \$440,000,000 for each of the fiscal years 1984, 1985, and 1986, and any amount appropriated under this sentence shall remain available until expended.”

Subsec. (d)(1). Pub. L. 100-242, §515(a), inserted dash before “(A)”, indented subpars. (A) and (B), struck out “as the primary criterion,” in subpar. (A) and “and” at end of subpar. (B), added subpars. (C) and (D), and struck out former subpar. (C) which read as follows: “at least the following other criteria: demonstrated performance of the city or urban county in housing and community development programs; the extent to which the grant will stimulate economic recovery by leveraging private investment; the number of permanent jobs to be created and their relation to the amount of grant funds requested; the proportion of permanent jobs accessible to lower income persons and minorities, including persons who are unemployed; the impact of the proposed activities on the fiscal base of the city or

urban county and its relation to the amount of grant funds requested; the extent to which State or local government funding or special economic incentives have been committed; and the feasibility of accomplishing the proposed activities in a timely fashion within the grant amount available."

Subsec. (d)(3) to (5). Pub. L. 100-242, §515(b), added pars. (3) to (5).

Subsec. (d)(5)(C), (D). Pub. L. 100-404 added subpars. (C) and (D).

Subsec. (d)(6). Pub. L. 100-242, §515(b), (g)(2), temporarily added par. (6), see Effective Date of 1988 Amendment note below.

Subsec. (f). Pub. L. 100-628, §1084(a), substituted "5305" for "5304" after "activities under this section or section".

Pub. L. 100-242, §515(c), inserted at end "In any case in which the project proposes the repayment to the applicant of the grant funds, such funds shall be made available by the applicant for economic development activities that are eligible activities under this section or section 5304 of this title. The applicant shall annually provide the Secretary with a statement of the projected receipt and use of repaid grant funds during the next year together with a report acceptable to the Secretary on the use of such funds during the most recent preceding full fiscal year of the applicant."

Subsec. (h)(1). Pub. L. 100-242, §516(a)(1), (2), designated existing provision as par. "(1) Speculative projects" and inserted at end "The provisions of this paragraph shall apply only to projects that do not have identified intended occupants."

Subsec. (h)(2) to (7). Pub. L. 100-242, §516(a)(3), added pars. (2) to (7).

Subsec. (n)(1). Pub. L. 100-628, §1084(b), directed that subsec. (n)(1) of this section as similarly amended first by provisions made effective by section 101(g) of Pub. L. 99-500 and Pub. L. 99-591 [see 1986 Amendment note below and Codification note above] and later by section 515(i) of Pub. L. 100-242 [see below] is amended to read as if the amendment by Pub. L. 100-242 had not been enacted.

Pub. L. 100-242, §515(i), made amendment identical to Pub. L. 99-500 and 99-591. See 1986 Amendment note below.

Subsec. (r). Pub. L. 100-242, §515(d), amended subsec. (r) generally. Prior to amendment, subsec. (r) read as follows: "In providing assistance under this section, the Secretary may not discriminate among programs on the basis of the particular type of activity involved, whether such activity is primarily a neighborhood, industrial, or commercial activity."

Subsec. (s). Pub. L. 100-242, §515(h), added subsec. (s). 1987—Subsec. (n)(1). For amendment by §106 of Pub. L. 100-202, see 1986 Amendment note below.

Subsec. (n)(2)(A). Pub. L. 100-202, §101(f) [title I, §101], inserted "or on former Indian reservations in Oklahoma as determined by the Secretary of the Interior," after "reservation".

1986—Subsec. (n)(1). Pub. L. 99-500 and 99-591, §101(g), as enacted by Pub. L. 100-202, inserted at end "Such term also includes the counties of Kauai, Maui and Hawaii in the State of Hawaii." See Codification note above.

Subsec. (n)(2)(B). Pub. L. 99-272 substituted "was an eligible recipient under chapter 67 of title 31 prior to the repeal of such chapter" for "is an eligible recipient under chapter 67 of title 31".

1984—Subsec. (n)(1). Pub. L. 98-454 inserted reference to American Samoa and the Northern Mariana Islands.

Subsec. (n)(2). Pub. L. 98-479 substituted "chapter 67 of title 31" for "the State and Local Fiscal Assistance Act of 1972".

1983—Subsec. (a). Pub. L. 98-181, §121(a), inserted authorizations for appropriations not to exceed \$440,000,000 for each of the fiscal years 1984, 1985, and 1986.

Subsec. (b)(1). Pub. L. 98-181, §121(b), substituted "the extent of unemployment, job lag, or surplus labor" for "where data are available, the extent of unemployment

and job lag", and inserted provisions for continued eligibility for assistance of any city with a population of less than 50,000 persons, other than a central city of a metropolitan area, which until the Secretary revises the standards for eligibility for such cities and includes the extent of unemployment, job lag, or labor surplus as a standard of distress for such cities, and provisions requiring the Secretary to make such revision as soon as possible following Nov. 30, 1983.

Subsec. (b)(2)(A)(i), (B)(i). Pub. L. 98-181, §121(c), inserted "neighborhood statistics areas," after "enumeration districts,".

Subsec. (c)(3)(C). Pub. L. 98-181, §121(d), added cl. (C). Subsec. (d)(1). Pub. L. 98-181, §121(e), substituted "criteria for a national competition" for "criteria" in provisions preceding cl. (A).

Subsec. (i). Pub. L. 98-181, §121(f), inserted provisions relating to applications by consortia of cities less than 50,000 population.

Subsecs. (p) to (r). Pub. L. 98-181, §121(g), added subsecs. (p) to (r).

1981—Pub. L. 97-35 substantially restructured and reorganized provisions, made changes in nomenclature and phraseology, and revised purposes, selection criteria and standards, application procedures, approval powers of Secretary, covered activities, limitations, allocation computations, funding prerequisites, amounts for grants, waivers, notice requirements, applicable definitions, and special provisions for years after 1983.

1980—Subsec. (c)(7). Pub. L. 96-399, §110(a)(1)-(3), added par. (7).

Subsec. (n). Pub. L. 96-399, §110(b), added subsec. (n).

Subsec. (o). Pub. L. 96-399, §117(a), added subsec. (o).

1979—Subsec. (b). Pub. L. 96-153, §104, designated existing provisions as par. (1) and added par. (2).

Subsec. (e). Pub. L. 96-153, §104(b), designated existing provisions as par. (1) and substituted "(1) Except in the case of a city or urban county eligible under subsection (b)(2) of this section, in establishing criteria" for "In establishing criteria" in opening sentence, redesignated existing cls. (1) to (3) as (A) to (C), and added pars. (2) and (3).

Subsecs. (l), (m). Pub. L. 96-153, §105, added subsecs. (l) and (m).

1978—Subsec. (c)(6). Pub. L. 95-557, §103(g), added par. (6).

Subsec. (e). Pub. L. 95-557, §103(h), inserted "impact of the proposed urban development action program on the residents, particularly those of low and moderate income, of the residential neighborhood, and on the neighborhood, in which the program is to be located" after "objectives of this chapter".

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-233 applicable with respect to any amounts made available to carry out subchapter II (§12721 et seq.) of chapter 130 of this title after Apr. 11, 1994, and any amounts made available to carry out that subchapter before that date that remain uncommitted on that date, with Secretary to issue any regulations necessary to carry out such amendment not later than end of 45-day period beginning on that date, see section 209 of Pub. L. 103-233, set out as a note under section 5301 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 515(f), (g) of Pub. L. 100-242 provided that:
 "(f) REGULATIONS.—The Secretary of Housing and Urban Development shall issue such regulations as may be necessary to carry out the amendments made by this section [amending this section]. Such regulations shall be published for comment in the Federal Register not later than 60 days after the date of enactment of this Act [Feb. 5, 1988]. The provisions of section 119(d)(1)(D), section 119(d)(3), and section 119(d)(4) of the Housing and Community Development Act of 1974 [subsec. (d)(1)(D), (3), (4) of this section], shall take effect on the date of enactment of this Act.

"(g) APPLICABILITY.—

“(1) IN GENERAL.—The amendments made by this section [amending this section] shall be applicable to the making of urban development action grants that have not received the preliminary approval of the Secretary of Housing and Urban Development before the date on which final regulations issued by the Secretary under subsection (f) become effective. For the fiscal year in which the amendments made by this section become applicable, such amendments shall only apply with respect to the aggregate amount awarded for such grants on or after such effective date.

“(2) SUNSET OF URBAN COUNTY COMPETITION RULE.—Effective October 1, 1989, section 119(d)(6) of the Housing and Community Development Act of 1974 [subsec. (d)(6) of this section] is repealed.”

Section 516(b) of Pub. L. 100-242 provided that: “Except as otherwise provided in section 119(h)(5) of the Housing and Community Development Act of 1974 [subsec. (h)(5) of this section] (as added by subsection (a)), the amendments made by this section [amending this section] shall be applicable to urban development action grants that have not received the preliminary approval of the Secretary of Housing and Urban Development before the date of the enactment of this Act [Feb. 5, 1988].”

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 106 of Pub. L. 100-202 provided that the amendment made by Pub. L. 99-500 and 99-591 is effective on date of enactment [Oct. 18, 1986] of the “pertinent joint resolution” making continuing appropriations for fiscal year 1987 [Pub. L. 99-500 and 99-591].

Amendment by Pub. L. 99-272 effective Oct. 18, 1986, see section 14001(e) of Pub. L. 99-272.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 308(c) of Pub. L. 97-35 provided that: “The amendments made by subsections (a) and (b) [amending this section and section 5320 of this title] shall become effective on the effective date of regulations implementing such subsections. As soon as practicable, but not later than January 1, 1982, the Secretary shall issue such final rules and regulations as the Secretary determines are necessary to carry out such subsections.”

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-557 effective Oct. 1, 1978, see section 104 of Pub. L. 95-557, set out as a note under section 1709 of Title 12, Banks and Banking.

EFFECTIVE DATE

Section effective Oct. 1, 1977, see section 114 of Pub. L. 95-128, set out as an Effective Date of 1977 Amendment note under section 5301 of this title.

IMPLEMENTATION OF URBAN DEVELOPMENT ACTION GRANT RETENTION PROGRAM

Section 232(c)(2) of Pub. L. 103-233 provided that: “Not later than 10 days after the date of enactment of this Act [Apr. 11, 1994], the Secretary shall, by notice published in the Federal Register, which shall take effect upon publication, establish such requirements as may be necessary to implement the amendments made by this subsection [amending this section].”

NEW TOWNS DEMONSTRATION PROGRAM FOR EMERGENCY RELIEF OF LOS ANGELES

Pub. L. 102-550, title XI, Oct. 28, 1992, 106 Stat. 3927, as amended by Pub. L. 105-362, title VII, § 701(g), Nov. 10, 1998, 112 Stat. 3287, provided that:

“SEC. 1101. AUTHORITY.

“To provide for the revitalization and renewal of inner city neighborhoods in the areas of Los Angeles, California, that were damaged by the civil disturbances during April and May of 1992, and to demonstrate the effectiveness of new town developments in revitalizing and restoring depressed and underprivileged inner city

neighborhoods, the Secretary of Housing and Urban Development shall, to the extent or in such amounts as are provided in appropriation Acts, make any assistance authorized under this title available under this title to units of general local government, governing boards, and eligible mortgagors in accordance with the provisions of this title.

“SEC. 1102. NEW TOWN PLAN.

“(a) REQUIREMENT.—The Secretary may make assistance available under this title only in connection with, and according to the provisions of a new town plan developed and established by a governing board under section 1107 and approved under subsection (d) of this section. In developing such plans, the governing board shall consult with representatives of the units of general local government within whose boundaries are located any portion of the new town demonstration area for the demonstration program to be carried out under such plan.

“(b) ELIGIBLE NEW TOWN DEMONSTRATION AREAS.—A new town plan under this section shall provide for carrying out a new town development demonstration providing assistance available under this title within a new town demonstration area, which shall be a geographic area defined in the new town plan—

“(1) that is one of pervasive poverty, unemployment, and general distress;

“(2) that has an unemployment rate of not less than 1.5 times the national unemployment rate for the 2 years preceding approval of the new town plan;

“(3) that has a poverty rate of not less than 20 percent during such 2-year period;

“(4) for which not less than 70 percent of the households living in the area have incomes below 80 percent of the median income of households of the unit of general local government in which they are located;

“(5) that has a shortage of adequate jobs for residents; and

“(6) that is located—

“(A) in or near the City or County of Los Angeles, in the State of California; and

“(B) within an area for which the President, pursuant to title IV or V of the Robert T. Stafford Disaster Relief and Emergency Assistance Act [42 U.S.C. 5170 et seq., 5191 et seq.], declared that a major disaster or emergency existed for purposes of such Act [42 U.S.C. 5121 et seq.], as a result of the civil disturbances involving acts of violence occurring on or after April 29, 1992, and before May 6, 1992.

“(c) CONTENTS.—Each new town plan shall include the following information:

“(1) GOVERNING BOARD.—A description of the members and purposes of the governing board that developed the plan, the manner in which members of the governing board were selected, and the businesses, agencies, interests, and community ties of each member of the governing board.

“(2) NEW TOWN DEMONSTRATION AREA.—A definition and description of the new town demonstration area for the new town development demonstration to be assisted under this title.

“(3) TARGET COMMUNITY.—A description of the economic, social, racial, and ethnic characteristics of the population of the neighborhood or area in which the new town demonstration area is located.

“(4) AGREEMENTS.—Agreements that the governing board will carry out the new town demonstration program in accordance with the requirements of this title.

“(5) HOUSING UNITS.—A description of the number, size, location, cost, style, and characteristics of rental and homeownership housing units to be developed under the new town demonstration program, any financing for developing such housing, and the amount of assistance necessary under section 1105 for developing the housing under the program.

“(6) JOBS.—A description of the number, types, and duration of any new jobs that will be created in the

new town demonstration area and surrounding areas as a result of the demonstration program, and of any job training activities and apprenticeship programs to be made available in connection with the program.

“(7) SOCIAL SERVICES.—A description of the social and supportive services to be made available under the demonstration program to residents of housing assisted under the demonstration program pursuant to section 1103(d) and to residents of the new town demonstration area.

“(8) SUPPLEMENTAL RESOURCES.—A description of any funds, assistance, in-kind contributions, and other resources to be made available in connection with the demonstration program, including the sources and amounts of any private capital resources and non-Federal funds required under section 1103(h).

“(9) CONTRACTORS AND DEVELOPERS.—A listing of the contractors and developers who potentially will carry out any construction and rehabilitation work for development of housing under the demonstration program and the expected costs involved in hiring such contractors and developers.

“(10) FINANCING FOR HOMEBUYERS.—A description of any mortgage lenders who have indicated that they will make financing available to families purchasing housing developed under the demonstration program through mortgages eligible for insurance under section 1104 and proposed terms of such mortgages.

“(11) COMMITMENTS.—Evidence of any commitments entered into for making any of the resources described in paragraphs (6) through (8) available in connection with the demonstration program.

“(12) PRESALE REQUIREMENTS.—A description of commitments made to purchase not less than 50 percent of the housing to be developed under the demonstration program for purchase by the occupant and to rent not less than 50 percent of the rental dwelling units to be developed under the demonstration program.

“(13) COMMUNITY DEVELOPMENT ACTIVITIES.—A description of the community development activities to be carried out with assistance under section 1106, the amount of assistance necessary under such section for such activities, and of the projected uses of such assistance.

“(d) REVIEW AND APPROVAL.—

“(1) SUBMISSION.—Not later than the expiration of the 6-month period beginning on the date of the enactment of this Act [Oct. 28, 1992], a governing board shall submit a new town plan under this section to the chief executive officers of each unit of general local government within whose boundaries is located any portion of the new town demonstration area described under the plan of the board.

“(2) APPROVAL.—For a plan to be eligible for assistance available under this title, the chief executive officer of all units of general local government to whom the new town plan is submitted shall approve the plan at a public meeting after the plan has been made publicly available for a period of not less than 30 days. A governing board may resubmit for approval any plan returned by any such chief executive officer to the governing board, and such chief executive officer may, upon returning the plan indicate any modifications necessary for approval. A new town plan may not be approved unless such chief executive officers determine that the membership of the governing board submitting the plan is constituted in accordance with section 1107 and the governing board is capable of carrying out the plan.

“(3) AMENDMENT.—An approved new town plan for the demonstration program developed by the governing board may be amended by the board by obtaining approval of the amendment in the manner provided under this subsection for approval of plans. If the chief executive officer of the unit of general local government does not approve or return the amended plan within 30 days of submission, the amended plan shall be considered to be approved for purposes of this subsection.

“SEC. 1103. NEW TOWN DEVELOPMENT DEMONSTRATION PROGRAM REQUIREMENTS.

“(a) IN GENERAL.—Each of the 2 new town development demonstration programs selected for assistance under this title under section 1102 shall be carried out, by the governing board submitting the new town plan for the demonstration program, in accordance with such plan (and any approved amendments of such plans) and shall be subject to the requirements under this section.

“(b) LOCAL PARTICIPATION.—With respect to any activities carried out under the demonstration program, the program shall give preference in awarding contracts, purchasing materials, acquiring services, and obtaining assistance or training, to contractors, businesses, developers, professionals, and other establishments located or having offices within the new town demonstration area.

“(c) HOUSING.—

“(1) NUMBER OF UNITS.—The demonstration program shall construct or renovate not less than 1,500 dwelling units in the new town demonstration area, of which not less than 60 percent shall be units available for purchase by the occupant.

“(2) AFFORDABILITY.—Units of varying sizes and costs shall be designed and developed under the demonstration program so that the program provides housing affordable to families of varying incomes not exceeding 115 percent of the median income for the area in which the new town demonstration area is located, including very low- and low-income families (as such terms are defined in section 3(b) of the United States Housing Act of 1937 [42 U.S.C. 1437a(b)]).

“(3) HOMEOWNERSHIP UNITS.—Dwelling units developed under the demonstration program for purchase by the occupant shall initially be sold at prices affordable to families eligible to purchase such units. Such units shall be available for purchase only by families having incomes not exceeding the amount specified in paragraph (2). The demonstration shall develop 2-, 3-, and 4-bedroom units for purchase.

“(4) RENTAL UNITS.—Dwelling units developed under the demonstration program that are to be available for rental shall include family-type units and single bedroom and efficiency units designed for elderly occupants. Such units shall be available for occupancy only by families who (upon initial occupancy) have incomes of (A) less than 60 percent of the median income for the area, or (B) less than \$20,000. Occupant families shall pay not more than 30 percent of the family income for rent.

“(d) SOCIAL SERVICES.—The demonstration program shall provide for appropriate social and supportive services to be made available to residents of housing assisted under the demonstration program and to other residents of the new town demonstration area, which may include rental and homeownership counseling, child care, job placement, educational programs, recreational and health care facilities and programs, and other appropriate services.

“(e) JOB CREATION AND TRAINING.—The demonstration program shall provide, to the extent practicable, that activities in connection with the demonstration program, including development of housing under subsection (c) and community development activities assisted under section 1106, shall employ and provide job training opportunities for residents of the housing assisted under the demonstration program and other residents of the new town demonstration area.

“(f) FINANCING.—The demonstration program shall provide for coordination with banks, credit unions, and other mortgage lenders to make financing available to purchasers of units developed under the demonstration program through mortgages eligible for insurance under section 1104, and shall give preference to such mortgage lenders who have offices located within or near the new town demonstration area.

“(g) SUPPORT FACILITIES.—The demonstration program shall encourage, facilitate, and provide for devel-

opment of appropriate support facilities to serve residents in the housing developed under the program, including infrastructure and commercial facilities.

“(h) NON-FEDERAL FUNDS.—The governing board carrying out the demonstration program shall ensure that not less than 25 percent of the total amounts used to carry out the demonstration program is provided from non-Federal sources, including State or local government funds, any salary paid to staff to carry out the demonstration program, the value of any time, services, and materials donated to carry out the program, the value of any donated building, and the value of any lease on a building.

“SEC. 1104. FEDERAL MORTGAGE INSURANCE.

“(a) IN GENERAL.—Pursuant to title II and section 251 of the National Housing Act [12 U.S.C. 1707 et seq., 1715z-16], the Secretary shall (to the extent authority is available pursuant to subsection (d)) insure mortgages under this section involving properties upon which are located dwelling units described in section 1103(c)(3) of this Act that are developed under the new town demonstration programs carried out pursuant to this title.

“(b) MORTGAGE TERMS.—Mortgages insured under this section shall—

“(1) provide for periodic adjustments in the effective rate of interest charged, which—

“(A) for the first 5 years of the mortgage, shall be an annual rate of not more than 7 percent; and

“(B) after the expiration of such 5-year period, may increase on an annual basis, but—

“(i) shall be limited, with respect to any single interest rate increase, to not more than a 10-percent increase in the annual percentage rate; and

“(ii) may not be increased at any time to a rate greater than the rate necessary at such time to fully amortize the outstanding loan balance over the term of the mortgage; and

“(2) have a maturity of 35 years from the date of the beginning of the amortization of the mortgage.

“(c) BOARD APPROVAL.—The Secretary may provide insurance under this section for a mortgage only if the governing board for the demonstration program for the new town demonstration area in which the property subject to the mortgage is located has indicated to the Secretary approval of the mortgage in connection with the demonstration program.

“(d) INSURANCE AUTHORITY.—To the extent provided in appropriation Acts, the Secretary shall use any authority provided pursuant to section 531(b) of the National Housing Act [12 U.S.C. 1735f-9(b)] to enter into commitments to insure loans and mortgages under this section in fiscal years 1993 and 1994 with an aggregate principal amount not exceeding such sums as may be necessary to carry out the demonstration under this title. Mortgages insured under this section shall not be considered for purposes of the aggregate limitation on the number of mortgages insured under section 251 of the National Housing Act [12 U.S.C. 1715z-16] specified in subsection (c) of such section.

“SEC. 1105. SECONDARY SOFT MORTGAGE FINANCING FOR HOUSING.

“(a) IN GENERAL.—The Secretary shall, to the extent amounts are provided in appropriation Acts under subsection (e), provide assistance under this section through the governing boards carrying out the new town demonstration programs under this section to assist in the development of housing under the program.

“(b) USE.—Any assistance provided under this section shall be used only for costs in planning, developing, constructing, and rehabilitating housing under the demonstration program available for rental or purchase by the occupant. The governing board shall determine, according to the new town plan for the demonstration program, the allocation of amounts of assistance provided under this section.

“(c) AMOUNT.—The Secretary may not provide assistance under this section for the development of housing under a demonstration program in an amount exceeding \$50,000 per dwelling unit assisted.

“(d) SECOND MORTGAGE.—

“(1) IN GENERAL.—Assistance under this section shall be repaid in accordance with this subsection. Repayment of the amount of any assistance provided with respect to—

“(A) any building containing rental units, or

“(B) any dwelling unit available for purchase by the occupant that is developed under a demonstration program,

shall be secured by a second mortgage held by the Secretary on the property involved.

“(2) TERMS.—During the period ending upon repayment of the assistance as provided in this subsection, any building containing rental units that is provided assistance under this section shall be used as rental housing subject to the requirements of section 1103(c)(4). During the period ending upon repayment of the assistance as provided in this subsection, any dwelling unit made available for purchase by the occupant that is provided assistance under this section may be sold only to a family having an income not exceeding the amount specified in section 1103(c)(2).

“(3) INTEREST.—Any assistance provided under this section for a building or dwelling unit shall bear interest at a rate equivalent to the rate for the most recently marketable obligations issued by the United States Treasury have terms of 10 years. The interest on such assistance shall be required to be repaid only upon sale of the building.

“(4) DISCOUNTED REPAYMENT.—The assistance provided under this section for any building containing rental units or any dwelling unit available for purchase by the occupant shall be considered to have been repaid for purposes of this subsection if the original purchaser of the building or the dwelling unit pays to the Secretary an amount equal to 50 percent of the amount of the assistance provided under this section.

“(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for fiscal years 1993 and 1994 such sums as may be necessary for providing assistance under this section.

“SEC. 1106. COMMUNITY DEVELOPMENT ASSISTANCE.

“(a) IN GENERAL.—The Secretary shall provide assistance under this section, to the extent amounts are provided in appropriation Acts under subsection (h), to units of general local government to address vital unmet needs and to promote the creation of jobs and economic development in connection with the new town demonstration programs carried out under this title.

“(b) ELIGIBLE UNITS OF GENERAL LOCAL GOVERNMENT.—Assistance may be provided under this section only to units of general local government—

“(1) within whose boundaries are located any portion of the new town demonstration areas described under the new town demonstration plans for the demonstration programs carried out under this title;

“(2) that make the certifications to the Secretary required under subsection (c); and

“(3) that will comply with a residential anti-displacement and relocation assistance plan described in subsection (d).

“(c) REQUIRED CERTIFICATIONS.—The certifications referred to in subsection (b)(2) shall be certifications that—

“(1) the assistance will be conducted and administered in conformity with the Civil Rights Act of 1964 [42 U.S.C. 2000a et seq.] and the Civil Rights Act of 1968 [see Short Title note set out under section 3601 of this title], and the unit of general local government will affirmatively further fair housing;

“(2) the projected use of funds has been developed in a manner that gives maximum feasible priority to activities which are designed to meet community development needs that have been delayed because of the lack of fiscal resources of the unit of general local government or which are designed to address condi-

tions that pose a serious and immediate threat to the health or welfare of the community;

“(3) any projected use of funds for public services will benefit primarily low- and moderate-income families;

“(4) the unit of general local government will not attempt to recover any capital costs of public improvements assisted in whole or part under this section by assessing any amount against properties owned and occupied by persons of low- and moderate-income, including any fee charged or assessment made as a condition of obtaining access to such public improvements, unless—

“(A) funds received under this section are used to pay the proportion of such fee or assessment that relates to the capital costs of such public improvements that are financed from revenue sources other than under this section; or

“(B) for purposes of assessing any amount against properties owned and occupied by persons of moderate income, the grantee certifies to the Secretary that it lacks sufficient funds received under this section to comply with the requirements of subparagraph (A); and

“(5) the unit of general local government will comply with the other provisions of this title and with other applicable laws.

“(d) ANTIDISPLACEMENT AND RELOCATION PLAN.—

“(1) CONTENTS.—The residential antidisplacement and relocation assistance plan referred to in subsection (b)(3) shall, in connection with activities assisted under this section—

“(A) provide that, in the event of such displacement—

“(i) governmental agencies or private developers shall provide, within the same community, comparable replacement dwellings for the same number of occupants as could have been housed in the occupied and vacant occupiable low- and moderate-income dwelling units demolished or converted to a use other than for housing for low- and moderate-income persons, and provide that such replacement housing may include existing housing assisted with project based assistance provided under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f];

“(ii) such comparable replacement dwellings shall be designed to remain affordable to persons of low- and moderate-income for 10 years from the time of initial occupancy;

“(iii) relocation benefits shall be provided for all low- or moderate-income persons who occupied housing demolished or converted to a use other than for low- or moderate-income housing, including reimbursement for actual and reasonable moving expenses, security deposits, credit checks, and other moving-related expenses, including any interim living costs; and in the case of displaced persons of low- and moderate-income, provide either—

“(I) compensation sufficient to ensure that, for a 5-year period, the displaced families shall not bear, after relocation, a ratio of shelter costs to income that exceeds 30 percent; or

“(II) if elected by a family, a lump-sum payment equal to the capitalized value of the benefits available under subclause (I) to permit the household to secure participation in a housing cooperative or mutual housing association; and

“(iv) persons displaced shall be relocated into comparable replacement housing that is—

“(I) decent, safe, and sanitary;

“(II) adequate in size to accommodate the occupants;

“(III) functionally equivalent; and

“(IV) in an area not subject to unreasonably adverse environmental conditions; and

“(B) provide that persons displaced shall have the right to elect, as an alternative to the benefits under this subsection, to receive benefits under the

Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 [42 U.S.C. 4601 et seq.] if such persons determine that it is in their best interest to do so; and

“(C) provide that where a claim for assistance under subparagraph (A)(iv) is denied by the unit of general local government, the claimant may appeal to the Secretary, and that the decision of the Secretary shall be final unless a court determines the decision was arbitrary and capricious.

“(2) EXCEPTION.—Paragraphs (1)(A)(i) and (1)(A)(ii) shall not apply in any case in which the Secretary finds, on the basis of objective data, that there is available in the area an adequate supply of habitable affordable housing for low- and moderate-income persons. A determination under this paragraph shall be final and nonreviewable.

“(e) ELIGIBLE ACTIVITIES.—Activities assisted with amounts provided under this section may include only the following activities:

“(1) ACQUISITION OF REAL PROPERTY.—The acquisition of real property (including air rights, water rights, and other interests therein) that is located within the new town demonstration area and is—

“(A) blighted, deteriorated, undeveloped, or inappropriately developed from the standpoint of sound community development and growth;

“(B) appropriate for rehabilitation activities;

“(C) appropriate for the preservation or restoration of historic sites, the beautification of urban land, the conservation of open spaces, natural resources, and scenic areas, the provision of recreational opportunities, or the guidance of urban development;

“(D) to be used for the provision of public works, facilities, and improvements eligible for assistance under this section;

“(E) to be used as a facility for coordinating and providing activities and services for high risk youth (as such term is defined in section 509A [now 517] of the Public Health Service Act [42 U.S.C. 290bb-23]); or

“(F) to be used for other public purposes.

“(2) CONSTRUCTION OF PUBLIC WORKS AND FACILITIES.—The acquisition, construction, rehabilitation, or installation of public works or public facilities within the new town demonstration area, including buildings for the general conduct of government and facilities for coordinating and providing activities and services for high risk youth (as such term is defined in section 509A [now 517] of the Public Health Service Act).

“(3) CLEARANCE AND REHABILITATION OF BUILDINGS.—The clearance, removal, and rehabilitation of buildings and improvements located within the new town demonstration area, including interim assistance, assistance for facilities for coordinating and providing activities and services for high risk youth (as such term is defined in section 509A [now 517] of the Public Health Service Act), and assistance to privately owned buildings and improvements.

“(4) PROVISION OF PUBLIC SERVICES AND HOUSING.—

“(A) PUBLIC SERVICES.—The provision of public services within the new town demonstration area that are concerned with job training and retraining, health care and education, crime prevention, drug abuse treatment and rehabilitation, child care, education, and recreation, which may include the provision of public health and public safety vehicles.

“(B) HOUSING ACTIVITIES.—The acquisition and rehabilitation of housing for low- and moderate-income families within the new town demonstration area, except that any grantee that uses amounts received under this section for housing activities under this subparagraph shall make not less than 15 percent of the amount used for such housing activities available only for community housing development organizations and nonprofit organizations (as such terms are defined in section 104 of the Cran-

ston-Gonzalez National Affordable Housing Act [42 U.S.C. 12704]) for such activities;

“(C) LIMITATION.—Not more than 25 percent of the amount of any assistance provided under this section (including program income) to any unit of general local government may be used for activities under this paragraph.

“(5) RELOCATION ASSISTANCE.—Relocation payments and assistance for individuals, families, business, and organizations that are displaced as a result of activities assisted under this title.

“(6) PAYMENT OF ADMINISTRATIVE EXPENSES.—Payment of reasonable administrative costs associated with activities assisted under this section and any expenses of developing the new town plan under section 1102.

“(f) ALLOCATION OF ASSISTANCE.—The Secretary may not provide more than 50 percent of any amounts appropriated under this section in connection with any one of the 2 new town demonstration programs carried out under this title.

“(g) OTHER REQUIREMENTS.—The provisions of subsections (f), (g), and (h) of section 104, subsections (c) and (d) of section 105, section 107, 108, 109, and 110 of the bill, H.R. 4073, 102d Congress (as reported on March 14, 1992 [May 14, 1992, H. Rept. No. 102-524], by the Committee on Banking, Finance and Urban Affairs of the House of Representatives), shall apply to grantees receiving assistance under this section.

“(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for fiscal years 1993 and 1994 such sums as may be necessary for assistance under this section.

“SEC. 1107. GOVERNING BOARDS.

“(a) PURPOSE.—For purposes of this title, a governing board shall be a board organized for the purpose of developing a new town plan under this title and carrying out a new town development demonstration under this title.

“(b) MEMBERSHIP.—Each governing board shall consist of not less than 10 members, who shall include—

“(1) residents of the area in which the new town demonstration area under the plan developed by the board is located;

“(2) owners of business in such area;

“(3) leaders or participants in community groups in such area; and

“(4) representatives of financial institutions located or having offices in such area.

“(c) ORGANIZATION.—A governing board may organize itself and conduct business in the manner that the board determines is appropriate to carry out the new town development demonstration under this title.

“SEC. 1108. REPORTS.

“Each governing board carrying out a new town development demonstration under this title shall submit to the Congress a copy of the new town plan of the governing board, upon the approval of that plan under section 1102(d).

“SEC. 1109. DEFINITIONS.

“For purposes of this title:

“(1) DEMONSTRATION PROGRAM.—The terms ‘demonstration program’ and ‘program’ mean a new town development demonstration program receiving assistance under this title, which is carried out within a new town demonstration area by a governing board.

“(2) GOVERNING BOARD.—The term ‘governing board’ means a board established under section 1107.

“(3) NEW TOWN DEMONSTRATION AREA.—The term ‘new town demonstration area’ means the area defined in a new town plan in which the new town development demonstration under the plan is to be carried out.

“(4) NEW TOWN PLAN.—The terms ‘new town plan’ and ‘plan’ mean a plan under section 1102 developed by a governing board.

“(5) UNIT OF GENERAL LOCAL GOVERNMENT.—The term ‘unit of general local government’ means any

city, county, town, township, parish, village, or other general purpose political subdivision of the State of California.”

REPORTS OF COMPTROLLER GENERAL

Pub. L. 100-242, title V, §515(e), Feb. 5, 1988, 101 Stat. 1933, which required the Comptroller General of the United States to triennially prepare and submit to Congress a comprehensive report evaluating the eligibility standards and selection criteria applicable under this section, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, item 14 on page 9 of House Document No. 103-7.

NEIGHBORHOOD DEVELOPMENT DEMONSTRATION

Section 123 of Pub. L. 98-181, as amended, which provided for a demonstration program to determine the feasibility of supporting eligible neighborhood development activities by providing Federal matching funds to eligible neighborhood development organizations, was transferred to section 5318a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5302, 5304, 5305, 5307, 5313, 5318a, 5320, 11501, 12705 of this title; title 12 section 1715z; title 26 sections 144, 1400E.

§ 5318a. John Heinz Neighborhood Development Program

(a) Definitions

For the purposes of this section:

(1) The term “eligible neighborhood development activity” means—

(A) creating permanent jobs in the neighborhood;

(B) establishing or expanding businesses within the neighborhood;

(C) developing, rehabilitating, or managing neighborhood housing stock;

(D) developing delivery mechanisms for essential services that have lasting benefit to the neighborhood; or

(E) planning, promoting, or financing voluntary neighborhood improvement efforts.

(2) The term “eligible neighborhood development organization” means—

(A)(i) an entity organized as a private, voluntary, nonprofit corporation under the laws of the State in which it operates;

(ii) an organization that is responsible to residents of its neighborhood through a governing body, not less than 51 per centum of the members of which are residents of the area served;

(iii) an organization that has conducted business for at least one year prior to the date of application for participation;

(iv) an organization that operates within an area that—

(I) meets the requirements for Federal assistance under section 5318 of this title;

(II) is designated as an enterprise zone under Federal law;

(III) is designated as an enterprise zone under State law and recognized by the Secretary for purposes of this section as a State enterprise zone; or

(IV) is a qualified distressed community within the meaning of section 1834a(b)(1) of title 12; and

(v) an organization that conducts one or more eligible neighborhood development activities that have as their primary beneficiaries low- and moderate-income persons, as defined in section 5302(a)(20) of this title; or

(B) any facility that provides small entrepreneurial business with affordable shared support services and business development services and meets the requirements of subparagraph (A).

(3) The term “neighborhood development funding organization” means—

(A) a depository institution the accounts of which are insured pursuant to the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.] or the Federal Credit Union Act [12 U.S.C. 1751 et seq.], and any subsidiary (as such term is defined in section 3(w) of the Federal Deposit Insurance Act [12 U.S.C. 1813(w)]) thereof;

(B) a depository institution holding company and any subsidiary thereof (as such term is defined in section 3(w) of the Federal Deposit Insurance Act [12 U.S.C. 1813(w)]); or

(C) a company at least 75 percent of the common stock of which is owned by one or more insured depository institutions or depository institution holding companies.

(4) The term “Secretary” means the Secretary of Housing and Urban Development.

(b) Duties of Secretary

(1) The Secretary shall carry out, in accordance with this section, a program to support eligible neighborhood development activities by providing Federal matching funds to eligible neighborhood development organizations on the basis of the monetary support such organizations have received from individuals, businesses, and nonprofit or other organizations in their neighborhoods, and from neighborhood development funding organizations, prior to receiving assistance under this section.

(2) The Secretary shall accept applications from eligible neighborhood development organizations for participation in the program. Eligible organizations may participate in more than one year of the program, but shall be required to submit a new application and to compete in the selection process for each program year. For fiscal year 1993 and thereafter, not more than 50 percent of the grants may be for multiyear awards.

(3) From the pool of eligible neighborhood development organizations submitting applications for participation in a given program year, the Secretary shall select participating organizations in an appropriate number through a competitive selection process. To be selected, an applicant shall—

(A) have demonstrated measurable achievements in one or more of the activities specified in subsection (a)(1) of this section;

(B) specify a business plan for accomplishing one or more of the activities specified in subsection (a)(1) of this section;

(C) specify a strategy for achieving greater long term private sector support, especially in cooperation with a neighborhood development

funding organization, except that an eligible neighborhood development organization shall be deemed to have the full benefit of the cooperation of a neighborhood development funding organization if the eligible neighborhood development organization—

(i) is located in an area described in subsection (a)(2)(A)(iv) of this section that does not contain a neighborhood development funding organization; or

(ii) demonstrates to the satisfaction of the Secretary that it has been unable to obtain the cooperation of any neighborhood development funding organization in such area despite having made a good faith effort to obtain such cooperation; and

(D) specify a strategy for increasing the capacity of the organization.

(c) Criteria for awarding grants

The Secretary shall award grants under this section among the eligible neighborhood development organizations submitting applications for such grants on the basis of—

(1) the degree of economic distress of the neighborhood involved;

(2) the extent to which the proposed activities will benefit persons of low and moderate income;

(3) the extent of neighborhood participation in the proposed activities, as indicated by the proportion of the households and businesses in the neighborhood involved that are members of the eligible neighborhood development organization involved and by the extent of participation in the proposed activities by a neighborhood development funding organization that has a branch or office in the neighborhood, except that an eligible neighborhood development organization shall be deemed to have the full benefit of the participation of a neighborhood development funding organization if the eligible neighborhood development organization—

(A) is located in an¹ neighborhood that does not contain a branch or office of a neighborhood development funding organization; or

(B) demonstrates to the satisfaction of the Secretary that it has been unable to obtain the participation of any neighborhood development funding organization that has a branch or office in the neighborhood despite having made a good faith effort to obtain such participation; and

(4) the extent of voluntary contributions available for the purpose of subsection (e)(4) of this section, except that the Secretary shall waive the requirement of this subparagraph in the case of an application submitted by a small eligible neighborhood development organization, an application involving activities in a very low-income neighborhood, or an application that is especially meritorious.

(d) Consultation with informal working group

The Secretary shall consult with an informal working group representative of eligible neighborhood organizations with respect to the imple-

¹ So in original. Probably should be “a”.

mentation and evaluation of the program established in this section.

(e) Matching funds for participating organizations

(1) The Secretary shall assign each participating organization a defined program year, during which time voluntary contributions from individuals, businesses, and nonprofit or other organizations in the neighborhood, and from neighborhood development funding organizations, shall be eligible for matching.

(2) Subject to paragraph (3), at the end of each three-month period occurring during the program year, the Secretary shall pay to each participating neighborhood development organization the product of—

(A) the aggregate amount of voluntary contributions that such organization certifies to the satisfaction of the Secretary it received during such three-month period; and

(B) the matching ratio established for such test neighborhoods under paragraph (4).

(3) The Secretary shall pay not more than \$50,000 under this section to any participating neighborhood development organization during a single program year, except that, if appropriations for this section exceed \$3,000,000, the Secretary may pay not more than \$75,000 to any participating neighborhood development organization.

(4) For purposes of paragraph (2), the Secretary shall, for each participating organization, determine an appropriate ratio by which monetary contributions made to participating neighborhood development organizations will be matched by Federal funds. The highest such ratios shall be established for neighborhoods having the smallest number of households or the greatest degree of economic distress.

(5) The Secretary shall insure that—

(A) grants and other forms of assistance may be made available under this section only if the application contains a certification by the unit of general local government within which the neighborhood to be assisted is located that such assistance is not inconsistent with the comprehensive housing affordability strategy of such unit approved under section 12705 of this title or the statement of community development activities and community development plans of the unit submitted under section 5304(m) of this title, except that the failure of a unit of general local government to respond to a request for a certification within thirty days after the request is made shall be deemed to be a certification; and

(B) eligible neighborhood development activities comply with all applicable provisions of the Civil Rights Act of 1964 [42 U.S.C. 2000a et seq.].

(6) To carry out this section, the Secretary—

(A) may issue regulations as necessary;

(B) shall utilize, to the fullest extent practicable, relevant research previously conducted by Federal agencies, State and local governments, and private organizations and persons;

(C) shall disseminate information about the kinds of activities, forms of organizations, and

fund-raising mechanisms associated with successful programs; and

(D) may use not more than 5 per centum of the funds appropriated for administrative or other expenses in connection with the program.

(f) Authorization

Of the amounts made available for assistance under section 5303 of this title, \$1,000,000 for fiscal year 1993 (in addition to other amounts provided for such fiscal year) and \$3,000,000 for fiscal year 1994 shall be available to carry out this section.

(g) Short title

This section may be cited as the “John Heinz Neighborhood Development Act”.

(Pub. L. 98-181, title I, §123, Nov. 30, 1983, 97 Stat. 1172; Pub. L. 98-479, title I, §101(b)(2), (3), Oct. 17, 1984, 98 Stat. 2220; Pub. L. 100-242, title V, §§521, 525, Feb. 5, 1988, 101 Stat. 1938, 1939; Pub. L. 101-625, title IX, §915, Nov. 28, 1990, 104 Stat. 4395; Pub. L. 102-550, title VIII, §832, Oct. 28, 1992, 106 Stat. 3852; Pub. L. 105-362, title VII, §701(d), Nov. 10, 1998, 112 Stat. 3287.)

REFERENCES IN TEXT

The Federal Deposit Insurance Act, referred to in subsec. (a)(3)(A), is act Sept. 21, 1950, ch. 967, §2, 64 Stat. 873, as amended, which is classified generally to chapter 16 (§1811 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 1811 of Title 12 and Tables.

The Federal Credit Union Act, referred to in subsec. (a)(3)(A), is act June 26, 1934, ch. 750, 48 Stat. 1216, as amended, which is classified generally to chapter 14 (§1751 et seq.) of Title 12. For complete classification of this Act to the Code, see section 1751 of Title 12 and Tables.

The Civil Rights Act of 1964, referred to in subsec. (e)(5)(B), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended, which is classified principally to subchapters II to IX (§2000a et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

CODIFICATION

Section was enacted as the John Heinz Neighborhood Development Act and also as part of the Housing and Urban-Rural Recovery Act of 1983, the Domestic Housing and International Recovery and Financial Stability Act, and the Supplemental Appropriations Act, 1984, and not as part of the Housing and Community Development Act of 1974 which comprises this chapter.

Section was formerly set out as a note under section 5318 of this title.

AMENDMENTS

1998—Subsecs. (f) to (h). Pub. L. 105-362 redesignated subsecs. (g) and (h) as (f) and (g), respectively, and struck out former subsec. (f) which read as follows: “The Secretary shall submit a report to the Congress, not later than 3 months after the end of each fiscal year in which payments are made under this section, regarding the program under this section. The report shall contain a summary of the activities carried out under this section during such fiscal year and any findings, conclusions, and recommendations for legislation regarding the program.”

1992—Pub. L. 102-550, §832(b)(1), substituted “John Heinz Neighborhood Development Program” for “Neighborhood Development Demonstration” as section catchline.

Subsec. (a)(2). Pub. L. 102-550, § 832(d)(1)-(3), (4), redesignated subpars. (A) to (E) of par. (2) as cls. (i) to (v), respectively, of subpar. (A) of par. (2) and added subpar. (B).

Subsec. (a)(2)(A)(iii). Pub. L. 102-550, § 832(g)(1), substituted "one year" for "three years".

Subsec. (a)(2)(A)(iv). Pub. L. 102-550, § 832(e)(1), added cl. (iv) and struck out former cl. (iv) which read as follows: "an organization that operates within an area that meets the requirements for Federal assistance under section 5318 of this title; and".

Subsec. (a)(3), (4). Pub. L. 102-550, § 832(e)(2), (3), added par. (3) and redesignated former par. (3) as (4).

Subsec. (b)(1). Pub. L. 102-550, § 832(f)(1), inserted ", and from neighborhood development funding organizations," after "neighborhoods".

Pub. L. 102-550, § 832(b)(2), (3), struck out "demonstration" before "program" and substituted "to support eligible" for "to determine the feasibility of supporting eligible".

Subsec. (b)(2). Pub. L. 102-550, § 832(b)(2), (g)(2), struck out "demonstration" before "program." and substituted "For fiscal year 1993 and thereafter, not more than 50 percent" for "Not more than 30 per centum".

Subsec. (b)(3)(B). Pub. L. 102-550, § 832(f)(2)(A), struck out "and" at end.

Subsec. (b)(3)(C). Pub. L. 102-550, § 832(f)(2)(B), substituted ", especially in cooperation with a neighborhood development funding organization, except that an eligible neighborhood development organization shall be deemed to have the full benefit of the cooperation of a neighborhood development funding organization if the eligible neighborhood development organization—" and cls. (i) and (ii) for period at end.

Subsec. (b)(3)(D). Pub. L. 102-550, § 832(f)(2)(C), added subpar. (D).

Subsec. (c)(3). Pub. L. 102-550, § 832(f)(3), inserted before semicolon "and by the extent of participation in the proposed activities by a neighborhood development funding organization that has a branch or office in the neighborhood, except that an eligible neighborhood development organization shall be deemed to have the full benefit of the participation of a neighborhood development funding organization if the eligible neighborhood development organization—" and subpars. (A) and (B).

Subsec. (e)(1). Pub. L. 102-550, § 832(f)(4), inserted ", and from neighborhood development funding organizations," after "neighborhood".

Subsec. (e)(3). Pub. L. 102-550, § 832(b)(4), inserted before period ", except that, if appropriations for this section exceed \$3,000,000, the Secretary may pay not more than \$75,000 to any participating neighborhood development organization".

Subsec. (e)(5)(A). Pub. L. 102-550, § 832(c), substituted "comprehensive housing affordability strategy of such unit approved under section 12705 of this title or the statement of community development activities and community development plans of the unit submitted under section 5304(m) of this title" for "housing and community development plans of such unit".

Subsec. (e)(6)(C). Pub. L. 102-550, § 832(b)(5)(A), inserted "and" after "programs".

Subsec. (e)(6)(D), (E). Pub. L. 102-550, § 832(b)(5)(B)-(D), redesignated subpar. (E) as (D), substituted "program" for "demonstration", and struck out former subpar. (D) which read as follows: "shall undertake any other activity the Secretary deems necessary to carry out this section, which shall include an evaluation and report to Congress on the demonstration and may include the performance of research, planning, and administration, either directly, or when in the Secretary's judgment such activity will be carried out more effectively, more rapidly, or at less cost, by contract or grant; and".

Subsec. (f). Pub. L. 102-550, § 832(b)(6), added subsec. (f) and struck out former subsec. (f) which read as follows: "The Secretary shall submit to the Congress—

"(1) not later than three months after the end of each fiscal year in which payments are made under

this section, an interim report containing a summary of the activities carried out under this section during such fiscal year and any preliminary findings or conclusions drawn from the demonstration program; and

"(2) not later than March 15 of the year after the end of the last fiscal year in which such payments are made, a final report containing a summary of all activities carried out under this section, the evaluation required in subsection (e)(6)(D) of this section and any findings, conclusions, or recommendations for legislation drawn from the demonstration program."

Subsec. (g). Pub. L. 102-550, § 832(a), amended subsec. (g) generally. Prior to amendment, subsec. (g) read as follows: "To the extent provided in appropriations Acts, of the amounts made available for assistance under section 5303 of this title, \$2,000,000 for fiscal year 1991 and \$2,000,000 for fiscal year 1992 shall be available to carry out this section."

Subsec. (h). Pub. L. 102-550, § 832(b)(7), added subsec. (h).

1990—Subsec. (g). Pub. L. 101-625 amended subsec. (g) generally. Prior to amendment, subsec. (g) read as follows: "There are authorized to be appropriated to carry out this section \$2,000,000 for fiscal year 1988, and \$2,000,000 for fiscal year 1989."

1988—Subsec. (e)(3). Pub. L. 100-242, § 525, substituted "under this section" for "under this Act".

Subsec. (g). Pub. L. 100-242, § 521, amended subsec. (g) generally. Prior to amendment, subsec. (g) read as follows: "For purposes of carrying out this section, there are authorized to be appropriated not to exceed \$2,000,000 for each of the fiscal years 1984 and 1985."

1984—Subsec. (b)(3)(A), (B). Pub. L. 98-479, § 101(b)(2), substituted "subsection (a)(1)" for "subsection (a)(4)" wherever appearing.

Subsec. (c). Pub. L. 98-479, § 101(b)(3), struck out "(1)" before "The Secretary shall award" and redesignated subpars. (A) to (D) as pars. (1) to (4), respectively.

§ 5319. Community participation in programs

No community shall be barred from participating in any program authorized under this chapter solely on the basis of population, except as expressly authorized by statute.

(Pub. L. 93-383, title I, § 120, as added Pub. L. 95-557, title I, § 103(i), Oct. 31, 1978, 92 Stat. 2084.)

EFFECTIVE DATE

Section effective Oct. 1, 1978, see section 104 of Pub. L. 95-557, set out as an Effective Date of 1978 Amendment note under section 1709 of Title 12, Banks and Banking.

§ 5320. Historic preservation requirements

(a) Regulations

With respect to applications for assistance under section 5318 of this title, the Secretary of the Interior, after consulting with the Secretary, shall prescribe and implement regulations concerning projects funded under section 5318 of this title and their relationship with—

(1) "An Act to establish a program for the preservation of additional historic properties throughout the Nation, and for other purposes", approved October 14, 1966, as amended [16 U.S.C. 470 et seq.]; and

(2) "An Act to provide for the preservation of historical and archaeological data (including relics and specimens) which might otherwise be lost as a result of the construction of a dam", approved June 27, 1960, as amended [16 U.S.C. 469 to 469c-1].

(b) Actions by State historic preservation officer and Secretary of the Interior

In prescribing and implementing such regulations with respect to applications submitted

under section 5318 of this title which identify any property pursuant to subsection (c)(4)(B) of such section, the Secretary of the Interior shall provide at least that—

(1) the appropriate State historic preservation officer (as determined in accordance with regulations prescribed by the Secretary of the Interior) shall, not later than 45 days after receiving information from the applicant relating to the identification of properties which will be affected by the project for which the application is made and which may meet the criteria established by the Secretary of the Interior for inclusion on the National Register of Historic Places (together with documentation relating to such inclusion), submit his or her comments, together with such other information considered necessary by the officer, to the applicant concerning such properties; and

(2) the Secretary of the Interior shall, not later than 45 days after receiving from the applicant the information described in paragraph (1) and the comments submitted to the applicant in accordance with paragraph (1), make a determination as to whether any of the properties affected by the project for which the application is made is eligible for inclusion on the National Register of Historic Places.

(c) Regulations by Advisory Council on Historic Preservation providing for expeditious action

The Advisory Council on Historic Preservation shall prescribe regulations providing for expeditious action by the Council in making its comments under section 106 of the Act [16 U.S.C. 470f] referred to in subsection (a)(1) in the case of properties which are included on, or eligible for inclusion on, the National Register of Historic Places and which are affected by a project for which an application is made under section 5318 of this title.

(Pub. L. 93-383, title I, §121, as added Pub. L. 96-399, title I, §110(c), Oct. 8, 1980, 94 Stat. 1620; amended Pub. L. 97-35, title III, §308(b), Aug. 13, 1981, 95 Stat. 396.)

REFERENCES IN TEXT

“An Act to establish a program for the preservation of additional historic properties throughout the Nation, and for other purposes”, approved October 14, 1966, as amended, referred to in subsec. (a)(1), probably means Pub. L. 89-665, Oct. 15, 1966, 80 Stat. 915, as amended, known as the National Historic Preservation Act, which is classified generally to subchapter II (§470 et seq.) of chapter 1A of Title 16, Conservation. For complete classification of this Act to the Code see section 470(a) of Title 16 and Tables.

“An Act to provide for the preservation of historical and archaeological data (including relics and specimens) which might otherwise be lost as a result of the construction of a dam”, approved June 27, 1960, as amended, referred to in subsec. (a)(2), is Pub. L. 86-523, June 27, 1960, 74 Stat. 220, as amended, which enacted sections 469 to 469c-1 of Title 16. For complete classification of this Act, see Tables.

AMENDMENTS

1981—Subsec. (b). Pub. L. 97-35 substituted “subsection (c)(4)(B)” for “subsection (c)(7)(B)”.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective on effective date of regulations implementing such amendments,

see section 308(c) of Pub. L. 97-35, set out as a note under section 5318 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5318 of this title.

§ 5321. Suspension of requirements for disaster areas

For funds designated under this chapter by a recipient to address the damage in an area for which the President has declared a disaster under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act [42 U.S.C. 5170 et seq.], the Secretary may suspend all requirements for purposes of assistance under section 5306 of this title for that area, except for those related to public notice of funding availability, nondiscrimination, fair housing, labor standards, environmental standards, and requirements that activities benefit persons of low- and moderate-income.

(Pub. L. 93-383, title I, §122, as added Pub. L. 103-233, title II, §234, Apr. 11, 1994, 108 Stat. 369.)

REFERENCES IN TEXT

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in text, is Pub. L. 93-288, May 22, 1974, 88 Stat. 143, as amended. Title IV of the Act is classified generally to subchapter IV (§5170 et seq.) of chapter 68 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables.

EFFECTIVE DATE

Section applicable with respect to any amounts made available to carry out subchapter II (§12721 et seq.) of chapter 130 of this title after Apr. 11, 1994, and any amounts made available to carry out that subchapter before that date that remain uncommitted on that date, with Secretary to issue any regulations necessary to carry out this section not later than end of 45-day period beginning on that date, see section 209 of Pub. L. 103-233, set out as an Effective Date of 1994 Amendment note under section 5301 of this title.

CHAPTER 70—MANUFACTURED HOME CONSTRUCTION AND SAFETY STANDARDS

Sec.	
5401.	Findings and purposes. <ul style="list-style-type: none"> (a) Findings. (b) Purposes.
5402.	Definitions.
5403.	Construction and safety standards. <ul style="list-style-type: none"> (a) Establishment. (b) Other orders. (c) Effective date of orders establishing standards. (d) Supremacy of Federal standards. (e) Considerations in establishing and interpreting standards and regulations. (f) Coverage; exclusion. (g) Manufactured housing construction and safety standards. (h) New performance standards for hard-board siding.
5404.	Manufactured home installation. <ul style="list-style-type: none"> (a) Provision of installation design and instructions. (b) Model manufactured home installation standards. (c) Manufactured home installation programs.
5405.	Judicial review of orders establishing standards; petition; additional evidence before Secretary; certified copy of transcript.

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| <p>Sec.
5406. Submission of cost or other information by manufacturer.
 (a) Purpose of submission; detail of information.
 (b) Conditions upon availability to public of submitted information.
 (c) "Cost information" defined.
 (d) Power of Secretary to obtain or require submission of information under other provisions unaffected.</p> <p>5407. Research, testing, development, and training by Secretary.
 (a) Scope.
 (b) Contracts and grants with States, interstate agencies, and independent institutions.
 (c) Definitions.</p> <p>5408. Cooperation by Secretary with public and private agencies.</p> <p>5409. Prohibited acts; exemptions.</p> <p>5410. Civil and criminal penalties.</p> <p>5411. Injunctive relief.
 (a) Jurisdiction; petition of United States attorney or Attorney General; notice by Secretary to affected persons to present views.
 (b) Criminal contempt proceedings; conduct of trial.
 (c) Venue.
 (d) Subpenas.
 (e) Designation by manufacturer of agent for service of administrative and judicial processes, etc.; filing and amendment of designation; failure to make designation.</p> <p>5412. Noncompliance with standards or defective nature of manufactured home; administrative or judicial determination; repurchase by manufacturer or repair by distributor or retailer; reimbursement of expenses, etc., by manufacturer; injunctive relief against manufacturer for failure to comply; jurisdiction and venue; damages; period of limitation.</p> <p>5413. Inspections and investigations for promulgation or enforcement of standards or execution of other duties.
 (a) Authority of Secretary; results furnished to Attorney General and Secretary of the Treasury for appropriate action.
 (b) Designation by Secretary of persons to enter and inspect factories, etc.; presentation of credentials; reasonableness and scope of inspection.
 (c) Powers of Secretary.
 (d) Refusal to obey subpoena or order of Secretary; order of compliance by district court; failure to obey order of compliance punishable as contempt.
 (e) Submission by manufacturer of building plans for manufactured homes; certification by manufacturer of conformity of building plans to standards.
 (f) Records, reports and information from manufacturers, distributors and retailers of manufactured homes; inspection and examination of relevant books, papers, records and documents by designated person.
 (g) Performance and technical data from manufacturer; persons required to receive notification of data.
 (h) Disclosure of confidential information and trade secrets.</p> <p>5414. Notification and correction of defects by manufacturer.</p> | <p>Sec.</p> <p>(a) Notice to purchaser within reasonable time after discovery of defect.
 (b) Notification by mail.
 (c) Form and requisites of notification.
 (d) Copy to Secretary of all notices, bulletins, and communications sent by manufacturer to retailers and purchasers concerning defects; disclosure to public by Secretary.
 (e) Notice by Secretary to manufacturers of noncompliance with standards or defective nature of manufactured home; contents of notice; presentation by manufacturer of views; notice to purchasers of defects.
 (f) Maintenance by manufacturers of record of names and addresses of first purchasers of manufactured homes; procedures for ascertaining names and addresses of subsequent purchasers; establishment and reasonableness of procedures for maintaining records.
 (g) Correction of defects by manufacturer; conditions; procedures; contract or legal rights of purchasers or other persons unaffected.
 (h) Submission to Secretary by manufacturer of plan for notifying owners of defects and repair of defects; approval of manufacturer's remedy plan; effectuation and implementation of remedy plan.
 (i) Defective or inadequately repaired manufactured homes; replacement with new or equivalent home or refund of purchase price.</p> <p>5415. Certification by manufacturer of conformity of manufactured home with standards; form and placement of certification.</p> <p>5416. Consumer's manual; contents.</p> <p>5417. Effect upon antitrust laws.</p> <p>5418. Use of services, research and testing facilities of public agencies and independent laboratories.</p> <p>5419. Authority to collect fee.
 (a) In general.
 (b) Contractors.
 (c) Prohibited use.
 (d) Modification.
 (e) Appropriation and deposit of fees.</p> <p>5420. Failure to report violations; penalties.</p> <p>5421. Prohibition on waiver of rights.</p> <p>5422. State enforcement.
 (a) Jurisdiction of State agency or court under State law.
 (b) Assumption of responsibility for enforcement of Federal standards; submission of enforcement plan to Secretary.
 (c) Criteria for approval of State plan by Secretary.
 (d) Notice and hearing prior to rejection by Secretary of State plan.
 (e) Discretionary enforcement by Secretary of standards in State having approved plan.
 (f) Annual evaluation by Secretary of execution of State plan; basis of evaluation; submission of evaluation and data to Congress; determination by Secretary of improper administration, etc., of State plan; procedure; effect of determination.
 (g) Enforcement of dispute resolution standards.</p> <p>5423. Grants to States.
 (a) Purposes.
 (b) Designation by Governor of State agency for receipt of grant.</p> |
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Sec.

- (c) Submission of application by State agency to Secretary; review by Secretary.
- (d) Amount of Federal share; equality of distribution of funds.

- 5424. Rules and regulations.
- 5425. Repealed.
- 5426. Authorization of appropriations.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 1472 of this title; title 12 section 1703.

§ 5401. Findings and purposes

(a) Findings

Congress finds that—

- (1) manufactured housing plays a vital role in meeting the housing needs of the Nation; and
- (2) manufactured homes provide a significant resource for affordable homeownership and rental housing accessible to all Americans.

(b) Purposes

The purposes of this chapter are—

- (1) to protect the quality, durability, safety, and affordability of manufactured homes;
- (2) to facilitate the availability of affordable manufactured homes and to increase homeownership for all Americans;
- (3) to provide for the establishment of practical, uniform, and, to the extent possible, performance-based Federal construction standards for manufactured homes;
- (4) to encourage innovative and cost-effective construction techniques for manufactured homes;
- (5) to protect residents of manufactured homes with respect to personal injuries and the amount of insurance costs and property damages in manufactured housing, consistent with the other purposes of this section;
- (6) to establish a balanced consensus process for the development, revision, and interpretation of Federal construction and safety standards for manufactured homes and related regulations for the enforcement of such standards;
- (7) to ensure uniform and effective enforcement of Federal construction and safety standards for manufactured homes; and
- (8) to ensure that the public interest in, and need for, affordable manufactured housing is duly considered in all determinations relating to the Federal standards and their enforcement.

(Pub. L. 93-383, title VI, §602, Aug. 22, 1974, 88 Stat. 700; Pub. L. 96-399, title III, §308(c)(4), Oct. 8, 1980, 94 Stat. 1641; Pub. L. 97-35, title III, §339B(c), Aug. 13, 1981, 95 Stat. 417; Pub. L. 106-569, title VI, §602, Dec. 27, 2000, 114 Stat. 2997.)

AMENDMENTS

2000—Pub. L. 106-569 amended section catchline and text generally. Prior to amendment, text read as follows: “The Congress declares that the purposes of this chapter are to reduce the number of personal injuries and deaths and the amount of insurance costs and property damage resulting from manufactured home accidents and to improve the quality and durability of

manufactured homes. Therefore, the Congress determines that it is necessary to establish Federal construction and safety standards for manufactured homes and to authorize manufactured home safety research and development.”

1980—Pub. L. 96-399 substituted “manufactured home” for “mobile home” wherever appearing.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-569, title VI, §612, Dec. 27, 2000, 114 Stat. 3012, provided that: “The amendments made by this title [see Short Title of 2000 Amendment note below] shall take effect on the date of the enactment of this Act [Dec. 27, 2000], except that the amendments shall have no effect on any order or interpretative bulletin that is issued under the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401 et seq.) and published as a proposed rule pursuant to section 553 of title 5, United States Code, on or before that date of the enactment.”

EFFECTIVE DATE

Pub. L. 93-383, title VI, §627, formerly §628, Aug. 22, 1974, 88 Stat. 714, renumbered §627, Pub. L. 106-569, title VI, §611(2), Dec. 27, 2000, 114 Stat. 3012, provided that: “The provisions of this title [enacting this chapter and provisions set out as a note under this section] shall take effect upon the expiration of 180 days following the date of enactment of this title [Aug. 22, 1974].”

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106-569, title VI, §601(a), Dec. 27, 2000, 114 Stat. 2997, provided that: “This title [amending this section and sections 5402 to 5404, 5406, 5407, 5409, 5412 to 5415, 5419, 5422, and 5426 of this title, repealing section 5425 of this title, and enacting and amending provisions set out as notes under this section] may be cited as the ‘Manufactured Housing Improvement Act of 2000.’”

SHORT TITLE

Section 601 of title VI of Pub. L. 93-383, as amended by Pub. L. 96-399, title III, §308(c)(5), Oct. 8, 1980, 94 Stat. 1641, provided that: “This title [enacting this chapter and provisions set out as a note under this section] may be cited as the ‘National Manufactured Housing Construction and Safety Standards Act of 1974.’”

SAVINGS PROVISIONS

Pub. L. 106-569, title VI, §613, Dec. 27, 2000, 114 Stat. 3012, provided that:

“(a) STANDARDS AND REGULATIONS.—The Federal manufactured home construction and safety standards (as such term is defined in section 603 of the National Manufactured Housing Construction and Safety Standards Act of 1974 [42 U.S.C. 5402]) and all regulations pertaining thereto in effect on the day before the date of the enactment of this Act [Dec. 27, 2000] shall apply until the effective date of a standard or regulation modifying or superseding the existing standard or regulation that is promulgated under subsection (a) or (b) of section 604 of the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended by this title [42 U.S.C. 5403(a), (b)].

“(b) CONTRACTS.—Any contract awarded pursuant to a Request for Proposal issued before the date of the enactment of this Act [Dec. 27, 2000] shall remain in effect until the earlier of—

- “(1) the expiration of the 2-year period beginning on the date of the enactment of this Act; or
- “(2) the expiration of the contract term.”

§ 5402. Definitions

As used in this chapter, the term—

- (1) “manufactured home construction” means all activities relating to the assembly and manufacture of a manufactured home including but not limited to those relating to durability, quality, and safety;

(2) "retailer" means any person engaged in the sale, leasing, or distribution of new manufactured homes primarily to persons who in good faith purchase or lease a manufactured home for purposes other than resale;

(3) "defect" includes any defect in the performance, construction, components, or material of a manufactured home that renders the home or any part thereof not fit for the ordinary use for which it was intended;

(4) "distributor" means any person engaged in the sale and distribution of manufactured homes for resale;

(5) "manufacturer" means any person engaged in manufacturing or assembling manufactured homes, including any person engaged in importing manufactured homes for resale;

(6) "manufactured home" means a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein; except that such term shall include any structure which meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary and complies with the standards established under this chapter; and except that such term shall not include any self-propelled recreational vehicle;

(7) "Federal manufactured home construction and safety standard" means a reasonable standard for the construction, design, and performance of a manufactured home which meets the needs of the public including the need for quality, durability, and safety;

(8) "manufactured home safety" means the performance of a manufactured home in such a manner that the public is protected against any unreasonable risk of the occurrence of accidents due to the design or construction of such manufactured home, or any unreasonable risk of death or injury to the user or to the public if such accidents do occur;

(9) "imminent safety hazard" means an imminent and unreasonable risk of death or severe personal injury;

(10) "purchaser" means the first person purchasing a manufactured home in good faith for purposes other than resale;

(11) "Secretary" means the Secretary of Housing and Urban Development;

(12) "State" includes each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Canal Zone, and American Samoa;

(13) "United States district courts" means the Federal district courts of the United States and the United States courts of the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Canal Zone, and American Samoa;

(14) "administering organization" means the recognized, voluntary, private sector, consen-

sus standards body with specific experience in developing model residential building codes and standards involving all disciplines regarding construction and safety that administers the consensus standards through a development process;

(15) "consensus committee" means the committee established under section 5403(a)(3) of this title;

(16) "consensus standards development process" means the process by which additions, revisions, and interpretations to the Federal manufactured home construction and safety standards and enforcement regulations shall be developed and recommended to the Secretary by the consensus committee;

(17) "primary inspection agency" means a State agency or private organization that has been approved by the Secretary to act as a design approval primary inspection agency or a production inspection primary inspection agency, or both;

(18) "design approval primary inspection agency" means a State agency or private organization that has been approved by the Secretary to evaluate and either approve or disapprove manufactured home designs and quality control procedures;

(19) "installation standards" means reasonable specifications for the installation of a manufactured home, at the place of occupancy, to ensure proper siting, the joining of all sections of the home, and the installation of stabilization, support, or anchoring systems;

(20) "monitoring" means the process of periodic review of the primary inspection agencies, by the Secretary or by a State agency under an approved State plan pursuant to section 5422 of this title, in accordance with regulations promulgated under this chapter, giving due consideration to the recommendations of the consensus committee under section 5403(b) of this title, which process shall be for the purpose of ensuring that the primary inspection agencies are discharging their duties under this chapter; and

(21) "production inspection primary inspection agency" means a State agency or private organization that has been approved by the Secretary to evaluate the ability of manufactured home manufacturing plants to comply with approved quality control procedures and with the Federal manufactured home construction and safety standards promulgated hereunder, including the inspection of homes in the plant.

(Pub. L. 93-383, title VI, § 603, Aug. 22, 1974, 88 Stat. 700; Pub. L. 96-399, title III, § 308(c)(4), (d), Oct. 8, 1980, 94 Stat. 1641; Pub. L. 97-35, title III, § 339B(c), Aug. 13, 1981, 95 Stat. 417; Pub. L. 105-276, title V, § 599A(a), Oct. 21, 1998, 112 Stat. 2660; Pub. L. 106-569, title VI, § 603(a), Dec. 27, 2000, 114 Stat. 2998.)

REFERENCES IN TEXT

For definition of Canal Zone, referred to in pars. (12) and (13), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

CODIFICATION

References to "mobile homes", wherever appearing in text, changed to "manufactured homes" in view of the

amendment of title VI of the Housing and Community Development Act of 1974 (this chapter) by section 308(c)(4) of Pub. L. 96-399 requiring the substitution of “manufactured home” for “mobile home” wherever appearing in title VI of the Housing and Community Development Act of 1974, and section 339B(c) of Pub. L. 97-35 (set out as a note under section 1703 of Title 12, Banks and Banking) providing that the terms “mobile home” and “manufactured home” shall be deemed to include the terms “mobile homes” and “manufactured homes”, respectively.

AMENDMENTS

2000—Par. (2). Pub. L. 106-569, §603(a)(1), substituted “retailer” for “dealer”.

Pars. (14) to (21). Pub. L. 106-569, §603(a)(2)–(4), added pars. (14) to (21).

1998—Par. (6). Pub. L. 105-276 inserted before semicolon at end “; and except that such term shall not include any self-propelled recreational vehicle”.

1980—Pars. (1), (2), (3). Pub. L. 96-399, §308(c)(4), substituted “manufactured home” for “mobile home” wherever appearing.

Par. (6). Pub. L. 96-399, §308(c)(4), (d), substituted “manufactured home” for “mobile home”, substituted “in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred twenty or more square feet” for “is eight body feet or more in width and is thirty-two body feet or more in length”, and inserted exception relating to inclusion of any structure meeting all requirements of this paragraph except size and with respect to which a certification is voluntarily filed and standards complied with.

Pars. (7), (8), (10). Pub. L. 96-399, §308(c)(4), substituted “manufactured home” for “mobile home” wherever appearing.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-569 effective Dec. 27, 2000, except that amendment has no effect on any order or interpretative bulletin issued under this chapter and published as a proposed rule pursuant to 5 U.S.C. 553 on or before Dec. 27, 2000, see section 612 of Pub. L. 106-569, set out as a note under section 5401 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-276, title V, §599A(b), Oct. 21, 1998, 112 Stat. 2660, provided that: “The amendment made by this section [amending this section] is made on, and shall apply beginning upon, the date of the enactment of this Act [Oct. 21, 1998].”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 12 sections 1701j-3, 1735f-7a, 3802; title 15 section 78c.

§ 5403. Construction and safety standards

(a) Establishment

(1) Authority

The Secretary shall establish, by order, appropriate Federal manufactured home construction and safety standards, each of which—

(A) shall—

- (i) be reasonable and practical;
- (ii) meet high standards of protection consistent with the purposes of this chapter; and
- (iii) be performance-based and objectively stated, unless clearly inappropriate; and

(B) except as provided in subsection (b) of this section, shall be established in accordance with the consensus standards development process.

(2) Consensus standards and regulatory development process

(A) Initial agreement

Not later than 180 days after December 27, 2000, the Secretary shall enter into a contract with an administering organization. The contractual agreement shall—

- (i) terminate on the date on which a contract is entered into under subparagraph (B); and
- (ii) require the administering organization to—

(I) recommend the initial members of the consensus committee under paragraph (3);

(II) administer the consensus standards development process until the termination of that agreement; and

(III) administer the consensus development and interpretation process for procedural and enforcement regulations and regulations specifying the permissible scope and conduct of monitoring until the termination of that agreement.

(B) Competitively procured contract

Upon the expiration of the 4-year period beginning on the date on which all members of the consensus committee are appointed under paragraph (3), the Secretary shall, using competitive procedures (as such term is defined in section 403 of title 41), enter into a competitively awarded contract with an administering organization. The administering organization shall administer the consensus process for the development and interpretation of the Federal standards, the procedural and enforcement regulations, and regulations specifying the permissible scope and conduct of monitoring, in accordance with this chapter.

(C) Performance review

The Secretary—

(i) shall periodically review the performance of the administering organization; and

(ii) may replace the administering organization with another qualified technical or building code organization, pursuant to competitive procedures, if the Secretary determines in writing that the administering organization is not fulfilling the terms of the agreement or contract to which the administering organization is subject or upon the expiration of the agreement or contract.

(3) Consensus committee

(A) Purpose

There is established a committee to be known as the “consensus committee”, which shall, in accordance with this chapter—

(i) provide periodic recommendations to the Secretary to adopt, revise, and interpret the Federal manufactured housing construction and safety standards in accordance with this subsection;

(ii) provide periodic recommendations to the Secretary to adopt, revise, and interpret the procedural and enforcement regu-

lations, including regulations specifying the permissible scope and conduct of monitoring in accordance with subsection (b) of this section;

(iii) be organized and carry out its business in a manner that guarantees a fair opportunity for the expression and consideration of various positions and for public participation; and

(iv) be deemed to be an advisory committee not composed of Federal employees.

(B) Membership

The consensus committee shall be composed of—

(i) twenty-one voting members appointed by the Secretary, after consideration of the recommendations of the administering organization, from among individuals who are qualified by background and experience to participate in the work of the consensus committee; and

(ii) one nonvoting member appointed by the Secretary to represent the Secretary on the consensus committee.

(C) Disapproval

The Secretary shall state, in writing, the reasons for failing to appoint any individual recommended under paragraph (2)(A)(ii)(I).

(D) Selection procedures and requirements

Each member of the consensus committee shall be appointed in accordance with selection procedures, which shall be based on the procedures for consensus committees promulgated by the American National Standards Institute (or successor organization), except that the American National Standards Institute interest categories shall be modified for purposes of this paragraph to ensure equal representation on the consensus committee of the following interest categories:

(i) Producers

Seven producers or retailers of manufactured housing.

(ii) Users

Seven persons representing consumer interests, such as consumer organizations, recognized consumer leaders, and owners who are residents of manufactured homes.

(iii) General interest and public officials

Seven general interest and public official members.

(E) Balancing of interests

(i) In general

In order to achieve a proper balance of interests on the consensus committee, the Secretary, in appointing the members of the consensus committee—

(I) shall ensure that all directly and materially affected interests have the opportunity for fair and equitable participation without dominance by any single interest; and

(II) may reject the appointment of any one or more individuals in order to ensure that there is not dominance by any single interest.

(ii) Dominance defined

In this subparagraph, the term “dominance” means a position or exercise of dominant authority, leadership, or influence by reason of superior leverage, strength, or representation.

(F) Additional qualifications

(i) Financial independence

No individual appointed under subparagraph (D)(ii) shall have, and three of the individuals appointed under subparagraph (D)(iii) shall not have—

(I) a significant financial interest in any segment of the manufactured housing industry; or

(II) a significant relationship to any person engaged in the manufactured housing industry.

(ii) Post-employment ban

Each individual described in clause (i) shall be subject to a ban disallowing compensation from the manufactured housing industry during the period of, and during the 1-year following, the membership of the individual on the consensus committee.

(G) Meetings

(i) Notice; open to public

The consensus committee shall provide advance notice of each meeting of the consensus committee to the Secretary and cause to be published in the Federal Register advance notice of each such meeting. All meetings of the consensus committee shall be open to the public.

(ii) Reimbursement

Members of the consensus committee in attendance at meetings of the consensus committee shall be reimbursed for their actual expenses as authorized by section 5703 of title 5 for persons employed intermittently in Government service.

(H) Administration

The consensus committee and the administering organization shall—

(i) operate in conformance with the procedures established by the American National Standards Institute for the development and coordination of American National Standards; and

(ii) apply to the American National Standards Institute and take such other actions as may be necessary to obtain accreditation from the American National Standards Institute.

(I) Staff and technical support

The administering organization shall, upon the request of the consensus committee—

(i) provide reasonable staff resources to the consensus committee; and

(ii) furnish technical support in a timely manner to any of the interest categories described in subparagraph (D) represented on the consensus committee, if—

(I) the support is necessary to ensure the informed participation of the consensus committee members; and

(II) the costs of providing the support are reasonable.

(J) Date of initial appointments

The initial appointments of all the members of the consensus committee shall be completed not later than 90 days after the date on which a contractual agreement under paragraph (2)(A) is entered into with the administering organization.

(4) Revisions of standards

(A) In general

Beginning on the date on which all members of the consensus committee are appointed under paragraph (3), the consensus committee shall, not less than once during each 2-year period—

- (i) consider revisions to the Federal manufactured home construction and safety standards; and
- (ii) submit proposed revised standards, if approved in a vote of the consensus committee by two-thirds of the members, to the Secretary in the form of a proposed rule, including an economic analysis.

(B) Publication of proposed revised standards

(i) Publication by the Secretary

The consensus committee shall provide a proposed revised standard under subparagraph (A)(ii) to the Secretary who shall, not later than 30 days after receipt, cause such proposed revised standard to be published in the Federal Register for notice and comment in accordance with section 553 of title 5. Unless clause (ii) applies, the Secretary shall provide an opportunity for public comment on such proposed revised standard in accordance with such section 553 and any such comments shall be submitted directly to the consensus committee, without delay.

(ii) Publication of rejected proposed revised standards

If the Secretary rejects the proposed revised standard, the Secretary shall cause to be published in the Federal Register the rejected proposed revised standard, the reasons for rejection, and any recommended modifications set forth.

(C) Presentation of public comments; publication of recommended revisions

(i) Presentation

Any public comments, views, and objections to a proposed revised standard published under subparagraph (B) shall be presented by the Secretary to the consensus committee upon their receipt and in the manner received, in accordance with procedures established by the American National Standards Institute.

(ii) Publication by the Secretary

The consensus committee shall provide to the Secretary any revision proposed by the consensus committee, which the Secretary shall, not later than 30 calendar days after receipt, cause to be published in

the Federal Register a notice of the recommended revisions of the consensus committee to the standards, a notice of the submission of the recommended revisions to the Secretary, and a description of the circumstances under which the proposed revised standards could become effective.

(iii) Publication of rejected proposed revised standards

If the Secretary rejects the proposed revised standard, the Secretary shall cause to be published in the Federal Register the rejected proposed revised standard, the reasons for rejection, and any recommended modifications set forth.

(5) Review by the Secretary

(A) In general

The Secretary shall either adopt, modify, or reject a standard, as submitted by the consensus committee under paragraph (4)(A).

(B) Timing

Not later than 12 months after the date on which a standard is submitted to the Secretary by the consensus committee, the Secretary shall take action regarding such standard under subparagraph (C).

(C) Procedures

If the Secretary—

(i) adopts a standard recommended by the consensus committee, the Secretary shall—

- (I) issue a final order without further rulemaking; and
- (II) cause the final order to be published in the Federal Register;

(ii) determines that any standard should be rejected, the Secretary shall—

- (I) reject the standard; and
- (II) cause to be published in the Federal Register a notice to that effect, together with the reason or reasons for rejecting the proposed standard; or

(iii) determines that a standard recommended by the consensus committee should be modified, the Secretary shall—

- (I) cause to be published in the Federal Register the proposed modified standard, together with an explanation of the reason or reasons for the determination of the Secretary; and
- (II) provide an opportunity for public comment in accordance with section 553 of title 5.

(D) Final order

Any final standard under this paragraph shall become effective pursuant to subsection (c) of this section.

(6) Failure to act

If the Secretary fails to take final action under paragraph (5) and to cause notice of the action to be published in the Federal Register before the expiration of the 12-month period beginning on the date on which the proposed revised standard is submitted to the Secretary under paragraph (4)(A)—

(A) the Secretary shall appear in person before the appropriate housing and appropriations subcommittees and committees of the House of Representatives and the Senate (referred to in this paragraph as the “committees”) on a date or dates to be specified by the committees, but in no event later than 30 days after the expiration of that 12-month period, and shall state before the committees the reasons for failing to take final action as required under paragraph (5); and

(B) if the Secretary does not appear in person as required under subparagraph (A), the Secretary shall thereafter, and until such time as the Secretary does appear as required under subparagraph (A), be prohibited from expending any funds collected under authority of this title in an amount greater than that collected and expended in the fiscal year immediately preceding December 27, 2000, indexed for inflation as determined by the Congressional Budget Office.

(b) Other orders

(1) Regulations

The Secretary may issue procedural and enforcement regulations and revisions to existing regulations as necessary to implement the provisions of this chapter. The consensus committee may submit to the Secretary proposed procedural and enforcement regulations and recommendations for the revision of such regulations.

(2) Interpretative bulletins

The Secretary may issue interpretative bulletins to clarify the meaning of any Federal manufactured home construction and safety standard or procedural and enforcement regulation. The consensus committee may submit to the Secretary proposed interpretative bulletins to clarify the meaning of any Federal manufactured home construction and safety standard or procedural and enforcement regulation.

(3) Review by consensus committee

Before issuing a procedural or enforcement regulation or an interpretative bulletin—

(A) the Secretary shall—

(i) submit the proposed procedural or enforcement regulation or interpretative bulletin to the consensus committee; and

(ii) provide the consensus committee with a period of 120 days to submit written comments to the Secretary on the proposed procedural or enforcement regulation or the interpretative bulletin; and

(B) if the Secretary rejects any significant comment provided by the consensus committee under subparagraph (A), the Secretary shall provide a written explanation of the reasons for the rejection to the consensus committee; and

(C) following compliance with subparagraphs (A) and (B), the Secretary shall—

(i) cause the proposed regulation or interpretative bulletin and the consensus committee’s written comments, along with the Secretary’s response thereto, to be published in the Federal Register; and

(ii) provide an opportunity for public comment in accordance with section 553 of title 5.

(4) Required action

Not later than 120 days after the date on which the Secretary receives a proposed regulation or interpretative bulletin submitted by the consensus committee, the Secretary shall—

(A) approve the proposal and cause the proposed regulation or interpretative bulletin to be published for public comment in accordance with section 553 of title 5; or

(B) reject the proposed regulation or interpretative bulletin and—

(i) provide to the consensus committee a written explanation of the reasons for rejection; and

(ii) cause to be published in the Federal Register the rejected proposed regulation or interpretative bulletin, the reasons for rejection, and any recommended modifications set forth.

(5) Authority to act and emergency

If the Secretary determines, in writing, that such action is necessary to address an issue on which the Secretary determines that the consensus committee has not made a timely recommendation following a request by the Secretary, or in order to respond to an emergency that jeopardizes the public health or safety, the Secretary may issue an order that is not developed under the procedures set forth in subsection (a) of this section or in this subsection, if the Secretary—

(A) provides to the consensus committee a written description and sets forth the reasons why action is necessary and all supporting documentation; and

(B) issues the order after notice and an opportunity for public comment in accordance with section 553 of title 5, and causes the order to be published in the Federal Register.

(6) Changes

Any statement of policies, practices, or procedures relating to construction and safety standards, regulations, inspections, monitoring, or other enforcement activities that constitutes a statement of general or particular applicability to implement, interpret, or prescribe law or policy by the Secretary is subject to subsection (a) of this section or this subsection. Any change adopted in violation of subsection (a) of this section or this subsection is void.

(7) Transition

Until the date on which the consensus committee is appointed pursuant to subsection (a)(3) of this section, the Secretary may issue proposed orders, pursuant to notice and comment in accordance with section 553 of title 5 that are not developed under the procedures set forth in this section for new and revised standards.

(c) Effective date of orders establishing standards

Each order establishing a Federal manufactured home construction and safety standard

shall specify the date such standard is to take effect, which shall not be sooner than one hundred and eighty days or later than one year after the date such order is issued, unless the Secretary finds, for good cause shown, that an earlier or later effective date is in the public interest, and publishes his reasons for such finding.

(d) Supremacy of Federal standards

Whenever a Federal manufactured home construction and safety standard established under this chapter is in effect, no State or political subdivision of a State shall have any authority either to establish, or to continue in effect, with respect to any manufactured home covered, any standard regarding the construction or safety applicable to the same aspect of performance of such manufactured home which is not identical to the Federal manufactured home construction and safety standard. Federal preemption under this subsection shall be broadly and liberally construed to ensure that disparate State or local requirements or standards do not affect the uniformity and comprehensiveness of the standards promulgated under this section nor the Federal superintendence of the manufactured housing industry as established by this chapter. Subject to section 5404 of this title, there is reserved to each State the right to establish standards for the stabilizing and support systems of manufactured homes sited within that State, and for the foundations on which manufactured homes sited within that State are installed, and the right to enforce compliance with such standards, except that such standards shall be consistent with the purposes of this chapter and shall be consistent with the design of the manufacturer.

(e) Considerations in establishing and interpreting standards and regulations

The consensus committee, in recommending standards, regulations, and interpretations, and the Secretary, in establishing standards or regulations or issuing interpretations under this section, shall—

(1) consider relevant available manufactured home construction and safety data, including the results of the research, development, testing, and evaluation activities conducted pursuant to this chapter, and those activities conducted by private organizations and other governmental agencies to determine how to best protect the public;

(2) consult with such State or interstate agencies (including legislative committees) as he deems appropriate;

(3) consider whether any such proposed standard is reasonable for the particular type of manufactured home or for the geographic region for which it is prescribed;

(4) consider the probable effect of such standard on the cost of the manufactured home to the public; and

(5) consider the extent to which any such standard will contribute to carrying out the purposes of this chapter.

(f) Coverage; exclusion

The Secretary shall exclude from the coverage of this chapter any structure which the manufacturer certifies, in a form prescribed by the Secretary, to be:

(1) designed only for erection or installation on a site-built permanent foundation;

(2) not designed to be moved once so erected or installed;

(3) designed and manufactured to comply with a nationally recognized model building code or an equivalent local code, or with a State or local modular building code recognized as generally equivalent to building codes for site-built housing, or with minimum property standards adopted by the Secretary pursuant to title II of the National Housing Act [12 U.S.C. 1707 et seq.]; and

(4) to the manufacturer's knowledge is not intended to be used other than on a site-built permanent foundation.

(g) Manufactured housing construction and safety standards

(1) The Federal manufactured home construction and safety standards established by the Secretary under this section shall include preemptive energy conservation standards in accordance with this subsection.

(2) The energy conservation standards established under this subsection shall be cost-effective energy conservation performance standards designed to ensure the lowest total of construction and operating costs.

(3) The energy conservation standards established under this subsection shall take into consideration the design and factory construction techniques of manufactured homes and shall provide for alternative practices that result in net estimated energy consumption equal to or less than the specified standards.

(h) New performance standards for hardboard siding

The Secretary shall develop a new standard for hardboard panel siding on manufactured housing taking into account durability, longevity, consumer's costs for maintenance and any other relevant information pursuant to subsection (e) of this section. The Secretary shall consult with the National Manufactured Home Advisory Council and the National Commission on Manufactured Housing in establishing the new standard. The new performance standard developed shall ensure the durability of hardboard sidings for at least a normal life of a mortgage with minimum maintenance required. Not later than 180 days from October 28, 1992, the Secretary shall update the standards for hardboard siding.

(Pub. L. 93-383, title VI, §604, Aug. 22, 1974, 88 Stat. 701; Pub. L. 95-128, title IX, §902(a), Oct. 12, 1977, 91 Stat. 1149; Pub. L. 96-399, title III, §308(c)(4), Oct. 8, 1980, 94 Stat. 1641; Pub. L. 98-479, title II, §204(l), Oct. 17, 1984, 98 Stat. 2233; Pub. L. 100-242, title V, §568, Feb. 5, 1988, 101 Stat. 1948; Pub. L. 102-550, title IX, §907, Oct. 28, 1992, 106 Stat. 3873; Pub. L. 106-569, title VI, §604, Dec. 27, 2000, 114 Stat. 2999.)

REFERENCES IN TEXT

The National Housing Act, referred to in subsec. (f)(3), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended. Title II of the National Housing Act is classified principally to subchapter II (§1707 et seq.) of chapter 13 of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1701 of Title 12 and Tables.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106-569, §604(1), added subsec. (a) and struck out former subsec. (a) which read as follows: “The Secretary, after consultation with the Consumer Product Safety Commission, shall establish by order appropriate Federal manufactured home construction and safety standards. Each such Federal manufactured home standard shall be reasonable and shall meet the highest standards of protection, taking into account existing State and local laws relating to manufactured home safety and construction.”

Subsec. (b). Pub. L. 106-569, §604(1), added subsec. (b) and struck out former subsec. (b) which read as follows: “All orders issued under this section shall be issued after notice and an opportunity for interested persons to participate are provided in accordance with the provisions of section 553 of title 5.”

Subsec. (d). Pub. L. 106-569, §604(2), inserted at end “Federal preemption under this subsection shall be broadly and liberally construed to ensure that disparate State or local requirements or standards do not affect the uniformity and comprehensiveness of the standards promulgated under this section nor the Federal superintendence of the manufactured housing industry as established by this chapter. Subject to section 5404 of this title, there is reserved to each State the right to establish standards for the stabilizing and support systems of manufactured homes sited within that State, and for the foundations on which manufactured homes sited within that State are installed, and the right to enforce compliance with such standards, except that such standards shall be consistent with the purposes of this chapter and shall be consistent with the design of the manufacturer.”

Subsec. (e). Pub. L. 106-569, §604(3), (4), redesignated subsec. (f) as (e), inserted heading, substituted “The consensus committee, in recommending standards, regulations, and interpretations, and the Secretary, in establishing standards or regulations or issuing interpretations under this section, shall—” for “In establishing standards under this section, the Secretary shall—” in introductory provisions, and struck out former subsec. (e) which read as follows: “The Secretary may by order amend or revoke any Federal manufactured home construction or safety standard established under this section. Such order shall specify the date on which such amendment or revocation is to take effect, which shall not be sooner than one hundred and eighty days or later than one year from the date the order is issued, unless the Secretary finds, for good cause shown, that an earlier or later date is in the public interest, and publishes his reasons for such finding.”

Subsec. (f). Pub. L. 106-569, §604(7), redesignated subsec. (h) as (f). Former subsec. (f) redesignated (e).

Subsec. (g). Pub. L. 106-569, §604(5), (7), redesignated subsec. (i) as (g) and struck out former subsec. (g) which read as follows: “The Secretary shall issue an order establishing initial Federal manufactured home construction and safety standards not later than one year after August 22, 1974.”

Subsec. (h). Pub. L. 106-569, §604(7), redesignated subsec. (j) as (h). Former subsec. (h) redesignated (f).

Subsec. (i). Pub. L. 106-569, §604(7), redesignated subsec. (i) as (g).

Subsec. (j). Pub. L. 106-569, §604(6), (7), substituted “subsection (e) of this section” for “subsection (f) of this section” and redesignated subsec. (j) as (h).

1992—Subsec. (j). Pub. L. 102-550 added subsec. (j).

1988—Subsec. (i). Pub. L. 100-242 added subsec. (i).

1984—Subsec. (e). Pub. L. 98-479 substituted “that” for “than” before “an earlier or later date”.

1980—Subsecs. (a), (c) to (g). Pub. L. 96-399 substituted “manufactured home” for “mobile home” wherever appearing.

1977—Subsec. (h). Pub. L. 95-128 added subsec. (h).

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-569 effective Dec. 27, 2000, except that amendment has no effect on any order or

interpretative bulletin issued under this chapter and published as a proposed rule pursuant to 5 U.S.C. 553 on or before Dec. 27, 2000, see section 612 of Pub. L. 106-569, set out as a note under section 5401 of this title.

EXCEPTION TO FEDERAL PREEMPTION FOR THERMAL INSULATION AND ENERGY EFFICIENCY STANDARDS

Pub. L. 102-486, title I, §104(c), Oct. 24, 1992, 106 Stat. 2792, provided that: “If the Secretary of Housing and Urban Development has not issued, within 1 year after the date of the enactment of this Act [Oct. 24, 1992], final regulations pursuant to section 604 of the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5403) that establish thermal insulation and energy efficiency standards for manufactured housing that take effect before January 1, 1995, then States may establish thermal insulation and energy efficiency standards for manufactured housing if such standards are at least as stringent as thermal performance standards for manufactured housing contained in the Second Public Review Draft of BSR/ASHRAE 90.2P entitled ‘Energy Efficient Design of Low-Rise Residential Buildings’ and all public reviews of Independent Substantive Changes to such document that have been approved on or before the date of the enactment of this Act.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5402, 5404, 5405, 5406, 5409, 5414, 5419, 5420, 5422 of this title; title 12 section 1703.

§ 5404. Manufactured home installation

(a) Provision of installation design and instructions

A manufacturer shall provide with each manufactured home, design and instructions for the installation of the manufactured home that have been approved by a design approval primary inspection agency. After establishment of model standards under subsection (b)(2) of this section, a design approval primary inspection agency may not give such approval unless a design and instruction provides equal or greater protection than the protection provided under such model standards.

(b) Model manufactured home installation standards

(1) Proposed model standards

Not later than 18 months after the date on which the initial appointments of all the members of the consensus committee are completed, the consensus committee shall develop and submit to the Secretary proposed model manufactured home installation standards, which shall, to the maximum extent practicable, taking into account the factors described in section 5403(e) of this title, be consistent with—

(A) the manufactured home designs that have been approved by a design approval primary inspection agency; and

(B) the designs and instructions for the installation of manufactured homes provided by manufacturers under subsection (a) of this section.

(2) Establishment of model standards

Not later than 12 months after receiving the proposed model standards submitted under paragraph (1), the Secretary shall develop and establish model manufactured home installation standards, which shall, to the maximum

extent practicable, taking into account the factors described in section 5403(e) of this title, be consistent with—

(A) the manufactured home designs that have been approved by a design approval primary inspection agency; and

(B) the designs and instructions for the installation of manufactured homes provided by manufacturers under subsection (a) of this section.

(3) Factors for consideration

(A) Consensus committee

In developing the proposed model standards under paragraph (1), the consensus committee shall consider the factors described in section 5403(e) of this title.

(B) Secretary

In developing and establishing the model standards under paragraph (2), the Secretary shall consider the factors described in section 5403(e) of this title.

(4) Issuance

The model manufactured home installation standards shall be issued after notice and an opportunity for public comment in accordance with section 553 of title 5.

(c) Manufactured home installation programs

(1) Protection of manufactured housing residents during initial period

During the 5-year period beginning on December 27, 2000, no State or manufacturer may establish or implement any installation standards that, in the determination of the Secretary, provide less protection to the residents of manufactured homes than the protection provided by the installation standards in effect with respect to the State or manufacturer, as applicable, on December 27, 2000.

(2) Installation standards

(A) Establishment of installation program

Not later than the expiration of the 5-year period described in paragraph (1), the Secretary shall establish an installation program that meets the requirements of paragraph (3) for the enforcement of installation standards in each State described in subparagraph (B) of this paragraph.

(B) Implementation of installation program

Beginning on the expiration of the 5-year period described in paragraph (1), the Secretary shall implement the installation program established under subparagraph (A) in each State that does not have an installation program established by State law that meets the requirements of paragraph (3).

(C) Contracting out of implementation

In carrying out subparagraph (B), the Secretary may contract with an appropriate agent to implement the installation program established under that subparagraph, except that such agent shall not be a person or entity other than a government, nor an affiliate or subsidiary of such a person or entity, that has entered into a contract with the Secretary to implement any other regulatory program under this chapter.

(3) Requirements

An installation program meets the requirements of this paragraph if it is a program regulating the installation of manufactured homes that includes—

(A) installation standards that, in the determination of the Secretary, provide protection to the residents of manufactured homes that equals or exceeds the protection provided to those residents by—

(i) the model manufactured home installation standards established by the Secretary under subsection (b)(2) of this section; or

(ii) the designs and instructions provided by manufacturers under subsection (a) of this section, if the Secretary determines that such designs and instructions provide protection to the residents of manufactured homes that equals or exceeds the protection provided by the model manufactured home installation standards established by the Secretary under subsection (b)(2) of this section;

(B) the training and licensing of manufactured home installers; and

(C) inspection of the installation of manufactured homes.

(Pub. L. 93-383, title VI, §605, Aug. 22, 1974, 88 Stat. 702; Pub. L. 96-399, title III, §308(c)(4), Oct. 8, 1980, 94 Stat. 1641; Pub. L. 106-569, title VI, §605(a), Dec. 27, 2000, 114 Stat. 3006.)

AMENDMENTS

2000—Pub. L. 106-569 amended section catchline and text generally, substituting provisions relating to manufactured home installation for provisions relating to National Manufactured Home Advisory Council.

1980—Subsecs. (a) to (c). Pub. L. 96-399 substituted “Manufactured Home” for “Mobile Home” and “manufactured home” for “mobile home” wherever appearing.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-569 effective Dec. 27, 2000, except that amendment has no effect on any order or interpretative bulletin issued under this chapter and published as a proposed rule pursuant to 5 U.S.C. 553 on or before Dec. 27, 2000, see section 612 of Pub. L. 106-569, set out as a note under section 5401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5403, 5409, 5419, 5422 of this title.

§5405. Judicial review of orders establishing standards; petition; additional evidence before Secretary; certified copy of transcript

(a)(1) In a case of actual controversy as to the validity of any order under section 5403 of this title, any person who may be adversely affected by such order when it is effective may at any time prior to the sixtieth day after such order is issued file a petition with the United States court of appeals for the circuit wherein such person resides or has his principal place of business, for judicial review of such order. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary or other officer designated by him for that purpose. The Secretary thereupon shall file in the court the record of the proceedings on which the Sec-

retary based his order, as provided in section 2112 of title 28.

(2) If the petitioner applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Secretary, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Secretary, and to be adduced upon the hearing, in such manner and upon such terms and conditions as to the court may seem proper. The Secretary may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file such modified or new findings, and his recommendation, if any, for the modification or setting aside of his original order, with the return of such additional evidence.

(3) Upon the filing of the petition referred to in paragraph (1) of this subsection, the court shall have jurisdiction to review the order in accordance with the provisions of sections 701 through 706 of title 5, and to grant appropriate relief.

(4) The judgment of the court affirming or setting aside, in whole or in part, any such order of the Secretary shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(5) Any action instituted under this subsection shall survive, notwithstanding any change in the person occupying the office of Secretary or any vacancy in such office.

(6) The remedies provided for in this subsection shall be in addition to and not in substitution for any other remedies provided by law.

(b) A certified copy of the transcript of the record and proceedings under this section shall be furnished by the Secretary to any interested party at his request and payment of the costs thereof, and shall be admissible in any criminal, exclusion of imports, or other proceeding arising under or in respect of this chapter, irrespective of whether proceedings with respect to the order have previously been initiated or become final under subsection (a) of this section.

(Pub. L. 93-383, title VI, §606, Aug. 22, 1974, 88 Stat. 702.)

§ 5406. Submission of cost or other information by manufacturer

(a) Purpose of submission; detail of information

Whenever any manufacturer is opposed to any action of the Secretary under section 5403 of this title or under any other provision of this chapter on the grounds of increased cost or for other reasons, the manufacturer shall submit to the Secretary such cost and other information (in such detail as the Secretary may by rule or order prescribe) as may be necessary in order to properly evaluate the manufacturer's statement. The Secretary shall submit such cost and other information to the consensus committee for evaluation.

(b) Conditions upon availability to public of submitted information

Such information shall be available to the public unless the manufacturer establishes that

it contains a trade secret or that disclosure of any portion of such information would put the manufacturer at a substantial competitive disadvantage. Notice of the availability of such information shall be published promptly in the Federal Register. If the Secretary determines that any portion of such information contains a trade secret or that the disclosure of any portion of such information would put the manufacturer at a substantial competitive disadvantage, such portion may be disclosed to the public only in such manner as to preserve the confidentiality of such trade secret or in such combined or summary form so as not to disclose the identity of any individual manufacturer, except that any such information may be disclosed to other officers or employees concerned with carrying out this chapter or when relevant in any proceeding under this chapter. Nothing in this subsection shall authorize the withholding of information by the Secretary or any officer or employee under his control from the duly authorized committees of the Congress.

(c) "Cost information" defined

For purposes of this section, "cost information" means information with respect to alleged cost increases resulting from action by the Secretary, in such a form as to permit the public, the consensus committee, and the Secretary to make an informed judgment on the validity of the manufacturer's statements. Such term includes both the manufacturer's cost and the cost to retail purchasers.

(d) Power of Secretary to obtain or require submission of information under other provisions unaffected

Nothing in this section shall be construed to restrict the authority of the Secretary to obtain or require submission of information under any other provision of this chapter.

(Pub. L. 93-383, title VI, §607, Aug. 22, 1974, 88 Stat. 703; Pub. L. 96-399, title III, §308(c)(4), Oct. 8, 1980, 94 Stat. 1641; Pub. L. 106-569, title VI, §606, Dec. 27, 2000, 114 Stat. 3009.)

AMENDMENTS

2000—Subsec. (a). Pub. L. 106-569, §606(1), inserted "to the Secretary" after "manufacturer shall submit" and inserted at end "The Secretary shall submit such cost and other information to the consensus committee for evaluation."

Subsec. (c). Pub. L. 106-569, §606(3), redesignated subsec. (d) as (c) and struck out former subsec. (c) which read as follows: "If the Secretary proposes to establish, amend, or revoke a Federal manufactured home construction and safety standard under section 5403 of this title on the basis of information submitted pursuant to subsection (a) of this section, he shall publish a notice of such proposed action, together with the reasons therefor, in the Federal Register at least thirty days in advance of making a final determination, in order to allow interested parties an opportunity to comment."

Subsec. (d). Pub. L. 106-569, §606(3), redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).

Pub. L. 106-569, §606(2), inserted ", the consensus committee," after "permit the public".

Subsec. (e). Pub. L. 106-569, §606(3), redesignated subsec. (e) as (d).

1980—Subsec. (c). Pub. L. 96-399 substituted "manufactured home" for "mobile home".

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-569 effective Dec. 27, 2000, except that amendment has no effect on any order or

interpretative bulletin issued under this chapter and published as a proposed rule pursuant to 5 U.S.C. 553 on or before Dec. 27, 2000, see section 612 of Pub. L. 106-569, set out as a note under section 5401 of this title.

§ 5407. Research, testing, development, and training by Secretary

(a) Scope

The Secretary shall conduct research, testing, development, and training necessary to carry out the purposes of this chapter, including, but not limited to—

(1) collecting data from any source for the purpose of determining the relationship between manufactured home performance characteristics and (A) accidents involving manufactured homes, and (B) the occurrence of death, personal injury, or damage resulting from such accidents;

(2) procuring (by negotiation or otherwise) experimental and other manufactured homes for research and testing purposes;

(3) selling or otherwise disposing of test manufactured homes and reimbursing the proceeds of such sale or disposal into the current appropriation available for the purpose of carrying out this chapter;

(4) encouraging the government-sponsored housing entities to actively develop and implement secondary market securitization programs for the FHA manufactured home loans and those of other loan programs, as appropriate, thereby promoting the availability of affordable manufactured homes to increase homeownership for all people in the United States; and

(5) reviewing the programs for FHA manufactured home loans and developing any changes to such programs to promote the affordability of manufactured homes, including changes in loan terms, amortization periods, regulations, and procedures.

(b) Contracts and grants with States, interstate agencies, and independent institutions

The Secretary is authorized to conduct research, testing, development, and training as authorized to be carried out by subsection (a) of this section by contracting for or making grants for the conduct of such research, testing, development, and training to States, interstate agencies, and independent institutions.

(c) Definitions

For purposes of this section, the following definitions shall apply:

(1) Government-sponsored housing entities

The term “government-sponsored housing entities” means the Government National Mortgage Association of the Department of Housing and Urban Development, the Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation.

(2) FHA manufactured home loan

The term “FHA manufactured home loan” means a loan that—

(A) is insured under title I of the National Housing Act [12 U.S.C. 1702 et seq.] and is made for the purpose of financing alterations, repairs, or improvements on or in

connection with an existing manufactured home, the purchase of a manufactured home, the purchase of a manufactured home and a lot on which to place the home, or the purchase only of a lot on which to place a manufactured home; or

(B) is otherwise insured under the National Housing Act [12 U.S.C. 1701 et seq.] and made for or in connection with a manufactured home.

(Pub. L. 93-383, title VI, §608, Aug. 22, 1974, 88 Stat. 704; Pub. L. 96-399, title III, §308(c)(4), Oct. 8, 1980, 94 Stat. 1641; Pub. L. 97-35, title III, §339B(c), Aug. 13, 1981, 95 Stat. 417; Pub. L. 106-569, title VI, §607, Dec. 27, 2000, 114 Stat. 3009.)

REFERENCES IN TEXT

The National Housing Act, referred to in subsec. (c)(2), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended, which is classified principally to chapter 13 (§1701 et seq.) of Title 12, Banks and Banking. Title I of the Act is classified generally to subchapter I (§1702 et seq.) of chapter 13 of Title 12. For complete classification of this Act to the Code, see section 1701 of Title 12 and Tables.

CODIFICATION

References to “mobile homes”, wherever appearing in subsec. (a)(1) to (3), changed to “manufactured homes” in view of the amendment of title VI of the Housing and Community Development Act of 1974 (this chapter) by section 308(c)(4) of Pub. L. 96-399 requiring the substitution of “manufactured home” for “mobile home” wherever appearing in title VI of the Housing and Community Development Act of 1974, and section 339B(c) of Pub. L. 97-35 (set out as a note under section 1703 of Title 12, Banks and Banking) providing that the terms “mobile home” and “manufactured home” shall be deemed to include the terms “mobile homes” and “manufactured homes”, respectively.

AMENDMENTS

2000—Subsec. (a)(4), (5). Pub. L. 106-569, §607(a), added pars. (4) and (5).

Subsec. (c). Pub. L. 106-569, §607(b), added subsec. (c).

1980—Subsec. (a)(1). Pub. L. 96-399 substituted “manufactured home” for “mobile home”.

EFFECTIVE DATE OF 2000 AMENDMENT

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§ 5408. Cooperation by Secretary with public and private agencies

The Secretary is authorized to advise, assist, and cooperate with other Federal agencies and with State and other interested public and private agencies, in the planning and development of—

(1) manufactured home construction and safety standards; and

(2) methods for inspecting and testing to determine compliance with manufactured home standards.

(Pub. L. 93-383, title VI, §609, Aug. 22, 1974, 88 Stat. 704; Pub. L. 96-399, title III, §308(c)(4), Oct. 8, 1980, 94 Stat. 1641.)

AMENDMENTS

1980—Pub. L. 96-399 substituted “manufactured home” for “mobile home” in two places.

§ 5409. Prohibited acts; exemptions

(a) No person shall—

(1) make use of any means of transportation or communication affecting interstate or foreign commerce or the mails to manufacture for sale, lease, sell, offer for sale or lease, or introduce or deliver, or import into the United States, any manufactured home which is manufactured on or after the effective date of any applicable Federal manufactured home construction and safety standard under this chapter and which does not comply with such standard, except as provided in subsection (b) of this section, where such manufacture, lease, sale, offer for sale or lease, introduction, delivery, or importation affects commerce;

(2) fail or refuse to permit access to or copying of records, or fail to make reports or provide information, or fail or refuse to permit entry or inspection, as required under section 5413 of this title;

(3) fail to furnish notification of any defect as required by section 5414 of this title;

(4) fail to issue a certification required by section 5415 of this title, or issue a certification to the effect that a manufactured home conforms to all applicable Federal manufactured home construction and safety standards, if such person in the exercise of due care has reason to know that such certification is false or misleading in a material respect;

(5) fail to comply with a final order issued by the Secretary under this chapter;

(6) issue a certification pursuant to subsection (h) of section 5403 of this title, if such person in the exercise of due care has reason to know that such certification is false or misleading in a material respect; or

(7) after the expiration of the period specified in section 5404(c)(2)(B) of this title, fail to comply with the requirements for the installation program required by section 5404 of this title in any State that has not adopted and implemented a State installation program.

(b)(1) Paragraph (1) of subsection (a) of this section shall not apply to the sale, the offer for sale, or the introduction or delivery for introduction in interstate commerce of any manufactured home after the first purchase of it in good faith for purposes other than resale.

(2) For purposes of section 5410 of this title, paragraph (1) of subsection (a) of this section shall not apply to any person who establishes that he did not have reason to know in the exercise of due care that such manufactured home is not in conformity with applicable Federal manufactured home construction and safety standards, or to any person who, prior to such first purchase, holds a certificate issued by the manufacturer or importer of such manufactured home to the effect that such manufactured home conforms to all applicable Federal manufactured home construction and safety standards, unless such person knows that such manufactured home does not so conform.

(3) A manufactured home offered for importation in violation of paragraph (1) of subsection (a) of this section shall be refused admission into the United States under joint regulations issued by the Secretary of the Treasury and the

Secretary, except that the Secretary of the Treasury and the Secretary may, by such regulations, provide for authorizing the importation of such manufactured home into the United States upon such terms and conditions (including the furnishing of a bond) as may appear to them appropriate to insure that any such manufactured home will be brought into conformity with any applicable Federal manufactured home construction or safety standard prescribed under this chapter, or will be exported from, or forfeited to, the United States.

(4) The Secretary of the Treasury and the Secretary may, by joint regulations, permit the importation of any manufactured home after the first purchase of it in good faith for purposes other than resale.

(5) Paragraph (1) of subsection (a) of this section shall not apply in the case of a manufactured home intended solely for export, and so labeled or tagged on the manufactured home itself and on the outside of the container, if any, in which it is to be exported.

(c) Compliance with any Federal manufactured home construction or safety standard issued under this chapter does not exempt any person from any liability under common law.

(Pub. L. 93-383, title VI, §610, Aug. 22, 1974, 88 Stat. 704; Pub. L. 95-128, title IX, §902(b), Oct. 12, 1977, 91 Stat. 1149; Pub. L. 96-399, title III, §308(c)(4), Oct. 8, 1980, 94 Stat. 1641; Pub. L. 106-569, title VI, §608, Dec. 27, 2000, 114 Stat. 3009.)

AMENDMENTS

2000—Subsec. (a)(7). Pub. L. 106-569 added par. (7).

1980—Subsecs. (a)(1), (4), (b)(1) to (5), (c). Pub. L. 96-399 substituted “manufactured home” for “mobile home” wherever appearing.

1977—Subsec. (a)(6). Pub. L. 95-128 added par. (6).

EFFECTIVE DATE OF 2000 AMENDMENT

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SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5410 of this title.

§ 5410. Civil and criminal penalties

(a) Whoever violates any provision of section 5409 of this title, or any regulation or final order issued thereunder, shall be liable to the United States for a civil penalty of not to exceed \$1,000 for each such violation. Each violation of a provision of section 5409 of this title, or any regulation or order issued thereunder shall constitute, a separate violation with respect to each manufactured home or with respect to each failure or refusal to allow or perform an act required thereby, except that the maximum civil penalty may not exceed \$1,000,000 for any related series of violations occurring within one year from the date of the first violation.

(b) An individual or a director, officer, or agent of a corporation who knowingly and willfully violates section 5409 of this title in a manner which threatens the health or safety of any purchaser shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

(Pub. L. 93-383, title VI, §611, Aug. 22, 1974, 88 Stat. 705; Pub. L. 96-399, title III, §308(c)(4), Oct. 8, 1980, 94 Stat. 1641.)

AMENDMENTS

1980—Subsec. (a). Pub. L. 96-399 substituted “manufactured home” for “mobile home”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5409, 5411, 5422 of this title.

§ 5411. Injunctive relief

(a) Jurisdiction; petition of United States attorney or Attorney General; notice by Secretary to affected persons to present views

The United States district courts shall have jurisdiction, for cause shown and subject to the provisions of rule 65(a) and (b) of the Federal Rules of Civil Procedure, to restrain violations of this chapter, or to restrain the sale, offer for sale, or the importation into the United States, of any manufactured home which is determined, prior to the first purchase of such manufactured home in good faith for purposes other than resale, not to conform to applicable Federal manufactured home construction and safety standards prescribed pursuant to this chapter or to contain a defect which constitutes an imminent safety hazard, upon petition by the appropriate United States attorney or the Attorney General on behalf of the United States. Whenever practicable, the Secretary shall give notice to any person against whom an action for injunctive relief is contemplated and afford him an opportunity to present his views and the failure to give such notice and afford such opportunity shall not preclude the granting of appropriate relief.

(b) Criminal contempt proceedings; conduct of trial

In any proceeding for criminal contempt for violation of an injunction or restraining order issued under this section, which violation also constitutes a violation of this chapter, trial shall be by the court or, upon demand of the accused, by a jury. Such trial shall be conducted in accordance with the practice and procedure applicable in the case of proceedings subject to the provisions of rule 42(b) of the Federal Rules of Criminal Procedure.

(c) Venue

Actions under subsection (a) of this section and section 5410 of this title may be brought in the district wherein any act or transaction constituting the violation occurred, or in the district wherein the defendant is found or is an inhabitant or transacts business, and process in such cases may be served in any other district of which the defendant is an inhabitant or wherever the defendant may be found.

(d) Subpenas

In any action brought by the United States under subsection (a) of this section or section 5410 of this title, subpenas by the United States for witnesses who are required to attend at United States district court may run into any other district.

(e) Designation by manufacturer of agent for service of administrative and judicial processes, etc.; filing and amendment of designation; failure to make designation

It shall be the duty of every manufacturer offering a manufactured home for importation into the United States to designate in writing an agent upon whom service of all administrative and judicial processes, notices, orders, decisions, and requirements may be made for and on behalf of such manufacturer, and to file such designation with the Secretary, which designation may from time to time be changed by like writing, similarly filed. Service of all administrative and judicial processes, notices, orders, decisions, and requirements may be made upon such manufacturer by service upon such designated agent at his office or usual place of residence with like effect as if made personally upon such manufacturer, and in default of such designation of such agent, service of process or any notice, order, requirement, or decision in any proceeding before the Secretary or in any judicial proceeding pursuant to this chapter may be made by mailing such process, notice, order, requirement, or decision to the Secretary by registered or certified mail.

(Pub. L. 93-383, title VI, §612, Aug. 22, 1974, 88 Stat. 705; Pub. L. 96-399, title III, §308(c)(4), Oct. 8, 1980, 94 Stat. 1641.)

REFERENCES IN TEXT

Rule 65 of the Federal Rules of Civil Procedure, referred to in subsec. (a), is set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 42 of the Federal Rules of Criminal Procedure, referred to in subsec. (b), is set out in the Appendix to Title 18, Crimes and Criminal Procedure.

AMENDMENTS

1980—Subsecs. (a), (e). Pub. L. 96-399 substituted “manufactured home” for “mobile home” wherever appearing.

§ 5412. Noncompliance with standards or defective nature of manufactured home; administrative or judicial determination; repurchase by manufacturer or repair by distributor or retailer; reimbursement of expenses, etc., by manufacturer; injunctive relief against manufacturer for failure to comply; jurisdiction and venue; damages; period of limitation

(a) If the Secretary or a court of appropriate jurisdiction determines that any manufactured home does not conform to applicable Federal manufactured home construction and safety standards, or that it contains a defect which constitutes an imminent safety hazard, after the sale of such manufactured home by a manufacturer to a distributor or a retailer and prior to the sale of such manufactured home by such distributor or retailer to a purchaser—

(1) the manufacturer shall immediately repurchase such manufactured home from such distributor or retailer at the price paid by such distributor or retailer, plus all transportation charges involved and a reasonable reimbursement of not less than 1 per centum per month of such price paid prorated from the date of receipt by certified mail of notice of such nonconformance to the date of repurchase by the manufacturer; or

(2) the manufacturer, at his own expense, shall immediately furnish the purchasing distributor or retailer the required conforming part or parts or equipment for installation by the distributor or retailer on or in such manufactured home, and for the installation involved the manufacturer shall reimburse such distributor or retailer for the reasonable value of such installation plus a reasonable reimbursement of not less than 1 per centum per month of the manufacturer's or distributor's selling price prorated from the date of receipt by certified mail of notice of such non-conformance to the date such vehicle is brought into conformance with applicable Federal standards, so long as the distributor or retailer proceeds with reasonable diligence with the installation after the required part or equipment is received.

The value of such reasonable reimbursements as specified in paragraphs (1) and (2) of this subsection shall be fixed by mutual agreement of the parties, or, failing such agreement, by the court pursuant to the provisions of subsection (b) of this section.

(b) If any manufacturer fails to comply with the requirements of subsection (a) of this section, then the distributor or retailer, as the case may be, to whom such manufactured home has been sold may bring an action seeking a court injunction compelling compliance with such requirements on the part of such manufacturer. Such action may be brought in any district court in the United States in the district in which such manufacturer resides, or is found, or has an agent, without regard to the amount in controversy, and the person bringing the action shall also be entitled to recover any damage sustained by him, as well as all court costs plus reasonable attorneys' fees. Any action brought pursuant to this section shall be forever barred unless commenced within three years after the cause of action shall have accrued.

(Pub. L. 93-383, title VI, §613, Aug. 22, 1974, 88 Stat. 706; Pub. L. 96-399, title III, §308(c)(4), Oct. 8, 1980, 94 Stat. 1641; Pub. L. 106-569, title VI, §603(b)(1), Dec. 27, 2000, 114 Stat. 2999.)

AMENDMENTS

2000—Subsecs. (a), (b). Pub. L. 106-569 substituted "retailer" for "dealer" wherever appearing.

1980—Subsecs. (a), (b). Pub. L. 96-399 substituted "manufactured home" for "mobile home" wherever appearing.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-569 effective Dec. 27, 2000, except that amendment has no effect on any order or interpretative bulletin issued under this chapter and published as a proposed rule pursuant to 5 U.S.C. 553 on or before Dec. 27, 2000, see section 612 of Pub. L. 106-569, set out as a note under section 5401 of this title.

§ 5413. Inspections and investigations for promulgation or enforcement of standards or execution of other duties

(a) Authority of Secretary; results furnished to Attorney General and Secretary of the Treasury for appropriate action

The Secretary is authorized to conduct such inspections and investigations as may be nec-

essary to promulgate or enforce Federal manufactured home construction and safety standards established under this chapter or otherwise to carry out his duties under this chapter. He shall furnish the Attorney General and, when appropriate, the Secretary of the Treasury any information obtained indicating noncompliance with such standards for appropriate action.

(b) Designation by Secretary of persons to enter and inspect factories, etc.; presentation of credentials; reasonableness and scope of inspection

(1) For purposes of enforcement of this chapter, persons duly designated by the Secretary, upon presenting appropriate credentials to the owner, operator, or agent in charge, are authorized—

(A) to enter, at reasonable times and without advance notice, any factory, warehouse, or establishment in which manufactured homes are manufactured, stored, or held, for sale; and

(B) to inspect, at reasonable times and within reasonable limits and in a reasonable manner, any such factory, warehouse, or establishment, and to inspect such books, papers, records, and documents as are set forth in subsection (c) of this section. Each such inspection shall be commenced and completed with reasonable promptness.

(2) The Secretary is authorized to contract with State and local governments and private inspection organizations to carry out his functions under this subsection.

(c) Powers of Secretary

For the purpose of carrying out the provisions of this chapter, the Secretary is authorized—

(1) to hold such hearings, take such testimony, sit and act at such times and places, administer such oaths, and require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, papers, correspondence, memorandums, contracts, agreements, or other records, as the Secretary or such officer or employee deems advisable. Witnesses summoned pursuant to this subsection shall be paid the same fees and mileage that are paid witnesses in the courts of the United States;

(2) to examine and copy any documentary evidence of any person having materials or information relevant to any function of the Secretary under this chapter;

(3) to require, by general or special orders, any person to file, in such form as the Secretary may prescribe, reports or answers in writing to specific questions relating to any function of the Secretary under this chapter. Such reports and answers shall be made under oath or otherwise, and shall be filed with the Secretary within such reasonable period as the Secretary may prescribe;

(4) to request from any Federal agency any information he deems necessary to carry out his functions under this chapter, and each such agency is authorized and directed to cooperate with the Secretary and to furnish such information upon request made by the Secretary, and the head of any Federal agency is authorized to detail, on a reimbursable basis,

any personnel of such agency to assist in carrying out the duties of the Secretary under this chapter; and

(5) to make available to the public any information which may indicate the existence of a defect which relates to manufactured home construction or safety or of the failure of a manufactured home to comply with applicable manufactured home construction and safety standards. The Secretary shall disclose so much of other information obtained under this subsection to the public as he determines will assist in carrying out this chapter; but he shall not (under the authority of this sentence) make available or disclosure to the public any information which contains or relates to a trade secret or any information the disclosure of which would put the person furnishing such information at a substantial competitive disadvantage, unless he determines that it is necessary to carry out the purpose of this chapter.

(d) Refusal to obey subpoena or order of Secretary; order of compliance by district court; failure to obey order of compliance punishable as contempt

Any of the district courts of the United States within the jurisdiction of which an inquiry is carried on may, in the case of contumacy or refusal to obey a subpoena or order of the Secretary issued under paragraph (1) or paragraph (3) of subsection (c) of this section, issue an order requiring compliance therewith; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(e) Submission by manufacturer of building plans for manufactured homes; certification by manufacturer of conformity of building plans to standards

Each manufacturer of manufactured homes shall submit the building plans for every model of such manufactured homes to the Secretary or his designee for the purpose of inspection under this section. The manufacturer must certify that each such building plan meets the Federal construction and safety standards in force at that time before the model involved is produced.

(f) Records, reports and information from manufacturers, distributors and retailers of manufactured homes; inspection and examination of relevant books, papers, records and documents by designated person

Each manufacturer, distributor, and retailer of manufactured homes shall establish and maintain such records, make such reports, and provide such information as the Secretary may reasonably require to enable him to determine whether such manufacturer, distributor, or retailer has acted or is acting in compliance with this chapter and Federal manufactured home construction and safety standards prescribed pursuant to this chapter and shall, upon request of a person duly designated by the Secretary, permit such person to inspect appropriate books, papers, records, and documents relevant to determining whether such manufacturer, distributor, or retailer has acted or is acting in compliance with this chapter and manufactured home construction and safety standards prescribed pursuant to this chapter.

(g) Performance and technical data from manufacturer; persons required to receive notification of data

Each manufacturer of manufactured homes shall provide to the Secretary such performance data and other technical data related to performance and safety as may be required to carry out the purposes of this chapter. These shall include records of tests and test results which the Secretary may require to be performed. The Secretary is authorized to require the manufacturer to give notification of such performance and technical data to—

(1) each prospective purchaser of a manufactured home before its first sale for purposes other than resale, at each location where any such manufacturer's manufactured homes are offered for sale by a person with whom such manufacturer has a contractual, proprietary, or other legal relationship and in a manner determined by the Secretary to be appropriate, which may include, but is not limited to, printed matter (A) available for retention by such prospective purchaser, and (B) sent by mail to such prospective purchaser upon his request; and

(2) the first person who purchases a manufactured home for purposes other than resale, at the time of such purchase or in printed matter placed in the manufactured home.

(h) Disclosure of confidential information and trade secrets

All information reported to or otherwise obtained by the Secretary or his representative pursuant to subsection (b), (c), (f), or (g) of this section which contains or relates to a trade secret, or which, if disclosed, would put the person furnishing such information at a substantial competitive disadvantage, shall be considered confidential, except that such information may be disclosed to other officers or employees concerned with carrying out this chapter or when relevant in any proceeding under this chapter. Nothing in this section shall authorize the withholding of information by the Secretary or any officer or employee under his control from the duly authorized committees of the Congress.

(Pub. L. 93-383, title VI, §614, Aug. 22, 1974, 88 Stat. 707; Pub. L. 96-399, title III, §308(c)(4), Oct. 8, 1980, 94 Stat. 1641; Pub. L. 97-35, title III, §339B(c), Aug. 13, 1981, 95 Stat. 417; Pub. L. 106-569, title VI, §603(b)(2), Dec. 27, 2000, 114 Stat. 2999.)

CODIFICATION

References to "mobile homes", wherever appearing in text, changed to "manufactured homes" in view of the amendment of title VI of the Housing and Community Development Act of 1974 (this chapter) by section 308(c)(4) of Pub. L. 96-399 requiring the substitution of "manufactured home" for "mobile home" wherever appearing in title VI of the Housing and Community Development Act of 1974, and section 339B(c) of Pub. L. 97-35 (set out as a note under section 1703 of Title 12, Banks and Banking) providing that the terms "mobile home" and "manufactured home" shall be deemed to include the terms "mobile homes" and "manufactured homes", respectively.

AMENDMENTS

2000—Subsec. (f). Pub. L. 106-569 substituted "retailer" for "dealer" wherever appearing.

1980—Subsecs. (a), (c)(5), (f), (g). Pub. L. 96-399 substituted “manufactured home” for “mobile home” wherever appearing.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-569 effective Dec. 27, 2000, except that amendment has no effect on any order or interpretative bulletin issued under this chapter and published as a proposed rule pursuant to 5 U.S.C. 553 on or before Dec. 27, 2000, see section 612 of Pub. L. 106-569, set out as a note under section 5401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5409, 5414, 5422 of this title.

§ 5414. Notification and correction of defects by manufacturer

(a) Notice to purchaser within reasonable time after discovery of defect

Every manufacturer of manufactured homes shall furnish notification of any defect in any manufactured home produced by such manufacturer which he determines, in good faith, relates to a Federal manufactured home construction or safety standard or contains a defect which constitutes an imminent safety hazard to the purchaser of such manufactured home, within a reasonable time after such manufacturer has discovered such defect.

(b) Notification by mail

The notification required by subsection (a) of this section shall be accomplished—

(1) by mail to the first purchaser (not including any retailer or distributor of such manufacturer) of the manufactured home containing the defect, and to any subsequent purchaser to whom any warranty on such manufactured home has been transferred;

(2) by mail to any other person who is a registered owner of such manufactured home and whose name and address has been ascertained pursuant to procedures established under subsection (f) of this section; and

(3) by mail or other more expeditious means to the retailer or retailers of such manufacturer to whom such manufactured home was delivered.

(c) Form and requisites of notification

The notification required by subsection (a) of this section shall contain a clear description of such defect or failure to comply, an evaluation of the risk to manufactured home occupants' safety reasonably related to such defect, and a statement of the measures needed to repair the defect. The notification shall also inform the owner whether the defect is a construction or safety defect which the manufacturer will have corrected at no cost to the owner of the manufactured home under subsection (g) of this section or otherwise, or is a defect which must be corrected at the expense of the owner.

(d) Copy to Secretary of all notices, bulletins, and communications sent by manufacturer to retailers and purchasers concerning defects; disclosure to public by Secretary

Every manufacturer of manufactured homes shall furnish to the Secretary a true or representative copy of all notices, bulletins, and other communications to the retailers of such

manufacturer or purchasers of manufactured homes of such manufacturer regarding any defect in any such manufactured home produced by such manufacturer. The Secretary shall disclose to the public so much of the information contained in such notices or other information obtained under section 5413 of this title as he deems will assist in carrying out the purposes of this chapter, but he shall not disclose any information which contains or relates to a trade secret, or which, if disclosed, would put such manufacturer at a substantial competitive disadvantage, unless he determines that it is necessary to carry out the purposes of this chapter.

(e) Notice by Secretary to manufacturers of non-compliance with standards or defective nature of manufactured home; contents of notice; presentation by manufacturer of views; notice to purchasers of defects

If the Secretary determines that any manufacturer does not comply with an applicable Federal manufactured home construction and safety standard prescribed pursuant to section 5403 of this title; or

(1) does not comply with an applicable Federal manufactured home construction and safety standard prescribed pursuant to section 5403 of this title; or

(2) contains a defect which constitutes an imminent safety hazard,

then he shall immediately notify the manufacturer of such manufactured home of such defect or failure to comply. The notice shall contain the findings of the Secretary and shall include all information upon which the findings are based. The Secretary shall afford such manufacturer an opportunity to present his views and evidence in support thereof, to establish that there is no failure of compliance. If after such presentation by the manufacturer the Secretary determines that such manufactured home does not comply with applicable Federal manufactured home construction or safety standards, or contains a defect which constitutes an imminent safety hazard, the Secretary shall direct the manufacturer to furnish the notification specified in subsections (a) and (b) of this section.

(f) Maintenance by manufacturers of record of names and addresses of first purchasers of manufactured homes; procedures for ascertaining names and addresses of subsequent purchasers; establishment and reasonableness of procedures for maintaining records

Every manufacturer of manufactured homes shall maintain a record of the name and address of the first purchaser of each manufactured home (for purposes other than resale), and, to the maximum extent feasible, shall maintain procedures for ascertaining the name and address of any subsequent purchaser thereof and shall maintain a record of names and addresses so ascertained. Such records shall be kept for each home produced by a manufacturer. The Secretary may establish by order procedures to be followed by manufacturers in establishing and maintaining such records, including procedures to be followed by distributors and retailers to assist manufacturers to secure the information required by this subsection. Such procedures shall be reasonable for the particular type of manufactured home for which they are prescribed.

(g) Correction of defects by manufacturer; conditions; procedures; contract or legal rights of purchasers or other persons unaffected

A manufacturer required to furnish notification of a defect under subsection (a) or (e) of this section shall also bring the manufactured home into compliance with applicable standards and correct the defect or have the defect corrected within a reasonable period of time at no expense to the owner, but only if—

- (1) the defect presents an unreasonable risk of injury or death to occupants of the affected manufactured home or homes;
- (2) the defect can be related to an error in design or assembly of the manufactured home by the manufacturer.

The Secretary may direct the manufacturer to make such corrections after providing an opportunity for oral and written presentation of views by interested persons. Nothing in this section shall limit the rights of the purchaser or any other person under any contract or applicable law.

(h) Submission to Secretary by manufacturer of plan for notifying owners of defects and repair of defects; approval of manufacturer's remedy plan; effectuation and implementation of remedy plan

The manufacturer shall submit his plan for notifying owners of the defect and for repairing such defect (if required under subsection (g) of this section) to the Secretary for his approval before implementing such plan. Whenever a manufacturer is required under subsection (g) of this section to correct a defect, the Secretary shall approve with or without modification, after consultation with the manufacturer of the manufactured home involved, such manufacturer's remedy plan including the date when, and the method by which, the notification and remedy required pursuant to this section shall be effectuated. Such date shall be the earliest practicable one but shall not be more than sixty days after the date of discovery or determination of the defect or failure to comply, unless the Secretary grants an extension of such period for good cause shown and publishes a notice of such extension in the Federal Register. Such manufacturer is bound to implement such remedy plan as approved by the Secretary.

(i) Defective or inadequately repaired manufactured homes; replacement with new or equivalent home or refund of purchase price

Where a defect or failure to comply in a manufactured home cannot be adequately repaired within sixty days from the date of discovery or determination of the defect, the Secretary may require that the manufactured home be replaced with a new or equivalent home without charge, or that the purchase price be refunded in full, less a reasonable allowance for depreciation based on actual use if the home has been in the possession of the owner for more than one year.

(Pub. L. 93-383, title VI, §615, Aug. 22, 1974, 88 Stat. 709; Pub. L. 96-399, title III, §308(c)(4), Oct. 8, 1980, 94 Stat. 1641; Pub. L. 97-35, title III, §339B(c), Aug. 13, 1981, 95 Stat. 417; Pub. L. 106-569, title VI, §603(b)(3), Dec. 27, 2000, 114 Stat. 2999.)

CODIFICATION

References to "mobile homes", wherever appearing in text, changed to "manufactured homes" in view of the amendment of title VI of the Housing and Community Development Act of 1974 (this chapter) by section 308(c)(4) of Pub. L. 96-399 requiring the substitution of "manufactured home" for "mobile home" wherever appearing in title VI of the Housing and Community Development Act of 1974, and section 339B(c) of Pub. L. 97-35 (set out as a note under section 1703 of Title 12, Banks and Banking) providing that the terms "mobile home" and "manufactured home" shall be deemed to include the terms "mobile homes" and "manufactured homes", respectively.

AMENDMENTS

2000—Subsec. (b)(1). Pub. L. 106-569, §603(b)(3)(A), substituted "retailer" for "dealer".

Subsec. (b)(3). Pub. L. 106-569, §603(b)(3)(B), substituted "retailer or retailers" for "dealer or dealers".

Subsecs. (d), (f). Pub. L. 106-569, §603(b)(3)(C), substituted "retailers" for "dealers".

1980—Subsecs. (a) to (i). Pub. L. 96-399 substituted "manufactured home" for "mobile home" wherever appearing.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-569 effective Dec. 27, 2000, except that amendment has no effect on any order or interpretative bulletin issued under this chapter and published as a proposed rule pursuant to 5 U.S.C. 553 on or before Dec. 27, 2000, see section 612 of Pub. L. 106-569, set out as a note under section 5401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5409, 5422 of this title.

§ 5415. Certification by manufacturer of conformity of manufactured home with standards; form and placement of certification

Every manufacturer of manufactured homes shall furnish to the distributor or retailer at the time of delivery of each such manufactured home produced by such manufacturer certification that such manufactured home conforms to all applicable Federal construction and safety standards. Such certification shall be in the form of a label or tag permanently affixed to each such manufactured home.

(Pub. L. 93-383, title VI, §616, Aug. 22, 1974, 88 Stat. 711; Pub. L. 96-399, title III, §308(c)(4), Oct. 8, 1980, 94 Stat. 1641; Pub. L. 97-35, title III, §339B(c), Aug. 13, 1981, 95 Stat. 417; Pub. L. 106-569, title VI, §603(b)(4), Dec. 27, 2000, 114 Stat. 2999.)

CODIFICATION

References to "mobile homes", wherever appearing in text, changed to "manufactured homes" in view of the amendment of title VI of the Housing and Community Development Act of 1974 (this chapter) by section 308(c)(4) of Pub. L. 96-399 requiring the substitution of "manufactured home" for "mobile home" wherever appearing in title VI of the Housing and Community Development Act of 1974, and section 339B(c) of Pub. L. 97-35 (set out as a note under section 1703 of Title 12, Banks and Banking) providing that the terms "mobile home" and "manufactured home" shall be deemed to include the terms "mobile homes" and "manufactured homes", respectively.

AMENDMENTS

2000—Pub. L. 106-569 substituted "retailer" for "dealer".

1980—Pub. L. 96-399 substituted “manufactured home” for “mobile home” wherever appearing.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-569 effective Dec. 27, 2000, except that amendment has no effect on any order or interpretative bulletin issued under this chapter and published as a proposed rule pursuant to 5 U.S.C. 553 on or before Dec. 27, 2000, see section 612 of Pub. L. 106-569, set out as a note under section 5401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5409 of this title; title 38 section 3712.

§ 5416. Consumer’s manual; contents

The Secretary shall develop guidelines for a consumer’s manual to be provided to manufactured home purchasers by the manufacturer. These manuals should identify and explain the purchasers’ responsibilities for operation, maintenance, and repair of their manufactured homes.

(Pub. L. 93-383, title VI, §617, Aug. 22, 1974, 88 Stat. 711; Pub. L. 96-399, title III, §308(c)(4), Oct. 8, 1980, 94 Stat. 1641; Pub. L. 97-35, title III, §339B(c), Aug. 13, 1981, 95 Stat. 417.)

CODIFICATION

References to “mobile homes”, wherever appearing in text, changed to “manufactured homes” in view of the amendment of title VI of the Housing and Community Development Act of 1974 (this chapter) by section 308(c)(4) of Pub. L. 96-399 requiring the substitution of “manufactured home” for “mobile home” wherever appearing in title VI of the Housing and Community Development Act of 1974, and section 339B(c) of Pub. L. 97-35 (set out as a note under section 1703 of Title 12, Banks and Banking) providing that the terms “mobile home” and “manufactured home” shall be deemed to include the terms “mobile homes” and “manufactured homes”, respectively.

AMENDMENTS

1980—Pub. L. 96-399 substituted “manufactured home” for “mobile home”.

§ 5417. Effect upon antitrust laws

Nothing contained in this chapter shall be deemed to exempt from the antitrust laws of the United States any conduct that would otherwise be unlawful under such laws, or to prohibit under the antitrust laws of the United States any conduct that would be lawful under such laws. As used in this section, the term “antitrust laws” includes, but is not limited to, the Act of July 2, 1890, as amended; the Act of October 14, 1914, as amended; the Federal Trade Commission Act (15 U.S.C. 41 et seq.); and sections 73 and 74 of the Act of August 27, 1894, as amended.

(Pub. L. 93-383, title VI, §618, Aug. 22, 1974, 88 Stat. 711.)

REFERENCES IN TEXT

Act of July 2, 1890, as amended, referred to in text, is act July 2, 1890, ch. 647, 26 Stat. 209, as amended, known as the Sherman Act, which is classified to sections 1 to 7 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1 of Title 15 and Tables.

Act of October 14, 1914, as amended, referred to in text, is act Oct. 15, 1914, ch. 323, 38 Stat. 730, as amended, known as the Clayton Act which is classified gener-

ally to sections 12, 13, 14 to 19, 21, and 22 to 27 of Title 15, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of Title 15 and Tables.

The Federal Trade Commission Act, referred to in text, is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of Title 15. For complete classification of this Act to the Code, see section 58 of Title 15 and Tables.

Sections 73 and 74 of the Act of August 27, 1894, referred to in text, are classified to sections 8 and 9 of Title 15.

§ 5418. Use of services, research and testing facilities of public agencies and independent laboratories

The Secretary, in exercising the authority under this chapter, shall utilize the services, research and testing facilities of public agencies and independent testing laboratories to the maximum extent practicable in order to avoid duplication.

(Pub. L. 93-383, title VI, §619, Aug. 22, 1974, 88 Stat. 711.)

§ 5419. Authority to collect fee

(a) In general

In carrying out inspections under this chapter, in developing standards and regulations pursuant to section 5403 of this title, and in facilitating the acceptance of the affordability and availability of manufactured housing within the Department, the Secretary may—

(1) establish and collect from manufactured home manufacturers a reasonable fee, as may be necessary to offset the expenses incurred by the Secretary in connection with carrying out the responsibilities of the Secretary under this chapter, including—

(A) conducting inspections and monitoring;

(B) providing funding to States for the administration and implementation of approved State plans under section 5422 of this title, including reasonable funding for cooperative educational and training programs designed to facilitate uniform enforcement under this chapter, which funds may be paid directly to the States or may be paid or provided to any person or entity designated to receive and disburse such funds by cooperative agreements among participating States, provided that such person or entity is not otherwise an agent of the Secretary under this chapter;

(C) providing the funding for a noncareer administrator within the Department to administer the manufactured housing program;

(D) providing the funding for salaries and expenses of employees of the Department to carry out the manufactured housing program;

(E) administering the consensus committee as set forth in section 5403 of this title;

(F) facilitating the acceptance of the quality, durability, safety, and affordability of manufactured housing within the Department; and

(G) the administration and enforcement of the installation standards authorized by section 5404 of this title in States in which the Secretary is required to implement an installation program after the expiration of the 5-year period set forth in section 5404(c)(2)(B) of this title, and the administration and enforcement of a dispute resolution program described in section 5422(c)(12) of this title in States in which the Secretary is required to implement such a program after the expiration of the 5-year period set forth in section 5422(g)(2) of this title; and

(2) subject to subsection (e) of this section, use amounts from any fee collected under paragraph (1) of this subsection to pay expenses referred to in that paragraph, which shall be exempt and separate from any limitations on the Department regarding full-time equivalent positions and travel.

(b) Contractors

In using amounts from any fee collected under this section, the Secretary shall ensure that separate and independent contractors are retained to carry out monitoring and inspection work and any other work that may be delegated to a contractor under this chapter.

(c) Prohibited use

No amount from any fee collected under this section may be used for any purpose or activity not specifically authorized by this chapter, unless such activity was already engaged in by the Secretary prior to December 27, 2000.

(d) Modification

Beginning on December 27, 2000, the amount of any fee collected under this section may only be modified—

- (1) as specifically authorized in advance in an annual appropriations Act; and
- (2) pursuant to rulemaking in accordance with section 553 of title 5.

(e) Appropriation and deposit of fees

(1) In general

There is established in the Treasury of the United States a fund to be known as the “Manufactured Housing Fees Trust Fund” for deposit of amounts from any fee collected under this section. Such amounts shall be held in trust for use only as provided in this chapter.

(2) Appropriation

Amounts from any fee collected under this section shall be available for expenditure only to the extent approved in advance in an annual appropriations Act. Any change in the expenditure of such amounts shall be specifically authorized in advance in an annual appropriations Act.

(3) Payments to States

On and after the effective date of the Manufactured Housing Improvement Act of 2000, the Secretary shall continue to fund the States having approved State plans in the amounts which are not less than the allocated amounts, based on the fee distribution system in effect on the day before such effective date.

(Pub. L. 93-383, title VI, §620, Aug. 22, 1974, 88 Stat. 712; Pub. L. 96-153, title III, §320, Dec. 21, 1979, 93 Stat. 1119; Pub. L. 96-399, title III, §308(c)(4), Oct. 8, 1980, 94 Stat. 1641; Pub. L. 106-569, title VI, §609, Dec. 27, 2000, 114 Stat. 3010.)

REFERENCES IN TEXT

For the effective date of the Manufactured Housing Improvement Act of 2000, referred to in subsec. (e)(3), see section 612 of Pub. L. 106-569, set out as an Effective Date of 2000 Amendment note under section 5401 of this title.

AMENDMENTS

2000—Pub. L. 106-569 amended section catchline and text generally. Prior to amendment, text read as follows: “In carrying out the inspections required under this chapter, the Secretary may establish and impose on manufactured home manufacturers, distributors, and dealers such reasonable fees as may be necessary to offset the expenses incurred by him in conducting such inspections, and the Secretary may use any fees so collected to pay expenses incurred in connection with such inspections, except that this section shall not apply in any State which has in effect a State plan under section 5422 of this title.”

1980—Pub. L. 96-399 substituted “manufactured home” for “mobile home”.

1979—Pub. L. 96-153 substituted “conducting such inspections, and the Secretary may use any fees so collected to pay expenses incurred in connection with such inspections, except” for “conducting such inspections, except”.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-569 effective Dec. 27, 2000, except that amendment has no effect on any order or interpretative bulletin issued under this chapter and published as a proposed rule pursuant to 5 U.S.C. 553 on or before Dec. 27, 2000, see section 612 of Pub. L. 106-569, set out as a note under section 5401 of this title.

MANUFACTURED HOUSING

Pub. L. 107-18, §1, July 5, 2001, 115 Stat. 152, provided that:

“(a) AVAILABILITY OF FEES.—Notwithstanding section 620(e)(2) of the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5419(e)(2)), any fees collected under that Act, including any fees collected before the date of enactment of the American Homeownership and Economic Opportunity Act of 2000 (12 U.S.C. 1701 note) [Dec. 27, 2000] and remaining unobligated on the date of enactment of this Act [July 5, 2001], shall be available for expenditure to offset the expenses incurred by the Secretary under the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401 et seq.), otherwise in accordance with section 620 of that Act.

“(b) DURATION.—The authority for the use of fees provided for in subsection (a) shall remain in effect during the period beginning in fiscal year 2001 and ending on the effective date of the first appropriations Act referred to in section 620(e)(2) of the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5419(e)(2)) that is enacted with respect to a fiscal year after fiscal year 2001.”

§ 5420. Failure to report violations; penalties

Any person, other than an officer or employee of the United States, or a person exercising inspection functions under a State plan pursuant to section 5422 of this title, who knowingly and willfully fails to report a violation of any construction or safety standard established under section 5403 of this title may be fined up to \$1,000 or imprisoned for up to one year, or both.

(Pub. L. 93-383, title VI, §621, Aug. 22, 1974, 88 Stat. 712.)

§ 5421. Prohibition on waiver of rights

The rights afforded manufactured home purchasers under this chapter may not be waived, and any provision of a contract or agreement entered into after August 22, 1974, to the contrary shall be void.

(Pub. L. 93-383, title VI, §622, Aug. 22, 1974, 88 Stat. 712; Pub. L. 96-399, title III, §308(c)(4), Oct. 8, 1980, 94 Stat. 1641.)

AMENDMENTS

1980—Pub. L. 96-399 substituted “manufactured home” for “mobile home”.

§ 5422. State enforcement

(a) Jurisdiction of State agency or court under State law

Nothing in this chapter shall prevent any State agency or court from asserting jurisdiction under State law over any manufactured home construction or safety issue with respect to which no Federal manufactured home construction and safety standard has been established pursuant to the provisions of section 5403 of this title.

(b) Assumption of responsibility for enforcement of Federal standards; submission of enforcement plan to Secretary

Any State which, at any time, desires to assume responsibility for enforcement of manufactured home safety and construction standards relating to any issue with respect to which a Federal standard has been established under section 5403 of this title, shall submit to the Secretary a State plan for enforcement of such standards.

(c) Criteria for approval of State plan by Secretary

The Secretary shall approve the plan submitted by a State under subsection (b) of this section, or any modification thereof, if such plan in his judgment—

(1) designates a State agency or agencies as the agency or agencies responsible for administering the plan throughout the State;

(2) provides for the enforcement of manufactured home safety and construction standards promulgated under section 5403 of this title;

(3) provides for a right of entry and inspection of all factories, warehouses, or establishments in such State in which manufactured homes are manufactured and for the review of plans, in a manner which is identical to that provided in section 5413 of this title;

(4) provides for the imposition of the civil and criminal penalties under section 5410 of this title;

(5) provides for the notification and correction procedures under section 5414 of this title;

(6) provides for the payment of inspection fees by manufacturers in amounts adequate to cover the costs of inspections;

(7) contains satisfactory assurances that the State agency or agencies have or will have the legal authority and qualified personnel necessary for the enforcement of such standards;

(8) give satisfactory assurances that such State will devote adequate funds to the administration and enforcement of such standards;

(9) requires manufacturers, distributors, and retailers in such State to make reports to the Secretary in the same manner and to the same extent as if the State plan were not in effect;

(10) provides that the State agency or agencies will make such reports to the Secretary in such form and containing such information as the Secretary shall from time to time require;

(11) with respect to any State plan submitted on or after the expiration of the 5-year period beginning on December 27, 2000, provides for an installation program established by State law that meets the requirements of section 5404(c)(3) of this title;

(12) with respect to any State plan submitted on or after the expiration of the 5-year period beginning on December 27, 2000, provides for a dispute resolution program for the timely resolution of disputes between manufacturers, retailers, and installers of manufactured homes regarding responsibility, and for the issuance of appropriate orders, for the correction or repair of defects in manufactured homes that are reported during the 1-year period beginning on the date of installation; and

(13) complies with such other requirements as the Secretary may by regulation prescribe for the enforcement of this chapter.

(d) Notice and hearing prior to rejection by Secretary of State plan

If the Secretary rejects a plan submitted under subsection (b) of this section, he shall afford the State submitting the plan due notice and opportunity for a hearing before so doing.

(e) Discretionary enforcement by Secretary of standards in State having approved plan

After the Secretary approves a State plan submitted under subsection (b) of this section, he may, but shall not be required to, exercise his authority under this chapter with respect to enforcement of manufactured home construction and safety standards in the State involved.

(f) Annual evaluation by Secretary of execution of State plan; basis of evaluation; submission of evaluation and data to Congress; determination by Secretary of improper administration, etc., of State plan; procedure; effect of determination

The Secretary shall, on the basis of reports submitted by the designated State agency and his own inspections, make a continuing evaluation of the manner in which each State having a plan approved under this section is carrying out such plan. Such evaluation shall be made by the Secretary at least annually for each State, and the results of such evaluation and the inspection reports on which it is based shall be promptly submitted to the appropriate committees of the Congress. Whenever the Secretary finds, after affording due notice and opportunity for a hearing, that in the administration of the State plan there is a failure to comply substantially with any provision of the State plan or that the State plan has become inadequate, he shall notify the State agency or agencies of his

withdrawal of approval of such plan. Upon receipt of such notice by such State agency or agencies such plan shall cease to be in effect, but the State may retain jurisdiction in any case commenced before the withdrawal of the plan in order to enforce manufactured home standards under the plan whenever the issues involved do not relate to the reasons for the withdrawal of the plan.

(g) Enforcement of dispute resolution standards

(1) Establishment of dispute resolution program

Not later than the expiration of the 5-year period beginning on December 27, 2000, the Secretary shall establish a dispute resolution program that meets the requirements of subsection (c)(12) of this section for dispute resolution in each State described in paragraph (2) of this subsection. The order establishing the dispute resolution program shall be issued after notice and opportunity for public comment in accordance with section 553 of title 5.

(2) Implementation of dispute resolution program

Beginning on the expiration of the 5-year period described in paragraph (1), the Secretary shall implement the dispute resolution program established under paragraph (1) in each State that has not established a dispute resolution program that meets the requirements of subsection (c)(12) of this section.

(3) Contracting out of implementation

In carrying out paragraph (2), the Secretary may contract with an appropriate agent to implement the dispute resolution program established under paragraph (2), except that such agent shall not be a person or entity other than a government, nor an affiliate or subsidiary of such a person or entity, that has entered into a contract with the Secretary to implement any other regulatory program under this chapter.

(Pub. L. 93-383, title VI, §623, Aug. 22, 1974, 88 Stat. 712; Pub. L. 96-399, title III, §308(c)(4), Oct. 8, 1980, 94 Stat. 1641; Pub. L. 97-35, title III, §339B(c), Aug. 13, 1981, 95 Stat. 417; Pub. L. 106-569, title VI, §§603(b)(5), 605(b), 610, Dec. 27, 2000, 114 Stat. 2999, 3008, 3011.)

CODIFICATION

Reference to “mobile homes”, appearing in subsec. (c)(3), changed to “manufactured homes” in view of the amendment of title VI of the Housing and Community Development Act of 1974 (this chapter) by section 308(c)(4) of Pub. L. 96-399 requiring the substitution of “manufactured home” for “mobile home” wherever appearing in title VI of the Housing and Community Development Act of 1974, and section 339B(c) of Pub. L. 97-35 (set out as a note under section 1703 of Title 12, Banks and Banking) providing that the terms “mobile home” and “manufactured home” shall be deemed to include the terms “mobile homes” and “manufactured homes”, respectively.

AMENDMENTS

2000—Subsec. (c)(9). Pub. L. 106-569, §603(b)(5), substituted “retailers” for “dealers”.
 Subsec. (c)(11). Pub. L. 106-569, §605(b)(1), (3), added par. (11). Former par. (11) redesignated (13).
 Subsec. (c)(12). Pub. L. 106-569, §610(1), added par. (12).

Subsec. (c)(13). Pub. L. 106-569, §605(b)(2), redesignated par. (11) as (13).

Subsec. (g). Pub. L. 106-569, §610(2), added subsec. (g).
 1980—Subsecs. (a), (b), (c)(2), (e), (f). Pub. L. 96-399 substituted “manufactured home” for “mobile home” wherever appearing.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-569 effective Dec. 27, 2000, except that amendment has no effect on any order or interpretative bulletin issued under this chapter and published as a proposed rule pursuant to 5 U.S.C. 553 on or before Dec. 27, 2000, see section 612 of Pub. L. 106-569, set out as a note under section 5401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5402, 5419, 5420, 5423 of this title.

§ 5423. Grants to States

(a) Purposes

The Secretary is authorized to make grants to the States which have designated a State agency under section 5422 of this title to assist them—

- (1) in identifying their needs and responsibilities in the area of manufactured home construction and safety standards; or
- (2) in developing State plans under section 5422 of this title.

(b) Designation by Governor of State agency for receipt of grant

The Governor of each State shall designate the appropriate State agency for receipt of any grant made by the Secretary under this section.

(c) Submission of application by State agency to Secretary; review by Secretary

Any State agency designated by the Governor of a State desiring a grant under this section shall submit an application therefor to the Secretary. The Secretary shall review and either accept or reject such application.

(d) Amount of Federal share; equality of distribution of funds

The Federal share for each State grant under subsection (a) of this section may not exceed 90 per centum of the total cost to the State in identifying its needs and developing its plan. In the event the Federal share for all States under such subsection is not the same, the differences among the States shall be established on the basis of objective criteria.

(Pub. L. 93-383, title VI, §624, Aug. 22, 1974, 88 Stat. 713; Pub. L. 96-399, title III, §308(c)(4), Oct. 8, 1980, 94 Stat. 1641.)

AMENDMENTS

1980—Subsec. (a)(1). Pub. L. 96-399 substituted “manufactured home” for “mobile home”.

§ 5424. Rules and regulations

The Secretary is authorized to issue, amend, and revoke such rules and regulations as he deems necessary to carry out this chapter.

(Pub. L. 93-383, title VI, §625, Aug. 22, 1974, 88 Stat. 713.)

REGULATIONS AND PROCEDURES WITH REGARD TO MANUFACTURED HOMES

Pub. L. 96-399, title III, §308(c)(7), Oct. 8, 1980, 94 Stat. 1641, provided that: “In adopting regulations and proce-

dures in accordance with this subsection [see Tables for classification] the Secretary of Housing and Urban Development shall have discretion to take actions in a manner which he deems necessary to insure that the public is fully aware of the distinctions between the various types of factory-built housing.”

§ 5425. Repealed. Pub. L. 106-569, title VI, § 611(1), Dec. 27, 2000, 114 Stat. 3012

Section, Pub. L. 93-383, title VI, § 626, Aug. 22, 1974, 88 Stat. 714; Pub. L. 95-557, title IX, § 901, Oct. 31, 1978, 92 Stat. 2124; Pub. L. 96-399, title III, § 308(c)(4), Oct. 8, 1980, 94 Stat. 1641; Pub. L. 97-35, title III, § 339B(c), Aug. 13, 1981, 95 Stat. 417, related to reports to Congress.

EFFECTIVE DATE OF REPEAL

Repeal effective Dec. 27, 2000, except that repeal has no effect on any order or interpretative bulletin issued under this chapter and published as a proposed rule pursuant to 5 U.S.C. 553 on or before Dec. 27, 2000, see section 612 of Pub. L. 106-569, set out as an Effective Date of 2000 Amendment note under section 5401 of this title.

§ 5426. Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this chapter.

(Pub. L. 93-383, title VI, § 626, formerly § 627, Aug. 22, 1974, 88 Stat. 714; renumbered § 626, Pub. L. 106-569, title VI, § 611(2), Dec. 27, 2000, 114 Stat. 3012.)

PRIOR PROVISIONS

A prior section 626 of Pub. L. 93-383 was classified to section 5425 of this title, prior to repeal by Pub. L. 106-569.

CHAPTER 71—SOLAR ENERGY

SUBCHAPTER I—HEATING AND COOLING

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|-------|--|--------------|--|
| Sec. | | Sec. | |
| 5501. | Congressional findings and declaration of policy. | 5504a, 5505. | Repealed or Omitted. |
| 5502. | Definitions. | 5506. | Test procedures and definitive performance criteria for solar heating and combined solar heating and cooling components and systems and suitable dwellings; determination, consultation and publication in Federal Register. |
| 5503. | Development and demonstration of solar heating systems for use in residential dwellings. | 5507. | Arrangements with Federal agencies for development and demonstration of solar heating and combined heating and cooling systems for commercial buildings. |
| | (a) Functions of Administrator and Secretary. | 5508. | Program of applied research by Secretary of Energy for improvement and development of heating systems for commercial application; transmission of results to Secretary and Administrator. |
| | (b) Time for determination, prescription and publishing of interim performance criteria; selection of designs for suitable dwellings. | 5509. | Supervision of systems and programs by Secretary. |
| | (c) Contracts and grants for development of heating systems for commercial production and residential use; contracts for procurement of heating systems and components. | | (a) Monitoring of performance; collection and evaluation of data; studies and investigation; reports to Congress. |
| | (d) Installation of heating systems; operation during demonstration period; title and ownership of dwellings and systems; agreement of owner to observe and monitor system for five years; reports by owner. | | (b) Cooperation with scientific, technical, and professional societies and industry representatives in development of performance criteria and test procedures. |
| | (e) Installation of heating systems by Secretary of Defense in dwellings located on Federal or federally administered property. | | (c) Continued liaison with building and related industries and scientific and technical communities. |
| | (f) Coordination of activities to assure a realistic and effective demonstration. | 5510. | Dissemination of information to promote practical use of solar heating and cooling technologies. |
| 5504. | Development and demonstration of combined solar heating and cooling systems for use in residential dwellings. | | (a) Coordination by Secretary with other Federal agencies in dissemination to Federal, State, and local authorities, etc. |
| | (a) Functions of Administrator and Secretary. | | (b) Studies, investigations and modifications of building codes, zoning ordinances, etc., to promote use of solar energy in buildings. |
| | | | (c) Establishment and operation of Solar Heating and Cooling Information Data Bank; retrieval and dissemination services; compilation of information for use by governmental agencies, nonprofit organizations and private persons; utilization of existing information. |
| | | | (d) Annual reports to President and Congress by officers and agencies; contents; special annual report by Secretary. |

Sec.

- (b) Time for determination, prescription and publishing of interim performance criteria; selection of designs for suitable dwellings.
- (c) Program of research, development and testing to provide additional technological resources for development and commercial application of combined systems.
- (d) Contracts and grants for development of combined systems for commercial production and residential use; contracts for procurement of combined systems.
- (e) Installation of combined systems; operation during demonstration period; title and ownership of dwellings and systems; agreement of owner to observe and monitor system; reports by owner.
- (f) Installation of combined systems by Secretary of Defense in dwellings located on Federal or federally administered property.
- (g) Coordination of activities to assure a realistic and effective demonstration.

5504a, 5505. Repealed or Omitted.

5506. Test procedures and definitive performance criteria for solar heating and combined solar heating and cooling components and systems and suitable dwellings; determination, consultation and publication in Federal Register.

5507. Arrangements with Federal agencies for development and demonstration of solar heating and combined heating and cooling systems for commercial buildings.

5508. Program of applied research by Secretary of Energy for improvement and development of heating systems for commercial application; transmission of results to Secretary and Administrator.

5509. Supervision of systems and programs by Secretary.

(a) Monitoring of performance; collection and evaluation of data; studies and investigation; reports to Congress.

(b) Cooperation with scientific, technical, and professional societies and industry representatives in development of performance criteria and test procedures.

(c) Continued liaison with building and related industries and scientific and technical communities.

5510. Dissemination of information to promote practical use of solar heating and cooling technologies.

(a) Coordination by Secretary with other Federal agencies in dissemination to Federal, State, and local authorities, etc.

(b) Studies, investigations and modifications of building codes, zoning ordinances, etc., to promote use of solar energy in buildings.

(c) Establishment and operation of Solar Heating and Cooling Information Data Bank; retrieval and dissemination services; compilation of information for use by governmental agencies, nonprofit organizations and private persons; utilization of existing information.

(d) Annual reports to President and Congress by officers and agencies; contents; special annual report by Secretary.

- Sec.
5511. Federally assisted or federally constructed housing.
 (a) Maximum dollar amount of federally assisted mortgage loan or maximum per unit or other cost or floor area limitation of federally constructed housing.
 (b) "Mortgage loan" and "federally assisted mortgage loan" defined.
 (c) "Federally constructed housing" defined.
- 5511a. Solar Assistance Financing Entity.
 (a) Establishment.
 (b) Purpose.
 (c) Eligible buildings.
 (d) Financing options.
 (e) Authority to leverage other funds.
 (f) Provision of assistance.
 (g) Regulations.
 (h) Authorization of appropriations.
5512. Small business concerns' opportunities to participate in programs.
5513. Priorities and criteria of demonstration programs.
5514. Regulations.
5515. Use of publicly assisted housing by Secretary in demonstrations.
5516. Transfer of functions.
5517. Authorization of appropriations.
 (a) Appropriations to National Aeronautics and Space Administration.
 (b) Appropriations to Department of Housing and Urban Development.
 (c) Appropriations for programs under this subchapter.

SUBCHAPTER II—RESEARCH, DEVELOPMENT, AND DEMONSTRATION

5551. Congressional declaration of findings and policy.
5552. Definitions.
5553. Solar Energy Coordination and Management Project.
 (a) Establishment.
 (b) Membership; chairman; compensation.
 (c) Responsibilities.
 (d) Cooperation with other Federal agencies; assignment of other Federal agency personnel to Project.
 (e) Establishment or approval of program or project; operation and administration of program or project.
 (f) Authorization of National Aeronautics and Space Administration to undertake and carry out assigned programs.
5554. Solar energy resource determination and assessment program; objectives; implementation.
5555. Research and development program.
 (a) Purpose.
 (b) Implementation.
 (c) Scope.
5556. Solar energy demonstration facilities program.
 (a) Authorization for design and construction of facilities; objectives.
 (b) Criteria for determination to proceed from development program to demonstration.
 (c) Establishment of one or more projects utilizing each form of solar energy.
 (d) Investigation and agreements for cooperative development of demonstration facilities.
 (e) Construction and operation of demonstration projects without cooperative agreements.

- Sec.
 (f) Additional appropriations for projects exceeding maximum amount.
 (g) Disposition of Federal property interests, electricity, synthetic fuels, and other byproducts upon completion of project.
- 5556a. Solar photovoltaic energy systems studies and acquisitions by Secretary of Energy; scope, contents, and submission dates for reports; acquisition authority and requirements; authorization of appropriations.
5557. Solar Energy Information Data Bank.
 (a) Establishment; utilization of other Federal agencies; information and data to be compiled; retrieval and dissemination services; utilization of existing scientific and technical information.
 (b) Studies and research to promote consumer acceptance and utilization of solar energy technologies.
 (c) Coordination of solar energy technology utilization programs.
5558. Scientific and technical education programs.
5559. Solar Energy Research Institute; establishment; functions; location.
5560. International cooperation in solar energy research and programs of education.
5561. Regulations.
5562. Summary in annual report.
5563. Project information to Congressional committees.
5564. Comprehensive program definition; preparation; utilization of and consultation with other agencies; transmittal to the President and Congress; time of transmittal.
5565. Transfer of functions.
5566. Authorization of appropriations.

SUBCHAPTER III—SOLAR PHOTOVOLTAIC ENERGY RESEARCH, DEVELOPMENT AND DEMONSTRATION

5581. Congressional findings and declaration of policy.
5582. Definitions.
5583. Establishment and promotion of research, development, and demonstration programs.
5584. Federal assistance application procedures; selection of applicants; agreements; financial assistance; observation and monitoring of photovoltaic systems; reports; projects and activities.
5585. Contracts, grants and arrangements.
 (a) Selection of photovoltaic components and systems, design concepts, and designs.
 (b) Commercial production and utilization of photovoltaic components and systems; selection of components and systems compatible with chosen design concepts; procurement of components and systems.
 (c) Design integration; demonstration of prototype photovoltaic systems; utilization of systems in existing facilities; terms and conditions upon transfer of facilities and systems.
 (d) Arrangements with Federal agencies for demonstration of systems in Federal buildings and facilities.
 (e) Projects and activities.
5586. Test procedures and performance criteria.
 (a) Testing program.
 (b) Establishment and use of performance criteria.
 (c) Determination and publication in Federal Register.

- Sec.
- (d) Performance criteria applicable to photovoltaic component or system procured or installed by Federal Government or with Federal assistance.
5587. Supervision of research, development, and demonstration programs.
- (a) Monitoring of photovoltaic systems; collection and evaluation of data; studies, investigations, and reports.
- (b) Assistance from scientific, technical, and professional societies and industry representatives.
- (c) Liaison with industries, interests, and scientific and technical community.
5588. Solar Photovoltaic Energy Advisory Committee.
- (a) Establishment; duties.
- (b) Membership; chairman.
- (c) Cooperation from executive departments, agencies, and instrumentalities.
- (d) Application of section 7234 of this title.
5589. Promotion and facilitation of practical use of photovoltaic energy.
- (a) Dissemination of information; trade secret exemption.
- (b) Studies and investigations.
- (c) Policy recommendations to President and Congress.
- (d) Consultation with government agencies, industry representatives, and scientific and technical community; coordination and merger of studies and reports.
5590. Submittal to Congressional committees of plan for demonstrating applications of photovoltaic systems and facilitating use in other nations; encouragement of international participation and cooperation; coordination and consistency of plan and international activities with similar activities and programs.
5591. Participation of small business concerns.
5592. Priorities.
5593. Construction with National Energy Conservation Policy Act.
5594. Authorization of appropriations.

SUBCHAPTER I—HEATING AND COOLING

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 5553, 5902, 7135a of this title.

§ 5501. Congressional findings and declaration of policy

(a) The Congress hereby finds that—

(1) the current imbalance between supply and demand for fuels and energy is likely to persist for some time;

(2) the early demonstration of the feasibility of using solar energy for the heating and cooling of buildings could help to relieve the demand upon present fuel and energy supplies;

(3) the technologies for solar heating are close to the point of commercial application in the United States;

(4) the technologies for combined solar heating and cooling still require research, development, testing and demonstration, but no insoluble technical problem is now foreseen in achieving commercial use of such technologies;

(5) the early development and export of viable solar heating equipment and combined

solar heating and cooling equipment, consistent with the established preeminence of the United States in the field of high technology products, can make a valuable contribution to our balance of trade;

(6) the widespread use of solar energy in place of conventional methods for the heating and cooling of buildings would have a significantly beneficial effect upon the environment;

(7) the mass production and use of solar heating and cooling equipment will help to eliminate the dependence of the United States upon foreign energy sources and promote the national defense;

(8) the widespread introduction of low-cost solar energy will be beneficial to consumers in a period of rapidly rising fuel cost;

(9) innovation and creativity in the development of solar heating and combined solar heating and cooling components and systems can be fostered through encouraging direct contact between the manufacturers of such systems and the architects, engineers, developers, contractors, and other persons interested in installing such systems in buildings;

(10) evaluation of the performance and reliability of solar heating and combined solar heating and cooling technologies can be expedited by testing under carefully controlled conditions; and

(11) commercial application of solar heating and combined solar heating and cooling technologies can be expedited by early commercial demonstration under practical conditions.

(b) It is therefore declared to be the policy of the United States and the purpose of this subchapter to provide for the demonstration within a three-year period of the practical use of solar heating technology, and to provide for the development and demonstration within a five-year period of the practical use of combined heating and cooling technology.

(Pub. L. 93-409, § 2, Sept. 3, 1974, 88 Stat. 1069.)

SHORT TITLE OF 1978 AMENDMENT

Pub. L. 95-590, § 1, Nov. 4, 1978, 92 Stat. 2513, provided: "That this Act [enacting subchapter III of this chapter] may be cited as the 'Solar Photovoltaic Energy Research, Development, and Demonstration Act of 1978'."

SHORT TITLE

Section 1 of Pub. L. 93-409 provided: "That this Act [enacting this subchapter and amending section 2473 of this title] may be cited as the 'Solar Heating and Cooling Demonstration Act of 1974'."

Pub. L. 93-473, § 1, Oct. 26, 1974, 88 Stat. 1431, provided: "That this Act [enacting subchapter II of this chapter] may be cited as the 'Solar Energy Research, Development, and Demonstration Act of 1974'."

§ 5502. Definitions

For purposes of this subchapter—

(1) the term "solar heating", with respect to any building, means the use of solar energy to meet such portion of the total heating needs of such building (including hot water), or such portion of the needs of such building for hot water (where its remaining heating needs are met by other methods), as may be required under performance criteria prescribed by the Secretary of Housing and Urban Development

utilizing the services of the Director of the National Institute of Standards and Technology, and in consultation with the Secretary of Energy, and the Administrator of the National Aeronautics and Space Administration;

(2) the terms "solar heating and cooling" and "combined solar heating and cooling", with respect to any building, mean the use of solar energy to provide both such portion of the total heating needs of such building (including hot water) and such portion of the total cooling needs of such building, or such portion of the needs of such building for hot water (where its remaining heating needs are met by other methods) and such portion of the total cooling needs of a building, as may be required under performance criteria prescribed by the Secretary of Housing and Urban Development utilizing the services of the Director of the National Institute of Standards and Technology, and in consultation with the Secretary of Energy, and the Administrator of the National Aeronautics and Space Administration, and such term includes cooling by means of nocturnal heat radiation, by evaporation, or by other methods of meeting peakload energy requirements at nonpeakload times;

(3) the term "residential dwellings" includes previously occupied and new single family and multifamily dwellings, mobile homes, and publicly assisted housing owned by a private sponsor or a State or local housing authority not covered by section 5515 of this title;

(4) the term "Administrator" means the Administrator of the National Aeronautics and Space Administration;

(5) the term "Secretary" means the Secretary of Housing and Urban Development; and

(6) Omitted.

(Pub. L. 93-409, §3, Sept. 3, 1974, 88 Stat. 1070; Pub. L. 93-438, title I, §104(f), title III, §301(h), Oct. 11, 1974, 88 Stat. 1238, 1250; Pub. L. 95-91, title III, §301(a), title VII, §§703, 707, Aug. 4, 1977, 91 Stat. 577, 606, 607; Pub. L. 100-418, title V, §5115(c), Aug. 23, 1988, 102 Stat. 1433.)

CODIFICATION

Par. (6) of this section, which defined the term "Director" as meaning the Director of the National Science Foundation, was omitted because of the transfer of functions from the National Science Foundation to the Secretary of Energy and the substitution of "Secretary of Energy" for "Director" wherever appearing in this subchapter. See Transfer of Functions note set out below.

AMENDMENTS

1988—Pars. (1), (2). Pub. L. 100-418 substituted "National Institute of Standards and Technology" for "National Bureau of Standards".

TRANSFER OF FUNCTIONS

"Secretary of Energy" substituted for "Director of the National Science Foundation" in pars. (1) and (2) pursuant to sections 104(f) and 301(h) of Pub. L. 93-438, which are classified to sections 5814(f) and 5871(h) of this title and which transferred functions of National Science Foundation relating to or utilized in connection with solar heating and cooling development to Administrator of Energy Research and Development Administration, and pursuant to sections 301(a), 703, and 707 of Pub. L. 95-91, which are classified to sections

7151(a), 7293, and 7297 of this title and which terminated Energy Research and Development Administration and transferred its functions and functions of Administrator thereof (with certain exceptions) to Secretary of Energy.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 38 section 3710.

§ 5503. Development and demonstration of solar heating systems for use in residential dwellings

(a) Functions of Administrator and Secretary

The Administrator and the Secretary shall promptly initiate and carry out a program, as provided in this section, for the development and demonstration of solar heating systems (including collectors, controls, and thermal storage) for use in residential dwellings.

(b) Time for determination, prescription and publishing of interim performance criteria; selection of designs for suitable dwellings

(1) Within 120 days after September 3, 1974, the Secretary, utilizing the services of the Director of the National Institute of Standards and Technology and in consultation with the Administrator and the Secretary of Energy, shall determine, prescribe, and publish—

(A) interim performance criteria for solar heating components and systems to be used in residential dwellings, and

(B) interim performance criteria (relating to suitability for solar heating) for such dwellings themselves,

taking into account in each instance climatic variations existing between different geographic areas.

(2) As soon as possible after the publication of the performance criteria prescribed under paragraph (1), the Secretary, in consultation with the Director of the National Institute of Standards and Technology and the Administrator, will select on the basis of open competition a number of designs for various types of residential dwellings suitable for and adapted to the installation of solar heating systems meeting the performance criteria prescribed under paragraph (1)(A).

(c) Contracts and grants for development of heating systems for commercial production and residential use; contracts for procurement of heating systems and components

The Administrator, in accordance with the applicable provisions of title II of the National Aeronautics and Space Act of 1958 [42 U.S.C. 2471 et seq.] and under program guidelines established jointly by the Administrator and the Secretary, shall, after consultation with the Secretary—

(1) enter into such contracts and grants as may be necessary or appropriate for the development (for commercial production and residential use) of solar heating systems meeting the performance criteria prescribed under subsection (b)(1)(A) of this section (including any further planning and design which may be required to conform with the specifications set forth in such criteria); and

(2) enter into contracts with a number of persons or firms for the procurement of solar

heating components and systems meeting such performance criteria (including adequate numbers of spare and replacement parts for such systems).

(d) Installation of heating systems; operation during demonstration period; title and ownership of dwellings and systems; agreement of owner to observe and monitor system for five years; reports by owner

The Secretary shall (1) arrange for the installation of solar heating systems procured by the Administrator under subsection (c)(2) of this section in a substantial number of residential dwellings and (2) provide for the satisfactory operation of such installations during the demonstration period. Title to and ownership of any dwellings constructed hereunder and of solar heating systems installed hereunder may be conveyed to purchasers or owners of such dwellings under terms and conditions prescribed by the Secretary, including an express agreement that any such purchaser or owner shall, in such manner and form and on such terms and conditions as the Secretary may prescribe, observe and monitor (or permit the Secretary to observe and monitor) the performance and operation of such system for a period of five years, and that such purchaser or owner (including any subsequent owner and occupant of the property who also makes such an agreement) shall regularly furnish the Secretary with such reports thereon as the agreement may require.

(e) Installation of heating systems by Secretary of Defense in dwellings located on Federal or federally administered property

The Secretary of Defense shall arrange for the installation of solar heating systems procured by the Administrator under subsection (c)(2) of this section in a substantial number of residential dwellings which are located on Federal or federally administered property where the performance and operation of such systems can be regularly and effectively observed and monitored by designated Federal personnel.

(f) Coordination of activities to assure a realistic and effective demonstration

The Secretary and the Secretary of Defense, and officials responsible for administering Federal or federally administered property, shall coordinate their activities under this section to assure that solar heating systems are installed in a substantial number of residential dwellings and in a sufficient number of different geographic areas under varying climatic conditions to constitute a realistic and effective demonstration in support of the objectives of this subchapter.

(Pub. L. 93-409, § 5, Sept. 3, 1974, 88 Stat. 1070; Pub. L. 93-438, title I, § 104(f), title III, § 301(h), Oct. 11, 1974, 88 Stat. 1238, 1250; Pub. L. 95-91, title III, § 301(a), title VII, §§ 703, 707, Aug. 4, 1977, 91 Stat. 577, 606, 607; Pub. L. 100-418, title V, § 5115(c), Aug. 23, 1988, 102 Stat. 1433.)

REFERENCES IN TEXT

The National Aeronautics and Space Act of 1958, referred to in subsec. (c), is Pub. L. 85-568, July 29, 1958, 72 Stat. 426, as amended. Title II of the National Aeronautics and Space Act of 1958 is classified generally to

subchapter II (§2471 et seq.) of chapter 26 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2451 of this title and Tables.

AMENDMENTS

1988—Subsec. (b)(1), (2). Pub. L. 100-418 substituted “National Institute of Standards and Technology” for “National Bureau of Standards”.

TRANSFER OF FUNCTIONS

“Secretary of Energy” substituted for “Director”, meaning Director of National Science Foundation, in subsec. (b)(1) pursuant to sections 104(f) and 301(h) of Pub. L. 93-438, which are classified to sections 5814(f) and 5871(h) of this title and which transferred functions of National Science Foundation relating to or utilized in connection with solar heating and cooling development to Administrator of Energy Research and Development Administration, and pursuant to sections 301(a), 703, and 707 of Pub. L. 95-91, which are classified to sections 7151(a), 7293, and 7297 of this title and which terminated Energy Research and Development Administration and transferred its functions and functions of Administrator thereof (with certain exceptions) to Secretary of Energy.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2473, 5506, 5507, 5509, 5511, 5513 of this title.

§ 5504. Development and demonstration of combined solar heating and cooling systems for use in residential dwellings

(a) Functions of Administrator and Secretary

The Administrator and the Secretary shall promptly initiate and carry out a program, as provided in this section, for the development and demonstration of combined solar heating and cooling systems (including collectors, controls, and thermal storage) for use in residential dwellings.

(b) Time for determination, prescription and publishing of interim performance criteria; selection of designs for suitable dwellings

(1) As soon as possible after September 3, 1974, the Secretary, utilizing the services of the Director of the National Institute of Standards and Technology and in consultation with the Administrator and the Secretary of Energy, shall determine, prescribe, and publish—

(A) interim performance criteria for combined solar heating and cooling components and systems to be used in residential dwellings, and

(B) interim performance criteria (relating to suitability for solar heating and cooling) for such dwellings themselves,

taking into account in each instance climatic variations existing between different geographic areas.

(2) As soon as possible after the publication of the performance criteria prescribed under paragraph (1) (and if possible before the completion of the research and development provided for in subsection (c) of this section), the Secretary, in consultation with the Director of the National Institute of Standards and Technology and the Administrator, will select on the basis of open competition a number of designs for various types of residential dwellings suitable for and adapted to the installation of combined solar

heating and cooling systems meeting the performance criteria prescribed under paragraph (1)(A).

(c) Program of research, development and testing to provide additional technological resources for development and commercial application of combined systems

During the period immediately following the publication of performance criteria under subsection (b)(1) of this section, the Administrator, in coordination with the Secretary of Energy, shall undertake and conduct with respect to solar heating and cooling a program of research, development, and testing designed to provide the additional technological resources necessary for the development and commercial application of combined solar heating and cooling systems as contemplated by the program under this section.

(d) Contracts and grants for development of combined systems for commercial production and residential use; contracts for procurement of combined systems

The Administrator, in accordance with the applicable provisions of title II of the National Aeronautics and Space Act of 1958 [42 U.S.C. 2471 et seq.] and under program guidelines established jointly by the Administrator and the Secretary, and at the earliest possible time during or immediately after the period specified in subsection (c) of this section, shall, after consultation with the Secretary—

(1) enter into such contracts and grants as may be necessary or appropriate for the development (for commercial production and residential use) of combined solar heating and cooling systems meeting the performance criteria prescribed under subsection (b)(1)(A) of this section (including any further planning and design which may be required to conform with the specifications set forth in such criteria or to reflect the results of the activities conducted under subsection (c) of this section); and

(2) enter into contracts with a number of persons or firms for the procurement of combined solar heating and cooling systems meeting such performance criteria (including adequate numbers of spare and replacement parts for such systems).

(e) Installation of combined systems; operation during demonstration period; title and ownership of dwellings and systems; agreement of owner to observe and monitor system; reports by owner

The Secretary shall (1) arrange for the installation of combined solar heating and cooling systems procured by the Administrator under subsection (d)(2) of this section in a substantial number of residential dwellings and (2) provide for the satisfactory operation of such installations during the demonstration period. Title to and ownership of any dwellings constructed hereunder and of combined solar heating and cooling systems installed hereunder may be conveyed to purchasers or owners of such dwellings under terms and conditions prescribed by the Secretary, including an express agreement that any such purchaser or owner shall, in such man-

ner and form and on such terms and conditions as the Secretary may prescribe, observe and monitor (or permit the Secretary to observe and monitor) the performance and operation of such system for a period of five years, and that such purchaser or owner (including any subsequent owner and occupant of the property who also makes such an agreement) shall regularly furnish the Secretary with such reports thereon as the agreement may require.

(f) Installation of combined systems by Secretary of Defense in dwellings located on Federal or federally administered property

The Secretary of Defense shall arrange for the installation of combined solar heating and cooling systems procured by the Administrator under subsection (d)(2) of this section in a substantial number of residential dwellings which are located on Federal or federally administered property where the performance and operation of such systems can be regularly and effectively observed and monitored by designated Federal personnel.

(g) Coordination of activities to assure a realistic and effective demonstration

The Secretary and the Secretary of Defense, and officials responsible for administering Federal or federally administered property, shall coordinate their activities under this section to assure that combined solar heating and cooling systems are installed in a substantial number of residential dwellings and in a sufficient number of geographic areas under varying climatic conditions to constitute a realistic and effective demonstration in support of the objectives of this subchapter.

(Pub. L. 93-409, § 6, Sept. 3, 1974, 88 Stat. 1072; Pub. L. 93-438, title I, § 104(f), title III, § 301(h), Oct. 11, 1974, 88 Stat. 1238, 1250; Pub. L. 95-91, title III, § 301(a), title VII, §§ 703, 707, Aug. 4, 1977, 91 Stat. 577, 606, 607; Pub. L. 100-418, title V, § 5115(c), Aug. 23, 1988, 102 Stat. 1433.)

REFERENCES IN TEXT

The National Aeronautics and Space Act of 1958, referred to in subsec. (d), is Pub. L. 85-568, July 29, 1958, 72 Stat. 426, as amended. Title II of the National Aeronautics and Space Act of 1958 is classified generally to subchapter II (§ 2471 et seq.) of chapter 26 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2451 of this title and Tables.

AMENDMENTS

1988—Subsec. (b)(1), (2). Pub. L. 100-418 substituted “National Institute of Standards and Technology” for “National Bureau of Standards”.

TRANSFER OF FUNCTIONS

“Secretary of Energy” substituted for “Director”, meaning Director of National Science Foundation, in subsecs. (b)(1) and (c) pursuant to sections 104(f) and 301(h) of Pub. L. 93-438, which are classified to sections 5814(f) and 5871(h) of this title and which transferred functions of National Science Foundation relating to or utilized in connection with solar heating and cooling development to Administrator of Energy Research and Development Administration, and pursuant to sections 301(a), 703, and 707 of Pub. L. 95-91, which are classified to sections 7151(a), 7293, and 7297 of this title and which terminated Energy Research and Development Administration and transferred its functions and functions of

Administrator thereof (with certain exceptions) to Secretary of Energy.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2473, 5506, 5507, 5509, 5511, 5513 of this title.

§ 5504a. Repealed. Pub. L. 96-125, title VIII, § 804(b), Nov. 26, 1979, 93 Stat. 948

Section, Pub. L. 95-356, title VIII, § 804, Sept. 8, 1978, 92 Stat. 585, related to use of solar energy systems in military construction projects.

§ 5505. Omitted

CODIFICATION

Section, Pub. L. 93-409, § 7, Sept. 3, 1974, 88 Stat. 1073, authorized and directed Administrator and Secretary to prepare a comprehensive plan for conduct of development and demonstration activities under section 5503 and 5504, such plan to be transmitted to President and Congress within 120 days after Sept. 3, 1974.

§ 5506. Test procedures and definitive performance criteria for solar heating and combined solar heating and cooling components and systems and suitable dwellings; determination, consultation and publication in Federal Register

As soon as feasible, and utilizing data available from the demonstration programs under sections 5503 and 5504 of this title, the Secretary, utilizing the services of the Director of the National Institute of Standards and Technology and in consultation with the Administrator and the Secretary of Energy shall determine, prescribe, and publish in the Federal Register in accordance with the applicable provisions regarding rulemaking prescribed by section 553 of title 5,

(1) definitive performance criteria for solar heating and combined solar heating and cooling components and systems to be used in residential dwellings, taking into account climatic variations existing between different geographic areas;

(2) definitive performance criteria (relating to suitability for solar heating and for combined solar heating and cooling) for such dwellings, taking into account climatic variations existing between different geographic areas; and

(3) procedures whereby manufacturers of solar heating and combined solar heating and cooling components and systems shall have their products tested in order to provide certification that such products conform to the performance criteria established under paragraph (1).

(Pub. L. 93-409, § 8, Sept. 3, 1974, 88 Stat. 1073; Pub. L. 93-438, title I, § 104(f), title III, § 301(h), Oct. 11, 1974, 88 Stat. 1238, 1250; Pub. L. 95-91, title III, § 301(a), title VII, §§ 703, 707, Aug. 4, 1977, 91 Stat. 577, 606, 607; Pub. L. 100-418, title V, § 5115(c), Aug. 23, 1988, 102 Stat. 1433.)

AMENDMENTS

1988—Pub. L. 100-418 substituted “National Institute of Standards and Technology” for “National Bureau of Standards”.

TRANSFER OF FUNCTIONS

“Secretary of Energy” substituted in text for “Director”, meaning Director of National Science Founda-

tion, pursuant to sections 104(f) and 301(h) of Pub. L. 93-438, which are classified to sections 5814(f) and 5871(h) of this title and which transferred functions of National Science Foundation relating to or utilized in connection with solar heating and cooling development to Administrator of Energy Research and Development Administration, and pursuant to sections 301(a), 703, and 707 of Pub. L. 95-91, which are classified to sections 7151(a), 7293, and 7297 of this title and which terminated Energy Research and Development Administration and transferred its functions and functions of Administrator thereof (with certain exceptions) to Secretary of Energy.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5509 of this title.

§ 5507. Arrangements with Federal agencies for development and demonstration of solar heating and combined heating and cooling systems for commercial buildings

The Administrator, in consultation with the Secretary, the Secretary of Energy, the Administrator of General Services, and the Director of the National Institute of Standards and Technology and concurrently with the conduct of the programs under sections 5503 and 5504 of this title, shall enter into arrangements with appropriate Federal agencies to carry out such projects and activities (including demonstration projects) with respect to apartment buildings, office buildings, factories, crop-drying facilities and other agricultural structures, public buildings (including schools and colleges), and other non-residential, commercial, or industrial buildings, taking into account the special needs of and individual differences in such buildings based upon size, function, and other relevant factors, as may be appropriate for the early development and demonstration of solar heating and combined solar heating and cooling systems suitable and effective for use in such buildings.

(Pub. L. 93-409, § 9, Sept. 3, 1974, 88 Stat. 1074; Pub. L. 93-438, title I, § 104(f), title III, § 301(h), Oct. 11, 1974, 88 Stat. 1238, 1250; Pub. L. 95-91, title III, § 301(a), title VII, §§ 703, 707, Aug. 4, 1977, 91 Stat. 577, 606, 607; Pub. L. 100-418, title V, § 5115(c), Aug. 23, 1988, 102 Stat. 1433.)

AMENDMENTS

1988—Pub. L. 100-418 substituted “National Institute of Standards and Technology” for “National Bureau of Standards”.

TRANSFER OF FUNCTIONS

“Secretary of Energy” substituted in text for “Director”, meaning Director of National Science Foundation, pursuant to sections 104(f) and 301(h) of Pub. L. 93-438, which are classified to sections 5814(f) and 5871(h) of this title and which transferred functions of National Science Foundation relating to or utilized in connection with solar heating and cooling development to Administrator of Energy Research and Development Administration, and pursuant to sections 301(a), 703, and 707 of Pub. L. 95-91, which are classified to sections 7151(a), 7293, and 7297 of this title and which terminated Energy Research and Development Administration and transferred its functions and functions of Administrator thereof (with certain exceptions) to Secretary of Energy.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2473, 5511, 5513 of this title.

§ 5508. Program of applied research by Secretary of Energy for improvement and development of heating systems for commercial application; transmission of results to Secretary and Administrator

(a) The Secretary of Energy shall conduct a program of applied research relevant to (1) the improvement of solar heating components and systems and (2) the development and commercial application of combined solar heating and cooling components and systems as contemplated by the programs under this subchapter.

(b) The Secretary of Energy shall apprise the Secretary and the Administrator on a continuing basis of the results of the programs being conducted in accordance with subsection (a) of this section, and the Secretary and the Administrator shall insure that such results, where appropriate, are incorporated into the development and demonstration programs established by this subchapter.

(Pub. L. 93-409, §10, Sept. 3, 1974, 88 Stat. 1074; Pub. L. 93-438, title I, §104(f), title III, §301(h), Oct. 11, 1974, 88 Stat. 1238, 1250; Pub. L. 95-91, title III, §301(a), title VII, §§703, 707, Aug. 4, 1977, 91 Stat. 577, 606, 607.)

TRANSFER OF FUNCTIONS

“Secretary of Energy” substituted in text for “Director”, meaning Director of National Science Foundation, pursuant to sections 104(f) and 301(h) of Pub. L. 93-438, which are classified to sections 5814(f) and 5871(h) of this title and which transferred functions of National Science Foundation relating to or utilized in connection with solar heating and cooling development to Administrator of Energy Research and Development Administration, and pursuant to sections 301(a), 703, and 707 of Pub. L. 95-91, which are classified to sections 7151(a), 7293, and 7297 of this title and which terminated Energy Research and Development Administration and transferred its functions and functions of Administrator thereof (with certain exceptions) to Secretary of Energy.

§ 5509. Supervision of systems and programs by Secretary

(a) Monitoring of performance; collection and evaluation of data; studies and investigation; reports to Congress

The Secretary, utilizing the services of the Director of the National Institute of Standards and Technology and in coordination with such other Government agencies as may be appropriate, shall—

(1) monitor the performance and operation of solar heating and combined solar heating and cooling systems installed in residential dwellings under this subchapter;

(2) collect and evaluate data and information on the performance and operation of solar heating and combined solar heating and cooling systems installed in residential dwellings under this subchapter; and

(3) from time to time, carrying out such studies and investigations and take such other actions, including the submission of special reports to the Congress when appropriate, as may be necessary to assure that the programs for which the Secretary is responsible under this subchapter effectively carry out the policy of this subchapter.

(b) Cooperation with scientific, technical, and professional societies and industry representatives in development of performance criteria and test procedures

In the development of the performance criteria and test procedures required under sections 5503, 5504, and 5506 of this title, the Secretary shall work closely with the appropriate scientific, technical, and professional societies and industry representatives to insure the best possible use of available expertise in this area.

(c) Continued liaison with building and related industries and scientific and technical communities

The Secretary shall also maintain continuing liaison with the building industry and related industries and interests, and with the scientific and technical community during and after the period of the programs carried out under this subchapter, in order to assure that the projected benefits of such programs are and will continue to be realized.

(Pub. L. 93-409, §11, Sept. 3, 1974, 88 Stat. 1074; Pub. L. 100-418, title V, §5115(c), Aug. 23, 1988, 102 Stat. 1433.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100-418 substituted “National Institute of Standards and Technology” for “National Bureau of Standards”.

§ 5510. Dissemination of information to promote practical use of solar heating and cooling technologies

(a) Coordination by Secretary with other Federal agencies in dissemination to Federal, State, and local authorities, etc.

The Secretary shall take all possible steps to assure that full and complete information with respect to the demonstrations and other activities conducted under this subchapter is made available to Federal, State, and local authorities, the building industry and related segments of the economy, the scientific and technical community, and the public at large, both during and after the close of the programs under this subchapter, with the objective of promoting and facilitating to the maximum extent feasible the early and widespread practical use of solar energy for the heating and cooling of buildings throughout the United States. In accordance with regulations prescribed under section 5514 of this title such information shall be disseminated on a coordinated basis by the Secretary, the Administrator, the Director of the National Institute of Standards and Technology, the Secretary of Energy, the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, and other appropriate Federal offices and agencies.

(b) Studies, investigations and modifications of building codes, zoning ordinances, etc., to promote use of solar energy in buildings

In addition, the Secretary shall—

(1) study and investigate the effect of building codes, zoning ordinances, tax regulations, and other laws, codes, ordinances, and practices upon the practical use of solar energy for the heating and cooling of buildings;

(2) determine the extent to which such laws, codes, ordinances, and practices should be changed to permit or facilitate such use, and the methods by which any such changes may best be brought about; and

(3) study the necessity of a program of incentives to accelerate the commercial application of solar heating and cooling technology.

(c) Establishment and operation of Solar Heating and Cooling Information Data Bank; retrieval and dissemination services; compilation of information for use by governmental agencies, nonprofit organizations and private persons; utilization of existing information

(1) In carrying out his functions under subsections (a) and (b) of this section the Secretary, utilizing the capabilities of the National Aeronautics and Space Administration, the Department of Commerce, and the Secretary of Energy to the maximum extent possible, shall establish and operate a Solar Heating and Cooling Information Data Bank (hereinafter in this subsection referred to as the "bank") for the purpose of collecting, reviewing, processing, and disseminating solar heating and cooling information and data in a timely and accurate manner in support of the objectives of this chapter.

(2) Information and data compiled in the bank shall include—

(A) technical information (including reports, journal articles, dissertations,¹ monographs, and project descriptions) on solar energy research, development, and applications;

(B) technical information on the design, construction, and maintenance of buildings compatible with solar heating and cooling concepts;

(C) physical and chemical properties of the materials required for solar heating and cooling;

(D) climatic conditions in appropriate areas of the United States, including those areas where the demonstrations are to be located; and

(E) engineering performance of devices utilized in solar heating and cooling or to be employed in the demonstrations.

(3) In accordance with regulations prescribed under section 5514 of this title, the Secretary shall provide retrieval and dissemination services to cover the solar heating and cooling information described under paragraph (2) for—

(A) Federal, State, and local government organizations that are active in the area of energy resources (and their contractors);

(B) universities, colleges, and other nonprofit organizations; and

(C) private persons, upon request, in appropriate cases.

(4) In carrying out his functions under this subsection, the Secretary shall utilize, when feasible, the existing data base of scientific and technical information in Federal agencies, adding to such data base any information described in paragraph (2) which does not already reside in such base.

(d) Annual reports to President and Congress by officers and agencies; contents; special annual report by Secretary

Each Federal officer and agency having functions under this subchapter shall include in his or its annual report to the President and the Congress a full and complete description of his or its activities (current and projected) under this subchapter, along with his or its recommendations for legislative, administrative, or other action to improve the programs under this subchapter or to achieve the objectives of this subchapter more promptly and effectively. In addition, the Secretary shall submit annually to the President and the Congress a special report summarizing in appropriate detail all of the activities (current and projected) of the various Federal officers and agencies having functions under this subchapter, with the objective of presenting a comprehensive overall view of such programs.

(Pub. L. 93-409, §12, Sept. 3, 1974, 88 Stat. 1075; Pub. L. 93-438, title I, §104(f), title III, §301(h), Oct. 11, 1974, 88 Stat. 1238, 1250; Pub. L. 95-91, title III, §301(a), title VII, §§703, 707, Aug. 4, 1977, 91 Stat. 577, 606, 607; Pub. L. 100-418, title V, §5115(c), Aug. 23, 1988, 102 Stat. 1433; Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §4732(b)(21)], Nov. 29, 1999, 113 Stat. 1536, 1501A-585.)

AMENDMENTS

1999—Subsec. (a). Pub. L. 106-113 substituted "Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office" for "Commissioner of the Patent Office".

1988—Subsec. (a). Pub. L. 100-418 substituted "National Institute of Standards and Technology" for "National Bureau of Standards".

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106-113, set out as a note under section 1 of Title 35, Patents.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103-7 (in which a report required under subsec. (d) of this section is listed in item 12 on page 102), see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

TRANSFER OF FUNCTIONS

"Secretary of Energy" substituted for "Director", meaning Director of National Science Foundation, in subsec. (a) and for "National Science Foundation" in subsec. (c) pursuant to sections 104(f) and 301(h) of Pub. L. 93-438, which are classified to sections 5814(f) and 5871(h) of this title and which transferred functions of National Science Foundation relating to or utilized in connection with solar heating and cooling development to Administrator of Energy Research and Development Administration, and pursuant to sections 301(a), 703, and 707 of Pub. L. 95-91, which are classified to sections 7151(a), 7293, and 7297 of this title and which terminated Energy Research and Development Administration and transferred its functions and functions of Administrator thereof (with certain exceptions) to Secretary of Energy.

¹ So in original. Probably should be "dissertations,".

§ 5511. Federally assisted or federally constructed housing

(a) Maximum dollar amount of federally assisted mortgage loan or maximum per unit or other cost or floor area limitation of federally constructed housing

(1) In determining the maximum dollar amount of any federally assisted mortgage loan (as defined in subsection (b) of this section) or the maximum per unit or other cost or floor area limitation of any federally constructed housing (as defined in subsection (c) of this section), where the law establishing the program under which the loan is made or the housing is constructed specifies such maximum per unit or other cost on floor area limitation and the structure involved is furnished with solar heating or combined solar heating and cooling equipment under the demonstration program established by section 5503, 5504, or 5507 of this title, the maximum amount or cost or floor area limitation so specified which is applicable to such structure shall be deemed to be increased by the amount by which (as determined by the Secretary or the Secretary of Defense, as appropriate) the price or cost or floor area limitation of the structure including such solar heating or combined solar heating and cooling equipment exceeds the price or cost or floor area limitation of the structure with such equipment replaced by conventional heating equipment or conventional heating and cooling equipment (as the case may be).

(2) In addition, in the case of a federally assisted mortgage loan, the cost excess specified in subsection (a) of this section shall be fully taken into account in determining the value or cost of the structure involved for purposes of applying any statutory provision specifying the maximum loan-to-value or -cost ratio; except that, if the law specifies different rates of downpayment for successive increments of such value or cost, the lowest such rate shall apply to the additional cost attributable to the solar heating or combined solar heating and cooling equipment, and such equipment shall otherwise be excluded in determining the total value or cost of the structure.

(b) "Mortgage loan" and "federally assisted mortgage loan" defined

As used in subsection (a) of this section, the term "mortgage loan" means a loan which is made to finance the purchase or construction of a residence or any other building or structure; and the term "federally assisted mortgage loan" means a mortgage loan which—

(1) is made in whole or in part by any lender the deposits or accounts of which are insured by any agency of the Federal Government, or is made in whole or in part by any lender which is itself regulated by any agency of the Federal Government; or

(2) is made in whole or in part, or insured, guaranteed, supplemented, or assisted in any way, by the Secretary or any other officer or agency of the Federal Government or under or in connection with a housing, urban development, or related program administered by the Secretary or a housing or related program ad-

ministered by any other such officer or agency; or

(3) is eligible for purchase by the Federal National Mortgage Association, the Government National Mortgage Association, or the Federal Home Loan Mortgage Corporation, or from any financial institution from which it could be purchased by the Federal Home Loan Mortgage Corporation; or

(4) is made in whole or in part by any "creditor," as defined in section 1602(f) of title 15, who makes or invests in residential real estate loans aggregating more than \$1,000,000 per year.

(c) "Federally constructed housing" defined

As used in subsection (a) of this section, the term "federally constructed housing" means (1) residential or multifamily housing which is constructed by agencies of the Federal Government to provide dwelling accommodations for particular types or classes of persons under programs administered by such Federal agencies (including all housing constructed by the Department of Defense to provide dwelling accommodations for personnel of the armed services or for such personnel and their families), and (2) residential or multifamily housing which is constructed by agencies of State or local government, with financial assistance in any form from the Federal Government, to provide dwelling accommodations for particular types or classes of persons under programs administered by such State or local agencies.

(Pub. L. 93-409, § 13, Sept. 3, 1974, 88 Stat. 1076.)

§ 5511a. Solar Assistance Financing Entity

(a) Establishment

The Secretary of Housing and Urban Development shall establish within the Department of Housing and Urban Development the Solar Assistance Financing Entity (in this section referred to as the "Entity").

(b) Purpose

The purpose of the Entity shall be to assist in financing solar and renewable energy capital investments and projects for eligible buildings under subsection (c) of this section.

(c) Eligible buildings

The Entity may provide assistance under this section only for the following buildings:

(1) Single family housing

Any building consisting of 1 to 4 dwelling units that has a system for heating or cooling, or both.

(2) Multifamily housing

Any building consisting of more than 4 dwelling units that has a system for heating or cooling, or both.

(3) Commercial buildings

Any building used primarily to carry on a business (including any nonprofit business) that is not used primarily for the manufacture or production of raw materials, products, or agricultural commodities.

(4) Schools, hospitals, and agricultural buildings

Any school, any hospital, and any building used exclusively in connection with the har-

vesting, storage, or drying of agricultural commodities.

(5) Other buildings

Any other building of a type that the Entity considers appropriate.

(d) Financing options

Assistance provided under this section by the Entity may be provided only for programs for financing solar and renewable energy capital investments and projects, which may include programs for making loans, making grants, reducing the principal obligations of loans, prepayment of interest on loans, purchase and sale of loans and advances of credit, providing loan guarantees, providing loan downpayment assistance, and providing rebates and other incentives for the purchase and installation of solar and renewable energy measures.

(e) Authority to leverage other funds

The Entity may encourage or require programs receiving assistance under this section to supplement the assistance received under this section with amounts from other public and private sources, and, in making assistance under this section available, may give preference to programs that leverage amounts from such other sources.

(f) Provision of assistance

The Entity shall provide assistance under this section through State agencies responsible for developing State energy conservation plans pursuant to section 6322 of this title, or any other entity or agency authorized to specifically carry out the purposes of this section.

(g) Regulations

Not later than the expiration of the 12-month period beginning on October 28, 1992, the Secretary of Housing and Urban Development, in consultation with the Secretary of Energy, shall issue any regulations necessary to carry out this section, which shall ensure maximum flexibility in utilizing amounts made available under this section.

(h) Authorization of appropriations

There are authorized to be appropriated to carry out this section \$10,000,000 for fiscal year 1993 and \$10,420,000 for fiscal year 1994. Such sums are to be available until expended.

(Pub. L. 102-550, title IX, §912, Oct. 28, 1992, 106 Stat. 3875.)

CODIFICATION

Section was enacted as part of the Housing and Community Development Act of 1992, and not as part of the Solar Heating and Cooling Demonstration Act of 1974 which comprises this subchapter.

Section is comprised of section 912 of Pub. L. 102-550. Subsec. (i) of section 912 of Pub. L. 102-550 repealed sections 1723g and 1723h and chapter 37 (§3601 et seq.) of Title 12, Banks and Banking.

§ 5512. Small business concerns' opportunities to participate in programs

In carrying out their functions under this subchapter, all Federal officers and agencies shall take steps to assure that small business concerns will have realistic and adequate opportu-

nities to participate in the programs under this subchapter to the maximum extent possible.

(Pub. L. 93-409, §14, Sept. 3, 1974, 88 Stat. 1077.)

§ 5513. Priorities and criteria of demonstration programs

The Secretary shall set priorities as far as possible consistent with the intent and operation of this subchapter in accordance with the following criteria:

(a) The residential dwellings and other buildings which will be part of the demonstration programs referred to in sections 5503, 5504, and 5507 of this title shall be located in a sufficient number of different geographic areas in the United States to assure a realistic and effective demonstration of the solar heating systems and combined solar heating and cooling systems involved, and of the dwellings and other buildings themselves, in both rural and urban locations and under climatic conditions which vary as much as possible.

(b) Consideration shall be given to projected costs of commercial production and maintenance of the solar heating systems and combined solar heating and cooling systems utilized in the demonstration programs.

(c) Encouragement should be given in the conduct of programs under this subchapter to those projects in which funds, appropriated by any State or political subdivision thereof for the purpose of sharing costs with the Federal Government for the purchase and installation of solar heating or combined solar heating and cooling components and systems, are committed before or after September 3, 1974.

(Pub. L. 93-409, §15, Sept. 3, 1974, 88 Stat. 1077.)

§ 5514. Regulations

The Administrator and the Secretary in consultation with the Director of the National Institute of Standards and Technology, the Secretary of Energy, the Administrator of the General Services Administration, the Secretary of Defense, and other appropriate officers and agencies, shall prescribe such regulations as may be necessary or appropriate to carry out this subchapter promptly and efficiently. Each such officer or agency, in consultation with the Administrator and the Secretary, may prescribe such regulations as may be necessary or appropriate to carry out his or its particular functions under this subchapter promptly and efficiently.

(Pub. L. 93-409, §16, Sept. 3, 1974, 88 Stat. 1078; Pub. L. 93-438, title I, §104(f), title III, §301(h), Oct. 11, 1974, 88 Stat. 1238, 1250; Pub. L. 95-91, title III, §301(a), title VII, §§703, 707, Aug. 4, 1977, 91 Stat. 577, 606, 607; Pub. L. 100-418, title V, §5115(c), Aug. 23, 1988, 102 Stat. 1433.)

AMENDMENTS

1988—Pub. L. 100-418 substituted “National Institute of Standards and Technology” for “National Bureau of Standards”.

TRANSFER OF FUNCTIONS

“Secretary of Energy” substituted in text for “Director”, meaning Director of the National Science Foundation, pursuant to sections 104(f) and 301(h) of Pub. L.

93-438, which are classified to sections 5814(f) and 5871(h) of this title and which transferred functions of National Science Foundation relating to or utilized in connection with solar heating and cooling development to Administrator of Energy Research and Development Administration, and pursuant to sections 301(a), 703, and 707 of Pub. L. 95-91, which are classified to sections 7151(a), 7293, and 7297 of this title and which terminated Energy Research and Development Administration and transferred its functions and functions of Administrator thereof (with certain exceptions) to Secretary of Energy.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5510 of this title.

§ 5515. Use of publicly assisted housing by Secretary in demonstrations

The Secretary shall make appropriate use of publicly assisted housing and particularly low-rent housing assisted under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] in demonstrating solar heating systems and combined solar heating and cooling systems under this subchapter.

(Pub. L. 93-409, §17, Sept. 3, 1974, 88 Stat. 1078.)

REFERENCES IN TEXT

The United States Housing Act of 1937, referred to in text, is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93-383, title II, §201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§1437 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5502 of this title.

§ 5516. Transfer of functions

Within sixty days after the effective date of the law creating the Energy Research and Development Administration or any other law creating a permanent Federal organization or agency having jurisdiction over the energy research and development functions of the United States (or within sixty days after September 3, 1974, if the effective date of such law occurs prior to the enactment of this subchapter), the energy research and development functions vested in the National Aeronautics and Space Administration and the National Science Foundation under this subchapter and any funds which may have been appropriated pursuant to section 5517 of this title, to the extent necessary or appropriate, may, in accordance with regulations prescribed by the Office of Management and Budget, be transferred to and vested in the Energy Research and Development Administration or such other organization or agency.

(Pub. L. 93-409, §18, Sept. 3, 1974, 88 Stat. 1078.)

TRANSFER OF FUNCTIONS

Energy Research and Development Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

functions of National Science Foundation relating to or utilized in connection with solar heating and cooling development transferred to Administrator of Energy Research and Development Administration by section 5814(f) of this title.

§ 5517. Authorization of appropriations

(a) Appropriations to National Aeronautics and Space Administration

There is hereby authorized to be appropriated to the National Aeronautics and Space Administration for the fiscal year ending June 30, 1975, \$5,000,000, to remain available until expended, to carry out the functions vested in the Administrator by this subchapter.

(b) Appropriations to Department of Housing and Urban Development

There is hereby authorized to be appropriated to the Department of Housing and Urban Development for the fiscal year ending June 30, 1975, \$5,000,000, to remain available until expended. Any sums so appropriated shall be available (1) to carry out the functions vested in the Secretary of Housing and Urban Development by this subchapter, and (2) for transfer to the Department of Defense, the National Institute of Standards and Technology, and the General Services Administration to enable them to carry out their respective functions under this subchapter.

(c) Appropriations for programs under this subchapter

There is hereby authorized to be appropriated for the fiscal years ending June 30, 1976, 1977, 1978, and 1979, \$50,000,000 in the aggregate to carry out the programs established by this subchapter.

(Pub. L. 93-409, §19, Sept. 3, 1974, 88 Stat. 1078; Pub. L. 100-418, title V, §5115(c), Aug. 23, 1988, 102 Stat. 1433.)

AMENDMENTS

1988—Subsec. (b). Pub. L. 100-418 substituted “National Institute of Standards and Technology” for “National Bureau of Standards”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5516 of this title.

SUBCHAPTER II—RESEARCH, DEVELOPMENT, AND DEMONSTRATION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 5902, 5905, 7135a of this title.

§ 5551. Congressional declaration of findings and policy

(a) The Congress hereby finds that—

(1) the needs of a viable society depend on an ample supply of energy;

(2) the current imbalance between domestic supply and demand for fuels and energy is likely to persist for some time;

(3) dependence on nonrenewable energy resources cannot be continued indefinitely, particularly at current rates of consumption;

(4) it is in the Nation's interest to expedite the long-term development of renewable and nonpolluting energy resources, such as solar energy;

(5) the various solar energy technologies are today at widely differing stages of development, with some already near the stage of commercial application and others still requiring basic research;

(6) the early development and export of viable equipment utilizing solar energy, consistent with the established preeminence of the United States in the field of high technology products, can make a valuable contribution to our balance of trade;

(7) the mass production and use of equipment utilizing solar energy will help to eliminate the dependence of the United States upon foreign energy sources and promote the national defense;

(8) to date, the national effort in research, development, and demonstration activities relating to the utilization of solar energy has been extremely limited; therefore

(9) the urgency of the Nation's critical energy shortages and the need to make clean and renewable energy alternatives commercially viable require that the Nation undertake an intensive research, development, and demonstration program with an estimated Federal investment which may reach or exceed \$1,000,000,000.

(b) The Congress declares that it is the policy of the Federal Government to—

(1) pursue a vigorous and viable program of research and resource assessment of solar energy as a major source of energy for our national needs; and

(2) provide for the development and demonstration of practicable means to employ solar energy on a commercial scale.

(Pub. L. 93-473, § 2, Oct. 26, 1974, 88 Stat. 1431.)

SHORT TITLE

For short title of Pub. L. 93-473, which enacted this subchapter, as the "Solar Energy Research, Development, and Demonstration Act of 1974", see section 1 of Pub. L. 93-473, set out as a note under section 5501 of this title.

§ 5552. Definitions

For the purposes of this subchapter—

(1) the term "solar energy" means energy which has recently originated in the Sun, including direct and indirect solar radiation and intermediate solar energy forms such as wind, sea thermal gradients, products of photosynthetic processes, organic wastes, and others;

(2) the term "byproducts" includes, with respect to any solar energy technology or process, any solar energy products (including energy forms) other than those associated with or constituting the primary product of such technology or process;

(3) the term "insolation" means the rate at which solar energy is received at the surface of the Earth;

(4) the term "Project" means the Solar Energy Coordination and Management Project; and

(5) the term "Chairman" means the Chairman of the Project.

(Pub. L. 93-473, § 3, Oct. 26, 1974, 88 Stat. 1431.)

§ 5553. Solar Energy Coordination and Management Project

(a) Establishment

There is hereby established the Solar Energy Coordination and Management Project.

(b) Membership; chairman; compensation

(1) The Project shall be composed of six members as follows:

(A) an Assistant Director of the National Science Foundation;

(B) an Assistant Secretary of Housing and Urban Development;

(C) a member of the Federal Power Commission;

(D) an Associate Administrator of the National Aeronautics and Space Administration;

(E) the General Manager of the Atomic Energy Commission; and

(F) a member to be designated by the President.

(2) The President shall designate one member of the Project to serve as Chairman of the Project.

(3) If the individual designated under paragraph (1)(F) is an officer or employee of the Federal Government, he shall receive no additional pay on account of his service as a member of the Project. If such individual is not an officer or employee of the Federal Government, he shall be entitled to receive the daily equivalent of the annual rate of basic pay in effect for level IV of the Executive Schedule (5 U.S.C. 5315) for each day (including traveltime) during which he is engaged in the actual performance of duties vested in the Project.

(c) Responsibilities

The Project shall have overall responsibility for the provision of effective management and coordination with respect to a national solar energy research, development, and demonstration program, including—

(1) the determination and evaluation of the resource base, including its temporal and geographic characteristics;

(2) research and development on solar energy technologies; and

(3) the demonstration of appropriate solar energy technologies.

(d) Cooperation with other Federal agencies; assignment of other Federal agency personnel to Project

(1) The Project shall carry out its responsibilities under this section in cooperation with the following Federal agencies:

(A) the National Science Foundation, the responsibilities of which shall include research;

(B) the National Aeronautics and Space Administration, the responsibilities of which shall include the provision of management capability and the development of technologies;

(C) the Atomic Energy Commission, the responsibilities of which shall include the development of technologies;

(D) the Department of Housing and Urban Development, the responsibilities of which shall include fostering the utilization of solar energy for the heating and cooling of buildings, pursuant to subchapter I of this chapter; and

(E) the Federal Power Commission, the responsibilities of which shall include fostering the utilization of solar energy for the generation of electricity and for the production of synthetic fuels.

(2) Upon request of the Chairman, the head of any such agency is authorized to detail or assign, on a reimbursable basis or otherwise, any of the personnel of such agency to the Project to assist it in carrying out its responsibilities under this subchapter.

(e) Establishment or approval of program or project; operation and administration of program or project

The Project shall have exclusive authority with respect to the establishment or approval of programs or projects initiated under this subchapter, but the agency involved in any particular program or project shall be responsible for the operation and administration of such program or project.

(f) Authorization of National Aeronautics and Space Administration to undertake and carry out assigned programs

The National Aeronautics and Space Administration is authorized to undertake and carry out those programs assigned to it by the Project.

(Pub. L. 93-473, § 4, Oct. 26, 1974, 88 Stat. 1432.)

TRANSFER OF FUNCTIONS

Federal Power Commission terminated and its functions, personnel, property, funds, etc., transferred to Secretary of Energy (except for certain functions which were transferred to Federal Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a), 7291, and 7293 of this title.

For transfer of functions of Federal Power Commission, with certain reservations, to chairman of such Commission, see Reorg. Plan No. 9 of 1950, §§ 1.2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out in the Appendix to Title 5, Government Organization and Employees.

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of this title. See also Transfer of Functions notes set out under those sections.

Functions of National Science Foundation relating to or utilized in connection with solar heating and cooling development transferred to Administrator of Energy Research and Development Administration by section 5814(f) of this title. Energy Research and Development Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 this title.

§ 5554. Solar energy resource determination and assessment program; objectives; implementation

(a) The Chairman shall initiate a solar energy resource determination and assessment program with the objective of making a regional and national appraisal of all solar energy resources, including data on insolation, wind, sea thermal gradients, and potentials for photosynthetic conversion. The program shall emphasize identification of promising areas for commercial exploitation and development. The specific goals shall include—

(1) the development of better methods for predicting the availability of all solar energy resources, over long time periods and by geographic location;

(2) the development of advanced meteorological, oceanographic, and other instruments, methodology, and procedures necessary to measure the quality and quantity of all solar resources on periodic bases;

(3) the development of activities, arrangements, and procedures for the collection, evaluation, and dissemination of information and data relating to solar energy resource assessment.

(b) The Chairman, acting through the National Aeronautics and Space Administration, the National Oceanic and Atmospheric Administration, and other appropriate agencies, shall—

(1) develop and carry out a general plan for inventorying all forms of solar energy resources associated with Federal lands and (where consistent with property rights) non-Federal lands;

(2) conduct regional surveys based upon such general plan, using innovative meteorological, oceanographic, and space-related techniques, in sufficient numbers to lead to a national inventory of solar energy resources in the United States;

(3) publish and make available maps, reports, and other documents developed from such surveys to encourage and facilitate the commercial development of solar energy resources; and

(4) make such recommendations for legislation as may appear to be necessary to establish policies for solar resources involving Federal lands and waters, consistent with known inventories of various resource types, with the state of technologies for solar energy development, and with evaluation of the environmental impacts of such development.

(Pub. L. 93-473, § 5, Oct. 26, 1974, 88 Stat. 1433.)

§ 5555. Research and development program

(a) Purpose

The Chairman shall initiate a research and development program for the purpose of resolving the major technical problems inhibiting commercial utilization of solar energy in the United States.

(b) Implementation

In connection with or as a part of such program, the Chairman shall—

(1) conduct, encourage, and promote scientific research and studies to develop effective and economical processes and equipment for the purpose of utilizing solar energy in an acceptable manner for beneficial uses;

(2) carry out systems, economic, social, and environmental studies to provide a basis for research, development and demonstration planning and phasing; and

(3) perform or cause to be performed technology assessments relevant to the utilization of solar energy.

(c) Scope

The specific solar energy technologies to be addressed or dealt with in the program shall include—

(1) direct solar heat as a source for industrial processes, including the utilization of low-level heat for process and other industrial purposes;

(2) thermal energy conversion, and other methods, for the generation of electricity and the production of chemical fuels;

(3) the conversion of cellulose and other organic materials (including wastes) to useful energy or fuels;

(4) photovoltaic and other direct conversion processes;

(5) sea thermal gradient conversion;

(6) windpower conversion;

(7) solar heating and cooling of housing and of commercial and public buildings; and

(8) energy storage.

(Pub. L. 93-473, § 6, Oct. 26, 1974, 88 Stat. 1433.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5556 of this title.

§ 5556. Solar energy demonstration facilities program

(a) Authorization for design and construction of facilities; objectives

The Chairman is authorized to initiate a program to design and construct, in specific solar energy technologies (including, but not limited to, those listed in section 5555(c) of this title,¹ facilities or powerplants of sufficient size to demonstrate the technical and economic feasibility of utilizing the various forms of solar energy. The specific goals of such programs shall include—

(1) production of electricity from a number of powerplants, on the order of one to ten megawatts each;

(2) production of synthetic fuels in commercial quantities;

(3) large-scale utilization of solar energy in the form of direct heat;

(4) utilization of thermal and all other by-products of the solar facilities;

(5) design and development of hybrid systems involving the concomitant utilization of solar and other energy sources; and

(6) the continuous operation of such plants and facilities for a period of time.

(b) Criteria for determination to proceed from development program to demonstration

For each of the technologies for which a successful and appropriate development program is completed, the Chairman shall make a determination to proceed to demonstration based on criteria including, but not necessarily limited to, the following:

(1) the technological feasibility of the project;

(2) the costs and benefits of the project, as determined by an economic assessment;

(3) the immediate and the potential uses of the solar energy utilized in the project;

(4) long-term national need for the technology;

(5) environmental impact;

(6) potential for technology transfer to other applications; and

(7) the nature and extent of Federal participation, if any, in the project.

(c) Establishment of one or more projects utilizing each form of solar energy

In carrying out his responsibilities under this section, the Chairman, acting through the ap-

propriate Federal agencies, may provide for the establishment of one or more demonstration projects utilizing each form of solar energy, which shall include, as appropriate, the specific research, development, pilot plant construction and operation, demonstration plant construction and operation, and other facilities and activities which may be necessary to show commercial viability of the specific solar technology.

(d) Investigation and agreements for cooperative development of demonstration facilities

The Chairman, acting through the appropriate Federal agencies, is authorized to investigate and enter into agreements for the cooperative development of facilities to demonstrate solar technologies. The responsible Federal agency may consider—

(1) cooperative agreements with non-Federal entities for construction of facilities and equipment to demonstrate solar energy technologies; and

(2) cooperative agreements with other Federal agencies for the construction of facilities and equipment and operation of facilities to produce energy for direct Federal utilization.

(e) Construction and operation of demonstration projects without cooperative agreements

The Chairman, acting through appropriate Federal agencies is authorized to construct and operate demonstration projects without entering into cooperative agreements with respect to such projects, if the Chairman finds that—

(1) the nature of the resource, the geographical location, the scale and engineering design of the facilities, the techniques of production, or any other significant factor of the specific demonstration project offers opportunities to make important contributions to the general knowledge of solar resources, the techniques of its development, or public confidence in the technology; and

(2) there is no opportunity for cooperative agreements with any non-Federal entity willing and able to cooperate in the demonstration project under subsection (d)(1) of this section, and there is no opportunity for cooperative agreements with other Federal agencies under subsection (d)(2) of this section.

(f) Additional appropriations for projects exceeding maximum amount

If the estimate of the Federal investment with respect to construction and operation costs of any demonstration project proposed to be established under this section exceeds \$20,000,000, no amount may be appropriated for such project except as specifically authorized by legislation hereafter enacted by the Congress.

(g) Disposition of Federal property interests, electricity, synthetic fuels, and other byproducts upon completion of project

(1) At the conclusion of any demonstration project established under this section, or as soon thereafter as may be practicable, the responsible Federal agencies shall, by sale, lease, or otherwise, dispose of all Federal property interests which they have acquired pursuant to this section in accordance with existing law and the terms of the cooperative agreements involved.

¹So in original. Probably should be preceded by a closing parenthesis.

(2) The agency involved shall, under appropriate agreements or other arrangements, provide for the disposition of electricity, synthetic fuels, and other byproducts of the project administered by such agency.

(Pub. L. 93-473, § 7, Oct. 26, 1974, 88 Stat. 1434.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5557, 5566 of this title.

§ 5556a. Solar photovoltaic energy systems studies and acquisitions by Secretary of Energy; scope, contents, and submission dates for reports; acquisition authority and requirements; authorization of appropriations

(a) The Secretary of Energy shall—

(1) initiate and conduct an “application and system design study”, cooperatively with appropriate Federal agencies, to determine the potential for the use of solar photovoltaic systems at specific Federal installations; and this study shall—

(A) include an analysis of those sites that are currently cost-effective for solar photovoltaic energy systems, using life-cycle costing techniques, as well as those which would be cost-effective at expected future market prices;

(B) identify potential sites and uses of solar photovoltaic energy systems at the following agencies as well as any others which the Secretary of Energy deems necessary:

- (i) the Department of Defense;
- (ii) the Department of Transportation (including the United States Coast Guard, the Federal Aviation Administration, and the Federal Highway Administration);
- (iii) the Department of Commerce;
- (iv) the Department of Agriculture; and
- (v) the Department of the Interior;

(C) provide a preliminary report to Congress within nine months following February 25, 1978;

(D) include the presentation of a detailed plan for the implementation of solar photovoltaic energy systems for power generation at specific sites in Federal Government agencies to Congress within twelve months following February 25, 1978;

(2) initiate and conduct a study of the options available to the Federal Government to provide for the adequate growth of the solar photovoltaic industry and to include such possible incentives as government funding, loan guarantees, tax incentives, the operation of pilot plants or production lines and other incentives deemed worthy of consideration by the Secretary of Energy. A preliminary report shall be submitted to Congress within six months following February 25, 1978;

(3) initiate and conduct a study involving the prospects for applications of solar photovoltaic energy systems for power generation in foreign countries, particularly lesser developed countries, and the potential for the exportation of these energy systems. This study shall involve the cooperation of the Department of State and the Department of Commerce, as well as other Federal agencies which

the Secretary of Energy deems appropriate. A final report shall be submitted to the Congress, as well as a preliminary report within twelve months of February 25, 1978; and

(4) be authorized to acquire up to an additional 4.0 megawatts (peak) of solar photovoltaic energy systems. The sum of \$13,000,000 is hereby authorized to be appropriated (in addition to any other amounts authorized by this Act to be appropriated) for the fiscal year ending September 30, 1978, and for delivery in the following twelve months. Such sums shall remain available until expended. The solar photovoltaic energy systems acquired shall be available for use for power generation by Federal agencies, provided that no procurement takes place until their application on Federal sites is determined to be life cycle cost effective.

(b) For technology development, particularly for engineering design and development of the manufacturing process of solar photovoltaic energy systems (primarily for the implementation of automated processes and other cost reducing production technologies), the sum of \$6,000,000 is hereby authorized by this Act to be appropriated for the fiscal year ending September 30, 1978.

(Pub. L. 95-238, title II, § 208, Feb. 25, 1978, 92 Stat. 75.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a)(4), means Pub. L. 95-238, Feb. 25, 1978, 92 Stat. 47, as amended, known as the Department of Energy Act of 1978—Civilian Applications. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was enacted as part of the Department of Energy Act of 1978—Civilian Applications, and not as part of the Solar Energy Research, Development, and Demonstration Act of 1974 which comprises this subchapter.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

NONAPPLICABILITY OF TITLE II OF PUB. L. 95-238 TO ANY AUTHORIZATION OR APPROPRIATION FOR MILITARY APPLICATION OF NUCLEAR ENERGY, ETC.; DEFINITIONS

Nonapplicability of provisions of title II of Pub. L. 95-238 with respect to any authorization or appropriation for any military application of nuclear energy, etc., see section 209 of Pub. L. 95-238, set out as a note under section 5821 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5589 of this title.

§ 5557. Solar Energy Information Data Bank

(a) Establishment; utilization of other Federal agencies; information and data to be compiled; retrieval and dissemination services; utilization of existing scientific and technical information

(1) In carrying out his functions under this subchapter the Chairman, utilizing the capabili-

ties of the National Science Foundation, the National Aeronautics and Space Administration, the Department of Commerce, the Atomic Energy Commission, and other appropriate Federal agencies to the maximum extent possible, shall establish and operate a Solar Energy Information Data Bank (hereinafter in this subsection referred to as the "bank") for the purpose of collecting, reviewing, processing, and disseminating information and data in all of the solar energy technologies referred to in section 5556(c) of this title in a timely and accurate manner in support of the objectives of this subchapter.

(2) Information and data compiled in the bank shall include—

(A) technical information (including reports, journal articles, dissertations, monographs, and project descriptions) on solar energy research, development, and applications;

(B) similar technical information on the design, construction, and maintenance of equipment utilizing solar energy;

(C) general information on solar energy applications to be disseminated for popular consumption;

(D) physical and chemical properties of materials required for solar energy activities and equipment; and

(E) engineering performance data on equipment and devices utilizing solar energy.

(3) In accordance with regulations prescribed under section 5561 of this title, the Chairman shall provide retrieval and dissemination services with respect to the information described under paragraph (2) for—

(A) Federal, State, and local government organizations that are active in the area of energy resources (and their contractors);

(B) universities and colleges in their related research and consulting activities; and

(C) the private sector upon request in appropriate cases.

(4) In carrying out his functions under this subsection, the Chairman shall utilize, when feasible, the existing data base of scientific and technical information in Federal agencies, adding to such data base any information described in paragraph (2) which does not already reside in such base. He shall coordinate or merge this data bank with other Federal energy information data banks as necessary to assure efficient and effective operation.

(b) Studies and research to promote consumer acceptance and utilization of solar energy technologies

In carrying out his functions under this subchapter the Chairman shall perform or cause to be performed studies and research on incentives to promote broader utilization and consumer acceptance of solar energy technologies.

(c) Coordination of solar energy technology utilization programs

The Chairman shall enter into such arrangements and take such other steps as may be necessary or appropriate to provide for the effective coordination of solar energy technology utilization with all other technology utilization programs within the Federal Government.

(Pub. L. 93-473, § 8, Oct. 26, 1974, 88 Stat. 1435.)

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of this title. See also Transfer of Functions notes set out under those sections.

Functions of National Science Foundation relating to or utilized in connection with solar heating and cooling development transferred to Administrator of Energy Research and Development Administration by section 5814(f) of this title. Energy Research and Development Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 5558. Scientific and technical education programs

The Chairman, acting through the National Science Foundation, is authorized and directed to support programs of education in the sciences and engineering to provide the necessary trained personnel to perform the solar energy research, development, and demonstration activities required under this subchapter. Such support may include fellowships, traineeships, technical training programs, technologist training programs, and summer institute programs.

(Pub. L. 93-473, § 9, Oct. 26, 1974, 88 Stat. 1436.)

TRANSFER OF FUNCTIONS

Functions of National Science Foundation relating to or utilized in connection with solar heating and cooling development transferred to Administrator of Energy Research and Development Administration by section 5814(f) of this title. Energy Research and Development Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5560 of this title.

§ 5559. Solar Energy Research Institute; establishment; functions; location

(a) There is established a Solar Energy Research Institute, which shall perform such research, development, and related functions as the Chairman may determine to be necessary or appropriate in connection with the Project's activities under this subchapter or to be otherwise in furtherance of the purpose and objectives of this subchapter.

(b) The Institute may be located (as designated by the Chairman) at a new or existing Federal laboratory (including a non-Federal laboratory performing functions under a contract entered into with the Project or with any of the agencies represented in the Project as well as a laboratory whose personnel are Federal employees).

(Pub. L. 93-473, § 10, Oct. 26, 1974, 88 Stat. 1436.)

§ 5560. International cooperation in solar energy research and programs of education

(a) The Chairman, in furtherance of the objectives of this subchapter, is authorized to cooperate and participate jointly with other nations, especially those with agreements for scientific cooperation with the United States, in the following activities:

(1) interinstitutional, bilateral, or multi-lateral research projects in the field of solar energy; and

(2) agreements and programs which will facilitate the exchange of information and data relating to solar energy resource assessment and solar energy technologies.

(b) The National Science Foundation is authorized to encourage, to the maximum extent practicable and consistent with the other objectives of this subchapter, international participation and cooperation in the development and maintenance of programs of education to carry out the policy set forth in section 5558 of this title.

(Pub. L. 93-473, §11, Oct. 26, 1974, 88 Stat. 1437.)

TRANSFER OF FUNCTIONS

Functions of National Science Foundation relating to or utilized in connection with solar heating and cooling development transferred to Administrator of Energy Research and Development Administration by section 5814(f) of this title. Energy Research and Development Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 5561. Regulations

The Chairman, in consultation with heads of the Federal agencies having functions under this subchapter and with other appropriate officers and agencies, shall prescribe such regulations as may be necessary or appropriate to carry out this subchapter promptly and efficiently. Each such officer or agency, in consultation with the Chairman, may prescribe such regulations as may be necessary or appropriate to carry out his or its particular functions under this subchapter promptly and efficiently.

(Pub. L. 93-473, §12, Oct. 26, 1974, 88 Stat. 1437.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5557 of this title.

§ 5562. Summary in annual report

A summary of all actions taken under the provisions of this subchapter and action planned for the ensuing year shall be included in the annual report required by section 7267 of this title.

(Pub. L. 93-473, §13, Oct. 26, 1974, 88 Stat. 1437; Pub. L. 96-470, title II, §203(c), Oct. 19, 1980, 94 Stat. 2243.)

AMENDMENTS

1980—Pub. L. 96-470 substituted provision requiring a summary of all action taken and action planned be included in the annual report required by section 7267 of this title for provision requiring the Chairman to report annually to the President and Congress on all action taken, action planned, and a projection, to the extent practical, of activities and funding requirements for the ensuing five years.

§ 5563. Project information to Congressional committees

Notwithstanding any other provision of law, the Chairman (or the head of any agency which assumes the functions of the Project pursuant to section 5565 of this title) shall keep the appro-

appropriate committees of the House of Representatives and the Senate fully and currently informed with respect to all activities under this subchapter.

(Pub. L. 93-473, §14, Oct. 26, 1974, 88 Stat. 1437.)

§ 5564. Comprehensive program definition; preparation; utilization of and consultation with other agencies; transmittal to the President and Congress; time of transmittal

(a) The Chairman is authorized and directed to prepare a comprehensive program definition of an integrated effort and commitment for effectively developing solar energy resources. The Chairman, in preparing such program definition, shall utilize and consult with the appropriate Federal agencies, State and local government agencies, and private organizations.

(b) The Chairman shall transmit such comprehensive program definition to the President and to each House of the Congress. An interim report shall be transmitted not later than March 1, 1975. The comprehensive program definition shall be transmitted as soon as possible thereafter, but in any case not later than June 30, 1975.

(Pub. L. 93-473, §15, Oct. 26, 1974, 88 Stat. 1437.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5566 of this title.

§ 5565. Transfer of functions

Within sixty days after the effective date of the law creating a permanent Federal organization or agency having jurisdiction over the energy research and development functions of the United States (or within sixty days after October 26, 1974, if the effective date of such law occurs prior to October 26, 1974), all of the authorities of the Project and all of the research and development functions (and other functions except those related to scientific and technical education) vested in Federal agencies under this subchapter along with related records, documents, personnel, obligations, and other items, to the extent necessary or appropriate, shall, in accordance with regulations prescribed by the Office of Management and Budget, be transferred to and vested in such organization or agency.

(Pub. L. 93-473, §16, Oct. 26, 1974, 88 Stat. 1438.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5563 of this title.

§ 5566. Authorization of appropriations

To carry out the provisions of this subchapter, there are authorized to be appropriated—

(1) for the fiscal year ending June 30, 1976, \$75,000,000;

(2) for subsequent fiscal years, only such sums as the Congress hereafter may authorize by law;

(3) such amounts as may be authorized for the construction of demonstrations pursuant to section 5556(f) of this title; and

(4) to the National Science Foundation for the fiscal year ending June 30, 1975, not to exceed \$2,000,000 to be made available for use in

the preparation of the comprehensive program definition under section 5564 of this title.

(Pub. L. 93-473, §17, Oct. 26, 1974, 88 Stat. 1438.)

SUBCHAPTER III—SOLAR PHOTOVOLTAIC ENERGY RESEARCH, DEVELOPMENT AND DEMONSTRATION

§ 5581. Congressional findings and declaration of policy

(a) The Congress hereby finds that—

(1) the United States of America is faced with a finite and diminishing resource base of native fossil fuels, and as a consequence must develop as quickly as possible a diversified, pluralistic national energy capability and posture;

(2) the current imbalance between supply and demand for fuels and energy in the United States is likely to grow for many years;

(3) the early demonstration of the feasibility of using solar photovoltaic energy systems for the generation of electricity could help to relieve the demand on existing fuel and energy supplies;

(4) the national security and economic well-being of the United States is endangered by its dependence on imported energy supplies which are subject to resource limitations, artificial pricing mechanisms which do not accurately reflect supply and demand relationships, and supply interruptions;

(5) the early development and widespread utilization of photovoltaic energy systems could significantly expand the domestic energy resource base of the United States, thereby lessening its dependence on foreign supplies;

(6) the establishment of sizable markets for photovoltaic energy systems will justify private investment in plant and equipment necessary to realize the economies of scale, and will result in significant reductions in the unit costs of these systems;

(7) the use of solar photovoltaic energy systems for certain limited applications has already proved feasible;

(8) there appear to be no insoluble technical obstacles to the widespread commercial use of solar photovoltaic energy technologies;

(9) an aggressive research and development program should solve existing technical problems of solar photovoltaic systems; and, supported by an assured and growing market for photovoltaic systems during the next decade, should maximize the future contribution of solar photovoltaic energy to this Nation's future energy production;

(10) it is the proper and appropriate role of the Federal Government to undertake research, development, and demonstration programs in solar photovoltaic energy technologies and to supplement and assist private industry and other entities and thereby the general public, so as to hasten the general commercial use of such technologies;

(11) the high cost of imported energy sources impairs the economic growth of many nations which lack sizable domestic energy supplies or are unable to develop these resources;

(12) photovoltaic energy systems are economically competitive with conventional energy resources for a wide variety of applications in many foreign nations at the present time, and will find additional applications with continued cost reductions;

(13) the early development and export of solar photovoltaic energy systems, consistent with the established preeminence of the United States in the field of high technology products, can make a valuable contribution to the well-being of the people of other nations and to this Nation's balance of trade;

(14) the widespread use of solar photovoltaic energy systems to supplement and replace conventional methods for the generation of electricity would have a beneficial effect upon the environment;

(15) to increase the potential application of solar photovoltaic energy systems in remote locations, and to minimize the need for backup systems depending on fossil fuel, programs leading to the development of inexpensive and reliable systems for the storage of electricity should be pursued as part of any solar photovoltaic energy research, development, and demonstration program;

(16) evaluation of the performance and reliability of solar photovoltaic energy technologies can be expedited by testing of prototypes under carefully controlled conditions;

(17) commercial application of solar photovoltaic energy technologies can be expedited by early commercial demonstration under practical conditions;

(18) photovoltaic energy systems are currently adaptable on a life cycle, cost-justified basis for certain of the energy needs of the Federal Government, and will find additional applications as continued refinements improve performance and reduce unit costs;

(19) the Federal Government can stimulate innovation and economic efficiency in the production of photovoltaic energy systems through the development and implementation of policies to promote diversity and maximum competition between firms engaged in the research, manufacture, installation, and/or maintenance of these systems;

(20) innovation and creativity in the development of solar photovoltaic energy components and systems can be fostered through encouraging direct contact between the manufacturers of such systems and the architects, engineers, developers, contractors, and other persons interested in utilizing such systems; and

(21) it is contemplated that the ten-year program established by this subchapter will require the expenditure of \$1,500,000,000 by the Federal Government.

(b) It is therefore declared to be the policy of the United States and the purpose of this subchapter to establish during the next decade an aggressive research, development, and demonstration program involving solar photovoltaic energy systems and in the long term, to have as an objective the production of electricity from photovoltaic systems cost competitive with utility-generated electricity from conventional sources. Further, it is declared to be the policy

of the United States and the purpose of this subchapter that the objectives of this research, development, and demonstration program are—

(1) to double the production of solar photovoltaic energy systems each year during the decade starting with fiscal year 1979, measured by the peak generating capacity of the systems produced, so as to reach a total annual United States production of solar photovoltaic energy systems of approximately two million peak kilowatts, and a total cumulative production of such systems of approximately four million peak kilowatts by fiscal year 1988;

(2) to reduce the average cost of installed solar photovoltaic energy systems to \$1 per peak watt by fiscal year 1988; and

(3) to stimulate the purchase by private buyers of at least 90 per centum of all solar photovoltaic energy systems produced in the United States during fiscal year 1988.

(Pub. L. 95-590, § 2, Nov. 4, 1978, 92 Stat. 2513.)

SHORT TITLE

For short title of this subchapter as the "Solar Photovoltaic Energy Research, Development, and Demonstration Act of 1978", see section 1 of Pub. L. 95-590, set out as a note under section 5501 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5583, 5589 of this title.

§ 5582. Definitions

For purposes of this subchapter—

(1) a "solar photovoltaic energy system" is a system of components which generates electricity from incident sunlight by means of the photovoltaic effect, and which shall include all components, including energy storage devices where appropriate, necessary to provide electricity for individual, industrial, agricultural, or governmental use;

(2) the term "solar photovoltaic energy system" may be used interchangeably with the term "photovoltaic system";

(3) a "hybrid solar photovoltaic energy system" is a system of components that generates electricity from incident sunlight by means of the photovoltaic effect and, in conjunction with electronic and, if appropriate, optical, thermal and storage devices, provides electricity, as well as heat and/or light for individual, commercial, industrial, agricultural, or governmental use;

(4) "photovoltaic effect" refers to the physical phenomenon exhibited under certain circumstances by some materials in which a portion of the light energy striking the material is directly converted to electrical energy;

(5) "facility" means any building, agricultural, commercial or industrial complex or other device constructively employing photovoltaic systems; and

(6) "Secretary" means the Secretary of Energy.

(Pub. L. 95-590, § 3, Nov. 4, 1978, 92 Stat. 2515.)

§ 5583. Establishment and promotion of research, development, and demonstration programs

The Secretary is directed to establish immediately and carry forth such research, develop-

ment, and demonstration programs as may be necessary to meet the objectives of this subchapter as set forth in section 5581(b) of this title, and as a part of any such program shall—

(a) conduct, and promote the coordination and acceleration of, research, development, and demonstrations relating to solar photovoltaic energy systems and components thereof, and

(b) conduct, and promote the coordination and acceleration of, research, development, and demonstrations for systems and components to be used in applications that are dependent for their energy on solar photovoltaic energy systems.

(Pub. L. 95-590, § 4, Nov. 4, 1978, 92 Stat. 2515.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5584, 5586, 5592 of this title.

§ 5584. Federal assistance application procedures; selection of applicants; agreements; financial assistance; observation and monitoring of photovoltaic systems; reports; projects and activities

(a) In carrying out the provisions of section 5583 of this title, the Secretary is authorized—

(1) to establish procedures whereby any public or private entity wishing to install solar photovoltaic components and systems in any new or existing facility may apply for Federal assistance in purchasing and installing, in such facility, photovoltaic components or systems;

(2) to select, as soon as he deems it feasible, a number of the applicants under paragraph (1) and enter into agreements with them for the design, purchase, fabrication, testing, installation, and demonstration of photovoltaic components and systems. Such selection shall be based on the need to obtain scientific, technological, and economic information from a variety of such systems under a variety of circumstances and conditions; and

(3) to arrange, as part of any agreement entered into under paragraph (2), to provide up to 75 per centum of the purchase and installation costs of photovoltaic components or systems, taking into account relevant considerations involving the relative stage of consumer and industry interest and development at the time of the financial assistance action. Such arrangements shall be contingent upon terms and conditions prescribed by the Secretary, including an express agreement that the entity with whom the agreement is entered into shall, in such manner and form and on such terms and conditions as the Secretary may prescribe, observe and monitor (or permit the Secretary or his agents to observe and monitor) the performance and operation of such system for a period of five years, and that such entity (including any subsequent owner of the property) shall regularly furnish the Secretary with such reports thereon as the agreement may require.

(b) The Secretary shall, as he deems appropriate, undertake any projects or activities (including demonstration projects) to further the attainment of the objectives of this section.

(Pub. L. 95-590, § 5, Nov. 4, 1978, 92 Stat. 2516.)

CODIFICATION

Section 5583 of this title, referred to in subsec. (a), was in the original "section (4)" and was translated section 5583 of this title as the probable intent of Congress.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5586, 5592 of this title.

§ 5585. Contracts, grants and arrangements

(a) Selection of photovoltaic components and systems, design concepts, and designs

The Secretary is authorized to select on the basis of open competitions—

- (1) a number of readily available photovoltaic components and systems;
- (2) a number of design concepts for various types of applications which demonstrate adaptability to the utilization of photovoltaic components and systems; and
- (3) a number of designs for applications selected under paragraph (2), so that each design includes specific provisions for the utilization of solar photovoltaic components and systems selected under paragraph (1).

(b) Commercial production and utilization of photovoltaic components and systems; selection of components and systems compatible with chosen design concepts; procurement of components and systems

The Secretary, in accordance with the applicable provisions of sections 5906, 5907, and 5908 of this title and with such program guidelines as the Secretary may establish, shall—

- (1) enter into such contracts and grants as may be necessary or appropriate for the development for commercial production and utilization of photovoltaic components and systems, including any further planning and design which may be required to conform with the specifications set forth in any applicable criteria;
- (2) select, as being compatible with the design concepts chosen under subsection (a)(2) of this section, a reasonable number of photovoltaic components and systems; and
- (3) enter into contracts with a number of persons or firms for the procurement of photovoltaic components and systems, including adequate numbers of spare and replacement parts for such systems.

(c) Design integration; demonstration of prototype photovoltaic systems; utilization of systems in existing facilities; terms and conditions upon transfer of facilities and systems

The Secretary is authorized to award contracts for the design integration between the application concepts and the photovoltaic systems procured by the Secretary under subsection (b)(3) of this section, and for the demonstration of prototype solar photovoltaic systems, and, when appropriate, for the utilization of such systems in existing facilities. Title to and ownership of the facilities so constructed and of photovoltaic systems installed hereunder may be conveyed to purchasers of such facilities under terms and conditions prescribed by the Sec-

retary, including an express agreement that any such purchaser shall, in such manner and form and on such terms and conditions as the Secretary may prescribe, observe and monitor (or permit the Secretary to observe and monitor) the performance and operation of such systems for a period of five years, and that such purchaser (including any subsequent owner) shall regularly furnish the Secretary with such reports thereon as the agreement may require.

(d) Arrangements with Federal agencies for demonstration of systems in Federal buildings and facilities

The Secretary, in consultation with the Administrator of General Services or the Secretary of Defense or both (as may be appropriate) shall enter into arrangements with appropriate Federal agencies concurrently with the conduct of the programs under this section and section 5586 of this title, to carry out such projects and activities (including demonstration projects), with respect to Federal buildings and facilities, as may be appropriate for the demonstration of photovoltaic systems suitable and effective for use in such applications.

(e) Projects and activities

The Secretary shall, as he deems appropriate, undertake any projects or activities (including demonstration projects) to further the attainment of the objectives of this section.

(Pub. L. 95-590, § 6, Nov. 4, 1978, 92 Stat. 2516.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5586, 5592 of this title; title 35 section 210.

§ 5586. Test procedures and performance criteria

(a) Testing program

The Secretary shall conduct a testing program for photovoltaic systems to assist in the development and demonstration of prototype photovoltaic systems, including collectors, controls, power conditioning, and energy storage systems.

(b) Establishment and use of performance criteria

Data obtained from the testing program under subsection (a) of this section shall be evaluated and used in establishing performance criteria. These performance criteria shall be used in the demonstration program described in sections 5583, 5584, and 5585 of this title.

(c) Determination and publication in Federal Register

The Secretary shall determine, prescribe, and publish in the Federal Register, at a time which he determines to be feasible and justified—

- (1) performance criteria for photovoltaic components and systems to be used in appropriate applications, and procedures whereby manufacturers of photovoltaic components and systems shall have their products tested in order to provide certification that such products conform to the performance criteria established under this paragraph; and
- (2) revised performance criteria for photovoltaic components and systems to be used in appropriate applications, and procedures

whereby manufacturers of photovoltaic components and systems shall have their products tested in order to provide certification that such products conform to the performance criteria established under this paragraph. Such criteria may be annually revised by the Secretary, as he deems appropriate.

(d) Performance criteria applicable to photovoltaic component or system procured or installed by Federal Government or with Federal assistance

Any photovoltaic component or system procured or installed by the Federal Government or procured or installed with Federal assistance under section 5584 or section 5585 of this title shall meet appropriate performance criteria prescribed under this section, if such performance criteria have been prescribed.

(Pub. L. 95-590, § 7, Nov. 4, 1978, 92 Stat. 2517.)

CODIFICATION

Section 5584 or section 5585 of this title, referred to in subsec. (d), was in the original "section (5) or section (6)" and was translated section 5584 or 5585 of this title as the probable intent of Congress.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5585, 5587, 5592 of this title.

§ 5587. Supervision of research, development, and demonstration programs

(a) Monitoring of photovoltaic systems; collection and evaluation of data; studies, investigations, and reports

The Secretary, in coordination with such Government agencies as may be appropriate, shall—

(1) monitor the performance and operation of photovoltaic systems installed under this subchapter;

(2) collect and evaluate data and information on the performance and operation of photovoltaic systems installed under this subchapter; and

(3) from time to time carry out such studies and investigations and take such other actions, including the submission of special reports to the Congress when appropriate, as may be necessary to assure that the programs for which the Secretary is responsible under this subchapter effectively carry out the policy of this subchapter.

(b) Assistance from scientific, technical, and professional societies and industry representatives

In the development of the performance criteria and test procedures required under section 5586 of this title, the Secretary shall work closely with the appropriate scientific, technical, and professional societies and industry representatives in order to assure the best possible use of available expertise in this area.

(c) Liaison with industries, interests, and scientific and technical community

The Secretary shall also maintain continuing liaison with related industries and interests, and with the scientific and technical community, during and after the period of the programs carried out under this subchapter, in order to as-

sure that the projected benefits of such programs are and will continue to be realized.

(Pub. L. 95-590, § 8, Nov. 4, 1978, 92 Stat. 2518.)

§ 5588. Solar Photovoltaic Energy Advisory Committee

(a) Establishment; duties

There is hereby established a Solar Photovoltaic Energy Advisory Committee, which shall study and advise the Secretary on—

(1) the scope and pace of research and development with respect to solar photovoltaic energy systems;

(2) the need for and timing of solar photovoltaic energy systems demonstration projects;

(3) the need for change in any research, development, or demonstration program established under this subchapter; and

(4) the economic, technological, and environmental consequences of the use of solar photovoltaic energy systems.

(b) Membership; chairman

The Committee shall be composed of thirteen members, including eleven members appointed by the Secretary from industrial organizations, academic institutions, professional societies or institutions, and other sources as he sees fit, and two members of the public appointed by the President. The Chairman of the Committee shall be elected from among the members thereof.

(c) Cooperation from executive departments, agencies, and instrumentalities

The heads of the departments, agencies, and instrumentalities of the executive branch of the Federal Government shall cooperate with the Committee in carrying out the requirements of this section, and shall furnish to the Committee such information as the Committee deems necessary to carry out this section.

(d) Application of section 7234 of this title

Section 7234 of this title shall be applicable to the Committee, except as inconsistent with this section.

(Pub. L. 95-590, § 9, Nov. 4, 1978, 92 Stat. 2518.)

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law. See section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 5589. Promotion and facilitation of practical use of photovoltaic energy

(a) Dissemination of information; trade secret exemption

The Secretary shall take all possible steps to assure that full and complete information with respect to the demonstrations and other activities conducted under this subchapter is made

available to Federal, State, and local authorities, relevant segments of the economy, the scientific and technical community, and the public at large, both during and after the close of the programs under this subchapter, with the objective of promoting and facilitating to the maximum extent feasible the early and widespread practical use of photovoltaic energy throughout the United States. Any trade secret or other proprietary information shall be exempted from such mandatory disclosure, as otherwise specified in law applicable to research, development and demonstration programs of the Department of Energy, including, but not limited to, section 5916 of this title.

(b) Studies and investigations

The Secretary shall—

(1) study the effect of the widespread utilization of photovoltaic systems on the existing electric utility system at varying levels of photovoltaic contribution to the system;

(2) study and investigate the effect of utility rate structures, building codes, zoning ordinances, and other laws, codes, ordinances, and practices upon the practical use of photovoltaic systems;

(3) determine the extent to which such laws, codes, ordinances, and practices should be changed to permit or facilitate such use and the methods by which any such changes may best be accomplished; and

(4) determine the necessity of a program of incentives to accelerate the commercial application of photovoltaic technologies.

(c) Policy recommendations to President and Congress

The Secretary is authorized and directed, within one year of November 4, 1978, to make recommendations to the President and to the Congress for Federal policies relating to barriers to the early and widespread utilization of photovoltaic systems in order to realize the goals set forth in section 5581 of this title. These recommendations shall include but not be limited to—

(1) the potential for integration of electricity derived from photovoltaic energy systems into the existing national grid system, including the potential of photovoltaic-generated electricity to meet the peak-load energy needs of electric utilities, load management and reliability implications of the utilization of photovoltaic electricity by utilities, the implications of utility ownership of photovoltaic components leased to others primarily for decentralized applications, the impacts of utility use of electricity derived from photovoltaic energy systems on utility rate structures, and the potential for reducing or obviating the need for energy storage components for photovoltaic energy systems through utility interface;

(2) the extent of competition between firms currently engaged in the fabrication and installation of photovoltaics components and systems as it affects the character and growth potential of the American photovoltaics industry, and the likelihood that small photovoltaic firms will have reasonable opportunities to compete and participate in the various programs authorized by this subchapter;

(3) the need to identify legal alternatives to ensure access to direct sunlight for photovoltaic energy systems, the appropriate methods of encouraging the adoption of such alternatives, and the implications of widespread utilization of photovoltaic energy systems for land use and urban development;

(4) the availability of private capital at reasonable interest rates for individuals, businesses and others desiring to establish commercial enterprises to manufacture, market, install, and/or, maintain photovoltaic components and systems, or purchase and install such systems for private, industrial, agricultural, commercial or other uses;

(5) the need for industry-wide warranty and reliability standards for photovoltaic energy components and systems for private sector applications, and, if appropriate, the mechanisms for establishing such standards; and

(6) the attainability of the goals specified in section 5581(b) of this title, and any modification of such goals which the Secretary proposes for consideration by Congress, with supporting analyses.

(d) Consultation with government agencies, industry representatives, and scientific and technical community; coordination and merger of studies and reports

In carrying out his functions under this section, the Secretary shall consult with the appropriate government agencies, industry representatives, and members of the scientific and technical community having expertise and interest in this area. The Secretary also shall ensure that any study or report prepared pursuant to this section is fully coordinated with and reflective of any analyses or reports prepared pursuant to the requirements in section 5556a of this title, and in the President's Solar Energy Domestic Policy Review. The Secretary, as appropriate, may merge any continuing or on-going studies under section 5556a of this title or the Domestic Policy Review with those required by this section or avoid any unnecessary duplication of effort or funding. The separate report requirements of section 5556a of this title and this section, however, shall remain in force.

(Pub. L. 95-590, §10, Nov. 4, 1978, 92 Stat. 2519.)

§ 5590. Submittal to Congressional committees of plan for demonstrating applications of photovoltaic systems and facilitating use in other nations; encouragement of international participation and cooperation; coordination and consistency of plan and international activities with similar activities and programs

(a) Within one year after November 4, 1978, the Secretary, in consultation with the Secretary of State, the Administrator of the Agency for International Development, the Director of the Export/Import Bank and other appropriate Federal officials, shall submit to the House Committee on Science and Technology and the Senate Committee on Energy and Natural Resources a plan for demonstrating applications of solar photovoltaic energy systems and facilitating their widespread use in other nations, especially those with agreements for scientific cooperation with the United States.

(b) The Secretary is authorized to encourage, to the maximum extent practicable, international participation and cooperation in the development and maintenance of programs established under this plan. The Secretary, in consultation and cooperation with the Federal officials specified in subsection (a) of this section, shall insure to the maximum extent possible that the plan submitted under subsection (a) of this section and any other international activities under this section are consistent with and reflective of any similar activities or requirements under any other Federal statute, specifically including any of the several programs under other agencies and Departments involving United States international cooperation and assistance in nonnuclear energy technology, and will not duplicate activities under such programs. The plan required in subsection (a) of this section shall specifically identify all such programs and statutes and describe how the activities under this section will be consistent with such programs, will be coordinated with them, and will avoid duplication of activities under such programs.

(Pub. L. 95-590, §11, Nov. 4, 1978, 92 Stat. 2520; Pub. L. 103-82, title IV, §405(j), Sept. 21, 1993, 107 Stat. 922.)

AMENDMENTS

1993—Subsec. (a). Pub. L. 103-82 struck out “the Director of ACTION,” after “International Development.”

CHANGE OF NAME

Committee on Science and Technology of House of Representatives changed to Committee on Science, Space, and Technology of House of Representatives by House Resolution No. 5, One Hundredth Congress, Jan. 6, 1987. Committee on Science, Space, and Technology of House of Representatives treated as referring to Committee on Science of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Apr. 4, 1994, see section 406(b) of Pub. L. 103-82, set out as a note under section 8332 of Title 5, Government Organization and Employees.

§ 5591. Participation of small business concerns

In carrying out his functions under this subchapter, the Secretary shall take steps to assure that small-business concerns will have realistic and adequate opportunities to participate in the programs under this subchapter to the maximum extent practicable, and the Secretary is directed to set aside at least 10 per centum of the funds authorized and appropriated for the participation of small business concerns.

(Pub. L. 95-590, §12, Nov. 4, 1978, 92 Stat. 2521.)

§ 5592. Priorities

The Secretary shall set priorities, as far as possible consistent with the intent and operation of this subchapter, in accordance with the following criteria:

(1) The applications utilizing photovoltaic systems which will be part of the research, development, and demonstration program and testing

and demonstration programs referred to in sections 5583, 5584, 5585, and 5586 of this title shall be located in a sufficient number of different geographic areas in the United States to assure a realistic and effective demonstration of the use of photovoltaic systems and of the applications themselves, in both rural and urban locations and under climatic conditions which vary as much as possible.

(2) The projected costs of commercial production and maintenance of the photovoltaic systems utilized in the testing and demonstration programs established under this subchapter should be taken into account.

(3) Encouragement should be given in the conduct of programs under this subchapter to those projects in which funds are appropriated by any State or political subdivision thereof for the purpose of sharing costs with the Federal Government for the purchase and installation of photovoltaic components and systems.

(Pub. L. 95-590, §13, Nov. 4, 1978, 92 Stat. 2521.)

§ 5593. Construction with National Energy Conservation Policy Act

Nothing in this subchapter shall be construed to negate, duplicate, or otherwise affect the provisions of part C subchapter III of chapter 91 of this title, and such part C shall be exempted fully from the provisions of this subchapter and any regulations, guidelines, or criteria pursuant thereto.

(Pub. L. 95-590, §14, Nov. 4, 1978, 92 Stat. 2521.)

REFERENCES IN TEXT

Part C (§8271 et seq.) of subchapter III of chapter 91 of this title, referred to in text, was in the original “title V (Federal Initiatives), part 4 (Federal Photovoltaic Utilization), National Energy Conservation Policy Act, H.R. 5037, 95th Congress, if and when that Act becomes enacted by the Ninety-fifth Congress”. H.R. 5037 was enacted as Pub. L. 95-619, Nov. 9, 1978, 92 Stat. 3206, and is classified principally to chapter 91 (§8201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 8201 of this title and Tables.

§ 5594. Authorization of appropriations

There is hereby authorized to be appropriated to the Secretary, for the fiscal year ending September 30, 1979, \$125,000,000, inclusive of any funds otherwise authorized for photovoltaic programs, (1) to carry out the functions vested in the Secretary by this subchapter, (2) to carry out the functions in fiscal year 1979, vested in the Secretary by part C of subchapter III of chapter 91 of this title, and (3) for transfer to such other agencies of the Federal Government as may be required to enable them to carry out their respective functions under this subchapter. Funds appropriated pursuant to this section shall remain available until expended: *Provided*, That any contract or agreement entered into pursuant to this subchapter shall be effective only to such extent or in such amounts as are provided in advance in appropriation Acts. Authorizations of appropriations for fiscal years after fiscal year 1979 shall be contained in the annual authorization for the Department of Energy, except for those funds authorized for fiscal years 1980 and 1981 contained in part C of subchapter III of chapter 91 of this title.

(Pub. L. 95-590, § 15, Nov. 4, 1978, 92 Stat. 2522.)

REFERENCES IN TEXT

Part C (§8271 et seq.) of subchapter III of chapter 91 of this title, referred to in text, was in the original "part 4 of title V of H.R. 5037, 95th Congress, if enacted by the 95th Congress". H.R. 5037 was enacted as Pub. L. 95-619, Nov. 9, 1978, 92 Stat. 3206, and is classified principally to chapter 91 (§8201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 8201 of this title and Tables.

CHAPTER 72—JUVENILE JUSTICE AND DELINQUENCY PREVENTION

SUBCHAPTER I—GENERALLY

- Sec.
5601. Findings.
5602. Purposes.
5603. Definitions.

SUBCHAPTER II—PROGRAMS AND OFFICES

PART A—JUVENILE JUSTICE AND DELINQUENCY PREVENTION OFFICE

5611. Establishment.
 (a) Placement within Department of Justice under general authority of Attorney General.
 (b) Administrator; head, appointment, authorities, etc.
 (c) Deputy Administrator; appointment, functions, etc.
5612. Personnel.
 (a) Selection; employment; compensation.
 (b) Special personnel.
 (c) Personnel from other agencies.
 (d) Experts and consultants.
5613. Voluntary and uncompensated services.
5614. Concentration of Federal efforts.
 (a) Implementation of policy by Administrator; consultation with Council and Advisory Committee.
 (b) Duties of Administrator.
 (c) Information, reports, studies, and surveys from other agencies.
 (d) Delegation of functions.
 (e) Utilization of services and facilities of other agencies; reimbursement.
 (f) Coordination of functions of Administrator and Secretary of Health and Human Services.
5615. Joint funding; non-Federal share requirements.
5616. Coordinating Council on Juvenile Justice and Delinquency Prevention.
 (a) Establishment; membership.
 (b) Chairman and Vice Chairman.
 (c) Functions.
 (d) Meetings.
 (e) Appointment of personnel or staff support by Administrator.
 (f) Expenses of Council members; reimbursement.
 (g) Authorization of appropriations.
5617. Annual report.
5618, 5619. Repealed.

PART B—FEDERAL ASSISTANCE FOR STATE AND LOCAL PROGRAMS

5631. Authority to make grants and contracts.
5632. Allocation of funds.
 (a) Time; basis; amounts.
 (b) Reallocation of unobligated funds.
 (c) Use of allocated funds for development, etc., of State plans; limitations; matching requirements.

- Sec.
 (d) Minimum annual allocation for assistance of advisory group.
5633. State plans.
 (a) Requirements.
 (b) Approval by State agency.
 (c) Compliance with statutory requirements.
 (d) Nonsubmission or nonqualification of plan; expenditure of allotted funds; availability of reallocated funds.
 (e) Administrative and supervisory board membership requirements.
 (f) Technical assistance.
5634 to 5639. Repealed.

PART C—JUVENILE DELINQUENCY PREVENTION BLOCK GRANT PROGRAM

5651. Authority to make grants.
 (a) Grants to eligible States.
 (b) Grants to eligible Indian tribes.
5652. Allocation.
 (a) Allocation among eligible States.
 (b) Allocation among Indian tribes collectively.
5653. Eligibility of States.
 (a) Application.
 (b) Approval of applications.
5654. Grants for local projects.
 (a) Grants by States.
 (b) Special consideration.
5655. Eligibility of entities.
 (a) Eligibility.
 (b) Limitation.
5656. Grants to Indian tribes.
 (a) Eligibility.
 (b) Factors for consideration.
 (c) Grant process.
 (d) Reporting requirement.
 (e) Matching requirement.

PART D—RESEARCH; EVALUATION; TECHNICAL ASSISTANCE; TRAINING

5661. Research and evaluation; statistical analyses; information dissemination.
 (a) Research and evaluation.
 (b) Statistical analyses.
 (c) Grant authority and competitive selection process.
 (d) Implementation of agreements.
 (e) Information dissemination.
5662. Training and technical assistance.
 (a) Training.
 (b) Technical assistance.
 (c) Training and technical assistance to mental health professionals and law enforcement personnel.

PART E—DEVELOPING, TESTING, AND DEMONSTRATING PROMISING NEW INITIATIVES AND PROGRAMS

5665. Grants and projects.
 (a) Authority to make grants.
 (b) Use of grants.
5666. Grants for technical assistance.
5667. Eligibility.
5668. Reports.

PART F—GENERAL AND ADMINISTRATIVE PROVISIONS

5671. Authorization of appropriations.
 (a) Authorization of appropriations for this subchapter (excluding parts C and E).
 (b) Authorization of appropriations for part C.
 (c) Authorization of appropriations for part E.
 (d) Experimentation on individuals; prohibition; "behavior control" defined.

- Sec. 5672. Administrative authority.
 - (a) Authority of Administrator.
 - (b) Certain crime control provisions applicable.
 - (c) Certain other crime control provisions applicable.
 - (d) Rules, regulations, and procedures.
 - (e) Presumption of State compliance.
- 5673. Withholding.
- 5674. Use of funds.
 - (a) In general.
 - (b) Prohibition against use of funds in construction.
 - (c) Funds paid to residential programs.
- 5675. Payments.
 - (a) In general.
 - (b) Percentage of approved costs.
 - (c) Increase of grants to Indian tribes; waiver of liability.
- 5676. Confidentiality of program records.
- 5677. Limitations on use of funds.
- 5678. Rules of construction.
- 5679. Leasing surplus Federal property.
- 5680. Issuance of rules.
- 5681. Content of materials.

SUBCHAPTER III—RUNAWAY AND HOMELESS YOUTH

- 5701. Findings.
 - 5702. Promulgation of rules.
- PART A—BASIC CENTER GRANT PROGRAM
- 5711. Authority to make grants.
 - (a) Grants for centers and services.
 - (b) Allotment of funds for grants; priority given to certain private entities.
 - 5712. Eligibility; plan requirements.
 - (a) Runaway and homeless youth center; project providing temporary shelter; counseling services.
 - (b) Provisions of plan.
 - (c) Applicants providing street-based services.
 - (d) Applicants providing home-based services.
 - (e) Applicants providing drug abuse education and prevention services.
- 5712a to 5712c. Repealed.
- 5712d. Grants for prevention of sexual abuse and exploitation.
 - (a) In general.
 - (b) Priority.
 - (c) Authorization of appropriations.
 - (d) Definitions.
 - 5713. Approval of applications.
 - (a) In general.
 - (b) Priority.
 - 5714. Grants to private entities; staffing.

PART B—TRANSITIONAL LIVING GRANT PROGRAM

- 5714-1. Authority for program.
- 5714-2. Eligibility.
 - (a) In general.
 - (b) Priority.
 - (c) Definition.

PART C—NATIONAL COMMUNICATIONS SYSTEM

- 5714-11. Authority to make grants.

PART D—COORDINATING, TRAINING, RESEARCH, AND OTHER ACTIVITIES

- 5714-21. Coordination.
- 5714-22. Grants for technical assistance and training.
- 5714-23. Authority to make grants for research, evaluation, demonstration, and service projects.
 - (a) Authorization; purposes.
 - (b) Selection factors; special consideration.

- Sec. (c) Priority.
- 5714-24. Demonstration projects to provide services to youth in rural areas.
- 5714-25. Repealed.

PART E—SEXUAL ABUSE PREVENTION PROGRAM

- 5714-41. Authority to make grants.
 - (a) In general.
 - (b) Priority.

PART F—GENERAL PROVISIONS

- 5714a. Assistance to potential grantees.
- 5714b. Lease of surplus Federal facilities for use as runaway and homeless youth centers or as transitional living youth shelter facilities.
 - (a) Conditions of lease arrangements.
 - (b) Period of availability; rent-free use; structural changes; Federal ownership and consent.
- 5715. Reports.
 - (a) In general.
 - (b) Contents of reports.
- 5716. Federal and non-Federal share; methods of payment.
- 5731. Restrictions on disclosure and transfer.
- 5731a. Consolidated review of applications.
- 5732. Evaluation and information.
 - (a) In general.
 - (b) Cooperation.
- 5732a. Definitions.
- 5733. Repealed.
- 5741. Repealed.
- 5751. Authorization of appropriations.
 - (a) In general.
 - (b) Separate identification required.
- 5752. Restrictions on use of funds.
 - (a) In general.
 - (b) Separate accounting.

SUBCHAPTER IV—MISSING CHILDREN

- 5771. Findings.
- 5772. Definitions.
- 5773. Duties and functions of the Administrator.
 - (a) Description of activities.
 - (b) Annual grant to National Center for Missing and Exploited Children.
 - (c) National incidence studies.
 - (d) Independent status of other Federal agencies.
- 5774. Repealed.
- 5775. Grants.
 - (a) Authority of Administrator; description of research, demonstration projects, and service programs.
 - (b) Priorities of grant applicants.
 - (c) Non-Federal fund expenditures requisite for receipt of Federal assistance.
- 5776. Criteria for grants.
 - (a) Establishment of priorities and criteria; publication in Federal Register.
 - (b) Competitive selection process for grant or contract exceeding \$50,000.
 - (c) Multiple grants or contracts to same grantee or contractor.
- 5776a. Repealed.
- 5777. Authorization of appropriations.
 - (a) In general.
 - (b) Evaluation.
- 5778. Repealed.
- 5779. Reporting requirement.
 - (a) In general.
 - (b) Guidelines.
 - (c) Annual summary.
- 5780. State requirements.

SUBCHAPTER V—INCENTIVE GRANTS FOR LOCAL DELINQUENCY PREVENTION PROGRAMS

- 5781. Definition.

- Sec.
5782. Duties and functions of the Administrator.
5783. Grants for delinquency prevention programs.
 (a) Purposes.
 (b) Eligibility.
 (c) Priority.
5784. Authorization of appropriations.
- SUBCHAPTER VI—PUBLIC OUTREACH
- PART A—AMBER ALERT
5791. National coordination of AMBER Alert communications network.
 (a) Coordination within Department of Justice.
 (b) Duties.
 (c) Consultation with Federal Bureau of Investigation.
 (d) Cooperation.
 (e) Report.
- 5791a. Minimum standards for issuance and dissemination of alerts through AMBER Alert communications network.
 (a) Establishment of minimum standards.
 (b) Limitations.
 (c) Cooperation.
- 5791b. Grant program for notification and communications systems along highways for recovery of abducted children.
 (a) Program required.
 (b) Development grants.
 (c) Implementation grants.
 (d) Federal share.
 (e) Distribution of grant amounts.
 (f) Administration.
 (g) Definition.
 (h) Authorization of appropriations.
 (i) Study of State programs.
- 5791c. Grant program for support of AMBER Alert communications plans.
 (a) Program required.
 (b) Activities.
 (c) Federal share.
 (d) Distribution of grant amounts on geographic basis.
 (e) Administration.
 (f) Authorization of appropriations.
- 5791d. Limitation on liability.

PART B—MISSING CHILDREN PROCEDURES IN PUBLIC BUILDINGS

5792. Definitions.
5792a. Procedures in public buildings regarding a missing or lost child.
 (a) In general.
 (b) Notification and search procedures.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 3797, 11804 of this title; title 20 sections 5964, 6434, 6453, 6455; title 25 sections 2433, 2453, 2454.

SUBCHAPTER I—GENERALLY

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 5661, 5678 of this title.

§ 5601. Findings

- (a) The Congress finds the following:
- (1) Although the juvenile violent crime arrest rate in 1999 was the lowest in the decade, there remains a consensus that the number of crimes and the rate of offending by juveniles nationwide is still too high.
- (2) According to the Office of Juvenile Justice and Delinquency Prevention, allowing 1

youth to leave school for a life of crime and of drug abuse costs society \$1,700,000 to \$2,300,000 annually.

(3) One in every 6 individuals (16.2 percent) arrested for committing violent crime in 1999 was less than 18 years of age. In 1999, juveniles accounted for 9 percent of murder arrests, 17 percent of forcible rape arrests, 25 percent of robbery arrest, 14 percent of aggravated assault arrests, and 24 percent of weapons arrests.

(4) More than ½ of juvenile murder victims are killed with firearms. Of the nearly 1,800 murder victims less than 18 years of age, 17 percent of the victims less than 13 years of age were murdered with a firearm, and 81 percent of the victims 13 years of age or older were killed with a firearm.

(5) Juveniles accounted for 13 percent of all drug abuse violation arrests in 1999. Between 1990 and 1999, juvenile arrests for drug abuse violations rose 132 percent.

(6) Over the last 3 decades, youth gang problems have increased nationwide. In the 1970's, 19 States reported youth gang problems. By the late 1990's, all 50 States and the District of Columbia reported gang problems. For the same period, the number of cities reporting youth gang problems grew 843 percent, and the number of counties reporting gang problems increased more than 1,000 percent.

(7) According to a national crime survey of individuals 12 years of age or older during 1999, those 12 to 19 years old are victims of violent crime at higher rates than individuals in all other age groups. Only 30.8 percent of these violent victimizations were reported by youth to police in 1999.

(8) One-fifth of juveniles 16 years of age who had been arrested were first arrested before attaining 12 years of age. Juveniles who are known to the juvenile justice system before attaining 13 years of age are responsible for a disproportionate share of serious crimes and violence.

(9) The increase in the arrest rates for girls and young juvenile offenders has changed the composition of violent offenders entering the juvenile justice system.

(10) These problems should be addressed through a 2-track common sense approach that addresses the needs of individual juveniles and society at large by promoting—

(A) quality prevention programs that—

(i) work with juveniles, their families, local public agencies, and community-based organizations, and take into consideration such factors as whether or not juveniles have been the victims of family violence (including child abuse and neglect); and

(ii) are designed to reduce risks and develop competencies in at-risk juveniles that will prevent, and reduce the rate of, violent delinquent behavior; and

(B) programs that assist in holding juveniles accountable for their actions and in developing the competencies necessary to become responsible and productive members of their communities, including a system of graduated sanctions to respond to each de-

linquent act, requiring juveniles to make restitution, or perform community service, for the damage caused by their delinquent acts, and methods for increasing victim satisfaction with respect to the penalties imposed on juveniles for their acts.

(11) Coordinated juvenile justice and delinquency prevention projects that meet the needs of juveniles through the collaboration of the many local service systems juveniles encounter can help prevent juveniles from becoming delinquent and help delinquent youth return to a productive life.

(b) Congress must act now to reform this program by focusing on juvenile delinquency prevention programs, as well as programs that hold juveniles accountable for their acts and which provide opportunities for competency development. Without true reform, the juvenile justice system will not be able to overcome the challenges it will face in the coming years when the number of juveniles is expected to increase by 18 percent between 2000 and 2030.

(Pub. L. 93-415, title I, §101, Sept. 7, 1974, 88 Stat. 1109; Pub. L. 96-509, §3, Dec. 8, 1980, 94 Stat. 2750; Pub. L. 98-473, title II, §611, Oct. 12, 1984, 98 Stat. 2107; Pub. L. 102-586, §1(a), Nov. 4, 1992, 106 Stat. 4982; Pub. L. 107-273, div. C, title II, §12202, Nov. 2, 2002, 116 Stat. 1869.)

AMENDMENTS

2002—Pub. L. 107-273 amended heading and text generally. Prior to amendment, text read as follows:

“(a) The Congress hereby finds that—

“(1) juveniles accounted for almost half the arrests for serious crimes in the United States in 1974 and for less than one-third of such arrests in 1983;

“(2) recent trends show an upsurge in arrests of adolescents for murder, assault, and weapon use;

“(3) the small number of youth who commit the most serious and violent offenses are becoming more violent;

“(4) understaffed, overcrowded juvenile courts, prosecutorial and public defender offices, probation services, and correctional facilities and inadequately trained staff in such courts, services, and facilities are not able to provide individualized justice or effective help;

“(5) present juvenile courts, foster and protective care programs, and shelter facilities are inadequate to meet the needs of children, who, because of this failure to provide effective services, may become delinquents;

“(6) existing programs have not adequately responded to the particular problems of the increasing numbers of young people who are addicted to or who abuse alcohol and other drugs, particularly nonopioid or polydrug abusers;

“(7) juvenile delinquency can be reduced through programs designed to keep students in elementary and secondary schools through the prevention of unwarranted and arbitrary suspensions and expulsions;

“(8) States and local communities which experience directly the devastating failures of the juvenile justice system do not presently have sufficient technical expertise or adequate resources to deal comprehensively with the problems of juvenile delinquency;

“(9) existing Federal programs have not provided the direction, coordination, resources, and leadership required to meet the crisis of delinquency;

“(10) the juvenile justice system should give additional attention to the problem of juveniles who commit serious crimes, with particular attention given to the areas of sentencing, providing resources necessary for informed dispositions, and rehabilitation;

“(11) emphasis should be placed on preventing youth from entering the juvenile justice system to begin with; and

“(12) the incidence of juvenile delinquency can be reduced through public recreation programs and activities designed to provide youth with social skills, enhance self esteem, and encourage the constructive use of discretionary time.

“(b) Congress finds further that the high incidence of delinquency in the United States today results in enormous annual cost and immeasurable loss of human life, personal security, and wasted human resources and that juvenile delinquency constitutes a growing threat to the national welfare requiring immediate and comprehensive action by the Federal Government to reduce and prevent delinquency.”

1992—Subsec. (a)(2), (3). Pub. L. 102-586, §1(a)(2), added pars. (2) and (3). Former pars. (2) and (3) redesignated (4) and (5), respectively.

Subsec. (a)(4). Pub. L. 102-586, §1(a)(1), (3), redesignated par. (2) as (4) and inserted “prosecutorial and public defender offices.”. Former par. (4) redesignated (6).

Subsec. (a)(5) to (10). Pub. L. 102-586, §1(a)(1), redesignated pars. (3) to (8) as (5) to (10), respectively.

Subsec. (a)(11), (12). Pub. L. 102-586, §1(a)(4)-(6), added pars. (11) and (12).

1984—Subsec. (a)(1). Pub. L. 98-473, §611(1), substituted “accounted” for “account” and “in 1974 and for less than one-third of such arrests in 1983” for “today”.

Subsec. (a)(2). Pub. L. 98-473, §611(2), inserted “and inadequately trained staff in such courts, services, and facilities”.

Subsec. (a)(3). Pub. L. 98-473, §611(3), struck out “the countless, abandoned, and dependent” before “children, who”.

Subsec. (a)(5). Pub. L. 98-473, §611(4), substituted “reduced” for “prevented”.

1980—Subsec. (a)(4). Pub. L. 96-509, §3(1), inserted reference to alcohol abuse.

Subsec. (a)(8). Pub. L. 96-509, §3(2)-(4), added par. (8).

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107-273, div. C, title II, §12223, Nov. 2, 2002, 116 Stat. 1896, as amended by Pub. L. 108-7, div. B, title I, §110(2), (3), Feb. 20, 2003, 117 Stat. 67, provided that:

“(a) EFFECTIVE DATE.—Except as provided in subsection (b), this subtitle [subtitle B (§§12201-12223) of title II of div. C of Pub. L. 107-273, see Short Title of 2002 Amendment note below] and the amendments made by this subtitle shall take effect on the effective date provided in section 12102(b) [set out as a note under section 3796ee of this title].

“(b) APPLICATION OF AMENDMENTS.—The amendments made by this subtitle shall apply only with respect to fiscal years beginning on or after the effective date provided in subsection (a).”

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-690, title VII, §7296, Nov. 18, 1988, 102 Stat. 4463, as amended by Pub. L. 101-204, title X, §1001(d), Dec. 7, 1989, 103 Stat. 1827, provided that:

“(a) EFFECTIVE DATE.—Except as provided in subsection (b), this subtitle [subtitle F (§§7250-7296) of title VII of Pub. L. 100-690, see Short Title of 1988 Amendment note below] and the amendments made by this Act [probably should be subtitle] shall take effect on October 1, 1988.

“(b) APPLICATION OF AMENDMENTS.—(1) The amendments made by section 7258(a) [amending section 5633 of this title] shall not apply to a State with respect to a fiscal year beginning before the date of the enactment of this Act [Nov. 18, 1988] if the State plan is approved before such date by the Administrator for such fiscal year.

“(2) The amendments made by section 7253(b)(1) [amending section 5614 of this title] and section 7278 [enacting section 5732 of this title] shall not apply with respect to fiscal year 1989.

“(3) Notwithstanding the 180-day period provided in—
“(A) section 207 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5611 et seq.) [42 U.S.C. 5617], as added by section 7255;

“(B) section 361 of the Runaway and Homeless Youth Act (42 U.S.C. 5701 et seq.) [42 U.S.C. 5715], as redesignated by section 7273(e)(2) and amended by section 7274; and

“(C) section 404(a)(5) of the Missing Children’s Assistance Act (42 U.S.C. 5773(a)(5)), as amended by section 7285(a)(3);

the reports required by such sections to be submitted with respect to fiscal year 1988 shall be submitted not later than August 1, 1989.”

EFFECTIVE DATE OF 1984 AMENDMENT

Section 670 of division II (§§610-670) of chapter VI of title II of Pub. L. 98-473 provided that:

“(a) Except as provided in subsection (b), this division and the amendments made by this division [see Short Title of 1984 Amendment note below] shall take effect on the date of the enactment of this joint resolution [Oct. 12, 1984] or October 1, 1984, whichever occurs later.

“(b) Paragraph (2) of section 331(c) of the Runaway and Homeless Youth Act, as added by section 657(d) of this division [section 5751(c)(2) of this title], shall not apply with respect to any grant or payment made before the effective date of this joint resolution [Oct. 12, 1984].”

EFFECTIVE DATE OF 1977 AMENDMENT

Section 263(c) of Pub. L. 93-415, as added by Pub. L. 95-115, §6(d)(2), Oct. 3, 1977, 91 Stat. 1058, which provided that except as otherwise provided by the Juvenile Justice Amendments of 1977 (see Short Title of 1977 Amendments note below), the amendments made by the Juvenile Justice Amendments of 1977 were to take effect on Oct. 1, 1977, was repealed by Pub. L. 100-690, title VII, §7266(2), Nov. 18, 1988, 102 Stat. 4449.

EFFECTIVE DATE

Section 263(a), (b) of Pub. L. 93-415, as amended by Pub. L. 94-273, §32(a), Apr. 21, 1976, 90 Stat. 380; Pub. L. 95-115, §6(d)(1), Oct. 3, 1977, 91 Stat. 1058, which provided that (a) except as provided by subsections (b) and (c) (set out as an Effective Date of 1977 Amendment note above), the foregoing provisions of such Act (enacting subchapters I and II of this chapter and amending section 5108 of Title 5, Government Organization and Employees) were to take effect on Sept. 7, 1974, and that (b) section 5614(b)(5) and 5614(b)(6) of this title was to become effective at the close of the thirty-first day of the twelfth calendar month of 1974 and section 5614(l) of this title was to become effective at the close of the thirtieth day of the eleventh month of 1976, was repealed by Pub. L. 100-690, title VII, §7266(2), Nov. 18, 1988, 102 Stat. 4449.

SHORT TITLE OF 2003 AMENDMENTS

Pub. L. 108-96, §1, Oct. 10, 2003, 117 Stat. 1167, provided that: “This Act [enacting section 5752 of this title, amending sections 5701, 5711, 5712, 5714-2, 5714-21, 5714-23, 5714-24, 5732a, 5751, 5771, 5773, and 5777 of this title, repealing section 5714-25 of this title, and enacting provisions set out as notes under sections 5701 and 5714-1 of this title] may be cited as the ‘Runaway, Homeless, and Missing Children Protection Act.’”

SHORT TITLE OF 2002 AMENDMENT

Pub. L. 107-273, div. C, title II, §12201, Nov. 2, 2002, 116 Stat. 1869, provided that: “This subtitle [subtitle B (§§12201-12223) of title II of div. C of Pub. L. 107-273, enacting subchapter V of this chapter, parts C to E of subchapter II of this chapter, and sections 5677 to 5681 of this title, redesignating part J of subchapter II of this chapter as part F of subchapter II of this chapter, amending this section and sections 5602, 5603, 5612, 5614, 5616, 5617, 5631 to 5633, 5671, 5672, 5674, 5675, 5773, 13002,

13003, 13013, and 13023 of this title, repealing parts C to I of subchapter II of this chapter, and enacting provisions set out as notes under this section] may be cited as the ‘Juvenile Justice and Delinquency Prevention Act of 2002.’”

SHORT TITLE OF 1999 AMENDMENT

Pub. L. 106-71, §1, Oct. 12, 1999, 113 Stat. 1032, provided that: “This Act [enacting sections 5714-25, 5714-41, 5731a, and 5732a of this title, amending sections 5701, 5711, 5712, 5713, 5714-1 to 5714-21, 5714-23, 5714-24, 5714a to 5731, 5732, 5751 to 5773, 5775, and 5777 of this title, and enacting provisions set out as a note under section 7101 of Title 20, Education] may be cited as the ‘Missing, Exploited, and Runaway Children Protection Act.’”

SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103-322, title XVII, §170301, Sept. 13, 1994, 108 Stat. 2043, provided that subtitle C (§§170301-170303) of title XVII of Pub. L. 103-322, which enacted section 5776a of this title, amended sections 5777 and 5778 of this title, and enacted provisions set out as a note under section 5776a of this title, could be cited as the “Morgan P. Hardiman Task Force on Missing and Exploited Children Act”, prior to repeal by Pub. L. 105-314, title VII, §703(g), Oct. 30, 1998, 112 Stat. 2989.

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100-690, title VII, §7250(a), Nov. 18, 1988, 102 Stat. 4434, provided that: “This subtitle [subtitle F (§§7250-7296) of title VII of Pub. L. 100-690, enacting sections 5617, 5662, 5665, 5665a, 5667, 5673 to 5676, 5712a to 5712c, 5714-1, 5714-2, 5732, 5733, and 5778 of this title, amending sections 5603, 5611, 5614, 5616, 5631 to 5633, 5651 to 5654, 5659 to 5661, 5671, 5672, 5711 to 5714, 5714a, 5714b, 5715, 5716, 5731, 5751, 5773, 5775, 5776, and 5777 of this title and sections 5315 and 5316 of Title 5, Government Organization and Employees, repealing sections 5634 to 5639, 5656, 5657, and 5774 of this title, enacting provisions set out as notes under this section and section 5617 of this title, and repealing provisions set out as a note under this section] may be cited as the ‘Juvenile Justice and Delinquency Prevention Amendments of 1988.’”

SHORT TITLE OF 1984 AMENDMENT

Section 610 of Pub. L. 98-473 provided that: “This Division [division II (§§610-670) of chapter VI of title II of Pub. L. 98-473, enacting sections 5714a, 5714b, and 5771 to 5777 of this title, amending this section and sections 5602, 5603, 5611, 5612, 5614, 5616, 5632 to 5635, 5637, 5638, 5651, 5653, 5654, 5657, 5659, 5661, 5671, 5672, 5702, 5711 to 5714, and 5751 of this title, repealing sections 5617, 5655, and 5741 of this title, and enacting provisions set out as notes under this section] may be cited as the ‘Juvenile Justice, Runaway Youth, and Missing Children’s Act Amendments of 1984.’”

SHORT TITLE OF 1980 AMENDMENT

Section 1 of Pub. L. 96-509 provided that: “This Act [enacting section 5617 of this title, amending this section and sections 5602, 5603, 5611, 5612, 5614 to 5616, 5632 to 5634, 5637, 5638, 5651, 5654 to 5656, 5659 to 5661, 5671, 5672, 5711 to 5713, 5715, and 5751 of this title, repealing former section 5617 and sections 5618 and 5619 of this title, and enacting provisions set out as notes under this section and section 5633 of this title] may be cited as the ‘Juvenile Justice Amendments of 1980.’”

SHORT TITLE OF 1977 AMENDMENT

Pub. L. 95-115, §1, Oct. 3, 1977, 91 Stat. 1048, provided that: “This Act [enacting section 5741 of this title, amending section 5316 of Title 5, Government Organization and Employees, sections 4351 and 5038 of Title 18, Crimes and Criminal Procedure, and sections 3723, 3767, 3811 to 3814, 3821, 3882, 3883, 3888, 3889, 5603, 5611, 5612, 5614 to 5618, 5631 to 5635, 5637 to 5639, 5651, 5653 to 5657, 5659 to 5661, 5671, 5672, 5711 to 5713, 5731, and 5751 of this title, repealing sections 3821, 5658, and 5732 of this title,

enacting provisions set out as notes under this section and sections 5632, 5633, and 5638 of this title, and amending provisions set out as a note under this section] may be cited as the ‘Juvenile Justice Amendments of 1977.’”

SHORT TITLE

Section 1 of Pub. L. 93-415 provided: “That this Act [enacting this chapter, sections 3772 to 3774, and 3821 of this title, and sections 4351 to 4353, 5038 to 5042 of Title 18, Crimes and Criminal Procedure, amending sections 3701, 3723, 3733, 3768, 3811 to 3814, 3882, 3883 and 3888 of this title, section 5108 of Title 5, Government Organization and Employees, and sections 5031 to 5037 of Title 18, and repealing section 3889 of this title] may be cited as the ‘Juvenile Justice and Delinquency Prevention Act of 1974.’”

Section 301 of title III of Pub. L. 93-415, as amended by Pub. L. 96-509, §18(b), Dec. 8, 1980, 94 Stat. 2762, provided that: “This title [enacting subchapter III of this chapter] may be cited as the ‘Runaway and Homeless Youth Act.’”

Section 401 of title IV of Pub. L. 93-415, as added by Pub. L. 98-473, title II, §660, Oct. 12, 1984, 98 Stat. 2125, as amended by Pub. L. 101-204, title X, §1004(1), Dec. 7, 1990, 103 Stat. 1828, provided that: “This title [enacting subchapter IV of this chapter] may be cited as the ‘Missing Children’s Assistance Act.’”

Section 501 of title V of Pub. L. 93-415, as added by Pub. L. 107-273, div. C, title II, §12222(a), Nov. 2, 2002, 116 Stat. 1894, provided that: “This title [enacting subchapter V of this chapter] may be cited as the ‘Incentive Grants for Local Delinquency Prevention Programs Act of 2002.’”

A prior section 501 of title V of Pub. L. 93-415, as added by Pub. L. 102-586, §5(a), Nov. 4, 1992, 106 Stat. 5027, provided that title V (enacting subchapter V of this chapter) could be cited as the ‘Incentive Grants for Local Delinquency Prevention Programs Act’, prior to the general amendment of title V of Pub. L. 93-415 by Pub. L. 107-273, §12222(a).

Another section 501 of Pub. L. 93-415, title V, Sept. 7, 1974, 88 Stat. 1133, amended section 5031 of Title 18, Crimes and Criminal Procedure.

Pub. L. 108-21, title III, §361, Apr. 30, 2003, 117 Stat. 665, provided that: “This subtitle [subtitle D (§§361-363) of title III of Pub. L. 108-21, enacting part B of subchapter VI of this chapter] may be cited as the ‘Code Adam Act of 2003.’”

§ 5602. Purposes

The purposes of this subchapter and subchapter II of this chapter are—

(1) to support State and local programs that prevent juvenile involvement in delinquent behavior;

(2) to assist State and local governments in promoting public safety by encouraging accountability for acts of juvenile delinquency; and

(3) to assist State and local governments in addressing juvenile crime through the provision of technical assistance, research, training, evaluation, and the dissemination of information on effective programs for combating juvenile delinquency.

(Pub. L. 93-415, title I, §102, Sept. 7, 1974, 88 Stat. 1110; Pub. L. 96-509, §4, Dec. 8, 1980, 94 Stat. 2750; Pub. L. 98-473, title II, §612, Oct. 12, 1984, 98 Stat. 2108; Pub. L. 102-586, §1(b), Nov. 4, 1992, 106 Stat. 4982; Pub. L. 107-273, div. C, title II, §12203, Nov. 2, 2002, 116 Stat. 1871.)

AMENDMENTS

2002—Pub. L. 107-273 amended heading and text generally. Prior to text, section read as follows:

“(a) It is the purpose of this chapter—

“(1) to provide for the thorough and ongoing evaluation of all federally assisted juvenile justice and delinquency prevention programs;

“(2) to provide technical assistance to public and private nonprofit juvenile justice and delinquency prevention programs;

“(3) to establish training programs for persons, including professionals, paraprofessionals, and volunteers, who work with delinquents or potential delinquents or whose work or activities relate to juvenile delinquency programs;

“(4) to establish a centralized research effort on the problems of juvenile delinquency, including the dissemination of the findings of such research and all data related to juvenile delinquency;

“(5) to develop and encourage the implementation of national standards for the administration of juvenile justice, including recommendations for administrative, budgetary, and legislative action at the Federal, State, and local level to facilitate the adoption of such standards;

“(6) to assist States and local communities with resources to develop and implement programs to keep students in elementary and secondary schools and to prevent unwarranted and arbitrary suspensions and expulsions;

“(7) to establish a Federal assistance program to deal with the problems of runaway and homeless youth;

“(8) to strengthen families in which juvenile delinquency has been a problem;

“(9) to assist State and local governments in removing juveniles from jails and lockups for adults;

“(10) to assist State and local governments in improving the administration of justice and services for juveniles who enter the system; and

“(11) to assist States and local communities to prevent youth from entering the justice system to begin with.

“(b) It is therefore the further declared policy of Congress to provide the necessary resources, leadership, and coordination (1) to develop and implement effective methods of preventing and reducing juvenile delinquency, including methods with a special focus on preserving and strengthening families so that juveniles may be retained in their homes; (2) to develop and conduct effective programs to prevent delinquency, to divert juveniles from the traditional juvenile justice system and to provide critically needed alternatives to institutionalization; (3) to improve the quality of juvenile justice in the United States; (4) to increase the capacity of State and local governments and public and private agencies to conduct effective juvenile justice and delinquency prevention and rehabilitation programs and to provide research, evaluation, and training services in the field of juvenile delinquency prevention; (5) to encourage parental involvement in treatment and alternative disposition programs; and (6) to provide for coordination of services between State, local, and community-based agencies and to promote interagency cooperation in providing such services.”

1992—Subsec. (a)(1). Pub. L. 102-586, §1(b)(1)(A), substituted “justice and delinquency prevention” for “delinquency”.

Subsec. (a)(2). Pub. L. 102-586, §1(b)(1)(B), substituted “nonprofit juvenile justice and delinquency prevention programs” for “agencies, institutions, and individuals in developing and implementing juvenile delinquency programs”.

Subsec. (a)(8), (9). Pub. L. 102-586, §1(b)(1)(C)–(E), added par. (8) and redesignated former par. (8) as (9).

Subsec. (a)(10), (11). Pub. L. 102-586, §1(b)(1)(F), (G), added pars. (10) and (11).

Subsec. (b)(1). Pub. L. 102-586, §1(b)(2)(A), substituted “preserving and strengthening families” for “maintaining and strengthening the family unit”.

Subsec. (b)(5), (6). Pub. L. 102-586, §1(b)(2)(B), (C), added cls. (5) and (6).

1984—Subsec. (a)(1). Pub. L. 98-473, §612(1), substituted “ongoing” for “prompt”.

Subsec. (a)(4). Pub. L. 98-473, § 612(2), substituted “the dissemination of” for “an information clearinghouse to disseminate”.

Subsec. (a)(7). Pub. L. 98-473, § 612(3), inserted “and homeless”.

1980—Subsec. (a)(8). Pub. L. 96-509, § 4(a), added par. (8).

Subsec. (b)(1). Pub. L. 96-509, § 4(b), inserted reference to methods with a special focus on maintaining and strengthening the family unit so that juveniles may be retained in their homes.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-273 effective on the first day of the first fiscal year that begins after Nov. 2, 2002, and applicable only with respect to fiscal years beginning on or after the first day of the first fiscal year that begins after Nov. 2, 2002, see section 12223 of Pub. L. 107-273, as amended, set out as a note under section 5601 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-473 effective Oct. 12, 1984, see section 670(a) of Pub. L. 98-473, set out as a note under section 5601 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5662 of this title.

§ 5603. Definitions

For purposes of this chapter—

(1) the term “community based” facility, program, or service means a small, open group home or other suitable place located near the juvenile’s home or family and programs of community supervision and service which maintain community and consumer participation in the planning operation, and evaluation of their programs which may include, but are not limited to, medical, educational, vocational, social, and psychological guidance, training, special education, counseling, alcoholism treatment, drug treatment, and other rehabilitative services;

(2) the term “Federal juvenile delinquency program” means any juvenile delinquency program which is conducted, directly, or indirectly, or is assisted by any Federal department or agency, including any program funded under this chapter;

(3) the term “juvenile delinquency program” means any program or activity related to juvenile delinquency prevention, control, diversion, treatment, rehabilitation, planning, education, training, and research, including drug and alcohol abuse programs; the improvement of the juvenile justice system; and any program or activity designed to reduce known risk factors for juvenile delinquent behavior, provides¹ activities that build on protective factors for, and develop competencies in, juveniles to prevent, and reduce the rate of, delinquent juvenile behavior;

(4)(A) the term “Bureau of Justice Assistance” means the bureau established by section 3741 of this title;

(B) the term “Office of Justice Programs” means the office established by section 3711 of this title;

(C) the term “National Institute of Justice” means the institute established by section 3722(a) of this title; and

(D) the term “Bureau of Justice Statistics” means the bureau established by section 3732(a) of this title;

(5) the term “Administrator” means the agency head designated by section 5611(b) of this title;

(6) the term “law enforcement and criminal justice” means any activity pertaining to crime prevention, control, or reduction or the enforcement of the criminal law, including, but not limited to police efforts to prevent, control, or reduce crime or to apprehend criminals, activities of courts having criminal jurisdiction and related agencies (including prosecutorial and defender services), activities of corrections, probation, or parole authorities, and programs relating to the prevention, control, or reduction of juvenile delinquency or narcotic addiction;

(7) the term “State” means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands;

(8) the term “unit of local government” means—

(A) any city, county, township, town, borough, parish, village, or other general purpose political subdivision of a State;

(B) any law enforcement district or judicial enforcement district that—

(i) is established under applicable State law; and

(ii) has the authority to, in a manner independent of other State entities, establish a budget and raise revenues;

(C) an Indian Tribe that performs law enforcement functions, as determined by the Secretary of the Interior; or

(D) for the purposes of assistance eligibility, any agency of the government of the District of Columbia or the Federal Government that performs law enforcement functions in and for—

(i) the District of Columbia; or

(ii) any Trust Territory of the United States;

(9) the term “combination” as applied to States or units of local government means any grouping or joining together of such States or units for the purpose of preparing, developing, or implementing a juvenile justice and delinquency prevention plan;

(10) the term “construction” means acquisition, expansion, remodeling, and alteration of existing buildings, and initial equipment of any such buildings, or any combination of such activities (including architects’ fees but not the cost of acquisition of land for buildings);

(11) the term “public agency” means any State, unit of local government, combination of such States or units, or any department, agency, or instrumentality of any of the foregoing;

(12) the term “secure detention facility” means any public or private residential facility which—

(A) includes construction fixtures designed to physically restrict the movements and ac-

¹ So in original. Probably should be “provide”.

tivities of juveniles or other individuals held in lawful custody in such facility; and

(B) is used for the temporary placement of any juvenile who is accused of having committed an offense or of any other individual accused of having committed a criminal offense;

(13) the term “secure correctional facility” means any public or private residential facility which—

(A) includes construction fixtures designed to physically restrict the movements and activities of juveniles or other individuals held in lawful custody in such facility; and

(B) is used for the placement, after adjudication and disposition, of any juvenile who has been adjudicated as having committed an offense or any other individual convicted of a criminal offense;

(14) the term “serious crime” means criminal homicide, forcible rape or other sex offenses punishable as a felony, mayhem, kidnapping, aggravated assault, drug trafficking, robbery, larceny or theft punishable as a felony, motor vehicle theft, burglary or breaking and entering, extortion accompanied by threats of violence, and arson punishable as a felony;

(15) the term “treatment” includes but is not limited to medical, educational, special education, social, psychological, and vocational services, corrective and preventive guidance and training, and other rehabilitative services designed to protect the public, including services designed to benefit addicts and other users by eliminating their dependence on alcohol or other addictive or non-addictive drugs or by controlling their dependence and susceptibility to addiction or use;

(16) the term “valid court order” means a court order given by a juvenile court judge to a juvenile—

(A) who was brought before the court and made subject to such order; and

(B) who received, before the issuance of such order, the full due process rights guaranteed to such juvenile by the Constitution of the United States;

(17) the term “Council” means the Coordinating Council on Juvenile Justice and Delinquency Prevention established in section 5616(a)(1) of this title;

(18) the term “Indian tribe” means—

(A) a federally recognized Indian tribe; or
(B) an Alaskan Native organization;

(19) the term “comprehensive and coordinated system of services” means a system that—

(A) ensures that services and funding for the prevention and treatment of juvenile delinquency are consistent with policy goals of preserving families and providing appropriate services in the least restrictive environment so as to simultaneously protect juveniles and maintain public safety;

(B) identifies, and intervenes early for the benefit of, young children who are at risk of developing emotional or behavioral problems because of physical or mental stress or abuse, and for the benefit of their families;

(C) increases interagency collaboration and family involvement in the prevention and treatment of juvenile delinquency; and

(D) encourages private and public partnerships in the delivery of services for the prevention and treatment of juvenile delinquency;

(20) the term “gender-specific services” means services designed to address needs unique to the gender of the individual to whom such services are provided;

(21) the term “home-based alternative services” means services provided to a juvenile in the home of the juvenile as an alternative to incarcerating the juvenile, and includes home detention;

(22) the term “jail or lockup for adults” means a locked facility that is used by a State, unit of local government, or any law enforcement authority to detain or confine adults—

(A) pending the filing of a charge of violating a criminal law;

(B) awaiting trial on a criminal charge; or

(C) convicted of violating a criminal law;

(23) the term “nonprofit organization” means an organization described in section 501(c)(3) of title 26 that is exempt from taxation under section 501(a) of title 26;

(24) the term “graduated sanctions” means an accountability-based, graduated series of sanctions (including incentives, treatment, and services) applicable to juveniles within the juvenile justice system to hold such juveniles accountable for their actions and to protect communities from the effects of juvenile delinquency by providing appropriate sanctions for every act for which a juvenile is adjudicated delinquent, by inducing their law-abiding behavior, and by preventing their subsequent involvement with the juvenile justice system;

(25) the term “contact” means the degree of interaction allowed between juvenile offenders in a secure custody status and incarcerated adults under section 31.303(d)(1)(i) of title 28, Code of Federal Regulations, as in effect on December 10, 1996;

(26) the term “adult inmate” means an individual who—

(A) has reached the age of full criminal responsibility under applicable State law; and

(B) has been arrested and is in custody for or awaiting trial on a criminal charge, or is convicted of a criminal offense;

(27) the term “violent crime” means—

(A) murder or nonnegligent manslaughter, forcible rape, or robbery, or

(B) aggravated assault committed with the use of a firearm;

(28) the term “collocated facilities” means facilities that are located in the same building, or are part of a related complex of buildings located on the same grounds; and

(29) the term “related complex of buildings” means 2 or more buildings that share—

(A) physical features, such as walls and fences, or services beyond mechanical services (heating, air conditioning, water and sewer); or

(B) the specialized services that are allowable under section 31.303(e)(3)(i)(C)(3) of title 28 of the Code of Federal Regulations, as in effect on December 10, 1996.

(Pub. L. 93-415, title I, § 103, Sept. 7, 1974, 88 Stat. 1111; Pub. L. 95-115, § 2, Oct. 3, 1977, 91 Stat. 1048; Pub. L. 96-509, §§ 5, 19(a), Dec. 8, 1980, 94 Stat. 2751, 2762; Pub. L. 98-473, title II, § 613, Oct. 12, 1984, 98 Stat. 2108; Pub. L. 100-690, title VII, §§ 7251(a), 7252(b)(1), Nov. 18, 1988, 102 Stat. 4435, 4436; Pub. L. 102-586, § 1(c), Nov. 4, 1992, 106 Stat. 4983; Pub. L. 105-277, div. A, § 101(b) [title I, § 129(a)(1)], Oct. 21, 1998, 112 Stat. 2681-50, 2681-75; Pub. L. 107-273, div. C, title II, § 12204, Nov. 2, 2002, 116 Stat. 1871.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 93-415, Sept. 7, 1974, 88 Stat. 1109, as amended, which enacted this chapter, sections 3772 to 3774 and 3821 of this title, and sections 4351 to 4353 and 5038 to 5042 of Title 18, Crimes and Criminal Procedure, amended sections 3701, 3723, 3733, 3768, 3811 to 3814, 3882, and 3883 to 3888 of this title, section 5108 of Title 5, Government Organization and Employees, and sections 5031 to 5037 of Title 18, and repealed section 3889 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5601 of this title and Tables.

AMENDMENTS

2002—Par. (3). Pub. L. 107-273, § 12204(1), substituted “designed to reduce known risk factors for juvenile delinquent behavior, provides activities that build on protective factors for, and develop competencies in, juveniles to prevent, and reduce the rate of, delinquent juvenile behavior” for “to help prevent juvenile delinquency”.

Par. (4). Pub. L. 107-273, § 12204(2), made technical amendment to references in original act which appear in text as references to sections 3741, 3711, 3722 and 3732 of this title.

Par. (7). Pub. L. 107-273, § 12204(3), struck out “the Trust Territory of the Pacific Islands,” after “Puerto Rico,”.

Par. (12)(B). Pub. L. 107-273, § 12204(4), struck out “, of any nonoffender,” after “committed an offense”.

Par. (13)(B). Pub. L. 107-273, § 12204(5), struck out “, any nonoffender,” after “committed an offense”.

Par. (14). Pub. L. 107-273, § 12204(6), inserted “drug trafficking,” after “aggravated assault,”.

Par. (16)(C). Pub. L. 107-273, § 12204(7), struck out subpar. (C) which read as follows: “with respect to whom an appropriate public agency (other than a court or law enforcement agency), before the issuance of such order—

“(i) reviewed the behavior of such juvenile and the circumstances under which such juvenile was brought before the court and made subject to such order;

“(ii) determined the reasons for the behavior that caused such juvenile to be brought before the court and made subject to such order;

“(iii) determined that all dispositions (including treatment), other than placement in a secure detention facility or a secure correctional facility, have been exhausted or are clearly inappropriate; and

“(iv) submitted to the court a written report stating the results of the review conducted under clause (i) and the determinations made under clauses (ii) and (iii);”.

Par. (22). Pub. L. 107-273, § 12204(8)(A), redesignated cls. (i) to (iii) as subpars. (A) to (C), respectively.

Pars. (24) to (29). Pub. L. 107-273, § 12204(8)(B)-(10), added pars. (24) to (29).

1998—Par. (8). Pub. L. 105-277, § 101(b) [title I, § 129(a)(1)(A)], added par. (8) and struck out former par. (8) which read as follows: “the term ‘unit of general

local government’ means any city, county, township, town, borough, parish, village, or other general purpose political subdivision of a State, an Indian tribe which performs law enforcement functions as determined by the Secretary of the Interior, or, for the purpose of assistance eligibility, any agency of the District of Columbia government performing law enforcement functions in and for the District of Columbia and funds appropriated by the Congress for the activities of such agency may be used to provide the non-Federal share of the cost of programs or projects funded under this subchapter;”.

Par. (9). Pub. L. 105-277, § 101(b) [title I, § 129(a)(1)(B)], substituted “units of local government” for “units of general local government”.

1992—Par. (16). Pub. L. 102-586, § 1(c)(1), amended par. (16) generally. Prior to amendment, par. (16) read as follows: “the term ‘valid court order’ means a court order given by a juvenile court judge to a juvenile who has been brought before the court and made subject to a court order. The use of the word ‘valid’ permits the incarceration of juveniles for violation of a valid court order only if they received their full due process rights as guaranteed by the Constitution of the United States;”.

Pars. (19) to (23). Pub. L. 102-586, § 1(c)(2)-(4), added pars. (19) to (23).

1988—Par. (5). Pub. L. 100-690, § 7252(b)(1), substituted “section 5611(b)” for “section 5611(c)”.

Pars. (17), (18). Pub. L. 100-690, § 7251(a), added pars. (17) and (18).

1984—Par. (3). Pub. L. 98-473, § 613(1), struck out “for neglected, abandoned, or dependent youth and other youth” before “to help” and inserted “juvenile” after “prevent”.

Par. (4)(A). Pub. L. 98-473, § 613(2), substituted “‘Bureau of Justice Assistance’ means the bureau established by section 3741 of this title” for “‘Office of Justice Assistance, Research, and Statistics’ means the office established by section 3781(a) of this title”.

Par. (4)(B). Pub. L. 98-473, § 613(2), substituted “‘Office of Justice Programs’ means the office established by section 3711 of this title” for “‘Law Enforcement Assistance Administration’ means the administration established by section 3711 of this title”.

Par. (6). Pub. L. 98-473, § 613(3), substituted “services,” for “services,” before “activities of”.

Par. (14). Pub. L. 98-473, § 613(4)(A), inserted “or other sex offenses punishable as a felony”.

Par. (16). Pub. L. 98-473, § 613(4)(B)-(6), added par. (16). 1980—Par. (1). Pub. L. 96-509, § 5(a), inserted reference to special education.

Par. (4). Pub. L. 96-509, § 5(b), designated existing provisions as subpar. (B) and added subpars. (A), (C), and (D).

Par. (5). Pub. L. 96-509, § 19(a), substituted “section 5611(c) of this title” for “section 3711(c) of this title”.

Par. (7). Pub. L. 96-509, § 5(c), substituted “the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands” for “and any territory or possession of the United States”.

Par. (9). Pub. L. 96-509, § 5(d), substituted “juvenile justice and delinquency prevention” for “law enforcement”.

Par. (12). Pub. L. 96-509, § 5(e), substituted definition of “secure detention facility” for definition of “correctional institution or facility”.

Pars. (13), (14). Pub. L. 96-509, § 5(f), added pars. (13) and (14). Former par. (13) redesignated (15).

Par. (15). Pub. L. 96-509, § 5(f), (g), redesignated former par. (13) as (15), inserted reference to special education, and substituted “protect the public, including services designed to benefit addicts and other users by eliminating their dependence on alcohol or other addictive or nonaddictive drugs or by controlling their dependence and susceptibility to addiction or use” for “protect the public and benefit the addict or other user by eliminating his dependence on addicting or other drugs or by controlling his dependence, and his susceptibility to addiction or use”.

1977—Par. (3). Pub. L. 95-115 substituted “to help prevent delinquency” for “who are in danger of becoming delinquent”.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-273 effective on the first day of the first fiscal year that begins after Nov. 2, 2002, and applicable only with respect to fiscal years beginning on or after the first day of the first fiscal year that begins after Nov. 2, 2002, see section 12223 of Pub. L. 107-273, as amended, set out as a note under section 5601 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-690 effective Oct. 1, 1988, see section 7296(a) of Pub. L. 100-690, set out as a note under section 5601 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-473 effective Oct. 12, 1984, see section 670(a) of Pub. L. 98-473, set out as a note under section 5601 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93-415, as added by Pub. L. 95-115, set out as a note under section 5601 of this title.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3791, 11851, 13791 of this title.

SUBCHAPTER II—PROGRAMS AND OFFICES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 5602, 13014, 13024 of this title.

PART A—JUVENILE JUSTICE AND DELINQUENCY PREVENTION OFFICE

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 5671 of this title.

§ 5611. Establishment

(a) Placement within Department of Justice under general authority of Attorney General

There is hereby established an Office of Juvenile Justice and Delinquency Prevention (hereinafter in this division¹ referred to as the “Office”) within the Department of Justice under the general authority of the Attorney General.

(b) Administrator; head, appointment, authorities, etc.

The Office shall be headed by an Administrator (hereinafter in this subchapter referred to as the “Administrator”) appointed by the President, by and with the advice and consent of the Senate, from among individuals who have had experience in juvenile justice programs. The Administrator is authorized to prescribe regulations consistent with this chapter to award, administer, modify, extend, terminate, monitor, evaluate, reject, or deny all grants and contracts from, and applications for, funds made

available under this subchapter. The Administrator shall have the same reporting relationship with the Attorney General as the directors of other offices and bureaus within the Office of Justice Programs have.

(c) Deputy Administrator; appointment, functions, etc.

There shall be in the Office a Deputy Administrator who shall be appointed by the Attorney General. The Deputy Administrator shall perform such functions as the Administrator may from time to time assign or delegate and shall act as the Administrator during the absence or disability of the Administrator.

(Pub. L. 93-415, title II, § 201(a)–(f), Sept. 7, 1974, 88 Stat. 1112, 1113; Pub. L. 95-115, § 3(a)(1)–(3)(A), (4), (5), Oct. 3, 1977, 91 Stat. 1048, 1049; Pub. L. 96-509, §§ 6, 19(b), Dec. 8, 1980, 94 Stat. 2752, 2762; Pub. L. 98-473, title II, § 620, Oct. 12, 1984, 98 Stat. 2108; Pub. L. 100-690, title VII, § 7252(a), Nov. 18, 1988, 102 Stat. 4436; Pub. L. 102-586, § 2(a), Nov. 4, 1992, 106 Stat. 4984.)

REFERENCES IN TEXT

This division, referred to in subsec. (a), probably means division II (§§ 610-670) of chapter VI of title II of Pub. L. 98-473, Oct. 12, 1984, 98 Stat. 2107, which made numerous amendments to this chapter. For complete classification of this division to the Code, see Short Title of 1984 Amendment note set out under section 5601 of this title and Tables.

This chapter, referred to in subsec. (b), was in the original “this Act”, meaning Pub. L. 93-415, Sept. 7, 1974, 88 Stat. 1109, as amended, which enacted this chapter, sections 3772 to 3774 and 3821 of this title, and sections 4351 to 4353 and 5038 to 5042 of Title 18, Crimes and Criminal Procedure, amended sections 3701, 3723, 3733, 3768, 3811 to 3814, 3882, and 3883 to 3888 of this title, section 5108 of Title 5, Government Organization and Employees, and sections 5031 to 5037 of Title 18, and repealed section 3889 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5601 of this title and Tables.

AMENDMENTS

1992—Subsec. (b). Pub. L. 102-586 amended third sentence generally, substituting “The Administrator shall have the same reporting relationship with the Attorney General as the directors of other offices and bureaus within the Office of Justice Programs have” for “The Administrator shall report to the Attorney General through the Assistant Attorney General who heads the Office of Justice Programs under part A of title I of the Omnibus Crime Control and Safe Streets Act of 1968”.

1988—Subsec. (c). Pub. L. 100-690 struck out “and whose function shall be to supervise and direct the National Institute for Juvenile Justice and Delinquency Prevention established by section 5651 of this title” after “Attorney General” in first sentence and “also” after “The Deputy Administrator shall” in second sentence.

1984—Subsec. (a). Pub. L. 98-473, in amending subsec. (a) generally, substituted provisions relating to establishment of the Office of Juvenile Justice and Delinquency Prevention for former provisions which also provided for the establishment of the Office and its administration by an Administrator.

Subsec. (b). Pub. L. 98-473, in amending subsec. (b) generally, substituted provisions relating to functions and duties of the Administrator for former provisions which related to administration of the program.

Subsec. (c). Pub. L. 98-473, in amending subsec. (c) generally, substituted provisions relating to Deputy Administrator for former provisions which related to nomination of the Administrator by the President.

¹ See References in Text note below.

Subsec. (d). Pub. L. 98-473, in amending section generally, struck out subsec. (d) which related to powers of the Administrator. See subsec. (b) of this section.

Subsec. (e). Pub. L. 98-473, in amending section generally, struck out subsec. (e) which related to Deputy Administrator. See subsec. (c) of this section.

Subsec. (f). Pub. L. 98-473, in amending section generally, struck out subsec. (f) which related to supervision of the National Institute for Juvenile Justice and Delinquency Prevention.

1980—Subsec. (a). Pub. L. 96-509, §6(a), substituted “under the general authority of the Attorney General” for “Law Enforcement Assistance Administration”.

Subsec. (c). Pub. L. 96-509, §19(b)(1), substituted “Administrator” for “Associate Administrator” as the name of the official heading the Office of Juvenile Justice and Delinquency Prevention and struck out provisions that had governed the meaning to be placed upon the use of the title “Associate Administrator”.

Subsec. (d). Pub. L. 96-509, §§6(b), 19(b)(2), substituted “Administrator” for “Associate Administrator” wherever appearing, struck out provisions that had required the former Associate Administrator to report directly to the Administrator, and provided that the Administrator exercise all necessary powers under the general authority of the Attorney General rather than the Administrator of the Law Enforcement Assistance Administration, clarified that the Administrator of the Office of Juvenile Justice and Delinquency Prevention is authorized to prescribe regulations for all grants and contracts available under part B and part C of this subchapter, and provided that the Administrator of the Law Enforcement Assistance Administration and the Director of the National Institute of Justice may delegate authority to the Administrator for all juvenile justice and delinquency prevention grants and contracts for funds made available under the Omnibus Crime Control and Safe Streets Act of 1968.

Subsec. (e). Pub. L. 96-509, §§6(c), 19(b)(3), substituted “Deputy Administrator” for “Deputy Associate Administrator”, “Administrator” for “Associate Administrator”, “Attorney General” for “Administrator of the Law Enforcement Assistance Administration”, and “office” for “Office”.

Subsec. (f). Pub. L. 96-509, §§6(d), 19(b)(4), substituted “Deputy Administrator” for “Deputy Associate Administrator” and “Attorney General” for “Administrator”.

1977—Subsec. (a). Pub. L. 95-115, §3(a)(1), inserted provisions relating to administration of provisions of this chapter.

Subsec. (c). Pub. L. 95-115, §3(a)(2), (3)(A), inserted provisions relating to statutory references to the Associate Administrator and substituted “an Associate” for “an Assistant”.

Subsec. (d). Pub. L. 95-115, §3(a)(3)(A), (4), inserted provisions relating to powers of the Associate Administrator over grants and contracts and provisions relating to reporting requirement and substituted “The Associate Administrator shall exercise” for “The Assistant Administrator shall exercise”.

Subsec. (e). Pub. L. 95-115, §3(a)(3)(A), (5), substituted references to Deputy Associate Administrator and Associate Administrator for references to Deputy Assistant Administrator and Assistant Administrator, respectively, wherever appearing.

Subsec. (f). Pub. L. 95-115, §3(a)(5), substituted “Associate” for “Assistant”.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-690 effective Oct. 1, 1988, see section 7296(a) of Pub. L. 100-690, set out as a note under section 5601 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-473 effective Oct. 12, 1984, see section 670(a) of Pub. L. 98-473, set out as a note under section 5601 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93-415, as added by Pub. L. 95-115, set out as a note under section 5601 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5603, 13001a of this title.

§ 5612. Personnel

(a) Selection; employment; compensation

The Administrator is authorized to select, employ, and fix the compensation of such officers and employees, including attorneys, as are necessary to perform the functions vested in the Administrator and to prescribe their functions.

(b) Special personnel

The Administrator is authorized to select, appoint, and employ not to exceed three officers and to fix their compensation at rates not to exceed the rate now or hereafter payable under section 5376 of title 5.

(c) Personnel from other agencies

Upon the request of the Administrator, the head of any Federal agency is authorized to detail, on a reimbursable basis, any of its personnel to the Administrator to assist the Administrator in carrying out the functions of the Administrator under this subchapter.

(d) Experts and consultants

The Administrator may obtain services as authorized by section 3109 of title 5, at rates not to exceed the rate now or hereafter payable under section 5376 of title 5.

(Pub. L. 93-415, title II, §202, Sept. 7, 1974, 88 Stat. 1113; Pub. L. 95-115, §3(a)(3)(A), Oct. 3, 1977, 91 Stat. 1048; Pub. L. 96-509, §19(c), Dec. 8, 1980, 94 Stat. 2763; Pub. L. 98-473, title II, §621, Oct. 12, 1984, 98 Stat. 2109; Pub. L. 102-586, §2(b), Nov. 4, 1992, 106 Stat. 4984; Pub. L. 107-273, div. C, title II, §12221(a)(1), Nov. 2, 2002, 116 Stat. 1894.)

AMENDMENTS

2002—Subsec. (b). Pub. L. 107-273 substituted “payable under section 5376” for “prescribed for GS-18 of the General Schedule by section 5332”.

1992—Subsec. (b). Pub. L. 102-586, §2(b)(1), which directed the substitution of “payable under section 5376” for “prescribes for GS-18 of the General Schedule by section 5332”, could not be executed because the phrase “prescribes for GS-18 of the General Schedule by section 5332” did not appear in text.

Subsec. (c). Pub. L. 102-586, §2(b)(2), substituted “subchapter” for “chapter”.

Subsec. (d). Pub. L. 102-586, §2(b)(3), substituted “payable under section 5376” for “prescribed for GS-18 of the General Schedule by section 5332”.

1984—Subsec. (a). Pub. L. 98-473, §621(a), substituted “the Administrator” for “him” before “and to prescribe”.

Subsec. (c). Pub. L. 98-473, §621(b), substituted “the Administrator” for “him” before “in carrying out” and “the functions of the Administrator” for “his functions”.

1980—Subsec. (c). Pub. L. 96-509, §19(c)(1), substituted “Administrator” for “Associate Administrator”.

Subsec. (d). Pub. L. 96-509, §19(c)(2), substituted “title 5” for “title I” after “section 5332 of”.

1977—Subsec. (c). Pub. L. 95-115 substituted “Associate” for “Assistant”.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-273 effective on the first day of the first fiscal year that begins after Nov. 2, 2002, and applicable only with respect to fiscal years beginning on or after the first day of the first fiscal year

that begins after Nov. 2, 2002, see section 12223 of Pub. L. 107-273, as amended, set out as a note under section 5601 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-473 effective Oct. 12, 1984, see section 670(a) of Pub. L. 98-473, set out as a note under section 5601 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93-415, as added by Pub. L. 95-115, set out as a note under section 5601 of this title.

§ 5613. Voluntary and uncompensated services

The Administrator is authorized to accept and employ, in carrying out the provisions of this chapter, voluntary and uncompensated services notwithstanding the provisions of section 1342 of title 31.

(Pub. L. 93-415, title II, §203, Sept. 7, 1974, 88 Stat. 1113.)

CODIFICATION

“Section 1342 of title 31” substituted in text for “section 3679(b) of the Revised Statutes (31 U.S.C. 665(b))” on authority of Pub. L. 97-258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

§ 5614. Concentration of Federal efforts

(a) Implementation of policy by Administrator; consultation with Council and Advisory Committee

(1) The Administrator shall develop objectives, priorities, and a long-term plan, and implement overall policy and a strategy to carry out such plan, for all Federal juvenile delinquency programs and activities relating to prevention, diversion, training, treatment, rehabilitation, evaluation, research, and improvement of the juvenile justice system in the United States. In carrying out the functions of the Administrator, the Administrator shall consult with the Council.

(2)(A) The plan described in paragraph (1) shall—

(i) contain specific goals and criteria for making grants and contracts, for conducting research, and for carrying out other activities under this subchapter; and

(ii) provide for coordinating the administration programs and activities under this subchapter with the administration of all other Federal juvenile delinquency programs and activities, including proposals for joint funding to be coordinated by the Administrator.

(B) The Administrator shall review the plan described in paragraph (1) annually, revise the plan as the Administrator considers appropriate, and publish the plan in the Federal Register—

(i) not later than 240 days after November 4, 1992, in the case of the initial plan required by paragraph (1); and

(ii) except as provided in clause (i), in the 30-day period ending on October 1 of each year.

(b) Duties of Administrator

In carrying out the purposes of this chapter, the Administrator shall—

(1) advise the President through the Attorney General as to all matters relating to fed-

erally assisted juvenile delinquency programs and Federal policies regarding juvenile delinquency;

(2) assist operating agencies which have direct responsibilities for the prevention and treatment of juvenile delinquency in the development and promulgation of regulations, guidelines, requirements, criteria, standards, procedures, and budget requests in accordance with the policies, priorities, and objectives the Administrator establishes;

(3) conduct and support evaluations and studies of the performance and results achieved by Federal juvenile delinquency programs and activities;

(4) implement Federal juvenile delinquency programs and activities among Federal departments and agencies and between Federal juvenile delinquency programs and activities and other Federal programs and activities which the Administrator determines may have an important bearing on the success of the entire Federal juvenile delinquency effort;

(5)(A) develop for each fiscal year, and publish annually in the Federal Register for public comment, a proposed comprehensive plan describing the particular activities which the Administrator intends to carry out under parts D and E of this subchapter in such fiscal year, specifying in detail those activities designed to satisfy the requirements of parts D and E of this subchapter; and

(B) taking into consideration comments received during the 45-day period beginning on the date the proposed plan is published, develop and publish a final plan, before December 31 of such fiscal year, describing the particular activities which the Administrator intends to carry out under parts D and E of this subchapter in such fiscal year, specifying in detail those activities designed to satisfy the requirements of parts D and E of this subchapter;

(6) provide for the auditing of monitoring systems required under section 5633(a)(15)¹ of this title to review the adequacy of such systems; and

(7) not later than 1 year after November 2, 2002, issue model standards for providing mental health care to incarcerated juveniles.

(c) Information, reports, studies, and surveys from other agencies

The Administrator may require, through appropriate authority, Federal departments and agencies engaged in any activity involving any Federal juvenile delinquency program to provide the Administrator with such information as may be appropriate to prevent the duplication of efforts, and to coordinate activities, related to the prevention of juvenile delinquency.

(d) Delegation of functions

The Administrator shall have the sole authority to delegate any of the functions of the Administrator under this chapter.

(e) Utilization of services and facilities of other agencies; reimbursement

The Administrator is authorized to utilize the services and facilities of any agency of the Fed-

¹ See References in Text note below.

eral Government and of any other public agency or institution in accordance with appropriate agreements, and to pay for such services either in advance or by way of reimbursement as may be agreed upon.

(f) Coordination of functions of Administrator and Secretary of Health and Human Services

All functions of the Administrator under this subchapter shall be coordinated as appropriate with the functions of the Secretary of Health and Human Services under subchapter III of this chapter.

(Pub. L. 93-415, title II, §204, Sept. 7, 1974, 88 Stat. 1113; Pub. L. 94-273, §§8(3), 12(3), Apr. 21, 1976, 90 Stat. 378; Pub. L. 95-115, §3(a)(3)(A), (b), Oct. 3, 1977, 91 Stat. 1048, 1049; Pub. L. 96-509, §§7, 19(d), Dec. 8, 1980, 94 Stat. 2752, 2763; Pub. L. 98-473, title II, §622, Oct. 12, 1984, 98 Stat. 2109; Pub. L. 100-690, title VII, §7253, Nov. 18, 1988, 102 Stat. 4436; Pub. L. 102-586, §2(c), Nov. 4, 1992, 106 Stat. 4984; Pub. L. 107-273, div. C, title II, §12205, Nov. 2, 2002, 116 Stat. 1872.)

REFERENCES IN TEXT

Section 5633(a)(15) of this title, referred to in subsec. (b)(6), was redesignated section 5633(a)(14) of this title by Pub. L. 107-273, div. C, title II, §12209(1)(S), Nov. 2, 2002, 116 Stat. 1879.

CODIFICATION

November 2, 2002, referred to in subsec. (b)(7), was in the original "the date of the enactment of this paragraph" which was translated as meaning the date of enactment of Pub. L. 107-273, which amended par. (7) generally, to reflect the probable intent of Congress.

AMENDMENTS

2002—Subsec. (b)(3). Pub. L. 107-273, §12205(1)(A), struck out "and of the prospective performance and results that might be achieved by alternative programs and activities supplementary to or in lieu of those currently being administered" before semicolon at end.

Subsec. (b)(5). Pub. L. 107-273, §12205(1)(B), substituted "parts D and E" for "parts C and D" wherever appearing.

Subsec. (b)(7). Pub. L. 107-273, §12205(1)(C), amended par. (7) generally. Prior to amendment, par. (7) read as follows: "not later than 1 year after November 4, 1992, issue model standards for providing health care to incarcerated juveniles."

Subsec. (c). Pub. L. 107-273, §12205(2), substituted "as may be appropriate to prevent the duplication of efforts, and to coordinate activities, related to the prevention of juvenile delinquency" for "and reports, and to conduct such studies and surveys, as the Administrator may deem to be necessary to carry out the purposes of this part".

Subsec. (d). Pub. L. 107-273, §12205(3), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: "The Administrator may delegate any of the functions of the Administrator under this subchapter, to any officer or employee of the Office."

Subsecs. (f), (h). Pub. L. 107-273, §12205(5), redesignated subsec. (h) as (f).

Subsec. (i). Pub. L. 107-273, §12205(4), struck out subsec. (i) which read as follows:

"(1) The Administrator shall require through appropriate authority each Federal agency which administers a Federal juvenile delinquency program to submit annually to the Council a juvenile delinquency development statement. Such statement shall be in addition to any information, report, study, or survey which the Administrator may require under subsection (c) of this section.

"(2) Each juvenile delinquency development statement submitted to the Administrator under paragraph

(1) shall contain such information, data, and analyses as the Administrator may require. Such analyses shall include an analysis of the extent to which the juvenile delinquency program of the Federal agency submitting such development statement conforms with and furthers Federal juvenile delinquency prevention and treatment goals and policies.

"(3) The Administrator shall review and comment upon each juvenile delinquency development statement transmitted to the Administrator under paragraph (1). Such development statement, together with the comments of the Administrator, shall be included by the Federal agency involved in every recommendation or request made by such agency for Federal legislation which significantly affects juvenile delinquency prevention and treatment."

1992—Subsec. (a). Pub. L. 102-586, §2(c)(1), designated existing provisions as par. (1), substituted "develop objectives, priorities, and a long-term plan, and implement overall policy and a strategy to carry out such plan," for "implement overall policy and develop objectives and priorities", and added par. (2).

Subsec. (b)(7). Pub. L. 102-586, §2(c)(2), (3), added par. (7).

Subsec. (f). Pub. L. 102-586, §2(c)(4), struck out subsec. (f) which read as follows: "The Administrator is authorized to transfer funds appropriated under this section to any agency of the Federal Government to develop or demonstrate new methods in juvenile delinquency prevention and rehabilitation and to supplement existing delinquency prevention and rehabilitation programs which the Administrator finds to be exceptionally effective or for which the Administrator finds there exists exceptional need."

Subsec. (g). Pub. L. 102-586, §2(c)(4), struck out subsec. (g) which read as follows: "The Administrator is authorized to make grants to, or enter into contracts with, any public or private agency, organization, institution, or individual to carry out the purposes of this subchapter."

1988—Subsec. (a). Pub. L. 100-690, §7253(a), struck out "and the National Advisory Committee for Juvenile Justice and Delinquency Prevention" before period at end.

Subsec. (b)(5). Pub. L. 100-690, §7253(b)(1), amended par. (5) generally. Prior to amendment, par. (5) read as follows: "develop annually with the assistance of the Advisory Committee and the Coordinating Council and submit to the President and the Congress, after the first year following October 3, 1977, prior to December 31, an analysis and evaluation of Federal juvenile delinquency programs conducted and assisted by Federal departments and agencies, the expenditures made, the results achieved, the plans developed, and problems in the operations and coordination of such programs and a brief but precise comprehensive plan for Federal juvenile delinquency programs, with particular emphasis on the prevention of juvenile delinquency and the development of programs and services which will encourage increased diversion of juveniles from the traditional juvenile justice system, which analysis and evaluation shall include recommendations for modifications in organization, management, personnel, standards, budget requests, and implementation plans necessary to increase the effectiveness of these programs;"

Subsec. (b)(6), (7). Pub. L. 100-690, §7253(b)(2), (3), redesignated par. (7) as (6) and struck out former par. (6) which read as follows: "provide technical assistance and training assistance to Federal, State, and local governments, courts, public and private agencies, institutions, and individuals, in the planning, establishment, funding, operation, or evaluation of juvenile delinquency programs; and"

Subsec. (c). Pub. L. 100-690, §7253(c)(1), (3), redesignated subsec. (f) as (c) and struck out former subsec. (c) which read as follows: "The President shall, no later than ninety days after receiving each annual report under subsection (b)(5) of this section, submit a report to the Congress and to the Council containing a de-

tailed statement of any action taken or anticipated with respect to recommendations made by each annual report."

Subsec. (d). Pub. L. 100-690, §7253(c)(1), (3), redesignated subsec. (g) as (d) and struck out former subsec. (d) which read as follows:

"(1) The first annual report submitted to the President and the Congress by the Administrator under subsection (b)(5) of this section shall contain, in addition to information required by subsection (b)(5) of this section, a detailed statement of criteria developed by the Administrator for identifying the characteristics of juvenile delinquency, juvenile delinquency prevention, diversion of youths from the juvenile justice system, and the training, treatment, and rehabilitation of juvenile delinquents.

"(2) The second such annual report shall contain, in addition to information required by subsection (b)(5) of this section, an identification of Federal programs which are related to juvenile delinquency prevention or treatment, together with a statement of the moneys expended for each such program during the most recent complete fiscal year. Such identification shall be made by the Administrator through the use of criteria developed under paragraph (1)."

Subsec. (e). Pub. L. 100-690, §7253(c)(1), (3), redesignated subsec. (h) as (e) and struck out former subsec. (e) which read as follows: "The third such annual report submitted to the President and the Congress by the Administrator under subsection (b)(5) of this section shall contain, in addition to the comprehensive plan required by subsection (b)(5) of this section, a detailed statement of procedures to be used with respect to the submission of juvenile delinquency development statements to the Administrator by Federal agencies under subsection (l) of this section. Such statement submitted by the Administrator shall include a description of information, data, and analyses which shall be contained in each such development statement."

Subsecs. (f) to (h). Pub. L. 100-690, §7253(c)(3), redesignated subsecs. (i) to (k) as (f) to (h), respectively. Former subsecs. (f) to (h) redesignated (c) to (e), respectively.

Subsec. (i). Pub. L. 100-690, §7253(c)(2), (3), redesignated subsec. (l) as (i), struck out "which meets any criterion developed by the Administrator under subsection (d)(1) of this section" after "juvenile delinquency program" and substituted "subsection (c)" for "subsection (f)" in par. (1), and struck out "shall be submitted in accordance with procedure established by the Administrator under subsection (e) of this section and" after "under paragraph (1)" and "under subsection (e) of this section" after "Administrator may require" in par. (2). Former subsec. (i) redesignated (f).

Subsecs. (j) to (l). Pub. L. 100-690, §7253(c)(3), redesignated subsecs. (j) to (l) as (g) to (i), respectively.

Subsec. (m). Pub. L. 100-690, §7253(c)(4), struck out subsec. (m) which read as follows: "To carry out the purposes of this section, there is authorized to be appropriated for each fiscal year an amount which does not exceed 7.5 percent of the total amount appropriated to carry out this subchapter."

1984—Subsec. (a). Pub. L. 98-473, §622(a), substituted "the functions of the Administrator" for "his functions".

Subsec. (b)(2), (4). Pub. L. 98-473, §622(b)(1), (2), substituted "the Administrator" for "he".

Subsec. (b)(7). Pub. L. 98-473, §622(b)(3)-(5), added par. (7).

Subsec. (e). Pub. L. 98-473, §622(c), substituted "subsection (l)" for "subsection (l)".

Subsec. (f). Pub. L. 98-473, §622(d), substituted "the Administrator" for "him" before "with such information" and for "he" before "may deem to be".

Subsec. (g). Pub. L. 98-473, §622(e), substituted "the functions of the Administrator" for "his functions".

Subsec. (i). Pub. L. 98-473, §622(f), substituted "section" for "subchapter" and "the Administrator" for "he" before "finds there exists".

Subsec. (l)(1). Pub. L. 98-473, §622(g)(1), substituted "subsection (d)(1) of this section" for "section 5614(d)(1)

of this title" and "subsection (f) of this section" for "section 5614(f) of this title".

Subsec. (l)(2). Pub. L. 98-473, §622(g)(2), substituted "paragraph (1)" for "subsection (l)" and "subsection (e) of this section" for "section 5614(e) of this title" in two places.

Subsec. (l)(3). Pub. L. 98-473, §622(g)(3), substituted "the Administrator" for "him" after "transmitted to" and "paragraph (1)" for "subsection (l)".

1980—Subsec. (b). Pub. L. 96-509, §7(a), struck out reference to the Associate Administrator in provisions preceding par. (1) and in par. (6) inserted reference to training assistance.

Subsec. (d)(1). Pub. L. 96-509, §19(d)(1), substituted "Administrator for identifying" for "Associate Administrator for identifying".

Subsec. (g). Pub. L. 96-509, §19(d)(2), substituted "Office" for "Administration".

Subsec. (i). Pub. L. 96-509, §19(d)(3), substituted "Administrator finds" for "Associate Administrator finds".

Subsec. (k). Pub. L. 96-509, §19(d)(4), substituted "Health and Human Services" for "the Department of Health, Education, and Welfare".

Subsec. (l)(1). Pub. L. 96-509, §19(d)(5), substituted "developed by the Administrator" for "developed by the Associate Administrator".

Subsec. (m). Pub. L. 96-509, §7(b), added subsec. (m).

1977—Subsec. (b). Pub. L. 95-115, §3(b)(1), in introductory text inserted requirement for assistance of the Associate Administrator, added par. (5), and redesignated par. (7) as (6). Former par. (5), relating to an analysis and evaluation of Federal juvenile delinquency programs, and former par. (6), relating to a comprehensive plan for Federal juvenile delinquency programs, were struck out.

Subsec. (d)(1). Pub. L. 95-115, §3(b)(2), inserted "Associate" before "Administrator for".

Subsec. (e). Pub. L. 95-115, §3(b)(3), substituted "(5)" for "(6)" in two places.

Subsec. (f). Pub. L. 95-115, §3(b)(4), inserted "Federal" after "appropriate authority,".

Subsec. (g). Pub. L. 95-115, §3(b)(5), substituted "subchapter" for "part, except the making of regulations".

Subsec. (i). Pub. L. 95-115, §3(a)(3)(A), substituted "Associate" for "Assistant".

Subsec. (j). Pub. L. 95-115, §3(b)(6), inserted "organization," after "agency," and substituted "subchapter" for "part".

Subsec. (k). Pub. L. 95-115, §3(b)(7), substituted "subchapter" for "part" and "subchapter III of this chapter" for "the Juvenile Delinquency Prevention Act".

Subsec. (l)(1). Pub. L. 95-115, §3(b)(8), inserted "Associate" before "Administrator under".

1976—Subsec. (b)(5). Pub. L. 94-273, §8(3), substituted "December 31" for "September 30".

Subsec. (b)(6). Pub. L. 94-273, §12(3), substituted "June" for "March".

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-273 effective on the first day of the first fiscal year that begins after Nov. 2, 2002, and applicable only with respect to fiscal years beginning on or after the first day of the first fiscal year that begins after Nov. 2, 2002, see section 12223 of Pub. L. 107-273, as amended, set out as a note under section 5601 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-690 effective Oct. 1, 1988, but amendment by section 7253(b)(1) of Pub. L. 100-690 not applicable with respect to fiscal year 1989, see section 7296(a), (b)(2) of Pub. L. 100-690, set out as a note under section 5601 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-473 effective Oct. 12, 1984, see section 670(a) of Pub. L. 98-473, set out as a note under section 5601 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93-415, as added by Pub. L. 95-115, set out as a note under section 5601 of this title.

EFFECTIVE DATE

Section effective Sept. 7, 1974, except that subsec. (b)(5), (6) effective at close of thirty-first day of twelfth calendar month of 1974, and subsec. (l) effective at close of thirtieth day of eleventh calendar month of 1976, see section 263(a), (b) of Pub. L. 93-415, set out as a note under section 5601 of this title.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment unless in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the end of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5616 of this title.

§ 5615. Joint funding; non-Federal share requirements

Notwithstanding any other provision of law, where funds are made available by more than one Federal agency to be used by any agency, organization, institution, or individual to carry out a Federal juvenile delinquency program or activity, any one of the Federal agencies providing funds may be requested by the Administrator to act for all in administering the funds advanced whenever the Administrator finds the program or activity to be exceptionally effective or for which the Administrator finds exceptional need. In such cases, a single non-Federal share requirement may be established according to the proportion of funds advanced by each Federal agency, and the Administrator may order any such agency to waive any technical grant or contract requirement (as defined in such regulations) which is inconsistent with the similar requirement of the administering agency or which the administering agency does not impose.

(Pub. L. 93-415, title II, §205, Sept. 7, 1974, 88 Stat. 1116; Pub. L. 95-115, §3(c), Oct. 3, 1977, 91 Stat. 1049; Pub. L. 96-509, §19(e), Dec. 8, 1980, 94 Stat. 2763.)

AMENDMENTS

1980—Pub. L. 96-509 struck out “Associate” before “Administrator finds” in two places.

1977—Pub. L. 95-115 inserted provisions relating to functions of the Associate Administrator with respect to joint funding.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93-415, as added by Pub. L. 95-115, set out as a note under section 5601 of this title.

§ 5616. Coordinating Council on Juvenile Justice and Delinquency Prevention**(a) Establishment; membership**

(1) There is hereby established, as an independent organization in the executive branch of

the Federal Government a Coordinating Council on Juvenile Justice and Delinquency Prevention composed of the Attorney General, the Secretary of Health and Human Services, the Secretary of Labor, the Secretary of Education, the Secretary of Housing and Urban Development, the Administrator of the Office of Juvenile Justice and Delinquency Prevention, the Director of the Office of National Drug Control Policy, the Chief Executive Officer of the Corporation for National and Community Service, the Commissioner of Immigration and Naturalization, such other officers of Federal agencies who hold significant decisionmaking authority as the President may designate, and individuals appointed under paragraph (2).

(2)(A) Nine members shall be appointed, without regard to political affiliation, to the Council in accordance with this paragraph from among individuals who are practitioners in the field of juvenile justice and who are not officers or employees of the United States.

(B)(i) Three members shall be appointed by the Speaker of the House of Representatives, after consultation with the minority leader of the House of Representatives.

(ii) Three members shall be appointed by the majority leader of the Senate, after consultation with the minority leader of the Senate.

(iii) Three members shall be appointed by the President.

(C)(i) Of the members appointed under each of clauses (i), (ii), and (iii)—

(I) 1 shall be appointed for a term of 1 year;

(II) 1 shall be appointed for a term of 2 years; and

(III) 1 shall be appointed for a term of 3 years;

as designated at the time of appointment.

(ii) Except as provided in clause (iii), a vacancy arising during the term for which an appointment is made may be filled only for the remainder of such term.

(iii) After the expiration of the term for which a member is appointed, such member may continue to serve until a successor is appointed.

(b) Chairman and Vice Chairman

The Attorney General shall serve as Chairman of the Council. The Administrator of the Office of Juvenile Justice and Delinquency Prevention shall serve as Vice Chairman of the Council. The Vice Chairman shall act as Chairman in the absence of the Chairman.

(c) Functions

(1) The function of the Council shall be to coordinate all Federal juvenile delinquency programs (in cooperation with State and local juvenile justice programs) all Federal programs and activities that detain or care for unaccompanied juveniles, and all Federal programs relating to missing and exploited children. The Council shall examine how the separate programs can be coordinated among Federal, State, and local governments to better serve at-risk children and juveniles and shall make recommendations to the President, and to the Congress, at least annually with respect to the coordination of overall policy and development of objectives and priorities for all Federal juvenile delinquency pro-

grams and activities and all Federal programs and activities that detain or care for unaccompanied juveniles. The Council shall review the programs and practices of Federal agencies and report on the degree to which Federal agency funds are used for purposes which are consistent or inconsistent with the mandates of paragraphs (12)(A), (13), and (14) of section 5633(a) of this title. The Council shall review, and make recommendations with respect to, any joint funding proposal undertaken by the Office of Juvenile Justice and Delinquency Prevention and any agency represented on the Council. The Council shall review the reasons why Federal agencies take juveniles into custody and shall make recommendations regarding how to improve Federal practices and facilities for holding juveniles in custody.

(2) In addition to performing their functions as members of the Council, the members appointed under subsection (a)(2) of this section shall collectively—

(A) make recommendations regarding the development of the objectives, priorities, and the long-term plan, and the implementation of overall policy and the strategy to carry out such plan, referred to in section 5614(a)(1) of this title; and

(B) not later than 180 days after November 4, 1992, submit such recommendations to the Administrator, the Chairman of the Committee on Education and the Workforce of the House of Representatives, and the Chairman of the Committee on the Judiciary of the Senate.

(d) Meetings

The Council shall meet at least quarterly.

(e) Appointment of personnel or staff support by Administrator

The Administrator shall, with the approval of the Council, appoint such personnel or staff support as the Administrator considers necessary to carry out the purposes of this subchapter.

(f) Expenses of Council members; reimbursement

Members appointed under subsection (a)(2) of this section shall serve without compensation. Members of the Council shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in carrying out the duties of the Council.

(g) Authorization of appropriations

Of sums available to carry out this part, not more than \$200,000 shall be available to carry out this section.

(Pub. L. 93-415, title II, §206, Sept. 7, 1974, 88 Stat. 1116; Pub. L. 94-237, §4(c)(5)(D), Mar. 19, 1976, 90 Stat. 244; Pub. L. 95-115, §3(a)(3)(A), (5), (d), Oct. 3, 1977, 91 Stat. 1048-1050; Pub. L. 96-509, §§8, 19(f), Dec. 8, 1980, 94 Stat. 2753, 2763; Pub. L. 98-473, title II, §623, Oct. 12, 1984, 98 Stat. 2110; Pub. L. 100-690, title VII, §§7251(b), 7252(b)(2), 7254, Nov. 18, 1988, 102 Stat. 4435-4437; Pub. L. 102-586, §2(d), Nov. 4, 1992, 106 Stat. 4985; Pub. L. 103-82, title IV, §405(k), Sept. 21, 1993, 107 Stat. 922; Pub. L. 107-273, div. C, title II, §12206, Nov. 2, 2002, 116 Stat. 1872.)

AMENDMENTS

2002—Subsec. (c)(2)(B). Pub. L. 107-273 substituted “Education and the Workforce” for “Education and Labor”.

1993—Subsec. (a)(1). Pub. L. 103-82 substituted “the Chief Executive Officer of the Corporation for National and Community Service” for “the Director of the ACTION Agency”.

1992—Subsec. (a)(1). Pub. L. 102-586, §2(d)(1)(A), substituted “the Administrator of the Office of Juvenile Justice and Delinquency Prevention, the Director of the Office of National Drug Control Policy, the Director of the ACTION Agency, the Commissioner of Immigration and Naturalization, such other officers of Federal agencies who hold significant decisionmaking authority as the President may designate, and individuals appointed under paragraph (2)” for “the Director of the Office of Community Services, the Director of the Office of Drug Abuse Policy, the Director of the ACTION Agency, the Director of the Bureau of Prisons, the Commissioner of the Bureau of Indian Affairs, the Director for the Office of Special Education and Rehabilitation Services, the Commissioner for the Administration for Children, Youth, and Families, and the Director of the Youth Development Bureau, or their respective designees, the Assistant Attorney General who heads the Office of Justice Programs, the Director of the Bureau of Justice Assistance, the Administrator of the Office of Juvenile Justice and Delinquency Prevention, the Director of the National Institute of Justice, and representatives of such other agencies as the President shall designate”.

Subsec. (a)(2). Pub. L. 102-586, §2(d)(1)(B), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “Any individual designated under this section shall be selected from individuals who exercise significant decisionmaking authority in the Federal agency involved.”

Subsec. (c). Pub. L. 102-586, §2(d)(2), designated existing provisions as par. (1), inserted “(in cooperation with State and local juvenile justice programs) all Federal programs and activities that detain or care for unaccompanied juveniles,” “shall examine how the separate programs can be coordinated among Federal, State, and local governments to better serve at-risk children and juveniles and” and “and all Federal programs and activities that detain or care for unaccompanied juveniles”, and added par. (2).

Subsec. (f). Pub. L. 102-586, §2(d)(3), inserted “Members appointed under subsection (a)(2) of this section shall serve without compensation.” before “Members of the Council” and struck out “who are employed by the Federal Government full time” before “shall be”.

1988—Subsec. (a)(1). Pub. L. 100-690, §§7251(b), 7252(b)(2), struck out “(hereinafter referred to as the ‘Council’)” after “Coordinating Council on Juvenile Justice and Delinquency Prevention” and “the Deputy Administrator of the Institute for Juvenile Justice and Delinquency Prevention,” after “Administrator of the Office of Juvenile Justice and Delinquency Prevention.”.

Subsec. (c). Pub. L. 100-690, §7254(a)(1)-(3), struck out “, in consultation with the Advisory Board on Missing Children,” after “programs and” in first sentence, substituted “shall” for “is authorized to” and “paragraphs (12)(A), (13), and (14) of section 5633(a) of this title” for “section 5633(a)(12)(A) and (13) of this title” in third sentence, and inserted at end “The Council shall review the reasons why Federal agencies take juveniles into custody and shall make recommendations regarding how to improve Federal practices and facilities for holding juveniles in custody.”

Subsec. (d). Pub. L. 100-690, §7254(b), struck out provision that annual report required by section 5614(b)(5) of this title include a description of the activities of the Council.

Subsec. (g). Pub. L. 100-690, §7254(c), amended subsec. (g) generally. Prior to amendment, subsec. (g) read as follows: “To carry out the purposes of this section there is authorized to be appropriated such sums as may be necessary, not to exceed \$200,000 for each fiscal year.”

1984—Subsec. (a)(1). Pub. L. 98-473, §623(a), substituted “Office of Community Services” for “Communi-

nity Services Administration”, “Assistant Attorney General who heads the Office of Justice Programs” for “Director of the Office of Justice Assistance, Research, and Statistics”, and “Director of the Bureau of Justice Assistance” for “Administrator of the Law Enforcement Assistance Administration”.

Subsec. (c). Pub. L. 98-473, §623(b), substituted “delinquency programs and, in consultation with the Advisory Board on Missing Children, all Federal programs relating to missing and exploited children” for “delinquency programs”.

Subsec. (e). Pub. L. 98-473, §623(c), substituted “the Administrator” for “he” before “considers necessary”.

Subsec. (g). Pub. L. 98-473, §623(d), substituted “\$200,000” for “\$500,000”.

1980—Subsec. (a)(1). Pub. L. 96-509, §§8(a), 19(f)(1), substituted “the Secretary of Health and Human Services, the Secretary of Labor, the Secretary of Education, the Secretary of Housing and Urban Development, the Director of the Community Services Administration, the Director of the Office of Drug Abuse Policy, the Director of the ACTION Agency, the Director of the Bureau of Prisons, the Commissioner of the Bureau of Indian Affairs, the Director of the Office of Special Education and Rehabilitation Services, the Commissioner for the Administration for Children, Youth, and Families, and the Director of the Youth Development Bureau, or their respective designees, the Director of the Office of Justice Assistance, Research and Statistics, the Administrator of the Law Enforcement Assistance Administration, the Administrator of the Office of Juvenile Justice and Delinquency Prevention, the Deputy Administrator of the Institute for Juvenile Justice and Delinquency Prevention, the Director of the National Institute of Justice, and representatives” for “the Secretary of Health, Education, and Welfare, the Secretary of Labor, the Director of the Office of Drug Abuse Policy, the Commissioner of the Office of Education, the Director of the ACTION Agency, the Secretary of Housing and Urban Development, or their respective designees, the Associate Administrator of the Office of Juvenile Justice and Delinquency Prevention, the Deputy Associate Administrator of the Institute for Juvenile Justice and Delinquency Prevention, and representatives”.

Subsec. (b). Pub. L. 96-509, §19(f)(2), struck out “Associate” before “Administrator”.

Subsec. (c). Pub. L. 96-509, §8(b), provided that the Coordinating Council make its annual recommendations to the Congress as well as the President and that the Coordinating Council review and make recommendations with respect to any joint funding proposal undertaken by the Office of Juvenile Justice and Delinquency Prevention and any agency represented on the Council and struck out “the Attorney General and”.

Subsec. (d). Pub. L. 96-509, §8(c), substituted “at least quarterly” for “a minimum of four times per year”.

Subsec. (e). Pub. L. 96-509, §§8(d), 19(f)(3), substituted “The Administrator shall” for “The Associate Administrator may”.

Subsec. (g). Pub. L. 96-509, §8(e), placed a limit of \$500,000 for each fiscal year on the amount authorized to be appropriated to carry out the purposes of this section.

1977—Subsec. (a)(1). Pub. L. 95-115, §3(a)(3)(A), (5), (d)(1), inserted references to the Commissioner of the Office of Education and the Director of the ACTION Agency, and substituted “Associate” for “Assistant” wherever appearing.

Subsec. (b). Pub. L. 95-115, §3(a)(3)(A), substituted “Associate” for “Assistant”.

Subsec. (c). Pub. L. 95-115, §3(d)(2), inserted provisions relating to review functions of the Council.

Subsec. (d). Pub. L. 95-115, §3(d)(3), substituted “four” for “six”.

Subsec. (e). Pub. L. 95-115, §3(d)(4), redesignated former par. (3) as entire subsec. (e) and, as so redesignated, inserted “or staff support” after “personnel” and substituted “Associate Administrator” for “Executive Secretary”. Former pars. (1) and (2), which related

to appointment and responsibilities of the Executive Secretary, respectively, were struck out.

1976—Subsec. (a)(1). Pub. L. 94-237 substituted “Office of Drug Abuse Policy” for “Special Action Office for Drug Abuse Prevention”.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-273 effective on the first day of the first fiscal year that begins after Nov. 2, 2002, and applicable only with respect to fiscal years beginning on or after the first day of the first fiscal year that begins after Nov. 2, 2002, see section 12223 of Pub. L. 107-273, as amended, set out as a note under section 5601 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Apr. 4, 1994, see section 406(b) of Pub. L. 103-82, set out as a note under section 8332 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-690 effective Oct. 1, 1988, see section 7296(a) of Pub. L. 100-690, set out as a note under section 5601 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-473 effective Oct. 12, 1984, see section 670(a) of Pub. L. 98-473, set out as a note under section 5601 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93-415, as added by Pub. L. 95-115, set out as a note under section 5601 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (c)(1) of this section relating to the Council making recommendations to Congress at least annually, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and item 1 on page 159 of House Document No. 103-7.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of Title 8, Aliens and Nationality.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5603 of this title.

§ 5617. Annual report

Not later than 180 days after the end of a fiscal year, the Administrator shall submit to the President, the Speaker of the House of Representatives, and the President pro tempore of the Senate a report that contains the following with respect to such fiscal year:

- (1) A detailed summary and analysis of the most recent data available regarding the number of juveniles taken into custody, the rate at which juveniles are taken into custody, and the trends demonstrated by the data required by subparagraphs (A), (B), and (C). Such summary and analysis shall set out the information required by subparagraphs (A), (B), (C), and (D) separately for juvenile nonoffenders, juvenile status offenders, and other juvenile offenders. Such summary and analysis shall separately address with respect to each category of juveniles specified in the preceding sentence—

(A) the types of offenses with which the juveniles are charged;

(B) the race and gender of the juveniles;

(C) the ages of the juveniles;

(D) the types of facilities used to hold the juveniles (including juveniles treated as adults for purposes of prosecution) in custody, including secure detention facilities, secure correctional facilities, jails, and lockups;

(E) the number of juveniles who died while in custody and the circumstances under which they died; and

(F) the educational status of juveniles, including information relating to learning disabilities, falling performance, grade retention, and dropping out of school.

(2) A description of the activities for which funds are expended under this part, including the objectives, priorities, accomplishments, and recommendations of the Council.

(3) A description, based on the most recent data available, of the extent to which each State complies with section 5633 of this title and with the plan submitted under such section by the State for such fiscal year.

(4) An evaluation of the programs funded under this subchapter and their effectiveness in reducing the incidence of juvenile delinquency, particularly violent crime, committed by juveniles.

(Pub. L. 93-415, title II, §207, as added Pub. L. 100-690, title VII, §7255, Nov. 18, 1988, 102 Stat. 4437; amended Pub. L. 102-586, §2(e), Nov. 4, 1992, 106 Stat. 4986; Pub. L. 107-273, div. C, title II, §12207, Nov. 2, 2002, 116 Stat. 1872.)

PRIOR PROVISIONS

A prior section 5617, Pub. L. 93-415, title II, §207, as added Pub. L. 96-509, §9, Dec. 8, 1980, 94 Stat. 2753, related to establishment and functions of National Advisory Committee for Juvenile Justice and Delinquency Prevention, prior to repeal eff. Oct. 12, 1984, by Pub. L. 98-473, title II, §624, Oct. 12, 1984, 98 Stat. 2111.

Another prior section 5617, Pub. L. 93-415, title II, §207, Sept. 7, 1974, 88 Stat. 1117; Pub. L. 95-115, §3(e), Oct. 3, 1977, 91 Stat. 1050, related to National Advisory Committee for Juvenile Justice and Delinquency Prevention, its membership, terms of office, etc., prior to repeal by Pub. L. 96-509, §9, Dec. 8, 1980, 94 Stat. 2753.

AMENDMENTS

2002—Pars. (4), (5). Pub. L. 107-273 added par. (4) and struck out former pars. (4) and (5) which read as follows:

“(4) A summary of each program or activity for which assistance is provided under part C or D of this subchapter, an evaluation of the results of such program or activity, and a determination of the feasibility and advisability of replicating such program or activity in other locations.

“(5) A description of selected exemplary delinquency prevention programs for which assistance is provided under this subchapter, with particular attention to community-based juvenile delinquency prevention programs that involve and assist families of juveniles.”

1992—Par. (1)(D). Pub. L. 102-586, §2(e)(1)(A), inserted “(including juveniles treated as adults for purposes of prosecution)”.

Par. (1)(F). Pub. L. 102-586, §2(e)(1)(B), (2), (3), added subpar. (F).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-273 effective on the first day of the first fiscal year that begins after Nov. 2, 2002,

and applicable only with respect to fiscal years beginning on or after the first day of the first fiscal year that begins after Nov. 2, 2002, see section 12223 of Pub. L. 107-273, as amended, set out as a note under section 5601 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1988, with the report required by this section with respect to fiscal year 1988 to be submitted not later than Aug. 1, 1989, notwithstanding the 180-day period provided in this section, see section 7296(a), (b)(3) of Pub. L. 100-690, as amended, set out as an Effective Date of 1988 Amendment note under section 5601 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in this section relating to submittal to the Speaker of the House of Representatives and the President pro tempore of the Senate of an annual report, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and item 10 on page 177 of House Document No. 103-7.

USE OF COURT ORDERS TO PLACE JUVENILES IN SECURE FACILITIES, JAILS AND LOCKUPS FOR ADULTS; INVESTIGATION AND REPORT

Section 7295 of Pub. L. 100-690 directed Comptroller General of the United States, not later than 180 days after Nov. 18, 1988, to conduct an investigation of extent to which valid court orders and court orders other than valid court orders, used in the 5-year period ending on Dec. 31, 1988, to place juveniles in secure detention facilities, in secure correctional facilities, and in jails and lockups for adults, and submit, not later than 3 years after Nov. 18, 1988, a report to certain congressional committees of results of investigation.

§§ 5618, 5619. Repealed. Pub. L. 96-509, §9, Dec. 8, 1980, 94 Stat. 2753

Section 5618, Pub. L. 93-415, title II, §208, Sept. 7, 1974, 88 Stat. 1117, Pub. L. 95-115, §3(a)(3)(B), (f), Oct. 3, 1977, 91 Stat. 1048, 1050, set out the duties and provided for the staffing of the National Advisory Committee and numerous subcommittees.

Section 5619, Pub. L. 93-415, title II, §209, Sept. 7, 1974, 88 Stat. 1118, set out provisions for compensation and reimbursement for travel and other expenses of full and part time Federal employees serving on the Advisory Committee.

PART B—FEDERAL ASSISTANCE FOR STATE AND LOCAL PROGRAMS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 5667-1, 5667a-1, 5671, 5783, 5784 of this title.

AMENDMENTS

1988—Pub. L. 100-690, title VII, §7263(a)(1)(A), Nov. 18, 1988, 102 Stat. 4443, struck out subpart I heading “Formula Grants”.

§ 5631. Authority to make grants and contracts

(a) The Administrator is authorized to make grants to States and units of local government or combinations thereof to assist them in planning, establishing, operating, coordinating, and evaluating projects directly or through grants and contracts with public and private agencies for the development of more effective education, training, research, prevention, diversion, treatment, and rehabilitation programs in the area of juvenile delinquency and programs to improve the juvenile justice system.

(b)(1) With not to exceed 2 percent of the funds available in a fiscal year to carry out this part,

the Administrator shall make grants to and enter into contracts with public and private agencies, organizations, and individuals to provide technical assistance to States, units of general local governments¹ (and combinations thereof), and local private agencies to facilitate compliance with section 5633 of this title and implementation of the State plan approved under section 5633(c) of this title.

(2) Grants and contracts may be made under paragraph (1) only to public and private agencies, organizations, and individuals that have experience in providing such technical assistance.

(Pub. L. 93-415, title II, §221, Sept. 7, 1974, 88 Stat. 1118; Pub. L. 95-115, §4(a), Oct. 3, 1977, 91 Stat. 1050; Pub. L. 98-473, title II, §625(a), Oct. 12, 1984, 98 Stat. 2111; Pub. L. 100-690, title VII, §7256, Nov. 18, 1988, 102 Stat. 4438; Pub. L. 102-586, §2(f)(1), Nov. 4, 1992, 106 Stat. 4987; Pub. L. 105-277, div. A, §101(b) [title I, §129(a)(2)(A)], Oct. 21, 1998, 112 Stat. 2681-50, 2681-75; Pub. L. 107-273, div. C, title II, §12221(a)(2), Nov. 2, 2002, 116 Stat. 1894.)

AMENDMENTS

2002—Subsec. (b)(2). Pub. L. 107-273 struck out at end “In providing such technical assistance, the recipient of a grant or contract under this subsection shall coordinate its activities with the State agency described in section 5671(c)(1) of this title.”

1998—Subsec. (a). Pub. L. 105-277 substituted “units of local government” for “units of general local government”.

1992—Subsec. (b)(2). Pub. L. 102-586, §2(f)(1)(A), which directed the substitution of “experience” for “existence”, could not be executed because “existence” did not appear in text.

Pub. L. 102-586, §2(f)(1)(B), made technical amendment to reference to section 5671 of this title to reflect renumbering of corresponding section of original act.

1988—Pub. L. 100-690 inserted “and contracts” after “grants” in section catchline, designated existing provisions as subsec. (a), and added subsec. (b).

1984—Pub. L. 98-473 amended section catchline.

1977—Pub. L. 95-115 inserted “grants and” before “contracts” and substituted “units of general local government or combinations thereof” for “local governments”.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-273 effective on the first day of the first fiscal year that begins after Nov. 2, 2002, and applicable only with respect to fiscal years beginning on or after the first day of the first fiscal year that begins after Nov. 2, 2002, see section 12223 of Pub. L. 107-273, as amended, set out as a note under section 5601 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-690 effective Oct. 1, 1988, see section 7296(a) of Pub. L. 100-690, set out as a note under section 5601 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93-415, as added by Pub. L. 95-115, set out as a note under section 5601 of this title.

§ 5632. Allocation of funds

(a) Time; basis; amounts

(1) Subject to paragraph (2) and in accordance with regulations promulgated under this part,

¹ So in original. Probably should be “units of local governments”.

funds shall be allocated annually among the States on the basis of relative population of people under age eighteen.

(2)(A) Subject to paragraph (3), if the aggregate amount appropriated for a fiscal year to carry out this subchapter is less than \$75,000,000, then the amount allocated to each State for such fiscal year shall be not less than \$325,000, or such greater amount up to \$400,000 as is available to be allocated without reducing the amount of any State or territory’s allocation below the amount allocated for fiscal year 2000, except that the amount allocated to the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands shall be not less than \$75,000, or such greater amount up to \$100,000 as is available to be allocated without reducing the amount of any State or territory’s allocation below the amount allocated for fiscal year 2000, each.

(B) Subject to paragraph (3), if the aggregate amount appropriated for a fiscal year to carry out this subchapter equals or exceeds \$75,000,000, then the amount allocated to each State for such fiscal year shall be not less than \$600,000, except that the amount allocated to the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands shall be not less than \$100,000, or such greater amount up to \$100,000 as is available to be allocated without reducing the amount of any State or territory’s allocation below the amount allocated for fiscal year 2000, each.

(3) If, as a result of paragraph (2), the amount allocated to a State for a fiscal year would be less than the amount allocated to such State for fiscal year 2000, then the amounts allocated to satisfy the requirements of such paragraph shall be reduced pro rata to the extent necessary to allocate to such State for the fiscal year the amount allocated to such State for fiscal year 2000.

(b) Reallocation of unobligated funds

If any amount so allocated remains unobligated at the end of the fiscal year, such funds shall be reallocated in a manner equitable and consistent with the purpose of this part. Any amount so reallocated shall be in addition to the amounts already allocated and available to the State, the Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands for the same period.

(c) Use of allocated funds for development, etc., of State plans; limitations; matching requirements

In accordance with regulations promulgated under this part, a portion of any allocation to any State under this part shall be available to develop a State plan or for other pre-award activities associated with such State plan, and to pay that portion of the expenditures which are necessary for efficient administration, including monitoring, evaluation, and one full-time staff position. Not more than 10 percent of the total annual allocation of such State shall be available for such purposes except that any amount expended or obligated by such State, or by units of local government or any combination thereof,

from amounts made available under this subsection shall be matched (in an amount equal to any such amount so expended or obligated) by such State, or by such units or combinations, from State or local funds, as the case may be. The State shall make available needed funds for planning and administration to units of local government or combinations thereof within the State on an equitable basis.

(d) Minimum annual allocation for assistance of advisory group

In accordance with regulations promulgated under this part, 5 per centum of the minimum annual allocation to any State under this part shall be available to assist the advisory group established under section 5633(a)(3) of this title.

(Pub. L. 93-415, title II, §222, Sept. 7, 1974, 88 Stat. 1118; Pub. L. 95-115, §4(b)(1), (2)(A)-(C), (3), (4), Oct. 3, 1977, 91 Stat. 1051; Pub. L. 96-509, §10, Dec. 8, 1980, 94 Stat. 2755; Pub. L. 98-473, title II, §625(b), Oct. 12, 1984, 98 Stat. 2111; Pub. L. 100-690, title VII, §7257, Nov. 18, 1988, 102 Stat. 4438; Pub. L. 102-586, §2(f)(2), Nov. 4, 1992, 106 Stat. 4987; Pub. L. 105-277, div. A, §101(b) [title I, §129(a)(2)(B)], Oct. 21, 1998, 112 Stat. 2681-50, 2681-75; Pub. L. 107-273, div. C, title II, §12208, Nov. 2, 2002, 116 Stat. 1873.)

AMENDMENTS

2002—Subsec. (a)(2)(A). Pub. L. 107-273, §12208(1)(A)(i), struck out “(other than parts D and E)” after “carry out this subchapter”, substituted “amount up to \$400,000” for “amount, up to \$400,000,” “fiscal year 2000, except” for “fiscal year 1992 except”, “amount up to \$100,000” for “amount, up to \$100,000,” and “fiscal year 2000, each” for “fiscal year 1992, each”, and struck out “the Trust Territory of the Pacific Islands,” after “American Samoa.”

Subsec. (a)(2)(B). Pub. L. 107-273, §12208(1)(A)(ii), struck out “(other than part D)” after “carry out this subchapter”, substituted “less than \$600,000” for “less than \$400,000”, “amount up to \$100,000” for “amount, up to \$100,000,” and “fiscal year 2000,” for “fiscal year 1992”, and struck out “or such greater amount, up to \$600,000, as is available to be allocated if appropriations have been enacted and made available to carry out parts D and E of this subchapter in the full amounts authorized by section 5671(a)(1) and (3) of this title” before “except that” and “the Trust Territory of the Pacific Islands,” after “American Samoa.”

Subsec. (a)(3). Pub. L. 107-273, §12208(1)(B), substituted “fiscal year 2000” for “fiscal year 1992” in two places and “allocate” for “allot”.

Subsec. (b). Pub. L. 107-273, §12208(2), struck out “the Trust Territory of the Pacific Islands,” after “Guam.”

1998—Subsec. (c). Pub. L. 105-277 substituted “units of local government” for “units of general local government” in two places.

1992—Subsec. (a)(2)(A). Pub. L. 102-586, §2(f)(2)(A), (B)(i), substituted “parts D and E” for “part D”, substituted “allocated” for “allotted” in two places, and inserted “or such greater amount, up to \$400,000, as is available to be allocated without reducing the amount of any State or territory’s allocation below the amount allocated for fiscal year 1992” and “, or such greater amount, up to \$100,000, as is available to be allocated without reducing the amount of any State or territory’s allocation below the amount allocated for fiscal year 1992.”

Subsec. (a)(2)(B). Pub. L. 102-586, §2(f)(2)(A), (B)(ii), substituted “allocated” for “allotted” in two places and inserted “or such greater amount, up to \$600,000, as is available to be allocated if appropriations have been enacted and made available to carry out parts D and E of this subchapter in the full amounts authorized by

section 5671(a)(1) and (3) of this title” and “, or such greater amount, up to \$100,000, as is available to be allocated without reducing the amount of any State or territory’s allocation below the amount allocated for fiscal year 1992”.

Subsec. (a)(3). Pub. L. 102-586, §2(f)(2)(A), (B)(iii), substituted “allocated” for “allotted” wherever appearing and “1992” for “1988” in two places.

Subsec. (b). Pub. L. 102-586, §2(f)(2)(A), substituted “allocated” for “allotted” in two places.

Subsec. (c). Pub. L. 102-586, §2(f)(2)(A), (C), substituted “allocation” for “allotment” in two places, “, evaluation, and one full-time staff position” for “and evaluation”, and “10 percent” for “7½ per centum”.

Subsec. (d). Pub. L. 102-586, §2(f)(2)(A), substituted “allocation” for “allotment”.

1988—Subsec. (a)(1). Pub. L. 100-690, §7257(a)(1), (2), designated existing provisions as par. (1), substituted “Subject to paragraph (2) and in” for “In”, and struck out at end “No such allotment to any State shall be less than \$225,000, except that for the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands no allotment shall be less than \$56,250.”

Subsec. (a)(2), (3). Pub. L. 100-690, §7257(a)(3), added pars. (2) and (3).

Subsec. (b). Pub. L. 100-690, §7257(b), substituted “If” for “Except for funds appropriated for fiscal year 1975, if” and struck out after first sentence “Funds appropriated for fiscal year 1975 may be obligated in accordance with subsection (a) of this section until June 30, 1976, after which time they may be reallocated.”

1984—Subsec. (b). Pub. L. 98-473 substituted “the Trust Territory” for “and the Trust Territory” and inserted “, and the Commonwealth of the Northern Mariana Islands” after “Pacific Islands”.

1980—Subsec. (a). Pub. L. 96-509 inserted reference to the Commonwealth of the Northern Mariana Islands.

1977—Subsec. (a). Pub. L. 95-115, §4(b)(1), substituted “\$225,000” for “\$200,000” and “\$56,250” for “\$50,000”.

Subsec. (c). Pub. L. 95-115, §4(b)(2)(A), (B), (3), inserted provisions relating to pre-award activities, monitoring and evaluation payments, and matching requirements for expended or obligated amounts, and substituted “7½” for “15” and “units of general local government or combinations thereof” for “local governments”.

Subsec. (d). Pub. L. 95-115, §4(b)(2)(C), (4)(B), redesignated subsec. (e) as (d). Former subsec. (d), relating to limitations on financial assistance under this section, was struck out.

Subsec. (e). Pub. L. 95-115, §4(b)(4)(A), (B), added subsec. (e) and redesignated former subsec. (e) as (d).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-273 effective on the first day of the first fiscal year that begins after Nov. 2, 2002, and applicable only with respect to fiscal years beginning on or after the first day of the first fiscal year that begins after Nov. 2, 2002, see section 12223 of Pub. L. 107-273, as amended, set out as a note under section 5601 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-690 effective Oct. 1, 1988, see section 7296(a) of Pub. L. 100-690, set out as a note under section 5601 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-473 effective Oct. 12, 1984, see section 670(a) of Pub. L. 98-473, set out as a note under section 5601 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by section 4(b)(1), (3) of Pub. L. 95-115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93-415, as added by Pub. L. 95-115, set out as a note under section 5601 of this title.

Section 4(b)(2)(D) of Pub. L. 95-115 provided that: "The amendments made by this paragraph [amending this section] shall take effect on October 1, 1978."

Section 4(b)(4)(B) of Pub. L. 95-115 provided that the amendment made by such section 4(b)(4)(B) is effective Oct. 1, 1978.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5633, 5656, 5675 of this title.

§ 5633. State plans

(a) Requirements

In order to receive formula grants under this part, a State shall submit a plan for carrying out its purposes applicable to a 3-year period. Such plan shall be amended annually to include new programs, projects, and activities. The State shall submit annual performance reports to the Administrator which shall describe progress in implementing programs contained in the original plan, and shall describe the status of compliance with State plan requirements. In accordance with regulations which the Administrator shall prescribe, such plan shall—

(1) designate the State agency described in section 5671(c)(1) of this title as the sole agency for supervising the preparation and administration of the plan;

(2) contain satisfactory evidence that the State agency designated in accordance with paragraph (1) has or will have authority, by legislation if necessary, to implement such plan in conformity with this part;

(3) provide for an advisory group that—

(A) shall consist of not less than 15 and not more than 33 members appointed by the chief executive officer of the State—

(i) which members have training, experience, or special knowledge concerning the prevention and treatment of juvenile delinquency, the administration of juvenile justice, or the reduction of juvenile delinquency;

(ii) which members include—

(I) at least 1 locally elected official representing general purpose local government;

(II) representatives of law enforcement and juvenile justice agencies, including juvenile and family court judges, prosecutors, counsel for children and youth, and probation workers;

(III) representatives of public agencies concerned with delinquency prevention or treatment, such as welfare, social services, mental health, education, special education, recreation, and youth services;

(IV) representatives of private non-profit organizations, including persons with a special focus on preserving and strengthening families, parent groups and parent self-help groups, youth development, delinquency prevention and treatment, neglected or dependent children, the quality of juvenile justice, education, and social services for children;

(V) volunteers who work with delinquents or potential delinquents;

(VI) youth workers involved with programs that are alternatives to incarcer-

ation, including programs providing organized recreation activities;

(VII) persons with special experience and competence in addressing problems related to school violence and vandalism and alternatives to suspension and expulsion; and

(VIII) persons with special experience and competence in addressing problems related to learning disabilities, emotional difficulties, child abuse and neglect, and youth violence;

(iii) a majority of which members (including the chairperson) shall not be full-time employees of the Federal, State, or local government;

(iv) at least one-fifth of which members shall be under the age of 24 at the time of appointment; and

(v) at least 3 members who have been or are currently under the jurisdiction of the juvenile justice system;

(B) shall participate in the development and review of the State's juvenile justice plan prior to submission to the supervisory board for final action;

(C) shall be afforded the opportunity to review and comment, not later than 30 days after their submission to the advisory group, on all juvenile justice and delinquency prevention grant applications submitted to the State agency designated under paragraph (1);

(D) shall, consistent with this subchapter—

(i) advise the State agency designated under paragraph (1) and its supervisory board; and

(ii) submit to the chief executive officer and the legislature of the State at least annually recommendations regarding State compliance with the requirements of paragraphs (11), (12), and (13); and

(iii) contact and seek regular input from juveniles currently under the jurisdiction of the juvenile justice system; and

(E) may, consistent with this subchapter—

(i) advise on State supervisory board and local criminal justice advisory board composition;¹

(ii) review progress and accomplishments of projects funded under the State plan.

(4) provide for the active consultation with and participation of units of local government or combinations thereof in the development of a State plan which adequately takes into account the needs and requests of units of local government, except that nothing in the plan requirements, or any regulations promulgated to carry out such requirements, shall be construed to prohibit or impede the State from making grants to, or entering into contracts with, local private agencies or the advisory group;

(5) unless the provisions of this paragraph are waived at the discretion of the Administrator for any State in which the services for

¹ So in original. Probably should be followed by "and".

delinquent or other youth are organized primarily on a statewide basis, provide that at least 66⅔ per centum of funds received by the State under section 5632 of this title reduced by the percentage (if any) specified by the State under the authority of paragraph (25) and excluding funds made available to the State advisory group under section 5632(d) of this title, shall be expended—

(A) through programs of units of local government or combinations thereof, to the extent such programs are consistent with the State plan;

(B) through programs of local private agencies, to the extent such programs are consistent with the State plan, except that direct funding of any local private agency by a State shall be permitted only if such agency requests such funding after it has applied for and been denied funding by any unit of local government or combination thereof; and

(C) to provide funds for programs of Indian tribes that perform law enforcement functions (as determined by the Secretary of the Interior) and that agree to attempt to comply with the requirements specified in paragraphs (11), (12), and (13), applicable to the detention and confinement of juveniles, an amount that bears the same ratio to the aggregate amount to be expended through programs referred to in subparagraphs (A) and (B) as the population under 18 years of age in the geographical areas in which such tribes perform such functions bears to the State population under 18 years of age;²

(6) provide for an equitable distribution of the assistance received under section 5632 of this title within the State, including in rural areas;

(7)(A) provide for an analysis of juvenile delinquency problems in, and the juvenile delinquency control and delinquency prevention needs (including educational needs) of, the State (including any geographical area in which an Indian tribe performs law enforcement functions), a description of the services to be provided, and a description of performance goals and priorities, including a specific statement of the manner in which programs are expected to meet the identified juvenile crime problems (including the joining of gangs that commit crimes) and juvenile justice and delinquency prevention needs (including educational needs) of the State; and

(B) contain—

(i) a plan for providing needed gender-specific services for the prevention and treatment of juvenile delinquency;

(ii) a plan for providing needed services for the prevention and treatment of juvenile delinquency in rural areas; and

(iii) a plan for providing needed mental health services to juveniles in the juvenile justice system, including information on how such plan is being implemented and how such services will be targeted to those juveniles in such system who are in greatest need of such services;

(8) provide for the coordination and maximum utilization of existing juvenile delinquency programs, programs operated by public and private agencies and organizations, and other related programs (such as education, special education, recreation, health, and welfare programs) in the State;

(9) provide that not less than 75 percent of the funds available to the State under section 5632 of this title, other than funds made available to the State advisory group under section 5632(d) of this title, whether expended directly by the State, by the unit of local government, or by a combination thereof, or through grants and contracts with public or private nonprofit agencies, shall be used for—

(A) community-based alternatives (including home-based alternatives) to incarceration and institutionalization including—

(i) for youth who need temporary placement: crisis intervention, shelter, and after-care; and

(ii) for youth who need residential placement: a continuum of foster care or group home alternatives that provide access to a comprehensive array of services;

(B) community-based programs and services to work with—

(i) parents and other family members to strengthen families, including parent self-help groups, so that juveniles may be retained in their homes;

(ii) juveniles during their incarceration, and with their families, to ensure the safe return of such juveniles to their homes and to strengthen the families; and

(iii) parents with limited English-speaking ability, particularly in areas where there is a large population of families with limited-English speaking ability;

(C) comprehensive juvenile justice and delinquency prevention programs that meet the needs of youth through the collaboration of the many local systems before which a youth may appear, including schools, courts, law enforcement agencies, child protection agencies, mental health agencies, welfare services, health care agencies, and private nonprofit agencies offering youth services;

(D) programs that provide treatment to juvenile offenders who are victims of child abuse or neglect, and to their families, in order to reduce the likelihood that such juvenile offenders will commit subsequent violations of law;

(E) educational programs or supportive services for delinquent or other juveniles—

(i) to encourage juveniles to remain in elementary and secondary schools or in alternative learning situations;

(ii) to provide services to assist juveniles in making the transition to the world of work and self-sufficiency; and

(iii) enhance³ coordination with the local schools that such juveniles would otherwise attend, to ensure that—

(I) the instruction that juveniles receive outside school is closely aligned

²So in original. The comma probably should be a semicolon.

³So in original. Probably should be "to enhance".

- with the instruction provided in school; and
- (II) information regarding any learning problems identified in such alternative learning situations are communicated to the schools;
- (F) expanding the use of probation officers—
- (i) particularly for the purpose of permitting nonviolent juvenile offenders (including status offenders) to remain at home with their families as an alternative to incarceration or institutionalization; and
- (ii) to ensure that juveniles follow the terms of their probation;
- (G) counseling, training, and mentoring programs, which may be in support of academic tutoring, vocational and technical training, and drug and violence prevention counseling, that are designed to link at-risk juveniles, juvenile offenders, or juveniles who have a parent or legal guardian who is or was incarcerated in a Federal, State, or local correctional facility or who is otherwise under the jurisdiction of a Federal, State, or local criminal justice system, particularly juveniles residing in low-income and high-crime areas and juveniles experiencing educational failure, with responsible individuals (such as law enforcement officials, Department of Defense personnel, individuals working with local businesses, and individuals working with community-based and faith-based organizations and agencies) who are properly screened and trained;
- (H) programs designed to develop and implement projects relating to juvenile delinquency and learning disabilities, including on-the-job training programs to assist community services, law enforcement, and juvenile justice personnel to more effectively recognize and provide for learning disabled and other juveniles with disabilities;
- (I) projects designed both to deter involvement in illegal activities and to promote involvement in lawful activities on the part of gangs whose membership is substantially composed of youth;
- (J) programs and projects designed to provide for the treatment of youths' dependence on or abuse of alcohol or other addictive or nonaddictive drugs;
- (K) programs for positive youth development that assist delinquent and other at-risk youth in obtaining—
- (i) a sense of safety and structure;
- (ii) a sense of belonging and membership;
- (iii) a sense of self-worth and social contribution;
- (iv) a sense of independence and control over one's life; and
- (v) a sense of closeness in interpersonal relationships;
- (L) programs that, in recognition of varying degrees of the seriousness of delinquent behavior and the corresponding gradations in the responses of the juvenile justice system in response to that behavior, are designed to—
- (i) encourage courts to develop and implement a continuum of post-adjudication restraints that bridge the gap between traditional probation and confinement in a correctional setting (including expanded use of probation, mediation, restitution, community service, treatment, home detention, intensive supervision, electronic monitoring, and similar programs, and secure community-based treatment facilities linked to other support services such as health, mental health, education (remedial and special), job training, and recreation); and
- (ii) assist in the provision by the provision⁴ by the Administrator of information and technical assistance, including technology transfer, to States in the design and utilization of risk assessment mechanisms to aid juvenile justice personnel in determining appropriate sanctions for delinquent behavior;
- (M) community-based programs and services to work with juveniles, their parents, and other family members during and after incarceration in order to strengthen families so that such juveniles may be retained in their homes;
- (N) programs (including referral to literacy programs and social service programs) to assist families with limited English-speaking ability that include delinquent juveniles to overcome language and other barriers that may prevent the complete treatment of such juveniles and the preservation of their families;
- (O) programs designed to prevent and to reduce hate crimes committed by juveniles;
- (P) after-school programs that provide at-risk juveniles and juveniles in the juvenile justice system with a range of age-appropriate activities, including tutoring, mentoring, and other educational and enrichment activities;
- (Q) community-based programs that provide follow-up post-placement services to adjudicated juveniles, to promote successful reintegration into the community;
- (R) projects designed to develop and implement programs to protect the rights of juveniles affected by the juvenile justice system; and
- (S) programs designed to provide mental health services for incarcerated juveniles suspected to be in need of such services, including assessment, development of individualized treatment plans, and discharge plans.
- (10) provide for the development of an adequate research, training, and evaluation capacity within the State;
- (11) shall, in accordance with rules issued by the Administrator, provide that—
- (A) juveniles who are charged with or who have committed an offense that would not be criminal if committed by an adult, excluding—

⁴So in original. The words "by the provision" probably should not appear.

(i) juveniles who are charged with or who have committed a violation of section 922(x)(2) of title 18 or of a similar State law;

(ii) juveniles who are charged with or who have committed a violation of a valid court order; and

(iii) juveniles who are held in accordance with the Interstate Compact on Juveniles as enacted by the State;

shall not be placed in secure detention facilities or secure correctional facilities; and

(B) juveniles—

(i) who are not charged with any offense; and

(ii) who are—

(I) aliens; or

(II) alleged to be dependent, neglected, or abused;

shall not be placed in secure detention facilities or secure correctional facilities;

(12) provide that—

(A) juveniles alleged to be or found to be delinquent or juveniles within the purview of paragraph (11) will not be detained or confined in any institution in which they have contact with adult inmates; and

(B) there is in effect in the State a policy that requires individuals who work with both such juveniles and such adult inmates, including in collocated facilities, have been trained and certified to work with juveniles;

(13) provide that no juvenile will be detained or confined in any jail or lockup for adults except—

(A) juveniles who are accused of nonstatus offenses and who are detained in such jail or lockup for a period not to exceed 6 hours—

(i) for processing or release;

(ii) while awaiting transfer to a juvenile facility; or

(iii) in which period such juveniles make a court appearance;

and only if such juveniles do not have contact with adult inmates and only if there is in effect in the State a policy that requires individuals who work with both such juveniles and adult inmates in collocated facilities have been trained and certified to work with juveniles;

(B) juveniles who are accused of nonstatus offenses, who are awaiting an initial court appearance that will occur within 48 hours after being taken into custody (excluding Saturdays, Sundays, and legal holidays), and who are detained in a jail or lockup—

(i) in which—

(I) such juveniles do not have contact with adult inmates; and

(II) there is in effect in the State a policy that requires individuals who work with both such juveniles and adults inmates in collocated facilities have been trained and certified to work with juveniles; and

(ii) that—

(I) is located outside a metropolitan statistical area (as defined by the Office

of Management and Budget) and has no existing acceptable alternative placement available;

(II) is located where conditions of distance to be traveled or the lack of highway, road, or transportation do not allow for court appearances within 48 hours (excluding Saturdays, Sundays, and legal holidays) so that a brief (not to exceed an additional 48 hours) delay is excusable; or

(III) is located where conditions of safety exist (such as severe adverse, life-threatening weather conditions that do not allow for reasonably safe travel), in which case the time for an appearance may be delayed until 24 hours after the time that such conditions allow for reasonable safe travel;

(14) provide for an adequate system of monitoring jails, detention facilities, correctional facilities, and non-secure facilities to insure that the requirements of paragraphs (11), (12), and (13) are met, and for annual reporting of the results of such monitoring to the Administrator, except that such reporting requirements shall not apply in the case of a State which is in compliance with the other requirements of this paragraph, which is in compliance with the requirements in paragraphs (11) and (12), and which has enacted legislation which conforms to such requirements and which contains, in the opinion of the Administrator, sufficient enforcement mechanisms to ensure that such legislation will be administered effectively;

(15) provide assurance that youth in the juvenile justice system are treated equitably on the basis of gender, race, family income, and disability;

(16) provide assurance that consideration will be given to and that assistance will be available for approaches designed to strengthen the families of delinquent and other youth to prevent juvenile delinquency (which approaches should include the involvement of grandparents or other extended family members when possible and appropriate and the provision of family counseling during the incarceration of juvenile family members and coordination of family services when appropriate and feasible);

(17) provide for procedures to be established for protecting the rights of recipients of services and for assuring appropriate privacy with regard to records relating to such services provided to any individual under the State plan;

(18) provide assurances that—

(A) any assistance provided under this chapter will not cause the displacement (including a partial displacement, such as a reduction in the hours of nonovertime work, wages, or employment benefits) of any currently employed employee;

(B) activities assisted under this chapter will not impair an existing collective bargaining relationship, contract for services, or collective bargaining agreement; and

(C) no such activity that would be inconsistent with the terms of a collective bargaining agreement shall be undertaken with-

out the written concurrence of the labor organization involved;

(19) provide for such fiscal control and fund accounting procedures necessary to assure prudent use, proper disbursement, and accurate accounting of funds received under this subchapter;

(20) provide reasonable assurance that Federal funds made available under this part for any period will be so used as to supplement and increase (but not supplant) the level of the State, local, and other non-Federal funds that would in the absence of such Federal funds be made available for the programs described in this part, and will in no event replace such State, local, and other non-Federal funds;

(21) provide that the State agency designated under paragraph (1) will—

(A) to the extent practicable give priority in funding to programs and activities that are based on rigorous, systematic, and objective research that is scientifically based;

(B) from time to time, but not less than annually, review its plan and submit to the Administrator an analysis and evaluation of the effectiveness of the programs and activities carried out under the plan, and any modifications in the plan, including the survey of State and local needs, that it considers necessary; and

(C) not expend funds to carry out a program if the recipient of funds who carried out such program during the preceding 2-year period fails to demonstrate, before the expiration of such 2-year period, that such program achieved substantial success in achieving the goals specified in the application submitted by such recipient to the State agency;

(22) address juvenile delinquency prevention efforts and system improvement efforts designed to reduce, without establishing or requiring numerical standards or quotas, the disproportionate number of juvenile members of minority groups, who come into contact with the juvenile justice system;

(23) provide that if a juvenile is taken into custody for violating a valid court order issued for committing a status offense—

(A) an appropriate public agency shall be promptly notified that such juvenile is held in custody for violating such order;

(B) not later than 24 hours during which such juvenile is so held, an authorized representative of such agency shall interview, in person, such juvenile; and

(C) not later than 48 hours during which such juvenile is so held—

(i) such representative shall submit an assessment to the court that issued such order, regarding the immediate needs of such juvenile; and

(ii) such court shall conduct a hearing to determine—

(I) whether there is reasonable cause to believe that such juvenile violated such order; and

(II) the appropriate placement of such juvenile pending disposition of the violation alleged;

(24) provide an assurance that if the State receives under section 5632 of this title for any fiscal year an amount that exceeds 105 percent of the amount the State received under such section for fiscal year 2000, all of such excess shall be expended through or for programs that are part of a comprehensive and coordinated community system of services;

(25) specify a percentage (if any), not to exceed 5 percent, of funds received by the State under section 5632 of this title (other than funds made available to the State advisory group under section 5632(d) of this title) that the State will reserve for expenditure by the State to provide incentive grants to units of general local government that reduce the caseload of probation officers within such units;

(26) provide that the State, to the maximum extent practicable, will implement a system to ensure that if a juvenile is before a court in the juvenile justice system, public child welfare records (including child protective services records) relating to such juvenile that are on file in the geographical area under the jurisdiction of such court will be made known to such court;

(27) establish policies and systems to incorporate relevant child protective services records into juvenile justice records for purposes of establishing and implementing treatment plans for juvenile offenders; and

(28) provide assurances that juvenile offenders whose placement is funded through section 672 of this title receive the protections specified in section 671 of this title, including a case plan and case plan review as defined in section 675 of this title.

(b) Approval by State agency

The State agency designated under subsection (a)(1) of this section, after receiving and considering the advice and recommendations of the advisory group referred to in subsection (a) of this section, shall approve the State plan and any modification thereof prior to submission to the Administrator.

(c) Compliance with statutory requirements

If a State fails to comply with any of the applicable requirements of paragraphs (11), (12), (13), and (22) of subsection (a) of this section in any fiscal year beginning after September 30, 2001, then—

(1) subject to paragraph (2), the amount allocated to such State under section 5632 of this title for the subsequent fiscal year shall be reduced by not less than 20 percent for each such paragraph with respect to which the failure occurs, and

(2) the State shall be ineligible to receive any allocation under such section for such fiscal year unless—

(A) the State agrees to expend 50 percent of the amount allocated to the State for such fiscal year to achieve compliance with any such paragraph with respect to which the State is in noncompliance; or

(B) the Administrator determines that the State—

(i) has achieved substantial compliance with such applicable requirements with re-

spect to which the State was not in compliance; and

(ii) has made, through appropriate executive or legislative action, an unequivocal commitment to achieving full compliance with such applicable requirements within a reasonable time.

(d) Nonsubmission or nonqualification of plan; expenditure of allotted funds; availability of reallocated funds

In the event that any State chooses not to submit a plan, fails to submit a plan, or submits a plan or any modification thereof, which the Administrator, after reasonable notice and opportunity for hearing, in accordance with sections 3783, 3784, and 3785 of this title, determines does not meet the requirements of this section, the Administrator shall endeavor to make that State's allocation under the provisions of section 5632(a) of this title, excluding funds the Administrator shall make available to satisfy the requirement specified in section 5632(d) of this title, available to local public and private non-profit agencies within such State for use in carrying out activities of the kinds described in paragraphs (11), (12), (13), and (22) of subsection (a) of this section. The Administrator shall make funds which remain available after disbursements are made by the Administrator under the preceding sentence, and any other unobligated funds, available on an equitable basis and to those States that have achieved full compliance with the requirements under paragraphs (11), (12), (13), and (22) of subsection (a) of this section.

(e) Administrative and supervisory board membership requirements

Notwithstanding any other provision of law, the Administrator shall establish appropriate administrative and supervisory board membership requirements for a State agency designated under subsection (a)(1) of this section and permit the State advisory group appointed under subsection (a)(3) of this section to operate as the supervisory board for such agency, at the discretion of the chief executive officer of the State.

(f) Technical assistance

(1) In general

The Administrator shall provide technical and financial assistance to an eligible organization composed of member representatives of the State advisory groups appointed under subsection (a)(3) of this section to assist such organization to carry out the functions specified in paragraph (2).

(2) Assistance

To be eligible to receive such assistance, such organization shall agree to carry out activities that include—

(A) conducting an annual conference of such member representatives for purposes relating to the activities of such State advisory groups;

(B) disseminating information, data, standards, advanced techniques, and program models;

(C) reviewing Federal policies regarding juvenile justice and delinquency prevention;

(D) advising the Administrator with respect to particular functions or aspects of the work of the Office; and

(E) advising the President and Congress with regard to State perspectives on the operation of the Office and Federal legislation pertaining to juvenile justice and delinquency prevention.

(Pub. L. 93-415, title II, §223, Sept. 7, 1974, 88 Stat. 1119; Pub. L. 94-503, title I, §130(b), Oct. 15, 1976, 90 Stat. 2425; Pub. L. 95-115, §§3(a)(3)(B), 4(c)(1)-(15), Oct. 3, 1977, 91 Stat. 1048, 1051-1054; Pub. L. 96-509, §§11, 19(g), Dec. 8, 1980, 94 Stat. 2755, 2764; Pub. L. 98-473, title II, §626, Oct. 12, 1984, 98 Stat. 2111; Pub. L. 100-690, title VII, §§7258, 7263(b)(1), Nov. 18, 1988, 102 Stat. 4439, 4447; Pub. L. 102-586, §2(f)(3)(A), Nov. 4, 1992, 106 Stat. 4987; Pub. L. 103-322, title XI, §110201(d), Sept. 13, 1994, 108 Stat. 2012; Pub. L. 104-294, title VI, §604(b)(28), Oct. 11, 1996, 110 Stat. 3508; Pub. L. 105-277, div. A, §101(b) [title I, §129(a)(2)(C)], Oct. 21, 1998, 112 Stat. 2681-50, 2681-76; Pub. L. 106-554, §1(a)(4) [div. B, title I, §142], Dec. 21, 2000, 114 Stat. 2763, 2763A-235; Pub. L. 107-273, div. C, title II, §12209, Nov. 2, 2002, 116 Stat. 1873.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(18), was in the original "this Act", meaning Pub. L. 93-415, Sept. 7, 1974, 88 Stat. 1109, as amended, which enacted this chapter, sections 3772 to 3774 and 3821 of this title, and sections 4351 to 4353 and 5038 to 5042 of Title 18, Crimes and Criminal Procedure, amended sections 3701, 3723, 3733, 3768, 3811 to 3814, 3882, and 3883 to 3888 of this title, section 5108 of Title 5, Government Organization and Employees, and sections 5031 to 5037 of Title 18, and repealed section 3889 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5601 of this title and Tables.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107-273, §12209(1)(A), substituted ", projects, and activities" for "and challenge activities subsequent to State participation in part E of this subchapter" in second sentence of introductory provisions.

Subsec. (a)(3). Pub. L. 107-273, §12209(1)(B)(i), substituted "that—" for " , which—" in introductory provisions.

Subsec. (a)(3)(A)(i). Pub. L. 107-273, §12209(1)(B)(ii), substituted " , the administration of juvenile justice, or the reduction of juvenile delinquency" for "or the administration of juvenile justice".

Subsec. (a)(3)(D)(i). Pub. L. 107-273, §12209(1)(B)(iii)(I), inserted "and" at end.

Subsec. (a)(3)(D)(ii). Pub. L. 107-273, §12209(1)(B)(iii)(II), substituted "paragraphs (11), (12), and (13)" for "paragraphs (12), (13), and (14) and with progress relating to challenge activities carried out pursuant to part E of this subchapter".

Subsec. (a)(5). Pub. L. 107-273, §12209(1)(C)(i), substituted "reduced by the percentage (if any) specified by the State under the authority of paragraph (25) and excluding" for " , other than" in introductory provisions.

Subsec. (a)(5)(C). Pub. L. 107-273, §12209(1)(C)(ii), substituted "paragraphs (11), (12), and (13)" for "paragraphs (12)(A), (13), and (14)".

Subsec. (a)(6). Pub. L. 107-273, §12209(1)(D), (S), redesignated par. (7) as (6) and struck out former par. (6) which read as follows: "provide that the chief executive officer of the unit of local government shall assign responsibility for the preparation and administration of the local government's part of a State plan, or for the supervision of the preparation and administration of the local government's part of the State plan, to that

agency within the local government's structure or to a regional planning agency (hereinafter in this part referred to as the 'local agency') which can most effectively carry out the purposes of this part and shall provide for supervision of the programs funded under this part by that local agency;"

Subsec. (a)(7). Pub. L. 107-273, §12209(1)(S), redesignated par. (8) as (7). Former par. (7) redesignated (6).

Pub. L. 107-273, §12209(1)(E), inserted ", including in rural areas" before semicolon at end.

Subsec. (a)(8). Pub. L. 107-273, §12209(1)(S), redesignated par. (9) as (8). Former par. (8) redesignated (7).

Subsec. (a)(8)(A). Pub. L. 107-273, §12209(1)(F)(i), substituted "for an analysis of juvenile delinquency problems in, and the juvenile delinquency control and delinquency prevention needs (including educational needs) of, the State" for "for (i) an analysis of juvenile crime problems (including the joining of gangs that commit crimes) and juvenile justice and delinquency prevention needs (including educational needs) within the relevant jurisdiction" and "of the State; and" for "of the jurisdiction; (ii) an indication of the manner in which the programs relate to other similar State or local programs which are intended to address the same or similar problems; and (iii) a plan for the concentration of State efforts which shall coordinate all State juvenile delinquency programs with respect to overall policy and development of objectives and priorities for all State juvenile delinquency programs and activities, including provision for regular meetings of State officials with responsibility in the area of juvenile justice and delinquency prevention;"

Subsec. (a)(8)(B). Pub. L. 107-273, §12209(1)(F)(ii), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "contain—

"(i) an analysis of gender-specific services for the prevention and treatment of juvenile delinquency, including the types of such services available and the need for such services for females; and

"(ii) a plan for providing needed gender-specific services for the prevention and treatment of juvenile delinquency;"

Subsec. (a)(8)(C), (D). Pub. L. 107-273, §12209(1)(F)(iii), struck out subpars. (C) and (D) which read as follows:

"(C) contain—

"(i) an analysis of services for the prevention and treatment of juvenile delinquency in rural areas, including the need for such services, the types of such services available in rural areas, and geographically unique barriers to providing such services; and

"(ii) a plan for providing needed services for the prevention and treatment of juvenile delinquency in rural areas; and

"(D) contain—

"(i) an analysis of mental health services available to juveniles in the juvenile justice system (including an assessment of the appropriateness of the particular placements of juveniles in order to receive such services) and of barriers to access to such services; and

"(ii) a plan for providing needed mental health services to juveniles in the juvenile justice system;"

Subsec. (a)(9). Pub. L. 107-273, §12209(1)(S), redesignated par. (10) as (9). Former par. (9) redesignated (8).

Pub. L. 107-273, §12209(1)(G), amended par. (9) generally. Prior to amendment, par. (9) read as follows: "provide for the active consultation with and participation of private agencies in the development and execution of the State plan; and provide for coordination and maximum utilization of existing juvenile delinquency programs and other related programs, such as education, special education, recreation, health, and welfare within the State;"

Subsec. (a)(10). Pub. L. 107-273, §12209(1)(S), redesignated par. (11) as (10). Former par. (10) redesignated (9).

Subsec. (a)(10)(A). Pub. L. 107-273, §12209(1)(H)(i), substituted "including" for "specifically" in introductory provisions, redesignated cls. (ii) and (iii) as (i) and (ii), respectively, and struck out former cl. (i) which read as follows: "for youth who can remain at home

with assistance: home probation and programs providing professional supervised group activities or individualized mentoring relationships with adults that involve the family and provide counseling and other supportive services;"

Subsec. (a)(10)(D). Pub. L. 107-273, §12209(1)(H)(ii), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: "projects designed to develop and implement programs stressing advocacy activities aimed at improving services for and protecting the rights of youth affected by the juvenile justice system;"

Subsec. (a)(10)(E). Pub. L. 107-273, §12209(1)(H)(iii), substituted "juveniles—" for "juveniles, provided equitably regardless of sex, race, or family income, designed to—" in introductory provisions, added cls. (i) and (ii), redesignated former cl. (ii) as (iii), and struck out former cl. (i) which read as follows: "encourage juveniles to remain in elementary and secondary schools or in alternative learning situations, including—

"(I) education in settings that promote experiential, individualized learning and exploration of academic and career options;

"(II) assistance in making the transition to the world of work and self-sufficiency;

"(III) alternatives to suspension and expulsion; and

"(IV) programs to counsel delinquent juveniles and other juveniles regarding the opportunities that education provides; and"

Subsec. (a)(10)(F). Pub. L. 107-273, §12209(1)(H)(iv), amended subpar. (F) generally. Prior to amendment, subpar. (F) read as follows: "expanded use of home probation and recruitment and training of home probation officers, other professional and paraprofessional personnel, and volunteers to work effectively to allow youth to remain at home with their families as an alternative to incarceration or institutionalization;"

Subsec. (a)(10)(G). Pub. L. 107-273, §12209(1)(H)(v), amended subpar. (G) generally. Prior to amendment, subpar. (G) read as follows: "youth-initiated outreach programs designed to assist youth (including youth with limited proficiency in English) who otherwise would not be reached by traditional youth assistance programs;"

Subsec. (a)(10)(H). Pub. L. 107-273, §12209(1)(H)(vii), substituted "juveniles with disabilities" for "handicapped youth"

Subsec. (a)(10)(K). Pub. L. 107-273, §12209(1)(H)(viii), (xiii), redesignated subpar. (L) as (K) and struck out former subpar. (K) which read as follows: "law-related education programs (and projects) for delinquent and at-risk youth designed to prevent juvenile delinquency;"

Subsec. (a)(10)(L). Pub. L. 107-273, §12209(1)(H)(xiii), redesignated subpar. (M) as (L). Former subpar. (L) redesignated (K).

Subsec. (a)(10)(L)(vi). Pub. L. 107-273, §12209(1)(H)(ix), struck out cl. (vi) which read as follows: "a sense of competence and mastery including health and physical competence, personal and social competence, cognitive and creative competence, vocational competence, and citizenship competence, including ethics and participation;"

Subsec. (a)(10)(M). Pub. L. 107-273, §12209(1)(H)(xiii), redesignated subpar. (N) as (M). Former subpar. (M) redesignated (L).

Subsec. (a)(10)(M)(i). Pub. L. 107-273, §12209(1)(H)(x), struck out "boot camps" after "electronic monitoring;"

Subsec. (a)(10)(N). Pub. L. 107-273, §12209(1)(H)(xiii), redesignated subpar. (O) as (N). Former subpar. (N) redesignated (M).

Pub. L. 107-273, §12209(1)(H)(xi), amended subpar. (N) generally. Prior to amendment, subpar. (N) read as follows: "programs designed to prevent and reduce hate crimes committed by juveniles, including educational programs and sentencing programs designed specifically for juveniles who commit hate crimes and that provide alternatives to incarceration; and"

Subsec. (a)(10)(O). Pub. L. 107-273, §12209(1)(H)(xiv), added subpar. (O). Former subpar. (O) redesignated (N).

Pub. L. 107-273, § 12209(1)(H)(xii), substituted "other barriers" for "cultural barriers" and semicolon for period at end.

Subsec. (a)(10)(P) to (S). Pub. L. 107-273, § 12209(1)(H)(xiv), added subpars. (P) to (S).

Subsec. (a)(11). Pub. L. 107-273, § 12209(1)(S), redesignated par. (12) as (11). Former par. (11) redesignated (10).

Subsec. (a)(12). Pub. L. 107-273, § 12209(1)(S), redesignated par. (13) as (12). Former par. (12) redesignated (11).

Pub. L. 107-273, § 12209(1)(I), amended par. (12) generally. Prior to amendment, par. (12) read as follows:

"(A) provide within three years after submission of the initial plan that juveniles who are charged with or who have committed offenses that would not be criminal if committed by an adult or offenses (other than an offense that constitutes a violation of a valid court order or a violation of section 922(x) of title 18 or a similar State law), or alien juveniles in custody, or such nonoffenders as dependent or neglected children, shall not be placed in secure detention facilities or secure correctional facilities; and

"(B) provide that the State shall submit annual reports to the Administrator containing a review of the progress made by the State to achieve the deinstitutionalization of juveniles described in subparagraph (A) and a review of the progress made by the State to provide that such juveniles, if placed in facilities, are placed in facilities which (i) are the least restrictive alternatives appropriate to the needs of the child and the community; (ii) are in reasonable proximity to the family and the home communities of such juveniles; and (iii) provide the services described in section 5603(1) of this title;"

Subsec. (a)(13). Pub. L. 107-273, § 12209(1)(S), redesignated par. (14) as (13). Former par. (13) redesignated (12).

Pub. L. 107-273, § 12209(1)(J), amended par. (13) generally. Prior to amendment, par. (13) read as follows: "provide that juveniles alleged to be or found to be delinquent and youths within the purview of paragraph (12) shall not be detained or confined in any institution in which they have contact with adult persons incarcerated because they have been convicted of a crime or are awaiting trial on criminal charges or with the part-time or full-time security staff (including management) or direct-care staff of a jail or lockup for adults;"

Subsec. (a)(14). Pub. L. 107-273, § 12209(1)(S), redesignated par. (15) as (14). Former par. (14) redesignated (13).

Pub. L. 107-273, § 12209(1)(K), amended par. (14) generally. Prior to amendment, par. (14) read as follows: "provide that no juvenile shall be detained or confined in any jail or lockup for adults, except that the Administrator shall, through 1997, promulgate regulations which make exceptions with regard to the detention of juveniles accused of nonstatus offenses who are awaiting an initial court appearance pursuant to an enforceable State law requiring such appearances within twenty-four hours (except in the case of Alaska where such time limit may be forty-eight hours in fiscal years 2000 through 2002) after being taken into custody (excluding weekends and holidays) provided that such exceptions are limited to areas that are in compliance with paragraph (13) and—

"(A)(i) are outside a Standard Metropolitan Statistical Area; and

"(ii) have no existing acceptable alternative placement available;

"(B) are located where conditions of distance to be traveled or the lack of highway, road, or other ground transportation do not allow for court appearances within 24 hours, so that a brief (not to exceed 48 hours) delay is excusable; or

"(C) are located where conditions of safety exist (such as severely adverse, life-threatening weather conditions that do not allow for reasonably safe travel), in which case the time for an appearance may be

delayed until 24 hours after the time that such conditions allow for reasonably safe travel;"

Subsec. (a)(15). Pub. L. 107-273, § 12209(1)(S), redesignated par. (16) as (15). Former par. (15) redesignated (14).

Pub. L. 107-273, § 12209(1)(L), substituted "paragraphs (11), (12), and (13)" for "paragraph (12)(A), paragraph (13), and paragraph (14)" and "paragraphs (11) and (12)" for "paragraph (12)(A) and paragraph (13)".

Subsec. (a)(16). Pub. L. 107-273, § 12209(1)(S), redesignated par. (17) as (16). Former par. (16) redesignated (15).

Pub. L. 107-273, § 12209(1)(M), substituted "disability" for "mentally, emotionally, or physically handicapping conditions".

Subsec. (a)(17), (18). Pub. L. 107-273, § 12209(1)(S), redesignated pars. (18) and (19) as (17) and (18), respectively. Former par. (17) redesignated (16).

Subsec. (a)(19). Pub. L. 107-273, § 12209(1)(S), redesignated par. (20) as (19). Former par. (19) redesignated (18).

Pub. L. 107-273, § 12209(1)(N), amended par. (19) generally. Prior to amendment, par. (19) read as follows: "provide that fair and equitable arrangements shall be made to protect the interests of employees affected by assistance under this chapter and shall provide for the terms and conditions of such protective arrangements established pursuant to this section, and such protective arrangements shall, to the maximum extent feasible, include, without being limited to, such provisions as may be necessary for—

"(A) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective-bargaining agreements or otherwise;

"(B) the continuation of collective-bargaining rights;

"(C) the protection of individual employees against a worsening of their positions with respect to their employment;

"(D) assurances of employment to employees of any State or political subdivision thereof who will be affected by any program funded in whole or in part under provisions of this chapter; and

"(E) training or retraining programs;"

Subsec. (a)(20), (21). Pub. L. 107-273, § 12209(1)(S), redesignated pars. (21) and (22) as (20) and (21), respectively. Former par. (20) redesignated (19).

Subsec. (a)(22). Pub. L. 107-273, § 12209(1)(S), redesignated par. (23) as (22). Former par. (22) redesignated (21).

Pub. L. 107-273, § 12209(1)(O), amended par. (22) generally. Prior to amendment, par. (22) read as follows: "provide that the State agency designated under paragraph (1) will from time to time, but not less often than annually, review its plan and submit to the Administrator an analysis and evaluation of the effectiveness of the programs and activities carried out under the plan, and any modifications in the plan, including the survey of State and local needs, which it considers necessary;"

Subsec. (a)(23). Pub. L. 107-273, § 12209(1)(S), redesignated par. (24) as (23). Former par. (23) redesignated (22).

Pub. L. 107-273, § 12209(1)(P), amended par. (23) generally. Prior to amendment, par. (23) read as follows: "address efforts to reduce the proportion of juveniles detained or confined in secure detention facilities, secure correctional facilities, jails, and lockups who are members of minority groups if such proportion exceeds the proportion such groups represent in the general population;"

Subsec. (a)(24). Pub. L. 107-273, § 12209(1)(S), redesignated par. (25) as (24). Former par. (24) redesignated (23).

Pub. L. 107-273, § 12209(1)(Q), amended par. (24) generally. Prior to amendment, par. (24) read as follows: "contain such other terms and conditions as the Administrator may reasonably prescribe to assure the effectiveness of the programs assisted under this subchapter; and".

Subsec. (a)(25). Pub. L. 107-273, § 12209(1)(T), added par. (25).

Pub. L. 107-273, § 12209(1)(S), redesignated par. (25) as (24).

Pub. L. 107-273, § 12209(1)(R), substituted "fiscal year 2000" for "fiscal year 1992" and a semicolon for period at end.

Subsec. (a)(26) to (28). Pub. L. 107-273, § 12209(1)(T), added pars. (26) to (28).

Subsec. (c). Pub. L. 107-273, § 12209(2), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows:

"(1) Subject to paragraph (2), the Administrator shall approve any State plan and any modification thereof that meets the requirements of this section.

"(2) Failure to achieve compliance with the subsection (a)(12)(A) requirement within the 3-year time limitation shall terminate any State's eligibility for funding under this part for a fiscal year beginning before January 1, 1993, unless the Administrator determines that the State is in substantial compliance with the requirement, through achievement of deinstitutionalization of not less than 75 percent of such juveniles or through removal of 100 percent of such juveniles from secure correctional facilities, and has made, through appropriate executive or legislative action, an unequivocal commitment to achieving full compliance within a reasonable time not exceeding 2 additional years.

"(3) If a State fails to comply with the requirements of subsection (a), (12)(A), (13), (14), or (23) of this section in any fiscal year beginning after January 1, 1993—

"(A) subject to subparagraph (B), the amount allotted under section 5632 of this title to the State for that fiscal year shall be reduced by 25 percent for each such paragraph with respect to which non-compliance occurs; and

"(B) the State shall be ineligible to receive any allotment under that section for such fiscal year unless—

"(i) the State agrees to expend all the remaining funds the State receives under this part (excluding funds required to be expended to comply with section 5632(c) and (d) of this title and with subsection (a)(5)(C) of this section) for that fiscal year only to achieve compliance with any such paragraph with respect to which the State is in noncompliance; or

"(ii) the Administrator determines, in the discretion of the Administrator, that the State—

"(I) has achieved substantial compliance with each such paragraph with respect to which the State was not in compliance; and

"(II) has made, through appropriate executive or legislative action, an unequivocal commitment to achieving full compliance within a reasonable time."

Subsec. (d). Pub. L. 107-273, § 12209(3), substituted "allocation" for "allotment" and substituted "paragraphs (11), (12), (13), and (22) of subsection (a)" for "subsection (a)(12)(A), (13), (14) and (23)" in two places.

Subsecs. (e), (f). Pub. L. 107-273, § 12209(4), added subsecs. (e) and (f).

2000—Subsec. (a)(14). Pub. L. 106-554 inserted "(except in the case of Alaska where such time limit may be forty-eight hours in fiscal years 2000 through 2002)" after "twenty-four hours" in introductory provisions.

1998—Subsec. (a)(4). Pub. L. 105-277, § 101(b) [title I, § 129(a)(2)(C)(i)], substituted "units of local government" for "units of general local government" after "participation of" and "units of local government" for "local governments" after "requests of".

Subsec. (a)(5). Pub. L. 105-277, § 101(b) [title I, § 129(a)(2)(C)(ii)], substituted "units of local government" for "units of general local government" in subpar. (A) and "unit of local government" for "unit of general local government" in subpar. (B).

Subsec. (a)(6). Pub. L. 105-277, § 101(b) [title I, § 129(a)(2)(C)(iii)], substituted "unit of local government" for "unit of general local government".

Subsec. (a)(10). Pub. L. 105-277, § 101(b) [title I, § 129(a)(2)(C)(iv)], substituted "unit of local govern-

ment" for "unit of general local government" in introductory provisions.

1996—Subsec. (a)(12)(A). Pub. L. 104-294 substituted "similar State law)" for "similar State law)."

1994—Subsec. (a)(12)(A). Pub. L. 103-322 substituted "(other than an offense that constitutes a violation of a valid court order or a violation of section 922(x) of title 18 or a similar State law)." for "which do not constitute violations of valid court orders".

1992—Subsec. (a). Pub. L. 102-586, § 2(f)(3)(A)(i)(I), substituted "programs and challenge activities subsequent to State participation in part E of this subchapter. The State" for "programs, and the State" in introductory provisions.

Subsec. (a)(1). Pub. L. 102-586, § 2(f)(3)(A)(i)(II), made technical amendment to reference to section 5671 of this title to reflect renumbering of corresponding section of original act.

Subsec. (a)(3). Pub. L. 102-586, § 2(f)(3)(A)(i)(III), amended par. (3) generally, revising and restating as subpars. (A) to (E) provisions formerly appearing in text containing unindented subpars. (A) to (F).

Subsec. (a)(8). Pub. L. 102-586, § 2(f)(3)(A)(i)(IV), designated existing provisions as subpar. (A), redesignated former cls. (A) to (C) as (i) to (iii), respectively, inserted "(including educational needs)" after "delinquency prevention needs" in two places in cl. (i), and added subpars. (B) to (D).

Subsec. (a)(9). Pub. L. 102-586, § 2(f)(3)(A)(i)(V), inserted "recreation," after "special education."

Subsec. (a)(10). Pub. L. 102-586, § 2(f)(3)(A)(i)(VI), amended par. (10) generally, revising and restating as introductory provisions and subpars. (A) to (O) provisions of former introductory provisions and subpars. (A) to (L).

Subsec. (a)(12)(A). Pub. L. 102-586, § 2(f)(3)(A)(i)(VII), inserted "or alien juveniles in custody," after "court orders."

Subsec. (a)(13). Pub. L. 102-586, § 2(f)(3)(A)(i)(VIII), struck out "regular" before "contact with" and inserted "or with the part-time or full-time security staff (including management) or direct-care staff of a jail or lockup for adults".

Subsec. (a)(14). Pub. L. 102-586, § 2(f)(3)(A)(i)(IX)(bb), (cc), in introductory provisions substituted "1997" for "1993" and "areas that are in compliance with paragraph (13) and" for "areas which", added subpars. (A) to (C), and struck out former subpars. (A) to (C) which read as follows:

"(A) are outside a Standard Metropolitan Statistical Area,

"(B) have no existing acceptable alternative placement available, and

"(C) are in compliance with the provisions of paragraph (13);"

Pub. L. 102-586, § 2(f)(3)(A)(i)(IX)(aa), which directed the amendment of par. (14) by striking out " ; beginning after the five-year period following December 8, 1980," was executed by striking out " , beginning after the five-year period following December 8, 1980," after "provide that" to reflect the probable intent of Congress.

Subsec. (a)(16). Pub. L. 102-586, § 2(f)(3)(A)(i)(X), amended par. (16) generally. Prior to amendment, par. (16) read as follows: "provide assurance that assistance will be available on an equitable basis to deal with disadvantaged youth including, but not limited to, females, minority youth, and mentally retarded and emotionally or physically handicapped youth;"

Subsec. (a)(17). Pub. L. 102-586, § 2(f)(3)(A)(i)(XI), substituted "the families" for "and maintain the family units" and "delinquency (which" for "delinquency. Such" and inserted before semicolon "and the provision of family counseling during the incarceration of juvenile family members and coordination of family services when appropriate and feasible)".

Subsec. (a)(25). Pub. L. 102-586, § 2(f)(3)(A)(i)(XII)-(XIV), added par. (25).

Subsec. (c). Pub. L. 102-586, § 2(f)(3)(A)(ii), amended subsec. (c) generally, revising and restating as pars. (1) to (3) provisions of former pars. (1) to (4).

Subsec. (d). Pub. L. 102-586, §2(f)(3)(A)(iii), inserted “, excluding funds the Administrator shall make available to satisfy the requirement specified in section 5632(d) of this title,” and substituted “activities of the kinds described in subsection (a)(12)(A), (13), (14) and (23) of this section” for “the purposes of subsection (a)(12)(A) of this section, subsection (a)(13) of this section, or subsection (a)(14) of this section” and “subsection (a)(12)(A), (13), (14) and (23) of this section” for “subsection (a)(12)(A) of this section and subsection (a)(13) of this section”.

1988—Subsec. (a)(1). Pub. L. 100-690, §626(b)(1), made technical amendment to reference to section 5671 of this title to reflect renumbering of corresponding section of original act.

Subsec. (a)(5). Pub. L. 100-690, §7258(a)(1), substituted in introductory provisions “shall be expended” for “shall be expended through”, in subpar. (A) substituted “through programs” for “programs” and struck out “and” at end, in subpar. (B) substituted “through programs” for “programs” and inserted “and” after semicolon, and added subpar. (C).

Subsec. (a)(8)(A). Pub. L. 100-690, §7258(a)(2), substituted “relevant jurisdiction (including any geographical area in which an Indian tribe performs law enforcement functions)” for “relevant jurisdiction” and “juvenile crime problems (including the joining of gangs that commit crimes)” for “juvenile crime problems” in two places.

Subsec. (a)(14). Pub. L. 100-690, §7258(b), substituted “1993” for “1989”, substituted a semicolon for the period at end of subpar. (iii), and redesignated subpars. (i) to (iii) as subpars. (A) to (C), respectively.

Subsec. (a)(23), (24). Pub. L. 100-690, §7258(c), added par. (23) and redesignated former par. (23) as (24).

Subsec. (c)(1). Pub. L. 100-690, §7258(d)(1)-(3), designated existing provisions as par. (1), substituted “part” for “subpart”, and struck out last sentence which read as follows: “Failure to achieve compliance with the requirements of subsection (a)(14) of this section, within the 5-year time limitation shall terminate any State’s eligibility for funding under this subpart, unless the Administrator determines that (1) the State is in substantial compliance with such requirements through the achievement of not less than 75 percent removal of juveniles from jails and lockups for adults; and (2) the State has made, through appropriate executive or legislative action, an unequivocal commitment to achieving full compliance within a reasonable time, not to exceed 3 additional years.”

Subsec. (c)(2) to (4). Pub. L. 100-690, §7258(d)(4), added pars. (2) to (4).

1984—Subsec. (a). Pub. L. 98-473, §626(a)(9), (10), struck out provision after numbered paragraphs which read as follows: “such plan may at the discretion of the Associate Administrator be incorporated into the plan specified in section 3743 of this title. Such plan shall be modified by the State, as soon as practicable after December 8, 1980, in order to comply with the requirements of paragraph (14).”

Subsec. (a)(1). Pub. L. 98-473, §626(a)(1), substituted “agency described in section 5671(c)(1) of this title” for “criminal justice council established by the State under section 3742(b)(1) of this title”.

Subsec. (a)(2). Pub. L. 98-473, §626(a)(2), struck out “(hereafter referred to in this part as the ‘State criminal justice council’)” before “has or will have authority”.

Subsec. (a)(3)(C). Pub. L. 98-473, §626(a)(3)(A), in amending subpar. (C) generally, designated provisions following “representatives of private organizations” as cl. (i) and inserted “, including those with a special focus on maintaining and strengthening the family unit”, designated provisions following “which utilize” as cl. (ii) and inserted “representatives of organizations which”, added cl. (iii), designated provisions following “business groups” as cl. (iv), designated the remainder of subpar. (C) as cl. (v) and substituted “family, school violence and vandalism, and learning disabilities,” for “school violence and vandalism and the problem of

learning disabilities; and organizations which represent employees affected by this chapter.”.

Subsec. (a)(3)(F). Pub. L. 98-473, §626(a)(3)(B)(i), substituted “agency designated under paragraph (1)” for “criminal justice council” in three places.

Subsec. (a)(3)(F)(ii). Pub. L. 98-473, §626(a)(3)(B)(ii), substituted “paragraphs (12), (13), and (14)” for “paragraph (12)(A) and paragraph (13)”.

Subsec. (a)(3)(F)(iv). Pub. L. 98-473, §626(a)(3)(B)(iii), substituted “paragraphs (12), (13), and (14)” for “paragraph (12)(A) and paragraph (13)” and struck out “in advising on the State’s maintenance of effort under section 3793a of this title,” before “and in review”.

Subsec. (a)(9). Pub. L. 98-473, §626(a)(4), inserted “special education.”.

Subsec. (a)(10). Pub. L. 98-473, §626(a)(5)(A), in provisions preceding subpar. (A), substituted “programs for juveniles, including those processed in the criminal justice system,” for “programs for juveniles” and “provide for effective rehabilitation, and facilitate the coordination of services between the juvenile justice and criminal justice systems” for “and provide for effective rehabilitation”.

Subsec. (a)(10)(E). Pub. L. 98-473, §626(a)(5)(B), inserted “, including programs to counsel delinquent youth and other youth regarding the opportunities which education provides”.

Subsec. (a)(10)(F). Pub. L. 98-473, §626(a)(5)(C), inserted “and their families”.

Subsec. (a)(10)(H)(iii). Pub. L. 98-473, §626(a)(5)(D)(i), substituted “National Advisory Committee for Juvenile Justice and Delinquency Prevention made before October 12, 1984, standards for the improvement of juvenile justice within the State;” for “Advisory Committee, standards for the improvement of juvenile justice within the State; or”.

Subsec. (a)(10)(H)(v). Pub. L. 98-473, §626(a)(5)(D)(ii), (iii), added cl. (v).

Subsec. (a)(10)(I). Pub. L. 98-473, §626(a)(5)(E), struck out “and” at end.

Subsec. (a)(10)(J). Pub. L. 98-473, §626(a)(5)(F), struck out “juvenile gangs and their members” and inserted “gangs whose membership is substantially composed of juveniles”.

Subsec. (a)(10)(K), (L). Pub. L. 98-473, §626(a)(5)(G), added subpars. (K) and (L).

Subsec. (a)(14). Pub. L. 98-473, §626(a)(6), in amending par. (14) generally, inserted “, through 1989,” after “shall” and substituted provisions relating to exceptions for former provisions which related to the special needs of areas characterized by low population density with respect to the detention of juveniles and exceptions for temporary detention in adult facilities of juveniles accused of serious crimes against persons.

Subsec. (a)(17), (18). Pub. L. 98-473, §626(a)(11), (12), added par. (17) and redesignated former par. (17) as (18). Former par. (18) redesignated (19).

Subsec. (a)(19). Pub. L. 98-473, §626(a)(11), redesignated par. (18) as (19). Former par. (19) redesignated (20).

Pub. L. 98-473, §626(a)(7), in provisions preceding (A), substituted “shall be” for “are” after “arrangements” and substituted “chapter and shall provide for the terms and conditions of such protective arrangements established pursuant to this section, and such” for “chapter. Such”, inserted “and” at end of subpar. (D), substituted a semicolon for the period at end of subpar. (E), and struck out last sentence, which read as follows: “The State plan shall provide for the terms and conditions of the protection arrangements established pursuant to this section;”.

Subsec. (a)(20), (21). Pub. L. 98-473, §626(a)(11), redesignated pars. (19) and (20) as (20) and (21), respectively. Former par. (21) redesignated (22).

Subsec. (a)(22). Pub. L. 98-473, §626(a)(11), redesignated par. (21) as (22). Former par. (22) redesignated (23).

Pub. L. 98-473, §626(a)(8), substituted “agency designated under paragraph (1)” for “criminal justice council”.

Subsec. (a)(23). Pub. L. 98-473, § 626(a)(11), redesignated par. (22) as (23).

Subsec. (b). Pub. L. 98-473, § 626(b), substituted "agency designated under subsection (a)(1) of this section" for "criminal justice council designated pursuant to section 5633(a) of this title" and "subsection (a) of this section" for "section 5633(a) of this title".

Subsec. (c). Pub. L. 98-473, § 626(c), substituted "3" for "2" before "additional years".

Subsec. (d). Pub. L. 98-473, § 626(d), made a conforming amendment to the reference to sections 3783, 3784, and 3785 of this title to reflect the renumbering of the corresponding sections of the original act.

1980—Subsec. (a). Pub. L. 96-509, § 11(a)(1), in provisions preceding par. (1), provided for 3-year, rather than annual, plans and annually submitted performance reports which describe the progress in implementing programs contained in the original plan and the status of compliance with State plan requirements.

Pub. L. 96-509, §§ 11(a)(15)(B), 19(g)(11), in provisions following par. (22), substituted reference to section 3743 of this title for reference to section 3733(a) of this title and inserted provision that plans be modified by States as soon as possible after Dec. 8, 1980, in order to comply with the requirements of par. (14).

Subsec. (a)(1). Pub. L. 96-509, § 19(g)(1), substituted "State criminal justice council established by the State under section 3742(b)(1) of this title" for "State planning agency established by the State under section 3723 of this title".

Subsec. (a)(2). Pub. L. 96-509, § 19(g)(2), substituted "criminal justice council" for "planning agency".

Subsec. (a)(3)(A). Pub. L. 96-509, §§ 11(a)(2), 19(g)(3), provided that State advisory groups shall consist of between 15 and 33 members rather than between 21 and 33 members and substituted "juvenile delinquency" for "a juvenile delinquency".

Subsec. (a)(3)(B). Pub. L. 96-509, § 11(a)(3), provided that locally elected officials be included on State advisory groups and made clear that special education departments be included along with other public agencies for representation on State advisory groups.

Subsec. (a)(3)(E). Pub. L. 96-509, § 11(a)(4), provided that one-fifth of the members of State advisory groups be under 24 years of age at the time of their appointment, rather than one-third under 26 years of age.

Subsec. (a)(3)(F). Pub. L. 96-509, §§ 11(a)(5), (6), 19(g)(4), substituted in cl. (i) "criminal justice council" for "planning agency", in cl. (ii) provision that the State advisory groups submit recommendations to the Governor and the legislature at least annually regarding matters related to its functions for provision that the State advisory groups advise the Governor and the legislature on matters related to its functions as requested, in cl. (iii) "criminal justice council" for "planning agency other than those subject to review by the State's judicial planning committee established pursuant to section 3723(c) of this title", in cl. (iv) "criminal justice council and local criminal justice advisory" for "planning agency and regional planning unit supervisory" and "section 3793a of this title" for "sections 3768(b) and 5671(b) of this title", and added cl. (v).

Subsec. (a)(8). Pub. L. 96-509, § 11(a)(7), provided that State juvenile justice plan requirements conform to State criminal justice application requirements and required a State concentration of effort to coordinate State juvenile delinquency programs and policy.

Subsec. (a)(10). Pub. L. 96-509, § 11(a)(8)(A)-(C), in provisions preceding subpar. (A), clarified that the advanced techniques described in this paragraph are to be used to provide community-based alternatives to "secure" juvenile detention and correctional facilities and that advanced techniques can be used for the purpose of providing programs for juveniles who have committed serious crimes, particularly programs designed to improve sentencing procedures, provide resources necessary for informed dispositions, and provide for effective rehabilitation.

Subsec. (a)(10)(A). Pub. L. 96-509, § 11(a)(9), inserted provisions for inclusion of education and special edu-

cation programs among community-based programs and services.

Subsec. (a)(10)(E). Pub. L. 96-509, § 11(a)(10), clarified that educational programs included as advanced techniques should be designed to encourage delinquent and other youth to remain in school.

Subsec. (a)(10)(H). Pub. L. 96-509, § 11(a)(11), provided that statewide programs through the use of subsidies or other financial incentives to units of local government be designed to (1) remove juveniles from jails and lock-ups for adults, (2) replicate juvenile programs designed as exemplary by the National Institute of Justice, (3) establish and adopt standards for the improvement of juvenile justice within the State, or, (4) increase the use of nonsecure, community-based facilities and discourage the use of secure incarceration and detention.

Subsec. (a)(10)(I). Pub. L. 96-509, § 11(a)(12), revised subpar. (I) to provide that advanced technique programs designed to develop and implement projects relating to juvenile delinquency and learning disabilities include on-the-job training programs to assist law enforcement and juvenile justice personnel to more effectively recognize and provide for learning disabled and other handicapped juveniles.

Subsec. (a)(10)(J). Pub. L. 96-509, § 11(a)(8)(D), added subpar. (J).

Subsec. (a)(11). Pub. L. 96-509, § 19(g)(5), substituted "provide" for "provides".

Subsec. (a)(12)(A). Pub. L. 96-509, § 11(a)(13), clarified that juveniles who are charged with or who have committed offenses that would not be criminal if committed by an adult shall not be placed in secure detention facilities or secure correctional facilities rather than simply, as formerly, juvenile detention or correctional facilities.

Subsec. (a)(12)(B). Pub. L. 96-509, § 19(g)(6), substituted "Administrator" for "Associate Administrator".

Subsec. (a)(14). Pub. L. 96-509, § 11(a)(15)(A), added par. (14). Former par. (14) redesignated (15).

Subsec. (a)(15). Pub. L. 96-509, §§ 11(a)(14), (15)(A), 19(g)(7), redesignated former par. (14) as (15) and in par. (15) as so redesignated, provided that the annual reporting requirements of the results of the monitoring required by this section can be waived for States which have complied with the requirements of par. (12)(A), par. (13), and par. (14), and which have enacted legislation, conforming to those requirements, which contains, in the opinion of the Administrator, sufficient enforcement mechanisms to ensure that such legislation will be administered effectively and substituted "to the Administrator" for "to the Associate Administrator". Former par. (15) redesignated (16).

Subsec. (a)(16), (17). Pub. L. 96-509, § 11(a)(15)(A), redesignated former pars. (15) and (16) as (16) and (17), respectively. Former par. (17) redesignated (18).

Subsec. (a)(18). Pub. L. 96-509, §§ 11(a)(15)(A), 19(g)(8), redesignated former par. (17) as (18) and, in subpar. (A) of par. (18) as so redesignated, substituted "preservation of rights" for "preservation or rights". Former par. (18) redesignated (19).

Subsec. (a)(19), (20). Pub. L. 96-509, § 11(a)(15)(A), redesignated former pars. (18) and (19) as (19) and (20), respectively.

Subsec. (a)(21). Pub. L. 96-509, §§ 11(a)(15)(A), 19(g)(9), redesignated former par. (20) as (21) and substituted "State criminal justice council will from time to time, but not less often than annually, review its plan and submit to the Administrator" for "State planning agency will from time to time, but not less often than annually, review its plan and submit to the Associate Administrator". Former par. (21) redesignated (22).

Subsec. (a)(22). Pub. L. 96-509, §§ 11(a)(15)(A), 19(g)(10), redesignated former par. (21) as (22) and substituted "Administrator" for "Associate Administrator".

Subsec. (b). Pub. L. 96-509, § 19(g)(12), substituted "criminal justice council" for "planning agency".

Subsec. (c). Pub. L. 96-509, § 11(b), made conforming amendment, redefined "substantial compliance" with regard to subsection (a)(12)(A) of this section to include either 75 percent deinstitutionalization of juveniles

who are charged with or who have committed offenses that would not be criminal if committed by an adult, or such nonoffenders as dependent or neglected children or the removal of 100 percent of such juveniles from secure correctional facilities, and inserted provision at end defining substantial compliance with regard to subsec. (a)(14) of this section.

Subsec. (d). Pub. L. 96-509, §§11(c), 19(g)(13), substituted reference to sections 3783, 3784, and 3785 of this title for reference to sections 3757, 3758, and 3759 of this title and provided that redistributed allotments be used for the purposes of subsections (a)(12)(A), (a)(13) or (a)(14) of this section, and further provided that the Administrator shall make such reallocated funds available on an equitable basis to States that have achieved full compliance with the requirements under subsections (a)(12)(A) and (a)(13) of this section.

1977—Subsec. (a)(3). Pub. L. 95-115, §4(c)(1), in introductory text substituted provisions relating to functions under subpar. (F) and participation in the development and review of the plan, for provisions relating to advisement of the State planning agency and its supervisory board, in subpar. (C) inserted provision relating to representatives from business groups and businesses, and in subpar. (E) inserted requirement for at least three of the members to be or have been under the jurisdiction of the juvenile justice system, and added subpar. (F).

Subsec. (a)(4). Pub. L. 95-115, §4(c)(2), inserted provisions relating to grants or contracts with local private agencies or the advisory group, and substituted "units of general local government or combinations thereof in" for "local governments in".

Subsec. (a)(5). Pub. L. 95-115, §4(c)(3), substituted provisions relating to requirements respecting expenditure of funds through programs of units of general local government or combinations thereof and programs of local private agencies, for provisions relating to requirements respecting expenditure of funds through programs of local government.

Subsec. (a)(6). Pub. L. 95-115, §4(c)(4), inserted provision relating to regional planning agency and "unit of general" before "local government".

Subsec. (a)(8). Pub. L. 95-115, §4(c)(5), inserted provisions relating to programs and projects developed under the study.

Subsec. (a)(10). Pub. L. 95-115, §4(c)(6)(A)(i), (B), inserted provisions relating to availability of funds to the State advisory group and provisions expanding authorized use of funds to include encouragement of diversity of alternatives within the juvenile justice system and adoption of juvenile justice standards, and substituted reference to unit of general local government or combination of such unit with the State, for reference to local government.

Subsec. (a)(10)(A). Pub. L. 95-115, §4(c)(6)(A)(ii), inserted "twenty-four hour intake screening, volunteer and crisis home programs, day treatment, and home probation," after "health services."

Subsec. (a)(10)(C). Pub. L. 95-115, §4(c)(6)(A)(iii), substituted "other youth to help prevent delinquency" for "youth in danger of becoming delinquent".

Subsec. (a)(10)(D). Pub. L. 95-115, §4(c)(6)(A)(iv), substituted provisions relating to programs stressing advocacy activities, for provisions relating to programs of drug and alcohol abuse education and prevention and programs for treatment and rehabilitation of drug addicted youth and drug dependent youth as defined in section 201(q) of this title.

Subsec. (a)(10)(G). Pub. L. 95-115, §4(c)(6)(A)(v), inserted "traditional youth" after "reached by".

Subsec. (a)(10)(H). Pub. L. 95-115, §4(c)(6)(A)(vi), substituted "are" for "that may include but are not limited to programs".

Subsec. (a)(10)(I). Pub. L. 95-115, §4(c)(6)(A)(vii), added subpar. (I).

Subsec. (a)(12). Pub. L. 95-115, §4(c)(7), redesignated existing provisions as subpar. (A), substituted provisions relating to detention requirements respecting programs within three years after submission of the

initial plan, for provisions relating to detention requirements respecting programs within two years after submission of the plan, and added subpar. (B).

Subsec. (a)(13). Pub. L. 95-115, §4(c)(8), inserted "and youths within the purview of paragraph (12)" after "delinquent".

Subsec. (a)(14). Pub. L. 95-115, §§3(a)(3)(B), 4(c)(9), inserted "(A)" after "(12)" and "Associate" before "Administrator" and substituted "facilities, correctional facilities, and non-secure facilities" for "facilities, and correctional facilities".

Subsec. (a)(15). Pub. L. 95-115, §4(c)(10), struck out "all" before "disadvantaged".

Subsec. (a)(19). Pub. L. 95-115, §4(c)(11), struck out "to the extent feasible and practical" before "the level".

Subsec. (a)(20), (21). Pub. L. 95-115, §3(a)(3)(B), inserted "Associate" before "Administrator" wherever appearing.

Subsec. (b). Pub. L. 95-115, §4(c)(12), substituted provisions relating to advice and recommendations for provisions relating to consultations.

Subsec. (c). Pub. L. 95-115, §4(c)(13), inserted provisions relating to failure to achieve compliance with the requirements of subsec. (a)(12)(A) within the three-year time limitation.

Subsec. (d). Pub. L. 95-115, §4(c)(14), inserted provision relating to the State choosing not to submit a plan and provision relating to reallocation of funds by the Administrator.

Subsec. (e). Pub. L. 95-115, §4(c)(15), struck out subsec. (e) which related to reallocation of funds in a State where the State plan fails to meet the requirements of this section as a result of oversight or neglect.

1976—Subsec. (a). Pub. L. 94-503 substituted "(15), and (17)" for "and (15)" in provisions preceding par. (1).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-273 effective on the first day of the first fiscal year that begins after Nov. 2, 2002, and applicable only with respect to fiscal years beginning on or after the first day of the first fiscal year that begins after Nov. 2, 2002, see section 12223 of Pub. L. 107-273, as amended, set out as a note under section 5601 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-294 effective Sept. 13, 1994, see section 604(d) of Pub. L. 104-294, set out as a note under section 13 of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-690 effective Oct. 1, 1988, but amendment by section 7258(a) of Pub. L. 100-690 not applicable to a State with respect to a fiscal year beginning before Nov. 18, 1988, if the State plan is approved before such date by the Administrator for such fiscal year, see section 7296(a), (b)(1) of Pub. L. 100-690, set out as a note under section 5601 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-473 effective Oct. 12, 1984, see section 670(a) of Pub. L. 98-473, set out as a note under section 5601 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93-415, as added by Pub. L. 95-115, set out as a note under section 5601 of this title.

Section 4(c)(3)(B) of Pub. L. 95-115 provided in part that the amendment of subsec. (a)(5) of this section, which substituted "5632(d)" for "5632(e)", by section 4(c)(3)(B) of Pub. L. 95-115 is effective Oct. 1, 1978.

Section 4(c)(6)(B) of Pub. L. 95-115 provided in part that the amendment of subsec. (a)(10) of this section, which substituted "5632(d)" for "5632(e)", by section 4(c)(6)(B) of Pub. L. 95-115 is effective Oct. 1, 1978.

SAVINGS PROVISION

Section 2(f)(3)(B) of Pub. L. 102-586 provided that: "Notwithstanding the amendment made by subpara-

graph (A)(ii) [amending this section], section 223(c)(3) of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5633(c)(3)), as in effect on the day prior to the date of enactment of this Act [Nov. 4, 1992], shall remain in effect to the extent that it provides the Administrator authority to grant a waiver with respect to a fiscal year prior to a fiscal year beginning before January 1, 1993." On the day prior to Nov. 4, 1992, subsection (c)(3) of this section read as follows: "Except as provided in paragraph (2), failure to achieve compliance with the requirements of subsection (a)(14) of this section after December 8, 1985, shall terminate any State's eligibility for funding under this part unless the Administrator waives the termination of the State's eligibility on the condition that the State agrees to expend all of the funds to be received under this part by the State (excluding funds required to be expended to comply with subsections (c) and (d) of section 5632 of this title and with subsection (a)(5)(C) of this section), only to achieve compliance with subsection (a)(14) of this section."

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law. See section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

COSTS AND IMPLICATIONS OF REMOVAL OF JUVENILES FROM ADULTS IN JAILS; REPORT TO CONGRESS

Section 17 of Pub. L. 96-509 provided that the Administrator of the Office of Juvenile Justice and Delinquency Prevention, not later than 18 months after Dec. 8, 1980, submit a report to the Congress relating to the cost and implications of any requirement added to the Juvenile Justice and Delinquency Prevention Act of 1974 which would mandate the removal of juveniles from adults in all jails and lockups, such report to include an estimate of the costs likely to be incurred by the States, an analysis of the experience of States which required the removal of juveniles from adults in all jails and lockups, an analysis of possible adverse ramifications which might result from such requirement of removal, and recommendations for such legislative or administrative action as the Administrator considers appropriate.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5614, 5616, 5617, 5631, 5632, 5653, 5656, 5671, 5672, 5781, 5782 of this title.

§§ 5634 to 5639. Repealed. Pub. L. 100-690, title VII, § 7263(a)(1)(B), Nov. 18, 1988, 102 Stat. 4443

Section 5634, Pub. L. 93-415, title II, § 224, Sept. 7, 1974, 88 Stat. 1122; Pub. L. 95-115, § 4(d), Oct. 3, 1977, 91 Stat. 1054; Pub. L. 96-509, §§ 12, 19(h), Dec. 8, 1980, 94 Stat. 2759, 2765; Pub. L. 98-473, title II, § 627, Oct. 12, 1984, 98 Stat. 2114, related to funding of special emphasis prevention and treatment programs through grants and contracts.

Section 5635, Pub. L. 93-415, title II, § 225, Sept. 7, 1974, 88 Stat. 1123; Pub. L. 94-503, title I, § 130(c), Oct. 15, 1976, 90 Stat. 2425; Pub. L. 95-115, § 4(e), Oct. 3, 1977, 91 Stat. 1055; Pub. L. 98-473, title II, § 628, Oct. 12, 1984, 98 Stat. 2116, related to applications for grants and contracts under section 5634 of this title.

Section 5636, Pub. L. 93-415, title II, § 226, Sept. 7, 1974, 88 Stat. 1124, provided for proceedings by Administrator in the case of noncompliance of program or activity with this subchapter.

Section 5637, Pub. L. 93-415, title II, § 227, Sept. 7, 1974, 88 Stat. 1124; Pub. L. 95-115, § 4(f), Oct. 3, 1977, 91 Stat. 1055; Pub. L. 96-509, § 13(a), Dec. 8, 1980, 94 Stat. 2759; Pub. L. 98-473, title II, § 629, Oct. 12, 1984, 98 Stat. 2117, related to use of funds paid pursuant to this subchapter.

Section 5638, Pub. L. 93-415, title II, § 228, Sept. 7, 1974, 88 Stat. 1124; Pub. L. 95-115, § 4(g)(1), (2), (3)(A), Oct. 3, 1977, 91 Stat. 1055, 1056; Pub. L. 96-509, §§ 14, 19(i), Dec. 8, 1980, 94 Stat. 2760, 2765; Pub. L. 98-473, title II, § 630, Oct. 12, 1984, 98 Stat. 2117, related to continuing financial assistance for programs.

Section 5639, Pub. L. 93-415, title II, § 229, as added Pub. L. 95-115, § 4(h), Oct. 3, 1977, 91 Stat. 1056, provided for confidentiality of program records.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1988, see section 7296(a) of Pub. L. 100-690, set out as an Effective Date of 1988 Amendment note under section 5601 of this title.

PART C—JUVENILE DELINQUENCY PREVENTION BLOCK GRANT PROGRAM

PRIOR PROVISIONS

A prior part C, consisting of sections 5651 to 5665a, related to national programs, prior to repeal by Pub. L. 107-273, div. C, title II, § 12210(1), Nov. 2, 2002, 116 Stat. 1880.

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 5617, 5667-1, 5667a-1, 5671, 5675, 5783 of this title.

§ 5651. Authority to make grants

(a) Grants to eligible States

The Administrator may make grants to eligible States, from funds allocated under section 5652 of this title, for the purpose of providing financial assistance to eligible entities to carry out projects designed to prevent juvenile delinquency, including—

- (1) projects that provide treatment (including treatment for mental health problems) to juvenile offenders, and juveniles who are at risk of becoming juvenile offenders, who are victims of child abuse or neglect or who have experienced violence in their homes, at school, or in the community, and to their families, in order to reduce the likelihood that such juveniles will commit violations of law;
- (2) educational projects or supportive services for delinquent or other juveniles—

(A) to encourage juveniles to remain in elementary and secondary schools or in alternative learning situations in educational settings;

(B) to provide services to assist juveniles in making the transition to the world of work and self-sufficiency;

(C) to assist in identifying learning difficulties (including learning disabilities);

(D) to prevent unwarranted and arbitrary suspensions and expulsions;

(E) to encourage new approaches and techniques with respect to the prevention of school violence and vandalism;

(F) which assist law enforcement personnel and juvenile justice personnel to more effectively recognize and provide for learning-disabled and other juveniles with disabilities;

(G) which develop locally coordinated policies and programs among education, juvenile justice, and social service agencies; or

(H) to provide services to juveniles with serious mental and emotional disturbances (SED) in need of mental health services;

(3) projects which expand the use of probation officers—

(A) particularly for the purpose of permitting nonviolent juvenile offenders (including status offenders) to remain at home with their families as an alternative to incarceration or institutionalization; and

(B) to ensure that juveniles follow the terms of their probation;

(4) counseling, training, and mentoring programs, which may be in support of academic tutoring, vocational and technical training, and drug and violence prevention counseling, that are designed to link at-risk juveniles, juvenile offenders, or juveniles who have a parent or legal guardian who is or was incarcerated in a Federal, State, or local correctional facility or who is otherwise under the jurisdiction of a Federal, State, or local criminal justice system, particularly juveniles residing in low-income and high-crime areas and juveniles experiencing educational failure, with responsible individuals (such as law enforcement officers, Department of Defense personnel, individuals working with local businesses, and individuals working with community-based and faith-based organizations and agencies) who are properly screened and trained;

(5) community-based projects and services (including literacy and social service programs) which work with juvenile offenders and juveniles who are at risk of becoming juvenile offenders, including those from families with limited English-speaking proficiency, their parents, their siblings, and other family members during and after incarceration of the juvenile offenders, in order to strengthen families, to allow juvenile offenders to be retained in their homes, and to prevent the involvement of other juvenile family members in delinquent activities;

(6) projects designed to provide for the treatment (including mental health services) of juveniles for dependence on or abuse of alcohol, drugs, or other harmful substances;

(7) projects which leverage funds to provide scholarships for postsecondary education and training for low-income juveniles who reside in neighborhoods with high rates of poverty, violence, and drug-related crimes;

(8) projects which provide for an initial intake screening of each juvenile taken into custody—

(A) to determine the likelihood that such juvenile will commit a subsequent offense; and

(B) to provide appropriate interventions (including mental health services) to prevent such juvenile from committing subsequent offenses;

(9) projects (including school- or community-based projects) that are designed to prevent, and reduce the rate of, the participation of juveniles in gangs that commit crimes (particularly violent crimes), that unlawfully use firearms and other weapons, or that unlawfully traffic in drugs and that involve, to the

extent practicable, families and other community members (including law enforcement personnel and members of the business community) in the activities conducted under such projects;

(10) comprehensive juvenile justice and delinquency prevention projects that meet the needs of juveniles through the collaboration of the many local service systems juveniles encounter, including schools, courts, law enforcement agencies, child protection agencies, mental health agencies, welfare services, health care agencies (including collaboration on appropriate prenatal care for pregnant juvenile offenders), private nonprofit agencies, and public recreation agencies offering services to juveniles;

(11) to develop, implement, and support, in conjunction with public and private agencies, organizations, and businesses, projects for the employment of juveniles and referral to job training programs (including referral to Federal job training programs);

(12) delinquency prevention activities which involve youth clubs, sports, recreation and parks, peer counseling and teaching, the arts, leadership development, community service, volunteer service, before- and after-school programs, violence prevention activities, mediation skills training, camping, environmental education, ethnic or cultural enrichment, tutoring, and academic enrichment;

(13) to establish policies and systems to incorporate relevant child protective services records into juvenile justice records for purposes of establishing treatment plans for juvenile offenders;

(14) programs that encourage social competencies, problem-solving skills, and communication skills, youth leadership, and civic involvement;

(15) programs that focus on the needs of young girls at-risk of delinquency or status offenses;

(16) projects which provide for—

(A) an assessment by a qualified mental health professional of incarcerated juveniles who are suspected to be in need of mental health services;

(B) the development of an individualized treatment plan for those incarcerated juveniles determined to be in need of such services;

(C) the inclusion of a discharge plan for incarcerated juveniles receiving mental health services that addresses aftercare services; and

(D) all juveniles receiving psychotropic medications to be under the care of a licensed mental health professional;

(17) after-school programs that provide at-risk juveniles and juveniles in the juvenile justice system with a range of age-appropriate activities, including tutoring, mentoring, and other educational and enrichment activities;

(18) programs related to the establishment and maintenance of a school violence hotline, based on a public-private partnership, that students and parents can use to report suspicious, violent, or threatening behavior to local school and law enforcement authorities;

(19) programs (excluding programs to purchase guns from juveniles) designed to reduce the unlawful acquisition and illegal use of guns by juveniles, including partnerships between law enforcement agencies, health professionals, school officials, firearms manufacturers, consumer groups, faith-based groups and community organizations;

(20) programs designed to prevent animal cruelty by juveniles and to counsel juveniles who commit animal cruelty offenses, including partnerships among law enforcement agencies, animal control officers, social services agencies, and school officials;

(21) programs that provide suicide prevention services for incarcerated juveniles and for juveniles leaving the incarceration system;

(22) programs to establish partnerships between State educational agencies and local educational agencies for the design and implementation of character education and training programs that reflect the values of parents, teachers, and local communities, and incorporate elements of good character, including honesty, citizenship, courage, justice, respect, personal responsibility, and trustworthiness;

(23) programs that foster strong character development in at-risk juveniles and juveniles in the juvenile justice system;

(24) local programs that provide for immediate psychological evaluation and follow-up treatment (including evaluation and treatment during a mandatory holding period for not less than 24 hours) for juveniles who bring a gun on school grounds without permission from appropriate school authorities; and

(25) other activities that are likely to prevent juvenile delinquency.

(b) Grants to eligible Indian tribes

The Administrator may make grants to eligible Indian tribes from funds allocated under section 5652(b) of this title, to carry out projects of the kinds described in subsection (a) of this section.

(Pub. L. 93-415, title II, §241, as added Pub. L. 107-273, div. C, title II, §12210(4), Nov. 2, 2002, 116 Stat. 1880.)

PRIOR PROVISIONS

A prior section 5651, Pub. L. 93-415, title II, §241, Sept. 7, 1974, 88 Stat. 1125; Pub. L. 95-115, §§3(a)(3)(A), (5), 5(a), (f), Oct. 3, 1977, 91 Stat. 1048, 1049, 1056, 1057; Pub. L. 96-509, §19(j), Dec. 8, 1980, 94 Stat. 2765; Pub. L. 98-473, title II, §631, Oct. 12, 1984, 98 Stat. 2118; Pub. L. 100-690, title VII, §7259, Nov. 18, 1988, 102 Stat. 4441; Pub. L. 102-586, §2(g)(1), Nov. 4, 1992, 106 Stat. 4994, related to the National Institute for Juvenile Justice and Delinquency Prevention, prior to repeal by Pub. L. 107-273, div. C, title II, §12210(1), Nov. 2, 2002, 116 Stat. 1880.

EFFECTIVE DATE

Part effective on the first day of the first fiscal year that begins after Nov. 2, 2002, and applicable only with respect to fiscal years beginning on or after the first day of the first fiscal year that begins after Nov. 2, 2002, see section 12223 of Pub. L. 107-273, as amended, set out as an Effective Date of 2002 Amendment note under section 5601 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5653, 5654, 5655, 5656 of this title.

§ 5652. Allocation

(a) Allocation among eligible States

Subject to subsection (b) of this section, funds appropriated to carry out this part shall be allocated among eligible States proportionately based on the population that is less than 18 years of age in the eligible States.

(b) Allocation among Indian tribes collectively

Before allocating funds under subsection (a) of this section among eligible States, the Administrator shall allocate among eligible Indian tribes as determined under section 5656(a) of this title, an aggregate amount equal to the amount such tribes would be allocated under subsection (a) of this section, and without regard to this subsection, if such tribes were treated collectively as an eligible State.

(Pub. L. 93-415, title II, §242, as added Pub. L. 107-273, div. C, title II, §12210(4), Nov. 2, 2002, 116 Stat. 1884.)

PRIOR PROVISIONS

A prior section 5652, Pub. L. 93-415, title II, §242, Sept. 7, 1974, 88 Stat. 1126; Pub. L. 100-690, title VII, §7260, Nov. 18, 1988, 102 Stat. 4441; Pub. L. 102-586, §2(g)(2), Nov. 4, 1992, 106 Stat. 4995, related to the information function of the Institute, prior to repeal by Pub. L. 107-273, div. C, title II, §12210(1), Nov. 2, 2002, 116 Stat. 1880.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5651 of this title.

§ 5653. Eligibility of States

(a) Application

To be eligible to receive a grant under section 5651 of this title, a State shall submit to the Administrator an application that contains the following:

(1) An assurance that the State will use—

(A) not more than 5 percent of such grant, in the aggregate, for—

(i) the costs incurred by the State to carry out this part; and

(ii) to evaluate, and provide technical assistance relating to, projects and activities carried out with funds provided under this part; and

(B) the remainder of such grant to make grants under section 5654 of this title.

(2) An assurance that, and a detailed description of how, such grant will supplement, and not supplant State and local efforts to prevent juvenile delinquency.

(3) An assurance that such application was prepared after consultation with and participation by the State advisory group, community-based organizations, and organizations in the local juvenile justice system, that carry out programs, projects, or activities to prevent juvenile delinquency.

(4) An assurance that the State advisory group will be afforded the opportunity to review and comment on all grant applications submitted to the State agency.

(5) An assurance that each eligible entity described in section 5654 of this title that receives an initial grant under section 5654 of

this title to carry out a project or activity shall also receive an assurance from the State that such entity will receive from the State, for the subsequent fiscal year to carry out such project or activity, a grant under such section in an amount that is proportional, based on such initial grant and on the amount of the grant received under section 5651 of this title by the State for such subsequent fiscal year, but that does not exceed the amount specified for such subsequent fiscal year in such application as approved by the State.

(6) Such other information and assurances as the Administrator may reasonably require by rule.

(b) Approval of applications

(1) Approval required

Subject to paragraph (2), the Administrator shall approve an application, and amendments to such application submitted in subsequent fiscal years, that satisfy the requirements of subsection (a) of this section.

(2) Limitation

The Administrator may not approve such application (including amendments to such application) for a fiscal year unless—

(A)(i) the State submitted a plan under section 5633 of this title for such fiscal year; and

(ii) such plan is approved by the Administrator for such fiscal year; or

(B) the Administrator waives the application of subparagraph (A) to such State for such fiscal year, after finding good cause for such a waiver.

(Pub. L. 93-415, title II, §243, as added Pub. L. 107-273, div. C, title II, §12210(4), Nov. 2, 2002, 116 Stat. 1884.)

PRIOR PROVISIONS

A prior section 5653, Pub. L. 93-415, title II, §243, Sept. 7, 1974, 88 Stat. 1126; Pub. L. 95-115, §§3(a)(3)(B), 5(b), Oct. 3, 1977, 91 Stat. 1048, 1057; Pub. L. 98-473, title II, §632, Oct. 12, 1984, 98 Stat. 2118; Pub. L. 100-690, title VII, §7261, Nov. 18, 1988, 102 Stat. 4442; Pub. L. 102-586, §2(g)(3), Nov. 4, 1992, 106 Stat. 4995, related to research, demonstration, and evaluation, prior to repeal by Pub. L. 107-273, div. C, title II, §12210(1), Nov. 2, 2002, 116 Stat. 1880.

§ 5654. Grants for local projects

(a) Grants by States

Using a grant received under section 5651 of this title, a State may make grants to eligible entities whose applications are received by the State, and reviewed by the State advisory group, to carry out projects and activities described in section 5651 of this title.

(b) Special consideration

For purposes of making grants under subsection (a) of this section, the State shall give special consideration to eligible entities that—

(1) propose to carry out such projects in geographical areas in which there is—

(A) a disproportionately high level of serious crime committed by juveniles; or

(B) a recent rapid increase in the number of nonstatus offenses committed by juveniles;

(2)(A) agreed to carry out such projects or activities that are multidisciplinary and involve more than 2 private nonprofit agencies, organizations, and institutions that have experience dealing with juveniles; or

(B) represent communities that have a comprehensive plan designed to identify at-risk juveniles and to prevent or reduce the rate of juvenile delinquency, and that involve other entities operated by individuals who have a demonstrated history of involvement in activities designed to prevent juvenile delinquency; and

(3) the amount of resources (in cash or in kind) such entities will provide to carry out such projects and activities.

(Pub. L. 93-415, title II, §244, as added Pub. L. 107-273, div. C, title II, §12210(4), Nov. 2, 2002, 116 Stat. 1885.)

PRIOR PROVISIONS

A prior section 5654, Pub. L. 93-415, title II, §244, Sept. 7, 1974, 88 Stat. 1127; Pub. L. 95-115, §5(f), Oct. 3, 1977, 91 Stat. 1057; Pub. L. 96-509, §19(k), Dec. 8, 1980, 94 Stat. 2765; Pub. L. 98-473, title II, §633, Oct. 12, 1984, 98 Stat. 2119; Pub. L. 100-690, title VII, §7262, Nov. 18, 1988, 102 Stat. 4442; Pub. L. 102-586, §2(g)(3), Nov. 4, 1992, 106 Stat. 4996; Pub. L. 105-277, div. A, §101(b) [title I, §129(a)(2)(D)], Oct. 21, 1998, 112 Stat. 2681-50, 2681-76, related to technical assistance and training functions, prior to repeal by Pub. L. 107-273, div. C, title II, §12210(1), Nov. 2, 2002, 116 Stat. 1880.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5653, 5655 of this title.

§ 5655. Eligibility of entities

(a) Eligibility

Except as provided in subsection (b) of this section, to be eligible to receive a grant under section 5654 of this title, a unit of general purpose local government, acting jointly with not fewer than 2 private nonprofit agencies, organizations, and institutions that have experience dealing with juveniles, shall submit to the State an application that contains the following:

(1) An assurance that such applicant will use such grant, and each such grant received for the subsequent fiscal year, to carry out throughout a 2-year period a project or activity described in reasonable detail, and of a kind described in one or more of paragraphs (1) through (25) of section 5651(a) of this title as specified in, such application.

(2) A statement of the particular goals such project or activity is designed to achieve, and the methods such entity will use to achieve, and assess the achievement of, each of such goals.

(3) A statement identifying the research (if any) such entity relied on in preparing such application.

(b) Limitation

If an eligible entity that receives a grant under section 5654 of this title to carry out a project or activity for a 2-year period, and receives technical assistance from the State or the Administrator after requesting such technical assistance (if any), fails to demonstrate, before the expiration of such 2-year period, that such project or such activity has achieved substantial

success in achieving the goals specified in the application submitted by such entity to receive such grants, then such entity shall not be eligible to receive any subsequent grant under such section to continue to carry out such project or activity.

(Pub. L. 93-415, title II, §245, as added Pub. L. 107-273, div. C, title II, §12210(4), Nov. 2, 2002, 116 Stat. 1885.)

PRIOR PROVISIONS

A prior section 5655, Pub. L. 93-415, title II, §245, Sept. 7, 1974, 88 Stat. 1127; Pub. L. 95-115, §5(c), Oct. 3, 1977, 91 Stat. 1057; Pub. L. 96-509, §19(l), Dec. 8, 1980, 94 Stat. 2765, provided for the functions of the Advisory Committee, prior to repeal by Pub. L. 98-473, title II, §§634, 670(a), Oct. 12, 1984, 98 Stat. 2119, 2129, effective Oct. 12, 1984.

A prior section 245 of Pub. L. 93-415 was classified to section 5659 of this title prior to repeal by Pub. L. 107-273.

Another prior section 245 of Pub. L. 93-415 was classified to section 5656 of this title prior to repeal by Pub. L. 100-690.

§ 5656. Grants to Indian tribes

(a) Eligibility

(1) Application

To be eligible to receive a grant under section 5651(b) of this title, an Indian tribe shall submit to the Administrator an application in accordance with this section, in such form and containing such information as the Administrator may require by rule.

(2) Plans

Such application shall include a plan for conducting programs, projects, and activities described in section 5651(a) of this title, which plan shall—

(A) provide evidence that the applicant Indian tribe performs law enforcement functions (as determined by the Secretary of the Interior);

(B) identify the juvenile justice and delinquency problems and juvenile delinquency prevention needs to be addressed by activities conducted with funds provided by the grant for which such application is submitted, by the Indian tribe in the geographical area under the jurisdiction of the Indian tribe;

(C) provide for fiscal control and accounting procedures that—

(i) are necessary to ensure the prudent use, proper disbursement, and accounting of grants received by applicants under this section; and

(ii) are consistent with the requirement specified in subparagraph (B); and

(D) comply with the requirements specified in section 5633(a) of this title (excluding any requirement relating to consultation with a State advisory group) and with the requirements specified in section 5632(c) of this title; and

(E) contain such other information, and be subject to such additional requirements, as the Administrator may reasonably require by rule to ensure the effectiveness of the projects for which grants are made under section 5651(b) of this title.

(b) Factors for consideration

For the purpose of selecting eligible applicants to receive grants under section 5651(b) of this title, the Administrator shall consider—

(1) the resources that are available to each applicant Indian tribe that will assist, and be coordinated with, the overall juvenile justice system of the Indian tribe; and

(2) with respect to each such applicant—

(A) the juvenile population; and

(B) the population and the entities that will be served by projects proposed to be carried out with the grant for which the application is submitted.

(c) Grant process

(1) Selection of grant recipients

(A) Selection requirements

Except as provided in paragraph (2), the Administrator shall—

(i) make grants under this section on a competitive basis; and

(ii) specify in writing to each applicant selected to receive a grant under this section, the terms and conditions on which such grant is made to such applicant.

(B) Period of grant

A grant made under this section shall be available for expenditure during a 2-year period.

(2) Exception

If—

(A) in the 2-year period for which a grant made under this section shall be expended, the recipient of such grant applies to receive a subsequent grant under this section; and

(B) the Administrator determines that such recipient performed during the year preceding the 2-year period for which such recipient applies to receive such subsequent grant satisfactorily and in accordance with the terms and conditions applicable to the grant received;

then the Administrator may waive the application of the competition-based requirement specified in paragraph (1)(A)(i) and may allow the applicant to incorporate by reference in the current application the text of the plan contained in the recipient's most recent application previously approved under this section.

(3) Authority to modify application process for subsequent grants

The Administrator may modify by rule the operation of subsection (a) of this section with respect to the submission and contents of applications for subsequent grants described in paragraph (2).

(d) Reporting requirement

Each Indian tribe that receives a grant under this section shall be subject to the fiscal accountability provisions of section 450c(f)(1) of title 25, relating to the submission of a single-agency audit report required by chapter 75 of title 31.

(e) Matching requirement

(1) Funds appropriated for the activities of any agency of an Indian tribal government or the

Bureau of Indian Affairs performing law enforcement functions on any Indian lands may be used to provide the non-Federal share of any program or project with a matching requirement funded under this section.

(2) Paragraph (1) shall not apply with respect to funds appropriated before November 2, 2002.

(3) If the Administrator determines that an Indian tribe does not have sufficient funds available to meet the non-Federal share of the cost of any program or activity to be funded under the grant, the Administrator may increase the Federal share of the cost thereof to the extent the Administrator deems necessary.

(Pub. L. 93-415, title II, §246, as added Pub. L. 107-273, div. C, title II, §12210(4), Nov. 2, 2002, 116 Stat. 1886.)

PRIOR PROVISIONS

A prior section 5656, Pub. L. 93-415, title II, §245, formerly §246, Sept. 7, 1974, 88 Stat. 1127; Pub. L. 94-273, §2(27), Apr. 21, 1976, 90 Stat. 376; Pub. L. 95-115, §3(a)(3), (5), Oct. 3, 1977, 91 Stat. 1048, 1049; Pub. L. 96-509, §19(m), Dec. 8, 1980, 94 Stat. 2765; renumbered §245, Pub. L. 98-473, title II, §635, Oct. 12, 1984, 98 Stat. 2120, related to annual report by Deputy Administrator on programs funded under this subchapter, prior to repeal by Pub. L. 100-690, title VII, §§7263(a)(2)(C), 7296(a), Nov. 18, 1988, 102 Stat. 4443, 4463, effective Oct. 1, 1988.

A prior section 5657, Pub. L. 93-415, title II, §246, formerly §247, Sept. 7, 1974, 88 Stat. 1127; Pub. L. 95-115, §5(d), Oct. 3, 1977, 91 Stat. 1057; renumbered §246 and amended Pub. L. 98-473, title II, §636, Oct. 12, 1984, 98 Stat. 2120, set forth additional functions of the Institute for Juvenile Justice and Delinquency Prevention, prior to repeal by Pub. L. 100-690, title VII, §§7263(a)(2)(C), 7296(a), Nov. 18, 1988, 102 Stat. 4443, 4463, effective Oct. 1, 1988.

A prior section 5658, Pub. L. 93-415, title II, §248, Sept. 7, 1974, 88 Stat. 1128, set forth provisions relating to restrictions on disclosure and transfer of juvenile records, prior to repeal by Pub. L. 95-115, §5(e)(1), Oct. 3, 1977, 91 Stat. 1057, effective Oct. 1, 1977.

A prior section 5659, Pub. L. 93-415, title II, §245, formerly §249, Sept. 7, 1974, 88 Stat. 1128; renumbered §248 and amended Pub. L. 95-115, §§3(a)(3)(B), 5(e)(1), (f), Oct. 3, 1977, 91 Stat. 1048, 1057; Pub. L. 96-509, §19(n), Dec. 8, 1980, 94 Stat. 2765; renumbered §247 and amended Pub. L. 98-473, title II, §637, Oct. 12, 1984, 98 Stat. 2120; renumbered §245, Pub. L. 100-690, title VII, §7263(a)(2)(E), Nov. 18, 1988, 102 Stat. 4443; Pub. L. 102-586, §2(g)(4), Nov. 4, 1992, 106 Stat. 4996, established a training program of methods and techniques for the prevention and treatment of juvenile delinquency, prior to repeal by Pub. L. 107-273, div. C, title II, §12210(1), Nov. 2, 2002, 116 Stat. 1880.

A prior section 5660, Pub. L. 93-415, title II, §246, formerly §250, Sept. 7, 1974, 88 Stat. 1128; renumbered §249 and amended Pub. L. 95-115, §§3(a)(3)(B), 5(e)(1), (2)(A), Oct. 3, 1977, 91 Stat. 1048, 1057; Pub. L. 96-509, §19(o), Dec. 8, 1980, 94 Stat. 2765; renumbered §248 Pub. L. 98-473, title II, §638, Oct. 12, 1984, 98 Stat. 2120; renumbered §246 and amended Pub. L. 100-690, title VII, §7263(a)(2)(E), (b)(2), Nov. 18, 1988, 102 Stat. 4443, 4447; Pub. L. 102-586, §2(g)(5), Nov. 4, 1992, 106 Stat. 4996, related to the curriculum for training program, prior to repeal by Pub. L. 107-273, div. C, title II, §12210(1), Nov. 2, 2002, 116 Stat. 1880.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5652 of this title.

PART D—RESEARCH; EVALUATION; TECHNICAL ASSISTANCE; TRAINING

PRIOR PROVISIONS

A prior part D, consisting of sections 5667 to 5667b, related to gang-free schools and communities and gang

intervention, prior to repeal by Pub. L. 107-273, div. C, title II, §12210(1), Nov. 2, 2002, 116 Stat. 1880.

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 5614, 5671 of this title.

§ 5661. Research and evaluation; statistical analyses; information dissemination

(a) Research and evaluation

(1) The Administrator may—

(A) plan and identify the purposes and goals of all agreements carried out with funds provided under this subsection; and

(B) conduct research or evaluation in juvenile justice matters, for the purpose of providing research and evaluation relating to—

(i) the prevention, reduction, and control of juvenile delinquency and serious crime committed by juveniles;

(ii) the link between juvenile delinquency and the incarceration of members of the families of juveniles;

(iii) successful efforts to prevent first-time minor offenders from committing subsequent involvement in serious crime;

(iv) successful efforts to prevent recidivism;

(v) the juvenile justice system;

(vi) juvenile violence;

(vii) appropriate mental health services for juveniles and youth at risk of participating in delinquent activities;

(viii) reducing the proportion of juveniles detained or confined in secure detention facilities, secure correctional facilities, jails, and lockups who are members of minority groups;

(ix) evaluating services, treatment, and aftercare placement of juveniles who were under the care of the State child protection system before their placement in the juvenile justice system;

(x) determining—

(I) the frequency, seriousness, and incidence of drug use by youth in schools and communities in the States using, if appropriate, data submitted by the States pursuant to this subparagraph and subsection (b) of this section; and

(II) the frequency, degree of harm, and morbidity of violent incidents, particularly firearm-related injuries and fatalities, by youth in schools and communities in the States, including information with respect to—

(aa) the relationship between victims and perpetrators;

(bb) demographic characteristics of victims and perpetrators; and

(cc) the type of weapons used in incidents, as classified in the Uniform Crime Reports of the Federal Bureau of Investigation; and

(xi) other purposes consistent with the purposes of this subchapter and subchapter I of this chapter.

(2) The Administrator shall ensure that an equitable amount of funds available to carry out paragraph (1)(B) is used for research and evalua-

tion relating to the prevention of juvenile delinquency.

(3) Nothing in this subsection shall be construed to permit the development of a national database of personally identifiable information on individuals involved in studies, or in data-collection efforts, carried out under paragraph (1)(B)(x).

(4) Not later than 1 year after November 2, 2002, the Administrator shall conduct a study with respect to juveniles who, prior to placement in the juvenile justice system, were under the care or custody of the State child welfare system, and to juveniles who are unable to return to their family after completing their disposition in the juvenile justice system and who remain wards of the State. Such study shall include—

(A) the number of juveniles in each category;

(B) the extent to which State juvenile justice systems and child welfare systems are coordinating services and treatment for such juveniles;

(C) the Federal and local sources of funds used for placements and post-placement services;

(D) barriers faced by State in providing services to these juveniles;

(E) the types of post-placement services used;

(F) the frequency of case plans and case plan reviews; and

(G) the extent to which case plans identify and address permanency and placement barriers and treatment plans.

(b) Statistical analyses

The Administrator may—

(1) plan and identify the purposes and goals of all agreements carried out with funds provided under this subsection; and

(2) undertake statistical work in juvenile justice matters, for the purpose of providing for the collection, analysis, and dissemination of statistical data and information relating to juvenile delinquency and serious crimes committed by juveniles, to the juvenile justice system, to juvenile violence, and to other purposes consistent with the purposes of this subchapter and subchapter I of this chapter.

(c) Grant authority and competitive selection process

The Administrator may make grants and enter into contracts with public or private agencies, organizations, or individuals and shall use a competitive process, established by rule by the Administrator, to carry out subsections (a) and (b) of this section.

(d) Implementation of agreements

A Federal agency that makes an agreement under subsections (a)(1)(B) and (b)(2) of this section with the Administrator may carry out such agreement directly or by making grants to or contracts with public and private agencies, institutions, and organizations.

(e) Information dissemination

The Administrator may—

(1) review reports and data relating to the juvenile justice system in the United States

and in foreign nations (as appropriate), collect data and information from studies and research into all aspects of juvenile delinquency (including the causes, prevention, and treatment of juvenile delinquency) and serious crimes committed by juveniles;

(2) establish and operate, directly or by contract, a clearinghouse and information center for the preparation, publication, and dissemination of information relating to juvenile delinquency, including State and local prevention and treatment programs, plans, resources, and training and technical assistance programs; and

(3) make grants and contracts with public and private agencies, institutions, and organizations, for the purpose of disseminating information to representatives and personnel of public and private agencies, including practitioners in juvenile justice, law enforcement, the courts, corrections, schools, and related services, in the establishment, implementation, and operation of projects and activities for which financial assistance is provided under this subchapter.

(Pub. L. 93-415, title II, §251, as added Pub. L. 107-273, div. C, title II, §12211, Nov. 2, 2002, 116 Stat. 1888.)

PRIOR PROVISIONS

A prior section 5661, Pub. L. 93-415, title II, §247, formerly §251, Sept. 7, 1974, 88 Stat. 1128; renumbered §250 and amended Pub. L. 95-115, §§3(a)(3)(B), 5(e)(1), (2)(B), Oct. 3, 1977, 91 Stat. 1048, 1057; Pub. L. 96-509, §19(p), Dec. 8, 1980, 94 Stat. 2765; renumbered §249 and amended Pub. L. 98-473, title II, §639, Oct. 12, 1984, 98 Stat. 2120; renumbered §247 and amended Pub. L. 100-690, title VII, §7263(a)(2)(D), (E), Nov. 18, 1988, 102 Stat. 4443, related to participation in training program and State advisory group conferences, prior to repeal by Pub. L. 107-273, div. C, title II, §12210(1), Nov. 2, 2002, 116 Stat. 1880.

EFFECTIVE DATE

Part effective on the first day of the first fiscal year that begins after Nov. 2, 2002, and applicable only with respect to fiscal years beginning on or after the first day of the first fiscal year that begins after Nov. 2, 2002, see section 12223 of Pub. L. 107-273, as amended, set out as an Effective Date of 2002 Amendment note under section 5601 of this title.

§ 5662. Training and technical assistance

(a) Training

The Administrator may—

(1) develop and carry out projects for the purpose of training representatives and personnel of public and private agencies, including practitioners in juvenile justice, law enforcement, courts (including model juvenile and family courts), corrections, schools, and related services, to carry out the purposes specified in section 5602 of this title; and

(2) make grants to and contracts with public and private agencies, institutions, and organizations for the purpose of training representatives and personnel of public and private agencies, including practitioners in juvenile justice, law enforcement, courts (including model juvenile and family courts), corrections, schools, and related services, to carry out the purposes specified in section 5602 of this title.

(b) Technical assistance

The Administrator may—

(1) develop and implement projects for the purpose of providing technical assistance to representatives and personnel of public and private agencies and organizations, including practitioners in juvenile justice, law enforcement, courts (including model juvenile and family courts), corrections, schools, and related services, in the establishment, implementation, and operation of programs, projects, and activities for which financial assistance is provided under this subchapter; and

(2) make grants to and contracts with public and private agencies, institutions, and organizations, for the purpose of providing technical assistance to representatives and personnel of public and private agencies, including practitioners in juvenile justice, law enforcement, courts (including model juvenile and family courts), corrections, schools, and related services, in the establishment, implementation, and operation of programs, projects, and activities for which financial assistance is provided under this subchapter.

(c) Training and technical assistance to mental health professionals and law enforcement personnel

The Administrator shall provide training and technical assistance to mental health professionals and law enforcement personnel (including public defenders, police officers, probation officers, judges, parole officials, and correctional officers) to address or to promote the development, testing, or demonstration of promising or innovative models (including model juvenile and family courts), programs, or delivery systems that address the needs of juveniles who are alleged or adjudicated delinquent and who, as a result of such status, are placed in secure detention or confinement or in nonsecure residential placements.

(Pub. L. 93-415, title II, §252, as added Pub. L. 107-273, div. C, title II, §12211, Nov. 2, 2002, 116 Stat. 1890.)

PRIOR PROVISIONS

A prior section 5662, Pub. L. 93-415, title II, §248, as added Pub. L. 100-690, title VII, §7264, Nov. 18, 1988, 102 Stat. 4447; amended Pub. L. 102-586, §2(g)(6), Nov. 4, 1992, 106 Stat. 4997, related to special studies and reports, prior to repeal by Pub. L. 107-273, div. C, title II, §12210(1), Nov. 2, 2002, 116 Stat. 1880.

PART E—DEVELOPING, TESTING, AND DEMONSTRATING PROMISING NEW INITIATIVES AND PROGRAMS

PRIOR PROVISIONS

A prior part E, consisting of section 5667c, related to State challenge activities, prior to repeal by Pub. L. 107-273, div. C, title II, §12210(1), Nov. 2, 2002, 116 Stat. 1880.

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 5614, 5671 of this title.

§ 5665. Grants and projects

(a) Authority to make grants

The Administrator may make grants to and contracts with States, units of general local government, Indian tribal governments, public

and private agencies, organizations, and individuals, or combinations thereof, to carry out projects for the development, testing, and demonstration of promising initiatives and programs for the prevention, control, or reduction of juvenile delinquency. The Administrator shall ensure that, to the extent reasonable and practicable, such grants are made to achieve an equitable geographical distribution of such projects throughout the United States.

(b) Use of grants

A grant made under subsection (a) of this section may be used to pay all or part of the cost of the project for which such grant is made.

(Pub. L. 93-415, title II, §261, as added Pub. L. 107-273, div. C, title II, §12212, Nov. 2, 2002, 116 Stat. 1891.)

PRIOR PROVISIONS

A prior section 5665, Pub. L. 93-415, title II, §261, as added Pub. L. 100-690, title VII, §7263(a)(2)(F), Nov. 18, 1988, 102 Stat. 4443; amended Pub. L. 102-586, §2(g)(7), Nov. 4, 1992, 106 Stat. 5000, related to authority to make grants and contracts, prior to repeal by Pub. L. 107-273, div. C, title II, §12210(1), Nov. 2, 2002, 116 Stat. 1880.

A prior section 261 of Pub. L. 93-415 was renumbered section 299 and is classified to section 5671 of this title.

A prior section 5665a, Pub. L. 93-415, title II, §262, as added Pub. L. 100-690, title VII, §7263(a)(2)(F), Nov. 18, 1988, 102 Stat. 4445; amended Pub. L. 102-586, §2(h), Nov. 4, 1992, 106 Stat. 5001, related to considerations for approval of applications, prior to repeal by Pub. L. 107-273, div. C, title II, §12210(1), Nov. 2, 2002, 116 Stat. 1880.

EFFECTIVE DATE

Part effective on the first day of the first fiscal year that begins after Nov. 2, 2002, and applicable only with respect to fiscal years beginning on or after the first day of the first fiscal year that begins after Nov. 2, 2002, see section 12223 of Pub. L. 107-273, as amended, set out as an Effective Date of 2002 Amendment note under section 5601 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5666 of this title.

§ 5666. Grants for technical assistance

The Administrator may make grants to and contracts with public and private agencies, organizations, and individuals to provide technical assistance to States, units of general local government, Indian tribal governments, local private entities or agencies, or any combination thereof, to carry out the projects for which grants are made under section 5665 of this title.

(Pub. L. 93-415, title II, §262, as added Pub. L. 107-273, div. C, title II, §12212, Nov. 2, 2002, 116 Stat. 1891.)

PRIOR PROVISIONS

A prior section 262 of Pub. L. 93-415 was classified to section 5665a of this title, prior to repeal by Pub. L. 107-273.

Another prior section 262 of Pub. L. 93-415 was renumbered section 299A and is classified to section 5672 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13023 of this title.

§ 5667. Eligibility

To be eligible to receive a grant made under this part, a public or private agency, Indian

tribal government, organization, institution, individual, or combination thereof shall submit an application to the Administrator at such time, in such form, and containing such information as the Administrator may reasonably require by rule.

(Pub. L. 93-415, title II, § 263, as added Pub. L. 107-273, div. C, title II, § 12212, Nov. 2, 2002, 116 Stat. 1891.)

PRIOR PROVISIONS

A prior section 5667, Pub. L. 93-415, title II, § 281, as added Pub. L. 102-586, § 2(i), Nov. 4, 1992, 106 Stat. 5001, related to authority to make grants and contracts, prior to repeal by Pub. L. 107-273, div. C, title II, § 12210(1), Nov. 2, 2002, 116 Stat. 1880.

Another prior section 5667, Pub. L. 93-415, title II, § 281, as added Pub. L. 100-690, title VII, § 7267, Nov. 18, 1988, 102 Stat. 4451, authorized Administrator to make grants and contracts for prevention and treatment programs relating to juvenile gangs, drug abuse, and drug trafficking, prior to the general amendment of part D by Pub. L. 102-586.

Prior sections 5667-1 to 5667f-3 were repealed by Pub. L. 107-273, div. C, title II, § 12210(1), Nov. 2, 2002, 116 Stat. 1880.

Section 5667-1, Pub. L. 93-415, title II, § 281A, as added Pub. L. 102-586, § 2(i), Nov. 4, 1992, 106 Stat. 5003, related to approval of applications.

Section 5667a, Pub. L. 93-415, title II, § 282, as added Pub. L. 102-586, § 2(i), Nov. 4, 1992, 106 Stat. 5004, related to authority to make grants and contracts.

Another prior section 5667a, Pub. L. 93-415, title II, § 282, as added Pub. L. 100-690, title VII, § 7267, Nov. 18, 1988, 102 Stat. 4451, related to approval of applications for grants and contracts, prior to the general amendment of part D by Pub. L. 102-586.

Section 5667a-1, Pub. L. 93-415, title II, § 282A, as added Pub. L. 102-586, § 2(i), Nov. 4, 1992, 106 Stat. 5005, related to application approval.

Section 5667b, Pub. L. 93-415, title II, § 283, as added Pub. L. 102-586, § 2(i), Nov. 4, 1992, 106 Stat. 5006, defined "juvenile".

Section 5667c, Pub. L. 93-415, title II, § 285, as added Pub. L. 102-586, § 2(i)(1)(C), Nov. 4, 1992, 106 Stat. 5006, related to establishment of program of State challenge activities.

Section 5667d, Pub. L. 93-415, title II, § 287, as added Pub. L. 102-586, § 2(i)(1)(C), Nov. 4, 1992, 106 Stat. 5008, defined "juvenile".

Section 5667d-1, Pub. L. 93-415, title II, § 287A, as added Pub. L. 102-586, § 2(i)(1)(C), Nov. 4, 1992, 106 Stat. 5008, related to grant authority.

Section 5667d-2, Pub. L. 93-415, title II, § 287B, as added Pub. L. 102-586, § 2(i)(1)(C), Nov. 4, 1992, 106 Stat. 5009, related to administrative requirements.

Section 5667d-3, Pub. L. 93-415, title II, § 287C, as added Pub. L. 102-586, § 2(i)(1)(C), Nov. 4, 1992, 106 Stat. 5009, established priority for grants.

Section 5667e, Pub. L. 93-415, title II, § 288, as added Pub. L. 102-586, § 2(i)(1)(C), Nov. 4, 1992, 106 Stat. 5009, related to purposes of mentoring programs.

Section 5667e-1, Pub. L. 93-415, title II, § 288A, as added Pub. L. 102-586, § 2(i)(1)(C), Nov. 4, 1992, 106 Stat. 5009, defined "at-risk youth" and "mentor".

Section 5667e-2, Pub. L. 93-415, title II, § 288B, as added Pub. L. 102-586, § 2(i)(1)(C), Nov. 4, 1992, 106 Stat. 5010, related to grants for local educational agencies for mentoring programs.

Section 5667e-3, Pub. L. 93-415, title II, § 288C, as added Pub. L. 102-586, § 2(i)(1)(C), Nov. 4, 1992, 106 Stat. 5010; amended Pub. L. 103-322, title XV, § 150006, Sept. 13, 1994, 108 Stat. 2035, related to regulations and guidelines.

Section 5667e-4, Pub. L. 93-415, title II, § 288D, as added Pub. L. 102-586, § 2(i)(1)(C), Nov. 4, 1992, 106 Stat. 5010, related to permitted and prohibited uses of grants.

Section 5667e-5, Pub. L. 93-415, title II, § 288E, as added Pub. L. 102-586, § 2(i)(1)(C), Nov. 4, 1992, 106 Stat.

5011; amended Pub. L. 103-382, title III, § 391(t), Oct. 20, 1994, 108 Stat. 4025, related to priority for awarding grants.

Section 5667e-6, Pub. L. 93-415, title II, § 288F, as added Pub. L. 102-586, § 2(i)(1)(C), Nov. 4, 1992, 106 Stat. 5011, related to information and assurances required on application.

Section 5667e-7, Pub. L. 93-415, title II, § 288G, as added Pub. L. 102-586, § 2(i)(1)(C), Nov. 4, 1992, 106 Stat. 5012, provided that grants would be made for 3-year periods.

Section 5667e-8, Pub. L. 93-415, title II, § 288H, as added Pub. L. 102-586, § 2(i)(1)(C), Nov. 4, 1992, 106 Stat. 5012, related to reports.

Section 5667f, Pub. L. 93-415, title II, § 289, as added Pub. L. 102-586, § 2(i)(1)(C), Nov. 4, 1992, 106 Stat. 5012, related to grants for establishment of boot camps.

Section 5667f-1, Pub. L. 93-415, title II, § 289A, as added Pub. L. 102-586, § 2(i)(1)(C), Nov. 4, 1992, 106 Stat. 5012, limited size of boot camps.

Section 5667f-2, Pub. L. 93-415, title II, § 289B, as added Pub. L. 102-586, § 2(i)(1)(C), Nov. 4, 1992, 106 Stat. 5013, related to eligibility and placement.

Section 5667f-3, Pub. L. 93-415, title II, § 289C, as added Pub. L. 102-586, § 2(i)(1)(C), Nov. 4, 1992, 106 Stat. 5013, related to post-release supervision.

Prior sections 5667g to 5667g-5 were repealed by Pub. L. 107-273, div. C, title II, § 12210(2), Nov. 2, 2002, 116 Stat. 1880.

Section 5667g, Pub. L. 93-415, title II, § 291, as added Pub. L. 102-586, § 2(i)(1)(C), Nov. 4, 1992, 106 Stat. 5013, authorized the President to call and conduct a National White House Conference on Juvenile Justice.

Section 5667g-1, Pub. L. 93-415, title II, § 291A, as added Pub. L. 102-586, § 2(i)(1)(C), Nov. 4, 1992, 106 Stat. 5014, related to Conference participants.

Section 5667g-2, Pub. L. 93-415, title II, § 291B, as added Pub. L. 102-586, § 2(i)(1)(C), Nov. 4, 1992, 106 Stat. 5015, related to appointment and compensation of directors and detailees.

Section 5667g-3, Pub. L. 93-415, title II, § 291C, as added Pub. L. 102-586, § 2(i)(1)(C), Nov. 4, 1992, 106 Stat. 5015, related to planning and administration of Conference.

Section 5667g-4, Pub. L. 93-415, title II, § 291D, as added Pub. L. 102-586, § 2(i)(1)(C), Nov. 4, 1992, 106 Stat. 5015, related to reports.

Section 5667g-5, Pub. L. 93-415, title II, § 291E, as added Pub. L. 102-586, § 2(i)(1)(C), Nov. 4, 1992, 106 Stat. 5015, related to congressional oversight.

§ 5668. Reports

Recipients of grants made under this part shall submit to the Administrator such reports as may be reasonably requested by the Administrator to describe progress achieved in carrying out the projects for which such grants are made.

(Pub. L. 93-415, title II, § 264, as added Pub. L. 107-273, div. C, title II, § 12212, Nov. 2, 2002, 116 Stat. 1891.)

PART F—GENERAL AND ADMINISTRATIVE PROVISIONS

PRIOR PROVISIONS

A prior part F, consisting of sections 5667d to 5667d-3, related to treatment for juvenile offenders who are victims of child abuse or neglect, prior to repeal by Pub. L. 107-273, div. C, title II, § 12210(1), Nov. 2, 2002, 116 Stat. 1880.

A prior part G, consisting of sections 5667e to 5667e-8, related to mentoring, prior to repeal by Pub. L. 107-273, div. C, title II, § 12210(1), Nov. 2, 2002, 116 Stat. 1880.

A prior part H, consisting of sections 5667f to 5667f-3, related to boot camps, prior to repeal by Pub. L. 107-273, div. C, title II, § 12210(1), Nov. 2, 2002, 116 Stat. 1880.

A prior part I, consisting of sections 5667g to 5667g-5, authorized the president to call a National White House Conference on Juvenile Justice, prior to repeal by Pub. L. 107-273, div. C, title II, §12210(2), Nov. 2, 2002, 116 Stat. 1880.

Part J, consisting of sections 5671 to 5676, was redesignated part F by Pub. L. 107-273, div. C, title II, §12210(3), Nov. 2, 2002, 116 Stat. 1880.

AMENDMENTS

2002—Pub. L. 107-273, div. C, title II, §12210(3), Nov. 2, 2002, 116 Stat. 1880, redesignated part I, which had been redesignated as J for purposes of codification, as F.

1992—Pub. L. 102-586, §2(i)(1)(A), Nov. 4, 1992, 106 Stat. 5006, redesignated part E as I, which was redesignated as J for purposes of codification.

1988—Pub. L. 100-690, title VII, §7266(1), Nov. 18, 1988, 102 Stat. 4449, redesignated part D as E and substituted “GENERAL AND ADMINISTRATIVE PROVISIONS” for “ADMINISTRATIVE PROVISIONS”.

§ 5671. Authorization of appropriations

(a) Authorization of appropriations for this subchapter (excluding parts C and E)

(1) There are authorized to be appropriated to carry out this subchapter such sums as may be appropriate for fiscal years 2003, 2004, 2005, 2006, and 2007.

(2) Of such sums as are appropriated for a fiscal year to carry out this subchapter (other than parts C and E)—

(A) not more than 5 percent shall be available to carry out part A of this subchapter;

(B) not less than 80 percent shall be available to carry out part B of this subchapter; and

(C) not more than 15 percent shall be available to carry out part D of this subchapter.

(b) Authorization of appropriations for part C

There are authorized to be appropriated to carry out part C of this subchapter such sums as may be necessary for fiscal years 2003, 2004, 2005, 2006, and 2007.

(c) Authorization of appropriations for part E

There are authorized to be appropriated to carry out part E of this subchapter, and authorized to remain available until expended, such sums as may be necessary for fiscal years 2003, 2004, 2005, 2006, and 2007.

(d) Experimentation on individuals; prohibition; “behavior control” defined

No funds appropriated to carry out the purposes of this subchapter may be used for any bio-medical or behavior control experimentation on individuals or any research involving such experimentation. For the purpose of this subsection, the term “behavior control” refers to experimentation or research employing methods which involve a substantial risk of physical or psychological harm to the individual subject and which are intended to modify or alter criminal and other anti-social behavior, including aversive conditioning therapy, drug therapy or chemotherapy (except as part of routine clinical care), physical therapy of mental disorders, electroconvulsive therapy, or physical punishment. The term does not apply to a limited class of programs generally recognized as involving no such risk, including methadone maintenance and certain alcohol treatment programs, psy-

chological counseling, parent training, behavior contracting, survival skills training, restitution, or community service, if safeguards are established for the informed consent of subjects (including parents or guardians of minors).

(Pub. L. 93-415, title II, §299, formerly §261, Sept. 7, 1974, 88 Stat. 1129; Pub. L. 94-273, §32(b), Apr. 21, 1976, 90 Stat. 380; Pub. L. 94-503, title I, §130(a), Oct. 15, 1976, 90 Stat. 2425; Pub. L. 95-115, §6(b), Oct. 3, 1977, 91 Stat. 1058; Pub. L. 96-509, §§2(a), 15, Dec. 8, 1980, 94 Stat. 2750, 2760; Pub. L. 98-473, title II, §640, Oct. 12, 1984, 98 Stat. 2121; renumbered §291 and amended Pub. L. 100-690, title VII, §§7265, 7266(3), Nov. 18, 1988, 102 Stat. 4448, 4449; Pub. L. 101-204, title X, §§1001(e)(1), 1002, Dec. 7, 1989, 103 Stat. 1827; renumbered §299 and amended Pub. L. 102-586, §2(i)(1)(B), (j), Nov. 4, 1992, 106 Stat. 5006, 5016; Pub. L. 107-273, div. C, title II, §12213, Nov. 2, 2002, 116 Stat. 1891.)

AMENDMENTS

2002—Subsecs. (a) to (c). Pub. L. 107-273, §12213(2), added subsecs. (a) to (c) and struck out former subsecs. (a) to (c) which related, respectively, to amounts and availability of appropriations for fiscal years 1993 to 1996, percentages available for specific programs, and administrative and supervisory board membership requirements for State agencies.

Subsec. (e). Pub. L. 107-273, §12213(1), struck out subsec. (e) which read as follows: “Of such sums as are appropriated to carry out section 5665(a)(6) of this title, not less than 20 percent shall be reserved by the Administrator for each of fiscal years 1993, 1994, 1995, and 1996, for not less than 2 programs that have not received funds under subpart II of part C of this subchapter prior to October 1, 1992, which shall be selected through the application and approval process set forth in section 5665a of this title.”

1992—Subsec. (a). Pub. L. 102-586, §2(j)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows:

“(1) To carry out the purposes of this subchapter (other than part D) there are authorized to be appropriated such sums as may be necessary for fiscal years 1989, 1990, 1991, and 1992. Funds appropriated for any fiscal year may remain available for obligation until expended.

“(2)(A) Subject to subparagraph (B), to carry out part D of this subchapter, there are authorized to be appropriated \$15,000,000 for fiscal year 1989 and such sums as may be necessary for each of the fiscal years 1990, 1991, and 1992.

“(B) No funds may be appropriated to carry out part D of this subchapter for a fiscal year unless the aggregate amount appropriated to carry out this subchapter (other than part D) for such fiscal year is not less than the aggregate amount appropriated to carry out this subchapter (other than part D) for the preceding fiscal year.”

Subsec. (e). Pub. L. 102-586, §2(j)(2), added subsec. (e). 1989—Subsec. (a). Pub. L. 101-204, §1001(e)(1), amended directory language of Pub. L. 100-690, §7265(a)(4), see 1988 Amendment note below.

Subsec. (a)(1). Pub. L. 101-204, §1002, substituted “are authorized” for “is authorized”.

1988—Subsec. (a). Pub. L. 100-690, §7265(a), as amended by Pub. L. 101-204, §1001(e)(1), designated existing provisions as par. (1), inserted “(other than part D)” after “this subchapter”, struck out “1985, 1986, 1987, and 1988” after “fiscal years”, inserted “1989, 1990, 1991, and 1992”, and added par. (2).

Subsec. (b). Pub. L. 100-690, §7265(b), inserted “(other than part D)” after “this subchapter” in introductory provisions and substituted “5 percent” for “7.5 percent” in par. (1), “70 percent” for “81.5 percent” in par. (2), and “25 percent” for “11 percent” in par. (3).

1984—Subsec. (a). Pub. L. 98-473, amended subsec. (a) generally, substituting provisions relating to author-

ization of appropriations for fiscal years 1985 to 1988 for former provisions which authorized appropriations for fiscal years 1981 to 1984.

Subsec. (b). Pub. L. 98-473, amended subsec. (b) generally, substituting provisions which set forth specific percentages of appropriations for parts A, B and C for former provisions which also set forth appropriation percentages for juvenile delinquency programs.

Subsec. (c). Pub. L. 98-473, amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: "Notwithstanding any other provision of law, if the Administrator determines, in his discretion, that sufficient funds have not been appropriated for any fiscal year for the activities authorized in part D of title I of the Omnibus Crime Control and Safe Streets Act of 1968 [42 U.S.C. 3741 et seq.], then the Administrator is authorized to—

"(1) approve any appropriate State agency designated by the Governor of the State involved as the sole agency responsible for supervising the preparation and administration of the State plan submitted under section 5633 of this title; and

"(2) establish appropriate administrative and supervisory board membership requirements for any agency designated in accordance with paragraph (1), and permit the State advisory group appointed under section 5633(a)(2) of this title to operate as the supervisory board for such agency, at the discretion of the Governor."

Subsec. (d). Pub. L. 98-473, in amending section generally, added subsec. (d).

1980—Subsec. (a). Pub. L. 96-509, §2(a), substituted provisions authorizing appropriations of \$200,000,000 for each of fiscal years ending Sept. 30, 1981, Sept. 30, 1982, Sept. 30, 1983, and Sept. 30, 1984, for provisions that had authorized appropriations of \$150,000,000 for fiscal year ending Sept. 30, 1978, \$175,000,000 for fiscal year ending Sept. 30, 1979, and \$200,000,000 for fiscal year ending Sept. 30, 1980.

Subsec. (c). Pub. L. 96-509, §15, added subsec. (c).

1977—Subsec. (a). Pub. L. 95-115 substituted provisions setting forth authorization of appropriations for fiscal year ending Sept. 30, 1978, through fiscal year ending Sept. 30, 1980, and authorization of availability of funds until expended, for provisions setting forth authorization of appropriations for fiscal year ending June 30, 1975, through fiscal year ending Sept. 30, 1977.

1976—Subsec. (a). Pub. L. 94-273 substituted "September 30, 1977" for "June 30, 1977".

Subsec. (b). Pub. L. 94-503 substituted "subsection (a) of this section" for "this section" and "the appropriation for the Law Enforcement Assistance Administration, each fiscal year, at least 19.15 percent of the total appropriations for the Administration, for juvenile delinquency programs" for "other Law Enforcement Assistance Administration appropriations other than the appropriations for administration, at least the same level of financial assistance for juvenile delinquency programs assisted by the Law Enforcement Assistance Administration during fiscal year 1972".

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-273 effective on the first day of the first fiscal year that begins after Nov. 2, 2002, and applicable only with respect to fiscal years beginning on or after the first day of the first fiscal year that begins after Nov. 2, 2002, see section 12223 of Pub. L. 107-273, as amended, set out as a note under section 5601 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-690 effective Oct. 1, 1988, see section 7296(a) of Pub. L. 100-690, set out as a note under section 5601 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-473 effective Oct. 12, 1984, see section 670(a) of Pub. L. 98-473, set out as a note under section 5601 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93-415, as added by Pub. L. 95-115, set out as a note under section 5601 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3796ee-10, 5633 of this title.

§ 5672. Administrative authority

(a) Authority of Administrator

The Office shall be administered by the Administrator under the general authority of the Attorney General.

(b) Certain crime control provisions applicable

Sections 3789d(c), 3789f(a), 3789f(b), 3789f(c), 3789g(a), 3789g(b), and 3789g(d) of this title, shall apply with respect to the administration of and compliance with this chapter, except that for purposes of this chapter—

(1) any reference to the Office of Justice Programs in such sections shall be deemed to be a reference to the Assistant Attorney General who heads the Office of Justice Programs; and

(2) the term "this chapter" as it appears in such sections shall be deemed to be a reference to this chapter.

(c) Certain other crime control provisions applicable

Sections 3782(a), 3782(c), and 3787 of this title shall apply with respect to the administration of and compliance with this chapter, except that for purposes of this chapter—

(1) any reference to the Attorney General, the Assistant Attorney General who heads the Office of Justice Programs, the Director of the National Institute of Justice, the Director of the Bureau of Justice Statistics, or the Director of the Bureau of Justice Assistance shall be deemed to be a reference to the Administrator;

(2) any reference to the Office of Justice Programs, the Bureau of Justice Assistance, the National Institute of Justice, or the Bureau of Justice Statistics shall be deemed to be a reference to the Office of Juvenile Justice and Delinquency Prevention; and

(3) the term "this chapter" as it appears in such sections shall be deemed to be a reference to this chapter.

(d) Rules, regulations, and procedures

The Administrator is authorized, after appropriate consultation with representatives of States and units of local government, to establish such rules, regulations, and procedures as are necessary for the exercise of the functions of the Office and only to the extent necessary to ensure that there is compliance with the specific requirements of this subchapter or to respond to requests for clarification and guidance relating to such compliance.

(e) Presumption of State compliance

If a State requires by law compliance with the requirements described in paragraphs (11), (12), and (13) of section 5633(a) of this title, then for the period such law is in effect in such State such State shall be rebuttably presumed to satisfy such requirements.

(Pub. L. 93-415, title II, §299A, formerly §262, Sept. 7, 1974, 88 Stat. 1129; Pub. L. 95-115, §6(c), Oct. 3, 1977, 91 Stat. 1058; Pub. L. 96-509, §16, Dec. 8, 1980, 94 Stat. 2761; Pub. L. 98-473, title II, §641, Oct. 12, 1984, 98 Stat. 2122; renumbered §292, Pub. L. 100-690, title VII, §7266(3), Nov. 18, 1988, 102 Stat. 4449; renumbered §299A, Pub. L. 102-586, §2(i)(1)(B), Nov. 4, 1992, 106 Stat. 5006; Pub. L. 107-273, div. C, title II, §12214, Nov. 2, 2002, 116 Stat. 1892.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (b) and (c), was in the original "this Act", meaning Pub. L. 93-415, Sept. 7, 1974, 88 Stat. 1109, as amended, which enacted this chapter, sections 3772 to 3774 and 3821 of this title, and sections 4351 to 4353 and 5038 to 5042 of Title 18, Crimes and Criminal Procedure, amended sections 3701, 3723, 3733, 3768, 3811 to 3814, 3882, and 3883 to 3888 of this title, section 5108 of Title 5, Government Organization and Employees, and sections 5031 to 5037 of Title 18, and repealed section 3889 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5601 of this title and Tables.

AMENDMENTS

2002—Subsec. (d). Pub. L. 107-273, §12214(1), substituted "only to the extent necessary to ensure that there is compliance with the specific requirements of this subchapter or to respond to requests for clarification and guidance relating to such compliance" for "as are consistent with the purpose of this chapter".

Subsec. (e). Pub. L. 107-273, §12214(2), added subsec. (e).

1984—Subsec. (a). Pub. L. 98-473, in amending subsec. (a) generally, substituted provisions setting forth the administrative authority of the Office for former provisions which incorporated other administrative provisions into this chapter as well as construing certain references as authorizing the Administrator of the Office of Juvenile Justice and Delinquency Prevention to perform the same actions as other officials.

Subsec. (b). Pub. L. 98-473, in amending subsec. (b) generally, substituted provisions relating to the applicability of other provisions to this chapter as well as defining certain references therein for former provisions which directed the Office of Justice Assistance, Research and Statistics to provide staff support and coordinate the activities of the Office of Juvenile Justice and Delinquency Prevention.

Subsecs. (c), (d). Pub. L. 98-473, in amending section generally, added subsecs. (c) and (d).

1980—Pub. L. 96-509 brought relevant applicable administrative provisions of the Omnibus Crime Control and Safe Streets Act of 1968 into conformance subsequent to the Justice System Improvement Amendments of 1979 and provided that the Office of Justice Assistance, Research, and Statistics provide staff support to, and coordinate the activities of the Office in the same manner as it does for the Law Enforcement Assistance Administration, National Institute of Justice, and Bureau of Justice Statistics pursuant to 3781(b) of this title.

1977—Pub. L. 95-115 substituted provisions setting forth applicability of specified statutory requirements, for provisions setting forth prohibitions against discrimination and required terms in grants, contracts, and agreements and enforcement procedures thereof.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-273 effective on the first day of the first fiscal year that begins after Nov. 2, 2002, and applicable only with respect to fiscal years beginning on or after the first day of the first fiscal year that begins after Nov. 2, 2002, see section 12223 of Pub. L. 107-273, as amended, set out as a note under section 5601 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-473 effective Oct. 12, 1984, see section 670(a) of Pub. L. 98-473, set out as a note under section 5601 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93-415, as added by section 6(d)(2) of Pub. L. 95-115, set out as a note under section 5601 of this title.

§ 5673. Withholding

Whenever the Administrator, after giving reasonable notice and opportunity for hearing to a recipient of financial assistance under this subchapter, finds that—

(1) the program or activity for which the grant or contract involved was made has been so changed that it no longer complies with this subchapter; or

(2) in the operation of such program or activity there is failure to comply substantially with any provision of this subchapter;

the Administrator shall initiate such proceedings as are appropriate.

(Pub. L. 93-415, title II, §299B, formerly §293, as added Pub. L. 100-690, title VII, §7266(4), Nov. 18, 1988, 102 Stat. 4449; renumbered §299B, Pub. L. 102-586, §2(i)(1)(B), Nov. 4, 1992, 106 Stat. 5006.)

EFFECTIVE DATE

Section effective Oct. 1, 1988, see section 7296(a) of Pub. L. 100-690, set out as an Effective Date of 1988 Amendment note under section 5601 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13002, 13003, 13013, 13023 of this title.

§ 5674. Use of funds**(a) In general**

Funds paid pursuant to this subchapter to any public or private agency, organization, or institution, or to any individual (either directly or through a State planning agency) may be used for—

(1) planning, developing, or operating the program designed to carry out this subchapter; and

(2) not more than 50 per centum of the cost of the construction of any innovative community-based facility for fewer than 20 persons which, in the judgment of the Administrator, is necessary to carry out this subchapter.

(b) Prohibition against use of funds in construction

Except as provided in subsection (a) of this section, no funds paid to any public or private agency, or institution or to any individual under this subchapter (either directly or through a State agency or local agency) may be used for construction.

(c) Funds paid to residential programs

No funds may be paid under this subchapter to a residential program (excluding a program in a private residence) unless—

(1) there is in effect in the State in which such placement or care is provided, a requirement that the provider of such placement or

such care may be licensed only after satisfying, at a minimum, explicit standards of discipline that prohibit neglect, and physical and mental abuse, as defined by State law;

(2) such provider is licensed as described in paragraph (1) by the State in which such placement or care is provided; and

(3) in a case involving a provider located in a State that is different from the State where the order for placement originates, the chief administrative officer of the public agency or the officer of the court placing the juvenile certifies that such provider—

(A) satisfies the originating State's explicit licensing standards of discipline that prohibit neglect, physical and mental abuse, and standards for education and health care as defined by that State's law; and

(B) otherwise complies with the Interstate Compact on the Placement of Children as entered into by such other State.

(Pub. L. 93-415, title II, §299C, formerly §294, as added Pub. L. 100-690, title VII, §7266(4), Nov. 18, 1988, 102 Stat. 4449; renumbered §299C, Pub. L. 102-586, §2(i)(1)(B), Nov. 4, 1992, 106 Stat. 5006; Pub. L. 107-273, div. C, title II, §12215, Nov. 2, 2002, 116 Stat. 1892.)

AMENDMENTS

2002—Subsec. (c). Pub. L. 107-273 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows:

“(1) Funds paid pursuant to section 5633(a)(10)(D) of this title and section 5665(a)(3) of this title to any public or private agency, organization, or institution or to any individual shall not be used to pay for any personal service, advertisement, telegram, telephone communication, letter, printed or written matter, or other device intended or designed to influence a Member of Congress or any other Federal, State, or local elected official to favor or oppose any Acts, bills, resolutions, or similar legislation, or any referendum, initiative, constitutional amendment, or any similar procedure of the Congress, any State legislature, any local council, or any similar governing body, except that this paragraph shall not preclude such funds from being used in connection with communications to Federal, State, or local elected officials, upon the request of such officials through proper official channels, pertaining to authorization, appropriation, or oversight measures directly affecting the operation of the program involved.

“(2) The Administrator shall take such action as may be necessary to ensure that no funds paid under section 5633(a)(10)(D) of this title or section 5665(a)(3) of this title are used either directly or indirectly in any manner prohibited in this paragraph.”

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-273 effective on the first day of the first fiscal year that begins after Nov. 2, 2002, and applicable only with respect to fiscal years beginning on or after the first day of the first fiscal year that begins after Nov. 2, 2002, see section 12223 of Pub. L. 107-273, as amended, set out as a note under section 5601 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1988, see section 7296(a) of Pub. L. 100-690, set out as an Effective Date of 1988 Amendment note under section 5601 of this title.

§ 5675. Payments

(a) In general

Payments under this subchapter, pursuant to a grant or contract, may be made (after nec-

essary adjustment, in the case of grants, on account of previously made overpayments or underpayments) in advance or by way of reimbursement, in such installments and on such conditions as the Administrator may determine.

(b) Percentage of approved costs

Except as provided in the second sentence of section 5632(c) of this title, financial assistance extended under this subchapter shall be 100 per centum of the approved costs of the program or activity involved.

(c) Increase of grants to Indian tribes; waiver of liability

(1) In the case of a grant under this subchapter to an Indian tribe, if the Administrator determines that the tribe does not have sufficient funds available to meet the local share of the cost of any program or activity to be funded under the grant, the Administrator may increase the Federal share of the cost thereof to the extent the Administrator deems necessary.

(2) If a State does not have an adequate forum to enforce grant provisions imposing any liability on Indian tribes, the Administrator may waive State liability attributable to the liability of such tribes and may pursue such legal remedies as are necessary.

(Pub. L. 93-415, title II, §299D, formerly §295, as added Pub. L. 100-690, title VII, §7266(4), Nov. 18, 1988, 102 Stat. 4450; renumbered §299D, Pub. L. 102-586, §2(i)(1)(B), Nov. 4, 1992, 106 Stat. 5006; amended Pub. L. 107-273, div. C, title II, §12221(a)(3), Nov. 2, 2002, 116 Stat. 1894.)

AMENDMENTS

2002—Subsec. (d). Pub. L. 107-273 struck out subsec. (d) which read as follows: “If the Administrator determines, on the basis of information available to the Administrator during any fiscal year, that a portion of the funds granted to an applicant under part C of this subchapter for such fiscal year will not be required by the applicant or will become available by virtue of the application of the provisions of section 3783 of this title, as amended from time to time, that portion shall be available for reallocation in an equitable manner to States which comply with the requirements in paragraphs (12)(A) and (13) of section 5633(a) of this title, under section 5665(b)(6) of this title.”

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-273 effective on the first day of the first fiscal year that begins after Nov. 2, 2002, and applicable only with respect to fiscal years beginning on or after the first day of the first fiscal year that begins after Nov. 2, 2002, see section 12223 of Pub. L. 107-273, as amended, set out as a note under section 5601 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1988, see section 7296(a) of Pub. L. 100-690, set out as an Effective Date of 1988 Amendment note under section 5601 of this title.

§ 5676. Confidentiality of program records

Except as authorized by law, program records containing the identity of individual juveniles gathered for purposes pursuant to this subchapter may not be disclosed without the consent of the service recipient or legally authorized representative, or as may be necessary to carry out this subchapter. Under no circum-

stances may program reports or findings available for public dissemination contain the actual names of individual service recipients.

(Pub. L. 93-415, title II, §299E, formerly §296, as added Pub. L. 100-690, title VII, §7266(4), Nov. 18, 1988, 102 Stat. 4450; renumbered §299E, Pub. L. 102-586, §2(i)(1)(B), Nov. 4, 1992, 106 Stat. 5006.)

EFFECTIVE DATE

Section effective Oct. 1, 1988, see section 7296(a) of Pub. L. 100-690, set out as an Effective Date of 1988 Amendment note under section 5601 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13002, 13003, 13013, 13023 of this title.

§ 5677. Limitations on use of funds

None of the funds made available to carry out this subchapter may be used to advocate for, or support, the unsecured release of juveniles who are charged with a violent crime.

(Pub. L. 93-415, title II, §299F, as added Pub. L. 107-273, div. C, title II, §12216, Nov. 2, 2002, 116 Stat. 1893.)

EFFECTIVE DATE

Section effective on the first day of the first fiscal year that begins after Nov. 2, 2002, and applicable only with respect to fiscal years beginning on or after the first day of the first fiscal year that begins after Nov. 2, 2002, see section 12223 of Pub. L. 107-273, as amended, set out as an Effective Date of 2002 Amendment note under section 5601 of this title.

§ 5678. Rules of construction

Nothing in this subchapter or subchapter I of this chapter shall be construed—

(1) to prevent financial assistance from being awarded through grants under this subchapter to any otherwise eligible organization; or

(2) to modify or affect any Federal or State law relating to collective bargaining rights of employees.

(Pub. L. 93-415, title II, §299G, as added Pub. L. 107-273, div. C, title II, §12217, Nov. 2, 2002, 116 Stat. 1893.)

EFFECTIVE DATE

Section effective on the first day of the first fiscal year that begins after Nov. 2, 2002, and applicable only with respect to fiscal years beginning on or after the first day of the first fiscal year that begins after Nov. 2, 2002, see section 12223 of Pub. L. 107-273, as amended, set out as an Effective Date of 2002 Amendment note under section 5601 of this title.

§ 5679. Leasing surplus Federal property

The Administrator may receive surplus Federal property (including facilities) and may lease such property to States and units of general local government for use in or as facilities for juvenile offenders, or for use in or as facilities for delinquency prevention and treatment activities.

(Pub. L. 93-415, title II, §299H, as added Pub. L. 107-273, div. C, title II, §12218, Nov. 2, 2002, 116 Stat. 1893.)

EFFECTIVE DATE

Section effective on the first day of the first fiscal year that begins after Nov. 2, 2002, and applicable only

with respect to fiscal years beginning on or after the first day of the first fiscal year that begins after Nov. 2, 2002, see section 12223 of Pub. L. 107-273, as amended, set out as an Effective Date of 2002 Amendment note under section 5601 of this title.

§ 5680. Issuance of rules

The Administrator shall issue rules to carry out this subchapter, including rules that establish procedures and methods for making grants and contracts, and distributing funds available, to carry out this subchapter.

(Pub. L. 93-415, title II, §299I, as added Pub. L. 107-273, div. C, title II, §12219, Nov. 2, 2002, 116 Stat. 1893.)

EFFECTIVE DATE

Section effective on the first day of the first fiscal year that begins after Nov. 2, 2002, and applicable only with respect to fiscal years beginning on or after the first day of the first fiscal year that begins after Nov. 2, 2002, see section 12223 of Pub. L. 107-273, as amended, set out as an Effective Date of 2002 Amendment note under section 5601 of this title.

§ 5681. Content of materials

Materials produced, procured, or distributed both using funds appropriated to carry out this chapter and for the purpose of preventing hate crimes that result in acts of physical violence, shall not recommend or require any action that abridges or infringes upon the constitutionally protected rights of free speech, religion, or equal protection of juveniles or of their parents or legal guardians.

(Pub. L. 93-415, title II, §299J, as added Pub. L. 107-273, div. C, title II, §12220, Nov. 2, 2002, 116 Stat. 1893.)

EFFECTIVE DATE

Section effective on the first day of the first fiscal year that begins after Nov. 2, 2002, and applicable only with respect to fiscal years beginning on or after the first day of the first fiscal year that begins after Nov. 2, 2002, see section 12223 of Pub. L. 107-273, as amended, set out as an Effective Date of 2002 Amendment note under section 5601 of this title.

SUBCHAPTER III—RUNAWAY AND HOMELESS YOUTH

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 11432 of this title; title 31 section 6703.

§ 5701. Findings

The Congress finds that—

(1) youth who have become homeless or who leave and remain away from home without parental permission, are at risk of developing, and have a disproportionate share of, serious health, behavioral, and emotional problems because they lack sufficient resources to obtain care and may live on the street for extended periods thereby endangering themselves and creating a substantial law enforcement problem for communities in which they congregate;

(2) many such young people, because of their age and situation, are urgently in need of temporary shelter and services, including services that are linguistically appropriate and ac-

knowledge the environment of youth seeking these services;

(3) in view of the interstate nature of the problem, it is the responsibility of the Federal Government to develop an accurate national reporting system to report the problem, and to assist in the development of an effective system of care (including preventive and after-care services, emergency shelter services, extended residential shelter, and street outreach services) outside the welfare system and the law enforcement system;

(4) to make a successful transition to adulthood, runaway youth, homeless youth, and other street youth need opportunities to complete high school or earn a general equivalency degree, learn job skills, and obtain employment; and

(5) improved coordination and collaboration between the Federal programs that serve runaway and homeless youth are necessary for the development of a long-term strategy for responding to the needs of this population.

(Pub. L. 93-415, title III, §302, Sept. 7, 1974, 88 Stat. 1129; Pub. L. 102-586, §3(a), Nov. 4, 1992, 106 Stat. 5017; Pub. L. 106-71, §3(a), Oct. 12, 1999, 113 Stat. 1035; Pub. L. 108-96, title I, §101, Oct. 10, 2003, 117 Stat. 1167.)

AMENDMENTS

2003—Pub. L. 108-96 amended section generally. Prior to amendment, section contained congressional statement of findings.

1999—Par. (5). Pub. L. 106-71, §3(a)(1), substituted “an accurate national reporting system to report the problem, and to assist in the development of” for “accurate reporting of the problem nationally and to develop”.

Par. (8). Pub. L. 106-71, §3(a)(2), added par. (8) and struck out former par. (8) which read as follows: “in view of the interstate nature of the problem, it is the responsibility of the Federal Government to develop an accurate national reporting system and to develop an effective system of care including prevention, emergency shelter services, and longer residential care outside the public welfare and law enforcement structures;”.

1992—Par. (1). Pub. L. 102-586, §3(a)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “the number of juveniles who leave and remain away from home without parental permission has increased to alarming proportions, creating a substantial law enforcement problem for the communities inundated, and significantly endangering the young people who are without resources and live on the street;”.

Par. (5). Pub. L. 102-586, §3(a)(3), substituted “care (including preventive services, emergency shelter services, and extended residential shelter) outside the welfare system and the law enforcement system;” for “temporary care outside the law enforcement structure.”

Pars. (6) to (10). Pub. L. 102-586, §3(a)(2), (4), added pars. (6) to (10).

SHORT TITLE

For short title of title III of Pub. L. 93-415, which enacted this subchapter, as the “Runaway and Homeless Youth Act”, see section 301 of Pub. L. 93-415, as amended, set out as a note under section 5601 of this title.

REPORT ON PROMISING STRATEGIES TO END YOUTH HOMELESSNESS

Pub. L. 108-96, title I, §118, Oct. 10, 2003, 117 Stat. 1170, provided that: “Not later than 2 years after the date of the enactment of this Act [Oct. 10, 2003], the Secretary of Health and Human Services, in consultation with the

United States Interagency Council on Homelessness, shall submit to the Congress a report on promising strategies to end youth homelessness.”

§ 5702. Promulgation of rules

The Secretary of Health and Human Services (hereinafter in this subchapter referred to as the “Secretary”) may issue such rules as the Secretary considers necessary or appropriate to carry out the purposes of this subchapter.

(Pub. L. 93-415, title III, §303, Sept. 7, 1974, 88 Stat. 1130; Pub. L. 98-473, title II, §650, Oct. 12, 1984, 98 Stat. 2122.)

AMENDMENTS

1984—Pub. L. 98-473 substituted “Health and Human Services” for “Health, Education, and Welfare” and “issue such rules as the Secretary” for “prescribe such rules as he”.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-473 effective Oct. 12, 1984, see section 670(a) of Pub. L. 98-473, set out as a note under section 5601 of this title.

PART A—BASIC CENTER GRANT PROGRAM

AMENDMENTS

2003—Pub. L. 108-96, title I, §102, Oct. 10, 2003, 117 Stat. 1168, substituted in part A heading “BASIC CENTER” for “RUNAWAY AND HOMELESS YOUTH”.

1988—Pub. L. 100-690, title VII, §7272(1), Nov. 18, 1988, 102 Stat. 4454, substituted in part A heading “RUNAWAY AND HOMELESS YOUTH GRANT PROGRAM” for “GRANTS PROGRAM”.

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 5714-24, 5715, 5731a, 5732, 5732a, 5751 of this title.

§ 5711. Authority to make grants

(a) Grants for centers and services

(1) In general

The Secretary shall make grants to public and nonprofit private entities (and combinations of such entities) to establish and operate (including renovation) local centers to provide services for runaway and homeless youth and for the families of such youth.

(2) Services provided

Services provided under paragraph (1)—

(A) shall be provided as an alternative to involving runaway and homeless youth in the law enforcement, child welfare, mental health, and juvenile justice systems;

(B) shall include—

(i) safe and appropriate shelter; and
(ii) individual, family, and group counseling, as appropriate; and

(C) may include—

(i) street-based services;
(ii) home-based services for families with youth at risk of separation from the family;
(iii) drug abuse education and prevention services; and
(iv) at the request of runaway and homeless youth, testing for sexually transmitted diseases.

(b) Allotment of funds for grants; priority given to certain private entities

(1) Subject to paragraph (2) and in accordance with regulations promulgated under this sub-

chapter, funds for grants under subsection (a) of this section shall be allotted annually with respect to the States on the basis of their relative population of individuals who are less than 18 years of age.

(2) The amount allotted under paragraph (1) with respect to each State for a fiscal year shall be not less than \$100,000, except that the amount allotted to the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands shall be not less than \$45,000 each.

(3) In selecting among applicants for grants under subsection (a) of this section, the Secretary shall give priority to private entities that have experience in providing the services described in such subsection.

(Pub. L. 93-415, title III, §311, Sept. 7, 1974, 88 Stat. 1130; Pub. L. 95-115, §7(a)(1), Oct. 3, 1977, 91 Stat. 1058; Pub. L. 96-509, §18(c), Dec. 8, 1980, 94 Stat. 2762; Pub. L. 98-473, title II, §651, Oct. 12, 1984, 98 Stat. 2123; Pub. L. 100-690, title VII, §7271(a), (b), Nov. 18, 1988, 102 Stat. 4452; Pub. L. 102-586, §3(b), Nov. 4, 1992, 106 Stat. 5018; Pub. L. 106-71, §3(b), Oct. 12, 1999, 113 Stat. 1035; Pub. L. 108-96, title I, §§103, 104, Oct. 10, 2003, 117 Stat. 1168.)

AMENDMENTS

2003—Subsec. (a)(2)(C)(iv). Pub. L. 108-96, §103, added cl. (iv).

Subsec. (b)(2). Pub. L. 108-96, §104(1), substituted “The” for “Subject to paragraph (3), the”.

Subsec. (b)(3), (4). Pub. L. 108-96, §104(2), (3), redesignated par. (4) as (3) and struck out former par. (3) which read as follows: “If, as a result of paragraph (2), the amount allotted under paragraph (1) with respect to a State for a fiscal year would be less than the aggregate amount of grants made under this part to recipients in such State for fiscal year 1992, then the amounts allotted to satisfy the requirements of such paragraph shall be reduced pro rata to the extent necessary to allot under paragraph (1) with respect to such State for the fiscal year an amount equal to the aggregate amount of grants made under this part to recipients in such State for fiscal year 1992.”

1999—Subsec. (a). Pub. L. 106-71, §3(b)(1), added heading and text of subsec. (a) and struck out former subsec. (a) which read as follows: “The Secretary shall make grants to public and private entities (and combinations of such entities) to establish and operate (including renovation) local runaway and homeless youth centers to provide services to deal primarily with the immediate needs of runaway or otherwise homeless youth, and their families, in a manner which is outside the law enforcement system, the child welfare system, the mental health system, and the juvenile justice system.”

Subsec. (b)(2). Pub. L. 106-71, §3(b)(2), struck out “the Trust Territory of the Pacific Islands,” after “American Samoa.”

Subsecs. (c), (d). Pub. L. 106-71, §3(b)(3), struck out subsecs. (c) and (d) which related to street-based services and home-based services, respectively.

1992—Subsec. (a). Pub. L. 102-586, §3(b)(1), substituted “system, the child welfare system, the mental health system, and” for “structure and”.

Subsec. (b)(2). Pub. L. 102-586, §3(b)(2)(A), substituted “\$100,000” for “\$75,000” and “\$45,000” for “\$30,000”.

Subsec. (b)(3). Pub. L. 102-586, §3(b)(2)(B), substituted “1992” for “1988” in two places.

Subsecs. (c), (d). Pub. L. 102-586, §3(b)(3), added subsecs. (c) and (d) and struck out former subsec. (c) which read as follows: “The Secretary is authorized to provide on-the-job training to local runaway and homeless youth center personnel and coordinated networks of

local law enforcement, social service, and welfare personnel to assist such personnel in recognizing and providing for learning disabled and other handicapped juveniles.”

1988—Pub. L. 100-690, §7271(a), substituted “Authority to make grants” for “Grants and technical assistance” in section catchline.

Subsec. (a). Pub. L. 100-690, §7271(b), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “The Secretary is authorized to make grants and to provide technical assistance and short-term training to States, localities and private entities and coordinated networks of such entities in accordance with the provisions of this part and assistance to their families. Grants under this part shall be made equitably among the States based upon their respective populations of youth under 18 years of age for the purpose of developing local facilities to deal primarily with the immediate needs of runaway youth or otherwise homeless youth, and their families, in a manner which is outside the law enforcement structure and juvenile justice system. The size of such grant shall be determined by the number of such youth in the community and the existing availability of services. Grants also may be made for the provision of a national communications system for the purpose of assisting runaway and homeless youth in communicating with their families and with service providers. Among applicants priority shall be given to private organizations or institutions which have had past experience in dealing with such youth.”

Subsec. (b). Pub. L. 100-690, §7271(b), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “The Secretary is authorized to provide supplemental grants to runaway centers which are developing, in cooperation with local juvenile court and social service agency personnel, model programs designed to provide assistance to juveniles who have repeatedly left and remained away from their homes or from any facilities in which they have been placed as the result of an adjudication and to the families of such juveniles.”

1984—Subsec. (a). Pub. L. 98-473, §651(a), in first sentence, substituted “private entities and coordinated networks of such entities” for “nonprofit private agencies and coordinated networks of such agencies” and inserted “and assistance to their families”.

Subsec. (b). Pub. L. 98-473, §651(b), inserted “and to the families of such juveniles”.

1980—Subsec. (a). Pub. L. 96-509, §18(c)(1)-(4), designated existing provision as subsec. (a), inserted “equitably among the States based upon their respective populations of youth under 18 years of age” after “shall be made”, “, and their families,” after “homeless youth”, and provision that grants also be made for the provision of a national communications system to assist runaway and homeless youth in communicating with their families and with service providers.

Subsecs. (b), (c). Pub. L. 96-509, §18(c)(5), added subsecs. (b) and (c).

1977—Pub. L. 95-115 substituted “technical assistance and short-term training to States, localities and nonprofit private agencies and coordinated networks of such agencies in” for “technical assistance to localities and nonprofit private agencies in”, “needs of runaway youth or otherwise homeless youth in” for “needs of runaway youth in”, and “such youth” for “runaway youth” in two places.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-690 effective Oct. 1, 1988, see section 7296(a) of Pub. L. 100-690, set out as a note under section 5601 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-473 effective Oct. 12, 1984, see section 670(a) of Pub. L. 98-473, set out as a note under section 5601 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93-415, as added by Pub. L. 95-115, set out as a note under section 5601 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5712, 5713 of this title.

§ 5712. Eligibility; plan requirements**(a) Runaway and homeless youth center; project providing temporary shelter; counseling services**

To be eligible for assistance under section 5711(a) of this title, an applicant shall propose to establish, strengthen, or fund an existing or proposed runaway and homeless youth center, a locally controlled project (including a host family home) that provides temporary shelter, and counseling services to youth who have left home without permission of their parents or guardians or to other homeless youth.

(b) Provisions of plan

In order to qualify for assistance under section 5711(a) of this title, an applicant shall submit a plan to the Secretary including assurances that the applicant—

(1) shall operate a runaway and homeless youth center located in an area which is demonstrably frequented by or easily reachable by runaway and homeless youth;

(2) shall use such assistance to establish, to strengthen, or to fund a runaway and homeless youth center, or a locally controlled facility providing temporary shelter, that has—

(A) a maximum capacity of not more than 20 youth, except where the applicant assures that the State where the center or locally controlled facility is located has a State or local law or regulation that requires a higher maximum to comply with licensure requirements for child and youth serving facilities; and

(B) a ratio of staff to youth that is sufficient to ensure adequate supervision and treatment;

(3) shall develop adequate plans for contacting the parents or other relatives of the youth and ensuring the safe return of the youth according to the best interests of the youth, for contacting local government officials pursuant to informal arrangements established with such officials by the runaway and homeless youth center and for providing for other appropriate alternative living arrangements;

(4) shall develop an adequate plan for ensuring—

(A) proper relations with law enforcement personnel, health and mental health care personnel, social service personnel, school system personnel, and welfare personnel;

(B) coordination with McKinney-Vento school district liaisons, designated under section 722(g)(1)(J)(ii) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11432(g)(1)(J)(ii)), to assure that runaway and homeless youth are provided information about the educational services available to such youth under subtitle B of title VII of that Act [42 U.S.C. 11431 et seq.]; and

(C) the return of runaway and homeless youth from correctional institutions;

(5) shall develop an adequate plan for providing counseling and aftercare services to such youth, for encouraging the involvement of their parents or legal guardians in counseling, and for ensuring, as possible, that aftercare services will be provided to those youth who are returned beyond the State in which the runaway and homeless youth center is located;

(6) shall develop an adequate plan for establishing or coordinating with outreach programs designed to attract persons (including, where applicable, persons who are members of a cultural minority and persons with limited ability to speak English) who are eligible to receive services for which a grant under subsection (a) of this section may be expended;

(7) shall keep adequate statistical records profiling the youth and family members whom it serves (including youth who are not referred to out-of-home shelter services), except that records maintained on individual runaway and homeless youth shall not be disclosed without the consent of the individual youth and parent or legal guardian to anyone other than another agency compiling statistical records or a government agency involved in the disposition of criminal charges against an individual runaway and homeless youth, and reports or other documents based on such statistical records shall not disclose the identity of individual runaway and homeless youth;

(8) shall submit annual reports to the Secretary detailing how the center has been able to meet the goals of its plans and reporting the statistical summaries required by paragraph (7);

(9) shall demonstrate its ability to operate under accounting procedures and fiscal control devices as required by the Secretary;

(10) shall submit a budget estimate with respect to the plan submitted by such center under this subsection;

(11) shall supply such other information as the Secretary reasonably deems necessary; and

(12) shall submit to the Secretary an annual report that includes, with respect to the year for which the report is submitted—

(A) information regarding the activities carried out under this part;

(B) the achievements of the project under this part carried out by the applicant; and

(C) statistical summaries describing—

(i) the number and the characteristics of the runaway and homeless youth, and youth at risk of family separation, who participate in the project; and

(ii) the services provided to such youth by the project.

(c) Applicants providing street-based services

To be eligible to use assistance under section 5711(a)(2)(C)(i) of this title to provide street-based services, the applicant shall include in the plan required by subsection (b) of this section assurances that in providing such services the applicant will—

(1) provide qualified supervision of staff, including on-street supervision by appropriately trained staff;

(2) provide backup personnel for on-street staff;

(3) provide initial and periodic training of staff who provide such services; and

(4) conduct outreach activities for runaway and homeless youth, and street youth.

(d) Applicants providing home-based services

To be eligible to use assistance under section 5711(a) of this title to provide home-based services described in section 5711(a)(2)(C)(ii) of this title, an applicant shall include in the plan required by subsection (b) of this section assurances that in providing such services the applicant will—

(1) provide counseling and information to youth and the families (including unrelated individuals in the family households) of such youth, including services relating to basic life skills, interpersonal skill building, educational advancement, job attainment skills, mental and physical health care, parenting skills, financial planning, and referral to sources of other needed services;

(2) provide directly, or through an arrangement made by the applicant, 24-hour service to respond to family crises (including immediate access to temporary shelter for runaway and homeless youth, and youth at risk of separation from the family);

(3) establish, in partnership with the families of runaway and homeless youth, and youth at risk of separation from the family, objectives and measures of success to be achieved as a result of receiving home-based services;

(4) provide initial and periodic training of staff who provide home-based services; and

(5) ensure that—

(A) caseloads will remain sufficiently low to allow for intensive (5 to 20 hours per week) involvement with each family receiving such services; and

(B) staff providing such services will receive qualified supervision.

(e) Applicants providing drug abuse education and prevention services

To be eligible to use assistance under section 5711(a)(2)(C)(iii) of this title to provide drug abuse education and prevention services, an applicant shall include in the plan required by subsection (b) of this section—

(1) a description of—

(A) the types of such services that the applicant proposes to provide;

(B) the objectives of such services; and

(C) the types of information and training to be provided to individuals providing such services to runaway and homeless youth; and

(2) an assurance that in providing such services the applicant shall conduct outreach activities for runaway and homeless youth.

(Pub. L. 93-415, title III, §312, Sept. 7, 1974, 88 Stat. 1130; Pub. L. 95-115, §7(a)(2), (3), Oct. 3, 1977, 91 Stat. 1058; Pub. L. 96-509, §18(d), Dec. 8, 1980, 94 Stat. 2762; Pub. L. 98-473, title II, §652, Oct. 12, 1984, 98 Stat. 2123; Pub. L. 100-690, title VII, §2721(c)(1)-(3), Nov. 18, 1988, 102 Stat. 4453; Pub. L. 102-586, §3(c), Nov. 4, 1992, 106 Stat. 5019;

Pub. L. 106-71, §3(c), Oct. 12, 1999, 113 Stat. 1036; Pub. L. 108-96, title I, §§105, 106, 109, Oct. 10, 2003, 117 Stat. 1168, 1169.)

REFERENCES IN TEXT

The McKinney-Vento Homeless Assistance Act, referred to in subsec. (b)(4)(B), is Pub. L. 100-77, July 22, 1987, 101 Stat. 482, as amended. Subtitle B of title VII of the Act is classified generally to part B (§11431 et seq.) of subchapter VI of chapter 119 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of this title and Tables.

AMENDMENTS

2003—Subsec. (a). Pub. L. 108-96, §105, substituted “services to youth” for “services to juveniles” and “homeless youth” for “homeless juveniles”.

Subsec. (b)(2)(A). Pub. L. 108-96, §106, inserted “, except where the applicant assures that the State where the center or locally controlled facility is located has a State or local law or regulation that requires a higher maximum to comply with licensure requirements for child and youth serving facilities” after “youth”.

Subsec. (b)(4)(B). Pub. L. 108-96, §109, substituted “McKinney-Vento school district liaisons, designated under section 722(g)(1)(J)(ii) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11432(g)(1)(J)(ii)), to assure that runaway and homeless youth are provided information about the educational services available to such youth under subtitle B of title VII of that Act;” for “personnel of the schools to which runaway and homeless youth will return, to assist such youth to stay current with the curricula of those schools;”.

1999—Subsec. (b)(8). Pub. L. 106-71, §3(c)(1)(A), substituted “paragraph (7)” for “paragraph (6)”.

Subsec. (b)(12). Pub. L. 106-71, §3(c)(1)(B)-(D), added par. (12).

Subsecs. (c) to (e). Pub. L. 106-71, §3(c)(2), added heading and text of subsecs. (c) to (e) and struck out former subsecs. (c) and (d) which related to street-based service projects and home-based service projects, respectively, but which specified more detailed lists of services applicants were to provide in order to qualify for assistance.

1992—Subsec. (a). Pub. L. 102-586, §3(c)(1), substituted “project (including a host family home) that provides” for “facility providing”.

Subsec. (b)(2). Pub. L. 102-586, §3(c)(2)(A), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “shall have a maximum capacity of no more than twenty children, with a ratio of staff to children of sufficient proportion to assure adequate supervision and treatment;”.

Subsec. (b)(3). Pub. L. 102-586, §3(c)(2)(B), substituted “parents or other relatives of the youth and ensuring” for “child’s parents or relatives and assuring” and “youth” for “child” after “the” in two places.

Subsec. (b)(4). Pub. L. 102-586, §3(c)(2)(C), amended par. (4) generally. Prior to amendment, par. (4) read as follows: “shall develop an adequate plan for assuring proper relations with law enforcement personnel, social service personnel, school system personnel, and welfare personnel, and the return of runaway and homeless youth from correctional institutions;”.

Subsec. (b)(5). Pub. L. 102-586, §3(c)(2)(D), substituted “providing counseling and aftercare services to such youth, for encouraging the involvement of their parents or legal guardians in counseling, and for ensuring” for “aftercare counseling involving runaway and homeless youth and their families within the State in which the runaway and homeless youth center is located and for assuring” and “youth” for “children” after “those”.

Subsec. (b)(6). Pub. L. 102-586, §3(c)(2)(G), added par. (6). Former par. (6) redesignated (7).

Subsec. (b)(7). Pub. L. 102-586, §2(c)(2)(E), (F), redesignated par. (6) as (7) and substituted “youth and family members whom it serves (including youth who are not

referred to out-of-home shelter services)" for "children and family members which it serves".

Subsec. (b)(8) to (11). Pub. L. 102-586, §3(c)(2)(F), redesignated pars. (7) to (10) as (8) to (11), respectively.

Subsecs. (c), (d). Pub. L. 102-586, §3(c)(2)(H), added subsecs. (c) and (d).

1988—Subsec. (a). Pub. L. 100-690, §7271(c)(1), (2), substituted "section 5711(a) of this title" for "this part" and "runaway and homeless youth center" for "runaway center".

Subsec. (b). Pub. L. 100-690, §7271(c)(1), (3)(A), substituted "section 5711(a) of this title" for "this part" and "including assurances that the applicant" for "meeting the following requirements and including the following information. Each center" in introductory provisions.

Subsec. (b)(1). Pub. L. 100-690, §7271(c)(3)(B), substituted "shall operate a runaway and homeless youth center" for "shall be" and "runaway and homeless youth" for "runaway youth".

Subsec. (b)(3). Pub. L. 100-690, §7271(c)(3)(C), substituted "runaway and homeless youth center" for "runaway center".

Subsec. (b)(4). Pub. L. 100-690, §7271(c)(3)(D), substituted "runaway and homeless youth" for "runaway youths".

Subsec. (b)(5). Pub. L. 100-690, §7271(c)(3)(C), (E), substituted "runaway and homeless youth" for "runaway youth" and substituted "runaway and homeless youth center" for "runaway center" in two places.

Subsec. (b)(6). Pub. L. 100-690, §7271(c)(3)(D), (E), substituted "individual runaway and homeless youth" for "individual runaway youths" in two places and "against an individual runaway and homeless youth" for "against an individual runaway youth".

1984—Subsec. (b)(2). Pub. L. 98-473, §652(1), substituted "proportion" for "portion".

Subsec. (b)(3). Pub. L. 98-473, §652(2), struck out "(if such action is required by State law)" before "and assuring".

Subsec. (b)(4). Pub. L. 98-473, §652(3), inserted "school system personnel".

Subsec. (b)(5). Pub. L. 98-473, §652(4), substituted "families" for "parents".

Subsec. (b)(6). Pub. L. 98-473, §652(5), substituted "family members" for "parents".

1980—Subsec. (a). Pub. L. 96-509, §18(d)(1), substituted "center" for "house" and inserted "or to other homeless juveniles" after "parents or guardians".

Subsec. (b). Pub. L. 96-509, §18(d)(2), substituted "center" for "house" wherever appearing, and in par. (4) inserted reference to social service personnel and welfare personnel.

1977—Subsec. (b)(5), (6). Pub. L. 95-115 substituted "aftercare services" for "aftercase services" in par. (5), and "the consent of the individual youth and parent or legal guardian" for "parental consent" in par. (6).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-690 effective Oct. 1, 1988, see section 7296(a) of Pub. L. 100-690, set out as a note under section 5601 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-473 effective Oct. 12, 1984, see section 670(a) of Pub. L. 98-473, set out as a note under section 5601 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93-415, as added by Pub. L. 95-115, set out as a note under section 5601 of this title.

§§ 5712a to 5712c. Repealed. Pub. L. 102-586, § 3(g)(2)(A)-(C), Nov. 4, 1992, 106 Stat. 5025

Section 5712a, Pub. L. 93-415, title III, §313, as added Pub. L. 100-690, title VII, §7275(b), Nov. 18, 1988, 102 Stat. 4457, related to grants for a national communica-

tion system to assist runaway and homeless youth. See section 5714-11 of this title.

Section 5712b, Pub. L. 93-415, title III, §314, as added Pub. L. 100-690, title VII, §7276, Nov. 18, 1988, 102 Stat. 4457, related to grants for technical assistance and training to public and private entities for establishment and operation of runaway and homeless youth centers.

Section 5712c, Pub. L. 93-415, title III, §315, as added Pub. L. 100-690, title VII, §7277, Nov. 18, 1988, 102 Stat. 4457, related to authority of the Secretary to make grants for research, demonstration, and service projects.

§ 5712d. Grants for prevention of sexual abuse and exploitation

(a) In general

The Secretary shall make grants under this section to private, nonprofit agencies for street-based outreach and education, including treatment, counseling, provision of information, and referral for runaway, homeless, and street youth who have been subjected to or are at risk of being subjected to sexual abuse.

(b) Priority

In selecting among applicants for grants under subsection (a) of this section, the Secretary shall give priority to agencies that have experience in providing services to runaway, homeless, and street youth.

(c) Authorization of appropriations

There are authorized to be appropriated to carry out this section—

- (1) \$7,000,000 for fiscal year 1996;
- (2) \$8,000,000 for fiscal year 1997; and
- (3) \$15,000,000 for fiscal year 1998.

(d) Definitions

For the purposes of this section—

- (1) the term "street-based outreach and education" includes education and prevention efforts directed at offenses committed by offenders who are not known to the victim as well as offenders who are known to the victim; and
- (2) the term "street youth" means a juvenile who spends a significant amount of time on the street or in other areas of exposure to encounters that may lead to sexual abuse.

(Pub. L. 93-415, title III, §316, as added Pub. L. 103-322, title IV, §40155, Sept. 13, 1994, 108 Stat. 1922.)

CODIFICATION

Section 40155(2) of Pub. L. 103-322, which directed that this section be added after section 315 of Pub. L. 93-415, was executed by adding this section after section 312 of Pub. L. 93-415 (classified to section 5712 of this title) to reflect the probable intent of Congress and amendment by Pub. L. 102-586, §3(g)(2)(A)-(D), which repealed sections 313 to 315 of Pub. L. 93-415 (formerly classified to sections 5712a to 5712c of this title) and renumbered sections 316 and 317 of Pub. L. 93-415 as sections 313 and 314, respectively, of Pub. L. 93-415 (classified to sections 5713 and 5714 of this title). Section 40155(1) of Pub. L. 103-322, which directed that sections 316 and 317 of Pub. L. 93-415 be renumbered sections 317 and 318 of Pub. L. 93-415, could not be executed because of the previous renumbering of sections 316 and 317 as sections 313 and 314 of Pub. L. 93-415, as indicated above.

PRIOR PROVISIONS

A prior section 316 of Pub. L. 93-415 was renumbered section 313 of Pub. L. 93-415 and is classified to section 5713 of this title.

Another prior section 316 of Pub. L. 93-415 was renumbered section 372 of Pub. L. 93-415 and is classified to section 5714b of this title.

Another prior section 316 of Pub. L. 93-415 was renumbered section 382 of Pub. L. 93-415 and is classified to section 5716 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 5713. Approval of applications

(a) In general

An application by a public or private entity for a grant under section 5711(a) of this title may be approved by the Secretary after taking into consideration, with respect to the State in which such entity proposes to provide services under this part—

(1) the geographical distribution in such State of the proposed services under this part for which all grant applicants request approval; and

(2) which areas of such State have the greatest need for such services.

(b) Priority

In selecting applications for grants under section 5711(a) of this title, the Secretary shall give priority to—

(1) eligible applicants who have demonstrated experience in providing services to runaway and homeless youth; and

(2) eligible applicants that request grants of less than \$200,000.

(Pub. L. 93-415, title III, §313, Sept. 7, 1974, 88 Stat. 1131; Pub. L. 95-115, §7(a)(4), Oct. 3, 1977, 91 Stat. 1058; Pub. L. 96-509, §18(e), Dec. 8, 1980, 94 Stat. 2762; Pub. L. 98-473, title II, §653, Oct. 12, 1984, 98 Stat. 2123; renumbered §316 and amended Pub. L. 100-690, title VII, §§7271(c)(1), 7275(a), Nov. 18, 1988, 102 Stat. 4453, 4457; renumbered §313 and amended Pub. L. 102-586, §3(d), (g)(2)(D), Nov. 4, 1992, 106 Stat. 5022, 5025; Pub. L. 106-71, §3(d), Oct. 12, 1999, 113 Stat. 1037.)

PRIOR PROVISIONS

A prior section 313 of Pub. L. 93-415 was classified to section 5712a of this title prior to repeal by Pub. L. 102-586.

AMENDMENTS

1999—Pub. L. 106-71 inserted section catchline and amended text generally. Prior to amendment, text read as follows: “An application by a State, locality, or private entity for a grant under section 5711(a), (c), or (d) of this title may be approved by the Secretary only if it is consistent with the applicable provisions of section 5711(a), (c), or (d) of this title and meets the requirements set forth in section 5712 of this title. Priority shall be given to grants smaller than \$200,000. In considering grant applications under section 5711(a) of this title, priority shall be given to organizations which have a demonstrated experience in the provision of service to runaway and homeless youth and their families.”

1992—Pub. L. 102-586, §3(d), substituted “section 5711(a), (c), or (d) of this title” for “section 5711(a) of this title” in two places in first sentence and substituted “\$200,000” for “\$150,000” in second sentence.

1988—Pub. L. 100-690, §7271(c)(1), substituted “section 5711(a) of this title” for “this part” in three places.

1984—Pub. L. 98-473 substituted “private entity” for “nonprofit private agency”.

1980—Pub. L. 96-509 substituted “\$150,000” for “\$100,000” and “organizations which have a demonstrated experience in the provision of service to runaway and homeless youth and their families” for “any applicant whose program budget is smaller than \$150,000”.

1977—Pub. L. 95-115 substituted “\$100,000” and “\$150,000” for “\$75,000” and “\$100,000”, respectively.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-690 effective Oct. 1, 1988, see section 7296(a) of Pub. L. 100-690, set out as a note under section 5601 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-473 effective Oct. 12, 1984, see section 670(a) of Pub. L. 98-473, set out as a note under section 5601 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93-415, as added by Pub. L. 95-115, set out as a note under section 5601 of this title.

§ 5714. Grants to private entities; staffing

Nothing in this subchapter shall be construed to deny grants to private entities which are fully controlled by private boards or persons but which in other respects meet the requirements of this subchapter and agree to be legally responsible for the operation of the runaway and homeless youth center and the programs, projects, and activities they carry out under this subchapter. Nothing in this subchapter shall give the Federal Government control over the staffing and personnel decisions of facilities receiving Federal funds under this subchapter.

(Pub. L. 93-415, title III, §314, Sept. 7, 1974, 88 Stat. 1131; Pub. L. 98-473, title II, §654, Oct. 12, 1984, 98 Stat. 2123; renumbered §317 and amended Pub. L. 100-690, title VII, §§7271(c)(4), 7275(a), Nov. 18, 1988, 102 Stat. 4453, 4457; renumbered §314 and amended Pub. L. 102-586, §3(e), (g)(2)(D), Nov. 4, 1992, 106 Stat. 5022, 5025.)

PRIOR PROVISIONS

A prior section 314 of Pub. L. 93-415 was classified to section 5712b of this title prior to repeal by Pub. L. 102-586.

AMENDMENTS

1992—Pub. L. 102-586, §3(e), substituted “subchapter” for “part” wherever appearing and inserted “and the programs, projects, and activities they carry out under this subchapter” after “center” and “under this subchapter” before period at end.

1988—Pub. L. 100-690, §7271(c)(4), substituted “runaway and homeless youth center” for “runaway center”.

1984—Pub. L. 98-473 amended section catchline and substituted “private entities” for “nonprofit private agencies” and “center” for “house” in text.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-690 effective Oct. 1, 1988, see section 7296(a) of Pub. L. 100-690, set out as a note under section 5601 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-473 effective Oct. 12, 1984, see section 670(a) of Pub. L. 98-473, set out as a note under section 5601 of this title.

PART B—TRANSITIONAL LIVING GRANT PROGRAM

AMENDMENTS

1988—Pub. L. 100-690, title VII, §§7272(2), 7273(f), Nov. 18, 1988, 102 Stat. 4454, 4455, added part B heading, set

out above, and struck out “PART B—RECORDS” heading, formerly set out preceding section 5731 of this title.

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 677, 5715, 5731a, 5732, 5732a, 5751 of this title.

§ 5714-1. Authority for program

The Secretary is authorized to make grants and to provide technical assistance to public and nonprofit private entities to establish and operate transitional living youth projects for homeless youth.

(Pub. L. 93-415, title III, §321, as added Pub. L. 100-690, title VII, §7273(f), Nov. 18, 1988, 102 Stat. 4455; amended Pub. L. 106-71, §3(e), Oct. 12, 1999, 113 Stat. 1038.)

PRIOR PROVISIONS

A prior section 321 of Pub. L. 93-415 was renumbered section 363 and is classified to section 5731 of this title.

AMENDMENTS

1999—Pub. L. 106-71 struck out “Purpose and” before “Authority” in section catchline and struck out subsec. (a) designation before “The Secretary” and subsec. (b) which defined “homeless youth” and “transitional living youth project”.

EFFECTIVE DATE

Section effective Oct. 1, 1988, see section 7296(a) of Pub. L. 100-690, set out as an Effective Date of 1988 Amendment note under section 5601 of this title.

STUDY OF HOUSING SERVICES AND STRATEGIES

Pub. L. 108-96, title I, §119, Oct. 10, 2003, 117 Stat. 1170, provided that: “The Secretary of Health and Human Services shall conduct a study of programs funded under part B of the Runaway and Homeless Youth Act (42 U.S.C. 5714-1 et seq.) to report on long-term housing outcomes for youth after exiting the program. The study of any such program should provide information on housing services available to youth upon exiting the program, including assistance in locating and retaining permanent housing and referrals to other residential programs. In addition, the study should identify housing models and placement strategies that prevent future episodes of homelessness.”

§ 5714-2. Eligibility

(a) In general

To be eligible for assistance under this part, an applicant shall propose to establish, strengthen, or fund a transitional living youth project for homeless youth and shall submit to the Secretary a plan in which such applicant agrees, as part of such project—

(1) to provide, directly or indirectly, shelter (such as group homes, including maternity group homes, host family homes, and supervised apartments) and services (including information and counseling services in basic life skills which shall include money management, budgeting, consumer education, and use of credit, parenting skills (as appropriate), interpersonal skill building, educational advancement, job attainment skills, and mental and physical health care) to homeless youth;

(2) to provide such shelter and such services to individual homeless youth throughout a continuous period not to exceed 540 days, except that a youth in a program under this part who is under the age of 18 years on the last

day of the 540-day period may, if otherwise qualified for the program, remain in the program until the earlier of the youth’s 18th birthday or the 180th day after the end of the 540-day period;

(3) to provide, directly or indirectly, on-site supervision at each shelter facility that is not a family home;

(4) that such shelter facility used to carry out such project shall have the capacity to accommodate not more than 20 individuals (excluding staff);

(5) to provide a number of staff sufficient to ensure that all homeless youth participating in such project receive adequate supervision and services;

(6) to provide a written transitional living plan to each youth based on an assessment of such youth’s needs, designed to help the transition from supervised participation in such project to independent living or another appropriate living arrangement;

(7) to develop an adequate plan to ensure proper referral of homeless youth to social service, law enforcement, educational (including post-secondary education), vocational, training (including services and programs for youth available under the Workforce Investment Act of 1998), welfare (including programs under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996), legal service, and health care programs and to help integrate and coordinate such services for youths;

(8) to provide for the establishment of outreach programs designed to attract individuals who are eligible to participate in the project;

(9) to submit to the Secretary an annual report that includes information regarding the activities carried out with funds under this part, the achievements of the project under this part carried out by the applicant and statistical summaries describing the number and the characteristics of the homeless youth who participate in such project, and the services provided to such youth by such project, in the year for which the report is submitted;

(10) to implement such accounting procedures and fiscal control devices as the Secretary may require;

(11) to submit to the Secretary an annual budget that estimates the itemized costs to be incurred in the year for which the applicant requests a grant under this part;

(12) to keep adequate statistical records profiling homeless youth which it serves and not to disclose the identity of individual homeless youth in reports or other documents based on such statistical records;

(13) not to disclose records maintained on individual homeless youth without the informed consent of the individual youth to anyone other than an agency compiling statistical records;

(14) to provide to the Secretary such other information as the Secretary may reasonably require; and

(15) to coordinate services with McKinney-Vento school district liaisons, designated under section 722(g)(1)(J)(ii) of the McKinney-Vento Homeless Assistance Act (42 U.S.C.

11432(g)(1)(J)(ii)), to assure that runaway and homeless youth are provided information about the educational services available to such youth under subtitle B of title VII of that Act [42 U.S.C. 11431 et seq.].

(b) Priority

In selecting eligible applicants to receive grants under this part, the Secretary shall give priority to entities that have experience in providing to homeless youth shelter and services of the types described in subsection (a)(1) of this section.

(c) Definition

In this part, the term “maternity group home” means a community-based, adult-supervised transitional living arrangement that provides pregnant or parenting youth and their children with a supportive and supervised living arrangement in which such pregnant or parenting youth are required to learn parenting skills, including child development, family budgeting, health and nutrition, and other skills to promote their long-term economic independence in order to ensure the well-being of their children.

(Pub. L. 93-415, title III, §322, as added Pub. L. 100-690, title VII, §7273(f), Nov. 18, 1988, 102 Stat. 4456; amended Pub. L. 102-586, §3(f), Nov. 4, 1992, 106 Stat. 5022; Pub. L. 106-71, §3(f), Oct. 12, 1999, 113 Stat. 1038; Pub. L. 108-96, title I, §§107, 108, 110, 111, Oct. 10, 2003, 117 Stat. 1168, 1169.)

REFERENCES IN TEXT

The Workforce Investment Act of 1998, referred to in subsec. (a)(7), is Pub. L. 105-220, Aug. 7, 1998, 112 Stat. 936, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, referred to in subsec. (a)(7), is Pub. L. 104-193, Aug. 22, 1996, 110 Stat. 2105, as amended. For complete classification of this Act to the Code, see Short Title of 1996 Amendments note set out under section 1305 of this title and Tables.

The McKinney-Vento Homeless Assistance Act, referred to in subsec. (a)(15), is Pub. L. 100-77, July 22, 1987, 101 Stat. 482, as amended. Subtitle B of title VII of the Act is classified generally to part B (§11431 et seq.) of subchapter VI of chapter 119 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of this title and Tables.

AMENDMENTS

2003—Subsec. (a)(1). Pub. L. 108-96, §107(a), inserted “including maternity group homes,” after “group homes,” and “parenting skills (as appropriate),” after “use of credit.”

Subsec. (a)(2). Pub. L. 108-96, §108, inserted “, except that a youth in a program under this part who is under the age of 18 years on the last day of the 540-day period may, if otherwise qualified for the program, remain in the program until the earlier of the youth’s 18th birthday or the 180th day after the end of the 540-day period” after “days”.

Subsec. (a)(7). Pub. L. 108-96, §111, amended par. (7) generally. Prior to amendment, par. (7) read as follows: “to develop an adequate plan to ensure proper referral of homeless youth to social service, law enforcement, educational, vocational, training, welfare, legal service, and health care programs and to help integrate and coordinate such services for youths;”

Subsec. (a)(15). Pub. L. 108-96, §110, added par. (15).

Subsec. (c). Pub. L. 108-96, §107(b), added subsec. (c).

1999—Subsec. (a)(9). Pub. L. 106-71 inserted “, and the services provided to such youth by such project,” after “participate in such project”.

1992—Subsec. (a)(1). Pub. L. 102-586, §3(f)(1), inserted “which shall include money management, budgeting, consumer education, and use of credit” after “basic life skills”.

Subsec. (a)(13). Pub. L. 102-586, §3(f)(2), substituted “informed consent of the individual youth” for “consent of the individual youth and parent or legal guardian” and struck out “or a government agency involved in the disposition of criminal charges against youth” after “statistical records”.

EFFECTIVE DATE

Section effective Oct. 1, 1988, see section 7296(a) of Pub. L. 100-690, set out as an Effective Date of 1988 Amendment note under section 5601 of this title.

PART C—NATIONAL COMMUNICATIONS SYSTEM

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 5715, 5731a, 5732, 5751, 5773 of this title.

§ 5714-11. Authority to make grants

The Secretary shall make grants for a national communication system to assist runaway and homeless youth in communicating with their families and with service providers. The Secretary shall give priority to grant applicants that have experience in providing telephone services to runaway and homeless youth.

(Pub. L. 93-415, title III, §331, as added Pub. L. 102-586, §3(g)(1)(C), Nov. 4, 1992, 106 Stat. 5022; amended Pub. L. 106-71, §3(r)(1), Oct. 12, 1999, 113 Stat. 1043.)

AMENDMENTS

1999—Pub. L. 106-71 substituted “The Secretary” for “With funds reserved under section 5751(a)(3) of this title, the Secretary” in first sentence.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5773 of this title.

PART D—COORDINATING, TRAINING, RESEARCH, AND OTHER ACTIVITIES

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 5715, 5731a, 5732, 5751 of this title.

§ 5714-21. Coordination

With respect to matters relating to the health, education, employment, and housing of runaway and homeless youth, the Secretary—

(1) in conjunction with the Attorney General, shall coordinate the activities of agencies of the Department of Health and Human Services with activities under any other Federal juvenile crime control, prevention, and juvenile offender accountability program and with the activities of other Federal entities;

(2) shall coordinate the activities of agencies of the Department of Health and Human Services with the activities of other Federal entities and with the activities of entities that are eligible to receive grants under this subchapter; and

(3) shall consult, as appropriate, the Secretary of Housing and Urban Development to ensure coordination of programs and services for homeless youth.

(Pub. L. 93-415, title III, §341, as added Pub. L. 102-586, §3(g)(1)(C), Nov. 4, 1992, 106 Stat. 5023;

amended Pub. L. 106-71, §3(g), Oct. 12, 1999, 113 Stat. 1038; Pub. L. 108-96, title I, §112, Oct. 10, 2003, 117 Stat. 1169.)

PRIOR PROVISIONS

A prior section 341 of Pub. L. 93-415 was renumbered section 380 and is classified to section 5714a of this title.

AMENDMENTS

2003—Par. (3). Pub. L. 108-96 added par. (3).

1999—Pub. L. 106-71 amended section catchline and text generally. Prior to amendment, text read as follows: “With respect to matters relating to the health, education, employment, and housing of runaway and homeless youth, the Secretary shall coordinate the activities of agencies of the Department of Health and Human Services with the activities of other Federal entities and with the activities of entities that are eligible to receive grants under this subchapter”.

§ 5714-22. Grants for technical assistance and training

The Secretary may make grants to statewide and regional nonprofit organizations (and combinations of such organizations) to provide technical assistance and training to public and private entities (and combinations of such entities) that are eligible to receive grants under this subchapter, for the purpose of carrying out the programs, projects, or activities for which such grants are made.

(Pub. L. 93-415, title III, §342, as added Pub. L. 102-586, §3(g)(1)(C), Nov. 4, 1992, 106 Stat. 5023.)

PRIOR PROVISIONS

A prior section 342 of Pub. L. 93-415 was renumbered section 381 and is classified to section 5714b of this title.

§ 5714-23. Authority to make grants for research, evaluation, demonstration, and service projects

(a) Authorization; purposes

The Secretary may make grants to States, localities, and private entities (and combinations of such entities) to carry out research, evaluation, demonstration, and service projects regarding activities under this subchapter designed to increase knowledge concerning, and to improve services for, runaway youth and homeless youth.

(b) Selection factors; special consideration

In selecting among applications for grants under subsection (a) of this section, the Secretary shall give special consideration to proposed projects relating to—

- (1) youth who repeatedly leave and remain away from their homes;
- (2) transportation of runaway youth and homeless youth in connection with services authorized to be provided under this subchapter;
- (3) the special needs of runaway youth and homeless youth programs in rural areas;
- (4) the special needs of programs that place runaway youth and homeless youth in host family homes;
- (5) staff training in—
 - (A) the behavioral and emotional effects of sexual abuse and assault;

(B) responding to youth who are showing effects of sexual abuse and assault; and

(C) agency-wide strategies for working with runaway and homeless youth who have been sexually victimized;

(6) innovative methods of developing resources that enhance the establishment or operation of runaway and homeless youth centers;

(7) training for runaway youth and homeless youth, and staff training, related to preventing and obtaining treatment for infection by the human immunodeficiency virus (HIV);

(8) increasing access to health care (including mental health care) for runaway youth and homeless youth; and

(9) increasing access to education for runaway youth and homeless youth.

(c) Priority

In selecting among applicants for grants under subsection (a) of this section, the Secretary shall give priority to applicants who have experience working with runaway youth or homeless youth.

(Pub. L. 93-415, title III, §343, as added Pub. L. 102-586, §3(g)(1)(C), Nov. 4, 1992, 106 Stat. 5023; amended Pub. L. 106-71, §3(h), Oct. 12, 1999, 113 Stat. 1038; Pub. L. 108-96, title I, §113, Oct. 10, 2003, 117 Stat. 1170.)

AMENDMENTS

2003—Subsec. (a). Pub. L. 108-96 inserted “regarding activities under this subchapter” after “service projects”.

1999—Pub. L. 106-71, §3(h)(1), inserted “evaluation,” after “research,” in section catchline.

Subsec. (a). Pub. L. 106-71, §3(h)(2), inserted “evaluation,” after “research,”.

Subsec. (b)(2) to (10). Pub. L. 106-71, §3(h)(3), redesignated pars. (3) to (10) as (2) to (9), respectively, and struck out former par. (2) which read as follows: “home-based and street-based services for, and outreach to, runaway youth and homeless youth;”.

§ 5714-24. Demonstration projects to provide services to youth in rural areas

(a)(1) The Secretary may make grants on a competitive basis to States, localities, and private entities (and combinations of such entities) to provide services (including transportation) authorized to be provided under part A of this subchapter, to runaway and homeless youth in rural areas.

(2)(A) Each grant made under paragraph (1) may not exceed \$100,000.

(B) In each fiscal year for which funds are appropriated to carry out this section, grants shall be made under paragraph (1) to eligible applicants to carry out projects in not fewer than 10 States.

(C) Not more than 2 grants may be made under paragraph (1) in each fiscal year to carry out projects in a particular State.

(3) Each eligible applicant that receives a grant for a fiscal year to carry out a project under this section shall have priority to receive a grant for the subsequent fiscal year to carry out a project under this section.

(b) To be eligible to receive a grant under subsection (a) of this section, an applicant shall—

(1) submit to the Secretary an application in such form and containing such information and assurances as the Secretary may require by rule; and

(2) propose to carry out such project in a geographical area that—

(A) has a population under 20,000;

(B) is located outside a Standard Metropolitan Statistical Area; and

(C) agree to provide to the Secretary an annual report identifying—

(i) the number of runaway and homeless youth who receive services under the project carried out by the applicant;

(ii) the types of services authorized under part A of this subchapter that were needed by, but not provided to, such youth in the geographical area served by the project;

(iii) the reasons the services identified under clause (ii) were not provided by the project; and

(iv) such other information as the Secretary may require.

(Pub. L. 93-415, title III, §344, as added Pub. L. 102-586, §3(g)(1)(C), Nov. 4, 1992, 106 Stat. 5024; amended Pub. L. 106-71, §3(r)(2), Oct. 12, 1999, 113 Stat. 1043; Pub. L. 108-96, title I, §114, Oct. 10, 2003, 117 Stat. 1170.)

AMENDMENTS

2003—Pub. L. 108-96 substituted “Demonstration” for “Temporary demonstration” in section catchline.

1999—Subsec. (a)(1). Pub. L. 106-71 substituted “The Secretary” for “With funds appropriated under section 5751(c) of this title, the Secretary”.

§ 5714-25. Repealed. Pub. L. 108-96, title I, § 115, Oct. 10, 2003, 117 Stat. 1170

Section, Pub. L. 93-415, title III, §345, as added Pub. L. 106-71, §3(i), Oct. 12, 1999, 113 Stat. 1038, related to study of runaways to determine the percent who have been sexually abused.

PART E—SEXUAL ABUSE PREVENTION PROGRAM

PRIOR PROVISIONS

A prior part E, consisting of sections 5714a and 5714b, was redesignated part F by Pub. L. 106-71, §3(n)(1)(B), Oct. 12, 1999, 113 Stat. 1040.

AMENDMENTS

1999—Pub. L. 106-71, §3(n)(1)(C), Oct. 12, 1999, 113 Stat. 1040, added part heading. Former part E redesignated F.

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 5715, 5731a, 5732, 5751 of this title.

§ 5714-41. Authority to make grants

(a) In general

The Secretary may make grants to nonprofit private agencies for the purpose of providing street-based services to runaway and homeless, and street youth, who have been subjected to, or are at risk of being subjected to, sexual abuse, prostitution, or sexual exploitation.

(b) Priority

In selecting applicants to receive grants under subsection (a) of this section, the Secretary shall give priority to nonprofit private agencies

that have experience in providing services to runaway and homeless, and street youth.

(Pub. L. 93-415, title III, §351, as added Pub. L. 106-71, §3(n)(1)(C), Oct. 12, 1999, 113 Stat. 1040.)

PART F—GENERAL PROVISIONS

AMENDMENTS

1999—Pub. L. 106-71, §3(n)(1)(A), (B), Oct. 12, 1999, 113 Stat. 1040, redesignated part E as F and struck out part F heading “Administrative Provisions”, formerly set out preceding section 5715 of this title.

1992—Pub. L. 102-586, §3(g)(1)(B)(i), Nov. 4, 1992, 106 Stat. 5022, redesignated part C as E.

Pub. L. 102-586, §3(g)(1)(A)(i), Nov. 4, 1992, 106 Stat. 5022, redesignated part D as F.

1988—Pub. L. 100-690, title VII, §7272(3), Nov. 18, 1988, 102 Stat. 4454, added part D heading “Administrative Provisions”.

Pub. L. 100-690, title VII, §§7272(2), 7273(e)(1), Nov. 18, 1988, 102 Stat. 4454, 4455, added part C heading, set out above, and struck out part C heading “Authorization of Appropriations”, formerly set out preceding section 5741 of this title.

§ 5714a. Assistance to potential grantees

The Secretary shall provide informational assistance to potential grantees interested in establishing runaway and homeless youth centers and transitional living youth projects.

(Pub. L. 93-415, title III, §380, formerly §315, as added Pub. L. 98-473, title II, §655(2), Oct. 12, 1984, 98 Stat. 2124; renumbered §341 and amended Pub. L. 100-690, title VII, §7273(a), (e)(2), Nov. 18, 1988, 102 Stat. 4454, 4455; renumbered §371, Pub. L. 102-586, §3(g)(1)(B)(ii), Nov. 4, 1992, 106 Stat. 5022; renumbered §380 and amended Pub. L. 106-71, §3(j), (q), Oct. 12, 1999, 113 Stat. 1038, 1042.)

AMENDMENTS

1999—Pub. L. 106-71, §3(j), struck out at end: “Such assistance shall consist of information on—

“(1) steps necessary to establish a runaway and homeless youth center or transitional living youth project, including information on securing space for such center or such project, obtaining insurance, staffing, and establishing operating procedures;

“(2) securing local private or public financial support for the operation of such center or such project, including information on procedures utilized by grantees under this subchapter; and

“(3) the need for the establishment of additional runaway and homeless youth centers in the geographical area identified by the potential grantee involved.”

1988—Pub. L. 100-690, §7273(a)(1), inserted “and transitional living youth projects” after “homeless youth centers” in introductory provisions.

Par. (1). Pub. L. 100-690, §7273(a)(2), (3), inserted “or transitional living youth project” after “homeless youth center” and “or such project” after “such center”.

Par. (2). Pub. L. 100-690, §7273(a)(3), inserted “such project” after “such center”.

Par. (3). Pub. L. 100-690, §7273(a)(4), inserted “and homeless” after “runaway”.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-690 effective Oct. 1, 1988, see section 7296(a) of Pub. L. 100-690, set out as a note under section 5601 of this title.

EFFECTIVE DATE

Section effective Oct. 12, 1984, see section 670(a) of Pub. L. 98-473, set out as an Effective Date of 1984 Amendment note under section 5601 of this title.

§ 5714b. Lease of surplus Federal facilities for use as runaway and homeless youth centers or as transitional living youth shelter facilities

(a) Conditions of lease arrangements

The Secretary may enter into cooperative lease arrangements with States, localities, and nonprofit private agencies to provide for the use of appropriate surplus Federal facilities transferred by the General Services Administration to the Department of Health and Human Services for use as runaway and homeless youth centers or as transitional living youth shelter facilities if the Secretary determines that—

- (1) the applicant involved has suitable financial support necessary to operate a runaway and homeless youth center or transitional living youth project, as the case may be, under this subchapter;
- (2) the applicant is able to demonstrate the program expertise required to operate such center in compliance with this subchapter, whether or not the applicant is receiving a grant under this part; and
- (3) the applicant has consulted with and obtained the approval of the chief executive officer of the unit of local government in which the facility is located.

(b) Period of availability; rent-free use; structural changes: Federal ownership and consent

(1) Each facility made available under this section shall be made available for a period of not less than 2 years, and no rent or fee shall be charged to the applicant in connection with use of such facility.

(2) Any structural modifications or additions to facilities made available under this section shall become the property of the United States. All such modifications or additions may be made only after receiving the prior written consent of the Secretary or other appropriate officer of the Department of Health and Human Services.

(Pub. L. 93-415, title III, §381, formerly §316, as added Pub. L. 98-473, title II, §655(2), Oct. 12, 1984, 98 Stat. 2124; renumbered §342 and amended Pub. L. 100-690, title VII, §7273(b), (e)(2), Nov. 18, 1988, 102 Stat. 4454, 4455; renumbered §372, Pub. L. 102-586, §3(g)(1)(B)(ii), Nov. 4, 1992, 106 Stat. 5022; Pub. L. 105-277, div. A, §101(b) [title I, §129(a)(2)(E)], Oct. 21, 1998, 112 Stat. 2681-50, 2681-76; renumbered §381, Pub. L. 106-71, §3(q), Oct. 12, 1999, 113 Stat. 1042.)

PRIOR PROVISIONS

A prior section 381 of Pub. L. 93-415 was renumbered section 382 and is classified to section 5715 of this title.

AMENDMENTS

1998—Subsec. (a)(3). Pub. L. 105-277 substituted “unit of local government” for “unit of general local government”.

1988—Pub. L. 100-690, §7273(b)(1), inserted “or as transitional living youth shelter facilities” at end of section catchline.

Subsec. (a). Pub. L. 100-690, §7273(b)(2), inserted “or as transitional living youth shelter facilities” after “runaway and homeless youth centers” in introductory provisions and “or transitional living youth project, as the

case may be, under this subchapter” after “homeless youth center” in par. (1).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-690 effective Oct. 1, 1988, see section 7296(a) of Pub. L. 100-690, set out as a note under section 5601 of this title.

EFFECTIVE DATE

Section effective Oct. 12, 1984, see section 670(a) of Pub. L. 98-473, set out as an Effective Date of 1984 Amendment note under section 5601 of this title.

§ 5715. Reports

(a) In general

Not later than April 1, 2000, and biennially thereafter, the Secretary shall submit, to the Committee on Education and the Workforce of the House of Representatives and the Committee on the Judiciary of the Senate, a report on the status, activities, and accomplishments of entities that receive grants under parts A, B, C, D, and E of this subchapter, with particular attention to—

(1) in the case of centers funded under part A of this subchapter, the ability or effectiveness of such centers in—

- (A) alleviating the problems of runaway and homeless youth;
- (B) if applicable or appropriate, reuniting such youth with their families and encouraging the resolution of intrafamily problems through counseling and other services;
- (C) strengthening family relationships and encouraging stable living conditions for such youth; and
- (D) assisting such youth to decide upon a future course of action; and

(2) in the case of projects funded under part B of this subchapter—

- (A) the number and characteristics of homeless youth served by such projects;
- (B) the types of activities carried out by such projects;
- (C) the effectiveness of such projects in alleviating the problems of homeless youth;
- (D) the effectiveness of such projects in preparing homeless youth for self-sufficiency;
- (E) the effectiveness of such projects in assisting homeless youth to decide upon future education, employment, and independent living;
- (F) the ability of such projects to encourage the resolution of intrafamily problems through counseling and development of self-sufficient living skills; and
- (G) activities and programs planned by such projects for the following fiscal year.

(b) Contents of reports

The Secretary shall include in each report submitted under subsection (a) of this section, summaries of—

- (1) the evaluations performed by the Secretary under section 5732 of this title; and
- (2) descriptions of the qualifications of, and training provided to, individuals involved in carrying out such evaluations.

(Pub. L. 93-415, title III, §382, formerly §315, Sept. 7, 1974, 88 Stat. 1131; Pub. L. 96-509, §18(f),

Dec. 8, 1980, 94 Stat. 2762; renumbered §317, Pub. L. 98-473, title II, §655(1), Oct. 12, 1984, 98 Stat. 2124; renumbered §361 and amended Pub. L. 100-690, title VII, §§7271(c)(5), 7273(c), (e)(2), 7274, Nov. 18, 1988, 102 Stat. 4453-4455, 4457; Pub. L. 101-204, title X, §1003(1), (2), Dec. 7, 1989, 103 Stat. 1827; renumbered §381 and amended Pub. L. 102-586, §3(g)(1)(A)(ii), (h), Nov. 4, 1992, 106 Stat. 5022, 5025; renumbered §382 and amended Pub. L. 106-71, §3(k), (q), Oct. 12, 1999, 113 Stat. 1039, 1042.)

PRIOR PROVISIONS

A prior section 382 of Pub. L. 93-415 was renumbered section 383 and is classified to section 5716 of this title.

AMENDMENTS

1999—Pub. L. 106-71 amended section generally, making reporting requirements biennial rather than annual and adding subsec. headings.

1992—Pub. L. 102-586, §3(h), which directed the amendment of section “361 of the Juvenile Justice and Delinquency Act of 1974 (42 U.S.C. 5715)” by amending it generally and adding subsec. (b), was executed to this section, which is section 381 of the Juvenile Justice and Delinquency Prevention Act of 1974 (Pub. L. 93-415), to reflect the probable intent of Congress and the intervening renumbering of section 361 of Pub. L. 93-415 as section 381 by section 3(g)(1)(A)(ii) of Pub. L. 102-586. Prior to amendment, this section consisted of subsecs. (a) and (b) which required annual reports to Congress on the status and accomplishments of the runaway and homeless youth centers funded under part A of this subchapter and of the transitional living youth projects funded under part B of this subchapter.

1989—Subsec. (a). Pub. L. 101-204, §1003(1), substituted “submit a report to the Committee on Education and Labor of the House of Representatives and the Committee on the Judiciary of the Senate” for “report to the Congress”.

Subsec. (b). Pub. L. 101-204, §1003(2), substituted “Not later than 180 days after the end of each fiscal year, the Secretary shall submit a report to the Committee on Education and Labor of the House of Representatives and the Committee on the Judiciary of the Senate” for “The Secretary shall annually report to the Congress”.

1988—Subsec. (a). Pub. L. 100-690, §§7271(c)(5), 7273(c)(1), (2), 7274, designated existing provisions as subsec. (a), in introductory provisions substituted “Not later than 180 days after the end of each fiscal year, the Secretary shall” for “The Secretary shall annually”, “runaway and homeless youth centers” for “runaway centers”, and “part A of this subchapter” for “this part”, and in par. (1) substituted “runaway and homeless youth” for “runaway youth”.

Subsec. (b). Pub. L. 100-690, §7273(c)(3), added subsec. (b).

1980—Pub. L. 96-509 substituted “centers” for “houses”.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-690 effective Oct. 1, 1988, with the report required by this section with respect to fiscal year 1988 to be submitted not later than Aug. 1, 1989, notwithstanding the 180-day period provided in this section, see section 7296(a), (b)(3) of Pub. L. 100-690, as amended, set out as a note under section 5601 of this title.

§ 5716. Federal and non-Federal share; methods of payment

(a) The Federal share for the renovation of existing structures, the provision of counseling services, staff training, and the general costs of operations of such facility’s budget for any fiscal year shall be 90 per centum. The non-Federal

share may be in cash or in kind, fairly evaluated by the Secretary, including plant, equipment, or services.

(b) Payments under this section may be made in installments, in advance, or by way of reimbursement, with necessary adjustments on account of overpayments or underpayments.

(Pub. L. 93-415, title III, §383, formerly §316, Sept. 7, 1974, 88 Stat. 1132; renumbered §318, Pub. L. 98-473, title II, §655(1), Oct. 12, 1984, 98 Stat. 2124; renumbered §362 and amended Pub. L. 100-690, title VII, §§7271(c)(6), 7273(e)(2), Nov. 18, 1988, 102 Stat. 4454, 4455; renumbered §382, Pub. L. 102-586, §3(g)(1)(A)(ii), Nov. 4, 1992, 106 Stat. 5022; renumbered §383, Pub. L. 106-71, §3(q), Oct. 12, 1999, 113 Stat. 1042.)

PRIOR PROVISIONS

A prior section 383 of Pub. L. 93-415 was renumbered section 384 and is classified to section 5731 of this title.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100-690, §7271(c)(6), struck out “acquisition and” before “renovation”.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-690 effective Oct. 1, 1988, see section 7296(a) of Pub. L. 100-690, set out as a note under section 5601 of this title.

§ 5731. Restrictions on disclosure and transfer

Records containing the identity of individual youths pursuant to this chapter may under no circumstances be disclosed or transferred to any individual or to any public or private agency.

(Pub. L. 93-415, title III, §384, formerly §321, Sept. 7, 1974, 88 Stat. 1132; Pub. L. 95-115, §7(b), Oct. 3, 1977, 91 Stat. 1058; renumbered §363, Pub. L. 100-690, title VII, §7273(e)(2), Nov. 18, 1988, 102 Stat. 4455; renumbered §383, Pub. L. 102-586, §3(g)(1)(A)(ii), Nov. 4, 1992, 106 Stat. 5022; renumbered §384, Pub. L. 106-71, §3(q), Oct. 12, 1999, 113 Stat. 1042.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 93-415, Sept. 7, 1974, 88 Stat. 1109, as amended, which enacted this chapter, sections 3772 to 3774 and 3821 of this title, and sections 4351 to 4353 and 5038 to 5042 of Title 18, Crimes and Criminal Procedure, amended sections 3701, 3723, 3733, 3768, 3811 to 3814, 3882, and 3883 to 3888 of this title, section 5108 of Title 5, Government Organization and Employees, and sections 5031 to 5037 of Title 18, and repealed section 3889 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5601 of this title and Tables.

PRIOR PROVISIONS

A prior section 384 of Pub. L. 93-415 was renumbered section 386 and is classified to section 5732 of this title.

AMENDMENTS

1977—Pub. L. 95-115 substituted provisions relating to restrictions on disclosure and transfer of records, for provisions relating to scope, etc., of statistical report to Congress.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93-415, as added by Pub. L. 95-115, set out as a note under section 5601 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5732 of this title.

§ 5731a. Consolidated review of applications

With respect to funds available to carry out parts A, B, C, D, and E of this subchapter, nothing in this subchapter shall be construed to prohibit the Secretary from—

- (1) announcing, in a single announcement, the availability of funds for grants under 2 or more of such parts; and
- (2) reviewing applications for grants under 2 or more of such parts in a single, consolidated application review process.

(Pub. L. 93-415, title III, §385, as added Pub. L. 106-71, §3(o), Oct. 12, 1999, 113 Stat. 1041.)

PRIOR PROVISIONS

A prior section 385 of Pub. L. 93-415 was renumbered section 388 and is classified to section 5751 of this title.

§ 5732. Evaluation and information**(a) In general**

If a grantee receives grants for 3 consecutive fiscal years under part A, B, C, D, or E of this subchapter (in the alternative), then the Secretary shall evaluate such grantee on-site, not less frequently than once in the period of such 3 consecutive fiscal years, for purposes of—

- (1) determining whether such grants are being used for the purposes for which such grants are made by the Secretary;
- (2) collecting additional information for the report required by section 5731 of this title; and
- (3) providing such information and assistance to such grantee as will enable such grantee to improve the operation of the centers, projects, and activities for which such grants are made.

(b) Cooperation

Recipients of grants under this subchapter shall cooperate with the Secretary's efforts to carry out evaluations, and to collect information, under this subchapter.

(Pub. L. 93-415, title III, §386, formerly §364, as added Pub. L. 100-690, title VII, §7278, Nov. 18, 1988, 102 Stat. 4458; renumbered §384, Pub. L. 102-586, §3(g)(1)(A)(ii), Nov. 4, 1992, 106 Stat. 5022; renumbered §386 and amended Pub. L. 106-71, §3(l), Oct. 12, 1999, 113 Stat. 1039.)

PRIOR PROVISIONS

A prior section 5732, Pub. L. 93-415, title III, §322, Sept. 7, 1974, 88 Stat. 1132, set forth restrictions on disclosure and transfer of records, prior to repeal by Pub. L. 95-115, §7(b), Oct. 3, 1977, 91 Stat. 1058, eff. Oct. 1, 1977.

AMENDMENTS

1999—Pub. L. 106-71 amended section catchline and text generally. Prior to amendment, text read as follows:

“(a) The Secretary shall develop for each fiscal year, and publish annually in the Federal Register for public comment a proposed plan specifying the subject priorities the Secretary will follow in making grants under this subchapter for such fiscal year.

“(b) Taking into consideration comments received in the 45-day period beginning on the date the proposed plan is published, the Secretary shall develop and publish, before December 31 of such fiscal year, a final plan specifying the priorities referred to in subsection (a) of this section.”

EFFECTIVE DATE

Section effective Oct. 1, 1988, but not applicable with respect to fiscal year 1989, see section 7296(a), (b)(2) of Pub. L. 100-690, set out as an Effective Date of 1988 Amendment note under section 5601 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5715 of this title.

§ 5732a. Definitions

In this subchapter:

(1) Drug abuse education and prevention services

The term “drug abuse education and prevention services”—

- (A) means services to runaway and homeless youth to prevent or reduce the illicit use of drugs by such youth; and
- (B) may include—
 - (i) individual, family, group, and peer counseling;
 - (ii) drop-in services;
 - (iii) assistance to runaway and homeless youth in rural areas (including the development of community support groups);
 - (iv) information and training relating to the illicit use of drugs by runaway and homeless youth, to individuals involved in providing services to such youth; and
 - (v) activities to improve the availability of local drug abuse prevention services to runaway and homeless youth.

(2) Home-based services

The term “home-based services”—

- (A) means services provided to youth and their families for the purpose of—
 - (i) preventing such youth from running away, or otherwise becoming separated, from their families; and
 - (ii) assisting runaway youth to return to their families; and

(B) includes services that are provided in the residences of families (to the extent practicable), including—

- (i) intensive individual and family counseling; and
- (ii) training relating to life skills and parenting.

(3) Homeless youth

The term “homeless youth” means an individual—

- (A) who is—
 - (i) not more than 21 years of age, or, in the case of a youth seeking shelter in a center under part A of this subchapter, not more than 18 years of age; and
 - (ii) for the purposes of part B of this subchapter, not less than 16 years of age;

(B) for whom it is not possible to live in a safe environment with a relative; and

(C) who has no other safe alternative living arrangement.

(4) Street-based services

The term “street-based services”—

(A) means services provided to runaway and homeless youth, and street youth, in areas where they congregate, designed to as-

sist such youth in making healthy personal choices regarding where they live and how they behave; and

(B) may include—

(i) identification of and outreach to runaway and homeless youth, and street youth;

(ii) crisis intervention and counseling;

(iii) information and referral for housing;

(iv) information and referral for transitional living and health care services;

(v) advocacy, education, and prevention services related to—

(I) alcohol and drug abuse;

(II) sexual exploitation;

(III) sexually transmitted diseases, including human immunodeficiency virus (HIV); and

(IV) physical and sexual assault.

(5) Street youth

The term “street youth” means an individual who—

(A) is—

(i) a runaway youth; or

(ii) indefinitely or intermittently a homeless youth; and

(B) spends a significant amount of time on the street or in other areas that increase the risk to such youth for sexual abuse, sexual exploitation, prostitution, or drug abuse.

(6) Transitional living youth project

The term “transitional living youth project” means a project that provides shelter and services designed to promote a transition to self-sufficient living and to prevent long-term dependency on social services.

(7) Youth at risk of separation from the family

The term “youth at risk of separation from the family” means an individual—

(A) who is less than 18 years of age; and

(B)(i) who has a history of running away from the family of such individual;

(ii) whose parent, guardian, or custodian is not willing to provide for the basic needs of such individual; or

(iii) who is at risk of entering the child welfare system or juvenile justice system as a result of the lack of services available to the family to meet such needs.

(Pub. L. 93-415, title III, §387, as added Pub. L. 106-71, §3(p), Oct. 12, 1999, 113 Stat. 1041; amended Pub. L. 108-96, title I, §116, Oct. 10, 2003, 117 Stat. 1170.)

AMENDMENTS

2003—Subsec. (3)(A)(i). Pub. L. 108-96 inserted “, or, in the case of a youth seeking shelter in a center under part A of this subchapter, not more than 18 years of age” after “of age”.

§ 5733. Repealed. Pub. L. 102-586, §3(g)(2)(E), Nov. 4, 1992, 106 Stat. 5025

Section, Pub. L. 93-415, title III, §365, as added Pub. L. 100-690, title VII, §7279, Nov. 18, 1988, 102 Stat. 4458, related to Secretary’s obligation to coordinate activities of health agencies with activities of entities eligible to receive grants.

§ 5741. Repealed. Pub. L. 98-473, title II, §656, Oct. 12, 1984, 98 Stat. 2124

Section, Pub. L. 93-415, title III, §331, as added Pub. L. 95-115, §7(c), Oct. 3, 1977, 91 Stat. 1059; amended Pub. L. 96-88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695, authorized President to submit to Congress after April 30, 1978, a reorganization plan for establishment of an Office of Youth Assistance, subject to Congressional resolution of disapproval.

Prior to repeal by Pub. L. 98-473, section 5741 of this title comprised part C of this subchapter. Section 657(e) of Pub. L. 98-473 redesignated former part D, consisting of section 5751 of this title, as part C. Previously, part C was redesignated part D by Pub. L. 95-115, §7(c), Oct. 3, 1977, 91 Stat. 1059.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 12, 1984, see section 670(a) of Pub. L. 98-473, set out as an Effective Date of 1984 Amendment note under section 5601 of this title.

§ 5751. Authorization of appropriations

(a) In general

(1) Authorization

There is authorized to be appropriated to carry out this subchapter (other than part E of this subchapter) \$105,000,000 for fiscal year 2004, and such sums as may be necessary for fiscal years 2005, 2006, 2007, and 2008.

(2) Allocation

(A) Parts A and B of this subchapter

From the amount appropriated under paragraph (1) for a fiscal year, the Secretary shall reserve not less than 90 percent to carry out parts A and B of this subchapter.

(B) Part B of this subchapter

Of the amount reserved under subparagraph (A), 45 percent and, in those fiscal years in which continuation grant obligations and the quality and number of applicants for parts A and B of this subchapter warrant not more than 55 percent, shall be reserved to carry out part B of this subchapter.

(3) Parts C and D of this subchapter

In each fiscal year, after reserving the amounts required by paragraph (2), the Secretary shall use the remaining amount (if any) to carry out parts C and D of this subchapter.

(4) Part E of this subchapter

There is authorized to be appropriated to carry out part E of this subchapter such sums as may be necessary for fiscal years 2004, 2005, 2006, 2007, and 2008.

(b) Separate identification required

No funds appropriated to carry out this subchapter may be combined with funds appropriated under any other Act if the purpose of combining such funds is to make a single discretionary grant, or a single discretionary payment, unless such funds are separately identified in all grants and contracts and are used for the purposes specified in this subchapter.

(Pub. L. 93-415, title III, §388, formerly §331, Sept. 7, 1974, 88 Stat. 1132; Pub. L. 94-273, §32(c), Apr. 21, 1976, 90 Stat. 380; renumbered §341 and amended Pub. L. 95-115, §7(c), (d), Oct. 3, 1977, 91

Stat. 1059, 1060; Pub. L. 96-509, §2(b), Dec. 8, 1980, 94 Stat. 2750; renumbered §331 and amended Pub. L. 98-473, title II, §657(a)-(d), (f), Oct. 12, 1984, 98 Stat. 2124, 2125; renumbered §366 and amended Pub. L. 100-690, title VII, §§7273(d), (e)(2), 7280, Nov. 18, 1988, 102 Stat. 4455, 4459; Pub. L. 101-204, title X, §§1001(e)(2), 1003(3), Dec. 7, 1989, 103 Stat. 1827; renumbered §385 and amended Pub. L. 102-586, §3(g)(1)(A)(ii), (i), Nov. 4, 1992, 106 Stat. 5022, 5026; renumbered §388 and amended Pub. L. 106-71, §3(m), (n)(2), Oct. 12, 1999, 113 Stat. 1040, 1041; Pub. L. 108-96, title I, §117, Oct. 10, 2003, 117 Stat. 1170.)

AMENDMENTS

2003—Subsec. (a)(1). Pub. L. 108-96, §117(a), substituted “\$105,000,000 for fiscal year 2004, and such sums as may be necessary for fiscal years 2005, 2006, 2007, and 2008” for “such sums as may be necessary for fiscal years 2000, 2001, 2002, and 2003”.

Subsec. (a)(2)(B). Pub. L. 108-96, §117(c), substituted “45 percent and, in those fiscal years in which continuation grant obligations and the quality and number of applicants for parts A and B of this subchapter warrant not more than 55 percent” for “not less than 20 percent, and not more than 30 percent”.

Subsec. (a)(4). Pub. L. 108-96, §117(b), substituted “2004, 2005, 2006, 2007, and 2008” for “2000, 2001, 2002, and 2003”.

1999—Pub. L. 106-71, §3(m), amended section catchline and text generally, substituting provisions relating to appropriations for fiscal years 2000 to 2003 for provisions relating to appropriations for fiscal years 1993 to 1996.

Subsec. (a)(4). Pub. L. 106-71, §3(n)(2), added par. (4).

1992—Pub. L. 102-586, §3(i), which directed the amendment of section “366 of the Juvenile Justice and Delinquency Act of 1974 (42 U.S.C. 5751)”, was executed to this section, which is section 385 of the Juvenile Justice and Delinquency Prevention Act of 1974 (Pub. L. 93-415), to reflect the probable intent of Congress and the intervening renumbering of section 366 of Pub. L. 93-415 as section 385 by section 3(g)(1)(A)(ii) of Pub. L. 102-586. See notes below.

Subsec. (a)(1). Pub. L. 102-586, §3(i)(1)(A), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “To carry out the purposes of part A of this subchapter there are authorized to be appropriated such sums as may be necessary for fiscal years 1989, 1990, 1991, and 1992.”

Subsec. (a)(3) to (5). Pub. L. 102-586, §3(i)(1)(B), added pars. (3) to (5).

Subsec. (b)(1). Pub. L. 102-586, §3(i)(2), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “Subject to paragraph (2), to carry out the purposes of part B of this subchapter, there are authorized to be appropriated \$5,000,000 for fiscal year 1989 and such sums as may be necessary for each of the fiscal years 1990, 1991, and 1992.”

Subsecs. (c) to (e). Pub. L. 102-586, §3(i)(3), (4), added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

1989—Subsec. (a). Pub. L. 101-204, §1001(e)(2), amended directory language of Pub. L. 100-690, §7280(2), see 1988 Amendment note below.

Subsec. (a)(1). Pub. L. 101-204, §1003(3), substituted “are authorized” for “is authorized”.

1988—Subsec. (a). Pub. L. 100-690, §7280, as amended by Pub. L. 101-204, §1001(e)(2), designated existing provisions as par. (1), struck out “1985, 1986, 1987, and 1988” after “fiscal years”, inserted “1989, 1990, 1991, and 1992”, and added par. (2).

Subsecs. (b) to (d). Pub. L. 100-690, §7273(d), added subsec. (b) and redesignated former subsecs. (b) and (c) as (c) and (d), respectively.

1984—Pub. L. 98-473, §657(a), amended section catchline.

Subsec. (a). Pub. L. 98-473, §657(b), substituted “such sums as may be necessary for fiscal years 1985, 1986,

1987, and 1988” for “for each of the fiscal years ending September 30, 1981, September 30, 1982, September 30, 1983, and September 30, 1984 the sum of \$25,000,000”.

Subsec. (b). Pub. L. 98-473, §657(c), struck out “Associate” before “Administrator”.

Subsec. (c). Pub. L. 98-473, §657(d), added subsec. (c).

1980—Subsec. (a). Pub. L. 96-509 substituted provisions authorizing appropriations of \$25,000,000 for each of fiscal years ending Sept. 30, 1981, 1982, 1983, and 1984, for provisions that had authorized appropriations of \$10,000,000 for each of fiscal years ending Sept. 30, 1975, 1976, and 1977, and \$25,000,000 for each of fiscal years ending Sept. 30, 1978, 1979, and 1980.

1977—Subsec. (a). Pub. L. 95-115, §7(d)(1), inserted provisions authorizing appropriations for fiscal years ending Sept. 30, 1978, 1979, and 1980.

Subsec. (b). Pub. L. 95-115, §7(d)(2), substituted provisions relating to consultative and coordinating requirements for funded programs and activities, for provisions relating to authorization for funding surveys under part B of this subchapter.

1976—Pub. L. 94-273 substituted “June 30, 1975, and 1976, and September 30, 1977” for “June 30, 1975, 1976, and 1977”.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-690 effective Oct. 1, 1988, see section 7296(a) of Pub. L. 100-690, set out as a note under section 5601 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-473 effective Oct. 12, 1984, except that subsec. (c)(2), as enacted by section 657(d) of Pub. L. 98-473, not applicable with respect to any grant or payment made before Oct. 12, 1984, see section 670 of Pub. L. 98-473, set out as a note under section 5601 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93-415, as added by Pub. L. 95-115, set out as a note under section 5601 of this title.

§ 5752. Restriction on use of funds

(a) In general

None of the funds contained in this subchapter may be used for any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.

(b) Separate accounting

Any individual or entity who receives any funds contained in this subchapter and who carries out any program described in subsection (a) of this section shall account for all funds used for such program separately from any funds contained in this subchapter.

(Pub. L. 93-415, title III, §389, as added Pub. L. 108-96, title I, §120, Oct. 10, 2003, 117 Stat. 1171.)

SUBCHAPTER IV—MISSING CHILDREN

§ 5771. Findings

The Congress finds that—

(1) each year thousands of children are abducted or removed from the control of a parent having legal custody without such parent's consent, under circumstances which immediately place the child in grave danger;

(2) many missing children are at great risk of both physical harm and sexual exploitation;

(3) in many cases, parents and local law enforcement officials have neither the resources nor the expertise to mount expanded search efforts;

(4) abducted children are frequently moved from one locality to another, requiring the cooperation and coordination of local, State, and Federal law enforcement efforts;

(5) the National Center for Missing and Exploited Children—

(A) serves as the national resource center and clearinghouse;

(B) works in partnership with the Department of Justice, the Federal Bureau of Investigation, the Department of the Treasury, the Department of State, and many other agencies in the effort to find missing children and prevent child victimization; and

(C) operates a national and increasingly worldwide network, linking the Center on-line with each of the missing children clearinghouses operated by the 50 States, the District of Columbia, and Puerto Rico, as well as with Scotland Yard in the United Kingdom, the Royal Canadian Mounted Police, INTERPOL headquarters in Lyon, France, and others, which enable the Center to transmit images and information regarding missing children to law enforcement across the United States and around the world instantly.

(Pub. L. 93-415, title IV, §402, as added Pub. L. 98-473, title II, §660, Oct. 12, 1984, 98 Stat. 2125; amended Pub. L. 106-71, §2(a), Oct. 12, 1999, 113 Stat. 1032; Pub. L. 108-96, title II, §201, Oct. 10, 2003, 117 Stat. 1171.)

PRIOR PROVISIONS

A prior section 402 of Pub. L. 93-415 amended section 3888 of this title and repealed section 3889 of this title, and was repealed by Pub. L. 95-115, §10, Oct. 3, 1977, 91 Stat. 1061, and Pub. L. 107-273, div. C, title II, §12221(a)(4), Nov. 2, 2002, 116 Stat. 1894.

AMENDMENTS

2003—Pub. L. 108-96 amended section generally. Prior to amendment, section consisted of pars. (1) to (21) stating findings of Congress.

1999—Pars. (9) to (21). Pub. L. 106-71 added pars. (9) to (21).

EFFECTIVE DATE

Subchapter effective Oct. 12, 1984, see section 670(a) of Pub. L. 98-473, set out as an Effective Date of 1984 Amendment note under section 5601 of this title.

SHORT TITLE

For short title of title IV of Pub. L. 93-415, which enacted this subchapter, as the “Missing Children’s Assistance Act”, see section 401 of Pub. L. 93-415, as added by Pub. L. 98-473, set out as a note under section 5601 of this title.

§ 5772. Definitions

For the purpose of this subchapter—

(1) the term “missing child” means any individual less than 18 years of age whose whereabouts are unknown to such individual’s legal custodian if—

(A) the circumstances surrounding such individual’s disappearance indicate that such individual may possibly have been removed by another from the control of such individual’s legal custodian without such custodian’s consent; or

(B) the circumstances of the case strongly indicate that such individual is likely to be abused or sexually exploited;

(2) the term “Administrator” means the Administrator of the Office of Juvenile Justice and Delinquency Prevention; and

(3) the term “Center” means the National Center for Missing and Exploited Children.

(Pub. L. 93-415, title IV, §403, as added Pub. L. 98-473, title II, §660, Oct. 12, 1984, 98 Stat. 2126; amended Pub. L. 106-71, §2(b), Oct. 12, 1999, 113 Stat. 1034.)

PRIOR PROVISIONS

A prior section 403 of Pub. L. 93-415 amended section 3883 of this title, and was repealed by Pub. L. 95-115, §10, Oct. 3, 1977, 91 Stat. 1061, and Pub. L. 107-273, div. C, title II, §12221(a)(4), Nov. 2, 2002, 116 Stat. 1894.

AMENDMENTS

1999—Par. (3). Pub. L. 106-71 added par. (3).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5775 of this title.

§ 5773. Duties and functions of the Administrator

(a) Description of activities

The Administrator shall—

(1) issue such rules as the Administrator considers necessary or appropriate to carry out this subchapter;

(2) make such arrangements as may be necessary and appropriate to facilitate effective coordination among all federally funded programs relating to missing children (including the preparation of an annual comprehensive plan for facilitating such coordination);

(3) provide for the furnishing of information derived from the national toll-free telephone line, established under subsection (b)(1) of this section, to appropriate entities;

(4) provide adequate staff and agency resources which are necessary to properly carry out the responsibilities pursuant to this subchapter; and

(5) not later than 180 days after the end of each fiscal year, submit a report to the President, Speaker of the House of Representatives, and the President pro tempore of the Senate—

(A) containing a comprehensive plan for facilitating cooperation and coordination in the succeeding fiscal year among all agencies and organizations with responsibilities related to missing children;

(B) identifying and summarizing effective models of Federal, State, and local coordination and cooperation in locating and recovering missing children;

(C) identifying and summarizing effective program models that provide treatment, counseling, or other aid to parents of missing children or to children who have been the victims of abduction;

(D) describing how the Administrator satisfied the requirements of paragraph (4) in the preceding fiscal year;

(E) describing in detail the number and types of telephone calls received in the preceding fiscal year over the national toll-free telephone line established under subsection

(b)(1)(A) of this section and the number and types of communications referred to the national communications system established under section 5714-11 of this title;

(F) describing in detail the activities in the preceding fiscal year of the national resource center and clearinghouse established under subsection (b)(2) of this section;

(G) describing all the programs for which assistance was provided under section 5775 of this title in the preceding fiscal year;

(H) summarizing the results of all research completed in the preceding year for which assistance was provided at any time under this subchapter; and

(I)(i) identifying each clearinghouse with respect to which assistance is provided under section 5775(a)(9) of this title in the preceding fiscal year;

(ii) describing the activities carried out by such clearinghouse in such fiscal year;

(iii) specifying the types and amounts of assistance (other than assistance under section 5775(a)(9) of this title) received by such clearinghouse in such fiscal year; and

(iv) specifying the number and types of missing children cases handled (and the number of such cases resolved) by such clearinghouse in such fiscal year and summarizing the circumstances of each such case.¹

(b) Annual grant to National Center for Missing and Exploited Children

(1) In general

The Administrator shall annually make a grant to the Center, which shall be used to—

(A)(i) operate a national 24-hour toll-free telephone line by which individuals may report information regarding the location of any missing child, or other child 13 years of age or younger whose whereabouts are unknown to such child's legal custodian, and request information pertaining to procedures necessary to reunite such child with such child's legal custodian; and

(ii) coordinate the operation of such telephone line with the operation of the national communications system referred to in part C of subchapter III of this chapter;

(B) operate the official national resource center and information clearinghouse for missing and exploited children;

(C) provide to State and local governments, public and private nonprofit agencies, and individuals, information regarding—

(i) free or low-cost legal, restaurant, lodging, and transportation services that are available for the benefit of missing and exploited children and their families; and

(ii) the existence and nature of programs being carried out by Federal agencies to assist missing and exploited children and their families;

(D) coordinate public and private programs that locate, recover, or reunite missing children with their families;

(E) disseminate, on a national basis, information relating to innovative and model programs, services, and legislation that benefit missing and exploited children;

(F) provide technical assistance and training to law enforcement agencies, State and local governments, elements of the criminal justice system, public and private nonprofit agencies, and individuals in the prevention, investigation, prosecution, and treatment of cases involving missing and exploited children;

(G) provide assistance to families and law enforcement agencies in locating and recovering missing and exploited children, both nationally and internationally; and

(H) coordinate the operation of a cyber tipline to provide online users an effective means of reporting Internet-related child sexual exploitation in the areas of—

(i) distribution of child pornography;

(ii) online enticement of children for sexual acts; and

(iii) child prostitution.

(2) Authorization of appropriations

There is authorized to be appropriated to the Administrator to carry out this subsection, \$20,000,000 for each of the fiscal years 2004 through 2008.

(c) National incidence studies

The Administrator, either by making grants to or entering into contracts with public agencies or nonprofit private agencies, shall—

(1) periodically conduct national incidence studies to determine for a given year the actual number of children reported missing each year, the number of children who are victims of abduction by strangers, the number of children who are the victims of parental kidnappings, and the number of children who are recovered each year; and

(2) provide to State and local governments, public and private nonprofit agencies, and individuals information to facilitate the lawful use of school records and birth certificates to identify and locate missing children.

(d) Independent status of other Federal agencies

Nothing contained in this subchapter shall be construed to grant to the Administrator any law enforcement responsibility or supervisory authority over any other Federal agency.

(Pub. L. 93-415, title IV, § 404, as added Pub. L. 98-473, title II, § 660, Oct. 12, 1984, 98 Stat. 2126; amended Pub. L. 100-690, title VII, § 7285, Nov. 18, 1988, 102 Stat. 4459; Pub. L. 101-204, title X, § 1004(2), Dec. 7, 1989, 103 Stat. 1828; Pub. L. 106-71, § 2(c), Oct. 12, 1999, 113 Stat. 1034; Pub. L. 107-273, div. C, title II, § 12221(b)(2), Nov. 2, 2002, 116 Stat. 1894; Pub. L. 108-21, title III, §§ 321(b), 323, Apr. 30, 2003, 117 Stat. 664, 665; Pub. L. 108-96, title II, § 202(a), Oct. 10, 2003, 117 Stat. 1172.)

PRIOR PROVISIONS

A prior section 404 of Pub. L. 93-415 amended section 3882 of this title, and was repealed by Pub. L. 95-115, § 10, Oct. 3, 1977, 91 Stat. 1061, and Pub. L. 107-273, div. C, title II, § 12221(a)(4), Nov. 2, 2002, 116 Stat. 1894.

AMENDMENTS

2003—Subsec. (b)(1)(H). Pub. L. 108-21, § 323, added subpar. (H).

¹ So in original. Probably should be "case."

Subsec. (b)(2). Pub. L. 108-96 substituted "2008" for "2005".

Pub. L. 108-21, §321(b), substituted "\$20,000,000 for each of the fiscal years 2004 through 2005" for "\$10,000,000 for each of fiscal years 2000, 2001, 2002, and 2003".

2002—Subsec. (a)(5)(E). Pub. L. 107-273 substituted "section 5714-11" for "section 5712a".

1999—Subsecs. (b) to (d). Pub. L. 106-71 added subsecs. (b) and (c), redesignated former subsec. (c) as (d), and struck out former subsec. (b) which related to the establishment of toll-free telephone line and national resource center and clearinghouse, conduct of national incidence studies, and use of school records and birth certificates.

1989—Subsec. (a)(5)(C). Pub. L. 101-204, §1004(2)(A), substituted semicolon for comma at end.

Subsec. (b)(2)(A). Pub. L. 101-204, §1004(2)(B), inserted "to" before "provide to State".

1988—Subsec. (a)(3). Pub. L. 100-690, §7285(a)(1), struck out "law enforcement" before "entities".

Subsec. (a)(4). Pub. L. 100-690, §7285(a)(2), inserted "and" at end.

Subsec. (a)(5). Pub. L. 100-690, §7285(a)(3), amended par. (5) generally. Prior to amendment, par. (5) read as follows: "analyze, compile, publish, and disseminate an annual summary of recently completed research, research being conducted, and Federal, State, and local demonstration projects relating to missing children with particular emphasis on—

"(A) effective models of local, State, and Federal coordination and cooperation in locating missing children;

"(B) effective programs designed to promote community awareness of the problem of missing children;

"(C) effective programs to prevent the abduction and sexual exploitation of children (including parent, child, and community education); and

"(D) effective program models which provide treatment, counseling, or other aid to parents of missing children or to children who have been the victims of abduction or sexual exploitation; and".

Subsec. (a)(6). Pub. L. 100-690, §7285(a)(4), struck out par. (6), which read as follows: "prepare, in conjunction with and with the final approval of the Advisory Board on Missing Children, an annual comprehensive plan for facilitating cooperation and coordination among all agencies and organizations with responsibilities related to missing children."

Subsec. (b)(1). Pub. L. 100-690, §7285(b)(1), designated existing provisions as subpar. (A), inserted "24-hour" after "national" and "and" at end, and added subpar. (B).

Subsec. (b)(2)(A). Pub. L. 100-690, §7285(b)(2)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "to provide technical assistance to local and State governments, public and private nonprofit agencies, and individuals in locating and recovering missing children;"

Subsec. (b)(2)(D). Pub. L. 100-690, §7285(b)(2)(B), inserted "and training" after "assistance" and "and in locating and recovering missing children" before semicolon.

Subsec. (b)(4). Pub. L. 100-690, §7285(b)(3), (4), added par. (4).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-273 effective on the first day of the first fiscal year that begins after Nov. 2, 2002, and applicable only with respect to fiscal years beginning on or after the first day of the first fiscal year that begins after Nov. 2, 2002, see section 12223 of Pub. L. 107-273, as amended, set out as a note under section 5601 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-690 effective Oct. 1, 1988, with the report required by subsec. (a)(5) of this section with respect to fiscal year 1988 to be submitted not

later than Aug. 1, 1989, notwithstanding the 180-day period provided in subsec. (a)(5) of this section, see section 7296(a), (b)(3) of Pub. L. 100-690, as amended, set out as a note under section 5601 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (a)(5) of this section relating to submittal of annual report to the Speaker of the House of Representatives and the President pro tempore of the Senate, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 2nd item on page 122 of House Document No. 103-7.

§ 5774. Repealed. Pub. L. 100-690, title VII, § 7286, Nov. 18, 1988, 102 Stat. 4460

Section, Pub. L. 93-415, title IV, §405, as added Pub. L. 98-473, title II, §660, Oct. 12, 1984, 98 Stat. 2127, provided for an Advisory Board on Missing Children.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1988, see section 7296(a) of Pub. L. 100-690, set out as an Effective Date of 1988 Amendment note under section 5601 of this title.

§ 5775. Grants

(a) Authority of Administrator; description of research, demonstration projects, and service programs

The Administrator is authorized to make grants to and enter into contracts with the Center and with public agencies or nonprofit private organizations, or combinations thereof, for research, demonstration projects, or service programs designed—

(1) to educate parents, children, and community agencies and organizations in ways to prevent the abduction and sexual exploitation of children;

(2) to provide information to assist in the locating and return of missing children;

(3) to aid communities in the collection of materials which would be useful to parents in assisting others in the identification of missing children;

(4) to increase knowledge of and develop effective treatment pertaining to the psychological consequences, on both parents and children, of—

(A) the abduction of a child, both during the period of disappearance and after the child is recovered; and

(B) the sexual exploitation of a missing child;

(5) to collect detailed data from selected States or localities on the actual investigative practices utilized by law enforcement agencies in missing children's cases;

(6) to address the particular needs of missing children by minimizing the negative impact of judicial and law enforcement procedures on children who are victims of abuse or sexual exploitation and by promoting the active participation of children and their families in cases involving abuse or sexual exploitation of children;

(7) to address the needs of missing children (as defined in section 5772(1)(A) of this title) and their families following the recovery of such children;

(8) to reduce the likelihood that individuals under 18 years of age will be removed from the control of such individuals' legal custodians without such custodians' consent; and

(9) to establish or operate statewide clearinghouses to assist in locating and recovering missing children.

(b) Priorities of grant applicants

In considering grant applications under this subchapter, the Administrator shall give priority to applicants who—

(1) have demonstrated or demonstrate ability in—

(A) locating missing children or locating and reuniting missing children with their legal custodians;

(B) providing other services to missing children or their families; or

(C) conducting research relating to missing children; and

(2) with respect to subparagraphs (A) and (B) of paragraph (1), substantially utilize volunteer assistance.

The Administrator shall give first priority to applicants qualifying under subparagraphs (A) and (B) of paragraph (1).

(c) Non-Federal fund expenditures requisite for receipt of Federal assistance

In order to receive assistance under this subchapter for a fiscal year, applicants shall give assurance that they will expend, to the greatest extent practicable, for such fiscal year an amount of funds (without regard to any funds received under any Federal law) that is not less than the amount of funds they received in the preceding fiscal year from State, local, and private sources.

(Pub. L. 93-415, title IV, § 405, formerly § 406, as added Pub. L. 98-473, title II, § 660, Oct. 12, 1984, 98 Stat. 2128; renumbered § 405 and amended Pub. L. 100-690, title VII, §§ 7287, 7290(a), Nov. 18, 1988, 102 Stat. 4460, 4461; Pub. L. 101-204, title X, § 1004(3), Dec. 7, 1989, 103 Stat. 1828; Pub. L. 106-71, § 2(d), Oct. 12, 1999, 113 Stat. 1035.)

PRIOR PROVISIONS

A prior section 405 of Pub. L. 93-415 was classified to section 5774 of this title prior to repeal by Pub. L. 100-690, title VII, § 7286, Nov. 18, 1988, 102 Stat. 4460.

AMENDMENTS

1999—Subsec. (a). Pub. L. 106-71 inserted “the Center and with” before “public agencies” in introductory provisions.

1989—Subsec. (a)(9). Pub. L. 101-204 substituted “clearinghouses” for “clearinghouse”.

1988—Subsec. (a)(7) to (9). Pub. L. 100-690, § 7287, added pars. (7) to (9).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-690 effective Oct. 1, 1988, see section 7296(a) of Pub. L. 100-690, set out as a note under section 5601 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5773, 5776 of this title.

§ 5776. Criteria for grants

(a) Establishment of priorities and criteria; publication in Federal Register

In carrying out the programs authorized by this subchapter, the Administrator shall establish—

(1) annual research, demonstration, and service program priorities for making grants and contracts pursuant to section 5775 of this title; and

(2) criteria based on merit for making such grants and contracts.

Not less than 60 days before establishing such priorities and criteria, the Administrator shall publish in the Federal Register for public comment a statement of such proposed priorities and criteria.

(b) Competitive selection process for grant or contract exceeding \$50,000

No grant or contract exceeding \$50,000 shall be made under this subchapter unless the grantee or contractor has been selected by a competitive process which includes public announcement of the availability of funds for such grant or contract, general criteria for the selection of recipients or contractors, and a description of the application process and application review process.

(c) Multiple grants or contracts to same grantee or contractor

Multiple grants or contracts to the same grantee or contractor within any 1 year to support activities having the same general purpose shall be deemed to be a single grant for the purpose of this subsection, but multiple grants or contracts to the same grantee or contractor to support clearly distinct activities shall be considered separate grants or contractors.¹

(Pub. L. 93-415, title IV, § 406, formerly § 407, as added Pub. L. 98-473, title II, § 660, Oct. 12, 1984, 98 Stat. 2129; renumbered § 406 and amended Pub. L. 100-690, title VII, §§ 7288, 7290, Nov. 18, 1988, 102 Stat. 4461.)

PRIOR PROVISIONS

A prior section 406 of Pub. L. 93-415 was renumbered section 405 and is classified to section 5775 of this title.

AMENDMENTS

1988—Pub. L. 100-690, § 7290(b), which purported to make technical amendment to reference to section 5775 of this title to reflect renumbering of corresponding section of original act, could not be executed to text because of general amendment of section by Pub. L. 100-690, § 7288, see below.

Pub. L. 100-690, § 7288, amended section generally. Prior to amendment, section read as follows: “The Administrator, in consultation with the Advisory Board, shall establish annual research, demonstration, and service program priorities for making grants and contracts pursuant to section 5775 of this title and, not less than 60 days before establishing such priorities, shall publish in the Federal Register for public comment a statement of such proposed priorities.”

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-690 effective Oct. 1, 1988, see section 7296(a) of Pub. L. 100-690, set out as a note under section 5601 of this title.

¹ So in original. Probably should be “contracts.”

§ 5776a. Repealed. Pub. L. 105-314, title VII, § 703(g), Oct. 30, 1998, 112 Stat. 2989

Section, Pub. L. 93-415, title IV, § 407, as added Pub. L. 103-322, title XVII, § 170303(2), Sept. 13, 1994, 108 Stat. 2043, related to establishment of a Missing and Exploited Children's Task Force. Pub. L. 105-314, title VII, § 703(g), Oct. 30, 1998, 112 Stat. 2989, repealed subtitle C (§§ 170301-170303) of title XVII of Pub. L. 103-322 which enacted this section, and this section is shown as repealed to reflect the probable intent of Congress.

PURPOSE

Section 170302 of title XVII of Pub. L. 103-322 provided that the purpose of subtitle C (§§ 170301-170303) of title XVII of Pub. L. 103-322, which enacted this section, amended sections 5777 and 5778 of this title, and enacted provisions set out as a note under section 5601 of this title, was to establish a task force comprised of law enforcement officers from pertinent Federal agencies to work with the National Center for Missing and Exploited Children and coordinate the provision of Federal law enforcement resources to assist State and local authorities in investigating the most difficult cases of missing and exploited children, prior to repeal by Pub. L. 105-314, title VII, § 703(g), Oct. 30, 1998, 112 Stat. 2989.

§ 5777. Authorization of appropriations

(a) In general

To carry out the provisions of this subchapter, there are authorized to be appropriated such sums as may be necessary for fiscal years 2004 through 2008.

(b) Evaluation

The Administrator may use not more than 5 percent of the amount appropriated for a fiscal year under subsection (a) of this section to conduct an evaluation of the effectiveness of the programs and activities established and operated under this subchapter.

(Pub. L. 93-415, title IV, § 407, formerly § 408, as added Pub. L. 98-473, title II, § 660, Oct. 12, 1984, 98 Stat. 2129; renumbered § 407 and amended Pub. L. 100-690, title VII, §§ 7289, 7290(a), Nov. 18, 1988, 102 Stat. 4461; Pub. L. 101-204, title X, § 1001(e)(3), Dec. 7, 1989, 103 Stat. 1827; Pub. L. 102-586, § 4, Nov. 4, 1992, 106 Stat. 5027; renumbered § 408, Pub. L. 103-322, title XVII, § 170303(1), Sept. 13, 1994, 108 Stat. 2043; Pub. L. 104-235, title II, § 231(a), Oct. 3, 1996, 110 Stat. 3092; renumbered § 407, Pub. L. 105-314, title VII, § 703(g), Oct. 30, 1998, 112 Stat. 2989; Pub. L. 106-71, § 2(e), Oct. 12, 1999, 113 Stat. 1035; Pub. L. 108-21, title III, § 321(a), Apr. 30, 2003, 117 Stat. 664; Pub. L. 108-96, title II, § 202(b), Oct. 10, 2003, 117 Stat. 1172.)

CODIFICATION

Section 703(g) of Pub. L. 105-314 repealed subtitle C (§§ 170301-170303) of title XVII of Pub. L. 103-322 which renumbered this section as section 408 of Pub. L. 93-415. This repeal was executed by renumbering this section as section 407 of Pub. L. 93-415 to reflect the probable intent of Congress.

PRIOR PROVISIONS

A prior section 407 of Pub. L. 93-415 was classified to section 5776a of this title prior to repeal by Pub. L. 105-314, § 703(g).

Another prior section 407 of Pub. L. 93-415 was renumbered section 406 of Pub. L. 93-415 and is classified to section 5776 of this title.

AMENDMENTS

2003—Subsec. (a). Pub. L. 108-96, which directed the substitution of “2008” for “2005.” in section 408(a) of

Pub. L. 93-415, was executed by making the substitution in subsec. (a) of this section, to reflect the probable intent of Congress. See Codification note above.

Pub. L. 108-21, which directed the substitution of “fiscal years 2004 through 2005.” for “fiscal years 2000 through 2003” in section 408(a) of Pub. L. 93-415, was executed by making the substitution in subsec. (a) of this section, to reflect the probable intent of Congress. See Codification note above.

1999—Subsec. (a). Pub. L. 106-71, which directed the substitution of “2000 through 2003” for “1997 through 2001” in section 408 of Pub. L. 93-415, was executed by making the substitution in subsec. (a) of this section, to reflect the probable intent of Congress. See Codification note above.

1996—Pub. L. 104-235 designated existing provisions as subsec. (a), inserted heading, substituted “1997 through 2001” for “1993, 1994, 1995, and 1996”, and added subsec. (b).

1992—Pub. L. 102-586 substituted “fiscal years 1993, 1994, 1995, and 1996” for “fiscal years 1989, 1990, 1991, and 1992”.

1989—Pub. L. 101-204 amended directory language of Pub. L. 100-690, § 7289(3), see 1988 Amendment note below.

1988—Pub. L. 100-690, § 7289, as amended by Pub. L. 101-204, struck out “\$10,000,000 for fiscal year 1985, and” after “appropriated” and “1986, 1987, and 1988” after “fiscal years” and inserted “1989, 1990, 1991, and 1992”.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-690 effective Oct. 1, 1988, see section 7296(a) of Pub. L. 100-690, set out as a note under section 5601 of this title.

§ 5778. Repealed. Pub. L. 104-235, title II, § 231(b), Oct. 3, 1996, 110 Stat. 3092

Section, Pub. L. 93-415, title IV, § 409, formerly § 408, as added Pub. L. 100-690, title VII, § 7291, Nov. 18, 1988, 102 Stat. 4461; renumbered § 409, Pub. L. 103-322, title XVII, § 170303(1), Sept. 13, 1994, 108 Stat. 2043, related to special study and report to determine obstacles that prevent or impede individuals who have legal custody of children from recovering children from parents who have removed children from such individuals in violation of law.

§ 5779. Reporting requirement

(a) In general

Each Federal, State, and local law enforcement agency shall report each case of a missing child under the age of 21 reported to such agency to the National Crime Information Center of the Department of Justice.

(b) Guidelines

The Attorney General may establish guidelines for the collection of such reports including procedures for carrying out the purposes of this section and section 5780 of this title.¹

(c) Annual summary

The Attorney General shall publish an annual statistical summary of the reports received under this section and section 5780 of this title.

(Pub. L. 101-647, title XXXVII, § 3701, Nov. 29, 1990, 104 Stat. 4966; Pub. L. 108-21, title II, § 204, Apr. 30, 2003, 117 Stat. 660.)

REFERENCES IN TEXT

This section and section 5780 of this title, referred to in subsec. (b), was in the original “this Act”, and was translated as reading “this title”, meaning title

¹ See References in Text note below.

XXXVII of Pub. L. 101-647, which enacted this section and section 5780 of this title, to reflect the probable intent of Congress.

CODIFICATION

Section was enacted as part of the Crime Control Act of 1990, and not as part of the Missing Children's Assistance Act which comprises this subchapter, nor as part of the Juvenile Justice and Delinquency Prevention Act of 1974 which comprises this chapter.

AMENDMENTS

2003—Subsec. (a). Pub. L. 108-21 substituted “age of 21” for “age of 18”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5780 of this title.

§ 5780. State requirements

Each State reporting under the provisions of this section and section 5779 of this title shall—

(1) ensure that no law enforcement agency within the State establishes or maintains any policy that requires the observance of any waiting period before accepting a missing child or unidentified person report;

(2) provide that each such report and all necessary and available information, which, with respect to each missing child report, shall include—

(A) the name, date of birth, sex, race, height, weight, and eye and hair color of the child;

(B) the date and location of the last known contact with the child; and

(C) the category under which the child is reported missing;

is entered immediately into the State law enforcement system and the National Crime Information Center computer networks and made available to the Missing Children Information Clearinghouse within the State or other agency designated within the State to receive such reports; and

(3) provide that after receiving reports as provided in paragraph (2), the law enforcement agency that entered the report into the National Crime Information Center shall—

(A) no later than 60 days after the original entry of the record into the State law enforcement system and National Crime Information Center computer networks, verify and update such record with any additional information, including, where available, medical and dental records;

(B) institute or assist with appropriate search and investigative procedures; and

(C) maintain close liaison with the National Center for Missing and Exploited Children for the exchange of information and technical assistance in the missing children cases.

(Pub. L. 101-647, title XXXVII, §3702, Nov. 29, 1990, 104 Stat. 4967.)

CODIFICATION

Section was enacted as part of the Crime Control Act of 1990, and not as part of the Missing Children's Assistance Act which comprises this subchapter, nor as part of the Juvenile Justice and Delinquency Prevention Act of 1974 which comprises this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5779 of this title.

SUBCHAPTER V—INCENTIVE GRANTS FOR LOCAL DELINQUENCY PREVENTION PROGRAMS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 5671 of this title.

CODIFICATION

Title V of the Juvenile Justice and Delinquency Prevention Act of 1974, comprising this subchapter, was originally added to Pub. L. 93-415 by Pub. L. 102-586, §5(a), Nov. 4, 1992, 106 Stat. 5027, and amended by Pub. L. 105-277, Oct. 21, 1998, 112 Stat. 2681. Title V is shown herein, however, as having been added by Pub. L. 107-273, div. C, title II, §12222(a), Nov. 2, 2002, 116 Stat. 1894, without reference to the intervening amendments because of the extensive revision of the title's provisions by Pub. L. 107-273.

Another title V of the Juvenile Justice and Delinquency Prevention Act of 1974, Pub. L. 93-415, title V, Sept. 7, 1974, 88 Stat. 1133, enacted chapter 319 and sections 5038 to 5042 of Title 18, Crimes and Criminal Procedure, and sections 3772 to 3774 of this title, and amended sections 5031 to 5038 of Title 18 and sections 3701, 3723, 3733, 3768 of this title. For complete classification of that title V to the Code, see Tables.

§ 5781. Definition

In this subchapter, the term “State advisory group” means the advisory group appointed by the chief executive officer of a State under a plan described in section 5633(a) of this title.

(Pub. L. 93-415, title V, §502, as added Pub. L. 107-273, div. C, title II, §12222(a), Nov. 2, 2002, 116 Stat. 1894.)

CODIFICATION

Another section 502 of Pub. L. 93-415, title V, Sept. 7, 1974, 88 Stat. 1134, amended section 5032 of Title 18, Crimes and Criminal Procedure.

PRIOR PROVISIONS

A prior section 5781, Pub. L. 93-415, title V, §502, as added Pub. L. 102-586, §5(a), Nov. 4, 1992, 106 Stat. 5027, related to findings, prior to the general amendment of this subchapter by Pub. L. 107-273.

EFFECTIVE DATE

Pub. L. 107-273, div. C, title II, §12222(b), Nov. 2, 2002, 116 Stat. 1896, as amended by Pub. L. 108-7, div. B, title I, §110(1), Feb. 20, 2003, 117 Stat. 67, provided that: “The amendment made by subsection (a) [enacting sections 5781 to 5784 of this title and provisions set out as a note under section 5601 of this title] shall take effect on the effective date provided in section 12102(b) [set out as a note under section 3796ee of this title], and shall not apply with respect to grants made before such date.”

SHORT TITLE

For short title of title V of Pub. L. 93-415, which enacted this subchapter, as the “Incentive Grants for Local Delinquency Prevention Programs Act of 2002”, see section 501 of Pub. L. 93-415, as added by Pub. L. 107-273, set out as a note under section 5601 of this title.

GAO STUDIES AND REPORTS

Section 5(b) of Pub. L. 102-586, as amended by Pub. L. 104-316, title I, §122(n), Oct. 19, 1996, 110 Stat. 3838, provided that: “Under such conditions as the Comptroller General of the United States determines appropriate, the General Accounting Office may conduct studies and report to Congress on the effects of the program established by subsection (a) [enacting former subchapter V of this chapter] in encouraging States and units of general local government to comply with the requirements

of part B of title II of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5631-5633).”

§ 5782. Duties and functions of the Administrator

The Administrator shall—

- (1) issue such rules as are necessary or appropriate to carry out this subchapter;
- (2) make such arrangements as are necessary and appropriate to facilitate coordination and policy development among all activities funded through the Department of Justice relating to delinquency prevention (including the preparation of an annual comprehensive plan for facilitating such coordination and policy development);
- (3) provide adequate staff and resources necessary to properly carry out this subchapter; and
- (4) not later than 180 days after the end of each fiscal year, submit a report to the chairman of the Committee on Education and the Workforce of the House of Representatives and the chairman of the Committee on the Judiciary of the Senate—
 - (A) describing activities and accomplishments of grant activities funded under this subchapter;
 - (B) describing procedures followed to disseminate grant activity products and research findings;
 - (C) describing activities conducted to develop policy and to coordinate Federal agency and interagency efforts related to delinquency prevention; and
 - (D) identifying successful approaches and making recommendations for future activities to be conducted under this subchapter.

(Pub. L. 93-415, title V, § 503, as added Pub. L. 107-273, div. C, title II, § 12222(a), Nov. 2, 2002, 116 Stat. 1894.)

CODIFICATION

Another section 503 of Pub. L. 93-415, title V, Sept. 7, 1974, 88 Stat. 1135, amended section 5033 of Title 18, Crimes and Criminal Procedure.

PRIOR PROVISIONS

A prior section 5782, Pub. L. 93-415, title V, § 503, as added Pub. L. 102-586, § 5(a), Nov. 4, 1992, 106 Stat. 5027, defined “State advisory group”, prior to the general amendment of this subchapter by Pub. L. 107-273.

§ 5783. Grants for delinquency prevention programs

(a) Purposes

The Administrator may make grants to a State, to be transmitted through the State advisory group to units of local government that meet the requirements of subsection (b) of this section, for delinquency prevention programs and activities for juveniles who have had contact with the juvenile justice system or who are likely to have contact with the juvenile justice system, including the provision to juveniles and their families of—

- (1) alcohol and substance abuse prevention services;
- (2) tutoring and remedial education, especially in reading and mathematics;
- (3) child and adolescent health and mental health services;

- (4) recreation services;
- (5) leadership and youth development activities;
- (6) the teaching that people are and should be held accountable for their actions;
- (7) assistance in the development of job training skills; and
- (8) other data-driven evidence based prevention programs.

(b) Eligibility

The requirements of this subsection are met with respect to a unit of general local government if—

- (1) the unit is in compliance with the requirements of part B of subchapter II of this chapter;
- (2) the unit has submitted to the State advisory group a minimum 3-year comprehensive plan outlining the unit’s local front end plans for investment for delinquency prevention and early intervention activities;
- (3) the unit has included in its application to the Administrator for formula grant funds a summary of the minimum 3-year comprehensive plan described in paragraph (2);
- (4) pursuant to its minimum 3-year comprehensive plan, the unit has appointed a local policy board of not fewer than 15 and not more than 21 members, with balanced representation of public agencies and private nonprofit organizations serving juveniles, their families, and business and industry;
- (5) the unit has, in order to aid in the prevention of delinquency, included in its application a plan for the coordination of services to at-risk juveniles and their families, including such programs as nutrition, energy assistance, and housing;
- (6) the local policy board is empowered to make all recommendations for distribution of funds and evaluation of activities funded under this subchapter; and
- (7) the unit or State has agreed to provide a 50 percent match of the amount of the grant, including the value of in-kind contributions, to fund the activity.

(c) Priority

In considering grant applications under this section, the Administrator shall give priority to applicants that demonstrate ability in—

- (1) plans for service and agency coordination and collaboration including the colocation of services;
- (2) innovative ways to involve the private nonprofit and business sector in delinquency prevention activities;
- (3) developing or enhancing a statewide subsidy program to local governments that is dedicated to early intervention and delinquency prevention;
- (4) coordinating and collaborating with programs established in local communities for delinquency prevention under part C of subchapter II of this chapter;¹ and
- (5) developing data-driven prevention plans, employing evidence-based prevention strategies, and conducting program evaluations to determine impact and effectiveness.

¹ See References in Text note below.

(Pub. L. 93-415, title V, § 504, as added Pub. L. 107-273, div. C, title II, § 12222(a), Nov. 2, 2002, 116 Stat. 1895.)

REFERENCES IN TEXT

Part C of subchapter II of this chapter, referred to in subsec. (c)(4), was in the original “part C of this subtitle”, and was translated as reading “part C of title II”, meaning part C of title II of Pub. L. 93-415, to reflect the probable intent of Congress. Title V of Pub. L. 93-415 does not contain parts or subtitles.

CODIFICATION

Another section 504 of Pub. L. 93-415, title V, Sept. 7, 1974, 88 Stat. 1135, amended section 5034 of Title 18, Crimes and Criminal Procedure.

PRIOR PROVISIONS

A prior section 5783, Pub. L. 93-415, title V, § 504, as added Pub. L. 102-586, § 5(a), Nov. 4, 1992, 106 Stat. 5027, set out the duties and functions of the Administrator, prior to the general amendment of this subchapter by Pub. L. 107-273.

§ 5784. Authorization of appropriations

There are authorized to be appropriated to carry out this subchapter such sums as may be necessary for fiscal years 2004, 2005, 2006, 2007, and 2008.

(Pub. L. 93-415, title V, § 505, as added Pub. L. 107-273, div. C, title II, § 12222(a), Nov. 2, 2002, 116 Stat. 1896.)

CODIFICATION

Another section 505 of Pub. L. 93-415, title V, Sept. 7, 1974, 88 Stat. 1135, amended section 5035 of Title 18, Crimes and Criminal Procedure.

PRIOR PROVISIONS

A prior section 5784, Pub. L. 93-415, title V, § 505, as added Pub. L. 102-586, § 5(a), Nov. 4, 1992, 106 Stat. 5028; amended Pub. L. 105-277, div. A, § 101(b) [title I, § 129(a)(2)(F)], Oct. 21, 1998, 112 Stat. 2681-50, 2681-76, related to grants for prevention programs, prior to the general amendment of this subchapter by Pub. L. 107-273.

A prior section 5785, Pub. L. 93-415, title V, § 506, as added Pub. L. 102-586, § 5(a), Nov. 4, 1992, 106 Stat. 5029, authorized appropriations, prior to the general amendment of this subchapter by Pub. L. 107-273.

SUBCHAPTER VI—PUBLIC OUTREACH

CODIFICATION

Subchapter was enacted as part of the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003, also known as the PROTECT Act, and not as part of the Juvenile Justice and Delinquency Prevention Act of 1974 which comprises this chapter.

PART A—AMBER ALERT

§ 5791. National coordination of AMBER Alert communications network

(a) Coordination within Department of Justice

The Attorney General shall assign an officer of the Department of Justice to act as the national coordinator of the AMBER Alert communications network regarding abducted children. The officer so designated shall be known as the AMBER Alert Coordinator of the Department of Justice.

(b) Duties

In acting as the national coordinator of the AMBER Alert communications network, the Coordinator shall—

(1) seek to eliminate gaps in the network, including gaps in areas of interstate travel;

(2) work with States to encourage the development of additional elements (known as local AMBER plans) in the network;

(3) work with States to ensure appropriate regional coordination of various elements of the network; and

(4) act as the nationwide point of contact for—

(A) the development of the network; and

(B) regional coordination of alerts on abducted children through the network.

(c) Consultation with Federal Bureau of Investigation

In carrying out duties under subsection (b) of this section, the Coordinator shall notify and consult with the Director of the Federal Bureau of Investigation concerning each child abduction for which an alert is issued through the AMBER Alert communications network.

(d) Cooperation

The Coordinator shall cooperate with the Secretary of Transportation and the Federal Communications Commission in carrying out activities under this section.

(e) Report

Not later than March 1, 2005, the Coordinator shall submit to Congress a report on the activities of the Coordinator and the effectiveness and status of the AMBER plans of each State that has implemented such a plan. The Coordinator shall prepare the report in consultation with the Secretary of Transportation.

(Pub. L. 108-21, title III, § 301, Apr. 30, 2003, 117 Stat. 660.)

CODIFICATION

Section was enacted as part of the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003, also known as the PROTECT Act, and not as part of the Juvenile Justice and Delinquency Prevention Act of 1974 which comprises this chapter.

§ 5791a. Minimum standards for issuance and dissemination of alerts through AMBER Alert communications network

(a) Establishment of minimum standards

Subject to subsection (b) of this section, the AMBER Alert Coordinator of the Department of Justice shall establish minimum standards for—

(1) the issuance of alerts through the AMBER Alert communications network; and

(2) the extent of the dissemination of alerts issued through the network.

(b) Limitations

(1) The minimum standards established under subsection (a) of this section shall be adoptable on a voluntary basis only.

(2) The minimum standards shall, to the maximum extent practicable (as determined by the Coordinator in consultation with State and local law enforcement agencies), provide that

appropriate information relating to the special needs of an abducted child (including health care needs) are disseminated to the appropriate law enforcement, public health, and other public officials.

(3) The minimum standards shall, to the maximum extent practicable (as determined by the Coordinator in consultation with State and local law enforcement agencies), provide that the dissemination of an alert through the AMBER Alert communications network be limited to the geographic areas most likely to facilitate the recovery of the abducted child concerned.

(4) In carrying out activities under subsection (a) of this section, the Coordinator may not interfere with the current system of voluntary coordination between local broadcasters and State and local law enforcement agencies for purposes of the AMBER Alert communications network.

(c) Cooperation

(1) The Coordinator shall cooperate with the Secretary of Transportation and the Federal Communications Commission in carrying out activities under this section.

(2) The Coordinator shall also cooperate with local broadcasters and State and local law enforcement agencies in establishing minimum standards under this section.

(Pub. L. 108-21, title III, §302, Apr. 30, 2003, 117 Stat. 661.)

CODIFICATION

Section was enacted as part of the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003, also known as the PROTECT Act, and not as part of the Juvenile Justice and Delinquency Prevention Act of 1974 which comprises this chapter.

§ 5791b. Grant program for notification and communications systems along highways for recovery of abducted children

(a) Program required

The Secretary of Transportation shall carry out a program to provide grants to States for the development or enhancement of notification or communications systems along highways for alerts and other information for the recovery of abducted children.

(b) Development grants

(1) In general

The Secretary may make a grant to a State under this subsection for the development of a State program for the use of changeable message signs or other motorist information systems to notify motorists about abductions of children. The State program shall provide for the planning, coordination, and design of systems, protocols, and message sets that support the coordination and communication necessary to notify motorists about abductions of children.

(2) Eligible activities

A grant under this subsection may be used by a State for the following purposes:

(A) To develop general policies and procedures to guide the use of changeable message

signs or other motorist information systems to notify motorists about abductions of children.

(B) To develop guidance or policies on the content and format of alert messages to be conveyed on changeable message signs or other traveler information systems.

(C) To coordinate State, regional, and local plans for the use of changeable message signs or other transportation related issues.

(D) To plan secure and reliable communications systems and protocols among public safety and transportation agencies or modify existing communications systems to support the notification of motorists about abductions of children.

(E) To plan and design improved systems for communicating with motorists, including the capability for issuing wide area alerts to motorists.

(F) To plan systems and protocols to facilitate the efficient issuance of child abduction notification and other key information to motorists during off-hours.

(G) To provide training and guidance to transportation authorities to facilitate appropriate use of changeable message signs and other traveler information systems for the notification of motorists about abductions of children.

(c) Implementation grants

(1) In general

The Secretary may make a grant to a State under this subsection for the implementation of a program for the use of changeable message signs or other motorist information systems to notify motorists about abductions of children. A State shall be eligible for a grant under this subsection if the Secretary determines that the State has developed a State program in accordance with subsection (b) of this section.

(2) Eligible activities

A grant under this subsection may be used by a State to support the implementation of systems that use changeable message signs or other motorist information systems to notify motorists about abductions of children. Such support may include the purchase and installation of changeable message signs or other motorist information systems to notify motorists about abductions of children.

(d) Federal share

The Federal share of the cost of any activities funded by a grant under this section may not exceed 80 percent.

(e) Distribution of grant amounts

The Secretary shall, to the maximum extent practicable, distribute grants under this section equally among the States that apply for a grant under this section within the time period prescribed by the Secretary.

(f) Administration

The Secretary shall prescribe requirements, including application requirements, for the receipt of grants under this section.

(g) Definition

In this section, the term “State” means any of the 50 States, the District of Columbia, or Puerto Rico.

(h) Authorization of appropriations

There is authorized to be appropriated to the Secretary to carry out this section \$20,000,000 for fiscal year 2004. Such amounts shall remain available until expended.

(i) Study of State programs**(1) Study**

The Secretary shall conduct a study to examine State barriers to the adoption and implementation of State programs for the use of communications systems along highways for alerts and other information for the recovery of abducted children.

(2) Report

Not later than 1 year after April 30, 2003, the Secretary shall transmit to Congress a report on the results of the study, together with any recommendations the Secretary determines appropriate.

(Pub. L. 108-21, title III, §303, Apr. 30, 2003, 117 Stat. 662.)

CODIFICATION

Section was enacted as part of the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003, also known as the PROTECT Act, and not as part of the Juvenile Justice and Delinquency Prevention Act of 1974 which comprises this chapter.

§ 5791c. Grant program for support of AMBER Alert communications plans**(a) Program required**

The Attorney General shall carry out a program to provide grants to States for the development or enhancement of programs and activities for the support of AMBER Alert communications plans.

(b) Activities

Activities funded by grants under the program under subsection (a) of this section may include—

- (1) the development and implementation of education and training programs, and associated materials, relating to AMBER Alert communications plans;
- (2) the development and implementation of law enforcement programs, and associated equipment, relating to AMBER Alert communications plans;
- (3) the development and implementation of new technologies to improve AMBER Alert communications; and
- (4) such other activities as the Attorney General considers appropriate for supporting the AMBER Alert communications program.

(c) Federal share

The Federal share of the cost of any activities funded by a grant under the program under subsection (a) of this section may not exceed 50 percent.

(d) Distribution of grant amounts on geographic basis

The Attorney General shall, to the maximum extent practicable, ensure the distribution of

grants under the program under subsection (a) of this section on an equitable basis throughout the various regions of the United States.

(e) Administration

The Attorney General shall prescribe requirements, including application requirements, for grants under the program under subsection (a) of this section.

(f) Authorization of appropriations

(1) There is authorized to be appropriated for the Department of Justice \$5,000,000 for fiscal year 2004 to carry out this section and, in addition, \$5,000,000 for fiscal year 2004 to carry out subsection (b)(3) of this section.

(2) Amounts appropriated pursuant to the authorization of appropriations in paragraph (1) shall remain available until expended.

(Pub. L. 108-21, title III, §304, Apr. 30, 2003, 117 Stat. 663.)

CODIFICATION

Section was enacted as part of the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003, also known as the PROTECT Act, and not as part of the Juvenile Justice and Delinquency Prevention Act of 1974 which comprises this chapter.

§ 5791d. Limitation on liability

(a) Except as provided in subsection (b) of this section, the National Center for Missing and Exploited Children, including any of its officers, employees, or agents, shall not be liable for damages in any civil action for defamation, libel, slander, or harm to reputation arising out of any action or communication by the National Center for Missing and Exploited Children, its officers, employees, or agents, in connection with any clearinghouse, hotline or complaint intake or forwarding program or in connection with activity that is wholly or partially funded by the United States and undertaken in cooperation with, or at the direction of a Federal law enforcement agency.

(b) The limitation in subsection (a) of this section does not apply in any action in which the plaintiff proves that the National Center for Missing and Exploited Children, its officers, employees, or agents acted with actual malice, or provided information or took action for a purpose unrelated to an activity mandated by Federal law. For purposes of this subsection, the prevention, or detection of crime, and the safety, recovery, or protection of missing or exploited children shall be deemed, per se, to be an activity mandated by Federal law.

(Pub. L. 108-21, title III, §305, Apr. 30, 2003, 117 Stat. 664.)

CODIFICATION

Section was enacted as part of the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003, also known as the PROTECT Act, and not as part of the Juvenile Justice and Delinquency Prevention Act of 1974 which comprises this chapter.

PART B—MISSING CHILDREN PROCEDURES IN PUBLIC BUILDINGS

CODIFICATION

Part was enacted as part of the Code Adam Act of 2003 and also as part of the Prosecutorial Remedies and

Other Tools to end the Exploitation of Children Today Act of 2003, also known as the PROTECT Act, and not as part of the Juvenile Justice and Delinquency Prevention Act of 1974 which comprises this chapter.

§ 5792. Definitions

In this part, the following definitions apply:

(1) Child

The term “child” means an individual who is 17 years of age or younger.

(2) Code Adam alert

The term “Code Adam alert” means a set of procedures used in public buildings to alert employees and other users of the building that a child is missing.

(3) Designated authority

The term “designated authority” means—
(A) with respect to a public building owned or leased for use by an Executive agency—

(i) except as otherwise provided in this paragraph, the Administrator of General Services;

(ii) in the case of the John F. Kennedy Center for the Performing Arts, the Board of Trustees of the John F. Kennedy Center for the Performing Arts;

(iii) in the case of buildings under the jurisdiction, custody, and control of the Smithsonian Institution, the Board of Regents of the Smithsonian Institution; or

(iv) in the case of another public building for which an Executive agency has, by specific or general statutory authority, jurisdiction, custody, and control over the building, the head of that agency;

(B) with respect to the Supreme Court Building, the Marshal of the Supreme Court; with respect to the Thurgood Marshall Federal Judiciary Building, the Director of the Administrative Office of United States Courts; and with respect to all other public buildings owned or leased for use by an establishment in the judicial branch of government, the General Services Administration in consultation with the United States Marshals Service; and

(C) with respect to a public building owned or leased for use by an establishment in the legislative branch of government, the Capitol Police Board.

(4) Executive agency

The term “Executive agency” has the same meaning such term has under section 105 of title 5.

(5) Federal agency

The term “Federal agency” means any Executive agency or any establishment in the legislative or judicial branches of the Government.

(6) Public building

The term “public building” means any building (or portion thereof) owned or leased for use by a Federal agency.

(Pub. L. 108-21, title III, §362, Apr. 30, 2003, 117 Stat. 665.)

CODIFICATION

Section was enacted as part of the Code Adam Act of 2003 and also as part of the Prosecutorial Remedies and

Other Tools to end the Exploitation of Children Today Act of 2003, also known as the PROTECT Act, and not as part of the Juvenile Justice and Delinquency Prevention Act of 1974 which comprises this chapter.

SHORT TITLE

For short title of subtitle D of title III of Pub. L. 108-21, which enacted this part, as the “Code Adam Act of 2003”, see section 361 of Pub. L. 108-21, set out as a note under section 5601 of this title.

§ 5792a. Procedures in public buildings regarding a missing or lost child

(a) In general

Not later than 180 days after April 30, 2003, the designated authority for a public building shall establish procedures for locating a child that is missing in the building.

(b) Notification and search procedures

Procedures established under this section shall provide, at a minimum, for the following:

(1) Notifying security personnel that a child is missing.

(2) Obtaining a detailed description of the child, including name, age, eye and hair color, height, weight, clothing, and shoes.

(3) Issuing a Code Adam alert and providing a description of the child, using a fast and effective means of communication.

(4) Establishing a central point of contact.

(5) Monitoring all points of egress from the building while a Code Adam alert is in effect.

(6) Conducting a thorough search of the building.

(7) Contacting local law enforcement.

(8) Documenting the incident.

(Pub. L. 108-21, title III, §363, Apr. 30, 2003, 117 Stat. 666.)

CODIFICATION

Section was enacted as part of the Code Adam Act of 2003 and also as part of the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003, also known as the PROTECT Act, and not as part of the Juvenile Justice and Delinquency Prevention Act of 1974 which comprises this chapter.

CHAPTER 73—DEVELOPMENT OF ENERGY SOURCES

- Sec. 5801. Congressional declaration of policy and purpose.
 - (a) Development and utilization of energy sources.
 - (b) Necessity of establishing Energy Research and Development Administration.
 - (c) Separation of licensing and regulatory functions of Atomic Energy Commission.
 - (d) Small business participation.
 - (e) Priorities.

SUBCHAPTER I—ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION

- 5811. Establishment of Energy Research and Development Administration.
- 5812. Officers of Administration.
 - (a) Administrator; appointment.
 - (b) Deputy Administrator.
 - (c) Qualifications of Administrator and Deputy Administrator.
 - (d) Assistant Administrators; number; appointment; qualifications.

Sec.		Sec.	
	(e) General Counsel.	5821.	Annual authorization Acts.
	(f) Additional officers.		(a) General requirements; applicability to appropriations.
	(g) Director of Military Application; functions; qualifications; compensation.		(b) Requirements and limitations respecting funds appropriated for operating expenses.
	(h) Allocation of functions; responsibility for international cooperation.		(c) Additional requirements and limitations respecting funds appropriated for operating expenses.
	(i) Order of succession.		(d) Requirements respecting amounts appropriated in annual appropriation Act for use in programs in excess of amount actually authorized for use in program not presented to, or requested of Congress; reduction in aggregate amount available for categories of coal, etc., from sums appropriated.
5813.	Responsibilities of Administrator.		(e) Requirements and limitations respecting merger of amounts appropriated for operating expenses or for plant and capital equipment.
5814.	Abolition and transfers.		(f) Availability until expended of amounts appropriated for operating expenses or for plant and capital equipment.
	(a) Abolition of Atomic Energy Commission.		(g) Performance of construction design services by Administrator.
	(b) Transfer or lapse of functions of Atomic Energy Commission.		(h) Retention and use for operating expenses, and availability until expended, of moneys received by Administration; exceptions.
	(c) Functions of Atomic Energy Commission transferred to Administrator.		(i) Requirements respecting transfers of sums appropriated for operating expenses to other Government agencies; merger of transferred sums.
	(d) Transfer of General Advisory Committee, Patent Compensation Board, and Divisions of Military Application and Naval Reactors to Administration.		
	(e) Transfer to Administrator of certain functions of Secretary of the Interior and Department of the Interior; study of potential energy application of helium; report to President and Congress.		SUBCHAPTER II—NUCLEAR REGULATORY COMMISSION; NUCLEAR WHISTLEBLOWER PROTECTION
	(f) Transfer to Administrator of certain functions of National Science Foundation.		
	(g) Transfer to Administrator of certain functions of Environmental Protection Agency.	5841.	Establishment and transfers.
	(h) Exercise of authority necessary or appropriate to perform transferred functions and carry out transferred programs.		(a) Composition; Chairman; Acting Chairman; quorum; official spokesman; seal; functions of Chairman and Commission.
	(i) Utilization of technical and management capabilities of other executive agencies; assignment of specific programs or projects in energy research and development.		(b) Appointment of members.
5815.	Administrative provisions.		(c) Term of office.
	(a) Rules and regulations.		(d) Submission of appointments to Senate.
	(b) Policy planning and evaluation.		(e) Removal of members; prohibition against engagement in business or other employment.
	(c) Delegation of functions.		(f) Transfer of licensing and regulatory functions of Atomic Energy Commission.
	(d) Organization.		(g) Additional transfers.
	(e) Field offices.	5842.	Licensing and related regulatory functions respecting selected Administration facilities.
	(f) Seal.	5843.	Office of Nuclear Reactor Regulation.
	(g) Working capital fund.		(a) Establishment; appointment of Director.
	(h) Information from other agencies.		(b) Functions of Director.
5816.	Personnel and services.		(c) Responsibility for safe operation of facilities.
	(a) Appointment and compensation of officers and employees.	5844.	Office of Nuclear Safety and Safeguards.
	(b) Employment of experts and consultants.		(a) Establishment; appointment of Director.
	(c) Participation of military personnel.		(b) Functions of Director.
	(d) Status of military personnel unaffected.		(c) Responsibility for safeguarding special nuclear materials; high-level radioactive wastes and nuclear facilities.
	(e) Transportation and per diem expenses.	5845.	Office of Nuclear Regulatory Research.
	(f) Personnel of other agencies.		(a) Establishment; appointment of Director.
	(g) Advisory boards.		(b) Functions of Director.
	(h) Employment of noncitizens.		(c) Cooperation of Federal agencies.
5816a.	Repealed.		(d) Responsibility for safety of activities.
5817.	Powers of Administrator.		
	(a) Research and development.		
	(b) Facilities and real property.		
	(c) Services for employees at remote locations.		
	(d) Acquisition of copyrights and patents.		
	(e) Dissemination of information.		
	(f) Gifts and bequests.		
5817a.	Employee-suggested research projects; approval; funding; reports.		
5818.	Repealed.		
5819.	Report to Congress on future reorganization.		
5820.	Coordination with environmental efforts.		

- Sec. (e) Information and research services.
(f) Improved safety systems research.
5846. Compliance with safety regulations.
(a) Notification to Commission of non-compliance.
(b) Penalty for failure to notify.
(c) Posting of requirements.
(d) Inspection and enforcement.
5847. Nuclear energy center site survey.
5848. Abnormal occurrence reports.
5849. Other officers.
(a) Executive Director.
(b) Functions of Executive Director.
(c) Equal employment opportunity report.
(d) Annual status report.
(e) Additional officers.
5850. Unresolved safety issues plan.
5851. Employee protection.
(a) Discrimination against employee.
(b) Complaint, filing and notification.
(c) Review.
(d) Jurisdiction.
(e) Commencement of action.
(f) Enforcement.
(g) Deliberate violations.
(h) Nonpreemption.
(i) Posting requirement.
(j) Investigation of allegations.
5852. Availability of funds.
(a) Appropriations for salaries and expenses; additional purposes.
(b) Appropriations for Office of Inspector General; additional purposes.
(c) Use of program funds for salaries and expenses.
(d) Use of funds to provide voluntary separation incentive payments.
(e) Fiscal year applicability.

SUBCHAPTER III—MISCELLANEOUS AND TRANSITIONAL PROVISIONS

5871. Transitional provisions.
(a) Lapse of agency or other body from which functions or programs have been transferred and positions or offices therein.
(b) Continuation of orders, determinations, rules, etc.
(c) Effect of chapter on proceedings pending before Atomic Energy Commission or other department or agency.
(d) Effect of chapter on suits commenced prior to effective date.
(e) Abatement of suits, actions, or other proceedings by or against officer, department, or agency.
(f) Continuation of suits; substitution of parties.
(g) Judicial review of orders and actions in performance of transferred functions; statutory requirements relating to notices, hearings, action upon record, or administrative review.
(h) References in other laws to department, agency, officer, or office whose functions have been transferred deemed reference to Administration, Administrator, or Commission.
(i) Limitation, curtailment, etc., of presidential functions or authority.
(j) References in chapter to provision of law deemed to include references thereto as amended or supplemented.
(k) Functions conferred by chapter deemed in addition to and not substitution for functions existing before effective date.

- Sec. 5872. Transfer of personnel.
(a) Provisions of law applicable.
(b) Prohibition against separation or reduction in grade or compensation for one year after transfer.
(c) Compensation in new position at not less than rate provided for previous position.
5873. Director of Office of Management and Budget; power to make dispositions.
5874. Definitions.
5875. Authorization of appropriations.
5876. Comptroller General audit.
5877. Reports to President for submission to Congress.
(a) Report by Administrator on activities of Administration.
(b) Review of desirability and feasibility of transferring functions of Administrator respecting military application and restricted data to Department of Defense or other Federal agencies; report by Administrator.
(c) Report by Commission on activities of Commission.
5878. Information to Congressional committees.
5878a. Funding and encouragement of small business; information for inclusion in report.
5879. Transfer of funds.

SUBCHAPTER IV—SEX DISCRIMINATION

5891. Sex discrimination prohibited.
- CHAPTER REFERRED TO IN OTHER SECTIONS**
- This chapter is referred to in sections 5905, 7135a, 7259a, 10141, 10155 of this title; title 15 sections 2507, 2705; title 22 section 3203.

§ 5801. Congressional declaration of policy and purpose

(a) Development and utilization of energy sources

The Congress hereby declares that the general welfare and the common defense and security require effective action to develop, and increase the efficiency and reliability of use of, all energy sources to meet the needs of present and future generations, to increase the productivity of the national economy and strengthen its position in regard to international trade, to make the Nation self-sufficient in energy, to advance the goals of restoring, protecting, and enhancing environmental quality, and to assure public health and safety.

(b) Necessity of establishing Energy Research and Development Administration

The Congress finds that, to best achieve these objectives, improve Government operations, and assure the coordinated and effective development of all energy sources, it is necessary to establish an Energy Research and Development Administration to bring together and direct Federal activities relating to research and development on the various sources of energy, to increase the efficiency and reliability in the use of energy, and to carry out the performance of other functions, including but not limited to the Atomic Energy Commission's military and production activities and its general basic research activities. In establishing an Energy Research and Development Administration to achieve these objectives, the Congress intends that all possible sources of energy be developed consistently with warranted priorities.

(c) Separation of licensing and regulatory functions of Atomic Energy Commission

The Congress finds that it is in the public interest that the licensing and related regulatory functions of the Atomic Energy Commission be separated from the performance of the other functions of the Commission, and that this separation be effected in an orderly manner, pursuant to this chapter, assuring adequacy of technical and other resources necessary for the performance of each.

(d) Small business participation

The Congress declares that it is in the public interest and the policy of Congress that small business concerns be given a reasonable opportunity to participate, insofar as is possible, fairly and equitably in grants, contracts, purchases, and other Federal activities relating to research, development, and demonstration of sources of energy efficiency, and utilization and conservation of energy. In carrying out this policy, to the extent practicable, the Administrator shall consult with the Administrator of the Small Business Administration.

(e) Priorities

Determination of priorities which are warranted should be based on such considerations as power-related values of an energy source, preservation of material resources, reduction of pollutants, export market potential (including reduction of imports), among others. On such a basis, energy sources warranting priority might include, but not be limited to, the various methods of utilizing solar energy.

(Pub. L. 93-438, § 2, Oct. 11, 1974, 88 Stat. 1233.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (c), was in the original "this Act", meaning Pub. L. 93-438, Oct. 11, 1974, 88 Stat. 1233, as amended, which enacted this chapter, amended sections 5313 to 5316 of Title 5, Government Organization and Employees, repealed sections 2031 and 2032 of this title, and enacted provisions set out as notes below. For complete classification of this Act to the Code, see Short Title note below and Tables.

EFFECTIVE DATE; INTERIM APPOINTMENTS

Section 312 of Pub. L. 93-438 provided that:

"(a) This Act [see Short Title note below] shall take effect one hundred and twenty days after the date of its enactment [Oct. 11, 1974], or on such earlier date as the President may prescribe and publish in the Federal Register [prescribed as Jan. 19, 1975, by Ex. Ord. No. 11834, formerly set out below] except that any of the officers provided for in title I of this Act [subchapter I of this chapter] may be nominated and appointed, as provided by this Act, at any time after the date of enactment of this Act. Funds available to any department or agency (or any official or component thereof), any functions of which are transferred to the Administrator and the Commission by this Act, may, with the approval of the President, be used to pay the compensation and expenses of any officer appointed pursuant to this subsection until such time as funds for that purpose are otherwise available.

"(b) In the event that any officer required by this Act to be appointed by and with the advice and consent of the Senate shall not have entered upon office on the effective date of this Act, the President may designate any officer, whose appointment was required to be made by and with the advice and consent of the Senate and who was such an officer immediately prior to the effective date of this Act, to act in such office until the

office is filled as provided in this Act. While so acting, such persons shall receive compensation at the rates provided by this Act for the respective offices in which they act."

SHORT TITLE

Section 1 of Pub. L. 93-438 provided that: "This Act [enacting this chapter, repealing sections 2031 and 2032 of this title, amending sections 5313 to 5316 of Title 5, Government Organization and Employees, and enacting provisions set out as notes under this section] may be cited as the 'Energy Reorganization Act of 1974'."

SEPARABILITY

Section 311 of Pub. L. 93-438 provided that: "If any provision of this Act [See Short Title note above], or the application thereof to any person or circumstance, is held invalid, the remainder of this Act, and the application of such provision to other persons or circumstances, shall not be affected thereby."

TRANSFER OF FUNCTIONS

Energy Research and Development Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

EXECUTIVE ORDER NO. 11834

Ex. Ord. No. 11834, eff. Jan. 15, 1975, 40 F.R. 2971, which prescribed Jan. 19, 1975, as the effective date of this chapter, was revoked by Ex. Ord. No. 12553, Feb. 25, 1986, 51 F.R. 7237.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5878a of this title.

SUBCHAPTER I—ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 5876 of this title.

§ 5811. Establishment of Energy Research and Development Administration

There is hereby established an independent executive agency to be known as the Energy Research and Development Administration (hereinafter in this chapter referred to as the "Administration").

(Pub. L. 93-438, title I, § 101, Oct. 11, 1974, 88 Stat. 1234.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 93-438, Oct. 11, 1974, 88 Stat. 1233, as amended, which enacted this chapter, amended sections 5313 to 5316 of Title 5, Government Organization and Employees, repealed sections 2031 and 2032 of this title, and enacted provisions set out as notes under section 5801 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5801 of this title and Tables.

TRANSFER OF FUNCTIONS

Energy Research and Development Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 5812. Officers of Administration

(a) Administrator; appointment

There shall be at the head of the Administration an Administrator of Energy Research and

Development (hereinafter in this chapter referred to as the "Administrator"), who shall be appointed from civilian life by the President by and with the advice and consent of the Senate. A person may not be appointed as Administrator within two years after release from active duty as a commissioned officer of a regular component of an Armed Force. The Administration shall be administered under the supervision and direction of the Administrator, who shall be responsible for the efficient and coordinated management of the Administration.

(b) Deputy Administrator

There shall be in the Administration a Deputy Administrator, who shall be appointed by the President, by and with the advice and consent of the Senate.

(c) Qualifications of Administrator and Deputy Administrator

The President shall appoint the Administrator and Deputy Administrator from among individuals who, by reason of their general background and experience are specially qualified to manage a full range of energy research and development programs.

(d) Assistant Administrators; number; appointment; qualifications

There shall be in the Administration six Assistant Administrators, one of whom shall be responsible for fossil energy, another for nuclear energy, another for environment and safety, another for conservation, another for solar, geothermal, and advanced energy systems, and another for national security. The Assistant Administrators shall be appointed by the President, by and with the advice and consent of the Senate. The President shall appoint each Assistant Administrator from among individuals who, by reason of general background and experience, are specially qualified to manage the energy technology area assigned to such Assistant Administrator.

(e) General Counsel

There shall be in the Administration a General Counsel who shall be appointed by the Administrator and who shall serve at the pleasure of and be removable by the Administrator.

(f) Additional officers

There shall be in the Administration not more than eight additional officers appointed by the Administrator. The positions of such officers shall be considered career positions and be subject to section 2201(d) of this title.

(g) Director of Military Application; functions; qualifications; compensation

The Division of Military Application transferred to and established in the Administration by section 5814(d) of this title shall be under the direction of a Director of Military Application, who shall be appointed by the Administrator and who shall serve at the pleasure of and be removable by the Administrator and shall be an active commissioned officer of the Armed Forces serving in general or flag officer rank or grade. The functions, qualifications, and compensation of the Director of Military Application shall be the same as those provided under

the Atomic Energy Act of 1954, as amended [42 U.S.C. 2011 et seq.], for the Assistant General Manager for Military Application.

(h) Allocation of functions; responsibility for international cooperation

Officers appointed pursuant to this section shall perform such functions as the Administrator shall specify from time to time. The Administrator shall delegate to one such officer the special responsibility for international cooperation in all energy and related environmental research and development.

(i) Order of succession

The Deputy Administrator (or in the absence or disability of the Deputy Administrator, or in the event of a vacancy in the office of the Deputy Administrator, an Assistant Administrator, the General Counsel or such other official, determined according to such order as the Administrator shall prescribe) shall act for and perform the functions of the Administrator during any absence or disability of the Administrator or in the event of a vacancy in the office of the Administrator.

(Pub. L. 93-438, title I, §102, Oct. 11, 1974, 88 Stat. 1234.)

REFERENCES IN TEXT

The Atomic Energy Act of 1954, as amended, referred to in subsec. (g), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

TRANSFER OF FUNCTIONS

Energy Research and Development Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

Division of Military Application transferred to Department of Energy by former section 7158(b) of this title with that organizational unit to be deemed an organizational unit established by chapter 84 (§7101 et seq.) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5815 of this title.

§ 5813. Responsibilities of Administrator

The responsibilities of the Administrator shall include, but not be limited to—

(1) exercising central responsibility for policy planning, coordination, support, and management of research and development programs respecting all energy sources, including assessing the requirements for research and development in regard to various energy sources in relation to near-term and long-range needs, policy planning in regard to meeting those requirements, undertaking programs for the optimal development of the various forms of energy sources, managing such programs, and disseminating information resulting therefrom;

(2) encouraging and conducting research and development, including demonstration of commercial feasibility and practical applications of the extraction, conversion, storage, trans-

mission, and utilization phases related to the development and use of energy from fossil, nuclear, solar, geothermal, and other energy sources;

(3) engaging in and supporting environmental, biomedical, physical, and safety research related to the development of energy sources and utilization technologies;

(4) taking into account the existence, progress, and results of other public and private research and development activities, including those activities of the Federal Energy Administration relating to the development of energy resources using currently available technology in promoting increased utilization of energy resources, relevant to the Administration's mission in formulating its own research and development programs;

(5) participating in and supporting cooperative research and development projects which may involve contributions by public or private persons or agencies, of financial or other resources to the performance of the work;

(6) developing, collecting, distributing, and making available for distribution, scientific and technical information concerning the manufacture or development of energy and its efficient extraction, conversion, transmission, and utilization;

(7) creating and encouraging the development of general information to the public on all energy conservation technologies and energy sources as they become available for general use, and the Administrator, in conjunction with the Administrator of the Federal Energy Administration shall, to the extent practicable, disseminate such information through the use of mass communications;

(8) encouraging and conducting research and development in energy conservation, which shall be directed toward the goals of reducing total energy consumption to the maximum extent practicable, and toward maximum possible improvement in the efficiency of energy use. Development of new and improved conservation measures shall be conducted with the goal of the most expeditious possible application of these measures;

(9) encouraging and participating in international cooperation in energy and related environmental research and development;

(10) helping to assure an adequate supply of manpower for the accomplishment of energy research and development programs, by sponsoring and assisting in education and training activities in institutions of higher education, vocational schools, and other institutions, and by assuring the collection, analysis, and dissemination of necessary manpower supply and demand data;

(11) encouraging and conducting research and development in clean and renewable energy sources.

(Pub. L. 93-438, title I, §103, Oct. 11, 1974, 88 Stat. 1235; Pub. L. 95-39, title V, §510(a), June 3, 1977, 91 Stat. 200; Pub. L. 102-486, title I, §143(b), Oct. 24, 1992, 106 Stat. 2843.)

AMENDMENTS

1992—Pars. (7) to (12). Pub. L. 102-486 redesignated pars. (8) to (12) as (7) to (11), respectively, and struck

out former par. (7) which read as follows: "establishing, in accordance with the National Energy Extension Service Act, an Energy Extension Service to provide technical assistance, instruction, and practical demonstrations on energy conservation measures and alternative energy systems to individuals, businesses, and State and local government officials;"

1977—Pars. (7) to (12). Pub. L. 95-39 added par. (7) and redesignated former pars. (7) to (11) as (8) to (12), respectively.

TRANSFER OF FUNCTIONS

Energy Research and Development Administration and Federal Energy Administration terminated and functions vested by law in their respective Administrators transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5814, 5817 of this title.

§ 5814. Abolition and transfers

(a) Abolition of Atomic Energy Commission

The Atomic Energy Commission is hereby abolished. Sections 2031 and 2032 of this title are repealed.

(b) Transfer or lapse of functions of Atomic Energy Commission

All other functions of the Commission, the Chairman and members of the Commission, and the officers and components of the Commission are hereby transferred or allowed to lapse pursuant to the provisions of this chapter.

(c) Functions of Atomic Energy Commission transferred to Administrator

There are hereby transferred to and vested in the Administrator all functions of the Atomic Energy Commission, the Chairman and members of the Commission, and the officers and components of the Commission, except as otherwise provided in this chapter.

(d) Transfer of General Advisory Committee, Patent Compensation Board, and Divisions of Military Application and Naval Reactors to Administration

The General Advisory Committee established pursuant to section 2036¹ of this title, the Patent Compensation Board established pursuant to section 2187 of this title, and the Divisions of Military Application and Naval Reactors established pursuant to section 2035 of this title, are transferred to the Energy Research and Development Administration and the functions of the Commission with respect thereto, and with respect to relations with the Military Liaison Committee established by section 2037¹ of this title, are transferred to the Administrator.

(e) Transfer to Administrator of certain functions of Secretary of the Interior and Department of the Interior; study of potential energy application of helium; report to President and Congress

There are hereby transferred to and vested in the Administrator such functions of the Secretary of the Interior, the Department of the Interior, and officers and components of such department—

¹ See References in Text note below.

(1) as relate to or are utilized by the Office of Coal Research established pursuant to the Act of July 1, 1960 (74 Stat. 336; 30 U.S.C. 661-669);

(2) as relate to or are utilized in connection with fossil fuel energy research and development programs and related activities conducted by the United States Bureau of Mines "energy centers" and synthane plant to provide greater efficiency in the extraction, processing, and utilization of energy resources for the purpose of conserving those resources, developing alternative energy resources, such as oil and gas secondary and tertiary recovery, oil shale and synthetic fuels, improving methods of managing energy-related wastes and pollutants, and providing technical guidance needed to establish and administer national energy policies; and

(3) as relate to or are utilized for underground electric power transmission research.

The Administrator shall conduct a study of the potential energy applications of helium and, within six months from October 11, 1974, report to the President and Congress his recommendations concerning the management of the Federal helium programs, as they relate to energy.

(f) Transfer to Administrator of certain functions of National Science Foundation

There are hereby transferred to and vested in the Administrator such functions of the National Science Foundation as relate to or are utilized in connection with—

- (1) solar heating and cooling development; and
- (2) geothermal power development.

(g) Transfer to Administrator of certain functions of Environmental Protection Agency

There are hereby transferred to and vested in the Administrator such functions of the Environmental Protection Agency and the officers and components thereof as relate to or are utilized in connection with research, development, and demonstration, but not assessment or monitoring for regulatory purposes, of alternative automotive power systems.

(h) Exercise of authority necessary or appropriate to perform transferred functions and carry out transferred programs

To the extent necessary or appropriate to perform functions and carry out programs transferred by this chapter, the Administrator and Commission may exercise, in relation to the functions so transferred, any authority or part thereof available by law, including appropriation Acts, to the official or agency from which such functions were transferred.

(i) Utilization of technical and management capabilities of other executive agencies; assignment of specific programs or projects in energy research and development

In the exercise of his responsibilities under section 5813 of this title, the Administrator shall utilize, with their consent, to the fullest extent he determines advisable the technical and management capabilities of other executive agencies having facilities, personnel, or other resources which can assist or advantageously be expanded

to assist in carrying out such responsibilities. The Administrator shall consult with the head of each agency with respect to such facilities, personnel, or other resources, and may assign, with their consent, specific programs or projects in energy research and development as appropriate. In making such assignments under this subsection, the head of each such agency shall insure that—

(1) such assignments shall be in addition to and not detract from the basic mission responsibilities of the agency, and

(2) such assignments shall be carried out under such guidance as the Administrator deems appropriate.

(Pub. L. 93-438, title I, §104, Oct. 11, 1974, 88 Stat. 1237; Pub. L. 102-285, §10(b), May 18, 1992, 106 Stat. 172.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (b), (c), and (h), was in the original "this Act", meaning Pub. L. 93-438, Oct. 11, 1974, 88 Stat. 1233, as amended, which enacted this chapter, amended sections 5313 to 5316 of Title 5, Government Organization and Employees, repealed sections 2031 and 2032 of this title, and enacted provisions set out as notes under section 5801 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5801 of this title and Tables.

Section 2036 of this title, referred to in subsec. (d), was repealed by Pub. L. 95-91, title VII, §709(c)(1), Aug. 4, 1977, 91 Stat. 608.

Section 2037 of this title, referred to in subsec. (d), was repealed by Pub. L. 99-661, div. C, title I, §3137(c), Nov. 14, 1986, 100 Stat. 4066.

Act of July 1, 1960 (74 Stat. 336; 661-668), referred to in subsec. (e)(1), probably means Pub. L. 86-599, July 7, 1960, 74 Stat. 336, which is classified principally to chapter 18 (§661 et seq.) of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code, see Tables.

CHANGE OF NAME

"United States Bureau of Mines" substituted for "Bureau of Mines" in subsec. (e)(2) pursuant to section 10(b) of Pub. L. 102-285, set out as a note under section 1 of Title 30, Mineral Lands and Mining.

TRANSFER OF FUNCTIONS

GENERALLY

Energy Research and Development Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

Division of Naval Reactors and Division of Military Applications, both established under section 2035 of this title, and functions of Energy Research and Development Administration with respect to Military Liaison Committee, established by section 2037 of this title, referred to in subsec. (d), transferred to Department of Energy by section 7158 of this title, with such organizational units to be deemed organizational units established by chapter 84 (§7101 et seq.) of this title.

Functions vested in, or delegated to, Secretary of Energy and Department of Energy under or with respect to authorities formerly exercised by Bureau of Mines, but limited to research and development relating to increased efficiency of production technology of solid fuel minerals, transferred to, and vested in, Secretary of the Interior, by section 100 of Pub. L. 97-257, 96 Stat. 841, set out as a note under section 7152 of this title.

Functions of Secretary of the Interior, Department of the Interior, and officers and components of Department of the Interior exercised by Bureau of Mines re-

lating to fuel supply and demand analysis and data gathering, research and development relating to increased efficiency of production technology of solid fuel minerals other than research relating to mine health and safety and research relating to environmental and leasing consequences of solid fuel mining, and coal preparation and analysis, referred to in subsec. (e), transferred to Secretary of Energy by section 7152(d) of this title.

DISTRIBUTION OF AUTHORITIES UNDER
ATOMIC ENERGY ACT OF 1954

The legislative history of Pub. L. 93-438 (which is classified principally to this chapter) was comprised in part by Senate Report No. 93-980 and House Report No. 93-707. Senate Report No. 93-980 (similar provisions appear in House Report No. 93-707) contained the following analysis showing the distribution by Pub. L. 93-438 of separately and jointly applicable authorities under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.):

I. The following provisions of the Atomic Energy Act of 1954, as heretofore amended, apply only to ERDA [Energy Research and Development Administration]

Subsection 31b. [42 U.S.C. 2051(b)] (certain grants and contributions).

Section 33 [42 U.S.C. 2053] ("Research for Others"); provided that the NSLC retains authority to contract out for research as it deems necessary to exercise its licensing and related regulatory functions.

Chapter 5 [(sections 41-44) 42 U.S.C. 2061-2064] ("Production of Special Nuclear Material").

Subsection 53c; 53d; and 53f. [42 U.S.C. 2073(c), (d), (f)] (distributing special nuclear material).

Section 54 [42 U.S.C. 2074] ("Foreign Distribution of Special Nuclear Material").

Section 56 [42 U.S.C. 2076] ("Guaranteed Purchase Prices").

Section 58 [42 U.S.C. 2078] ("Review").

Subsection 63c. [42 U.S.C. 2093(c)] (charges for distributing source material).

Section 64 [42 U.S.C. 2094] ("Foreign Distribution of Source Material").

Section 67 [42 U.S.C. 2097] ("Operations on Lands Belonging to the United States").

Section 91 [42 U.S.C. 2121] ("Authority").

Section 142 [42 U.S.C. 2162] ("Classification and Declassification of Restricted Data").

Section 143 [42 U.S.C. 2163] ("Department of Defense Participation").

Subsections 144a; 144b; and 144c. [42 U.S.C. 2164(a)-(c)] (international cooperation).

Subsection 151c; 151d; 151e. [42 U.S.C. 2181(c)-(e)] (certain patent aspects).

Section 153 [42 U.S.C. 2183] ("Nonmilitary Utilization").

Section 154 [42 U.S.C. 2184] ("Injunctions").

Section 157 [42 U.S.C. 2187] ("Commission Patent Licenses").

Subsections 161e; 161m; 161r; 161t; 161u; and 161v. [42 U.S.C. 2201(e), (m), (r), (t)-(v)] (general provisions).

Section 164 [42 U.S.C. 2204] ("Electric Utility Contracts").

Section 167 [42 U.S.C. 2207] ("Claims Settlements").

II. The following provisions of the Atomic Energy Act of 1954, as heretofore amended, apply only to NSLC [Nuclear Regulatory Commission as enacted]

Subsection 53b. [42 U.S.C. 2073(b)] (minimum criteria for licenses).

Subsection 53e. [42 U.S.C. 2073(e)] (licensing conditions).

Section 62 [42 U.S.C. 2092] ("License for Transfers Required").

Subsection 63b. [42 U.S.C. 2093(b)] (minimum criteria for licenses).

Section 69 [42 U.S.C. 2099] ("Prohibition").

Section 101 [42 U.S.C. 2131] ("License Required").

Section 102 [42 U.S.C. 2132] ("Utilization and Production Facilities for Industrial or Commercial Purposes").

Section 103 [42 U.S.C. 2133] ("Commercial Licenses").
Section 104 [42 U.S.C. 2134] ("Medical Therapy and Research and Development").

Subsection 105c [42 U.S.C. 2135(c)] (licensing antitrust review).

Section 106 [42 U.S.C. 2136] ("Classes of Facilities").

Section 107 [42 U.S.C. 2137] ("Operators' Licenses").

Section 109 [42 U.S.C. 2139] ("Component Parts of Facilities").

Subsection 161h. [42 U.S.C. 2201(h)] (licensing activities).

Subsection 161w. [42 U.S.C. 2201(w)] (licensing charges).

Section 182 [42 U.S.C. 2232] ("License Applications").

Section 183 [42 U.S.C. 2233] ("Terms of License").

Section 184 [42 U.S.C. 2234] ("Inalienability of Licenses").

Section 185 [42 U.S.C. 2235] ("Construction Permits").

Subsections 186a. and 186b. [42 U.S.C. 2236(a), (b)] (license revocation).

Section 187 [42 U.S.C. 2237] ("Modification of License").

Section 190 [42 U.S.C. 2240] ("Licensee Incident Reports").

Section 191 [42 U.S.C. 2241] ("Atomic Safety and Licensing Board").

Section 192 [42 U.S.C. 2242] ("Temporary Operating License").

Section 272 [42 U.S.C. 2019] ("Applicability of Federal Power Act").

Section 273 [42 U.S.C. 2020] ("Licensing of Government Agencies").

Section 274 [42 U.S.C. 2021] ("Cooperation with States").

III. The following provisions of the Atomic Energy Act of 1954, as heretofore amended, generally apply, respectively, to the functions of the Administrator [Energy Research and Development Administration] and to NSLC [Nuclear Regulatory Commission as enacted]

Chapter 1 [(sections 1-3) 42 U.S.C. 2011-2013] ("Declaration, Findings and Purpose"); provided that all references to encouraging, promoting, utilizing, developing and participating in atomic energy or the atomic industry shall not be applicable to the NSLC.

Chapter 2 [(section 11) 42 U.S.C. 2014] ("Definitions"); provided that (i) the determinations and criteria in j. [42 U.S.C. 2014(j)] (extraordinary nuclear occurrences) shall be the responsibility of the Administrator only in regard to activities and matters not covered by the licensing and related regulatory facets of Section 170 of the Atomic Energy Act, as amended, [42 U.S.C. 2210] and (ii) the determinations in v. (production facility), z. (source material), aa. (special nuclear material), and cc. (utilization facility) [42 U.S.C. 2014(v), (z), (aa), (cc)] shall be the responsibility of the Administrator only in regard to facilities and materials not subject to licensing and related regulatory control by NSLC.

Chapter 3 [(sections 21-29) 42 U.S.C. 2031-2039] ("Organization"); except (i) as provided for in this bill, (ii) the Inspection Division established by subsection 25c. [42 U.S.C. 2035(c)] will be transferred to NSLC and the ERDA Administrator also will provide for the discharge of the inspection function under subsection 25c. in ERDA, (iii) in regard to section 29 [42 U.S.C. 2039] ("Advisory Committee on Reactor Safeguards"), it is intended that the ACRS be transferred to NSLC but that the ACRS also be made available to ERDA as the Administrator may request to perform such of the activities contemplated by section 29 as relate to functions transferred to the Administrator.

Subsections 31a; 31c; and 31d. [42 U.S.C. 2051(a), (c), (d)] (research assistance), and Section 32 [42 U.S.C. 2052] ("Research By the Commission").

Section 51 [42 U.S.C. 2071]; provided, that the respective determinations shall be made as indicated in Chapter 2 above.

Subsection 53a [42 U.S.C. 2073(a)]; provided, that subdivisions (ii) and (iii) of said subsection (distributing and making available special nuclear material) shall

apply only to ERDA, and subsection (i) (licenses) shall apply only to NSLC.

Section 55 [42 U.S.C. 2075] (“Acquisition”).

Section 57 [42 U.S.C. 2077] (“Prohibition”).

Section 61 [42 U.S.C. 2091] (“Source Material”); provided, that the respective determinations shall be made as indicated in Chapter 2 above).

Subsection 63a. (source material) [42 U.S.C. 2093(a)]; provided, that the authority to distribute shall apply only to ERDA and the authority to license shall apply only to NSLC.

Section 65 [42 U.S.C. 2095] (“Reporting”).

Section 66 [42 U.S.C. 2096] (“Acquisition”).

Section 68 [42 U.S.C. 2098] (“Public and Acquired Lands”).

Section 81 [42 U.S.C. 2111] (“Domestic Distribution”), and Section 82 [42 U.S.C. 2112] (“Foreign Distribution of Byproduct Material”); provided, that the authority to distribute shall apply only to ERDA and the authority to license shall apply only to NSLC.

Section 92 [42 U.S.C. 2122] (“Prohibition”).

Subsections 105a. and 105b. [42 U.S.C. 2135(a), (b)] (Antitrust provisions and reporting).

Section 108 [42 U.S.C. 2138] (“War or National Emergency”).

Section 110 [42 U.S.C. 2140] (“Exclusions”); it should be noted that subsection 110a. is amended by section 202 of the bill [42 U.S.C. 5842].

Chapter 11 [(sections 121–125) 42 U.S.C. 2151–2154, 2153 note] (“International Activities”); provided, that, except for licensing and regulatory aspects, the implementation of these provisions shall be the responsibility of ERDA.

Section 141 [42 U.S.C. 2161] (“policy”); provided, that the implementation of subsection 141a. shall be the responsibility of ERDA.

Subsection 144d. [42 U.S.C. 2164(d)] (Presidential authorization).

Section 145 [42 U.S.C. 2165] (“Restrictions”); except that only the Administrator shall establish the basic standards and procedures for the safeguarding of the national defense and security.

Section 146 [42 U.S.C. 2166] (“General Provisions”).

Subsection 151a and 151b. [42 U.S.C. 2181(a), (b)] (certain inventions and discoveries).

Section 152 [42 U.S.C. 2182] (“Inventions Made or Conceived During Commission Contracts”).

Section 155 [42 U.S.C. 2185] (“Prior Art”).

Section 156 [42 U.S.C. 2186] (“Commission Patent Licenses”).

Section 158 [42 U.S.C. 2188] (“Monopolistic Use of Patents”).

Section 159 [42 U.S.C. 2189] (“Federally Financed Research”).

Section 160 [42 U.S.C. 2190] (“Saving Clause”).

Subsections 161a., 161b., 161c., 161d., 161f., and 161g. [42 U.S.C. 2201(a)–(d), (f), (g)] (general authority).

Subsection 161i. and 161j. [42 U.S.C. 2201(i), (j)] (certain regulations or orders and dispositions); provided, that the Administrator shall establish the basic standards and procedures respecting the national security.

Subsections 161k. [42 U.S.C. 2201(k)] (firearms); 161n. [42 U.S.C. 2201(n)] (delegations), provided that no functions delegated to officers of NSLC shall include functions relating to the development of atomic energy or the atomic industry; 161o. (reports and records), 161p. (rules and regulations), 161q. (rights-of-way), and 161s. (succession of authority) [42 U.S.C. 2201(o)–(q), (s)].

Section 162 [42 U.S.C. 2202] (“Contracts”).

Section 163 [42 U.S.C. 2203] (“Advisory Committees”).

Section 165 [42 U.S.C. 2205] (“Contract Practices”).

Section 166 [42 U.S.C. 2206] (“Comptroller General Audit”); it should be noted that section 305 of the bill [(section 306 as passed) 42 U.S.C. 5876] also makes this section applicable to ERDA’s contracts for non nuclear activities.

Section 168 [42 U.S.C. 2208] (“Payments in Lieu of Taxes”).

Section 169 [42 U.S.C. 2209] (“No Subsidy”).

Section 170 [42 U.S.C. 2210] (“Indemnification and Limitation of Liability”).

Chapter 15 [(sections 171–174) 42 U.S.C. 2221–2224] (“Compensation for Private Property Acquired”).

Section 181 [42 U.S.C. 2231] (“General”).

Subsection 186c. [42 U.S.C. 2236(c)] (Retaking and Recapture); provided that the Administrator shall establish the basic standards and procedures in regard to safeguarding the national defense and security.

Section 188 [42 U.S.C. 2238] (“Continued Operation of Facilities”); provided, that findings and judgments respecting the production program shall be the responsibility of the Administrator.

Section 189 [42 U.S.C. 2239] (“Hearings and Judicial Review”).

Chapter 17 [(sections 201–207) 42 U.S.C. 2251–2257] (“Joint Committee on Atomic Energy”).

Chapter 18 [(sections 221–234) 42 U.S.C. 2271–2282] (“Enforcement”); except for Section 234 [42 U.S.C. 2282] (“Civil Monetary Penalties for Violation of Licensing Requirements”) which is applicable only to NSLC.

Section 241 [42 U.S.C. 2015] (“Transfer of Property”).

Section 251 [42 U.S.C. 2016] (“Report to the Congress”).

Section 261 [42 U.S.C. 2017] (“Appropriations”).

Section 271 [42 U.S.C. 2018] (“Agency Jurisdiction”).

Section 281 [42 U.S.C. 2011 note] (“Separability”) and Section 291 [42 U.S.C. 2011 note] (“Short Title”).

TERMINATION OF ADVISORY COMMITTEES

Advisory committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5812, 5815, 5817, 5841 of this title.

§ 5815. Administrative provisions

(a) Rules and regulations

The Administrator is authorized to prescribe such policies, standards, criteria, procedures, rules, and regulations as he may deem to be necessary or appropriate to perform functions now or hereafter vested in him.

(b) Policy planning and evaluation

The Administrator shall engage in such policy planning, and perform such program evaluation analyses and other studies, as may be necessary to promote the efficient and coordinated administration of the Administration and properly assess progress toward the achievement of its missions.

(c) Delegation of functions

Except as otherwise expressly provided by law, the Administrator may delegate any of his functions to such officers and employees of the Administration as he may designate, and may authorize such successive redelegations of such functions as he may deem to be necessary or appropriate.

(d) Organization

Except as provided in sections 5812 and 5814(d) of this title, the Administrator may organize the Administration as he may deem to be necessary or appropriate.

(e) Field offices

The Administrator is authorized to establish, maintain, alter, or discontinue such State, regional, district, local, or other field offices as he may deem to be necessary or appropriate to perform functions now or hereafter vested in him.

(f) Seal

The Administrator shall cause a seal of office to be made for the Administration of such device as he shall approve, and judicial notice shall be taken of such seal.

(g) Working capital fund

The Administrator is authorized to establish a working capital fund, to be available without fiscal year limitation, for expenses necessary for the maintenance and operation of such common administrative services as he shall find to be desirable in the interests of economy and efficiency. There shall be transferred to the fund the stocks of supplies, equipment, assets other than real property, liabilities, and unpaid obligations relating to the services which he determines will be performed through the fund. Appropriations to the fund, in such amounts as may be necessary to provide additional working capital, are authorized. The working capital fund shall recover, from the appropriations and funds for which services are performed, either in advance or by way of reimbursement, amounts which will approximate the costs incurred, including the accrual or annual leave and the depreciation of equipment. The fund shall also be credited with receipts from the sale or exchange of its property, and receipts in payment for loss or damage to property owned by the fund.

(h) Information from other agencies

Each department, agency, and instrumentality of the executive branch of the Government is authorized to furnish to the Administrator, upon his request, any information or other data which the Administrator deems necessary to carry out his duties under this subchapter.

(Pub. L. 93-438, title I, §105, Oct. 11, 1974, 88 Stat. 1238.)

TRANSFER OF FUNCTIONS

Energy Research and Development Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 5816. Personnel and services**(a) Appointment and compensation of officers and employees**

The Administrator is authorized to select, appoint, employ, and fix the compensation of such officers and employees, including attorneys, pursuant to section 2201(d) of this title as are necessary to perform the functions now or hereafter vested in him and to prescribe their functions.

(b) Employment of experts and consultants

The Administrator is authorized to obtain services as provided by section 3109 of title 5.

(c) Participation of military personnel

The Administrator is authorized to provide for participation of military personnel in the performance of his functions. Members of the Army, the Navy, the Air Force, or the Marine Corps may be detailed for service in the Administration by the appropriate military Secretary, pursuant to cooperative agreements with the Secretary, for service in the Administration in positions other than a position the occupant of which must be approved by and with the advice and consent of the Senate.

(d) Status of military personnel unaffected

Appointment, detail, or assignment to, acceptance of, and service in, any appointive or other position in the Administration under this section shall in no way affect the status, office, rank, or grade which such officers or enlisted men may occupy or hold, or any emolument, perquisite, right, privilege, or benefit incident to or arising out of any such status, office, rank, or grade. A member so appointed, detailed, or assigned shall not be subject to direction or control by his Armed Force, or any officer thereof, directly or indirectly, with respect to the responsibilities exercised in the position to which appointed, detailed, or assigned.

(e) Transportation and per diem expenses

The Administrator is authorized to pay transportation expenses, and per diem in lieu of subsistence expenses, in accordance with chapter 57 of title 5 for travel between places of recruitment and duty, and while at places of duty, of persons appointed for emergency, temporary, or seasonal services in the field service of the Administration.

(f) Personnel of other agencies

The Administrator is authorized to utilize, on a reimbursable basis, the services of any personnel made available by any department, agency, or instrumentality, including any independent agency of the Government.

(g) Advisory boards

The Administrator is authorized to establish advisory boards, in accordance with the provisions of the Federal Advisory Committee Act (Public Law 92-463), to advise with and make recommendations to the Administrator on legislation, policies, administration, research, and other matters.

(h) Employment of noncitizens

The Administrator is authorized to employ persons who are not citizens of the United States in expert, scientific, technical, or professional capacities whenever he deems it in the public interest.

(Pub. L. 93-438, title I, §106, Oct. 11, 1974, 88 Stat. 1239.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (g), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

TRANSFER OF FUNCTIONS

Energy Research and Development Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

TERMINATION OF ADVISORY BOARDS

Advisory boards established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a board established by the Congress, its duration is otherwise provided for by law. See sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5919 of this title.

§ 5816a. Repealed. Pub. L. 104-106, div. D, title XLIII, § 4304(b)(7), Feb. 10, 1996, 110 Stat. 664

Section, Pub. L. 95-39, title III, §308, June 3, 1977, 91 Stat. 189; Pub. L. 96-470, title II, §203(d), Oct. 19, 1980, 94 Stat. 2243, related to financial statements of Department of Energy officers and employees.

EFFECTIVE DATE OF REPEAL

For effective date and applicability of repeal, see section 4401 of Pub. L. 104-106, set out as an Effective Date of 1996 Amendment note under section 251 of Title 41, Public Contracts.

§ 5817. Powers of Administrator

(a) Research and development

The Administrator is authorized to exercise his powers in such manner as to insure the continued conduct of research and development and related activities in areas or fields deemed by the Administrator to be pertinent to the acquisition of an expanded fund of scientific, technical, and practical knowledge in energy matters. To this end, the Administrator is authorized to make arrangements (including contracts, agreements, and loans) for the conduct of research and development activities with private or public institutions or persons, including participation in joint or cooperative projects of a research, developmental, or experimental nature; to make payments (in lump sum or installments, and in advance or by way of reimbursement, with necessary adjustments on account of overpayments or underpayments); and generally to take such steps as he may deem necessary or appropriate to perform functions now or hereafter vested in him. Such functions of the Administrator under this chapter as are applicable to the nuclear activities transferred pursuant to this subchapter shall be subject to the provisions of the Atomic Energy Act of 1954, as amended [42 U.S.C. 2011 et seq.], and to other authority applicable to such nuclear activities. The nonnuclear responsibilities and functions of the Administrator referred to in sections 5813 and 5814 of this title shall be carried out pursuant to the provisions of this chapter, applicable authority existing immediately before the effective date of this chapter, or in accordance with

the provisions of chapter 4 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2051-2053).

(b) Facilities and real property

Except for public buildings as defined in chapter 33 of title 40, and with respect to leased space subject to the provisions of Reorganization Plan Numbered 18 of 1950, the Administrator is authorized to acquire (by purchase, lease, condemnation, or otherwise), construct, improve, repair, operate, and maintain facilities and real property as the Administrator deems to be necessary in and outside of the District of Columbia. Such authority shall apply only to facilities required for the maintenance and operation of laboratories, research and testing sites and facilities, quarters, and related accommodations for employees and dependents of employees of the Administration, and such other special-purpose real property as the Administrator deems to be necessary in and outside the District of Columbia. Title to any property or interest therein, real, personal, or mixed, acquired pursuant to this section, shall be in the United States.

(c) Services for employees at remote locations

(1) The Administrator is authorized to provide, construct, or maintain, as necessary and when not otherwise available, the following for employees and their dependents stationed at remote locations:

(A) Emergency medical services and supplies.

(B) Food and other subsistence supplies.

(C) Messing facilities.

(D) Audiovisual equipment, accessories, and supplies for recreation and training.

(E) Reimbursement for food, clothing, medicine, and other supplies furnished by such employees in emergencies for the temporary relief of distressed persons.

(F) Living and working quarters and facilities.

(G) Transportation for school-age dependents of employees to the nearest appropriate educational facilities.

(2) The furnishing of medical treatment under subparagraph (A) of paragraph (1) and the furnishing of services and supplies under paragraphs (B) and (C) of paragraph (1) shall be at prices reflecting reasonable value as determined by the Administrator.

(3) Proceeds from reimbursements under this section shall be deposited in the Treasury and may be withdrawn by the Administrator to pay directly the cost of such work or services, to repay or make advances to appropriations or funds which do or will bear all or a part of such cost, or to refund excess sums when necessary; except that such payments may be credited to a service or working capital fund otherwise established by law, and used under the law governing such funds, if the fund is available for use by the Administrator for performing the work or services for which payment is received.

(d) Acquisition of copyrights and patents

The Administrator is authorized to acquire any of the following described rights if the property acquired thereby is for use in, or is useful to, the performance of functions vested in him:

(1) Copyrights, patents, and applications for patents, designs, processes, specifications, and data.

(2) Licenses under copyrights, patents, and applications for patents.

(3) Releases, before suit is brought, for past infringement of patents or copyrights.

(e) Dissemination of information

Subject to the provisions of chapter 12 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2161-2166), and other applicable law, the Administrator shall disseminate scientific, technical, and practical information acquired pursuant to this subchapter through information programs and other appropriate means, and shall encourage the dissemination of scientific, technical, and practical information relating to energy so as to enlarge the fund of such information and to provide that free interchange of ideas and criticism which is essential to scientific and industrial progress and public understanding.

(f) Gifts and bequests

The Administrator is authorized to accept, hold, administer, and utilize gifts, and bequests of property, both real and personal, for the purpose of aiding or facilitating the work of the Administration. Gifts and bequests of money and proceeds from sales of other property received as gifts or bequests shall be deposited in the Treasury and shall be disbursed upon the order of the Administrator. For the purposes of Federal income, estate, and gift taxes, property accepted under this section shall be considered as a gift or bequest to the United States.

(Pub. L. 93-438, title I, § 107, Oct. 11, 1974, 88 Stat. 1240.)

REFERENCES IN TEXT

The Atomic Energy Act of 1954, as amended, referred to in subsecs. (a) and (e), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§2011 et seq.) of this title. Chapters 4 and 12 of the Atomic Energy Act of 1954, as amended, are classified generally to subchapters III (§2051 et seq.) and XI (§2161 et seq.), respectively, of division A of chapter 23 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

The effective date of this chapter, referred to in subsec. (a), refers to the effective date of Pub. L. 93-438. See section 312 of Pub. L. 93-438, set out as an Effective Date; Interim Appointments note under section 5801 of this title.

Reorganization Plan Numbered 18 of 1950, referred to in subsec. (b), is Reorg. Plan No. 18 of 1950, eff. July 1, 1950, 15 F.R. 3177, 64 Stat. 1270, which is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

In subsec. (b), “chapter 33 of title 40” substituted for “the Public Buildings Act of 1959, as amended” on authority of Pub. L. 107-217, §5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

TRANSFER OF FUNCTIONS

Energy Research and Development Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (un-

less otherwise specifically provided) by sections 7151(a) and 7293 of this title.

AIR TRANSPORTATION OF PLUTONIUM; EXEMPT SHIPMENT OF PLUTONIUM

Pub. L. 94-187, title V, Dec. 31, 1975, 89 Stat. 1077, provided that:

“SEC. 501. The Energy Research and Development Administration shall not ship plutonium in any form by aircraft whether exports, imports, or domestic shipment: *Provided*, That any exempt shipments of plutonium, as defined by section 502, are not subject to this restriction. This restriction shall be in force until the Energy Research and Development Administration has certified to the Joint Committee on Atomic Energy of the Congress that a safe container has been developed and tested which will not rupture under crash and blast testing equivalent to the crash and explosion of a high-flying aircraft.

“SEC. 502. For the purposes of this title, the term ‘exempt shipments of plutonium’ shall include the following:

“(1) Plutonium shipments in any form designed for medical application.

“(2) Plutonium shipments which pursuant to rules promulgated by the Administrator of the Energy Research and Development Administration are determined to be made for purposes of national security, public health and safety, or emergency maintenance operations.

“(3) Shipments of small amounts of plutonium deemed by the Administrator of the Energy Research and Development Administration to require rapid shipment by air in order to preserve the chemical, physical, or isotopic properties of the transported item or material.”

§ 5817a. Employee-suggested research projects; approval; funding; reports

(a) Any Government-owned contractor operated laboratory, energy research center, or other laboratory performing functions under contract to the Administration may, with the approval of the Administrator, use a reasonable amount of its operating budget for the funding of employee-suggested research projects up to the pilot stage of development. It shall be a condition of any such approval that the director of the laboratory or center involved form an internal review mechanism for determining which employee-suggested projects merit funding in a given fiscal year; and any such project may be funded in one or more succeeding years if the review process indicates that it merits such funding.

(b) Each director of a laboratory or center specified in subsection (a) of this section shall submit an annual report to the Administrator on projects being funded under this section; and on completion of each such project shall submit a report to the Technical Information Center of the Administration for inclusion in its data base.

(Pub. L. 95-39, title III, §303, June 3, 1977, 91 Stat. 189.)

CODIFICATION

Section was not enacted as part of the Energy Reorganization Act of 1974 which comprises this chapter.

TRANSFER OF FUNCTIONS

Energy Research and Development Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 5818. Repealed. Pub. L. 95-91, title VII, § 709(b), Aug. 4, 1977, 91 Stat. 608

Section, Pub. L. 93-438, title I, § 108, Oct. 11, 1974, 88 Stat. 1241; Pub. L. 94-385, title I, §§ 162, 163, Aug. 14, 1976, 90 Stat. 1140, 1142; Pub. L. 95-39, title V, § 510(b), (c), June 3, 1977, 91 Stat. 200, related to establishment of an Energy Resources Council.

EXECUTIVE ORDER NO. 11814

Ex. Ord. No. 11814, Oct. 11, 1974, 39 F.R. 36955, as amended by Ex. Ord. No. 11819, Nov. 16, 1974, 39 F.R. 40743; Ex. Ord. No. 11855, May 1, 1975, 40 F.R. 19423, which related to the activation of the Energy Resources Council, was revoked by Ex. Ord. No. 12083, Sept. 27, 1978, 43 F.R. 44813, set out as a note under section 7101 of this title.

§ 5819. Report to Congress on future reorganization

(a) The President shall transmit to the Congress as promptly as possible, but not later than June 30, 1975, such additional recommendations as he deems advisable for organization of energy and related functions in the Federal Government, including, but not limited to, whether or not there shall be established (1) a Department of Energy and Natural Resources, (2) an Energy Policy Council, and (3) a consolidation in whole or in part of regulatory functions concerning energy.

(b) This report shall replace and serve the purposes of the report required by section 774(a)(4) of title 15.

(Pub. L. 93-438, title I, § 109, Oct. 11, 1974, 88 Stat. 1242.)

§ 5820. Coordination with environmental efforts

The Administrator is authorized to establish programs to utilize research and development performed by other Federal agencies to minimize the adverse environmental effects of energy projects. The Administrator of the Environmental Protection Agency, as well as other affected agencies and departments, shall cooperate fully with the Administrator in establishing and maintaining such programs, and in establishing appropriate interagency agreements to develop cooperative programs and to avoid unnecessary duplication.

(Pub. L. 93-438, title I, § 110, Oct. 11, 1974, 88 Stat. 1242.)

TRANSFER OF FUNCTIONS

Energy Research and Development Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

RESEARCH APPLIED TO NATIONAL NEEDS; COORDINATION OF ENERGY RESEARCH AND DEVELOPMENT ACTIVITIES

Pub. L. 94-471, § 2(e)(3), Oct. 11, 1976, 90 Stat. 2053, provided that: "In the conduct of the energy research and development activities under the 'Research Applied to National Needs' category, the National Science Foundation shall coordinate all new energy research project awards with the Administrator of the Energy Research and Development Administration or his designee."

Similar provisions were contained in Pub. L. 94-86, § 5, Aug. 9, 1975, 89 Stat. 430.

§ 5821. Annual authorization Acts

(a) General requirements; applicability to appropriations

All appropriations made to the Energy Research and Development Administration or the Administrator shall, except as otherwise provided by law, be subject to annual authorization in accordance with section 2017 of this title, section 5915 of this title, and section 5875 of this title. The provisions of this section shall apply with respect to appropriations made pursuant to the Act providing such authorization (hereinafter in this section referred to as "annual authorization Acts").

(b) Requirements and limitations respecting funds appropriated for operating expenses

(1) Funds appropriated pursuant to an annual authorization Act for "Operating expenses" may be used for—

(A) the construction or acquisition of any facilities, or major items of equipment, which may be required at locations other than installations of the Administration, for the performance of research, development, and demonstration activities, and

(B) grants to any organization for purchase or construction of research facilities.

No such funds shall be used under this subsection for the acquisition of land. Fee title to all such facilities and items of equipment shall be vested in the United States, unless the Administrator or his designee determines in writing that the research, development, and demonstration authorized by such Act would best be implemented by permitting fee title or any other property interest to be vested in an entity other than the United States; but before approving the vesting of such title or interest in such entity, the Administrator shall (i) transmit such determination, together with all pertinent data, to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Energy and Natural Resources of the Senate and (ii) wait a period of thirty calendar days (not including any day in which either House of Congress is not in session because of adjournment of more than three calendar days to a day certain), unless prior to the expiration of such period each such committee has transmitted to the Administrator written notice to the effect that such committee has no objection to the proposed action.

(2) No funds shall be used under paragraph (1) for any facility or major item of equipment, including collateral equipment, if the estimated cost to the Federal Government exceeds \$5,000,000 in the case of such a facility or \$2,000,000 in the case of such an item of equipment, unless such facility or item has been previously authorized by the appropriate committees of the House of Representatives and the Senate, or the Administrator—

(A) transmit to the appropriate committees of the House of Representatives and the Senate a report on such facility or item showing its nature, purpose, and estimated cost, and

(B) wait a period of thirty calendar days (not including any day in which either House of Congress is not in session because of ad-

jourment of more than three calendar days to a day certain), unless prior to the expiration of such period each such committee has transmitted to the Administrator written notice to the effect that such committee has no objection to the proposed action.

(c) Additional requirements and limitations respecting funds appropriated for operating expenses

(1) Not to exceed 1 per centum of all funds appropriated pursuant to any annual authorization Act for "Operating expenses" may be used by the Administrator to construct, expand, or modify laboratories and other facilities, including the acquisition of land, at any location under the control of the Administrator, if the Administrator determines that (A) such action would be necessary because of changes in the national programs authorized to be funded by such Act or because of new scientific or engineering developments, and (B) deferral of such action until the enactment of the next authorization Act would be inconsistent with the policies established by Congress for the Administration.

(2) No funds may be obligated for expenditure or expended under paragraph (1) for activities described in such paragraph unless—

(A) a period of thirty calendar days (not including any day in which either House of Congress is not in session because of adjournment of more than three calendar days to a day certain) has passed after the Administrator has transmitted to the appropriate committees of the House of Representatives and the Senate a written report containing a full and complete statement concerning (i) the nature of the construction, expansion, or modification involved, (ii) the cost thereof, including the cost of any real estate action pertaining thereto, and (iii) the reason why such construction, expansion, or modification is necessary and in the national interest, or

(B) each such committee before the expiration of such period has transmitted to the Administrator a written notice to the effect that such committee has no objection to the proposed action;

except that this paragraph shall not apply to any project the estimated total cost of which does not exceed \$50,000.

(d) Requirements respecting amounts appropriated in annual appropriation Act for use in programs in excess of amount actually authorized for use in program not presented to, or requested of Congress; reduction in aggregate amount available for categories of coal, etc., from sums appropriated

(1) Except as otherwise provided in the authorization Act involved—

(A) no amount appropriated pursuant to any annual authorization Act may be used for any program in excess of the amount actually authorized for that particular program by such Act, and

(B) no amount appropriated pursuant to any annual authorization Act may be used for any program which has not been presented to, or requested of the Congress,

unless (i) a period of thirty calendar days (not including any day in which either House of Con-

gress is not in session because of adjournment of more than three calendar days to a day certain) has passed after the receipt by the appropriate committees of the House of Representatives and the Senate of notice given by the Administrator containing a full and complete statement of the action proposed to be taken and the facts and circumstances relied upon in support of such proposed action, or (ii) each such committee before the expiration of such period has transmitted to the Administrator written notice to the effect that such committee has no objection to the proposed action.

(2) Notwithstanding any other provision of this section or the authorization Act involved, the aggregate amount available for use within the categories of coal, petroleum and natural gas, oil shale, solar, geothermal, nuclear energy (non-weapons), environment and safety, and conservation from sums appropriated pursuant to an annual authorization Act may not, as a result of reprogramming, be decreased by more than 10 per centum of the total of the sums appropriated pursuant to such Act for those categories.

(e) Requirements and limitations respecting merger of amounts appropriated for operating expenses or for plant and capital equipment

Subject to the applicable requirements and limitations of this section and the authorization Act involved, when so specified in an appropriation Act, amounts appropriated pursuant to any annual authorization Act for "Operating expenses" or for "Plant and capital equipment" may be merged with any other amounts appropriated for like purposes pursuant to any other Act authorizing appropriations for the Administration: *Provided*, That no such amounts appropriated for "Plant and capital equipment" may be merged with amounts appropriated for "Operating expenses".

(f) Availability until expended of amounts appropriated for operating expenses or for plant and capital equipment

When so specified in an appropriation Act, amounts appropriated pursuant to any annual authorization Act for "Operating expenses" or for "Plant and capital equipment" may remain available until expended.

(g) Performance of construction design services by Administrator

The Administrator is authorized to perform construction design services for any administration construction project whenever (1) such construction project has been included in a proposed authorization bill transmitted to the Congress by the Administration, and (2) the Administration determines that the project is of such urgency in order to meet the needs of national defense or protection of life and property or health and safety that construction of the project should be initiated promptly upon enactment of legislation appropriating funds for its construction.

(h) Retention and use for operating expenses, and availability until expended, of moneys received by Administration; exceptions

When so specified in appropriation Acts, any moneys received by the Administration may be

retained and used for operating expenses, and may remain available until expended, notwithstanding the provisions of section 3302(b) of title 31; except that—

(1) this subsection shall not apply with respect to sums received from disposal of property under the Atomic Energy Community Act of 1955 [42 U.S.C. 2301 et seq.] or the Strategic and Critical Materials Stockpiling Act, as amended [50 U.S.C. 98 et seq.], or with respect to fees received for tests or investigations under the Act of May 16, 1910, as amended (30 U.S.C. 7); and

(2) revenues received by the Administration for the enrichment of uranium shall (when so specified) be retained and used for the specific purpose of offsetting costs incurred by the Administration in providing uranium enrichment service activities.

(i) Requirements respecting transfers of sums appropriated for operating expenses to other Government agencies; merger of transferred sums

When so specified in an appropriation Act, transfers of sums from the “Operating expenses” appropriation made pursuant to an annual authorization Act may be made to other agencies of the Government for the performance of the work for which the appropriation is made, and in such cases the sums so transferred may be merged with the appropriations to which they are transferred.

(Pub. L. 93-438, title I, §111, as added Pub. L. 95-238, title II, §201, Feb. 25, 1978, 92 Stat. 56; amended Pub. L. 103-437, §15(c)(7), Nov. 2, 1994, 108 Stat. 4592.)

REFERENCES IN TEXT

The Atomic Energy Community Act of 1955, referred to in subsec. (h)(1), is act Aug. 4, 1955, ch. 543, 69 Stat. 472, as amended, which is classified principally to chapter 24 (§2301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2301 of this title and Tables.

The Strategic and Critical Materials Stockpiling Act, as amended, referred to in subsec. (h)(1), is act June 7, 1939, ch. 190, as revised generally by Pub. L. 96-41, §2, July 30, 1979, 93 Stat. 319, which is classified generally to subchapter III (§98 et seq.) of chapter 5 of Title 50, War and National Defense. For complete classification of this Act to the Code, see section 98 of Title 50 and Tables.

Act of May 16, 1910, as amended, referred to in subsec. (h)(1), is act May 16, 1910, ch. 240, 36 Stat. 369, as amended, which enacted sections 1, 3, and 5 to 7 of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code, see Tables.

CODIFICATION

In subsec. (h), “section 3302(b) of title 31” substituted for “section 3617 of the Revised Statutes (31 U.S.C. 484)” on authority of Pub. L. 97-258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

PRIOR PROVISIONS

Provisions similar to those in subsec. (g) of this section were contained in the following appropriation authorization acts, formerly classified to section 2017a-1 of this title.

Pub. L. 95-39, title III, §304, June 3, 1977, 91 Stat. 189.
Pub. L. 94-187, title III, §301, Dec. 31, 1975, 89 Stat. 1073.

Pub. L. 93-276, title I, §103, May 10, 1974, 88 Stat. 118.
Pub. L. 93-60, §103, July 6, 1973, 87 Stat. 144.
Pub. L. 92-314, title I, §103, June 16, 1972, 86 Stat. 225.
Pub. L. 92-84, title I, §103, Aug. 11, 1971, 85 Stat. 306.
Pub. L. 91-273, §103, June 2, 1970, 84 Stat. 300.
Pub. L. 91-44, §103, July 11, 1969, 83 Stat. 47.
Pub. L. 90-289, §103, Apr. 19, 1968, 82 Stat. 97.
Pub. L. 90-56, §103, July 26, 1967, 81 Stat. 125.
Pub. L. 89-428, §103, May 21, 1966, 80 Stat. 163.
Pub. L. 89-32, §103, June 2, 1965, 79 Stat. 122.
Pub. L. 88-332, §104, June 30, 1964, 78 Stat. 229.

AMENDMENTS

1994—Subsec. (b)(1). Pub. L. 103-437 substituted “Committee on Science, Space, and Technology” for “Committee on Science and Technology”.

CHANGE OF NAME

Committee on Science, Space, and Technology of House of Representatives treated as referring to Committee on Science of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

NONAPPLICABILITY OF TITLE II OF PUB. L. 95-238 TO ANY AUTHORIZATION OR APPROPRIATION FOR MILITARY APPLICATION OF NUCLEAR ENERGY, ETC.; DEFINITIONS

Section 209 of title II of Pub. L. 95-238 provided that:

“(a) Nothing in this title [enacting this section and sections 5556a and 5919 of this title, amending sections 2391, 2394, 5905, 5906, and 5914 of this title, and enacting provisions set out as notes under section 7256 of this title and section 2429 of Title 22, Foreign Relations and Intercourse] shall apply with respect to any authorization or appropriation for any military application of nuclear energy, for research and development in support of the Armed Forces, or for the common defense and security of the United States.

“(b)(1) The term ‘military application’ means any activity authorized or permitted by chapter 9 of the Atomic Energy Act of 1954, as amended (Public Law 83-703, as amended; 42 U.S.C. 2121, 2122).

“(2) The term ‘research and development’ as used in this section, is defined by section 11 x., of the Atomic Energy Act of 1954, as amended (Public Law 83-703, as amended; 42 U.S.C. 2014).

“(3) The term ‘common defense and security’ means the common defense and security of the United States as used in the Atomic Energy Act of 1954, as amended (Public Law 83-703, as amended) [section 2011 et seq. of this title].”

SUBCHAPTER II—NUCLEAR REGULATORY COMMISSION; NUCLEAR WHISTLEBLOWER PROTECTION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 5876, 10134, 10243 of this title.

§ 5841. Establishment and transfers

(a) Composition; Chairman; Acting Chairman; quorum; official spokesman; seal; functions of Chairman and Commission

(1) There is established an independent regulatory commission to be known as the Nuclear Regulatory Commission which shall be composed of five members, each of whom shall be a citizen of the United States. The President shall designate one member of the Commission as Chairman thereof to serve as such during the pleasure of the President. The Chairman may from time to time designate any other member of the Commission as Acting Chairman to act in the place and stead of the Chairman during his

absence. The Chairman (or the Acting Chairman in the absence of the Chairman) shall preside at all meetings of the Commission and a quorum for the transaction of business shall consist of at least three members present. Each member of the Commission, including the Chairman, shall have equal responsibility and authority in all decisions and actions of the Commission, shall have full access to all information relating to the performance of his duties or responsibilities, and shall have one vote. Action of the Commission shall be determined by a majority vote of the members present. The Chairman (or Acting Chairman in the absence of the Chairman) shall be the official spokesman of the Commission in its relations with the Congress, Government agencies, persons, or the public, and, on behalf of the Commission, shall see to the faithful execution of the policies and decisions of the Commission, and shall report thereon to the Commission from time to time or as the Commission may direct. The Commission shall have an official seal which shall be judicially noticed.

(2) The Chairman of the Commission shall be the principal executive officer of the Commission, and he shall exercise all of the executive and administrative functions of the Commission, including functions of the Commission with respect to (a) the appointment and supervision of personnel employed under the Commission (other than personnel employed regularly and full time in the immediate offices of commissioners other than the Chairman, and except as otherwise provided in this chapter), (b) the distribution of business among such personnel and among administrative units of the Commission, and (c) the use and expenditure of funds.

(3) In carrying out any of his functions under the provisions of this section the Chairman shall be governed by general policies of the Commission and by such regulatory decisions, findings, and determinations as the Commission may by law be authorized to make.

(4) The appointment by the Chairman of the heads of major administrative units under the Commission shall be subject to the approval of the Commission.

(5) There are hereby reserved to the Commission its functions with respect to revising budget estimates and with respect to determining upon the distribution of appropriated funds according to major programs and purposes.

(b) Appointment of members

(1) Members of the Commission shall be appointed by the President, by and with the advice and consent of the Senate.

(2) Appointments of members pursuant to this subsection shall be made in such a manner that not more than three members of the Commission shall be members of the same political party.

(c) Term of office

Each member shall serve for a term of five years, each such term to commence on July 1, except that of the five members first appointed to the Commission, one shall serve for one year, one for two years, one for three years, one for four years, and one for five years, to be designated by the President at the time of appointment; and except that any member appointed to

fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed, shall be appointed for the remainder of such term. For the purpose of determining the expiration date of the terms of office of the five members first appointed to the Nuclear Regulatory Commission, each such term shall be deemed to have begun July 1, 1975.

(d) Submission of appointments to Senate

Such initial appointments shall be submitted to the Senate within sixty days of October 11, 1974. Any individual who is serving as a member of the Atomic Energy Commission on October 11, 1974, and who may be appointed by the President to the Commission, shall be appointed for a term designated by the President, but which term shall terminate not later than the end of his present term as a member of the Atomic Energy Commission, without regard to the requirements of subsection (b)(2) of this section. Any subsequent appointment of such individuals shall be subject to the provisions of this section.

(e) Removal of members; prohibition against engagement in business or other employment

Any member of the Commission may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. No member of the Commission shall engage in any business, vocation, or employment other than that of serving as a member of the Commission.

(f) Transfer of licensing and regulatory functions of Atomic Energy Commission

There are hereby transferred to the Commission all the licensing and related regulatory functions of the Atomic Energy Commission, the Chairman and members of the Commission, the General Counsel, and other officers and components of the Commission—which functions of officers, components, and personnel are excepted from the transfer to the Administrator by section 5814(c) of this title.

(g) Additional transfers

In addition to other functions and personnel transferred to the Commission, there are also transferred to the Commission—

(1) the functions of the Atomic Safety and Licensing Board Panel and the Atomic Safety and Licensing Appeal Board;

(2) such personnel as the Director of the Office of Management and Budget determines are necessary for exercising responsibilities under section 5845 of this title, relating to, research, for the purpose of confirmatory assessment relating to licensing and other regulation under the provisions of the Atomic Energy Act of 1954, as amended [42 U.S.C. 2011 et seq.], and of this chapter.

(Pub. L. 93-438, title II, §201, Oct. 11, 1974, 88 Stat. 1242; Pub. L. 94-79, title II, §§201-203, Aug. 9, 1975, 89 Stat. 413, 414; Pub. L. 95-209, §2, Dec. 13, 1977, 91 Stat. 1482; Pub. L. 99-386, title I, §109, Aug. 22, 1986, 100 Stat. 822.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(2) and (g)(2), was in the original “the Energy Reorganization Act of 1974”, and “this Act”, respectively, meaning Pub. L. 93-438, Oct. 11, 1974, 88 Stat. 1233, as amended, which en-

acted this chapter, amended sections 5313 to 5316 of Title 5, Government Organization and Employees, repealed sections 2031 and 2032 of this title, and enacted provisions set out as notes under section 5801 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5801 of this title and Tables.

The Atomic Energy Act of 1954, as amended, referred to in subsec. (g), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

AMENDMENTS

1986—Subsec. (h). Pub. L. 99-386 struck out subsec. (h) which related to quarterly reports on compliance with equal employment requirements for grades GS-11 or above.

1977—Subsec. (h). Pub. L. 95-209 added subsec. (h).

1975—Subsec. (a). Pub. L. 94-79, §201, designated existing provisions as par. (1) and added pars. (2) to (5).

Subsec. (c). Pub. L. 94-79, §§202, 203, provided for appointment for remainder of term where vacancy occurs prior to expiration of term of predecessor appointee and designated July 1, 1975, as commencement date of initial appointees for purpose of determining expiration date of terms of office.

TRANSFER OF FUNCTIONS

For transfer of certain functions from Nuclear Regulatory Commission to Chairman thereof, see Reorg. Plan No. 1 of 1980, 45 F.R. 40561, 94 Stat. 3585, set out below.

Energy Research and Development Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

TRANSPORTATION OF PLUTONIUM BY AIRCRAFT THROUGH UNITED STATES AIR SPACE

Pub. L. 100-202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121, and Pub. L. 100-203, title V, §5062, Dec. 22, 1987, 101 Stat. 1330-251, provided that:

“(a) IN GENERAL.—Notwithstanding any other provision of law, no form of plutonium may be transported by aircraft through the air space of the United States from a foreign nation to a foreign nation unless the Nuclear Regulatory Commission has certified to Congress that the container in which such plutonium is transported is safe, as determined in accordance with subsection (b), the second undesignated paragraph under section 201 of Public Law 94-79 (89 Stat. 413; 42 U.S.C. 5841 note), and all other applicable laws.

“(b) RESPONSIBILITIES OF THE NUCLEAR REGULATORY COMMISSION.—

“(1) DETERMINATION OF SAFETY.—The Nuclear Regulatory Commission shall determine whether the container referred to in subsection (a) is safe for use in the transportation of plutonium by aircraft and transmit to Congress a certification for the purposes of such subsection in the case of each container determined to be safe.

“(2) TESTING.—In order to make a determination with respect to a container under paragraph (1), the Nuclear Regulatory Commission shall—

“(A) require an actual drop test from maximum cruising altitude of a full-scale sample of such container loaded with test materials; and

“(B) require an actual crash test of a cargo aircraft fully loaded with full-scale samples of such container loaded with test material unless the Commission determines, after consultation with an independent scientific review panel, that the stresses on the container produced by other tests used in developing the container exceed the stresses which would occur during a worst case plutonium air shipment accident.

“(3) LIMITATION.—The Nuclear Regulatory Commission may not certify under this section that a container is safe for use in the transportation of plutonium by aircraft if the container ruptured or released its contents during testing conducted in accordance with paragraph (2).

“(4) EVALUATION.—The Nuclear Regulatory Commission shall evaluate the container certification required by title II of the Energy Reorganization Act of 1974 (42 U.S.C. 5841 et seq.) and subsection (a) in accordance with the National Environmental Policy Act of 1969 (83 Stat. 852; 42 U.S.C. 4321 et seq.) and all other applicable law.

“(c) CONTENT OF CERTIFICATION.—A certification referred to in subsection (a) with respect to a container shall include—

“(1) the determination of the Nuclear Regulatory Commission as to the safety of such container;

“(2) a statement that the requirements of subsection (b)(2) were satisfied in the testing of such container; and

“(3) a statement that the container did not rupture or release its contents into the environment during testing.

“(d) DESIGN OF TESTING PROCEDURES.—The tests required by subsection (b) shall be designed by the Nuclear Regulatory Commission to replicate actual worst case transportation conditions to the maximum extent practicable. In designing such tests, the Commission shall provide for public notice of the proposed test procedures, provide a reasonable opportunity for public comment on such procedures, and consider such comments, if any.

“(e) TESTING RESULTS: REPORTS AND PUBLIC DISCLOSURE.—The Nuclear Regulatory Commission shall transmit to Congress a report on the results of each test conducted under this section and shall make such results available to the public.

“(f) ALTERNATIVE ROUTES AND MEANS OF TRANSPORTATION.—With respect to any shipments of plutonium from a foreign nation to a foreign nation which are subject to United States consent rights contained in an Agreement for Peaceful Nuclear Cooperation, the President is authorized to make every effort to pursue and conclude arrangements for alternative routes and means of transportation, including sea shipment. All such arrangements shall be subject to stringent physical security conditions, and other conditions designed to protect the public health and safety, and provisions of this section, and all other applicable laws.

“(g) INAPPLICABILITY TO MEDICAL DEVICES.—Subsections (a) through (e) shall not apply with respect to plutonium in any form contained in a medical device designed for individual human application.

“(h) INAPPLICABILITY TO MILITARY USES.—Subsections (a) through (e) shall not apply to plutonium in the form of nuclear weapons nor to other shipments of plutonium determined by the Department of Energy to be directly connected with the United States national security or defense programs.

“(i) INAPPLICABILITY TO PREVIOUSLY CERTIFIED CONTAINERS.—This section shall not apply to any containers for the shipment of plutonium previously certified as safe by the Nuclear Regulatory Commission under Public Law 94-79 (89 Stat. 413; 42 U.S.C. 5841 note).

“(j) PAYMENT OF COSTS.—All costs incurred by the Nuclear Regulatory Commission associated with the testing program required by this section, and administrative costs related thereto, shall be reimbursed to the Nuclear Regulatory Commission by any foreign country receiving plutonium shipped through United States airspace in containers specified by the Commission.”

RESIDENT INSPECTOR PROGRAM; IMPLEMENTATION AND ACCELERATION OF ASSIGNMENT OF PERSONNEL; STUDY OF EXISTING AND ALTERNATE PROGRAMS FOR IMPROVING QUALITY ASSURANCE AND CONTROL; PILOT PROGRAMS TO REVIEW AND EVALUATE ALTERNATIVE PROGRAMS; SCOPE OF PILOT PROGRAM; REPORT TO CONGRESS; CONTENTS

Pub. L. 97-415, §13, Jan. 4, 1983, 96 Stat. 2074, provided that:

“(a) The Nuclear Regulatory Commission is authorized and directed to implement and accelerate the resident inspector program so as to assure the assignment of at least one resident inspector by the end of fiscal year 1982 at each site at which a commercial nuclear powerplant is under construction and construction is more than 15 percent complete. At each such site at which construction is not more than 15 percent complete, the Commission shall provide that such inspection personnel as the Commission deems appropriate shall be physically present at the site at such times following issuance of the construction permit as may be necessary in the judgment of the Commission.

“(b) The Commission shall conduct a study of existing and alternative programs for improving quality assurance and quality control in the construction of commercial nuclear powerplants. In conducting the study, the Commission shall obtain the comments of the public, licensees of nuclear powerplants, the Advisory Committee on Reactor Safeguards, and organizations comprised of professionals having expertise in appropriate fields. The study shall include an analysis of the following:

“(1) providing a basis for quality assurance and quality control, inspection, and enforcement actions through the adoption of an approach which is more prescriptive than that currently in practice for defining principal architectural and engineering criteria for the construction of commercial nuclear powerplants;

“(2) conditioning the issuance of construction permits for commercial nuclear powerplants on a demonstration by the licensee that the licensee is capable of independently managing the effective performance of all quality assurance and quality control responsibilities for the powerplant;

“(3) evaluations, inspections, or audits of commercial nuclear powerplant construction by organizations comprised of professionals having expertise in appropriate fields which evaluations, inspections, or audits are more effective than those under current practice;

“(4) improvement of the Commission's organization, methods, and programs for quality assurance development, review, and inspection; and

“(5) conditioning the issuance of construction permits for commercial nuclear powerplants on the permittee entering into contracts or other arrangements with an independent inspector to audit the quality assurance program to verify quality assurance performance.

For purposes of paragraph (5), the term ‘independent inspector’ means a person or other entity having no responsibility for the design or construction of the plant involved. The study shall also include an analysis of quality assurance and quality control programs at representative sites at which such programs are operating satisfactorily and an assessment of the reasons therefor.

“(c) For purposes of—

“(1) determining the best means of assuring that commercial nuclear powerplants are constructed in accordance with the applicable safety requirements in effect pursuant to the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.]; and

“(2) assessing the feasibility and benefits of the various means listed in subsection (b); the Commission shall undertake a pilot program to review and evaluate programs that include one or more of the alternative concepts identified in subsection (b) for the purposes of assessing the feasibility and benefits of their implementation. The pilot program shall include programs that use independent inspectors for auditing quality assurance responsibilities of the licensee for the construction of commercial nuclear powerplants, as described in paragraph (5) of subsection (b). The pilot program shall include at least three sites at which commercial nuclear powerplants are under construction. The Commission shall select at least one site at which quality assurance and quality control programs

have operated satisfactorily, and at least two sites with remedial programs underway at which major construction, quality assurance, or quality control deficiencies (or any combination thereof) have been identified in the past. The Commission may require any changes in existing quality assurance and quality control organizations and relationships that may be necessary at the selected sites to implement the pilot program.

“(d) Not later than fifteen months after the date of the enactment of this Act [Jan. 4, 1983], the Commission shall complete the study required under subsection (b) and submit to the United States Senate and House of Representatives a report setting forth the results of the study. The report shall include a brief summary of the information received from the public and from other persons referred to in subsection (b) and a statement of the Commission's response to the significant comments received. The report shall also set forth an analysis of the results of the pilot program required under subsection (c). The report shall be accompanied by the recommendations of the Commission, including any legislative recommendations, and a description of any administrative actions that the Commission has undertaken or intends to undertake, for improving quality assurance and quality control programs that are applicable during the construction of nuclear powerplants.”

TRANSPORTATION OF NUCLEAR WASTE WITH POTENTIAL FOR SIGNIFICANT PUBLIC HEALTH AND SAFETY HAZARDS; REGULATIONS FOR NOTICE TO GOVERNOR

Pub. L. 96-295, title III, §301, June 30, 1980, 94 Stat. 789, directed Nuclear Regulatory Commission, within 90 days of June 30, 1980, to promulgate regulations providing for timely notification to the Governor of any State prior to the transport of nuclear waste, including spent nuclear fuel, to, through, or across the boundaries of such State, and provided that such notification requirement would not apply to nuclear waste in such quantities and of such types as the Commission specifically determined did not pose a potentially significant hazard to the health and safety of the public.

REVIEW OF SELECTION AND TRAINING OF MEMBERS OF ATOMIC SAFETY AND LICENSING BOARDS; REPORT TO CONGRESS

Pub. L. 95-601, §7, Nov. 6, 1978, 92 Stat. 2950, directed Commission to undertake a comprehensive review of the existing process for selection and training of members of the Atomic Safety and Licensing Boards, report to Congress on findings of such review by Jan. 1, 1979, and revise such selection and training process as appropriate, based on such findings.

PLUTONIUM SHIPMENTS RESTRICTIONS

Section 201 of Pub. L. 94-79 provided in part that: “The Nuclear Regulatory Commission shall not license any shipments by air transport of plutonium in any form, whether exports, imports or domestic shipments: *Provided, however,* That any plutonium in any form contained in a medical device designed for individual human application is not subject to this restriction. This restriction shall be in force until the Nuclear Regulatory Commission has certified to the Joint Committee on Atomic Energy of the Congress that a safe container has been developed and tested which will not rupture under crash and blast-testing equivalent to the crash and explosion of a high-flying aircraft.”

REORGANIZATION PLAN NO. 1 OF 1980

45 F.R. 40561, 94 Stat. 3585

Prepared by the President and submitted to the Senate and the House of Representatives in Congress assembled March 27, 1980,¹ pursuant to the provisions of Chapter 9 of Title 5 of the United States Code.

¹ As amended May 5, 1980.

NUCLEAR REGULATORY COMMISSION

SECTION 1. (a) Those functions of the Nuclear Regulatory Commission, hereinafter referred to as the "Commission", concerned with:

- (1) policy formulation;
- (2) rulemaking, as defined in section 553 of Title 5 of the United States Code, except that those matters set forth in 553(a)(2) and (b) which do not pertain to policy formulation orders or adjudications shall be reserved to the Chairman of the Commission;
- (3) orders and adjudications, as defined in section 551 (6) and (7) of Title 5 of the United States Code; shall remain vested in the Commission. The Commission may determine by majority vote, in an area of doubt, whether any matter, action, question or area of inquiry pertains to one of these functions. The performance of any portion of these functions may be delegated by the Commission to a member of the Commission, including the Chairman of the Nuclear Regulatory Commission, hereinafter referred to as the "Chairman", and to the staff through the Chairman.

(b)(1) With respect to the following officers or successor officers duly established by statute or by the Commission, the Chairman shall initiate the appointment, subject to the approval of the Commission; and the Chairman or a member of the Commission may initiate an action for removal, subject to the approval of the Commission:

- (i) Executive Director for Operations,
- (ii) General Counsel,
- (iii) Secretary of the Commission,
- (iv) Director of the Office of Policy Evaluation,
- (v) Director of the Office of Inspector and Auditor,
- (vi) Chairman, Vice Chairman, Executive Secretary, and Members of the Atomic Safety and Licensing Board Panel,
- (vii) Chairman, Vice Chairman and Members of the Atomic Safety and Licensing Appeal Panel.

(2) With respect to the following officers or successor officers duly established by statute or by the Commission, the Chairman, after consultation with the Executive Director for Operations, shall initiate the appointment, subject to the approval of the Commission, and the Chairman, or a member of the Commission may initiate an action for removal, subject to the approval of the Commission:

- (i) Director of Nuclear Reactor Regulation,
- (ii) Director of Nuclear Material Safety and Safeguards,
- (iii) Director of Nuclear Regulatory Research,
- (iv) Director of Inspection and Enforcement,
- (v) Director of Standards Development.

(3) The Chairman or a member of the Commission shall initiate the appointment of the Members of the Advisory Committee on Reactor Safeguards, subject to the approval of the Commission. The provisions for appointment of the Chairman of the Advisory Committee on Reactor Safeguards and the term of the members shall not be affected by the provisions of this Reorganization Plan.

(4) The Commission shall delegate the function of appointing, removing and supervising the staff of the following offices or successor offices to the respective heads of such offices: General Counsel, Secretary of the Commission, Office of Policy Evaluation, Office of Inspector and Auditor. The Commission shall delegate the functions of appointing, removing and supervising the staff of the following panels and committee to the respective Chairmen thereof: Atomic Safety and Licensing Board Panel, Atomic Safety and Licensing Appeal Panel and Advisory Committee on Reactor Safeguards.

(c) Each member of the Commission shall continue to appoint, remove and supervise the personnel employed in his or her immediate office.

(d) The Commission shall act as provided by subsection 201(a)(1) of the Energy Reorganization Act of 1974, as amended (42 U.S.C. 5841(a)(1)) in the performance of its functions as described in subsections (a) and (b) of this section.

SEC. 2. (a) All other functions of the Commission, not specified by Section 1 of this Reorganization Plan, are hereby transferred to the Chairman. The Chairman shall be the official spokesman for the Commission, and shall appoint, supervise, and remove, without further action by the Commission, the Directors and staff of the Office of Public Affairs and the Office of Congressional Relations. The Chairman may consult with the Commission as he deems appropriate in exercising this appointment function.

(b) The Chairman shall also be the principal executive officer of the Commission, and shall be responsible to the Commission for developing policy planning and guidance for consideration by the Commission; shall be responsible to the Commission for assuring that the Executive Director for Operations and the staff of the Commission (other than the officers and staff referred to in sections (1)(b)(4), (1)(c) and (2)(a) of this Reorganization Plan) are responsive to the requirements of the Commission in the performance of its functions; shall determine the use and expenditure of funds of the Commission, in accordance with the distribution of appropriated funds according to major programs and purposes approved by the Commission; shall present to the Commission for its consideration the proposals and estimates set forth in subsection (3) of this paragraph; and shall be responsible for the following functions, which he shall delegate, subject to his direction and supervision, to the Executive Director for Operations unless otherwise provided by this Reorganization Plan:

- (1) administrative functions of the Commission;
- (2) distribution of business among such personnel and among administrative units and offices of the Commission;
- (3) preparation of
 - (i) proposals for the reorganization of the major offices within the Commission;
 - (ii) the budget estimate for the Commission; and
 - (iii) the proposed distribution of appropriated funds according to major programs and purposes.
- (4) appointing and removing without any further action by the Commission, all officers and employees under the Commission other than those whose appointment and removal are specifically provided for by subsections 1 (b), (c) and 2(a) of this Reorganization Plan.

(c) The Chairman as principal executive officer and the Executive Director for Operations shall be governed by the general policies of the Commission and by such regulatory decisions, findings, and determinations, including those for reorganization proposals, budget revisions and distribution of appropriated funds, as the Commission may by law, including this Plan, be authorized to make. The Chairman and the Executive Director for Operations, through the Chairman, shall be responsible for insuring that the Commission is fully and currently informed about matters within its functions.

SEC. 3. (a) Notwithstanding sections 1 and 2 of this Reorganization Plan, there are hereby transferred to the Chairman all the functions vested in the Commission pertaining to an emergency concerning a particular facility or materials licensed or regulated by the Commission, including the functions of declaring, responding, issuing orders, determining specific policies, advising the civil authorities and the public, directing, and coordinating actions relative to such emergency incident.

(b) The Chairman may delegate the authority to perform such emergency functions, in whole or in part, to any of the other members of the Commission. Such authority may also be delegated or redelegated, in whole or in part, to the staff of the Commission.

(c) In acting under this section, the Chairman, or other member of the Commission delegated authority under subsection (b), shall conform to the policy guidelines of the Commission. To the maximum extent possible under the emergency conditions, the Chairman or other member of the Commission delegated authority under subsection (b), shall inform the Commission of actions taken relative to the emergency.

(d) Following the conclusion of the emergency, the Chairman, or the member of the Commission delegated the emergency functions under subsection (b), shall render a complete and timely report to the Commission on the actions taken during the emergency.

SEC. 4. (a) The Chairman may make such delegations and provide for such reporting as the Chairman deems necessary, subject to provisions of law and this Reorganization Plan. Any officer or employee under the Commission may communicate directly to the Commission, or to any member of the Commission, whenever in the view of such officer or employee a critical problem or public health and safety or common defense and security is not being properly addressed.

(b) The Executive Director for Operations shall report for all matters to the Chairman.

(c) The function of the Directors of Nuclear Reactor Regulations, Nuclear Material Safety and Safeguards, and Nuclear Regulatory Research of reporting directly to the Commission is hereby transferred so that such officers report to the Executive Director for Operations. The function of receiving such reports is hereby transferred from the Commission to the Executive Director for Operations.

(d) The heads of the Commission level offices or successor offices, of General Counsel, Secretary to the Commission, Office of Policy Evaluation, Office of Inspector and Auditor, the Atomic Safety and Licensing Board Panel and Appeal Panel, and Advisory Committee on Reactor Safeguards shall continue to report directly to the Commission and the Commission shall continue to receive such reports.

SEC. 5. The provisions of this Reorganization Plan shall take effect October 1, 1980, or at such earlier time or times as the President shall specify, but no sooner than the earliest time allowable under Section 906 of Title 5 of the United States Code.

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

I am submitting herewith to the Congress Reorganization Plan No. 1 of 1980, under authority vested in me by the Reorganization Act of 1977 (Chapter 9 of Title 5 of the United States Code). The Plan is designed to strengthen management of the Nuclear Regulatory Commission in order to foster safety in all of the agency's activities.

The need for more effective management of the Nuclear Regulatory Commission has been amply demonstrated over the past year. The accident at Three Mile Island one year ago revealed serious shortcomings in the agency's ability to respond effectively during a crisis. The lessons learned from that accident go beyond crisis management, however. They provide the impetus for improving the effectiveness of all aspects of the government regulation of nuclear energy.

In my statement of December 7, 1979, I responded to the recommendations of my Commission on the Accident at Three Mile Island and set forth steps now being taken to address those recommendations. I stated that I would send to Congress a Reorganization Plan to strengthen the Nuclear Regulatory Commission's ability to regulate nuclear safety. I am submitting that Plan today.

The Plan clarifies the duties of the Chairman as principal executive officer. In addition to directing the day-to-day operations of the agency, the Chairman would take charge of the Commission's response to nuclear emergencies and, as principal executive officer, would be guided by Commission policy and subject to Commission oversight.

MANAGEMENT PROBLEMS

Intensive investigations undertaken since the Three Mile Island accident have revealed management problems at the Nuclear Regulatory Commission. These problems must be rectified if the Commission is to be a strong and effective safety regulator.

—My Commission, called the Kemeny Commission after its Chairman, Dr. John Kemeny, concluded

that the underlying problem at Three Mile Island stemmed not from deficient equipment but rather from compounded human failures. This included the inability of the Nuclear Regulatory Commission to pursue its safety mission effectively in view of its existing management policies and practices. The Kemeny Commission reported a lack of "closure" in the system to ensure that safety issues are raised, analyzed and resolved. Kemeny Commission members also concluded that the Nuclear Regulatory Commission relies too heavily on licensing, and pays insufficient attention to ensuring the safety of plants once they are in operation.

—During the course of its investigation, the Kemeny Commission found serious managerial problems at the top of the Nuclear Regulatory Commission. It noted that the Commissioners and the Chairman are unclear as to their respective roles. Uncertain, diffuse leadership of this kind leads to highly compartmentalized offices that operate with little or no effective guidance and little coordination.

—A recently completed independent study authorized and funded by the Nuclear Regulatory Commission itself also found serious fault with the Commission's management and called for a major organizational overhaul. The report states that there is no authoritative manager but, instead, five equally responsible Commissioners who deal individually with office directors who, in turn, head their own "independent fiefdoms."

—Likewise, a recent report of the General Accounting Office notes the failure of the Nuclear Regulatory Commission to define either the authority of the Chairman or that of the Executive Director for Operations. The staff lacks policy guidance and top management leadership to set priorities and resolve safety issues. There are unreasonable delays in developing policies to guide the licensing and enforcement activities of the agency.

The central theme in all three of these studies is the failure of the Nuclear Regulatory Commission to provide unified leadership and consistent direction of the agency's activities. The present statutes contain conflicting and ambiguous provisions for managing the agency. Important corrective actions cannot or will not be taken by the Commission until the laws are changed. Failure to do so constitutes a continuing nuclear safety hazard.

The present Reorganization Plan would improve the effectiveness of the Nuclear Regulatory Commission by giving the Chairman the powers he needs to ensure efficient and coherent management in a manner that preserves, in fact enhances, the commission form of organization.

COMMISSION

Under the proposed Plan, the Commission would continue to be responsible for policy formulation, rule-making and adjudication as functions which should have collegial deliberation. In addition, the Commission would review and approve proposals by the Chairman concerning key management actions such as personnel decisions affecting top positions which directly support Commission functions, the annual budget, and major staff reorganizations. In carrying out its role, the Commission would have the direct assistance of several Commission-level offices as well as the licensing board, the appeal panel, and the Advisory Committee on Reactor Safeguards. The Plan would not alter the present arrangement whereby the Commission, acting on majority vote, represents the ultimate authority of the Nuclear Regulatory Commission and sets the framework within which the Chairman is to operate.

CHAIRMAN

Under the Plan, the Chairman would act as the principal executive officer and spokesman for the Commission. To accomplish this, those functions of the Nuclear Regulatory Commission not retained by the Commis-

sion would be vested in the Chairman, who is currently coequal with the Commissioners in all decisions and actions. The Chairman would be authorized to make appointments, on his own authority, to all positions not specified for Commission approval and would be responsible to the Commission for assuring staff support by the operating offices in meeting the needs of the Commission. The Executive Director for Operations would report directly to and receive his authority from the Chairman. Heads of operating offices would also report to the Chairman or, by delegation, to the Executive Director for Operations. Office heads would also be authorized to communicate directly with members of the Commission whenever an office head believed critical safety issues were not being addressed.

EMERGENCY MANAGEMENT

The Nuclear Regulatory Commission's ability to respond decisively and responsibly to any nuclear emergency must be fully ensured in advance. Experience has shown that the Commission as a whole cannot deal expeditiously with emergencies or communicate in a clear, unified voice to civil authorities or to the public. But present law prevents the Commission from delegating its emergency authority to one of its members. The Plan would correct this situation by specifically authorizing the Chairman to act for the Commission in an emergency. In order to ensure flexibility, the Chairman would be permitted to delegate his authority to deal with a particular emergency to any other Commissioner. Plans for dealing with various contingencies would be approved by the Commission in advance. The Commission would also receive a report from the Chairman or his designee describing the management of the emergency once it was over.

ACTIONS NOT INCLUDED IN THIS PLAN

Not included in this Plan are two actions that I support in principle but that need not or cannot be accomplished by means of a Reorganization Plan. First the Commission, as part of its implementation of this reorganization, can and should establish an internal entity to help oversee the performance of the agency as it operates under the Chairman's direction. This action does not require a Reorganization Plan. Second, I have consistently favored funding assistance to intervenors in regulatory proceedings. This is particularly important in the case of nuclear safety regulation. I therefore encourage the Commission to include consideration of intervenor funding as part of its review and upgrading of the licensing process, as called for by the Kemeny Commission. I have also requested Congress to appropriate funds for this purpose. This activity cannot be authorized by a Reorganization Plan.

NO ADDED COSTS

This proposed realignment and clarification of responsibilities would not result in an increase or decrease of expenditures. But placing management responsibilities in the Chairman would result in greater attention to developing and implementing nuclear safety policies and to strict enforcement of the terms of licenses granted by the Commission.

Each of the provisions of this proposed reorganization would also accomplish one or more of the purposes set forth in 5 U.S.C. 901(a). No statutory functions would be abolished by the Plan; rather they would be consolidated or reassigned in order to improve management, delivery of services, execution of the law, and overall operational efficiency and effectiveness of the Commission.

By Executive Order No. 12202, dated March 18, 1980 [42 U.S.C. 5848 note], I established a Nuclear Safety Oversight Committee to advise me of progress being made by the Nuclear Regulatory Commission, the nuclear industry, and others in improving nuclear safety. I am confident that the present Reorganization Plan, together with the other steps that have been or are being taken by this Administration and by others, will great-

ly advance the goal of nuclear safety. It would permit the Commission and the American people to hold one individual—the Chairman—accountable for implementation of the Commission's policies through effective management of the Commission staff. Freed of management and administrative details, the Commission could then concentrate on the purpose for which that collegial body was created—to deliberate on the formulation of policy and rules to govern nuclear safety and to decide or oversee disposition of individual cases.

JIMMY CARTER.

THE WHITE HOUSE, March 27, 1980.

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

I herewith transmit the following amendments to Reorganization Plan No. 1 of 1980, which I sent to the Congress on March 27, 1980.

The amendments to Reorganization Plan No. 1 are consistent with my original intent of strengthening the management of the Nuclear Regulatory Commission in order to improve safety in all of the agency's activities, while preserving the advantages of the Commission form. The amendments reinforce the purpose of the Plan in two respects. First, the amended Plan gives the Commission a greater role in selection of key program officers of the agency by adding four positions to the list of appointments initiated by the Chairman for the Commission's advice and consent. These are the Executive Director for Operations, the Director of Inspection and Enforcement, the Director of Nuclear Regulatory Research, and the Director of Standards Development. Each of these positions contributes to nuclear safety regulation, and each performs functions that help determine the policy and performance of the agency.

The Advisory Committee on Reactor Safeguards advises the Commission as a whole. Since its members serve renewable 4-year terms, another amendment provides that a Commission member, as well as the Chairman, can initiate an appointment to the Advisory Committee on Reactor Safeguards for approval by the Commission.

As a means to ensure that the flow of information to the Commission will not be restricted, the Plan has been amended to make explicit that the Chairman, and the Executive Director of Operations through the Chairman, shall keep the Commission fully and currently informed.

The second general purpose of the amendments is to provide for more effective management of the agency by making more explicit the responsibilities of the Chairman and the Executive Director for Operations acting under his direction. As amended, the Plan charges the Chairman with planning for the development of policy for consideration and approval by the Commission. In the past, this responsibility has not been clearly fixed and has consequently been neglected. The amended Plan continues to make clear that the Executive Director for Operations reports to the Chairman. An amendment, however, requires the Chairman to delegate to the Executive Director for Operations the authority to appoint the staff and the day-to-day administration of the agency. Under this arrangement, the Chairman retains responsibility for the delegated functions but will be better able to handle his other leadership tasks.

In summary, the amendments I am transmitting to Reorganization Plan No. 1 of 1980, based on review and hearings conducted by the Congress and on continued consultations, will help establish a more accountable central management structure for the Nuclear Regulatory Commission as it pursues its statutory objective of ensuring safety in the use of nuclear power.

JIMMY CARTER.

THE WHITE HOUSE, May 5, 1980.

EXECUTIVE ORDER NO. 11902

Ex. Ord. No. 11902, Feb. 2, 1976, 41 F.R. 4877, as amended by Ex. Ord. No. 12038, Feb. 3, 1978, 43 F.R. 4957, which

set out procedures for the export licensing policy as to nuclear materials and equipment, was revoked by Ex. Ord. No. 12058, May 11, 1978, 43 F.R. 20947, set out as a note under section 3201 of Title 22, Foreign Relations and Intercourse.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5845 of this title.

§ 5842. Licensing and related regulatory functions respecting selected Administration facilities

Notwithstanding the exclusions provided for in section 110a. [42 U.S.C. 2140(a)] or any other provisions of the Atomic Energy Act of 1954, as amended [42 U.S.C. 2011 et seq.], the Nuclear Regulatory Commission shall, except as otherwise specifically provided by section 110b. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2140(b)), or other law, have licensing and related regulatory authority pursuant to chapters 6, 7, 8, and 10 of the Atomic Energy Act of 1954, as amended [42 U.S.C. 2071 et seq., 2091 et seq., 2111 et seq., 2131 et seq.], as to the following facilities of the Administration:

(1) Demonstration Liquid Metal Fast Breeder reactors when operated as part of the power generation facilities of an electric utility system, or when operated in any other manner for the purpose of demonstrating the suitability for commercial application of such a reactor.

(2) Other demonstration nuclear reactors—except those in existence on the effective date of this chapter—when operated as part of the power generation facilities of an electric utility system, or when operated in any other manner for the purpose of demonstrating the suitability for commercial application of such a reactor.

(3) Facilities used primarily for the receipt and storage of high-level radioactive wastes resulting from activities licensed under such Act.

(4) Retrievable Surface Storage Facilities and other facilities authorized for the express purpose of subsequent long-term storage of high-level radioactive waste generated by the Administration, which are not used for, or are part of, research and development activities.

(5) Any facility under a contract with and for the account of the Department of Energy that is utilized for the express purpose of fabricating mixed plutonium-uranium oxide nuclear reactor fuel for use in a commercial nuclear reactor licensed under such Act, other than any such facility that is utilized for research, development, demonstration, testing, or analysis purposes.

(Pub. L. 93-438, title II, §202, Oct. 11, 1974, 88 Stat. 1244; Pub. L. 105-261, div. C, title XXXI, §3134(a), Oct. 17, 1998, 112 Stat. 2247.)

REFERENCES IN TEXT

The Atomic Energy Act of 1954, as amended, referred to in text, is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§2011 et seq.) of this title. Chapters 6, 7, 8, and 10 of the Atomic Energy Act of 1954, as amended, are classified generally to subchapters V (§2071 et seq.), VI (§2091 et seq.), VII (§2111 et seq.), and IX (§2131 et seq.) of division A of chapter 23 of this title. For complete classification of

this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

The effective date of this chapter, referred to in par. (2), refers to the effective date of Pub. L. 93-438. See section 312 of Pub. L. 93-438, set out as an Effective Date; Interim Appointments note under section 5801 of this title.

AMENDMENTS

1998—Par. (5). Pub. L. 105-261 added par. (5).

TRANSFER OF FUNCTIONS

For transfer of certain functions from Nuclear Regulatory Commission to Chairman thereof, see Reorg. Plan No. 1 of 1980, 45 F.R. 40561, 94 Stat. 3585, set out as a note under section 5841 of this title.

AVAILABILITY OF FUNDS FOR LICENSING BY NRC

Pub. L. 105-261, div. C, title XXXI, §3134(b), Oct. 17, 1998, 112 Stat. 2247, provided that: "Section 210 of the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1981 (42 U.S.C. 7272 [now 50 U.S.C. 2513]) shall not apply to any licensing activities required pursuant to section 202(5) of the Energy Reorganization Act of 1974 (42 U.S.C. 5842), as added by subsection (a)."

APPLICABILITY OF OCCUPATIONAL SAFETY AND HEALTH REQUIREMENTS TO ACTIVITIES UNDER LICENSE

Pub. L. 105-261, div. C, title XXXI, §3134(c), Oct. 17, 1998, 112 Stat. 2247, provided that: "Any activities carried out under a license required pursuant to section 202(5) of the Energy Reorganization Act of 1974 (42 U.S.C. 5842), as added by subsection (a), shall be subject to regulation under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.)."

VERBAL COMMUNICATIONS BETWEEN COMMISSION HEADQUARTERS AND REGIONAL OFFICES AND LICENSED UTILIZATION FACILITIES

Pub. L. 96-295, title III, §305(a), June 30, 1980, 94 Stat. 790, provided that: "As expeditiously as practicable, the Nuclear Regulatory Commission shall establish a mechanism for instantaneous and uninterrupted verbal communication between each utilization facility licensed to operate under section 103 or section 104 b. of the Atomic Energy Act of 1954 [section 2133 or 2134(b) of this title] on the date of enactment of this Act [June 30, 1980], or thereafter, and

"(1) Commission headquarters, and

"(2) the appropriate Commission regional office."

STUDY OF EXTENSION OF LICENSING AND REGULATORY AUTHORITY OF COMMISSION; REPORT TO CONGRESS

Pub. L. 95-601, §12, Nov. 6, 1978, 92 Stat. 2953, directed Commission, in cooperation with Department of Energy, to conduct a study of extending the Commission's licensing or regulatory authority to include categories of existing and future Federal radioactive waste storage and disposal activities not presently subject to such authority, and on or before Mar. 1, 1979, to submit a report to Congress containing results of study, which report was to include a complete listing and inventory of all radioactive waste storage and disposal activities being conducted or planned by Federal agencies.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2210, 10107, 10161, 10168, 10197 of this title.

§ 5843. Office of Nuclear Reactor Regulation

(a) Establishment; appointment of Director

There is hereby established in the Commission an Office of Nuclear Reactor Regulation under the direction of a Director of Nuclear Reactor Regulation, who shall be appointed by the Com-

mission, who may report directly to the Commission, as provided in section 5849 of this title, and who shall serve at the pleasure of and be removable by the Commission.

(b) Functions of Director

Subject to the provisions of this chapter, the Director of Nuclear Reactor Regulation shall perform such functions as the Commission shall delegate including:

(1) Principal licensing and regulation involving all facilities, and materials licensed under the Atomic Energy Act of 1954, as amended [42 U.S.C. 2011 et seq.], associated with the construction and operation of nuclear reactors licensed under the Atomic Energy Act of 1954, as amended;

(2) Review the safety and safeguards of all such facilities, materials, and activities, and such review functions shall include, but not be limited to—

(A) monitoring, testing and recommending upgrading of systems designed to prevent substantial health or safety hazards; and

(B) evaluating methods of transporting special nuclear and other nuclear materials and of transporting and storing high-level radioactive wastes to prevent radiation hazards to employees and the general public.

(3) Recommend research necessary for the discharge of the functions of the Commission.

(c) Responsibility for safe operation of facilities

Nothing in this section shall be construed to limit in any way the functions of the Administration relating to the safe operation of all facilities resulting from all activities within the jurisdiction of the Administration pursuant to this chapter.

(Pub. L. 93-438, title II, §203, Oct. 11, 1974, 88 Stat. 1244.)

REFERENCES IN TEXT

The Atomic Energy Act of 1954, as amended, referred to in subsec. (b)(1), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

TRANSFER OF FUNCTIONS

For transfer of certain functions from Nuclear Regulatory Commission to Chairman thereof, see Reorg. Plan No. 1 of 1980, 45 F.R. 40561, 94 Stat. 3585, set out as a note under section 5841 of this title.

§ 5844. Office of Nuclear Safety and Safeguards

(a) Establishment; appointment of Director

There is hereby established in the Commission an Office of Nuclear Material Safety and Safeguards under the direction of a Director of Nuclear Material Safety and Safeguards, who shall be appointed by the Commission, who may report directly to the Commission as provided in section 5849 of this title, and who shall serve at the pleasure of and be removable by the Commission.

(b) Functions of Director

Subject to the provisions of this chapter, the Director of Nuclear Material Safety and Safe-

guards shall perform such functions as the Commission shall delegate including:

(1) Principal licensing and regulation involving all facilities and materials, licensed under the Atomic Energy Act of 1954, as amended [42 U.S.C. 2011 et seq.], associated with the processing, transport, and handling of nuclear materials, including the provision and maintenance of safeguards against threats, thefts, and sabotage of such licensed facilities, and materials.

(2) Review safety and safeguards of all such facilities and materials licensed under the Atomic Energy Act of 1954, as amended, and such review shall include, but not be limited to—

(A) monitoring, testing, and recommending upgrading of internal accounting systems for special nuclear and other nuclear materials licensed under the Atomic Energy Act of 1954, as amended;

(B) developing, in consultation and coordination with the Administration, contingency plans for dealing with threats, thefts, and sabotage relating to special nuclear materials, high-level radioactive wastes and nuclear facilities resulting from all activities licensed under the Atomic Energy Act of 1954, as amended;

(C) assessing the need for, and the feasibility of, establishing a security agency within the office for the performance of the safeguards functions, and a report with recommendations on this matter shall be prepared within one year of the effective date of this chapter and promptly transmitted to the Congress by the Commission.

(3) Recommending research to enable the Commission to more effectively perform its functions.

(c) Responsibility for safeguarding special nuclear materials; high-level radioactive wastes and nuclear facilities

Nothing in this section shall be construed to limit in any way the functions of the Administration relating to the safeguarding of special nuclear materials, high-level radioactive wastes and nuclear facilities resulting from all activities within the jurisdiction of the Administration pursuant to this chapter.

(Pub. L. 93-438, title II, §204, Oct. 11, 1974, 88 Stat. 1245.)

REFERENCES IN TEXT

The Atomic Energy Act of 1954, as amended, referred to in subsec. (b)(1), (2), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

The effective date of this chapter, referred to in subsec. (b)(2)(C), refers to the effective date of Pub. L. 93-438. See section 312 of Pub. L. 93-438, set out as an Effective Date; Interim Provisions note under section 5801 of this title.

TRANSFER OF FUNCTIONS

For transfer of certain functions from Nuclear Regulatory Commission to Chairman thereof, see Reorg. Plan No. 1 of 1980, 45 F.R. 40561, 94 Stat. 3585, set out as a note under section 5841 of this title.

§ 5845. Office of Nuclear Regulatory Research

(a) Establishment; appointment of Director

There is hereby established in the Commission an Office of Nuclear Regulatory Research under the direction of a Director of Nuclear Regulatory Research, who shall be appointed by the Commission, who may report directly to the Commission as provided in section 5849 of this title, and who shall serve at the pleasure of and be removable by the Commission.

(b) Functions of Director

Subject to the provisions of this chapter, the Director of Nuclear Regulatory Research shall perform such functions as the Commission shall delegate including:

(1) Developing recommendations for research deemed necessary for performance by the Commission of its licensing and related regulatory functions.

(2) Engaging in or contracting for research which the Commission deems necessary for the performance of its licensing and related regulatory functions.

(c) Cooperation of Federal agencies

The Administrator of the Administration and the head of every other Federal agency shall—

(1) cooperate with respect to the establishment of priorities for the furnishing of such research services as requested by the Commission for the conduct of its functions;

(2) furnish to the Commission, on a reimbursable basis, through their own facilities or by contract or other arrangement, such research services as the Commission deems necessary and requests for the performance of its functions; and

(3) consult and cooperate with the Commission on research and development matters of mutual interest and provide such information and physical access to its facilities as will assist the Commission in acquiring the expertise necessary to perform its licensing and related regulatory functions.

(d) Responsibility for safety of activities

Nothing in subsections (a) and (b) of this section or section 5841 of this title shall be construed to limit in any way the functions of the Administration relating to the safety of activities within the jurisdiction of the Administration.

(e) Information and research services

Each Federal agency, subject to the provisions of existing law, shall cooperate with the Commission and provide such information and research services, on a reimbursable basis, as it may have or be reasonably able to acquire.

(f) Improved safety systems research

The Commission shall develop a long-term plan for projects for the development of new or improved safety systems for nuclear powerplants.

(Pub. L. 93-438, title II, §205, Oct. 11, 1974, 88 Stat. 1246; Pub. L. 95-209, §4(a), Dec. 13, 1977, 91 Stat. 1482.)

AMENDMENTS

1977—Subsec. (f). Pub. L. 95-209 added subsec. (f).

TRANSFER OF FUNCTIONS

For transfer of certain functions from Nuclear Regulatory Commission to Chairman thereof, see Reorg. Plan No. 1 of 1980, 45 F.R. 40561, 94 Stat. 3585, set out as a note under section 5841 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5841 of this title.

§ 5846. Compliance with safety regulations

(a) Notification to Commission of noncompliance

Any individual director, or responsible officer of a firm constructing, owning, operating, or supplying the components of any facility or activity which is licensed or otherwise regulated pursuant to the Atomic Energy Act of 1954 as amended [42 U.S.C. 2011 et seq.], or pursuant to this chapter, who obtains information reasonably indicating that such facility or activity or basic components supplied to such facility or activity—

(1) fails to comply with the Atomic Energy Act of 1954, as amended, or any applicable rule, regulation, order, or license of the Commission relating to substantial safety hazards, or

(2) contains a defect which could create a substantial safety hazard, as defined by regulations which the Commission shall promulgate,

shall immediately notify the Commission of such failure to comply, or of such defect, unless such person has actual knowledge that the Commission has been adequately informed of such defect or failure to comply.

(b) Penalty for failure to notify

Any person who knowingly and consciously fails to provide the notice required by subsection (a) of this section shall be subject to a civil penalty in an amount equal to the amount provided by section 234 of the Atomic Energy Act of 1954, as amended [42 U.S.C. 2282].

(c) Posting of requirements

The requirements of this section shall be prominently posted on the premises of any facility licensed or otherwise regulated pursuant to the Atomic Energy Act of 1954, as amended [42 U.S.C. 2011 et seq.].

(d) Inspection and enforcement

The Commission is authorized to conduct such reasonable inspections and other enforcement activities as needed to insure compliance with the provisions of this section.

(Pub. L. 93-438, title II, §206, Oct. 11, 1974, 88 Stat. 1246.)

REFERENCES IN TEXT

The Atomic Energy Act of 1954, as amended, referred to in subsecs. (a) and (c), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

TRANSFER OF FUNCTIONS

For transfer of certain functions from Nuclear Regulatory Commission to Chairman thereof, see Reorg. Plan No. 1 of 1980, 45 F.R. 40561, 94 Stat. 3585, set out as a note under section 5841 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2297h-13 of this title.

§ 5847. Nuclear energy center site survey

(a)(1)¹ The Commission is authorized and directed to make or cause to be made under its direction, a national survey, which shall include consideration of each of the existing or future electric reliability regions, or other appropriate regional areas, to locate and identify possible nuclear energy center sites. This survey shall be conducted in cooperation with other interested Federal, State, and local agencies, and the views of interested persons, including electric utilities, citizens' groups, and others, shall be solicited and considered.

(2) For purposes of this section, the term "nuclear energy center site" means any site, including a site not restricted to land, large enough to support utility operations or other elements of the total nuclear fuel cycle, or both including, if appropriate, nuclear fuel reprocessing facilities, nuclear fuel fabrication plants, retrievable nuclear waste storage facilities, and uranium² enrichment facilities.

(3) The survey shall include—

(a) a regional evaluation of natural resources, including land, air, and water resources, available for use in connection with nuclear energy center sites; estimates of future electric power requirements that can be served by each nuclear energy center site; an assessment of the economic impact of each nuclear energy site; and consideration of any other relevant factors, including but not limited to population distribution, proximity to electric load centers and to other elements of the fuel cycle, transmission line rights-of-way, and the availability of other fuel resources;

(b) an evaluation of the environmental impact likely to result from construction and operation of such nuclear energy centers, including an evaluation whether such nuclear energy centers will result in greater or lesser environmental impact than separate siting of the reactors and/or fuel cycle facilities; and

(c) consideration of the use of federally owned property and other property designated for public use, but excluding national parks, national forests, national wilderness areas, and national historic monuments.

(4) A report of the results of the survey shall be published and transmitted to the Congress and the Council on Environmental Quality not later than one year from October 11, 1974, and shall be made available to the public, and shall be updated from time to time thereafter as the Commission, in its discretion, deems advisable. The report shall include the Commission's evaluation of the results of the survey and any conclusions and recommendations, including recommendations for legislation, which the Commission may have concerning the feasibility and practicality of locating nuclear power reactors and/or other elements of the nuclear fuel cycle on nuclear energy center sites. The Commission

¹ So in original. No subsec. (b) has been enacted.

² So in original. Probably should be "uranium".

is authorized to adopt policies which will encourage the location of nuclear power reactors and related fuel cycle facilities on nuclear energy center sites insofar as practicable.

(Pub. L. 93-438, title II, §207, Oct. 11, 1974, 88 Stat. 1247.)

TRANSFER OF FUNCTIONS

For transfer of certain functions from Nuclear Regulatory Commission to Chairman thereof, see Reorg. Plan No. 1 of 1980, 45 F.R. 40561, 94 Stat. 3585, set out as a note under section 5841 of this title.

§ 5848. Abnormal occurrence reports

The Commission shall submit to the Congress an annual report listing for the previous fiscal year any abnormal occurrences at or associated with any facility which is licensed or otherwise regulated pursuant to the Atomic Energy Act of 1954 as amended [42 U.S.C. 2011 et seq.], or pursuant to this chapter. For the purposes of this section an abnormal occurrence is an unscheduled incident or event which the Commission determines is significant from the standpoint of public health or safety. Nothing in the preceding sentence shall limit the authority of a court to review the determination of the Commission. Each such report shall contain—

(1) the date and place of each occurrence;

(2) the nature and probable consequence of each occurrence;

(3) the cause or causes of each; and

(4) any action taken to prevent reoccurrence;

the Commission shall also provide as wide dissemination to the public of the information specified in clauses (1) and (2) of this section as reasonably possible within fifteen days of its receiving information of each abnormal occurrence and shall provide as wide dissemination to the public as reasonably possible of the information specified in clauses (3) and (4) as soon as such information becomes available to it.

(Pub. L. 93-438, title II, §208, Oct. 11, 1974, 88 Stat. 1248; Pub. L. 104-66, title II, §2171, Dec. 21, 1995, 109 Stat. 731.)

REFERENCES IN TEXT

The Atomic Energy Act of 1954, as amended, referred to in text, is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

AMENDMENTS

1995—Pub. L. 104-66 substituted "an annual report listing for the previous fiscal year" for "each quarter a report listing for that period" in first sentence.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103-7 (in which the 9th item on page 186 identifies a reporting provision which, as subsequently amended, is contained in this section), see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

TRANSFER OF FUNCTIONS

For transfer of certain functions from Nuclear Regulatory Commission to Chairman thereof, see Reorg.

Plan No. 1 of 1980, 45 F.R. 40561, 94 Stat. 3585, set out as a note under section 5841 of this title.

PRESIDENT'S COMMISSION ON THE ACCIDENT AT THREE MILE ISLAND; SUBPENA POWER

Pub. L. 96-12, May 23, 1979, 93 Stat. 26, which authorized the President's Commission on the Accident at Three Mile Island, as established by Ex. Ord. No. 12130, Apr. 11, 1979, 44 F.R. 22027, formerly set out below, to issue subpoenas requiring the attendance and testimony of witnesses and the produce of any evidence from the Nuclear Regulatory Commission or any person which related to the accident at Three Mile Island, and to issue orders for the inspection of the Three Mile Island nuclear power plant, with refusal to obey a subpoena or inspection order punishable by contempt of court.

EXECUTIVE ORDER NO. 12130

Ex. Ord. No. 12130, Apr. 11, 1979, 44 F.R. 22027, which established the President's Commission on the Accident at Three Mile Island and provided for its functions, administration, final report, and termination, was revoked by section 1-103(h) of Ex. Ord. No. 12258, Dec. 31, 1980, 46 F.R. 1252, set out as a note under section 14 of the Appendix to Title 5, Government Organization and Employees.

EXECUTIVE ORDER NO. 12202

Ex. Ord. No. 12202, Mar. 18, 1980, 45 F.R. 17939, as amended by Ex. Ord. No. 12240, Sept. 26, 1980, 45 F.R. 64545, which established the Nuclear Safety Oversight Committee and provided for its membership, functions, etc., was revoked by Ex. Ord. No. 12379, §22, Aug. 17, 1982, 47 F.R. 36100 and Ex. Ord. No. 12399, §4(c), Dec. 31, 1982, 48 F.R. 380, set out as notes under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

§ 5849. Other officers

(a) Executive Director

The Commission shall appoint an Executive Director for Operations, who shall serve at the pleasure of and be removable by the Commission.

(b) Functions of Executive Director

The Executive Director shall perform such functions as the Commission may direct, except that the Executive Director shall not limit the authority of the director of any component organization provided in this chapter to communicate with or report directly to the Commission when such director of a component organization deems it necessary to carry out his responsibilities. Notwithstanding the preceding sentence, each such director shall keep the Executive Director fully and currently informed concerning the content of all such direct communications with the Commission.

(c) Equal employment opportunity report

The Executive Director shall report to the Commission at semi-annual public meetings on the problems, progress, and status of the Commission's equal employment opportunity efforts.

(d) Annual status report

The Executive Director shall prepare and forward to the Commission an annual report (for the fiscal year 1978 and each succeeding fiscal year) on the status of the Commission's programs concerning domestic safeguards matters including an assessment of the effectiveness and adequacy of safeguards at facilities and activities licensed by the Commission. The Commis-

sion shall forward to the Congress a report under this section prior to February 1, 1979, as a separate document, and prior to February 1 of each succeeding year as a separate chapter of the Commission's annual report (required under section 5877(c) of this title) following the fiscal year to which such report applies.

(e) Additional officers

There shall be in the Commission not more than five additional officers appointed by the Commission. The positions of such officers shall be considered career positions and be subject to section 2201(d) of this title.

(Pub. L. 93-438, title II, §209, Oct. 11, 1974, 88 Stat. 1248; Pub. L. 95-601, §§4, 6, Nov. 6, 1978, 92 Stat. 2949.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-601, §4(a), inserted provision requiring component organization directors to keep the Executive Director informed as to communications with the Commission.

Subsec. (c). Pub. L. 95-601, §4(b), added subsec. (c). Former subsec. (c) redesignated (e).

Subsec. (d). Pub. L. 95-601, §6, added subsec. (d).

Subsec. (e). Pub. L. 95-601, §4(b), redesignated former subsec. (c) as (e).

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (d) of this section relating to forwarding of annual report to Congress, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 10th item on page 186 of House Document No. 103-7.

TRANSFER OF FUNCTIONS

For transfer of certain functions from Nuclear Regulatory Commission to Chairman thereof, see Reorg. Plan No. 1 of 1980, 45 F.R. 40561, 94 Stat. 3585, set out as a note under section 5841 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5843, 5844, 5845, of this title.

§ 5850. Unresolved safety issues plan

The Commission shall develop a plan providing for the specification and analysis of unresolved safety issues relating to nuclear reactors and shall take such action as may be necessary to implement corrective measures with respect to such issues. Such plan shall be submitted to the Congress on or before January 1, 1978 and progress reports shall be included in the annual report of the Commission thereafter.

(Pub. L. 93-438, title II, §210, as added Pub. L. 95-209, §3, Dec. 13, 1977, 91 Stat. 1482.)

PRIOR PROVISIONS

Another section 210 of Pub. L. 93-438 was renumbered section 211 and is classified to section 5851 of this title.

TRANSFER OF FUNCTIONS

For transfer of certain functions from Nuclear Regulatory Commission to Chairman thereof, see Reorg. Plan No. 1 of 1980, 45 F.R. 40561, 94 Stat. 3585, set out as a note under section 5841 of this title.

§ 5851. Employee protection

(a) Discrimination against employee

(1) No employer may discharge any employee or otherwise discriminate against any employee

with respect to his compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee)—

(A) notified his employer of an alleged violation of this chapter or the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.);

(B) refused to engage in any practice made unlawful by this chapter or the Atomic Energy Act of 1954, if the employee has identified the alleged illegality to the employer;

(C) testified before Congress or at any Federal or State proceeding regarding any provision (or proposed provision) of this chapter or the Atomic Energy Act of 1954;

(D) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this chapter or the Atomic Energy Act of 1954, as amended, or a proceeding for the administration or enforcement of any requirement imposed under this chapter or the Atomic Energy Act of 1954, as amended;

(E) testified or is about to testify in any such proceeding or;

(F) assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other manner in such a proceeding or in any other action to carry out the purposes of this chapter or the Atomic Energy Act of 1954, as amended.

(2) For purposes of this section, the term “employer” includes—

(A) a licensee of the Commission or of an agreement State under section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021);

(B) an applicant for a license from the Commission or such an agreement State;

(C) a contractor or subcontractor of such a licensee or applicant; and

(D) a contractor or subcontractor of the Department of Energy that is indemnified by the Department under section 170 d. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(d)), but such term shall not include any contractor or subcontractor covered by Executive Order No. 12344.

(b) Complaint, filing and notification

(1) Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of subsection (a) of this section may, within 180 days after such violation occurs, file (or have any person file on his behalf) a complaint with the Secretary of Labor (in this section referred to as the “Secretary”) alleging such discharge or discrimination. Upon receipt of such a complaint, the Secretary shall notify the person named in the complaint of the filing of the complaint, the Commission, and the Department of Energy.

(2)(A) Upon receipt of a complaint filed under paragraph (1), the Secretary shall conduct an investigation of the violation alleged in the complaint. Within thirty days of the receipt of such complaint, the Secretary shall complete such investigation and shall notify in writing the complainant (and any person acting in his behalf) and the person alleged to have committed such violation of the results of the investigation conducted pursuant to this subparagraph. Within

ninety days of the receipt of such complaint the Secretary shall, unless the proceeding on the complaint is terminated by the Secretary on the basis of a settlement entered into by the Secretary and the person alleged to have committed such violation, issue an order either providing the relief prescribed by subparagraph (B) or denying the complaint. An order of the Secretary shall be made on the record after notice and opportunity for public hearing. Upon the conclusion of such hearing and the issuance of a recommended decision that the complaint has merit, the Secretary shall issue a preliminary order providing the relief prescribed in subparagraph (B), but may not order compensatory damages pending a final order. The Secretary may not enter into a settlement terminating a proceeding on a complaint without the participation and consent of the complainant.

(B) If, in response to a complaint filed under paragraph (1), the Secretary determines that a violation of subsection (a) of this section has occurred, the Secretary shall order the person who committed such violation to (i) take affirmative action to abate the violation, and (ii) reinstate the complainant to his former position together with the compensation (including back pay), terms, conditions, and privileges of his employment, and the Secretary may order such person to provide compensatory damages to the complainant. If an order is issued under this paragraph, the Secretary, at the request of the complainant shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorneys’ and expert witness fees) reasonably incurred, as determined by the Secretary, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

(3)(A) The Secretary shall dismiss a complaint filed under paragraph (1), and shall not conduct the investigation required under paragraph (2), unless the complainant has made a prima facie showing that any behavior described in subparagraphs (A) through (F) of subsection (a)(1) of this section was a contributing factor in the unfavorable personnel action alleged in the complaint.

(B) Notwithstanding a finding by the Secretary that the complainant has made the showing required by subparagraph (A), no investigation required under paragraph (2) shall be conducted if the employer demonstrates, by clear and convincing evidence, that it would have taken the same unfavorable personnel action in the absence of such behavior.

(C) The Secretary may determine that a violation of subsection (a) of this section has occurred only if the complainant has demonstrated that any behavior described in subparagraphs (A) through (F) of subsection (a)(1) of this section was a contributing factor in the unfavorable personnel action alleged in the complaint.

(D) Relief may not be ordered under paragraph (2) if the employer demonstrates by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of such behavior.

(c) Review

(1) Any person adversely affected or aggrieved by an order issued under subsection (b) of this section may obtain review of the order in the United States court of appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred. The petition for review must be filed within sixty days from the issuance of the Secretary's order. Review shall conform to chapter 7 of title 5. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the Secretary's order.

(2) An order of the Secretary with respect to which review could have been obtained under paragraph (1) shall not be subject to judicial review in any criminal or other civil proceeding.

(d) Jurisdiction

Whenever a person has failed to comply with an order issued under subsection (b)(2) of this section, the Secretary may file a civil action in the United States district court for the district in which the violation was found to occur to enforce such order. In actions brought under this subsection, the district courts shall have jurisdiction to grant all appropriate relief including, but not limited to, injunctive relief, compensatory, and exemplary damages.

(e) Commencement of action

(1) Any person on whose behalf an order was issued under paragraph (2) of subsection (b) of this section may commence a civil action against the person to whom such order was issued to require compliance with such order. The appropriate United States district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such order.

(2) The court, in issuing any final order under this subsection, may award costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the court determines such award is appropriate.

(f) Enforcement

Any nondiscretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28.

(g) Deliberate violations

Subsection (a) of this section shall not apply with respect to any employee who, acting without direction from his or her employer (or the employer's agent), deliberately causes a violation of any requirement of this chapter or of the Atomic Energy Act of 1954, as amended [42 U.S.C. 2011 et seq.].

(h) Nonpreemption

This section may not be construed to expand, diminish, or otherwise affect any right otherwise available to an employee under Federal or State law to redress the employee's discharge or other discriminatory action taken by the employer against the employee.

(i) Posting requirement

The provisions of this section shall be prominently posted in any place of employment to which this section applies.

(j) Investigation of allegations

(1) The Commission or the Department of Energy shall not delay taking appropriate action with respect to an allegation of a substantial safety hazard on the basis of—

(A) the filing of a complaint under subsection (b)(1) of this section arising from such allegation; or

(B) any investigation by the Secretary, or other action, under this section in response to such complaint.

(2) A determination by the Secretary under this section that a violation of subsection (a) of this section has not occurred shall not be considered by the Commission or the Department of Energy in its determination of whether a substantial safety hazard exists.

(Pub. L. 93-438, title II, §211, formerly §210, as added Pub. L. 95-601, §10, Nov. 6, 1978, 92 Stat. 2951; renumbered §211 and amended Pub. L. 102-486, title XXIX, §2902(a)-(g), (h)(2), (3), Oct. 24, 1992, 106 Stat. 3123, 3124.)

REFERENCES IN TEXT

The Atomic Energy Act of 1954, referred to in subsecs. (a)(1) and (g), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§2011 et seq.) of Title 42, The Public Health and Welfare. For complete classification on this Act to the Code, see Short Title note set out under section 2011 of Title 42 and Tables.

Executive Order No. 12344, referred to in subsec. (a)(2)(D), is Ex. Ord. No. 12344, Feb. 1, 1982, 47 F.R. 4979, which is set out as a note under section 2511 of Title 50, War and National Defense.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102-486, §2902(a), designated existing provisions as par. (1) and struck out “, including a Commission licensee, an applicant for a Commission license, or a contractor or a subcontractor of a Commission licensee or applicant,” after “No employer”, added subpars. (A) to (C), redesignated former pars. (1) to (3) as subpars. (D) to (F), respectively, and added par. (2).

Subsec. (b)(1). Pub. L. 102-486, §2902(b), (h)(2), substituted “180” for “thirty”, “(in this section referred to as the ‘Secretary’)” for “(hereinafter in this subsection referred to as the ‘Secretary’)”, and “, the Commission, and the Department of Energy” for “and the Commission”.

Subsec. (b)(2)(A). Pub. L. 102-486, §2902(c), inserted before last sentence “Upon the conclusion of such hearing and the issuance of a recommended decision that the complaint has merit, the Secretary shall issue a preliminary order providing the relief prescribed in subparagraph (B), but may not order compensatory damages pending a final order.”

Subsec. (b)(3). Pub. L. 102-486, §2902(d), added par. (3).

Subsecs. (h) to (j). Pub. L. 102-486, §2902(e)-(g), added subsecs. (h) to (j).

EFFECTIVE DATE OF 1992 AMENDMENT

Section 2902(i) of Pub. L. 102-486 provided that: “The amendments made by this section [amending this section] shall apply to claims filed under section 211(b)(1) of the Energy Reorganization Act of 1974 (42 U.S.C. 5851(b)(1)) on or after the date of the enactment of this Act [Oct. 24, 1992].”

TRANSFER OF FUNCTIONS

For transfer of certain functions from Nuclear Regulatory Commission to Chairman thereof, see Reorg. Plan No. 1 of 1980, 45 F.R. 40561, 94 Stat. 3585, set out as a note under section 5841 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2297h-13 of this title.

§ 5852. Availability of funds**(a) Appropriations for salaries and expenses; additional purposes**

Funds appropriated for “Nuclear Regulatory Commission—Salaries and Expenses” shall be available to the Commission for the following additional purposes:

- (1) Employment of aliens.
- (2) Services authorized by section 3109 of title 5.
- (3) Publication and dissemination of atomic information.
- (4) Purchase, repair, and cleaning of uniforms.
- (5) Reimbursements to the General Services Administration for security guard services.
- (6) Hire of passenger motor vehicles and aircraft.
- (7) Transfers of funds to other agencies of the Federal Government for the performance of the work for which such funds are appropriated, and such transferred funds may be merged with the appropriations to which they are transferred.
- (8) Transfers to the Office of Inspector General of the Commission, not to exceed an additional amount equal to 5 percent of the amount otherwise appropriated to the Office for the fiscal year. Notice of such transfers shall be submitted to the Committees on Appropriations.

(b) Appropriations for Office of Inspector General; additional purposes

Funds appropriated for “Nuclear Regulatory Commission—Office of Inspector General” shall be available to the Office for the additional purposes described in paragraphs (2) and (7) of subsection (a) of this section.

(c) Use of program funds for salaries and expenses

Moneys received by the Commission for the cooperative nuclear research program, services rendered to State governments, foreign governments, and international organizations, and the material and information access authorization programs, including criminal history checks under section 2169 of this title¹ may be retained and used for salaries and expenses associated with those activities, notwithstanding section 3302 of title 31, and shall remain available until expended.

(d) Use of funds to provide voluntary separation incentive payments

Notwithstanding section 663(c)(2)(D) of Public Law 104-208, and to facilitate targeted workforce downsizing and restructuring, the Chairman of the Nuclear Regulatory Commission may use funds appropriated in this Act to exercise the authority provided by section 663 of that Act with respect to employees who voluntarily separate from October 7, 1998, through December 31, 2000. All of the requirements in section 663 of

Public Law 104-208, except for section 663(c)(2)(D), apply to the exercise of authority under this section.

(e) Fiscal year applicability

Subsections (a), (b), and (c) of this section shall apply to fiscal year 1999 and each succeeding fiscal year.

(Pub. L. 105-245, title V, §506, Oct. 7, 1998, 112 Stat. 1856.)

REFERENCES IN TEXT

Section 663 of Public Law 104-208, referred to in subsec. (d), is section 663 of Pub. L. 104-208, div. A, title I, §101(f) [title VI], Sept. 30, 1996, 110 Stat. 3009-314, 3009-383, which is set out as a note under section 5597 of Title 5, Government Organization and Employees.

This Act, referred to in subsec. (d), is Pub. L. 105-245, Oct. 7, 1998, 112 Stat. 1838, known as the Energy and Water Development Appropriations Act, 1999. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was enacted as part of the Energy and Water Development Appropriations Act, 1999, and not as part of the Energy Reorganization Act of 1974 which comprises this chapter.

SIMILAR PROVISIONS

Similar provisions were contained in the following prior appropriation acts:

- Pub. L. 105-62, title IV, Oct. 13, 1997, 111 Stat. 1336.
- Pub. L. 104-206, title IV, Sept. 30, 1996, 110 Stat. 3000.
- Pub. L. 104-46, title IV, Nov. 13, 1995, 109 Stat. 417.
- Pub. L. 103-316, title IV, Aug. 26, 1994, 108 Stat. 1721.
- Pub. L. 103-126, title IV, Oct. 28, 1993, 107 Stat. 1332.
- Pub. L. 102-377, title IV, Oct. 2, 1992, 106 Stat. 1340.
- Pub. L. 102-104, title IV, Aug. 17, 1991, 105 Stat. 534.
- Pub. L. 101-514, title IV, Nov. 5, 1990, 104 Stat. 2096.
- Pub. L. 101-101, title IV, Sept. 29, 1989, 103 Stat. 664.
- Pub. L. 100-371, title IV, July 19, 1988, 102 Stat. 872.
- Pub. L. 100-202, §101(d) [title IV], Dec. 22, 1987, 101 Stat. 1329-104, 1329-128.
- Pub. L. 99-500, §101(e) [title IV], Oct. 18, 1986, 100 Stat. 1783-194, 1783-211, and Pub. L. 99-591, §101(e) [title IV], Oct. 30, 1986, 100 Stat. 3341-194, 3341-211.
- Pub. L. 99-141, title IV, Nov. 1, 1985, 99 Stat. 577.
- Pub. L. 98-360, title IV, July 16, 1984, 98 Stat. 419.
- Pub. L. 98-50, title IV, July 14, 1983, 97 Stat. 260.
- Pub. L. 97-88, title IV, Dec. 4, 1981, 95 Stat. 1147.
- Pub. L. 96-367, title IV, Oct. 1, 1980, 94 Stat. 1344.
- Pub. L. 96-69, title IV, Sept. 25, 1979, 93 Stat. 449.

SUBCHAPTER III—MISCELLANEOUS AND TRANSITIONAL PROVISIONS

§ 5871. Transitional provisions**(a) Lapse of agency or other body from which functions or programs have been transferred and positions or offices therein**

Except as otherwise provided in this chapter, whenever all of the functions or programs of an agency, or other body, or any component thereof, affected by this chapter, have been transferred from that agency, or other body, or any component thereof by this chapter, the agency, or other body, or component thereof shall lapse. If an agency, or other body, or any component thereof, lapses pursuant to the preceding sentence, each position and office therein which was expressly authorized by law, or the incumbent of which was authorized to receive compensation at the rate prescribed for an office or position at level II, III, IV, or V of the Executive Schedule (5 U.S.C. 5313-5316), shall lapse.

¹ So in original. Probably should be followed by a comma.

(b) Continuation of orders, determinations, rules, etc.

All orders, determinations, rules, regulations, permits, contracts, certificates, licenses, and privileges—

(1) which have been issued, made, granted, or allowed to become effective by the President, any Federal department or agency or official thereof, or by a court of competent jurisdiction, in the performance of functions which are transferred under this chapter, and

(2) which are in effect at the time this chapter takes effect,

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked by the President, the Administrator, the Commission, or other authorized officials, a court of competent jurisdiction, or by operation of law.

(c) Effect of chapter on proceedings pending before Atomic Energy Commission or other department or agency

The provisions of this chapter shall not affect any proceeding pending, at the time this section takes effect, before the Atomic Energy Commission or any department or agency (or component thereof) functions of which are transferred by this chapter; but such proceedings, to the extent that they relate to functions so transferred, shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this chapter had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued if this chapter had not been enacted.

(d) Effect of chapter on suits commenced prior to effective date

Except as provided in subsection (f) of this section—

(1) the provisions of this chapter shall not affect suits commenced prior to the date this chapter takes effect, and

(2) in all such suits proceedings shall be had, appeals taken, and judgments rendered, in the same manner and effect as if this chapter had not been enacted.

(e) Abatement of suits, actions, or other proceedings by or against officer, department, or agency

No suit, action, or other proceeding commenced by or against any officer in his official capacity as an officer of any department or agency, functions of which are transferred by this chapter, shall abate by reason of the enactment of this chapter. No cause of action by or against any department or agency, functions of which are transferred by this chapter, or by or against any officer thereof in his official capacity shall abate by reason of the enactment of

this chapter. Causes of actions, suits, actions, or other proceedings may be asserted by or against the United States or such official as may be appropriate and, in any litigation pending when this section takes effect, the court may at any time, on its own motion or that of any party, enter any order which will give effect to the provisions of this section.

(f) Continuation of suits; substitution of parties

If, before the date on which this chapter takes effect, any department or agency, or officer thereof in his official capacity, is a party to a suit, and under this chapter any function of such department, agency, or officer is transferred to the Administrator or Commission, or any other official, then such suit shall be continued as if this chapter had not been enacted, with the Administrator or Commission, or other official, as the case may be, substituted.

(g) Judicial review of orders and actions in performance of transferred functions; statutory requirements relating to notices, hearings, action upon record, or administrative review

Final orders and actions of any official or component in the performance of functions transferred by this chapter shall be subject to judicial review to the same extent and in the same manner as if such orders or actions had been made or taken by the officer, department, agency, or instrumentality in the performance of such functions immediately preceding the effective date of this chapter. Any statutory requirements relating to notices, hearings, action upon the record, or administrative review that apply to any function transferred by this chapter shall apply to the performance of those functions by the Administrator or Commission, or any officer or component.

(h) References in other laws to department, agency, officer, or office whose functions have been transferred deemed reference to Administration, Administrator, or Commission

With respect to any functions transferred by this chapter and performed after the effective date of this chapter, reference in any other law to any department or agency, or any officer or office, the functions of which are so transferred, shall be deemed to refer to the Administration, the Administrator or Commission, or other office or official in which this chapter vests such functions.

(i) Limitation, curtailment, etc., of presidential functions or authority

Nothing contained in this chapter shall be construed to limit, curtail, abolish, or terminate any function of the President which he had immediately before the effective date of this chapter; or to limit, curtail, abolish, or terminate his authority to perform such function; or to limit, curtail, abolish, or terminate his authority to delegate, redelegate, or terminate any delegation of functions.

(j) References in chapter to provision of law deemed to include references thereto as amended or supplemented

Any reference in this chapter to any provision of law shall be deemed to include, as appro-

priate, references thereto as now or hereafter amended or supplemented.

(k) Functions conferred by chapter deemed in addition to and not substitution for functions existing before effective date

Except as may be otherwise expressly provided in this chapter, all functions expressly conferred by this chapter shall be in addition to and not in substitution for functions existing immediately before the effective date of this chapter and transferred by this chapter.

(Pub. L. 93-438, title III, §301, Oct. 11, 1974, 88 Stat. 1248.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 93-438, Oct. 11, 1974, 88 Stat. 1233, as amended, which enacted this chapter, amended sections 5313 to 5316 of Title 5, Government Organization and Employees, repealed sections 2031 and 2032 of this title, and enacted provisions set out as notes under section 5801 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5801 of this title and Tables.

References to "at the time this chapter takes effect" in subsec. (b)(2), "the date this chapter takes effect" in subsec. (d)(1), "date on which this chapter takes effect" in subsec. (f), and "the effective date of this chapter" in subsecs. (g), (h), (i), and (k), refer to the effective date of Pub. L. 93-438. See section 312 of Pub. L. 93-438, set out as an Effective Date; Interim Appointments note under section 5801 of this title.

TRANSFER OF FUNCTIONS

For transfer of certain functions from Nuclear Regulatory Commission to Chairman thereof, see Reorg. Plan No. 1 of 1980, 45 F.R. 40561, 94 Stat. 3585, set out as a note under section 5841 of this title.

Energy Research and Development Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5872 of this title.

§ 5872. Transfer of personnel

(a) Provisions of law applicable

Except as provided in the next sentence, the personnel employed in connection with, and the personnel positions, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to or to be made available in connection with the functions and programs transferred by this chapter, are, subject to section 1531 of title 31, correspondingly transferred for appropriate allocation. Personnel positions expressly created by law, personnel occupying those positions on the effective date of this chapter, and personnel authorized to receive compensation at the rate prescribed for offices and positions at levels II, III, IV, or V of the Executive Schedule (5 U.S.C. 5313-5316) on the effective date of this chapter shall be subject to the provisions of subsection (c) of this section and section 5871 of this title.

(b) Prohibition against separation or reduction in grade or compensation for one year after transfer

Except as provided in subsection (c) of this section, transfer of nontemporary personnel pur-

suant to this chapter shall not cause any such employee to be separated or reduced in grade or compensation for one year after such transfer.

(c) Compensation in new position at not less than rate provided for previous position

Any person who, on the effective date of this chapter, held a position compensated in accordance with the Executive Schedule prescribed in chapter 53 of title 5, and who, without a break in service, is appointed in the Administration to a position having duties comparable to those performed immediately preceding his appointment shall continue to be compensated in his new position at not less than the rate provided for his previous position.

(Pub. L. 93-438, title III, §302, Oct. 11, 1974, 88 Stat. 1250.)

REFERENCES IN TEXT

The effective date of this chapter, referred to in subsecs. (a) and (c), refers to the effective date of Pub. L. 93-438. See section 312 of Pub. L. 93-438, set out as an Effective Date; Interim Appointments note under section 5801 of this title.

CODIFICATION

In subsec. (a), "section 1531 of title 31" substituted for "section 202 of the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 581c)" on authority of Pub. L. 97-258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

TRANSFER OF FUNCTIONS

Energy Research and Development Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 5873. Director of Office of Management and Budget; power to make dispositions

The Director of the Office of Management and Budget is authorized to make such additional incidental dispositions of personnel, personnel positions, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to or to be made available in connection with functions transferred by this chapter, as he may deem necessary or appropriate to accomplish the intent and purpose of this chapter.

(Pub. L. 93-438, title III, §303, Oct. 11, 1974, 88 Stat. 1250.)

§ 5874. Definitions

As used in this chapter—

(1) any reference to "function" or "functions" shall be deemed to include references to duty, obligation, power, authority, responsibility, right, privilege, and activity, or the plural thereof, as the case may be; and

(2) any reference to "perform" or "performance", when used in relation to functions, shall be deemed to include the exercise of power, authority, rights, and privileges.

(Pub. L. 93-438, title III, §304, Oct. 11, 1974, 88 Stat. 1251.)

§ 5875. Authorization of appropriations

(a) Except as otherwise provided by law, appropriations made under this chapter shall be subject to annual authorization.

(b) Authorization of appropriations to the Commission shall reflect the need for effective licensing and other regulation of the nuclear power industry in relation to the growth of such industry.

(Pub. L. 93-438, title III, §305, Oct. 11, 1974, 88 Stat. 1251.)

TRANSFER OF FUNCTIONS

For transfer of certain functions from Nuclear Regulatory Commission to Chairman thereof, see Reorg. Plan No. 1 of 1980, 45 F.R. 40561, 94 Stat. 3585, set out as a note under section 5841 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5821 of this title.

§ 5876. Comptroller General audit

(a) Section 166 of the Atomic Energy Act of 1954, as amended [42 U.S.C. 2206], shall be deemed to be applicable, respectively, to the nuclear and nonnuclear activities under subchapter I of this chapter and to the activities under subchapter II of this chapter.

(b) The Comptroller General of the United States shall audit, review, and evaluate the implementation of the provisions of subchapter II of this chapter by the Nuclear Safety and Licensing Commission not later than sixty months after the effective date of this chapter, the Comptroller General shall prepare and submit to the Congress a report on his audit, which shall contain, but not be limited to—

(1) an evaluation of the effectiveness of the licensing and related regulatory activities of the Commission and the operations of the Office of Nuclear Safety Research and the Bureau of Nuclear Materials Security;

(2) an evaluation of the effect of such Commission activities on the efficiency, effectiveness, and safety with which the activities licensed under the Atomic Energy Act of 1954, as amended [42 U.S.C. 2011 et seq.], are carried out;

(3) recommendations concerning any legislation he deems necessary, and the reasons therefor, for improving the implementation of subchapter II of this chapter.

(Pub. L. 93-438, title III, §306, Oct. 11, 1974, 88 Stat. 1251.)

REFERENCES IN TEXT

The effective date of this chapter, referred to in subsec. (b), is the effective date of Pub. L. 93-438. See section 312 of Pub. L. 93-438, set out as an Effective Date; Interim Appointments note under section 5801 of this title.

The Atomic Energy Act of 1954, as amended, referred to in subsec. (b)(2), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

TRANSFER OF FUNCTIONS

For transfer of certain functions from Nuclear Regulatory Commission to Chairman thereof, see Reorg.

Plan No. 1 of 1980, 45 F.R. 40561, 94 Stat. 3585, set out as a note under section 5841 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 15 section 2708.

§ 5877. Reports to President for submission to Congress

(a) Report by Administrator on activities of Administration

The Administrator shall, as soon as practicable after the end of each fiscal year, make a report to the President for submission to the Congress on the activities of the Administration during the preceding fiscal year. Such report shall include a statement of the short-range and long-range goals, priorities, and plans of the Administration together with an assessment of the progress made toward the attainment of those objectives and toward the more effective and efficient management of the Administration and the coordination of its functions.

(b) Review of desirability and feasibility of transferring functions of Administrator respecting military application and restricted data to Department of Defense or other Federal agencies; report by Administrator

During the first year of operation of the Administration, the Administrator, in collaboration with the Secretary of Defense, shall conduct a thorough review of the desirability and feasibility of transferring to the Department of Defense or other Federal agencies the functions of the Administrator respecting military application and restricted data, and within one year after the Administrator first takes office the Administrator shall make a report to the President, for submission to the Congress, setting forth his comprehensive analysis, the principal alternatives, and the specific recommendations of the Administrator and the Secretary of Defense.

(c) Report by Commission on activities of Commission

The Commission shall, as soon as practicable after the end of each fiscal year, make a report to the President for submission to the Congress on the activities of the Commission during the preceding fiscal year. Such report shall include a clear statement of the short-range and long-range goals, priorities, and plans of the Commission as they relate to the benefits, costs, and risks of commercial nuclear power. Such report shall also include a clear description of the Commission's activities and findings in the following areas—

(1) insuring the safe design of nuclear powerplants and other licensed facilities;

(2) investigating abnormal occurrences and defects in nuclear powerplants and other licensed facilities;

(3) safeguarding special nuclear materials at all stages of the nuclear fuel cycle;

(4) investigating suspected, attempted, or actual thefts of special nuclear materials in the licensed sector and developing contingency plans for dealing with such incidents;

(5) insuring the safe, permanent disposal of high-level radioactive wastes through the licensing of nuclear activities and facilities;

(6) protecting the public against the hazards of low-level radioactive emissions from licensed nuclear activities and facilities.

(Pub. L. 93-438, title III, §307, Oct. 11, 1974, 88 Stat. 1251.)

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (c) of this section relating to submission of annual report to Congress, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 10th item on page 186 of House Document No. 103-7.

TRANSFER OF FUNCTIONS

For transfer of certain functions from Nuclear Regulatory Commission to Chairman thereof, see Reorg. Plan No. 1 of 1980, 45 F.R. 40561, 94 Stat. 3585, set out as a note under section 5841 of this title.

Energy Research and Development Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

DESCRIPTION IN REPORT RESPECTING DECONTAMINATION, ETC., COLLABORATIVE EFFORTS AT THREE MILE ISLAND UNIT 2

Pub. L. 97-415, §10(c), Jan. 4, 1983, 96 Stat. 2071, provided that: "The Nuclear Regulatory Commission shall include in its annual report to the Congress under section 307(c) of the Energy Reorganization Act of 1974 (42 U.S.C. 5877(c)) as a separate chapter a description of the collaborative efforts undertaken, or proposed to be undertaken, by the Commission and the Department of Energy with respect to the decontamination, cleanup, repair, or rehabilitation of facilities at Three Mile Island Unit 2."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5849, 7267 of this title.

§ 5878. Information to Congressional committees

The Administrator shall keep the appropriate congressional committees fully and currently informed with respect to all of the Administration's activities.

(Pub. L. 93-438, title III, §308, Oct. 11, 1974, 88 Stat. 1252.)

TRANSFER OF FUNCTIONS

Energy Research and Development Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 5878a. Funding and encouragement of small business; information for inclusion in report

The Secretary of Energy shall,¹ include, in the report required by section 204(b) of the Department of Energy Act of 1978—Civilian Applications (42 U.S.C. 7256, note; 92 Stat. 60), information detailing the extent to which small business and nonprofit organizations are being funded by the nonnuclear research, development, and demonstration programs of the Secretary of Energy, and the extent to which small business involvement pursuant to section 5801(d) of this

¹ So in original. The comma probably should not appear.

title is being encouraged by the Secretary of Energy.

(Pub. L. 94-187, title III, §308, Dec. 31, 1975, 89 Stat. 1074; Pub. L. 96-470, title II, §203(e), Oct. 19, 1980, 94 Stat. 2243.)

REFERENCES IN TEXT

Section 204(b) of the Department of Energy Act 1978—Civilian Applications (42 U.S.C. 7256, note; 92 Stat. 60), referred to in text, is section 204(b) of Pub. L. 95-238, title II, Feb. 25, 1978, 92 Stat. 59, as amended, which is set out as a note under section 7256 of this title.

CODIFICATION

Section was not enacted as a part of the Energy Reorganization Act of 1974 which comprises this chapter.

AMENDMENTS

1980—Pub. L. 96-470 substituted "include, in the report required by section 204(b) of the Department of Energy Act of 1978—Civilian Applications, information" for "by June 30, 1976, and by the end of each fiscal year thereafter, submit a report to the Committee on Science and Technology of the House of Representatives and the Committee on Interior and Insular Affairs of the Senate" and "Secretary of Energy" for "Administrator" wherever appearing.

§ 5879. Transfer of funds

The Administrator, when authorized in an appropriation Act, may, in any fiscal year, transfer funds from one appropriation to another within the Administration; except, that no appropriation shall be either increased or decreased pursuant to this section by more than 5 per centum of the appropriation for such fiscal year.

(Pub. L. 93-438, title III, §309, Oct. 11, 1974, 88 Stat. 1252.)

TRANSFER OF FUNCTIONS

Energy Research and Development Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

SUBCHAPTER IV—SEX DISCRIMINATION

§ 5891. Sex discrimination prohibited

No person shall on the ground of sex be excluded from participation in, be denied a license under, be denied the benefits of, or be subjected to discrimination under any program or activity carried on or receiving Federal assistance under any subchapter of this chapter. This provision will be enforced through agency provisions and rules similar to those already established, with respect to racial and other discrimination, under title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.]. However, this remedy is not exclusive and will not prejudice or cut off any other legal remedies available to a discriminatee.

(Pub. L. 93-438, title IV, §401, Oct. 11, 1974, 88 Stat. 1254.)

REFERENCES IN TEXT

Any subchapter of this chapter, referred to in text, was in the original "any title of this Act", meaning Pub. L. 93-438, Oct. 11, 1974, 88 Stat. 1233, as amended, which enacted this chapter, amended sections 5313 to

5316 of Title 5, Government Organization and Employees, repealed sections 2031 and 2032 of this title, and enacted provisions set out as notes under section 5801 of this title.

The Civil Rights Act of 1964, referred to in text, is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Civil Rights Act of 1964 is classified generally to subchapter V (§2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

CHAPTER 74—NONNUCLEAR ENERGY RESEARCH AND DEVELOPMENT

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|---|---|
| <p>Sec.
5901. Congressional statement of findings.
5902. Congressional declaration of policy and purpose; implementation and administration of program by Secretary of Energy.
5903. Duties and functions of Secretary.
5903a. Nonduplication of programs, projects, and research facilities.
5903b. Environmental and safety research, development, and demonstration program.
5903c. Moneys received by Secretary from fossil energy activity; payment into Treasury; reports to House and Senate Committees.
5903d. Clean coal technology projects; proposals, implementation, funding, etc.
5904. Research, development, and demonstration program governing principles.
5905. Comprehensive plan and implementing program for energy research, development, and demonstration; transmission to Congress; purposes; scope of program; comprehensive environment and safety program implementing plan; development and transmission to Congress.
5906. Federal assistance and participation in programs.
 (a) Forms of activities authorized.
 (b) Proposed joint Federal-industry corporations; operational guidelines; powers, duties, and functions; composition; scope of Federal assistance and participation; specific authorization.
 (c) Proposed competitive systems of price supports for demonstration facilities; guidelines.
 (d) Support for joint university-industry research efforts.
5907. Demonstration projects.
 (a) Scope of authority of Secretary.
 (b) Criteria applicable in reviewing potential projects.
 (c) Federal and non-Federal share of costs.
 (d) Submission of proposals to Secretary; promulgation of regulations by Secretary establishing procedures; required contents of proposals and regulations.
 (e) Amount of estimate of Federal investment requiring Congressional authorization for appropriation.
 (f) Amount of estimated Federal contribution authorizing Secretary to proceed with negotiation of agreements and implementation of proposal; amount of Federal contribution requiring Secretary to submit report to Congress as prerequisite to expenditure of funds.
5907a. Small grant program.
 (a) Establishment.
 (b) Limitation.
 (c) Systems and technologies to be developed and demonstrated.</p> | <p>Sec.
5908. Patents and inventions.
 (d) Eligible participants; simplified application procedures; report to Secretary; allocation criteria; guidelines.
 (e) Reports to Congress.
 (a) Vesting of title to invention and issuance of patents to United States; prerequisites.
 (b) Contract as requiring report to Secretary of invention, etc., made in course of contract.
 (c) Waiver by Secretary of rights of United States; regulations prescribing procedures; record of waiver determinations; objectives.
 (d) Considerations applicable at time of contracting for waiver determination by Secretary.
 (e) Considerations applicable to identified invention for waiver determination by Secretary.
 (f) Rights subject to reservation where title to invention vested in United States.
 (g) to (i) Repealed.
 (j) Small business status of applicant for waiver or licenses.
 (k) Protection of invention, etc., rights by Secretary.
 (l) Department of Energy as defense agency of United States for purpose of maintaining secrecy of inventions.
 (m) Definitions.
 (n) Report concerning applicability of existing patent policies to energy programs; time for submission to President and appropriate Congressional committees.
5909. Relationship to antitrust laws.
5910. Repealed.
5911. Allocation or acquisition of essential materials and equipment pursuant to Presidential rule or order; transmission to Congress and effective date of proposed rule or order; disapproval by Congress.
5912. Water resource assessments.
 (a) Assessments by Water Resources Council of water resource requirements and water supply availability for nonnuclear energy technologies; preparation requirements.
 (b) Request by Secretary that Water Resources Council prepare assessment of availability of adequate water resources for proposed demonstration projects; report; publication.
 (c) Assessment by Water Resources Council of availability of adequate water resources as precondition for Federal assistance for commercial application of nonnuclear energy technologies.
 (d) Publication of reports of assessments and evaluations by Water Resources Council in Federal Register; public review and comments.
 (e) Inclusion of survey and analysis of regional and national water resource availability in biennial assessment by Water Resources Council.
 (f) Secretary as member of Water Resources Council.
5913. Evaluation by National Institute of Standards and Technology of energy-related inventions prior to awarding of grants by Secretary; promulgation of regulations.
5914. Omitted.</p> |
|---|---|

- Sec. 5915. Authorization of appropriations.
- 5915a. Expiration of initial authorization to construct fossil energy demonstration plants.
- 5916. Central source of nonnuclear energy information; acquisition of proprietary and other information; availability of information to public, Government agencies, Federal agencies and agency heads for execution of duties and responsibilities, and chairmen of Congressional committees; disclosure restrictions.
- 5917. Energy information.
- 5918. Repealed.
- 5919. Loan guarantees and commitments for alternative fuel demonstration facilities.
 - (a) Statement of purpose.
 - (b) Issuance of obligations for alternative fuel conversion facilities; terms and conditions; rules and regulations; informational requirements; concurrence of Secretary of Treasury to terms and conditions; pledge of full faith and credit of United States; cooperative agreements for construction, etc., of modular facilities; bidding practices.
 - (c) Prerequisites.
 - (d) Repealed.
 - (e) Impact on communities, States, and Indian tribes; notice to State and local officials; procedures applicable for further action by Secretary subsequent to negative recommendation by State Governor; criteria and determinations relating to approval by Secretary of construction and operation plans; establishment, membership, etc., of advisory panel.
 - (f) Termination, cancellation, revocation; conclusiveness; contestability.
 - (g) Default by borrower; procedures applicable to payment by Secretary and rights of subrogation; notice to Attorney General by Secretary for further action; protection for benefit of United States of patents and technologies of defaulting project through agreements, etc.
 - (h) Contracts to pay, and payment of principal and interest by Secretary of unpaid balance of guaranteed obligations; prerequisites.
 - (i) Time for issuance of regulations; procedures applicable to issuance of regulations and amendments.
 - (j) Fees for guarantees of obligations; determination of amounts; excepted guarantees.
 - (k) Community development and planning assistance guarantees; terms and conditions; rules and regulations; concurrence of Secretary of Treasury to terms and conditions; payment of taxes in event of default by borrower; additional direct loans and grants; redemption of debt obligations; funding requirements and authorizations; facility title vesting and status upon default.
 - (l) Annual reporting requirements; contents, etc.
 - (m) Congressional finalization of guarantee, etc., subsequent to report to Congressional committees; scope of authority.

- Sec. (n) Revolving fund; creation; funding; payments and transfers to general fund of Treasury; issuance, redemption, etc., of notes or obligations; applicability to direct loans or planning grants.
 - (o) Definitions.
 - (p) Citizenship or nationality requirements for applicants; waiver.
 - (q) Transfer of part of program to other agency or authority.
 - (r) Statutory provisions applicable to inventions.
 - (s) Compliance by persons receiving financial assistance with Federal and State environmental, etc., laws and regulations, and licensing requirements.
 - (t) Availability of information; procedures applicable; scope of disclosure; persons to whom disclosure may be made; "person" defined.
 - (u) Scope of exercise of statutory authorities.
 - (v) Nondiscrimination requirements; scope of exemption from requirements for Indian tribes.
 - (w) Participation by small business concerns in program.
 - (x) Recordkeeping requirements; audit by Comptroller General; labor standards at construction facilities.
 - (y) Issuance of obligations for synthetic fuel conversion facilities and municipal organic waste energy generation facilities; rules and regulations; statutory provisions inapplicable; limitation on outstanding indebtedness; additional procedural requirements and terms and conditions applicable.
- 5920. Financial support program for municipal waste reprocessing demonstration facilities.
 - (a) Statement of purpose.
 - (b) Grants, contracts, price supports, and cooperative agreements implementing programs; aggregate amount of funds available; "municipal" defined; ownership, operation, etc., of facilities; Federal share; price support program regulations for revenue producing products.
 - (c) Consultation with Environmental Protection Agency to insure compliance with provisions relating to solid waste disposal full-scale demonstration facilities; administration of projects subject to May 7, 1976, Interagency Agreement.
 - (d) Guidelines for obtaining program information from municipalities; availability of information, etc., to Congressional committees; annual reports to Congress; contents, etc.
 - (e) Transfer of part of program to other agency or authority.
 - (f) Compliance by municipalities receiving financial assistance with Federal and State environmental, etc., laws and regulations, and licensing requirements.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 5903d, 5907a, 6981, 7135a, 7259a, 8837, 13435, 13541 of this title; title 7 sections 341, 427, 1932; title 15 sections 2507, 2705, 5103, 5303.

§ 5901. Congressional statement of findings

The Congress hereby finds that—

(a) The Nation is suffering from a shortage of environmentally acceptable forms of energy.

(b) Compounding this energy shortage is our past and present failure to formulate a comprehensive and aggressive research and development program designed to make available to American consumers our large domestic energy reserves including fossil fuels, nuclear fuels, geothermal resources, solar energy, and other forms of energy. This failure is partially because the unconventional energy technologies have not been judged to be economically competitive with traditional energy technologies.

(c) The urgency of the Nation's energy challenge will require commitments similar to those undertaken in the Manhattan and Apollo projects; it will require that the Nation undertake a research, development, and demonstration program in nonnuclear energy technologies with a total Federal investment which may reach or exceed \$20,000,000,000 over the next decade.

(d) In undertaking such program, full advantage must be taken of the existing technical and managerial expertise in the various energy fields within Federal agencies and particularly in the private sector.

(e) The Nation's future energy needs can be met if a national commitment is made now to dedicate the necessary financial resources, to enlist our scientific and technological capabilities, and to accord the proper priority to developing new nonnuclear energy options to serve national needs, conserve vital resources, and protect the environment.

(Pub. L. 93-577, § 2, Dec. 31, 1974, 88 Stat. 1879.)

SHORT TITLE

Section 1 of Pub. L. 93-577 provided that: "This Act [enacting this chapter] may be cited as the 'Federal Nonnuclear Energy Research and Development Act of 1974'."

§ 5902. Congressional declaration of policy and purpose; implementation and administration of program by Secretary of Energy

(a) It is the policy of the Congress to develop on an urgent basis the technological capabilities to support the broadest range of energy policy options through conservation and use of domestic resources by socially and environmentally acceptable means.

(b)(1) The Congress declares the purpose of this chapter to be to establish and vigorously conduct a comprehensive, national program of basic and applied research and development, including but not limited to demonstrations of practical applications, of all potentially beneficial energy sources and utilization technologies, within the Department of Energy.

(2) In carrying out this program, the Secretary of Energy (hereinafter in this chapter referred to as the "Secretary") shall be governed by the terms of this chapter and other applicable provisions of law with respect to all nonnuclear aspects of the research, development, and demonstration program; and the policies and provisions of the Atomic Energy Act of 1954 [42 U.S.C.

2011 et seq.], and other provisions of law shall continue to apply to the nuclear research, development, and demonstration program.

(3) In implementing and conducting the research, development, and demonstration programs pursuant to this chapter, the Secretary shall incorporate programs in specific nonnuclear technologies previously enacted into law, including those established by the Solar Heating and Cooling Act of 1974 (Public Law 93-409) [42 U.S.C. 5501 et seq.], the Geothermal Energy Research, Development, and Demonstration Act of 1974 (Public Law 93-410) [30 U.S.C. 1101 et seq.], and the Solar Energy Research, Development, and Demonstration Act of 1974 (Public Law 93-473) [42 U.S.C. 5551 et seq.].

(Pub. L. 93-577, § 3, Dec. 31, 1974, 88 Stat. 1879; Pub. L. 95-91, title III, § 301(a), title VII, §§ 703, 707, Aug. 4, 1977, 91 Stat. 577, 606, 607.)

REFERENCES IN TEXT

The Atomic Energy Act of 1954, referred to in subsec. (b)(2), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§ 2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

The Solar Heating and Cooling Act of 1974, referred to in subsec. (b)(3), probably means the Solar Heating and Cooling Demonstration Act of 1974, Pub. L. 93-409, Sept. 3, 1974, 88 Stat. 1069, as amended, which is classified generally to subchapter I (§ 5501 et seq.) of chapter 71 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5501 of this title and Tables.

The Geothermal Energy Research, Development, and Demonstration Act of 1974, referred to in subsec. (b)(3), is Pub. L. 93-410, Sept. 3, 1974, 88 Stat. 1079, as amended, which is classified generally to chapter 24 (§ 1101 et seq.) of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of Title 30 and Tables.

The Solar Energy Research, Development, and Demonstration Act of 1974, referred to in subsec. (b)(3), is Pub. L. 93-473, Oct. 26, 1974, 88 Stat. 1431, as amended, which is classified generally to subchapter II (§ 5551 et seq.) of chapter 71 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5501 of this title and Tables.

TRANSFER OF FUNCTIONS

"Department of Energy", "Secretary of Energy", and "Secretary" substituted for "Energy Research and Development Administration", "Administrator of the Energy Research and Development Administration", and "Administrator", respectively, in subsec. (b) pursuant to sections 301(a), 703, and 707 of Pub. L. 95-91, which are classified to sections 7151(a), 7293, and 7297 of this title and which terminated Energy Research and Development Administration and transferred its functions and functions of Administrator thereof (with certain exceptions) to Secretary of Energy.

§ 5903. Duties and functions of Secretary

The Secretary shall—

(a) review the current status of nonnuclear energy resources and current nonnuclear energy research and development activities, including research and development being conducted by Federal and non-Federal entities;

(b) formulate and carry out a comprehensive Federal nonnuclear energy research, development, and demonstration program which will expeditiously advance the policies established

by this chapter and other relevant legislation establishing programs in specific energy technologies;

(c) utilize the funds authorized pursuant to this chapter to advance energy research and development by initiating and maintaining, through fund transfers, grants, or contracts, energy research, development and demonstration programs or activities utilizing the facilities, capabilities, expertise, and experience of Federal agencies, national laboratories, universities, nonprofit organizations, industrial entities, and other non-Federal entities which are appropriate to each type of research, development, and demonstration activity;

(d) establish procedures for periodic consultation with representatives of science, industry, environmental organizations, consumers, and other groups who have special expertise in the areas of energy research, development, and technology; and

(e) initiate programs to design, construct, and operate energy facilities of sufficient size to demonstrate the technical and economic feasibility of utilizing various forms of non-nuclear energy.

(Pub. L. 93-577, §4, Dec. 31, 1974, 88 Stat. 1880; Pub. L. 95-91, title III, §301(a), title VII, §§703, 707, Aug. 4, 1977, 91 Stat. 577, 606, 607.)

TRANSFER OF FUNCTIONS

“Secretary”, meaning Secretary of Energy, substituted in text for “Administrator”, meaning Administrator of Energy Research and Development Administration, pursuant to sections 301(a), 703, and 707 of Pub. L. 95-91, which are classified to sections 7151(a), 7293, and 7297 of this title and which terminated Energy Research and Development Administration and transferred its functions and functions of Administrator thereof (with certain exceptions) to Secretary of Energy.

CLASSIFICATION OF RECIPIENTS OF AWARDS, CONTRACTS, OR OTHER FINANCIAL ARRANGEMENTS; REPORTING REQUIREMENT

Pub. L. 95-39, title I, §111, June 3, 1977, 91 Stat. 186, provided that:

“(a) The Administrator [now Secretary of Energy] shall classify each recipient of any award, contract, or other financial arrangement in any nonnuclear research, development, or demonstration category as—

“(1) a Federal agency,

“(2) a non-Federal governmental entity,

“(3) a profitmaking enterprise (indicating whether or not it is a small business concern),

“(4) a nonprofit enterprise other than an educational institution, or

“(5) a nonprofit educational institution.

“(b) The information required by subsection (a), along with the dollar amount of each award, contract, or other financial arrangement made, shall be included as an appendix to the annual report required by section 15(a) of the Federal Nonnuclear Energy Research and Development Act of 1974 ([former] 42 U.S.C. 5914): *Provided*, That small purchases or contracts of less than \$10,000, which are excepted from the requirements of advertising by section 252(c)(3) of title 41, United States Code, shall be exempt from the reporting requirements of this section.”

§ 5903a. Nonduplication of programs, projects, and research facilities

The Secretary shall coordinate nonnuclear programs of the Department of Energy with the

heads of relevant Federal agencies in order to minimize unnecessary duplication of programs, projects, and research facilities.

(Pub. L. 94-187, title III, §309, Dec. 31, 1975, 89 Stat. 1074; Pub. L. 95-91, title III, §301(a), title VII, §§703, 707, Aug. 4, 1977, 91 Stat. 577, 606, 607.)

CODIFICATION

Section was not enacted as a part of the Federal Non-nuclear Energy Research and Development Act of 1974 which comprises this chapter.

TRANSFER OF FUNCTIONS

“Secretary”, meaning Secretary of Energy, substituted in text for “Administrator”, meaning Administrator of Energy Research and Development Administration, and “Department of Energy” substituted in text for “Administration” pursuant to sections 301(a), 703, and 707 of Pub. L. 95-91, which are classified to sections 7151(a), 7293, and 7297 of this title and which terminated Energy Research and Development Administration and transferred its functions and functions of Administrator thereof (with certain exceptions) to Secretary of Energy.

§ 5903b. Environmental and safety research, development, and demonstration program

The Secretary shall conduct an environmental and safety research, development, and demonstration program related to fossil fuels.

(Pub. L. 94-187, title III, §316, Dec. 31, 1975, 89 Stat. 1077; Pub. L. 95-91, title III, §301(a), title VII, §§703, 707, Aug. 4, 1977, 91 Stat. 577, 606, 607.)

CODIFICATION

Section was not enacted as a part of the Federal Non-nuclear Energy Research and Development Act of 1974 which comprises this chapter.

TRANSFER OF FUNCTIONS

“Secretary”, meaning Secretary of Energy, substituted in text for “Administrator”, meaning Administrator of Energy Research and Development Administration, pursuant to sections 301(a), 703, and 707 of Pub. L. 95-91, which are classified to sections 7151(a), 7293, and 7297 of this title and which terminated Energy Research and Development Administration and transferred its functions and functions of Administrator thereof (with certain exceptions) to Secretary of Energy.

§ 5903c. Moneys received by Secretary from fossil energy activity; payment into Treasury; reports to House and Senate Committees

All moneys received by the Secretary from any fossil energy activity shall be paid into the Treasury to the credit of miscellaneous receipts, except that on December 1 of each year the Secretary shall provide to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report of all such receipts for the preceding fiscal year, including, but not limited to, the amount and source of such revenues and the program and subprogram activity generating such revenues.

(Pub. L. 95-39, title I, §106, June 3, 1977, 91 Stat. 184; Pub. L. 95-91, title III, §301(a), title VII, §§703, 707, Aug. 4, 1977, 91 Stat. 577, 606, 607; Pub. L. 103-437, §15(c)(8), Nov. 2, 1994, 108 Stat. 4592.)

CODIFICATION

Section was not enacted as part of the Federal Non-nuclear Energy Research and Development Act of 1974 which comprises this chapter.

AMENDMENTS

1994—Pub. L. 103-437 substituted “Committee on Science, Space, and Technology” for “Committee on Science and Technology”.

CHANGE OF NAME

Committee on Science, Space, and Technology of House of Representatives treated as referring to Committee on Science of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

TRANSFER OF FUNCTIONS

“Secretary”, meaning Secretary of Energy, substituted in text for “Administrator”, meaning Administrator of Energy Research and Development Administration, pursuant to sections 301(a), 703, and 707 of Pub. L. 95-91, which are classified to sections 7151(a), 7293, and 7297 of this title and which terminated Energy Research and Development Administration and transferred its functions and functions of Administrator thereof (with certain exceptions) to Secretary of Energy.

§ 5903d. Clean coal technology projects; proposals, implementation, funding, etc.

Within 60 days following December 19, 1985, the Secretary of Energy shall, pursuant to the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5901, et seq.), issue a general request for proposals for clean coal technology projects for which the Secretary of Energy upon review may provide financial assistance awards. Proposals for clean coal technology projects under this section shall be submitted to the Department of Energy within 60 days after issuance of the general request for proposals. The Secretary of Energy shall make any project selections no later than August 1, 1986: *Provided*, That the Secretary may vest fee title or other property interests acquired under cost-shared clean coal technology agreements in any entity, including the United States: *Provided further*, That the Secretary shall not finance more than 50 per centum of the total costs of a project as estimated by the Secretary as of the date of award of financial assistance: *Provided further*, That cost-sharing by project sponsors is required in each of the design, construction, and operating phases proposed to be included in a project: *Provided further*, That financial assistance for costs in excess of those estimated as of the date of award of original financial assistance may not be provided in excess of the proportion of costs borne by the Government in the original agreement and only up to 25 per centum of the original financial assistance: *Provided further*, That revenues or royalties from prospective operation of projects beyond the time considered in the award of financial assistance, or proceeds from prospective sale of the assets of the project, or revenues or royalties from replication of technology in future projects or plants are not cost-sharing for the purposes of this appropriation: *Provided further*, That other appropriated Federal funds are not cost-sharing for the purposes of this appropriation: *Provided further*, That existing facilities, equipment, and supplies, or previously expended research or development funds are not cost-sharing for the purposes of this appropriation, except as amortized, depreciated, or expensed in normal business practice.

(Pub. L. 99-190, §101(d) [title II, §201], Dec. 19, 1985, 99 Stat. 1224, 1251.)

REFERENCES IN TEXT

The Federal Nonnuclear Energy Research and Development Act of 1974, referred to in text, is Pub. L. 93-577, Dec. 31, 1974, 88 Stat. 1878, as amended, which is classified generally to this chapter (§5901 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 5901 of this title and Tables.

CODIFICATION

Section was not enacted as part of the Federal Nonnuclear Energy Research and Development Act of 1974 which comprises this chapter.

PROVISIONS RELATING TO PROJECTS USING CLEAN COAL TECHNOLOGIES

Provisions relating to projects using clean coal technologies were contained in the following appropriations acts:

Pub. L. 102-154, title II, Nov. 13, 1991, 105 Stat. 1019;
 Pub. L. 103-211, title II, Feb. 12, 1994, 108 Stat. 18.
 Pub. L. 101-512, title II, Nov. 5, 1990, 104 Stat. 1944;
 Pub. L. 103-211, title II, Feb. 12, 1994, 108 Stat. 18.
 Pub. L. 101-121, title II, Oct. 23, 1989, 103 Stat. 728.
 Pub. L. 100-446, title II, Sept. 27, 1988, 102 Stat. 1811.
 Pub. L. 100-202, §101(g) [title II], Dec. 22, 1987, 101 Stat. 1329-213, 1329-240.
 Pub. L. 99-500, §101(h) [title II], Oct. 18, 1986, 100 Stat. 1783-242, 1783-272, and Pub. L. 99-591, §101(h) [title II], Oct. 30, 1986, 100 Stat. 3341-242, 3341-272.

§ 5904. Research, development, and demonstration program governing principles

(a) The Congress authorizes and directs that the comprehensive program in research, development, and demonstration required by this chapter shall be designed and executed according to the following principles:

(1) Energy conservation shall be a primary consideration in the design and implementation of the Federal nonnuclear energy program. For the purposes of this chapter, energy conservation means both improvement in efficiency of energy production and use, and reduction in energy waste.

(2) The environmental and social consequences of a proposed program shall be analyzed and considered in evaluating its potential.

(3) Any program for the development of a technology which may require significant consumptive use of water after the technology has reached the stage of commercial application shall include thorough consideration of the impacts of such technology and use on water resources pursuant to the provisions of section 5912 of this title.

(4) Heavy emphasis shall be given to those technologies which utilize renewable or essentially inexhaustible energy sources.

(5) The potential for production of net energy by the proposed technology at the stage of commercial application shall be analyzed and considered in evaluating proposals.

(b) The Congress further directs that the execution of the comprehensive research, development, and demonstration program shall conform to the following principles:

(1) Research and development of nonnuclear energy sources shall be pursued in such a way

as to facilitate the commercial availability of adequate supplies of energy to all regions of the United States.

(2) In determining the appropriateness of Federal involvement in any particular research and development undertaking, the Secretary shall give consideration to the extent to which the proposed undertaking satisfies criteria including, but not limited to, the following:

(A) The urgency of public need for the potential results of the research, development, or demonstration effort is high, and it is unlikely that similar results would be achieved in a timely manner in the absence of Federal assistance.

(B) The potential opportunities for non-Federal interests to recapture the investment in the undertaking through the normal commercial utilization of proprietary knowledge appear inadequate to encourage timely results.

(C) The extent of the problems treated and the objectives sought by the undertaking are national or widespread in their significance.

(D) There are limited opportunities to induce non-Federal support of the undertaking through regulatory actions, end use controls, tax and price incentives, public education, or other alternatives to direct Federal financial assistance.

(E) The degree of risk of loss of investment inherent in the research is high, and the availability or risk capital to the non-Federal entities which might otherwise engage in the field of the research is inadequate for the timely development of the technology.

(F) The magnitude of the investment appears to exceed the financial capabilities of potential non-Federal participants in the research to support effective efforts.

(Pub. L. 93-577, § 5, Dec. 31, 1974, 88 Stat. 1880; Pub. L. 95-91, title III, § 301(a), title VII, §§ 703, 707, Aug. 4, 1977, 91 Stat. 577, 606, 607.)

TRANSFER OF FUNCTIONS

“Secretary”, meaning Secretary of Energy, substituted in text for “Administrator”, meaning Administrator of Energy Research and Development Administration, pursuant to sections 301(a), 703, and 707 of Pub. L. 95-91, which are classified to sections 7151(a), 7293, and 7297 of this title and which terminated Energy Research and Development Administration and transferred its functions and functions of Administrator thereof (with certain exceptions) to Secretary of Energy.

NATIONAL ALCOHOL FUELS COMMISSION

Pub. L. 95-599, title I, § 170, Nov. 6, 1978, 92 Stat. 2724, as amended by Pub. L. 96-106, § 20, Nov. 9, 1979, 93 Stat. 799, established the National Alcohol Fuels Commission, directed the Commission to make a full and complete investigation and study of the long- and short-term potential for alcohol fuels, from biomass (including but not limited to, animal, crop and wood waste, municipal and industrial waste, sewage sludge, and ocean and terrestrial crops) and coal, to contribute to meeting the Nation's energy needs, and provided that, not later than eighteen months after being established, the Commission submit to the President and the Congress its final report including its recommendations and findings, with the Commission to cease to exist six months after submission of such report.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5907 of this title.

§ 5905. Comprehensive plan and implementing program for energy research, development, and demonstration; transmission to Congress; purposes; scope of program; comprehensive environment and safety program implementing plan; development and transmission to Congress

(a) Pursuant to the authority and directions of this chapter and the Energy Reorganization Act of 1974 (Public Law 93-438) [42 U.S.C. 5801 et seq.], the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), and titles XX through XXIII of the Energy Policy Act of 1992 [42 U.S.C. 13401 et seq., 13451 et seq., 13501 et seq., 13521 et seq.], the Secretary, in consultation with the Advisory Board established under section 2302 of the Energy Policy Act of 1992 [42 U.S.C. 13522], shall transmit to the Congress, on or before June 30, 1975, a comprehensive plan for energy research, development, and demonstration. This plan shall be appropriately revised annually as provided in section 5914(a)¹ of this title. Such plan shall be designed to achieve—

(1) solutions to immediate and short-term (the period up to 5 years after submission of the plan or its annual revision) energy supply system and associated environmental problems;

(2) solutions to middle-term (the period from 5 years to 10 years after submission of the plan or its annual revision) energy supply system and associated environmental problems; and

(3) solutions to long-term (the period beyond 10 years after submission of the plan or its annual revision) energy supply system and associated environmental problems.

(b)(1) Based on the comprehensive energy research, development, and demonstration plan developed under subsection (a) of this section, the Secretary, in consultation with the Advisory Board established under section 2302 of the Energy Policy Act of 1992 [42 U.S.C. 13522], shall develop and transmit to the Congress, on or before June 30, 1975, a comprehensive nonnuclear energy research, development, and demonstration program to implement the nonnuclear research, development, and demonstration aspects of the comprehensive plan. Such program shall be updated and transmitted to the Congress annually as part of the report required under section 5914¹ of this title.

(2) This program shall be designed to achieve solutions to the energy supply and associated environmental problems in the immediate and short-term, middle-term, and long-term time intervals described in subsection (a)(1) through (3) of this section. In formulating the nonnuclear aspects of this program, the Secretary, in consultation with the Advisory Board established under section 2302 of the Energy Policy Act of 1992 [42 U.S.C. 13522], shall evaluate the economic, environmental, and technological merits of each aspect of the program.

(3) The Secretary shall assign program elements and activities in specific nonnuclear en-

¹ See References in Text note below.

ergy technologies, to the short-term, middle-term, and long-term time intervals, and shall present full and complete justification for these assignments and the degree of emphasis for each. These program elements and activities shall include, but not be limited to, research, development, and demonstrations designed—

(A) to advance energy conservation technologies, including but not limited to—

(i) productive use of waste, including garbage, sewage, agricultural wastes, and industrial waste heat;

(ii) reuse and recycling of materials and consumer products;

(iii) improvements in automobile design for increased efficiency and lowered emissions, including investigation of the full range of alternatives to the internal combustion engine and systems of efficient public transportation; and

(iv) advanced urban and architectural design to promote efficient energy use in the residential and commercial sectors, improvements in home design and insulation technologies, small thermal storage units and increased efficiency in electrical appliances and lighting fixtures;

(B) to accelerate the commercial demonstration of technologies for producing low-sulfur fuels suitable for boiler use;

(C) to demonstrate improved methods for the generation, storage, and transmission of electrical energy through (i) advances in gas turbine technologies, combined power cycles, the use of low British thermal unit gas and, if practicable, magnetohydrodynamics; (ii) storage systems to allow more efficient load following, including the use of inertial energy storage systems; and (iii) improvement in cryogenic transmission methods;

(D) to accelerate the commercial demonstration of technologies for producing substitutes for natural gas, including coal gasification: *Provided*, That the Secretary shall invite and consider proposals from potential participants based upon Federal assistance and participation in the form of a joint Federal-industry corporation, and recommendations pursuant to this clause shall be accompanied by a report on the viability of using this form of Federal assistance or participation;

(E) to accelerate the commercial demonstration of technologies for producing syncrude and liquid petroleum products from coal: *Provided*, That the Secretary shall invite and consider proposals from potential participants based upon Federal assistance and participation through guaranteed prices or purchase of the products, and recommendations pursuant to this clause shall be accompanied by a report on the viability of using this form of Federal assistance or participation;

(F) in accordance with the program authorized by the Geothermal Energy Research, Development, and Demonstration Act of 1974 (Public Law 93-410) [30 U.S.C. 1101 et seq.], to accelerate the commercial demonstration of geothermal energy technologies;

(G) to demonstrate the production of syncrude from oil shale by all promising technologies including in situ technologies;

(H) to demonstrate new and improved methods for the extraction of petroleum resources, including secondary and tertiary recovery of crude oil;

(I) to demonstrate the economics and commercial viability of solar energy for residential and commercial energy supply applications in accordance with the program authorized by the Solar Heating and Cooling Act of 1974 (Public Law 93-409) [42 U.S.C. 5501 et seq.];

(J) to accelerate the commercial demonstration of environmental control systems for energy technologies developed pursuant to this chapter;

(K) to investigate the technical and economic feasibility of tidal power for supplying electrical energy;

(L) to commercially demonstrate advanced solar energy technologies in accordance with the Solar Research, Development, and Demonstration Act of 1974 (Public Law 93-473) [42 U.S.C. 5551 et seq.];

(M) to determine the economics and commercial viability of the production of synthetic fuels such as hydrogen and methanol;

(N) to commercially demonstrate the use of fuel cells for central station electric power generation;

(O) to determine the economics and commercial viability of in situ coal gasification;

(P) to improve techniques for the management of existing energy systems by means of quality control; application of systems analysis, communications, and computer techniques; and public information with the objective of improving the reliability and efficiency of energy supplies and encourage the conservation of energy resources;

(Q) to improve methods for the prevention and cleanup of marine oil spills;

(R) to implement the Renewable Energy and Energy Efficiency Technology Competitiveness Act of 1989 (42 U.S.C. 12001 et seq.); and

(S) to implement titles XX through XXIII of the Energy Policy Act of 1992 [42 U.S.C. 13401 et seq., 13451 et seq., 13501 et seq., 13521 et seq.].

(c) Based upon the comprehensive plan developed under subsection (a) of this section, the Secretary, in consultation with the Advisory Board established under section 2302 of the Energy Policy Act of 1992 [42 U.S.C. 13522], shall develop and transmit to the Congress, on or before September 1, 1978, a comprehensive environment and safety program to insure the full consideration and evaluation of all environmental, health, and safety impacts of each element, program, or initiative contained in the nuclear and nonnuclear energy research, development, and demonstration plans. Such program shall be updated and transmitted to the Congress annually as part of the report required under section 5914¹ of this title.

(Pub. L. 93-577, § 6, Dec. 31, 1974, 88 Stat. 1881; Pub. L. 95-91, title III, § 301(a), title VII, §§ 703, 707, Aug. 4, 1977, 91 Stat. 577, 606, 607; Pub. L. 95-238, title II, § 206(a), Feb. 25, 1978, 92 Stat. 61; Pub. L. 102-486, title XXIII, § 2303(a), Oct. 24, 1992, 106 Stat. 3092.)

REFERENCES IN TEXT

The Energy Reorganization Act of 1974, referred to in subsec. (a), is Pub. L. 93-438, Oct. 11, 1974, 88 Stat. 1233,

as amended, which is classified principally to chapter 73 (§5801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5801 of this title and Tables.

The Department of Energy Organization Act, referred to in subsec. (a), is Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 565, as amended, which is classified principally to chapter 84 (§7101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

The Energy Policy Act of 1992, referred to in subsecs. (a) and (b)(3)(S), is Pub. L. 102-486, Oct. 24, 1992, 106 Stat. 2776. Titles XX through XXIII of the Act are classified generally to subchapters VIII (§13401 et seq.), IX (§13451 et seq.), X (§13501 et seq.), and XI (§13521 et seq.), respectively, of chapter 134 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 13201 of this title and Tables.

Section 5914 of this title, referred to in subsecs. (a), (b)(1), and (c), was omitted from the Code.

The Solar Heating and Cooling Act of 1974, referred to in subsec. (b)(3), probably means the Solar Heating and Cooling Demonstration Act of 1974, Pub. L. 93-409, Sept. 3, 1974, 88 Stat. 1069, as amended, which is classified generally to subchapter I (§5501 et seq.) of chapter 71 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5501 of this title and Tables.

The Geothermal Energy Research, Development, and Demonstration Act of 1974, referred to in subsec. (b)(3)(F), is Pub. L. 93-410, Sept. 3, 1974, 88 Stat. 1079, as amended, which is classified generally to chapter 24 (§1101 et seq.) of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of Title 30 and Tables.

The Solar Research, Development, and Demonstration Act of 1974, referred to in subsec. (b)(3)(L), probably means the Solar Energy Research, Development, and Demonstration Act of 1974, Pub. L. 93-473, Oct. 26, 1974, 88 Stat. 1431, as amended, which is classified generally to subchapter II (§5551 et seq.) of chapter 71 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5551 of this title and Tables.

The Renewable Energy and Energy Efficiency Technology Competitiveness Act of 1989, referred to in subsec. (b)(3)(R), is Pub. L. 101-218, Dec. 11, 1989, 103 Stat. 1859, which is classified principally to chapter 125 (§12001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 12001 of this title and Tables.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102-486, §2303(a)(1)(A), substituted “the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), and titles XX through XXIII of the Energy Policy Act of 1992, the Secretary, in consultation with the Advisory Board established under section 2302 of the Energy Policy Act of 1992,” for “the Administrator”.

Subsec. (a)(1). Pub. L. 102-486, §2303(a)(1)(B), substituted “(the period up to 5 years after submission of the plan or its annual revision)” for “(to the early 1980’s)”.

Subsec. (a)(2). Pub. L. 102-486, §2303(a)(1)(C), substituted “(the period from 5 years to 10 years after submission of the plan or its annual revision)” for “(the early 1980’s to 2000)”.

Subsec. (a)(3). Pub. L. 102-486, §2303(a)(1)(D), substituted “(the period beyond 10 years after submission of the plan or its annual revision)” for “(beyond 2000)”.

Subsec. (b)(1). Pub. L. 102-486, §2303(a)(2)(B), inserted at end “Such program shall be updated and transmitted to the Congress annually as part of the report required under section 5914 of this title.”

Pub. L. 102-486, §2303(a)(2)(A), substituted “Secretary, in consultation with the Advisory Board established under section 2302 of the Energy Policy Act of 1992,” for “Administrator”.

Subsec. (b)(2). Pub. L. 102-486, §2303(a)(2)(C), substituted “, middle-term, and long-term time intervals described in subsection (a)(1) through (3) of this section” for “(to the early 1980’s), middle-term (the early 1980’s to 2000), and long-term (beyond 2000) time intervals”.

Pub. L. 102-486, §2303(a)(2)(A), substituted “Secretary, in consultation with the Advisory Board established under section 2302 of the Energy Policy Act of 1992,” for “Administrator”.

Subsec. (b)(3). Pub. L. 102-486, §2303(a)(2)(D)–(F), added subpars. (R) and (S).

Subsec. (c). Pub. L. 102-486, §2303(a)(3)(B), inserted at end “Such program shall be updated and transmitted to the Congress annually as part of the report required under section 5914 of this title.”

Pub. L. 102-486, §2303(a)(3)(A), substituted “Secretary, in consultation with the Advisory Board established under section 2302 of the Energy Policy Act of 1992,” for “Administrator”.

1978—Subsec. (c). Pub. L. 95-238 added subsec. (c).

TRANSFER OF FUNCTIONS

“Secretary”, meaning Secretary of Energy, substituted for “Administrator”, meaning Administrator of Energy Research and Development Administration, in subsec. (b)(3) pursuant to sections 301(a), 703, and 707 of Pub. L. 95-91, which are classified to sections 7151(a), 7293, and 7297 of this title and which terminated Energy Research and Development Administration and transferred its functions and functions of Administrator thereof (with certain exceptions) to Secretary of Energy.

NONAPPLICABILITY OF TITLE II OF PUB. L. 95-238 TO ANY AUTHORIZATION OR APPROPRIATION FOR MILITARY APPLICATION OF NUCLEAR ENERGY, ETC.; DEFINITIONS

Nonapplicability of provisions of title II of Pub. L. 95-238 with respect to any authorization or appropriation for any military application of nuclear energy, etc., see section 209 of Pub. L. 95-238, set out as a note under section 5821 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12006, 13522 of this title; title 15 section 2709.

§5906. Federal assistance and participation in programs

(a) Forms of activities authorized

In carrying out the objectives of this chapter, the Secretary may utilize various forms of Federal assistance and participation which may include but are not limited to—

(1) joint Federal-industry experimental, demonstration, or commercial corporations consistent with the provisions of subsection (b) of this section;

(2) contractual arrangements with non-Federal participants including corporations, consortia, universities, governmental entities and nonprofit institutions;

(3) contracts for the construction and operation of federally owned facilities;

(4) Federal purchases or guaranteed price of the products of demonstration plants or activities consistent with the provisions of subsection (c) of the section;

(5) Federal loans to non-Federal entities conducting demonstrations of new technologies;

(6) incentives, including financial awards, to individual inventors, such incentives to be designed to encourage the participation of a large number of such inventors; and

(7) Federal loan guarantees and commitments thereof as provided in section 5919¹ of this title.

(b) Proposed joint Federal-industry corporations; operational guidelines; powers, duties, and functions; composition; scope of Federal assistance and participation; specific authorization

Joint Federal-industry corporations proposed for congressional authorization pursuant to this chapter shall be subject to the provisions of section 5908 of this title and shall conform to the following guidelines except as otherwise authorized by Congress:

(1) Each such corporation may design, construct, operate, and maintain one or more experimental, demonstration, or commercial-size facilities, or other operations which will ascertain the technical, environmental, and economic feasibility of a particular energy technology. In carrying out this function, the corporation shall be empowered, either directly or by contract, to utilize commercially available technologies, perform tests, or design, construct, and operate pilot plants, as may be necessary for the design of the full-scale facility.

(2) Each corporation shall have—

(A) a Board of nine directors consisting of individuals who are citizens of the United States, of whom one shall be elected annually by the Board to serve as Chairman. The Board shall be empowered to adopt and amend bylaws. Five members of the Board shall be appointed by the President of the United States, by and with the advice and consent of the Senate, and four members of the Board shall be appointed by the President on the basis of recommendations received by him from any non-Federal entity or entities entering into contractual arrangements to participate in the corporation;

(B) a President and such other officers and employees as may be named and appointed by the Board (with the rates of compensation of all officers and employees being fixed by the Board); and

(C) the usual powers conferred upon corporations by the laws of the District of Columbia.

(3) An appropriate time interval, not to exceed 12 years, shall be established for the term of Federal participation in the corporation, at the expiration of which the Board of Directors shall take such action as may be necessary to dissolve the corporation or otherwise terminate Federal participation and financial interests. In carrying out such dissolution, the Board of Directors shall dispose of all physical facilities of the corporation in such manner and subject to such terms and conditions as the Board determines are in the public interest and consistent with existing law; and a share of the appraised value of the corporate assets proportional to the Federal participation in the corporation, including the proceeds from the disposition of such facilities, on the

date of its dissolution, after satisfaction of all its legal obligations, shall be made available to the United States and deposited in the Treasury of the United States as miscellaneous receipts. All patent rights of the corporation shall, on such date of dissolution, be vested in the Secretary: *Provided*, That Federal participation may be terminated prior to the time established in the authorizing Act upon recommendation of the Board of Directors.

(4) Any commercially valuable product produced by demonstration facilities shall be disposed of in such manner and under such terms and conditions as the corporation shall prescribe. All revenues received by the corporation from the sale of such products shall be available to the corporation for use by it in defraying expenses incurred in connection with carrying out its functions to which this chapter applies.

(5) The estimated Federal share of the construction, operation, and maintenance cost over the life of each corporation shall be determined in order to facilitate a single congressional authorization of the full amount at the time of establishment of the corporation.

(6) The Federal share of the cost of each such corporation shall reflect (A) the technical and economic risk of the venture, (B) the probability of any financial return to the non-Federal participants arising from the venture, (C) the financial capability of the potential non-Federal participants, and (D) such other factors as the Secretary may set forth in proposing the corporation: *Provided*, That in no instance shall the Federal share exceed 90 per centum of the cost.

(7) No such corporation shall be established unless previously authorized by specific legislation enacted by the Congress.

(c) Proposed competitive systems of price supports for demonstration facilities; guidelines

Competitive systems of price supports proposed for congressional authorization pursuant to this chapter shall conform to the following guidelines:

(1) The Secretary shall determine the types and capacities of the desired full-scale, commercial-size facility or other operation which would demonstrate the technical, environmental, and economic feasibility of a particular nonnuclear energy technology.

(2) The Secretary may award planning grants for the purpose of financing a study of the full cycle economic and environmental costs associated with the demonstration facility selected pursuant to paragraph (1) of this subsection. Such planning grants may be awarded to Federal and non-Federal entities including, but not limited to, industrial entities, universities, and nonprofit organizations. Such planning grants may also be used by the grantee to prepare a detailed and comprehensive bid to construct the demonstration facility.

(3) Following the completion of the studies pursuant to the planning grants awarded under paragraph (2) of this subsection regarding each such potential price supported demonstration facility for which the Secretary in-

¹ See Codification note below.

tends to request congressional authorization, he shall invite bids from all interested parties to determine the minimum amount of Federal price support needed to construct the demonstration facility. The Secretary may designate one or more competing entities, each to construct one commercial demonstration facility. Such designation shall be made on the basis of those entities, (A) commitment to construct the demonstration facility at the minimum level of Federal price supports, (B) detailed plan of environmental protection, and (C) proposed design and operation of the demonstration facility.

(4) The construction plans and actual construction of the demonstration facility, together with all related facilities, shall be monitored by the Environmental Protection Agency. If additional environmental requirements are imposed by the Secretary after the designation of the successful bidders and if such additional environmental requirements result in additional costs, the Secretary is authorized to renegotiate the support price to cover such additional costs.

(5) The estimated amount of the Federal price support for a demonstration facility's product over the life of such facility shall be determined by the Secretary to facilitate a single congressional authorization of the full amount of such support at the time of the designation of the successful bidders.

(6) No price support program shall be implemented unless previously authorized by specific legislation enacted by the Congress.

(d) Support for joint university-industry research efforts

Nothing in this section shall preclude Federal participation in, and support for, joint university-industry nonnuclear energy research efforts.

(Pub. L. 93-577, §7, Dec. 31, 1974, 88 Stat. 1883; Pub. L. 95-91, title III, §301(a), title VII, §§703, 707, Aug. 4, 1977, 91 Stat. 577, 606, 607; Pub. L. 95-238, title II, §207(a), Feb. 25, 1978, 92 Stat. 61; Pub. L. 99-386, title I, §104(a), Aug. 22, 1986, 100 Stat. 821.)

CODIFICATION

Section 5919 of this title, referred to in subsec. (a)(7), was in the original "section 19" and has been editorially translated as section 5919 of this title which relates to loan guarantees as the probable intent of Congress, notwithstanding enactment of another section 19 which is classified to section 5918 of this title and which relates to organizational conflicts.

AMENDMENTS

1986—Subsec. (b)(7). Pub. L. 99-386 struck out subpar. (A) which related to submission of a report by Secretary to House and Senate, prior to establishment of any joint Federal-industry corporation pursuant to this chapter, setting forth in detail consistency of establishment of corporation with this section and section 5904 of this title, and proposed purpose and activities of corporation, and struck out subpar. (B) designation.

1978—Subsec. (a)(7). Pub. L. 95-238 added par. (7).

TRANSFER OF FUNCTIONS

"Secretary", meaning Secretary of Energy, substituted for "Administrator", meaning Administrator of Energy Research and Development Administration,

in subsecs. (a), (b)(3), (6), (7)(A), and (c)(1) to (5) pursuant to sections 301(a), 703, and 707 of Pub. L. 95-91, which are classified to sections 7151(a), 7293, and 7297 of this title and which terminated Energy Research and Development Administration and transferred its functions and functions of Administrator thereof (with certain exceptions) to Secretary of Energy.

NONAPPLICABILITY OF TITLE II OF PUB. L. 95-238 TO ANY AUTHORIZATION OR APPROPRIATION FOR MILITARY APPLICATION OF NUCLEAR ENERGY, ETC.; DEFINITIONS

Nonapplicability of provisions of title II of Pub. L. 95-238 with respect to any authorization or appropriation for any military application of nuclear energy, etc., see section 209 of Pub. L. 95-238, set out as a note under section 5821 of this title.

PRICE-SUPPORT PROGRAM TO DEMONSTRATE MUNICIPAL SOLID WASTE REPROCESSING FOR PRODUCTION OF FUELS AND ENERGY INTENSIVE PRODUCTS

Pub. L. 95-39, title I, §107, June 3, 1977, 91 Stat. 185, authorized Administrator, subject to the appropriation of funds pursuant to section 101(7)(I) of Pub. L. 95-39, to establish and implement, under subsection (a)(4) of this section and in accordance with subsection (c) of this section, a price-support program to demonstrate municipal solid waste reprocessing for production of fuels and energy intensive products, with Administrator, prior to entering into any contract for such demonstration, to submit to Congress a full and complete report on the proposed commercial demonstration facility and the necessary project demonstration guarantees, and provided that such contract could not be finalized prior to the expiration of ninety calendar days (not including any day on which either House of Congress was not in session because of an adjournment of more than three calendar days to a day certain) from the date on which such report was received.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5585, 5907, 5919, 5920 of this title.

§ 5907. Demonstration projects

(a) Scope of authority of Secretary

The Secretary is authorized to—

(1) identify opportunities to accelerate the commercial applications of new energy technologies, and provide Federal assistance for or participation in demonstration projects (including pilot plants demonstrating technological advances and field demonstrations of new methods and procedures, and demonstrations of prototype commercial applications for the exploration, development, production, transportation, conversion, and utilization of energy resources); and

(2) enter into cooperative agreements with non-Federal entities to demonstrate the technical feasibility and economic potential of energy technologies on a prototype or full-scale basis.

(b) Criteria applicable in reviewing potential projects

In reviewing potential projects, the Secretary shall consider criteria including but not limited to—

(1) the anticipated, research, development, and application objectives to be achieved by the activities or facilities proposed;

(2) the economic, environmental, and societal significance which a successful demonstration may have for the national fuels and energy system;

(3) the relationship of the proposal to the criteria of priority set forth in section 5904(b)(2) of this title;

(4) the availability of non-Federal participants to construct and operate the facilities or perform the activities associated with the proposal and to contribute to the financing of the proposal;

(5) the total estimated cost including the Federal investment and the probable time schedule;

(6) the proposed participants and the proposed financial contributions of the Federal Government and of the non-Federal participants; and

(7) the proposed cooperative arrangement, agreements among the participants, and form of management of the activities.

(c) Federal and non-Federal share of costs

(1) A financial award under this section may be made only to the extent of the Federal share of the estimated total design and construction costs, plus operation and maintenance costs.

(2) For the purposes of this chapter the non-Federal share may be in any form, including, but not limited to, lands or interests therein needed for the project or personal property or services, the value of which shall be determined by the Secretary.

(d) Submission of proposals to Secretary; promulgation of regulations by Secretary establishing procedures; required contents of proposals and regulations

(1) The Secretary shall, within six months of December 31, 1974, promulgate regulations establishing procedures for submission of proposals to the Secretary for the purposes of this chapter. Such regulations shall establish a procedure for selection of proposals which—

(A) provides that projects will be carried out under such conditions and varying circumstances as will assist in solving energy extraction, transportation, conversion, conservation, and end-use problems of various areas and regions, under representative geological, geographic, and environmental conditions; and

(B) provides time schedules for submission of, and action on, proposal requests for the purposes of implementing the goals and objectives of this chapter.

(2) Such regulations also shall specify the types and form of the information, data, and support documentation that are to be contained in proposals for each form of Federal assistance or participation set forth in section 5906(a) of this title: *Provided*, That such proposals to the extent possible shall include, but not be limited to—

(A) specification of the technology;

(B) description of prior pilot plant operating experience with the technology;

(C) preliminary design of the demonstration plant;

(D) time tables containing proposed construction and operation plans;

(E) budget-type estimates of construction and operating costs;

(F) description and proof of title to land for proposed site, natural resources, electricity

and water supply and logistical information related to access to raw materials to construct and operate the plant and to dispose of salable products produced from the plant;

(G) analysis of the environmental impact of the proposed plant and plans for disposal of wastes resulting from the operation of the plant;

(H) plans for commercial use of the technology if the demonstration is successful;

(I) plans for continued use of the plant if the demonstration is successful; and

(J) plans for dismantling of the plant if the demonstration is unsuccessful or otherwise abandoned.

(3) The Secretary shall from time to time review and, as appropriate, modify and repromulgate regulations issued pursuant to this section.

(e) Amount of estimate of Federal investment requiring Congressional authorization for appropriation

If the estimate of the Federal investment with respect to construction costs of any demonstration project proposed to be established under this section exceeds \$50,000,000, no amount may be appropriated for such project except as specifically authorized by legislation hereafter enacted by the Congress.

(f) Amount of estimated Federal contribution authorizing Secretary to proceed with negotiation of agreements and implementation of proposal; amount of Federal contribution requiring Secretary to submit report to Congress as prerequisite to expenditure of funds

If the total estimated amount of the Federal contribution to the construction cost of a demonstration project does not exceed \$50,000,000, the Secretary is authorized to proceed with the negotiation of agreements and implementation of the proposal subject to the availability of funds under the authorization of appropriations pursuant to section 5915 of this title: *Provided*, That if such Federal contribution to the construction cost is estimated to exceed \$25,000,000 the Secretary shall provide a full and comprehensive report on the proposed demonstration project to the appropriate committees of the Congress and no funds may be expended for any agreement under the authority granted by this section prior to the expiration of sixty calendar days (not including any day on which either House of Congress is not in session because of an adjournment of more than three calendar days to a day certain) from the date on which the Secretary's report on the proposed project is received by the Congress. Such reports shall contain an analysis of the extent to which the proposed demonstration satisfies the criteria specified in subsection (b) of this section.

(Pub. L. 93-577, § 8, Dec. 31, 1974, 88 Stat. 1886; Pub. L. 95-91, title III, § 301(a), title VII, §§ 703, 707, Aug. 4, 1977, 91 Stat. 577, 606, 607.)

TRANSFER OF FUNCTIONS

“Secretary” and “Secretary’s”, meaning Secretary of Energy, substituted for “Administrator” and “Administrator’s”, respectively, meaning Administrator of Energy Research and Development Administration, in subsecs. (a), (b), (c)(2), (d)(1), (3), and (f) and “Sec-

retary” substituted for “Energy Research and Development Administration” in subsec. (d)(1) pursuant to sections 301(a), 703, and 707 of Pub. L. 95-91, which are classified to sections 7151(a), 7293, and 7297 of this title and which terminated Energy Research and Development Administration and transferred its functions and functions of Administrator thereof (with certain exceptions) to Secretary of Energy.

REPORT TO CONGRESS ON ENVIRONMENTAL, MONITORING, ASSESSMENT, AND CONTROL EFFORTS REQUIRED FOR DEMONSTRATION PROJECTS; SUBMISSION TO CONGRESS BY DECEMBER 3, 1977

Pub. L. 95-39, title I, §113, June 3, 1977, 91 Stat. 187, directed Administrator of Energy Research and Development Administration, in consultation with Administrator of Environmental Protection Agency, to submit a report to Congress six months after June 3, 1977, on the environmental monitoring, assessment, and control efforts, relating to environment, safety, and health, which are required to successfully demonstrate any project which is subject to subsecs. (e) and (f) of this section and is authorized by this Act or any prior Act.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5585, 5915a, 5919 of this title.

§ 5907a. Small grant program

(a) Establishment

There shall be established within the Department of Energy a program for appropriate technology under the direction of the Secretary. The Secretary shall develop and implement a program of small grants for the purpose of encouraging development and demonstration projects described in subsection (c) of this section.

(b) Limitation

The aggregate amount of financial support made available to any participant in such program, including affiliates, under this section shall not exceed \$50,000 during any two-year period.

(c) Systems and technologies to be developed and demonstrated

Funds made available under this section shall be used to provide for a coordinated and expanded effort for the development and demonstration of, and the dissemination of information with respect to, energy-related systems and supporting technologies appropriate to—

- (1) the needs of local communities and the enhancement of community self-reliance through the use of available resources;
- (2) the use of renewable resources and the conservation of nonrenewable resources;
- (3) the use of existing technologies applied to novel situations and uses;
- (4) applications which are energy-conserving, environmentally sound, small scale, durable and low cost; and
- (5) applications which demonstrate simplicity of installation, operation and maintenance.

(d) Eligible participants; simplified application procedures; report to Secretary; allocation criteria; guidelines

(1) Grants, agreements or contracts under this section may be made to individuals, local non-profit organizations and institutions, State and local agencies, Indian tribes and small busi-

nesses. The Secretary shall develop simplified procedures with respect to application for support under this section.

(2) Each grant, agreement or contract under this section shall be governed by the provisions of section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 [42 U.S.C. 5908] and shall contain effective provisions under which the Secretary shall receive a full written report of activities supported in whole or in part by funds made available by the Secretary; and

(3) In determining the allocation of funds among applicants for support under this section the Secretary may take into consideration:

- (A) the potential for energy savings or energy production;
- (B) the type of fuel saved or produced;
- (C) the potential impact on local or regional energy or environmental problems; and
- (D) such other criteria as the Secretary finds necessary to achieve the purposes of this Act or the purposes of the Federal Nonnuclear Energy Research and Development Act of 1974 [42 U.S.C. 5901 et seq.].

Guidelines implementing this section shall be promulgated with full opportunity for public comment.

(e) Reports to Congress

The Secretary shall—

(1) prepare and submit no later than October 1, 1977, a detailed report on plans for implementation, including the timing of implementation, of the provisions of this section to the Committee on Energy and Natural Resources of the Senate and the Committee on Science and Technology of the House of Representatives and shall keep such committees fully and currently informed concerning the development of such plans; and

(2) include as a part of the annual report required by section 15(a)(1)¹ of the Federal Nonnuclear Energy Research and Development Act of 1974 beginning in 1977, a full and complete report on the program under this section.

(Pub. L. 95-39, title I, §112, June 3, 1977, 91 Stat. 186; Pub. L. 95-91, title III, §301(a), title VII, §§703, 707, Aug. 4, 1977, 91 Stat. 577, 606, 607.)

REFERENCES IN TEXT

This Act, referred to in subsec. (d)(3)(D), means Pub. L. 95-39, June 3, 1977, 91 Stat. 180, which to the extent classified to the Code enacted sections 5816a, 5817a, 5903c, 5907a, 5915a, 5918, and 7001 to 7011 of this title, amended sections 5813, 5818, and 5912 of this title, and enacted provisions set out as notes under sections 5906, 5907, 5914, and 7001 of this title. For complete classification of this Act to the Code, see Tables.

The Federal Nonnuclear Energy Research and Development Act of 1974, referred to in subsec. (d)(3)(D), is Pub. L. 93-577, Dec. 31, 1974, 88 Stat. 1878, as amended, which is classified generally to this chapter (§5901 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 5901 of this title and Tables.

Section 15 of the Federal Nonnuclear Energy Research and Development Act of 1974, referred to in subsec. (e)(2), was classified to section 5914 of this title and was omitted from the Code.

¹ See References in Text note below.

CODIFICATION

Section was not enacted as part of the Federal Non-nuclear Energy Research and Development Act of 1974 which comprises this chapter.

CHANGE OF NAME

Committee on Science and Technology of House of Representatives changed to Committee on Science, Space, and Technology of House of Representatives by House Resolution No. 5, One Hundredth Congress, Jan. 6, 1987. Committee on Science, Space, and Technology of House of Representatives treated as referring to Committee on Science of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

TRANSFER OF FUNCTIONS

“Secretary”, meaning Secretary of Energy, substituted for “Administrator”, “Administration”, and “Assistant Administrator for Conservation and Development”, meaning Energy Research and Development Administration and Administrator thereof, in subsecs. (a), (d), and (e) and “Department of Energy” substituted for “Administration” in subsec. (a) pursuant to sections 301(a), 703, and 707 of Pub. L. 95-91, which are classified to sections 7151(a), 7293, and 7297 of this title and which terminated Energy Research and Development Administration and transferred its functions and functions of Administrator thereof (with certain exceptions) to Secretary of Energy.

§ 5908. Patents and inventions**(a) Vesting of title to invention and issuance of patents to United States; prerequisites**

Whenever any invention is made or conceived in the course of or under any contract of the Secretary, other than nuclear energy research, development, and demonstration pursuant to the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) and the Secretary determines that—

(1) the person who made the invention was employed or assigned to perform research, development, or demonstration work and the invention is related to the work he was employed or assigned to perform, or that it was within the scope of his employment duties, whether or not it was made during working hours, or with a contribution by the Government of the use of Government facilities, equipment, materials, allocated funds, information proprietary to the Government, or services of Government employees during working hours; or

(2) the person who made the invention was not employed or assigned to perform research, development, or demonstration work, but the invention is nevertheless related to the contract or to the work or duties he was employed or assigned to perform, and was made during working hours, or with a contribution from the Government of the sort referred to in clause (1).¹

title to such invention shall vest in the United States, and if patents on such invention are issued they shall be issued to the United States, unless in particular circumstances the Secretary waives all or any part of the rights of the United States to such invention in conformity with the provisions of this section.

¹ So in original. Probably should be a comma.

(b) Contract as requiring report to Secretary of invention, etc., made in course of contract

Each contract entered into by the Secretary with any person shall contain effective provisions under which such person shall furnish promptly to the Secretary a written report containing full and complete technical information concerning any invention, discovery, improvement, or innovation which may be made in the course of or under such contract.

(c) Waiver by Secretary of rights of United States; regulations prescribing procedures; record of waiver determinations; objectives

Under such regulations in conformity with the provisions of this section as the Secretary shall prescribe, the Secretary may waive all or any part of the rights of the United States under this section with respect to any invention or class of inventions made or which may be made by any person or class of persons in the course of or under any contract of the Secretary if he determines that the interests of the United States and the general public will be best served by such waiver. The Secretary shall maintain a publicly available, periodically updated record of waiver determinations. In making such determinations, the Secretary shall have the following objectives:

(1) Making the benefits of the energy research, development, and demonstration program widely available to the public in the shortest practicable time.

(2) Promoting the commercial utilization of such inventions.

(3) Encouraging participation by private persons in the Secretary's energy research, development, and demonstration program.

(4) Fostering competition and preventing undue market concentration or the creation or maintenance of other situations inconsistent with the antitrust laws.

(d) Considerations applicable at time of contracting for waiver determination by Secretary

In determining whether a waiver to the contractor at the time of contracting will best serve the interests of the United States and the general public, the Secretary shall specifically include as considerations—

(1) the extent to which the participation of the contractor will expedite the attainment of the purposes of the program;

(2) the extent to which a waiver of all or any part of such rights in any or all fields of technology is needed to secure the participation of the particular contractor;

(3) the extent to which the contractor's commercial position may expedite utilization of the research, development, and demonstration program results;

(4) the extent to which the Government has contributed to the field of technology to be funded under the contract;

(5) the purpose and nature of the contract, including the intended use of the results developed thereunder;

(6) the extent to which the contractor has made or will make substantial investment of financial resources or technology developed at the contractor's private expense which will di-

rectly benefit the work to be performed under the contract;

(7) the extent to which the field of technology to be funded under the contract has been developed at the contractor's private expense;

(8) the extent to which the Government intends to further develop to the point of commercial utilization the results of the contract effort;

(9) the extent to which the contract objectives are concerned with the public health, public safety, or public welfare;

(10) the likely effect of the waiver on competition and market concentration; and

(11) in the case of a nonprofit educational institution, the extent to which such institution has a technology transfer capability and program, approved by the Secretary as being consistent with the applicable policies of this section.

(e) Considerations applicable to identified invention for waiver determination by Secretary

In determining whether a waiver to the contractor or inventor or rights to an identified invention will best serve the interests of the United States and the general public, the Secretary shall specifically include as considerations paragraphs (4) through (11) of subsection (d) of this section as applied to the invention and—

(1) the extent to which such waiver is a reasonable and necessary incentive to call forth private risk capital for the development and commercialization of the invention; and

(2) the extent to which the plans, intentions, and ability of the contractor or inventor will obtain expeditious commercialization of such invention.

(f) Rights subject to reservation where title to invention vested in United States

Whenever title to an invention is vested in the United States, there may be reserved to the contractor or inventor—

(1) a revocable or irrevocable nonexclusive, paid-up license for the practice of the invention throughout the world; and

(2) the rights to such invention in any foreign country where the United States has elected not to secure patent rights and the contractor elects to do so, subject to the rights set forth in paragraphs (2), (3), (6), and (7) of subsection (h) of this section: *Provided*, That when specifically requested by the Secretary and three years after issuance of such a patent, the contractor shall submit the report specified in subsection (h)(1) of this section.

(g) to (i) Repealed. Pub. L. 96-517, § 7(c), Dec. 12, 1980, 94 Stat. 3027

(j) Small business status of applicant for waiver or licenses

The Secretary shall, in granting waivers or licenses, consider the small business status of the applicant.

(k) Protection of invention, etc., rights by Secretary

The Secretary is authorized to take all suitable and necessary steps to protect any inven-

tion or discovery to which the United States holds title, and to require that contractors or persons who acquire rights to inventions under this section protect such inventions.

(l) Department of Energy as defense agency of United States for purpose of maintaining secrecy of inventions

The Department of Energy shall be considered a defense agency of the United States for the purpose of chapter 17 of title 35.

(m) Definitions

As used in this section—

(1) the term "person" means any individual, partnership, corporation, association, institution, or other entity;

(2) the term "contract" means any contract, grant, agreement, understanding, or other arrangement, which includes research, development, or demonstration work, and includes any assignment, substitution of parties, or subcontract executed or entered into thereunder;

(3) the term "made", when used in relation to any invention, means the conception or first actual reduction to practice of such invention;

(4) the term "invention" means inventions or discoveries, whether patented or unpatented; and

(5) the term "contractor" means any person having a contract with or on behalf of the Secretary.

(n) Report concerning applicability of existing patent policies to energy programs; time for submission to President and appropriate Congressional committees

Within twelve months after December 31, 1974, the Secretary with the participation of the Attorney General, the Secretary of Commerce, and other officials as the President may designate, shall submit to the President and the appropriate congressional committees a report concerning the applicability of existing patent policies affecting the programs under this chapter, along with his recommendations for amendments or additions to the statutory patent policy, including his recommendations on mandatory licensing, which he deems advisable for carrying out the purposes of this chapter.

(Pub. L. 93-577, § 9, Dec. 31, 1974, 88 Stat. 1887; Pub. L. 95-91, title III, § 301(a), title VII, §§ 703, 707, Aug. 4, 1977, 91 Stat. 577, 606, 607; Pub. L. 96-517, § 7(c), Dec. 12, 1980, 94 Stat. 3027.)

REFERENCES IN TEXT

The Atomic Energy Act of 1954, referred to in subsec. (a), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§ 2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

The antitrust laws, referred to in subsec. (c)(4), probably mean the laws specified as antitrust laws in section 5909(b) of this title.

AMENDMENTS

1980—Subsec. (g). Pub. L. 96-517 struck out subsec. (g) which related to licenses for inventions, promulgation of regulations specifying terms and conditions, criteria

and procedures for grant of exclusive or partially exclusive licenses, and record of determinations.

Subsec. (h). Pub. L. 96-517 struck out subsec. (h) which related to required terms and conditions in waiver of rights or grant of exclusive or partially exclusive license.

Subsec. (i). Pub. L. 96-517 struck out subsec. (i) which related to publication in the Federal Register by the Administrator of waiver or license termination hearing requirements and availability of records.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-517 effective July 1, 1981, but implementing regulations authorized to be issued earlier, see section 8(f) of Pub. L. 96-517, set out as a note under section 41 of Title 35, Patents.

TRANSFER OF FUNCTIONS

“Secretary” and “Secretary’s”, meaning Secretary of Energy, substituted for “Administrator”, “Administration”, and “Administration’s”, meaning Energy Research and Development Administration and Administrator thereof, in subssecs. (a) to (e), (f)(2), (j), (k), (m)(5), and (n), and “Department of Energy” substituted for “Administration” in subsec. (l) pursuant to sections 301(a), 703, and 707 of Pub. L. 95-91, which are classified to sections 7151(a), 7293, and 7297 of this title and which terminated Energy Research and Development Administration and transferred its functions and functions of Administrator thereof (with certain exceptions) to Secretary of Energy.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5585, 5906, 5907a, 5919, 6981, 7261a, 10308 of this title; title 7 section 178j; title 15 sections 2511, 2707, 5104; title 35 section 210.

§ 5909. Relationship to antitrust laws

(a) Nothing in this chapter shall be deemed to convey to any individual, corporation, or other business organization immunity from civil or criminal liability, or to create defenses to actions, under the antitrust laws.

(b) As used in this section, the term “antitrust law” means—

(1) the Act entitled “An Act to protect trade and commerce against unlawful restraints and monopolies”, approved July 2, 1890 (15 U.S.C. 1 et seq.), as amended;

(2) the Act entitled “An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes”, approved October 15, 1914 (15 U.S.C. 12 et seq.) as amended;

(3) the Federal Trade Commission Act (15 U.S.C. 41 et seq.), as amended;

(4) sections 73 and 74 of the Act entitled “An Act to reduce taxation, to provide revenue for the Government, and for other purposes”, approved August 27, 1894 (15 U.S.C. 8 and 9), as amended; and

(5) the Act of June 19, 1936, chapter 592 (15 U.S.C. 13, 13a, 13b, and 21a).

(Pub. L. 93-577, §10, Dec. 31, 1974, 88 Stat. 1891.)

REFERENCES IN TEXT

Act of July 2, 1890, referred to in subsec. (b)(1), is act July 2, 1890, ch. 647, 26 Stat. 209, as amended, known as the Sherman Act, which is classified to sections 1 to 7 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1 of Title 15 and Tables.

Act of October 15, 1914, referred to in subsec. (b)(2), is act Oct. 15, 1914, ch. 323, 38 Stat. 730, as amended,

known as the Clayton Act, which is classified generally to sections 12, 13, 14 to 19, 21, and 22 to 27 of Title 15, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of Title 15 and Tables.

The Federal Trade Commission Act (15 U.S.C. 41 et seq.), as amended, referred to in subsec. (b)(3), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of Title 15. For complete classification of this Act to the Code, see section 58 of Title 15 and Tables.

Act of June 19, 1936, chapter 592, referred to in subsec. (b)(5), is act June 19, 1936, ch. 592, 49 Stat. 1526, popularly known as the Robinson-Patman Antidiscrimination Act and also as the Robinson-Patman Price Discrimination Act, which enacted sections 13a, 13b, and 21a of Title 15, Commerce and Trade, and amended section 13 of Title 15. For complete classification of this Act to the Code, see Short Title note set out under section 13 of Title 15 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10308 of this title; title 7 section 178j.

§ 5910. Repealed. Pub. L. 104-66, title II, § 2021(i), Dec. 21, 1995, 109 Stat. 727

Section, Pub. L. 93-577, §11, Dec. 31, 1974, 88 Stat. 1892; Pub. L. 95-91, title III, §301(a), title VII, §§703, 707, Aug. 4, 1977, 91 Stat. 577, 606, 607; 1977 Reorg. Plan No. 1, §5E, 42 F.R. 56101, 91 Stat. 1634, related to environmental evaluations by Administrator of Environmental Protection Agency.

§ 5911. Allocation or acquisition of essential materials and equipment pursuant to Presidential rule or order; transmission to Congress and effective date of proposed rule or order; disapproval by Congress

(a) The President may, by rule or order, require the allocation of, or the performance under contracts or orders (other than contracts of employment) relating to, supplies of materials and equipment if he finds that—

(1) such supplies are scarce, critical, and essential to carry out the purposes of this chapter; and

(2) such supplies cannot reasonably be obtained without exercising the authority granted by this section.

(b) The President shall transmit any rule or order proposed under subsection (a) of this section (bearing an identification number) to each House of Congress on the date on which it is proposed. If such proposed rule or order is transmitted to the Congress such proposed rule or order shall take effect at the end of the first period of thirty calendar days of continuous session of Congress after the date on which such proposed rule or order is transmitted to it unless, between the date of transmittal and the end of the thirty day period, either House passes a resolution stating in substance that such House does not favor such a proposed rule or order.

(Pub. L. 93-577, §12, Dec. 31, 1974, 88 Stat. 1892.)

§ 5912. Water resource assessments

(a) Assessments by Water Resources Council of water resource requirements and water supply availability for nonnuclear energy technologies; preparation requirements

The Water Resources Council shall undertake assessments of water resource requirements and

water supply availability for any nonnuclear energy technology and any probable combinations of technologies which are the subject of Federal research and development efforts authorized by this chapter, and the commercial development of which could have significant impacts on water resources. In the preparation of its assessment, the Council shall—

(1) utilize to the maximum extent practicable data on water supply and demand available in the files of member agencies of the Council;

(2) collect and compile any additional data it deems necessary for complete and accurate assessments;

(3) give full consideration to the constraints upon availability imposed by treaty, compact, court decree, State water laws, and water rights granted pursuant to State and Federal law;

(4) assess the effects of development of such technology on water quality;

(5) include estimates of cost associated with production and management of the required water supply, and the cost of disposal of waste water generated by the proposed facility or process;

(6) assess the environmental, social, and economic impact of any change in use of currently utilized water resource that may be required by the proposed facility or process; and

(7) consult with the Council on Environmental Quality.

(b) Request by Secretary that Water Resources Council prepare assessment of availability of adequate water resources for proposed demonstration projects; report; publication

For any proposed demonstration project which may involve a significant impact on water resources, the Secretary shall, as a precondition of Federal assistance to that project, request the Water Resources Council to prepare an assessment of water requirements and availability for such project. A report on the assessment shall be published in the Federal Register for public review thirty days prior to the expenditure of Federal funds on the demonstration.

(c) Assessment by Water Resources Council of availability of adequate water resources as precondition for Federal assistance for commercial application of nonnuclear energy technologies

For any proposed Federal assistance for commercial application of energy technologies pursuant to this chapter, the Water Resource¹ Council shall, as a precondition of such Federal assistance, provide to the Secretary an assessment of the availability of adequate water resources for such commercial application and an evaluation of the environmental, social, and economic impacts of the dedication of water to such uses.

(d) Publication of reports of assessments and evaluations by Water Resources Council in Federal Register; public review and comments

Reports of assessments and evaluations prepared by the Council pursuant to subsections (a)

and (c) of this section shall be published in the Federal Register and at least ninety days shall be provided for public review and comment. Comments received shall accompany the reports when they are submitted to the Secretary and shall be available to the public.

(e) Inclusion of survey and analysis of regional and national water resource availability in biennial assessment by Water Resources Council

The Council shall include a broad survey and analysis of regional and national water resource availability for energy development in the biennial assessment required by section 1962a-1(a) of this title.

(f) Secretary as member of Water Resources Council

The Secretary shall, upon enactment of this subsection, be a member of the Council.

(Pub. L. 93-577, §13, Dec. 31, 1974, 88 Stat. 1893; Pub. L. 95-39, title I, §110, June 3, 1977, 91 Stat. 186; Pub. L. 95-91, title III, §301(a), title VII, §§703, 707, Aug. 4, 1977, 91 Stat. 577, 606, 607.)

AMENDMENTS

1977—Subsec. (a). Pub. L. 95-39, §110(1), substituted “The Water Resources Council” for “At the request of the Administrator, the Water Resources Council”.

Subsec. (b). Pub. L. 95-39, §110(2), substituted “the Administrator shall, as a precondition of Federal assistance to that project, request the Water Resources Council to prepare an assessment of water requirements and availability for such project” for “the Administrator shall, as a precondition of Federal assistance to that project, prepare or have prepared an assessment of the availability of adequate water resources”.

Subsec. (f). Pub. L. 95-39, §110(3), added subsec. (f).

TRANSFER OF FUNCTIONS

“Secretary”, meaning Secretary of Energy, substituted for “Administrator”, meaning Administrator of Energy Research and Development Administration, in subsections (b) to (d) and (f) pursuant to sections 301(a), 703, and 707 of Pub. L. 95-91, which are classified to sections 7151(a), 7293, and 7297 of this title and which terminated Energy Research and Development Administration and transferred its functions and functions of Administrator thereof (with certain exceptions) to Secretary of Energy.

Functions of Council on Environmental Quality and Office of Environmental Quality relating to evaluation provided for by section 5910 of this title transferred to Administrator of Environmental Protection Agency by Reorg. Plan No. 1 of 1977, §5E, 42 F.R. 56101, 91 Stat. 1634, set out in the Appendix to Title 5, Government Organization and Employees, effective Feb. 26, 1978, pursuant to Ex. Ord. No. 12040, Feb. 24, 1978, 43 F.R. 8097, formerly set out under section 5910 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5904, 5915 of this title.

§ 5913. Evaluation by National Institute of Standards and Technology of energy-related inventions prior to awarding of grants by Secretary; promulgation of regulations

The National Institute of Standards and Technology shall give particular attention to the evaluation of all promising energy-related inventions, particularly those submitted by individual inventors and small companies for the

¹ So in original. Probably should be “Resources”.

purpose of obtaining direct grants from the Secretary. The National Institute of Standards and Technology is authorized to promulgate regulations in the furtherance of this section.

(Pub. L. 93-577, §14, Dec. 31, 1974, 88 Stat. 1894; Pub. L. 95-91, title III, §301(a), title VII, §§703, 707, Aug. 4, 1977, 91 Stat. 577, 606, 607; Pub. L. 100-418, title V, §5115(c), Aug. 23, 1988, 102 Stat. 1433.)

AMENDMENTS

1988—Pub. L. 100-418 substituted “National Institute of Standards and Technology” for “National Bureau of Standards” in two places.

TRANSFER OF FUNCTIONS

“Secretary”, meaning Secretary of Energy, substituted in text for “Administrator”, meaning Administrator of Energy Research and Development Administration, pursuant to sections 301(a), 703, and 707 of Pub. L. 95-91, which are classified to sections 7151(a), 7293, and 7297 of this title and which terminated Energy Research and Development Administration and transferred its functions and functions of Administrator thereof (with certain exceptions) to Secretary of Energy.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 15 section 278m.

§ 5914. Omitted

CODIFICATION

Section, Pub. L. 93-577, §15, Dec. 31, 1974, 88 Stat. 1894; Pub. L. 95-91, title III, §301(a), title VII, §§703, 707, Aug. 4, 1977, 91 Stat. 577, 606, 607; Pub. L. 95-238, title II, §206(b), Feb. 25, 1978, 92 Stat. 61, which required the Secretary to submit annually to Congress a report detailing the activities carried out pursuant to this chapter during the preceding fiscal year, a detailed description of the comprehensive plan for nuclear and non-nuclear energy research, development, and demonstration then in effect under section 5905(a) of this title, a detailed description of the comprehensive nonnuclear research, development, and demonstration program then in effect under section 5905(b) of this title, and a detailed description of the environmental and safety research, development, and demonstration activities carried out and in progress and which provided that those reports would satisfy the reporting requirements of section 5877(a) of this title insofar as is concerned activities, goals, priorities, and plans of the Secretary pertaining to nonnuclear energy, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, the 20th item on page 86 of House Document No. 103-7.

§ 5915. Authorization of appropriations

(a) There may be appropriated to the Secretary to carry out the purposes of this chapter such sums as may be authorized in annual authorization Acts.

(b) Of the amounts appropriated pursuant to subsection (a) of this section—

(1) \$500,000 annually shall be made available by fund transfer to the Council on Environmental Quality for the purposes authorized by section 5910¹ of this title; and

(2) not to exceed \$1,000,000 annually shall be made available by fund transfer to the Water Resources Council for the purposes authorized by section 5912 of this title.

¹ See References in Text note below.

(c) There also may be appropriated to the Secretary by separate Acts such amounts as are required for demonstration projects for which the total Federal contribution to construction costs exceeds \$50,000,000.

(Pub. L. 93-577, §16, Dec. 31, 1974, 88 Stat. 1894; Pub. L. 95-91, title III, §301(a), title VII, §§703, 707, Aug. 4, 1977, 91 Stat. 577, 606, 607.)

REFERENCES IN TEXT

Section 5910 of this title, referred to in subsec. (b)(1), was repealed by Pub. L. 104-66, title II, §2021(i), Dec. 21, 1995, 109 Stat. 727.

TRANSFER OF FUNCTIONS

“Secretary”, meaning Secretary of Energy, substituted for “Administrator”, meaning Administrator of Energy Research and Development Administration, in subsecs. (a) and (c) pursuant to sections 301(a), 703, and 707 of Pub. L. 95-91, which are classified to sections 7151(a), 7293, and 7297 of this title and which terminated Energy Research and Development Administration and transferred its functions and functions of Administrator thereof (with certain exceptions) to Secretary of Energy.

Functions of Council on Environmental Quality and Office of Environmental Quality relating to evaluation provided for by section 5910 of this title transferred to Administrator of Environmental Protection Agency by Reorg. Plan No. 1 of 1977, §5E, 42 F.R. 56101, 91 Stat. 1634, set out in the Appendix to Title 5, Government Organization and Employees, effective on or before Apr. 1, 1978, at such time as specified by President. Section 6 of Reorg. Plan No. 1 of 1977 authorized Director of Office of Management and Budget to transfer to appropriate agency or department unexpended balances of appropriations, allocations and other funds used, held, or available in connection with functions transferred. Ex. Ord. No. 12040, Feb. 24, 1978, 43 F.R. 8097, set out under section 5910 of this title, provided that transfer of functions of Council on Environmental Quality and Office of Environmental Quality to Administrator of Environmental Protection Agency is effective Feb. 26, 1978.

ALTERNATIVE FUELS PRODUCTION; ENERGY SECURITY RESERVE FUND

Pub. L. 96-126, title II, §201, Nov. 27, 1979, 93 Stat. 970, as amended by Pub. L. 99-190, §101(d) [title II, §201], Dec. 19, 1985, 99 Stat. 1224, 1255, provided that:

“In order to expedite the domestic development and production of alternative fuels and to reduce dependence on foreign supplies of energy resources by establishing such domestic production at maximum levels at the earliest time practicable, there is hereby established in the Treasury of the United States a special fund to be designated the ‘Energy Security Reserve’, to which is appropriated \$19,000,000,000, to remain available until expended: *Provided*, That these funds shall be available for obligation only to stimulate domestic commercial production of alternative fuels and only to the extent provided in advance in appropriations Acts: *Provided further*, That of these funds \$1,500,000,000 shall be available immediately to the Secretary of Energy to carry out the provisions of the Federal Nonnuclear Energy Research and Development Act of 1974, as amended (42 U.S.C. 5901, et seq.), to remain available until expended, for the purchase or production by way of purchase commitments or price guarantees of alternative fuels: *Provided further*, That the Secretary shall immediately begin the contract process for purchases of, or commitments to purchase, or to resell alternative fuels to the extent of appropriations provided herein: *Provided further*, That of these funds an additional \$708,000,000 shall be available immediately to the Secretary of Energy, to remain available until expended, to support preliminary alternative fuels commercialization activities under the Federal Nonnuclear En-

ergy Research and Development Act of 1974, as amended, of which (1) not to exceed \$100,000,000 shall be available for project development feasibility studies, such individual awards not to exceed \$4,000,000; *Provided*, That the Secretary may require repayment of such funds where studies determine that such project proposals have economic or technical feasibility; (2) not to exceed \$100,000,000 shall be available for cooperative agreements with non-Federal entities, such individual agreements not to exceed \$25,000,000 to support commercial scale development of alternative fuel facilities; (3) not to exceed \$500,000,000 shall be available for a reserve to cover any defaults from loan guarantees issued to finance the construction of alternative fuels production facilities as authorized by the Federal Nonnuclear Energy Research and Development Act of 1974, as amended: *Provided*, That the indebtedness guaranteed or committed to be guaranteed under this appropriation shall not exceed the aggregate of \$1,500,000,000; and (4) not to exceed \$8,000,000 shall be available for program management.

"This Act [Pub. L. 96-126] shall be deemed to satisfy the requirements for congressional action pursuant to sections 7(c) and 19 of said Act [sections 5906(c) and 5919 of this title] with respect to any purchase commitment, price guarantee, or loan guarantee for which funds appropriated hereby are utilized or obligated.

"For the purposes of this appropriation the term 'alternative fuels', means gaseous, liquid, or solid fuels and chemical feedstocks derived from coal, shale, tar sands, lignite, peat, biomass, solid waste, unconventional natural gas, and other minerals or organic materials other than crude oil or any derivative thereof.

"Within ninety days following enactment of this Act [Nov. 27, 1979], the Secretary of Energy in his sole discretion shall issue a solicitation for applications which shall include criteria for project development feasibility studies described in this account.

"Loan guarantees for oil shale facilities issued under this appropriation may be used to finance construction of full-sized commercial facilities without regard to the proviso in section 19(b)(1) of said Act [section 5919(b)(1) of this title] requiring the prior demonstration of a modular facility.

"In any case in which the Government, under the provisions of this appropriation, accepts delivery of and does not resell any alternative fuels, such fuels shall be used by an appropriate Federal agency. Such Federal agency shall pay into the reserve the market price, as determined by the Secretary, for such fuels from sums appropriated to such Federal agency for the purchase of fuels. The Secretary shall pay the contractor, from sums appropriated herein, the contract price for such fuels.

"All amounts received by the Secretary under this appropriation, including fees, any other monies, property, or assets derived by the Secretary from operations under this appropriation shall be deposited in the reserve.

"All payments for obligations and appropriate expenses (including reimbursements to other Government accounts), pursuant to operations of the Secretary under this appropriation shall be paid from the reserve subject to appropriations.

"For the establishment in the Treasury of the United States of a special fund to be designated the 'Solar and Conservation Reserve', \$1,000,000,000 to remain available until expended: *Provided*, That these funds shall be available for obligation only to stimulate solar energy and conservation: *Provided further*, That the withdrawal of said funds shall be subject to the passage of authorizing legislation and only to the extent provided in advance in appropriations Acts."

Additional provisions relating to appropriations for the Energy Security Reserve Fund, purposes for which the Fund is available, and administrative provisions for the Fund and alternative fuels production were contained in the following appropriation Acts:

Pub. L. 98-369, div. B, title I, §2103, July 18, 1984, 98 Stat. 1058.

Pub. L. 97-100, title II, Dec. 23, 1981, 95 Stat. 1407.

Pub. L. 97-12, title I, June 5, 1981, 95 Stat. 48.

Pub. L. 96-369, §121, Oct. 1, 1980, 94 Stat. 1357.

Pub. L. 96-304, title I, July 8, 1980, 94 Stat. 880-882, as amended Pub. L. 96-514, title II, Dec. 12, 1980, 94 Stat. 2974.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5821, 5907 of this title.

§ 5915a. Expiration of initial authorization to construct fossil energy demonstration plants

Notwithstanding any other applicable provision of law, the initial authorization in this Act or any other Act heretofore or hereafter enacted to construct, pursuant to section 5907 of this title, any fossil energy demonstration plant shall expire at the end of the three full fiscal years following the date of enactment of such authorization, unless (1) funds to construct each such plant are appropriated or otherwise provided pursuant to applicable law prior thereto, or (2) such authorization period is extended by specific Act of Congress hereafter enacted.

(Pub. L. 95-39, title I, §105, June 3, 1977, 91 Stat. 184.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 95-39, June 3, 1977, 91 Stat. 180. The provisions of this Act relating to an initial authorization for construction pursuant to section 5907 of this title are not classified to the Code.

CODIFICATION

Section was not enacted as part of the Federal Non-nuclear Energy Research and Development Act of 1974 which comprises this chapter.

§ 5916. Central source of nonnuclear energy information; acquisition of proprietary and other information; availability of information to public, Government agencies, Federal agencies and agency heads for execution of duties and responsibilities, and chairmen of Congressional committees; disclosure restrictions

The Secretary shall promptly establish, develop, acquire, and maintain a central source of information on all energy resources and technology in furtherance of the Secretary's research, development, and demonstration mission carried out directly or indirectly under this chapter. When the Secretary determines that such information is needed to carry out the purposes of this chapter, he may acquire proprietary and other information (a) by purchase through negotiation or by donation from any person, or (b) from another Federal agency. The information maintained by the Secretary shall be made available to the public, subject to the provisions of section 552 of title 5 and section 1905 of title 18, and to other Government agencies in a manner that will facilitate its dissemination: *Provided*, That upon a showing satisfactory to the Secretary by any person that any information, or portion thereof, obtained under this section by the Secretary directly or indirectly from such person, would, if made public, divulge (1) trade secrets or (2) other proprietary information of such person, the Secretary shall not disclose such information and disclosure

thereof shall be punishable under section 1905 of title 18: *Provided further*, That the Secretary shall, upon request, provide such information to (A) any delegate of the Secretary for the purpose of carrying out this chapter, and (B) the Attorney General, the Secretary of Agriculture, the Secretary of the Interior, the Federal Trade Commission, the Environmental Protection Agency, the General Accounting Office, other Federal agencies, when necessary to carry out their duties and responsibilities under this chapter and other statutes, but such agencies and agency heads shall not release such information to the public. This section is not authority to withhold information from Congress or any committee of Congress upon request of the chairman.

(Pub. L. 93-577, §17, as added Pub. L. 94-187, title III, §312, Dec. 31, 1975, 89 Stat. 1075; amended Pub. L. 95-91, title III, §301, title VII, §§703, 707, Aug. 4, 1977, 91 Stat. 577, 606, 607.)

CODIFICATION

In cl. (B), the words “the Federal Energy Administration,” and “the Federal Power Commission,” following “the Federal Trade Commission,” and “the Environmental Protection Agency,” respectively, omitted from text in view of termination of Federal Energy Administration and Federal Power Commission and transfer of their functions (with certain exceptions) to Secretary of Energy pursuant to sections 301, 703, and 707 of Pub. L. 95-91, which are classified to sections 7151, 7293, and 7297 of this title. This transfer would result in cl. (B) being redundant in that it would require Secretary of Energy to provide information to himself. See Transfer of Functions note below.

TRANSFER OF FUNCTIONS

“Secretary” and “Secretary’s”, meaning Secretary of Energy, substituted in text for “Administrator” and “Administrator’s”, respectively, meaning Administrator of Energy Research and Development Administration, pursuant to sections 301(a), 703, and 707 of Pub. L. 95-91, which are classified to sections 7151(a), 7293, and 7297 of this title and which terminated Energy Research and Development Administration and transferred its functions and functions of Administrator thereof (with certain exceptions) to Secretary of Energy.

§ 5917. Energy information

The Secretary is, upon request, authorized to obtain energy information under section 796(d) of title 15.

(Pub. L. 93-577, §18, as added Pub. L. 94-187, title III, §313, Dec. 31, 1975, 89 Stat. 1075; amended Pub. L. 95-91, title III, §301(a), title VII, §§703, 707, Aug. 4, 1977, 91 Stat. 577, 606, 607.)

TRANSFER OF FUNCTIONS

“Secretary”, meaning Secretary of Energy, substituted in text for “Administrator”, meaning Administrator of Energy Research and Development Administration, pursuant to sections 301(a), 703, and 707 of Pub. L. 95-91, which are classified to sections 7151(a), 7293, and 7297 of this title and which terminated Energy Research and Development Administration and transferred its functions and functions of Administrator thereof (with certain exceptions) to Secretary of Energy.

§ 5918. Repealed. Pub. L. 104-106, div. D, title XLIII, § 4304(b)(5), Feb. 10, 1996, 110 Stat. 664

Section, Pub. L. 93-577, §19, as added Pub. L. 95-39, title IV, §401, June 3, 1977, 91 Stat. 190; amended Pub.

L. 95-91, title III, §301(a), title VII, §§703, 707, Aug. 4, 1977, 91 Stat. 577, 606, 607, related to organizational conflicts.

EFFECTIVE DATE OF REPEAL

For effective date and applicability of repeal, see section 4401 of Pub. L. 104-106, set out as an Effective Date of 1996 Amendment note under section 251 of Title 41, Public Contracts.

§ 5919. Loan guarantees and commitments for alternative fuel demonstration facilities

(a) Statement of purpose

It is the purpose of this section—

(1) to assure adequate Federal support to foster a demonstration program to produce alternative fuels from coal, oil shale, biomass, and other domestic resources;

(2) to authorize assistance, through loan guarantees under subsection¹ (b) and (y) of this section for construction and startup and related costs, to demonstration facilities for the conversion of domestic coal, oil shale, biomass, and other domestic resources into alternative fuels; and

(3) to gather information about the technological, economic, environmental, and social costs, benefits, and impacts of such demonstration facilities.

(b) Issuance of obligations for alternative fuel conversion facilities; terms and conditions; rules and regulations; informational requirements; concurrence of Secretary of Treasury to terms and conditions; pledge of full faith and credit of United States; cooperative agreements for construction, etc., of modular facilities; bidding practices

(1) Except as provided in paragraph (5) of this subsection and subsection (y) of this section the Secretary is authorized, in accordance with such rules and regulations as he shall prescribe after consultation with the Secretary of the Treasury, to guarantee and to make commitments to guarantee, in such manner and subject to such conditions (not inconsistent with the provisions of this chapter) as he deems appropriate, the payment of interest on, and the principal balance of, bonds, debentures, notes, and other obligations issued by, or on behalf of, any borrower for the purpose of financing the construction and startup costs of demonstration facilities for the conversion of domestic coal, oil shale, biomass, and other domestic resources into alternative fuels: *Provided*, That no loan guarantee for a full sized oil shale facility shall be provided under this section until after successful demonstration of a modular facility producing between six and ten thousand barrels per day, taking into account such considerations as water usage, environmental effects, waste disposal, labor conditions, health and safety, and the socioeconomic impacts on local communities: *Provided further*, That no loan guarantee shall be available under this subsection for the manufacture of component parts for demonstration facilities eligible for assistance under this subsection.

(2) An applicant for any financial assistance under this section shall provide information to

¹ So in original. Probably should be “subsections”.

the Secretary in such form and with such content as the Secretary deems necessary.

(3) Prior to issuing any guarantee under this section the Secretary shall obtain the concurrence of the Secretary of the Treasury with respect to the timing, interest rate, and substantial terms and conditions of such guarantee. The Secretary of the Treasury shall insure to the maximum extent feasible that the timing, interest rate, and substantial terms and conditions of such guarantee will have the minimum possible impact on the capital markets of the United States, taking into account other Federal direct and indirect securities activities.

(4) The full faith and credit of the United States is pledged to the payment of all guarantees issued under this section with respect to principal and interest.

(5)(A) The Secretary is authorized, in the case of a facility for the conversion of oil shale to alternative fuels which is determined by the Secretary pursuant to the proviso in paragraph (1) of this subsection, to be constructed at a modular size, to enter into a cooperative agreement with the applicant in accordance with section 5907 of this title and the other provisions of this chapter to share the estimated total design and construction costs, plus operation and maintenance costs, of such modular facility. The Federal share shall not exceed 75 per centum of such costs. All receipts for the sale of any products produced during the operation of the facility shall be used to offset the costs incurred in the operation and maintenance of the facility. The provisions of subsections (d), (e), (k), (m), (p), (s), (t), (u), (v), (w), and (x) of this section shall apply to any such modular facility. The provisions of this section shall apply to any loan guarantee for such modular facility.

(B) After successful demonstration of the modular facility, as determined by the Secretary, the facility is eligible for financial assistance under this section for purposes of expansion to a full sized facility and the applicant may purchase the Federal interest in the modular facility as represented by the Federal share thereof by means of (i) a cash payment to the United States, or (ii) a share of the product or sales resulting from such expanded operation, as determined by the Secretary. If expansion of such facility is determined not to be warranted by the Secretary, he may, at the option of the applicant, dispose of the modular facility to the applicant at not less than fair market value, as determined by the Secretary as of the date of the disposal, or otherwise dispose of it, in accordance with applicable provisions of law, and distribute the net proceeds thereof, after expenses of such disposal, to the applicant in proportion to the applicant's share of the costs of such facility.

(6) To the extent possible, loan guarantees shall be issued on the basis of competitive bidding among guarantee applicants in a particular technology area.

(c) Prerequisites

The Secretary, with due regard for the need for competition, shall guarantee or make a commitment to guarantee any obligation under subsection (b) or (y) of this section only if—

(1) the Secretary is satisfied that the financial assistance applied for is necessary to encourage financial participation;

(2) the amount guaranteed to any borrower at any time does not exceed—

(A) an amount equal to 75 per centum of the project cost of the demonstration facility as estimated at the time the guarantee is issued, which cost shall not include amounts expended for facilities and equipment used in the extraction of a mineral other than coal or shale, and in the case of coal only to the extent that the Secretary determines that the coal is to be converted to alternative fuel; and

(B) an amount equal to 60 per centum of that portion of the actual total project cost of any demonstration facility which exceeds the project cost of such facility as estimated at the time the loan guarantee is issued;

(3) the Secretary has determined that there will be a continued reasonable assurance of full repayment;

(4) the obligation is subject to the condition that it not be subordinated to any other financing;

(5) the Secretary has determined, taking into consideration all reasonably available forms of assistance under this section and other Federal and State statutes, that the impacts resulting from the proposed demonstration facility have been fully evaluated by the borrower, the Secretary, and the Governor of the affected State, and that effective steps have been taken or will be taken in a timely manner to finance community planning and development costs resulting from such facility under this section, under other provisions of law, or by other means;

(6) the maximum maturity of the obligation does not exceed twenty years, or 90 per centum of the projected useful economic life of the physical assets of the demonstration facility covered by the guarantee, whichever is less, as determined by the Secretary;

(7) the Secretary has determined that, in the case of any demonstration or modular facility planned to be located on Indian lands, the appropriate Indian tribe, with the approval of the Secretary of the Interior, has given written consent to such location;

(8) the obligation provides for the orderly and ratable retirement of the obligation and includes sinking fund provisions, installment payment provisions or other methods of payments and reserves as may be reasonably required by the Secretary. Prior to approving any repayment schedule the Secretary may consider the date on which operating revenues are anticipated to be generated by the project. To the maximum extent possible repayment or provision therefor shall be required to be made in equal payments payable at equal intervals; and

(9) the obligation provides that the Secretary shall, after a period of not less than ten years from issuance of the obligation, taking into consideration whether the Government's needs for information to be derived from the project have been substantially met and whether the project is capable of commercial

operation, determine the feasibility and advisability of terminating the Federal participation in the project. In the event that such determination is positive, the Secretary shall notify the borrower and provide the borrower with not less than two nor more than three years in which to find alternative financing. At the expiration of the designated period of time, if the borrower has been unable to secure alternative financing, the Secretary is authorized to collect from the borrower an additional fee of 1 per centum per annum on the remaining obligation to which the Federal guarantee applies.

(d) Repealed. Pub. L. 96-470, title I, § 109, Oct. 19, 1980, 94 Stat. 2239

(e) Impact on communities, States, and Indian tribes; notice to State and local officials; procedures applicable for further action by Secretary subsequent to negative recommendation by State Governor; criteria and determinations relating to approval by Secretary of construction and operation plans; establishment, membership, etc., of advisory panel

(1) As soon as the Secretary knows the geographic location of a proposed facility for which a guarantee or a commitment to guarantee or cooperative agreement is sought under this section, he shall inform the Governor of the State, and officials of each political subdivision and Indian tribe, as appropriate, in which the facility would be located or which would be impacted by such facility. The Secretary shall not guarantee or make a commitment to guarantee or enter into a cooperative agreement under subsection (b) or subsection (y) of this section, if the Governor of the State in which the proposed facility would be located recommends that such action not be taken, unless the Secretary finds that there is an overriding national interest in taking such action in order to achieve the purpose of this section. If the Secretary decides to guarantee or make a commitment to guarantee or enter into a cooperative agreement despite a Governor's recommendation not to take such action, the Secretary shall communicate, in writing, to the Governor reasons for not concurring with such recommendation. This Secretary's decision, pursuant to this subsection, shall be final unless determined upon judicial review initiated by the Governor to be unlawful by the reviewing court pursuant to section 706(2)(A) through (D) of title 5. Such review shall take place in the United States court of appeals for the circuit in which the State involved is located, upon application made within ninety days from the date of such decision. The Secretary shall, by regulation, establish procedures for review of, and comment on, the proposed facility by States, local political subdivisions, and Indian tribes which may be impacted by such facility, and the general public.

(2) The Secretary shall review and approve the plans of the applicant for the construction and operation of any demonstration and related facilities constructed or to be constructed with assistance under this section. Such plans and the actual construction shall include such monitoring and other data-gathering costs associated with such facility as are required by the compre-

hensive plan and program under this section. The Secretary shall determine the estimated total cost of such demonstration facility, including, but not limited to, construction costs, startup costs, costs to political subdivisions and Indian tribe by such facility, and cost of any water storage facilities needed in connection with such demonstration facility, and determine who shall pay such costs. Such determination shall not be binding upon the States, political subdivisions, or Indian tribes.

(3) There is hereby established a panel to advise the Secretary on matters relating to the program authorized by this section, including, but not limited to, the impact of the demonstration facilities on communities and States and Indian tribes, the environmental and health and safety effects of such facilities, and the means, measures, and planning for preventing or mitigating such impacts, and other matters relating to the development of alternative fuels and other energy sources under this section. The panel shall include such Governors or their designees as shall be designated by the Chairman of the National Governors Conference. Representatives of Indian tribes, industry, environmental organizations, and the general public shall be appointed by the Secretary. The Chairman of the panel shall be selected by the Secretary. No person shall be appointed to the panel who has a financial interest in any applicant applying for assistance under this section. Members of the panel shall serve without compensation. The provisions of section 5816(e) of this title shall apply to the panel.

(f) Termination, cancellation, revocation; conclusiveness; contestability

Except in accordance with reasonable terms and conditions contained in the written contract of guarantee, no guarantee issued or commitment to guarantee made under this section shall be terminated, canceled, or otherwise revoked. Such a guarantee or commitment shall be conclusive evidence that the underlying obligation is in compliance with the provisions of this section and that such obligation has been approved and is legal as to principal, interest, and other terms. Subject to the conditions of the guarantee or commitment to guarantee, such a guarantee shall be incontestable in the hands of the holder of the guaranteed obligation, except as to fraud or material misrepresentation on the part of the holder.

(g) Default by borrower; procedures applicable to payment by Secretary and rights of subrogation; notice to Attorney General by Secretary for further action; protection for benefit of United States of patents and technologies of defaulting project through agreements, etc.

(1) If there is a default by the borrower, as defined in regulations promulgated by the Secretary and in the guarantee contract, the holder of the obligation shall have the right to demand payment of the unpaid amount from the Secretary. Within such period as may be specified in the guarantee or related agreements, the Secretary shall pay to the holder of the obligation the unpaid interest on, and unpaid principal of, the guaranteed obligation as to which the bor-

rower has defaulted, unless the Secretary finds that there was no default by the borrower in the payment of interest or principal or that such default has been remedied. Nothing in this section shall be construed to preclude any forbearance by the holder of the obligation for the benefit of the borrower which may be agreed upon by the parties to the guaranteed obligation and approved by the Secretary.

(2) If the Secretary makes a payment under paragraph (1) of this subsection, the Secretary shall be subrogated to the rights of the recipient of such payment (and such subrogation shall be expressly set forth in the guarantee or related agreements), including the authority to complete, maintain, operate, lease, or otherwise dispose of any property acquired pursuant to such guarantee or related agreements, or any other property of the borrower (of a value equal to the amount of such payment) to the extent that the guarantee applies to amounts in excess of the estimated project cost under subsection (c)(2)(B) of this section, without regard to the provisions of the Federal Property and Administrative Services Act of 1949, as amended,² except section 207 of that Act,² or any other law, or to permit the borrower, pursuant to an agreement with the Secretary, to continue to pursue the purposes of the demonstration facility if the Secretary determines that this is in the public interest. The rights of the Secretary with respect to any property acquired pursuant to such guarantee or related agreements, shall be superior to the rights of any other person with respect to such property.

(3) In the event of a default on any guarantee under this section, the Secretary shall notify the Attorney General, who shall take such action as may be appropriate to recover the amounts of any payments made under paragraph (1) including any payment of principal and interest under subsection (h) of this section from such assets of the defaulting borrower as are associated with the demonstration facility, or from any other security included in the terms of the guarantee.

(4) For purposes of this section, patents, including any inventions for which a waiver was made by the Secretary under section 5908 of this title, and technology resulting from the demonstration facility, shall be treated as project assets of such facility. The guarantee agreement shall include such detailed terms and conditions as the Secretary deems appropriate to protect the interests of the United States in the case of default and to have available all the patents and technology necessary for any person selected, including, but not limited to the Secretary, to complete and operate the defaulting project. Furthermore, the guarantee agreement shall contain a provision specifying that patents, technology, and other proprietary rights which are necessary for the completion or operation of the demonstration facility shall be available to the United States and its designees on equitable terms, including due consideration to the amount of the United States default payments. Inventions made or conceived in the course of or under such guarantee, title to which is vested in

the United States under this chapter, shall not be treated as project assets of such facility for disposal purposes under this subsection, unless the Secretary determines in writing that it is in the best interests of the United States to do so.

(h) Contracts to pay, and payment of principal and interest by Secretary of unpaid balance of guaranteed obligations; prerequisites

With respect to any obligation guaranteed under this section, the Secretary is authorized to enter into a contract to pay, and to pay, holders of the obligations, for and on behalf of the borrowers, from the fund established by this section, the principal and interest payments which become due and payable on the unpaid balance of such obligation if the Secretary finds that—

(1) the borrower is unable to meet such payments and is not in default; it is in the public interest to permit the borrower to continue to pursue the purposes of such demonstration facility; and the probable net benefit to the Federal Government in paying such principal and interest will be greater than that which would result in the event of a default;

(2) the amount of such payment which the Secretary is authorized to pay shall be no greater than the amount of principal and interest which the borrower is obligated to pay under the loan agreement; and

(3) the borrower agrees to reimburse the Secretary for such payment on terms and conditions, including interest, which are satisfactory to the Secretary.

(i) Time for issuance of regulations; procedures applicable to issuance of regulations and amendments

Regulations required by this section shall be issued within one hundred and eighty days after February 25, 1978. All regulations under this section and any amendments thereto shall be issued in accordance with section 553 of title 5.

(j) Fees for guarantees of obligations; determination of amounts; excepted guarantees

The Secretary shall charge and collect fees for guarantees of obligations authorized by subsection (b)(1) of this section, in amounts which (1) are sufficient in the judgment of the Secretary to cover the applicable administrative costs, and (2) reflect the percentage of projects costs guaranteed. In no event shall the fee be less than 1 per centum per annum of the outstanding indebtedness covered by the guarantee. Nothing in this subsection shall be construed to apply to community planning and development assistance pursuant to subsection (k) of this section.

(k) Community development and planning assistance guarantees; terms and conditions; rules and regulations; concurrence of Secretary of Treasury to terms and conditions; payment of taxes in event of default by borrower; additional direct loans and grants; redemption of debt obligations; funding requirements and authorizations; facility title vesting and status upon default

(1) In accordance with such rules and regulations as the Secretary in consultation with the Secretary of the Treasury shall prescribe, and

² See References in Text note below.

subject to such terms and conditions as he deems appropriate, the Secretary is authorized, for the purpose of financing essential community development and planning which directly result from, or are necessitated by, one or more demonstration facilities assisted under this section to—

(A) guarantee and make commitments to guarantee the payment of interest on, and the principal balance of obligations for such financing issued by eligible States, political subdivisions, or Indian tribes,

(B) guarantee and make commitments to guarantee the payment of taxes imposed on such demonstration facilities by eligible non-Federal taxing authorities which taxes are earmarked by such authorities to support the payment of interest and principal on obligations for such financing, and

(C) require that the applicant for assistance for a demonstration facility under this section advance sums to eligible States, political subdivisions, and Indian tribes to pay for the financing of such development and planning: *Provided*, That the State, political subdivision, or Indian tribe agrees to provide tax abatement credits over the life of the facilities for such payments by such applicant.

(2) Prior to issuing any guarantee under this subsection, the Secretary shall obtain the concurrence of the Secretary of the Treasury with respect to the timing, interest rate, and substantial terms and conditions of such guarantee. The Secretary of the Treasury shall insure to the maximum extent feasible that the timing, interest rate, and substantial terms and conditions of such guarantee will have the minimum possible impact on the capital markets of the United States, taking into account other Federal direct and indirect securities activities.

(3) In the event of any default by the borrower in the payment of taxes guaranteed by the Secretary under this subsection, the Secretary shall pay out of the fund established by this section such taxes at the time or times they may fall due, and shall have by reason of such payment a claim against the borrower for all sums paid plus interest.

(4) If after consultation with the State, political subdivision, or Indian tribe, the Secretary finds that the financial assistance programs of paragraph (1) of this subsection will not result in sufficient funds to carry out the purposes of this subsection, then the Secretary may—

(A) make direct loans to the eligible States, political subdivisions, or Indian tribes for such purposes: *Provided*, That such loans shall be made on such reasonable terms and conditions as the Secretary shall prescribe: *Provided further*, That the Secretary may waive repayment of all or part of a loan made under this paragraph, including interest, if the State or political subdivision or Indian tribe involved demonstrates to the satisfaction of the Secretary that due to a change in circumstances there will be net adverse impacts resulting from such demonstration facility that would probably cause such State, subdivision, or tribe to default on the loan; or

(B) require that any community development and planning costs which are associated

with, or result from, such demonstration facility and which are determined by the Secretary to be appropriate for such inclusion shall be included in the total costs of the demonstration facility.

(5) The Secretary is further authorized to make grants to States, political subdivisions, or Indian tribes for studying and planning for the potential economic, environmental, and social consequences of demonstration facilities, and for establishing related management expertise.

(6) At any time the Secretary may, with the concurrence of the Secretary of the Treasury, redeem, in whole or in part, out of the fund established by this section, the debt obligations guaranteed or the debt obligations for which tax payments are guaranteed under this subsection.

(7) When one or more States, political subdivisions, or Indian tribes would be eligible for assistance under this subsection, but for the fact that construction and operation of the demonstration facilities occurs outside its jurisdiction, the Secretary is authorized to provide, to the greatest extent possible, arrangements for equitable sharing of such assistance.

(8) Such amounts as may be necessary for direct loans and grants pursuant to this subsection shall be available as provided in annual authorization Acts.

(9) The Secretary, if appropriate, shall provide assistance in the financing of up to 100 per centum of the costs of the required community development and planning pursuant to this subsection.

(10) In carrying out the provisions of this subsection, the Secretary shall provide that title to any facility receiving financial assistance under this subsection shall vest in the applicable State, political subdivision, or Indian tribe, as appropriate, and in the case of default by the borrower on a loan guarantee such facility shall not be considered a project asset for the purposes of subsection (g) of this section.

(I) Annual reporting requirements; contents, etc.

(1) The Secretary is directed to submit a report to the Congress within one hundred and eighty days after February 25, 1978, setting forth his recommendations on the best opportunities to implement a program of Federal financial assistance with the objective of demonstrating production and conservation of energy. Such report shall be updated and submitted to Congress at least annually and shall include specific comments and recommendations by the Secretary of the Treasury on the methods and procedures set forth in subparagraph (B)(viii) of this subsection, including their adequacy, and changes necessary to satisfy the objectives stated in this subsection. This report shall include—

(A) a study of the purchase or commitment to purchase by the Federal Government, for the use by the United States, of all or a portion of the products of any alternative fuel facilities constructed pursuant to this program as a direct or an alternate form of Federal assistance, which assistance, if recommended, shall be carried out pursuant to section 5906(a)(4) of this title; and

(B) a comprehensive plan and program to acquire information and evaluate the environ-

mental, economic, social, and technological impacts of the demonstration program under this section. In preparing such a comprehensive plan and program, the Secretary shall consult with the Environmental Protection Agency, the Department of Housing and Urban Development, the Department of the Interior, the Department of Agriculture, and the Department of the Treasury, and shall include therein, but not be limited to, the following:

(i) information about potential demonstration facilities proposed in the program under this section;

(ii) any significant adverse impacts which may result from any activity included in the program;

(iii) the extent to which it is feasible to commercialize the technologies as they affect different regions of the Nation;

(iv) proposed regulations required to carry out the purposes of this section;

(v) a list of Federal agencies, governmental entities, and other persons that will be consulted or utilized to implement the program;

(vi) the methods and procedures by which the information gathered under the program will be analyzed and disseminated;

(vii) a plan for the study and monitoring of the health effects of such facilities on workers and other persons, including, but not limited to, any carcinogenic effect of alternative fuels; and

(viii) the methods and procedures to insure that (I) the use of the Federal assistance for demonstration facilities is kept to the minimum level necessary for the information objectives of this section, (II) the impact of loan guarantees on the capital markets of the United States is minimized, taking into account other Federal direct and indirect securities activities, and any economic sectors which may be negatively impacted as a result of the reduction of capital by the placement of guaranteed loans, and (III) the granting of Federal loan guarantees under this chapter does not impede movement toward improvement in the climate for attracting private capital to develop alternative fuels without continued direct Federal incentives.

(2) The Secretary shall annually submit a detailed report to the Congress concerning—

(A) the actions taken or not taken by the Secretary under this section during the preceding fiscal year, and including, but not be limited to (i) a discussion of the status of each demonstration facility and related facilities financed under this section, including progress made in the development of such facilities, and the expected or actual production from each such facility, including byproduct production therefrom, and the distribution of such products and byproducts, (ii) a detailed statement of the financial conditions of each such demonstration facility, (iii) data concerning the environmental, community, and health and safety impacts of each such facility and the actions taken or planned to prevent or mitigate such impacts, (iv) the administrative and other costs incurred by the Secretary and

other Federal agencies in carrying out this program, and (v) such other data as may be helpful in keeping Congress and the public fully and currently informed about the program authorized by this section; and

(B) the activities of the fund referred to in subsection (n) of this section during the preceding fiscal year, including a statement of the amount and source of fees or other moneys, property, or assets deposited into the funds, all payments made, the notes or other obligations issued by the Secretary, and such other data as may be appropriate.

(3) The annual reports required by this subsection shall be a part of the annual report required by section 5914³ of this title, except that the matters required to be reported by this subsection shall be clearly set out and identified in such annual reports. Such reports and the one-hundred-and-eighty-day report required in paragraph (1) of this subsection shall be transmitted to the Speaker of the House of Representatives and the House Committee on Science, Space, and Technology and to the President of the Senate and the Committee on Energy and Natural Resources of the Senate.

(m) Congressional finalization of guarantee, etc., subsequent to report to Congressional committees; scope of authority

Prior to issuing any guarantee or commitment to guarantee or cooperative agreement pursuant to subsection (b) or subsection (y) of this section the Secretary shall submit to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a full and complete report on the proposed demonstration facility and such guarantee, agreement, or contract. Such guarantee, commitment to guarantee, cooperative agreement, or contract shall not be finalized under the authority granted by this section prior to the expiration of ninety calendar days (not including any day on which either House of Congress is not in session because of an adjournment of more than three calendar days to a day certain) from the date on which such report is received by such committees: *Provided*, That, where the cost of a demonstration facility to be assisted with a guarantee or cooperative agreement pursuant to subsection (b) or subsection (y) of this section exceeds \$50,000,000 such guarantee or commitment to guarantee or cooperative agreement shall not be finalized unless (1) the making of such guarantee or commitment or agreement is specifically authorized by legislation hereafter enacted by the Congress or (2) both Houses pass a resolution stating in substance that the Congress favors the making of such guarantee or commitment or agreement.

(n) Revolving fund; creation; funding; payments and transfers to general fund of Treasury; issuance, redemption, etc., of notes or obligations; applicability to direct loans or planning grants

(1) There is hereby created within the Treasury a separate fund (hereafter in this section

³ See References in Text note below.

called the “fund”) which shall be available to the Secretary without fiscal year limitation as a revolving fund for the purpose of carrying out the program authorized by subsection (b)(1) of this section and subsections (g), (h), (k), and (y) of this section.

(2) There are hereby authorized to be appropriated to the fund for administrative expenses from time to time such amounts as may be necessary to carry out the purposes of the applicable provisions of this section, including, but not limited to, the payments of interest and principal and the payment of interest differentials and redemption of debt. All amounts received by the Secretary as interest payments or repayments of principal on loans which are guaranteed under this section, fees, and any other moneys, property, or assets derived by him from operations under this section shall be deposited in the fund.

(3) All payments on obligations, appropriate expenses (including reimbursements to other Government accounts), and repayments pursuant to operations of the Secretary under this section shall be paid from the fund subject to appropriations. If at any time the Secretary determines that moneys in the fund exceed the present and reasonably foreseeable future requirements of the fund, such excess shall be transferred to the general fund of the Treasury.

(4) If at any time the moneys available in the fund are insufficient to enable the Secretary to discharge his responsibilities as authorized by subsections (b)(1), (g), (h), and (y) of this section, the Secretary shall issue to the Secretary of the Treasury notes or other obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be prescribed by the Secretary of the Treasury. Redemption of such notes or obligations shall be made by the Secretary from appropriations or other moneys available under paragraph (2) of this subsection for loan guarantees authorized by subsection (b)(1) of this section and subsections (g), (h), (k), and (y) of this section. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, which shall be not less than a rate determined by taking into consideration the average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the notes or other obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this subsection.

(5) The provisions of this subsection do not apply to direct loans or planning grants made under subsection (k) of this section.

(o) Definitions

For the purposes of this section, the term—

(1) “State” means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, any territory or possession of the United States,

(2) “United States” means the several States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa,

(3) “borrower” or “applicant” shall include any individual, firm, corporation, company,

partnership, association, society, trust, joint venture, joint stock company, or other non-Federal entity, and

(4) “biomass” shall include, but is not limited to, animal and timber waste, municipal and industrial waste, sewage, sludge, and oceanic and terrestrial crops.

(p) Citizenship or nationality requirements for applicants; waiver

(1) An applicant seeking a guarantee or cooperative agreement under subsection (b) or subsection (y) of this section must be a citizen or national of the United States. A corporation, partnership, firm, or association shall not be deemed to be a citizen or national of the United States unless the Secretary determines that it satisfactorily meets all the requirements of section 802 of title 46, Appendix, for determining such citizenship, except that the provisions in subsection (a) of such section 802 concerning (A) the citizenship of officers or directors of a corporation, and (B) the interest required to be owned in the case of a corporation, association, or partnership operating a vessel in the coastwise trade, shall not be applicable.

(2) The Secretary, in consultation with the Secretary of State, may waive such requirements in the case of a corporation, partnership, firm, or association, controlling interest in which is owned by citizens of countries which are participants in the International Energy Agreement.

(q) Transfer of part of program to other agency or authority

No part of the program authorized by this section shall be transferred to any other agency or authority, except pursuant to Act of Congress enacted after February 25, 1978.

(r) Statutory provisions applicable to inventions

Inventions made or conceived in the course of or under a guarantee authorized by this section shall be subject to the title and waiver requirements and conditions of section 5908 of this title.

(s) Compliance by persons receiving financial assistance with Federal and State environmental, etc., laws and regulations, and licensing requirements

Nothing in this section shall be construed as affecting the obligations of any person receiving financial assistance pursuant to this section to comply with Federal and State environmental, land use, water, and health and safety laws and regulations or to obtain applicable Federal and State permits, licenses, and certificates.

(t) Availability of information; procedures applicable; scope of disclosure; persons to whom disclosure may be made; “person” defined

The information maintained by the Secretary under this section shall be made available to the public subject to the provision of section 552 of title 5 and section 1905 of title 18 and to other Government agencies in a manner that will facilitate its dissemination: *Provided*, That upon a showing satisfactory to the Secretary by any person that any information, or portion thereof obtained under this section by the Secretary directly or indirectly from such person would, if

made public, divulge (1) trade secrets or (2) other proprietary information of such person, the Secretary shall not disclose such information and disclosure thereof shall be punishable under section 1905 of title 18: *Provided further*, That the Secretary shall, upon request, provide such information to (A) any delegate of the Secretary for the purpose of carrying out this chapter, and (B) the Attorney General, the Secretary of Agriculture, the Secretary of the Interior, the Federal Trade Commission, the Environmental Protection Agency, the General Accounting Office, other Federal agencies, or heads of other Federal agencies, when necessary to carry out their duties and responsibilities under this and other statutes, but such agencies and agency heads shall not release such information to the public. This section is not authority to withhold information from Congress, or from any committee of Congress upon request of the Chairman. For the purposes of this subsection, the term "person" shall include the borrower.

(u) Scope of exercise of statutory authorities

Notwithstanding any other provision of this section, the authority provided in this section to make guarantees or commitments to guarantee or enter into cooperative agreements under subsection (b)(1) or subsection (y) of this section, to make guarantees or commitments to guarantees, or to make loans or grants, under subsection (k) of this section, to make contracts under subsection (h) of this section, and to use fees and receipts collected under subsections (b), (j), and (y) of this section, and the authorities provided under subsection (n) of this section shall be effective only to the extent provided, without fiscal year limitation, in appropriation Acts enacted after February 25, 1978.

(v) Nondiscrimination requirements; scope of exemption from requirements for Indian tribes

No person in the United States shall on the grounds of race, color, religion, national origin, or sex, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with assistance made available under this section: *Provided*, That Indian tribes are exempt from the operation of this subsection: *Provided further*, That such exemption shall be limited to the planning and provision of public facilities which are located on reservations and which are provided for members of the affected Indian tribes as the primary beneficiaries.

(w) Participation by small business concerns in program

In carrying out his functions under this section, the Secretary shall provide a realistic and adequate opportunity for small business concerns to participate in the program to the optimum extent feasible consistent with the size and nature of each project.

(x) Recordkeeping requirements; audit by Comptroller General; labor standards at construction facilities

(1) Recipients of financial assistance under this section shall keep such records and other pertinent documents, as the Secretary shall pre-

scribe by regulation, including, but not limited to, records which fully disclose the disposition of the proceeds of such assistance, the cost of any facility, the total cost of the provision of public facilities for which assistance was used and such other records as the Secretary may require to facilitate an effective audit. The Secretary and the Comptroller General of the United States, or their duly authorized representative shall have access, for the purpose of audit, to such records and other pertinent documents.

(2) All laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with assistance under this section shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with sections 3141-3144, 3146, and 3147 of title 40. The Secretary of Labor shall have, with respect to such labor standards, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 3145 of title 40.

(y) Issuance of obligations for synthetic fuel conversion facilities and municipal organic waste energy generation facilities; rules and regulations; statutory provisions inapplicable; limitation on outstanding indebtedness; additional procedural requirements and terms and conditions applicable

(1) The Secretary is authorized in accordance with such rules and regulations as he shall prescribe after consultation with the Secretary of the Treasury, to guarantee and to make commitments to guarantee the payment of interest on, and the principal balance of, bonds, debentures, notes, and other obligations issued by or on behalf of any borrower for the purpose of (A) financing the construction and startup costs of demonstration facilities for the conversion of municipal or industrial waste, sewage sludge, or other municipal organic wastes into synthetic fuels, and (B) financing the construction and startup costs of demonstration facilities to generate desirable forms of energy (including synthetic fuels) from municipal or industrial waste, sewage sludge, or other municipal organic waste. With respect to a guarantee or a commitment to guarantee authorized by this subsection; the following subsections of this section shall not apply: (b)(1), (b)(5), (c)(2), (c)(5), (c)(6), (c)(7), (c)(8), (c)(9), (e)(3), (j), (k), and (q).

(2) In the case where the Secretary seeks to guarantee or to make commitments to guarantee as provided by this subsection he is authorized to incur an outstanding indebtedness which at no time shall exceed \$300,000,000.

(3) The Secretary shall apply the following provisions thereto:

(A) With respect to any demonstration facility for the conversion of solid waste (as the term is defined in the Resource Conservation and Recovery Act (42 U.S.C. 6903)), the Secretary, prior to issuing any guarantee under this section, must be in receipt of a certification from the Secretary of the Environmental Protection Agency and any appropriate State or areawide solid waste manage-

ment planning agency that the proposed application for a guarantee is consistent with any applicable suggested guidelines published pursuant to section 1008(a) of the Resource Conservation and Recovery Act [42 U.S.C. 6907(a)], and any applicable State or regional solid waste management plan.

(B) The amount guaranteed shall not exceed 75 per centum of the total cost of the commercial demonstration facility, as determined by the Secretary: *Provided*, That the amount guaranteed may not exceed 90 per centum of the total cost of the commercial demonstration facility during the period of construction and startup.

(C) The maximum maturity of the obligation shall not exceed thirty years, or 90 per centum of the projected useful economic life of the physical assets of the commercial demonstration facility covered by the guarantee, whichever is less, as determined by the Secretary.

(D) The Secretary shall charge and collect fees for guarantees of obligations in amounts sufficient in the judgment of the Secretary to cover the applicable administrative costs and probable losses on guaranteed obligations, but in any event not to exceed 1 per centum per annum of the outstanding indebtedness covered by the guarantee.

(E) No part of the program authorized by this section shall be transferred to any other agency or authority, except pursuant to Act of Congress enacted after February 25, 1978: *Provided*, That project agreements entered into pursuant to this section for any commercial demonstration facility for the conversion or bioconversion of solid waste (as that term is defined in the Resource Conservation and Recovery Act [42 U.S.C. 6901 et seq.]) shall be administered in accordance with the May 7, 1976, Interagency Agreement between the Environmental Protection Agency and the Energy Research and Development Administration on the Development of Energy From Solid Wastes, and provided specifically that in accordance with this agreement (i) for those energy-related projects of mutual interest, planning will be conducted jointly by the Environmental Protection Agency and the Secretary, following which project responsibility will be assigned to one agency; (ii) energy-related projects for recovery of synthetic fuels or other forms of energy from solid waste shall be the responsibility of the Secretary; and (iii) the Environmental Protection Agency shall retain responsibility for the environmental, economic, and institutional aspects of solid waste projects and for assurance that such projects are consistent with any applicable suggested guidelines pursuant to section 1008 of the Resource Conservation and Recovery Act of 1976, as amended [42 U.S.C. 6907], and any applicable State or regional solid waste management plan.

(F) With respect to any obligation which is issued after February 25, 1978, by, or in behalf of, any State, political subdivision, or Indian tribe and which is either guaranteed under, or supported by taxes levied by said issuer which are guaranteed under, this section, the interest paid on such obligation and received by the

purchaser thereof (or the purchaser's successor in interest) shall be included in gross income for the purpose of chapter 1 of title 26: *Provided*, That the Secretary shall pay to such issuer out of the fund established by this section such portion of the interest on such obligations, as determined by the Secretary of the Treasury to be appropriate after taking into account current market yields (i) on obligations of said issuer, if any, and (ii) on other obligations with similar terms and conditions the interest on which is not so included in gross income for purposes of chapter 1 of title 26, and in accordance with, such terms and conditions as the Secretary of the Treasury shall require.

(Pub. L. 93-577, § 19, as added Pub. L. 95-238, title II, § 207(b), Feb. 25, 1978, 92 Stat. 61; amended Pub. L. 96-470, title I, § 109, Oct. 19, 1980, 94 Stat. 2239; Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 103-437, § 15(c)(9), Nov. 2, 1994, 108 Stat. 4592; Pub. L. 104-316, title I, § 122(o), Oct. 19, 1996, 110 Stat. 3838.)

REFERENCES IN TEXT

The Federal Property and Administrative Services Act of 1949, as amended, referred to in subsec. (g)(2), is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Except for title III of the Act, which is classified generally to subchapter IV (§251 et seq.) of chapter 4 of Title 41, Public Contracts, the Act was repealed and reenacted by Pub. L. 107-217, §§ 1, 6(b), Aug. 21, 2002, 116 Stat. 1062, 1304, as chapters 1 to 11 of Title 40, Public Buildings, Property, and Works. Section 207 of the Act was repealed and reenacted by Pub. L. 107-217 as section 559 of Title 40.

Section 5914 of this title, referred to in subsec. (l)(3), was omitted from the Code.

Reorganization Plan Numbered 14 of 1950, referred to in subsec. (x)(2), is set out in the Appendix to Title 5, Government Organization and Employees.

The Resource Conservation and Recovery Act of 1976, referred to in subsec. (y)(3)(A), (E), is Pub. L. 94-580, Oct. 21, 1976, 90 Stat. 2796, as amended, which is classified generally to chapter 82 (§6901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title of 1976 Amendment note set out under section 6901 of this title and Tables.

CODIFICATION

The words "the Federal Energy Administration," after "the Environmental Protection Agency," in subsec. (l)(1)(B) and after "the Federal Trade Commission," in subsec. (t)(B), and the words "the Federal Power Commission," after "the Environmental Protection Agency," in subsec. (t)(B) omitted from text in view of termination of Federal Energy Administration and Federal Power Commission and transfer of their functions (with certain exceptions) to Secretary of Energy pursuant to sections 301, 703, and 707 of Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 577, 606, 607, which are classified to sections 7151, 7293, and 7297 of this title. This transfer would result in subsecs. (l)(1)(B) and (t)(B) being redundant in that it would require Secretary of Energy to consult with or provide information to himself. See Transfer of Functions note below.

In subsec. (x)(2), "sections 3141-3144, 3146, and 3147 of title 40" substituted for "the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5)" and "section 3145 of title 40" substituted for "section 2 of the Act of June 13, 1934, as amended (48 Stat. 948; 40 U.S.C. 276(c))", meaning 276c, on authority of Pub. L. 107-217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

Another section 19 of Pub. L. 93-577 was classified to section 5918 of this title prior to repeal by Pub. L. 104-106.

AMENDMENTS

1996—Subsec. (x)(1). Pub. L. 104-316 struck out subpar. (A) designation before “Recipients of financial” and struck out subpar. (B) which read as follows: “Within 6 months after February 25, 1978, and at 6-month intervals thereafter, the Comptroller General of the United States shall make an audit of recipients of financial assistance under this section. The Comptroller General may prescribe such regulations as he deems necessary to carry out this subparagraph.”

1994—Subsecs. (l)(3), (m). Pub. L. 103-437 substituted “Committee on Science, Space, and Technology” for “Committee on Science and Technology”.

1986—Subsec. (y)(3)(F). Pub. L. 99-514 substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”, which for purposes of codification was translated as “title 26” thus requiring no change in text.

1980—Subsec. (d). Pub. L. 96-470 struck out subsec. (d) which provided that prior to submitting a report to Congress pursuant to subsec. (m) of this section on each guarantee and cooperative agreement, the Administrator request from the Attorney General and the Chairman of the Federal Trade Commission written views and recommendations concerning the impact of such guarantee, commitment, or agreement on competition and concentration in the production of energy and give due consideration to the views and recommendations received, except that if either official, within 60 days after receipt of such request or at any time prior to the Administrator submitting such report to Congress, recommends against making the proposed guarantee, commitment, or agreement, the proposed guarantee, commitment, or agreement be referred to the President, and the Administrator not do so unless the President determines in writing that the guarantee, commitment, or agreement is in the national interest.

CHANGE OF NAME

Committee on Science, Space, and Technology of House of Representatives treated as referring to Committee on Science of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

TRANSFER OF FUNCTIONS

“Secretary” and “Secretary’s”, meaning Secretary of Energy, substituted for “Administrator” and “Administrator’s”, respectively, meaning Administrator of Energy Research and Development Administration, in text and for “Energy Research and Development Administration” in subsec. (y)(3)(E)(i), (ii) pursuant to sections 301(a), 703, and 707 of Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 577, 606, 607, which are classified to sections 7151(a), 7293, and 7297 of this title and which terminated Energy Research and Development Administration and transferred its functions and functions of Administrator thereof (with certain exceptions) to Secretary of Energy.

NONAPPLICABILITY OF TITLE II OF PUB. L. 95-238 TO ANY AUTHORIZATION OR APPROPRIATION FOR MILITARY APPLICATION OF NUCLEAR ENERGY, ETC.; DEFINITIONS

Nonapplicability of provisions of title II of Pub. L. 95-238 with respect to any authorization or appropriation for any military application of nuclear energy, etc., see section 209 of Pub. L. 95-238, set out as a note under section 5821 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5906, 8837 of this title.

§ 5920. Financial support program for municipal waste reprocessing demonstration facilities

(a) Statement of purpose

It is the purpose of this section—

(1) to assure adequate Federal support to foster a program to demonstrate municipal waste reprocessing for the production of fuel and energy intensive products; and

(2) to gather information about the technological, economic, environmental, and social costs, benefits, and impacts of such demonstration facilities.

(b) Grants, contracts, price supports, and cooperative agreements implementing programs; aggregate amount of funds available; “municipal” defined; ownership, operation, etc., of facilities; Federal share; price support program regulations for revenue producing products

(1) The Secretary is authorized and directed, to the extent provided in appropriation Acts, to establish such a demonstration program by making grants, contracts, price supports, and cooperative agreements pursuant to this chapter or any combination thereof for the establishment of municipal waste reprocessing demonstration facilities. For the purpose of this section municipal waste shall include but not be limited to municipal solid waste, sewage sludge, and other municipal organic wastes.

(2) The aggregate amount of funds available for grants, contracts, price supports, and cooperative agreements for municipal waste reprocessing demonstration facilities shall not exceed \$20,000,000 in the fiscal year ending September 30, 1978.

(3) For purposes of this section the term “municipal” shall include any city, town, borough, county, parish, district, or other public body created by or pursuant to State law.

(4) Municipal waste reprocessing demonstration facilities established under this section shall be owned or operated (or both owned and operated) by the municipality and shall involve the recovery of energy or energy intensive products. Such facilities may be established by any public or private entity, by contract or otherwise, as may be determined by the local government which will own or operate (or both own and operate) such facilities and to which financial support is provided. The Federal share for any such facility to which this section applies shall not exceed 75 per centum of the cost of such facility, and not more than \$40,000,000 in Federal funds under this section may be used for the construction of any one facility.

(5) The Secretary shall promulgate such regulations as he deems necessary, pursuant to section 5906(a)(4) and section 5906(c)(1) and (6) of this title, for purposes of establishing a price support program for revenue producing products of municipal waste reprocessing demonstration facilities.

(c) Consultation with Environmental Protection Agency to insure compliance with provisions relating to solid waste disposal full-scale demonstration facilities; administration of projects subject to May 7, 1976, Interagency Agreement

(1) The Secretary shall consult with the Environmental Protection Agency to assure that the provisions of section 6984 of this title are applied in carrying out this section.

(2) Any energy-related research, development, or demonstration project for the conversion (in-

cluding bioconversion) of municipal waste carried out by the Secretary pursuant to this chapter or any other Act shall be administered in accordance with the May 7, 1976, Interagency Agreement between the Environmental Protection Agency and the Energy Research and Development Administration on the development of energy from solid wastes; and specifically, in accordance with such Agreement (A) for those energy-related projects of mutual interest, planning will be conducted jointly by the Environmental Protection Agency and the Secretary, following which project responsibility will be assigned to one agency; (B) energy-related aspects of projects for recovery of fuels or energy intensive products from municipal waste as defined in this section shall be the responsibility of the Secretary including energy-related economic and institutional aspects; and (C) the Environmental Protection Agency shall retain responsibility for the environmental and other economic and institutional aspects of solid waste projects and for assurance that such projects are consistent with any applicable suggested guidelines published pursuant to section 6907 of this title, and any applicable State or regional waste management plan.

(d) Guidelines for obtaining program information from municipalities; availability of information, etc., to Congressional committees; annual reports to Congress; contents, etc.

(1) The Secretary shall establish such guidelines as he deems necessary for purposes of obtaining pertinent information from municipalities receiving funding under this section. These guidelines shall include but not be limited to methods of assessment and evaluation of projects authorized under this section. Such assessments and evaluations shall be presented by the Secretary to the House Committee on Science, Space, and Technology and the Senate Committee on Energy and Natural Resources upon the request of either such committee.

(2) The Secretary shall annually submit a report to the Congress concerning the actions taken or not taken by the Secretary under this section during the preceding fiscal year, and including but not limited to (A) a discussion of the status of each demonstration facility and related facilities financed under this section, including progress made in the development of such facilities, and the expected or actual production from each such facility including byproduct production therefrom, and the distribution of such products and byproducts, (B) a statement of the financial condition of each such demonstration facility, (C) data concerning the environmental, community, and health and safety impacts of each such facility and the actions taken or planned to prevent or mitigate such impacts, (D) the administrative and other costs incurred by the Secretary and other Federal agencies in carrying out this program, and (E) such other data as may be helpful in keeping Congress and the public fully and currently informed about the program authorized by this section.

(3) The annual reports required by this subsection shall be a part of the annual report required by section 5914¹ of this title, except that

¹ See References in Text note below.

the matters required to be reported by this subsection shall be clearly set out and identified in such annual reports. Such reports shall be transmitted to the Speaker of the House of Representatives and the House Committee on Science, Space, and Technology and to the President of the Senate and the Senate Committee on Energy and Natural Resources.

(e) Transfer of part of program to other agency or authority

No part of the program authorized by this section shall be transferred to any other agency or authority, except pursuant to Act of Congress enacted after February 25, 1978.

(f) Compliance by municipalities receiving financial assistance with Federal and State environmental, etc., laws and regulations, and licensing requirements

Nothing in this section shall be construed as abrogating any obligations of any municipality receiving financial assistance pursuant to this section to comply with Federal and State environmental, land use, water, and health and safety laws and regulations or to obtain applicable Federal and State permits, licenses, and certificates.

(Pub. L. 93-577, §20, as added Pub. L. 95-238, title IV, §401, Feb. 25, 1978, 92 Stat. 84; amended Pub. L. 103-437, §15(c)(9), Nov. 2, 1994, 108 Stat. 4592.)

REFERENCES IN TEXT

Section 5914 of this title, referred to in subsec. (d)(3), was omitted from the Code.

AMENDMENTS

1994—Subsec. (d)(1), (3). Pub. L. 103-437 substituted “Committee on Science, Space, and Technology” for “Committee on Science and Technology”.

CHANGE OF NAME

Committee on Science, Space, and Technology of House of Representatives treated as referring to Committee on Science of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

TRANSFER OF FUNCTIONS

“Secretary”, meaning Secretary of Energy, substituted for “Administrator” in subsecs. (b)(1), (5), (c)(1), and (d)(1), (2) and for “Energy Research and Development Administration” in subsec. (c)(2) pursuant to sections 301(a), 703, and 707 of Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 577, 606, 607, which are classified to sections 7151(a), 7293, and 7297 of this title and which terminated Energy Research and Development Administration and transferred its functions and functions of Administrator thereof (with certain exceptions) to Secretary of Energy.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8838 of this title.

CHAPTER 75—PROGRAMS FOR INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES

CODIFICATION

The Developmental Disabilities Assistance and Bill of Rights Act, formerly comprising this chapter, was title I of the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963, which was originally enacted by Pub. L. 88-164, Oct. 31, 1963, 77 Stat. 282, at which time title I was known as the Mental Retardation Facilities Construction Act, and

parts B and C of such title I were classified to subchapters I (§2661 et seq.) and II (§2670 et seq.), respectively, of chapter 33 of this title. Because of the extensive amendments, reorganization of the subject matter, and expansion of the Act by the acts summarized below, the Act was set out here as having been added by Pub. L. 98-527, without reference to intervening amendments.

Part D of the Act was added by Pub. L. 90-170, §4, Dec. 4, 1967, 81 Stat. 528, and was classified to subchapter IIA (§2678 et seq.) of chapter 33 of this title. Part C of the Act was amended generally and the Act was reorganized and renamed the Developmental Disabilities Services and Facilities Construction Act, by Pub. L. 91-517, Oct. 30, 1970, 84 Stat. 1316.

Parts A, B, and D of the Act were amended generally and the Act was otherwise extensively amended and reorganized by Pub. L. 94-103, Oct. 4, 1975, 89 Stat. 486, and was reclassified to this chapter.

The Act was renamed the Developmental Disabilities Assistance and Bill of Rights Act and was amended and reorganized by Pub. L. 95-602, title V, Nov. 6, 1978, 92 Stat. 3003, and was subsequently amended generally and completely reorganized by Pub. L. 98-527, §2, Oct. 19, 1984, 98 Stat. 2662.

For provisions similar to former chapter 75 of this title, relating to programs for individuals with developmental disabilities, see subchapter I (§15001 et seq.) of chapter 144 of this title.

SUBCHAPTER I—GENERAL PROVISIONS

§§ 6000, 6001. Repealed. Pub. L. 106-402, title IV, § 401(a), Oct. 30, 2000, 114 Stat. 1737

Section 6000, Pub. L. 88-164, title I, §101, as added Pub. L. 98-527, §2, Oct. 19, 1984, 98 Stat. 2662; amended Pub. L. 100-146, title I, §101, Oct. 29, 1987, 101 Stat. 840; Pub. L. 101-496, §3, Oct. 31, 1990, 104 Stat. 1191; Pub. L. 103-230, title I, §102, Apr. 6, 1994, 108 Stat. 285, set out congressional findings, purpose and policy concerning individuals with developmental disabilities.

A prior section 6000, Pub. L. 88-164, title I, §101, as added Pub. L. 95-602, title V, §502, Nov. 6, 1978, 92 Stat. 3004, set out congressional statement of findings and purpose, prior to the general amendment of this chapter by Pub. L. 98-527.

Section 6001, Pub. L. 88-164, title I, §102, as added Pub. L. 98-527, §2, Oct. 19, 1984, 98 Stat. 2663; amended Pub. L. 100-146, title I, §102, Oct. 29, 1987, 101 Stat. 841; Pub. L. 101-496, §4, Oct. 31, 1990, 104 Stat. 1192; Pub. L. 103-230, title I, §103, Apr. 6, 1994, 108 Stat. 288, defined terms for purposes of chapter.

A prior section 6001, Pub. L. 88-164, title I, §102, as added Pub. L. 94-103, title I, §125, Oct. 4, 1975, 89 Stat. 496; amended Pub. L. 95-602, title V, §503(a), (b)(1), (c)-(f), Nov. 6, 1978, 92 Stat. 3004-3006; Pub. L. 98-221, title III, §301, Feb. 22, 1984, 98 Stat. 34, defined terms for purposes of this chapter, prior to the general amendment of this chapter by Pub. L. 98-527.

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104-183, §1, Aug. 6, 1996, 110 Stat. 1694, provided that: "This Act [amending sections 6030, 6043, 6066, and 6083 of this title] may be cited as the 'Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1996'."

SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103-230, §1(a), Apr. 6, 1994, 108 Stat. 284, provided that: "This Act [enacting sections 6025a, 6065, and 6066 of this title, amending this section and sections 6001, 6003, 6005 to 6009, 6021, 6022, 6024, 6025, 6026, 6027, 6029, 6030, 6041 to 6043, 6061 to 6064, and 6081 to 6083 of this title, repealing sections 6002, 6004, 6023, and 6028 of this title, enacting provisions set out as a note under section 6025 of this title, and amending provisions set out as a note under this section] may be cited as the 'Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1994'."

SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101-496, §1, Oct. 31, 1990, 104 Stat. 1191, provided that: "This Act [amending this section and sections 6001, 6002, 6006 to 6009, 6021, 6022, 6024, 6025, 6030, 6042, 6043, 6062 to 6064, and 6081 to 6083 of this title] may be cited as the 'Developmental Disabilities Assistance and Bill of Rights Act of 1990'."

SHORT TITLE OF 1987 AMENDMENT

Pub. L. 100-146, §1, Oct. 29, 1987, 101 Stat. 840, provided that: "This Act [amending this section and sections 6001, 6006, 6021 to 6025, 6027, 6030, 6042, 6043, 6061 to 6064, and 6081 to 6083 of this title, and enacting provisions set out as a note above] may be cited as the 'Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1987'."

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98-527, §1, Oct. 19, 1984, 98 Stat. 2662, provided: "That this Act [enacting this chapter] may be cited as the 'Developmental Disabilities Act of 1984'."

SHORT TITLE OF 1975 AMENDMENT

Pub. L. 94-103, §1, Oct. 4, 1975, 89 Stat. 486, provided that: "This Act [see Codification note set out above] may be cited as the 'Developmentally Disabled Assistance and Bill of Rights Act'."

SHORT TITLE

Pub. L. 88-164, §1, Oct. 31, 1963, 77 Stat. 282, as amended, provided that: "This Act [enacting this chapter and subchapter III (§2689 et seq.) of chapter 33 of this title, and enacting provisions set out as notes under this section and section 2689 of this title] may be cited as the 'Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963'."

Pub. L. 88-164, title I, §101, as added by Pub. L. 94-103, title I, §125, Oct. 4, 1975, 89 Stat. 496, which provided that title I of Pub. L. 88-164, as added by Pub. L. 94-103 (enacting this chapter) could be cited as the "Developmental Disabilities Services and Facilities Construction Act", was repealed by Pub. L. 95-602, title V, §502, Nov. 6, 1978, 92 Stat. 3003.

Pub. L. 88-164, title I, §100, as added by Pub. L. 98-527, §2, Oct. 19, 1984, 98 Stat. 2662, and amended by Pub. L. 103-230, title I, §101(c), Apr. 6, 1994, 108 Stat. 285, which provided that title I of Pub. L. 88-164, as added by Pub. L. 98-527 (enacting this chapter) could be cited as the "Developmental Disabilities Assistance and Bill of Rights Act", was repealed by Pub. L. 106-402, title IV, §401(a), Oct. 30, 2000, 114 Stat. 1737.

§ 6002. Repealed. Pub. L. 103-230, title I, § 104, Apr. 6, 1994, 108 Stat. 293

Section, Pub. L. 88-164, title I, §103, as added Pub. L. 98-527, §2, Oct. 19, 1984, 98 Stat. 2667; amended Pub. L. 101-496, §5, Oct. 31, 1990, 104 Stat. 1194, related to Federal share of costs of projects under subchapters II and IV of this chapter.

A prior section 6002, Pub. L. 88-164, title I, §103, as added Pub. L. 94-103, title I, §125, Oct. 4, 1975, 89 Stat. 498, set out provisions relating to Federal share, prior to the general amendment of this chapter by Pub. L. 98-527.

§ 6003. Repealed. Pub. L. 106-402, title IV, § 401(a), Oct. 30, 2000, 114 Stat. 1737

Section 6003, Pub. L. 88-164, title I, §104, as added Pub. L. 98-527, §2, Oct. 19, 1984, 98 Stat. 2667; amended Pub. L. 103-230, title I, §105, Apr. 6, 1994, 108 Stat. 293, related to records and audits.

A prior section 6003, Pub. L. 88-164, title I, §104, as added Pub. L. 94-103, title I, §125, Oct. 4, 1975, 89 Stat. 498, set forth provisions relating to State control of operations, prior to the general amendment of this chapter by Pub. L. 98-527.

§ 6004. Repealed. Pub. L. 103-230, title I, § 106, Apr. 6, 1994, 108 Stat. 293

Section, Pub. L. 88-164, title I, § 105, as added Pub. L. 98-527, § 2, Oct. 19, 1984, 98 Stat. 2667, related to recovery of Federal share of costs of facilities constructed under subchapters II and IV of this chapter under certain conditions.

A prior section 6004, Pub. L. 88-164, title I, § 105, as added Pub. L. 94-103, title I, § 125, Oct. 4, 1975, 89 Stat. 498, related to records and audits, prior to the general amendment of this chapter by Pub. L. 98-527.

§§ 6005 to 6009. Repealed. Pub. L. 106-402, title IV, § 401(a), Oct. 30, 2000, 114 Stat. 1737

Section 6005, Pub. L. 88-164, title I, § 106, as added Pub. L. 98-527, § 2, Oct. 19, 1984, 98 Stat. 2668; amended Pub. L. 103-230, title I, § 107, Apr. 6, 1994, 108 Stat. 293, provided for state control of operations.

A prior section 6005, Pub. L. 88-164, title I, § 106, as added Pub. L. 94-103, title I, § 125, Oct. 4, 1975, 89 Stat. 498, related to employment of handicapped individuals, prior to the general amendment of this chapter by Pub. L. 98-527.

Section 6006, Pub. L. 88-164, title I, § 107, as added Pub. L. 98-527, § 2, Oct. 19, 1984, 98 Stat. 2668; amended Pub. L. 100-146, title I, § 103, Oct. 29, 1987, 101 Stat. 844; Pub. L. 101-496, § 6, Oct. 31, 1990, 104 Stat. 1194; Pub. L. 103-230, title I, § 108, Apr. 6, 1994, 108 Stat. 294, provided for various reports.

A prior section 6006, Pub. L. 88-164, title I, § 107, as added Pub. L. 94-103, title I, § 125, Oct. 4, 1975, 89 Stat. 499, related to recovery of expenditures under certain conditions and liens, prior to the general amendment of this chapter by Pub. L. 98-527.

Section 6007, Pub. L. 88-164, title I, § 108, as added Pub. L. 98-527, § 2, Oct. 19, 1984, 98 Stat. 2669; amended Pub. L. 101-496, § 7, Oct. 31, 1990, 104 Stat. 1195; Pub. L. 103-230, title I, § 109, Apr. 6, 1994, 108 Stat. 296, related to responsibilities of the Secretary.

A prior section 6007, Pub. L. 88-164, title I, § 108, formerly § 133, as added Pub. L. 91-517, title I, § 101(b), Oct. 30, 1970, 84 Stat. 1318, and renumbered and amended Pub. L. 94-103, title I, § 126(a), Oct. 4, 1975, 89 Stat. 499, established National Advisory Council on Services and Facilities for Developmentally Disabled and provided for membership, terms of office, compensation and traveling expenses, and duties and functions, prior to repeal by Pub. L. 95-602, title V, § 504(a), Nov. 6, 1978, 92 Stat. 3006.

Section 6008, Pub. L. 88-164, title I, § 109, as added Pub. L. 98-527, § 2, Oct. 19, 1984, 98 Stat. 2669; amended Pub. L. 101-496, § 8, Oct. 31, 1990, 104 Stat. 1195; Pub. L. 103-230, title I, § 110, Apr. 6, 1994, 108 Stat. 296, required recipients to employ qualified individuals with disabilities on the same terms and conditions required by the Rehabilitation Act of 1973.

A prior section 6008, Pub. L. 88-164, title I, § 109, formerly § 139, as added Pub. L. 91-517, title I, § 101(b), Oct. 30, 1970, 84 Stat. 1323; renumbered § 109 and amended Pub. L. 94-103, title I, § 127, Oct. 4, 1975, 89 Stat. 500; Pub. L. 95-602, title V, § 505, Nov. 6, 1978, 92 Stat. 3007, related to promulgation of regulations, prior to the general amendment of this chapter by Pub. L. 98-527.

Section 6009, Pub. L. 88-164, title I, § 110, as added Pub. L. 98-527, § 2, Oct. 19, 1984, 98 Stat. 2669; amended Pub. L. 101-496, § 9, Oct. 31, 1990, 104 Stat. 1195; Pub. L. 103-230, title I, § 111, Apr. 6, 1994, 108 Stat. 296, related to rights of individuals with developmental disabilities.

A prior section 6009, Pub. L. 88-164, title I, § 110, as added Pub. L. 94-103, title I, § 128, Oct. 4, 1975, 89 Stat. 501; amended Pub. L. 95-602, title V, § 504(b)(1), 506, Nov. 6, 1978, 92 Stat. 3006, 3007; Pub. L. 96-32, § 3(b), July 10, 1979, 93 Stat. 82, set forth provisions respecting development, etc., of evaluation system, prior to repeal by Pub. L. 97-35, title IX, § 912(a), Aug. 13, 1981, 95 Stat. 563.

Prior sections 6010 to 6012 were omitted in the general amendment of this chapter by Pub. L. 98-527.

Section 6010, Pub. L. 88-164, title I, § 111, as added Pub. L. 94-103, title II, § 201, Oct. 4, 1975, 89 Stat. 502; amended Pub. L. 95-602, title V, § 507, Nov. 6, 1978, 92 Stat. 3007, set forth Congressional findings respecting rights of the developmentally disabled.

Section 6011, Pub. L. 88-164, title I, § 112, as added Pub. L. 94-103, title II, § 202, Oct. 4, 1975, 89 Stat. 503; amended Pub. L. 95-602, title V, § 514(a), Nov. 6, 1978, 92 Stat. 3016, related to habilitation plans.

Section 6012, Pub. L. 88-164, title I, § 113, as added Pub. L. 94-103, title II, § 203, Oct. 4, 1975, 89 Stat. 504; amended Pub. L. 95-602, title V, § 508, Nov. 6, 1978, 92 Stat. 3007; Pub. L. 97-35, title IX, § 911(a), Aug. 13, 1981, 95 Stat. 563; Pub. L. 98-221, title III, § 302, Feb. 22, 1984, 98 Stat. 35, related to protection and advocacy of rights of persons with developmental disabilities.

SUBCHAPTER II—FEDERAL ASSISTANCE TO STATE DEVELOPMENTAL DISABILITIES COUNCILS

§§ 6021, 6022. Repealed. Pub. L. 106-402, title IV, § 401(a), Oct. 30, 2000, 114 Stat. 1737

Section 6021, Pub. L. 88-164, title I, § 121, as added Pub. L. 98-527, § 2, Oct. 19, 1984, 98 Stat. 2670; amended Pub. L. 100-146, title II, § 201(a), Oct. 29, 1987, 101 Stat. 845; Pub. L. 101-496, § 10, Oct. 31, 1990, 104 Stat. 1195; Pub. L. 103-230, title II, § 202, Apr. 6, 1994, 108 Stat. 297, set forth the purpose of this subchapter.

A prior section 121 of Pub. L. 88-164, title I, as added Pub. L. 94-103, title I, § 105, Oct. 4, 1975, 89 Stat. 486; amended Pub. L. 95-602, title V, § 509, Nov. 6, 1978, 92 Stat. 3008, related generally to demonstration and training grants and was classified to section 6031 of this title, prior to the general amendment of this chapter by Pub. L. 98-527.

Section 6022, Pub. L. 88-164, title I, § 122, as added Pub. L. 98-527, § 2, Oct. 19, 1984, 98 Stat. 2670; amended Pub. L. 99-91, § 6(b), Aug. 15, 1985, 99 Stat. 391; Pub. L. 100-146, title II, § 202, Oct. 29, 1987, 101 Stat. 845; Pub. L. 101-496, § 11, Oct. 31, 1990, 104 Stat. 1195; Pub. L. 102-119, § 26(b), Oct. 7, 1991, 105 Stat. 607; Pub. L. 103-230, title II, § 203, Apr. 6, 1994, 108 Stat. 297; Pub. L. 105-12, § 9(l)(1), Apr. 30, 1997, 111 Stat. 28, related to submission and approval of State plans.

§ 6023. Repealed. Pub. L. 103-230, title II, § 204, Apr. 6, 1994, 108 Stat. 302

Section, Pub. L. 88-164, title I, § 123, as added Pub. L. 98-527, § 2, Oct. 19, 1984, 98 Stat. 2674; amended Pub. L. 100-146, title II, § 203, Oct. 29, 1987, 101 Stat. 849, required habilitation plan as condition to State's receipt of allotment under this subchapter.

§§ 6024 to 6027. Repealed. Pub. L. 106-402, title IV, § 401(a), Oct. 30, 2000, 114 Stat. 1737

Section 6024, Pub. L. 88-164, title I, § 124, as added Pub. L. 98-527, § 2, Oct. 19, 1984, 98 Stat. 2675; amended Pub. L. 100-146, title II, § 204, Oct. 29, 1987, 101 Stat. 849; Pub. L. 101-496, § 12, Oct. 31, 1990, 104 Stat. 1197; Pub. L. 102-119, § 26(b), Oct. 7, 1991, 105 Stat. 607; Pub. L. 103-230, title II, § 205, Apr. 6, 1994, 108 Stat. 302, required each State receiving assistance to establish and maintain a State Developmental Disabilities Council.

Section 6025, Pub. L. 88-164, title I, § 125, as added Pub. L. 98-527, § 2, Oct. 19, 1984, 98 Stat. 2676; amended Pub. L. 100-146, title II, § 205, Oct. 29, 1987, 101 Stat. 850; Pub. L. 101-496, § 13, Oct. 31, 1990, 104 Stat. 1197; Pub. L. 103-230, title II, § 206, Apr. 6, 1994, 108 Stat. 310, related to State allotments.

Section 6025a, Pub. L. 88-164, title I, § 125A, as added Pub. L. 103-230, title II, § 207, Apr. 6, 1994, 108 Stat. 312, established Federal and non-Federal shares.

Section 6026, Pub. L. 88-164, title I, § 126, as added Pub. L. 98-527, § 2, Oct. 19, 1984, 98 Stat. 2677; amended Pub. L. 103-230, title II, § 208, Apr. 6, 1994, 108 Stat. 313, provided for payments to States for planning, administration, and services.

Section 6027, Pub. L. 88-164, title I, §127, as added Pub. L. 98-527, §2, Oct. 19, 1984, 98 Stat. 2678; amended Pub. L. 100-146, title II, §207, Oct. 29, 1987, 101 Stat. 851; Pub. L. 103-230, title II, §209, Apr. 6, 1994, 108 Stat. 313, related to withholding of payments to States.

§ 6028. Repealed. Pub. L. 103-230, title II, §210, Apr. 6, 1994, 108 Stat. 313

Section, Pub. L. 88-164, title I, §128, as added Pub. L. 98-527, §2, Oct. 19, 1984, 98 Stat. 2678, related to non-duplication in determining amount of Federal share of expenditures under State plan approved under section 6022 of this title.

§§ 6029, 6030. Repealed. Pub. L. 106-402, title IV, § 401(a), Oct. 30, 2000, 114 Stat. 1737

Section 6029, Pub. L. 88-164, title I, §129, as added Pub. L. 98-527, §2, Oct. 19, 1984, 98 Stat. 2678; amended Pub. L. 103-230, title II, §211, Apr. 6, 1994, 108 Stat. 313, related to appeals by States.

Section 6030, Pub. L. 88-164, title I, §130, as added Pub. L. 98-527, §2, Oct. 19, 1984, 98 Stat. 2679; amended Pub. L. 100-146, title II, §208, Oct. 29, 1987, 101 Stat. 851; Pub. L. 101-496, §14, Oct. 31, 1990, 104 Stat. 1198; Pub. L. 103-230, title II, §212, Apr. 6, 1994, 108 Stat. 313; Pub. L. 104-183, §2, Aug. 6, 1996, 110 Stat. 1694, authorized appropriations.

Prior sections 6031 to 6033 were omitted in the general amendment of this chapter by Pub. L. 98-527.

Section 6031, Pub. L. 88-164, title I, §121, as added Pub. L. 94-103, title I, §105, Oct. 4, 1975, 89 Stat. 486; amended Pub. L. 95-602, title V, §509, Nov. 6, 1978, 92 Stat. 3008, related to grants for university affiliated facilities.

Section 6032, Pub. L. 88-164, title I, §122, as added Pub. L. 94-103, title I, §105, Oct. 4, 1975, 89 Stat. 487; amended Pub. L. 95-602, title V, §509, Nov. 6, 1978, 92 Stat. 3009, set forth administrative provisions relating to demonstration and training grants for university affiliated facilities.

Section 6033, Pub. L. 88-164, title I, §123, as added Pub. L. 94-103, title I, §105, Oct. 4, 1975, 89 Stat. 487; amended Pub. L. 95-602, title V, §509, Nov. 6, 1978, 92 Stat. 3010; Pub. L. 97-35, title IX, §911(b), Aug. 13, 1981, 95 Stat. 563; Pub. L. 98-221, title III, §303, Feb. 22, 1984, 98 Stat. 35, authorized appropriations for demonstration and training grants for university affiliated facilities.

**SUBCHAPTER III—PROTECTION AND
ADVOCACY OF INDIVIDUAL RIGHTS**

§§ 6041 to 6043. Repealed. Pub. L. 106-402, title IV, § 401(a), Oct. 30, 2000, 114 Stat. 1737

Section 6041, Pub. L. 88-164, title I, §141, as added Pub. L. 98-527, §2, Oct. 19, 1984, 98 Stat. 2679; amended Pub. L. 103-230, title III, §302, Apr. 6, 1994, 108 Stat. 314, stated the purpose of this subchapter.

A prior section 6041, Pub. L. 88-164, title I, §125, as added Pub. L. 94-103, title I, §105, Oct. 4, 1975, 89 Stat. 488, authorized construction, renovation, or modernization of buildings to be used by university-affiliated facilities, prior to the general amendment of former subchapter II of this chapter by Pub. L. 95-602, title V, §509, Nov. 6, 1978, 92 Stat. 3008.

Section 6042, Pub. L. 88-164, title I, §142, as added Pub. L. 98-527, §2, Oct. 19, 1984, 98 Stat. 2679; amended Pub. L. 100-146, title III, §301, Oct. 29, 1987, 101 Stat. 851; Pub. L. 101-496, §15, Oct. 31, 1990, 104 Stat. 1198; Pub. L. 103-230, title III, §303, Apr. 6, 1994, 108 Stat. 314; Pub. L. 105-12, §9(7)(2), Apr. 30, 1997, 111 Stat. 28, related to State systems to protect and advocate the rights of individuals with developmental disabilities.

A prior section 6042, Pub. L. 88-164, title I, §126, as added Pub. L. 94-103, title I, §105, Oct. 4, 1975, 89 Stat. 488, related to grants for projects and to application requirements, prior to the general amendment of former

subchapter II of this chapter by Pub. L. 95-602, title V, §509, Nov. 6, 1978, 92 Stat. 3008.

Section 6043, Pub. L. 88-164, title I, §143, as added Pub. L. 98-527, §2, Oct. 19, 1984, 98 Stat. 2680; amended Pub. L. 100-146, title III, §302, Oct. 29, 1987, 101 Stat. 853; Pub. L. 101-496, §16, Oct. 31, 1990, 104 Stat. 1200; Pub. L. 103-230, title III, §304, Apr. 6, 1994, 108 Stat. 319; Pub. L. 104-183, §3, Aug. 6, 1996, 110 Stat. 1694, authorized appropriations.

A prior section 6043, Pub. L. 88-164, title I, §127, as added Pub. L. 94-103, title I, §105, Oct. 4, 1975, 89 Stat. 488, authorized appropriations for making payments for construction, renovation, or modernization of buildings, prior to the general amendment of former subchapter II of this chapter by Pub. L. 95-602, title V, §509, Nov. 6, 1978, 92 Stat. 3008.

**SUBCHAPTER IV—UNIVERSITY AFFILIATED
PROGRAMS**

§§ 6061 to 6066. Repealed. Pub. L. 106-402, title IV, § 401(a), Oct. 30, 2000, 114 Stat. 1737

Section 6061, Pub. L. 88-164, title I, §151, as added Pub. L. 98-527, §2, Oct. 19, 1984, 98 Stat. 2681; amended Pub. L. 100-146, title IV, §401(a), Oct. 29, 1987, 101 Stat. 853; Pub. L. 103-230, title IV, §402, Apr. 6, 1994, 108 Stat. 319, provided for the purpose and scope of activities under this subchapter.

A prior section 6061, Pub. L. 88-164, title I, §131, as added Pub. L. 91-517, title I, §101(b), Oct. 30, 1970, 84 Stat. 1317; amended Pub. L. 93-45, title III, §301(b), June 18, 1973, 87 Stat. 95; Pub. L. 94-103, title I, §101(a), 110(a), Oct. 4, 1975, 89 Stat. 486, 489; Pub. L. 95-602, title V, §510(a), Nov. 6, 1978, 92 Stat. 3010; Pub. L. 97-35, title IX, §911(c), Aug. 13, 1981, 95 Stat. 563; Pub. L. 98-221, title III, §304, Feb. 22, 1984, 98 Stat. 35, authorized appropriations for State allotments, prior to the general amendment of this chapter by Pub. L. 98-527.

Section 6062, Pub. L. 88-164, title I, §152, as added Pub. L. 98-527, §2, Oct. 19, 1984, 98 Stat. 2681; amended Pub. L. 100-146, title IV, §402, Oct. 29, 1987, 101 Stat. 853; Pub. L. 101-496, §17, Oct. 31, 1990, 104 Stat. 1200; Pub. L. 103-230, title IV, §403, Apr. 6, 1994, 108 Stat. 320; Pub. L. 105-12, §9(7)(3), Apr. 30, 1997, 111 Stat. 28, provided for administration and operation grants.

A prior section 6062, Pub. L. 88-164, title I, §132, as added Pub. L. 91-517, title I, §101(b), Oct. 30, 1970, 84 Stat. 1317; amended Pub. L. 94-103, title I, §110(b)-(e)(1), title III, §302(b)(1), Oct. 4, 1975, 89 Stat. 489, 490, 506; Pub. L. 94-278, title XI, §1107(a) Apr. 22, 1976, 90 Stat. 416; Pub. L. 95-602, title V, §510(b), Nov. 6, 1978, 92 Stat. 3010, related to allotments to States, prior to the general amendment of this chapter by Pub. L. 98-527.

Section 6063, Pub. L. 88-164, title I, §153, as added Pub. L. 98-527, §2, Oct. 19, 1984, 98 Stat. 2682; amended Pub. L. 100-146, title IV, §403, Oct. 29, 1987, 101 Stat. 855; Pub. L. 101-496, §18, Oct. 31, 1990, 104 Stat. 1203; Pub. L. 103-230, title IV, §404, Apr. 6, 1994, 108 Stat. 324, related to applications.

A prior section 6063, Pub. L. 88-164, title I, §133, formerly §134, as added Pub. L. 91-517, title I, §101(b), Oct. 30, 1970, 84 Stat. 1319; renumbered §133 and amended Pub. L. 94-103, title I, §§110(e)(2), 111, title III, §302(a), (b)(2), Oct. 4, 1975, 89 Stat. 490, 506; Pub. L. 95-602, title V, §511, Nov. 6, 1978, 92 Stat. 3011, related to State plans, prior to the general amendment of this chapter by Pub. L. 98-527.

Section 6064, Pub. L. 88-164, title I, §154, as added Pub. L. 98-527, §2, Oct. 19, 1984, 98 Stat. 2683; amended Pub. L. 100-146, title IV, §404, Oct. 29, 1987, 101 Stat. 857; Pub. L. 101-496, §19, Oct. 31, 1990, 104 Stat. 1203; Pub. L. 103-230, title IV, §405, Apr. 6, 1994, 108 Stat. 326, established the order of priorities for grant awards.

A prior section 6064, Pub. L. 88-164, title I, §134, formerly §137, as added Pub. L. 91-517, title I, §101(b), Oct. 30, 1970, 84 Stat. 1323; amended Pub. L. 93-45, title III, §301(c), June 18, 1973, 87 Stat. 95; renumbered §134 and amended Pub. L. 94-103, title I, §§101(b), 113, title III, §302(a), Oct. 4, 1975, 89 Stat. 486, 492, 506; Pub. L. 94-278,

title XI, §1107(b), (c), Apr. 22, 1976, 90 Stat. 416; Pub. L. 95-602, title V, §514(b), Nov. 6, 1978, 92 Stat. 3017, related to payments to the States for planning, administration, and services, prior to the general amendment of this chapter by Pub. L. 98-527.

Section 6065, Pub. L. 88-164, title I, §155, as added Pub. L. 103-230, title IV, §406, Apr. 6, 1994, 108 Stat. 327, defined "State".

A prior section 6065, Pub. L. 88-164, title I, §135, formerly §138, as added Pub. L. 91-517, title I, §101(b), Oct. 30, 1970, 84 Stat. 1323; renumbered §135 and amended Pub. L. 94-103, title I, §§110(e)(3), 114, title III, §302(a), (b)(3), Oct. 4, 1975, 89 Stat. 490, 493, 506; Pub. L. 95-602, title V, §514(c), Nov. 6, 1978, 92 Stat. 3017, related to withholding of payments to States for planning, administration, and services, prior to the general amendment of this chapter by Pub. L. 98-527.

Section 6066, Pub. L. 88-164, title I, §156, as added Pub. L. 103-230, title IV, §406, Apr. 6, 1994, 108 Stat. 327; amended Pub. L. 104-183, §4, Aug. 6, 1996, 110 Stat. 1694, authorized appropriations.

Prior sections 6066 to 6068 were omitted in the general amendment of this chapter by Pub. L. 98-527.

Section 6066, Pub. L. 88-164, title I, §136, formerly §140, as added Pub. L. 91-517, title I, §101(b), Oct. 30, 1970, 84 Stat. 1324; renumbered §136 and amended Pub. L. 94-103, title I, §115, title III, §302(a), (b)(4), Oct. 4, 1975, 89 Stat. 493, 506, related to nonduplication of payments.

Section 6067, Pub. L. 88-164, title I, §137, formerly §141, as added and renumbered §137, Pub. L. 94-103, title I, §116, title III, §302(a), Oct. 4, 1975, 89 Stat. 493, 506; amended Pub. L. 95-602, title V, §512, Nov. 6, 1978, 92 Stat. 3015, related to State Planning Councils.

Section 6068, Pub. L. 88-164, title I, §138, formerly §142, as added, renumbered §138, and amended Pub. L. 94-103, title I, §117, title III, §302(a), (b)(5), Oct. 4, 1975, 89 Stat. 494, 506, related to appeals, petitions, record, jurisdiction of courts of appeals, conclusiveness of findings, review by the Supreme Court, and stay of administrative action.

SUBCHAPTER V—PROJECTS OF NATIONAL SIGNIFICANCE

§§ 6081 to 6083. Repealed. Pub. L. 106-402, title IV, §401(a), Oct. 30, 2000, 114 Stat. 1737

Section 6081, Pub. L. 88-164, title I, §161, as added Pub. L. 98-527, §2, Oct. 19, 1984, 98 Stat. 2683; amended Pub. L. 100-146, title V, §501(a), Oct. 29, 1987, 101 Stat. 857; Pub. L. 101-496, §20, Oct. 31, 1990, 104 Stat. 1203; Pub. L. 103-230, title V, §502, Apr. 6, 1994, 108 Stat. 328, stated the purpose of this subchapter.

A prior section 6081, Pub. L. 88-164, title I, §145, as added Pub. L. 94-103, title I, §105, Oct. 4, 1975, 89 Stat. 495; amended Pub. L. 95-602, title V, §§504(b)(2), (3), 513, Nov. 6, 1978, 92 Stat. 3006, 3016; Pub. L. 96-32, §3(a), July 10, 1979, 93 Stat. 82; Pub. L. 97-35, title IX, §913, Aug. 13, 1981, 95 Stat. 563; Pub. L. 98-221, title III, §305, Feb. 22, 1984, 98 Stat. 35, set forth grant authority for special projects grants, prior to the general amendment of this chapter by Pub. L. 98-527.

Section 6082, Pub. L. 88-164, title I, §162, as added Pub. L. 98-527, §2, Oct. 19, 1984, 98 Stat. 2683; amended Pub. L. 100-146, title V, §502, Oct. 29, 1987, 101 Stat. 857; Pub. L. 101-496, §21, Oct. 31, 1990, 104 Stat. 1204; Pub. L. 103-230, title V, §503, Apr. 6, 1994, 108 Stat. 328; Pub. L. 105-12, §9(l)(4), Apr. 30, 1997, 111 Stat. 28, related to the Secretary's grant authority.

Section 6083, Pub. L. 88-164, title I, §163, as added Pub. L. 98-527, §2, Oct. 19, 1984, 98 Stat. 2684; amended Pub. L. 100-146, title V, §503, Oct. 29, 1987, 101 Stat. 858; Pub. L. 101-496, §22, Oct. 31, 1990, 104 Stat. 1204; Pub. L. 103-230, title V, §504, Apr. 6, 1994, 108 Stat. 331; Pub. L. 104-183, §5, Aug. 6, 1996, 110 Stat. 1695, authorized appropriations.

CHAPTER 76—AGE DISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

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| Sec.
6101.
6102.
6103. | Statement of purpose.
Prohibition of discrimination.
Regulations. |
| | (a) Publication in Federal Register of proposed general regulations, final general regulations, and anti-discrimination regulations; effective date.
(b) Nonviolative actions; program or activity exemption.
(c) Employment practices and labor-management joint apprenticeship training program exemptions; Age Discrimination in Employment Act unaffected. |
| 6104. | Enforcement.
(a) Methods of achieving compliance with regulations.
(b) Limitations on termination of, or on refusal to grant or to continue, assistance; disbursement of withheld funds to achiever agencies.
(c) Advice as to failure to comply with regulation; determination that compliance cannot be secured by voluntary means.
(d) Report to Congressional committees.
(e) Injunctions; notice of violations; costs; conditions for actions.
(f) Exhaustion of administrative remedies. |
| 6105. | Judicial review.
(a) Provisions of other laws.
(b) Provisions of chapter 7 of title 5; reviewable agency discretion. |
| 6106. | Study of discrimination based on age.
(a) Study by Commission on Civil Rights.
(b) Public hearings.
(c) Publication of results of analyses, research and studies by independent experts; services of voluntary or uncompensated personnel.
(d) Report to President and Congress; copies to affected Federal departments and agencies; information and technical assistance.
(e) Comments and recommendations of Federal departments and agencies; submission to President and Congressional committees.
(f) Cooperation of Federal departments and agencies with Commission.
(g) Authorization of appropriations. |
| 6106a.
6107. | Reports to the Secretary and Congress.
Definitions. |

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 290cc-33, 300w-7, 300x-57, 608, 708, 1437aaa-1, 1437aaa-2, 1760, 2000d-7, 3608, 5057, 5309, 6727, 8625, 9918, 10406, 11386, 11394, 12635, 12832, 12872, 12873, 12892, 12893, 12899b, 12899c of this title; title 20 sections 1221, 1231e, 7221i; title 29 section 2938; title 31 section 6711.

§ 6101. Statement of purpose

It is the purpose of this chapter to prohibit discrimination on the basis of age in programs or activities receiving Federal financial assistance.

(Pub. L. 94-135, title III, §302, Nov. 28, 1975, 89 Stat. 728; Pub. L. 95-478, title IV, §401(a), Oct. 18, 1978, 92 Stat. 1555; Pub. L. 99-272, title XIV, §14001(b)(4), Apr. 7, 1986, 100 Stat. 329.)

AMENDMENTS

1986—Pub. L. 99-272 struck out “, including programs or activities receiving funds under the State and Local Fiscal Assistance Act of 1972 (31 U.S.C. 1221 et seq.)” after “Federal financial assistance”.

1978—Pub. L. 95-478 struck out “unreasonable” before “discrimination”.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-272 effective Oct. 18, 1986, see section 14001(e) of Pub. L. 99-272.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-478 effective at the close of Sept. 30, 1978, see section 504 of Pub. L. 95-478, set out as a note under section 3001 of this title.

SHORT TITLE

Pub. L. 94-135, title III, §301, Nov. 28, 1975, 89 Stat. 728, provided that: “The provisions of this title [enacting this chapter] may be cited as the ‘Age Discrimination Act of 1975’.”

§ 6102. Prohibition of discrimination

Pursuant to regulations prescribed under section 6103 of this title, and except as provided by section 6103(b) and section 6103(c) of this title, no person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance.

(Pub. L. 94-135, title III, §303, Nov. 28, 1975, 89 Stat. 728.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6103, 6106a of this title.

§ 6103. Regulations**(a) Publication in Federal Register of proposed general regulations, final general regulations, and anti-discrimination regulations; effective date**

(1) Not later than one year after the transmission of the report required by section 6106(b) of this title, or two and one-half years after November 28, 1975, whichever occurs first, the Secretary of Health and Human Services shall publish in the Federal Register proposed general regulations to carry out the provisions of section 6102 of this title.

(2)(A) The Secretary shall not publish such proposed general regulations until the expiration of a period comprised of—

(i) the forty-five day period specified in section 6106(e) of this title; and

(ii) an additional forty-five day period, immediately following the period described in clause (i), during which any committee of the Congress having jurisdiction over the subject matter involved may conduct hearings with respect to the report which the Commission is required to transmit under section 6106(d) of this title, and with respect to the comments and recommendations submitted by Federal departments and agencies under section 6106(e) of this title.

(B) The forty-five day period specified in subparagraph (A)(ii) shall include only days during which both Houses of the Congress are in session.

(3) Not later than ninety days after the Secretary publishes proposed regulations under paragraph (1), the Secretary shall publish in the Federal Register final general regulations to carry out the provisions of section 6102 of this title, after taking into consideration any comments received by the Secretary with respect to the regulations proposed under paragraph (1).

(4) Not later than ninety days after the Secretary publishes final general regulations under paragraph (a)(3), the head of each Federal department or agency which extends Federal financial assistance to any program or activity by way of grant, entitlement, loan, or contract other than a contract of insurance or guaranty, shall transmit to the Secretary and publish in the Federal Register proposed regulations to carry out the provisions of section 6102 of this title and to provide appropriate investigative, conciliation, and enforcement procedures. Such regulations shall be consistent with the final general regulations issued by the Secretary, and shall not become effective until approved by the Secretary.

(5) Notwithstanding any other provision of this section, no regulations issued pursuant to this section shall be effective before July 1, 1979.

(b) Nonviolative actions; program or activity exemption

(1) It shall not be a violation of any provision of this chapter, or of any regulation issued under this chapter, for any person to take any action otherwise prohibited by the provisions of section 6102 of this title if, in the program or activity involved—

(A) such action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of such program or activity; or

(B) the differentiation made by such action is based upon reasonable factors other than age.

(2) The provisions of this chapter shall not apply to any program or activity established under authority of any law which (A) provides any benefits or assistance to persons based upon the age of such persons; or (B) establishes criteria for participation in age-related terms or describes intended beneficiaries or target groups in such terms.

(c) Employment practices and labor-management joint apprenticeship training program exemptions; Age Discrimination in Employment Act unaffected

(1) Nothing in this chapter shall be construed to authorize action under this chapter by any Federal department or agency with respect to any employment practice of any employer, employment agency, or labor organization, or with respect to any labor-management joint apprenticeship training program.

(2) Nothing in this chapter shall be construed to amend or modify the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621-634), as amended, or to affect the rights or responsibilities of any person or party pursuant to such Act.

(Pub. L. 94-135, title III, §304, Nov. 28, 1975, 89 Stat. 729; Pub. L. 95-478, title IV, §401(b), Oct. 18,

1978, 92 Stat. 1555; Pub. L. 96-88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 97-300, title I, §183, Oct. 13, 1982, 96 Stat. 1357; Pub. L. 105-277, div. A, §101(f) [title VIII, §405(d)(37)], Oct. 21, 1998, 112 Stat. 2681-337, 2681-427.)

REFERENCES IN TEXT

The Age Discrimination in Employment Act of 1967 (29 U.S.C. 621-634), as amended, referred to in subsec. (c)(2), is Pub. L. 90-202, Dec. 15, 1967, 81 Stat. 602, as amended, which is classified generally to chapter 14 (§621 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 621 of Title 29 and Tables.

CODIFICATION

In subsec. (c)(1), "Job Training Partnership Act [29 U.S.C. 1501 et seq.]" substituted for "Comprehensive Employment and Training Act of 1974 (29 U.S.C. 801 et seq.), as amended" pursuant to section 183 of the Job Training Partnership Act, Pub. L. 97-300, title I, Oct. 13, 1982, 96 Stat. 1357, which is classified to section 1592 of Title 29, Labor, and which provided in part that references in any other statute to the Comprehensive Employment and Training Act shall be deemed to refer to the Job Training Partnership Act.

AMENDMENTS

1998—Subsec. (c)(1). Pub. L. 105-277 substituted "Nothing" for "Except with respect to any program or activity receiving Federal financial assistance for public service employment under the Job Training Partnership Act, nothing".

1978—Subsec. (a)(4). Pub. L. 95-478, §401(b)(1), provided that the regulations shall not become effective until approved by the Secretary.

Subsec. (a)(5). Pub. L. 95-478, §401(b)(2), substituted "July 1, 1979" for "January 1, 1979".

CHANGE OF NAME

"Secretary of Health and Human Services" substituted for "Secretary of Health, Education, and Welfare" in subsec. (a)(1) pursuant to section 509(b) of Pub. L. 96-88, which is classified to section 3508(b) of Title 20, Education.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-478 effective at the close of Sept. 30, 1978, see section 504 of Pub. L. 95-478, set out as a note under section 3001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6102, 6104 of this title.

§ 6104. Enforcement

(a) Methods of achieving compliance with regulations

The head of any Federal department or agency who prescribes regulations under section 6103 of this title may seek to achieve compliance with any such regulation—

(1) by terminating, or refusing to grant or to continue, assistance under the program or activity involved to any recipient with respect to whom there has been an express finding on the record, after reasonable notice and opportunity for hearing, of a failure to comply with any such regulation; or

(2) by any other means authorized by law.

(b) Limitations on termination of, or on refusal to grant or to continue, assistance; disbursement of withheld funds to achiever agencies

Any termination of, or refusal to grant or to continue, assistance under subsection (a)(1) of

this section shall be limited to the particular political entity or other recipient with respect to which a finding has been made under subsection (a)(1) of this section. Any such termination or refusal shall be limited in its effect to the particular program or activity, or part of such program or activity, with respect to which such finding has been made. No such termination or refusal shall be based in whole or in part on any finding with respect to any program or activity which does not receive Federal financial assistance. Whenever the head of any Federal department or agency who prescribes regulations under section 6103 of this title withholds funds pursuant to subsection (a) of this section, he may, in accordance with regulations he shall prescribe, disburse the funds so withheld directly to any public or nonprofit private organization or agency, or State or political subdivision thereof, which demonstrates the ability to achieve the goals of the Federal statute authorizing the program or activity while complying with regulations issued under section 6103 of this title.

(c) Advice as to failure to comply with regulation; determination that compliance cannot be secured by voluntary means

No action may be taken under subsection (a) of this section until the head of the Federal department or agency involved has advised the appropriate person of the failure to comply with the regulation involved and has determined that compliance cannot be secured by voluntary means.

(d) Report to Congressional committees

In the case of any action taken under subsection (a) of this section, the head of the Federal department or agency involved shall transmit a written report of the circumstances and grounds of such action to the committees of the House of Representatives and the Senate having legislative jurisdiction over the program or activity involved. No such action shall take effect until thirty days after the transmission of any such report.

(e) Injunctions; notice of violations; costs; conditions for actions

(1) When any interested person brings an action in any United States district court for the district in which the defendant is found or transacts business to enjoin a violation of this Act by any program or activity receiving Federal financial assistance, such interested person shall give notice by registered mail not less than 30 days prior to the commencement of that action to the Secretary of Health and Human Services, the Attorney General of the United States, and the person against whom the action is directed. Such interested person may elect, by a demand for such relief in his complaint, to recover reasonable attorney's fees, in which case the court shall award the costs of suit, including a reasonable attorney's fee, to the prevailing plaintiff.

(2) The notice referred to in paragraph (1) shall state the nature of the alleged violation, the relief to be requested, the court in which the action will be brought, and whether or not attorney's fees are being demanded in the event that the plaintiff prevails. No action described in

paragraph (1) shall be brought (A) if at the time the action is brought the same alleged violation by the same defendant is the subject of a pending action in any court of the United States; or (B) if administrative remedies have not been exhausted.

(f) Exhaustion of administrative remedies

With respect to actions brought for relief based on an alleged violation of the provisions of this chapter, administrative remedies shall be deemed exhausted upon the expiration of 180 days from the filing of an administrative complaint during which time the Federal department or agency makes no finding with regard to the complaint, or upon the day that the Federal department or agency issues a finding in favor of the recipient of financial assistance, whichever occurs first.

(Pub. L. 94-135, title III, §305, Nov. 28, 1975, 89 Stat. 730; Pub. L. 95-478, title IV, §401(c), (d), Oct. 18, 1978, 92 Stat. 1555, 1556; Pub. L. 96-88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695.)

REFERENCES IN TEXT

This Act, referred to in subsec. (e)(1), probably means Pub. L. 94-135, Nov. 28, 1975, 89 Stat. 713, as amended, known as the Older Americans Amendments of 1975. For complete classification of this Act to the Code, see Short Title of 1975 Amendment note set out under section 3001 of this title and Tables.

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-478, §401(d), authorized disbursement of withheld funds directly to organization or agency demonstrating ability to achieve the goals of the Federal statute authorizing the program or activity while complying with the regulations.

Subsec. (e). Pub. L. 95-478, §401(c), substituted provisions relating to injunctions, notice of violations, and costs for provision making this section the exclusive remedy for the enforcement of the provisions of this chapter.

Subsec. (f). Pub. L. 95-478, §401(c), added subsec. (f).

CHANGE OF NAME

“Secretary of Health and Human Services” substituted for “Secretary of Health, Education, and Welfare” in subsec. (e)(1) pursuant to section 509(b) of Pub. L. 96-88, which is classified to section 3508(b) of Title 20, Education.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-478 effective at the close of Sept. 30, 1978, see section 504 of Pub. L. 95-478, set out as a note under section 3001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6105 of this title.

§ 6105. Judicial review

(a) Provisions of other laws

Any action by any Federal department or agency under section 6104 of this title shall be subject to such judicial review as may otherwise be provided by law for similar action taken by any such department or agency on other grounds.

(b) Provisions of chapter 7 of title 5; reviewable agency discretion

In the case of any action by any Federal department or agency under section 6104 of this

title which is not otherwise subject to judicial review, any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with the provisions of chapter 7 of title 5. For purposes of this subsection, any such action shall not be considered committed to unreviewable agency discretion within the meaning of section 701(a)(2) of such title.

(Pub. L. 94-135, title III, §306, Nov. 28, 1975, 89 Stat. 730.)

§ 6106. Study of discrimination based on age

(a) Study by Commission on Civil Rights

The Commission on Civil Rights shall (1) undertake a study of unreasonable discrimination based on age in programs and activities receiving Federal financial assistance; and (2) identify with particularity any such federally assisted program or activity in which there is found evidence of persons who are otherwise qualified being, on the basis of age, excluded from participation in, denied the benefits of, or subjected to discrimination under such program or activity.

(b) Public hearings

As part of the study required by this section, the Commission shall conduct public hearings to elicit the views of interested parties, including Federal departments and agencies, on issues relating to age discrimination in programs and activities receiving Federal financial assistance, and particularly with respect to the reasonableness of distinguishing, on the basis of age, among potential participants in, or beneficiaries of, specific federally assisted programs.

(c) Publication of results of analyses, research and studies by independent experts; services of voluntary or uncompensated personnel

The Commission is authorized to obtain, through grant or contract, analyses, research and studies by independent experts of issues relating to age discrimination and to publish the results thereof. For purposes of the study required by this section, the Commission may accept and utilize the services of voluntary or uncompensated personnel, without regard to the provisions of section 105(b) of the Civil Rights Act of 1957 (42 U.S.C. 1975d(b)).

(d) Report to President and Congress; copies to affected Federal departments and agencies; information and technical assistance

Not later than two years after November 28, 1975, the Commission shall transmit a report of its findings and its recommendations for statutory changes (if any) and administrative action, including suggested general regulations, to the Congress and to the President and shall provide a copy of its report to the head of each Federal department and agency with respect to which the Commission makes findings or recommendations. The Commission is authorized to provide, upon request, information and technical assistance regarding its findings and recommendations to Congress, to the President, and to the heads of Federal departments and agencies for a ninety-day period following the transmittal of its report.

(e) Comments and recommendations of Federal departments and agencies; submission to President and Congressional committees

Not later than forty-five working days after receiving a copy of the report required by subsection (d) of this section, each Federal department or agency with respect to which the Commission makes findings or recommendations shall submit its comments and recommendations regarding such report to the President and to the Committee on Labor and Human Resources of the Senate and the Committee on Education and Labor of the House of Representatives.

(f) Cooperation of Federal departments and agencies with Commission

The head of each Federal department or agency shall cooperate in all respects with the Commission with respect to the study required by subsection (a) of this section, and shall provide to the Commission such data, reports, and documents in connection with the subject matter of such study as the Commission may request.

(g) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

(Pub. L. 94-135, title III, §307, Nov. 28, 1975, 89 Stat. 731; S. Res. 4, Feb. 4, 1977; Pub. L. 95-65, §1, July 11, 1977, 91 Stat. 269; S. Res. 30, Mar. 7, 1979.)

REFERENCES IN TEXT

Section 105(b) of the Civil Rights Act of 1957, referred to in subsec. (c), is section 105(b) of Pub. L. 85-315, pt. I, Sept. 9, 1957, 71 Stat. 636, which was classified to section 1975d(b) of this title and was omitted from the Code. For further details, see Codification note set out preceding section 1975 of this title. Similar provisions are contained in section 4(c) of the Civil Rights Commission Act of 1983, Pub. L. 98-183, Nov. 30, 1983, 97 Stat. 1304, as amended, which is classified to section 1975b(c) of this title.

AMENDMENTS

1977—Subsec. (d). Pub. L. 95-65 substituted “two years” for “eighteen months” and authorized the Commission to provide information and technical assistance regarding its findings and recommendations to Congress, the President, and heads of Federal departments and agencies for a ninety-day period following the transmittal of its report.

CHANGE OF NAME

Committee on Education and Labor of House of Representatives treated as referring to Committee on Economic and Educational Opportunities of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Economic and Educational Opportunities of House of Representatives changed to Committee on Education and the Workforce of House of Representatives by House Resolution No. 5, One Hundred Fifth Congress, Jan. 7, 1997.

Committee on Human Resources of Senate changed to Committee on Labor and Human Resources of Senate effective Mar. 7, 1979, by Senate Resolution No. 30, 96th Congress. See Rule XXV of Standing Rules of Senate adopted Nov. 14, 1979.

Committee on Labor and Public Welfare of Senate abolished and replaced by Committee on Human Resources of Senate, effective Feb. 11, 1977. See Rule XXV of Standing Rules of Senate, as amended by Senate Resolution No. 4 (popularly cited as the “Committee

System Reorganization Amendments of 1977”), approved Feb. 4, 1977.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6103 of this title.

§ 6106a. Reports to the Secretary and Congress

(a) Not later than December 31 of each year (beginning in 1979), the head of each Federal department or agency shall submit to the Secretary of Health and Human Services a report (1) describing in detail the steps taken during the preceding fiscal year by such department or agency to carry out the provisions of section 6102 of this title; and (2) containing specific data about program participants or beneficiaries, by age, sufficient to permit analysis of how well the department or agency is carrying out the provisions of section 6102 of this title.

(b) Not later than March 31 of each year (beginning in 1980), the Secretary of Health and Human Services shall compile the reports made pursuant to subsection (a) of this section and shall submit them to the Congress, together with an evaluation of the performance of each department or agency with respect to carrying out the provisions of section 6102 of this title.

(Pub. L. 94-135, title III, §308, as added Pub. L. 95-478, title IV, §401(e), Oct. 18, 1978, 92 Stat. 1556; amended Pub. L. 96-88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695.)

PRIOR PROVISIONS

A prior section 308 of Pub. L. 94-135 was renumbered section 309 and is classified to section 6107 of this title.

CHANGE OF NAME

“Secretary of Health and Human Services” substituted for “Secretary of Health, Education, and Welfare” pursuant to section 509(b) of Pub. L. 96-88, which is classified to section 3508(b) of Title 20, Education.

EFFECTIVE DATE

Section effective at close of Sept. 30, 1978, see section 504 of Pub. L. 95-478, set out as an Effective Date of 1978 Amendment note under section 3001 of this title.

§ 6107. Definitions

For purposes of this chapter—

(1) the term “Commission” means the Commission on Civil Rights;

(2) the term “Secretary” means the Secretary of Health and Human Services;

(3) the term “Federal department or agency” means any agency as defined in section 551 of title 5 and includes the United States Postal Service and the Postal Rate Commission; and

(4) the term “program or activity” means all of the operations of—

(A)(i) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(B)(i) a college, university, or other post-secondary institution, or a public system of higher education; or

(ii) a local educational agency (as defined in section 7801 of title 20), system of vocational education, or other school system;

(C)(i) an entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(I) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(II) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(D) any other entity which is established by two or more of the entities described in subparagraph (A), (B), or (C);

any part of which is extended Federal financial assistance.

(Pub. L. 94-135, title III, § 309, formerly § 308, Nov. 28, 1975, 89 Stat. 731; renumbered § 309, Pub. L. 95-478, title IV, § 401(e), Oct. 18, 1978, 92 Stat. 1556; amended Pub. L. 96-88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 100-259, § 5, Mar. 22, 1988, 102 Stat. 30; Pub. L. 103-382, title III, § 391(u), Oct. 20, 1994, 108 Stat. 4025; Pub. L. 107-110, title X, § 1076(z), Jan. 8, 2002, 115 Stat. 2093.)

AMENDMENTS

2002—Par. (4)(B)(ii). Pub. L. 107-110 substituted “7801” for “8801”.

1994—Par. (4)(B)(ii). Pub. L. 103-382 substituted “section 8801 of title 20” for “section 198(a)(10), of the Elementary and Secondary Education Act of 1965”.

1988—Par. (4). Pub. L. 100-259 added par. (4).

CHANGE OF NAME

“Secretary of Health and Human Services” substituted for “Secretary of Health, Education, and Welfare” in par. (2), pursuant to section 509(b) of Pub. L. 96-88, which is classified to section 3508(b) of Title 20, Education.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-110 effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107-110, set out as an Effective Date note under section 6301 of Title 20, Education.

EXCLUSION FROM COVERAGE

Amendment by Pub. L. 100-259 not to be construed to extend application of Age Discrimination Act of 1975 (this chapter) to ultimate beneficiaries of Federal financial assistance excluded from coverage before Mar. 22, 1988, see section 7 of Pub. L. 100-259, set out as a Construction note under section 1687 of Title 20, Education.

ABORTION NEUTRALITY

Amendment by Pub. L. 100-259 not to be construed to force or require any individual or hospital or any other institution, program, or activity receiving Federal funds to perform or pay for an abortion, see section 8 of Pub. L. 100-259, set out as a note under section 1688 of Title 20, Education.

CHAPTER 77—ENERGY CONSERVATION

Sec.

6201.

Congressional statement of purpose.

6202.

Definitions.

SUBCHAPTER I—DOMESTIC SUPPLY AVAILABILITY

PART A—DOMESTIC SUPPLY

6211.

Repealed.

6212.

Domestic use of energy supplies and related materials and equipment.

(a) Export restrictions.

(b) Exemptions.

(c) Implementing restrictions.

(d) Restrictions and national interest.

(e) Waiver of notice and comment period.

6213.

Certain lease bidding arrangements prohibited.

(a) Promulgation of rule by Secretary of the Interior.

(b) Definitions.

(c) Exemptions.

(d) Unitization of producing fields.

(e) Report to Congress covering extension of restrictions on joint bidding.

6214.

Repealed.

6215.

Major fuel burning stationary source.

(a) Restrictions on issuance of orders or rules by Governor pursuant to section 7425 of this title.

(b) Petition to President.

(c) Action to be taken by President.

(d) Effect on authority of President to allocate coal or coal derivatives.

(e) Definitions.

6216.

Annual Home Heating Readiness Reports.

(a) In general.

(b) Contents.

(c) Information requests.

6217.

Scientific inventory of oil and gas reserves.

(a) In general.

(b) Regular update.

(c) Inventory.

(d) Authorization of appropriations.

PART B—STRATEGIC PETROLEUM RESERVE

6231.

Congressional finding and declaration of policy.

6232.

Definitions.

6233.

Repealed.

6234.

Strategic Petroleum Reserve.

(a) Establishment.

(b) Authority of Secretary.

(c) to (e) Repealed.

(f) Purpose of drawdown and distribution; requests for funds for storage.

6235 to 6238.

Repealed.

6239.

Development, operation, and maintenance of the Reserve.

(a) to (e) Repealed.

(f) Powers of Secretary to develop and operate the Strategic Petroleum Reserve.

(g) Acquisition of property by negotiation as prerequisite to condemnation.

(h), (i) Repealed.

(j) Expansion beyond 700,000,000 barrels.

(k) Exemption from subtitle IV of title 49.

(l) Rulemaking during drawdown and sale.

6240.

Petroleum products for storage, transport, or exchange.

(a) Eligibility of petroleum products.

(b) Objectives in determining manner of acquisition.

(c) to (e) Repealed.

- (f) Predrawdown diversion.
 - (g) Repealed.
 - (h) Purchase from stripper well properties.
6241. Drawdown and sale of petroleum products.
- (a) Power of Secretary.
 - (b), (c) Repealed.
 - (d) Presidential finding prerequisite to drawdown and sale.
 - (e) Sales procedures.
 - (f) Repealed.
 - (g) Directive to carry out test drawdown and sale.
 - (h) Prevention or reduction of adverse impact of severe domestic energy supply interruptions.
 - (i) Exchange of withdrawn products.
 - (j) Purchases from Strategic Petroleum Reserve by entities in insular areas of United States and Freely Associated States.
6242. Coordination with import quota system.
6243. Records and accounts.
- (a) Preparation and maintenance.
 - (b) Audit of operations of storage facility.
 - (c) Access to and inspection of records or accounts and storage facilities.
6244. Repealed.
6245. Annual report.
6246. Authorization of appropriations.
6247. SPR Petroleum Account.
- (a) Establishment.
 - (b) Obligation of funds for acquisition, transportation, and injection of petroleum products into SPR.
 - (c) Provision and deposit of funds.
 - (d) Off-budgeting procedures.
- 6247a. Use of underutilized facilities.
- (a) Authority.
 - (b) Protection of facilities.
 - (c) Access to stored oil.
 - (d) Availability of funds.
- 6247b. Purchase of oil from marginal wells.
- (a) In general.
 - (b) Definition of marginal well.
- PART C—AUTHORITY TO CONTRACT FOR PETROLEUM PRODUCT NOT OWNED BY UNITED STATES
6249. Contracting for petroleum product and facilities.
- (a) In general.
 - (b) Conditions.
 - (c) Charge for storage.
 - (d) Duration.
 - (e) Binding arbitration.
 - (f) Availability of funds.
- 6249a. Implementation.
- (a), (b) Repealed.
 - (c) Legal status regarding other law.
 - (d) Return of product.
- 6249b. Repealed.
- 6249c. Contracts for which implementing legislation is needed.
- (a) In general.
 - (b) Consultation.
 - (c) Effective date.
 - (d) Rules of Senate.
 - (e) Introduction and referral in Senate.
 - (f) Consideration of amendments to implementing bill prohibited in Senate.
 - (g) Discharge in Senate.
 - (h) Floor consideration in Senate.
- PART D—NORTHEAST HOME HEATING OIL RESERVE
6250. Establishment.
- 6250a. Authority.
- 6250b. Conditions for release; plan.
- (a) Finding.
 - (b) Definition.
 - (c) Continuing evaluation.
 - (d) Release of petroleum distillate.
 - (e) Plan.
- 6250c. Northeast Home Heating Oil Reserve Account.
- (a) Establishment.
 - (b) Deposits.
 - (c) Obligation of amounts.
- 6250d. Exemptions.
- 6250e. Authorization of appropriations.
- PART E—EXPIRATION
6251. Expiration.
- SUBCHAPTER II—STANDBY ENERGY AUTHORITIES
- PART A—GENERAL EMERGENCY AUTHORITIES
- 6261 to 6264. Repealed.
- PART B—AUTHORITIES WITH RESPECT TO INTERNATIONAL ENERGY PROGRAM
6271. International oil allocations.
- (a) Authority of President to prescribe rules for implementation of obligations of United States relating to international allocation of petroleum products; amounts of allocation and prices; petroleum products subject to rule; term of rule.
 - (b) Prerequisites to rule taking effect; time rule may be put into effect or remain in effect.
 - (c) Consistency of rule with attainment of objectives specified in section 753(b)(1) of title 15; limitation on authority of officers or agencies of United States.
 - (d) Nonapplicability of export restrictions under other laws.
 - (e) Prerequisites for effectiveness of rule.
6272. International voluntary agreements.
- (a) Exclusiveness of section's requirements.
 - (b) Prescription by Secretary of standards and procedures for developing and carrying out voluntary agreements and plans of action.
 - (c) Requirements for standards and procedures.
 - (d) Participation of Attorney General and Federal Trade Commission in development and carrying out of voluntary agreements and plans of action.
 - (e) Monitoring of development and carrying out of voluntary agreements and plans of action by Attorney General and Federal Trade Commission.
 - (f) Defense to civil or criminal antitrust actions.
 - (g) Acts or practices occurring prior to date of enactment of chapter or subsequent to its expiration or repeal.
 - (h) Applicability of Defense Production Act of 1950.
 - (i) Reports by Attorney General and Federal Trade Commission to Congress and President.
 - (j) Defense in breach of contract actions.
 - (k) Definitions.
 - (l) Applicability of antitrust defense.
 - (m) Limitation on new plans of action.
 - (n) Joint resolution of disapproval.
6273. Advisory committees.

- (a) Authority of Secretary to establish; applicability of section 17 of Federal Energy Administration Act of 1974; chairman; inclusion of representatives of public; public meetings; notice of meeting to Attorney General and Federal Trade Commission; attendance and participation of their representatives.
- (b) Transcript of meetings.
- (c) Suspension of application of certain requirements by President.
- 6274. Exchange of information with International Energy Agency.
 - (a) Submission of information by Secretary to Secretary of State; transmittal to Agency; aggregation and reporting of geological or geophysical information, trade secrets, or commercial or financial information; availability of such information during international energy supply emergency; certification by President that Agency has adopted security measures; review of compliance of other nations with program; petition to President for changes in procedure.
 - (b) Halting transmittal of information that would prejudice competition, violate antitrust laws, or be inconsistent with security interests.
 - (c) Information protected by statute.
 - (d) Continuation of authority to collect data under Energy Supply and Environmental Coordination Act and Federal Energy Administration Act of 1974.
 - (e) Limitation on disclosure contained in other laws.
- 6275. Relationship between standby emergency authorities and international energy program.
- 6276. Domestic renewable energy industry and related service industries.
 - (a) Purpose.
 - (b) Evaluation; report to Congress.
 - (c) Program for enhancing commerce in renewable energy technologies; funding.
 - (d) Interagency working group.
 - (e) Omitted.
 - (f) Functions of interagency working group; plan to increase United States exports of renewable energy and energy efficiency technologies.
 - (g) Repealed.
 - (h) Authorization of appropriations.
- PART C—ENERGY EMERGENCY PREPAREDNESS [REPEALED]
- 6281, 6282. Repealed.
- 6283. Summer fill and fuel budgeting programs.
 - (a) Definitions.
 - (b) Assistance.
 - (c) Preference.
 - (d) Authorization of appropriations.
 - (e) Inapplicability of expiration provision.
- PART D—EXPIRATION
- 6285. Expiration.
- SUBCHAPTER III—IMPROVING ENERGY EFFICIENCY
- PART A—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS OTHER THAN AUTOMOBILES
- 6291. Definitions.
- 6292. Coverage.
 - (a) In general.
- (b) Special classification of consumer product.
- 6293. Test procedures.
 - (a) General rule.
 - (b) Amended and new procedures.
 - (c) Restriction on certain representations.
 - (d) Case in which test procedure is not required.
 - (e) Amendment of standard.
- 6294. Labeling.
 - (a) In general.
 - (b) Rules in effect; new rules.
 - (c) Content of label.
 - (d) Effective date.
 - (e) Study of certain products.
 - (f) Consultation.
 - (g) Other authority of the Commission.
- 6295. Energy conservation standards.
 - (a) Purposes.
 - (b) Standards for refrigerators, refrigerator-freezers, and freezers.
 - (c) Standards for room air conditioners.
 - (d) Standards for central air conditioners and heat pumps.
 - (e) Standards for water heaters; pool heaters; direct heating equipment.
 - (f) Standards for furnaces.
 - (g) Standards for dishwashers; clothes washers; clothes dryers; fluorescent lamp ballasts.
 - (h) Standards for kitchen ranges and ovens.
 - (i) General service fluorescent lamps and incandescent reflector lamps.
 - (j) Standards for showerheads and faucets.
 - (k) Standards for water closets and urinals.
 - (l) Standards for other covered products.
 - (m) Further rulemaking.
 - (n) Petition for amended standard.
 - (o) Criteria for prescribing new or amended standards.
 - (p) Procedure for prescribing new or amended standards.
 - (q) Special rule for certain types or classes of products.
 - (r) Inclusion in standards of test procedures and other requirements.
 - (s) Determination of compliance with standards.
 - (t) Small manufacturer exemption.
- 6296. Requirements of manufacturers.
 - (a) In general.
 - (b) Notification.
 - (c) Deadline.
 - (d) Information requirements.
- 6297. Effect on other law.
 - (a) Preemption of testing and labeling requirements.
 - (b) General rule of preemption for energy conservation standards before Federal standard becomes effective for product.
 - (c) General rule of preemption for energy conservation standards when Federal standard becomes effective for product.
 - (d) Waiver of Federal preemption.
 - (e) Exception for certain State procurement standards.
 - (f) Exception for certain building code requirements.
 - (g) No warranty.
- 6298. Rules.
- 6299. Authority to obtain information.
 - (a) In general.
 - (b) Confidentiality.
- 6300. Exports.

6301. Imports.
6302. Prohibited acts.
 (a) In general.
 (b) "New covered product" defined.
6303. Enforcement.
 (a) In general.
 (b) "Knowingly" defined.
 (c) Special rule.
 (d) Procedure for assessing penalty.
6304. Injunctive enforcement.
6305. Citizen suits.
 (a) Civil actions; jurisdiction.
 (b) Limitation.
 (c) Right to intervene.
 (d) Award of costs of litigation.
 (e) Preservation of other relief.
 (f) Compliance in good faith.
6306. Administrative procedure and judicial review.
 (a) Procedure for prescription of rules.
 (b) Petition by persons adversely affected by rules; effect on other laws.
 (c) Jurisdiction.
6307. Consumer education.
 (a) In general.
 (b) State and local incentive programs.
6308. Annual report.
6309. Authorization of appropriations.
 (a) Authorizations for Secretary.
 (b) Authorizations for Commission.
 (c) Other authorizations.
- PART A-1—CERTAIN INDUSTRIAL EQUIPMENT**
6311. Definitions.
6312. Purposes and coverage.
 (a) Congressional statement of purpose.
 (b) Inclusion of industrial equipment as covered equipment.
 (c) Inclusion of component parts of consumer products as industrial equipment.
6313. Standards.
 (a) Small and large commercial package air conditioning and heating equipment, packaged terminal air conditioners and heat pumps, warm-air furnaces, packaged boilers, storage water heaters, instantaneous water heaters, and unfired hot water storage tanks.
 (b) Electric motors.
6314. Test procedures.
 (a) Prescription by Secretary; requirements.
 (b) Publication in Federal Register; presentation of oral and written data, views, and arguments by interested persons.
 (c) Reevaluations.
 (d) Prohibited representations.
 (e) Assistance by National Institute of Standards and Technology.
6315. Labeling.
 (a) Prescription by Secretary.
 (b) Disclosure of energy efficiency of articles of covered equipment.
 (c) Inclusion of requirements.
 (d) Labeling rules applicable to electric motors.
 (e) Labeling rules for air conditioning and heating equipment.
 (f) Consultation with Federal Trade Commission.
 (g) Publication in Federal Register; presentation of oral and written data, views, and arguments of interested persons.
 (h) Restrictions on Secretary's authority to promulgate rules.
 (i) Tests for accuracy of information contained on labels.
- (j) Products completed prior to effective date of rules.
- (k) Labeling authority under Federal Trade Commission Act.
6316. Administration, penalties, enforcement, and preemption.
6317. Energy conservation standards for high-intensity discharge lamps, distribution transformers, and small electric motors.
 (a) High-intensity discharge lamps and distribution transformers.
 (b) Small electric motors.
 (c) Consideration of criteria under other law.
 (d) Prescription of labeling requirements by Secretary.
 (e) Compliance by manufacturers with labeling requirements.
 (f) New covered products; distribution of non-conforming products prohibited; construction with other law.
- PART B—STATE ENERGY CONSERVATION PLANS**
6321. Congressional findings and declaration of purpose.
6322. State energy conservation plans.
 (a) Feasibility reports.
 (b) Guidelines.
 (c) Mandatory features of plans.
 (d) Optional features of plans.
 (e) Standby plans.
 (f) Energy Technology Commercialization Services Program.
6323. Federal assistance to States.
 (a) Information, technical assistance, and assistance in preparation of reports and development, implementation, or modification of energy conservation plan.
 (b) Financial assistance to assist State in development, implementation, or modification of energy conservation plan; submission of plan to and approval of Secretary; considerations governing approval; amount of assistance.
 (c) Records.
 (d) Assistance as supplementing and not supplanting State and local funds.
 (e) Energy emergency planning program as prerequisite to assistance.
 (f) State buildings energy efficiency improvements incentive fund.
- 6323a. Matching State contributions.
6324. State energy efficiency goals.
6325. General provisions.
 (a) Rules.
 (b) Departmental consultation.
 (c) Annual report.
 (d) Duty of Federal Trade Commission to prevent unfair or deceptive practices or acts relating to implementation of energy measures.
 (e) List of energy measures eligible for financial assistance; designation of types and requirements of energy audits.
 (f) Authorization of appropriations.
 (g) State Energy Advisory Board.
6326. Definitions.
6327. Repealed.
- PART C—INDUSTRIAL ENERGY CONSERVATION**
- 6341 to 6347. Repealed or Omitted.
6348. Energy efficiency in industrial facilities.
 (a) Grant program.
 (b) Award program.
 (c) Report on industrial reporting and voluntary targets.

6349. Process-oriented industrial energy efficiency.
 (a) Definitions.
 (b) Grant program.
 (c) Other Federal assistance.
 (d) Authorization of appropriations.
6350. Industrial insulation and audit guidelines.
 (a) Voluntary guidelines for energy efficiency auditing and insulating.
 (b) Educational and technical assistance.
- PART D—OTHER FEDERAL ENERGY CONSERVATION MEASURES
6361. Federal energy conservation programs.
 (a) Establishment and coordination of Federal agency actions.
 (b) Public education programs.
 (c) Omitted.
 (d) Applicability of plan to Executive agencies.
 (e) Authorization of appropriations.
6362. Energy conservation policies and practices.
 (a) "Agency" defined.
 (b) Statement of probable impact of major regulatory action on energy efficiency.
 (c) Application of provisions to authority exercised to protect public health and safety.
6363. Federal actions with respect to recycled oil.
 (a) Purpose.
 (b) Definitions.
 (c) Test procedures for determining substantial equivalency of recycled oil and new oil.
 (d) Promulgation of rules prescribing test procedures and labeling standards.
 (e) Labeling standards.
 (f) Conformity of acts of Federal officials to Commission rules.
- PART E—ENERGY CONSERVATION PROGRAM FOR SCHOOLS AND HOSPITALS
6371. Definitions.
 6371a. Guidelines.
 (a) Energy audits.
 (b) State plans for implementation of energy conservation projects in schools and hospitals.
 (c) Revisions.
 (d) Determination of severe hardship class for schools and hospitals.
- 6371b. Preliminary energy audits and energy audits.
 (a) Application by Governor.
 (b) Grants for conduct of preliminary energy audits.
 (c) Grants for conduct of energy audits.
 (d) Audits conducted prior to grant of financial assistance.
 (e) Restriction on use of funds; grant covering total cost of energy audits.
- 6371c. State plans.
 (a) Invitation to State energy agency to submit plan; contents.
 (b) Approval of plans.
 (c) Development and implementation of approved plans; submission of proposed State plan.
- 6371d. Applications for financial assistance.
 (a) Limitation on number of applications by States, schools, and hospitals; submittal to State energy agency.
 (b) Required information.
 (c) Conditions for financial assistance; applications consistent with related State programs and health plans.
 (d) Compliance required for approval; reasons for disapproval; resubmittal; amendment.
- (e) Suspension of further assistance for failure to comply.
- 6371e. Grants for project costs and technical assistance.
 (a) Authorization of Secretary; project costs.
 (b) Restrictions on use of funds.
 (c) Allocation requirements.
 (d) Technical assistance costs.
- 6371f. Authorization of appropriations.
 6371g. Allocation of grants.
 (a) Section 6371e grants.
 (b) Restrictions on allocations to States.
 (c) Prescription of rules governing allocations among States with regard to energy audits.
 (d) Prescription of rules limiting allocations to States for administrative expenses.
 (e) Reallocations.
- 6371h. Administration; detailed description in annual report.
- 6371i. Records.
- 6371j. Application of sections 3141-3144, 3146, and 3147 of title 40.
- PART F—ENERGY CONSERVATION PROGRAM FOR BUILDINGS OWNED BY UNITS OF LOCAL GOVERNMENT AND PUBLIC CARE INSTITUTIONS
6372. Definitions.
 6372a. Guidelines.
 (a) Energy audits.
 (b) Implementation of technical assistance programs.
 (c) Revisions.
- 6372b. Preliminary energy audits and energy audits.
 (a) Application by Governor.
 (b) Grants for conduct of preliminary energy audits.
 (c) Application by Governor, unit of local government or public care institution.
 (d) Grants for conduct of energy audits.
 (e) Audits conducted prior to grant of financial assistance.
 (f) Restriction on use of funds.
- 6372c. State plans.
 6372d. Applications for grants for technical assistance.
 (a) Limitation on number of applications by units of local government and public care institutions; submittal to State energy agency.
 (b) Required information.
 (c) Compliance required for approval; reasons for disapproval; resubmittal; amendment.
 (d) Suspension of further assistance for failure to comply.
- 6372e. Grants for technical assistance.
 (a) Authorization of Secretary.
 (b) Restriction on use of funds.
 (c) Allocation requirements.
 (d) Prescription of rules limiting allocations to States for administrative expenses.
- 6372f. Authorization of appropriations.
 6372g. Allocation of grants.
 6372h. Administration; detailed description in annual report.
- 6372i. Records.
- PART G—OFF-HIGHWAY MOTOR VEHICLES
6373. Off-highway motor vehicles.
- PART H—ENCOURAGING USE OF ALTERNATIVE FUELS
6374. Alternative fuel use by light duty Federal vehicles.
 (a) Department of Energy program.

- (b) Studies.
- (c) Availability to public.
- (d) Federal agency use of demonstration vehicles.
- (e) Detail of personnel.
- (f) Exemptions.
- (g) Definitions.
- (h) Funding.
- 6374a. Alternative fuels truck commercial application program.
 - (a) Establishment.
 - (b) Funding.
- 6374b. Alternative fuels bus program.
 - (a) Testing.
 - (b) Funding.
 - (c) "Bus" defined.
- 6374c. Omitted.
- 6374d. Studies and reports.
 - (a) Methanol study.
 - (b) Omitted.
 - (c) Public participation.

SUBCHAPTER IV—GENERAL PROVISIONS

PART A—ENERGY DATA BASE AND ENERGY INFORMATION

- 6381. Verification examinations.
 - (a) Authority of Comptroller General.
 - (b) Request for examination.
 - (c) Definitions.
- 6382. Powers and duties of Comptroller General.
 - (a) Subpenas; discovery and inspection; oaths; search.
 - (b) Information in possession of Federal agencies.
 - (c) Transmission of examination results to Federal agencies.
 - (d) Report to Congressional committees.
 - (e) Disclosure of geological or geophysical information.
- 6383. Accounting practices.
 - (a) Development by Securities and Exchange Commission; time of taking effect.
 - (b) Consultation with Secretary, General Accounting Office and Federal Energy Regulatory Commission; rules; reliance on practices developed by Financial Accounting Standards Board; opportunity to submit written comment.
 - (c) Requirements for accounting practices.
- 6384. Enforcement.
 - (a) Civil penalties.
 - (b) Jurisdiction; process.
 - (c) Securing compliance with subpena.
- 6385. Petroleum product information.

PART B—GENERAL PROVISIONS

- 6391. Prohibited actions.
 - (a) Unreasonable classifications and differentiations.
 - (b) Unreasonably disproportionate share of burdens between segments of business community.
 - (c) Authorities to which section applies.
- 6392. Repealed.
- 6393. Administrative procedure and judicial review.
- 6394. Prohibited acts.
- 6395. Enforcement.
 - (a) Civil penalty.
 - (b) Penalty for willful violation.
 - (c) Penalty for violation after having been subjected to civil penalty for prior violation.
 - (d) Injunction action by Attorney General.
 - (e) Private right of action.
- 6396. State laws or programs.

- 6397. Repealed.
- 6398. Authorization of appropriations.
- 6399. Intrastate natural gas.
- 6400. Limitation on loan guarantees.
- 6401. Repealed.

PART C—CONGRESSIONAL REVIEW

- 6421. Procedure for Congressional review of Presidential requests to implement certain authorities.
 - (a) "Energy action" defined.
 - (b) Transmittal of energy action to Congress.
 - (c) Effective date of energy action.
 - (d) Computation of period.
 - (e) Provision in energy action for later effective date.
 - (f) Resolutions with respect to energy action.
- 6422. Expedited procedure for Congressional consideration of certain authorities.
 - (a) Contingency plan identification number; transmittal of plan to Congress.
 - (b) Necessity of Congressional resolution within certain period for plan to be considered approved.
 - (c) Computation of period.
 - (d) Resolution with respect to contingency plan.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 7135, 7194, 7521, 8255 of this title; title 15 section 719j.

§ 6201. Congressional statement of purpose

The purposes of this chapter are—

(1) to grant specific authority to the President to fulfill obligations of the United States under the international energy program;

(2) to provide for the creation of a Strategic Petroleum Reserve capable of reducing the impact of severe energy supply interruptions;

(3) Repealed. Pub. L. 106-469, title I, § 102(2), Nov. 9, 2000, 114 Stat. 2029;

(4) to conserve energy supplies through energy conservation programs, and, where necessary, the regulation of certain energy uses;

(5) to provide for improved energy efficiency of motor vehicles, major appliances, and certain other consumer products;

(6) Repealed. Pub. L. 106-469, title I, § 102(2), Nov. 9, 2000, 114 Stat. 2029;

(7) to provide a means for verification of energy data to assure the reliability of energy data; and

(8) to conserve water by improving the water efficiency of certain plumbing products and appliances.

(Pub. L. 94-163, § 2, Dec. 22, 1975, 89 Stat. 874; Pub. L. 102-486, title I, § 123(a), Oct. 24, 1992, 106 Stat. 2817; Pub. L. 106-469, title I, § 102, Nov. 9, 2000, 114 Stat. 2029.)

REFERENCES IN TEXT

This chapter, referred to in introductory clause, was in the original "this Act", meaning Pub. L. 94-163, Dec. 22, 1975, 89 Stat. 871, as amended, known as the Energy Policy and Conservation Act. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

AMENDMENTS

2000—Par. (1). Pub. L. 106-469, § 102(1), struck out "standby" after "grant specific" and ", subject to con-

gressional review, to impose rationing, to reduce demand for energy through the implementation of energy conservation plans, and” after “the President”.

Par. (3). Pub. L. 106-469, §102(2), struck out par. (3) which read as follows: “to increase the supply of fossil fuels in the United States, through price incentives and production requirements;”.

Par. (6). Pub. L. 106-469, §102(2), struck out par. (6) which read as follows: “to reduce the demand for petroleum products and natural gas through programs designed to provide greater availability and use of this Nation’s abundant coal resources;”.

1992—Par. (8). Pub. L. 102-486 added par. (8).

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106-469, §1, Nov. 9, 2000, 114 Stat. 2029, provided that: “This Act [see Tables for classification] may be cited as the ‘Energy Act of 2000’.”

Pub. L. 106-469, title I, §101, Nov. 9, 2000, 114 Stat. 2029, provided that: “This title [amending this section and sections 6231, 6232, 6234, 6239 to 6241, 6245 to 6247, 6249, 6249a, 6251, 6276 and 6285 of this title, repealing sections 6211, 6214, 6233, 6235 to 6238, 6244, 6249b, 6261 to 6264, 6281 and 6282 of this title, and repealing provisions set out as notes under section 2071 of Title 50, Appendix, War and National Defense] may be cited as the ‘Energy Policy and Conservation Act Amendments of 2000’.”

SHORT TITLE OF 1998 AMENDMENT

Pub. L. 105-388, §1, Nov. 13, 1998, 112 Stat. 3477, provided that: “This Act [enacting section 13220 of this title, amending sections 2296a, 2296a-2, 2297g-1, 6241, 6291, 6292, 6294, 6295, 6306, 6316, 6322, 6325, 6371, 6371c, 6371f, 6371i, 6372c, 6372h, 6374, 6383, 6422, 6802, 6872, 8217, 8231, 8235e, 8259, 8287, 8287c, and 13218 of this title and section 3503 of Title 25, Indians, enacting provisions set out as notes under section 6241 of this title, and amending and repealing provisions set out as notes under section 2071 of Title 50, Appendix, War and National Defense] may be cited as the ‘Energy Conservation Reauthorization Act of 1998’.”

SHORT TITLE OF 1994 AMENDMENTS

Pub. L. 103-406, §1, Oct. 22, 1994, 108 Stat. 4209, provided: “That this Act [amending sections 6251 and 6285 of this title and enacting provisions set out as a note below] may be cited as the ‘Energy Policy and Conservation Act Amendments Act of 1994’.”

Pub. L. 103-406, title I, §101, Oct. 22, 1994, 108 Stat. 4209, provided that: “This title [amending sections 6251 and 6285 of this title] may be cited as the ‘Energy Policy and Conservation Act Amendments of 1994’.”

SHORT TITLE OF 1990 AMENDMENTS

Pub. L. 101-440, §1, Oct. 18, 1990, 104 Stat. 1006, provided that: “This Act [amending sections 6322, 6323, 6324 to 6326, 6371, 6371e, 6371f, 6861 to 6865, 6871, and 6872 of this title and repealing section 6327 of this title] may be cited as the ‘State Energy Efficiency Programs Improvement Act of 1990’.”

Pub. L. 101-383, §1, Sept. 15, 1990, 104 Stat. 727, provided that: “This Act [enacting sections 6249 to 6249c of this title, amending sections 6202, 6232, 6239 to 6241, 6247, 6251, and 6285 of this title, and amending provisions set out as a note under section 2071 of Title 50, Appendix, War and National Defense] may be referred to as the ‘Energy Policy and Conservation Act Amendments of 1990’.”

Pub. L. 101-360, §1, Aug. 10, 1990, 104 Stat. 421, provided: “That this Act [amending sections 6251 and 6285 of this title and provisions set out as a note under section 2071 of Title 50, Appendix, War and National Defense] may be referred to as the ‘Energy Policy and Conservation Act Short-Term Extension Amendment of 1990’.”

Pub. L. 101-262, §1, Mar. 31, 1990, 104 Stat. 124, provided: “That this Act [amending sections 6251 and 6285 of this title and provisions set out as a note under section 2071 of Title 50, Appendix, War and National De-

fense] may be referred to as the ‘Energy Policy and Conservation Act Extension Amendment of 1990’.”

SHORT TITLE OF 1988 AMENDMENTS

Pub. L. 100-494, §1, Oct. 14, 1988, 102 Stat. 2441, provided that: “This Act [enacting sections 6374 to 6374d of this title and section 2013 of Title 15, Commerce and Trade, amending sections 2001, 2002, and 2006 of Title 15, and enacting provisions set out as notes under section 6374 of this title and sections 2006, 2013, and 2512 of Title 15] may be cited as the ‘Alternative Motor Fuels Act of 1988’.”

Pub. L. 100-357, §1, June 28, 1988, 102 Stat. 671, provided that: “This Act [amending sections 6291 to 6295 and 6297 of this title] may be referred to as the ‘National Appliance Energy Conservation Amendments of 1988’.”

SHORT TITLE OF 1987 AMENDMENT

Pub. L. 100-12, §1, Mar. 17, 1987, 101 Stat. 103, provided that: “This Act [amending sections 6291 to 6297, 6299, 6302, 6303, 6305, 6306, 6308, and 6309 of this title] may be referred to as the ‘National Appliance Energy Conservation Act of 1987’.”

SHORT TITLE OF 1985 AMENDMENT

Pub. L. 99-58, §1, July 2, 1985, 99 Stat. 102, provided that: “This Act [enacting sections 6251, 6264, 6285, and 7277 of this title, amending sections 6239, 6240, 6241, 6247, and 6272 of this title, repealing section 6401 of this title, enacting provisions set out as notes under section 7277 of this title, and amending provisions set out as a note under section 2071 of Title 50, Appendix, War and National Defense] may be cited as the ‘Energy and Conservation Amendments Act of 1985’.”

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98-370, §1, July 18, 1984, 98 Stat. 1211, provided: “That this Act [enacting section 6276 of this title and a provision set out as a note under section 627] may be cited as the ‘Renewable Energy Industry Development Act of 1983’.”

SHORT TITLE OF 1982 AMENDMENT

Pub. L. 97-229, §1, Aug. 3, 1982, 96 Stat. 248, provided that: “This Act [enacting sections 6281, 6282, and 6385 of this title, amending sections 6239, 6240, 6247, 6271, and 6272 of this title, and enacting provisions set out as notes under sections 6234, 6240, and 6245 of this title] may be cited as the ‘Energy Emergency Preparedness Act of 1982’.”

SHORT TITLE OF 1981 AMENDMENT

Pub. L. 97-35, title X, §1031, Aug. 13, 1981, 95 Stat. 618, provided that: “This subtitle [subtitle C (§§1031-1038) of title X of Pub. L. 97-35, enacting section 6247 of this title, amending sections 6240, 6245, and 6246 of this title, and enacting provisions set out as notes under sections 6231, 6240, and 6247 of this title] may be cited as the ‘Strategic Petroleum Reserve Amendments Act of 1981’.”

SHORT TITLE

Section 1 of Pub. L. 94-163 provided in part: “That this Act [enacting this chapter and sections 757 to 760h and 2001 to 2012 of Title 15, Commerce and Trade, amending sections 753, 754, 755, 792, 796, and 1901 of Title 15 and section 2071 of the Appendix to Title 50, War and National Defense, enacting provisions set out as notes under this section, sections 753 and 796 of Title 15, and section 2071 of Title 50 App., and repealing provisions formerly set out as a note under section 1904 of Title 12, Banks and Banking] may be cited as the ‘Energy Policy and Conservation Act’.”

NATIONAL OIL HEAT RESEARCH ALLIANCE

Pub. L. 106-469, title VII, Nov. 9, 2000, 114 Stat. 2043, provided that:

“SEC. 701. SHORT TITLE.

“This title may be cited as the ‘National Oilheat Research Alliance Act of 2000’.

“SEC. 702. FINDINGS.

“Congress finds that—

“(1) oilheat is an important commodity relied on by approximately 30,000,000 Americans as an efficient and economical energy source for commercial and residential space and hot water heating;

“(2) oilheat equipment operates at efficiencies among the highest of any space heating energy source, reducing fuel costs and making oilheat an economical means of space heating;

“(3) the production, distribution, and marketing of oilheat and oilheat equipment plays a significant role in the economy of the United States, accounting for approximately \$12,900,000,000 in expenditures annually and employing millions of Americans in all aspects of the oilheat industry;

“(4) only very limited Federal resources have been made available for oilheat research, development, safety, training, and education efforts, to the detriment of both the oilheat industry and its 30,000,000 consumers; and

“(5) the cooperative development, self-financing, and implementation of a coordinated national oilheat industry program of research and development, training, and consumer education is necessary and important for the welfare of the oilheat industry, the general economy of the United States, and the millions of Americans that rely on oilheat for commercial and residential space and hot water heating.

“SEC. 703. DEFINITIONS.

“In this title:

“(1) ALLIANCE.—The term ‘Alliance’ means a national oilheat research alliance established under section 704.

“(2) CONSUMER EDUCATION.—The term ‘consumer education’ means the provision of information to assist consumers and other persons in making evaluations and decisions regarding oilheat and other non-industrial commercial or residential space or hot water heating fuels.

“(3) EXCHANGE.—The term ‘exchange’ means an agreement that—

“(A) entitles each party or its customers to receive oilheat from the other party; and

“(B) requires only an insubstantial portion of the volumes involved in the exchange to be settled in cash or property other than the oilheat.

“(4) INDUSTRY TRADE ASSOCIATION.—The term ‘industry trade association’ means an organization described in paragraph (3) or (6) of section 501(c) of the Internal Revenue Code of 1986 [26 U.S.C. 501(c)(3), (6)] that is exempt from taxation under section 501(a) of that Code and is organized for the purpose of representing the oilheat industry.

“(5) NO. 1 DISTILLATE.—The term ‘No. 1 distillate’ means fuel oil classified as No. 1 distillate by the American Society for Testing and Materials.

“(6) NO. 2 DYED DISTILLATE.—The term ‘No. 2 dyed distillate’ means fuel oil classified as No. 2 distillate by the American Society for Testing and Materials that is indelibly dyed in accordance with regulations prescribed by the Secretary of the Treasury under section 4082(a)(2) of the Internal Revenue Code of 1986 [26 U.S.C. 4082(a)(2)].

“(7) OILHEAT.—The term ‘oilheat’ means—

“(A) No. 1 distillate; and

“(B) No. 2 dyed distillate,

that is used as a fuel for nonindustrial commercial or residential space or hot water heating.

“(8) OILHEAT INDUSTRY.—

“(A) IN GENERAL.—The term ‘oilheat industry’ means—

“(i) persons in the production, transportation, or sale of oilheat; and

“(ii) persons engaged in the manufacture or distribution of oilheat utilization equipment.

“(B) EXCLUSION.—The term ‘oilheat industry’ does not include ultimate consumers of oilheat.

“(9) PUBLIC MEMBER.—The term ‘public member’ means a member of the Alliance described in section 705(c)(1)(F).

“(10) QUALIFIED INDUSTRY ORGANIZATION.—The term ‘qualified industry organization’ means the National Association for Oilheat Research and Education or a successor organization.

“(11) QUALIFIED STATE ASSOCIATION.—The term ‘qualified State association’ means the industry trade association or other organization that the qualified industry organization or the Alliance determines best represents retail marketers in a State.

“(12) RETAIL MARKETER.—The term ‘retail marketer’ means a person engaged primarily in the sale of oilheat to ultimate consumers.

“(13) SECRETARY.—The term ‘Secretary’ means the Secretary of Energy.

“(14) WHOLESALE DISTRIBUTOR.—The term ‘wholesale distributor’ means a person that—

“(A)(i) produces No. 1 distillate or No. 2 dyed distillate;

“(ii) imports No. 1 distillate or No. 2 dyed distillate; or

“(iii) transports No. 1 distillate or No. 2 dyed distillate across State boundaries or among local marketing areas; and

“(B) sells the distillate to another person that does not produce, import, or transport No. 1 distillate or No. 2 dyed distillate across State boundaries or among local marketing areas.

“(15) STATE.—The term ‘State’ means the several States, except the State of Alaska.

“SEC. 704. REFERENDA.

“(a) CREATION OF PROGRAM.—

“(1) IN GENERAL.—The oilheat industry, through the qualified industry organization, may conduct, at its own expense, a referendum among retail marketers and wholesale distributors for the establishment of a national oilheat research alliance.

“(2) REIMBURSEMENT OF COST.—The Alliance, if established, shall reimburse the qualified industry organization for the cost of accounting and documentation for the referendum.

“(3) CONDUCT.—A referendum under paragraph (1) shall be conducted by an independent auditing firm.

“(4) VOTING RIGHTS.—

“(A) RETAIL MARKETERS.—Voting rights of retail marketers in a referendum under paragraph (1) shall be based on the volume of oilheat sold in a State by each retail marketer in the calendar year previous to the year in which the referendum is conducted or in another representative period.

“(B) WHOLESALE DISTRIBUTORS.—Voting rights of wholesale distributors in a referendum under paragraph (1) shall be based on the volume of No. 1 distillate and No. 2 dyed distillate sold in a State by each wholesale distributor in the calendar year previous to the year in which the referendum is conducted or in another representative period, weighted by the ratio of the total volume of No. 1 distillate and No. 2 dyed distillate sold for nonindustrial commercial and residential space and hot water heating in the State to the total volume of No. 1 distillate and No. 2 dyed distillate sold in that State.

“(5) ESTABLISHMENT BY APPROVAL OF TWO-THIRDS.—

“(A) IN GENERAL.—Subject to subparagraph (B), on approval of persons representing two-thirds of the total volume of oilheat voted in the retail marketer class and two-thirds of the total weighted volume of No. 1 distillate and No. 2 dyed distillate voted in the wholesale distributor class, the Alliance shall be established and shall be authorized to levy assessments under section 707.

“(B) REQUIREMENT OF MAJORITY OF RETAIL MARKETERS.—Except as provided in subsection (b), the oilheat industry in a State shall not participate in

the Alliance if less than 50 percent of the retail marketer vote in the State approves establishment of the Alliance.

“(6) CERTIFICATION OF VOLUMES.—Each person voting in the referendum shall certify to the independent auditing firm the volume of oilheat, No. 1 distillate, or No. 2 dyed distillate represented by the vote of the person.

“(7) NOTIFICATION.—Not later than 90 days after the date of the enactment of this title [Nov. 9, 2000], a qualified State association may notify the qualified industry organization in writing that a referendum under paragraph (1) will not be conducted in the State.

“(b) SUBSEQUENT STATE PARTICIPATION.—The oilheat industry in a State that has not participated initially in the Alliance may subsequently elect to participate by conducting a referendum under subsection (a).

“(c) TERMINATION OR SUSPENSION.—

“(1) IN GENERAL.—On the initiative of the Alliance or on petition to the Alliance by retail marketers and wholesale distributors representing 25 percent of the volume of oilheat or weighted No. 1 distillate and No. 2 dyed distillate in each class, the Alliance shall, at its own expense, hold a referendum, to be conducted by an independent auditing firm selected by the Alliance, to determine whether the oilheat industry favors termination or suspension of the Alliance.

“(2) VOLUME PERCENTAGES REQUIRED TO TERMINATE OR SUSPEND.—Termination or suspension shall not take effect unless termination or suspension is approved by persons representing more than one-half of the total volume of oilheat voted in the retail marketer class or more than one-half of the total volume of weighted No. 1 distillate and No. 2 dyed distillate voted in the wholesale distributor class.

“(3) TERMINATION BY A STATE.—A State may elect to terminate participation by notifying the Alliance that 50 percent of the oilheat volume in the State has voted in a referendum to withdraw.

“(d) CALCULATION OF OILHEAT SALES.—For the purposes of this section and section 705, the volume of oilheat sold annually in a State shall be determined on the basis of information provided by the Energy Information Administration with respect to a calendar year or other representative period.

“SEC. 705. MEMBERSHIP.

“(a) SELECTION.—

“(1) IN GENERAL.—Except as provided in subsection (c)(1)(C), the qualified industry organization shall select members of the Alliance representing the oilheat industry in a State from a list of nominees submitted by the qualified State association in the State.

“(2) VACANCIES.—A vacancy in the Alliance shall be filled in the same manner as the original selection.

“(b) REPRESENTATION.—In selecting members of the Alliance, the qualified industry organization shall make best efforts to select members that are representative of the oilheat industry, including representation of—

“(1) interstate and intrastate operators among retail marketers;

“(2) wholesale distributors of No. 1 distillate and No. 2 dyed distillate;

“(3) large and small companies among wholesale distributors and retail marketers; and

“(4) diverse geographic regions of the country.

“(c) NUMBER OF MEMBERS.—

“(1) IN GENERAL.—The membership of the Alliance shall be as follows:

“(A) One member representing each State with oilheat sales in excess of 32,000,000 gallons per year.

“(B) If fewer than 24 States are represented under subparagraph (A), one member representing each of the States with the highest volume of annual oilheat sales, as necessary to cause the total number of States represented under subparagraph (A) and this subparagraph to equal 24.

“(C) Five representatives of retail marketers, one each to be selected by the qualified State associa-

tions of the five States with the highest volume of annual oilheat sales.

“(D) Five additional representatives of retail marketers.

“(E) Twenty-one representatives of wholesale distributors.

“(F) Six public members, who shall be representatives of significant users of oilheat, the oilheat research community, State energy officials, or other groups knowledgeable about oilheat.

“(2) FULL-TIME OWNERS OR EMPLOYEES.—Other than the public members, Alliance members shall be full-time owners or employees of members of the oilheat industry, except that members described in subparagraphs (C), (D), and (E) of paragraph (1) may be employees of the qualified industry organization or an industry trade association.

“(d) COMPENSATION.—Alliance members shall receive no compensation for their service, nor shall Alliance members be reimbursed for expenses relating to their service, except that public members, on request, may be reimbursed for reasonable expenses directly related to participation in meetings of the Alliance.

“(e) TERMS.—

“(1) IN GENERAL.—Subject to paragraph (4), a member of the Alliance shall serve a term of 3 years, except that a member filling an unexpired term may serve a total of 7 consecutive years.

“(2) TERM LIMIT.—A member may serve not more than two full consecutive terms.

“(3) FORMER MEMBERS.—A former member of the Alliance may be returned to the Alliance if the member has not been a member for a period of 2 years.

“(4) INITIAL APPOINTMENTS.—Initial appointments to the Alliance shall be for terms of 1, 2, and 3 years, as determined by the qualified industry organization, staggered to provide for the subsequent selection of one-third of the members each year.

“SEC. 706. FUNCTIONS.

“(a) IN GENERAL.—

“(1) PROGRAMS, PROJECTS; CONTRACTS AND OTHER AGREEMENTS.—The Alliance—

“(A) shall develop programs and projects and enter into contracts or other agreements with other persons and entities for implementing this title, including programs—

“(i) to enhance consumer and employee safety and training;

“(ii) to provide for research, development, and demonstration of clean and efficient oilheat utilization equipment; and

“(iii) for consumer education; and

“(B) may provide for the payment of the costs of carrying out subparagraph (A) with assessments collected under section 707.

“(2) COORDINATION.—The Alliance shall coordinate its activities with industry trade associations and other persons as appropriate to provide efficient delivery of services and to avoid unnecessary duplication of activities.

“(3) ACTIVITIES.—

“(A) EXCLUSIONS.—Activities under clause (i) or (ii) of paragraph (1)(A) shall not include advertising, promotions, or consumer surveys in support of advertising or promotions.

“(B) RESEARCH, DEVELOPMENT, AND DEMONSTRATION ACTIVITIES.—

“(i) IN GENERAL.—Research, development, and demonstration activities under paragraph (1)(A)(ii) shall include—

“(I) all activities incidental to research, development, and demonstration of clean and efficient oilheat utilization equipment; and

“(II) the obtaining of patents, including payment of attorney’s fees for making and perfecting a patent application.

“(ii) EXCLUDED ACTIVITIES.—Research, development, and demonstration activities under paragraph (1)(A)(ii) shall not include research, devel-

opment, and demonstration of oilheat utilization equipment with respect to which technically feasible and commercially feasible operations have been verified, except that funds may be provided for improvements to existing equipment until the technical feasibility and commercial feasibility of the operation of those improvements have been verified.

“(b) PRIORITIES.—In the development of programs and projects, the Alliance shall give priority to issues relating to—

- “(1) research, development, and demonstration;
- “(2) safety;
- “(3) consumer education; and
- “(4) training.

“(c) ADMINISTRATION.—

“(1) OFFICERS; COMMITTEES; BYLAWS.—The Alliance—

“(A) shall select from among its members a chairperson and other officers as necessary;

“(B) may establish and authorize committees and subcommittees of the Alliance to take specific actions that the Alliance is authorized to take; and

“(C) shall adopt bylaws for the conduct of business and the implementation of this title.

“(2) SOLICITATION OF OILHEAT INDUSTRY COMMENT AND RECOMMENDATIONS.—The Alliance shall establish procedures for the solicitation of oilheat industry comment and recommendations on any significant contracts and other agreements, programs, and projects to be funded by the Alliance.

“(3) ADVISORY COMMITTEES.—The Alliance may establish advisory committees consisting of persons other than Alliance members.

“(4) VOTING.—Each member of the Alliance shall have one vote in matters before the Alliance.

“(d) ADMINISTRATIVE EXPENSES.—

“(1) IN GENERAL.—The administrative expenses of operating the Alliance (not including costs incurred in the collection of assessments under section 707) plus amounts paid under paragraph (2) shall not exceed 7 percent of the amount of assessments collected in any calendar year, except that during the first year of operation of the Alliance such expenses and amounts shall not exceed 10 percent of the amount of assessments.

“(2) REIMBURSEMENT OF THE SECRETARY.—

“(A) IN GENERAL.—The Alliance shall annually reimburse the Secretary for costs incurred by the Federal Government relating to the Alliance.

“(B) LIMITATION.—Reimbursement under subparagraph (A) for any calendar year shall not exceed the amount that the Secretary determines is twice the average annual salary of one employee of the Department of Energy.

“(e) BUDGET.—

“(1) PUBLICATION OF PROPOSED BUDGET.—Before August 1 of each year, the Alliance shall publish for public review and comment a proposed budget for the next calendar year, including the probable costs of all programs, projects, and contracts and other agreements.

“(2) SUBMISSION TO THE SECRETARY AND CONGRESS.—After review and comment under paragraph (1), the Alliance shall submit the proposed budget to the Secretary and Congress.

“(3) RECOMMENDATIONS BY THE SECRETARY.—The Secretary may recommend for inclusion in the budget programs and activities that the Secretary considers appropriate.

“(4) IMPLEMENTATION.—The Alliance shall not implement a proposed budget until the expiration of 60 days after submitting the proposed budget to the Secretary.

“(f) RECORDS; AUDITS.—

“(1) RECORDS.—The Alliance shall—

“(A) keep records that clearly reflect all of the acts and transactions of the Alliance; and

“(B) make the records available to the public.

“(2) AUDITS.—

“(A) IN GENERAL.—The records of the Alliance (including fee assessment reports and applications for refunds under section 707(b)(4)) shall be audited by a certified public accountant at least once each year and at such other times as the Alliance may designate.

“(B) AVAILABILITY OF AUDIT REPORTS.—Copies of each audit report shall be provided to the Secretary, the members of the Alliance, and the qualified industry organization, and, on request, to other members of the oilheat industry.

“(C) POLICIES AND PROCEDURES.—

“(i) IN GENERAL.—The Alliance shall establish policies and procedures for auditing compliance with this title.

“(ii) CONFORMITY WITH GAAP.—The policies and procedures established under clause (i) shall conform with generally accepted accounting principles.

“(g) PUBLIC ACCESS TO ALLIANCE PROCEEDINGS.—

“(1) PUBLIC NOTICE.—The Alliance shall give at least 30 days' public notice of each meeting of the Alliance.

“(2) MEETINGS OPEN TO THE PUBLIC.—Each meeting of the Alliance shall be open to the public.

“(3) MINUTES.—The minutes of each meeting of the Alliance shall be made available to and readily accessible by the public.

“(h) ANNUAL REPORT.—Each year the Alliance shall prepare and make publicly available a report that—

“(1) includes a description of all programs, projects, and contracts and other agreements undertaken by the Alliance during the previous year and those planned for the current year; and

“(2) details the allocation of Alliance resources for each such program and project.

“(SEC. 707. ASSESSMENTS.

“(a) RATE.—The assessment rate shall be equal to two-tenths-cent per gallon of No. 1 distillate and No. 2 dyed distillate.

“(b) COLLECTION RULES.—

“(1) COLLECTION AT POINT OF SALE.—The assessment shall be collected at the point of sale of No. 1 distillate and No. 2 dyed distillate by a wholesale distributor to a person other than a wholesale distributor, including a sale made pursuant to an exchange.

“(2) RESPONSIBILITY FOR PAYMENT.—A wholesale distributor—

“(A) shall be responsible for payment of an assessment to the Alliance on a quarterly basis; and

“(B) shall provide to the Alliance certification of the volume of fuel sold.

“(3) NO OWNERSHIP INTEREST.—A person that has no ownership interest in No. 1 distillate or No. 2 dyed distillate shall not be responsible for payment of an assessment under this section.

“(4) FAILURE TO RECEIVE PAYMENT.—

“(A) REFUND.—A wholesale distributor that does not receive payments from a purchaser for No. 1 distillate or No. 2 dyed distillate within 1 year of the date of sale may apply for a refund from the Alliance of the assessment paid.

“(B) AMOUNT.—The amount of a refund shall not exceed the amount of the assessment levied on the No. 1 distillate or No. 2 dyed distillate for which payment was not received.

“(5) IMPORTATION AFTER POINT OF SALE.—The owner of No. 1 distillate or No. 2 dyed distillate imported after the point of sale—

“(A) shall be responsible for payment of the assessment to the Alliance at the point at which the product enters the United States; and

“(B) shall provide to the Alliance certification of the volume of fuel imported.

“(6) LATE PAYMENT CHARGE.—The Alliance may establish a late payment charge and rate of interest to be imposed on any person who fails to remit or pay to the Alliance any amount due under this title.

“(7) ALTERNATIVE COLLECTION RULES.—The Alliance may establish, or approve a request of the oilheat in-

dustry in a State for, an alternative means of collecting the assessment if another means is determined to be more efficient or more effective.

“(c) SALE FOR USE OTHER THAN AS OILHEAT.—No. 1 distillate and No. 2 dyed distillate sold for uses other than as oilheat are excluded from the assessment.

“(d) INVESTMENT OF FUNDS.—Pending disbursement under a program, project or contract or other agreement the Alliance may invest funds collected through assessments, and any other funds received by the Alliance, only—

“(1) in obligations of the United States or any agency of the United States;

“(2) in general obligations of any State or any political subdivision of a State;

“(3) in any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System; or

“(4) in obligations fully guaranteed as to principal and interest by the United States.

“(e) STATE, LOCAL, AND REGIONAL PROGRAMS.—

“(1) COORDINATION.—The Alliance shall establish a program coordinating the operation of the Alliance with the operator of any similar State, local, or regional program created under State law (including a regulation), or similar entity.

“(2) FUNDS MADE AVAILABLE TO QUALIFIED STATE ASSOCIATIONS.—

“(A) IN GENERAL.—

“(i) BASE AMOUNT.—The Alliance shall make available to the qualified State association of each State an amount equal to 15 percent of the amount of assessments collected in the State.

“(ii) ADDITIONAL AMOUNT.—

“(I) IN GENERAL.—A qualified State association may request that the Alliance provide to the association any portion of the remaining 85 percent of the amount of assessments collected in the State.

“(II) REQUEST REQUIREMENTS.—A request under this clause shall—

“(aa) specify the amount of funds requested;

“(bb) describe in detail the specific uses for which the requested funds are sought;

“(cc) include a commitment to comply with this title in using the requested funds; and

“(dd) be made publicly available.

“(III) DIRECT BENEFIT.—The Alliance shall not provide any funds in response to a request under this clause unless the Alliance determines that the funds will be used to directly benefit the oilheat industry.

“(IV) MONITORING; TERMS, CONDITIONS, AND REPORTING REQUIREMENTS.—The Alliance shall—

“(aa) monitor the use of funds provided under this clause; and

“(bb) impose whatever terms, conditions, and reporting requirements that the Alliance considers necessary to ensure compliance with this title.

“SEC. 708. MARKET SURVEY AND CONSUMER PROTECTION.

“(a) PRICE ANALYSIS.—Beginning 2 years after establishment of the Alliance and annually thereafter, the Secretary of Commerce, using only data provided by the Energy Information Administration and other public sources, shall prepare and make available to the Congress, the Alliance, the Secretary of Energy, and the public, an analysis of changes in the price of oilheat relative to other energy sources. The oilheat price analysis shall compare indexed changes in the price of consumer grade oilheat to a composite of indexed changes in the price of residential electricity, residential natural gas, and propane on an annual national average basis. For purposes of indexing changes in oilheat, residential electricity, residential natural gas, and propane prices, the Secretary of Commerce shall use a 5-year rolling average price beginning with the year 4 years prior to the establishment of the Alliance.

“(b) AUTHORITY TO RESTRICT ACTIVITIES.—If in any year the 5-year average price composite index of consumer grade oilheat exceeds the 5-year rolling average price composite index of residential electricity, residential natural gas, and propane in an amount greater than 10.1 percent, the activities of the Alliance shall be restricted to research and development, training, and safety matters. The Alliance shall inform the Secretary of Energy and the Congress of any restriction of activities under this subsection. Upon expiration of 180 days after the beginning of any such restriction of activities, the Secretary of Commerce shall again conduct the oilheat price analysis described in subsection (a). Activities of the Alliance shall continue to be restricted under this subsection until the price index excess is 10.1 percent or less.

“SEC. 709. COMPLIANCE.

“(a) IN GENERAL.—The Alliance may bring a civil action in United States district court to compel payment of an assessment under section 707.

“(b) COSTS.—A successful action for compliance under this section may also require payment by the defendant of the costs incurred by the Alliance in bringing the action.

“SEC. 710. LOBBYING RESTRICTIONS.

“No funds derived from assessments under section 707 collected by the Alliance shall be used to influence legislation or elections, except that the Alliance may use such funds to formulate and submit to the Secretary recommendations for amendments to this title or other laws that would further the purposes of this title.

“SEC. 711. DISCLOSURE.

“Any consumer education activity undertaken with funds provided by the Alliance shall include a statement that the activities were supported, in whole or in part, by the Alliance.

“SEC. 712. VIOLATIONS.

“(a) PROHIBITION.—It shall be unlawful for any person to conduct a consumer education activity, undertaken with funds derived from assessments collected by the Alliance under section 707, that includes—

“(1) a reference to a private brand name;

“(2) a false or unwarranted claim on behalf of oilheat or related products; or

“(3) a reference with respect to the attributes or use of any competing product.

“(b) COMPLAINTS.—

“(1) IN GENERAL.—A public utility that is aggrieved by a violation described in subsection (a) may file a complaint with the Alliance.

“(2) TRANSMITTAL TO QUALIFIED STATE ASSOCIATION.—A complaint shall be transmitted concurrently to any qualified State association undertaking the consumer education activity with respect to which the complaint is made.

“(3) CESSATION OF ACTIVITIES.—On receipt of a complaint under this subsection, the Alliance, and any qualified State association undertaking the consumer education activity with respect to which the complaint is made, shall cease that consumer education activity until—

“(A) the complaint is withdrawn; or

“(B) a court determines that the conduct of the activity complained of does not constitute a violation of subsection (a).

“(c) RESOLUTION BY PARTIES.—

“(1) IN GENERAL.—Not later than 10 days after a complaint is filed and transmitted under subsection (b), the complaining party, the Alliance, and any qualified State association undertaking the consumer education activity with respect to which the complaint is made shall meet to attempt to resolve the complaint.

“(2) WITHDRAWAL OF COMPLAINT.—If the issues in dispute are resolved in those discussions, the complaining party shall withdraw its complaint.

“(d) JUDICIAL REVIEW.—

“(1) IN GENERAL.—A public utility filing a complaint under this section, the Alliance, a qualified State association undertaking the consumer education activity with respect to which a complaint under this section is made, or any person aggrieved by a violation of subsection (a) may seek appropriate relief in United States district court.

“(2) RELIEF.—A public utility filing a complaint under this section shall be entitled to temporary and injunctive relief enjoining the consumer education activity with respect to which a complaint under this section is made until—

“(A) the complaint is withdrawn; or

“(B) the court has determined that the consumer education activity complained of does not constitute a violation of subsection (a).

“(e) ATTORNEY’S FEES.—

“(1) MERITORIOUS CASE.—In a case in Federal court in which the court grants a public utility injunctive relief under subsection (d), the public utility shall be entitled to recover an attorney’s fee from the Alliance and any qualified State association undertaking the consumer education activity with respect to which a complaint under this section is made.

“(2) NONMERITORIOUS CASE.—In any case under subsection (d) in which the court determines a complaint under subsection (b) to be frivolous and without merit, the prevailing party shall be entitled to recover an attorney’s fee.

“(f) SAVINGS CLAUSE.—Nothing in this section shall limit causes of action brought under any other law.

“SEC. 713. SUNSET.

“This title shall cease to be effective as of the date that is 4 years after the date on which the Alliance is established.”

EX. ORD. NO. 11912. DELEGATION OF AUTHORITIES

Ex. Ord. No. 11912, April 13, 1976, 41 F.R. 15825, as amended by Ex. Ord. No. 12003, July 20, 1977, 42 F.R. 37523; Ex. Ord. No. 12038, Feb. 3, 1978, 43 F.R. 4957; Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 4323 Ex. Ord. No. 12375, Aug. 4, 1982, 47 F.R. 34105; Ex. Ord. No. 12919, §904(a)(7), June 3, 1994, 59 F.R. 29533, provided:

By virtue of the authority vested in me by the Constitution and the statutes of the United States of America, including the Energy Policy and Conservation Act (Public Law 94-163, 89 Stat. 8, 42 U.S.C. 6201 et seq.), the Motor Vehicle Information and Cost Savings Act, as amended (15 U.S.C. 1901 et seq.), the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 et seq.), and section 301 of Title 3 of the United States Code, and as President of the United States of America, it is hereby ordered as follows:

SECTION 1. (a) The Administrator of General Services is designated and empowered to perform without approval, ratification, or other action by the President, the functions vested in the President by Section 510 of the Motor Vehicle Information and Cost Savings Act, as amended (89 Stat. 915, 15 U.S.C. 2010). The Administrator shall exercise that authority to ensure that passenger automobiles acquired by all Executive agencies in each fiscal year achieve a fleet average fuel economy standard that is not less than the average fuel economy standard for automobiles manufactured for the model year which includes January 1 of each fiscal year.

(b) The Administrator of General Services shall also promulgate rules which will ensure that each class of nonpassenger automobiles acquired by all Executive agencies in each fiscal year achieves a fleet average fuel economy that is not less than the average fuel economy standard for such class, established pursuant to Section 502(b) of the Motor Vehicle Information and Cost Savings Act, as amended (89 Stat. 903, 15 U.S.C. 2002(b)), for the model year which includes January 1 of such fiscal year. Such rules shall not apply to nonpassenger automobiles intended for use in combat-related missions for the Armed Forces or intended for use in law enforcement work or emergency rescue work. The Administrator may provide for granting exceptions for

individual nonpassenger automobiles or categories of nonpassenger automobiles as he determines to be appropriate in terms of energy conservation, economy, efficiency, or service.

(c) In performing these functions, the Administrator of General Services shall consult with the Secretary of Transportation and the Secretary of Energy.

SEC. 2. The Secretary of Commerce is designated and empowered to perform without approval, ratification, or other action by the President, the functions vested in the President by section 103 of the Energy Policy and Conservation Act (89 Stat. 877, 42 U.S.C. 6212). In performing each of these functions, the Secretary of Commerce shall consult with appropriate Executive agencies, as set forth in the provisions of section 5(a) of the Export Administration Act of 1969, as amended (50 U.S.C. App. 2404(a)).

SEC. 3. The Administrator of the Office of Federal Procurement Policy, in the exercise of his statutory responsibility to provide overall direction of procurement policy (41 U.S.C. 405), shall, after consultation with the heads of appropriate agencies, including those responsible for developing energy conservation and efficiency standards, and to the extent he considers appropriate and with due regard to the program activities of the Executive agencies, provide policy guidance governing the application of energy conservation and efficiency standards in the Federal procurement process in accord with section 381(a)(1) of the Energy Policy and Conservation Act (89 Stat. 939, 42 U.S.C. 6361(a)(1)).

SEC. 4. (a) The Secretary of Energy, in consultation with the heads of appropriate agencies, is hereby authorized and directed to develop for the President’s consideration, in accord with section 201 of the Energy Policy and Conservation Act (89 Stat. 890, 42 U.S.C. 6261), the energy conservation and rationing contingency plans prescribed under sections 202 and 203 of the Energy Policy and Conservation Act (89 Stat. 892, 42 U.S.C. 6262 and 6263).

(b) The Secretary of Energy shall prepare, with the assistance of the heads of appropriate agencies, for the President’s consideration, the annual reports provided by section 381(c) of the Energy Policy and Conservation Act (89 Stat. 939, 42 U.S.C. 6361(c)).

SEC. 5. The Secretary of State is hereby delegated the authority vested in the President by Section 252(c)(1)(A)(iii) of the Energy Policy and Conservation Act (89 Stat. 895, 42 U.S.C. 6272(c)(1)(A)(iii)).

SEC. 6. The Secretary of Energy is designated and empowered to perform without approval, ratification, or other action by the President, the functions vested in the President by:

(a) Section 251 of the Energy Policy and Conservation Act (89 Stat. 894, 42 U.S.C. 6271), except the making of the findings provided by subparagraph (b)(1)(B) thereof; however, in performing these functions, the Secretary shall consult with the Secretary of Commerce with respect to the international allocation of petroleum products which are within the territorial jurisdiction of the United States; and *provided that* the Secretary of Commerce shall promulgate rules, pursuant to the procedures established by the Export Administration Act of 1969, as amended [50 App. U.S.C. former 2401 et seq.], to authorize the export of petroleum and petroleum products, as may be necessary for implementation of the obligations of the United States under the International Energy Program, and in accordance with the rules promulgated under Section 251 of the Energy Policy and Conservation Act by the Secretary pursuant to this subsection.

(b) Section 253(c) of the Energy Policy and Conservation Act (89 Stat. 898, 42 U.S.C. 6273);

(c) Section 254(a) of the Energy Policy and Conservation Act (89 Stat. 899, 42 U.S.C. 6274(a)), including the receipt of petitions under section 254(a)(3)(B); *provided that*, the authority under section 254(a) may be exercised only after consultation with the Secretary of State;

(d) Section 254(b) of the Energy Policy and Conservation Act (89 Stat. 900, 42 U.S.C. 6274(b)); *provided that*, in

determining whether the transmittal of data would prejudice competition or violate the antitrust laws, the Secretary shall consult with the Attorney General, and in determining whether the transmittal of data would be inconsistent with national security interests, he shall consult with the Secretaries of State and Defense, and the heads of such other agencies as he deems appropriate;

(e) Section 523(a)(2)(A) of the Energy Policy and Conservation Act (89 Stat. 962, 42 U.S.C. 6393(a)(2)(A)), but only to the extent applicable to other functions delegated or assigned by this Order to the Secretary of Energy.

[SECS. 7 and 8. Revoked by Ex. Ord. No. 12919, §904(a)(7), June 3, 1994, 59 F.R. 29533.]

SEC. 9. All orders, regulations, circulars or other directives issued and all other action taken prior to the date of this order that would be valid under the authority delegated by this Order, are hereby confirmed and ratified and shall be deemed to have been issued under this order.

SEC. 10. (a)(1) The Secretary of Energy, hereinafter referred to as the Secretary, shall develop, with the concurrence of the Director of the Office of Management and Budget, and in consultation with the Secretary of Defense, the Secretary of Housing and Urban Development, the Administrator of Veterans' Affairs, the Administrator of General Services, and the heads of such other Executive agencies as he deems appropriate, the ten-year plan for energy conservation with respect to Government buildings, as provided by section 381(a)(2) of the Energy Policy and Conservation Act (42 U.S.C. 6361(a)(2)).

(2) The goals established in subsection (b) shall apply to the following categories of Federally-owned buildings: (i) office buildings, (ii) hospitals, (iii) schools, (iv) prison facilities, (v) multi-family dwellings, (vi) storage facilities, and (vii) such other categories of buildings for which the Administrator determines the establishment of energy-efficiency performance goals is feasible.

(b) The Secretary shall establish requirements and procedures, which shall be observed by each agency unless a waiver is granted by the Secretary, designed to ensure that each agency to the maximum extent practicable aims to achieve the following goals:

(1) For the total of all Federally-owned existing buildings the goal shall be a reduction of 20 percent in the average annual energy use per gross square foot of floor area in 1985 from the average energy use per gross square foot of floor area in 1975. This goal shall apply to all buildings for which construction was or design specifications were completed prior to the date of promulgation of the guidelines pursuant to subsection (d) of this Section.

(2) For the total of all Federally-owned new buildings the goal shall be a reduction of 45 percent in the average annual energy requirement per gross square foot of floor area in 1985 from the average annual energy use per gross square foot of floor area in 1975. This goal shall apply to all new buildings for which design specifications are completed after the date of promulgation of the guidelines pursuant to subsection (d) of this Section.

(c) The Secretary with the concurrence of the Director of the Office of Management and Budget, in consultation with the heads of the Executive agencies specified in subsection (a) and the Director of the National Bureau of Standards, shall establish, for purposes of developing the ten-year plan, a practical and effective method for estimating and comparing life cycle capital and operating costs for Federal buildings, including residential, commercial, and industrial type categories. Such method shall be consistent with the Office of Management and Budget Circular No. A-94, and shall be adopted and used by all agencies in developing their plans pursuant to subsection (e), annual reports pursuant to subsection (g), and budget estimates pursuant to subsection (h). For purposes of this paragraph, the term "life cycle cost" means the total costs

of owning, operating, and maintaining a building over its economic life, including its fuel and energy costs, determined on the basis of a systematic evaluation and comparison of alternative building systems. [References to National Bureau of Standards deemed to refer to National Institute of Standards and Technology pursuant to section 5115(c) of Pub. L. 100-418, set out as a Change of Name note under 15 U.S.C. 271.]

(d) Not later than November 1, 1977, the Secretary, with the concurrence of the Director of the Office of Management and Budget, and after consultation with the Administrator of General Services and the heads of the Executive agencies specified in subsection (a) shall issue guidelines for the plans to be submitted pursuant to subsection (e).

(e)(1) The head of each Executive agency that maintains any existing building or will maintain any new building shall submit no later than six months after the issuance of guidelines pursuant to subsection (d), to the Secretary a ten-year plan designed to the maximum extent practicable to meet the goals in subsection (b) for the total of existing or new Federal buildings. Such ten-year plans shall only consider improvements that are cost-effective consistent with the criteria established by the Director of the Office of Management and Budget (OMB Circular A-94) and the method established pursuant to subsection (c) of this Section. The plan submitted shall specify appropriate energy-saving initiatives and shall estimate the expected improvements by fiscal year in terms of specific accomplishments—energy savings and cost savings—together with the estimated costs of achieving the savings.

(2) The plans submitted shall, to the maximum extent practicable, include the results of preliminary energy audits of all existing buildings with over 30,000 gross square feet of space owned and maintained by Executive agencies. Further, the second annual report submitted under subsection (g)(2) of this Section shall, to the maximum extent practicable, include the results of preliminary energy audits of all existing buildings with more than 5,000 but not more than 30,000 gross square feet of space. The purpose of such preliminary energy audits shall be to identify the type, size, energy use level and major energy using systems of existing Federal buildings.

(3) The Secretary shall evaluate agency plans relative to the guidelines established pursuant to subsection (d) for such plans and relative to the cost estimating method established pursuant to subsection (c). Plans determined to be deficient by the Secretary will be returned to the submitting agency head for revision and resubmission within 60 days.

(4) The head of any Executive agency submitting a plan, should he disagree with the Secretary's determination with respect to that plan, may appeal to the Director of the Office of Management and Budget for resolution of the disagreement.

(f) The head of each agency submitting a plan or revised plan determined not deficient by the Secretary or, on appeal, by the Director of the Office of Management and Budget, shall implement the plan in accord with approved budget estimates.

(g)(1) Each Executive agency shall submit to the Secretary an overall plan for conserving fuel and energy in all operations of the agency. This overall plan shall be in addition to and include any ten-year plan for energy conservation in Government buildings submitted in accord with Subsection (e).

(2) By July 1 of each year, each Executive agency shall submit a report to the Secretary on progress made toward achieving the goals established in the overall plan required by paragraph (1) of this subsection. The annual report shall include quantitative measures and accomplishment with respect to energy saving actions taken, the cost of these actions, the energy saved, the costs saved, and other benefits realized.

(3) The Secretary shall prepare a consolidated annual report on Federal government progress toward achieving the goals, including aggregate quantitative measures of accomplishment as well as suggested revisions

to the ten-year plan, and submit the report to the President by August 15 of each year.

(h) Each agency required to submit a plan shall submit to the Director of the Office of Management and Budget with the agency's annual budget submission, and in accordance with procedures and requirements that the Director shall establish, estimates for implementation of the agency's plan. The Director of the Office of Management and Budget shall consult with the Secretary about the agency budget estimates.

(i) Each agency shall program its proposed energy conservation improvements of buildings so as to give the highest priority to the most cost-effective projects.

(j) No agency of the Federal government may enter into a lease or a commitment to lease a building the construction of which has not commenced by the effective date of this Order unless the building will likely meet or exceed the general goal set forth in subsection (b)(2).

(k) The provisions of this Section do not apply to housing units repossessed by the Federal Government.

EXECUTIVE ORDER NO. 12759

Ex. Ord. No. 12759, Apr. 17, 1991, 56 F.R. 16257, as amended by Ex. Ord. No. 12902, § 701, Mar. 8, 1994, 59 F.R. 11471, which provided for minimization of petroleum use in Federal facilities, vehicle fuel efficiency outreach programs, and Federal vehicle fuel efficiency, was revoked by Ex. Ord. No. 13123, § 604, June 3, 1999, 64 F.R. 30859, set out as a note under section 8251 of this title.

EXECUTIVE ORDER NO. 12902

Ex. Ord. No. 12902, Mar. 8, 1994, 59 F.R. 11463, which directed executive agencies to implement programs to reduce energy consumption, increase energy efficiency, and conserve water, was revoked by Ex. Ord. No. 13123, § 604, June 3, 1999, 64 F.R. 30859, set out as a note under section 8251 of this title.

§ 6202. Definitions

As used in this chapter:

(1) The term "Secretary" means the Secretary of Energy.

(2) The term "person" includes (A) any individual, (B) any corporation, company, association, firm, partnership, society, trust, joint venture, or joint stock company, and (C) the government and any agency of the United States or any State or political subdivision thereof.

(3) The term "petroleum product" means crude oil, residual fuel oil, or any refined petroleum product (including any natural liquid and any natural gas liquid product).

(4) The term "State" means a State, the District of Columbia, Puerto Rico, the Trust Territory of the Pacific Islands, or any territory or possession of the United States.

(5) The term "United States" when used in the geographical sense means all of the States and the Outer Continental Shelf.

(6) The term "Outer Continental Shelf" has the same meaning as such term has under section 1331 of title 43.

(7) The term "international energy program" means the Agreement on an International Energy Program, signed by the United States on November 18, 1974, including (A) the annex entitled "Emergency Reserves", (B) any amendment to such Agreement which includes another nation as a party to such Agreement, and (C) any technical or clerical amendment to such Agreement.

(8) The term "severe energy supply interruption" means a national energy supply shortage which the President determines—

(A) is, or is likely to be, of significant scope and duration, and of an emergency nature;

(B) may cause major adverse impact on national safety or the national economy; and

(C) results, or is likely to result, from (i) an interruption in the supply of imported petroleum products, (ii) an interruption in the supply of domestic petroleum products, or (iii) sabotage or an act of God.

(9) The term "antitrust laws" includes—

(A) the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July 2, 1890 (15 U.S.C. 1, et seq.);

(B) the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914 (15 U.S.C. 12, et seq.);

(C) the Federal Trade Commission Act (15 U.S.C. 41, et seq.);

(D) sections 73 and 74 of the Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purpose", approved August 27, 1894 (15 U.S.C. 8 and 9); and

(E) the Act of June 19, 1936, chapter 592 (15 U.S.C. 13, 13a, 13b, and 21A).

(10) The term "Federal land" means all lands owned or controlled by the United States, including the Outer Continental Shelf, and any land in which the United States has reserved mineral interests, except lands—

(A) held in trust for Indians or Alaska Natives,

(B) owned by Indians or Alaska Natives with Federal restrictions on the title,

(C) within any area of the National Park System, the National Wildlife Refuge System, the National Wilderness Preservation System, the National System of Trails, or the Wild and Scenic Rivers System, or

(D) within military reservations.

(Pub. L. 94-163, § 3, Dec. 22, 1975, 89 Stat. 874; Pub. L. 95-619, title VI, § 691(a), Nov. 9, 1978, 92 Stat. 3287; Pub. L. 98-454, title VI, § 601(f), Oct. 5, 1984, 98 Stat. 1736; Pub. L. 101-383, § 3(a), Sept. 15, 1990, 104 Stat. 727.)

REFERENCES IN TEXT

This chapter, referred to in introductory clause, was in the original "this Act", meaning Pub. L. 94-163, Dec. 22, 1975, 89 Stat. 871, as amended, known as the Energy Policy and Conservation Act. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

Act approved July 2, 1890, referred to in par. (9)(A), is act July 2, 1890, ch. 647, 26 Stat. 209, as amended, known as the Sherman Act, which is classified to sections 1 to 7 of Title 15. For complete classification of this Act to the Code, see Short Title note set out under section 1 of Title 15 and Tables.

Act approved October 15, 1914, referred to in par. (9)(B), is act Oct. 15, 1914, ch. 323, 38 Stat. 730, as amended, known as the Clayton Act, which is classified generally to sections 12, 13, 14 to 19, 21, and 22 to 27 of Title 15, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of Title 15 and Tables.

The Federal Trade Commission Act, referred to in par. (9)(C), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as

amended, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of Title 15. For complete classification of this Act to the Code, see section 58 of Title 15 and Tables.

Act of June 19, 1936, chapter 592, referred to in par. (9)(E), is act June 19, 1936, ch. 592, 49 Stat. 1526, popularly known as the Robinson-Patman Antidiscrimination Act and also as the Robinson-Patman Price Discrimination Act, which enacted sections 13a, 13b, and 21a of Title 15, Commerce and Trade, and amended section 13 of Title 15. For complete classification of this Act to the Code, see Short Title note set out under section 13 of Title 15 and Tables.

AMENDMENTS

1990—Par. (8)(C). Pub. L. 101-383 inserted “(i)” before “an interruption” and substituted “(ii) an interruption in the supply of domestic petroleum products, or (iii)” for “or from”.

1984—Par. (4). Pub. L. 98-454 inserted reference to Trust Territory of the Pacific Islands.

1978—Par. (1). Pub. L. 95-619 substituted definition of “Secretary”, meaning the Secretary of Energy, for definition of “Administrator”, meaning Administrator of the Federal Energy Administration.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6241, 8374, 8502 of this title.

SUBCHAPTER I—DOMESTIC SUPPLY AVAILABILITY

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 6391, 6393, 6394, 6396 of this title.

PART A—DOMESTIC SUPPLY

§ 6211. Repealed. Pub. L. 106-469, title I, § 103(1), Nov. 9, 2000, 114 Stat. 2029

Section, Pub. L. 94-163, title I, §102, Dec. 22, 1975, 89 Stat. 876; Pub. L. 94-385, title I, §164, Aug. 14, 1976, 90 Stat. 1142; Pub. L. 95-619, title VI, §691(b)(2), Nov. 9, 1978, 92 Stat. 3288; Pub. L. 95-620, title VIII, §802, Nov. 9, 1978, 92 Stat. 3347, provided for incentives to develop underground coal mines.

§ 6212. Domestic use of energy supplies and related materials and equipment

(a) Export restrictions

The President may, by rule, under such terms and conditions as he determines to be appropriate and necessary to carry out the purposes of this chapter, restrict exports of—

(1) coal, petroleum products, natural gas, or petrochemical feedstocks, and

(2) supplies of materials or equipment which he determines to be necessary (A) to maintain or further exploration, production, refining, or transportation of energy supplies, or (B) for the construction or maintenance of energy facilities within the United States.

(b) Exemptions

(1) The President shall exercise the authority provided for in subsection (a) of this section to promulgate a rule prohibiting the export of crude oil and natural gas produced in the United

States, except that the President may, pursuant to paragraph (2), exempt from such prohibition such crude oil or natural gas exports which he determines to be consistent with the national interest and the purposes of this chapter.

(2) Exemptions from any rule prohibiting crude oil or natural gas exports shall be included in such rule or provided for in an amendment thereto and may be based on the purpose for export, class of seller or purchaser, country of destination, or any other reasonable classification or basis as the President determines to be appropriate and consistent with the national interest and the purposes of this chapter.

(c) Implementing restrictions

In order to implement any rule promulgated under subsection (a) of this section, the President may request and, if so, the Secretary of Commerce shall, pursuant to the procedures established by the Export Administration Act of 1979 [50 App. U.S.C. 2401 et seq.] (but without regard to the phrase “and to reduce the serious inflationary impact of foreign demand” in section 3(2)(C) of such Act [50 App. U.S.C. 2402(2)(C)]), impose such restrictions as specified in any rule under subsection (a) of this section on exports of coal, petroleum products, natural gas, or petrochemical feedstocks, and such supplies of materials and equipment.

(d) Restrictions and national interest

Any finding by the President pursuant to subsection (a) or (b) of this section and any action taken by the Secretary of Commerce pursuant thereto shall take into account the national interest as related to the need to leave uninterrupted or unimpaired—

(1) exchanges in similar quantity for convenience or increased efficiency of transportation with persons or the government of a foreign state,

(2) temporary exports for convenience or increased efficiency of transportation across parts of an adjacent foreign state which exports reenter the United States, and

(3) the historical trading relations of the United States with Canada and Mexico.

(e) Waiver of notice and comment period

(1) The provisions of subchapter II of chapter 5 of title 5 shall apply with respect to the promulgation of any rule pursuant to this section, except that the President may waive the requirement pertaining to the notice of proposed rulemaking or period for comment only if he finds that compliance with such requirements may seriously impair his ability to impose effective and timely prohibitions on exports.

(2) In the event such notice and comment period are waived with respect to a rule promulgated under this section, the President shall afford interested persons an opportunity to comment on any such rule at the earliest practicable date thereafter.

(3) If the President determines to request the Secretary of Commerce to impose specified restrictions as provided for in subsection (c) of this section, the enforcement and penalty provisions of the Export Administration Act of 1969 shall apply, in lieu of this chapter, to any violation of such restrictions.

(Pub. L. 94-163, title I, §103, Dec. 22, 1975, 89 Stat. 877; Pub. L. 96-72, §22(b)(1), Sept. 29, 1979, 93 Stat. 535.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (b), and (e)(3), was in the original "this Act", meaning Pub. L. 94-163, Dec. 22, 1975, 89 Stat. 871, as amended, known as the Energy Policy and Conservation Act. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

The Export Administration Act of 1979, referred to in subsec. (c), is Pub. L. 96-72, Sept. 29, 1979, 93 Stat. 503, as amended, which is classified principally to section 2401 et seq. of Title 50, Appendix, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 2401 of Title 50, Appendix, and Tables.

The Export Administration Act of 1969, referred to in subsec. (e)(3), is Pub. L. 91-184, Dec. 30, 1969, 83 Stat. 841, as amended, which was formerly classified to sections 2401 to 2413 of Title 50, Appendix, and was terminated on Sept. 30, 1979, pursuant to the terms of that Act.

CODIFICATION

Subsec. (f) of this section, which required the President to submit quarterly reports to Congress concerning the administration of this section and any findings made pursuant to subsec. (a) or (b) of this section, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, the 5th item on page 19 of House Document No. 103-7.

AMENDMENTS

1979—Subsec. (c). Pub. L. 96-72 substituted "1979" for "1969" and "(C)" for "(A)".

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-72 effective upon expiration of Export Administration Act of 1969, which terminated on Sept. 30, 1979, or upon any prior date which Congress by concurrent resolution or President by proclamation designated, see section 2418 of the Appendix to Title 50, War and National Defense.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6271, 6393 of this title; title 15 section 719j.

§ 6213. Certain lease bidding arrangements prohibited

(a) Promulgation of rule by Secretary of the Interior

The Secretary of the Interior shall, not later than 30 days after December 22, 1975, prescribe and make effective a rule which prohibits the bidding for any right to develop crude oil, natural gas, and natural gas liquids on any lands located on the Outer Continental Shelf by any person if more than one major oil company, more than one affiliate of a major oil company, or a major oil company and any affiliate of a major oil company, has or have a significant ownership interest in such person. Such rule shall define affiliate relationships and significant ownership interests.

(b) Definitions

As used in this section:

(1) The term "major oil company" means any person who, individually or together with any other person with respect to which such person has an affiliate relationship or significant ownership interest, produced during a

prior 6-month period specified by the Secretary, an average daily volume of 1,600,000 barrels of crude oil, natural gas liquids equivalents, and natural gas equivalents.

(2) One barrel of natural gas equivalent equals 5,626 cubic feet of natural gas measured at 14.73 pounds per square inch (MSL) and 60 degrees Fahrenheit.

(3) One barrel of natural gas liquids equivalent equals 1.454 barrels of natural gas liquids at 60 degrees Fahrenheit.

(c) Exemptions

The Secretary may, in his discretion, consider a request from any person described in subsection (a) of this section for an exemption from the prohibition of this section. In considering any such request, the Secretary may exempt bidding for leases for lands in any area only if the Secretary finds, on the record after opportunity for an agency hearing, that—

(1) such lands have extremely high cost exploration or development problems; and

(2) exploration and development will not occur on such lands unless such exemption is granted.

Findings of the Secretary under this subsection shall be final, and shall not be invalidated unless found to be arbitrary or capricious.

(d) Unitization of producing fields

This section shall not be construed to prohibit the unitization of producing fields to increase production or maximize ultimate recovery of oil or natural gas, or both.

(e) Report to Congress covering extension of restrictions on joint bidding

The Secretary shall study and report to the Congress, not later than 6 months after December 22, 1975, with respect to the feasibility and desirability of extending the prohibition on joint bidding to—

(1) bidding for any right to develop crude oil, natural gas, and natural gas liquids on Federal lands other than those located on the Outer Continental Shelf; and

(2) bidding for any right to develop coal and oil shale on such lands.

(Pub. L. 94-163, title I, §105, Dec. 22, 1975, 89 Stat. 879; Pub. L. 95-372, title II, §205(c), Sept. 18, 1978, 92 Stat. 646.)

AMENDMENTS

1978—Subsec. (c). Pub. L. 95-372 substituted "in his discretion, consider a request from any person described in subsection (a) of this section for an exemption from the prohibition of this section" for "by amendment to the rule, exempt bidding for leases for lands located in frontier or other areas determined by the Secretary to be extremely high risk lands or to present unusually high cost exploration, or development, problems" in existing provisions and inserted provisions setting out the requisite finding of the Secretary and making arbitrariness and capriciousness of the Secretary's findings the only bases for invalidation of those findings.

TRANSFER OF FUNCTIONS

Functions of Secretary of the Interior to promulgate regulations under this chapter relating to fostering of competition for Federal leases and to implementation of alternative bidding systems authorized for award of

Federal leases transferred to Secretary of Energy by section 7152(b) of this title. Section 7152(b) of this title repealed by Pub. L. 97-100, title II, §201, Dec. 23, 1981, 95 Stat. 1407, and functions of Secretary of Energy returned to Secretary of the Interior. See House Report No. 97-315, pp. 25, 26, Nov. 5, 1981.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7172 of this title.

§ 6214. Repealed. Pub. L. 106-469, title I, § 103(3), Nov. 9, 2000, 114 Stat. 2029

Section, Pub. L. 94-163, title I, §106, Dec. 22, 1975, 89 Stat. 880, related to production of oil or gas at the maximum efficient rate and temporary emergency production rate.

§ 6215. Major fuel burning stationary source

(a) Restrictions on issuance of orders or rules by Governor pursuant to section 7425 of this title

No Governor of a State may issue any order or rule pursuant to section 7425 of this title to any major fuel burning stationary source (or class or category thereof)—

- (1) prohibiting such source from using fuels other than locally or regionally available coal or coal derivatives, or
- (2) requiring such source to enter into a contract (or contracts) for supplies of locally or regionally available coal or coal derivatives.

(b) Petition to President

(1) The Governor of any State may petition the President to exercise the President's authorities pursuant to section 7425 of this title with respect to any major fuel burning stationary source located in such State.

(2) Any petition under paragraph (1) shall include documentation which could support a finding that significant local or regional economic disruption or unemployment would result from use by such source of—

- (A) coal or coal derivatives other than locally or regionally available coal,
- (B) petroleum products,
- (C) natural gas, or
- (D) any combination of fuels referred to in subparagraphs (A) through (C), to comply with the requirements of a State implementation plan pursuant to section 7410 of this title.

(c) Action to be taken by President

Within 90 days after the submission of a Governor's petition under subsection (b) of this section, the President shall either issue an order or rule pursuant to section 7425 of this title or deny such petition, stating in writing his reasons for such denial. In making his determination to issue such an order or rule pursuant to this subsection, the President must find that such order or rule would—

- (1) be consistent with section 7425 of this title;
- (2) result in no significant increase in the consumption of energy;
- (3) not subject the ultimate consumer to significantly higher energy costs; and
- (4) not violate any contractual relationship between such source and any supplier or transporter of fuel to such source.

(d) Effect on authority of President to allocate coal or coal derivatives

Nothing in subsection (a) or (b) of this section shall affect the authority of the President or the Secretary of the Department of Energy to allocate coal or coal derivatives under any provision of law.

(e) Definitions

The terms "major fuel burning stationary source (or class or category thereof)" and "locally or regionally available coal or coal derivatives" shall have the meanings assigned to them for the purposes of section 7425 of this title.

(Pub. L. 94-163, title I, §107, as added Pub. L. 95-619, title VI, §661, Nov. 9, 1978, 92 Stat. 3285; amended Pub. L. 106-469, title VI, §605(b)(2), Nov. 9, 2000, 114 Stat. 2043.)

AMENDMENTS

2000—Pub. L. 106-469 inserted section catchline.

§ 6216. Annual Home Heating Readiness Reports

(a) In general

On or before September 1 of each year, the Secretary, acting through the Administrator of the Energy Information Agency, shall submit to Congress a Home Heating Readiness Report on the readiness of the natural gas, heating oil and propane industries to supply fuel under various weather conditions, including rapid decreases in temperature.

(b) Contents

The Home Heating Readiness Report shall include—

- (1) estimates of the consumption, expenditures, and average price per gallon of heating oil and propane and thousand cubic feet of natural gas for the upcoming period of October through March for various weather conditions, with special attention to extreme weather, and various regions of the country;
- (2) an evaluation of—
 - (A) global and regional crude oil and refined product supplies;
 - (B) the adequacy and utilization of refinery capacity;
 - (C) the adequacy, utilization, and distribution of regional refined product storage capacity;
 - (D) weather conditions;
 - (E) the refined product transportation system;
 - (F) market inefficiencies; and
 - (G) any other factor affecting the functional capability of the heating oil industry and propane industry that has the potential to affect national or regional supplies and prices;

(3) recommendations on steps that the Federal, State, and local governments can take to prevent or alleviate the impact of sharp and sustained increases in the price of natural gas, heating oil, and propane; and

(4) recommendations on steps that companies engaged in the production, refining, storage, transportation of heating oil or propane, or any other activity related to the heating oil industry or propane industry, can take to pre-

vent or alleviate the impact of sharp and sustained increases in the price of heating oil and propane.

(c) Information requests

The Secretary may request information necessary to prepare the Home Heating Readiness Report from companies described in subsection (b)(4) of this section.

(Pub. L. 94-163, title I, §108, as added Pub. L. 106-469, title VI, §605(a), Nov. 9, 2000, 114 Stat. 2042.)

§ 6217. Scientific inventory of oil and gas reserves

(a) In general

The Secretary of the Interior, in consultation with the Secretaries of Agriculture and Energy, shall conduct an inventory of all onshore Federal lands. The inventory shall identify—

(1) the United States Geological Survey reserve estimates of the oil and gas resources underlying these lands; and

(2) the extent and nature of any restrictions or impediments to the development of such resources.

(b) Regular update

Once completed, the USGS reserve estimates and the surface availability data as provided in subsection (a)(2) of this section shall be regularly updated and made publically¹ available.

(c) Inventory

The inventory shall be provided to the Committee on Resources of the House of Representatives and to the Committee on Energy and Natural Resources of the Senate within 2 years after November 9, 2000.

(d) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to implement this section.

(Pub. L. 106-469, title VI, §604, Nov. 9, 2000, 114 Stat. 2041.)

CODIFICATION

Section was enacted as part of the Energy Act of 2000, and not as part of the Energy Policy and Conservation Act which comprises this chapter.

PART B—STRATEGIC PETROLEUM RESERVE

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 6249, 6250, 7270a, 7270b of this title; title 10 section 7430; title 12 section 1701z-8.

§ 6231. Congressional finding and declaration of policy

(a) The Congress finds that the storage of substantial quantities of petroleum products will diminish the vulnerability of the United States to the effects of a severe energy supply interruption, and provide limited protection from the short-term consequences of interruptions in supplies of petroleum products.

(b) It is the policy of the United States to provide for the creation of a Strategic Petroleum

Reserve for the storage of up to 1 billion barrels of petroleum products to reduce the impact of disruptions in supplies of petroleum products, to carry out obligations of the United States under the international energy program, and for other purposes as provided for in this chapter.

(Pub. L. 94-163, title I, §151, Dec. 22, 1975, 89 Stat. 881; Pub. L. 106-469, title I, §103(4), Nov. 9, 2000, 114 Stat. 2029.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original “this Act”, meaning Pub. L. 94-163, Dec. 22, 1975, 89 Stat. 871, as amended, known as the Energy Policy and Conservation Act. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

AMENDMENTS

2000—Subsec. (b). Pub. L. 106-469 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “It is hereby declared to be the policy of the United States to provide for the creation of a Strategic Petroleum Reserve for the storage of up to 1 billion barrels of petroleum products, but not less than 150 million barrels of petroleum products by the end of the 3-year period which begins on December 22, 1975, for the purpose of reducing the impact of disruptions in supplies of petroleum products or to carry out obligations of the United States under the international energy program. It is further declared to be the policy of the United States to provide for the creation of an Early Storage Reserve, as part of the Reserve, for the purpose of providing limited protection from the impact of near-term disruptions in supplies of petroleum products or to carry out obligations of the United States under the international energy program.”

STUDY OF A STRATEGIC ETHANOL RESERVE

Pub. L. 99-198, title XVII, §1778, Dec. 23, 1985, 99 Stat. 1659, provided that:

“(a) The Secretary of Agriculture shall conduct a study of the cost effectiveness, the economic benefits, and the feasibility of establishing, maintaining, and utilizing a Strategic Ethanol Reserve relative to the existing Strategic Petroleum Reserve.

“(b) The study shall be completed within one year after the enactment of this section [Dec. 23, 1985] and shall include, among other considerations—

“(1) the benefits and losses related to the U.S. economy, farm income, employment, government commodity programs, and the trade deficit of utilizing a Strategic Ethanol Reserve, as opposed to the Strategic Petroleum Reserve; and

“(2) the savings from storing ethanol as opposed to storing the amount of CCC-held grain necessary to produce the ethanol.

“(c) If the study shows that the Strategic Ethanol Reserve is cost effective, beneficial to the U.S. economy, and feasible in comparison with the Strategic Petroleum Reserve, the Secretary of Agriculture may establish, maintain, and utilize a Strategic Ethanol Reserve.”

ADDITIONAL CONGRESSIONAL FINDINGS

Pub. L. 97-35, title X, §1032, Aug. 13, 1981, 95 Stat. 618, provided that: “The Congress finds that—

“(1) the Strategic Petroleum Reserve should be considered a national security asset; and

“(2) enlarging the capacity and filling of the Strategic Petroleum Reserve should be accelerated (to the extent technically and economically practicable) to take advantage of any increased availability of crude oil in the world market from time to time.”

§ 6232. Definitions

As used in this part and part C of this subchapter:

¹ So in original. Probably should be “publicly”.

(1) Repealed. Pub. L. 106-469, title I, § 103(5)(A), Nov. 9, 2000, 114 Stat. 2029.

(2) The term “importer” means any person who owns, at the first place of storage, any petroleum product imported into the United States.

(3) Repealed. Pub. L. 106-469, title I, § 103(5)(A), Nov. 9, 2000, 114 Stat. 2029.

(4) The term “interest in land” means any ownership or possessory right with respect to real property, including ownership in fee, an easement, a leasehold, and any subsurface or mineral rights.

(5) The term “readily available inventories” means stocks and supplies of petroleum products which can be distributed or used without affecting the ability of the importer or refiner to operate at normal capacity; such term does not include minimum working inventories or other unavailable stocks.

(6) The term “refiner” means any person who owns, operates, or controls the operation of any refinery.

(7) Repealed. Pub. L. 106-469, title I, § 103(5)(A), Nov. 9, 2000, 114 Stat. 2029.

(8) The term “related facility” means any necessary appurtenance to a storage facility, including pipelines, roadways, reservoirs, and salt brine lines.

(9) The term “Reserve” means the Strategic Petroleum Reserve.

(10) The term “storage facility” means any facility or geological formation which is capable of storing significant quantities of petroleum products.

(11) The term “Strategic Petroleum Reserve” means petroleum products stored in storage facilities pursuant to this part.

(Pub. L. 94-163, title I, § 152, Dec. 22, 1975, 89 Stat. 882; Pub. L. 101-383, § 6(a)(1), Sept. 15, 1990, 104 Stat. 729; Pub. L. 106-469, title I, § 103(5), Nov. 9, 2000, 114 Stat. 2029.)

AMENDMENTS

2000—Par. (1). Pub. L. 106-469, § 103(5)(A), struck out par. (1) which read as follows: “The term ‘Early Storage Reserve’ means that portion of the Strategic Petroleum Reserve which consists of petroleum products stored pursuant to section 6235 of this title.”

Par. (3). Pub. L. 106-469, § 103(5)(A), struck out par. (3) which read as follows: “The term ‘Industrial Petroleum Reserve’ means that portion of the Strategic Petroleum Reserve which consists of petroleum products owned by importers or refiners and acquired, stored, or maintained pursuant to section 6236 of this title.”

Par. (7). Pub. L. 106-469, § 103(5)(A), struck out par. (7) which read as follows: “The term ‘Regional Petroleum Reserve’ means that portion of the Strategic Petroleum Reserve which consists of petroleum products stored pursuant to section 6237 of this title.”

Par. (11). Pub. L. 106-469, § 103(5)(B), struck out “; such term includes the Industrial Petroleum Reserve, the Early Storage Reserve, and the Regional Petroleum Reserve” before period at end.

1990—Pub. L. 101-383 inserted “and part C of this chapter” after “this part”.

§ 6233. Repealed. Pub. L. 106-469, title I, § 103(6), Nov. 9, 2000, 114 Stat. 2030

Section, Pub. L. 94-163, title I, § 153, Dec. 22, 1975, 89 Stat. 882; Pub. L. 95-619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288, related to the Strategic Petroleum Reserve Office.

§ 6234. Strategic Petroleum Reserve

(a) Establishment

A Strategic Petroleum Reserve for the storage of up to 1 billion barrels of petroleum products shall be created pursuant to this part.

(b) Authority of Secretary

The Secretary, in accordance with this part, shall exercise authority over the development, operation, and maintenance of the Reserve.

(c) to (e) Repealed. Pub. L. 106-469, title I, § 103(7)(C), Nov. 9, 2000, 114 Stat. 2030

(f) Purpose of drawdown and distribution; requests for funds for storage

(1) The drawdown and distribution of petroleum products from the Strategic Petroleum Reserve is authorized only under section 6241 of this title, and drawdown and distribution of petroleum products for purposes other than those described in section 6241 of this title shall be prohibited.

(2) In the Secretary’s annual budget submission, the Secretary shall request funds for acquisition, transportation, and injection of petroleum products for storage in the Reserve. If no requests for funds are made, the Secretary shall provide a written explanation of the reason therefore.

(Pub. L. 94-163, title I, § 154, Dec. 22, 1975, 89 Stat. 882; Pub. L. 95-619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288; Pub. L. 102-486, title XIV, § 1402, Oct. 24, 1992, 106 Stat. 2994; Pub. L. 105-177, § 1(6), June 1, 1998, 112 Stat. 106; Pub. L. 106-469, title I, § 103(7), Nov. 9, 2000, 114 Stat. 2030.)

AMENDMENTS

2000—Subsec. (a). Pub. L. 106-469, § 103(7)(A), amended subsec. (a) generally. Prior to amendment, subsec. (a) provided for the creation of a Strategic Petroleum Reserve of up to 1 billion barrels of petroleum products and required that the Reserve contain not less than 150 million barrels of petroleum products by the end of the 3-year period beginning on Dec. 22, 1975, and that the President take actions to enlarge the Reserve to 1,000,000,000 barrels as rapidly as possible beginning Oct. 24, 1992.

Subsec. (b). Pub. L. 106-469, § 103(7)(B), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “The Secretary, not later than December 15, 1976, shall prepare and transmit to the Congress, in accordance with section 6421 of this title, a Strategic Petroleum Reserve Plan. Such Plan shall comply with the provisions of this section and shall detail the Secretary’s proposals for designing, constructing, and filling the storage and related facilities of the Reserve.”

Subsecs. (c) to (e). Pub. L. 106-469, § 103(7)(C), struck out subsecs. (c) to (e) which related to the levels of crude oil to be stored, plan objectives, and plan provisions.

1998—Subsec. (f). Pub. L. 105-177 added subsec. (f).

1992—Subsec. (a). Pub. L. 102-486 designated existing provisions as par. (1) and added par. (2).

1978—Subsecs. (b), (d). Pub. L. 95-619 substituted “Secretary” and “Secretary’s” for “Administrator” and “Administrator’s”, respectively, meaning Administrator of the Federal Energy Administration, wherever appearing.

STRATEGIC PETROLEUM RESERVE DRAWDOWN PLAN

Pub. L. 97-229, § 4(c), Aug. 3, 1982, 96 Stat. 252, provided that: “On or before December 1, 1982, the President shall transmit to the Congress a drawdown plan for the

Strategic Petroleum Reserve consistent with the requirements of section 154 of the Energy Policy and Conservation Act [this section]. Such plan shall be transmitted to the Congress as an amendment to the Strategic Petroleum Reserve Plan. Such amendment shall take effect on the date it is transmitted to the Congress and shall not be subject to section 159(e) of such Act [section 6239(e) of this title] relating to Congressional review. Subsequent amendments to such plan shall be in accordance with subsections (d) and (e) of such section 159."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 15 section 714b.

§§ 6235 to 6238. Repealed. Pub. L. 106-469, title I, § 103(8)-(11), Nov. 9, 2000, 114 Stat. 2030

Section 6235, Pub. L. 94-163, title I, §155, Dec. 22, 1975, 89 Stat. 884; Pub. L. 95-619, title VI, §691(b)(2), Nov. 9, 1978, 92 Stat. 3288, related to the Early Storage Reserve.

Section 6236, Pub. L. 94-163, title I, §156, Dec. 22, 1975, 89 Stat. 885; Pub. L. 95-619, title VI, §691(b)(2), Nov. 9, 1978, 92 Stat. 3288, related to the Industrial Petroleum Reserve.

Section 6237, Pub. L. 94-163, title I, §157, Dec. 22, 1975, 89 Stat. 885; Pub. L. 95-619, title VI, §691(b)(2), Nov. 9, 1978, 92 Stat. 3288; Pub. L. 102-486, title XIV, §1405, Oct. 24, 1992, 106 Stat. 2995, related to the Regional Petroleum Reserve.

Section 6238, Pub. L. 94-163, title I, §158, Dec. 22, 1975, 89 Stat. 886; Pub. L. 95-619, title VI, §691(b)(2), Nov. 9, 1978, 92 Stat. 3288, related to a report on the establishment of Utility Reserves, Coal Reserves, Remote Crude Oil and Natural Gas Reserves.

§ 6239. Development, operation, and maintenance of the Reserve

(a) to (e) Repealed. Pub. L. 106-469, title I, § 103(13)(A), Nov. 9, 2000, 114 Stat. 2030

(f) Powers of Secretary to develop and operate the Strategic Petroleum Reserve

In order to develop, operate, or maintain the Strategic Petroleum Reserve, the Secretary may—

- (1) issue rules, regulations, or orders;
- (2) acquire by purchase, condemnation, or otherwise, land or interests in land for the location of storage and related facilities;
- (3) construct, purchase, lease, or otherwise acquire storage and related facilities;
- (4) use, lease, maintain, sell or otherwise dispose of land or interests in land, or of storage and related facilities acquired under this part, under such terms and conditions as the Secretary considers necessary or appropriate;
- (5) acquire, subject to the provisions of section 6240 of this title, by purchase, exchange, or otherwise, petroleum products for storage in the Strategic Petroleum Reserve;
- (6) store petroleum products in storage facilities owned and controlled by the United States or in storage facilities owned by others if those facilities are subject to audit by the United States;
- (7) execute any contracts necessary to develop, operate, or maintain the Strategic Petroleum Reserve;
- (8) bring an action, when the Secretary considers it necessary, in any court having jurisdiction over the proceedings, to acquire by condemnation any real or personal property, including facilities, temporary use of facili-

ties, or other interests in land, together with any personal property located on or used with the land.

(g) Acquisition of property by negotiation as prerequisite to condemnation

Before any condemnation proceedings are instituted, an effort shall be made to acquire the property involved by negotiation, unless, the effort to acquire such property by negotiation would, in the judgement of the Secretary be futile or so time-consuming as to unreasonably delay the development of the Strategic Petroleum Reserve, because of (1) reasonable doubt as to the identity of the owners, (2) the large number of persons with whom it would be necessary to negotiate, or (3) other reasons.

(h), (i) Repealed. Pub. L. 106-469, title I, § 103(13)(D), Nov. 9, 2000, 114 Stat. 2031

(j) Expansion beyond 700,000,000 barrels

If the Secretary determines expansion beyond 700,000,000 barrels of petroleum product inventory is appropriate, the Secretary shall submit a plan for expansion to the Congress.

(k) Exemption from subtitle IV of title 49

A storage or related facility of the Strategic Petroleum Reserve owned by or leased to the United States is not subject to the Interstate Commerce Act.

(l) Rulemaking during drawdown and sale

During a drawdown and sale of Strategic Petroleum Reserve petroleum products, the Secretary may issue implementing rules, regulations, or orders in accordance with section 553 of title 5, without regard to rulemaking requirements in section 6393 of this title, and section 7191 of this title.

(Pub. L. 94-163, title I, §159, Dec. 22, 1975, 89 Stat. 886; Pub. L. 95-619, title VI, §691(b)(2), Nov. 9, 1978, 92 Stat. 3288; Pub. L. 97-229, §4(b)(1), (2)(B), Aug. 3, 1982, 96 Stat. 251, 252; Pub. L. 99-58, title I, §102(a), July 2, 1985, 99 Stat. 102; Pub. L. 101-383, §§4(a), 9, 11, Sept. 15, 1990, 104 Stat. 728, 735; Pub. L. 106-469, title I, §103(12), (13), Nov. 9, 2000, 114 Stat. 2030.)

REFERENCES IN TEXT

The Interstate Commerce Act, referred to in subsec. (k), is act Feb. 4, 1887, ch. 104, 24 Stat. 379, as amended, which was classified generally to chapters 1, 8, 12, 13, and 19 (§§1 et seq., 301 et seq., 901 et seq., 1001 et seq., and 1231 et seq., respectively) of former Title 49, Transportation. The Act was repealed (subject to an exception) by Pub. L. 95-473, §4(b), Oct. 17, 1978, 92 Stat. 1466, the first section of which enacted subtitle IV (§10101 et seq.) of Title 49. Section 4(c) of Pub. L. 95-473 excepted from repeal those provisions of the Interstate Commerce Act that vested functions in the Interstate Commerce Commission, or the chairman or members of the Commission, related to transportation of oil by pipeline and that were transferred to the Secretary of Energy and the Federal Energy Regulatory Commission by sections 7155 and 7172(b) of this title.

AMENDMENTS

2000—Pub. L. 106-469, §103(12), amended section catchline generally.

Subsecs. (a) to (e). Pub. L. 106-469, §103(13)(A), struck out subsecs. (a) to (e) which related to congressional review and effective date of the Strategic Petroleum Re-

serve Plan, preparation and transmittal to Congress of proposals for designing, constructing, and filling facilities and of Plan amendments, and 60-day waiting period for effectiveness of amendments.

Subsec. (f). Pub. L. 106-469, §103(13)(B), amended subsec. (f) generally. Prior to amendment, subsec. (f) set out powers of the Secretary to implement the Strategic Petroleum Reserve Plan, the Early Storage Reserve Plan, proposals for designing, constructing, and filling facilities, amendments to the Plans, and the storage of petroleum products in interim storage facilities.

Subsec. (g). Pub. L. 106-469, §103(13)(C), substituted "development" for "implementation" and struck out "Plan" after "Strategic Petroleum Reserve".

Subsecs. (h), (i). Pub. L. 106-469, §103(13)(D), struck out subsecs. (h) and (i) which related to use of interim storage facilities and environmental considerations for existing facilities, and report to Congress on results of negotiations for enlargement of Strategic Petroleum Reserve to one billion barrels.

Subsec. (j). Pub. L. 106-469, §103(13)(E), amended subsec. (j) generally. Prior to amendment, subsec. (j) read as follows: "No later than 24 months after September 15, 1990, the Secretary shall amend the Strategic Petroleum Reserve Plan to prescribe plans for completion of storage of one billion barrels of petroleum product in the Reserve. Such amendment shall comply with the provisions of this section and shall detail the Secretary's plans for the design, construction, leasing or other acquisition, and fill of storage and related facilities of the Reserve to achieve such one billion barrels of storage. Such amendment shall not be subject to the congressional review procedures contained in section 6421 of this title. In assessing alternatives in the development of such plans, the Secretary shall consider leasing privately owned storage facilities."

Subsec. (l). Pub. L. 106-469, §103(13)(F), amended subsec. (l) generally. Prior to amendment, subsec. (l) read as follows: "Notwithstanding subsection (d) of this section, during any period in which the Distribution Plan is being implemented, the Secretary may amend the plan and promulgate rules, regulations, or orders to implement such amendments in accordance with section 6393 of this title, without regard to the requirements of section 553 of title 5 and section 7191 of this title. Such amendments shall be transmitted to the Congress together with a statement explaining the need for such amendments."

1990—Subsecs. (i), (j). Pub. L. 101-383, §4(a), added subsecs. (i) and (j).

Subsec. (k). Pub. L. 101-383, §9, added subsec. (k).

Subsec. (l). Pub. L. 101-383, §11, added subsec. (l).

1985—Subsec. (e). Pub. L. 99-58 amended subsec. (e) generally, substituting provisions directing that amendments transmitted pursuant to subsec. (d) of this section not become effective until 60 days after transmittal except in the case of enumerated presidential determinations for provisions which had formerly empowered Congress to disapprove of transmitted proposals and amendments in accordance with the procedures specified in section 6421 of this title.

1982—Subsec. (f)(5). Pub. L. 97-229, §4(b)(1), added par. (5).

Subsec. (h). Pub. L. 97-229, §4(b)(2)(B), added subsec. (h).

1978—Subsecs. (a)(1), (c), (d), (e)(1), (f), (f)(I), (g). Pub. L. 95-619 substituted "Secretary" for "Administrator", meaning Administrator of the Federal Energy Administration, wherever appearing.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 10 section 7430.

§ 6240. Petroleum products for storage, transport, or exchange

(a) Eligibility of petroleum products

The Secretary may acquire, place in storage, transport, or exchange—

(1) crude oil produced from Federal lands¹

(2) crude oil which the United States is entitled to receive in kind as royalties from production on Federal lands; and

(3) petroleum products acquired by purchase, exchange, or otherwise.

(b) Objectives in determining manner of acquisition

The Secretary shall, to the greatest extent practicable, acquire petroleum products for the Reserve in a manner consonant with the following objectives:

(1) minimization of the cost of the Reserve;

(2) Repealed. Pub. L. 106-469, title I, §103(14)(C), Nov. 9, 2000, 114 Stat. 2031;

(3) minimization of the Nation's vulnerability to a severe energy supply interruption;

(4) minimization of the impact of such acquisition upon supply levels and market forces; and

(5) encouragement of competition in the petroleum industry.

(c) to (e) Repealed. Pub. L. 106-469, title I, §103(14)(D), Nov. 9, 2000, 114 Stat. 2031

(f) Predrawdown diversion

If the Secretary finds that a severe energy supply interruption may be imminent, the Secretary may suspend the acquisition of petroleum product for, and the injection of petroleum product into, the Reserve and may sell any petroleum product acquired for and in transit to, but not injected into, the Reserve.

(g) Repealed. Pub. L. 106-469, title I, §103(14)(D), Nov. 9, 2000, 114 Stat. 2031

(h) Purchase from stripper well properties

(1) If the President finds that declines in the production of oil from domestic resources pose a threat to national energy security, the President may direct the Secretary to acquire oil from domestic production of stripper well properties for storage in the Strategic Petroleum Reserve. Except as provided in paragraph (2), the Secretary may set such terms and conditions as he deems necessary for such acquisition.

(2) Crude oil purchased by the Secretary pursuant to this subsection shall be by competitive bid. The price paid by the Secretary—

(A) shall take into account the cost of production including costs of reservoir and well maintenance; and

(B) shall not exceed the price that would have been paid if the Secretary had acquired petroleum products of a similar quality on the open market under competitive bid procedures without regard to the source of the petroleum products.

(Pub. L. 94-163, title I, §160, Dec. 22, 1975, 89 Stat. 888; Pub. L. 95-619, title VI, §691(b)(2), Nov. 9, 1978, 92 Stat. 3288; Pub. L. 96-294, title VIII, §§801(a), 802(a), 803, June 30, 1980, 94 Stat. 775, 776; Pub. L. 97-35, title X, §1033, Aug. 13, 1981, 95 Stat. 618; Pub. L. 97-229, §4(a)(1), (b)(2)(C), Aug. 3, 1982, 96 Stat. 250, 252; Pub. L. 99-58, title I, §§102(b), 103(b)(1), July 2, 1985, 99 Stat. 103, 104; Pub. L. 99-88, title I, §100, Aug. 15, 1985, 99 Stat.

¹ So in original. Probably should be followed by a semicolon.

342; Pub. L. 99-272, title VII, §7102, Apr. 7, 1986, 100 Stat. 141; Pub. L. 99-509, title III, §3202, Oct. 21, 1986, 100 Stat. 1889; Pub. L. 101-383, §§4(b), (c), 5(a), (b)(3), 7, Sept. 15, 1990, 104 Stat. 728, 729, 734; Pub. L. 101-548, §1, Nov. 14, 1990, 104 Stat. 2398; Pub. L. 102-486, title XIV, §1404(a), (b)(2), Oct. 24, 1992, 106 Stat. 2994, 2995; Pub. L. 104-66, title I, §1051(f), Dec. 21, 1995, 109 Stat. 716; Pub. L. 106-469, title I, §103(14), Nov. 9, 2000, 114 Stat. 2031.)

AMENDMENTS

2000—Subsec. (a). Pub. L. 106-469, §103(14)(A), in introductory provisions, substituted “The Secretary may acquire, place in storage, transport, or exchange” for “The Secretary is authorized, for purposes of implementing the Strategic Petroleum Reserve Plan or the Early Storage Reserve Plan, to place in storage, transport, or exchange”.

Subsec. (a)(1). Pub. L. 106-469, §103(14)(B), struck out “, including crude oil produced from the Naval Petroleum Reserves to the extent that such production is authorized by law;” after “Federal lands”.

Subsec. (b). Pub. L. 106-469, §103(14)(C), struck out “, including the Early Storage Reserve and the Regional Petroleum Reserve” before “in a manner consonant” in introductory provisions.

Subsec. (b)(2). Pub. L. 106-469, §103(14)(C), struck out par. (2) which read as follows: “orderly development of the Naval Petroleum Reserves to the extent authorized by law;”.

Subsecs. (c) to (e). Pub. L. 106-469, §103(14)(D), struck out subsecs. (c) to (e) which related to fill operations by the President, disposition of crude oil from Naval Petroleum Reserve Numbered 1, and suspensions of fill operations during emergency situations.

Subsec. (g). Pub. L. 106-469, §103(14)(D), struck out subsec. (g) which required the Secretary to conduct a test program of storage of refined petroleum products within the Reserve.

1995—Subsec. (g)(7). Pub. L. 104-66 struck out par. (7) which read as follows: “No later than January 31, 1994, the Secretary shall transmit to the Congress a report on the test program. The report shall evaluate the mechanisms demonstrated under the test program, other potential mechanisms, and the purchase of facilities. The report shall include an assessment of the costs and benefits of the various mechanisms. The report shall also make recommendations with regard to future storage of refined petroleum products and contain drafts of any legislative provisions which the Secretary wishes to recommend.”

1992—Subsec. (d)(2). Pub. L. 102-486, §1405, redesignated cls. (i) to (iii) as pars. (A) to (C), respectively, and struck out former par. (A) designation after “(2)”.

Subsec. (h). Pub. L. 102-486, §1404(a), added subsec. (h).

1990—Subsec. (c)(3). Pub. L. 101-383, §4(b)(1), substituted “fiscal year 1994” for “fiscal years 1988 and 1989” and “1,000,000,000” for “at least 750,000,000”.

Subsec. (d)(1)(A). Pub. L. 101-383, §4(c), inserted “Government owned facilities of” after “within”.

Subsec. (d)(1)(B). Pub. L. 101-383, §4(b)(2), inserted before period at end “and the Secretary has amended the Strategic Petroleum Reserve Plan as required by section 6239(j) of this title”.

Subsec. (d)(4). Pub. L. 101-383, §5(b)(3), added par. (4).

Subsec. (f). Pub. L. 101-383, §5(a), added subsec. (f).

Subsec. (g). Pub. L. 101-548 inserted “with regard to future storage of refined petroleum products and” after “recommendations” in par. (7).

Pub. L. 101-383, §7, added subsec. (g).

1986—Subsec. (c)(3). Pub. L. 99-509, §3202(a), substituted “fiscal year 1987 and continuing through fiscal years 1988 and 1989” for “fiscal year 1986 and continuing through fiscal years 1987 and 1988”, “750,000,000 barrels” for “527,000,000 barrels”, and “at the highest practicable fill rate achievable, subject to the availability

of appropriated funds” for “at a level sufficient to assure a minimum average annual fill-rate of at least 35,000 barrels per day in addition to any petroleum products acquired for the Reserve to replace petroleum products withdrawn from the Reserve as a result of a test drawdown and distribution”.

Pub. L. 99-272, §7102(a), added par. (3).

Subsec. (d)(1)(A). Pub. L. 99-509, §3202(b)(1), substituted “750,000,000 barrels” for “527,000,000 barrels”.

Pub. L. 99-272, §7102(b)(1), substituted “527,000,000 barrels” for “500,000,000 barrels”.

Subsec. (d)(1)(B). Pub. L. 99-509, §3202(b)(2), substituted “75,000 barrels” for “100,000 barrels”, and substituted a period for “; or”.

Subsec. (d)(1)(C). Pub. L. 99-509, §3202(b)(3), struck out subpar. (C) which read as follows: “acquisition, transportation, and injection activities for the Reserve are being undertaken, beginning in fiscal year 1986 and continuing through fiscal years 1987 and 1988 until the quantity of crude oil in storage within the Reserve is at least 527,000,000 barrels, at a level sufficient to assure that petroleum products in storage in the Reserve will be increased at a minimum annual average rate of at least 35,000 barrels per day in addition to any petroleum products acquired for the Reserve to replace petroleum products withdrawn from the Reserve as a result of a test drawdown and distribution”.

Pub. L. 99-272, §7102(b)(2), added subpar. (C) and struck out former subpar. (C) which read as follows: “the fill rate is sufficient to attain a level of 500,000,000 barrels by the end of the fiscal year during which the fill rate falls below the rate established in (B).”

1985—Subsec. (d)(1)(C). Pub. L. 99-88 added subpar. (C).

Subsec. (d)(3). Pub. L. 99-58, §103(b)(1), added par. (3).

Subsec. (e)(1)(B). Pub. L. 99-58, §102(b)(1), (2), inserted “and” at end of cl. (i), inserted a period following “to the Congress”, and struck out “in accordance with section 6422 of this title, together with a request for a suspension of such provisions; and” in cl. (ii), and struck out cl. (iii) which directed that provisions of subsecs. (c) and (d) of this section would not apply if a Presidential request for the suspension of such provisions was approved by a resolution of each House of Congress within 60 days of continuous session after the date of its transmittal in accordance with provisions of section 6422 of this title applicable to energy conservation contingency plans.

Subsec. (e)(2). Pub. L. 99-58, §102(b)(3), substituted “may become effective on the day the finding is transmitted to the Congress and shall terminate nine months thereafter or on such earlier date as is specified in such finding” for “shall take effect on the date on which a resolution approving that request is adopted by the second House to have so approved that request and shall terminate 9 months thereafter, or such earlier date as is specified in the request transmitted under paragraph (1)(B)(ii)”.

Subsec. (e)(3), (4). Pub. L. 99-58, §102(b)(3), (4), redesignated par. (4) as (3). Former par. (3), which related to application of section 6422 of this title for purposes of par. (1)(B), was struck out.

1982—Subsec. (c). Pub. L. 97-229, §4(a)(1), substituted provisions directing the President to fill the Strategic Petroleum Reserve with petroleum products at a level sufficient to assure an increase at an annual rate of at least the minimum required fill rate, 300,000 barrels per day, until the quantity of petroleum products stored is at least 500,000,000 barrels, allowing for a lower minimum required fill rate of 220,000 barrels per day if the President finds that compliance with the 300,000 barrels per day rate would not be in the national interest, specifying the effective period of such a Presidential finding, authorizing a higher minimum required rate than the 220,000 barrels per day if funds are available in any fiscal year after fiscal year 1982, making the Impoundment Control Act of 1974 applicable to funds available under section 6247(b) and (e) of this title, and providing that, after the Strategic Petroleum Reserve reaches 500,000,000 barrels, the President shall seek to fill the Reserve at an annual rate of at least 300,000 bar-

rels per day of petroleum products until the Reserve reaches 750,000,000 barrels for provisions directing the President to seek to fill the Strategic Petroleum Reserve with crude oil at a level sufficient to assure that crude oil in storage will be increased at an average annual rate of at least 300,000 barrels per day until the Reserve is at least 750,000,000 barrels.

Subsec. (e)(4). Pub. L. 97-229, § 4(b)(2)(C), substituted "petroleum product" for "crude oil".

1981—Subsec. (c). Pub. L. 97-35 substituted provisions respecting fill operation at a rate of 300,000 barrels per day for provisions respecting fill operation at a rate of 100,000 barrels per day.

1980—Subsec. (c). Pub. L. 96-294, § 801(a), added subsec. (c).

Subsec. (d). Pub. L. 96-294, § 802(a), added subsec. (d).

Subsec. (e). Pub. L. 96-294, § 803, added subsec. (e).

1978—Pub. L. 95-619 substituted "Secretary" for "Administrator", meaning Administrator of the Federal Energy Administration, wherever appearing.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 4(a)(2) of Pub. L. 97-229 provided that: "The amendment made by paragraph (1) [amending this section] shall take effect July 1, 1982."

EFFECTIVE DATE OF 1981 AMENDMENT

Section 1033 of title X of Pub. L. 97-35 provided that: "The provisions of this title [enacting sections 6247, 8341, and 8484 of this title, amending this section and sections 6245, 6246, 6831 to 6833, 6835, 6837 to 6839, 8372, 8421, 8422, and 8803 of this title, repealing sections 6834, 6836 and 8341 of this title, and enacting provisions set out as notes under sections 6201, 6231, 6247, 7270, and 8341 of this title, section 3620 of Title 12, Banks and Banking, and section 719e of Title 15, Commerce and Trade] shall take effect on the date of enactment of this Act [Aug. 13, 1981]."

EFFECTIVE DATE OF 1980 AMENDMENT

Section 801(b) of Pub. L. 96-294 provided that: "The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [June 30, 1980], and shall apply with respect to the entirety of fiscal year 1981 (and each fiscal year thereafter)."

Section 802(b) of Pub. L. 96-294 provided that: "The amendments made by subsection (a) [amending this section] shall take effect October 1, 1980."

SUSPENSION OF TEST PROGRAM REQUIREMENTS DURING FISCAL YEAR 1994

Pub. L. 103-138, title II, Nov. 11, 1993, 107 Stat. 1406, provided in part that requirements of subsec. (g) of this section would not apply in fiscal year 1994.

STUDY AND REPORT ON OIL LEASING AND OTHER ARRANGEMENTS TO FILL SPR TO ONE BILLION BARRELS

Pub. L. 101-46, § 2, June 30, 1989, 103 Stat. 132, directed Secretary of Energy to conduct a study on potential financial arrangements, including long-term leasing of crude oil and storage facilities, that could be used to provide additional, alternative means of financing the filling of the Strategic Petroleum Reserve to one billion barrels and directed Secretary to transmit an interim report to Committee on Energy and Natural Resources of Senate and Committee on Energy and Commerce of House of Representatives no later than Oct. 15, 1989, and no later than Feb. 1, 1990, to transmit to such committees a copy of the preliminary written solicitations for proposed alternative financial arrangements to assist in filling the Strategic Petroleum Reserve to one billion barrels and a final report containing findings and conclusions together with a draft of legislative changes necessary to authorize the most significant alternative financial arrangements.

EXCHANGE OF AGRICULTURAL PRODUCTS FOR CRUDE OIL TO BE DELIVERED TO STRATEGIC PETROLEUM RESERVE

Pub. L. 99-190, § 101(d) [title II], Dec. 19, 1985, 99 Stat. 1224, 1254, provided that: "Notwithstanding any other provision of law, the Secretary of Agriculture, at the request of the Secretary of Energy, may exchange agricultural products owned by the Commodity Credit Corporation for crude oil to be delivered to the Strategic Petroleum Reserve: *Provided*, That the Secretary of Energy shall approve the quantity, quality, delivery method, scheduling, market value and other aspects of the exchange of such agricultural products: *Provided further*, That if the volume of agricultural products to be exchanged has a value in excess of the market value of the crude oil acquired by such exchange, then the Secretary of Agriculture shall require as part of the terms and conditions of the exchange that the party or entity providing such crude oil shall agree to purchase, within six months following the exchange, current crop commodities or value-added food products from United States producers or processors in an amount equal to at least one-half the difference between the value of the commodities received in exchange and the market value of the crude oil acquired for the Strategic Petroleum Reserve."

ALLOCATION TO STRATEGIC PETROLEUM RESERVE OF LOWER TIER CRUDE OIL AND FEDERAL ROYALTY OIL; PROCEDURES APPLICABLE, AUTHORITIES, ETC.

Section 805 of Pub. L. 96-294 provided that:

"(a)(1) In order to carry out the requirement of the amendment made by section 801 of this Act [amending this section and enacting provision set out as a note above] and to carry out the policies and objectives established in sections 151 and 160(b)(1) of the Energy Policy and Conservation Act (42 U.S.C. 6231 and 6240(b)(1)) the President shall, within 60 days after the date of the enactment of this Act [June 30, 1980], promulgate and make effective an amendment to the provisions of the regulation under section 4(a) of the Emergency Petroleum Allocation Act of 1973 [15 U.S.C. 753(a)] relating to entitlements, which has the same effect as allocating lower tier crude oil to the Government for storage in the Strategic Petroleum Reserve. Such amendment shall not apply with respect to crude oil purchased after September 30, 1981, for storage in such reserve.

"(2) The authority provided by this subsection shall be in addition to, and shall not be deemed to limit, any other authority available to the President under the Emergency Petroleum Allocation Act of 1973 [15 U.S.C. 751 et seq.] or any other law.

"(3) The President or his delegate may promulgate and make effective rules or orders to implement this subsection without regard to the requirements of section 501 of the Department of Energy Organization Act [42 U.S.C. 7191] or any other law or regulation specifying procedural requirements.

"(b) In addition to the requirement under subsection (a), the President may direct that—

"(1) all or any portion of Federal royalty oil be placed in storage in the Reserve,

"(2) all or any portion of Federal royalty oil be exchanged, directly or indirectly, for other crude oil for storage in the Reserve, or

"(3) all or any portion of the proceeds from the sales of Federal royalty oil be transferred to the account established under subsection (c) for use for the purchase of crude oil for the Reserve, as provided in subsection (c).

"(c)(1) Any proceeds—

"(A) from the sale of entitlements received by the Government under the amendment to the regulation made under subsection (a), and

"(B) to the extent provided in subsection (b), from the sale of Federal royalty oil, shall be deposited in a special account which the Secretary of the Treasury shall establish on the books of the Treasury of the United States.

"(2)(A) Subject to the provisions of any Act enacted pursuant to section 660 of the Department of Energy

Organization Act [42 U.S.C. 7270], such account shall be available (except as provided in subparagraph (B)) for use by the Secretary of Energy, without fiscal year limitation, for the purchase of crude oil for the Strategic Petroleum Reserve, to the extent provided in advance in appropriation Acts.

“(B) Amounts in such account attributable to the proceeds from the sale of entitlements under the amendment to the regulation under subsection (a) are hereby appropriated for fiscal year 1981 for acquisition of crude oil for the Strategic Petroleum Reserve pursuant to subsection (a).

“(d) For purposes of this section—

“(1) the terms ‘entitlements’, ‘crude oil’, and ‘allocation’ shall have the same meaning as those terms have as used in the Emergency Petroleum Allocation Act of 1973 [15 U.S.C. 751 et seq.] (and the regulation thereunder);

“(2) the term ‘lower tier crude oil’ means crude oil which is subject to the price ceiling established under section 212.73 of title 10, Code of Federal Regulations;

“(3) the term ‘Federal royalty oil’ means crude oil which the United States is entitled to receive in kind as royalties from production on Federal land (as such term is defined in section 3(10) of the Energy Policy and Conservation Act (42 U.S.C. 6202(10)); and

“(4) the term ‘proceeds from the sale of Federal royalty oil’ means that portion of the amounts deposited into the Treasury of the United States from the sale of Federal royalty oil which is not otherwise required to be disposed of (other than as miscellaneous receipts) pursuant to (A) the provisions of section 35 of the Act of February 25, 1920, as amended (41 Stat. 450; 30 U.S.C. 191), commonly known as the Mineral Lands Leasing Act, or (B) the provisions of any other law.”

RATE OF FILL OF STRATEGIC PETROLEUM RESERVE

Pub. L. 96-514, title II, Dec. 12, 1980, 94 Stat. 2976, provided in part: “That the President shall immediately seek to undertake, and thereafter continue, crude oil acquisition, transportation, and injection activities at a level sufficient to assure that crude oil storage in the Strategic Petroleum Reserve will be increased to an average annual rate of at least 300,000 barrels per day or a sustained average annual daily rate of fill which would fully utilize appropriated funds: *Provided*, That the requirements of the preceding provision shall be in addition to the provisions of title VIII of the Energy Security Act [title VIII of Pub. L. 96-294, which amended this section and section 7430 of Title 10, Armed Forces, and enacted provisions set out as a note above] and shall not affect such provisions of the Energy Security Act in any way.”

EX. ORD. NO. 12231. STRATEGIC PETROLEUM RESERVE

Ex. Ord. No. 12231, Aug. 4, 1980, 45 F.R. 52139, provided:

By the authority vested in me as President of the United States of America by Title VIII of the Energy Security Act (Public Law 96-294) [title VIII of Pub. L. 96-294, which amended this section and section 7430 of Title 10, Armed Forces, and enacted provisions set out as a note above] and by Section 301 of Title 3 of the United States Code, and in order to meet the goals and requirements for the strategic petroleum reserve, it is hereby ordered as follows:

1-101. The functions vested in the President by Section 160(c) of the Energy Policy and Conservation Act, as amended, are delegated to the Secretary of Energy (42 U.S.C. 6240(c); see Section 801 of the Energy Security Act).

1-102. The functions vested in the President by Section 7430(k) of Title 10 of the United States Code are delegated to the Secretary of Energy (see Section 804(b) of the Energy Security Act).

1-103. The functions vested in the President by Section 805(a) of the Energy Security Act [section 805(a) of Pub. L. 96-294, set out as a note above] are, consistent with Section 2 of Executive Order No. 11790, as amended

[set out as a note under section 761 of Title 15, Commerce and Trade], delegated to the Secretary of Energy.

JIMMY CARTER.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6239, 6247 of this title.

§ 6241. Drawdown and sale of petroleum products

(a) Power of Secretary

The Secretary may drawdown and sell petroleum products in the Reserve only in accordance with the provisions of this section.

(b), (c) Repealed. Pub. L. 106-469, title I, § 103(15)(C), Nov. 9, 2000, 114 Stat. 2031

(d) Presidential finding prerequisite to drawdown and sale

(1) Drawdown and sale of petroleum products from the Strategic Petroleum Reserve may not be made unless the President has found drawdown and sale are required by a severe energy supply interruption or by obligations of the United States under the international energy program.

(2) For purposes of this section, in addition to the circumstances set forth in section 6202(8) of this title, a severe energy supply interruption shall be deemed to exist if the President determines that—

(A) an emergency situation exists and there is a significant reduction in supply which is of significant scope and duration;

(B) a severe increase in the price of petroleum products has resulted from such emergency situation; and

(C) such price increase is likely to cause a major adverse impact on the national economy.

(e) Sales procedures

(1) The Secretary shall sell petroleum products withdrawn from the Strategic Petroleum Reserve at public sale to the highest qualified bidder in the amounts, for the period, and after a notice of sale considered appropriate by the Secretary, and without regard to Federal, State, or local regulations controlling sales of petroleum products.

(2) The Secretary may cancel in whole or in part any offer to sell petroleum products as part of any drawdown and sale under this section.

(f) Repealed. Pub. L. 106-469, title I, § 103(15)(C), Nov. 9, 2000, 114 Stat. 2031

(g) Directive to carry out test drawdown and sale

(1) The Secretary shall conduct a continuing evaluation of the drawdown and sales procedures. In the conduct of an evaluation, the Secretary is authorized to carry out a test drawdown and sale or exchange of petroleum products from the Reserve. Such a test drawdown and sale or exchange may not exceed 5,000,000 barrels of petroleum products.

(2) Repealed. Pub. L. 106-469, title I, § 103(15)(F)(ii), Nov. 9, 2000, 114 Stat. 2031.

(3) At least part of the crude oil that is sold or exchanged under this subsection shall be sold or

exchanged to or with entities that are not part of the Federal Government.

(4) The Secretary may not sell any crude oil under this subsection at a price less than that which the Secretary determines appropriate and, in no event, at a price less than 95 percent of the sales price, as estimated by the Secretary, of comparable crude oil being sold in the same area at the time the Secretary is offering crude oil for sale in such area under this subsection.

(5) The Secretary may cancel any offer to sell or exchange crude oil as part of any test under this subsection if the Secretary determines that there are insufficient acceptable offers to obtain such crude oil.

(6) In the case of a sale of any petroleum products under this subsection, the Secretary shall, to the extent funds are available in the SPR Petroleum Account as a result of such sale, acquire petroleum products for the Reserve within the 12-month period beginning after completion of the sale.

(7) Rules, regulations, or orders issued in order to carry out this subsection which have the applicability and effect of a rule as defined in section 551(4) of title 5 shall not be subject to the requirements of subchapter II of chapter 5 of such title or to section 6393 of this title.

(8) The Secretary shall transmit to both Houses of the Congress a detailed explanation of the test carried out under this subsection. Such explanation may be a part of any report made to the President and the Congress under section 6245 of this title.

(h) Prevention or reduction of adverse impact of severe domestic energy supply interruptions

(1) If the President finds that—

(A) a circumstance, other than those described in subsection (d) of this section, exists that constitutes, or is likely to become, a domestic or international energy supply shortage of significant scope or duration;

(B) action taken under this subsection would assist directly and significantly in preventing or reducing the adverse impact of such shortage; and

(C) the Secretary of Defense has found that action taken under this subsection will not impair national security,

then the Secretary may, subject to the limitations of paragraph (2), draw down and sell petroleum products from the Strategic Petroleum Reserve.

(2) Petroleum products from the Reserve may not be drawn down under this subsection—

(A) in excess of an aggregate of 30,000,000 barrels with respect to each such shortage;

(B) for more than 60 days with respect to each such shortage;

(C) if there are fewer than 500,000,000 barrels of petroleum product stored in the Reserve; or

(D) below the level of an aggregate of 500,000,000 barrels of petroleum product stored in the Reserve.

(3) During any period in which there is a drawdown and sale of the Reserve in effect under this subsection, the Secretary shall transmit a monthly report to the Congress containing an account of the drawdown and sale of petroleum

products under this subsection and an assessment of its effect.

(4) In no case may the drawdown under this subsection be extended beyond 60 days with respect to any domestic energy supply shortage.

(i) Exchange of withdrawn products

Notwithstanding any other law, the President may permit any petroleum products withdrawn from the Strategic Petroleum Reserve in accordance with this section to be sold and delivered for refining or exchange outside of the United States, in connection with an arrangement for the delivery of refined petroleum products to the United States.

(j) Purchases from Strategic Petroleum Reserve by entities in insular areas of United States and Freely Associated States

(1) Definitions

In this subsection:

(A) Binding offer

The term “binding offer” means a bid submitted by the State of Hawaii for an assured award of a specific quantity of petroleum product, with a price to be calculated pursuant to paragraph (2) of this subsection, that obligates the offeror to take title to the petroleum product without further negotiation or recourse to withdraw the offer.

(B) Category of petroleum product

The term “category of petroleum product” means a master line item within a notice of sale.

(C) Eligible entity

The term “eligible entity” means an entity that owns or controls a refinery that is located within the State of Hawaii.

(D) Full tanker load

The term “full tanker load” means a tanker of approximately 700,000 barrels of capacity, or such lesser tanker capacity as may be designated by the State of Hawaii.

(E) Insular area

The term “insular area” means the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, Guam, American Samoa, the Freely Associated States of the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

(F) Offering

The term “offering” means a solicitation for bids for a quantity or quantities of petroleum product from the Strategic Petroleum Reserve as specified in the notice of sale.

(G) Notice of sale

The term “notice of sale” means the document that announces—

(i) the sale of Strategic Petroleum Reserve products;

(ii) the quantity, characteristics, and location of the petroleum product being sold;

(iii) the delivery period for the sale; and

(iv) the procedures for submitting offers.

(2) In general

In the case of an offering of a quantity of petroleum product during a drawdown of the Strategic Petroleum Reserve—

(A) the State of Hawaii, in addition to having the opportunity to submit a competitive bid, may—

(i) submit a binding offer, and shall on submission of the offer, be entitled to purchase a category of a petroleum product specified in a notice of sale at a price equal to the volumetrically weighted average of the successful bids made for the remaining quantity of the petroleum product within the category that is the subject of the offering; and

(ii) submit one or more alternative offers, for other categories of the petroleum product, that will be binding if no price competitive contract is awarded for the category of petroleum product on which a binding offer is submitted under clause (i); and

(B) at the request of the Governor of the State of Hawaii, a petroleum product purchased by the State of Hawaii at a competitive sale or through a binding offer shall have first preference in scheduling for lifting.

(3) Limitation on quantity**(A) In general**

In administering this subsection, in the case of each offering, the Secretary may impose the limitation described in subparagraph (B) or (C) that results in the purchase of the lesser quantity of petroleum product.

(B) Portion of quantity of previous imports

The Secretary may limit the quantity of a petroleum product that the State of Hawaii may purchase through a binding offer at any offering to 1/12 of the total quantity of imports of the petroleum product brought into the State during the previous year (or other period determined by the Secretary to be representative).

(C) Percentage of offering

The Secretary may limit the quantity that may be purchased through binding offers at any offering to 3 percent of the offering.

(4) Adjustments**(A) In general**

Notwithstanding any limitation imposed under paragraph (3), in administering this subsection, in the case of each offering, the Secretary shall, at the request of the Governor of the State of Hawaii, or an eligible entity certified under paragraph (7), adjust the quantity to be sold to the State of Hawaii in accordance with this paragraph.

(B) Upward adjustment

The Secretary shall adjust upward to the next whole number increment of a full tanker load if the quantity to be sold is—

- (i) less than 1 full tanker load; or
- (ii) greater than or equal to 50 percent of a full tanker load more than a whole number increment of a full tanker load.

(C) Downward adjustment

The Secretary shall adjust downward to the next whole number increment of a full tanker load if the quantity to be sold is less than 50 percent of a full tanker load more than a whole number increment of a full tanker load.

(5) Delivery to other locations

The State of Hawaii may enter into an exchange or a processing agreement that requires delivery to other locations, if a petroleum product of similar value or quantity is delivered to the State of Hawaii.

(6) Standard sales provisions

Except as otherwise provided in this chapter, the Secretary may require the State of Hawaii to comply with the standard sales provisions applicable to purchasers of petroleum products at competitive sales.

(7) Eligible entities**(A) In general**

Subject to subparagraphs (B) and (C) and notwithstanding any other provision of this paragraph, if the Governor of the State of Hawaii certifies to the Secretary that the State has entered into an agreement with an eligible entity to carry out this chapter, the eligible entity may act on behalf of the State of Hawaii to carry out this subsection.

(B) Limitation

The Governor of the State of Hawaii shall not certify more than one eligible entity under this paragraph for each notice of sale.

(C) Barred company

If the Secretary has notified the Governor of the State of Hawaii that a company has been barred from bidding (either prior to, or at the time that a notice of sale is issued), the Governor shall not certify the company under this paragraph.

(8) Supplies of petroleum products

At the request of the Governor of an insular area, the Secretary shall, for a period not to exceed 180 days following a drawdown of the Strategic Petroleum Reserve, assist the insular area or the President of a Freely Associated State in its efforts to maintain adequate supplies of petroleum products from traditional and nontraditional suppliers.

(Pub. L. 94-163, title I, §161, Dec. 22, 1975, 89 Stat. 888; Pub. L. 95-619, title VI, §691(b)(2), Nov. 9, 1978, 92 Stat. 3288; Pub. L. 99-58, title I, §103(a), (b)(2), July 2, 1985, 99 Stat. 103, 104; Pub. L. 101-383, §§3(b), 8, 10, Sept. 15, 1990, 104 Stat. 727, 735; Pub. L. 102-486, title XIV, §1401, Oct. 24, 1992, 106 Stat. 2993; Pub. L. 105-388, §9(a), Nov. 13, 1998, 112 Stat. 3482; Pub. L. 106-469, title I, §103(15), Nov. 9, 2000, 114 Stat. 2031.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (j)(6), (7)(A), was in the original "this Act", meaning Pub. L. 94-163, Dec. 22, 1975, 89 Stat. 871, as amended, known as the Energy Policy and Conservation Act. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

AMENDMENTS

2000—Pub. L. 106-469, §103(15)(A), substituted “sale of petroleum products” for “distribution of the Reserve” in section catchline.

Subsec. (a). Pub. L. 106-469, §103(15)(B), substituted “drawdown and sell petroleum products in” for “drawdown and distribute”.

Subsec. (b). Pub. L. 106-469, §103(15)(C), struck out subsec. (b) which read as follows: “Except as provided in subsections (c), (f), and (g) of this section, no drawdown and distribution of the Reserve may be made except in accordance with the provisions of the Distribution Plan contained in the Strategic Petroleum Reserve Plan which has taken effect pursuant to section 6239(a) of this title.”

Subsec. (c). Pub. L. 106-469, §103(15)(C), struck out subsec. (c) which read as follows: “Drawdown and distribution of the Early Storage Reserve may be made in accordance with the provisions of the Distribution Plan contained in the Early Storage Reserve Plan until the Strategic Petroleum Reserve Plan has taken effect pursuant to section 6239(a) of this title.”

Subsec. (d)(1). Pub. L. 106-469, §103(15)(D), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “Neither the Distribution Plan contained in the Strategic Petroleum Reserve Plan nor the Distribution Plan contained in the Early Storage Reserve Plan may be implemented, and no drawdown and distribution of the Reserve or the Early Storage Reserve may be made, unless the President has found that implementation of either such Distribution Plan is required by a severe energy supply interruption or by obligations of the United States under the international energy program.”

Subsec. (e). Pub. L. 106-469, §103(15)(E), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: “The Secretary may, by rule, provide for the allocation of any petroleum product withdrawn from the Strategic Petroleum Reserve in amounts specified in (or determined in a manner prescribed by) and at prices specified in (or determined in a manner prescribed by) such rules. Such price levels and allocation procedures shall be consistent with the attainment, to the maximum extent practicable, of the objectives specified in section 753(b)(1) of title 15.”

Subsec. (f). Pub. L. 106-469, §103(15)(C), struck out subsec. (f) which read as follows: “The Secretary may permit any importer or refiner who owns any petroleum products stored in the Industrial Petroleum Reserve pursuant to section 6236 of this title to remove or otherwise dispose of such products upon such terms and conditions as the Secretary may prescribe.”

Subsec. (g)(1). Pub. L. 106-469, §103(15)(F)(i), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “The Secretary shall conduct a continuing evaluation of the Distribution Plan. In the conduct of such evaluation, the Secretary is authorized to carry out test drawdown and distribution of crude oil from the Reserve. If any such test drawdown includes the sale or exchange of crude oil, then the aggregate quantity of crude oil withdrawn from the Reserve may not exceed 5,000,000 barrels during any such test drawdown or distribution.”

Subsec. (g)(2). Pub. L. 106-469, §103(15)(F)(ii), struck out par. (2) which read as follows: “The Secretary shall carry out such drawdown and distribution in accordance with the Distribution Plan and implementing regulations and contract provisions, modified as the Secretary considers appropriate taking into consideration the artificialities of a test and the absence of a severe energy supply interruption. To meet the requirements of subsections (d) and (e) of section 6239 of this title, the Secretary shall transmit any such modification of the Plan, along with explanatory and supporting material, to both Houses of the Congress no later than 15 calendar days prior to the offering of any crude oil for sale under this subsection.”

Subsec. (g)(4). Pub. L. 106-469, §103(15)(F)(iii), substituted “95 percent” for “90 percent”.

Subsec. (g)(5). Pub. L. 106-469, §103(15)(F)(iv), substituted “test” for “drawdown and distribution”.

Subsec. (g)(6). Pub. L. 106-469, §103(15)(F)(v), amended par. (6) generally. Prior to amendment, par. (6) read as follows:

“(6)(A) The minimum required fill rate in effect for any fiscal year shall be reduced by the amount of any crude oil drawdown from the Reserve under this subsection during such fiscal year.

“(B) In the case of a sale of any crude oil under this subsection, the Secretary shall, to the extent funds are available in the SPR Petroleum Account as a result of such sale, acquire crude oil for the Reserve within the 12-month period beginning after the completion of the sale. Such acquisition shall be in addition to any acquisition of crude oil for the Reserve required as part of a fill rate established by any other provision of law.”

Subsec. (g)(8). Pub. L. 106-469, §103(15)(F)(vi), substituted “test” for “drawdown and distribution”.

Subsec. (h)(1). Pub. L. 106-469, §103(15)(G)(i), substituted “sell petroleum products from” for “distribute” in concluding provisions.

Subsec. (h)(1)(C). Pub. L. 106-469, §103(15)(G)(ii), added subpar. (C).

Subsec. (h)(2). Pub. L. 106-469, §103(15)(G)(iii), substituted “Petroleum products from the Reserve may not” for “In no case may the Reserve” in introductory provisions.

Subsec. (h)(3). Pub. L. 106-469, §103(15)(G)(iv), substituted “sale” for “distribution” in two places.

1998—Subsec. (j). Pub. L. 105-388 added subsec. (j).

1992—Subsec. (d). Pub. L. 102-486, §1401(1), designated existing provisions as par. (1) and added par. (2).

Subsec. (h)(1)(A). Pub. L. 102-486, §1401(2), inserted “or international” after “domestic”.

1990—Subsec. (g)(1). Pub. L. 101-383, §8, amended par. (1) generally. Prior to amendment, par. (1) read as follows: “In order to evaluate the implementation of the Distribution Plan, the Secretary shall, commencing within 180 days after July 2, 1985, carry out a test drawdown and distribution under this subsection through the sale or exchange of approximately 1,100,000 barrels of crude oil from the Reserve. The requirement of this paragraph shall not apply if the President determines, within the 180-day period described in the preceding sentence, that implementation of the Distribution Plan is required by a severe energy supply interruption or by obligations of the United States under the international energy program.”

Subsec. (h). Pub. L. 101-383, §3(b), added subsec. (h).

Subsec. (i). Pub. L. 101-383, §10, added subsec. (i).

1985—Subsec. (b). Pub. L. 99-58, §103(b)(2), inserted reference to subsec. (g) of this section.

Subsec. (g). Pub. L. 99-58, §103(a), added subsec. (g).

1978—Subsecs. (a), (e), (f). Pub. L. 95-619 substituted “Secretary” for “Administrator”, meaning Administrator of the Federal Energy Administration, wherever appearing.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-388, §9(c), Nov. 13, 1998, 112 Stat. 3484, provided that: “The amendment made by subsection (a) [amending this section] takes effect on the earlier of—

“(1) the date that is 180 days after the date of enactment of this Act [Nov. 13, 1998]; or

“(2) the date that final regulations are issued under subsection (b) [set out as a note below].”

REGULATIONS

Pub. L. 105-388, §9(b), Nov. 13, 1998, 112 Stat. 3484, provided that:

“(1) IN GENERAL.—The Secretary of Energy shall issue such regulations as are necessary to carry out the amendment made by subsection (a) [amending this section].

“(2) ADMINISTRATIVE PROCEDURE.—Regulations issued to carry out the amendment made by subsection (a) shall not be subject to—

“(A) section 523 of the Energy Policy and Conservation Act (42 U.S.C. 6393); or

“(B) section 501 of the Department of Energy Organization Act (42 U.S.C. 7191).”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6234, 6239, 6247 of this title.

§ 6242. Coordination with import quota system

No quantitative restriction on the importation of any petroleum product into the United States imposed by law shall apply to volumes of any such petroleum product imported into the United States for storage in the Reserve.

(Pub. L. 94-163, title I, §162, Dec. 22, 1975, 89 Stat. 889.)

§ 6243. Records and accounts

(a) Preparation and maintenance

The Secretary may require any person to prepare and maintain such records or accounts as the Secretary, by rule, determines necessary to carry out the purposes of this part.

(b) Audit of operations of storage facility

The Secretary may audit the operations of any storage facility in which any petroleum product is stored or required to be stored pursuant to the provisions of this part.

(c) Access to and inspection of records or accounts and storage facilities

The Secretary may require access to, and the right to inspect and examine, at reasonable times, (1) any records or accounts required to be prepared or maintained pursuant to subsection (a) of this section and (2) any storage facilities subject to audit by the United States under the authority of this part.

(Pub. L. 94-163, title I, §163, Dec. 22, 1975, 89 Stat. 889; Pub. L. 95-619, title VI, §691(b)(2), Nov. 9, 1978, 92 Stat. 3288.)

AMENDMENTS

1978—Pub. L. 95-619 substituted “Secretary” for “Administrator”, meaning Administrator of the Federal Energy Administration, wherever appearing.

§ 6244. Repealed. Pub. L. 106-469, title I, § 103(16), Nov. 9, 2000, 114 Stat. 2032

Section, Pub. L. 94-163, title I, §164, Dec. 22, 1975, 89 Stat. 889; Pub. L. 94-258, title I, §105(a), Apr. 5, 1976, 90 Stat. 305; Pub. L. 95-619, title VI, §691(b)(2), Nov. 9, 1978, 92 Stat. 3288, required a report on development of Naval Petroleum Reserve Number 4.

§ 6245. Annual report

The Secretary shall report annually to the President and the Congress on actions taken to implement this part. This report shall include—

(1) the status of the physical capacity of the Reserve and the type and quantity of petroleum products in the Reserve;

(2) an estimate of the schedule and cost to complete planned equipment upgrade or capital investment in the Reserve, including upgrades and investments carried out as part of operational maintenance or extension of life activities;

(3) an identification of any life-limiting conditions or operational problems at any Re-

serve facility, and proposed remedial actions including an estimate of the schedule and cost of implementing those remedial actions;

(4) a description of current withdrawal and distribution rates and capabilities, and an identification of any operational or other limitations on those rates and capabilities;

(5) a listing of petroleum product acquisitions made in the preceding year and planned in the following year, including quantity, price, and type of petroleum;

(6) a summary of the actions taken to develop, operate, and maintain the Reserve;

(7) a summary of the financial status and financial transactions of the Strategic Petroleum Reserve and Strategic Petroleum Reserve Petroleum Accounts for the year;

(8) a summary of expenses for the year, and the number of Federal and contractor employees;

(9) the status of contracts for development, operation, maintenance, distribution, and other activities related to the implementation of this part;

(10) a summary of foreign oil storage agreements and their implementation status;

(11) any recommendations for supplemental legislation or policy or operational changes the Secretary considers necessary or appropriate to implement this part.

(Pub. L. 94-163, title I, §165, Dec. 22, 1975, 89 Stat. 889; Pub. L. 95-619, title VI, §691(b)(2), Nov. 9, 1978, 92 Stat. 3288; Pub. L. 97-35, title X, §1035(a), Aug. 13, 1981, 95 Stat. 620; Pub. L. 99-509, title III, §3203, Oct. 21, 1986, 100 Stat. 1890; Pub. L. 104-66, title I, §1051(j), Dec. 21, 1995, 109 Stat. 717; Pub. L. 106-469, title I, §103(17), Nov. 9, 2000, 114 Stat. 2032.)

AMENDMENTS

2000—Pub. L. 106-469 amended section generally. Prior to amendment, section required the Secretary to report to the President and to Congress, not later than one year after the transmittal of the Strategic Petroleum Reserve Plan to the Congress and each year thereafter, on all actions taken to implement this part.

1995—Pub. L. 104-66 struck out subsec. (a) designation before “The Secretary shall”, and struck out subsec. (b) which directed Secretary to report to Congress on activities undertaken with respect to Strategic Petroleum Reserve under the amendments made by Strategic Petroleum Reserve Amendments Act of 1981.

1986—Subsec. (a)(1). Pub. L. 99-509 amended par. (1) generally, inserting “, including” in introductory text and adding subpars. (A) to (G).

1981—Pub. L. 97-35 designated existing provisions as subsec. (a) and added subsec. (b).

1978—Pub. L. 95-619 substituted “Secretary” for “Administrator”, meaning Administrator of the Federal Energy Administration, wherever appearing.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective Aug. 13, 1981, see section 1038 of Pub. L. 97-35, set out as a note under section 6240 of this title.

REPORTS TO CONGRESS ON PETROLEUM SUPPLY INTERRUPTIONS

Pub. L. 97-229, §6, Aug. 3, 1982, 96 Stat. 253, provided that:

“(a) IMPACT ANALYSIS.—(1) The Secretary of Energy shall analyze the impact on the domestic economy and on consumers in the United States of reliance on market allocation and pricing during any substantial re-

duction in the amount of petroleum products available to the United States. In making such analysis, the Secretary of Energy may consult with the Secretary of the Treasury, the Secretary of Agriculture, the Director of the Office of Management and Budget, and the heads of other appropriate Federal agencies. Such analysis shall—

“(A) examine the equity and efficiency of such reliance,

“(B) distinguish between the impacts of such reliance on various categories of business (including small business and agriculture) and on households of different income levels,

“(C) specify the nature and administration of monetary and fiscal policies that would be followed including emergency tax cuts, emergency block grants, and emergency supplements to income maintenance programs, and

“(D) describe the likely impact on the distribution of petroleum products of State and local laws and regulations (including emergency authorities) affecting the distribution of petroleum products.

Such analysis shall include projections of the effect of the petroleum supply reduction on the price of motor gasoline, home heating oil, and diesel fuel, and on Federal tax revenues, Federal royalty receipts, and State and local tax revenues.

“(2) Within one year after the date of the enactment of this Act [Aug. 3, 1982], the Secretary of Energy shall submit a report to the Congress and the President containing the analysis required by this subsection, including a detailed step-by-step description of the procedures by which the policies specified in paragraph (1)(C) would be accomplished in an emergency, along with such recommendations as the Secretary of Energy deems appropriate.

“(b) STRATEGIC PETROLEUM RESERVE DRAWDOWN AND DISTRIBUTION REPORT.—The President shall prepare and transmit to the Congress, at the time he transmits the drawdown plan pursuant to section 4(c) [section 4(c) of Pub. L. 97-229, set out as a note under 42 U.S.C. 6234], a report containing—

“(1) a description of the foreseeable situations (including selective and general embargoes, sabotage, war, act of God, or accident) which could result in a severe energy supply interruption or obligations of the United States arising under the international energy program necessitating distributions from the Strategic Petroleum Reserve, and

“(2) a description of the strategy or alternative strategies of distribution which could reasonably be used to respond to each situation described under paragraph (1), together with the theory and justification underlying each such strategy.

The description of each strategy under paragraph (2) shall include an explanation of the methods which would likely be used to determine the price and distribution of petroleum products from the Reserve in any such distribution, and an explanation of the disposition of revenues arising from sales of any such petroleum products under the strategy.

“(c) REGIONAL RESERVE REPORT.—The President or his delegate shall submit to the Congress no later than December 31, 1982, a report regarding the actions taken to comply with the provisions of section 157 of the Energy Policy and Conservation Act (42 U.S.C. 6237). Such report shall include an analysis of the economic benefits and costs of establishing Regional Petroleum Reserves, including—

“(1) an assessment of the ability to transport petroleum products to refiners, distributors, and end users within the regions specified in section 157(a) of such Act;

“(2) the comparative costs of creating and operating Regional Petroleum Reserves for such regions as compared to the costs of continuing current plans for the Strategic Petroleum Reserve; and

“(3) a list of potential sites for Regional Petroleum Reserves.

“(d) STRATEGIC ALCOHOL FUEL RESERVE REPORT.—The Secretary of Energy shall, in consultation with the

Secretary of Agriculture, prepare and transmit to the Congress no later than December 31, 1982, a study of the potential for establishing a Strategic Alcohol Fuel Reserve.

“(e) MEANING OF TERMS.—As used in this section, the terms ‘international energy program’, ‘petroleum product’, ‘Reserve’, ‘severe energy supply interruption’, and ‘Strategic Petroleum Reserve’ have the meanings given such terms in sections 3 and 152 of the Energy Policy and Conservation Act (42 U.S.C. 6202 and 6232).”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6241 of this title.

§ 6246. Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to implement this part, to remain available until expended.

(Pub. L. 94-163, title I, §166, Dec. 22, 1975, 89 Stat. 890; Pub. L. 95-70, §4, July 21, 1977, 91 Stat. 277; Pub. L. 97-35, title X, §1034(b), Aug. 13, 1981, 95 Stat. 619; Pub. L. 104-306, §1(1), Oct. 14, 1996, 110 Stat. 3810; Pub. L. 105-177, §1(1), June 1, 1998, 112 Stat. 105; Pub. L. 106-64, §1(1), Oct. 5, 1999, 113 Stat. 511; Pub. L. 106-469, title I, §103(18), Nov. 9, 2000, 114 Stat. 2033; Pub. L. 108-7, div. F, title III, §339(a)(1), Feb. 20, 2003, 117 Stat. 278.)

AMENDMENTS

2003—Pub. L. 108-7 amended section catchline and text generally. Prior to amendment, text read as follows: “There are authorized to be appropriated for fiscal year 2000 such sums as may be necessary to implement this part, to remain available only through March 31, 2000.”

2000—Pub. L. 106-469, which directed amendment of this section by striking out “for fiscal year 1997.”, could not be executed because the words “for fiscal year 1997.” did not appear.

1999—Pub. L. 106-64 amended section catchline and text generally. Prior to amendment, text read as follows: “There are authorized to be appropriated for fiscal year 1999 such sums as may be necessary to implement this part.”

1998—Pub. L. 105-177 substituted “1999” for “1997”.

1996—Pub. L. 104-306 reenacted section catchline without change and amended text generally. Prior to amendment, text authorized appropriations for the Early Storage Reserve Plan and the Strategic Petroleum Reserve Plan combined with specific amounts for fiscal years ending Sept. 30, 1978, and Sept. 30, 1982.

1981—Par. (4). Pub. L. 97-35 added par. (4).

1977—Par. (3). Pub. L. 95-70 added par. (3).

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective Aug. 13, 1981, see section 1038 of Pub. L. 97-35, set out as a note under section 6240 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6247b of this title.

§ 6247. SPR Petroleum Account

(a) Establishment

The Secretary of the Treasury shall establish in the Treasury of the United States an account to be known as the “SPR Petroleum Account” (hereinafter in this section referred to as the “Account”).

(b) Obligation of funds for acquisition, transportation, and injection of petroleum products into SPR

Amounts in the Account may be obligated by the Secretary of Energy for the acquisition,

transportation, and injection of petroleum products into the Strategic Petroleum Reserve, for test sales of petroleum products from the Reserve, and for the drawdown, sale, and delivery of petroleum products from the Reserve—

(1) Repealed. Pub. L. 106-469, title I, §103(19)(A)(ii), Nov. 9, 2000, 114 Stat. 2033;

(2) in the case of any fiscal year, subject to section 7270 of this title, in such aggregate amounts as may be appropriated in advance in appropriation Acts; and

(3) in the case of any fiscal year, notwithstanding section 7270 of this title, in an aggregate amount equal to the aggregate amount of the receipts to the United States from the sale of petroleum products in any drawdown and distribution of the Strategic Petroleum Reserve under section 6241 of this title, including a drawdown and distribution carried out under subsection (g) of such section, or from the sale of petroleum products under section 6240(f) of this title.

Funds available to the Secretary of Energy for obligation under this subsection may remain available without fiscal year limitation.

(c) Provision and deposit of funds

The Secretary of the Treasury shall provide and deposit into the Account such sums as may be necessary to meet obligations of the Secretary of Energy under subsection (b) of this section.

(d) Off-budgeting procedures

The Account, the deposits and withdrawals from the Account, and the transactions, receipts, obligations, outlays associated with such deposits and withdrawals (including petroleum product purchases and related transactions), and receipts to the United States from the sale of petroleum products in any drawdown and distribution of the Strategic Petroleum Reserve under section 6241 of this title, including a drawdown and distribution carried out under subsection (g) of such section, and from the sale of petroleum products under section 6240(f) of this title—

(1) shall not be included in the totals of the budget of the United States Government and shall be exempt from any general limitation imposed by statute on expenditures and net lending (budget outlays) of the United States; and

(2) shall not be deemed to be budget authority, spending authority, budget outlays, or Federal revenues for purposes of title III of Public Law 93-344, as amended [2 U.S.C. 631 et seq.].

(Pub. L. 94-163, title I, §167, as added Pub. L. 97-35, title X, §1034(a)(1), Aug. 13, 1981, 95 Stat. 619; amended Pub. L. 97-229, §4(b)(2)(A), Aug. 3, 1982, 96 Stat. 251; Pub. L. 99-58, title I, §103(b)(3), (4), July 2, 1985, 99 Stat. 104; Pub. L. 101-383, §5(b)(1), (2), Sept. 15, 1990, 104 Stat. 729; Pub. L. 102-486, title XIV, §1404(b)(1), Oct. 24, 1992, 106 Stat. 2995; Pub. L. 106-469, title I, §103(19), Nov. 9, 2000, 114 Stat. 2033.)

REFERENCES IN TEXT

Public Law 93-344, as amended, referred to in subsec. (d)(2), is Pub. L. 93-344, July 12, 1974, 88 Stat. 297, as

amended, known as the Congressional Budget and Impoundment Control Act of 1974. Title III of that Act is classified generally to subchapter I (§631 et seq.) of chapter 17A of Title 2, The Congress. For complete classification of this Act to the Code, see Short Title note set out under section 621 of Title 2 and Tables.

AMENDMENTS

2000—Subsec. (b). Pub. L. 106-469, §103(19)(A)(i), substituted “for test sales of petroleum products from the Reserve, and for the drawdown, sale,” for “and the drawdown” in introductory provisions.

Subsec. (b)(1). Pub. L. 106-469, §103(19)(A)(ii), struck out par. (1) which read as follows: “in the case of fiscal year 1982, in an aggregate amount, not to exceed \$3,900,000,000, as may be provided in advance in appropriation Acts;”.

Subsec. (b)(2). Pub. L. 106-469, §103(19)(A)(iii), struck out “after fiscal year 1982” after “any fiscal year”.

Subsec. (e). Pub. L. 106-469, §103(19)(B), struck out subsec. (e) which read as follows:

“(1) Except as provided in paragraph (2), nothing in this part shall be construed to limit the Account from being used to meet expenses relating to interim storage facilities for the storage of petroleum products for the Strategic Petroleum Reserve.

“(2) In any fiscal year, amounts in the Account may not be obligated for expenses relating to interim storage facilities in excess of 10 percent of the total amounts in the Account obligated in such fiscal year. If the amount obligated in any fiscal year for interim storage expenses is less than the amount of the 10-percent limit under the preceding sentence for that fiscal year, then the amount of the 10-percent limit applicable in the following fiscal year shall be increased by the amount by which the limit exceeded the amount obligated for such expenses.”

1992—Subsec. (d). Pub. L. 102-486 substituted “under subsection (g)” for “subsection (g)”.

1990—Subsec. (b)(3). Pub. L. 101-383, §5(b)(1), inserted before period at end “, or from the sale of petroleum products under section 6240(f) of this title”.

Subsec. (d). Pub. L. 101-383, §5(b)(2), inserted “, and from the sale of petroleum products under section 6240(f) of this title” after “subsection (g) of such section”.

1985—Subsec. (b)(3). Pub. L. 99-58, §103(b)(3), inserted “, including a drawdown and distribution carried out under subsection (g) of such section” after “section 6241 of this title”.

Subsec. (d). Pub. L. 99-58, §103(b)(4), inserted “, including a drawdown and distribution carried out under subsection (g) of such section” after “section 6241 of this title” in provisions preceding par. (1).

1982—Subsec. (e). Pub. L. 97-229 added subsec. (e).

EFFECTIVE DATE

Section effective Aug. 13, 1981, see section 1038 of Pub. L. 97-35, set out as an Effective Date of 1981 Amendment note under section 6240 of this title.

TRANSFER OF FUNDS TO SPR PETROLEUM ACCOUNT FOR DRAWDOWN AND SALE OPERATIONS

Pub. L. 106-113, div. B, §1000(a)(3) [title II], Nov. 29, 1999, 113 Stat. 1535, 1501A-180, provided in part: “That the Secretary of Energy hereafter may transfer to the SPR Petroleum Account such funds as may be necessary to carry out drawdown and sale operations of the Strategic Petroleum Reserve initiated under section 161 of the Energy Policy and Conservation Act (42 U.S.C. 6241) from any funds available to the Department of Energy under this or any other Act: *Provided further*, That all funds transferred pursuant to this authority must be replenished as promptly as possible from oil sale receipts pursuant to the drawdown and sale.”

ACQUISITION, TRANSPORTATION, AND INJECTION OF PETROLEUM PRODUCTS FOR SPR; APPLICABILITY OF SUBSEC. (d)

Section 1034(c) of Pub. L. 97-35 provided that: “The provisions of section 167(d) of such Act, as added by

subsection (a) of this section [subsec. (d) of this section], shall apply with respect to the outlays associated with unexpended balances of appropriations made available and obligated as of the end of fiscal year 1981 for the acquisition, transportation, and injection of petroleum products for the Strategic Petroleum Reserve to the same extent and manner as such provisions apply with respect to withdrawals from the SPR Petroleum Account.’’

§ 6247a. Use of underutilized facilities

(a) Authority

Notwithstanding any other provision of this subchapter, the Secretary, by lease or otherwise, for any term and under such other conditions as the Secretary considers necessary or appropriate, may store in underutilized Strategic Petroleum Reserve facilities petroleum product¹ owned by a foreign government or its representative. Petroleum products stored under this section are not part of the Strategic Petroleum Reserve and may be exported without license from the United States.

(b) Protection of facilities

All agreements entered into pursuant to subsection (a) of this section shall contain provisions providing for fees to fully compensate the United States for all related costs of storage and removals of petroleum products (including the proportionate cost of replacement facilities necessitated as a result of any withdrawals) incurred by the United States on behalf of the foreign government or its representative.

(c) Access to stored oil

The Secretary shall ensure that agreements to store petroleum products for foreign governments or their representatives do not impair the ability of the United States to withdraw, distribute, or sell petroleum products from the Strategic Petroleum Reserve in response to an energy emergency or to the obligations of the United States under the Agreement on an International Energy Program.

(d) Availability of funds

Funds collected through the leasing of Strategic Petroleum Reserve facilities authorized by subsection (a) of this section after September 30, 2007, shall be used by the Secretary of Energy without further appropriation for the purchase of petroleum products for the Strategic Petroleum Reserve.

(Pub. L. 94-163, title I, §168, as added Pub. L. 105-33, title IX, §9303(a), Aug. 5, 1997, 111 Stat. 676.)

§ 6247b. Purchase of oil from marginal wells

(a) In general

From amounts authorized under section 6246 of this title, in any case in which the price of oil decreases to an amount less than \$15.00 per barrel (an amount equal to the annual average well head price per barrel for all domestic crude oil), adjusted for inflation, the Secretary may purchase oil from a marginal well at \$15.00 per barrel, adjusted for inflation.

¹ So in original. Probably should be “products”.

(b) Definition of marginal well

The term “marginal well” has the same meaning as the definition of “stripper well property” in section 613A(c)(6)(E) of title 26.

(Pub. L. 94-163, title I, §169, as added Pub. L. 106-469, title III, §301(a), Nov. 9, 2000, 114 Stat. 2037.)

PART C—AUTHORITY TO CONTRACT FOR PETROLEUM PRODUCT NOT OWNED BY UNITED STATES

PRIOR PROVISIONS

A prior part C, consisting of section 6251 of this title, was redesignated part E of this subchapter.

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 6232 of this title.

§ 6249. Contracting for petroleum product and facilities

(a) In general

Subject to the other provisions of this part, the Secretary may contract—

(1) for storage, in otherwise unused Strategic Petroleum Reserve facilities, of petroleum product not owned by the United States; and

(2) for storage, in storage facilities other than those of the Reserve, of petroleum product either owned or not owned by the United States.

(b) Conditions

(1) Petroleum product stored pursuant to such a contract shall, until the expiration, termination, or other conclusion of the contract, be a part of the Reserve and subject to the Secretary’s authority under part B of this subchapter.

(2) The Secretary may enter into a contract for storage of petroleum product under subsection (a) of this section only if—

(A) the Secretary determines (i) that entering into one or more contracts under such subsection would achieve benefits comparable to the acquisition of an equivalent amount of petroleum product, or an equivalent volume of storage capacity, for the Reserve under part B of this subchapter, and (ii) that, because of budgetary constraints, the acquisition of an equivalent amount of petroleum product or volume of storage space for the Reserve cannot be accomplished under part B of this subchapter; and

(B) the Secretary notifies each House of the Congress of the determination and identifies in the notification the location, type, and ownership of storage and related facilities proposed to be included, or the volume, type, and ownership of petroleum products proposed to be stored, in the Reserve, and an estimate of the proposed benefits.

(3) A contract entered into under subsection (a) of this section shall not limit the discretion of the President or the Secretary to conduct a drawdown and sale of petroleum products from the Reserve.

(4) A contract entered into under subsection (a) of this section shall include a provision that the obligation of the United States to make payments under the contract in any fiscal year is subject to the availability of appropriations.

(c) Charge for storage

The Secretary may store petroleum product pursuant to a contract entered into under subsection (a)(1) of this section with or without charge or may pay a fee for its storage.

(d) Duration

Contracts entered into under subsection (a) of this section may be of such duration as the Secretary considers necessary or appropriate.

(e) Binding arbitration

The Secretary may agree to binding arbitration of disputes under any contract entered into under subsection (a) of this section.

(f) Availability of funds

The Secretary may utilize such funds as are available in the SPR Petroleum Account to carry out the activities described in subsection (a) of this section, and may obligate and expend such funds to carry out such activities, in advance of the receipt of petroleum products.

(Pub. L. 94-163, title I, §171, as added Pub. L. 101-383, §6(a)(4), Sept. 15, 1990, 104 Stat. 729; amended Pub. L. 102-486, title XIV, §1403, Oct. 24, 1992, 106 Stat. 2994; Pub. L. 106-469, title I, §103(20), Nov. 9, 2000, 114 Stat. 2033.)

PRIOR PROVISIONS

A prior section 171 of Pub. L. 94-163 was renumbered section 191 and is classified to section 6251 of this title.

AMENDMENTS

2000—Subsec. (b)(2)(B). Pub. L. 106-469, §103(20)(A), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “the Secretary notifies each House of the Congress of such determination and includes in such notification the same information required under section 6234(e) of this title with regard to storage and related facilities proposed to be included, or petroleum product proposed to be stored, in the Reserve.”

Subsec. (b)(3). Pub. L. 106-469, §103(20)(B), substituted “sale of petroleum products from” for “distribution of”.

1992—Subsec. (f). Pub. L. 102-486 added subsec. (f).

§ 6249a. Implementation**(a), (b) Repealed. Pub. L. 106-469, title I, § 103(21), Nov. 9, 2000, 114 Stat. 2033****(c) Legal status regarding other law**

Petroleum product and facilities contracted for under this part have the same status as petroleum product and facilities owned by the United States for all purposes associated with the exercise of the laws of any State or political subdivision thereof.

(d) Return of product

At such time as the petroleum product contracted for under this part is withdrawn from the Reserve upon the expiration, termination, or other conclusion of the contract, such petroleum product (or the equivalent quantity of petroleum product withdrawn from the Reserve pursuant to the contract) shall be deemed, for purposes of determining the extent to which such product is thereafter subject to any Federal, State, or local law or regulation, not to have left the place where such petroleum product was located at the time it was originally committed to a contract under this part.

(Pub. L. 94-163, title I, §172, as added Pub. L. 101-383, §6(a)(4), Sept. 15, 1990, 104 Stat. 730; amended Pub. L. 106-469, title I, §103(21), Nov. 9, 2000, 114 Stat. 2033.)

AMENDMENTS

2000—Subsecs. (a), (b). Pub. L. 106-469 struck out subsecs. (a) and (b) which read as follows:

“(a) AMENDMENT TO PLAN NOT REQUIRED.—An amendment of the Strategic Petroleum Reserve Plan is not required for any action taken under this part.

“(b) FILL RATE REQUIREMENT.—For purposes of section 6240(d)(1) of this title, any petroleum product stored in the Reserve under this part that is removed from the Reserve at the expiration, termination, or other conclusion of the agreement shall be considered to be part of the Reserve until the beginning of the fiscal year following the fiscal year in which the petroleum product was removed.”

§ 6249b. Repealed. Pub. L. 106-469, title I, § 103(22), Nov. 9, 2000, 114 Stat. 2033

Section, Pub. L. 94-163, title I, §173, as added Pub. L. 101-383, §6(a)(4), Sept. 15, 1990, 104 Stat. 731, related to contracts not requiring implementing legislation.

§ 6249c. Contracts for which implementing legislation is needed**(a) In general**

(1) In the case of contracts entered into under this part, and amendments to such contracts, for which implementing legislation will be needed, the Secretary may transmit an implementing bill to both Houses of the Congress.

(2) In the Senate, any such bill shall be considered in accordance with the provisions of this section.

(3) For purposes of this section—

(A) the term “implementing bill” means a bill introduced in either House of Congress with respect to one or more contracts or amendments to contracts submitted to the House of Representatives and the Senate under this section and which contains—

(i) a provision approving such contracts or amendments, or both; and

(ii) legislative provisions that are necessary or appropriate for the implementation of such contracts or amendments, or both; and

(B) the term “implementing revenue bill” means an implementing bill which contains one or more revenue measures by reason of which it must originate in the House of Representatives.

(b) Consultation

The Secretary shall consult, at the earliest possible time and on a continuing basis, with each committee of the House and the Senate that has jurisdiction over all matters expected to be affected by legislation needed to implement any such contract.

(c) Effective date

Each contract and each amendment to a contract for which an implementing bill is necessary may become effective only if—

(1) the Secretary, not less than 30 days before the day on which such contract is entered into, notifies the House of Representatives and the Senate of the intention to enter into such

a contract and promptly thereafter publishes notice of such intention in the Federal Register;

(2) after entering into the contract, the Secretary transmits a report to the House of Representatives and to the Senate containing a copy of the final text of such contract together with—

(A) the implementing bill, and an explanation of how the implementing bill changes or affects existing law; and

(B) a statement of the reasons why the contract serves the interests of the United States and why the implementing bill is required or appropriate to implement the contract; and

(3) the implementing bill is enacted into law.

(d) Rules of Senate

Subsections (e) through (h) of this section are enacted by the Congress—

(1) as an exercise of the rulemaking power of the Senate, and as such they are deemed a part of the rules of the Senate but applicable only with respect to the procedure to be followed in the Senate in the case of implementing bills and implementing revenue bills described in subsection (a) of this section, and they supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of the Senate to change the rules (so far as relating to the procedure of the Senate) at any time, in the same manner and to the same extent as in the case of any other rule of the Senate.

(e) Introduction and referral in Senate

(1) On the day on which an implementing bill is transmitted to the Senate under this section, the implementing bill shall be introduced (by request) in the Senate by the majority leader of the Senate, for himself or herself and the minority leader of the Senate, or by Members of the Senate designated by the majority leader and minority leader of the Senate.

(2) If the Senate is not in session on the day on which such an agreement is submitted, the implementing bill shall be introduced in the Senate, as provided in the¹ paragraph (1), on the first day thereafter on which the Senate is in session.

(3) Such bills shall be referred by the presiding officer of the Senate to the appropriate committee, or, in the case of a bill containing provisions within the jurisdiction of two or more committees, jointly to such committees for consideration of those provisions within their respective jurisdictions.

(f) Consideration of amendments to implementing bill prohibited in Senate

(1) No amendments to an implementing bill shall be in order in the Senate, and it shall not be in order in the Senate to consider an implementing bill that originated in the House if such bill passed the House containing any amendment to the introduced bill.

(2) No motion to suspend the application of this subsection shall be in order in the Senate;

nor shall it be in order in the Senate for the Presiding Officer to entertain a request to suspend the application of this subsection by unanimous consent.

(g) Discharge in Senate

(1) Except as provided in paragraph (3), if the committee or committees of the Senate to which an implementing bill has been referred have not reported it at the close of the 30th day after its introduction, such committee or committees shall be automatically discharged from further consideration of the bill, and it shall be placed on the appropriate calendar.

(2) A vote on final passage of the bill shall be taken in the Senate on or before the close of the 15th day after the bill is reported by the committee or committees to which it was referred or after such committee or committees have been discharged from further consideration of the bill.

(3) The provisions of paragraphs (1) and (2) shall not apply in the Senate to an implementing revenue bill. An implementing revenue bill received from the House shall be, subject to subsection (f)(1) of this section, referred to the appropriate committee or committees of the Senate. If such committee or committees have not reported such bill at the close of the 15th day after its receipt by the Senate, such committee or committees shall be automatically discharged from further consideration of such bill and it shall be placed on the calendar. A vote on final passage of such bill shall be taken in the Senate on or before the close of the 15th day after such bill is reported by the committee or committees of the Senate to which it was referred, or after such committee or committees have been discharged from further consideration of such bill.

(4) For purposes of this subsection, in computing a number of days in the Senate, there shall be excluded any day on which the Senate is not in session.

(h) Floor consideration in Senate

(1) A motion in the Senate to proceed to the consideration of an implementing bill shall be privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(2) Debate in the Senate on an implementing bill, and all debatable motions and appeals in connection therewith, shall be limited to not more than 20 hours. The time shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

(3) Debate in the Senate on any debatable motion or appeal in connection with an implementing bill shall be limited to not more than one hour to be equally divided between, and controlled by, the mover and the manager of the bill, except that in the event the manager of the bill is in favor of any such motion or appeal, the time in opposition thereto shall be controlled by the minority leader or his designee. Such leaders, or either of them, may, from time under their control on the passage of an implementing bill, allot additional time to any Senator during the consideration of any debatable motion or appeal.

¹ So in original. The word "the" probably should not appear.

(4) A motion in the Senate to further limit debate is not debatable. A motion to recommit an implementing bill is not in order.

(Pub. L. 94-163, title I, §174, as added Pub. L. 101-383, §6(a)(4), Sept. 15, 1990, 104 Stat. 731.)

PART D—NORTHEAST HOME HEATING OIL
RESERVE

PRIOR PROVISIONS

A prior part D, consisting of section 6251 of this title, was redesignated part E of this subchapter.

§ 6250. Establishment

(a) Notwithstanding any other provision of this chapter, the Secretary may establish, maintain, and operate in the Northeast a Northeast Home Heating Oil Reserve. A Reserve established under this part is not a component of the Strategic Petroleum Reserve established under part B of this subchapter. A Reserve established under this part shall contain no more than 2 million barrels of petroleum distillate.

(b) For the purposes of this part—

(1) the term “Northeast” means the States of Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, Pennsylvania, and New Jersey;

(2) the term “petroleum distillate” includes heating oil and diesel fuel; and

(3) the term “Reserve” means the Northeast Home Heating Oil Reserve established under this part.

(Pub. L. 94-163, title I, §181, as added Pub. L. 106-469, title II, §201(a)(3), Nov. 9, 2000, 114 Stat. 2034.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original “this Act”, meaning Pub. L. 94-163, Dec. 22, 1975, 89 Stat. 871, as amended, known as the Energy Policy and Conservation Act. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

PRIOR PROVISIONS

A prior section 181 of Pub. L. 94-163 was renumbered section 191 and is classified to section 6251 of this title.

§ 6250a. Authority

To the extent necessary or appropriate to carry out this part, the Secretary may—

(1) purchase, contract for, lease, or otherwise acquire, in whole or in part, storage and related facilities, and storage services;

(2) use, lease, maintain, sell, or otherwise dispose of storage and related facilities acquired under this part;

(3) acquire by purchase, exchange (including exchange of petroleum products from the Strategic Petroleum Reserve or received as royalty from Federal lands), lease, or otherwise, petroleum distillate for storage in the Northeast Home Heating Oil Reserve;

(4) store petroleum distillate in facilities not owned by the United States; and

(5) sell, exchange, or otherwise dispose of petroleum distillate from the Reserve established under this part, including to maintain the quality or quantity of the petroleum distillate in the Reserve or to maintain the operational capability of the Reserve.

(Pub. L. 94-163, title I, §182, as added Pub. L. 106-469, title II, §201(a)(3), Nov. 9, 2000, 114 Stat. 2034.)

§ 6250b. Conditions for release; plan

(a) Finding

The Secretary may sell products from the Reserve only upon a finding by the President that there is a severe energy supply interruption. Such a finding may be made only if he determines that—

(1) a dislocation in the heating oil market has resulted from such interruption; or

(2) a circumstance, other than that described in paragraph (1), exists that constitutes a regional supply shortage of significant scope and duration and that action taken under this section would assist directly and significantly in reducing the adverse impact of such shortage.

(b) Definition

For purposes of this section a “dislocation in the heating oil market” shall be deemed to occur only when—

(1) The price differential between crude oil, as reflected in an industry daily publication such as “Platt’s Oilgram Price Report” or “Oil Daily” and No. 2 heating oil, as reported in the Energy Information Administration’s retail price data for the Northeast, increases by more than¹ 60 percent over its 5 year rolling average for the months of mid-October through March, and continues for 7 consecutive days; and

(2) The price differential continues to increase during the most recent week for which price information is available.

(c) Continuing evaluation

The Secretary shall conduct a continuing evaluation of the residential price data supplied by the Energy Information Administration for the Northeast and data on crude oil prices from published sources.

(d) Release of petroleum distillate

After consultation with the heating oil industry, the Secretary shall determine procedures governing the release of petroleum distillate from the Reserve. The procedures shall provide that—

(1) the Secretary may—

(A) sell petroleum distillate from the Reserve through a competitive process, or

(B) enter into exchange agreements for the petroleum distillate that results² in the Secretary receiving a greater volume of petroleum distillate as repayment than the volume provided to the acquirer;

(2) in all such sales or exchanges, the Secretary shall receive revenue or its equivalent in petroleum distillate that provides the Department with fair market value. At no time may the oil be sold or exchanged resulting in a loss of revenue or value to the United States; and

(3) the Secretary shall only sell or dispose of the oil in the Reserve to entities customarily

¹ So in original. Probably should be “than”.

² So in original. Probably should be “result”.

engaged in the sale and distribution of petroleum distillate.

(e) Plan

Within 45 days of November 9, 2000, the Secretary shall transmit to the President and, if the President approves, to the Congress a plan describing—

(1) the acquisition of storage and related facilities or storage services for the Reserve, including the potential use of storage facilities not currently in use;

(2) the acquisition of petroleum distillate for storage in the Reserve;

(3) the anticipated methods of disposition of petroleum distillate from the Reserve;

(4) the estimated costs of establishment, maintenance, and operation of the Reserve;

(5) efforts the Department will take to minimize any potential need for future drawdowns and ensure that distributors and importers are not discouraged from maintaining and increasing supplies to the Northeast; and

(6) actions to ensure quality of the petroleum distillate in the Reserve.

(Pub. L. 94-163, title I, §183, as added Pub. L. 106-469, title II, §201(a)(3), Nov. 9, 2000, 114 Stat. 2035.)

§ 6250c. Northeast Home Heating Oil Reserve Account

(a) Establishment

Upon a decision of the Secretary of Energy to establish a Reserve under this part, the Secretary of the Treasury shall establish in the Treasury of the United States an account known as the “Northeast Home Heating Oil Reserve Account” (referred to in this section as the “Account”).

(b) Deposits

the¹ Secretary of the Treasury shall deposit in the Account any amounts appropriated to the Account and any receipts from the sale, exchange, or other disposition of petroleum distillate from the Reserve.

(c) Obligation of amounts

The Secretary of Energy may obligate amounts in the Account to carry out activities under this part without the need for further appropriation, and amounts available to the Secretary of Energy for obligation under this section shall remain available without fiscal year limitation.

(Pub. L. 94-163, title I, §184, as added Pub. L. 106-469, title II, §201(a)(3), Nov. 9, 2000, 114 Stat. 2036.)

§ 6250d. Exemptions

An action taken under this part is not subject to the rulemaking requirements of section 6393 of this title, section 7191 of this title, or section 553 of title 5.

(Pub. L. 94-163, title I, §185, as added Pub. L. 106-469, title II, §201(a)(3), Nov. 9, 2000, 114 Stat. 2036.)

¹ So in original. Probably should be capitalized.

§ 6250e. Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to implement this part.

(Pub. L. 94-163, title I, §186, as added Pub. L. 106-469, title II, §201(a)(3), Nov. 9, 2000, 114 Stat. 2036; amended Pub. L. 108-7, div. F, title III, §339(a)(2), Feb. 20, 2003, 117 Stat. 278.)

AMENDMENTS

2003—Pub. L. 108-7 struck out “for fiscal years 2001, 2002, and 2003” after “appropriated”.

PART E—EXPIRATION

AMENDMENTS

2000—Pub. L. 106-469, title II, §201(a)(1), Nov. 9, 2000, 114 Stat. 2034, redesignated part D as E.

1990—Pub. L. 101-383, §6(a)(2), Sept. 15, 1990, 104 Stat. 729, redesignated part C as D.

§ 6251. Expiration

Except as otherwise provided in this subchapter, all authority under any provision of this subchapter and any rule, regulation, or order issued pursuant to such authority, shall expire at midnight, September 30, 2008, but such expiration shall not affect any action or pending proceedings, civil or criminal, not finally determined on such date, nor any action or proceeding based upon any act committed prior to midnight, September 30, 2008.

(Pub. L. 94-163, title I, §191, formerly §171, as added Pub. L. 99-58, title I, §101(a), July 2, 1985, 99 Stat. 102; amended Pub. L. 101-46, §1(1), June 30, 1989, 103 Stat. 132; Pub. L. 101-262, §2(b), Mar. 31, 1990, 104 Stat. 124; Pub. L. 101-360, §2(b), Aug. 10, 1990, 104 Stat. 421; renumbered §181 and amended Pub. L. 101-383, §§2(2), 6(a)(3), Sept. 15, 1990, 104 Stat. 727, 729; Pub. L. 103-406, title I, §102, Oct. 22, 1994, 108 Stat. 4209; Pub. L. 104-306, §1(2), Oct. 14, 1996, 110 Stat. 3810; Pub. L. 105-177, §1(2), June 1, 1998, 112 Stat. 105; Pub. L. 106-64, §1(2), Oct. 5, 1999, 113 Stat. 511; renumbered §191 and amended Pub. L. 106-469, title I, §103(23), title II, §201(a)(2), Nov. 9, 2000, 114 Stat. 2033, 2034; Pub. L. 108-7, div. F, title III, §339(a)(3), Feb. 20, 2003, 117 Stat. 278.)

CODIFICATION

Words “(other than a provision of such title amending another law)” appearing in the original in this section, have been omitted as unnecessary. Such title meant title I of Pub. L. 94-163, which is classified to this subchapter. The provisions of such title that amended other laws are not classified to this subchapter.

AMENDMENTS

2003—Pub. L. 108-7 substituted “September 30, 2008” for “September 30, 2003” in two places.

2000—Pub. L. 106-469, §103(23), substituted “September 30, 2003” for “March 31, 2000” in two places.

1999—Pub. L. 106-64 substituted “March 31, 2000” for “September 30, 1999” in two places.

1998—Pub. L. 105-177 substituted “1999” for “1997” in two places.

1996—Pub. L. 104-306 substituted “September 30, 1997” for “June 30, 1996” in two places.

1994—Pub. L. 103-406 substituted “June 30, 1996” for “September 30, 1994” in two places.

1990—Pub. L. 101-383, §2(2), substituted “September 30, 1994” for “September 15, 1990” in two places.

Pub. L. 101-360 substituted "September 15, 1990" for "August 15, 1990" in two places.

Pub. L. 101-262 substituted "August 15, 1990" for "April 1, 1990" in two places.

1989—Pub. L. 101-46 substituted "April 1, 1990" for "June 30, 1989" in two places.

SUBCHAPTER II—STANDBY ENERGY AUTHORITIES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 6391, 6393, 6394, 6396 of this title.

PART A—GENERAL EMERGENCY AUTHORITIES

§§ 6261 to 6264. Repealed. Pub. L. 106-469, title I, § 104(1), Nov. 9, 2000, 114 Stat. 2033

Section 6261, Pub. L. 94-163, title II, § 201, Dec. 22, 1975, 89 Stat. 890; Pub. L. 96-102, title I, §§103(b)(1), (c)(1), 105(a)(1)-(3), (5), Nov. 5, 1979, 93 Stat. 751, 755, 756; H. Res. 549, Mar. 25, 1980, required the President to transmit to Congress energy conservation contingency plans and rationing contingency plans and provided requirements for plans to become effective and for amendment, approval, and implementation of plans.

Section 6262, Pub. L. 94-163, title II, § 202, Dec. 22, 1975, 89 Stat. 892; Pub. L. 96-102, title II, § 231, Nov. 5, 1979, 93 Stat. 767, provided requirements for energy conservation contingency plans.

Section 6263, Pub. L. 94-163, title II, § 203, Dec. 22, 1975, 89 Stat. 892; Pub. L. 96-102, title I, §§103(a), (c)(2), 104, 105(b)(1)-(5), Nov. 5, 1979, 93 Stat. 751, 755, 756, provided requirements for rationing contingency plan, and in subsec. (f) provided that all authority to carry out a plan would expire on same date as authority to issue and enforce rules and orders under the Emergency Petroleum Allocation Act of 1973, 15 U.S.C. 751 et seq.

Section 6264, Pub. L. 94-163, title II, § 204, as added Pub. L. 99-58, title I, §104(b), July 2, 1985, 99 Stat. 104, provided that except as provided in section 6263(f) of this title, authority to carry out the provisions of sections 6261 to 6264 of this title and any rule, regulation, or order issued pursuant to such sections expired at midnight, June 30, 1985.

PART B—AUTHORITIES WITH RESPECT TO INTERNATIONAL ENERGY PROGRAM

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in title 30 section 185.

§ 6271. International oil allocations

(a) Authority of President to prescribe rules for implementation of obligations of United States relating to international allocation of petroleum products; amounts of allocation and prices; petroleum products subject to rule; term of rule

The President may, by rule, require that persons engaged in producing, transporting, refining, distributing, or storing petroleum products, take such action as he determines to be necessary for implementation of the obligations of the United States under chapters III and IV of the international energy program insofar as such obligations relate to the international allocation of petroleum products. Allocation under such rule shall be in such amounts and at such prices as are specified in (or determined in a manner prescribed by) such rule. Such rule may apply to any petroleum product owned or controlled by any person described in the first sentence of this subsection who is subject to the jurisdiction of the United States, including any

petroleum product destined, directly or indirectly, for import into the United States or any foreign country, or produced in the United States. Subject to subsection (b)(2) of this section, such a rule shall remain in effect until amended or rescinded by the President.

(b) Prerequisites to rule taking effect; time rule may be put into effect or remain in effect

(1) No rule under subsection (a) of this section may take effect unless the President—

(A) has transmitted such rule to the Congress;

(B) has found that putting such rule into effect is required in order to fulfill obligations of the United States under the international energy program; and

(C) has transmitted such finding to the Congress, together with a statement of the effective date and manner for exercise of such rule.

(2) No rule under subsection (b) of this section may be put into effect or remain in effect after the expiration of 12 months after the date such rule was transmitted to Congress under paragraph (1)(A).

(c) Consistency of rule with attainment of objectives specified in section 753(b)(1)¹ of title 15; limitation on authority of officers or agencies of United States

(1) Any rule under this section shall be consistent with the attainment, to the maximum extent practicable, of the objectives specified in section 753(b)(1)¹ of title 15.

(2) No officer or agency of the United States shall have any authority, other than authority under this section, to require that petroleum products be allocated to other countries for the purpose of implementation of the obligations of the United States under the international energy program.

(d) Nonapplicability of export restrictions under other laws

Neither section 6212 of this title nor section 185(u) of title 30 shall preclude the allocation and export, to other countries in accordance with this section, of petroleum products produced in the United States.

(e) Prerequisites for effectiveness of rule

No rule under this section may be put into effect unless—

(1) an international energy supply emergency, as defined in the first sentence of section 6272(k)(1) of this title, is in effect; and

(2) the allocation of available oil referred to in chapter III of the international energy program has been activated pursuant to chapter IV of such program.

(Pub. L. 94-163, title II, § 251, Dec. 22, 1975, 89 Stat. 894; Pub. L. 97-229, § 2(b)(1), Aug. 3, 1982, 96 Stat. 248; Pub. L. 105-177, § 1(3), June 1, 1998, 112 Stat. 105.)

REFERENCES IN TEXT

Section 753 of title 15, referred to in subsec. (c), was omitted from the Code pursuant to section 760g of Title 15, Commerce and Trade, which provided for the expiration of the President's authority under that section on Sept. 30, 1981.

¹ See References in Text note below.

AMENDMENTS

1998—Subsec. (e)(1), Pub. L. 105-177 substituted reference to section 6272(k)(1) for reference to section 6272(l)(1).

1982—Subsec. (e), Pub. L. 97-229 added subsec. (e).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6395 of this title.

§ 6272. International voluntary agreements**(a) Exclusiveness of section's requirements**

Effective 90 days after December 22, 1975, the requirements of this section shall be the sole procedures applicable to—

(1) the development or carrying out of voluntary agreements and plans of action to implement the international emergency response provisions, and

(2) the availability of immunity from the antitrust laws with respect to the development or carrying out of such voluntary agreements and plans of action.

(b) Prescription by Secretary of standards and procedures for developing and carrying out voluntary agreements and plans of action

The Secretary, with the approval of the Attorney General, after each of them has consulted with the Federal Trade Commission and the Secretary of State, shall prescribe, by rule, standards and procedures by which persons engaged in the business of producing, transporting, refining, distributing, or storing petroleum products may develop and carry out voluntary agreements, and plans of action, which are required to implement the international emergency response provisions.

(c) Requirements for standards and procedures

The standards and procedures prescribed under subsection (b) of this section shall include the following requirements:

(1)(A)(i) Except as provided in clause (ii) or (iii) of this subparagraph, meetings held to develop or carry out a voluntary agreement or plan of action under this subsection shall permit attendance by representatives of committees of Congress and interested persons, including all interested segments of the petroleum industry, consumers, and the public; shall be preceded by timely and adequate notice with identification of the agenda of such meeting to the Attorney General, the Federal Trade Commission, committees of Congress, and (except during an international energy supply emergency with respect to meetings to carry out a voluntary agreement or to develop or carry out a plan of action) the public; and shall be initiated and chaired by a regular full-time Federal employee.

(ii) Meetings of bodies created by the International Energy Agency established by the international energy program need not be open to interested persons and need not be initiated and chaired by a regular full-time Federal employee.

(iii) The President, in consultation with the Secretary, the Secretary of State, and the Attorney General, may determine that a meeting held to carry out a voluntary agreement or to develop or carry out a plan of action shall not

be open to interested persons or that attendance by interested persons may be limited, if the President finds that a wider disclosure would be detrimental to the foreign policy interests of the United States.

(B) No meetings may be held to develop or carry out a voluntary agreement or plan of action under this section unless a regular full-time Federal employee is present.

(2) Interested persons permitted to attend such a meeting shall be afforded an opportunity to present, in writing and orally, data, views, and arguments at such meetings, subject to any reasonable limitations with respect to the manner of presentation of data, views, and arguments as the Secretary may impose.

(3) A full and complete record, and where practicable a verbatim transcript, shall be kept of any meeting held, and a full and complete record shall be kept of any communication (other than in a meeting) made, between or among participants or potential participants, to develop, or carry out a voluntary agreement or a plan of action under this section. Such record or transcript shall be deposited, together with any agreement resulting therefrom, with the Secretary, and shall be available to the Attorney General and the Federal Trade Commission. Such records or transcripts shall be available for public inspection and copying in accordance with section 552 of title 5; except that (A) matter may not be withheld from disclosure under section 552(b) of such title on grounds other than the grounds specified in section 552(b)(1), (b)(3), or so much of (b)(4) as relates to trade secrets; and (B) in the exercise of authority under section 552(b)(1), the President shall consult with the Secretary of State, the Secretary, and the Attorney General with respect to questions relating to the foreign policy interests of the United States.

(4) No provision of this section may be exercised so as to prevent representatives of committees of Congress from attending meetings to which this section applies, or from having access to any transcripts, records, and agreements kept or made under this section. Such access to any transcript that is required to be kept for any meeting shall be provided as soon as practicable (but not later than 14 days) after that meeting.

(d) Participation of Attorney General and Federal Trade Commission in development and carrying out of voluntary agreements and plans of action

(1) The Attorney General and the Federal Trade Commission shall participate from the beginning in the development, and when practicable, in the carrying out of voluntary agreements and plans of action authorized under this section. Each may propose any alternative which would avoid or overcome, to the greatest extent practicable, possible anticompetitive effects while achieving substantially the purposes of this part. A voluntary agreement or plan of action under this section may not be carried out unless approved by the Attorney General, after consultation with the Federal Trade Commis-

sion. Prior to the expiration of the period determined under paragraph (2), the Federal Trade Commission shall transmit to the Attorney General its views as to whether such an agreement or plan of action should be approved, and shall publish such views in the Federal Register. The Attorney General, in consultation with the Federal Trade Commission, the Secretary of State, and the Secretary, shall have the right to review, amend, modify, disapprove, or revoke, on his own motion or upon the request of the Federal Trade Commission or any interested person, any voluntary agreement or plan of action at any time, and, if revoked, thereby withdraw prospectively any immunity which may be conferred by subsection (f) or (j) of this section.

(2) Any voluntary agreement or plan of action entered into pursuant to this section shall be submitted in writing to the Attorney General and the Federal Trade Commission 20 days before being implemented; except that during an international energy supply emergency, the Secretary, subject to approval of the Attorney General, may reduce such 20-day period. Any such agreement or plan of action shall be available for public inspection and copying, except that a plan of action shall be so available only to the extent to which records or transcripts are so available as provided in the last sentence of subsection (c)(3) of this section. Any action taken pursuant to such voluntary agreement or plan of action shall be reported to the Attorney General and the Federal Trade Commission pursuant to such regulations as shall be prescribed under paragraphs (3) and (4) of subsection (e) of this section.

(3) A plan of action may not be approved by the Attorney General under this subsection unless such plan (A) describes the types of substantive actions which may be taken under the plan, and (B) is as specific in its description of proposed substantive actions as is reasonable in light of circumstances known at the time of approval.

(e) Monitoring of development and carrying out of voluntary agreements and plans of action by Attorney General and Federal Trade Commission

(1) The Attorney General and the Federal Trade Commission shall monitor the development and carrying out of voluntary agreements and plans of action authorized under this section in order to promote competition and to prevent anticompetitive practices and effects, while achieving substantially the purposes of this part.

(2) In addition to any requirement specified under subsections (b) and (c) of this section and in order to carry out the purposes of this section, the Attorney General, in consultation with the Federal Trade Commission and the Secretary, may promulgate rules concerning the maintenance of necessary and appropriate records related to the development and carrying out of voluntary agreements and plans of action authorized pursuant to this section.

(3) Persons developing or carrying out voluntary agreements and plans of action authorized pursuant to this section shall maintain such records as are required by rules promul-

gated under paragraph (2). The Attorney General and the Federal Trade Commission shall have access to and the right to copy such records at reasonable times and upon reasonable notice.

(4) The Attorney General and the Federal Trade Commission may each prescribe such rules as may be necessary or appropriate to carry out their respective responsibilities under this section. They may both utilize for such purposes and for purposes of enforcement any powers conferred upon the Federal Trade Commission or the Department of Justice, or both, by the antitrust laws or the Antitrust Civil Process Act [15 U.S.C. 1311 et seq.]; and wherever any such law refers to "the purposes of this Act" or like terms, the reference shall be understood to include this section.

(f) Defense to civil or criminal antitrust actions

(1) There shall be available as a defense to any civil or criminal action brought under the antitrust laws (or any similar State law) in respect to actions taken to develop or carry out a voluntary agreement or plan of action by persons engaged in the business of producing, transporting, refining, distributing, or storing petroleum products (provided that such actions were not taken for the purpose of injuring competition) that—

(A) such actions were taken—

(i) in the course of developing a voluntary agreement or plan of action pursuant to this section, or

(ii) to carry out a voluntary agreement or plan of action authorized and approved in accordance with this section, and

(B) such persons complied with the requirements of this section and the rules promulgated hereunder.

(2) Except in the case of actions taken to develop a voluntary agreement or plan of action, the defense provided in this subsection shall be available only if the person asserting the defense demonstrates that the actions were specified in, or within the reasonable contemplation of, an approved voluntary agreement or plan of action.

(3) Persons interposing the defense provided by this subsection shall have the burden of proof, except that the burden shall be on the person against whom the defense is asserted with respect to whether the actions were taken for the purpose of injuring competition.

(g) Acts or practices occurring prior to date of enactment of chapter or subsequent to its expiration or repeal

No provision of this section shall be construed as granting immunity for, or as limiting or in any way affecting any remedy or penalty which may result from any legal action or proceeding arising from, any act or practice which occurred prior to the date of enactment of this chapter or subsequent to its expiration or repeal.

(h) Applicability of Defense Production Act of 1950

Section 2158 of title 50, Appendix, shall not apply to any agreement or action undertaken for the purpose of developing or carrying out—

(1) the international energy program; or

(2) any allocation, price control, or similar program with respect to petroleum products under this chapter.

(i) Reports by Attorney General and Federal Trade Commission to Congress and President

The Attorney General and the Federal Trade Commission shall each submit to the Congress and to the President, at such intervals as are appropriate based on significant developments and issues, reports on the impact on competition and on small business of actions authorized by this section.

(j) Defense in breach of contract actions

In any action in any Federal or State court for breach of contract, there shall be available as a defense that the alleged breach of contract was caused predominantly by action taken during an international energy supply emergency to carry out a voluntary agreement or plan of action authorized and approved in accordance with this section.

(k) Definitions

As used in this section and section 6274 of this title:

(1) The term "international energy supply emergency" means any period (A) beginning on any date which the President determines allocation of petroleum products to nations participating in the international energy program is required by chapters III and IV of such program, and (B) ending on a date on which he determines that such allocation is no longer required. Such a period may not exceed 90 days, but the President may establish one or more additional 90-day periods by making anew the determination under subparagraph (A) of the preceding sentence. Any determination respecting the beginning or end of any such period shall be published in the Federal Register.

(2) The term "international emergency response provisions" means—

(A) the provisions of the international energy program which relate to international allocation of petroleum products and to the information system provided in the program; and

(B) the emergency response measures adopted by the Governing Board of the International Energy Agency (including the July 11, 1984, decision by the Governing Board on "Stocks and Supply Disruptions") for—

(i) the coordinated drawdown of stocks of petroleum products held or controlled by governments; and

(ii) complementary actions taken by governments during an existing or impending international oil supply disruption.

(l) Applicability of antitrust defense

The antitrust defense under subsection (f) of this section shall not extend to the international allocation of petroleum products unless allocation is required by chapters III and IV of the international energy program during an international energy supply emergency.

(m) Limitation on new plans of action

(1) With respect to any plan of action approved by the Attorney General after July 2, 1985—

(A) the defenses under subsection (f) and (j) of this section shall be applicable to Type 1 activities (as that term is defined in the International Energy Agency Emergency Management Manual, dated December 1982) only if—

(i) the Secretary has transmitted such plan of action to the Congress; and

(ii)(I) 90 calendar days of continuous session have elapsed since receipt by the Congress of such transmittal; or

(II) within 90 calendar days of continuous session after receipt of such transmittal, either House of the Congress has disapproved a joint resolution of disapproval pursuant to subsection (n) of this section; and

(B) such defenses shall not be applicable to Type 1 activities if there has been enacted, in accordance with subsection (n) of this section, a joint resolution of disapproval.

(2) The Secretary may withdraw the plan of action at any time prior to adoption of a joint resolution described in subsection (n)(3) of this section by either House of Congress.

(3) For the purpose of this subsection—

(A) continuity of session is broken only by an adjournment of the Congress sine die at the end of the second session of Congress; and

(B) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the calendar-day period involved.

(n) Joint resolution of disapproval

(1)(A) The application of defenses under subsections (f) and (j) of this section for Type 1 activities with respect to any plan of action transmitted to Congress as described in subsection (m)(1)(A)(i) of this section shall be disapproved if a joint resolution of disapproval has been enacted into law during the 90-day period of continuous session after which such transmission was received by the Congress. For the purpose of this subsection, the term "joint resolution" means only a joint resolution of either House of the Congress as described in paragraph (3).

(B) After receipt by the Congress of such plan of action, a joint resolution of disapproval may be introduced in either House of the Congress. Upon introduction in the Senate, the joint resolution shall be referred in the Senate immediately to the Committee on Energy and Natural Resources of the Senate.

(2) This subsection is enacted by the Congress—

(A) as an exercise of the rulemaking power of the Senate and as such it is deemed a part of the rules of the Senate, but applicable only with respect to the procedure to be followed in the Senate in the case of resolutions described by paragraph (3); it supersedes other rules only to the extent that is inconsistent therewith; and

(B) with full recognition of the constitutional right of the Senate to change the rules (so far as relating to the procedure of the Senate) at any time, in the same manner and to the same extent as in the case of any other rule of the Senate.

(3) The joint resolution disapproving the transmission under subsection (m) of this sec-

tion shall read as follows after the resolving clause: "That the Congress of the United States disapproves the availability of the defenses pursuant to section 252 (f) and (j) of the Energy Policy and Conservation Act with respect to Type 1 activities under the plan of action submitted to the Congress by the Secretary of Energy on . . .", the blank space therein being filled with the date and year of receipt by the Congress of the plan of action transmitted as described in subsection (m) of this section.

(4)(A) If the Committee on Energy and Natural Resources of the Senate has not reported a joint resolution referred to it under this subsection at the end of 20 calendar days of continuous session after its referral, it shall be in order to move either to discharge the committee from further consideration of such resolution or to discharge the committee from further consideration of any other joint resolution which has been referred to the committee with respect to such plan of action.

(B) A motion to discharge shall be highly privileged (except that it may not be made after the Committee on Energy and Natural Resources has reported a joint resolution with respect to the plan of action), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the joint resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(C) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other joint resolution with respect to the same transmission.

(5)(A) When the Committee on Energy and Natural Resources of the Senate has reported or has been discharged from further consideration of a joint resolution, it shall be in order at any time thereafter within the 90-day period following receipt by the Congress of the plan of action (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of such joint resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider a vote by which the motion was agreed to or disagreed to.

(B) Debate on the joint resolution shall be limited to not more than 10 hours and final action on the joint resolution shall occur immediately following conclusion of such debate. A motion further to limit debate shall not be debatable. A motion to recommit such a joint resolution shall not be in order, and it shall not be in order to move to reconsider the vote by which such a joint resolution was agreed to or disagreed to.

(6)(A) Motions to postpone made with respect to the discharge from committee or consideration of a joint resolution, shall be decided without debate.

(B) Appeals from the decision of the Chair relating to the application of rules of the Senate to the procedures relating to a joint resolution shall be decided without debate.

(Pub. L. 94-163, title II, §252, Dec. 22, 1975, 89 Stat. 894; Pub. L. 95-619, title VI, §691(b)(2), Nov.

9, 1978, 92 Stat. 3288; Pub. L. 96-30, June 30, 1979, 93 Stat. 80; Pub. L. 96-94, Oct. 31, 1979, 93 Stat. 720; Pub. L. 96-133, §§1, 2, Nov. 30, 1979, 93 Stat. 1053; Pub. L. 97-5, Mar. 13, 1981, 95 Stat. 7; Pub. L. 97-50, Sept. 30, 1981, 95 Stat. 957; Pub. L. 97-163, Apr. 1, 1982, 96 Stat. 24; Pub. L. 97-190, June 1, 1982, 96 Stat. 106; Pub. L. 97-217, July 19, 1982, 96 Stat. 196; Pub. L. 97-229, §2(a), (b)(2), Aug. 3, 1982, 96 Stat. 248; Pub. L. 98-239, Mar. 20, 1984, 98 Stat. 93; Pub. L. 99-58, title I, §§104(c)(2), (4), 105, July 2, 1985, 99 Stat. 105; Pub. L. 104-66, title I, §1091(g), Dec. 21, 1995, 109 Stat. 722; Pub. L. 105-177, §1(4), June 1, 1998, 112 Stat. 105.)

REFERENCES IN TEXT

The antitrust laws, referred to in subsecs. (a)(2), (e)(4), and (f)(1), are classified generally to chapter 1 (§1 et seq.) of Title 15, Commerce and Trade.

The Antitrust Civil Process Act, referred to in subsec. (e)(4), is Pub. L. 87-664, Sept. 19, 1962, 76 Stat. 548, as amended, which is classified generally to chapter 34 (§1311 et seq.) of Title 15. For complete classification of that Act to the Code, see Short Title note set out under section 1311 of Title 15 and Tables.

The date of enactment of this chapter, referred to in subsec. (g), means the date of enactment of Pub. L. 94-163, which was approved Dec. 22, 1975.

This chapter, referred to in subsec. (h)(2), was in the original "this Act", meaning Pub. L. 94-163, Dec. 22, 1975, 89 Stat. 871, as amended, known as the Energy Policy and Conservation Act. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

Section 252(f) and (j) of the Energy Policy and Conservation Act, referred to in subsection (n)(3), is classified to subsecs. (f) and (j) of this section.

AMENDMENTS

1998—Subsecs. (a)(1), (b). Pub. L. 105-177, §1(4)(A), substituted "international emergency response provisions" for "allocation and information provisions of the international energy program".

Subsec. (d)(3). Pub. L. 105-177, §1(4)(B), substituted "circumstances known at the time of approval" for "known circumstances".

Subsec. (e)(2). Pub. L. 105-177, §1(4)(C), substituted "may" for "shall".

Subsec. (f)(2). Pub. L. 105-177, §1(4)(D), inserted "voluntary agreement or" after "approved".

Subsec. (h). Pub. L. 105-177, §1(4)(E), amended subsec. (h) generally. Prior to amendment, subsec. (h) read as follows: "Upon the expiration of the 90-day period which begins on December 22, 1975, the provisions of sections 708 and 708A (other than 708A(o)) of the Defense Production Act of 1950 shall not apply to any agreement or action undertaken for the purpose of developing or carrying out (1) the international energy program, or (2) any allocation, price control, or similar program with respect to petroleum products under this chapter or under the Emergency Petroleum Allocation Act of 1973. For purposes of section 708(A)(o) of the Defense Production Act of 1950, the effective date of the provisions of this chapter which relate to international voluntary agreements to carry out the International Energy Program shall be deemed to be 90 days after December 22, 1975."

Subsec. (k)(2). Pub. L. 105-177, §1(4)(F), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "The term 'allocation and information provisions of the international energy program' means the provisions of the international energy program which relate to international allocation of petroleum products and to the information system provided in such program."

Subsec. (l). Pub. L. 105-177, §1(4)(G), amended subsec. (l) generally. Prior to amendment, subsec. (l) read as follows: "The authority granted by this section shall apply only to the development or carrying out of voluntary agreements and plans of action to implement

chapters III, IV, and V of the international energy program.”

1995—Subsec. (i). Pub. L. 104-66 substituted “, at such intervals as are appropriate based on significant developments and issues, reports” for “, at least once every 6 months, a report”.

1985—Subsec. (d)(1). Pub. L. 99-58, §104(c)(4), substituted “subsection (f) or (j)” for “subsection (f) or (k)”.

Subsecs. (j) to (l). Pub. L. 99-58, §104(c)(2), redesignated subsecs. (k) to (m) as (j) to (l). Former subsec. (j), which provided that the authority granted by this section would terminate at midnight, June 30, 1985, was struck out.

Subsecs. (m), (n). Pub. L. 99-58, §105, added subsecs. (m) and (n). Former subsec. (m) redesignated (l).

1984—Subsec. (j). Pub. L. 98-239 substituted “June 30, 1985” for “December 31, 1983”.

1982—Subsec. (j). Pub. L. 97-229, §2(a), substituted “at midnight December 31, 1983” for “August 1, 1982”.

Pub. L. 97-217 substituted “August 1, 1982” for “July 1, 1982”.

Pub. L. 97-190 substituted “July 1, 1982” for “June 1, 1982”.

Pub. L. 97-163 substituted “June 1, 1982” for “April 1, 1982”.

Subsec. (m). Pub. L. 97-229, §2(b)(2), added subsec. (m).

1981—Subsec. (j). Pub. L. 97-50 substituted “April 1, 1982” for “September 30, 1981”.

Pub. L. 97-5 substituted “September 30, 1981” for “March 15, 1981”.

1979—Subsec. (c)(4). Pub. L. 96-133, §2, inserted provisions respecting access to transcripts.

Subsec. (j). Pub. L. 96-133, §1, substituted “March 15, 1981” for “November 30, 1979”.

Pub. L. 96-94 substituted “November 30” for “October 31”.

Pub. L. 96-30 substituted “October 31, 1979” for “June 30, 1979”.

1978—Subsecs. (b), (c)(1)(A)(iii), (2), (3), (d)(1), (2), (e)(2). Pub. L. 95-619 substituted “Secretary” for “Administrator”, meaning Administrator of the Federal Energy Administration, wherever appearing.

STUDY AND REPORT ON ENERGY POLICY COOPERATION BETWEEN UNITED STATES AND OTHER WESTERN HEMISPHERE COUNTRIES

Pub. L. 100-373, §2, July 19, 1988, 102 Stat. 878, directed Secretary of Energy, in consultation with Secretary of State and Secretary of Commerce, to conduct a study to determine how best to enhance cooperation between United States and other countries of Western Hemisphere with respect to energy policy including stable supplies of, and stable prices for, energy, with Secretary of Energy to report results of such study to Congress, propose a comprehensive international energy policy for United States designed to enhance cooperation between United States and other countries of the Western Hemisphere, and recommend such action as Secretary deemed necessary to establish and implement such policy.

REPORT OF IMPLEMENTATION ACTIVITIES UNDER INTERNATIONAL VOLUNTARY AGREEMENTS

Section 3 of Pub. L. 96-133, directed Secretary of Energy, in consultation with Secretary of State, Attorney General, and Chairman of Federal Trade Commission, to prepare and submit to appropriate committees of Congress, a report concerning actions taken by them to carry out provisions of this section, which report was to examine and discuss extent to which all, or part, of any meeting held in accordance with subsec. (c) of this section to carry out a voluntary agreement or to develop or carry out a plan of action should be open to interested persons in furtherance of provisions of subsec. (c)(1)(A) of this section, policies and procedures followed by appropriate Federal agencies in reviewing and making public or withholding from the public all, or

part, of any transcript of any meeting held to develop or carry out a voluntary agreement or plan of action under this section and in permitting persons, other than citizens of United States, to review such transcripts prior to any public disclosure thereof, extent to which classification of all, or part, of such transcripts should be carried out by one agency, adequacy of actions by responsible Federal agencies in insuring that standards and procedures required by this section are fully implemented and enforced, including monitoring of program concerning any anticompetitive effects, and number of personnel, and amount of funds, assigned by each such agency to carry out such standards and procedures, actions taken, or to be taken, to improve reporting of energy supply data under international energy program and to reconcile such reporting with similar reporting that is conducted by Department of Energy, actions taken, or planned, to improve reporting required by subsec. (i) of this section, and other actions under subsec. (i) of this section and to transmit such report to such committees within 120 days after Nov. 30, 1979, and to make such report available to the public.

CLASSIFICATION OF CERTAIN INFORMATION AND MATERIAL

For provisions relating to the classification of certain information and material obtained from advisory bodies created to implement the International Energy Program, see Ex. Ord. No. 11932, eff. Aug. 4, 1976, 41 F.R. 32691, set out as a note under section 435 of Title 50, War and National Defense.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6271, 6395 of this title.

§ 6273. Advisory committees

(a) Authority of Secretary to establish; applicability of section 17 of Federal Energy Administration Act of 1974; chairman; inclusion of representatives of public; public meetings; notice of meeting to Attorney General and Federal Trade Commission; attendance and participation of their representatives

To achieve the purposes of the international energy program with respect to international allocation of petroleum products and the information system provided in such program, the Secretary may provide for the establishment of such advisory committees as he determines are necessary. In addition to the requirements specified in this section, such advisory committees shall be subject to the provisions of section 17 of the Federal Energy Administration Act of 1974 [15 U.S.C. 776] (whether or not such Act [15 U.S.C. 761 et seq.] or any of its provisions expire or terminate before June 30, 1985); shall be chaired by a regular full-time Federal employee; and shall include representatives of the public. The meetings of such committees shall be open to the public. The Attorney General and the Federal Trade Commission shall have adequate advance notice of any meeting and may have an official representative attend and participate in any such meeting.

(b) Transcript of meetings

A verbatim transcript shall be kept of such advisory committee meetings, and shall be deposited with the Attorney General and the Federal Trade Commission. Such transcript shall be made available for public inspection and copying in accordance with section 552 of title 5, ex-

cept that matter may not be withheld from disclosure under section 552(b) of such title on grounds other than the grounds specified in section 552(b)(1), (b)(3), and so much of (b)(4) as relates to trade secrets, or pursuant to a determination under subsection (c) of this section.

(c) Suspension of application of certain requirements by President

The President, after consultation with the Secretary of State, the Federal Trade Commission, the Attorney General, and the Secretary, may suspend the application of—

(1) sections 10 and 11 of the Federal Advisory Committee Act,

(2) subsections (b) and (c) of section 17¹ of the Federal Energy Administration Act of 1974,

(3) the requirement under subsection (a) of this section that meetings be open to the public, and

(4) the second sentence of subsection (b) of this section;

if the President determines with respect to a particular meeting, (A) that such suspension is essential to the developing or carrying out of the international energy program, (B) that such suspension relates solely to the purpose of international allocation of petroleum products and the information system provided in such program, and (C) that the meeting deals with matters described in section 552(b)(1) of title 5. Such determination by the President shall be in writing, shall set forth a detailed explanation of reasons justifying the granting of such suspension, and shall be published in the Federal Register at a reasonable time prior to the effective date of any such suspension.

(Pub. L. 94-163, title II, §253, Dec. 22, 1975, 89 Stat. 898; Pub. L. 95-619, title VI, §691(b)(2), Nov. 9, 1978, 92 Stat. 3288.)

REFERENCES IN TEXT

The Federal Energy Administration Act of 1974, referred to in subsec. (a), is Pub. L. 93-275, May 7, 1974, 88 Stat. 96, as amended, which is classified generally to chapter 16B (§761 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 761 of Title 15 and Tables.

Sections 10 and 11 of the Federal Advisory Committee Act, referred to in subsec. (c)(1), are sections 10 and 11 of Pub. L. 92-463, which are set out in the Appendix to Title 5, Government Organization and Employees.

Section 17 of the Federal Energy Administration Act of 1974, referred to in subsec. (c)(2), was classified to section 776 of Title 15, Commerce and Trade, prior to repeal by Pub. L. 105-28, §2(b)(2), July 18, 1997, 111 Stat. 245.

AMENDMENTS

1978—Subsecs. (a), (c). Pub. L. 95-619 substituted “Secretary” for “Administrator”, meaning Administrator of the Federal Energy Administration.

CLASSIFICATION OF CERTAIN INFORMATION AND MATERIAL

For provisions relating to the classification of certain information and material obtained from advisory bodies created to implement the International Energy Program, see Ex. Ord. No. 11932, eff. Aug. 4, 1976, 41 F.R.

¹ See References in Text note below.

32691, set out as a note under section 435 of Title 50, War and National Defense.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment unless in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the end of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6395 of this title.

§ 6274. Exchange of information with International Energy Agency

(a) Submission of information by Secretary to Secretary of State; transmittal to Agency; aggregation and reporting of geological or geophysical information, trade secrets, or commercial or financial information; availability of such information during international energy supply emergency; certification by President that Agency has adopted security measures; review of compliance of other nations with program; petition to President for changes in procedure

(1) Except as provided in subsections (b) and (c) of this section, the Secretary, after consultation with the Attorney General, may provide to the Secretary of State, and the Secretary of State may transmit to the International Energy Agency established by the international energy program, the information and data related to the energy industry certified by the Secretary of State as required to be submitted under the international energy program.

(2)(A) Except as provided in subparagraph (B) of this paragraph, any such information or data which is geological or geophysical information or a trade secret or commercial or financial information to which section 552(b)(9) or (b)(4) of title 5 applies shall, prior to such transmittal, be aggregated, accumulated, or otherwise reported in such manner as to avoid, to the fullest extent feasible, identification of any person from whom the United States obtained such information or data, and in the case of geological or geophysical information, a competitive disadvantage to such person.

(B)(i) Notwithstanding subparagraph (A) of this paragraph, during an international energy supply emergency, any such information or data with respect to the international allocation of petroleum products may be made available to the International Energy Agency is otherwise authorized to be made available to such Agency by paragraph (1) of this subsection.

(ii) Subparagraph (A) shall not apply to information described in subparagraph (A) (other than geological or geophysical information) if the President certifies, after opportunity for presentation of views by interested persons, that the International Energy Agency has adopted and is implementing security measures which assure that such information will not be disclosed by such Agency or its employees to any

person or foreign country without having been aggregated, accumulated, or otherwise reported in such manner as to avoid identification of any person from whom the United States obtained such information or data.

(3)(A) Within 90 days after December 22, 1975, and periodically thereafter, the President shall review the operation of this section and shall determine whether other signatory nations to the international energy program are transmitting information and data to the International Energy Agency in substantial compliance with such program. If the President determines that other nations are not so complying, paragraph (2)(B)(ii) shall not apply until he determines other nations are so complying.

(B) Any person who believes he has been or will be damaged by the transmittal of information or data pursuant to this section shall have the right to petition the President and to request changes in procedures which will protect such person from any competitive damage.

(b) Halting transmittal of information that would prejudice competition, violate antitrust laws, or be inconsistent with security interests

If the President determines that the transmittal of data or information pursuant to the authority of this section would prejudice competition, violate the antitrust laws, or be inconsistent with United States national security interests, he may require that such data or information not be transmitted.

(c) Information protected by statute

Information and data the confidentiality of which is protected by statute shall not be provided by the Secretary to the Secretary of State under subsection (a) of this section for transmittal to the International Energy Agency, unless the Secretary has obtained the specific concurrence of the head of any department or agency which has the primary statutory authority for the collection, gathering, or obtaining of such information and data. In making a determination to concur in providing such information and data, the head of any department or agency which has the primary statutory authority for the collection, gathering, or obtaining of such information and data shall consider the purposes for which such information and data were collected, gathered, and obtained, the confidentiality provisions of such statutory authority, and the international obligations of the United States under the international energy program with respect to the transmittal of such information and data to an international organization or foreign country.

(d) Continuation of authority to collect data under Energy Supply and Environmental Coordination Act and Federal Energy Administration Act of 1974

For the purposes of carrying out the obligations of the United States under the international energy program, the authority to collect data granted by sections 11 and 13 of the Energy Supply and Environmental Coordination Act [15 U.S.C. 796] and the Federal Energy Administration Act of 1974 [15 U.S.C. 772], respectively, shall continue in full force and effect without regard to the provisions of such Acts relating to their expiration.

(e) Limitation on disclosure contained in other laws

The authority under this section to transmit information shall be subject to any limitations on disclosure contained in other laws, except that such authority may be exercised without regard to—

(1) section 11(d) of the Energy Supply and Environmental Coordination Act of 1974 [15 U.S.C. 796(d)];

(2) section 14(b) of the Federal Energy Administration Act of 1974 [15 U.S.C. 773(b)];

(3) section 12 of the Export Administration Act of 1979 [50 App. U.S.C. 2411];

(4) section 9 of title 13;

(5) section 176a of title 15; and

(6) section 1905 of title 18.

(Pub. L. 94-163, title II, §254, Dec. 22, 1975, 89 Stat. 899; Pub. L. 95-619, title VI, §691(b)(2), Nov. 9, 1978, 92 Stat. 3288; Pub. L. 96-72, §22(b)(2), Sept. 29, 1979, 93 Stat. 535.)

REFERENCES IN TEXT

The antitrust laws, referred to in subsec. (b), are classified generally to chapter 1 (§1 et seq.) of Title 15, Commerce and Trade.

The provisions of such Acts relating to their expiration, referred to in subsec. (d), means section 11(g) of Pub. L. 93-319, June 22, 1974, 88 Stat. 246, the Energy Supply and Environmental Coordination Act, which enacted section 796(g) of Title 15, and section 30 of Pub. L. 93-275, May 7, 1974, 88 Stat. 97, the Federal Energy Administration Act of 1974, which is set out as a note under section 761 of Title 15.

AMENDMENTS

1979—Subsec. (e)(3). Pub. L. 96-72 substituted “12” for “7” and “1979” for “1969”.

1978—Subsecs. (a)(1), (c). Pub. L. 95-619 substituted “Secretary” for “Administrator”, meaning Administrator of the Federal Energy Administration, wherever appearing.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-72 effective upon the expiration of the Export Administration Act of 1969, which terminated on Sept. 30, 1979, or upon any prior date which the Congress by concurrent resolution or the President by proclamation designated, see section 2418 of Appendix to Title 50, War and National Defense.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6272, 6395 of this title.

§ 6275. Relationship between standby emergency authorities and international energy program

The purpose of the Congress in enacting this subchapter is to provide standby energy emergency authority to deal with energy shortage conditions and to minimize economic dislocations and adverse impacts on employment. While the authorities contained in this subchapter may, to the extent authorized by this subchapter, be used to carry out obligations incurred by the United States in connection with the International Energy Program, this subchapter shall not be construed in any way as advice and consent, ratification, endorsement, or other form of congressional approval of the specific terms of such program.

(Pub. L. 94-163, title II, §255, Dec. 22, 1975, 89 Stat. 900.)

§ 6276. Domestic renewable energy industry and related service industries

(a) Purpose

It is the purpose of this section to implement the responsibilities of the United States under chapter VII of the international energy program with respect to development of alternative energy by facilitating the overall abilities of the domestic renewable energy industry and related service industries to create new markets.

(b) Evaluation; report to Congress

- (1) Before the later of—
 (A) 6 months after July 18, 1984, and
 (B) May 31, 1985,

the Secretary of Commerce shall conduct an evaluation regarding the domestic renewable energy industry and related service industries and submit a report of his findings to the Congress.

(2) Such evaluation shall include—

(A) an assessment of the technical and commercial status of the domestic renewable energy industry and related service industries in domestic and foreign markets;

(B) an assessment of the Federal Government's activities affecting commerce in the domestic renewable energy industry and related service industries and in consolidating and coordinating such activities within the Federal Government; and

(C) an assessment of the aspects of the domestic renewable energy industry and related service industries in which improvements must be made to increase the international commercialization of such industry.

(c) Program for enhancing commerce in renewable energy technologies; funding

(1) On the basis of the evaluation under subsection (b) of this section, the Secretary of Commerce shall, consistent with existing law, establish a program for enhancing commerce in renewable energy technologies and consolidating or coordinating existing activities for such purpose.

(2) Such program shall provide for—

(A) the broadening of the participation by the domestic renewable energy industry and related service industries in such activities;

(B) the promotion of the domestic renewable energy industry and related service industries on a worldwide basis;

(C) the participation by the Federal Government and the domestic renewable energy industry and related service industries in international standard-setting activities; and

(D) the establishment of an information program under which—

(i) technical information about the domestic renewable energy industry and related service industries shall be provided to appropriate public and private officials engaged in commerce, and to potential end users, including other industry sectors in foreign countries such as health care, rural development, communications, and refrigeration, and others, and

(ii) marketing information about export and export financing opportunities shall be available to the domestic renewable energy industry and related service industries.

(3) Necessary funds required for carrying out such program shall be requested in connection with fiscal years beginning after September 30, 1984.

(d) Interagency working group

(1) Establishment

(A) There shall be established an interagency working group that, in consultation with the representative industry groups and relevant agency heads, shall make recommendations to coordinate the actions and programs of the Federal Government affecting exports of renewable energy and energy efficiency products and services. The interagency working group shall establish a program to inform foreign countries of the benefits of policies that would increase energy efficiency or would allow facilities that use renewable energy to compete effectively with producers of energy from nonrenewable sources.

(B) There shall be established an Interagency Working Subgroup on Renewable Energy and an Interagency Working Subgroup on Energy Efficiency that shall, in consultation with representative industry groups, nonprofit organizations, and relevant Federal agencies, make recommendations to coordinate the actions and programs of the Federal Government to promote the export of domestic renewable energy and energy efficiency products and services, respectively.

(C) The Secretary of Energy, or the Secretary's designee, shall chair the interagency working group and each subgroup established under this paragraph. The Administrator of the Agency for International Development and the Secretary of Commerce, or their designees, shall be members of both subgroups established under this paragraph. The Secretary shall provide staff for carrying out the functions of the interagency working group and each subgroup established under this paragraph. The heads of appropriate agencies may detail such personnel and may furnish such services to such group and subgroups, with or without reimbursement, as may be necessary to carry out their functions.

(2) Duties of the interagency working subgroups

(A) The interagency working subgroups established under paragraph (1)(B), through the member agencies of the interagency working group, shall promote the development and application in foreign countries of renewable energy and energy efficiency products and services, respectively, that—

(i) reduce dependence on unreliable sources of energy by encouraging the use of sustainable biomass, wind, small-scale hydroelectric, solar, geothermal, and other renewable energy and energy efficiency products and services; and

(ii) use hybrid fossil-renewable energy systems.

(B) In addition, the interagency working subgroups shall explore mechanisms for assisting domestic firms, particularly small businesses, with the export of their renewable energy and energy efficiency products and serv-

ices and with the identification of potential projects.

(3) Training and assistance

The interagency working subgroups shall encourage the member agencies of the interagency working group to—

(A) provide technical training and education for international development personnel and local users in their own country;

(B) provide financial and technical assistance to nonprofit institutions that support the marketing and export efforts of domestic companies that provide renewable energy and energy efficiency products and services;

(C) develop environmentally sustainable renewable energy and energy efficiency projects in foreign countries;

(D) provide technical assistance and training materials to loan officers of the World Bank, international lending institutions, commercial and energy attaches at embassies of the United States and other appropriate personnel in order to provide information about renewable energy and energy efficiency products and services to foreign governments or other potential project sponsors;

(E) support, through financial incentives, private sector efforts to commercialize and export renewable energy and energy efficiency products and services; and

(F) augment budgets for trade and development programs in order to support pre-feasibility or feasibility studies for projects that utilize renewable energy and energy efficiency products and services.

(4) Study of export promotion practices

The interagency working group shall conduct a study of subsidies, incentives, and policies that foreign countries use to promote exports of their own renewable energy and energy efficiency technologies and products. Such study shall also identify foreign trade barriers to the import of renewable energy and energy efficiency technologies and products produced in the United States. The interagency working group shall report to the appropriate committees of the House of Representatives and the Senate the results of such study within 18 months after October 24, 1992.

(e) Omitted

(f) Functions of interagency working group; plan to increase United States exports of renewable energy and energy efficiency technologies

(1) The interagency working group shall—

(A) establish, in consultation with representatives of affected industries, a plan to increase United States exports of renewable energy and energy efficiency technologies, and include in such plan recommended guidelines for agencies that are represented on the working group with respect to the financing of, or other actions they can take within their programs to promote, exports of such renewable energy and energy efficiency technologies;

(B) develop, in consultation with representatives of affected industries, recommended ad-

ministrative guidelines for Federal export loan programs to simplify application by firms seeking export assistance for renewable energy and energy efficiency technologies from agencies implementing such programs; and

(C) recommend specific renewable energy and energy efficiency technology markets for primary emphasis by Federal export loan programs, development programs, and private sector assistance programs.

(2) The interagency working group shall include a description of the plan established under paragraph (1)(A) in no later than the second report submitted under subsection (e)¹ of this section, and shall include in subsequent reports a description of any modifications to such plan and of the progress in implementing the plan.

(g) Repealed. Pub. L. 102-486, title XII, § 1207(c), Oct. 24, 1992, 106 Stat. 2963

(h) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to implement this part, to remain available until expended.

(Pub. L. 94-163, title II, §256, as added Pub. L. 98-370, §2, July 18, 1984, 98 Stat. 1211; amended Pub. L. 101-218, §7, Dec. 11, 1989, 103 Stat. 1867; Pub. L. 102-486, title XII, §§1207, 1208, Oct. 24, 1992, 106 Stat. 2962, 2964; Pub. L. 104-306, §1(3), Oct. 14, 1996, 110 Stat. 3810; Pub. L. 106-469, title I, §104(2), Nov. 9, 2000, 114 Stat. 2033; Pub. L. 108-7, div. F, title III, §339(b)(1), Feb. 20, 2003, 117 Stat. 278.)

REFERENCES IN TEXT

Subsection (e) of this section, referred to in subsec. (f)(2), was omitted from the Code.

CODIFICATION

Subsec. (e) of this section, which required the interagency working group established under subsec. (d) of this section to annually report to Congress, describing the actions of each agency represented by a member of the working group taken during the previous fiscal year to achieve the purposes of such working group and of this section and describing the exports of renewable energy technology that have occurred as a result of such agency actions, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, the 6th item on page 175 of House Document No. 103-7.

AMENDMENTS

2003—Subsec. (h). Pub. L. 108-7 amended subsec. (h) generally. Prior to amendment, subsec. (h) read as follows: “There are authorized to be appropriated to the Secretary for purposes of carrying out the programs under subsections (d) and (e) of this section \$10,000,000, to be divided equitably between the interagency working subgroups based on program requirements, for each of the fiscal years 1993 and 1994, and such sums as may be necessary for fiscal year 1995 to carry out the purposes of this subtitle. There are authorized to be appropriated for fiscal year 1997 such sums as may be necessary to carry out this part. There are authorized to be appropriated for fiscal years 2000 through 2003, such sums as may be necessary.”

2000—Subsec. (h). Pub. L. 106-469 inserted at end “There are authorized to be appropriated for fiscal years 2000 through 2003, such sums as may be necessary.”

¹ See References in Text note below.

1996—Subsec. (h). Pub. L. 104-306 inserted at end “There are authorized to be appropriated for fiscal year 1997 such sums as may be necessary to carry out this part.”

1992—Subsec. (d). Pub. L. 102-486, §1207(a), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows:

“(1) There shall be established an interagency working group which, in consultation with the representative industry groups and relevant agency heads, shall make recommendations to coordinate the actions and programs of the Federal Government affecting commerce in renewable energy products and related services. The Secretary of Energy shall be the chairman of such group. The heads of appropriate agencies may detail such personnel and may furnish such services to such working group, with or without reimbursement, as may be necessary to carry out its functions.

“(2) The interagency group shall establish a program to inform other countries of the benefits of policies that would allow small facilities which produce renewable energy to compete effectively with producers of energy from nonrenewable sources.”

Subsec. (d)(4). Pub. L. 102-486, §1208, added par. (4).

Subsec. (f)(1). Pub. L. 102-486, §1207(b), inserted “and energy efficiency” after “renewable energy” wherever appearing.

Subsec. (g). Pub. L. 102-486, §1207(c), struck out subsec. (g) which read as follows: “For purposes of this section, the term ‘renewable energy’ includes energy efficiency to the extent it is a part of a renewable energy system or technology.”

Subsec. (h). Pub. L. 102-486, §1207(d), amended subsec. (h) generally. Prior to amendment, subsec. (h) read as follows: “There are authorized to be appropriated to the Secretary for activities of the interagency working group established under subsection (d) of this section not to exceed—

“(1) \$3,000,000 for fiscal year 1991;

“(2) \$3,300,000 for fiscal year 1992; and

“(3) \$3,600,000 for fiscal year 1993.”

1989—Subsec. (c)(2)(D)(i). Pub. L. 101-218, §7(a)(1), inserted “and to potential end users, including other industry sectors in foreign countries such as health care, rural development, communications, and refrigeration, and others,” after “commerce.”

Subsec. (c)(2)(D)(ii). Pub. L. 101-218, §7(a)(2), substituted “export and export financing opportunities” for “export opportunities”.

Subsec. (d). Pub. L. 101-218, §7(b), designated existing provisions as par. (1) and added par. (2).

Subsecs. (e) to (h). Pub. L. 101-218, §7(c), added subsecs. (e) to (h).

EFFECTIVE DATE

Section 3 of Pub. L. 98-370 provided that: “The amendments made by this Act [enacting this section and a provision set out as a note under section 6201 of this title] shall take effect on the date of the enactment of this Act [July 18, 1984].”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13315, 13316, 13387 of this title.

PART C—ENERGY EMERGENCY PREPAREDNESS [REPEALED]

AMENDMENTS

2000—Pub. L. 106-496, title I, §104(3), Nov. 9, 2000, 114 Stat. 2033, struck out heading for part C.

§§ 6281, 6282. Repealed. Pub. L. 106-469, title I, § 104(3), Nov. 9, 2000, 114 Stat. 2033

Section 6281, Pub. L. 94-163, title II, §271, as added Pub. L. 97-229, §3(a), Aug. 3, 1982, 96 Stat. 248, related to congressional findings, policy, and purpose.

Section 6282, Pub. L. 94-163, title II, §272, as added Pub. L. 97-229, §3(a), Aug. 3, 1982, 96 Stat. 249, related to preparation for petroleum supply interruptions.

§ 6283. Summer fill and fuel budgeting programs

(a) Definitions

In this section:

(1) Budget contract

The term “budget contract” means a contract between a retailer and a consumer under which the heating expenses of the consumer are spread evenly over a period of months.

(2) Fixed-price contract

The term “fixed-price contract” means a contract between a retailer and a consumer under which the retailer charges the consumer a set price for propane, kerosene, or heating oil without regard to market price fluctuations.

(3) Price cap contract

The term “price cap contract” means a contract between a retailer and a consumer under which the retailer charges the consumer the market price for propane, kerosene, or heating oil, but the cost of the propane, kerosene, or heating oil may exceed a maximum amount stated in the contract.

(b) Assistance

At the request of the chief executive officer of a State, the Secretary shall provide information, technical assistance, and funding—

(1) to develop education and outreach programs to encourage consumers to fill their storage facilities for propane, kerosene, and heating oil during the summer months; and

(2) to promote the use of budget contracts, price cap contracts, fixed-price contracts, and other advantageous financial arrangements,

to avoid severe seasonal price increases for and supply shortages of those products.

(c) Preference

In implementing this section, the Secretary shall give preference to States that contribute public funds or leverage private funds to develop State summer fill and fuel budgeting programs.

(d) Authorization of appropriations

There are authorized to be appropriated to carry out this section—

(1) \$25,000,000 for fiscal year 2001; and

(2) such sums as are necessary for each fiscal year thereafter.

(e) Inapplicability of expiration provision

Section 6285 of this title does not apply to this section.

(Pub. L. 94-163, title II, §273, as added Pub. L. 106-469, title VI, §602(a), Nov. 9, 2000, 114 Stat. 2040.)

CODIFICATION

Pub. L. 106-469, title VI, §602(a), Nov. 9, 2000, 114 Stat. 2040, which directed amendment of part C of title II of the Energy Policy and Conservation Act by adding this section at the end, was executed by adding this section at the end of part B of title II of the Act, to reflect the probable intent of Congress and the repeal of part C by Pub. L. 106-469, title I, §104(3), Nov. 9, 2000, 114 Stat. 2033.

PART D—EXPIRATION

§ 6285. Expiration

Except as otherwise provided in this subchapter, all authority under any provision of

this subchapter and any rule, regulation, or order issued pursuant to such authority, shall expire at midnight, September 30, 2008, but such expiration shall not affect any action or pending proceedings, civil or criminal, not finally determined on such date, nor any action or proceeding based upon any act committed prior to midnight, September 30, 2008.

(Pub. L. 94-163, title II, §281, as added Pub. L. 99-58, title I, §104(a), July 2, 1985, 99 Stat. 104; amended Pub. L. 100-373, §1, July 19, 1988, 102 Stat. 878; Pub. L. 101-262, §2(c), Mar. 31, 1990, 104 Stat. 124; Pub. L. 101-360, §2(c), Aug. 10, 1990, 104 Stat. 421; Pub. L. 101-383, §2(3), Sept. 15, 1990, 104 Stat. 727; Pub. L. 103-406, title I, §103, Oct. 22, 1994, 108 Stat. 4209; Pub. L. 104-306, §1(4), Oct. 14, 1996, 110 Stat. 3810; Pub. L. 105-177, §1(5), June 1, 1998, 112 Stat. 106; Pub. L. 106-64, §1(3), Oct. 5, 1999, 113 Stat. 511; Pub. L. 106-469, title I, §104(4), Nov. 9, 2000, 114 Stat. 2033; Pub. L. 108-7, div. F, title III, §339(b)(2), Feb. 20, 2003, 117 Stat. 279.)

CODIFICATION

Words “(other than a provision of such title amending another law)” appearing in the original in this section, have been omitted as unnecessary. Such title meant title II of Pub. L. 94-163 which is classified in its entirety to this subchapter.

AMENDMENTS

- 2003—Pub. L. 108-7 substituted “September 30, 2008” for “September 30, 2003” in two places.
- 2000—Pub. L. 106-469 substituted “September 30, 2003” for “March 31, 2000” in two places.
- 1999—Pub. L. 106-64 substituted “March 31, 2000” for “September 30, 1999” in two places.
- 1998—Pub. L. 105-177 substituted “1999” for “1997” in two places.
- 1996—Pub. L. 104-306 substituted “September 30, 1997” for “June 30, 1996” in two places.
- 1994—Pub. L. 103-406 substituted “June 30, 1996” for “September 30, 1994” in two places.
- 1990—Pub. L. 101-383 substituted “September 30, 1994” for “September 15, 1990” in two places.
- Pub. L. 101-360 substituted “September 15, 1990” for “August 15, 1990” in two places.
- Pub. L. 101-262 substituted “August 15, 1990” for “June 30, 1990” in two places.
- 1988—Pub. L. 100-373 substituted “1990” for “1988” in two places.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6283 of this title.

SUBCHAPTER III—IMPROVING ENERGY EFFICIENCY

PART A—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS OTHER THAN AUTOMOBILES

CODIFICATION

This part was, in the original, designated part B and has been redesignated as part A for purposes of codification.

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 6316 of this title.

§ 6291. Definitions

For purposes of this part:

(1) The term “consumer product” means any article (other than an automobile, as defined in section 32901(a)(3) of title 49) of a type—

(A) which in operation consumes, or is designed to consume, energy or, with respect

to showerheads, faucets, water closets, and urinals, water; and

(B) which, to any significant extent, is distributed in commerce for personal use or consumption by individuals;

without regard to whether such article of such type is in fact distributed in commerce for personal use or consumption by an individual, except that such term includes fluorescent lamp ballasts, general service fluorescent lamps, incandescent reflector lamps, showerheads, faucets, water closets, and urinals distributed in commerce for personal or commercial use or consumption.

(2) The term “covered product” means a consumer product of a type specified in section 6292 of this title.

(3) The term “energy” means electricity, or fossil fuels. The Secretary may, by rule, include other fuels within the meaning of the term “energy” if he determines that such inclusion is necessary or appropriate to carry out the purposes of this chapter.

(4) The term “energy use” means the quantity of energy directly consumed by a consumer product at point of use, determined in accordance with test procedures under section 6293 of this title.

(5) The term “energy efficiency” means the ratio of the useful output of services from a consumer product to the energy use of such product, determined in accordance with test procedures under section 6293 of this title.

(6) The term “energy conservation standard” means—

(A) a performance standard which prescribes a minimum level of energy efficiency or a maximum quantity of energy use, or, in the case of showerheads, faucets, water closets, and urinals, water use, for a covered product, determined in accordance with test procedures prescribed under section 6293 of this title; or

(B) a design requirement for the products specified in paragraphs (6), (7), (8), (10), (15), (16), (17), and (19) of section 6292(a) of this title; and

includes any other requirements which the Secretary may prescribe under section 6295(r) of this title.

(7) The term “estimated annual operating cost” means the aggregate retail cost of the energy which is likely to be consumed annually, and in the case of showerheads, faucets, water closets, and urinals, the aggregate retail cost of water and wastewater treatment services likely to be incurred annually, in representative use of a consumer product, determined in accordance with section 6293 of this title.

(8) The term “measure of energy consumption” means energy use, energy efficiency, estimated annual operating cost, or other measure of energy consumption.

(9) The term “class of covered products” means a group of covered products, the functions or intended uses of which are similar (as determined by the Secretary).

(10) The term “manufacture” means to manufacture, produce, assemble or import.

(11) The terms "import" and "importation" mean to import into the customs territory of the United States.

(12) The term "manufacturer" means any person who manufactures a consumer product.

(13) The term "retailer" means a person to whom a consumer product is delivered or sold, if such delivery or sale is for purposes of sale or distribution in commerce to purchasers who buy such product for purposes other than resale.

(14) The term "distributor" means a person (other than a manufacturer or retailer) to whom a consumer product is delivered or sold for purposes of distribution in commerce.

(15)(A) The term "private labeler" means an owner of a brand or trademark on the label of a consumer product which bears a private label.

(B) A consumer product bears a private label if (i) such product (or its container) is labeled with the brand or trademark of a person other than a manufacturer of such product, (ii) the person with whose brand or trademark such product (or container) is labeled has authorized or caused such product to be so labeled, and (iii) the brand or trademark of a manufacturer of such product does not appear on such label.

(16) The terms "to distribute in commerce" and "distribution in commerce" mean to sell in commerce, to import, to introduce or deliver for introduction into commerce, or to hold for sale or distribution after introduction into commerce.

(17) The term "commerce" means trade, traffic, commerce, or transportation—

(A) between a place in a State and any place outside thereof, or

(B) which affects trade, traffic, commerce, or transportation described in subparagraph (A).

(18) The term "Commission" means the Federal Trade Commission.

(19) The term "AV" is the adjusted volume for refrigerators, refrigerator-freezers, and freezers, as defined in the applicable test procedure prescribed under section 6293 of this title.

(20) The term "annual fuel utilization efficiency" means the efficiency descriptor for furnaces and boilers, determined using test procedures prescribed under section 6293 of this title and based on the assumption that all—

(A) weatherized warm air furnaces or boilers are located out-of-doors;

(B) warm air furnaces which are not weatherized are located indoors and all combustion and ventilation air is admitted through grills or ducts from the outdoors and does not communicate with air in the conditioned space; and

(C) boilers which are not weatherized are located within the heated space.

(21) The term "central air conditioner" means a product, other than a packaged terminal air conditioner, which—

(A) is powered by single phase electric current;

(B) is air-cooled;

(C) is rated below 65,000 Btu per hour;

(D) is not contained within the same cabinet as a furnace the rated capacity of which is above 225,000 Btu per hour; and

(E) is a heat pump or a cooling only unit.

(22) The term "efficiency descriptor" means the ratio of the useful output to the total energy input, determined using the test procedures prescribed under section 6293 of this title and expressed for the following products in the following terms:

(A) For furnaces and direct heating equipment, annual fuel utilization efficiency.

(B) For room air conditioners, energy efficiency ratio.

(C) For central air conditioning and central air conditioning heat pumps, seasonal energy efficiency ratio.

(D) For water heaters, energy factor.

(E) For pool heaters, thermal efficiency.

(23) The term "furnace" means a product which utilizes only single-phase electric current, or single-phase electric current or DC current in conjunction with natural gas, propane, or home heating oil, and which—

(A) is designed to be the principal heating source for the living space of a residence;

(B) is not contained within the same cabinet with a central air conditioner whose rated cooling capacity is above 65,000 Btu per hour;

(C) is an electric central furnace, electric boiler, forced-air central furnace, gravity central furnace, or low pressure steam or hot water boiler; and

(D) has a heat input rate of less than 300,000 Btu per hour for electric boilers and low pressure steam or hot water boilers and less than 225,000 Btu per hour for forced-air central furnaces, gravity central furnaces, and electric central furnaces.

(24) The terms "heat pump" or "reverse cycle" mean a product, other than a packaged terminal heat pump, which—

(A) consists of one or more assemblies;

(B) is powered by single phase electric current;

(C) is rated below 65,000 Btu per hour;

(D) utilizes an indoor conditioning coil, compressors, and refrigerant-to-outdoor-air heat exchanger to provide air heating; and

(E) may also provide air cooling, dehumidifying, humidifying circulating, and air cleaning.

(25) The term "pool heater" means an appliance designed for heating nonpotable water contained at atmospheric pressure, including heating water in swimming pools, spas, hot tubs and similar applications.

(26) The term "thermal efficiency of pool heaters" means a measure of the heat in the water delivered at the heater outlet divided by the heat input of the pool heater as measured under test conditions specified in section 2.8.1 of the American National Standard for Gas Fired Pool Heaters, Z21.56-1986, or as may be prescribed by the Secretary.

(27) The term "water heater" means a product which utilizes oil, gas, or electricity to

heat potable water for use outside the heater upon demand, including—

(A) storage type units which heat and store water at a thermostatically controlled temperature, including gas storage water heaters with an input of 75,000 Btu per hour or less, oil storage water heaters with an input of 105,000 Btu per hour or less, and electric storage water heaters with an input of 12 kilowatts or less;

(B) instantaneous type units which heat water but contain no more than one gallon of water per 4,000 Btu per hour of input, including gas instantaneous water heaters with an input of 200,000 Btu per hour or less, oil instantaneous water heaters with an input of 210,000 Btu per hour or less, and electric instantaneous water heaters with an input of 12 kilowatts or less; and

(C) heat pump type units, with a maximum current rating of 24 amperes at a voltage no greater than 250 volts, which are products designed to transfer thermal energy from one temperature level to a higher temperature level for the purpose of heating water, including all ancillary equipment such as fans, storage tanks, pumps, or controls necessary for the device to perform its function.

(28) The term “weatherized warm air furnace or boiler” means a furnace or boiler designed for installation outdoors, approved for resistance to wind, rain, and snow, and supplied with its own venting system.

(29)(A) The term “fluorescent lamp ballast” means a device which is used to start and operate fluorescent lamps by providing a starting voltage and current and limiting the current during normal operation.

(B) The term “ANSI standard” means a standard developed by a committee accredited by the American National Standards Institute.

(C) The term “ballast efficacy factor” means the relative light output divided by the power input of a fluorescent lamp ballast, as measured under test conditions specified in ANSI standard C82.2-1984, or as may be prescribed by the Secretary.

(D)(i) The term “F40T12 lamp” means a nominal 40 watt tubular fluorescent lamp which is 48 inches in length and one-and-a-half inches in diameter, and conforms to ANSI standard C78.1-1978(R1984).

(ii) The term “F96T12 lamp” means a nominal 75 watt tubular fluorescent lamp which is 96 inches in length and one-and-a-half inches in diameter, and conforms to ANSI standard C78.3-1978(R1984).

(iii) The term “F96T12HO lamp” means a nominal 110 watt tubular fluorescent lamp which is 96 inches in length and one-and-a-half inches in diameter, and conforms to ANSI standard C78.1-1978(R1984).

(E) The term “input current” means the root-mean-square (RMS) current in amperes delivered to a fluorescent lamp ballast.

(F) The term “luminaire” means a complete lighting unit consisting of a fluorescent lamp or lamps, together with parts designed to distribute the light, to position and protect such lamps, and to connect such lamps to the power supply through the ballast.

(G) The term “ballast input voltage” means the rated input voltage of a fluorescent lamp ballast.

(H) The term “nominal lamp watts” means the wattage at which a fluorescent lamp is designed to operate.

(I) The term “power factor” means the power input divided by the product of ballast input voltage and input current of a fluorescent lamp ballast, as measured under test conditions specified in ANSI standard C82.2-1984, or as may be prescribed by the Secretary.

(J) The term “power input” means the power consumption in watts of a ballast and fluorescent lamp or lamps, as determined in accordance with the test procedures specified in ANSI standard C82.2-1984, or as may be prescribed by the Secretary.

(K) The term “relative light output” means the light output delivered through the use of a ballast divided by the light output delivered through the use of a reference ballast, expressed as a percent, as determined in accordance with the test procedures specified in ANSI standard C82.2-1984, or as may be prescribed by the Secretary.

(L) The term “residential building” means a structure or portion of a structure which provides facilities or shelter for human residency, except that such term does not include any multifamily residential structure of more than three stories above grade.

(30)(A) Except as provided in subparagraph (E), the term “fluorescent lamp” means a low pressure mercury electric-discharge source in which a fluorescing coating transforms some of the ultraviolet energy generated by the mercury discharge into light, including only the following:

(i) Any straight-shaped lamp (commonly referred to as 4-foot medium bi-pin lamps) with medium bi-pin bases of nominal overall length of 48 inches and rated wattage of 28 or more.

(ii) Any U-shaped lamp (commonly referred to as 2-foot U-shaped lamps) with medium bi-pin bases of nominal overall length between 22 and 25 inches and rated wattage of 28 or more.

(iii) Any rapid start lamp (commonly referred to as 8-foot high output lamps) with recessed double contact bases of nominal overall length of 96 inches and 0.800 nominal amperes, as defined in ANSI C78.1-1978 and related supplements.

(iv) Any instant start lamp (commonly referred to as 8-foot slimline lamps) with single pin bases of nominal overall length of 96 inches and rated wattage of 52 or more, as defined in ANSI C78.3-1978 (R1984) and related supplement ANSI C78.3a-1985.

(B) The term “general service fluorescent lamp” means fluorescent lamps which can be used to satisfy the majority of fluorescent applications, but does not include any lamp designed and marketed for the following nongeneral lighting applications:

(i) Fluorescent lamps designed to promote plant growth.

(ii) Fluorescent lamps specifically designed for cold temperature installations.

- (iii) Colored fluorescent lamps.
- (iv) Impact-resistant fluorescent lamps.
- (v) Reflectorized or aperture lamps.
- (vi) Fluorescent lamps designed for use in reprographic equipment.
- (vii) Lamps primarily designed to produce radiation in the ultra-violet region of the spectrum.
- (viii) Lamps with a color rendering index of 82 or greater.

(C) Except as provided in subparagraph (E), the term “incandescent lamp” means a lamp in which light is produced by a filament heated to incandescence by an electric current, including only the following:

(i) Any lamp (commonly referred to as lower wattage nonreflector general service lamps, including any tungsten-halogen lamp) that has a rated wattage between 30 and 199 watts, has an E26 medium screw base, has a rated voltage or voltage range that lies at least partially within 115 and 130 volts, and is not a reflector lamp.

(ii) Any lamp (commonly referred to as a reflector lamp) which is not colored or designed for rough or vibration service applications, that contains an inner reflective coating on the outer bulb to direct the light, an R, PAR, or similar bulb shapes (excluding ER or BR) with E26 medium screw bases, a rated voltage or voltage range that lies at least partially within 115 and 130 volts, a diameter which exceeds 2.75 inches, and is either—

(I) a low(er) wattage reflector lamp which has a rated wattage between 40 and 205 watts; or

(II) a high(er) wattage reflector lamp which has a rated wattage above 205 watts.

(iii) Any general service incandescent lamp (commonly referred to as a high- or higher-wattage lamp) that has a rated wattage above 199 watts (above 205 watts for a high wattage reflector lamp).

(D) The term “general service incandescent lamp” means any incandescent lamp (other than a miniature or photographic lamp) that has an E26 medium screw base, a rated voltage range at least partially within 115 and 130 volts, and which can be used to satisfy the majority of lighting applications, but does not include any lamps specifically designed for—

- (i) traffic signal, or street lighting service;
- (ii) airway, airport, aircraft, or other aviation service;
- (iii) marine or marine signal service;
- (iv) photo, projection, sound reproduction, or film viewer service;
- (v) stage, studio, or television service;
- (vi) mill, saw mill, or other industrial process service;
- (vii) mine service;
- (viii) headlight, locomotive, street railway, or other transportation service;
- (ix) heating service;
- (x) code beacon, marine signal, lighthouse, reprographic, or other communication service;
- (xi) medical or dental service;
- (xii) microscope, map, microfilm, or other specialized equipment service;

(xiii) swimming pool or other underwater service;

(xiv) decorative or showcase service;

(xv) producing colored light;

(xvi) shatter resistance which has an external protective coating; or

(xvii) appliance service.

(E) The terms “fluorescent lamp” and “incandescent lamp” do not include any lamp excluded by the Secretary, by rule, as a result of a determination that standards for such lamp would not result in significant energy savings because such lamp is designed for special applications or has special characteristics not available in reasonably substitutable lamp types.

(F) The term “incandescent reflector lamp” means a lamp described in subparagraph (C)(ii).

(G) The term “average lamp efficacy” means the lamp efficacy readings taken over a statistically significant period of manufacture with the readings averaged over that period.

(H) The term “base” means the portion of the lamp which connects with the socket as described in ANSI C81.61-1990.

(I) The term “bulb shape” means the shape of lamp, especially the glass bulb with designations for bulb shapes found in ANSI C79.1-1980 (R1984).

(J) The term “color rendering index” or “CRI” means the measure of the degree of color shift objects undergo when illuminated by a light source as compared with the color of those same objects when illuminated by a reference source of comparable color temperature.

(K) The term “correlated color temperature” means the absolute temperature of a blackbody whose chromaticity most nearly resembles that of the light source.

(L) The term “IES” means the Illuminating Engineering Society of North America.

(M) The term “lamp efficacy” means the lumen output of a lamp divided by its wattage, expressed in lumens per watt (LPW).

(N) The term “lamp type” means all lamps designated as having the same electrical and lighting characteristics and made by one manufacturer.

(O) The term “lamp wattage” means the total electrical power consumed by a lamp in watts, after the initial seasoning period referenced in the appropriate IES standard test procedure and including, for fluorescent, arc watts plus cathode watts.

(P) The terms “life” and “lifetime” mean length of operating time of a statistically large group of lamps between first use and failure of 50 percent of the group in accordance with test procedures described in the IES Lighting Handbook-Reference Volume.

(Q) The term “lumen output” means total luminous flux (power) of a lamp in lumens, as measured in accordance with applicable IES standards as determined by the Secretary.

(R) The term “tungsten-halogen lamp” means a gas-filled tungsten filament incandescent lamp containing a certain proportion of halogens in an inert gas.

(S) The term “medium base compact fluorescent lamp” means an integrally ballasted fluo-

rescent lamp with a medium screw base and a rated input voltage of 115 to 130 volts and which is designed as a direct replacement for a general service incandescent lamp.

(31)(A) The term “water use” means the quantity of water flowing through a showerhead, faucet, water closet, or urinal at point of use, determined in accordance with test procedures under section 6293 of this title.

(B) The term “ASME” means the American Society of Mechanical Engineers.

(C) The term “ANSI” means the American National Standards Institute.

(D) The term “showerhead” means any showerhead (including a handheld showerhead), except a safety shower showerhead.

(E) The term “faucet” means a lavatory faucet, kitchen faucet, metering faucet, or replacement aerator for a lavatory or kitchen faucet.

(F) The term “water closet” has the meaning given such term in ASME A112.19.2M-1990, except such term does not include fixtures designed for installation in prisons.

(G) The term “urinal” has the meaning given such term in ASME A112.19.2M-1990, except such term does not include fixtures designed for installation in prisons.

(H) The terms “blowout”, “flushometer tank”, “low consumption”, and “flushometer valve” have the meaning given such terms in ASME A112.19.2M-1990.

(Pub. L. 94-163, title III, §321, Dec. 22, 1975, 89 Stat. 917; Pub. L. 95-619, title VI, §691(b)(2), Nov. 9, 1978, 92 Stat. 3288; Pub. L. 100-12, §2, Mar. 17, 1987, 101 Stat. 103; Pub. L. 100-357, §2(a), June 28, 1988, 102 Stat. 671; Pub. L. 102-486, title I, §123(b), Oct. 24, 1992, 106 Stat. 2817; Pub. L. 105-388, §5(a)(2), Nov. 13, 1998, 112 Stat. 3478.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(3), was in the original “this Act”, meaning Pub. L. 94-163, Dec. 22, 1975, 89 Stat. 871, as amended, known as the Energy Policy and Conservation Act. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

AMENDMENTS

1998—Par. (1). Pub. L. 105-388 substituted “section 32901(a)(3) of title 49” for “section 501(1) of the Motor Vehicle Information and Cost Savings Act” and struck out second period at end.

1992—Pub. L. 102-486, §123(b)(1), in introductory provisions, struck out “(a)” before “For purposes”.

Par. (1). Pub. L. 102-486, §123(b)(2)(B), which directed amendment of par. (1)(B) by substituting “ballasts, general service fluorescent lamps, incandescent reflector lamps, showerheads, faucets, water closets, and urinals” for “ballasts”, was executed by making amendment in closing provisions of par. (1), to reflect the probable intent of Congress.

Par. (1)(A). Pub. L. 102-486, §123(b)(2)(A), inserted “or, with respect to showerheads, faucets, water closets, and urinals, water” after “energy”.

Par. (6). Pub. L. 102-486, §123(b)(3)(B)(ii), which directed amendment of par. (6)(B) by substituting “6295(r)” for “6295(o)”, was executed by making amendment in closing provisions of par. (6), to reflect the probable intent of Congress.

Par. (6)(A). Pub. L. 102-486, §123(b)(3)(A), inserted “, or, in the case of showerheads, faucets, water closets, and urinals, water use,” after “energy use”.

Par. (6)(B). Pub. L. 102-486, §123(b)(3)(B)(i), substituted “(15), (16), (17), and (19)” for “and (14)”.

Par. (7). Pub. L. 102-486, §123(b)(4), inserted “, and in the case of showerheads, faucets, water closets, and urinals, the aggregate retail cost of water and wastewater treatment services likely to be incurred annually,” after “to be consumed annually”.

Pars. (30), (31). Pub. L. 102-486, §123(b)(5), added pars. (30) and (31).

1988—Subsec. (a)(1). Pub. L. 100-357, §2(a)(2), inserted before period at end “, except that such term includes fluorescent lamp ballasts distributed in commerce for personal or commercial use or consumption.”

Subsec. (a)(6)(B). Pub. L. 100-357, §2(a)(3), substituted “(14)” for “(13)”.

Subsec. (a)(29). Pub. L. 100-357, §2(a)(1), added par. (29).

1987—Subsec. (a)(6). Pub. L. 100-12, §2(a), amended par. (6) generally. Prior to amendment, par. (6) read as follows: “The term ‘energy efficiency standard’ means a performance standard—

“(A) which prescribes a minimum level of energy efficiency for a covered product, determined in accordance with test procedures prescribed under section 6293 of this title, and

“(B) which includes any other requirements which the Secretary may prescribe under section 6295(c) of this title.”

Subsec. (a)(19) to (28). Pub. L. 100-12, §2(b), added pars. (19) to (28).

1978—Subsec. (a)(3), (6)(B), (9). Pub. L. 95-619 substituted “Secretary” for “Administrator”, meaning Administrator of the Federal Energy Administration, wherever appearing.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6311 of this title.

§ 6292. Coverage

(a) In general

The following consumer products, excluding those consumer products designed solely for use in recreational vehicles and other mobile equipment, are covered products:

(1) Refrigerators, refrigerator-freezers, and freezers which can be operated by alternating current electricity, excluding—

(A) any type designed to be used without doors; and

(B) any type which does not include a compressor and condenser unit as an integral part of the cabinet assembly.

(2) Room air conditioners.

(3) Central air conditioners and central air conditioning heat pumps.

(4) Water heaters.

(5) Furnaces.

(6) Dishwashers.

(7) Clothes washers.

(8) Clothes dryers.

(9) Direct heating equipment.

(10) Kitchen ranges and ovens.

(11) Pool heaters.

(12) Television sets.

(13) Fluorescent lamp ballasts.

(14) General service fluorescent lamps and incandescent reflector lamps.

(15) Showerheads, except safety shower showerheads.

(16) Faucets.

(17) Water closets.

(18) Urinals.

(19) Any other type of consumer product which the Secretary classifies as a covered product under subsection (b) of this section.

(b) Special classification of consumer product

(1) The Secretary may classify a type of consumer product as a covered product if he determines that—

(A) classifying products of such type as covered products is necessary or appropriate to carry out the purposes of this chapter, and

(B) average annual per-household energy use by products of such type is likely to exceed 100 kilowatt-hours (or its Btu equivalent) per year.

(2) For purposes of this subsection:

(A) The term “average annual per-household energy use with respect to a type of product” means the estimated aggregate annual energy use (in kilowatt-hours or the Btu equivalent) of consumer products of such type which are used by households in the United States, divided by the number of such households which use products of such type.

(B) The Btu equivalent of one kilowatt-hour is 3,412 British thermal units.

(C) The term “household” shall be defined under rules of the Secretary.

(Pub. L. 94-163, title III, §322, Dec. 22, 1975, 89 Stat. 918; Pub. L. 95-619, title VI, §691(b)(2), Nov. 9, 1978, 92 Stat. 3288; Pub. L. 100-12, §§3, 11(b)(1), Mar. 17, 1987, 101 Stat. 105, 125; Pub. L. 100-357, §2(b), June 28, 1988, 102 Stat. 672; Pub. L. 102-486, title I, §123(c), Oct. 24, 1992, 106 Stat. 2821; Pub. L. 105-388, §5(a)(3), Nov. 13, 1998, 112 Stat. 3478.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b)(1)(A), was in the original “this Act”, meaning Pub. L. 94-163, Dec. 22, 1975, 89 Stat. 871, as amended, known as the Energy Policy and Conservation Act. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

AMENDMENTS

1998—Subsec. (b)(2)(A). Pub. L. 105-388 inserted closing quotation marks after “type of product”.

1992—Subsec. (a)(14) to (19). Pub. L. 102-486 added pars. (14) to (18) and redesignated former par. (14) as (19).

1988—Subsec. (a)(13), (14). Pub. L. 100-357 added par. (13) and redesignated former par. (13) as (14).

1987—Subsec. (a). Pub. L. 100-12, §3, inserted heading and amended text generally. Prior to amendment, text read as follows: “A consumer product is a covered product if it is one of the following types (or is designed to perform a function which is the principal function of any of the following types):

“(1) Refrigerators and refrigerator-freezers.

“(2) Freezers.

“(3) Dishwashers.

“(4) Clothes dryers.

“(5) Water heaters.

“(6) Room air conditioners.

“(7) Home heating equipment, not including furnaces.

“(8) Television sets.

“(9) Kitchen ranges and ovens.

“(10) Clothes washers.

“(11) Humidifiers and dehumidifiers.

“(12) Central air conditioners.

“(13) Furnaces.

“(14) Any other type of consumer product which the Secretary classifies as a covered product under subsection (b) of this section.”

Subsec. (b). Pub. L. 100-12, §11(b)(1), inserted heading.

1978—Subsecs. (a)(14), (b)(1), (2)(C). Pub. L. 95-619 substituted “Secretary” for “Administrator”, meaning

Administrator of the Federal Energy Administration, wherever appearing.

ENERGY EFFICIENCY LABELING FOR WINDOWS AND WINDOW SYSTEMS

Section 121 of Pub. L. 102-486 provided that:

“(a) IN GENERAL.—(1) The Secretary shall, after consulting with the National Fenestration Rating Council, industry representatives, and other appropriate organizations, provide financial assistance to support a voluntary national window rating program that will develop energy ratings and labels for windows and window systems.

“(2) Such rating program shall include—

“(A) specifications for testing procedures and labels that will enable window buyers to make more informed purchasing decisions about the energy efficiency of windows and window systems; and

“(B) information (which may be disseminated through catalogs, trade publications, labels, or other mechanisms) that will allow window buyers to assess the energy consumption and potential cost savings of alternative window products.

“(3) Such rating program shall be developed by the National Fenestration Rating Council according to commonly accepted procedures for the development of national testing procedures and labeling programs.

“(b) MONITORING.—The Secretary shall monitor and evaluate the efforts of the National Fenestration Rating Council and, not later than one year after the date of the enactment of this Act [Oct. 24, 1992], make a determination as to whether the program developed by the Council is consistent with the objectives of subsection (a).

“(c) ALTERNATIVE SYSTEM.—(1) If the Secretary makes a determination under subsection (b) that a voluntary national window rating program consistent with the objectives of subsection (a) has not been developed, the Secretary shall, after consultation with the National Institute of Standards and Technology, develop, not later than two years after such determination, test procedures under section 323 of the Energy Policy and Conservation Act (42 U.S.C. 6293) for windows and window systems.

“(2) Not later than one year after the Secretary develops test procedures under paragraph (1), the Federal Trade Commission (hereafter in this section referred to as the ‘Commission’) shall prescribe labeling rules under section 324 of such Act (42 U.S.C. 6294) for those windows and window systems for which the Secretary has prescribed test procedures under paragraph (1) except that, with respect to any type of window or window system (or class thereof), the Secretary may determine that such labeling is not technologically feasible or economically justified or is not likely to assist consumers in making purchasing decisions.

“(3) For purposes of sections 323, 324, and 327 of such Act [42 U.S.C. 6293, 6294, 6297], each product for which the Secretary has established test procedures or labeling rules pursuant to this subsection shall be considered a new covered product under section 322 of such Act (42 U.S.C. 6292) to the extent necessary to carry out this subsection.

“(4) For purposes of section 327(a) of such Act, the term ‘this part’ includes this subsection to the extent necessary to carry out this subsection.”

ENERGY EFFICIENCY INFORMATION FOR COMMERCIAL OFFICE EQUIPMENT

Section 125 of Pub. L. 102-486 provided that:

“(a) IN GENERAL.—(1) The Secretary shall, after consulting with the Computer and Business Equipment Manufacturers Association and other interested organizations, provide financial and technical assistance to support a voluntary national testing and information program for those types of commercial office equipment that are widely used and for which there is a potential for significant energy savings as a result of such program.

“(2) Such program shall—

“(A) consistent with the objectives of paragraph (1), determine the commercial office equipment to be covered under such program;

“(B) include specifications for testing procedures that will enable purchasers of such commercial office equipment to make more informed decisions about the energy efficiency and costs of alternative products; and

“(C) include information, which may be disseminated through catalogs, trade publications, labels, or other mechanisms, that will allow consumers to assess the energy consumption and potential cost savings of alternative products.

“(3) Such program shall be developed by an appropriate organization (composed of interested parties) according to commonly accepted procedures for the development of national testing procedure and labeling programs.

“(b) MONITORING.—The Secretary shall monitor and evaluate the efforts to develop the program described in subsection (a) and, not later than three years after the date of the enactment of this Act [Oct. 24, 1992], shall make a determination as to whether such program is consistent with the objectives of subsection (a).

“(c) ALTERNATIVE SYSTEM.—(1) If the Secretary makes a determination under subsection (b) that a voluntary national testing and information program for commercial office equipment consistent with the objectives of subsection (a) has not been developed, the Secretary shall, after consultation with the National Institute of Standards and Technology, develop, not later than two years after such determination, test procedures under section 323 of the Energy Policy and Conservation Act (42 U.S.C. 6293) for such commercial office equipment.

“(2) Not later than one year after the Secretary develops test procedures under paragraph (1), the Federal Trade Commission (hereafter in this section referred to as the ‘Commission’) shall prescribe labeling rules under section 324 of such Act (42 U.S.C. 6294) for commercial office equipment for which the Secretary has prescribed test procedures under paragraph (1) except that, with respect to any type of commercial office equipment (or class thereof), the Secretary may determine that such labeling is not technologically feasible or economically justified or is not likely to assist consumers in making purchasing decisions.

“(3) For purposes of sections 323, 324, and 327 of such Act [42 U.S.C. 6293, 6294, 6297], each product for which the Secretary has established test procedures or labeling rules pursuant to this subsection shall be considered a new covered product under section 322 of such Act (42 U.S.C. 6292) to the extent necessary to carry out this subsection.

“(4) For purposes of section 327(a) of such Act, the term ‘this part’ includes this subsection to the extent necessary to carry out this subsection.”

ENERGY EFFICIENCY INFORMATION FOR LUMINAIRES

Section 126 of Pub. L. 102-486 provided that:

“(a) IN GENERAL.—(1) The Secretary shall, after consulting with the National Electric Manufacturers Association, the American Lighting Association, and other interested organizations, provide financial and technical assistance to support a voluntary national testing and information program for those types of luminaires that are widely used and for which there is a potential for significant energy savings as a result of such program.

“(2) Such program shall—

“(A) consistent with the objectives of paragraph (1), determine the luminaires to be covered under such program;

“(B) include specifications for testing procedures that will enable purchasers of such luminaires to make more informed decisions about the energy efficiency and costs of alternative products; and

“(C) include information, which may be disseminated through catalogs, trade publications, labels, or

other mechanisms, that will allow consumers to assess the energy consumption and potential cost savings of alternative products.

“(3) Such program shall be developed by an appropriate organization (composed of interested parties) according to commonly accepted procedures for the development of national testing procedures and labeling programs.

“(b) MONITORING.—The Secretary shall monitor and evaluate the efforts to develop the program described in subsection (a) and, not later than three years after the date of the enactment of this Act [Oct. 24, 1992], shall make a determination as to whether the program developed is consistent with the objectives of subsection (a).

“(c) ALTERNATIVE SYSTEM.—(1) If the Secretary makes a determination under subsection (b) that a voluntary national testing and information program for luminaires consistent with the objectives of subsection (a) has not been developed, the Secretary shall, after consultation with the National Institute of Standards and Technology, develop, not later than two years after such determination, test procedures under section 323 of the Energy Policy and Conservation Act (42 U.S.C. 6293) for such luminaires.

“(2) Not later than one year after the Secretary develops test procedures under paragraph (1), the Federal Trade Commission (hereafter in this section referred to as the ‘Commission’) shall prescribe labeling rules under section 324 of such Act (42 U.S.C. 6294) for those luminaires for which the Secretary has prescribed test procedures under paragraph (1) except that, with respect to any type of luminaire (or class thereof), the Secretary may determine that such labeling is not technologically feasible or economically justified or is not likely to assist consumers in making purchasing decisions.

“(3) For purposes of sections 323, 324, and 327 of such Act [42 U.S.C. 6293, 6294, 6297], each product for which the Secretary has established test procedures or labeling rules pursuant to this subsection shall be considered a new covered product under section 322 of such Act (42 U.S.C. 6292) to the extent necessary to carry out this subsection.

“(4) For purposes of section 327(a) of such Act, the term ‘this part’ includes this subsection to the extent necessary to carry out this subsection.”

REPORT ON POTENTIAL OF COOPERATIVE ADVANCED APPLIANCE DEVELOPMENT

Section 127 of Pub. L. 102-486 provided that:

“(a) IN GENERAL.—Not later than 18 months after the date of the enactment of this Act [Oct. 24, 1992], the Secretary shall, in consultation with the Administrator of the Environmental Protection Agency, utilities, and appliance manufacturers, prepare and submit to the Congress, a report on the potential for the development and commercialization of appliances which are substantially more efficient than required by Federal or State law.

“(b) IDENTIFICATION OF HIGH-EFFICIENCY APPLIANCES.—The report submitted under subsection (a) shall identify candidate high-efficiency appliances which meet the following criteria:

“(1) The potential exists for substantial improvement in the appliance’s energy efficiency, beyond the minimum established in Federal and State law.

“(2) There is the potential for significant energy savings at the national or regional level.

“(3) Such appliances are likely to be cost-effective for consumers.

“(4) Electric, water, or gas utilities are prepared to support and promote the commercialization of such appliances.

“(5) Manufacturers are unlikely to undertake development and commercialization of such appliances on their own, or development and production would be substantially accelerated by support to manufacturers.

“(c) RECOMMENDATIONS AND PROPOSALS.—The report submitted under subsection (a) shall also—

“(1) describe the general actions the Secretary or the Administrator of the Environmental Protection Agency could take to coordinate and assist utilities and appliance manufacturers in developing and commercializing highly efficient appliances;

“(2) describe specific proposals for Department of Energy or Environmental Protection Agency assistance to utilities and appliance manufacturers to promote the development and commercialization of highly efficient appliances;

“(3) identify methods by which Federal purchase of highly efficient appliances could assist in the development and commercialization of such appliances; and

“(4) identify the funding levels needed to develop and implement a Federal program to assist in the development and commercialization of highly efficient appliances.”

EVALUATION OF UTILITY EARLY REPLACEMENT PROGRAMS FOR APPLIANCES

Section 128 of Pub. L. 102-486 provided that: “Within 18 months after the date of the enactment of this Act [Oct. 24, 1992], the Secretary, in consultation with the Administrator of the Environmental Protection Agency, utilities, and appliance manufacturers, shall evaluate and report to the Congress on the energy savings and environmental benefits of programs which are directed to the early replacement of older, less efficient appliances presently in use by consumers with existing products which are more efficient than required by Federal law. For the purposes of this section, the term ‘appliance’ means those consumer products specified in section 322(a) [42 U.S.C. 6292(a)].”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6291, 6293, 6294, 6295, 6317 of this title.

§ 6293. Test procedures

(a) General rule

All test procedures and related determinations prescribed or made by the Secretary with respect to any covered product (or class thereof) which are in effect on March 17, 1987, shall remain in effect until the Secretary amends such test procedures and related determinations under subsection (b) of this section.

(b) Amended and new procedures

(1)(A) The Secretary may amend test procedures with respect to any covered product if the Secretary determines that amended test procedures would more accurately or fully comply with the requirements of paragraph (3).

(B) The Secretary may, in accordance with the requirements of this subsection, prescribe test procedures for any consumer product classified as a covered product under section 6292(b) of this title.

(C) The Secretary shall direct the National Institute of Standards and Technology to assist in developing new or amended test procedures.

(2) If the Secretary determines, on his own behalf or in response to a petition by any interested person, that a test procedure should be prescribed or amended, the Secretary shall promptly publish in the Federal Register proposed test procedures and afford interested persons an opportunity to present oral and written data, views, and arguments with respect to such procedures. The comment period shall not be less than 60 days and may be extended for good cause shown to not more than 270 days. In pre-

scribing or amending a test procedure, the Secretary shall take into account such information as the Secretary determines relevant to such procedure, including technological developments relating to energy use or energy efficiency of the type (or class) of covered products involved.

(3) Any test procedures prescribed or amended under this section shall be reasonably designed to produce test results which measure energy efficiency, energy use, water use (in the case of showerheads, faucets, water closets and urinals), or estimated annual operating cost of a covered product during a representative average use cycle or period of use, as determined by the Secretary, and shall not be unduly burdensome to conduct.

(4) If the test procedure is a procedure for determining estimated annual operating costs, such procedure shall provide that such costs shall be calculated from measurements of energy use or, in the case of showerheads, faucets, water closets, or urinals, water use in a representative average use cycle or period of use, as determined by the Secretary, and from representative average unit costs of the energy needed to operate such product during such cycle, or in the case of showerheads, faucets, water closets, or urinals, representative average unit costs of water and wastewater treatment service resulting from the operation of such products during such cycle. The Secretary shall provide information to manufacturers with respect to representative average unit costs of energy, water, and wastewater treatment.

(5) With respect to fluorescent lamp ballasts manufactured on or after January 1, 1990, and to which standards are applicable under section 6295 of this title, the Secretary shall prescribe test procedures that are in accord with ANSI standard C82.2-1984 or other test procedures determined appropriate by the Secretary.

(6) With respect to fluorescent lamps and incandescent reflector lamps to which standards are applicable under subsection (i) of section 6295 of this title, the Secretary shall prescribe test procedures, to be carried out by accredited test laboratories, that take into consideration the applicable IES or ANSI standard.

(7)(A) Test procedures for showerheads and faucets to which standards are applicable under subsection (j) of section 6295 of this title shall be the test procedures specified in ASME A112.18.1M-1989 for such products.

(B) If the test procedure requirements of ASME A112.18.1M-1989 are revised at any time and approved by ANSI, the Secretary shall amend the test procedures established by subparagraph (A) to conform to such revised ASME/ANSI requirements unless the Secretary determines, by rule, that to do so would not meet the requirements of paragraph (3).

(8)(A) Test procedures for water closets and urinals to which standards are applicable under subsection (k) of section 6295 of this title shall be the test procedures specified in ASME A112.19.6-1990 for such products.

(B) If the test procedure requirements of ASME A112.19.6-1990 are revised at any time and approved by ANSI, the Secretary shall amend the test procedures established by subparagraph

(A) to conform to such revised ASME/ANSI requirements unless the Secretary determines, by rule, that to do so would not meet the requirements of paragraph (3).

(c) Restriction on certain representations

(1) No manufacturer, distributor, retailer, or private labeler may make any representation—

- (A) in writing (including a representation on a label); or
- (B) in any broadcast advertisement,

with respect to the energy use or efficiency or, in the case of showerheads, faucets, water closets, and urinals, water use of a covered product to which a test procedure is applicable under subsection (a) of this section or the cost of energy consumed by such product, unless such product has been tested in accordance with such test procedure and such representation fairly discloses the results of such testing.

(2) Effective 180 days after an amended or new test procedure applicable to a covered product is prescribed or established under subsection (b) of this section, no manufacturer, distributor, retailer, or private labeler may make any representation—

- (A) in writing (including a representation on a label); or
- (B) in any broadcast advertisement,

with respect to energy use or efficiency or, in the case of showerheads, faucets, water closets, and urinals, water use of such product or cost of energy consumed by such product, unless such product has been tested in accordance with such amended or new test procedures and such representation fairly discloses the results of such testing.

(3) On the petition of any manufacturer, distributor, retailer, or private labeler, filed not later than the 60th day before the expiration of the period involved, the 180-day period referred to in paragraph (2) may be extended by the Secretary with respect to the petitioner (but in no event for more than an additional 180 days) if the Secretary determines that the requirements of paragraph (2) would impose an undue hardship on such petitioner.

(d) Case in which test procedure is not required

(1) The Secretary is not required to publish and prescribe test procedures for a covered product (or class thereof) if the Secretary determines, by rule, that test procedures cannot be developed which meet the requirements of subsection (b)(3) of this section and publishes such determination in the Federal Register, together with the reasons therefor.

(2) For purposes of section 6297 of this title, a determination under paragraph (1) with respect to any covered product or class shall have the same effect as would a standard prescribed for a covered product (or class).

(e) Amendment of standard

(1) In the case of any amended test procedure which is prescribed pursuant to this section, the Secretary shall determine, in the rulemaking carried out with respect to prescribing such procedure, to what extent, if any, the proposed test procedure would alter the measured energy efficiency, measured energy use, or measured water

use of any covered product as determined under the existing test procedure.

(2) If the Secretary determines that the amended test procedure will alter the measured efficiency or measured use, the Secretary shall amend the applicable energy conservation standard during the rulemaking carried out with respect to such test procedure. In determining the amended energy conservation standard, the Secretary shall measure, pursuant to the amended test procedure, the energy efficiency, energy use, or water use of a representative sample of covered products that minimally comply with the existing standard. The average of such energy efficiency, energy use, or water use levels determined under the amended test procedure shall constitute the amended energy conservation standard for the applicable covered products.

(3) Models of covered products in use before the date on which the amended energy conservation standard becomes effective (or revisions of such models that come into use after such date and have the same energy efficiency, energy use, or water use characteristics) that comply with the energy conservation standard applicable to such covered products on the day before such date shall be deemed to comply with the amended energy conservation standard.

(4) The Secretary's authority to amend energy conservation standards under this subsection shall not affect the Secretary's obligation to issue final rules as described in section 6295 of this title.

(Pub. L. 94-163, title III, §323, Dec. 22, 1975, 89 Stat. 919; Pub. L. 95-619, title IV, §§421, 425(a), title VI, §691(b)(2), Nov. 9, 1978, 92 Stat. 3257, 3265, 3288; Pub. L. 100-12, §4, Mar. 17, 1987, 101 Stat. 105; Pub. L. 100-357, §2(c), June 28, 1988, 102 Stat. 672; Pub. L. 100-418, title V, §5115(c), Aug. 23, 1988, 102 Stat. 1433; Pub. L. 102-486, title I, §123(d), Oct. 24, 1992, 106 Stat. 2821.)

AMENDMENTS

1992—Subsec. (b)(3). Pub. L. 102-486, §123(d)(1)(A), inserted “water use (in the case of showerheads, faucets, water closets and urinals),” after “energy use.”

Subsec. (b)(4). Pub. L. 102-486, §123(d)(1)(B), in first sentence inserted “or, in the case of showerheads, faucets, water closets, or urinals, water use” after “energy use” and “, or in the case of showerheads, faucets, water closets, or urinals, representative average unit costs of water and wastewater treatment service resulting from the operation of such products during such cycle” after “such cycle”, and in second sentence inserted “, water, and wastewater treatment” before period at end.

Subsec. (b)(6) to (8). Pub. L. 102-486, §123(d)(1)(C), added pars. (6) to (8).

Subsec. (c)(1). Pub. L. 102-486, §123(d)(2), in closing provisions inserted “or, in the case of showerheads, faucets, water closets, and urinals, water use” after “efficiency”.

Subsec. (c)(2). Pub. L. 102-486, §123(d)(3), in introductory provisions substituted “prescribed or established” for “prescribed”.

Pub. L. 102-486, §123(d)(2), in closing provisions inserted “or, in the case of showerheads, faucets, water closets, and urinals, water use” after “efficiency”.

Subsec. (e)(1) to (3). Pub. L. 102-486, §123(d)(4), substituted “, measured energy use, or measured water use” for “or measured energy use” in par. (1) and “energy efficiency, energy use, or water use” for “energy efficiency or energy use” in two places in par. (2) and once in par. (3).

1988—Subsec. (b)(1)(C). Pub. L. 100-418 substituted “National Institute of Standards and Technology” for “National Bureau of Standards”.

Subsec. (b)(5). Pub. L. 100-357 added par. (5).

1987—Pub. L. 100-12 amended section generally, revising and restating as subsecs. (a) to (e) provisions formerly contained in subsecs. (a) to (c).

1978—Subsec. (a)(1), (2). Pub. L. 95-619, § 691(b)(2), substituted “Secretary” for “Administrator”, meaning Administrator of the Federal Energy Administration, wherever appearing.

Subsec. (a)(3). Pub. L. 95-619, §§ 425(a), 691(b)(2), struck out “Except as provided in paragraph (6),” before “The Secretary”, struck out provision requiring proposed test procedures to be published not later than June 30, 1976, with certain excepted cases not required to be published before Sept. 30, 1976 and June 30, 1977, and substituted “Secretary” for “Administrator”.

Subsec. (a)(4). Pub. L. 95-619, §§ 421(a), 691(b)(2), redesignated provisions formerly classified to subpar. (A), as par. (4) and in par. (4), as so redesignated, struck out “Except as provided in paragraph (6),” before “The Secretary shall”, substituted “Secretary” for “Administrator” in two places, inserted provision requiring the prescription of test procedures not later than Jan. 31, 1978, and struck out subpar. (B) requiring the prescription of test procedures not later than Sept. 30, 1976, with certain excepted cases required to be prescribed not later than Dec. 31, 1976 and Sept. 30, 1977.

Subsec. (a)(5). Pub. L. 95-619, § 691(b)(2), substituted “Secretary” for “Administrator” wherever appearing.

Subsec. (a)(6). Pub. L. 95-619, § 421(b), redesignated existing provisions as subpar. (A) and, in subpar. (A) as so redesignated, substituted “Secretary” for “Administrator”, struck out provisions relating to the authority to delay publication of proposed test procedures, inserted requirement that a determination of a necessary prescription delay be submitted in a report to Congress, inserted specific ninety day time limitation for delayed prescriptions, and added subpar. (B).

Subsec. (a)(7). Pub. L. 95-619, § 421(c), added par. (7).

Subsec. (b). Pub. L. 95-619, § 691(b)(2), substituted “Secretary” for “Administrator” wherever appearing.

Subsec. (c). Pub. L. 95-619, § 421(d), redesignated existing provisions as par. (1), substituted “180 days” for “90 days” and redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, and added par. (2).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6291, 6294, 6295, 6296, 6297, 6303, 6306, 6314, 6316 of this title.

§ 6294. Labeling

(a) In general

(1) The Commission shall prescribe labeling rules under this section applicable to all covered products of each of the types specified in paragraphs (1), (2), (4), (6), and (8) through (12) of section 6292(a) of this title, except to the extent that, with respect to any such type (or class thereof), the Commission determines under the second sentence of subsection (b)(5) of this section that labeling in accordance with this section is not technologically or economically feasible.

(2)(A) The Commission shall prescribe labeling rules under this section applicable to all covered products of each of the types specified in paragraphs (3), (5), and (7) of section 6292(a) of this title, except to the extent that with respect to any such type (or class thereof), the Commission determines under the second sentence of subsection (b)(5) of this section that labeling in accordance with this section is not technologically or economically feasible or is not likely to assist consumers in making purchasing decisions.

(B) The Commission shall prescribe labeling rules under this section applicable to the covered product specified in paragraph (13) of section 6292(a) of this title and to which standards are applicable under section 6295 of this title. Such rules shall provide that the labeling of any fluorescent lamp ballast manufactured on or after January 1, 1990, will indicate conspicuously, in a manner prescribed by the Commission under subsection (b) of this section by July 1, 1989, a capital letter “E” printed within a circle on the ballast and on the packaging of the ballast or of the luminaire into which the ballast has been incorporated.

(C)(i) Not later than 18 months after October 24, 1992, the Commission shall prescribe labeling rules under this section applicable to general service fluorescent lamps, medium base compact fluorescent lamps, and general service incandescent lamps. Except as provided in clause (ii), such rules shall provide that the labeling of any general service fluorescent lamp, medium base compact fluorescent lamp, and general service incandescent lamp manufactured after the 12-month period beginning on the date of the publication of such rule shall indicate conspicuously on the packaging of the lamp, in a manner prescribed by the Commission under subsection (b) of this section, such information as the Commission deems necessary to enable consumers to select the most energy efficient lamps which meet their requirements. Labeling information for incandescent lamps shall be based on performance when operated at 120 volts input, regardless of the rated lamp voltage.

(ii) If the Secretary determines that compliance with the standards specified in section 6295(i) of this title for any lamp will result in the discontinuance of the manufacture of such lamp, the Commission may exempt such lamp from the labeling rules prescribed under clause (i).

(D)(i) Not later than one year after October 24, 1992, the Commission shall prescribe labeling rules under this section for showerheads and faucets to which standards are applicable under subsection (j) of section 6295 of this title. Such rules shall provide that the labeling of any showerhead or faucet manufactured after the 12-month period beginning on the date of the publication of such rule shall be consistent with the marking and labeling requirements of ASME A112.18.1M-1989, except that each showerhead and flow restricting or controlling spout-end device shall bear a permanent legible marking indicating the flow rate, expressed in gallons per minute (gpm) or gallons per cycle (gpc), and the flow rate value shall be the actual flow rate or the maximum flow rate specified by the standards established in subsection (j) of section 6295 of this title.

(ii) If the marking and labeling requirements of ASME A112.18.1M-1989 are revised at any time and approved by ANSI, the Commission shall amend the labeling rules established pursuant to clause (i) to be consistent with such revised ASME/ANSI requirements unless such requirements are inconsistent with the purposes of this chapter or the requirement specified in clause (i) requiring each showerhead and flow restricting or controlling spout-end device to bear a

permanent legible marking indicating the flow rate of such product.

(E)(i) Not later than one year after October 24, 1992, the Commission shall prescribe labeling rules under this section for water closets and urinals to which standards are applicable under subsection (k) of section 6295 of this title. Such rules shall provide that the labeling of any water closet or urinal manufactured after the 12-month period beginning on the date of the publication of such rule shall be consistent with the marking and labeling requirements of ASME A112.19.2M-1990, except that each fixture (and flushometer valve associated with such fixture) shall bear a permanent legible marking indicating the water use, expressed in gallons per flush (gpf), and the water use value shall be the actual water use or the maximum water use specified by the standards established in subsection (k) of section 6295 of this title.

(ii) If the marking and labeling requirements of ASME A112.19.2M-1990 are revised at any time and approved by ANSI, the Commission shall amend the labeling rules established pursuant to clause (i) to be consistent with such revised ASME/ANSI requirements unless such requirements are inconsistent with the purposes of this chapter or the requirement specified in clause (i) requiring each fixture and flushometer valve to bear a permanent legible marking indicating the water use of such fixture or flushometer valve.

(iii) Any labeling rules prescribed under this subparagraph before January 1, 1997, shall provide that, with respect to any gravity tank-type white 2-piece toilet which has a water use greater than 1.6 gallons per flush (gpf), any printed matter distributed or displayed in connection with such product (including packaging and point of sale material, catalog material, and print advertising) shall include, in a conspicuous manner, the words "For Commercial Use Only".

(3) The Commission may prescribe a labeling rule under this section applicable to covered products of a type specified in paragraph (19) of section 6292(a) of this title (or a class thereof) if—

(A) the Commission or the Secretary has made a determination with respect to such type (or class thereof) that labeling in accordance with this section will assist purchasers in making purchasing decisions,

(B) the Secretary has prescribed test procedures under section 6293(b)(1)(B) of this title for such type (or class thereof), and

(C) the Commission determines with respect to such type (or class thereof) that application of labeling rules under this section to such type (or class thereof) is economically and technologically feasible.

(4) Any determination under this subsection shall be published in the Federal Register.

(b) Rules in effect; new rules

(1)(A) Any labeling rule in effect on March 17, 1987, shall remain in effect until amended, by rule, by the Commission.

(B) After March 17, 1987, and not later than 30 days after the date on which a proposed test procedure applicable to a covered product of any of the types specified in paragraphs (1) through

(13), and paragraphs (15) through (19) of section 6292(a) of this title (or class thereof) is prescribed under section 6293(b) of this title, the Commission shall publish a proposed labeling rule applicable to such type (or class thereof).

(2) The Commission shall afford interested persons an opportunity to present written or oral data, views, and comments with respect to the proposed labeling rules published under paragraph (1). The period for such presentations shall not be less than 45 days.

(3) Not earlier than 45 days nor later than 60 days after the date on which test procedures are prescribed under section 6293(b) of this title with respect to covered products of any type (or class thereof) specified in paragraphs (1) through (12) of section 6292(a) of this title, the Commission shall prescribe labeling rules with respect to covered products of such type (or class thereof). Not earlier than 45 days after the date on which test procedures are prescribed under section 6293(b) of this title with respect to covered products of a type specified in paragraph (19) of section 6292(a) of this title, the Commission may prescribe labeling rules with respect to covered products of such type (or class thereof).

(4) A labeling rule prescribed under paragraph (3) shall take effect not later than 3 months after the date of prescription of such rule, except that such rules may take effect not later than 6 months after such date of prescription if the Commission determines that such extension is necessary to allow persons subject to such rules adequate time to come into compliance with such rules.

(5) The Commission may delay the publication of a proposed labeling rule, or the prescription of a labeling rule, beyond the dates specified in paragraph (1) or (3), if it determines that it cannot publish proposed labeling rules or prescribe labeling rules which meet the requirements of this section on or prior to the date specified in the applicable paragraph and publishes such determination in the Federal Register, together with the reasons therefor. In any such case, it shall publish proposed labeling rules or prescribe labeling rules for covered products of such type (or class thereof) as soon as practicable unless it determines (A) that labeling in accordance with this section is not economically or technically feasible, or (B) in the case of a type specified in paragraphs (3), (5), and (7) of section 6292(a) of this title, that labeling in accordance with this section is not likely to assist consumers in purchasing decisions. Any such determination shall be published in the Federal Register, together with the reasons therefor. This paragraph shall not apply to the prescription of a labeling rule with respect to covered products of a type specified in paragraph (19) of section 6292(a) of this title.

(c) Content of label

(1) Subject to paragraph (6), a rule prescribed under this section shall require that each covered product in the type or class of covered products to which the rule applies bear a label which discloses—

(A) the estimated annual operating cost of such product (determined in accordance with test procedures prescribed under section 6293 of this title), except that if—

(i) the Secretary determines that disclosure of estimated annual operating cost is not technologically feasible, or

(ii) the Commission determines that such disclosure is not likely to assist consumers in making purchasing decisions or is not economically feasible,

the Commission shall require disclosure of a different useful measure of energy consumption (determined in accordance with test procedures prescribed under section 6293 of this title); and

(B) information respecting the range of estimated annual operating costs for covered products to which the rule applies; except that if the Commission requires disclosure under subparagraph (A) of a measure of energy consumption different from estimated annual operating cost, then the label shall disclose the range of such measure of energy consumption of covered products to which such rule applies.

(2) A rule under this section shall include the following:

(A) A description of the type or class of covered products to which such rule applies.

(B) Subject to paragraph (6), information respecting the range of estimated annual operating costs or other useful measure of energy consumption (determined in such manner as the rule may prescribe) for such type or class of covered products.

(C) A description of the test procedures under section 6293 of this title used in determining the estimated annual operating costs or other measure of energy consumption of the type or class of covered products.

(D) A prototype label and directions for displaying such label.

(3) A rule under this section shall require that the label be displayed in a manner that the Commission determines is likely to assist consumers in making purchasing decisions and is appropriate to carry out this part. The Commission may permit a tag to be used in lieu of a label in any case in which the Commission finds that a tag will carry out the purposes for which the label was intended.

(4) A rule under this section applicable to a covered product may require disclosure, in any printed matter displayed or distributed at the point of sale of such product, of any information which may be required under this section to be disclosed on the label of such product. Requirements under this paragraph shall not apply to any broadcast advertisement or any advertisement in any newspaper, magazine, or other periodical.

(5) The Commission may require that a manufacturer of a covered product to which a rule under this section applies—

(A) include on the label,

(B) separately attach to the product, or

(C) ship with the product,

additional information relating to energy consumption, including instructions for the maintenance, use, or repair of the covered product, if the Commission determines that such additional information would assist consumers in making purchasing decisions or in using such product,

and that such requirement would not be unduly burdensome to manufacturers.

(6) The Commission may delay the effective date of the requirement specified in paragraph (1)(B) of this subsection applicable to a type or class of covered product, insofar as it requires the disclosure on the label of information respecting range of a measure of energy consumption, for not more than 12 months after the date on which the rule under this section is first applicable to such type or class, if the Commission determines that such information will not be available within an adequate period of time before such date.

(7) Paragraphs (1), (2), (3), (5), and (6) of this subsection shall not apply to the covered product specified in paragraphs (13), (14), (15), (16), (17), and (18) of section 6292(a) of this title.

(8) If a manufacturer of a covered product specified in paragraph (15) or (17) of section 6292(a) of this title elects to provide a label for such covered product conveying the estimated annual operating cost of such product or the range of estimated annual operating costs for the type or class of such product—

(A) such estimated cost or range of costs shall be determined in accordance with test procedures prescribed under section 6293 of this title;

(B) the format of such label shall be in accordance with a format prescribed by the Commission; and

(C) such label shall be displayed in a manner, prescribed by the Commission, to be likely to assist consumers in making purchasing decisions and appropriate to carry out the purposes of this chapter.

(d) Effective date

A rule under this section (or an amendment thereto) shall not apply to any covered product the manufacture of which was completed prior to the effective date of such rule or amendment, as the case may be.

(e) Study of certain products

The Secretary, in consultation with the Commission, shall study consumer products for which labeling rules under this section have not been proposed, in order to determine (1) the aggregate energy consumption of such products, and (2) whether the imposition of labeling requirements under this section would be feasible and useful to consumers in making purchasing decisions. The Secretary shall include the results of such study in the annual report under section 6308 of this title.

(f) Consultation

The Secretary and the Commission shall consult with each other on a continuing basis as may be necessary or appropriate to carry out their respective responsibilities under this part. Before the Commission makes any determination under subsection (a)(1) of this section, it shall obtain the views of the Secretary and shall take such views into account in making such determination.

(g) Other authority of the Commission

Until such time as labeling rules under this section take effect with respect to a type or

class of covered product, this section shall not affect any authority of the Commission under the Federal Trade Commission Act [15 U.S.C. 41 et seq.] to require labeling with respect to energy consumption of such type or class of covered product.

(Pub. L. 94-163, title III, §324, Dec. 22, 1975, 89 Stat. 920; Pub. L. 95-619, title IV, §425(b), (c), title VI, §691(b)(2), Nov. 9, 1978, 92 Stat. 3265, 3288; Pub. L. 100-12, §11(a)(1), (b)(2), Mar. 17, 1987, 101 Stat. 124, 125; Pub. L. 100-357, §2(d), June 28, 1988, 102 Stat. 672; Pub. L. 102-486, title I, §123(e), Oct. 24, 1992, 106 Stat. 2822; Pub. L. 105-388, §5(a)(4), Nov. 13, 1998, 112 Stat. 3478.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(2)(D)(ii), (E)(ii) and (c)(8)(C), was in the original "this Act", meaning Pub. L. 94-163, Dec. 22, 1975, 89 Stat. 871, as amended, known as the Energy Policy and Conservation Act. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

The Federal Trade Commission Act, referred to in subsec. (g), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 58 of Title 15 and Tables.

AMENDMENTS

1998—Subsec. (a)(2)(C)(ii). Pub. L. 105-388 substituted "section 6295(i)" for "section 6295(j)".

1992—Subsec. (a)(2)(C) to (E). Pub. L. 102-486, §123(e)(1), added subpars. (C) to (E).

Subsec. (a)(3). Pub. L. 102-486, §123(e)(2), substituted "(19)" for "(14)".

Subsec. (b)(1)(B). Pub. L. 102-486, §123(e)(3), substituted "(13), and paragraphs (15) through (19)" for "(14)".

Subsec. (b)(3), (5). Pub. L. 102-486, §123(e)(4), substituted "(19)" for "(14)".

Subsec. (c)(7). Pub. L. 102-486, §123(e)(5)(A), substituted "paragraphs (13), (14), (15), (16), (17), and (18) of section 6292(a)" for "paragraph (13) of section 6292".

Subsec. (c)(8). Pub. L. 102-486, §123(e)(5)(B), added par. (8).

1988—Subsec. (a)(2). Pub. L. 100-357, §2(d)(1), designated existing provision as subpar. (A) and added subpar. (B).

Subsecs. (a)(3), (b)(1)(B), (3), (5). Pub. L. 100-357, §2(d)(2), substituted "(14)" for "(13)".

Subsec. (c)(7). Pub. L. 100-357, §2(d)(3), added par. (7).

1987—Subsec. (a). Pub. L. 100-12, §11(b)(2)(A), inserted heading.

Subsec. (a)(1). Pub. L. 100-12, §11(a)(1)(A), substituted "paragraphs (1), (2), (4), (6), and (8) through (12)" for "paragraphs (1) through (9)".

Subsec. (a)(2). Pub. L. 100-12, §11(a)(1)(B), substituted "paragraphs (3), (5), and (7)" for "paragraphs (10) through (13)".

Subsec. (a)(3). Pub. L. 100-12, §11(a)(1)(C)(i), substituted "paragraph (13)" for "paragraph (14)".

Subsec. (a)(3)(A). Pub. L. 100-12, §11(a)(1)(C)(ii), added subpar. (A) and struck out former subpar. (A) which read as follows: "the Commission or the Secretary has made a determination with respect to such type (or class thereof) under section 6293(a)(5)(B) of this title."

Subsec. (a)(3)(B). Pub. L. 100-12, §11(a)(1)(C)(iii), substituted "section 6293(b)(1)(B)" for "section 6293(a)(5)".

Subsec. (b). Pub. L. 100-12, §11(a)(1)(D), inserted heading.

Subsec. (b)(1). Pub. L. 100-12, §11(a)(1)(D), added par. (1) and struck out former par. (1) which read as follows: "Not later than 30 days after the date on which a proposed test procedure applicable to a covered product of any of the types specified in paragraphs (1) through (14)

of section 6292(a) of this title (or class thereof) is published under section 6293(a) of this title, the Commission shall publish a proposed labeling rule applicable to such type (or class thereof)."

Subsec. (b)(3). Pub. L. 100-12, §11(a)(1)(E), substituted "section 6293(b)" for "section 6293" in two places, "(12)" for "(13)", and "(13)" for "(14)".

Subsec. (b)(5). Pub. L. 100-12, §11(a)(1)(F), substituted "(3), (5), and (7)" for "(10) through (13)" and "(13)" for "(14)".

Subsec. (c). Pub. L. 100-12, §11(b)(2)(B), inserted heading.

Subsec. (d). Pub. L. 100-12, §11(b)(2)(C), inserted heading.

Subsec. (e). Pub. L. 100-12, §11(b)(2)(D), inserted heading.

Subsec. (f). Pub. L. 100-12, §11(b)(2)(E), inserted heading.

Pub. L. 100-12, §11(a)(1)(G), struck out "or (2)" after "subsection (a)(1)".

Subsec. (g). Pub. L. 100-12, §11(b)(2)(F), inserted heading.

1978—Subsec. (a)(1), (2). Pub. L. 95-619, §425(b), struck out labeling rule exception where Administrator had determined under section 6293(a)(6) of this title that test procedures could not be developed pursuant to section 6293(b) of this title.

Subsec. (a)(3). Pub. L. 95-619, §691(b)(2), substituted "Secretary" for "Administrator", meaning Administrator of the Federal Energy Administration, in cls. (A) and (B).

Subsec. (c)(1)(A)(i). Pub. L. 95-619, §691(b)(2), substituted "Secretary" for "Administrator".

Subsec. (c)(5). Pub. L. 95-619, §425(c), inserted "including instructions for the maintenance, use, or repair of the covered product," after "energy consumption".

Subsecs. (e), (f). Pub. L. 95-619, §691(b)(2), substituted "Secretary" for "Administrator" wherever appearing.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6293, 6295, 6296, 6297, 6302, 6304, 6306, 6316, 6317 of this title.

§ 6295. Energy conservation standards

(a) Purposes

The purposes of this section are to—

- (1) provide Federal energy conservation standards applicable to covered products; and
(2) authorize the Secretary to prescribe amended or new energy conservation standards for each type (or class) of covered product.

(b) Standards for refrigerators, refrigerator-freezers, and freezers

(1) The following is the maximum energy use allowed in kilowatt hours per year for the following products (other than those described in paragraph (2)) manufactured on or after January 1, 1990:

Table with 2 columns: Product description and Energy Standards Equations. Includes Refrigerators and Refrigerator-Freezers with manual defrost (16.3 AV+316), Refrigerator-Freezers—partial automatic defrost (21.8 AV+429), Refrigerator-Freezers—automatic defrost with: Top mounted freezer without ice (23.5 AV+471), Side mounted freezer without ice (27.7 AV+488), Bottom mounted freezer without ice (27.7 AV+488), Top mounted freezer with through the door ice service (26.4 AV+535), Side mounted freezer with through the door ice (30.9 AV+547).

	Energy Standards Equations
Upright Freezers with:	
Manual defrost	10.9 AV+422
Automatic defrost	16.0 AV+623
Chest Freezers and all other freezers ...	14.8 AV+223

(2) The standards described in paragraph (1) do not apply to refrigerators and refrigerator-freezers with total refrigerated volume exceeding 39 cubic feet or freezers with total refrigerated volume exceeding 30 cubic feet.

(3)(A)(i) The Secretary shall publish a proposed rule, no later than July 1, 1988, to determine if the standards established by paragraph (1) should be amended. The Secretary shall publish a final rule no later than July 1, 1989, which shall contain such amendment, if any, and provide that the amendment shall apply to products manufactured on or after January 1, 1993. If such a final rule is not published before January 1, 1990, any amendment of such standards shall apply to products manufactured on or after January 1, 1995. Nothing in this subsection provides any justification or defense for a failure by the Secretary to comply with the nondiscretionary duty to publish final rules by the dates stated in this paragraph.

(ii)(I) If the Secretary does not publish a final rule before January 1, 1990, relating to the revision of the energy conservation standards for refrigerators, refrigerator-freezers and freezers, the regulations which established standards for such products and were promulgated by the California Energy Commission on December 14, 1984, to be effective January 1, 1992 (or any amendments to such standards that are not more stringent than the standards in the original regulations), shall apply in California to such products, effective beginning January 1, 1993, and shall not be preempted after such effective date by any energy conservation standard established in this section or prescribed, on or after January 1, 1990, under this section.

(II) If the Secretary does not publish a final rule before January 1, 1992, relating to the revision of the energy conservation standards for refrigerators, refrigerator-freezers and freezers, State regulations which apply to such products manufactured on or after January 1, 1995, shall apply to such products until the effective date of a rule issued under this section with respect to such products.

(B) After the publication of a final rule under subparagraph (A), the Secretary shall publish a final rule no later than five years after the date of publication of the previous final rule. The Secretary shall determine in such rule whether to amend the standards in effect for the products described in paragraph (1).

(C) Any amendment prescribed under subparagraph (B) shall apply to products manufactured after a date which is five years after—

- (i) the effective date of the previous amendment; or
- (ii) if the previous final rule did not amend the standards, the earliest date by which the previous amendment could have been effective;

except that in no case may any amended standard apply to products manufactured within

three years after publication of the final rule establishing such amended standard.

(c) Standards for room air conditioners

(1) The energy efficiency ratio of room air conditioners shall be not less than the following for products manufactured on or after January 1, 1990:

Product Class:	Ratio
Without Reverse Cycle and With Louvered Sides:	
Less than 6,000 Btu	8.0
6,000 to 7,999 Btu	8.5
8,000 to 13,999 Btu	9.0
14,000 to 19,999 Btu	8.8
20,000 and more Btu	8.2
Without Reverse Cycle and Without Louvered Sides:	
Less than 6,000 Btu	8.0
6,000 to 7,999 Btu	8.5
8,000 to 13,999 Btu	8.5
14,000 to 19,999 Btu	8.5
20,000 and more Btu	8.2
With Reverse Cycle and With Louvered Sides	8.5
With Reverse Cycle, Without Louvered Sides	8.0

(2)(A) The Secretary shall publish a final rule no later than January 1, 1992, to determine if the standards established under paragraph (1) should be amended. Such rule shall contain such amendment, if any, and provide that the amendment shall apply to products manufactured on or after January 1, 1995.

(B) After January 1, 1992, the Secretary shall publish a final rule no later than five years after the date of publication of a previous final rule. The Secretary shall determine in such rule whether to amend the standards in effect for room air conditioners.

(C) Any amendment prescribed under subparagraph (B) shall apply to products manufactured after a date which is five years after—

- (i) the effective date of the previous amendment; or
- (ii) if the previous final rule did not amend the standards, the earliest date by which a previous amendment could have been effective;

except that in no case may any amended standard apply to products manufactured within three years after publication of the final rule establishing such amended standard.

(d) Standards for central air conditioners and heat pumps

(1) The seasonal energy efficiency ratio of central air conditioners and central air conditioning heat pumps shall be not less than the following:

- (A) Split Systems: 10.0 for products manufactured on or after January 1, 1992.
- (B) Single Package Systems: 9.7 for products manufactured on or after January 1, 1993.

(2) The heating seasonal performance factor of central air conditioning heat pumps shall be not less than the following:

- (A) Split Systems: 6.8 for products manufactured on or after January 1, 1992.
- (B) Single Package Systems: 6.6 for products manufactured on or after January 1, 1993.

(3)(A) The Secretary shall publish a final rule no later than January 1, 1994, to determine

whether the standards established under paragraph (1) should be amended. Such rule shall contain such amendment, if any, and provide that the amendment shall apply to products manufactured on or after January 1, 1999. The Secretary shall publish a final rule no later than January 1, 1994, to determine whether the standards established under paragraph (2) shall be amended. Such rule shall contain such amendment, if any, and provide that the amendment shall apply to products manufactured on or after January 1, 2002.

(B) The Secretary shall publish a final rule after January 1, 1994, and no later than January 1, 2001, to determine whether the standards in effect for central air conditioners and central air conditioning heat pumps should be amended. Such rule shall provide that any amendment shall apply to products manufactured on or after January 1, 2006.

(e) Standards for water heaters; pool heaters; direct heating equipment

(1) The energy factor of water heaters shall be not less than the following for products manufactured on or after January 1, 1990:

- (A) Gas Water Heater: .62 - (.0019 x Rated Storage Volume in gallons)
- (B) Oil Water Heater: .59 - (.0019 x Rated Storage Volume in gallons)
- (C) Electric Water Heater: .95 - (.00132 x Rated Storage Volume in gallons)

(2) The thermal efficiency of pool heaters manufactured on or after January 1, 1990, shall not be less than 78 percent.

(3) The efficiencies of gas direct heating equipment manufactured on or after January 1, 1990, shall be not less than the following:

Wall		
Fan type		
Up to 42,000 Btu/hour	73% AFUE	
Over 42,000 Btu/hour	74% AFUE	
Gravity type		
Up to 10,000 Btu/hour	59% AFUE	
Over 10,000 Btu/hour up to 12,000 Btu/hour	60% AFUE	
Over 12,000 Btu/hour up to 15,000 Btu/hour	61% AFUE	
Over 15,000 Btu/hour up to 19,000 Btu/hour	62% AFUE	
Over 19,000 Btu/hour up to 27,000 Btu/hour	63% AFUE	
Over 27,000 Btu/hour up to 46,000 Btu/hour	64% AFUE	
Over 46,000 Btu/hour	65% AFUE	
Floor		
Up to 37,000 Btu/hour	56% AFUE	
Over 37,000 Btu/hour	57% AFUE	
Room		
Up to 18,000 Btu/hour	57% AFUE	
Over 18,000 Btu/hour up to 20,000 Btu/hour	58% AFUE	
Over 20,000 Btu/hour up to 27,000 Btu/hour	63% AFUE	
Over 27,000 Btu/hour up to 46,000 Btu/hour	64% AFUE	
Over 46,000 Btu/hour	65% AFUE	

(4)(A) The Secretary shall publish final rules no later than January 1, 1992, to determine whether the standards established by paragraph (1), (2), or (3) for water heaters, pool heaters, and direct heating equipment should be amended.

Such rule shall provide that any amendment shall apply to products manufactured on or after January 1, 1995.

(B) The Secretary shall publish a final rule no later than January 1, 2000, to determine whether standards in effect for such products should be amended. Such rule shall provide that any such amendment shall apply to products manufactured on or after January 1, 2005.

(f) Standards for furnaces

(1) Furnaces (other than furnaces designed solely for installation in mobile homes) manufactured on or after January 1, 1992, shall have an annual fuel utilization efficiency of not less than 78 percent, except that—

(A) boilers (other than gas steam boilers) shall have an annual fuel utilization efficiency of not less than 80 percent and gas steam boilers shall have an annual fuel utilization efficiency of not less than 75 percent; and

(B) the Secretary shall prescribe a final rule not later than January 1, 1989, establishing an energy conservation standard—

(i) which is for furnaces (other than furnaces designed solely for installation in mobile homes) having an input of less than 45,000 Btu per hour and manufactured on or after January 1, 1992;

(ii) which provides that the annual fuel utilization efficiency of such furnaces shall be a specific percent which is not less than 71 percent and not more than 78 percent; and

(iii) which the Secretary determines is not likely to result in a significant shift from gas heating to electric resistance heating with respect to either residential construction or furnace replacement.

(2) Furnaces which are designed solely for installation in mobile homes and which are manufactured on or after September 1, 1990, shall have an annual fuel utilization efficiency of not less than 75 percent.

(3)(A) The Secretary shall publish a final rule no later than January 1, 1992, to determine whether the standards established by paragraph (2) for mobile home furnaces should be amended. Such rule shall provide that any amendment shall apply to products manufactured on or after January 1, 1994.

(B) The Secretary shall publish a final rule no later than January 1, 1994, to determine whether the standards established by this subsection for furnaces (including mobile home furnaces) should be amended. Such rule shall provide that any amendment shall apply to products manufactured on or after January 1, 2002.

(C) After January 1, 1997, and before January 1, 2007, the Secretary shall publish a final rule to determine whether standards in effect for such products should be amended. Such rule shall contain such amendment, if any, and provide that any amendment shall apply to products manufactured on or after January 1, 2012.

(g) Standards for dishwashers; clothes washers; clothes dryers; fluorescent lamp ballasts

(1) Dishwashers manufactured on or after January 1, 1988, shall be equipped with an option to dry without heat.

(2) All rinse cycles of clothes washers shall include an unheated water option, but may have a

heated water rinse option, for products manufactured on or after January 1, 1988.

(3) Gas clothes dryers shall not be equipped with a constant burning pilot for products manufactured on or after January 1, 1988.

(4)(A) The Secretary shall publish final rules no later than January 1, 1990, to determine if the standards established under this subsection for products described in paragraphs (1), (2), and (3) should be amended. Such rules shall provide that any amendment shall apply to products the manufacture of which is completed on or after January 1, 1993.

(B) After January 1, 1990, the Secretary shall publish a final rule no later than five years after the date of publication of the previous final rule. The Secretary shall determine in such rule whether to amend the standards in effect for such products.

(C) Any such amendment shall apply to products manufactured after a date which is five years after—

- (i) the effective date of the previous amendment; or
- (ii) if the previous final rule did not amend the standard, the earliest date by which a previous amendment could have been in effect;

except that in no case may any amended standard apply to products manufactured within three years after publication of the final rule establishing such standard.

(5) Except as provided in paragraph (6), each fluorescent lamp ballast—

- (A)(i) manufactured on or after January 1, 1990;
- (ii) sold by the manufacturer on or after April 1, 1990; or
- (iii) incorporated into a luminaire by a luminaire manufacturer on or after April 1, 1991; and
- (B) designed—
 - (i) to operate at nominal input voltages of 120 or 277 volts;
 - (ii) to operate with an input current frequency of 60 Hertz; and
 - (iii) for use in connection with an F40T12, F96T12, or F96T12HO lamps;

shall have a power factor of 0.90 or greater and shall have a ballast efficacy factor not less than the following:

Application for Operation of	Ballast Input Voltage	Total Nominal Lamp Watts	Ballast Efficacy Factor
one F40T12 lamp	120	40	1.805
	277	40	1.805
two F40T12 lamps	120	80	1.060
	277	80	1.050
two F96T12 lamps	120	150	0.570
	277	150	0.570
two F96T12HO lamps	120	220	0.390
	277	220	0.390

(6) The standards described in paragraph (5) do not apply to (A) a ballast which is designed for

dimming or for use in ambient temperatures of 0° F or less, or (B) a ballast which has a power factor of less than 0.90 and is designed for use only in residential building applications.

(7)(A) The Secretary shall publish a final rule no later than January 1, 1992, to determine if the standards established under paragraph (5) should be amended, including whether such standards should be amended so that they would be applicable to ballasts described in paragraph (6) and other fluorescent lamp ballasts. Such rule shall contain such amendment, if any, and provide that the amendment shall apply to products manufactured on or after January 1, 1995.

(B) After January 1, 1992, the Secretary shall publish a final rule no later than five years after the date of publication of a previous final rule. The Secretary shall determine in such rule whether to amend the standards in effect for fluorescent lamp ballasts, including whether such standards should be amended so that they would be applicable to additional fluorescent lamp ballasts.

(C) Any amendment prescribed under subparagraph (B) shall apply to products manufactured after a date which is five years after—

- (i) the effective date of the previous amendment; or
- (ii) if the previous final rule did not amend the standards, the earliest date by which a previous amendment could have been effective;

except that in no case may any amended standard apply to products manufactured within three years after publication of the final rule establishing such amended standard.

(h) Standards for kitchen ranges and ovens

(1) Gas kitchen ranges and ovens having an electrical supply cord shall not be equipped with a constant burning pilot for products manufactured on or after January 1, 1990.

(2)(A) The Secretary shall publish a final rule no later than January 1, 1992, to determine if the standards established for kitchen ranges and ovens in this subsection should be amended. Such rule shall contain such amendment, if any, and provide that the amendment shall apply to products manufactured on or after January 1, 1995.

(B) The Secretary shall publish a final rule no later than January 1, 1997, to determine whether standards in effect for such products should be amended. Such rule shall apply to products manufactured on or after January 1, 2000.

(i) General service fluorescent lamps and incandescent reflector lamps

(1)(A) Each of the following general service fluorescent lamps and incandescent reflector lamps manufactured after the effective date specified in the tables listed in this paragraph shall meet or exceed the following lamp efficacy and CRI standards:

FLUORESCENT LAMPS

Lamp Type	Nominal Lamp Wattage	Minimum CRI	Minimum Average Lamp Efficacy (LPW)	Effective Date (Months)
4-foot medium bi-pin	>35 W	69	75.0	36
	≤35 W	45	75.0	36
2-foot U-shaped	>35 W	69	68.0	36
	≤35 W	45	64.0	36
8-foot slimline	65 W	69	80.0	18
	≤65 W	45	80.0	18
8-foot high output	>100 W	69	80.0	18
	≤100 W	45	80.0	18

INCANDESCENT REFLECTOR LAMPS

Nominal Lamp Wattage	Minimum Average Lamp Efficacy (LPW)	Effective Date (Months)
40-50	10.5	36
51-66	11.0	36
67-85	12.5	36
86-115	14.0	36
116-155	14.5	36
156-205	15.0	36

Such rule shall provide that the amendment shall apply to products manufactured after a date which is 36 months after the date such rule is published.

(6)(A) With respect to any lamp to which standards are applicable under this subsection or any lamp specified in section 6317 of this title, the Secretary shall inform any Federal entity proposing actions which would adversely impact the energy consumption or energy efficiency of such lamp of the energy conservation consequences of such action. It shall be the responsibility of such Federal entity to carefully consider the Secretary's comments.

(B) Notwithstanding subsection (n)(1) of this section, the Secretary shall not be prohibited from amending any standard, by rule, to permit increased energy use or to decrease the minimum required energy efficiency of any lamp to which standards are applicable under this subsection if such action is warranted as a result of other Federal action (including restrictions on materials or processes) which would have the effect of either increasing the energy use or decreasing the energy efficiency of such product.

(7) Not later than the date on which standards established pursuant to this subsection become effective, or, with respect to high-intensity discharge lamps covered under section 6317 of this title, the effective date of standards established pursuant to such section, each manufacturer of a product to which such standards are applicable shall file with the Secretary a laboratory report certifying compliance with the applicable standard for each lamp type. Such report shall include the lumen output and wattage consumption for each lamp type as an average of measurements taken over the preceding 12-month period. With respect to lamp types which are not manufactured during the 12-month period preceding the date such standards become effective, such report shall be filed with the Secretary not later than the date which is 12 months after the date manufacturing is commenced and shall include the lumen output and wattage consumption for each such lamp type as an average of measurements taken during such 12-month period.

(j) Standards for showerheads and faucets

(1) The maximum water use allowed for any showerhead manufactured after January 1, 1994, is 2.5 gallons per minute when measured at a flowing water pressure of 80 pounds per square inch. Any such showerhead shall also meet the requirements of ASME/ANSI A112.18.1M-1989, 7.4.3(a).

(B) For the purposes of the tables set forth in subparagraph (A), the term "effective date" means the last day of the month set forth in the table which follows October 24, 1992.

(2) Notwithstanding section 6302(a)(5) of this title and section 6302(b) of this title, it shall not be unlawful for a manufacturer to sell a lamp which is in compliance with the law at the time such lamp was manufactured.

(3) Not less than 36 months after October 24, 1992, the Secretary shall initiate a rulemaking procedure and shall publish a final rule not later than the end of the 54-month period beginning on October 24, 1992, to determine if the standards established under paragraph (1) should be amended. Such rule shall contain such amendment, if any, and provide that the amendment shall apply to products manufactured on or after the 36-month period beginning on the date such final rule is published.

(4) Not less than eight years after October 24, 1992, the Secretary shall initiate a rulemaking procedure and shall publish a final rule not later than nine years and six months after October 24, 1992, to determine if the standards in effect for fluorescent lamps and incandescent lamps should be amended. Such rule shall contain such amendment, if any, and provide that the amendment shall apply to products manufactured on or after the 36-month period beginning on the date such final rule is published.

(5) Not later than the end of the 24-month period beginning on the date labeling requirements under section 6294(a)(2)(C) of this title become effective, the Secretary shall initiate a rulemaking procedure to determine if the standards in effect for fluorescent lamps and incandescent lamps should be amended so that they would be applicable to additional general service fluorescent and general service incandescent lamps and shall publish, not later than 18 months after initiating such rulemaking, a final rule including such amended standards, if any.

(2) The maximum water use allowed for any of the following faucets manufactured after January 1, 1994, when measured at a flowing water pressure of 80 pounds per square inch, is as follows:

Lavatory faucets	2.5 gallons per minute
Lavatory replacement aerators	2.5 gallons per minute
Kitchen faucets	2.5 gallons per minute
Kitchen replacement aerators	2.5 gallons per minute
Metering faucets	0.25 gallons per cycle

(3)(A) If the maximum flow rate requirements or the design requirements of ASME/ANSI Standard A112.18.1M-1989 are amended to improve the efficiency of water use of any type or class of showerhead or faucet and are approved by ANSI, the Secretary shall, not later than 12 months after the date of such amendment, publish a final rule establishing an amended uniform national standard for that product at the level specified in the amended ASME/ANSI Standard A112.18.1M and providing that such standard shall apply to products manufactured after a date which is 12 months after the publication of such rule, unless the Secretary determines, by rule published in the Federal Register, that adoption of a uniform national standard at the level specified in such amended ASME/ANSI Standard A112.18.1M—

- (i) is not technologically feasible and economically justified under subsection (o) of this section;
- (ii) is not consistent with the maintenance of public health and safety; or
- (iii) is not consistent with the purposes of this chapter.

(B)(i) As part of the rulemaking conducted under subparagraph (A), the Secretary shall also determine if adoption of a uniform national standard for any type or class of showerhead or faucet more stringent than such amended ASME/ANSI Standard A112.18.1M—

- (I) would result in additional conservation of energy or water;
- (II) would be technologically feasible and economically justified under subsection (o) of this section; and
- (III) would be consistent with the maintenance of public health and safety.

(ii) If the Secretary makes an affirmative determination under clause (i), the final rule published under subparagraph (A) shall waive the provisions of section 6297(c) of this title with respect to any State regulation concerning the water use or water efficiency of such type or class of showerhead or faucet if such State regulation—

- (I) is more stringent than amended ASME/ANSI Standard A112.18.1M for such type or class of showerhead or faucet and the standard in effect for such product on the day before the date on which a final rule is published under subparagraph (A); and
- (II) is applicable to any sale or installation of all products in such type or class of showerhead or faucet.

(C) If, after any period of five consecutive years, the maximum flow rate requirements of the ASME/ANSI standard for showerheads are

not amended to improve the efficiency of water use of such products, or after any such period such requirements for faucets are not amended to improve the efficiency of water use of such products, the Secretary shall, not later than six months after the end of such five-year period, publish a final rule waiving the provisions of section 6297(c) of this title with respect to any State regulation concerning the water use or water efficiency of such type or class of showerhead or faucet if such State regulation—

- (i) is more stringent than the standards in effect for such type of class of showerhead or faucet; and
- (ii) is applicable to any sale or installation of all products in such type or class of showerhead or faucet.

(k) Standards for water closets and urinals

(1)(A) Except as provided in subparagraph (B), the maximum water use allowed in gallons per flush for any of the following water closets manufactured after January 1, 1994, is the following:

Gravity tank-type toilets	1.6 gpf.
Flushometer tank toilets	1.6 gpf.
Electromechanical hydraulic toilets ...	1.6 gpf.
Blowout toilets	3.5 gpf.

(B) The maximum water use allowed for any gravity tank-type white 2-piece toilet which bears an adhesive label conspicuous upon installation consisting of the words “Commercial Use Only” manufactured after January 1, 1994, and before January 1, 1997, is 3.5 gallons per flush.

(C) The maximum water use allowed for flushometer valve toilets, other than blowout toilets, manufactured after January 1, 1997, is 1.6 gallons per flush.

(2) The maximum water use allowed for any urinal manufactured after January 1, 1994, is 1.0 gallon per flush.

(3)(A) If the maximum flush volume requirements of ASME Standard A112.19.6-1990 are amended to improve the efficiency of water use of any low consumption water closet or low consumption urinal and are approved by ANSI, the Secretary shall, not later than 12 months after the date of such amendment, publish a final rule establishing an amended uniform national standard for that product at the level specified in amended ASME/ANSI Standard A112.19.6 and providing that such standard shall apply to products manufactured after a date which is one year after the publication of such rule, unless the Secretary determines, by rule published in the Federal Register, that adoption of a uniform national standard at the level specified in such amended ASME/ANSI Standard A112.19.6—

- (i) is not technologically feasible and economically justified under subsection (o) of this section;
- (ii) is not consistent with the maintenance of public health and safety; or
- (iii) is not consistent with the purposes of this chapter.

(B)(i) As part of the rulemaking conducted under subparagraph (A), the Secretary shall also determine if adoption of a uniform national standard for any type or class of low consumption water closet or low consumption urinal more stringent than such amended ASME/ANSI Standard A112.19.6 for such product—

(I) would result in additional conservation of energy or water;

(II) would be technologically feasible and economically justified under subsection (o) of this section; and

(III) would be consistent with the maintenance of public health and safety.

(ii) If the Secretary makes an affirmative determination under clause (i), the final rule published under subparagraph (A) shall waive the provisions of section 6297(c) of this title with respect to any State regulation concerning the water use or water efficiency of such type or class of low consumption water closet or low consumption urinal if such State regulation—

(I) is more stringent than amended ASME/ANSI Standard A112.19.6 for such type or class of low consumption water closet or low consumption urinal and the standard in effect for such product on the day before the date on which a final rule is published under subparagraph (A); and

(II) is applicable to any sale or installation of all products in such type or class of low consumption water closet or low consumption urinal.

(C) If, after any period of five consecutive years, the maximum flush volume requirements of the ASME/ANSI standard for low consumption water closets are not amended to improve the efficiency of water use of such products, or after any such period such requirements for low consumption urinals are not amended to improve the efficiency of water use of such products, the Secretary shall, not later than six months after the end of such five-year period, publish a final rule waiving the provisions of section 6297(c) of this title with respect to any State regulation concerning the water use or water efficiency of such type or class of water closet or urinal if such State regulation—

(i) is more stringent than the standards in effect for such type or class of water closet or urinal; and

(ii) is applicable to any sale or installation of all products in such type or class of water closet or urinal.

(I) Standards for other covered products

(1) The Secretary may prescribe an energy conservation standard for any type (or class) of covered products of a type specified in paragraph (19) of section 6292(a) of this title if the requirements of subsections (o) and (p) of this section are met and the Secretary determines that—

(A) the average per household energy use within the United States by products of such type (or class) exceeded 150 kilowatt-hours (or its Btu equivalent) for any 12-month period ending before such determination;

(B) the aggregate household energy use within the United States by products of such type (or class) exceeded 4,200,000,000 kilowatt-hours (or its Btu equivalent) for any such 12-month period;

(C) substantial improvement in the energy efficiency of products of such type (or class) is technologically feasible; and

(D) the application of a labeling rule under section 6294 of this title to such type (or class)

is not likely to be sufficient to induce manufacturers to produce, and consumers and other persons to purchase, covered products of such type (or class) which achieve the maximum energy efficiency which is technologically feasible and economically justified.

(2) Any new or amended standard for covered products of a type specified in paragraph (19) of section 6292(a) of this title shall not apply to products manufactured within five years after the publication of a final rule establishing such standard.

(3) The Secretary may, in accordance with subsections (o) and (p) of this section, prescribe an energy conservation standard for television sets. Any such standard may not become effective with respect to products manufactured before January 1, 1992.

(m) Further rulemaking

After issuance of the last final rules required under subsections (b) through (i) of this section, the Secretary may publish final rules to determine whether standards for a covered product should be amended. An amendment prescribed under this subsection shall apply to products manufactured after a date which is 5 years after—

(A) the effective date of the previous amendment made pursuant to this part; or

(B) if the previous final rule published under this part did not amend the standard, the earliest date by which a previous amendment could have been in effect, except that in no case may an amended standard apply to products manufactured within 3 years (for refrigerators, refrigerator-freezers, and freezers, room air conditioners, dishwashers, clothes washers, clothes dryers, fluorescent lamp ballasts, and kitchen ranges and ovens) or 5 years (for central air conditioners and heat pumps, water heaters, pool heaters, direct heating equipment and furnaces) after publication of the final rule establishing a standard.

(n) Petition for amended standard

(1) With respect to each covered product described in paragraphs (1) through (11), and in paragraphs (13) and (14) of section 6292(a) of this title, any person may petition the Secretary to conduct a rulemaking to determine for a covered product if the standards contained either in the last final rule required under subsections (b) through (i) of this section or in a final rule published under this section should be amended.

(2) The Secretary shall grant a petition if he finds that it contains evidence which, assuming no other evidence were considered, provides an adequate basis for amending the standards under the following criteria—

(A) amended standards will result in significant conservation of energy;

(B) amended standards are technologically feasible; and

(C) amended standards are cost effective as described in subsection (o)(2)(B)(i)(II) of this section.

The grant of a petition by the Secretary under this subsection creates no presumption with respect to the Secretary's determination of any of the criteria in a rulemaking under this section.

(3) An amendment prescribed under this subsection shall apply to products manufactured after a date which is 5 years after—

(A) the effective date of the previous amendment pursuant to this part; or

(B) if the previous final rule published under this part did not amend the standard, the earliest date by which a previous amendment could have been in effect, except that in no case may an amended standard apply to products manufactured within 3 years (for refrigerators, refrigerator-freezers, and freezers, room air conditioners, dishwashers, clothes washers, clothes dryers, fluorescent lamp ballasts, general service fluorescent lamps, incandescent reflector lamps, and kitchen ranges and ovens) or 5 years (for central air conditioners and heat pumps, water heaters, pool heaters, direct heating equipment and furnaces) after publication of the final rule establishing a standard.

(o) Criteria for prescribing new or amended standards

(1) The Secretary may not prescribe any amended standard which increases the maximum allowable energy use, or, in the case of showerheads, faucets, water closets, or urinals, water use, or decreases the minimum required energy efficiency, of a covered product.

(2)(A) Any new or amended energy conservation standard prescribed by the Secretary under this section for any type (or class) of covered product shall be designed to achieve the maximum improvement in energy efficiency, or, in the case of showerheads, faucets, water closets, or urinals, water efficiency, which the Secretary determines is technologically feasible and economically justified.

(B)(i) In determining whether a standard is economically justified, the Secretary shall, after receiving views and comments furnished with respect to the proposed standard, determine whether the benefits of the standard exceed its burdens by, to the greatest extent practicable, considering—

(I) the economic impact of the standard on the manufacturers and on the consumers of the products subject to such standard;

(II) the savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered products which are likely to result from the imposition of the standard;

(III) the total projected amount of energy, or as applicable, water, savings likely to result directly from the imposition of the standard;

(IV) any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard;

(V) the impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard;

(VI) the need for national energy and water conservation; and

(VII) other factors the Secretary considers relevant.

(ii) For purposes of clause (i)(V), the Attorney General shall make a determination of the im-

pact, if any, of any lessening of competition likely to result from such standard and shall transmit such determination, not later than 60 days after the publication of a proposed rule prescribing or amending an energy conservation standard, in writing to the Secretary, together with an analysis of the nature and extent of such impact. Any such determination and analysis shall be published by the Secretary in the Federal Register.

(iii) If the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy, and as applicable, water, savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure, there shall be a rebuttable presumption that such standard level is economically justified. A determination by the Secretary that such criterion is not met shall not be taken into consideration in the Secretary's determination of whether a standard is economically justified.

(3) The Secretary may not prescribe an amended or new standard under this section for a type (or class) of covered product if—

(A) for products other than dishwashers, clothes washers, clothes dryers, and kitchen ranges and ovens, a test procedure has not been prescribed pursuant to section 6293 of this title with respect to that type (or class) of product; or

(B) the Secretary determines, by rule, that the establishment of such standard will not result in significant conservation of energy or, in the case of showerheads, faucets, water closets, or urinals, water, or that the establishment of such standard is not technologically feasible or economically justified.

For purposes of section 6297 of this title, a determination under subparagraph (B) with respect to any type (or class) of covered products shall have the same effect as would a standard prescribed for such type (or class).

(4) The Secretary may not prescribe an amended or new standard under this section if the Secretary finds (and publishes such finding) that interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States at the time of the Secretary's finding. The failure of some types (or classes) to meet this criterion shall not affect the Secretary's determination of whether to prescribe a standard for other types (or classes).

(p) Procedure for prescribing new or amended standards

Any new or amended energy conservation standard shall be prescribed in accordance with the following procedure:

(1) The Secretary—

(A) shall publish an advance notice of proposed rulemaking which specifies the type (or class) of covered products to which the rule may apply;

(B) shall invite interested persons to submit, within 60 days after the date of publication of such advance notice, written presentations of data, views, and arguments in response to such notice; and

(C) may identify proposed or amended standards that may be prescribed.

(2) A proposed rule which prescribes an amended or new energy conservation standard or prescribes no amendment or no new standard for a type (or class) of covered products shall be published in the Federal Register. In prescribing any such proposed rule with respect to a standard, the Secretary shall determine the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible for each type (or class) of covered products. If such standard is not designed to achieve such efficiency or use, the Secretary shall state in the proposed rule the reasons therefor.

(3) After the publication of such proposed rulemaking, the Secretary shall, in accordance with section 6306 of this title, afford interested persons an opportunity, during a period of not less than 60 days, to present oral and written comments (including an opportunity to question those who make such presentations, as provided in such section) on matters relating to such proposed rule, including—

(A) whether the standard to be prescribed is economically justified (taking into account those factors which the Secretary must consider under subsection (o)(2) of this section) or will result in the effects described in subsection (o)(4) of this section;

(B) whether the standard will achieve the maximum improvement in energy efficiency which is technologically feasible;

(C) if the standard will not achieve such improvement, whether the reasons for not achieving such improvement are adequate; and

(D) whether such rule should prescribe a level of energy use or efficiency which is higher or lower than that which would otherwise apply in the case of any group of products within the type (or class) that will be subject to such standard.

(4) A final rule prescribing an amended or new energy conservation standard or prescribing no amended or new standard for a type (or class) of covered products shall be published as soon as is practicable, but not less than 90 days, after publication of the proposed rule in the Federal Register.

(q) Special rule for certain types or classes of products

(1) A rule prescribing an energy conservation standard for a type (or class) of covered products shall specify a level of energy use or efficiency higher or lower than that which applies (or would apply) for such type (or class) for any group of covered products which have the same function or intended use, if the Secretary determines that covered products within such group—

(A) consume a different kind of energy from that consumed by other covered products within such type (or class); or

(B) have a capacity or other performance-related feature which other products within such type (or class) do not have and such feature justifies a higher or lower standard from that which applies (or will apply) to other products within such type (or class).

In making a determination under this paragraph concerning whether a performance-related feature justifies the establishment of a higher or lower standard, the Secretary shall consider such factors as the utility to the consumer of such a feature, and such other factors as the Secretary deems appropriate.

(2) Any rule prescribing a higher or lower level of energy use or efficiency under paragraph (1) shall include an explanation of the basis on which such higher or lower level was established.

(r) Inclusion in standards of test procedures and other requirements

Any new or amended energy conservation standard prescribed under this section shall include, where applicable, test procedures prescribed in accordance with section 6293 of this title and may include any requirement which the Secretary determines is necessary to assure that each covered product to which such standard applies meets the required minimum level of energy efficiency or maximum quantity of energy use specified in such standard.

(s) Determination of compliance with standards

Compliance with, and performance under, the energy conservation standards (except for design standards authorized by this part) established in, or prescribed under, this section shall be determined using the test procedures and corresponding compliance criteria prescribed under section 6293 of this title.

(t) Small manufacturer exemption

(1) Subject to paragraph (2), the Secretary may, on application of any manufacturer, exempt such manufacturer from all or part of the requirements of any energy conservation standard established in or prescribed under this section for any period not longer than the 24-month period beginning on the date such rule becomes effective, if the Secretary finds that the annual gross revenues of such manufacturer from all its operations (including the manufacture and sale of covered products) does not exceed \$8,000,000 for the 12-month period preceding the date of the application. In making such finding with respect to any manufacturer, the Secretary shall take into account the annual gross revenues of any other person who controls, is controlled by, or is under common control with, such manufacturer.

(2) The Secretary may not exercise the authority granted under paragraph (1) with respect to any type (or class) of covered product subject to an energy conservation standard under this section unless the Secretary makes a finding, after obtaining the written views of the Attorney General, that a failure to allow an exemption under paragraph (1) would likely result in a lessening of competition.

(Pub. L. 94-163, title III, §325, Dec. 22, 1975, 89 Stat. 923; Pub. L. 94-385, title I, §161, Aug. 14,

1976, 90 Stat. 1140; Pub. L. 95-619, title IV, § 422, Nov. 9, 1978, 92 Stat. 3259; Pub. L. 100-12, § 5, Mar. 17, 1987, 101 Stat. 107; Pub. L. 100-357, § 2(e), June 28, 1988, 102 Stat. 673; Pub. L. 102-486, title I, § 123(f), Oct. 24, 1992, 106 Stat. 2824; Pub. L. 105-388, § 5(a)(5), Nov. 13, 1998, 112 Stat. 3478.)

REFERENCES IN TEXT

This chapter, referred to in subsections. (j)(3)(A)(iii) and (k)(3)(A)(iii), was in the original "this Act", meaning Pub. L. 94-163, Dec. 22, 1975, 89 Stat. 871, as amended, known as the Energy Policy and Conservation Act. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

AMENDMENTS

1998—Subsec. (e)(4)(A). Pub. L. 105-388, § 5(a)(5)(A), substituted "paragraph" for "paragraphs".

Subsec. (g). Pub. L. 105-388, § 5(a)(5)(B), substituted "ballasts" for "ballasts;" in heading.

1992—Subsecs. (i) to (k). Pub. L. 102-486, § 123(f)(2), added subsections. (i) to (k). Former subsections. (i) to (k) redesignated (l) to (n), respectively.

Subsec. (l). Pub. L. 102-486, § 123(f)(1), redesignated subsec. (i) as (l). Former subsec. (l) redesignated (o).

Subsec. (l)(1). Pub. L. 102-486, § 123(f)(3), substituted "paragraph (19)" for "paragraph (14)" and "subsections (o) and (p)" for "subsections (l) and (m)".

Subsec. (l)(2). Pub. L. 102-486, § 123(f)(3)(A), substituted "(19)" for "(14)".

Subsec. (l)(3). Pub. L. 102-486, § 123(f)(3)(B), substituted "(o) and (p)" for "(l) and (m)".

Subsec. (m). Pub. L. 102-486, § 123(f)(1), (4), redesignated subsec. (j) as (m) and substituted "(i)" for "(h)" in introductory provisions. Former subsec. (m) redesignated (p).

Subsec. (n). Pub. L. 102-486, § 123(f)(1), redesignated subsec. (k) as (n). Former subsec. (n) redesignated (q).

Subsec. (n)(1). Pub. L. 102-486, § 123(f)(5)(A), substituted ", and in paragraphs (13) and (14)" for "and in paragraph (13)" and "subsections (b) through (i)" for "subsections (b) through (h)".

Subsec. (n)(2)(C). Pub. L. 102-486, § 123(f)(5)(B), substituted "subsection (o)(2)(B)(i)(II)" for "subsection (l)(2)(B)(i)(II)".

Subsec. (n)(3)(B). Pub. L. 102-486, § 123(f)(5)(C), inserted "general service fluorescent lamps, incandescent reflector lamps," after "fluorescent lamp ballasts,".

Subsec. (o). Pub. L. 102-486, § 123(f)(1), redesignated subsec. (l) as (o). Former subsec. (o) redesignated (r).

Subsec. (o)(1). Pub. L. 102-486, § 123(f)(6)(A), inserted "or, in the case of showerheads, faucets, water closets, or urinals, water use," after "energy use,".

Subsec. (o)(2)(A). Pub. L. 102-486, § 123(f)(6)(B), inserted ", or, in the case of showerheads, faucets, water closets, or urinals, water efficiency," after "energy efficiency".

Subsec. (o)(2)(B)(i)(III). Pub. L. 102-486, § 123(f)(6)(C), inserted ", or as applicable, water," after "energy".

Subsec. (o)(2)(B)(i)(VI). Pub. L. 102-486, § 123(f)(6)(D), inserted "and water" after "energy".

Subsec. (o)(2)(B)(iii). Pub. L. 102-486, § 123(f)(6)(E), substituted "energy, and as applicable, water, savings" for "energy savings".

Subsec. (o)(3)(B). Pub. L. 102-486, § 123(f)(6)(F), inserted ", in the case of showerheads, faucets, water closets, or urinals, water, or" after "energy or".

Subsec. (p). Pub. L. 102-486, § 123(f)(1), redesignated subsec. (m) as (p). Former subsec. (p) redesignated (s).

Subsec. (p)(3)(A). Pub. L. 102-486, § 123(f)(7), substituted "subsection (o)(2)" for "subsection (l)(2)" and "subsection (o)(4)" for "subsection (l)(4)".

Subsecs. (q) to (t). Pub. L. 102-486, § 123(f)(1), redesignated subsections. (n) to (q) as (q) to (t), respectively.

1988—Subsec. (e)(1)(C). Pub. L. 100-357, § 2(e)(3), inserted "Volume" after "Rated Storage".

Subsec. (g). Pub. L. 100-357, § 2(e)(1)(A), inserted "; fluorescent lamp ballasts;" in heading.

Subsec. (g)(5) to (7). Pub. L. 100-357, § 2(e)(1)(B), added pars. (5) to (7).

Subsec. (i)(1), (2). Pub. L. 100-357, § 2(e)(2), substituted "(14)" for "(13)".

Subsec. (j)(B). Pub. L. 100-357, § 2(e)(4)(A), inserted "fluorescent lamp ballasts," after "clothes dryers," and substituted "heating" for "hearing".

Subsec. (k)(1). Pub. L. 100-357, § 2(e)(4)(B)(i), inserted "and in paragraph (13)" after "(11)".

Subsec. (k)(3)(B). Pub. L. 100-357, § 2(e)(4)(B)(ii), inserted "fluorescent lamp ballasts," after "clothes dryers,".

1987—Pub. L. 100-12 amended section generally, revising and restating as subsections. (a) to (q) provisions formerly contained in subsections. (a) to (j).

1978—Subsec. (a). Pub. L. 95-619 substituted provisions authorizing Secretary to prescribe an energy efficiency standard for each type of covered product specified in section 6292(a)(1) to (13) of this title, authorizing such prescription for any type of covered product specified in section 6292(a)(14) of this title where certain conditions are found to exist, and requiring publication of a list of those types of covered products considered subject to prescribed standards in the Federal Register not later than two years after Nov. 9, 1978, for provisions requiring the Administrator, meaning the Administrator of the Federal Energy Administration, to direct the National Bureau of Standards to develop an energy efficiency improvement target for each type of covered product listed in section 6292(a)(1) to (10) of this title, requiring prescription of such a target by the Administrator not later than ninety days after Aug. 14, 1976, requiring such targets be designed to exceed by 1980 by at least twenty percent the aggregate energy efficiency of the covered products as manufactured in 1972, requiring similar energy efficiency targets be prescribed for covered products specified in section 6292(a)(11) to (13) of this title not later than one year after Aug. 14, 1976, authorizing the Administrator to modify periodically any established targets, requiring the manufacturers of any covered products to submit reports as requested by the Administrator to help in establishing and reaching such targets, authorizing the Administrator to commence proceedings in certain situations to prescribe initial or revised targets, specifying when improvements of energy efficiency are economically justified, and authorizing the Attorney General to determine any negative effects on competition so as to make certain improvements economically unjustified.

Subsec. (b). Pub. L. 95-619 substituted provisions specifying preconditions for prescription of a standard for a type or class of covered products for provisions specifying the procedure to be followed in prescribing energy efficiency standards.

Subsec. (c). Pub. L. 95-619 substituted provisions requiring energy efficiency standards for each type of covered products be designed to achieve the maximum improvement in energy efficiency which the Secretary determines feasible and justified and requiring such standards be phased in over a period not to exceed five years for provisions relating to the prescription of test procedures and the requirements necessary to meet minimum energy efficiency levels.

Subsec. (d). Pub. L. 95-619 substituted provisions relating to a determination by the Secretary of the economic justification of any particular energy efficiency standard and a determination by the Attorney General of the impact on competition of any proposed standard for provisions relating to labeling rules.

Subsecs. (e) to (j). Pub. L. 95-619 added subsections. (e) to (j).

1976—Subsec. (a)(1)(A). Pub. L. 94-385, § 161(a), transferred authority to determine energy targets from the Administrator to the National Bureau of Standards and substituted 90 days after August 14, 1976, for 180 days after December 22, 1975, for the promulgation of rules by the Administrator.

Subsec. (a)(2). Pub. L. 94-385, § 161(b), transferred authority to determine energy targets from the Adminis-

trator to the National Bureau of Standards and substituted one year after August 14, 1976, for one year after December 22, 1975, for the promulgation of rules by the Administrator.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6291, 6293, 6294, 6296, 6297, 6302, 6304, 6305, 6306, 6307, 6316, 6317 of this title.

§ 6296. Requirements of manufacturers

(a) In general

Each manufacturer of a covered product to which a rule under section 6294 of this title applies shall provide a label which meets, and is displayed in accordance with, the requirements of such rule. If such manufacturer or any distributor, retailer, or private labeler of such product advertises such product in a catalog from which it may be purchased, such catalog shall contain all information required to be displayed on the label, except as otherwise provided by rule of the Commission. The preceding sentence shall not require that a catalog contain information respecting a covered product if the distribution of such catalog commenced before the effective date of the labeling rule under section 6294 of this title applicable to such product.

(b) Notification

(1) Each manufacturer of a covered product to which a rule under section 6294 of this title applies shall notify the Secretary or the Commission—

(A) not later than 60 days after the date such rule takes effect, of the models in current production (and starting serial numbers of those models) to which such rule applies; and

(B) prior to commencement of production, of all models subsequently produced (and starting serial numbers of those models) to which such rule applies.

(2) If requested by the Secretary or Commission, the manufacturer of a covered product to which a rule under section 6294 of this title applies shall provide, within 30 days of the date of the request, the data from which the information included on the label and required by the rule was derived. Data shall be kept on file by the manufacturer for a period specified in the rule.

(3) When requested—

(A) by the Secretary for purposes of ascertaining whether a product subject to a standard established in or prescribed under section 6295 of this title is in compliance with that standard, or

(B) by the Commission for purposes of ascertaining whether the information set out on a label of a product, as required under section 6294 of this title, is accurate,

each manufacturer of such a product shall supply at his expense a reasonable number of such covered products to any laboratory designated by the Secretary or the Commission, as the case may be. Any reasonable charge levied by the laboratory for such testing shall be borne by the United States, if and to the extent provided in appropriation Acts.

(4) Each manufacturer of a covered product to which a rule under section 6294 of this title ap-

plies shall annually, at a time specified by the Commission, supply to the Commission relevant data respecting energy consumption or water use developed in accordance with the test procedures applicable to such product under section 6293 of this title.

(5) A rule under section 6293, 6294, or 6295 of this title may require the manufacturer or his agent to permit a representative designated by the Commission or the Secretary to observe any testing required by this part and inspect the results of such testing.

(c) Deadline

Each manufacturer shall use labels reflecting the range data required to be disclosed under section 6294(c)(1)(B) of this title after the expiration of 60 days following the date of publication of any revised table of ranges unless the rule under section 6294 of this title provides for a later date. The Commission may not require labels be changed to reflect revised tables of ranges more often than annually.

(d) Information requirements

(1) For purposes of carrying out this part, the Secretary may require, under this part or other provision of law administered by the Secretary, each manufacturer of a covered product to submit information or reports to the Secretary with respect to energy efficiency, energy use, or, in the case of showerheads, faucets, water closets, and urinals, water use of such covered product and the economic impact of any proposed energy conservation standard, as the Secretary determines may be necessary to establish and revise test procedures, labeling rules, and energy conservation standards for such product and to insure compliance with the requirements of this part. In making any determination under this paragraph, the Secretary shall consider existing public sources of information, including nationally recognized certification programs of trade associations.

(2) The Secretary shall exercise authority under this section in a manner designed to minimize unnecessary burdens on manufacturers of covered products.

(3) The provisions of section 796(d) of title 15 shall apply with respect to information obtained under this subsection to the same extent and in the same manner as they apply with respect to energy information obtained under section 796 of title 15.

(Pub. L. 94-163, title III, §326, Dec. 22, 1975, 89 Stat. 926; Pub. L. 95-619, title IV, §425(d), title VI, §691(b)(2), Nov. 9, 1978, 92 Stat. 3265, 3288; Pub. L. 100-12, §§6, 11(a)(2), (b)(3), Mar. 17, 1987, 101 Stat. 117, 125; Pub. L. 102-486, title I, §123(g), Oct. 24, 1992, 106 Stat. 2829.)

AMENDMENTS

1992—Subsec. (b)(4). Pub. L. 102-486, §123(g)(1), inserted “or water use” after “consumption”.

Subsec. (d)(1). Pub. L. 102-486, §123(g)(2), substituted “, energy use, or, in the case of showerheads, faucets, water closets, and urinals, water use” for “or energy use”.

1987—Subsec. (a). Pub. L. 100-12, §11(b)(3)(A), inserted heading.

Subsec. (b). Pub. L. 100-12, §11(b)(3)(B), inserted heading.

Subsec. (b)(3)(A). Pub. L. 100-12, §11(a)(2), inserted “established in or” before “prescribed under”.

Subsec. (c). Pub. L. 100-12, §11(b)(3)(C), inserted heading.

Subsec. (d). Pub. L. 100-12, §6, inserted “Information requirements” as heading and amended text generally. Prior to amendment, text read as follows: “For purposes of carrying out this part, the Secretary may require, under authority otherwise available to him under this part or other provisions of law administered by him, each manufacturer of covered products to submit such information or reports of any kind or nature directly to the Secretary with respect to energy efficiency of such covered products, and with respect to the economic impact of any proposed energy efficiency standard, as the Secretary determines may be necessary to establish and revise test procedures, labeling rules, and energy efficiency standards for such products and to insure compliance with the requirements of this part. The provisions of section 796(d) of title 15 shall apply with respect to information obtained under this subsection to the same extent and in the same manner as it applies with respect to energy information obtained under section 796 of title 15.”

1978—Subsec. (b)(1). Pub. L. 95-619, §425(d)(2), inserted requirement that manufacturers of covered products give notice to the Secretary of models affected by rules promulgated under section 6294 of this title and expanded the notice requirement itself to include models manufactured more than sixty days after the date a particular rule takes effect.

Subsec. (b)(2). Pub. L. 95-619, §691(b)(2), substituted “Secretary” for “Administrator”, meaning Administrator of the Federal Energy Administration.

Subsec. (b)(3). Pub. L. 95-619, §425(d)(3), authorized Secretary to request submission of covered products for purposes of ascertaining whether a particular product complies with standards under section 6295 of this title and also authorized Secretary to designate testing laboratories for the submitted products.

Subsec. (b)(5). Pub. L. 95-619, §691(b)(2), substituted “Secretary” for “Administrator”.

Subsec. (d). Pub. L. 95-619, §425(d)(1), added subsec. (d).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6302 to 6304, 6316 of this title.

§ 6297. Effect on other law

(a) Preemption of testing and labeling requirements

(1) Effective on March 17, 1987, this part supersedes any State regulation insofar as such State regulation provides at any time for the disclosure of information with respect to any measure of energy consumption or water use of any covered product if—

(A) such State regulation requires testing or the use of any measure of energy consumption, water use, or energy descriptor in any manner other than that provided under section 6293 of this title; or

(B) such State regulation requires disclosure of information with respect to the energy use, energy efficiency, or water use of any covered product other than information required under section 6294 of this title.

(2) For purposes of this section, the following definitions apply:

(A) The term “State regulation” means a law, regulation, or other requirement of a State or its political subdivisions. With respect to showerheads, faucets, water closets, and urinals, such term shall also mean a law,

regulation, or other requirement of a river basin commission that has jurisdiction within a State.

(B) The term “river basin commission” means—

(i) a commission established by interstate compact to apportion, store, regulate, or otherwise manage or coordinate the management of the waters of a river basin; and

(ii) a commission established under section 1962b(a) of this title.

(b) General rule of preemption for energy conservation standards before Federal standard becomes effective for product

Effective on March 17, 1987, and ending on the effective date of an energy conservation standard established under section 6295 of this title for any covered product, no State regulation, or revision thereof, concerning the energy efficiency, energy use, or water use of the covered product shall be effective with respect to such covered product, unless the State regulation or revision—

(1) was prescribed or enacted before January 8, 1987, and is applicable to products before January 3, 1988, or in the case of any portion of any regulation which establishes requirements for fluorescent lamp ballasts, was prescribed or enacted before June 28, 1988, or in the case of any portion of any regulation which establishes requirements for fluorescent or incandescent lamps, flow rate requirements for showerheads or faucets, or water use requirements for water closets or urinals, was prescribed or enacted before October 24, 1992;

(2) is a State procurement regulation described in subsection (e) of this section;

(3) is a regulation described in subsection (f)(1) of this section or is prescribed or enacted in a building code for new construction described in subsection (f)(2) of this section;

(4) is a regulation prohibiting the use in pool heaters of a constant burning pilot, or is a regulation (or portion thereof) regulating fluorescent lamp ballasts other than those to which paragraph (5) of section 6295(g) of this title is applicable, or is a regulation (or portion thereof) regulating fluorescent or incandescent lamps other than those to which section 6295(i) of this title is applicable, or is a regulation (or portion thereof) regulating showerheads or faucets other than those to which section 6295(j) of this title is applicable or regulating lavatory faucets (other than metering faucets) for installation in public places, or is a regulation (or portion thereof) regulating water closets or urinals other than those to which section 6295(k) of this title is applicable;

(5) is a regulation described in subsection (d)(5)(B) of this section for which a waiver has been granted under subsection (d) of this section;

(6) is a regulation effective on or after January 1, 1992, concerning the energy efficiency or energy use of television sets; or

(7) is a regulation (or portion thereof) concerning the water efficiency or water use of low consumption flushometer valve water closets.

(c) General rule of preemption for energy conservation standards when Federal standard becomes effective for product

Except as provided in section 6295(b)(3)(A)(ii) of this title, subparagraphs (B) and (C) of section 6295(j)(3) of this title, and subparagraphs (B) and (C) of section 6295(k)(3) of this title and effective on the effective date of an energy conservation standard established in or prescribed under section 6295 of this title for any covered product, no State regulation concerning the energy efficiency, energy use, or water use of such covered product shall be effective with respect to such product unless the regulation—

(1) is a regulation described in paragraph (2) or (4) of subsection (b) of this section, except that a State regulation (or portion thereof) regulating fluorescent lamp ballasts other than those to which paragraph (5) of section 6295(g) of this title is applicable shall be effective only until the effective date of a standard that is prescribed by the Secretary under paragraph (7) of such section and is applicable to such ballasts, except that a State regulation (or portion thereof) regulating fluorescent or incandescent lamps other than those for which section 6295(i) of this title is applicable shall be effective only until the effective date of a standard that is prescribed by the Secretary and is applicable to such lamps;

(2) is a regulation which has been granted a waiver under subsection (d) of this section;

(3) is in a building code for new construction described in subsection (f)(3) of this section;

(4) is a regulation concerning the water use of lavatory faucets adopted by the State of New York or the State of Georgia before October 24, 1992;

(5) is a regulation concerning the water use of lavatory or kitchen faucets adopted by the State of Rhode Island prior to October 24, 1992; or

(6) is a regulation (or portion thereof) concerning the water efficiency or water use of gravity tank-type low consumption water closets for installation in public places, except that such a regulation shall be effective only until January 1, 1997.

(d) Waiver of Federal preemption

(1)(A) Any State or river basin commission with a State regulation which provides for any energy conservation standard or other requirement with respect to energy use, energy efficiency, or water use for any type (or class) of covered product for which there is a Federal energy conservation standard under section 6295 of this title may file a petition with the Secretary requesting a rule that such State regulation become effective with respect to such covered product.

(B) Subject to paragraphs (2) through (5), the Secretary shall, within the period described in paragraph (2) and after consideration of the petition and the comments of interested persons, prescribe such rule if the Secretary finds (and publishes such finding) that the State or river basin commission has established by a preponderance of the evidence that such State regulation is needed to meet unusual and compelling State or local energy or water interests.

(C) For purposes of this subsection, the term “unusual and compelling State or local energy or water interests” means interests which—

(i) are substantially different in nature or magnitude than those prevailing in the United States generally; and

(ii) are such that the costs, benefits, burdens, and reliability of energy or water savings resulting from the State regulation make such regulation preferable or necessary when measured against the costs, benefits, burdens, and reliability of alternative approaches to energy or water savings or production, including reliance on reasonably predictable market-induced improvements in efficiency of all products subject to the State regulation.

The factors described in clause (ii) shall be evaluated within the context of the State’s energy plan and forecast, and, with respect to a State regulation for which a petition has been submitted to the Secretary which provides for any energy conservation standard or requirement with respect to water use of a covered product, within the context of the water supply and groundwater management plan, water quality program, and comprehensive plan (if any) of the State or river basin commission for improving, developing, or conserving a waterway affected by water supply development.

(2) The Secretary shall give notice of any petition filed under paragraph (1)(A) and afford interested persons a reasonable opportunity to make written comments, including rebuttal comments, thereon. The Secretary shall, within the 6-month period beginning on the date on which any such petition is filed, deny such petition or prescribe the requested rule, except that the Secretary may publish a notice in the Federal Register extending such period to a date certain but no longer than one year after the date on which the petition was filed. Such notice shall include the reasons for delay. In the case of any denial of a petition under this subsection, the Secretary shall publish in the Federal Register notice of, and the reasons for, such denial.

(3) The Secretary may not prescribe a rule under this subsection if the Secretary finds (and publishes such finding) that interested persons have established, by a preponderance of the evidence, that such State regulation will significantly burden manufacturing, marketing, distribution, sale, or servicing of the covered product on a national basis. In determining whether to make such finding, the Secretary shall evaluate all relevant factors, including—

(A) the extent to which the State regulation will increase manufacturing or distribution costs of manufacturers, distributors, and others;

(B) the extent to which the State regulation will disadvantage smaller manufacturers, distributors, or dealers or lessen competition in the sale of the covered product in the State;

(C) the extent to which the State regulation would cause a burden to manufacturers to redesign and produce the covered product type (or class), taking into consideration the extent to which the regulation would result in a reduction—

(i) in the current models, or in the projected availability of models, that could be

shipped on the effective date of the regulation to the State and within the United States; or

(ii) in the current or projected sales volume of the covered product type (or class) in the State and the United States; and

(D) the extent to which the State regulation is likely to contribute significantly to a proliferation of State appliance efficiency requirements and the cumulative impact such requirements would have.

(4) The Secretary may not prescribe a rule under this subsection if the Secretary finds (and publishes such finding) that interested persons have established, by a preponderance of the evidence, that the State regulation is likely to result in the unavailability in the State of any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the State at the time of the Secretary's finding, except that the failure of some classes (or types) to meet this criterion shall not affect the Secretary's determination of whether to prescribe a rule for other classes (or types).

(5) No final rule prescribed by the Secretary under this subsection may—

(A) permit any State regulation to become effective with respect to any covered product manufactured within three years after such rule is published in the Federal Register or within five years if the Secretary finds that such additional time is necessary due to the substantial burdens of retooling, redesign, or distribution needed to comply with the State regulation; or

(B) become effective with respect to a covered product manufactured before the earliest possible effective date specified in section 6295 of this title for the initial amendment of the energy conservation standard established in such section for the covered product; except that such rule may become effective before such date if the Secretary finds (and publishes such finding) that, in addition to the other requirements of this subsection the State has established, by a preponderance of the evidence, that—

(i) there exists within the State an energy emergency condition or, if the State regulation provides for an energy conservation standard or other requirement with respect to the water use of a covered product for which there is a Federal energy conservation standard under subsection (j) or (k) of section 6295 of this title, a water emergency condition, which—

(I) imperils the health, safety, and welfare of its residents because of the inability of the State or utilities within the State to provide adequate quantities of gas or electric energy or, in the case of a water emergency condition, water or wastewater treatment, to its residents at less than prohibitive costs; and

(II) cannot be substantially alleviated by the importation of energy or, in the case of a water emergency condition, by the importation of water, or by the use of interconnection agreements; and

(ii) the State regulation is necessary to alleviate substantially such condition.

(6) In any case in which a State is issued a rule under paragraph (1) with respect to a covered product and subsequently a Federal energy conservation standard concerning such product is amended pursuant to section 6295 of this title, any person subject to such State regulation may file a petition with the Secretary requesting the Secretary to withdraw the rule issued under paragraph (1) with respect to such product in such State. The Secretary shall consider such petition in accordance with the requirements of paragraphs (1), (3), and (4), except that the burden shall be on the petitioner to show by a preponderance of the evidence that the rule received by the State under paragraph (1) should be withdrawn as a result of the amendment to the Federal standard. If the Secretary determines that the petitioner has shown that the rule issued by the State should be so withdrawn, the Secretary shall withdraw it.

(e) Exception for certain State procurement standards

Any State regulation which sets forth procurement standards for a State (or political subdivision thereof) shall not be superseded by the provisions of this part if such standards are more stringent than the corresponding Federal energy conservation standards.

(f) Exception for certain building code requirements

(1) A regulation or other requirement enacted or prescribed before January 8, 1987, that is contained in a State or local building code for new construction concerning the energy efficiency or energy use of a covered product is not superseded by this part until the effective date of the energy conservation standard established in or prescribed under section 6295 of this title for such covered product.

(2) A regulation or other requirement, or revision thereof, enacted or prescribed on or after January 8, 1987, that is contained in a State or local building code for new construction concerning the energy efficiency or energy use of a covered product is not superseded by this part until the effective date of the energy conservation standard established in or prescribed under section 6295 of this title for such covered product if the code does not require that the energy efficiency of such covered product exceed—

(A) the applicable minimum efficiency requirement in a national voluntary consensus standard; or

(B) the minimum energy efficiency level in a regulation or other requirement of the State meeting the requirements of subsection (b)(1) or (b)(5) of this section,

whichever is higher.

(3) Effective on the effective date of an energy conservation standard for a covered product established in or prescribed under section 6295 of this title, a regulation or other requirement contained in a State or local building code for new construction concerning the energy efficiency or energy use of such covered product is not superseded by this part if the code complies with all of the following requirements:

(A) The code permits a builder to meet an energy consumption or conservation objective for a building by selecting items whose combined energy efficiencies meet the objective.

(B) The code does not require that the covered product have an energy efficiency exceeding the applicable energy conservation standard established in or prescribed under section 6295 of this title, except that the required efficiency may exceed such standard up to the level required by a regulation of that State for which the Secretary has issued a rule granting a waiver under subsection (d) of this section.

(C) The credit to the energy consumption or conservation objective allowed by the code for installing covered products having energy efficiencies exceeding such energy conservation standard established in or prescribed under section 6295 of this title or the efficiency level required in a State regulation referred to in subparagraph (B) is on a one-for-one equivalent energy use or equivalent cost basis.

(D) If the code uses one or more baseline building designs against which all submitted building designs are to be evaluated and such baseline building designs contain a covered product subject to an energy conservation standard established in or prescribed under section 6295 of this title, the baseline building designs are based on the efficiency level for such covered product which meets but does not exceed such standard or the efficiency level required by a regulation of that State for which the Secretary has issued a rule granting a waiver under subsection (d) of this section.

(E) If the code sets forth one or more optional combinations of items which meet the energy consumption or conservation objective, for every combination which includes a covered product the efficiency of which exceeds either standard or level referred to in subparagraph (D), there also shall be at least one combination which includes such covered product the efficiency of which does not exceed such standard or level by more than 5 percent, except that at least one combination shall include such covered product the efficiency of which meets but does not exceed such standard.

(F) The energy consumption or conservation objective is specified in terms of an estimated total consumption of energy (which may be calculated from energy loss- or gain-based codes) utilizing an equivalent amount of energy (which may be specified in units of energy or its equivalent cost).

(G) The estimated energy use of any covered product permitted or required in the code, or used in calculating the objective, is determined using the applicable test procedures prescribed under section 6293 of this title, except that the State may permit the estimated energy use calculation to be adjusted to reflect the conditions of the areas where the code is being applied if such adjustment is based on the use of the applicable test procedures prescribed under section 6293 of this title or other technically accurate documented procedure.

(4)(A) Subject to subparagraph (B), a State or local government is not required to submit a pe-

tion to the Secretary in order to enforce or apply its building code or to establish that the code meets the conditions set forth in this subsection.

(B) If a building code requires the installation of covered products with efficiencies exceeding both the applicable Federal standard established in or prescribed under section 6295 of this title and the applicable standard of such State, if any, that has been granted a waiver under subsection (d) of this section, such requirement of the building code shall not be applicable unless the Secretary has granted a waiver for such requirement under subsection (d) of this section.

(g) No warranty

Any disclosure with respect to energy use, energy efficiency, or estimated annual operating cost which is required to be made under the provisions of this part shall not create an express or implied warranty under State or Federal law that such energy efficiency will be achieved or that such energy use or estimated annual operating cost will not be exceeded under conditions of actual use.

(Pub. L. 94-163, title III, §327, Dec. 22, 1975, 89 Stat. 926; Pub. L. 95-619, title IV, §424, Nov. 9, 1978, 92 Stat. 3263; Pub. L. 100-12, §7, Mar. 17, 1987, 101 Stat. 117; Pub. L. 100-357, §2(f), June 28, 1988, 102 Stat. 674; Pub. L. 102-486, title I, §123(h), Oct. 24, 1992, 106 Stat. 2829.)

AMENDMENTS

1992—Subsec. (a)(1). Pub. L. 102-486, §123(h)(1)(A)-(C), in introductory provisions inserted “or water use” after “energy consumption”, in par. (A) inserted “, water use,” after “energy consumption”, and in par. (B) substituted “, energy efficiency, or water use” for “or energy efficiency”.

Subsec. (a)(2). Pub. L. 102-486, §123(h)(1)(D), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “For purposes of this section, the term ‘State regulation’ means a law, regulation, or other requirement of a State or its political subdivisions.”

Subsec. (b). Pub. L. 102-486, §123(h)(2)(A), substituted “, energy use, or water use of the covered product” for “or energy use of the covered product”.

Subsec. (b)(1). Pub. L. 102-486, §123(h)(2)(B), inserted before semicolon at end “, or in the case of any portion of any regulation which establishes requirements for fluorescent or incandescent lamps, flow rate requirements for showerheads or faucets, or water use requirements for water closets or urinals, was prescribed or enacted before October 24, 1992”.

Subsec. (b)(4). Pub. L. 102-486, §123(h)(2)(C), inserted before semicolon at end “, or is a regulation (or portion thereof) regulating fluorescent or incandescent lamps other than those to which section 6295(i) of this title is applicable, or is a regulation (or portion thereof) regulating showerheads or faucets other than those to which section 6295(j) of this title is applicable or regulating lavatory faucets (other than metering faucets) for installation in public places, or is a regulation (or portion thereof) regulating water closets or urinals other than those to which section 6295(k) of this title is applicable”.

Subsec. (b)(7). Pub. L. 102-486, §123(h)(2)(D)-(F), added par. (7).

Subsec. (c). Pub. L. 102-486, §123(h)(3)(A), inserted “, subparagraphs (B) and (C) of section 6295(j)(3) of this title, and subparagraphs (B) and (C) of section 6295(k)(3) of this title” after “section 6295(b)(3)(A)(ii) of this title” and substituted “, energy use, or water use” for “or energy use” of this title.

Subsec. (c)(1). Pub. L. 102-486, §123(h)(3)(B) inserted before semicolon at end “, except that a State regula-

tion (or portion thereof) regulating fluorescent or incandescent lamps other than those for which section 6295(i) of this title is applicable shall be effective only until the effective date of a standard that is prescribed by the Secretary and is applicable to such lamps”.

Subsec. (c)(4) to (6). Pub. L. 102-486, § 123(h)(3)(C)-(E), added pars. (4) to (6).

Subsec. (d)(1)(A). Pub. L. 102-486, § 123(h)(4)(A), inserted “or river basin commission” after “Any State” and substituted “, energy efficiency, or water use” for “or energy efficiency”.

Subsec. (d)(1)(B). Pub. L. 102-486, § 123(h)(4)(B), substituted “State or river basin commission has” for “State has” and inserted “or water” after “energy”.

Subsec. (d)(1)(C). Pub. L. 102-486, § 123(h)(4)(C), in introductory provisions and cl. (ii) inserted “or water” after “energy” wherever appearing and in closing provisions inserted before period at end “, and, with respect to a State regulation for which a petition has been submitted to the Secretary which provides for any energy conservation standard or requirement with respect to water use of a covered product, within the context of the water supply and groundwater management plan, water quality program, and comprehensive plan (if any) of the State or river basin commission for improving, developing, or conserving a waterway affected by water supply development”.

Subsec. (d)(5)(B)(i). Pub. L. 102-486, § 123(h)(5), added cl. (i) and struck out former cl. (i) which read as follows: “an energy emergency condition exists within the State which—

“(I) imperils the health, safety, and welfare of its residents because of the inability of the State or utilities within the State to provide adequate quantities of gas or electric energy to its residents at less than prohibitive costs; and

“(II) cannot be substantially alleviated by the importation of energy or the use of interconnection agreements; and”.

1988—Subsec. (b)(1). Pub. L. 100-357, § 2(f)(1), inserted before semicolon “, or in the case of any portion of any regulation which establishes requirements for fluorescent lamp ballasts, was prescribed or enacted before June 28, 1988”.

Subsec. (b)(4). Pub. L. 100-357, § 2(f)(2), inserted before semicolon “, or is a regulation (or portion thereof) regulating fluorescent lamp ballasts other than those to which paragraph (5) of section 6295(g) of this title is applicable”.

Subsec. (c)(1). Pub. L. 100-357, § 2(f)(3), inserted before semicolon “, except that a State regulation (or portion thereof) regulating fluorescent lamp ballasts other than those to which paragraph (5) of section 6295(g) of this title is applicable shall be effective only until the effective date of a standard that is prescribed by the Secretary under paragraph (7) of such section and is applicable to such ballasts”.

1987—Pub. L. 100-12 amended section generally, revising and restating as subsecs. (a) to (g) provisions formerly contained in subsecs. (a) to (e).

1978—Subsec. (a)(2). Pub. L. 95-619, § 424(b), substituted “other requirement” for “similar requirement”.

Subsec. (b). Pub. L. 95-619, § 424(a), in par. (1) substituted provisions vesting power to prescribe rules superseding State energy efficiency regulations in the Secretary for provisions vesting such power in the Administrator of the Federal Energy Administration and provided that persons subject to such State regulations were to petition the Secretary for relief therefrom rather than the Administrator, in par. (2) inserted provisions authorizing the superseding of any State regulation prescribed after Jan. 1, 1978 respecting energy use of any type of covered product and authorizing the filing of a petition by the State for exemption from any such superseding, and struck out provision that a State regulation containing a more stringent energy efficiency standard than the corresponding Federal standard would not be superseded, and added pars. (3) to (5).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6293, 6295, 6306, 6316 of this title.

§ 6298. Rules

The Commission and the Secretary may each issue such rules as each deems necessary to carry out the provisions of this part.

(Pub. L. 94-163, title III, § 328, Dec. 22, 1975, 89 Stat. 928; Pub. L. 95-619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288.)

AMENDMENTS

1978—Pub. L. 95-619 substituted “Secretary” for “Administrator”, meaning Administrator of the Federal Energy Administration.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6306, 6316 of this title.

§ 6299. Authority to obtain information

(a) In general

For purposes of carrying out this part, the Commission and the Secretary may each sign and issue subpoenas for the attendance and testimony of witnesses and the production of relevant books, records, papers, and other documents, and may each administer oaths. Witnesses summoned under the provisions of this section shall be paid the same fees and mileage as are paid to witnesses in the courts of the United States. In case of contumacy by, or refusal to obey a subpoena served, upon any persons subject to this part, the Commission and the Secretary may each seek an order from the district court of the United States for any district in which such person is found or resides or transacts business requiring such person to appear and give testimony, or to appear and produce documents. Failure to obey any such order is punishable by such court as a contempt thereof.

(b) Confidentiality

Any information submitted by any person to the Secretary or the Commission under this part shall not be considered energy information as defined by section 796(e)(1) of title 15 for purposes of any verification examination authorized to be conducted by the Comptroller General under section 6381 of this title.

(Pub. L. 94-163, title III, § 329, Dec. 22, 1975, 89 Stat. 928; Pub. L. 95-619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288; Pub. L. 100-12, § 11(b)(4), Mar. 17, 1987, 101 Stat. 125.)

AMENDMENTS

1987—Pub. L. 100-12 inserted headings for subsecs. (a) and (b).

1978—Pub. L. 95-619 substituted “Secretary” for “Administrator”, meaning Administrator of the Federal Energy Administration, wherever appearing.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6316 of this title.

§ 6300. Exports

This part shall not apply to any covered product if (1) such covered product is manufactured,

sold, or held for sale for export from the United States (or such product was imported for export), unless such product is in fact distributed in commerce for use in the United States, and (2) such covered product when distributed in commerce, or any container in which it is enclosed when so distributed, bears a stamp or label stating that such covered product is intended for export.

(Pub. L. 94-163, title III, §330, Dec. 22, 1975, 89 Stat. 928.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6316 of this title.

§ 6301. Imports

Any covered product offered for importation in violation of section 6302 of this title shall be refused admission into the customs territory of the United States under rules issued by the Secretary of the Treasury, except that the Secretary of the Treasury may, by such rules, authorize the importation of such covered product upon such terms and conditions (including the furnishing of a bond) as may appear to him appropriate to ensure that such covered product will not violate section 6302 of this title, or will be exported or abandoned to the United States. The Secretary of the Treasury shall prescribe rules under this section not later than 180 days after December 22, 1975.

(Pub. L. 94-163, title III, §331, Dec. 22, 1975, 89 Stat. 928.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6316 of this title.

§ 6302. Prohibited acts

(a) In general

It shall be unlawful—

(1) for any manufacturer or private labeler to distribute in commerce any new covered product to which a rule under section 6294 of this title applies, unless such covered product is labeled in accordance with such rule;

(2) for any manufacturer, distributor, retailer, or private labeler to remove from any new covered product or render illegible any label required to be provided with such product under a rule under section 6294 of this title;

(3) for any manufacturer to fail to permit access to, or copying of, records required to be supplied under this part, or fail to make reports or provide other information required to be supplied under this part;

(4) for any person to fail to comply with an applicable requirement of section 6296(a), (b)(2), (b)(3), or (b)(5) of this title; or

(5) for any manufacturer or private labeler to distribute in commerce any new covered product which is not in conformity with an applicable energy conservation standard established in or prescribed under this part.

(b) “New covered product” defined

For purposes of this section, the term “new covered product” means a covered product the title of which has not passed to a purchaser who buys such product for purposes other than (1) re-

selling such product, or (2) leasing such product for a period in excess of one year.

(Pub. L. 94-163, title III, §332, Dec. 22, 1975, 89 Stat. 928; Pub. L. 100-12, §11(a)(3), (b)(5), Mar. 17, 1987, 101 Stat. 125.)

AMENDMENTS

1987—Subsec. (a). Pub. L. 100-12, §11(b)(5)(A), inserted heading.

Subsec. (a)(5). Pub. L. 100-12, §11(a)(3), substituted “energy conservation standard established in or prescribed under” for “energy efficiency standard prescribed under”.

Subsec. (b). Pub. L. 100-12, §11(b)(5)(B), inserted heading.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6295, 6301, 6303, 6304, 6316, 6317 of this title.

§ 6303. Enforcement

(a) In general

Except as provided in subsection (c) of this section, any person who knowingly violates any provision of section 6302 of this title shall be subject to a civil penalty of not more than \$100 for each violation. Such penalties shall be assessed by the Commission, except that penalties for violations of section 6302(a)(3) of this title which relate to requirements prescribed by the Secretary, violations of section 6302(a)(4) of this title which relate to requests of the Secretary under section 6296(b)(2) of this title, or violations of section 6302(a)(5) of this title shall be assessed by the Secretary. Civil penalties assessed under this part may be compromised by the agency or officer authorized to assess the penalty, taking into account the nature and degree of the violation and the impact of the penalty upon a particular respondent. Each violation of paragraph (1), (2), or (5) of section 6302(a) of this title shall constitute a separate violation with respect to each covered product, and each day of violation of section 6302(a)(3) or (4) of this title shall constitute a separate violation.

(b) “Knowingly” defined

As used in subsection (a) of this section, the term “knowingly” means (1) the having of actual knowledge, or (2) the presumed having of knowledge deemed to be possessed by a reasonable man who acts in the circumstances, including knowledge obtainable upon the exercise of due care.

(c) Special rule

It shall be an unfair or deceptive act or practice in or affecting commerce (within the meaning of section 45(a)(1) of title 15) for any person to violate section 6293(c) of this title, except to the extent that such violation is prohibited under the provisions of section 6302(a)(1) of this title, in which case such provisions shall apply.

(d) Procedure for assessing penalty

(1) Before issuing an order assessing a civil penalty against any person under this section, the Secretary shall provide to such person notice of the proposed penalty. Such notice shall inform such person of his opportunity to elect in writing within 30 days after the date of receipt of such notice to have the procedures of para-

graph (3) (in lieu of those of paragraph (2)) apply with respect to such assessment.

(2)(A) Unless an election is made within 30 calendar days after receipt of notice under paragraph (1) to have paragraph (3) apply with respect to such penalty, the Secretary shall assess the penalty, by order, after a determination of violation has been made on the record after an opportunity for an agency hearing pursuant to section 554 of title 5 before an administrative law judge appointed under section 3105 of such title 5. Such assessment order shall include the administrative law judge's findings and the basis for such assessment.

(B) Any person against whom a penalty is assessed under this paragraph may, within 60 calendar days after the date of the order of the Secretary assessing such penalty, institute an action in the United States court of appeals for the appropriate judicial circuit for judicial review of such order in accordance with chapter 7 of title 5. The court shall have jurisdiction to enter a judgment affirming, modifying, or setting aside in whole or in part, the order of the Secretary, or the court may remand the proceeding to the Secretary for such further action as the court may direct.

(3)(A) In the case of any civil penalty with respect to which the procedures of this paragraph have been elected, the Secretary shall promptly assess such penalty, by order, after the date of the receipt of the notice under paragraph (1) of the proposed penalty.

(B) If the civil penalty has not been paid within 60 calendar days after the assessment order has been made under subparagraph (A), the Secretary shall institute an action in the appropriate district court of the United States for an order affirming the assessment of the civil penalty. The court shall have authority to review de novo the law and the facts involved, and shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part, such assessment.

(C) Any election to have this paragraph apply may not be revoked except with the consent of the Secretary.

(4) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order under paragraph (2), or after the appropriate district court has entered final judgment in favor of the Secretary under paragraph (3), the Secretary shall institute an action to recover the amount of such penalty in any appropriate district court of the United States. In such action, the validity and appropriateness of such final assessment order or judgment shall not be subject to review.

(5)(A) Notwithstanding the provisions of title 28 or section 7192(c) of this title, the Secretary shall be represented by the general counsel of the Department of Energy (or any attorney or attorneys within the Department of Energy designated by the Secretary) who shall supervise, conduct, and argue any civil litigation to which paragraph (3) of this subsection applies (including any related collection action under paragraph (4)) in a court of the United States or in any other court, except the Supreme Court. However, the Secretary or the general counsel shall consult with the Attorney General con-

cerning such litigation, and the Attorney General shall provide, on request, such assistance in the conduct of such litigation as may be appropriate.

(B) Subject to the provisions of section 7192(c) of this title, the Secretary shall be represented by the Attorney General, or the Solicitor General, as appropriate, in actions under this subsection, except to the extent provided in subparagraph (A) of this paragraph.

(C) Section 7172(d) of this title shall not apply with respect to the functions of the Secretary under this subsection.

(6) For purposes of applying the preceding provisions of this subsection in the case of the assessment of a penalty by the Commission for a violation of paragraphs (1) and (2) of section 6302 of this title, references in such provisions to "Secretary" and "Department of Energy" shall be considered to be references to the "Commission".

(Pub. L. 94-163, title III, §333, Dec. 22, 1975, 89 Stat. 929; Pub. L. 95-619, title IV, §§423, 425(e), title VI, §691(b)(2), Nov. 9, 1978, 92 Stat. 3262, 3266, 3288; Pub. L. 100-12, §11(b)(6), Mar. 17, 1987, 101 Stat. 125.)

AMENDMENTS

1987—Pub. L. 100-12 inserted headings for subsecs. (a) to (d).

1978—Subsec. (a). Pub. L. 95-619, §§425(e)(1), 691(b)(2), substituted "Secretary" for "Administrator", meaning Administrator of the Federal Energy Administration, wherever appearing, and "subsection (c) of this section" for "subsection (b) of this section".

Subsec. (c). Pub. L. 95-619, §425(e)(2), substituted "section 6293(c) of this title" for "section 6293(d)(2) of this title" and inserted provision making an exception from the unfair or deceptive act or practice rule.

Subsec. (d). Pub. L. 95-619, §423, added subsec. (d).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6316, 6317 of this title.

§ 6304. Injunctive enforcement

The United States district courts shall have jurisdiction to restrain (1) any violation of section 6302 of this title and (2) any person from distributing in commerce any covered product which does not comply with an applicable rule under section 6294 or 6295 of this title. Any such action shall be brought by the Commission, except that any such action to restrain any violation of section 6302(a)(3) of this title which relates to requirements prescribed by the Secretary, any violation of section 6302(a)(4) of this title which relates to requests of the Secretary under section 6296(b)(2) of this title, or any violation of section 6302(a)(5) of this title shall be brought by the Secretary. Any such action may be brought in any United States district court for a district wherein any act, omission, or transaction constituting the violation occurred, or in such court for the district wherein the defendant is found or transacts business. In any action under this section, process may be served on a defendant in any other district in which the defendant resides or may be found.

(Pub. L. 94-163, title III, §334, Dec. 22, 1975, 89 Stat. 929; Pub. L. 95-619, title VI, §691(b)(2), Nov. 9, 1978, 92 Stat. 3288.)

AMENDMENTS

1978—Pub. L. 95-619 substituted “Secretary” for “Administrator”, meaning Administrator of the Federal Energy Administration, wherever appearing.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6316 of this title.

§ 6305. Citizen suits**(a) Civil actions; jurisdiction**

Except as otherwise provided in subsection (b) of this section, any person may commence a civil action against—

(1) any manufacturer or private labeler who is alleged to be in violation of any provision of this part or any rule under this part;

(2) any Federal agency which has a responsibility under this part where there is an alleged failure of such agency to perform any act or duty under this part which is not discretionary; or

(3) the Secretary in any case in which there is an alleged failure of the Secretary to comply with a nondiscretionary duty to issue a proposed or final rule according to the schedules set forth in section 6295 of this title.

The United States district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such provision or rule, or order such Federal agency to perform such act or duty, as the case may be. The courts shall advance on the docket, and expedite the disposition of, all causes filed therein pursuant to paragraph (3) of this subsection. If the court finds that the Secretary has failed to comply with a deadline established in section 6295 of this title, the court shall have jurisdiction to order appropriate relief, including relief that will ensure the Secretary’s compliance with future deadlines for the same covered product.

(b) Limitation

No action may be commenced—

(1) under subsection (a)(1) of this section—

(A) prior to 60 days after the date on which the plaintiff has given notice of the violation (i) to the Secretary, (ii) to the Commission, and (iii) to any alleged violator of such provision or rule, or

(B) if the Commission has commenced and is diligently prosecuting a civil action to require compliance with such provision or rule, but, in any such action, any person may intervene as a matter of right.

(2) under subsection (a)(2) of this section prior to 60 days after the date on which the plaintiff has given notice of such action to the Secretary and Commission.

Notice under this subsection shall be given in such manner as the Commission shall prescribe by rule.

(c) Right to intervene

In such action under this section, the Secretary or the Commission (or both), if not a party, may intervene as a matter of right.

(d) Award of costs of litigation

The court, in issuing any final order in any action brought pursuant to subsection (a) of this

section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate.

(e) Preservation of other relief

Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of this part or any rule thereunder, or to seek any other relief (including relief against the Secretary or the Commission).

(f) Compliance in good faith

For purposes of this section, if a manufacturer or private labeler complied in good faith with a rule under this part, then he shall not be deemed to have violated any provision of this part by reason of the alleged invalidity of such rule.

(Pub. L. 94-163, title III, §335, Dec. 22, 1975, 89 Stat. 930; Pub. L. 95-619, title IV, §425(f), title VI, §691(b)(2), Nov. 9, 1978, 92 Stat. 3266, 3288; Pub. L. 100-12, §§8, 11(b)(7), Mar. 17, 1987, 101 Stat. 122, 126.)

AMENDMENTS

1987—Subsec. (a). Pub. L. 100-12, §8, added par. (3) and inserted at end “The courts shall advance on the docket, and expedite the disposition of, all causes filed therein pursuant to paragraph (3) of this subsection. If the court finds that the Secretary has failed to comply with a deadline established in section 6295 of this title, the court shall have jurisdiction to order appropriate relief, including relief that will ensure the Secretary’s compliance with future deadlines for the same covered product.”

Subsecs. (b) to (f). Pub. L. 100-12, §11(b)(7), inserted headings for subsecs. (b) to (f).

1978—Subsec. (a). Pub. L. 95-619, §425(f), struck out provision in par. (1) which excluded sections 6295 and 6302(a)(5) of this title and rules thereunder, struck out provision in par. (2) which excluded any act or duty under section 6295 or 6302(a)(5) of this title, and inserted provision giving district courts jurisdiction to order Federal agencies to perform particular acts or duties under this part.

Subsecs. (b), (c), (e). Pub. L. 95-619, §691(b)(2), substituted “Secretary” for “Administrator”, meaning Administrator of the Federal Energy Administration, wherever appearing.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6316 of this title.

§ 6306. Administrative procedure and judicial review**(a) Procedure for prescription of rules**

(1) In addition to the requirements of section 553 of title 5, rules prescribed under section 6293, 6294, 6295, 6297, or 6298 of this title shall afford interested persons an opportunity to present written and oral data, views, and arguments with respect to any proposed rule.

(2) In the case of a rule prescribed under section 6295 of this title, the Secretary shall, by means of conferences or other informal procedures, afford any interested person an opportunity to question—

(A) other interested persons who have made oral presentations; and

(B) employees of the United States who have made written or oral presentations with respect to disputed issues of material fact.

Such opportunity shall be afforded to the extent the Secretary determines that questioning pursuant to such procedures is likely to result in a more timely and effective resolution of such issues.

(3) A transcript shall be kept of any oral presentations made under this subsection.

(b) Petition by persons adversely affected by rules; effect on other laws

(1) Any person who will be adversely affected by a rule prescribed under section 6293, 6294, or 6295 of this title may, at any time within 60 days after the date on which such rule is prescribed, file a petition with the United States court of appeals for the circuit in which such person resides or has his principal place of business, for judicial review of such rule. A copy of the petition shall be transmitted by the clerk of the court to the agency which prescribed the rule. Such agency shall file in the court the written submissions to, and transcript of, the proceedings on which the rule was based, as provided in section 2112 of title 28.

(2) Upon the filing of the petition referred to in paragraph (1), the court shall have jurisdiction to review the rule in accordance with chapter 7 of title 5 and to grant appropriate relief as provided in such chapter. No rule under section 6293, 6294, or 6295 of this title may be affirmed unless supported by substantial evidence.

(3) The judgment of the court affirming or setting aside, in whole or in part, any such rule shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(4) The remedies provided for in this subsection shall be in addition to, and not in substitution for, any other remedies provided by law.

(5) The procedures applicable under this part shall not—

(A) be considered to be modified or affected by any other provision of law unless such other provision specifically amends this part (or provisions of law cited herein); or

(B) be considered to be superseded by any other provision of law unless such other provision does so in specific terms by referring to this part and declaring that such provision supersedes, in whole or in part, the procedures of this part.

(c) Jurisdiction

Jurisdiction is vested in the Federal district courts of the United States over actions brought by—

(1) any adversely affected person to determine whether a State or local government is complying with the requirements of this part; and

(2) any person who files a petition under section 6295(n) of this title which is denied by the Secretary.

(Pub. L. 94-163, title III, § 336, Dec. 22, 1975, 89 Stat. 930; Pub. L. 95-619, title IV, §§ 425(g), 427, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3266, 3267, 3288; Pub. L. 100-12, § 9, Mar. 17, 1987, 101 Stat. 123; Pub. L. 105-388, § 5(a)(6), Nov. 13, 1998, 112 Stat. 3478.)

AMENDMENTS

1998—Subsec. (c)(2). Pub. L. 105-388 substituted “section 6295(n)” for “section 6295(k)”.

1987—Subsec. (a). Pub. L. 100-12 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “Rules under sections 6293, 6294, 6295(a), 6297(b), or 6298 of this title shall be prescribed in accordance with section 553 of title 5, except that—

“(1) interested persons shall be afforded an opportunity to present written and oral data, views, and arguments with respect to any proposed rule, and

“(2) in the case of a rule under section 6295(a) of this title, the Secretary shall, by means of conferences or other informal procedures, afford any interested person an opportunity to question—

“(A) other interested persons who have made oral presentations under paragraph (1), and

“(B) employees of the United States who have made written or oral presentations,

with respect to disputed issues of material fact. Such opportunity shall be afforded to the extent the Secretary determines that questioning pursuant to such procedures is likely to result in a more timely and effective resolution of such issues.

A transcript shall be kept of any oral presentations made under this subsection.”

Subsec. (b). Pub. L. 100-12 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows:

“(1) Any person who will be adversely affected by a rule prescribed under section 6293, 6294, or 6295 of this title when it is effective may, at any time prior to the sixtieth day after the date such rule is prescribed, file a petition with the United States court of appeals for the circuit wherein such person resides or has his principal place of business, for a judicial review thereof. A copy of the petition shall be forthwith transmitted by the clerk of the court to the agency which prescribed the rule. Such agency thereupon shall file in the court the written submissions to, and transcript of, the proceedings on which the rule was based as provided in section 2112 of title 28.

“(2) Upon the filing of the petition referred to in paragraph (1), the court shall have jurisdiction to review the rule in accordance with chapter 7 of title 5 and to grant appropriate relief as provided in such chapter. No rule under section 6293, 6294, or 6295 of this title may be affirmed unless supported by substantial evidence.

“(3) The judgment of the court affirming or setting aside, in whole or in part, any such rule shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

“(4) The remedies provided for in this subsection shall be in addition to, and not in substitution for, any other remedies provided by law.”

Subsec. (c). Pub. L. 100-12 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows:

“(1) Titles IV and V of the Department of Energy Organization Act shall not apply with respect to the procedures under this part.

“(2) The procedures applicable under this part shall not—

“(A) be considered to be modified or affected by any other provision of law unless such other provision specifically amends this part (or provisions of law cited herein), or

“(B) be considered to be superseded by any other provision of law unless such other provision does so in specific terms, referring to this part, and declaring that such provision supersedes, in whole or in part, the procedures of this part.”

1978—Subsec. (a). Pub. L. 95-619, §§ 425(g)(1)-(3), 691(b)(2), struck out par. designation “(1)” before “Rules” and substituted reference to section “6295(a)” for “6295(a)(1), (2), or (3)” in first sentence; redesignated subpars. (A) and (B) and cls. (i) and (ii) of subpar. (B) as pars. (1) and (2) and subpars. (A) and (B) of par. (2), respectively; struck out “paragraph (1), (2), or (3) of” before “section 6295(a)” in par. (2) as so redesignated;

directed the substitution of "paragraph (1)" for "subparagraph (A)" in par. (2)(B) as so redesignated, which was executed to par. (2)(A) as so redesignated to reflect the probable intent of Congress; substituted "subsection" for "paragraph" in last sentence; and substituted "Secretary" for "Administrator", meaning Administrator of the Federal Energy Administration, wherever appearing.

Par. (2), which provided that subsecs. (c) and (d) of section 57a of title 15 shall apply to rules under section 6295 of this title (other than subsecs. (a)(1), (2), and (3)) to the same extent that such subsecs. apply to rules under section 57a(a)(1)(B) of title 15, was struck out to reflect the probable intent of Congress in view of the amendment by Pub. L. 95-619, § 425(g)(1), which struck out designation "(1)" after subsection (a) designation, and in view of the amendment by Pub. L. 95-619, § 422, to section 6295(a) of this title, which struck out pars. (3) to (5) therefrom.

Subsec. (b). Pub. L. 95-619, § 425(g)(4), (5), substituted "section 6293, 6294, or 6295" for "section 6293 or 6294" in pars. (1) and (2) and struck out former par. (5) which related to the application of section 57a(e) of title 15 to rules under section 6295 of this title.

Subsec. (c). Pub. L. 95-619, § 427, added subsec. (c).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6295, 6316 of this title.

§ 6307. Consumer education

(a) In general

The Secretary shall, in close cooperation and coordination with the Commission and appropriate industry trade associations and industry members, including retailers, and interested consumer and environmental organizations, carry out a program to educate consumers and other persons with respect to—

- (1) the significance of estimated annual operating costs;
- (2) the way in which comparative shopping, including comparisons of estimated annual operating costs, can save energy for the Nation and money for consumers; and
- (3) such other matters as the Secretary determines may encourage the conservation of energy in the use of consumer products.

Such steps to educate consumers may include publications, audiovisual presentations, demonstrations, and the sponsorship of national and regional conferences involving manufacturers, distributors, retailers, and consumers, and State, local, and Federal Government representatives. Nothing in this section may be construed to require the compilation of lists which compare the estimated annual operating costs of consumer products by model or manufacturer's name.

(b) State and local incentive programs

(1) The Secretary shall, not later than one year after October 24, 1992, issue recommendations to the States for establishing State and local incentive programs designed to encourage the acceleration of voluntary replacement, by consumers, of existing showerheads, faucets, water closets, and urinals with those products that meet the standards established for such products pursuant to subsections (j) and (k) of section 6295 of this title.

(2) In developing such recommendations, the Secretary shall consult with the heads of other

federal¹ agencies, including the Administrator of the Environmental Protection Agency; State officials; manufacturers, suppliers, and installers of plumbing products; and other interested parties.

(Pub. L. 94-163, title III, § 337, Dec. 22, 1975, 89 Stat. 931; Pub. L. 95-619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288; Pub. L. 102-486, title I, § 123(i), Oct. 24, 1992, 106 Stat. 2831.)

AMENDMENTS

1992—Pub. L. 102-486 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

1978—Pub. L. 95-619 substituted "Secretary" for "Administrator", meaning Administrator of the Federal Energy Administration, wherever appearing.

§ 6308. Annual report

The Secretary shall report to the Congress and the President either (1) as part of his annual report, or (2) in a separate report submitted annually, on the progress of the program undertaken pursuant to this part and on the energy savings impact of this part. Each such report shall specify the actions undertaken by the Secretary in carrying out this part during the period covered by such report, and those actions which the Secretary was required to take under this part during such period but which were not taken, together with the reasons therefor. Nothing in this section provides a defense or justification for a failure by the Secretary to comply with a non-discretionary duty as provided for in this part.

(Pub. L. 94-163, title III, § 338, Dec. 22, 1975, 89 Stat. 932; Pub. L. 95-619, title IV, § 425(h), title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3266, 3288; Pub. L. 100-12, § 10, Mar. 17, 1987, 101 Stat. 124.)

AMENDMENTS

1987—Pub. L. 100-12 inserted at end "Nothing in this section provides a defense or justification for a failure by the Secretary to comply with a nondiscretionary duty as provided for in this part."

1978—Pub. L. 95-619 inserted requirement that each report under this section should account for actions taken by the Secretary, as well as actions not taken, during the covered period in carrying out this part and substituted "Secretary" for "Administrator", meaning Administrator of the Federal Energy Administration.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6294 of this title.

§ 6309. Authorization of appropriations

(a) Authorizations for Secretary

There are authorized to be appropriated to the Secretary not more than the following amounts to carry out his responsibilities under this part—

- (1) \$1,700,000 for fiscal year 1976;
- (2) \$1,500,000 for fiscal year 1977;
- (3) \$3,300,000 for fiscal year 1978; and
- (4) \$10,000,000 for fiscal year 1979.

Amounts authorized for such purposes under paragraph (3) shall be in addition to amounts otherwise authorized and appropriated for such purposes.

(b) Authorizations for Commission

There are authorized to be appropriated to the Commission not more than the following

¹ So in original. Probably should be capitalized.

amounts to carry out its responsibilities under this part—

- (1) \$650,000 for fiscal year 1976;
- (2) \$700,000 for fiscal year 1977;
- (3) \$700,000 for fiscal year 1978; and
- (3)¹ \$2,000,000 for fiscal year 1979.

(c) Other authorizations

There are authorized to be appropriated to the Secretary to be allocated not more than the following amounts—

- (1) \$1,100,000 for fiscal year 1976;
- (2) \$2,500,000 for fiscal year 1977; and
- (3) \$1,800,000 for fiscal year 1978.

Such amounts shall, and any amounts authorized to be appropriated under subsection (a) of this section, may be allocated by the Secretary to the National Institute of Standards and Technology.

(Pub. L. 94-163, title III, §339, Dec. 22, 1975, 89 Stat. 932; Pub. L. 95-70, §3, July 21, 1977, 91 Stat. 276; Pub. L. 95-619, title IV, §426, title VI, §691(b)(2), Nov. 9, 1978, 92 Stat. 3267, 3288; Pub. L. 100-12, §11(b)(8), Mar. 17, 1987, 101 Stat. 126; Pub. L. 100-418, title V, §5115(c), Aug. 23, 1988, 102 Stat. 1433.)

AMENDMENTS

1988—Subsec. (c). Pub. L. 100-418 substituted “National Institute of Standards and Technology” for “National Bureau of Standards” in closing provisions.

1987—Pub. L. 100-12 inserted headings for subsecs. (a) to (c).

1978—Subsec. (a). Pub. L. 95-619, §§426(a), 691(b)(2), substituted “Secretary” for “Administrator”, meaning Administrator of the Federal Energy Administration, in text preceding par. (1), “\$3,300,000” for “\$1,500,000” in par. (3), added par. (4), and provided that amounts authorized under par. (3) would be in addition to amounts otherwise authorized and appropriated.

Subsec. (b)(3). Pub. L. 95-619, §426(b), added second par. (3) relating to fiscal year 1979.

Subsec. (c). Pub. L. 95-619, §691(b)(2), substituted “Secretary” for “Administrator”.

1977—Subsec. (c)(2). Pub. L. 95-70, §3(a), substituted “\$2,500,000” for “\$700,000”.

Subsec. (c)(3). Pub. L. 95-70, §3(b), substituted “\$1,800,000” for “\$700,000”.

PART A-1—CERTAIN INDUSTRIAL EQUIPMENT

CODIFICATION

This part was, in the original, designated part C and has been changed to part A-1 for purposes of codification.

§ 6311. Definitions

For purposes of this part—

(1) The term “covered equipment” means one of the following types of industrial equipment:

- (A) Electric motors and pumps.
- (B) Small commercial package air conditioning and heating equipment.
- (C) Large commercial package air conditioning and heating equipment.
- (D) Packaged terminal air-conditioners and packaged terminal heat pumps.
- (E) Warm air furnaces and packaged boilers.
- (F) Storage water heaters, instantaneous water heaters, and unfired hot water storage tanks.

(G) Any other type of industrial equipment which the Secretary classifies as covered equipment under section 6312(b) of this title.

(2)(A) The term “industrial equipment” means any article of equipment referred to in subparagraph (B) of a type—

- (i) which in operation consumes, or is designed to consume, energy;
- (ii) which, to any significant extent, is distributed in commerce for industrial or commercial use; and
- (iii) which is not a “covered product” as defined in section 6291(a)(2) of this title, other than a component of a covered product with respect to which there is in effect a determination under section 6312(c) of this title;

without regard to whether such article is in fact distributed in commerce for industrial or commercial use.

(B) The types of equipment referred to in this subparagraph (in addition to electric motors and pumps, small and large commercial package air conditioning and heating equipment, packaged terminal air-conditioners, packaged terminal heat pumps, warm air furnaces, packaged boilers, storage water heaters, instantaneous water heaters, and unfired hot water storage tanks) are as follows:

- (i) compressors;
- (ii) fans;
- (iii) blowers;
- (iv) refrigeration equipment;
- (v) electric lights;
- (vi) electrolytic equipment;
- (vii) electric arc equipment;
- (viii) steam boilers;
- (ix) ovens;
- (x) kilns;
- (xi) evaporators; and
- (xii) dryers.

(3) The term “energy efficiency” means the ratio of the useful output of services from an article of industrial equipment to the energy use by such article, determined in accordance with test procedures under section 6314 of this title.

(4) The term “energy use” means the quantity of energy directly consumed by an article of industrial equipment at the point of use, determined in accordance with test procedures established under section 6314 of this title.

(5) The term “manufacturer” means any person who manufactures industrial equipment.

(6) The term “label” may include any printed matter determined appropriate by the Secretary.

(7) The terms “energy”, “manufacture”, “import”, “importation”, “consumer product”, “distribute in commerce”, “distribution in commerce”, and “commerce” have the same meaning as is given such terms in section 6291 of this title.

(8) The term “small commercial package air conditioning and heating equipment” means air-cooled, water-cooled, evaporatively-cooled, or water source (not including ground water source) electrically operated, unitary central air conditioners and central air conditioning heat pumps for commercial application which

¹ So in original. Probably should be designated “(4)”.

are rated below 135,000 Btu per hour (cooling capacity).

(9) The term "large commercial package air conditioning and heating equipment" means air-cooled, water-cooled, evaporatively-cooled, or water source (not including ground water source) electrically operated, unitary central air conditioners and central air conditioning heat pumps for commercial application which are rated at or above 135,000 Btu per hour and below 240,000 Btu per hour (cooling capacity).

(10)(A) The term "packaged terminal air conditioner" means a wall sleeve and a separate unencased combination of heating and cooling assemblies specified by the builder and intended for mounting through the wall. It includes a prime source of refrigeration, separable outdoor louvers, forced ventilation, and heating availability by builder's choice of hot water, steam, or electricity.

(B) The term "packaged terminal heat pump" means a packaged terminal air conditioner that utilizes reverse cycle refrigeration as its prime heat source and should have supplementary heat source available to builders with the choice of hot water, steam, or electric resistant heat.

(11)(A) The term "warm air furnace" means a self-contained oil- or gas-fired furnace designed to supply heated air through ducts to spaces that require it and includes combination warm air furnace/electric air conditioning units but does not include unit heaters and duct furnaces.

(B) The term "packaged boiler" means a boiler that is shipped complete with heating equipment, mechanical draft equipment, and automatic controls; usually shipped in one or more sections.

(12)(A) The term "storage water heater" means a water heater that heats and stores water within the appliance at a thermostatically controlled temperature for delivery on demand. Such term does not include units with an input rating of 4000 Btu per hour or more per gallon of stored water.

(B) The term "instantaneous water heater" means a water heater that has an input rating of at least 4000 Btu per hour per gallon of stored water.

(C) The term "unfired hot water storage tank" means a tank used to store water that is heated externally.

(13)(A) The term "electric motor" means any motor which is a general purpose T-frame, single-speed, foot-mounting, polyphase squirrel-cage induction motor of the National Electrical Manufacturers Association, Design A and B, continuous rated, operating on 230/460 volts and constant 60 Hertz line power as defined in NEMA Standards Publication MG1-1987.

(B) The term "definite purpose motor" means any motor designed in standard ratings with standard operating characteristics or standard mechanical construction for use under service conditions other than usual or for use on a particular type of application and which cannot be used in most general purpose applications.

(C) The term "special purpose motor" means any motor, other than a general purpose

motor or definite purpose motor, which has special operating characteristics or special mechanical construction, or both, designed for a particular application.

(D) The term "open motor" means a motor having ventilating openings which permit passage of external cooling air over and around the windings of the machine.

(E) The term "enclosed motor" means a motor so enclosed as to prevent the free exchange of air between the inside and outside of the case but not sufficiently enclosed to be termed airtight.

(F) The term "small electric motor" means a NEMA general purpose alternating current single-speed induction motor, built in a two-digit frame number series in accordance with NEMA Standards Publication MG1-1987.

(G) The term "efficiency" when used with respect to an electric motor means the ratio of an electric motor's useful power output to its total power input, expressed in percentage.

(H) The term "nominal full load efficiency" means the average efficiency of a population of motors of duplicate design as determined in accordance with NEMA Standards Publication MG1-1987.

(14) The term "ASHRAE" means the American Society of Heating, Refrigerating, and Air Conditioning Engineers.

(15) The term "IES" means the Illuminating Engineering Society of North America.

(16) The term "NEMA" means the National Electrical Manufacturers Association.

(17) The term "IEEE" means the Institute of Electrical and Electronics Engineers.

(18) The term "energy conservation standard" means—

(A) a performance standard that prescribes a minimum level of energy efficiency or a maximum quantity of energy use for a product; or

(B) a design requirement for a product.

(Pub. L. 94-163, title III, §340, as added Pub. L. 95-619, title IV, §441(a), Nov. 9, 1978, 92 Stat. 3267; amended Pub. L. 102-486, title I, §122(a), (f)(1), Oct. 24, 1992, 106 Stat. 2806, 2817.)

AMENDMENTS

1992—Par. (1)(B) to (G). Pub. L. 102-486, §122(a)(1), added subpars. (B) to (F) and redesignated former subpar. (B) as (G).

Par. (2)(B). Pub. L. 102-486, §122(a)(2), in introductory provisions, substituted "pumps, small and large commercial package air conditioning and heating equipment, packaged terminal air-conditioners, packaged terminal heat pumps, warm air furnaces, packaged boilers, storage water heaters, instantaneous water heaters, and unfired hot water storage tanks" for "pumps", redesignated cls. (vi) to (x) and (xii) to (xiv) as cls. (v) to (ix) and (x) to (xii), respectively, and struck out former cls. (v) and (xi) which read "air conditioning equipment;" and "furnaces;", respectively.

Par. (3). Pub. L. 102-486, §122(f)(1), substituted "(3) The" for "(3) the".

Pars. (8) to (18). Pub. L. 102-486, §122(a)(3), added pars. (8) to (18).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6312, 6316, 6317 of this title.

§ 6312. Purposes and coverage**(a) Congressional statement of purpose**

It is the purpose of this part to improve the efficiency of electric motors and pumps and certain other industrial equipment in order to conserve the energy resources of the Nation.

(b) Inclusion of industrial equipment as covered equipment

The Secretary may, by rule, include a type of industrial equipment as covered equipment if he determines that to do so is necessary to carry out the purposes of this part.

(c) Inclusion of component parts of consumer products as industrial equipment

The Secretary may, by rule, include as industrial equipment articles which are component parts of consumer products, if he determines that—

(1) such articles are, to a significant extent, distributed in commerce other than as component parts for consumer products; and

(2) such articles meet the requirements of section 6311(2)(A) of this title (other than clauses (ii) and (iii)).

(Pub. L. 94-163, title III, §341, as added Pub. L. 95-619, title IV, §441(a), Nov. 9, 1978, 92 Stat. 3268.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6311 of this title.

§ 6313. Standards**(a) Small and large commercial package air conditioning and heating equipment, packaged terminal air conditioners and heat pumps, warm-air furnaces, packaged boilers, storage water heaters, instantaneous water heaters, and unfired hot water storage tanks**

(1) Each small commercial package air conditioning and heating equipment manufactured on or after January 1, 1994, shall meet the following standard levels:

(A) The minimum seasonal energy efficiency ratio of air-cooled three-phase electric central air conditioners and central air conditioning heat pumps less than 65,000 Btu per hour (cooling capacity), split systems, shall be 10.0.

(B) The minimum seasonal energy efficiency ratio of air-cooled three-phase electric central air conditioners and central air conditioning heat pumps less than 65,000 Btu per hour (cooling capacity), single package, shall be 9.7.

(C) The minimum energy efficiency ratio of air-cooled central air conditioners and central air conditioning heat pumps at or above 65,000 Btu per hour (cooling capacity) and less than 135,000 Btu per hour (cooling capacity) shall be 8.9 (at a standard rating of 95 degrees F db).

(D) The minimum heating seasonal performance factor of air-cooled three-phase electric central air conditioning heat pumps less than 65,000 Btu per hour (cooling capacity), split systems, shall be 6.8.

(E) The minimum heating seasonal performance factor of air-cooled three-phase electric central air conditioning heat pumps less than 65,000 Btu per hour (cooling capacity), single package, shall be 6.6.

(F) The minimum coefficient of performance in the heating mode of air-cooled central air conditioning heat pumps at or above 65,000 Btu per hour (cooling capacity) and less than 135,000 Btu per hour (cooling capacity) shall be 3.0 (at a high temperature rating of 47 degrees F db).

(G) The minimum energy efficiency ratio of water-cooled, evaporatively-cooled and water-source central air conditioners and central air conditioning heat pumps less than 65,000 Btu per hour (cooling capacity) shall be 9.3 (at a standard rating of 95 degrees F db, outdoor temperature for evaporatively cooled equipment, and 85 degrees Fahrenheit entering water temperature for water-source and water-cooled equipment).

(H) The minimum energy efficiency ratio of water-cooled, evaporatively-cooled and water-source central air conditioners and central air conditioning heat pumps at or above 65,000 Btu per hour (cooling capacity) and less than 135,000 Btu per hour (cooling capacity) shall be 10.5 (at a standard rating of 95 degrees F db, outdoor temperature for evaporatively cooled equipment, and 85 degrees Fahrenheit entering water temperature for water source and water-cooled equipment).

(I) The minimum coefficient of performance in the heating mode of water-source heat pumps less than 135,000 Btu per hour (cooling capacity) shall be 3.8 (at a standard rating of 70 degrees Fahrenheit entering water).

(2) Each large commercial package air conditioning and heating equipment manufactured on or after January 1, 1995, shall meet the following standard levels:

(A) The minimum energy efficiency ratio of air-cooled central air conditioners and central air conditioning heat pumps at or above 135,000 Btu per hour (cooling capacity) and less than 240,000 Btu per hour (cooling capacity) shall be 8.5 (at a standard rating of 95 degrees F db).

(B) The minimum coefficient of performance in the heating mode of air-cooled central air conditioning heat pumps at or above 135,000 Btu per hour (cooling capacity) and less than 240,000 Btu per hour (cooling capacity) shall be 2.9.

(C) The minimum energy efficiency ratio of water- and evaporatively-cooled central air conditioners and central air conditioning heat pumps at or above 135,000 Btu per hour (cooling capacity) and less than 240,000 Btu per hour (cooling capacity) shall be 9.6 (according to ARI Standard 360-86).

(3) Each packaged terminal air conditioner and packaged terminal heat pump manufactured on or after January 1, 1994, shall meet the following standard levels:

(A) The minimum energy efficiency ratio (EER) of packaged terminal air conditioners and packaged terminal heat pumps in the cooling mode shall be 10.0 — (0.16 x Capacity [in thousands of Btu per hour at a standard rating of 95 degrees F db, outdoor temperature]). If a unit has a capacity of less than 7,000 Btu per hour, then 7,000 Btu per hour shall be used in the calculation. If a unit has a capacity of greater than 15,000 Btu per hour,

then 15,000 Btu per hour shall be used in the calculation.

(B) The minimum coefficient of performance (COP) of packaged terminal heat pumps in the heating mode shall be $1.3 + (0.16 \times \text{the minimum cooling EER as specified in subparagraph (A)})$ (at a standard rating of 47 degrees F db).

(4) Each warm air furnace and packaged boiler manufactured on or after January 1, 1994, shall meet the following standard levels:

(A) The minimum thermal efficiency at the maximum rated capacity of gas-fired warm-air furnaces with capacity of 225,000 Btu per hour or more shall be 80 percent.

(B) The minimum thermal efficiency at the maximum rated capacity of oil-fired warm-air furnaces with capacity of 225,000 Btu per hour or more shall be 81 percent.

(C) The minimum combustion efficiency at the maximum rated capacity of gas-fired packaged boilers with capacity of 300,000 Btu per hour or more shall be 80 percent.

(D) The minimum combustion efficiency at the maximum rated capacity of oil-fired packaged boilers with capacity of 300,000 Btu per hour or more shall be 83 percent.

(5) Each storage water heater, instantaneous water heater, and unfired water storage tank manufactured on or after January 1, 1994, shall meet the following standard levels:

(A) Except as provided in subparagraph (G), the maximum standby loss, in percent per hour, of electric storage water heaters shall be $0.30 + (27/\text{Measured Storage Volume [in gallons]})$.

(B) Except as provided in subparagraph (G), the maximum standby loss, in percent per hour, of gas- and oil-fired storage water heaters with input ratings of 155,000 Btu per hour or less shall be $1.30 + (114/\text{Measured Storage Volume [in gallons]})$. The minimum thermal efficiency of such units shall be 78 percent.

(C) Except as provided in subparagraph (G), the maximum standby loss, in percent per hour, of gas- and oil-fired storage water heaters with input ratings of more than 155,000 Btu per hour shall be $1.30 + (95/\text{Measured Storage Volume [in gallons]})$. The minimum thermal efficiency of such units shall be 78 percent.

(D) The minimum thermal efficiency of instantaneous water heaters with a storage volume of less than 10 gallons shall be 80 percent.

(E) Except as provided in subparagraph (G), the minimum thermal efficiency of instantaneous water heaters with a storage volume of 10 gallons or more shall be 77 percent. The maximum standby loss, in percent/hour, of such units shall be $2.30 + (67/\text{Measured Storage Volume [in gallons]})$.

(F) Except as provided in subparagraph (G), the maximum heat loss of unfired hot water storage tanks shall be 6.5 Btu per hour per square foot of tank surface area.

(G) Storage water heaters and hot water storage tanks having more than 140 gallons of storage capacity need not meet the standby loss or heat loss requirements specified in subparagraphs (A) through (C) and subparagraphs (E) and (F) if the tank surface area is thermally insulated to R-12.5 and if a standing pilot light is not used.

(6)(A) If ASHRAE/IES Standard 90.1, as in effect on October 24, 1992, is amended with respect to any small commercial package air conditioning and heating equipment, large commercial package air conditioning and heating equipment, packaged terminal air conditioners, packaged terminal heat pumps, warm-air furnaces, packaged boilers, storage water heaters, instantaneous water heaters, or unfired hot water storage tanks, the Secretary shall establish an amended uniform national standard for that product at the minimum level for each effective date specified in the amended ASHRAE/IES Standard 90.1, unless the Secretary determines, by rule published in the Federal Register and supported by clear and convincing evidence, that adoption of a uniform national standard more stringent than such amended ASHRAE/IES Standard 90.1 for such product would result in significant additional conservation of energy and is technologically feasible and economically justified.

(B)(i) If the Secretary issues a rule containing such a determination, the rule shall establish such amended standard. In determining whether a standard is economically justified for the purposes of subparagraph (A), the Secretary shall, after receiving views and comments furnished with respect to the proposed standard, determine whether the benefits of the standard exceed its burdens by, to the greatest extent practicable, considering—

(I) the economic impact of the standard on the manufacturers and on the consumers of the products subject to such standard;

(II) the savings in operating costs throughout the estimated average life of the product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the products which are likely to result from the imposition of the standard;

(III) the total projected amount of energy savings likely to result directly from the imposition of the standard;

(IV) any lessening of the utility or the performance of the products likely to result from the imposition of the standard;

(V) the impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard;

(VI) the need for national energy conservation; and

(VII) other factors the Secretary considers relevant.

(ii) The Secretary may not prescribe any amended standard under this paragraph which increases the maximum allowable energy use, or decreases the minimum required energy efficiency, of a covered product. The Secretary may not prescribe an amended standard under this subparagraph if the Secretary finds (and publishes such finding) that interested persons have established by a preponderance of the evidence that a standard is likely to result in the unavailability in the United States in any product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United

States at the time of the Secretary's finding. The failure of some types (or classes) to meet this criterion shall not affect the Secretary's determination of whether to prescribe a standard for other types or classes.

(C) A standard amended by the Secretary under this paragraph shall become effective for products manufactured—

(i) with respect to small commercial package air conditioning and heating equipment, packaged terminal air conditioners, packaged terminal heat pumps, warm-air furnaces, packaged boilers, storage water heaters, instantaneous water heaters, and unfired hot water storage tanks, on or after a date which is two years after the effective date of the applicable minimum energy efficiency requirement in the amended ASHRAE/IES standard referred to in subparagraph (A); and

(ii) with respect to large commercial package air conditioning and heating equipment, on or after a date which is three years after the effective date of the applicable minimum energy efficiency requirement in the amended ASHRAE/IES standard referred to in subparagraph (A);

except that an energy conservation standard amended by the Secretary pursuant to a rule under subparagraph (B) shall become effective for products manufactured on or after a date which is four years after the date such rule is published in the Federal Register.

(b) Electric motors

(1) Except for definite purpose motors, special purpose motors, and those motors exempted by the Secretary under paragraph (2), each electric motor manufactured (alone or as a component of another piece of equipment) after the 60-month period beginning on October 24, 1992, or in the case of an electric motor which requires listing or certification by a nationally recognized safety testing laboratory, after the 84-month period beginning on October 24, 1992, shall have a nominal full load efficiency of not less than the following:

Number of poles	Nominal Full-Load Efficiency					
	Open Motors			Closed Motors		
	6	4	2	6	4	2
Motor Horsepower						
1	80.0	82.5	.....	80.0	82.5	75.5
1.5	84.0	84.0	82.5	85.5	84.0	82.5
2	85.5	84.0	84.0	86.5	84.0	84.0
3	86.5	86.5	84.0	87.5	87.5	85.5
5	87.5	87.5	85.5	87.5	87.5	87.5
7.5	88.5	88.5	87.5	89.5	89.5	88.5
10	90.2	89.5	88.5	89.5	89.5	89.5
15	90.2	91.0	89.5	90.2	91.0	90.2
20	91.0	91.0	90.2	90.2	91.0	90.2
25	91.7	91.7	91.0	91.7	92.4	91.0
30	92.4	92.4	91.0	91.7	92.4	91.0
40	93.0	93.0	91.7	93.0	93.0	91.7
50	93.0	93.0	92.4	93.0	93.0	92.4
60	93.6	93.6	93.0	93.6	93.6	93.0
75	93.6	94.1	93.0	93.6	94.1	93.0
100	94.1	94.1	93.0	94.1	94.5	93.6
125	94.1	94.5	93.6	94.1	94.5	94.5
150	94.5	95.0	93.6	95.0	95.0	94.5
200	94.5	95.0	94.5	95.0	95.0	95.0

(2)(A) The Secretary may, by rule, provide that the standards specified in paragraph (1) shall not apply to certain types or classes of electric motors if—

(i) compliance with such standards would not result in significant energy savings because such motors cannot be used in most general purpose applications or are very unlikely to be used in most general purpose applications; and

(ii) standards for such motors would not be technologically feasible or economically justified.

(B) Not later than one year after October 24, 1992, a manufacturer seeking an exemption under this paragraph with respect to a type or class of electric motor developed on or before October 24, 1992, shall submit a petition to the Secretary requesting such exemption. Such petition shall include evidence that the type or class of motor meets the criteria for exemption specified in subparagraph (A).

(C) Not later than two years after October 24, 1992, the Secretary shall rule on each petition for exemption submitted pursuant to subparagraph (B). In making such ruling, the Secretary shall afford an opportunity for public comment.

(D) Manufacturers of types or classes of motors developed after October 24, 1992, to which standards under paragraph (1) would be applicable may petition the Secretary for exemptions from compliance with such standards based on the criteria specified in subparagraph (A).

(3)(A) The Secretary shall publish a final rule no later than the end of the 24-month period beginning on the effective date of the standards established under paragraph (1) to determine if such standards should be amended. Such rule shall provide that any amendment shall apply to electric motors manufactured on or after a date which is five years after the effective date of the standards established under paragraph (1).

(B) The Secretary shall publish a final rule no later than 24 months after the effective date of the previous final rule to determine whether to amend the standards in effect for such product. Any such amendment shall apply to electric motors manufactured after a date which is five years after—

(i) the effective date of the previous amendment; or

(ii) if the previous final rule did not amend the standards, the earliest date by which a previous amendment could have been effective.

(Pub. L. 94-163, title III, §342, as added Pub. L. 95-619, title IV, §441(a), Nov. 9, 1978, 92 Stat. 3269; amended Pub. L. 102-486, title I, §122(d), Oct. 24, 1992, 106 Stat. 2810.)

AMENDMENTS

1992—Pub. L. 102-486 amended section generally, substituting present provisions for former provisions requiring Secretary to conduct evaluations of electric motors and pumps and other industrial equipment for purposes of determining standards.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6314, 6315, 6316 of this title.

§ 6314. Test procedures**(a) Prescription by Secretary; requirements**

(1) The Secretary may conduct an evaluation of a class of covered equipment and may prescribe test procedures for such class in accordance with the provisions of this section.

(2) Test procedures prescribed in accordance with this section shall be reasonably designed to produce test results which reflect energy efficiency, energy use, and estimated operating costs of a type of industrial equipment (or class thereof) during a representative average use cycle (as determined by the Secretary), and shall not be unduly burdensome to conduct.

(3) If the test procedure is a procedure for determining estimated annual operating costs, such procedure shall provide that such costs shall be calculated from measurements of energy use in a representative average-use cycle (as determined by the Secretary), and from representative average unit costs of the energy needed to operate such equipment during such cycle. The Secretary shall provide information to manufacturers of covered equipment respecting representative average unit costs of energy.

(4)(A) With respect to small commercial package air conditioning and heating equipment, large commercial package air conditioning and heating equipment, packaged terminal air conditioners, packaged terminal heat pumps, warm-air furnaces, packaged boilers, storage water heaters, instantaneous water heaters, and unfired hot water storage tanks to which standards are applicable under section 6313 of this title, the test procedures shall be those generally accepted industry testing procedures or rating procedures developed or recognized by the Air-Conditioning and Refrigeration Institute or by the American Society of Heating, Refrigerating and Air Conditioning Engineers, as referenced in ASHRAE/IES Standard 90.1 and in effect on June 30, 1992.

(B) If such an industry test procedure or rating procedure for small commercial package air conditioning and heating equipment, large commercial package air conditioning and heating equipment, packaged terminal air conditioners, packaged terminal heat pumps, warm-air furnaces, packaged boilers, storage water heaters, instantaneous water heaters, or unfired hot water storage tanks is amended, the Secretary shall amend the test procedure for the product as necessary to be consistent with the amended industry test procedure or rating procedure unless the Secretary determines, by rule, published in the Federal Register and supported by clear and convincing evidence, that to do so would not meet the requirements for test procedures described in paragraphs (2) and (3) of this subsection.

(C) If the Secretary prescribes a rule containing such a determination, the rule may establish an amended test procedure for such product that meets the requirements of paragraphs (2) and (3) of this subsection. In establishing any amended test procedure under this subparagraph or subparagraph (B), the Secretary shall follow the procedures and meet the requirements specified in section 6293(e) of this title.

(5)(A) With respect to electric motors to which standards are applicable under section 6313 of

this title, the test procedures shall be the test procedures specified in NEMA Standards Publication MG1-1987 and IEEE Standard 112 Test Method B for motor efficiency, as in effect on October 24, 1992.

(B) If the test procedure requirements of NEMA Standards Publication MG-1987 and IEEE Standard 112 Test Method B for motor efficiency are amended, the Secretary shall amend the test procedures established by subparagraph (A) to conform to such amended test procedure requirements unless the Secretary determines, by rule, published in the Federal Register and supported by clear and convincing evidence, that to do so would not meet the requirements for test procedures described in paragraphs (2) and (3) of this subsection.

(C) If the Secretary prescribes a rule containing such a determination, the rule may establish amended test procedures for such electric motors that meets the requirements of paragraphs (2) and (3) of this subsection. In establishing any amended test procedure under this subparagraph or subparagraph (B), the Secretary shall follow the procedures and meet the requirements specified in section 6293(e) of this title.

(b) Publication in Federal Register; presentment of oral and written data, views, and arguments by interested persons

Before prescribing any final test procedures under this section, the Secretary shall—

(1) publish proposed test procedures in the Federal Register; and

(2) afford interested persons an opportunity (of not less than 45 days' duration) to present oral and written data, views, and arguments on the proposed test procedures.

(c) Reevaluations

(1) The Secretary shall, not later than 3 years after the date of prescribing a test procedure under this section (and from time to time thereafter), conduct a reevaluation of such procedure and, on the basis of such reevaluation, shall determine if such test procedure should be amended. In conducting such reevaluation, the Secretary shall take into account such information as he deems relevant, including technological developments relating to the energy efficiency of the type (or class) of covered equipment involved.

(2) If the Secretary determines under paragraph (1) that a test procedure should be amended, he shall promptly publish in the Federal Register proposed test procedures incorporating such amendments and afford interested persons an opportunity to present oral and written data, views, and arguments. Such comment period shall not be less than 45 days' duration.

(d) Prohibited representations

(1) Effective 180 days (or, in the case of small commercial package air conditioning and heating equipment, large commercial package air conditioning and heating equipment, packaged terminal air conditioners, packaged terminal heat pumps, warm-air furnaces, packaged boilers, storage water heaters, instantaneous water heaters, and unfired hot water storage tanks, 360 days) after a test procedure rule applicable to any covered equipment is prescribed under this

section, no manufacturer, distributor, retailer, or private labeler may make any representation—

- (A) in writing (including any representation on a label), or
- (B) in any broadcast advertisement,

respecting the energy consumption of such equipment or cost of energy consumed by such equipment, unless such equipment has been tested in accordance with such test procedure and such representation fairly discloses the results of such testing.

(2) On the petition of any manufacturer, distributor, retailer, or private labeler, filed not later than the 60th day before the expiration of the period involved, the 180-day period referred to in paragraph (1) may be extended by the Secretary with respect to the petitioner (but in no event for more than an additional 180 days) if he finds that the requirements of paragraph (1) would impose on such petitioner an undue hardship (as determined by the Secretary).

(e) Assistance by National Institute of Standards and Technology

The Secretary may direct the National Institute of Standards and Technology to provide such assistance as the Secretary deems necessary to carry out his responsibilities under this part, including the development of test procedures.

(Pub. L. 94-163, title III, §343, as added Pub. L. 95-619, title IV, §441(a), Nov. 9, 1978, 92 Stat. 3270; amended Pub. L. 100-418, title V, §5115(c), Aug. 23, 1988, 102 Stat. 1433; Pub. L. 102-486, title I, §122(b), (f)(2), Oct. 24, 1992, 106 Stat. 2808, 2817.)

AMENDMENTS

1992—Subsec. (a)(1). Pub. L. 102-486, §122(b)(1)(A), added par. (1) and struck out former par. (1) which read as follows: “If the Secretary has conducted an evaluation of a class of covered equipment under section 6313 of this title, he may prescribe test procedures for such class in accordance with the following provisions of this section.”

Subsec. (a)(4), (5). Pub. L. 102-486, §122(b)(1)(B), added pars. (4) and (5).

Subsecs. (c), (d). Pub. L. 102-486, §122(f)(2), redesignated subsec. (d), relating to reevaluations, as (c).

Subsec. (d)(1). Pub. L. 102-486, §122(b)(2), inserted “(or, in the case of small commercial package air conditioning and heating equipment, large commercial package air conditioning and heating equipment, packaged terminal air conditioners, packaged terminal heat pumps, warm-air furnaces, packaged boilers, storage water heaters, instantaneous water heaters, and unfired hot water storage tanks, 360 days)” after “180 days”.

1988—Subsec. (e). Pub. L. 100-418 substituted “National Institute of Standards and Technology” for “National Bureau of Standards”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6311, 6315, 6316 of this title.

§ 6315. Labeling

(a) Prescription by Secretary

If the Secretary has prescribed test procedures under section 6314 of this title for any class of covered equipment, he shall prescribe a labeling rule applicable to such class of covered equipment in accordance with the following provisions of this section.

(b) Disclosure of energy efficiency of articles of covered equipment

A labeling rule prescribed in accordance with this section shall require that each article of covered equipment which is in the type (or class) of industrial equipment to which such rule applies, discloses by label, the energy efficiency of such article, determined in accordance with test procedures under section 6314 of this title. Such rule may also require that such disclosure include the estimated operating costs and energy use, determined in accordance with test procedures under section 6314 of this title.

(c) Inclusion of requirements

A rule prescribed in accordance with this section shall include such requirements as the Secretary determines are likely to assist purchasers in making purchasing decisions, including—

(1) requirements and directions for display of any label,

(2) requirements for including on any label, or separately attaching to, or shipping with, the covered equipment, such additional information relating to energy efficiency, energy use, and other measures of energy consumption, including instructions for the maintenance, use, or repair of the covered equipment, as the Secretary determines necessary to provide adequate information to purchasers, and

(3) requirements that printed matter which is displayed or distributed at the point of sale of such equipment shall disclose such information as may be required under this section to be disclosed on the label of such equipment.

(d) Labeling rules applicable to electric motors

Subject to subsection (h) of this section, not later than 12 months after the Secretary establishes test procedures for electric motors under section 6314 of this title, the Secretary shall prescribe labeling rules under this section applicable to electric motors taking into consideration NEMA Standards Publication MG1-1987. Such rules shall provide that the labeling of any electric motor manufactured after the 12-month period beginning on the date the Secretary prescribes such labeling rules, shall—

(1) indicate the energy efficiency of the motor on the permanent nameplate attached to such motor;

(2) prominently display the energy efficiency of the motor in equipment catalogs and other material used to market the equipment; and

(3) include such other markings as the Secretary determines necessary solely to facilitate enforcement of the standards established for electric motors under section 6313 of this title.

(e) Labeling rules for air conditioning and heating equipment

Subject to subsection (h) of this section, not later than 12 months after the Secretary establishes test procedures for small commercial package air conditioning and heating equipment, large commercial package air conditioning and heating equipment, packaged terminal air conditioners, packaged terminal heat pumps, warm-air furnaces, packaged boilers, storage water heaters, instantaneous water heaters, and unfired hot water storage tanks

under section 6314 of this title, the Secretary shall prescribe labeling rules under this section for such equipment. Such rules shall provide that the labeling of any small commercial package air conditioning and heating equipment, large commercial package air conditioning and heating equipment, packaged terminal air conditioner, packaged terminal heat pump, warm-air furnace, packaged boiler, storage water heater, instantaneous water heater, and unfired hot water storage tank manufactured after the 12-month period beginning on the date the Secretary prescribes such rules shall—

(1) indicate the energy efficiency of the equipment on the permanent nameplate attached to such equipment or other nearby permanent marking;

(2) prominently display the energy efficiency of the equipment in new equipment catalogs used by the manufacturer to advertise the equipment; and

(3) include such other markings as the Secretary determines necessary solely to facilitate enforcement of the standards established for such equipment under section 6313 of this title.

(f) Consultation with Federal Trade Commission

Before prescribing any labeling rules for a type (or class) of covered equipment, the Secretary shall consult with, and obtain the written views of, the Federal Trade Commission with respect to such rules. The Federal Trade Commission shall promptly provide such written views upon the request of the Secretary.

(g) Publication in Federal Register; presentment of oral and written data, views, and arguments of interested persons

(1) Before prescribing any labeling rules under this section, the Secretary shall—

(A) publish proposed labeling rules in the Federal Register, and

(B) afford interested persons an opportunity (of not less than 45 days' duration) to present oral and written data, views, and arguments on the proposed rules.

(2) A labeling rule prescribed under this section shall take effect not later than 3 months after the date of prescription of such rule, except that such rules may take effect not later than 6 months after such date of prescription if the Secretary determines that such extension is necessary to allow persons subject to such rules adequate time to come into compliance with such rules.

(h) Restrictions on Secretary's authority to promulgate rules

The Secretary shall not promulgate labeling rules for any class of industrial equipment unless he has determined that—

(1) labeling in accordance with this section is technologically and economically feasible with respect to such class;

(2) significant energy savings will likely result from such labeling; and

(3) labeling in accordance with this section is likely to assist consumers in making purchasing decisions.

(i) Tests for accuracy of information contained on labels

When requested by the Secretary, any manufacturer of industrial equipment to which a rule under this section applies shall supply at the manufacturer's expense a reasonable number of articles of such covered equipment to any laboratory or testing facility designated by the Secretary, or permit representatives of such laboratory or facility to test such equipment at the site where it is located, for purposes of ascertaining whether the information set out on the label, or otherwise required to be disclosed, as required under this section, is accurate. Any reasonable charge levied by the laboratory or facility for such testing shall be borne by the United States, if and to the extent provided in appropriations Acts.

(j) Products completed prior to effective date of rules

A labeling rule under this section shall not apply to any article of covered equipment the manufacture of which was completed before the effective date of such rule.

(k) Labeling authority under Federal Trade Commission Act

Until such time as labeling rules under this section take effect with respect to a type (or class) of covered equipment, this section shall not affect any authority of the Commission under the Federal Trade Commission Act [15 U.S.C. 41 et seq.] to require labeling with respect to energy consumption of such type (or class) of covered equipment.

(Pub. L. 94-163, title III, §344, as added Pub. L. 95-619, title IV, §441(a), Nov. 9, 1978, 92 Stat. 3271; amended Pub. L. 102-486, title I, §122(c), Oct. 24, 1992, 106 Stat. 2809.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsec. (k), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 58 of Title 15 and Tables.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102-486, §122(c)(1), substituted "shall prescribe" for "may prescribe".

Subsec. (c). Pub. L. 102-486, §122(c)(2), substituted "shall include" for "may include".

Subsecs. (d) to (k). Pub. L. 102-486, §122(c)(3), (4), added subsecs. (d) and (e) and redesignated former subsecs. (d) to (i) as (f) to (k), respectively.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6316 of this title.

§ 6316. Administration, penalties, enforcement, and preemption

(a) The provisions of section 6296(a), (b), and (d) of this title, the provisions of subsections (l) through (s) of section 6295 of this title, and section¹ 6297 through 6306 of this title shall apply with respect to this part (other than the equipment specified in subparagraphs (B), (C), (D), (E), and (F) of section 6311(1) of this title) to the

¹ So in original. Probably should be "sections".

same extent and in the same manner as they apply in part A of this subchapter. In applying such provisions for the purposes of this part—

(1) references to sections 6293, 6294, and 6295 of this title shall be considered as references to sections 6314, 6315, and 6313 of this title, respectively;

(2) references to “this part” shall be treated as referring to part A-1 of this subchapter;

(3) the term “equipment” shall be substituted for the term “product”;

(4) the term “Secretary” shall be substituted for “Commission” each place it appears (other than in section 6303(c) of title);

(5) section 6297(a) of this title shall be applied, in the case of electric motors, as if the National Appliance Energy Conservation Act of 1987 was the Energy Policy Act of 1992;

(6) section 6297(b)(1) of this title shall be applied as if electric motors were fluorescent lamp ballasts and as if the National Appliance Energy Conservation Amendments of 1988 were the Energy Policy Act of 1992;

(7) section 6297(b)(4) of this title shall be applied as if electric motors were fluorescent lamp ballasts and as if paragraph (5) of section 6295(g) of this title were section 6313 of this title; and

(8) notwithstanding any other provision of law, a regulation or other requirement adopted by a State or subdivision of a State contained in a State or local building code for new construction concerning the energy efficiency or energy use of an electric motor covered under this part is not superseded by the standards for such electric motor established or prescribed under section 6313(b) of this title if such regulation or requirement is identical to the standards established or prescribed under such section.

(b)(1) The provisions of section 6296(a), (b), and (d) of this title, section 6297(a) of this title, and sections 6298 through 6306 of this title shall apply with respect to the equipment specified in subparagraphs (B), (C), (D), (E), and (F) of section 6311(1) of this title to the same extent and in the same manner as they apply in part B of this subchapter. In applying such provisions for the purposes of such equipment, paragraphs (1), (2), (3), and (4) of subsection (a) of this section shall apply.

(2)(A) A standard prescribed or established under section 6313(a) of this title shall, beginning on the effective date of such standard, supersede any State or local regulation concerning the energy efficiency or energy use of a product for which a standard is prescribed or established pursuant to such section.

(B) Notwithstanding subparagraph (A), a standard prescribed or established under section 6313(a) of this title shall not supersede a standard for such a product contained in a State or local building code for new construction if—

(i) the standard in the building code does not require that the energy efficiency of such product exceed the applicable minimum energy efficiency requirement in amended ASHRAE/IES Standard 90.1; and

(ii) the standard in the building code does not take effect prior to the effective date of the applicable minimum energy efficiency re-

quirement in amended ASHRAE/IES Standard 90.1.

(C) Notwithstanding subparagraph (A), a standard prescribed or established under section 6313(a) of this title shall not supersede the standards established by the State of California set forth in Table C-6, California Code of Regulations, Title 24, Part 2, Chapter 2-53, for water-source heat pumps below 135,000 Btu per hour (cooling capacity) that become effective on January 1, 1993.

(D) Notwithstanding subparagraph (A), a standard prescribed or established under section 6313(a) of this title shall not supersede a State regulation which has been granted a waiver by the Secretary. The Secretary may grant a waiver pursuant to the terms, conditions, criteria, procedures, and other requirements specified in section 6297(d) of this title.

(c) With respect to any electric motor to which standards are applicable under section 6313(b) of this title, the Secretary shall require manufacturers to certify, through an independent testing or certification program nationally recognized in the United States, that such motor meets the applicable standard.

(Pub. L. 94-163, title III, §345, as added Pub. L. 95-619, title IV, §441(a), Nov. 9, 1978, 92 Stat. 3272; amended Pub. L. 102-486, title I, §122(e), Oct. 24, 1992, 106 Stat. 2815; Pub. L. 105-388, §5(a)(7), Nov. 13, 1998, 112 Stat. 3478.)

REFERENCES IN TEXT

The National Appliance Energy Conservation Act of 1987, referred to in subsec. (a)(5), is Pub. L. 100-12, Mar. 17, 1987, 101 Stat. 103. For complete classification of this Act to the Code, see Short Title of 1987 Amendment note set out under section 6201 of this title and Tables.

The Energy Policy Act of 1992, referred to in subsec. (a)(5), (6), is Pub. L. 102-486, Oct. 24, 1992, 106 Stat. 2776. For complete classification of this Act to the Code, see Short Title note set out under section 13201 of this title and Tables.

The National Appliance Energy Conservation Amendments of 1988, referred to in subsec. (a)(6), is Pub. L. 100-357, June 28, 1988, 102 Stat. 671. For complete classification of this Act to the Code, see Short Title of 1988 Amendments note set out under section 6201 of this title and Tables.

AMENDMENTS

1998—Subsec. (c). Pub. L. 105-388 inserted “standard” after “meets the applicable”.

1992—Pub. L. 102-486, §122(e)(3), substituted “enforcement, and preemption” for “and enforcement” in section catchline.

Subsec. (a). Pub. L. 102-486, §122(e)(1)(A), inserted “(other than the equipment specified in subparagraphs (B), (C), (D), (E), and (F) of section 6311(l) of this title)” after “to this part” and substituted “, the provisions of subsections (l) through (s) of section 6295 of this title, and section 6297” for “and sections 6298”.

Subsec. (a)(1). Pub. L. 102-486, §122(e)(1)(B), substituted “, 6294, and 6295 of this title” for “and 6294 of this title” and “6314, 6315, and 6313 of this title, respectively” for “6314 and 6315 of this title, respectively”.

Subsec. (a)(5) to (8). Pub. L. 102-486, §122(e)(1)(C)-(E), added pars. (5) to (8).

Subsecs. (b), (c). Pub. L. 102-486, §122(e)(2), added subsecs. (b) and (c).

§ 6317. Energy conservation standards for high-intensity discharge lamps, distribution transformers, and small electric motors

(a) High-intensity discharge lamps and distribution transformers

(1) The Secretary shall, within 30 months after October 24, 1992, prescribe testing requirements for those high-intensity discharge lamps and distribution transformers for which the Secretary makes a determination that energy conservation standards would be technologically feasible and economically justified, and would result in significant energy savings.

(2) The Secretary shall, within 18 months after the date on which testing requirements are prescribed by the Secretary pursuant to paragraph (1), prescribe, by rule, energy conservation standards for those high-intensity discharge lamps and distribution transformers for which the Secretary prescribed testing requirements under paragraph (1).

(3) Any standard prescribed under paragraph (2) with respect to high-intensity discharge lamps shall apply to such lamps manufactured 36 months after the date such rule is published.

(b) Small electric motors

(1) The Secretary shall, within 30 months after October 24, 1992, prescribe testing requirements for those small electric motors for which the Secretary makes a determination that energy conservation standards would be technologically feasible and economically justified, and would result in significant energy savings.

(2) The Secretary shall, within 18 months after the date on which testing requirements are prescribed by the Secretary pursuant to paragraph (1), prescribe, by rule, energy conservation standards for those small electric motors for which the Secretary prescribed testing requirements under paragraph (1).

(3) Any standard prescribed under paragraph (2) shall apply to small electric motors manufactured 60 months after the date such rule is published or, in the case of small electric motors which require listing or certification by a nationally recognized testing laboratory, 84 months after such date. Such standards shall not apply to any small electric motor which is a component of a covered product under section 6292(a) of this title or a covered equipment under section 6311 of this title.

(c) Consideration of criteria under other law

In establishing any standard under this section, the Secretary shall take into consideration the criteria contained in section 6295(n) of this title.

(d) Prescription of labeling requirements by Secretary

The Secretary shall, within six months after the date on which energy conservation standards are prescribed by the Secretary for high-intensity discharge lamps and distribution transformers pursuant to subsection (a)(2) of this section and small electric motors pursuant to subsection (b)(2) of this section, prescribe labeling requirements for such lamps, transformers, and small electric motors.

(e) Compliance by manufacturers with labeling requirements

Beginning on the date which occurs six months after the date on which a labeling rule is prescribed for a product under subsection (d) of this section, each manufacturer of a product to which such a rule applies shall provide a label which meets, and is displayed in accordance with, the requirements of such rule.

(f) New covered products; distribution of non-conforming products prohibited; construction with other law

(1) After the date on which a manufacturer must provide a label for a product pursuant to subsection (e) of this section—

(A) each such product shall be considered, for purposes of paragraphs (1) and (2) of section 6302(a) of this title, a new covered product to which a rule under section 6294 of this title applies; and

(B) it shall be unlawful for any manufacturer or private labeler to distribute in commerce any new product for which an energy conservation standard is prescribed under subsection (a)(2) or (b)(2) of this section which is not in conformity with the applicable energy conservation standard.

(2) For purposes of section 6303(a) of this title, paragraph (1) of this subsection shall be considered to be a part of section 6302 of this title.

(Pub. L. 94-163, title III, §346, as added Pub. L. 95-619, title IV, §441(a), Nov. 9, 1978, 92 Stat. 3272; amended Pub. L. 102-486, title I, §124(a), Oct. 24, 1992, 106 Stat. 2832.)

AMENDMENTS

1992—Pub. L. 102-486 amended section generally, substituting provisions requiring energy conservation standards for high-intensity discharge lamps, distribution transformers, and small electric motors, for provisions authorizing appropriations for fiscal years 1978 and 1979.

STUDY OF UTILITY DISTRIBUTION TRANSFORMERS;
REPORT TO CONGRESS

Section 124(c) of Pub. L. 102-486 provided that: "The Secretary shall evaluate the practicability, cost-effectiveness, and potential energy savings of replacing, or upgrading components of, existing utility distribution transformers during routine maintenance and, not later than 18 months after the date of the enactment of this Act [Oct. 24, 1992], report the findings of such evaluation to the Congress with recommendations on how such energy savings, if any, could be achieved."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6295 of this title.

PART B—STATE ENERGY CONSERVATION PLANS

CODIFICATION

This part, originally designated part C and subsequently redesignated part D by Pub. L. 95-619, title IV, §441(a), Nov. 9, 1978, 92 Stat. 3267, was changed to part B for purposes of codification.

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 6316, 6323a, 6851 of this title; title 12 section 1701z-8; title 15 section 4507.

§ 6321. Congressional findings and declaration of purpose

(a) The Congress finds that—

(1) the development and implementation by States of laws, policies, programs, and procedures to conserve and to improve efficiency in the use of energy will have an immediate and substantial effect in reducing the rate of growth of energy demand and in minimizing the adverse social, economic, political, and environmental impacts of increasing energy consumption;

(2) the development and implementation of energy conservation programs by States will most efficiently and effectively minimize any adverse economic or employment impacts of changing patterns of energy use and meet local economic, climatic, geographic, and other unique conditions and requirements of each State; and

(3) the Federal Government has a responsibility to foster and promote comprehensive energy conservation programs and practices by establishing guidelines for such programs and providing overall coordination, technical assistance, and financial support for specific State initiatives in energy conservation.

(b) It is the purpose of this part to promote the conservation of energy and reduce the rate of growth of energy demand by authorizing the Secretary to establish procedures and guidelines for the development and implementation of specific State energy conservation programs and to provide Federal financial and technical assistance to States in support of such programs.

(Pub. L. 94-163, title III, §361, Dec. 22, 1975, 89 Stat. 932; Pub. L. 95-619, title VI, §691(b)(2), Nov. 9, 1978, 92 Stat. 3288.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-619 substituted “Secretary” for “Administrator”, meaning Administrator of the Federal Energy Administration.

REPORT ON COORDINATION OF ENERGY CONSERVATION PROGRAMS

Section 623 of Pub. L. 95-619 provided that not later than 6 months after Nov. 9, 1978, the Secretary of Energy submit a report on the coordination of Federal energy conservation programs involving State and local government.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6323a of this title.

§ 6322. State energy conservation plans

(a) Feasibility reports

The Secretary shall, by rule, within 60 days after December 22, 1975, prescribe guidelines for the preparation of a State energy conservation feasibility report. The Secretary shall invite the Governor of each State to submit, within 3 months after the effective date of such guidelines, such a report. Such report shall include—

(1) an assessment of the feasibility of establishing a State energy conservation goal, which goal shall consist of a reduction, as a result of the implementation of the State energy conservation plan described in this section, of 5 percent or more in the total amount of energy consumed in such State in the year 1980 from the projected energy consumption for such State in the year 1980, and

(2) a proposal by such State for the development of a State energy conservation plan to achieve such goal.

(b) Guidelines

The Secretary shall, by rule, within 6 months after December 22, 1975, prescribe guidelines with respect to measures required to be included in, and guidelines for the development, modification, and funding of, State energy conservation plans. The Secretary shall invite the Governor of each State to submit, within 5 months after the effective date of such guidelines, a report. Such report shall include—

(1) a proposed State energy conservation plan designed to result in scheduled progress toward, and achievement of, the State energy conservation goal of such State; and

(2) a detailed description of the requirements, including the estimated cost of implementation and the estimated energy savings, associated with each functional category of energy conservation included in the State energy conservation plan.

(c) Mandatory features of plans

Each proposed State energy conservation plan to be eligible for Federal assistance under this part shall include—

(1) mandatory lighting efficiency standards for public buildings (except public buildings owned or leased by the United States);

(2) programs to promote the availability and use of carpools, vanpools, and public transportation (except that no Federal funds provided under this part shall be used for subsidizing fares for public transportation);

(3) mandatory standards and policies relating to energy efficiency to govern the procurement practices of such State and its political subdivisions;

(4) mandatory thermal efficiency standards and insulation requirements for new and renovated buildings (except buildings owned or leased by the United States);

(5) a traffic law or regulation which, to the maximum extent practicable consistent with safety, permits the operator of a motor vehicle to turn such vehicle right at a red stop light after stopping and to turn such vehicle left from a one-way street onto a one-way street at a red light after stopping; and

(6) procedures for ensuring effective coordination among various local, State, and Federal energy conservation programs within the State, including any program administered within the Office of Technical and Financial Assistance of the Department of Energy and the Low Income Home Energy Assistance Program administered by the Department of Health and Human Services.

(d) Optional features of plans

Each proposed State energy conservation plan may include—

(1) restrictions governing the hours and conditions of operation of public buildings (except buildings owned or leased by the United States);

(2) restrictions on the use of decorative or nonessential lighting;

(3) programs to increase transportation energy efficiency, including programs to acceler-

ate the use of alternative transportation fuels for State government vehicles, fleet vehicles, taxis, mass transit, and privately owned vehicles;

(4) programs of public education to promote energy conservation;

(5) programs for financing energy efficiency and renewable energy capital investments, projects, and programs—

(A) which may include loan programs and performance contracting programs for leveraging of additional public and private sector funds, and programs which allow rebates, grants, or other incentives for the purchase and installation of energy efficiency and renewable energy measures; or

(B) in addition to or in lieu of programs described in subparagraph (A), which may be used in connection with public or nonprofit buildings owned and operated by a State, a political subdivision of a State or an agency or instrumentality of a State, or an organization exempt from taxation under section 501(c)(3) of title 26;

(6) programs for encouraging and for carrying out energy audits with respect to buildings and industrial facilities (including industrial processes) within the State;

(7) programs to promote the adoption of integrated energy plans which provide for—

(A) periodic evaluation of a State's energy needs, available energy resources (including greater energy efficiency), and energy costs; and

(B) utilization of adequate and reliable energy supplies, including greater energy efficiency, that meet applicable safety, environmental, and policy requirements at the lowest cost;

(8) programs to promote energy efficiency in residential housing, such as—

(A) programs for development and promotion of energy efficiency rating systems for newly constructed housing and existing housing so that consumers can compare the energy efficiency of different housing; and

(B) programs for the adoption of incentives for builders, utilities, and mortgage lenders to build, service, or finance energy efficient housing;

(9) programs to identify unfair or deceptive acts or practices which relate to the implementation of energy efficiency measures and renewable resource energy measures and to educate consumers concerning such acts or practices;

(10) programs to modify patterns of energy consumption so as to reduce peak demands for energy and improve the efficiency of energy supply systems, including electricity supply systems;

(11) programs to promote energy efficiency as an integral component of economic development planning conducted by State, local, or other governmental entities or by energy utilities;

(12) in accordance with subsection (f)(2) of this section, programs to implement the Energy Technology Commercialization Services Program;

(13) programs (enlisting appropriate trade and professional organizations in the development and financing of such programs) to provide training and education (including, if appropriate, training workshops, practice manuals, and testing for each area of energy efficiency technology) to building designers and contractors involved in building design and construction or in the sale, installation, and maintenance of energy systems and equipment to promote building energy efficiency improvements;

(14) programs for the development of building retrofit standards and regulations, including retrofit ordinances enforced at the time of the sale of a building;

(15) support for prefeasibility and feasibility studies for projects that utilize renewable energy and energy efficiency resource technologies in order to facilitate access to capital and credit for such projects;

(16) programs to facilitate and encourage the voluntary use of renewable energy technologies for eligible participants in Federal agency programs, including the Rural Electrification Administration and the Farmers Home Administration; and

(17) any other appropriate method or programs to conserve and to promote efficiency in the use of energy.

(e) Standby plans

The Governor of any State may submit to the Secretary a State energy conservation plan which is a standby energy conservation plan to significantly reduce energy demand by regulating the public and private consumption of energy during a severe energy supply interruption, which plan may be separately eligible for Federal assistance under this part without regard to subsections (c) and (d) of this section.

(f) Energy Technology Commercialization Services Program

(1) The purposes of this subsection are to—

(A) strengthen State outreach programs to aid small and start-up businesses;

(B) foster a broader application of engineering principles and techniques to energy technology products, manufacturing, and commercial production by small and start-up businesses; and

(C) foster greater assistance to small and start-up businesses in dealing with the Federal Government on energy technology related matters.

(2) The programs to implement the functions of the Energy Technology Commercialization Services Program, as provided for by subsection (d)(12) of this section, shall—

(A) aid small and start-up businesses in discovering useful and practical information relating to manufacturing and commercial production techniques and costs associated with new energy technologies;

(B) encourage the application of such information in order to solve energy technology product development and manufacturing problems;

(C) establish an Energy Technology Commercialization Services Program affiliated with an existing entity in each State;

(D) coordinate engineers and manufacturers to aid small and start-up businesses in solving specific technical problems and improving the cost effectiveness of methods for manufacturing new energy technologies;

(E) assist small and start-up businesses in preparing the technical portions of proposals seeking financial assistance for new energy technology commercialization; and

(F) facilitate contract research between university faculty and students and small start-up businesses, in order to improve energy technology product development and independent quality control testing.

(3) Each State energy technology commercialization services program shall develop and maintain a data base of engineering and scientific experts in energy technologies and product commercialization interested in participating in the service. Such data base shall, at a minimum, include faculty of institutions of higher education, retired manufacturing experts, and national laboratory personnel.

(4) The services provided by the energy technology commercialization services programs established under this subsection shall be available to any small or start-up business. Such service programs shall charge fees which are affordable to a party eligible for assistance, which shall be determined by examining factors, including the following: (A) the costs of the services received; (B) the need of the recipient for the services; and (C) the ability of the recipient to pay for the services.

(5) For the purposes of this subsection, the term—

(A) “institution of higher education” has the same meaning as such term is defined in section 1001 of title 20;

(B) “small business” means a private firm that does not exceed the numerical size standard promulgated by the Small Business Administration under section 632(a) of title 15 for the Standard Industrial Classification (SIC) codes designated by the Secretary of Energy; and

(C) “start-up business” means a small business which has been in existence for 5 years or less.

(Pub. L. 94-163, title III, §362, Dec. 22, 1975, 89 Stat. 933; Pub. L. 95-619, title VI, §691(b)(2), Nov. 9, 1978, 92 Stat. 3288; Pub. L. 101-440, §§3(a), 4(a), (b), Oct. 18, 1990, 104 Stat. 1006-1008; Pub. L. 102-486, title I, §141(b), (c)(1), Oct. 24, 1992, 106 Stat. 2841; Pub. L. 105-244, title I, §102(a)(13)(E), Oct. 7, 1998, 112 Stat. 1620; Pub. L. 105-388, §5(a)(8), Nov. 13, 1998, 112 Stat. 3478.)

AMENDMENTS

1998—Subsec. (a)(1). Pub. L. 105-388, §5(a)(8)(A), inserted “of” after “of the implementation”.

Subsec. (d)(12). Pub. L. 105-388, §5(a)(8)(B), substituted “subsection (f)(2)” for “subsection (g)”.

Subsec. (f)(5)(A). Pub. L. 105-244 substituted “section 1001” for “section 1141(a)”.

1992—Subsec. (c)(5). Pub. L. 102-486, §141(c)(1), substituted “and to turn such vehicle left from a one-way street onto a one-way street at a red light after stopping; and” for “; and”.

Subsec. (d)(13) to (17). Pub. L. 102-486, §141(b), added pars. (13) to (16) and redesignated former par. (13) as (17).

1990—Subsec. (c)(6). Pub. L. 101-440, §3(a), added par. (6).

Subsec. (d)(3). Pub. L. 101-440, §4(a)(1), added par. (3) and struck out former par. (3) which read as follows: “transportation controls;”.

Subsec. (d)(5) to (13). Pub. L. 101-440, §4(a)(3), added pars. (5) to (13) and struck out former par. (5) which read as follows: “any other appropriate method or programs to conserve and to improve efficiency in the use of energy.”

Subsec. (f). Pub. L. 101-440, §4(b), added subsec. (f).

1978—Subsecs. (a), (b), (e). Pub. L. 95-619 substituted “Secretary” for “Administrator”, meaning Administrator of the Federal Energy Administration, wherever appearing.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see section 3 of Pub. L. 105-244, set out as a note under section 1001 of Title 20, Education.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 141(c)(2) of Pub. L. 102-486 provided that: “The amendment made by paragraph (1) [amending this section] shall take effect January 1, 1995.”

STUDY REGARDING IMPACT OF PERMITTING RIGHT AND LEFT TURNS ON RED LIGHTS

Section 141(d) of Pub. L. 102-486 provided that:

“(1) IN GENERAL.—The Administrator of the National Highway Traffic Safety Administration, in consultation with State agencies with jurisdiction over traffic safety issues, shall conduct a study on the safety impact of the requirement specified in section 362(c)(5) of the Energy Policy and Conservation Act (42 U.S.C. 6322(c)(5)), particularly with respect to the impact on pedestrian safety.

“(2) REPORT.—The Administrator shall report the findings of the study conducted under paragraph (1) to the Congress and the Secretary not later than 2 years after the date of the enactment of this Act [Oct. 24, 1992].”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5511a, 6323, 6323a, 6325, 6371 of this title.

§ 6323. Federal assistance to States

(a) Information, technical assistance, and assistance in preparation of reports and development, implementation, or modification of energy conservation plan

Upon request of the Governor of any State, the Secretary shall provide, subject to the availability of personnel and funds, information and technical assistance, including model State laws and proposed regulations relating to energy conservation, and other assistance in—

(1) the preparation of the reports described in section 6322 of this title, and

(2) the development, implementation, or modification of an energy conservation plan of such State submitted under section 6322(b) or (e) of this title.

(b) Financial assistance to assist State in development, implementation, or modification of energy conservation plan; submission of plan to and approval of Secretary; considerations governing approval; amount of assistance

(1) The Secretary may grant Federal financial assistance pursuant to this section for the purpose of assisting such State in the development of any such energy conservation plan or in the

implementation or modification of a State energy conservation plan or part thereof which has been submitted to and approved by the Secretary pursuant to this part.

(2) In determining whether to approve a State energy conservation plan submitted under section 6322(b) or (e) of this title, the Secretary—

(A) shall take into account the impact of local economic, climatic, geographic, and other unique conditions and requirements of such State on the opportunity to conserve and to improve efficiency in the use of energy in such State; and

(B) may extend the period of time during which a State energy conservation feasibility report or State energy conservation plan may be submitted if the Secretary determines that participation by the State submitting such report or plan is likely to result in significant progress toward achieving the purposes of this chapter.

No such plan shall be disapproved without notice and an opportunity to present views.

(3) In determining the amount of Federal financial assistance to be provided to any State under this subsection, the Secretary shall consider—

(A) the contribution to energy conservation which can reasonably be expected,

(B) the number of people affected by such plan, and

(C) the consistency of such plan with the purposes of this chapter, and such other factors as the Secretary deems appropriate.

(c) Records

Each recipient of Federal financial assistance under subsection (b) of this section shall keep such records as the Secretary shall require, including records which fully disclose the amount and disposition by each recipient of the proceeds of such assistance, the total cost of the plan, program, projects, measures, or systems for which such assistance was given or used, the source and amount of funds for such plan, program, projects, measures, or systems not supplied by the Secretary, and such other records as the Secretary determines necessary to facilitate an effective audit and performance evaluation. The Secretary and Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination, at reasonable times and under reasonable conditions, to any pertinent books, documents, papers, and records of any recipient of Federal assistance under this part.

(d) Assistance as supplementing and not supplanting State and local funds

Each State receiving Federal financial assistance pursuant to this section shall provide reasonable assurance to the Secretary that it has established policies and procedures designed to assure that Federal financial assistance under this part and under part E of this subchapter will be used to supplement, and not to supplant, State and local funds, and to the extent practicable, to increase the amount of such funds that otherwise would be available, in the absence of such Federal financial assistance, for

those programs set forth in the State energy conservation plan approved pursuant to subsection (b) of this section.

(e) Energy emergency planning program as prerequisite to assistance

(1) Effective October 1, 1991, to be eligible for Federal financial assistance pursuant to this section, a State shall submit to the Secretary, as a supplement to its energy conservation plan, an energy emergency planning program for an energy supply disruption, as designed by the State consistent with applicable Federal and State law. The contingency plan provided for by the program shall include an implementation strategy or strategies (including regional coordination) for dealing with energy emergencies. The submission of such plan shall be for informational purposes only and without any requirement of approval by the Secretary.

(2) Federal financial assistance made available under this part to a State may be used to develop and conduct the energy emergency planning program requirement referred to in paragraph (1).

(f) State buildings energy efficiency improvements incentive fund

If the Secretary determines that a State has demonstrated a commitment to improving the energy efficiency of buildings within such State, the Secretary may, beginning in fiscal year 1994, provide up to \$1,000,000 to such State for deposit into a revolving fund established by such State for the purpose of financing energy efficiency improvements in State and local government buildings. In making such determination the Secretary shall consider whether—

(1) such State, or a majority of the units of local government with jurisdiction over building energy codes within such State, has adopted codes for energy efficiency in new buildings that are at least as stringent as American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 90.1-1989 (with respect to commercial buildings) and Council of American Building Officials Model Energy Code, 1992 (with respect to residential buildings);

(2) such State has established a program, including a revolving fund, to finance energy efficiency improvement projects in State and local government facilities and buildings; and

(3) such State has obtained funding from non-Federal sources, including but not limited to, oil overcharge funds, State or local government appropriations, or utility contributions (including rebates) equal to or greater than three times the amount provided by the Secretary under this subsection for deposit into such revolving fund.

(Pub. L. 94-163, title III, §363, Dec. 22, 1975, 89 Stat. 934; Pub. L. 94-385, title IV, §432(b), (c), Aug. 14, 1976, 90 Stat. 1162; Pub. L. 95-619, title VI, §691(b)(2), Nov. 9, 1978, 92 Stat. 3288; Pub. L. 101-440, §3(b), Oct. 18, 1990, 104 Stat. 1007; Pub. L. 102-486, title I, §141(a)(1), Oct. 24, 1992, 106 Stat. 2840.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b)(2)(B), (3)(C), was in the original "this Act", meaning Pub. L. 94-163,

Dec. 22, 1975, 89 Stat. 871, as amended, known as the Energy Policy and Conservation Act. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

AMENDMENTS

1992—Subsec. (f). Pub. L. 102-486 added subsec. (f).
1990—Subsecs. (d), (e). Pub. L. 101-440 added subsecs. (d) and (e).

1978—Pub. L. 95-619 substituted “Secretary” for “Administrator”, meaning Administrator of the Federal Energy Administration, wherever appearing.

1976—Subsec. (b)(2). Pub. L. 94-385, § 432(b), inserted provision requiring notice and opportunity to present views prior to disapproval of plans.

Subsec. (c). Pub. L. 94-385, § 432(c), inserted references to plan, measures, or systems wherever appearing and required that examinations be at reasonable times and under reasonable conditions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6323a, 6325 of this title.

§ 6323a. Matching State contributions

For the base State Energy Conservation Program (part D of the Energy Policy and Conservation Act, sections 361 through 366 [42 U.S.C. 6321-6326]), each State will hereafter match in cash or in kind not less than 20 percent of the Federal contribution.

(Pub. L. 98-473, title I, § 101(c) [title II], Oct. 12, 1984, 98 Stat. 1837, 1861.)

REFERENCES IN TEXT

The Energy Policy and Conservation Act, referred to in text, is Pub. L. 94-163, Dec. 22, 1975, 89 Stat. 871, as amended. Part D of title III of the Energy Policy and Conservation Act, as amended, is classified generally to this part (§ 6321 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

CODIFICATION

Section was enacted as part of the Department of the Interior and Related Agencies Appropriations Act, 1985, as enacted by Pub. L. 98-473, and not as part of the Energy Policy and Conservation Act which comprises this chapter.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in the following prior appropriation act:

Pub. L. 98-146, title II, Nov. 4, 1983, 97 Stat. 942.

§ 6324. State energy efficiency goals

Each State energy conservation plan with respect to which assistance is made available under this part on or after October 1, 1991, shall contain a goal, consisting of an improvement of 10 percent or more in the efficiency of use of energy in the State concerned in the calendar year 2000 as compared to the calendar year 1990, and may contain interim goals.

(Pub. L. 94-163, title III, § 364, Dec. 22, 1975, 89 Stat. 935; Pub. L. 95-619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288; Pub. L. 101-440, § 2(a)(1), Oct. 18, 1990, 104 Stat. 1006.)

AMENDMENTS

1990—Pub. L. 101-440 amended section generally. Prior to amendment, section read as follows: “Upon the basis of the reports submitted pursuant to this part and such other information as is available, the Secretary shall,

at the earliest practicable date, set an energy conservation goal for each State for 1980 and may set interim goals. Such goal or goals shall consist of the maximum reduction in the consumption of energy during any year as a result of the implementation of the State energy conservation plan described in section 6322(b) of this title which is consistent with technological feasibility, financial resources, and economic objectives, by comparison with the projected energy consumption for such State in such year. The Secretary shall specify the assumptions used in the determination of the projected energy consumption in each State, taking into account population trends, economic growth, and the effects of national energy conservation programs.”

1978—Pub. L. 95-619 substituted “Secretary” for “Administrator”, meaning Administrator of the Federal Energy Administration, wherever appearing.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6323a, 6325 of this title.

§ 6325. General provisions

(a) Rules

The Secretary may prescribe such rules as may be necessary or appropriate to carry out his authority under this part.

(b) Departmental consultation

In carrying out the provisions of sections 6322 and 6324 of this title and subsection (a) of section 6323 of this title, the Secretary shall consult with appropriate departments and Federal agencies.

(c) Annual report

The Secretary shall, as part of the report required under section 7267 of this title, report to the President and the Congress, and shall furnish copies of such report to the Governor of each State, on the operation of the program under this part. Such report shall include an estimate of the energy conservation achieved, the degree of State participation and achievement, a description of innovative conservation programs undertaken by individual States, and the recommendations of the Secretary, if any, for additional legislation.

(d) Duty of Federal Trade Commission to prevent unfair or deceptive practices or acts relating to implementation of energy measures

The Federal Trade Commission shall (1) cooperate with and assist State agencies which have primary responsibilities for the protection of consumers in activities aimed at preventing unfair and deceptive acts or practices affecting commerce which relate to the implementation of measures likely to conserve, or improve efficiency in the use of, energy, including energy conservation measures and renewable-resource energy measures, and (2) undertake its own program, pursuant to the Federal Trade Commission Act [15 U.S.C. 41 et seq.], to prevent unfair or deceptive acts or practices affecting commerce which relate to the implementation of any such measures.

(e) List of energy measures eligible for financial assistance; designation of types and requirements of energy audits

Within 90 days after August 14, 1976, the Secretary shall—

(1) develop, by rule after consultation with the Secretary of Housing and Urban Develop-

ment, and publish a list of energy conservation measures and renewable-resource energy measures which are eligible (on a national or regional basis) for financial assistance pursuant to section 1701z-8 of title 12 or section 6881 of this title;

(2) designate, by rule, the types of, and requirements for, energy audits.

(f) Authorization of appropriations

For the purpose of carrying out this part, there are authorized to be appropriated for fiscal years 1999 through 2003 such sums as may be necessary.

(g) State Energy Advisory Board

(1)(A) There is hereby established within the Department of Energy a State Energy Advisory Board (hereafter in this subsection referred to as the "Board") which shall consist of at least 18 and not more than 21 members appointed by the Secretary as soon as practicable but no later than September 30, 1991. At least eight of the members of the Board shall be persons who serve as directors of the State agency, or a division of such agency, responsible for developing State energy conservation plans pursuant to section 6322 of this title. At least four members shall be directors of State or local low income weatherization assistance programs. Other members shall be appointed from persons who have experience in energy efficiency or renewable energy programs from the private sector, consumer interest groups, utilities, public utility commissions, educational institutions, financial institutions, local government energy programs, or research institutions. A majority of the members of the Board shall be State employees.

(B)(i) Except as provided in clause (ii), the members of the Board shall serve a term of three years.

(ii) Of the members first appointed to the Board, one-third shall serve a term of one year, one-third shall serve a term of two years, and the remainder shall serve a term of three years, as specified by the Secretary.

(2) The Board shall—

(A) make recommendations to the Assistant Secretary for Conservation and Renewable Energy within the Department of Energy with respect to—

(i) the energy efficiency goals and objectives of the programs carried out under this part, part E of this subchapter, and under part A of title IV of the Energy Conservation and Production Act [42 U.S.C. 6861 et seq.]; and

(ii) programmatic and administrative policies designed to strengthen and improve the programs referred to in clause (i), including actions that should be considered to encourage non-Federal resources (including private resources) to supplement Federal financial assistance;

(B) serve as a liaison between the States and such Department on energy efficiency and renewable energy resource programs; and

(C) encourage transfer of the results of research and development activities carried out by the Federal Government with respect to energy efficiency and renewable energy resource technologies.

(3) The Secretary shall designate one of the members of the Board to serve as its chairman and one to serve as its vice-chairman. The chairman and vice-chairman shall serve in those offices no longer than two years.

(4) The Secretary shall provide the Board with such reasonable services and facilities as may be necessary for the performance of its functions.

(5) The Board shall be nonpartisan.

(6) The Board may adopt administrative rules and procedures and may elect one of its members secretary of the Board.

(7) Consistent with Federal regulations, the Secretary shall reimburse members of the Board for expenses (including travel expenses) necessarily incurred by them in the performance of their duties.

(8) The Board shall meet at least twice a year and shall submit an annual report to the Secretary and the Congress on the activities carried out by the Board in the previous fiscal year, including an accounting of the expenses reimbursed under paragraph (7) with respect to the year for which the report is made and any recommendations it may have for administrative or legislative changes concerning the matters referred to in subparagraphs (A), (B), and (C) of paragraph (2).

(9) The Board shall continue until terminated by law.

(Pub. L. 94-163, title III, §365, Dec. 22, 1975, 89 Stat. 935; Pub. L. 94-385, title IV, §432(d), Aug. 14, 1976, 90 Stat. 1162; Pub. L. 95-619, title VI, §§621, 691(b)(2), Nov. 9, 1978, 92 Stat. 3283, 3288; Pub. L. 101-440, §§5, 8(a), Oct. 18, 1990, 104 Stat. 1009, 1015; Pub. L. 102-486, title I, §141(a)(2), Oct. 24, 1992, 106 Stat. 2841; Pub. L. 104-66, title I, §1052(f), Dec. 21, 1995, 109 Stat. 718; Pub. L. 105-388, §2(a), Nov. 13, 1998, 112 Stat. 3477.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsec. (d), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 58 of Title 15 and Tables.

The Energy Conservation and Production Act, referred to in subsec. (g)(2)(A)(i), is Pub. L. 94-385, Aug. 14, 1976, 90 Stat. 1125, as amended. Part A of title IV of the Act is classified generally to part A (§6861 et seq.) of subchapter III of chapter 81 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6801 of this title and Tables.

AMENDMENTS

1998—Subsec. (f). Pub. L. 105-388 amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows:

“(f)(1) Except as provided in paragraph (2), for the purpose of carrying out this part, there are authorized to be appropriated not to exceed \$25,000,000 for fiscal year 1991, \$35,000,000 for fiscal year 1992, and \$45,000,000 for fiscal year 1993.

“(2) For the purposes of carrying out section 6323(f) of this title, there is authorized to be appropriated for fiscal year 1994 and each fiscal year thereafter such sums as may be necessary, to remain available until expended.”

1995—Subsec. (c). Pub. L. 104-66 substituted “, as part of the report required under section 7267 of this title, report” for “report annually” in first sentence.

1992—Subsec. (f). Pub. L. 102-486 designated existing provisions as par. (1), substituted “Except as provided

in paragraph (2), for the purpose” for “For the purpose”, and added par. (2).

1990—Subsec. (f). Pub. L. 101-440, § 8(a), amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: “There are authorized to be appropriated for carrying out the provisions of this part (other than section 6327 of this title) \$50,000,000 for fiscal year 1976, \$50,000,000 for fiscal year 1977, \$50,000,000 for fiscal year 1978, and \$50,000,000 for fiscal year 1979.”

Subsec. (g). Pub. L. 101-440, § 5, added subsec. (g).

1978—Subsecs. (a) to (c), (e). Pub. L. 95-619, § 691(b)(2), substituted “Secretary” for “Administrator”, meaning Administrator of the Federal Energy Administration, wherever appearing.

Subsec. (f). Pub. L. 95-619, § 621, authorized to be appropriated \$50,000,000 for fiscal year 1979.

1976—Subsec. (d). Pub. L. 94-385, § 432(d)(1), (2), added subsec. (d). Former subsec. (d) redesignated (f).

Subsec. (e). Pub. L. 94-385, § 432(d)(2), added subsec. (e).

Subsec. (f). Pub. L. 94-385, § 432(d)(1), (3), redesignated former subsec. (d) as (f) and inserted “(other than section 6327 of this title)” after “part”.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103-7 (in which the 16th item on page 87 identifies a reporting provision which, as subsequently amended, is contained in subsec. (c) of this section and in which the 14th item on page 91 identifies a reporting provision in subsec. (g)(8) of this section), see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6323a, 6326, 6371, 6865, 6881, 7267 of this title; title 12 section 1701z-8.

§ 6326. Definitions

As used in this part—

(1) The term “appliance” means any article, such as a room air-conditioner, refrigerator-freezer, or dishwasher, which the Secretary classifies as an appliance for purposes of this part.

(2) The term “building” means any structure which includes provision for a heating or cooling system, or both, or for a hot water system.

(3) The term “energy audit” means any process which identifies and specifies the energy and cost savings which are likely to be realized through the purchase and installation of particular energy conservation measures or renewable-resource energy measures and which—

(A) is carried out in accordance with rules of the Secretary; and

(B) imposes—

(i) no direct costs, with respect to individuals who are occupants of dwelling units in any State having a supplemental State energy conservation plan approved under section 6327¹ of this title, and

(ii) only reasonable costs, as determined by the Secretary, with respect to any person not described in clause (i).

Rules referred to in subparagraph (A) may include minimum qualifications for, and provisions with respect to conflicts of interest of, persons carrying out such energy audits.

(4) The term “energy conservation measure” means a measure which modifies any building, building system, energy consuming device associated with the building, or industrial plant, the construction of which has been completed prior to May 1, 1989, if such measure has been determined by means of an energy audit or by the Secretary, by rule under section 6325(e)(1) of this title, to be likely to maintain or improve the efficiency of energy use and to reduce energy costs (as calculated on the basis of energy costs reasonably projected over time, as determined by the Secretary) in an amount sufficient to enable a person to recover the total cost of purchasing and installing such measure (without regard to any tax benefit or Federal financial assistance applicable thereto) within the period of—

(A) the useful life of the modification involved, as determined by the Secretary, or

(B) 15 years after the purchase and installation of such measure,

whichever is less. Such term does not include (i) the purchase or installation of any appliance, (ii) any conversion from one fuel or source of energy to another which is of a type which the Secretary, by rule, determines is ineligible on the basis that such type of conversion is inconsistent with national policy with respect to energy conservation or reduction of imports of fuels, or (iii) any measure, or type of measure, which the Secretary determines does not have as its primary purpose an improvement in efficiency of energy use.

(5) The term “industrial plant” means any fixed equipment or facility which is used in connection with, or as part of, any process or system for industrial production or output.

(6) The term “renewable-resource energy measure” means a measure which modifies any building or industrial plant, the construction of which has been completed prior to August 14, 1976, if such measure has been determined by means of an energy audit or by the Secretary, by rule under section 6325(e)(1) of this title, to—

(A) involve changing, in whole or in part, the fuel or source of the energy used to meet the requirements of such building or plant from a depletable source of energy to a non-depletable source of energy; and

(B) be likely to reduce energy costs (as calculated on the basis of energy costs reasonably projected over time, as determined by the Secretary) in an amount sufficient to enable a person to recover the total cost of purchasing and installing such measure (without regard to any tax benefit or Federal financial assistance applicable thereto) within the period of—

(i) the useful life of the modification involved, as determined by the Secretary, or

(ii) 25 years after the purchase and installation of such measure,

whichever is less.

Such term does not include the purchase or installation of any appliance.

(7) The term “public building” means any building which is open to the public during normal business hours.

¹ See References in Text note below.

(8) The term “transportation controls” means any plan, procedure, method, or arrangement, or any system of incentives, disincentives, restrictions, and requirements, which is designed to reduce the amount of energy consumed in transportation, except that the term does not include rationing of gasoline or diesel fuel.

(Pub. L. 94-163, title III, §366, Dec. 22, 1975, 89 Stat. 935; Pub. L. 94-385, title IV, §431, Aug. 14, 1976, 90 Stat. 1158; Pub. L. 95-619, title VI, §691(b)(2), Nov. 9, 1978, 92 Stat. 3288; Pub. L. 101-440, §2(b), Oct. 18, 1990, 104 Stat. 1006.)

REFERENCES IN TEXT

Section 6327 of this title, referred to in par. (3)(B)(i), was repealed by Pub. L. 101-440, §4(c)(1), Oct. 18, 1990, 104 Stat. 1009.

AMENDMENTS

1990—Par. (4). Pub. L. 101-440 substituted “building, building system, energy consuming device associated with the building, or industrial” for “building or industrial”, “May 1, 1989” for “August 14, 1976”, and “maintain or improve the efficiency” for “improve the efficiency”.

1978—Pars. (1), (3)(A), (B)(ii), (4), (A), (6), (B), (B)(i). Pub. L. 95-619 substituted “Secretary” for “Administrator”, meaning Administrator of the Federal Energy Administration, wherever appearing.

1976—Pub. L. 94-385 redesignated former pars. (1) and (2) as (7) and (8), respectively, and added pars. (1) to (6).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6323a, 6881 of this title; title 12 section 1701z-8.

§ 6327. Repealed. Pub. L. 101-440, § 4(c)(1), Oct. 18, 1990, 104 Stat. 1009

Section, Pub. L. 94-163, title III, §367, as added Pub. L. 94-385, title IV, §432(a), Aug. 14, 1976, 90 Stat. 1160; amended Pub. L. 95-91, title III, §301(a), title VII, §§703, 707, Aug. 4, 1977, 91 Stat. 577, 606, 607; Pub. L. 95-619, title VI, §§622, 691(b)(2), Nov. 9, 1978, 92 Stat. 3283, 3288, related to supplemental State energy conservation plans.

PART C—INDUSTRIAL ENERGY CONSERVATION

CODIFICATION

This part, originally designated part D and subsequently redesignated part E by Pub. L. 95-619, title IV, §441(a), Nov. 9, 1978, 92 Stat. 3267, was changed to part C for purposes of codification.

§§ 6341 to 6346. Repealed. Pub. L. 99-509, title III, § 3101(b), Oct. 21, 1986, 100 Stat. 1888

Section 6341, Pub. L. 94-163, title III, §371, Dec. 22, 1975, 89 Stat. 936; Pub. L. 95-619, title VI, §§601(c), 691(b)(2), Nov. 9, 1978, 92 Stat. 3283, 3288, defined terms used in this part.

Section 6342, Pub. L. 94-163, title III, §372, Dec. 22, 1975, 89 Stat. 936; Pub. L. 95-91, title III, §301(a), title VII, §§703, 707, Aug. 4, 1977, 91 Stat. 577, 606, 607; Pub. L. 95-619, title VI, §691(b)(2), Nov. 9, 1978, 92 Stat. 3288, directed Secretary to establish and maintain an energy efficient program.

Section 6343, Pub. L. 94-163, title III, §373, Dec. 22, 1975, 89 Stat. 936; Pub. L. 95-619, title VI, §§601(a), 691(b)(2), Nov. 9, 1978, 92 Stat. 3282, 3288, directed Secretary to identify major energy-consuming industries and corporations in the United States.

Section 6344, Pub. L. 94-163, title III, §374, Dec. 22, 1975, 89 Stat. 936; Pub. L. 95-619, title VI, §691(b)(2), Nov. 9, 1978, 92 Stat. 3288, directed Secretary to establish in-

dividual energy improvement targets for each of 10 most energy-consuming industries.

Section 6344a, Pub. L. 94-163, title III, §374A, as added Pub. L. 95-619, title IV, §461(c), Nov. 9, 1978, 92 Stat. 3273, directed Secretary to set targets for increased utilization of energy-saving recovered materials for specified industries.

Section 6345, Pub. L. 94-163, title III, §375, Dec. 22, 1975, 89 Stat. 937; Pub. L. 95-619, title VI, §601(b), Nov. 9, 1978, 92 Stat. 3282, required reports from corporations to Secretary on progress made in improving energy efficiency and an annual report from Secretary to Congress and President on progress toward achieving energy efficiency program improvement targets.

Section 6346, Pub. L. 94-163, title III, §376, Dec. 22, 1975, 89 Stat. 938; Pub. L. 95-619, title IV, §461(d)(1), title VI, §691(b)(2), Nov. 9, 1978, 92 Stat. 3275, 3288, contained general provisions relating to reporting and use of information under this part and to development of and compliance with energy efficiency improvement targets.

§ 6347. Omitted

CODIFICATION

Section, Pub. L. 96-294, title V, §591, June 30, 1980, 94 Stat. 761, authorized appropriations to Secretary of Energy of \$40,000,000 for each of fiscal years ending Sept. 30, 1981 and 1982, for industrial energy conservation demonstration projects designed to substantially increase productivity in industry.

Section was enacted as part of the Energy Security Act, and not as part of the Energy Policy and Conservation Act which comprises this chapter.

§ 6348. Energy efficiency in industrial facilities

(a) Grant program

(1) In general

The Secretary shall make grants to industry associations to support programs to improve energy efficiency in industry. In order to be eligible for a grant under this subsection, an industry association shall establish a voluntary energy efficiency improvement target program.

(2) Awarding of grants

The Secretary shall request project proposals and provide annual grants on a competitive basis. In evaluating grant proposals under this subsection, the Secretary shall consider—

- (A) potential energy savings;
- (B) potential environmental benefits;
- (C) the degree of cost sharing;
- (D) the degree to which new and innovative technologies will be encouraged;
- (E) the level of industry involvement;
- (F) estimated project cost-effectiveness; and
- (G) the degree to which progress toward the energy improvement targets can be monitored.

(3) Eligible projects

Projects eligible for grants under this subsection may include the following:

- (A) Workshops.
- (B) Training seminars.
- (C) Handbooks.
- (D) Newsletters.
- (E) Data bases.
- (F) Other activities approved by the Secretary.

(4) Limitation on cost sharing

Grants provided under this subsection shall not exceed \$250,000 and each grant shall not ex-

ceed 75 percent of the total cost of the project for which the grant is made.

(5) Authorization

There are authorized to be appropriated such sums as are necessary to carry out this subsection.

(b) Award program

The Secretary shall establish an annual award program to recognize those industry associations or individual industrial companies that have significantly improved their energy efficiency.

(c) Report on industrial reporting and voluntary targets

Not later than one year after October 24, 1992, the Secretary shall, in consultation with affected industries, evaluate and report to the Congress regarding the establishment of Federally mandated energy efficiency reporting requirements and voluntary energy efficiency improvement targets for energy intensive industries. Such report shall include an evaluation of the costs and benefits of such reporting requirements and voluntary energy efficiency improvement targets, and recommendations regarding the role of such activities in improving energy efficiency in energy intensive industries.

(Pub. L. 102-486, title I, §131, Oct. 24, 1992, 106 Stat. 2836.)

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of the Energy Policy and Conservation Act which comprises this chapter.

§ 6349. Process-oriented industrial energy efficiency

(a) Definitions

For the purposes of this section—

(1) the term “covered industry” means the food and food products industry, lumber and wood products industry, petroleum and coal products industry, and all other manufacturing industries specified in Standard Industrial Classification Codes 20 through 39 (or successor classification codes);

(2) the term “process-oriented industrial assessment” means—

(A) the identification of opportunities in the production process (from the introduction of materials to final packaging of the product for shipping) for—

- (i) improving energy efficiency;
- (ii) reducing environmental impact; and
- (iii) designing technological improvements to increase competitiveness and achieve cost-effective product quality enhancement;

(B) the identification of opportunities for improving the energy efficiency of lighting, heating, ventilation, air conditioning, and the associated building envelope; and

(C) the identification of cost-effective opportunities for using renewable energy technology in the production process and in the systems described in subparagraph (B); and

(3) the term “utility” means any person, State agency (including any municipality), or

Federal agency, which sells electric or gas energy to retail customers.

(b) Grant program

(1) Use of funds

The Secretary shall, to the extent funds are made available for such purpose, make grants to States which, consistent with State law, shall be used for the following purposes:

(A) To promote, through appropriate institutions such as universities, nonprofit organizations, State and local government entities, technical centers, utilities, and trade organizations, the use of energy-efficient technologies in covered industries.

(B) To establish programs to train individuals (on an industry-by-industry basis) in conducting process-oriented industrial assessments and to encourage the use of such trained assessors.

(C) To assist utilities in developing, testing, and evaluating energy efficiency programs and technologies for industrial customers in covered industries.

(2) Consultation

States receiving grants under this subsection shall consult with utilities and representatives of affected industries, as appropriate, in determining the most effective use of such funds consistent with the requirements of paragraph (1).

(3) Eligibility criteria

Not later than 1 year after October 24, 1992, the Secretary shall establish eligibility criteria for grants made pursuant to this subsection. Such criteria shall require a State applying for a grant to demonstrate that such State—

(A) pursuant to section 2621(a) of title 16, has considered and made a determination regarding the implementation of the standards specified in paragraphs (7) and (8) of section 2621(d) of title 16 (with respect to integrated resources planning and investments in conservation and demand management); and

(B) by legislation or regulation—

(i) allows utilities to recover the costs prudently incurred in providing process-oriented industrial assessments; and

(ii) encourages utilities to provide to covered industries—

(I) process-oriented industrial assessments; and

(II) financial incentives for implementing energy efficiency improvements.

(4) Allocation of funds

Grants made pursuant to this subsection shall be allocated each fiscal year among States meeting the criteria specified in paragraph (3) who have submitted applications 60 days before the first day of such fiscal year. Such allocation shall be made in accordance with a formula to be prescribed by the Secretary based on each State’s share of value added in industry (as determined by the Census of Manufacturers) as a percentage of the value added by all such States.

(5) Renewal of grants

A grant under this subsection may continue to be renewed after 2 consecutive fiscal years

during which a State receives a grant under this subsection, subject to the availability of funds, if—

(A) the Secretary determines that the funds made available to the State during the previous 2 years were used in a manner required under paragraph (1); and

(B) such State demonstrates, in a manner prescribed by the Secretary, utility participation in programs established pursuant to this subsection.

(6) Coordination with other Federal programs

In carrying out the functions described in paragraph (1), States shall, to the extent practicable, coordinate such functions with activities and programs conducted by the Energy Analysis and Diagnostic Centers of the Department of Energy and the Manufacturing Technology Centers of the National Institute of Standards and Technology.

(c) Other Federal assistance

(1) Assessment criteria

Not later than 2 years after October 24, 1992, the Secretary shall, by contract with non-profit organizations with expertise in process-oriented industrial energy efficiency technologies, establish and, as appropriate, update criteria for conducting process-oriented industrial assessments on an industry-by-industry basis. Such criteria shall be made available to State and local government, public utility commissions, utilities, representatives of affected process-oriented industries, and other interested parties.

(2) Directory

The Secretary shall establish a nationwide directory of organizations offering industrial energy efficiency assessments, technologies, and services consistent with the purposes of this section. Such directory shall be made available to State governments, public utility commissions, utilities, industry representatives, and other interested parties.

(3) Award program

The Secretary shall establish an annual award program to recognize utilities operating outstanding or innovative industrial energy efficiency technology assistance programs.

(4) Meetings

In order to further the purposes of this section, the Secretary shall convene annual meetings of parties interested in process-oriented industrial assessments, including representatives of State government, public utility commissions, utilities, and affected process-oriented industries.

(d) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this section.

(Pub. L. 102-486, title I, §132, Oct. 24, 1992, 106 Stat. 2837; Pub. L. 104-66, title I, §1052(a)(1), Dec. 21, 1995, 109 Stat. 717; Pub. L. 105-362, title IV, §401(d), Nov. 10, 1998, 112 Stat. 3282.)

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of the Energy Policy and Conservation Act which comprises this chapter.

AMENDMENTS

1998—Subsecs. (d), (e). Pub. L. 105-362 redesignated subsec. (e) as (d) and struck out heading and text of former subsec. (d) which related to reports to Congress.

1995—Subsec. (d). Pub. L. 104-66 substituted “Not later than October 24, 1995, and biennially thereafter” for “Not later than 2 years after October 24, 1992, and annually thereafter” in introductory provisions and added par. (6).

§ 6350. Industrial insulation and audit guidelines

(a) Voluntary guidelines for energy efficiency auditing and insulating

Not later than 18 months after October 24, 1992, the Secretary, after consultation with utilities, major industrial energy consumers, and representatives of the insulation industry, shall establish voluntary guidelines for—

(1) the conduct of energy efficiency audits of industrial facilities to identify cost-effective opportunities to increase energy efficiency; and

(2) the installation of insulation to achieve cost-effective increases in energy efficiency in industrial facilities.

(b) Educational and technical assistance

The Secretary shall conduct a program of educational and technical assistance to promote the use of the voluntary guidelines established under subsection (a) of this section.

(Pub. L. 102-486, title I, §133, Oct. 24, 1992, 106 Stat. 2840; Pub. L. 104-66, title I, §1052(a)(2), Dec. 21, 1995, 109 Stat. 717; Pub. L. 105-362, title IV, §401(e), Nov. 10, 1998, 112 Stat. 3282.)

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of the Energy Policy and Conservation Act which comprises this chapter.

AMENDMENTS

1998—Subsec. (c). Pub. L. 105-362 struck out heading and text of subsec. (c). Text read as follows: “Not later than 2 years after October 24, 1995, and biennially thereafter, as part of the report required under section 6349(d) of this title, the Secretary shall report to the Congress on activities conducted pursuant to this section, including—

“(1) a review of the status of industrial energy auditing procedures; and

“(2) an evaluation of the effectiveness of the guidelines established under subsection (a) of this section and the responsiveness of the industrial sector to such guidelines.”

1995—Subsec. (c). Pub. L. 104-66 in introductory provisions substituted “1995” for “1992”, and inserted “as part of the report required under section 6349(d) of this title,” after “and biennially thereafter,”.

PART D—OTHER FEDERAL ENERGY
CONSERVATION MEASURES

CODIFICATION

This part, originally designated part E and subsequently redesignated part F by Pub. L. 95-619, title IV, §441(a), Nov. 9, 1978, 92 Stat. 3267, was changed to part D for purposes of codification.

§ 6361. Federal energy conservation programs

(a) Establishment and coordination of Federal agency actions

(1) The President shall, to the extent of his authority under other law, establish or coordinate

Federal agency actions to develop mandatory standards with respect to energy conservation and energy efficiency to govern the procurement policies and decisions of the Federal Government and all Federal agencies, and shall take such steps as are necessary to cause such standards to be implemented.

(2) The President shall develop and, to the extent of his authority under other law, implement a 10-year plan for energy conservation with respect to buildings owned or leased by an agency of the United States. Such plan shall include mandatory lighting efficiency standards, mandatory thermal efficiency standards and insulation requirements, restrictions on hours of operation, thermostat controls, and other conditions of operation, and plans for replacing or retrofitting to meet such standards.

(b) Public education programs

(1) The Secretary shall establish and carry out a responsible public education program—

(A) to encourage energy conservation and energy efficiency; or

(B) to promote van pooling and carpooling arrangements.

(2) For purposes of this subsection:

(A) The term “van” means any automobile which the Secretary determines is manufactured primarily for use in the transportation of not less than 8 individuals and not more than 15 individuals.

(B) The term “van pooling arrangement” means an arrangement for the transportation of employees between their residences or other designated locations and their place of employment on a nonprofit basis in which the operating costs of such arrangement are paid for by the employees utilizing such arrangement.

(c) Omitted

(d) Applicability of plan to Executive agencies

The plan developed by the President pursuant to subsection (a)(2) of this section shall be applicable to Executive agencies as defined in section 105 of title 5 and to the United States Postal Service.

(e) Authorization of appropriations

In addition to funds authorized in any other law, there is authorized to be appropriated to the President for fiscal year 1978 not to exceed \$25,000,000, and for fiscal year 1979 not to exceed \$50,000,000, to carry out the purposes of subsection (a)(2) of this section.

(Pub. L. 94-163, title III, §381, Dec. 22, 1975, 89 Stat. 939; Pub. L. 95-619, title V, §501, title VI, §691(b)(2), Nov. 9, 1978, 92 Stat. 3275, 3288; Pub. L. 100-615, §2(b), Nov. 5, 1988, 102 Stat. 3189.)

CODIFICATION

Subsec. (c) of this section, which required the Secretary to include in the report required under section 8258(b) of this title the steps taken under subsecs. (a) and (b) of this section, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, the 13th item on page 19 and the 3rd item on page 138 of House Document No. 103-7.

AMENDMENTS

1988—Subsec. (c). Pub. L. 100-615 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as fol-

lows: “The President shall submit to the Congress an annual report concerning all steps taken under subsections (a) and (b) of this section.”

1978—Subsec. (b). Pub. L. 95-619, §691(b)(2), substituted “Secretary” for “Administrator”, meaning Administrator of the Federal Energy Administration, wherever appearing.

Subsecs. (d), (e). Pub. L. 95-619, §501, added subsecs. (d) and (e).

TRANSFER OF FUNCTIONS

Functions vested in Secretary [formerly Administrator of Federal Energy Administration] under subsec. (b)(1)(B) of this section transferred to Secretary of Transportation by section 7159 of this title.

EX. ORD. NO. 12191. FEDERAL FACILITY RIDESHARING PROGRAM

Ex. Ord. No. 12191, Feb. 1, 1980, 45 F.R. 7997, provided: By the authority vested in me as President by the Constitution and statutes of the United States of America, and in order to increase ridesharing as a means to conserve petroleum, reduce congestion, improve air quality, and provide an economical way for Federal employees to commute to work, it is hereby ordered as follows:

1-1. RESPONSIBILITIES OF EXECUTIVE AGENCIES

1-101. Executive agencies shall promote the use of ridesharing (carpools, vanpools, privately leased buses, public transportation, and other multi-occupancy modes of travel) by personnel working at Federal facilities. Agency actions pursuant to this Order shall be consistent with Circular A-118 issued by the Office of Management and Budget.

1-102. Agencies shall establish an annual ridesharing goal tailored to each facility, and expressed as a percentage of fulltime personnel working at that facility who use ridesharing in the commute between home and work. Agencies that share facilities or that are within easy walking distance of one another should coordinate their efforts to develop and implement ridesharing opportunities.

1-103. Agencies shall designate, in accordance with OMB Circular A-118, an employee transportation coordinator. Agencies that share facilities may designate a single transportation coordinator. The coordinator shall assist employees in forming carpools or vanpools (employee-owned or leased) and facilitate employee participation in ridesharing matching programs. The coordinator shall publicize within the facility the availability of public transportation. The coordinator shall also communicate employee needs for new or improved transportation service to the appropriate local public transit authorities or other organizations furnishing multi-passenger modes of travel.

1-104. Agencies shall report to the Administrator of General Services, hereinafter referred to as the Administrator, the goals established, the means developed to achieve those goals, and the progress achieved. These reports shall be in such form and frequency as the Administrator may require.

1-2. RESPONSIBILITIES OF THE ADMINISTRATOR OF GENERAL SERVICES

1-201. The Administrator shall issue such regulations as are necessary to implement this Order.

1-202. The Administrator may exempt small, remotely located Federal facilities from the requirements of Sections 1-102, 1-103, and 1-104 on his own initiative or upon request of the agency. An exemption shall be granted in whole or in part when, in the judgment of the Administrator, the requirements of those Sections would not yield significant ridesharing benefits.

1-203. The Administrator shall, in consultation with the Secretary of Transportation, periodically provide agencies with guidelines, instructions, and other practical aids for establishing, implementing, and improving their ridesharing programs.

1-204. The Administrator shall assist in coordinating the ridesharing activities of the agencies with the efforts of the Department of Energy, under the Federal Energy Management Program and in the development of an emergency energy conservation plan for the Federal government.

1-205. The Administrator shall take into consideration the advice of the Environmental Protection Agency under the Clean Air Act, as amended [42 U.S.C. 7401 et seq.] in performing his responsibilities under this Order.

1-206. The Administrator shall, in consultation with the Secretary of Transportation, report annually to the President on the performance of the agencies in implementing the policies and actions contained in this Order. The report shall include (a) an assessment of each agency's performance, including the reasonableness of its goals and the adequacy of its effort, (b) a comparison of private sector and State and local government ridesharing efforts with those of the Federal government, and (c) recommendations for additional actions necessary to remove barriers or to provide additional incentives to encourage more ridesharing by personnel at Federal facilities.

JIMMY CARTER.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7159 of this title.

§ 6362. Energy conservation policies and practices

(a) "Agency" defined

In this section, "agency" means—

- (1) the Department of Transportation with respect to part A of subtitle VII of title 49, United States Code;
- (2) the Interstate Commerce Commission;
- (3) the Federal Maritime Commission; and
- (4) the Federal Power Commission.

(b) Statement of probable impact of major regulatory action on energy efficiency

Except as provided in subsection (c) of this section, each of the agencies specified in subsection (a) of this section shall, where practicable and consistent with the exercise of their authority under other law, include in any major regulatory action (as defined by rule by each such agency) taken by each such agency, a statement of the probable impact of such major regulatory action on energy efficiency and energy conservation.

(c) Application of provisions to authority exercised to protect public health and safety

Subsection (b) of this section shall not apply to any authority exercised under any provision of law designed to protect the public health or safety.

(Pub. L. 94-163, title III, §382, Dec. 22, 1975, 89 Stat. 939; Pub. L. 103-272, §4(h), July 5, 1994, 108 Stat. 1364.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103-272, §4(h)(1), added subsec. (a) and struck out former subsec. (a) which related to reports to Congress by Federal agencies, feasibility of additional savings in energy consumption, and administration of laws permitting inefficient use of energy.

Subsec. (b). Pub. L. 103-272, §4(h)(2), substituted "subsection (a)" for "subsection (a)(1)".

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise

provided in Pub. L. 104-88, to Surface Transportation Board effective Jan. 1, 1996, by section 702 of Title 49, Transportation, and section 101 of Pub. L. 104-88, set out as a note under section 701 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104-88, set out as a note under section 701 of Title 49.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 45 sections 1010, 1207.

§ 6363. Federal actions with respect to recycled oil

(a) Purpose

The purposes of this section are—

- (1) to encourage the recycling of used oil;
- (2) to promote the use of recycled oil;
- (3) to reduce consumption of new oil by promoting increased utilization of recycled oil; and
- (4) to reduce environmental hazards and wasteful practices associated with the disposal of used oil.

(b) Definitions

As used in this section:

(1) the term "used oil" means any oil which has been refined from crude oil, has been used, and as a result of such use has been contaminated by physical or chemical impurities.

(2) The term "recycled oil" means—

(A) used oil from which physical and chemical contaminants acquired through use have been removed by re-refining or other processing, or

(B) any blend of oil, consisting of such re-refined or otherwise processed used oil and new oil or additives,

with respect to which the manufacturer has determined, pursuant to the rule prescribed under subsection (d)(1)(A)(i) of this section, is substantially equivalent to new oil for a particular end use.

(3) The term "new oil" means any oil which has been refined from crude oil and has not been used, and which may or may not contain additives. Such term does not include used oil or recycled oil.

(4) The term "manufacturer" means any person who re-refines or otherwise processes used oil to remove physical or chemical impurities acquired through use or who blends such re-refined or otherwise processed used oil with new oil or additives.

(5) The term "Commission" means the Federal Trade Commission.

(c) Test procedures for determining substantial equivalency of recycled oil and new oil

As soon as practicable after December 22, 1975, the National Institute of Standards and Technology shall develop test procedures for the determination of substantial equivalency of re-refined or otherwise processed used oil or blend of oil, consisting of such re-refined or otherwise processed used oil and new oil or additives, with new oil for a particular end use. As soon as practicable after development of such test procedures, the National Institute of Standards and

Technology shall report such procedures to the Commission.

(d) Promulgation of rules prescribing test procedures and labeling standards

(1)(A) Within 90 days after the date on which the Commission receives the report under subsection (c) of this section, the Commission shall, by rule, prescribe—

(i) test procedures for the determination of substantial equivalency of re-refined or otherwise processed used oil or blend of oil, consisting of such re-refined or otherwise processed used oil and new oil or additives, with new oil distributed for a particular end use; and

(ii) labeling standards applicable to containers of recycled oil in order to carry out the purposes of this section.

(B) Such labeling standards shall permit any container of recycled oil to bear a label indicating any particular end use for which a determination of substantial equivalency has been made pursuant to subparagraph (A)(i).

(2) Not later than the expiration of such 90-day period, the Administrator of the Environmental Protection Agency shall, by rule, prescribe labeling standards applicable to containers of new oil, used oil, and recycled oil relating to the proper disposal of such oils after use. Such standards shall be designed to reduce, to the maximum extent practicable, environmental hazards and wasteful practices associated with the disposal of such oils after use.

(e) Labeling standards

Beginning on the effective date of the standards prescribed pursuant to subsection (d)(1)(A) of this section—

(1) no rule or order of the Commission, other than the rules required to be prescribed pursuant to subsection (d)(1)(A) of this section, and no law, regulation, or order of any State or political subdivision thereof may apply, or remain applicable, to any container of recycled oil, if such law, regulation, rule, or order requires any container of recycled oil, which container bears a label in accordance with the terms of the rules prescribed under subsection (d)(1)(A) of this section, to bear any label with respect to the comparative characteristics of such recycled oil with new oil which is not identical to that permitted by the rule respecting labeling standards prescribed under subsection (d)(1)(A)(ii) of this section; and

(2) no rule or order of the Commission may require any container of recycled oil to also bear a label containing any term, phrase, or description which connotes less than substantial equivalency of such recycled oil with new oil.

(f) Conformity of acts of Federal officials to Commission rules

After the effective date of the rules required to be prescribed under subsection (d)(1)(A) of this section, all Federal officials shall act within their authority to carry out the purposes of this section, including—

(1) revising procurement policies to encourage procurement of recycled oil for military and nonmilitary Federal uses whenever such recycled oil is available at prices competitive

with new oil procured for the same end use; and

(2) educating persons employed by Federal and State governments and private sectors of the economy of the merits of recycled oil, the need for its use in order to reduce the drain on the Nation's oil reserves, and proper disposal of used oil to avoid waste of such oil and to minimize environmental hazards associated with improper disposal.

(Pub. L. 94-163, title III, §383, Dec. 22, 1975, 89 Stat. 940; Pub. L. 100-418, title V, §5115(c), Aug. 23, 1988, 102 Stat. 1433.)

AMENDMENTS

1988—Subsec. (c). Pub. L. 100-418 substituted “National Institute of Standards and Technology” for “National Bureau of Standards” in two places.

APPLICABILITY OF LABELING STANDARDS

Pub. L. 96-463, §4(c), Oct. 15, 1980, 94 Stat. 2056, provided: “Before the effective date of the labeling standards required to be prescribed under section 383(d)(1)(A) of the Energy Policy and Conservation Act [subsec. (d)(1)(A) of this section], no requirement of any rule or order of the Federal Trade Commission may apply, or remain applicable, to any container of recycled oil (as defined in section 383(b) of such Act [subsec. (b) of this section]) if such requirement provides that the container must bear any label referring to the fact that it has been derived from previously used oil. Nothing in this subsection [this note] shall be construed to affect any labeling requirement applicable to recycled oil under any authority of law to the extent such requirement relates to fitness for intended use or any other performance characteristic of such oil or to any characteristic of such oil other than that referred to in the preceding sentence.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6394 of this title.

PART E—ENERGY CONSERVATION PROGRAM FOR SCHOOLS AND HOSPITALS

CODIFICATION

This part was, in the original, designated part G and has been changed to part E for purposes of codification.

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 6323, 6325, 6371j of this title; title 15 section 4507.

§ 6371. Definitions

For the purposes of this part—

(1) The term “building” means any structure the construction of which was completed on or before May 1, 1989, which includes a heating or cooling system, or both.

(2) The term “energy conservation measure” means an installation or modification of an installation in a building which is primarily intended to maintain or reduce energy consumption and reduce energy costs or allow the use of an alternative energy source, including, but not limited to—

(A) insulation of the building structure and systems within the building;

(B) storm windows and doors, multiglazed windows and doors, heat absorbing or heat reflective glazed and coated windows and door systems, additional glazing, reductions in glass area, and other window and door system modifications;

(C) automatic energy control systems and load management systems;

(D) equipment required to operate variable steam, hydraulic, and ventilating systems adjusted by automatic energy control systems;

(E) solar space heating or cooling systems, solar electric generating systems, or any combination thereof;

(F) solar water heating systems;

(G) furnace or utility plant and distribution system modifications including—

(i) replacement burners, furnaces, boilers, or any combination thereof, which substantially increases the energy efficiency of the heating system,

(ii) devices for modifying flue openings which will increase the energy efficiency of the heating system,

(iii) electrical or mechanical furnace ignition systems which replace standing gas pilot lights, and

(iv) utility plant system conversion measures including conversion of existing oil- and gas-fired boiler installations to alternative energy sources, including coal;

(H) caulking and weatherstripping;

(I) replacement or modification of lighting fixtures which replacement or modification increases the energy efficiency of the lighting system without increasing the overall illumination of a facility (unless such increase in illumination is necessary to conform to any applicable State or local building code or, if no such code applies, the increase is considered appropriate by the Secretary);

(J) energy recovery systems;

(K) cogeneration systems which produce steam or forms of energy such as heat, as well as electricity for use primarily within a building or a complex of buildings owned by a school or hospital and which meet such fuel efficiency requirements as the Secretary may by rule prescribe;

(L) such other measures as the Secretary identifies by rule for purposes of this part; and

(M) such other measures as a grant applicant shows will save a substantial amount of energy and as are identified in an energy audit prescribed pursuant to section 6325(e)(2) of this title.

(3) The term “hospital” means a public or nonprofit institution which is—

(A) a general hospital, tuberculosis hospital, or any other type of hospital, other than a hospital furnishing primarily domiciliary care; and

(B) duly authorized to provide hospital services under the laws of the State in which it is situated.

(4) The term “hospital facilities” means buildings housing a hospital and related facilities, including laboratories, outpatient departments, nurses’ home and training facilities and central service facilities operated in connection with a hospital, and also includes buildings housing education or training facilities for health professions personnel operated as an integral part of a hospital.

(5) The term “public or nonprofit institution” means an institution owned and operated by—

(A) a State, a political subdivision of a State or an agency or instrumentality of either, or

(B) an organization exempt from income tax under section 501(c)(3) of title 26.

(6) The term “school” means a public or nonprofit institution which—

(A) provides, and is legally authorized to provide, elementary education or secondary education, or both, on a day or residential basis;

(B)(i) provides, and is legally authorized to provide a program of education beyond secondary education, on a day or residential basis;

(ii) admits as students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such certificate;

(iii) is accredited by a nationally recognized accrediting agency or association; and

(iv) provides an educational program for which it awards a bachelor’s degree or higher degree or provides not less than a two-year program which is acceptable for full credit toward such a degree at any institution which meets the requirements of clauses (i), (ii), and (iii) and which provides such a program;

(C) provides not less than a one-year program of training to prepare students for gainful employment in a recognized occupation and which meets the provisions of clauses (i), (ii), and (iii) of subparagraph (B); or

(D) is a local educational agency.

(7) The term “local education agency” means a public board of education or other public authority or a nonprofit institution legally constituted within, or otherwise recognized by, a State for either administrative control or direction of, or to perform administrative services for, a group of schools within a State.

(8) The term “school facilities” means buildings housing classrooms, laboratories, dormitories, administrative facilities, athletic facilities, or related facilities operated in connection with a school.

(9) The term “State” means, in addition to the several States of the Union, the District of Columbia, Puerto Rico, Guam, American Samoa, the Northern Mariana Islands, and the Virgin Islands.

(10) The term “State energy agency” means the State agency responsible for developing State energy conservation plans pursuant to section 6322 of this title, or, if no such agency exists, a State agency designated by the Governor of such State to prepare and submit a State plan under section 6371c of this title.

(11) The term “State school facilities agency” means an existing agency which is broadly representative of public institutions of higher education, nonprofit institutions of higher education, public elementary and secondary schools, nonprofit elementary and secondary schools, public vocational education institutions, nonprofit vocational education institutions, and the interests of handicapped persons, in a State or, if no such agency exists, an agency which is designated by the Governor of such State which conforms to the requirements of this paragraph.

(12) The term “State hospital facilities agency” means an existing agency which is broadly

representative of the public hospitals and the nonprofit hospitals, or, if no such agency exists, an agency designated by the Governor of such State which conforms to the requirements of this paragraph.

(13) The term “energy audit” means a determination of the energy consumption characteristics of a building which—

(A) identifies the type, size, and rate of energy consumption of such building and the major energy using systems of such building;

(B) determines appropriate energy conservation maintenance and operating procedures; and

(C) indicates the need, if any, for the acquisition and installation of energy conservation measures.

(14) The term “preliminary energy audit” means a determination of the energy consumption characteristics of a building, including the size, type, rate of energy consumption and major energy-using systems of such building.

(15) The term “energy conservation project” means—

(A) an undertaking to acquire and to install one or more energy conservation measures in school or hospital facilities and

(B) technical assistance in connection with any such undertaking and technical assistance as described in paragraph (17)(A).

(16) The term “energy conservation project costs” includes only costs incurred in the design, acquisition, construction, and installation of energy conservation measures and technical assistance costs.

(17) The term “technical assistance” means assistance, under rules promulgated by the Secretary, to States, schools, and hospitals—

(A) to conduct specialized studies identifying and specifying energy savings or energy cost savings that are likely to be realized as a result of (i) modification of maintenance and operating procedures in a building, or (ii) the acquisition and installation of one or more specified energy conservation measures in such building, or (iii) both, and

(B) the planning or administration of specific remodeling, renovation, repair, replacement, or insulation projects related to the installation of energy conservation measures in such building.

(18) The term “technical assistance costs” means costs incurred for the use of existing personnel or the temporary employment of other qualified personnel (or both such types of personnel) necessary for providing technical assistance.

(19) The term “energy conservation maintenance and operating procedure” means modification or modifications in the maintenance and operations of a building, and any installations therein, which are designed to reduce energy consumption in such building and which require no significant expenditure of funds.

(20) The term “Secretary” means the Secretary of Energy or his designee.

(21) The term “Governor” means the chief executive officer of a State or his designee.

(Pub. L. 94-163, title III, §391, as added Pub. L. 95-619, title III, §302(a), Nov. 9, 1978, 92 Stat. 3239;

amended Pub. L. 98-454, title VI, §601(e), Oct. 5, 1984, 98 Stat. 1736; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 101-440, §6(b), Oct. 18, 1990, 104 Stat. 1011; Pub. L. 105-388, §5(a)(9), Nov. 13, 1998, 112 Stat. 3478.)

AMENDMENTS

1998—Par. (2)(B). Pub. L. 105-388 substituted a semicolon for period at end.

1990—Par. (1). Pub. L. 101-440, §6(b)(1), substituted “May 1, 1989” for “April 20, 1977”.

Par. (2). Pub. L. 101-440, §6(b)(2), (3), in introductory provision substituted “maintain or reduce energy consumption and reduce energy costs” for “reduce energy consumption” and in subpar. (C) inserted “and load management systems” after “systems”.

Par. (8). Pub. L. 101-440, §6(b)(4), inserted “administrative facilities,” after “dormitories.”

Par. (17)(A). Pub. L. 101-440, §6(b)(5), substituted “or energy cost savings” for “and related cost savings”.

1986—Par. (5)(B). Pub. L. 99-514 substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”, which for purposes of codification was translated as “title 26” thus requiring no change in text.

1984—Par. (9). Pub. L. 98-454 which directed the amendment of subsec. (a) by inserting reference to the Northern Mariana Islands was executed to par. (9) of this section to reflect the probable intent of Congress, because this section does not contain a subsec. (a).

SEPARABILITY

Section 302(c) of title III of Pub. L. 95-619 provided that: “If any provision of this title [enacting sections 6371 to 6371j and section 6372 to 6372i of this title, amending sections 300k-2 and 300n-1 of this title, and enacting provisions set out as notes under this section and section 6372 of this title] or the application thereof to any person or circumstances be held invalid, the provisions of other sections of this title and their application to other persons or circumstances shall not be affected thereby.”

CONGRESSIONAL STATEMENT OF FINDINGS AND PURPOSES

Section 301 of part 1 of title III of Pub. L. 95-619 provided:

“(a) FINDINGS.—The Congress finds that—

“(1) the Nation’s nonrenewable energy resources are being rapidly depleted;

“(2) schools and hospitals are major consumers of energy, and have been especially burdened by rising energy prices and fuel shortages;

“(3) substantial energy conservation can be achieved in schools and hospitals through the implementation of energy conservation maintenance and operating procedures and the installation of energy conservation measures; and

“(4) public and nonprofit schools and hospitals in many instances need financial assistance in order to make the necessary improvements to achieve energy conservation.

“(b) PURPOSE.—It is the purpose of this part [enacting sections 6371 to 6371i of this title, amending sections 300k-2 and 300n-1 of this title, and enacting provisions set out as notes under this section] to authorize grants to States and to public and nonprofit schools and hospitals to assist them in identifying and implementing energy conservation maintenance and operating procedures and in evaluating, acquiring, and installing energy conservation measures to reduce the energy use and anticipated energy costs of schools and hospitals.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6372 of this title.

§ 6371a. Guidelines

(a) Energy audits

The Secretary shall, by rule, not later than 60 days after November 9, 1978—

(1) prescribe guidelines for the conduct of preliminary energy audits, including a description of the type, number, and distribution of preliminary energy audits of school and hospital facilities that will provide a reasonably accurate evaluation of the energy conservation needs of all such facilities in each State, and

(2) prescribe guidelines for the conduct of energy audits.

(b) State plans for implementation of energy conservation projects in schools and hospitals

The Secretary shall, by rule, not later than 90 days after November 9, 1978, prescribe guidelines for State plans for the implementation of energy conservation projects in schools and hospitals. The guidelines shall include—

(1) a description of the factors which the State energy agency may consider in determining which energy conservation projects will be given priority in making grants pursuant to this part, including such factors as cost, energy consumption, energy savings, and energy conservation goals,

(2) a description of the suggested criteria to be used in establishing a State program to identify persons qualified to implement energy conservation projects, and

(3) a description of the types of energy conservation measures deemed appropriate for each region of the Nation.

(c) Revisions

Guidelines prescribed under this section may be revised from time to time after notice and opportunity for comment.

(d) Determination of severe hardship class for schools and hospitals

The Secretary shall, by rule prescribe criteria for determining schools and hospitals which are in a class of severe hardship. Such criteria shall take into account climate, fuel costs, fuel availability, ability to provide the non-Federal share of the costs, and such other factors that he deems appropriate.

(Pub. L. 94-163, title III, § 392, as added Pub. L. 95-619, title III, § 302(a), Nov. 9, 1978, 92 Stat. 3242.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6371b, 6371c, 6371e, of this title.

§ 6371b. Preliminary energy audits and energy audits

(a) Application by Governor

The Governor of any State may apply to the Secretary at such time as the Secretary may specify after promulgation of guidelines under section 6371a(a) of this title for grants to conduct preliminary energy audits and energy audits of school facilities and hospital facilities in such State under this part.

(b) Grants for conduct of preliminary energy audits

Upon application under subsection (a) of this section the Secretary may make grants to States for purposes of conducting preliminary

energy audits of school facilities and hospital facilities under this part in accordance with the guidelines prescribed under section 6371a(a)(1) of this title. If a State does not conduct preliminary energy audits within two years after November 9, 1978, the Secretary may conduct such audits within such State.

(c) Grants for conduct of energy audits

Upon application under subsection (a) of this section the Secretary may make grants to States for purposes of conducting energy audits of school facilities and hospital facilities under this part in accordance with the guidelines prescribed under section 6371a(a)(2) of this title.

(d) Audits conducted prior to grant of financial assistance

If a State without the use of financial assistance under this section, conducts preliminary energy audits or energy audits which comply with the guidelines prescribed by the Secretary or which are approved by the Secretary the funds allocated for purposes of this section shall be added to the funds available for energy conservation projects for such State and shall be in addition to amounts otherwise available for such purposes.

(e) Restriction on use of funds; grant covering total cost of energy audits

(1) Except as provided in paragraph (2), amounts made available under this section (together with any other amounts made available from other Federal sources) may not be used to pay more than 50 percent of the costs of any preliminary energy audit or any energy audit.

(2) Upon the request of the Governor, the Secretary may make grants to a State for up to 100 percent of the costs of any preliminary energy audits and energy audits, subject to the requirements of section 6371g(a)(3) of this title.

(Pub. L. 94-163, title III, § 393, as added Pub. L. 95-619, title III, § 302(a), Nov. 9, 1978, 92 Stat. 3242.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6371c, 6371f, 6371g of this title.

§ 6371c. State plans

(a) Invitation to State energy agency to submit plan; contents

The Secretary shall invite the State energy agency of each State to submit, within 90 days after the effective date of the guidelines prescribed pursuant to section 6371a of this title, or such longer period as the Secretary may, for good cause, allow, a State plan under this section for such State. Such plan shall include—

(1) the results of preliminary energy audits conducted in accordance with the guidelines prescribed under section 6371a(a)(1) of this title, and an estimate of the energy savings that may result from the modification of maintenance and operating procedures and installation of energy conservation measures in the schools and hospitals in such State;

(2) a recommendation as to the types of energy conservation projects considered appropriate for schools and hospitals in such State,

together with an estimate of the costs of carrying out such projects in each year for which funds are appropriated;

(3) a program for identifying persons qualified to carry out energy conservation projects;

(4) procedures to insure that funds will be allocated among eligible applicants for energy conservation projects within such State, including procedures—

(A) to insure that funds will be allocated on the basis of relative need taking into account such factors as cost, energy consumption and energy savings, and

(B) to insure that equitable consideration is given to all eligible public or nonprofit institutions regardless of size and type of ownership;

(5) a statement of the extent to which, and by which methods, such State will encourage utilization of solar space heating, cooling, and electric systems and solar water heating systems where appropriate;

(6) procedures to assure that all assistance under this part in such State will be expended in compliance with the requirements of an approved State plan for such State, and in compliance with the requirements of this part;

(7) procedures to insure implementation of energy conserving maintenance and operating procedures in those facilities for which projects are proposed; and

(8) policies and procedures designed to assure that financial assistance provided under this part in such State will be used to supplement, and not to supplant, State, local, or other funds.

(b) Approval of plans

The Secretary shall review and approve or disapprove each State plan not later than 60 days after receipt by the Secretary. If such plan meets the requirements of subsection (a) of this section, the Secretary shall approve the plan. If a State plan submitted within the 90-day period specified in subsection (a) of this section has not been disapproved within the 60-day period following its receipt by the Secretary, such plan shall be treated as approved by the Secretary. A State energy agency may submit a new or amended plan at any time after the submission of the original plan if the agency obtains the consent of the Secretary.

(c) Development and implementation of approved plans; submission of proposed State plan

(1) If a State plan has not been approved under this section within 2 years and 90 days after November 9, 1978, or within 90 days after the completion of the preliminary audits under section 6371b(a) of this title, whichever is later, the Secretary may take such action as necessary to develop and implement such a State plan and to carry out the functions which would otherwise be carried out under this part by the State energy agency, State school facilities agency, and State hospital facilities agency, in order that the energy conservation program for schools and hospitals may be implemented in such State.

(2) Notwithstanding any other provision contained in this section, a State may, at any time,

submit a proposed State plan for such State under this section. The Secretary shall approve or disapprove such plan not later than 60 days after receipt by the Secretary. If such plan meets the requirements of subsection (a) of this section and is not inconsistent with any plan developed and implemented by the Secretary under paragraph (1), the Secretary shall approve the plan and withdraw any such plan developed and implemented by the Secretary.

(Pub. L. 94-163, title III, §394, as added Pub. L. 95-619, title III, §302(a), Nov. 9, 1978, 92 Stat. 3243; amended Pub. L. 105-388, §5(a)(10), Nov. 13, 1998, 112 Stat. 3478.)

AMENDMENTS

1998—Subsec. (a)(1). Pub. L. 105-388, §5(a)(10)(A), substituted semicolon for comma at end.

Subsec. (a)(2). Pub. L. 105-388, §5(a)(10)(B), substituted semicolon for period at end.

Subsec. (a)(3), (5). Pub. L. 105-388, §5(a)(10)(A), substituted semicolon for comma at end.

Subsec. (a)(6). Pub. L. 105-388, §5(a)(10)(C), substituted semicolon for colon at end.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6371, 6371d, 6371e of this title.

§ 6371d. Applications for financial assistance

(a) Limitation on number of applications by States, schools, and hospitals; submittal to State energy agency

Applications of States, schools, and hospitals for financial assistance under this part for energy conservation projects shall be made not more than once for any fiscal year. Schools and hospitals applying for such financial assistance shall submit their applications to the State energy agency and the State energy agency shall make a single submittal to the Secretary, containing all applications which comply with the State plan.

(b) Required information

Applications for financial assistance under this part for energy conservation projects shall contain, or shall be accompanied by, such information as the Secretary may reasonably require, including the results of energy audits which comply with guidelines under this part. The annual submittal to the Secretary by the State energy agency under subsection (a) of this section shall include a listing and description of energy conservation projects proposed to be funded within the State during the fiscal year for which such application is made, and such information concerning expected expenditures as the Secretary may, by rule, require.

(c) Conditions for financial assistance; applications consistent with related State programs and health plans

(1) The Secretary may not provide financial assistance to States, schools, or hospitals for energy conservation projects unless the application for a grant for such project is submitted through, or approved by the appropriate State hospital facilities agency or State school facilities agency, respectively, and determined by the State energy agency to comply with the State plan.

(2) Applications of States, schools, and hospitals and State plans pursuant to this part shall be consistent with—

(A) related State programs for educational facilities in such State, and

(B) State health plans under section 300m-3(c)(2)¹ and 300o-2¹ of this title, and shall be coordinated through the review mechanisms required under section 300m-2¹ of this title and section 1320a-1 of this title.

(d) Compliance required for approval; reasons for disapproval; resubmittal; amendment

The Secretary shall approve such applications submitted by a State energy agency as he determines to be in compliance with this section and with the requirements of the applicable State plan approved under section 6371c of this title. The Secretary shall state the reasons for his disapproval in the case of any application which he disapproves. Any application not approved by the Secretary may be resubmitted by the applicant at any time in the same manner as the original application and the Secretary shall approve such resubmitted application as he determines to be in compliance with this section and the requirements of the State plan. Amendments of an application shall, except as the Secretary may otherwise provide, be subject to approval in the same manner as the original application. All or any portion of an application under this section may be disapproved to the extent that funds are not available under this part to carry out such application or portion.

(e) Suspension of further assistance for failure to comply

Whenever the Secretary, after reasonable notice and opportunity for hearing to any State, school, or hospital receiving assistance under this part, finds that there has been a failure to comply substantially with the provisions set forth in the application approved under this section, the Secretary shall notify the State, school, or hospital that further assistance will not be made available to such State, school or hospital under this part until he is satisfied that there is no longer any such failure to comply. Until he is so satisfied no further assistance shall be made to such State, school, or hospital under this part.

(Pub. L. 94-163, title III, §395, as added Pub. L. 95-619, title III, §302(a), Nov. 9, 1978, 92 Stat. 3244.)

REFERENCES IN TEXT

Sections 300m-2 and 300m-3 of this title, referred to in subsec. (c)(2)(B), were repealed effective Jan. 1, 1987, by Pub. L. 99-660, title VII, §701(a), Nov. 14, 1986, 100 Stat. 3799.

Section 300o-2 of this title, referred to in subsec. (c)(2)(B), was repealed by Pub. L. 96-79, title II, §202(a), Oct. 4, 1979, 93 Stat. 632.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6371e of this title.

¹ See References in Text note below.

§ 6371e. Grants for project costs and technical assistance

(a) Authorization of Secretary; project costs

The Secretary may make grants to schools and hospitals for carrying out energy conservation projects the applications for which have been approved under section 6371d of this title.

(b) Restrictions on use of funds

(1) Except as provided in paragraph (2), amounts made available for purposes of this section (together with any amounts available for such purposes from other Federal sources) may not be used to pay more than 50 percent of the costs of any energy conservation project. The non-Federal share of the costs of any such energy conservation project may be provided by using programs of innovative financing for energy conservation projects (including, but not limited to, loan programs and performance contracting), even if, pursuant to such financing, clear title to the equipment does not pass to the school or hospital until after the grant is completed.

(2) Amounts made available for purposes of this section (together with any amounts available for such purposes from other Federal sources) may be used to pay not to exceed 90 percent of the costs of an energy conservation project if the Secretary determines that a project meets the hardship criteria of section 6371a(d) of this title. Grants made under this paragraph shall be from the funds provided under section 6371g(a)(2) of this title.

(c) Allocation requirements

Grants made under this section in any State in any year shall be made in accordance with the requirements contained in section 6371g of this title.

(d) Technical assistance costs

(1) The Secretary may make grants to States for paying technical assistance costs. Schools in any State shall not be allocated less than 30 percent of the funds for energy conservation projects within such State and hospitals in any State shall not be allocated less than 30 percent of such funds.

(2) A State may utilize up to 100 percent of the funds provided by the Secretary under this part for any fiscal year for program and technical assistance and up to 50 percent of such funds for marketing and other costs associated with leveraging of non-Federal funds for carrying out this part and may administer a continuous and consecutive application and award procedure for providing program and technical assistance under this part in accordance with regulations that the Secretary shall establish, if the State—

(A) has adopted a State plan in accordance with section 6371c of this title, the administration of which is in accordance with applicable regulations; and

(B) certifies to the Secretary that not more than 15 percent of the aggregate amount of Federal and non-Federal funds used by the State to provide program and technical assistance, implement energy conservation measures, and otherwise carry out a program pursuant to this part for the fiscal year concerned

will be expended for program and technical assistance and for marketing and other costs associated with leveraging of non-Federal funds for such program.

(Pub. L. 94-163, title III, §396, as added Pub. L. 95-619, title III, §302(a), Nov. 9, 1978, 92 Stat. 3245; amended Pub. L. 101-440, §6(a), (c), (d), Oct. 18, 1990, 104 Stat. 1011.)

AMENDMENTS

1990—Subsec. (b)(1). Pub. L. 101-440, §6(a), inserted at end “The non-Federal share of the costs of any such energy conservation project may be provided by using programs of innovative financing for energy conservation projects (including, but not limited to, loan programs and performance contracting), even if, pursuant to such financing, clear title to the equipment does not pass to the school or hospital until after the grant is completed.”

Subsec. (d). Pub. L. 101-440, §6(d), designated existing provisions as par. (1) and added par. (2).

Subsec. (e). Pub. L. 101-440, §6(c), struck out subsec. (e) which prohibited funds for buildings used principally for administration.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6371f, 6371g of this title.

§ 6371f. Authorization of appropriations

For the purpose of carrying out this part, there are authorized to be appropriated for fiscal years 1999 through 2003 such sums as may be necessary.

(Pub. L. 94-163, title III, §397, as added Pub. L. 95-619, title III, §302(a), Nov. 9, 1978, 92 Stat. 3246; amended Pub. L. 101-440, §8(b), Oct. 18, 1990, 104 Stat. 1015; Pub. L. 105-388, §2(b), Nov. 13, 1998, 112 Stat. 3477.)

AMENDMENTS

1998—Pub. L. 105-388 amended section generally, substituting provisions authorizing appropriations for fiscal years 1999 through 2003 for provisions authorizing appropriations for fiscal years 1991 through 1993.

1990—Pub. L. 101-440 amended section generally, substituting provisions authorizing appropriations for fiscal years 1991 through 1993 for provisions authorizing appropriations for fiscal years ending Sept. 30, 1978, Sept. 30, 1979, and Sept. 30, 1980.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6371g of this title.

§ 6371g. Allocation of grants

(a) Section 6371e grants

(1) Except as otherwise provided in subsection (b) of this section, the Secretary shall allocate 90 percent of the amounts made available under section 6371f(b)¹ of this title in any year for purposes of making energy conservation project grants pursuant to section 6371e of this title as follows:

(A) Eighty percent of amounts made available under section 6371f(b)¹ of this title shall be allocated among the States in accordance with a formula to be prescribed, by rule, by the Secretary, taking into account population and climate of each State, and such other factors as the Secretary may deem appropriate.

(B) Ten percent of amounts made available under section 6371f(b)¹ of this title shall be allocated among the States in such manner as the Secretary determines by rule after taking into account the availability and cost of fuel or other energy used in, and the amount of fuel or other energy consumed by, schools and hospitals in the States, and such other factors as he deems appropriate.

(2) The Secretary shall allocate 10 percent of the amounts made available under section 6371f(b)¹ of this title in any year for purposes of making grants as provided under section 6371e(b)(2) of this title in excess of the 50 percent limitation contained in section 6371e(b)(1) of this title.

(3) In the case of any State which received for any fiscal year an amount which exceeded 50 percent of the cost of any energy audit as provided in section 6371b(e)(2) of this title, the aggregate amount allocated to such State under this subsection for such fiscal year (determined after applying paragraphs (1) and (2)) shall be reduced by an amount equal to such excess. The amount of such reduction shall be reallocated to the States for such fiscal year as provided in this subsection except that for purposes of such reallocation, the State which received such excess shall not be eligible for any portion of such reallocation.

(b) Restrictions on allocations to States

The total amount allocated to any State under subsection (a) of this section in any year shall not exceed 10 percent of the total amount allocated to all the States in such year under such subsection (a) of this section. Except for the District of Columbia, Puerto Rico, Guam, American Samoa, the Northern Mariana Islands, and the Virgin Islands, not less than 0.5 percent of such total allocation to all States for that year shall be allocated in such year for the total of grants to States and to schools and hospitals in each State which has an approved State plan under this part.

(c) Prescription of rules governing allocations among States with regard to energy audits

Not later than 60 days after November 9, 1978, the Secretary shall prescribe rules governing the allocation among the States of funds for grants for preliminary energy audits and energy audits. Such rules shall take into account the population and climate of such States and such other factors as he may deem appropriate.

(d) Prescription of rules limiting allocations to States for administrative expenses

The Secretary shall prescribe rules limiting the amount of funds allocated to a State which may be expended for administrative expenses by such State.

(e) Reallocations

Funds allocated for projects in any States for a fiscal year under this section but not obligated in such fiscal year shall be available for reallocation under subsection (a) of this section in the subsequent fiscal year.

(Pub. L. 94-163, title III, §398, as added Pub. L. 95-619, title III, §302(a), Nov. 9, 1978, 92 Stat. 3246;

¹ See References in Text note below.

amended Pub. L. 98-454, title VI, §601(e), Oct. 5, 1984, 98 Stat. 1736.)

REFERENCES IN TEXT

Section 6371f of this title, referred to in subsec. (a)(1), (2), was amended by Pub. L. 101-440, §8(b), Oct. 18, 1990, 104 Stat. 1015, and, as so amended, no longer contains a subsec. (b).

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-454 inserted reference to Northern Mariana Islands.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6371c, 6371e of this title.

§ 6371h. Administration; detailed description in annual report

(a) The Secretary may prescribe such rules as may be necessary in order to carry out the provisions of this part.

(b) The Secretary shall include in his annual report a detailed description of the actions taken under this part in the preceding fiscal year and the actions planned to be taken in the subsequent fiscal year. Such description shall show the allocations made (including the allocations made to each State) and include information on the types of conservation measures implemented, with funds allocated, and an estimate of the energy savings achieved.

(Pub. L. 94-163, title III, §399, as added Pub. L. 95-619, title III, §302(a), Nov. 9, 1978, 92 Stat. 3247; amended Pub. L. 96-470, title II, §203(b), Oct. 19, 1980, 94 Stat. 2242.)

AMENDMENTS

1980—Subsec. (b). Pub. L. 96-470 substituted “include in his annual report a detailed description” for “, within one year after November 9, 1978, and annually thereafter while funds are available under this part, submit to Congress a detailed report” and “Such description” for “Such report”.

§ 6371i. Records

Each recipient of assistance under this part shall keep such records, provide such reports, and furnish such access to books and records as the Secretary may by rule prescribe.

(Pub. L. 94-163, title III, §400, as added Pub. L. 95-619, title III, §302(a), Nov. 9, 1978, 92 Stat. 3247; amended Pub. L. 105-388, §5(a)(11), Nov. 13, 1998, 112 Stat. 3479.)

AMENDMENTS

1998—Pub. L. 105-388 struck out “(a)” before “Each recipient”.

§ 6371j. Application of sections 3141-3144, 3146, and 3147 of title 40

No grant for a project (other than so much of a grant as is used for a preliminary energy audit, energy audit, or technical assistance or a grant the total project cost of which is \$5,000 or less, excluding costs for a preliminary energy audit, energy audit, or technical assistance) shall be made under this part or part 1 unless the Secretary finds that all laborers and mechanics employed by contractors or subcontractors in the performance of work on any con-

struction utilizing such grants will be paid at rates not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor in accordance with sections 3141-3144, 3146, and 3147 of title 40; and the Secretary of Labor shall have with respect to the labor standards specified in this section the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 5 U.S.C. Appendix) and section 3145 of title 40.

(Pub. L. 95-619, title III, §312, Nov. 9, 1978, 92 Stat. 3254.)

REFERENCES IN TEXT

This part, referred to in text, means part 2 (§§310-312) of title III of Pub. L. 95-619, Nov. 9, 1978, 92 Stat. 3248, as amended, which enacted sections 6371j and 6372 to 6372i of this title and enacted provisions set out as a note under section 6372 of this title. For complete classification of this part to the Code, see Tables.

Part 1, referred to in text, means part 1 (§§301-304) of title III of Pub. L. 95-619, Nov. 9, 1978, 92 Stat. 3238, as amended, which enacted sections 6371 to 6371i of this title, amended sections 300k-2 and 300n-1 of this title, and enacted provisions set out as notes under sections 6371 of this title. For complete classification of this part to the Code, see Tables.

Reorganization Plan Numbered 14 of 1950, referred to in text, is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

In text, “sections 3141-3144, 3146, and 3147 of title 40” substituted for “the Act of March 31, 1931 (40 U.S.C. 276a-276a-5, known as the Davis-Bacon Act)” and “section 3145 of title 40” substituted for “section 2 of the Act of June 13, 1934 (40 U.S.C. 276c)” on authority of Pub. L. 107-217, §5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

Section was enacted as a part of the National Energy Conservation Policy Act, and not as a part of the Energy Policy and Conservation Act which comprises this chapter, and consequently is not a part of part E of this subchapter.

PART F—ENERGY CONSERVATION PROGRAM FOR BUILDINGS OWNED BY UNITS OF LOCAL GOVERNMENT AND PUBLIC CARE INSTITUTIONS

CODIFICATION

This part was, in the original, designated part H and has been changed to part F for purposes of codification.

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 6371j of this title.

§ 6372. Definitions

For purposes of this part—

(1) The terms “hospital”, “State”, “school”, “Governor”, “State energy agency”, “energy conservation measure”, “energy conservation maintenance and operating procedure”, “preliminary energy audit”, “technical assistance costs”, “energy audit” and “Secretary” have the meanings provided in section 6371 of this title.

(2) The term “unit of local government” means the government of a county, municipality, or township, which is a unit of general purpose government below the State (determined on the basis of the same principles as are used by the Bureau of the Census for general statistical purposes) and the District of

Columbia. Such term also means the recognized governing body of an Indian tribe (as defined in section 6862 of this title) which governing body performs substantial governmental functions.

(3) The term "building" has the meaning provided in section 6371 of this title except that for purposes of this part such term includes only buildings which are owned and primarily occupied by offices or agencies of a unit of local government or by a public care institution and does not include any building intended for seasonal use or any building utilized primarily by a school or hospital.

(4) The term "public care institution" means a public or nonprofit institution which owns—

(A) a facility for long term care, a rehabilitation facility, or a public health center, as described in section 300s-3 of this title, or

(B) a residential child care center.

(5) The term "public or nonprofit institution" means an institution owned and operated by—

(A) a State, a political subdivision of a State or an agency or instrumentality of either, or

(B) an organization exempt from income tax under section 501(c)(3) or 501(c)(4) of title 26.

(6) The term "technical assistance program costs" means the costs of carrying out a technical assistance program.

(7) The term "technical assistance" means assistance under rules, promulgated by the Secretary, to States, units of local government and public care institutions—

(A) to conduct specialized studies identifying and specifying energy savings and related cost savings that are likely to be realized as a result of (i) modification or maintenance and operating procedures in a building, (ii) the acquisition and installation of one or more specified energy conservation measures in such building or (iii) both, or

(B) the planning or administration of such specialized studies.

(Pub. L. 94-163, title III, §400A, as added Pub. L. 95-619, title III, §311(a), Nov. 9, 1978, 92 Stat. 3248; amended Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095.)

AMENDMENTS

1986—Par. (5)(B). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

SEPARABILITY

For separability of provisions of title III of Pub. L. 95-619, see section 302(c) of Pub. L. 95-619, set out as a note under section 6371 of this title.

CONGRESSIONAL STATEMENT OF FINDINGS AND PURPOSES

Section 310 of part 2 of title III of Pub. L. 95-619 provided that:

"(a) FINDINGS.—The Congress finds that—

"(1) the Nation's nonrenewable energy resources are being rapidly depleted;

"(2) buildings owned by units of local government and public care institutions are major consumers of

energy, and such units and institutions have been especially burdened by rising energy prices and fuel shortages;

"(3) substantial energy conservation can be achieved in buildings owned by units of local government and public care institutions through the implementation of energy conservation maintenance and operating procedures; and

"(4) units of local government and public care institutions in many instances need financial assistance in order to conduct energy audits and to identify energy conservation maintenance and operating procedures and to evaluate the potential benefits of acquiring and installing energy conservation measures.

"(b) PURPOSE.—It is the purpose of this part [enacting sections 6371j and 6372 to 6372i of this title] to authorize grants to States and units of local government and public care institutions to assist them in conducting preliminary energy audits and energy audits in identifying and implementing energy conservation maintenance and operating procedures and in evaluating energy conservation measures to reduce the energy use and anticipated energy costs of buildings owned by units of local government and public care institutions."

APPLICATION OF DAVIS-BACON ACT

For application of the Davis-Bacon Act to grants made by the Secretary under this part, see section 6371j of this title.

§ 6372a. Guidelines

(a) Energy audits

The Secretary shall, by rule, not later than sixty days after November 9, 1978—

(1) prescribe guidelines for the conduct of the preliminary energy audits for buildings owned by units of local government and public care institutions, including a description of the type, number and distribution of preliminary energy audits of such buildings that will provide a reasonably accurate evaluation of the energy conservation needs of all such buildings in each State, and

(2) prescribe guidelines for the conduct of energy audits.

(b) Implementation of technical assistance programs

The Secretary shall, by rule, not later than 90 days after November 9, 1978, prescribe guidelines for State plans for the implementation of technical assistance programs for buildings owned by units of local government and public care institutions. The guidelines shall include—

(1) a description of the factors to be considered in determining which technical assistance programs will be given priority in making grants pursuant to this part, including such factors as cost, energy consumption, energy savings, and energy conservation goals;

(2) a description of the suggested criteria to be used in establishing a State program to identify persons qualified to undertake technical assistance work; and

(3) a description of the types of energy conservation measures deemed appropriate for each region of the Nation.

(c) Revisions

Guidelines prescribed under this part may be revised from time to time after notice and opportunity for comment.

(Pub. L. 94-163, title III, §400B, as added Pub. L. 95-619, title III, §311(a), Nov. 9, 1978, 92 Stat. 3249.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6372b, 6372c of this title.

§ 6372b. Preliminary energy audits and energy audits

(a) Application by Governor

The Governor of any State may apply to the Secretary at such time as the Secretary may specify after promulgation of the guidelines under section 6372a(a) of this title for grants to conduct preliminary energy audits of buildings owned by units of local government and public care institutions in such State under this part.

(b) Grants for conduct of preliminary energy audits

Upon application under subsection (a) of this section, the Secretary may make grants to States to assist in conducting preliminary energy audits under this part for buildings owned by units of local government and public care institutions. Such audits shall be conducted in accordance with the guidelines prescribed under section 6372a(a)(1) of this title.

(c) Application by Governor, unit of local government or public care institution

The Governor of any State, unit of local government or public care institution may apply to the Secretary at such time as the Secretary may specify after promulgation of the guidelines under section 6372a(a) of this title for grants to conduct energy audits of buildings owned by units of local government and public care institutions in such State under this part.

(d) Grants for conduct of energy audits

Upon application under subsection (c) of this section the Secretary may make grants to States, units of local government, and public care institutions for purposes of conducting energy audits of facilities under this part in accordance with the guidelines prescribed under section 6372a(a)(2) of this title.

(e) Audits conducted prior to grant of financial assistance

If a State, unit of local government, or public care institution, without the use of financial assistance under this section, conducts preliminary energy audits or energy audits which comply with the guidelines prescribed by the Secretary or which are approved by the Secretary, the funds allocated for purposes of this section shall be added to the funds available for technical assistance programs for such State, and shall be in addition to amounts otherwise available for such purpose.

(f) Restriction on use of funds

Amounts made available under this section (together with any other amounts made available from other Federal sources) may not be used to pay more than 50 percent of the costs of any preliminary energy audit or energy audit.

(Pub. L. 94-163, title III, §400C, as added Pub. L. 95-619, title III, §311(a), Nov. 9, 1978, 92 Stat. 3250.)

§ 6372c. State plans

(a) The Secretary shall invite the State energy agency of each State to submit, within 90 days

after the effective date of the guidelines prescribed pursuant to section 6372a of this title, or such longer period as the Secretary may, for good cause, allow, a proposed State plan under this section for such State. Such plan shall include—

(1) the results of preliminary energy audits conducted in accordance with the guidelines prescribed pursuant to section 6372a(a)(1) of this title, and an estimate of the energy savings that may result from the modification of maintenance and operating procedures in buildings owned by units of local government and public care institutions;

(2) a recommendation as to the types of technical assistance programs considered appropriate for buildings owned by units of local government and public care institutions in such State, together with an estimate of the costs of carrying out such programs;

(3) a program for identifying persons qualified to carry out technical assistance programs;

(4) procedures for the coordination among technical assistance programs within any State and for coordination of programs authorized under this part with other State energy conservation programs,¹

(5) a description of the policies and procedures to be followed in the allocation of funds among eligible applicants for technical assistance within such State, including procedures to insure that funds will be allocated among eligible applicants on the basis of relative need and including recommendations as to how priorities should be established between buildings owned by units of local government and public care institutions, and among competing proposals taking into account such factors as cost, energy consumption, and energy savings;

(6) procedures to assure that all grants for technical assistance provided under this part are expended in compliance with the requirements of an approved State plan for such State and in compliance with the requirements of this part (including requirements contained in rules promulgated under this part); and

(7) policies and procedures designed to assure that financial assistance provided under this part in such State will be used to supplement, and not to supplant State, local, or other funds.

(b) Each State plan submitted under this section shall be reviewed and approved or disapproved by the Secretary not later than 60 days after receipt by the Secretary. If such plan meets the requirements of subsection (a) of this section, the Secretary shall approve the plan. If a State plan submitted within the 90 day period specified in subsection (a) of this section has not been disapproved within the 60-day period following its receipt by the Secretary, such plan shall be treated as approved by the Secretary. A State energy agency may submit a new or amended plan at any time after the submission of the original plan if the agency obtains the consent of the Secretary.

¹ So in original. The comma probably should be a semicolon.

(Pub. L. 94-163, title III, §400D, as added Pub. L. 95-619, title III, §311(a), Nov. 9, 1978, 92 Stat. 3251; amended Pub. L. 105-388, §5(a)(12), Nov. 13, 1998, 112 Stat. 3479.)

AMENDMENTS

1998—Subsec. (a)(1). Pub. L. 105-388 substituted semicolon for comma at end.

Subsec. (a)(2). Pub. L. 105-388, which directed substitution of semicolon for comma at end, could not be executed because comma does not appear at end.

Subsec. (a)(3). Pub. L. 105-388 substituted semicolon for comma at end.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6372d of this title.

§ 6372d. Applications for grants for technical assistance

(a) Limitation on number of applications by units of local government and public care institutions; submittal to State energy agency

Applications of units of local government and public care institutions for grants for technical assistance under this part shall be made not more than once for any fiscal year. Such applications shall be submitted to the State energy agency and the State energy agency shall make a single submittal to the Secretary containing all applications which comply with the State plan.

(b) Required information

Applications for grants for technical assistance under this part shall contain or be accompanied by, such information as the Secretary may reasonably require, including the results of energy audits which comply with guidelines under this part. The annual submittal to the Secretary by the State energy agency under subsection (a) of this section shall include a listing and description of technical assistance proposed to be funded under this part within the State during the fiscal year for which such application is made, and such information concerning expenditures as the Secretary may, by rule, require.

(c) Compliance required for approval; reasons for disapproval; resubmittal; amendment

The Secretary shall approve such applications submitted by a State energy agency as he determines to be in compliance with this section and the requirements of the applicable State plan approved under section 6372c of this title. The Secretary shall state the reasons for his disapproval in the case of any application which he disapproves. Any application not approved by the Secretary may be resubmitted by the applicant at any time in the same manner as the original application and the Secretary shall approve such resubmitted application as he determines to be in compliance with this section and the requirements of the State plan. Amendments of an application shall, except as the Secretary may otherwise provide be subject to approval in the same manner as the original application. All or any portions of an application under this section may be disapproved to the extent that funds are not available under this part.

(d) Suspension of further assistance for failure to comply

Whenever the Secretary after reasonable notice and opportunity for hearing to any unit of local government or public care institution receiving assistance under this part, finds that there has been a failure to comply substantially with the provisions set forth in the application approved under this section, the Secretary shall notify the unit of local government or public care institution that further assistance will not be made available to such unit of local government or public care institution under this part until he is satisfied that there is no longer any failure to comply. Until he is so satisfied, no further assistance shall be made to such unit of local government or public care institution under this part.

(Pub. L. 94-163, title III, §400E, as added Pub. L. 95-619, title III, §311(a), Nov. 9, 1978, 92 Stat. 3252.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6372e of this title.

§ 6372e. Grants for technical assistance

(a) Authorization of Secretary

The Secretary may make grants to States and to units of local government and public care institutions in payment of technical assistance program costs for buildings owned by units of local government and public care institutions the applications for which have been approved under section 6372d of this title.

(b) Restriction on use of funds

Amounts made available for purposes of this section (together with any amounts available for such purposes from other Federal sources) may not be used to pay more than 50 percent of technical assistance program costs.

(c) Allocation requirements

Grants made under this section in any State in any year shall be made in accordance with the requirements contained in section 6372g of this title.

(d) Prescription of rules limiting allocations to States for administrative expenses

The Secretary shall prescribe rules limiting the amount of funds allocated to a State which may be expended for administrative expenses by such State.

(Pub. L. 94-163, title III, §400F, as added Pub. L. 95-619, title III, §311(a), Nov. 9, 1978, 92 Stat. 3252.)

§ 6372f. Authorization of appropriations

(a) For the purpose of making grants to States to conduct preliminary energy audits and energy audits under this part there is authorized to be appropriated not to exceed \$7,500,000 for the fiscal year ending September 30, 1978, and \$7,500,000 for the fiscal year ending September 30, 1979, such funds to remain available until expended.

(b) For the purpose of making technical assistance grants under this part to States and to

units of local government and public care institutions, there is hereby authorized to be appropriated not to exceed \$17,500,000 for the fiscal year ending September 30, 1978, and \$32,500,000 for the fiscal year ending September 30, 1979, such funds to remain available until expended.

(c) For the expenses of the Secretary in administering the provisions of this part, there are hereby authorized to be appropriated such sums as may be necessary for each fiscal year in the two consecutive fiscal year periods ending September 30, 1979, such funds to remain available until expended.

(Pub. L. 94-163, title III, §400G, as added Pub. L. 95-619, title III, §311(a), Nov. 9, 1978, 92 Stat. 3253.)

§ 6372g. Allocation of grants

(a) Grants made under this part shall be allocated among the States in accordance with a formula to be prescribed, by rule, by the Secretary, taking into account population and climate of each State, and such other factors as the Secretary may deem appropriate.

(b) The total amount allocated to any State under subsection (a) of this section in any year shall not exceed 10 percent of the total amount allocated to all the States in such year under such subsection (a) of this section. Except for the District of Columbia, Puerto Rico, Guam, American Samoa, and the Virgin Islands, not less than 0.5 percent of such total allocation to all States for that year shall be allocated in such year for the total of grants in each State which has an approved State plan under this part.

(Pub. L. 94-163, title III, §400H, as added Pub. L. 95-619, title III, §311(a), Nov. 9, 1978, 92 Stat. 3253.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6372e of this title.

§ 6372h. Administration; detailed description in annual report

(a) The Secretary may prescribe such rules as may be necessary in order to carry out the provisions of this part.

(b) The Secretary shall include in his annual report a detailed description of the actions taken under this part in the preceding fiscal year and the actions planned to be taken in the subsequent fiscal year. Such description shall show the allocations made (including the allocations made to each State) and include information on the technical assistance carried out with funds allocated, and an estimate of the energy savings, if any, achieved.

(Pub. L. 94-163, title III, §400I, as added Pub. L. 95-619, title III, §311(a), Nov. 9, 1978, 92 Stat. 3253; amended Pub. L. 96-470, title II, §203(a), Oct. 19, 1980, 94 Stat. 2242; Pub. L. 105-388, §5(a)(13), Nov. 13, 1998, 112 Stat. 3479.)

AMENDMENTS

1998—Subsec. (b). Pub. L. 105-388 struck out comma after “Secretary shall”.

1980—Subsec. (b). Pub. L. 96-470 substituted “include in his annual report a detailed description” for “within

one year after November 9, 1978, and annually thereafter while funds are available under this part, submit to the Congress a detailed report” and “Such description” for “Such report”.

§ 6372i. Records

Each recipient of assistance under this part shall keep such records, provide such reports, and furnish such access to books and records as the Secretary may by rule prescribe.

(Pub. L. 94-163, title III, §400J, as added Pub. L. 95-619, title III, §311(a), Nov. 9, 1978, 92 Stat. 3253.)

PART G—OFF-HIGHWAY MOTOR VEHICLES

CODIFICATION

This part was, in the original, designated part I and has been changed to part G for purposes of codification.

§ 6373. Off-highway motor vehicles

Not later than 1 year after November 9, 1978, the Secretary of Transportation shall complete a study of the energy conservation potential of recreational motor vehicles, including, but not limited to, aircraft and motor boats which are designed for recreational use, and shall submit a report to the President and to the Congress containing the results of such study.

(Pub. L. 94-163, title III, §385, as added Pub. L. 95-619, title VI, §681(a), Nov. 9, 1978, 92 Stat. 3286.)

PART H—ENCOURAGING USE OF ALTERNATIVE FUELS

CODIFICATION

This part was, in the original, designated part J and has been changed to part H for purposes of codification.

§ 6374. Alternative fuel use by light duty Federal vehicles

(a) Department of Energy program

(1) Beginning in the fiscal year ending September 30, 1990, the Secretary shall ensure, with the cooperation of other appropriate agencies and consistent with other Federal law, that the maximum number practicable of the vehicles acquired annually for use by the Federal Government shall be alternative fueled vehicles. In no event shall the number of such vehicles acquired be less than the number required under section 13212 of this title.

(2) In any determination of whether the acquisition of a vehicle is practicable under paragraph (1), the initial cost of such vehicle to the United States shall not be considered as a factor unless the initial cost of such vehicle exceeds the initial cost of a comparable gasoline or diesel fueled vehicle by at least 5 percent.

(3)(A) To the extent practicable, the Secretary shall acquire both dedicated and dual fueled vehicles, and shall ensure that each type of alternative fueled vehicle is used by the Federal Government.

(B) Vehicles acquired under this section shall be acquired from original equipment manufacturers. If such vehicles are not available from original equipment manufacturers, vehicles converted to use alternative fuels may be acquired

if, after conversion, the original equipment manufacturer's warranty continues to apply to such vehicles, pursuant to an agreement between the original equipment manufacturer and the person performing the conversion. This subparagraph shall not apply to vehicles acquired by the United States Postal Service pursuant to a contract entered into by the United States Postal Service before October 24, 1992, and which terminates on or before December 31, 1997.

(C) Alternative fueled vehicles, other than those described in subparagraph (B), may be acquired solely for the purposes of studies under subsection (b) of this section, whether or not original equipment manufacturer warranties still apply.

(D) In deciding which types of alternative fueled vehicles to acquire in implementing this part, the Secretary shall consider as a factor—

(i) which types of vehicles yield the greatest reduction in pollutants emitted per dollar spent; and

(ii) the source of the fuel to supply the vehicles, giving preference to vehicles that operate on alternative fuels derived from domestic sources.

(E) Dual fueled vehicles acquired pursuant to this section shall be operated on alternative fuels unless the Secretary determines that operation on such alternative fuels is not feasible.

(F) At least 50 percent of the alternative fuels used in vehicles acquired pursuant to this section shall be derived from domestic feedstocks, except to the extent inconsistent with the multilateral trade agreements (as defined in section 3501(4) of title 19). The Secretary shall issue regulations to implement this requirement. For purposes of this subparagraph, the term "domestic" has the meaning given such term in section 13211(7) of this title.

(G) Except to the extent inconsistent with the multilateral trade agreements (as defined in section 3501(4) of title 19), vehicles acquired under this section shall be motor vehicles manufactured in the United States or Canada.

(4) Acquisitions of vehicles under this section shall, to the extent practicable, be coordinated with acquisitions of alternative fueled vehicles by State and local governments.

(b) Studies

(1)(A) The Secretary, in cooperation with the Environmental Protection Agency and the National Highway Traffic Safety Administration, shall conduct a study of a representative sample of alternative fueled vehicles in Federal fleets, which shall at a minimum address—

(i) the performance of such vehicles, including performance in cold weather and at high altitude;

(ii) the fuel economy, safety, and emissions of such vehicles; and

(iii) a comparison of the operation and maintenance costs of such vehicles to the operation and maintenance costs of other passenger automobiles and light duty trucks.

(B) The Secretary shall provide a report on the results of the study conducted under subparagraph (A) to the Committees on Commerce, Science, and Transportation and Governmental

Affairs of the Senate, and the Committee on Energy and Commerce of the House of Representatives, within one year after the first such vehicles are acquired.

(2)(A) The Secretary and the Administrator of the General Services Administration shall conduct a study of the advisability, feasibility, and timing of the disposal of vehicles acquired under subsection (a) of this section and any problems of such disposal. Such study shall take into account existing laws governing the sale of Government vehicles and shall specifically focus on when to sell such vehicles and what price to charge, without compromising studies of the use of such vehicles authorized under this part.

(B) The Secretary and the Administrator of the General Services Administration shall report the results of the study conducted under subparagraph (A) to the Committees on Commerce, Science, and Transportation and Governmental Affairs of the Senate, and the Committee on Energy and Commerce of the House of Representatives, within 12 months after funds are appropriated for carrying out this section.

(3) Studies undertaken under this subsection shall be coordinated with relevant testing activities of the Environmental Protection Agency and the Department of Transportation.

(c) Availability to public

To the extent practicable, at locations where vehicles acquired under subsection (a) of this section are supplied with alternative fuels, such fuels shall be offered for sale to the public. The head of the Federal agency responsible for such a location shall consider whether such sale is practicable, taking into account, among other factors—

(1) whether alternative fuel is commercially available for vehicles in the vicinity of such location;

(2) security and safety considerations;

(3) whether such sale is in accordance with applicable local, State, and Federal law;

(4) the ease with which the public can access such location; and

(5) the cost to the United States of such sale.

(d) Federal agency use of demonstration vehicles

(1) Upon the request of the head of any agency of the Federal Government, the Secretary shall ensure that such Federal agency be provided with vehicles acquired under subsection (a) of this section to the maximum extent practicable.

(2)(A) Funds appropriated under this section for the acquisition of vehicles under subsection (a) of this section shall be applicable only to the portion of the cost of vehicles acquired under subsection (a) of this section which exceeds the cost of comparable gasoline or diesel fueled vehicles.

(B) To the extent that appropriations are available for such purposes, the Secretary shall ensure that the cost to any Federal agency receiving a vehicle under paragraph (1) shall not exceed the cost to such agency of a comparable gasoline or diesel fueled vehicle.

(3) Only one-half of the vehicles acquired under this section by an agency of the Federal Government shall be counted against any limitation under law, Executive order, or executive or agency policy on the number of vehicles which may be acquired by such agency.

(4) Any Federal agency receiving a vehicle under paragraph (1) shall cooperate with studies undertaken by the Secretary under subsection (b) of this section.

(e) Detail of personnel

Upon the request of the Secretary, the head of any Federal agency may detail, on a reimbursable basis, any of the personnel of such agency to the Department of Energy to assist the Secretary in carrying out the Secretary's duties under this section.

(f) Exemptions

(1) Vehicles acquired under this section shall not be counted in any calculation of the average fuel economy of the fleet of passenger automobiles acquired in a fiscal year by the United States.

(2) The incremental cost of vehicles acquired under this section over the cost of comparable gasoline or diesel fueled vehicles shall not be applied to any calculation with respect to a limitation under law on the maximum cost of individual vehicles which may be acquired by the United States.

(g) Definitions

For purposes of this part—

(1) the term “acquired” means leased for a period of sixty continuous days or more, or purchased;

(2) the term “alternative fuel” means methanol, denatured ethanol, and other alcohols; mixtures containing 85 percent or more (or such other percentage, but not less than 70 percent, as determined by the Secretary, by rule, to provide for requirements relating to cold start, safety, or vehicle functions) by volume of methanol, denatured ethanol, and other alcohols with gasoline or other fuels; natural gas; liquefied petroleum gas; hydrogen; coal-derived liquid fuels; fuels (other than alcohol) derived from biological materials; electricity (including electricity from solar energy); and any other fuel the Secretary determines, by rule, is substantially not petroleum and would yield substantial energy security benefits and substantial environmental benefits;

(3) the term “alternative fueled vehicle” means a dedicated vehicle or a dual fueled vehicle;

(4) the term “dedicated vehicle” means—

(A) a dedicated automobile, as such term is defined in section 32901(a)(7) of title 49; or

(B) a motor vehicle, other than an automobile, that operates solely on alternative fuel;

(5) the term “dual fueled vehicle” means—

(A) dual fueled automobile, as such term is defined in section 32901(a)(8) of title 49; or

(B) a motor vehicle, other than an automobile, that is capable of operating on alternative fuel and is capable of operating on gasoline or diesel fuel; and

(6) the term “heavy duty vehicle” means a vehicle of greater than 8,500 pounds gross vehicle weight rating.

(h) Funding

(1) For the purposes of this section, there are authorized to be appropriated such sums as may

be necessary for fiscal years 1993 through 1998, to remain available until expended.

(2) The authority of the Secretary to obligate amounts to be expended under this section shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance by appropriation Acts.

(Pub. L. 94-163, title III, §400AA, as added Pub. L. 100-494, §4(a), Oct. 14, 1988, 102 Stat. 2442; amended Pub. L. 102-486, title III, §§302(a), 309, Oct. 24, 1992, 106 Stat. 2868, 2874; Pub. L. 104-66, title I, §§1051(a), 1052(e), Dec. 21, 1995, 109 Stat. 716, 718; Pub. L. 105-388, §5(a)(14), Nov. 13, 1998, 112 Stat. 3479; Pub. L. 106-36, title I, §1002(h), June 25, 1999, 113 Stat. 134.)

CODIFICATION

In subsec. (g)(4)(A), (5)(A), “section 32901(a)(7) of title 49” substituted for “section 513(h)(1)(C) of the Motor Vehicle Information Cost Savings Act” and “section 32901(a)(8) of title 49” substituted for “section 513(h)(1)(D) of the Motor Vehicle Information and Cost Savings Act”, respectively, on authority of Pub. L. 103-272, §6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

AMENDMENTS

1999—Subsec. (a)(3)(F), (G). Pub. L. 106-36 substituted “multilateral trade agreements (as defined in section 3501(4) of title 19)” for “General Agreement on Tariffs and Trade”.

1998—Subsecs. (h), (i). Pub. L. 105-388 redesignated subsec. (i) as (h).

1995—Subsec. (b)(1)(B). Pub. L. 104-66, §1052(e), struck out before period at end “, and annually thereafter”.

Subsec. (b)(3) to (5). Pub. L. 104-66, §1051(a), redesignated par. (5) as (3) and struck out former par. (3) which directed Secretary to conduct study of heavy duty vehicles acquired under Department of Energy program and report results to Congress and par. (4) which directed Secretary to conduct study of advisability of heavy duty vehicle disposal and report results to Congress.

1992—Subsec. (a)(1). Pub. L. 102-486, §302(a)(1), substituted “vehicles” for “passenger automobiles and light duty trucks” before “acquired annually for use” and “alternative fueled vehicles. In no event shall the number of such vehicles acquired be less than the number required under section 13212 of this title.” for “alcohol powered vehicles, dual energy vehicles, natural gas powered vehicles, or natural gas dual energy vehicles.”

Subsec. (a)(3). Pub. L. 102-486, §302(a)(2), amended par. (3) generally. Prior to amendment, par. (3) read as follows: “The Secretary shall, to the extent practicable and consistent with this part, ensure that the number of dual energy vehicles acquired under this subsection is at least as great as the number of alcohol powered vehicles acquired under this subsection, and that the number of natural gas dual energy vehicles acquired under this subsection is at least as great as the number of natural gas powered vehicles acquired under this subsection. To the extent practicable, both vehicles capable of operating on alcohol and vehicles capable of operating on natural gas shall be acquired in carrying out this subsection, and such vehicles shall be supplied by original equipment manufacturers.”

Subsec. (a)(4). Pub. L. 102-486, §302(a)(3), added par. (4).

Subsec. (b)(1)(A). Pub. L. 102-486, §309, substituted “a representative sample of alternative fueled vehicles in Federal fleets” for “the vehicles acquired under subsection (a) of this section”.

Subsec. (b)(3) to (5). Pub. L. 102-486, §302(a)(4), added pars. (3) to (5).

Subsec. (c). Pub. L. 102-486, §302(a)(5), in introductory provisions substituted “alternative fuels, such fuels”

for “alcohol or natural gas, alcohol or natural gas” and in par. (1) substituted “alternative fuel” for “alcohol or natural gas”.

Subsec. (d)(2)(B). Pub. L. 102-486, §302(a)(6), substituted “To the extent that appropriations are available for such purposes, the Secretary” for “The Secretary”.

Subsec. (g)(2) to (6). Pub. L. 102-486, §302(a)(7), added pars. (2) to (6) and struck out former pars. (2) to (6) which read as follows:

“(2) the term ‘alcohol’ means a mixture containing 85 percent or more by volume methanol, ethanol, or other alcohols, in any combination;

“(3) the term ‘alcohol powered vehicle’ means a vehicle designed to operate exclusively on alcohol;

“(4) the term ‘dual energy vehicle’ means a vehicle which is capable of operating on alcohol and on gasoline or diesel fuel;

“(5) the term ‘natural gas dual energy vehicle’ means a vehicle which is capable of operating on natural gas and on gasoline or diesel fuel; and

“(6) the term ‘natural gas powered vehicle’ means a vehicle designed to operate exclusively on natural gas.”

Subsec. (i)(1). Pub. L. 102-486, §302(a)(8), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “For the purposes of this section, there are authorized to be appropriated for the fiscal year ending September 30, 1990, \$5,000,000, for the fiscal year ending September 30, 1991, \$3,000,000, for the fiscal year ending September 30, 1992, \$2,000,000, and for the fiscal year ending September 30, 1993, \$2,000,000.”

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

TERMINATION DATE

Section 4(b) of Pub. L. 100-494, which provided that this section and the amendments made by this section (enacting this part) were to cease to be effective after Sept. 30, 1997, was repealed by Pub. L. 102-486, title III, §302(b), Oct. 24, 1992, 106 Stat. 2871.

FINDINGS

Section 2 of Pub. L. 100-494 provided that: “The Congress finds and declares that—

“(1) the achievement of long-term energy security for the United States is essential to the health of the national economy, the well-being of our citizens, and the maintenance of national security;

“(2) the displacement of energy derived from imported oil with alternative fuels will help to achieve energy security and improve air quality;

“(3) transportation uses account for more than 60 percent of the oil consumption of the Nation;

“(4) the Nation’s security, economic, and environmental interests require that the Federal Government should assist clean-burning, nonpetroleum transportation fuels to reach a threshold level of commercial application and consumer acceptability at which they can successfully compete with petroleum-based fuels;

“(5) methanol, ethanol, and natural gas are proven transportation fuels that burn more cleanly and efficiently than gasoline and diesel fuel;

“(6) the production and use as transportation fuels of ethanol, methanol made from natural gas or biomass, and compressed natural gas have been esti-

mated in some studies to release less carbon dioxide than comparable quantities of petroleum-based fuel;

“(7) the amount of carbon dioxide released with methanol from a coal-to-methanol industry using currently available technologies has been estimated in some studies to be significantly greater than the amount released with a comparable quantity of petroleum-based fuel;

“(8) there exists evidence that manmade pollution—the release of carbon dioxide, chlorofluorocarbons, methane, and other trace gases into the atmosphere—may be producing a long term and substantial increase in the average temperature on Earth, a phenomenon known as global warming through the greenhouse effect; and

“(9) ongoing pollution and deforestation may be contributing now to an irreversible process producing unacceptable global climate changes; necessary actions must be identified and implemented in time to protect the climate, including the development of technologies to control increased carbon dioxide emissions that result with methanol from a coal-to-methanol industry.”

PURPOSE

Section 3 of Pub. L. 100-494 provided that: “The purpose of this Act [see Short Title of 1988 Amendment note set out under section 6201 of this title] is to encourage—

“(1) the development and widespread use of methanol, ethanol, and natural gas as transportation fuels by consumers; and

“(2) the production of methanol, ethanol, and natural gas powered motor vehicles.”

USE OF NONSTANDARD FUELS

Section 5 of Pub. L. 100-494 provided that: “No guaranty or warranty with respect to any passenger automobile or light-duty truck acquired by the United States after October 1, 1989, shall be voided or reduced in effect by reason of the operation of such vehicle with any fuel for which a currently effective waiver, which includes a limitation regarding Reid vapor pressure with respect to such fuel, has been issued by the Administrator of the Environmental Protection Agency under section 211(f) of the Clean Air Act (42 U.S.C. 7545(f)).”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13212 of this title.

§ 6374a. Alternative fuels truck commercial application program

(a) Establishment

The Secretary, in cooperation with manufacturers of heavy duty engines and with other Federal agencies, shall establish a commercial application program to study the use of alternative fuels in heavy duty trucks and, if appropriate, other heavy duty applications.

(b) Funding

(1) There are authorized to be appropriated to the Secretary for carrying out this section such sums as may be necessary for fiscal years 1993 through 1995, to remain available until expended.

(2) The authority of the Secretary to obligate amounts to be expended under this section shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance by appropriation Acts.

(Pub. L. 94-163, title III, §400BB, as added Pub. L. 100-494, §4(a), Oct. 14, 1988, 102 Stat. 2444;

amended Pub. L. 102-486, title IV, § 401, Oct. 24, 1992, 106 Stat. 2875.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102-486, § 401(a), substituted “alternative fuels” for “alcohol and natural gas”.

Subsec. (b)(1). Pub. L. 102-486, § 401(b), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “There are authorized to be appropriated for the period encompassing the fiscal years ending September 30, 1990, September 30, 1991, and September 30, 1992, a total of \$2,000,000 for alcohol powered vehicles and dual energy vehicles, and a total of \$2,000,000 for natural gas powered vehicles and natural gas dual energy vehicles, to carry out the purposes of this section.”

§ 6374b. Alternative fuels bus program

(a) Testing

The Secretary, in cooperation with the Administrator of the Environmental Protection Agency and the Administrator of the National Highway Traffic Safety Administration, shall, beginning in the fiscal year ending September 30, 1990, assist State and local government agencies in the testing in urban settings of buses capable of operating on alternative fuels for the emissions levels, durability, safety, and fuel economy of such buses, comparing the different types with each other and with diesel powered buses, as such buses will be required to operate under Federal safety and environmental standards applicable to such buses for the model year 1991. To the extent practicable, testing assisted under this section shall apply to each of the various types of alternative fuel buses.

(b) Funding

There are authorized to be appropriated for the period encompassing the fiscal years ending September 30, 1990, September 30, 1991, and September 30, 1992, a total of \$2,000,000 to carry out the purposes of this section.

(c) “Bus” defined

For purposes of this section, the term “bus” means a vehicle which is designed to transport 30 individuals or more.

(Pub. L. 94-163, title III, § 400CC, as added Pub. L. 100-494, § 4(a), Oct. 14, 1988, 102 Stat. 2445; amended Pub. L. 102-486, title IV, § 402(1), Oct. 24, 1992, 106 Stat. 2875.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102-486 substituted “alternative fuels” for “alcohol and buses capable of operating on natural gas” and “each of the various types of alternative fuel buses” for “both buses capable of operating on alcohol and buses capable of operating on natural gas”.

§ 6374c. Omitted

CODIFICATION

Section, Pub. L. 94-163, title III, § 400DD, as added Pub. L. 100-494, § 4(a), Oct. 14, 1988, 102 Stat. 2445; amended Pub. L. 102-486, title IV, § 402(2), (3), Oct. 24, 1992, 106 Stat. 2876, provided for establishment of the Interagency Commission on Alternative Motor Fuels and the United States Alternative Fuels Council, required the Commission to submit interim reports and a final report by Sept. 30, 1992, to Congress, and terminated the Commission and Council upon submission of the final report.

§ 6374d. Studies and reports

(a) Methanol study

(1) The Secretary shall study methanol plants, including the costs and practicability of such plants, that are—

- (A) capable of utilizing current domestic supplies of unutilized natural gas;
- (B) relocatable; or
- (C) suitable for natural gas to methanol conversion by natural gas distribution companies.

(2) For purposes of this subsection, the term “unutilized natural gas” means gas that is available in small remote fields and cannot be economically transported to natural gas pipelines, or gas the quality of which is so poor that extensive and uneconomic pretreatment is required prior to its introduction into the natural gas distribution system.

(3) The Secretary shall submit a report under this subsection to the Committees on Commerce, Science, and Transportation and Governmental Affairs of the Senate, and the Committee on Energy and Commerce of the House of Representatives, no later than September 30, 1990.

(b) Omitted

(c) Public participation

Adequate opportunity shall be provided for public comment on the reports required by this section before they are submitted to the Congress, and a summary of such comments shall be attached to such reports.

(Pub. L. 94-163, title III, § 400EE, as added Pub. L. 100-494, § 4(a), Oct. 14, 1988, 102 Stat. 2447.)

REFERENCES IN TEXT

This part, referred to in subsec. (b)(1)(A), was in the original “the Alternative Motor Fuels Act of 1988”, Pub. L. 100-494, Oct. 14, 1988, 102 Stat. 2441, which is classified principally to this part. For complete classification of this Act to the Code, see Short Title of 1988 Amendment note set out under section 6201 of this title and Tables.

CODIFICATION

Subsec. (b) of this section, which required the Administrator of the Environmental Protection Agency to submit biennially to Congress a report which includes a comprehensive analysis of the environmental impacts associated with the production and use of alternative motor vehicle fuels under this part and an extended forecast of the environmental effects of such production and use, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, the 25th item on page 163 of House Document No. 103-7.

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

SUBCHAPTER IV—GENERAL PROVISIONS

PART A—ENERGY DATA BASE AND ENERGY INFORMATION

§ 6381. Verification examinations**(a) Authority of Comptroller General**

The Comptroller General may conduct verification examinations with respect to the books, records, papers, or other documents of—

(1) any person who is required to submit energy information to the Secretary, the Department of the Interior, or the Federal Energy Regulatory Commission pursuant to any rule, regulation, order, or other legal process of such Secretary, Department or Commission;

(2) any person who is engaged in the production, processing, refining, transportation by pipeline, or distribution (at other than the retail level) of energy resources—

(A) if such person has furnished, directly or indirectly, energy information (without regard to whether such information was furnished pursuant to legal requirements) to any Federal agency (other than the Internal Revenue Service), and

(B) if the Comptroller General of the United States determines that such information has been or is being used or taken into consideration, in whole or in part, by a Federal agency in carrying out responsibilities committed to such agency; or

(3) any vertically integrated petroleum company with respect to financial information of such company related to energy resource exploration, development, and production and the transportation, refining and marketing of energy resources and energy products.

(b) Request for examination

The Comptroller General shall conduct verification examinations of any person or company described in subsection (a) of this section, if requested to do so by any duly established committee of the Congress having legislative or oversight responsibilities under the rules of the House of Representatives or of the Senate, with respect to energy matters or any of the laws administered by the Department of the Interior (or the Secretary thereof), the Federal Energy Regulatory Commission, or the Secretary.

(c) Definitions

For the purposes of this subchapter—

(1) The term “verification examination” means an examination of such books, records, papers, or other documents of a person or company as the Comptroller General determines necessary and appropriate to assess the accuracy, reliability, and adequacy of the energy information, or financial information, referred to in subsection (a) of this section.

(2) The term “energy information” has the same meaning as such term has in section 796(e)(1) of title 15.

(3) The term “person” has the same meaning as such term has in section 796(e)(2) of title 15.

(4) The term “vertically integrated petroleum company” means any person which itself, or through a person which is controlled by, controls, or is under common control with

such person, is engaged in the production, refining, and marketing of petroleum products.

(Pub. L. 94-163, title V, § 501, Dec. 22, 1975, 89 Stat. 956; Pub. L. 95-91, title III, § 301, title IV, § 402, title VII, §§ 703, 707, Aug. 4, 1977, 91 Stat. 577, 583, 606, 607; Pub. L. 95-619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-619 purported to substitute “Secretary” for “Administrator”, meaning Administrator of the Federal Energy Administration. See Transfer of Functions note below.

TRANSFER OF FUNCTIONS

“Secretary, the Department of the Interior, or the Federal Energy Regulatory Commission” and “Secretary” substituted for “Federal Energy Administration, the Department of the Interior, or the Federal Power Commission” and “Administration”, respectively, in subsec. (a)(1), and “Federal Energy Regulatory Commission, or the Secretary” substituted for “Federal Power Commission, or the Federal Energy Administration (or the Administrator)” in subsec. (b) pursuant to sections 301, 402, 703, and 707 of Pub. L. 95-91, which are classified to sections 7151, 7172, 7293, and 7297 of this title and which terminated Federal Energy Administration and transferred its functions and functions of Administrator thereof (with certain exceptions) to Secretary of Energy and terminated Federal Power Commission and transferred its functions to Federal Energy Regulatory Commission and Secretary of Energy.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6299, 6382 of this title.

§ 6382. Powers and duties of Comptroller General**(a) Subpenas; discovery and inspection; oaths; search**

For the purpose of carrying out his authority under section 6381 of this title—

(1) the Comptroller General may—

(A) sign and issue subpenas for the attendance and testimony of witnesses and the production of books, records, papers, and other documents;

(B) require any person, by general or special order, to submit answers in writing to interrogatories, to submit books, records, papers, or other documents, or to submit any other information or reports, and such answers or other submissions shall be made within such reasonable period, and under oath or otherwise, as the Comptroller General may determine; and

(C) administer oaths.

(2) the Comptroller General, or any officer or employee duly designated by the Comptroller General, upon presenting appropriate credentials and a written notice from the Comptroller General to the owner, operator, or agent in charge, may—

(A) enter, at reasonable times, any business premise or facility; and

(B) inspect, at reasonable times and in a reasonable manner, any such premise or facility, inventory and sample any stock of energy resources therein, and examine and copy books, records, papers, or other documents, relating to any energy information,

or any financial information in the case of a vertically integrated petroleum company.

(b) Information in possession of Federal agencies

The Comptroller General shall have access to any energy information within the possession of any Federal agency (other than the Internal Revenue Service) as is necessary to carry out his authority under this section.

(c) Transmission of examination results to Federal agencies

(1) Except as provided in subsections (d) and (e) of this section, the Comptroller General shall transmit a copy of the results of any verification examination conducted under section 6381 of this title to the Federal agency to which energy information which was subject to such examination was furnished.

(2) Any report made pursuant to paragraph (1) shall include the Comptroller General's findings with respect to the accuracy, reliability, and adequacy of the energy information which was the subject of such examination.

(d) Report to Congressional committees

If the verification examination was conducted at the request of any committee of the Congress, the Comptroller General shall report his findings as to the accuracy, reliability, or adequacy of the energy information which was the subject of such examination, or financial information in the case of a vertically integrated petroleum company, directly to such committee of the Congress and any such information obtained and such report shall be deemed the property of such committee and may not be disclosed except in accordance with the rules of the committee and the rules of the House of Representatives or the Senate and as permitted by law.

(e) Disclosure of geological or geophysical information

(1) Any information obtained by the Comptroller General or any officer or employee of the General Accounting Office pursuant to the exercise of responsibilities or authorities under this section which relates to geological or geophysical information, or any estimate or interpretation thereof, the disclosure of which would result in significant competitive disadvantage or significant loss to the owner thereof shall not be disclosed except to a committee of Congress. Any such information so furnished to a committee of the Congress shall be deemed the property of such committee and may not be disclosed except in accordance with the rules of the committee and the rules of the House of Representatives or the Senate and as permitted by law.

(2) Any person who knowingly discloses information in violation of paragraph (1) shall be subject to the penalties specified in section 754(a)(3)(B) and (4)¹ of title 15.

(Pub. L. 94-163, title V, §502, Dec. 22, 1975, 89 Stat. 957; Pub. L. 104-316, title I, §122(p), Oct. 19, 1996, 110 Stat. 3838.)

REFERENCES IN TEXT

Section 754 of title 15, referred to in subsec. (e)(2), was omitted from the Code pursuant to section 760g of Title

¹ See References in Text note below.

15, Commerce and Trade, which provided for the expiration of the President's authority under that section on Sept. 30, 1981.

AMENDMENTS

1996—Subsec. (f). Pub. L. 104-316 struck out subsec. (f) which read as follows: "The Comptroller General shall prepare and submit to the Congress an annual report with respect to the exercise of its authorities under this part, which report shall specifically identify any deficiencies in energy information or financial information reviewed by the Comptroller General and include a discussion of action taken by the person or company so examined, if any, to correct any such deficiencies."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6384 of this title.

§ 6383. Accounting practices

(a) Development by Securities and Exchange Commission; time of taking effect

For purposes of developing a reliable energy data base related to the production of crude oil and natural gas, the Securities and Exchange Commission shall take such steps as may be necessary to assure the development and observance of accounting practices to be followed in the preparation of accounts by persons engaged, in whole or in part, in the production of crude oil or natural gas in the United States. Such practices shall be developed not later than 24 months after December 22, 1975, and shall take effect with respect to the fiscal year of each such person which begins 3 months after the date on which such practices are prescribed or made effective under the authority of subsection (b)(2) of this section.

(b) Consultation with Secretary, General Accounting Office and Federal Energy Regulatory Commission; rules; reliance on practices developed by Financial Accounting Standards Board; opportunity to submit written comment

In carrying out its responsibilities under subsection (a) of this section, the Securities and Exchange Commission shall—

(1) consult with the Secretary, the General Accounting Office, and the Federal Energy Regulatory Commission with respect to accounting practices to be developed under subsection (a) of this section, and

(2) have authority to prescribe rules applicable to persons engaged in the production of crude oil or natural gas, or make effective by recognition, or by other appropriate means indicating a determination to rely on, accounting practices developed by the Financial Accounting Standards Board, if the Securities and Exchange Commission is assured that such practice will be observed by persons engaged in the production of crude oil or natural gas to the same extent as would result if the Securities and Exchange Commission had prescribed such practices by rule.

The Securities and Exchange Commission shall afford interested persons an opportunity to submit written comments with respect to whether it should exercise its discretion to recognize or otherwise rely on such accounting practice in lieu of prescribing such practices by rule and

may extend the 24-month period referred to in subsection (a) of this section as it determines may be necessary to allow for a meaningful comment period with respect to such determination.

(c) Requirements for accounting practices

The Securities and Exchange Commission shall assure that accounting practices developed pursuant to this section, to the greatest extent practicable, permit the compilation, treating domestic and foreign operations as separate categories, of an energy data base consisting of:

- (1) The separate calculation of capital, revenue, and operating cost information pertaining to—
 - (A) prospecting,
 - (B) acquisition,
 - (C) exploration,
 - (D) development, and
 - (E) production,

including geological and geophysical costs, carrying costs, unsuccessful exploratory drilling costs, intangible drilling and development costs on productive wells, the cost of unsuccessful development wells, and the cost of acquiring oil and gas reserves by means other than development. Any such calculation shall take into account disposition of capitalized costs, contractual arrangements involving special conveyance of rights and joint operations, differences between book and tax income, and prices used in the transfer of products or other assets from one person to any other person, including a person controlled by, controlling, or under common control with such person.

(2) The full presentation of the financial information of persons engaged in the production of crude oil or natural gas, including—

- (A) disclosure of reserves and operating activities, both domestic and foreign, to facilitate evaluation of financial effort and result; and
- (B) classification of financial information by function to facilitate correlation with reserve and operating statistics, both domestic and foreign.

(3) Such other information, projections, and relationships of collected data as shall be necessary to facilitate the compilation of such data base.

(Pub. L. 94-163, title V, §503, Dec. 22, 1975, 89 Stat. 958; Pub. L. 95-91, title III, §301, title IV, §402, title VII, §§703, 707, Aug. 4, 1977, 91 Stat. 577, 583, 606, 607; Pub. L. 105-388, §5(a)(15), Nov. 13, 1998, 112 Stat. 3479.)

AMENDMENTS

1998—Subsec. (b). Pub. L. 105-388, §5(a)(15)(A), substituted “with respect to” for “with respect to” in concluding provisions.

Subsec. (c)(1). Pub. L. 105-388, §5(a)(15)(B), substituted “, controlling,” for “controlling” in concluding provisions.

TRANSFER OF FUNCTIONS

“Secretary, the General Accounting Office, and the Federal Energy Regulatory Commission” substituted for “Federal Energy Administration, the General Accounting Office, and the Federal Power Commission” in

subsec. (b)(1) pursuant to sections 301, 402, 703, and 707 of Pub. L. 95-91, which are classified to sections 7151, 7172, 7293, and 7297 of this title and which terminated Federal Energy Administration and transferred its functions (with certain exceptions) to Secretary of Energy and terminated Federal Power Commission and transferred its functions to Federal Energy Regulatory Commission and Secretary of Energy.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 15 section 796.

§ 6384. Enforcement

(a) Civil penalties

Any person who violates any general or special order of the Comptroller General issued under section 6382(a)(1)(B) of this title may be assessed a civil penalty not to exceed \$10,000 for each violation. Each day of failure to comply with such an order shall be deemed a separate violation. Such penalty shall be assessed by the Comptroller General and collected in a civil action brought by the Comptroller General through any attorney employed by the General Accounting Office or any other attorney designated by the Comptroller General, or, upon request of the Comptroller General, the Attorney General. A person shall not be liable with respect to any period during which the effectiveness of the order with respect to such person was stayed.

(b) Jurisdiction; process

Any action to enjoin or set aside an order issued under section 6382(a)(1)(B) of this title may be brought only before the United States Court of Appeals for the District of Columbia. Any action to collect a civil penalty for violation of any general or special order may be brought only in the United States District Court for the District of Columbia. In any action brought under subsection (a) of this section to collect a civil penalty, process may be served in any judicial district of the United States.

(c) Securing compliance with subpoena

Upon petition by the Comptroller General through any attorney employed by the General Accounting Office or designated by the Comptroller General, or, upon request of the Comptroller General, the Attorney General, any United States district court within the jurisdiction of which any inquiry under this part is carried on may, in the case of refusal to obey a subpoena of the Comptroller General issued under this part, issue an order requiring compliance therewith; and any failure to obey the order of the court may be treated by the court as a contempt thereof.

(Pub. L. 94-163, title V, §504, Dec. 22, 1975, 89 Stat. 959.)

§ 6385. Petroleum product information

The President or his delegate shall, pursuant to authority otherwise available to the President or his delegate under any other provision of law, collect information on the pricing, supply, and distribution of petroleum products by product category at the wholesale and retail levels, on a State-by-State basis, which was collected as of September 1, 1981, by the Energy Information Administration.

(Pub. L. 94-163, title V, § 507, as added Pub. L. 97-229, § 5(a), Aug. 3, 1982, 96 Stat. 252.)

PART B—GENERAL PROVISIONS

§ 6391. Prohibited actions

(a) Unreasonable classifications and differentiations

Action taken under the authorities to which this section applies, resulting in the allocation of petroleum products or electrical energy among classes of users or resulting in restrictions on use of petroleum products and electrical energy shall not be based upon unreasonable classifications of, or unreasonable differentiations between, classes of users. In making any such allocation the President, or any agency of the United States to which such authority is delegated, shall give consideration to the need to foster reciprocal and nondiscriminatory treatment by foreign countries of United States citizens engaged in commerce in those countries.

(b) Unreasonably disproportionate share of burdens between segments of business community

To the maximum extent practicable, any restriction under authorities to which this section applies on the use of energy shall be designed to be carried out in such manner so as to be fair and to create a reasonable distribution of the burden of such restriction on all sectors of the economy, without imposing an unreasonably disproportionate share of such burden on any specific class of industry, business, or commercial enterprise, or on any individual segment thereof. In prescribing any such restriction, due consideration shall be given to the needs of commercial, retail, and service establishments whose normal function is to supply goods or services of an essential convenience nature during times of day other than conventional daytime working hours.

(c) Authorities to which section applies

This section applies to actions under any of the following authorities:

- (1) subchapters I and II of this chapter.
- (2) this subchapter.
- (3) the Emergency Petroleum Allocation Act of 1973¹ [15 U.S.C. 751 et seq.].

(Pub. L. 94-163, title V, § 521, Dec. 22, 1975, 89 Stat. 960.)

REFERENCES IN TEXT

The Emergency Petroleum Allocation Act of 1973, referred to in subsec. (c)(3), is Pub. L. 93-159, Nov. 27, 1973, 87 Stat. 628, as amended, which was classified generally to chapter 16A (§ 751 et seq.) of Title 15, Commerce and Trade, and was omitted from the Code pursuant to section 760g of Title 15, which provided for the expiration of the President's authority under that chapter on Sept. 30, 1981.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6395 of this title.

§ 6392. Repealed. Pub. L. 104-106, div. D, title XLIII, § 4304(b)(8), Feb. 10, 1996, 110 Stat. 664

Section, Pub. L. 94-163, title V, § 522, Dec. 22, 1975, 89 Stat. 961; Pub. L. 95-91, title III, § 301(a), title VII, §§ 703,

707, Aug. 4, 1977, 91 Stat. 577, 606, 607; Pub. L. 95-619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288, related to conflicts of interest.

EFFECTIVE DATE OF REPEAL

For effective date and applicability of repeal, see section 4401 of Pub. L. 104-106, set out as an Effective Date of 1996 Amendment note under section 251 of Title 41, Public Contracts.

§ 6393. Administrative procedure and judicial review

(a)(1) Subject to paragraphs (2), (3), and (4) of this subsection, the provisions of subchapter II of chapter 5 of title 5 shall apply to any rule, regulation, or order having the applicability and effect of a rule as defined in section 551(4) of title 5 issued under subchapter I of this chapter (other than section 6212 of this title) and subchapter II of this chapter, or this subchapter.

(2)(A) Notice of any proposed rule, regulation, or order described in paragraph (1) which is substantive and of general applicability shall be given by publication of such proposed rule, regulation, or order in the Federal Register. In each case, a minimum of 30 days following the date of such publication and prior to the effective date of the rule shall be provided for opportunity to comment; except that the 30-day period for opportunity to comment prior to the effective date of the rule may be—

(i) reduced to no less than 10 days if the President finds that strict compliance would seriously impair the operation of the program to which such rule, regulation, or order relates and such findings are set out in such rule, regulation, or order, or

(ii) waived entirely, if the President finds that such waiver is necessary to act expeditiously during an emergency affecting the national security of the United States.

(B) Public notice of any rule, regulation, or order which is substantive and of general applicability which is promulgated by officers of a State or political subdivision thereof or to State or local boards which have been delegated authority pursuant to subchapter I or II of this chapter or this subchapter shall, to the maximum extent practicable, be achieved by publication of such rules, regulations, or orders in a sufficient number of newspapers of general circulation calculated to receive widest practicable notice.

(3) In addition to the requirements of paragraph (2) and to the maximum extent practicable, an opportunity for oral presentation of data, views, and arguments shall be afforded and such opportunity shall be afforded prior to the effective date of such rule, regulation, or order, but in all cases such opportunity shall be afforded no later than 45 days, and no later than 10 days (in the case of a waiver of the entire comment period under paragraph (2) (ii)), after such date. A transcript shall be made of any oral presentation.

(4) Any officer or agency authorized to issue rules, regulations, or orders described in paragraph (1) shall provide for the making of such adjustments, consistent with the other purposes of this chapter as may be necessary to prevent special hardship, inequity, or an unfair distribu-

¹ See References in Text note below.

tion of burdens and shall in rules prescribed by it establish procedures which are available to any person for the purpose of seeking an interpretation, modification, or rescission of, or an exception to or exemption from, such rules, regulations and orders. If such person is aggrieved or adversely affected by the denial of a request for such action under the preceding sentence, he may request a review of such denial by the officer or agency and may obtain judicial review in accordance with subsection (b) of this section or other applicable law when such denial becomes final. The officer or agency shall, by rule, establish appropriate procedures, including a hearing where deemed advisable, for considering such requests for action under this paragraph.

(b) The procedures for judicial review established by section 211 of the Economic Stabilization Act of 1970 shall apply to proceedings to which subsection (a) of this section applies, as if such proceedings took place under such Act. Such procedures for judicial review shall apply notwithstanding the expiration of the Economic Stabilization Act of 1970.

(c) Any agency authorized to issue any rule, regulation, or order described in subsection (a)(1) of this section shall, upon written request of any person, which request is filed after any grant or denial of a request for exception or exemption from any such rule, regulation, or order, furnish such person, within 30 days after the date on which such request is filed, with a written opinion setting forth applicable facts and the legal basis in support of such grant or denial.

(Pub. L. 94-163, title V, §523, Dec. 22, 1975, 89 Stat. 962.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(4), was in the original "this Act", meaning Pub. L. 94-163, Dec. 22, 1975, 89 Stat. 871, as amended, known as the Energy Policy and Conservation Act. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

The Economic Stabilization Act of 1970, referred to in subsec. (b), is title II of Pub. L. 91-379, Aug. 15, 1970, 84 Stat. 799, as amended, formerly set out as an Economic Stabilization Provisions note under section 1904 of Title 12, Banks and Banking.

CODIFICATION

Words "(other than any provision of such titles which amends another law)", appearing in the original at the end of subsec. (a), have been omitted as unnecessary. Such titles meant titles I, II, and V of Pub. L. 94-163, which titles are classified to subchapters I, II, and V of this chapter. The provisions of such titles that amended other laws were not classified to subchapters I, II, and V of this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6239, 6241, 6250d of this title; title 15 section 2841; title 28 section 1295.

§ 6394. Prohibited acts

It shall be unlawful for any person—

(1) to violate any provision of subchapter I or subchapter II of this chapter or this subchapter,

(2) to violate any rule, regulation, or order issued pursuant to any such provision or any provision of section 6363 of this title; or

(3) to fail to comply with any provision prescribed in, or pursuant to, an energy conservation contingency plan which is in effect.

(Pub. L. 94-163, title V, §524, Dec. 22, 1975, 89 Stat. 963.)

CODIFICATION

Words "(other than any provision of such titles which amends another law)", appearing in the original at the end of par. (1), have been omitted as unnecessary. Such titles meant titles I, II, and V of Pub. L. 94-163, which titles are classified to subchapters I, II, and V of this chapter. The provisions of such titles that amended other laws were not classified to subchapters I, II, and V of this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6395 of this title.

§ 6395. Enforcement

(a) Civil penalty

Whoever violates section 6394 of this title shall be subject to a civil penalty of not more than \$5,000 for each violation.

(b) Penalty for willful violation

Whoever willfully violates section 6394 of this title shall be fined not more than \$10,000 for each violation.

(c) Penalty for violation after having been subjected to civil penalty for prior violation

Any person who knowingly and willfully violates section 6394 of this title with respect to the sale, offer of sale, or distribution in commerce of a product or commodity after having been subjected to a civil penalty for a prior violation of section 6394 of this title with respect to the sale, offer of sale, or distribution in commerce of such product or commodity shall be fined not more than \$50,000 or imprisoned not more than 6 months, or both.

(d) Injunction action by Attorney General

Whenever it appears to any officer or agency of the United States in whom is vested, or to whom is delegated, authority under this chapter that any person has engaged, is engaged, or is about to engage in acts or practices constituting a violation of section 6394 of this title, such officer or agency may request the Attorney General to bring an action in an appropriate district court of the United States to enjoin such acts or practices, and upon a proper showing a temporary restraining order or a preliminary or permanent injunction shall be granted without bond. Any such court may also issue mandatory injunctions commanding any person to comply with any rule, regulation, or order described in section 6394 of this title.

(e) Private right of action

(1) Any person suffering legal wrong because of any act or practice arising out of any violation of any provision of this chapter described in paragraph (2), may bring an action in an appropriate district court of the United States without regard to the amount in controversy, for appropriate relief, including an action for a declaratory judgment or writ of injunction. Nothing in this subsection shall authorize any person to recover damages.

(2) The provisions of this chapter referred to in paragraph (1) are as follows:

(A) Section 6262¹ of this title (relating to energy conservation plans).

(B) Section 6271 of this title (relating to international oil allocation).

(C) Section 6272 of this title (relating to international voluntary agreements).

(D) Section 6273 of this title (relating to advisory committees).

(E) Section 6274 of this title (relating to international exchange of information).

(F) Section 6391 of this title (relating to prohibition on certain actions).

(Pub. L. 94-163, title V, §525, Dec. 22, 1975, 89 Stat. 963.)

REFERENCES IN TEXT

This chapter, referred to in subssecs. (d) and (e), was in the original "this Act", meaning Pub. L. 94-163, Dec. 22, 1975, 89 Stat. 871, as amended, known as the Energy Policy and Conservation Act. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

Section 6262 of this title, referred to in subsec. (e)(2)(A), was repealed by Pub. L. 106-469, title I, §104(1), Nov. 9, 2000, 114 Stat. 2033.

§ 6396. State laws or programs

No State law or State program in effect on December 22, 1975, or which may become effective thereafter, shall be superseded by any provision of subchapter I or II of this chapter or any rule, regulation, or order thereunder, except insofar as such State law or State program is in conflict with such provision, rule, regulation, or order.

(Pub. L. 94-163, title V, §526, Dec. 22, 1975, 89 Stat. 964.)

CODIFICATION

Words "(other than any provision of such title which amends another law)", appearing in the original in this section, have been omitted as unnecessary. Such title meant title I or title II of Pub. L. 94-163, which titles are classified to subchapters I and II of this chapter. The provisions of such titles that amended other laws were not classified to subchapters I and II of this chapter.

§ 6397. Repealed. Pub. L. 95-619, title VI, § 691(b)(1), Nov. 9, 1978, 92 Stat. 3288

Section, Pub. L. 94-163, title V, §527, Dec. 22, 1975, 89 Stat. 964, related to transfer of authority on termination of Federal Energy Administration.

§ 6398. Authorization of appropriations

Any authorization of appropriations in this Act, or in any amendment to any other law made by this Act, for the fiscal year 1976 shall be deemed to include an additional authorization of appropriations for the period beginning July 1, 1976, and ending September 30, 1976, in amounts which equal one-fourth of any amount authorized for fiscal year 1976, unless appropriations for the same purpose are specifically authorized in a law hereinafter enacted.

(Pub. L. 94-163, title V, §528, Dec. 22, 1975, 89 Stat. 964.)

¹ See References in Text note below.

REFERENCES IN TEXT

This Act, referred to in text, means Pub. L. 94-163, Dec. 22, 1975, 89 Stat. 871, as amended, known as the Energy Policy and Conservation Act, which is classified principally to this chapter (§6201 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

§ 6399. Intrastate natural gas

No provision of this chapter shall permit the imposition of any price controls on, or require any allocation of, natural gas not subject to the jurisdiction of the Secretary or the Federal Energy Regulatory Commission.

(Pub. L. 94-163, title V, §529, Dec. 22, 1975, 89 Stat. 964; Pub. L. 95-91, title III, §301(a), title IV, §402, title VII, §§703, 707, Aug. 4, 1977, 91 Stat. 577, 583, 606, 607.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 94-163, Dec. 22, 1975, 89 Stat. 871, as amended, known as the Energy Policy and Conservation Act. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

TRANSFER OF FUNCTIONS

"Secretary or the Federal Energy Regulatory Commission" substituted for "Federal Power Commission" pursuant to sections 301(a), 402, 703, and 707 of Pub. L. 95-91, which are classified to sections 7151(a), 7172, 7293, and 7297 of this title and which terminated Federal Power Commission and transferred its functions to Federal Energy Regulatory Commission and Secretary of Energy.

§ 6400. Limitation on loan guarantees

Loan guarantees and obligation guarantees under this Act or any amendment to another law made by this Act may not be issued in violation of any limitation in appropriations or other Acts, with respect to the amounts of outstanding obligational authority.

(Pub. L. 94-163, title V, §530, Dec. 22, 1975, 89 Stat. 964.)

REFERENCES IN TEXT

This Act, referred to in text, means Pub. L. 94-163, Dec. 22, 1975, 89 Stat. 871, as amended, known as the Energy Policy and Conservation Act, which is classified principally to this chapter (§6201 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

§ 6401. Repealed. Pub. L. 99-58, title I, § 104(c)(3), July 2, 1985, 99 Stat. 105

Section, Pub. L. 94-163, title V, §531, Dec. 22, 1975, 89 Stat. 965, provided for the expiration of all authority under subchapters I and II of this chapter at midnight June 30, 1985. See sections 6251 and 6285 of this title.

PART C—CONGRESSIONAL REVIEW

§ 6421. Procedure for Congressional review of Presidential requests to implement certain authorities

(a) "Energy action" defined

For purposes of this section, the term "energy action" means any matter required to be transmitted, or submitted to the Congress in accordance with the procedures of this section.

(b) Transmittal of energy action to Congress

The President shall transmit any energy action (bearing an identification number) to both Houses of Congress on the same day. If both Houses are not in session on the day any energy action is received by the appropriate officers of each House, for purposes of this section such energy action shall be deemed to have been transmitted on the first succeeding day on which both Houses are in session.

(c) Effective date of energy action

(1) Except as provided in paragraph (2) of this subsection, if energy action is transmitted to the Houses of Congress, such action shall take effect at the end of the first period of 15 calendar days of continuous session of Congress after the date on which such action is transmitted to such Houses, unless between the date of transmittal and the end of such 15-day period, either House passes a resolution stating in substance that such House does not favor such action.

(2) An energy action described in paragraph (1) may take effect prior to the expiration of the 15-calendar-day period after the date on which such action is transmitted, if each House of Congress approves a resolution affirmatively stating in substance that such House does not object to such action.

(d) Computation of period

For the purpose of subsection (c) of this section—

(1) continuity of session is broken only by an adjournment of Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 15-calendar-day period.

(e) Provision in energy action for later effective date

Under provisions contained in an energy action, a provision of such an action may take effect on a date later than the date on which such action otherwise takes effect pursuant to the provisions of this section.

(f) Resolutions with respect to energy action

(1) This subsection is enacted by Congress—

(A) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions described by paragraph (2) of this subsection; and it supersedes other rules only to the extent that it is inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of the House.

(2) For purposes of this subsection, the term “resolution” means only a resolution of either House of Congress described in subparagraph (A) or (B) of this paragraph.

(A) A resolution the matter after the resolving clause of which is as follows: “That the

_____ does not object to the energy action numbered _____ submitted to the Congress on _____, 19____.”, the first blank space therein being filled with the name of the resolving House and the other blank spaces being appropriately filled; but does not include a resolution which specifies more than one energy action.

(B) A resolution the matter after the resolving clause of which is as follows: “That the _____ does not favor the energy action numbered _____ transmitted to Congress on _____, 19____.”, the first blank space therein being filled with the name of the resolving House and the other blank spaces therein being appropriately filled; but does not include a resolution which specifies more than one energy action.

(3) A resolution once introduced with respect to an energy action shall immediately be referred to a committee (and all resolutions with respect to the same plan shall be referred to the same committee) by the President of the Senate or the Speaker of the House of Representatives, as the case may be.

(4)(A) If the committee to which a resolution with respect to an energy action has been referred has not reported it at the end of 5 calendar days after its referral, it shall be in order to move either to discharge the committee from further consideration of such resolution or to discharge the committee from further consideration of any other resolution with respect to such energy action which has been referred to the committee.

(B) A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same energy action), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(C) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same energy action.

(5)(A) When the committee has reported, or has been discharged from further consideration of, a resolution, it shall be at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(B) Debate on the resolution referred to in subparagraph (A) of this paragraph shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing such resolution. A motion further to limit debate shall not be debatable. An amendment to, or motion to recommit, the resolution shall not be in order, and it shall not be

in order to move to reconsider the vote by which such resolution was agreed to or disagreed to; except that it shall be in order—

(i) to offer an amendment in the nature of a substitute, consisting of the text of a resolution described in paragraph (2)(A) of this subsection with respect to an energy action, for a resolution described in paragraph (2)(B) of this subsection with respect to the same such action, or

(ii) to offer an amendment in the nature of a substitute, consisting of the text of a resolution described in paragraph (2)(B) of this subsection with respect to an energy action, for a resolution described in paragraph (2)(A) of this subsection with respect to the same such action.

The amendments described in clauses (i) and (ii) of this subparagraph shall not be amendable.

(6)(A) Motions to postpone, made with respect to the discharge from committee, or the consideration of a resolution and motions to proceed to the consideration of other business, shall be decided without debate.

(B) Appeals from the decision of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution shall be decided without debate.

(7) Notwithstanding any of the provisions of this subsection, if a House has approved a resolution with respect to an energy action, then it shall not be in order to consider in that House any other resolution with respect to the same such action.

(Pub. L. 94-163, title V, § 551, Dec. 22, 1975, 89 Stat. 965.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6239, 7172, 8374, 10222 of this title; title 49 section 32902.

§ 6422. Expedited procedure for Congressional consideration of certain authorities

(a) Contingency plan identification number; transmittal of plan to Congress

Any contingency plan transmitted to the Congress pursuant to section 6261(a)(1)¹ of this title shall bear an identification number and shall be transmitted to both Houses of Congress on the same day and to each House while it is in session.

(b) Necessity of Congressional resolution within certain period for plan to be considered approved

(1) No such energy conservation contingency plan may be considered approved for purposes of section 6261(b)¹ of this title unless between the date of transmittal and the end of the first period of 60 calendar days of continuous session of Congress after the date on which such action is transmitted to such House, each House of Congress passes a resolution described in subsection (d)(2)(A) of this section.

(2)(A) Subject to subparagraph (B), any such rationing contingency plan shall be considered approved for purposes of section 6261(d)¹ of this

title only if such plan is not disapproved by a resolution described in subsection (d)(2)(B)(i) of this section which passes each House of the Congress during the 30-calendar-day period of continuous session after the plan is transmitted to such Houses and which thereafter becomes law.

(B) A rationing contingency plan may be considered approved prior to the expiration of the 30-calendar-day period after such plan is transmitted if a resolution described in subsection (d)(2)(B)(ii) of this section is passed by each House of the Congress and thereafter becomes law.

(c) Computation of period

For the purpose of subsection (b) of this section—

(1) continuity of session is broken only by an adjournment of Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the calendar-day period involved.

(d) Resolution with respect to contingency plan

(1) This subsection is enacted by Congress—

(A) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions described by paragraph (2) of this subsection; and it supersedes other rules only to the extent that it is inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of the House.

(2)(A) For purposes of applying this section with respect to any energy conservation contingency plan, the term “resolution” means only a resolution of either House of Congress the matter after the resolving clauses of which is as follows: “That the _____ approves the energy conservation contingency plan numbered _____ submitted to the Congress on _____, 19____.”, the first blank space therein being filled with the name of the resolving House and the other blank spaces being appropriately filled; but does not include a resolution which specifies more than one energy conservation contingency plan.

(B) For purposes of applying this subsection with respect to any rationing contingency plan (other than pursuant to section 6261(d)(2)(B)¹ of this title), the term “resolution” means only a joint resolution described in clause (i) or (ii) of this subparagraph with respect to such plan.

(i) A joint resolution of either House of the Congress (I) which is entitled: “Joint resolution relating to a rationing contingency plan.”, (II) which does not contain a preamble, and (III) the matter after the resolving clause of which is: “That the Congress of the United States disapproves the rationing contingency plan transmitted to the Congress on _____, 19____.”, the blank spaces therein appropriately filled.

¹ See References in Text note below.

(ii) A joint resolution of either House of the Congress (I) which is entitled: "Joint resolution relating to a rationing contingency plan.", (II) which does not contain a preamble, and (III) the matter after the resolving clause of which is: "That the Congress of the United States does not object to the rationing contingency plan transmitted to the Congress on _____, 19____.", the blank spaces therein appropriately filled.

(3) A resolution once introduced with respect to a contingency plan shall immediately be referred to a committee (and all resolutions with respect to the same contingency plan shall be referred to the same committee) by the President of the Senate or the Speaker of the House of Representatives, as the case may be.

(4)(A) If the committee to which a resolution with respect to a contingency plan has been referred has not reported it at the end of 20 calendar days after its referral in the case of any energy conservation contingency plan or at the end of 10 calendar days after its referral in the case of any rationing contingency plan, it shall be in order to move either to discharge the committee from further consideration of such resolution or to discharge the committee from further consideration of any other resolution with respect to such contingency plan which has been referred to the committee.

(B) A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same contingency plan), and debate thereon shall be limited to not more than 1 hour, to be divided equally between those favoring and those opposing the resolution. Except to the extent provided in paragraph (7)(A), an amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(C) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same contingency plan.

(5)(A) When the committee has reported, or has been discharged from further consideration of, a resolution, it shall be at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(B) Debate on the resolution referred to in subparagraph (A) of this paragraph shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing such resolution. A motion further to limit debate shall not be debatable. Except to the extent provided in paragraph (7)(B), an amendment to, or motion to recommit the resolution shall not be in order, and it shall not be in order to move to reconsider the vote by which such resolution was agreed to or disagreed to.

(6)(A) Motions to postpone, made with respect to the discharge from committee, or the consideration of a resolution and motions to proceed to the consideration of other business, shall be decided without debate.

(B) Appeals from the decision of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedures relating to a resolution shall be decided without debate.

(7) With respect to any rationing contingency plan—

(A) In the consideration of any motion to discharge any committee from further consideration of any resolution on any such plan, it shall be in order after debate allowed for under paragraph (4)(B) to offer an amendment in the nature of a substitute for such motion—

(i) consisting of a motion to discharge such committee from further consideration of a resolution described in paragraph (2)(B)(i) with respect to any rationing contingency plan, if the discharge motion sought to be amended relates to a resolution described in paragraph (2)(B)(ii) with respect to the same such plan, or

(ii) consisting of a motion to discharge such committee from further consideration of a resolution described in paragraph (2)(B)(ii) with respect to any rationing contingency plan, if the discharge motion sought to be amended relates to a resolution described in paragraph (2)(B)(i) with respect to the same such plan.

An amendment described in this subparagraph shall not be amendable. Debate on such an amendment shall be limited to not more than 1 hour, which shall be divided equally between those favoring and those opposing the amendment.

(B) In the consideration of any resolution on any such plan which has been reported by a committee, it shall be in order at any time during the debate allowed for under paragraph (5)(B) to offer an amendment in the nature of a substitute for such resolution—

(i) consisting of the text of a resolution described in paragraph (2)(B)(i) with respect to any rationing contingency plan, if the resolution sought to be amended is a resolution described in paragraph (2)(B)(ii) with respect to the same such plan, or

(ii) consisting of the text of a resolution described in paragraph (2)(B)(ii) with respect to any rationing contingency plan, if the resolution sought to be amended is a resolution described in paragraph (2)(B)(i) with respect to the same such plan.

An amendment described in this subparagraph shall not be amendable.

(C) If one House receives from the other House a resolution with respect to a rationing contingency plan, then the following procedure applies:

(i) the resolution of the other House with respect to such plan shall not be referred to a committee;

(ii) in the case of a resolution of the first House with respect to such plan—

(I) the procedure with respect to that or other resolutions of such House with re-

spect to such plan shall be the same as if no resolution from the other House with respect to such plan had been received; but

(II) on any vote on final passage of a resolution of the first House with respect to such plan a resolution from the other House with respect to such plan which has the same effect shall be automatically substituted for the resolution of the first House.

(D) Notwithstanding any of the preceding provisions of this subsection, if a House has approved a resolution with respect to a rationing contingency plan, then it shall not be in order to consider in that House any other resolution under this section with respect to the approval of such plan.

(Pub. L. 94-163, title V, §552, Dec. 22, 1975, 89 Stat. 967; Pub. L. 96-102, title I, §§103(b)(2), 105(a)(4), (b)(6), Nov. 5, 1979, 93 Stat. 753, 756; Pub. L. 105-388, §5(a)(16), Nov. 13, 1998, 112 Stat. 3479.)

REFERENCES IN TEXT

Section 6261 of this title, referred to in subsecs. (a), (b)(1), (2)(A), and (d)(2)(B), was repealed by Pub. L. 106-469, title I, §104(1), Nov. 9, 2000, 114 Stat. 2033.

AMENDMENTS

1998—Subsec. (d)(5)(A). Pub. L. 105-388 substituted “motion” for “notion” after “amendment to the”.

1979—Subsec. (b). Pub. L. 96-102, §§103(b)(2)(A), 105(b)(6), designated existing provisions as par. (1) and substituted “No such energy conservation contingency plan” for “No such contingency plan”, “section 6261(b)” for “section 6261(a)(2)”, and “subsection (d)(2)(A)” for “subsection (d)(2)”, and added par. (2).

Subsec. (c)(2). Pub. L. 96-102, §103(b)(2)(B), substituted “calendar-day period involved” for “60-calendar-day period”.

Subsec. (d)(2). Pub. L. 96-102, §§103(b)(2)(C), 105(a)(4), designated existing provisions as subpar. (A), substituted “For purposes of applying this section with respect to any energy conservation contingency plan” for “For purposes of this subsection” and “energy conservation contingency plan” for “contingency plan” in two places, and added subpar. (B).

Subsec. (d)(4)(A). Pub. L. 96-102, §103(b)(2)(D), inserted “in the case of any energy conservation contingency plan or at the end of 10 calendar days after its referral in the case of any rationing contingency plan” after “after its referral”.

Subsec. (d)(4)(B). Pub. L. 96-102, §103(b)(2)(E), substituted “Except to the extent provided in paragraph (7)(A), an amendment” for “An amendment”.

Subsec. (d)(5)(B). Pub. L. 96-102, §103(b)(2)(F), substituted “Except to the extent provided in paragraph (7)(B), an amendment” for “An amendment”.

Subsec. (d)(7). Pub. L. 96-102, §103(b)(2)(G), added par. (7).

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-102 effective Nov. 5, 1979, see section 302 of Pub. L. 96-102, set out as an Effective Date note under section 8501 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 15 section 2841.

CHAPTER 78—NATIONAL PETROLEUM RESERVE IN ALASKA

- Sec. 6501. “Petroleum” defined.
- 6502. Designation of National Petroleum Reserve in Alaska; reservation of lands; disposition and conveyance of mineral materials, lands, etc., preexisting property rights.

Sec. 6503. Transfer of jurisdiction, duties, property, etc., to Secretary of the Interior from Secretary of Navy.

- (a) Transfer of jurisdiction over reserve; date of transfer.
- (b) Protection of environmental, fish and wildlife, and historical or scenic values; promulgation of rules and regulations.
- (c) Contract responsibilities and functions.
- (d) Equipment, facilities, and other properties used in connection with operation of reserve; transfer without reimbursement.
- (e) Unexpended funds previously appropriated for use in connection with reserve and civilian personnel ceilings assigned to management and operation of reserve.

6504. Administration of reserve.

- (a) Congressional authorization as precondition for production and development of petroleum.
- (b) Conduct of exploration within designated areas to protect surface values.
- (c) Continuation of ongoing petroleum exploration program by Secretary of Navy prior to date of transfer of jurisdiction; duties of Secretary of Navy prior to transfer date.
- (d) Commencement of petroleum exploration by Secretary of the Interior as of date of transfer of jurisdiction; powers and duties of Secretary of the Interior in conduct of exploration.

6505. Executive department responsibility for studies to determine procedures used in development, production, transportation, and distribution of petroleum resources in reserve; reports to Congress by President; establishment of task force by Secretary of the Interior; purposes; membership; report and recommendations to Congress by Secretary; contents.

6506. Applicability of antitrust provisions; plans and proposals submitted to Congress to contain report by Attorney General on impact of plans and proposals on competition.

6507. Authorization of appropriations; Federal financial assistance for increased municipal services and facilities in communities located on or near reserve resulting from authorized exploration and study activities.

6508. Competitive leasing of oil and gas.

§ 6501. “Petroleum” defined

As used in this chapter, the term “petroleum” includes crude oil, gases (including natural gas), natural gasoline, and other related hydrocarbons, oil shale, and the products of any of such resources.

(Pub. L. 94-258, title I, §101, Apr. 5, 1976, 90 Stat. 303.)

SHORT TITLE

Section 1 of Pub. L. 94-258 provided: “That this Act [enacting this chapter and section 7420 of Title 10, Armed Forces, and amending section 6244 of this title and sections 7421 to 7436 and 7438 of Title 10] may be cited as the ‘Naval Petroleum Reserves Production Act of 1976’.”

§ 6502. Designation of National Petroleum Reserve in Alaska; reservation of lands; disposition and conveyance of mineral materials, lands, etc., preexisting property rights

The area known as Naval Petroleum Reserve Numbered 4, Alaska, established by Executive order of the President, dated February 27, 1923, except for tract Numbered 1 as described in Public Land Order 2344, dated April 24, 1961, shall be transferred to and administered by the Secretary of the Interior in accordance with the provisions of this Act. Effective on the date of transfer all lands within such area shall be redesignated as the "National Petroleum Reserve in Alaska" (hereinafter in this chapter referred to as the "reserve"). Subject to valid existing rights, all lands within the exterior boundaries of such reserve are hereby reserved and withdrawn from all forms of entry and disposition under the public land laws, including the mining and mineral leasing laws, and all other Acts; but the Secretary is authorized to (1) make dispositions of mineral materials pursuant to the Act of July 31, 1947 (61 Stat. 681), as amended [30 U.S.C. 601 et seq.], for appropriate use by Alaska Natives and the North Slope Borough, (2) make such dispositions of mineral materials and grant such rights-of-way, licenses, and permits as may be necessary to carry out his responsibilities under this Act, (3) convey the surface of lands properly selected on or before December 18, 1975, by Native village corporations pursuant to the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.], and (4) grant such rights-of-way to the North Slope Borough, under the provisions of title V of the Federal Land Policy and Management Act of 1976 [43 U.S.C. 1761 et seq.] or section 28 of the Mineral Leasing Act, as amended [30 U.S.C. 185], as may be necessary to permit the North Slope Borough to provide energy supplies to villages on the North Slope. All other provisions of law heretofore enacted and actions heretofore taken reserving such lands as a Naval Petroleum Reserve shall remain in full force and effect to the extent not inconsistent with this Act.

(Pub. L. 94-258, title I, § 102, Apr. 5, 1976, 90 Stat. 303; Pub. L. 98-366, § 4(a), July 17, 1984, 98 Stat. 470.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 94-258, Apr. 5, 1976, 90 Stat. 303, known as the Naval Petroleum Reserves Production Act of 1976, which enacted this chapter and section 7420 of Title 10, Armed Forces, and amended section 6244 of this title and sections 7421 to 7436 and 7438 of Title 10. For complete classification of this Act to the Code, see Short Note set out under section 6501 of this title and Tables.

The public land laws, referred to in text, are classified generally to Title 43, Public Lands.

The mining laws and the mineral leasing laws, referred to in text, are classified generally to Title 30, Mineral Lands and Mining.

Act of July 31, 1947 (61 Stat. 681), as amended, referred to in text, popularly known as the Materials Act of 1947, is classified generally to subchapter I (§ 601 et seq.) of chapter 15 of Title 30. For complete classification of this Act to the Code, see Short Title note set out under section 601 of Title 30 and Tables.

The Alaska Native Claims Settlement Act, referred to in text, is Pub. L. 92-203, Dec. 18, 1971, 85 Stat. 688,

as amended, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

The Federal Land Policy and Management Act of 1976, referred to in text, is Pub. L. 94-579, Oct. 21, 1976, 90 Stat. 2743, as amended. Title V of the Federal Land Policy and Management Act of 1976 is classified generally to subchapter V (§ 1761 et seq.) of chapter 35 of Title 43. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of Title 43 and Tables.

AMENDMENTS

1984—Pub. L. 98-366 inserted "and the North Slope Borough" after "Alaska Natives", struck out "and" after "responsibilities under this Act," and inserted ", and (4) grant rights-of-way to the North Slope Borough, under the provisions of title V of the Federal Land Policy and Management Act of 1976 or section 28 of the Mineral Leasing Act, as amended, as may be necessary to permit the North Slope Borough to provide energy supplies to the villages on the North Slope".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6508 of this title.

§ 6503. Transfer of jurisdiction, duties, property, etc., to Secretary of the Interior from Secretary of Navy

(a) Transfer of jurisdiction over reserve; date of transfer

Jurisdiction over the reserve shall be transferred by the Secretary of the Navy to the Secretary of the Interior on June 1, 1977.

(b) Protection of environmental, fish and wildlife, and historical or scenic values; promulgation of rules and regulations

With respect to any activities related to the protection of environmental, fish and wildlife, and historical or scenic values, the Secretary of the Interior shall assume all responsibilities as of April 5, 1976. As soon as possible, but not later than the effective date of transfer, the Secretary of the Interior may promulgate such rules and regulations as he deems necessary and appropriate for the protection of such values within the reserve.

(c) Contract responsibilities and functions

The Secretary of the Interior shall, upon the effective date of the transfer of the reserve, assume the responsibilities and functions of the Secretary of the Navy under any contracts which may be in effect with respect to activities within the reserve.

(d) Equipment, facilities, and other properties used in connection with operation of reserve; transfer without reimbursement

On the date of transfer of jurisdiction of the reserve, all equipment, facilities, and other property of the Department of the Navy used in connection with the operation of the reserve, including all records, maps, exhibits, and other informational data held by the Secretary of the Navy in connection with the reserve, shall be transferred without reimbursement from the Secretary of the Navy to the Secretary of the Interior who shall thereafter be authorized to use them to carry out the provisions of this chapter.

(e) Unexpended funds previously appropriated for use in connection with reserve and civilian personnel ceilings assigned to management and operation of reserve

On the date of transfer of jurisdiction of the reserve, the Secretary of the Navy shall transfer to the Secretary of the Interior all unexpended funds previously appropriated for use in connection with the reserve and all civilian personnel ceilings assigned by the Secretary of the Navy to the management and operation of the reserve as of January 1, 1976.

(Pub. L. 94-258, title I, §103, Apr. 5, 1976, 90 Stat. 303.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6504 of this title.

§ 6504. Administration of reserve

(a) Congressional authorization as precondition for production and development of petroleum

Except as provided in subsection (e) of this section, production of petroleum from the reserve is prohibited and no development leading to production of petroleum from the reserve shall be undertaken until authorized by an Act of Congress.

(b) Conduct of exploration within designated areas to protect surface values

Any exploration within the Utukok River, the Teshekpuk Lake areas, and other areas designated by the Secretary of the Interior containing any significant subsistence, recreational, fish and wildlife, or historical or scenic value, shall be conducted in a manner which will assure the maximum protection of such surface values to the extent consistent with the requirements of this Act for the exploration of the reserve.

(c) Continuation of ongoing petroleum exploration program by Secretary of Navy prior to date of transfer of jurisdiction; duties of Secretary of Navy prior to transfer date

The Secretary of the Navy shall continue the ongoing petroleum exploration program within the reserve until the date of the transfer of jurisdiction specified in section 6503(a) of this title. Prior to the date of such transfer of jurisdiction the Secretary of the Navy shall—

(1) cooperate fully with the Secretary of the Interior providing him access to such facilities and such information as he may request to facilitate the transfer of jurisdiction;

(2) provide to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives copies of any reports, plans, or contracts pertaining to the reserve that are required to be submitted to the Committees on Armed Services of the Senate and the House of Representatives; and

(3) cooperate and consult with the Secretary of the Interior before executing any new contract or amendment to any existing contract pertaining to the reserve and allow him a reasonable opportunity to comment on such contract or amendment, as the case may be.

(d) Commencement of petroleum exploration by Secretary of the Interior as of date of transfer of jurisdiction; powers and duties of Secretary of the Interior in conduct of exploration

The Secretary of the Interior shall commence further petroleum exploration of the reserve as of the date of transfer of jurisdiction specified in section 6503(a) of this title. In conducting this exploration effort, the Secretary of the Interior—

(1) is authorized to enter into contracts for the exploration of the reserve, except that no such contract may be entered into until at least thirty days after the Secretary of the Interior has provided the Attorney General with a copy of the proposed contract and such other information as may be appropriate to determine legal sufficiency and possible violations under, or inconsistencies with, the antitrust laws. If, within such thirty day period, the Attorney General advises the Secretary of the Interior that any such contract would unduly restrict competition or be inconsistent with the antitrust laws, then the Secretary of the Interior may not execute that contract;

(2) shall submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives any new plans or substantial amendments to ongoing plans for the exploration of the reserve. All such plans or amendments submitted to such committees pursuant to this section shall contain a report by the Attorney General of the United States with respect to the anticipated effects of such plans or amendments on competition. Such plans or amendments shall not be implemented until sixty days after they have been submitted to such committees; and

(3) shall report annually to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives on the progress of, and future plans for, exploration of the reserve.

(Pub. L. 94-258, title I, §104, Apr. 5, 1976, 90 Stat. 304; Pub. L. 98-366, §4(b), July 17, 1984, 98 Stat. 470; Pub. L. 103-437, §15(q), Nov. 2, 1994, 108 Stat. 4594.)

REFERENCES IN TEXT

This Act, referred to in subsec. (b), is Pub. L. 94-258, Apr. 5, 1976, 90 Stat. 303, known as the Naval Petroleum Reserves Production Act of 1976, which enacted this chapter and section 7420 of Title 10, Armed Forces, and amended section 6244 of this title and sections 7421 to 7436 and 7438 of Title 10. For complete classification of this Act to the Code, see Short Note set out under section 6501 of this title and Tables.

The antitrust laws, referred to in subsec. (d), are classified generally to chapter 1 (§1 et seq.) of Title 15, Commerce and Trade.

AMENDMENTS

1994—Subsecs. (c)(2), (d)(2), (3). Pub. L. 103-437 substituted “Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House” for “Committees on Interior and Insular Affairs of the Senate and the House”.

1984—Subsec. (e). Pub. L. 98-366 struck out subsec. (e) which read as follows: “Until the reserve is transferred

to the jurisdiction of the Secretary of the Interior, the Secretary of the Navy is authorized to develop and continue operation of the South Barrow gas field, or such other fields as may be necessary, to supply gas at reasonable and equitable rates to the native village of Barrow, and other communities and installations at or near Point Barrow, Alaska, and to installations of the Department of Defense and other agencies of the United States located at or near Point Barrow, Alaska. After such transfer, the Secretary of the Interior shall take such actions as may be necessary to continue such service to such village, communities, installations, and agencies at reasonable and equitable rates."

CHANGE OF NAME

Committee on Natural Resources of House of Representatives treated as referring to Committee on Resources of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 4(b) of Pub. L. 98-366 provided that the amendment made by that section is effective Oct. 1, 1984.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6508 of this title.

§ 6505. Executive department responsibility for studies to determine procedures used in development, production, transportation, and distribution of petroleum resources in reserve; reports to Congress by President; establishment of task force by Secretary of the Interior; purposes; membership; report and recommendations to Congress by Secretary; contents

(a) Omitted

(b)(1) The President shall direct such Executive departments and/or agencies as he may deem appropriate to conduct a study, in consultation with representatives of the State of Alaska, to determine the best overall procedures to be used in the development, production, transportation, and distribution of petroleum resources in the reserve. Such study shall include, but shall not be limited to, a consideration of—

(A) the alternative procedures for accomplishing the development, production, transportation, and distribution of the petroleum resources from the reserve, and

(B) the economic and environmental consequences of such alternative procedures.

(2) The President shall make semiannual progress reports on the implementation of this subsection to the Committees on Interior and Insular Affairs of the Senate and the House of Representatives beginning not later than six months after April 5, 1976, and shall, not later than one year after the transfer of jurisdiction of the reserve, and annually thereafter, report any findings or conclusions developed as a result of such study together with appropriate supporting data and such recommendations as he deems desirable. The study shall be completed and submitted to such committees, together with recommended procedures and any proposed legislation necessary to implement such procedures not later than January 1, 1980.

(c)(1) The Secretary of the Interior shall establish a task force to conduct a study to deter-

mine the values of, and best uses for, the lands contained in the reserve, taking into consideration (A) the natives who live or depend upon such lands, (B) the scenic, historical, recreational, fish and wildlife, and wilderness values, (C) mineral potential, and (D) other values of such lands.

(2) Such task force shall be composed of representatives from the government of Alaska, the Arctic slope native community, and such offices and bureaus of the Department of the Interior as the Secretary of the Interior deems appropriate, including, but not limited to, the Bureau of Land Management, the United States Fish and Wildlife Service, the United States Geological Survey, and the United States Bureau of Mines.

(3) The Secretary of the Interior shall submit a report, together with the concurring or dissenting views, if any, of any non-Federal representatives of the task force, of the results of such study to the Committees on Interior and Insular Affairs of the Senate and the House of Representatives within three years after April 5, 1976, and shall include in such report his recommendations with respect to the value, best use, and appropriate designation of the lands referred to in paragraph (1).

(Pub. L. 94-258, title I, §105, Apr. 5, 1976, 90 Stat. 305; Pub. L. 102-285, §10(b), May 18, 1992, 106 Stat. 172.)

CODIFICATION

Subsec. (a) of this section amended former section 6244 of this title.

CHANGE OF NAME

"United States Bureau of Mines" substituted for "Bureau of Mines" in subsec. (c)(2) pursuant to section 10(b) of Pub. L. 102-285, set out as a note under section 1 of Title 30, Mineral Lands and Mining.

Committee on Interior and Insular Affairs of Senate abolished and replaced by Committee on Energy and Natural Resources of Senate, effective Feb. 11, 1977. See Rule XXV of Standing Rules of Senate, as amended by Senate Resolution No. 4 (popularly cited as the "Committee System Reorganization Amendments of 1977"), approved Feb. 4, 1977.

Committee on Interior and Insular Affairs of the House of Representatives changed to Committee on Natural Resources of the House of Representatives on Jan. 5, 1993, by House Resolution No. 5, One Hundred Third Congress. Committee on Natural Resources of House of Representatives treated as referring to Committee on Resources of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6508 of this title; title 16 section 1276.

§ 6506. Applicability of antitrust provisions; plans and proposals submitted to Congress to contain report by Attorney General on impact of plans and proposals on competition

Unless otherwise provided by Act of Congress, whenever development leading to production of petroleum is authorized, the provisions of subsections (g), (h), and (i) of section 7430 of title 10 shall be deemed applicable to the Secretary of the Interior with respect to rules and regulations, plans of development and amendments thereto, and contracts and operating agree-

ments. All plans and proposals submitted to the Congress under this chapter or pursuant to legislation authorizing development leading to production shall contain a report by the Attorney General of the United States on the anticipated effects upon competition of such plans and proposals.

(Pub. L. 94-258, title I, § 106, Apr. 5, 1976, 90 Stat. 306.)

§ 6507. Authorization of appropriations; Federal financial assistance for increased municipal services and facilities in communities located on or near reserve resulting from authorized exploration and study activities

(a) There are authorized to be appropriated to the Department of the Interior such sums as may be necessary to carry out the provisions of this chapter.

(b) If the Secretary of the Interior determines that there is an immediate and substantial increase in the need for municipal services and facilities in communities located on or near the reserve as a direct result of the exploration and study activities authorized by this chapter and that an unfair and excessive financial burden will be incurred by such communities as a result of the increased need for such services and facilities, then he is authorized to assist such communities in meeting the costs of providing increased municipal services and facilities. The Secretary of the Interior shall carry out the provisions of this section through existing Federal programs and he shall consult with the heads of the departments or agencies of the Federal Government concerned with the type of services and facilities for which financial assistance is being made available.

(Pub. L. 94-258, title I, § 107, Apr. 5, 1976, 90 Stat. 306.)

§ 6508. Competitive leasing of oil and gas

There shall be conducted, notwithstanding any other provision of law and pursuant to such rules and regulations as the Secretary may prescribe, an expeditious program of competitive leasing of oil and gas in the National Petroleum Reserve in Alaska: *Provided*, That (1) activities undertaken pursuant to this section shall include or provide for such conditions, restrictions, and prohibitions as the Secretary deems necessary or appropriate to mitigate reasonably foreseeable and significantly adverse effects on the surface resources of the National Petroleum Reserve in Alaska (the Reserve); (2) the provisions of section 202 and section 603 of the Federal Lands Policy and Management Act of 1976 (90 Stat. 2743) [43 U.S.C. 1712, 1782] shall not be applicable to the Reserve; (3) the first lease sale shall be conducted within twenty months of December 12, 1980: *Provided*, That the first lease sale shall be conducted only after publication of a final environmental impact statement if such is deemed necessary under the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4332); (4) the withdrawals established by section 102 of Public Law 94-258 [42 U.S.C. 6502] are rescinded for the purposes of the oil and gas leasing program authorized herein; (5) bidding

systems used in lease sales shall be based on bidding systems included in section 205(a)(1)(A) through (H)¹ of the Outer Continental Shelf Lands Act Amendments of 1978 (92 Stat. 629) [43 U.S.C. 1337(a)(1)(A)-(H)]; (6) lease tracts may encompass identified geological structures; (7) the size of lease tracts may be up to sixty thousand acres, as determined by the Secretary; (8) each lease shall be issued for an initial period of ten years, and shall be extended for so long thereafter as oil or gas is produced from the lease in paying quantities, or as drilling or reworking operations, as approved by the Secretary, are conducted thereon; (9) for purposes of conservation of the natural resources of any oil or gas pool, field, or like area, or any part thereof, lessees thereof and their representatives are authorized to unite with each other, or jointly or separately with others, in collectively adopting and operating under a unit agreement for such pool, field, or like area, or any part thereof (whether or not any other part of said oil or gas pool, field, or like area is already subject to any cooperative or unit plan of development or operation), whenever determined by the Secretary to be necessary or advisable in the public interest. Drilling, production, and well reworking operations performed in accordance with a unit agreement shall be deemed to be performed for the benefit of all leases that are subject in whole or in part to such unit agreement. When separate tracts cannot be independently developed and operated in conformity with an established well spacing or development program, any lease, or a portion thereof, may be pooled with other lands, whether or not owned by the United States, under a communitization or drilling agreement providing for an apportionment of production or royalties among the separate tracts of land comprising the drilling or spacing unit when determined by the Secretary of the Interior to be in the public interest, and operations or production pursuant to such an agreement shall be deemed to be operations or production as to each such lease committed thereto; (10) to encourage the greatest ultimate recovery of oil or gas or in the interest of conservation the Secretary is authorized to waive, suspend, or reduce the rental, or minimum royalty, or reduce the royalty on an entire leasehold, including on any lease operated pursuant to a unit agreement, whenever in his judgment the leases cannot be successfully operated under the terms provided therein. The Secretary is authorized to direct or assent to the suspension of operations and production on any lease or unit. In the event the Secretary, in the interest of conservation, shall direct or assent to the suspension of operations and production on any lease or unit, any payment of acreage rental or minimum royalty prescribed by such lease or unit likewise shall be suspended during the period of suspension of operations and production, and the term of such lease shall be extended by adding any such suspension period thereto; and (11) all receipts from sales, rentals, bonuses, and royalties on leases issued pursuant to this section shall be paid into the Treasury of the United States: *Provided*, That 50 percent thereof

¹ See References in Text note below.

shall be paid by the Secretary of the Treasury semiannually, as soon thereafter as practicable after March 30 and September 30 each year, to the State of Alaska for: (A) planning; (B) construction, maintenance, and operation of essential public facilities; and (C) other necessary provisions of public service: *Provided further*, That in the allocation of such funds, the State shall give priority to use by subdivisions of the State most directly or severely impacted by development of oil and gas leased under this section.

Any agency of the United States and any person authorized by the Secretary may conduct geological and geophysical explorations in the National Petroleum Reserve in Alaska which do not interfere with operations under any contract maintained or granted previously. Any information acquired in such explorations shall be subject to the conditions of 43 U.S.C. 1352(a)(1)(A).

Any action seeking judicial review of the adequacy of any program or site-specific environmental impact statement under section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) concerning oil and gas leasing in the National Petroleum Reserve-Alaska shall be barred unless brought in the appropriate District Court within 60 days after notice of the availability of such statement is published in the Federal Register.

The detailed environmental studies and assessments that have been conducted on the exploration program and the comprehensive land-use studies carried out in response to sections 105(b) and (c) of Public Law 94-258 [42 U.S.C. 6505(b), (c)] shall be deemed to have fulfilled the requirements of section 102(2)(c) of the National Environmental Policy Act (Public Law 91-190) [42 U.S.C. 4332(2)(C)], with regard to the first two oil and gas lease sales in the National Petroleum Reserve-Alaska: *Provided*, That not more than a total of 2,000,000 acres may be leased in these two sales: *Provided further*, That any exploration or production undertaken pursuant to this section shall be in accordance with section 104(b) of the Naval Petroleum Reserves Production Act of 1976 (90 Stat. 304; 42 U.S.C. 6504).

(Pub. L. 96-514, title I, § 100, Dec. 12, 1980, 94 Stat. 2964; Pub. L. 98-620, title IV, § 402(41), Nov. 8, 1984, 98 Stat. 3360; Pub. L. 105-83, title I, § 128, Nov. 14, 1997, 111 Stat. 1568.)

REFERENCES IN TEXT

This section, referred to in first par., was in the original "this Act", meaning Pub. L. 96-514, Dec. 12, 1980, 94 Stat. 2957, known as the Department of the Interior and Related Agencies Appropriations Act, 1981. For complete classification of this Act to the Code, see Tables.

Subpar. (H) of section 205(a)(1) of the Outer Continental Shelf Lands Act Amendments of 1978, referred to in first par., was redesignated subpar. (I) of section 205(a)(1), and a new subpar. (H) was added by Pub. L. 104-58, title III, § 303, Nov. 28, 1995, 109 Stat. 565.

The National Environmental Policy Act of 1969, referred to in text, is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

CODIFICATION

Section was enacted as part of the Department of the Interior and Related Agencies Appropriations Act, 1981,

and not as part of the Naval Petroleum Reserves Production Act of 1976 which comprises this chapter.

AMENDMENTS

1997—Pub. L. 105-83, in first par., substituted cls. (8) to (11) and two concluding provisos for "(8) each lease shall be issued for an initial period of up to ten years, and shall be extended for so long thereafter as oil or gas is produced from the lease in paying quantities, or as drilling or reworking operations, as approved by the Secretary, are conducted thereon; and (9) all receipts from sales, rentals, bonuses, and royalties on leases issued pursuant to this section shall be paid into the Treasury of the United States: *Provided*, That 50 per centum thereof shall be paid by the Secretary of the Treasury semiannually, as soon as practicable after March 30 and September 30 each year, to the State of Alaska for (a) planning, (b) construction, maintenance, and operation of essential public facilities, and (c) other necessary provisions of public service: *Provided further*, That in the allocation of such funds, the State shall give priority to use by subdivisions of the State most directly or severely impacted by development of oil and gas leased under this section."

1984—Pub. L. 98-620 struck out provision in third par. that required that any proceeding on such action be assigned for hearing at the earliest possible date and be expedited by the Court.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

CHAPTER 79—SCIENCE AND TECHNOLOGY POLICY, ORGANIZATION AND PRIORITIES

SUBCHAPTER I—NATIONAL SCIENCE, ENGINEERING, AND TECHNOLOGY POLICY AND PRIORITIES

Sec.

- 6601. Congressional findings; priority goals.
- 6602. Congressional declaration of policy.
 - (a) Principles.
 - (b) Implementation.
 - (c) Procedures.

SUBCHAPTER II—OFFICE OF SCIENCE AND TECHNOLOGY POLICY

- 6611. Establishment of Office.
- 6612. Director; Associate Directors.
- 6613. Functions of the Director.
- 6614. Policy planning; analysis; advice; establishment of advisory panel.
- 6615. Science and technology report and outlook.
 - (a) Contents of report.
 - (b) Printing; availability to public.
- 6616. Additional functions of Director.
 - (a) Service as Chairman of Federal Coordinating Council for Science, Engineering, and Technology and as member of Domestic Council.
 - (b) Advice to National Security Council.
 - (c) Officers and employees; services; contracts; payments.
- 6617. Coordination with other organizations.
 - (a) Consultation and cooperation with Federal departments and agencies; utilization of consultants; establishment of advisory panels; consultation with State and local agencies, professional groups, and representatives of industry, etc.; hearings; utilization of services, personnel, equipment, etc., of public and private agencies and organizations, and individuals.
 - (b) Information from Executive departments, agencies, and instrumentalities.

Sec.

- (c) Assistance from Administrator of National Aeronautics and Space Administration.

6618. Major science and technology proposals.

SUBCHAPTER III—PRESIDENT'S COMMITTEE ON SCIENCE AND TECHNOLOGY

6631. Establishment of Committee.

6632. Membership of Committee.

- (a) Composition; appointment.
- (b) Qualifications.
- (c) Chairman; Vice Chairman.
- (d) Compensation.

6633. Federal science, engineering, and technology survey; reports.

6634. Continuation of Committee.

6635. Staff and consultant report.

SUBCHAPTER IV—FEDERAL COORDINATING COUNCIL FOR SCIENCE, ENGINEERING, AND TECHNOLOGY

6651. Establishment, membership, and functions of Council.

- (a) Designation.
- (b) Composition.
- (c) Chairman.
- (d) Participation of unnamed Federal agencies in meetings; invitations to attend meetings.
- (e) Consideration of problems and developments affecting more than one Federal agency; recommendations.
- (f) Other advisory duties.
- (g) Assistance to Council by agency represented thereon.
- (h) Establishment of subcommittees and panels.

SUBCHAPTER V—GENERAL PROVISIONS

6671. Authorization of appropriations.

SUBCHAPTER VI—NATIONAL CRITICAL TECHNOLOGIES PANEL

6681 to 6685. Omitted.

6686. Science and Technology Policy Institute.

- (a) Establishment.
- (b) Incorporation.
- (c) Duties.
- (d) Consultation on Institute activities.
- (e) Annual reports.
- (f) Sponsorship.

6687. Critical technology strategies.

- (a) Requirement for critical technology strategies.
- (b) Report.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 30 sections 1602, 1604.

SUBCHAPTER I—NATIONAL SCIENCE, ENGINEERING, AND TECHNOLOGY POLICY AND PRIORITIES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 6632 of this title.

§ 6601. Congressional findings; priority goals

(a) The Congress, recognizing the profound impact of science and technology on society, and the interrelations of scientific, technological, economic, social, political, and institutional factors, hereby finds and declares that—

- (1) the general welfare, the security, the economic health and stability of the Nation, the conservation and efficient utilization of its

natural and human resources, and the effective functioning of government and society require vigorous, perceptive support and employment of science and technology in achieving national objectives;

(2) the many large and complex scientific and technological factors which increasingly influence the course of national and international events require appropriate provision, involving long-range, inclusive planning as well as more immediate program development, to incorporate scientific and technological knowledge in the national decisionmaking process;

(3) the scientific and technological capabilities of the United States, when properly fostered, applied, and directed, can effectively assist in improving the quality of life, in anticipating and resolving critical and emerging international, national, and local problems, in strengthening the Nation's international economic position, and in furthering its foreign policy objectives;

(4) Federal funding for science and technology represents an investment in the future which is indispensable to sustained national progress and human betterment, and there should be a continuing national investment in science, engineering, and technology which is commensurate with national needs and opportunities and the prevalent economic situation;

(5) the manpower pool of scientists, engineers, and technicians, constitutes an invaluable national resource which should be utilized to the fullest extent possible; and

(6) the Nation's capabilities for technology assessment and for technological planning and policy formulation must be strengthened at both Federal and State levels.

(b) As a consequence, the Congress finds and declares that science and technology should contribute to the following priority goals without being limited thereto:

(1) fostering leadership in the quest for international peace and progress toward human freedom, dignity, and well-being by enlarging the contributions of American scientists and engineers to the knowledge of man and his universe, by making discoveries of basic science widely available at home and abroad, and by utilizing technology in support of United States national and foreign policy goals;

(2) increasing the efficient use of essential materials and products, and generally contributing to economic opportunity, stability, and appropriate growth;

(3) assuring an adequate supply of food, materials, and energy for the Nation's needs;

(4) contributing to the national security;

(5) improving the quality of health care available to all residents of the United States;

(6) preserving, fostering, and restoring a healthful and esthetic natural environment;

(7) providing for the protection of the oceans and coastal zones, and the polar regions, and the efficient utilization of their resources;

(8) strengthening the economy and promoting full employment through useful scientific and technological innovations;

(9) increasing the quality of educational opportunities available to all residents of the United States;

(10) promoting the conservation and efficient utilization of the Nation's natural and human resources;

(11) improving the Nation's housing, transportation, and communication systems, and assuring the provision of effective public services throughout urban, suburban, and rural areas;

(12) eliminating air and water pollution, and unnecessary, unhealthful, or ineffective drugs and food additives; and

(13) advancing the exploration and peaceful uses of outer space.

(Pub. L. 94-282, title I, §101, May 11, 1976, 90 Stat. 459.)

SHORT TITLE

Section 1 of Pub. L. 94-282 provided that: "This Act [enacting this chapter, amending section 1863 of this title, repealing sections 1, 2, 3, and 4 of Reorganization Plan Numbered 2 of 1962 (76 Stat. 1253), set out as a note under section 1861 of this title, and section 2 of Reorganization Plan Numbered 1 of 1973 (87 Stat. 1089), set out as a note under section 5195 of this title, and enacting provisions set out as notes under this section and sections 1862 and 6611 of this title] may be cited as the 'National Science and Technology Policy, Organization, and Priorities Act of 1976'."

Section 201 of title II of Pub. L. 94-282 provided that: "This title [enacting subchapter II of this chapter] may be cited as the 'Presidential Science and Technology Advisory Organization Act of 1976'."

EX. ORD. NO. 12039. TRANSFER OF CERTAIN SCIENCE AND TECHNOLOGY POLICY FUNCTIONS

Ex. Ord. No. 12039, Feb. 24, 1978, 43 F.R. 8095, as amended by Ex. Ord. No. 12399, Dec. 31, 1982, 48 F.R. 379, provided:

By virtue of the authority vested in me by the Constitution and laws of the United States of America, including Section 7 of Reorganization Plan No. 1 of 1977 (42 FR 56101 (October 21, 1977)) [set out in Appendix of Title 5, Government Organization and Employees], Section 301 of Title 3 of the United States Code, and Section 202 of the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 581c) [31 U.S.C. 1531], and as President of the United States of America, in order to provide for the transfer of certain science and technology functions, it is hereby ordered as follows:

SECTION 1. (a) The transfer, provided by Section 5A of Reorganization Plan No. 1 of 1977 (42 FR 56101) [set out in Appendix of Title 5, Government Organization and Employees], of certain functions under the National Science and Technology Policy, Organization, and Priorities Act of 1976, hereinafter referred to as the Act (90 Stat. 459, 42 U.S.C. 6601 et seq.), from the Office of Science and Technology Policy and its Director to the Director of the National Science Foundation is hereby effective.

(b) The abolition of the Intergovernmental Science, Engineering, and Technology Advisory Panel, the President's Committee on Science and Technology, and the Federal Coordinating Council for Science, Engineering and Technology (established in accordance with Titles II, III, and IV of the Act) [sections 6611 et seq., 6631 et seq., and 6651 of this title] and the transfer of their functions (Sections 205(b)(1), 303(a) and (b)(1), and 401 of the Act, 42 U.S.C. 6614(b)(1), 6633 (a) and (b)(1), and 6651(e)) to the President of the United States of America, provided by Section 5A of Reorganization Plan No. 1 of 1977 [set out in Appendix of Title 5, Government Organization and Employees], are hereby effective.

SEC. 2. (a) The intergovernmental science, engineering, and technology functions under Section 205(b)(1) of

the Act (42 U.S.C. 6614(b)(1)), which were transferred to the President (see Section 1(b) of this Order), are delegated to the Director of the Office of Science and Technology Policy; *Except that*, the responsibility for fostering any policies to facilitate the transfer and utilization of research and development results is delegated to the Director of the Office of Management and Budget.

(b) The functions vested by subsection (a) of this Section in the Director of the Office of Management and Budget shall be performed in accord with the Director's responsibilities under the Intergovernmental Cooperation Act of 1968 (82 Stat. 1098, 42 U.S.C. 4201 et seq.) [31 U.S.C. 6501 et seq.]. The Director of the Office of Science and Technology Policy shall advise the Director of the Office of Management and Budget with respect to the needs of State, regional, and local governments which may be assisted by the utilization of science, engineering, and technology research and development results.

(c) The functions vested by subsection (a) of this Section in the Director of the Office of Science and Technology Policy shall be performed in coordination with the Director of the Office of Management and Budget and with others as designated by the President.

(d) [Revoked by Ex. Ord. No. 12399, Dec. 31, 1982, 48 F.R. 379.]

SEC. 3. The Federal science, engineering, and technology functions under Section 303 (a) and (b)(1) of the Act (42 U.S.C. 6633 (a) and (b)(1)), which were transferred to the President (see Section 1(b) of this Order), are delegated to the Director of the Office of Science and Technology Policy; *Except that*, those functions concerned with reorganization, including Federal-State liaison, are delegated to the Director of the Office of Management and Budget, who shall be provided advice and assistance thereon by the Director of the Office of Science and Technology Policy.

SEC. 4. The science, engineering, and technology and related activities functions under Section 401(e) of the Act (42 U.S.C. 6651(e)), which were transferred to the President (see Section 1(b) of this Order), are delegated to the Director of the Office of Science and Technology Policy.

SEC. 5. There is hereby established the Federal Coordinating Council for Science, Engineering, and Technology. The Council shall be composed of the Director of the Office of Science and Technology Policy, who shall be Chairman, and representatives of such other Executive agencies designated by the Chairman. The head of an agency so designated shall designate an appropriate individual to serve on the Council. The Council shall advise and assist the Director of the Office of Science and Technology Policy in the performance of those functions delegated under Section 4 of this Order.

SEC. 6. The records, property, personnel, and unexpended balances of appropriations, available or to be made available, which relate to the functions transferred, reassigned, or redelegated by this Order are hereby transferred to the Director of the Office of Management and Budget, the Director of the Office of Science and Technology Policy, or the Director of the National Science Foundation, as appropriate.

SEC. 7. The Director of the Office of Management and Budget shall make such determinations, issue such orders, and take all actions necessary or appropriate to effectuate the transfers or reassignments provided by this Order, including the transfer of funds, records, property, and personnel.

SEC. 8. This Order shall be effective on February 26, 1978.

JIMMY CARTER.

EXECUTIVE ORDER NO. 12700

Ex. Ord. No. 12700, Jan. 19, 1990, 55 F.R. 2219, as amended by Ex. Ord. No. 12768, June 28, 1991, 56 F.R. 30302, which established the President's Council of Advisors on Science and Technology and provided for its functions, administration, and termination on June 30,

1993, was revoked by section 4(c) of Ex. Ord. No. 12882, §4(c), Nov. 23, 1993, 58 F.R. 62493. Ex. Ord. No. 12869, Sept. 30, 1993, §2, 58 F.R. 51751, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees, which reestablished the President's Council of Advisors on Science and Technology in accordance with the provisions of Ex. Ord. No. 12700 and extended its term until Sept. 30, 1995, was also revoked by Ex. Ord. 12882, §4(c).

EX. ORD. NO. 12881. ESTABLISHMENT OF NATIONAL SCIENCE AND TECHNOLOGY COUNCIL

Ex. Ord. No. 12881, Nov. 23, 1993, 58 F.R. 62491; Ex. Ord. No. 13284, §9, Jan. 23, 2003, 68 F.R. 4076, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, it is hereby ordered as follows:

SECTION 1. *Establishment.* There is established the National Science and Technology Council ("the Council").

SEC. 2. *Membership.* The Council shall comprise the:

- (a) President, who shall serve as Chairman of the Council;
- (b) Vice President;
- (c) Secretary of Commerce;
- (d) Secretary of Defense;
- (e) Secretary of Energy;
- (f) Secretary of Health and Human Services;
- (g) Secretary of State;
- (h) Secretary of the Interior;
- (i) Secretary of Homeland Security;
- (j) Administrator, National Aeronautics and Space Administration;
- (k) Director, National Science Foundation;
- (l) Director of the Office of Management and Budget;
- (m) Administrator, Environmental Protection Agency;
- (n) Assistant to the President for Science and Technology;
- (o) National Security Adviser;
- (p) Assistant to the President for Economic Policy;
- (q) Assistant to the President for Domestic Policy; and
- (r) Such other officials of executive departments and agencies as the President may, from time to time, designate.

SEC. 3. *Meetings of the Council.* The President or, upon his direction, the Assistant to the President for Science and Technology ("the Assistant"), may convene meetings of the Council. The President shall preside over the meetings of the Council, provided that in his absence the Vice President, and in his absence the Assistant, will preside.

SEC. 4. *Functions.* (a) The principal functions of the Council are, to the extent permitted by law: (1) to coordinate the science and technology policy-making process; (2) to ensure science and technology policy decisions and programs are consistent with the President's stated goals; (3) to help integrate the President's science and technology policy agenda across the Federal Government; (4) to ensure science and technology are considered in development and implementation of Federal policies and programs; and (5) to further international cooperation in science and technology. The Assistant may take such actions, including drafting a Charter, as may be necessary or appropriate to implement such functions.

(b) All executive departments and agencies, whether or not represented on the Council, shall coordinate science and technology policy through the Council and shall share information on research and development budget requests with the Council.

(c) The Council shall develop for submission to the Director of the Office of Management and Budget recommendations on research and development budgets that reflect national goals. In addition, the Council shall provide advice to the Director of the Office of Management and Budget concerning the agencies' research and development budget submissions.

(d) The Assistant will, when appropriate, work in conjunction with the Assistant to the President for Economic Policy, the Assistant to the President for Domestic Policy, the Director of the Office of Management and Budget, and the National Security Adviser.

SEC. 5. *Administration.* (a) The Council will oversee the duties of the Federal Coordinating Council for Science, Engineering, and Technology, the National Space Council, and the National Critical Materials Council.

(b) The Council may function through established or ad hoc committees, task forces, or interagency groups.

(c) To the extent practicable and permitted by law, executive departments and agencies shall make resources, including, but not limited to, personnel, office support, and printing, available to the Council as requested by the Assistant.

(d) All executive departments and agencies shall cooperate with the Council and provide such assistance, information, and advice to the Council as the Council may request, to the extent permitted by law.

EXECUTIVE ORDER NO. 12882

Ex. Ord. No. 12882, Nov. 23, 1993, 58 F.R. 62493, as amended by Ex. Ord. No. 12907, Apr. 14, 1994, 59 F.R. 18291, which established the President's Committee of Advisors on Science and Technology, was revoked by Ex. Ord. No. 13226, §4(c), Sept. 30, 2001, 66 F.R. 50524, set out below.

EXECUTIVE ORDER NO. 12975

Ex. Ord. No. 12975, Oct. 3, 1995, 60 F.R. 52063, as amended by Ex. Ord. No. 13018, Sept. 16, 1996, 61 F.R. 49045; Ex. Ord. No. 13046, May 16, 1997, 62 F.R. 27685; Ex. Ord. No. 13137, Sept. 15, 1999, 64 F.R. 50733, which provided for the protection of human research subjects and created the National Bioethics Advisory Commission, was revoked by Ex. Ord. No. 13316, §3(b), Sept. 17, 2003, 68 F.R. 55256, eff. Sept. 30, 2003.

EX. ORD. NO. 13226. PRESIDENT'S COUNCIL OF ADVISORS ON SCIENCE AND TECHNOLOGY

Ex. Ord. No. 13226, Sept. 30, 2001, 66 F.R. 50523, as amended by Ex. Ord. No. 13305, May 28, 2003, 68 F.R. 32323, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App.), and in order to establish an advisory committee on science and technology, it is hereby ordered as follows:

SECTION 1. *Establishment.* There is established the President's Council of Advisors on Science and Technology (PCAST). The PCAST shall be composed of not more than 25 members, one of whom shall be a Federal Government official designated by the President (the "Official"), and 24 of whom shall be nonfederal members appointed by the President and have diverse perspectives and expertise in science, technology, and the impact of science and technology on the Nation. The Official shall co-chair PCAST with a nonfederal member designated by the President.

SEC. 2. *Functions.* (a) The PCAST shall advise the President, through the Official, on matters involving science and technology policy.

(b) In performance of its advisory duties, the PCAST shall assist the National Science and Technology Council (NSTC) in securing private sector involvement in its activities.

SEC. 3. *Administration.* (a) The heads of the executive departments and agencies shall, to the extent permitted by law, provide the PCAST with information concerning scientific and technological matters when requested by the PCAST co-chairs.

(b) In consultation with the Official, the PCAST is authorized to convene ad hoc working groups to provide preliminary nonbinding information and advice directly to the PCAST.

(c) Members shall serve without compensation for their work on the PCAST. However, members may be

allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the government service (5 U.S.C. 5701-5707).

(d) Any expenses of the PCAST shall be paid from the funds available for the expenses of the Office of Science and Technology Policy.

(e) The Office of Science and Technology Policy shall provide such administrative services as the PCAST may require, with the approval of the Official.

SEC. 4. *General.* (a) Notwithstanding any other Executive Order, the functions of the President with respect to the PCAST under the Federal Advisory Committee Act, as amended, except that of reporting to the Congress, shall be performed by the Office of Science and Technology Policy in accordance with the guidelines and procedures established by the Administrator of General Services.

(b) The PCAST shall terminate September 30, 2005, unless extended by the President prior to that date.

(c) Executive Order 12882 of November 23, 1993; Executive Order 12907 of April 14, 1994; and section 1(h) of Executive Order 13138 of September 30, 1999 [formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees], are hereby revoked.

GEORGE W. BUSH.

EX. ORD. NO. 13237. CREATION OF THE PRESIDENT'S
COUNCIL ON BIOETHICS

Ex. Ord. No. 13237, Nov. 28, 2001, 66 F.R. 59851, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

SECTION 1. *Establishment.* There is established the President's Council on Bioethics (the "Council").

SEC. 2. *Mission.*

(a) The Council shall advise the President on bioethical issues that may emerge as a consequence of advances in biomedical science and technology. In connection with its advisory role, the mission of the Council includes the following functions:

- (1) to undertake fundamental inquiry into the human and moral significance of developments in biomedical and behavioral science and technology;
- (2) to explore specific ethical and policy questions related to these developments;
- (3) to provide a forum for a national discussion of bioethical issues;
- (4) to facilitate a greater understanding of bioethical issues; and
- (5) to explore possibilities for useful international collaboration on bioethical issues.

(b) In support of its mission, the Council may study ethical issues connected with specific technological activities, such as embryo and stem cell research, assisted reproduction, cloning, uses of knowledge and techniques derived from human genetics or the neurosciences, and end of life issues. The Council may also study broader ethical and social issues not tied to a specific technology, such as questions regarding the protection of human subjects in research, the appropriate uses of biomedical technologies, the moral implications of biomedical technologies, and the consequences of limiting scientific research.

(c) The Council shall strive to develop a deep and comprehensive understanding of the issues that it considers. In pursuit of this goal, the Council shall be guided by the need to articulate fully the complex and often competing moral positions on any given issue, rather than by an overriding concern to find consensus. The Council may therefore choose to proceed by offering a variety of views on a particular issue, rather than attempt to reach a single consensus position.

(d) The Council shall not be responsible for the review and approval of specific projects or for devising and overseeing regulations for specific government agencies.

(e) In support of its mission, the Council may accept suggestions of issues for consideration from the heads of other Government agencies and other sources, as it deems appropriate.

(f) In establishing priorities for its activities, the Council shall consider the urgency and gravity of the particular issue; the need for policy guidance and public education on the particular issue; the connection of the bioethical issue to the goal of Federal advancement of science and technology; and the existence of another entity available to deliberate appropriately on the bioethical issue.

SEC. 3. *Membership.*

(a) The Council shall be composed of not more than 18 members appointed by the President from among individuals who are not officers or employees of the Federal Government. The Council shall include members drawn from the fields of science and medicine, law and government, philosophy and theology, and other areas of the humanities and social sciences.

(b) The President shall designate a member of the Council to serve as Chairperson.

(c) The term of office of a member shall be 2 years, and members shall be eligible for reappointment. Members may continue to serve after the expiration of their terms until the President appoints a successor. A member appointed to fill a vacancy shall serve only for the unexpired term of such vacancy.

SEC. 4. *Administration.*

(a) Upon the request of the Chairperson, the heads of executive departments and agencies shall, to the extent permitted by law, provide the Council with information it needs for purposes of carrying out its functions.

(b) The Council may conduct inquiries, hold hearings, and establish subcommittees, as necessary.

(c) The Council is authorized to conduct analyses and develop reports or other materials.

(d) Members of the Council may be compensated to the extent permitted by Federal law for their work on the Council. Members may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in Government service (5 U.S.C. 5701-5707), to the extent funds are available.

(e) To the extent permitted by law, and subject to the availability of appropriations, the Department of Health and Human Services shall provide the Council with administrative support and with such funds as may be necessary for the performance of the Council's functions.

(f) The Council shall have a staff headed by an Executive Director, who shall be appointed by the Secretary of Health and Human Services in consultation with the Chairperson. To the extent permitted by law, office space, analytical support, and additional staff support for the Council shall be provided by the Department of Health and Human Services or other executive branch departments and agencies as directed by the President.

SEC. 5. *General Provisions.*

(a) Insofar as the Federal Advisory Committee Act, as amended (5 U.S.C. App.), may apply to the Council, any functions of the President under that Act, except that of reporting to the Congress, shall be performed by the Secretary of Health and Human Services in accordance with the guidelines that have been issued by the Administrator of General Services.

(b) The Council shall terminate 2 years from the date of this order unless extended by the President prior to that date.

(c) This order is intended only to improve the internal management of the executive branch and it is not intended to create any right, benefit, trust, or responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any person.

GEORGE W. BUSH.

EXTENSION OF TERM OF PRESIDENT'S COUNCIL ON
BIOETHICS

Term of President's Council on Bioethics extended until Sept. 30, 2005, by Ex. Ord. No. 13316, Sept. 17, 2003,

68 F.R. 55255, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

STRENGTHENED PROTECTIONS FOR HUMAN SUBJECTS OF CLASSIFIED RESEARCH

Memorandum of President of the United States, Mar. 27, 1997, 62 F.R. 26369, provided:

Memorandum for the Secretary of Defense, the Attorney General, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Labor, the Secretary of Health and Human Services, the Secretary of Housing and Urban Development, the Secretary of Transportation, the Secretary of Energy, the Secretary of Education, the Secretary of Veterans Affairs, the Director of Central Intelligence, the Administrator of the Environmental Protection Agency, the Administrator of the Agency for International Development, the Administrator of the National Aeronautics and Space Administration, the Director of the National Science Foundation, the Chair of the Nuclear Regulatory Commission, the Director of the Office of Science and Technology Policy, [and] the Chair of the Consumer Product Safety Commission

I have worked hard to restore trust and ensure openness in government. This memorandum will further our progress toward these goals by strengthening the Federal Government's protections for human subjects of classified research.

In January 1994, I established the Advisory Committee on Human Radiation Experiments (the "Advisory Committee") to examine reports that the government had funded and conducted unethical human radiation experiments during the Cold War [see Ex. Ord. No. 12891, set out as a note under section 2210 of this title]. I directed the Advisory Committee to uncover the truth, recommend steps to right past wrongs, and propose ways to prevent unethical human subjects research from occurring in the future. In its October 1995 final report, the Advisory Committee recommended, among other things, that the government modify its policy governing classified research on human subjects ("Recommendations for Balancing National Security Interests and the Rights of the Public," Recommendation 15, Final Report, Advisory Committee on Human Radiation Experiments). This memorandum sets forth policy changes in response to those recommendations.

The Advisory Committee acknowledged that it is in the Nation's interest to continue to allow the government to conduct classified research involving human subjects where such research serves important national security interests. The Advisory Committee found, however, that classified human subjects research should be a "rare event" and that the "subjects of such research, as well as the interests of the public in openness in science and in government, deserve special protections." The Advisory Committee was concerned about "exceptions to informed consent requirements and the absence of any special review and approval process for human research that is to be classified." The Advisory Committee recommended that in all classified research projects the agency conducting or sponsoring the research meet the following requirements:

- obtain informed consent from all human subjects;
- inform subjects of the identity of the sponsoring agency;
- inform subjects that the project involves classified research;
- obtain approval by an "independent panel of non-governmental experts and citizen representatives, all with the necessary security clearances" that reviews scientific merit, risk-benefit tradeoffs, and ensures subjects have enough information to make informed decisions to give valid consent; and
- maintain permanent records of the panel's deliberations and consent procedures.

This memorandum implements these recommendations with some modifications. For classified research, it prohibits waiver of informed consent and requires researchers to disclose that the project is classified. For

all but minimal risk studies, it requires researchers to inform subjects of the sponsoring agency. It also requires permanent recordkeeping.

The memorandum also responds to the Advisory Committee's call for a special review process for classified human subjects research. It requires that institutional review boards for secret projects include a non-governmental member, and establishes an appeals process so that any member of a review board who believes a project should not go forward can appeal the boards' decision to approve it.

Finally, this memorandum sets forth additional steps to ensure that classified human research is rare. It requires the heads of Federal agencies to disclose annually the number of secret human research projects undertaken by their agency. It also prohibits any agency from conducting secret human research without first promulgating a final rule applying the Federal Policy for the Protection of Human Subjects, as modified in this memorandum, to the agency.

These steps, set forth in detail below, will preserve the government's ability to conduct any necessary classified research involving human subjects while ensuring adequate protection of research participants.

1. *Modifications to the Federal Policy for the Protection of Human Subjects as it Affects Classified Research.* All agencies that may conduct or support classified research that is subject to the 1991 Federal Policy for the Protection of Human Subjects ("Common Rule") (56 Fed. Reg. 28010-28018) shall promptly jointly publish in the Federal Register the following proposed revisions to the Common Rule as it affects classified research. The Office for Protection from Research Risks in the Department of Health and Human Services shall be the lead agency and, in consultation with the Office of Management and Budget, shall coordinate the joint rulemaking.

(a) The agencies shall jointly propose to prohibit waiver of informed consent for classified research.

(b) The agencies shall jointly propose to prohibit the use of expedited review procedures under the Common Rule for classified research.

(c) The joint proposal should request comment on whether all research exemptions under the Common Rule should be maintained for classified research.

(d) The agencies shall jointly propose to require that in classified research involving human subjects, two additional elements of information be provided to potential subjects when consent is sought from subjects:

(i) the identity of the sponsoring Federal agency. Exceptions are allowed if the head of the sponsoring agency determines that providing this information could compromise intelligence sources or methods and that the research involves no more than minimal risk to subjects. The determination about sources and methods is to be made in consultation with the Director of Central Intelligence and the Assistant to the President for National Security Affairs. The determination about risk is to be made in consultation with the Director of the White House Office of Science and Technology Policy.

(ii) a statement that the project is "classified" and an explanation of what classified means.

(e) The agencies shall jointly propose to modify the institutional review board ("IRB") approval process for classified human subjects research as follows:

(i) The Common Rule currently requires that each IRB "include at least one member who is not otherwise affiliated with the institution and who is not part of the immediate family of a person who is affiliated with the institution." For classified research, the agencies shall define "not otherwise affiliated with the institution," as a nongovernmental member with the appropriate security clearance.

(ii) Under the Common Rule, research projects are approved by the IRB if a "majority of those (IRB) members present at a meeting" approved the project. For classified research, the agencies shall propose to permit any member of the IRB who does not believe a specific project should be approved by the IRB to appeal a ma-

jectory decision to approve the project to the head of the sponsoring agency. If the agency head affirms the IRB's decision to approve the project, the dissenting IRB member may appeal the IRB's decisions to the Director of OSTP. The Director of OSTP shall review the IRB's decision and approve or disapprove the project, or, at the Director's discretion, convene an IRB made up of nongovernmental officials, each with the appropriate security clearances, to approve or disapprove the project.

(iii) IRBs for classified research shall determine whether potential subjects need access to classified information to make a valid informed consent decision.

2. *Final Rules.* Agencies shall, within 1 year, after considering any comments, promulgate final rules on the protection of human subjects of classified research.

3. *Agency Head Approval of Classified Research Projects.* Agencies may not conduct any classified human research project subject to the Common Rule unless the agency head has personally approved the specific project.

4. *Annual Public Disclosure of the Number of Classified Research Projects.* Each agency head shall inform the Director of OSTP by September 30 of each year of the number of classified research projects involving human subjects underway on that date, the number completed in the previous 12-month period, and the number of human subjects in each project. The Director of OSTP shall report the total number of classified research projects and participating subjects to the President and shall then report to the congressional armed services and intelligence committees and further shall publish the numbers in the Federal Register.

5. *Definitions.* For purposes of this memorandum, the terms "research" and "human subject" shall have the meaning set forth in the Common Rule. "Classified human research" means research involving "classified information" as defined in Executive Order 12958 [50 U.S.C. 435 note].

6. *No Classified Human Research Without Common Rule.* Beginning one year after the date of this memorandum, no agency shall conduct or support classified human research without having proposed and promulgated the Common Rule, including the changes set forth in this memorandum and any subsequent amendments.

7. *Judicial Review.* This memorandum is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any other persons.

8. The Secretary of Health and Human Services shall publish this memorandum in the Federal Register.

WILLIAM J. CLINTON.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6614 of this title.

§ 6602. Congressional declaration of policy

(a) Principles

In view of the foregoing, the Congress declares that the United States shall adhere to a national policy for science and technology which includes the following principles:

(1) The continuing development and implementation of strategies for determining and achieving the appropriate scope, level, direction, and extent of scientific and technological efforts based upon a continuous appraisal of the role of science and technology in achieving goals and formulating policies of the United States, and reflecting the views of State and local governments and representative public groups.

(2) The enlistment of science and technology to foster a healthy economy in which the directions of growth and innovation are compatible with the prudent and frugal use of re-

sources and with the preservation of a benign environment.

(3) The conduct of science and technology operations so as to serve domestic needs while promoting foreign policy objectives.

(4) The recruitment, education, training, retraining, and beneficial use of adequate numbers of scientists, engineers, and technologists, and the promotion by the Federal Government of the effective and efficient utilization in the national interest of the Nation's human resources in science, engineering, and technology.

(5) The development and maintenance of a solid base for science and technology in the United States, including: (A) strong participation of and cooperative relationships with State and local governments and the private sector; (B) the maintenance and strengthening of diversified scientific and technological capabilities in government, industry, and the universities, and the encouragement of independent initiatives based on such capabilities, together with elimination of needless barriers to scientific and technological innovation; (C) effective management and dissemination of scientific and technological information; (D) establishment of essential scientific, technical and industrial standards and measurement and test methods; and (E) promotion of increased public understanding of science and technology.

(6) The recognition that, as changing circumstances require periodic revision and adaptation of this subchapter, the Federal Government is responsible for identifying and interpreting the changes in those circumstances as they occur, and for effecting subsequent changes in this subchapter as appropriate.

(b) Implementation

To implement the policy enunciated in subsection (a) of this section, the Congress declares that:

(1) The Federal Government should maintain central policy planning elements in the executive branch which assist Federal agencies in (A) identifying public problems and objectives, (B) mobilizing scientific and technological resources for essential national programs, (C) securing appropriate funding for programs so identified, (D) anticipating future concerns to which science and technology can contribute and devising strategies for the conduct of science and technology for such purposes, (E) reviewing systematically Federal science policy and programs and recommending legislative amendment thereof when needed. Such elements should include an advisory mechanism within the Executive Office of the President so that the Chief Executive may have available independent, expert judgment and assistance on policy matters which require accurate assessments of the complex scientific and technological features involved.

(2) It is a responsibility of the Federal Government to promote prompt, effective, reliable, and systematic transfer of scientific and technological information by such appropriate methods as programs conducted by nongovernmental organizations, including industrial

groups and technical societies. In particular, it is recognized as a responsibility of the Federal Government not only to coordinate and unify its own science and technology information systems, but to facilitate the close coupling of institutional scientific research with commercial application of the useful findings of science.

(3) It is further an appropriate Federal function to support scientific and technological efforts which are expected to provide results beneficial to the public but which the private sector may be unwilling or unable to support.

(4) Scientific and technological activities which may be properly supported exclusively by the Federal Government should be distinguished from those in which interests are shared with State and local governments and the private sector. Among these entities, cooperative relationships should be established which encourage the appropriate sharing of science and technology decisionmaking, funding support, and program planning and execution.

(5) The Federal Government should support and utilize engineering and its various disciplines and make maximum use of the engineering community, whenever appropriate, as an essential element in the Federal policy-making process.

(6) Comprehensive legislative support for the national science and technology effort requires that the Congress be regularly informed of the condition, health and vitality, and funding requirements of science and technology, the relation of science and technology to changing national goals, and the need for legislative modification of the Federal endeavor and structure at all levels as it relates to science and technology.

(c) Procedures

The Congress declares that, in order to expedite and facilitate the implementation of the policy enunciated in subsection (a) of this section, the following coordinate procedures are of paramount importance:

(1) Federal procurement policy should encourage the use of science and technology to foster frugal use of materials, energy, and appropriated funds; to assure quality environment; and to enhance product performance.

(2) Explicit criteria, including cost-benefit principles where practicable, should be developed to identify the kinds of applied research and technology programs that are appropriate for Federal funding support and to determine the extent of such support. Particular attention should be given to scientific and technological problems and opportunities offering promise of social advantage that are so long range, geographically widespread, or economically diffused that the Federal Government constitutes the appropriate source for undertaking their support.

(3) Federal promotion of science and technology should emphasize quality of research, recognize the singular importance of stability in scientific and technological institutions, and for urgent tasks, seek to assure timeliness of results. With particular reference to Fed-

eral support for basic research, funds should be allocated to encourage education in needed disciplines, to provide a base of scientific knowledge from which future essential technological development can be launched, and to add to the cultural heritage of the Nation.

(4) Federal patent policies should be developed, based on uniform principles, which have as their objective the preservation of incentives for technological innovation and the application of procedures which will continue to assure the full use of beneficial technology to serve the public.

(5) Closer relationships should be encouraged among practitioners of different scientific and technological disciplines, including the physical, social, and biomedical fields.

(6) Federal departments, agencies, and instrumentalities should assure efficient management of laboratory facilities and equipment in their custody, including acquisition of effective equipment, disposal of inferior and obsolete properties, and cross-servicing to maximize the productivity of costly property of all kinds. Disposal policies should include attention to possibilities for further productive use.

(7) The full use of the contributions of science and technology to support State and local government goals should be encouraged.

(8) Formal recognition should be accorded those persons whose scientific and technological achievements have contributed significantly to the national welfare.

(9) The Federal Government should support applied scientific research, when appropriate, in proportion to the probability of its usefulness, insofar as this probability can be determined; but while maximizing the beneficial consequences of technology, the Government should act to minimize foreseeable injurious consequences.

(10) Federal departments, agencies, and instrumentalities should establish procedures to insure among them the systematic interchange of scientific data and technological findings developed under their programs.

(Pub. L. 94-282, title I, §102, May 11, 1976, 90 Stat. 460.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6614 of this title.

SUBCHAPTER II—OFFICE OF SCIENCE AND TECHNOLOGY POLICY

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 6632, 6671 of this title.

§ 6611. Establishment of Office

There is established in the Executive Office of the President an Office of Science and Technology Policy (hereinafter referred to in this subchapter as the "Office").

(Pub. L. 94-282, title II, §202, May 11, 1976, 90 Stat. 463.)

SHORT TITLE

For short title of this subchapter as the "Presidential Science and Technology Advisory Organization Act of

1976", see section 201 of Pub. L. 94-282, set out as a Short Title note under section 6601 of this title.

HIGH-RESOLUTION INFORMATION SYSTEM ADVISORY
BOARD

Pub. L. 102-245, title V, §501, Feb. 14, 1992, 106 Stat. 22, authorized the Director of the Office of Science and Technology Policy to establish within that office a High-Resolution Information Systems Advisory Board to monitor and, as appropriate, foster the development and competitiveness of United States-based high-resolution information systems industries, further provided that "high-resolution information systems" means equipment and techniques required to create, store, recover, and play back high-resolution images and accompanying sound, further provided for functions of the Board, including provision of guidance and advice relating to establishment of such industries as well as transfer of Federal technologies to the private sector, further provided for membership and procedures of the Board, including submission of annual report of its activities to the President and Congress, and further provided for limitation on functions of Board and appropriations through fiscal year 1993.

§ 6612. Director; Associate Directors

There shall be at the head of the Office a Director who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at the rate provided for level II of the Executive Schedule in section 5313 of title 5. The President is authorized to appoint not more than four Associate Directors, by and with the advice and consent of the Senate, who shall be compensated at a rate not to exceed that provided for level III of the Executive Schedule in section 5314 of such title. Associate Directors shall perform such functions as the Director may prescribe.

(Pub. L. 94-282, title II, §203, May 11, 1976, 90 Stat. 463.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6632 of this title.

§ 6613. Functions of the Director

(a) The primary function of the Director is to provide, within the Executive Office of the President, advice on the scientific, engineering, and technological aspects of issues that require attention at the highest levels of Government.

(b) In addition to such other functions and activities as the President may assign, the Director shall—

(1) advise the President of scientific and technological considerations involved in areas of national concern including, but not limited to, the economy, national security, homeland security, health, foreign relations, the environment, and the technological recovery and use of resources;

(2) evaluate the scale, quality, and effectiveness of the Federal effort in science and technology and advise on appropriate actions;

(3) advise the President on scientific and technological considerations with regard to Federal budgets, assist the Office of Management and Budget with an annual review and analysis of funding proposed for research and development in budgets of all Federal agencies, and aid the Office of Management and Budget and the agencies throughout the budget development process; and

(4) assist the President in providing general leadership and coordination of the research and development programs of the Federal Government.

(Pub. L. 94-282, title II, §204, May 11, 1976, 90 Stat. 463; Pub. L. 107-296, title XVII, §1712(1), Nov. 25, 2002, 116 Stat. 2320.)

AMENDMENTS

2002—Subsec. (b)(1). Pub. L. 107-296 inserted "homeland security," after "national security,".

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107-296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

§ 6614. Policy planning; analysis; advice; establishment of advisory panel

(a) The Office shall serve as a source of scientific and technological analysis and judgment for the President with respect to major policies, plans, and programs of the Federal Government. In carrying out the provisions of this section, the Director shall—

(1) seek to define coherent approaches for applying science and technology to critical and emerging national and international problems and for promoting coordination of the scientific and technological responsibilities and programs of the Federal departments and agencies in the resolution of such problems;

(2) assist and advise the President in the preparation of the Science and Technology Report, in accordance with section 6618¹ of this title;

(3) gather timely and authoritative information concerning significant developments and trends in science, technology, and in national priorities, both current and prospective, to analyze and interpret such information for the purpose of determining whether such developments and trends are likely to affect achievement of the priority goals of the Nation as set forth in section 6601(b) of this title;

(4) encourage the development and maintenance of an adequate data base for human resources in science, engineering, and technology, including the development of appropriate models to forecast future manpower requirements, and assess the impact of major governmental and public programs on human resources and their utilization;

(5) initiate studies and analyses, including systems analyses and technology assessments, of alternatives available for the resolution of critical and emerging national and international problems amendable to the contributions of science and technology and, insofar as possible, determine and compare probable costs, benefits, and impacts of such alternatives;

(6) advise the President on the extent to which the various scientific and technological programs, policies, and activities of the Federal Government are likely to affect the achievement of the priority goals of the Nation as set forth in section 6601(b) of this title;

¹ See References in Text note below.

(7) provide the President with periodic reviews of Federal statutes and administrative regulations of the various departments and agencies which affect research and development activities, both internally and in relation to the private sector, or which may interfere with desirable technological innovation, together with recommendations for their elimination, reform, or updating as appropriate;

(8) develop, review, revise, and recommend criteria for determining scientific and technological activities warranting Federal support, and recommend Federal policies designed to advance (A) the development and maintenance of broadly based scientific and technological capabilities, including human resources, at all levels of government, academia, and industry, and (B) the effective application of such capabilities to national needs;

(9) assess and advise on policies for international cooperation in science and technology which will advance the national and international objectives of the United States;

(10) identify and assess emerging and future areas in which science and technology can be used effectively in addressing national and international problems;

(11) report at least once each year to the President and the Congress on the overall activities and accomplishments of the Office, pursuant to section 6615 of this title;

(12) periodically survey the nature and needs of national science and technology policy and make recommendations to the President, for review and transmission to the Congress, for the timely and appropriate revision of such policy in accordance with section 6602(a)(6) of this title; and

(13) perform such other duties and functions and make and furnish such studies and reports thereon, and recommendations with respect to matters of policy and legislation as the President may request.

(b)(1) The Director shall establish an Intergovernmental Science, Engineering, and Technology Advisory Panel (hereinafter referred to as the "Panel"), whose purpose shall be to (A) identify and define civilian problems at State, regional, and local levels which science, engineering, and technology may assist in resolving or ameliorating; (B) recommend priorities for addressing such problems; and (C) advise and assist the Director in identifying and fostering policies to facilitate the transfer and utilization of research and development results so as to maximize their application to civilian needs.

(2) The Panel shall be composed of (A) the Director of the Office, or his representative; (B) at least ten members representing the interests of the States, appointed by the Director of the Office after consultation with State officials; and (C) the Director of the National Science Foundation, or his representative.

(3)(A) The Director of the Office, or his representative, shall serve as Chairman of the Panel.

(B) The Panel shall perform such functions as the Chairman may prescribe, and shall meet at the call of the Chairman.

(4) Each member of the Panel shall, while serving on business of the Panel, be entitled to

receive compensation at a rate not to exceed the daily rate prescribed for GS-18 of the General Schedule under section 5332 of title 5, including traveltime, and, while so serving away from his home or regular place of business, he may be allowed travel expenses, including per diem in lieu of subsistence in the same manner as the expenses authorized by section 5703(b)² of title 5 for persons in government service employed intermittently.

(Pub. L. 94-282, title II, §205, May 11, 1976, 90 Stat. 464; Pub. L. 97-375, title II, §215(2), (4), Dec. 21, 1982, 96 Stat. 1826, 1827.)

REFERENCES IN TEXT

Section 6618 of this title, referred to in subsec. (a)(2), was repealed by Pub. L. 97-375, title II, §215(1), Dec. 21, 1982, 96 Stat. 1826. See section 6615 of this title.

Section 5703 of title 5, referred to in subsec. (b)(4), was amended generally by Pub. L. 94-22, §4, May 19, 1975, 89 Stat. 85, and, as so amended, does not contain a subsec. (b).

AMENDMENTS

1982—Subsec. (a)(11). Pub. L. 97-375, §215(2), (4), inserted "and the Congress" after "President", and substituted "section 6615" for "section 6618".

TRANSFER OF FUNCTIONS

Functions vested in Office of Science and Technology Policy and Director thereof pursuant to subsec. (a)(2) of this section and sections 6615 and 6618 of this title transferred to Director of National Science Foundation by section 5A of Reorg. Plan No. 1 of 1977, set out in the Appendix to Title 5, Government Organization and Employees, effective Feb. 26, 1978, as provided by section 1(a) of Ex. Ord. No. 12039, Feb. 24, 1978, 43 F.R. 8095, set out under section 6601 of this title.

ABOLITION OF INTERGOVERNMENTAL SCIENCE, ENGINEERING, AND TECHNOLOGY ADVISORY PANEL; TRANSFER OF FUNCTIONS

The Intergovernmental Science, Engineering, and Technology Advisory Panel, established pursuant to this section, was abolished and its functions transferred to the President by Reorg. Plan No. 1 of 1977, §5A, 42 F.R. 56101, 91 Stat. 1634, set out in the Appendix to Title 5, effective Feb. 26, 1978, as provided by section 1(b) of Ex. Ord. No. 12039, Feb. 24, 1978, 43 F.R. 8095, set out under section 6601 of this title.

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

COMPREHENSIVE ACCOUNTABILITY STUDY FOR FEDERALLY-FUNDED RESEARCH

Pub. L. 105-276, title IV, §430, Oct. 21, 1998, 112 Stat. 2512, provided that:

"(a) STUDY.—The Director of the Office of Science and Technology Policy, in consultation with the Director of the Office of Management and Budget, may enter into an agreement with the National Academy of Sciences for the Academy to conduct a comprehensive study to develop methods for evaluating federally-funded research and development programs. This study shall—

"(1) recommend processes to determine an acceptable level of success for federally-funded research and development programs by—

² See References in Text note below.

“(A) describing the research process in the various scientific and engineering disciplines;

“(B) describing in the different sciences what measures and what criteria each community uses to evaluate the success or failure of a program, and on what time scales these measures are considered reliable—both for exploratory long-range work and for short-range goals; and

“(C) recommending how these measures may be adapted for use by the Federal Government to evaluate federally-funded research and development programs;

“(2) assess the extent to which agencies incorporate independent merit-based evaluation into the formulation of the strategic plans of funding agencies and if the quantity or quality of this type of input is unsatisfactory;

“(3) recommend mechanisms for identifying federally-funded research and development programs which are unsuccessful or unproductive;

“(4) evaluate the extent to which independent, merit-based evaluation of federally-funded research and development programs and projects achieves the goal of eliminating unsuccessful or unproductive programs and projects; and

“(5) investigate and report on the validity of using quantitative performance goals for aspects of programs which relate to administrative management of the program and for which such goals would be appropriate, including aspects related to—

“(A) administrative burden on contractors and recipients of financial assistance awards;

“(B) administrative burdens on external participants in independent, merit-based evaluations;

“(C) cost and schedule control for construction projects funded by the program;

“(D) the ratio of overhead costs of the program relative to the amounts expended through the program for equipment and direct funding of research; and

“(E) the timeliness of program responses to requests for funding, participation, or equipment use.

“(b) INDEPENDENT MERIT-BASED EVALUATION DEFINED.—The term ‘independent merit-based evaluation’ means review of the scientific or technical quality of research or development, conducted by experts who are chosen for their knowledge of scientific and technical fields relevant to the evaluation and who—

“(1) in the case of the review of a program activity, do not derive long-term support from the program activity; or

“(2) in the case of the review of a project proposal, are not seeking funds in competition with the proposal.”

COMPUTER NETWORK STUDY

Pub. L. 99-383, §10, Aug. 21, 1986, 100 Stat. 816, provided that:

“(a) The Office of Science and Technology Policy (hereinafter referred to as the ‘Office’) shall undertake a study of critical problems and current and future options regarding communications networks for research computers, including supercomputers, at universities and Federal research facilities in the United States. The study shall include an analysis of—

“(1) the networking needs of the Nation’s academic and Federal research computer programs, including supercomputer programs, over the period which is fifteen years after the date of enactment of this Act [Aug. 21, 1986], including requirements in terms of volume of data, reliability of transmission, software compatibility, graphics capability, and transmission security;

“(2) the benefits and opportunities that an improved computer network would offer for electronic mail, file transfer, and remote access and communications for universities and Federal research facilities in the United States; and

“(3) the networking options available for linking academic and other federally supported research

computers, including supercomputers, with a particular emphasis on the advantages and disadvantages, if any, of fiber optic systems.

“(b) The Office shall submit to the Congress—

“(1) within one year after the date of enactment of this Act [Aug. 21, 1986], a report on findings from the study undertaken pursuant to subsection (a) with respect to needs and options regarding communications networks for university and Federal research supercomputers within the United States; and

“(2) within two years after the date of enactment of this Act [Aug. 21, 1986], a report on findings from the study undertaken pursuant to subsection (a) with respect to needs and options regarding communications networks for all research computers at universities and Federal research facilities in the United States.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6617 of this title.

§ 6615. Science and technology report and outlook

(a) Contents of report

Notwithstanding the provisions of Reorganization Plan Number 1 of 1977, the Director shall render to the President for submission to the Congress no later than January 15 of each odd numbered year, a science and technology report and outlook (hereinafter referred to as the ‘report’) which shall be prepared under the guidance of the Office and with the cooperation of the Director of the National Science Foundation, with appropriate assistance from other Federal departments and agencies as the Office or the Director of the National Science Foundation deems necessary. The report shall include—

(1) a statement of the President’s current policy for the maintenance of the Nation’s leadership in science and technology;

(2) a review of developments of national significance in science and technology;

(3) a description of major Federal decisions and actions related to science and technology that have occurred since the previous such report;

(4) a discussion of currently important national issues in which scientific or technical considerations are of major significance;

(5) a forecast of emerging issues of national significance resulting from, or identified through, scientific research or in which scientific or technical considerations are of major importance; and

(6) a discussion of opportunities for, and constraints on, the use of new and existing scientific and technological information, capabilities, and resources, including manpower resources, to make significant contributions to the achievement of Federal program objectives and national goals.

(b) Printing; availability to public

The Office shall insure that the report, in the form approved by the President, is printed and made available as a public document.

(Pub. L. 94-282, title II, §206, May 11, 1976, 90 Stat. 466; Pub. L. 97-375, title II, §215(3), Dec. 21, 1982, 96 Stat. 1826.)

REFERENCES IN TEXT

Reorganization Plan Number 1 of 1977, referred to in subsec. (a), is Reorg. Plan No. 1 of 1977, 42 F.R. 56101, 91

Stat. 1633, which is set out in the Appendix to Title 5, Government Organization and Employees.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 6618 of this title, Pub. L. 94-282, title II, §209, May 11, 1976, 90 Stat. 468, prior to repeal by Pub. L. 97-375, title II, §215(1), Dec. 21, 1982, 96 Stat. 1826.

AMENDMENTS

1982—Pub. L. 97-375 substituted provisions requiring the President to submit to Congress in odd numbered years a science and technology report and outlook for provisions which required the Office of Science and Technology Policy to create a five-year science and technology outlook, dealing with current and emerging problems and with opportunities for and constraints on new and existing capabilities, to be revised annually, composed with the consultation of officials of departments and agencies having related programs and responsibilities, and with officials of the Office of Management and Budget and other appropriate elements of the Executive Office of the President.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (a) of this section relating to submission of biennial report to Congress, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 16th item on page 42 of House Document No. 103-7.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6615 of this title.

§ 6616. Additional functions of Director

(a) Service as Chairman of Federal Coordinating Council for Science, Engineering, and Technology and as member of Domestic Council

The Director shall, in addition to the other duties and functions set forth in this subchapter—

- (1) serve as Chairman of the Federal Coordinating Council for Science, Engineering, and Technology established under subchapter IV of this chapter; and
- (2) serve as a member of the Domestic Council.

(b) Advice to National Security Council

For the purpose of assuring the optimum contribution of science and technology to the national security, the Director, at the request of the National Security Council, shall advise the National Security Council in such matters concerning science and technology as relate to national security.

(c) Officers and employees; services; contracts; payments

In carrying out his functions under this chapter, the Director is authorized to—

- (1) appoint such officers and employees as he may deem necessary to perform the functions now or hereafter vested in him and to prescribe their duties;
- (2) obtain services as authorized by section 3109 of title 5 at rates not to exceed the rate prescribed for grade GS-18 of the General Schedule by section 5332 of title 5; and
- (3) enter into contracts and other arrangements for studies, analyses, and other services with public agencies and with private persons, organizations, or institutions, and make such

payments as he deems necessary to carry out the provisions of this chapter without legal consideration, without performance bonds, and without regard to section 5 of title 41.

(Pub. L. 94-282, title II, §207, May 11, 1976, 90 Stat. 466.)

ABOLITION OF THE FEDERAL COORDINATING COUNCIL FOR SCIENCE, ENGINEERING, AND TECHNOLOGY; TRANSFER OF FUNCTIONS

See note set out under section 6651 of this title.

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

§ 6617. Coordination with other organizations

(a) Consultation and cooperation with Federal departments and agencies; utilization of consultants; establishment of advisory panels; consultation with State and local agencies, professional groups, and representatives of industry, etc.; hearings; utilization of services, personnel, equipment, etc., of public and private agencies and organizations, and individuals

In exercising his functions under this chapter, the Director shall—

(1) work in close consultation and cooperation with the Domestic Council, the National Security Council, the Office of Homeland Security, the Council on Environmental Quality, the Council of Economic Advisers, the Office of Management and Budget, the National Science Board, and the Federal departments and agencies;

(2) utilize the services of consultants, establish such advisory panels, and, to the extent practicable, consult with State and local governmental agencies, with appropriate professional groups, and with such representatives of industry, the universities, agriculture, labor, consumers, conservation organizations, and such other public interest groups, organizations, and individuals as he deems advisable;

(3) hold such hearings in various parts of the Nation as he deems necessary, to determine the views of the agencies, groups, and organizations referred to in paragraph (2) of this subsection and of the general public, concerning national needs and trends in science and technology; and

(4) utilize with their consent to the fullest extent possible the services, personnel, equipment, facilities, and information (including statistical information) of public and private agencies and organizations, and individuals, in order to avoid duplication of effort and expense, and may transfer funds made available pursuant to this chapter to other Federal agencies as reimbursement for the utilization of such personnel, services, facilities, equipment, and information.

(b) Information from Executive departments, agencies, and instrumentalities

Each department, agency, and instrumentality of the Executive Branch of the Government, including any independent agency, is authorized to furnish the Director such information as the Director deems necessary to carry out his functions under this chapter.

(c) Assistance from Administrator of National Aeronautics and Space Administration

Upon request, the Administrator of the National Aeronautics and Space Administration is authorized to assist the Director with respect to carrying out his activities conducted under paragraph (5) of section 6614(a) of this title.

(Pub. L. 94-282, title II, §208, May 11, 1976, 90 Stat. 467; Pub. L. 107-296, title XVII, §1712(2), Nov. 25, 2002, 116 Stat. 2320.)

AMENDMENTS

2002—Subsec. (a)(1). Pub. L. 107-296 inserted “the Office of Homeland Security,” after “the National Security Council,”.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107-296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

§ 6618. Major science and technology proposals

The Director shall identify and provide an annual report to Congress on each major multinational science and technology project, in which the United States is not a participant, which has a total estimated cost greater than \$1,000,000,000.

(Pub. L. 94-282, title II, §209, as added Pub. L. 102-245, title V, §502, Feb. 14, 1992, 106 Stat. 24.)

PRIOR PROVISIONS

A prior section 6618, Pub. L. 94-282, title II, §209, May 11, 1976, 90 Stat. 468, directed President to transmit annually to Congress a report on science and technology to be prepared by Office of Science and Technology Policy, and directed Director of Office to make the report available as a public document, prior to repeal by Pub. L. 97-375, title II, §215(1), Dec. 21, 1982, 96 Stat. 1826. See section 6615 of this title.

SUBCHAPTER III—PRESIDENT’S COMMITTEE ON SCIENCE AND TECHNOLOGY

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 6671 of this title.

§ 6631. Establishment of Committee

The President shall establish within the Executive Office of the President a President’s Committee on Science and Technology (hereinafter referred to as the “Committee”).

(Pub. L. 94-282, title III, §301, May 11, 1976, 90 Stat. 468.)

ABOLITION OF PRESIDENT’S COMMITTEE ON SCIENCE AND TECHNOLOGY; TRANSFER OF FUNCTIONS

The President’s Committee on Science and Technology, established pursuant to this subchapter, was abolished and its functions transferred to the President, by Reorg. Plan No. 1 of 1977, §5A, 42 F.R. 56101, 91

Stat. 1634, set out in the Appendix to Title 5, Government Organization and Employees, effective Feb. 26, 1978, as provided by section 1(b) of Ex. Ord. No. 12039, Feb. 24, 1978, 43 F.R. 8095, set out under section 6601 of this title.

§ 6632. Membership of Committee

(a) Composition; appointment

The Committee shall consist of—

(1) the Director of the Office of Science and Technology Policy established under subchapter II of this chapter; and

(2) not less than eight nor more than fourteen other members appointed by the President not more than sixty days after the Director has assumed office (as provided in section 6612 of this title).

(b) Qualifications

Members of the Committee appointed by the President pursuant to subsection (a)(2) of this section shall—

(1) be qualified and distinguished in one or more of the following areas: science, engineering, technology, information dissemination, education, management, labor, or public affairs;

(2) be capable of critically assessing the policies, priorities, programs, and activities of the Nation, with respect to the findings, policies, and purposes set forth in subchapter I of this chapter; and

(3) shall collectively constitute a balanced composition with respect to (A) fields of science and engineering, (B) academic, industrial, and government experience, and (C) business, labor, consumer, and public interest points of view.

(c) Chairman; Vice Chairman

The President shall appoint one member of the Committee to serve as Chairman and another member to serve as Vice Chairman for such periods as the President may determine.

(d) Compensation

Each member of the Committee who is not an officer of the Federal Government shall, while serving on business of the Committee, be entitled to receive compensation at a rate not to exceed the daily rate prescribed for GS-18 of the General Schedule under section 5332 of title 5, including traveltime, and while so serving away from his home or regular place of business he may be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as the expenses authorized by section 5703(b)¹ of title 5 for persons in Government service employed intermittently.

(Pub. L. 94-282, title III, §302, May 11, 1976, 90 Stat. 468.)

REFERENCES IN TEXT

Section 5703 of title 5, referred to in subsec. (d), was amended generally by Pub. L. 94-22, §4, May 19, 1975, 89 Stat. 95, and, as so amended, does not contain a subsec. (b).

ABOLITION OF PRESIDENT’S COMMITTEE ON SCIENCE AND TECHNOLOGY; TRANSFER OF FUNCTIONS

See note set out under section 6631 of this title.

¹ See References in Text note below.

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6633 of this title.

§ 6633. Federal science, engineering, and technology survey; reports

(a) The Committee shall survey, examine, and analyze the overall context of the Federal science, engineering, and technology effort including missions, goals, personnel, funding, organization, facilities, and activities in general, taking adequate account of the interests of individuals and groups that may be affected by Federal scientific, engineering, and technical programs, including, as appropriate, consultation with such individuals and groups. In carrying out its functions under this section, the Committee shall, among other things, consider needs for—

- (1) organizational reform, including institutional realignment designed to place Federal agencies whose missions are primarily or solely devoted to scientific and technological research and development, and those agencies primarily or solely concerned with fuels, energy, and materials, within a single cabinet-level department;
- (2) improvements in existing systems for handling scientific and technical information on a Government-wide basis, including consideration of the appropriate role to be played by the private sector in the dissemination of such information;
- (3) improved technology assessment in the executive branch of the Federal Government;
- (4) improved methods for effecting technology innovation, transfer, and use;
- (5) stimulating more effective Federal-State and Federal-industry liaison and cooperation in science and technology, including the formation of Federal-State mechanisms for the mutual pursuit of this goal;
- (6) reduction and simplification of Federal regulations and administrative practices and procedures which may have the effect of retarding technological innovation or opportunities for its utilization;
- (7) a broader base for support of basic research;
- (8) ways of strengthening the Nation's academic institutions' capabilities for research and education in science and technology;
- (9) ways and means of effectively integrating scientific and technological factors into our national and international policies;
- (10) technology designed to meet community and individual needs;
- (11) maintenance of adequate scientific and technological manpower with regard to both quality and quantity;
- (12) improved systems for planning and analysis of the Federal science and technology programs; and

(13) long-range study, analysis, and planning in regard to the application of science and technology to major national problems or concerns.

(b)(1) Within twelve months from the time the Committee is activated in accordance with section 6632(a) of this title, the Committee shall issue an interim report of its activities and operations to date. Not more than twenty-four months from the time the Committee is activated, the Committee shall submit a final report of its activities, findings, conclusions, and recommendations, including such supporting data and material as may be necessary, to the President.

(2) The President, within sixty days of receipt thereof, shall transmit each such report to each House of Congress together with such comments, observations, and recommendations thereon as he deems appropriate.

(Pub. L. 94-282, title III, §303, May 11, 1976, 90 Stat. 469.)

ABOLITION OF PRESIDENT'S COMMITTEE ON SCIENCE AND TECHNOLOGY; TRANSFER OF FUNCTIONS

See note set out under section 6631 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6634, 6635 of this title.

§ 6634. Continuation of Committee

(a) Ninety days after submission of the final report prepared under section 6633 of this title, the Committee shall cease to exist, unless the President, before the expiration of the ninety-day period, makes a determination that it is advantageous for the Committee to continue in being.

(b) If the President determines that it is advantageous for the Committee to continue in being, (1) the Committee shall exercise such functions as are prescribed by the President; and (2) the members of the Committee shall serve at the pleasure of the President.

(Pub. L. 94-282, title III, §304, May 11, 1976, 90 Stat. 470.)

ABOLITION OF PRESIDENT'S COMMITTEE ON SCIENCE AND TECHNOLOGY; TRANSFER OF FUNCTIONS

See note set out under section 6631 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6635 of this title.

§ 6635. Staff and consultant support

(a) In the performance of its functions under sections 6633 and 6634 of this title, the Committee is authorized—

- (1) to select, appoint, employ, and fix the compensation of such specialists and other experts as may be necessary for the carrying out of its duties and functions, and to select, appoint, and employ, subject to the civil service laws, such other officers and employees as may be necessary for carrying out its duties and functions; and
- (2) to provide for participation of such civilian and military personnel as may be detailed to the Committee pursuant to subsection (b)

of this section for carrying out the functions of the Committee.

(b) Upon request of the Committee, the head of any Federal department, agency, or instrumentality is authorized (1) to furnish to the Committee such information as may be necessary for carrying out its functions and as may be available to or procurable by such department, agency, or instrumentality, and (2) to detail to temporary duty with the Committee on a reimbursable basis such personnel within his administrative jurisdiction as it may need or believe to be useful for carrying out its functions. Each such detail shall be without loss of seniority, pay, or other employee status, to civilian employees so detailed, and without loss of status, rank, office, or grade, or of any emolument, perquisite, right, privilege, or benefit incident thereto to military personnel so detailed. Each such detail shall be made pursuant to an agreement between the Chairman and the head of the relevant department, agency, or instrumentality, and shall be in accordance with the provisions of subchapter III of chapter 33, title 5.

(Pub. L. 94-282, title III, §305, May 11, 1976, 90 Stat. 470.)

REFERENCES IN TEXT

The civil service laws, referred to in subsec. (a)(1), are set out in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

ABOLITION OF PRESIDENT'S COMMITTEE ON SCIENCE AND TECHNOLOGY; TRANSFER OF FUNCTIONS

See note set out under section 6631 of this title.

SUBCHAPTER IV—FEDERAL COORDINATING COUNCIL FOR SCIENCE, ENGINEERING, AND TECHNOLOGY

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 6616 of this title.

§ 6651. Establishment, membership, and functions of Council

(a) Designation

There is established the Federal Coordinating Council for Science, Engineering, and Technology (hereinafter referred to as the "Council").

(b) Composition

The Council shall be composed of the Director of the Office of Science and Technology Policy and one representative of each of the following Federal agencies: Department of Agriculture, Department of Commerce, Department of Defense, Department of Health and Human Services, Department of Housing and Urban Development, Department of the Interior, Department of State, Department of Transportation, Department of Veterans Affairs, National Aeronautics and Space Administration, National Science Foundation, Environmental Protection Agency, and Department of Energy. Each such representative shall be an official of policy rank designated by the head of the Federal agency concerned.

(c) Chairman

The Director of the Office of Science and Technology Policy shall serve as Chairman of the

Council. The Chairman may designate another member of the Council to act temporarily in the Chairman's absence as Chairman.

(d) Participation of unnamed Federal agencies in meetings; invitations to attend meetings

The Chairman may (1) request the head of any Federal agency not named in subsection (b) of this section to designate a representative to participate in meetings or parts of meetings of the Council concerned with matters of substantial interest to such agency, and (2) invite other persons to attend meetings of the Council.

(e) Consideration of problems and developments affecting more than one Federal agency; recommendations

The Council shall consider problems and developments in the fields of science, engineering, and technology and related activities affecting more than one Federal agency, and shall recommend policies and other measures designed to—

(1) provide more effective planning and administration of Federal scientific, engineering, and technological programs,

(2) identify research needs including areas requiring additional emphasis,

(3) achieve more effective utilization of the scientific, engineering, and technological resources and facilities of Federal agencies, including the elimination of unwarranted duplication, and

(4) further international cooperation in science, engineering, and technology.

(f) Other advisory duties

The Council shall perform such other related advisory duties as shall be assigned by the President or by the Chairman.

(g) Assistance to Council by agency represented thereon

For the purpose of carrying out the provisions of this section, each Federal agency represented on the Council shall furnish necessary assistance to the Council. Such assistance may include—

(1) detailing employees to the Council to perform such functions, consistent with the purposes of this section, as the Chairman may assign to them, and

(2) undertaking, upon request of the Chairman, such special studies for the Council as come within the functions herein assigned.

(h) Establishment of subcommittees and panels

For the purpose of conducting studies and making reports as directed by the Chairman, standing subcommittees and panels of the Council may be established.

(Pub. L. 94-282, title IV, §401, May 11, 1976, 90 Stat. 471; Pub. L. 95-91, title III, §301(a), title VII, §§703, 707, Aug. 4, 1977, 91 Stat. 577, 606, 607; Pub. L. 95-113, title XIV, §1406, Sept. 29, 1977, 91 Stat. 986; Pub. L. 97-98, title XIV, §1406(a), (b), Dec. 22, 1981, 95 Stat. 1298; Pub. L. 102-54, §13(q)(11), June 13, 1991, 105 Stat. 281; Pub. L. 104-127, title VIII, §851, Apr. 4, 1996, 110 Stat. 1171.)

AMENDMENTS

1996—Subsec. (h). Pub. L. 104-127 struck out after first sentence "Among such standing subcommittees and

panels of the Council shall be the Subcommittee on Food, Agricultural, and Forestry Research. This subcommittee shall review Federal research and development programs relevant to domestic and world food and fiber production and distribution, promote planning and coordination of this research in the Federal Government, and recommend policies and other measures concerning the food and agricultural sciences for the consideration of the Council. The subcommittee shall include, but not be limited to, representatives of each of the following departments or agencies; the Department of Agriculture, the Department of State, the Department of Defense, the Department of the Interior, the Department of Health and Human Services, the National Oceanic and Atmospheric Administration, the Department of Energy, the National Science Foundation, the Environmental Protection Agency, and the Tennessee Valley Authority. The principal representatives of the Department of Agriculture shall serve as the chairman of the subcommittee."

1991—Subsec. (b). Pub. L. 102-54 substituted "Department of Veterans Affairs" for "Veterans' Administration".

1981—Subsec. (h). Pub. L. 97-98 substituted "Subcommittee on Food, Agricultural, and Forestry Research" for "Subcommittee on Food and Renewable Resources", "Department of Health and Human Services" for "Department of Health, Education, and Welfare", and "Department of Energy" for "Energy Research and Development Administration".

1977—Subsec. (h). Pub. L. 95-113 inserted provisions relating to Subcommittee on Food and Renewable Resources.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-98 effective Dec. 22, 1981, see section 1801 of Pub. L. 97-98, set out as an Effective Date note under section 4301 of Title 7, Agriculture.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-113 effective Oct. 1, 1977, see section 1901 of Pub. L. 95-113, set out as a note under section 1307 of Title 7, Agriculture.

TRANSFER OF FUNCTIONS

"Department of Energy" substituted for "Energy Research and Development Administration" in subsec. (b) pursuant to sections 301(a), 703, and 707 of Pub. L. 95-91, which are classified to sections 7151(a), 7293, and 7297 of this title and which terminated Energy Research and Development Administration and transferred its functions (with certain exceptions) to Secretary of Energy.

ABOLITION OF FEDERAL COORDINATING COUNCIL FOR SCIENCE, ENGINEERING, AND TECHNOLOGY; TRANSFER OF FUNCTIONS

The Federal Coordinating Council for Science, Engineering, and Technology, established pursuant to this section, was abolished and its functions transferred to the President by Reorg. Plan No. 1 of 1977, §5A, 42 F.R. 56101, 91 Stat. 1634, set out in the Appendix to Title 5, Government Organization and Employees, effective Feb. 26, 1978, as provided by section 1(b) of Ex. Ord. No. 12039, Feb. 24, 1978, 43 F.R. 8095, set out under section 6601 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 15 section 2932.

SUBCHAPTER V—GENERAL PROVISIONS

§ 6671. Authorization of appropriations

(a) For the purpose of carrying out subchapter II of this chapter, there are authorized to be appropriated—

(1) \$750,000 for the fiscal year ending June 30, 1976;

(2) \$500,000 for the period beginning July 1, 1976, and ending September 30, 1976;

(3) \$3,000,000 for the fiscal year ending September 30, 1977; and

(4) such sums as may be necessary for each of the succeeding fiscal years.

(b) For the purpose of carrying out subchapter III of this chapter, there are authorized to be appropriated—

(1) \$750,000 for the fiscal year ending June 30, 1976;

(2) \$500,000 for the period beginning July 1, 1976, and ending September 30, 1976;

(3) \$1,000,000 for the fiscal year ending September 30, 1977; and

(4) such sums as may be necessary for each of the succeeding fiscal years.

(Pub. L. 94-282, title V, §501, May 11, 1976, 90 Stat. 472.)

SUBCHAPTER VI—NATIONAL CRITICAL TECHNOLOGIES PANEL

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 50 App. section 2170.

§§ 6681 to 6685. Omitted

CODIFICATION

Sections 6681 to 6685 were omitted pursuant to section 6685 which provided that sections 6681 to 6685 ceased to be effective Dec. 31, 2000, and that the National Critical Technologies Panel established by this subchapter terminated on that date.

Section 6681, Pub. L. 94-282, title VI, §601, as added Pub. L. 101-189, div. A, title VIII, §841(a)(1), Nov. 29, 1989, 103 Stat. 1511, established a National Critical Technologies Panel.

Section 6682, Pub. L. 94-282, title VI, §602, as added Pub. L. 101-189, div. A, title VIII, §841(a)(1), Nov. 29, 1989, 103 Stat. 1511, related to membership of the Panel.

Section 6683, Pub. L. 94-282, title VI, §603, as added Pub. L. 101-189, div. A, title VIII, §841(a)(1), Nov. 29, 1989, 103 Stat. 1511; amended Pub. L. 102-245, title V, §503, Feb. 14, 1992, 106 Stat. 24, required the Panel to submit to the President a biennial report on national critical technologies.

Section 6684, Pub. L. 94-282, title VI, §604, as added Pub. L. 101-189, div. A, title VIII, §841(a)(1), Nov. 29, 1989, 103 Stat. 1512, related to administration and funding of Panel.

Section 6685, Pub. L. 94-282, title VI, §605, as added Pub. L. 101-189, div. A, title VIII, §841(a)(1), Nov. 29, 1989, 103 Stat. 1512, provided that sections 6681 to 6685 ceased to be effective Dec. 31, 2000, and that the Panel terminated on that date.

§ 6686. Science and Technology Policy Institute

(a) Establishment

There shall be established a federally funded research and development center to be known as the "Science and Technology Policy Institute" (hereinafter in this section referred to as the "Institute").

(b) Incorporation

The Institute shall be—

(1) administered as a separate entity by an organization currently managing another federally funded research and development center; or

(2) incorporated as a nonprofit membership corporation.

(c) Duties

The duties of the Institute shall include the following:

(1) The assembly of timely and authoritative information regarding significant developments and trends in science and technology research and development in the United States and abroad, including information relating to the technologies identified in the most recent biennial report submitted to Congress by the President pursuant to section 6683(d)¹ of this title and developing and maintaining relevant informational and analytical tools.

(2) Analysis and interpretation of the information referred to in paragraph (1) with particular attention to the scope and content of the Federal science and technology research and development portfolio as it affects interagency and national issues.

(3) Initiation of studies and analysis of alternatives available for ensuring the long-term strength of the United States in the development and application of science and technology, including appropriate roles for the Federal Government, State governments, private industry, and institutions of higher education in the development and application of science and technology.

(4) Provision, upon the request of the Director of the Office of Science and Technology Policy, of technical support and assistance—

(A) to the committees and panels of the President's Council of Advisers on Science and Technology that provide advice to the Executive branch on science and technology policy; and

(B) to the interagency committees and panels of the Federal Government concerned with science and technology.

(d) Consultation on Institute activities

In carrying out the duties referred to in subsection (c) of this section, personnel of the Institute shall—

(1) consult widely with representatives from private industry, institutions of higher education, and nonprofit institutions; and

(2) to the maximum extent practicable, incorporate information and perspectives derived from such consultations in carrying out such duties.

(e) Annual reports

The Institute shall submit to the President an annual report on the activities of the Institute under this section. Each report shall be in accordance with requirements prescribed by the President.

(f) Sponsorship

(1) The Director of the National Science Foundation shall be the sponsor of the Institute.

(2) The Director of the National Science Foundation, in consultation with the Director of Office of Science and Technology Policy, shall enter into a sponsoring agreement with respect to the Institute. The sponsoring agreement shall require that the Institute carry out such functions as the Director of Office of Science and Technology Policy may specify consistent with

the duties referred to in subsection (c) of this section. The sponsoring agreement shall be consistent with the general requirements prescribed for such a sponsoring agreement by the Administrator for Federal Procurement Policy.

(Pub. L. 101-510, div. A, title VIII, § 822, Nov. 5, 1990, 104 Stat. 1598; Pub. L. 102-25, title VII, § 704(a)(5), Apr. 6, 1991, 105 Stat. 118; Pub. L. 102-190, div. A, title VIII, § 822(c)(1), Dec. 5, 1991, 105 Stat. 1433; Pub. L. 103-160, div. A, title VIII, § 803, Nov. 30, 1993, 107 Stat. 1701; Pub. L. 104-201, div. A, title X, § 1073(e)(1)(C), Sept. 23, 1996, 110 Stat. 2658; Pub. L. 105-207, title II, § 208(a), July 29, 1998, 112 Stat. 877.)

REFERENCES IN TEXT

Section 6683 of this title, referred to in subsec. (c)(1), was omitted from the Code.

CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Year 1991, and not as part of the National Science and Technology Policy, Organization, and Priorities Act of 1976 which comprises this chapter.

AMENDMENTS

1998—Pub. L. 105-207, § 208(a)(1), substituted “Science and Technology Policy Institute” for “Critical Technologies Institute” in section catchline.

Subsec. (a). Pub. L. 105-207, § 208(a)(1), substituted “Science and Technology Policy Institute” for “Critical Technologies Institute”.

Subsec. (b). Pub. L. 105-207, § 208(a)(2), substituted “The” for “As determined by the chairman of the committee referred to in subsection (c) of this section, the”.

Subsec. (c). Pub. L. 105-207, § 208(a)(3), redesignated subsec. (d) as (c) and struck out heading and text of former subsec. (c). Text read as follows:

“(1) The Institute shall have an Operating Committee composed of six members as follows:

“(A) The Director of the Office of Science and Technology Policy, who shall chair the committee.

“(B) The Director of the National Institutes of Health.

“(C) The Under Secretary of Commerce for Technology.

“(D) The Director of the Defense Advanced Research Projects Agency.

“(E) The Director of the National Science Foundation.

“(F) The Under Secretary of Energy having responsibility for science and technology matters.

“(2) The Operating Committee shall meet not less than four times each year.”

Subsec. (c)(1). Pub. L. 105-207, § 208(a)(4)(A)–(C), inserted “science and” after “developments and trends in”, substituted “including” for “with particular emphasis on”, and inserted before period at end “and developing and maintaining relevant informational and analytical tools”.

Subsec. (c)(2). Pub. L. 105-207, § 208(a)(4)(D), substituted “with particular attention to the scope and content of the Federal science and technology research and development portfolio as it affects interagency and national issues” for “to determine whether such developments and trends are likely to affect United States technology policies”.

Subsec. (c)(3). Pub. L. 105-207, § 208(a)(4)(E), amended par. (3) generally. Prior to amendment, par. (3) read as follows: “Initiation of studies and analyses (including systems analyses and technology assessments) of alternatives available for ensuring long-term leadership by the United States in the development and application of the technologies referred to in paragraph (1), including appropriate roles for the Federal Government,

¹ See References in Text note below.

State governments, private industry, and institutions of higher education in the development and application of such technologies.”

Subsec. (c)(4). Pub. L. 105-207, §208(a)(4)(F), (G), inserted “science and” after “Executive branch on” in subpar. (A) and amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “to the committees and panels of the Federal Coordinating Council for Science, Engineering, and Technology that are responsible for planning and coordinating activities of the Federal Government to advance the development of critical technologies and sustain and strengthen the technology base of the United States.”

Subsec. (d). Pub. L. 105-207, §208(a)(3), (5), redesignated subsec. (e) as (d) and substituted “subsection (c)” for “subsection (d)” in introductory provisions. Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 105-207, §208(a)(6), which directed the substitution of “Institute” for “Committee” each place appearing, was executed by making the substitution for “committee” in two places to reflect the probable intent of Congress.

Pub. L. 105-207, §208(a)(3), redesignated subsec. (f) as (e). Former subsec. (e) redesignated (d).

Subsec. (f). Pub. L. 105-207, §208(a)(3), redesignated subsec. (g) as (f). Former subsec. (f) redesignated (e).

Subsec. (f)(2). Pub. L. 105-207, §208(a)(8), which directed the substitution of “Director of Office of Science and Technology Policy” for “Chairman of Committee” each place appearing, was executed by making the substitution for “chairman of the committee” in two places to reflect the probable intent of Congress.

Pub. L. 105-207, §208(a)(7), substituted “subsection (c)” for “subsection (d)”.

Subsec. (g). Pub. L. 105-207, §208(a)(3), redesignated subsec. (g) as (f).

1996—Subsec. (c)(1)(D). Pub. L. 104-201 inserted “Defense” before “Advanced Research Projects Agency”.

1993—Subsec. (c). Pub. L. 103-160 amended heading and text of subsec. (c) generally. Prior to amendment, text consisted of pars. (1) to (4) relating to the composition, designation of chairman, terms of service, and meetings of the Operating Committee.

1991—Pub. L. 102-190 amended section generally, substituting present provisions for provisions establishing “Critical Technologies Institute” and providing for incorporation, Board of Trustees, duties of Institute, sponsorship of Institute, deadline for certain actions, and funding.

Subsec. (g)(1). Pub. L. 102-25, §704(a)(5)(A), substituted “appropriated pursuant to this Act” for “available for the Department of Defense” and struck out “in the first fiscal year in which the Institute begins operations” after “activities of the Institute”.

Subsec. (g)(2). Pub. L. 102-25, §704(a)(5)(B), struck out “for each fiscal year after the fiscal year referred to in paragraph (1)” after “for the Institute”.

EFFECTIVE DATE OF 1991 AMENDMENTS

Section 822(c)(2), (3) of Pub. L. 102-190 provided that: “(2) The amendment made by paragraph (1) [amending this section] shall take effect as of November 5, 1990.

“(3) The sponsoring agreement required by subsection (g) of section 822 of Public Law 101-510 [subsec. (g) of this section], as amended by paragraph (1), shall be entered into not later than February 15, 1992.”

Amendment by Pub. L. 102-25 applicable as if included in enactment of Pub. L. 101-510, see section 704(e) of Pub. L. 102-25, set out as a note under section 12321 of Title 10, Armed Forces.

AUTHORIZATION OF APPROPRIATIONS

Section 822(d)(2) of Pub. L. 102-190 provided that: “There is authorized to be appropriated for each fiscal year after fiscal year 1991 for the Institute such sums as may be necessary for the operation of the Institute.”

REFERENCES TO CRITICAL TECHNOLOGIES INSTITUTE

Pub. L. 105-207, title II, §208(b), July 29, 1998, 112 Stat. 878, provided that: “All references in Federal law or

regulations to the Critical Technologies Institute shall be considered to be references to the Science and Technology Policy Institute.”

§ 6687. Critical technology strategies

(a) Requirement for critical technology strategies

(1) The President shall develop and revise as needed a multiyear strategy for federally supported research and development for each critical technology designated by the President. In designating critical technologies for the purpose of this section, the President shall begin with the national critical technologies listed in a biennial report on national critical technologies submitted to Congress by the President pursuant to section 6683(d)¹ of this title. A critical technology strategy may cover more than one critical technology.

(2) The President shall assign responsibilities and develop procedures for conducting executive branch activities to carry out this section.

(3) During the development of a critical technology strategy, the President shall provide for the following:

(A) The development of goals and objectives for the appropriate Federal role in the development of the critical technology or technologies that the President expects to be covered by the strategy.

(B) Close consultation with appropriate representatives of United States industries, members of industry associations, representatives of labor organizations in the United States, members of professional and technical societies in the United States and other persons who are qualified to provide advice and assistance in the development of such critical technology or technologies.

(C) The development of an organizational structure within the Federal Government that is appropriate for coordinating, managing, and reviewing the Federal Government’s role in the implementation of the strategy, including allocating roles among Federal departments and agencies.

(D) The development of policies and procedures for synergistic government, industrial, and university participation in the implementation of the strategy.

(E) The development of Federal budget estimates for research and development regarding the critical technology or technologies covered by the strategy for the first five fiscal years covered by that strategy.

(b) Report

Not later than February 15 of each year, beginning in 1993, the President shall submit to Congress an annual report describing the implementation of subsection (a) of this section. The annual report shall include the following:

(1) For each critical technology designated by the President for the purpose of subsection (a) of this section, a description of the progress made in implementing subsection (a) of this section during the fiscal year preceding the fiscal year in which the report is submitted.

¹ See References in Text note below.

(2) A description of each proposed program, if any, for further implementing subsection (a) of this section with respect to a critical technology through the date for the submission of the next annual report.

(3) A copy of each strategy, if any, completed or revised pursuant to subsection (a) of this section during the fiscal year covered by the report.

(Pub. L. 102-190, div. A, title VIII, §822(a), (b), Dec. 5, 1991, 105 Stat. 1432, 1433.)

REFERENCES IN TEXT

Section 6683 of this title, referred to in subsec. (a)(1), was omitted from the Code.

CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Years 1992 and 1993, and not as part of the National Science and Technology Policy, Organization, and Priorities Act of 1976 which comprises this chapter.

CHAPTER 80—PUBLIC WORKS EMPLOYMENT

SUBCHAPTER I—LOCAL PUBLIC WORKS

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|-------|---|
| Sec. | |
| 6701. | Definitions. |
| 6702. | Direct grants; Federal share. |
| 6703. | Grants supplementing Federal contributions under other Federal laws; Federal share. |
| 6704. | Grants providing State or local contributions required under State or local law. |
| 6705. | Limitations on use of grants. <ul style="list-style-type: none"> (a) Projects relating to natural water-course or canals. (b) Acquisition of interest in real property. (c) Maintenance costs. (d) Commencement of on-site labor within 90 days of project approval as prerequisite. (e) Performance of projects by State or local governments prohibited; competitive bidding; illegal aliens. (f) Use of products made in United States; minority business enterprises. (g) Accessibility standards for handicapped and elderly. |
| 6706. | Implementing rules, regulations, and procedures; criteria; employment of disabled and Vietnam-era veterans; determination of applications for grants. |
| 6707. | Priority and amounts of projects. <ul style="list-style-type: none"> (a) Allocation of appropriated funds; Indian tribes and Alaska Native villages; prior applications; unemployment ratio; limits on grants for any one State; territories. (b) Local government projects; energy conservation; endorsement of project by general purpose local government; projects requested by school districts. (c) Unemployment rates; priority; States receiving minimum allocations. (d) Priorities for projects in State or localities with two or more projects. (e) Community or neighborhood basis of unemployment rates. (f) Repealed. (g) Criteria for requests. (h) Applications not submitted on or before December 23, 1976; grants prohibited; exceptions. (i) Substitution of projects to alleviate drought or other emergency or disaster-related conditions or damage. |

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| Sec. | |
| 6708. | (j) Private nonprofit health care or rehabilitation facilities. |
| 6709. | Wage standards for laborers and mechanics; enforcement. |
| 6710. | Sex discrimination; prohibition; enforcement. Authorization of appropriations. |

SUBCHAPTER II—ANTIRECESSION PROVISIONS

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|-------|---|
| 6721. | Congressional findings of fact and declaration of policy. |
| 6722. | Financial assistance. <ul style="list-style-type: none"> (a) Payments to State and local governments. (b) Authorization of appropriations. (c) Aggregate authorization. (d) Termination. |
| 6723. | Allocation of amounts. <ul style="list-style-type: none"> (a) Reservations for eligible States and units of local government. (b) State allocation; percentage; definitions. (c) Local government allocation; percentage; definitions; special limitation. |
| 6724. | Uses of payments. |
| 6725. | Statement of assurances as prerequisite for payments; rules governing time and manner of filing; contents of statement. |
| 6726. | Repealed. |
| 6727. | Nondiscrimination. |
| 6728. | Wage standards for laborers and mechanics; enforcement. |
| 6729. | Reports to Secretary by States and local governments; contents. |
| 6730. | Payments. <ul style="list-style-type: none"> (a) Time and amount. (b) Adjustments. (c) Termination. |
| 6731. | Economization by State and local governments; statement of assurances, etc., required. |
| 6732. | Withholding of payments for failure to comply with statement of assurances; procedures applicable. |
| 6733. | Repealed. |
| 6734. | Administration; rules; authorization of appropriations. |
| 6735. | Program studies and recommendations; evaluation; countercyclical study. |
| 6736. | Authorization of appropriations for Puerto Rico, Guam, American Samoa, and Virgin Islands. <ul style="list-style-type: none"> (a) Authorizations for five calendar quarters beginning July 1, 1977. (b) Allocations. (c) Payments to local governments. |

SUBCHAPTER I—LOCAL PUBLIC WORKS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 3211 of this title.

§ 6701. Definitions

As used in this subchapter, the term—

(1) “Secretary” means the Secretary of Commerce, acting through the Economic Development Administration.

(2) “State” includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

(3) “local government” means any city, county, town, parish, or other political subdivision of a State, and any Indian tribe.

(4) “public works project” includes a project for the transportation and provision of water to a drought-stricken area.

(Pub. L. 94-369, title I, §102, July 22, 1976, 90 Stat. 999; Pub. L. 95-28, title I, §102, May 13, 1977, 91 Stat. 116.)

AMENDMENTS

1977—Par. (2). Pub. L. 95-28, §102(a), inserted reference to Trust Territory of the Pacific Islands.

Par. (4). Pub. L. 95-28, §102(b), added par. (4).

SHORT TITLE OF 1977 AMENDMENTS

Pub. L. 95-30, title VI, §601, May 23, 1977, 91 Stat. 164, provided that: "This title [enacting section 6736 of this title, amending sections 6722 to 6724, 6727, and 6735 of this title, and repealing section 6726 of this title] may be cited as the 'Intergovernmental Antirecession Assistance Act of 1977'."

Section 101 of title I of Pub. L. 95-28 provided that: "This title [amending sections 6701, 6705 to 6708, and 6710 of this title and enacting provisions set out as notes under sections 6701 and 6710 of this title] may be cited as the 'Public Works Employment Act of 1977'."

SHORT TITLE

Section 1 of Pub. L. 94-369 provided: "That this Act [enacting this chapter and provision set out as a note under section 1287 of Title 33, Navigation and Navigable Waters] may be cited as the 'Public Works Employment Act of 1976'."

Section 101 of title I of Pub. L. 94-369 provided that: "This title [enacting this subchapter] may be cited as the 'Local Public Works Capital Development and Investment Act of 1976'."

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

PUBLIC WORKS INVESTMENT STUDY; PRELIMINARY REPORT; FINAL REPORT WITHIN 18 MONTHS AFTER MAY 13, 1977

Section 110 of Pub. L. 95-28 directed Secretary of Commerce to study public works investment in United States and implications for future of recent trends in such investment and submit a report with respect to its findings and recommendations no later than 18 months after May 13, 1977.

§ 6702. Direct grants; Federal share

(a) The Secretary is authorized to make grants to any State or local government for construction (including demolition and other site preparation activities), renovation, repair, or other improvement of local public works projects including but not limited to those public works projects of State and local governments for which Federal financial assistance is authorized under provisions of law other than this chapter. In addition the Secretary is authorized to make grants to any State or local government for the completion of plans, specifications, and estimates for local public works projects where either architectural design or preliminary engineering or related planning has already been undertaken and where additional architectural and engineering work or related planning is required to permit construction of the project under this chapter.

(b) The Federal share of any project for which a grant is made under this section shall be 100 per centum of the cost of the project.

(Pub. L. 94-369, title I, §103, July 22, 1976, 90 Stat. 999.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6705 of this title.

§ 6703. Grants supplementing Federal contributions under other Federal laws; Federal share

In addition to the grants otherwise authorized by this chapter, the Secretary is authorized to make a grant for the purpose of increasing the Federal contribution to a public works project for which Federal financial assistance is authorized under provisions of law other than this chapter. Any grant made for a public works project under this section shall be in such amount as may be necessary to make the Federal share of the cost of such project 100 per centum. No grant shall be made for a project under this section unless the Federal financial assistance for such project authorized under provisions of law other than this chapter is immediately available for such project and construction of such project has not yet been initiated because of lack of funding for the non-Federal share.

(Pub. L. 94-369, title I, §104, July 22, 1976, 90 Stat. 999.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6705 of this title.

§ 6704. Grants providing State or local contributions required under State or local law

In addition to the grants otherwise authorized by this chapter, the Secretary is authorized to make a grant for the purpose of providing all or any portion of the required State or local share of the cost of any public works project for which financial assistance is authorized under any provision of State or local law requiring such contribution. Any grant made for a public works project under this section shall be made in such amount as may be necessary to provide the requested State or local share of the cost of such project. A grant shall be made under this section for either the State or local share of the cost of the project, but not both shares. No grant shall be made for a project under this section unless the share of the financial assistance for such project (other than the share with respect to which a grant is requested under this section) is immediately available for such project and construction of such project has not yet been initiated.

(Pub. L. 94-369, title I, §105, July 22, 1976, 90 Stat. 999.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6705 of this title.

§ 6705. Limitations on use of grants

(a) Projects relating to natural watercourse or canals

No grant shall be made under section 6702, 6703, or 6704 of this title for any project having as its principal purpose the channelization, damming, diversion, or dredging of any natural watercourse, or the construction or enlargement of any canal (other than a canal or raceway designated for maintenance as an historic site) and

having as its permanent effect the channelization, damming, diversion, or dredging of such watercourse or construction or enlargement of any canal (other than a canal or raceway designated for maintenance as an historic site).

(b) Acquisition of interest in real property

No part of any grant made under section 6702, 6703, or 6704 of this title shall be used for the acquisition of any interest in real property.

(c) Maintenance costs

Nothing in this chapter shall be construed to authorize the payment of maintenance costs in connection with any projects constructed (in whole or in part) with Federal financial assistance under this chapter.

(d) Commencement of on-site labor within 90 days of project approval as prerequisite

Grants made by the Secretary under this chapter shall be made only for projects for which the applicant gives satisfactory assurances, in such manner and form as may be required by the Secretary and in accordance with such terms and conditions as the Secretary may prescribe, that, if funds are available, on-site labor can begin within ninety days of project approval.

(e) Performance of projects by State or local governments prohibited; competitive bidding; illegal aliens

(1) No part of the construction (including demolition and other site preparation activities), renovation, repair, or other improvement of any public works project for which a grant is made under this chapter after May 13, 1977, shall be performed directly by any department, agency, or instrumentality of any State or local government. Construction of each such project shall be performed by contract awarded by competitive bidding, unless the Secretary shall affirmatively find that, under the circumstances relating to such project, some other method is in the public interest. Contracts for the construction of each project shall be awarded only on the basis of the lowest responsive bid submitted by a bidder meeting established criteria of responsibility. No requirement or obligation shall be imposed as a condition precedent to the award of a contract to such bidder for a project, or to the Secretary's concurrence in the award of a contract to such bidder, unless such requirement or obligation is otherwise lawful and is specifically set forth in the advertised specifications.

(2) No grant shall be made under this chapter for any local public works project unless the State or local government applying for such grant submits with its application a certification acceptable to the Secretary that no contract will be awarded in connection with such project to any bidder who will employ on such project any alien in the United States in violation of the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] or any other law, convention, or treaty of the United States relating to the immigration, exclusion, deportation, or expulsion of aliens.

(f) Use of products made in United States; minority business enterprises

(1)(A) Notwithstanding any other provision of law, no grant shall be made under this chapter

for any local public works project unless only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, and supplies mined, produced, or manufactured, as the case may be, in the United States, will be used in such project.

(B) Subparagraph (A) of this paragraph shall not apply in any case where the Secretary determines it to be inconsistent with the public interest, or the cost to be unreasonable, or if articles, materials, or supplies of the class or kind to be used or the articles, materials, or supplies from which they are manufactured are not mined, produced, or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

(2) Except to the extent that the Secretary determines otherwise, no grant shall be made under this chapter for any local public works project unless the applicant gives satisfactory assurance to the Secretary that at least 10 per centum of the amount of each grant shall be expended for minority business enterprises. For purposes of this paragraph, the term "minority business enterprise" means a business at least 50 per centum of which is owned by minority group members or, in case of a publicly owned business, at least 51 per centum of the stock of which is owned by minority group members. For the purposes of the preceding sentence, minority group members are citizens of the United States who are Negroes, Spanish-speaking, Orientals, Indians, Eskimos, and Aleuts.

(g) Accessibility standards for handicapped and elderly

No grant shall be made under this chapter for any project for which the applicant does not give assurances satisfactory to the Secretary that the project will be designed and constructed in accordance with the standards for accessibility for public buildings and facilities to the handicapped and elderly under the Act entitled "An Act to insure that certain buildings financed with Federal funds are so designed and constructed as to be accessible to the physically handicapped", approved August 12, 1968 (42 U.S.C. 4151 et seq.). The Architectural and Transportation Barriers Compliance Board established by the Rehabilitation Act of 1973 (P.L. 93-112) [29 U.S.C. 701 et seq.] is authorized to insure that any construction and renovation done pursuant to any grant made under this chapter complies with the accessibility standards for public buildings¹ and facilities issued under the Act of August 12, 1968.

(Pub. L. 94-369, title I, §106, July 22, 1976, 90 Stat. 1000; Pub. L. 95-28, title I, §103, May 13, 1977, 91 Stat. 116.)

REFERENCES IN TEXT

The Immigration and Nationality Act, referred to in subsec. (e)(2), is act June 27, 1952, ch. 477, 66 Stat. 163, as amended, which is classified principally to chapter

¹ So in original. Probably should be "buildings".

12 (§1101 et seq.) of Title 8, Aliens and Nationality. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of Title 8 and Tables.

Act of August 12, 1968, entitled "An Act to insure that certain buildings financed with Federal funds are so designed and constructed as to be accessible to the physically handicapped", referred to in subsec. (g), is Pub. L. 90-480, Aug. 12, 1968, 82 Stat. 718, as amended, popularly known as the Architectural Barriers Act of 1968, which is classified generally to chapter 51 (§4151 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4151 of this title and Tables.

The Rehabilitation Act of 1973, referred to in subsec. (g), is Pub. L. 93-112, Sept. 26, 1973, 87 Stat. 355, as amended, which is classified generally to chapter 16 (§701 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

AMENDMENTS

1977—Subsecs. (e) to (g). Pub. L. 95-28 added subsecs. (e) to (g).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6707 of this title.

§ 6706. Implementing rules, regulations, and procedures; criteria; employment of disabled and Vietnam-era veterans; determination of applications for grants

The Secretary shall, not later than thirty days after July 22, 1976, prescribe those rules, regulations, and procedures (including application forms) necessary to carry out this chapter. Such rules, regulations, and procedures shall assure that adequate consideration is given to the relative needs of various sections of the country. The Secretary shall consider among other factors (1) the severity and duration of unemployment in proposed project areas, (2) the income levels and extent of underemployment in proposed project area, and (3) the extent to which proposed projects will contribute to the reduction of unemployment. The Secretary, in consultation with the Secretary of Labor, and consistent with existing applicable collective bargaining agreements and practices, shall promulgate regulations to assure special consideration to the employment in projects under this chapter of qualified disabled veterans (as defined in section 4211(1) of title 38) and qualified Vietnam-era veterans (as defined in section 4211(2) of such title 38). The Secretary shall make a final determination with respect to each application for a grant submitted to him under this chapter not later than the sixtieth day after the date he receives such application. Failure to make such final determination within such period shall be deemed to be an approval by the Secretary of the grant requested. For purposes of this section, in considering the extent of unemployment or underemployment, the Secretary shall consider the amount of unemployment or underemployment in the construction and construction-related industries.

(Pub. L. 94-369, title I, §107, July 22, 1976, 90 Stat. 1000; Pub. L. 95-28, title I, §104, May 13, 1977, 91 Stat. 117; Pub. L. 102-83, §5(c)(2), Aug. 6, 1991, 105 Stat. 406; Pub. L. 103-446, title XII, §1203(c)(3), Nov. 2, 1994, 108 Stat. 4690.)

AMENDMENTS

1994—Pub. L. 103-446, which directed substitution of "section 4211(2)" for "section 4211(2)(A)" and "section 4211(1)" for "section 2011(1)", was executed by substituting "section 4211(2)" for "section 4211(2)(A)". Previously, "section 4211(1)" was substituted for "section 2011(1)" by Pub. L. 103-83. See 1991 Amendment note below.

1991—Pub. L. 102-83 substituted references to section 4211 of title 38 for references to section 2011 of title 38 in two places.

1977—Pub. L. 95-28 inserted provision directing Secretary to promulgate regulations to assure special consideration to employment in projects of qualified disabled veterans and qualified Vietnam-era veterans.

§ 6707. Priority and amounts of projects

(a) Allocation of appropriated funds; Indian tribes and Alaska Native villages; prior applications; unemployment ratio; limits on grants for any one State; territories

The Secretary shall allocate funds appropriated after May 13, 1977, under section 6710 of this title as follows:

(1) 2½ per centum of such funds shall be set aside and shall be expended only for grants for public works projects under this chapter to Indian tribes and Alaska Native villages. None of the remainder of such funds shall be expended for such grants to such tribes and villages.

(2) After the set aside required by paragraph (1) of this subsection, \$70,000,000 shall be set aside and expended only for grants for any public works project the application for a grant for which was made under this chapter after July 22, 1976, and before December 24, 1976, and which application was not received, was not considered, or was rejected solely because of an error by an officer or employee of the United States. Any allocation made to an applicant pursuant to regulation shall be reduced by the amount of any grant made to such applicant under this paragraph.

(3) After the set asides required by paragraphs (1) and (2) of this subsection, 65 per centum of such funds shall be allocated among the States on the basis of the ratio that the number of unemployed persons in each State bears to the total number of unemployed persons in all the States and 35 per centum of such funds shall be allocated among those States with an average unemployment rate for the preceding twelve-month period in excess of 6.5 per centum on the basis of the relative severity of unemployment in each such State, except that (A) no State shall be allocated less than three-quarters of one per centum or more than 12½ per centum of such funds for local public works projects within such State, except that in the case of Guam, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands, not less than one-half of one per centum in the aggregate shall be granted for such projects in all four of these jurisdictions, and (B) no State whose unemployment data was converted for the first time in 1976 to the benchmark data of the current population survey annual average compiled by the Bureau of Labor Statistics shall receive a percentage of such funds less than the percentage of funds allocated to such State under this

chapter from funds appropriated to carry out this chapter prior to May 13, 1977.

(b) Local government projects; energy conservation; endorsement of project by general purpose local government; projects requested by school districts

(1) In making grants under this chapter, the Secretary shall give priority and preference to public works projects of local governments.

(2) In making grants for projects for construction, renovation, repair, or other improvement of buildings, the Secretary shall also give consideration as between such building projects to those projects which will result in conserving energy, including, but not limited to, projects to redesign and retrofit existing public facilities for energy conservation purposes, and projects using alternative energy systems.

(3) In making grants under this chapter, the Secretary shall also give priority and preference to any public works project requested by a State or by a special purpose unit of local government which is endorsed by a general purpose local government within such State.

(4) A project requested by a school district shall be accorded the full priority and preference to public works projects of local governments provided in paragraph (1).

(c) Unemployment rates; priority; States receiving minimum allocations

In making grants under this chapter, if for the twelve most recent consecutive months, the national unemployment rate is equal to or exceeds 6½ per centum, the Secretary shall (1) expedite and give priority to applications submitted by States or local governments having unemployment rates for the twelve most recent consecutive months in excess of the national unemployment rate and (2) shall give priority thereafter to applications submitted by States or local governments having unemployment rates for the twelve most recent consecutive months in excess of 6½ per centum, but less than the national unemployment rate. Information regarding unemployment rates may be furnished either by the Federal Government, or by States or local governments, provided the Secretary determines that the unemployment rates furnished by States or local governments are accurate, and shall provide assistance to States or local governments in the calculation of such rates to insure validity and standardization. The Secretary may waive the application of the first sentence of this subsection to any State which receives a minimum allocation pursuant to paragraph (3) of subsection (a) of this section.

(d) Priorities for projects in State or localities with two or more projects

Whenever a State or local government submits applications for grants under this chapter for two or more projects, such State or local government shall submit as part of such applications its priority for each such project.

(e) Community or neighborhood basis of unemployment rates

The unemployment rate of a local government shall, for the purposes of this chapter, and upon request of the applicant, be based upon the un-

employment rate of any community or neighborhood (defined without regard to political or other subdivisions or boundaries) within the jurisdiction of such local government, except that any grant made to a local government based upon the unemployment rate of a community or neighborhood within its jurisdiction must be for a project to be constructed in such community or neighborhood.

(f) Repealed. Pub. L. 95-28, title I, § 107(e), May 13, 1977, 91 Stat. 119

(g) Criteria for requests

States and local governments making application under this chapter should (1) relate their specific requests to existing approved plans and programs of a local community development or regional development nature so as to avoid harmful or costly inconsistencies or contradictions; and (2) where feasible, make requests which, although capable of early initiation, will promote or advance longer range plans and programs.

(h) Applications not submitted on or before December 23, 1976; grants prohibited; exceptions

(1) Except as provided in paragraph (2) of this subsection, the Secretary shall not consider or approve or make a grant for any project for which any application was not submitted for a grant under this chapter on or before December 23, 1976.

(2) The Secretary may receive applications for grants for projects under this chapter—

(A) from the Trust Territory of the Pacific Islands;

(B) from Indian tribes and Alaska Native villages;

(C) from any applicant to use any allocation which may be made pursuant to regulation, to the extent necessary to expend such allocation, if a sufficient number of applications were not submitted on or before December 23, 1976, to use such allocation.

(i) Substitution of projects to alleviate drought or other emergency or disaster-related conditions or damage

The Secretary may allow any applicant which has received a grant for a project under this chapter to substitute one or more projects for such project if in the judgment of the Secretary (1) the Federal cost in the aggregate of such substituted project or projects does not exceed such grant, (2) such substituted project or projects comply with section 6705(d) of this title, and (3) such substituted project or projects will in fact aid in alleviating drought or other emergency or disaster-related conditions or damage. Section 6705(a) of this title shall not apply to projects substituted under this subsection.

(j) Private nonprofit health care or rehabilitation facilities

Notwithstanding subsection (h)(1) of this section, grants may be made from appropriations made under section 6710 of this title after September 30, 1977, to States or local governments for projects for the construction, renovation, repair, or other improvements of health care or rehabilitation facilities owned and operated by private nonprofit entities.

(Pub. L. 94-369, title I, §108, July 22, 1976, 90 Stat. 1000; Pub. L. 95-28, title I, §§105-107, May 13, 1977, 91 Stat. 117, 118.)

AMENDMENTS

1977—Subsec. (a). Pub. L. 95-28, §105, added par. (1) and introductory provisions preceding par. (1), par. (2), and, in par. (3), introductory provisions preceding cl. (A) and cl. (B), designated existing provisions as cl. (A) of par. (3) and, in such cl. (A) as so designated, inserted reference to Trust Territory of the Pacific Islands and substituted “three-quarters of one percentum” for “one-half of one percentum” and “of such funds” for “of all amounts appropriated to carry out this subchapter”.

Subsec. (b). Pub. L. 95-28, §106, designated existing provisions as par. (1) and added pars. (2) to (4).

Subsec. (c). Pub. L. 95-28, §107(a), (b), substituted “twelve most recent consecutive months” for “three most recent consecutive months” and authorized the Secretary to waive the application of the first sentence of the subsection to any State which receives a minimum allocation pursuant to subsec. (a)(3) of this section.

Subsec. (d). Pub. L. 95-28, §107(c), substituted provisions directing State or local governments that submit two or more projects to submit as part of their applications the priorities assigned to each project for provisions directing that seventy percentum of all amounts appropriated to carry out this chapter be granted for public works projects submitted by State or local governments given priority under clause (1) of the first sentence of subsec. (c) of this section, with the remaining thirty percentum available for public works projects submitted by State or local governments in other classifications of priority.

Subsec. (e). Pub. L. 95-28, §107(d), substituted “to be constructed in such community or neighborhood” for “of direct benefit to, or provide employment for, unemployed persons who are residents of that community or neighborhood”.

Subsec. (f). Pub. L. 95-28, §107(e), struck out subsec. (f) which directed that, in determining the unemployment rate of a local government for purposes of this section, the unemployment in those adjoining areas from which the labor force for such project might be drawn were to be taken into consideration.

Subsecs. (h) to (j). Pub. L. 95-28, §107(f), added subsecs. (h) to (j).

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 6708. Wage standards for laborers and mechanics; enforcement

All laborers and mechanics employed on projects assisted by the Secretary under this chapter shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with sections 3141-3144, 3146, and 3147 of title 40. The Secretary shall not extend any financial assistance under this chapter for such project without first obtaining adequate assurance that these labor standards will be maintained upon the construction work. The Secretary of Labor shall have, with respect to the labor standards specified in this provision, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267), and section 3145 of title 40.

(Pub. L. 94-369, title I, §109, July 22, 1976, 90 Stat. 1001; Pub. L. 95-28, title I, §108, May 13, 1977, 91 Stat. 119.)

REFERENCES IN TEXT

Reorganization Plan Numbered 14 of 1950, referred to in text, is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

In text, “sections 3141-3144, 3146, and 3147 of title 40” substituted for “the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5)” and “section 3145 of title 40” substituted for “section 2 of the Act of June 13, 1964, as amended (40 U.S.C. 276c)”, meaning section 2 of the Act of June 13, 1934, on authority of Pub. L. 107-217, §5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

AMENDMENTS

1977—Pub. L. 95-28 substituted “All laborers and mechanics employed” for “All laborers and mechanics employed by contractors or subcontractors”.

§ 6709. Sex discrimination; prohibition; enforcement

No person shall on the ground of sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any project receiving Federal grant assistance under this chapter, including any supplemental grant made under this chapter. This provision will be enforced through agency provisions and rules similar to those already established, with respect to racial and other discrimination under title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.]. However, this remedy is not exclusive and will not prejudice or cut off any other legal remedies available to a discriminatee.

(Pub. L. 94-369, title I, §110, July 22, 1976, 90 Stat. 1002.)

REFERENCES IN TEXT

The Civil Rights Act of 1964, referred to in text, is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Civil Rights Act of 1964 is classified generally to subchapter V (§2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

§ 6710. Authorization of appropriations

There is authorized to be appropriated not to exceed \$6,000,000,000 for the period ending December 31, 1978, to carry out this chapter.

(Pub. L. 94-369, title I, §111, July 22, 1976, 90 Stat. 1002; Pub. L. 95-28, title I, §109, May 13, 1977, 91 Stat. 119.)

AMENDMENTS

1977—Pub. L. 95-28 substituted “\$6,000,000,000 for the period ending December 31, 1978” for “\$2,000,000,000 for the period ending September 30, 1977”.

IMMEDIATE INITIATION OF CONSTRUCTION ON CERTAIN PROJECTS

Section 111 of Pub. L. 95-28 directed Secretary of Agriculture and Secretary of the Interior to immediately initiate construction of those Federal public works projects which are responsibility of their respective departments, which have been authorized, and which can be commenced within 60 days of May 13, 1977, and completed no later than 180th day after commencement of construction, with no funds authorized by this section used to carry out such works.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6707 of this title.

SUBCHAPTER II—ANTIRECESSION
PROVISIONS

§ 6721. Congressional findings of fact and declaration of policy

The Congress finds—

(1) that State and local governments represent a significant segment of the national economy whose economic health is essential to national economic prosperity;

(2) that present national economic problems have imposed considerable hardships on State and local government budgets;

(3) that those governments, because of their own fiscal difficulties, are being forced to take budget-related actions which tend to undermine Federal Government efforts to stimulate the economy;

(4) that efforts to stimulate the economy through reductions in Federal Government tax obligations are weakened when State and local governments are forced to increase taxes;

(5) that the net effect of Federal Government efforts to reduce unemployment through public service jobs is substantially limited if State and local governments use federally financed public service employees to replace regular employees that they have been forced to lay off;

(6) that efforts to stimulate the construction industry and reduce unemployment are substantially undermined when State and local governments are forced to cancel or delay the construction of essential capital projects; and

(7) that efforts by the Federal Government to stimulate the economic recovery will be substantially enhanced by a program of emergency Federal Government assistance to State and local governments to help prevent those governments from taking budget-related actions which undermine the Federal Government efforts to stimulate economic recovery.

(Pub. L. 94-369, title II, §201, July 22, 1976, 90 Stat. 1002.)

§ 6722. Financial assistance

(a) Payments to State and local governments

The Secretary of the Treasury (hereafter in this subchapter referred to as the "Secretary") shall, in accordance with the provisions of this subchapter, make payments to States and to local governments to coordinate budget-related actions by such governments with Federal Government efforts to stimulate economic recovery.

(b) Authorization of appropriations

Subject to the provisions of subsections (c) and (d) of this section, there are authorized to be appropriated for each of the five succeeding calendar quarters (beginning with the calendar quarter which begins on July 1, 1977) for the purpose of payments under this subchapter—

(1) \$125,000,000, plus

(2) \$30,000,000 multiplied by the number of whole one-tenth percentage points by which the rate of seasonally adjusted national unemployment for the most recent calendar quarter which ended three months before the beginning of such quarter exceeded 6 per centum.

(c) Aggregate authorization

In no case shall the aggregate amount authorized to be appropriated under the provisions of

subsection (b) of this section for the five successive calendar quarters beginning with the calendar quarter which begins July 1, 1977, exceed \$2,250,000,000.

(d) Termination

No amount is authorized to be appropriated under the provisions of subsection (b) of this section for any calendar quarter if—

(1) the average rate of national unemployment during the most recent calendar quarter which ended three months before the beginning of such calendar quarter did not exceed 6 percent, or

(2) the rate of national unemployment for the last month of the most recent calendar quarter which ended three months before the beginning of such calendar quarter did not exceed 6 percent.

(Pub. L. 94-369, title II, §202, July 22, 1976, 90 Stat. 1002; Pub. L. 94-447, title II, §201(1), Oct. 1, 1976, 90 Stat. 1498; Pub. L. 95-30, title VI, §602, May 23, 1977, 91 Stat. 164.)

AMENDMENTS

1977—Subsec. (b). Pub. L. 95-30, §602(a), substituted "July 1, 1977" for "July 1, 1976" in introductory provisions preceding par. (1) and in par. (2) substituted "\$30,000,000 multiplied by the number of whole one-tenth" for "\$62,500,000 multiplied by the number of one-half" and "such quarter exceeded 6 per centum" for "such calendar quarter exceeded 6 percent".

Subsec. (c). Pub. L. 95-30, §602(b), substituted "five successive calendar quarters beginning with the calendar quarter which begins July 1, 1977, exceed \$2,250,000,000" for "five calendar quarters beginning with the calendar quarter which begins July 1, 1976, exceed \$1,250,000,000".

1976—Subsec. (d)(1). Pub. L. 94-447 substituted "6 percent, or" for "6 percent, and".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6723, 6736 of this title.

§ 6723. Allocation of amounts

(a) Reservations for eligible States and units of local government

(1) The Secretary shall reserve one-third of the amounts appropriated pursuant to authorization under section 6722 of this title for each calendar quarter for the purpose of making payments to eligible State governments under subsection (b) of this section.

(2) The Secretary shall reserve two-thirds of such amounts for the purpose of making payments to eligible units of local government under subsection (c) of this section.

(b) State allocation; percentage; definitions

(1) The Secretary shall allocate from amounts reserved under subsection (a)(1) of this section an amount for the purpose of making payments to each State equal to the total amount reserved under subsection (a)(1) of this section for the calendar quarter multiplied by the applicable State percentage.

(2) For purposes of this subsection, the applicable State percentage is equal to the quotient resulting from the division of the product of—

(A) the State excess unemployment percentage, multiplied by

(B) the State revenue sharing amount by the sum of such products for all the States.

(3) For the purposes of this section—

(A) the term “State” means each State of the United States;

(B) the State excess unemployment percentage is equal to the difference resulting from the subtraction of 4.5 percentage points from the State unemployment rate for that State but shall not be less than zero;

(C) the State unemployment rate is equal to the rate of unemployment in the State during the appropriate calendar quarter, as determined by the Secretary of Labor and reported to the Secretary; and

(D) the State revenue sharing amount is the amount determined under sections 6705–6707(a) of title 31¹ for the most recently completed entitlement period, as defined under section 6701(a)(1) of title 31.

(c) Local government allocation; percentage; definitions; special limitation

(1) The Secretary shall allocate from amounts reserved under subsection (a)(2) of this section an amount for the purpose of making payments to each local government, subject to the provisions of paragraph (4), equal to the total amount reserved under such subsection for calendar quarter multiplied by the local government percentage.

(2) For purposes of this subsection, the local government percentage is equal to the quotient resulting from the division of the product of—

(A) the local excess unemployment percentage, multiplied by

(B) the local revenue sharing amount, by the sum of such products for all local governments.

(3) For purposes of this subsection—

(A) the local excess unemployment percentage is equal to the difference resulting from the subtraction of 4.5 percentage points from the local unemployment rate, but shall not be less than zero;

(B) the local unemployment rate is equal to the rate of unemployment in the jurisdiction of the local government during the appropriate calendar quarter, as determined or assigned by the Secretary of Labor and reported to the Secretary (in the case of a local government for which the Secretary of Labor cannot determine a local unemployment rate, he shall assign such local government the local unemployment rate of the smallest unit or subunit of local government for which he has determined a local unemployment rate and within the jurisdiction of which such local government is located, unless—

(i) the Governor of the State in which such local government is located has provided the Secretary of Labor with a local unemployment rate for such local government, and

(ii) the Secretary of Labor finds that such local unemployment rate provided by the Governor has been determined in a manner consistent with the procedures and methodologies used by the Secretary of Labor in determining local unemployment rates,

in which case the Secretary of Labor shall assign such local government the local unemployment rate provided by such Governor);

(C) the local revenue sharing amount is the amount determined under sections 6701(a)(5), (7), (b)–(d), and 6708–6712 of title 31¹ for the most recently completed entitlement period, as defined under section 6701(a)(1) of title 31;¹

(D) the term “local government” means the government of a county, municipality, township, or other unit of government below the State which—

(i) is a unit of general government (determined on the basis of the same principles as are used by the Bureau of the Census for general statistical purposes), and

(ii) performs substantial governmental functions. Such term includes the District of Columbia and also includes the recognized governing body of an Indian tribe or Alaskan Native village which performs substantial governmental functions. Such term does not include the government of a township area unless such government performs substantial governmental functions.

(4) If the amount which would be allocated to any unit of local government under this subsection is less than \$100, then no amount shall be allocated for such unit of local government under this subsection.

(Pub. L. 94–369, title II, §203, July 22, 1976, 90 Stat. 1003; Pub. L. 94–447, title II, §201(2), (3), Oct. 1, 1976, 90 Stat. 1498; Pub. L. 95–30, title VI, §603(a)–(h), May 23, 1977, 91 Stat. 165, 166.)

REFERENCES IN TEXT

Chapter 67 of title 31, including sections 6701 and 6705 to 6712, referred to in subsecs. (b)(3)(D) and (c)(3)(C), was repealed by Pub. L. 99–272, title XIV, §14001(a)(1), Apr. 7, 1986, 100 Stat. 327. See, also, Codification note below.

CODIFICATION

In subsecs. (b)(3)(D) and (c)(3)(C), “sections 6705–6707(a) of title 31” substituted for “section 107 of the State and Local Fiscal Assistance Act of 1972 [31 U.S.C. 1226]”, “sections 6701(a)(5), (7), (b)–(d), and 6708–6712 of title 31” substituted for “section 108 of the State and Local Fiscal Assistance Act of 1972 [31 U.S.C. 1227], and “section 6701(a)(1) of title 31” substituted for “section 141(b) of such Act [31 U.S.C. 1261(b)]”, respectively, on authority of Pub. L. 97–258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance. See, also, References in Text note above.

AMENDMENTS

1977—Subsec. (b)(3)(D). Pub. L. 95–30, §603(a), substituted “for the most recently completed entitlement period, as defined under section 1261(b) of title 31” for “for the one-year period beginning on July 1, 1975”.

Subsec. (c)(1). Pub. L. 95–30, §603(b), substituted “paragraph (4)” for “paragraphs (3) and (5)”.

Subsec. (c)(3). Pub. L. 95–30, §603(c)–(h), struck out par. (3) which set out special rules for local governments other than identifiable local governments, redesignated par. (4) as (3), substituted “determined or assigned” for “determined” in subpar. (B), substituted provisions covering local governments for which the Secretary of Labor cannot determine a local unemployment rate for provisions covering local governments treated as one local government in subpar. (B), substituted “for the most recently completed entitlement period, as defined under section 1261(b) of title 31” for

¹ See References in Text note below.

“for the one-year period beginning July 1, 1975” in subpar. (C), struck out parenthetical provisions covering local governments treated as one local government in subpar. (C), struck out subpar. (D) which had defined “identifiable local government”, redesignated former subpar. (E) as (D), substituted “Bureau of the Census” for “Social and Economic Statistics Administration” in cl. (i) of subpar. (D) as so redesignated, and struck out provisions which had directed the Secretary of Labor to make determinations with respect to rates of unemployment for the purposes of title VI of the Comprehensive Employment and Training Act of 1973.

Subsec. (c)(4), (5). Pub. L. 95-30, §603(c), redesignated pars. (4) and (5) as (3) and (4), respectively.

1976—Subsec. (c)(3)(C)(ii). Pub. L. 94-447, §201(2), substituted “90 days” for “thirty days”.

Subsec. (c)(4)(E)(ii). Pub. L. 94-447, §201(3), substituted “or Alaskan Native village” for “of Alaskan Native village”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6730, 6736 of this title.

§ 6724. Uses of payments

Each State and local government shall use payments made under this subchapter for the maintenance of basic services customarily provided to persons in that State or in the area under the jurisdiction of that local government, as the case may be. State and local governments may not use emergency support payments made under this subchapter for the acquisition of supplies and materials or for construction, except for normal supplies or repairs necessary to maintain basic services.

(Pub. L. 94-369, title II, §204, July 22, 1976, 90 Stat. 1006; Pub. L. 94-447, title II, §201(4), Oct. 1, 1976, 90 Stat. 1498; Pub. L. 95-30, title VI, §604, May 23, 1977, 91 Stat. 166.)

AMENDMENTS

1977—Pub. L. 95-30 substituted “or for construction, except for normal supplies or repairs necessary to maintain basic services” for “and for construction, unless such supplies and materials or construction are to maintain basic services”.

1976—Pub. L. 94-447 substituted “support payments” for “support grants”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6725, 6736 of this title.

§ 6725. Statement of assurances as prerequisite for payments; rules governing time and manner of filing; contents of statement

Each State and unit of local government may receive payments under this subchapter only upon filing with the Secretary, at such time and in such manner as the Secretary prescribes by rule, a statement of assurances. Such rules shall be prescribed by the Secretary not later than ninety days after July 22, 1976. The Secretary may not require any State or local government to file more than one such statement during each fiscal year. Each such statement shall contain—

(1) an assurance that payments made under this subchapter to the State or local government will be used for the maintenance, to the extent practical, of levels of public employment and of basic services customarily pro-

vided to persons in that State or in the area under the jurisdiction of that unit of local government which is consistent with the provisions of section 6724 of this title;

(2) an assurance that the State or unit of local government will—

(A) use fiscal, accounting, and audit procedures which conform to guidelines established therefor by the Secretary (after consultation with the Comptroller General of the United States), and

(B) provide to the Secretary (and to the Comptroller General of the United States), on reasonable notice, access to, and the right to examine, such books, documents, papers, or records as the Secretary may reasonably require for purposes of reviewing compliance with this subchapter;

(3) an assurance that reasonable reports will be furnished to the Secretary in such form and containing such information as the Secretary may reasonably require to carry out the purposes of this subchapter and that such report shall be published in a newspaper of general circulation in the jurisdiction of such government unless the cost of such publication is excessive in relation to the amount of the payments received by such government under this subchapter or other means of publicizing such report is more appropriate, in which case such report shall be publicized pursuant to rules prescribed by the Secretary;

(4) an assurance that the requirements of section 6727 of this title will be complied with;

(5) an assurance that the requirements of section 6728 of this title will be complied with;

(6) an assurance that the requirements of section 6729 of this title will be complied with;

(7) an assurance that the State or unit of local government will spend any payment it receives under this subchapter before the end of the six-calendar-month period which begins on the day after the date on which such State or local government receives such payment; and

(8) an assurance that the State or unit of local government will spend amounts received under this subchapter only in accordance with the laws and procedures applicable to the expenditure of its own revenues.

(Pub. L. 94-369, title II, §205, July 22, 1976, 90 Stat. 1006.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6730, 6732, 6736 of this title.

§ 6726. Repealed. Pub. L. 95-30, title VI, § 603(i), May 23, 1977, 91 Stat 166

Section, Pub. L. 94-369, title II, §206, July 22, 1976, 90 Stat. 1007, provided for the filing of optional State allocation plans.

§ 6727. Nondiscrimination

(a)(1) No person in the United States shall, on the ground of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity of a State government or unit of local government, which gov-

ernment or unit receives funds made available under this subchapter. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.] or with respect to an otherwise qualified handicapped individual as provided in section 794 of title 29 shall also apply to any such program or activity. Any prohibition against discrimination on the basis of religion, or any exemption, from such prohibition, as provided in the Civil Rights Act of 1964 [42 U.S.C. 2000a et seq.] or title VIII of the Act of April 11, 1968, commonly referred to as Civil Rights Act of 1968 [42 U.S.C. 3601 et seq.], shall also apply to any such program or activity.

(2)(A) The provisions of paragraph (1) of this subsection shall not apply where any State government or unit of local government demonstrates, by clear and convincing evidence, that the program or activity with respect to which the allegation of discrimination has been made is not funded in whole or in part with funds made available under this subchapter.

(B) The provisions of paragraph (1), relating to discrimination on the basis of handicapped status, shall not apply with respect to construction projects commenced prior to January 1, 1977.

(b) The provisions of subsection (a) of this section shall be enforced by the Secretary in the same manner and in accordance with the same procedures as are required by sections 6701(a)(2), (3), 6716-6720, 6721, and 6723(f) of title 31¹ to enforce compliance with section 6716(a)-(c) of title 31.¹ The Attorney General shall have the same authority, functions, and duties with respect to funds made available under this subchapter as the Attorney General has under sections 6716(d), 6720, and 6721(d) of title 31¹ with respect to funds made available under chapter 67 of title 31.¹ Any person aggrieved by a violation of subsection (a) of this section shall have the same rights and remedies as a person aggrieved by a violation of section 6716(a)-(c) of title 31,¹ including the rights provided under section 6721(d) of title 31.¹

(Pub. L. 94-369, title II, §207, July 22, 1976, 90 Stat. 1007; Pub. L. 95-30, title VI, §605, May 23, 1977, 91 Stat. 166.)

REFERENCES IN TEXT

The Age Discrimination Act of 1975, referred to in subsec. (a)(1), is title III of Pub. L. 94-135, Nov. 28, 1975, 89 Stat. 728, as amended, which is classified generally to chapter 76 (§6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

The Civil Rights Act of 1964, referred to in subsec. (a)(1), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended, which is classified principally to subchapters II to IX (§2000a et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

Act of April 11, 1968, referred to in subsec. (a)(1), is Pub. L. 90-284, Apr. 11, 1968, 82 Stat. 73, as amended, known as the Civil Rights Act of 1968. Title VIII of Pub. L. 90-284, known as the Fair Housing Act, is classified principally to subchapter I (§3601 et seq.) of chapter 45 of this title.

Chapter 67 of title 31, including sections 6701, 6716-6720, 6721, and 6723, referred to in subsec. (b), was repealed by Pub. L. 99-272, title XIV, §14001(a)(1), Apr. 7, 1986, 100 Stat. 327. See, also, Codification note below.

¹ See References in Text note below.

CODIFICATION

In subsec. (b), "sections 6701(a)(2), (3), 6716-6720, 6721, and 6723(f) of title 31" substituted for "sections 122, 124, and 125 of the State and Local Fiscal Assistance Act of 1972 [31 U.S.C. 1242, 1244, 1245]", "section 6716(a)-(c) of title 31" substituted for "section 122(a) of such Act" and also for "subsection (a) of section 122 of such Act" [31 U.S.C. 1242(a)], "sections 6716(d), 6720, and 6721(d) of title 31" substituted for "sections 122(g) and (h) and 124(c) of such Act [31 U.S.C. 1242(g), (h), 1244(c)]", and "chapter 67 of title 31" substituted for "that Act [31 U.S.C. 1221 et seq.]", respectively, on authority of Pub. L. 97-258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance. See, also, References in Text note above.

AMENDMENTS

1977—Pub. L. 95-30 amended section generally, inserting reference to discriminatory practices prohibited by the Age Discrimination Act of 1975 and the Rehabilitation Act of 1973 and generally restructuring the enforcement and remedies provisions to incorporate the procedures of the Secretary and of the Attorney General under the State and Local Fiscal Assistance Act of 1972.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6725, 6736 of this title.

§ 6728. Wage standards for laborers and mechanics; enforcement

All laborers and mechanics employed by contractors on all construction projects funded in whole or in part by payments under this subchapter shall be paid wages at rates not less than those prevailing on similar projects in the locality as determined by the Secretary of Labor in accordance with sections 3141-3144, 3146, and 3147 of title 40. The Secretary of Labor shall have, with respect to the labor standards specified in this section, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 and section 3145 of title 40.

(Pub. L. 94-369, title II, §208, July 22, 1976, 90 Stat. 1008.)

REFERENCES IN TEXT

Reorganization Plan Numbered 14 of 1950, referred to in text, is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

In text, "sections 3141-3144, 3146, and 3147 of title 40" substituted for "the Davis-Bacon Act (40 U.S.C. 276a to 276a-5)" and "section 3145 of title 40" substituted for "section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c)", on authority of Pub. L. 107-217, §5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6725, 6736 of this title.

§ 6729. Reports to Secretary by States and local governments; contents

Each State and unit of local government which receives a payment under the provisions of this subchapter shall report to the Secretary any increase or decrease in any tax which it imposes and any substantial reduction in the number of individuals it employs or in services

which such State or local government provides. Each State which receives a payment under the provisions of this subchapter shall report to the Secretary any decrease in the amount of financial assistance which the State provides to the units of local governments during the twelve-month period which ends on the last day of the calendar quarter immediately preceding July 22, 1976, together with an explanation of the reasons for such decrease. Such reports shall be made as soon as it is practical and, in any case, not more than six months after the date on which the decision to impose such tax increase or decrease, such reductions in employment or services, or such decrease in State financial assistance is made public.

(Pub. L. 94-369, title II, §209, July 22, 1976, 90 Stat. 1008.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6725, 6736 of this title.

§ 6730. Payments

(a) Time and amount

From the amount allocated for State and local governments under section 6723 of this title, the Secretary shall pay not later than five days after the beginning of each quarter to each State and to each local government which has filed a statement of assurances under section 6725 of this title, an amount equal to the amount allocated to such State or local government under section 6723 of this title.

(b) Adjustments

Payments under this subchapter may be made with necessary adjustments on account of overpayments or underpayments.

(c) Termination

No amount shall be paid to any State or local government under the provisions of this section for any calendar quarter if—

(1) the average rate of unemployment within the jurisdiction of such State or local government during the most recent calendar quarter which ended three months before the beginning of such calendar quarter was less than 4.5 percent, or

(2) the rate of unemployment within the jurisdiction of such government for the last month of the most recent calendar quarter which ended three months before the beginning of such calendar quarter did not exceed 4.5 percent.

(Pub. L. 94-369, title II, §210, July 22, 1976, 90 Stat. 1009; Pub. L. 94-447, title II, §201 (5), Oct. 1, 1976, 90 Stat. 1498.)

AMENDMENTS

1976—Subsec. (c)(1). Pub. L. 94-447 substituted “4.5 percent, or” for “4.5 percent, and”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6736 of this title.

§ 6731. Economization by State and local governments; statement of assurances, etc., required

Each State or unit of local government which receives payments under this subchapter shall

provide assurances in writing to the Secretary, at such time and in such manner and form as the Secretary may prescribe by rule, that it has made substantial economies in its operations and that payments under this subchapter are necessary to maintain essential services without weakening Federal Government efforts to stimulate the economy through reductions in Federal tax obligations.

(Pub. L. 94-369, title II, §211, July 22, 1976, 90 Stat. 1009.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6736 of this title.

§ 6732. Withholding of payments for failure to comply with statement of assurances; procedures applicable

Whenever the Secretary, after affording reasonable notice and an opportunity for a hearing to any State or unit of local government, finds that there has been a failure to comply substantially with any assurance set forth in the statement of assurances of that State or units of local government filed under section 6725 of this title, the Secretary shall notify that State or unit of local government that further payments will not be made under this subchapter until he is satisfied that there is no longer any such failure to comply. Until he is so satisfied, no further payments shall be made under this subchapter.

(Pub. L. 94-369, title II, §212, July 22, 1976, 90 Stat. 1009.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6736 of this title.

§ 6733. Repealed. Pub. L. 104-66, title I, § 1131(b), Dec. 21, 1995, 109 Stat. 725

Section, Pub. L. 94-369, title II, §213, July 22, 1976, 90 Stat. 1009, related to reports to Congress by Secretary of the Treasury.

§ 6734. Administration; rules; authorization of appropriations

(a) The Secretary is authorized to prescribe, after consultation with the Secretary of Labor, such rules as may be necessary for the purpose of carrying out his functions under this subchapter. Such rules should be prescribed by the Secretary not later than ninety days of July 22, 1976.

(b) There are authorized to be appropriated such sums as may be necessary for the administration of this subchapter.

(Pub. L. 94-369, title II, §214, July 22, 1976, 90 Stat. 1010.)

§ 6735. Program studies and recommendations; evaluation; countercyclical study

(a) The Comptroller General of the United States shall conduct an investigation of the impact which emergency support grants have on the operations of State and local governments and on the national economy. Before and during the course of such investigation the Comptroller General shall consult with and coordinate his activities with the Congressional Budget Office

and the Advisory Commission on Intergovernmental Relations. The Comptroller General shall report the results of such investigation to the Congress within one year after July 22, 1976, together with an evaluation of the macro-economic effect of the program established under this subchapter and any recommendations for improving the effectiveness of similar programs. All officers and employees of the United States shall make available all information, reports, data, and any other material necessary to carry out the provisions of this subsection to the Comptroller General upon a reasonable request.

(b) The Congressional Budget Office and the Advisory Commission on Intergovernmental Relations shall conduct a study to determine the most effective means by which the Federal Government can stabilize the national economy during periods of rapid economic growth and high inflation through programs directed toward State and local governments. Such study shall include a comparison of the effectiveness of alternative factors for triggering and measuring the extent of the fiscal coordination problem addressed by this program, and the effect of the recession on State and local expenditures. Before and during the course of such study, the Congressional Budget Office and the Advisory Commission shall consult with and coordinate their activities with the Comptroller General of the United States. The Congressional Budget Office and the Advisory Commission shall report the results of such study to Congress within two years after July 22, 1976. Such study shall include the opinions of the Comptroller General with respect to such study.

(c) The Secretary shall, in consultation with the Secretary of Commerce, conduct an investigation of—

(1) the extent to which allocations of funds provided under this chapter might be more precisely related to true economic conditions by the use of data on aggregate declines in private real wages and salaries;

(2) the extent to which other factors, such as relative tax effort, should also be made part of the allocation system provided by this chapter; and

(3) the availability and reliability of data concerning Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands, and the extent to which such territories may properly be made part of the regular allocation system applicable to the several States.

The results of such investigation shall be submitted to the Congress not later than March 1, 1978, in order that such results may be available during congressional consideration of any extension of this chapter beyond the fiscal year ending September 30, 1978.

(Pub. L. 94-369, title II, §215, July 22, 1976, 90 Stat. 1010; Pub. L. 95-30, title VI, §606, May 23, 1977, 91 Stat. 167.)

AMENDMENTS

1977—Subsec. (c). Pub. L. 95-30 added subsec. (c).

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 6736. Authorization of appropriations for Puerto Rico, Guam, American Samoa, and Virgin Islands

(a) Authorizations for five calendar quarters beginning July 1, 1977

There is hereby authorized to be appropriated for each of the five succeeding calendar quarters (beginning with the calendar quarter which begins on July 1, 1977) for the purpose of making payments under this subchapter to Puerto Rico, Guam, American Samoa, and the Virgin Islands, an amount equal to 1 percent of the amount authorized for each such quarter under section 6722(b) of this title.

(b) Allocations

(1) The Secretary shall allocate from the amount authorized under subsection (a) of this section an amount for the purpose of making payments to such governments equal to the total authorized for the calendar quarter multiplied by the applicable territorial percentage.

(2) For the purposes of this subsection, the applicable territorial percentage is equal to the quotient resulting from the division of the territorial population by the sum of the territorial population for all territories.

(3) For purposes of this section—

(A) The term “territory” means Puerto Rico, Guam, American Samoa, and the Virgin Islands.

(B) The term “territorial population” means the most recent population for each territory as determined by the Bureau of Census.

(C) The provisions of sections 6723(c)(4), 6724, 6725, 6726,¹ 6727, 6728, 6729, 6730, 6731, 6732, and 6733¹ of this title shall apply to the funds authorized under this section.

(c) Payments to local governments

The governments of the territories are authorized to make payments to local governments within their jurisdiction from sums received under this section as they deem appropriate.

(Pub. L. 94-369, title II, §216, as added Pub. L. 95-30, title VI, §607, May 23, 1977, 91 Stat. 167.)

REFERENCES IN TEXT

Section 6726 of this title, referred to in subsec. (b)(3)(C), was repealed by Pub. L. 95-30, title VI, §603(i), May 23, 1977, 91 Stat. 166.

Section 6733 of this title, referred to in subsec. (b)(3)(C), was repealed by Pub. L. 104-66, title I, §1131(b), Dec. 21, 1995, 109 Stat. 725.

CHAPTER 81—ENERGY CONSERVATION AND RESOURCE RENEWAL

SUBCHAPTER I—ELECTRIC UTILITY RATE DESIGN INITIATIVES

Sec.	
6801.	Congressional findings and purpose.
6802.	Definitions.
6803.	Development of electric utility rate design proposals by Secretary; contents; submission to Congress; supporting analysis.

¹ See References in Text note below.

- Sec.
6804. Funding, administrative, and judicial authorities of Secretary.
6805. Grants for State consumer protection offices by Secretary.
(a) Establishment, operation, and purpose; qualifications for funds.
(b) Grants subject to State assurances on funds.
(c) Offices established by Tennessee Valley Authority.
6806. Statement in annual report.
6807. State utility regulatory assistance.
(a) Grants to State utility regulatory commissions and nonregulated electric utilities.
(b) Unnecessary requirements prohibited.
(c) Application for grant.
(d) Apportionment of funds.
- 6807a. Energy efficiency grants to State regulatory authorities.
(a) Energy efficiency grants.
(b) Plan.
(c) Secretarial action.
(d) Recordkeeping.
(e) "State regulatory authority" defined.
(f) Authorization.
6808. Authorization of appropriations.
- SUBCHAPTER II—ENERGY CONSERVATION STANDARDS FOR NEW BUILDINGS
6831. Congressional findings and purpose.
6832. Definitions.
6833. Updating State building energy efficiency codes.
(a) Consideration and determination respecting residential building energy codes.
(b) Certification of commercial building energy code updates.
(c) Extensions.
(d) Technical assistance.
(e) Availability of incentive funding.
6834. Federal building energy efficiency standards.
(a) In general.
(b) Omitted.
(c) Periodic review.
(d) Interim standards.
6835. Federal compliance.
(a) Procedures.
(b) Construction of new buildings.
6836. Support for voluntary building energy codes.
(a) In general.
(b) Review.
6837. Omitted.
- 6838 to 6840. Repealed.
- SUBCHAPTER III—ENERGY CONSERVATION AND RENEWABLE-RESOURCE ASSISTANCE FOR EXISTING BUILDINGS
6851. Congressional findings and purpose.
- PART A—WEATHERIZATION ASSISTANCE FOR LOW-INCOME PERSONS
6861. Congressional findings and purpose.
6862. Definitions.
6863. Weatherization program.
(a) Development and conduct of program by Secretary; grants to States and Indian tribal organizations.
(b) Consultation by Secretary with other Federal departments and agencies on development and publication in Federal Register of proposed regulations; required regulatory provisions; standards and procedures; rental units.
(c) Failure of State to submit application; alternate application by any unit of general purpose local government or community action agency; submission of amended application by State.
- Sec.
(d) Direct grants to low-income members of Indian tribal organizations or alternate service organizations; application for funds.
(e) Transfer of funds.
6864. Financial assistance.
(a) Annual application; contents; allocation to States.
(b) Requirements for assistance.
(c) Annual update of data used in allocating funds.
- 6864a. Private sector investments.
(a) In general.
(b) Use of funds.
(c) Conditions.
- 6864b. Technical transfer grants.
(a) In general.
(b) Conditions.
6865. Limitations on financial assistance.
(a) Purchase of materials and administration of projects.
(b) Allocation, termination or discontinuance by Secretary.
(c) Limitations on expenditures; exceptions; annual adjustments.
(d) Supplementary financial assistance to States.
(e) Supplementary financial assistance to grant recipients.
6866. Monitoring and evaluation of funded projects; technical assistance; limitation on assistance.
6867. Administration of projects receiving financial assistance.
(a) Reporting requirements.
(b) Maintenance of records.
(c) Audit and examination of books, etc.
(d) Method of payments.
6868. Approval of application or amendment for financial assistance; administrative procedures applicable.
6869. Judicial review of final action by Secretary on application.
(a) Time for appeal; jurisdiction; filing of administrative record by Secretary.
(b) Conclusiveness of findings of Secretary; remand; modified findings by Secretary; certification of record.
(c) Power of court to affirm or set aside action of Secretary; appeal to Supreme Court.
6870. Prohibition against discrimination; notification to funded project of violation; penalties for failure to comply.
6871. Annual report by Secretary and Director to President and Congress on weatherization program.
6872. Authorization of appropriations.
6873. Availability of labor.
- PART B—ENERGY CONSERVATION AND RENEWABLE-RESOURCE OBLIGATION GUARANTEES
6881. Energy resource and renewable-resource obligation guarantee program.
(a) Authorization; requirements for guarantees and commitments to guarantee; procedures.
(b) Preconditions for issuance of guarantees and commitments to guarantee.
(c) Limitations on availability of guarantees; term of guarantees; aggregate outstanding principal amount of obligations of one borrower.
(d) Limitations on original principal amount guaranteed; revocation of guarantees and commitments to guarantee; conclusiveness of guarantee.

Sec.

- (e) Information and assurances required prior to guarantees and commitments to guarantee; maintenance and availability of records; fees to borrowers; exceptions.
- (f) Default in payment of principal due under guaranteed obligation; procedures applicable.
- (g) Limitation on aggregate outstanding principal amount of obligations guaranteed; time limitation on guarantees and commitments to guarantee; authorization of appropriations.
- (h) Wages paid laborers and mechanics; labor standards.
- (i) Definitions.

PART C—MISCELLANEOUS PROVISIONS

- 6891. Exchange of energy information among the States.
- 6892. Annual report to Congress by Comptroller General.
 - (a) Requirements; access to information.
 - (b) Contents of report.
 - (c) Definitions.

SUBCHAPTER I—ELECTRIC UTILITY RATE DESIGN INITIATIVES

§ 6801. Congressional findings and purpose

(a) The Congress finds that improvement in electric utility rate design has great potential for reducing the cost of electric utility services to consumers and current and projected shortages of capital, and for encouraging energy conservation and better use of existing electrical generating facilities.

(b) It is the purpose of this subchapter to require the Secretary to develop proposals for improvement of electric utility rate design and transmit such proposals to Congress; to fund electric utility rate demonstration projects; to intervene or participate, upon request, in the proceedings of utility regulatory commissions; and to provide financial assistance to State offices of consumer services to facilitate presentation of consumer interests before such commissions.

(Pub. L. 94-385, title II, §201, Aug. 14, 1976, 90 Stat. 1142; Pub. L. 95-91, title III, §301(a), title VII, §§703, 707, Aug. 4, 1977, 91 Stat. 577, 606, 607.)

SHORT TITLE

Section 1 of Pub. L. 94-385 provided: "That this Act [enacting this chapter, section 6327 of this title, section 1701z-8 of Title 12, Banks and Banking, sections 787 and 790 to 790h of Title 15, Commerce and Trade, amending sections 5818, 6211, 6295, 6323, 6325, and 6326 of this title and sections 757, 764, 766, 772, 774, 777 and 784 of Title 15, and enacting provisions set out as notes under sections 6801, 6831, and 6851 of this title, and sections 753, 757, 761, and 790 of Title 15] may be cited as the 'Energy Conservation and Production Act'."

Section 301 of title III of Pub. L. 94-385 provided that: "This title [enacting subchapter II of this chapter] may be cited as the 'Energy Conservation Standards for New Buildings Act of 1976'."

Section 401 of title IV of Pub. L. 94-385 provided that: "This title [enacting subchapter III of this chapter, section 6327 of this title, and section 1701z-8 of Title 12, Banks and Banking, and amending sections 6323, 6325, and 6326 of this title] may be cited as the 'Energy Conservation in Existing Buildings Act of 1976'."

TRANSFER OF FUNCTIONS

"Secretary", meaning Secretary of Energy, substituted for "Federal Energy Administration" in subsec. (b) pursuant to sections 301(a), 703, and 707 of Pub. L. 95-91, which are classified to sections 7151(a), 7293, and 7297 of this title and which terminated Federal Energy Administration and transferred its functions (with certain exceptions) to Secretary of Energy.

§ 6802. Definitions

As used in this subchapter:

(1) The term "Secretary" means the Secretary of Energy.

(2) The term "electric utility" means any person, State agency, or Federal agency which sells electric energy.

(3) The term "Federal agency" means any agency or instrumentality of the United States.

(4) The term "State agency" means a State, political subdivision thereof, or any agency or instrumentality of either.

(5) The term "State utility regulatory commission" means (A) any utility regulatory commission which is a State agency or (B) the Tennessee Valley Authority.

(6) The term "State" means any State, the District of Columbia, Puerto Rico, and any territory or possession of the United States.

(7) The term "utility regulatory commission" means any State agency or Federal agency which has authority to fix, modify, approve, or disapprove rates for the sale of electric energy by any electric utility (other than by such agency).

(Pub. L. 94-385, title II, §202, Aug. 14, 1976, 90 Stat. 1142; Pub. L. 95-617, title I, §143, Nov. 9, 1978, 92 Stat. 3134; Pub. L. 105-388, §5(b)(2), Nov. 13, 1998, 112 Stat. 3479.)

AMENDMENTS

1998—Par. (1). Pub. L. 105-388 made technical amendment by striking heading and designation which had been inserted by Pub. L. 95-617.

1978—Par. (1). Pub. L. 95-617 substituted "The term 'Secretary' means the Secretary of Energy" for "The term 'Administrator' means the Administrator of the Federal Energy Administration; except that after such Administration ceases to exist, such term means any officer of the United States designated by the President for purposes of this subchapter".

§ 6803. Development of electric utility rate design proposals by Secretary; contents; submission to Congress; supporting analysis

(a) The Secretary shall develop proposals to improve electric utility rate design. Such proposals shall be designed to encourage energy conservation, minimize the need for new electrical generating capacity, and minimize costs of electric energy to consumers, and shall include (but not be limited to) proposals which provide for the development and implementation of—

(1) load management techniques which are cost effective;

(2) rates which reflect marginal cost of service, or time of use of service, or both;

(3) ratemaking policies which discourage inefficient use of fuel and encourage economical purchases of fuel; and

(4) rates (or other regulatory policies) which encourage electric utility system reliability and reliability of major items of electric utility equipment.

(b) The proposals prepared under subsection (a) of this section shall be transmitted to each House of Congress not later than 6 months after August 14, 1976, for review and for such further action as the Congress may direct by law. Such proposals shall be accompanied by an analysis of—

(1) the projected savings (if any) in consumption of petroleum products, natural gas, electric energy, and other energy resources,

(2) the reduction (if any) in the need for new electrical generating capacity, and of the demand for capital by the electric utility industry, and

(3) changes (if any) in the cost of electric energy to consumers,

which are likely to result from the implementation nationally of each of the proposals transmitted under this subsection.

(Pub. L. 94-385, title II, §203, Aug. 14, 1976, 90 Stat. 1143; Pub. L. 95-617, title I, §143, Nov. 9, 1978, 92 Stat. 3134.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-617 substituted “Secretary” for “Administrator”, meaning Administrator of the Federal Energy Administration.

§ 6804. Funding, administrative, and judicial authorities of Secretary

The Secretary may—

(1) fund (A) demonstration projects to improve electric utility load management procedures and (B) regulatory rate reform initiatives,

(2) on request of a State, a utility regulatory commission, or of any participant in any proceeding before a State utility regulatory commission which relates to electric utility rates or rate design, intervene and participate in such proceeding, and

(3) on request of any State, utility regulatory commission, or party to any action to obtain judicial review of an administrative proceeding in which the Secretary intervened or participated under paragraph (2), intervene and participate in such action.

(Pub. L. 94-385, title II, §204, Aug. 14, 1976, 90 Stat. 1143; Pub. L. 95-617, title I, §143, Nov. 9, 1978, 92 Stat. 3134.)

AMENDMENTS

1978—Pub. L. 95-617 substituted “Secretary” for “Administrator”, meaning Administrator of the Federal Energy Administration in two places.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6808 of this title; title 16 section 2633.

§ 6805. Grants for State consumer protection offices by Secretary

(a) Establishment, operation, and purpose; qualifications for funds

The Secretary may make grants to States, or otherwise as provided in subsection (c) of this

section, under this section to provide for the establishment and operation of offices of consumer services to assist consumers in their presentations before utility regulatory commissions. Any assistance provided under this section shall be provided only for an office of consumer services which is operated independently of any such utility regulatory commission and which is empowered to—

(1) make general factual assessments of the impact of proposed rate changes and other proposed regulatory actions upon all affected consumers;

(2) assist consumers in the presentation of their positions before utility regulatory commissions; and

(3) advocate, on its own behalf, a position which it determines represents the position most advantageous to consumers, taking into account developments in rate design reform.

(b) Grants subject to State assurances on funds

Grants pursuant to subsection (a) of this section shall be made only to States which furnish such assurances as the Secretary may require that funds made available under such section will be in addition to, and not in substitution for, funds made available to offices of consumer services from other sources.

(c) Offices established by Tennessee Valley Authority

Assistance may be provided under this section to an office of consumer services established by the Tennessee Valley Authority, if such office is operated independently of the Tennessee Valley Authority.

(Pub. L. 94-385, title II, §205, Aug. 14, 1976, 90 Stat. 1144; Pub. L. 95-617, title I, §143, Nov. 9, 1978, 92 Stat. 3134.)

AMENDMENTS

1978—Subsecs. (a), (b). Pub. L. 95-617 substituted “Secretary” for “Administrator”, meaning Administrator of the Federal Energy Administration.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6808 of this title.

§ 6806. Statement in annual report

The Secretary shall include in each annual report submitted under section 7267 of this title a statement with respect to activities conducted under this subchapter and recommendations as to the need for and types of further Federal legislation.

(Pub. L. 94-385, title II, §206, Aug. 14, 1976, 90 Stat. 1144; Pub. L. 95-617, title I, §143, Nov. 9, 1978, 92 Stat. 3134; Pub. L. 96-470, title II, §203(g), Oct. 19, 1980, 94 Stat. 2243.)

AMENDMENTS

1980—Pub. L. 96-470 substituted “The Secretary shall include in each annual report submitted under section 7267 of this title a statement” for “Not later than the last day in December in each year, the Secretary shall transmit to the Congress a report”.

1978—Pub. L. 95-617 substituted “Secretary” for “Administrator”, meaning Administrator of the Federal Energy Administration.

§ 6807. State utility regulatory assistance**(a) Grants to State utility regulatory commissions and nonregulated electric utilities**

The Secretary may make grants to State utility regulatory commissions and nonregulated electric utilities (as defined in the Public Utility Regulatory Policies Act of 1978 [16 U.S.C. 2602]) to carry out duties and responsibilities under titles I [16 U.S.C. 2601 et seq.] and III [15 U.S.C. 3201 et seq.], and section 210 [16 U.S.C. 824a-3], of the Public Utility Regulatory Policies Act of 1978. No grant may be made under this section to any Federal agency.

(b) Unnecessary requirements prohibited

Any requirements established by the Secretary with respect to grants under this section may be only such requirements as are necessary to assure that such grants are expended solely to carry out duties and responsibilities referred to in subsection (a) of this section or such as are otherwise required by law.

(c) Application for grant

No grant may be made under this section unless an application for such grant is submitted to the Secretary in such form and manner as the Secretary may require. The Secretary may not approve an application of a State utility regulatory commission or nonregulated electric utility unless such commission or nonregulated electric utility assures the Secretary that funds made available under this section will be in addition to, and not in substitution for, funds made available to such commission or nonregulated electric utility from other governmental sources.

(d) Apportionment of funds

The funds appropriated for purposes of this section shall be apportioned among the States in such manner that grants made under this section in each State shall not exceed the lesser of—

- (1) the amount determined by dividing equally among all States the total amount available under this section for such grants, or
- (2) the amount which the Secretary is authorized to provide pursuant to subsections (b) and (c) of this section for such State.

(Pub. L. 94-385, title II, §207, Aug. 14, 1976, 90 Stat. 1144; Pub. L. 95-617, title I, §141, Nov. 9, 1978, 92 Stat. 3133.)

REFERENCES IN TEXT

The Public Utility Regulatory Policies Act of 1978, referred to in subsec. (a), is Pub. L. 95-617, Nov. 9, 1978, 92 Stat. 3117, as amended. Title I of such Act is classified principally to chapter 46 (§2601 et seq.) of Title 16, Conservation, and title III of such Act is classified generally to chapter 59 (§3201 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 16 and Tables.

AMENDMENTS

1978—Pub. L. 95-617 substituted provisions relating to grants to State utility regulatory commissions and nonregulated electric utilities for provisions authorizing appropriations to carry out this subchapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6808 of this title.

§ 6807a. Energy efficiency grants to State regulatory authorities**(a) Energy efficiency grants**

The Secretary is authorized in accordance with the provisions of this section to provide grants to State regulatory authorities in an amount not to exceed \$250,000 per authority, for purposes of encouraging demand-side management including energy conservation, energy efficiency and load management techniques and for meeting the requirements of paragraphs (7), (8), and (9) of section 2621(d) of title 16 and as a means of meeting gas supply needs and to meet the requirements of paragraphs (3) and (4) of section 3203(b) of title 15. Such grants may be utilized by a State regulatory authority to provide financial assistance to nonprofit subgrantees of the Department of Energy's Weatherization Assistance Program in order to facilitate participation by such subgrantees in proceedings of such regulatory authority to examine energy conservation, energy efficiency, or other demand-side management programs.

(b) Plan

A State regulatory authority wishing to receive a grant under this section shall submit a plan to the Secretary that specifies the actions such authority proposes to take that would achieve the purposes of this section.

(c) Secretarial action

(1) In determining whether, and in what amount, to provide a grant to a State regulatory authority under this section the Secretary shall consider, in addition to other appropriate factors, the actions proposed by the State regulatory authority to achieve the purposes of this section and to consider implementation of the ratemaking standards established in—

- (A) paragraphs (7), (8) and (9) of section 2621(d) of title 16; or
- (B) paragraphs (3) and (4) of section 3203(b) of title 15.

(2) Such actions—

- (A) shall include procedures to facilitate the participation of grantees and nonprofit subgrantees of the Department of Energy's Weatherization Assistance Program in proceedings of such regulatory authorities examining demand-side management programs; and
- (B) shall provide for coverage of the cost of such grantee and subgrantees' participation in such proceedings.

(d) Recordkeeping

Each State regulatory authority that receives a grant under this section shall keep such records as the Secretary shall require.

(e) "State regulatory authority" defined

For purposes of this section, the term "State regulatory authority" shall have the same meaning as provided by section 2602 of title 16 in the case of electric utilities, and such term shall have the same meaning as provided by section 3202 of title 15 in the case of gas utilities, except that in the case of any State without a statewide ratemaking authority, such term shall mean the State energy office.

(f) Authorization

There are authorized to be appropriated \$5,000,000 for each of the fiscal years 1994, 1995

and 1996 to carry out the purposes of this section.

(Pub. L. 102-486, title I, §112, Oct. 24, 1992, 106 Stat. 2797.)

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of the Energy Conservation and Production Act which comprises this chapter.

§ 6808. Authorization of appropriations

There are authorized to be appropriated—

(1) not to exceed \$40,000,000 for each of the fiscal years 1979 and 1980 to carry out section 6807 of this title (relating to State utility regulatory assistance);

(2) not to exceed \$10,000,000 for each of the fiscal years 1979 and 1980 to carry out section 6805 of this title (relating to State offices of consumer services); and

(3) not to exceed \$8,000,000 for the fiscal year 1979, and \$10,000,000 for the fiscal year 1980 to carry out section 6804(1)(B) of this title (relating to innovative rate structures).

(Pub. L. 94-385, title II, §208, as added Pub. L. 95-617, title II, §142, Nov. 9, 1978, 92 Stat. 3134.)

SUBCHAPTER II—ENERGY CONSERVATION STANDARDS FOR NEW BUILDINGS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 7154 of this title.

§ 6831. Congressional findings and purpose

(a) The Congress finds that—

(1) large amounts of fuel and energy are consumed unnecessarily each year in heating, cooling, ventilating, and providing domestic hot water for newly constructed residential and commercial buildings because such buildings lack adequate energy conservation features;

(2) Federal voluntary performance standards for newly constructed buildings can prevent such waste of energy, which the Nation can no longer afford in view of its current and anticipated energy shortage;

(3) the failure to provide adequate energy conservation measures in newly constructed buildings increases long-term operating costs that may affect adversely the repayment of, and security for, loans made, insured, or guaranteed by Federal agencies or made by federally insured or regulated instrumentalities; and

(4) State and local building codes or similar controls can provide an existing means by which to assure, in coordination with other building requirements and with a minimum of Federal interference in State and local transactions, that newly constructed buildings contain adequate energy conservation features.

(b) The purposes of this subchapter, therefore, are to—

(1) redirect Federal policies and practices to assure that reasonable energy conservation features will be incorporated into new commercial and residential buildings receiving Federal financial assistance;

(2) provide for the development and implementation, as soon as practicable, of voluntary performance standards for new residential and commercial buildings which are designed to achieve the maximum practicable improvements in energy efficiency and increases in the use of nondepletable sources of energy; and

(3) encourage States and local governments to adopt and enforce such standards through their existing building codes and other construction control mechanisms, or to apply them through a special approval process.

(Pub. L. 94-385, title III, §302, Aug. 14, 1976, 90 Stat. 1144; Pub. L. 97-35, title X, §1041(a), Aug. 13, 1981, 95 Stat. 621.)

AMENDMENTS

1981—Subsecs. (a)(2), (b)(2). Pub. L. 97-35 inserted “voluntary” before “performance standards”.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective Aug. 13, 1981, see section 1038 of Pub. L. 97-35, set out as a note under section 6240 of this title.

SHORT TITLE

For short title of this subchapter as the “Energy Conservation Standards for New Buildings Act of 1976”, see section 301 of Pub. L. 94-385, set out as a note under section 6801 of this title.

§ 6832. Definitions

As used in this subchapter:

(1) Omitted

(2) The term “building” means any structure to be constructed which includes provision for a heating or cooling system, or both, or for a hot water system.

(3) The term “building code” means a legal instrument which is in effect in a State or unit of general purpose local government, the provisions of which must be adhered to if a building is to be considered to be in conformance with law and suitable for occupancy and use.

(4) The term “commercial building” means any building other than a residential building, including any building developed for industrial or public purposes.

(5) The term “Federal agency” means any department, agency, corporation, or other entity or instrumentality of the executive branch of the Federal Government, including the United States Postal Service, the Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation.

(6) The term “Federal building” means any building to be constructed by, or for the use of, any Federal agency which is not legally subject to State or local building codes or similar requirements.

(7) The term “Federal financial assistance” means (A) any form of loan, grant, guarantee, insurance, payment, rebate, subsidy, or any other form of direct or indirect Federal assistance (other than general or special revenue sharing or formula grants made to States) approved by any Federal officer or agency; or (B) any loan made or purchased by any bank, savings and loan association, or similar institu-

tion subject to regulation by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Federal Home Loan Bank Board, the Federal Savings and Loan Insurance Corporation, or the National Credit Union Administration.

(8) The term "National Institute of Building Sciences" means the institute established by section 1701j-2 of title 12.

(9) The term "residential building" means any structure which is constructed and developed for residential occupancy.

(10) The term "Secretary" means the Secretary of Energy.

(11) The term "State" includes each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory and possession of the United States.

(12) The term "unit of general purpose local government" means any city, county, town, municipality, or other political subdivision of a State (or any combination thereof), which has a building code or similar authority over a particular geographic area.

(13) The term "Federal building energy standards" means energy consumption objectives to be met without specification of the methods, materials, or equipment to be employed in achieving those objectives, but including statements of the requirements, criteria, and evaluation methods to be used, and any necessary commentary.

(14) The term "voluntary building energy code" means a building energy code developed and updated through a consensus process among interested persons, such as that used by the Council of American Building Officials; the American Society of Heating, Refrigerating, and Air-Conditioning Engineers; or other appropriate organizations.

(15) The term "CABO" means the Council of American Building Officials.

(16) The term "ASHRAE" means the American Society of Heating, Refrigerating, and Air-Conditioning Engineers.

(Pub. L. 94-385, title III, §303, Aug. 14, 1976, 90 Stat. 1145; Pub. L. 95-91, title III, §301(a), title VII, §§703, 707, Aug. 4, 1977, 91 Stat. 577, 606, 607; Pub. L. 97-35, title X, §1041(a), Aug. 13, 1981, 95 Stat. 621; Pub. L. 100-242, title V, §570(c), Feb. 5, 1988, 101 Stat. 1950; Pub. L. 102-486, title I, §101(a)(1), Oct. 24, 1992, 106 Stat. 2782.)

CODIFICATION

Par. (1) of this section which read "The term 'Administrator' means the Administrator of the Federal Energy Administration; except that after such Administration ceases to exist, such term means any officer of the United States designated by the President for purposes of this subchapter" has been omitted in view of the termination of the Federal Energy Administration and the transfer of its functions and the functions of the Administrator thereof (with certain exceptions) to the Secretary of Energy pursuant to sections 301(a), 703, and 707 of Pub. L. 95-91, which are classified to sections 7151(a), 7293, and 7297 of this title and the fact that the term "Secretary" is defined for the purposes of this subchapter by par. (10) of this section. In this subchapter, "Secretary of Energy" has been substituted for "Administrator" wherever appearing.

AMENDMENTS

1992—Pars. (9) to (16). Pub. L. 102-486 redesignated pars. (10) to (13) as (9) to (12), respectively, added pars. (13) to (16), and struck out former par. (9) which read as follows: "The term 'voluntary performance standards' means an energy consumption goal or goals to be met without specification of the methods, materials, and processes to be employed in achieving that goal or goals, but including statements of the requirements, criteria and evaluation methods to be used, and any necessary commentary."

1988—Par. (11). Pub. L. 100-242 substituted "Secretary of Energy" for "Secretary of Housing and Urban Development".

1981—Par. (9). Pub. L. 97-35 inserted "voluntary" before "performance standards".

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective Aug. 13, 1981, see section 1038 of Pub. L. 97-35, set out as a note under section 6240 of this title.

TRANSFER OF FUNCTIONS

Federal Savings and Loan Insurance Corporation and Federal Home Loan Bank Board abolished and functions transferred, see sections 401 to 406 of Pub. L. 101-73, set out as a note under section 1437 of Title 12, Banks and Banking.

§ 6833. Updating State building energy efficiency codes

(a) Consideration and determination respecting residential building energy codes

(1) Not later than 2 years after October 24, 1992, each State shall certify to the Secretary that it has reviewed the provisions of its residential building code regarding energy efficiency and made a determination as to whether it is appropriate for such State to revise such residential building code provisions to meet or exceed CABO Model Energy Code, 1992.

(2) The determination referred to in paragraph (1) shall be—

(A) made after public notice and hearing;

(B) in writing;

(C) based upon findings included in such determination and upon the evidence presented at the hearing; and

(D) available to the public.

(3) Each State may, to the extent consistent with otherwise applicable State law, revise the provisions of its residential building code regarding energy efficiency to meet or exceed CABO Model Energy Code, 1992, or may decline to make such revisions.

(4) If a State makes a determination under paragraph (1) that it is not appropriate for such State to revise its residential building code, such State shall submit to the Secretary, in writing, the reasons for such determination, and such statement shall be available to the public.

(5)(A) Whenever CABO Model Energy Code, 1992,¹ (or any successor of such code) is revised, the Secretary shall, not later than 12 months after such revision, determine whether such revision would improve energy efficiency in residential buildings. The Secretary shall publish notice of such determination in the Federal Register.

(B) If the Secretary makes an affirmative determination under subparagraph (A), each State

¹ So in original. The comma probably should not appear.

shall, not later than 2 years after the date of the publication of such determination, certify that it has reviewed the provisions of its residential building code regarding energy efficiency and made a determination as to whether it is appropriate for such State to revise such residential building code provisions to meet or exceed the revised code for which the Secretary made such determination.

(C) Paragraphs (2), (3), and (4) shall apply to any determination made under subparagraph (B).

(b) Certification of commercial building energy code updates

(1) Not later than 2 years after October 24, 1992, each State shall certify to the Secretary that it has reviewed and updated the provisions of its commercial building code regarding energy efficiency. Such certification shall include a demonstration that such State's code provisions meet or exceed the requirements of ASHRAE Standard 90.1-1989.

(2)(A) Whenever the provisions of ASHRAE Standard 90.1-1989 (or any successor standard) regarding energy efficiency in commercial buildings are revised, the Secretary shall, not later than 12 months after the date of such revision, determine whether such revision will improve energy efficiency in commercial buildings. The Secretary shall publish a notice of such determination in the Federal Register.

(B)(i) If the Secretary makes an affirmative determination under subparagraph (A), each State shall, not later than 2 years after the date of the publication of such determination, certify that it has reviewed and updated the provisions of its commercial building code regarding energy efficiency in accordance with the revised standard for which such determination was made. Such certification shall include a demonstration that the provisions of such State's commercial building code regarding energy efficiency meet or exceed such revised standard.

(ii) If the Secretary makes a determination under subparagraph (A) that such revised standard will not improve energy efficiency in commercial buildings, State commercial building code provisions regarding energy efficiency shall meet or exceed ASHRAE Standard 90.1-1989, or if such standard has been revised, the last revised standard for which the Secretary has made an affirmative determination under subparagraph (A).

(c) Extensions

The Secretary shall permit extensions of the deadlines for the certification requirements under subsections (a) and (b) of this section if a State can demonstrate that it has made a good faith effort to comply with such requirements and that it has made significant progress in doing so.

(d) Technical assistance

The Secretary shall provide technical assistance to States to implement the requirements of this section, and to improve and implement State residential and commercial building energy efficiency codes or to otherwise promote the design and construction of energy efficient buildings.

(e) Availability of incentive funding

(1) The Secretary shall provide incentive funding to States to implement the requirements of this section, and to improve and implement State residential and commercial building energy efficiency codes. In determining whether, and in what amount, to provide incentive funding under this subsection, the Secretary shall consider the actions proposed by the State to implement the requirements of this section, to improve and implement residential and commercial building energy efficiency codes, and to promote building energy efficiency through the use of such codes.

(2) There are authorized to be appropriated such sums as may be necessary to carry out this subsection.

(Pub. L. 94-385, title III, §304, as added Pub. L. 102-486, title I, §101(a)(2), Oct. 24, 1992, 106 Stat. 2783.)

PRIOR PROVISIONS

A prior section 6833, Pub. L. 94-385, title III, §304, Aug. 14, 1976, 90 Stat. 1146; Pub. L. 95-91, title III, §§301(a), 304(a), title VII, §§703, 707, 709(e)(1), Aug. 4, 1977, 91 Stat. 577, 580, 606, 608; Pub. L. 96-399, title III, §326(a)-(c), Oct. 8, 1980, 94 Stat. 1649; Pub. L. 97-35, title X, §1041(a), (c), Aug. 13, 1981, 95 Stat. 621; Pub. L. 100-418, title V, §5115(c), Aug. 23, 1988, 102 Stat. 1433, related to development and promulgation of energy conservation voluntary performance standards for new commercial and residential buildings, prior to repeal by Pub. L. 102-486, title I, §101(a)(2), Oct. 24, 1992, 106 Stat. 2783.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7154, 8235 of this title.

§ 6834. Federal building energy efficiency standards

(a) In general

(1) Not later than 2 years after October 24, 1992, the Secretary, after consulting with appropriate Federal agencies, CABO, ASHRAE, the National Association of Home Builders, the Illuminating Engineering Society, the American Institute of Architects, the National Conference of the States on Building Codes and Standards, and other appropriate persons, shall establish, by rule, Federal building energy standards that require in new Federal buildings those energy efficiency measures that are technologically feasible and economically justified. Such standards shall become effective no later than 1 year after such rule is issued.

(2) The standards established under paragraph (1) shall—

(A) contain energy saving and renewable energy specifications that meet or exceed the energy saving and renewable energy specifications of CABO Model Energy Code, 1992 (in the case of residential buildings) or ASHRAE Standard 90.1-1989 (in the case of commercial buildings);

(B) to the extent practicable, use the same format as the appropriate voluntary building energy code; and

(C) consider, in consultation with the Environmental Protection Agency and other Federal agencies, and where appropriate contain,

measures with regard to radon and other indoor air pollutants.

(b) Omitted

(c) Periodic review

The Secretary shall periodically, but not less than once every 5 years, review the Federal building energy standards established under this section and shall, if significant energy savings would result, upgrade such standards to include all new energy efficiency and renewable energy measures that are technologically feasible and economically justified.

(d) Interim standards

Interim energy performance standards for new Federal buildings issued by the Secretary under this subchapter as it existed before October 24, 1992, shall remain in effect until the standards established under subsection (a) of this section become effective.

(Pub. L. 94-385, title III, §305, as added Pub. L. 102-486, title I, §101(a)(2), Oct. 24, 1992, 106 Stat. 2784.)

CODIFICATION

Subsec. (b) of this section, which required the Secretary to identify and describe, in the annual report required under section 6837 of this title, the basis for any substantive difference between the Federal building energy standards established under this section and the appropriate voluntary building energy code, was omitted because of termination of the annual report. See Codification note set out under section 6837 of this title.

PRIOR PROVISIONS

A prior section 6834, Pub. L. 94-385, title III, §305, Aug. 14, 1976, 90 Stat. 1147, related to availability or approval of Federal financial assistance for new construction, prior to repeal by Pub. L. 97-35, title X, §1041(b), Aug. 13, 1981, 95 Stat. 621.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6835 of this title.

§ 6835. Federal compliance

(a) Procedures

(1) The head of each Federal agency shall adopt procedures necessary to assure that new Federal buildings meet or exceed the Federal building energy standards established under section 6834 of this title.

(2) The Federal building energy standards established under section 6834 of this title shall apply to new buildings under the jurisdiction of the Architect of the Capitol. The Architect shall adopt procedures necessary to assure that such buildings meet or exceed such standards.

(b) Construction of new buildings

The head of a Federal agency may expend Federal funds for the construction of a new Federal building only if the building meets or exceeds the appropriate Federal building energy standards established under section 6834 of this title.

(Pub. L. 94-385, title III, §306, as added Pub. L. 102-486, title I, §101(a)(2), Oct. 24, 1992, 106 Stat. 2785.)

PRIOR PROVISIONS

A prior section 6835, Pub. L. 94-385, title III, §306, Aug. 14, 1976, 90 Stat. 1148; Pub. L. 96-399, title III,

§326(d), Oct. 8, 1980, 94 Stat. 1650; Pub. L. 97-35, title X, §1041(d), Aug. 13, 1981, 95 Stat. 621, related to compliance with final performance standards by Federal agencies, prior to repeal by Pub. L. 102-486, title I, §101(a)(2), Oct. 24, 1992, 106 Stat. 2783.

§ 6836. Support for voluntary building energy codes

(a) In general

Not later than 1 year after October 24, 1992, the Secretary, after consulting with the Secretary of Housing and Urban Development, the Secretary of Veterans Affairs, other appropriate Federal agencies, CABO, ASHRAE, the National Conference of States on Building Codes and Standards, and any other appropriate building codes and standards organization, shall support the upgrading of voluntary building energy codes for new residential and commercial buildings. Such support shall include—

(1) a compilation of data and other information regarding building energy efficiency standards and codes in the possession of the Federal Government, State and local governments, and industry organizations;

(2) assistance in improving the technical basis for such standards and codes;

(3) assistance in determining the cost-effectiveness and the technical feasibility of the energy efficiency measures included in such standards and codes; and

(4) assistance in identifying appropriate measures with regard to radon and other indoor air pollutants.

(b) Review

The Secretary shall periodically review the technical and economic basis of voluntary building energy codes and, based upon ongoing research activities—

(1) recommend amendments to such codes including measures with regard to radon and other indoor air pollutants;

(2) seek adoption of all technologically feasible and economically justified energy efficiency measures; and

(3) otherwise participate in any industry process for review and modification of such codes.

(Pub. L. 94-385, title III, §307, as added Pub. L. 102-486, title I, §101(a)(2), Oct. 24, 1992, 106 Stat. 2785.)

PRIOR PROVISIONS

A prior section 6836, Pub. L. 94-385, title III, §307, Aug. 14, 1976, 90 Stat. 1149; Pub. L. 95-619, title II, §255, Nov. 9, 1978, 92 Stat. 3238, set forth provisions respecting grants to States for adoption and implementation of performance standards, prior to repeal by Pub. L. 97-35, title X, §1041(b), Aug. 13, 1981, 95 Stat. 621.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6837 of this title.

§ 6837. Omitted

CODIFICATION

Section, Pub. L. 94-385, title III, §308, as added Pub. L. 102-486, title I, §101(a)(2), Oct. 24, 1992, 106 Stat. 2786, which required the Secretary to report annually to Congress on activities conducted pursuant to this subchapter, terminated, effective May 15, 2000, pursuant to

section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, the 4th item on page 88 of House Document No. 103-7.

A prior section 6837, Pub. L. 94-385, title III, §308, Aug. 14, 1976, 90 Stat. 1149; Pub. L. 97-35, title X, §1041(e), Aug. 13, 1981, 95 Stat. 621, related to technical assistance to States, etc., prior to repeal by Pub. L. 102-486, §101(a)(2).

§§ 6838 to 6840. Repealed. Pub. L. 102-486, title I, § 101(a)(2), Oct. 24, 1992, 106 Stat. 2783

Section 6838, Pub. L. 94-385, title III, §309, Aug. 14, 1976, 90 Stat. 1149; Pub. L. 97-35, title X, §1041(a), Aug. 13, 1981, 95 Stat. 621, related to consultations by Secretary with interested and affected groups in developing and promulgating voluntary performance standards and establishment of advisory committees.

Section 6839, Pub. L. 94-385, title III, §310, Aug. 14, 1976, 90 Stat. 1149; Pub. L. 95-91, title III, §§301(a), 304(a), title VII, §§703, 707, 709(e)(2), Aug. 4, 1977, 91 Stat. 577, 580, 606, 607, 608; Pub. L. 97-35, title X, §1041(a), Aug. 13, 1981, 95 Stat. 621; Pub. L. 100-418, title V, §5115(c), Aug. 23, 1988, 102 Stat. 1433, related to support activities necessary or appropriate to develop and implement voluntary performance standards.

Section 6840, Pub. L. 94-385, title III, §311, Aug. 14, 1976, 90 Stat. 1149; Pub. L. 97-375, title II, §207(b), Dec. 21, 1982, 96 Stat. 1824, related to monitoring of State and local adoption and implementation of standards and reports to Congress on implementation and effectiveness of standards.

SUBCHAPTER III—ENERGY CONSERVATION AND RENEWABLE-RESOURCE ASSISTANCE FOR EXISTING BUILDINGS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 8624 of this title.

§ 6851. Congressional findings and purpose

(a) The Congress finds that—

(1) the fastest, most cost-effective, and most environmentally sound way to prevent future energy shortages in the United States, while reducing the Nation's dependence on imported energy supplies, is to encourage and facilitate, through major programs, the implementation of energy conservation and renewable-resource energy measures with respect to dwelling units, nonresidential buildings, and industrial plants;

(2) current efforts to encourage and facilitate such measures are inadequate as a consequence of—

(A) a lack of adequate and available financing for such measures, particularly with respect to individual consumers and owners of small businesses;

(B) a shortage of reliable and impartial information and advisory services pertaining to practicable energy conservation measures and renewable-resource energy measures and the cost savings that are likely if they are implemented in such units, buildings, and plants; and

(C) the absence of organized programs which, if they existed, would enable consumers, especially individuals and owners of small businesses, to undertake such measures easily and with confidence in their economic value;

(3) major programs of financial incentives and assistance for energy conservation meas-

ures and renewable-resource energy measures in dwelling units, nonresidential buildings, and industrial plants would—

(A) significantly reduce the Nation's demand for energy and the need for petroleum imports;

(B) cushion the adverse impact of the high price of energy supplies on consumers, particularly elderly and handicapped low-income persons who cannot afford to make the modifications necessary to reduce their residential energy use; and

(C) increase, directly and indirectly, job opportunities and national economic output;

(4) the primary responsibility for the implementation of such major programs should be lodged with the governments of the States; the diversity of conditions among the various States and regions of the Nation is sufficiently great that a wholly federally administered program would not be as effective as one which is tailored to meet local requirements and to respond to local opportunities; the State should be allowed flexibility within which to fashion such programs, subject to general Federal guidelines and monitoring sufficient to protect the financial investments of consumers and the financial interest of the United States and to insure that the measures undertaken in fact result in significant energy and cost savings which would probably not otherwise occur;

(5) to the extent that direct Federal administration is more economical and efficient, direct Federal financial incentives and assistance should be extended through existing and proven Federal programs rather than through new programs that would necessitate new and separate administrative bureaucracies; and

(6) such programs should be designed and administered to supplement, and not to supplant or in any other way conflict with, State energy conservation programs under part C of title III of the Energy Policy and Conservation Act [42 U.S.C. 6321 et seq.]; the emergency energy conservation program carried out by community action agencies pursuant to section 2809(a)(12)¹ of this title; and other forms of assistance and encouragement for energy conservation.

(b) It is, therefore, the purpose of this subchapter to encourage and facilitate the implementation of energy conservation measures and renewable-resource energy measures in dwelling units, nonresidential buildings, and industrial plants, through—

(1) supplemental State energy conservation plans; and

(2) Federal financial incentives and assistance.

(Pub. L. 94-385, title IV, §402, Aug. 14, 1976, 90 Stat. 1150.)

REFERENCES IN TEXT

The Energy Policy and Conservation Act, referred to in subsec. (a)(5), is Pub. L. 94-163, Dec. 22, 1975, 89 Stat. 871, as amended. Part C of title III of the Energy Policy and Conservation Act is classified generally to part B

¹ See References in Text note below.

(§6321 et seq.) of subchapter III of chapter 77 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

Section 2809(a)(12) of this title, referred to in subsec. (a)(6), which was redesignated as section 2809(a)(5) by Pub. L. 95-568, §5(a)(2)(E), Nov. 2, 1978, 92 Stat. 2426, was subsequently repealed by Pub. L. 97-35, title VI, §683(a), Aug. 13, 1981, 95 Stat. 519.

This subchapter, referred to in subsec. (b), was in the original "this title," meaning title IV of Pub. L. 94-385, known as the Energy Conservation in Existing Buildings Act of 1976, which enacted this subchapter, section 6327 of this title, and section 1701z-8 of Title 12, Banks and Banking, amended sections 6323, 6325, and 6326 of this title, and enacted provisions set out as a note under section 6801 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6801 of this title and Tables.

SHORT TITLE

For short title of title IV of Pub. L. 94-385, which is classified principally to this subchapter, as the "Energy Conservation in Existing Buildings Act of 1976", see section 401 of Pub. L. 94-385, set out as a note under section 6801 of this title.

PART A—WEATHERIZATION ASSISTANCE FOR LOW-INCOME PERSONS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 1474, 3013, 6325, 6873, 8626b, 12807 of this title; title 15 section 4507; title 31 section 3803.

§ 6861. Congressional findings and purpose

(a) The Congress finds that—

(1) a fast, cost-effective, and environmentally sound way to prevent future energy shortages in the United States while reducing the Nation's dependence on imported energy supplies, is to encourage and facilitate, through major programs, the implementation of energy conservation and renewable-resource energy measures with respect to dwelling units;

(2) existing efforts to encourage and facilitate such measures are inadequate because—

(A) many dwellings owned or occupied by low-income persons are energy inefficient;

(B) low-income persons can least afford to make the modifications necessary to provide for efficient energy equipment in such dwellings and otherwise to improve the energy efficiency of such dwellings;

(3) weatherization of such dwellings would lower shelter costs in dwellings owned or occupied by low-income persons as well as save energy and reduce future energy capacity requirements; and

(4) States, through Community Action Agencies established under the Economic Opportunity Act of 1964 [42 U.S.C. 2701 et seq.] and units of general purpose local government, should be encouraged, with Federal financial and technical assistance, to develop and support coordinated weatherization programs designed to alleviate the adverse effects of energy costs on such low-income persons, to supplement other Federal programs serving such low-income persons, and to increase energy efficiency.

(b) It is, therefore, the purpose of this part to develop and implement a weatherization assist-

ance program to increase the energy efficiency of dwellings owned or occupied by low-income persons, reduce their total residential energy expenditures, and improve their health and safety, especially low-income persons who are particularly vulnerable such as the elderly, the handicapped, and children.

(Pub. L. 94-385, title IV, §411, Aug. 14, 1976, 90 Stat. 1151; Pub. L. 101-440, §7(j), Oct. 18, 1990, 104 Stat. 1015.)

REFERENCES IN TEXT

The Economic Opportunity Act of 1964, referred to in subsec. (a)(4), is Pub. L. 88-452, Aug. 20, 1964, 78 Stat. 508, as amended, which was classified generally to chapter 34 (§2701 et seq.) of this title prior to repeal, except for titles VIII and X, by Pub. L. 97-35, title VI, §683(a), Aug. 13, 1981, 95 Stat. 519. Titles VIII and X of the Act are classified generally to subchapters VIII (§2991 et seq.) and X (§2996 et seq.) of chapter 34 of this title. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1990—Pub. L. 101-440 amended section generally. Prior to amendment, section read as follows:

“(a) The Congress finds that—

“(1) dwellings owned or occupied by low-income persons frequently are inadequately insulated;

“(2) low-income persons, particularly elderly and handicapped low-income persons, can least afford to make the modifications necessary to provide for adequate insulation in such dwellings and to otherwise reduce residential energy use;

“(3) weatherization of such dwellings would lower utility expenses for such low-income owners or occupants as well as save thousands of barrels per day of needed fuel; and

“(4) States, through community action agencies established under the Economic Opportunity Act of 1964 and units of general purpose local government, should be encouraged, with Federal financial and technical assistance, to develop and support coordinated weatherization programs designed to ameliorate the adverse effects of high energy costs on such low-income persons, to supplement other Federal programs serving such persons, and to conserve energy.

“(b) It is, therefore, the purpose of this part to develop and implement a supplementary weatherization assistance program to assist in achieving a prescribed level of insulation in the dwellings of low-income persons, particularly elderly and handicapped low-income persons, in order both to aid those persons least able to afford higher utility costs and to conserve needed energy.”

§ 6862. Definitions

As used in this part:

(1) The term "Secretary" means the Secretary of Energy.

(2) The term "Director" means the Director of the Community Services Administration.

(3) The term "elderly" means any individual who is 60 years of age or older.

(4) The term "Governor" means the chief executive officer of a State (including the Mayor of the District of Columbia).

(5) The term "handicapped person" means any individual (A) who is an individual with a disability, as defined in section 705 of title 29, (B) who is under a disability as defined in section 1614(a)(3)(A) or 233(d)(1) of the Social Security Act [42 U.S.C. 1382c(a)(3)(A), 423(d)(1)] or in section 102(7)¹ of the Developmental Dis-

¹ See References in Text note below.

abilities Services and Facilities Construction Act [42 U.S.C. 6001(7)], or (C) who is receiving benefits under chapter 11 or 15 of title 38.

(6) The terms "Indian", "Indian tribe", and "tribal organization" have the meanings prescribed for such terms by paragraphs (4), (5), and (6), respectively, of section 102¹ of the Older Americans Act of 1965 [42 U.S.C. 3002].

(7) The term "low-income" means that income in relation to family size which (A) is at or below 125 percent of the poverty level determined in accordance with criteria established by the Director of the Office of Management and Budget, except that the Secretary may establish a higher level if the Secretary, after consulting with the Secretary of Agriculture and the Director of the Community Services Administration, determines that such a higher level is necessary to carry out the purposes of this part and is consistent with the eligibility criteria established for the weatherization program under section 2809(a)(12) of this title, (B) is the basis on which cash assistance payments have been paid during the preceding 12-month period under titles IV and XVI of the Social Security Act [42 U.S.C. 601 et seq., 1381 et seq.] or applicable State or local law, or (C) if a State elects, is the basis for eligibility for assistance under the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8621), provided that such basis is at least 125 percent of the poverty level determined in accordance with criteria established by the Director of the Office of Management and Budget.

(8) The term "State" means each of the States and the District of Columbia.

(9) The term "weatherization materials" means—

(A) caulking and weatherstripping of doors and windows;

(B) furnace efficiency modifications, including, but not limited to—

(i) replacement burners, furnaces, or boilers or any combination thereof;

(ii) devices for minimizing energy loss through heating system, chimney, or venting devices; and

(iii) electrical or mechanical furnace ignition systems which replace standing gas pilot lights;

(C) clock thermostats;

(D) ceiling, attic, wall, floor, and duct insulation;

(E) water heater insulation;

(F) storm windows and doors, multiglazed windows and doors, heat-absorbing or heat-reflective window and door materials;

(G) cooling efficiency modifications, including, but not limited to, replacement air-conditioners, ventilation equipment, screening, window films, and shading devices;

(H) solar thermal water heaters;

(I) wood-heating appliances; and

(J) such other insulating or energy conserving devices or technologies as the Secretary may determine, after consulting with the Secretary of Housing and Urban Development, the Secretary of Agriculture, and the Director, of the Community Services Administration.

(Pub. L. 94-385, title IV, §412, Aug. 14, 1976, 90 Stat. 1152; Pub. L. 95-602, title I, §122(e), Nov. 6,

1978, 92 Stat. 2987; Pub. L. 95-619, title II, §231(a)(1), (b)(2), Nov. 9, 1978, 92 Stat. 3224, 3225; Pub. L. 96-294, title V, §577(1), (2), June 30, 1980, 94 Stat. 760; Pub. L. 98-558, title IV, §§401, 402, Oct. 30, 1984, 98 Stat. 2887; Pub. L. 100-242, title V, §570(d), Feb. 5, 1988, 101 Stat. 1950; Pub. L. 101-440, §7(a), Oct. 18, 1990, 104 Stat. 1012; Pub. L. 102-486, title I, §142(b), Oct. 24, 1992, 106 Stat. 2843; Pub. L. 105-220, title IV, §414(f), Aug. 7, 1998, 112 Stat. 1242.)

REFERENCES IN TEXT

Section 102(7) of the Developmental Disabilities Services and Facilities Construction Act [42 U.S.C. 6001(7)], referred to in par. (5), was repealed by Pub. L. 106-402, title IV, §401(a), Oct. 30, 2000, 114 Stat. 1737.

Paragraphs (4), (5), and (6) of section 102 of the Older Americans Act of 1965, referred to in par. (6), were redesignated pars. (5), (6), and (7), respectively, of section 102 of the Act by Pub. L. 95-478, title V, §503(a)(2), Oct. 18, 1978, 92 Stat. 1559, and are classified to pars. (5), (6), and (7), respectively, of section 3002 of this title.

Section 2809(a)(12) of this title, referred to in par. (7), which was redesignated as section 2809(a)(5) by Pub. L. 95-568, §5(a)(2)(E), Nov. 2, 1978, 92 Stat. 2426, was subsequently repealed by Pub. L. 97-35, title VI, §683(a), Aug. 13, 1981, 95 Stat. 519.

The Social Security Act, referred to in par. (7), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles IV and XVI of the Social Security Act are classified generally to subchapters IV (§601 et seq.) and XVI (§1381 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Low-Income Home Energy Assistance Act of 1981, referred to in par. (7), is title XXVI of Pub. L. 97-35, Aug. 13, 1981, 95 Stat. 893, as amended, which is classified generally to subchapter II (§8621 et seq.) of chapter 94 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 8621 of this title and Tables.

AMENDMENTS

1998—Par. (5)(A). Pub. L. 105-220 substituted "an individual with a disability, as defined in section 705 of title 29" for "a handicapped individual as defined in section 7(7) of the Rehabilitation Act of 1973".

1992—Par. (9)(G) to (J). Pub. L. 102-486 realigned margin of subpar. (G), added subpars. (H) and (I), and redesignated former subpar. (H) as (J).

1990—Par. (9)(G), (H). Pub. L. 101-440 added subpar. (G) and redesignated former subpar. (G) as (H).

1988—Par. (9)(G). Pub. L. 100-242 substituted a single comma for two consecutive commas after "determine".

1984—Par. (7)(C). Pub. L. 98-558, §401, added cl. (C).

Par. (9)(B). Pub. L. 98-558, §402(1), in amending subpar. (B) generally, substituted "including, but not limited to" for "limited to" in provisions preceding cl. (i), "furnaces, or boilers or any combination thereof" for "designed to substantially increase the energy efficiency of the heating system," in cl. (i), and "minimizing energy loss through heating system, chimney, or venting devices" for "modifying flue openings which will increase the energy efficiency of the heating system," in cl. (ii).

Par. (9)(C). Pub. L. 98-558, §402(2), struck out "by rule" after "may determine,".

1980—Par. (1). Pub. L. 96-294, §577(1), substituted provisions defining "Secretary" for provisions defining "Administrator".

Pars. (7), (9)(G). Pub. L. 96-294, §577(2), substituted "Secretary" for "Administrator" wherever appearing.

1978—Par. (5). Pub. L. 95-602 substituted "section 7(7) of the Rehabilitation Act of 1973" for "section 7(6) of the Rehabilitation Act of 1973".

Par. (7)(A). Pub. L. 95-619, §231(a)(1), inserted "125 percent of" after "at or below" and inserted provision authorizing the Administrator to establish a higher

level for low-income computations after determining such higher level to be necessary to carry out the purposes of this part.

Par. (9). Pub. L. 95-619, §231(b)(2), substituted a specific listing of items to be considered weatherization materials for purposes of this part for a general statement of the sort of materials that could be considered as such.

COMMUNITY SERVICES ADMINISTRATION

Community Services Administration, which was established by section 601 of Economic Opportunity Act of 1964, as amended (42 U.S.C. 2941), terminated when Economic Opportunity Act of 1964, Pub. L. 88-452, Aug. 20, 1964, 78 Stat. 508, as amended, was repealed, except for titles VIII and X, effective Oct. 1, 1981, by section 683(a) of Pub. L. 97-35, title VI, Aug. 13, 1981, 95 Stat. 519, which is classified to 42 U.S.C. 9912(a). An Office of Community Services, headed by a Director, was established in Department of Health and Human Services by section 676 of Pub. L. 97-35, which is classified to 42 U.S.C. 9905.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1474, 6372 of this title; title 12 section 1703.

§ 6863. Weatherization program

(a) Development and conduct of program by Secretary; grants to States and Indian tribal organizations

The Secretary shall develop and conduct, in accordance with the purpose and provisions of this part, a weatherization program. In developing and conducting such program, the Secretary may, in accordance with this part and regulations promulgated under this part, make grants (1) to States, and (2) in accordance with the provisions of subsection (d) of this section, to Indian tribal organizations to serve Native Americans. Such grants shall be made for the purpose of providing financial assistance with regard to projects designed to provide for the weatherization of dwelling units, particularly those where elderly or handicapped low-income persons reside, occupied by low-income families.

(b) Consultation by Secretary with other Federal departments and agencies on development and publication in Federal Register of proposed regulations; required regulatory provisions; standards and procedures; rental units

(1) The Secretary, after consultation with the Director, the Secretary of Housing and Urban Development, the Secretary of Health and Human Services, the Secretary of Labor, and the heads of such other Federal departments and agencies as the Secretary deems appropriate, shall develop and publish in the Federal Register for public comment, not later than 60 days after August 14, 1976, proposed regulations to carry out the provisions of this part. The Secretary shall take into consideration comments submitted regarding such proposed regulations and shall promulgate and publish final regulations for such purpose not later than 90 days after August 14, 1976. The development of regulations under this part shall be fully coordinated with the Director.

(2) The regulations promulgated pursuant to this section shall include provisions—

(A) prescribing, in coordination with the Secretary of Housing and Urban Development,

the Secretary of Health and Human Services, and the Director of the National Institute of Standards and Technology in the Department of Commerce, for use in various climatic, structural, and human need settings, standards for weatherization materials, energy conservation techniques, and balance combinations thereof, which are designed to achieve a balance of a healthful dwelling environment and maximum practicable energy conservation;

(B) that provide guidance to the States in the implementation of this part, including guidance designed to ensure that a State establishes (i) procedures that provide protection under paragraph (5) to tenants paying for energy as a portion of their rent, and (ii) a process for monitoring compliance with its obligations pursuant to this part; and

(C) that secure the Federal investment made under this part and address the issues of eviction from and sale of property receiving weatherization materials under this part.

(3) The Secretary, in coordination with the Secretaries and Director described in paragraph (2)(A) and with the Director of the Community Services Administration and the Secretary of Agriculture, shall develop and publish in the Federal Register for public comment, not later than 60 days after November 9, 1978, proposed amendments to the regulations prescribed under paragraph (1). Such amendments shall provide that the standards described in paragraph (2)(A) shall include a set of procedures to be applied to each dwelling unit to determine the optimum set of cost-effective measures, within the cost guidelines set for the program, to be installed in such dwelling unit. Such standards shall, in order to achieve such optimum savings of energy, take into consideration the following factors—

(A) the cost of the weatherization material;

(B) variation in climate; and

(C) the value of energy saved by the application of the weatherization material.

Such standards shall be utilized by the Secretary in carrying out this part, the Secretary of Agriculture in carrying out the weatherization program under section 1474(c) of this title, and the Director of the Community Services Administration in carrying out weatherization programs under section 222(a)(12) of the Economic Opportunity Act of 1964 [42 U.S.C. 2809(a)(12)]. The Secretary shall take into consideration comments submitted regarding such proposed amendment and shall promulgate and publish final amended regulations not later than 120 days after November 9, 1978.

(4) In carrying out paragraphs (2)(A) and (3), the Secretary shall establish the standards and procedures described in such paragraphs so that weatherization efforts being carried out under this part and under programs described in the fourth sentence of paragraph (3) will accomplish uniform results among the States in any area with a similar climatic condition.

(5) In any case in which a dwelling consists of a rental unit or rental units, the State, in the implementation of this part, shall ensure that—

(A) the benefits of weatherization assistance in connection with such rental units, includ-

ing units where the tenants pay for their energy through their rent, will accrue primarily to the low-income tenants residing in such units;

(B) for a reasonable period of time after weatherization work has been completed on a dwelling containing a unit occupied by an eligible household, the tenants in that unit (including households paying for their energy through their rent) will not be subjected to rent increases unless those increases are demonstrably related to matters other than the weatherization work performed;

(C) the enforcement of subparagraph (B) is provided through procedures established by the State by which tenants may file complaints and owners, in response to such complaints, shall demonstrate that the rent increase concerned is related to matters other than the weatherization work performed; and

(D) no undue or excessive enhancement will occur to the value of such dwelling units.

(6) As a condition of having assistance provided under this part with respect to multifamily buildings, a State may require financial participation from the owners of such buildings.

(c) Failure of State to submit application; alternate application by any unit of general purpose local government or community action agency; submission of amended application by State

If a State does not, within 90 days after the date on which final regulations are promulgated under this section, submit an application to the Secretary which meets the requirements set forth in section 6864 of this title, any unit of general purpose local government of sufficient size (as determined by the Secretary), or a community action agency carrying out programs under title II of the Economic Opportunity Act of 1964 [42 U.S.C. 2781 et seq.], may, in lieu of such State, submit an application (meeting such requirements and subject to all other provisions of this part) for carrying out projects under this part within the geographical area which is subject to the jurisdiction of such government or is served by such agency. A State may, in accordance with regulations promulgated under this part, submit an amended application.

(d) Direct grants to low-income members of Indian tribal organizations or alternate service organizations; application for funds

(1) Notwithstanding any other provision of this part, in any State in which the Secretary determines (after having taken into account the amount of funds made available to the State to carry out the purposes of this part) that the low-income members of an Indian tribe are not receiving benefits under this part that are equivalent to the assistance provided to other low-income persons in such State under this part, and if he further determines that the members of such tribe would be better served by means of a grant made directly to provide such assistance, he shall reserve from sums that would otherwise be allocated to such State under this part not less than 100 percent, nor more than 150 percent, of an amount which bears the same ratio to the State's allocation for the fiscal year involved as

the population of all low-income Indians for whom a determination under this subsection has been made bears to the population of all low-income persons in such State.

(2) The sums reserved by the Secretary on the basis of his determination under this subsection shall be granted to the tribal organization serving the individuals for whom such a determination has been made, or, where there is no tribal organization, to such other entity as he determines has the capacity to provide services pursuant to this part.

(3) In order for a tribal organization or other entity to be eligible for a grant for a fiscal year under this subsection, it shall submit to the Secretary an application meeting the requirements set forth in section 6864 of this title.

(e) Transfer of funds

Notwithstanding any other provision of law, the Secretary may transfer to the Director sums appropriated under this part to be utilized in order to carry out programs, under section 222(a)(12) of the Economic Opportunity Act of 1964 [42 U.S.C. 2809(a)(12)], which further the purpose of this part.

(Pub. L. 94-385, title IV, §413, Aug. 14, 1976, 90 Stat. 1152; Pub. L. 95-619, title II, §231(a)(2), (b)(1), Nov. 9, 1978, 92 Stat. 3224; Pub. L. 96-294, title V, §§573(b), 574, 577(2), June 30, 1980, 94 Stat. 759, 760; Pub. L. 98-479, title II, §201(h), Oct. 17, 1984, 98 Stat. 2228; Pub. L. 100-418, title V, §5115(c), Aug. 23, 1988, 102 Stat. 1433; Pub. L. 101-440, §7(b), Oct. 18, 1990, 104 Stat. 1012; Pub. L. 103-82, title IV, §405(l), Sept. 21, 1993, 107 Stat. 922.)

REFERENCES IN TEXT

The Economic Opportunity Act of 1964, referred to in subsecs. (b)(3), (c), and (e), is Pub. L. 88-452, Aug. 20, 1964, 78 Stat. 508, as amended. Title II of the Economic Opportunity Act of 1964 was classified generally to subchapter II (§2781 et seq.) of chapter 34 of this title prior to repeal by Pub. L. 97-35, title VI, §683(a), Aug. 13, 1981, 95 Stat. 519. Prior to that repeal, section 222(a)(12) of that Act [42 U.S.C. 2809(a)(12)] was redesignated as section 222(a)(5) [42 U.S.C. 2809(a)(5)] by Pub. L. 95-568, §5(a)(2)(E), Nov. 2, 1978, 94 Stat. 2426. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1993—Subsec. (b)(1). Pub. L. 103-82 struck out “the Director of the ACTION Agency,” after “Labor.”

1990—Subsec. (b)(2)(B), (C). Pub. L. 101-440, §7(b)(1), added subpars. (B) and (C) and struck out former subpar. (B) which read as follows: “designed to insure that (i) the benefits of weatherization assistance in connection with leased dwelling units will accrue primarily to low-income tenants; (ii) the rents on such dwelling units will not be raised because of any increase in the value thereof due solely to weatherization assistance provided under this part; and (iii) no undue or excessive enhancement will occur to the value of such dwelling units.”

Subsec. (b)(5), (6). Pub. L. 101-440, §7(b)(2), added pars. (5) and (6).

1988—Subsec. (b)(2)(A). Pub. L. 100-418 substituted “National Institute of Standards and Technology” for “National Bureau of Standards”.

1984—Subsec. (b)(1), (2)(A). Pub. L. 98-479 substituted “Health and Human Services” for “Health, Education, and Welfare”.

1980—Subsecs. (a), (b)(1), (3). Pub. L. 96-294, §577(2), substituted “Secretary” for “Administrator” wherever appearing.

Subsec. (b)(4). Pub. L. 96-294, § 574, added par. (4).

Subsec. (c). Pub. L. 96-294, §§ 573(b), 577(2), substituted "Secretary" for "Administrator" wherever appearing, and struck out provisions relating to determinations respecting inapplicability of allocation requirement and priority for an applicable community action agency.

Subsec. (d), (e). Pub. L. 96-294, § 577(2), substituted "Secretary" for "Administrator" wherever appearing.

1978—Subsec. (a). Pub. L. 95-619, § 231(a)(2), substituted "occupied by low-income families" for "in which the head of the household is a low-income person".

Subsec. (b)(3). Pub. L. 95-619, § 231(b)(1), added par. (3).

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Apr. 4, 1994, see section 406(b) of Pub. L. 103-82, set out as a note under section 8332 of Title 5, Government Organization and Employees.

WEATHERIZATION ASSISTANCE GRANTS COST SHARING

Pub. L. 106-291, title II, Oct. 11, 2000, 114 Stat. 976, provided in part: "That, hereafter, Indian tribal direct grantees of weatherization assistance shall not be required to provide matching funds."

Provisions of Pub. L. 106-113, div. B, § 1000(a)(3) [title II], Nov. 29, 1999, 113 Stat. 1535, 1501A-180, which provided that sums appropriated for weatherization assistance grants were to be contingent on a cost share of 25 percent by each participating State or other qualified participant, were repealed by Pub. L. 106-469, title VI, § 601(a), Nov. 9, 2000, 114 Stat. 2040.

COMMUNITY SERVICES ADMINISTRATION

Community Services Administration, which was established by section 601 of Economic Opportunity Act of 1964, as amended (42 U.S.C. 2941), terminated when Economic Opportunity Act of 1964, Pub. L. 88-452, Aug. 20, 1964, 78 Stat. 508, as amended, was repealed, except for titles VIII and X, effective Oct. 1, 1981, by section 683(a) of Pub. L. 97-35, title VI, Aug. 13, 1981, 95 Stat. 519, which is classified to 42 U.S.C. 9912(a). An Office of Community Services, headed by a Director, was established in Department of Health and Human Services by section 676 of Pub. L. 97-35, which is classified to 42 U.S.C. 9905.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1474, 6864, 6864a, 6864b, 6868 of this title.

§ 6864. Financial assistance

(a) Annual application; contents; allocation to States

The Secretary shall provide financial assistance, from sums appropriated for any fiscal year under this part, only upon annual application. Each such application shall describe the estimated number and characteristics of the low-income persons and the number of dwelling units to be assisted and the criteria and methods to be used by the applicant in providing weatherization assistance to such persons. The application shall also contain such other information (including information needed for evaluation purposes) and assurances as may be required (1) in the regulations promulgated pursuant to section 6863 of this title and (2) to carry out this section. The Secretary shall allocate financial assistance to each State on the basis of the relative need for weatherization assistance among low-income persons throughout the States, taking into account the following factors:

(A) The number of dwelling units to be weatherized.

(B) The climatic conditions in the State respecting energy conservation, which may include consideration of annual degree days.

(C) The type of weatherization work to be done in the various settings.

(D) Such other factors as the Secretary may determine necessary, such as the cost of heating and cooling, in order to carry out the purpose and provisions of this part.

(b) Requirements for assistance

The Secretary shall not provide financial assistance under this part unless the applicant has provided reasonable assurances that it has—

(1) established a policy advisory council which (A) has special qualifications and sensitivity with respect to solving the problems of low-income persons (including the weatherization and energy-conservation problems of such persons), (B) is broadly representative of organizations and agencies which are providing services to such persons in the State or geographical area in question, and (C) is responsible for advising the responsible official or agency administering the allocation of financial assistance in such State or area with respect to the development and implementation of such weatherization assistance program;

(2) established priorities to govern the provision of weatherization assistance to low-income persons, including methods to provide priority to elderly and handicapped low-income persons, and such priority as the applicant determines is appropriate for single-family or other high-energy-consuming dwelling units;

(3) established policies and procedures designed to assure that financial assistance provided under this part will be used to supplement, and not to supplant, State or local funds, and, to the extent practicable, to increase the amounts of such funds that would be made available in the absence of Federal funds for carrying out the purpose of this part, including plans and procedures (A) for securing, to the maximum extent practicable, the services of volunteers and training participants and public service employment workers, pursuant to title I of the Workforce Investment Act of 1998 [29 U.S.C. 2801 et seq.], to work under the supervision of qualified supervisors and foremen, (B) for using Federal financial assistance under this part to increase the portion of low-income weatherization assistance that the State obtains from non-Federal sources, including private sources, and (C) for complying with the limitations set forth in section 6865 of this title; and

(4) selected on the basis of public comment received during a public hearing conducted pursuant to section 6865(b)(1) of this title, and other appropriate findings, community action agencies or other public or nonprofit entities to undertake the weatherization activities authorized by this subchapter: *Provided*, Such selection shall be based on the agency's experience and performance in weatherization or housing renovation activities, experience in assisting low-income persons in the area to be served, and the capacity to undertake a timely

and effective weatherization program: *Provided further*, That in making such selection preference shall be given to any community action agency or other public or nonprofit entity which has, or is currently administering, an effective program under this subchapter or under title II of the Economic Opportunity Act of 1964 [42 U.S.C. 2781 et seq.].

(c) Annual update of data used in allocating funds

Effective with fiscal year 1991, and annually thereafter, the Secretary shall update the population, eligible households, climatic, residential energy use, and all other data used in allocating the funds under this part among the States pursuant to subsection (a) of this section.

(Pub. L. 94-385, title IV, §414, Aug. 14, 1976, 90 Stat. 1154; Pub. L. 96-294, title V, §§573(c), 577(2), June 30, 1980, 94 Stat. 759, 760; Pub. L. 101-440, §7(c), (g), Oct. 18, 1990, 104 Stat. 1012, 1014; Pub. L. 105-277, div. A, §101(f) [title VIII, §405(d)(38), (f)(29)], Oct. 21, 1998, 112 Stat. 2681-337, 2681-427, 2681-434.)

REFERENCES IN TEXT

The Workforce Investment Act of 1998, referred to in subsec. (b)(3), is Pub. L. 105-220, Aug. 7, 1998, 112 Stat. 936, as amended. Title I of the Act is classified principally to chapter 30 (§2801 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

The Economic Opportunity Act of 1964, referred to in subsec. (b)(4), is Pub. L. 88-452, Aug. 20, 1964, 78 Stat. 508, as amended. Title II of the Economic Opportunity Act of 1964 was classified generally to subchapter II (§2781 et seq.) of chapter 34 of this title prior to repeal by Pub. L. 97-35, title VI, §683(a), Aug. 13, 1981, 95 Stat. 519. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1998—Subsec. (b)(3). Pub. L. 105-277, §101(f) [title VIII, §405(f)(29)], struck out “the Job Training Partnership Act or” after “pursuant to”.

Pub. L. 105-277, §101(f) [title VIII, §405(d)(38)], substituted “the Job Training Partnership Act or title I of the Workforce Investment Act of 1998” for “the Comprehensive Employment and Training Act of 1973”.

1990—Subsec. (a)(D). Pub. L. 101-440, §7(c)(1), inserted “, such as the cost of heating and cooling,” after “necessary”.

Subsec. (b)(3). Pub. L. 101-440, §7(g), added cl. (B) and redesignated former cl. (B) as (C).

Subsec. (c). Pub. L. 101-440, §7(c)(2), added subsec. (c). 1980—Subsec. (a). Pub. L. 96-294, §577(2), substituted “Secretary” for “Administrator” wherever appearing.

Subsec. (b). Pub. L. 96-294, §§573(c), 577(2), substituted “Secretary” for “Administrator” and added par. (4).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 101(f) [title VIII, §405(d)(38)] of Pub. L. 105-277 effective Oct. 21, 1998, and amendment by section 101(f) [title VIII, §405(f)(29)] of Pub. L. 105-277 effective July 1, 2000, see section 101(f) [title VIII, §405(g)(1), (2)(B)] of Pub. L. 105-277, set out as a note under section 3502 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6863, 6864a, 6864b, 6869 of this title.

§ 6864a. Private sector investments

(a) In general

The Secretary shall, to the extent funds are made available for such purpose, provide financial assistance to entities receiving funding from the Federal Government or from a State through a weatherization assistance program under section 6863 or section 6864 of this title for the development and initial implementation of partnerships, agreements, or other arrangements with utilities, private sector interests, or other institutions, under which non-Federal financial assistance would be made available to support programs which install energy efficiency improvements in low-income housing.

(b) Use of funds

Financial assistance provided under this section may be used for—

(1) the negotiation of such partnerships, agreements and other arrangements;

(2) the presentation of arguments before State or local agencies;

(3) expert advice on the development of such partnerships, agreements, and other arrangements; or

(4) other activities reasonably associated with the development and initial implementation of such arrangements.

(c) Conditions

(1) Financial assistance provided under this section to entities other than States shall, to the extent practicable, coincide with the timing of financial assistance provided to such entities under section 6863 or section 6864 of this title.

(2) Not less than 80 percent of amounts provided under this section shall be provided to entities other than States.

(3) A recipient of financial assistance under this section shall have up to three years to complete projects undertaken with such assistance.

(Pub. L. 94-385, title IV, §414A, as added Pub. L. 102-486, title I, §142(a), Oct. 24, 1992, 106 Stat. 2842.)

§ 6864b. Technical transfer grants

(a) In general

The Secretary may, to the extent funds are made available, provide financial assistance to entities receiving funding from the Federal Government or from a State through a weatherization assistance program under section 6863 or section 6864 of this title for—

(1) evaluating technical and management measures which increase program and/or private entity performance in weatherizing low-income housing;

(2) producing technical information for use by persons involved in weatherizing low-income housing;

(3) exchanging information; and

(4) conducting training programs for persons involved in weatherizing low-income housing.

(b) Conditions

(1) Not less than 50 percent of amounts provided under this section shall be awarded to entities other than States.

(2) A recipient of financial assistance under this section may contract with nonprofit enti-

ties to carry out all or part of the activities for which such financial assistance is provided.

(Pub. L. 94-385, title IV, §414B, as added Pub. L. 102-486, title I, §142(a), Oct. 24, 1992, 106 Stat. 2842.)

§ 6865. Limitations on financial assistance

(a) Purchase of materials and administration of projects

(1) Not more than an amount equal to 10 percent of any grant made by the Secretary under this part may be used for administrative purposes in carrying out duties under this part, except that not more than one-half of such amount may be used by any State for such purposes, and a State may provide in the plan adopted pursuant to subsection (b) of this section for recipients of grants of less than \$350,000 to use up to an additional 5 percent of such grant for administration if the State has determined that such recipient requires such additional amount to implement effectively the administrative requirements established by the Secretary pursuant to this part.

(2) The Secretary shall establish energy audit procedures and techniques which (i) meet standards established by the Secretary after consultation with the State Energy Advisory Board established under section 6325(g) of this title, (ii) establish priorities for selection of weatherization measures based on their cost and contribution to energy efficiency, (iii) measure the energy requirement of individual dwellings and the rate of return of the total conservation investment in a dwelling, and (iv) account for interaction among energy efficiency measures.

(b) Allocation, termination or discontinuance by Secretary

The Secretary shall insure that financial assistance provided under this part will—

(1) be allocated within the State or area in accordance with a published State or area plan, which is adopted by such State after notice and a public hearing, describing the proposed funding distributions and recipients;

(2) be allocated, pursuant to such State or area plan, to community action agencies carrying out programs under title II of the Economic Opportunity Act of 1964 [42 U.S.C. 2781 et seq.] or to other appropriate and qualified public or nonprofit entities in such State or area so that—

(A) funds will be allocated on the basis of the relative need for weatherization assistance among the low-income persons within such State or area, taking into account appropriate climatic and energy conservation factors; and

(B) due consideration will be given to the results of periodic evaluations of the projects carried out under this part in light of available information regarding the current and anticipated energy and weatherization needs of low-income persons within the State; and

(3) be terminated or discontinued during the application period only in accordance with policies and procedures consistent with the policies and procedures set forth in section 6868 of this title.

(c) Limitations on expenditures; exceptions; annual adjustments

(1) Except as provided in paragraph (3), the expenditure of financial assistance provided under this part for labor, weatherization materials, and related matters shall not exceed an average of \$2,500 per dwelling unit weatherized in that State. Labor, weatherization materials, and related matter includes, but is not limited to—

(A) the appropriate portion of the cost of tools and equipment used to install weatherization materials for a dwelling unit;

(B) the cost of transporting labor, tools, and materials to a dwelling unit;

(C) the cost of having onsite supervisory personnel;

(D) the cost of making incidental repairs to a dwelling unit if such repairs are necessary to make the installation of weatherization materials effective, and

(E) the cost of making heating and cooling modifications, including replacement¹

(2) Dwelling units partially weatherized under this part or under other Federal programs during the period September 30, 1975, through September 30, 1979, may receive further financial assistance for weatherization under this part.

(3) Beginning with fiscal year 2000, the \$2,500 per dwelling unit average provided in paragraph (1) shall be adjusted annually by increasing the average amount by an amount equal to—

(A) the average amount for the previous fiscal year, multiplied by

(B) the lesser of (i) the percentage increase in the Consumer Price Index (all items, United States city average) for the most recent calendar year completed before the beginning of the fiscal year for which the determination is being made, or (ii) three percent.

(d) Supplementary financial assistance to States

Beginning with fiscal year 1992, the Secretary may allocate funds appropriated pursuant to section 6872(b)² of this title to provide supplementary financial assistance to those States which the Secretary determines have achieved the best performance during the previous fiscal year in achieving the purposes of this part. In making this determination, the Secretary shall—

(1) consult with the State Energy Advisory Board established under section 6325(g) of this title; and

(2) give priority to those States which, during such previous fiscal year, obtained a significant portion of income from non-Federal sources for their weatherization programs or increased significantly the portion of low-income weatherization assistance that the State obtained from non-Federal sources.

(e) Supplementary financial assistance to grant recipients

(1)(A) Beginning with fiscal year 1992, the Secretary may allocate, from funds appropriated pursuant to section 6872(b)² of this title, among the States an equal amount for each State not to exceed \$100,000 per State. Each State shall

¹ So in original. Probably should be followed by a period.

² See References in Text note below.

make available amounts received under this subsection to provide supplementary financial assistance to recipients of grants under this part that have achieved the best performance during the previous fiscal year in advancing the purposes of this part.

(B) None of the funds made available under this subsection may be used by any State for administrative purposes.

(2) The Secretary shall, after consulting with the State Energy Advisory Board referred to in subsection (d)(1) of this section, prescribe guidelines to be used by each State in making available supplementary financial assistance under this subsection, with a priority being given to subgrantees that, by law or through administrative or other executive action, provided non-Federal resources (including private resources) to supplement Federal financial assistance under this part during the previous fiscal year.

(Pub. L. 94-385, title IV, §415, Aug. 14, 1976, 90 Stat. 1155; Pub. L. 95-619, title II, §231(c), Nov. 9, 1978, 92 Stat. 3225; Pub. L. 96-294, title V, §§571, 572, 573(a), 575, 577(2), June 30, 1980, 94 Stat. 759, 760; Pub. L. 98-558, title IV, §§403, 404, Oct. 30, 1984, 98 Stat. 2887, 2888; Pub. L. 101-440, §7(d)-(f), (i), Oct. 18, 1990, 104 Stat. 1013, 1014; Pub. L. 106-469, title VI, §601(b), Nov. 9, 2000, 114 Stat. 2040.)

REFERENCES IN TEXT

The Economic Opportunity Act of 1964, referred to in subsec. (b)(2), is Pub. L. 88-452, Aug. 20, 1964, 78 Stat. 508, as amended. Title II of the Economic Opportunity Act of 1964 was classified generally to subchapter II (§2781 et seq.) of chapter 34 of this title prior to repeal by Pub. L. 97-35, title VI, §683(a), Aug. 13, 1981, 95 Stat. 519. For complete classification of this Act to the Code, see Tables.

Section 6872 of this title, referred to in subsecs. (d) and (e)(1)(A), was amended by Pub. L. 105-388, §3, Nov. 13, 1998, 112 Stat. 3477, and, as so amended, no longer contains a subsec. (b).

AMENDMENTS

2000—Subsec. (a)(1). Pub. L. 106-469, §601(b)(1), struck out first sentence which read as follows: “Except as provided in paragraph (2), an average of at least forty percent of the funds provided in a State under this part for weatherization materials, labor, and related matters described in subsection (c) of this section shall be spent for weatherization materials.”

Subsec. (a)(2). Pub. L. 106-469, §601(b)(2)(C), struck out subpar. (B) which read as follows: “The Secretary shall make information on energy audit procedures and techniques available to States applying for a waiver under subparagraph (A) and shall provide training for State and local agencies in the implementation of such procedures and techniques.”

Pub. L. 106-469, §601(b)(2)(B), which directed amendment of par. (2) by substituting “establish” for “approve a State’s application to waive the 40 percent requirement established in paragraph (1) if the State includes in its plan”, was executed by making the substitution for “approve a State’s application to waive the 40-percent requirement established in paragraph (1) if the State includes in its plan”, to reflect the probable intent of Congress.

Pub. L. 106-469, §601(b)(2)(A), struck out “(A)” before “The Secretary shall approve”.

Subsec. (c)(1). Pub. L. 106-469, §601(b)(3)(A), (B), in introductory provisions, substituted “paragraph (3)” for “paragraphs (3) and (4)” and “\$2,500” for “\$1,600”.

Subsec. (c)(1)(E). Pub. L. 106-469, §601(b)(3)(C)-(E), added subpar. (E).

Subsec. (c)(3). Pub. L. 106-469, §601(b)(4), in introductory provisions, substituted “2000, the \$2,500 per dwelling unit average” for “1991, the \$1,600 per dwelling unit limitation” and “average amount” for “limitation amount”, in subpar. (A), substituted “average” for “limitation”, and, in subpar. (B), inserted “the” after “beginning of”.

Subsec. (c)(4). Pub. L. 106-469, §601(b)(5), struck out par. (4), which required the Secretary, upon State application, to establish a separate average per dwelling unit limitation for dwelling units in the State.

1990—Subsec. (a). Pub. L. 101-440, §7(d), substituted “(1) Except as provided in paragraph (2), an average” for “An average”, inserted before period at end “, and a State may provide in the plan adopted pursuant to subsection (b) of this section for recipients of grants of less than \$350,000 to use up to an additional 5 percent of such grant for administration if the State has determined that such recipient requires such additional amount to implement effectively the administrative requirements established by the Secretary pursuant to this part”, and added par. (2).

Subsec. (c)(1). Pub. L. 101-440, §7(e)(1), substituted “Except as provided in paragraphs (3) and (4), the expenditure” for “The expenditure”.

Subsec. (c)(3), (4). Pub. L. 101-440, §7(e)(2), added pars. (3) and (4).

Subsec. (d). Pub. L. 101-440, §7(i), added subsec. (d).

Pub. L. 101-440, §7(f), struck out subsec. (d) which established a performance fund to provide financial assistance to those States the Secretary determined to have demonstrated the best performance during the previous fiscal year in providing weatherization assistance.

Subsec. (e). Pub. L. 101-440, §7(i), added subsec. (e).

1984—Subsec. (a). Pub. L. 98-558, §403(1), substituted provisions that an average of at least forty percent of the funds provided shall be spent for weatherization for former provisions which directed the Secretary to use funds to the maximum extent practicable.

Subsec. (c). Pub. L. 98-558, §403(2), in amending subsec. (c) generally, substituted provisions that expenditures shall not exceed an average of \$1,600 per dwelling unit for former provisions which provided for an \$800 per dwelling unit limit in par. (1), struck out “(not to exceed \$150)” after “the cost” in par. (1)(D), substituted provisions that dwelling units partially weatherized between certain dates could receive further financial assistance under this part for former provisions that \$800 limit would not apply if the State policy advisory council requested greater amounts from the Secretary and the Secretary gave approval in par. (2), and deleted former par. (3) which provided that in areas where the Secretary, after consultation with the Secretary of Labor, determined that there was an insufficient number of volunteers and training participants and public service employment workers, assisted pursuant to the Comprehensive Employment and Training Act of 1973, available to work on weatherization projects under the supervision of qualified supervisors and foremen, the Secretary could increase the limitation of \$800 to not more than \$1,600 to cover the costs of paying persons who would install the weatherization materials and, to the maximum extent practicable, who would otherwise be able to participate as training participants and public service employment workers pursuant to the Comprehensive Employment and Training Act of 1973.

Subsec. (d). Pub. L. 98-558, §404, added subsec. (d).

1980—Subsec. (a). Pub. L. 96-294, §§571, 577(2), substituted “Secretary” for “Administrator” and provisions limiting amounts used for administrative purposes in any grant made by the Secretary under this part for provisions limiting amounts used for administrative purposes in any grant made pursuant to section 6863(a) of this title and any allocations under this section.

Subsec. (b). Pub. L. 96-294, §§573(a), 577(2), substituted in provision preceding par. (1) “Secretary” for “Administrator”, redesignated former par. (2)(C) as (B), and struck out former par. (2)(B), which related to funds al-

located for carrying out weatherization projects under this part in the geographical area served by the emergency program.

Subsec. (c)(1). Pub. L. 96-294, §§572(1), 575, inserted in provision preceding subpar. (A) reference to par. (3) and in subpar. (D) substituted "\$150" for "\$100".

Subsec. (c)(2). Pub. L. 96-294, §577(2), substituted "Secretary" for "Administrator" wherever appearing.

Subsec. (c)(3). Pub. L. 96-294, §572(2), added par. (3).

1978—Subsec. (a). Pub. L. 95-619, §231(c)(1), authorized expenditure of allocations under this part for costs related to weatherization of a dwelling unit as provided in subsec. (c) of this section and substituted an administrative expenses limitation of five percent of any allocation under this section for a similar limitation of ten percent of any such allocation.

Subsec. (c). Pub. L. 95-619, §231(c)(2), included expenditure of financial assistance provided under this section for costs related to procurement and installation of weatherization materials in dwelling units in the maximum amount available per dwelling unit and increased such maximum amount to \$800 per unit.

PERFORMANCE FUND; RESTRICTION ON USE

Pub. L. 99-190, §101(d) [title II, §201], Dec. 19, 1985, 99 Stat. 1224, 1253, provided: "That section 404 of Public Law 98-558 [enacting subsec. (d) of this section] shall not be effective in any fiscal year in which the amount made available for low income weatherization assistance from appropriations under this head is less than 5 per centum above the amount made available in fiscal year 1985."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1474, 6864, 6872 of this title.

§ 6866. Monitoring and evaluation of funded projects; technical assistance; limitation on assistance

The Secretary, in coordination with the Director, shall monitor and evaluate the operation of projects receiving financial assistance under this part through methods provided for in section 6867(a) of this title, through onsite inspections, or through other means, in order to assure the effective provision of weatherization assistance for the dwelling units of low-income persons. The Secretary shall also carry out periodic evaluations of the program authorized by this part and projects receiving financial assistance under this part. The Secretary may provide technical assistance to any such project, directly and through persons and entities with a demonstrated capacity in developing and implementing appropriate technology for enhancing the effectiveness of the provision of weatherization assistance to the dwelling units of low-income persons, utilizing in any fiscal year not to exceed 10 percent of the sums appropriated for such year under this part.

(Pub. L. 94-385, title IV, §416, Aug. 14, 1976, 90 Stat. 1156; Pub. L. 96-294, title V, §577(2), June 30, 1980, 94 Stat. 760.)

AMENDMENTS

1980—Pub. L. 96-294 substituted "Secretary" for "Administrator" wherever appearing.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6871 of this title.

§ 6867. Administration of projects receiving financial assistance

(a) Reporting requirements

The Secretary, in consultation with the Director, by general or special orders, may require any recipient of financial assistance under this part to provide, in such form as he may prescribe, such reports or answers in writing to specific questions, surveys, or questionnaires as may be necessary to enable the Secretary and the Director to carry out their functions under this part.

(b) Maintenance of records

Each person responsible for the administration of a weatherization assistance project receiving financial assistance under this part shall keep such records as the Secretary may prescribe in order to assure an effective financial audit and performance evaluation of such project.

(c) Audit and examination of books, etc.

The Secretary, the Director (with respect to community action agencies), and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, information, and records of any project receiving financial assistance under this part that are pertinent to the financial assistance received under this part.

(d) Method of payments

Payments under this part may be made in installments and in advance, or by way of reimbursement, with necessary adjustments on account of overpayments or underpayments.

(Pub. L. 94-385, title IV, §417, Aug. 14, 1976, 90 Stat. 1156; Pub. L. 96-294, title V, §577(2), June 30, 1980, 94 Stat. 760.)

AMENDMENTS

1980—Subsecs. (a) to (c). Pub. L. 96-294 substituted "Secretary" for "Administrator" wherever appearing.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6866 of this title.

§ 6868. Approval of application or amendment for financial assistance; administrative procedures applicable

(a) The Secretary shall not finally disapprove any application submitted under this part, or any amendment thereto, without first affording the State (or unit of general purpose local government or community action agency under section 6863(c) of this title, as appropriate) in question, as well as other interested parties, reasonable notice and an opportunity for a public hearing. The Secretary may consolidate into a single application for a particular fiscal year to carry out projects within a particular State. Whenever the Secretary, after reasonable notice and an opportunity for a public hearing, finds that there is a failure to comply substantially with the provisions of this part or regulations promulgated under this part, he shall notify the agency or institution involved and other interested parties that such State (or unit of general

purpose local government or agency, as appropriate) will no longer be eligible to participate in the program under this part until the Secretary is satisfied that there is no longer any such failure to comply.

(b) Reasonable notice under this section shall include a written notice of intention to act adversely (including a statement of the reasons therefor) and a reasonable period of time within which to submit corrective amendments to the application, or to propose corrective action.

(Pub. L. 94-385, title IV, §418, Aug. 14, 1976, 90 Stat. 1157; Pub. L. 96-294, title V, §577(2), June 30, 1980, 94 Stat. 760.)

AMENDMENTS

1980—Subsec. (a). Pub. L. 96-294 substituted “Secretary” for “Administrator” wherever appearing.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6865, 6869 of this title.

§ 6869. Judicial review of final action by Secretary on application

(a) Time for appeal; jurisdiction; filing of administrative record by Secretary

If any applicant is dissatisfied with the Secretary's final action with respect to the application submitted by it under section 6864 of this title, or with a final action under section 6868 of this title, such applicant may, within 60 days after notice of such action, file with the United States court of appeals for the circuit in which the State involved is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which he based his action, as provided in section 2112 of title 28.

(b) Conclusiveness of findings of Secretary; remand; modified findings by Secretary; certification of record

The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive. The court may, for good cause shown, remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify his previous action. The Secretary shall certify to the court the record of any such further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(c) Power of court to affirm or set aside action of Secretary; appeal to Supreme Court

The court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification, as provided in section 1254 of title 28.

(Pub. L. 94-385, title IV, §419, Aug. 14, 1976, 90 Stat. 1157; Pub. L. 96-294, title V, §577(2), (3), June 30, 1980, 94 Stat. 760.)

AMENDMENTS

1980—Subsecs. (a) to (c). Pub. L. 96-294 substituted “Secretary” for “Administrator” wherever appearing, and “Secretary's” for “Administrator's”.

§ 6870. Prohibition against discrimination; notification to funded project of violation; penalties for failure to comply

(a) No person in the United States shall, on the ground of race, color, national origin, or sex, or on the ground of any other factor specified in any Federal law prohibiting discrimination, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program, project, or activity supported in whole or in part with financial assistance under this part.

(b) Whenever the Secretary determines that a recipient of financial assistance under this part has failed to comply with subsection (a) of this section or any applicable regulation, he shall notify the recipient thereof in order to secure compliance. If, within a reasonable period of time thereafter, such recipient fails to comply, the Secretary shall—

(1) refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted;

(2) exercise the power and functions provided by title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.] and any other applicable Federal nondiscrimination law; or

(3) take such other action as may be authorized by law.

(Pub. L. 94-385, title IV, §420, Aug. 14, 1976, 90 Stat. 1158; Pub. L. 96-294, title V, §577(2), June 30, 1980, 94 Stat. 760.)

REFERENCES IN TEXT

The Civil Rights Act of 1964, referred to in subsec. (b)(2), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Civil Rights Act of 1964 is classified generally to subchapter V (§2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

AMENDMENTS

1980—Subsec. (b). Pub. L. 96-294 substituted “Secretary” for “Administrator” wherever appearing.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6871 of this title.

§ 6871. Annual report by Secretary and Director to President and Congress on weatherization program

The Secretary and (with respect to the operation and effectiveness of activities carried out through community action agencies) the Director shall each submit, on or before March 31, 1977, and annually thereafter, a report to the Congress and the President describing the weatherization assistance program carried out under this part or any other provision of law, including the results of the periodic evaluations and monitoring activities required by section 6866 of this title. Such report shall include information and data furnished by each State on the average costs incurred in weatherization of individual dwelling units, the average size of the dwellings being weatherized, and the average income of households receiving assistance under this part.

(Pub. L. 94-385, title IV, §421, Aug. 14, 1976, 90 Stat. 1158; Pub. L. 96-294, title V, §577(2), June

30, 1980, 94 Stat. 760; Pub. L. 101-440, §7(h), Oct. 18, 1990, 104 Stat. 1014.)

AMENDMENTS

1990—Pub. L. 101-440 struck out “through 1979” after “and annually thereafter” and inserted at end “Such report shall include information and data furnished by each State on the average costs incurred in weatherization of individual dwelling units, the average size of the dwellings being weatherized, and the average income of households receiving assistance under this part.”

1980—Pub. L. 96-294 substituted “Secretary” for “Administrator”.

§ 6872. Authorization of appropriations

For the purpose of carrying out the weatherization program under this part, there are authorized to be appropriated for fiscal years 1999 through 2003 such sums as may be necessary.

(Pub. L. 94-385, title IV, §422, Aug. 14, 1976, 90 Stat. 1158; Pub. L. 95-619, title II, §231(d), Nov. 9, 1978, 92 Stat. 3226; Pub. L. 96-294, title V, §576, June 30, 1980, 94 Stat. 760; Pub. L. 98-181, title IV, §464, Nov. 30, 1983, 97 Stat. 1235; Pub. L. 101-440, §8(c), Oct. 18, 1990, 104 Stat. 1016; Pub. L. 105-388, §3, Nov. 13, 1998, 112 Stat. 3477.)

AMENDMENTS

1998—Pub. L. 105-388 reenacted section catchline without change and amended text generally. Prior to amendment, text read as follows:

“(a) There are authorized to be appropriated for purposes of carrying out the weatherization program under this part, other than under subsections (d) and (e) of section 6865 of this title, not to exceed \$200,000,000 for fiscal year 1991 and such sums as may be necessary for fiscal years 1992, 1993, and 1994.

“(b) There are authorized to be appropriated for purposes of carrying out the weatherization program under subsections (d) and (e) of section 6865 of this title, not to exceed \$20,000,000 for fiscal year 1992 and such sums as may be necessary for fiscal years 1993 and 1994.”

1990—Pub. L. 101-440 amended section generally. Prior to amendment, section read as follows: “Of the funds authorized by section 1005(1) of the Omnibus Budget Reconciliation Act of 1981 for energy conservation for fiscal year 1984, not less than \$190,000,000 is authorized to be appropriated to carry out the weatherization program under this part. There is authorized to be appropriated such sums as may be necessary for fiscal year 1985 to carry out such weatherization program. Any amount appropriated under this section shall remain available until expended.”

1983—Pub. L. 98-181 amended section generally, providing that, of the funds authorized by section 1005(1) of the Omnibus Budget Reconciliation Act of 1981 for energy conservation for fiscal year 1984, not less than \$190,000,000 was authorized to be appropriated to carry out the weatherization program under this part, and substituted provisions authorizing the appropriation of such sums as may be necessary for fiscal year 1985 to carry out the weatherization program for provisions that had authorized the appropriations of \$55,000,000 for the fiscal year ending on Sept. 30, 1977, \$130,000,000 for the fiscal year ending on Sept. 30, 1978, \$200,000,000 for the fiscal year ending on Sept. 30, 1979, \$200,000,000 for the fiscal year ending on Sept. 30, 1980, and \$200,000,000 for the fiscal year ending on Sept. 30, 1981.

1980—Pub. L. 96-294 inserted provisions authorizing to be appropriated \$200,000,000 for fiscal year ending on Sept. 30, 1981, such sums to remain available until expended, substituted “the sum of” for “not to exceed” wherever appearing.

1978—Pub. L. 95-619 substituted an appropriations authorization of not to exceed \$130,000,000 for fiscal year ending Sept. 30, 1978, for an authorization of not to exceed \$65,000,000 for such fiscal year, substituted an au-

thorization of not to exceed \$200,000,000 for fiscal year ending Sept. 30, 1979, for an authorization of \$80,000,000 for such fiscal year, and added an authorization of not to exceed \$200,000,000 for fiscal year ending Sept. 30, 1980.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6865 of this title.

§ 6873. Availability of labor

The following actions shall be taken in order to assure that there is a sufficient number of volunteers and training participants and public service employment workers, assisted pursuant to title I of the Workforce Investment Act of 1998 [29 U.S.C. 2801 et seq.] and the Older American Community Service Employment Act [42 U.S.C. 3056 et seq.], available to work in support of weatherization programs conducted under part A of the Energy Conservation in Existing Buildings Act of 1976 [42 U.S.C. 6861 et seq.], section 222(a)(12)¹ of the Economic Opportunity Act of 1964 [42 U.S.C. 2809(a)(12)], and section 504 of the Housing Act of 1949 [42 U.S.C. 1474]:

(1) First, the Secretary of Energy (in consultation with the Director of the Community Services Administration, the Secretary of Agriculture, and the Secretary of Labor) shall determine the number of individuals needed to supply sufficient labor to carry out such weatherization programs in the various areas of the country.

(2) After the determination in paragraph (1) is made, the Secretary of Labor shall identify the areas of the country in which there is an insufficient number of such volunteers and training participants and public service employment workers.

(3) After such areas are identified, the Secretary of Labor shall take steps to assure that such weatherization programs are supported to the maximum extent practicable in such areas by such volunteers and training participants and public service employment workers.

(Pub. L. 95-619, title II, §233, Nov. 9, 1978, 92 Stat. 3227; Pub. L. 105-277, div. A, §101(f) [title VIII, §405(d)(39), (f)(30)], Oct. 21, 1998, 112 Stat. 2681-337, 2681-427, 2681-434.)

REFERENCES IN TEXT

The Workforce Investment Act of 1998, referred to in text, is Pub. L. 105-220, Aug. 7, 1998, 112 Stat. 936, as amended. Title I of the Act is classified principally to chapter 30 (§2801 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

The Older American Community Service Employment Act, referred to in text, is title V of Pub. L. 89-73, as added Pub. L. 94-135, title I, §113(a), Nov. 28, 1975, 89 Stat. 720, and amended. Title V of Pub. L. 89-73 was amended generally by Pub. L. 106-501, title V, §501, Nov. 13, 2000, 114 Stat. 2267, and is classified generally to subchapter IX (§3056 et seq.) of chapter 35 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

The Energy Conservation in Existing Buildings Act of 1976, referred to in text, is title IV of Pub. L. 94-385, Aug. 14, 1976, 90 Stat. 1150, as amended. Part A of the Energy Conservation in Existing Buildings Act of 1976

¹ See References in Text note below.

is classified generally to part A (§6861 et seq.) of subchapter III of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 6801 of this title and Tables.

Section 222(a)(12) of the Economic Opportunity Act of 1964 [42 U.S.C. 2809(a)(12)], referred to in text, which was redesignated as section 222(a)(5) [42 U.S.C. 2809(a)(5)] by Pub. L. 95-568, § 5(a)(2)(E), Nov. 2, 1978, 92 Stat. 2426, was subsequently repealed by Pub. L. 97-35, title VI, § 683(a), Aug. 13, 1981, 95 Stat. 519.

CODIFICATION

Section was enacted as a part of the National Energy Conservation Policy Act, and not as a part of the Energy Conservation and Production Act which comprises this chapter.

AMENDMENTS

1998—Pub. L. 105-277, § 101(f) [title VIII, § 405(f)(30)], struck out “the Job Training Partnership Act or” after “assisted pursuant to”.

Pub. L. 105-277, § 101(f) [title VIII, § 405(d)(39)], which directed the substitution of “the Job Training Partnership Act or title I of the Workforce Investment Act of 1998” for “the Comprehensive Employment and Training Act of 1973” in introductory provisions, was executed by making the substitution for “the Comprehensive Employment Training Act of 1973” to reflect the probable intent of Congress.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 101(f) [title VIII, § 405(d)(39)] of Pub. L. 105-277 effective Oct. 21, 1998, and amendment by section 101(f) [title VIII, § 405(f)(30)] of Pub. L. 105-277 effective July 1, 2000, see section 101(f) [title VIII, § 405(g)(1), (2)(B)] of Pub. L. 105-277, set out as a note under section 3502 of Title 5, Government Organization and Employees.

COMMUNITY SERVICES ADMINISTRATION

Community Services Administration, which was established by section 601 of Economic Opportunity Act of 1964, as amended (42 U.S.C. 2941), terminated when Economic Opportunity Act of 1964, Pub. L. 88-452, Aug. 20, 1964, 78 Stat. 508, as amended, was repealed, except for titles VIII and X, effective Oct. 1, 1981, by section 683(a) of Pub. L. 97-35, title VI, Aug. 13, 1981, 95 Stat. 519, which is classified to 42 U.S.C. 9912(a). An Office of Community Services, headed by a Director, was established in Department of Health and Human Services by section 676 of Pub. L. 97-35, which is classified to 42 U.S.C. 9905.

PART B—ENERGY CONSERVATION AND RENEWABLE-RESOURCE OBLIGATION GUARANTEES

CODIFICATION

This part was, in the original, designated part D and has been redesignated part B for purposes of codification.

§ 6881. Energy resource and renewable-resource obligation guarantee program

(a) Authorization; requirements for guarantees and commitments to guarantee; procedures

(1) The Secretary may, in accordance with this section and such rules as he shall prescribe after consultation with the Secretary of the Treasury, guarantee and issue commitments to guarantee the payment of the outstanding principal amount of any loan, note, bond, or other obligation evidencing indebtedness, if—

(A) such obligation is entered into or issued by any person or by any State, political subdivision of a State, or agency and instrumentality of either a State or political subdivision thereof; and

(B) the purpose of entering into or issuing such obligation is the financing of any energy conservation measure or renewable-resource energy measure which is to be installed or otherwise implemented in any building or industrial plant owned or operated by the person or State, political subdivision of a State, or agency or instrumentality of either a State or political subdivision thereof, (i) which enters into or issues such obligation, or (ii) to which such measure is leased.

(2) No guarantee or commitment to guarantee may be issued under this subsection with respect to any obligation—

(A) which is a general obligation of a State; or

(B) which is entered into or issued for the purpose of financing any energy conservation measure or renewable-resource energy measure which is to be installed or otherwise implemented in a residential building containing 2 or fewer dwelling units.

(3) Before prescribing rules pursuant to this subsection, the Secretary shall consult with the Administrator of the Small Business Administration in order to formulate procedures which would assist small business concerns in obtaining guarantees and commitments to guarantee under this section.

(b) Preconditions for issuance of guarantees and commitments to guarantee

No obligation may be guaranteed, and no commitment to guarantee an obligation may be issued, under subsection (a) of this section, unless the Secretary finds that the measure which is to be financed by such obligation—

(1) has been identified by an energy audit to be an energy conservation measure or a renewable-resource energy measure; or

(2) is included on a list of energy conservation measures and renewable-resource energy measures which the Secretary publishes under section 6325(e)(1) of this title.

Before issuing a guarantee under subsection (a) of this section, the Secretary may require that an energy audit be conducted with respect to an energy conservation measure or a renewable-resource energy measure which is on a list described in paragraph (2) and which is to be financed by the obligation to be guaranteed under this section. The amount of any obligation which may be guaranteed under subsection (a) of this section may include the cost of an energy audit.

(c) Limitations on availability of guarantees; term of guarantees; aggregate outstanding principal amount of obligations of one borrower

(1) The Secretary shall limit the availability of a guarantee otherwise authorized by subsection (a) of this section to obligations entered into by or issued by borrowers who can demonstrate that financing is not otherwise available on reasonable terms and conditions to allow the measure to be financed.

(2) No obligation may be guaranteed by the Secretary under subsection (a) of this section unless the Secretary finds—

(A) there is a reasonable prospect for the repayment of such obligation; and

(B) in the case of an obligation issued by a person, such obligation constitutes a general obligation of such person for such guarantee.

(3) The term of any guarantee issued under subsection (a) of this section may not exceed 25 years.

(4) The aggregate outstanding principal amount which may be guaranteed under subsection (a) of this section at any one time with respect to obligations entered into or issued by any borrower may not exceed \$5,000,000.

(d) Limitations on original principal amount guaranteed; revocation of guarantees and commitments to guarantee; conclusiveness of guarantee

The original principal amount guaranteed under subsection (a) may not exceed 90 percent of the cost of the energy conservation measure or the renewable-resource energy measure financed by the obligation guaranteed under such subsection; except that such amount may not exceed 25 percent of the fair market value of the building or industrial plant being modified by such energy conservation measure or renewable-resource energy measure. No guarantee issued, and no commitment to guarantee, which is issued under subsection (a) of this section shall be terminated, canceled, or otherwise revoked except in accordance with reasonable terms and conditions prescribed by the Secretary, after consultation with the Secretary of the Treasury, and contained in the written guarantee or commitment to guarantee. The full faith and credit of the United States is pledged to the payment of all guarantees made under subsection (a) of this section. Any such guarantee made by the Secretary shall be conclusive evidence of the eligibility of the obligation involved for such guarantee, and the validity of any guarantee so made shall be incontestable in the hands of a holder of the guaranteed obligation except for fraud or material misrepresentation on the part of such holder.

(e) Information and assurances required prior to guarantees and commitments to guarantee; maintenance and availability of records; fees to borrowers; exceptions

(1) No guarantee and no commitment to guarantee may be issued under subsection (a) of this section unless the Secretary obtains any information reasonably requested and such assurances as are in his judgment (after consultation with the Secretary of the Treasury) reasonable to protect the interests of the United States and to assure that such guarantee or commitment to guarantee is consistent with and will further the purpose of this subchapter. The Secretary shall require that records be kept and made available to the Secretary or the Comptroller General, or any of their duly authorized representatives, in such detail and form as are determined necessary to facilitate (A) an effective financial audit of the energy conservation measure or renewable-resource energy measure investment involved, and (B) an adequate evaluation of the effectiveness of this section. The Secretary and the Comptroller General, or any of their duly

authorized representatives, shall have access to pertinent books, documents, papers, and records of any recipient of Federal assistance under this section.

(2) The Secretary may collect a fee from any borrower with respect to whose obligation a guarantee or commitment to guarantee is issued under subsection (a) of this section; except that the Secretary may waive any such fee with respect to any such borrower or class of borrowers. Fees shall be designed to recover the estimated administrative expenses incurred under this part; except that the total of the fees charged any such borrower may not exceed (A) one percent of the amount of the guarantee, or (B) one-half percent of the amount of the commitment to guarantee, whichever is greater. Any amount collected under this paragraph shall be deposited in the miscellaneous receipts of the Treasury.

(f) Default in payment of principal due under guaranteed obligation; procedures applicable

(1) If there is a default by the obligor in any payment of principal due under an obligation guaranteed under subsection (a) of this section, and if such default continues for 30 days, the holder of such obligation or his agent has the right to demand payment by the Secretary of the unpaid principal of such obligation, consistent with the terms of the guarantee of such obligation. Such payment may be demanded within such period as may be specified in the guarantee or related agreements, which period shall expire not later than 90 days from the date of such default. If demand occurs within such specified period, then not later than 60 days from the date of such demand, the Secretary shall pay to such holder the unpaid principal of such obligation, consistent with the terms of the guarantee of such obligation; except that (A) the Secretary shall not be required to make any such payment if he finds, prior to the expiration of the 60-day period beginning on the date on which the demand is made, that there was no default by the obligor in the payment of principal or that such default has been remedied, and (B) no such holder shall receive payment or be entitled to retain payment in a total amount which together with any other recovery (including any recovery based upon any security interest) exceeds the actual loss of principal by such holder.

(2) If the Secretary makes payment to a holder under paragraph (1), the Secretary shall thereupon—

(A) have all of the rights granted to him by law or agreement with the obligor; and

(B) be subrogated to all of the rights which were granted such holder, by law, assignment, or security agreement applicable to the guaranteed obligation.

(3) The Secretary may, in his discretion, take possession of, complete, recondition, reconstruct, renovate, repair, maintain, operate, remove, charter, rent, sell, or otherwise dispose of any property or other interests obtained by him pursuant to this subsection. The terms of any such sale or other disposition shall be as approved by the Secretary.

(4) If there is a default by the obligor in any payment due under an obligation guaranteed

under subsection (a) of this section, the Secretary shall take such action against such obligor or any other person as is, in his discretion, necessary or appropriate to protect the interests of the United States. Such an action may be brought in the name of the United States or in the name of the holder of such obligation. Such holder shall make available to the Secretary all records and evidence necessary to prosecute any such suit. The Secretary may, in his discretion, accept a conveyance of property in full or partial satisfaction of any sums owed to him. If the Secretary receives, through the sale of property, an amount greater than his cost and the amount paid to the holder under paragraph (1), he shall pay such excess to the obligor.

(g) Limitation on aggregate outstanding principal amount of obligations guaranteed; time limitation on guarantees and commitments to guarantee; authorization of appropriations

(1) The aggregate outstanding principal amount of obligations which may be guaranteed under this section may not at any one time exceed \$2,000,000,000. No guarantee or commitment to guarantee may be issued under subsection (a) of this section after September 30, 1979.

(2) There is authorized to be appropriated for the payment of amounts to be paid under subsection (f) of this section, not to exceed \$60,000,000. Any amount appropriated pursuant to this paragraph shall remain available until expended.

(3) There is authorized to be appropriated to carry out the provisions of this part, including administrative costs, but not for the payment of amounts to be paid under subsection (f) of this section—

(A) for the fiscal year ending September 30, 1977, not to exceed \$1,836,000; and

(B) for the fiscal year ending September 30, 1978, not to exceed \$4,950,000.

(h) Wages paid laborers and mechanics; labor standards

All laborers and mechanics employed in construction, alteration, or repair which is financed by an obligation guaranteed under subsection (a) of this section shall be paid wages at rates not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor in accordance with sections 3141-3144, 3146, and 3147 of title 40. The Secretary shall not guarantee any obligations under subsection (a) of this section without first obtaining adequate assurance that these labor standards will be maintained during such construction, alteration, or repair. The Secretary of Labor shall, with respect to the labor standards in this subsection, have the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 and section 3145 of title 40.

(i) Definitions

As used in this part:

(1) The term "Secretary" means the Secretary of Energy.

(2) The term "Comptroller General" means the Comptroller General of the United States.

(3) The terms "energy audit", "energy conservation measure", "renewable-resource en-

ergy measure", "building", and "industrial plant" have the meanings prescribed for such terms in section 6326 of this title.

(Pub. L. 94-385, title IV, § 451, Aug. 14, 1976, 90 Stat. 1165; Pub. L. 95-70, § 5, July 21, 1977, 91 Stat. 277; Pub. L. 95-91, title III, § 301(a), title VII, §§ 703, 707, Aug. 4, 1977, 91 Stat. 577, 606, 607; Pub. L. 104-316, title I, § 122(q), Oct. 19, 1996, 110 Stat. 3838.)

REFERENCES IN TEXT

This subchapter, referred to in subsec. (e)(1), was in the original "this title", meaning title IV of Pub. L. 94-385, known as the Energy Conservation in Existing Buildings Act of 1976, which enacted this subchapter, section 6327 of this title, and section 1701z-8 of Title 12, Banks and Banking, amended sections 6323, 6325, and 6326 of this title, and enacted provisions set out as a note under section 6801 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6801 of this title and Tables.

Reorganization Plan Numbered 14 of 1950, referred to in subsec. (h), is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

In subsec. (h), "sections 3141-3144, 3146, and 3147 of title 40" substituted for "the Davis-Bacon Act" and "section 3145 of title 40" substituted for "section 276c of title 40, United States Code", on authority of Pub. L. 107-217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

In subsec. (i)(1), "The term 'Secretary' means the Secretary of Energy" substituted for "The term 'Administrator' means the Administrator of the Federal Energy Administration; except that after such Administration ceases to exist, such term means any officer of the United States designated by the President for purposes of this part" in view of termination of Federal Energy Administration and transfer of its functions and functions of Administrator thereof (with certain exceptions) to Secretary of Energy pursuant to sections 301(a), 703, and 707 of Pub. L. 95-91, which are classified to sections 7151(a), 7293, and 7297 of this title.

AMENDMENTS

1996—Subsecs. (d), (e)(1). Pub. L. 104-316 struck out "and the Comptroller General" after "Secretary of the Treasury".

1977—Subsec. (g)(3). Pub. L. 95-70 added par. (3).

TRANSFER OF FUNCTIONS

"Secretary", meaning Secretary of Energy, substituted for "Administrator", meaning Administrator of Federal Energy Administration, in subsecs. (a) to (f) and (h) pursuant to sections 301(a), 703, and 707 of Pub. L. 95-91, which are classified to sections 7151(a), 7293, and 7297 of this title and which terminated Federal Energy Administration and transferred its functions and functions of Administrator thereof (with certain exceptions) to Secretary of Energy.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6325 of this title.

PART C—MISCELLANEOUS PROVISIONS

CODIFICATION

This part was, in the original, designated Part E and has been redesignated Part C for purposes of codification.

§ 6891. Exchange of energy information among the States

The Secretary of Energy shall (through conferences, publications, and other appropriate

means) encourage and facilitate the exchange of information among the States with respect to energy conservation and increased use of non-depletable energy sources.

(Pub. L. 94-385, title IV, §461, Aug. 14, 1976, 90 Stat. 1168; Pub. L. 95-91, title III, §301(a), title VII, §703, Aug. 4, 1977, 91 Stat. 577, 606.)

TRANSFER OF FUNCTIONS

“Secretary of Energy” substituted in text for “Administrator”, meaning Administrator of Federal Energy Administration, pursuant to sections 301(a), 703, and 707 of Pub. L. 95-91, which are classified to sections 7151(a), 7293, and 7297 of this title and which terminated Federal Energy Administration and transferred its functions and functions of Administrator thereof (with certain exceptions) to Secretary of Energy.

§ 6892. Annual report to Congress by Comptroller General

(a) Requirements; access to information

For each fiscal year ending before October 1, 1979, the Comptroller General shall report to the Congress on the activities of the Secretary of Energy and the Secretary under this subchapter and any amendments to other statutes made by this subchapter. The provisions of section 771 of title 15 (relating to access by the Comptroller General to books, documents, papers, statistics, data, records, and information in the possession of the Secretary of Energy or of recipients of Federal funds) shall apply to data which relate to such activities.

(b) Contents of report

Each report submitted by the Comptroller General under subsection (a) of this section shall include—

- (1) an accounting, by State, of expenditures of Federal funds under each program authorized by this subchapter or by amendments made by this subchapter;
- (2) an estimate of the energy savings which have resulted thereby;
- (3) a thorough evaluation of the effectiveness of the programs authorized by this subchapter or by amendments made by this title in achieving the energy conservation or renewable resource potential available in the sectors and regions affected by such programs;
- (4) a review of the extent and effectiveness of compliance monitoring of programs established by this subchapter or by amendments made by this title and any evidence as to the occurrence of fraud with respect to such programs; and
- (5) the recommendations of the Comptroller General with respect to (A) improvements in the administration of programs authorized by this subchapter or by amendments made by this subchapter, and (B) additional legislation, if any, which is needed to achieve the purposes of this subchapter.

(c) Definitions

As used in this part:

- (1) Omitted
- (2) The term “Comptroller General” means the Comptroller General of the United States.
- (3) The term “Secretary” means the Secretary of Housing and Urban Development.

(Pub. L. 94-385, title IV, §462, Aug. 14, 1976, 90 Stat. 1168; Pub. L. 95-91, title III, §301(a), title VII, §§703, 707, Aug. 4, 1977, 91 Stat. 577, 606, 607.)

REFERENCES IN TEXT

This subchapter, referred to in subsecs. (a), and (b)(1), (3), (4), (5), was in the original “this title”, meaning title IV of Pub. L. 94-385 which enacted this subchapter, section 6327 of this title, and section 1701z-8 of Title 12, Banks and Banking, amended sections 6323, 6325, and 6326 of this title, and enacted provisions set out as a note under section 6801 of this title.

CODIFICATION

Subsec. (c)(1) of this section which read “The term ‘Administrator’ means the Administrator of the Federal Energy Administration; except that after such Administration ceases to exist, such term means any officer of the United States designated by the President for purposes of this part” has been omitted in view of termination of Federal Energy Administration and transfer of its functions and functions of Administrator thereof (with certain exceptions) to Secretary of Energy pursuant to sections 301(a), 703, and 707 of Pub. L. 95-91, which are classified to sections 7151(a), 7293, and 7297 of this title and the fact that the term “Secretary” is defined for the purposes of this subchapter by par. (3) of this section. In this part, “Secretary of Energy” has been substituted for “Administrator” wherever it appears.

TRANSFER OF FUNCTIONS

“Secretary of Energy” substituted for “Administrator”, meaning Administrator of Federal Energy Administration, in subsec. (a) pursuant to sections 301(a), 703, and 707 of Pub. L. 95-91, which are classified to sections 7151(a), 7293, and 7297 of this title and which terminated Federal Energy Administration and transferred its functions and functions of Administrator thereof (with certain exceptions) to Secretary of Energy.

CHAPTER 82—SOLID WASTE DISPOSAL

SUBCHAPTER I—GENERAL PROVISIONS

Sec.	
6901.	Congressional findings. <ul style="list-style-type: none"> (a) Solid waste. (b) Environment and health. (c) Materials. (d) Energy.
6901a.	Congressional findings: used oil recycling.
6902.	Objectives and national policy. <ul style="list-style-type: none"> (a) Objectives. (b) National policy.
6903.	Definitions.
6904.	Governmental cooperation. <ul style="list-style-type: none"> (a) Interstate cooperation. (b) Consent of Congress to compacts.
6905.	Application of chapter and integration with other Acts. <ul style="list-style-type: none"> (a) Application of chapter. (b) Integration with other Acts. (c) Integration with the Surface Mining Control and Reclamation Act of 1977.
6906.	Financial disclosure. <ul style="list-style-type: none"> (a) Statement. (b) Action by Administrator. (c) Exemption. (d) Penalty.
6907.	Solid waste management information and guidelines. <ul style="list-style-type: none"> (a) Guidelines. (b) Notice.
6908.	Small town environmental planning. <ul style="list-style-type: none"> (a) Establishment. (b) Small Town Environmental Planning Task Force.

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| <p>Sec.</p> <p>(c) Identification of environmental requirements.</p> <p>(d) Small Town Ombudsman.</p> <p>(e) Multi-media permits.</p> <p>(f) "Small town" defined.</p> <p>(g) Authorization.</p> <p>6908a. Agreements with Indian tribes.</p> <p style="text-align: center;">SUBCHAPTER II—OFFICE OF SOLID WASTE;
AUTHORITIES OF THE ADMINISTRATOR</p> <p>6911. Office of Solid Waste and Interagency Coordinating Committee.</p> <p style="padding-left: 20px;">(a) Office of Solid Waste.</p> <p style="padding-left: 20px;">(b) Interagency Coordinating Committee.</p> <p>6911a. Assistant Administrator of Environmental Protection Agency; appointment, etc.</p> <p>6912. Authorities of Administrator.</p> <p style="padding-left: 20px;">(a) Authorities.</p> <p style="padding-left: 20px;">(b) Revision of regulations.</p> <p style="padding-left: 20px;">(c) Criminal investigations.</p> <p>6913. Resource Recovery and Conservation Panels.</p> <p>6914. Grants for discarded tire disposal.</p> <p style="padding-left: 20px;">(a) Grants.</p> <p style="padding-left: 20px;">(b) Authorization of appropriations.</p> <p>6914a. Labeling of lubricating oil.</p> <p>6914b. Degradable plastic ring carriers; definitions.</p> <p>6914b-1. Regulation of plastic ring carriers.</p> <p>6915. Annual report.</p> <p>6916. General authorization.</p> <p style="padding-left: 20px;">(a) General administration.</p> <p style="padding-left: 20px;">(b) Resource Recovery and Conservation Panels.</p> <p style="padding-left: 20px;">(c) Hazardous waste.</p> <p style="padding-left: 20px;">(d) State and local support.</p> <p style="padding-left: 20px;">(e) Criminal investigators.</p> <p style="padding-left: 20px;">(f) Underground storage tanks.</p> <p>6917. Office of Ombudsman.</p> <p style="padding-left: 20px;">(a) Establishment; functions.</p> <p style="padding-left: 20px;">(b) Authority to render assistance.</p> <p style="padding-left: 20px;">(c) Effect on procedures for grievances, appeals, or administrative matters.</p> <p style="padding-left: 20px;">(d) Termination.</p> <p style="text-align: center;">SUBCHAPTER III—HAZARDOUS WASTE
MANAGEMENT</p> <p>6921. Identification and listing of hazardous waste.</p> <p style="padding-left: 20px;">(a) Criteria for identification or listing.</p> <p style="padding-left: 20px;">(b) Identification and listing.</p> <p style="padding-left: 20px;">(c) Petition by State Governor.</p> <p style="padding-left: 20px;">(d) Small quantity generator waste.</p> <p style="padding-left: 20px;">(e) Specified wastes.</p> <p style="padding-left: 20px;">(f) Delisting procedures.</p> <p style="padding-left: 20px;">(g) EP toxicity.</p> <p style="padding-left: 20px;">(h) Additional characteristics.</p> <p style="padding-left: 20px;">(i) Clarification of household waste exclusion.</p> <p>6922. Standards applicable to generators of hazardous waste.</p> <p style="padding-left: 20px;">(a) In general.</p> <p style="padding-left: 20px;">(b) Waste minimization.</p> <p>6923. Standards applicable to transporters of hazardous waste.</p> <p style="padding-left: 20px;">(a) Standards.</p> <p style="padding-left: 20px;">(b) Coordination with regulations of Secretary of Transportation.</p> <p style="padding-left: 20px;">(c) Fuel from hazardous waste.</p> <p>6924. Standards applicable to owners and operators of hazardous waste treatment, storage, and disposal facilities.</p> <p style="padding-left: 20px;">(a) In general.</p> <p style="padding-left: 20px;">(b) Salt dome formations, salt bed formations, underground mines and caves.</p> <p style="padding-left: 20px;">(c) Liquids in landfills.</p> <p style="padding-left: 20px;">(d) Prohibitions on land disposal of specified wastes.</p> <p style="padding-left: 20px;">(e) Solvents and dioxins.</p> <p style="padding-left: 20px;">(f) Disposal into deep injection wells; specified subsection (d) wastes; solvents and dioxins.</p> | <p>Sec.</p> <p>(g) Additional land disposal prohibition determinations.</p> <p>(h) Variance from land disposal prohibitions.</p> <p>(i) Publication of determination.</p> <p>(j) Storage of hazardous waste prohibited from land disposal.</p> <p>(k) "Land disposal" defined.</p> <p>(l) Ban on dust suppression.</p> <p>(m) Treatment standards for wastes subject to land disposal prohibition.</p> <p>(n) Air emissions.</p> <p>(o) Minimum technological requirements.</p> <p>(p) Ground water monitoring.</p> <p>(q) Hazardous waste used as fuel.</p> <p>(r) Labeling.</p> <p>(s) Recordkeeping.</p> <p>(t) Financial responsibility provisions.</p> <p>(u) Continuing releases at permitted facilities.</p> <p>(v) Corrective action beyond facility boundary.</p> <p>(w) Underground tanks.</p> <p>(x) Mining and other special wastes.</p> <p>(y) Munitions.</p> <p>6925. Permits for treatment, storage, or disposal of hazardous waste.</p> <p style="padding-left: 20px;">(a) Permit requirements.</p> <p style="padding-left: 20px;">(b) Requirements of permit application.</p> <p style="padding-left: 20px;">(c) Permit issuance.</p> <p style="padding-left: 20px;">(d) Permit revocation.</p> <p style="padding-left: 20px;">(e) Interim status.</p> <p style="padding-left: 20px;">(f) Coal mining wastes and reclamation permits.</p> <p style="padding-left: 20px;">(g) Research, development, and demonstration permits.</p> <p style="padding-left: 20px;">(h) Waste minimization.</p> <p style="padding-left: 20px;">(i) Interim status facilities receiving wastes after July 26, 1982.</p> <p style="padding-left: 20px;">(j) Interim status surface impoundments.</p> <p>6926. Authorized State hazardous waste programs.</p> <p style="padding-left: 20px;">(a) Federal guidelines.</p> <p style="padding-left: 20px;">(b) Authorization of State program.</p> <p style="padding-left: 20px;">(c) Interim authorization.</p> <p style="padding-left: 20px;">(d) Effect of State permit.</p> <p style="padding-left: 20px;">(e) Withdrawal of authorization.</p> <p style="padding-left: 20px;">(f) Availability of information.</p> <p style="padding-left: 20px;">(g) Amendments made by 1984 act.</p> <p style="padding-left: 20px;">(h) State programs for used oil.</p> <p>6927. Inspections.</p> <p style="padding-left: 20px;">(a) Access entry.</p> <p style="padding-left: 20px;">(b) Availability to public.</p> <p style="padding-left: 20px;">(c) Federal facility inspections.</p> <p style="padding-left: 20px;">(d) State-operated facilities.</p> <p style="padding-left: 20px;">(e) Mandatory inspections.</p> <p>6928. Federal enforcement.</p> <p style="padding-left: 20px;">(a) Compliance orders.</p> <p style="padding-left: 20px;">(b) Public hearing.</p> <p style="padding-left: 20px;">(c) Violation of compliance orders.</p> <p style="padding-left: 20px;">(d) Criminal penalties.</p> <p style="padding-left: 20px;">(e) Knowing endangerment.</p> <p style="padding-left: 20px;">(f) Special rules.</p> <p style="padding-left: 20px;">(g) Civil penalty.</p> <p style="padding-left: 20px;">(h) Interim status corrective action orders.</p> <p>6929. Retention of State authority.</p> <p>6930. Effective date.</p> <p style="padding-left: 20px;">(a) Preliminary notification.</p> <p style="padding-left: 20px;">(b) Effective date of regulation.</p> <p>6931. Authorization of assistance to States.</p> <p style="padding-left: 20px;">(a) Authorization of appropriations.</p> <p style="padding-left: 20px;">(b) Allocation.</p> <p style="padding-left: 20px;">(c) Activities included.</p> <p>6932. Transferred.</p> <p>6933. Hazardous waste site inventory.</p> <p style="padding-left: 20px;">(a) State inventory programs.</p> <p style="padding-left: 20px;">(b) Environmental Protection Agency program.</p> |
|--|--|

- | | | | |
|--|---|--|--|
| <p>Sec.</p> <p>6934. Monitoring, analysis, and testing.</p> <p>6935. Restrictions on recycled oil.</p> <p>6936. Expansion during interim status.</p> <p>6937. Inventory of Federal agency hazardous waste facilities.</p> <p>6938. Export of hazardous wastes.</p> <p>6939. Domestic sewage.</p> <p>6939a. Exposure information and health assessments.</p> <p>6939b. Interim control of hazardous waste injection.</p> <p>6939c. Mixed waste inventory reports and plan.</p> <p>6939d. Public vessels.</p> <p>6939e. Federally owned treatment works.</p> <p>SUBCHAPTER IV—STATE OR REGIONAL SOLID WASTE PLANS</p> <p>6941. Objectives of subchapter.</p> | <p>(c) Grants.</p> <p>(d) No impediment to immediate remedial action.</p> <p>(a) Authority of Administrator.</p> <p>(b) Previous owners and operators.</p> <p>(c) Proposal.</p> <p>(d) Monitoring, etc., carried out by Administrator.</p> <p>(e) Enforcement.</p> <p>(a) In general.</p> <p>(b) Identification or listing of used oil as hazardous waste.</p> <p>(c) Used oil which is recycled.</p> <p>(d) Permits.</p> <p>(a) Waste piles.</p> <p>(b) Landfills and surface impoundments.</p> <p>(a) Program requirement; submission; availability; contents.</p> <p>(b) Environmental Protection Agency program.</p> <p>(a) In general.</p> <p>(b) Regulations.</p> <p>(c) Notification.</p> <p>(d) Procedures for requesting consent of receiving country.</p> <p>(e) Conveyance of written consent to exporter.</p> <p>(f) International agreements.</p> <p>(g) Reports.</p> <p>(h) Other standards.</p> <p>(a) Report.</p> <p>(b) Revisions of regulations.</p> <p>(c) Report on wastewater lagoons.</p> <p>(d) Application of sections 6927 and 6930.</p> <p>(a) Exposure information.</p> <p>(b) Health assessments.</p> <p>(c) Members of the public.</p> <p>(d) Priority.</p> <p>(e) Periodic reports.</p> <p>(f) "Health assessments" defined.</p> <p>(g) Cost recovery.</p> <p>(a) Underground source of drinking water.</p> <p>(b) Actions under Comprehensive Environmental Response, Compensation, and Liability Act.</p> <p>(c) Enforcement.</p> <p>(d) Definitions.</p> <p>(a) Mixed waste inventory reports.</p> <p>(b) Plan for development of treatment capacities and technologies.</p> <p>(c) Schedule and progress reports.</p> <p>(a) Waste generated on public vessels.</p> <p>(b) Computation of storage period.</p> <p>(c) Definitions.</p> <p>(d) Relationship to other law.</p> <p>(a) In general.</p> <p>(b) Prohibition.</p> <p>(c) Enforcement.</p> <p>(d) "Federally owned treatment works" defined.</p> <p>(e) Savings clause.</p> | <p>Sec.</p> <p>6941a. Energy and materials conservation and recovery; Congressional findings.</p> <p>6942. Federal guidelines for plans.</p> <p>6943. Requirements for approval of plans.</p> <p>6944. Criteria for sanitary landfills; sanitary landfills required for all disposal.</p> <p>6945. Upgrading of open dumps.</p> <p>6946. Procedure for development and implementation of State plan.</p> <p>6947. Approval of State plan; Federal assistance.</p> <p>6948. Federal assistance.</p> <p>6949. Rural communities assistance.</p> <p>6949a. Adequacy of certain guidelines and criteria.</p> <p>SUBCHAPTER V—DUTIES OF SECRETARY OF COMMERCE IN RESOURCE AND RECOVERY</p> <p>6951. Functions.</p> <p>6952. Development of specifications for secondary materials.</p> <p>6953. Development of markets for recovered materials.</p> <p>6954. Technology promotion.</p> <p>6955. Marketing policies, establishment; non-discrimination requirement.</p> <p>6956. Authorization of appropriations.</p> <p>SUBCHAPTER VI—FEDERAL RESPONSIBILITIES</p> <p>6961. Application of Federal, State, and local law to Federal facilities.</p> | <p>(a) Guidelines for identification of regions.</p> <p>(b) Guidelines for State plans.</p> <p>(c) Considerations for State plan guidelines.</p> <p>(a) Minimum requirements.</p> <p>(b) Discretionary plan provisions relating to recycled oil.</p> <p>(c) Energy and materials conservation and recovery feasibility planning and assistance.</p> <p>(d) Size of waste-to-energy facilities.</p> <p>(a) Criteria for sanitary landfills.</p> <p>(b) Disposal required to be in sanitary landfills, etc.</p> <p>(c) Effective date.</p> <p>(a) Closing or upgrading of existing open dumps.</p> <p>(b) Inventory.</p> <p>(c) Control of hazardous disposal.</p> <p>(a) Identification of regions.</p> <p>(b) Identification of State and local agencies and responsibilities.</p> <p>(c) Interstate regions.</p> <p>(a) Plan approval.</p> <p>(b) Eligibility of States for Federal financial assistance.</p> <p>(c) Existing activities.</p> <p>(a) Authorization of Federal financial assistance.</p> <p>(b) State allotment.</p> <p>(c) Distribution of Federal financial assistance within the State.</p> <p>(d) Technical assistance.</p> <p>(e) Special communities.</p> <p>(f) Assistance to States for discretionary program for recycled oil.</p> <p>(g) Assistance to municipalities for energy and materials conservation and recovery planning activities.</p> <p>(a) In general.</p> <p>(b) Allotment.</p> <p>(c) Limit.</p> <p>(d) Authorization of appropriations.</p> <p>(a) Study.</p> <p>(b) Report.</p> <p>(c) Revisions of guidelines and criteria.</p> |
|--|---|--|--|

- Sec. 6962. Federal procurement.
- (a) Application of section.
 - (b) Procurement subject to other law.
 - (c) Requirements.
 - (d) Specifications.
 - (e) Guidelines.
 - (f) Procurement of services.
 - (g) Executive Office.
 - (h) "Recovered materials" defined.
 - (i) Procurement program.
6963. Cooperation with Environmental Protection Agency.
- (a) General rule.
 - (b) Information relating to energy and materials conservation and recovery.
6964. Applicability of solid waste disposal guidelines to Executive agencies.
- (a) Compliance.
 - (b) Licenses and permits.
6965. Chief Financial Officer report.
- SUBCHAPTER VII—MISCELLANEOUS PROVISIONS
6971. Employee protection.
- (a) General.
 - (b) Remedy.
 - (c) Costs.
 - (d) Exception.
 - (e) Employment shifts and loss.
 - (f) Occupational safety and health.
6972. Citizen suits.
- (a) In general.
 - (b) Actions prohibited.
 - (c) Notice.
 - (d) Intervention.
 - (e) Costs.
 - (f) Other rights preserved.
 - (g) Transporters.
6973. Imminent hazard.
- (a) Authority of Administrator.
 - (b) Violations.
 - (c) Immediate notice.
 - (d) Public participation in settlements.
6974. Petition for regulations; public participation.
- (a) Petition.
 - (b) Public participation.
6975. Separability.
6976. Judicial review.
- (a) Review of final regulations and certain petitions.
 - (b) Review of certain actions under sections 6925 and 6926 of this title.
6977. Grants or contracts for training projects.
- (a) General authority.
 - (b) Purposes.
6978. Payments.
- (a) General rule.
 - (b) Prohibition.
6979. Labor standards.
- 6979a. Transferred.
- 6979b. Law enforcement authority.
- SUBCHAPTER VIII—RESEARCH, DEVELOPMENT, DEMONSTRATION, AND INFORMATION
6981. Research, demonstration, training, and other activities.
- (a) General authority.
 - (b) Management program.
 - (c) Authorities.
6982. Special studies; plans for research, development, and demonstrations.
- (a) Glass and plastic.
 - (b) Composition of waste stream.
 - (c) Priorities study.
 - (d) Small-scale and low technology study.
 - (e) Front-end source separation.
 - (f) Mining waste.
 - (g) Sludge.
 - (h) Tires.
 - (i) Resource recovery facilities.
 - (j) Resource Conservation Committee.
 - (k) Airport landfills.
 - (l) Completion of research and studies.
 - (m) Drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil or natural gas or geothermal energy.
 - (n) Materials generated from the combustion of coal and other fossil fuels.
 - (o) Cement kiln dust waste.
 - (p) Materials generated from extraction, beneficiation, and processing of ores and minerals, including phosphate rock and overburden from uranium mining.
 - (q) Authorization of appropriations.
 - (r) Minimization of hazardous waste.
 - (s) Extending landfill life and reusing landfilled areas.
6983. Coordination, collection, and dissemination of information.
- (a) Information.
 - (b) Library.
 - (c) Model accounting system.
 - (d) Model codes.
 - (e) Information programs.
 - (f) Coordination.
 - (g) Special restriction.
6984. Full-scale demonstration facilities.
- (a) Authority.
 - (b) Time limitation.
 - (c) Cost sharing.
 - (d) Prohibition.
6985. Special study and demonstration projects on recovery of useful energy and materials.
- (a) Studies.
 - (b) Demonstration.
 - (c) Application of other sections.
6986. Grants for resource recovery systems and improved solid waste disposal facilities.
- (a) Authority.
 - (b) Conditions.
 - (c) Limitations.
 - (d) Regulations.
 - (e) Additional limitations.
 - (f) Single State.
6987. Authorization of appropriations.
- SUBCHAPTER IX—REGULATION OF UNDERGROUND STORAGE TANKS
6991. Definitions and exemptions.
- 6991a. Notification.
- (a) Underground storage tanks.
 - (b) Agency designation.
 - (c) State inventories.
- 6991b. Release detection, prevention, and correction regulations.
- (a) Regulations.
 - (b) Distinctions in regulations.
 - (c) Requirements.
 - (d) Financial responsibility.
 - (e) New tank performance standards.
 - (f) Effective dates.
 - (g) Interim prohibition.
 - (h) EPA response program for petroleum.
- 6991c. Approval of State programs.
- (a) Elements of State program.
 - (b) Federal standards.
 - (c) Financial responsibility.
 - (d) EPA determination.
 - (e) Withdrawal of authorization.
- 6991d. Inspections, monitoring, testing, and corrective action.
- (a) Furnishing information.
 - (b) Confidentiality.
- 6991e. Federal enforcement.

- Sec.
- (a) Compliance orders.
 - (b) Procedure.
 - (c) Contents of order.
 - (d) Civil penalties.
- 6991f. Federal facilities.
- (a) Application of subchapter.
 - (b) Presidential exemption.
- 6991g. State authority.
- 6991h. Study of underground storage tanks.
- (a) Petroleum tanks.
 - (b) Other tanks.
 - (c) Elements of studies.
 - (d) Farm and heating oil tanks.
 - (e) Reports.
 - (f) Reimbursement.
- 6991i. Authorization of appropriations.
- SUBCHAPTER X—DEMONSTRATION MEDICAL
WASTE TRACKING PROGRAM
6992. Scope of demonstration program for medical waste.
- (a) Covered States.
 - (b) Opt out.
 - (c) Petition in.
 - (d) Expiration of demonstration program.
- 6992a. Listing of medical wastes.
- (a) List.
 - (b) Exclusions from list.
- 6992b. Tracking of medical waste.
- (a) Demonstration program.
 - (b) Small quantities.
 - (c) On-site incinerators.
 - (d) Type of medical waste and types of generators.
- 6992c. Inspections.
- (a) Requirements for access.
 - (b) Procedures.
 - (c) Availability to public.
- 6992d. Enforcement.
- (a) Compliance orders.
 - (b) Criminal penalties.
 - (c) Knowing endangerment.
 - (d) Civil penalties.
 - (e) Civil penalty policy.
- 6992e. Federal facilities.
- (a) In general.
 - (b) "Person" defined.
- 6992f. Relationship to State law.
- (a) State inspections and enforcement.
 - (b) Retention of State authority.
 - (c) State forms.
- 6992g. Repealed.
- 6992h. Health impacts report.
- 6992i. General provisions.
- (a) Consultation.
 - (b) Public comment.
 - (c) Relationship to subchapter III.
- 6992j. Effective date.
- 6992k. Authorization of appropriations.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 300h-6, 300h-7, 2022, 2114, 4365, 4368b, 5919, 7412, 7429, 8302, 9601, 9604, 9613, 9614, 9619, 6920, 9621, 9627, 9628, 9659, 9660, 14323 of this title; title 7 section 136q; title 10 sections 2708, 7311; title 16 section 46077; title 18 section 1956; title 25 section 3908; title 26 section 468; title 30 section 1292; title 33 sections 1319, 2602, 2622, 2718; title 49 section 14901.

SUBCHAPTER I—GENERAL PROVISIONS

§ 6901. Congressional findings

(a) Solid waste

The Congress finds with respect to solid waste—

- (1) that the continuing technological progress and improvement in methods of man-

ufacture, packaging, and marketing of consumer products has resulted in an ever-mounting increase, and in a change in the characteristics, of the mass material discarded by the purchaser of such products;

(2) that the economic and population growth of our Nation, and the improvements in the standard of living enjoyed by our population, have required increased industrial production to meet our needs, and have made necessary the demolition of old buildings, the construction of new buildings, and the provision of highways and other avenues of transportation, which, together with related industrial, commercial, and agricultural operations, have resulted in a rising tide of scrap, discarded, and waste materials;

(3) that the continuing concentration of our population in expanding metropolitan and other urban areas has presented these communities with serious financial, management, intergovernmental, and technical problems in the disposal of solid wastes resulting from the industrial, commercial, domestic, and other activities carried on in such areas;

(4) that while the collection and disposal of solid wastes should continue to be primarily the function of State, regional, and local agencies, the problems of waste disposal as set forth above have become a matter national in scope and in concern and necessitate Federal action through financial and technical assistance and leadership in the development, demonstration, and application of new and improved methods and processes to reduce the amount of waste and unsalvageable materials and to provide for proper and economical solid waste disposal practices.

(b) Environment and health

The Congress finds with respect to the environment and health, that—

(1) although land is too valuable a national resource to be needlessly polluted by discarded materials, most solid waste is disposed of on land in open dumps and sanitary landfills;

(2) disposal of solid waste and hazardous waste in or on the land without careful planning and management can present a danger to human health and the environment;

(3) as a result of the Clean Air Act [42 U.S.C. 7401 et seq.], the Water Pollution Control Act [33 U.S.C. 1251 et seq.], and other Federal and State laws respecting public health and the environment, greater amounts of solid waste (in the form of sludge and other pollution treatment residues) have been created. Similarly, inadequate and environmentally unsound practices for the disposal or use of solid waste have created greater amounts of air and water pollution and other problems for the environment and for health;

(4) open dumping is particularly harmful to health, contaminates drinking water from underground and surface supplies, and pollutes the air and the land;

(5) the placement of inadequate controls on hazardous waste management will result in substantial risks to human health and the environment;

(6) if hazardous waste management is improperly performed in the first instance, cor-

rective action is likely to be expensive, complex, and time consuming;

(7) certain classes of land disposal facilities are not capable of assuring long-term containment of certain hazardous wastes, and to avoid substantial risk to human health and the environment, reliance on land disposal should be minimized or eliminated, and land disposal, particularly landfill and surface impoundment, should be the least favored method for managing hazardous wastes; and

(8) alternatives to existing methods of land disposal must be developed since many of the cities in the United States will be running out of suitable solid waste disposal sites within five years unless immediate action is taken.

(c) Materials

The Congress finds with respect to materials, that—

(1) millions of tons of recoverable material which could be used are needlessly buried each year;

(2) methods are available to separate usable materials from solid waste; and

(3) the recovery and conservation of such materials can reduce the dependence of the United States on foreign resources and reduce the deficit in its balance of payments.

(d) Energy

The Congress finds with respect to energy, that—

(1) solid waste represents a potential source of solid fuel, oil, or gas that can be converted into energy;

(2) the need exists to develop alternative energy sources for public and private consumption in order to reduce our dependence on such sources as petroleum products, natural gas, nuclear and hydroelectric generation; and

(3) technology exists to produce usable energy from solid waste.

(Pub. L. 89-272, title II, §1002, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2796; amended Pub. L. 95-609, §7(a), Nov. 8, 1978, 92 Stat. 3081; Pub. L. 98-616, title I, §101(a), Nov. 8, 1984, 98 Stat. 3224.)

REFERENCES IN TEXT

The Clean Air Act, referred to in subsec. (b)(3), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§7401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

The Water Pollution Control Act, referred to in subsec. (b)(3), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92-500, §2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

CODIFICATION

The statutory system governing the disposal of solid wastes set out in this chapter is found in Pub. L. 89-272, title II, as amended in its entirety and completely revised by section 2 of Pub. L. 94-580, Oct. 21, 1976, 90 Stat. 2795. See Short Title of 1976 Amendment note below.

The act, as set out in this chapter, carries a statutory credit showing the sections as having been added by Pub. L. 94-580, without reference to amendments to the

act between its original enactment in 1965 and its complete revision in 1976. The act, as originally enacted in 1965, was classified to section 3251 et seq. of this title. For a recapitulation of the provisions of the act as originally enacted, see notes in chapter 39 (§3251 et seq.) of this title where the act was originally set out.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3251 of this title prior to the general amendment of the Solid Waste Disposal Act by Pub. L. 94-580.

AMENDMENTS

1984—Subsec. (b)(5) to (8). Pub. L. 98-616 added pars. (5) to (7), struck out former par. (5) providing that “hazardous waste presents, in addition to the problems associated with non-hazardous solid waste, special dangers to health and requires a greater degree of regulation than does non-hazardous solid waste; and”, redesignated former par. (6) as (8), and substituted a period for the semicolon at end.

1978—Subsec. (a)(4). Pub. L. 95-609 substituted “solid waste” for “solid-waste”.

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104-119, §1, Mar. 26, 1996, 110 Stat. 830, provided that: “This Act [amending sections 6921, 6924, 6925, 6947, and 6949a of this title and enacting provisions set out as a note under section 6949a of this title] may be cited as the ‘Land Disposal Program Flexibility Act of 1996’.”

SHORT TITLE OF 1992 AMENDMENT

Pub. L. 102-386, title I, §101, Oct. 6, 1992, 106 Stat. 1505, provided that: “This title [enacting sections 6908, 6939c to 6939e, and 6965 of this title, amending sections 6903, 6924, 6927, and 6961 of this title, and enacting provisions set out as notes under sections 6939c and 6961 of this title] may be cited as the ‘Federal Facility Compliance Act of 1992’.”

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100-582, §1, Nov. 1, 1988, 102 Stat. 2950, provided that: “This Act [enacting sections 6992 to 6992k of this title and section 3063 of Title 18, Crimes and Criminal Procedure, and amending section 6903 of this title] may be cited as the ‘Medical Waste Tracking Act of 1988’.”

SHORT TITLE OF 1984 AMENDMENT

Section 1 of Pub. L. 98-616 provided that: “This Act [enacting sections 6917, 6936 to 6939a, 6949a, 6979a, 6979b, and 6991 to 6991i of this title, amending this section and sections 6902, 6905, 6912, 6915, 6916, 6921 to 6933, 6935, 6941 to 6945, 6948, 6956, 6962, 6972, 6973, 6976, 6982 and 6984 of this title and enacting provisions set out as notes under sections 6905, 6921 and 6926 of this title] may be cited as ‘The Hazardous and Solid Waste Amendments of 1984’.”

SHORT TITLE OF 1980 AMENDMENTS

Pub. L. 96-482, §1, Oct. 21, 1980, 94 Stat. 2334, provided: “This Act [enacting sections 6933, 6934, 6941a, 6955, and 6956 of this title, amending sections 6903, 6905, 6911, 6912, 6916, 6921, 6922, 6924, 6925, 6927 to 6931, 6941 to 6943, 6945, 6946, 6948, 6949, 6952, 6953, 6962, 6963, 6964, 6971, 6973, 6974, 6976, 6979, and 6982 of this title; and enacting and repealing provisions set out as a note under section 6981 of this title] may be cited as the ‘Solid Waste Disposal Act Amendments of 1980’.”

Pub. L. 96-463, §1, Oct. 15, 1980, 94 Stat. 2055, provided: “This Act [enacting sections 6901a, 6914a and 6932 of this title, amending sections 6903, 6943 and 6948 of this title, and enacting provisions set out as notes under sections 6363 and 6932 of this title] may be cited as the ‘Used Oil Recycling Act of 1980’.”

SHORT TITLE OF 1976 AMENDMENT

Section 1 of Pub. L. 94-580 provided that: “This Act [enacting this chapter and provisions set out as notes

under this section and section 6981 of this title] may be cited as the 'Resource Conservation and Recovery Act of 1976'."

SHORT TITLE

Section 1001 of Pub. L. 89-272, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2795, provided in part that title II of Pub. L. 89-272 [enacting this chapter] may be cited as the "Solid Waste Disposal Act".

FEDERAL COMPLIANCE WITH POLLUTION CONTROL STANDARDS

For provisions relating to the responsibility of the head of each Executive agency for compliance with applicable pollution control standards, see Ex. Ord. No. 12088, Oct. 13, 1978, 43 F.R. 47707, set out as a note under section 4321 of this title.

NATIONAL COMMISSION ON MATERIALS POLICY

Pub. L. 91-512, title II, §§201-206, Oct. 26, 1970, 84 Stat. 1234, known as the "National Materials Policy Act of 1970", provided for the establishment of the National Commission on Materials Policy to make a full investigation and study for the purpose of developing a national materials policy to utilize present resources and technology more efficiently and to anticipate the future materials requirements of the Nation and the world, the Commission to submit to the President and Congress a report on its findings and recommendations no later than June 30, 1973, ninety days after the submission of which it should cease to exist.

§ 6901a. Congressional findings: used oil recycling

The Congress finds and declares that—

- (1) used oil is a valuable source of increasingly scarce energy and materials;
- (2) technology exists to re-refine, reprocess, reclaim, and otherwise recycle used oil;
- (3) used oil constitutes a threat to public health and the environment when reused or disposed of improperly; and

that, therefore, it is in the national interest to recycle used oil in a manner which does not constitute a threat to public health and the environment and which conserves energy and materials.

(Pub. L. 96-463, §2, Oct. 15, 1980, 94 Stat. 2055.)

CODIFICATION

Section was enacted as part of the Used Oil Recycling Act of 1980, and not as part of the Solid Waste Disposal Act which comprises this chapter.

§ 6902. Objectives and national policy

(a) Objectives

The objectives of this chapter are to promote the protection of health and the environment and to conserve valuable material and energy resources by—

- (1) providing technical and financial assistance to State and local governments and interstate agencies for the development of solid waste management plans (including resource recovery and resource conservation systems) which will promote improved solid waste management techniques (including more effective organizational arrangements), new and improved methods of collection, separation, and recovery of solid waste, and the environmentally safe disposal of nonrecoverable residues;

(2) providing training grants in occupations involving the design, operation, and maintenance of solid waste disposal systems;

(3) prohibiting future open dumping on the land and requiring the conversion of existing open dumps to facilities which do not pose a danger to the environment or to health;

(4) assuring that hazardous waste management practices are conducted in a manner which protects human health and the environment;

(5) requiring that hazardous waste be properly managed in the first instance thereby reducing the need for corrective action at a future date;

(6) minimizing the generation of hazardous waste and the land disposal of hazardous waste by encouraging process substitution, materials recovery, properly conducted recycling and reuse, and treatment;

(7) establishing a viable Federal-State partnership to carry out the purposes of this chapter and insuring that the Administrator will, in carrying out the provisions of subchapter III of this chapter, give a high priority to assisting and cooperating with States in obtaining full authorization of State programs under subchapter III of this chapter;

(8) providing for the promulgation of guidelines for solid waste collection, transport, separation, recovery, and disposal practices and systems;

(9) promoting a national research and development program for improved solid waste management and resource conservation techniques, more effective organizational arrangements, and new and improved methods of collection, separation, and recovery, and recycling of solid wastes and environmentally safe disposal of nonrecoverable residues;

(10) promoting the demonstration, construction, and application of solid waste management, resource recovery, and resource conservation systems which preserve and enhance the quality of air, water, and land resources; and

(11) establishing a cooperative effort among the Federal, State, and local governments and private enterprise in order to recover valuable materials and energy from solid waste.

(b) National policy

The Congress hereby declares it to be the national policy of the United States that, wherever feasible, the generation of hazardous waste is to be reduced or eliminated as expeditiously as possible. Waste that is nevertheless generated should be treated, stored, or disposed of so as to minimize the present and future threat to human health and the environment.

(Pub. L. 89-272, title II, §1003, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2798; amended Pub. L. 98-616, title I, §101(b), Nov. 8, 1984, 98 Stat. 3224.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3251 of this title, prior to the general amendment of the Solid Waste Disposal Act by Pub. L. 94-580.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-616, §101(b)(1), designated existing provisions as subsec. (a).

Subsec. (a)(4) to (11). Pub. L. 98-616, §101(b)(2), struck out par. (4) which provided for regulating the treatment, storage, transportation, and disposal of hazardous wastes which have adverse effects on health and the environment, added pars. (4) to (7), and redesignated former pars. (5) to (8) as (8) to (11), respectively.

Subsec. (b). Pub. L. 98-616, §101(b)(1), added subsec. (b).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6982 of this title.

§ 6903. Definitions

As used in this chapter:

(1) The term "Administrator" means the Administrator of the Environmental Protection Agency.

(2) The term "construction," with respect to any project of construction under this chapter, means (A) the erection or building of new structures and acquisition of lands or interests therein, or the acquisition, replacement, expansion, remodeling, alteration, modernization, or extension of existing structures, and (B) the acquisition and installation of initial equipment of, or required in connection with, new or newly acquired structures or the expanded, remodeled, altered, modernized or extended part of existing structures (including trucks and other motor vehicles, and tractors, cranes, and other machinery) necessary for the proper utilization and operation of the facility after completion of the project; and includes preliminary planning to determine the economic and engineering feasibility and the public health and safety aspects of the project, the engineering, architectural, legal, fiscal, and economic investigations and studies, and any surveys, designs, plans, working drawings, specifications, and other action necessary for the carrying out of the project, and (C) the inspection and supervision of the process of carrying out the project to completion.

(2A) The term "demonstration" means the initial exhibition of a new technology process or practice or a significantly new combination or use of technologies, processes or practices, subsequent to the development stage, for the purpose of proving technological feasibility and cost effectiveness.

(3) The term "disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

(4) The term "Federal agency" means any department, agency, or other instrumentality of the Federal Government, any independent agency or establishment of the Federal Government including any Government corporation, and the Government Printing Office.

(5) The term "hazardous waste" means a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may—

(A) cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or

(B) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.

(6) The term "hazardous waste generation" means the act or process of producing hazardous waste.

(7) The term "hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous wastes.

(8) For purposes of Federal financial assistance (other than rural communities assistance), the term "implementation" does not include the acquisition, leasing, construction, or modification of facilities or equipment or the acquisition, leasing, or improvement of land.

(9) The term "intermunicipal agency" means an agency established by two or more municipalities with responsibility for planning or administration of solid waste.

(10) The term "interstate agency" means an agency of two or more municipalities in different States, or an agency established by two or more States, with authority to provide for the management of solid wastes and serving two or more municipalities located in different States.

(11) The term "long-term contract" means, when used in relation to solid waste supply, a contract of sufficient duration to assure the viability of a resource recovery facility (to the extent that such viability depends upon solid waste supply).

(12) The term "manifest" means the form used for identifying the quantity, composition, and the origin, routing, and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment, or storage.

(13) The term "municipality" (A) means a city, town, borough, county, parish, district, or other public body created by or pursuant to State law, with responsibility for the planning or administration of solid waste management, or an Indian tribe or authorized tribal organization or Alaska Native village or organization, and (B) includes any rural community or unincorporated town or village or any other public entity for which an application for assistance is made by a State or political subdivision thereof.

(14) The term "open dump" means any facility or site where solid waste is disposed of which is not a sanitary landfill which meets the criteria promulgated under section 6944 of this title and which is not a facility for disposal of hazardous waste.

(15) The term "person" means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body and shall include each department, agency, and instrumentality of the United States.

(16) The term "procurement item" means any device, good, substance, material, product, or other item whether real or personal property which is the subject of any purchase, barter, or other exchange made to procure such item.

(17) The term "procuring agency" means any Federal agency, or any State agency or agency of a political subdivision of a State which is using appropriated Federal funds for such procurement, or any person contracting with any such agency with respect to work performed under such contract.

(18) The term "recoverable" refers to the capability and likelihood of being recovered from solid waste for a commercial or industrial use.

(19) The term "recovered material" means waste material and byproducts which have been recovered or diverted from solid waste, but such term does not include those materials and byproducts generated from, and commonly reused within, an original manufacturing process.

(20) The term "recovered resources" means material or energy recovered from solid waste.

(21) The term "resource conservation" means reduction of the amounts of solid waste that are generated, reduction of overall resource consumption, and utilization of recovered resources.

(22) The term "resource recovery" means the recovery of material or energy from solid waste.

(23) The term "resource recovery system" means a solid waste management system which provides for collection, separation, recycling, and recovery of solid wastes, including disposal of nonrecoverable waste residues.

(24) The term "resource recovery facility" means any facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

(25) The term "regional authority" means the authority established or designated under section 6946 of this title.

(26) The term "sanitary landfill" means a facility for the disposal of solid waste which meets the criteria published under section 6944 of this title.

(26A) The term "sludge" means any solid, semisolid or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility or any other such waste having similar characteristics and effects.

(27) The term "solid waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 1342 of title 33, or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923) [42 U.S.C. 2011 et seq.].

(28) The term "solid waste management" means the systematic administration of activities which provide for the collection, source separation, storage, transportation, transfer, processing, treatment, and disposal of solid waste.

(29) The term "solid waste management facility" includes—

(A) any resource recovery system or component thereof,

(B) any system, program, or facility for resource conservation, and

(C) any facility for the collection, source separation, storage, transportation, transfer, processing, treatment or disposal of solid wastes, including hazardous wastes, whether such facility is associated with facilities generating such wastes or otherwise.

(30) The terms "solid waste planning", "solid waste management", and "comprehensive planning" include planning or management respecting resource recovery and resource conservation.

(31) The term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(32) The term "State authority" means the agency established or designated under section 6947 of this title.

(33) The term "storage", when used in connection with hazardous waste, means the containment of hazardous waste, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such hazardous waste.

(34) The term "treatment", when used in connection with hazardous waste, means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, amenable for recovery, amenable for storage, or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous.

(35) The term "virgin material" means a raw material, including previously unused copper, aluminum, lead, zinc, iron, or other metal or metal ore, any undeveloped resource that is, or with new technology will become, a source of raw materials.

(36) The term "used oil" means any oil which has been—

(A) refined from crude oil,

(B) used, and

(C) as a result of such use, contaminated by physical or chemical impurities.

(37) The term "recycled oil" means any used oil which is reused, following its original use, for any purpose (including the purpose for which the oil was originally used). Such term includes oil which is re-refined, reclaimed, burned, or reprocessed.

(38) The term "lubricating oil" means the fraction of crude oil which is sold for purposes of reducing friction in any industrial or mechanical device. Such term includes re-refined oil.

(39) The term "re-refined oil" means used oil from which the physical and chemical contaminants acquired through previous use have been removed through a refining process.

(40) Except as otherwise provided in this paragraph, the term "medical waste" means any

solid waste which is generated in the diagnosis, treatment, or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biologicals. Such term does not include any hazardous waste identified or listed under subchapter III of this chapter or any household waste as defined in regulations under subchapter III of this chapter.

(41) The term "mixed waste" means waste that contains both hazardous waste and source, special nuclear, or by-product material subject to the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).

(Pub. L. 89-272, title II, §1004, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2798; amended Pub. L. 95-609, §7(b), Nov. 8, 1978, 92 Stat. 3081; Pub. L. 96-463, §3, Oct. 15, 1980, 94 Stat. 2055; Pub. L. 96-482, §2, Oct. 21, 1980, 94 Stat. 2334; Pub. L. 100-582, §3, Nov. 1, 1988, 102 Stat. 2958; Pub. L. 102-386, title I, §§103, 105(b), Oct. 6, 1992, 106 Stat. 1507, 1512.)

REFERENCES IN TEXT

The Atomic Energy Act of 1954, referred to in pars. (27) and (41), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3252 of this title, prior to the general amendment of the Solid Waste Disposal Act by Pub. L. 94-580.

AMENDMENTS

1992—Par. (15). Pub. L. 102-386, §103, inserted before period at end "and shall include each department, agency, and instrumentality of the United States".

Par. (41). Pub. L. 102-386, §105(b), added par. (41).

1988—Par. (40). Pub. L. 100-582 added par. (40).

1980—Par. (14). Pub. L. 96-482, §2(a), defined "open dump" to include a facility, substituted requirement that disposal facility or site not be a sanitary landfill meeting section 6944 of this title criteria for prior requirement that disposal site not be a sanitary landfill within meaning of section 6944 of this title, and required that the disposal facility or site not be a facility for disposal of hazardous waste.

Par. (19). Pub. L. 96-482, §2(b), defined "recovered material" to cover byproducts, substituted provision for recovery or diversion of waste material and byproducts from solid waste for prior provision for collection or recovery of material from solid waste, and excluded materials and byproducts generated from and commonly reused within an original manufacturing process.

Pars. (36) to (39). Pub. L. 96-463, §3, added pars. (36) to (39).

1978—Par. (8). Pub. L. 95-609, §7(b)(1), struck out provision stating that employees' salaries due pursuant to subchapter IV of this chapter would not be included after Dec. 31, 1979.

Par. (10). Pub. L. 95-609, §7(b)(2), substituted "management" for "disposal".

Par. (29)(C). Pub. L. 95-609, §7(b)(3), substituted "the collection, source separation, storage, transportation, transfer, processing, treatment or disposal" for "the treatment".

TRANSFER OF FUNCTIONS

Enforcement functions of Administrator or other official of Environmental Protection Agency related to compliance with resource conservation and recovery permits used under this chapter with respect to pre-

construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas transferred to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until first anniversary of date of initial operation of Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, eff. July 1, 1979, §§102(a), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, set out in the Appendix to Title 5, Government Organization and Employees. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102-486, set out as an Abolition of Office of Federal Inspector note under section 719e of Title 15, Commerce and Trade.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5919, 6921, 6939e, 6991, 9601, 9614 of this title; title 10 section 2708; title 25 section 3902; title 26 section 4662; title 33 section 2601; title 46 App. section 883; title 49 sections 5702, 60128.

§ 6904. Governmental cooperation

(a) Interstate cooperation

The provisions of this chapter to be carried out by States may be carried out by interstate agencies and provisions applicable to States may apply to interstate regions where such agencies and regions have been established by the respective States and approved by the Administrator. In any such case, action required to be taken by the Governor of a State, respecting regional designation shall be required to be taken by the Governor of each of the respective States with respect to so much of the interstate region as is within the jurisdiction of that State.

(b) Consent of Congress to compacts

The consent of the Congress is hereby given to two or more States to negotiate and enter into agreements or compacts, not in conflict with any law or treaty of the United States, for—

(1) cooperative effort and mutual assistance for the management of solid waste or hazardous waste (or both) and the enforcement of their respective laws relating thereto, and

(2) the establishment of such agencies, joint or otherwise, as they may deem desirable for making effective such agreements or compacts.

No such agreement or compact shall be binding or obligatory upon any State a party thereto unless it is agreed upon by all parties to the agreement and until it has been approved by the Administrator and the Congress.

(Pub. L. 89-272, title II, §1005, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2801.)

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

§ 6905. Application of chapter and integration with other Acts

(a) Application of chapter

Nothing in this chapter shall be construed to apply to (or to authorize any State, interstate,

or local authority to regulate) any activity or substance which is subject to the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.], the Safe Drinking Water Act [42 U.S.C. 300f et seq.], the Marine Protection, Research and Sanctuaries Act of 1972 [16 U.S.C. 1431 et seq., 1447 et seq., 33 U.S.C. 1401 et seq., 2801 et seq.], or the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.] except to the extent that such application (or regulation) is not inconsistent with the requirements of such Acts.

(b) Integration with other Acts

(1) The Administrator shall integrate all provisions of this chapter for purposes of administration and enforcement and shall avoid duplication, to the maximum extent practicable, with the appropriate provisions of the Clean Air Act [42 U.S.C. 7401 et seq.], the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.], the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.], the Safe Drinking Water Act [42 U.S.C. 300f et seq.], the Marine Protection, Research and Sanctuaries Act of 1972 [16 U.S.C. 1431 et seq., 1447 et seq., 33 U.S.C. 1401 et seq., 2801 et seq.], and such other Acts of Congress as grant regulatory authority to the Administrator. Such integration shall be effected only to the extent that it can be done in a manner consistent with the goals and policies expressed in this chapter and in the other acts referred to in this subsection.

(2)(A) As promptly as practicable after November 8, 1984, the Administrator shall submit a report describing—

- (i) the current data and information available on emissions of polychlorinated dibenzo-p-dioxins from resource recovery facilities burning municipal solid waste;
- (ii) any significant risks to human health posed by these emissions; and
- (iii) operating practices appropriate for controlling these emissions.

(B) Based on the report under subparagraph (A) and on any future information on such emissions, the Administrator may publish advisories or guidelines regarding the control of dioxin emissions from such facilities. Nothing in this paragraph shall be construed to preempt or otherwise affect the authority of the Administrator to promulgate any regulations under the Clean Air Act [42 U.S.C. 7401 et seq.] regarding emissions of polychlorinated dibenzo-p-dioxins.

(3) Notwithstanding any other provisions of law, in developing solid waste plans, it is the intention of this chapter that in determining the size of a waste-to-energy facility, adequate provisions shall be given to the present and reasonably anticipated future needs, including those needs created by thorough implementation of section 6962(h) of this title, of the recycling and resource recovery interests within the area encompassed by the solid waste plan.

(c) Integration with the Surface Mining Control and Reclamation Act of 1977

(1) No later than 90 days after October 21, 1980, the Administrator shall review any regulations applicable to the treatment, storage, or disposal of any coal mining wastes or overburden promulgated by the Secretary of the Interior under

the Surface Mining and Reclamation Act of 1977 [30 U.S.C. 1201 et seq.]. If the Administrator determines that any requirement of final regulations promulgated under any section of subchapter III of this chapter relating to mining wastes or overburden is not adequately addressed in such regulations promulgated by the Secretary, the Administrator shall promptly transmit such determination, together with suggested revisions and supporting documentation, to the Secretary.

(2) The Secretary of the Interior shall have exclusive responsibility for carrying out any requirement of subchapter III of this chapter with respect to coal mining wastes or overburden for which a surface coal mining and reclamation permit is issued or approved under the Surface Mining Control and Reclamation Act of 1977 [30 U.S.C. 1201 et seq.]. The Secretary shall, with the concurrence of the Administrator, promulgate such regulations as may be necessary to carry out the purposes of this subsection and shall integrate such regulations with regulations promulgated under the Surface Mining Control and Reclamation Act of 1977.

(Pub. L. 89-272, title II, §1006, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2802; amended Pub. L. 96-482, §3, Oct. 21, 1980, 94 Stat. 2334; Pub. L. 98-616, title I, §102, title V, §501(f)(2), Nov. 8, 1984, 98 Stat. 3225, 3276.)

REFERENCES IN TEXT

The Federal Water Pollution Control Act, referred to in subsecs. (a) and (b), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92-500, §2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Atomic Energy Act of 1954, as amended, referred to in subsec. (a), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

The Marine Protection, Research and Sanctuaries Act of 1972, referred to in subsecs. (a) and (b), is Pub. L. 92-532, Oct. 23, 1972, 86 Stat. 1052, as amended, which enacted chapters 32 (§1431 et seq.) and 32A (§1447 et seq.) of Title 16, Conservation, and chapters 27 (§1401 et seq.) and 41 (§2801 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1401 of Title 33 and Tables.

The Safe Drinking Water Act, referred to in subsecs. (a) and (b), is title XIV of act July 1, 1944, as added Dec. 16, 1974, Pub. L. 93-523, §2(a), 88 Stat. 1660, as amended, which is classified generally to subchapter XII (§300f et seq.) of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

The Clean Air Act, referred to in subsec. (b)(1), (2)(B), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§7401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

The Federal Insecticide, Fungicide, and Rodenticide Act, referred to in subsec. (b), is act June 25, 1947, ch. 125, as amended generally by Pub. L. 92-516, Oct. 21, 1972, 86 Stat. 973, which is classified generally to subchapter II (§136 et seq.) of chapter 6 of Title 7, Agriculture. For complete classification of this Act to the

Code, see Short Title note set out under section 136 of Title 7 and Tables.

The Surface Mining Control and Reclamation Act of 1977, referred to in subsec. (c), is Pub. L. 95-87, Aug. 3, 1977, 91 Stat. 445, as amended, which is classified generally to chapter 25 (§1201 et seq.) of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code, see Short Title note set out under section 1201 of Title 30 and Tables.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3257 of this title, prior to the general amendment of the Solid Waste Disposal Act by Pub. L. 94-580.

AMENDMENTS

1984—Subsec. (b)(1), (2). Pub. L. 98-616, §102, designated existing provisions as par. (1) and added par. (2).

Subsec. (b)(3). Pub. L. 98-616, §501(f)(2), added par. (3).
1980—Subsec. (c). Pub. L. 96-482 added subsec. (c).

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

URANIUM MILL TAILINGS

Section 703 of Pub. L. 98-616 provided that: "Nothing in the Hazardous and Solid Waste Amendments of 1984 [see Short Title of 1984 Amendment note set out under section 6901 of this title] shall be construed to affect, modify, or amend the Uranium Mill Tailings Radiation Control Act of 1978 [42 U.S.C. 7901 et seq.]".

§ 6906. Financial disclosure

(a) Statement

Each officer or employee of the Administrator who—

- (1) performs any function or duty under this chapter; and
- (2) has any known financial interest in any person who applies for or receives financial assistance under this chapter

shall, beginning on February 1, 1977, annually file with the Administrator a written statement concerning all such interests held by such officer or employee during the preceding calendar year. Such statement shall be available to the public.

(b) Action by Administrator

The Administrator shall—

- (1) act within ninety days after October 21, 1976—

(A) to define the term "known financial interest" for purposes of subsection (a) of this section; and

(B) to establish the methods by which the requirement to file written statements specified in subsection (a) of this section will be monitored and enforced, including appropriate provision for the filing by such officers and employees of such statements and the review by the Administrator of such statements; and

- (2) report to the Congress on June 1, 1978, and of each succeeding calendar year with re-

spect to such disclosures and the actions taken in regard thereto during the preceding calendar year.

(c) Exemption

In the rules prescribed under subsection (b) of this section, the Administrator may identify specific positions within the Environmental Protection Agency which are of a nonpolicy-making nature and provide that officers or employees occupying such positions shall be exempt from the requirements of this section.

(d) Penalty

Any officer or employee who is subject to, and knowingly violates, this section shall be fined not more than \$2,500 or imprisoned not more than one year, or both.

(Pub. L. 89-272, title II, §1007, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2802.)

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of reporting provisions in subsec. (b)(2) of this section, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 14th item on page 164 of House Document No. 103-7.

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

§ 6907. Solid waste management information and guidelines

(a) Guidelines

Within one year of October 21, 1976, and from time to time thereafter, the Administrator shall, in cooperation with appropriate Federal, State, municipal, and intermunicipal agencies, and in consultation with other interested persons, and after public hearings, develop and publish suggested guidelines for solid waste management. Such suggested guidelines shall—

- (1) provide a technical and economic description of the level of performance that can be attained by various available solid waste management practices (including operating practices) which provide for the protection of public health and the environment;

(2) not later than two years after October 21, 1976, describe levels of performance, including appropriate methods and degrees of control, that provide at a minimum for (A) protection of public health and welfare; (B) protection of the quality of ground waters and surface waters from leachates; (C) protection of the quality of surface waters from runoff through compliance with effluent limitations under the Federal Water Pollution Control Act, as amended [33 U.S.C. 1251 et seq.]; (D) protection of ambient air quality through compliance with new source performance standards or requirements of air quality implementation plans under the Clean Air Act, as amended [42 U.S.C. 7401 et seq.]; (E) disease and vector control; (F) safety; and (G) esthetics; and

- (3) provide minimum criteria to be used by the States to define those solid waste manage-

ment practices which constitute the open dumping of solid waste or hazardous waste and are to be prohibited under subchapter IV of this chapter.

Where appropriate, such suggested guidelines also shall include minimum information for use in deciding the adequate location, design, and construction of facilities associated with solid waste management practices, including the consideration of regional, geographic, demographic, and climatic factors.

(b) Notice

The Administrator shall notify the Committee on Environment and Public Works of the Senate and the Committee on Energy and Commerce of the House of Representatives a reasonable time before publishing any suggested guidelines or proposed regulations under this chapter of the content of such proposed suggested guidelines or proposed regulations under this chapter.

(Pub. L. 89-272, title II, §1008, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2803; amended Pub. L. 95-609, §7(c), (d), Nov. 8, 1978, 92 Stat. 3081; Pub. L. 103-437, §15(r), Nov. 2, 1994, 108 Stat. 4594.)

REFERENCES IN TEXT

The Federal Water Pollution Control Act, referred to in subsec. (a)(2), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92-500, §2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Clean Air Act, as amended, referred to in subsec. (a)(2), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§7401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3254c of this title, prior to the general amendment of the Solid Waste Disposal Act by Pub. L. 94-580.

AMENDMENTS

1994—Subsec. (b). Pub. L. 103-437 substituted “Committee on Environment and Public Works of the Senate and the Committee on Energy and Commerce of the House” for “Committee on Public Works of the Senate and the Committee on Interstate and Foreign Commerce of the House”.

1978—Subsec. (a)(3). Pub. L. 95-609, §7(c), substituted “subchapter IV of this chapter” for “title IV of this Act”.

Subsec. (b). Pub. L. 95-609, §7(d), struck out “pursuant to this section” after “any suggested guidelines” and inserted “or proposed regulations under this chapter” after “suggested guidelines” in two places.

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representa-

tives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5919, 5920, 6945, 6948, 6949a, 6964, 6981, 6984, 6986 of this title.

§ 6908. Small town environmental planning

(a) Establishment

The Administrator of the Environmental Protection Agency (hereafter referred to as the “Administrator”) shall establish a program to assist small communities in planning and financing environmental facilities. The program shall be known as the “Small Town Environmental Planning Program”.

(b) Small Town Environmental Planning Task Force

(1) The Administrator shall establish a Small Town Environmental Planning Task Force which shall be composed of representatives of small towns from different areas of the United States, Federal and State governmental agencies, and public interest groups. The Administrator shall terminate the Task Force not later than 2 years after the establishment of the Task Force.

(2) The Task Force shall—

(A) identify regulations developed pursuant to Federal environmental laws which pose significant compliance problems for small towns;

(B) identify means to improve the working relationship between the Environmental Protection Agency (hereafter referred to as the Agency) and small towns;

(C) review proposed regulations for the protection of the environmental and public health and suggest revisions that could improve the ability of small towns to comply with such regulations;

(D) identify means to promote regionalization of environmental treatment systems and infrastructure serving small towns to improve the economic condition of such systems and infrastructure; and

(E) provide such other assistance to the Administrator as the Administrator deems appropriate.

(c) Identification of environmental requirements

(1) Not later than 6 months after October 6, 1992, the Administrator shall publish a list of requirements under Federal environmental and public health statutes (and the regulations developed pursuant to such statutes) applicable to small towns. Not less than annually, the Administrator shall make such additions and deletions to and from the list as the Administrator deems appropriate.

(2) The Administrator shall, as part of the Small Town Environmental Planning Program under this section, implement a program to no-

tify small communities of the regulations identified under paragraph (1) and of future regulations and requirements through methods that the Administrator determines to be effective to provide information to the greatest number of small communities, including any of the following:

- (A) Newspapers and other periodicals.
- (B) Other news media.
- (C) Trade, municipal, and other associations that the Administrator determines to be appropriate.
- (D) Direct mail.

(d) Small Town Ombudsman

The Administrator shall establish and staff an Office of the Small Town Ombudsman. The Office shall provide assistance to small towns in connection with the Small Town Environmental Planning Program and other business with the Agency. Each regional office shall identify a small town contact. The Small Town Ombudsman and the regional contacts also may assist larger communities, but only if first priority is given to providing assistance to small towns.

(e) Multi-media permits

(1) The Administrator shall conduct a study of establishing a multi-media permitting program for small towns. Such evaluation shall include an analysis of—

- (A) environmental benefits and liabilities of a multi-media permitting program;
- (B) the potential of using such a program to coordinate a small town's environmental and public health activities; and
- (C) the legal barriers, if any, to the establishment of such a program.

(2) Within 3 years after October 6, 1992, the Administrator shall report to Congress on the results of the evaluation performed in accordance with paragraph (1). Included in this report shall be a description of the activities conducted pursuant to subsections (a) through (d) of this section.

(f) "Small town" defined

For purposes of this section, the term "small town" means an incorporated or unincorporated community (as defined by the Administrator) with a population of less than 2,500 individuals.

(g) Authorization

There is authorized to be appropriated the sum of \$500,000 to implement this section.

(Pub. L. 102-386, title I, §109, Oct. 6, 1992, 106 Stat. 1515.)

CODIFICATION

Section was enacted as part of the Federal Facility Compliance Act of 1992, and not as part of the Solid Waste Disposal Act which comprises this chapter.

§ 6908a. Agreements with Indian tribes

On and after October 21, 1998, the Administrator is authorized to enter into assistance agreements with Federally¹ recognized Indian tribes on such terms and conditions as the Administrator deems appropriate for the develop-

ment and implementation of programs to manage hazardous waste, and underground storage tanks.

(Pub. L. 105-276, title III, Oct. 21, 1998, 112 Stat. 2499.)

CODIFICATION

Section was enacted as part of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999, and not as part of the Solid Waste Disposal Act which comprises this chapter.

SUBCHAPTER II—OFFICE OF SOLID WASTE; AUTHORITIES OF THE ADMINISTRATOR

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 6948 of this title.

§ 6911. Office of Solid Waste and Interagency Coordinating Committee

(a) Office of Solid Waste

The Administrator shall establish within the Environmental Protection Agency an Office of Solid Waste (hereinafter referred to as the "Office") to be headed by an Assistant Administrator of the Environmental Protection Agency. The duties and responsibilities (other than duties and responsibilities relating to research and development) of the Administrator under this chapter (as modified by applicable reorganization plans) shall be carried out through the Office.

(b) Interagency Coordinating Committee

(1) There is hereby established an Interagency Coordinating Committee on Federal Resource Conservation and Recovery Activities which shall have the responsibility for coordinating all activities dealing with resource conservation and recovery from solid waste carried out by the Environmental Protection Agency, the Department of Energy, the Department of Commerce, and all other Federal agencies which conduct such activities pursuant to this chapter or any other Act. For purposes of this subsection, the term "resource conservation and recovery activities" shall include, but not be limited to, all research, development and demonstration projects on resource conservation or energy, or material, recovery from solid waste, and all technical or financial assistance for State or local planning for, or implementation of, projects related to resource conservation or energy or material, recovery from solid waste. The Committee shall be chaired by the Administrator of the Environmental Protection Agency or such person as the Administrator may designate. Members of the Committee shall include representatives of the Department of Energy, the Department of Commerce, the Department of the Treasury, and each other Federal agency which the Administrator determines to have programs or responsibilities affecting resource conservation or recovery.

(2) The Interagency Coordinating Committee shall include oversight of the implementation of

(A) the May 1979 Memorandum of Understanding on Energy Recovery from Municipal Solid Waste between the Environmental Protection Agency and the Department of Energy;

¹ So in original. Probably should not be capitalized.

(B) the May 30, 1978, Interagency Agreement between the Department of Commerce and the Environmental Protection Agency on the Implementation of the Resource Conservation and Recovery Act [42 U.S.C. 6901 et seq.]; and

(C) any subsequent agreements between these agencies or other Federal agencies which address Federal resource recovery or conservation activities.

(Pub. L. 89-272, title II, §2001, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2804; amended Pub. L. 96-482, §4(c), Oct. 21, 1980, 94 Stat. 2335; Pub. L. 96-510, title III, §307(a), Dec. 11, 1980, 94 Stat. 2810.)

REFERENCES IN TEXT

The Resource Conservation and Recovery Act, referred to in subsec. (b)(2)(B), is Pub. L. 94-580, Oct. 21, 1976, 90 Stat. 2796, which is classified generally to this chapter (§6901 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

CODIFICATION

Subsection (b)(3) of this section, which required the Interagency Coordinating Committee to submit to Congress on March 1 of each year, a five-year action plan for Federal resource conservation or recovery activities, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, the 2nd item on page 175 of House Document No. 103-7.

AMENDMENTS

1980—Subsec. (a). Pub. L. 96-510 substituted reference to Assistant Administrator for reference to Deputy Assistant Administrator.

Pub. L. 96-482 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1980 AMENDMENT

Section 307(c) of Pub. L. 96-510 provided that: “The amendment made by subsection (a) [amending this section] shall become effective ninety days after the date of the enactment of this Act [Dec. 11, 1980].”

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

§ 6911a. Assistant Administrator of Environmental Protection Agency; appointment, etc.

The Assistant Administrator of the Environmental Protection Agency appointed to head the Office of Solid Waste shall be in addition to the five Assistant Administrators of the Environmental Protection Agency provided for in section 1(d) of Reorganization Plan Numbered 3 of 1970 and the additional Assistant Administrator provided by the Toxic Substances Control Act [15 U.S.C. 2601 et seq.], shall be appointed by the President by and with the advice and consent of the Senate.

(Pub. L. 96-510, title III, §307(b), Dec. 11, 1980, 94 Stat. 2810; Pub. L. 98-80, §2(c)(2)(B), Aug. 23, 1983, 97 Stat. 485.)

REFERENCES IN TEXT

Reorganization Plan Numbered 3 of 1970, referred to in text, is set out in the Appendix to Title 5, Government Organization and Employees.

The Toxic Substances Control Act, referred to in text, is Pub. L. 94-469, Oct. 11, 1976, 90 Stat. 2003, as amended, which is classified generally to chapter 53 (§2601 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 15 and Tables.

CODIFICATION

Section was enacted as part of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and not as part of the Solid Waste Disposal Act which comprises this chapter.

AMENDMENTS

1983—Pub. L. 98-80 struck out “, and shall be compensated at the rate provided for Level IV of the Executive Schedule pay rates under section 5315 of title 5” after “advice and consent of the Senate”.

EFFECTIVE DATE

Section effective Dec. 11, 1980, see section 9652 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4370a of this title.

§ 6912. Authorities of Administrator

(a) Authorities

In carrying out this chapter, the Administrator is authorized to—

(1) prescribe, in consultation with Federal, State, and regional authorities, such regulations as are necessary to carry out his functions under this chapter;

(2) consult with or exchange information with other Federal agencies undertaking research, development, demonstration projects, studies, or investigations relating to solid waste;

(3) provide technical and financial assistance to States or regional agencies in the development and implementation of solid waste plans and hazardous waste management programs;

(4) consult with representatives of science, industry, agriculture, labor, environmental protection and consumer organizations, and other groups, as he deems advisable;

(5) utilize the information, facilities, personnel and other resources of Federal agencies, including the National Institute of Standards and Technology and the National Bureau of the Census, on a reimbursable basis, to perform research and analyses and conduct studies and investigations related to resource recovery and conservation and to otherwise carry out the Administrator's functions under this chapter; and

(6) to delegate to the Secretary of Transportation the performance of any inspection or enforcement function under this chapter relating to the transportation of hazardous waste where such delegation would avoid unnecessary duplication of activity and would carry out the objectives of this chapter and of chapter 51 of title 49.

(b) Revision of regulations

Each regulation promulgated under this chapter shall be reviewed and, where necessary, revised not less frequently than every three years.

(c) Criminal investigations

In carrying out the provisions of this chapter, the Administrator, and duly-designated agents and employees of the Environmental Protection Agency, are authorized to initiate and conduct investigations under the criminal provisions of this chapter, and to refer the results of these investigations to the Attorney General for prosecution in appropriate cases.

(Pub. L. 89-272, title II, §2002, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2804; amended Pub. L. 96-482, §5, Oct. 21, 1980, 94 Stat. 2335; Pub. L. 98-616, title IV, §403(d)(4), Nov. 8, 1984, 98 Stat. 3272; Pub. L. 100-418, title V, §5115(c), Aug. 23, 1988, 102 Stat. 1433.)

CODIFICATION

In subsec. (a)(6), "chapter 51 of title 49" substituted for "the Hazardous Materials Transportation Act [49 App. U.S.C. 1801 et seq.]" on authority of Pub. L. 103-272, §6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

AMENDMENTS

1988—Subsec. (a)(5). Pub. L. 100-418 substituted "National Institute of Standards and Technology" for "National Bureau of Standards".

1984—Subsec. (c). Pub. L. 98-616 added subsec. (c).

1980—Subsec. (a)(6). Pub. L. 96-482 added par. (6).

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6921 of this title.

§ 6913. Resource Recovery and Conservation Panels

The Administrator shall provide teams of personnel, including Federal, State, and local employees or contractors (hereinafter referred to as "Resource Conservation and Recovery Panels") to provide Federal agencies, States and local governments upon request with technical assistance on solid waste management, resource recovery, and resource conservation. Such teams shall include technical, marketing, financial, and institutional specialists, and the services of such teams shall be provided without charge to States or local governments.

(Pub. L. 89-272, title II, §2003, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2804; amended Pub. L. 95-609, §7(e), Nov. 8, 1978, 92 Stat. 3081.)

AMENDMENTS

1978—Pub. L. 95-609 inserted "Federal agencies," after "to provide".

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protec-

tion Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6916 of this title.

§ 6914. Grants for discarded tire disposal**(a) Grants**

The Administrator shall make available grants equal to 5 percent of the purchase price of tire shredders (including portable shredders attached to tire collection trucks) to those eligible applicants best meeting criteria promulgated under this section. An eligible applicant may be any private purchaser, public body, or public-private joint venture. Criteria for receiving grants shall be promulgated under this section and shall include the policy to offer any private purchaser the first option to receive a grant, the policy to develop widespread geographic distribution of tire shredding facilities, the need for such facilities within a geographic area, and the projected risk and viability of any such venture. In the case of an application under this section from a public body, the Administrator shall first make a determination that there are no private purchasers interested in making an application before approving a grant to a public body.

(b) Authorization of appropriations

There is authorized to be appropriated \$750,000 for each of the fiscal years 1978 and 1979 to carry out this section.

(Pub. L. 89-272, title II, §2004, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2805.)

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

§ 6914a. Labeling of lubricating oil

For purposes of any provision of law which requires the labeling of commodities, lubricating oil shall be treated as lawfully labeled only if it bears the following statement, prominently displayed:

"DON'T POLLUTE—CONSERVE RESOURCES;
RETURN USED OIL TO COLLECTION CENTERS".

(Pub. L. 89-272, title II, §2005, as added Pub. L. 96-463, §4(a), Oct. 15, 1980, 94 Stat. 2056.)

PRIOR PROVISIONS

A prior section 2005 of Pub. L. 89-272 was renumbered section 2006 and is classified to section 6915 of this title.

§ 6914b. Degradable plastic ring carriers; definitions

As used in this title—

(1) the term "regulated item" means any plastic ring carrier device that contains at

least one hole greater than 1¼ inches in diameter which is made, used, or designed for the purpose of packaging, transporting, or carrying multipackaged cans or bottles, and which is of a size, shape, design, or type capable, when discarded, of becoming entangled with fish or wildlife; and

(2) the term "naturally degradable material" means a material which, when discarded, will be reduced to environmentally benign subunits under the action of normal environmental forces, such as, among others, biological decomposition, photodegradation, or hydrolysis.

(Pub. L. 100-556, title I, §102, Oct. 28, 1988, 102 Stat. 2779.)

REFERENCES IN TEXT

This title, referred to in text, is title I of Pub. L. 100-556, Oct. 28, 1988, 102 Stat. 2779, which enacted sections 6914b and 6914b-1 of this title, and provisions set out as a note under section 6914b of this title. For complete classification of this title to the Code, see Tables.

CODIFICATION

Section was not enacted as part of the Solid Waste Disposal Act which comprises this chapter.

CONGRESSIONAL FINDINGS

Section 101 of Pub. L. 100-556 provided that: "The Congress finds that—

"(1) plastic ring carrier devices have been found in large quantities in the marine environment;

"(2) fish and wildlife have been known to have become entangled in plastic ring carriers;

"(3) nondegradable plastic ring carrier devices can remain intact in the marine environment for decades, posing a threat to fish and wildlife; and

"(4) 16 States have enacted laws requiring that plastic ring carrier devices be made from degradable material in order to reduce litter and to protect fish and wildlife."

§ 6914b-1. Regulation of plastic ring carriers

Not later than 24 months after October 28, 1988 (unless the Administrator of the Environmental Protection Agency determines that it is not feasible or that the byproducts of degradable regulated items present a greater threat to the environment than nondegradable regulated items), the Administrator of the Environmental Protection Agency shall require, by regulation, that any regulated item intended for use in the United States shall be made of naturally degradable material which, when discarded, decomposes within a period established by such regulation. The period within which decomposition must occur after being discarded shall be the shortest period of time consistent with the intended use of the item and the physical integrity required for such use. Such regulation shall allow a reasonable time for affected parties to come into compliance, including the use of existing inventories.

(Pub. L. 100-556, title I, §103, Oct. 28, 1988, 102 Stat. 2779.)

CODIFICATION

Section was not enacted as part of the Solid Waste Disposal Act which comprises this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6914b of this title.

§ 6915. Annual report

The Administrator shall transmit to the Congress and the President, not later than ninety days after the end of each fiscal year, a comprehensive and detailed report on all activities of the Office during the preceding fiscal year. Each such report shall include—

(1) a statement of specific and detailed objectives for the activities and programs conducted and assisted under this chapter;

(2) statements of the Administrator's conclusions as to the effectiveness of such activities and programs in meeting the stated objectives and the purposes of this chapter, measured through the end of such fiscal year;

(3) a summary of outstanding solid waste problems confronting the Administrator, in order of priority;

(4) recommendations with respect to such legislation which the Administrator deems necessary or desirable to assist in solving problems respecting solid waste;

(5) all other information required to be submitted to the Congress pursuant to any other provision of this chapter; and

(6) the Administrator's plans for activities and programs respecting solid waste during the next fiscal year.

(Pub. L. 89-272, title II, §2006, formerly §2005, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2805, and renumbered Pub. L. 96-463, §4(a), Oct. 15, 1980, 94 Stat. 2056; amended Pub. L. 98-616, title V, §502(b), Nov. 8, 1984, 98 Stat. 3276.)

PRIOR PROVISIONS

A prior section 2006 of Pub. L. 89-272 was renumbered section 2007 and is classified to section 6916 of this title.

AMENDMENTS

1984—Par. (1). Pub. L. 98-616 substituted "detailed" for "detail".

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of this section relating to transmittal of annual report to Congress, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 19th item on page 164 of House Document No. 103-7.

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

§ 6916. General authorization

(a) General administration

There are authorized to be appropriated to the Administrator for the purpose of carrying out the provisions of this chapter, \$35,000,000 for the fiscal year ending September 30, 1977, \$38,000,000 for the fiscal year ending September 30, 1978, \$42,000,000 for the fiscal year ending September 30, 1979, \$70,000,000 for the fiscal year ending September 30, 1980, \$80,000,000 for the fiscal year ending September 30, 1981, \$80,000,000 for the fiscal year ending September 30, 1982, \$70,000,000 for

the fiscal year ending September 30, 1985, \$80,000,000 for the fiscal year ending September 30, 1986, \$80,000,000 for the fiscal year ending September 30, 1987, and \$80,000,000 for the fiscal year 1988.

(b) Resource Recovery and Conservation Panels

Not less than 20 percent of the amount appropriated under subsection (a) of this section, or \$5,000,000 per fiscal year, whichever is less, shall be used only for purposes of Resource Recovery and Conservation Panels established under section 6913 of this title (including travel expenses incurred by such panels in carrying out their functions under this chapter).

(c) Hazardous waste

Not less than 30 percent of the amount appropriated under subsection (a) of this section shall be used only for purposes of carrying out subchapter III of this chapter (relating to hazardous waste) other than section 6931 of this title.

(d) State and local support

Not less than 25 percent of the total amount appropriated under this chapter, up to the amount authorized in section 6948(a)(1) of this title, shall be used only for purposes of support to State, regional, local, and interstate agencies in accordance with subchapter IV of this chapter other than section 6948(a)(2) or 6949 of this title.

(e) Criminal investigators

There is authorized to be appropriated to the Administrator \$3,246,000 for the fiscal year 1985, \$2,408,300 for the fiscal year 1986, \$2,529,000 for the fiscal year 1987, and \$2,529,000 for the fiscal year 1988 to be used—

(1) for additional officers or employees of the Environmental Protection Agency authorized by the Administrator to conduct criminal investigations (to investigate, or supervise the investigation of, any activity for which a criminal penalty is provided) under this chapter; and

(2) for support costs for such additional officers or employees.

(f) Underground storage tanks

(1) There are authorized to be appropriated to the Administrator for the purpose of carrying out the provisions of subchapter IX of this chapter (relating to regulation of underground storage tanks), \$10,000,000 for each of the fiscal years 1985 through 1988.

(2) There is authorized to be appropriated \$25,000,000 for each of the fiscal years 1985 through 1988 to be used to make grants to the States for purposes of assisting the States in the development and implementation of approved State underground storage tank release detection, prevention, and correction programs under subchapter IX of this chapter.

(Pub. L. 89-272, title II, §2007, formerly §2006, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2805, renumbered Pub. L. 96-463, §4(a), Oct. 15, 1980, 94 Stat. 2055; amended Pub. L. 96-482, §§6, 31(a), Oct. 21, 1980, 94 Stat. 2336, 2352; Pub. L. 98-616, §2(a), (i), Nov. 8, 1984, 98 Stat. 3222, 3223.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-616, §2(a), substituted “\$80,000,000 for the fiscal year ending September 30,

1982, \$70,000,000 for the fiscal year ending September 30, 1985, \$80,000,000 for the fiscal year ending September 30, 1986, \$80,000,000 for the fiscal year ending September 30, 1987, and \$80,000,000 for the fiscal year 1988” for “and \$80,000,000 for the fiscal year ending September 30, 1982”.

Subsecs. (e), (f). Pub. L. 98-616, §2(i), added subsecs. (e) and (f).

1980—Subsec. (a). Pub. L. 96-482, §31(a), authorized appropriation of \$70,000,000, \$80,000,000, and \$80,000,000 for fiscal years ending Sept. 30, 1980, through 1982, respectively.

Subsec. (b). Pub. L. 96-482, §6(a), inserted “, or \$5,000,000 per fiscal year, whichever is less,” after “subsection (a) of this section”.

Subsec. (d). Pub. L. 96-482, §6(b), added subsec. (d).

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6991h, 6991i of this title.

§ 6917. Office of Ombudsman

(a) Establishment; functions

The Administrator shall establish an Office of Ombudsman, to be directed by an Ombudsman. It shall be the function of the Office of Ombudsman to receive individual complaints, grievances, requests for information submitted by any person with respect to any program or requirement under this chapter.

(b) Authority to render assistance

The Ombudsman shall render assistance with respect to the complaints, grievances, and requests submitted to the Office of Ombudsman, and shall make appropriate recommendations to the Administrator.

(c) Effect on procedures for grievances, appeals, or administrative matters

The establishment of the Office of Ombudsman shall not affect any procedures for grievances, appeals, or administrative matters in any other provision of this chapter, any other provision of law, or any Federal regulation.

(d) Termination

The Office of the Ombudsman shall cease to exist 4 years after November 8, 1984.

(Pub. L. 89-272, title II, §2008, as added Pub. L. 98-616, title I, §103(a), Nov. 8, 1984, 98 Stat. 3225.)

SUBCHAPTER III—HAZARDOUS WASTE MANAGEMENT

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 2022, 6902, 6903, 6905, 6916, 6948, 6949a, 6972, 6991, 6992i, 7412, 7511b, 9601, 9603, 9604, 9607, 9608, 9614, 9621, 9651, 14336 of this title; title 10 section 7311; title 26 section 142; title 33 section 1345.

§ 6921. Identification and listing of hazardous waste

(a) Criteria for identification or listing

Not later than eighteen months after October 21, 1976, the Administrator shall, after notice

and opportunity for public hearing, and after consultation with appropriate Federal and State agencies, develop and promulgate criteria for identifying the characteristics of hazardous waste, and for listing hazardous waste, which should be subject to the provisions of this subchapter, taking into account toxicity, persistence, and degradability in nature, potential for accumulation in tissue, and other related factors such as flammability, corrosiveness, and other hazardous characteristics. Such criteria shall be revised from time to time as may be appropriate.

(b) Identification and listing

(1) Not later than eighteen months after October 21, 1976, and after notice and opportunity for public hearing, the Administrator shall promulgate regulations identifying the characteristics of hazardous waste, and listing particular hazardous wastes (within the meaning of section 6903(5) of this title), which shall be subject to the provisions of this subchapter. Such regulations shall be based on the criteria promulgated under subsection (a) of this section and shall be revised from time to time thereafter as may be appropriate. The Administrator, in cooperation with the Agency for Toxic Substances and Disease Registry and the National Toxicology Program, shall also identify or list those hazardous wastes which shall be subject to the provisions of this subchapter solely because of the presence in such wastes of certain constituents (such as identified carcinogens, mutagens, or teratogens)¹ at levels in excess of levels which endanger human health.

(2)(A) Notwithstanding the provisions of paragraph (1) of this subsection, drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil or natural gas or geothermal energy shall be subject only to existing State or Federal regulatory programs in lieu of this subchapter until at least 24 months after October 21, 1980, and after promulgation of the regulations in accordance with subparagraphs (B) and (C) of this paragraph. It is the sense of the Congress that such State or Federal programs should include, for waste disposal sites which are to be closed, provisions requiring at least the following:

(i) The identification through surveying, platting, or other measures, together with recordation of such information on the public record, so as to assure that the location where such wastes are disposed of can be located in the future; except however, that no such surveying, platting, or other measure identifying the location of a disposal site for drilling fluids and associated wastes shall be required if the distance from the disposal site to the surveyed or platted location to the associated well is less than two hundred lineal feet; and

(ii) A chemical and physical analysis of a produced water and a composition of a drilling fluid suspected to contain a hazardous material, with such information to be acquired prior to closure and to be placed on the public record.

(B) Not later than six months after completion and submission of the study required by section 6982(m) of this title, the Administrator shall, after public hearings and opportunity for comment, determine either to promulgate regulations under this subchapter for drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil or natural gas or geothermal energy or that such regulations are unwarranted. The Administrator shall publish his decision in the Federal Register accompanied by an explanation and justification of the reasons for it. In making the decision under this paragraph, the Administrator shall utilize the information developed or accumulated pursuant to the study required under section 6982(m) of this title.

(C) The Administrator shall transmit his decision, along with any regulations, if necessary, to both Houses of Congress. Such regulations shall take effect only when authorized by Act of Congress.

(3)(A) Notwithstanding the provisions of paragraph (1) of this subsection, each waste listed below shall, except as provided in subparagraph (B) of this paragraph, be subject only to regulation under other applicable provisions of Federal or State law in lieu of this subchapter until at least six months after the date of submission of the applicable study required to be conducted under subsection (f), (n), (o), or (p) of section 6982 of this title and after promulgation of regulations in accordance with subparagraph (C) of this paragraph:

(i) Fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels.

(ii) Solid waste from the extraction, beneficiation, and processing of ores and minerals, including phosphate rock and overburden from the mining of uranium ore.

(iii) Cement kiln dust waste.

(B)(i) Owners and operators of disposal sites for wastes listed in subparagraph (A) may be required by the Administrator, through regulations prescribed under authority of section 6912 of this title—

(I) as to disposal sites for such wastes which are to be closed, to identify the locations of such sites through surveying, platting, or other measures, together with recordation of such information on the public record, to assure that the locations where such wastes are disposed of are known and can be located in the future, and

(II) to provide chemical and physical analysis and composition of such wastes, based on available information, to be placed on the public record.

(ii)(I) In conducting any study under subsection (f), (n), (o), or (p), of section 6982 of this title, any officer, employee, or authorized representative of the Environmental Protection Agency, duly designated by the Administrator, is authorized, at reasonable times and as reasonably necessary for the purposes of such study, to enter any establishment where any waste subject to such study is generated, stored, treated,

¹ So in original. Probably should be "teratogens".

disposed of, or transported from; to inspect, take samples, and conduct monitoring and testing; and to have access to and copy records relating to such waste. Each such inspection shall be commenced and completed with reasonable promptness. If the officer, employee, or authorized representative obtains any samples prior to leaving the premises, he shall give to the owner, operator, or agent in charge a receipt describing the sample obtained and if requested a portion of each such sample equal in volume or weight to the portion retained. If any analysis is made of such samples, or monitoring and testing performed, a copy of the results shall be furnished promptly to the owner, operator, or agent in charge.

(II) Any records, reports, or information obtained from any person under subclause (I) shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that records, reports, or information, or particular part thereof, to which the Administrator has access under this subparagraph is made public, would divulge information entitled to protection under section 1905 of title 18, the Administrator shall consider such information or particular portion thereof confidential in accordance with the purposes of that section, except that such record, report, document, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter. Any person not subject to the provisions of section 1905 of title 18 who knowingly and willfully divulges or discloses any information entitled to protection under this subparagraph shall, upon conviction, be subject to a fine of not more than \$5,000 or to imprisonment not to exceed one year, or both.

(iii) The Administrator may prescribe regulations, under the authority of this chapter, to prevent radiation exposure which presents an unreasonable risk to human health from the use in construction or land reclamation (with or without revegetation) of (I) solid waste from the extraction, beneficiation, and processing of phosphate rock or (II) overburden from the mining of uranium ore.

(iv) Whenever on the basis of any information the Administrator determines that any person is in violation of any requirement of this subparagraph, the Administrator shall give notice to the violator of his failure to comply with such requirement. If such violation extends beyond the thirtieth day after the Administrator's notification, the Administrator may issue an order requiring compliance within a specified time period or the Administrator may commence a civil action in the United States district court in the district in which the violation occurred for appropriate relief, including a temporary or permanent injunction.

(C) Not later than six months after the date of submission of the applicable study required to be conducted under subsection (f), (n), (o), or (p), of section 6982 of this title, the Administrator shall, after public hearings and opportunity for comment, either determine to promulgate regulations under this subchapter for each waste listed in subparagraph (A) of this paragraph or determine that such regulations are unwar-

ranted. The Administrator shall publish his determination, which shall be based on information developed or accumulated pursuant to such study, public hearings, and comment, in the Federal Register accompanied by an explanation and justification of the reasons for it.

(c) Petition by State Governor

At any time after the date eighteen months after October 21, 1976, the Governor of any State may petition the Administrator to identify or list a material as a hazardous waste. The Administrator shall act upon such petition within ninety days following his receipt thereof and shall notify the Governor of such action. If the Administrator denies such petition because of financial considerations, in providing such notice to the Governor he shall include a statement concerning such considerations.

(d) Small quantity generator waste

(1) By March 31, 1986, the Administrator shall promulgate standards under sections 6922, 6923, and 6924 of this title for hazardous waste generated by a generator in a total quantity of hazardous waste greater than one hundred kilograms but less than one thousand kilograms during a calendar month.

(2) The standards referred to in paragraph (1), including standards applicable to the legitimate use, reuse, recycling, and reclamation of such wastes, may vary from the standards applicable to hazardous waste generated by larger quantity generators, but such standards shall be sufficient to protect human health and the environment.

(3) Not later than two hundred and seventy days after November 8, 1984, any hazardous waste which is part of a total quantity generated by a generator generating greater than one hundred kilograms but less than one thousand kilograms during one calendar month and which is shipped off the premises on which such waste is generated shall be accompanied by a copy of the Environmental Protection Agency Uniform Hazardous Waste Manifest form signed by the generator. This form shall contain the following information:

(A) the name and address of the generator of the waste;

(B) the United States Department of Transportation description of the waste, including the proper shipping name, hazard class, and identification number (UN/NA), if applicable;

(C) the number and type of containers;

(D) the quantity of waste being transported; and

(E) the name and address of the facility designated to receive the waste.

If subparagraph (B) is not applicable, in lieu of the description referred to in such subparagraph (B), the form shall contain the Environmental Protection Agency identification number, or a generic description of the waste, or a description of the waste by hazardous waste characteristic. Additional requirements related to the manifest form shall apply only if determined necessary by the Administrator to protect human health and the environment.

(4) The Administrator's responsibility under this subchapter to protect human health and the

environment may require the promulgation of standards under this subchapter for hazardous wastes which are generated by any generator who does not generate more than one hundred kilograms of hazardous waste in a calendar month.

(5) Until the effective date of standards required to be promulgated under paragraph (1), any hazardous waste identified or listed under this section generated by any generator during any calendar month in a total quantity greater than one hundred kilograms but less than one thousand kilograms, which is not treated, stored, or disposed of at a hazardous waste treatment, storage, or disposal facility with a permit under section 6925 of this title, shall be disposed of only in a facility which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste.

(6) Standards promulgated as provided in paragraph (1) shall, at a minimum, require that all treatment, storage, or disposal of hazardous wastes generated by generators referred to in paragraph (1) shall occur at a facility with interim status or a permit under this subchapter, except that onsite storage of hazardous waste generated by a generator generating a total quantity of hazardous waste greater than one hundred kilograms, but less than one thousand kilograms during a calendar month, may occur without the requirement of a permit for up to one hundred and eighty days. Such onsite storage may occur without the requirement of a permit for not more than six thousand kilograms for up to two hundred and seventy days if such generator must ship or haul such waste over two hundred miles.

(7)(A) Nothing in this subsection shall be construed to affect or impair the validity of regulations promulgated by the Secretary of Transportation pursuant to chapter 51 of title 49.

(B) Nothing in this subsection shall be construed to affect, modify, or render invalid any requirements in regulations promulgated prior to January 1, 1983 applicable to any acutely hazardous waste identified or listed under this section which is generated by any generator during any calendar month in a total quantity less than one thousand kilograms.

(8) Effective March 31, 1986, unless the Administrator promulgates standards as provided in paragraph (1) of this subsection prior to such date, hazardous waste generated by any generator in a total quantity greater than one hundred kilograms but less than one thousand kilograms during a calendar month shall be subject to the following requirements until the standards referred to in paragraph (1) of this subsection have become effective:

(A) the notice requirements of paragraph (3) of this subsection shall apply and in addition, the information provided in the form shall include the name of the waste transporters and the name and address of the facility designated to receive the waste;

(B) except in the case of the onsite storage referred to in paragraph (6) of this subsection, the treatment, storage, or disposal of such waste shall occur at a facility with interim status or a permit under this subchapter;

(C) generators of such waste shall file manifest exception reports as required of genera-

tors producing greater amounts of hazardous waste per month except that such reports shall be filed by January 31, for any waste shipment occurring in the last half of the preceding calendar year, and by July 31, for any waste shipment occurring in the first half of the calendar year; and

(D) generators of such waste shall retain for three years a copy of the manifest signed by the designated facility that has received the waste.

Nothing in this paragraph shall be construed as a determination of the standards appropriate under paragraph (1).

(9) The last sentence of section 6930(b) of this title shall not apply to regulations promulgated under this subsection.

(e) Specified wastes

(1) Not later than 6 months after November 8, 1984, the Administrator shall, where appropriate, list under subsection (b)(1) of this section, additional wastes containing chlorinated dioxins or chlorinated-dibenzofurans. Not later than one year after November 8, 1984, the Administrator shall, where appropriate, list under subsection (b)(1) of this section wastes containing remaining halogenated dioxins and halogenated-dibenzofurans.

(2) Not later than fifteen months after November 8, 1984, the Administrator shall make a determination of whether or not to list under subsection (b)(1) of this section the following wastes: Chlorinated Aliphatics, Dioxin, Dimethyl Hydrazine, TDI (toluene diisocyanate), Carbamates, Bromacil, Linuron, Organo-bromines, solvents, refining wastes, chlorinated aromatics, dyes and pigments, inorganic chemical industry wastes, lithium batteries, coke by-products, paint production wastes, and coal slurry pipeline effluent.

(f) Delisting procedures

(1) When evaluating a petition to exclude a waste generated at a particular facility from listing under this section, the Administrator shall consider factors (including additional constituents) other than those for which the waste was listed if the Administrator has a reasonable basis to believe that such additional factors could cause the waste to be a hazardous waste. The Administrator shall provide notice and opportunity for comment on these additional factors before granting or denying such petition.

(2)(A) To the maximum extent practicable the Administrator shall publish in the Federal Register a proposal to grant or deny a petition referred to in paragraph (1) within twelve months after receiving a complete application to exclude a waste generated at a particular facility from being regulated as a hazardous waste and shall grant or deny such a petition within twenty-four months after receiving a complete application.

(B) The temporary granting of such a petition prior to November 8, 1984, without the opportunity for public comment and the full consideration of such comments shall not continue for more than twenty-four months after November 8, 1984. If a final decision to grant or deny such a petition has not been promulgated after notice

and opportunity for public comment within the time limit prescribed by the preceding sentence, any such temporary granting of such petition shall cease to be in effect.

(g) EP toxicity

Not later than twenty-eight months after November 8, 1984, the Administrator shall examine the deficiencies of the extraction procedure toxicity characteristic as a predictor of the leaching potential of wastes and make changes in the extraction procedure toxicity characteristic, including changes in the leaching media, as are necessary to insure that it accurately predicts the leaching potential of wastes which pose a threat to human health and the environment when mismanaged.

(h) Additional characteristics

Not later than two years after November 8, 1984, the Administrator shall promulgate regulations under this section identifying additional characteristics of hazardous waste, including measures or indicators of toxicity.

(i) Clarification of household waste exclusion

A resource recovery facility recovering energy from the mass burning of municipal solid waste shall not be deemed to be treating, storing, disposing of, or otherwise managing hazardous wastes for the purposes of regulation under this subchapter, if—

(1) such facility—

(A) receives and burns only—

(i) household waste (from single and multiple dwellings, hotels, motels, and other residential sources), and

(ii) solid waste from commercial or industrial sources that does not contain hazardous waste identified or listed under this section, and

(B) does not accept hazardous wastes identified or listed under this section, and

(2) the owner or operator of such facility has established contractual requirements or other appropriate notification or inspection procedures to assure that hazardous wastes are not received at or burned in such facility.

(Pub. L. 89-272, title II, §3001, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2806; amended Pub. L. 96-482, §7, Oct. 21, 1980, 94 Stat. 2336; Pub. L. 98-616, title II, §§221(a), 222, 223(a), Nov. 8, 1984, 98 Stat. 3248, 3251, 3252; Pub. L. 104-119, §4(1), Mar. 26, 1996, 110 Stat. 833.)

CODIFICATION

In subsec. (d)(7)(A), “chapter 51 of title 49” substituted for “the Hazardous Materials Transportation Act [49 App. U.S.C. 1801 et seq.]” on authority of Pub. L. 103-272, §6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

AMENDMENTS

1996—Subsec. (d)(5). Pub. L. 104-119 made technical amendment to reference in original act which appears in text as reference to this section.

1984—Subsec. (b)(1). Pub. L. 98-616, §222(b), inserted at end “The Administrator, in cooperation with the Agency for Toxic Substances and Disease Registry and the National Toxicology Program, shall also identify or list those hazardous wastes which shall be subject to

the provisions of this subchapter solely because of the presence in such wastes of certain constituents (such as identified carcinogens, mutagens, or teratogens) [sic] at levels in excess of levels which endanger human health.”

Subsec. (d). Pub. L. 98-616, §221(a), added subsec. (d).

Subsecs. (e) to (h). Pub. L. 98-616, §222(a), added subsecs. (e) to (h).

Subsec. (i). Pub. L. 98-616, §223(a), added subsec. (i).

1980—Subsec. (b). Pub. L. 96-482 designated existing provisions as par. (1) and added pars. (2) and (3).

REGULATION

Pub. L. 99-499, title I, §124(b), Oct. 17, 1986, 100 Stat. 1689, provided that: “Unless the Administrator of the Environmental Protection Agency promulgates regulations under subtitle C of the Solid Waste Disposal Act [42 U.S.C. 6921 et seq.] addressing the extraction of wastes from landfills as part of the process of recovering methane from such landfills, the owner and operator of equipment used to recover methane from a landfill shall not be deemed to be managing, generating, transporting, treating, storing, or disposing of hazardous or liquid wastes within the meaning of that subtitle. If the aqueous or hydrocarbon phase of the condensate or any other waste material removed from the gas recovered from the landfill meets any of the characteristics identified under section 3001 of subtitle C of the Solid Waste Disposal Act [42 U.S.C. 6921], the preceding sentence shall not apply and such condensate phase or other waste material shall be deemed a hazardous waste under that subtitle, and shall be regulated accordingly.”

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

ASH MANAGEMENT AND DISPOSAL

Pub. L. 101-549, title III, §306, Nov. 15, 1990, 104 Stat. 2584, provided that: “For a period of 2 years after the date of enactment of the Clean Air Act Amendments of 1990 [Nov. 15, 1990], ash from solid waste incineration units burning municipal waste shall not be regulated by the Administrator of the Environmental Protection Agency pursuant to section 3001 of the Solid Waste Disposal Act [42 U.S.C. 6921]. Such reference and limitation shall not be construed to prejudice, endorse or otherwise affect any activity by the Administrator following the 2-year period from the date of enactment of the Clean Air Act Amendments of 1990.”

SMALL QUANTITY GENERATOR WASTE; INFORM AND EDUCATE; WASTE GENERATORS

Section 221(b) of Pub. L. 98-616 directed Administrator of Environmental Protection Agency to undertake activities to inform and educate waste generators of their responsibilities under subsec. (d) of this section during the period within thirty months after Nov. 8, 1984, to help assure compliance.

STUDY OF EXISTING MANIFEST SYSTEM FOR HAZARDOUS WASTES AS APPLICABLE TO SMALL QUANTITY GENERATORS; SUBMITTAL TO CONGRESS

Section 221(d) of Pub. L. 98-616 directed Administrator of Environmental Protection Agency to cause to be studied the existing manifest system for hazardous wastes as it applies to small quantity generators and recommend whether the current system should be retained or whether a new system should be introduced, such study to include an analysis of the cost versus the benefits of the system studied as well as an analysis of the ease of retrieving and collating information and identifying a given substance, with any new proposal to

include a list of those standards that are necessary to protect human health and the environment, and with such study to be submitted to Congress not later than Apr. 1, 1987.

ADMINISTRATIVE BURDENS; SMALL QUANTITY GENERATORS; RETENTION OF CURRENT SYSTEM; REPORT TO CONGRESS

Section 221(e) of Pub. L. 98-616 directed Administrator of Environmental Protection Agency, in conjunction with Secretary of Transportation, to prepare and submit to Congress, not later than Apr. 1, 1987, a report on the feasibility of easing the administrative burden on small quantity generators, increasing compliance with statutory and regulatory requirements, and simplifying enforcement efforts through a program of licensing hazardous waste transporters to assume the responsibilities of small quantity generators relating to preparation of manifests and associated record-keeping and reporting requirements, such report to examine the appropriate licensing requirements under such a program including the need for financial assurances by licensed transporters and to make recommendations on provisions and requirements for such a program including the appropriate division of responsibilities between Department of Transportation and Environmental Protection Administration.

EDUCATIONAL INSTITUTIONS; ACCUMULATION, STORAGE AND DISPOSAL OF HAZARDOUS WASTES; STUDY

Section 221(f) of Pub. L. 98-616, as amended by Pub. L. 107-110, title X, §1076(aa), Jan. 8, 2002, 115 Stat. 2093, directed Administrator of Environmental Protection Agency, in consultation with Secretary of Education, the States, and appropriate educational associations, to conduct a comprehensive study of problems associated with accumulation, storage, and disposal of hazardous wastes from educational institutions, such study to include an investigation of feasibility and availability of environmentally sound methods for treatment, storage, or disposal of hazardous waste from such institutions, taking into account the types and quantities of such waste which are generated by these institutions, and the nonprofit nature of these institutions, and directed Administrator to submit a report to Congress containing the findings of the study not later than Apr. 1, 1987.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6923, 6924, 6925, 6930, 6935, 6938, 6939, 6945, 6949a, 9605, 9625 of this title; title 33 sections 1319, 2601; title 49 section 14901.

§ 6922. Standards applicable to generators of hazardous waste

(a) In general

Not later than eighteen months after October 21, 1976, and after notice and opportunity for public hearings and after consultation with appropriate Federal and State agencies, the Administrator shall promulgate regulations establishing such standards, applicable to generators of hazardous waste identified or listed under this subchapter, as may be necessary to protect human health and the environment. Such standards shall establish requirements respecting—

- (1) recordkeeping practices that accurately identify the quantities of such hazardous waste generated, the constituents thereof which are significant in quantity or in potential harm to human health or the environment, and the disposition of such wastes;
- (2) labeling practices for any containers used for the storage, transport, or disposal of such hazardous waste such as will identify accurately such waste;

(3) use of appropriate containers for such hazardous waste;

(4) furnishing of information on the general chemical composition of such hazardous waste to persons transporting, treating, storing, or disposing of such wastes;

(5) use of a manifest system and any other reasonable means necessary to assure that all such hazardous waste generated is designated for treatment, storage, or disposal in, and arrives at, treatment, storage, or disposal facilities (other than facilities on the premises where the waste is generated) for which a permit has been issued as provided in this subchapter, or pursuant to title I of the Marine Protection, Research, and Sanctuaries Act (86 Stat. 1052) [33 U.S.C. 1411 et seq.]; and

(6) submission of reports to the Administrator (or the State agency in any case in which such agency carries out a permit program pursuant to this subchapter) at least once every two years, setting out—

(A) the quantities and nature of hazardous waste identified or listed under this subchapter that he has generated during the year;

(B) the disposition of all hazardous waste reported under subparagraph (A);

(C) the efforts undertaken during the year to reduce the volume and toxicity of waste generated; and

(D) the changes in volume and toxicity of waste actually achieved during the year in question in comparison with previous years, to the extent such information is available for years prior to November 8, 1984.

(b) Waste minimization

Effective September 1, 1985, the manifest required by subsection (a)(5) of this section shall contain a certification by the generator that—

(1) the generator of the hazardous waste has a program in place to reduce the volume or quantity and toxicity of such waste to the degree determined by the generator to be economically practicable; and

(2) the proposed method of treatment, storage, or disposal is that practicable method currently available to the generator which minimizes the present and future threat to human health and the environment.

(Pub. L. 89-272, title II, §3002, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2806; amended Pub. L. 95-609, §7(f), Nov. 8, 1978, 92 Stat. 3082; Pub. L. 96-482, §8, Oct. 21, 1980, 94 Stat. 2338; Pub. L. 98-616, title II, §224(a), Nov. 8, 1984, 98 Stat. 3252.)

REFERENCES IN TEXT

The Marine Protection, Research, and Sanctuaries Act, referred to in subsec. (a)(5), probably means the Marine Protection, Research, and Sanctuaries Act of 1972, Pub. L. 92-532, Oct. 23, 1972, 86 Stat. 1052, as amended. Title I of the Marine Protection, Research, and Sanctuaries Act of 1972 is classified generally to subchapter I (§1411 et seq.) of chapter 27 of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1401 of Title 33 and Tables.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-616, §224(a)(1), designated existing provisions as subsec. (a).

Subsec. (a)(6). Pub. L. 98-616, §224(a)(2), amended par. (6) generally. Prior to amendment, par. (6) read as follows: "submission of reports to the Administrator (or the State agency in any case in which such agency carries out an authorized permit program pursuant to this subchapter) at such times as the Administrator (or the State agency if appropriate) deems necessary, setting out—

"(A) the quantities of hazardous waste identified or listed under this subchapter that he has generated during a particular time period; and

"(B) the disposition of all hazardous waste reported under subparagraph (A)."

Subsec. (b). Pub. L. 98-616, §224(a)(2), added subsec. (b).

1980—Par. (5). Pub. L. 96-482 inserted "and any other reasonable means necessary" and "; and arrives at," after "use of a manifest system" and "disposal in", respectively.

1978—Par. (5). Pub. L. 95-609, §7(f)(1), inserted provision relating to title I of the Marine Protection, Research, and Sanctuaries Act.

Par. (6). Pub. L. 95-609, §7(f)(2), closed the parenthetical after "to this subchapter".

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6921, 6923, 6924, 6926, 6935, 6938, 6971 of this title.

§ 6923. Standards applicable to transporters of hazardous waste

(a) Standards

Not later than eighteen months after October 21, 1976, and after opportunity for public hearings, the Administrator, after consultation with the Secretary of Transportation and the States, shall promulgate regulations establishing such standards, applicable to transporters of hazardous waste identified or listed under this subchapter, as may be necessary to protect human health and the environment. Such standards shall include but need not be limited to requirements respecting—

(1) recordkeeping concerning such hazardous waste transported, and their source and delivery points;

(2) transportation of such waste only if properly labeled;

(3) compliance with the manifest system referred to in section 6922(5)¹ of this title; and

(4) transportation of all such hazardous waste only to the hazardous waste treatment, storage, or disposal facilities which the shipper designates on the manifest form to be a facility holding a permit issued under this subchapter, or pursuant to title I of the Marine Protection, Research, and Sanctuaries Act (86 Stat. 1052) [33 U.S.C. 1411 et seq.].

(b) Coordination with regulations of Secretary of Transportation

In case of any hazardous waste identified or listed under this subchapter which is subject to

chapter 51 of title 49, the regulations promulgated by the Administrator under this section shall be consistent with the requirements of such Act and the regulations thereunder. The Administrator is authorized to make recommendations to the Secretary of Transportation respecting the regulations of such hazardous waste under the Hazardous Materials Transportation Act and for addition of materials to be covered by such Act.

(c) Fuel from hazardous waste

Not later than two years after November 8, 1984, and after opportunity for public hearing, the Administrator shall promulgate regulations establishing standards, applicable to transporters of fuel produced (1) from any hazardous waste identified or listed under section 6921 of this title, or (2) from any hazardous waste identified or listed under section 6921 of this title and any other material, as may be necessary to protect human health and the environment. Such standards may include any of the requirements set forth in paragraphs (1) through (4) of subsection (a) of this section as may be appropriate.

(Pub. L. 89-272, title II, §3003, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2807; amended Pub. L. 95-609, §7(g), Nov. 8, 1978, 92 Stat. 3082; Pub. L. 98-616, title II, §204(b)(2), Nov. 8, 1984, 98 Stat. 3238.)

REFERENCES IN TEXT

Section 6922(5) of this title, referred to in subsec. (a)(3), was redesignated section 6922(a)(5) of this title, by Pub. L. 98-616, title II, §224(a)(1), Nov. 8, 1984, 98 Stat. 3253.

The Marine Protection, Research, and Sanctuaries Act, referred to in subsec. (a)(4), probably means the Marine Protection, Research, and Sanctuaries Act of 1972, Pub. L. 92-532, Oct. 23, 1972, 86 Stat. 1052, as amended. Title I of the Marine Protection, Research, and Sanctuaries Act of 1972 is classified generally to subchapter I (§1411 et seq.) of chapter 27 of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1401 of Title 33 and Tables.

CODIFICATION

In subsec. (b), "chapter 51 of title 49" substituted for "the Hazardous Materials Transportation Act (88 Stat. 2156) [49 App. U.S.C. 1801 et seq.]" on authority of Pub. L. 103-272, §6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-616 added subsec. (c).

1978—Subsec. (a)(4). Pub. L. 95-609, §7(g)(1), inserted provision relating to title I of the Marine Protection, Research, and Sanctuaries Act.

Subsec. (b). Pub. L. 95-609, §7(g)(2), substituted "Administrator under this section" for "Administrator under this subchapter".

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6921, 6926, 6935, 6938, 6971 of this title.

¹ See References in Text note below.

§ 6924. Standards applicable to owners and operators of hazardous waste treatment, storage, and disposal facilities

(a) In general

Not later than eighteen months after October 21, 1976, and after opportunity for public hearings and after consultation with appropriate Federal and State agencies, the Administrator shall promulgate regulations establishing such performance standards, applicable to owners and operators of facilities for the treatment, storage, or disposal of hazardous waste identified or listed under this subchapter, as may be necessary to protect human health and the environment. In establishing such standards the Administrator shall, where appropriate, distinguish in such standards between requirements appropriate for new facilities and for facilities in existence on the date of promulgation of such regulations. Such standards shall include, but need not be limited to, requirements respecting—

(1) maintaining records of all hazardous wastes identified or listed under this chapter which is treated, stored, or disposed of, as the case may be, and the manner in which such wastes were treated, stored, or disposed of;

(2) satisfactory reporting, monitoring, and inspection and compliance with the manifest system referred to in section 6922(5)¹ of this title;

(3) treatment, storage, or disposal of all such waste received by the facility pursuant to such operating methods, techniques, and practices as may be satisfactory to the Administrator;

(4) the location, design, and construction of such hazardous waste treatment, disposal, or storage facilities;

(5) contingency plans for effective action to minimize unanticipated damage from any treatment, storage, or disposal of any such hazardous waste;

(6) the maintenance of operation of such facilities and requiring such additional qualifications as to ownership, continuity of operation, training for personnel, and financial responsibility (including financial responsibility for corrective action) as may be necessary or desirable; and

(7) compliance with the requirements of section 6925 of this title respecting permits for treatment, storage, or disposal.

No private entity shall be precluded by reason of criteria established under paragraph (6) from the ownership or operation of facilities providing hazardous waste treatment, storage, or disposal services where such entity can provide assurances of financial responsibility and continuity of operation consistent with the degree and duration of risks associated with the treatment, storage, or disposal of specified hazardous waste.

(b) Salt dome formations, salt bed formations, underground mines and caves

(1) Effective on November 8, 1984, the placement of any noncontainerized or bulk liquid hazardous waste in any salt dome formation, salt bed formation, underground mine, or cave is prohibited until such time as—

(A) the Administrator has determined, after notice and opportunity for hearings on the record in the affected areas, that such placement is protective of human health and the environment;

(B) the Administrator has promulgated performance and permitting standards for such facilities under this subchapter, and;

(C) a permit has been issued under section 6925(c) of this title for the facility concerned.

(2) Effective on November 8, 1984, the placement of any hazardous waste other than a hazardous waste referred to in paragraph (1) in a salt dome formation, salt bed formation, underground mine, or cave is prohibited until such time as a permit has been issued under section 6925(c) of this title for the facility concerned.

(3) No determination made by the Administrator under subsection (d), (e), or (g) of this section regarding any hazardous waste to which such subsection (d), (e), or (g) of this section applies shall affect the prohibition contained in paragraph (1) or (2) of this subsection.

(4) Nothing in this subsection shall apply to the Department of Energy Waste Isolation Pilot Project in New Mexico.

(c) Liquids in landfills

(1) Effective 6 months after November 8, 1984, the placement of bulk or noncontainerized liquid hazardous waste or free liquids contained in hazardous waste (whether or not absorbents have been added) in any landfill is prohibited. Prior to such date the requirements (as in effect on April 30, 1983) promulgated under this section by the Administrator regarding liquid hazardous waste shall remain in force and effect to the extent such requirements are applicable to the placement of bulk or noncontainerized liquid hazardous waste, or free liquids contained in hazardous waste, in landfills.

(2) Not later than fifteen months after November 8, 1984, the Administrator shall promulgate final regulations which—

(A) minimize the disposal of containerized liquid hazardous waste in landfills, and

(B) minimize the presence of free liquids in containerized hazardous waste to be disposed of in landfills.

Such regulations shall also prohibit the disposal in landfills of liquids that have been absorbed in materials that biodegrade or that release liquids when compressed as might occur during routine landfill operations. Prior to the date on which such final regulations take effect, the requirements (as in effect on April 30, 1983) promulgated under this section by the Administrator shall remain in force and effect to the extent such requirements are applicable to the disposal of containerized liquid hazardous waste, or free liquids contained in hazardous waste, in landfills.

(3) Effective twelve months after November 8, 1984, the placement of any liquid which is not a hazardous waste in a landfill for which a permit is required under section 6925(c) of this title or which is operating pursuant to interim status granted under section 6925(e) of this title is prohibited unless the owner or operator of such landfill demonstrates to the Administrator, or the Administrator determines, that—

¹ See References in Text note below.

(A) the only reasonably available alternative to the placement in such landfill is placement in a landfill or unlined surface impoundment, whether or not permitted under section 6925(c) of this title or operating pursuant to interim status under section 6925(e) of this title, which contains, or may reasonably be anticipated to contain, hazardous waste; and

(B) placement in such owner or operator's landfill will not present a risk of contamination of any underground source of drinking water.

As used in subparagraph (B), the term "underground source of drinking water" has the same meaning as provided in regulations under the Safe Drinking Water Act (title XIV of the Public Health Service Act) [42 U.S.C. 300f et seq.].

(4) No determination made by the Administrator under subsection (d), (e), or (g) of this section regarding any hazardous waste to which such subsection (d), (e), or (g) of this section applies shall affect the prohibition contained in paragraph (1) of this subsection.

(d) Prohibitions on land disposal of specified wastes

(1) Effective 32 months after November 8, 1984 (except as provided in subsection (f) of this section with respect to underground injection into deep injection wells), the land disposal of the hazardous wastes referred to in paragraph (2) is prohibited unless the Administrator determines the prohibition on one or more methods of land disposal of such waste is not required in order to protect human health and the environment for as long as the waste remains hazardous, taking into account—

(A) the long-term uncertainties associated with land disposal,

(B) the goal of managing hazardous waste in an appropriate manner in the first instance, and

(C) the persistence, toxicity, mobility, and propensity to bioaccumulate of such hazardous wastes and their hazardous constituents.

For the purposes of this paragraph, a method of land disposal may not be determined to be protective of human health and the environment for a hazardous waste referred to in paragraph (2) (other than a hazardous waste which has complied with the pretreatment regulations promulgated under subsection (m) of this section), unless, upon application by an interested person, it has been demonstrated to the Administrator, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous.

(2) Paragraph (1) applies to the following hazardous wastes listed or identified under section 6921 of this title:

(A) Liquid hazardous wastes, including free liquids associated with any solid or sludge, containing free cyanides at concentrations greater than or equal to 1,000 mg/l.

(B) Liquid hazardous wastes, including free liquids associated with any solid or sludge, containing the following metals (or elements) or compounds of these metals (or elements) at concentrations greater than or equal to those specified below:

(i) arsenic and/or compounds (as As) 500 mg/l;

(ii) cadmium and/or compounds (as Cd) 100 mg/l;

(iii) chromium (VI and/or compounds (as Cr VI)) 500 mg/l;

(iv) lead and/or compounds (as Pb) 500 mg/l;

(v) mercury and/or compounds (as Hg) 20 mg/l;

(vi) nickel and/or compounds (as Ni) 134 mg/l;

(vii) selenium and/or compounds (as Se) 100 mg/l; and

(viii) thallium and/or compounds (as Th) 130 mg/l.

(C) Liquid hazardous waste having a pH less than or equal to two (2.0).

(D) Liquid hazardous wastes containing polychlorinated biphenyls at concentrations greater than or equal to 50 ppm.

(E) Hazardous wastes containing halogenated organic compounds in total concentration greater than or equal to 1,000 mg/kg.

When necessary to protect human health and the environment, the Administrator shall substitute more stringent concentration levels than the levels specified in subparagraphs (A) through (E).

(3) During the period ending forty-eight months after November 8, 1984, this subsection shall not apply to any disposal of contaminated soil or debris resulting from a response action taken under section 9604 or 9606 of this title or a corrective action required under this subchapter.

(e) Solvents and dioxins

(1) Effective twenty-four months after November 8, 1984 (except as provided in subsection (f) of this section with respect to underground injection into deep injection wells), the land disposal of the hazardous wastes referred to in paragraph (2) is prohibited unless the Administrator determines the prohibition of one or more methods of land disposal of such waste is not required in order to protect human health and the environment for as long as the waste remains hazardous, taking into account the factors referred to in subparagraph (A) through (C) of subsection (d)(1) of this section. For the purposes of this paragraph, a method of land disposal may not be determined to be protective of human health and the environment for a hazardous waste referred to in paragraph (2) (other than a hazardous waste which has complied with the pretreatment regulations promulgated under subsection (m) of this section), unless upon application by an interested person it has been demonstrated to the Administrator, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous.

(2) The hazardous wastes to which the prohibition under paragraph (1) applies are as follows—

(A) dioxin-containing hazardous wastes numbered F020, F021, F022, and F023 (as referred to in the proposed rule published by the

Administrator in the Federal Register for April 4, 1983), and

(B) those hazardous wastes numbered F001, F002, F003, F004, and F005 in regulations promulgated by the Administrator under section 6921 of this title (40 C.F.R. 261.31 (July 1, 1983)), as those regulations are in effect on July 1, 1983.

(3) During the period ending forty-eight months after November 8, 1984, this subsection shall not apply to any disposal of contaminated soil or debris resulting from a response action taken under section 9604 or 9606 of this title or a corrective action required under this subchapter.

(f) Disposal into deep injection wells; specified subsection (d) wastes; solvents and dioxins

(1) Not later than forty-five months after November 8, 1984, the Administrator shall complete a review of the disposal of all hazardous wastes referred to in paragraph (2) of subsection (d) of this section and in paragraph (2) of subsection (e) of this section by underground injection into deep injection wells.

(2) Within forty-five months after November 8, 1984, the Administrator shall make a determination regarding the disposal by underground injection into deep injection wells of the hazardous wastes referred to in paragraph (2) of subsection (d) of this section and the hazardous wastes referred to in paragraph (2) of subsection (e) of this section. The Administrator shall promulgate final regulations prohibiting the disposal of such wastes into such wells if it may reasonably be determined that such disposal may not be protective of human health and the environment for as long as the waste remains hazardous, taking into account the factors referred to in subparagraphs (A) through (C) of subsection (d)(1) of this section. In promulgating such regulations, the Administrator shall consider each hazardous waste referred to in paragraph (2) of subsection (d) of this section or in paragraph (2) of subsection (e) of this section which is prohibited from disposal into such wells by any State.

(3) If the Administrator fails to make a determination under paragraph (2) for any hazardous waste referred to in paragraph (2) of subsection (d) of this section or in paragraph (2) of subsection (e) of this section within forty-five months after November 8, 1984, such hazardous waste shall be prohibited from disposal into any deep injection well.

(4) As used in this subsection, the term "deep injection well" means a well used for the underground injection of hazardous waste other than a well to which section 6979a(a)² of this title applies.

(g) Additional land disposal prohibition determinations

(1) Not later than twenty-four months after November 8, 1984, the Administrator shall submit a schedule to Congress for—

(A) reviewing all hazardous wastes listed (as of November 8, 1984) under section 6921 of this title other than those wastes which are re-

ferred to in subsection (d) or (e) of this section; and

(B) taking action under paragraph (5) of this subsection with respect to each such hazardous waste.

(2) The Administrator shall base the schedule on a ranking of such listed wastes considering their intrinsic hazard and their volume such that decisions regarding the land disposal of high volume hazardous wastes with high intrinsic hazard shall, to the maximum extent possible, be made by the date forty-five months after November 8, 1984. Decisions regarding low volume hazardous wastes with lower intrinsic hazard shall be made by the date sixty-six months after November 8, 1984.

(3) The preparation and submission of the schedule under this subsection shall not be subject to the Paperwork Reduction Act of 1980.² No hearing on the record shall be required for purposes of preparation or submission of the schedule. The schedule shall not be subject to judicial review.

(4) The schedule under this subsection shall require that the Administrator shall promulgate regulations in accordance with paragraph (5) or make a determination under paragraph (5)—

(A) for at least one-third of all hazardous wastes referred to in paragraph (1) by the date forty-five months after November 8, 1984;

(B) for at least two-thirds of all such listed wastes by the date fifty-five months after November 8, 1984; and

(C) for all such listed wastes and for all hazardous wastes identified under section 6921 of this title by the date sixty-six months after November 8, 1984.

In the case of any hazardous waste identified or listed under section 6921 of this title after November 8, 1984, the Administrator shall determine whether such waste shall be prohibited from one or more methods of land disposal in accordance with paragraph (5) within six months after the date of such identification or listing.

(5) Not later than the date specified in the schedule published under this subsection, the Administrator shall promulgate final regulations prohibiting one or more methods of land disposal of the hazardous wastes listed on such schedule except for methods of land disposal which the Administrator determines will be protective of human health and the environment for as long as the waste remains hazardous, taking into account the factors referred to in subparagraphs (A) through (C) of subsection (d)(1) of this section. For the purposes of this paragraph, a method of land disposal may not be determined to be protective of human health and the environment (except with respect to a hazardous waste which has complied with the pretreatment regulations promulgated under subsection (m) of this section) unless, upon application by an interested person, it has been demonstrated to the Administrator, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous.

(6)(A) If the Administrator fails (by the date forty-five months after November 8, 1984) to pro-

² See References in Text note below.

mulgate regulations or make a determination under paragraph (5) for any hazardous waste which is included in the first one-third of the schedule published under this subsection, such hazardous waste may be disposed of in a landfill or surface impoundment only if—

(i) such facility is in compliance with the requirements of subsection (o) of this section which are applicable to new facilities (relating to minimum technological requirements); and

(ii) prior to such disposal, the generator has certified to the Administrator that such generator has investigated the availability of treatment capacity and has determined that the use of such landfill or surface impoundment is the only practical alternative to treatment currently available to the generator.

The prohibition contained in this subparagraph shall continue to apply until the Administrator promulgates regulations or makes a determination under paragraph (5) for the waste concerned.

(B) If the Administrator fails (by the date 55 months after November 8, 1984) to promulgate regulations or make a determination under paragraph (5) for any hazardous waste which is included in the first two-thirds of the schedule published under this subsection, such hazardous waste may be disposed of in a landfill or surface impoundment only if—

(i) such facility is in compliance with the requirements of subsection (o) of this section which are applicable to new facilities (relating to minimum technological requirements); and

(ii) prior to such disposal, the generator has certified to the Administrator that such generator has investigated the availability of treatment capacity and has determined that the use of such landfill or surface impoundment is the only practical alternative to treatment currently available to the generator.

The prohibition contained in this subparagraph shall continue to apply until the Administrator promulgates regulations or makes a determination under paragraph (5) for the waste concerned.

(C) If the Administrator fails to promulgate regulations, or make a determination under paragraph (5) for any hazardous waste referred to in paragraph (1) within 66 months after November 8, 1984, such hazardous waste shall be prohibited from land disposal.

(7) Solid waste identified as hazardous based solely on one or more characteristics shall not be subject to this subsection, any prohibitions under subsection (d), (e), or (f) of this section, or any requirement promulgated under subsection (m) of this section (other than any applicable specific methods of treatment, as provided in paragraph (8)) if the waste—

(A) is treated in a treatment system that subsequently discharges to waters of the United States pursuant to a permit issued under section 1342 of title 33, treated for the purposes of the pretreatment requirements of section 1317 of title 33, or treated in a zero discharge system that, prior to any permanent land disposal, engages in treatment that is

equivalent to treatment required under section 1342 of title 33 for discharges to waters of the United States, as determined by the Administrator; and

(B) no longer exhibits a hazardous characteristic prior to management in any land-based solid waste management unit.

(8) Solid waste that otherwise qualifies under paragraph (7) shall nevertheless be required to meet any applicable specific methods of treatment specified for such waste by the Administrator under subsection (m) of this section, including those specified in the rule promulgated by the Administrator June 1, 1990, prior to management in a land-based unit as part of a treatment system specified in paragraph (7)(A). No solid waste may qualify under paragraph (7) that would generate toxic gases, vapors, or fumes due to the presence of cyanide when exposed to pH conditions between 2.0 and 12.5.

(9) Solid waste identified as hazardous based on one or more characteristics alone shall not be subject to this subsection, any prohibitions under subsection (d), (e), or (f) of this section, or any requirement promulgated under subsection (m) of this section if the waste no longer exhibits a hazardous characteristic at the point of injection in any Class I injection well permitted under section 300h-1 of this title.

(10) Not later than five years after March 26, 1996, the Administrator shall complete a study of hazardous waste managed pursuant to paragraph (7) or (9) to characterize the risks to human health or the environment associated with such management. In conducting this study, the Administrator shall evaluate the extent to which risks are adequately addressed under existing State or Federal programs and whether unaddressed risks could be better addressed under such laws or programs. Upon receipt of additional information or upon completion of such study and as necessary to protect human health and the environment, the Administrator may impose additional requirements under existing Federal laws, including subsection (m)(1) of this section, or rely on other State or Federal programs or authorities to address such risks. In promulgating any treatment standards pursuant to subsection (m)(1) of this section under the previous sentence, the Administrator shall take into account the extent to which treatment is occurring in land-based units as part of a treatment system specified in paragraph (7)(A).

(11) Nothing in paragraph (7) or (9) shall be interpreted or applied to restrict any inspection or enforcement authority under the provisions of this chapter.

(h) Variance from land disposal prohibitions

(1) A prohibition in regulations under subsection (d), (e), (f), or (g) of this section shall be effective immediately upon promulgation.

(2) The Administrator may establish an effective date different from the effective date which would otherwise apply under subsection (d), (e), (f), or (g) of this section with respect to a specific hazardous waste which is subject to a prohibition under subsection (d), (e), (f), or (g) of this section or under regulations under subsection (d), (e), (f), or (g) of this section. Any

such other effective date shall be established on the basis of the earliest date on which adequate alternative treatment, recovery, or disposal capacity which protects human health and the environment will be available. Any such other effective date shall in no event be later than 2 years after the effective date of the prohibition which would otherwise apply under subsection (d), (e), (f), or (g) of this section.

(3) The Administrator, after notice and opportunity for comment and after consultation with appropriate State agencies in all affected States, may on a case-by-case basis grant an extension of the effective date which would otherwise apply under subsection (d), (e), (f), or (g) of this section or under paragraph (2) for up to one year, where the applicant demonstrates that there is a binding contractual commitment to construct or otherwise provide such alternative capacity but due to circumstances beyond the control of such applicant such alternative capacity cannot reasonably be made available by such effective date. Such extension shall be renewable once for no more than one additional year.

(4) Whenever another effective date (hereinafter referred to as a "variance") is established under paragraph (2), or an extension is granted under paragraph (3), with respect to any hazardous waste, during the period for which such variance or extension is in effect, such hazardous waste may be disposed of in a landfill or surface impoundment only if such facility is in compliance with the requirements of subsection (o) of this section.

(i) Publication of determination

If the Administrator determines that a method of land disposal will be protective of human health and the environment, he shall promptly publish in the Federal Register notice of such determination, together with an explanation of the basis for such determination.

(j) Storage of hazardous waste prohibited from land disposal

In the case of any hazardous waste which is prohibited from one or more methods of land disposal under this section (or under regulations promulgated by the Administrator under any provision of this section) the storage of such hazardous waste is prohibited unless such storage is solely for the purpose of the accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment or disposal.

(k) "Land disposal" defined

For the purposes of this section, the term "land disposal", when used with respect to a specified hazardous waste, shall be deemed to include, but not be limited to, any placement of such hazardous waste in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, or underground mine or cave.

(l) Ban on dust suppression

The use of waste or used oil or other material, which is contaminated or mixed with dioxin or any other hazardous waste identified or listed under section 6921 of this title (other than a

waste identified solely on the basis of ignitability), for dust suppression or road treatment is prohibited.

(m) Treatment standards for wastes subject to land disposal prohibition

(1) Simultaneously with the promulgation of regulations under subsection (d), (e), (f), or (g) of this section prohibiting one or more methods of land disposal of a particular hazardous waste, and as appropriate thereafter, the Administrator shall, after notice and an opportunity for hearings and after consultation with appropriate Federal and State agencies, promulgate regulations specifying those levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized.

(2) If such hazardous waste has been treated to the level or by a method specified in regulations promulgated under this subsection, such waste or residue thereof shall not be subject to any prohibition promulgated under subsection (d), (e), (f), or (g) of this section and may be disposed of in a land disposal facility which meets the requirements of this subchapter. Any regulation promulgated under this subsection for a particular hazardous waste shall become effective on the same date as any applicable prohibition promulgated under subsection (d), (e), (f), or (g) of this section.

(n) Air emissions

Not later than thirty months after November 8, 1984, the Administrator shall promulgate such regulations for the monitoring and control of air emissions at hazardous waste treatment, storage, and disposal facilities, including but not limited to open tanks, surface impoundments, and landfills, as may be necessary to protect human health and the environment.

(o) Minimum technological requirements

(1) The regulations under subsection (a) of this section shall be revised from time to time to take into account improvements in the technology of control and measurement. At a minimum, such regulations shall require, and a permit issued pursuant to section 6925(c) of this title after November 8, 1984, by the Administrator or a State shall require—

(A) for each new landfill or surface impoundment, each new landfill or surface impoundment unit at an existing facility, each replacement of an existing landfill or surface impoundment unit, and each lateral expansion of an existing landfill or surface impoundment unit, for which an application for a final determination regarding issuance of a permit under section 6925(c) of this title is received after November 8, 1984—

- (i) the installation of two or more liners and a leachate collection system above (in the case of a landfill) and between such liners; and
- (ii) ground water monitoring; and

(B) for each incinerator which receives a permit under section 6925(c) of this title after November 8, 1984, the attainment of the mini-

imum destruction and removal efficiency required by regulations in effect on June 24, 1982. The requirements of this paragraph shall apply with respect to all waste received after the issuance of the permit.

(2) Paragraph (1)(A)(i) shall not apply if the owner or operator demonstrates to the Administrator, and the Administrator finds for such landfill or surface impoundment, that alternative design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituents into the ground water or surface water at least as effectively as such liners and leachate collection systems.

(3) The double-liner requirement set forth in paragraph (1)(A)(i) may be waived by the Administrator for any monofill, if—

(A) such monofill contains only hazardous wastes from foundry furnace emission controls or metal casting molding sand,

(B) such wastes do not contain constituents which would render the wastes hazardous for reasons other than the Extraction Procedure (“EP”) toxicity characteristics set forth in regulations under this subchapter, and

(C) such monofill meets the same requirements as are applicable in the case of a waiver under section 6925(j)(2) or (4) of this title.

(4)(A) Not later than thirty months after November 8, 1984, the Administrator shall promulgate standards requiring that new landfill units, surface impoundment units, waste piles, underground tanks and land treatment units for the storage, treatment, or disposal of hazardous waste identified or listed under section 6921 of this title shall be required to utilize approved leak detection systems.

(B) For the purposes of subparagraph (A)—

(i) the term “approved leak detection system” means a system or technology which the Administrator determines to be capable of detecting leaks of hazardous constituents at the earliest practicable time; and

(ii) the term “new units” means units on which construction commences after the date of promulgation of regulations under this paragraph.

(5)(A) The Administrator shall promulgate regulations or issue guidance documents implementing the requirements of paragraph (1)(A) within two years after November 8, 1984.

(B) Until the effective date of such regulations or guidance documents, the requirement for the installation of two or more liners may be satisfied by the installation of a top liner designed, operated, and constructed of materials to prevent the migration of any constituent into such liner during the period such facility remains in operation (including any post-closure monitoring period), and a lower liner designed, operated³ and constructed to prevent the migration of any constituent through such liner during such period. For the purpose of the preceding sentence, a lower liner shall be deemed to satisfy such requirement if it is constructed of at least a 3-foot thick layer of recompacted clay or

other natural material with a permeability of no more than 1×10^{-7} centimeter per second.

(6) Any permit under section 6925 of this title which is issued for a landfill located within the State of Alabama shall require the installation of two or more liners and a leachate collection system above and between such liners, notwithstanding any other provision of this chapter.

(7) In addition to the requirements set forth in this subsection, the regulations referred to in paragraph (1) shall specify criteria for the acceptable location of new and existing treatment, storage, or disposal facilities as necessary to protect human health and the environment. Within 18 months after November 8, 1984, the Administrator shall publish guidance criteria identifying areas of vulnerable hydrogeology.

(p) Ground water monitoring

The standards under this section concerning ground water monitoring which are applicable to surface impoundments, waste piles, land treatment units, and landfills shall apply to such a facility whether or not—

(1) the facility is located above the seasonal high water table;

(2) two liners and a leachate collection system have been installed at the facility; or

(3) the owner or operator inspects the liner (or liners) which has been installed at the facility.

This subsection shall not be construed to affect other exemptions or waivers from such standards provided in regulations in effect on November 8, 1984, or as may be provided in revisions to those regulations, to the extent consistent with this subsection. The Administrator is authorized on a case-by-case basis to exempt from ground water monitoring requirements under this section (including subsection (o) of this section) any engineered structure which the Administrator finds does not receive or contain liquid waste (nor waste containing free liquids), is designed and operated to exclude liquid from precipitation or other runoff, utilizes multiple leak detection systems within the outer layer of containment, and provides for continuing operation and maintenance of these leak detection systems during the operating period, closure, and the period required for post-closure monitoring and for which the Administrator concludes on the basis of such findings that there is a reasonable certainty hazardous constituents will not migrate beyond the outer layer of containment prior to the end of the period required for post-closure monitoring.

(q) Hazardous waste used as fuel

(1) Not later than two years after November 8, 1984, and after notice and opportunity for public hearing, the Administrator shall promulgate regulations establishing such—

(A) standards applicable to the owners and operators of facilities which produce a fuel—

(i) from any hazardous waste identified or listed under section 6921 of this title, or

(ii) from any hazardous waste identified or listed under section 6921 of this title and any other material;

(B) standards applicable to the owners and operators of facilities which burn, for purposes

³ So in original. Probably should be followed by a comma.

of energy recovery, any fuel produced as provided in subparagraph (A) or any fuel which otherwise contains any hazardous waste identified or listed under section 6921 of this title; and

(C) standards applicable to any person who distributes or markets any fuel which is produced as provided in subparagraph (A) or any fuel which otherwise contains any hazardous waste identified or listed under section 6921 of this title;

as may be necessary to protect human health and the environment. Such standards may include any of the requirements set forth in paragraphs (1) through (7) of subsection (a) of this section as may be appropriate. Nothing in this subsection shall be construed to affect or impair the provisions of section 6921(b)(3) of this title. For purposes of this subsection, the term "hazardous waste listed under section 6921 of this title" includes any commercial chemical product which is listed under section 6921 of this title and which, in lieu of its original intended use, is (i) produced for use as (or as a component of) a fuel, (ii) distributed for use as a fuel, or (iii) burned as a fuel.

(2)(A) This subsection, subsection (r) of this section, and subsection (s) of this section shall not apply to petroleum refinery wastes containing oil which are converted into petroleum coke at the same facility at which such wastes were generated, unless the resulting coke product would exceed one or more characteristics by which a substance would be identified as a hazardous waste under section 6921 of this title.

(B) The Administrator may exempt from the requirements of this subsection, subsection (r) of this section, or subsection (s) of this section facilities which burn de minimis quantities of hazardous waste as fuel, as defined by the Administrator, if the wastes are burned at the same facility at which such wastes are generated; the waste is burned to recover useful energy, as determined by the Administrator on the basis of the design and operating characteristics of the facility and the heating value and other characteristics of the waste; and the waste is burned in a type of device determined by the Administrator to be designed and operated at a destruction and removal efficiency sufficient such that protection of human health and environment is assured.

(C)(i) After November 8, 1984, and until standards are promulgated and in effect under paragraph (2) of this subsection, no fuel which contains any hazardous waste may be burned in any cement kiln which is located within the boundaries of any incorporated municipality with a population greater than five hundred thousand (based on the most recent census statistics) unless such kiln fully complies with regulations (as in effect on November 8, 1984) under this subchapter which are applicable to incinerators.

(ii) Any person who knowingly violates the prohibition contained in clause (i) shall be deemed to have violated section 6928(d)(2) of this title.

(r) Labeling

(1) Notwithstanding any other provision of law, until such time as the Administrator pro-

mulgates standards under subsection (q) of this section specifically superceding this requirement, it shall be unlawful for any person who is required to file a notification in accordance with paragraph (1) or (3) of section 6930 of this title to distribute or market any fuel which is produced from any hazardous waste identified or listed under section 6921 of this title, or any fuel which otherwise contains any hazardous waste identified or listed under section 6921 of this title if the invoice or the bill of sale fails—

(A) to bear the following statement: "WARNING: THIS FUEL CONTAINS HAZARDOUS WASTES", and

(B) to list the hazardous wastes contained therein.

Beginning ninety days after November 8, 1984, such statement shall be located in a conspicuous place on every such invoice or bill of sale and shall appear in conspicuous and legible type in contrast by typography, layouts, or color with other printed matter on the invoice or bill of sale.

(2) Unless the Administrator determines otherwise as may be necessary to protect human health and the environment, this subsection shall not apply to fuels produced from petroleum refining waste containing oil if—

(A) such materials are generated and reinserted onsite into the refining process;

(B) contaminants are removed; and

(C) such refining waste containing oil is converted along with normal process streams into petroleum-derived fuel products at a facility at which crude oil is refined into petroleum products and which is classified as a number SIC 2911 facility under the Office of Management and Budget Standard Industrial Classification Manual.

(3) Unless the Administrator determines otherwise as may be necessary to protect human health and the environment, this subsection shall not apply to fuels produced from oily materials, resulting from normal petroleum refining, production and transportation practices, if (A) contaminants are removed; and (B) such oily materials are converted along with normal process streams into petroleum-derived fuel products at a facility at which crude oil is refined into petroleum products and which is classified as a number SIC 2911 facility under the Office of Management and Budget Standard Industrial Classification Manual.

(s) Recordkeeping

Not later than fifteen months after November 8, 1984, the Administrator shall promulgate regulations requiring that any person who is required to file a notification in accordance with subparagraph (1), (2), or (3), of section 6930(a) of this title shall maintain such records regarding fuel blending, distribution, or use as may be necessary to protect human health and the environment.

(t) Financial responsibility provisions

(1) Financial responsibility required by subsection (a) of this section may be established in accordance with regulations promulgated by the Administrator by any one, or any combination, of the following: insurance, guarantee, surety

bond, letter of credit, or qualification as a self-insurer. In promulgating requirements under this section, the Administrator is authorized to specify policy or other contractual terms, conditions, or defenses which are necessary or are unacceptable in establishing such evidence of financial responsibility in order to effectuate the purposes of this chapter.

(2) In any case where the owner or operator is in bankruptcy, reorganization, or arrangement pursuant to the Federal Bankruptcy Code or where (with reasonable diligence) jurisdiction in any State court or any Federal Court cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility must be provided under this section may be asserted directly against the guarantor providing such evidence of financial responsibility. In the case of any action pursuant to this subsection, such guarantor shall be entitled to invoke all rights and defenses which would have been available to the owner or operator if any action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator.

(3) The total liability of any guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this chapter. Nothing in this subsection shall be construed to limit any other State or Federal statutory, contractual or common law liability of a guarantor to its owner or operator including, but not limited to, the liability of such guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. Nothing in this subsection shall be construed to diminish the liability of any person under section 9607 or 9611 of this title or other applicable law.

(4) For the purpose of this subsection, the term "guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this section.

(u) Continuing releases at permitted facilities

Standards promulgated under this section shall require, and a permit issued after November 8, 1984, by the Administrator or a State shall require, corrective action for all releases of hazardous waste or constituents from any solid waste management unit at a treatment, storage, or disposal facility seeking a permit under this subchapter, regardless of the time at which waste was placed in such unit. Permits issued under section 6925 of this title shall contain schedules of compliance for such corrective action (where such corrective action cannot be completed prior to issuance of the permit) and assurances of financial responsibility for completing such corrective action.

(v) Corrective action beyond facility boundary

As promptly as practicable after November 8, 1984, the Administrator shall amend the standards under this section regarding corrective action required at facilities for the treatment, storage, or disposal, of hazardous waste listed or

identified under section 6921 of this title to require that corrective action be taken beyond the facility boundary where necessary to protect human health and the environment unless the owner or operator of the facility concerned demonstrates to the satisfaction of the Administrator that, despite the owner or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake such action. Such regulations shall take effect immediately upon promulgation, notwithstanding section 6930(b) of this title, and shall apply to—

(1) all facilities operating under permits issued under subsection (c) of this section, and

(2) all landfills, surface impoundments, and waste pile units (including any new units, replacements of existing units, or lateral expansions of existing units) which receive hazardous waste after July 26, 1982.

Pending promulgation of such regulations, the Administrator shall issue corrective action orders for facilities referred to in paragraphs (1) and (2), on a case-by-case basis, consistent with the purposes of this subsection.

(w) Underground tanks

Not later than March 1, 1985, the Administrator shall promulgate final permitting standards under this section for underground tanks that cannot be entered for inspection. Within forty-eight months after November 8, 1984, such standards shall be modified, if necessary, to cover at a minimum all requirements and standards described in section 6991b of this title.

(x) Mining and other special wastes

If (1) solid waste from the extraction, beneficiation or processing of ores and minerals, including phosphate rock and overburden from the mining of uranium, (2) fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels, or (3) cement kiln dust waste, is subject to regulation under this subchapter, the Administrator is authorized to modify the requirements of subsections (c), (d), (e), (f), (g), (o), and (u) of this section and section 6925(j) of this title, in the case of landfills or surface impoundments receiving such solid waste, to take into account the special characteristics of such wastes, the practical difficulties associated with implementation of such requirements, and site-specific characteristics, including but not limited to the climate, geology, hydrology and soil chemistry at the site, so long as such modified requirements assure protection of human health and the environment.

(y) Munitions

(1) Not later than 6 months after October 6, 1992, the Administrator shall propose, after consulting with the Secretary of Defense and appropriate State officials, regulations identifying when military munitions become hazardous waste for purposes of this subchapter and providing for the safe transportation and storage of such waste. Not later than 24 months after October 6, 1992, and after notice and opportunity for comment, the Administrator shall promulgate such regulations. Any such regulations shall assure protection of human health and the environment.

(2) For purposes of this subsection, the term "military munitions" includes chemical and conventional munitions.

(Pub. L. 89-272, title II, §3004, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2807; amended Pub. L. 96-482, §9, Oct. 21, 1980, 94 Stat. 2338; Pub. L. 98-616, title II, §§201(a), 202(a), 203, 204(b)(1), 205-209, Nov. 8, 1984, 98 Stat. 3226, 3233, 3234, 3236, 3238-3240; Pub. L. 102-386, title I, §107, Oct. 6, 1992, 106 Stat. 1513; Pub. L. 104-119, §§2, 4(2)-(5), Mar. 26, 1996, 110 Stat. 830, 833.)

REFERENCES IN TEXT

Section 6922(5) of this title, referred to in subsec. (a)(2), was redesignated section 6922(a)(5) of this title, by Pub. L. 98-616, title II, §224(a)(1), Nov. 8, 1984, 98 Stat. 3253.

The Safe Drinking Water Act, referred to in subsec. (c)(3), is title XIV of act July 1, 1944, as added Dec. 16, 1974, Pub. L. 93-523, §2(a), 88 Stat. 1660, as amended, which is classified generally to subchapter XII (§300f et seq.) of chapter 6A of this title. For complete classification of this Act to the Code see Short Title note set out under section 201 of this title and Tables.

Section 6979a of this title, referred to in subsec. (f)(4), was in the original a reference to section 7010 of Pub. L. 89-272, which was renumbered section 3020 of Pub. L. 89-272 by Pub. L. 99-339, title II, §201(c), June 19, 1986, 100 Stat. 654, and transferred to section 6939b of this title.

The Paperwork Reduction Act of 1980, referred to in subsec. (g)(3), is Pub. L. 96-511, Dec. 11, 1980, 94 Stat. 2812, as amended, which was classified principally to chapter 35 (§3501 et seq.) of Title 44, Public Printing and Documents, prior to the general amendment of that chapter by Pub. L. 104-13, §2, May 22, 1995, 109 Stat. 163. For complete classification of this Act to the Code, see Short Title of 1980 Amendment note set out under section 101 of Title 44 and Tables.

The Federal Bankruptcy Code, referred to in subsec. (t)(2), probably means a reference to Title 11, Bankruptcy.

AMENDMENTS

1996—Subsec. (g)(5). Pub. L. 104-119, §4(3), substituted "subparagraphs (A) through (C)" for "subparagraph (A) through (C)".

Subsec. (g)(7) to (11). Pub. L. 104-119, §2, added pars. (7) to (11).

Subsec. (q)(1)(C). Pub. L. 104-119, §4(2), inserted a semicolon at end of subpar. (C).

Subsec. (r)(2)(C). Pub. L. 104-119, §4(4), substituted "petroleum-derived" for "pertroleum-derived".

Subsec. (r)(3). Pub. L. 104-119, §4(5), inserted "Industrial" after "Standard".

1992—Subsec. (y). Pub. L. 102-386 added subsec. (y).

1984—Subsec. (a). Pub. L. 98-616, §201(a), designated existing provisions as subsec. (a).

Subsec. (a)(6). Pub. L. 98-616, §208, inserted "(including financial responsibility for corrective action)".

Subsecs. (b) to (n). Pub. L. 98-616, §201(a), added subsecs. (b) to (n).

Subsec. (o). Pub. L. 98-616, §202(a), added subsec. (o).

Subsec. (p). Pub. L. 98-616, §203, added subsec. (p).

Subsecs. (q) to (s). Pub. L. 98-616, §204(b)(1), added subsecs. (q) to (s).

Subsec. (t). Pub. L. 98-616, §205, added subsec. (t).

Subsec. (u). Pub. L. 98-616, §206, added subsec. (u).

Subsecs. (v), (w). Pub. L. 98-616, §207, added subsecs. (v) and (w).

Subsec. (x). Pub. L. 98-616, §209, added subsec. (x).

1980—Pub. L. 96-482 required standards regulations to reflect distinction in requirements appropriate for new facilities and for facilities in existence on date of promulgation of the regulations.

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protec-

tion Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6921, 6925, 6926, 6935, 6936, 6939c, 6939e, 6971, 9601, 9621, 9622 of this title; title 10 section 2708; title 26 section 4662.

§ 6925. Permits for treatment, storage, or disposal of hazardous waste

(a) Permit requirements

Not later than eighteen months after October 21, 1976, the Administrator shall promulgate regulations requiring each person owning or operating an existing facility or planning to construct a new facility for the treatment, storage, or disposal of hazardous waste identified or listed under this subchapter to have a permit issued pursuant to this section. Such regulations shall take effect on the date provided in section 6930 of this title and upon and after such date the treatment, storage, or disposal of any such hazardous waste and the construction of any new facility for the treatment, storage, or disposal of any such hazardous waste is prohibited except in accordance with such a permit. No permit shall be required under this section in order to construct a facility if such facility is constructed pursuant to an approval issued by the Administrator under section 2605(e) of title 15 for the incineration of polychlorinated biphenyls and any person owning or operating such a facility may, at any time after operation or construction of such facility has begun, file an application for a permit pursuant to this section authorizing such facility to incinerate hazardous waste identified or listed under this subchapter.

(b) Requirements of permit application

Each application for a permit under this section shall contain such information as may be required under regulations promulgated by the Administrator, including information respecting—

(1) estimates with respect to the composition, quantities, and concentrations of any hazardous waste identified or listed under this subchapter, or combinations of any such hazardous waste and any other solid waste, proposed to be disposed of, treated, transported, or stored, and the time, frequency, or rate of which such waste is proposed to be disposed of, treated, transported, or stored; and

(2) the site at which such hazardous waste or the products of treatment of such hazardous waste will be disposed of, treated, transported to, or stored.

(c) Permit issuance

(1) Upon a determination by the Administrator (or a State, if applicable), of compliance by a facility for which a permit is applied for under this section with the requirements of this section and section 6924 of this title, the Administrator (or the State) shall issue a permit for such facilities. In the event permit applicants propose modification of their facilities, or in the event the Administrator (or the State) determines that modifications are necessary to con-

form to the requirements under this section and section 6924 of this title, the permit shall specify the time allowed to complete the modifications.

(2)(A)(i) Not later than the date four years after November 8, 1984, in the case of each application under this subsection for a permit for a land disposal facility which was submitted before such date, the Administrator shall issue a final permit pursuant to such application or issue a final denial of such application.

(ii) Not later than the date five years after November 8, 1984, in the case of each application for a permit under this subsection for an incinerator facility which was submitted before such date, the Administrator shall issue a final permit pursuant to such application or issue a final denial of such application.

(B) Not later than the date eight years after November 8, 1984, in the case of each application for a permit under this subsection for any facility (other than a facility referred to in subparagraph (A)) which was submitted before such date, the Administrator shall issue a final permit pursuant to such application or issue a final denial of such application.

(C) The time periods specified in this paragraph shall also apply in the case of any State which is administering an authorized hazardous waste program under section 6926 of this title. Interim status under subsection (e) of this section shall terminate for each facility referred to in subparagraph (A)(ii) or (B) on the expiration of the five- or eight-year period referred to in subparagraph (A) or (B), whichever is applicable, unless the owner or operator of the facility applies for a final determination regarding the issuance of a permit under this subsection with—

(i) two years after November 8, 1984 (in the case of a facility referred to in subparagraph (A)(ii)), or

(ii) four years after November 8, 1984 (in the case of a facility referred to in subparagraph (B)).

(3) Any permit under this section shall be for a fixed term, not to exceed 10 years in the case of any land disposal facility, storage facility, or incinerator or other treatment facility. Each permit for a land disposal facility shall be reviewed five years after date of issuance or re-issuance and shall be modified as necessary to assure that the facility continues to comply with the currently applicable requirements of this section and section 6924 of this title. Nothing in this subsection shall preclude the Administrator from reviewing and modifying a permit at any time during its term. Review of any application for a permit renewal shall consider improvements in the state of control and measurement technology as well as changes in applicable regulations. Each permit issued under this section shall contain such terms and conditions as the Administrator (or the State) determines necessary to protect human health and the environment.

(d) Permit revocation

Upon a determination by the Administrator (or by a State, in the case of a State having an authorized hazardous waste program under section 6926 of this title) of noncompliance by a fa-

cility having a permit under this chapter with the requirements of this section or section 6924 of this title, the Administrator (or State, in the case of a State having an authorized hazardous waste program under section 6926 of this title) shall revoke such permit.

(e) Interim status

(1) Any person who—

(A) owns or operates a facility required to have a permit under this section which facility—

(i) was in existence on November 19, 1980, or

(ii) is in existence on the effective date of statutory or regulatory changes under this chapter that render the facility subject to the requirement to have a permit under this section,

(B) has complied with the requirements of section 6930(a) of this title, and

(C) has made an application for a permit under this section,

shall be treated as having been issued such permit until such time as final administrative disposition of such application is made, unless the Administrator or other plaintiff proves that final administrative disposition of such application has not been made because of the failure of the applicant to furnish information reasonably required or requested in order to process the application. This paragraph shall not apply to any facility which has been previously denied a permit under this section or if authority to operate the facility under this section has been previously terminated.

(2) In the case of each land disposal facility which has been granted interim status under this subsection before November 8, 1984, interim status shall terminate on the date twelve months after November 8, 1984, unless the owner or operator of such facility—

(A) applies for a final determination regarding the issuance of a permit under subsection (c) of this section for such facility before the date twelve months after November 8, 1984; and

(B) certifies that such facility is in compliance with all applicable groundwater monitoring and financial responsibility requirements.

(3) In the case of each land disposal facility which is in existence on the effective date of statutory or regulatory changes under this chapter that render the facility subject to the requirement to have a permit under this section and which is granted interim status under this subsection, interim status shall terminate on the date twelve months after the date on which the facility first becomes subject to such permit requirement unless the owner or operator of such facility—

(A) applies for a final determination regarding the issuance of a permit under subsection (c) of this section for such facility before the date twelve months after the date on which the facility first becomes subject to such permit requirement; and

(B) certifies that such facility is in compliance with all applicable groundwater monitoring and financial responsibility requirements.

(f) Coal mining wastes and reclamation permits

Notwithstanding subsection (a) through (e) of this section, any surface coal mining and reclamation permit covering any coal mining wastes or overburden which has been issued or approved under the Surface Mining Control and Reclamation Act of 1977 [30 U.S.C. 1201 et seq.] shall be deemed to be a permit issued pursuant to this section with respect to the treatment, storage, or disposal of such wastes or overburden. Regulations promulgated by the Administrator under this subchapter shall not be applicable to treatment, storage, or disposal of coal mining wastes and overburden which are covered by such a permit.

(g) Research, development, and demonstration permits

(1) The Administrator may issue a research, development, and demonstration permit for any hazardous waste treatment facility which proposes to utilize an innovative and experimental hazardous waste treatment technology or process for which permit standards for such experimental activity have not been promulgated under this subchapter. Any such permit shall include such terms and conditions as will assure protection of human health and the environment. Such permits—

(A) shall provide for the construction of such facilities, as necessary, and for operation of the facility for not longer than one year (unless renewed as provided in paragraph (4)), and

(B) shall provide for the receipt and treatment by the facility of only those types and quantities of hazardous waste which the Administrator deems necessary for purposes of determining the efficacy and performance capabilities of the technology or process and the effects of such technology or process on human health and the environment, and

(C) shall include such requirements as the Administrator deems necessary to protect human health and the environment (including, but not limited to, requirements regarding monitoring, operation, insurance or bonding, financial responsibility,¹ closure, and remedial action), and such requirements as the Administrator deems necessary regarding testing and providing of information to the Administrator with respect to the operation of the facility.

The Administrator may apply the criteria set forth in this paragraph in establishing the conditions of each permit without separate establishment of regulations implementing such criteria.

(2) For the purpose of expediting review and issuance of permits under this subsection, the Administrator may, consistent with the protection of human health and the environment, modify or waive permit application and permit issuance requirements established in the Administrator's general permit regulations except that there may be no modification or waiver of regulations regarding financial responsibility (including insurance) or of procedures established under section 6974(b)(2) of this title regarding public participation.

¹ So in original. Probably should be "responsibility".

(3) The Administrator may order an immediate termination of all operations at the facility at any time he determines that termination is necessary to protect human health and the environment.

(4) Any permit issued under this subsection may be renewed not more than three times. Each such renewal shall be for a period of not more than 1 year.

(h) Waste minimization

Effective September 1, 1985, it shall be a condition of any permit issued under this section for the treatment, storage, or disposal of hazardous waste on the premises where such waste was generated that the permittee certify, no less often than annually, that—

(1) the generator of the hazardous waste has a program in place to reduce the volume or quantity and toxicity of such waste to the degree determined by the generator to be economically practicable; and

(2) the proposed method of treatment, storage, or disposal is that practicable method currently available to the generator which minimizes the present and future threat to human health and the environment.

(i) Interim status facilities receiving wastes after July 26, 1982

The standards concerning ground water monitoring, unsaturated zone monitoring, and corrective action, which are applicable under section 6924 of this title to new landfills, surface impoundments, land treatment units, and waste-pile units required to be permitted under subsection (c) of this section shall also apply to any landfill, surface impoundment, land treatment unit, or waste-pile unit qualifying for the authorization to operate under subsection (e) of this section which receives hazardous waste after July 26, 1982.

(j) Interim status surface impoundments

(1) Except as provided in paragraph (2), (3), or (4), each surface impoundment in existence on November 8, 1984, and qualifying for the authorization to operate under subsection (e) of this section shall not receive, store, or treat hazardous waste after the date four years after November 8, 1984, unless such surface impoundment is in compliance with the requirements of section 6924(o)(1)(A) of this title which would apply to such impoundment if it were new.

(2) Paragraph (1) of this subsection shall not apply to any surface impoundment which (A) has at least one liner, for which there is no evidence that such liner is leaking; (B) is located more than one-quarter mile from an underground source of drinking water; and (C) is in compliance with generally applicable ground water monitoring requirements for facilities with permits under subsection (c) of this section.

(3) Paragraph (1) of this subsection shall not apply to any surface impoundment which (A) contains treated waste water during the secondary or subsequent phases of an aggressive biological treatment facility subject to a permit issued under section 1342 of title 33 (or which holds such treated waste water after treatment and prior to discharge); (B) is in compliance

with generally applicable ground water monitoring requirements for facilities with permits under subsection (c) of this section; and (C)(i) is part of a facility in compliance with section 1311(b)(2) of title 33, or (ii) in the case of a facility for which no effluent guidelines required under section 1314(b)(2) of title 33 are in effect and no permit under section 1342(a)(1) of title 33 implementing section 1311(b)(2) of title 33 has been issued, is part of a facility in compliance with a permit under section 1342 of title 33, which is achieving significant degradation of toxic pollutants and hazardous constituents contained in the untreated waste stream and which has identified those toxic pollutants and hazardous constituents in the untreated waste stream to the appropriate permitting authority.

(4) The Administrator (or the State, in the case of a State with an authorized program), after notice and opportunity for comment, may modify the requirements of paragraph (1) for any surface impoundment if the owner or operator demonstrates that such surface impoundment is located, designed and operated so as to assure that there will be no migration of any hazardous constituent² into ground water or surface water at any future time. The Administrator or the State shall take into account locational criteria established under section 6924(o)(7) of this title.

(5) The owner or operator of any surface impoundment potentially subject to paragraph (1) who has reason to believe that on the basis of paragraph (2), (3), or (4) such surface impoundment is not required to comply with the requirements of paragraph (1), shall apply to the Administrator (or the State, in the case of a State with an authorized program) not later than twenty-four months after November 8, 1984, for a determination of the applicability of paragraph (1) (in the case of paragraph (2) or (3)) or for a modification of the requirements of paragraph (1) (in the case of paragraph (4)), with respect to such surface impoundment. Such owner or operator shall provide, with such application, evidence pertinent to such decision, including:

(A) an application for a final determination regarding the issuance of a permit under subsection (c) of this section for such facility, if not previously submitted;

(B) evidence as to compliance with all applicable ground water monitoring requirements and the information and analysis from such monitoring;

(C) all reasonably ascertainable evidence as to whether such surface impoundment is leaking; and

(D) in the case of applications under paragraph (2) or (3), a certification by a registered professional engineer with academic training and experience in ground water hydrology that—

(i) under paragraph (2), the liner of such surface impoundment is designed, constructed, and operated in accordance with applicable requirements, such surface impoundment is more than one-quarter mile from an underground source of drinking water and there is no evidence such liner is leaking; or

(ii) under paragraph (3), based on analysis of those toxic pollutants and hazardous constituents that are likely to be present in the untreated waste stream, such impoundment satisfies the conditions of paragraph (3).

In the case of any surface impoundment for which the owner or operator fails to apply under this paragraph within the time provided by this paragraph or paragraph (6), such surface impoundment shall comply with paragraph (1) notwithstanding paragraph (2), (3), or (4). Within twelve months after receipt of such application and evidence and not later than thirty-six months after November 8, 1984, and after notice and opportunity to comment, the Administrator (or, if appropriate, the State) shall advise such owner or operator on the applicability of paragraph (1) to such surface impoundment or as to whether and how the requirements of paragraph (1) shall be modified and applied to such surface impoundment.

(6)(A) In any case in which a surface impoundment becomes subject to paragraph (1) after November 8, 1984, due to the promulgation of additional listings or characteristics for the identification of hazardous waste under section 6921 of this title, the period for compliance in paragraph (1) shall be four years after the date of such promulgation, the period for demonstrations under paragraph (4) and for submission of evidence under paragraph (5) shall be not later than twenty-four months after the date of such promulgation, and the period for the Administrator (or if appropriate, the State) to advise such owners or operators under paragraph (5) shall be not later than thirty-six months after the date of promulgation.

(B) In any case in which a surface impoundment is initially determined to be excluded from the requirements of paragraph (1) but due to a change in condition (including the existence of a leak) no longer satisfies the provisions of paragraph (2), (3), or (4) and therefore becomes subject to paragraph (1), the period for compliance in paragraph (1) shall be two years after the date of discovery of such change of condition, or in the case of a surface impoundment excluded under paragraph (3) three years after such date of discovery.

(7)(A) The Administrator shall study and report to the Congress on the number, range of size, construction, likelihood of hazardous constituents migrating into ground water, and potential threat to human health and the environment of existing surface impoundments excluded by paragraph (3) from the requirements of paragraph (1). Such report shall address the need, feasibility, and estimated costs of subjecting such existing surface impoundments to the requirements of paragraph (1).

(B) In the case of any existing surface impoundment or class of surface impoundments from which the Administrator (or the State, in the case of a State with an authorized program) determines hazardous constituents are likely to migrate into ground water, the Administrator (or if appropriate, the State) is authorized to impose such requirements as may be necessary to protect human health and the environment, including the requirements of section 6924(o) of this title which would apply to such impoundments if they were new.

² So in original. Probably should be "constituent".

(C) In the case of any surface impoundment excluded by paragraph (3) from the requirements of paragraph (1) which is subsequently determined to be leaking, the Administrator (or, if appropriate, the State) shall require compliance with paragraph (1), unless the Administrator (or, if appropriate, the State) determines that such compliance is not necessary to protect human health and the environment.

(8) In the case of any surface impoundment in which the liners and leak detection system have been installed pursuant to the requirements of paragraph (1) and in good faith compliance with section 6924(o) of this title and the Administrator's regulations and guidance documents governing liners and leak detection systems, no liner or leak detection system which is different from that which was so installed pursuant to paragraph (1) shall be required for such unit by the Administrator when issuing the first permit under this section to such facility. Nothing in this paragraph shall preclude the Administrator from requiring installation of a new liner when the Administrator has reason to believe that any liner installed pursuant to the requirements of this subsection is leaking.

(9) In the case of any surface impoundment which has been excluded by paragraph (2) on the basis of a liner meeting the definition under paragraph (12)(A)(ii), at the closure of such impoundment the Administrator shall require the owner or operator of such impoundment to remove or decontaminate all waste residues, all contaminated liner material, and contaminated soil to the extent practicable. If all contaminated soil is not removed or decontaminated, the owner or operator of such impoundment shall be required to comply with appropriate post-closure requirements, including but not limited to ground water monitoring and corrective action.

(10) Any incremental cost attributable to the requirements of this subsection or section 6924(o) of this title shall not be considered by the Administrator (or the State, in the case of a State with an authorized program under section 1342 of title 33)—

(A) in establishing effluent limitations and standards under section 1311, 1314, 1316, 1317, or 1342 of title 33 based on effluent limitations guidelines and standards promulgated any time before twelve months after November 8, 1984; or

(B) in establishing any other effluent limitations to carry out the provisions of section 1311, 1317, or 1342 of title 33 on or before October 1, 1986.

(11)(A) If the Administrator allows a hazardous waste which is prohibited from one or more methods of land disposal under subsection (d), (e), or (g) of section 6924 of this title (or under regulations promulgated by the Administrator under such subsections) to be placed in a surface impoundment (which is operating pursuant to interim status) for storage or treatment, such impoundment shall meet the requirements that are applicable to new surface impoundments under section 6924(o)(1) of this title, unless such impoundment meets the requirements of paragraph (2) or (4).

(B) In the case of any hazardous waste which is prohibited from one or more methods of land

disposal under subsection (d), (e), or (g) of section 6924 of this title (or under regulations promulgated by the Administrator under such subsection) the placement or maintenance of such hazardous waste in a surface impoundment for treatment is prohibited as of the effective date of such prohibition unless the treatment residues which are hazardous are, at a minimum, removed for subsequent management within one year of the entry of the waste into the surface impoundment.

(12)(A) For the purposes of paragraph (2)(A) of this subsection, the term "liner" means—

(i) a liner designed, constructed, installed, and operated to prevent hazardous waste from passing into the liner at any time during the active life of the facility; or

(ii) a liner designed, constructed, installed, and operated to prevent hazardous waste from migrating beyond the liner to adjacent subsurface soil, ground water, or surface water at any time during the active life of the facility.

(B) For the purposes of this subsection, the term "aggressive biological treatment facility" means a system of surface impoundments in which the initial impoundment of the secondary treatment segment of the facility utilizes intense mechanical aeration to enhance biological activity to degrade waste water pollutants and

(i) the hydraulic retention time in such initial impoundment is no longer than 5 days under normal operating conditions, on an annual average basis;

(ii) the hydraulic retention time in such initial impoundment is no longer than thirty days under normal operating conditions, on an annual average basis: *Provided*, That the sludge in such impoundment does not constitute a hazardous waste as identified by the extraction procedure toxicity characteristic in effect on November 8, 1984; or

(iii) such system utilizes activated sludge treatment in the first portion of secondary treatment.

(C) For the purposes of this subsection, the term "underground source or³ drinking water" has the same meaning as provided in regulations under the Safe Drinking Water Act (title XIV of the Public Health Service Act [42 U.S.C. 300f et seq.]).

(13) The Administrator may modify the requirements of paragraph (1) in the case of a surface impoundment for which the owner or operator, prior to October 1, 1984, has entered into, and is in compliance with, a consent order, decree, or agreement with the Administrator or a State with an authorized program mandating corrective action with respect to such surface impoundment that provides a degree of protection of human health and the environment which is at a minimum equivalent to that provided by paragraph (1).

(Pub. L. 89-272, title II, §3005, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2808; amended Pub. L. 95-609, §7(h), Nov. 8, 1978, 92 Stat. 3082; Pub. L. 96-482, §§10, 11, Oct. 21, 1980, 94 Stat. 2338; Pub. L. 98-616, title II, §§211-213(a), (c), 214(a), 215, 224(b), 243(c), Nov. 8, 1984, 98 Stat. 3240-3243,

³ So in original. Probably should be "of".

3253, 3261; Pub. L. 104-119, §4(6), (7), Mar. 26, 1996, 110 Stat. 833.)

REFERENCES IN TEXT

The Surface Mining Control and Reclamation Act of 1977, referred to in subsec. (f), is Pub. L. 95-87, Aug. 3, 1977, 91 Stat. 445, as amended, which is classified generally to chapter 25 (§1201 et seq.) of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code, see Short Title note set out under section 1201 of Title 30 and Tables.

The Safe Drinking Water Act, referred to in subsec. (j)(12)(C), is title XIV of act July 1, 1944, as added Dec. 16, 1974, Pub. L. 93-523, §2(a), 88 Stat. 1660, as amended, which is classified generally to subchapter XII (§300f et seq.) of chapter 6A of this title. For complete classification of this Act to the Code see Short Title note set out under section 201 of this title and Tables.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104-119, §4(6), substituted “polychlorinated” for “polychlorinated”.

Subsec. (e)(1)(C). Pub. L. 104-119, §4(7), inserted comma at end of subpar. (C).

1984—Subsec. (a). Pub. L. 98-616, §211, substituted “an existing facility or planning to construct a new” for “a”, inserted “and the construction of any new facility for the treatment, storage, or disposal of any such hazardous waste”, and inserted at end “No permit shall be required under this section in order to construct a facility if such facility is constructed pursuant to an approval issued by the Administrator under section 2605(e) of title 15 for the incineration of polychlorinated [sic] biphenyls and any person owning or operating such a facility may, at any time after operation or construction of such facility has begun, file an application for a permit pursuant to this section authorizing such facility to incinerate hazardous waste identified or listed under this subchapter.”

Subsec. (c)(1), (2). Pub. L. 98-616, §213(c), designated existing provisions as par. (1) and added par. (2).

Subsec. (c)(3). Pub. L. 98-616, §212, added par. (3).

Subsec. (e). Pub. L. 98-616, §213(a), designated existing provisions as par. (1), redesignated former pars. (1), (2), and (3) thereof as subpars. (A), (B), and (C), respectively, designated existing provisions of previously redesignated subpar. (A) as cl. (i) and added cl. (ii), inserted “This paragraph shall not apply to any facility which has been previously denied a permit under this section or if authority to operate the facility under this section has been previously terminated.” to closing provisions of par. (1), and added pars. (2) and (3).

Subsec. (g). Pub. L. 98-616, §214(a), added subsec. (g).

Subsec. (h). Pub. L. 98-616, §224(b), added subsec. (h).

Subsec. (i). Pub. L. 98-616, §243(c), added subsec. (i).

Subsec. (j). Pub. L. 98-616, §215, added subsec. (j).

1980—Subsec. (e)(1). Pub. L. 96-482, §10, substituted “November 19, 1980” for “October 21, 1976”.

Subsec. (f). Pub. L. 96-482, §11, added subsec. (f).

1978—Subsec. (a). Pub. L. 95-609 inserted “treatment, storage, or” after “and after such date the”.

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6921, 6924, 6926, 6927, 6928, 6933, 6935, 6936, 6937, 6939a, 6945, 6974, 6976, 7429, 9601, 9607, 9620, 9621, 9622 of this title; title 10 section 2702; title 26 sections 4662, 9507.

§ 6926. Authorized State hazardous waste programs

(a) Federal guidelines

Not later than eighteen months after October 21, 1976, the Administrator, after consultation with State authorities, shall promulgate guidelines to assist States in the Development of State hazardous waste programs.

(b) Authorization of State program

Any State which seeks to administer and enforce a hazardous waste program pursuant to this subchapter may develop and, after notice and opportunity for public hearing, submit to the Administrator an application, in such form as he shall require, for authorization of such program. Within ninety days following submission of an application under this subsection, the Administrator shall issue a notice as to whether or not he expects such program to be authorized, and within ninety days following such notice (and after opportunity for public hearing) he shall publish his findings as to whether or not the conditions listed in items (1), (2), and (3) below have been met. Such State is authorized to carry out such program in lieu of the Federal program under this subchapter in such State and to issue and enforce permits for the storage, treatment, or disposal of hazardous waste (and to enforce permits deemed to have been issued under section 6935(d)(1)¹ of this title) unless, within ninety days following submission of the application the Administrator notifies such State that such program may not be authorized and, within ninety days following such notice and after opportunity for public hearing, he finds that (1) such State program is not equivalent to the Federal program under this subchapter, (2) such program is not consistent with the Federal or State programs applicable in other States, or (3) such program does not provide adequate enforcement of compliance with the requirements of this subchapter. In authorizing a State program, the Administrator may base his findings on the Federal program in effect one year prior to submission of a State's application or in effect on January 26, 1983, whichever is later.

(c) Interim authorization

(1) Any State which has in existence a hazardous waste program pursuant to State law before the date ninety days after the date of promulgation of regulations under sections 6922, 6923, 6924, and 6925 of this title, may submit to the Administrator evidence of such existing program and may request a temporary authorization to carry out such program under this subchapter. The Administrator shall, if the evidence submitted shows the existing State program to be substantially equivalent to the Federal program under this subchapter, grant an interim authorization to the State to carry out such program in lieu of the Federal program pursuant to this subchapter for a period ending no later than January 31, 1986.

(2) The Administrator shall, by rule, establish a date for the expiration of interim authorization under this subsection.

¹ See References in Text note below.

(3) Pending interim or final authorization of a State program for any State which reflects the amendments made by the Hazardous and Solid Waste Amendments of 1984, the State may enter into an agreement with the Administrator under which the State may assist in the administration of the requirements and prohibitions which take effect pursuant to such Amendments.

(4) In the case of a State permit program for any State which is authorized under subsection (b) of this section or under this subsection, until such program is amended to reflect the amendments made by the Hazardous and Solid Waste Amendments of 1984 and such program amendments receive interim or final authorization, the Administrator shall have the authority in such State to issue or deny permits or those portions of permits affected by the requirements and prohibitions established by the Hazardous and Solid Waste Amendments of 1984. The Administrator shall coordinate with States the procedures for issuing such permits.

(d) Effect of State permit

Any action taken by a State under a hazardous waste program authorized under this section shall have the same force and effect as action taken by the Administrator under this subchapter.

(e) Withdrawal of authorization

Whenever the Administrator determines after public hearing that a State is not administering and enforcing a program authorized under this section in accordance with requirements of this section, he shall so notify the State and, if appropriate corrective action is not taken within a reasonable time, not to exceed ninety days, the Administrator shall withdraw authorization of such program and establish a Federal program pursuant to this subchapter. The Administrator shall not withdraw authorization of any such program unless he shall first have notified the State, and made public, in writing, the reasons for such withdrawal.

(f) Availability of information

No State program may be authorized by the Administrator under this section unless—

(1) such program provides for the public availability of information obtained by the State regarding facilities and sites for the treatment, storage, and disposal of hazardous waste; and

(2) such information is available to the public in substantially the same manner, and to the same degree, as would be the case if the Administrator was carrying out the provisions of this subchapter in such State.

(g) Amendments made by 1984 act

(1) Any requirement or prohibition which is applicable to the generation, transportation, treatment, storage, or disposal of hazardous waste and which is imposed under this subchapter pursuant to the amendments made by the Hazardous and Solid Waste Amendments of 1984 shall take effect in each State having an interim or finally authorized State program on the same date as such requirement takes effect in other States. The Administrator shall carry out such requirement directly in each such

State unless the State program is finally authorized (or is granted interim authorization as provided in paragraph (2)) with respect to such requirement.

(2) Any State which, before November 8, 1984, has an existing hazardous waste program which has been granted interim or final authorization under this section may submit to the Administrator evidence that such existing program contains (or has been amended to include) any requirement which is substantially equivalent to a requirement referred to in paragraph (1) and may request interim authorization to carry out that requirement under this subchapter. The Administrator shall, if the evidence submitted shows the State requirement to be substantially equivalent to the requirement referred to in paragraph (1), grant an interim authorization to the State to carry out such requirement in lieu of direct administration in the State by the Administrator of such requirement.

(h) State programs for used oil

In the case of used oil which is not listed or identified under this subchapter as a hazardous waste but which is regulated under section 6935 of this title, the provisions of this section regarding State programs shall apply in the same manner and to the same extent as such provisions apply to hazardous waste identified or listed under this subchapter.

(Pub. L. 89-272, title II, §3006, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2809; amended Pub. L. 95-609, §7(i), Nov. 8, 1978, 92 Stat. 3082; Pub. L. 98-616, title II, §§225, 226(a), 227, 228, 241(b)(2), Nov. 8, 1984, 98 Stat. 3254, 3255, 3260; Pub. L. 99-499, title II, §205(j), Oct. 17, 1986, 100 Stat. 1703.)

REFERENCES IN TEXT

Section 6935(d)(1) of this title, referred to in subsec. (b), was in the original a reference to section 3012(d)(1) of Pub. L. 89-272, which was renumbered section 3014(d)(1) of Pub. L. 89-272 by Pub. L. 98-616 and is classified to section 6935(d)(1) of this title.

The Hazardous and Solid Waste Amendments of 1984, referred to in subsecs. (c)(3), (4), and (g), is Pub. L. 98-616, Nov. 8, 1984, 98 Stat. 3221, which amended this chapter. For complete classification of this Act to the Code, see Short Title of 1984 Amendment note set out under section 6901 of this title and Tables.

AMENDMENTS

1986—Subsec. (h). Pub. L. 99-499 added subsec. (h).

1984—Subsec. (b). Pub. L. 98-616, §§225, 241(b)(2), inserted “(and to enforce permits deemed to have been issued under section 6935(d)(1) of this title)”, and inserted provision at end that in authorizing a State program, the Administrator may base his findings on the Federal program in effect one year prior to submission of a State’s application or in effect on January 26, 1983, whichever is later.

Subsec. (c)(1). Pub. L. 98-616, §227(1), (2), designated existing provisions as par. (1) and substituted “period ending no later than January 31, 1986” for “twenty-four month period beginning on the date six months after the date of promulgation of regulations under sections 6922 through 6925 of this title”.

Subsec. (c)(2) to (4). Pub. L. 98-616, §227(3), added pars. (2) to (4).

Subsec. (f). Pub. L. 98-616, §226(a), added subsec. (f).

Subsec. (g). Pub. L. 98-616, §228, added subsec. (g).

1978—Subsec. (c). Pub. L. 95-609 substituted “of” for “required for” wherever appearing and “may submit” for “submit”.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 226(b) of Pub. L. 98-616 provided that: "The amendment made by subsection (a) [enacting subsec. (f) of this section] shall apply with respect to State programs authorized under section 3006 [this section] before, on, or after the date of enactment of the Hazardous and Solid Waste Amendments of 1984 [Nov. 8, 1984]."

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6925, 6928, 6930, 6939c, 6974, 6976, 9607 of this title.

§ 6927. Inspections**(a) Access entry**

For purposes of developing or assisting in the development of any regulation or enforcing the provisions of this chapter, any person who generates, stores, treats, transports, disposes of, or otherwise handles or has handled hazardous wastes shall, upon request of any officer, employee or representative of the Environmental Protection Agency, duly designated by the Administrator, or upon request of any duly designated officer, employee or representative of a State having an authorized hazardous waste program, furnish information relating to such wastes and permit such person at all reasonable times to have access to, and to copy all records relating to such wastes. For the purposes of developing or assisting in the development of any regulation or enforcing the provisions of this chapter, such officers, employees or representatives are authorized—

(1) to enter at reasonable times any establishment or other place where hazardous wastes are or have been generated, stored, treated, disposed of, or transported from;

(2) to inspect and obtain samples from any person of any such wastes and samples of any containers or labeling for such wastes.

Each such inspection shall be commenced and completed with reasonable promptness. If the officer, employee or representative obtains any samples, prior to leaving the premises, he shall give to the owner, operator, or agent in charge a receipt describing the sample obtained and if requested a portion of each such sample equal in volume or weight to the portion retained. If any analysis is made of such samples, a copy of the results of such analysis shall be furnished promptly to the owner, operator, or agent in charge.

(b) Availability to public

(1) Any records, reports, or information (including records, reports, or information obtained by representatives of the Environmental Protection Agency) obtained from any person under this section shall be available to the public, except that upon a showing satisfactory to the Administrator (or the State, as the case may be) by any person that records, reports, or information, or particular part thereof, to which the

Administrator (or the State, as the case may be) or any officer, employee or representative thereof has access under this section if made public, would divulge information entitled to protection under section 1905 of title 18, such information or particular portion thereof shall be considered confidential in accordance with the purposes of that section, except that such record, report, document, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter, or when relevant in any proceeding under this chapter.

(2) Any person not subject to the provisions of section 1905 of title 18 who knowingly and willfully divulges or discloses any information entitled to protection under this subsection shall, upon conviction, be subject to a fine of not more than \$5,000 or to imprisonment not to exceed one year, or both.

(3) In submitting data under this chapter, a person required to provide such data may—

(A) designate the data which such person believes is entitled to protection under this subsection, and

(B) submit such designated data separately from other data submitted under this chapter.

A designation under this paragraph shall be made in writing and in such manner as the Administrator may prescribe.

(4) Notwithstanding any limitation contained in this section or any other provision of law, all information reported to, or otherwise obtained by, the Administrator (or any representative of the Administrator) under this chapter shall be made available, upon written request of any duly authorized committee of the Congress, to such committee.

(c) Federal facility inspections

The Administrator shall undertake on an annual basis a thorough inspection of each facility for the treatment, storage, or disposal of hazardous waste which is owned or operated by a department, agency, or instrumentality of the United States to enforce its compliance with this subchapter and the regulations promulgated thereunder. Any State with an authorized hazardous waste program also may conduct an inspection of any such facility for purposes of enforcing the facility's compliance with the State hazardous waste program. The records of such inspections shall be available to the public as provided in subsection (b) of this section. The department, agency, or instrumentality owning or operating each such facility shall reimburse the Environmental Protection Agency for the costs of the inspection of the facility. With respect to the first inspection of each such facility occurring after October 6, 1992, the Administrator shall conduct a comprehensive ground water monitoring evaluation at the facility, unless such an evaluation was conducted during the 12-month period preceding October 6, 1992.

(d) State-operated facilities

The Administrator shall annually undertake a thorough inspection of every facility for the treatment, storage, or disposal of hazardous waste which is operated by a State or local government for which a permit is required under

section 6925 of this title. The records of such inspection shall be available to the public as provided in subsection (b) of this section.

(e) Mandatory inspections

(1) The Administrator (or the State in the case of a State having an authorized hazardous waste program under this subchapter) shall commence a program to thoroughly inspect every facility for the treatment, storage, or disposal of hazardous waste for which a permit is required under section 6925 of this title no less often than every two years as to its compliance with this subchapter (and the regulations promulgated under this subchapter). Such inspections shall commence not later than twelve months after November 8, 1984. The Administrator shall, after notice and opportunity for public comment, promulgate regulations governing the minimum frequency and manner of such inspections, including the manner in which records of such inspections shall be maintained and the manner in which reports of such inspections shall be filed. The Administrator may distinguish between classes and categories of facilities commensurate with the risks posed by each class or category.

(2) Not later than six months after November 8, 1984, the Administrator shall submit to the Congress a report on the potential for inspections of hazardous waste treatment, storage, or disposal facilities by nongovernmental inspectors as a supplement to inspections conducted by officers, employees, or representatives of the Environmental Protection Agency or States having authorized hazardous waste programs or operating under a cooperative agreement with the Administrator. Such report shall be prepared in cooperation with the States, insurance companies offering environmental impairment insurance, independent companies providing inspection services, and other such groups as appropriate. Such report shall contain recommendations on provisions and requirements for a program of private inspections to supplement governmental inspections.

(Pub. L. 89-272, title II, §3007, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2810; amended Pub. L. 95-609, §7(j), Nov. 8, 1978, 92 Stat. 3082; Pub. L. 96-482, §12, Oct. 21, 1980, 94 Stat. 2339; Pub. L. 98-616, title II, §§229-231, title V, §502(a), Nov. 8, 1984, 98 Stat. 3255, 3256, 3276; Pub. L. 102-386, title I, §104, Oct. 6, 1992, 106 Stat. 1507.)

AMENDMENTS

1992—Subsec. (c). Pub. L. 102-386 in first sentence substituted “The Administrator shall undertake” for “Beginning twelve months after November 8, 1984, the Administrator shall, or in the case of a State with an authorized hazardous waste program the State may, undertake” and “department, agency, or instrumentality of the United States” for “Federal agency”, inserted after first sentence “Any State with an authorized hazardous waste program also may conduct an inspection of any such facility for purposes of enforcing the facility’s compliance with the State hazardous waste program.”, and inserted at end “The department, agency, or instrumentality owning or operating each such facility shall reimburse the Environmental Protection Agency for the costs of the inspection of the facility. With respect to the first inspection of each such facility occurring after October 6, 1992, the Administrator shall conduct a comprehensive ground water monitor-

ing evaluation at the facility, unless such an evaluation was conducted during the 12-month period preceding October 6, 1992.”

1984—Subsec. (b)(1). Pub. L. 98-616, §502(a), modified directory language for amendment by sec. 12(b)(4) of Pub. L. 96-482.

Subsec. (c). Pub. L. 98-616, §229, added subsec. (c).

Subsec. (d). Pub. L. 98-616, §230, added subsec. (d).

Subsec. (e). Pub. L. 98-616, §231, added subsec. (e).

1980—Subsec. (a). Pub. L. 96-482, §12(a), substituted “chapter” for “subchapter”, “any officer, employee or representative” for “any officer or employee”, “duly designated officer, employee or representative” for “duly designated officer employee”, “such officers, employees or representatives” for “such officers or employees”, “furnish information relating to such wastes and permit” for “furnish or permit”, and “officer, employee or representative obtains” for “officer or employee obtains”, struck out “maintained by any person” after “establishment or other place”, substituted “officer, employee or representative obtains” for “officer or employee obtains”, and inserted “or has handled” after “otherwise handles” and “or have been” after “where hazardous wastes are”.

Subsec. (b)(1). Pub. L. 96-482, §12(b)(1)-(3), designated existing provisions as par. (1), inserted “or any officer, employee or representative thereof” before “has access under this section” and substituted “such information or particular portion thereof shall be considered” for “the Administrator (or the State, as the case may be) shall consider such information or portion thereof”.

Pub. L. 96-482, §12(b)(4), as modified by Pub. L. 98-616, §502(a), inserted “(including records, reports, or information obtained by representatives of the Environmental Protection Agency)” after “information”.

Subsec. (b)(2) to (4). Pub. L. 96-482, §12(b)(3), added pars. (2) to (4).

1978—Subsec. (a)(1). Pub. L. 95-609 substituted “disposed of, or transported from” for “or disposed of”.

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6933, 6934, 6937, 6939, 6945, 6992c, 7412, 9606 of this title.

§ 6928. Federal enforcement

(a) Compliance orders

(1) Except as provided in paragraph (2), whenever on the basis of any information the Administrator determines that any person has violated or is in violation of any requirement of this subchapter, the Administrator may issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified time period, or both, or the Administrator may commence a civil action in the United States district court in the district in which the violation occurred for appropriate relief, including a temporary or permanent injunction.

(2) In the case of a violation of any requirement of this subchapter where such violation occurs in a State which is authorized to carry out a hazardous waste program under section 6926 of this title, the Administrator shall give notice to the State in which such violation has occurred prior to issuing an order or commencing a civil action under this section.

(3) Any order issued pursuant to this subsection may include a suspension or revocation of any permit issued by the Administrator or a State under this subchapter and shall state with reasonable specificity the nature of the violation. Any penalty assessed in the order shall not exceed \$25,000 per day of noncompliance for each violation of a requirement of this subchapter. In assessing such a penalty, the Administrator shall take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

(b) Public hearing

Any order issued under this section shall become final unless, no later than thirty days after the order is served, the person or persons named therein request a public hearing. Upon such request the Administrator shall promptly conduct a public hearing. In connection with any proceeding under this section the Administrator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may promulgate rules for discovery procedures.

(c) Violation of compliance orders

If a violator fails to take corrective action within the time specified in a compliance order, the Administrator may assess a civil penalty of not more than \$25,000 for each day of continued noncompliance with the order and the Administrator may suspend or revoke any permit issued to the violator (whether issued by the Administrator or the State).

(d) Criminal penalties

Any person who—

(1) knowingly transports or causes to be transported any hazardous waste identified or listed under this subchapter to a facility which does not have a permit under this subchapter, or pursuant to title I of the Marine Protection, Research, and Sanctuaries Act (86 Stat. 1052) [33 U.S.C. 1411 et seq.],

(2) knowingly treats, stores, or disposes of any hazardous waste identified or listed under this subchapter—

(A) without a permit under this subchapter or pursuant to title I of the Marine Protection, Research, and Sanctuaries Act (86 Stat. 1052) [33 U.S.C. 1411 et seq.]; or

(B) in knowing violation of any material condition or requirement of such permit; or

(C) in knowing violation of any material condition or requirement of any applicable interim status regulations or standards;

(3) knowingly omits material information or makes any false material statement or representation in any application, label, manifest, record, report, permit, or other document filed, maintained, or used for purposes of compliance with regulations promulgated by the Administrator (or by a State in the case of an authorized State program) under this subchapter;

(4) knowingly generates, stores, treats, transports, disposes of, exports, or otherwise handles any hazardous waste or any used oil not identified or listed as a hazardous waste under this subchapter (whether such activity took place before or takes place after Novem-

ber 8, 1984) and who knowingly destroys, alters, conceals, or fails to file any record, application, manifest, report, or other document required to be maintained or filed for purposes of compliance with regulations promulgated by the Administrator (or by a State in the case of an authorized State program) under this subchapter;

(5) knowingly transports without a manifest, or causes to be transported without a manifest, any hazardous waste or any used oil not identified or listed as a hazardous waste under this subchapter required by regulations promulgated under this subchapter (or by a State in the case of a State program authorized under this subchapter) to be accompanied by a manifest;

(6) knowingly exports a hazardous waste identified or listed under this subchapter (A) without the consent of the receiving country or, (B) where there exists an international agreement between the United States and the government of the receiving country establishing notice, export, and enforcement procedures for the transportation, treatment, storage, and disposal of hazardous wastes, in a manner which is not in conformance with such agreement; or

(7) knowingly stores, treats, transports, or causes to be transported, disposes of, or otherwise handles any used oil not identified or listed as a hazardous waste under this subchapter—

(A) in knowing violation of any material condition or requirement of a permit under this subchapter; or

(B) in knowing violation of any material condition or requirement of any applicable regulations or standards under this chapter;

shall, upon conviction, be subject to a fine of not more than \$50,000 for each day of violation, or imprisonment not to exceed two years (five years in the case of a violation of paragraph (1) or (2)), or both. If the conviction is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment under the respective paragraph shall be doubled with respect to both fine and imprisonment.

(e) Knowing endangerment

Any person who knowingly transports, treats, stores, disposes of, or exports any hazardous waste identified or listed under this subchapter or used oil not identified or listed as a hazardous waste under this subchapter in violation of paragraph (1), (2), (3), (4), (5), (6), or (7) of subsection (d) of this section who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than \$250,000 or imprisonment for not more than fifteen years, or both. A defendant that is an organization shall, upon conviction of violating this subsection, be subject to a fine of not more than \$1,000,000.

(f) Special rules

For the purposes of subsection (e) of this section—

(1) A person's state of mind is knowing with respect to—

(A) his conduct, if he is aware of the nature of his conduct;

(B) an existing circumstance, if he is aware or believes that the circumstance exists; or

(C) a result of his conduct, if he is aware or believes that his conduct is substantially certain to cause danger of death or serious bodily injury.

(2) In determining whether a defendant who is a natural person knew that his conduct placed another person in imminent danger of death or serious bodily injury—

(A) the person is responsible only for actual awareness or actual belief that he possessed; and

(B) knowledge possessed by a person other than the defendant but not by the defendant himself may not be attributed to the defendant;

Provided, That in proving the defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to shield himself from relevant information.

(3) It is an affirmative defense to a prosecution that the conduct charged was consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of—

(A) an occupation, a business, or a profession; or

(B) medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent.

The defendant may establish an affirmative defense under this subsection by a preponderance of the evidence.

(4) All general defenses, affirmative defenses, and bars to prosecution that may apply with respect to other Federal criminal offenses may apply under subsection (e) of this section and shall be determined by the courts of the United States according to the principles of common law as they may be interpreted in the light of reason and experience. Concepts of justification and excuse applicable under this section may be developed in the light of reason and experience.

(5) The term "organization" means a legal entity, other than a government, established, or organized for any purpose, and such term includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons.

(6) The term "serious bodily injury" means—

(A) bodily injury which involves a substantial risk of death;

(B) unconsciousness;

(C) extreme physical pain;

(D) protracted and obvious disfigurement; or

(E) protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(g) Civil penalty

Any person who violates any requirement of this subchapter shall be liable to the United

States for a civil penalty in an amount not to exceed \$25,000 for each such violation. Each day of such violation shall, for purposes of this subsection, constitute a separate violation.

(h) Interim status corrective action orders

(1) Whenever on the basis of any information the Administrator determines that there is or has been a release of hazardous waste into the environment from a facility authorized to operate under section 6925(e) of this title, the Administrator may issue an order requiring corrective action or such other response measure as he deems necessary to protect human health or the environment or the Administrator may commence a civil action in the United States district court in the district in which the facility is located for appropriate relief, including a temporary or permanent injunction.

(2) Any order issued under this subsection may include a suspension or revocation of authorization to operate under section 6925(e) of this title, shall state with reasonable specificity the nature of the required corrective action or other response measure, and shall specify a time for compliance. If any person named in an order fails to comply with the order, the Administrator may assess, and such person shall be liable to the United States for, a civil penalty in an amount not to exceed \$25,000 for each day of noncompliance with the order.

(Pub. L. 89-272, title II, §3008, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2811; amended Pub. L. 95-609, §7(k), Nov. 8, 1978, 92 Stat. 3082; Pub. L. 96-482, §13, Oct. 21, 1980, 94 Stat. 2339; Pub. L. 98-616, title II, §§232, 233, 245(c), title IV, §403(d)(1)-(3), Nov. 8, 1984, 98 Stat. 3256, 3257, 3264, 3272; Pub. L. 99-499, title II, §205(i), Oct. 17, 1986, 100 Stat. 1703.)

REFERENCES IN TEXT

The Marine Protection, Research, and Sanctuaries Act, referred to in subsec. (d)(1), (2)(A), probably means the Marine Protection, Research, and Sanctuaries Act of 1972, Pub. L. 92-532, Oct. 23, 1972, 86 Stat. 1052, as amended. Title I of the Marine Protection, Research, and Sanctuaries Act of 1972 is classified generally to subchapter I (§1411 et seq.) of chapter 27 of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1401 of Title 33 and Tables.

AMENDMENTS

1986—Subsec. (d)(4). Pub. L. 99-499, §205(i)(1), inserted "or any used oil not identified or listed as a hazardous waste under this subchapter".

Subsec. (d)(5). Pub. L. 99-499, §205(i)(1), (2), inserted "or any used oil not identified or listed as a hazardous waste under this subchapter" and struck out "; or" after "accompanied by a manifest".

Subsec. (d)(6). Pub. L. 99-499, §205(i)(3), inserted at end "; or".

Subsec. (d)(7). Pub. L. 99-499, §205(i)(4), added par. (7).

Subsec. (e). Pub. L. 99-499, §205(i)(5), inserted "or used oil not identified or listed as a hazardous waste under this subchapter" and substituted "(5), (6), or (7)" for "(5), or (6)".

1984—Subsec. (a)(1). Pub. L. 98-616, §403(d)(1), in amending par. (1) generally, expanded authority of Administrator by empowering him to determine that a person "has violated" a requirement of this subchapter, and to assess a civil penalty for a past or current violation.

Subsec. (a)(3). Pub. L. 98-616, §403(d)(2), in amending par. (3) generally, substituted provision that any order

issued pursuant to this subsection may include a suspension or revocation of any permit issued by the Administrator or a State under this subchapter and shall state with reasonable specificity the nature of the violation, and provision that any penalty assessed in the order shall not exceed \$25,000 per day of noncompliance for each violation of a requirement of this subchapter, and that in assessing such a penalty, the Administrator take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements, for provision that if such violator fails to take corrective action within the time specified in the order, he shall be liable for a civil penalty of not more than \$25,000 for each day of continued noncompliance and the Administrator may suspend or revoke any permit issued to the violator, whether issued by the Administrator or the State.

Subsec. (b). Pub. L. 98-616, §233(b), inserted "issued under this section".

Subsec. (c). Pub. L. 98-616, §403(d)(3), substituted provisions relating to penalties for violation of compliance orders for former provisions which set forth requirements for compliance orders.

Subsec. (d). Pub. L. 98-616, §232(a)(3), amended closing provisions generally. Prior to amendment, closing provisions read as follows: "shall, upon conviction, be subject to a fine of not more than \$25,000 (\$50,000 in the case of a violation of paragraph (1) or (2)) for each day of violation, or to imprisonment not to exceed one year (two years in the case of a violation of paragraph (1) or (2)), or both. If the conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than \$50,000 per day of violation, or by imprisonment for not more than two years, or by both."

Subsec. (d)(1). Pub. L. 98-616, §232(a)(1), inserted "or causes to be transported" and substituted "this subchapter" for "section 6925 of this title (or section 6926 of this title in case of a State program)".

Subsec. (d)(2). Pub. L. 98-616, §232(a)(2)(A), struck out "either" after "subchapter" in provision preceding subpar. (A).

Subsec. (d)(2)(A). Pub. L. 98-616, §232(a)(2)(B), (c), substituted "this subchapter" for "section 6925 of this title (or section 6926 of this title in the case of a State program)" and struck out "having obtained" before "a permit under".

Subsec. (d)(2)(C). Pub. L. 98-616, §232(a)(2)(C), added subpar. (C).

Subsec. (d)(3) to (5). Pub. L. 98-616, §232(a)(3), in amending pars. (3) and (4) generally, expanded par. (3) by providing criminal penalties for one who knowingly omits material information from documents required to be filed, maintained or used under this subchapter, expanded par. (4) by providing criminal penalties for one who knowingly fails to file required material under this subchapter, and added par. (5).

Subsec. (d)(6). Pub. L. 98-616, §245(c), added par. (6).

Subsec. (e). Pub. L. 98-616, §232(b), in amending subsec. (e) generally, struck out provisions referring to violations of interim status standards and omission of material information from permit applications, struck out provision requiring proof of "unjustifiable and inexcusable disregard for human life" or "extreme indifference to human life" for conviction under this subsection, and inserted provision increasing maximum prison sentence to fifteen years for violation of subsec. (d)(1) through (6) of this section by one who knowingly places another person in imminent danger of death or serious bodily injury, replacing former provision calling for maximum imprisonment of two years, or five years in cases evidencing extreme indifference to human life.

Subsec. (h). Pub. L. 98-616, §233(a), added subsec. (h).

1980—Subsec. (a)(1). Pub. L. 96-482, §13(1), (2), struck out "the Administrator shall give notice to the violator of his failure to comply with such requirement. If such violation extends beyond the thirtieth day after the Administrator's notification" before "the Administrator may issue" and substituted "compliance imme-

diately or within a specified time period" for "compliance within a specified time period".

Subsec. (a)(2). Pub. L. 96-482, §13(2), struck out "thirty days" after "violation has occurred".

Subsec. (b). Pub. L. 96-482, §13(3), substituted "order shall become final unless, no later than thirty days after the order is served" for "order or any suspension or revocation of a permit shall become final unless, no later than thirty days after the order or notice of the suspension or revocation is served".

Subsec. (c). Pub. L. 96-482, §13(4), authorized orders for suspension or revocation of permits.

Subsec. (d). Pub. L. 96-482, §13(5), in par. (2), designated existing provisions as subpar. (A) and added subpar. (B), in par. (3), inserted provision requiring the statement or representation to be material, added par. (4), and in provisions following par. (4), inserted provision authorizing a fine of \$50,000 and a two year imprisonment for violation of par. (1) or (2).

Subsecs. (e) to (g). Pub. L. 96-482, §13(5), added subsecs. (e) to (g).

1978—Subsec. (d)(1). Pub. L. 95-609, §7(k)(1), inserted provision relating to title I of the Marine Protection, Research, and Sanctuaries Act.

Subsec. (d)(2). Pub. L. 95-609, §7(k)(2), inserted provisions relating to treatment or storage of hazardous wastes and relating to title I of the Marine Protection, Research, and Sanctuaries Act.

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6924, 6939c, 6945, 6972, 6992d, 7412, 9601, 9606 of this title; title 26 section 4662.

§ 6929. Retention of State authority

Upon the effective date of regulations under this subchapter no State or political subdivision may impose any requirements less stringent than those authorized under this subchapter respecting the same matter as governed by such regulations, except that if application of a regulation with respect to any matter under this subchapter is postponed or enjoined by the action of any court, no State or political subdivision shall be prohibited from acting with respect to the same aspect of such matter until such time as such regulation takes effect. Nothing in this chapter shall be construed to prohibit any State or political subdivision thereof from imposing any requirements, including those for site selection, which are more stringent than those imposed by such regulations. Nothing in this chapter (or in any regulation adopted under this chapter) shall be construed to prohibit any State from requiring that the State be provided with a copy of each manifest used in connection with hazardous waste which is generated within that State or transported to a treatment, storage, or disposal facility within that State.

(Pub. L. 89-272, title II, §3009, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2812; amended Pub. L. 96-482, §14, Oct. 21, 1980, 94 Stat. 2342; Pub. L. 98-616, title II, §213(b), Nov. 8, 1984, 98 Stat. 3242.)

AMENDMENTS

1984—Pub. L. 98-616 inserted "Nothing in this chapter (or in any regulation adopted under this chapter) shall

be construed to prohibit any State from requiring that the State be provided with a copy of each manifest used in connection with hazardous waste which is generated within that State or transported to a treatment, storage, or disposal facility within that State.”

1980—Pub. L. 96-482 prohibited construction of this chapter as barring a State from imposing more stringent requirements than provided in Federal regulations.

§ 6930. Effective date

(a) Preliminary notification

Not later than ninety days after promulgation of regulations under section 6921 of this title identifying by its characteristics or listing any substance as hazardous waste subject to this subchapter, any person generating or transporting such substance or owning or operating a facility for treatment, storage, or disposal of such substance shall file with the Administrator (or with States having authorized hazardous waste permit programs under section 6926 of this title) a notification stating the location and general description of such activity and the identified or listed hazardous wastes handled by such person. Not later than fifteen months after November 8, 1984—

(1) the owner or operator of any facility which produces a fuel (A) from any hazardous waste identified or listed under section 6921 of this title, (B) from such hazardous waste identified or listed under section 6921 of this title and any other material, (C) from used oil, or (D) from used oil and any other material;

(2) the owner or operator of any facility (other than a single- or two-family residence) which burns for purposes of energy recovery any fuel produced as provided in paragraph (1) or any fuel which otherwise contains used oil or any hazardous waste identified or listed under section 6921 of this title; and

(3) any person who distributes or markets any fuel which is produced as provided in paragraph (1) or any fuel which otherwise contains used oil or any hazardous waste identified or listed under section 6921 of this title¹

shall file with the Administrator (and with the State in the case of a State with an authorized hazardous waste program) a notification stating the location and general description of the facility, together with a description of the identified or listed hazardous waste involved and, in the case of a facility referred to in paragraph (1) or (2), a description of the production or energy recovery activity carried out at the facility and such other information as the Administrator deems necessary. For purposes of the preceding provisions, the term “hazardous waste listed under section 6921 of this title” also includes any commercial chemical product which is listed under section 6921 of this title and which, in lieu of its original intended use, is (i) produced for use as (or as a component of) a fuel, (ii) distributed for use as a fuel, or (iii) burned as a fuel. Notification shall not be required under the second sentence of this subsection in the case of facilities (such as residential boilers) where the Administrator determines that such notification is not necessary in order for the Administrator

to obtain sufficient information respecting current practices of facilities using hazardous waste for energy recovery. Nothing in this subsection shall be construed to affect or impair the provisions of section 6921(b)(3) of this title. Nothing in this subsection shall affect regulatory determinations under section 6935 of this title. In revising any regulation under section 6921 of this title identifying additional characteristics of hazardous waste or listing any additional substance as hazardous waste subject to this subchapter, the Administrator may require any person referred to in the preceding provisions to file with the Administrator (or with States having authorized hazardous waste permit programs under section 6926 of this title) the notification described in the preceding provisions. Not more than one such notification shall be required to be filed with respect to the same substance. No identified or listed hazardous waste subject to this subchapter may be transported, treated, stored, or disposed of unless notification has been given as required under this subsection.

(b) Effective date of regulation

The regulations under this subchapter respecting requirements applicable to the generation, transportation, treatment, storage, or disposal of hazardous waste (including requirements respecting permits for such treatment, storage, or disposal) shall take effect on the date six months after the date of promulgation thereof (or six months after the date of revision in the case of any regulation which is revised after the date required for promulgation thereof). At the time a regulation is promulgated, the Administrator may provide for a shorter period prior to the effective date, or an immediate effective date for:

(1) a regulation with which the Administrator finds the regulated community does not need six months to come into compliance;

(2) a regulation which responds to an emergency situation; or

(3) other good cause found and published with the regulation.

(Pub. L. 89-272, title II, §3010, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2812; amended Pub. L. 96-482, §15, Oct. 21, 1980, 94 Stat. 2342; Pub. L. 98-616, title II, §§204(a), 234, Nov. 8, 1984, 98 Stat. 3235, 3258.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-616, §204(a), inserted provisions after first sentence relating to burning and blending of hazardous wastes and substituted “the preceding provisions” for “the preceding sentence” in three places.

Subsec. (b). Pub. L. 98-616, §234, inserted provision that at the time a regulation is promulgated, the Administrator may provide for a shorter period prior to the effective date, or an immediate effective date for a regulation with which the Administrator finds the regulated community does not need six months to come into compliance, a regulation which responds to an emergency situation, or other good cause found and published with the regulation.

1980—Subsec. (a). Pub. L. 96-482 struck out “or revision” after “after promulgation or revision of regulations” and inserted provision for filing of notification when revising any regulation identifying additional characteristics of hazardous waste or listing any addi-

¹ So in original. Probably should be followed by a semicolon.

tional substance as hazardous waste subject to this subchapter.

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6921, 6924, 6925, 6937, 6939, 6971, 9620 of this title.

§ 6931. Authorization of assistance to States

(a) Authorization of appropriations

There is authorized to be appropriated \$25,000,000 for each of the fiscal years 1978 and 1979¹ \$20,000,000 for fiscal year 1980, \$35,000,000 for fiscal year 1981, \$40,000,000 for the fiscal year 1982, \$55,000,000 for the fiscal year 1985, \$60,000,000 for the fiscal year 1986, \$60,000,000 for the fiscal year 1987, and \$60,000,000 for the fiscal year 1988 to be used to make grants to the States for purposes of assisting the States in the development and implementation of authorized State hazardous waste programs.

(b) Allocation

Amounts authorized to be appropriated under subsection (a) of this section shall be allocated among the States on the basis of regulations promulgated by the Administrator, after consultation with the States, which take into account, the extent to which hazardous waste is generated, transported, treated, stored, and disposed of within such State, the extent of exposure of human beings and the environment within such State to such waste, and such other factors as the Administrator deems appropriate.

(c) Activities included

State hazardous waste programs for which grants may be made under subsection (a) of this section may include (but shall not be limited to) planning for hazardous waste treatment, storage and disposal facilities, and the development and execution of programs to protect health and the environment from inactive facilities which may contain hazardous waste.

(Pub. L. 89-272, title II, §3011, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2812; amended Pub. L. 96-482, §§16, 31(b), Oct. 21, 1980, 94 Stat. 2342, 2352; Pub. L. 98-616, §2(b), Nov. 8, 1984, 98 Stat. 3222.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-616 substituted “\$40,000,000 for fiscal year 1982, \$55,000,000 for fiscal year 1985, \$60,000,000 for fiscal year 1986, \$60,000,000 for fiscal year 1987, and \$60,000,000 for fiscal year 1988” for “and \$40,000,000 for fiscal year 1982”.

1980—Subsec. (a). Pub. L. 96-482, §31(b), authorized appropriation of \$20,000,000, \$35,000,000, and \$40,000,000 for fiscal years 1980, 1981, and 1982, respectively.

Subsec. (c). Pub. L. 96-482, §16, added subsec. (c).

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protec-

tion Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6916 of this title.

§ 6932. Transferred

CODIFICATION

Section, Pub. L. 89-272, title II, §3012, as added Pub. L. 96-463, §7(a), Oct. 15, 1980, 94 Stat. 2057, was redesignated section 3014 of Pub. L. 89-272 by Pub. L. 98-616, title V, §502(g)(1), Nov. 8, 1984, 98 Stat. 3277, and was transferred to section 6935 of this title.

§ 6933. Hazardous waste site inventory

(a) State inventory programs

Each State shall, as expeditiously as practicable, undertake a continuing program to compile, publish, and submit to the Administrator an inventory describing the location of each site within such State at which hazardous waste has at any time been stored or disposed of. Such inventory shall contain—

(1) a description of the location of the sites at which any such storage or disposal has taken place before the date on which permits are required under section 6925 of this title for such storage or disposal;

(2) such information relating to the amount, nature, and toxicity of the hazardous waste at each such site as may be practicable to obtain and as may be necessary to determine the extent of any health hazard which may be associated with such site;

(3) the name and address, or corporate headquarters of, the owner of each such site, determined as of the date of preparation of the inventory;

(4) an identification of the types or techniques of waste treatment or disposal which have been used at each such site; and

(5) information concerning the current status of the site, including information respecting whether or not hazardous waste is currently being treated or disposed of at such site (and if not, the date on which such activity ceased) and information respecting the nature of any other activity currently carried out at such site.

For purposes of assisting the States in compiling information under this section, the Administrator shall make available to each State undertaking a program under this section such information as is available to him concerning the items specified in paragraphs (1) through (5) with respect to the sites within such State, including such information as the Administrator is able to obtain from other agencies or departments of the United States and from surveys and studies carried out by any committee or subcommittee of the Congress. Any State may exercise the authority of section 6927 of this title for purposes of this section in the same manner and to the same extent as provided in such section in the case of States having an authorized hazardous waste program, and any State may by order require any person to sub-

¹ So in original. Probably should be followed by a comma.

mit such information as may be necessary to compile the data referred to in paragraphs (1) through (5).

(b) Environmental Protection Agency program

If the Administrator determines that any State program under subsection (a) of this section is not adequately providing information respecting the sites in such State referred to in subsection (a) of this section, the Administrator shall notify the State. If within ninety days following such notification, the State program has not been revised or amended in such manner as will adequately provide such information, the Administrator shall carry out the inventory program in such State. In any such case—

(1) the Administrator shall have the authorities provided with respect to State programs under subsection (a) of this section;

(2) the funds allocated under subsection (c) of this section for grants to States under this section may be used by the Administrator for carrying out such program in such State; and

(3) no further expenditure may be made for grants to such State under this section until such time as the Administrator determines that such State is carrying out, or will carry out, an inventory program which meets the requirements of this section.

(c) Grants

(1) Upon receipt of an application submitted by any State to carry out a program under this section, the Administrator may make grants to the States for purposes of carrying out such a program. Grants under this section shall be allocated among the several States by the Administrator based upon such regulations as he prescribes to carry out the purposes of this section. The Administrator may make grants to any State which has conducted an inventory program which effectively carried out the purposes of this section before October 21, 1980, to reimburse such State for all, or any portion of, the costs incurred by such State in conducting such program.

(2) There are authorized to be appropriated to carry out this section \$25,000,000 for each of the fiscal years 1985 through 1988.

(d) No impediment to immediate remedial action

Nothing in this section shall be construed to provide that the Administrator or any State should, pending completion of the inventory required under this section, postpone undertaking any enforcement or remedial action with respect to any site at which hazardous waste has been treated, stored, or disposed of.

(Pub. L. 89-272, title II, §3012, as added Pub. L. 96-482, §17(a), Oct. 21, 1980, 94 Stat. 2342; amended Pub. L. 98-616, §2(c), Nov. 8, 1984, 98 Stat. 3222.)

CODIFICATION

Another section 3012 of Pub. L. 89-272 as added by Pub. L. 96-463, §7(a), Oct. 15, 1980, 94 Stat. 2057, was redesignated section 3014 of Pub. L. 89-272, and is classified to section 6935 of this title.

AMENDMENTS

1984—Subsec. (c)(2). Pub. L. 98-616 substituted “\$25,000,000 for each of the fiscal years 1985 through 1988” for “\$20,000,000”.

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

§ 6934. Monitoring, analysis, and testing

(a) Authority of Administrator

If the Administrator determines, upon receipt of any information, that—

(1) the presence of any hazardous waste at a facility or site at which hazardous waste is, or has been, stored, treated, or disposed of, or

(2) the release of any such waste from such facility or site

may present a substantial hazard to human health or the environment, he may issue an order requiring the owner or operator of such facility or site to conduct such monitoring, testing, analysis, and reporting with respect to such facility or site as the Administrator deems reasonable to ascertain the nature and extent of such hazard.

(b) Previous owners and operators

In the case of any facility or site not in operation at the time a determination is made under subsection (a) of this section with respect to the facility or site, if the Administrator finds that the owner of such facility or site could not reasonably be expected to have actual knowledge of the presence of hazardous waste at such facility or site and of its potential for release, he may issue an order requiring the most recent previous owner or operator of such facility or site who could reasonably be expected to have such actual knowledge to carry out the actions referred to in subsection (a) of this section.

(c) Proposal

An order under subsection (a) or (b) of this section shall require the person to whom such order is issued to submit to the Administrator within 30 days from the issuance of such order a proposal for carrying out the required monitoring, testing, analysis, and reporting. The Administrator may, after providing such person with an opportunity to confer with the Administrator respecting such proposal, require such person to carry out such monitoring, testing, analysis, and reporting in accordance with such proposal, and such modifications in such proposal as the Administrator deems reasonable to ascertain the nature and extent of the hazard.

(d) Monitoring, etc., carried out by Administrator

(1) If the Administrator determines that no owner or operator referred to in subsection (a) or (b) of this section is able to conduct monitoring, testing, analysis, or reporting satisfactory to the Administrator, if the Administrator deems any such action carried out by an owner or operator to be unsatisfactory, or if the Administrator cannot initially determine that there is an owner or operator referred to in subsection (a) or (b) of this section who is able to conduct such monitoring, testing, analysis, or reporting, he may—

(A) conduct monitoring, testing, or analysis (or any combination thereof) which he deems reasonable to ascertain the nature and extent of the hazard associated with the site concerned, or

(B) authorize a State or local authority or other person to carry out any such action,

and require, by order, the owner or operator referred to in subsection (a) or (b) of this section to reimburse the Administrator or other authority or person for the costs of such activity.

(2) No order may be issued under this subsection requiring reimbursement of the costs of any action carried out by the Administrator which confirms the results of an order issued under subsection (a) or (b) of this section.

(3) For purposes of carrying out this subsection, the Administrator or any authority or other person authorized under paragraph (1), may exercise the authorities set forth in section 6927 of this title.

(e) Enforcement

The Administrator may commence a civil action against any person who fails or refuses to comply with any order issued under this section. Such action shall be brought in the United States district court in which the defendant is located, resides, or is doing business. Such court shall have jurisdiction to require compliance with such order and to assess a civil penalty of not to exceed \$5,000 for each day during which such failure or refusal occurs.

(Pub. L. 89-272, title II, §3013, as added Pub. L. 96-482, §17(a), Oct. 21, 1980, 94 Stat. 2344.)

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6939, 7412, 9606 of this title.

§ 6935. Restrictions on recycled oil

(a) In general

Not later than one year after October 15, 1980, the Administrator shall promulgate regulations establishing such performance standards and other requirements as may be necessary to protect the public health and the environment from hazards associated with recycled oil. In developing such regulations, the Administrator shall conduct an analysis of the economic impact of the regulations on the oil recycling industry. The Administrator shall ensure that such regulations do not discourage the recovery or recycling of used oil, consistent with the protection of human health and the environment.

(b) Identification or listing of used oil as hazardous waste

Not later than twelve months after November 8, 1984, the Administrator shall propose whether to list or identify used automobile and truck crankcase oil as hazardous waste under section

6921 of this title. Not later than twenty-four months after November 8, 1984, the Administrator shall make a final determination whether to list or identify used automobile and truck crankcase oil and other used oil as hazardous wastes under section 6921 of this title.

(c) Used oil which is recycled

(1) With respect to generators and transporters of used oil identified or listed as a hazardous waste under section 6921 of this title, the standards promulgated under section¹ 6921(d), 6922, and 6923 of this title shall not apply to such used oil if such used oil is recycled.

(2)(A) In the case of used oil which is exempt under paragraph (1), not later than twenty-four months after November 8, 1984, the Administrator shall promulgate such standards under this subsection regarding the generation and transportation of used oil which is recycled as may be necessary to protect human health and the environment. In promulgating such regulations with respect to generators, the Administrator shall take into account the effect of such regulations on environmentally acceptable types of used oil recycling and the effect of such regulations on small quantity generators and generators which are small businesses (as defined by the Administrator).

(B) The regulations promulgated under this subsection shall provide that no generator of used oil which is exempt under paragraph (1) from the standards promulgated under section¹ 6921(d), 6922, and 6923 of this title shall be subject to any manifest requirement or any associated recordkeeping and reporting requirement with respect to such used oil if such generator—

(i) either—

(I) enters into an agreement or other arrangement (including an agreement or arrangement with an independent transporter or with an agent of the recycler) for delivery of such used oil to a recycling facility which has a permit under section 6925(c) of this title (or for which a valid permit is deemed to be in effect under subsection (d) of this section), or

(II) recycles such used oil at one or more facilities of the generator which has such a permit under section 6925 of this title (or for which a valid permit is deemed to have been issued under subsection (d) of this section);

(ii) such used oil is not mixed by the generator with other types of hazardous wastes; and

(iii) the generator maintains such records relating to such used oil, including records of agreements or other arrangements for delivery of such used oil to any recycling facility referred to in clause (i)(I), as the Administrator deems necessary to protect human health and the environment.

(3) The regulations under this subsection regarding the transportation of used oil which is exempt from the standards promulgated under section¹ 6921(d), 6922, and 6923 of this title under paragraph (1) shall require the transporters of such used oil to deliver such used oil to a facility which has a valid permit under section 6925

¹ So in original. Probably should be "sections".

of this title or which is deemed to have a valid permit under subsection (d) of this section. The Administrator shall also establish other standards for such transporters as may be necessary to protect human health and the environment.

(d) Permits

(1) The owner or operator of a facility which recycles used oil which is exempt under subsection (c)(1) of this section, shall be deemed to have a permit under this subsection for all such treatment or recycling (and any associated tank or container storage) if such owner and operator comply with standards promulgated by the Administrator under section 6924 of this title; except that the Administrator may require such owners and operators to obtain an individual permit under section 6925(c) of this title if he determines that an individual permit is necessary to protect human health and the environment.

(2) Notwithstanding any other provision of law, any generator who recycles used oil which is exempt under subsection (c)(1) of this section shall not be required to obtain a permit under section 6925(c) of this title with respect to such used oil until the Administrator has promulgated standards under section 6924 of this title regarding the recycling of such used oil.

(Pub. L. 89-272, title II, § 3014, formerly § 3012, as added Pub. L. 96-463, § 7(a), Oct. 15, 1980, 94 Stat. 2057, and renumbered and amended Pub. L. 98-616, title II, §§ 241(a), 242, title V, § 502(g)(1), Nov. 8, 1984, 98 Stat. 3258, 3260, 3277.)

CODIFICATION

Section was formerly classified to section 6932 of this title.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-616, §§ 241(a), 242, designated existing provisions as subsec. (a) and inserted “, consistent with the protection of human health and the environment” at end.

Subsecs. (b) to (d). Pub. L. 98-616, § 241(a), added subsecs. (b) to (d).

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6926, 6930, 6976, 9614 of this title.

§ 6936. Expansion during interim status

(a) Waste piles

The owner or operator of a waste pile qualifying for the authorization to operate under section 6925(e) of this title shall be subject to the same requirements for liners and leachate collection systems or equivalent protection provided in regulations promulgated by the Administrator under section 6924 of this title before October 1, 1982, or revised under section 6924(o) of this title (relating to minimum technological requirements), for new facilities receiving individual permits under subsection (c) of section

6925 of this title, with respect to each new unit, replacement of an existing unit, or lateral expansion of an existing unit that is within the waste management area identified in the permit application submitted under section 6925 of this title, and with respect to waste received beginning six months after November 8, 1984.

(b) Landfills and surface impoundments

(1) The owner or operator of a landfill or surface impoundment qualifying for the authorization to operate under section 6925(e) of this title shall be subject to the requirements of section 6924(o) of this title (relating to minimum technological requirements), with respect to each new unit, replacement of an existing unit, or lateral expansion of an existing unit that is within the waste management area identified in the permit application submitted under this section, and with respect to waste received beginning 6 months after November 8, 1984.

(2) The owner or operator of each unit referred to in paragraph (1) shall notify the Administrator (or the State, if appropriate) at least sixty days prior to receiving waste. The Administrator (or the State) shall require the filing, within six months of receipt of such notice, of an application for a final determination regarding the issuance of a permit for each facility submitting such notice.

(3) In the case of any unit in which the liner and leachate collection system has been installed pursuant to the requirements of this section and in good faith compliance with the Administrator's regulations and guidance documents governing liners and leachate collection systems, no liner or leachate collection system which is different from that which was so installed pursuant to this section shall be required for such unit by the Administrator when issuing the first permit under section 6925 of this title to such facility, except that the Administrator shall not be precluded from requiring installation of a new liner when the Administrator has reason to believe that any liner installed pursuant to the requirements of this section is leaking. The Administrator may, under section 6924 of this title, amend the requirements for liners and leachate collection systems required under this section as may be necessary to provide additional protection for human health and the environment.

(Pub. L. 89-272, title II, § 3015, as added Pub. L. 98-616, title II, § 243(a), Nov. 8, 1984, 98 Stat. 3260.)

§ 6937. Inventory of Federal agency hazardous waste facilities

(a) Program requirement; submission; availability; contents

Each Federal agency shall undertake a continuing program to compile, publish, and submit to the Administrator (and to the State in the case of sites in States having an authorized hazardous waste program) an inventory of each site which the Federal agency owns or operates or has owned or operated at which hazardous waste is stored, treated, or disposed of or has been disposed of at any time. The inventory shall be submitted every two years beginning January 31, 1986. Such inventory shall be available to the

public as provided in section 6927(b) of this title. Information previously submitted by a Federal agency under section 9603 of this title, or under section 6925 or 6930 of this title, or under this section need not be resubmitted except that the agency shall update any previous submission to reflect the latest available data and information. The inventory shall include each of the following:

(1) A description of the location of each site at which any such treatment, storage, or disposal has taken place before the date on which permits are required under section 6925 of this title for such storage, treatment, or disposal, and where hazardous waste has been disposed, a description of hydrogeology of the site and the location of withdrawal wells and surface water within one mile of the site.

(2) Such information relating to the amount, nature, and toxicity of the hazardous waste in each site as may be necessary to determine the extent of any health hazard which may be associated with any site.

(3) Information on the known nature and extent of environmental contamination at each site, including a description of the monitoring data obtained.

(4) Information concerning the current status of the site, including information respecting whether or not hazardous waste is currently being treated, stored, or disposed of at such site (and if not, the date on which such activity ceased) and information respecting the nature of any other activity currently carried out at such site.

(5) A list of sites at which hazardous waste has been disposed and environmental monitoring data has not been obtained, and the reasons for the lack of monitoring data at each site.

(6) A description of response actions undertaken or contemplated at contaminated sites.

(7) An identification of the types of techniques of waste treatment, storage, or disposal which have been used at each site.

(8) The name and address and responsible Federal agency for each site, determined as of the date of preparation of the inventory.

(b) Environmental Protection Agency program

If the Administrator determines that any Federal agency under subsection (a) of this section is not adequately providing information respecting the sites referred to in subsection (a) of this section, the Administrator shall notify the chief official of such agency. If within ninety days following such notification, the Federal agency has not undertaken a program to adequately provide such information, the Administrator shall carry out the inventory program for such agency.

(Pub. L. 89-272, title II, §3016, as added Pub. L. 98-616, title II, §244, Nov. 8, 1984, 98 Stat. 3261.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9620 of this title.

§ 6938. Export of hazardous wastes

(a) In general

Beginning twenty-four months after November 8, 1984, no person shall export any hazardous

waste identified or listed under this subchapter unless¹

(1)(A) such person has provided the notification required in subsection (c) of this section,

(B) the government of the receiving country has consented to accept such hazardous waste,

(C) a copy of the receiving country's written consent is attached to the manifest accompanying each waste shipment, and

(D) the shipment conforms with the terms of the consent of the government of the receiving country required pursuant to subsection (e) of this section, or

(2) the United States and the government of the receiving country have entered into an agreement as provided for in subsection (f) of this section and the shipment conforms with the terms of such agreement.

(b) Regulations

Not later than twelve months after November 8, 1984, the Administrator shall promulgate the regulations necessary to implement this section. Such regulations shall become effective one hundred and eighty days after promulgation.

(c) Notification

Any person who intends to export a hazardous waste identified or listed under this subchapter beginning twelve months after November 8, 1984, shall, before such hazardous waste is scheduled to leave the United States, provide notification to the Administrator. Such notification shall contain the following information:

(1) the name and address of the exporter;

(2) the types and estimated quantities of hazardous waste to be exported;

(3) the estimated frequency or rate at which such waste is to be exported; and the period of time over which such waste is to be exported;

(4) the ports of entry;

(5) a description of the manner in which such hazardous waste will be transported to and treated, stored, or disposed in the receiving country; and

(6) the name and address of the ultimate treatment, storage or disposal facility.

(d) Procedures for requesting consent of receiving country

Within thirty days of the Administrator's receipt of a complete notification under this section, the Secretary of State, acting on behalf of the Administrator, shall—

(1) forward a copy of the notification to the government of the receiving country;

(2) advise the government that United States law prohibits the export of hazardous waste unless the receiving country consents to accept the hazardous waste;

(3) request the government to provide the Secretary with a written consent or objection to the terms of the notification; and

(4) forward to the government of the receiving country a description of the Federal regulations which would apply to the treatment, storage, and disposal of the hazardous waste in the United States.

(e) Conveyance of written consent to exporter

Within thirty days of receipt by the Secretary of State of the receiving country's written con-

¹ So in original. Probably should be followed by a dash.

sent or objection (or any subsequent communication withdrawing a prior consent or objection), the Administrator shall forward such a consent, objection, or other communication to the exporter.

(f) International agreements

Where there exists an international agreement between the United States and the government of the receiving country establishing notice, export, and enforcement procedures for the transportation, treatment, storage, and disposal of hazardous wastes, only the requirements of subsections (a)(2) and (g) of this section shall apply.

(g) Reports

After November 8, 1984, any person who exports any hazardous waste identified or listed under section 6921 of this title shall file with the Administrator no later than March 1 of each year, a report summarizing the types, quantities, frequency, and ultimate destination of all such hazardous waste exported during the previous calendar year.

(h) Other standards

Nothing in this section shall preclude the Administrator from establishing other standards for the export of hazardous wastes under section 6922 of this title or section 6923 of this title.

(Pub. L. 89-272, title II, §3017, as added Pub. L. 98-616, title II, §245(a), Nov. 8, 1984, 98 Stat. 3262.)

§ 6939. Domestic sewage

(a) Report

The Administrator shall, not later than 15 months after November 8, 1984, submit a report to the Congress concerning those substances identified or listed under section 6921 of this title which are not regulated under this subchapter by reason of the exclusion for mixtures of domestic sewage and other wastes that pass through a sewer system to a publicly owned treatment works. Such report shall include the types, size and number of generators which dispose of such substances in this manner, the types and quantities disposed of in this manner, and the identification of significant generators, wastes, and waste constituents not regulated under existing Federal law or regulated in a manner sufficient to protect human health and the environment.

(b) Revisions of regulations

Within eighteen months after submitting the report specified in subsection (a) of this section, the Administrator shall revise existing regulations and promulgate such additional regulations pursuant to this subchapter (or any other authority of the Administrator, including section 1317 of title 33) as are necessary to assure that substances identified or listed under section 6921 of this title which pass through a sewer system to a publicly owned treatment works are adequately controlled to protect human health and the environment.

(c) Report on wastewater lagoons

The Administrator shall, within thirty-six months after November 8, 1984, submit a report to Congress concerning wastewater lagoons at publicly owned treatment works and their effect

on groundwater quality. Such report shall include—

- (1) the number and size of such lagoons;
- (2) the types and quantities of waste contained in such lagoons;
- (3) the extent to which such waste has been or may be released from such lagoons and contaminate ground water; and
- (4) available alternatives for preventing or controlling such releases.

The Administrator may utilize the authority of sections 6927 and 6934 of this title for the purpose of completing such report.

(d) Application of sections 6927 and 6930

The provisions of sections 6927 and 6930 of this title shall apply to solid or dissolved materials in domestic sewage to the same extent and in the same manner as such provisions apply to hazardous waste.

(Pub. L. 89-272, title II, §3018, as added Pub. L. 98-616, title II, §246(a), Nov. 8, 1984, 98 Stat. 3264.)

§ 6939a. Exposure information and health assessments

(a) Exposure information

Beginning on the date nine months after November 8, 1984, each application for a final determination regarding a permit under section 6925(c) of this title for a landfill or surface impoundment shall be accompanied by information reasonably ascertainable by the owner or operator on the potential for the public to be exposed to hazardous wastes or hazardous constituents through releases related to the unit. At a minimum, such information must address:

- (1) reasonably foreseeable potential releases from both normal operations and accidents at the unit, including releases associated with transportation to or from the unit;
- (2) the potential pathways of human exposure to hazardous wastes or constituents resulting from the releases described under paragraph (1); and
- (3) the potential magnitude and nature of the human exposure resulting from such releases.

The owner or operator of a landfill or surface impoundment for which an application for such a final determination under section 6925(c) of this title has been submitted prior to November 8, 1984, shall submit the information required by this subsection to the Administrator (or the State, in the case of a State with an authorized program) no later than the date nine months after November 8, 1984.

(b) Health assessments

(1) The Administrator (or the State, in the case of a State with an authorized program) shall make the information required by subsection (a) of this section, together with other relevant information, available to the Agency for Toxic Substances and Disease Registry established by section 9604(i) of this title.

(2) Whenever in the judgment of the Administrator, or the State (in the case of a State with an authorized program), a landfill or a surface impoundment poses a substantial potential risk to human health, due to the existence of re-

leases of hazardous constituents, the magnitude of contamination with hazardous constituents which may be the result of a release, or the magnitude of the population exposed to such release or contamination, the Administrator or the State (with the concurrence of the Administrator) may request the Administrator of the Agency for Toxic Substances and Disease Registry to conduct a health assessment in connection with such facility and take other appropriate action with respect to such risks as authorized by section 9604(b) and (i) of this title. If funds are provided in connection with such request the Administrator of such Agency shall conduct such health assessment.

(c) Members of the public

Any member of the public may submit evidence of releases of or exposure to hazardous constituents from such a facility, or as to the risks or health effects associated with such releases or exposure, to the Administrator of the Agency for Toxic Substances and Disease Registry, the Administrator, or the State (in the case of a State with an authorized program).

(d) Priority

In determining the order in which to conduct health assessments under this subsection, the Administrator of the Agency for Toxic Substances and Disease Registry shall give priority to those facilities or sites at which there is documented evidence of release of hazardous constituents, at which the potential risk to human health appears highest, and for which in the judgment of the Administrator of such Agency existing health assessment data is inadequate to assess the potential risk to human health as provided in subsection (f) of this section.

(e) Periodic reports

The Administrator of such Agency shall issue periodic reports which include the results of all the assessments carried out under this section. Such assessments or other activities shall be reported after appropriate peer review.

(f) "Health assessments" defined

For the purposes of this section, the term "health assessments" shall include preliminary assessments of the potential risk to human health posed by individual sites and facilities subject to this section, based on such factors as the nature and extent of contamination, the existence of potential for pathways of human exposure (including ground or surface water contamination, air emissions, and food chain contamination), the size and potential susceptibility of the community within the likely pathways of exposure, the comparison of expected human exposure levels to the short-term and long-term health effects associated with identified contaminants and any available recommended exposure or tolerance limits for such contaminants, and the comparison of existing morbidity and mortality data on diseases that may be associated with the observed levels of exposure. The assessment shall include an evaluation of the risks to the potentially affected population from all sources of such contaminants, including known point or nonpoint sources other than the site or facility in ques-

tion. A purpose of such preliminary assessments shall be to help determine whether full-scale health or epidemiological studies and medical evaluations of exposed populations shall be undertaken.

(g) Cost recovery

In any case in which a health assessment performed under this section discloses the exposure of a population to the release of a hazardous substance, the costs of such health assessment may be recovered as a cost of response under section 9607 of this title from persons causing or contributing to such release of such hazardous substance or, in the case of multiple releases contributing to such exposure, to all such release.

(Pub. L. 89-272, title II, §3019, as added Pub. L. 98-616, title II, §247(a), Nov. 8, 1984, 98 Stat. 3265.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9604 of this title.

§ 6939b. Interim control of hazardous waste injection

(a) Underground source of drinking water

No hazardous waste may be disposed of by underground injection—

- (1) into a formation which contains (within one-quarter mile of the well used for such underground injection) an underground source of drinking water; or
- (2) above such a formation.

The prohibitions established under this section shall take effect 6 months after November 8, 1984, except in the case of any State in which identical or more stringent prohibitions are in effect before such date under the Safe Drinking Water Act [42 U.S.C. 300f et seq.].

(b) Actions under Comprehensive Environmental Response, Compensation, and Liability Act

Subsection (a) of this section shall not apply to the injection of contaminated ground water into the aquifer from which it was withdrawn, if—

- (1) such injection is—
 - (A) a response action taken under section 9604 or 9606 of this title, or
 - (B) part of corrective action required under this chapter¹

intended to clean up such contamination;

(2) such contaminated ground water is treated to substantially reduce hazardous constituents prior to such injection; and

(3) such response action or corrective action will, upon completion, be sufficient to protect human health and the environment.

(c) Enforcement

In addition to enforcement under the provisions of this chapter, the prohibitions established under paragraphs (1) and (2) of subsection (a) of this section shall be enforceable under the Safe Drinking Water Act [42 U.S.C. 300f et seq.] in any State—

- (1) which has adopted identical or more stringent prohibitions under part C of the Safe

¹ So in original. Probably should be followed by a comma.

Drinking Water Act [42 U.S.C. 300h et seq.] and which has assumed primary enforcement responsibility under that Act for enforcement of such prohibitions; or

(2) in which the Administrator has adopted identical or more stringent prohibitions under the Safe Drinking Water Act [42 U.S.C. 300f et seq.] and is exercising primary enforcement responsibility under that Act for enforcement of such prohibitions.

(d) Definitions

The terms “primary enforcement responsibility”, “underground source of drinking water”, “formation” and “well” have the same meanings as provided in regulations of the Administrator under the Safe Drinking Water Act [42 U.S.C. 300f et seq.]. The term “Safe Drinking Water Act” means title XIV of the Public Health Service Act.

(Pub. L. 89-272, title II, §3020, formerly §7010, as added Pub. L. 98-616, title IV, §405(a), Nov. 8, 1984, 98 Stat. 3273; renumbered §3020, and amended Pub. L. 99-339, title II, §201(c), June 19, 1986, 100 Stat. 654.)

REFERENCES IN TEXT

Title XIV of the Public Health Service Act, referred to in subsec. (d), is title XIV of act July 1, 1944, as added Dec. 16, 1974, Pub. L. 93-523, §2(a), 88 Stat. 1660, as amended, known as the Safe Drinking Water Act, which is classified generally to subchapter XII (§300f et seq.) of chapter 6A of this title. Part C of the Act is classified generally to part C (§300h et seq.) of subchapter XII of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

CODIFICATION

Section was formerly classified to section 6979a of this title, prior to renumbering by Pub. L. 99-339.

AMENDMENTS

1986—Subsec. (c). Pub. L. 99-339, §201(c)(1), substituted “enforcement under the provisions of this chapter” for “enforcement under sections 6972 and 6973 of this title”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6924 of this title.

§ 6939c. Mixed waste inventory reports and plan

(a) Mixed waste inventory reports

(1) Requirement

Not later than 180 days after October 6, 1992, the Secretary of Energy shall submit to the Administrator and to the Governor of each State in which the Department of Energy stores or generates mixed wastes the following reports:

(A) A report containing a national inventory of all such mixed wastes, regardless of the time they were generated, on a State-by-State basis.

(B) A report containing a national inventory of mixed waste treatment capacities and technologies.

(2) Inventory of wastes

The report required by paragraph (1)(A) shall include the following:

(A) A description of each type of mixed waste at each Department of Energy facility

in each State, including, at a minimum, the name of the waste stream.

(B) The amount of each type of mixed waste currently stored at each Department of Energy facility in each State, set forth separately by mixed waste that is subject to the land disposal prohibition requirements of section 6924 of this title and mixed waste that is not subject to such prohibition requirements.

(C) An estimate of the amount of each type of mixed waste the Department expects to generate in the next 5 years at each Department of Energy facility in each State.

(D) A description of any waste minimization actions the Department has implemented at each Department of Energy facility in each State for each mixed waste stream.

(E) The EPA hazardous waste code for each type of mixed waste containing waste that has been characterized at each Department of Energy facility in each State.

(F) An inventory of each type of waste that has not been characterized by sampling and analysis at each Department of Energy facility in each State.

(G) The basis for the Department’s determination of the applicable hazardous waste code for each type of mixed waste at each Department of Energy facility and a description of whether the determination is based on sampling and analysis conducted on the waste or on the basis of process knowledge.

(H) A description of the source of each type of mixed waste at each Department of Energy facility in each State.

(I) The land disposal prohibition treatment technology or technologies specified for the hazardous waste component of each type of mixed waste at each Department of Energy facility in each State.

(J) A statement of whether and how the radionuclide content of the waste alters or affects use of the technologies described in subparagraph (I).

(3) Inventory of treatment capacities and technologies

The report required by paragraph (1)(B) shall include the following:

(A) An estimate of the available treatment capacity for each waste described in the report required by paragraph (1)(A) for which treatment technologies exist.

(B) A description, including the capacity, number and location, of each treatment unit considered in calculating the estimate under subparagraph (A).

(C) A description, including the capacity, number and location, of any existing treatment unit that was not considered in calculating the estimate under subparagraph (A) but that could, alone or in conjunction with other treatment units, be used to treat any of the wastes described in the report required by paragraph (1)(A) to meet the requirements of regulations promulgated pursuant to section 6924(m) of this title.

(D) For each unit listed in subparagraph (C), a statement of the reasons why the unit

was not included in calculating the estimate under subparagraph (A).

(E) A description, including the capacity, number, location, and estimated date of availability, of each treatment unit currently proposed to increase the treatment capacities estimated under subparagraph (A).

(F) For each waste described in the report required by paragraph (1)(A) for which the Department has determined no treatment technology exists, information sufficient to support such determination and a description of the technological approaches the Department anticipates will need to be developed to treat the waste.

(4) Comments and revisions

Not later than 90 days after the date of the submission of the reports by the Secretary of Energy under paragraph (1), the Administrator and each State which received the reports shall submit any comments they may have concerning the reports to the Department of Energy. The Secretary of Energy shall consider and publish the comments prior to publication of the final report.

(5) Requests for additional information

Nothing in this subsection limits or restricts the authority of States or the Administrator to request additional information from the Secretary of Energy.

(b) Plan for development of treatment capacities and technologies

(1) Plan requirement

(A)(i) For each facility at which the Department of Energy generates or stores mixed wastes, except any facility subject to a permit, agreement, or order described in clause (ii), the Secretary of Energy shall develop and submit, as provided in paragraph (2), a plan for developing treatment capacities and technologies to treat all of the facility's mixed wastes, regardless of the time they were generated, to the standards promulgated pursuant to section 6924(m) of this title.

(ii) Clause (i) shall not apply with respect to any facility subject to any permit establishing a schedule for treatment of such wastes, or any existing agreement or administrative or judicial order governing the treatment of such wastes, to which the State is a party.

(B) Each plan shall contain the following:

(i) For mixed wastes for which treatment technologies exist, a schedule for submitting all applicable permit applications, entering into contracts, initiating construction, conducting systems testing, commencing operations, and processing backlogged and currently generated mixed wastes.

(ii) For mixed wastes for which no treatment technologies exist, a schedule for identifying and developing such technologies, identifying the funding requirements for the identification and development of such technologies, submitting treatability study exemptions, and submitting research and development permit applications.

(iii) For all cases where the Department proposes radionuclide separation of mixed

wastes, or materials derived from mixed wastes, it shall provide an estimate of the volume of waste generated by each case of radionuclide separation, the volume of waste that would exist or be generated without radionuclide separation, the estimated costs of waste treatment and disposal if radionuclide separation is used compared to the estimated costs if it is not used, and the assumptions underlying such waste volume and cost estimates.

(C) A plan required under this subsection may provide for centralized, regional, or on-site treatment of mixed wastes, or any combination thereof.

(2) Review and approval of plan

(A) For each facility that is located in a State (i) with authority under State law to prohibit land disposal of mixed waste until the waste has been treated and (ii) with both authority under State law to regulate the hazardous components of mixed waste and authorization from the Environmental Protection Agency under section 6926 of this title to regulate the hazardous components of mixed waste, the Secretary of Energy shall submit the plan required under paragraph (1) to the appropriate State regulatory officials for their review and approval, modification, or disapproval. In reviewing the plan, the State shall consider the need for regional treatment facilities. The State shall consult with the Administrator and any other State in which a facility affected by the plan is located and consider public comments in making its determination on the plan. The State shall approve, approve with modifications, or disapprove the plan within 6 months after receipt of the plan.

(B) For each facility located in a State that does not have the authority described in subparagraph (A), the Secretary shall submit the plan required under paragraph (1) to the Administrator of the Environmental Protection Agency for review and approval, modification, or disapproval. A copy of the plan also shall be provided by the Secretary to the State in which such facility is located. In reviewing the plan, the Administrator shall consider the need for regional treatment facilities. The Administrator shall consult with the State or States in which any facility affected by the plan is located and consider public comments in making a determination on the plan. The Administrator shall approve, approve with modifications, or disapprove the plan within 6 months after receipt of the plan.

(C) Upon the approval of a plan under this paragraph by the Administrator or a State, the Administrator shall issue an order under section 6928(a) of this title, or the State shall issue an order under appropriate State authority, requiring compliance with the approved plan.

(3) Public participation

Upon submission of a plan by the Secretary of Energy to the Administrator or a State, and before approval of the plan by the Administrator or a State, the Administrator or State shall publish a notice of the availability of the

submitted plan and make such submitted plan available to the public on request.

(4) Revisions of plan

If any revisions of an approved plan are proposed by the Secretary of Energy or required by the Administrator or a State, the provisions of paragraphs (2) and (3) shall apply to the revisions in the same manner as they apply to the original plan.

(5) Waiver of plan requirement

(A) A State may waive the requirement for the Secretary of Energy to develop and submit a plan under this subsection for a facility located in the State if the State (i) enters into an agreement with the Secretary of Energy that addresses compliance at that facility with section 6924(j) of this title with respect to mixed waste, and (ii) issues an order requiring compliance with such agreement and which is in effect.

(B) Any violation of an agreement or order referred to in subparagraph (A) is subject to the waiver of sovereign immunity contained in section 6961(a) of this title.

(c) Schedule and progress reports

(1) Schedule

Not later than 6 months after October 6, 1992, the Secretary of Energy shall publish in the Federal Register a schedule for submitting the plans required under subsection (b) of this section.

(2) Progress reports

(A) Not later than the deadlines specified in subparagraph (B), the Secretary of Energy shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Energy and Commerce of the House of Representatives a progress report containing the following:

(i) An identification, by facility, of the plans that have been submitted to States or the Administrator of the Environmental Protection Agency pursuant to subsection (b) of this section.

(ii) The status of State and Environmental Protection Agency review and approval of each such plan.

(iii) The number of orders requiring compliance with such plans that are in effect.

(iv) For the first 2 reports required under this paragraph, an identification of the plans required under such subsection (b) of this section that the Secretary expects to submit in the 12-month period following submission of the report.

(B) The Secretary of Energy shall submit a report under subparagraph (A) not later than 12 months after October 6, 1992, 24 months after October 6, 1992, and 36 months after October 6, 1992.

(Pub. L. 89-272, title II, §3021, as added Pub. L. 102-386, title I, §105(a)(1), Oct. 6, 1992, 106 Stat. 1508.)

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on

Commerce of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

GAO REPORT

Section 105(c) of Pub. L. 102-386 provided that:

“(1) REQUIREMENT.—Not later than 18 months after the date of the enactment of this Act [Oct. 6, 1992], the Comptroller General shall submit to Congress a report on the Department of Energy’s progress in complying with section 3021(b) of the Solid Waste Disposal Act [42 U.S.C. 6939c(b)].

“(2) MATTERS TO BE INCLUDED.—The report required under paragraph (1) shall contain, at a minimum, the following:

“(A) The Department of Energy’s progress in submitting to the States or the Administrator of the Environmental Protection Agency a plan for each facility for which a plan is required under section 3021(b) of the Solid Waste Disposal Act and the status of State or Environmental Protection Agency review and approval of each such plan.

“(B) The Department of Energy’s progress in entering into orders requiring compliance with any such plans that have been approved.

“(C) An evaluation of the completeness and adequacy of each such plan as of the date of submission of the report required under paragraph (1).

“(D) An identification of any recurring problems among the Department of Energy’s submitted plans.

“(E) A description of treatment technologies and capacity that have been developed by the Department of Energy since the date of the enactment of this Act and a list of the wastes that are expected to be treated by such technologies and the facilities at which the wastes are generated or stored.

“(F) The progress made by the Department of Energy in characterizing its mixed waste streams at each such facility by sampling and analysis.

“(G) An identification and analysis of additional actions that the Department of Energy must take to—

“(i) complete submission of all plans required under such section 3021(b) for all such facilities;

“(ii) obtain the adoption of orders requiring compliance with all such plans; and

“(iii) develop mixed waste treatment capacity and technologies.”

§ 6939d. Public vessels

(a) Waste generated on public vessels

Any hazardous waste generated on a public vessel shall not be subject to the storage, manifest, inspection, or recordkeeping requirements of this chapter until such waste is transferred to a shore facility, unless—

(1) the waste is stored on the public vessel for more than 90 days after the public vessel is placed in reserve or is otherwise no longer in service; or

(2) the waste is transferred to another public vessel within the territorial waters of the United States and is stored on such vessel or another public vessel for more than 90 days after the date of transfer.

(b) Computation of storage period

For purposes of subsection (a) of this section, the 90-day period begins on the earlier of—

(1) the date on which the public vessel on which the waste was generated is placed in reserve or is otherwise no longer in service; or

(2) the date on which the waste is transferred from the public vessel on which the waste was generated to another public vessel within the territorial waters of the United States;

and continues, without interruption, as long as the waste is stored on the original public vessel (if in reserve or not in service) or another public vessel.

(c) Definitions

For purposes of this section:

(1) The term “public vessel” means a vessel owned or bareboat chartered and operated by the United States, or by a foreign nation, except when the vessel is engaged in commerce.

(2) The terms “in reserve” and “in service” have the meanings applicable to those terms under section 7293 and sections 7304 through 7308 of title 10 and regulations prescribed under those sections.

(d) Relationship to other law

Nothing in this section shall be construed as altering or otherwise affecting the provisions of section 7311 of title 10.

(Pub. L. 89-272, title II, §3022, as added Pub. L. 102-386, title I, §106(a), Oct. 6, 1992, 106 Stat. 1513.)

§ 6939e. Federally owned treatment works

(a) In general

For purposes of section 6903(27) of this title, the phrase “but does not include solid or dissolved material in domestic sewage” shall apply to any solid or dissolved material introduced by a source into a federally owned treatment works if—

(1) such solid or dissolved material is subject to a pretreatment standard under section 1317 of title 33, and the source is in compliance with such standard;

(2) for a solid or dissolved material for which a pretreatment standard has not been promulgated pursuant to section 1317 of title 33, the Administrator has promulgated a schedule for establishing such a pretreatment standard which would be applicable to such solid or dissolved material not later than 7 years after October 6, 1992, such standard is promulgated on or before the date established in the schedule, and after the effective date of such standard the source is in compliance with such standard;

(3) such solid or dissolved material is not covered by paragraph (1) or (2) and is not prohibited from land disposal under subsections¹ (d), (e), (f), or (g) of section 6924 of this title because such material has been treated in accordance with section 6924(m) of this title; or

(4) notwithstanding paragraphs¹ (1), (2), or (3), such solid or dissolved material is generated by a household or person which generates less than 100 kilograms of hazardous waste per month unless such solid or dissolved material would otherwise be an acutely hazardous waste and subject to standards, regulations, or other requirements under this chapter notwithstanding the quantity generated.

¹ So in original. Probably should be singular.

(b) Prohibition

It is unlawful to introduce into a federally owned treatment works any pollutant that is a hazardous waste.

(c) Enforcement

(1) Actions taken to enforce this section shall not require closure of a treatment works if the hazardous waste is removed or decontaminated and such removal or decontamination is adequate, in the discretion of the Administrator or, in the case of an authorized State, of the State, to protect human health and the environment.

(2) Nothing in this subsection shall be construed to prevent the Administrator or an authorized State from ordering the closure of a treatment works if the Administrator or State determines such closure is necessary for protection of human health and the environment.

(3) Nothing in this subsection shall be construed to affect any other enforcement authorities available to the Administrator or a State under this subchapter.

(d) “Federally owned treatment works” defined

For purposes of this section, the term “federally owned treatment works” means a facility that is owned and operated by a department, agency, or instrumentality of the Federal Government treating wastewater, a majority of which is domestic sewage, prior to discharge in accordance with a permit issued under section 1342 of title 33.

(e) Savings clause

Nothing in this section shall be construed as affecting any agreement, permit, or administrative or judicial order, or any condition or requirement contained in such an agreement, permit, or order, that is in existence on October 6, 1992, and that requires corrective action or closure at a federally owned treatment works or solid waste management unit or facility related to such a treatment works.

(Pub. L. 89-272, title II, §3023, as added Pub. L. 102-386, title I, §108(a), Oct. 6, 1992, 106 Stat. 1514.)

SUBCHAPTER IV—STATE OR REGIONAL SOLID WASTE PLANS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 6903, 6907, 6916, 6986 of this title; title 25 section 3902.

§ 6941. Objectives of subchapter

The objectives of this subchapter are to assist in developing and encouraging methods for the disposal of solid waste which are environmentally sound and which maximize the utilization of valuable resources including energy and materials which are recoverable from solid waste and to encourage resource conservation. Such objectives are to be accomplished through Federal technical and financial assistance to States or regional authorities for comprehensive planning pursuant to Federal guidelines designed to foster cooperation among Federal, State, and local governments and private industry. In developing such comprehensive plans, it is the intention of this chapter that in deter-

mining the size of the waste-to-energy facility, adequate provision shall be given to the present and reasonably anticipated future needs, including those needs created by thorough implementation of section 6962(h) of this title, of the recycling and resource recovery interest within the area encompassed by the planning process.

(Pub. L. 89-272, title II, §4001, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2813; amended Pub. L. 96-482, §32(b), Oct. 21, 1980, 94 Stat. 2353; Pub. L. 98-616, title III, §301(a), title V, §501(f)(1), Nov. 8, 1984, 98 Stat. 3267, 3276.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3254 of this title, prior to the general amendment of the Solid Waste Disposal Act by Pub. L. 94-580.

AMENDMENTS

1984—Pub. L. 98-616, §501(f)(1), inserted “, including those needs created by thorough implementation of section 6962(h) of this title.”

Pub. L. 98-616, §301(a), inserted at end “In developing such comprehensive plans, it is the intention of this chapter that in determining the size of the waste-to-energy facility, adequate provision shall be given to the present and reasonably anticipated future needs of the recycling and resource recovery interest within the area encompassed by the planning process.”

1980—Pub. L. 96-482 included as an objective in the disposal of solid waste the utilization of energy and materials recoverable from solid waste.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6942 of this title.

§ 6941a. Energy and materials conservation and recovery; Congressional findings

The Congress finds that—

(1) significant savings could be realized by conserving materials in order to reduce the volume or quantity of material which ultimately becomes waste;

(2) solid waste contains valuable energy and material resources which can be recovered and used thereby conserving increasingly scarce and expensive fossil fuels and virgin materials;

(3) the recovery of energy and materials from municipal waste, and the conservation of energy and materials contributing to such waste streams, can have the effect of reducing the volume of the municipal waste stream and the burden of disposing of increasing volumes of solid waste;

(4) the technology to conserve resources exists and is commercially feasible to apply;

(5) the technology to recover energy and materials from solid waste is of demonstrated commercial feasibility; and

(6) various communities throughout the nation have different needs and different potentials for conserving resources and for utilizing techniques for the recovery of energy and materials from waste, and Federal assistance in planning and implementing such energy and materials conservation and recovery programs should be available to all such communities on an equitable basis in relation to their needs and potential.

(Pub. L. 96-482, §32(a), Oct. 21, 1980, 94 Stat. 2353.)

CODIFICATION

Section was enacted as part of the Solid Waste Disposal Act Amendments of 1980, and not as part of the Solid Waste Disposal Act which comprises this chapter.

§ 6942. Federal guidelines for plans

(a) Guidelines for identification of regions

For purposes of encouraging and facilitating the development of regional planning for solid waste management, the Administrator, within one hundred and eighty days after October 21, 1976, and after consultation with appropriate Federal, State, and local authorities, shall by regulation publish guidelines for the identification of those areas which have common solid waste management problems and are appropriate units for planning regional solid waste management services. Such guidelines shall consider—

(1) the size and location of areas which should be included,

(2) the volume of solid waste which should be included, and

(3) the available means of coordinating regional planning with other related regional planning and for coordination of such regional planning into the State plan.

(b) Guidelines for State plans

Not later than eighteen months after October 21, 1976, and after notice and hearing, the Administrator shall, after consultation with appropriate Federal, State, and local authorities, promulgate regulations containing guidelines to assist in the development and implementation of State solid waste management plans (hereinafter in this chapter referred to as “State plans”). The guidelines shall contain methods for achieving the objectives specified in section 6941 of this title. Such guidelines shall be reviewed from time to time, but not less frequently than every three years, and revised as may be appropriate.

(c) Considerations for State plan guidelines

The guidelines promulgated under subsection (b) of this section shall consider—

(1) the varying regional, geologic, hydrologic, climatic, and other circumstances under which different solid waste practices are required in order to insure the reasonable protection of the quality of the ground and surface waters from leachate contamination, the reasonable protection of the quality of the surface waters from surface runoff contamination, and the reasonable protection of ambient air quality;

(2) characteristics and conditions of collection, storage, processing, and disposal operating methods, techniques and practices, and location of facilities where such operating methods, techniques, and practices are conducted, taking into account the nature of the material to be disposed;

(3) methods for closing or upgrading open dumps for purposes of eliminating potential health hazards;

(4) population density, distribution, and projected growth;

(5) geographic, geologic, climatic, and hydrologic characteristics;

- (6) the type and location of transportation;
- (7) the profile of industries;
- (8) the constituents and generation rates of waste;
- (9) the political, economic, organizational, financial, and management problems affecting comprehensive solid waste management;
- (10) types of resource recovery facilities and resource conservation systems which are appropriate; and
- (11) available new and additional markets for recovered material and energy and energy resources recovered from solid waste as well as methods for conserving such materials and energy.

(Pub. L. 89-272, title II, §4002, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2813; amended Pub. L. 96-482, §32(c), Oct. 21, 1980, 94 Stat. 2353.)

AMENDMENTS

1980—Subsec. (c)(11). Pub. L. 96-482 required State plan guidelines to consider energy and energy resources recovered from solid waste as well as methods for conserving such materials and energy.

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6946 of this title.

§ 6943. Requirements for approval of plans

(a) Minimum requirements

In order to be approved under section 6947 of this title, each State plan must comply with the following minimum requirements—

- (1) The plan shall identify (in accordance with section 6946(b) of this title) (A) the responsibilities of State, local, and regional authorities in the implementation of the State plan, (B) the distribution of Federal funds to the authorities responsible for development and implementation of the State plan, and (C) the means for coordinating regional planning and implementation under the State plan.
- (2) The plan shall, in accordance with sections 6944(b) and 6945(a) of this title, prohibit the establishment of new open dumps within the State, and contain requirements that all solid waste (including solid waste originating in other States, but not including hazardous waste) shall be (A) utilized for resource recovery or (B) disposed of in sanitary landfills (within the meaning of section 6944(a) of this title) or otherwise disposed of in an environmentally sound manner.
- (3) The plan shall provide for the closing or upgrading of all existing open dumps within the State pursuant to the requirements of section 6945 of this title.
- (4) The plan shall provide for the establishment of such State regulatory powers as may be necessary to implement the plan.
- (5) The plan shall provide that no State or local government within the State shall be

prohibited under State or local law from negotiating and entering into long-term contracts for the supply of solid waste to resource recovery facilities, from entering into long-term contracts for the operation of such facilities, or from securing long-term markets for material and energy recovered from such facilities or for conserving materials or energy by reducing the volume of waste.

(6) The plan shall provide for such resource conservation or recovery and for the disposal of solid waste in sanitary landfills or any combination of practices so as may be necessary to use or dispose of such waste in a manner that is environmentally sound.

(b) Discretionary plan provisions relating to recycled oil

Any State plan submitted under this subchapter may include, at the option of the State, provisions to carry out each of the following:

- (1) Encouragement, to the maximum extent feasible and consistent with the protection of the public health and the environment, of the use of recycled oil in all appropriate areas of State and local government.
- (2) Encouragement of persons contracting with the State to use recycled oil to the maximum extent feasible, consistent with protection of the public health and the environment.
- (3) Informing the public of the uses of recycled oil.
- (4) Establishment and implementation of a program (including any necessary licensing of persons and including the use, where appropriate, of manifests) to assure that used oil is collected, transported, treated, stored, reused, and disposed of, in a manner which does not present a hazard to the public health or the environment.

Any plan submitted under this chapter before October 15, 1980, may be amended, at the option of the State, at any time after such date to include any provision referred to in this subsection.

(c) Energy and materials conservation and recovery feasibility planning and assistance

(1) A State which has a plan approved under this subchapter or which has submitted a plan for such approval shall be eligible for assistance under section 6948(a)(3) of this title if the Administrator determines that under such plan the State will—

- (A) analyze and determine the economic and technical feasibility of facilities and programs to conserve resources which contribute to the waste stream or to recover energy and materials from municipal waste;
- (B) analyze the legal, institutional, and economic impediments to the development of systems and facilities for conservation of energy or materials which contribute to the waste stream or for the recovery of energy and materials from municipal waste and make recommendations to appropriate governmental authorities for overcoming such impediments;
- (C) assist municipalities within the State in developing plans, programs, and projects to conserve resources or recover energy and materials from municipal waste; and

(D) coordinate the resource conservation and recovery planning under subparagraph (C).

(2) The analysis referred to in paragraph (1)(A) shall include—

(A) the evaluation of, and establishment of priorities among, market opportunities for industrial and commercial users of all types (including public utilities and industrial parks) to utilize energy and materials recovered from municipal waste;

(B) comparisons of the relative costs of energy recovered from municipal waste in relation to the costs of energy derived from fossil fuels and other sources;

(C) studies of the transportation and storage problems and other problems associated with the development of energy and materials recovery technology, including curbside source separation;

(D) the evaluation and establishment of priorities among ways of conserving energy or materials which contribute to the waste stream;

(E) comparison of the relative total costs between conserving resources and disposing of or recovering such waste; and

(F) studies of impediments to resource conservation or recovery, including business practices, transportation requirements, or storage difficulties.

Such studies and analyses shall also include studies of other sources of solid waste from which energy and materials may be recovered or minimized.

(d) Size of waste-to-energy facilities

Notwithstanding any of the above requirements, it is the intention of this chapter and the planning process developed pursuant to this chapter that in determining the size of the waste-to-energy facility, adequate provision shall be given to the present and reasonably anticipated future needs of the recycling and resource recovery interest within the area encompassed by the planning process.

(Pub. L. 89-272, title II, §4003, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2814; amended Pub. L. 96-463, §5(b), Oct. 15, 1980, 94 Stat. 2056; Pub. L. 96-482, §§18, 32(d), Oct. 21, 1980, 94 Stat. 2345, 2353; Pub. L. 98-616, title III, §301(b), title V, §502(h), Nov. 8, 1984, 98 Stat. 3267, 3277.)

CODIFICATION

Another section 5(b) of Pub. L. 96-463 amended section 6948 of this title.

AMENDMENTS

1984—Subsecs. (b), (c). Pub. L. 98-616, §502(h), redesignated the subsec. (b) entitled energy and materials conservation and recovery feasibility planning and assistance, as subsec. (c).

Subsec. (d). Pub. L. 98-616, §301(b), added subsec. (d).
1980—Subsec. (a). Pub. L. 96-463, §5(b), and Pub. L. 96-482, §32(d)(2), designated existing provisions as subsec. (a).

Subsec. (a)(2). Pub. L. 96-482, §18(a), substituted reference to sections 6944(b) and 6945(a) of this title for reference to section 6945(c) of this title.

Subsec. (a)(5). Pub. L. 96-482, §§18(b), 32(d)(1), substituted “State or local government” for “local government” and required State plan recognition of right to enter into long-term contracts for operation of re-

source recovery facilities and to secure long-term markets for material and energy recovered from such facilities, and required State plan recognition of right to negotiate long-term contracts and to negotiate and enter into such contracts for conserving materials or energy by reducing the volume of waste.

Subsec. (b). Pub. L. 96-463, §5(b), added subsec. (b) relating to discretionary plan provisions for recycled oil.

Pub. L. 96-482, §32(d)(2), added subsec. (b) relating to energy and materials conservation and recovery feasibility planning and assistance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6944, 6945, 6946, 6947, 6948 of this title.

§ 6944. Criteria for sanitary landfills; sanitary landfills required for all disposal

(a) Criteria for sanitary landfills

Not later than one year after October 21, 1976, after consultation with the States, and after notice and public hearings, the Administrator shall promulgate regulations containing criteria for determining which facilities shall be classified as sanitary landfills and which shall be classified as open dumps within the meaning of this chapter. At a minimum, such criteria shall provide that a facility may be classified as a sanitary landfill and not an open dump only if there is no reasonable probability of adverse effects on health or the environment from disposal of solid waste at such facility. Such regulations may provide for the classification of the types of sanitary landfills.

(b) Disposal required to be in sanitary landfills, etc.

For purposes of complying with section 6943(2)¹ of this title each State plan shall prohibit the establishment of open dumps and contain a requirement that disposal of all solid waste within the State shall be in compliance with such section 6943(2)¹ of this title.

(c) Effective date

The prohibition contained in subsection (b) of this section shall take effect on the date six months after the date of promulgation of regulations under subsection (a) of this section.

(Pub. L. 89-272, title II, §4004, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2815; amended Pub. L. 98-616, title III, §302(b), Nov. 8, 1984, 98 Stat. 3268.)

REFERENCES IN TEXT

Section 6943(2) of this title, referred to in subsec. (b), was redesignated section 6943(a)(2) of this title by Pub. L. 96-463, §5(b), Oct. 15, 1980, 94 Stat. 2056, and Pub. L. 96-482, §32(d)(2), Oct. 21, 1980, 94 Stat. 2353.

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-616 struck out “or on the date of approval of the State plan, whichever is later” at end.

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to

¹ See References in Text note below.

Secretary of Energy, see note set out under section 6903 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6903, 6943, 6945, 6948, 6949a of this title; title 25 section 3902.

§ 6945. Upgrading of open dumps

(a) Closing or upgrading of existing open dumps

Upon promulgation of criteria under section 6907(a)(3) of this title, any solid waste management practice or disposal of solid waste or hazardous waste which constitutes the open dumping of solid waste or hazardous waste is prohibited, except in the case of any practice or disposal of solid waste under a timetable or schedule for compliance established under this section. The prohibition contained in the preceding sentence shall be enforceable under section 6972 of this title against persons engaged in the act of open dumping. For purposes of complying with section 6943(a)(2) and 6943(a)(3) of this title, each State plan shall contain a requirement that all existing disposal facilities or sites for solid waste in such State which are open dumps listed in the inventory under subsection (b) of this section shall comply with such measures as may be promulgated by the Administrator to eliminate health hazards and minimize potential health hazards. Each such plan shall establish, for any entity which demonstrates that it has considered other public or private alternatives for solid waste management to comply with the prohibition on open dumping and is unable to utilize such alternatives to so comply, a timetable or schedule for compliance for such practice or disposal of solid waste which specifies a schedule of remedial measures, including an enforceable sequence of actions or operations, leading to compliance with the prohibition on open dumping of solid waste within a reasonable time (not to exceed 5 years from the date of publication of criteria under section 6907(a)(3) of this title).

(b) Inventory

To assist the States in complying with section 6943(a)(3) of this title, not later than one year after promulgation of regulations under section 6944 of this title, the Administrator, with the cooperation of the Bureau of the Census shall publish an inventory of all disposal facilities or sites in the United States which are open dumps within the meaning of this chapter.

(c) Control of hazardous disposal

(1)(A) Not later than 36 months after November 8, 1984, each State shall adopt and implement a permit program or other system of prior approval and conditions to assure that each solid waste management facility within such State which may receive hazardous household waste or hazardous waste due to the provision of section 6921(d) of this title for small quantity generators (otherwise not subject to the requirement for a permit under section 6925 of this title) will comply with the applicable criteria promulgated under section 6944(a) and 6907(a)(3) of this title.

(B) Not later than eighteen months after the promulgation of revised criteria under sub-

section¹ 6944(a) of this title (as required by section 6949a(c) of this title), each State shall adopt and implement a permit program or other system or² prior approval and conditions, to assure that each solid waste management facility within such State which may receive hazardous household waste or hazardous waste due to the provision of section 6921(d) of this title for small quantity generators (otherwise not subject to the requirement for a permit under section 6925 of this title) will comply with the criteria revised under section 6944(a) of this title.

(C) The Administrator shall determine whether each State has developed an adequate program under this paragraph. The Administrator may make such a determination in conjunction with approval, disapproval or partial approval of a State plan under section 6947 of this title.

(2)(A) In any State that the Administrator determines has not adopted an adequate program for such facilities under paragraph (1)(B) by the date provided in such paragraph, the Administrator may use the authorities available under sections 6927 and 6928 of this title to enforce the prohibition contained in subsection (a) of this section with respect to such facilities.

(B) For purposes of this paragraph, the term "requirement of this subchapter" in section 6928 of this title shall be deemed to include criteria promulgated by the Administrator under sections 6907(a)(3) and 6944(a) of this title, and the term "hazardous wastes" in section 6927 of this title shall be deemed to include solid waste at facilities that may handle hazardous household wastes or hazardous wastes from small quantity generators.

(Pub. L. 89-272, title II, § 4005, as added Pub. L. 94-580, § 2, Oct. 21, 1976, 90 Stat. 2815; amended Pub. L. 96-482, § 19(a), (b), Oct. 21, 1980, 94 Stat. 2345; Pub. L. 98-616, title III, § 302(c), title IV, § 403(c), title V, § 502(c), Nov. 8, 1984, 98 Stat. 3268, 3272, 3276.)

CODIFICATION

Another section 19(b) of Pub. L. 96-482 amended section 6946 of this title.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-616, § 403(c), inserted after first sentence "The prohibition contained in the preceding sentence shall be enforceable under section 6972 of this title against persons engaged in the act of open dumping."

Pub. L. 98-616, § 502(c), inserted a closing parenthesis before the period at end.

Subsec. (c). Pub. L. 98-616, § 302(c), added subsec. (c).

1980—Subsec. (a). Pub. L. 96-482, § 19(a), (b)(1), struck out subsec. (a) which defined "open dump", which is covered in section 6903(14) of this title, redesignated subsec. (c) as (a) and substituted "Upon promulgation of criteria under section 6907(a)(3) of this title, any" for "Any", "section 6943(a)(2) and 6943(a)(3) of this title" for "section 6943(2) of this title", and "criteria under section 6907(a)(3) of this title" for "the inventory under subsection (b) of this section".

Amendment by section 19(b)(1) of Pub. L. 96-482, directing that following reference to "4003(2)", which had been editorially translated as section 6943(2) of this title, the phrase "and 4003(3)" be inserted, was executed by translating "4003(2) and 4003(3)" as section 6943(a)(2)

¹ So in original. Probably should be "section".

² So in original. Probably should be "of".

and 6943(a)(3) of this title, in view of the designation of the existing provisions of section 6943 of this title as subsec. (a) of section 6943 of this title by section 5(b) of Pub. L. 96-463 and also by section 32(d)(2) of Pub. L. 96-482.

Subsec. (b). Pub. L. 96-482, §19(b)(2), inserted introductory phrase "To assist the States in complying with section 6943(a)(3) of this title". Amendment referring to section "4003(3)" was executed by translating "4003(3)" as section 6943(a)(3) of this title, in view of the designation of the existing provisions of section 6943 of this title as subsec. (a) of section 6943 of this title by section 5(b) of Pub. L. 96-463 and also by section 32(d)(2) of Pub. L. 96-482.

Subsec. (c). Pub. L. 96-482, §19(a), redesignated subsec. (c) as (a).

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6943, 6946, 6948, 6949 of this title.

§ 6946. Procedure for development and implementation of State plan

(a) Identification of regions

Within one hundred and eighty days after publication of guidelines under section 6942(a) of this title (relating to identification of regions), the Governor of each State, after consultation with local elected officials, shall promulgate regulations based on such guidelines identifying the boundaries of each area within the State which, as a result of urban concentrations, geographic conditions, markets, and other factors, is appropriate for carrying out regional solid waste management. Such regulations may be modified from time to time (identifying additional or different regions) pursuant to such guidelines.

(b) Identification of State and local agencies and responsibilities

(1) Within one hundred and eighty days after the Governor promulgates regulations under subsection (a) of this section, for purposes of facilitating the development and implementation of a State plan which will meet the minimum requirements of section 6943 of this title, the State, together with appropriate elected officials of general purpose units of local government, shall jointly (A) identify an agency to develop the State plan and identify one or more agencies to implement such plan, and (B) identify which solid waste management activities will, under such State plan, be planned for and carried out by the State and which such management activities will, under such State plan, be planned for and carried out by a regional or local authority or a combination of regional or local and State authorities. If a multi-functional regional agency authorized by State law to conduct solid waste planning and management (the members of which are appointed by the Governor) is in existence on October 21, 1976, the Governor shall identify such authority for

purposes of carrying out within such region clause (A) of this paragraph. Where feasible, designation of the agency for the affected area designated under section 1288 of title 33 shall be considered. A State agency identified under this paragraph shall be established or designated by the Governor of such State. Local or regional agencies identified under this paragraph shall be composed of individuals at least a majority of whom are elected local officials.

(2) If planning and implementation agencies are not identified and designated or established as required under paragraph (1) for any affected area, the governor shall, before the date two hundred and seventy days after promulgation of regulations under subsection (a) of this section, establish or designate a State agency to develop and implement the State plan for such area.

(c) Interstate regions

(1) In the case of any region which, pursuant to the guidelines published by the Administrator under section 6942(a) of this title (relating to identification of regions), would be located in two or more States, the Governors of the respective States, after consultation with local elected officials, shall consult, cooperate, and enter into agreements identifying the boundaries of such region pursuant to subsection (a) of this section.

(2) Within one hundred and eighty days after an interstate region is identified by agreement under paragraph (1), appropriate elected officials of general purpose units of local government within such region shall jointly establish or designate an agency to develop a plan for such region. If no such agency is established or designated within such period by such officials, the Governors of the respective States may, by agreement, establish or designate for such purpose a single representative organization including elected officials of general purpose units of local government within such region.

(3) Implementation of interstate regional solid waste management plans shall be conducted by units of local government for any portion of a region within their jurisdiction, or by multi-jurisdictional agencies or authorities designated in accordance with State law, including those designated by agreement by such units of local government for such purpose. If no such unit, agency, or authority is so designated, the respective Governors shall designate or establish a single interstate agency to implement such plan.

(4) For purposes of this subchapter, so much of an interstate regional plan as is carried out within a particular State shall be deemed part of the State plan for such State.

(Pub. L. 89-272, title II, §4006, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2816; amended Pub. L. 96-482, §19(b), Oct. 21, 1980, 94 Stat. 2345.)

CODIFICATION

Another section 19(b) of Pub. L. 96-482 amended section 6945 of this title.

AMENDMENTS

1980—Subsec. (b)(1)(B). Pub. L. 96-482 substituted "management activities" for "functions" in two places.

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protec-

tion Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6903, 6943, 6944, 6947, 6948 of this title.

§ 6947. Approval of State plan; Federal assistance

(a) Plan approval

The Administrator shall, within six months after a State plan has been submitted for approval, approve or disapprove the plan. The Administrator shall approve a plan if he determines that—

(1) it meets the requirements of paragraphs (1), (2), (3), and (5) of section 6943(a) of this title; and

(2) it contains provision for revision of such plan, after notice and public hearing, whenever the Administrator, by regulation, determines—

(A) that revised regulations respecting minimum requirements have been promulgated under paragraphs (1), (2), (3), and (5) of section 6943(a) of this title with which the State plan is not in compliance;

(B) that information has become available which demonstrates the inadequacy of the plan to effectuate the purposes of this subchapter; or

(C) that such revision is otherwise necessary.

The Administrator shall review approved plans from time to time and if he determines that revision or corrections are necessary to bring such plan into compliance with the minimum requirements promulgated under section 6943 of this title (including new or revised requirements), he shall, after notice and opportunity for public hearing, withdraw his approval of such plan. Such withdrawal of approval shall cease to be effective upon the Administrator's determination that such complies with such minimum requirements.

(b) Eligibility of States for Federal financial assistance

(1) The Administrator shall approve a State application for financial assistance under this subchapter, and make grants to such State, if such State and local and regional authorities within such State have complied with the requirements of section 6946 of this title within the period required under such section and if such State has a State plan which has been approved by the Administrator under this subchapter.

(2) The Administrator shall approve a State application for financial assistance under this subchapter, and make grants to such State, for fiscal years 1978 and 1979 if the Administrator determines that the State plan continues to be eligible for approval under subsection (a) of this section and is being implemented by the State.

(3) Upon withdrawal of approval of a State plan under subsection (a) of this section, the Administrator shall withhold Federal financial and technical assistance under this subchapter

(other than such technical assistance as may be necessary to assist in obtaining the reinstatement of approval) until such time as such approval is reinstated.

(c) Existing activities

Nothing in this subchapter shall be construed to prevent or affect any activities respecting solid waste planning or management which are carried out by State, regional, or local authorities unless such activities are inconsistent with a State plan approved by the Administrator under this subchapter.

(Pub. L. 89-272, title II, § 4007, as added Pub. L. 94-580, § 2, Oct. 21, 1976, 90 Stat. 2817; amended Pub. L. 95-609, § 7(l), Nov. 8, 1978, 92 Stat. 3082; Pub. L. 104-119, § 4(8), Mar. 26, 1996, 110 Stat. 833.)

AMENDMENTS

1996—Subsec. (a)(1), (2)(A). Pub. L. 104-119 substituted "section 6943(a) of this title" for "section 6943 of this title".

1978—Subsec. (c). Pub. L. 95-609 substituted "(c)" for "(C)" in subsection designation.

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6903, 6943, 6945, 6948 of this title.

§ 6948. Federal assistance

(a) Authorization of Federal financial assistance

(1) There are authorized to be appropriated \$30,000,000 for fiscal year 1978, \$40,000,000 for fiscal year 1979, \$20,000,000 for fiscal year 1980, \$15,000,000 for fiscal year 1981, \$20,000,000 for the fiscal year 1982, and \$10,000,000 for each of the fiscal years 1985 through 1988 for purposes of financial assistance to States and local, regional, and interstate authorities for the development and implementation of plans approved by the Administrator under this subchapter (other than the provisions of such plans referred to in section 6943(b)¹ of this title, relating to feasibility planning for municipal waste energy and materials conservation and recovery).

(2)(A) The Administrator is authorized to provide financial assistance to States, counties, municipalities, and intermunicipal agencies and State and local public solid waste management authorities for implementation of programs to provide solid waste management, resource recovery, and resource conservation services and hazardous waste management. Such assistance shall include assistance for facility planning and feasibility studies; expert consultation; surveys and analyses of market needs; marketing of recovered resources; technology assessments; legal expenses; construction feasibility studies; source separation projects; and fiscal or economic investigations or studies; but such assistance shall not include any other element of con-

¹ See References in Text note below.

struction, or any acquisition of land or interest in land, or any subsidy for the price of recovered resources. Agencies assisted under this subsection shall consider existing solid waste management and hazardous waste management services and facilities as well as facilities proposed for construction.

(B) An applicant for financial assistance under this paragraph must agree to comply with respect to the project or program assisted with the applicable requirements of section 6945 of this title and subchapter III of this chapter and apply applicable solid waste management practices, methods, and levels of control consistent with any guidelines published pursuant to section 6907 of this title. Assistance under this paragraph shall be available only for programs certified by the State to be consistent with any applicable State or areawide solid waste management plan or program. Applicants for technical and financial assistance under this section shall not preclude or foreclose consideration of programs for the recovery of recyclable materials through source separation or other resource recovery techniques.

(C) There are authorized to be appropriated \$15,000,000 for each of the fiscal years 1978 and 1979 for purposes of this section. There are authorized to be appropriated \$10,000,000 for fiscal year 1980, \$10,000,000 for fiscal year 1981, \$10,000,000 for fiscal year 1982, and \$10,000,000 for each of the fiscal years 1985 through 1988 for purposes of this paragraph.

(D) There are authorized—

(i) to be made available \$15,000,000 out of funds appropriated for fiscal year 1985, and

(ii) to be appropriated for each of the fiscal years 1986 through² 1988, \$20,000,000³

for grants to States (and where appropriate to regional, local, and interstate agencies) to implement programs requiring compliance by solid waste management facilities with the criteria promulgated under section 6944(a) of this title and section 6907(a)(3) of this title and with the provisions of section 6945 of this title. To the extent practicable, such programs shall require such compliance not later than thirty-six months after November 8, 1984.

(3)(A) There is authorized to be appropriated for the fiscal year beginning October 1, 1981, and for each fiscal year thereafter before October 1, 1986, \$4,000,000 for purposes of making grants to States to carry out section 6943(b)⁴ of this title. No amount may be appropriated for such purposes for the fiscal year beginning on October 1, 1986, or for any fiscal year thereafter.

(B) Assistance provided by the Administrator under this paragraph shall be used only for the purposes specified in section 6943(b)⁴ of this title. Such assistance may not be used for purposes of land acquisition, final facility design, equipment purchase, construction, startup or operation activities.

(C) Where appropriate, any State receiving assistance under this paragraph may make all or any part of such assistance available to municipalities within the State to carry out the activi-

ties specified in section 6943(b)(1)(A) and (B)⁴ of this title.

(b) State allotment

The sums appropriated in any fiscal year under subsection (a)(1) of this section shall be allotted by the Administrator among all States, in the ratio that the population in each State bears to the population in all of the States, except that no State shall receive less than one-half of 1 per centum of the sums so allotted in any fiscal year. No State shall receive any grant under this section during any fiscal year when its expenditures of non-Federal funds for other than non-recurrent expenditures for solid waste management control programs will be less than its expenditures were for such programs during fiscal year 1975, except that such funds may be reduced by an amount equal to their proportionate share of any general reduction of State spending ordered by the Governor or legislature of such State. No State shall receive any grant for solid waste management programs unless the Administrator is satisfied that such grant will be so used as to supplement and, to the extent practicable, increase the level of State, local, regional, or other non-Federal funds that would in the absence of such grant be made available for the maintenance of such programs.

(c) Distribution of Federal financial assistance within the State

The Federal assistance allotted to the States under subsection (b) of this section shall be allocated by the State receiving such funds to State, local, regional, and interstate authorities carrying out planning and implementation of the State plan. Such allocation shall be based upon the responsibilities of the respective parties as determined pursuant to section 6946(b) of this title.

(d) Technical assistance

(1) The Administrator may provide technical assistance to State and local governments for purposes of developing and implementing State plans. Technical assistance respecting resource recovery and conservation may be provided through resource recovery and conservation panels, established in the Environmental Protection Agency under subchapter II of this chapter, to assist the State and local governments with respect to particular resource recovery and conservation projects under consideration and to evaluate their effect on the State plan.

(2) In carrying out this subsection, the Administrator may, upon request, provide technical assistance to States to assist in the removal or modification of legal, institutional, economic, and other impediments to the recycling of used oil. Such impediments may include laws, regulations, and policies, including State procurement policies, which are not favorable to the recycling of used oil.

(3) In carrying out this subsection, the Administrator is authorized to provide technical assistance to States, municipalities, regional authorities, and intermunicipal agencies upon request, to assist in the removal or modification of legal, institutional, and economic impediments which have the effect of impeding the development of systems and facilities to recovery

² So in original. Probably should be "through".

³ So in original. Probably should be followed by a comma.

⁴ See References in Text note below.

energy and materials from municipal waste or to conserve energy or materials which contribute to the waste stream. Such impediments may include—

(A) laws, regulations, and policies, including State and local procurement policies, which are not favorable to resource conservation and recovery policies, systems, and facilities;

(B) impediments to the financing of facilities to conserve or recover energy and materials from municipal waste through the exercise of State and local authority to issue revenue bonds and the use of State and local credit assistance; and

(C) impediments to institutional arrangements necessary to undertake projects for the conservation or recovery of energy and materials from municipal waste, including the creation of special districts, authorities, or corporations where necessary having the power to secure the supply of waste of a project, to conserve resources, to implement the project, and to undertake related activities.

(e) Special communities

(1) The Administrator, in cooperation with State and local officials, shall identify local governments within the United States (A) having a solid waste disposal facility (i) which is owned by the unit of local government, (ii) for which an order has been issued by the State to cease receiving solid waste for treatment, storage, or disposal, and (iii) which is subject to a State-approved end-use recreation plan, and (B) which are located over an aquifer which is the source of drinking water for any person or public water system and which has serious environmental problems resulting from the disposal of such solid waste, including possible methane migration.

(2) There is authorized to be appropriated to the Administrator \$2,500,000 for the fiscal year 1980 and \$1,500,000 for each of the fiscal years 1981 and 1982 to make grants to be used for containment and stabilization of solid waste located at the disposal sites referred to in paragraph (1). Not more than one community in any State shall be eligible for grants under this paragraph and not more than one project in any State shall be eligible for such grants. No unit of local government shall be eligible for grants under this paragraph with respect to any site which exceeds 65 acres in size.

(f) Assistance to States for discretionary program for recycled oil

(1) The Administrator may make grants to States, which have a State plan approved under section 6947 of this title, or which have submitted a State plan for approval under such section, if such plan includes the discretionary provisions described in section 6943(b) of this title. Grants under this subsection shall be for purposes of assisting the State in carrying out such discretionary provisions. No grant under this subsection may be used for construction or for the acquisition of land or equipment.

(2) Grants under this subsection shall be allotted among the States in the same manner as provided in the first sentence of subsection (b) of this section.

(3) No grant may be made under this subsection unless an application therefor is submit-

ted to, and approved by, the Administrator. The application shall be in such form, be submitted in such manner, and contain such information as the Administrator may require.

(4) For purposes of making grants under this subsection, there are authorized to be appropriated \$5,000,000 for fiscal year 1982, \$5,000,000 for fiscal year 1983, and \$5,000,000 for each of the fiscal years 1985 through 1988.

(g) Assistance to municipalities for energy and materials conservation and recovery planning activities

(1) The Administrator is authorized to make grants to municipalities, regional authorities, and intermunicipal agencies to carry out activities described in subparagraphs (A) and (B) of section 6943(b)(1)⁵ of this title. Such grants may be made only pursuant to an application submitted to the Administrator by the municipality which application has been approved by the State and determined by the State to be consistent with any State plan approved or submitted under this subchapter or any other appropriate planning carried out by the State.

(2) There is authorized to be appropriated for the fiscal year beginning October 1, 1981, and for each fiscal year thereafter before October 1, 1986, \$8,000,000 for purposes of making grants to municipalities under this subsection. No amount may be appropriated for such purposes for the fiscal year beginning on October 1, 1986, or for any fiscal year thereafter.

(3) Assistance provided by the Administrator under this subsection shall be used only for the purposes specified in paragraph (1). Such assistance may not be used for purposes of land acquisition, final facility design, equipment purchase, construction, startup or operation activities.

(Pub. L. 89-272, title II, §4008, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2818; amended Pub. L. 96-463, §§5(b), 6, Oct. 15, 1980, 94 Stat. 2057; Pub. L. 96-482, §§20, 31(c), (d), 32(e), (f), Oct. 21, 1980, 94 Stat. 2345, 2352, 2354, 2355; Pub. L. 98-616, §2(d)-(g), (k), title V, §502(d), (e), Nov. 8, 1984, 98 Stat. 3222, 3223, 3276.)

REFERENCES IN TEXT

Section 6943(b) of this title, referred to in subsecs. (a)(1), (3) and (g)(1), was redesignated section 6943(c) of this title by Pub. L. 98-616, title V, §502(h), Nov. 8, 1984, 98 Stat. 3277.

CODIFICATION

Section 2(d)-(g) of Pub. L. 98-616, cited as a credit to this section, appears to contain typographical error in that the text of subsec. (f)(1) of section 2007 of the Solid Waste Disposal Act (as added by section 2(i) of Pub. L. 98-616) is also shown as the text of subsec. "(f)(1)" of such section 2. Subsec. (f) of section 2, as set out in the Conference Report (H. Rept. 98-1133) to accompany H.R. 2867 (which became Pub. L. 98-616) read:

"(f) Section 4008(e)(2) of the Solid Waste Disposal Act (relating to special communities) is amended by striking out 'and \$1,500,000 for each of the fiscal years 1981 and 1982' and substituting ', \$1,500,000 for each of the fiscal years 1981 and 1982, and \$500,000 for each of the fiscal years 1985 through 1988'."

Another section 5(b) of Pub. L. 96-463 amended section 6943 of this title.

⁵ See References in Text note below.

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-616, §2(d), authorized appropriation of \$10,000,000 for each of fiscal years 1985 through 1988.

Subsec. (a)(2)(C). Pub. L. 98-616, §2(e), authorized appropriation of \$10,000,000 for each of fiscal years 1985 through 1988.

Subsec. (a)(2)(D). Pub. L. 98-616, §2(k), added subpar. (D).

Subsec. (d)(2), (3). Pub. L. 98-616, §502(d), redesignated second par. (2), relating to recovery of energy and materials from municipal waste, as par. (3).

Subsec. (f). Pub. L. 98-616, §502(e), redesignated second subsec. (f), relating to assistance to municipalities for energy and materials conservation and recovery planning activities, as subsec. (g).

Subsec. (f)(4). Pub. L. 98-616, §2(g), authorized appropriation of \$5,000,000 for each of fiscal years 1985 through 1988.

Subsec. (g). Pub. L. 98-616, §502(e), redesignated second subsec. (f), relating to assistance to municipalities for energy and materials conservation and recovery planning activities, as subsec. (g).

1980—Subsec. (a)(1). Pub. L. 96-482, §31(c), authorized appropriations of \$20,000,000, \$15,000,000, and \$20,000,000 for fiscal years, 1980, 1981, and 1982, respectively, and substituted provision making appropriation available for financial assistance to States, and local, regional, and interstate authorities for development and implementation of plans approved by the Administrator, except plans referred to in section 6943(b) of this title, relating to feasibility planning for municipal waste energy and materials conservation and recovery for provision making appropriations available to State for development and implementation of State plans.

Subsec. (a)(2)(B). Pub. L. 96-482, §32(e)(1), provided that applicants for technical and financial assistance shall not preclude or foreclose consideration of programs for recovery of recyclable materials through source separation or other resource recovery techniques.

Subsec. (a)(2)(C). Pub. L. 96-482, §31(d), authorized appropriation of \$10,000,000 for each fiscal year 1980, 1981, and 1982.

Subsec. (a)(3). Pub. L. 96-482, §32(e)(2), added par. (3).
Subsec. (d). Pub. L. 96-463, §6, and Pub. L. 96-482, §32(f), designated existing provisions as par. (1).

Subsec. (d)(2). Pub. L. 96-463, §6, added par. (2) authorizing the Administrator to provide technical assistance to States to assist in the removal or modification of legal, institutional, economic, and other impediments to the recycling of used oil.

Pub. L. 96-482, §32(f), added par. (2) authorizing the Administrator to provide technical assistance to States, municipalities, regional authorities, and intermunicipal agencies to assist in the removal or modification of legal, institutional, and economic impediments which have the effect of impeding the development of systems and facilities to recover energy and materials from municipal waste.

Subsec. (e)(1). Pub. L. 96-482, §20(1)–(5), substituted in provision preceding cl. (A) “identify local governments” for “identify communities”, struck out cl. (A), which required the Administrator to identify populations of less than twenty-five thousand persons, redesignated cls. (B) and (C) as (A) and (B), respectively, in cl. (A) as so redesignated, substituted “a solid waste disposal facility (i) which is owned by the unit of local government, (ii) for which an order has been issued by the State to cease receiving solid waste for treatment, storage, or disposal, and (iii) which is subject to a State-approved end-use recreation plan” for “solid waste disposal facilities in which more than 75 per centum of the solid waste of is from areas outside the jurisdiction of the communities” in cl. (B) as so redesignated, substituted “which are located over an aquifer which is the source of drinking water for any person or public water system and which has” for “which have” and inserted “, including possible methane migration” after “such solid waste”.

Subsec. (e)(2). Pub. L. 96-482, §20(6)–(8), substituted appropriations authorization of \$2,500,000; \$1,500,000; and \$1,500,000 for fiscal years 1980, 1981, and 1982, for prior authorization of \$2,500,000 for fiscal years 1978 and 1979, substituted provision for grants for “containment and stabilization of solid waste located at the disposal sites referred to in paragraph (1)” for such grants for “the conversion, improvement, or consolidation of existing solid waste disposal facilities, or for the construction of new solid waste disposal facilities, or for both, within communities identified under paragraph (1)”, and prohibited grants to units of local government when site exceeds 65 acres in size.

Subsec. (e)(3). Pub. L. 96-482, §20(9), struck out par. (3) which required that grants to States be made only when the projects are consistent with applicable and approved State plan and will assist in carrying out such plan.

Subsec. (f). Pub. L. 96-463, §5(b), added subsec. (f) relating to assistance to States for discretionary program for recycled oil.

Pub. L. 96-482, §32(e)(3), added subsec. (f) relating to assistance to municipalities for energy and materials conservation and recovery planning activities.

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6916, 6943 of this title.

§ 6949. Rural communities assistance

(a) In general

The Administrator shall make grants to States to provide assistance to municipalities with a population of five thousand or less, or counties with a population of ten thousand or less or less than twenty persons per square mile and not within a metropolitan area, for solid waste management facilities (including equipment) necessary to meet the requirements of section 6945 of this title or restrictions on open burning or other requirements arising under the Clean Air Act [42 U.S.C. 7401 et seq.] or the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.]. Such assistance shall only be available—

(1) to any municipality or county which could not feasibly be included in a solid waste management system or facility serving an urbanized, multijurisdictional area because of its distance from such systems;

(2) where existing or planned solid waste management services or facilities are unavailable or insufficient to comply with the requirements of section 6945 of this title; and

(3) for systems which are certified by the State to be consistent with any plans or programs established under any State or areawide planning process.

(b) Allotment

The Administrator shall allot the sums appropriated to carry out this section in any fiscal year among the States in accordance with regulations promulgated by him on the basis of the average of the ratio which the population of

rural areas of each State bears to the total population of rural areas of all the States, the ratio which the population of counties in each State having less than twenty persons per square mile bears to the total population of such counties in all the States, and the ratio which the population of such low-density counties in each State having 33 per centum or more of all families with incomes not in excess of 125 per centum of the poverty level bears to the total population of such counties in all the States.

(c) Limit

The amount of any grant under this section shall not exceed 75 per centum of the costs of the project. No assistance under this section shall be available for the acquisition of land or interests in land.

(d) Authorization of appropriations

There are authorized to be appropriated \$25,000,000 for each of the fiscal years 1978 and 1979 to carry out this section. There are authorized to be appropriated \$10,000,000 for the fiscal year 1980 and \$15,000,000 for each of the fiscal years 1981 and 1982 to carry out this section.

(Pub. L. 89-272, title II, §4009, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2819; amended Pub. L. 96-482, §31(e), Oct. 21, 1980, 94 Stat. 2353.)

REFERENCES IN TEXT

The Clean Air Act, referred to in subsec. (a), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§7401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

The Federal Water Pollution Control Act, referred to in subsec. (a), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92-500, §2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§1251 et seq.) of title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short title note set out under section 1251 of title 33 and Tables.

AMENDMENTS

1980—Subsec. (d). Pub. L. 96-482 authorized appropriation of \$10,000,000, \$15,000,000, and \$15,000,000 for fiscal years 1980, 1981, 1982, respectively.

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6916 of this title.

§ 6949a. Adequacy of certain guidelines and criteria

(a) Study

The Administrator shall conduct a study of the extent to which the guidelines and criteria under this chapter (other than guidelines and criteria for facilities to which subchapter III of this chapter applies) which are applicable to solid waste management and disposal facilities, including, but not limited to landfills and sur-

face impoundments, are adequate to protect human health and the environment from ground water contamination. Such study shall include a detailed assessment of the degree to which the criteria under section 6907(a) of this title and the criteria under section 6944 of this title regarding monitoring, prevention of contamination, and remedial action are adequate to protect ground water and shall also include recommendation with respect to any additional enforcement authorities which the Administrator, in consultation with the Attorney General, deems necessary for such purposes.

(b) Report

Not later than thirty-six months after November 8, 1984, the Administrator shall submit a report to the Congress setting forth the results of the study required under this section, together with any recommendations made by the Administrator on the basis of such study.

(c) Revisions of guidelines and criteria

(1) In general

Not later than March 31, 1988, the Administrator shall promulgate revisions of the criteria promulgated under paragraph (1) of section 6944(a) of this title and under section 6907(a)(3) of this title for facilities that may receive hazardous household wastes or hazardous wastes from small quantity generators under section 6921(d) of this title. The criteria shall be those necessary to protect human health and the environment and may take into account the practicable capability of such facilities. At a minimum such revisions for facilities potentially receiving such wastes should require ground water monitoring as necessary to detect contamination, establish criteria for the acceptable location of new or existing facilities, and provide for corrective action as appropriate.

(2) Additional revisions

Subject to paragraph (3), the requirements of the criteria described in paragraph (1) relating to ground water monitoring shall not apply to an owner or operator of a new municipal solid waste landfill unit, an existing municipal solid waste landfill unit, or a lateral expansion of a municipal solid waste landfill unit, that disposes of less than 20 tons of municipal solid waste daily, based on an annual average, if—

(A) there is no evidence of ground water contamination from the municipal solid waste landfill unit or expansion; and

(B) the municipal solid waste landfill unit or expansion serves—

(i) a community that experiences an annual interruption of at least 3 consecutive months of surface transportation that prevents access to a regional waste management facility; or

(ii) a community that has no practicable waste management alternative and the landfill unit is located in an area that annually receives less than or equal to 25 inches of precipitation.

(3) Protection of ground water resources

(A) Monitoring requirement

A State may require ground water monitoring of a solid waste landfill unit that

would otherwise be exempt under paragraph (2) if necessary to protect ground water resources and ensure compliance with a State ground water protection plan, where applicable.

(B) Methods

If a State requires ground water monitoring of a solid waste landfill unit under subparagraph (A), the State may allow the use of a method other than the use of ground water monitoring wells to detect a release of contamination from the unit.

(C) Corrective action

If a State finds a release from a solid waste landfill unit, the State shall require corrective action as appropriate.

(4) No-migration exemption

(A) In general

Ground water monitoring requirements may be suspended by the Director of an approved State for a landfill operator if the operator demonstrates that there is no potential for migration of hazardous constituents from the unit to the uppermost aquifer during the active life of the unit and the post-closure care period.

(B) Certification

A demonstration under subparagraph (A) shall be certified by a qualified ground-water scientist and approved by the Director of an approved State.

(C) Guidance

Not later than 6 months after March 26, 1996, the Administrator shall issue a guidance document to facilitate small community use of the no migration¹ exemption under this paragraph.

(5) Alaska Native villages

Upon certification by the Governor of the State of Alaska that application of the requirements described in paragraph (1) to a solid waste landfill unit of a Native village (as defined in section 1602 of title 43) or unit that is located in or near a small, remote Alaska village would be infeasible, or would not be cost-effective, or is otherwise inappropriate because of the remote location of the unit, the State may exempt the unit from some or all of those requirements. This paragraph shall apply only to solid waste landfill units that dispose of less than 20 tons of municipal solid waste daily, based on an annual average.

(6) Further revisions of guidelines and criteria

Recognizing the unique circumstances of small communities, the Administrator shall, not later than two years after March 26, 1996, promulgate revisions to the guidelines and criteria promulgated under this subchapter to provide additional flexibility to approved States to allow landfills that receive 20 tons or less of municipal solid waste per day, based on an annual average, to use alternative frequencies of daily cover application, frequencies of methane gas monitoring, infiltra-

tion layers for final cover, and means for demonstrating financial assurance: *Provided*, That such alternative requirements take into account climatic and hydrogeologic conditions and are protective of human health and environment.

(Pub. L. 89-272, title II, §4010, as added Pub. L. 98-616, title III, §302(a)(1), Nov. 8, 1984, 98 Stat. 3267; amended Pub. L. 104-119, §3(a), Mar. 26, 1996, 110 Stat. 831.)

AMENDMENTS

1996—Subsec. (c). Pub. L. 104-119 designated existing provisions as par. (1), inserted heading, and added pars. (2) to (6).

REINSTATEMENT OF REGULATORY EXEMPTION

Section 3(b) of Pub. L. 104-119 provided that: "It is the intent of section 4010(c)(2) of the Solid Waste Disposal Act [42 U.S.C. 6949a(c)(2)], as added by subsection (a), to immediately reinstate subpart E of part 258 of title 40, Code of Federal Regulations, as added by the final rule published at 56 Federal Register 50798 on October 9, 1991."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6945 of this title.

SUBCHAPTER V—DUTIES OF SECRETARY OF COMMERCE IN RESOURCE AND RECOVERY

§ 6951. Functions

The Secretary of Commerce shall encourage greater commercialization of proven resource recovery technology by providing—

- (1) accurate specifications for recovered materials;
- (2) stimulation of development of markets for recovered materials;
- (3) promotion of proven technology; and
- (4) a forum for the exchange of technical and economic data relating to resource recovery facilities.

(Pub. L. 89-272, title II, §5001, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2820.)

§ 6952. Development of specifications for secondary materials

The Secretary of Commerce, acting through the National Institute of Standards and Technology, and in conjunction with national standards-setting organizations in resource recovery, shall, after public hearings, and not later than two years after September 1, 1979, publish guidelines for the development of specifications for the classification of materials recovered from waste which were destined for disposal. The specifications shall pertain to the physical and chemical properties and characteristics of such materials with regard to their use in replacing virgin materials in various industrial, commercial, and governmental uses. In establishing such guidelines the Secretary shall also, to the extent feasible, provide such information as may be necessary to assist Federal agencies with procurement of items containing recovered materials. The Secretary shall continue to cooperate with national standards-setting organizations, as may be necessary, to encourage the publication, promulgation and updating of standards

¹ So in original. Probably should be "no-migration".

for recovered materials and for the use of recovered materials in various industrial, commercial, and governmental uses.

(Pub. L. 89-272, title II, §5002, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2820; amended Pub. L. 96-482, §21(a), Oct. 21, 1980, 94 Stat. 2346; Pub. L. 100-418, title V, §5115(c), Aug. 23, 1988, 102 Stat. 1433.)

AMENDMENTS

1988—Pub. L. 100-418 substituted “National Institute of Standards and Technology” for “National Bureau of Standards”.

1980—Pub. L. 96-482 substituted “September 1, 1979” for “October 21, 1976”.

§ 6953. Development of markets for recovered materials

The Secretary of Commerce shall within two years after September 1, 1979, take such actions as may be necessary to—

- (1) identify the geographical location of existing or potential markets for recovered materials;
- (2) identify the economic and technical barriers to the use of recovered materials; and
- (3) encourage the development of new uses for recovered materials.

(Pub. L. 89-272, title II, §5003, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2821; amended Pub. L. 96-482, §21(b), Oct. 21, 1980, 94 Stat. 2346.)

AMENDMENTS

1980—Pub. L. 96-482 substituted “September 1, 1979” for “October 21, 1976”.

§ 6954. Technology promotion

The Secretary of Commerce is authorized to evaluate the commercial feasibility of resource recovery facilities and to publish the results of such evaluation, and to develop a data base for purposes of assisting persons in choosing such a system.

(Pub. L. 89-272, title II, §5004, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2821.)

§ 6955. Marketing policies, establishment; non-discrimination requirement

In establishing any policies which may affect the development of new markets for recovered materials and in making any determination concerning whether or not to impose monitoring or other controls on any marketing or transfer of recovered materials, the Secretary of Commerce may consider whether to establish the same or similar policies or impose the same or similar monitoring or other controls on virgin materials.

(Pub. L. 89-272, title II, §5005, as added Pub. L. 96-482, §21(c)(1), Oct. 21, 1980, 94 Stat. 2346.)

§ 6956. Authorization of appropriations

There are authorized to be appropriated to the Secretary of Commerce \$5,000,000 for each of fiscal years 1980, 1981, and 1982 and \$1,500,000 for each of the fiscal years 1985 through 1988 to carry out the purposes of this subchapter.

(Pub. L. 89-272, title II, §5006, as added Pub. L. 96-482, §31(f)(1), Oct. 21, 1980, 94 Stat. 2353;

amended Pub. L. 98-616, §2(h), Nov. 8, 1984, 98 Stat. 3223.)

AMENDMENTS

1984—Pub. L. 98-616 authorized appropriation of \$1,500,000 for each of fiscal years 1985 through 1988.

SUBCHAPTER VI—FEDERAL RESPONSIBILITIES

§ 6961. Application of Federal, State, and local law to Federal facilities

(a) In general

Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any solid waste management facility or disposal site, or (2) engaged in any activity resulting, or which may result, in the disposal or management of solid waste or hazardous waste shall be subject to, and comply with, all Federal, State, interstate, and local requirements, both substantive and procedural (including any requirement for permits or reporting or any provisions for injunctive relief and such sanctions as may be imposed by a court to enforce such relief), respecting control and abatement of solid waste or hazardous waste disposal and management in the same manner, and to the same extent, as any person is subject to such requirements, including the payment of reasonable service charges. The Federal, State, interstate, and local substantive and procedural requirements referred to in this subsection include, but are not limited to, all administrative orders and all civil and administrative penalties and fines, regardless of whether such penalties or fines are punitive or coercive in nature or are imposed for isolated, intermittent, or continuing violations. The United States hereby expressly waives any immunity otherwise applicable to the United States with respect to any such substantive or procedural requirement (including, but not limited to, any injunctive relief, administrative order or civil or administrative penalty or fine referred to in the preceding sentence, or reasonable service charge). The reasonable service charges referred to in this subsection include, but are not limited to, fees or charges assessed in connection with the processing and issuance of permits, renewal of permits, amendments to permits, review of plans, studies, and other documents, and inspection and monitoring of facilities, as well as any other nondiscriminatory charges that are assessed in connection with a Federal, State, interstate, or local solid waste or hazardous waste regulatory program. Neither the United States, nor any agent, employee, or officer thereof, shall be immune or exempt from any process or sanction of any State or Federal Court with respect to the enforcement of any such injunctive relief. No agent, employee, or officer of the United States shall be personally liable for any civil penalty under any Federal, State, interstate, or local solid or hazardous waste law with respect to any act or omission within the scope of the official duties of the agent, employee, or officer. An agent, employee, or officer of the United States shall be subject to any criminal sanction (including, but not limited to, any fine or impris-

onment) under any Federal or State solid or hazardous waste law, but no department, agency, or instrumentality of the executive, legislative, or judicial branch of the Federal Government shall be subject to any such sanction. The President may exempt any solid waste management facility of any department, agency, or instrumentality in the executive branch from compliance with such a requirement if he determines it to be in the paramount interest of the United States to do so. No such exemption shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation. Any exemption shall be for a period not in excess of one year, but additional exemptions may be granted for periods not to exceed one year upon the President's making a new determination. The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with his reason for granting each such exemption.

(b) Administrative enforcement actions

(1) The Administrator may commence an administrative enforcement action against any department, agency, or instrumentality of the executive, legislative, or judicial branch of the Federal Government pursuant to the enforcement authorities contained in this chapter. The Administrator shall initiate an administrative enforcement action against such a department, agency, or instrumentality in the same manner and under the same circumstances as an action would be initiated against another person. Any voluntary resolution or settlement of such an action shall be set forth in a consent order.

(2) No administrative order issued to such a department, agency, or instrumentality shall become final until such department, agency, or instrumentality has had the opportunity to confer with the Administrator.

(c) Limitation on State use of funds collected from Federal Government

Unless a State law in effect on October 6, 1992, or a State constitution requires the funds to be used in a different manner, all funds collected by a State from the Federal Government from penalties and fines imposed for violation of any substantive or procedural requirement referred to in subsection (a) of this section shall be used by the State only for projects designed to improve or protect the environment or to defray the costs of environmental protection or enforcement.

(Pub. L. 89-272, title II, §6001, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2821; amended Pub. L. 95-609, §7(m), Nov. 8, 1978, 92 Stat. 3082; Pub. L. 102-386, title I, §102(a), (b), Oct. 6, 1992, 106 Stat. 1505, 1506.)

AMENDMENTS

1992—Pub. L. 102-386 designated existing provisions as subsec. (a), inserted heading, inserted in first sentence “and management” before “in the same manner”, inserted second to fourth, sixth, and seventh sentences specifying Federal, State, interstate, and local substantive and procedural requirements, waiving sov-

ereign immunity, determining reasonable service charges, and providing no agent, employee, or officer of the United States be personally liable for a civil penalty for an act or omission within the scope of official duties but be subject to criminal sanction, with no department, agency, or instrumentality of the executive, legislative, or judicial branch subject to such sanction, and added subsecs. (b) and (c).

1978—Pub. L. 95-609 inserted “or management” after “disposal” in cl. (2).

EFFECTIVE DATE OF 1992 AMENDMENT

Section 102(c) of Pub. L. 102-386 provided that:

“(1) IN GENERAL.—Except as otherwise provided in paragraphs (2) and (3), the amendments made by subsection (a) [amending this section] shall take effect upon the date of the enactment of this Act [Oct. 6, 1992].

“(2) DELAYED EFFECTIVE DATE FOR CERTAIN MIXED WASTE.—Until the date that is 3 years after the date of the enactment of this Act, the waiver of sovereign immunity contained in section 6001(a) of the Solid Waste Disposal Act [subsec. (a) of this section] with respect to civil, criminal, and administrative penalties and fines (as added by the amendments made by subsection (a)) shall not apply to departments, agencies, and instrumentalities of the executive branch of the Federal Government for violations of section 3004(j) of the Solid Waste Disposal Act [42 U.S.C. 6924(j)] involving storage of mixed waste that is not subject to an existing agreement, permit, or administrative or judicial order, so long as such waste is managed in compliance with all other applicable requirements.

“(3) EFFECTIVE DATE FOR CERTAIN MIXED WASTE.—(A) Except as provided in subparagraph (B), after the date that is 3 years after the date of the enactment of this Act, the waiver of sovereign immunity contained in section 6001(a) of the Solid Waste Disposal Act with respect to civil, criminal, and administrative penalties and fines (as added by the amendments made by subsection (a)) shall apply to departments, agencies, and instrumentalities of the executive branch of the Federal Government for violations of section 3004(j) of the Solid Waste Disposal Act involving storage of mixed waste.

“(B) With respect to the Department of Energy, the waiver of sovereign immunity referred to in subparagraph (A) shall not apply after the date that is 3 years after the date of the enactment of this Act for violations of section 3004(j) of such Act involving storage of mixed waste, so long as the Department of Energy is in compliance with both—

“(i) a plan that has been submitted and approved pursuant to section 3021(b) of the Solid Waste Disposal Act [42 U.S.C. 6939c(b)] and which is in effect; and

“(ii) an order requiring compliance with such plan which has been issued pursuant to such section 3021(b) and which is in effect.

“(4) APPLICATION OF WAIVER TO AGREEMENTS AND ORDERS.—The waiver of sovereign immunity contained in section 6001(a) of the Solid Waste Disposal Act (as added by the amendments made by subsection (a)) shall take effect on the date of the enactment of this Act with respect to any agreement, permit, or administrative or judicial order existing on such date of enactment (and any subsequent modifications to such an agreement, permit, or order), including, without limitation, any provision of an agreement, permit, or order that addresses compliance with section 3004(j) of such Act with respect to mixed waste.

“(5) AGREEMENT OR ORDER.—Except as provided in paragraph (4), nothing in this Act [see Short Title of 1992 Amendment note set out under section 6901 of this title] shall be construed to alter, modify, or change in any manner any agreement, permit, or administrative or judicial order, including, without limitation, any provision of an agreement, permit, or order—

“(i) that addresses compliance with section 3004(j) of the Solid Waste Disposal Act with respect to mixed waste;

“(ii) that is in effect on the date of enactment of this Act; and

“(iii) to which a department, agency, or instrumentality of the executive branch of the Federal Government is a party.”

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (a) of this section requiring the President to report annually to Congress, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 8th item on page 20 of House Document No. 103-7.

EXECUTIVE ORDER NO. 12780

Ex. Ord. No. 12780, Oct. 31, 1991, 56 F.R. 56289, which required Federal agencies to promote cost-effective waste reduction and recycling of reusable materials and established a Council on Federal Recycling and Procurement Policy, was revoked by Ex. Ord. No. 12873, §901, Oct. 20, 1993, 58 F.R. 54911, formerly set out below.

EXECUTIVE ORDER NO. 12873

Ex. Ord. No. 12873, Oct. 20, 1993, 58 F.R. 54911, as amended by Ex. Ord. No. 12995, Mar. 25, 1996, 61 F.R. 13645, which directed Executive agencies to incorporate waste prevention and recycling in daily operations and work and to acquire and use environmentally preferable products and services and which created a Federal Environmental Executive and established high-level Environmental Executive positions within each agency, was revoked by Ex. Ord. No. 13101, §901, Sept. 14, 1998, 63 F.R. 49651, set out below.

EX. ORD. NO. 13101. GREENING THE GOVERNMENT THROUGH WASTE PREVENTION, RECYCLING, AND FEDERAL ACQUISITION

Ex. Ord. No. 13101, Sept. 14, 1998, 63 F.R. 49643, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Solid Waste Disposal Act, Public Law 89-272, 79 Stat. 997, as amended by the Resource Conservation and Recovery Act (RCRA), Public Law 94-580, 90 Stat. 2795, as amended (42 U.S.C. 6901-6907), section 301 of title 3, United States Code, and in order to improve the Federal Government's use of recycled products and environmentally preferable products and services, it is hereby ordered as follows:

PART 1—PREAMBLE

SECTION 101. Consistent with the demands of efficiency and cost effectiveness, the head of each executive agency shall incorporate waste prevention and recycling in the agency's daily operations and work to increase and expand markets for recovered materials through greater Federal Government preference and demand for such products. It is the national policy to prefer pollution prevention, whenever feasible. Pollution that cannot be prevented should be recycled; pollution that cannot be prevented or recycled should be treated in an environmentally safe manner. Disposal should be employed only as a last resort.

SEC. 102. Consistent with policies established by the Office of Federal Procurement Policy (OFPP) Policy Letter 92-4, agencies shall comply with executive branch policies for the acquisition and use of environmentally preferable products and services and implement cost-effective procurement preference programs favoring the purchase of these products and services.

SEC. 103. This order creates a Steering Committee, a Federal Environmental Executive (FEE), and a Task Force, and establishes Agency Environmental Executive (AEE) positions within each agency, to be responsible for ensuring the implementation of this order. The FEE, AEEs, and members of the Steering Committee and Task Force shall be full-time Federal Government employees.

PART 2—DEFINITIONS

For purposes of this order:

SEC. 201. “Environmentally preferable” means products or services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product or service.

SEC. 202. “Executive agency” or “agency” means an executive agency as defined in 5 U.S.C. 105. For the purpose of this order, military departments, as defined in 5 U.S.C. 102, are covered under the auspices of the Department of Defense.

SEC. 203. “Postconsumer material” means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. “Postconsumer material” is a part of the broader category of “recovered material.”

SEC. 204. “Acquisition” means the acquiring by contract with appropriated funds for supplies or services (including construction) by and for the use of the Federal Government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated, and evaluated. Acquisition begins at the point when agency needs are established and includes the description of requirements to satisfy agency needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling agency needs by contract.

SEC. 205. “Recovered materials” means waste materials and by-products that have been recovered or diverted from solid waste, but such term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process (42 U.S.C. 6903(19)).

SEC. 206. “Recyclability” means the ability of a product or material to be recovered from, or otherwise diverted from, the solid waste stream for the purpose of recycling.

SEC. 207. “Recycling” means the series of activities, including collection, separation, and processing, by which products or other materials are recovered from the solid waste stream for use in the form of raw materials in the manufacture of new products other than fuel for producing heat or power by combustion.

SEC. 208. “Waste prevention” means any change in the design, manufacturing, purchase, or use of materials or products (including packaging) to reduce their amount or toxicity before they are discarded. Waste prevention also refers to the reuse of products or materials.

SEC. 209. “Waste reduction” means preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and environmentally preferable products.

SEC. 210. “Life cycle cost” means the amortized annual cost of a product, including capital costs, installation costs, operating costs, maintenance costs, and disposal costs discounted over the lifetime of the product.

SEC. 211. “Life cycle assessment” means the comprehensive examination of a product's environmental and economic aspects and potential impacts throughout its lifetime, including raw material extraction, transportation, manufacturing, use, and disposal.

SEC. 212. “Pollution prevention” means “source reduction” as defined in the Pollution Prevention Act of 1990 (42 U.S.C. 13102), and other practices that reduce or eliminate the creation of pollutants through: (a) increased efficiency in the use of raw materials, energy, water, or other resources; or (b) protection of natural resources by conservation.

SEC. 213. “Biobased product” means a commercial or industrial product (other than food or feed) that utilizes biological products or renewable domestic agricultural (plant, animal, and marine) or forestry materials.

SEC. 214. "Major procuring agencies" shall include any executive agency that procures over \$50 million per year of goods and services.

PART 3—THE ROLES AND DUTIES OF THE STEERING COMMITTEE, FEDERAL ENVIRONMENTAL EXECUTIVE, TASK FORCE, AND AGENCY ENVIRONMENTAL EXECUTIVES

SEC. 301. Committees, Executives, and Task Force. (a) Steering Committee. There is hereby established a Steering Committee on Greening the Government through Waste Prevention and Recycling ("Steering Committee"). The Steering Committee shall be composed of the Chair of the Council on Environmental Quality (CEQ), the Federal Environmental Executive (FEE), and the Administrator for Federal Procurement Policy (OFPP). The Steering Committee, which shall be chaired by the Chair of the CEQ, is directed to charter a Task Force to facilitate implementation of this order, and shall provide the Task Force with policy direction in such implementation.

(b) Federal Environmental Executive. A Federal Environmental Executive, Environmental Protection Agency, shall be designated by the President. The FEE shall chair the Task Force described in subsection (c), take all actions necessary to ensure that the agencies comply with the requirements of this order, and generate a biennial report to the President.

(c) Task Force. The Steering Committee shall charter a Task Force on Greening the Government through Waste Prevention and Recycling ("Task Force"), which shall be chaired by the FEE and composed of staff from the major procuring agencies. The Steering Committee, in consultation with the agencies, shall determine the necessary staffing and resources for the Task Force. The major procuring agencies shall provide, to the extent practicable and permitted by law, resources and support to the Task Force and the FEE, upon request from the Steering Committee. The Task Force shall have the duty of assisting the FEE and the agencies in implementing this order, subject to policy direction provided by the Steering Committee. The Task Force shall report through the FEE to the Chair of the Steering Committee.

(d) Agency Environmental Executives (AEEs). Within 90 days after the date of this order, the head of each major procuring agency shall designate an AEE from among his or her staff, who serves at a level no lower than the Assistant Secretary level or equivalent, and shall notify the Chair of CEQ and the FEE of such designation.

SEC. 302. Duties. (a) The Federal Environmental Executive. The FEE, working through the Task Force, and in consultation with the AEEs, shall:

(1) Develop a Government-wide Waste Prevention and Recycling Strategic Plan ("Strategic Plan") to further implement this order. The Strategic Plan should be initially developed within 180 days of the date of this order and revised as necessary thereafter. The Strategic Plan should include, but is not limited to, the following elements:

(a) direction and initiatives for acquisition of recycled and recyclable products and environmentally preferable products and services;

(b) development of affirmative procurement programs;

(c) review and revision of standards and product specifications;

(d) assessment and evaluation of compliance;

(e) reporting requirements;

(f) outreach programs to promote adoption of practices endorsed in this order; and

(g) development and implementation of new technologies that are of environmental significance.

(2) Prepare a biennial report to the President on the actions taken by the agencies to comply with this order. The report also may incorporate information from existing agency reports regarding Government-wide progress in implementing the following Executive Orders: 12843, Procurement Requirements and Policies

for Federal Agencies for Ozone Depleting Substances [former 42 U.S.C. 76711 note]; 13031, Federal Alternative Fueled Vehicle Leadership [former 42 U.S.C. 13212 note]; 12845, Requiring Agencies to Purchase Energy Efficient Computer Equipment [42 U.S.C. 8262g note]; 12856, Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements [former 42 U.S.C. 11001 note]; 12902, Energy Efficiency and Water Conservation at Federal Facilities [42 U.S.C. 6201 note]; and 12969, Federal Acquisition and Community Right-to-Know [former 41 U.S.C. 401 note].

(3) In coordination with the Office of Federal Procurement Policy, the Environmental Protection Agency (EPA), the General Services Administration (GSA), and the Department of Agriculture (USDA), convene a group of acquisition/procurement managers and environmental State, and local government managers to work with State and local governments to improve the Federal, State, and local governments' use of recycled products and environmentally preferable products and services.

(4) Coordinate appropriate Government-wide education and training programs for agencies.

(5) Establish committees and work groups, as needed, to identify, assess, and recommend actions to be taken to fulfill the goals, responsibilities, and initiatives of the FEE. As these committees and work groups are created, agencies are requested to designate appropriate personnel in the areas of procurement and acquisition, standards and specifications, electronic commerce, facilities management, pollution prevention, waste prevention, recycling, and others as needed to staff and work on these initiatives. An initial group shall be established to develop recommendations for tracking and reporting requirements, taking into account the costs and benefits of such tracking and reporting. The Steering Committee shall consult with the AEEs before approving these recommendations.

(b) Agency Environmental Executives. The AEEs shall:

(1) translate the Government-wide Strategic Plan into specific agency and service plans;

(2) implement the specific agency and service plans;

(3) report to the FEE on the progress of plan implementation;

(4) work with the FEE and the Task Force in furthering implementation of this order; and

(5) track agencies' purchases of EPA-designated guideline items and report agencies' purchases of such guideline items to the FEE per the recommendations developed in subsection 302(a)(5) of this order. Agency acquisition and procurement personnel shall justify in writing to the file and to the AEE the rationale for not purchasing such items, above the micropurchase threshold (as set out in the Office of Federal Procurement Policy Act at 41 U.S.C. 428), and submit a plan and timetable for increasing agency purchases of the designated item(s).

(6) one year after a product is placed on the USDA Biobased Products List, estimate agencies' purchases of products on the list and report agencies' estimated purchases of such products to the Secretary of Agriculture.

PART 4—ACQUISITION PLANNING, AFFIRMATIVE PROCUREMENT PROGRAMS, AND FEDERAL FACILITY COMPLIANCE

SEC. 401. Acquisition Planning. In developing plans, drawings, work statements, specifications, or other product descriptions, agencies shall consider, as appropriate, a broad range of factors including: elimination of virgin material requirements; use of biobased products; use of recovered materials; reuse of product; life cycle cost; recyclability; use of environmentally preferable products; waste prevention (including toxicity reduction or elimination); and ultimate disposal. These factors should be considered in acquisition planning for all procurement and in the evaluation and award of contracts, as appropriate. Program and acquisition managers should take an active role in these activities.

SEC. 402. Affirmative Procurement Programs. (a) The head of each executive agency shall develop and implement affirmative procurement programs in accordance with section 6002 of RCRA (42 U.S.C. 6962) and this order and consider use of the procurement tools and methods described in [former] 7 U.S.C. 5909. Agencies shall ensure that responsibilities for preparation, implementation, and monitoring of affirmative procurement programs are shared between the program personnel and acquisition and procurement personnel. For the purposes of all purchases made pursuant to this order, EPA, in consultation with such other executive agencies as appropriate, shall endeavor to maximize environmental benefits, consistent with price, performance, and availability considerations, and constraints imposed by law, and shall adjust solicitation guidelines as necessary in order to accomplish this goal.

(b) Agencies shall establish affirmative procurement programs for all EPA-designated guideline items purchased by their agency. For newly designated items, agencies shall revise their internal programs within 1 year from the date the EPA designated the new items.

(c) Exclusive of the biobased products described in section 504, for the EPA-designated guideline items, which are contained in 40 CFR part 247, and for all future designated guideline items, agencies shall ensure that their affirmative procurement programs require 100 percent of their purchases of products to meet or exceed the EPA guideline unless written justification is provided that a product is not available competitively within a reasonable time frame, does not meet appropriate performance standards, or is only available at an unreasonable price. Written justification is not required for purchases below the micropurchase threshold. For micropurchases, agencies shall provide guidance regarding purchase of EPA-designated guideline items. This guidance should encourage consideration of aggregating purchases when this method would promote economy and efficiency.

(d) Within 90 days after the date of this order, the head of each executive agency that has not implemented an affirmative procurement program shall ensure that the affirmative procurement program has been established and is being implemented to the maximum extent practicable.

SEC. 403. Federal Facility Compliance. (a) Within 6 months of the date of this order, the Administrator of the EPA shall, in consultation with the Federal Environmental Executive, prepare guidance for use in determining Federal facility compliance with section 6002 of RCRA [42 U.S.C. 6962] and the related requirements of this order.

(b) EPA inspections of Federal facilities conducted pursuant to RCRA and the Federal Facility Compliance Act [of 1992] [see Short Title of 1992 Amendment note set out under section 6901 of this title] and EPA "multi-media" inspections carried out at Federal facilities will include, where appropriate, evaluation of facility compliance with section 6002 of RCRA and any implementing guidance.

(c) Where inspections of Federal facilities are carried out by authorized States pursuant to RCRA and the Federal Facility Compliance Act, the Administrator of the EPA will encourage those States to include evaluation of facility compliance with section 6002 of RCRA in light of EPA guidance prepared pursuant to subsection (a), where appropriate, similar to inspections performed by the EPA. The EPA may provide information and technical assistance to the States to enable them to include such considerations in their inspection.

(d) The EPA shall report annually to the Federal Environmental Executive on the results of inspections performed by the EPA to determine Federal facility compliance with section 6002 of RCRA not later than February 1st for those inspections conducted during the previous fiscal year.

PART 5—STANDARDS, SPECIFICATIONS, AND DESIGNATION OF ITEMS

SEC. 501. Specifications, Product Descriptions, and Standards. When developing, reviewing, or revising

Federal and military specifications, product descriptions (including commercial item descriptions), and standards, executive agencies shall consider recovered materials and any environmentally preferable purchasing criteria developed by the EPA, and ensure the criteria are complied with in developing or revising standards. Agencies shall report annually to the FEE on their compliance with this section for incorporation into the biennial report to the President referred to in section 302(a)(2) of this order. (a) If an inconsistency with section 6002 of RCRA [42 U.S.C. 6962] or this order is identified in a specification, standard, or product description, the FEE shall request that the Environmental Executive of the pertinent agency advise the FEE as to why the specification cannot be revised or submit a plan for revising it within 60 days.

(b) If an agency is able to revise an inconsistent specification but cannot do so within 60 days, it is the responsibility of that AEE to monitor and implement the plan for revising it.

SEC. 502. Designation of Items that Contain Recovered Materials. In order to expedite the process of designating items that are or can be made with recovered materials, the EPA shall use the following process for designating these items in accordance with section 6002(e) of RCRA. (a) The EPA shall designate items that are or can be made with recovered material, by promulgating amendments to the Comprehensive Procurement Guideline (CPG). The CPG shall be updated every 2 years or as appropriate after an opportunity for public comment.

(b) Concurrent with the issuance of the CPG, the EPA shall publish for comment in the Federal Register Recovered Materials Advisory Notices that present the range of recovered materials content levels within which the designated items are currently available. These levels shall be updated periodically, after opportunity for public comment, to reflect changes in market conditions.

(c) Once items containing recovered materials have been designated by the EPA in the CPG, agencies shall modify their affirmative procurement programs to require that, to the maximum extent practicable, their purchases of products meet or exceed the EPA guidelines unless written justification is provided that a product is not available competitively, not available within a reasonable time frame, does not meet appropriate performance standards, or is only available at an unreasonable price.

SEC. 503. Guidance on Acquisition of Environmentally Preferable Products and Services. (a) The EPA shall develop guidance within 90 days from the date of this order to address environmentally preferable purchasing. The guidance may be based on the EPA's September 1995 Proposed Guidance on the Acquisition of Environmentally Preferable Products and Services and comments received thereon. The guidance should be designed for Government-wide use and targeted towards products and services that have the most effect. The guidance may also address the issues of use of the technical expertise of nongovernmental entities and tools such as life cycle assessment in decisions on environmentally preferable purchasing. The EPA shall update this guidance every 2 years, or as appropriate.

(b) Agencies are encouraged to immediately test and evaluate the principles and concepts contained in the EPA's Guidance on the Acquisition of Environmentally Preferable Products and Services through pilot projects to provide practical information to the EPA for further updating of the guidance. Specifically:

(1) These pilot projects shall be focused around those product and service categories, including printing, that have wide use within the Federal Government. Priorities regarding which product and service categories to pilot shall be developed by the individual agencies and the EPA, in consultation with the OFPP, the FEE, and the appropriate agency procurement executives. Any policy disagreements shall be resolved by the Steering Committee.

(2) Agencies are encouraged to use all of the options available to them to determine the environmentally

preferable attributes of products and services in their pilot and demonstration projects, including the use of technical expertise of nongovernmental entities such as labeling, certification, or standards-developing organizations, as well as using the expertise of the National Institute of Standards and Technology.

(3) Upon request and to the extent practicable, the EPA shall assist executive agencies in designing, implementing, and documenting the results of these pilot and demonstration projects.

(4) The EPA, in coordination with other executive agencies, shall develop a database of information about these projects, including, but not limited to, the number and status of pilot projects, examples of agencies' policy directives, revisions to specifications, solicitation procedures, and grant/contract policies that facilitate adoption of environmentally preferable purchasing practices, to be integrated on a commonly available electronic medium (e.g., Internet Web site). These data are to be reported to the FEE.

(c) Executive agencies shall use the principles and concepts in the EPA Guidance on Acquisition of Environmentally Preferable Products and Services, in addition to the lessons from the pilot and demonstration projects, to the maximum extent practicable, in identifying and purchasing environmentally preferable products and services and shall modify their procurement programs as appropriate.

SEC. 504. Designation of Biobased Items by the USDA. The USDA Biobased Products Coordination Council shall, in consultation with the FEE, issue a Biobased Products List. (a) The Biobased Products List shall be published in the Federal Register by the USDA within 180 days after the date of this order and shall be updated biannually after publication to include additional items.

(b) Once the Biobased Products List has been published, agencies are encouraged to modify their affirmative procurement program to give consideration to those products.

SEC. 505. Minimum Content Standard for Printing and Writing Paper. Executive agency heads shall ensure that their agencies meet or exceed the following minimum materials content standards when purchasing or causing the purchase of printing and writing paper: (a) For high speed copier paper, offset paper, forms bond, computer printout paper, carbonless paper, file folders, white wove envelopes, writing and office paper, book paper, cotton fiber paper, and cover stock, the minimum content standard shall be no less than 30 percent postconsumer materials beginning December 31, 1998. If paper containing 30 percent postconsumer material is not reasonably available, does not meet reasonable performance requirements, or is only available at an unreasonable price, then the agency shall purchase paper containing no less than 20 percent postconsumer material. The Steering Committee, in consultation with the AEEs, may revise these levels if necessary.

(b) As an alternative to meeting the standards in sections [sic] 505(a), for all printing and writing papers, the minimum content standard shall be no less than 50 percent recovered materials that are a waste material byproduct of a finished product other than a paper or textile product that would otherwise be disposed of in a landfill, as determined by the State in which the facility is located.

(c) Effective January 1, 1999, no executive branch agency shall purchase, sell, or arrange for the purchase of, printing and writing paper that fails to meet the minimum requirements of this section.

SEC. 506. Revision of Brightness Specifications and Standards. The GSA and other executive agencies are directed to identify, evaluate, and revise or eliminate any standards or specifications unrelated to performance that present barriers to the purchase of paper or paper products made by production processes that minimize emissions of harmful byproducts. This evaluation shall include a review of unnecessary brightness and stock clause provisions, such as lignin content and chemical pulp requirements. The GSA shall complete

the review and revision of such specifications within 6 months after the date of this order, and shall consult closely with the Joint Committee on Printing during such process. The GSA shall also compile any information or market studies that may be necessary to accomplish the objectives of this provision.

SEC. 507. Procurement of Re-refined Lubricating Oil and Retread Tires. (a) Agencies shall implement the EPA procurement guidelines for re-refined lubricating oil and retread tires. Fleet and commodity managers shall take immediate steps, as appropriate, to procure these items in accordance with section 6002 of RCRA [42 U.S.C. 6962]. This provision does not preclude the acquisition of biobased (e.g., vegetable) oils.

(b) The FEE shall work to educate executive agencies about the new Department of Defense Cooperative Tire Qualification Program, including the Cooperative Approval Tire List and Cooperative Plant Qualification Program, as they apply to retread tires.

PART 6—AGENCY GOALS AND REPORTING REQUIREMENTS

SEC. 601. Agency Goals. (a)(1) Each agency shall establish either a goal for solid waste prevention and a goal for recycling or a goal for solid waste diversion to be achieved by January 1, 2000. Each agency shall further ensure that the established goals include long-range goals to be achieved by the years 2005 and 2010. These goals shall be submitted to the FEE within 180 days after the date of this order. (2) In addition to white paper, mixed paper/cardboard, aluminum, plastic, and glass, agencies should incorporate into their recycling programs efforts to recycle, reuse, or refurbish pallets and collect toner cartridges for remanufacturing. Agencies should also include programs to reduce or recycle, as appropriate, batteries, scrap metal, and fluorescent lamps and ballasts.

(b) Agencies shall set goals to increase the procurement of products that are made with recovered materials, in order to maximize the number of recycled products purchased, relative to non-recycled alternatives.

(c) Each agency shall set a goal for increasing the use of environmentally preferable products and services for those products and services for which the agency has completed a pilot program.

(d) Agencies are encouraged to incorporate into their Government Performance [and] Results Act [of 1993] [see Short Title of 1993 Amendment note set out under section 1101 of Title 31, Money and Finance] annual performance plans the goals listed in subsections (a), (b), and (c) above, starting with the submittal to the Office of Management and Budget of the plan accompanying the FY 2001 budget.

(e) Progress on attaining these goals should be reported by the agencies to the FEE for the biennial report specified in section 302(a)(2) of this order.

PART 7—APPLICABILITY AND OTHER REQUIREMENTS

SEC. 701. Contractor Applicability. Contracts that provide for contractor operation of a Government-owned or -leased facility and/or contracts that provide for contractor or other support services at Government-owned or -operated facilities awarded by executive agencies after the date of this order, shall include provisions that obligate the contractor to comply with the requirements of this order within the scope of its operations.

SEC. 702. Real Property Acquisition and Management. Within 90 days after the date of this order, and to the extent permitted by law and where economically feasible, executive agencies shall ensure compliance with the provisions of this order in the acquisition and management of Federally owned and leased space. The GSA and other executive agencies shall also include environmental and recycling provisions in the acquisition and management of all leased space and in the construction of new Federal buildings.

SEC. 703. Retention of Funds. (a) The Administrator of General Services shall continue with the program that retains for the agencies the proceeds from the sale of materials recovered through recycling or waste prevention programs and specifying the eligibility requirements for the materials being recycled.

(b) Agencies in non-GSA managed facilities, to the extent permitted by law, should develop a plan to retain the proceeds from the sale of materials recovered through recycling or waste prevention programs.

SEC. 704. Model Facility Programs. Each executive agency shall establish a model demonstration program incorporating some or all of the following elements as appropriate. Agencies are encouraged to demonstrate and test new and innovative approaches such as incorporating environmentally preferable and bio-based products; increasing the quantity and types of products containing recovered materials; expanding collection programs; implementing source reduction programs; composting organic materials when feasible; and exploring public/private partnerships to develop markets for recovered materials.

SEC. 705. Recycling Programs. (a)(1) Each executive agency that has not already done so shall initiate a program to promote cost-effective waste prevention and recycling of reusable materials in all of its facilities. The recycling programs implemented pursuant to this section must be compatible with applicable State and local recycling requirements.

(2) Agencies shall designate a recycling coordinator for each facility or installation. The recycling coordinator shall implement or maintain waste prevention and recycling programs in the agencies' action plans.

(b) Executive agencies shall also consider cooperative ventures with State and local governments to promote recycling and waste reduction in the community.

SEC. 706. Review of Implementation. The President's Council on Integrity and Efficiency shall request that the Inspectors General periodically review agencies' implementation of this order.

PART 8—AWARENESS

SEC. 801. Training. (a) Within 180 days of the date of this order, the FEE and OFPP should evaluate the training courses provided by the Federal Acquisition Institute and the Defense Acquisition University and recommend any appropriate curriculum changes to ensure that procurement officials are aware of the requirements of this order.

(b) Executive agencies shall provide training to program management and requesting activities as needed to ensure awareness of the requirements of this order.

SEC. 802. Internal Agency Awards Programs. Each agency shall develop an internal agency-wide awards program, as appropriate, to reward its most innovative environmental programs. Among others, winners of agency-wide awards will be eligible for the White House Awards Program.

SEC. 803. White House Awards Program. A Government-wide award will be presented annually by the White House to the best, most innovative programs implementing the objectives of this order to give greater visibility to these efforts so that they can be incorporated Government-wide. The White House Awards Program will be administered jointly by the FEE and the CEQ.

PART 9—REVOCATION, LIMITATION, AND IMPLEMENTATION

SEC. 901. Executive Order 12873 of October 20, 1993, is hereby revoked.

SEC. 902. This order is intended only to improve the internal management of the executive branch and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any other person.

SEC. 903. The policies and direction expressed in the EPA guidance to be developed pursuant to section 503

of this order shall be implemented and incorporated in the Federal Acquisition Regulation within 180 days after issuance of the guidance.

WILLIAM J. CLINTON.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6939c of this title.

§ 6962. Federal procurement

(a) Application of section

Except as provided in subsection (b) of this section, a procuring agency shall comply with the requirements set forth in this section and any regulations issued under this section, with respect to any purchase or acquisition of a procurement item where the purchase price of the item exceeds \$10,000 or where the quantity of such items or of functionally equivalent items purchased or acquired in the course of the preceding fiscal year was \$10,000 or more.

(b) Procurement subject to other law

Any procurement, by any procuring agency, which is subject to regulations of the Administrator under section 6964 of this title (as promulgated before October 21, 1976, under comparable provisions of prior law) shall not be subject to the requirements of this section to the extent that such requirements are inconsistent with such regulations.

(c) Requirements

(1) After the date specified in applicable guidelines prepared pursuant to subsection (e) of this section, each procuring agency which procures any items designated in such guidelines shall procure such items composed of the highest percentage of recovered materials practicable (and in the case of paper, the highest percentage of the postconsumer recovered materials referred to in subsection (h)(1) of this section practicable), consistent with maintaining a satisfactory level of competition, considering such guidelines. The decision not to procure such items shall be based on a determination that such procurement items—

(A) are not reasonably available within a reasonable period of time;

(B) fail to meet the performance standards set forth in the applicable specifications or fail to meet the reasonable performance standards of the procuring agencies; or

(C) are only available at an unreasonable price. Any determination under subparagraph (B) shall be made on the basis of the guidelines of the National Institute of Standards and Technology in any case in which such material is covered by such guidelines.

(2) Agencies that generate heat, mechanical, or electrical energy from fossil fuel in systems that have the technical capability of using energy or fuels derived from solid waste as a primary or supplementary fuel shall use such capability to the maximum extent practicable.

(3)(A) After the date specified in any applicable guidelines prepared pursuant to subsection (e) of this section, contracting officers shall require that vendors:

(i) certify that the percentage of recovered materials to be used in the performance of the

contract will be at least the amount required by applicable specifications or other contractual requirements and

(ii) estimate the percentage of the total material utilized for the performance of the contract which is recovered materials.

(B) Clause (ii) of subparagraph (A) applies only to a contract in an amount greater than \$100,000.

(d) Specifications

All Federal agencies that have the responsibility for drafting or reviewing specifications for procurement items procured by Federal agencies shall—

(1) as expeditiously as possible but in any event no later than eighteen months after November 8, 1984, eliminate from such specifications—

(A) any exclusion of recovered materials and

(B) any requirement that items be manufactured from virgin materials; and

(2) within one year after the date of publication of applicable guidelines under subsection (e) of this section, or as otherwise specified in such guidelines, assure that such specifications require the use of recovered materials to the maximum extent possible without jeopardizing the intended end use of the item.

(e) Guidelines

The Administrator, after consultation with the Administrator of General Services, the Secretary of Commerce (acting through the National Institute of Standards and Technology), and the Public Printer, shall prepare, and from time to time revise, guidelines for the use of procuring agencies in complying with the requirements of this section. Such guidelines shall—

(1) designate those items which are or can be produced with recovered materials and whose procurement by procuring agencies will carry out the objectives of this section, and in the case of paper, provide for maximizing the use of post consumer recovered materials referred to in subsection (h)(1) of this section; and

(2) set forth recommended practices with respect to the procurement of recovered materials and items containing such materials and with respect to certification by vendors of the percentage of recovered materials used,

and shall provide information as to the availability, relative price, and performance of such materials and items and where appropriate shall recommend the level of recovered material to be contained in the procured product. The Administrator shall prepare final guidelines for paper within one hundred and eighty days after November 8, 1984, and for three additional product categories (including tires) by October 1, 1985. In making the designation under paragraph (1), the Administrator shall consider, but is not limited in his considerations, to—

(A) the availability of such items;

(B) the impact of the procurement of such items by procuring agencies on the volume of solid waste which must be treated, stored or disposed of;

(C) the economic and technological feasibility of producing and using such items; and

(D) other uses for such recovered materials.

(f) Procurement of services

A procuring agency shall, to the maximum extent practicable, manage or arrange for the procurement of solid waste management services in a manner which maximizes energy and resource recovery.

(g) Executive Office

The Office of Procurement Policy in the Executive Office of the President, in cooperation with the Administrator, shall implement the requirements of this section. It shall be the responsibility of the Office of Procurement Policy to coordinate this policy with other policies for Federal procurement, in such a way as to maximize the use of recovered resources, and to, every two years beginning in 1984, report to the Congress on actions taken by Federal agencies and the progress made in the implementation of this section, including agency compliance with subsection (d) of this section.

(h) "Recovered materials" defined

As used in this section, in the case of paper products, the term "recovered materials" includes—

(1) postconsumer materials such as—

(A) paper, paperboard, and fibrous wastes from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item, including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; and

(B) all paper, paperboard, and fibrous wastes that enter and are collected from municipal solid waste, and

(2) manufacturing, forest residues, and other wastes such as—

(A) dry paper and paperboard waste generated after completion of the papermaking process (that is, those manufacturing operations up to and including the cutting and trimming of the paper machine reel into smaller rolls or rough sheets) including: envelope cuttings, bindery trimmings, and other paper and paperboard waste, resulting from printing, cutting, forming, and other converting operations; bag, box, and carton manufacturing wastes; and butt rolls, mill wrappers, and rejected unused stock; and

(B) finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others;

(C) fibrous byproducts of harvesting, manufacturing, extractive, or wood-cutting processes, flax, straw, linters, bagasse, slash, and other forest residues;

(D) wastes generated by the conversion of goods made from fibrous material (that is, waste rope from cordage manufacture, textile mill waste, and cuttings); and

(E) fibers recovered from waste water which otherwise would enter the waste stream.

(i) Procurement program

(1) Within one year after the date of publication of applicable guidelines under subsection

(e) of this section, each procuring agency shall develop an affirmative procurement program which will assure that items composed of recovered materials will be purchased to the maximum extent practicable and which is consistent with applicable provisions of Federal procurement law.

(2) Each affirmative procurement program required under this subsection shall, at a minimum, contain—

(A) a recovered materials preference program;

(B) an agency promotion program to promote the preference program adopted under subparagraph (A);

(C) a program for requiring estimates of the total percentage of recovered material utilized in the performance of a contract; certification of minimum recovered material content actually utilized, where appropriate; and reasonable verification procedures for estimates and certifications; and

(D) annual review and monitoring of the effectiveness of an agency's affirmative procurement program.

In the case of paper, the recovered materials preference program required under subparagraph (A) shall provide for the maximum use of the post consumer recovered materials referred to in subsection (h)(1) of this section.

(3) In developing the preference program, the following options shall be considered for adoption:

(A) Case-by-Case Policy Development: Subject to the limitations of subsection (c)(1)(A) through (C) of this section, a policy of awarding contracts to the vendor offering an item composed of the highest percentage of recovered materials practicable (and in the case of paper, the highest percentage of the post consumer recovered materials referred to in subsection (h)(1) of this section). Subject to such limitations, agencies may make an award to a vendor offering items with less than the maximum recovered materials content.

(B) Minimum Content Standards: Minimum recovered materials content specifications which are set in such a way as to assure that the recovered materials content (and in the case of paper, the content of post consumer materials referred to in subsection (h)(1) of this section) required is the maximum available without jeopardizing the intended end use of the item, or violating the limitations of subsection (c)(1)(A) through (C) of this section.

Procuring agencies shall adopt one of the options set forth in subparagraphs (A) and (B) or a substantially equivalent alternative, for inclusion in the affirmative procurement program.

(Pub. L. 89-272, title II, §6002, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2822; amended Pub. L. 95-609, §7(n), Nov. 8, 1978, 92 Stat. 3082; Pub. L. 96-482, §22, Oct. 21, 1980, 94 Stat. 2346; Pub. L. 97-375, title I, §102, Dec. 21, 1982, 96 Stat. 1819; Pub. L. 98-616, title V, §501(a)-(e), Nov. 8, 1984, 98 Stat. 3274-3276; Pub. L. 100-418, title V, §5115(c), Aug. 23, 1988, 102 Stat. 1433; Pub. L. 102-393, title VI, §630, Oct. 6, 1992, 106 Stat. 1773; Pub. L. 103-355, title I, §1554(1), title IV, §4104(e), Oct. 13, 1994, 108 Stat. 3300, 3342.)

CODIFICATION

Pub. L. 102-393, title VI, §630, Oct. 6, 1992, 106 Stat. 1773, which directed that this title be amended by adding a new section 6962j, relating to a preference for recycled toner cartridges, and which had been executed by adding the provisions of purported new section as subsec. (j) of this section, to reflect the probable intent of Congress, was repealed by Pub. L. 103-355, title I, §1554(1), Oct. 13, 1994, 108 Stat. 3300. Similar provisions were contained in Pub. L. 103-123, title IV, §401, Oct. 28, 1993, 107 Stat. 1238, prior to repeal by Pub. L. 103-355, title I, §1554(2), Oct. 13, 1994, 108 Stat. 3300.

AMENDMENTS

1994—Subsec. (c)(3). Pub. L. 103-355, §4104(e), designated existing provisions as subpar. (A), redesignated subpars. (A) and (B) as cls. (i) and (ii), respectively, and added subpar. (B).

Subsec. (j). Pub. L. 103-355, §1554(1), struck out subsec. (j). See Codification note above.

1992—Subsec. (j). Pub. L. 102-393 added subsec. (j). See Codification note above.

1988—Subsecs. (c)(1)(C), (e). Pub. L. 100-418 substituted "National Institute of Standards and Technology" for "Bureau of Standards".

1984—Subsec. (c)(1). Pub. L. 98-616, §501(c), inserted "(and in the case of paper, the highest percentage of the postconsumer recovered materials referred to in subsection (h)(1) of this section practicable)".

Subsec. (d)(1). Pub. L. 98-616, §501(e), substituted "eighteen months after November 8, 1984" for "five years after October 21, 1976".

Subsec. (e). Pub. L. 98-616, §501(b)(2), substituted "for paper within one hundred and eighty days after November 8, 1984, and for three additional product categories (including tires) by October 1, 1985" for "for at least three product categories, including paper, by May 1, 1981, and for two additional product categories, including construction materials, by September 30, 1982." in provisions following par. (2).

Subsec. (e)(1). Pub. L. 98-616, §501(b)(1), inserted "and in the case of paper, provide for maximizing the use of post consumer recovered materials referred to in subsection (h)(1) of this section".

Subsec. (g). Pub. L. 98-616, §501(d), substituted "the requirements of" for "the policy expressed in" and inserted "and to, every two years beginning in 1984, report to the Congress on actions taken by Federal agencies and the progress made in the implementation of this section, including agency compliance with subsection (d) of this section".

Subsecs. (h), (i). Pub. L. 98-616, §501(a), added subsecs. (h) and (i).

1982—Subsec. (g). Pub. L. 97-375 struck out provision requiring the Office of Procurement Policy to report annually to Congress on actions taken by Federal agencies and the progress made in the implementation of the policy expressed in this section.

1980—Subsec. (c)(1). Pub. L. 96-482, §22(1), (2), in provision preceding subpar. (A), substituted "After the date specified in applicable guidelines prepared pursuant to subsection (e) of this section, each procuring agency which procures any item designated in such guidelines shall procure such" for "After two years after October 21, 1976, each procuring agency shall procure", and in subpar. (C), "subparagraph (B)" for "clause (B)".

Subsec. (c)(2). Pub. L. 96-482, §22(3), substituted "energy or fuels derived from solid waste" for "recovered material and recovered-material-derived fuel".

Subsec. (c)(3). Pub. L. 96-482, §22(4), substituted subpars. (A) and (B) for provision requiring certification of the percentage of the total material utilized for the performance of the contract which is recovered materials.

Subsec. (d). Pub. L. 96-482, §22(5), in par. (1), substituted provision requiring Federal agencies to eliminate from specifications as expeditiously as possible, but in no event later than 5 years after Oct. 21, 1976, any exclusion of recovered materials and any require-

ment that items be manufactured from virgin materials for provision that Federal agencies in reviewing specifications, ascertain whether those specifications violate prohibitions in par. (2)(A) to (C), with such review undertaken not later than 18 months after Oct. 21, 1976, and in par. (2), substituted provision that Federal agencies act within 1 year from publication of applicable guidelines under subsec. (e) of this section for provision that in drafting or revising specifications after Oct. 21, 1976, any exclusion of recovered materials be eliminated and specifications not require the item to be manufactured from virgin materials.

Subsec. (e). Pub. L. 96-482, §22(6), designated provision relating to requirements of guidelines as cl. (2) and subpars. (A) and (C), added cl. (1), subpars. (B) and (C), and provision preceding subpar. (A), and struck out provision requiring information on source of supply.

1978—Subsec. (c). Pub. L. 95-609, §7(n)(1), (2), redesignated subpar. (1)(A) as par. (1), subpars. (1)(B) and (C) as pars. (2) and (3), respectively, and cls. (i) to (iii) of former subpar. (1)(A) as subpars. (A) to (C), respectively, of par. (1), and in par. (3), as so redesignated, inserted "After the date specified in any applicable guidelines prepared pursuant to subsection (e) of this section," before "contracting".

Subsec. (e). Pub. L. 95-609, §7(n)(3), inserted provision dealing with certification by vendors of the materials used.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103-355, see section 10001 of Pub. L. 103-355, set out as a note under section 251 of Title 41, Public Contracts.

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

GREENING THE GOVERNMENT THROUGH WASTE PREVENTION

Executive agency heads to develop and implement affirmative procurement programs in accordance with this section and Ex. Ord. No. 13101, and specifications, standards, and product descriptions inconsistent with this section or Ex. Ord. No. 13101 to be revised, and guidance for use in determining Federal facility compliance with this section and Ex. Ord. No. 13101 to be prepared with evaluations to be based on this implementing guidance, see Ex. Ord. No. 13101, §§402, 403, 501(a), Sept. 14, 1998, 63 F.R. 49646, 49647, set out as a note under section 6961 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6905, 6941, 8102 of this title.

§ 6963. Cooperation with Environmental Protection Agency

(a) General rule

All Federal agencies shall assist the Administrator in carrying out his functions under this chapter and shall promptly make available all requested information concerning past or present Agency waste management practices and past or present Agency owned, leased, or operated solid or hazardous waste facilities. This information shall be provided in such format as may be determined by the Administrator.

(b) Information relating to energy and materials conservation and recovery

The Administrator shall collect, maintain, and disseminate information concerning the

market potential of energy and materials recovered from solid waste, including materials obtained through source separation, and information concerning the savings potential of conserving resources contributing to the waste stream. The Administrator shall identify the regions in which the increased substitution of such energy for energy derived from fossil fuels and other sources is most likely to be feasible, and provide information on the technical and economic aspects of developing integrated resource conservation or recovery systems which provide for the recovery of source-separated materials to be recycled or the conservation of resources. The Administrator shall utilize the authorities of subsection (a) of this section in carrying out this subsection.

(Pub. L. 89-272, title II, §6003, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2823; amended Pub. L. 96-482, §32(g), Oct. 21, 1980, 94 Stat. 2355.)

AMENDMENTS

1980—Pub. L. 96-482 designated existing provision as subsec. (a), substituted provision that information be provided in a format determined by the Administrator for provision that information be furnished on a reimbursable basis, and added subsec. (b).

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

§ 6964. Applicability of solid waste disposal guidelines to Executive agencies

(a) Compliance

(1) If—

(A) an Executive agency (as defined in section 105 of title 5) or any unit of the legislative branch of the Federal Government has jurisdiction over any real property or facility the operation or administration of which involves such agency in solid waste management activities, or

(B) such an agency enters into a contract with any person for the operation by such person of any Federal property or facility, and the performance of such contract involves such person in solid waste management activities,

then such agency shall insure compliance with the guidelines recommended under section 6907 of this title and the purposes of this chapter in the operation or administration of such property or facility, or the performance of such contract, as the case may be.

(2) Each Executive agency or any unit of the legislative branch of the Federal Government which conducts any activity—

(A) which generates solid waste, and

(B) which, if conducted by a person other than such agency, would require a permit or license from such agency in order to dispose of such solid waste,

shall insure compliance with such guidelines and the purposes of this chapter in conducting such activity.

(3) Each Executive agency which permits the use of Federal property for purposes of disposal of solid waste shall insure compliance with such guidelines and the purposes of this chapter in the disposal of such waste.

(4) The President or the Committee on House Oversight of the House of Representatives and the Committee on Rules and Administration of the Senate with regard to any unit of the legislative branch of the Federal Government shall prescribe regulations to carry out this subsection.

(b) Licenses and permits

Each Executive agency which issues any license or permit for disposal of solid waste shall, prior to the issuance of such license or permit, consult with the Administrator to insure compliance with guidelines recommended under section 6907 of this title and the purposes of this chapter.

(Pub. L. 89-272, title II, §6004, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2823; amended Pub. L. 95-609, §7(o), Nov. 8, 1978, 92 Stat. 3083; Pub. L. 96-482, §23, Oct. 21, 1980, 94 Stat. 2347; Pub. L. 104-186, title II, §222(2), Aug. 20, 1996, 110 Stat. 1751.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3254e of this title, prior to the general amendment of the Solid Waste Disposal Act by Pub. L. 94-580.

AMENDMENTS

1996—Subsec. (a)(4). Pub. L. 104-186 substituted “House Oversight” for “House Administration”.

1980—Subsec. (a)(1)(A). Pub. L. 96-482, §23(1), inserted reference to any unit of the legislative branch of the Federal Government.

Subsec. (a)(2). Pub. L. 96-482, §23(2), required any unit of the legislative branch of the Federal Government to insure compliance with solid waste disposal guidelines.

Subsec. (a)(4). Pub. L. 96-482, §23(3), required House Committee on House Administration and Senate Committee on Rules and Administration with regard to any unit of the legislative branch of the Federal Government to prescribe implementing regulations.

1978—Subsec. (a)(1). Pub. L. 95-609, §7(o)(1), (2), substituted “management” for “disposal” in two places.

Subsec. (b). Pub. L. 95-609, §7(o)(3), substituted “Administrator” for “Secretary”.

CHANGE OF NAME

Committee on House Oversight of House of Representatives changed to Committee on House Administration of House of Representatives by House Resolution No. 5, One Hundred Sixth Congress, Jan. 6, 1999.

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6962 of this title.

§ 6965. Chief Financial Officer report

The Chief Financial Officer of each affected agency shall submit to Congress an annual re-

port containing, to the extent practicable, a detailed description of the compliance activities undertaken by the agency for mixed waste streams, and an accounting of the fines and penalties imposed on the agency for violations involving mixed waste.

(Pub. L. 102-386, title I, §110, Oct. 6, 1992, 106 Stat. 1516.)

CODIFICATION

Section was enacted as part of the Federal Facility Compliance Act of 1992, and not as part of the Solid Waste Disposal Act which comprises this chapter.

SUBCHAPTER VII—MISCELLANEOUS PROVISIONS

§ 6971. Employee protection

(a) General

No person shall fire, or in any other way discriminate against, or cause to be fired or discriminated against, any employee or any authorized representative of employees by reason of the fact that such employee or representative has filed, instituted, or caused to be filed or instituted any proceeding under this chapter or under any applicable implementation plan, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this chapter or of any applicable implementation plan.

(b) Remedy

Any employee or a representative of employees who believes that he has been fired or otherwise discriminated against by any person in violation of subsection (a) of this section may, within thirty days after such alleged violation occurs, apply to the Secretary of Labor for a review of such firing or alleged discrimination. A copy of the application shall be sent to such person who shall be the respondent. Upon receipt of such application, the Secretary of Labor shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of any party to such review to enable the parties to present information relating to such alleged violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to section 554 of title 5. Upon receiving the report of such investigation, the Secretary of Labor shall make findings of fact. If he finds that such violation did occur, he shall issue a decision, incorporating an order therein and his findings, requiring the party committing such violation to take such affirmative action to abate the violation as the Secretary of Labor deems appropriate, including, but not limited to, the rehiring or reinstatement of the employee or representative of employees to his former position with compensation. If he finds that there was no such violation, he shall issue an order denying the application. Such order issued by the Secretary of Labor under this subparagraph shall be subject to judicial review in the same manner as orders and decisions of the Administrator or subject to judicial review under this chapter.

(c) Costs

Whenever an order is issued under this section to abate such violation, at the request of the applicant, a sum equal to the aggregate amount of all costs and expenses (including the attorney's fees) as determined by the Secretary of Labor, to have been reasonably incurred by the applicant for, or in connection with, the institution and prosecution of such proceedings, shall be assessed against the person committing such violation.

(d) Exception

This section shall have no application to any employee who, acting without direction from his employer (or his agent) deliberately violates any requirement of this chapter.

(e) Employment shifts and loss

The Administrator shall conduct continuing evaluations of potential loss or shifts of employment which may result from the administration or enforcement of the provisions of this chapter and applicable implementation plans, including, where appropriate, investigating threatened plant closures or reductions in employment allegedly resulting from such administration or enforcement. Any employee who is discharged, or laid off, threatened with discharge or layoff, or otherwise discriminated against by any person because of the alleged results of such administration or enforcement, or any representative of such employee, may request the Administrator to conduct a full investigation of the matter. The Administrator shall thereupon investigate the matter and, at the request of any party, shall hold public hearings on not less than five days' notice, and shall at such hearings require the parties, including the employer involved, to present information relating to the actual or potential effect of such administration or enforcement on employment and on any alleged discharge, layoff, or other discrimination and the detailed reasons or justification therefor. Any such hearing shall be of record and shall be subject to section 554 of title 5. Upon receiving the report of such investigation, the Administrator shall make findings of fact as to the effect of such administration or enforcement on employment and on the alleged discharge, layoff, or discrimination and shall make such recommendations as he deems appropriate. Such report, findings, and recommendations shall be available to the public. Nothing in this subsection shall be construed to require or authorize the Administrator or any State to modify or withdraw any standard, limitation, or any other requirement of this chapter or any applicable implementation plan.

(f) Occupational safety and health

In order to assist the Secretary of Labor and the Director of the National Institute for Occupational Safety and Health in carrying out their duties under the Occupational Safety and Health Act of 1970 [29 U.S.C. 651 et seq.], the Administrator shall—

(1) provide the following information, as such information becomes available, to the Secretary and the Director:

(A) the identity of any hazardous waste generation, treatment, storage, disposal fa-

cility or site where cleanup is planned or underway;

(B) information identifying the hazards to which persons working at a hazardous waste generation, treatment, storage, disposal facility or site or otherwise handling hazardous waste may be exposed, the nature and extent of the exposure, and methods to protect workers from such hazards; and

(C) incidents of worker injury or harm at a hazardous waste generation, treatment, storage or disposal facility or site; and

(2) notify the Secretary and the Director of the Administrator's receipt of notifications under section 6930 or reports under sections 6922, 6923, and 6924 of this title and make such notifications and reports available to the Secretary and the Director.

(Pub. L. 89-272, title II, §7001, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2824; amended Pub. L. 96-482, §24, Oct. 21, 1980, 94 Stat. 2347.)

REFERENCES IN TEXT

The Occupational Safety and Health Act of 1970, referred to in subsec. (f), is Pub. L. 91-596, Dec. 29, 1970, 84 Stat. 1590, as amended, which is classified principally to chapter 15 (§651 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 651 of Title 29 and Tables.

AMENDMENTS

1980—Subsec. (f). Pub. L. 96-482 added subsec. (f).

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

§ 6972. Citizen suits**(a) In general**

Except as provided in subsection (b) or (c) of this section, any person may commence a civil action on his own behalf—

(1)(A) against any person (including (a) the United States, and (b) any other governmental instrumentality or agency, to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of any permit, standard, regulation, condition, requirement, prohibition, or order which has become effective pursuant to this chapter; or

(B) against any person, including the United States and any other governmental instrumentality or agency, to the extent permitted by the eleventh amendment to the Constitution, and including any past or present generator, past or present transporter, or past or present owner or operator of a treatment, storage, or disposal facility, who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment; or

(2) against the Administrator where there is alleged a failure of the Administrator to per-

form any act or duty under this chapter which is not discretionary with the Administrator.

Any action under paragraph (a)(1) of this subsection shall be brought in the district court for the district in which the alleged violation occurred or the alleged endangerment may occur. Any action brought under paragraph (a)(2) of this subsection may be brought in the district court for the district in which the alleged violation occurred or in the District Court of the District of Columbia. The district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce the permit, standard, regulation, condition, requirement, prohibition, or order, referred to in paragraph (1)(A), to restrain any person who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste referred to in paragraph (1)(B), to order such person to take such other action as may be necessary, or both, or to order the Administrator to perform the act or duty referred to in paragraph (2), as the case may be, and to apply any appropriate civil penalties under section 6928(a) and (g) of this title.

(b) Actions prohibited

(1) No action may be commenced under subsection (a)(1)(A) of this section—

(A) prior to 60 days after the plaintiff has given notice of the violation to—

- (i) the Administrator;
- (ii) the State in which the alleged violation occurs; and
- (iii) to any alleged violator of such permit, standard, regulation, condition, requirement, prohibition, or order,

except that such action may be brought immediately after such notification in the case of an action under this section respecting a violation of subchapter III of this chapter; or

(B) if the Administrator or State has commenced and is diligently prosecuting a civil or criminal action in a court of the United States or a State to require compliance with such permit, standard, regulation, condition, requirement, prohibition, or order.

In any action under subsection (a)(1)(A) of this section in a court of the United States, any person may intervene as a matter of right.

(2)(A) No action may be commenced under subsection (a)(1)(B) of this section prior to ninety days after the plaintiff has given notice of the endangerment to—

- (i) the Administrator;
- (ii) the State in which the alleged endangerment may occur;
- (iii) any person alleged to have contributed or to be contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste referred to in subsection (a)(1)(B) of this section,

except that such action may be brought immediately after such notification in the case of an action under this section respecting a violation of subchapter III of this chapter.

(B) No action may be commenced under subsection (a)(1)(B) of this section if the Administrator, in order to restrain or abate acts or con-

ditions which may have contributed or are contributing to the activities which may present the alleged endangerment—

(i) has commenced and is diligently prosecuting an action under section 6973 of this title or under section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 [42 U.S.C. 9606],¹

(ii) is actually engaging in a removal action under section 104 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 [42 U.S.C. 9604];

(iii) has incurred costs to initiate a Remedial Investigation and Feasibility Study under section 104 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 [42 U.S.C. 9604] and is diligently proceeding with a remedial action under that Act [42 U.S.C. 9601 et seq.]; or

(iv) has obtained a court order (including a consent decree) or issued an administrative order under section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980² [42 U.S.C. 9606] or section 6973 of this title pursuant to which a responsible party is diligently conducting a removal action, Remedial Investigation and Feasibility Study (RIFS), or proceeding with a remedial action.

In the case of an administrative order referred to in clause (iv), actions under subsection (a)(1)(B) of this section are prohibited only as to the scope and duration of the administrative order referred to in clause (iv).

(C) No action may be commenced under subsection (a)(1)(B) of this section if the State, in order to restrain or abate acts or conditions which may have contributed or are contributing to the activities which may present the alleged endangerment—

(i) has commenced and is diligently prosecuting an action under subsection (a)(1)(B) of this section;

(ii) is actually engaging in a removal action under section 104 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 [42 U.S.C. 9604]; or

(iii) has incurred costs to initiate a Remedial Investigation and Feasibility Study under section 104 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 [42 U.S.C. 9604] and is diligently proceeding with a remedial action under that Act [42 U.S.C. 9601 et seq.].

(D) No action may be commenced under subsection (a)(1)(B) of this section by any person (other than a State or local government) with respect to the siting of a hazardous waste treatment, storage, or a disposal facility, nor to restrain or enjoin the issuance of a permit for such facility.

(E) In any action under subsection (a)(1)(B) of this section in a court of the United States, any person may intervene as a matter of right when the applicant claims an interest relating to the subject of the action and he is so situated that the disposition of the action may, as a practical

¹ So in original. The comma probably should be a semicolon.

² So in original. Probably should be "1980".

matter, impair or impede his ability to protect that interest, unless the Administrator or the State shows that the applicant's interest is adequately represented by existing parties.

(F) Whenever any action is brought under subsection (a)(1)(B) of this section in a court of the United States, the plaintiff shall serve a copy of the complaint on the Attorney General of the United States and with the Administrator.

(c) Notice

No action may be commenced under paragraph (a)(2) of this section prior to sixty days after the plaintiff has given notice to the Administrator that he will commence such action, except that such action may be brought immediately after such notification in the case of an action under this section respecting a violation of subchapter III of this chapter. Notice under this subsection shall be given in such manner as the Administrator shall prescribe by regulation. Any action respecting a violation under this chapter may be brought under this section only in the judicial district in which such alleged violation occurs.

(d) Intervention

In any action under this section the Administrator, if not a party, may intervene as a matter of right.

(e) Costs

The court, in issuing any final order in any action brought pursuant to this section or section 6976 of this title, may award costs of litigation (including reasonable attorney and expert witness fees) to the prevailing or substantially prevailing party, whenever the court determines such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(f) Other rights preserved

Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any standard or requirement relating to the management of solid waste or hazardous waste, or to seek any other relief (including relief against the Administrator or a State agency).

(g) Transporters

A transporter shall not be deemed to have contributed or to be contributing to the handling, storage, treatment, or disposal, referred to in subsection (a)(1)(B) of this section taking place after such solid waste or hazardous waste has left the possession or control of such transporter, if the transportation of such waste was under a sole contractual arrangement arising from a published tariff and acceptance for carriage by common carrier by rail and such transporter has exercised due care in the past or present handling, storage, treatment, transportation and disposal of such waste.

(Pub. L. 89-272, title II, §7002, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2825; amended Pub. L. 95-609, §7(p), Nov. 8, 1978, 92 Stat. 3083; Pub. L. 98-616, title IV, §401, Nov. 8, 1984, 98 Stat. 3268.)

REFERENCES IN TEXT

That Act, referred to in subsec. (b)(2)(B)(iii), (C)(iii), means Pub. L. 96-510, Dec. 11, 1980, 94 Stat. 2767, as amended, known as the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, which is classified principally to chapter 103 (§9601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of this title and Tables.

The Federal Rules of Civil Procedure, referred to in subsec. (e), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-616, §401(a), (b), designated existing provisions of subsec. (a)(1) as subpar. (A) thereof, inserted "prohibition," after "requirement," added subpar. (B), and in provisions following par. (2) inserted "or the alleged endangerment may occur" in first sentence and substituted "to enforce the permit, standard, regulation, condition, requirement, prohibition, or order, referred to in paragraph (1)(A), to restrain any person who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste referred to in paragraph (1)(B), to order such person to take such other action as may be necessary, or both, or to order the Administrator to perform the act or duty referred to in paragraph (2), as the case may be, and to apply any appropriate civil penalties under section 6928(a) and (g) of this title" for "to enforce such regulation or order, or to order the Administrator to perform such act or duty as the case may be".

Subsec. (b). Pub. L. 98-616, §401(d), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "No action may be commenced under paragraph (a)(1) of this section—

"(1) prior to sixty days after the plaintiff has given notice of the violation (A) to the Administrator; (B) to the State in which the alleged violation occurs; and (C) to any alleged violator of such permit, standard, regulation, condition, requirement, or order; or

"(2) if the Administrator or State has commenced and is diligently prosecuting a civil or criminal action in a court of the United States or a State to require compliance with such permit, standard, regulation, condition, requirement, or order: *Provided, however*, That in any such action in a court of the United States, any person may intervene as a matter of right."

Subsec. (e). Pub. L. 98-616, §401(e), substituted "to the prevailing or substantially prevailing party" for "to any party" and inserted "or section 6976 of this title".

Subsec. (g). Pub. L. 98-616, §401(c), added subsec. (g).
1978—Subsec. (c). Pub. L. 95-609, §7(p)(1), substituted "subchapter III of this chapter" for "section 212 of this Act."

Subsec. (e). Pub. L. 95-609, §7(p)(2), substituted "require" for "requiring".

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6945 of this title.

§ 6973. Imminent hazard

(a) Authority of Administrator

Notwithstanding any other provision of this chapter, upon receipt of evidence that the past

or present handling, storage, treatment, transportation or disposal of any solid waste or hazardous waste may present an imminent and substantial endangerment to health or the environment, the Administrator may bring suit on behalf of the United States in the appropriate district court against any person (including any past or present generator, past or present transporter, or past or present owner or operator of a treatment, storage, or disposal facility) who has contributed or who is contributing to such handling, storage, treatment, transportation or disposal to restrain such person from such handling, storage, treatment, transportation, or disposal, to order such person to take such other action as may be necessary, or both. A transporter shall not be deemed to have contributed or to be contributing to such handling, storage, treatment, or disposal taking place after such solid waste or hazardous waste has left the possession or control of such transporter if the transportation of such waste was under a sole contractual¹ arrangement arising from a published tariff and acceptance for carriage by common carrier by rail and such transporter has exercised due care in the past or present handling, storage, treatment, transportation and disposal of such waste. The Administrator shall provide notice to the affected State of any such suit. The Administrator may also, after notice to the affected State, take other action under this section including, but not limited to, issuing such orders as may be necessary to protect public health and the environment.

(b) Violations

Any person who willfully violates, or fails or refuses to comply with, any order of the Administrator under subsection (a) of this section may, in an action brought in the appropriate United States district court to enforce such order, be fined not more than \$5,000 for each day in which such violation occurs or such failure to comply continues.

(c) Immediate notice

Upon receipt of information that there is hazardous waste at any site which has presented an imminent and substantial endangerment to human health or the environment, the Administrator shall provide immediate notice to the appropriate local government agencies. In addition, the Administrator shall require notice of such endangerment to be promptly posted at the site where the waste is located.

(d) Public participation in settlements

Whenever the United States or the Administrator proposes to covenant not to sue or to forbear from suit or to settle any claim arising under this section, notice, and opportunity for a public meeting in the affected area, and a reasonable opportunity to comment on the proposed settlement prior to its final entry shall be afforded to the public. The decision of the United States or the Administrator to enter into or not to enter into such Consent Decree, covenant or agreement shall not constitute a final agency action subject to judicial review under this chapter or chapter 7 of title 5.

¹ So in original. Probably should be "contractual".

(Pub. L. 89-272, title II, §7003, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2826; amended Pub. L. 95-609, §7(q), Nov. 8, 1978, 92 Stat. 3083; Pub. L. 96-482, §25, Oct. 21, 1980, 94 Stat. 2348; Pub. L. 98-616, title IV, §§402, 403(a), 404, Nov. 8, 1984, 98 Stat. 3271, 3273.)

CODIFICATION

In subsec. (d), "chapter 7 of title 5" substituted for "the Administrative Procedure Act" on authority of Pub. L. 89-554, §7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-616, §402, inserted "past or present" after "evidence that the", substituted "against any person (including any past or present generator, past or present transporter, or past or present owner or operator of a treatment, storage, or disposal facility) who has contributed or, who is" for "to immediately restrain any person", substituted "to restrain such person from" for "to stop", substituted ", to order such person to take such other action as may be necessary, or both" for "or to take such other action as may be necessary", and inserted "A transporter shall not be deemed to have contributed or to be contributing to such handling, storage, treatment, or disposal, taking place after such solid waste or hazardous waste has left the possession or control of such transporter, if the transportation of such waste was under a sole contractual [sic] arrangement arising from a published tariff and acceptance for carriage by common carrier by rail and such transporter has exercised due care in the past or present handling, storage, treatment, transportation and disposal of such waste."

Subsec. (c). Pub. L. 98-616, §403(a), added subsec. (c).

Subsec. (d). Pub. L. 98-616, §404, added subsec. (d).

1980—Pub. L. 96-482, §25, designated existing provisions as subsec. (a), substituted "may present" for "is presenting" and "such handling, storage, treatment, transportation or disposal" for "the alleged disposal" and authorized other action to be taken by the Administrator after notice including issuance of protective orders relating to public health and the environment, and added subsec. (b).

1978—Pub. L. 95-609 struck out "for" after "restrain any person".

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6972, 7412, 9604, 9606 of this title.

§ 6974. Petition for regulations; public participation

(a) Petition

Any person may petition the Administrator for the promulgation, amendment, or repeal of any regulation under this chapter. Within a reasonable time following receipt of such petition, the Administrator shall take action with respect to such petition and shall publish notice of such action in the Federal Register, together with the reasons therefor.

(b) Public participation

(1) Public participation in the development, revision, implementation, and enforcement of

any regulation, guideline, information, or program under this chapter shall be provided for, encouraged, and assisted by the Administrator and the States. The Administrator, in cooperation with the States, shall develop and publish minimum guidelines for public participation in such processes.

(2) Before the issuing of a permit to any person with any respect to any facility for the treatment, storage, or disposal of hazardous wastes under section 6925 of this title, the Administrator shall—

(A) cause to be published in major local newspapers of general circulation and broadcast over local radio stations notice of the agency's intention to issue such permit, and

(B) transmit in writing notice of the agency's intention to issue such permit to each unit of local government having jurisdiction over the area in which such facility is proposed to be located and to each State agency having any authority under State law with respect to the construction or operation of such facility.

If within 45 days the Administrator receives written notice of opposition to the agency's intention to issue such permit and a request for a hearing, or if the Administrator determines on his own initiative, he shall hold an informal public hearing (including an opportunity for presentation of written and oral views) on whether he should issue a permit for the proposed facility. Whenever possible the Administrator shall schedule such hearing at a location convenient to the nearest population center to such proposed facility and give notice in the aforementioned manner of the date, time, and subject matter of such hearing. No State program which provides for the issuance of permits referred to in this paragraph may be authorized by the Administrator under section 6926 of this title unless such program provides for the notice and hearing required by the paragraph.

(Pub. L. 89-272, title II, §7004, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2826; amended Pub. L. 96-482, §26, Oct. 21, 1980, 94 Stat. 2348.)

AMENDMENTS

1980—Subsec. (b). Pub. L. 96-482 designated existing provisions as par. (1) and added par. (2).

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6925 of this title.

§ 6975. Separability

If any provision of this chapter, or the application of any provision of this chapter to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this chapter, shall not be affected thereby.

(Pub. L. 89-272, title II, §7005, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2827.)

§ 6976. Judicial review

(a) Review of final regulations and certain petitions

Any judicial review of final regulations promulgated pursuant to this chapter and the Administrator's denial of any petition for the promulgation, amendment, or repeal of any regulation under this chapter shall be in accordance with sections 701 through 706 of title 5, except that—

(1) a petition for review of action of the Administrator in promulgating any regulation, or requirement under this chapter or denying any petition for the promulgation, amendment or repeal of any regulation under this chapter may be filed only in the United States Court of Appeals for the District of Columbia, and such petition shall be filed within ninety days from the date of such promulgation or denial, or after such date if such petition for review is based solely on grounds arising after such ninetieth day; action of the Administrator with respect to which review could have been obtained under this subsection shall not be subject to judicial review in civil or criminal proceedings for enforcement; and

(2) in any judicial proceeding brought under this section in which review is sought of a determination under this chapter required to be made on the record after notice and opportunity for hearing, if a party seeking review under this chapter applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that the information is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Administrator, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Administrator, and to be adduced upon the hearing in such manner and upon such terms and conditions as the court may deem proper; the Administrator may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file with the court such modified or new findings and his recommendation, if any, for the modification or setting aside of his original order, with the return of such additional evidence.

(b) Review of certain actions under sections 6925 and 6926 of this title

Review of the Administrator's action (1) in issuing, denying, modifying, or revoking any permit under section 6925 of this title (or in modifying or revoking any permit which is deemed to have been issued under section 6935(d)(1)¹ of this title), or (2) in granting, denying, or withdrawing authorization or interim authorization under section 6926 of this title, may be had by any interested person in the Circuit Court of Appeals of the United States for the Federal judicial district in which such person resides or transacts such business upon application by such person. Any such application shall be made within ninety days from the date of such issuance, denial, modification, revocation, grant, or

¹ See References in Text note below.

withdrawal, or after such date only if such application is based solely on grounds which arose after such ninetieth day. Action of the Administrator with respect to which review could have been obtained under this subsection shall not be subject to judicial review in civil or criminal proceedings for enforcement. Such review shall be in accordance with sections 701 through 706 of title 5.

(Pub. L. 89-272, title II, §7006, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2827; amended Pub. L. 96-482, §27, Oct. 21, 1980, 94 Stat. 2349; Pub. L. 98-616, title II, §241(b)(1), title IV, §403(d)(5), Nov. 8, 1984, 98 Stat. 3259, 3273.)

REFERENCES IN TEXT

Section 6935(d)(1) of this title, referred to in subsec. (b), was in the original a reference to section 3012(d)(1) of Pub. L. 89-272, which was renumbered section 3014(d)(1) of Pub. L. 89-272 by Pub. L. 98-616 and is classified to section 6935(d)(1) of this title.

AMENDMENTS

1984—Pub. L. 98-616 inserted “(or in modifying or revoking any permit which is deemed to have been issued under section 6935(d)(1) of this title)” and inserted “Action of the Administrator with respect to which review could have been obtained under this subsection shall not be subject to judicial review in civil or criminal proceedings for enforcement.”

1980—Pub. L. 96-482, §27(a), designated existing provisions as subsec. (a), in provision preceding par. (1), included judicial review of Administrator’s denial of any petition for promulgation, amendment, or repeal of any regulation in par. (1), included review of Administrator’s denial of any petition for promulgation, amendment, or repeal of any regulation, and substituted “District of Columbia, and” for “District of Columbia. Any”, “date of such promulgation or denial” for “date of such promulgation”, “petition for review is based” for “petition is based”, and “; action” for “. Action”, and in par. (2), substituted “proper; the” for “proper. The”, and added subsec. (b).

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6972 of this title.

§ 6977. Grants or contracts for training projects

(a) General authority

The Administrator is authorized to make grants to, and contracts with any eligible organization. For purposes of this section the term “eligible organization” means a State or interstate agency, a municipality, educational institution, and any other organization which is capable of effectively carrying out a project which may be funded by grant under subsection (b) of this section.

(b) Purposes

(1) Subject to the provisions of paragraph (2), grants or contracts may be made to pay all or a part of the costs, as may be determined by the Administrator, of any project operated or to be operated by an eligible organization, which is designed—

(A) to develop, expand, or carry out a program (which may combine training, education, and employment) for training persons for occupations involving the management, supervision, design, operation, or maintenance of solid waste management and resource recovery equipment and facilities; or

(B) to train instructors and supervisory personnel to train or supervise persons in occupations involving the design, operation, and maintenance of solid waste management and resource recovery equipment and facilities.

(2) A grant or contract authorized by paragraph (1) of this subsection may be made only upon application to the Administrator at such time or times and containing such information as he may prescribe, except that no such application shall be approved unless it provides for the same procedures and reports (and access to such reports and to other records) as required by section 3254a(b)(4) and (5)¹ of this title (as in effect before October 21, 1976) with respect to applications made under such section (as in effect before October 21, 1976).

(Pub. L. 89-272, title II, §7007, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2827; amended Pub. L. 95-609, §7(r), Nov. 8, 1978, 92 Stat. 3083; Pub. L. 105-362, title V, §501(f), Nov. 10, 1998, 112 Stat. 3284.)

REFERENCES IN TEXT

Section 3254a(b)(4) and (5) of this title, referred to in subsec. (b)(2), was in the original “section 207(b)(4) and (5)”, meaning section 207(b)(4) and (5) of the Solid Waste Disposal Act, which was omitted in the general revision of the Solid Waste Disposal Act by Pub. L. 94-580 on Oct. 21, 1976.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3254d of this title, prior to the general amendment of the Solid Waste Disposal Act by Pub. L. 94-580.

AMENDMENTS

1998—Subsec. (c). Pub. L. 105-362 struck out heading and text of subsec. (c) which related to Administrator’s study and report on State and local training needs and obstacles to employment and occupational advancement in solid waste management and resource recovery field.

1978—Subsec. (b)(1). Pub. L. 95-609, §7(r)(1), (2), substituted “management” for “disposal” in two places, and “resource” for “resources”.

Subsec. (c)(3). Pub. L. 95-609, §7(r)(3), substituted “management” for “disposal”.

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

§ 6978. Payments

(a) General rule

Payments of grants under this chapter may be made (after necessary adjustment on account of

¹ See References in Text note below.

previously made underpayments or overpayments) in advance or by way of reimbursement, and in such installments and on such conditions as the Administrator may determine.

(b) Prohibition

No grant may be made under this chapter to any private profitmaking organization.

(Pub. L. 89-272, title II, §7008, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2828.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3258 of this title, prior to the general amendment of the Solid Waste Disposal Act by Pub. L. 94-580.

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

§ 6979. Labor standards

No grant for a project of construction under this chapter shall be made unless the Administrator finds that the application contains or is supported by reasonable assurance that all laborers and mechanics employed by contractors or subcontractors on projects of the type covered by sections 3141-3144, 3146, and 3147 of title 40, will be paid wages at rates not less than those prevailing on similar work in the locality as determined by the Secretary of Labor in accordance with those sections; and the Secretary of Labor shall have with respect to the labor standards specified in this section the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176) and section 3145 of title 40.

(Pub. L. 89-272, title II, §7009, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2828; amended Pub. L. 96-482, §28, Oct. 21, 1980, 94 Stat. 2349.)

REFERENCES IN TEXT

Reorganization Plan Numbered 14 of 1950, referred to in text, is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

In text, "sections 3141-3144, 3146, and 3147 of title 40" substituted for "the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5)", "those sections" substituted for "that Act", and "section 3145 of title 40" substituted for "section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c)", on authority of Pub. L. 107-217, §5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3256 of this title, prior to the general amendment of the Solid Waste Disposal Act by Pub. L. 94-580.

AMENDMENTS

1980—Pub. L. 96-482 substituted "Administrator" for "Secretary".

§ 6979a. Transferred

CODIFICATION

Section, Pub. L. 89-272, title II, §7010, as added Pub. L. 98-616, title IV, §405(a), Nov. 8, 1984, 98 Stat. 3273; Pub. L. 99-339, title II, §201(c)(1), June 19, 1986, 100 Stat. 654, relating to interim control of hazardous waste injection, was renumbered section 3020 of Pub. L. 89-272 by Pub. L. 99-339, title II, §201(c)(2), June 19, 1986, 100 Stat. 654, and transferred to section 6939b of this title.

§ 6979b. Law enforcement authority

The Attorney General of the United States shall, at the request of the Administrator and on the basis of a showing of need, deputize qualified employees of the Environmental Protection Agency to serve as special deputy United States marshals in criminal investigations with respect to violations of the criminal provisions of this chapter.

(Pub. L. 89-272, title II, §7010, formerly §7012, as added Pub. L. 98-616, title IV, §403(b)(1), Nov. 8, 1984, 98 Stat. 3272; renumbered §7010, Pub. L. 99-339, title II, §201(c)(2), June 19, 1986, 100 Stat. 654.)

PRIOR PROVISIONS

A prior section 7010 of Pub. L. 89-272, which was classified to section 6979a of this title, was renumbered section 3020 and transferred to section 6939b of this title.

SUBCHAPTER VIII—RESEARCH, DEVELOPMENT, DEMONSTRATION, AND INFORMATION

§ 6981. Research, demonstration, training, and other activities

(a) General authority

The Administrator, alone or after consultation with the Secretary of Energy, shall conduct, and encourage, cooperate with, and render financial and other assistance to appropriate public (whether Federal, State, interstate, or local) authorities, agencies, and institutions, private agencies and institutions, and individuals in the conduct of, and promote the coordination of, research, investigations, experiments, training, demonstrations, surveys, public education programs, and studies relating to—

(1) any adverse health and welfare effects of the release into the environment of material present in solid waste, and methods to eliminate such effects;

(2) the operation and financing of solid waste management programs;

(3) the planning, implementation, and operation of resource recovery and resource conservation systems and hazardous waste management systems, including the marketing of recovered resources;

(4) the production of usable forms of recovered resources, including fuel, from solid waste;

(5) the reduction of the amount of such waste and unsalvageable waste materials;

(6) the development and application of new and improved methods of collecting and disposing of solid waste and processing and recovering materials and energy from solid wastes;

(7) the identification of solid waste components and potential materials and energy recoverable from such waste components;

(8) small scale and low technology solid waste management systems, including but not limited to, resource recovery source separation systems;

(9) methods to improve the performance characteristics of resources recovered from solid waste and the relationship of such performance characteristics to available and potentially available markets for such resources;

(10) improvements in land disposal practices for solid waste (including sludge) which may reduce the adverse environmental effects of such disposal and other aspects of solid waste disposal on land, including means for reducing the harmful environmental effects of earlier and existing landfills, means for restoring areas damaged by such earlier or existing landfills, means for rendering landfills safe for purposes of construction and other uses, and techniques of recovering materials and energy from landfills;

(11) methods for the sound disposal of, or recovery of resources, including energy, from, sludge (including sludge from pollution control and treatment facilities, coal slurry pipelines, and other sources);

(12) methods of hazardous waste management, including methods of rendering such waste environmentally safe; and

(13) any adverse effects on air quality (particularly with regard to the emission of heavy metals) which result from solid waste which is burned (either alone or in conjunction with other substances) for purposes of treatment, disposal or energy recovery.

(b) Management program

(1)(A) In carrying out his functions pursuant to this chapter, and any other Federal legislation respecting solid waste or discarded material research, development, and demonstrations, the Administrator shall establish a management program or system to insure the coordination of all such activities and to facilitate and accelerate the process of development of sound new technology (or other discoveries) from the research phase, through development, and into the demonstration phase.

(B) The Administrator shall (i) assist, on the basis of any research projects which are developed with assistance under this chapter or without Federal assistance, the construction of pilot plant facilities for the purpose of investigating or testing the technological feasibility of any promising new fuel, energy, or resource recovery or resource conservation method or technology; and (ii) demonstrate each such method and technology that appears justified by an evaluation at such pilot plant stage or at a pilot plant stage developed without Federal assistance. Each such demonstration shall incorporate new or innovative technical advances or shall apply such advances to different circumstances and conditions, for the purpose of evaluating design concepts or to test the performance, efficiency, and economic feasibility of a particular method or technology under actual operating conditions. Each such demonstration shall be so planned and designed that, if successful, it can be expanded or utilized directly as a full-scale operational fuel, energy, or resource recovery or resource conservation facility.

(2) Any energy-related research, development, or demonstration project for the conversion including bioconversion, of solid waste carried out by the Environmental Protection Agency or by the Secretary of Energy pursuant to this chapter or any other Act shall be administered in accordance with the May 7, 1976, Interagency Agreement between the Environmental Protection Agency and the Energy Research and Development Administration on the Development of Energy from Solid Wastes and specifically, that in accordance with this agreement, (A) for those energy-related projects of mutual interest, planning will be conducted jointly by the Environmental Protection Agency and the Secretary of Energy, following which project responsibility will be assigned to one agency; (B) energy-related portions of projects for recovery of synthetic fuels or other forms of energy from solid waste shall be the responsibility of the Secretary of Energy; (C) the Environmental Protection Agency shall retain responsibility for the environmental, economic, and institutional aspects of solid waste projects and for assurance that such projects are consistent with any applicable suggested guidelines published pursuant to section 6907 of this title, and any applicable State or regional solid waste management plan; and (D) any activities undertaken under provisions of sections 6982 and 6983 of this title as related to energy; as related to energy or synthetic fuels recovery from waste; or as related to energy conservation shall be accomplished through coordination and consultation with the Secretary of Energy.

(c) Authorities

(1) In carrying out subsection (a) of this section respecting solid waste research, studies, development, and demonstration, except as otherwise specifically provided in section 6984(d) of this title, the Administrator may make grants to or enter into contracts (including contracts for construction) with, public agencies and authorities or private persons.

(2) Contracts for research, development, or demonstrations or for both (including contracts for construction) shall be made in accordance with and subject to the limitations provided with respect to research contracts of the military departments in section 2353 of title 10, except that the determination, approval, and certification required thereby shall be made by the Administrator.

(3) Any invention made or conceived in the course of, or under, any contract under this chapter shall be subject to section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 [42 U.S.C. 5908] to the same extent and in the same manner as inventions made or conceived in the course of contracts under such Act [42 U.S.C. 5901 et seq.], except that in applying such section, the Environmental Protection Agency shall be substituted for the Secretary of Energy and the words "solid waste" shall be substituted for the word "energy" where appropriate.

(4) For carrying out the purpose of this chapter the Administrator may detail personnel of the Environmental Protection Agency to agencies eligible for assistance under this section.

(Pub. L. 89-272, title II, §8001, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2829; amended Pub. L. 95-91, title III, §301, title VII, §§703, 707, Aug. 4, 1977, 91 Stat. 577, 606, 607; Pub. L. 95-609, §7(s), Nov. 8, 1978, 92 Stat. 3083.)

REFERENCES IN TEXT

Such Act, referred to in subsec. (c)(3), means the Federal Nonnuclear Energy Research and Development Act of 1974, Pub. L. 93-577, Dec. 31, 1974, 88 Stat. 1878, as amended, which is classified generally to chapter 74 (§5901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5901 of this title and Tables.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3253 of this title, prior to the general amendment of the Solid Waste Disposal Act by Pub. L. 94-580.

AMENDMENTS

1978—Subsec. (a)(2). Pub. L. 95-609, §7(s)(1), substituted “management” for “disposal”.

Subsec. (a)(13). Pub. L. 95-609, §7(s)(2), inserted “treatment,” after “for purpose of”.

TRANSFER OF FUNCTIONS

“Secretary of Energy” was substituted for “Administrator of the Federal Energy Administration, the Administrator of the Energy Research and Development Administration, or the Chairman of the Federal Power Commission” in subsec. (a), and for “Energy Research and Development Administration” in subssecs. (b)(2) and (c)(3), in view of the termination of the Federal Energy Administration, the Energy Research and Development Administration, and the Federal Power Commission and the transfer of their functions and the functions of the Administrators and Chairman thereof (with certain exceptions) to the Secretary of Energy pursuant to sections 301, 703, and 707 of Pub. L. 95-91, which are classified to sections 7151, 7293, and 7297 of this title.

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

EPA STUDY OF METHODS TO REDUCE PLASTIC POLLUTION

Pub. L. 100-220, title II, §2202, Dec. 29, 1987, 101 Stat. 1465, directed Administrator of Environmental Protection Agency, in consultation with Secretary of Commerce, to conduct a study of the adverse effects of improper disposal of plastic articles on environment and on waste disposal, and various methods to reduce or eliminate such adverse effects, and directed Administrator, within 18 months after Dec. 29, 1987, to report results of this study to Congress.

NATIONAL ADVISORY COMMISSION ON RESOURCE CONSERVATION AND RECOVERY

Pub. L. 96-482, §33, Oct. 21, 1980, 94 Stat. 2356, as amended by Pub. L. 105-362, title V, §501(g), Nov. 10, 1998, 112 Stat. 3284, provided for establishment, membership, functions, etc., of a National Advisory Commission on Resource Conservation and Recovery, directed Commission, upon expiration of the two-year period beginning on the date when all initial members of the Commission have been appointed or the date initial funds become available, whichever is later, to transmit a final report to President and Congress containing a detailed statement of the findings and conclusions of the Commission, and terminated the Commission 30 days after submission of its final report.

SOLID WASTE CLEANUP ON FEDERAL LANDS IN ALASKA; STUDY AND REPORT TO CONGRESSIONAL COMMITTEES

Section 3 of Pub. L. 94-580 provided for a study of procedures for removal of solid waste from Federal lands in Alaska and submission of a Presidential Report to the Senate Committee on Public Lands and House Committee on Interstate and Foreign Commerce no later than one year after Oct. 21, 1976, and implementing recommendations to such committees within six months thereafter, prior to repeal by Pub. L. 96-482, §30, Oct. 21, 1980, 94 Stat. 2352.

LEACHATE CONTROL RESEARCH PROGRAM IN DELAWARE

Section 4 of Pub. L. 94-580 directed Administrator of Environmental Protection Agency, in order to demonstrate effective means of dealing with contamination of public water supplies by leachate from abandoned or other landfills, to provide technical and financial assistance for a research program, designed by New Castle County areawide waste treatment management program, to control leachate from Llangollen Landfill in New Castle County, Delaware, and provided up to \$250,000 in each of the fiscal years 1978 and 1979 for the operating costs of a counter-pumping program to contain the leachate from the Llangollen Landfill during the period of this study.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6984, 6985 of this title; title 35 section 210.

§ 6982. Special studies; plans for research, development, and demonstrations

(a) Glass and plastic

The Administrator shall undertake a study and publish a report on resource recovery from glass and plastic waste, including a scientific, technological, and economic investigation of potential solutions to implement such recovery.

(b) Composition of waste stream

The Administrator shall undertake a systematic study of the composition of the solid waste stream and of anticipated future changes in the composition of such stream and shall publish a report containing the results of such study and quantitatively evaluating the potential utility of such components.

(c) Priorities study

For purposes of determining priorities for research on recovery of materials and energy from solid waste and developing materials and energy recovery research, development, and demonstration strategies, the Administrator shall review, and make a study of, the various existing and promising techniques of energy recovery from solid waste (including, but not limited to, water-wall furnace incinerators, dry shredded fuel systems, pyrolysis, densified refuse-derived fuel systems, anerobic digestion, and fuel and feedstock preparation systems). In carrying out such study the Administrator shall investigate with respect to each such technique—

(1) the degree of public need for the potential results of such research, development, or demonstration,

(2) the potential for research, development, and demonstration without Federal action, including the degree of restraint on such potential posed by the risks involved, and

(3) the magnitude of effort and period of time necessary to develop the technology to

the point where Federal assistance can be ended.

(d) Small-scale and low technology study

The Administrator shall undertake a comprehensive study and analysis of, and publish a report on, systems of small-scale and low technology solid waste management, including household resource recovery and resource recovery systems which have special application to multiple dwelling units and high density housing and office complexes. Such study and analysis shall include an investigation of the degree to which such systems could contribute to energy conservation.

(e) Front-end source separation

The Administrator shall undertake research and studies concerning the compatibility of front-end source separation systems with high technology resource recovery systems and shall publish a report containing the results of such research and studies.

(f) Mining waste

The Administrator, in consultation with the Secretary of the Interior, shall conduct a detailed and comprehensive study on the adverse effects of solid wastes from active and abandoned surface and underground mines on the environment, including, but not limited to, the effects of such wastes on humans, water, air, health, welfare, and natural resources, and on the adequacy of means and measures currently employed by the mining industry, Government agencies, and others to dispose of and utilize such solid wastes and to prevent or substantially mitigate such adverse effects. Such study shall include an analysis of—

- (1) the sources and volume of discarded material generated per year from mining;
- (2) present disposal practices;
- (3) potential dangers to human health and the environment from surface runoff of leachate and air pollution by dust;
- (4) alternatives to current disposal methods;
- (5) the cost of those alternatives in terms of the impact on mine product costs; and
- (6) potential for use of discarded material as a secondary source of the mine product.

In furtherance of this study, the Administrator shall, as he deems appropriate, review studies and other actions of other Federal agencies concerning such wastes with a view toward avoiding duplication of effort and the need to expedite such study. Not later than thirty-six months after October 21, 1980, the Administrator shall publish a report of such study and shall include appropriate findings and recommendations for Federal and non-Federal actions concerning such effects. Such report shall be submitted to the Committee on Environment and Public Works of the United States Senate and the Committee on Energy and Commerce of the United States House of Representatives.

(g) Sludge

The Administrator shall undertake a comprehensive study and publish a report on sludge. Such study shall include an analysis of—

- (1) what types of solid waste (including but not limited to sewage and pollution treatment

residues and other residues from industrial operations such as extraction of oil from shale, liquefaction and gasification of coal and coal slurry pipeline operations) shall be classified as sludge;

(2) the effects of air and water pollution legislation on the creation of large volumes of sludge;

(3) the amounts of sludge originating in each State and in each industry producing sludge;

(4) methods of disposal of such sludge, including the cost, efficiency, and effectiveness of such methods;

(5) alternative methods for the use of sludge, including agricultural applications of sludge and energy recovery from sludge; and

(6) methods to reclaim areas which have been used for the disposal of sludge or which have been damaged by sludge.

(h) Tires

The Administrator shall undertake a study and publish a report respecting discarded motor vehicle tires which shall include an analysis of the problems involved in the collection, recovery of resources including energy, and use of such tires.

(i) Resource recovery facilities

The Administrator shall conduct research and report on the economics of, and impediments, to the effective functioning of resource recovery facilities.

(j) Resource Conservation Committee

(1) The Administrator shall serve as Chairman of a Committee composed of himself, the Secretary of Commerce, the Secretary of Labor, the Chairman of the Council on Environmental Quality, the Secretary of Treasury, the Secretary of the Interior, the Secretary of Energy, the Chairman of the Council of Economic Advisors, and a representative of the Office of Management and Budget, which shall conduct a full and complete investigation and study of all aspects of the economic, social, and environmental consequences of resource conservation with respect to—

(A) the appropriateness of recommended incentives and disincentives to foster resource conservation;

(B) the effect of existing public policies (including subsidies and economic incentives and disincentives, percentage depletion allowances, capital gains treatment and other tax incentives and disincentives) upon resource conservation, and the likely effect of the modification or elimination of such incentives and disincentives upon resource conservation;

(C) the appropriateness and feasibility of restricting the manufacture or use of categories of consumer products as a resource conservation strategy;

(D) the appropriateness and feasibility of employing as a resource conservation strategy the imposition of solid waste management charges on consumer products, which charges would reflect the costs of solid waste management services, litter pickup, the value of recoverable components of such product, final disposal, and any social value associated with the nonrecycling or uncontrolled disposal of such product; and

(E) the need for further research, development, and demonstration in the area of resource conservation.

(2) The study required in paragraph (1)(D) may include pilot scale projects, and shall consider and evaluate alternative strategies with respect to—

(A) the product categories on which such charges would be imposed;

(B) the appropriate state in the production of such consumer product at which to levy such charge;

(C) appropriate criteria for establishing such charges for each consumer product category;

(D) methods for the adjustment of such charges to reflect actions such as recycling which would reduce the overall quantities of solid waste requiring disposal; and

(E) procedures for amending, modifying, or revising such charges to reflect changing conditions.

(3) The design for the study required in paragraph (1) of this subsection shall include timetables for the completion of the study. A preliminary report putting forth the study design shall be sent to the President and the Congress within six months following October 21, 1976, and followup reports shall be sent six months thereafter. Each recommendation resulting from the study shall include at least two alternatives to the proposed recommendation.

(4) The results of such investigation and study, including recommendations, shall be reported to the President and the Congress not later than two years after October 21, 1976.

(5) There are authorized to be appropriated not to exceed \$2,000,000 to carry out this subsection.

(k) Airport landfills

The Administrator shall undertake a comprehensive study and analysis of and publish a report on systems to alleviate the hazards to aviation from birds congregating and feeding on landfills in the vicinity of airports.

(l) Completion of research and studies

The Administrator shall complete the research and studies, and submit the reports, required under subsections (b), (c), (d), (e), (f), (g), and (k) of this section not later than October 1, 1978. The Administrator shall complete the research and studies, and submit the reports, required under subsections (a), (h), and (i) of this section not later than October 1, 1979. Upon completion, each study specified in subsections (a) through (k) of this section, the Administrator shall prepare a plan for research, development, and demonstration respecting the findings of the study and shall submit any legislative recommendations resulting from such study to appropriate committees of Congress.

(m) Drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil or natural gas or geothermal energy

(1) The Administrator shall conduct a detailed and comprehensive study and submit a report on the adverse effects, if any, of drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of

crude oil or natural gas or geothermal energy on human health and the environment, including, but not limited to, the effects of such wastes on humans, water, air, health, welfare, and natural resources and on the adequacy of means and measures currently employed by the oil and gas and geothermal drilling and production industry, Government agencies, and others to dispose of and utilize such wastes and to prevent or substantially mitigate such adverse effects. Such study shall include an analysis of—

(A) the sources and volume of discarded material generated per year from such wastes;

(B) present disposal practices;

(C) potential danger to human health and the environment from the surface runoff or leachate;

(D) documented cases which prove or have caused danger to human health and the environment from surface runoff or leachate;

(E) alternatives to current disposal methods;

(F) the cost of such alternatives; and

(G) the impact of those alternatives on the exploration for, and development and production of, crude oil and natural gas or geothermal energy.

In furtherance of this study, the Administrator shall, as he deems appropriate, review studies and other actions of other Federal agencies concerning such wastes with a view toward avoiding duplication of effort and the need to expedite such study. The Administrator shall publish a report of such study and shall include appropriate findings and recommendations for Federal and non-Federal actions concerning such effects.

(2) The Administrator shall complete the research and study and submit the report required under paragraph (1) not later than twenty-four months from October 21, 1980. Upon completion of the study, the Administrator shall prepare a summary of the findings of the study, a plan for research, development, and demonstration respecting the findings of the study, and shall submit the findings and the study, along with any recommendations resulting from such study, to the Committee on Environment and Public Works of the United States Senate and the Committee on Energy and Commerce of the United States House of Representatives.

(3) There are authorized to be appropriated not to exceed \$1,000,000 to carry out the provisions of this subsection.

(n) Materials generated from the combustion of coal and other fossil fuels

The Administrator shall conduct a detailed and comprehensive study and submit a report on the adverse effects on human health and the environment, if any, of the disposal and utilization of fly ash waste, bottom ash waste, slag waste, flue gas emission control waste, and other by-product materials generated primarily from the combustion of coal or other fossil fuels. Such study shall include an analysis of—

(1) the source and volumes of such material generated per year;

(2) present disposal and utilization practices;

(3) potential danger, if any, to human health and the environment from the disposal and reuse of such materials;

- (4) documented cases in which danger to human health or the environment from surface runoff or leachate has been proved;
- (5) alternatives to current disposal methods;
- (6) the costs of such alternatives;
- (7) the impact of those alternatives on the use of coal and other natural resources; and
- (8) the current and potential utilization of such materials.

In furtherance of this study, the Administrator shall, as he deems appropriate, review studies and other actions of other Federal and State agencies concerning such material and invite participation by other concerned parties, including industry and other Federal and State agencies, with a view toward avoiding duplication of effort. The Administrator shall publish a report on such study, which shall include appropriate findings, not later than twenty-four months after October 21, 1980. Such study and findings shall be submitted to the Committee on Environment and Public Works of the United States Senate and the Committee on Energy and Commerce of the United States House of Representatives.

(o) Cement kiln dust waste

The Administrator shall conduct a detailed and comprehensive study of the adverse effects on human health and the environment, if any, of the disposal of cement kiln dust waste. Such study shall include an analysis of—

- (1) the source and volumes of such materials generated per year;
- (2) present disposal practices;
- (3) potential danger, if any, to human health and the environment from the disposal of such materials;
- (4) documented cases in which danger to human health or the environment has been proved;
- (5) alternatives to current disposal methods;
- (6) the costs of such alternatives;
- (7) the impact of those alternatives on the use of natural resources; and
- (8) the current and potential utilization of such materials.

In furtherance of this study, the Administrator shall, as he deems appropriate, review studies and other actions of other Federal and State agencies concerning such waste or materials and invite participation by other concerned parties, including industry and other Federal and State agencies, with a view toward avoiding duplication of effort. The Administrator shall publish a report of such study, which shall include appropriate findings, not later than thirty-six months after October 21, 1980. Such report shall be submitted to the Committee on Environment and Public Works of the United States Senate and the Committee on Energy and Commerce of the United States House of Representatives.

(p) Materials generated from extraction, beneficiation, and processing of ores and minerals, including phosphate rock and overburden from uranium mining

The Administrator shall conduct a detailed and comprehensive study on the adverse effects on human health and the environment, if any, of the disposal and utilization of solid waste from

the extraction, beneficiation, and processing of ores and minerals, including phosphate rock and overburden from uranium mining. Such study shall be conducted in conjunction with the study of mining wastes required by subsection (f) of this section and shall include an analysis of—

- (1) the source and volumes of such materials generated per year;
- (2) present disposal and utilization practices;
- (3) potential danger, if any, to human health and the environment from the disposal and reuse of such materials;
- (4) documented cases in which danger to human health or the environment has been proved;
- (5) alternatives to current disposal methods;
- (6) the costs of such alternatives;
- (7) the impact of those alternatives on the use of phosphate rock and uranium ore, and other natural resources; and
- (8) the current and potential utilization of such materials.

In furtherance of this study, the Administrator shall, as he deems appropriate, review studies and other actions of other Federal and State agencies concerning such waste or materials and invite participation by other concerned parties, including industry and other Federal and State agencies, with a view toward avoiding duplication of effort. The Administrator shall publish a report of such study, which shall include appropriate findings, in conjunction with the publication of the report of the study of mining wastes required to be conducted under subsection (f) of this section. Such report and findings shall be submitted to the Committee on Environment and Public Works of the United States Senate and the Committee on Energy and Commerce of the United States House of Representatives.

(q) Authorization of appropriations

There are authorized to be appropriated not to exceed \$8,000,000 for the fiscal years 1978 and 1979 to carry out this section other than subsection (j) of this section.

(r) Minimization of hazardous waste

The Administrator shall compile, and not later than October 1, 1986, submit to the Congress, a report on the feasibility and desirability of establishing standards of performance or of taking other additional actions under this chapter to require the generators of hazardous waste to reduce the volume or quantity and toxicity of the hazardous waste they generate, and of establishing with respect to hazardous wastes required management practices or other requirements to assure such wastes are managed in ways that minimize present and future risks to human health and the environment. Such report shall include any recommendations for legislative changes which the Administrator determines are feasible and desirable to implement the national policy established by section 6902 of this title.

(s) Extending landfill life and reusing landfilled areas

The Administrator shall conduct detailed, comprehensive studies of methods to extend the useful life of sanitary landfills and to better use

sites in which filled or closed landfills are located. Such studies shall address—

- (1) methods to reduce the volume of materials before placement in landfills;
- (2) more efficient systems for depositing waste in landfills;
- (3) methods to enhance the rate of decomposition of solid waste in landfills, in a safe and environmentally acceptable manner;
- (4) methane production from closed landfill units;
- (5) innovative uses of closed landfill sites, including use for energy production such as solar or wind energy and use for metals recovery;
- (6) potential for use of sewage treatment sludge in reclaiming landfilled areas; and
- (7) methods to coordinate use of a landfill owned by one municipality by nearby municipalities, and to establish equitable rates for such use, taking into account the need to provide future landfill capacity to replace that so used.

The Administrator is authorized to conduct demonstrations in the areas of study provided in this subsection. The Administrator shall periodically report on the results of such studies, with the first such report not later than October 1, 1986. In carrying out this subsection, the Administrator need not duplicate other studies which have been completed and may rely upon information which has previously been compiled.

(Pub. L. 89-272, title II, §8002, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2831; amended Pub. L. 95-609, §7(t), Nov. 8, 1978, 92 Stat. 3083; H. Res. 549, Mar. 25, 1980; Pub. L. 96-482, §29, Oct. 21, 1980, 94 Stat. 2349; Pub. L. 98-616, title II, §224(c), title VII, §702, Nov. 8, 1984, 98 Stat. 3253, 3289.)

AMENDMENTS

1984—Subsec. (r). Pub. L. 98-616, §224(c), added subsec. (r).

Subsec. (s). Pub. L. 98-616, §702, added subsec. (s).

1980—Subsec. (f). Pub. L. 96-482, §29(1), required publication of report no later than thirty-six months after Oct. 21, 1980, and its submission to Senate Committee on Environment and Public Works and House Committee on Energy and Commerce.

Subsecs. (m) to (q). Pub. L. 96-482, §29(2), added subsecs. (m) to (p) and redesignated former subsec. (m) as (q).

1978—Subsec. (g)(1). Pub. L. 95-609, §7(t)(1), substituted "shale, liquefaction" for "shale liquefaction".

Subsec. (j)(1). Pub. L. 95-609, §7(t)(2), enacted a provision adding the Secretary of Energy and the Chairman of the Council of Economic Advisors to the Committee.

Subsec. (j)(2). Pub. L. 95-609, §7(t)(3), substituted "paragraph (1)(D)" for "paragraph (2)(D)".

Subsec. (j)(3). Pub. L. 95-609, §7(t)(4), substituted "paragraph (1)" for "paragraph (2)(D)".

Subsec. (l). Pub. L. 95-609, §7(t)(5), struck out requirement of submission of reports under subsec. (j) of this section.

CHANGE OF NAME

Committee on Interstate and Foreign Commerce of the House of Representatives changed to Committee on Energy and Commerce immediately prior to noon on Jan. 3, 1981, by House Resolution No. 549, Ninety-sixth Congress, Mar. 25, 1980. Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representa-

tives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6921, 6981, 6987, 7412 of this title.

§ 6983. Coordination, collection, and dissemination of information

(a) Information

The Administrator shall develop, collect, evaluate, and coordinate information on—

- (1) methods and costs of the collection of solid waste;
- (2) solid waste management practices, including data on the different management methods and the cost, operation, and maintenance of such methods;
- (3) the amounts and percentages of resources (including energy) that can be recovered from solid waste by use of various solid waste management practices and various technologies;
- (4) methods available to reduce the amount of solid waste that is generated;
- (5) existing and developing technologies for the recovery of energy or materials from solid waste and the costs, reliability, and risks associated with such technologies;
- (6) hazardous solid waste, including incidents of damage resulting from the disposal of hazardous solid wastes; inherently and potentially hazardous solid wastes; methods of neutralizing or properly disposing of hazardous solid wastes; facilities that properly dispose of hazardous wastes;
- (7) methods of financing resource recovery facilities or, sanitary landfills, or hazardous solid waste treatment facilities, whichever is appropriate for the entity developing such facility or landfill (taking into account the amount of solid waste reasonably expected to be available to such entity);
- (8) the availability of markets for the purchase of resources, either materials or energy, recovered from solid waste; and
- (9) research and development projects respecting solid waste management.

(6) hazardous solid waste, including incidents of damage resulting from the disposal of hazardous solid wastes; inherently and potentially hazardous solid wastes; methods of neutralizing or properly disposing of hazardous solid wastes; facilities that properly dispose of hazardous wastes;

(7) methods of financing resource recovery facilities or, sanitary landfills, or hazardous solid waste treatment facilities, whichever is appropriate for the entity developing such facility or landfill (taking into account the amount of solid waste reasonably expected to be available to such entity);

(8) the availability of markets for the purchase of resources, either materials or energy, recovered from solid waste; and

(9) research and development projects respecting solid waste management.

(b) Library

(1) The Administrator shall establish and maintain a central reference library for (A) the materials collected pursuant to subsection (a) of this section and (B) the actual performance and cost effectiveness records and other data and information with respect to—

- (i) the various methods of energy and resource recovery from solid waste,

(ii) the various systems and means of resource conservation,

(iii) the various systems and technologies for collection, transport, storage, treatment, and final disposition of solid waste, and

(iv) other aspects of solid waste and hazardous solid waste management.

Such central reference library shall also contain, but not be limited to, the model codes and model accounting systems developed under this section, the information collected under subsection (d) of this section, and, subject to any applicable requirements of confidentiality, information respecting any aspect of solid waste provided by officers and employees of the Environmental Protection Agency which has been acquired by them in the conduct of their functions under this chapter and which may be of value to Federal, State, and local authorities and other persons.

(2) Information in the central reference library shall, to the extent practicable, be collated, analyzed, verified, and published and shall be made available to State and local governments and other persons at reasonable times and subject to such reasonable charges as may be necessary to defray expenses of making such information available.

(c) Model accounting system

In order to assist State and local governments in determining the cost and revenues associated with the collection and disposal of solid waste and with resource recovery operations, the Administrator shall develop and publish a recommended model cost and revenue accounting system applicable to the solid waste management functions of State and local governments. Such system shall be in accordance with generally accepted accounting principles. The Administrator shall periodically, but not less frequently than once every five years, review such accounting system and revise it as necessary.

(d) Model codes

The Administrator is authorized, in cooperation with appropriate State and local agencies, to recommend model codes, ordinances, and statutes, providing for sound solid waste management.

(e) Information programs

(1) The Administrator shall implement a program for the rapid dissemination of information on solid waste management, hazardous waste management, resource conservation, and methods of resource recovery from solid waste, including the results of any relevant research, investigations, experiments, surveys, studies, or other information which may be useful in the implementation of new or improved solid waste management practices and methods and information on any other technical, managerial, financial, or market aspect of resource conservation and recovery facilities.

(2) The Administrator shall develop and implement educational programs to promote citizen understanding of the need for environmentally sound solid waste management practices.

(f) Coordination

In collecting and disseminating information under this section, the Administrator shall coor-

dinate his actions and cooperate to the maximum extent possible with State and local authorities.

(g) Special restriction

Upon request, the full range of alternative technologies, programs or processes deemed feasible to meet the resource recovery or resource conservation needs of a jurisdiction shall be described in such a manner as to provide a sufficient evaluative basis from which the jurisdiction can make its decisions, but no officer or employee of the Environmental Protection Agency shall, in an official capacity, lobby for or otherwise represent an agency position in favor of resource recovery or resource conservation, as a policy alternative for adoption into ordinances, codes, regulations, or law by any State or political subdivision thereof.

(Pub. L. 89-272, title II, §8003, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2834; amended Pub. L. 95-609, §7(u), Nov. 8, 1978, 92 Stat. 3083.)

AMENDMENTS

1978—Subsec. (a)(3). Pub. L. 95-609 substituted "solid waste" for "discarded materials".

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6981 of this title.

§ 6984. Full-scale demonstration facilities

(a) Authority

The Administrator may enter into contracts with public agencies or authorities or private persons for the construction and operation of a full-scale demonstration facility under this chapter, or provide financial assistance in the form of grants to a full-scale demonstration facility under this chapter only if the Administrator finds that—

(1) such facility or proposed facility will demonstrate at full scale a new or significantly improved technology or process, a practical and significant improvement in solid waste management practice, or the technological feasibility and cost effectiveness of an existing, but unproven technology, process, or practice, and will not duplicate any other Federal, State, local, or commercial facility which has been constructed or with respect to which construction has begun (determined as of the date action is taken by the Administrator under this chapter),

(2) such contract or assistance meets the requirements of section 6981 of this title and meets other applicable requirements of this chapter,

(3) such facility will be able to comply with the guidelines published under section 6907 of this title and with other laws and regulations for the protection of health and the environment,

(4) in the case of a contract for construction or operation, such facility is not likely to be constructed or operated by State, local, or private persons or in the case of an application for financial assistance, such facility is not likely to receive adequate financial assistance from other sources, and

(5) any Federal interest in, or assistance to, such facility will be disposed of or terminated, with appropriate compensation, within such period of time as may be necessary to carry out the basic objectives of this chapter.

(b) Time limitation

No obligation may be made by the Administrator for financial assistance under this subchapter for any full-scale demonstration facility after the date ten years after October 21, 1976. No expenditure of funds for any such full-scale demonstration facility under this subchapter may be made by the Administrator after the date fourteen years after October 21, 1976.

(c) Cost sharing

(1) Wherever practicable, in constructing, operating, or providing financial assistance under this subchapter to a full-scale demonstration facility, the Administrator shall endeavor to enter into agreements and make other arrangements for maximum practicable cost sharing with other Federal, State, and local agencies, private persons, or any combination thereof.

(2) The Administrator shall enter into arrangements, wherever practicable and desirable, to provide monitoring of full-scale solid waste facilities (whether or not constructed or operated under this chapter) for purposes of obtaining information concerning the performance, and other aspects, of such facilities. Where the Administrator provides only monitoring and evaluation instruments or personnel (or both) or funds for such instruments or personnel and provides no other financial assistance to a facility, notwithstanding section 6981(c)(3) of this title, title to any invention made or conceived of in the course of developing, constructing, or operating such facility shall not be required to vest in the United States and patents respecting such invention shall not be required to be issued to the United States.

(d) Prohibition

After October 21, 1976, the Administrator shall not construct or operate any full-scale facility (except by contract with public agencies or authorities or private persons).

(Pub. L. 89-272, title II, §8004, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2836; amended Pub. L. 95-609, §7(v), Nov. 8, 1978, 92 Stat. 3084; Pub. L. 98-616, title V, §502(f), Nov. 8, 1984, 98 Stat. 3276.)

AMENDMENTS

1984—Subsec. (c)(1). Pub. L. 98-616 inserted “(1)” before “Wherever”.

1978—Subsec. (a)(1). Pub. L. 95-609 substituted “solid waste” for “discarded material”.

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector,

Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5920, 6981 of this title.

§ 6985. Special study and demonstration projects on recovery of useful energy and materials

(a) Studies

The Administrator shall conduct studies and develop recommendations for administrative or legislative action on—

(1) means of recovering materials and energy from solid waste, recommended uses of such materials and energy for national or international welfare, including identification of potential markets for such recovered resources, the impact of distribution of such resources on existing markets, and potentials for energy conservation through resource conservation and resource recovery;

(2) actions to reduce waste generation which have been taken voluntarily or in response to governmental action, and those which practically could be taken in the future, and the economic, social, and environmental consequences of such actions;

(3) methods of collection, separation, and containerization which will encourage efficient utilization of facilities and contribute to more effective programs of reduction, reuse, or disposal of wastes;

(4) the use of Federal procurement to develop market demand for recovered resources;

(5) recommended incentives (including Federal grants, loans, and other assistance) and disincentives to accelerate the reclamation or recycling of materials from solid wastes, with special emphasis on motor vehicle hulks;

(6) the effect of existing public policies, including subsidies and economic incentives and disincentives, percentage depletion allowances, capital gains treatment and other tax incentives and disincentives, upon the recycling and reuse of materials, and the likely effect of the modification or elimination of such incentives and disincentives upon the reuse, recycling and conservation of such materials;

(7) the necessity and method of imposing disposal or other charges on packaging, containers, vehicles, and other manufactured goods, which charges would reflect the cost of final disposal, the value of recoverable components of the item, and any social costs associated with nonrecycling or uncontrolled disposal of such items; and

(8) the legal constraints and institutional barriers to the acquisition of land needed for solid waste management, including land for facilities and disposal sites;

(9) in consultation with the Secretary of Agriculture, agricultural waste management problems and practices, the extent of reuse and recovery of resources in such wastes, the prospects for improvement, Federal, State, and local regulations governing such practices, and the economic, social, and environmental consequences of such practices; and

(10) in consultation with the Secretary of the Interior, mining waste management problems, and practices, including an assessment of existing authorities, technologies, and economics, and the environmental and public health consequences of such practices.

(b) Demonstration

The Administrator is also authorized to carry out demonstration projects to test and demonstrate methods and techniques developed pursuant to subsection (a) of this section.

(c) Application of other sections

Section 6981(b) and (c) of this title shall be applicable to investigations, studies, and projects carried out under this section.

(Pub. L. 89-272, title II, §8005, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2837.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3253a of this title, prior to the general amendment of the Solid Waste Disposal Act by Pub. L. 94-580.

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

§ 6986. Grants for resource recovery systems and improved solid waste disposal facilities

(a) Authority

The Administrator is authorized to make grants pursuant to this section to any State, municipal, or interstate or intermunicipal agency for the demonstration of resource recovery systems or for the construction of new or improved solid waste disposal facilities.

(b) Conditions

(1) Any grant under this section for the demonstration of a resource recovery system may be made only if it (A) is consistent with any plans which meet the requirements of subchapter IV of this chapter; (B) is consistent with the guidelines recommended pursuant to section 6907 of this title; (C) is designed to provide area-wide resource recovery systems consistent with the purposes of this chapter, as determined by the Administrator, pursuant to regulations promulgated under subsection (d) of this section; and (D) provides an equitable system for distributing the costs associated with construction, operation, and maintenance of any resource recovery system among the users of such system.

(2) The Federal share for any project to which paragraph (1) applies shall not be more than 75 percent.

(c) Limitations

(1) A grant under this section for the construction of a new or improved solid waste disposal facility may be made only if—

(A) a State or interstate plan for solid waste disposal has been adopted which applies to the area involved, and the facility to be con-

structed (i) is consistent with such plan, (ii) is included in a comprehensive plan for the area involved which is satisfactory to the Administrator for the purposes of this chapter, and (iii) is consistent with the guidelines recommended under section 6907 of this title, and

(B) the project advances the state of the art by applying new and improved techniques in reducing the environmental impact of solid waste disposal, in achieving recovery of energy or resources, or in recycling useful materials.

(2) The Federal share for any project to which paragraph (1) applies shall be not more than 50 percent in the case of a project serving an area which includes only one municipality, and not more than 75 percent in any other case.

(d) Regulations

(1) The Administrator shall promulgate regulations establishing a procedure for awarding grants under this section which—

(A) provides that projects will be carried out in communities of varying sizes, under such conditions as will assist in solving the community waste problems of urban-industrial centers, metropolitan regions, and rural areas, under representative geographic and environmental conditions; and

(B) provides deadlines for submission of, and action on, grant requests.

(2) In taking action on applications for grants under this section, consideration shall be given by the Administrator (A) to the public benefits to be derived by the construction and the propriety of Federal aid in making such grant; (B) to the extent applicable, to the economic and commercial viability of the project (including contractual arrangements with the private sector to market any resources recovered); (C) to the potential of such project for general application to community solid waste disposal problems; and (D) to the use by the applicant of comprehensive regional or metropolitan area planning.

(e) Additional limitations

A grant under this section—

(1) may be made only in the amount of the Federal share of (A) the estimated total design and construction costs, plus (B) in the case of a grant to which subsection (b)(1) of this section applies, the first-year operation and maintenance costs;

(2) may not be provided for land acquisition or (except as otherwise provided in paragraph (1)(B)) for operating or maintenance costs;

(3) may not be made until the applicant has made provision satisfactory to the Administrator for proper and efficient operation and maintenance of the project (subject to paragraph (1)(B)); and

(4) may be made subject to such conditions and requirements, in addition to those provided in this section, as the Administrator may require to properly carry out his functions pursuant to this chapter.

For purposes of paragraph (1), the non-Federal share may be in any form, including, but not limited to, lands or interests therein needed for the project or personal property or services, the

value of which shall be determined by the Administrator.

(f) Single State

(1) Not more than 15 percent of the total of funds authorized to be appropriated for any fiscal year to carry out this section shall be granted under this section for projects in any one State.

(2) The Administrator shall prescribe by regulation the manner in which this subsection shall apply to a grant under this section for a project in an area which includes all or part of more than one State.

(Pub. L. 89-272, title II, §8006, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2838.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3254b of this title, prior to the general amendment of the Solid Waste Disposal Act by Pub. L. 94-580.

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

§ 6987. Authorization of appropriations

There are authorized to be appropriated not to exceed \$35,000,000 for the fiscal year 1978 to carry out the purposes of this subchapter (except for section 6982 of this title).

(Pub. L. 89-272, title II, §8007, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2839.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3259 of this title, prior to the general amendment of the Solid Waste Disposal Act by Pub. L. 94-580.

SUBCHAPTER IX—REGULATION OF UNDERGROUND STORAGE TANKS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 6916, 7589, 9601, 9607, 9614 of this title.

§ 6991. Definitions and exemptions

For the purposes of this subchapter—

(1) The term “underground storage tank” means any one or combination of tanks (including underground pipes connected thereto) which is used to contain an accumulation of regulated substances, and the volume of which (including the volume of the underground pipes connected thereto) is 10 per centum or more beneath the surface of the ground. Such term does not include any—

(A) farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes,

(B) tank used for storing heating oil for consumptive use on the premises where stored,

(C) septic tank,

(D) pipeline facility (including gathering lines)—

(i) which is regulated under chapter 601 of title 49, or

(ii) which is an intrastate pipeline facility regulated under State laws as provided in chapter 601 of title 49,

and which is determined by the Secretary to be connected to a pipeline or to be operated or intended to be capable of operating at pipeline pressure or as an integral part of a pipeline,

(E) surface impoundment, pit, pond, or lagoon,

(F) storm water or waste water collection system,

(G) flow-through process tank,

(H) liquid trap or associated gathering lines directly related to oil or gas production and gathering operations, or

(I) storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

The term “underground storage tank” shall not include any pipes connected to any tank which is described in subparagraphs (A) through (I).

(2) The term “regulated substance” means—

(A) any substance defined in section 9601(14) of this title (but not including any substance regulated as a hazardous waste under subchapter III of this chapter), and

(B) petroleum.

(3) The term “owner” means—

(A) in the case of an underground storage tank in use on November 8, 1984, or brought into use after that date, any person who owns an underground storage tank used for the storage, use, or dispensing of regulated substances,¹ and

(B) in the case of any underground storage tank in use before November 8, 1984, but no longer in use on November 8, 1984, any person who owned such tank immediately before the discontinuation of its use.

(4) The term “operator” means any person in control of, or having responsibility for, the daily operation of the underground storage tank.

(5) The term “release” means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank into ground water, surface water or subsurface soils.

(6) The term “person” has the same meaning as provided in section 6903(15) of this title, except that such term includes a consortium, a joint venture, and a commercial entity, and the United States Government.

(7) The term “nonoperational storage tank” means any underground storage tank in which regulated substances will not be deposited or from which regulated substances will not be dispensed after November 8, 1984.

(8) The term “petroleum” means petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of tem-

¹ So in original. Probably should be “substances.”

perature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute).

(Pub. L. 89-272, title II, §9001, as added Pub. L. 98-616, title VI, §601(a), Nov. 8, 1984, 98 Stat. 3277; amended Pub. L. 99-499, title II, §205(a), Oct. 17, 1986, 100 Stat. 1696; Pub. L. 102-508, title III, §302, Oct. 24, 1992, 106 Stat. 3307; Pub. L. 103-429, §7(d), Oct. 31, 1994, 108 Stat. 4389.)

AMENDMENTS

1994—Par. (1)(D). Pub. L. 103-429 amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: “pipeline facility (including gathering lines)—

“(i) which is regulated under the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1671 et seq.),

“(ii) which is regulated under the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2001 et seq.), or

“(iii) which is an intrastate pipeline facility regulated under State laws as provided in the provisions of law referred to in clause (i) or (ii) of this subparagraph,

and which is determined by the Secretary to be connected to a pipeline or to be operated or intended to be capable of operating at pipeline pressure or as an integral part of a pipeline.”.

1992—Par. (1)(D). Pub. L. 102-508 amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: “pipeline facility (including gathering lines) regulated under—

“(i) the Natural Gas Pipeline Safety Act of 1968,

“(ii) the Hazardous Liquid Pipeline Safety Act of 1979, or

“(iii) which is an intrastate pipeline facility regulated under State laws comparable to the provisions of law referred to in clause (i) or (ii) of this subparagraph.”.

1986—Par. (2)(B). Pub. L. 99-499 struck out “, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute)”. See par. (8).

Par. (8). Pub. L. 99-499 added par. (8).

ABOVEGROUND STORAGE TANK GRANT PROGRAM

Pub. L. 106-554, §1(a)(4) [div. B, title XII, §1201], Dec. 21, 2000, 114 Stat. 2763, 2763A-313, provided that:

“(a) DEFINITIONS.—In this provision:

“(1) ABOVEGROUND STORAGE TANK.—The term ‘aboveground storage tank’ means any tank or combination of tanks (including any connected pipe)—

“(A) that is used to contain an accumulation of regulated substances; and

“(B) the volume of which (including the volume of any connected pipe) is located wholly above the surface of the ground.

“(2) ADMINISTRATOR.—The term ‘Administrator’ means the Administrator of the Environmental Protection Agency.

“(3) DENALI COMMISSION.—The term ‘Denali Commission’ means the commission established by section 303(a) of the Denali Commission Act of 1998 [Pub. L. 105-277, div. C, title III] (42 U.S.C. 3121 note).

“(4) FEDERAL ENVIRONMENTAL LAW.—The term ‘Federal environmental law’ means—

“(A) the Oil Pollution Control Act of 1990 (33 U.S.C. 2701 et seq.);

“(B) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.);

“(C) the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.);

“(D) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.); or

“(E) any other Federal law that is applicable to the release into the environment of a regulated substance, as determined by the Administrator.

“(5) NATIVE VILLAGE.—The term ‘Native village’ has the meaning given the term in section 11(b) in Public Law 92-203 (85 Stat. 688) [43 U.S.C. 1610(b)].

“(6) PROGRAM.—The term ‘program’ means the Aboveground Storage Tank Grant Program established by subsection (b)(1).

“(7) REGULATED SUBSTANCE.—The term ‘regulated substance’ has the meaning given the term in section 9001 of the Solid Waste Disposal Act (42 U.S.C. 6991).

“(8) STATE.—The term ‘State’ means the State of Alaska.

“(b) ESTABLISHMENT.—

“(1) IN GENERAL.—There is established a grant program to be known as the ‘Aboveground Storage Tank Grant Program’

“(2) GRANTS.—Under the program, the Administrator shall award a grant to—

“(A) the State, on behalf of a Native village; or

“(B) the Denali Commission.

“(c) USE OF GRANTS.—The State or the Denali Commission shall use the funds of a grant under subsection (b) to repair, upgrade, or replace one or more aboveground storage tanks that—

“(1) leaks or poses an imminent threat of leaking, as certified by the Administrator, the Commandant of the Coast Guard, or any other appropriate Federal or State agency (as determined by the Administrator); and

“(2) is located in a Native village—

“(A) the median household income of which is less than 80 percent of the median household income in the State;

“(B) that is located—

“(i) within the boundaries of—

“(I) a unit of the National Park System;

“(II) a unit of the National Wildlife Refuge System; or

“(III) a National Forest; or

“(ii) on public land under the administrative jurisdiction of the Bureau of Land Management; or

“(C) that receives payments from the Federal Government under chapter 69 of title 31, United States Code (commonly known as ‘payments in lieu of taxes’).

“(d) REPORTS.—Not later than 1 year after the date on which the State or the Denali Commission receives a grant under subsection (c), and annually thereafter, the State or the Denali Commission, as the case may be, shall submit a report describing each project completed with grant funds and any projects planned for the following year, to—

“(1) the Administrator;

“(2) the Committee on Resources of the House of Representatives;

“(3) the Committee on Environment and Public Works of the Senate;

“(4) the Committee on Appropriations of the House of Representatives; and

“(5) the Committee on Appropriations of the Senate.

“(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this Act [probably means this section], to remain available until expended—

“(1) \$20,000,000 for fiscal year 2001; and

“(2) such sums as are necessary for each fiscal year thereafter.”

[For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.]

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6991b, 6991c, 6991h of this title.

§ 6991a. Notification

(a) Underground storage tanks

(1) Within 18 months after November 8, 1984, each owner of an underground storage tank shall

notify the State or local agency or department designated pursuant to subsection (b)(1) of this section of the existence of such tank, specifying the age, size, type, location, and uses of such tank.

(2)(A) For each underground storage tank taken out of operation after January 1, 1974, the owner of such tank shall, within eighteen months after November 8, 1984, notify the State or local agency, or department designated pursuant to subsection (b)(1) of this section of the existence of such tanks (unless the owner knows the tank subsequently was removed from the ground). The owner of a tank taken out of operation on or before January 1, 1974, shall not be required to notify the State or local agency under this subsection.

(B) Notice under subparagraph (A) shall specify, to the extent known to the owner—

- (i) the date the tank was taken out of operation,
- (ii) the age of the tank on the date taken out of operation,
- (iii) the size, type and location of the tank, and
- (iv) the type and quantity of substances left stored in such tank on the date taken out of operation.

(3) Any owner which brings into use an underground storage tank after the initial notification period specified under paragraph (1), shall notify the designated State or local agency or department within thirty days of the existence of such tank, specifying the age, size, type, location and uses of such tank.

(4) Paragraphs (1) through (3) of this subsection shall not apply to tanks for which notice was given pursuant to section 9603(c) of this title.

(5) Beginning thirty days after the Administrator prescribes the form of notice pursuant to subsection (b)(2) of this section and for eighteen months thereafter, any person who deposits regulated substances in an underground storage tank shall reasonably notify the owner or operator of such tank of the owner's notification requirements pursuant to this subsection.

(6) Beginning thirty days after the Administrator issues new tank performance standards pursuant to section 6991b(c) of this title, any person who sells a tank intended to be used as an underground storage tank shall notify the purchaser of such tank of the owner's notification requirements pursuant to this subsection.

(b) Agency designation

(1) Within one hundred and eighty days after November 8, 1984, the Governors of each State shall designate the appropriate State agency or department or local agencies or departments to receive the notifications under subsection (a)(1), (2), or (3) of this section.

(2) Within twelve months after November 8, 1984, the Administrator, in consultation with State and local officials designated pursuant to subsection (b)(1) of this section, and after notice and opportunity for public comment, shall prescribe the form of the notice and the information to be included in the notifications under subsection (a)(1), (2), or (3) of this section. In prescribing the form of such notice, the Admin-

istrator shall take into account the effect on small businesses and other owners and operators.

(c) State inventories

Each State shall make 2 separate inventories of all underground storage tanks in such State containing regulated substances. One inventory shall be made with respect to petroleum and one with respect to other regulated substances. In making such inventories, the State shall utilize and aggregate the data in the notification forms submitted pursuant to subsections (a) and (b) of this section. Each State shall submit such aggregated data to the Administrator not later than 270 days after October 17, 1986.

(Pub. L. 89-272, title II, §9002, as added Pub. L. 98-616, title VI, §601(a), Nov. 8, 1984, 98 Stat. 3278; amended Pub. L. 99-499, title II, §205(b), Oct. 17, 1986, 100 Stat. 1696.)

AMENDMENTS

1986—Subsec. (c). Pub. L. 99-499 added subsec. (c).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6991c, 6991e of this title.

§ 6991b. Release detection, prevention, and correction regulations

(a) Regulations

The Administrator, after notice and opportunity for public comment, and at least three months before the effective dates specified in subsection (f) of this section, shall promulgate release detection, prevention, and correction regulations applicable to all owners and operators of underground storage tanks, as may be necessary to protect human health and the environment.

(b) Distinctions in regulations

In promulgating regulations under this section, the Administrator may distinguish between types, classes, and ages of underground storage tanks. In making such distinctions, the Administrator may take into consideration factors, including, but not limited to: location of the tanks, soil and climate conditions, uses of the tanks, history of maintenance, age of the tanks, current industry recommended practices, national consensus codes, hydrogeology, water table, size of the tanks, quantity of regulated substances periodically deposited in or dispensed from the tank, the technical capability of the owners and operators, and the compatibility of the regulated substance and the materials of which the tank is fabricated.

(c) Requirements

The regulations promulgated pursuant to this section shall include, but need not be limited to, the following requirements respecting all underground storage tanks—

(1) requirements for maintaining a leak detection system, an inventory control system together with tank testing, or a comparable system or method designed to identify releases in a manner consistent with the protection of human health and the environment;

(2) requirements for maintaining records of any monitoring or leak detection system or

inventory control system or tank testing or comparable system;

(3) requirements for reporting of releases and corrective action taken in response to a release from an underground storage tank;

(4) requirements for taking corrective action in response to a release from an underground storage tank;

(5) requirements for the closure of tanks to prevent future releases of regulated substances into the environment; and

(6) requirements for maintaining evidence of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from operating an underground storage tank.

(d) Financial responsibility

(1) Financial responsibility required by this subsection may be established in accordance with regulations promulgated by the Administrator by any one, or any combination, of the following: insurance, guarantee, surety bond, letter of credit, qualification as a self-insurer or any other method satisfactory to the Administrator. In promulgating requirements under this subsection, the Administrator is authorized to specify policy or other contractual terms, conditions, or defenses which are necessary or are unacceptable in establishing such evidence of financial responsibility in order to effectuate the purposes of this subchapter.

(2) In any case where the owner or operator is in bankruptcy, reorganization, or arrangement pursuant to the Federal Bankruptcy Code or where with reasonable diligence jurisdiction in any State court of the Federal courts cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility must be provided under this subsection may be asserted directly against the guarantor providing such evidence of financial responsibility. In the case of any action pursuant to this paragraph such guarantor shall be entitled to invoke all rights and defenses which would have been available to the owner or operator if any action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator.

(3) The total liability of any guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this section. Nothing in this subsection shall be construed to limit any other State or Federal statutory, contractual or common law liability of a guarantor to its owner or operator including, but not limited to, the liability of such guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. Nothing in this subsection shall be construed to diminish the liability of any person under section 9607 or 9611 of this title or other applicable law.

(4) For the purpose of this subsection, the term "guarantor" means any person, other than the owner or operator, who provides evidence of

financial responsibility for an owner or operator under this subsection.

(5)(A) The Administrator, in promulgating financial responsibility regulations under this section, may establish an amount of coverage for particular classes or categories of underground storage tanks containing petroleum which shall satisfy such regulations and which shall not be less than \$1,000,000 for each occurrence with an appropriate aggregate requirement.

(B) The Administrator may set amounts lower than the amounts required by subparagraph (A) of this paragraph for underground storage tanks containing petroleum which are at facilities not engaged in petroleum production, refining, or marketing and which are not used to handle substantial quantities of petroleum.

(C) In establishing classes and categories for purposes of this paragraph, the Administrator may consider the following factors:

(i) The size, type, location, storage, and handling capacity of underground storage tanks in the class or category and the volume of petroleum handled by such tanks.

(ii) The likelihood of release and the potential extent of damage from any release from underground storage tanks in the class or category.

(iii) The economic impact of the limits on the owners and operators of each such class or category, particularly relating to the small business segment of the petroleum marketing industry.

(iv) The availability of methods of financial responsibility in amounts greater than the amount established by this paragraph.

(v) Such other factors as the Administrator deems pertinent.

(D) The Administrator may suspend enforcement of the financial responsibility requirements for a particular class or category of underground storage tanks or in a particular State, if the Administrator makes a determination that methods of financial responsibility satisfying the requirements of this subsection are not generally available for underground storage tanks in that class or category, and—

(i) steps are being taken to form a risk retention group for such class of tanks; or

(ii) such State is taking steps to establish a fund pursuant to section 6991c(c)(1) of this title to be submitted as evidence of financial responsibility.

A suspension by the Administrator pursuant to this paragraph shall extend for a period not to exceed 180 days. A determination to suspend may be made with respect to the same class or category or for the same State at the end of such period, but only if substantial progress has been made in establishing a risk retention group, or the owners or operators in the class or category demonstrate, and the Administrator finds, that the formation of such a group is not possible and that the State is unable or unwilling to establish such a fund pursuant to clause (ii).

(e) New tank performance standards

The Administrator shall, not later than three months prior to the effective date specified in

subsection (f) of this section, issue performance standards for underground storage tanks brought into use on or after the effective date of such standards. The performance standards for new underground storage tanks shall include, but need not be limited to, design, construction, installation, release detection, and compatibility standards.

(f) Effective dates

(1) Regulations issued pursuant to subsection¹ (c) and (d) of this section, and standards issued pursuant to subsection (e) of this section, for underground storage tanks containing regulated substances defined in section 6991(2)(B) of this title (petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure) shall be effective not later than thirty months after November 8, 1984.

(2) Standards issued pursuant to subsection (e) of this section (entitled "New Tank Performance Standards") for underground storage tanks containing regulated substances defined in section 6991(2)(A) of this title shall be effective not later than thirty-six months after November 8, 1984.

(3) Regulations issued pursuant to subsection (c) of this section (entitled "Requirements") and standards issued pursuant to subsection (d) of this section (entitled "Financial Responsibility") for underground storage tanks containing regulated substances defined in section 6991(2)(A) of this title shall be effective not later than forty-eight months after November 8, 1984.

(g) Interim prohibition

(1) Until the effective date of the standards promulgated by the Administrator under subsection (e) of this section and after one hundred and eighty days after November 8, 1984, no person may install an underground storage tank for the purpose of storing regulated substances unless such tank (whether of single or double wall construction)—

(A) will prevent releases due to corrosion or structural failure for the operational life of the tank;

(B) is cathodically protected against corrosion, constructed of noncorrosive material, steel clad with a noncorrosive material, or designed in a manner to prevent the release or threatened release of any stored substance; and

(C) the material used in the construction or lining of the tank is compatible with the substance to be stored.

(2) Notwithstanding paragraph (1), if soil tests conducted in accordance with ASTM Standard G57-78, or another standard approved by the Administrator, show that soil resistivity in an installation location is 12,000 ohm/cm or more (unless a more stringent standard is prescribed by the Administrator by rule), a storage tank without corrosion protection may be installed in that location during the period referred to in paragraph (1).

¹ So in original. Probably should be "subsections".

(h) EPA response program for petroleum

(1) Before regulations

Before the effective date of regulations under subsection (c) of this section, the Administrator (or a State pursuant to paragraph (7)) is authorized to—

(A) require the owner or operator of an underground storage tank to undertake corrective action with respect to any release of petroleum when the Administrator (or the State) determines that such corrective action will be done properly and promptly by the owner or operator of the underground storage tank from which the release occurs; or

(B) undertake corrective action with respect to any release of petroleum into the environment from an underground storage tank if such action is necessary, in the judgment of the Administrator (or the State), to protect human health and the environment.

The corrective action undertaken or required under this paragraph shall be such as may be necessary to protect human health and the environment. The Administrator shall use funds in the Leaking Underground Storage Tank Trust Fund for payment of costs incurred for corrective action under subparagraph (B), enforcement action under subparagraph (A), and cost recovery under paragraph (6) of this subsection. Subject to the priority requirements of paragraph (3), the Administrator (or the State) shall give priority in undertaking such actions under subparagraph (B) to cases where the Administrator (or the State) cannot identify a solvent owner or operator of the tank who will undertake action properly.

(2) After regulations

Following the effective date of regulations under subsection (c) of this section, all actions or orders of the Administrator (or a State pursuant to paragraph (7)) described in paragraph (1) of this subsection shall be in conformity with such regulations. Following such effective date, the Administrator (or the State) may undertake corrective action with respect to any release of petroleum into the environment from an underground storage tank only if such action is necessary, in the judgment of the Administrator (or the State), to protect human health and the environment and one or more of the following situations exists:

(A) No person can be found, within 90 days or such shorter period as may be necessary to protect human health and the environment, who is—

(i) an owner or operator of the tank concerned,

(ii) subject to such corrective action regulations, and

(iii) capable of carrying out such corrective action properly.

(B) A situation exists which requires prompt action by the Administrator (or the State) under this paragraph to protect human health and the environment.

(C) Corrective action costs at a facility exceed the amount of coverage required by the Administrator pursuant to the provisions of

subsections (c) and (d)(5) of this section and, considering the class or category of underground storage tank from which the release occurred, expenditures from the Leaking Underground Storage Tank Trust Fund are necessary to assure an effective corrective action.

(D) The owner or operator of the tank has failed or refused to comply with an order of the Administrator under this subsection or section 6991e of this title or with the order of a State under this subsection to comply with the corrective action regulations.

(3) Priority of corrective actions

The Administrator (or a State pursuant to paragraph (7)) shall give priority in undertaking corrective actions under this subsection, and in issuing orders requiring owners or operators to undertake such actions, to releases of petroleum from underground storage tanks which pose the greatest threat to human health and the environment.

(4) Corrective action orders

The Administrator is authorized to issue orders to the owner or operator of an underground storage tank to carry out subparagraph (A) of paragraph (1) or to carry out regulations issued under subsection (c)(4) of this section. A State acting pursuant to paragraph (7) of this subsection is authorized to carry out subparagraph (A) of paragraph (1) only until the State's program is approved by the Administrator under section 6991c of this title. Such orders shall be issued and enforced in the same manner and subject to the same requirements as orders under section 6991e of this title.

(5) Allowable corrective actions

The corrective actions undertaken by the Administrator (or a State pursuant to paragraph (7)) under paragraph (1) or (2) may include temporary or permanent relocation of residents and alternative household water supplies. In connection with the performance of any corrective action under paragraph (1) or (2), the Administrator may undertake an exposure assessment as defined in paragraph (10) of this subsection or provide for such an assessment in a cooperative agreement with a State pursuant to paragraph (7) of this subsection. The costs of any such assessment may be treated as corrective action for purposes of paragraph (6), relating to cost recovery.

(6) Recovery of costs

(A) In general

Whenever costs have been incurred by the Administrator, or by a State pursuant to paragraph (7), for undertaking corrective action or enforcement action with respect to the release of petroleum from an underground storage tank, the owner or operator of such tank shall be liable to the Administrator or the State for such costs. The liability under this paragraph shall be construed to be the standard of liability which obtains under section 1321 of title 33.

(B) Recovery

In determining the equities for seeking the recovery of costs under subparagraph (A),

the Administrator (or a State pursuant to paragraph (7) of this subsection) may consider the amount of financial responsibility required to be maintained under subsections (c) and (d)(5) of this section and the factors considered in establishing such amount under subsection (d)(5) of this section.

(C) Effect on liability

(i) No transfers of liability

No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer from the owner or operator of any underground storage tank or from any person who may be liable for a release or threat of release under this subsection, to any other person the liability imposed under this subsection. Nothing in this subsection shall bar any agreement to insure, hold harmless, or indemnify a party to such agreement for any liability under this section.

(ii) No bar to cause of action

Nothing in this subsection, including the provisions of clause (i) of this subparagraph, shall bar a cause of action that an owner or operator or any other person subject to liability under this section, or a guarantor, has or would have, by reason of subrogation or otherwise against any person.

(D) Facility

For purposes of this paragraph, the term "facility" means, with respect to any owner or operator, all underground storage tanks used for the storage of petroleum which are owned or operated by such owner or operator and located on a single parcel of property (or on any contiguous or adjacent property).

(7) State authorities

(A) General

A State may exercise the authorities in paragraphs (1) and (2) of this subsection, subject to the terms and conditions of paragraphs (3), (5), (9), (10), and (11), and including the authorities of paragraphs (4), (6), and (8) of this subsection if—

(i) the Administrator determines that the State has the capabilities to carry out effective corrective actions and enforcement activities; and

(ii) the Administrator enters into a cooperative agreement with the State setting out the actions to be undertaken by the State.

The Administrator may provide funds from the Leaking Underground Storage Tank Trust Fund for the reasonable costs of the State's actions under the cooperative agreement.

(B) Cost share

Following the effective date of the regulations under subsection (c) of this section, the State shall pay 10 per centum of the cost of corrective actions undertaken either by the Administrator or by the State under a cooperative agreement, except that the Administrator may take corrective action at a facil-

ity where immediate action is necessary to respond to an imminent and substantial endangerment to human health or the environment if the State fails to pay the cost share.

(8) Emergency procurement powers

Notwithstanding any other provision of law, the Administrator may authorize the use of such emergency procurement powers as he deems necessary.

(9) Definition of owner or operator

(A) In general

As used in this subchapter, the terms "owner" and "operator" do not include a person that, without participating in the management of an underground storage tank and otherwise not engaged in petroleum production, refining, or marketing, holds indicia of ownership primarily to protect the person's security interest.

(B) Security interest holders

The provisions regarding holders of security interests in subparagraphs (E) through (G) of section 9601(20) of this title and the provisions regarding fiduciaries at section 9607(n) of this title shall apply in determining a person's liability as an owner or operator of an underground storage tank for the purposes of this subchapter.

(C) Effect on rule

Nothing in subparagraph (B) shall be construed as modifying or affecting the final rule issued by the Administrator on September 7, 1995 (60 Fed. Reg. 46,692), or as limiting the authority of the Administrator to amend the final rule, in accordance with applicable law. The final rule in effect on September 30, 1996, shall prevail over any inconsistent provision regarding holders of security interests in subparagraphs (E) through (G) of section 9601(20) of this title or any inconsistent provision regarding fiduciaries in section 9607(n) of this title. Any amendment to the final rule shall be consistent with the provisions regarding holders of security interests in subparagraphs (E) through (G) of section 9601(20) of this title and the provisions regarding fiduciaries in section 9607(n) of this title. This subparagraph does not preclude judicial review of any amendment of the final rule made after September 30, 1996.

(10) Definition of exposure assessment

As used in this subsection, the term "exposure assessment" means an assessment to determine the extent of exposure of, or potential for exposure of, individuals to petroleum from a release from an underground storage tank based on such factors as the nature and extent of contamination and the existence of or potential for pathways of human exposure (including ground or surface water contamination, air emissions, and food chain contamination), the size of the community within the likely pathways of exposure, and the comparison of expected human exposure levels to the short-term and long-term health effects associated with identified contaminants and any available recommended exposure or tolerance

limits for such contaminants. Such assessment shall not delay corrective action to abate immediate hazards or reduce exposure.

(11) Facilities without financial responsibility

At any facility where the owner or operator has failed to maintain evidence of financial responsibility in amounts at least equal to the amounts established by subsection (d)(5)(A) of this section (or a lesser amount if such amount is applicable to such facility as a result of subsection (d)(5)(B) of this section) for whatever reason the Administrator shall expend no monies from the Leaking Underground Storage Tank Trust Fund to clean up releases at such facility pursuant to the provisions of paragraph (1) or (2) of this subsection. At such facilities the Administrator shall use the authorities provided in subparagraph (A) of paragraph (1) and paragraph (4) of this subsection and section 6991e of this title to order corrective action to clean up such releases. States acting pursuant to paragraph (7) of this subsection shall use the authorities provided in subparagraph (A) of paragraph (1) and paragraph (4) of this subsection to order corrective action to clean up such releases. Notwithstanding the provisions of this paragraph, the Administrator may use monies from the fund to take the corrective actions authorized by paragraph (5) of this subsection to protect human health at such facilities and shall seek full recovery of the costs of all such actions pursuant to the provisions of paragraph (6)(A) of this subsection and without consideration of the factors in paragraph (6)(B) of this subsection. Nothing in this paragraph shall prevent the Administrator (or a State pursuant to paragraph (7) of this subsection) from taking corrective action at a facility where there is no solvent owner or operator or where immediate action is necessary to respond to an imminent and substantial endangerment of human health or the environment.

(Pub. L. 89-272, title II, §9003, as added Pub. L. 98-616, title VI, §601(a), Nov. 8, 1984, 98 Stat. 3279; amended Pub. L. 99-499, title II, §205(c), (d), Oct. 17, 1986, 100 Stat. 1697, 1698; Pub. L. 104-208, div. A, title II, §2503, Sept. 30, 1996, 110 Stat. 3009-468.)

REFERENCES IN TEXT

The Federal Bankruptcy Code, referred to in subsec. (d)(2), probably means a reference to Title 11, Bankruptcy.

AMENDMENTS

1996—Subsec. (h)(9). Pub. L. 104-208 added par. (9) and struck out heading and text of former par. (9). Text read as follows: "As used in this subsection, the term 'owner' does not include any person who, without participating in the management of an underground storage tank and otherwise not engaged in petroleum production, refining, and marketing, holds indicia of ownership primarily to protect the owner's security interest in the tank."

1986—Subsec. (c)(6). Pub. L. 99-499, §205(c)(1), added par. (6).

Subsec. (d)(1). Pub. L. 99-499, §205(c)(3), which directed that par. (1) be amended by "striking out 'or' after 'credit,' and by striking out the period at the end thereof and inserting in lieu thereof the following: 'or any other method satisfactory to the Administrator.'",

was executed by striking the period and making insertion at end of first sentence, rather than at end of par. (1), as the probable intent of Congress, because an earlier version of the amending legislation had provided that such amendment be made to first sentence.

Pub. L. 99-499, §205(c)(2), redesignated par. (2) as (1) and struck out former par. (1) which read as follows: "As he deems necessary or desirable, the Administrator shall promulgate regulations containing requirements for maintaining evidence of financial responsibility as he deems necessary and desirable for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from operating an underground storage tank."

Subsec. (d)(2) to (5), Pub. L. 99-499, §205(c)(2), (4), added par. (5) and redesignated pars. (3) to (5) as (2) to (4), respectively. Former par. (2) redesignated (1).

Subsec. (h), Pub. L. 99-499, §205(d), added subsec. (h).

EFFECTIVE DATE OF 1996 AMENDMENT

Section 2505 of div. A of Pub. L. 104-208 provided that: "The amendments made by this subtitle [subtitle E (§§2501-2505) of title II of div. A of Pub. L. 104-208, amending this section and sections 9601 and 9607 of this title] shall be applicable with respect to any claim that has not been finally adjudicated as of the date of enactment of this Act [Sept. 30, 1996]."

ASSISTANCE AGREEMENTS WITH INDIAN TRIBES

Pub. L. 105-276, title III, Oct. 21, 1998, 112 Stat. 2497, provided in part: "That hereafter, the Administrator is authorized to enter into assistance agreements with Federally recognized Indian tribes on such terms and conditions as the Administrator deems appropriate for the same purposes as are set forth in section 9003(h)(7) of the Resource Conservation and Recovery Act [probably means section 9003(h)(7) of Pub. L. 89-272, 42 U.S.C. 6991b(h)(7)]."

POLLUTION LIABILITY INSURANCE

Section 205(h) of Pub. L. 99-499 provided that:

"(1) STUDY.—The Comptroller General shall conduct a study of the availability of pollution liability insurance, leak insurance, and contamination insurance for owners and operators of petroleum storage and distribution facilities. The study shall assess the current and projected extent to which private insurance can contribute to the financial responsibility of owners and operators of underground storage tanks and the ability of owners and operators of underground storage tanks to maintain financial responsibility through other methods. The study shall consider the experience of owners and operators of marine vessels in getting insurance for their liabilities under the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.] and the operation of the Water Quality Insurance Syndicate.

"(2) REPORT.—The Comptroller General shall report the findings under this subsection to the Congress within 15 months after the enactment of this subsection [Oct. 17, 1986]. Such report shall include recommendations for legislative or administrative changes that will enable owners and operators of underground storage tanks to maintain financial responsibility sufficient to provide all clean-up costs and damages that may result from reasonably foreseeable releases and events."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6924, 6991a, 6991c, 6991d, 6991e, 9601 of this title; title 26 section 9508.

§ 6991c. Approval of State programs

(a) Elements of State program

Beginning 30 months after November 8, 1984, any State may, submit an underground storage tank release detection, prevention, and correc-

tion program for review and approval by the Administrator. The program may cover tanks used to store regulated substances referred to in¹ 6991(2)(A) or (B) or both of this title. A State program may be approved by the Administrator under this section only if the State demonstrates that the State program includes the following requirements and standards and provides for adequate enforcement of compliance with such requirements and standards—

(1) requirements for maintaining a leak detection system, an inventory control system together with tank testing, or a comparable system or method designed to identify releases in a manner consistent with the protection of human health and the environment;

(2) requirements for maintaining records of any monitoring or leak detection system or inventory control system or tank testing system;

(3) requirements for reporting of any releases and corrective action taken in response to a release from an underground storage tank;

(4) requirements for taking corrective action in response to a release from an underground storage tank;

(5) requirements for the closure of tanks to prevent future releases of regulated substances into the environment;

(6) requirements for maintaining evidence of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from operating an underground storage tank;

(7) standards of performance for new underground storage tanks; and

(8) requirements—

(A) for notifying the appropriate State agency or department (or local agency or department) designated according to section 6991a(b)(1) of this title of the existence of any operational or non-operational underground storage tank; and

(B) for providing the information required on the form issued pursuant to section 6991a(b)(2) of this title.

(b) Federal standards

(1) A State program submitted under this section may be approved only if the requirements under paragraphs (1) through (7) of subsection (a) of this section are no less stringent than the corresponding requirements standards promulgated by the Administrator pursuant to section 6991b(a) of this title.

(2)(A) A State program may be approved without regard to whether or not the requirements referred to in paragraphs (1), (2), (3), and (5) of subsection (a) of this section are less stringent than the corresponding standards under section 6991b(a) of this title during the one-year period commencing on the date of promulgation of regulations under section 6991b(a) of this title if State regulatory action but no State legislative action is required in order to adopt a State program.

(B) If such State legislative action is required, the State program may be approved without re-

¹ So in original. Probably should be "in section".

gard to whether or not the requirements referred to in paragraphs (1), (2), (3), and (5) of subsection (a) of this section are less stringent than the corresponding standards under section 6991b(a) of this title during the two-year period commencing on the date of promulgation of regulations under section 6991b(a) of this title (and during an additional one-year period after such legislative action if regulations are required to be promulgated by the State pursuant to such legislative action).

(c) Financial responsibility

(1) Corrective action and compensation programs administered by State or local agencies or departments may be submitted for approval under subsection (a)(6) of this section as evidence of financial responsibility.

(2) Financial responsibility required by this subsection may be established in accordance with regulations promulgated by the Administrator by any one, or any combination, of the following: insurance, guarantee, surety bond, letter of credit, qualification as a self-insurer or any other method satisfactory to the Administrator. In promulgating requirements under this subsection, the Administrator is authorized to specify policy or other contractual terms including the amount of coverage required for various classes and categories of underground storage tanks pursuant to section 6991b(d)(5) of this title, conditions, or defenses which are necessary or are unacceptable in establishing such evidence of financial responsibility in order to effectuate the purposes of this subchapter.

(3) In any case where the owner or operator is in bankruptcy, reorganization, or arrangement pursuant to the Federal Bankruptcy Code or where with reasonable diligence jurisdiction in any State court of the Federal courts cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility must be provided under this subsection may be asserted directly against the guarantor providing such evidence of financial responsibility. In the case of any action pursuant to this paragraph such guarantor shall be entitled to invoke all rights and defenses which would have been available to the owner or operator if any action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator.

(4) The total liability of any guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this section. Nothing in this subsection shall be construed to limit any other State or Federal statutory, contractual or common law liability of a guarantor to its owner or operator including, but not limited to, the liability of such guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. Nothing in this subsection shall be construed to diminish the liability of any person under section 9607 or 9611 of this title or other applicable law.

(5) For the purpose of this subsection, the term "guarantor" means any person, other than

the owner or operator, who provides evidence of financial responsibility for an owner or operator under this subsection.

(d) EPA determination

(1) Within one hundred and eighty days of the date of receipt of a proposed State program, the Administrator shall, after notice and opportunity for public comment, make a determination whether the State's program complies with the provisions of this section and provides for adequate enforcement of compliance with the requirements and standards adopted pursuant to this section.

(2) If the Administrator determines that a State program complies with the provisions of this section and provides for adequate enforcement of compliance with the requirements and standards adopted pursuant to this section, he shall approve the State program in lieu of the Federal program and the State shall have primary enforcement responsibility with respect to requirements of its program.

(e) Withdrawal of authorization

Whenever the Administrator determines after public hearing that a State is not administering and enforcing a program authorized under this subchapter in accordance with the provisions of this section, he shall so notify the State. If appropriate action is not taken within a reasonable time, not to exceed one hundred and twenty days after such notification, the Administrator shall withdraw approval of such program and reestablish the Federal program pursuant to this subchapter.

(Pub. L. 89-272, title II, §9004, as added Pub. L. 98-616, title VI, §601(a), Nov. 8, 1984, 98 Stat. 3282; amended Pub. L. 99-499, title II, §205(e), Oct. 17, 1986, 100 Stat. 1702.)

REFERENCES IN TEXT

The Federal Bankruptcy Code, referred to in subsec. (c)(3), probably means a reference to Title 11, Bankruptcy.

AMENDMENTS

1986—Subsec. (c)(1). Pub. L. 99-499, §205(e)(1), struck out "financed by fees on tank owners and operators and" after "compensation programs".

Subsec. (c)(2). Pub. L. 99-499, §205(e)(2), struck out "or" after "letter of credit," and inserted "or any other method satisfactory to the Administrator" and "including the amount of coverage required for various classes and categories of underground storage tanks pursuant to section 6991b(d)(5) of this title".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6991b, 6991e of this title.

§ 6991d. Inspections, monitoring, testing, and corrective action

(a) Furnishing information

For the purposes of developing or assisting in the development of any regulation, conducting any study¹ taking any corrective action, or enforcing the provisions of this subchapter, any owner or operator of an underground storage tank (or any tank subject to study under section

¹ So in original. Probably should be followed by a comma.

6991h of this title that is used for storing regulated substances) shall, upon request of any officer, employee or representative of the Environmental Protection Agency, duly designated by the Administrator, or upon request of any duly designated officer, employee, or representative of a State acting pursuant to subsection (h)(7) of section 6991b of this title or with an approved program, furnish information relating to such tanks, their associated equipment, their contents, conduct monitoring or testing, permit such officer at all reasonable times to have access to, and to copy all records relating to such tanks and permit such officer to have access for corrective action. For the purposes of developing or assisting in the development of any regulation, conducting any study, taking corrective action, or enforcing the provisions of this subchapter, such officers, employees, or representatives are authorized—

- (1) to enter at reasonable times any establishment or other place where an underground storage tank is located;
- (2) to inspect and obtain samples from any person or any regulated substances contained in such tank;
- (3) to conduct monitoring or testing of the tanks, associated equipment, contents, or surrounding soils, air, surface water or ground water; and
- (4) to take corrective action.

Each such inspection shall be commenced and completed with reasonable promptness.

(b) Confidentiality

(1) Any records, reports, or information obtained from any persons under this section shall be available to the public, except that upon a showing satisfactory to the Administrator (or the State, as the case may be) by any person that records, reports, or information, or a particular part thereof, to which the Administrator (or the State, as the case may be) or any officer, employee, or representative thereof has access under this section if made public, would divulge information entitled to protection under section 1905 of title 18, such information or particular portion thereof shall be considered confidential in accordance with the purposes of that section, except that such record, report, document, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter, or when relevant² in any proceeding under this chapter.

(2) Any person not subject to the provisions of section 1905 of title 18 who knowingly and willfully divulges or discloses any information entitled to protection under this subsection shall, upon conviction, be subject to a fine of not more than \$5,000 or to imprisonment not to exceed one year, or both.

(3) In submitting data under this subchapter, a person required to provide such data may—

(A) designate the data which such person believes is entitled to protection under this subsection, and

(B) submit such designated data separately from other data submitted under this subchapter.

²So in original. Probably should be "relevant".

A designation under this paragraph shall be made in writing and in such manner as the Administrator may prescribe.

(4) Notwithstanding any limitation contained in this section or any other provision of law, all information reported to, or otherwise obtained, by the Administrator (or any representative of the Administrator) under this chapter shall be made available, upon written request of any duly authorized committee of the Congress, to such committee (including records, reports, or information obtained by representatives of the Environmental³ Protection Agency).

(Pub. L. 89-272, title II, §9005, as added Pub. L. 98-616, title VI, §601(a), Nov. 8, 1984, 98 Stat. 3284; amended Pub. L. 99-499, title II, §205(f), Oct. 17, 1986, 100 Stat. 1702.)

AMENDMENTS

1986—Pub. L. 99-499, §205(f)(3), inserted reference to corrective action in section catchline.

Subsec. (a). Pub. L. 99-499, §205(f)(1), in first sentence, inserted "taking any corrective action" after "conducting any study", inserted "acting pursuant to subsection (h)(7) of section 6991b of this title or", struck out "and" before "permit such officer", and inserted "and permit such officer to have access for corrective action", and in second sentence, inserted "taking corrective action," after "study,". The amendment directing insertion of "taking any corrective action" after "study" in first sentence was executed by inserting that language after "conducting any study" rather than after "subject to study", as the probable intent of Congress.

Subsec. (a)(4). Pub. L. 99-499, §205(f)(2), added par. (4).

§ 6991e. Federal enforcement

(a) Compliance orders

(1) Except as provided in paragraph (2), whenever on the basis of any information, the Administrator determines that any person is in violation of any requirement of this subchapter, the Administrator may issue an order requiring compliance within a reasonable specified time period or the Administrator may commence a civil action in the United States district court in which the violation occurred for appropriate relief, including a temporary or permanent injunction.

(2) In the case of a violation of any requirement of this subchapter where such violation occurs in a State with a program approved under section 6991c of this title, the Administrator shall give notice to the State in which such violation has occurred prior to issuing an order or commencing a civil action under this section.

(3) If a violator fails to comply with an order under this subsection within the time specified in the order, he shall be liable for a civil penalty of not more than \$25,000 for each day of continued noncompliance.

(b) Procedure

Any order issued under this section shall become final unless, no later than thirty days after the order is served, the person or persons named therein request a public hearing. Upon such request the Administrator shall promptly conduct a public hearing. In connection with any proceeding under this section the Adminis-

³So in original. Probably should be "Environmental".

trator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may promulgate rules for discovery procedures.

(c) Contents of order

Any order issued under this section shall state with reasonable specificity the nature of the violation, specify a reasonable time for compliance, and assess a penalty, if any, which the Administrator determines is reasonable taking into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements.

(d) Civil penalties

(1) Any owner who knowingly fails to notify or submits false information pursuant to section 6991a(a) of this title shall be subject to a civil penalty not to exceed \$10,000 for each tank for which notification is not given or false information is submitted.

(2) Any owner or operator of an underground storage tank who fails to comply with—

(A) any requirement or standard promulgated by the Administrator under section 6991b of this title;

(B) any requirement or standard of a State program approved pursuant to section 6991c of this title; or

(C) the provisions of section 6991b(g) of this title (entitled “Interim Prohibition”)

shall be subject to a civil penalty not to exceed \$10,000 for each tank for each day of violation.

(Pub. L. 89-272, title II, §9006, as added Pub. L. 98-616, title VI, §601(a), Nov. 8, 1984, 98 Stat. 3285.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6991b of this title.

§ 6991f. Federal facilities

(a) Application of subchapter

Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government having jurisdiction over any underground storage tank shall be subject to and comply with all Federal, State, interstate, and local requirements, applicable to such tank, both substantive and procedural, in the same manner, and to the same extent, as any other person is subject to such requirements, including payment of reasonable service charges. Neither the United States, nor any agent, employee, or officer thereof, shall be immune or exempt from any process or sanction of any State or Federal court with respect to the enforcement of any such injunctive relief.

(b) Presidential exemption

The President may exempt any underground storage tanks of any department, agency, or instrumentality in the executive branch from compliance with such a requirement if he determines it to be in the paramount interest of the United States to do so. No such exemption shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to

make available such requested appropriations. Any exemption shall be for a period not in excess of one year, but additional exemptions may be granted for periods not to exceed one year upon the President's making a new determination. The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with his reason for granting each such exemption.

(Pub. L. 89-272, title II, §9007, as added Pub. L. 98-616, title VI, §601(a), Nov. 8, 1984, 98 Stat. 3286.)

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (b) of this section requiring the President to report annually to Congress, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 9th item on page 20 of House Document No. 103-7.

§ 6991g. State authority

Nothing in this subchapter shall preclude or deny any right of any State or political subdivision thereof to adopt or enforce any regulation, requirement, or standard of performance respecting underground storage tanks that is more stringent than a regulation, requirement, or standard of performance in effect under this subchapter or to impose any additional liability with respect to the release of regulated substances within such State or political subdivision.

(Pub. L. 89-272, title II, §9008, as added Pub. L. 98-616, title VI, §601(a), Nov. 8, 1984, 98 Stat. 3286; amended Pub. L. 99-499, title II, §205(g), Oct. 17, 1986, 100 Stat. 1702.)

AMENDMENTS

1986—Pub. L. 99-499 amended section generally. Prior to amendment, section read as follows: “Nothing in this subchapter shall preclude or deny any right of any State or political subdivision thereof to adopt or enforce any regulation, requirement or standard of performance respecting underground storage tanks that is more stringent than a regulation, requirement, or standard of performance in effect under this subchapter.”

§ 6991h. Study of underground storage tanks

(a) Petroleum tanks

Not later than twelve months after November 8, 1984, the Administrator shall complete a study of underground storage tanks used for the storage of regulated substances defined in section 6991(2)(B) of this title.

(b) Other tanks

Not later than thirty-six months after November 8, 1984, the Administrator shall complete a study of all other underground storage tanks.

(c) Elements of studies

The studies under subsections (a) and (b) of this section shall include an assessment of the ages, types (including methods of manufacture, coatings, protection systems, the compatibility of the construction materials and the installation methods) and locations (including the climate of the locations) of such tanks; soil condi-

tions, water tables, and the hydrogeology of tank locations; the relationship between the foregoing factors and the likelihood of releases from underground storage tanks; the effectiveness and costs of inventory systems, tank testing, and leak detection systems; and such other factors as the Administrator deems appropriate.

(d) Farm and heating oil tanks

Not later than thirty-six months after November 8, 1984, the Administrator shall conduct a study regarding the tanks referred to in section 6991(1)(A) and (B) of this title. Such study shall include estimates of the number and location of such tanks and an analysis of the extent to which there may be releases or threatened releases from such tanks into the environment.

(e) Reports

Upon completion of the studies authorized by this section, the Administrator shall submit reports to the President and to the Congress containing the results of the studies and recommendations respecting whether or not such tanks should be subject to the preceding provisions of this subchapter.

(f) Reimbursement

(1) If any owner or operator (excepting an agency, department, or instrumentality of the United States Government, a State or a political subdivision thereof) shall incur costs, including the loss of business opportunity, due to the closure or interruption of operation of an underground storage tank solely for the purpose of conducting studies authorized by this section, the Administrator shall provide such person fair and equitable reimbursement for such costs.

(2) All claims for reimbursement shall be filed with the Administrator not later than ninety days after the closure or interruption which gives rise to the claim.

(3) Reimbursements made under this section shall be from funds appropriated by the Congress pursuant to the authorization contained in section 6916(g)¹ of this title.

(4) For purposes of judicial review, a determination by the Administrator under this subsection shall be considered final agency action. (Pub. L. 89-272, title II, §9009, as added Pub. L. 98-616, title VI, §601(a), Nov. 8, 1984, 98 Stat. 3287.)

REFERENCES IN TEXT

Section 6916(g) of this title, referred to in subsec. (f)(3), probably means section 6916(f) of this title which authorizes appropriations for this subchapter. There is no subsec. (g) of section 6916.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6991d of this title.

§ 6991i. Authorization of appropriations

For authorization of appropriations to carry out this subchapter, see section 6916(g)¹ of this title.

(Pub. L. 89-272, title II, §9010, as added Pub. L. 98-616, title VI, §601(a), Nov. 8, 1984, 98 Stat. 3287.)

¹ See References in Text note below.

¹ See References in Text note below.

REFERENCES IN TEXT

Section 6916(g) of this title, referred to in text, probably means section 6916(f) of this title which authorizes appropriations for this subchapter. There is no subsec. (g) of section 6916.

SUBCHAPTER X—DEMONSTRATION
MEDICAL WASTE TRACKING PROGRAM

§ 6992. Scope of demonstration program for medical waste

(a) Covered States

The States within the demonstration program established under this subchapter for tracking medical wastes shall be New York, New Jersey, Connecticut, the States contiguous to the Great Lakes and any State included in the program through the petition procedure described in subsection (c) of this section, except for any of such States in which the Governor notifies the Administrator under subsection (b) of this section that such State shall not be covered by the program.

(b) Opt out

(1) If the Governor of any State covered under subsection (a) of this section which is not contiguous to the Atlantic Ocean notifies the Administrator that such State elects not to participate in the demonstration program, the Administrator shall remove such State from the program.

(2) If the Governor of any other State covered under subsection (a) of this section notifies the Administrator that such State has implemented a medical waste tracking program that is no less stringent than the demonstration program under this subchapter and that such State elects not to participate in the demonstration program, the Administrator shall, if the Administrator determines that such State program is no less stringent than the demonstration program under this subchapter, remove such State from the demonstration program.

(3) Notifications under paragraphs (1) or (2) shall be submitted to the Administrator no later than 30 days after the promulgation of regulations implementing the demonstration program under this subchapter.

(c) Petition in

The Governor of any State may petition the Administrator to be included in the demonstration program and the Administrator may, in his discretion, include any such State. Such petition may not be made later than 30 days after promulgation of regulations establishing the demonstration program under this subchapter, and the Administrator shall determine whether to include the State within 30 days after receipt of the State's petition.

(d) Expiration of demonstration program

The demonstration program shall expire on the date 24 months after the effective date of the regulations under this subchapter.

(Pub. L. 89-272, title II, §11001, as added Pub. L. 100-582, §2(a), Nov. 1, 1988, 102 Stat. 2950.)

§ 6992a. Listing of medical wastes

(a) List

Not later than 6 months after November 1, 1988, the Administrator shall promulgate regula-

tions listing the types of medical waste to be tracked under the demonstration program. Except as provided in subsection (b) of this section, such list shall include, but need not be limited to, each of the following types of solid waste:

(1) Cultures and stocks of infectious agents and associated biologicals, including cultures from medical and pathological laboratories, cultures and stocks of infectious agents from research and industrial laboratories, wastes from the production of biologicals, discarded live and attenuated vaccines, and culture dishes and devices used to transfer, inoculate, and mix cultures.

(2) Pathological wastes, including tissues, organs, and body parts that are removed during surgery or autopsy.

(3) Waste human blood and products of blood, including serum, plasma, and other blood components.

(4) Sharps that have been used in patient care or in medical, research, or industrial laboratories, including hypodermic needles, syringes, pasteur pipettes, broken glass, and scalpel blades.

(5) Contaminated animal carcasses, body parts, and bedding of animals that were exposed to infectious agents during research, production of biologicals, or testing of pharmaceuticals.

(6) Wastes from surgery or autopsy that were in contact with infectious agents, including soiled dressings, sponges, drapes, lavage tubes, drainage sets, underpads, and surgical gloves.

(7) Laboratory wastes from medical, pathological, pharmaceutical, or other research, commercial, or industrial laboratories that were in contact with infectious agents, including slides and cover slips, disposable gloves, laboratory coats, and aprons.

(8) Dialysis wastes that were in contact with the blood of patients undergoing hemodialysis, including contaminated disposable equipment and supplies such as tubing, filters, disposable sheets, towels, gloves, aprons, and laboratory coats.

(9) Discarded medical equipment and parts that were in contact with infectious agents.

(10) Biological waste and discarded materials contaminated with blood, excretion, exudates¹ or secretion from human beings or animals who are isolated to protect others from communicable diseases.

(11) Such other waste material that results from the administration of medical care to a patient by a health care provider and is found by the Administrator to pose a threat to human health or the environment.

(b) Exclusions from list

The Administrator may exclude from the list under this section any categories or items described in paragraphs (6) through (10) of subsection (a) of this section which he determines do not pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

(Pub. L. 89-272, title II, §11002, as added Pub. L. 100-582, §2(a), Nov. 1, 1988, 102 Stat. 2951.)

¹ So in original. Probably should be "exudates".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6992b, 6992i of this title.

§ 6992b. Tracking of medical waste

(a) Demonstration program

Not later than 6 months after November 1, 1988, the Administrator shall promulgate regulations establishing a program for the tracking of the medical waste listed in section 6992a of this title which is generated in a State subject to the demonstration program. The program shall (1) provide for tracking of the transportation of the waste from the generator to the disposal facility, except that waste that is incinerated need not be tracked after incineration, (2) include a system for providing the generator of the waste with assurance that the waste is received by the disposal facility, (3) use a uniform form for tracking in each of the demonstration States, and (4) include the following requirements:

(A) A requirement for segregation of the waste at the point of generation where practicable.

(B) A requirement for placement of the waste in containers that will protect waste handlers and the public from exposure.

(C) A requirement for appropriate labeling of containers of the waste.

(b) Small quantities

In the program under subsection (a) of this section, the Administrator may establish an exemption for generators of small quantities of medical waste listed under section 6992a of this title, except that the Administrator may not exempt from the program any person who, or facility that, generates 50 pounds or more of such waste in any calendar month.

(c) On-site incinerators

Concurrently with the promulgation of regulations under subsection (a) of this section, the Administrator shall promulgate a recordkeeping and reporting requirement for any generator in a demonstration State of medical waste listed in section 6992a of this title that (1) incinerates medical waste listed in section 6992a of this title on site and (2) does not track such waste under the regulations promulgated under subsection (a) of this section. Such requirement shall require the generator to report to the Administrator on the volume and types of medical waste listed in section 6992a of this title that the generator incinerated on site during the 6 months following the effective date of the requirements of this subsection.

(d) Type of medical waste and types of generators

For each of the requirements of this section, the regulations may vary for different types of medical waste and for different types of medical waste generators.

(Pub. L. 89-272, title II, §11003, as added Pub. L. 100-582, §2(a), Nov. 1, 1988, 102 Stat. 2952.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6992c, 6992f of this title.

§ 6992c. Inspections**(a) Requirements for access**

For purposes of developing or assisting in the development of any regulation or report under this subchapter or enforcing any provision of this subchapter, any person who generates, stores, treats, transports, disposes of, or otherwise handles or has handled medical waste shall, upon request of any officer, employee, or representative of the Environmental Protection Agency duly designated by the Administrator, furnish information relating to such waste, including any tracking forms required to be maintained under section 6992b of this title, conduct monitoring or testing, and permit such person at all reasonable times to have access to, and to copy, all records relating to such waste. For such purposes, such officers, employees, or representatives are authorized to—

(1) enter at reasonable times any establishment or other place where medical wastes are or have been generated, stored, treated, disposed of, or transported from;

(2) conduct monitoring or testing; and

(3) inspect and obtain samples from any person of any such wastes and samples of any containers or labeling for such wastes.

(b) Procedures

Each inspection under this section shall be commenced and completed with reasonable promptness. If the officer, employee, or representative obtains any samples, prior to leaving the premises he shall give to the owner, operator, or agent in charge a receipt describing the sample obtained and, if requested, a portion of each such sample equal in volume or weight to the portion retained if giving such an equal portion is feasible. If any analysis is made of such samples, a copy of the results of such analysis shall be furnished promptly to the owner, operator, or agent in charge of the premises concerned.

(c) Availability to public

The provisions of section 6927(b) of this title shall apply to records, reports, and information obtained under this section in the same manner and to the same extent as such provisions apply to records, reports, and information obtained under section 6927 of this title.

(Pub. L. 89-272, title II, §11004, as added Pub. L. 100-582, §2(a), Nov. 1, 1988, 102 Stat. 2952.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6992f of this title.

§ 6992d. Enforcement**(a) Compliance orders****(1) Violations**

Whenever on the basis of any information the Administrator determines that any person has violated, or is in violation of, any requirement or prohibition in effect under this subchapter (including any requirement or prohibition in effect under regulations under this subchapter) (A) the Administrator may issue an order (i) assessing a civil penalty for any past or current violation, (ii) requiring compliance

immediately or within a specified time period, or (iii) both, or (B) the Administrator may commence a civil action in the United States district court in the district in which the violation occurred for appropriate relief, including a temporary or permanent injunction. Any order issued pursuant to this subsection shall state with reasonable specificity the nature of the violation.

(2) Orders assessing penalties

Any penalty assessed in an order under this subsection shall not exceed \$25,000 per day of noncompliance for each violation of a requirement or prohibition in effect under this subchapter. In assessing such a penalty, the Administrator shall take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

(3) Public hearing

Any order issued under this subsection shall become final unless, not later than 30 days after issuance of the order, the persons named therein request a public hearing. Upon such request, the Administrator shall promptly conduct a public hearing. In connection with any proceeding under this section, the Administrator may issue subpoenas for the production of relevant papers, books, and documents, and may promulgate rules for discovery procedures.

(4) Violation of compliance orders

In the case of an order under this subsection requiring compliance with any requirement of or regulation under this subchapter, if a violator fails to take corrective action within the time specified in an order, the Administrator may assess a civil penalty of not more than \$25,000 for each day of continued noncompliance with the order.

(b) Criminal penalties

Any person who—

(1) knowingly violates the requirements of or regulations under this subchapter;

(2) knowingly omits material information or makes any false material statement or representation in any label, record, report, or other document filed, maintained, or used for purposes of compliance with this subchapter or regulations thereunder; or

(3) knowingly generates, stores, treats, transports, disposes of, or otherwise handles any medical waste (whether such activity took place before or takes place after November 1, 1988) and who knowingly destroys, alters, conceals, or fails to file any record, report, or other document required to be maintained or filed for purposes of compliance with this subchapter or regulations thereunder

shall, upon conviction, be subject to a fine of not more than \$50,000 for each day of violation, or imprisonment not to exceed 2 years (5 years in the case of a violation of paragraph (1)). If the conviction is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment under the respective paragraph shall be doubled with respect to both fine and imprisonment.

(c) Knowing endangerment

Any person who knowingly violates any provision of subsection (b) of this section who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall upon conviction be subject to a fine of not more than \$250,000 or imprisonment for not more than 15 years, or both. A defendant that is an organization shall, upon conviction under this subsection, be subject to a fine of not more than \$1,000,000. The terms of this paragraph shall be interpreted in accordance with the rules provided under section 6928(f) of this title.

(d) Civil penalties

Any person who violates any requirement of or regulation under this subchapter shall be liable to the United States for a civil penalty in an amount not to exceed \$25,000 for each such violation. Each day of such violation shall, for purposes of this section, constitute a separate violation.

(e) Civil penalty policy

Civil penalties assessed by the United States or by the States under this subchapter shall be assessed in accordance with the Administrator's "RCRA Civil Penalty Policy", as such policy may be amended from time to time.

(Pub. L. 89-272, title II, §11005, as added Pub. L. 100-582, §2(a), Nov. 1, 1988, 102 Stat. 2953.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6992f of this title.

§ 6992e. Federal facilities**(a) In general**

Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government in a demonstration State (1) having jurisdiction over any solid waste management facility or disposal site at which medical waste is disposed of or otherwise handled, or (2) engaged in any activity resulting, or which may result, in the disposal, management, or handling of medical waste shall be subject to, and comply with, all Federal, State, interstate, and local requirements, both substantive and procedural (including any requirement for permits or reporting or any provisions for injunctive relief and such sanctions as may be imposed by a court to enforce such relief), respecting control and abatement of medical waste disposal and management in the same manner, and to the same extent, as any person is subject to such requirements, including the payment of reasonable service charges. The Federal, State, interstate, and local substantive and procedural requirements referred to in this subsection include, but are not limited to, all administrative orders, civil, criminal, and administrative penalties, and other sanctions, including injunctive relief, fines, and imprisonment. Neither the United States, nor any agent, employee, or officer thereof, shall be immune or exempt from any process or sanction of any State or Federal court with respect to the enforcement of any such order, penalty, or other sanc-

tion. For purposes of enforcing any such substantive or procedural requirement (including, but not limited to, any injunctive relief, administrative order, or civil, criminal, administrative penalty, or other sanction), against any such department, agency, or instrumentality, the United States hereby expressly waives any immunity otherwise applicable to the United States. The President may exempt any department, agency, or instrumentality in the executive branch from compliance with such a requirement if he determines it to be in the paramount interest of the United States to do so. No such exemption shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation. Any exemption shall be for a period not in excess of one year, but additional exemptions may be granted for periods not to exceed one year upon the President's making a new determination. The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with his reason for granting each such exemption.

(b) "Person" defined

For purposes of this chapter, the term "person" shall be treated as including each department, agency, and instrumentality of the United States.

(Pub. L. 89-272, title II, §11006, as added Pub. L. 100-582, §2(a), Nov. 1, 1988, 102 Stat. 2954.)

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (a) of this section requiring the President to report annually to Congress, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 10th item on page 20 of House Document No. 103-7.

§ 6992f. Relationship to State law**(a) State inspections and enforcement**

A State may conduct inspections under¹ 6992c of this title and take enforcement actions under section 6992d of this title against any person, including any person who has imported medical waste into a State in violation of the requirements of, or regulations under, this subchapter, to the same extent as the Administrator. At the time a State initiates an enforcement action under section 6992d of this title against any person, the State shall notify the Administrator in writing.

(b) Retention of State authority

Nothing in this subchapter shall—

- (1) preempt any State or local law; or
- (2) except as provided in subsection (c) of this section, otherwise affect any State or local law or the authority of any State or local government to adopt or enforce any State or local law.

(c) State forms

Any State or local law which requires submission of a tracking form from any person subject

¹ So in original. Probably should be "under section".

to this subchapter shall require that the form be identical in content and format to the form required under section 6992b of this title, except that a State may require the submission of other tracking information which is supplemental to the information required on the form required under section 6992b of this title through additional sheets or such other means as the State deems appropriate.

(Pub. L. 89-272, title II, §11007, as added Pub. L. 100-582, §2(a), Nov. 1, 1988, 102 Stat. 2955.)

§ 6992g. Repealed. Pub. L. 105-362, title V, §501(h)(1)(A), Nov. 10, 1998, 112 Stat. 3284

Section, Pub. L. 89-272, title II, §11008, as added Pub. L. 100-582, §2(a), Nov. 1, 1988, 102 Stat. 2956, related to Administrator's report to Congress concerning demonstration medical waste tracking program.

§ 6992h. Health impacts report

Within 24 months after November 1, 1988, the Administrator of the Agency for Toxic Substances and Disease Registry shall prepare for Congress a report on the health effects of medical waste, including each of the following—

(1) A description of the potential for infection or injury from the segregation, handling, storage, treatment, or disposal of medical wastes.

(2) An estimate of the number of people injured or infected annually by sharps, and the nature and seriousness of those injuries or infections.

(3) An estimate of the number of people infected annually by other means related to waste segregation, handling, storage, treatment, or disposal, and the nature and seriousness of those infections.

(4) For diseases possibly spread by medical waste, including Acquired Immune Deficiency Syndrome and hepatitis B, an estimate of what percentage of the total number of cases nationally may be traceable to medical wastes.

(Pub. L. 89-272, title II, §11008, formerly §11009, as added Pub. L. 100-582, §2(a), Nov. 1, 1988, 102 Stat. 2957; renumbered §11008, Pub. L. 105-362, title V, §501(h)(1)(B), Nov. 10, 1998, 112 Stat. 3284.)

PRIOR PROVISIONS

A prior section 11008 of Pub. L. 89-272 was classified to section 6992g of this title prior to repeal by Pub. L. 105-362, §501(h)(1)(A).

§ 6992i. General provisions

(a) Consultation

(1) In promulgating regulations under this subchapter, the Administrator shall consult with the affected States and may consult with other interested parties.

(2) The Administrator shall also consult with the International Joint Commission to determine how to monitor the disposal of medical waste emanating from Canada.

(b) Public comment

In the case of the regulations required by this subchapter to be promulgated within 9 months after November 1, 1988, the Administrator may

promulgate such regulations in interim final form without prior opportunity for public comment, but the Administrator shall provide an opportunity for public comment on the interim final rule. The promulgation of such regulations shall not be subject to the Paperwork Reduction Act of 1980.¹

(c) Relationship to subchapter III

Nothing in this subchapter shall affect the authority of the Administrator to regulate medical waste, including medical waste listed under section 6992a of this title, under subchapter III of this chapter.

(Pub. L. 89-272, title II, §11009, formerly §11010, as added Pub. L. 100-582, §2(a), Nov. 1, 1988, 102 Stat. 2957; renumbered §11009, Pub. L. 105-362, title V, §501(h)(1)(B), Nov. 10, 1998, 112 Stat. 3284.)

REFERENCES IN TEXT

The Paperwork Reduction Act of 1980, referred to in subsec. (b), is Pub. L. 96-511, Dec. 11, 1980, 94 Stat. 2812, as amended, which was classified principally to chapter 35 (§3501 et seq.) of Title 44, Public Printing and Documents, prior to the general amendment of that chapter by Pub. L. 104-13, §2, May 22, 1995, 109 Stat. 163. For complete classification of this Act to the Code, see Short Title of 1980 Amendment note set out under section 101 of Title 44 and Tables.

PRIOR PROVISIONS

A prior section 11009 of Pub. L. 89-272 was renumbered section 11008 and is classified to section 6992h of this title.

§ 6992j. Effective date

The regulations promulgated under this subchapter shall take effect within 90 days after promulgation, except that, at the time of promulgation, the Administrator may provide for a shorter period prior to the effective date if he finds the regulated community does not need 90 days to come into compliance.

(Pub. L. 89-272, title II, §11010, formerly §11011, as added Pub. L. 100-582, §2(a), Nov. 1, 1988, 102 Stat. 2958; renumbered §11010, Pub. L. 105-362, title V, §501(h)(1)(B), Nov. 10, 1998, 112 Stat. 3284.)

PRIOR PROVISIONS

A prior section 11010 of Pub. L. 89-272 was renumbered section 11009 and is classified to section 6992i of this title.

§ 6992k. Authorization of appropriations

There are authorized to be appropriated to the Administrator such sums as may be necessary for each of the fiscal years 1989 through 1991 for purposes of carrying out activities under this subchapter.

(Pub. L. 89-272, title II, §11011, formerly §11012, as added Pub. L. 100-582, §2(a), Nov. 1, 1988, 102 Stat. 2958; renumbered §11011, Pub. L. 105-362, title V, §501(h)(1)(B), Nov. 10, 1998, 112 Stat. 3284.)

PRIOR PROVISIONS

A prior section 11011 of Pub. L. 89-272 was renumbered section 11010 and is classified to section 6992j of this title.

¹ See References in Text note below.

CHAPTER 83—ENERGY EXTENSION SERVICE

§§ 7001 to 7011. Repealed. Pub. L. 102-486, title I, § 143(a), Oct. 24, 1992, 106 Stat. 2843

Section 7001, Pub. L. 95-39, title V, § 502, June 3, 1977, 91 Stat. 191, related to congressional declaration and statement of purposes.
Section 7002, Pub. L. 95-39, title V, § 503, June 3, 1977, 91 Stat. 192, provided for establishment of Energy Extension Service.
Section 7003, Pub. L. 95-39, title V, § 504, June 3, 1977, 91 Stat. 192, provided for development and implementation of comprehensive program.
Section 7004, Pub. L. 95-39, title V, § 505, June 3, 1977, 91 Stat. 193, provided for initial implementation of State energy extension service plans.
Section 7005, Pub. L. 95-39, title V, § 506, June 3, 1977, 91 Stat. 195, provided for national implementation of State energy extension service plans.
Section 7006, Pub. L. 95-39, title V, § 507, June 3, 1977, 91 Stat. 198, related to administration of Energy Extension Service.
Section 7007, Pub. L. 95-39, title V, § 508, June 3, 1977, 91 Stat. 199, related to energy education, extension, and information.
Section 7008, Pub. L. 95-39, title V, § 509, June 3, 1977, 91 Stat. 199, provided for establishment of National Energy Extension Service Advisory Board.
Section 7009, Pub. L. 95-39, title V, § 511, June 3, 1977, 91 Stat. 201, related to records.
Section 7010, Pub. L. 95-39, title V, § 512, June 3, 1977, 91 Stat. 201, related to authorization of appropriations.
Section 7011, Pub. L. 95-39, title V, § 513, June 3, 1977, 91 Stat. 202, set out definitions.

SHORT TITLE

Section 501 of title V of Pub. L. 95-39, which provided that this title, which enacted this chapter and amended sections 5813 and 5818 of this title, could be cited as the "National Energy Extension Service Act", was repealed by Pub. L. 102-486, title I, § 143(a), Oct. 24, 1992, 106 Stat. 2843.

CHAPTER 84—DEPARTMENT OF ENERGY

Sec.

7101. Definitions.

SUBCHAPTER I—DECLARATION OF FINDINGS AND PURPOSES

7111. Congressional findings.
7112. Congressional declaration of purpose.
7113. Relationship with States.

SUBCHAPTER II—ESTABLISHMENT OF DEPARTMENT

7131. Establishment.
7132. Principal officers.
(a) Deputy Secretary.
(b) Under Secretary; General Counsel.
(c) Under Secretary for Nuclear Security.
7133. Assistant Secretaries; appointment and confirmation; identification of responsibilities.
7134. Federal Energy Regulatory Commission; compensation of Chairman and members.
7135. Energy Information Administration.
(a) Establishment; appointment of Administrator; compensation; qualifications; duties.
(b) Delegation of functions.
(c) Functions of Director of Office of Energy Information and Analysis.
(d) Collection or analysis of information and preparation of reports without approval.
(e) Annual audit.
(f) Furnishing information or analysis to any other administration, commission, or office within Department.

Sec.

(g) Availability of information to public.
(h) Identification and designation of "major energy producing companies"; format for financial report; accounting practices; filing of financial report; annual report of Department; definitions; confidentiality.
(i) Manufacturers energy consumption survey.
(j) Collection and publication of survey results.
(k) Survey procedure.
(l) Data collection.
7135a. Delegation by Secretary of Energy of energy research, etc., functions to Administrator of Energy Information Administration; prohibition against required delegation; utilization of capabilities by Secretary.
7136. Economic Regulatory Administration; appointment of Administrator; compensation; qualifications; functions.
7137. Functions of Comptroller General.
7138. Repealed.
7139. Office of Science; establishment; appointment of Director; compensation; duties.
7140. Leasing Liaison Committee; establishment; composition.
7141. Office of Minority Economic Impact.
(a) Establishment; appointment of Director; compensation.
(b) Advice to Secretary on effect of energy policies, regulations, and other actions of Department respecting minority participation in energy programs.
(c) Research programs respecting effects of national energy programs, policies, and regulations of Department on minorities.
(d) Management and technical assistance to minority educational institutions and business enterprises to foster participation in research, development, demonstration, and contract activities of Department.
(e) Loans to minority business enterprises; restriction on use of funds; interest; deposits into Treasury.
(f) Definitions.
(g) Authorization of appropriations.
7142. National Atomic Museum.
(a) Recognition and status.
(b) Volunteers.
(c) Authority.
7142a. Designation of American Museum of Science and Energy.
(a) In general.
(b) References.
(c) Property of the United States.
7142b. Authority.
7142c. Museum volunteers.
(a) Authority to use volunteers.
(b) Status of volunteers.
(c) Compensation.
7142d. Definitions.
7143. Repealed.
7144. Establishment of policy for National Nuclear Security Administration.
(a) Responsibility for establishing policy.
(b) Review of programs and activities.
(c) Staff.
7144a. Establishment of security, counter-intelligence, and intelligence policies.
7144b. Office of Counterintelligence.
(a) Establishment.
(b) Director.
(c) Duties.
(d) Annual reports.

- Sec.
7144c. Office of Intelligence.
(a) Establishment.
(b) Director.
(c) Duties.
- 7144d. Office of Arctic Energy.
(a) Establishment.
(b) Purposes.
(c) Location.
- SUBCHAPTER III—TRANSFERS OF FUNCTIONS
7151. General transfers.
- 7151a. Jurisdiction over matters transferred from Energy Research and Development Administration.
7152. Transfers from Department of the Interior.
(a) Functions relating to electric power.
(b), (c) Repealed.
(d) Functions of Bureau of Mines.
7153. Administration of leasing transfers.
(a) Authority retained by Secretary of the Interior.
(b) Consultation with Secretary of the Interior with respect to promulgation of regulations.
(c) Repealed.
(d) Preparation of environmental impact statement.
7154. Transfers from Department of Housing and Urban Development.
7155. Repealed.
7156. Transfers from Department of the Navy.
- 7156a. Repealed.
7157. Transfers from Department of Commerce.
7158. Naval reactor and military application programs.
7159. Transfer to Department of Transportation.
- SUBCHAPTER IV—FEDERAL ENERGY REGULATORY COMMISSION
7171. Appointment and administration.
(a) Federal Energy Regulatory Commission; establishment.
(b) Composition; term of office; conflict of interest; expiration of terms.
(c) Duties and responsibilities of Chairman.
(d) Supervision and direction of members, employees, or other personnel of Commission.
(e) Designation of Acting Chairman; quorum; seal.
(f) Rules.
(g) Powers of Commission.
(h) Principal office of Commission.
(i) Commission deemed agency; attorney for Commission.
(j) Annual authorization and appropriation request.
7172. Jurisdiction of Commission.
(a) Transfer of functions from Federal Power Commission.
(b) Repealed.
(c) Consideration of proposals made by Secretary to amend regulations issued under section 753 of title 15; exception.
(d) Matters involving agency determinations to be made on record after agency hearing.
(e) Matters assigned by Secretary after public notice and matters referred under section 7174 of this title.
(f) Limitation.
(g) Final agency action.
(h) Rules, regulations, and statements of policy.
7173. Initiation of rulemaking procedures before Commission.
(a) Proposal of rules, regulations, and statements of policy of general applicability by Secretary and Commission.
- Sec.
(b) Consideration and final action on proposals of Secretary.
(c) Utilization of rulemaking procedures for establishment of rates and charges under Federal Power Act and Natural Gas Act.
(d) Submission of written questions by interested persons.
7174. Referral of other rulemaking proceedings to Commission.
(a) Notification of Commission of proposed action; public comment.
(b) Recommendations of Commission; publication.
(c) Options of Secretary; final agency action.
7175. Right of Secretary to intervene in Commission proceedings.
7176. Reorganization.
7177. Access to information.
7178. Federal Energy Regulatory Commission fees and annual charges.
(a) In general.
(b) Basis for assessments.
(c) Estimates.
(d) Time of payment.
(e) Adjustments.
(f) Use of funds.
(g) Waiver.
- SUBCHAPTER V—ADMINISTRATIVE PROCEDURES AND JUDICIAL REVIEW
7191. Procedures for issuance of rules, regulations, or orders.
(a) Applicability of subchapter II of chapter 5 of title 5.
(b) Substantial issue of fact or law or likelihood of substantial impact on Nation's economy, etc.; oral presentation.
(c) Waiver of requirements.
(d) Effects confined to single unit of local government, geographic area within State, or State; hearing or oral presentation.
(e) Prescription of procedures for State and local government agencies.
7192. Judicial review.
(a) Agency action.
(b) Review by district court of United States; removal.
(c) Litigation supervision by Attorney General.
7193. Remedial orders.
(a) Violations of rules, regulations, or orders promulgated pursuant to Emergency Petroleum Allocation Act of 1973.
(b) Notice of intent to contest; final order not subject to review.
(c) Notice of contestation to Commission; stay; hearing; cross examination; final order; enforcement and review.
(d) Time limits.
(e) Effect on procedural action taken by Secretary prior to issuance of initial remedial order.
(f) Savings provision.
(g) Retroactive application; marketing of petroleum products.
7194. Requests for adjustments.
7195. Report to Congress; contents.
- SUBCHAPTER VI—ADMINISTRATIVE PROVISIONS
- PART A—CONFLICT OF INTEREST PROVISIONS
- 7211 to 7218. Repealed.
- PART B—PERSONNEL PROVISIONS
7231. Officers and employees.

- | | |
|---|--|
| <p>Sec.</p> <p>(a) Authority of Secretary to appoint and fix compensation.</p> <p>(b) Appointment of scientific, engineering, etc., personnel without regard to civil service laws; compensation; termination of authority.</p> <p>(c) Placement of GS-16, GS-17, and GS-18 positions without regard to section 3324 of title 5; termination of authority.</p> <p>(d) Appointment of additional scientific, engineering, etc., personnel without regard to civil service laws; compensation.</p> <p>(e) Determination of maximum aggregate number of positions.</p> <p>(f) Intelligence and intelligence-related positions exempt from competitive service.</p> <p>7232. Senior positions.</p> <p>7233. Experts and consultants.</p> <p>7234. Advisory committees.</p> <p>7235. Armed services personnel.</p> <p>7236. Transferred.</p> <p>7237. Priority placement, job placement, retraining, and counseling programs for United States Department of Energy employees affected by reduction in force.</p> <p>(a) Definitions.</p> <p>(b) Priority placement and retraining program.</p> <p>(c) Filling vacancy from outside agency.</p> <p>(d) Job placement and counseling services.</p> <p>7238. Temporary appointments for scientific and technical experts in Department of Energy research and development programs.</p> <p>7239. Transferred.</p> <p style="text-align: center;">PART C—GENERAL ADMINISTRATIVE PROVISIONS</p> <p>7251. General authority.</p> <p>7252. Delegation.</p> <p>7253. Reorganization.</p> <p>7254. Rules and regulations.</p> <p>7255. Subpoena.</p> <p>7256. Contracts, leases, etc., with public agencies and private organizations and persons.</p> <p>(a) General authority.</p> <p>(b) Limitation on authority; appropriations.</p> <p>(c) Leasing of excess Department of Energy property.</p> <p>(d) Terms of lease.</p> <p>(e) Environmental concerns.</p> <p>(f) Retention and use of rentals; report.</p> <p>7256a, 7256b. Transferred.</p> <p>7257. Acquisition, construction, etc., of laboratories, research and testing sites, etc.</p> <p>7257a to 7257c. Transferred.</p> <p>7257d. Expanded research by Secretary of Energy.</p> <p>(a) Detection and identification research.</p> <p>(b) Authorization.</p> <p>7258. Facilities construction.</p> <p>(a) Employees and dependents stationed at remote locations.</p> <p>(b) Medical treatment at reasonable prices.</p> <p>(c) Use of reimbursement proceeds.</p> <p>7259. Use of facilities.</p> <p>(a) Facilities of United States and foreign governments.</p> <p>(b) Facilities under custody of Secretary.</p> <p>(c) Use of reimbursement proceeds.</p> <p>7259a. Activities of Department of Energy facilities.</p> <p>(a) Research and activities on behalf of non-department persons and entities.</p> <p>(b) Charges.</p> <p>(c) Pilot program of reduced facility overhead charges.</p> | <p>Sec.</p> <p>(d) Applicability with respect to user fee practice.</p> <p>7260. Field offices.</p> <p>7261. Acquisition of copyrights, patents, etc.</p> <p>7261a. Protection of sensitive technical information.</p> <p>(a) Property rights in inventions and discoveries; timely determination; reports to Congressional committees.</p> <p>(b) Matters to be considered.</p> <p>7261b. Technology transfer to small businesses.</p> <p>7261c. Technology partnerships ombudsman.</p> <p>(a) Appointment of ombudsman.</p> <p>(b) Qualifications.</p> <p>(c) Duties.</p> <p>7262. Repealed.</p> <p>7263. Capital fund.</p> <p>7264. Seal of Department.</p> <p>7265. Regional Energy Advisory Boards.</p> <p>(a) Establishment; membership.</p> <p>(b) Observers.</p> <p>(c) Recommendations of Board.</p> <p>(d) Notice of reasons not to adopt recommendations.</p> <p>7266. Designation of conservation officers.</p> <p>7267. Annual report.</p> <p>7268. Leasing report.</p> <p>7269. Transfer of funds.</p> <p>7269a. Transfer of funds between appropriations for Department of Energy activities.</p> <p>7269b. Transfer of unexpended appropriation balances.</p> <p>7270. Authorization of appropriations.</p> <p>7270a. Guards for Strategic Petroleum Reserve facilities.</p> <p>7270b. Trespass on Strategic Petroleum Reserve facilities.</p> <p>7270c. Annual assessment and report on vulnerability of facilities to terrorist attack.</p> <p>7271 to 7273a. Transferred or Repealed.</p> <p>7273b. Security investigations.</p> <p>7273c. Transferred.</p> <p>7274. Environmental impact statements relating to defense facilities of Department of Energy.</p> <p>7274a to 7274d. Transferred.</p> <p>7274e. Scholarship and fellowship program for environmental restoration and waste management.</p> <p>(a) Establishment.</p> <p>(b) Eligibility.</p> <p>(c) Agreement.</p> <p>(d) Repayment.</p> <p>(e) Preference for cooperative education students.</p> <p>(f) Coordination of benefits.</p> <p>(g) Award of scholarships and fellowships.</p> <p>(h) Report to Congress.</p> <p>(i) Funding.</p> <p>7274f. Transferred.</p> <p>7274g. Environmental restoration and waste management five-year plan and budget reports.</p> <p>(a) Five-year plan.</p> <p>(b) Treatment of plans under section 4332.</p> <p>(c) Grants.</p> <p>(d) Funding.</p> <p>(e) Budget reports.</p> <p>7274h to 7274k. Transferred or Repealed.</p> <p>7274l. Authority to transfer certain Department of Energy property.</p> <p>(a) Authority to transfer.</p> <p>(b) Covered property.</p> <p>7274m to 7274o. Transferred.</p> <p>7274p. Advice to President and Congress regarding safety, security, and reliability of United States nuclear weapons stockpile.</p> <p>(a) Findings.</p> <p>(b) Policy.</p> <p>(c), (d) Omitted.</p> <p>(e) Advice and opinions regarding nuclear weapons stockpile.</p> |
|---|--|

- Sec. (f) Expression of individual views.
(g) Definitions.
- 7274q to 7274s. Transferred.
7275. Definitions.
7276. Regulations to require integrated resource planning.
(a) Regulations.
(b) Certain small customers.
- 7276a. Technical assistance.
- 7276b. Integrated resource plans.
(a) Review by Western Area Power Administration.
(b) Criteria for approval of integrated resource plans.
(c) Use of other integrated resource plans.
(d) Compliance with integrated resource plans.
(e) Enforcement.
(f) Integrated resource planning cooperatives.
(g) Customers with more than 1 contract.
(h) Program review.
- 7276c. Miscellaneous provisions.
(a) Environmental impact statement.
(b) Annual reports.
(c) State regulated investor-owned utilities.
(d) Rural Electrification Administration requirements.
- 7276d. Property protection program for power marketing administrations.
- 7276e. Provision of rewards.
7277. Report concerning review of United States coal imports.
(a) In general.
(b) Contents.
(c) Date of reports.
(d) Limitation.
7278. Availability of appropriations for Department of Energy for transportation, uniforms, security, and price support and loan guarantee programs; transfer of funds; acceptance of contributions.
- SUBCHAPTER VII—TRANSITIONAL, SAVINGS, AND CONFORMING PROVISIONS**
7291. Transfer and allocations of appropriations and personnel.
7292. Effect on personnel.
(a) Full-time and part-time personnel holding permanent positions.
(b) Person who held position compensated in accordance with chapter 53 of title 5.
(c) Employees holding reemployment rights acquired under section 786 of title 15.
7293. Agency terminations.
7294. Incidental transfers.
7295. Savings provisions.
(a) Orders, determinations, rules, etc., in effect prior to effective date of this chapter.
(b) Proceedings or applications for licenses, permits, etc., pending at effective date of this chapter; regulations.
(c) Suits commenced prior to effective date of this chapter.
(d) Suits, actions, etc., commenced by or against any officer or agency or cause of action by or against any department or agency.
(e) Suits with officers, departments, or agencies as parties.
7296. Separability.
7297. Cross references.
7298. Presidential authority.
- Sec. 7299. Transition.
7300. Report to Congress; effect on personnel.
7301. Environmental impact statements.
- SUBCHAPTER VIII—ENERGY PLANNING**
7321. National Energy Policy Plan.
(a) Preparation by President and submission to Congress; formulation and review.
(b) Biennial transmittal to Congress; contents.
(c) Submission of report to Congress; contents.
(d) Consultation with consumers, small businesses, etc.
7322. Congressional review.
- SUBCHAPTER IX—EFFECTIVE DATE AND INTERIM APPOINTMENTS**
7341. Effective date.
7342. Interim appointments.
- SUBCHAPTER X—SUNSET PROVISIONS**
7351. Submission of comprehensive review.
7352. Contents of review.
- SUBCHAPTER XI—ENERGY TARGETS**
- 7361 to 7364. Repealed.
- SUBCHAPTER XII—RENEWABLE ENERGY INITIATIVES**
7371. Statement of purpose.
7372. “Secretary” and “renewable energy resource” defined.
7373. Coordinated dissemination of information on renewable energy resources and conservation.
7374. Energy self-sufficiency initiatives.
(a) Establishment of 3-year pilot program.
(b) Establishment of subprograms to pilot program; scope of subprograms.
(c) Implementation of subprograms; preparation of plan of program and additional Federal actions.
(d) Submission of plan and implementation report to Congress.
7375. Authorization of appropriations.
- SUBCHAPTER XIII—DEPARTMENT OF ENERGY SCIENCE EDUCATION PROGRAMS**
7381. Findings and purposes.
(a) Findings.
(b) Purposes.
- 7381a. Science education programs.
(a) Programs.
(b) Relationship to other Department activities.
- 7381b. Laboratory cooperative science centers and other authorized education activities.
(a) Activities.
(b) Use of facilities.
(c) Funding.
- 7381c. Education partnerships.
(a) Education partnerships.
(b) Types of assistance.
- 7381d. Definitions.
- 7381e. Authorization of appropriations.
- SUBCHAPTER XIV—ALBERT EINSTEIN DISTINGUISHED EDUCATOR FELLOWSHIPS**
7382. Findings.
7382a. Purpose; designation.
(a) Purpose.
(b) Designation.
- 7382b. Definitions.
- 7382c. Fellowship Program.
(a) In general.

- Sec. (b) Administration.
(c) Selection.
- 7382d. Fellowship awards.
(a) Fellowship recipient compensation.
(b) Local educational agency.
- 7382e. Waste Management Education Research Consortium (WERC).
- 7382f. Authorization of appropriations.
(a) In general.
(b) WERC program.
- SUBCHAPTER XV—MATTERS RELATING TO SAFEGUARDS, SECURITY, AND COUNTER-INTELLIGENCE
7383. Commission on Safeguards, Security, and Counterintelligence at Department of Energy Facilities.
(a) Establishment.
(b) Membership and organization.
(c) Duties.
(d) Reports.
(e) Personnel matters.
(f) Applicability of FACA.
(g) Funding.
- 7383a to 7383d. Transferred.
- 7383e. Annual report by the President on espionage by the People's Republic of China.
(a) Annual report required.
(b) Initial report.
- 7383f to 7383h-1. Transferred.
- 7383i. Definitions of national laboratory and nuclear weapons production facility.
- 7383j. Definition of Restricted Data.
- SUBCHAPTER XVI—ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM
7384. Findings; sense of Congress.
(a) Findings.
(b) Sense of Congress.
- PART A—ESTABLISHMENT OF COMPENSATION PROGRAM AND COMPENSATION FUND
- 7384d. Establishment of Energy Employees Occupational Illness Compensation Program.
(a) Program established.
(b) Purpose of program.
(c) Eligibility for compensation.
- 7384e. Establishment of Energy Employees Occupational Illness Compensation Fund.
(a) Establishment.
(b) Amounts in compensation fund.
(c) Financing of compensation fund.
(d) Use of compensation fund.
(e) Administrative costs not paid from compensation fund.
(f) Investment of amounts in compensation fund.
- 7384f. Legislative proposal.
(a) Legislative proposal required.
(b) Assessment of potential covered employees and required amounts.
- 7384g. Authorization of appropriations.
(a) In general.
(b) Compensation fund.
- PART B—PROGRAM ADMINISTRATION
- 7384i. Definitions for program administration.
- 7384m. Expansion of list of beryllium vendors.
- 7384n. Exposure in the performance of duty.
(a) Beryllium.
(b) Cancer.
(c) Guidelines.
(d) Methods for radiation dose reconstructions.
(e) Information on radiation doses.
- 7384o. Advisory Board on Radiation and Worker Health.
(a) Establishment.
- Sec. (b) Duties.
(c) Staff.
(d) Expenses.
- 7384p. Responsibilities of Secretary of Health and Human Services.
- 7384q. Designation of additional members of special exposure cohort.
(a) Advice on additional members.
(b) Designation of additional members.
(c) Access to information.
- 7384r. Separate treatment of chronic silicosis.
(a) Sense of Congress.
(b) Certification by President.
(c) Exposure to silica in the performance of duty.
(d) Covered employee with chronic silicosis.
(e) Chronic silicosis.
- 7384s. Compensation and benefits to be provided.
(a) Compensation provided.
(b) Medical benefits.
(c) Beryllium sensitivity monitoring.
(d) Payment from compensation fund.
(e) Payments in the case of deceased persons.
(f) Effective date.
- 7384t. Medical benefits.
(a) Medical benefits provided.
(b) Persons furnishing benefits.
(c) Transportation and expenses.
(d) Commencement of benefits.
(e) Payment from compensation fund.
(f) Effective date.
- 7384u. Separate treatment of certain uranium employees.
(a) Compensation provided.
(b) Medical benefits.
(c) Coordination with RECA.
(d) Payment from compensation fund.
(e) Payments in the case of deceased persons.
(f) Procedures required.
(g) Effective date.
- 7384v. Assistance for claimants and potential claimants.
(a) Assistance for claimants.
(b) Assistance for potential claimants.
(c) Information from beryllium vendors and other contractors.
- PART C—TREATMENT, COORDINATION, AND FORFEITURE OF COMPENSATION AND BENEFITS
7385. Offset for certain payments.
- 7385a. Subrogation of the United States.
- 7385b. Payment in full settlement of claims.
- 7385c. Exclusivity of remedy against the United States and against contractors and subcontractors.
(a) In general.
(b) Applicability.
(c) Workers' compensation.
- 7385d. Election of remedy for beryllium employees and atomic weapons employees.
(a) Effect of tort cases filed before enactment of original law.
(b) Effect of tort cases filed between enactment of original law and enactment of 2001 amendments.
(c) Effect of tort cases filed after enactment of 2001 amendments.
(d) Covered tort cases.
(e) Workers' compensation.
- 7385e. Certification of treatment of payments under other laws.
- 7385f. Claims not assignable or transferable; choice of remedies.
(a) Claims not assignable or transferable.
(b) Choice of remedies.
- 7385g. Attorney fees.

- Sec.
- (a) General rule.
 - (b) Applicable percentage limitations.
 - (c) Inapplicability to other services.
 - (d) Penalty.
- 7385h. Certain claims not affected by awards of damages.
- 7385i. Forfeiture of benefits by convicted felons.
- (a) Forfeiture of compensation.
 - (b) Information.
- 7385j. Coordination with other Federal radiation compensation laws.
- PART D—ASSISTANCE IN STATE WORKERS' COMPENSATION PROCEEDINGS
- 7385o. Agreements with States.
- (a) Agreements authorized.
 - (b) Procedure.
 - (c) Submittal of applications to panels.
 - (d) Composition and operation of panels.
 - (e) Assistance.
 - (f) Information.
 - (g) GAO report.

SUBCHAPTER XVII—[Repealed]

7386 to 7386k. Transferred.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 5905 of this title; title 15 section 3393; title 16 section 824a-1; title 30 section 1303; title 43 section 1331, 1866.

§ 7101. Definitions

(a) As used in this chapter, unless otherwise provided or indicated by the context, the term the "Department" means the Department of Energy or any component thereof, including the Federal Energy Regulatory Commission.

(b) As used in this chapter (1) reference to "function" includes reference to any duty, obligation, power, authority, responsibility, right, privilege, and activity, or the plural thereof, as the case may be; and (2) reference to "perform", when used in relation to functions, includes the undertaking, fulfillment, or execution of any duty or obligation; and the exercise of power, authority, rights, and privileges.

(c) As used in this chapter, "Federal lease" means an agreement which, for any consideration, including but not limited to, bonuses, rents, or royalties conferred and covenants to be observed, authorizes a person to explore for, or develop, or produce (or to do any or all of these) oil and gas, coal, oil shale, tar sands, and geothermal resources on lands or interests in lands under Federal jurisdiction.

(Pub. L. 95-91, §2, Aug. 4, 1977, 91 Stat. 567.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (b), and (c), was in the original "this Act", meaning Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 565, as amended, known as the Department of Energy Organization Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

SHORT TITLE OF 1997 AMENDMENT

Pub. L. 105-28, §1, July 18, 1997, 111 Stat. 245, provided that: "This Act [amending sections 7191 and 7234 of this title and repealing section 776 of Title 15, Commerce and Trade] may be cited as the 'Department of Energy Standardization Act of 1997'."

SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101-271, §1, Apr. 11, 1990, 104 Stat. 135, provided that: "This Act [amending section 7171 of this title and

enacting provisions set out as a note under section 7171 of this title] may be cited as the 'Federal Energy Regulatory Commission Member Term Act of 1990'."

SHORT TITLE

Section 1 of Pub. L. 95-91 provided: "That this Act [enacting this chapter and section 916 of Title 7, Agriculture, amending sections 6833 and 6839 of this title, section 19 of Title 3, The President, sections 101, 5108, and 5312 to 5316 of Title 5, Government Organization and Employees, section 1701z-8 of Title 12, Banks and Banking, and sections 766, 790a, 790d, and 2002 of Title 15, Commerce and Trade, repealing sections 2036 and 5818 of this title and sections 763, 768, and 786 of Title 15, enacting provisions set out as a note under section 2201 of this title, and repealing provisions set out as a note under section 761 of Title 15] may be cited as the 'Department of Energy Organization Act'."

For short title of part E of title XXXI of div. C of Pub. L. 101-510, which enacted subchapter XIII of this chapter, as the "Department of Energy Science Education Enhancement Act", see section 3161 of Pub. L. 101-510, set out as a note under section 7381 of this title.

For short title of part A of title V of Pub. L. 103-382, which enacted subchapter XIV of this chapter, as the "Albert Einstein Distinguished Educator Fellowship Act of 1994", see section 511 of Pub. L. 103-382, set out as a note under section 7382 of this title.

For short title of subtitle D of title XXXI of div. C of Pub. L. 106-65, which enacted subchapter XV of this chapter, as the "Department of Energy Facilities Safeguards, Security, and Counterintelligence Enhancement Act of 1999", see section 3141 of Pub. L. 106-65, set out as a note under section 7383 of this title.

For short title of section 1 [div. C, title XXXVI] of Pub. L. 106-398, which enacted subchapter XVI of this chapter, as the "Energy Employees Occupational Illness Compensation Program Act of 2000", see section 1 [div. C, title XXXVI, §3601] of Pub. L. 106-398, set out as a note under section 7384 of this title.

Pub. L. 107-314, div. C, title XXXVI, §3601, Dec. 2, 2002, 116 Stat. 2756, which was formerly set out as a note under this section, was renumbered section 4001(a) of Pub. L. 107-314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108-136, div. C, title XXXI, §3141(c)(1)(A)-(D)(ii), Nov. 24, 2003, 117 Stat. 1753, and is now set out as a note under section 2501 of Title 50, War and National Defense.

EXECUTIVE ORDER NO. 12083

Ex. Ord. No. 12083, Sept. 27, 1978, 43 F.R. 44813, as amended by Ex. Ord. No. 12121, Feb. 26, 1979, 44 F.R. 11195; Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239, which established the Energy Coordinating Committee and provided for its membership, functions, etc., was revoked by Ex. Ord. No. 12379, §20, Aug. 17, 1982, 47 F.R. 36100, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

SUBCHAPTER I—DECLARATION OF FINDINGS AND PURPOSES

§ 7111. Congressional findings

The Congress of the United States finds that—

(1) the United States faces an increasing shortage of nonrenewable energy resources;

(2) this energy shortage and our increasing dependence on foreign energy supplies present a serious threat to the national security of the United States and to the health, safety and welfare of its citizens;

(3) a strong national energy program is needed to meet the present and future energy needs of the Nation consistent with overall national economic, environmental and social goals;

(4) responsibility for energy policy, regulation, and research, development and dem-

onstration is fragmented in many departments and agencies and thus does not allow for the comprehensive, centralized focus necessary for effective coordination of energy supply and conservation programs; and

(5) formulation and implementation of a national energy program require the integration of major Federal energy functions into a single department in the executive branch.

(Pub. L. 95-91, title I, §101, Aug. 4, 1977, 91 Stat. 567.)

§ 7112. Congressional declaration of purpose

The Congress therefore declares that the establishment of a Department of Energy is in the public interest and will promote the general welfare by assuring coordinated and effective administration of Federal energy policy and programs. It is the purpose of this chapter:

(1) To establish a Department of Energy in the executive branch.

(2) To achieve, through the Department, effective management of energy functions of the Federal Government, including consultation with the heads of other Federal departments and agencies in order to encourage them to establish and observe policies consistent with a coordinated energy policy, and to promote maximum possible energy conservation measures in connection with the activities within their respective jurisdictions.

(3) To provide for a mechanism through which a coordinated national energy policy can be formulated and implemented to deal with the short-, mid- and long-term energy problems of the Nation; and to develop plans and programs for dealing with domestic energy production and import shortages.

(4) To create and implement a comprehensive energy conservation strategy that will receive the highest priority in the national energy program.

(5) To carry out the planning, coordination, support, and management of a balanced and comprehensive energy research and development program, including—

(A) assessing the requirements for energy research and development;

(B) developing priorities necessary to meet those requirements;

(C) undertaking programs for the optimal development of the various forms of energy production and conservation; and

(D) disseminating information resulting from such programs, including disseminating information on the commercial feasibility and use of energy from fossil, nuclear, solar, geothermal, and other energy technologies.

(6) To place major emphasis on the development and commercial use of solar, geothermal, recycling and other technologies utilizing renewable energy resources.

(7) To continue and improve the effectiveness and objectivity of a central energy data collection and analysis program within the Department.

(8) To facilitate establishment of an effective strategy for distributing and allocating fuels in periods of short supply and to provide

for the administration of a national energy supply reserve.

(9) To promote the interests of consumers through the provision of an adequate and reliable supply of energy at the lowest reasonable cost.

(10) To establish and implement through the Department, in coordination with the Secretaries of State, Treasury, and Defense, policies regarding international energy issues that have a direct impact on research, development, utilization, supply, and conservation of energy in the United States and to undertake activities involving the integration of domestic and foreign policy relating to energy, including provision of independent technical advice to the President on international negotiations involving energy resources, energy technologies, or nuclear weapons issues, except that the Secretary of State shall continue to exercise primary authority for the conduct of foreign policy relating to energy and nuclear nonproliferation, pursuant to policy guidelines established by the President.

(11) To provide for the cooperation of Federal, State, and local governments in the development and implementation of national energy policies and programs.

(12) To foster and assure competition among parties engaged in the supply of energy and fuels.

(13) To assure incorporation of national environmental protection goals in the formulation and implementation of energy programs, and to advance the goals of restoring, protecting, and enhancing environmental quality, and assuring public health and safety.

(14) To assure, to the maximum extent practicable, that the productive capacity of private enterprise shall be utilized in the development and achievement of the policies and purposes of this chapter.

(15) To provide for, encourage, and assist public participation in the development and enforcement of national energy programs.

(16) To create an awareness of, and responsibility for, the fuel and energy needs of rural and urban residents as such needs pertain to home heating and cooling, transportation, agricultural production, electrical generation, conservation, and research and development.

(17) To foster insofar as possible the continued good health of the Nation's small business firms, public utility districts, municipal utilities, and private cooperatives involved in energy production, transportation, research, development, demonstration, marketing, and merchandising.

(18) To provide for the administration of the functions of the Energy Research and Development Administration related to nuclear weapons and national security which are transferred to the Department by this chapter.

(19) To ensure that the Department can continue current support of mathematics, science, and engineering education programs by using the personnel, facilities, equipment, and resources of its laboratories and by working with State and local education agencies, institutions of higher education, and business and industry. The Department's involvement in

mathematics, science, and engineering education should be consistent with its main mission and should be coordinated with all Federal efforts in mathematics, science, and engineering education, especially with the Department of Education and the National Science Foundation (which have the primary Federal responsibility for mathematics, science, and engineering education).

(Pub. L. 95-91, title I, §102, Aug. 4, 1977, 91 Stat. 567; Pub. L. 101-510, div. C, title XXXI, §3163, Nov. 5, 1990, 104 Stat. 1841.)

AMENDMENTS

1990—Pub. L. 101-510 substituted “chapter:” for “chapter—” in introductory provisions, capitalized the first letter of the first word in each of pars. (1) to (18), substituted a period for last semicolon in each of pars. (1) to (17), struck out “and” at end of par. (17), and added par. (19).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7133 of this title.

§ 7113. Relationship with States

Whenever any proposed action by the Department conflicts with the energy plan of any State, the Department shall give due consideration to the needs of such State, and where practicable, shall attempt to resolve such conflict through consultations with appropriate State officials. Nothing in this chapter shall affect the authority of any State over matters exclusively within its jurisdiction.

(Pub. L. 95-91, title I, §103, Aug. 4, 1977, 91 Stat. 569.)

SUBCHAPTER II—ESTABLISHMENT OF DEPARTMENT

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 7232, 7341 of this title.

§ 7131. Establishment

There is established at the seat of government an executive department to be known as the Department of Energy. There shall be at the head of the Department a Secretary of Energy (hereinafter in this chapter referred to as the “Secretary”), who shall be appointed by the President by and with the advice and consent of the Senate. The Department shall be administered, in accordance with the provisions of this chapter, under the supervision and direction of the Secretary.

(Pub. L. 95-91, title II, §201, Aug. 4, 1977, 91 Stat. 569.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 565, as amended, known as the Department of Energy Organization Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Department of Energy, including the

functions of the Secretary of Energy relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 121(g)(4), 183(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 7132. Principal officers

(a) Deputy Secretary

There shall be in the Department a Deputy Secretary, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at the rate provided for level II of the Executive Schedule under section 5313 of title 5. The Deputy Secretary shall act for and exercise the functions of the Secretary during the absence or disability of the Secretary or in the event the office of Secretary becomes vacant. The Secretary shall designate the order in which the Under Secretary and other officials shall act for and perform the functions of the Secretary during the absence or disability of both the Secretary and Deputy Secretary or in the event of vacancies in both of those offices.

(b) Under Secretary; General Counsel

There shall be in the Department an Under Secretary and a General Counsel, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall perform such functions and duties as the Secretary shall prescribe. The Under Secretary shall bear primary responsibility for energy conservation. The Under Secretary shall be compensated at the rate provided for level III of the Executive Schedule under section 5314 of title 5, and the General Counsel shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5.

(c) Under Secretary for Nuclear Security

(1) There shall be in the Department an Under Secretary for Nuclear Security, who shall be appointed by the President, by and with the advice and consent of the Senate. The Under Secretary shall be compensated at the rate provided for at level III of the Executive Schedule under section 5314 of title 5.

(2) The Under Secretary for Nuclear Security shall be appointed from among persons who—

(A) have extensive background in national security, organizational management, and appropriate technical fields; and

(B) are well qualified to manage the nuclear weapons, nonproliferation, and materials disposition programs of the National Nuclear Security Administration in a manner that advances and protects the national security of the United States.

(3) The Under Secretary for Nuclear Security shall serve as the Administrator for Nuclear Security under section 2402 of title 50. In carrying out the functions of the Administrator, the Under Secretary shall be subject to the authority, direction, and control of the Secretary. Such authority, direction, and control may be delegated only to the Deputy Secretary of Energy, without redelegation.

(Pub. L. 95-91, title II, §202, Aug. 4, 1977, 91 Stat. 569; Pub. L. 106-65, div. C, title XXXII, §3202, Oct. 5, 1999, 113 Stat. 954.)

AMENDMENTS

1999—Subsec. (c). Pub. L. 106-65 added subsec. (c).

TERM OF OFFICE OF PERSON FIRST APPOINTED AS UNDER SECRETARY FOR NUCLEAR SECURITY OF THE DEPARTMENT OF ENERGY

Pub. L. 106-398, §1 [div. C, title XXXI, §3151], Oct. 30, 2000, 114 Stat. 1654, 1654A-464, provided that:

“(a) LENGTH OF TERM.—The term of office as Under Secretary for Nuclear Security of the Department of Energy of the person first appointed to that position shall be three years.

“(b) EXCLUSIVE REASONS FOR REMOVAL.—The exclusive reasons for removal from office as Under Secretary for Nuclear Security of the person described in subsection (a) shall be inefficiency, neglect of duty, or malfeasance in office.

“(c) POSITION DESCRIBED.—The position of Under Secretary for Nuclear Security of the Department of Energy referred to in this section is the position established by subsection (c) of section 202 of the Department of Energy Organization Act (42 U.S.C. 7132), as added by section 3202 of the National Nuclear Security Administration Act (title XXXII of Public Law 106-65; 113 Stat. 954).”

Substantially identical provisions were contained in Pub. L. 106-377, §1(a)(2) [title III, §313], Oct. 27, 2000, 114 Stat. 1441, 1441A-81.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 50 sections 2402, 2410.

§ 7133. Assistant Secretaries; appointment and confirmation; identification of responsibilities

(a) There shall be in the Department six Assistant Secretaries, each of whom shall be appointed by the President, by and with the advice and consent of the Senate; who shall be compensated at the rate provided for at level IV of the Executive Schedule under section 5315 of title 5; and who shall perform, in accordance with applicable law, such of the functions transferred or delegated to, or vested in, the Secretary as he shall prescribe in accordance with the provisions of this chapter. The functions which the Secretary shall assign to the Assistant Secretaries include, but are not limited to, the following:

(1) Energy resource applications, including functions dealing with management of all forms of energy production and utilization, including fuel supply, electric power supply, enriched uranium production, energy technology programs, and the management of energy resource leasing procedures on Federal lands.

(2) Energy research and development functions, including the responsibility for policy and management of research and development for all aspects of—

- (A) solar energy resources;
- (B) geothermal energy resources;
- (C) recycling energy resources;
- (D) the fuel cycle for fossil energy resources; and
- (E) the fuel cycle for nuclear energy resources.

(3) Environmental responsibilities and functions, including advising the Secretary with respect to the conformance of the Department's activities to environmental protection laws and principles, and conducting a compre-

hensive program of research and development on the environmental effects of energy technologies and programs.

(4) International programs and international policy functions, including those functions which assist in carrying out the international energy purposes described in section 7112 of this title.

(5) Repealed. Pub. L. 106-65, div. C, title XXXII, §3294(b), Oct. 5, 1999, 113 Stat. 970.

(6) Intergovernmental policies and relations, including responsibilities for assuring that national energy policies are reflective of and responsible to the needs of State and local governments, and for assuring that other components of the Department coordinate their activities with State and local governments, where appropriate, and develop intergovernmental communications with State and local governments.

(7) Competition and consumer affairs, including responsibilities for the promotion of competition in the energy industry and for the protection of the consuming public in the energy policymaking processes, and assisting the Secretary in the formulation and analysis of policies, rules, and regulations relating to competition and consumer affairs.

(8) Nuclear waste management responsibilities, including—

(A) the establishment of control over existing Government facilities for the treatment and storage of nuclear wastes, including all containers, casks, buildings, vehicles, equipment, and all other materials associated with such facilities;

(B) the establishment of control over all existing nuclear waste in the possession or control of the Government and all commercial nuclear waste presently stored on other than the site of a licensed nuclear power electric generating facility, except that nothing in this paragraph shall alter or effect title to such waste;

(C) the establishment of temporary and permanent facilities for storage, management, and ultimate disposal of nuclear wastes;

(D) the establishment of facilities for the treatment of nuclear wastes;

(E) the establishment of programs for the treatment, management, storage, and disposal of nuclear wastes;

(F) the establishment of fees or user charges for nuclear waste treatment or storage facilities, including fees to be charged Government agencies; and

(G) the promulgation of such rules and regulations to implement the authority described in this paragraph,

except that nothing in this section shall be construed as granting to the Department regulatory functions presently within the Nuclear Regulatory Commission, or any additional functions than those already conferred by law.

(9) Energy conservation functions, including the development of comprehensive energy conservation strategies for the Nation, the planning and implementation of major research and demonstration programs for the development of technologies and processes to reduce

total energy consumption, the administration of voluntary and mandatory energy conservation programs, and the dissemination to the public of all available information on energy conservation programs and measures.

(10) Power marketing functions, including responsibility for marketing and transmission of Federal power.

(11) Public and congressional relations functions, including responsibilities for providing a continuing liaison between the Department and the Congress and the Department and the public.

(b) At the time the name of any individual is submitted for confirmation to the position of Assistant Secretary, the President shall identify with particularity the function or functions described in subsection (a) of this section (or any portion thereof) for which such individual will be responsible.

(Pub. L. 95-91, title II, §203, Aug. 4, 1977, 91 Stat. 570; Pub. L. 106-65, div. C, title XXXII, §3294(a)(2), (b), Oct. 5, 1999, 113 Stat. 970.)

AMENDMENTS

1999—Subsec. (a). Pub. L. 106-65, §3294(a)(2), substituted “six” for “eight” in introductory provisions.

Subsec. (a)(5). Pub. L. 106-65, §3294(b), struck out par. (5) which read as follows: “National security functions, including those transferred to the Department from the Energy Research and Development Administration which relate to management and implementation of the nuclear weapons program and other national security functions involving nuclear weapons research and development.”

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-65 effective Mar. 1, 2000, see section 3299 of Pub. L. 106-65, set out as an Effective Date note under section 2401 of Title 50, War and National Defense.

FEDERAL POWER MARKETING ADMINISTRATION EMPLOYMENT LEVELS

Pub. L. 101-514, title V, §510, Nov. 5, 1990, 104 Stat. 2098, provided that no funds appropriated or made available were to be used by the executive branch to change employment levels determined by Administrators of the Federal Power Marketing Administrations to be necessary to carry out their responsibilities under this chapter and related laws, or to change employment levels of other Department of Energy programs to compensate for employment levels of the Federal Power Marketing Administrations, prior to repeal by Pub. L. 104-46, title V, §501, Nov. 13, 1995, 109 Stat. 419.

MARKETING AND EXCHANGE OF SURPLUS ELECTRICITY FROM NAVAJO GENERATING STATION

Pub. L. 98-381, title I, §107, Aug. 17, 1984, 98 Stat. 1339, provided that:

“(a) Subject to the provisions of any existing layoff contracts, electrical capacity and energy associated with the United States’ interest in the Navajo generating station which is in excess of the pumping requirements of the Central Arizona project and any such needs for desalting and protective pumping facilities as may be required under section 101(b)(2)(B) of the Colorado River Basin Salinity Control Act of 1974, as amended [43 U.S.C. 1571(b)(2)(B)] (hereinafter in this Act referred to as ‘Navajo surplus’) shall be marketed and exchanged by the Secretary of Energy pursuant to this section.

“(b) Navajo surplus shall be marketed by the Secretary of Energy pursuant to the plan adopted under subsection (c) of this section, directly to, with or

through the Arizona Power Authority and/or other entities having the status of preference entities under the reclamation law in accordance with the preference provisions of section 9(c) of the Reclamation Project Act of 1939 [43 U.S.C. 485h(c)] and as provided in part IV, section A of the Criteria.

“(c) In the marketing and exchanging of Navajo surplus, the Secretary of the Interior shall adopt the plan deemed most acceptable, after consultation with the Secretary of Energy, the Governor of Arizona, and the Central Arizona Water Conservation District (or its successor in interest to the repayment obligation for the Central Arizona project), for the purposes of optimizing the availability of Navajo surplus and providing financial assistance in the timely construction and repayment of construction costs of authorized features of the Central Arizona project. The Secretary of the Interior, in concert with the Secretary of Energy, in accordance with section 14 of the Reclamation Project Act of 1939 [43 U.S.C. 389], shall grant electrical power and energy exchange rights with Arizona entities as necessary to implement the adopted plan: *Provided, however,* That if exchange rights with Arizona entities are not required to implement the adopted plan, exchange rights may be offered to other entities.

“(d) For the purposes provided in subsection (c) of this section, the Secretary of Energy, or the marketing entity or entities under the adopted plan, are authorized to establish and collect or cause to be established and collected, rate components, in addition to those currently authorized, and to deposit the revenues received in the Lower Colorado River Basin Development Fund to be available for such purposes and if required under the adopted plan, to credit, utilize, pay over directly or assign revenues from such additional rate components to make repayment and establish reserves for repayment of funds, including interest incurred, to entities which have advanced funds for the purposes of subsection (c) of this section: *Provided, however,* That rates shall not exceed levels that allow for an appropriate saving for the contractor.

“(e) To the extent that this section may be in conflict with any other provision of law relating to the marketing and exchange of Navajo surplus, or to the disposition of any revenues therefrom, this section shall control.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7139 of this title.

§ 7134. Federal Energy Regulatory Commission; compensation of Chairman and members

There shall be within the Department, a Federal Energy Regulatory Commission established by subchapter IV of this chapter (hereinafter referred to in this chapter as the “Commission”). The Chairman shall be compensated at the rate provided for level III of the Executive Schedule under section 5314 of title 5. The other members of the Commission shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5. The Chairman and members of the Commission shall be individuals who, by demonstrated ability, background, training, or experience, are specially qualified to assess fairly the needs and concerns of all interests affected by Federal energy policy.

(Pub. L. 95-91, title II, §204, Aug. 4, 1977, 91 Stat. 571.)

§ 7135. Energy Information Administration

(a) Establishment; appointment of Administrator; compensation; qualifications; duties

(1) There shall be within the Department an Energy Information Administration to be head-

ed by an Administrator who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at the rate provided for in level IV of the Executive Schedule under section 5315 of title 5. The Administrator shall be a person who, by reason of professional background and experience, is specially qualified to manage an energy information system.

(2) The Administrator shall be responsible for carrying out a central, comprehensive, and unified energy data and information program which will collect, evaluate, assemble, analyze, and disseminate data and information which is relevant to energy resource reserves, energy production, demand, and technology, and related economic and statistical information, or which is relevant to the adequacy of energy resources to meet demands in the near and longer term future for the Nation's economic and social needs.

(b) Delegation of functions

The Secretary shall delegate to the Administrator (which delegation may be on a nonexclusive basis as the Secretary may determine may be necessary to assure the faithful execution of his authorities and responsibilities under law) the functions vested in him by law relating to gathering, analysis, and dissemination of energy information (as defined in section 796 of title 15) and the Administrator may act in the name of the Secretary for the purpose of obtaining enforcement of such delegated functions.

(c) Functions of Director of Office of Energy Information and Analysis

In addition to, and not in limitation of the functions delegated to the Administrator pursuant to other subsections of this section, there shall be vested in the Administrator, and he shall perform, the functions assigned to the Director of the Office of Energy Information and Analysis under part B of the Federal Energy Administration Act of 1974 [15 U.S.C. 790 et seq.], and the provisions of sections 53(d) and 59 thereof [15 U.S.C. 790b(d), 790h] shall be applicable to the Administrator in the performance of any function under this chapter.

(d) Collection or analysis of information and preparation of reports without approval

The Administrator shall not be required to obtain the approval of any other officer or employee of the Department in connection with the collection or analysis of any information; nor shall the Administrator be required, prior to publication, to obtain the approval of any other officer or employee of the United States with respect to the substance of any statistical or forecasting technical reports which he has prepared in accordance with law.

(e) Annual audit

The Energy Information Administration shall be subject to an annual professional audit review of performance as described in section 55¹ of part B of the Federal Energy Administration Act of 1974.

¹ See References in Text note below.

(f) Furnishing information or analysis to any other administration, commission, or office within Department

The Administrator shall, upon request, promptly provide any information or analysis in his possession pursuant to this section to any other administration, commission, or office within the Department which such administration, commission, or office determines relates to the functions of such administration, commission, or office.

(g) Availability of information to public

Information collected by the Energy Information Administration shall be cataloged and, upon request, any such information shall be promptly made available to the public in a form and manner easily adaptable for public use, except that this subsection shall not require disclosure of matters exempted from mandatory disclosure by section 552(b) of title 5. The provisions of section 796(d) of title 15, and section 5916 of this title, shall continue to apply to any information obtained by the Administrator under such provisions.

(h) Identification and designation of "major energy producing companies"; format for financial report; accounting practices; filing of financial report; annual report of Department; definitions; confidentiality

(1)(A) In addition to the acquisition, collection, analysis, and dissemination of energy information pursuant to this section, the Administrator shall identify and designate "major energy-producing companies" which alone or with their affiliates are involved in one or more lines of commerce in the energy industry so that the energy information collected from such major energy-producing companies shall provide a statistically accurate profile of each line of commerce in the energy industry in the United States.

(B) In fulfilling the requirements of this subsection the Administrator shall—

(i) utilize, to the maximum extent practicable, consistent with the faithful execution of his responsibilities under this chapter, reliable statistical sampling techniques; and

(ii) otherwise give priority to the minimization of the reporting of energy information by small business.

(2) The Administrator shall develop and make effective for use during the second full calendar year following August 4, 1977, the format for an energy-producing company financial report. Such report shall be designed to allow comparison on a uniform and standardized basis among energy-producing companies and shall permit for the energy-related activities of such companies—

(A) an evaluation of company revenues, profits, cash flow, and investments in total, for the energy-related lines of commerce in which such company is engaged and for all significant energy-related functions within such company;

(B) an analysis of the competitive structure of sectors and functional groupings within the energy industry;

(C) the segregation of energy information, including financial information, describing

company operations by energy source and geographic area;

(D) the determination of costs associated with exploration, development, production, processing, transportation, and marketing and other significant energy-related functions within such company; and

(E) such other analyses or evaluations as the Administrator finds is necessary to achieve the purposes of this chapter.

(3) The Administrator shall consult with the Chairman of the Securities and Exchange Commission with respect to the development of accounting practices required by the Energy Policy and Conservation Act [42 U.S.C. 6201 et seq.] to be followed by persons engaged in whole or in part in the production of crude oil and natural gas and shall endeavor to assure that the energy-producing company financial report described in paragraph (2) of this subsection, to the extent practicable and consistent with the purposes and provisions of this chapter, is consistent with such accounting practices where applicable.

(4) The Administrator shall require each major energy-producing company to file with the Administrator an energy-producing company financial report on at least an annual basis and may request energy information described in such report on a quarterly basis if he determines that such quarterly report of information will substantially assist in achieving the purposes of this chapter.

(5) A summary of information gathered pursuant to this section, accompanied by such analysis as the Administrator deems appropriate, shall be included in the annual report of the Department required by subsection (a)² of section 7267 of this title.

(6) As used in this subsection the term—

(A) “energy-producing company” means a person engaged in:

(i) ownership or control of mineral fuel resources or nonmineral energy resources;

(ii) exploration for, or development of, mineral fuel resources;

(iii) extraction of mineral fuel or nonmineral energy resources;

(iv) refining, milling, or otherwise processing mineral fuels or nonmineral energy resources;

(v) storage of mineral fuels or nonmineral energy resources;

(vi) the generation, transmission, or storage of electrical energy;

(vii) transportation of mineral fuels or nonmineral energy resources by any means whatever; or

(viii) wholesale or retail distribution of mineral fuels, nonmineral energy resources or electrical energy;

(B) “energy industry” means all energy-producing companies; and

(C) “person” has the meaning as set forth in section 796 of title 15.

(7) The provisions of section 1905 of title 18 shall apply in accordance with its terms to any

information obtained by the Administration pursuant to this subsection.

(i) Manufacturers energy consumption survey

(1) The Administrator shall conduct and publish the results of a survey of energy consumption in the manufacturing industries in the United States at least once every two years and in a manner designed to protect the confidentiality of individual responses. In conducting the survey, the Administrator shall collect information, including—

(A) quantity of fuels consumed;

(B) energy expenditures;

(C) fuel switching capabilities; and

(D) use of nonpurchased sources of energy, such as solar, wind, biomass, geothermal, waste by-products, and cogeneration.

(2) This subsection does not affect the authority of the Administrator to collect data under section 52 of the Federal Energy Administration Act of 1974 (15 U.S.C. 790a).

(j) Collection and publication of survey results

(1) The Administrator shall annually collect and publish the results of a survey of electricity production from domestic renewable energy resources, including production in kilowatt hours, total installed capacity, capacity factor, and any other measure of production efficiency. Such results shall distinguish between various renewable energy resources.

(2) In carrying out this subsection, the Administrator shall—

(A) utilize, to the maximum extent practicable and consistent with the faithful execution of his responsibilities under this chapter, reliable statistical sampling techniques; and

(B) otherwise take into account the reporting burdens of energy information by small businesses.

(3) As used in this subsection, the term “renewable energy resources” includes energy derived from solar thermal, geothermal, biomass, wind, and photovoltaic resources.

(k) Survey procedure

Pursuant to section 52(a) of the Federal Energy Administration Act of 1974 (15 U.S.C. 790a(a)), the Administrator shall—

(1) conduct surveys of residential and commercial energy use at least once every 3 years, and make such information available to the public;

(2) when surveying electric utilities, collect information on demand-side management programs conducted by such utilities, including information regarding the types of demand-side management programs being operated, the quantity of measures installed, expenditures on demand-side management programs, estimates of energy savings resulting from such programs, and whether the savings estimates were verified; and

(3) in carrying out this subsection, take into account reporting burdens and the protection of proprietary information as required by law.

(l) Data collection

In order to improve the ability to evaluate the effectiveness of the Nation’s energy efficiency

²So in original. Section 7267 of this title was enacted without a subsec. (a).

policies and programs, the Administrator shall, in carrying out the data collection provisions of subsections (i) and (k) of this section, consider—

(1) expanding the survey instruments to include questions regarding participation in Government and utility conservation programs;

(2) expanding fuel-use surveys in order to provide greater detail on energy use by user subgroups; and

(3) expanding the scope of data collection on energy efficiency and load-management programs, including the effects of building construction practices such as those designed to obtain peak load shifting.

(Pub. L. 95–91, title II, §205, Aug. 4, 1977, 91 Stat. 572; Pub. L. 99–509, title III, §3101(a), Oct. 21, 1986, 100 Stat. 1888; Pub. L. 102–486, title I, §171, Oct. 24, 1992, 106 Stat. 2864.)

REFERENCES IN TEXT

The Federal Energy Administration Act of 1974, referred to in subsec. (c), is Pub. L. 93–275, May 7, 1974, 88 Stat. 96, as amended. Part B of the Federal Energy Administration Act of 1974 is classified generally to subchapter II (§790 et seq.) of chapter 16B of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 761 of Title 15 and Tables.

Section 55 of part B of the Federal Energy Administration Act of 1974, referred to in subsec. (e), was classified to section 790d of Title 15, Commerce and Trade, and was repealed by Pub. L. 104–66, title I, §1051(k), Dec. 21, 1995, 109 Stat. 717.

The Energy Policy and Conservation Act, referred to in subsec. (h)(3), is Pub. L. 94–163, Dec. 22, 1975, 89 Stat. 871, as amended, which is classified principally to chapter 77 (§6201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

AMENDMENTS

1992—Subsec. (i)(1). Pub. L. 102–486, §171(a)(1), in introductory provisions, substituted “at least once every two years” for “on at least a triennial basis”.

Subsec. (i)(1)(D). Pub. L. 102–486, §171(a)(2), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: “use of nonpurchased sources of energy, such as cogeneration and waste by-products.”

Subsecs. (j) to (l). Pub. L. 102–486, §171(b), added subsecs. (j) to (l).

1986—Subsec. (i). Pub. L. 99–509 added subsec. (i).

END USE CONSUMPTION SURVEYS; MANUFACTURING ENERGY CONSUMPTION SURVEY

Pub. L. 104–134, title I, §101(c) [title II], Apr. 26, 1996, 110 Stat. 1321–156, 1321–188; renumbered title I, Pub. L. 104–140, §1(a), May 2, 1996, 110 Stat. 1327, provided in part: “That notwithstanding section 4(d) of the Service Contract Act of 1965 (41 U.S.C. 353(d)) or any other provision of law, funds appropriated under this heading [DEPARTMENT OF ENERGY, ENERGY INFORMATION ADMINISTRATION] hereafter may be used to enter into a contract for end use consumption surveys for a term not to exceed eight years: *Provided further*, That notwithstanding any other provision of law, hereafter the Manufacturing Energy Consumption Survey shall be conducted on a triennial basis.”

§ 7135a. Delegation by Secretary of Energy of energy research, etc., functions to Administrator of Energy Information Administration; prohibition against required delegation; utilization of capabilities by Secretary

Notwithstanding any other provision of law, the Secretary of Energy shall not be required to

delegate to the Administrator of the Energy Information Administration any energy research, development, and demonstration function vested in the Secretary, pursuant to the Atomic Energy Act [42 U.S.C. 2011 et seq.], the Federal Nonnuclear Energy Research and Development Act [42 U.S.C. 5901 et seq.], the Geothermal Research, Development and Demonstration Act [30 U.S.C. 1101 et seq.], the Electric and Hybrid Vehicle Research, Development and Demonstration Act [15 U.S.C. 2501 et seq.], the Solar Heating and Cooling Demonstration Act [42 U.S.C. 5501 et seq.], the Solar Energy Research, Development and Demonstration Act [42 U.S.C. 5551 et seq.], and the Energy Reorganization Act [42 U.S.C. 5801 et seq.]. Additionally, the Secretary may utilize the capabilities of the Energy Information Administration as he deems appropriate for the conduct of such programs.

(Pub. L. 95–238, title I, §104(b), Feb. 25, 1978, 92 Stat. 53.)

REFERENCES IN TEXT

The Atomic Energy Act, referred to in text, probably means the Atomic Energy Act of 1954, act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

The Federal Nonnuclear Energy Research and Development Act, referred to in text, probably means the Federal Nonnuclear Energy Research and Development Act of 1974, Pub. L. 93–577, Dec. 31, 1974, 88 Stat. 1878, as amended, which is classified generally to chapter 74 (§5901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5901 of this title and Tables.

The Geothermal Research, Development, and Demonstration Act, referred to in text, probably means the Geothermal Energy, Research, Development, and Demonstration Act of 1974, Pub. L. 93–410, Sept. 3, 1974, 88 Stat. 1079, as amended, which is classified generally to chapter 24 (§1101 et seq.) of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of Title 30 and Tables.

The Electric and Hybrid Vehicle Research, Development and Demonstration Act, referred to in text, probably means the Electric and Hybrid Vehicle Research, Development, and Demonstration Act of 1976, Pub. L. 94–413, Sept. 17, 1976, 90 Stat. 1260, as amended, which is classified generally to chapter 52 (§2501 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 2501 of Title 15 and Tables.

The Solar Heating and Cooling Demonstration Act, referred to in text, probably means the Solar Heating and Cooling Demonstration Act of 1974, Pub. L. 93–409, Sept. 3, 1974, 88 Stat. 1069, as amended, which is classified generally to subchapter I (§5501 et seq.) of chapter 71 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5501 of this title and Tables.

The Solar Energy Research, Development, and Demonstration Act, referred to in text, probably means the Solar Energy Research, Development, and Demonstration Act of 1974, Pub. L. 93–473, Oct. 26, 1974, 88 Stat. 1431, as amended, which is classified generally to subchapter II (§5551 et seq.) of chapter 71 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5501 of this title and Tables.

The Energy Reorganization Act, referred to in text, probably means the Energy Reorganization Act of 1974, Pub. L. 93–438, Oct. 11, 1974, 88 Stat. 1233, as amended,

which is classified principally to chapter 73 (§5801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5801 of this title and Tables.

CODIFICATION

Section was enacted as part of the Department of Energy Act of 1978—Civilian Applications, and not as part of the Department of Energy Organization Act which comprises this chapter.

§ 7136. Economic Regulatory Administration; appointment of Administrator; compensation; qualifications; functions

(a) There shall be within the Department an Economic Regulatory Administration to be headed by an Administrator, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at a rate provided for level IV of the Executive Schedule under section 5315 of title 5. Such Administrator shall be, by demonstrated ability, background, training, or experience, an individual who is specially qualified to assess fairly the needs and concerns of all interests affected by Federal energy policy. The Secretary shall by rule provide for a separation of regulatory and enforcement functions assigned to, or vested in, the Administration.

(b) Consistent with the provisions of subchapter IV of this chapter, the Secretary shall utilize the Economic Regulatory Administration to administer such functions as he may consider appropriate.

(Pub. L. 95–91, title II, §206, Aug. 4, 1977, 91 Stat. 574.)

§ 7137. Functions of Comptroller General

The functions of the Comptroller General of the United States under section 771 of title 15 shall apply with respect to the monitoring and evaluation of all functions and activities of the Department under this chapter or any other Act administered by the Department.

(Pub. L. 95–91, title II, §207, Aug. 4, 1977, 91 Stat. 574.)

§ 7138. Repealed. Pub. L. 100–504, title I, § 102(e)(1)(A), Oct. 18, 1988, 102 Stat. 2517

Section, Pub. L. 95–91, title II, §208, Aug. 4, 1977, 91 Stat. 575; Pub. L. 96–226, title II, §202, Apr. 3, 1980, 94 Stat. 315; Pub. L. 97–375, title II, §205, Dec. 21, 1982, 96 Stat. 1823, related to the Office of Inspector General in the Department of Energy, providing for (a) appointment and confirmation of Inspector General and Deputy Inspector General, removal, assistants, and compensation; (b) duties and responsibilities of Inspector General; (c) semiannual reports to Secretary and Congress; (d) report on problems, abuses, or deficiencies relating to administration of Department programs and operations; (e) additional investigations and reports; (f) transmittal of reports, information, or documents without clearance or approval; (g) additional authority of Inspector General; (h) auditing requirements; (i) avoidance of duplication and coordination and cooperation with activities of Comptroller General; and (j) report of violations of Federal criminal law to Attorney General. See section 9 of Pub. L. 95–452, Inspector General Act of 1978, as amended, set out in the Appendix to Title 5, Government Organization and Employees.

EFFECTIVE DATE OF REPEAL

Repeal effective 180 days after Oct. 18, 1988, see section 113 of Pub. L. 100–504, set out as an Effective Date

of 1988 Amendment note under section 5 of Pub. L. 95–452 [Inspector General Act of 1978] in the Appendix to Title 5, Government Organization and Employees.

§ 7139. Office of Science; establishment; appointment of Director; compensation; duties

(a) There shall be within the Department an Office of Science to be headed by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5.

(b) It shall be the duty and responsibility of the Director—

(1) to advise the Secretary with respect to the physical research program transferred to the Department from the Energy Research and Development Administration;

(2) to monitor the Department's energy research and development programs in order to advise the Secretary with respect to any undesirable duplication or gaps in such programs;

(3) to advise the Secretary with respect to the well-being and management of the multipurpose laboratories under the jurisdiction of the Department, excluding laboratories that constitute part of the nuclear weapons complex;

(4) to advise the Secretary with respect to education and training activities required for effective short- and long-term basic and applied research activities of the Department;

(5) to advise the Secretary with respect to grants and other forms of financial assistance required for effective short- and long-term basic and applied research activities of the Department; and

(6) to carry out such additional duties assigned to the Office by the Secretary relating to basic and applied research, including but not limited to supervision or support of research activities carried out by any of the Assistant Secretaries designated by section 7133 of this title, as the Secretary considers advantageous.

(Pub. L. 95–91, title II, §209, Aug. 4, 1977, 91 Stat. 577; Pub. L. 105–245, title III, §309(a), Oct. 7, 1998, 112 Stat. 1853.)

AMENDMENTS

1998—Pub. L. 105–245 substituted “Office of Science” for “Office of Energy Research” in section catchline and in subsec. (a).

§ 7140. Leasing Liaison Committee; establishment; composition

There is established a Leasing Liaison Committee which shall be composed of an equal number of members appointed by the Secretary and the Secretary of the Interior.

(Pub. L. 95–91, title II, §210, Aug. 4, 1977, 91 Stat. 577.)

§ 7141. Office of Minority Economic Impact

(a) Establishment; appointment of Director; compensation

There shall be established within the Department an Office of Minority Economic Impact.

The Office shall be headed by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate. The Director shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5.

(b) Advice to Secretary on effect of energy policies, regulations, and other actions of Department respecting minority participation in energy programs

The Director shall have the duty and responsibility to advise the Secretary on the effect of energy policies, regulations, and other actions of the Department and its components on minorities and minority business enterprises and on ways to insure that minorities are afforded an opportunity to participate fully in the energy programs of the Department.

(c) Research programs respecting effects of national energy programs, policies, and regulations of Department on minorities

The Director shall conduct an ongoing research program, with the assistance of the Administrator of the Energy Information Administration, and such other Federal agencies as the Director determines appropriate, to determine the effects (including the socio-economic and environmental effects) of national energy programs, policies, and regulations of the Department on minorities. In conducting such program, the Director shall, from time to time, develop and recommend to the Secretary policies to assist, where appropriate, such minorities and minority business enterprises concerning such effects. In addition, the Director shall, to the greatest extent practicable—

(1) determine the average energy consumption and use patterns of minorities relative to other population categories;

(2) evaluate the percentage of disposable income spent on energy by minorities relative to other population categories; and

(3) determines how programs, policies, and actions of the Department and its components affect such consumption and use patterns and such income.

(d) Management and technical assistance to minority educational institutions and business enterprises to foster participation in research, development, demonstration, and contract activities of Department

The Director may provide the management any¹ technical assistance he considers appropriate to minority educational institutions and minority business enterprises to enable these enterprises and institutions to participate in the research, development, demonstration, and contract activities of the Department. In carrying out his functions under this section, the Director may enter into contracts, in accordance with section 7256 of this title and other applicable provisions of law, with any person, including minority educational institutions, minority business enterprises, and organizations the primary purpose of which is to assist the development of

minority communities. The management and technical assistance may include—

(1) a national information clearinghouse which will develop and disseminate information on the aspects of energy programs to minority business enterprises, minority educational institutions and other appropriate minority organizations;

(2) market research, planning economic and business analysis, and feasibility studies to identify and define economic opportunities for minorities in energy research, production, conservation, and development;

(3) technical assistance programs to encourage, promote, and assist minority business enterprises in establishing and expanding energy-related business opportunities which are located in minority communities and that can provide jobs to workers in such communities; and

(4) programs to assist minority business enterprises in the commercial application of energy-related technologies.

(e) Loans to minority business enterprises; restriction on use of funds; interest; deposits into Treasury

(1) The Secretary, acting through the Office, may provide financial assistance in the form of loans to any minority business enterprise under such rules as he shall prescribe to assist such enterprises in participating fully in research, development, demonstration, and contract activities of the Department to the extent he considers appropriate. He shall limit the use of financial assistance to providing funds necessary for such enterprises to bid for and obtain contracts or other agreements, and shall limit the amount of the financial assistance to any recipient to not more than 75 percent of such costs.

(2) The Secretary shall determine the rate of interest on loans under this section in consultation with the Secretary of the Treasury.

(3) The Secretary shall deposit into the Treasury as miscellaneous receipts amounts received in connection with the repayment and satisfaction of such loans.

(f) Definitions

As used in this section, the term—

(1) “minority” means any individual who is a citizen of the United States and who is a Negro, Puerto Rican, American Indian, Eskimo, Oriental, or Aleut or is a Spanish speaking individual of Spanish descent;

(2) “minority business enterprise” means a firm, corporation, association, or partnership which is at least 50 percent owned or controlled by a minority or group of minorities; and

(3) “minority educational institution” means an educational institution with an enrollment in which a substantial proportion (as determined by the Secretary) of the students are minorities.

(g) Authorization of appropriations

There is authorized to be appropriated to the Secretary to carry out the functions of the Office not to exceed \$3,000,000 for fiscal year 1979, not to exceed \$5,000,000 for fiscal year 1980, and not to exceed \$6,000,000 for fiscal year 1981. Of

¹ So in original. Probably should be “and”.

the amounts so appropriated each fiscal year, not less than 50 percent shall be available for purposes of financial assistance under subsection (e) of this section.

(Pub. L. 95-91, title II, §211, as added Pub. L. 95-619, title VI, §641, Nov. 9, 1978, 92 Stat. 3284.)

§ 7142. National Atomic Museum

(a) Recognition and status

The museum operated by the Department of Energy and currently located at Building 20358 on Wyoming Avenue South near the corner of M street within the confines of the Kirtland Air Force Base (East), Albuquerque, New Mexico—

(1) is recognized as the official atomic museum of the United States;

(2) shall be known as the “National Atomic Museum”; and

(3) shall have the sole right throughout the United States and its possessions to have and use the name “National Atomic Museum”.

(b) Volunteers

(1) In operating the National Atomic Museum, the Secretary of Energy may—

(A) recruit, train, and accept the services of individuals without compensation as volunteers for, or in aid of, interpretive functions or other services or activities of and related to the museum; and

(B) provide to volunteers incidental expenses, such as nominal awards, uniforms, and transportation.

(2) Except as provided in paragraphs (3) and (4), a volunteer who is not otherwise employed by the Federal Government is not subject to laws relating to Federal employment, including those relating to hours of work, rates of compensation, leave, unemployment compensation, and Federal employee benefits, because of service as a volunteer under this subsection.

(3) For purposes of chapter 171 of title 28 (relating to tort claims), a volunteer under this subsection is considered a Federal employee.

(4) For the purposes of subchapter I of chapter 81 of title 5 (relating to compensation for work-related injuries), a volunteer under this subsection is considered an employee of the United States.

(c) Authority

(1) In operating the National Atomic Museum, the Secretary of Energy may—

(A) accept and use donations of money or gifts pursuant to section 7262¹ of this title, if such gifts or money are designated in a written document signed by the donor as intended for the museum, and such donations or gifts are determined by the Secretary to be suitable and beneficial for use by the museum;

(B) operate a retail outlet on the premises of the museum for the purpose of selling or distributing mementos, replicas of memorabilia, literature, materials, and other items of an informative, educational, and tasteful nature relevant to the contents of the museum; and

(C) exhibit, perform, display, and publish information and materials concerning museum

mementos, items, memorabilia, and replicas thereof in any media or place anywhere in the world, at reasonable fees or charges where feasible and appropriate, to substantially cover costs.

(2) The net proceeds of activities authorized under subparagraphs (B) and (C) of paragraph (1) may be used by the National Atomic Museum for activities of the museum.

(Pub. L. 102-190, div. C, title XXXI, §3137, Dec. 5, 1991, 105 Stat. 1578; Pub. L. 103-35, title II, §203(b)(4), May 31, 1993, 107 Stat. 102.)

REFERENCES IN TEXT

Section 7262 of this title, referred to in subsec. (c)(1)(A), was repealed by Pub. L. 104-206, title V, §502, Sept. 30, 1996, 110 Stat. 3002.

CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Years 1992 and 1993, and not as part of the Department of Energy Organization Act which comprises this chapter.

AMENDMENTS

1993—Subsec. (c)(1). Pub. L. 103-35 struck out comma after “Secretary of Energy” in introductory provisions.

§ 7142a. Designation of American Museum of Science and Energy

(a) In general

The Museum—

(1) is designated as the “American Museum of Science and Energy”; and

(2) shall be the official museum of science and energy of the United States.

(b) References

Any reference in a law, map, regulation, document, paper, or other record of the United States to the Museum is deemed to be a reference to the “American Museum of Science and Energy”.

(c) Property of the United States

(1) In general

The name “American Museum of Science and Energy” is declared the property of the United States.

(2) Use

The Museum shall have the sole right throughout the United States and its possessions to have and use the name “American Museum of Science and Energy”.

(3) Effect on other rights

This subsection shall not be construed to conflict or interfere with established or vested rights.

(Pub. L. 106-554, §1(a)(4) [div. B, title IV, §401], Dec. 21, 2000, 114 Stat. 2763, 2763A-266.)

CODIFICATION

Section was enacted as part of the Miscellaneous Appropriations Act, 2001, and also as part of the Consolidated Appropriations Act, 2001, and not as part of the Department of Energy Organization Act which comprises this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7142d of this title.

¹ See References in Text note below.

§ 7142b. Authority

To carry out the activities of the Museum, the Secretary may—

(1) accept and dispose of any gift, devise, or bequest of services or property, real or personal, that is—

(A) designated in a written document by the person making the gift, devise, or bequest as intended for the Museum; and

(B) determined by the Secretary to be suitable and beneficial for use by the Museum;

(2) operate a retail outlet on the premises of the Museum for the purpose of selling or distributing items (including mementos, food, educational materials, replicas, and literature) that are—

(A) relevant to the contents of the Museum; and

(B) informative, educational, and tasteful;

(3) collect reasonable fees where feasible and appropriate;

(4) exhibit, perform, display, and publish materials and information of or relating to the Museum in any media or place;

(5) consistent with guidelines approved by the Secretary, lease space on the premises of the Museum at reasonable rates and for uses consistent with such guidelines; and

(6) use the proceeds of activities authorized under this section to pay the costs of the Museum.

(Pub. L. 106-554, §1(a)(4) [div. B, title IV, §402], Dec. 21, 2000, 114 Stat. 2763, 2763A-267.)

CODIFICATION

Section was enacted as part of the Miscellaneous Appropriations Act, 2001, and also as part of the Consolidated Appropriations Act, 2001, and not as part of the Department of Energy Organization Act which comprises this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7142d of this title.

§ 7142c. Museum volunteers**(a) Authority to use volunteers**

The Secretary may recruit, train, and accept the services of individuals or entities as volunteers for services or activities related to the Museum.

(b) Status of volunteers**(1) In general**

Except as provided in paragraph (2), service by a volunteer under subsection (a) of this section shall not be considered Federal employment.

(2) Exceptions**(A) Federal Tort Claims Act**

For purposes of chapter 171 of title 28, a volunteer under subsection (a) of this section shall be treated as an employee of the Government (as defined in section 2671 of that title).

(B) Compensation for work injuries

For purposes of subchapter I of chapter 81 of title 5, a volunteer described in subsection

(a) of this section shall be treated as an employee (as defined in section 8101 of title 5).

(c) Compensation

A volunteer under subsection (a) of this section shall serve without pay, but may receive nominal awards and reimbursement for incidental expenses, including expenses for a uniform or transportation in furtherance of Museum activities.

(Pub. L. 106-554, §1(a)(4) [div. B, title IV, §403], Dec. 21, 2000, 114 Stat. 2763, 2763A-267.)

CODIFICATION

Section was enacted as part of the Miscellaneous Appropriations Act, 2001, and also as part of the Consolidated Appropriations Act, 2001, and not as part of the Department of Energy Organization Act which comprises this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7142d of this title.

§ 7142d. Definitions

For purposes of sections 7142a to 7142d of this title:

(1) Museum

The term “Museum” means the museum operated by the Secretary of Energy and located at 300 South Tulane Avenue in Oak Ridge, Tennessee.

(2) Secretary

The term “Secretary” means the Secretary of Energy or a designated representative of the Secretary.

(Pub. L. 106-554, §1(a)(4) [div. B, title IV, §404], Dec. 21, 2000, 114 Stat. 2763, 2763A-268.)

REFERENCES IN TEXT

Sections 7142a to 7142d of this title, referred to in text, was in the original “this Act”, and was translated as reading “this title”, meaning §1(a)(4) [div. B, title IV] of Pub. L. 106-554, which enacted sections 7142a to 7142d of this title, to reflect the probable intent of Congress.

CODIFICATION

Section was enacted as part of the Miscellaneous Appropriations Act, 2001, and also as part of the Consolidated Appropriations Act, 2001, and not as part of the Department of Energy Organization Act which comprises this chapter.

§ 7143. Repealed. Pub. L. 106-65, div. C, title XXXII, § 3294(d)(1), Oct. 5, 1999, 113 Stat. 970

Section, Pub. L. 95-91, title II, §212, as added Pub. L. 103-337, div. C, title XXXI, §3158(a), Oct. 5, 1994, 108 Stat. 3093, established the Office of Fissile Materials Disposition.

EFFECTIVE DATE OF REPEAL

Repeal effective Mar. 1, 2000, see section 3299 of Pub. L. 106-65, set out as an Effective Date note under section 2401 of Title 50, War and National Defense.

§ 7144. Establishment of policy for National Nuclear Security Administration**(a) Responsibility for establishing policy**

The Secretary shall be responsible for establishing policy for the National Nuclear Security Administration.

(b) Review of programs and activities

The Secretary may direct officials of the Department who are not within the National Nuclear Security Administration to review the programs and activities of the Administration and to make recommendations to the Secretary regarding administration of those programs and activities, including consistency with other similar programs and activities of the Department.

(c) Staff

The Secretary shall have adequate staff to support the Secretary in carrying out the Secretary's responsibilities under this section.

(Pub. L. 95-91, title II, §213, as added Pub. L. 106-65, div. C, title XXXII, §3203(a), Oct. 5, 1999, 113 Stat. 954.)

EFFECTIVE DATE

Section effective Mar. 1, 2000, see section 3299 of Pub. L. 106-65, set out as a note under section 2401 of Title 50, War and National Defense.

§ 7144a. Establishment of security, counterintelligence, and intelligence policies

The Secretary shall be responsible for developing and promulgating the security, counterintelligence, and intelligence policies of the Department. The Secretary may use the immediate staff of the Secretary to assist in developing and promulgating those policies.

(Pub. L. 95-91, title II, §214, as added Pub. L. 106-65, div. C, title XXXII, §3204(a), Oct. 5, 1999, 113 Stat. 955.)

EFFECTIVE DATE

Section effective Oct. 5, 1999, see section 3299 of Pub. L. 106-65, set out as a note under section 2401 of Title 50, War and National Defense.

§ 7144b. Office of Counterintelligence**(a) Establishment**

There is within the Department an Office of Counterintelligence.

(b) Director

(1) The head of the Office shall be the Director of the Office of Counterintelligence, which shall be a position in the Senior Executive Service. The Director of the Office shall report directly to the Secretary.

(2) The Secretary shall select the Director of the Office from among individuals who have substantial expertise in matters relating to counterintelligence.

(3) The Director of the Federal Bureau of Investigation may detail, on a reimbursable basis, any employee of the Bureau to the Department for service as Director of the Office. The service of an employee of the Bureau as Director of the Office shall not result in any loss of status, right, or privilege by the employee within the Bureau.

(c) Duties

(1) The Director of the Office shall be responsible for establishing policy for counterintelligence programs and activities at Department facilities in order to reduce the threat of

disclosure or loss of classified and other sensitive information at such facilities.

(2) The Director of the Office shall be responsible for establishing policy for the personnel assurance programs of the Department.

(3) The Director shall inform the Secretary, the Director of Central Intelligence, and the Director of the Federal Bureau of Investigation on a regular basis, and upon specific request by any such official, regarding the status and effectiveness of the counterintelligence programs and activities at Department facilities.

(d) Annual reports

(1) Not later than March 1 each year, the Director of the Office shall submit a report on the status and effectiveness of the counterintelligence programs and activities at each Department facility during the preceding year. Each such report shall be submitted to the following:

(A) The Secretary.

(B) The Director of Central Intelligence.

(C) The Director of the Federal Bureau of Investigation.

(D) The Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives.

(E) The Committee on Armed Services and the Select Committee on Intelligence of the Senate.

(2) Each such report shall include for the year covered by the report the following:

(A) A description of the status and effectiveness of the counterintelligence programs and activities at Department facilities.

(B) A description of any violation of law or other requirement relating to intelligence, counterintelligence, or security at such facilities, including—

(i) the number of violations that were investigated; and

(ii) the number of violations that remain unresolved.

(C) A description of the number of foreign visitors to Department facilities, including the locations of the visits of such visitors.

(D) The adequacy of the Department's procedures and policies for protecting national security information, making such recommendations to Congress as may be appropriate.

(E) A determination of whether each Department of Energy national laboratory is in full compliance with all departmental security requirements and, in the case of any such laboratory that is not, what measures are being taken to bring that laboratory into compliance.

(3) Not less than 30 days before the date that the report required by paragraph (1) is submitted, the director of each Department of Energy national laboratory shall certify in writing to the Director of the Office whether that laboratory is in full compliance with all departmental security requirements and, if not, what measures are being taken to bring that laboratory into compliance and a schedule for implementing those measures.

(4) Each report under this subsection as submitted to the committees referred to in subpara-

graphs (D) and (E) of paragraph (1) shall be submitted in unclassified form, but may include a classified annex.

(Pub. L. 95-91, title II, §215, as added Pub. L. 106-65, div. C, title XXXII, §3204(a), Oct. 5, 1999, 113 Stat. 955.)

EFFECTIVE DATE

Section effective Oct. 5, 1999, see section 3299 of Pub. L. 106-65, set out as a note under section 2401 of Title 50, War and National Defense.

§ 7144c. Office of Intelligence

(a) Establishment

There is within the Department an Office of Intelligence.

(b) Director

(1) The head of the Office shall be the Director of the Office of Intelligence, which shall be a position in the Senior Executive Service. The Director of the Office shall report directly to the Secretary.

(2) The Secretary shall select the Director of the Office from among individuals who have substantial expertise in matters relating to foreign intelligence.

(c) Duties

Subject to the authority, direction, and control of the Secretary, the Director of the Office shall perform such duties and exercise such powers as the Secretary may prescribe.

(Pub. L. 95-91, title II, §216, as added Pub. L. 106-65, div. C, title XXXII, §3204(a), Oct. 5, 1999, 113 Stat. 956.)

EFFECTIVE DATE

Section effective Oct. 5, 1999, see section 3299 of Pub. L. 106-65, set out as a note under section 2401 of Title 50, War and National Defense.

§ 7144d. Office of Arctic Energy

(a) Establishment

The Secretary of Energy may establish within the Department of Energy an Office of Arctic Energy.

(b) Purposes

The purposes of such office shall be as follows:

(1) To promote research, development, and deployment of electric power technology that is cost-effective and especially well suited to meet the needs of rural and remote regions of the United States, especially where permafrost is present or located nearby.

(2) To promote research, development, and deployment in such regions of—

(A) enhanced oil recovery technology, including heavy oil recovery, reinjection of carbon, and extended reach drilling technologies;

(B) gas-to-liquids technology and liquified natural gas (including associated transportation systems);

(C) small hydroelectric facilities, river turbines, and tidal power;

(D) natural gas hydrates, coal bed methane, and shallow bed natural gas; and

(E) alternative energy, including wind, geothermal, and fuel cells.

(c) Location

The Secretary shall locate such office at a university with expertise and experience in the matters specified in subsection (b) of this section.

(Pub. L. 106-398, §1 [div. C, title XXXI, §3197], Oct. 30, 2000, 114 Stat. 1654, 1654A-482.)

CODIFICATION

Section was enacted as part of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, and not as part of the Department of Energy Organization Act which comprises this chapter.

SUBCHAPTER III—TRANSFERS OF FUNCTIONS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 7301 of this title.

§ 7151. General transfers

(a) Except as otherwise provided in this chapter, there are transferred to, and vested in, the Secretary all of the functions vested by law in the Administrator of the Federal Energy Administration or the Federal Energy Administration, the Administrator of the Energy Research and Development Administration or the Energy Research and Development Administration; and the functions vested by law in the officers and components of either such Administration.

(b) Except as provided in subchapter IV of this chapter, there are transferred to, and vested in, the Secretary the function of the Federal Power Commission, or of the members, officers, or components thereof. The Secretary may exercise any power described in section 7172(a)(2) of this title to the extent the Secretary determines such power to be necessary to the exercise of any function within his jurisdiction pursuant to the preceding sentence.

(Pub. L. 95-91, title III, §301, Aug. 4, 1977, 91 Stat. 577.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original “this Act”, meaning Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 565, as amended, known as the Department of Energy Organization Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

EMERGENCY PREPAREDNESS FUNCTIONS

For assignment of certain emergency preparedness functions to the Secretary of Energy, see Parts 1, 2, and 7 of Ex. Ord. No. 12656, Nov. 18, 1988, 53 F.R. 47491, set out as a note under section 5195 of this title.

EX. ORD. NO. 12038. TRANSFER OF CERTAIN FUNCTIONS TO SECRETARY OF ENERGY

Ex. Ord. No. 12038, Feb. 3, 1978, 43 F.R. 4957, as amended by Ex. Ord. No. 12156, Sept. 10, 1979, 44 F.R. 53073, provided:

By virtue of the authority vested in me as President of the United States of America, in order to reflect the responsibilities of the Secretary of Energy for the performance of certain functions previously vested in other officers of the United States by direction of the President and subsequently transferred to the Secretary of Energy pursuant to the Department of Energy Organization Act (91 Stat. 565; 42 U.S.C. 7101 et seq.) it is hereby ordered as follows:

SECTION 1. *Functions of the Federal Energy Administration.* In accordance with the transfer of all functions vested by law in the Federal Energy Administration, or the Administrator thereof, to the Secretary of Energy pursuant to Section 301(a) of the Department of Energy Organization Act [subsec. (a) of this section], hereinafter referred to as the Act, the Executive Orders and Proclamations referred to in this Section, which conferred authority or responsibility upon the Administrator of the Federal Energy Administration, are amended as follows:

(a) Executive Order No. 11647, as amended [formerly set out as a note under 31 U.S.C. 501], relating to Federal Regional Councils, is further amended by deleting "The Federal Energy Administration" in Section 1(a)(10) and substituting "The Department of Energy", and by deleting "The Deputy Administrator of the Federal Energy Administration" in Section 3(a)(10) and substituting "The Deputy Secretary of Energy".

(b) Executive Order No. 11790 of June 25, 1974 [set out as a note under 15 U.S.C. 761], relating to the Federal Energy Administration Act of 1974, is amended by deleting "Administrator of the Federal Energy Administration" and "Administrator" wherever they appear in Sections 1 through 6 and substituting "Secretary of Energy" and "Secretary", respectively, and by deleting Section 7 through 10.

(c) Executive Order No. 11912, as amended [set out as a note under 42 U.S.C. 6201], relating to energy policy and conservation, and Proclamation No. 3279, as amended [set out as a note under 19 U.S.C. 1862], relating to imports of petroleum and petroleum products, are further amended by deleting "Administrator of the Federal Energy Administration", "Federal Energy Administration", and "Administrator" (when used in reference to the Federal Energy Administration) wherever those terms appear and by substituting "Secretary of Energy", "Department of Energy", and "Secretary", respectively, and by deleting "the Administrator of Energy Research and Development" in Section 10(a)(1) of Executive Order No. 11912, as amended.

SEC. 2. *Functions of the Federal Power Commission.* In accordance with the transfer of functions vested in the Federal Power Commission to the Secretary of Energy pursuant to Section 301(b) of the Act [subsec. (b) of this section], the Executive Orders referred to in this Section, which conferred authority or responsibility upon the Federal Power Commission, or Chairman thereof, are amended or modified as follows:

(a) Executive Order No. 10485 of September 3, 1953, [set out as a note under 15 U.S.C. 717b], relating to certain facilities at the borders of the United States is amended by deleting Section 2 thereof, and by deleting "Federal Power Commission" and "Commission" wherever those terms appear in Sections 1, 3 and 4 of such Order and substituting for each "Secretary of Energy".

(b) Executive Order No. 11969 of February 2, 1977 [formerly set out as a note under 15 U.S.C. 717], relating to the administration of the Emergency Natural Gas Act of 1977 [formerly set out as a note under 15 U.S.C. 717], is hereby amended by deleting the second sentence in Section 1, by deleting "the Secretary of the Interior, the Administrator of the Federal Energy Administration, other members of the Federal Power Commission and in Section 2, and by deleting "Chairman of the Federal Power Commission" and "Chairman" wherever those terms appear and substituting therefor "Secretary of Energy" and "Secretary", respectively.

(c) Paragraph (2) of Section 3 of Executive Order No. 11331, as amended [formerly set out as a note under 42 U.S.C. 1962b], relating to the Pacific Northwest River Basins Commission, is hereby amended by deleting "from each of the following Federal departments and agencies" and substituting therefor "to be appointed by the head of each of the following Executive agencies", by deleting "Federal Power Commission" and substituting therefor "Department of Energy", and by deleting "such member to be appointed by the head of each department or independent agency he represents,".

SEC. 3. *Functions of the Secretary of the Interior.* In accordance with the transfer of certain functions vested in the Secretary of the Interior to the Secretary of Energy pursuant to Section 302 of the Act [42 U.S.C. 7152], the Executive Orders referred to in this Section, which conferred authority or responsibility on the Secretary of the Interior, are amended or modified as follows:

(a) Sections 1 and 4 of Executive Order No. 8526 of August 27, 1940, relating to functions of the Bonneville Power Administration, are hereby amended by substituting "Secretary of Energy" for "Secretary of the Interior", by adding "of the Interior" after "Secretary" in Sections 2 and 3, and by adding "and the Secretary of Energy," after "the Secretary of the Interior" wherever the latter term appears in Section 5.

(b) Executive Order No. 11177 of September 16, 1964, relating to the Columbia River Treaty, is amended by deleting "Secretary of the Interior" and "Department of the Interior" wherever those terms appear and substituting therefor "Secretary of Energy" and "Department of Energy", respectively.

SEC. 4. *Functions of the Atomic Energy Commission and the Energy Research and Development Administration.*

(a) In accordance with the transfer of all functions vested by law in the Administrator of Energy Research and Development to the Secretary of Energy pursuant to Section 301(a) of the Act [subsec. (a) of this section] the Executive Orders referred to in this Section are amended or modified as follows:

(1) All current Executive Orders which refer to functions of the Atomic Energy Commission, including Executive Order No. 10127, as amended; Executive Order No. 10865, as amended [set out as a note under 50 U.S.C. 435]; Executive Order No. 10899 of December 9, 1960 [set out as a note under 42 U.S.C. 2162]; Executive Order No. 11057 of December 18, 1962 [set out as a note under 42 U.S.C. 2162]; Executive Order No. 11477 of August 7, 1969 [set out as a note under 42 U.S.C. 2187]; Executive Order No. 11752 of December 17, 1973 [formerly set out as a note under 42 U.S.C. 4331]; and Executive Order No. 11761 of January 17, 1974 [formerly set out as a note under 20 U.S.C. 1221]; are modified to provide that all such functions shall be exercised by (1) the Secretary of Energy to the extent consistent with the functions of the Atomic Energy Commission that were transferred to the Administrator of Energy Research and Development pursuant to the Energy Organization Act of 1974 (Public Law 93-438; 88 Stat. 1233) [42 U.S.C. 5801 et seq.], and (2) the Nuclear Regulatory Commission to the extent consistent with the functions of the Atomic Energy Commission that were transferred to the Commission by the Energy Reorganization Act of 1974 [42 U.S.C. 5801 et seq.].

(2) Executive Order No. 11652, as amended [formerly set out as a note under 50 U.S.C. 435], relating to the classification of national security matters, is further amended by substituting "Department of Energy" for "Energy Research and Development Administration" in Sections 2(A), 7(A) and 8 and by deleting "Federal Power Commission" in Section 2(B)(3).

(3) Executive Order No. 11902 of February 2, 1976 [formerly set out as a note under 42 U.S.C. 5841], relating to export licensing policy for nuclear materials and equipment, is amended by substituting "the Secretary of Energy" for "the Administrator of the United States Energy Research and Development Administration, hereinafter referred to as the Administrator" in Section 1(b) and for the "Administrator" in Sections 2 and 3.

(4) Executive Order No. 11905, as amended, [formerly set out as a note under 50 U.S.C. 401], relating to foreign intelligence activities, is further amended by deleting "Energy Research and Development Administration", "Administrator or the Energy Research and Development Administration", and "ERDA" wherever those terms appear and substituting "Department of Energy", "Secretary of Energy", and "DOE" respectively.

(5) Section 3(2) of each of the following Executive Orders is amended by substituting "Department of En-

ergy” for “Energy Research and Development Administration”:

(i) Executive Order No. 11345, as amended [formerly set out as a note under 42 U.S.C. 1962b], establishing the Great Lakes River Basin Commission.

(ii) Executive Order No. 11371, as amended [formerly set out as a note under 42 U.S.C. 1962b], establishing the New England River Basin Commission.

(iii) Executive Order No. 11578, as amended [formerly set out as a note under 42 U.S.C. 1962b], establishing the Ohio River Basin Commission.

(iv) Executive Order No. 11658, as amended [formerly set out as a note under 42 U.S.C. 1962b], establishing the Missouri River Basin Commission.

(v) Executive Order No. 11659, as amended [formerly set out as a note under 42 U.S.C. 1962b], establishing the Mississippi River Basin Commission.

SEC. 5. *Special Provisions Relating to Emergency Preparedness and Mobilization Functions.*

(a) Executive Order No. 10480, as amended [formerly set out as a note under 50 App. U.S.C. 2153], is further amended by adding thereto the following new Sections:

“Sec. 609. Effective October 1, 1977, the Secretary of Energy shall exercise all authority and discharge all responsibility herein delegated to or conferred upon (a) the Atomic Energy Commission, and (b) with respect to petroleum, gas, solid fuels and electric power, upon the Secretary of the Interior.

“Sec. 610. Whenever the Administrator of General Services believes that the functions of an Executive agency have been modified pursuant to law in such manner as to require the amendment of any Executive order which relates to the assignment of emergency preparedness functions or the administration of mobilization programs, he shall promptly submit any proposals for the amendment of such Executive orders to the Director of the Office of Management and Budget in accordance with the provisions of Executive Order No. 11030, as amended [set out as a note under 44 U.S.C. 1505].

(b) Executive Order No. 11490, as amended [formerly set out as a note under 50 App. U.S.C. 2251], is further amended by adding thereto the following new section:

“Sec. 3016. Effective October 1, 1977, the Secretary of Energy shall exercise all authority and discharge all responsibility herein delegated to or conferred upon (a) the Federal Power Commission, (b) the Energy Research and Development Administration, and (c) with respect to electric power, petroleum, gas and solid fuels, upon the Department of the Interior.”

SEC. 6. This Order shall be effective as of October 1, 1977, the effective date of the Department of Energy Organization Act [this chapter] pursuant to the provisions of section 901 [42 U.S.C. 7341] thereof and Executive Order No. 12009 of September 13, 1977 [formerly set out as a note under 42 U.S.C. 7341], and all actions taken by the Secretary of Energy on or after October 1, 1977, which are consistent with the foregoing provisions are entitled to full force and effect.

JIMMY CARTER.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7159, 7174 of this title; title 15 section 3418; title 16 section 824a-4.

§ 7151a. Jurisdiction over matters transferred from Energy Research and Development Administration

Notwithstanding any other provision of law, jurisdiction over matters transferred to the Department of Energy from the Energy Research and Development Administration which on the effective date of such transfer were required by law, regulation, or administrative order to be made on the record after an opportunity for an agency hearing may be assigned to the Federal Energy Regulatory Commission or retained by the Secretary at his discretion.

(Pub. L. 95-238, title I, §104(a), Feb. 25, 1978, 92 Stat. 53.)

CODIFICATION

Section was enacted as part of the Department of Energy Act of 1978—Civilian Applications, and not as part of the Department of Energy Organization Act which comprises this chapter.

§ 7152. Transfers from Department of the Interior

(a) Functions relating to electric power

(1) There are transferred to, and vested in, the Secretary all functions of the Secretary of the Interior under section 825s of title 16, and all other functions of the Secretary of the Interior, and officers and components of the Department of the Interior, with respect to—

(A) the Southeastern Power Administration;

(B) the Southwestern Power Administration;

(C) the Bonneville Power Administration including but not limited to the authority contained in the Bonneville Project Act of 1937 [16 U.S.C. 832 et seq.] and the Federal Columbia River Transmission System Act [16 U.S.C. 838 et seq.];

(D) the power marketing functions of the Bureau of Reclamation, including the construction, operation, and maintenance of transmission lines and attendant facilities; and

(E) the transmission and disposition of the electric power and energy generated at Falcon Dam and Amistad Dam, international storage reservoir projects on the Rio Grande, pursuant to the Act of June 18, 1954, as amended by the Act of December 23, 1963.

(2) The Southeastern Power Administration, the Southwestern Power Administration, and the Bonneville Power Administration,¹ shall be preserved as separate and distinct organizational entities within the Department. Each such entity shall be headed by an Administrator appointed by the Secretary. The functions transferred to the Secretary in paragraphs (1)(A), (1)(B), (1)(C), and (1)(D) shall be exercised by the Secretary, acting by and through such Administrators. Each such Administrator shall maintain his principal office at a place located in the region served by his respective Federal power marketing entity.

(3) The functions transferred in paragraphs (1)(E) and (1)(F)² of this subsection shall be exercised by the Secretary, acting by and through a separate and distinct Administration within the Department which shall be headed by an Administrator appointed by the Secretary. The Administrator shall establish and shall maintain such regional offices as necessary to facilitate the performance of such functions. Neither the transfer of functions effected by paragraph (1)(E) of this subsection nor any changes in cost allocation or project evaluation standards shall be deemed to authorize the reallocation of joint costs of multipurpose facilities theretofore allocated unless and to the extent that such change is hereafter approved by Congress.

¹ So in original. The comma probably should not appear.

² See References in Text note below.

(b), (c) Repealed. Pub. L. 97-100, title II, § 201, Dec. 23, 1981, 95 Stat. 1407**(d) Functions of Bureau of Mines**

There are transferred to, and vested in, the Secretary those functions of the Secretary of the Interior, the Department of the Interior, and officers and components of that Department under the Act of May 15, 1910, and other authorities, exercised by the Bureau of Mines, but limited to—

- (1) fuel supply and demand analysis and data gathering;
- (2) research and development relating to increased efficiency of production technology of solid fuel minerals, other than research relating to mine health and safety and research relating to the environmental and leasing consequences of solid fuel mining (which shall remain in the Department of the Interior); and
- (3) coal preparation and analysis.

(Pub. L. 95-91, title III, § 302, Aug. 4, 1977, 91 Stat. 578; Pub. L. 97-100, title II, § 201, Dec. 23, 1981, 95 Stat. 1407; Pub. L. 104-58, title I, § 104(h), Nov. 28, 1995, 109 Stat. 560.)

REFERENCES IN TEXT

The Bonneville Project Act of 1937, referred to in subsec. (a)(1)(C), is act Aug. 20, 1937, ch. 720, 50 Stat. 731, as amended, which is classified generally to chapter 12B (§ 832 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 832 of Title 16 and Tables.

The Federal Columbia River Transmission System Act, referred to in subsec. (a)(1)(C), is Pub. L. 93-454, Oct. 18, 1974, 88 Stat. 1376, as amended, which is classified generally to chapter 12G (§ 838 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 838 of Title 16 and Tables.

Act of June 18, 1954, as amended by the Act of December 23, 1963, referred to in subsec. (a)(1)(E), is act June 18, 1954, ch. 310, 68 Stat. 255, which was not classified to the Code.

Paragraphs (1)(E) and (1)(F) of this subsection, referred to in subsec. (a)(3), were redesignated as pars. (1)(D) and (1)(E) of this subsection, respectively, by Pub. L. 104-58, title I, § 104(h)(1)(B), Nov. 28, 1995, 109 Stat. 560.

Act of May 15, 1910, referred to in subsec. (d), as amended, probably means act May 16, 1910, ch. 240, 36 Stat. 369, which is classified to sections 1, 3, and 5 to 7 of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1995—Subsec. (a)(1)(C) to (F). Pub. L. 104-58, § 104(h)(1), redesignated subpars. (D) to (F) as (C) to (E), respectively, and struck out former subpar. (C) which read as follows: “the Alaska Power Administration.”

Subsec. (a)(2). Pub. L. 104-58, § 104(h)(2), inserted “and” after “Southwestern Power Administration,” and struck out “and the Alaska Power Administration” after “Bonneville Power Administration.”

1981—Subsecs. (b), (c). Pub. L. 97-100 struck out subsecs. (b) and (c) which related, respectively, to the functions of the Secretary of Energy to promulgate regulations under certain provisions of the Outer Continental Shelf Lands Act, the Mineral Lands Leasing Act, the Mineral Leasing Act for Acquired Lands, the Geothermal Steam Act of 1970, and the Energy Policy and Conservation Act and to the functions of establishing production rates for all Federal leases.

CHANGE OF NAME

Bureau of Mines redesignated United States Bureau of Mines by section 10(b) of Pub. L. 102-285, set out as

a note under section 1 of Title 30, Mineral Lands and Mining.

EFFECTIVE DATE OF 1995 AMENDMENT

For effective date of amendment by Pub. L. 104-58, see section 104(h) of Pub. L. 104-58, set out below.

ALASKA POWER ADMINISTRATION ASSET SALE AND TERMINATION

Title I of Pub. L. 104-58 provided that:

“SEC. 101. SHORT TITLE.

“This title may be cited as the ‘Alaska Power Administration Asset Sale and Termination Act’.

“SEC. 102. DEFINITIONS.

“For purposes of this title:

“(1) The term ‘Eklutna’ means the Eklutna Hydroelectric Project and related assets as described in section 4 and Exhibit A of the Eklutna Purchase Agreement.

“(2) The term ‘Eklutna Purchase Agreement’ means the August 2, 1989, Eklutna Purchase Agreement between the Alaska Power Administration of the Department of Energy and the Eklutna Purchasers, together with any amendments thereto adopted before the enactment of this section [Nov. 28, 1995].

“(3) The term ‘Eklutna Purchasers’ means the Municipality of Anchorage doing business as Municipal Light and Power, the Chugach Electric Association, Inc. and the Matanuska Electric Association, Inc.

“(4) The term ‘Snettisham’ means the Snettisham Hydroelectric Project and related assets as described in section 4 and Exhibit A of the Snettisham Purchase Agreement.

“(5) The term ‘Snettisham Purchase Agreement’ means the February 10, 1989, Snettisham Purchase Agreement between the Alaska Power Administration of the Department of Energy and the Alaska Power Authority and its successors in interest, together with any amendments thereto adopted before the enactment of this section.

“(6) The term ‘Snettisham Purchaser’ means the Alaska Industrial Development and Export Authority or a successor State agency or authority.

“SEC. 103. SALE OF EKLUTNA AND SNETTISHAM HYDROELECTRIC PROJECTS.

“(a) SALE OF EKLUTNA.—The Secretary of Energy is authorized and directed to sell Eklutna to the Eklutna Purchasers in accordance with the terms of this Act and the Eklutna Purchase Agreement.

“(b) SALE OF SNETTISHAM.—The Secretary of Energy is authorized and directed to sell Snettisham to the Snettisham Purchaser in accordance with the terms of this Act and the Snettisham Purchase Agreement.

“(c) COOPERATION OF OTHER AGENCIES.—The heads of other Federal departments, agencies, and instrumentalities of the United States shall assist the Secretary of Energy in implementing the sales and conveyances authorized and directed by this title.

“(d) PROCEEDS.—Proceeds from the sales required by this title shall be deposited in the Treasury of the United States to the credit of miscellaneous receipts.

“(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to prepare, survey, and acquire Eklutna and Snettisham for sale and conveyance. Such preparations and acquisitions shall provide sufficient title to ensure the beneficial use, enjoyment, and occupancy by the purchasers.

“(f) CONTRIBUTED FUNDS.—Notwithstanding any other provision of law, the Alaska Power Administration is authorized to receive, administer, and expend such contributed funds as may be provided by the Eklutna Purchasers or customers or the Snettisham Purchaser or customers for the purposes of upgrading, improving, maintaining, or administering Eklutna or Snettisham. Upon the termination of the Alaska Power Administration under section 104(f), the Secretary of Energy shall

administer and expend any remaining balances of such contributed funds for the purposes intended by the contributors.

“SEC. 104. EXEMPTION AND OTHER PROVISIONS.

“(a) FEDERAL POWER ACT.—(1) After the sales authorized by this Act occur, Eklutna and Snettisham, including future modifications, shall continue to be exempt from the requirements of Part I of the Federal Power Act (16 U.S.C. 791a et seq.), except as provided in subsection (b).

“(2) The exemption provided by paragraph (1) shall not affect the Memorandum of Agreement entered into among the State of Alaska, the Eklutna Purchasers, the Alaska Energy Authority, and Federal fish and wildlife agencies regarding the protection, mitigation of, damages to, and enhancement of fish and wildlife, dated August 7, 1991, which remains in full force and effect.

“(3) Nothing in this title or the Federal Power Act preempts the State of Alaska from carrying out the responsibilities and authorities of the Memorandum of Agreement.

“(b) SUBSEQUENT TRANSFERS.—Except for subsequent assignment of interest in Eklutna by the Eklutna Purchasers to the Alaska Electric Generation and Transmission Cooperative Inc. pursuant to section 19 of the Eklutna Purchase Agreement, upon any subsequent sale or transfer of any portion of Eklutna or Snettisham from the Eklutna Purchasers or the Snettisham Purchaser to any other person, the exemption set forth in paragraph (1) of subsection (a) of this section shall cease to apply to such portion.

“(c) REVIEW.—(1) The United States District Court for the District of Alaska shall have jurisdiction to review decisions made under the Memorandum of Agreement and to enforce the provisions of the Memorandum of Agreement, including the remedy of specific performance.

“(2) An action seeking review of a Fish and Wildlife Program (‘Program’) of the Governor of Alaska under the Memorandum of Agreement or challenging actions of any of the parties to the Memorandum of Agreement prior to the adoption of the Program shall be brought not later than 90 days after the date on which the Program is adopted by the Governor of Alaska, or be barred.

“(3) An action seeking review of implementation of the Program shall be brought not later than 90 days after the challenged act implementing the Program, or be barred.

“(d) EKLUTNA LANDS.—With respect to Eklutna lands described in Exhibit A of the Eklutna Purchase Agreement:

“(1) The Secretary of the Interior shall issue rights-of-way to the Alaska Power Administration for subsequent reassignment to the Eklutna Purchasers—

“(A) at no cost to the Eklutna Purchasers;

“(B) to remain effective for a period equal to the life of Eklutna as extended by improvements, repairs, renewals, or replacements; and

“(C) sufficient for the operation of, maintenance of, repair to, and replacement of, and access to, Eklutna facilities located on military lands and lands managed by the Bureau of Land Management, including lands selected by the State of Alaska.

“(2) Fee title to lands at Anchorage Substation shall be transferred to Eklutna Purchasers at no additional cost if the Secretary of the Interior determines that pending claims to, and selections of, those lands are invalid or relinquished.

“(3) With respect to the Eklutna lands identified in paragraph 1 of Exhibit A of the Eklutna Purchase Agreement, the State of Alaska may select, and the Secretary of the Interior shall convey to the State, improved lands under the selection entitlements in section 6 of the Act of July 7, 1958 (commonly referred to as the Alaska Statehood Act, Public Law 85-508; 72 Stat. 339) [set out as a note preceding section 21 of Title 48, Territories and Insular Posses-

sions], and the North Anchorage Land Agreement dated January 31, 1983. This conveyance shall be subject to the rights-of-way provided to the Eklutna Purchasers under paragraph (1).

“(e) SNETTISHAM LANDS.—With respect to the Snettisham lands identified in paragraph 1 of Exhibit A of the Snettisham Purchase Agreement and Public Land Order No. 5108, the State of Alaska may select, and the Secretary of the Interior shall convey to the State of Alaska, improved lands under the selection entitlements in section 6 of the Act of July 7, 1958 (commonly referred to as the Alaska Statehood Act, Public Law 85-508; 72 Stat. 339).

“(f) TERMINATION OF ALASKA POWER ADMINISTRATION.—Not later than one year after both of the sales authorized in section 103 have occurred, as measured by the Transaction Dates stipulated in the Purchase Agreements, the Secretary of Energy shall—

“(1) complete the business of, and close out, the Alaska Power Administration;

“(2) submit to Congress a report documenting the sales; and

“(3) return unobligated balances of funds appropriated for the Alaska Power Administration to the Treasury of the United States.

“(g) REPEALS.—(1) The Act of July 31, 1950 (64 Stat. 382) [enacting sections 312 to 312d of Title 48, Territories and Insular Possessions, and provisions formerly set out as a note under section 312 of Title 48] is repealed effective on the date that Eklutna is conveyed to the Eklutna Purchasers [ownership of Eklutna project transferred Oct. 2, 1997].

“(2) Section 204 of the Flood Control Act of 1962 (76 Stat. 1193) is repealed effective on the date that Snettisham is conveyed to the Snettisham Purchaser [purchase of Snettisham project completed Aug. 19, 1998].

“(3) The Act of August 9, 1955 [enacting sections 1962d-12 to 1962d-14 of this title], concerning water resources investigation in Alaska (69 Stat. 618), is repealed.

“(h) DOE ORGANIZATION ACT.—As of the later of the two dates determined in paragraphs (1) and (2) of subsection (g), section 302(a) of the Department of Energy Organization Act (42 U.S.C. 7152(a)) is amended—

“(1) in paragraph (1)—

“(A) by striking subparagraph (C); and

“(B) by redesignating subparagraphs (D), (E), and (F) as subparagraphs (C), (D), and (E) respectively; and

“(2) in paragraph (2) by striking out ‘and the Alaska Power Administration’ and by inserting ‘and’ after ‘Southwestern Power Administration.’

“(i) DISPOSAL.—The sales of Eklutna and Snettisham under this title are not considered disposal of Federal surplus property under the Federal Property and Administrative Services Act of 1949 [now chapters 1 to 11 of Title 40, Public Buildings, Property, and Works, and title III of the Act of June 30, 1949 (41 U.S.C. 251 et seq.)] (40 U.S.C. 484) [now 40 U.S.C. 541-555] or the Act of October 3, 1944, popularly referred to as the ‘Surplus Property Act of 1944’ (50 U.S.C. App. 1622).

“SEC. 105. OTHER FEDERAL HYDROELECTRIC PROJECTS.

“The provisions of this title regarding the sale of the Alaska Power Administration’s hydroelectric projects under section 103 and the exemption of these projects from Part I of the Federal Power Act [16 U.S.C. 791a et seq.] under section 104 do not apply to other Federal hydroelectric projects.”

USE OF FUNDS TO STUDY NONCOST-BASED METHODS OF PRICING HYDROELECTRIC POWER

Pub. L. 102-377, §505, Oct. 2, 1992, 106 Stat. 1343, provided that: “Notwithstanding any other provision of this Act, subsequent Energy and Water Development Appropriations Acts or any other provision of law hereafter, none of the funds made available under this Act, subsequent Energy and Water Development Appro-

priations Acts or any other law hereafter shall be used for the purposes of conducting any studies relating or leading to the possibility of changing from the currently required 'at cost' to a 'market rate' or any other noncost-based method for the pricing of hydroelectric power by the six Federal public power authorities, or other agencies or authorities of the Federal Government, except as may be specifically authorized by Act of Congress hereafter enacted."

TRANSFERS TO SECRETARY OF THE INTERIOR OF CERTAIN FOSSIL ENERGY RESEARCH AND DEVELOPMENT AUTHORITIES

Pub. L. 97-257, title I, §100, Sept. 10, 1982, 96 Stat. 841, provided: "That there are transferred to, and vested in, the Secretary of the Interior all functions vested in, or delegated to, the Secretary of Energy and the Department of Energy under or with respect to (1) the Act of May 16, 1910 [30 U.S.C. 1, 3, 5-7], and other authorities formerly exercised by the Bureau of Mines [now United States Bureau of Mines], but limited to research and development relating to increased efficiency of production technology of solid fuel minerals; (2) section 908 of the Surface Mining Control and Reclamation Act of 1977, relating to research and development concerning alternative coal mining technologies (30 U.S.C. 1328); (3) sections 5(g)(2), 8(a)(4), 8(a)(9), 27(b)(2)(3) of the Outer Continental Shelf Lands Act (43 U.S.C. 1334(g)(2) and 1337(a)(4) and 1337(a)(9) [and 1353(b)(2) and (3)]); and (4) section 105 of the Energy Policy and Conservation Act (42 U.S.C. 6213): *Provided further*, That the personnel employed, personnel positions, equipment, facilities, and unexpended balances of the aforementioned transferred programs shall be merged with the 'Mines and minerals' account of the Bureau of Mines."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7153 of this title; title 16 section 839f; title 33 section 2213.

§ 7153. Administration of leasing transfers

(a) Authority retained by Secretary of the Interior

The Secretary of the Interior shall retain any authorities not transferred under section 7152(b)¹ of this title and shall be solely responsible for the issuance and supervision of Federal leases and the enforcement of all regulations applicable to the leasing of mineral resources, including but not limited to lease terms and conditions and production rates. No regulation promulgated by the Secretary shall restrict or limit any authority retained by the Secretary of the Interior under section 7152(b)¹ of this title with respect to the issuance or supervision of Federal leases. Nothing in section 7152(b)¹ of this title shall be construed to affect Indian lands and resources or to transfer any functions of the Secretary of the Interior concerning such lands and resources.

(b) Consultation with Secretary of the Interior with respect to promulgation of regulations

In exercising the authority under section 7152(b)¹ of this title to promulgate regulations, the Secretary shall consult with the Secretary of the Interior during the preparation of such regulations and shall afford the Secretary of the Interior not less than thirty days, prior to the date on which the Department first publishes or otherwise prescribes regulations, to comment on the content and effect of such regulations.

¹ See References in Text note below.

(c) Repealed. Pub. L. 97-100, title II, §201, Dec. 23, 1981, 95 Stat. 1407

(d) Preparation of environmental impact statement

The Department of the Interior shall be the lead agency for the purpose of preparation of an environmental impact statement required by section 4332(2)(C) of this title for any action with respect to the Federal leases taken under the authority of this section, unless the action involves only matters within the exclusive authority of the Secretary.

(Pub. L. 95-91, title III, §303, Aug. 4, 1977, 91 Stat. 579; Pub. L. 97-100, title II, §201, Dec. 23, 1981, 95 Stat. 1407.)

REFERENCES IN TEXT

Section 7152(b) of this title, referred to in subsecs. (a) and (b), was repealed by Pub. L. 97-100, title II, §201, Dec. 23, 1981, 95 Stat. 1407.

AMENDMENTS

1981—Subsec. (c). Pub. L. 97-100 struck out subsec. (c) which afforded the Secretary of Energy the opportunity to disapprove any terms and conditions on which the Secretary of the Interior proposed to issue a Federal lease.

§ 7154. Transfers from Department of Housing and Urban Development

(a) There is transferred to, and vested in, the Secretary the functions vested in the Secretary of Housing and Urban Development pursuant to section 304 of the Energy Conservation Standards for New Buildings Act of 1976 [42 U.S.C. 6833], to develop and promulgate energy conservation standards for new buildings. The Secretary of Housing and Urban Development shall provide the Secretary with any necessary technical assistance in the development of such standards. All other responsibilities, pursuant to title III of the Energy Conservation and Production Act [42 U.S.C. 6831 et seq.], shall remain with the Secretary of Housing and Urban Development, except that the Secretary shall be kept fully and currently informed of the implementation of the promulgated standards.

(b) There is hereby transferred to, and vested in, the Secretary the functions vested in the Secretary of Housing and Urban Development pursuant to section 1701z-8 of title 12.

(Pub. L. 95-91, title III, §304, Aug. 4, 1977, 91 Stat. 580.)

REFERENCES IN TEXT

The Energy Conservation and Production Act, referred to in subsec. (a), is Pub. L. 94-385, Aug. 14, 1976, 90 Stat. 1125, as amended. Title III of the Energy Conservation and Production Act, known as the Energy Conservation Standards for New Buildings Act of 1976, is classified generally to subchapter II (§6831 et seq.) of chapter 81 of this title. For complete classification of the Energy Conservation and Production Act and the Energy Standards for New Buildings Act of 1976 to the Code, see Short Title note set out under section 6801 of this title and Tables.

§ 7155. Repealed. Pub. L. 103-272, §7(b), July 5, 1994, 108 Stat. 1379

Section, Pub. L. 95-91, title III, §306, Aug. 4, 1977, 91 Stat. 581, transferred to Secretary the functions set

forth in Interstate Commerce Act and vested by law in Interstate Commerce Commission or Chairman and members thereof as related to transportation of oil by pipeline. See section 60501 of Title 49, Transportation.

§ 7156. Transfers from Department of the Navy

There are transferred to and vested in the Secretary all functions vested by chapter 641 of title 10, in the Secretary of the Navy as they relate to the administration of and jurisdiction over—

(1) Naval Petroleum Reserve Numbered 1 (Elk Hills), located in Kern County, California, established by Executive order of the President, dated September 2, 1912;

(2) Naval Petroleum Reserve Numbered 2 (Buena Vista), located in Kern County, California, established by Executive order of the President, dated December 13, 1912;

(3) Naval Petroleum Reserve Numbered 3 (Teapot Dome), located in Wyoming, established by Executive order of the President, dated April 30, 1915;

(4) Oil Shale Reserve Numbered 1, located in Colorado, established by Executive order of the President, dated December 6, 1916, as amended by Executive order dated June 12, 1919;

(5) Oil Shale Reserve Numbered 2, located in Utah, established by Executive order of the President, dated December 6, 1916; and

(6) Oil Shale Reserve Numbered 3, located in Colorado, established by Executive order of the President, dated September 27, 1924.

In the administration of any of the functions transferred to, and vested in, the Secretary by this section the Secretary shall take into consideration the requirements of national security.

(Pub. L. 95–91, title III, §307, Aug. 4, 1977, 91 Stat. 581.)

§ 7156a. Repealed. Pub. L. 105–85, div. C, title XXXIV, § 3403, Nov. 18, 1997, 111 Stat. 2059

Section, Pub. L. 96–137, § 2, Dec. 12, 1979, 93 Stat. 1061, related to assignment of naval officers to key management positions within Office of Naval Petroleum and Oil Shale Reserves in Department of Energy and to position of Director.

§ 7157. Transfers from Department of Commerce

There are transferred to, and vested in, the Secretary all functions of the Secretary of Commerce, the Department of Commerce, and officers and components of that Department, as relate to or are utilized by the Office of Energy Programs, but limited to industrial energy conservation programs.

(Pub. L. 95–91, title III, §308, Aug. 4, 1977, 91 Stat. 581.)

§ 7158. Naval reactor and military application programs

The Division of Naval Reactors established pursuant to section 2035 of this title, and responsible for research, design, development, health, and safety matters pertaining to naval nuclear propulsion plants and assigned civilian power reactor programs is transferred to the Department

under the Under Secretary for Nuclear Security, and such organizational unit shall be deemed to be an organizational unit established by this chapter.

(Pub. L. 95–91, title III, §309, Aug. 4, 1977, 91 Stat. 581; Pub. L. 106–65, div. C, title XXXII, §3294(c), Oct. 5, 1999, 113 Stat. 970.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 95–91, Aug. 4, 1977, 91 Stat. 565, as amended, known as the Department of Energy Organization Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

AMENDMENTS

1999—Pub. L. 106–65 struck out subsec. (a) designation before “The Division of Naval Reactors”, substituted “Under Secretary for Nuclear Security” for “Assistant Secretary to whom the Secretary has assigned the function listed in section 7133(a)(2)(E) of this title”, and struck out subsec. (b) which read as follows: “The Division of Military Application, established by section 2035 of this title, and the functions of the Energy Research and Development Administration with respect to the Military Liaison Committee, established by section 2037 of this title, are transferred to the Department under the Assistant Secretary to whom the Secretary has assigned those functions listed in section 7133(a)(5) of this title, and such organizational units shall be deemed to be organizational units established by this chapter.”

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–65 effective Mar. 1, 2000, see section 3299 of Pub. L. 106–65, set out as an Effective Date note under section 2401 of Title 50, War and National Defense.

TRANSFER OF FUNCTIONS

All national security functions and activities performed immediately before Oct. 5, 1999, by the Office of Naval Reactors transferred to the Administrator for Nuclear Security of the National Nuclear Security Administration of the Department of Energy, and the Deputy Administrator for Naval Reactors of the Administration to be assigned the responsibilities, authorities, and accountability for all functions of the Office of Naval Reactors under Executive Order No. 12344, set out as a note under section 2511 of Title 50, War and National Defense, see sections 2406 and 2481 of Title 50.

Pub. L. 98–525, title XVI, §1634, Oct. 19, 1984, 98 Stat. 2649, which was formerly set out as a note under this section, was renumbered section 4101 of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, §3141(d)(2), Nov. 24, 2003, 117 Stat. 1757, and is set out as a note under section 2511 of Title 50, War and National Defense.

§ 7159. Transfer to Department of Transportation

Notwithstanding section 7151(a) of this title, there are transferred to, and vested in, the Secretary of Transportation all of the functions vested in the Administrator of the Federal Energy Administration by section 6361(b)(1)(B) of this title.

(Pub. L. 95–91, title III, §310, Aug. 4, 1977, 91 Stat. 582.)

SUBCHAPTER IV—FEDERAL ENERGY REGULATORY COMMISSION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 7134, 7136, 7151, 7298, 7301, 7341 of this title.

§ 7171. Appointment and administration

(a) Federal Energy Regulatory Commission; establishment

There is established within the Department an independent regulatory commission to be known as the Federal Energy Regulatory Commission.

(b) Composition; term of office; conflict of interest; expiration of terms

(1) The Commission shall be composed of five members appointed by the President, by and with the advice and consent of the Senate. One of the members shall be designated by the President as Chairman. Members shall hold office for a term of 5 years and may be removed by the President only for inefficiency, neglect of duty, or malfeasance in office. Not more than three members of the Commission shall be members of the same political party. Any Commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A Commissioner may continue to serve after the expiration of his term until his successor is appointed and has been confirmed and taken the oath of Office, except that such Commissioner shall not serve beyond the end of the session of the Congress in which such term expires. Members of the Commission shall not engage in any other business, vocation, or employment while serving on the Commission.

(2) Notwithstanding the third sentence of paragraph (1), the terms of members first taking office after April 11, 1990, shall expire as follows:

(A) In the case of members appointed to succeed members whose terms expire in 1991, one such member's term shall expire on June 30, 1994, and one such member's term shall expire on June 30, 1995, as designated by the President at the time of appointment.

(B) In the case of members appointed to succeed members whose terms expire in 1992, one such member's term shall expire on June 30, 1996, and one such member's term shall expire on June 30, 1997, as designated by the President at the time of appointment.

(C) In the case of the member appointed to succeed the member whose term expires in 1993, such member's term shall expire on June 30, 1998.

(c) Duties and responsibilities of Chairman

The Chairman shall be responsible on behalf of the Commission for the executive and administrative operation of the Commission, including functions of the Commission with respect to (1) the appointment and employment of hearing examiners in accordance with the provisions of title 5, (2) the selection, appointment, and fixing of the compensation of such personnel as he deems necessary, including an executive director, (3) the supervision of personnel employed by or assigned to the Commission, except that each member of the Commission may select and supervise personnel for his personal staff, (4) the distribution of business among personnel and among administrative units of the Commission, and (5) the procurement of services of experts and consultants in accordance with section 3109 of title 5. The Secretary shall provide to the

Commission such support and facilities as the Commission determines it needs to carry out its functions.

(d) Supervision and direction of members, employees, or other personnel of Commission

In the performance of their functions, the members, employees, or other personnel of the Commission shall not be responsible to or subject to the supervision or direction of any officer, employee, or agent of any other part of the Department.

(e) Designation of Acting Chairman; quorum; seal

The Chairman of the Commission may designate any other member of the Commission as Acting Chairman to act in the place and stead of the Chairman during his absence. The Chairman (or the Acting Chairman in the absence of the Chairman) shall preside at all sessions of the Commission and a quorum for the transaction of business shall consist of at least three members present. Each member of the Commission, including the Chairman, shall have one vote. Actions of the Commission shall be determined by a majority vote of the members present. The Commission shall have an official seal which shall be judicially noticed.

(f) Rules

The Commission is authorized to establish such procedural and administrative rules as are necessary to the exercise of its functions. Until changed by the Commission, any procedural and administrative rules applicable to particular functions over which the Commission has jurisdiction shall continue in effect with respect to such particular functions.

(g) Powers of Commission

In carrying out any of its functions, the Commission shall have the powers authorized by the law under which such function is exercised to hold hearings, sign and issue subpoenas, administer oaths, examine witnesses, and receive evidence at any place in the United States it may designate. The Commission may, by one or more of its members or by such agents as it may designate, conduct any hearing or other inquiry necessary or appropriate to its functions, except that nothing in this subsection shall be deemed to supersede the provisions of section 556 of title 5 relating to hearing examiners.

(h) Principal office of Commission

The principal office of the Commission shall be in or near the District of Columbia, where its general sessions shall be held, but the Commission may sit anywhere in the United States.

(i) Commission deemed agency; attorney for Commission

For the purpose of section 552b of title 5, the Commission shall be deemed to be an agency. Except as provided in section 518 of title 28, relating to litigation before the Supreme Court, attorneys designated by the Chairman of the Commission may appear for, and represent the Commission in, any civil action brought in connection with any function carried out by the Commission pursuant to this chapter or as otherwise authorized by law.

(j) Annual authorization and appropriation request

In each annual authorization and appropriation request under this chapter, the Secretary shall identify the portion thereof intended for the support of the Commission and include a statement by the Commission (1) showing the amount requested by the Commission in its budgetary presentation to the Secretary and the Office of Management and Budget and (2) an assessment of the budgetary needs of the Commission. Whenever the Commission submits to the Secretary, the President, or the Office of Management and Budget, any legislative recommendation or testimony, or comments on legislation, prepared for submission to Congress, the Commission shall concurrently transmit a copy thereof to the appropriate committees of Congress.

(Pub. L. 95-91, title IV, § 401, Aug. 4, 1977, 91 Stat. 582; Pub. L. 101-271, § 2(a), (b), Apr. 11, 1990, 104 Stat. 135.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (i) and (j), was in the original "this Act", meaning Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 565, as amended, known as the Department of Energy Organization Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

AMENDMENTS

1990—Subsec. (b). Pub. L. 101-271 designated existing provisions as par. (1), substituted "5 years" for "four years", struck out after third sentence "The terms of the members first taking office shall expire (as designated by the President at the time of appointment), two at the end of two years, two at the end of three years, and one at the end of four years.", substituted "A Commissioner may continue to serve after the expiration of his term until his successor is appointed and has been confirmed and taken the oath of Office, except that such Commissioner shall not serve beyond the end of the session of the Congress in which such term expires." for "A Commissioner may continue to serve after the expiration of his term until his successor has taken office, except that he may not so continue to serve for more than one year after the date on which his term would otherwise expire under this subsection.", and added par. (2).

EFFECTIVE DATE OF 1990 AMENDMENT

Section 2(c) of Pub. L. 101-271 provided that: "The amendments made by this section [amending this section] apply only to persons appointed or reappointed as members of the Federal Energy Regulatory Commission after the date of enactment of this Act [Apr. 11, 1990]."

RENEWABLE ENERGY AND ENERGY CONSERVATION INCENTIVES

Pub. L. 101-549, title VIII, § 808, Nov. 15, 1990, 104 Stat. 2690, provided that:

"(a) DEFINITION.—For purposes of this section, 'renewable energy' means energy from photovoltaic, solar thermal, wind, geothermal, and biomass energy production technologies.

"(b) RATE INCENTIVES STUDY.—Within 18 months after enactment [Nov. 15, 1990], the Federal Energy Regulatory Commission, in consultation with the Environmental Protection Agency, shall complete a study which calculates the net environmental benefits of renewable energy, compared to nonrenewable energy, and assigns numerical values to them. The study shall in-

clude, but not be limited to, environmental impacts on air, water, land use, water use, human health, and waste disposal.

"(c) MODEL REGULATIONS.—In conjunction with the study in subsection (b), the Commission shall propose one or more models for incorporating the net environmental benefits into the regulatory treatment of renewable energy in order to provide economic compensation for those benefits.

"(d) REPORT.—The Commission shall transmit the study and the model regulations to Congress, along with any recommendations on the best ways to reward renewable energy technologies for their environmental benefits, in a report no later than 24 months after enactment [Nov. 15, 1990]."

RETENTION AND USE OF REVENUES FROM LICENSING FEES, INSPECTION SERVICES, AND OTHER SERVICES AND COLLECTIONS; REDUCTION TO ACHIEVE FINAL FISCAL YEAR APPROPRIATION

Pub. L. 108-137, title III, Dec. 1, 2003, 117 Stat. 1859, provided in part: "That notwithstanding any other provision of law, not to exceed \$204,400,000 of revenues from fees and annual charges, and other services and collections in fiscal year 2004 shall be retained and used for necessary expenses in this account, and shall remain available until expended: *Provided further*, That the sum herein appropriated from the general fund shall be reduced as revenues are received during fiscal year 2004 so as to result in a final fiscal year 2004 appropriation from the general fund estimated at not more than \$0."

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 108-7, div. D, title III, Feb. 20, 2003, 117 Stat. 153.

Pub. L. 107-66, title III, Nov. 12, 2001, 115 Stat. 508.

Pub. L. 106-377, § 1(a)(2) [title III], Oct. 27, 2000, 114 Stat. 1441, 1441A-78.

Pub. L. 106-60, title III, Sept. 29, 1999, 113 Stat. 494.

Pub. L. 105-245, title III, Oct. 7, 1998, 112 Stat. 1851.

Pub. L. 105-62, title III, Oct. 13, 1997, 111 Stat. 1334.

Pub. L. 104-206, title III, Sept. 30, 1996, 110 Stat. 2998.

Pub. L. 104-46, title III, Nov. 13, 1995, 109 Stat. 416.

Pub. L. 103-316, title III, Aug. 26, 1994, 108 Stat. 1719.

Pub. L. 103-126, title III, Oct. 28, 1993, 107 Stat. 1330.

Pub. L. 102-377, title III, Oct. 2, 1992, 106 Stat. 1338.

Pub. L. 102-104, title III, Aug. 17, 1991, 105 Stat. 531.

Pub. L. 101-514, title III, Nov. 5, 1990, 104 Stat. 2093.

Pub. L. 101-101, title III, Sept. 29, 1989, 103 Stat. 661.

Pub. L. 100-371, title III, July 19, 1988, 102 Stat. 870.

Pub. L. 100-202, § 101(d) [title III], Dec. 22, 1987, 101 Stat. 1329-104, 1329-124.

Pub. L. 99-500, § 101(e) [title III], Oct. 18, 1986, 100 Stat. 1783-194, 1783-208, and Pub. L. 99-591, § 101(e) [title III], Oct. 30, 1986, 100 Stat. 3341-194, 3341-208.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7192 of this title.

§ 7172. Jurisdiction of Commission**(a) Transfer of functions from Federal Power Commission**

(1) There are transferred to, and vested in, the Commission the following functions of the Federal Power Commission or of any member of the Commission or any officer or component of the Commission:

(A) the investigation, issuance, transfer, renewal, revocation, and enforcement of licenses and permits for the construction, operation, and maintenance of dams, water conduits, reservoirs, powerhouses, transmission lines, or other works for the development and improvement of navigation and for the development and utilization of power across, along, from, or in navigable waters under part I of the Federal Power Act [16 U.S.C. 791a et seq.];

(B) the establishment, review, and enforcement of rates and charges for the transmission or sale of electric energy, including determinations on construction work in progress, under part II of the Federal Power Act [16 U.S.C. 824 et seq.], and the interconnection, under section 202(b), of such Act [16 U.S.C. 824a(b)], of facilities for the generation, transmission, and sale of electric energy (other than emergency interconnection);

(C) the establishment, review, and enforcement of rates and charges for the transportation and sale of natural gas by a producer or gatherer or by a natural gas pipeline or natural gas company under sections 1, 4, 5, and 6 of the Natural Gas Act [15 U.S.C. 717, 717c to 717e];

(D) the issuance of a certificate of public convenience and necessity, including abandonment of facilities or services, and the establishment of physical connections under section 7 of the Natural Gas Act [15 U.S.C. 717f];

(E) the establishment, review, and enforcement of curtailments, other than the establishment and review of priorities for such curtailments, under the Natural Gas Act [15 U.S.C. 717 et seq.]; and

(F) the regulation of mergers and securities acquisition under the Federal Power Act [16 U.S.C. 791a et seq.] and Natural Gas Act [15 U.S.C. 717 et seq.].

(2) The Commission may exercise any power under the following sections to the extent the Commission determines such power to be necessary to the exercise of any function within the jurisdiction of the Commission:

(A) sections 4, 301, 302, 306 through 309, and 312 through 316 of the Federal Power Act [16 U.S.C. 797, 825, 825a, 825e to 825h, 825k to 825o]; and

(B) sections 8, 9, 13 through 17, 20, and 21 of the Natural Gas Act [15 U.S.C. 717g, 717h, 717l to 717p, 717s, 717t].

(b) Repealed. Pub. L. 103-272, § 7(b), July 5, 1994, 108 Stat. 1379

(c) Consideration of proposals made by Secretary to amend regulations issued under section 753 of title 15; exception

(1) Pursuant to the procedures specified in section 7174 of this title and except as provided in paragraph (2), the Commission shall have jurisdiction to consider any proposal by the Secretary to amend the regulation required to be issued under section 753(a)¹ of title 15 which is required by section 757 or 760a¹ of title 15 to be transmitted by the President to, and reviewed by, each House of Congress, under section 6421 of this title.

(2) In the event that the President determines that an emergency situation of overriding national importance exists and requires the expeditious promulgation of a rule described in paragraph (1), the President may direct the Secretary to assume sole jurisdiction over the promulgation of such rule, and such rule shall be transmitted by the President to, and reviewed by, each House of Congress under section 757 or 760a¹ of title 15, and section 6421 of this title.

¹ See References in Text note below.

(d) Matters involving agency determinations to be made on record after agency hearing

The Commission shall have jurisdiction to hear and determine any other matter arising under any other function of the Secretary—

(1) involving any agency determination required by law to be made on the record after an opportunity for an agency hearing; or

(2) involving any other agency determination which the Secretary determines shall be made on the record after an opportunity for an agency hearing,

except that nothing in this subsection shall require that functions under sections 6213 and 6214¹ of this title shall be within the jurisdiction of the Commission unless the Secretary assigns such a function to the Commission.

(e) Matters assigned by Secretary after public notice and matters referred under section 7174 of this title

In addition to the other provisions of this section, the Commission shall have jurisdiction over any other matter which the Secretary may assign to the Commission after public notice, or which are required to be referred to the Commission pursuant to section 7174 of this title.

(f) Limitation

No function described in this section which regulates the exports or imports of natural gas or electricity shall be within the jurisdiction of the Commission unless the Secretary assigns such a function to the Commission.

(g) Final agency action

The decision of the Commission involving any function within its jurisdiction, other than action by it on a matter referred to it pursuant to section 7174 of this title, shall be final agency action within the meaning of section 704 of title 5 and shall not be subject to further review by the Secretary or any officer or employee of the Department.

(h) Rules, regulations, and statements of policy

The Commission is authorized to prescribe rules, regulations, and statements of policy of general applicability with respect to any function under the jurisdiction of the Commission pursuant to this section.

(Pub. L. 95-91, title IV, § 402, Aug. 4, 1977, 91 Stat. 583; Pub. L. 103-272, § 7(b), July 5, 1994, 108 Stat. 1379.)

REFERENCES IN TEXT

The Federal Power Act, referred to in subsec. (a)(1)(A), (B), and (F), is act June 10, 1920, ch. 285, 41 Stat. 1063, as amended, which is classified generally to chapter 12 (§ 791a et seq.) of Title 16, Conservation. Parts I and II of the Federal Power Act are classified generally to subchapters I (§ 791a et seq.) and II (§ 824 et seq.), respectively, of chapter 12 of Title 16. For complete classification of this Act to the Code, see section 791a of Title 16 and Tables.

The Natural Gas Act, referred to in subsec. (a)(1)(E), (F), is act June 21, 1938, ch. 556, 52 Stat. 821, as amended, which is classified generally to chapter 15B (§ 717 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 717w of Title 15 and Tables.

Sections 753, 757, and 760a of title 15, referred to in subsec. (c), were omitted from the Code pursuant to

section 760g of Title 15, which provided for the expiration of the President's authority under those sections on Sept. 30, 1981.

Section 6214 of this title, referred to in subsec. (d), was repealed by Pub. L. 106-469, title I, §103(3), Nov. 9, 2000, 114 Stat. 2029.

AMENDMENTS

1994—Subsec. (b). Pub. L. 103-272 struck out subsec. (b) which read as follows: "There are transferred to, and vested in, the Commission all functions and authority of the Interstate Commerce Commission or any officer or component of such Commission where the regulatory function establishes rates or charges for the transportation of oil by pipeline or establishes the valuation of any such pipeline." See section 60502 of Title 49, Transportation.

OIL PIPELINE REGULATORY REFORM

Pub. L. 102-486, title XVIII, Oct. 24, 1992, 106 Stat. 3010, provided that:

"SEC. 1801. OIL PIPELINE RATEMAKING METHODOLOGY.

"(a) ESTABLISHMENT.—Not later than 1 year after the date of the enactment of this Act [Oct. 24, 1992], the Federal Energy Regulatory Commission shall issue a final rule which establishes a simplified and generally applicable ratemaking methodology for oil pipelines in accordance with section 1(5) of part I of the Interstate Commerce Act [former 49 U.S.C. 1(5)].

"(b) EFFECTIVE DATE.—The final rule to be issued under subsection (a) may not take effect before the 365th day following the date of the issuance of the rule.

"SEC. 1802. STREAMLINING OF COMMISSION PROCEDURES.

"(a) RULEMAKING.—Not later than 18 months after the date of the enactment of this Act [Oct. 24, 1992], the Commission shall issue a final rule to streamline procedures of the Commission relating to oil pipeline rates in order to avoid unnecessary regulatory costs and delays.

"(b) SCOPE OF RULEMAKING.—Issues to be considered in the rulemaking proceeding to be conducted under subsection (a) shall include the following:

"(1) Identification of information to be filed with an oil pipeline tariff and the availability to the public of any analysis of such tariff filing performed by the Commission or its staff.

"(2) Qualification for standing (including definitions of economic interest) of parties who protest oil pipeline tariff filings or file complaints thereto.

"(3) The level of specificity required for a protest or complaint and guidelines for Commission action on the portion of the tariff or rate filing subject to protest or complaint.

"(4) An opportunity for the oil pipeline to file a response for the record to an initial protest or complaint.

"(5) Identification of specific circumstances under which Commission staff may initiate a protest.

"(c) ADDITIONAL PROCEDURAL CHANGES.—In conducting the rulemaking proceeding to carry out subsection (a), the Commission shall identify and transmit to Congress any other procedural changes relating to oil pipeline rates which the Commission determines are necessary to avoid unnecessary regulatory costs and delays and for which additional legislative authority may be necessary.

"(d) WITHDRAWAL OF TARIFFS AND COMPLAINTS.—

"(1) WITHDRAWAL OF TARIFFS.—If an oil pipeline tariff which is filed under part I of the Interstate Commerce Act [former 49 U.S.C. 1 et seq.] and which is subject to investigation is withdrawn—

"(A) any proceeding with respect to such tariff shall be terminated;

"(B) the previous tariff rate shall be reinstated; and

"(C) any amounts collected under the withdrawn tariff rate which are in excess of the previous tariff rate shall be refunded.

"(2) WITHDRAWAL OF COMPLAINTS.—If a complaint which is filed under section 13 of the Interstate Commerce Act [former 49 U.S.C. 13] with respect to an oil pipeline tariff is withdrawn, any proceeding with respect to such complaint shall be terminated.

"(e) ALTERNATIVE DISPUTE RESOLUTION.—To the maximum extent practicable, the Commission shall establish appropriate alternative dispute resolution procedures, including required negotiations and voluntary arbitration, early in an oil pipeline rate proceeding as a method preferable to adjudication in resolving disputes relating to the rate. Any proposed rates derived from implementation of such procedures shall be considered by the Commission on an expedited basis for approval.

"SEC. 1803. PROTECTION OF CERTAIN EXISTING RATES.

"(a) RATES DEEMED JUST AND REASONABLE.—Except as provided in subsection (b)—

"(1) any rate in effect for the 365-day period ending on the date of the enactment of this Act [Oct. 24, 1992] shall be deemed to be just and reasonable (within the meaning of section 1(5) of the Interstate Commerce Act [former 49 U.S.C. 1(5)]); and

"(2) any rate in effect on the 365th day preceding the date of such enactment shall be deemed to be just and reasonable (within the meaning of such section 1(5)) regardless of whether or not, with respect to such rate, a new rate has been filed with the Commission during such 365-day period;

if the rate in effect, as described in paragraph (1) or (2), has not been subject to protest, investigation, or complaint during such 365-day period.

"(b) CHANGED CIRCUMSTANCES.—No person may file a complaint under section 13 of the Interstate Commerce Act [former 49 U.S.C. 13] against a rate deemed to be just and reasonable under subsection (a) unless—

"(1) evidence is presented to the Commission which establishes that a substantial change has occurred after the date of the enactment of this Act [Oct. 24, 1992]—

"(A) in the economic circumstances of the oil pipeline which were a basis for the rate; or

"(B) in the nature of the services provided which were a basis for the rate; or

"(2) the person filing the complaint was under a contractual prohibition against the filing of a complaint which was in effect on the date of enactment of this Act and had been in effect prior to January 1, 1991, provided that a complaint by a party bound by such prohibition is brought within 30 days after the expiration of such prohibition.

If the Commission determines pursuant to a proceeding instituted as a result of a complaint under section 13 of the Interstate Commerce Act that the rate is not just and reasonable, the rate shall not be deemed to be just and reasonable. Any tariff reduction or refunds that may result as an outcome of such a complaint shall be prospective from the date of the filing of the complaint.

"(c) LIMITATION REGARDING UNDULY DISCRIMINATORY OR PREFERENTIAL TARIFFS.—Nothing in this section shall prohibit any aggrieved person from filing a complaint under section 13 or section 15(1) of the Interstate Commerce Act [former 49 U.S.C. 13, 15(1)] challenging any tariff provision as unduly discriminatory or unduly preferential.

"SEC. 1804. DEFINITIONS.

"For the purposes of this title, the following definitions apply:

"(1) COMMISSION.—The term 'Commission' means the Federal Energy Regulatory Commission and, unless the context requires otherwise, includes the Oil Pipeline Board and any other office or component of the Commission to which the functions and authority vested in the Commission under section 402(b) of the Department of Energy Organization Act (42 U.S.C. 7172(b)) are delegated.

"(2) OIL PIPELINE.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the term ‘oil pipeline’ means any common carrier (within the meaning of the Interstate Commerce Act [former 49 U.S.C. 1 et seq.] which transports oil by pipeline subject to the functions and authority vested in the Commission under section 402(b) of the Department of Energy Organization Act (42 U.S.C. 7172(b)).

“(B) EXCEPTION.—The term ‘oil pipeline’ does not include the Trans-Alaska Pipeline authorized by the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1651 et seq.) or any pipeline delivering oil directly or indirectly to the Trans-Alaska Pipeline.

“(3) OIL.—The term ‘oil’ has the same meaning as is given such term for purposes of the transfer of functions from the Interstate Commerce Commission to the Federal Energy Regulatory Commission under section 402(b) of the Department of Energy Organization Act (42 U.S.C. 7172(b)).

“(4) RATE.—The term ‘rate’ means all charges that an oil pipeline requires shippers to pay for transportation services.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2077, 2160, 6303, 7151, 7173, 7174, 7191, 7920, 8433 of this title.

§ 7173. Initiation of rulemaking procedures before Commission

(a) Proposal of rules, regulations, and statements of policy of general applicability by Secretary and Commission

The Secretary and the Commission are authorized to propose rules, regulations, and statements of policy of general applicability with respect to any function within the jurisdiction of the Commission under section 7172 of this title.

(b) Consideration and final action on proposals of Secretary

The Commission shall have exclusive jurisdiction with respect to any proposal made under subsection (a) of this section, and shall consider and take final action on any proposal made by the Secretary under such subsection in an expeditious manner in accordance with such reasonable time limits as may be set by the Secretary for the completion of action by the Commission on any such proposal.

(c) Utilization of rulemaking procedures for establishment of rates and charges under Federal Power Act and Natural Gas Act

Any function described in section 7172 of this title which relates to the establishment of rates and charges under the Federal Power Act [16 U.S.C. 791a et seq.] or the Natural Gas Act [15 U.S.C. 717 et seq.], may be conducted by rulemaking procedures. Except as provided in subsection (d) of this section, the procedures in such a rulemaking proceeding shall assure full consideration of the issues and an opportunity for interested persons to present their views.

(d) Submission of written questions by interested persons

With respect to any rule or regulation promulgated by the Commission to establish rates and charges for the first sale of natural gas by a producer or gatherer to a natural gas pipeline under the Natural Gas Act [15 U.S.C. 717 et seq.], the Commission may afford any interested person a reasonable opportunity to submit written questions with respect to disputed issues of fact to

other interested persons participating in the rulemaking proceedings. The Commission may establish a reasonable time for both the submission of questions and responses thereto.

(Pub. L. 95-91, title IV, § 403, Aug. 4, 1977, 91 Stat. 585.)

REFERENCES IN TEXT

The Federal Power Act, referred to in subsec. (c), is act June 10, 1920, ch. 285, 41 Stat. 1063, as amended, which is classified generally to chapter 12 (§791a et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see section 791a of Title 16 and Tables.

The Natural Gas Act, referred to in subsecs. (c) and (d), is act June 21, 1938, ch. 556, 52 Stat. 821, as amended, which is classified generally to chapter 15B (§717 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 717w of Title 15 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7174 of this title.

§ 7174. Referral of other rulemaking proceedings to Commission

(a) Notification of Commission of proposed action; public comment

Except as provided in section 7173 of this title, whenever the Secretary proposes to prescribe rules, regulations, and statements of policy of general applicability in the exercise of any function which is transferred to the Secretary under section 7151 of this title or section 60501 of title 49, he shall notify the Commission of the proposed action. If the Commission, in its discretion, determines within such period as the Secretary may prescribe, that the proposed action may significantly affect any function within the jurisdiction of the Commission pursuant to section 7172(a)(1) and (c)(1) of this title and section 60502 of title 49, the Secretary shall immediately refer the matter to the Commission, which shall provide an opportunity for public comment.

(b) Recommendations of Commission; publication

Following such opportunity for public comment the Commission, after consultation with the Secretary, shall either—

- (1) concur in adoption of the rule or statement as proposed by the Secretary;
- (2) concur in adoption of the rule or statement only with such changes as it may recommend; or
- (3) recommend that the rule or statement not be adopted.

The Commission shall promptly publish its recommendations, adopted under this subsection, along with an explanation of the reason for its actions and an analysis of the major comments, criticisms, and alternatives offered during the comment period.

(c) Options of Secretary; final agency action

Following publication of the Commission's recommendations the Secretary shall have the option of—

- (1) issuing a final rule or statement in the form initially proposed by the Secretary if the Commission has concurred in such rule pursuant to subsection (b)(1) of this section;

(2) issuing a final rule or statement in amended form so that the rule conforms in all respects with the changes proposed by the Commission if the Commission has concurred in such rule or statement pursuant to subsection (b)(2) of this section; or

(3) ordering that the rule shall not be issued.

The action taken by the Secretary pursuant to this subsection shall constitute a final agency action for purposes of section 704 of title 5.

(Pub. L. 95-91, title IV, § 404, Aug. 4, 1977, 91 Stat. 586.)

CODIFICATION

In subsec. (a), “section 60501 of title 49” substituted for reference to section 306 of this Act, meaning section 306 of Pub. L. 95-91 [42 U.S.C. 7155], and “section 60502 of title 49” substituted for reference to section 402(b), meaning section 402(b) of Pub. L. 95-91 [42 U.S.C. 7172(b)] on authority of Pub. L. 103-272, § 6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7172 of this title.

§ 7175. Right of Secretary to intervene in Commission proceedings

The Secretary may as a matter of right intervene or otherwise participate in any proceeding before the Commission. The Secretary shall comply with rules of procedure of general applicability governing the timing of intervention or participation in such proceeding or activity and, upon intervening or participating therein, shall comply with rules of procedure of general applicability governing the conduct thereof. The intervention or participation of the Secretary in any proceeding or activity shall not affect the obligation of the Commission to assure procedure fairness to all participants.

(Pub. L. 95-91, title IV, § 405, Aug. 4, 1977, 91 Stat. 586.)

§ 7176. Reorganization

For the purposes of chapter 9 of title 5 the Commission shall be deemed to be an independent regulatory agency.

(Pub. L. 95-91, title IV, § 406, Aug. 4, 1977, 91 Stat. 586.)

§ 7177. Access to information

(a) The Secretary, each officer of the Department, and each Federal agency shall provide to the Commission, upon request, such existing information in the possession of the Department or other Federal agency as the Commission determines is necessary to carry out its responsibilities under this chapter.

(b) The Secretary, in formulating the information to be requested in the reports or investigations under section 825c and section 825j of title 16 and section 717i and section 717j of title 15 shall include in such reports and investigations such specific information as requested by the Federal Energy Regulatory Commission and copies of all reports, information, results of investigations and data under said sections shall be furnished by the Secretary to the Federal Energy Regulatory Commission.

(Pub. L. 95-91, title IV, § 407, Aug. 4, 1977, 91 Stat. 587.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original “this Act”, meaning Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 565, as amended, known as the Department of Energy Organization Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

§ 7178. Federal Energy Regulatory Commission fees and annual charges

(a) In general

(1) Except as provided in paragraph (2) and beginning in fiscal year 1987 and in each fiscal year thereafter, the Federal Energy Regulatory Commission shall, using the provisions of this section and authority provided by other laws, assess and collect fees and annual charges in any fiscal year in amounts equal to all of the costs incurred by the Commission in that fiscal year.

(2) The provisions of this section shall not affect the authority, requirements, exceptions, or limitations in sections 803(e) and 823a(e) of title 16.

(b) Basis for assessments

The fees or annual charges assessed shall be computed on the basis of methods that the Commission determines, by rule, to be fair and equitable.

(c) Estimates

The Commission may assess fees and charges under this section by making estimates based on data available to the Commission at the time of assessment.

(d) Time of payment

The Commission shall provide that the fees and charges assessed under this section shall be paid by the end of the fiscal year for which they were assessed.

(e) Adjustments

The Commission shall, after the completion of a fiscal year, make such adjustments in the assessments for such fiscal year as may be necessary to eliminate any overrecovery or underrecovery of its total costs, and any overcharging or undercharging of any person.

(f) Use of funds

All moneys received under this section shall be credited to the general fund of the Treasury.

(g) Waiver

The Commission may waive all or part of any fee or annual charge assessed under this section for good cause shown.

(Pub. L. 99-509, title III, § 3401, Oct. 21, 1986, 100 Stat. 1890.)

CODIFICATION

Section was enacted as part of the Omnibus Budget Reconciliation Act of 1986, and not as part of the Department of Energy Organization Act which comprises this chapter.

SUBCHAPTER V—ADMINISTRATIVE PROCEDURES AND JUDICIAL REVIEW

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 7919, 8411 of this title.

§ 7191. Procedures for issuance of rules, regulations, or orders

(a) Applicability of subchapter II of chapter 5 of title 5

(1) Subject to the other requirements of this subchapter, the provisions of subchapter II of chapter 5 of title 5 shall apply in accordance with its terms to any rule or regulation, or any order having the applicability and effect of a rule (as defined in section 551(4) of title 5), issued pursuant to authority vested by law in, or transferred or delegated to, the Secretary, or required by this chapter or any other Act to be carried out by any other officer, employee, or component of the Department, other than the Commission, including any such rule, regulation, or order of a State, or local government agency or officer thereof, issued pursuant to authority delegated by the Secretary in accordance with this subchapter. If any provision of any Act, the functions of which are transferred, vested, or delegated pursuant to this chapter, provides administrative procedure requirements in addition to the requirements provided in this subchapter, such additional requirements shall also apply to actions under that provision.

(2) Notwithstanding paragraph (1), this subchapter shall apply to the Commission to the same extent this subchapter applies to the Secretary in the exercise of any of the Commission's functions under section 7172(c)(1) of this title or which the Secretary has assigned under section 7172(e) of this title.

(b) Substantial issue of fact or law or likelihood of substantial impact on Nation's economy, etc.; oral presentation

(1) If the Secretary determines, on his own initiative or in response to any showing made pursuant to paragraph (2) (with respect to a proposed rule, regulation, or order described in subsection (a) of this section) that no substantial issue of fact or law exists and that such rule, regulation, or order is unlikely to have a substantial impact on the Nation's economy or large numbers of individuals or businesses, such proposed rule, regulation, or order may be promulgated in accordance with section 553 of title 5. If the Secretary determines that a substantial issue of fact or law exists or that such rule, regulation, or order is likely to have a substantial impact on the Nation's economy or large numbers of individuals or businesses, an opportunity for oral presentation of views, data, and arguments shall be provided.

(2) Any person, who would be adversely affected by the implementation of any proposed rule, regulation, or order who desires an opportunity for oral presentation of views, data, and arguments, may submit material supporting the existence of such substantial issues or such impact.

(3) A transcript shall be kept of any oral presentation with respect to a rule, regulation, or order described in subsection (a) of this section.

(c) Waiver of requirements

The requirements of subsection (b) of this section may be waived where strict compliance is found by the Secretary to be likely to cause serious harm or injury to the public health, safe-

ty, or welfare, and such finding is set out in detail in such rule, regulation, or order. In the event the requirements of this section are waived, the requirements shall be satisfied within a reasonable period of time subsequent to the promulgation of such rule, regulation, or order.

(d) Effects confined to single unit of local government, geographic area within State, or State; hearing or oral presentation

(1) With respect to any rule, regulation, or order described in subsection (a) of this section, the effects of which, except for indirect effects of an inconsequential nature, are confined to—

- (A) a single unit of local government or the residents thereof;
- (B) a single geographic area within a State or the residents thereof; or
- (C) a single State or the residents thereof;

the Secretary shall, in any case where appropriate, afford an opportunity for a hearing or the oral presentation of views, and provide procedures for the holding of such hearing or oral presentation within the boundaries of the unit of local government, geographic area, or State described in paragraphs (A) through (C) of this paragraph as the case may be.

(2) For the purposes of this subsection—

- (A) the term "unit of local government" means a county, municipality, town, township, village, or other unit of general government below the State level; and
- (B) the term "geographic area within a State" means a special purpose district or other region recognized for governmental purposes within such State which is not a unit of local government.

(3) Nothing in this subsection shall be construed as requiring a hearing or an oral presentation of views where none is required by this section or other provision of law.

(e) Prescription of procedures for State and local government agencies

Where authorized by any law vested, transferred, or delegated pursuant to this chapter, the Secretary may, by rule, prescribe procedures for State or local government agencies authorized by the Secretary to carry out such functions as may be permitted under applicable law. Such procedures shall apply to such agencies in lieu of this section, and shall require that prior to taking any action, such agencies shall take steps reasonably calculated to provide notice to persons who may be affected by the action, and shall afford an opportunity for presentation of views (including oral presentation of views where practicable) within a reasonable time before taking the action.

(Pub. L. 95-91, title V, § 501, Aug. 4, 1977, 91 Stat. 587; Pub. L. 105-28, § 2(a), July 18, 1997, 111 Stat. 245.)

AMENDMENTS

1997—Subsec. (b), Pub. L. 105-28, § 2(a)(1), (2), redesignated subsec. (c) as (b) and struck out former subsec. (b) which read as follows:

“(1) In addition to the requirements of subsection (a) of this section, notice of any proposed rule, regulation, or order described in subsection (a) of this section shall be given by publication of such proposed rule, regula-

tion, or order in the Federal Register. Such publication shall be accompanied by a statement of the research, analysis, and other available information in support of, the need for, and the probable effect of, any such proposed rule, regulation, or order. Other effective means of publicity shall be utilized as may be reasonably calculated to notify concerned or affected persons of the nature and probable effect of any such proposed rule, regulation, or order. In each case, a minimum of thirty days following such publication shall be provided for an opportunity to comment prior to promulgation of any such rule, regulation, or order.

“(2) Public notice of all rules, regulations, or orders described in subsection (a) of this section which are promulgated by officers of a State or local government agency pursuant to a delegation under this chapter shall be provided by publication of such proposed rules, regulations, or orders in at least two newspapers of statewide circulation. If such publication is not practicable, notice of any such rule, regulation, or order shall be given by such other means as the officer promulgating such rule, regulation, or order determines will reasonably assure wide public notice.

“(3) For the purposes of this subchapter, the exception from the requirements of section 553 of title 5 provided by subsection (a)(2) of such section with respect to public property, loans, grants, or contracts shall not be available.”

Subsec. (c). Pub. L. 105-28, §2(a)(2), (3), redesignated subsec. (e) as (c) and substituted “subsection (b)” for “subsections (b), (c), and (d)”. Former subsec. (c) redesignated (b).

Subsec. (d). Pub. L. 105-28, §2(a)(1), (2), redesignated subsec. (f) as (d) and struck out former subsec. (d) which read as follows: “Following the notice and comment period, including any oral presentation required by this subsection, the Secretary may promulgate a rule if the rule is accompanied by an explanation responding to the major comments, criticisms, and alternatives offered during the comment period.”

Subsecs. (e) to (g). Pub. L. 105-28, §2(a)(2), redesignated subsecs. (e) to (g) as (c) to (e), respectively.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6239, 6250d, 7193, 7194, 8513, 9204 of this title.

§ 7192. Judicial review

(a) Agency action

Judicial review of agency action taken under any law the functions of which are vested by law in, or transferred or delegated to the Secretary, the Commission or any officer, employee, or component of the Department shall, notwithstanding such vesting, transfer, or delegation, be made in the manner specified in or for such law.

(b) Review by district court of United States; removal

Notwithstanding the amount in controversy, the district courts of the United States shall have exclusive original jurisdiction of all other cases or controversies arising exclusively under this chapter, or under rules, regulations, or orders issued exclusively thereunder, other than any actions taken to implement or enforce any rule, regulation, or order by any officer of a State or local government agency under this chapter, except that nothing in this section affects the power of any court of competent jurisdiction to consider, hear, and determine in any proceeding before it any issue raised by way of defense (other than a defense based on the unconstitutionality of this chapter or the validity of action taken by any agency under this chap-

ter). If in any such proceeding an issue by way of defense is raised based on the unconstitutionality of this chapter or the validity of agency action under this chapter, the case shall be subject to removal by either party to a district court of the United States in accordance with the applicable provisions of chapter 89 of title 28. Cases or controversies arising under any rule, regulation, or order of any officer of a State or local government agency may be heard in either (A) any appropriate State court, or (B) without regard to the amount in controversy, the district courts of the United States.

(c) Litigation supervision by Attorney General

Subject to the provisions of section 7171(i) of this title and notwithstanding any other law, the litigation of the Department shall be subject to the supervision of the Attorney General pursuant to chapter 31 of title 28. The Attorney General may authorize any attorney of the Department to conduct any civil litigation of the Department in any Federal court except the Supreme Court.

(Pub. L. 95-91, title V, §502, Aug. 4, 1977, 91 Stat. 589.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6303, 8412, 8433, 8434 of this title.

§ 7193. Remedial orders

(a) Violations of rules, regulations, or orders promulgated pursuant to Emergency Petroleum Allocation Act of 1973

If upon investigation the Secretary or his authorized representative believes that a person has violated any regulation, rule, or order described in section 7191(a) of this title promulgated pursuant to the Emergency Petroleum Allocation Act of 1973¹ [15 U.S.C. 751 et seq.], he may issue a remedial order to the person. Each remedial order shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provision of such rule, regulation, or order alleged to have been violated. For purposes of this section “person” includes any individual, association, company, corporation, partnership, or other entity however organized.

(b) Notice of intent to contest; final order not subject to review

If within thirty days after the receipt of the remedial order issued by the Secretary, the person fails to notify the Secretary that he intends to contest the remedial order, the remedial order shall become effective and shall be deemed a final order of the Secretary and not subject to review by any court or agency.

(c) Notice of contestation to Commission; stay; hearing; cross examination; final order; enforcement and review

If within thirty days after the receipt of the remedial order issued by the Secretary, the person notifies the Secretary that he intends to contest a remedial order issued under subsection (a) of this section, the Secretary shall imme-

¹ See References in Text note below.

diately advise the Commission of such notification. Upon such notice, the Commission shall stay the effect of the remedial order, unless the Commission finds the public interest requires immediate compliance with such remedial order. The Commission shall, upon request, afford an opportunity for a hearing, including, at a minimum, the submission of briefs, oral or documentary evidence, and oral arguments. To the extent that the Commission in its discretion determines that such is required for a full and true disclosure of the facts, the Commission shall afford the right of cross examination. The Commission shall thereafter issue an order, based on findings of fact, affirming, modifying, or vacating the Secretary's remedial order, or directing other appropriate relief, and such order shall, for the purpose of judicial review, constitute a final agency action, except that enforcement and other judicial review of such action shall be the responsibility of the Secretary.

(d) Time limits

The Secretary may set reasonable time limits for the Commission to complete action on a proceeding referred to it pursuant to this section.

(e) Effect on procedural action taken by Secretary prior to issuance of initial remedial order

Nothing in preceding provisions of this section shall be construed to affect any procedural action taken by the Secretary prior to or incident to initial issuance of a remedial order which is the subject of the hearing provided in preceding provisions of this section, but such procedures shall be reviewable in the hearing.

(f) Savings provision

The provisions of preceding provisions of this section shall be applicable only with respect to proceedings initiated by a notice of probable violation issued after October 1, 1977.

(g) Retroactive application; marketing of petroleum products

With respect to any person whose sole petroleum industry operation relates to the marketing of petroleum products, the Secretary or any person acting on his behalf may not exercise discretion to maintain a civil action (other than an action for injunctive relief) or issue a remedial order against such person for any violation of any rule or regulation if—

(1) such civil action or order is based on a retroactive application of such rule or regulation or is based upon a retroactive interpretation of such rule or regulation; and

(2) such person relied in good faith upon rules, regulations, or ruling in effect on the date of the violation interpreting such rules or regulations.

(Pub. L. 95-91, title V, § 503, Aug. 4, 1977, 91 Stat. 590; Pub. L. 95-620, title VIII, § 805, Nov. 9, 1978, 92 Stat. 3348.)

REFERENCES IN TEXT

The Emergency Petroleum Allocation Act of 1973, referred to in subsec. (a), is Pub. L. 93-159, Nov. 27, 1973, 87 Stat. 628, as amended, which was classified generally to chapter 16A (§ 751 et seq.) of Title 15, Commerce and Trade, and was omitted from the Code pursuant to sec-

tion 760g of Title 15, which provided for the expiration of the President's authority under that chapter on Sept. 30, 1981.

AMENDMENTS

1978—Subsecs. (e), (f). Pub. L. 95-620, § 805(b), inserted “preceding provisions of” before “this section”.

Subsec. (g). Pub. L. 95-620, § 805(a), added subsec. (g).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-620 effective 180 days after Nov. 9, 1978, see section 901 of Pub. L. 95-620, set out as an Effective Date note under section 8301 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 15 section 4504.

§ 7194. Requests for adjustments

(a) The Secretary or any officer designated by him shall provide for the making of such adjustments to any rule, regulation or order described in section 7191(a) of this title issued under the Federal Energy Administration Act [15 U.S.C. 761 et seq.], the Emergency Petroleum Allocation Act of 1973¹ [15 U.S.C. 751 et seq.], the Energy Supply and Environmental Coordination Act of 1974 [15 U.S.C. 791 et seq.], or the Energy Policy and Conservation Act [42 U.S.C. 6201 et seq.], consistent with the other purposes of the relevant Act, as may be necessary to prevent special hardship, inequity, or unfair distribution of burdens, and shall by rule, establish procedures which are available to any person for the purpose of seeking an interpretation, modification, or rescission² of, exception to, or exemption from, such rule, regulation or order. The Secretary or any such officer shall additionally insure that each decision on any application or petition requesting an adjustment shall specify the standards of hardship, inequity, or unfair distribution of burden by which any disposition was made, and the specific application of such standards to the facts contained in any such application or petition.

(b)(1) If any person is aggrieved or adversely affected by a denial of a request for adjustment under subsection (a) of this section such person may request a review of such denial by the Commission and may obtain judicial review in accordance with this subchapter when such a denial becomes final.

(2) The Commission shall, by rule, establish appropriate procedures, including a hearing when requested, for review of a denial. Action by the Commission under this section shall be considered final agency action within the meaning of section 704 of title 5 and shall not be subject to further review by the Secretary or any officer or employee of the Department. Litigation involving judicial review of such action shall be the responsibility of the Secretary.

(Pub. L. 95-91, title V, § 504, Aug. 4, 1977, 91 Stat. 590.)

REFERENCES IN TEXT

The Federal Energy Administration Act, referred to in subsec. (a), is Pub. L. 93-275, May 7, 1974, 88 Stat. 96, as amended, which is classified generally to chapter 16B (§ 761 et seq.) of Title 15, Commerce and Trade. For

¹ See References in Text note below.

² So in original. Probably should be “recision”.

complete classification of this Act to the Code, see Short Title note set out under section 761 of Title 15 and Tables.

The Emergency Petroleum Allocation Act of 1973, referred to in subsec. (a), is Pub. L. 93-159, Nov. 27, 1973, 87 Stat. 628, as amended, which was classified generally to chapter 16A (§751 et seq.) of Title 15, and was omitted from the Code pursuant to section 760g of Title 15, which provided for the expiration of the President's authority under that chapter on Sept. 30, 1981.

The Energy Supply and Environmental Coordination Act of 1974, referred to in subsec. (a), is Pub. L. 93-319, June 22, 1974, 88 Stat. 246, as amended, which is classified principally to chapter 16C (§791 et seq.) of Title 15. For complete classification of this Act to the Code, see Short Title note set out under section 791 of Title 15 and Tables.

The Energy Policy and Conservation Act, referred to in subsec. (a), is Pub. L. 94-163, Dec. 22, 1975, 89 Stat. 871, as amended, which is classified principally to chapter 77 (§6201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 15 section 4504.

§ 7195. Report to Congress; contents

Within one year after October 1, 1977, the Secretary shall submit a report to Congress concerning the actions taken to implement section 7191 of this title. The report shall include a discussion of the adequacy of such section from the standpoint of the Department and the public, including a summary of any comments obtained by the Secretary from the public about such section and implementing regulations, and such recommendations as the Secretary deems appropriate concerning the procedures required by such section.

(Pub. L. 95-91, title V, § 505, Aug. 4, 1977, 91 Stat. 591.)

SUBCHAPTER VI—ADMINISTRATIVE PROVISIONS

PART A—CONFLICT OF INTEREST PROVISIONS

§§ 7211, 7212. Repealed. Pub. L. 104-106, div. D, title XLIII, § 4304(b)(6), Feb. 10, 1996, 110 Stat. 664

Section 7211, Pub. L. 95-91, title VI, § 601, Aug. 4, 1977, 91 Stat. 591; Pub. L. 103-160, div. C, title XXXI, § 3161(c)(1)(A), (B), Nov. 30, 1993, 107 Stat. 1958, related to definitions of supervisory employees and energy concern.

Section 7212, Pub. L. 95-91, title VI, § 602, Aug. 4, 1977, 91 Stat. 592; 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3784; Pub. L. 103-160, div. C, title XXXI, § 3161(b), (c)(1)(C), Nov. 30, 1993, 107 Stat. 1958, related to divestiture of energy holdings by supervisory employees.

EFFECTIVE DATE OF REPEAL

For effective date and applicability of repeal, see section 4401 of Pub. L. 104-106, set out as an Effective Date of 1996 Amendment note under section 251 of Title 41, Public Contracts.

§§ 7213 to 7217. Repealed. Pub. L. 103-160, div. C, title XXXI, § 3161(a), Nov. 30, 1993, 107 Stat. 1957

Section 7213, Pub. L. 95-91, title VI, § 603, Aug. 4, 1977, 91 Stat. 593, related to disclosure of energy assets.

Section 7214, Pub. L. 95-91, title VI, § 604, Aug. 4, 1977, 91 Stat. 594, required, with exceptions for certain information, that supervisory employees of Department file report on prior employment.

Section 7215, Pub. L. 95-91, title VI, § 605, Aug. 4, 1977, 91 Stat. 594, related to postemployment prohibitions and reporting requirements.

Section 7216, Pub. L. 95-91, title VI, § 606, Aug. 4, 1977, 91 Stat. 595, prohibited former supervisory employees from participating in certain Department proceedings.

Section 7217, Pub. L. 95-91, title VI, § 607, Aug. 4, 1977, 91 Stat. 596; 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3784, related to procedures applicable to reports under former sections 7213, 7214, and 7215 of this title.

§ 7218. Repealed. Pub. L. 104-106, div. D, title XLIII, § 4304(b)(6), Feb. 10, 1996, 110 Stat. 664

Section, Pub. L. 95-91, title VI, § 603, formerly § 608, Aug. 4, 1977, 91 Stat. 596; renumbered § 603 and amended, Pub. L. 103-160, div. C, title XXXI, § 3161(c)(1)(D), (E), Nov. 30, 1993, 107 Stat. 1958, related to sanctions.

A prior section 603 of Pub. L. 95-91 was classified to section 7213 of this title prior to repeal by Pub. L. 103-160.

EFFECTIVE DATE OF REPEAL

For effective date and applicability of repeal, see section 4401 of Pub. L. 104-106, set out as an Effective Date of 1996 Amendment note under section 251 of Title 41, Public Contracts.

PART B—PERSONNEL PROVISIONS

§ 7231. Officers and employees

(a) Authority of Secretary to appoint and fix compensation

In the performance of his functions the Secretary is authorized to appoint and fix the compensation of such officers and employees, including attorneys, as may be necessary to carry out such functions. Except as otherwise provided in this section, such officers and employees shall be appointed in accordance with the civil service laws and their compensation fixed in accordance with title 5.

(b) Appointment of scientific, engineering, etc., personnel without regard to civil service laws; compensation; termination of authority

(1) Subject to the limitations provided in paragraph (2) and to the extent the Secretary deems such action necessary to the discharge of his functions, he may appoint not more than three hundred eleven of the scientific, engineering, professional, and administrative personnel of the department without regard to the civil service laws, and may fix the compensation of such personnel not in excess of the maximum rate payable for GS-18 of the General Schedule under section 5332 of title 5.

(2) The Secretary's authority under this subsection to appoint an individual to such a position without regard to the civil service laws shall cease—

(A) when a person appointed, within four years after October 1, 1977, to fill such position under paragraph (1) leaves such position, or

(B) on the day which is four years after such date,

whichever is later.

(c) Placement of GS-16, GS-17, and GS-18 positions without regard to section 3324 of title 5; termination of authority

(1) Subject to the provisions of chapter 51 of title 5 but notwithstanding the last two sentences of section 5108(a)¹ of such title, the Secretary may place at GS-16, GS-17, and GS-18, not to exceed one hundred seventy-eight positions of the positions subject to the limitation of the first sentence of section 5108(a)¹ of such title.

(2) Appointments under this subsection may be made without regard to the provisions of sections 3324 of title 5, relating to the approval by the Director of the Office of Personnel Management of appointments under GS-16, GS-17, and GS-18 if the individual placed in such position is an individual who is transferred in connection with a transfer of functions under this chapter and who, immediately before October 1, 1977, held a position and duties comparable to those of such position.

(3) The Secretary's authority under this subsection with respect to any position shall cease when the person first appointed to fill such position leaves such position.

(d) Appointment of additional scientific, engineering, etc., personnel without regard to civil service laws; compensation

In addition to the number of positions which may be placed at GS-16, GS-17, and GS-18 under section 5108 of title 5, under existing law, or under this chapter, and to the extent the Secretary deems such action necessary to the discharge of his functions, he may appoint not more than two hundred of the scientific, engineering, professional, and administrative personnel without regard to the civil service laws and may fix the compensation of such personnel not in excess of the maximum rate payable for GS-18 of the General Schedule under section 5332 of title 5.

(e) Determination of maximum aggregate number of positions

For the purposes of determining the maximum aggregate number of positions which may be placed at GS-16, GS-17, or GS-18 under section 5108(a) of title 5, 63 percent of the positions established under subsections (b) and (c) of this section shall be deemed GS-16 positions, 25 percent of such positions shall be deemed GS-17 positions, and 12 percent of such positions shall be deemed GS-18.

(f) Intelligence and intelligence-related positions exempt from competitive service

All positions in the Department which the Secretary determines are devoted to intelligence and intelligence-related activities of the United States Government are excepted from the competitive service, and the individuals who occupy such positions as of August 14, 1991, shall, while employed in such positions, be exempt from the competitive service.

(Pub. L. 95-91, title VI, § 621, Aug. 4, 1977, 91 Stat. 596; 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3784; Pub. L. 102-88, title IV, § 403, Aug. 14, 1991, 105 Stat. 434.)

¹ See References in Text note below.

REFERENCES IN TEXT

The civil service laws, referred to in subsecs. (a), (b)(1), (2), and (d), are set out in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

Section 5108(a) of title 5, referred to in subsec. (c)(1), was amended generally by Pub. L. 101-509, title V, § 529 [title I, § 102(b)(2)], Nov. 5, 1990, 104 Stat. 1427, 1443, and, as so amended, contains only one sentence.

This chapter, referred to in subsecs. (c)(2) and (d), was in the original "this Act", meaning Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 565, as amended, known as the Department of Energy Organization Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

CODIFICATION

August 14, 1991, referred to in subsec. (f), was in the original "the date of enactment of this Act", which was translated as meaning the date of enactment of Pub. L. 102-88, which enacted subsec. (f) of this section, to reflect the probable intent of Congress.

AMENDMENTS

1991—Subsec. (f). Pub. L. 102-88 added subsec. (f).

TRANSFER OF FUNCTIONS

"Director of the Office of Personnel Management" substituted for "Civil Service Commission" in subsec. (c)(2), pursuant to Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred all functions vested by statute in United States Civil Service Commission to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

AUTHORITY FOR APPOINTMENT OF CERTAIN SCIENTIFIC, ENGINEERING, AND TECHNICAL PERSONNEL

Pub. L. 103-337, div. C, title XXXI, § 3161, Oct. 5, 1994, 108 Stat. 3095, as amended by Pub. L. 105-85, div. C, title XXXI, § 3139, Nov. 18, 1997, 111 Stat. 2040; Pub. L. 105-261, div. C, title XXXI, §§ 3152, 3155, Oct. 17, 1998, 112 Stat. 2253, 2257; Pub. L. 106-398, § 1 [div. C, title XXXI, § 3191], Oct. 30, 2000, 114 Stat. 1654, 1654A-480; Pub. L. 107-314, div. C, title XXXI, § 3174, Dec. 2, 2002, 116 Stat. 2745, which was formerly set out as a note under this section, was renumbered section 4601 of Pub. L. 107-314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108-136, div. C, title XXXI, § 3141(i)(2), Nov. 24, 2003, 117 Stat. 1776, and is classified to section 2701 of Title 50, War and National Defense.

§ 7232. Senior positions

In addition to those positions created by subchapter II of this chapter, there shall be within the Department fourteen additional officers in positions authorized by section 5316 of title 5 who shall be appointed by the Secretary and who shall perform such functions as the Secretary shall prescribe from time to time.

(Pub. L. 95-91, title VI, § 622, Aug. 4, 1977, 91 Stat. 597.)

§ 7233. Experts and consultants

The Secretary may obtain services as authorized by section 3109 of title 5, at rates not to exceed the daily rate prescribed for grade GS-18 of the General Schedule under section 5332 of title 5 for persons in Government service employed intermittently.

(Pub. L. 95-91, title VI, § 623, Aug. 4, 1977, 91 Stat. 598.)

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

§ 7234. Advisory committees

The Secretary is authorized to establish in accordance with the Federal Advisory Committee Act such advisory committees as he may deem appropriate to assist in the performance of his functions. Members of such advisory committees, other than full-time employees of the Federal Government, while attending meetings of such committees or while otherwise serving at the request of the Secretary while serving away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 for individuals in the Government serving without pay.

(Pub. L. 95-91, title VI, § 624, Aug. 4, 1977, 91 Stat. 598; Pub. L. 105-28, § 2(b)(1), July 18, 1997, 111 Stat. 245.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in text, is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

1997—Pub. L. 105-28 struck out subsec. (a) designation and struck out subsec. (b) which read as follows: “Section 776 of title 15 shall be applicable to advisory committees chartered by the Secretary, or transferred to the Secretary or the Department under this chapter, except that where an advisory committee advises the Secretary on matters pertaining to research and development, the Secretary may determine that such meeting shall be closed because it involves research and development matters and comes within the exemption of section 552b(c)(4) of title 5.”

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law. See section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 776, set out in the Appen-

dix to Title 5, Government Organization and Employees.

DEPARTMENT OF ENERGY PROJECT REVIEW GROUPS NOT SUBJECT TO FEDERAL ADVISORY COMMITTEE ACT BY REASON OF INCLUSION OF EMPLOYEES OF DEPARTMENT OF ENERGY MANAGEMENT AND OPERATING CONTRACTORS

Pub. L. 108-136, div. C, title XXXI, § 3112, Nov. 24, 2003, 117 Stat. 1743, provided that: “An officer or employee of a management and operating contractor of the Department of Energy, when serving as a member of a group reviewing or advising on matters related to any one or more management and operating contracts of the Department, shall be treated as an officer or employee of the Department for purposes of determining whether the group is an advisory committee within the meaning of section 3 of the Federal Advisory Committee Act (5 U.S.C. App.)”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5588 of this title.

§ 7235. Armed services personnel

(a) The Secretary is authorized to provide for participation of Armed Forces personnel in carrying out functions authorized to be performed, on August 4, 1977, in the Energy Research and Development Administration and under chapter 641 of title 10. Members of the Armed Forces may be detailed for service in the Department by the Secretary concerned (as such term is defined in section 101 of such title) pursuant to cooperative agreements with the Secretary.

(b) The detail of any personnel to the Department under this section shall in no way affect status, office, rank, or grade which officers or enlisted men may occupy or hold or any emolument, perquisite, right, privilege, or benefit incident to, or arising out of, such status, office, rank, or grade. A member so detailed shall not be subject to direction or control by his armed force, or any officer thereof, directly or indirectly, with respect to the responsibilities exercised in the position to which detailed.

(Pub. L. 95-91, title VI, § 625, Aug. 4, 1977, 91 Stat. 598; Pub. L. 95-509, title II, § 210, Oct. 24, 1978, 92 Stat. 1779.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-509 struck out requirement that a detailed member be charged to the limitations applicable to the Department and prohibition of such member from being charged to any statutory or other limitation or strengths applicable to the Armed Forces.

§ 7236. Transferred

CODIFICATION

Section, Pub. L. 101-189, div. C, title XXXI, § 3142, Nov. 29, 1989, 103 Stat. 1680, which related to executive management training in the Department of Energy, was renumbered section 4621 of Pub. L. 107-314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108-136, div. C, title XXXI, § 3141(i)(8)(A)-(C), Nov. 24, 2003, 117 Stat. 1778, and is classified to section 2721 of Title 50, War and National Defense.

§ 7237. Priority placement, job placement, retraining, and counseling programs for United States Department of Energy employees affected by reduction in force

(a) Definitions

(1) For the purposes of this section, the term “agency” means the United States Department of Energy.

(2) For the purposes of this section, the term “eligible employee” means any employee of the agency who—

(A) is scheduled to be separated from service due to a reduction in force under—

(i) regulations prescribed under section 3502 of title 5; or

(ii) procedures established under section 3595 of title 5; or

(B) is separated from service due to such a reduction in force, but does not include—

(i) an employee separated from service for cause on charges of misconduct or delinquency; or

(ii) an employee who, at the time of separation, meets the age and service requirements for an immediate annuity under subchapter III of chapter 83 or chapter 84 of title 5.

(b) Priority placement and retraining program

Not later than 30 days after September 30, 1996, the United States Department of Energy shall establish an agency-wide priority placement and retraining program for eligible employees.

(c) Filling vacancy from outside agency

The priority placement program established under subsection (b) of this section shall include provisions under which a vacant position shall not be filled by the appointment or transfer of any individual from outside of the agency if—

(1) there is then available any eligible employee who applies for the position within 30 days of the agency issuing a job announcement and is qualified (or can be trained or retrained to become qualified within 90 days of assuming the position) for the position; and

(2) the position is within the same commuting area as the eligible employee’s last-held position or residence.

(d) Job placement and counseling services

The head of the agency may establish a program to provide job placement and counseling services to eligible employees. A program established under subsection (d) of this section may include, but is not limited to, such services as—

(1) career and personal counseling;

(2) training and job search skills; and

(3) job placement assistance, including assistance provided through cooperative arrangements with State and local employment services offices.

(Pub. L. 104–206, title III, § 301, Sept. 30, 1996, 110 Stat. 2999.)

CODIFICATION

Section was enacted as part of the Energy and Water Development Appropriations Act, 1997, and not as part of the Department of Energy Organization Act which comprises this chapter.

§ 7238. Temporary appointments for scientific and technical experts in Department of Energy research and development programs

(a) The Secretary, utilizing authority under other applicable law and the authority of this section, may appoint for a limited term, or on a temporary basis, scientists, engineers, and other technical and professional personnel on leave of absence from academic, industrial, or research institutions to work for the Department.

(b) The Department may pay, to the extent authorized for certain other Federal employees by section 5723 of title 5, travel expenses for any individual appointed for a limited term or on a temporary basis and transportation expenses of his or her immediate family and his or her household goods and personal effects from that individual’s residence at the time of selection or assignment to his or her duty station. The Department may pay such travel expenses to the same extent for such an individual’s return to the former place of residence from his or her duty station, upon separation from the Federal service following an agreed period of service. The Department may also pay a per diem allowance at a rate not to exceed the daily amounts prescribed under section 5702 of title 5 to such an individual, in lieu of transportation expenses of the immediate family and household goods and personal effects, for the period of his or her employment with the Department. Notwithstanding any other provision of law, the employer’s contribution to any retirement, life insurance, or health benefit plan for an individual appointed for a term of one year or less, which could be extended for no more than one additional year, may be made or reimbursed from appropriations available to the Department.

(Pub. L. 104–271, title III, § 301, Oct. 9, 1996, 110 Stat. 3307.)

CODIFICATION

Section was enacted as part of the Hydrogen Future Act of 1996, and not as part of the Department of Energy Organization Act which comprises this chapter.

DEFINITIONS

Section 2 of Pub. L. 104–271 provided that: “For purposes of titles II and III [enacting this section and provisions set out as a note under section 12403 of this title]—

“(1) the term ‘Department’ means the Department of Energy; and

“(2) the term ‘Secretary’ means the Secretary of Energy.”

§ 7239. Transferred

CODIFICATION

Section, Pub. L. 106–65, div. C, title XXXI, § 3164, Oct. 5, 1999, 113 Stat. 946, which related to the whistleblower protection program, was renumbered section 4602 of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, § 3141(i)(3)(A)–(C), Nov. 24, 2003, 117 Stat. 1776, and is classified to section 2702 of Title 50, War and National Defense.

PART C—GENERAL ADMINISTRATIVE PROVISIONS

§ 7251. General authority

To the extent necessary or appropriate to perform any function transferred by this chapter,

the Secretary or any officer or employee of the Department may exercise, in carrying out the function so transferred, any authority or part thereof available by law, including appropriation Acts, to the official or agency from which such function was transferred.

(Pub. L. 95-91, title VI, § 641, Aug. 4, 1977, 91 Stat. 598.)

DEPARTMENT OF ENERGY SECURITY MANAGEMENT
BOARD

Pub. L. 105-85, div. C, title XXXI, § 3161, Nov. 18, 1997, 111 Stat. 2048, required the Secretary of Energy to establish the Department of Energy Security Management Board, and provided for its duties which related to the security functions of the Department, and its membership, appointments, personnel, compensation, expenses, and termination on Oct. 31, 2000, prior to repeal by Pub. L. 106-65, div. C, title XXXI, § 3142(h)(1), Oct. 5, 1999, 113 Stat. 933.

§ 7252. Delegation

Except as otherwise expressly prohibited by law, and except as otherwise provided in this chapter, the Secretary may delegate any of his functions to such officers and employees of the Department as he may designate, and may authorize such successive redelegations of such functions within the Department as he may deem to be necessary or appropriate.

(Pub. L. 95-91, title VI, § 642, Aug. 4, 1977, 91 Stat. 599.)

REORGANIZATION OF FIELD ACTIVITIES AND
MANAGEMENT OF NATIONAL SECURITY FUNCTIONS

Pub. L. 104-206, title III, § 302, Sept. 30, 1996, 110 Stat. 2999, provided that: "None of the funds appropriated by this or any other Act may be used to implement section 3140 of H.R. 3230 as reported by the Committee of Conference on July 30, 1996 [Pub. L. 104-201, set out below]. The Secretary of Energy shall develop a plan to reorganize the field activities and management of the national security functions of the Department of Energy and shall submit such plan to the Congress not later than 120 days after the date of enactment of this Act [Sept. 30, 1996]. The plan will specifically identify all significant functions performed by the Department's national security operations and area offices and make recommendations as to where those functions should be performed."

Pub. L. 104-201, div. C, title XXXI, § 3140, Sept. 23, 1996, 110 Stat. 2833, which was formerly set out as a note under this section, was renumbered section 4102 of Pub. L. 107-314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108-136, div. C, title XXXI, § 3141(d)(3)(A)-(C), Nov. 24, 2003, 117 Stat. 1757, and is classified to section 2512 of Title 50, War and National Defense.

§ 7253. Reorganization

(a) Subject to subsection (b) of this section, the Secretary is authorized to establish, alter, consolidate or discontinue such organizational units or components within the Department as he may deem to be necessary or appropriate. Such authority shall not extend to the abolition of organizational units or components established by this chapter, or to the transfer of functions vested by this chapter in any organizational unit or component.

(b)¹ The authority of the Secretary to establish, abolish, alter, consolidate, or discontinue

any organizational unit or component of the National Nuclear Security Administration is governed by the provisions of section 2409 of title 50.

(b)¹ The authority of the Secretary under subsection (a) of this section does not apply to the National Nuclear Security Administration. The corresponding authority that applies to the Administration is set forth in section 2402(e)² of title 50.

(Pub. L. 95-91, title VI, § 643, Aug. 4, 1977, 91 Stat. 599; Pub. L. 106-377, § 1(a)(2) [title III, § 314(b)], Oct. 27, 2000, 114 Stat. 1441, 1441A-81; Pub. L. 106-398, § 1 [div. C, title XXXI, § 3159(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A-470.)

REFERENCES IN TEXT

Section 2402(e) of title 50, referred to in subsec. (b) set out second, probably means the subsec. (e) of section 2402 which relates to reorganization authority and was added by Pub. L. 106-398, § 1 [div. C, title XXXI, § 3159(a)] Oct. 30, 2000, 114 Stat. 1654, 1654A-469 and redesignated section 2402(f) of title 50 by Pub. L. 107-107, div. A, title X, § 1048(i)(12), Dec. 28, 2001, 115 Stat. 1230.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106-398, § 1 [div. C, title XXXI, § 3159(b)(1)], which directed amendment of section by substituting "(a) Except as provided in subsection (b) of this section, the Secretary" for "The Secretary", could not be executed because the words "The Secretary" did not appear after execution of the amendment by Pub. L. 106-377, § 1(a)(2) [title III, § 314(b)(1)]. See below.

Pub. L. 106-377, § 1(a)(2) [title III, § 314(b)(1)], designated existing provisions as subsec. (a) and substituted "Subject to subsection (b) of this section, the Secretary" for "The Secretary".

Subsec. (b). Pub. L. 106-398, § 1 [div. C, title XXXI, § 3159(b)(2)], added subsec. (b) relating to nonapplicability of authority of Secretary under subsec. (a) of this section to National Nuclear Security Administration.

Pub. L. 106-377, § 1(a)(2) [title III, § 314(b)(2)], added subsec. (b) relating to authority of Secretary as to National Nuclear Security Administration.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 50 section 2409.

§ 7254. Rules and regulations

The Secretary is authorized to prescribe such procedural and administrative rules and regulations as he may deem necessary or appropriate to administer and manage the functions now or hereafter vested in him.

(Pub. L. 95-91, title VI, § 644, Aug. 4, 1977, 91 Stat. 599.)

§ 7255. Subpoena

For the purpose of carrying out the provisions of this chapter, the Secretary, or his duly authorized agent or agents, shall have the same powers and authorities as the Federal Trade Commission under section 49 of title 15 with respect to all functions vested in, or transferred or delegated to, the Secretary or such agents by this chapter. For purposes of carrying out its responsibilities under the Natural Gas Policy Act of 1978 [15 U.S.C. 3301 et seq.], the Commission shall have the same powers and authority as the Secretary has under this section.

¹ So in original. Two subssecs. (b) have been enacted.

² See References in Text note below.

(Pub. L. 95-91, title VI, §645, Aug. 4, 1977, 91 Stat. 599; Pub. L. 95-621, title V, §508(a), Nov. 9, 1978, 92 Stat. 3408.)

REFERENCES IN TEXT

The Natural Gas Policy Act of 1978, referred to in text, is Pub. L. 95-621, Nov. 9, 1978, 92 Stat. 3350, which is classified generally to chapter 60 (§3301 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 3301 of Title 15 and Tables.

AMENDMENTS

1978—Pub. L. 95-621 inserted provision giving the Commission the same powers and authority as the Secretary under this section for purposes of carrying out its responsibilities under the Natural Gas Policy Act of 1978.

§ 7256. Contracts, leases, etc., with public agencies and private organizations and persons

(a) General authority

The Secretary is authorized to enter into and perform such contracts, leases, cooperative agreements, or other similar transactions with public agencies and private organizations and persons, and to make such payments (in lump sum or installments, and by way of advance or reimbursement) as he may deem to be necessary or appropriate to carry out functions now or hereafter vested in the Secretary.

(b) Limitation on authority; appropriations

Notwithstanding any other provision of this subchapter, no authority to enter into contracts or to make payments under this subchapter shall be effective except to such extent or in such amounts as are provided in advance in appropriation Acts.

(c) Leasing of excess Department of Energy property

The Secretary may lease, upon terms and conditions the Secretary considers appropriate to promote national security or the public interest, acquired real property and related personal property that—

- (1) is located at a facility of the Department of Energy to be closed or reconfigured;
- (2) at the time the lease is entered into, is not needed by the Department of Energy; and
- (3) is under the control of the Department of Energy.

(d) Terms of lease

(1) A lease entered into under subsection (c) of this section may not be for a term of more than 10 years, except that the Secretary may enter into a lease that includes an option to renew for a term of more than 10 years if the Secretary determines that entering into such a lease will promote the national security or be in the public interest.

(2) A lease entered into under subsection (c) of this section may provide for the payment (in cash or in kind) by the lessee of consideration in an amount that is less than the fair market rental value of the leasehold interest. Services relating to the protection and maintenance of the leased property may constitute all or part of such consideration.

(e) Environmental concerns

(1) Before entering into a lease under subsection (c) of this section, the Secretary shall

consult with the Administrator of the Environmental Protection Agency (with respect to property located on a site on the National Priorities List) or the appropriate State official (with respect to property located on a site that is not listed on the National Priorities List) to determine whether the environmental conditions of the property are such that leasing the property, and the terms and conditions of the lease agreement, are consistent with safety and the protection of public health and the environment.

(2) Before entering into a lease under subsection (c) of this section, the Secretary shall obtain the concurrence of the Administrator of the Environmental Protection Agency or the appropriate State official, as the case may be, in the determination required under paragraph (1). The Secretary may enter into a lease under subsection (c) of this section without obtaining such concurrence if, within 60 days after the Secretary requests the concurrence, the Administrator or appropriate State official, as the case may be, fails to submit to the Secretary a notice of such individual's concurrence with, or rejection of, the determination.

(f) Retention and use of rentals; report

To the extent provided in advance in appropriations Acts, the Secretary may retain and use money rentals received by the Secretary directly from a lease entered into under subsection (c) of this section in any amount the Secretary considers necessary to cover the administrative expenses of the lease, the maintenance and repair of the leased property, or environmental restoration activities at the facility where the leased property is located. Amounts retained under this subsection shall be retained in a separate fund established in the Treasury for such purpose. The Secretary shall annually submit to the Congress a report on amounts retained and amounts used under this subsection.

(Pub. L. 95-91, title VI, §646, Aug. 4, 1977, 91 Stat. 599; Pub. L. 103-160, div. C, title XXXI, §3154, Nov. 30, 1993, 107 Stat. 1952.)

AMENDMENTS

1993—Subsecs. (c) to (f). Pub. L. 103-160 added subsecs. (c) to (f).

PILOT PROGRAM RELATING TO USE OF PROCEEDS OF DISPOSAL OR UTILIZATION OF CERTAIN DEPARTMENT OF ENERGY ASSETS

Pub. L. 105-85, div. C, title XXXI, §3138, Nov. 18, 1997, 111 Stat. 2039, which was formerly set out as a note under this section, was renumbered section 4833 of Pub. L. 107-314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108-136, div. C, title XXXI, §3141(k)(13)(A)-(C), Nov. 24, 2003, 117 Stat. 1786, and is classified to section 2813 of Title 50, War and National Defense.

CONTRACT GOAL FOR SMALL DISADVANTAGED BUSINESSES AND CERTAIN INSTITUTIONS OF HIGHER EDUCATION

Section 3159 of Pub. L. 103-160, as amended by Pub. L. 103-337, div. A, title X, §1070(b)(16), Oct. 5, 1994, 108 Stat. 2857, provided that:

“(a) GOAL.—Except as provided in subsection (c), a goal of 5 percent of the amount described in subsection (b) shall be the objective of the Department of Energy in carrying out national security programs of the Department in each of fiscal years 1994 through 2000 for

the total combined amount obligated for contracts and subcontracts entered into with—

“(1) small business concerns, including mass media and advertising firms, owned and controlled by socially and economically disadvantaged individuals (as such term is used in section 8(d) of the Small Business Act (15 U.S.C. 637(d)) and regulations issued under that section), the majority of the earnings of which directly accrue to such individuals;

“(2) historically Black colleges and universities, including any nonprofit research institution that was an integral part of such a college or university before November 14, 1986; and

“(3) minority institutions (as defined in section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1135d-5(3))), which, for the purposes of this section, shall include Hispanic-serving institutions (as defined in section 316(b)(1) of such Act (20 U.S.C. 1059c(b)(1))).

“(b) AMOUNT.—(1) Except as provided in paragraph (2), the requirements of subsection (a) for any fiscal year apply to the combined total of the funds obligated for contracts entered into by the Department of Energy pursuant to competitive procedures for such fiscal year for purposes of carrying out national security programs of the Department.

“(2) In computing the combined total of funds under paragraph (1) for a fiscal year, funds obligated for such fiscal year for contracts for naval reactor programs shall not be included.

“(c) APPLICABILITY.—Subsection (a) does not apply—

“(1) to the extent to which the Secretary of Energy determines that compelling national security considerations require otherwise; and

“(2) if the Secretary notifies the Congress of such a determination and the reasons for the determination.”

SMALL BUSINESS CONCERNS PARTICIPATION IN PROGRAMS FUNDED BY DEPARTMENT OF ENERGY ACT OF 1978—CIVILIAN APPLICATIONS; REPORT TO CONGRESSIONAL COMMITTEES

Pub. L. 95-238, title II, §204, Feb. 25, 1978, 92 Stat. 59, as amended by Pub. L. 96-470, title II, §203(f), Oct. 19, 1980, 94 Stat. 2243, provided that:

“(a) In carrying out the programs for which funds are authorized by this Act [see Tables for classification], the Secretary of Energy shall provide a realistic and adequate opportunity for small business concerns to participate in such programs to the optimum extent feasible consistent with the size and nature of the projects and activities involved.

“(b) The Secretary of Energy shall submit annually to the appropriate committees of the House of Representatives and the Senate a full report on the actions taken in carrying out subsection (a) during the preceding year, including the extent to which small business concerns are participating in the programs involved and in projects and activities of various types and sizes within each such program, and indicating the steps currently taken to assure such participation in the future. Such report shall also contain such information as may be required by section 308 of the Act of December 31, 1975 (42 U.S.C. 5878a; 89 Stat. 1074).”

[For termination, effective May 15, 2000, of reporting provisions in section 204(b) of Pub. L. 95-238, set out above, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 21st item on page 89 of House Document No. 103-7.]

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7141 of this title.

§§ 7256a, 7256b. Transferred

CODIFICATION

Section 7256a, Pub. L. 99-145, title XV, §1534, Nov. 8, 1985, 99 Stat. 774; Pub. L. 100-180, div. C, title III, §3131(a), Dec. 4, 1987, 101 Stat. 1238, which related to

costs not allowed under covered contracts, was renumbered section 4801 of Pub. L. 107-314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108-136, div. C, title XXXI, §3141(k)(2)(A)-(C), Nov. 24, 2003, 117 Stat. 1783, and is classified to section 2781 of Title 50, War and National Defense.

Section 7256b, Pub. L. 101-189, div. C, title XXXI, §3151, Nov. 29, 1989, 103 Stat. 1682, which related to the prohibition of bonuses to contractors operating defense nuclear facilities, was renumbered section 4802 of Pub. L. 107-314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108-136, div. C, title XXXI, §3141(k)(3)(A)-(C), Nov. 24, 2003, 117 Stat. 1783, and is classified to section 2782 of Title 50, War and National Defense.

§ 7257. Acquisition, construction, etc., of laboratories, research and testing sites, etc.

The Secretary is authorized to acquire (by purchase, lease, condemnation, or otherwise), construct, improve, repair, operate, and maintain laboratories, research and testing sites and facilities, quarters and related accommodations for employees and dependents of employees of the Department, personal property (including patents), or any interest therein, as the Secretary deems necessary; and to provide by contract or otherwise for eating facilities and other necessary facilities for the health and welfare of employees of the Department at its installations and purchase and maintain equipment therefor.

(Pub. L. 95-91, title VI, §647, Aug. 4, 1977, 91 Stat. 599.)

PILOT PROGRAM FOR PROJECT MANAGEMENT OVERSIGHT REGARDING DEPARTMENT OF ENERGY CONSTRUCTION PROJECTS

Pub. L. 106-65, div. C, title XXXI, §3175, Oct. 5, 1999, 113 Stat. 950, provided that:

“(a) REQUIREMENT.—(1) The Secretary of Energy shall carry out a pilot program on use of project management oversight services (in this section referred to as ‘PMO services’) for construction projects of the Department of Energy.

“(2) The purpose of the pilot program shall be to provide a basis for determining whether or not the use of competitively procured, external PMO services for those construction projects would permit the Department to control excessive costs and schedule delays associated with those construction projects that have large capital costs.

“(b) PROJECTS COVERED BY PROGRAM.—(1) Subject to paragraph (2), the Secretary shall carry out the pilot program at construction projects selected by the Secretary. The projects shall include one or more construction projects authorized pursuant to section 3101 [113 Stat. 915] and one construction project authorized pursuant to section 3102 [113 Stat. 917].

“(2) Each project selected by the Secretary shall be a project having capital construction costs anticipated to be not less than \$25,000,000.

“(c) SERVICES UNDER PROGRAM.—The PMO services used under the pilot program shall include the following services:

“(1) Monitoring the overall progress of a project.

“(2) Determining whether or not a project is on schedule.

“(3) Determining whether or not a project is within budget.

“(4) Determining whether or not a project conforms with plans and specifications approved by the Department.

“(5) Determining whether or not a project is being carried out efficiently and effectively.

“(6) Any other management oversight services that the Secretary considers appropriate for purposes of the pilot program.

“(d) PROCUREMENT OF SERVICES UNDER PROGRAM.—Any PMO services procured under the pilot program shall be acquired—

“(1) on a competitive basis; and

“(2) from among commercial entities that—

“(A) do not currently manage or operate facilities at a location where the pilot program is being conducted; and

“(B) have an expertise in the management of large construction projects.

“(e) REPORT.—Not later than February 1, 2000, the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the pilot program. The report shall include the assessment of the Secretary as to the feasibility and desirability of using PMO services for construction projects of the Department.”

LABORATORY FUNDING PLAN

Pub. L. 106-60, title III, §310, Sept. 29, 1999, 113 Stat. 496, which provided that no funds in an Energy and Water Development Appropriations Act were to be expended after December 31 of each year under certain contracts unless the funds were expended pursuant to a Laboratory Funding Plan approved by the Secretary of Energy, and which also provided for directives, approval, and exceptions by the Secretary, was repealed by Pub. L. 108-7, div. D, title III, §310, Feb. 20, 2003, 117 Stat. 155.

TERMINATION OR CHANGES IN ACTIVITIES OF GOVERNMENT-OWNED AND CONTRACTOR-OPERATED FACILITIES, NATIONAL LABORATORIES, ETC.; REPORTS BY SECRETARY OF ENERGY CONCERNING PROPOSALS PRIOR TO IMPLEMENTATION; CONTENTS; SUBMISSION DATE

Pub. L. 95-238, title I, §104(c), Feb. 25, 1978, 92 Stat. 53, provided that: “As part of the Department of Energy’s responsibility to keep the Congress fully and currently informed, the Secretary shall make the following reports:

“(i) any proposal by the Secretary of the Department of Energy to terminate or make major changes in activities of the Government-owned and contractor-operated facilities, the national laboratories, energy research centers and the operations offices managing such laboratories, shall not be implemented until the Secretary transmits the proposal, together with all pertinent data, to the Committee on Science and Technology [now Committee on Science] of the House of Representatives and the Committee on Energy and Natural Resources of the Senate, and waits a period of thirty calendar days (not including any day on which either House of Congress is not in session because of an adjournment of more than three calendar days to a day certain) from the date on which such report is received by such committees; and

“(ii) by January 31, 1978, the Secretary shall file a full and complete report on each such proposal which he has implemented, as described in the preceding paragraph, and any major program structure change with the Committee on Science and Technology of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.”

§§ 7257a to 7257c. Transferred

CODIFICATION

Section 7257a, Pub. L. 101-510, div. C, title XXXI, §3132, Nov. 5, 1990, 104 Stat. 1832, which related to laboratory-directed research and development programs, was renumbered section 4811 of Pub. L. 107-314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108-136, div. C, title XXXI, §3141(k)(6)(A)-(C), Nov. 24, 2003, 117 Stat. 1784, and is classified to section 2791 of Title 50, War and National Defense.

Section 7257b, Pub. L. 104-201, div. C, title XXXI, §3136(b), Sept. 23, 1996, 110 Stat. 2831; Pub. L. 107-314,

div. D, title XLVIII, §4812(c), formerly Pub. L. 105-85, div. C, title XXXI, §3137(c), Nov. 18, 1997, 111 Stat. 2039, renumbered Pub. L. 108-136, div. C, title XXXI, §3141(k)(7)(A)(i)-(iii), Nov. 24, 2003, 117 Stat. 1784, which related to annual reports by the Secretary of Energy with respect to expenditures of the Department of Energy Laboratory Directed Research and Development Program, was renumbered section 4812A(b) of Pub. L. 107-314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108-136, div. C, title XXXI, §3141(k)(7)(B)(i)-(iii), Nov. 24, 2003, 117 Stat. 1784, and is classified to section 2793(b) of Title 50, War and National Defense.

Section 7257c, Pub. L. 105-85, div. C, title XXXI, §3137, Nov. 18, 1997, 111 Stat. 2038, which related to limitations on the use of funds for laboratory directed research and development purposes, was renumbered section 4812 of Pub. L. 107-314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108-136, div. C, title XXXI, §3141(k)(7)(A)(i)-(iii), Nov. 24, 2003, 117 Stat. 1784, and is classified to section 2792 of Title 50, War and National Defense.

§ 7257d. Expanded research by Secretary of Energy

(a) Detection and identification research

(1) In general

In conjunction with the working group under section 247d-6(a) of this title, the Secretary of Energy and the Administrator of the National Nuclear Security Administration shall expand, enhance, and intensify research relevant to the rapid detection and identification of pathogens likely to be used in a bioterrorism attack or other agents that may cause a public health emergency.

(2) Authorized activities

Activities carried out under paragraph (1) may include—

(A) the improvement of methods for detecting biological agents or toxins of potential use in a biological attack and the testing of such methods under variable conditions;

(B) the improvement or pursuit of methods for testing, verifying, and calibrating new detection and surveillance tools and techniques; and

(C) carrying out other research activities in relevant areas.

(3) Report

Not later than 180 days after June 12, 2002, the Administrator of the National Nuclear Security Administration shall submit to the Committee on Energy and Natural Resources and the Committee on Armed Services of the Senate, and the Committee on Energy and Commerce and the Committee on Armed Services of the House of Representatives, a report setting forth the programs and projects that will be funded prior to the obligation of funds appropriated under subsection (b) of this section.

(b) Authorization

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary in each of fiscal years 2002 through 2006.

(Pub. L. 107-188, title I, §152, June 12, 2002, 116 Stat. 630.)

CODIFICATION

Section was enacted as part of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, and not as part of the Department of Energy Organization Act which comprises this chapter.

§ 7258. Facilities construction**(a) Employees and dependents stationed at remote locations**

As necessary and when not otherwise available, the Secretary is authorized to provide for, construct, or maintain the following for employees and their dependents stationed at remote locations:

- (1) Emergency medical services and supplies;
- (2) Food and other subsistence supplies;
- (3) Messing facilities;
- (4) Audio-visual equipment, accessories, and supplies for recreation and training;
- (5) Reimbursement for food, clothing, medicine, and other supplies furnished by such employees in emergencies for the temporary relief of distressed persons;
- (6) Living and working quarters and facilities; and
- (7) Transportation of schoolage dependents of employees to the nearest appropriate educational facilities.

(b) Medical treatment at reasonable prices

The furnishing of medical treatment under paragraph (1) of subsection (a) of this section and the furnishing of services and supplies under paragraphs (2) and (3) of subsection (a) of this section shall be at prices reflecting reasonable value as determined by the Secretary.

(c) Use of reimbursement proceeds

Proceeds from reimbursements under this section shall be deposited in the Treasury and may be withdrawn by the Secretary to pay directly the cost of such work or services, to repay or make advances to appropriations of funds which will initially bear all or a part of such cost, or to refund excess sums when necessary. Such payments may be credited to a working capital fund otherwise established by law, including the fund established pursuant to section 7263 of this title, and used under the law governing such fund, if the fund is available for use by the Department for performing the work or services for which payment is received.

(Pub. L. 95-91, title VI, § 648, Aug. 4, 1977, 91 Stat. 600.)

§ 7259. Use of facilities**(a) Facilities of United States and foreign governments**

With their consent, the Secretary and the Federal Energy Regulatory Commission may, with or without reimbursement, use the research, equipment, and facilities of any agency or instrumentality of the United States or of any State, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States, or of any political subdivision thereof, or of any foreign government, in carrying out any function now or hereafter vested in the Secretary or the Commission.

(b) Facilities under custody of Secretary

In carrying out his functions, the Secretary, under such terms, at such rates, and for such pe-

riods not exceeding five years, as he may deem to be in the public interest, is authorized to permit the use by public and private agencies, corporations, associations, or other organizations or by individuals of any real property, or any facility, structure, or other improvement thereon, under the custody of the Secretary for Department purposes. The Secretary may require permittees under this section to recondition and maintain, at their own expense, the real property, facilities, structures, and improvements involved to a satisfactory standard. This section shall not apply to excess property as defined in section 102(3) of title 40.

(c) Use of reimbursement proceeds

Proceeds from reimbursements under this section shall be deposited in the Treasury and may be withdrawn by the Secretary or the head of the agency or instrumentality of the United States involved, as the case may be, to pay directly the costs of the equipment, or facilities provided, to repay or make advances to appropriations or funds which do or will initially bear all or a part of such costs, or to refund excess sums when necessary, except that such proceeds may be credited to a working capital fund otherwise established by law, including the fund established pursuant to section 7263 of this title, and used under the law governing such fund, if the fund is available for use for providing the equipment or facilities involved.

(Pub. L. 95-91, title VI, § 649, Aug. 4, 1977, 91 Stat. 600.)

CODIFICATION

In subsec. (b), “section 102(3) of title 40” substituted for “section 3(e) of the Federal Property and Administrative Services Act of 1949” on authority of Pub. L. 107-217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

§ 7259a. Activities of Department of Energy facilities**(a) Research and activities on behalf of non-department persons and entities**

(1) The Secretary of Energy may conduct research and other activities referred to in paragraph (2) at facilities of the Department of Energy on behalf of other departments and agencies of the Government, agencies of State and local governments, and private persons and entities.

(2) The research and other activities that may be conducted under paragraph (1) are those which the Secretary is authorized to conduct by law, including research and activities authorized under the following provisions of law:

(A) The Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).

(B) The Energy Reorganization Act of 1974 [42 U.S.C. 5801 et seq.].

(C) The Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5901 et seq.).

(b) Charges

(1) The Secretary shall impose on the department, agency, or person or entity for which research and other activities are carried out under

subsection (a) of this section a charge for such research and activities in carrying out such research and activities, which shall include—

(A) the direct cost incurred in carrying out such research and activities; and

(B) the overhead cost, including site-wide indirect costs, associated with such research and activities.

(2)(A) Subject to subparagraph (B), the Secretary shall also impose on the department, agency, or person or entity concerned a Federal administrative charge (which includes any depreciation and imputed interest charges) in an amount not to exceed 3 percent of the full cost incurred in carrying out the research and activities concerned.

(B) The Secretary may waive the imposition of the Federal administrative charge required by subparagraph (A) in the case of research and other activities conducted on behalf of small business concerns, institutions of higher education, non-profit entities, and State and local governments.

(3) Not later than 2 years after October 17, 1998, the Secretary shall terminate any waiver of charges under section 33 of the Atomic Energy Act of 1954 (42 U.S.C. 2053) that were made before such date, unless the Secretary determines that such waiver should be continued.

(c) Pilot program of reduced facility overhead charges

(1) The Secretary may, with the cooperation of participating contractors of the contractor-operated facilities of the Department, carry out a pilot program under which the Secretary and such contractors reduce the facility overhead charges imposed under this section for research and other activities conducted under this section.

(2) The Secretary shall carry out the pilot program at contractor-operated facilities selected by the Secretary in consultation with the contractors concerned.

(3) The Secretary shall determine the facility overhead charges to be imposed under the pilot program at a facility based on a joint review by the Secretary and the contractor for the facility of all items included in the overhead costs of the facility in order to determine which items are appropriately incurred as facility overhead charges by the contractor in carrying out research and other activities at such facility under this section.

(4) The Secretary shall commence carrying out the pilot program under this subsection not later than October 1, 1999, and shall terminate the pilot program on September 30, 2003.

(5) Not later than January 31, 2003, the Secretary shall submit to Congress an interim report on the results of the pilot program under this subsection. The report shall include any recommendations for the extension or expansion of the pilot program, including the establishment of multiple rates of overhead charges for various categories of persons and entities seeking research and other activities in contractor-operated facilities of the Department.

(d) Applicability with respect to user fee practice

This section does not apply to the practice of the Department of Energy with respect to user fees at Department facilities.

(Pub. L. 105–261, div. C, title XXXI, § 3137, Oct. 17, 1998, 112 Stat. 2248.)

REFERENCES IN TEXT

The Atomic Energy Act of 1954, referred to in subsec. (a)(2)(A), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1. 68 Stat. 921, and amended, which is classified generally to chapter 23 (§ 2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

The Energy Reorganization Act of 1974, referred to in subsec. (a)(2)(B), is Pub. L. 93–438, Oct. 11, 1974, 88 Stat. 1233, as amended, which is classified principally to chapter 73 (§ 5801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5801 of this title and Tables.

The Federal Nonnuclear Energy Research and Development Act of 1974, referred to in subsec. (a)(2)(C), is Pub. L. 93–577, Dec. 31, 1974, 88 Stat. 1878, as amended, which is classified generally to chapter 74 (§ 5901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5901 of this title and Tables.

CODIFICATION

Section was enacted as part of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999, and not as part of the Department of Energy Organization Act which comprises this chapter.

§ 7260. Field offices

The Secretary is authorized to establish, alter, consolidate or discontinue and to maintain such State, regional, district, local or other field offices as he may deem to be necessary to carry out functions vested in him.

(Pub. L. 95–91, title VI, § 650, Aug. 4, 1977, 91 Stat. 601.)

§ 7261. Acquisition of copyrights, patents, etc.

The Secretary is authorized to acquire any of the following described rights if the property acquired thereby is for use by or for, or useful to, the Department:

- (1) copyrights, patents, and applications for patents, designs, processes, and manufacturing data;
- (2) licenses under copyrights, patents, and applications for patents; and
- (3) releases, before suit is brought, for past infringement of patents or copyrights.

(Pub. L. 95–91, title VI, § 651, Aug. 4, 1977, 91 Stat. 601.)

§ 7261a. Protection of sensitive technical information

(a) Property rights in inventions and discoveries; timely determination; reports to Congressional committees

(1) Whenever any contractor makes an invention or discovery to which the title vests in the Department of Energy pursuant to exercise of section 202(a)(ii) or (iv) of title 35, or pursuant to section 2182 of this title or section 5908 of this title in the course of or under any Government contract or subcontract of the Naval Nuclear Propulsion Program or the nuclear weapons programs or other atomic energy defense activities of the Department of Energy and the contractor requests waiver of any or all of the Govern-

ment's property rights, the Secretary of Energy may decide to waive the Government's rights and assign the rights in such invention or discovery.

(2) Such decision shall be made within 150 days after the date on which a complete request for waiver of such rights has been submitted to the Secretary by the contractor. For purposes of this paragraph, a complete request includes such information, in such detail and form, as the Secretary by regulation prescribes as necessary to allow the Secretary to take into consideration the matters described in subsection (b) of this section in making the decision.

(3) If the Secretary fails to make the decision within such 150-day period, the Secretary shall submit to the Committees on Armed Services of the House of Representatives and the Senate, within 10 days after the end of the 150-day period, a report on the reasons for such failure. The submission of such report shall not relieve the Secretary of the requirement to make the decision under this section. The Secretary shall, at the end of each 30-day period after submission of the first report during which the Secretary continues to fail to make the decision required by this section, submit another report on the reasons for such failure to the committees listed in this paragraph.

(b) Matters to be considered

In making a decision under this section, the Secretary shall consider, in addition to the applicable policies of section 2182 of this title or subsections (c) and (d) of section 5908 of this title—

(1) whether national security will be compromised;

(2) whether sensitive technical information (whether classified or unclassified) under the Naval Nuclear Propulsion Program or the nuclear weapons programs or other atomic energy defense activities of the Department of Energy for which dissemination is controlled under Federal statutes and regulations will be released to unauthorized persons;

(3) whether an organizational conflict of interest contemplated by Federal statutes and regulations will result; and

(4) whether failure to assert such a claim will adversely affect the operation of the Naval Nuclear Propulsion Program or the nuclear weapons programs or other atomic energy defense activities of the Department of Energy.

(Pub. L. 99-661, div. C, title I, § 3131, Nov. 14, 1986, 100 Stat. 4062; Pub. L. 100-180, div. C, title III, § 3135(a), Dec. 4, 1987, 101 Stat. 1240.)

CODIFICATION

Section was enacted as part of the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1987 and also as part of the National Defense Authorization Act for Fiscal Year 1987, and not as part of the Department of Energy Organization Act which comprises this chapter.

AMENDMENTS

1987—Subsec. (a). Pub. L. 100-180 designated existing provisions as par. (1), struck out at end “Such decision shall be made within a reasonable time (which shall usually be six months from the date of the request by

the contractor for assignment of such rights).”, and added pars. (2) and (3).

EFFECTIVE DATE OF 1987 AMENDMENT

Section 3135(b) of Pub. L. 100-180 provided that: “Paragraphs (2) and (3) of section 3131(a) of the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1987 [subsec. (a)(2), (3) of this section] (as added by subsection (a)) shall apply with respect to waiver requests submitted by contractors under that section after March 1, 1988.”

§ 7261b. Technology transfer to small businesses

(1) The Secretary of Energy shall establish a program to facilitate and encourage the transfer of technology to small businesses and shall issue guidelines relating to the program not later than May 1, 1993.

(2) For the purposes of this section, the term “small business” means a business concern that meets the applicable size standards prescribed pursuant to section 632(a) of title 15.

(Pub. L. 102-484, div. C, title XXXI, § 3135(b), Oct. 23, 1992, 106 Stat. 2641.)

CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Year 1993, and not as part of the Department of Energy Organization Act which comprises this chapter.

§ 7261c. Technology partnerships ombudsman

(a) Appointment of ombudsman

The Secretary of Energy shall direct the director of each national laboratory of the Department of Energy, and may direct the director of each facility under the jurisdiction of the Department of Energy, to appoint a technology partnership ombudsman to hear and help resolve complaints from outside organizations regarding the policies and actions of each such laboratory or facility with respect to technology partnerships (including cooperative research and development agreements), patents, and technology licensing.

(b) Qualifications

An ombudsman appointed under subsection (a) of this section shall be a senior official of the national laboratory or facility who is not involved in day-to-day technology partnerships, patents, or technology licensing, or, if appointed from outside the laboratory or facility, function as such a senior official.

(c) Duties

Each ombudsman appointed under subsection (a) of this section shall—

(1) serve as the focal point for assisting the public and industry in resolving complaints and disputes with the national laboratory or facility regarding technology partnerships, patents, and technology licensing;

(2) promote the use of collaborative alternative dispute resolution techniques such as mediation to facilitate the speedy and low-cost resolution of complaints and disputes, when appropriate; and

(3) report quarterly on the number and nature of complaints and disputes raised, along with the ombudsman's assessment of their res-

olution, consistent with the protection of confidential and sensitive information, to—

- (A) the Secretary;
- (B) the Administrator for Nuclear Security;
- (C) the Director of the Office of Dispute Resolution of the Department of Energy; and
- (D) the employees of the Department responsible for the administration of the contract for the operation of each national laboratory or facility that is a subject of the report, for consideration in the administration and review of that contract.

(Pub. L. 106–404, §11, Nov. 1, 2000, 114 Stat. 1749.)

CODIFICATION

Section was enacted as part of the Technology Transfer Commercialization Act of 2000, and not as part of the Department of Energy Organization Act which comprises this chapter.

§ 7262. Repealed. Pub. L. 104–206, title V, § 502, Sept. 30, 1996, 110 Stat. 3002

Section, Pub. L. 95–91, title VI, §652, Aug. 4, 1977, 91 Stat. 601, authorized Secretary to accept gifts, bequests, and devises of property for purpose of aiding or facilitating work of Department.

CODIFICATION

Pub. L. 104–206, which directed the repeal of 42 U.S.C. 7262, was executed by repealing section 652 of Pub. L. 95–91, which was classified to this section, to reflect the probable intent of Congress.

§ 7263. Capital fund

The Secretary is authorized to establish a working capital fund, to be available without fiscal year limitation, for expenses necessary for the maintenance and operation of such common administrative services as he shall find to be desirable in the interests of economy and efficiency, including such services as a central supply service for stationery and other supplies and equipment for which adequate stocks may be maintained to meet in whole or in part the requirements of the Department and its agencies; central messenger, mail, telephone, and other communications services; office space, central services for document reproduction, and for graphics and visual aids; and a central library service. The capital of the fund shall consist of any appropriations made for the purpose of providing capital (which appropriations are hereby authorized) and the fair and reasonable value of such stocks of supplies, equipment, and other assets and inventories on order as the Secretary may transfer to the fund, less the related liabilities and unpaid obligations. Such funds shall be reimbursed in advance from available funds of agencies and offices in the Department, or from other sources, for supplies and services at rates which will approximate the expense of operation, including the accrual of annual leave and the depreciation of equipment. The fund shall also be credited with receipts from sale or exchange of property and receipts in payment for loss or damage to property owned by the fund. There shall be covered into the United States Treasury as miscellaneous receipts any surplus found in the fund (all assets, liabilities, and prior losses considered) above the amounts

transferred or appropriated to establish and maintain said fund. There shall be transferred to the fund the stocks of supplies, equipment, other assets, liabilities, and unpaid obligations relating to the services which he determines will be performed through the fund. Appropriations to the fund, in such amounts as may be necessary to provide additional working capital, are authorized.

(Pub. L. 95–91, title VI, §653, Aug. 4, 1977, 91 Stat. 601.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7258, 7259 of this title.

§ 7264. Seal of Department

The Secretary shall cause a seal of office to be made for the Department of such design as he shall approve and judicial notice shall be taken of such seal.

(Pub. L. 95–91, title VI, §654, Aug. 4, 1977, 91 Stat. 602.)

§ 7265. Regional Energy Advisory Boards

(a) Establishment; membership

The Governors of the various States may establish Regional Energy Advisory Boards for their regions with such membership as they may determine.

(b) Observers

Representatives of the Secretary, the Secretary of Commerce, the Secretary of the Interior, the Chairman of the Council on Environmental Quality, the Commandant of the Coast Guard and the Administrator of the Environmental Protection Agency shall be entitled to participate as observers in the deliberations of any Board established pursuant to subsection (a) of this section. The Federal Cochairman of the Appalachian Regional Commission or any regional commission under title V of the Public Works and Economic Development Act [42 U.S.C. 3181 et seq.] shall be entitled to participate as an observer in the deliberations of any such Board which contains one or more States which are members of such Commission.

(c) Recommendations of Board

Each Board established pursuant to subsection (a) of this section may make such recommendations as it determines to be appropriate to programs of the Department having a direct effect on the region.

(d) Notice of reasons not to adopt recommendations

If any Regional Advisory Board makes specific recommendations pursuant to subsection (c) of this section, the Secretary shall, if such recommendations are not adopted in the implementation of the program, notify the Board in writing of his reasons for not adopting such recommendations.

(Pub. L. 95–91, title VI, §655, Aug. 4, 1977, 91 Stat. 602.)

REFERENCES IN TEXT

The Public Works and Economic Development Act, referred to in subsec. (b), is Pub. L. 89–136, Aug. 26, 1965,

79 Stat. 552, as amended. Title V of the Public Works and Economic Development Act was classified generally to subchapter V (§3181 et seq.) of chapter 38 of this title prior to repeal by Pub. L. 97-35, title XVIII, §1821(a)(8), Aug. 13, 1981, 95 Stat. 766. For complete classification of this Act to the Code, see Short Title note set out under section 3121 of this title and Tables.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 7266. Designation of conservation officers

The Secretary of Defense, the Secretary of Commerce, the Secretary of Housing and Urban Development, the Secretary of Transportation, the Secretary of Agriculture, the Secretary of the Interior, the United States Postal Service, and the Administrator of General Services shall each designate one Assistant Secretary or Assistant Administrator, as the case may be, as the principal conservation officer of such Department or of the Administration. Such designated principal conservation officer shall be principally responsible for planning and implementation of energy conservation programs by such Department or Administration and principally responsible for coordination with the Department of Energy with respect to energy matters. Each agency, Department or Administration required to designate a principal conservation officer pursuant to this section shall periodically inform the Secretary of the identity of such conservation officer, and the Secretary shall periodically publish a list identifying such officers.

(Pub. L. 95-91, title VI, §656, Aug. 4, 1977, 91 Stat. 602.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8257 of this title.

§ 7267. Annual report

The Secretary shall, as soon as practicable after the end of each fiscal year, commencing with the first complete fiscal year following October 1, 1977, make a report to the President for submission to the Congress on the activities of the Department during the preceding fiscal year. Such report shall include a statement of the Secretary's goals, priorities, and plans for the Department, together with an assessment of the progress made toward the attainment of those goals, the effective and efficient management of the Department and progress made in coordination of its functions with other departments and agencies of the Federal Government. In addition, such report shall include the information required by section 774 of title 15, section 6325(c) of this title, section 10224(c) of this title, section 5877 of this title, and section 5914¹ of this title, and shall include:

- (1) projected energy needs of the United States to meet the requirements of the gen-

eral welfare of the people of the United States and the commercial and industrial life of the Nation, including a comprehensive summary of data pertaining to all fuel and energy needs of residents of the United States residing in—

- (A) areas outside standard metropolitan statistical areas; and
- (B) areas within such areas which are unincorporated or are specified by the Bureau of the Census, Department of Commerce, as rural areas;

(2) an estimate of (A) the domestic and foreign energy supply on which the United States will be expected to rely to meet such needs in an economic manner with due regard for the protection of the environment, the conservation of natural resources, and the implementation of foreign policy objectives, and (B) the quantities of energy expected to be provided by different sources (including petroleum, natural and synthetic gases, coal, uranium, hydroelectric, solar, and other means) and the expected means of obtaining such quantities;

(3) current and foreseeable trends in the price, quality, management, and utilization of energy resources and the effects of those trends on the social, environmental, economic, and other requirements of the Nation;

(4) a summary of research and development efforts funded by the Federal Government to develop new technologies, to forestall energy shortages, to reduce waste, to foster recycling, to encourage conservation practices, and to increase efficiency; and further such summary shall include a description of the activities the Department is performing in support of environmental, social, economic and institutional, biomedical, physical and safety research, development, demonstration, and monitoring activities necessary to guarantee that technological programs, funded by the Department, are undertaken in a manner consistent with and capable of maintaining or improving the quality of the environment and of mitigating any undesirable environmental and safety impacts;

(5) a review and appraisal of the adequacy and appropriateness of technologies, procedures, and practices (including competitive and regulatory practices) employed by Federal/State, and local governments and non-governmental entities to achieve the purposes of this chapter;

(6) a summary of cooperative and voluntary efforts that have been mobilized to promote conservation and recycling, together with plans for such efforts in the succeeding fiscal year, and recommendations for changes in laws and regulations needed to encourage more conservation and recycling by all segments of the Nation's populace;

(7) a summary of substantive measures taken by the Department to stimulate and encourage the development of new manpower resources through the Nation's colleges and universities and to involve these institutions in the execution of the Department's research and development programs; and

(8) to the extent practicable, a summary of activities in the United States by companies or persons which are foreign owned or con-

¹ See References in Text note below.

trolled and which own or control United States energy sources and supplies, including the magnitude of annual foreign direct investment in the energy sector in the United States and exports of energy resources from the United States by foreign owned or controlled business entities or persons, and such other related matters as the Secretary may deem appropriate.

(Pub. L. 95-91, title VI, § 657, Aug. 4, 1977, 91 Stat. 603; Pub. L. 104-66, title I, § 1052(g), Dec. 21, 1995, 109 Stat. 718.)

REFERENCES IN TEXT

Section 5914 of this title, referred to in text, was omitted from the Code.

AMENDMENTS

1995—Pub. L. 104-66 inserted “section 6325(c) of this title, section 10224(c) of this title,” after “section 774 of title 15,” in introductory provisions.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103-7 (in which the 3rd item on page 88 identifies a reporting provision which, as subsequently amended, is contained in this section), see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5562, 6806, 7135, 8235g of this title; title 15 section 780; title 22 section 3142.

§ 7268. Leasing report

The Secretary of the Interior shall submit to the Congress not later than one year after August 4, 1977, a report on the organization of the leasing operations of the Federal Government, together with any recommendations for reorganizing such functions may deem necessary or appropriate.

(Pub. L. 95-91, title VI, § 658, Aug. 4, 1977, 91 Stat. 604.)

§ 7269. Transfer of funds

The Secretary, when authorized in an appropriation Act, in any fiscal year, may transfer funds from one appropriation to another within the Department, except that no appropriation shall be either increased or decreased pursuant to this section by more than 5 per centum of the appropriation for such fiscal year.

(Pub. L. 95-91, title VI, § 659, Aug. 4, 1977, 91 Stat. 604.)

§ 7269a. Transfer of funds between appropriations for Department of Energy activities

Not to exceed 5 per centum of any appropriation made available for Department of Energy activities funded in this Act or subsequent Energy and Water Development Appropriations Acts may on and after October 2, 1992, be transferred between such appropriations, but no such appropriation, except as otherwise provided, shall be increased or decreased by more than 5 per centum by any such transfers, and any such

proposed transfers shall be submitted promptly to the Committees on Appropriations of the House and Senate.

(Pub. L. 102-377, title III, § 302, Oct. 2, 1992, 106 Stat. 1339.)

CODIFICATION

Section was enacted as part of the Energy and Water Development Appropriations Act, 1993, and not as part of the Department of Energy Organization Act which comprises this chapter.

§ 7269b. Transfer of unexpended appropriation balances

The unexpended balances of prior appropriations provided for activities in this Act or subsequent Energy and Water Development Appropriations Acts may on and after October 2, 1992, be transferred to appropriation accounts for such activities established pursuant to this title.¹ Balances so transferred may be merged with funds in the applicable established accounts and thereafter may be accounted for as one fund for the same time period as originally enacted.

(Pub. L. 102-377, title III, § 303, Oct. 2, 1992, 106 Stat. 1339.)

REFERENCES IN TEXT

This title, referred to in text, is title III of Pub. L. 102-377, Oct. 2, 1992, 106 Stat. 1332. For complete classification of title III to the Code, see Tables.

CODIFICATION

Section was enacted as part of the Energy and Water Development Appropriations Act, 1993, and not as part of the Department of Energy Organization Act which comprises this chapter.

§ 7270. Authorization of appropriations

Appropriations to carry out the provisions of this chapter shall be subject to annual authorization.

(Pub. L. 95-91, title VI, § 660, Aug. 4, 1977, 91 Stat. 604.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6247, 7351, 9009, 9312 of this title.

§ 7270a. Guards for Strategic Petroleum Reserve facilities

Under guidelines prescribed by the Secretary and concurred with by the Attorney General, employees of the Department of Energy and employees of contractors and subcontractors (at any tier) of the Department of Energy, while discharging their official duties of protecting the Strategic Petroleum Reserve (established under part B of title I of the Energy Policy and Conservation Act [42 U.S.C. 6231 et seq.]) or its storage or related facilities or of protecting persons upon the Strategic Petroleum Reserve or its storage or related facilities, may—

(1) carry firearms, if designated by the Secretary and qualified for the use of firearms under the guidelines; and

(2) arrest without warrant any person for an offense against the United States—

¹ See References in Text note below.

(A) in the case of a felony, if the employee has reasonable grounds to believe that the person—

- (i) has committed or is committing a felony; and
- (ii) is in or is fleeing from the immediate area of the felony; and

(B) in the case of a felony or misdemeanor, if the violation is committed in the presence of the employee.

(Pub. L. 95–91, title VI, § 661, as added Pub. L. 100–531, § 1(a), Oct. 25, 1988, 102 Stat. 2652.)

REFERENCES IN TEXT

The Energy Policy and Conservation Act, referred to in text, is Pub. L. 94–163, Dec. 22, 1975, 89 Stat. 871, as amended. Part B of title I of the Act is classified generally to part B (§ 6231 et seq.) of subchapter I of chapter 77 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

§ 7270b. Trespass on Strategic Petroleum Reserve facilities

(a) The Secretary may issue regulations relating to the entry upon or carrying, transporting, or otherwise introducing or causing to be introduced any dangerous weapon, explosive, or other dangerous instrument or material likely to produce substantial injury or damage to persons or property into or onto the Strategic Petroleum Reserve, its storage or related facilities, or real property subject to the jurisdiction, administration, or in the custody of the Secretary under part B of title I of the Energy Policy and Conservation Act (42 U.S.C. 6231–6247). The Secretary shall post conspicuously, on the property subject to the regulations, notification that the property is subject to the regulations.

(b) Whoever willfully violates a regulation of the Secretary issued under subsection (a) of this section shall be guilty of a misdemeanor and punished upon conviction by a fine of not more than \$5,000, imprisonment for not more than one year, or both.

(Pub. L. 95–91, title VI, § 662, as added Pub. L. 100–531, § 1(a), Oct. 25, 1988, 102 Stat. 2652.)

REFERENCES IN TEXT

The Energy Policy and Conservation Act, referred to in subsec. (a), is Pub. L. 94–163, Dec. 22, 1975, 89 Stat. 871, as amended. Part B of title I of the Act is classified generally to part B (§ 6231 et seq.) of subchapter I of chapter 77 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

§ 7270c. Annual assessment and report on vulnerability of facilities to terrorist attack

(a) The Secretary shall, on an annual basis, conduct a comprehensive assessment of the vulnerability of Department facilities to terrorist attack.

(b) Not later than January 31 each year, the Secretary shall submit to Congress a report on the assessment conducted under subsection (a) of this section during the preceding year. Each report shall include the results of the assessment covered by such report, together with such findings and recommendations as the Secretary considers appropriate.

(Pub. L. 95–91, title VI, § 663, as added Pub. L. 107–107, div. C, title XXXI, § 3154(a), Dec. 28, 2001, 115 Stat. 1377.)

§ 7271. Transferred

CODIFICATION

Section, Pub. L. 95–509, title II, § 208, Oct. 24, 1978, 92 Stat. 1779, which related to single annual requests by the Secretary for authorizations of appropriations for programs involving the common defense and security of the United States, was renumbered section 4731 of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, § 3141(j)(7), Nov. 24, 2003, 117 Stat. 1782, and is classified to section 2771 of Title 50, War and National Defense.

§ 7271a. Repealed. Pub. L. 105–85, div. C, title XXXI, § 3152(h), Nov. 18, 1997, 111 Stat. 2042

Section, Pub. L. 101–189, div. C, title XXXI, § 3143, Nov. 29, 1989, 103 Stat. 1681, related to major Department of Energy national security programs.

§ 7271b. Repealed. Pub. L. 106–65, div. C, title XXXII, § 3294(f), Oct. 5, 1999, 113 Stat. 970

Section, Pub. L. 104–201, div. C, title XXXI, § 3155, Sept. 23, 1996, 110 Stat. 2841, related to requirement for annual five-year budget for national security programs of Department of Energy.

EFFECTIVE DATE OF REPEAL

Repeal effective Mar. 1, 2000, see section 3299 of Pub. L. 106–65, set out as an Effective Date note under section 2401 of Title 50, War and National Defense.

§ 7271c. Repealed. Pub. L. 105–85, div. C, title XXXI, § 3152(b), Nov. 18, 1997, 111 Stat. 2042

Section, Pub. L. 104–201, div. C, title XXXI, § 3156, Sept. 23, 1996, 110 Stat. 2841, related to requirements for Department of Energy weapons activities budgets for fiscal years after fiscal year 1997.

§§ 7271d to 7273a. Transferred

CODIFICATION

Section 7271d, Pub. L. 107–314, div. C, title XXXI, § 3143, Dec. 2, 2002, 116 Stat. 2733, which related to requirements for specific funding requests for new or modified nuclear weapons, was renumbered section 4209 of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, § 3141(e)(10), Nov. 24, 2003, 117 Stat. 1759, and is classified to section 2529 of Title 50, War and National Defense.

Section 7272, Pub. L. 96–540, title II, § 210, Dec. 17, 1980, 94 Stat. 3202, which prohibited the use of funds for purposes related to the licensing of defense activities or facilities of the Department of Energy by the Nuclear Regulatory Commission, was renumbered section 4103 of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, § 3141(d)(4)(A)–(C)(ii), Nov. 24, 2003, 117 Stat. 1757, and is classified to section 2513 of Title 50, War and National Defense.

Section 7273, Pub. L. 96–540, title II, § 211, Dec. 17, 1980, 94 Stat. 3203, which related to restrictions on the use of funds to pay penalties under the Clean Air Act, was renumbered section 4722 of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, § 3141(j)(5)(A)–(C)(ii), Nov. 24, 2003, 117 Stat. 1781, 1782, and is classified to section 2762 of Title 50, War and National Defense.

Section 7273a, Pub. L. 99–661, div. C, title I, § 3132, Nov. 14, 1986, 100 Stat. 4063, which related to restric-

tions on the use of funds to pay penalties under environmental laws, was renumbered section 4721 of Pub. L. 107-314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108-136, div. C, title XXXI, § 3141(j)(4)(A)-(C), Nov. 24, 2003, 117 Stat. 1781, and is classified to section 2761 of Title 50, War and National Defense.

§ 7273b. Security investigations

(1) No funds appropriated to the Department of Energy may be obligated or expended for the conduct of an investigation by the Department of Energy or any other Federal department or agency for purposes of determining whether to grant a security clearance to an individual or a facility unless the Secretary of Energy determines both of the following:

(A) That a current, complete investigation file is not available from any other department or agency of the Federal government with respect to that individual or facility.

(B) That no other department or agency of the Federal government is conducting an investigation with respect to that individual or facility that could be used as the basis for determining whether to grant the security clearance.

(2) For purposes of paragraph (1)(A), a current investigation file is a file on an investigation that has been conducted within the past five years.

(Pub. L. 101-510, div. C, title XXXI, § 3104(d), Nov. 5, 1990, 104 Stat. 1828.)

CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Year 1991, and not as part of the Department of Energy Organization Act which comprises this chapter.

§ 7273c. Transferred

CODIFICATION

Section, Pub. L. 105-85, div. C, title XXXI, § 3133, Nov. 18, 1997, 111 Stat. 2036; Pub. L. 105-261, div. A, title X, § 1069(b)(3), div. C, title XXXI, § 3131, Oct. 17, 1998, 112 Stat. 2136, 2246, which related to international cooperative stockpile stewardship, was renumbered section 4301 of Pub. L. 107-314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108-136, div. C, title XXXI, § 3141(f)(2)(A)-(C), Nov. 24, 2003, 117 Stat. 1762, and is classified to section 2561 of Title 50, War and National Defense.

§ 7274. Environmental impact statements relating to defense facilities of Department of Energy

(1) The Secretary may not proceed with the preparation of an environmental impact statement relating to the construction or operation of a defense facility of the Department of Energy if the estimated cost of preparing such statement exceeds \$250,000 unless—

(A) the Secretary has notified the Committees on Armed Services of the Senate and the House of Representatives of his intent to prepare such statement and a period of thirty days has expired after the date on which such notice was received by such committees; or

(B) the Secretary has received from each such committee, before the expiration of such thirty-day period, a written notice that the committee agrees with the decision of the Sec-

retary regarding the preparation of such statement.

(2) The provisions of paragraph (1) shall not apply in the case of any environmental impact statement on which the Secretary began preparation before December 4, 1981.

(Pub. L. 97-90, title II, § 212(b), Dec. 4, 1981, 95 Stat. 1171.)

CODIFICATION

Section was enacted as part of the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1982, and not as part of the Department of Energy Organization Act which comprises this chapter.

NATIONAL ENVIRONMENTAL POLICY ACT COMPLIANCE REPORT REQUIREMENT

Pub. L. 101-510, div. C, title XXXI, § 3133, Nov. 5, 1990, 104 Stat. 1832, directed Secretary of Energy, not later than 30 days after the end of each quarter of fiscal years 1991 and 1992, to submit to Congress a brief report on Department of Energy's compliance with National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), which was to contain a brief description of each proposed action to be taken by the Department of Energy, the environmental impact of which was not clearly insignificant, and a description of the steps taken or proposed to be taken by the Department of Energy to assess the environmental impact of the proposed action, and if the Secretary found that the proposed action of the Department of Energy would have no significant impact, the Secretary was to include the rationale for that determination.

§§ 7274a to 7274d. Transferred

CODIFICATION

Section 7274a, Pub. L. 101-189, div. C, title XXXI, § 3141, Nov. 29, 1989, 103 Stat. 1679; Pub. L. 105-85, div. C, title XXXI, § 3152(g), Nov. 18, 1997, 111 Stat. 2042, which related to a defense waste cleanup technology program, was renumbered section 4406 of Pub. L. 107-314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108-136, div. C, title XXXI, § 3141(g)(7)(A)-(C), Nov. 24, 2003, 117 Stat. 1765, and is classified to section 2586 of Title 50, War and National Defense.

Section 7274b, Pub. L. 101-189, div. C, title XXXI, § 3156, Nov. 29, 1989, 103 Stat. 1683, which related to the submission of reports in connection with permanent closures of Department of Energy defense nuclear facilities, was renumbered section 4422 of Pub. L. 107-314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108-136, div. C, title XXXI, § 3141(g)(12)(A)-(C), Nov. 24, 2003, 117 Stat. 1766, and is classified to section 2602 of Title 50, War and National Defense.

Section 7274c, Pub. L. 101-510, div. C, title XXXI, § 3134, Nov. 5, 1990, 104 Stat. 1833, which related to the submission of reports on environmental restoration expenditures, was renumbered section 4407 of Pub. L. 107-314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108-136, div. C, title XXXI, § 3141(g)(8)(A)-(C), Nov. 24, 2003, 117 Stat. 1765, and is classified to section 2587 of Title 50, War and National Defense.

Section 7274d, Pub. L. 102-190, div. C, title XXXI, § 3131, Dec. 5, 1991, 105 Stat. 1571, which related to worker protection at nuclear weapons facilities, was renumbered section 4641 of Pub. L. 107-314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108-136, div. C, title XXXI, § 3141(i)(12)(A)-(C), Nov. 24, 2003, 117 Stat. 1779, and is classified to section 2731 of Title 50, War and National Defense.

§ 7274e. Scholarship and fellowship program for environmental restoration and waste management

(a) Establishment

The Secretary of Energy shall conduct a scholarship and fellowship program for the purpose of enabling individuals to qualify for employment in environmental restoration and waste management positions in the Department of Energy. The scholarship and fellowship program shall be known as the "Marilyn Lloyd Scholarship and Fellowship Program".

(b) Eligibility

To be eligible to participate in the scholarship and fellowship program, an individual must—

- (1) be accepted for enrollment or be currently enrolled as a full-time student at an institution of higher education (as defined in section 101 of the Higher Education Act of 1965 [20 U.S.C. 1001]);
- (2) be pursuing a program of education that leads to an appropriate higher education degree in a qualifying field of study, as determined by the Secretary;
- (3) sign an agreement described in subsection (c) of this section;
- (4) be a citizen or national of the United States or be an alien lawfully admitted to the United States for permanent residence; and
- (5) meet such other requirements as the Secretary prescribes.

(c) Agreement

An agreement between the Secretary and a participant in the scholarship and fellowship program established under this section shall be in writing, shall be signed by the participant, and shall include the following provisions:

- (1) The Secretary's agreement to provide the participant with educational assistance for a specified number of school years (not exceeding 5) during which the participant is pursuing a program of education in a qualifying field of study. The assistance may include payment of tuition, fees, books, laboratory expenses, and a stipend.
- (2) The participant's agreement (A) to accept such educational assistance, (B) to maintain enrollment and attendance in the program of education until completed, (C) while enrolled in such program, to maintain satisfactory academic progress as prescribed by the institution of higher education in which the participant is enrolled, and (D) after completion of the program of education, to serve as a full-time employee in an environmental restoration or waste management position in the Department of Energy for a period of 12 months for each school year or part thereof for which the participant is provided a scholarship or fellowship under the program established under this section.

(d) Repayment

- (1) Any person participating in a scholarship or fellowship program established under this section shall agree to pay to the United States the total amount of educational assistance provided to the person under the program, plus interest at the rate prescribed by paragraph (4), if the person—

(A) does not complete the course of education as agreed to pursuant to subsection (c) of this section, or completes the course of education but declines to serve in a position in the Department of Energy as agreed to pursuant to subsection (c) of this section; or

(B) is voluntarily separated from service or involuntarily separated for cause from the Department of Energy before the end of the period for which the person has agreed to continue in the service of the Department of Energy.

(2) If an employee fails to fulfill his agreement to pay to the Government the total amount of educational assistance provided to the person under the program, plus interest at the rate prescribed by paragraph (4), a sum equal to the amount of the educational assistance (plus such interest) is recoverable by the Government from the person or his estate by—

(A) in the case of a person who is an employee, setoff against accrued pay, compensation, amount of retirement credit, or other amount due the employee from the Government; and

(B) such other method as is provided by law for the recovery of amounts owing to the Government.

(3) The Secretary may waive in whole or in part a required repayment under this subsection if the Secretary determines the recovery would be against equity and good conscience or would be contrary to the best interests of the United States.

(4) For purposes of repayment under this section, the total amount of educational assistance provided to a person under the program shall bear interest at the applicable rate of interest under section 427A(c) of the Higher Education Act of 1965 (20 U.S.C. 1077a(c)).

(e) Preference for cooperative education students

In evaluating applicants for award of scholarships and fellowships under the program, the Secretary of Energy may give a preference to an individual who is enrolled in, or accepted for enrollment in, an educational institution that has a cooperative education program with the Department of Energy.

(f) Coordination of benefits

A scholarship or fellowship awarded under this section shall be taken into account in determining the eligibility of the student for Federal student financial assistance provided under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq. [and 42 U.S.C. 2751 et seq.]).

(g) Award of scholarships and fellowships

(1) Subject to paragraph (2), the Secretary shall award at least 20 scholarships (for undergraduate students) and 20 fellowships (for graduate students) during fiscal year 1992.

(2) The requirement to award 20 scholarships and 20 fellowships under paragraph (1) applies only to the extent there is a sufficient number of applicants qualified for such awards.

(h) Report to Congress

Not later than January 1, 1993, the Secretary of Energy shall submit to Congress a report on

activities undertaken under the program and recommendations for future activities under the program.

(i) Funding

Of the funds authorized to be appropriated pursuant to section 3101(9)(B), \$1,000,000 may be used for the purpose of carrying out this section. (Pub. L. 102-190, div. C, title XXXI, §3132, Dec. 5, 1991, 105 Stat. 1572; Pub. L. 103-337, div. C, title XXXI, §3156(b)(1), Oct. 5, 1994, 108 Stat. 3092; Pub. L. 105-244, title I, §102(a)(13)(F), Oct. 7, 1998, 112 Stat. 1620.)

REFERENCES IN TEXT

The Higher Education Act of 1965, referred to in subsec. (f), is Pub. L. 89-329, Nov. 8, 1965, 79 Stat. 1219, as amended. Title IV of the Act is classified generally to subchapter IV (§1070 et seq.) of chapter 28 of Title 20, Education, and part C (§2751 et seq.) of subchapter I of chapter 34 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

Section 3101(9)(B), referred to in subsec. (i), is section 3101(9)(B) of Pub. L. 102-190, div. C, title XXXI, Dec. 5, 1991, 105 Stat. 1564, which is not classified to the Code.

CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Years 1992 and 1993, and not as part of the Department of Energy Organization Act which comprises this chapter.

AMENDMENTS

1998—Subsec. (b)(1). Pub. L. 105-244 substituted “section 101 of the Higher Education Act of 1965” for “section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a))”.

1994—Subsec. (a). Pub. L. 103-337 inserted at end “The scholarship and fellowship program shall be known as the ‘Marilyn Lloyd Scholarship and Fellowship Program’.”

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see section 3 of Pub. L. 105-244, set out as a note under section 1001 of Title 20, Education.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 3156(b)(2) of Pub. L. 103-337 provided that: “The amendment made by paragraph (1) [amending this section] shall take effect on January 3, 1995.”

§ 7274f. Transferred

CODIFICATION

Section, Pub. L. 102-190, div. C, title XXXI, §3134, Dec. 5, 1991, 105 Stat. 1575, which related to the Defense Environmental Restoration and Waste Management Account, was renumbered section 4401 of Pub. L. 107-314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108-136, div. C, title XXXI, §3141(g)(2), Nov. 24, 2003, 117 Stat. 1764, and is classified to section 2581 of Title 50, War and National Defense.

§ 7274g. Environmental restoration and waste management five-year plan and budget reports

(a) Five-year plan

(1) Not later than September 1 of each year, the Secretary of Energy shall issue a plan for environmental restoration and waste management activities to be conducted, during the five-year period beginning on October 1 of the next

calendar year, at all facilities owned or operated by the Department of Energy except defense nuclear facilities. The plan also shall contain a description of environmental restoration and waste management activities conducted during the fiscal year in which the plan is submitted and of such activities to be conducted during the fiscal year beginning on October 1 of the same calendar year. Such five-year plan shall be designed to complete environmental restoration at all such Department of Energy facilities not later than the year 2019.

(2) The Secretary shall prepare each annual five-year plan in a preliminary form at least four months before the date on which that plan is required to be issued under paragraph (1). The preliminary plan shall contain the matters referred to in paragraph (4) (other than the matters referred to in subparagraph (J) of that paragraph). The Secretary shall provide the preliminary plan to the Governors and Attorneys General of affected States, appropriate representatives of affected Indian tribes, and the public for coordination, review, and comment.

(3) At the same time the Secretary issues an annual five-year plan under paragraph (1), the Secretary shall submit the plan to the President and Congress, publish a notice of the issuance of the plan in the Federal Register, and make the plan available to the Governors and Attorneys General of affected States, appropriate representatives of affected Indian tribes, and the public.

(4) The annual five-year plan, and the actions and other matters contained in the plan, shall be in accordance with all laws, regulations, permits, orders, and agreements. The plan shall include, with respect to the Department of Energy facilities required by paragraph (1) to be covered by the plan, the following matters:

(A) A description of the actions, including identification of specific projects, necessary to maintain or achieve compliance with Federal, State, or local environmental laws, regulations, permits, orders, and agreements.

(B) A description of the actions, including identification of specific projects, to be taken at each Department of Energy facility in order to implement environmental restoration activities planned for each such facility.

(C) A description of research and development activities for the expeditious and efficient environmental restoration of such facilities.

(D) A description of the technologies and facilities necessary to carry out the environmental restoration activities.

(E) A description of the waste management activities, including identification of specific projects, necessary to continue to operate the Department of Energy facilities or to decontaminate and decommission the facilities, as the case may be.

(F) A description of research and development activities for waste management.

(G) A description of the technologies and facilities necessary to carry out the waste management activities.

(H) A description of activities and practices that the Secretary is undertaking or plans to undertake to minimize the generation of waste.

(I) The estimated costs of, and personnel required for, each project, action, or activity contained in the plan.

(J) A description of the respects in which the plan differs from the preliminary form of that plan issued pursuant to paragraph (2), together with the reasons for any differences.

(K) A discussion of the implementation of the preceding annual five-year plan.

(L) Such other matters as the Secretary finds appropriate and in the public interest.

(5) The Secretary shall consult with the Administrator of the Environmental Protection Agency, Governors and Attorneys General of affected States, and appropriate representatives of affected Indian tribes in the preparation of the plan and the preliminary form of the plan pursuant to paragraphs (1) and (2). The Secretary shall include as an appendix to the plan (A) all comments submitted on the preliminary form of the plan by the Administrator, Governors and Attorneys General of affected States, and affected Indian tribes, and (B) a summary of comments submitted by the public.

(6) The first annual five-year plan issued pursuant to this section shall be issued in 1992.

(b) Treatment of plans under section 4332

The development and adoption of any part of any plan (including any preliminary form of any such plan) under subsection (a) of this section shall not be considered a major Federal action for the purposes of subparagraph (C), (E), or (F) of section 4332(2) of this title. Nothing in this subsection shall affect the Department of Energy's ongoing preparation of a programmatic environmental impact statement on environmental restoration and waste management.

(c) Grants

The Secretary of Energy is authorized to award grants to, and enter into cooperative agreements with, affected States and affected Indian tribes to assist such States and tribes in participating in the development of the annual five-year plan (including the preliminary form of such plan).

(d) Funding

Of the funds authorized to be appropriated pursuant to section 3103, \$20,000,000 may be used for the purpose of carrying out subsection (c) of this section.

(e) Budget reports

Each year, at the same time the President submits to Congress the budget for a fiscal year (pursuant to section 1105 of title 31), the President shall submit to Congress a description of proposed activities and funding levels contained in the annual five-year plan (issued, pursuant to subsection (a)(1) of this section, in the year preceding the year in which the budget is submitted to Congress) that are not included in the budget or are included in the budget in a different form or at a different funding level, together with the reasons for such differences.

(Pub. L. 102-190, div. C, title XXXI, §3135, Dec. 5, 1991, 105 Stat. 1575; Pub. L. 103-337, div. C, title XXXI, §3160(a), Oct. 5, 1994, 108 Stat. 3094.)

REFERENCES IN TEXT

Section 3103, referred to in subsec. (d), is section 3103 of Pub. L. 102-190, div. C, title XXXI, Dec. 5, 1991, 105 Stat. 1566, which is not classified to the Code.

CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Years 1992 and 1993, and not as part of the Department of Energy Organization Act which comprises this chapter.

AMENDMENTS

1994—Subsec. (a)(1). Pub. L. 103-337, §3160(a)(1), substituted “all facilities owned or operated by the Department of Energy except defense nuclear facilities” for “(A) defense nuclear facilities and (B) all other facilities owned or operated by the Department of Energy” in first sentence and inserted “such” after “restoration at all” in third sentence.

Subsec. (a)(4). Pub. L. 103-337, §3160(a)(2), substituted “The plan shall include, with respect to the Department of Energy facilities required by paragraph (1) to be covered by the plan, the following matters:” for “The plan shall contain the following matters:” in introductory provisions.

Subsec. (a)(6), (7). Pub. L. 103-337, §3160(a)(3), (4), redesignated par. (7) as (6) and struck out former par. (6) which read as follows: “The Secretary shall include in the annual five-year plan issued in 1992 a discussion of the feasibility and need, if any, for the establishment of a contingency fund in the Department of Energy to provide funds necessary to meet the requirements in environmental laws, to remove an immediate threat to worker or public health and safety, to prevent or improve a condition where postponement of activity would lead to deterioration of the environment, and to undertake additional environmental restoration activities at Department of Energy defense nuclear facilities that are not provided for in the budgets for fiscal years in which it is necessary to meet such requirements or undertake such activities.”

PUBLIC PARTICIPATION IN PLANNING

Pub. L. 103-337, div. C, title XXXI, §3160(e), Oct. 5, 1994, 108 Stat. 3095, which was formerly set out as a note under this section, was renumbered section 4408 of Pub. L. 107-314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108-136, div. C, title XXXI, §3141(g)(9), Nov. 24, 2003, 117 Stat. 1765, and is classified to section 2588 of Title 50, War and National Defense.

§§ 7274h, 7274i. Transferred

CODIFICATION

Section 7274h, Pub. L. 102-484, div. C, title XXXI, §3161, Oct. 23, 1992, 106 Stat. 2644; Pub. L. 103-337, div. A, title X, §1070(c)(2), Oct. 5, 1994, 108 Stat. 2857; Pub. L. 105-277, div. A, §101(f) [title VIII, §405(d)(7)(A), (f)(6)(A)], Oct. 21, 1998, 112 Stat. 2681-337, 2681-419, 2681-430; Pub. L. 107-107, div. A, title X, §1048(h)(1), Dec. 28, 2001, 115 Stat. 1229, which related to the Department of Energy's workforce restructuring plan for defense nuclear facilities, was renumbered section 4604 of Pub. L. 107-314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108-136, div. C, title XXXI, §3141(i)(5)(A)-(C), Nov. 24, 2003, 117 Stat. 1777, and is classified to section 2704 of Title 50, War and National Defense.

Section 7274i, Pub. L. 102-484, div. C, title XXXI, §3162, Oct. 23, 1992, 106 Stat. 2646, which related to a program to monitor Department of Energy workers exposed to hazardous and radioactive substances, was renumbered section 4643 of Pub. L. 107-314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108-136, div. C, title XXXI, §3141(i)(14)(A)-(C), Nov. 24, 2003, 117 Stat. 1779, 1780, and is classified to section 2733 of Title 50, War and National Defense.

SEMIANNUAL REPORT TO CONGRESS OF LOCAL IMPACT ASSISTANCE

Pub. L. 105-85, div. C, title XXXI, §3153(f), Nov. 18, 1997, 111 Stat. 2044, which was formerly set out as a note under section 7274h of this title, was renumbered section 4851 of Pub. L. 107-314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108-136, div. C, title XXXI, §3141(k)(15)(A)-(C)(ii), Nov. 24, 2003, 117 Stat. 1786, and is classified to section 2821 of Title 50, War and National Defense.

§ 7274j. Repealed. Pub. L. 108-136, div. C, title XXXI, §3141(m)(2), Nov. 24, 2003, 117 Stat. 1787

Section, Pub. L. 102-484, div. C, title XXXI, §3163, Oct. 23, 1992, 106 Stat. 2647; Pub. L. 104-106, div. A, title XV, §1504(c)(2), Feb. 10, 1996, 110 Stat. 514, related to definitions for purposes of former sections 7274h to 7274j of this title.

§ 7274k. Transferred

CODIFICATION

Section, Pub. L. 103-160, div. C, title XXXI, §3153, Nov. 30, 1993, 107 Stat. 1950; Pub. L. 103-337, div. C, title XXXI, §3160(b)-(d), Oct. 5, 1994, 108 Stat. 3094; Pub. L. 104-201, div. C, title XXXI, §3152, Sept. 23, 1996, 110 Stat. 2839; Pub. L. 105-85, div. C, title XXXI, §3160, Nov. 18, 1997, 111 Stat. 2048, which related to baseline environmental management reports, was renumbered section 4404 of Pub. L. 107-314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108-136, div. C, title XXXI, §3141(g)(5), Nov. 24, 2003, 117 Stat. 1765, and is classified to section 2584 of Title 50, War and National Defense.

REQUIREMENT TO DEVELOP FUTURE USE PLANS FOR ENVIRONMENTAL MANAGEMENT PROGRAMS

Pub. L. 104-201, div. C, title XXXI, §3153, Sept. 23, 1996, 110 Stat. 2839, which was formerly set out as a note under this section, was renumbered section 4402 of Pub. L. 107-314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108-136, div. C, title XXXI, §3141(g)(3)(A)-(C), Nov. 24, 2003, 117 Stat. 1764, and is classified to section 2582 of Title 50, War and National Defense.

ACCELERATED SCHEDULE FOR ENVIRONMENTAL RESTORATION AND WASTE MANAGEMENT ACTIVITIES

Pub. L. 104-106, div. C, title XXXI, §3156, Feb. 10, 1996, 110 Stat. 625, which was formerly set out as a note under this section, was renumbered section 4405 of Pub. L. 107-314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003 by Pub. L. 108-136, div. C, title XXXI, §3141(g)(6)(A)-(C), Nov. 24, 2003, 117 Stat. 1765, and is classified to section 2585 of Title 50, War and National Defense.

§ 7274l. Authority to transfer certain Department of Energy property

(a) Authority to transfer

(1) Notwithstanding any other provision of law, the Secretary of Energy may transfer, for consideration, all right, title, and interest of the United States in and to the property referred to in subsection (b) of this section to any person if the Secretary determines that such transfer will mitigate the adverse economic consequences that might otherwise arise from the closure of a Department of Energy facility.

(2) The amount of consideration received by the United States for a transfer under paragraph (1) may be less than the fair market value of the property transferred if the Secretary determines that the receipt of such lesser amount by the

United States is in accordance with the purpose of such transfer under this section.

(3) The Secretary may require any additional terms and conditions with respect to a transfer of property under paragraph (1) that the Secretary determines appropriate to protect the interests of the United States.

(b) Covered property

Property referred to in subsection (a) of this section is the following property of the Department of Energy that is located at a Department of Energy facility to be closed or reconfigured:

(1) The personal property and equipment at the facility that the Secretary determines to be excess to the needs of the Department of Energy.

(2) Any personal property and equipment at the facility (other than the property and equipment referred to in paragraph (1)) the replacement cost of which does not exceed an amount equal to 110 percent of the costs of relocating the property or equipment to another facility of the Department of Energy.

(Pub. L. 103-160, div. C, title XXXI, §3155, Nov. 30, 1993, 107 Stat. 1953.)

CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Year 1994, and not as part of the Department of Energy Organization Act which comprises this chapter.

§§ 7274m to 7274o. Transferred

CODIFICATION

Section 7274m, Pub. L. 103-337, div. C, title XXXI, §3163, Oct. 5, 1994, 108 Stat. 3097, which related to safety oversight and enforcement at defense nuclear facilities, was renumbered section 4642 of Pub. L. 107-314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108-136, div. C, title XXXI, §3141(i)(13)(A)-(C), Nov. 24, 2003, 117 Stat. 1779, and is classified to section 2732 of Title 50, War and National Defense.

Section 7274n, Pub. L. 104-201, div. C, title XXXI, §3143, Sept. 23, 1996, 110 Stat. 2836, which related to projects to accelerate closure activities at defense nuclear facilities, was renumbered section 4421 of Pub. L. 107-314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108-136, div. C, title XXXI, §3141(g)(11)(A)-(C), Nov. 24, 2003, 117 Stat. 1766, and is classified to section 2601 of Title 50, War and National Defense.

Section 7274o, Pub. L. 104-201, div. C, title XXXI, §3159, Sept. 23, 1996, 110 Stat. 2842; Pub. L. 105-85, div. A, title XIII, §1305(c), (d), Nov. 18, 1997, 111 Stat. 1954; Pub. L. 106-65, div. C, title XXXI, §3163(f), Oct. 5, 1999, 113 Stat. 946, which related to reports on critical difficulties at nuclear weapons laboratories and nuclear weapons production plants, was renumbered section 4213 of Pub. L. 107-314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108-136, div. C, title XXXI, §3141(e)(14), Nov. 24, 2003, 117 Stat. 1760, and is classified to section 2533 of Title 50, War and National Defense.

SUBMITTAL OF ANNUAL REPORT ON STATUS OF SECURITY FUNCTIONS AT NUCLEAR WEAPONS FACILITIES

Pub. L. 105-85, div. C, title XXXI, §3162, Nov. 18, 1997, 111 Stat. 2049, as amended by Pub. L. 106-65, div. C, title XXXI, §3142(h)(2), Oct. 5, 1999, 113 Stat. 934, which was formerly set out as a note under section 7274m of this title, was renumbered section 4506 of Pub. L. 107-314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108-136, div. C, title XXXI,

§3141(h)(7)(A)-(C), Nov. 24, 2003, 117 Stat. 1773, and is classified to section 2657 of Title 50, War and National Defense.

EMPLOYEE INCENTIVES FOR EMPLOYEES AT CLOSURE
PROJECT FACILITIES

Pub. L. 106-398, §1 [div. C, title XXXI, §3136], Oct. 30, 2000, 114 Stat. 1654, 1654A-458, which was formerly set out as a note under section 7274n of this title, was re-numbered section 4603 of Pub. L. 107-314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108-136, div. C, title XXXI, §3141(i)(4)(A)-(C), Nov. 24, 2003, 117 Stat. 1777, and is classified to section 2703 of Title 50, War and National Defense.

§ 7274p. Advice to President and Congress regarding safety, security, and reliability of United States nuclear weapons stockpile

(a) Findings

Congress makes the following findings:

(1) Nuclear weapons are the most destructive weapons on earth. The United States and its allies continue to rely on nuclear weapons to deter potential adversaries from using weapons of mass destruction. The safety and reliability of the nuclear weapons stockpile are essential to ensure its credibility as a deterrent.

(2) On September 24, 1996, President Clinton signed the Comprehensive Test Ban Treaty.

(3) Effective as of September 30, 1996, the United States is prohibited by section 507 of the Energy and Water Development Appropriations Act, 1993 (Public Law 102-377; 42 U.S.C. 2121 note)¹ from conducting underground nuclear tests “unless a foreign state conducts a nuclear test after this date, at which time the prohibition on United States nuclear testing is lifted”.

(4) Section 1436(b) of the National Defense Authorization Act, Fiscal Year 1989 (Public Law 100-456; 42 U.S.C. 2121 note)¹ requires the Secretary of Energy to “establish and support a program to assure that the United States is in a position to maintain the reliability, safety, and continued deterrent effect of its stockpile of existing nuclear weapons designs in the event that a low-threshold or comprehensive test ban on nuclear explosive testing is negotiated and ratified.”

(5) Section 3138(d) of the National Defense Authorization Act for Fiscal Year 1994¹ (Public Law 103-160; 42 U.S.C. 2121 note) required the President to submit an annual report to Congress which sets forth “any concerns with respect to the safety, security, effectiveness, or reliability of existing United States nuclear weapons raised by the Stockpile Stewardship Program of the Department of Energy”.

(6) President Clinton declared in July 1993 that “to assure that our nuclear deterrent remains unquestioned under a test ban, we will explore other means of maintaining our confidence in the safety, reliability, and the performance of our weapons”. This decision was incorporated in a Presidential Directive.

(7) Section 3138 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103-160; 42 U.S.C. 2121 note)¹ also requires

that the Secretary of Energy establish a “stewardship program to ensure the preservation of the core intellectual and technical competencies of the United States in nuclear weapons”.

(8) The plan of the Department of Energy to maintain the safety and reliability of the United States nuclear weapons stockpile is known as the Stockpile Stewardship and Management Program. The ability of the United States to maintain and certify the safety, security, effectiveness, and reliability of the nuclear weapons stockpile without testing will require utilization of new and sophisticated computational capabilities and diagnostic technologies, methods, and procedures. Current diagnostic technologies and laboratory testing techniques are insufficient to certify the safety and reliability of the United States nuclear weapons stockpile into the future. Whereas in the past laboratory and diagnostic tools were used in conjunction with nuclear testing, in the future they will provide, under the Department of Energy’s stockpile stewardship plan, the sole basis for assessing past test data and for making judgments on phenomena observed in connection with the aging of the stockpile.

(9) Section 3159 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104-201; 42 U.S.C. 7274o) requires that the directors of the nuclear weapons laboratories and the nuclear weapons production plants submit a report to the Assistant Secretary of Energy for Defense Programs if they identify a problem that has significant bearing on confidence in the safety or reliability of a nuclear weapon or nuclear weapon type, that the Assistant Secretary must transmit that report, along with any comments, to the congressional defense committees and to the Secretary of Energy and the Secretary of Defense, and that the Joint Nuclear Weapons Council advise Congress regarding its analysis of any such problems.

(10) On August 11, 1995, President Clinton directed “the establishment of a new annual reporting and certification requirement [to] ensure that our nuclear weapons remain safe and reliable under a comprehensive test ban”.

(11) On the same day, the President noted that the Secretary of Defense and the Secretary of Energy have the responsibility, after being “advised by the Nuclear Weapons Council, the Directors of DOE’s nuclear weapons laboratories, and the Commander of United States Strategic Command”, to provide the President with the information regarding the certification referred to in paragraph (10).

(12) The Joint Nuclear Weapons Council established by section 179 of title 10 is responsible for providing advice to the Secretary of Energy and the Secretary of Defense regarding nuclear weapons issues, including “considering safety, security, and control issues for existing weapons”. The Council plays a critical role in advising Congress in matters relating to nuclear weapons.

(13) It is essential that the President receive well-informed, objective, and honest opinions, including dissenting views, from his advisers

¹ See References in Text note below.

and technical experts regarding the safety, security, effectiveness, and reliability of the nuclear weapons stockpile.

(b) Policy

(1) In general

It is the policy of the United States—

- (A) to maintain a safe, secure, effective, and reliable nuclear weapons stockpile; and
- (B) as long as other nations control or actively seek to acquire nuclear weapons, to retain a credible nuclear deterrent.

(2) Nuclear weapons stockpile

It is in the security interest of the United States to sustain the United States nuclear weapons stockpile through a program of stockpile stewardship, carried out at the nuclear weapons laboratories and nuclear weapons production plants.

(3) Sense of Congress

It is the sense of Congress that—

(A) the United States should retain a triad of strategic nuclear forces sufficient to deter any future hostile foreign leadership with access to strategic nuclear forces from acting against the vital interests of the United States;

(B) the United States should continue to maintain nuclear forces of sufficient size and capability to implement an effective and robust deterrent strategy; and

(C) the advice of the persons required to provide the President and Congress with assurances of the safety, security, effectiveness, and reliability of the nuclear weapons force should be scientifically based, without regard for politics, and of the highest quality and integrity.

(c), (d) Omitted

(e) Advice and opinions regarding nuclear weapons stockpile

In addition to a director of a nuclear weapons laboratory or a nuclear weapons production plant (under section 3159 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104-201; 42 U.S.C. 7274o)),¹ any member of the Joint Nuclear Weapons Council or the commander of the United States Strategic Command may also submit to the President, the Secretary of Defense, the Secretary of Energy, or the congressional defense committees advice or opinion regarding the safety, security, effectiveness, and reliability of the nuclear weapons stockpile.

(f) Expression of individual views

A representative of the President may not take any action against, or otherwise constrain, a director of a nuclear weapons laboratory or a nuclear weapons production plant, a member of the Joint Nuclear Weapons Council, or the Commander of United States Strategic Command for presenting individual views to the President, the National Security Council, or Congress regarding the safety, security, effectiveness, and reliability of the nuclear weapons stockpile.

(g) Definitions

In this section:

(1) The term “representative of the President” means the following:

(A) Any official of the Department of Defense or the Department of Energy who is appointed by the President and confirmed by the Senate.

(B) Any member of the National Security Council.

(C) Any member of the Joint Chiefs of Staff.

(D) Any official of the Office of Management and Budget.

(2) The term “nuclear weapons laboratory” means any of the following:

(A) Lawrence Livermore National Laboratory, California.

(B) Los Alamos National Laboratory, New Mexico.

(C) Sandia National Laboratories.

(3) The term “nuclear weapons production plant” means any of the following:

(A) The Pantex Plant, Texas.

(B) The Savannah River Site, South Carolina.

(C) The Kansas City Plant, Missouri.

(D) The Y-12 Plant, Oak Ridge, Tennessee.

(Pub. L. 105-85, div. A, title XIII, §1305, Nov. 18, 1997, 111 Stat. 1952.)

REFERENCES IN TEXT

Section 507 of the Energy and Water Development Appropriations Act, 1993 (Public Law 102-377), referred to in subsec. (a)(3), which is set out as a note under section 2121 of this title, was amended by Pub. L. 108-136, div. C, title XXXI, §3141(e)(11), Nov. 24, 2003, 117 Stat. 1760, and no longer contains the words “unless a foreign state conducts a nuclear test after this date, at which time the prohibition on United States nuclear testing is lifted”. Those words were transferred to section 2530 of Title 50, War and National Defense.

Section 1436 of the National Defense Authorization Act, Fiscal Year 1989 (Public Law 100-456), referred to in subsec. (a)(4), was set out as a note under section 2121 of this title and was renumbered section 4207 of Pub. L. 107-314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108-136, div. C, title XXXI, §3141(e)(8)(A)–(C), Nov. 24, 2003, 117 Stat. 1759, which is classified to section 2527 of Title 50, War and National Defense.

Section 3138 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103-160), referred to in subsec. (a)(5) and (7), was amended by Pub. L. 105-85, div. C, title XXXI, §3152(e)(1), Nov. 18, 1997, 111 Stat. 2042, to strike out subsec. (d) and subsequently renumbered section 4201 of Pub. L. 107-314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108-136, div. C, title XXXI, §3141(e)(2), Nov. 24, 2003, 117 Stat. 1758, which is classified to section 2521 of Title 50, War and National Defense.

Section 3159 of the National Defense Authorization Act for Fiscal Year 1997, referred to in subsecs. (a)(9) and (e), was classified to section 7274o of this title and was renumbered section 4213 of Pub. L. 107-314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108-136, div. C, title XXXI, §3141(e)(14), Nov. 24, 2003, 117 Stat. 1760, which is classified to section 2533 of Title 50, War and National Defense.

CODIFICATION

Section is comprised of section 1305 of Pub. L. 105-85. Subsecs. (c) and (d) of section 1305 of Pub. L. 105-85 amended section 2533 of Title 50, War and National Defense.

Section was enacted as part of the National Defense Authorization Act for Fiscal Year 1998, and not as part of the Department of Energy Organization Act which comprises this chapter.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the advanced scientific computing research program and activities at Lawrence Livermore National Laboratory, including the functions of the Secretary of Energy relating thereto, to the Secretary of Homeland Security, see sections 183(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

All national security functions and activities performed immediately before Oct. 5, 1999, by nuclear weapons laboratories and production plants defined in this section, transferred to the Administrator for Nuclear Security of the National Nuclear Security Administration of the Department of Energy, see section 2481 of Title 50, War and National Defense.

“CONGRESSIONAL DEFENSE COMMITTEES” DEFINED

Congressional defense committees means the Committees on Armed Services and Appropriations of the Senate and the House of Representatives, see section 3 of Pub. L. 105-85, 111 Stat. 1645, as amended by Pub. L. 106-65, div. A, title X, §1067(4), Oct. 5, 1999, 113 Stat. 774.

§ 7274q. Transferred

CODIFICATION

Section, Pub. L. 105-85, div. C, title XXXI, §3158, Nov. 18, 1997, 111 Stat. 2046; Pub. L. 108-7, div. D, title V, §506, Feb. 20, 2003, 117 Stat. 158, which related to transfers of real property at certain Department of Energy facilities, was renumbered section 4831 of Pub. L. 107-314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108-136, div. C, title XXXI, §3141(k)(11), Nov. 24, 2003, 117 Stat. 1785, and is classified to section 2811 of Title 50, War and National Defense.

§ 7274r. Transferred

CODIFICATION

Section, Pub. L. 108-7, div. D, title III, §308, Feb. 20, 2003, 117 Stat. 154, which related to research, development, and demonstration activities with respect to engineering and manufacturing capabilities at covered nuclear weapons production plants, was transferred and is listed in a similar provisions note under the heading Activities at Covered Nuclear Weapons Facilities under section 2812 of Title 50, War and National Defense.

ENGINEERING AND MANUFACTURING RESEARCH, DEVELOPMENT, AND DEMONSTRATION BY PLANT MANAGERS OF CERTAIN NUCLEAR WEAPONS PRODUCTION PLANTS

Pub. L. 106-398, §1 [div. C, title XXXI, §3156], Oct. 30, 2000, 114 Stat. 1654, 1654A-467, which was formerly set out as a note under this section, was renumbered section 4832 of Pub. L. 107-314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108-136, div. C, title XXXI, §3141(k)(12), Nov. 24, 2003, 117 Stat. 1785, and is classified to section 2812 of Title 50, War and National Defense.

§ 7274s. Transferred

CODIFICATION

Section, Pub. L. 107-314, div. C, title XXXI, §3141, Dec. 2, 2002, 116 Stat. 2730, which related to annual assessments and reports to the President and Congress regarding the condition of the United States nuclear weapons stockpile, was renumbered section 4205 of Pub. L. 107-314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108-136, div. C,

title XXXI, §3141(e)(6)(A)-(C), Nov. 24, 2003, 117 Stat. 1759, and is classified to section 2525 of Title 50, War and National Defense.

§ 7275. Definitions

As used in sections 7275 to 7276c of this title:

(1) The term “Administrator” means the Administrator of the Western Area Power Administration.

(2) The term “integrated resource planning” means a planning process for new energy resources that evaluates the full range of alternatives, including new generating capacity, power purchases, energy conservation and efficiency, cogeneration and district heating and cooling applications, and renewable energy resources, in order to provide adequate and reliable service to its electric customers at the lowest system cost. The process shall take into account necessary features for system operation, such as diversity, reliability, dispatchability, and other factors of risk; shall take into account the ability to verify energy savings achieved through energy conservation and efficiency and the projected durability of such savings measured over time; and shall treat demand and supply resources on a consistent and integrated basis.

(3) The term “least cost option” means an option for providing reliable electric services to electric customers which will, to the extent practicable, minimize life-cycle system costs, including adverse environmental effects, of providing such service. To the extent practicable, energy efficiency and renewable resources may be given priority in any least-cost option.

(4) The term “long-term firm power service contract” means any contract for the sale by Western Area Power Administration of firm capacity, with or without energy, which is to be delivered over a period of more than one year.

(5) The terms “customer” or “customers” means any entity or entities purchasing firm capacity with or without energy, from the Western Area Power Administration under a long-term firm power service contract. Such terms include parent-type entities and their distribution or user members.

(6) For any customer, the term “applicable integrated resource plan” means the integrated resource plan approved by the Administrator under sections 7275 to 7276c of this title for that customer.

(Pub. L. 98-381, title II, §201, as added Pub. L. 102-486, title I, §114, Oct. 24, 1992, 106 Stat. 2799.)

CODIFICATION

Section was enacted as part of the Hoover Power Plant Act of 1984, and not as part of the Department of Energy Organization Act which comprises this chapter.

PRIOR PROVISIONS

A prior section 7275, Pub. L. 98-381, title II, §201, Aug. 17, 1984, 98 Stat. 1340, related to energy conservation program of Western Area Power Administration, prior to the general amendment of title II of Pub. L. 98-381 by section 114 of Pub. L. 102-486.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7276, 7276a, 7276b, 7276c of this title.

§ 7276. Regulations to require integrated resource planning

(a) Regulations

Within 1 year after October 24, 1992, the Administrator shall, by regulation, revise the Final Amended Guidelines and Acceptance Criteria for Customer Conservation and Renewable Energy Programs published in the Federal Register on August 21, 1985 (50 F.R. 33892), or any subsequent amendments thereto, to require each customer purchasing electric energy under a long-term firm power service contract with the Western Area Power Administration to implement, within 3 years after October 24, 1992, integrated resource planning in accordance with the requirements of sections 7275 to 7276c of this title.

(b) Certain small customers

Notwithstanding subsection (a) of this section, for customers with total annual energy sales or usage of 25 Gigawatt Hours or less which are not members of a joint action agency or a generation and transmission cooperative with power supply responsibility, the Administrator may establish different regulations and apply such regulations to customers that the Administrator finds have limited economic, managerial, and resource capability to conduct integrated resource planning. The regulations under this subsection shall require such customers to consider all reasonable opportunities to meet their future energy service requirements using demand-side techniques, new renewable resources and other programs that will provide retail customers with electricity at the lowest possible cost, and minimize, to the extent practicable, adverse environmental effects.

(Pub. L. 98-381, title II, §202, as added Pub. L. 102-486, title I, §114, Oct. 24, 1992, 106 Stat. 2800.)

CODIFICATION

Section was enacted as part of the Hoover Power Plant Act of 1984, and not as part of the Department of Energy Organization Act which comprises this chapter.

PRIOR PROVISIONS

A prior section 7276, Pub. L. 98-381, title II, §202, Aug. 17, 1984, 98 Stat. 1341, related to regulations of Western Area Power Administration, including amendment of regulations after notice and comment, evaluation of energy conservation programs, and allowance by Western for incorporation of elements of such programs, prior to the general amendment of title II of Pub. L. 98-381 by section 114 of Pub. L. 102-486.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7275, 7276a, 7276b, 7276c of this title.

§ 7276a. Technical assistance

The Administrator may provide technical assistance to customers to, among other things, conduct integrated resource planning, implement applicable integrated resource plans, and otherwise comply with the requirements of sections 7275 to 7276c of this title. Technical assistance may include publications, workshops, conferences, one-to-one assistance, equipment loans, technology and resource assessment studies, marketing studies, and other mechanisms to

transfer information on energy efficiency and renewable energy options and programs to customers. The Administrator shall give priority to providing technical assistance to customers that have limited capability to conduct integrated resource planning.

(Pub. L. 98-381, title II, §203, as added Pub. L. 102-486, title I, §114, Oct. 24, 1992, 106 Stat. 2800.)

CODIFICATION

Section was enacted as part of the Hoover Power Plant Act of 1984, and not as part of the Department of Energy Organization Act which comprises this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7275, 7276, 7276b, 7276c of this title.

§ 7276b. Integrated resource plans

(a) Review by Western Area Power Administration

Within 1 year after October 24, 1992, the Administrator shall, by regulation, revise the Final Amended Guidelines and Acceptance Criteria for Customer Conservation and Renewable Energy Programs published in the Federal Register on August 21, 1985 (50 F.R. 33892), or any subsequent amendments thereto, to require each customer to submit an integrated resource plan to the Administrator within 12 months after such regulations are amended. The regulation shall require a revision of such plan to be submitted every 5 years after the initial submission. The Administrator shall review the initial plan in accordance with a schedule established by the Administrator (which schedule will provide for the review of all initial plans within 24 months after such regulations are amended), and each revision thereof within 120 days after his receipt of the plan or revision and determine whether the customer has in the development of the plan or revision, complied with sections 7275 to 7276c of this title. Plan amendments may be submitted to the Administrator at any time and the Administrator shall review each such amendment within 120 days after receipt thereof to determine whether the customer in amending its plan has complied with sections 7275 to 7276c of this title. If the Administrator determines that the customer, in developing its plan, revision, or amendment, has not complied with the requirements of sections 7275 to 7276c of this title, the customer shall resubmit the plan at any time thereafter. Whenever a plan or revision or amendment is resubmitted the Administrator shall review the plan or revision or amendment within 120 days after his receipt thereof to determine whether the customer has complied with sections 7275 to 7276c of this title.

(b) Criteria for approval of integrated resource plans

The Administrator shall approve an integrated resource plan submitted as required under subsection (a) of this section if, in developing the plan, the customer has:

- (1) Identified and accurately compared all practicable energy efficiency and energy supply resource options available to the customer.
- (2) Included a 2-year action plan and a 5-year action plan which describe specific actions the

customer will take to implement its integrated resource plan.

(3) Designated "least-cost options" to be utilized by the customer for the purpose of providing reliable electric service to its retail consumers and explained the reasons why such options were selected.

(4) To the extent practicable, minimized adverse environmental effects of new resource acquisitions.

(5) In preparation and development of the plan (and each revision or amendment of the plan) has provided for full public participation, including participation by governing boards.

(6) Included load forecasting.

(7) Provided methods of validating predicted performance in order to determine whether objectives in the plan are being met.

(8) Met such other criteria as the Administrator shall require.

(c) Use of other integrated resource plans

Where a customer or group of customers are implementing integrated resource planning under a program responding to Federal, State, or other initiatives, including integrated resource planning considered and implemented pursuant to section 2621(d) of title 16, in evaluating that customer's integrated resource plan under sections 7275 to 7276c of this title, the Administrator shall accept such plan as fulfillment of the requirements of sections 7275 to 7276c of this title to the extent such plan substantially complies with the requirements of sections 7275 to 7276c of this title.

(d) Compliance with integrated resource plans

Within 1 year after October 24, 1992, the Administrator shall, by regulation, revise the Final Amended Guidelines and Acceptance Criteria for Customer Conservation and Renewable Energy Programs published in the Federal Register on August 21, 1985 (50 F.R. 33892), or any subsequent amendments thereto, to require each customer to fully comply with the applicable integrated resource plan and submit an annual report to the Administrator (in such form and containing such information as the Administrator may require) describing the customer's progress to the goals established in such plan. After the initial review under subsection (a) of this section the Administrator shall periodically conduct reviews of a representative sample of applicable integrated resource plans and the customer's implementation of the applicable integrated resource plan to determine if the customers are in compliance with their plans. If the Administrator finds a customer out-of-compliance, the Administrator shall impose a surcharge under this section on all electric energy purchased by the customer from the Western Area Power Administration or reduce such customer's power allocation by 10 percent, unless the Administrator finds that a good faith effort has been made to comply with the approved plan.

(e) Enforcement

(1) No approved plan

If an integrated resource plan for any customer is not submitted before the date 12

months after the guidelines are amended as required under this section or if the plan is disapproved by the Administrator and a revised plan is not resubmitted by the date 9 months after the date of such disapproval, the Administrator shall impose a surcharge of 10 percent of the purchase price on all power obtained by that customer from the Western Area Power Administration after such date. The surcharge shall remain in effect until an integrated resource plan is approved for that customer. If the plan is not submitted for more than one year after the required date, the surcharge shall increase to 20 percent for the second year (or any portion thereof prior to approval of the plan) and to 30 percent thereafter until the plan is submitted or the contract for the purchase of power by such customer from the Western Area Power Administration terminates.

(2) Failure to comply with approved plan

After approval by the Administrator of an applicable integrated resource plan for any customer, the Administrator shall impose a 10 percent surcharge on all power purchased by such customer from the Western Area Power Administration whenever the Administrator determines that such customer's activities are not consistent with the applicable integrated resource plan. The surcharge shall remain in effect until the Administrator determines that the customer's activities are consistent with the applicable integrated resource plan. The surcharge shall be increased to 20 percent if the customer's activities are out of compliance for more than one year and to 30 percent after more than 2 years, except that no surcharge shall be imposed if the customer demonstrates, to the satisfaction of the Administrator, that a good faith effort has been made to comply with the approved plan.

(3) Reduction in power allocation

In the case of any customer subject to a surcharge under paragraph (1) or (2), in lieu of imposing such surcharge the Administrator may reduce such customer's power allocation from the Western Area Power Administration by 10 percent. The Administrator shall provide by regulation the terms and conditions under which a power allocation terminated under this subsection may be reinstated.

(f) Integrated resource planning cooperatives

With the approval of the Administrator, customers within any State or region may form integrated resource planning cooperatives for the purposes of complying with sections 7275 to 7276c of this title, and such customers shall be allowed an additional 6 months to submit an initial integrated resource plan to the Administrator.

(g) Customers with more than 1 contract

If more than one long-term firm power service contract exists between the Administrator and a customer, only one integrated resource plan shall be required for that customer under sections 7275 to 7276c of this title.

(h) Program review

Within 1 year after January 1, 1999, and at appropriate intervals thereafter, the Adminis-

trator shall initiate a public process to review the program established by this section. The Administrator is authorized at that time to revise the criteria set forth in subsection (b) of this section to reflect changes, if any, in technology, needs, or other developments.

(Pub. L. 98-381, title II, § 204, as added Pub. L. 102-486, title I, § 114, Oct. 24, 1992, 106 Stat. 2800.)

CODIFICATION

Section was enacted as part of the Hoover Power Plant Act of 1984, and not as part of the Department of Energy Organization Act which comprises this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7275, 7276, 7276a, 7276c of this title.

§ 7276c. Miscellaneous provisions

(a) Environmental impact statement

The provisions of the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] shall apply to actions of the Administrator implementing sections 7275 to 7276c of this title in the same manner and to the same extent as such provisions apply to other major Federal actions significantly affecting the quality of the human environment.

(b) Annual reports

The Administrator shall include in the annual report submitted by the Western Area Power Administration (1) a description of the activities undertaken by the Administrator and by customers under sections 7275 to 7276c of this title and (2) an estimate of the energy savings and renewable resource benefits achieved as a result of such activities.

(c) State regulated investor-owned utilities

Any State regulated electric utility (as defined in section 2602(18) of title 16) shall be exempt from the provisions of sections 7275 to 7276c of this title.

(d) Rural Electrification Administration requirements

Nothing in sections 7275 to 7276c of this title shall require a customer to take any action inconsistent with a requirement imposed by the Rural Electrification Administration¹

(Pub. L. 98-381, title II, § 205, as added Pub. L. 102-486, title I, § 114, Oct. 24, 1992, 106 Stat. 2803.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (a), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

CODIFICATION

Section was enacted as part of the Hoover Power Plant Act of 1984, and not as part of the Department of Energy Organization Act which comprises this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7275, 7276, 7276a, 7276b of this title.

¹ So in original. Probably should be followed by a period.

§ 7276d. Property protection program for power marketing administrations

The Administrators of the Western Area Power Administration, the Southwestern Power Administration, and the Southeastern Power Administration may each carry out programs to reduce vandalism, theft, and destruction of property that is under their jurisdiction.

(Pub. L. 107-78, § 1, Nov. 28, 2001, 115 Stat. 808.)

CODIFICATION

Section was not enacted as part of the Department of Energy Organization Act which comprises this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7276e of this title.

§ 7276e. Provision of rewards

In carrying out a program under this section and section 7276d of this title, each Administrator referred to in section 7276d of this title is authorized to provide rewards (including cash rewards) to individuals who provide information or evidence leading to the arrest and prosecution of individuals causing damage to, or loss of, Federal property under their jurisdiction. The amount of any one such reward paid to any individual may not exceed a value of \$1,000.

(Pub. L. 107-78, § 2, Nov. 28, 2001, 115 Stat. 808.)

CODIFICATION

Section was not enacted as part of the Department of Energy Organization Act which comprises this chapter.

§ 7277. Report concerning review of United States coal imports

(a) In general

The Energy Information Administration shall issue a report quarterly, and provide an annual summary of the quarterly reports to the Congress, on the status of United States coal imports. Such quarterly reports may be published as a part of the Quarterly Coal Report published by the Energy Information Administration.

(b) Contents

Each report required by this section shall—

(1) include current and previous year data on the quantity, quality (including heating value, sulfur content, and ash content), and delivered price of all coals imported by domestic electric utility plants that imported more than 10,000 tons during the previous calendar year into the United States;

(2) identify the foreign nations exporting the coal, the domestic electric utility plants receiving coal from each exporting nation, the domestically produced coal supplied to such plants, and the domestic coal production, by State, displaced by the imported coal;

(3) identify (to the extent allowed under disclosure policy), at regional and State levels of aggregation, transportation modes and costs for delivery of imported coal from the exporting country port of origin to the point of consumption in the United States; and

(4) specifically highlight and analyze any significant trends of unusual variations in coal imports.

(c) Date of reports

The first report required by this section shall be submitted to Congress in March 1986. Subsequent reports shall be submitted within 90 days after the end of each quarter.

(d) Limitation

Information and data required for the purpose of this section shall be subject to the law regarding the collection and disclosure of such data.

(Pub. L. 99-58, title II, § 202, July 2, 1985, 99 Stat. 107.)

CODIFICATION

Section was enacted as part of the Energy Policy and Conservation Amendments Act of 1985, and also as part of the National Coal Imports Reporting Act of 1985, and not as part of the Department of Energy Organization Act which comprises this chapter.

SHORT TITLE

Section 201 of title II of Pub. L. 99-58 provided that: "This title [enacting this section and provisions set out as a note below] may be cited as the 'National Coal Imports Reporting Act of 1985'."

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in this section requiring submittal of reports to Congress, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 14th item on page 90 of House Document No. 103-7.

ANALYSIS OF UNITED STATES COAL IMPORT MARKET;
REPORT BY SECRETARY OF ENERGY TO CONGRESS

Section 203 of Pub. L. 99-58 provided that:

"(a) IN GENERAL.—The Secretary of Energy shall, through the Energy Information Administration, conduct a comprehensive analysis of the coal import market in the United States and report the findings of such analysis to the Committee on Energy and Natural Resources of the Senate and the appropriate committees of the House of Representatives, within nine months of the date of enactment of this Act [July 2, 1985].

"(b) CONTENTS.—The report required by this section shall—

"(1) contain a detailed analysis of potential domestic markets for foreign coals, by producing nation, between 1985 and 1995;

"(2) identify potential domestic consuming sectors of imported coal and evaluate the magnitude of any potential economic disruptions for each impacted State, including analysis of direct and indirect employment impact in the domestic coal industry and resulting income loss to each State;

"(3) identify domestically produced coal that potentially could be replaced by imported coal;

"(4) identify contractual commitments of domestic utilities expiring between 1985 and 1995 and describe spot buying practices of domestic utilities, fuel cost patterns, plant modification costs required to burn foreign coals, proximity of navigable waters to utilities, demand for compliance coal, availability of less expensive purchased power from Canada, and State and local considerations;

"(5) evaluate increased coal consumption by domestic electric utilities resulting from increased power sales and analyze the potential coal import market represented by this increased coal consumption, including consumption by existing coal-fired plants, new coal-fired plants projected up to the year 1995, and plants planning to convert to coal by 1995;

"(6) identify existing authorities available to the Federal Government relating to coal imports, assess the potential impact of exercising each of these au-

thorities, and describe executive branch plans and strategies to address coal imports;

"(7) identify and characterize the coal export policies of all major coal exporting nations, including the United States, Australia, Canada, Colombia, Poland, and South Africa, with specific analysis of—

"(A) direct or indirect Government subsidies to coal exporters;

"(B) health, safety, and environmental regulations imposed on each coal producer; and

"(C) trade policies relating to coal exports;

"(8) evaluate the excess capacity of foreign producers, potential development of new export-oriented coal mines in foreign nations, operating costs of foreign coal mines, capacity of ocean vessels to transport foreign coal, and constraints on importing coal into the United States because of port and harbor availability;

"(9) identify specifically the participation of all United States corporations involved in mining and exporting coal from foreign nations; and

"(10) identify the policies governing coal imports of all coal-importing industrialized nations (including the United States, Japan, and European nations) by considering such factors as import duties or tariffs, import quotas, and other governmental restrictions or trade policies impacting coal imports."

§ 7278. Availability of appropriations for Department of Energy for transportation, uniforms, security, and price support and loan guarantee programs; transfer of funds; acceptance of contributions

Appropriations for the Department of Energy under this title¹ in this and subsequent Energy and Water Development Appropriations Acts, on and after October 2, 1992, shall be available for hire of passenger motor vehicles; hire, maintenance and operation of aircraft; purchase, repair and cleaning of uniforms; and reimbursement to the General Services Administration for security guard services. From these appropriations, transfers of sums may on and after October 2, 1992, be made to other agencies of the United States Government for the performance of work for which this appropriation is made. None of the funds made available to the Department of Energy under this Act or subsequent Energy and Water Development Appropriations Acts shall be used to implement or finance authorized price support or loan guarantee programs unless specific provision is made for such programs in an appropriation Act. The Secretary is authorized on and after October 2, 1992, to accept lands, buildings, equipment, and other contributions from public and private sources and to prosecute projects in cooperation with other agencies, Federal, State, private, or foreign.

(Pub. L. 102-377, title III, § 301, Oct. 2, 1992, 106 Stat. 1338.)

REFERENCES IN TEXT

This title, referred to in text, is title III of Pub. L. 102-377, Oct. 2, 1992, 106 Stat. 1332. For complete classification of title III to Code, see Tables.

CODIFICATION

Section was enacted as part of the Energy and Water Development Appropriations Act, 1993, and not as part of the Department of Energy Organization Act which comprises this chapter.

¹ See References in Text note below.

SUBCHAPTER VII—TRANSITIONAL,
SAVINGS, AND CONFORMING PROVISIONS

§ 7291. Transfer and allocations of appropriations and personnel

(a) Except as otherwise provided in this chapter, the personnel employed in connection with, and the assets, liabilities, contracts, property, records, and unexpended balance of appropriations authorizations, allocations, and other funds employed, held, used, arising from, available to or to be made available in connection with the functions transferred by this chapter, subject to section 1531 of title 31, are hereby transferred to the Secretary for appropriate allocation. Unexpended funds transferred pursuant to this subsection shall only be used for the purposes for which the funds were originally authorized and appropriated.

(b) Positions expressly specified by statute or reorganization plan to carry out function transferred by this chapter personnel occupying those positions on October 1, 1977, and personnel authorized to receive compensation in such positions at the rate prescribed for offices and positions at level I, II, III, IV, or V of the executive schedule (5 U.S.C. 5312-5316) on October 1, 1977, shall be subject to the provisions of section 7293 of this title.

(Pub. L. 95-91, title VII, §701, Aug. 4, 1977, 91 Stat. 605.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b), was in the original "this Act", meaning Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 565, as amended, known as the Department of Energy Organization Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

CODIFICATION

In subsec. (a), "section 1531 of title 31" substituted for "section 202 of the Budget and Accounting Procedures Act of 1950 [31 U.S.C. 581c]" on authority of Pub. L. 97-258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

§ 7292. Effect on personnel

(a) Full-time and part-time personnel holding permanent positions

Except as otherwise provided in this chapter, the transfer pursuant to this subchapter of full-time personnel (except special Government employees) and part-time personnel holding permanent positions pursuant to this subchapter shall not cause any such employee to be separated or reduced in grade or compensation for one year after August 4, 1977, except that full-time temporary personnel employed at the Energy Research Centers of the Energy Research and Development Administration upon the establishment of the Department who are determined by the Department to be performing continuing functions may at the employee's option be converted to permanent full-time status within one hundred and twenty days following their transfer to the Department. The employment levels of full-time permanent personnel authorized for the Department by other law or administrative action shall be increased by the number of em-

ployees who exercise the option to be so converted.

(b) Person who held position compensated in accordance with chapter 53 of title 5

Any person who, on October 1, 1977, held a position compensated in accordance with the Executive Schedule prescribed in chapter 53 of title 5, and who, without a break in service, is appointed in the Department to a position having duties comparable to those performed immediately preceding his appointment shall continue to be compensated in his new position at not less than the rate provided for his previous position, for the duration of his service in the new position.

(c) Employees holding reemployment rights acquired under section 786 of title 15

Employees transferred to the Department holding reemployment rights acquired under section 786 of title 15¹ or any other provision of law or regulation may exercise such rights only within one hundred twenty days from October 1, 1977, or within two years of acquiring such rights, whichever is later. Reemployment rights may only be exercised at the request of the employee.

(Pub. L. 95-91, title VII, §702, Aug. 4, 1977, 91 Stat. 605.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this Act", meaning Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 565, as amended, known as the Department of Energy Organization Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

This subchapter, referred to in subsec. (a), was in the original "this title" meaning title VII of Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 605, which enacted this subchapter and section 916 of Title 7, Agriculture, amended sections 6833 and 6839 of this title, section 19 of Title 3, The President, sections 101, 5108, and 5312 to 5316 of Title 5, Government Organization and Employees, section 1701z-8 of Title 12, Banks and Banking, and sections 766, 790a, and 790d of Title 15, Commerce and Trade, repealed sections 2036 and 5818 of this title and sections 763, 768 and 786 of Title 15, enacted provisions set out as a note under 2201 of this title, and repealed provisions set out as a note under section 761 of Title 15. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

Section 786 of title 15, referred to in subsec. (c), was repealed by Pub. L. 95-91, title VII, §709(a)(1), Aug. 4, 1977, 91 Stat. 607.

EX. ORD. NO. 12026. REINSTATEMENT RIGHTS OF CERTAIN
EMPLOYEES OF DEPARTMENT OF ENERGY

Ex. Ord. No. 12026, Dec. 5, 1977, 42 F.R. 61849, provided: By virtue of the authority vested in me by Sections 3301 and 3302 of Title 5 of the United States Code, and as President of the United States of America, the service of an employee of the Atomic Energy Commission or of the Energy Research and Development Administration pursuant to a Regular or Regular (Conditional) appointment, other than such service in an attorney position, who was transferred to the Department of Energy pursuant to the Department of Energy Organization Act (91 Stat. 565; 42 U.S.C. 7101 *et seq.*) shall be considered as Career or Career-Conditional service, respec-

¹ See References in Text note below.

tively, for purposes of eligibility for reinstatement in the competitive Civil Service.

JIMMY CARTER.

§ 7293. Agency terminations

Except as otherwise provided in this chapter, whenever all of the functions vested by law in any agency, commission, or other body, or any component thereof, have been terminated or transferred from that agency, commission, or other body, or component by this chapter, the agency, commission, or other body, or component, shall terminate. If an agency, commission, or other body, or any component thereof, terminates pursuant to the preceding sentence, each position and office therein which was expressly authorized by law, or the incumbent of which was authorized to receive compensation at the rates prescribed for an office or position at level II, III, IV, or V of the Executive Schedule (5 U.S.C. 5313-5316), shall terminate.

(Pub. L. 95-91, title VII, §703, Aug. 4, 1977, 91 Stat. 606.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7291 of this title.

§ 7294. Incidental transfers

The Director of the Office of Management and Budget, in consultation with the Secretary and the Commission, is authorized and directed to make such determinations as may be necessary with regard to the transfer of functions which relate to or are utilized by an agency, commission or other body, or component thereof affected by this chapter, to make such additional incidental dispositions of personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to or to be made available in connection with the functions transferred by this chapter, as he may deem necessary to accomplish the purposes of this chapter.

(Pub. L. 95-91, title VII, §704, Aug. 4, 1977, 91 Stat. 606.)

§ 7295. Savings provisions

(a) Orders, determinations, rules, etc., in effect prior to effective date of this chapter

All orders, determinations, rules, regulations, permits, contracts, certificates, licenses, and privileges—

- (1) which have been issued, made, granted, or allowed to become effective by the President, any Federal department or agency or official thereof, or by a court of competent jurisdiction, in the performance of functions which are transferred under this chapter to the Department or the Commission after August 4, 1977, and
- (2) which are in effect on October 1, 1977,

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, the Secretary, the Federal Energy Regulatory Commission, or other authorized officials, a court of competent jurisdiction, or by operation of law.

(b) Proceedings or applications for licenses, permits, etc., pending at effective date of this chapter; regulations

(1) The provisions of this chapter shall not affect any proceedings or any application for any license, permit, certificate, or financial assistance pending on October 1, 1977, before any department, agency, commission, or component thereof, functions of which are transferred by this chapter; but such proceedings and applications, to the extent that they relate to functions so transferred, shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this chapter had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this chapter had not been enacted.

(2) The Secretary and the Commission are authorized to promulgate regulations providing for the orderly transfer of such proceedings to the Department or the Commission.

(c) Suits commenced prior to effective date of this chapter

Except as provided in subsection (e) of this section—

(1) the provisions of this chapter shall not affect suits commenced prior to October 1, 1977, and

(2) in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and effect as if this chapter had not been enacted.

(d) Suits, actions, etc., commenced by or against any officer or agency or cause of action by or against any department or agency

No suit, action, or other proceeding commenced by or against any officer in his official capacity as an officer of any department or agency, functions of which are transferred by this chapter, shall abate by reason of the enactment of this chapter. No cause of action by or against any department or agency, functions of which are transferred by this chapter, or by or against any officer thereof in his official capacity shall abate by reason of the enactment of this chapter.

(e) Suits with officers, departments, or agencies as parties

If, before October 1, 1977, any department or agency, or officer thereof in his official capacity, is a party to a suit, and under this chapter any function of such department, agency, or officer is transferred to the Secretary or any other official, then such suit shall be continued with the Secretary or other official, as the case may be, substituted.

(Pub. L. 95-91, title VIII, §705, Aug. 4, 1977, 91 Stat. 606.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7341 of this title.

§ 7296. Separability

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, neither the remainder of this chapter nor the application of such provision to other persons or circumstances shall be affected thereby.

(Pub. L. 95-91, title VII, § 706, Aug. 4, 1977, 91 Stat. 607.)

§ 7297. Cross references

With respect to any functions transferred by this chapter and exercised after October 1, 1977, reference in any other Federal law to any department, commission, or agency or any officer or office the functions of which are so transferred shall be deemed to refer to the Secretary, the Federal Energy Regulatory Commission, or other official or component of the Department in which this chapter vests such functions.

(Pub. L. 95-91, title VII, § 707, Aug. 4, 1977, 91 Stat. 607.)

§ 7298. Presidential authority

Except as provided in subchapter IV of this chapter, nothing contained in this chapter shall be construed to limit, curtail, abolish, or terminate any function of, or authority available to, the President which he had immediately before October 1, 1977; or to limit, curtail, abolish, or terminate his authority to delegate, redelegate, or terminate any delegation of functions.

(Pub. L. 95-91, title VII, § 708, Aug. 4, 1977, 91 Stat. 607.)

§ 7299. Transition

With the consent of the appropriate department or agency head concerned, the Secretary is authorized to utilize the services of such officers, employees, and other personnel of the departments and agencies from which functions have been transferred to the Secretary for such period of time as may reasonably be needed to facilitate the orderly transfer of functions under this chapter.

(Pub. L. 95-91, title VII, § 711, Aug. 4, 1977, 91 Stat. 609.)

§ 7300. Report to Congress; effect on personnel

The Civil Service Commission shall, as soon as practicable but not later than one year after October 1, 1977, prepare and transmit to the Congress a report on the effects on employees of the reorganization under this chapter which shall include—

- (1) an identification of any position within the Department or elsewhere in the executive branch, which it considers unnecessary due to consolidation of functions under this chapter;
- (2) a statement of the number of employees entitled to pay savings by reason of the reorganization under this chapter;
- (3) a statement of the number of employees who are voluntarily or involuntarily separated by reason of such reorganization;
- (4) an estimate of the personnel costs associated with such reorganization;

(5) the effects of such reorganization on labor management relations; and

(6) such legislative and administrative recommendations for improvements in personnel management within the Department as the Commission considers necessary.

(Pub. L. 95-91, title VII, § 712, Aug. 4, 1977, 91 Stat. 609.)

TRANSFER OF FUNCTIONS

Functions vested by statute in United States Civil Service Commission transferred to Director of Office of Personnel Management (except as otherwise specified) by Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

§ 7301. Environmental impact statements

The transfer of functions under subchapters III and IV of this chapter shall not affect the validity of any draft environmental impact statement published before October 1, 1977.

(Pub. L. 95-91, title VII, § 713, Aug. 4, 1977, 91 Stat. 610.)

SUBCHAPTER VIII—ENERGY PLANNING

§ 7321. National Energy Policy Plan**(a) Preparation by President and submission to Congress; formulation and review**

The President shall—

(1) prepare and submit to the Congress a proposed National Energy Policy Plan (hereinafter in this subchapter referred to as a “proposed Plan”) as provided in subsection (b) of this section;

(2) seek the active participation by regional, State, and local agencies and instrumentalities and the private sector through public hearings in cities and rural communities and other appropriate means to insure that the views and proposals of all segments of the economy are taken into account in the formulation and review of such proposed Plan;

(3) include within the proposed Plan a comprehensive summary of data pertaining to all fuel and energy needs of persons residing in—

(A) areas outside standard metropolitan statistical areas; and

(B) areas within standard metropolitan statistical areas which are unincorporated or are specified by the Bureau of the Census, Department of Commerce, as rural areas.

(b) Biennial transmittal to Congress; contents

Not later than April 1, 1979, and biennially thereafter, the President shall transmit to the Congress the proposed Plan. Such proposed Plan shall—

(1) consider and establish energy production, utilization, and conservation objectives, for periods of five and ten years, necessary to satisfy projected energy needs of the United States to meet the requirements of the general welfare of the people of the United States and the commercial and industrial life of the Nation, paying particular attention to the needs for full employment, price stability, energy security, economic growth, environ-

mental protection, nuclear non-proliferation, special regional needs, and the efficient utilization of public and private resources;

(2) identify the strategies that should be followed and the resources that should be committed to achieve such objectives, forecasting the level of production and investment necessary in each of the significant energy supply sectors and the level of conservation and investment necessary in each consuming sector, and outlining the appropriate policies and actions of the Federal Government that will maximize the private production and investment necessary in each of the significant energy supply sectors consistent with applicable Federal, State, and local environmental laws, standards, and requirements; and

(3) recommend legislative and administrative actions necessary and desirable to achieve the objectives of such proposed Plan, including legislative recommendations with respect to taxes or tax incentives, Federal funding, regulatory actions, antitrust policy, foreign policy, and international trade.

(c) Submission of report to Congress; contents

The President shall submit to the Congress with the proposed Plan a report which shall include—

(1) whatever data and analysis are necessary to support the objectives, resource needs, and policy recommendations contained in such proposed Plan;

(2) an estimate of the domestic and foreign energy supplies on which the United States will be expected to rely to meet projected energy needs in an economic manner consistent with the need to protect the environment, conserve natural resources, and implement foreign policy objectives;

(3) an evaluation of current and foreseeable trends in the price, quality, management, and utilization of energy resources and the effects of those trends on the social, environmental, economic, and other requirements of the Nation;

(4) a summary of research and development efforts funded by the Federal Government to forestall energy shortages, to reduce waste, to foster recycling, to encourage conservation practices, and to otherwise protect environmental quality, including recommendations for developing technologies to accomplish such purposes; and

(5) a review and appraisal of the adequacy and appropriateness of technologies, procedures, and practices (including competitive and regulatory practices) employed by Federal, State, and local governments and nongovernmental entities to achieve the purposes of the Plan.

(d) Consultation with consumers, small businesses, etc.

The President shall insure that consumers, small businesses, and a wide range of other interests, including those of individual citizens who have no financial interest in the energy industry, are consulted in the development of the Plan.

(Pub. L. 95-91, title VIII, §801, Aug. 4, 1977, 91 Stat. 610.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12006, 13382, 13522 of this title.

§ 7322. Congressional review

(a) Each proposed Plan shall be referred to the appropriate committees in the Senate and the House of Representatives.

(b) Each such committee shall review the proposed Plan and, if it deems appropriate and necessary, report to the Senate or the House of Representatives legislation regarding such Plan which may contain such alternatives to, modifications of, or additions to the proposed Plan submitted by the President as the committee deems appropriate.

(Pub. L. 95-91, title VIII, §802, Aug. 4, 1977, 91 Stat. 611.)

SUBCHAPTER IX—EFFECTIVE DATE AND INTERIM APPOINTMENTS

§ 7341. Effective date

The provisions of this chapter shall take effect one hundred and twenty days after the Secretary first takes office, or on such earlier date as the President may prescribe and publish in the Federal Register, except that at any time after August 4, 1977, (1) any of the officers provided for in subchapters II and IV of this chapter may be nominated and appointed, as provided in those subchapters, and (2) the Secretary and the Commission may promulgate regulations pursuant to section 7295(b)(2) of this title at any time after August 4, 1977. Funds available to any department or agency (or any official or component thereof), functions of which are transferred to the Secretary or the Commission by this chapter, may with the approval of the Director of the Office of Management and Budget, be used to pay the compensation and expenses of any officer appointed pursuant to this subsection until such time as funds for that purpose are otherwise available.

(Pub. L. 95-91, title IX, §901, Aug. 4, 1977, 91 Stat. 612.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 565, as amended, known as the Department of Energy Organization Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

EXECUTIVE ORDER No. 12009

Ex. Ord. No. 12009, Sept. 13, 1977, 42 F.R. 46267, which prescribed Oct. 1, 1977, as the effective date of this chapter, was revoked by Ex. Ord. No. 12553, Feb. 25, 1986, 51 F.R. 7237.

§ 7342. Interim appointments

In the event that one or more officers required by this chapter to be appointed by and with the advice and consent of the Senate shall not have entered upon office on October 1, 1977, the President may designate any officer, whose appointment was required to be made, by and with the advice and consent of the Senate, and who was

such an officer immediately prior to October 1, 1977, to act in such office until the office is filled as provided in this chapter. While so acting such persons shall receive compensation at the rates provided by this chapter for the respective offices in which they act.

(Pub. L. 95-91, title IX, § 902, Aug. 4, 1977, 91 Stat. 612.)

SUBCHAPTER X—SUNSET PROVISIONS

§ 7351. Submission of comprehensive review

Not later than January 15, 1982, the President shall prepare and submit to the Congress a comprehensive review of each program of the Department. Each such review shall be made available to the committee or committees of the Senate and House of Representatives having jurisdiction with respect to the annual authorization of funds, pursuant to section 7270 of this title, for such programs for the fiscal year beginning October 1, 1982.

(Pub. L. 95-91, title X, § 1001, Aug. 4, 1977, 91 Stat. 612.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7352 of this title.

§ 7352. Contents of review

Each comprehensive review prepared for submission under section 7351 of this title shall include—

(1) the name of the component of the Department responsible for administering the program;

(2) an identification of the objectives intended for the program and the problem or need which the program was intended to address;

(3) an identification of any other programs having similar or potentially conflicting or duplicative objectives;

(4) an assessment of alternative methods of achieving the purposes of the program;

(5) a justification for the authorization of new budget authority, and an explanation of the manner in which it conforms to and integrates with other efforts;

(6) an assessment of the degree to which the original objectives of the program have been achieved, expressed in terms of the performance, impact, or accomplishments of the program and of the problem or need which it was intended to address, and employing the procedures or methods of analysis appropriate to the type or character of the program;

(7) a statement of the performance and accomplishments of the program in each of the previous four completed fiscal years and of the budgetary costs incurred in the operation of the program;

(8) a statement of the number and types of beneficiaries or persons served by the program;

(9) an assessment of the effect of the program on the national economy, including, but not limited to, the effects on competition, economic stability, employment, unemployment, productivity, and price inflation, including costs to consumers and to businesses;

(10) an assessment of the impact of the program on the Nation's health and safety;

(11) an assessment of the degree to which the overall administration of the program, as expressed in the rules, regulations, orders, standards, criteria, and decisions of the officers executing the program, are believed to meet the objectives of the Congress in establishing the program;

(12) a projection of the anticipated needs for accomplishing the objectives of the program, including an estimate if applicable of the date on which, and the conditions under which, the program may fulfill such objectives;

(13) an analysis of the services which could be provided and performance which could be achieved if the program were continued at a level less than, equal to, or greater than the existing level; and

(14) recommendations for necessary transitional requirements in the event that funding for such program is discontinued, including proposals for such executives or legislative action as may be necessary to prevent such discontinuation from being unduly disruptive.

(Pub. L. 95-91, title X, § 1002, Aug. 4, 1977, 91 Stat. 612.)

SUBCHAPTER XI—ENERGY TARGETS

§§ 7361 to 7364. Repealed. Pub. L. 102-486, title XVI, § 1606, Oct. 24, 1992, 106 Stat. 3003

Section 7361, Pub. L. 96-294, title III, § 301, June 30, 1980, 94 Stat. 712, related to preparation of energy targets.

Section 7362, Pub. L. 96-294, title III, § 302, June 30, 1980, 94 Stat. 712, related to congressional consideration.

Section 7363, Pub. L. 96-294, title III, § 303, June 30, 1980, 94 Stat. 714, set out energy target form and definitions.

Section 7364, Pub. L. 96-294, title III, § 304, June 30, 1980, 94 Stat. 715, set out general provisions regarding targets.

SUBCHAPTER XII—RENEWABLE ENERGY INITIATIVES

CODIFICATION

This subchapter was enacted as part of title IV of the Energy Security Act, which title is known as the Renewable Energy Resources Act of 1980, and not as part of the Department of Energy Organization Act which comprises this chapter.

§ 7371. Statement of purpose

The purpose of this subchapter is to establish incentives for the use of renewable energy resources, to improve and coordinate the dissemination of information to the public with respect to renewable energy resources, to encourage the use of certain cost effective solar energy systems and conservation measures by the Federal Government, to establish a program for the promotion of local energy self-sufficiency, to broaden the existing program for accelerating the procurement and use of photovoltaic systems, and to provide further encouragement for the development of small hydroelectric power projects.

(Pub. L. 96-294, title IV, § 402, June 30, 1980, 94 Stat. 715.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original "this title", meaning title IV of Pub. L. 96-294, June 30, 1980, 94 Stat. 715, known as the Renewable Energy Resources Act of 1980. For complete classification of title IV to the Code, see Short Title note set out below and Tables.

SHORT TITLE

Section 401 of title IV Pub. L. 96-294 provided that: "This title [enacting this subchapter, amending sections 8255, 8271, and 8274 to 8276 of this title and sections 2705 and 2708 of Title 16, Conservation, and enacting a provision set out as a note under section 2701 of Title 16] may be cited as the 'Renewable Energy Resources Act of 1980.'"

§ 7372. "Secretary" and "renewable energy resource" defined

For purposes of this subchapter—

(1) the term "Secretary" means the Secretary of Energy; and

(2) the term "renewable energy resource" means any energy resource which has recently originated in the sun, including direct and indirect solar radiation and intermediate solar energy forms such as wind, ocean thermal gradients, ocean currents and waves, hydropower, photovoltaic energy, products of photosynthetic processes, organic wastes, and others.

(Pub. L. 96-294, title IV, § 403, June 30, 1980, 94 Stat. 716.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original "this title", meaning title IV of Pub. L. 96-294, June 30, 1980, 94 Stat. 715, known as the Renewable Energy Resources Act of 1980, which enacted this subchapter, amended sections 8255, 8271, and 8274 to 8276 of this title and sections 2705 and 2708 of Title 16, Conservation, and enacted a provision set out as a note under section 2701 of Title 16. For complete classification of title IV to the Code, see Short Title note set out under section 7371 of this title and Tables.

§ 7373. Coordinated dissemination of information on renewable energy resources and conservation

In order to improve the effectiveness of Federal information dissemination activities in the fields of renewable energy resources and energy conservation with the objective of developing and promoting better public understanding of these resources and their potential uses, the Secretary shall—

(1) take affirmative steps to coordinate all of the activities of the Department of Energy, whether conducted by the Department itself or by other public or private entities with assistance from the Department, which are aimed at or involve the dissemination of information with respect to renewable energy resources or energy conservation, and

(2) report annually to the Congress on the status of such activities, including a description of how the information dissemination activities and services of the Department of Energy in the fields of renewable energy resources and energy conservation are being coordinated with similar or related activities and services of other Federal agencies.

(Pub. L. 96-294, title IV, § 404, June 30, 1980, 94 Stat. 716.)

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of reporting provisions in par. (2) of this section, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 18th item on page 87 of House Document No. 103-7.

§ 7374. Energy self-sufficiency initiatives

(a) Establishment of 3-year pilot program

There is hereby established under the direction of the Secretary a 3-year pilot energy self-sufficiency program to demonstrate energy self-sufficiency through the use of renewable energy resources in one or more States in the United States.

(b) Establishment of subprograms to pilot programs; scope of subprograms

As a part of the pilot program, the Secretary shall establish such subprograms as the Secretary determines are necessary to achieve the purpose of this section, including subprograms—

(1) to promote the development and utilization of synergistic combinations of different renewable energy resources in specific projects aimed at reducing fossil fuel importation;

(2) to initiate and encourage energy self-sufficiency at appropriate levels of government;

(3) to stimulate private industry participation in the realization of the objective stated in subsection (a) of this section; and

(4) to stimulate the utilization of abandoned or underutilized industrial facilities for the generation of energy from any locally available renewable resource, such as municipal solid waste, agricultural waste, or forest products waste.

(c) Implementation of subprograms; preparation of plan of program and additional Federal actions

In carrying out the provisions of this section, the Secretary is authorized to assign to an existing office in the Department of Energy the responsibility of undertaking and carrying out the subprograms established under subsection (b) of this section. In addition, the Secretary shall prepare a detailed plan within one hundred eighty days of June 30, 1980, setting forth (1) the 3-year pilot program itself, and (2) any additional Federal actions needed to encourage and promote the adoption of programs for energy self-sufficiency.

(d) Submission of plan and implementation report to Congress

The Secretary shall submit to the Congress, within one year after June 30, 1980, the plan prepared under the second sentence of subsection (c) of this section along with a report suggesting the legislative initiatives needed to fully implement such plan.

(Pub. L. 96-294, title IV, § 406, June 30, 1980, 94 Stat. 716.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7375 of this title.

§ 7375. Authorization of appropriations

(a) There is authorized to be appropriated for each of the fiscal years 1981 and 1982 not to ex-

ceed \$10,000,000 for loans under section 402 of the Public Utility Regulatory Policies Act of 1978 [16 U.S.C. 2702], in addition to any amounts authorized for such loans by that Act; and the amounts appropriated pursuant to this subsection shall remain available until expended.

(b) There is authorized to be appropriated for each of the fiscal years 1981 and 1982 not to exceed \$100,000,000 for loans under section 403 of the Public Utility Regulatory Policies Act of 1978 [16 U.S.C. 2703]; and the amounts appropriated pursuant to this subsection shall remain available until expended.

(c) There is authorized to be appropriated for the fiscal year 1981 not to exceed \$10,000,000 to carry out section 7374 of this title (relating to energy self-sufficiency initiatives).

(Pub. L. 96-294, title IV, § 409, June 30, 1980, 94 Stat. 719.)

REFERENCES IN TEXT

That Act, referred to in subsec. (a), is Pub. L. 95-617, Nov. 9, 1978, 92 Stat. 3117, as amended, known as the Public Utility Regulatory Policies Act of 1978. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 16, Conservation, and Tables.

SUBCHAPTER XIII—DEPARTMENT OF ENERGY SCIENCE EDUCATION PROGRAMS

CODIFICATION

This subchapter was enacted as part of part E (§§3161-3168) of title XXXI of div. C of the National Defense Authorization Act for Fiscal Year 1991, known as the Department of Energy Science Education Enhancement Act, and not as part of the Department of Energy Organization Act which comprises this chapter.

§ 7381. Findings and purposes

(a) Findings

The Congress finds the following:

(1) Scientific, technical, and engineering competence is essential to the Nation's future well-being.

(2) The scientific, technical, and engineering capability at the Federal laboratories is unmatched throughout the world.

(3) Superb research, development, testing, and evaluation occur in Department of Energy research and development facilities.

(4) Department of Energy research and development facilities will play an increasing role in assuring that the United States remains competitive in world markets.

(5) Improvements in mathematics, science, and engineering education are needed desperately to provide the trained and educated citizenry essential to the future competitiveness of the United States.

(6) The future health and vitality of the economy of the United States is predicated on the availability of an adequate supply of scientists, mathematicians, and engineers to provide for growing needs and to replenish the workforce.

(7) United States college and university enrollment in science, mathematics, and engineering programs is sharply declining at undergraduate, graduate, and post-graduate levels.

(8) The Federal Government is the largest United States employer of research scientists, mathematicians, and engineers, and the Department of Energy has a growing need for scientists, mathematicians, and engineers at a time when these enrollments are declining.

(9) Women and minorities are grossly underrepresented in science and mathematics fields, and this group represents more than 80 percent of the projected increase in the national workforce through the year 2000.

(b) Purposes

The purposes of this subchapter are—

(1) to encourage the development and implementation of science, mathematics, and engineering education programs at the Department of Energy and at its research and development facilities as part of a national effort to improve science, mathematics, and engineering education; and

(2) to provide more efficient coordination among science, mathematics, and engineering education programs.

(Pub. L. 101-510, div. C, title XXXI, §3162, Nov. 5, 1990, 104 Stat. 1840.)

REFERENCES IN TEXT

This subchapter, referred to in subsec. (b), was in the original "this part", meaning part E of title XXXI of div. C of Pub. L. 101-510, which is classified principally to this subchapter. For complete classification of part E to the Code, see Short Title note set out below and Tables.

SHORT TITLE

Section 3161 of Pub. L. 101-510 provided that: "This part [part E (§§3161-3168) of title XXXI of div. C of Pub. L. 101-510, enacting this subchapter and amending section 7112 of this title] may be cited as the 'Department of Energy Science Education Enhancement Act'."

UNIVERSITY-BASED RESEARCH COLLABORATION PROGRAM

Pub. L. 105-85, div. C, title XXXI, §3155, Nov. 18, 1997, 111 Stat. 2044, which was formerly set out as a note under this section, was renumbered section 4814 of Pub. L. 107-314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108-136, div. C, title XXXI, §3141(k)(9)(A)-(C), Nov. 24, 2003, 117 Stat. 1785, and is classified to section 2795 of Title 50, War and National Defense.

§ 7381a. Science education programs

(a) Programs

The Secretary is authorized to establish programs to enhance the quality of mathematics, science, and engineering education. Any such programs shall be operated at or through the support of Department research and development facilities, shall use the scientific resources of the Department, and shall be consistent with the overall Federal plan for education and human resources in science and technology developed by the Federal Coordinating Council for Science, Engineering, and Technology.

(b) Relationship to other Department activities

The programs described in subsection (a) of this section shall supplement and be coordinated with current activities of the Department, but shall not supplant them.

(Pub. L. 101-510, div. C, title XXXI, §3164, Nov. 5, 1990, 104 Stat. 1841.)

§ 7381b. Laboratory cooperative science centers and other authorized education activities

(a) Activities

The Secretary is authorized to:

(1) Support research appointments for college and university science and engineering students, and for faculty-student teams, at Department research and development facilities.

(2) Support research appointments for high school science teachers at Department research and development facilities.

(3) Support research apprenticeship appointments at Department research and development facilities for students underrepresented in science and technology careers.

(4) Support research experience programs at Department research and development facilities for nationally selected high school honor students.

(5) Operate mathematics and science education programs for elementary and secondary students at Department research and development facilities.

(6) Establish a museum-based science education program.

(7) Establish collaborative inner-city and rural partnership programs designed to meet the special mathematics and science education needs of students in inner-city and rural areas.

(8) Provide paid administrative leave for employees of the Department or Department research and development facilities who volunteer to interact with schools, colleges, universities, teachers, or students for the purpose of science, mathematics, and engineering education.

(9) Establish a talent pool of volunteer scientists, mathematicians, and engineers who have retired from the Department or Department research and development facilities to serve at schools and school districts for the purpose of (A) assisting teachers, with activities such as experiments, lectures, or the preparation of materials; (B) serving as counselors to students on science, mathematics, and engineering; and (C) otherwise assisting science, mathematics, and engineering classes. The Secretary, acting through Department research and development facilities, shall, wherever possible, identify and match schools and school districts with retired scientists, mathematicians, and engineers.

(10) Establish a Young Americans' Summer Science Camp Program to provide secondary school students with a hands-on science experience as well as exposure to working scientists and career counseling.

(11) Establish a program for mathematics and science teachers to provide teachers serving large numbers of disadvantaged students with new strategies for mathematics and science instruction.

(12) Support graduate students and, through university-based cooperative programs, undergraduate students for the purpose of encouraging more students to pursue scientific and technical careers, with a particular focus on the recruitment of women and minority students.

(13) Establish a prefreshman enrichment program in which middle-school students attend

summer workshops on mathematics, science, and engineering conducted by universities on their campuses.

(b) Use of facilities

Any of the activities authorized by subsection (a) of this section may be conducted through Department research and development facilities. The Secretary may designate facilities conducting such education activities as "Laboratory Cooperative Science Centers".

(c) Funding

The Secretary is authorized to accept non-Federal funds to finance education activities described in subsection (a) of this section.

(Pub. L. 101-510, div. C, title XXXI, §3165, Nov. 5, 1990, 104 Stat. 1841; Pub. L. 102-25, title VII, §704(d), Apr. 6, 1991, 105 Stat. 120.)

AMENDMENTS

1991—Subsec. (a). Pub. L. 102-25, §704(d)(1), redesignated subpars. (J) to (M) as pars. (10) to (13), respectively.

Subsec. (b). Pub. L. 102-25, §704(d)(2), inserted "such" before "education activities" in second sentence.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-25 applicable as if included in enactment of Pub. L. 101-510, see section 704(e) of Pub. L. 102-25, set out as a note under section 12321 of Title 10, Armed Forces.

§ 7381c. Education partnerships

(a) Education partnerships

The Secretary may authorize each Department research and development facility, to the extent practicable and consistent with the provisions of the laboratory's management and operating contract, to enter into education partnership agreements with educational institutions in the United States (including local educational agencies, colleges, and universities) for the purpose of encouraging and enhancing study in scientific disciplines at all levels of education.

(b) Types of assistance

Under a partnership agreement entered into with an educational institution under subsection (a) of this section and as authorized by the Secretary, a Department research and development facility may provide assistance to the educational institution by—

(1) loaning equipment to the institution;

(2) transferring to the institution equipment determined by the director of the Department research and development facility to be surplus;

(3) making personnel of Department research and development facilities available to teach science courses or to assist in the development of science courses and materials for the institution;

(4) involving faculty and students of the institution in research programs of Department research and development facilities;

(5) cooperating with the institution in developing a program under which students may be given academic credit for work on research projects of Department research and development facilities; and

(6) providing academic and career advice and assistance to students of the institution.
(Pub. L. 101-510, div. C, title XXXI, §3166, Nov. 5, 1990, 104 Stat. 1843.)

§ 7381d. Definitions

In this subchapter:

(1) The term “Secretary” means the Secretary of Energy.

(2) The term “Department” means the Department of Energy.

(3) The term “Department research and development facilities” means all Department of Energy single-purpose and multipurpose National Laboratories and research and development facilities and programs, and any other facility or program operated by a contractor funded from the Office of Science of the Department of Energy.

(4) The term “local educational agency” has the meaning given that term by section 2891(12)¹ of title 20.

(Pub. L. 101-510, div. C, title XXXI, §3167, Nov. 5, 1990, 104 Stat. 1843; Pub. L. 105-245, title III, §309(b)(2)(D), Oct. 7, 1998, 112 Stat. 1853.)

REFERENCES IN TEXT

Section 2891(12) of title 20, referred to in par. (4), was in the original “section 1471(12) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891(12))”, Pub. L. 89-10, and was omitted in the general amendment of that Act by Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3519. See section 7801 of Title 20, Education.

AMENDMENTS

1998—Par. (3). Pub. L. 105-245 substituted “Office of Science” for “Office of Energy Research”.

§ 7381e. Authorization of appropriations

There are authorized to be appropriated to the Secretary for carrying out university research support and other science, mathematics, and engineering education programs authorized by this subchapter and administered by the Office of Science of the Department of Energy, \$40,000,000 for fiscal year 1991.

(Pub. L. 101-510, div. C, title XXXI, §3168, Nov. 5, 1990, 104 Stat. 1843; Pub. L. 105-245, title III, §309(b)(2)(D), Oct. 7, 1998, 112 Stat. 1853.)

AMENDMENTS

1998—Pub. L. 105-245 substituted “Office of Science” for “Office of Energy Research”.

SUBCHAPTER XIV—ALBERT EINSTEIN DISTINGUISHED EDUCATOR FELLOWSHIPS

CODIFICATION

This subchapter was enacted as part A (§§511-518) of title V of the Improving America’s Schools Act of 1994, known as the Albert Einstein Distinguished Educator Fellowship Act of 1994, and not as part of the Department of Energy Organization Act which comprises this chapter.

§ 7382. Findings

The Congress finds that—

(1) the Department of Energy has unique and extensive mathematics and science capabili-

ties that contribute to mathematics and science education programs throughout the Nation;

(2) a need exists to increase understanding, communication, and cooperation between the Congress, the Department of Energy, other Federal agencies, and the mathematics and science education community;

(3) elementary and secondary school mathematics and science teachers can provide practical insight to the legislative and executive branches in establishing and operating education programs; and

(4) a pilot program that placed elementary and secondary school mathematics and science teachers in professional staff positions in the Senate and the House of Representatives has proven successful and demonstrated the value of expanding the program.

(Pub. L. 103-382, title V, §512, Oct. 20, 1994, 108 Stat. 4042.)

SHORT TITLE

Section 511 of Pub. L. 103-382 provided that: “This part [part A (§§511-518) of title V of Pub. L. 103-382, enacting this subchapter] may be cited as the ‘Albert Einstein Distinguished Educator Fellowship Act of 1994.’”

§ 7382a. Purpose; designation

(a) Purpose

The purpose of this subchapter is to establish within the Department of Energy a national fellowship program for elementary and secondary school mathematics and science teachers.

(b) Designation

A recipient of a fellowship under this subchapter shall be known as an “Albert Einstein Fellow”.

(Pub. L. 103-382, title V, §513, Oct. 20, 1994, 108 Stat. 4042.)

§ 7382b. Definitions

As used in this subchapter—

(1) the term “elementary school” has the meaning provided by section 7801 of title 20;

(2) the term “local educational agency” has the meaning provided by section 7801 of title 20;

(3) the term “secondary school” has the meaning provided by section 7801 of title 20;

(4) the term “Secretary” means the Secretary of Energy.

(Pub. L. 103-382, title V, §514, Oct. 20, 1994, 108 Stat. 4042; Pub. L. 107-110, title X, §1076(bb), Jan. 8, 2002, 115 Stat. 2093.)

AMENDMENTS

2002—Pars. (1) to (3). Pub. L. 107-110 substituted “7801” for “8801”.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-110 effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107-110, set out as an Effective Date note under section 6301 of Title 20, Education.

¹ See References in Text note below.

§ 7382c. Fellowship Program**(a) In general****(1) Establishment**

The Secretary shall establish the Albert Einstein Distinguished Educator Fellowship Program (hereafter in this subchapter referred to as the "Program") to provide 12 elementary or secondary school mathematics or science teachers with fellowships in each fiscal year in accordance with this subchapter.

(2) Order of priority

The Secretary may reduce the number of fellowships awarded under this subchapter for any fiscal year in which the amount appropriated for the Program is insufficient to support 12 fellowships. If the number of fellowships awarded under this subchapter is reduced for any fiscal year, then the Secretary shall award fellowships based on the following order of priority:

- (A) Three fellowships in the Department of Energy.
- (B) Two fellowships in the Senate.
- (C) Two fellowships in the House of Representatives.
- (D) One fellowship in each of the following entities:
 - (i) The Department of Education.
 - (ii) The National Institutes of Health.
 - (iii) The National Science Foundation.
 - (iv) The National Aeronautics and Space Administration.
 - (v) The Office of Science and Technology Policy.

(3) Terms of fellowships

Each fellowship awarded under this subchapter shall be awarded for a period of ten months that, to the extent practicable, coincide with the academic year.

(4) Eligibility

To be eligible for a fellowship under this subchapter, an elementary or secondary school mathematics or science teacher must demonstrate—

- (A) that such teacher would bring unique and valuable contributions to the Program;
- (B) that such teacher is recognized for excellence in mathematics or science education; and
- (C)(i) a sabbatical leave from teaching will be granted in order to participate in the Program; or
 - (ii) the teacher will return to a teaching position comparable to the position held prior to participating in the Program.

(b) Administration

The Secretary shall—

(1) provide for the development and administration of an application and selection process for fellowships under the Program, including a process whereby final selections of fellowship recipients are made in accordance with subsection (c) of this section;

(2) provide for the publication of information on the Program in appropriate professional publications, including an invitation for applications from teachers listed in the directories of national and State recognition programs;

(3) select from the pool of applicants 12 elementary and secondary school mathematics teachers and 12 elementary and secondary school science teachers;

(4) develop a program of orientation for fellowship recipients under this subchapter; and

(5) not later than August 31 of each year in which fellowships are awarded, prepare and submit an annual report and evaluation of the Program to the appropriate Committees of the Senate and the House of Representatives.

(c) Selection**(1) In general**

The Secretary shall arrange for the 24 semifinalists to travel to Washington, D.C., to participate in interviews in accordance with the selection process described in paragraph (2).

(2) Final selection

(A) Not later than May 1 of each year preceding each year in which fellowships are to be awarded, the Secretary shall select and announce the names of the fellowship recipients.

(B) The Secretary shall provide for the development and administration of a process to select fellowship recipients from the pool of semifinalists as follows:

(i) The Secretary shall select three fellowship recipients who shall be assigned to the Department of Energy.

(ii) The Majority Leader of the Senate and the Minority Leader of the Senate, or their designees, shall each select a fellowship recipient who shall be assigned to the Senate.

(iii) The Speaker of the House of Representatives and the Minority Leader of the House of Representatives, or their designees, shall each select a fellowship recipient who shall be assigned to the House of Representatives.

(iv) Each of the following individuals, or their designees, shall select one fellowship recipient who shall be assigned within the department, office, agency, or institute such individual administrators:

(I) The Secretary of Education.

(II) The Director of the National Institutes of Health.

(III) The Director of the National Science Foundation.

(IV) The Administrator of the National Aeronautics and Space Administration.

(V) The Director of the Office of Science and Technology Policy.

(Pub. L. 103-382, title V, §515, Oct. 20, 1994, 108 Stat. 4042.)

§ 7382d. Fellowship awards**(a) Fellowship recipient compensation**

Each recipient of a fellowship under this subchapter shall be paid during the fellowship period at a rate of pay that shall not exceed the minimum annual rate payable for a position under GS-13 of the General Schedule.

(b) Local educational agency

The Secretary shall seek to ensure that no local educational agency penalizes a teacher who elects to participate in the Program.

(Pub. L. 103-382, title V, §516, Oct. 20, 1994, 108 Stat. 4044.)

REFERENCES IN TEXT

The General Schedule, referred to in subsec. (a), is set out under section 5332 of Title 5, Government Organization and Employees.

§ 7382e. Waste management education research consortium (WERC)

(a)¹ In general

The Secretary is authorized to establish a partnership of Department of Energy laboratories, academic institutions, and private sector industries to conduct environmentally-related education programs, including programs involving environmentally conscious manufacturing and waste management activities that have undergraduate and graduate educational training as a component.

(Pub. L. 103-382, title V, §517, Oct. 20, 1994, 108 Stat. 4044.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7382f of this title.

§ 7382f. Authorization of appropriations

(a) In general

There are authorized to be appropriated for the Program \$700,000 for fiscal year 1995, and such sums as may be necessary for each of the four succeeding fiscal years.

(b) WERC program

There are authorized to be appropriated for the WERC program under section 7382e of this title such sums as may be necessary for fiscal year 1995 and each of the four succeeding fiscal years.

(Pub. L. 103-382, title V, §518, Oct. 20, 1994, 108 Stat. 4044.)

SUBCHAPTER XV—MATTERS RELATING TO SAFEGUARDS, SECURITY, AND COUNTER-INTELLIGENCE

CODIFICATION

This subchapter was enacted as part of subtitle D (§§3141-3156) of title XXXI of div. C of the National Defense Authorization Act for Fiscal Year 2000, known as the Department of Energy Facilities Safeguards, Security, and Counterintelligence Enhancement Act of 1999, and not as part of the Department of Energy Organization Act which comprises this chapter.

§ 7383. Commission on Safeguards, Security, and Counterintelligence at Department of Energy Facilities

(a) Establishment

There is hereby established a commission to be known as the Commission on Safeguards, Security, and Counterintelligence at Department of Energy Facilities (in this section referred to as the "Commission").

(b) Membership and organization

(1) The Commission shall be composed of nine members appointed from among individuals in the public and private sectors who have significant experience in matters related to the secu-

rity of nuclear weapons and materials, the classification of information, or counterintelligence matters, as follows:

(A) Two shall be appointed by the chairman of the Committee on Armed Services of the Senate, in consultation with the ranking member of that Committee.

(B) One shall be appointed by the ranking member of the Committee on Armed Services of the Senate, in consultation with the chairman of that Committee.

(C) Two shall be appointed by the chairman of the Committee on Armed Services of the House of Representatives, in consultation with the ranking member of that Committee.

(D) One shall be appointed by the ranking member of the Committee on Armed Services of the House of Representatives, in consultation with the chairman of that Committee.

(E) One shall be appointed by the Secretary of Defense.

(F) One shall be appointed by the Director of the Federal Bureau of Investigation.

(G) One shall be appointed by the Director of Central Intelligence.

(2) Members of the Commission shall be appointed for four year terms, except as follows:

(A) One member initially appointed under paragraph (1)(A) shall serve a term of two years, to be designated at the time of appointment.

(B) One member initially appointed under paragraph (1)(C) shall serve a term of two years, to be designated at the time of appointment.

(C) The member initially appointed under paragraph (1)(E) shall serve a term of two years.

(3) Any vacancy in the Commission shall be filled in the same manner as the original appointment and shall not affect the powers of the Commission.

(4)(A) After five members of the Commission have been appointed under paragraph (1), the chairman of the Committee on Armed Services of the Senate, in consultation with the chairman of the Committee on Armed Services of the House of Representatives, shall designate the chairman of the Commission from among the members appointed under paragraph (1)(A).

(B) The chairman of the Commission may be designated once five members of the Commission have been appointed under paragraph (1).

(5) The initial members of the Commission shall be appointed not later than 60 days after October 5, 1999.

(6) The members of the Commission shall establish procedures for the activities of the Commission, including procedures for calling meetings, requirements for quorums, and the manner of taking votes.

(7) The Commission shall meet not less often than once every three months.

(8) The Commission may commence its activities under this section upon the designation of the chairman of the Commission under paragraph (4).

(c) Duties

(1) The Commission shall, in accordance with this section, review the safeguards, security,

¹ So in original. No subsec. (b) has been enacted.

and counterintelligence activities (including activities relating to information management, computer security, and personnel security) at Department of Energy facilities to—

(A) determine the adequacy of those activities to ensure the security of sensitive information, processes, and activities under the jurisdiction of the Department against threats to the disclosure of such information, processes, and activities; and

(B) make recommendations for actions the Commission determines as being necessary to ensure that such security is achieved and maintained.

(2) The activities of the Commission under paragraph (1) shall include the following:

(A) An analysis of the sufficiency of the Design Threat Basis documents as a basis for the allocation of resources for safeguards, security, and counterintelligence activities at the Department facilities in light of applicable guidance with respect to such activities, including applicable laws, Department of Energy orders, Presidential Decision Directives, and Executive orders.

(B) Visits to Department facilities to assess the adequacy of the safeguards, security, and counterintelligence activities at such facilities.

(C) Evaluations of specific concerns set forth in Department reports regarding the status of safeguards, security, or counterintelligence activities at particular Department facilities or at facilities throughout the Department.

(D) Reviews of relevant laws, Department orders, and other requirements relating to safeguards, security, and counterintelligence activities at Department facilities.

(E) Any other activities relating to safeguards, security, and counterintelligence activities at Department facilities that the Secretary of Energy considers appropriate.

(d) Reports

(1) Not later than February 15 each year, the Commission shall submit to the Secretary of Energy and to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the activities of the Commission during the preceding year. The report shall be submitted in unclassified form, but may include a classified annex.

(2) Each report—

(A) shall describe the activities of the Commission during the year covered by the report;

(B) shall set forth proposals for any changes in safeguards, security, or counterintelligence activities at Department of Energy facilities that the Commission considers appropriate in light of such activities; and

(C) may include any other recommendations for legislation or administrative action that the Commission considers appropriate.

(e) Personnel matters

(1)(A) Each member of the Commission who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive

Schedule under section 5316 of title 5 for each day (including travel time) during which such member is engaged in the performance of the duties of the Commission.

(B) All members of the Commission who are officers or employees of the United States shall serve without compensation by reason of their service on the Commission.

(2) The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5 while away from their homes or regular places of business in the performance of services for the Commission.

(3)(A) The Commission may, without regard to the civil service laws and regulations, appoint and terminate such personnel as may be necessary to enable the Commission to perform its duties.

(B) The Commission may fix the compensation of the personnel of the Commission without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5 relating to classification of positions and General Schedule pay rates.

(4) Any officer or employee of the United States may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(5) The members and employees of the Commission shall hold security clearances appropriate for the matters considered by the Commission in the discharge of its duties under this section.

(f) Applicability of FACA

The provisions of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the activities of the Commission.

(g) Funding

(1) From amounts authorized to be appropriated by sections 3101 and 3103, the Secretary of Energy shall make available to the Commission not more than \$1,000,000 for the activities of the Commission under this section.

(2) Amounts made available to the Commission under this subsection shall remain available until expended.

(Pub. L. 106-65, div. C, title XXXI, §3142, Oct. 5, 1999, 113 Stat. 931.)

REFERENCES IN TEXT

The civil service laws, referred to in subsec. (e)(3)(A), are set forth in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

The Federal Advisory Committee Act, referred to in subsec. (f), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

Sections 3101 and 3103, referred to in subsec. (g), are sections 3101 and 3103 of Pub. L. 106-65, div. C, title XXXI, Oct. 5, 1999, 113 Stat. 915, 919, which are not classified to the Code.

CODIFICATION

Section is comprised of section 3142 of Pub. L. 106-65. Subsec. (h)(1) of section 3142 of Pub. L. 106-65 repealed section 3161 of Pub. L. 105-85, formerly set out as a note under section 7251 of this title. Subsec. (h)(2) of section

3142 of Pub. L. 106-65 amended section 2657 of Title 50, War and National Defense.

SHORT TITLE

Pub. L. 106-65, div. C, title XXXI, §3141, Oct. 5, 1999, 113 Stat. 931, provided that: “This subtitle [subtitle D, §§3141-3156, of title XXXI of div. C of Pub. L. 106-65, enacting this subchapter and section 2282b of this title, amending sections 2165, 2274, 2275, 2277, and 2282a of this title, enacting provisions set out as notes under sections 2165 and 2282b of this title and section 435 of Title 50, War and National Defense, amending provisions set out as a note under section 7274m of this title, and repealing provisions set out as a note under section 7251 of this title] may be cited as the ‘Department of Energy Facilities Safeguards, Security, and Counterintelligence Enhancement Act of 1999.’”

§§ 7383a to 7383d. Transferred

CODIFICATION

Section 7383a, Pub. L. 106-65, div. C, title XXXI, §3143, Oct. 5, 1999, 113 Stat. 934, which related to background investigations of certain personnel at Department of Energy facilities, was renumbered section 4503 of Pub. L. 107-314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108-136, div. C, title XXXI, §3141(h)(4)(A)-(C), Nov. 24, 2003, 117 Stat. 1772, and is classified to section 2653 of Title 50, War and National Defense.

Section 7383b, Pub. L. 106-65, div. C, title XXXI, §3145, Oct. 5, 1999, 113 Stat. 935, which related to protection of classified information during laboratory-to-laboratory exchanges, was renumbered section 4524 of Pub. L. 107-314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108-136, div. C, title XXXI, §3141(h)(14), Nov. 24, 2003, 117 Stat. 1775, and is classified to section 2674 of Title 50, War and National Defense.

Section 7383c, Pub. L. 106-65, div. C, title XXXI, §3146, Oct. 5, 1999, 113 Stat. 935, which related to restrictions on access to national laboratories by foreign visitors from sensitive countries, was renumbered section 4502 of Pub. L. 107-314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108-136, div. C, title XXXI, §3141(h)(3)(A)-(C), Nov. 24, 2003, 117 Stat. 1771, and is classified to section 2652 of Title 50, War and National Defense.

Section 7383d, Pub. L. 106-65, div. C, title XXXI, §3150, Oct. 5, 1999, 113 Stat. 939, which related to notice to congressional committees of certain security and counterintelligence failures within nuclear energy defense programs, was renumbered section 4505 of Pub. L. 107-314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108-136, div. C, title XXXI, §3141(h)(6), Nov. 24, 2003, 117 Stat. 1773, and is classified to section 2656 of Title 50, War and National Defense.

§ 7383e. Annual report by the President on espionage by the People’s Republic of China

(a) Annual report required

The President shall transmit to Congress an annual report on the steps being taken by the Department of Energy, the Department of Defense, the Federal Bureau of Investigation, the Central Intelligence Agency, and all other relevant executive departments and agencies to respond to espionage and other intelligence activities by the People’s Republic of China, particularly with respect to—

- (1) the theft of sophisticated United States nuclear weapons design information; and
- (2) the targeting by the People’s Republic of China of United States nuclear weapons codes and other national security information of strategic concern.

(b) Initial report

The first report under this section shall be transmitted not later than March 1, 2000.

(Pub. L. 106-65, div. C, title XXXI, §3151, Oct. 5, 1999, 113 Stat. 939.)

§§ 7383f to 7383h-1. Transferred

CODIFICATION

Section 7383f, Pub. L. 106-65, div. C, title XXXI, §3152, Oct. 5, 1999, 113 Stat. 940, which related to the submission of annual reports on counterintelligence and security practices at national laboratories, was renumbered section 4507 of Pub. L. 107-314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108-136, div. C, title XXXI, §3141(h)(8)(A)-(C), Nov. 24, 2003, 117 Stat. 1773, and is classified to section 2658 of Title 50, War and National Defense.

Section 7383g, Pub. L. 106-65, div. C, title XXXI, §3153, Oct. 5, 1999, 113 Stat. 940, which related to the submission of annual reports on security vulnerabilities of national laboratory computers, was renumbered section 4508 of Pub. L. 107-314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108-136, div. C, title XXXI, §3141(h)(9)(A)-(C), Nov. 24, 2003, 117 Stat. 1774, and is classified to section 2659 of Title 50, War and National Defense.

Section 7383h, Pub. L. 106-65, div. C, title XXXI, §3154, Oct. 5, 1999, 113 Stat. 941; Pub. L. 106-398, §1 [div. C, title XXXI, §3135], Oct. 30, 2000, 114 Stat. 1654, 1654A-456, which related to a counterintelligence polygraph program for defense-related activities of the Department of Energy, was renumbered section 4504A of Pub. L. 107-314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108-136, div. C, title XXXI, §3141(h)(5)(B)(i)-(iii), Nov. 24, 2003, 117 Stat. 1773, and is classified to section 2655 of Title 50, War and National Defense.

Section 7383h-1, Pub. L. 107-107, div. C, title XXXI, §3152, Dec. 28, 2001, 115 Stat. 1376, which related to a new counterintelligence polygraph program for the Department of Energy, was renumbered section 4504 of Pub. L. 107-314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108-136, div. C, title XXXI, §3141(h)(5)(A)(i)-(iii), Nov. 24, 2003, 117 Stat. 1772, and is classified to section 2654 of Title 50, War and National Defense.

§ 7383i. Definitions of national laboratory and nuclear weapons production facility

For purposes of this subchapter:

(1) The term “national laboratory” means any of the following:

- (A) The Lawrence Livermore National Laboratory, Livermore, California.
- (B) The Los Alamos National Laboratory, Los Alamos, New Mexico.
- (C) The Sandia National Laboratories, Albuquerque, New Mexico and Livermore, California.

(2) The term “nuclear weapons production facility” means any of the following:

- (A) The Kansas City Plant, Kansas City, Missouri.
- (B) The Pantex Plant, Amarillo, Texas.
- (C) The Y-12 Plant, Oak Ridge, Tennessee.
- (D) The tritium operations at the Savannah River Site, Aiken, South Carolina.
- (E) The Nevada Test Site, Nevada.

(Pub. L. 106-65, div. C, title XXXI, §3155, Oct. 5, 1999, 113 Stat. 942.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original “this subtitle”, meaning subtitle D of title XXXI of

div. C of Pub. L. 106-65, Oct. 5, 1999, 113 Stat. 931, which is classified principally to this subchapter. For complete classification of subtitle D to the Code, see Short Title note set out under section 7383 of this title and Tables.

§ 7383j. Definition of Restricted Data

In this subchapter, the term “Restricted Data” has the meaning given that term in section 2014(y) of this title.

(Pub. L. 106-65, div. C, title XXXI, §3156, Oct. 5, 1999, 113 Stat. 942.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original “this subtitle”, meaning subtitle D of title XXXI of div. C of Pub. L. 106-65, Oct. 5, 1999, 113 Stat. 931, which is classified principally to this subchapter. For complete classification of subtitle D to the Code, see Short Title note set out under section 7383 of this title and Tables.

SUBCHAPTER XVI—ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM

CODIFICATION

This subchapter was enacted as title XXXVI of div. C of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, known as the Energy Employees Occupational Illness Compensation Program Act of 2000, and not as part of the Department of Energy Organization Act which comprises this chapter.

§ 7384. Findings; sense of Congress

(a) Findings

The Congress finds the following:

(1) Since World War II, Federal nuclear activities have been explicitly recognized under Federal law as activities that are ultra-hazardous. Nuclear weapons production and testing have involved unique dangers, including potential catastrophic nuclear accidents that private insurance carriers have not covered and recurring exposures to radioactive substances and beryllium that, even in small amounts, can cause medical harm.

(2) Since the inception of the nuclear weapons program and for several decades afterwards, a large number of nuclear weapons workers at sites of the Department of Energy and at sites of vendors who supplied the Cold War effort were put at risk without their knowledge and consent for reasons that, documents reveal, were driven by fears of adverse publicity, liability, and employee demands for hazardous duty pay.

(3) Many previously secret records have documented unmonitored exposures to radiation and beryllium and continuing problems at these sites across the Nation, at which the Department of Energy and its predecessor agencies have been, since World War II, self-regulating with respect to nuclear safety and occupational safety and health. No other hazardous Federal activity has been permitted to be carried out under such sweeping powers of self-regulation.

(4) The policy of the Department of Energy has been to litigate occupational illness claims, which has deterred workers from filing workers’ compensation claims and has im-

posed major financial burdens for such employees who have sought compensation. Contractors of the Department have been held harmless and the employees have been denied workers’ compensation coverage for occupational disease.

(5) Over the past 20 years, more than two dozen scientific findings have emerged that indicate that certain of such employees are experiencing increased risks of dying from cancer and non-malignant diseases. Several of these studies have also established a correlation between excess diseases and exposure to radiation and beryllium.

(6) While linking exposure to occupational hazards with the development of occupational disease is sometimes difficult, scientific evidence supports the conclusion that occupational exposure to dust particles or vapor of beryllium can cause beryllium sensitivity and chronic beryllium disease. Furthermore, studies indicate that 98 percent of radiation-induced cancers within the nuclear weapons complex have occurred at dose levels below existing maximum safe thresholds.

(7) Existing information indicates that State workers’ compensation programs do not provide a uniform means of ensuring adequate compensation for the types of occupational illnesses and diseases that relate to the employees at those sites.

(8) To ensure fairness and equity, the civilian men and women who, over the past 50 years, have performed duties uniquely related to the nuclear weapons production and testing programs of the Department of Energy and its predecessor agencies should have efficient, uniform, and adequate compensation for beryllium-related health conditions and radiation-related health conditions.

(9) On April 12, 2000, the Secretary of Energy announced that the Administration intended to seek compensation for individuals with a broad range of work-related illnesses throughout the Department of Energy’s nuclear weapons complex.

(10) However, as of October 2, 2000, the Administration has failed to provide Congress with the necessary legislative and budget proposals to enact the promised compensation program.

(b) Sense of Congress

It is the sense of Congress that—

(1) a program should be established to provide compensation to covered employees;

(2) a fund for payment of such compensation should be established on the books of the Treasury;

(3) payments from that fund should be made only after—

(A) the identification of employees of the Department of Energy (including its predecessor agencies), and of contractors of the Department, who may be members of the group of covered employees;

(B) the establishment of a process to receive and administer claims for compensation for disability or death of covered employees;

(C) the submittal by the President of a legislative proposal for compensation of such

employees that includes the estimated annual budget resources for that compensation; and

(D) consideration by the Congress of the legislative proposal submitted by the President; and

(4) payments from that fund should commence not later than fiscal year 2002.

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3602], Oct. 30, 2000, 114 Stat. 1654, 1654A-495.)

SHORT TITLE

Pub. L. 106-398, §1 [div. C, title XXXVI, §3601], Oct. 30, 2000, 114 Stat. 1654, 1654A-495, provided that: "This title [enacting this subchapter] may be cited as the 'Energy Employees Occupational Illness Compensation Program Act of 2000'."

STUDY OF RESIDUAL CONTAMINATION OF FACILITIES

Pub. L. 107-107, div. C, title XXXI, §3151(b), Dec. 28, 2001, 115 Stat. 1375, provided that:

"(1) The National Institute for Occupational Safety and Health shall, with the cooperation of the Department of Energy and the Department of Labor, carry out a study on the following matters:

"(A) Whether or not significant contamination remained in any atomic weapons employer facility or facility of a beryllium vendor after such facility discontinued activities relating to the production of nuclear weapons.

"(B) If so, whether or not such contamination could have caused or substantially contributed to the cancer of a covered employee with cancer or a covered beryllium illness, as the case may be.

"(2)(A) The National Institute for Occupational Safety and Health shall submit to the applicable congressional committees the following reports:

"(i) Not later than 180 days after the date of the enactment of this Act [Dec. 28, 2001], a report on the progress made as of the date of the report on the study required by paragraph (1).

"(ii) Not later than one year after the date of the enactment of this Act, a final report on the study required by paragraph (1).

"(B) In this paragraph, the term 'applicable congressional committees' means—

"(i) the Committee on Armed Services, Committee on Appropriations, Committee on the Judiciary, and Committee on Health, Education, Labor, and Pensions of the Senate; and

"(ii) the Committee on Armed Services, Committee on Appropriations, Committee on the Judiciary, and Committee on Education and the Workforce of the House of Representatives.

"(3) Amounts for the study under paragraph (1) shall be derived from amounts authorized to be appropriated by section 3614(a) of the Energy Employees Occupational Illness Compensation Program Act of 2000 (114 Stat. 1654A-498) [42 U.S.C. 7384g(a)].

"(4) In this subsection:

"(A) The terms 'atomic weapons employer facility', 'beryllium vendor', 'covered employee with cancer', and 'covered beryllium illness' have the meanings given those terms in section 3621 of the Energy Employees Occupational Illness Compensation Program Act of 2000 (114 Stat. 1654A-498; 42 U.S.C. 7384f).

"(B) The term 'contamination' means the presence of any—

"(i) material that emitted radiation and was used in the production of an atomic weapon, excluding uranium mining and milling; or

"(ii) beryllium dust, particles, or vapor, exposure to which could cause or substantially contribute to the cancer of a covered employee with cancer or a covered beryllium illness, as the case may be."

EX. ORD. NO. 13179. PROVIDING COMPENSATION TO AMERICA'S NUCLEAR WEAPONS WORKERS

Ex. Ord. No. 13179, Dec. 7, 2000, 65 F.R. 77487, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including Public Law 106-398, the Energy Employees Occupational Illness Compensation Program Act of 2000 [42 U.S.C. 7384 et seq.] (Public Law 106-398, the "Act"), and to allocate the responsibilities imposed by that legislation and to provide for further legislative efforts, it is hereby ordered as follows:

SECTION 1. *Policy.* Since World War II, hundreds of thousands of men and women have served their Nation in building its nuclear defense. In the course of their work, they overcame previously unimagined scientific and technical challenges. Thousands of these courageous Americans, however, paid a high price for their service, developing disabling or fatal illnesses as a result of exposure to beryllium, ionizing radiation, and other hazards unique to nuclear weapons production and testing. Too often, these workers were neither adequately protected from, nor informed of, the occupational hazards to which they were exposed.

Existing workers' compensation programs have failed to provide for the needs of these workers and their families. Federal workers' compensation programs have generally not included these workers. Further, because of long latency periods, the uniqueness of the hazards to which they were exposed, and inadequate exposure data, many of these individuals have been unable to obtain State workers' compensation benefits. This problem has been exacerbated by the past policy of the Department of Energy (DOE) and its predecessors of encouraging and assisting DOE contractors in opposing the claims of workers who sought those benefits. This policy has recently been reversed.

While the Nation can never fully repay these workers or their families, they deserve recognition and compensation for their sacrifices. Since the Administration's historic announcement in July of 1999 that it intended to compensate DOE nuclear weapons workers who suffered occupational illnesses as a result of exposure to the unique hazards in building the Nation's nuclear defense, it has been the policy of this Administration to support fair and timely compensation for these workers and their survivors. The Federal Government should provide necessary information and otherwise help employees of the DOE or its contractors determine if their illnesses are associated with conditions of their nuclear weapons-related work; it should provide workers and their survivors with all pertinent and available information necessary for evaluating and processing claims; and it should ensure that this program minimizes the administrative burden on workers and their survivors, and respects their dignity and privacy. This order sets out agency responsibilities to accomplish these goals, building on the Administration's articulated principles and the framework set forth in the Energy Employees Occupational Illness Compensation Program Act of 2000 [42 U.S.C. 7384 et seq.]. The Departments of Labor, Health and Human Services, and Energy shall be responsible for developing and implementing actions under the Act to compensate these workers and their families in a manner that is compassionate, fair, and timely. Other Federal agencies, as appropriate, shall assist in this effort.

SEC. 2. *Designation of Responsibilities for Administering the Energy Employees' Occupational Illness Compensation Program ("Program").*

(a) *Secretary of Labor.* The Secretary of Labor shall have primary responsibility for administering the Program. Specifically, the Secretary shall:

(i) Administer and decide all questions arising under the Act not assigned to other agencies by the Act or by this order, including determining the eligibility of individuals with covered occupational illnesses and their survivors and adjudicating claims for compensation and benefits;

(ii) No later than May 31, 2001, promulgate regulations for the administration of the Program, except for functions assigned to other agencies pursuant to the Act or this order;

(iii) No later than July 31, 2001, ensure the availability, in paper and electronic format, of forms necessary for making claims under the Program; and

(iv) Develop informational materials, in coordination with the Secretary of Energy and the Secretary of Health and Human Services, to help potential claimants understand the Program and the application process, and provide these materials to individuals upon request and to the Secretary of Energy and the Attorney General for dissemination to potentially eligible individuals.

(b) *Secretary of Health and Human Services.* The Secretary of Health and Human Services shall:

(i) No later than May 31, 2001, promulgate regulations establishing:

(A) guidelines, pursuant to section 3623(c) of the Act [42 U.S.C. 7384n(c)], to assess the likelihood that an individual with cancer sustained the cancer in the performance of duty at a Department of Energy facility or an atomic weapons employer facility, as defined by the Act; and

(B) methods, pursuant to section 3623(d) of the Act, for arriving at and providing reasonable estimates of the radiation doses received by individuals applying for assistance under this program for whom there are inadequate records of radiation exposure;

(ii) In accordance with procedures developed by the Secretary of Health and Human Services, consider and issue determinations on petitions by classes of employees to be treated as members of the Special Exposure Cohort;

(iii) With the assistance of the Secretary of Energy, apply the methods promulgated under subsection (b)(i)(B) to estimate the radiation doses received by individuals applying for assistance;

(iv) Upon request from the Secretary of Energy, appoint members for a physician panel or panels to consider individual workers' compensation claims as part of the Worker Assistance Program under the process established pursuant to subsection (c)(v); and

(v) Provide the Advisory Board established under section 4 of this order with administrative services, funds, facilities, staff, and other necessary support services and perform the administrative functions of the President under the Federal Advisory Committee Act, as amended (5 U.S.C. App.), with respect to the Advisory Board.

(c) *Secretary of Energy.* The Secretary of Energy shall:

(i) Provide the Secretary of Health and Human Services and the Advisory Board on Radiation and Worker Health access, in accordance with law, to all relevant information pertaining to worker exposures, including access to restricted data, and any other technical assistance needed to carry out their responsibilities under subsection (b)(ii) and section 4(b), respectively.

(ii) Upon request from the Secretary of Health and Human Services or the Secretary of Labor, and as permitted by law, require a DOE contractor, subcontractor, or designated beryllium vendor, pursuant to section 3631(c) of the Act [42 U.S.C. 7384v(c)], to provide information relevant to a claim under this Program;

(iii) Identify and notify potentially eligible individuals of the availability of compensation under the Program;

(iv) Designate, pursuant to sections 3621(4)(B) and 3622 of the Act [42 U.S.C. 7384f(4)(B), 7384m], atomic weapons employers and additions to the list of designated beryllium vendors;

(v) Pursuant to Subtitle D of the Act [42 U.S.C. 7385o], negotiate agreements with the chief executive officer of each State in which there is a DOE facility, and other States as appropriate, to provide assistance to a DOE contractor employee on filing a State workers' compensation system claim, and establish a Worker Assistance Program to help individuals whose illness is related to employment in the DOE's nuclear weapons complex, or the individual's survivor if the individual is deceased, in applying for State workers' compensation benefits. This assistance shall include:

(1) Submittal of reasonable claims to a physician panel, appointed by the Secretary of Health and Human Services and administered by the Secretary of Energy, under procedures established by the Secretary of En-

ergy, for determination of whether the individual's illness or death arose out of and in the course of employment by the DOE or its contractors and exposure to a toxic substance at a DOE facility; and

(2) For cases determined by the physician panel and the Secretary of Energy under section 3661(d) and (e) of the Act [42 U.S.C. 7385o(d), (e)] to have arisen out of and in the course of employment by the DOE or its contractors and exposure to a toxic substance at a DOE facility, provide assistance to the individual in filing for workers' compensation benefits. The Secretary shall not contest these claims and, to the extent permitted by law, shall direct a DOE contractor who employed the applicant not to contest the claim;

(vi) Report on the Worker Assistance Program by making publicly available on at least an annual basis claims-related data, including the number of claims filed, the number of illnesses found to be related to work at a DOE facility, job location and description, and number of successful State workers' compensation claims awarded; and

(vii) No later than January 15, 2001, publish in the Federal Register a list of atomic weapons employer facilities within the meaning of section 3621(5) of the Act [42 U.S.C. 7384f(5)], Department of Energy employer facilities within the meaning of section 3621(12) of the Act, and a list of facilities owned and operated by a beryllium vendor, within the meaning of section 3621(6) of the Act.

(d) *Attorney General.* The Attorney General shall:

(i) Develop procedures to notify, to the extent possible, each claimant (or the survivor of that claimant if deceased) whose claim for compensation under section 5 of the Radiation Exposure Compensation Act [Pub. L. 101-426, 42 U.S.C. 2210 note] has been or is approved by the Department of Justice, of the availability of supplemental compensation and benefits under the Energy Employees Occupational Illness Compensation Program;

(ii) Identify and notify eligible covered uranium employees or their survivors of the availability of supplemental compensation under the Program; and

(iii) Upon request by the Secretary of Labor, provide information needed to adjudicate the claim of a covered uranium employee under this Program.

SEC. 3. *Establishment of Interagency Working Group.*

(a) There is hereby established an Interagency Working Group to be composed of representatives from the Office of Management and Budget, the National Economic Council, and the Departments of Labor, Energy, Health and Human Services, and Justice.

(b) The Working Group shall:

(i) By January 1, 2001, develop a legislative proposal to ensure the Program's fairness and efficiency, including provisions to assure adequate administrative resources and swift dispute resolution; and

(ii) Address any impediments to timely and coordinated Program implementation.

SEC. 4. *Establishment of Advisory Board on Radiation and Worker Health.*

(a) Pursuant to Public Law 106-398, there is hereby established an Advisory Board on Radiation and Health (Advisory Board). The Advisory Board shall consist of no more than 20 members to be appointed by the President. Members shall include affected workers and their representatives, and representatives from scientific and medical communities. The President shall designate a Chair for the Board among its members.

(b) The Advisory Board shall:

(i) Advise the Secretary of Health and Human Services on the development of guidelines under section 2(b)(i) of this order;

(ii) Advise the Secretary of Health and Human Services on the scientific validity and quality of dose reconstruction efforts performed for this Program; and

(iii) Upon request by the Secretary of Health and Human Services, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on

whether there is a reasonable likelihood that such radiation dose may have endangered the health of members of the class.

SEC. 5. Reporting Requirements. The Secretaries of Labor, Health and Human Services, and Energy shall, as part of their annual budget submissions, report to the Office of Management and Budget (OMB) on their activities under this Program, including total expenditures related to benefits and program administration. They shall also report to the OMB, no later than March 1, 2001, on the manner in which they will carry out their respective responsibilities under the Act and this order. This report shall include, among other things, a description of the administrative structure established within their agencies to implement the Act and this order. In addition, the Secretary of Labor shall annually report on the total number and types of claims for which compensation was considered and other data pertinent to evaluating the Federal Government's performance fulfilling the requirements of the Act and this order.

SEC. 6. Administration and Judicial Review. (a) This Executive Order shall be carried out subject to the availability of appropriations, and to the extent permitted by law.

(b) This Executive Order does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers or employees, or any other person.

WILLIAM J. CLINTON.

PART A—ESTABLISHMENT OF COMPENSATION PROGRAM AND COMPENSATION FUND

§ 7384d. Establishment of Energy Employees Occupational Illness Compensation Program

(a) Program established

There is hereby established a program to be known as the "Energy Employees Occupational Illness Compensation Program" (in this subchapter referred to as the "compensation program"). The President shall carry out the compensation program through one or more Federal agencies or officials, as designated by the President.

(b) Purpose of program

The purpose of the compensation program is to provide for timely, uniform, and adequate compensation of covered employees and, where applicable, survivors of such employees, suffering from illnesses incurred by such employees in the performance of duty for the Department of Energy and certain of its contractors and subcontractors.

(c) Eligibility for compensation

The eligibility of covered employees for compensation under the compensation program shall be determined in accordance with the provisions of part B as may be modified by a law enacted after the date of the submittal of the proposal for legislation required by section 7384f of this title.

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3611], Oct. 30, 2000, 114 Stat. 1654, 1654A-497.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7384r of this title.

§ 7384e. Establishment of Energy Employees Occupational Illness Compensation Fund

(a) Establishment

There is hereby established on the books of the Treasury a fund to be known as the "Energy

Employees Occupational Illness Compensation Fund" (in this subchapter referred to as the "compensation fund").

(b) Amounts in compensation fund

The compensation fund shall consist of the following amounts:

(1) Amounts appropriated to the compensation fund pursuant to the authorization of appropriations in section 7384g(b) of this title.

(2) Amounts transferred to the compensation fund under subsection (c) of this section.

(c) Financing of compensation fund

Upon the exhaustion of amounts in the compensation fund attributable to the authorization of appropriations in section 7384g(b) of this title, the Secretary of the Treasury shall transfer directly to the compensation fund from the General Fund of the Treasury, without further appropriation, such amounts as are further necessary to carry out the compensation program.

(d) Use of compensation fund

Subject to subsection (e) of this section, amounts in the compensation fund shall be used to carry out the compensation program.

(e) Administrative costs not paid from compensation fund

No cost incurred in carrying out the compensation program, or in administering the compensation fund, shall be paid from the compensation fund or set off against or otherwise deducted from any payment to any individual under the compensation program.

(f) Investment of amounts in compensation fund

Amounts in the compensation fund shall be invested in accordance with section 9702 of title 31, and any interest on, and proceeds from, any such investment shall be credited to and become a part of the compensation fund.

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3612], Oct. 30, 2000, 114 Stat. 1654, 1654A-497.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7384g, 7384s, 7384t, 7384u of this title.

§ 7384f. Legislative proposal

(a) Legislative proposal required

Not later than March 15, 2001, the President shall submit to Congress a proposal for legislation to implement the compensation program. The proposal for legislation shall include, at a minimum, the specific recommendations (including draft legislation) of the President for the following:

(1) The types of compensation and benefits, including lost wages, medical benefits, and any lump-sum settlement payments, to be provided under the compensation program.

(2) Any adjustments or modifications necessary to appropriately administer the compensation program under part B.

(3) Whether to expand the compensation program to include other illnesses associated with exposure to toxic substances.

(4) Whether to expand the class of individuals who are members of the Special Exposure Cohort (as defined in section 7384l(14) of this title).

(b) Assessment of potential covered employees and required amounts

The President shall include with the proposal for legislation under subsection (a) of this section the following:

(1) An estimate of the number of covered employees that the President determines were exposed in the performance of duty.

(2) An estimate, for each fiscal year of the compensation program, of the amounts to be required for compensation and benefits anticipated to be provided in such fiscal year under the compensation program.

(Pub. L. 106-398, § 1 [div. C, title XXXVI, § 3613], Oct. 30, 2000, 114 Stat. 1654, 1654A-498.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7384d of this title.

§ 7384g. Authorization of appropriations

(a) In general

Pursuant to the authorization of appropriations in section 3103(a),¹ \$25,000,000 may be used for purposes of carrying out this subchapter.

(b) Compensation fund

There is hereby authorized to be appropriated \$250,000,000 to the Energy Employees Occupational Illness Compensation Fund established by section 7384e of this title.

(Pub. L. 106-398, § 1 [div. C, title XXXVI, § 3614], Oct. 30, 2000, 114 Stat. 1654, 1654A-498.)

REFERENCES IN TEXT

Section 3103(a), referred to in subsec. (a), means section 1 [div. C, title XXXVI, § 3103(a)] of Pub. L. 106-398, Oct. 30, 2000, 114 Stat. 1654, 1654A-449, which is not classified to the Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7384e of this title.

PART B—PROGRAM ADMINISTRATION

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 7384d, 7384f, 7385, 7385a, 7385b, 7385d, 7385e, 7385f, 7385g, 7385h, 7385i of this title.

§ 7384l. Definitions for program administration

In this subchapter:

(1) The term “covered employee” means any of the following:

(A) A covered beryllium employee.

(B) A covered employee with cancer.

(C) To the extent provided in section 7384r of this title, a covered employee with chronic silicosis (as defined in that section).

(2) The term “atomic weapon” has the meaning given that term in section 2014(d) of this title.

(3) The term “atomic weapons employee” means an individual employed by an atomic weapons employer during a period when the employer was processing or producing, for the use by the United States, material that emit-

ted radiation and was used in the production of an atomic weapon, excluding uranium mining and milling.

(4) The term “atomic weapons employer” means an entity, other than the United States, that—

(A) processed or produced, for use by the United States, material that emitted radiation and was used in the production of an atomic weapon, excluding uranium mining and milling; and

(B) is designated by the Secretary of Energy as an atomic weapons employer for purposes of the compensation program.

(5) The term “atomic weapons employer facility” means a facility, owned by an atomic weapons employer, that is or was used to process or produce, for use by the United States, material that emitted radiation and was used in the production of an atomic weapon, excluding uranium mining or milling.

(6) The term “beryllium vendor” means any of the following:

(A) Atomics International.

(B) Brush Wellman, Incorporated, and its predecessor, Brush Beryllium Company.

(C) General Atomics.

(D) General Electric Company.

(E) NGK Metals Corporation and its predecessors, Kawecki-Berylco, Cabot Corporation, BerylCo, and Beryllium Corporation of America.

(F) Nuclear Materials and Equipment Corporation.

(G) StarMet Corporation and its predecessor, Nuclear Metals, Incorporated.

(H) Wyman Gordan, Incorporated.

(I) Any other vendor, processor, or producer of beryllium or related products designated as a beryllium vendor for purposes of the compensation program under section 7384m of this title.

(7) The term “covered beryllium employee” means the following, if and only if the employee is determined to have been exposed to beryllium in the performance of duty in accordance with section 7384n(a) of this title:

(A) A current or former employee (as that term is defined in section 8101(1) of title 5) who may have been exposed to beryllium at a Department of Energy facility or at a facility owned, operated, or occupied by a beryllium vendor.

(B) A current or former employee of—

(i) any entity that contracted with the Department of Energy to provide management and operation, management and integration, or environmental remediation of a Department of Energy facility; or

(ii) any contractor or subcontractor that provided services, including construction and maintenance, at such a facility.

(C) A current or former employee of a beryllium vendor, or of a contractor or subcontractor of a beryllium vendor, during a period when the vendor was engaged in activities related to the production or processing of beryllium for sale to, or use by, the Department of Energy.

(8) The term “covered beryllium illness” means any of the following:

¹ See References in Text note below.

(A) Beryllium sensitivity as established by an abnormal beryllium lymphocyte proliferation test performed on either blood or lung lavage cells.

(B) Established chronic beryllium disease.

(C) Any injury, illness, impairment, or disability sustained as a consequence of a covered beryllium illness referred to in subparagraph (A) or (B).

(9) The term "covered employee with cancer" means any of the following:

(A) An individual with a specified cancer who is a member of the Special Exposure Cohort, if and only if that individual contracted that specified cancer after beginning employment at a Department of Energy facility (in the case of a Department of Energy employee or Department of Energy contractor employee) or at an atomic weapons employer facility (in the case of an atomic weapons employee).

(B)(i) An individual with cancer specified in subclause (I), (II), or (III) of clause (ii), if and only if that individual is determined to have sustained that cancer in the performance of duty in accordance with section 7384n(b) of this title.

(ii) Clause (i) applies to any of the following:

(I) A Department of Energy employee who contracted that cancer after beginning employment at a Department of Energy facility.

(II) A Department of Energy contractor employee who contracted that cancer after beginning employment at a Department of Energy facility.

(III) An atomic weapons employee who contracted that cancer after beginning employment at an atomic weapons employer facility.

(10) The term "Department of Energy" includes the predecessor agencies of the Department of Energy, including the Manhattan Engineering District.

(11) The term "Department of Energy contractor employee" means any of the following:

(A) An individual who is or was in residence at a Department of Energy facility as a researcher for one or more periods aggregating at least 24 months.

(B) An individual who is or was employed at a Department of Energy facility by—

(i) an entity that contracted with the Department of Energy to provide management and operating, management and integration, or environmental remediation at the facility; or

(ii) a contractor or subcontractor that provided services, including construction and maintenance, at the facility.

(12) The term "Department of Energy facility" means any building, structure, or premise, including the grounds upon which such building, structure, or premise is located—

(A) in which operations are, or have been, conducted by, or on behalf of, the Department of Energy (except for buildings, structures, premises, grounds, or operations cov-

ered by Executive Order No. 12344, dated February 1, 1982, pertaining to the Naval Nuclear Propulsion Program); and

(B) with regard to which the Department of Energy has or had—

(i) a proprietary interest; or

(ii) entered into a contract with an entity to provide management and operation, management and integration, environmental remediation services, construction, or maintenance services.

(13) The term "established chronic beryllium disease" means chronic beryllium disease as established by the following:

(A) For diagnoses on or after January 1, 1993, beryllium sensitivity (as established in accordance with paragraph (8)(A)), together with lung pathology consistent with chronic beryllium disease, including—

(i) a lung biopsy showing granulomas or a lymphocytic process consistent with chronic beryllium disease;

(ii) a computerized axial tomography scan showing changes consistent with chronic beryllium disease; or

(iii) pulmonary function or exercise testing showing pulmonary deficits consistent with chronic beryllium disease.

(B) For diagnoses before January 1, 1993, the presence of—

(i) occupational or environmental history, or epidemiologic evidence of beryllium exposure; and

(ii) any three of the following criteria:

(I) Characteristic chest radiographic (or computed tomography (CT)) abnormalities.

(II) Restrictive or obstructive lung physiology testing or diffusing lung capacity defect.

(III) Lung pathology consistent with chronic beryllium disease.

(IV) Clinical course consistent with a chronic respiratory disorder.

(V) Immunologic tests showing beryllium sensitivity (skin patch test or beryllium blood test preferred).

(14) The term "member of the Special Exposure Cohort" means a Department of Energy employee, Department of Energy contractor employee, or atomic weapons employee who meets any of the following requirements:

(A) The employee was so employed for a number of work days aggregating at least 250 work days before February 1, 1992, at a gaseous diffusion plant located in Paducah, Kentucky, Portsmouth, Ohio, or Oak Ridge, Tennessee, and, during such employment—

(i) was monitored through the use of dosimetry badges for exposure at the plant of the external parts of employee's body to radiation; or

(ii) worked in a job that had exposures comparable to a job that is or was monitored through the use of dosimetry badges.

(B) The employee was so employed before January 1, 1974, by the Department of Energy or a Department of Energy contractor

or subcontractor on Amchitka Island, Alaska, and was exposed to ionizing radiation in the performance of duty related to the Long Shot, Milrow, or Cannikin underground nuclear tests.

(C)(i) Subject to clause (ii), the employee is an individual designated as a member of the Special Exposure Cohort by the President for purposes of the compensation program under section 7384q of this title.

(ii) A designation under clause (i) shall, unless Congress otherwise provides, take effect on the date that is 180 days after the date on which the President submits to Congress a report identifying the individuals covered by the designation and describing the criteria used in designating those individuals.

(15) The term “occupational illness” means a covered beryllium illness, cancer referred to in paragraph (9)(B), specified cancer, or chronic silicosis, as the case may be.

(16) The term “radiation” means ionizing radiation in the form of—

- (A) alpha particles;
- (B) beta particles;
- (C) neutrons;
- (D) gamma rays; or
- (E) accelerated ions or subatomic particles from accelerator machines.

(17) The term “specified cancer” means any of the following:

- (A) A specified disease, as that term is defined in section 4(b)(2) of the Radiation Exposure Compensation Act (42 U.S.C. 2210 note).
- (B) Bone cancer.
- (C) Renal cancers.
- (D) Leukemia (other than chronic lymphocytic leukemia), if initial occupational exposure occurred before 21 years of age and onset occurred more than two years after initial occupational exposure.

(Pub. L. 106–398, §1 [div. C, title XXXVI, §3621], Oct. 30, 2000, 114 Stat. 1654, 1654A–498; Pub. L. 107–20, title II, §2403(a), July 24, 2001, 115 Stat. 175; Pub. L. 107–107, div. C, title XXXI, §3151(a)(1), (4)(C), Dec. 28, 2001, 115 Stat. 1371, 1374.)

REFERENCES IN TEXT

Executive Order No. 12344, referred to in par. (12)(A), is set out as a note under section 2511 of Title 50, War and National Defense.

Section 4(b)(2) of the Radiation Exposure Compensation Act, referred to in par. (17)(A), is section 4(b)(2) of Pub. L. 101–426, which is set out in a note under section 2210 of this title.

AMENDMENTS

- 2001—Par. (17)(C). Pub. L. 107–20 added subpar. (C).
 Par. (17)(D). Pub. L. 107–107, §3151(a)(1), added subpar. (D).
 Par. (18). Pub. L. 107–107, §3151(a)(4)(C), struck out par. (18) which read as follows: “The term ‘survivor’ means any individual or individuals eligible to receive compensation pursuant to section 8133 of title 5.”

EFFECTIVE DATE OF 2001 AMENDMENTS

Pub. L. 107–107, div. C, title XXXI, §3151(a)(4)(D), Dec. 28, 2001, 115 Stat. 1374, provided that: “The amendments

made by this paragraph [amending this section and sections 7384s and 7384u of this title] shall take effect on July 1, 2001.”

Pub. L. 107–20, title II, §2403(b), July 24, 2001, 115 Stat. 175, provided that: “This section [amending this section] shall be effective on October 1, 2001.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7384f, 7384m, 7384n, 7384q, 7384r of this title.

§ 7384m. Expansion of list of beryllium vendors

Not later than December 31, 2002, the President may, in consultation with the Secretary of Energy, designate as a beryllium vendor for purposes of section 7384l(6) of this title any vendor, processor, or producer of beryllium or related products not previously listed under or designated for purposes of such section 7384l(6) of this title if the President finds that such vendor, processor, or producer has been engaged in activities related to the production or processing of beryllium for sale to, or use by, the Department of Energy in a manner similar to the entities listed in such section 7384l(6) of this title.

(Pub. L. 106–398, §1 [div. C, title XXXVI, §3622], Oct. 30, 2000, 114 Stat. 1654, 1654A–502.)

DELEGATION OF FUNCTIONS

For delegation of certain functions of the President under this section, see Ex. Ord. No. 13179, Dec. 7, 2000, 65 F.R. 77487, set out as a note under section 7384 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7384l of this title.

§ 7384n. Exposure in the performance of duty

(a) Beryllium

A covered beryllium employee shall, in the absence of substantial evidence to the contrary, be determined to have been exposed to beryllium in the performance of duty for the purposes of the compensation program if, and only if, the covered beryllium employee was—

- (1) employed at a Department of Energy facility; or
- (2) present at a Department of Energy facility, or a facility owned and operated by a beryllium vendor, because of employment by the United States, a beryllium vendor, or a contractor or subcontractor of the Department of Energy,

during a period when beryllium dust, particles, or vapor may have been present at such facility.

(b) Cancer

An individual with cancer specified in subclause (I), (II), or (III) of section 7384l(9)(B)(ii) of this title shall be determined to have sustained that cancer in the performance of duty for purposes of the compensation program if, and only if, the cancer specified in that subclause was at least as likely as not related to employment at the facility specified in that subclause, as determined in accordance with the guidelines established under subsection (c) of this section.

(c) Guidelines

(1) For purposes of the compensation program, the President shall by regulation establish

guidelines for making the determinations required by subsection (b) of this section.

(2) The President shall establish such guidelines after technical review by the Advisory Board on Radiation and Worker Health under section 7384o of this title.

(3) Such guidelines shall—

(A) be based on the radiation dose received by the employee (or a group of employees performing similar work) at such facility and the upper 99 percent confidence interval of the probability of causation in the radioepidemiological tables published under section 7(b) of the Orphan Drug Act (42 U.S.C. 241 note), as such tables may be updated under section 7(b)(3) of such Act from time to time;

(B) incorporate the methods established under subsection (d) of this section; and

(C) take into consideration the type of cancer, past health-related activities (such as smoking), information on the risk of developing a radiation-related cancer from workplace exposure, and other relevant factors.

(d) Methods for radiation dose reconstructions

(1) The President shall, through any Federal agency (other than the Department of Energy) or official (other than the Secretary of Energy or any other official within the Department of Energy) that the President may designate, establish by regulation methods for arriving at reasonable estimates of the radiation doses received by an individual specified in subparagraph (B) of section 7384l(9) of this title at a facility specified in that subparagraph by each of the following employees:

(A) An employee who was not monitored for exposure to radiation at such facility.

(B) An employee who was monitored inadequately for exposure to radiation at such facility.

(C) An employee whose records of exposure to radiation at such facility are missing or incomplete.

(2) The President shall establish an independent review process using the Advisory Board on Radiation and Worker Health to—

(A) assess the methods established under paragraph (1); and

(B) verify a reasonable sample of the doses established under paragraph (1).

(e) Information on radiation doses

(1) The Secretary of Energy shall provide, to each covered employee with cancer specified in section 7384l(9)(B) of this title, information specifying the estimated radiation dose of that employee during each employment specified in section 7384l(9)(B) of this title, whether established by a dosimetry reading, by a method established under subsection (d) of this section, or by both a dosimetry reading and such method.

(2) The Secretary of Health and Human Services and the Secretary of Energy shall each make available to researchers and the general public information on the assumptions, methodology, and data used in establishing radiation doses under subsection (d) of this section. The actions taken under this paragraph shall be consistent with the protection of private medical records.

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3623], Oct. 30, 2000, 114 Stat. 1654, 1654A-502.)

REFERENCES IN TEXT

Section 7(b) of the Orphan Drug Act, referred to in subsec. (c)(3)(A), is section 7(b) of Pub. L. 97-414, which is set out in a note under section 241 of this title.

DELEGATION OF FUNCTIONS

For delegation of certain functions of the President under this section, see Ex. Ord. No. 13179, Dec. 7, 2000, 65 F.R. 77487, set out as a note under section 7384 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7384l, 7384o, 7385d of this title.

§ 7384o. Advisory Board on Radiation and Worker Health

(a) Establishment

(1) Not later than 120 days after October 30, 2000, the President shall establish and appoint an Advisory Board on Radiation and Worker Health (in this section referred to as the “Board”).

(2) The President shall make appointments to the Board in consultation with organizations with expertise on worker health issues in order to ensure that the membership of the Board reflects a balance of scientific, medical, and worker perspectives.

(3) The President shall designate a Chair for the Board from among its members.

(b) Duties

The Board shall advise the President on—

(1) the development of guidelines under section 7384n(c) of this title;

(2) the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program; and

(3) such other matters related to radiation and worker health in Department of Energy facilities as the President considers appropriate.

(c) Staff

(1) The President shall appoint a staff to facilitate the work of the Board. The staff shall be headed by a Director who shall be appointed under subchapter VIII of chapter 33 of title 5.

(2) The President may accept as staff of the Board personnel on detail from other Federal agencies. The detail of personnel under this paragraph may be on a nonreimbursable basis.

(d) Expenses

Members of the Board, other than full-time employees of the United States, while attending meetings of the Board or while otherwise serving at the request of the President, while serving away from their homes or regular places of business, shall be allowed travel and meal expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 for individuals in the Government serving without pay.

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3624], Oct. 30, 2000, 114 Stat. 1654, 1654A-504.)

TERMINATION OF ADVISORY BOARDS

Advisory boards established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year pe-

riod beginning on the date of their establishment, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a board established by Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7384n, 7384q of this title.

§ 7384p. Responsibilities of Secretary of Health and Human Services

The Secretary of Health and Human Services shall carry out that Secretary's responsibilities with respect to the compensation program with the assistance of the Director of the National Institute for Occupational Safety and Health.

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3625], Oct. 30, 2000, 114 Stat. 1654, 1654A-504.)

§ 7384q. Designation of additional members of special exposure cohort

(a) Advice on additional members

(1) The Advisory Board on Radiation and Worker Health under section 7384o of this title shall advise the President whether there is a class of employees at any Department of Energy facility who likely were exposed to radiation at that facility but for whom it is not feasible to estimate with sufficient accuracy the radiation dose they received.

(2) The advice of the Advisory Board on Radiation and Worker Health under paragraph (1) shall be based on exposure assessments by radiation health professionals, information provided by the Department of Energy, and such other information as the Advisory Board considers appropriate.

(3) The President shall request advice under paragraph (1) after consideration of petitions by classes of employees described in that paragraph for such advice. The President shall consider such petitions pursuant to procedures established by the President.

(b) Designation of additional members

Subject to the provisions of section 7384l(14)(C) of this title, the members of a class of employees at a Department of Energy facility, or at an atomic weapons employer facility, may be treated as members of the Special Exposure Cohort for purposes of the compensation program if the President, upon recommendation of the Advisory Board on Radiation and Worker Health, determines that—

(1) it is not feasible to estimate with sufficient accuracy the radiation dose that the class received; and

(2) there is a reasonable likelihood that such radiation dose may have endangered the health of members of the class.

(c) Access to information

The Secretary of Energy shall provide, in accordance with law, the Secretary of Health and Human Services and the members and staff of the Advisory Board on Radiation and Worker

Health access to relevant information on worker exposures, including access to Restricted Data (as defined in section 2014(y) of this title.¹

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3626], Oct. 30, 2000, 114 Stat. 1654, 1654A-504; Pub. L. 107-107, div. C, title XXXI, §3151(a)(2), Dec. 28, 2001, 115 Stat. 1372.)

AMENDMENTS

2001—Subsec. (b). Pub. L. 107-107 inserted “, or at an atomic weapons employer facility,” after “Department of Energy facility” in introductory provisions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7384l of this title.

§ 7384r. Separate treatment of chronic silicosis

(a) Sense of Congress

Congress finds that employees who worked in Department of Energy test sites and later contracted chronic silicosis should also be considered for inclusion in the compensation program. Recognizing that chronic silicosis resulting from exposure to silica is not a condition unique to the nuclear weapons industry, it is not the intent of Congress with this subchapter to establish a precedent on the question of chronic silicosis as a compensable occupational disease. Consequently, it is the sense of Congress that a further determination by the President is appropriate before these workers are included in the compensation program.

(b) Certification by President

A covered employee with chronic silicosis shall be treated as a covered employee (as defined in section 7384l(1) of this title) for the purposes of the compensation program required by section 7384d of this title unless the President submits to Congress not later than 180 days after October 30, 2000, the certification of the President that there is insufficient basis to include such employees. The President shall submit with the certification any recommendations about the compensation program with respect to covered employees with chronic silicosis as the President considers appropriate.

(c) Exposure to silica in the performance of duty

A covered employee shall, in the absence of substantial evidence to the contrary, be determined to have been exposed to silica in the performance of duty for the purposes of the compensation program if, and only if, the employee was present for a number of work days aggregating at least 250 work days during the mining of tunnels at a Department of Energy facility located in Nevada or Alaska for tests or experiments related to an atomic weapon.

(d) Covered employee with chronic silicosis

For purposes of this subchapter, the term “covered employee with chronic silicosis” means a Department of Energy employee, or a Department of Energy contractor employee, with chronic silicosis who was exposed to silica in the performance of duty as determined under subsection (c) of this section.

¹So in original. A closing parenthesis should probably follow “title”.

(e) Chronic silicosis

For purposes of this subchapter, the term “chronic silicosis” means a nonmalignant lung disease if—

(1) the initial occupational exposure to silica dust preceded the onset of silicosis by at least 10 years; and

(2) a written diagnosis of silicosis is made by a medical doctor and is accompanied by—

(A) a chest radiograph, interpreted by an individual certified by the National Institute for Occupational Safety and Health as a B reader, classifying the existence of pneumoconioses of category 1/0 or higher;

(B) results from a computer assisted tomograph or other imaging technique that are consistent with silicosis; or

(C) lung biopsy findings consistent with silicosis.

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3627], Oct. 30, 2000, 114 Stat. 1654, 1654A-505; Pub. L. 107-107, div. C, title XXXI, §3151(a)(3), Dec. 28, 2001, 115 Stat. 1372.)

AMENDMENTS

2001—Subsec. (e)(2)(A). Pub. L. 107-107 substituted “category 1/0” for “category 1/1”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7384f, 7385 of this title.

§ 7384s. Compensation and benefits to be provided**(a) Compensation provided**

(1) Except as provided in paragraph (2), a covered employee, or the survivor of that covered employee if the employee is deceased, shall receive compensation for the disability or death of that employee from that employee’s occupational illness in the amount of \$150,000.

(2) A covered employee shall, to the extent that employee’s occupational illness is established beryllium sensitivity, receive beryllium sensitivity monitoring under subsection (c) of this section in lieu of compensation under paragraph (1).

(b) Medical benefits

A covered employee shall receive medical benefits under section 7384t of this title for that employee’s occupational illness.

(c) Beryllium sensitivity monitoring

An individual receiving beryllium sensitivity monitoring under this subsection shall receive the following:

(1) A thorough medical examination to confirm the nature and extent of the individual’s established beryllium sensitivity.

(2) Regular medical examinations thereafter to determine whether that individual has developed established chronic beryllium disease.

(d) Payment from compensation fund

The compensation provided under this section, when authorized or approved by the President, shall be paid from the compensation fund established under section 7384e of this title.

(e) Payments in the case of deceased persons

(1) In the case of a covered employee who is deceased at the time of payment of compensa-

tion under this section, whether or not the death is the result of the covered employee’s occupational illness, such payment may be made only as follows:

(A) If the covered employee is survived by a spouse who is living at the time of payment, such payment shall be made to such surviving spouse.

(B) If there is no surviving spouse described in subparagraph (A), such payment shall be made in equal shares to all children of the covered employee who are living at the time of payment.

(C) If there is no surviving spouse described in subparagraph (A) and if there are no children described in subparagraph (B), such payment shall be made in equal shares to the parents of the covered employee who are living at the time of payment.

(D) If there is no surviving spouse described in subparagraph (A), and if there are no children described in subparagraph (B) or parents described in subparagraph (C), such payment shall be made in equal shares to all grandchildren of the covered employee who are living at the time of payment.

(E) If there is no surviving spouse described in subparagraph (A), and if there are no children described in subparagraph (B), parents described in subparagraph (C), or grandchildren described in subparagraph (D), then such payment shall be made in equal shares to the grandparents of the covered employee who are living at the time of payment.

(F) Notwithstanding the other provisions of this paragraph, if there is—

(i) a surviving spouse described in subparagraph (A); and

(ii) at least one child of the covered employee who is living and a minor at the time of payment and who is not a recognized natural child or adopted child of such surviving spouse,

then half of such payment shall be made to such surviving spouse, and the other half of such payment shall be made in equal shares to each child of the covered employee who is living and a minor at the time of payment.

(2) If a covered employee eligible for payment dies before filing a claim under this subchapter, a survivor of that employee who may receive payment under paragraph (1) may file a claim for such payment.

(3) For purposes of this subsection—

(A) the “spouse” of an individual is a wife or husband of that individual who was married to that individual for at least one year immediately before the death of that individual;

(B) a “child” includes a recognized natural child, a stepchild who lived with an individual in a regular parent-child relationship, and an adopted child;

(C) a “parent” includes fathers and mothers through adoption;

(D) a “grandchild” of an individual is a child of a child of that individual; and

(E) a “grandparent” of an individual is a parent of a parent of that individual.

(f) Effective date

This section shall take effect on July 31, 2001, unless Congress otherwise provides in an Act enacted before that date.

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3628], Oct. 30, 2000, 114 Stat. 1654, 1654A-506; Pub. L. 107-107, div. C, title XXXI, §3151(a)(4)(A), Dec. 28, 2001, 115 Stat. 1372.)

AMENDMENTS

2001—Subsec. (e). Pub. L. 107-107 amended heading and text of subsec. (e) generally. Prior to amendment, text read as follows:

“(1) Subject to the provisions of this section, if a covered employee dies before the effective date specified in subsection (f) of this section, whether or not the death is a result of that employee’s occupational illness, a survivor of that employee may, on behalf of that survivor and any other survivors of that employee, receive the compensation provided for under this section.

“(2) The right to receive compensation under this section shall be afforded to survivors in the same order of precedence as that set forth in section 8109 of title 5.”

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107-107 effective July 1, 2001, see section 3151(a)(4)(D) of Pub. L. 107-107, set out as a note under section 7384t of this title.

§ 7384t. Medical benefits**(a) Medical benefits provided**

The United States shall furnish, to an individual receiving medical benefits under this section for an illness, the services, appliances, and supplies prescribed or recommended by a qualified physician for that illness, which the President considers likely to cure, give relief, or reduce the degree or the period of that illness.

(b) Persons furnishing benefits

(1) These services, appliances, and supplies shall be furnished by or on the order of United States medical officers and hospitals, or, at the individual’s option, by or on the order of physicians and hospitals designated or approved by the President.

(2) The individual may initially select a physician to provide medical services, appliances, and supplies under this section in accordance with such regulations and instructions as the President considers necessary.

(c) Transportation and expenses

The individual may be furnished necessary and reasonable transportation and expenses incident to the securing of such services, appliances, and supplies.

(d) Commencement of benefits

An individual receiving benefits under this section shall be furnished those benefits as of the date on which that individual submitted the claim for those benefits in accordance with this subchapter.

(e) Payment from compensation fund

The benefits provided under this section, when authorized or approved by the President, shall be paid from the compensation fund established under section 7384e of this title.

(f) Effective date

This section shall take effect on July 31, 2001, unless Congress otherwise provides in an Act enacted before that date.

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3629], Oct. 30, 2000, 114 Stat. 1654, 1654A-507.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7384s, 7384u of this title.

§ 7384u. Separate treatment of certain uranium employees**(a) Compensation provided**

An individual who receives, or has received, \$100,000 under section 5 of the Radiation Exposure Compensation Act (42 U.S.C. 2210 note) for a claim made under that Act (hereafter in this section referred to as a “covered uranium employee”), or the survivor of that covered uranium employee if the employee is deceased, shall receive compensation under this section in the amount of \$50,000.

(b) Medical benefits

A covered uranium employee shall receive medical benefits under section 7384t of this title for the illness for which that employee received \$100,000 under section 5 of that Act.

(c) Coordination with RECA

The compensation and benefits provided in subsections (a) and (b) of this section are separate from any compensation or benefits provided under that Act.

(d) Payment from compensation fund

The compensation provided under this section, when authorized or approved by the President, shall be paid from the compensation fund established under section 7384e of this title.

(e) Payments in the case of deceased persons

(1) In the case of a covered employee who is deceased at the time of payment of compensation under this section, whether or not the death is the result of the covered employee’s occupational illness, such payment may be made only as follows:

(A) If the covered employee is survived by a spouse who is living at the time of payment, such payment shall be made to such surviving spouse.

(B) If there is no surviving spouse described in subparagraph (A), such payment shall be made in equal shares to all children of the covered employee who are living at the time of payment.

(C) If there is no surviving spouse described in subparagraph (A) and if there are no children described in subparagraph (B), such payment shall be made in equal shares to the parents of the covered employee who are living at the time of payment.

(D) If there is no surviving spouse described in subparagraph (A), and if there are no children described in subparagraph (B) or parents described in subparagraph (C), such payment shall be made in equal shares to all grandchildren of the covered employee who are living at the time of payment.

(E) If there is no surviving spouse described in subparagraph (A), and if there are no children described in subparagraph (B), parents described in subparagraph (C), or grandchildren described in subparagraph (D), then

such payment shall be made in equal shares to the grandparents of the covered employee who are living at the time of payment.

(F) Notwithstanding the other provisions of this paragraph, if there is—

(i) a surviving spouse described in subparagraph (A); and

(ii) at least one child of the covered employee who is living and a minor at the time of payment and who is not a recognized natural child or adopted child of such surviving spouse,

then half of such payment shall be made to such surviving spouse, and the other half of such payment shall be made in equal shares to each child of the covered employee who is living and a minor at the time of payment.

(2) If a covered employee eligible for payment dies before filing a claim under this subchapter, a survivor of that employee who may receive payment under paragraph (1) may file a claim for such payment.

(3) For purposes of this subsection—

(A) the “spouse” of an individual is a wife or husband of that individual who was married to that individual for at least one year immediately before the death of that individual;

(B) a “child” includes a recognized natural child, a stepchild who lived with an individual in a regular parent-child relationship, and an adopted child;

(C) a “parent” includes fathers and mothers through adoption;

(D) a “grandchild” of an individual is a child of a child of that individual; and

(E) a “grandparent” of an individual is a parent of a parent of that individual.

(f) Procedures required

The President shall establish procedures to identify and notify each covered uranium employee, or the survivor of that covered uranium employee if that employee is deceased, of the availability of compensation and benefits under this section.

(g) Effective date

This section shall take effect on July 31, 2001, unless Congress otherwise provides in an Act enacted before that date.

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3630], Oct. 30, 2000, 114 Stat. 1654, 1654A-507; Pub. L. 107-107, div. C, title XXXI, §3151(a)(4)(B), Dec. 28, 2001, 115 Stat. 1373.)

REFERENCES IN TEXT

The Radiation Exposure Compensation Act, referred to in subsecs. (a) to (c), is Pub. L. 101-426, Oct. 15, 1990, 104 Stat. 920, as amended, which is set out as a note under section 2210 of this title.

AMENDMENTS

2001—Subsec. (e). Pub. L. 107-107 amended heading and text of subsec. (e) generally. Prior to amendment, text read as follows:

“(1) Subject to the provisions of this section, if a covered uranium employee dies before the effective date specified in subsection (g) of this section, whether or not the death is a result of the illness specified in subsection (b) of this section, a survivor of that employee may, on behalf of that survivor and any other survivors of that employee, receive the compensation provided for under this section.

“(2) The right to receive compensation under this section shall be afforded to survivors in the same order of precedence as that set forth in section 8109 of title 5.”

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107-107 effective July 1, 2001, see section 3151(a)(4)(D) of Pub. L. 107-107, set out as a note under section 7384f of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7385, 7385j of this title.

§ 7384v. Assistance for claimants and potential claimants

(a) Assistance for claimants

The President shall, upon the receipt of a request for assistance from a claimant under the compensation program, provide assistance to the claimant in connection with the claim, including—

(1) assistance in securing medical testing and diagnostic services necessary to establish the existence of a covered beryllium illness, chronic silicosis, or cancer; and

(2) such other assistance as may be required to develop facts pertinent to the claim.

(b) Assistance for potential claimants

The President shall take appropriate actions to inform and assist covered employees who are potential claimants under the compensation program, and other potential claimants under the compensation program, of the availability of compensation under the compensation program, including actions to—

(1) ensure the ready availability, in paper and electronic format, of forms necessary for making claims;

(2) provide such covered employees and other potential claimants with information and other support necessary for making claims, including—

(A) medical protocols for medical testing and diagnosis to establish the existence of a covered beryllium illness, chronic silicosis, or cancer; and

(B) lists of vendors approved for providing laboratory services related to such medical testing and diagnosis; and

(3) provide such additional assistance to such covered employees and other potential claimants as may be required for the development of facts pertinent to a claim.

(c) Information from beryllium vendors and other contractors

As part of the assistance program provided under subsections (a) and (b) of this section, and as permitted by law, the Secretary of Energy shall, upon the request of the President, require a beryllium vendor or other Department of Energy contractor or subcontractor to provide information relevant to a claim or potential claim under the compensation program to the President.

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3631], Oct. 30, 2000, 114 Stat. 1654, 1654A-508.)

DELEGATION OF FUNCTIONS

For delegation of certain functions of the President under this section, see Ex. Ord. No. 13179, Dec. 7, 2000,

65 F.R. 77487, set out as a note under section 7384 of this title.

PART C—TREATMENT, COORDINATION, AND
FORFEITURE OF COMPENSATION AND BENEFITS

§ 7385. Offset for certain payments

A payment of compensation to an individual, or to a survivor of that individual, under part B shall be offset by the amount of any payment made pursuant to a final award or settlement on a claim (other than a claim for worker's compensation), against any person, that is based on injuries incurred by that individual on account of the exposure of a covered beryllium employee, covered employee with cancer, covered employee with chronic silicosis (as defined in section 7384r of this title), or covered uranium employee (as defined in section 7384u of this title), while so employed, to beryllium, radiation, silica, or radiation, respectively.

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3641], Oct. 30, 2000, 114 Stat. 1654, 1654A-509.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7385a, 7385b of this title.

§ 7385a. Subrogation of the United States

Upon payment of compensation under part B, the United States is subrogated for the amount of the payment to a right or claim that the individual to whom the payment was made may have against any person on account of injuries referred to in section 7385 of this title.

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3642], Oct. 30, 2000, 114 Stat. 1654, 1654A-509.)

§ 7385b. Payment in full settlement of claims

The acceptance by an individual of payment of compensation under part B with respect to a covered employee shall be in full satisfaction of all claims of or on behalf of that individual against the United States, against a Department of Energy contractor or subcontractor, beryllium vendor, or atomic weapons employer, or against any person with respect to that person's performance of a contract with the United States, that arise out of an exposure referred to in section 7385 of this title.

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3643], Oct. 30, 2000, 114 Stat. 1654, 1654A-509.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7385d of this title.

§ 7385c. Exclusivity of remedy against the United States and against contractors and subcontractors

(a) In general

The liability of the United States or an instrumentality of the United States under this subchapter with respect to a cancer (including a specified cancer), chronic silicosis, covered beryllium illness, or death related thereto of a covered employee is exclusive and instead of all other liability—

(1) of—

(A) the United States;

(B) any instrumentality of the United States;

(C) a contractor that contracted with the Department of Energy to provide management and operation, management and integration, or environmental remediation of a Department of Energy facility (in its capacity as a contractor);

(D) a subcontractor that provided services, including construction, at a Department of Energy facility (in its capacity as a subcontractor); and

(E) an employee, agent, or assign of an entity specified in subparagraphs (A) through (D);

(2) to—

(A) the covered employee;

(B) the covered employee's legal representative, spouse, dependents, survivors, and next of kin; and

(C) any other person, including any third party as to whom the covered employee, or the covered employee's legal representative, spouse, dependents, survivors, or next of kin, has a cause of action relating to the cancer (including a specified cancer), chronic silicosis, covered beryllium illness, or death, otherwise entitled to recover damages from the United States, the instrumentality, the contractor, the subcontractor, or the employee, agent, or assign of one of them,

because of the cancer (including a specified cancer), chronic silicosis, covered beryllium illness, or death in any proceeding or action including a direct judicial proceeding, a civil action, a proceeding in admiralty, or a proceeding under a tort liability statute or the common law.

(b) Applicability

This section applies to all cases filed on or after October 30, 2000.

(c) Workers' compensation

This section does not apply to an administrative or judicial proceeding under a Federal or State workers' compensation law.

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3644], Oct. 30, 2000, 114 Stat. 1654, 1654A-509.)

§ 7385d. Election of remedy for beryllium employees and atomic weapons employees

(a) Effect of tort cases filed before enactment of original law

(1) Except as provided in paragraph (2), if an otherwise eligible individual filed a tort case specified in subsection (d) of this section before October 30, 2000, such individual shall be eligible for compensation and benefits under part B.

(2) If such tort case remained pending as of December 28, 2001, and such individual does not dismiss such tort case before December 31, 2003, such individual shall not be eligible for such compensation or benefits.

(b) Effect of tort cases filed between enactment of original law and enactment of 2001 amendments

(1) Except as provided in paragraph (2), if an otherwise eligible individual filed a tort case

specified in subsection (d) of this section during the period beginning on October 30, 2000, and ending on December 28, 2001, such individual shall not be eligible for such compensation or benefits.

(2) If such individual dismisses such tort case on or before the last permissible date specified in paragraph (3), such individual shall be eligible for such compensation or benefits.

(3) The last permissible date referred to in paragraph (2) is the later of the following dates:

(A) April 30, 2003.

(B) The date that is 30 months after the date the individual first becomes aware that an illness covered by part B of a covered employee may be connected to the exposure of the covered employee in the performance of duty under section 7384n of this title.

(c) Effect of tort cases filed after enactment of 2001 amendments

(1) If an otherwise eligible individual files a tort case specified in subsection (d) of this section after December 28, 2001, such individual shall not be eligible for such compensation or benefits if a final court decision is entered against such individual in such tort case.

(2) If such a final court decision is not entered, such individual shall nonetheless not be eligible for such compensation or benefits, except as follows: If such individual dismisses such tort case on or before the last permissible date specified in paragraph (3), such individual shall be eligible for such compensation and benefits.

(3) The last permissible date referred to in paragraph (2) is the later of the following dates:

(A) April 30, 2003.

(B) The date that is 30 months after the date the individual first becomes aware that an illness covered by part B of a covered employee may be connected to the exposure of the covered employee in the performance of duty under section 7384n of this title.

(d) Covered tort cases

A tort case specified in this subsection is a tort case alleging a claim referred to in section 7385b of this title against a beryllium vendor or atomic weapons employer.

(e) Workers' compensation

This section does not apply to an administrative or judicial proceeding under a State or Federal workers' compensation law.

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3645], Oct. 30, 2000, 114 Stat. 1654, 1654A-510; Pub. L. 107-107, div. C, title XXXI, §3151(a)(5), Dec. 28, 2001, 115 Stat. 1374.)

AMENDMENTS

2001—Subsecs. (a) to (d). Pub. L. 107-107 amended headings and text of subsecs. (a) to (d) generally, substituting present provisions for provisions relating to election to file suit in subsec. (a), applicable time limits in subsec. (b), dismissal of claims in subsec. (c), and dismissal of pending suit in subsec. (d).

§ 7385e. Certification of treatment of payments under other laws

Compensation or benefits provided to an individual under part B—

(1) shall be treated for purposes of the internal revenue laws of the United States as damages for human suffering; and

(2) shall not be included as income or resources for purposes of determining eligibility to receive benefits described in section 3803(c)(2)(C) of title 31 or the amount of such benefits.

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3646], Oct. 30, 2000, 114 Stat. 1654, 1654A-510.)

§ 7385f. Claims not assignable or transferable; choice of remedies

(a) Claims not assignable or transferable

No claim cognizable under part B shall be assignable or transferable.

(b) Choice of remedies

No individual may receive more than one payment of compensation under part B.

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3647], Oct. 30, 2000, 114 Stat. 1654, 1654A-511.)

§ 7385g. Attorney fees

(a) General rule

Notwithstanding any contract, the representative of an individual may not receive, for services rendered in connection with the claim of an individual for payment of lump-sum compensation under part B, more than that percentage specified in subsection (b) of this section of a payment made under part B on such claim.

(b) Applicable percentage limitations

The percentage referred to in subsection (a) of this section is—

(1) 2 percent for the filing of an initial claim for payment of lump-sum compensation; and

(2) 10 percent with respect to objections to a recommended decision denying payment of lump-sum compensation.

(c) Inapplicability to other services

This section shall not apply with respect to services rendered that are not in connection with such a claim for payment of lump-sum compensation.

(d) Penalty

Any such representative who violates this section shall be fined not more than \$5,000.

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3648], Oct. 30, 2000, 114 Stat. 1654, 1654A-511; Pub. L. 107-107, div. C, title XXXI, §3151(a)(6), Dec. 28, 2001, 115 Stat. 1375.)

AMENDMENTS

2001—Subsec. (a). Pub. L. 107-107, §3151(a)(6)(A), inserted “for payment of lump-sum compensation” after “the claim of an individual”.

Subsec. (b)(1). Pub. L. 107-107, §3151(a)(6)(B), inserted “for payment of lump-sum compensation” after “initial claim”.

Subsec. (b)(2). Pub. L. 107-107, §3151(a)(6)(C), substituted “with respect to objections to a recommended decision denying payment of lump-sum compensation” for “with respect to any claim with respect to which a representative has made a contract for services before October 30, 2000”.

Subsecs. (c), (d). Pub. L. 107-107, §3151(a)(6)(D), (E), added subsec. (c) and redesignated former subsec. (c) as (d).

§ 7385h. Certain claims not affected by awards of damages

A payment under part B shall not be considered as any form of compensation or reimburse-

ment for a loss for purposes of imposing liability on any individual receiving such payment, on the basis of such receipt, to repay any insurance carrier for insurance payments, or to repay any person on account of worker's compensation payments; and a payment under part B shall not affect any claim against an insurance carrier with respect to insurance or against any person with respect to worker's compensation.

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3649], Oct. 30, 2000, 114 Stat. 1654, 1654A-511.)

§ 7385i. Forfeiture of benefits by convicted felons

(a) Forfeiture of compensation

Any individual convicted of a violation of section 1920 of title 18, or any other Federal or State criminal statute relating to fraud in the application for or receipt of any benefit under part B or under any other Federal or State workers' compensation law, shall forfeit (as of the date of such conviction) any entitlement to any compensation or benefit under part B such individual would otherwise be awarded for any injury, illness or death covered by part B for which the time of injury was on or before the date of the conviction.

(b) Information

Notwithstanding section 552a of title 5, or any other Federal or State law, an agency of the United States, a State, or a political subdivision of a State shall make available to the President, upon written request from the President and if the President requires the information to carry out this section, the names and Social Security account numbers of individuals confined, for conviction of a felony, in a jail, prison, or other penal institution or correctional facility under the jurisdiction of that agency.

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3650], Oct. 30, 2000, 114 Stat. 1654, 1654A-511.)

§ 7385j. Coordination with other Federal radiation compensation laws

Except in accordance with section 7384u of this title, an individual may not receive compensation or benefits under the compensation program for cancer and also receive compensation under the Radiation Exposure Compensation Act (42 U.S.C. 2210 note) or section 1112(c) of title 38.

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3651], Oct. 30, 2000, 114 Stat. 1654, 1654A-512.)

REFERENCES IN TEXT

The Radiation Exposure Compensation Act, referred to in text, is Pub. L. 101-426, Oct. 15, 1990, 104 Stat. 920, as amended, which is set out as a note under section 2210 of this title.

PART D—ASSISTANCE IN STATE WORKERS' COMPENSATION PROCEEDINGS

§ 7385o. Agreements with States

(a) Agreements authorized

The Secretary of Energy (hereafter in this section referred to as the "Secretary") may enter into agreements with the chief executive officer of a State to provide assistance to a Department

of Energy contractor employee in filing a claim under the appropriate State workers' compensation system.

(b) Procedure

Pursuant to agreements under subsection (a) of this section, the Secretary may—

(1) establish procedures under which an individual may submit an application for review and assistance under this section; and

(2) review an application submitted under this section and determine whether the applicant submitted reasonable evidence that—

(A) the application was filed by or on behalf of a Department of Energy contractor employee or employee's estate; and

(B) the illness or death of the Department of Energy contractor employee may have been related to employment at a Department of Energy facility.

(c) Submittal of applications to panels

If provided in an agreement under subsection (a) of this section, and if the Secretary determines that the applicant submitted reasonable evidence under subsection (b)(2) of this section, the Secretary shall submit the application to a physicians panel established under subsection (d) of this section. The Secretary shall assist the employee in obtaining additional evidence within the control of the Department of Energy and relevant to the panel's deliberations.

(d) Composition and operation of panels

(1) The Secretary shall inform the Secretary of Health and Human Services of the number of physicians panels the Secretary has determined to be appropriate to administer this section, the number of physicians needed for each panel, and the area of jurisdiction of each panel. The Secretary may determine to have only one panel.

(2)(A) The Secretary of Health and Human Services shall appoint panel members with experience and competency in diagnosing occupational illnesses under section 3109 of title 5.

(B) Each member of a panel shall be paid at the rate of pay payable for level III of the Executive Schedule for each day (including travel time) the member is engaged in the work of a panel.

(3) A panel shall review an application submitted to it by the Secretary and determine, under guidelines established by the Secretary, by regulation, whether the illness or death that is the subject of the application arose out of and in the course of employment by the Department of Energy and exposure to a toxic substance at a Department of Energy facility.

(4) At the request of a panel, the Secretary and a contractor who employed a Department of Energy contractor employee shall provide additional information relevant to the panel's deliberations. A panel may consult specialists in relevant fields as it determines necessary.

(5) Once a panel has made a determination under paragraph (3), it shall report to the Secretary its determination and the basis for the determination.

(6) A panel established under this subsection shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

(e) Assistance

If provided in an agreement under subsection (a) of this section—

(1) the Secretary shall review a panel's determination made under subsection (d) of this section, information the panel considered in reaching its determination, any relevant new information not reasonably available at the time of the panel's deliberations, and the basis for the panel's determination;

(2) as a result of the review under paragraph (1), the Secretary shall accept the panel's determination in the absence of significant evidence to the contrary; and

(3) if the panel has made a positive determination under subsection (d) of this section and the Secretary accepts the determination under paragraph (2), or the panel has made a negative determination under subsection (d) of this section and the Secretary finds significant evidence to the contrary—

(A) the Secretary shall assist the applicant to file a claim under the appropriate State workers' compensation system based on the health condition that was the subject of the determination;

(B) the Secretary thereafter—

(i) may not contest such claim;

(ii) may not contest an award made regarding such claim; and

(iii) may, to the extent permitted by law, direct the Department of Energy contractor who employed the applicant not to contest such claim or such award,

unless the Secretary finds significant new evidence to justify such contest; and

(C) any costs of contesting a claim or an award regarding the claim incurred by the contractor who employed the Department of Energy contractor employee who is the subject of the claim shall not be an allowable cost under a Department of Energy contract.

(f) Information

At the request of the Secretary, a contractor who employed a Department of Energy contractor employee shall make available to the Secretary and the employee information relevant to deliberations under this section.

(g) GAO report

Not later than February 1, 2002, the Comptroller General shall submit to Congress a report on the implementation by the Department of Energy of the provisions of this section and of the effectiveness of the program under this section in assisting Department of Energy contractor employees in obtaining compensation for occupational illness.

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3661], Oct. 30, 2000, 114 Stat. 1654, 1654A-512.)

REFERENCES IN TEXT

Level III of the Executive Schedule, referred to in subsec. (d)(2)(B), is set out in section 5314 of Title 5, Government Organization and Employees.

The Federal Advisory Committee Act, referred to in subsec. (d)(6), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

SUBCHAPTER XVII—[Repealed]

AMENDMENTS

2003—Pub. L. 108-136, div. C, title XXXI, §3141(m)(1), Nov. 24, 2003, 117 Stat. 1787, struck out heading for sub-

chapter XVII “Department of Energy National Security Authorizations General Provisions”.

§§ 7386 to 7386k. Transferred

CODIFICATION

Sections 7386 to 7386k, Pub. L. 107-314, div. C, title XXXVI, §§3620-3631, Dec. 2, 2002, 116 Stat. 2756-2762, were renumbered sections 4701 to 4712, respectively, of Pub. L. 107-314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108-136, div. C, title XXXI, §3141(j)(2)(A)-(C), Nov. 24, 2003, 117 Stat. 1781, and are classified to sections 2741 to 2752, respectively, of Title 50, War and National Defense.

Section 7386 related to definitions for purposes of former sections 7386 to 7386k of this title.

Section 7386a related to reprogramming of amounts appropriated pursuant to a Department of Energy national security authorization.

Section 7386b related to minor construction projects.

Section 7386c related to limits on construction projects.

Section 7386d related to fund transfer authority.

Section 7386e related to conceptual and construction design.

Section 7386f related to authority for emergency planning, design, and construction activities.

Section 7386g related to scope of authority to carry out plant projects.

Section 7386h related to availability of funds.

Section 7386i related to transfer of defense environmental management funds.

Section 7386j related to transfer of weapons activities funds.

Section 7386k related to funds available for all national security programs of the Department of Energy.

CHAPTER 85—AIR POLLUTION PREVENTION AND CONTROL

SUBCHAPTER I—PROGRAMS AND ACTIVITIES

PART A—AIR QUALITY AND EMISSION LIMITATIONS

Sec.	
7401.	Congressional findings and declaration of purpose. <ul style="list-style-type: none"> (a) Findings. (b) Declaration. (c) Pollution prevention.
7402.	Cooperative activities. <ul style="list-style-type: none"> (a) Interstate cooperation; uniform State laws; State compacts. (b) Federal cooperation. (c) Consent of Congress to compacts.
7403.	Research, investigation, training, and other activities. <ul style="list-style-type: none"> (a) Research and development program for prevention and control of air pollution. (b) Authorized activities of Administrator in establishing research and development program. (c) Air pollutant monitoring, analysis, modeling, and inventory research. (d) Environmental health effects research. (e) Ecosystem research. (f) Liquefied Gaseous Fuels Spill Test Facility. (g) Pollution prevention and emissions control. (h) NIEHS studies. <ul style="list-style-type: none"> (i) Coordination of research. (j) Continuation of national acid precipitation assessment program. (k) Air pollution conferences.
7404.	Research relating to fuels and vehicles. <ul style="list-style-type: none"> (a) Research programs; grants; contracts; pilot and demonstration plants; by-products research.

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| Sec. | <ul style="list-style-type: none"> (b) Powers of Administrator in establishing research and development programs. (c) Clean alternative fuels. | Sec. | <ul style="list-style-type: none"> (c) Preparation and publication by Administrator of proposed regulations setting forth implementation plan; transportation regulations study and report; parking surcharge; suspension authority; plan implementation. |
| 7405. | <ul style="list-style-type: none"> Grants for support of air pollution planning and control programs. <ul style="list-style-type: none"> (a) Amounts; limitations; assurances of plan development capability. (b) Terms and conditions; regulations; factors for consideration; State expenditure limitations. (c) Maintenance of effort. (d) Reduction of payments; availability of reduced amounts; reduced amount as deemed paid to agency for purpose of determining amount of grant. (e) Notice and opportunity for hearing when affected by adverse action. | | <ul style="list-style-type: none"> (d),(e) Repealed. (f) National or regional energy emergencies; determination by President. (g) Governor's authority to issue temporary emergency suspensions. (h) Publication of comprehensive document for each State setting forth requirements of applicable implementation plan. (i) Modification of requirements prohibited. (j) Technological systems of continuous emission reduction on new or modified stationary sources; compliance with performance standards. (k) Environmental Protection Agency action on plan submissions. <ul style="list-style-type: none"> (l) Plan revisions. (m) Sanctions. (n) Savings clauses. (o) Indian tribes. (p) Reports. |
| 7406. | <ul style="list-style-type: none"> Interstate air quality agencies; program cost limitations. | 7411. | <ul style="list-style-type: none"> Standards of performance for new stationary sources. <ul style="list-style-type: none"> (a) Definitions. (b) List of categories of stationary sources; standards of performance; information on pollution control techniques; sources owned or operated by United States; particular systems; revised standards. (c) State implementation and enforcement of standards of performance. (d) Standards of performance for existing sources; remaining useful life of source. (e) Prohibited acts. (f) New source standards of performance. (g) Revision of regulations. (h) Design, equipment, work practice, or operational standard; alternative emission limitation. <ul style="list-style-type: none"> (i) Country elevators. (j) Innovative technological systems of continuous emission reduction. |
| 7407. | <ul style="list-style-type: none"> Air quality control regions. <ul style="list-style-type: none"> (a) Responsibility of each State for air quality; submission of implementation plan. (b) Designated regions. (c) Authority of Administrator to designate regions; notification of Governors of affected States. (d) Designations. (e) Redesignation of air quality control regions. | 7412. | <ul style="list-style-type: none"> Hazardous air pollutants. <ul style="list-style-type: none"> (a) Definitions. (b) List of pollutants. (c) List of source categories. (d) Emission standards. (e) Schedule for standards and review. (f) Standard to protect health and environment. (g) Modifications. (h) Work practice standards and other requirements. (i) Schedule for compliance. (j) Equivalent emission limitation by permit. (k) Area source program. <ul style="list-style-type: none"> (l) State programs. (m) Atmospheric deposition to Great Lakes and coastal waters. <ul style="list-style-type: none"> (n) Other provisions. (o) National Academy of Sciences study. (p) Mickey Leland National Air Toxics Research Center. (q) Savings provision. (r) Prevention of accidental releases. (s) Periodic report. |
| 7408. | <ul style="list-style-type: none"> Air quality criteria and control techniques. <ul style="list-style-type: none"> (a) Air pollutant list; publication and revision by Administrator; issuance of air quality criteria for air pollutants. (b) Issuance by Administrator of information on air pollution control techniques; standing consulting committees for air pollutants; establishment; membership. (c) Review, modification, and reissuance of criteria or information. (d) Publication in Federal Register; availability of copies for general public. (e) Transportation planning and guidelines. (f) Information regarding processes, procedures, and methods to reduce or control pollutants in transportation; reduction of mobile source related pollutants; reduction of impact on public health. (g) Assessment of risks to ecosystems. (h) RACT/BACT/LAER clearinghouse. | 7413. | <ul style="list-style-type: none"> Federal enforcement. |
| 7409. | <ul style="list-style-type: none"> National primary and secondary ambient air quality standards. <ul style="list-style-type: none"> (a) Promulgation. (b) Protection of public health and welfare. (c) National primary ambient air quality standard for nitrogen dioxide. (d) Review and revision of criteria and standards; independent scientific review committee; appointment; advisory functions. | | |
| 7410. | <ul style="list-style-type: none"> State implementation plans for national primary and secondary ambient air quality standards. <ul style="list-style-type: none"> (a) Adoption of plan by State; submission to Administrator; content of plan; revision; new sources; indirect source review program; supplemental or intermittent control systems. (b) Extension of period for submission of plans. | | |

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| <p>Sec.</p> <p>(a) In general.
 (b) Civil judicial enforcement.
 (c) Criminal penalties.
 (d) Administrative assessment of civil penalties.
 (e) Penalty assessment criteria.
 (f) Awards.
 (g) Settlements; public participation.
 (h) Operator.</p> <p>7414. Recordkeeping, inspections, monitoring, and entry.
 (a) Authority of Administrator or authorized representative.
 (b) State enforcement.
 (c) Availability of records, reports, and information to public; disclosure of trade secrets.
 (d) Notice of proposed entry, inspection, or monitoring.</p> <p>7415. International air pollution.
 (a) Endangerment of public health or welfare in foreign countries from pollution emitted in United States.
 (b) Prevention or elimination of endangerment.
 (c) Reciprocity.
 (d) Recommendations.</p> <p>7416. Retention of State authority.</p> <p>7417. Advisory committees.
 (a) Establishment; membership.
 (b) Compensation.
 (c) Consultations by Administrator.</p> <p>7418. Control of pollution from Federal facilities.
 (a) General compliance.
 (b) Exemption.
 (c) Government vehicles.
 (d) Vehicles operated on Federal installations.</p> <p>7419. Primary nonferrous smelter orders.
 (a) Issuance; hearing; enforcement orders; statement of grounds for application; findings.
 (b) Prerequisites to issuance of orders.
 (c) Second orders.
 (d) Interim measures; continuous emission reduction technology.
 (e) Termination of orders.
 (f) Violation of requirements.</p> <p>7420. Noncompliance penalty.
 (a) Assessment and collection.
 (b) Regulations.
 (c) Contract to assist in determining amount of penalty assessment or payment schedule.
 (d) Payment.
 (e) Judicial review.
 (f) Other orders, payments, sanctions, or requirements.
 (g) More stringent emission limitations or other requirements.</p> <p>7421. Consultation.</p> <p>7422. Listing of certain unregulated pollutants.
 (a) Radioactive pollutants, cadmium, arsenic, and polycyclic organic matter.
 (b) Revision authority.
 (c) Consultation with Nuclear Regulatory Commission; interagency agreement; notice and hearing.</p> <p>7423. Stack heights.
 (a) Heights in excess of good engineering practice; other dispersion techniques.
 (b) Dispersion technique.
 (c) Regulations; good engineering practice.</p> <p>7424. Assurance of adequacy of State plans.
 (a) State review of implementation plans which relate to major fuel burning sources.</p> | <p>Sec.</p> <p>(b) Plan revision.</p> <p>7425. Measures to prevent economic disruption or unemployment.
 (a) Determination that action is necessary.
 (b) Use of locally or regionally available coal or coal derivatives to comply with implementation plan requirements.
 (c) Contracts; schedules.
 (d) Existing or new major fuel burning stationary sources.
 (e) Actions not to be deemed modifications of major fuel burning stationary sources.
 (f) Treatment of prohibitions, rules, or orders as requirements or parts of plans under other provisions.
 (g) Delegation of Presidential authority.
 (h) "Locally or regionally available coal or coal derivatives" defined.</p> <p>7426. Interstate pollution abatement.
 (a) Written notice to all nearby States.
 (b) Petition for finding that major sources emit or would emit prohibited air pollutants.
 (c) Violations; allowable continued operation.</p> <p>7427. Public notification.
 (a) Warning signs; television, radio, or press notices or information.
 (b) Grants.</p> <p>7428. State boards.</p> <p>7429. Solid waste combustion.
 (a) New source performance standards.
 (b) Existing units.
 (c) Monitoring.
 (d) Operator training.
 (e) Permits.
 (f) Effective date and enforcement.
 (g) Definitions.
 (h) Other authority.</p> <p>7430. Emission factors.</p> <p>7431. Land use authority.</p> <p style="text-align: center;">PART B—OZONE PROTECTION</p> <p>7450 to 7459. Repealed.</p> <p style="text-align: center;">PART C—PREVENTION OF SIGNIFICANT DETERIORATION OF AIR QUALITY</p> <p style="text-align: center;">SUBPART I—CLEAN AIR</p> <p>7470. Congressional declaration of purpose.</p> <p>7471. Plan requirements.</p> <p>7472. Initial classifications.
 (a) Areas designated as class I.
 (b) Areas designated as class II.</p> <p>7473. Increments and ceilings.
 (a) Sulfur oxide and particulate matter; requirement that maximum allowable increases and maximum allowable concentrations not be exceeded.
 (b) Maximum allowable increases in concentrations over baseline concentrations.
 (c) Orders or rules for determining compliance with maximum allowable increases in ambient concentrations of air pollutants.</p> <p>7474. Area redesignation.
 (a) Authority of States to redesignate areas.
 (b) Notice and hearing; notice to Federal land manager; written comments and recommendations; regulations; disapproval of redesignation.
 (c) Indian reservations.
 (d) Review of national monuments, primitive areas, and national preserves.</p> |
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- Sec. (e) Resolution of disputes between State and Indian tribes.
7475. Preconstruction requirements.
- (a) Major emitting facilities on which construction is commenced.
- (b) Exception.
- (c) Permit applications.
- (d) Action taken on permit applications; notice; adverse impact on air quality related values; variance; emission limitations.
- (e) Analysis; continuous air quality monitoring data; regulations; model adjustments.
7476. Other pollutants.
- (a) Hydrocarbons, carbon monoxide, petrochemical oxidants, and nitrogen oxides.
- (b) Effective date of regulations.
- (c) Contents of regulations.
- (d) Specific measures to fulfill goals and purposes.
- (e) Area classification plan not required.
- (f) PM-10 increments.
7477. Enforcement.
7478. Period before plan approval.
- (a) Existing regulations to remain in effect.
- (b) Regulations deemed amended; construction commenced after June 1, 1975.
7479. Definitions.
- SUBPART II—VISIBILITY PROTECTION
7491. Visibility protection for Federal class I areas.
- (a) Impairment of visibility; list of areas; study and report.
- (b) Regulations.
- (c) Exemptions.
- (d) Consultations with appropriate Federal land managers.
- (e) Buffer zones.
- (f) Nondiscretionary duty.
- (g) Definitions.
7492. Visibility.
- (a) Studies.
- (b) Impacts of other provisions.
- (c) Establishment of visibility transport regions and commissions.
- (d) Duties of visibility transport commissions.
- (e) Duties of Administrator.
- (f) Grand Canyon visibility transport commission.
- PART D—PLAN REQUIREMENTS FOR NONATTAINMENT AREAS
- SUBPART 1—NONATTAINMENT AREAS IN GENERAL
7501. Definitions.
7502. Nonattainment plan provisions in general.
- (a) Classifications and attainment dates.
- (b) Schedule for plan submissions.
- (c) Nonattainment plan provisions.
- (d) Plan revisions required in response to finding of plan inadequacy.
- (e) Future modification of standard.
7503. Permit requirements.
- (a) In general.
- (b) Prohibition on use of old growth allowances.
- (c) Offsets.
- (d) Control technology information.
- (e) Rocket engines or motors.
7504. Planning procedures.
- (a) In general.
- (b) Coordination.
- (c) Joint planning.
7505. Environmental Protection Agency grants.
- Sec. (a) Plan revision development costs.
- (b) Uses of grant funds.
- 7505a. Maintenance plans.
- (a) Plan revision.
- (b) Subsequent plan revisions.
- (c) Nonattainment requirements applicable pending plan approval.
- (d) Contingency provisions.
7506. Limitations on certain Federal assistance.
- (a), (b) Repealed.
- (c) Activities not conforming to approved or promulgated plans.
- (d) Priority of achieving and maintaining national primary ambient air quality standards.
- 7506a. Interstate transport commissions.
- (a) Authority to establish interstate transport regions.
- (b) Transport commissions.
- (c) Commission requests.
7507. New motor vehicle emission standards in nonattainment areas.
7508. Guidance documents.
7509. Sanctions and consequences of failure to attain.
- (a) State failure.
- (b) Sanctions.
- (c) Notice of failure to attain.
- (d) Consequences for failure to attain.
- 7509a. International border areas.
- (a) Implementation plans and revisions.
- (b) Attainment of ozone levels.
- (c) Attainment of carbon monoxide levels.
- (d) Attainment of PM-10 levels.
- SUBPART 2—ADDITIONAL PROVISIONS FOR OZONE NONATTAINMENT AREAS
7511. Classifications and attainment dates.
- (a) Classification and attainment dates for 1989 nonattainment areas.
- (b) New designations and reclassifications.
- (c) References to terms.
- 7511a. Plan submissions and requirements.
- (a) Marginal Areas.
- (b) Moderate Areas.
- (c) Serious Areas.
- (d) Severe Areas.
- (e) Extreme Areas.
- (f) NO_x requirements.
- (g) Milestones.
- (h) Rural transport areas.
- (i) Reclassified areas.
- (j) Multi-State ozone nonattainment areas.
- 7511b. Federal ozone measures.
- (a) Control techniques guidelines for VOC sources.
- (b) Existing and new CTGS.
- (c) Alternative control techniques.
- (d) Guidance for evaluating cost-effectiveness.
- (e) Control of emissions from certain sources.
- (f) Tank vessel standards.
- (g) Ozone design value study.
- (h) Vehicles entering ozone nonattainment areas.
- 7511c. Control of interstate ozone air pollution.
- (a) Ozone transport regions.
- (b) Plan provisions for States in ozone transport regions.
- (c) Additional control measures.
- (d) Best available air quality monitoring and modeling.
- 7511d. Enforcement for Severe and Extreme ozone nonattainment areas for failure to attain.
- (a) General rule.

- Sec. (b) Computation of fee.
(c) Exception.
(d) Fee collection by Administrator.
(e) Exemptions for certain small areas.
- 7511e. Transitional areas.
- 7511f. NO_x and VOC study.
- SUBPART 3—ADDITIONAL PROVISIONS FOR CARBON MONOXIDE NONATTAINMENT AREAS
7512. Classification and attainment dates.
(a) Classification by operation of law and attainment dates for nonattainment areas.
(b) New designations and reclassifications.
(c) References to terms.
- 7512a. Plan submissions and requirements.
(a) Moderate Areas.
(b) Serious Areas.
(c) Areas with significant stationary source emissions of CO.
(d) CO milestone.
(e) Multi-State CO nonattainment areas.
(f) Reclassified areas.
(g) Failure of Serious Area to attain standard.
- SUBPART 4—ADDITIONAL PROVISIONS FOR PARTICULATE MATTER NONATTAINMENT AREAS
7513. Classifications and attainment dates.
(a) Initial classifications.
(b) Reclassification as Serious.
(c) Attainment dates.
(d) Extension of attainment date for Moderate Areas.
(e) Extension of attainment date for Serious Areas.
(f) Waivers for certain areas.
- 7513a. Plan provisions and schedules for plan submissions.
(a) Moderate Areas.
(b) Serious Areas.
(c) Milestones.
(d) Failure to attain.
(e) PM-10 precursors.
- 7513b. Issuance of RACM and BACM guidance.
- SUBPART 5—ADDITIONAL PROVISIONS FOR AREAS DESIGNATED NONATTAINMENT FOR SULFUR OXIDES, NITROGEN DIOXIDE, OR LEAD
7514. Plan submission deadlines.
(a) Submission.
(b) States lacking fully approved State implementation plans.
- 7514a. Attainment dates.
(a) Plans under section 7514(a).
(b) Plans under section 7514(b).
(c) Inadequate plans.
- SUBPART 6—SAVINGS PROVISIONS
7515. General savings clause.
- SUBCHAPTER II—EMISSION STANDARDS FOR MOVING SOURCES
- PART A—MOTOR VEHICLE EMISSION AND FUEL STANDARDS
7521. Emission standards for new motor vehicles or new motor vehicle engines.
(a) Authority of Administrator to prescribe by regulation.
(b) Emissions of carbon monoxide, hydrocarbons, and oxides of nitrogen; annual report to Congress; waiver of emission standards; research objectives.
(c) Feasibility study and investigation by National Academy of Sciences; reports to Administrator and Congress; availability of information.
- Sec. (d) Useful life of vehicles.
(e) New power sources or propulsion systems.
(f) High altitude regulations.
(g) Light-duty trucks up to 6,000 lbs. GVWR and light-duty vehicles; standards for model years after 1993.
(h) Light-duty trucks of more than 6,000 lbs. GVWR; standards for model years after 1995.
(i) Phase II study for certain light-duty vehicles and light-duty trucks.
(j) Cold CO standard.
(k) Control of evaporative emissions.
(l) Mobile source-related air toxics.
(m) Emissions control diagnostics.
(f) Model years after 1990.
7522. Prohibited acts.
(a) Enumerated prohibitions.
(b) Exemptions; refusal to admit vehicle or engine into United States; vehicles or engines intended for export.
7523. Actions to restrain violations.
(a) Jurisdiction.
(b) Actions brought by or in name of United States; subpenas.
7524. Civil penalties.
(a) Violations.
(b) Civil actions.
(c) Administrative assessment of certain penalties.
7525. Motor vehicle and motor vehicle engine compliance testing and certification.
(a) Testing and issuance of certificate of conformity.
(b) Testing procedures; hearing; judicial review; additional evidence.
(c) Inspection.
(d) Rules and regulations.
(e) Publication of test results.
(f) High altitude regulations.
(g) Nonconformance penalty.
(h) Review and revision of regulations.
7541. Compliance by vehicles and engines in actual use.
(a) Warranty; certification; payment of replacement costs of parts, devices, or components designed for emission control.
(b) Testing methods and procedures.
(c) Nonconforming vehicles; plan for remedying nonconformity; instructions for maintenance and use; label or tag.
(d) Dealer costs borne by manufacturer.
(e) Cost statement.
(f) Inspection after sale to ultimate purchaser.
(g) Replacement and maintenance costs borne by owner.
(h) Dealer certification.
(i) Warranty period.
7542. Information collection.
(a) Manufacturer's responsibility.
(b) Enforcement authority.
(c) Availability to public; trade secrets.
7543. State standards.
(a) Prohibition.
(b) Waiver.
(c) Certification of vehicle parts or engine parts.
(d) Control, regulation, or restrictions on registered or licensed motor vehicles.
(e) Nonroad engines or vehicles.
7544. State grants.
7545. Regulation of fuels.
(a) Authority of Administrator to regulate.

- Sec. (b) Registration requirement.
(c) Offending fuels and fuel additives; control; prohibition.
(d) Penalties and injunctions.
(e) Testing of fuels and fuel additives.
(f) New fuels and fuel additives.
(g) Misfueling.
(h) Reid vapor pressure requirements.
(i) Sulfur content requirements for diesel fuel.
(j) Lead substitute gasoline additives.
(k) Reformulated gasoline for conventional vehicles.
(l) Detergents.
(m) Oxygenated fuels.
(n) Prohibition on leaded gasoline for highway use.
(o) Fuel and fuel additive importers and importation.
7546. Repealed.
7547. Nonroad engines and vehicles.
(a) Emissions standards.
(b) Effective date.
(c) Safe controls.
(d) Enforcement.
7548. Study of particulate emissions from motor vehicles.
(a) Study and analysis.
(b) Report to Congress.
7549. High altitude performance adjustments.
(a) Instruction of the manufacturer.
(b) Regulations.
(c) Manufacturer parts.
(d) State inspection and maintenance programs.
(e) High altitude testing.
7550. Definitions.
7551. Omitted.
7552. Motor vehicle compliance program fees.
(a) Fee collection.
(b) Special Treasury fund.
(c) Limitation on fund use.
(d) Administrator's testing authority.
7553. Prohibition on production of engines requiring leaded gasoline.
7554. Urban bus standards.
(a) Standards for model years after 1993.
(b) PM standard.
(c) Low-polluting fuel requirement.
(d) Retrofit requirements.
(e) Procedures for administration and enforcement.
(f) Definitions.
- PART B—AIRCRAFT EMISSION STANDARDS
7571. Establishment of standards.
(a) Study; proposed standards; hearings; issuance of regulations.
(b) Effective date of regulations.
(c) Regulations which create hazards to aircraft safety.
7572. Enforcement of standards.
(a) Regulations to insure compliance with standards.
(b) Notice and appeal rights.
7573. State standards and controls.
7574. Definitions.
- PART C—CLEAN FUEL VEHICLES
7581. Definitions.
7582. Requirements applicable to clean-fuel vehicles.
(a) Promulgation of standards.
(b) Other requirements.
(c) In-use useful life and testing.
7583. Standards for light-duty clean-fuel vehicles.
(a) Exhaust standards for light-duty vehicles and certain light-duty trucks.
- Sec. (b) Exhaust standards for light-duty trucks of more than 3,750 lbs. LVW and up to 5,750 lbs. LVW and up to 6,000 lbs. GVWR.
(c) Exhaust standards for light-duty trucks greater than 6,000 lbs. GVWR.
(d) Flexible and dual-fuel vehicles.
(e) Replacement by CARB standards.
(f) Less stringent CARB standards.
(g) Not applicable to heavy-duty vehicles.
7584. Administration and enforcement as per California standards.
7585. Standards for heavy-duty clean-fuel vehicles (GVWR above 8,500 up to 26,000 lbs).
(a) Model years after 1997; combined NO_x and NMHC standard.
(b) Revised standards that are less stringent.
7586. Centrally fueled fleets.
(a) Fleet program required for certain nonattainment areas.
(b) Phase-in of requirements.
(c) Accelerated standard for light-duty trucks up to 6,000 lbs. GVWR and light-duty vehicles.
(d) Choice of vehicles and fuel.
(e) Availability of clean alternative fuel.
(f) Credits.
(g) Availability to public.
(h) Transportation control measures.
7587. Vehicle conversions.
(a) Conversion of existing and new conventional vehicles to clean-fuel vehicles.
(b) Regulations.
(c) Enforcement.
(d) Tampering.
(e) Safety.
7588. Federal agency fleets.
(a) Additional provisions applicable.
(b) Cost of vehicles to Federal agency.
(c) Limitations on appropriations.
(d) Vehicle costs.
(e) Exemptions.
(f) Acquisition requirement.
(g) Authorization of appropriations.
7589. California pilot test program.
(a) Establishment.
(b) Applicability.
(c) Program requirements.
(d) Credits for motor vehicle manufacturers.
(e) Program evaluation.
(f) Voluntary opt-in for other States.
7590. General provisions.
(a) State refueling facilities.
(b) No production mandate.
(c) Tank and fuel system safety.
(d) Consultation with Department of Energy and Department of Transportation.
- SUBCHAPTER III—GENERAL PROVISIONS
7601. Administration.
(a) Regulations; delegation of powers and duties; regional officers and employees.
(b) Detail of Environmental Protection Agency personnel to air pollution control agencies.
(c) Payments under grants; installments; advances or reimbursements.
(d) Tribal authority.
7602. Definitions.
7603. Emergency powers.
7604. Citizen suits.
(a) Authority to bring civil action; jurisdiction.

- | | |
|---|---|
| <p>Sec.</p> <p>(b) Notice.</p> <p>(c) Venue; intervention by Administrator; service of complaint; consent judgment.</p> <p>(d) Award of costs; security.</p> <p>(e) Nonrestriction of other rights.</p> <p>(f) "Emission standard or limitation under this chapter" defined.</p> <p>(g) Penalty fund.</p> <p>7605. Representation in litigation.</p> <p>(a) Attorney General; attorneys appointed by Administrator.</p> <p>(b) Memorandum of understanding regarding legal representation.</p> <p>7606. Federal procurement.</p> <p>(a) Contracts with violators prohibited.</p> <p>(b) Notification procedures.</p> <p>(c) Federal agency contracts.</p> <p>(d) Exemptions; notification to Congress.</p> <p>7607. Administrative proceedings and judicial review.</p> <p>(a) Administrative subpoenas; confidentiality; witnesses.</p> <p>(b) Judicial review.</p> <p>(c) Additional evidence.</p> <p>(d) Rulemaking.</p> <p>(e) Other methods of judicial review not authorized.</p> <p>(f) Costs.</p> <p>(g) Stay, injunction, or similar relief in proceedings relating to noncompliance penalties.</p> <p>(h) Public participation.</p> <p>7608. Mandatory licensing.</p> <p>7609. Policy review.</p> <p>(a) Environmental impact.</p> <p>(b) Unsatisfactory legislation, action, or regulation.</p> <p>7610. Other authority.</p> <p>(a) Authority and responsibilities under other laws not affected.</p> <p>(b) Nonduplication of appropriations.</p> <p>7611. Records and audit.</p> <p>(a) Recipients of assistance to keep prescribed records.</p> <p>(b) Audits.</p> <p>7612. Economic impact analyses.</p> <p>(a) Cost-benefit analysis.</p> <p>(b) Benefits.</p> <p>(c) Costs.</p> <p>(d) Initial report.</p> <p>(e) Omitted.</p> <p>(f) Appointment of Advisory Council on Clean Air Compliance Analysis.</p> <p>(g) Duties of Advisory Council.</p> <p>7613. Repealed.</p> <p>7614. Labor standards.</p> <p>7615. Separability.</p> <p>7616. Sewage treatment grants.</p> <p>(a) Construction.</p> <p>(b) Withholding, conditioning, or restriction of construction grants.</p> <p>(c) National Environmental Policy Act.</p> <p>7617. Economic impact assessment.</p> <p>(a) Notice of proposed rulemaking; substantial revisions.</p> <p>(b) Preparation of assessment by Administrator.</p> <p>(c) Analysis.</p> <p>(d) Extensiveness of assessment.</p> <p>(e) Limitations on construction of section.</p> <p>(f) Citizen suits.</p> <p>(g) Costs.</p> <p>7618. Repealed.</p> <p>7619. Air quality monitoring.</p> <p>7620. Standardized air quality modeling.</p> <p>(a) Conferences.</p> <p>(b) Conferees.</p> | <p>Sec.</p> <p>(c) Comments; transcripts.</p> <p>(d) Promulgation and revision of regulations relating to air quality modeling.</p> <p>7621. Employment effects.</p> <p>(a) Continuous evaluation of potential loss or shifts of employment.</p> <p>(b) Request for investigation; hearings; record; report.</p> <p>(c) Subpenas; confidential information; witnesses; penalty.</p> <p>(d) Limitations on construction of section.</p> <p>7622. Employee protection.</p> <p>(a) Discharge or discrimination prohibited.</p> <p>(b) Complaint charging unlawful discharge or discrimination; investigation; order.</p> <p>(c) Review.</p> <p>(d) Enforcement of order by Secretary.</p> <p>(e) Enforcement of order by person on whose behalf order was issued.</p> <p>(f) Mandamus.</p> <p>(g) Deliberate violation by employee.</p> <p>7623. Repealed.</p> <p>7624. Cost of vapor recovery equipment.</p> <p>(a) Costs to be borne by owner of retail outlet.</p> <p>(b) Payment by lessee.</p> <p>7625. Vapor recovery for small business marketers of petroleum products.</p> <p>(a) Marketers of gasoline.</p> <p>(b) State requirements.</p> <p>(c) Refiners.</p> <p>7625-1. Exemptions for certain territories.</p> <p>7625a. Statutory construction.</p> <p>7626. Authorization of appropriations.</p> <p>(a) In general.</p> <p>(b) Grants for planning.</p> <p>7627. Air pollution from Outer Continental Shelf activities.</p> <p>(a) Applicable requirements for certain areas.</p> <p>(b) Requirements for other offshore areas.</p> <p>(c) Coastal waters.</p> <p>SUBCHAPTER IV—NOISE POLLUTION</p> <p>7641. Noise abatement.</p> <p>(a) Office of Noise Abatement and Control.</p> <p>(b) Investigation techniques; report and recommendations.</p> <p>(c) Abatement of noise from Federal activities.</p> <p>7642. Authorization of appropriations.</p> <p>SUBCHAPTER IV—A—ACID DEPOSITION CONTROL</p> <p>7651. Findings and purposes.</p> <p>(a) Findings.</p> <p>(b) Purposes.</p> <p>7651a. Definitions.</p> <p>7651b. Sulfur dioxide allowance program for existing and new units.</p> <p>(a) Allocations of annual allowances for existing and new units.</p> <p>(b) Allowance transfer system.</p> <p>(c) Interpollutant trading.</p> <p>(d) Allowance tracking system.</p> <p>(e) New utility units.</p> <p>(f) Nature of allowances.</p> <p>(g) Prohibition.</p> <p>(h) Competitive bidding for power supply.</p> <p>(i) Applicability of antitrust laws.</p> <p>(j) Public Utility Holding Company Act.</p> <p>7651c. Phase I sulfur dioxide requirements.</p> <p>(a) Emission limitations.</p> <p>(b) Substitutions.</p> |
|---|---|

- Sec. (c) Administrator's action on substitution proposals.
- (d) Eligible phase I extension units.
- (e) Allocation of allowances.
- (f) Energy conservation and renewable energy.
- (g) Conservation and renewable energy reserve.
- (h) Alternative allowance allocation for units in certain utility systems with optional baseline.
- 7651d. Phase II sulfur dioxide requirements.
- (a) Applicability.
- (b) Units equal to, or above, 75 MWe and 1.20 lbs/mmBtu.
- (c) Coal or oil-fired units below 75 MWe and above 1.20 lbs/mmBtu.
- (d) Coal-fired units below 1.20 lbs/mmBtu.
- (e) Oil and gas-fired units equal to or greater than 0.60 lbs/mmBtu and less than 1.20 lbs/mmBtu.
- (f) Oil and gas-fired units less than 0.60 lbs/mmBtu.
- (g) Units that commence operation between 1986 and December 31, 1995.
- (h) Oil and gas-fired units less than 10 percent oil consumed.
- (i) Units in high growth States.
- (j) Certain municipally owned power plants.
- 7651e. Allowances for States with emissions rates at or below 0.80 lbs/mmBtu.
- (a) Election of Governor.
- (b) Notification of Administrator.
- (c) Allowances after January 1, 2010.
- 7651f. Nitrogen oxides emission reduction program.
- (a) Applicability.
- (b) Emission limitations.
- (c) Revised performance standards.
- (d) Alternative emission limitations.
- (e) Emissions averaging.
- 7651g. Permits and compliance plans.
- (a) Permit program.
- (b) Compliance plan.
- (c) First phase permits.
- (d) Second phase permits.
- (e) New units.
- (f) Units subject to certain other limits.
- (g) Amendment of application and compliance plan.
- (h) Prohibition.
- (i) Multiple owners.
- 7651h. Repowered sources.
- (a) Availability.
- (b) Extension.
- (c) Allowances.
- (d) Control requirements.
- (e) Expedited permitting.
- (f) Prohibition.
- 7651i. Election for additional sources.
- (a) Applicability.
- (b) Establishment of baseline.
- (c) Emission limitations.
- (d) Process sources.
- (e) Allowances and permits.
- (f) Limitation.
- (g) Implementation.
- (h) Small diesel refineries.
- 7651j. Excess emissions penalty.
- (a) Excess emissions penalty.
- (b) Excess emissions offset.
- (c) Penalty adjustment.
- (d) Prohibition.
- (e) Savings provision.
- 7651k. Monitoring, reporting, and recordkeeping requirements.
- (a) Applicability.
- (b) First phase requirements.
- (c) Second phase requirements.
- Sec. (d) Unavailability of emissions data.
- (e) Prohibition.
- 7651l. General compliance with other provisions.
- 7651m. Enforcement.
- 7651n. Clean coal technology regulatory incentives.
- (a) "Clean coal technology" defined.
- (b) Revised regulations for clean coal technology demonstrations.
- (c) Exemption for reactivation of very clean units.
- 7651o. Contingency guarantee, auctions, reserve.
- (a) Definitions.
- (b) Special reserve of allowances.
- (c) Direct sales at \$1,500 per ton.
- (d) Auction sales.
- (e) Changes in sales, auctions, and withholding.
- (f) Termination of auctions.
- SUBCHAPTER V—PERMITS
7661. Definitions.
- 7661a. Permit programs.
- (a) Violations.
- (b) Regulations.
- (c) Single permit.
- (d) Submission and approval.
- (e) Suspension.
- (f) Prohibition.
- (g) Interim approval.
- (h) Effective date.
- (i) Administration and enforcement.
- 7661b. Permit applications.
- (a) Applicable date.
- (b) Compliance plan.
- (c) Deadline.
- (d) Timely and complete applications.
- (e) Copies; availability.
- 7661c. Permit requirements and conditions.
- (a) Conditions.
- (b) Monitoring and analysis.
- (c) Inspection, entry, monitoring, certification, and reporting.
- (d) General permits.
- (e) Temporary sources.
- (f) Permit shield.
- 7661d. Notification to administrator and contiguous States.
- (a) Transmission and notice.
- (b) Objection by EPA.
- (c) Issuance or denial.
- (d) Waiver of notification requirements.
- (e) Refusal of permitting authority to terminate, modify, or revoke and reissue.
- 7661e. Other authorities.
- (a) In general.
- (b) Permits implementing acid rain provisions.
- 7661f. Small business stationary source technical and environmental compliance assistance program.
- (a) Plan revisions.
- (b) Program.
- (c) Eligibility.
- (d) Monitoring.
- (e) Compliance Advisory Panel.
- (f) Fees.
- (g) Continuous emission monitors.
- (h) Control technique guidelines.
- SUBCHAPTER VI—STRATOSPHERIC OZONE PROTECTION
7671. Definitions.
- 7671a. Listing of class I and class II substances.
- (a) List of class I substances.
- (b) List of class II substances.
- (c) Additions to the lists.
- (d) New listed substances.
- (e) Ozone-depletion and global warming potential.

- Sec.
7671b. Monitoring and reporting requirements.
 (a) Regulations.
 (b) Production, import, and export level reports.
 (c) Baseline reports for class I substances.
 (d) Monitoring and reports to Congress.
 (e) Technology status report in 2015.
 (f) Emergency report.
- 7671c. Phase-out of production and consumption of class I substances.
 (a) Production phase-out.
 (b) Termination of production of class I substances.
 (c) Regulations regarding production and consumption of class I substances.
 (d) Exceptions for essential uses of methyl chloroform, medical devices, and aviation safety.
 (e) Developing countries.
 (f) National security.
 (g) Fire suppression and explosion prevention.
 (h) Methyl bromide.
- 7671d. Phase-out of production and consumption of class II substances.
 (a) Restriction of use of class II substances.
 (b) Production phase-out.
 (c) Regulations regarding production and consumption of class II substances.
 (d) Exceptions.
- 7671e. Accelerated schedule.
 (a) In general.
 (b) Petition.
- 7671f. Exchange authority.
 (a) Transfers.
 (b) Interpollutant transfers.
 (c) Trades with other persons.
 (d) Consumption.
- 7671g. National recycling and emission reduction program.
 (a) In general.
 (b) Safe disposal.
 (c) Prohibitions.
- 7671h. Servicing of motor vehicle air conditioners.
 (a) Regulations.
 (b) Definitions.
 (c) Servicing motor vehicle air conditioners.
 (d) Certification.
 (e) Small containers of class I or class II substances.
- 7671i. Nonessential products containing chloro-fluorocarbons.
 (a) Regulations.
 (b) Nonessential products.
 (c) Effective date.
 (d) Other products.
 (e) Medical devices.
- 7671j. Labeling.
 (a) Regulations.
 (b) Containers containing class I or class II substances and products containing class I substances.
 (c) Products containing class II substances.
 (d) Products manufactured with class I and class II substances.
 (e) Petitions.
 (f) Relationship to other law.
- 7671k. Safe alternatives policy.
 (a) Policy.
 (b) Reviews and reports.
 (c) Alternatives for class I or II substances.
 (d) Right to petition.
 (e) Studies and notification.
- 7671l. Federal procurement.

- Sec.
7671m. Relationship to other laws.
 (a) State laws.
 (b) Montreal Protocol.
 (c) Technology export and overseas investment.
- 7671n. Authority of Administrator.
- 7671o. Transfers among Parties to Montreal Protocol.
 (a) In general.
 (b) Effect of transfers on production limits.
 (c) Regulations.
 (d) "Applicable domestic law" defined.
- 7671p. International cooperation.
 (a) In general.
 (b) Assistance to developing countries.
- 7671q. Miscellaneous provisions.

CODIFICATION

Act July 14, 1955, ch. 360, 69 Stat. 322, as amended, known as the Clean Air Act, which was formerly classified to chapter 15B (§1857 et seq.) of this title, was completely revised by Pub. L. 95-95, Aug. 7, 1977, 91 Stat. 685, and was reclassified to this chapter.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 2022, 4363a, 4365, 4905, 6901, 6905, 6907, 6949, 8302, 8402, 8411, 9621, 13257, 13260, 13369 of this title; title 7 section 7719; title 10 section 2704; title 15 sections 793, 798, 2080, 2617, 2706, 3801; title 16 sections 410aaa-59, 460ii-4, 460iii, 1456; title 18 section 2721; title 23 sections 104, 134, 135, 149; title 26 section 169; title 30 sections 201, 1251, 1253, 1292, 1303; title 33 sections 1345, 1502, 1503; title 43 section 1334; title 49 sections 5303, 5305, 5309, 5323, 5335, 5506, 26101, 47102, 47117; title 50 section 2762.

SUBCHAPTER I—PROGRAMS AND ACTIVITIES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 7545, 7586, 7607, 7661a of this title.

PART A—AIR QUALITY AND EMISSION LIMITATIONS

AMENDMENTS

1977—Pub. L. 95-95, title I, §117(a), Aug. 7, 1977, 91 Stat. 712, designated sections 7401 to 7428 of this title as part A.

§ 7401. Congressional findings and declaration of purpose

(a) Findings

The Congress finds—

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

(2) that the growth in the amount and complexity of air pollution brought about by urbanization, industrial development, and the increasing use of motor vehicles, has resulted in mounting dangers to the public health and welfare, including injury to agricultural crops and livestock, damage to and the deterioration of property, and hazards to air and ground transportation;

(3) that air pollution prevention (that is, the reduction or elimination, through any measures, of the amount of pollutants produced or

created at the source) and air pollution control at its source is the primary responsibility of States and local governments; and

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

(b) Declaration

The purposes of this subchapter are—

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

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

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

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

(c) Pollution prevention

A primary goal of this chapter is to encourage or otherwise promote reasonable Federal, State, and local governmental actions, consistent with the provisions of this chapter, for pollution prevention.

(July 14, 1955, ch. 360, title I, §101, formerly §1, as added Pub. L. 88-206, §1, Dec. 17, 1963, 77 Stat. 392; renumbered §101 and amended Pub. L. 89-272, title I, §101(2), (3), Oct. 20, 1965, 79 Stat. 992; Pub. L. 90-148, §2, Nov. 21, 1967, 81 Stat. 485; Pub. L. 101-549, title I, §108(k), Nov. 15, 1990, 104 Stat. 2468.)

CODIFICATION

Section was formerly classified to section 1857 of this title.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in a prior section 1857 of this title, act of July 14, 1955, ch. 360, §1, 69 Stat. 322, prior to the general amendment of this chapter by Pub. L. 88-206.

AMENDMENTS

1990—Subsec. (a)(3). Pub. L. 101-549, §108(k)(1), amended par. (3) generally. Prior to amendment, par. (3) read as follows: “that the prevention and control of air pollution at its source is the primary responsibility of States and local governments; and”.

Subsec. (b)(4). Pub. L. 101-549, §108(k)(2), inserted “prevention and” after “pollution”.

Subsec. (c). Pub. L. 101-549, §108(k)(3), added subsec. (c).

1967—Subsec. (b)(1). Pub. L. 90-148 inserted “and enhance the quality of” after “to protect”.

1965—Subsec. (b). Pub. L. 89-272 substituted “this title” for “this Act”, which for purposes of codification has been changed to “this subchapter”.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 711(b) of Pub. L. 101-549 provided that:

“(1) Except as otherwise expressly provided, the amendments made by this Act [see Tables for classification] shall be effective on the date of enactment of this Act [Nov. 15, 1990].

“(2) The Administrator's authority to assess civil penalties under section 205(c) of the Clean Air Act [42

U.S.C. 7524(c)], as amended by this Act, shall apply to violations that occur or continue on or after the date of enactment of this Act. Civil penalties for violations that occur prior to such date and do not continue after such date shall be assessed in accordance with the provisions of the Clean Air Act [42 U.S.C. 7401 et seq.] in effect immediately prior to the date of enactment of this Act.

“(3) The civil penalties prescribed under sections 205(a) and 211(d)(1) of the Clean Air Act [42 U.S.C. 7524(a), 7545(d)(1)], as amended by this Act, shall apply to violations that occur on or after the date of enactment of this Act. Violations that occur prior to such date shall be subject to the civil penalty provisions prescribed in sections 205(a) and 211(d) of the Clean Air Act in effect immediately prior to the enactment of this Act. The injunctive authority prescribed under section 211(d)(2) of the Clean Air Act, as amended by this Act, shall apply to violations that occur or continue on or after the date of enactment of this Act.

“(4) For purposes of paragraphs (2) and (3), where the date of a violation cannot be determined it will be assumed to be the date on which the violation is discovered.”

EFFECTIVE DATE OF 1977 AMENDMENT; PENDING ACTIONS; CONTINUATION OF RULES, CONTRACTS, AUTHORIZATIONS, ETC.; IMPLEMENTATION PLANS

Section 406 of Pub. L. 95-95, as amended by Pub. L. 95-190, §14(b)(6), Nov. 16, 1977, 91 Stat. 1405, provided that:

“(a) No suit, action, or other proceeding lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under the Clean Air Act [this chapter], as in effect immediately prior to the date of enactment of this Act [Aug. 7, 1977] shall abate by reason of the taking effect of the amendments made by this Act [see Short Title of 1977 Amendment note below]. The court may, on its own motion or that of any party made at any time within twelve months after such taking effect, allow the same to be maintained by or against the Administrator or such officer or employee.

“(b) All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to the Clean Air Act [this chapter], as in effect immediately prior to the date of enactment of this Act [Aug. 7, 1977], and pertaining to any functions, powers, requirements, and duties under the Clean Air Act, as in effect immediately prior to the date of enactment of this Act, and not suspended by the Administrator or the courts, shall continue in full force and effect after the date of enactment of this Act until modified or rescinded in accordance with the Clean Air Act as amended by this Act [see Short Title of 1977 Amendment note below].

“(c) Nothing in this Act [see Short Title of 1977 Amendment note below] nor any action taken pursuant to this Act shall in any way affect any requirement of an approved implementation plan in effect under section 110 of the Clean Air Act [section 7410 of this title] or any other provision of the Act in effect under the Clean Air Act before the date of enactment of this section [Aug. 7, 1977] until modified or rescinded in accordance with the Clean Air Act [this chapter] as amended by this Act [see Short Title of 1977 Amendment note below].

“(d)(1) Except as otherwise expressly provided, the amendments made by this Act [see Short Title of 1977 Amendment note below] shall be effective on date of enactment [Aug. 7, 1977].

“(2) Except as otherwise expressly provided, each State required to revise its applicable implementation plan by reason of any amendment made by this Act [see Short Title of 1977 Amendment note below] shall adopt and submit to the Administrator of the Environmental Protection Administration such plan revision before the later of the date—

“(A) one year after the date of enactment of this Act [Aug. 7, 1977], or

“(B) nine months after the date of promulgation by the Administrator of the Environmental Protection Administration of any regulations under an amendment made by this Act which are necessary for the approval of such plan revision.”

SHORT TITLE OF 1999 AMENDMENT

Pub. L. 106-40, §1, Aug. 5, 1999, 113 Stat. 207, provided that: “This Act [amending section 7412 of this title and enacting provisions set out as notes under section 7412 of this title] may be cited as the ‘Chemical Safety Information, Site Security and Fuels Regulatory Relief Act.’”

SHORT TITLE OF 1998 AMENDMENT

Pub. L. 105-286, §1, Oct. 27, 1998, 112 Stat. 2773, provided that: “This Act [amending section 7511b of this title and enacting provisions set out as a note under section 7511b of this title] may be cited as the ‘Border Smog Reduction Act of 1998.’”

SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101-549, Nov. 15, 1990, 104 Stat. 2399, is popularly known as the “Clean Air Act Amendments of 1990”. See Tables for classification.

SHORT TITLE OF 1981 AMENDMENT

Pub. L. 97-23, §1, July 17, 1981, 95 Stat. 139, provided: “That this Act [amending sections 7410 and 7413 of this title] may be cited as the ‘Steel Industry Compliance Extension Act of 1981.’”

SHORT TITLE OF 1977 AMENDMENT

Pub. L. 95-95, §1, Aug. 7, 1977, 91 Stat. 685, provided that: “This Act [enacting sections 4362, 7419 to 7428, 7450 to 7459, 7470 to 7479, 7491, 7501 to 7508, 7548, 7549, 7551, 7617 to 7625, and 7626 of this title, amending sections 7403, 7405, 7407 to 7415, 7417, 7418, 7521 to 7525, 7541, 7543, 7544, 7545, 7550, 7571, 7601 to 7605, 7607, 7612, 7613, and 7616 of this title, repealing section 1857c-10 of this title, and enacting provisions set out as notes under this section, sections 7403, 7422, 7470, 7479, 7502, 7521, 7548, and 7621 of this title, and section 792 of Title 15, Commerce and Trade] may be cited as the ‘Clean Air Act Amendments of 1977.’”

SHORT TITLE OF 1970 AMENDMENT

Pub. L. 91-604, §1, Dec. 31, 1970, 84 Stat. 1676, provided: “That this Act [amending this chapter generally] may be cited as the ‘Clean Air Amendments of 1970.’”

SHORT TITLE OF 1967 AMENDMENT

Section 1 of Pub. L. 90-148 provided: “That this Act [amending this chapter generally] may be cited as the ‘Air Quality Act of 1967.’”

SHORT TITLE OF 1966 AMENDMENT

Pub. L. 89-675, §1, Oct. 15, 1966, 80 Stat. 954, provided: “That this Act [amending sections 7405 and 7616 of this title and repealing section 1857f-8 of this title] may be cited as the ‘Clean Air Act Amendments of 1966.’”

SHORT TITLE

Section 317, formerly section 14, of act July 14, 1955, as added by section 1 of Pub. L. 88-206, renumbered section 307 by section 101(4) of Pub. L. 89-272, renumbered section 310 by section 2 of Pub. L. 90-148, and renumbered section 317 by Pub. L. 91-604, §12(a), Dec. 31, 1970, 84 Stat. 1705, provided that: “This Act [enacting this chapter] may be cited as the ‘Clean Air Act.’”

Section 201 of title II of act July 14, 1955, as added by Pub. L. 89-272, title I, §101(8), Oct. 20, 1965, 79 Stat. 992, and amended by Pub. L. 90-148, §2, Nov. 21, 1967, 81 Stat. 499, provided that: “This title [enacting subchapter II of this chapter] may be cited as the ‘National Emission Standards Act.’” Prior to its amendment by Pub. L.

90-148, title II of act June 14, 1955, was known as the “Motor Vehicle Air Pollution Control Act”.

Section 401 of title IV of act July 14, 1955, as added Dec. 31, 1970, Pub. L. 91-604, §14, 84 Stat. 1709, provided that: “This title [enacting subchapter IV of this chapter] may be cited as the ‘Noise Pollution and Abatement Act of 1970.’”

SAVINGS PROVISION

Section 711(a) of Pub. L. 101-549 provided that: “Except as otherwise expressly provided in this Act [see Tables for classification], no suit, action, or other proceeding lawfully commenced by the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under the Clean Air Act [42 U.S.C. 7401 et seq.], as in effect immediately prior to the date of enactment of this Act [Nov. 15, 1990], shall abate by reason of the taking effect of the amendments made by this Act.”

TRANSFER OF FUNCTIONS

Reorg. Plan No. 3 of 1970, §2(a)(3), eff. Dec. 2, 1970, 35 F.R. 15623, 84 Stat. 2086, transferred to Administrator of Environmental Protection Agency functions vested by law in Secretary of Health, Education, and Welfare or in Department of Health, Education, and Welfare which are administered through Environmental Health Service, including functions exercised by National Air Pollution Control Administration, and Environmental Control Administration’s Bureau of Solid Waste Management, Bureau of Water Hygiene, and Bureau of Radiological Health, except insofar as functions carried out by Bureau of Radiological Health pertain to regulation of radiation from consumer products, including electronic product radiation, radiation as used in healing arts, occupational exposure to radiation, and research, technical assistance, and training related to radiation from consumer products, radiation as used in healing arts, and occupational exposure to radiation.

IMPACT ON SMALL COMMUNITIES

Section 810 of Pub. L. 101-549 provided that: “Before implementing a provision of this Act [see Tables for classification], the Administrator of the Environmental Protection Agency shall consult with the Small Communities Coordinator of the Environmental Protection Agency to determine the impact of such provision on small communities, including the estimated cost of compliance with such provision.”

RADON ASSESSMENT AND MITIGATION

Pub. L. 99-499, title I, §118(k), Oct. 17, 1986, 100 Stat. 1659, as amended by Pub. L. 105-362, title V, §501(i), Nov. 10, 1998, 112 Stat. 3284, provided that:

“(1) NATIONAL ASSESSMENT OF RADON GAS.—No later than one year after the enactment of this Act [Oct. 17, 1986], the Administrator shall submit to the Congress a report which shall, to the extent possible—

“(A) identify the locations in the United States where radon is found in structures where people normally live or work, including educational institutions;

“(B) assess the levels of radon gas that are present in such structures;

“(C) determine the level of radon gas and radon daughters which poses a threat to human health and assess for each location identified under subparagraph (A) the extent of the threat to human health;

“(D) determine methods of reducing or eliminating the threat to human health of radon gas and radon daughters; and

“(E) include guidance and public information materials based on the findings or research of mitigating radon.

“(2) RADON MITIGATION DEMONSTRATION PROGRAM.—

“(A) DEMONSTRATION PROGRAM.—The Administrator shall conduct a demonstration program to test methods and technologies of reducing or eliminating radon

gas and radon daughters where it poses a threat to human health. The Administrator shall take into consideration any demonstration program underway in the Reading Prong of Pennsylvania, New Jersey, and New York and at other sites prior to enactment. The demonstration program under this section shall be conducted in the Reading Prong, and at such other sites as the Administrator considers appropriate.

“(B) LIABILITY.—Liability, if any, for persons undertaking activities pursuant to the radon mitigation demonstration program authorized under this subsection shall be determined under principles of existing law.

“(3) CONSTRUCTION OF SECTION.—Nothing in this subsection shall be construed to authorize the Administrator to carry out any regulatory program or any activity other than research, development, and related reporting, information dissemination, and coordination activities specified in this subsection. Nothing in paragraph (1) or (2) shall be construed to limit the authority of the Administrator or of any other agency or instrumentality of the United States under any other authority of law.”

SPILL CONTROL TECHNOLOGY

Pub. L. 99-499, title I, §118(n), Oct. 17, 1986, 100 Stat. 1660, provided that:

“(1) ESTABLISHMENT OF PROGRAM.—Within 180 days of enactment of this subsection [Oct. 17, 1986], the Secretary of the United States Department of Energy is directed to carry out a program of testing and evaluation of technologies which may be utilized in responding to liquefied gaseous and other hazardous substance spills at the Liquefied Gaseous Fuels Spill Test Facility that threaten public health or the environment.

“(2) TECHNOLOGY TRANSFER.—In carrying out the program established under this subsection, the Secretary shall conduct a technology transfer program that, at a minimum—

“(A) documents and archives spill control technology;

“(B) investigates and analyzes significant hazardous spill incidents;

“(C) develops and provides generic emergency action plans;

“(D) documents and archives spill test results;

“(E) develops emergency action plans to respond to spills;

“(F) conducts training of spill response personnel; and

“(G) establishes safety standards for personnel engaged in spill response activities.

“(3) CONTRACTS AND GRANTS.—The Secretary is directed to enter into contracts and grants with a non-profit organization in Albany County, Wyoming, that is capable of providing the necessary technical support and which is involved in environmental activities related to such hazardous substance related emergencies.

“(4) USE OF SITE.—The Secretary shall arrange for the use of the Liquefied Gaseous Fuels Spill Test Facility to carry out the provisions of this subsection.”

RADON GAS AND INDOOR AIR QUALITY RESEARCH

Pub. L. 99-499, title IV, Oct. 17, 1986, 100 Stat. 1758, provided that:

“SEC. 401. SHORT TITLE.

“This title may be cited as the ‘Radon Gas and Indoor Air Quality Research Act of 1986’.

“SEC. 402. FINDINGS.

“The Congress finds that:

“(1) High levels of radon gas pose a serious health threat in structures in certain areas of the country.

“(2) Various scientific studies have suggested that exposure to radon, including exposure to naturally occurring radon and indoor air pollutants, poses a public health risk.

“(3) Existing Federal radon and indoor air pollutant research programs are fragmented and underfunded.

“(4) An adequate information base concerning exposure to radon and indoor air pollutants should be developed by the appropriate Federal agencies.

“SEC. 403. RADON GAS AND INDOOR AIR QUALITY RESEARCH PROGRAM.

“(a) DESIGN OF PROGRAM.—The Administrator of the Environmental Protection Agency shall establish a research program with respect to radon gas and indoor air quality. Such program shall be designed to—

“(1) gather data and information on all aspects of indoor air quality in order to contribute to the understanding of health problems associated with the existence of air pollutants in the indoor environment;

“(2) coordinate Federal, State, local, and private research and development efforts relating to the improvement of indoor air quality; and

“(3) assess appropriate Federal Government actions to mitigate the environmental and health risks associated with indoor air quality problems.

“(b) PROGRAM REQUIREMENTS.—The research program required under this section shall include—

“(1) research and development concerning the identification, characterization, and monitoring of the sources and levels of indoor air pollution, including radon, which includes research and development relating to—

“(A) the measurement of various pollutant concentrations and their strengths and sources,

“(B) high-risk building types, and

“(C) instruments for indoor air quality data collection;

“(2) research relating to the effects of indoor air pollution and radon on human health;

“(3) research and development relating to control technologies or other mitigation measures to prevent or abate indoor air pollution (including the development, evaluation, and testing of individual and generic control devices and systems);

“(4) demonstration of methods for reducing or eliminating indoor air pollution and radon, including sealing, venting, and other methods that the Administrator determines may be effective;

“(5) research, to be carried out in conjunction with the Secretary of Housing and Urban Development, for the purpose of developing—

“(A) methods for assessing the potential for radon contamination of new construction, including (but not limited to) consideration of the moisture content of soil, porosity of soil, and radon content of soil; and

“(B) design measures to avoid indoor air pollution; and

“(6) the dissemination of information to assure the public availability of the findings of the activities under this section.

“(c) ADVISORY COMMITTEES.—The Administrator shall establish a committee comprised of individuals representing Federal agencies concerned with various aspects of indoor air quality and an advisory group comprised of individuals representing the States, the scientific community, industry, and public interest organizations to assist him in carrying out the research program for radon gas and indoor air quality.

“(d) IMPLEMENTATION PLAN.—Not later than 90 days after the enactment of this Act [Oct. 17, 1986], the Administrator shall submit to the Congress a plan for implementation of the research program under this section. Such plan shall also be submitted to the EPA Science Advisory Board, which shall, within a reasonable period of time, submit its comments on such plan to Congress.

“(e) REPORT.—Not later than 2 years after the enactment of this Act [Oct. 17, 1986], the Administrator shall submit to Congress a report respecting his activities under this section and making such recommendations as appropriate.

“SEC. 404. CONSTRUCTION OF TITLE.

“Nothing in this title shall be construed to authorize the Administrator to carry out any regulatory program

or any activity other than research, development, and related reporting, information dissemination, and coordination activities specified in this title. Nothing in this title shall be construed to limit the authority of the Administrator or of any other agency or instrumentality of the United States under any other authority of law.

“SEC. 405. AUTHORIZATIONS.

“There are authorized to be appropriated to carry out the activities under this title and under section 118(k) of the Superfund Amendments and Reauthorization Act of 1986 (relating to radon gas assessment and demonstration program) [section 118(k) of Pub. L. 99-499, set out as a note above] not to exceed \$5,000,000 for each of the fiscal years 1987, 1988, and 1989. Of such sums appropriated in fiscal years 1987 and 1988, two-fifths shall be reserved for the implementation of section 118(k)(2).”

STUDY OF ODORS AND ODOROUS EMISSIONS

Pub. L. 95-95, title IV, §403(b), Aug. 7, 1977, 91 Stat. 792, directed Administrator of Environmental Protection Agency to conduct a study and report to Congress not later than Jan. 1, 1979, on effects on public health and welfare of odors and odorous emissions, source of such emissions, technology or other measures available for control of such emissions and costs of such technology or measures, and costs and benefits of alternative measures or strategies to abate such emissions.

LIST OF CHEMICAL CONTAMINANTS FROM ENVIRONMENTAL POLLUTION FOUND IN HUMAN TISSUE

Pub. L. 95-95, title IV, §403(c), Aug. 7, 1977, 91 Stat. 792, directed Administrator of EPA, not later than twelve months after Aug. 7, 1977, to publish throughout the United States a list of all known chemical contaminants resulting from environmental pollution which have been found in human tissue including blood, urine, breast milk, and all other human tissue, such list to be prepared for the United States and to indicate approximate number of cases, range of levels found, and mean levels found, directed Administrator, not later than eighteen months after Aug. 7, 1977, to publish in same manner an explanation of what is known about the manner in which chemicals entered the environment and thereafter human tissue, and directed Administrator, in consultation with National Institutes of Health, the National Center for Health Statistics, and the National Center for Health Services Research and Development, to, if feasible, conduct an epidemiological study to demonstrate the relationship between levels of chemicals in the environment and in human tissue, such study to be made in appropriate regions or areas of the United States in order to determine any different results in such regions or areas, and the results of such study to be reported, as soon as practicable, to appropriate committee of Congress.

STUDY ON REGIONAL AIR QUALITY

Pub. L. 95-95, title IV, §403(d), Aug. 7, 1977, 91 Stat. 793, directed Administrator of EPA to conduct a study of air quality in various areas throughout the country including the gulf coast region, such study to include analysis of liquid and solid aerosols and other fine particulate matter and contribution of such substances to visibility and public health problems in such areas, with Administrator to use environmental health experts from the National Institutes of Health and other outside agencies and organizations.

RAILROAD EMISSION STUDY

Pub. L. 95-95, title IV, §404, Aug. 7, 1977, 91 Stat. 793, as amended by H. Res. 549, Mar. 25, 1980, directed Administrator of EPA to conduct a study and investigation of emissions of air pollutants from railroad locomotives, locomotive engines, and secondary power sources on railroad rolling stock, in order to determine extent to which such emissions affect air quality in air

quality control regions throughout the United States, technological feasibility and current state of technology for controlling such emissions, and status and effect of current and proposed State and local regulations affecting such emissions, and within one hundred and eighty days after commencing such study and investigation, Administrator to submit a report of such study and investigation, together with recommendations for appropriate legislation, to Senate Committee on Environment and Public Works and House Committee on Energy and Commerce.

STUDY AND REPORT CONCERNING ECONOMIC APPROACHES TO CONTROLLING AIR POLLUTION

Pub. L. 95-95, title IV, §405, Aug. 7, 1977, 91 Stat. 794, directed Administrator, in conjunction with Council of Economic Advisors, to undertake a study and assessment of economic measures for control of air pollution which could strengthen effectiveness of existing methods of controlling air pollution, provide incentives to abate air pollution greater than that required by Clean Air Act, and serve as primary incentive for controlling air pollution problems not addressed by Clean Air Act, and directed that not later than 2 years after Aug. 7, 1977, Administrator and Council conclude study and submit a report to President and Congress.

NATIONAL INDUSTRIAL POLLUTION CONTROL COUNCIL

For provisions relating to establishment of National Industrial Pollution Control Council, see Ex. Ord. No. 11523, Apr. 9, 1970, 35 F.R. 5993, set out as a note under section 4321 of this title.

FEDERAL COMPLIANCE WITH POLLUTION CONTROL STANDARDS

For provisions relating to responsibility of head of each Executive agency for compliance with applicable pollution control standards, see Ex. Ord. No. 12088, Oct. 13, 1978, 43 F.R. 47707, set out as a note under section 4321 of this title.

EXECUTIVE ORDER NO. 10779

Ex. Ord. No. 10779, Aug. 21, 1958, 23 F.R. 6487, which related to cooperation of Federal agencies with State and local authorities, was superseded by Ex. Ord. No. 11282, May 26, 1966, 31 F.R. 7663, formerly set out under section 7418 of this title.

EXECUTIVE ORDER NO. 11507

Ex. Ord. No. 11507, Feb. 4, 1970, 35 F.R. 2573, which provided for prevention, control, and abatement of air pollution at Federal facilities, was superseded by Ex. Ord. No. 11752, Dec. 17, 1973, 38 F.R. 34793, formerly set out as a note under section 4331 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7471, 7476 of this title.

§ 7402. Cooperative activities

(a) Interstate cooperation; uniform State laws; State compacts

The Administrator shall encourage cooperative activities by the States and local governments for the prevention and control of air pollution; encourage the enactment of improved and, so far as practicable in the light of varying conditions and needs, uniform State and local laws relating to the prevention and control of air pollution; and encourage the making of agreements and compacts between States for the prevention and control of air pollution.

(b) Federal cooperation

The Administrator shall cooperate with and encourage cooperative activities by all Federal

departments and agencies having functions relating to the prevention and control of air pollution, so as to assure the utilization in the Federal air pollution control program of all appropriate and available facilities and resources within the Federal Government.

(c) Consent of Congress to compacts

The consent of the Congress is hereby given to two or more States to negotiate and enter into agreements or compacts, not in conflict with any law or treaty of the United States, for (1) cooperative effort and mutual assistance for the prevention and control of air pollution and the enforcement of their respective laws relating thereto, and (2) the establishment of such agencies, joint or otherwise, as they may deem desirable for making effective such agreements or compacts. No such agreement or compact shall be binding or obligatory upon any State a party thereto unless and until it has been approved by Congress. It is the intent of Congress that no agreement or compact entered into between States after November 21, 1967, which relates to the control and abatement of air pollution in an air quality control region, shall provide for participation by a State which is not included (in whole or in part) in such air quality control region.

(July 14, 1955, ch. 360, title I, §102, formerly §2, as added Pub. L. 88-206, §1, Dec. 17, 1963, 77 Stat. 393; renumbered §102, Pub. L. 89-272, title I, §101(3), Oct. 20, 1965, 79 Stat. 992; amended Pub. L. 90-148, §2, Nov. 21, 1967, 81 Stat. 485; Pub. L. 91-604, §15(c)(2), Dec. 31, 1970, 84 Stat. 1713.)

CODIFICATION

Section was formerly classified to section 1857a of this title.

PRIOR PROVISIONS

Provisions similar to those in the first clause of subsec. (a) of this section were contained in subsec. (b)(1) of a prior section 1857a, of this title, act July 14, 1955, ch. 360, §2, 69 Stat. 322, prior to the general amendment of this chapter by Pub. L. 88-206.

AMENDMENTS

1970—Subsecs. (a), (b). Pub. L. 91-604 substituted “Administrator” for “Secretary” wherever appearing.

1967—Subsec. (c). Pub. L. 90-148 inserted declaration that it is the intent of Congress that no agreement or compact entered into between States after the date of enactment of the Air Quality Act of 1967, which for purposes of codification was changed to November 21, 1967, the date of approval of such Act, relating to the control and abatement of air pollution in an air quality control region, shall provide for participation by a State which is not included (in whole or in part) in such air quality control region.

§ 7403. Research, investigation, training, and other activities

(a) Research and development program for prevention and control of air pollution

The Administrator shall establish a national research and development program for the prevention and control of air pollution and as part of such program shall—

- (1) conduct, and promote the coordination and acceleration of, research, investigations, experiments, demonstrations, surveys, and

studies relating to the causes, effects (including health and welfare effects), extent, prevention, and control of air pollution;

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

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

- (4) establish technical advisory committees composed of recognized experts in various aspects of air pollution to assist in the examination and evaluation of research progress and proposals and to avoid duplication of research, and

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

(b) Authorized activities of Administrator in establishing research and development program

In carrying out the provisions of the preceding subsection the Administrator is authorized to—

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

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

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

- (4) contract with public or private agencies, institutions, and organizations, and with individuals, without regard to section 3324(a) and (b) of title 31 and section 5 of title 41;

- (5) establish and maintain research fellowships, in the Environmental Protection Agency and at public or nonprofit private educational institutions or research organizations;

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

(7) develop effective and practical processes, methods, and prototype devices for the prevention or control of air pollution; and

(8) construct facilities, provide equipment, and employ staff as necessary to carry out this chapter.

In carrying out the provisions of subsection (a) of this section, the Administrator shall provide training for, and make training grants to, personnel of air pollution control agencies and other persons with suitable qualifications and make grants to such agencies, to other public or nonprofit private agencies, institutions, and organizations for the purposes stated in subsection (a)(5) of this section. Reasonable fees may be charged for such training provided to persons other than personnel of air pollution control agencies but such training shall be provided to such personnel of air pollution control agencies without charge.

(c) Air pollutant monitoring, analysis, modeling, and inventory research

In carrying out subsection (a) of this section, the Administrator shall conduct a program of research, testing, and development of methods for sampling, measurement, monitoring, analysis, and modeling of air pollutants. Such program shall include the following elements:

(1) Consideration of individual, as well as complex mixtures of, air pollutants and their chemical transformations in the atmosphere.

(2) Establishment of a national network to monitor, collect, and compile data with quantification of certainty in the status and trends of air emissions, deposition, air quality, surface water quality, forest condition, and visibility impairment, and to ensure the comparability of air quality data collected in different States and obtained from different nations.

(3) Development of improved methods and technologies for sampling, measurement, monitoring, analysis, and modeling to increase understanding of the sources of ozone precursors,¹ ozone formation, ozone transport, regional influences on urban ozone, regional ozone trends, and interactions of ozone with other pollutants. Emphasis shall be placed on those techniques which—

(A) improve the ability to inventory emissions of volatile organic compounds and nitrogen oxides that contribute to urban air pollution, including anthropogenic and natural sources;

(B) improve the understanding of the mechanism through which anthropogenic and biogenic volatile organic compounds react to form ozone and other oxidants; and

(C) improve the ability to identify and evaluate region-specific prevention and control options for ozone pollution.

(4) Submission of periodic reports to the Congress, not less than once every 5 years, which evaluate and assess the effectiveness of air pollution control regulations and programs using monitoring and modeling data obtained pursuant to this subsection.

(d) Environmental health effects research

(1) The Administrator, in consultation with the Secretary of Health and Human Services, shall conduct a research program on the short-term and long-term effects of air pollutants, including wood smoke, on human health. In conducting such research program the Administrator—

(A) shall conduct studies, including epidemiological, clinical, and laboratory and field studies, as necessary to identify and evaluate exposure to and effects of air pollutants on human health;

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

(C) shall consult with other Federal agencies to ensure that similar research being conducted in other agencies is coordinated to avoid duplication.

(2) In conducting the research program under this subsection, the Administrator shall develop methods and techniques necessary to identify and assess the risks to human health from both routine and accidental exposures to individual air pollutants and combinations thereof. Such research program shall include the following elements:

(A) The creation of an Interagency Task Force to coordinate such program. The Task Force shall include representatives of the National Institute for Environmental Health Sciences, the Environmental Protection Agency, the Agency for Toxic Substances and Disease Registry, the National Toxicology Program, the National Institute of Standards and Technology, the National Science Foundation, the Surgeon General, and the Department of Energy. This Interagency Task Force shall be chaired by a representative of the Environmental Protection Agency and shall convene its first meeting within 60 days after November 15, 1990.

(B) An evaluation, within 12 months after November 15, 1990, of each of the hazardous air pollutants listed under section 7412(b) of this title, to decide, on the basis of available information, their relative priority for preparation of environmental health assessments pursuant to subparagraph (C). The evaluation shall be based on reasonably anticipated toxicity to humans and exposure factors such as frequency of occurrence as an air pollutant and volume of emissions in populated areas. Such evaluation shall be reviewed by the Interagency Task Force established pursuant to subparagraph (A).

(C) Preparation of environmental health assessments for each of the hazardous air pollutants referred to in subparagraph (B), beginning 6 months after the first meeting of the Interagency Task Force and to be completed within 96 months thereafter. No fewer than 24 assessments shall be completed and published annually. The assessments shall be prepared in accordance with guidelines developed by the Administrator in consultation with the Interagency Task Force and the Science Advisory Board of the Environmental Protection Agency. Each such assessment shall include—

¹ So in original. Probably should be "precursors,".

(i) an examination, summary, and evaluation of available toxicological and epidemiological information for the pollutant to ascertain the levels of human exposure which pose a significant threat to human health and the associated acute, subacute, and chronic adverse health effects;

(ii) a determination of gaps in available information related to human health effects and exposure levels; and

(iii) where appropriate, an identification of additional activities, including toxicological and inhalation testing, needed to identify the types or levels of exposure which may present significant risk of adverse health effects in humans.

(e) Ecosystem research

In carrying out subsection (a) of this section, the Administrator, in cooperation, where appropriate, with the Under Secretary of Commerce for Oceans and Atmosphere, the Director of the Fish and Wildlife Service, and the Secretary of Agriculture, shall conduct a research program to improve understanding of the short-term and long-term causes, effects, and trends of ecosystems damage from air pollutants on ecosystems. Such program shall include the following elements:

(1) Identification of regionally representative and critical ecosystems for research.

(2) Evaluation of risks to ecosystems exposed to air pollutants, including characterization of the causes and effects of chronic and episodic exposures to air pollutants and determination of the reversibility of those effects.

(3) Development of improved atmospheric dispersion models and monitoring systems and networks for evaluating and quantifying exposure to and effects of multiple environmental stresses associated with air pollution.

(4) Evaluation of the effects of air pollution on water quality, including assessments of the short-term and long-term ecological effects of acid deposition and other atmospherically derived pollutants on surface water (including wetlands and estuaries) and groundwater.

(5) Evaluation of the effects of air pollution on forests, materials, crops, biological diversity, soils, and other terrestrial and aquatic systems exposed to air pollutants.

(6) Estimation of the associated economic costs of ecological damage which have occurred as a result of exposure to air pollutants.

Consistent with the purpose of this program, the Administrator may use the estuarine research reserves established pursuant to section 1461 of title 16 to carry out this research.

(f) Liquefied Gaseous Fuels Spill Test Facility

(1) The Administrator, in consultation with the Secretary of Energy and the Federal Coordinating Council for Science, Engineering, and Technology, shall oversee an experimental and analytical research effort, with the experimental research to be carried out at the Liquefied Gaseous Fuels Spill Test Facility. In consultation with the Secretary of Energy, the Administrator shall develop a list of chemicals and a schedule for field testing at the Facility.

Analysis of a minimum of 10 chemicals per year shall be carried out, with the selection of a minimum of 2 chemicals for field testing each year. Highest priority shall be given to those chemicals that would present the greatest potential risk to human health as a result of an accidental release—

(A) from a fixed site; or

(B) related to the transport of such chemicals.

(2) The purpose of such research shall be to—

(A) develop improved predictive models for atmospheric dispersion which at a minimum—

(i) describe dense gas releases in complex terrain including man-made structures or obstacles with variable winds;

(ii) improve understanding of the effects of turbulence on dispersion patterns; and

(iii) consider realistic behavior of aerosols by including physicochemical reactions with water vapor, ground deposition, and removal by water spray;

(B) evaluate existing and future atmospheric dispersion models by—

(i) the development of a rigorous, standardized methodology for dense gas models; and

(ii) the application of such methodology to current dense gas dispersion models using data generated from field experiments; and

(C) evaluate the effectiveness of hazard mitigation and emergency response technology for fixed site and transportation related accidental releases of toxic chemicals.

Models pertaining to accidental release shall be evaluated and improved periodically for their utility in planning and implementing evacuation procedures and other mitigative strategies designed to minimize human exposure to hazardous air pollutants released accidentally.

(3) The Secretary of Energy shall make available to interested persons (including other Federal agencies and businesses) the use of the Liquefied Gaseous Fuels Spill Test Facility to conduct research and other activities in connection with the activities described in this subsection.

(g) Pollution prevention and emissions control

In carrying out subsection (a) of this section, the Administrator shall conduct a basic engineering research and technology program to develop, evaluate, and demonstrate nonregulatory strategies and technologies for air pollution prevention. Such strategies and technologies shall be developed with priority on those pollutants which pose a significant risk to human health and the environment, and with opportunities for participation by industry, public interest groups, scientists, and other interested persons in the development of such strategies and technologies. Such program shall include the following elements:

(1) Improvements in nonregulatory strategies and technologies for preventing or reducing multiple air pollutants, including sulfur oxides, nitrogen oxides, heavy metals, PM-10 (particulate matter), carbon monoxide, and carbon dioxide, from stationary sources, including fossil fuel power plants. Such strategies and technologies shall include improve-

ments in the relative cost effectiveness and long-range implications of various air pollutant reduction and nonregulatory control strategies such as energy conservation, including end-use efficiency, and fuel-switching to cleaner fuels. Such strategies and technologies shall be considered for existing and new facilities.

(2) Improvements in nonregulatory strategies and technologies for reducing air emissions from area sources.

(3) Improvements in nonregulatory strategies and technologies for preventing, detecting, and correcting accidental releases of hazardous air pollutants.

(4) Improvements in nonregulatory strategies and technologies that dispose of tires in ways that avoid adverse air quality impacts.

Nothing in this subsection shall be construed to authorize the imposition on any person of air pollution control requirements. The Administrator shall consult with other appropriate Federal agencies to ensure coordination and to avoid duplication of activities authorized under this subsection.

(h) NIEHS studies

(1) The Director of the National Institute of Environmental Health Sciences may conduct a program of basic research to identify, characterize, and quantify risks to human health from air pollutants. Such research shall be conducted primarily through a combination of university and medical school-based grants, as well as through intramural studies and contracts.

(2) The Director of the National Institute of Environmental Health Sciences shall conduct a program for the education and training of physicians in environmental health.

(3) The Director shall assure that such programs shall not conflict with research undertaken by the Administrator.

(4) There are authorized to be appropriated to the National Institute of Environmental Health Sciences such sums as may be necessary to carry out the purposes of this subsection.

(i) Coordination of research

The Administrator shall develop and implement a plan for identifying areas in which activities authorized under this section can be carried out in conjunction with other Federal ecological and air pollution research efforts. The plan, which shall be submitted to Congress within 6 months after November 15, 1990, shall include—

(1) an assessment of ambient monitoring stations and networks to determine cost effective ways to expand monitoring capabilities in both urban and rural environments;

(2) a consideration of the extent of the feasibility and scientific value of conducting the research program under subsection (e) of this section to include consideration of the effects of atmospheric processes and air pollution effects; and

(3) a methodology for evaluating and ranking pollution prevention technologies, such as those developed under subsection (g) of this section, in terms of their ability to reduce cost effectively the emissions of air pollutants and other airborne chemicals of concern.

Not later than 2 years after November 15, 1990, and every 4 years thereafter, the Administrator shall report to Congress on the progress made in implementing the plan developed under this subsection, and shall include in such report any revisions of the plan.

(j) Continuation of national acid precipitation assessment program

(1) The acid precipitation research program set forth in the Acid Precipitation Act of 1980 [42 U.S.C. 8901 et seq.] shall be continued with modifications pursuant to this subsection.

(2) The Acid Precipitation Task Force shall consist of the Administrator of the Environmental Protection Agency, the Secretary of Energy, the Secretary of the Interior, the Secretary of Agriculture, the Administrator of the National Oceanic and Atmospheric Administration, the Administrator of the National Aeronautics and Space Administration, and such additional members as the President may select. The President shall appoint a chairman for the Task Force from among its members within 30 days after November 15, 1990.

(3) The responsibilities of the Task Force shall include the following:

(A) Review of the status of research activities conducted to date under the comprehensive research plan developed pursuant to the Acid Precipitation Act of 1980 [42 U.S.C. 8901 et seq.], and development of a revised plan that identifies significant research gaps and establishes a coordinated program to address current and future research priorities. A draft of the revised plan shall be submitted by the Task Force to Congress within 6 months after November 15, 1990. The plan shall be available for public comment during the 60 day period after its submission, and a final plan shall be submitted by the President to the Congress within 45 days after the close of the comment period.

(B) Coordination with participating Federal agencies, augmenting the agencies' research and monitoring efforts and sponsoring additional research in the scientific community as necessary to ensure the availability and quality of data and methodologies needed to evaluate the status and effectiveness of the acid deposition control program. Such research and monitoring efforts shall include, but not be limited to—

(i) continuous monitoring of emissions of precursors of acid deposition;

(ii) maintenance, upgrading, and application of models, such as the Regional Acid Deposition Model, that describe the interactions of emissions with the atmosphere, and models that describe the response of ecosystems to acid deposition; and

(iii) analysis of the costs, benefits, and effectiveness of the acid deposition control program.

(C) Publication and maintenance of a National Acid Lakes Registry that tracks the condition and change over time of a statistically representative sample of lakes in regions that are known to be sensitive to surface water acidification.

(D) Submission every two years of a unified budget recommendation to the President for

activities of the Federal Government in connection with the research program described in this subsection.

(E) Beginning in 1992 and biennially thereafter, submission of a report to Congress describing the results of its investigations and analyses. The reporting of technical information about acid deposition shall be provided in a format that facilitates communication with policymakers and the public. The report shall include—

(i) actual and projected emissions and acid deposition trends;

(ii) average ambient concentrations of acid deposition precursors² and their transformation products;

(iii) the status of ecosystems (including forests and surface waters), materials, and visibility affected by acid deposition;

(iv) the causes and effects of such deposition, including changes in surface water quality and forest and soil conditions;

(v) the occurrence and effects of episodic acidification, particularly with respect to high elevation watersheds; and

(vi) the confidence level associated with each conclusion to aid policymakers in use of the information.

(F) Beginning in 1996, and every 4 years thereafter, the report under subparagraph (E) shall include—

(i) the reduction in deposition rates that must be achieved in order to prevent adverse ecological effects; and

(ii) the costs and benefits of the acid deposition control program created by subchapter IV-A of this chapter.

(k) Air pollution conferences

If, in the judgment of the Administrator, an air pollution problem of substantial significance may result from discharge or discharges into the atmosphere, the Administrator may call a conference concerning this potential air pollution problem to be held in or near one or more of the places where such discharge or discharges are occurring or will occur. All interested persons shall be given an opportunity to be heard at such conference, either orally or in writing, and shall be permitted to appear in person or by representative in accordance with procedures prescribed by the Administrator. If the Administrator finds, on the basis of the evidence presented at such conference, that the discharge or discharges if permitted to take place or continue are likely to cause or contribute to air pollution subject to abatement under this part, the Administrator shall send such findings, together with recommendations concerning the measures which the Administrator finds reasonable and suitable to prevent such pollution, to the person or persons whose actions will result in the discharge or discharges involved; to air pollution agencies of the State or States and of the municipality or municipalities where such discharge or discharges will originate; and to the interstate air pollution control agency, if any, in the jurisdictional area of which any such municipality is located. Such findings and rec-

ommendations shall be advisory only, but shall be admitted together with the record of the conference, as part of the proceedings under subsections (b), (c), (d), (e), and (f) of section 7408 of this title.

(July 14, 1955, ch. 360, title I, §103, formerly §3, as added Pub. L. 88-206, §1, Dec. 17, 1963, 77 Stat. 394; renumbered §103 and amended Pub. L. 89-272, title I, §§101(3), 103, Oct. 20, 1965, 79 Stat. 992, 996; Pub. L. 90-148, §2, Nov. 21, 1967, 81 Stat. 486; Pub. L. 91-604, §§2(a), 4(2), 15(a)(2), (c)(2), Dec. 31, 1970, 84 Stat. 1676, 1689, 1710, 1713; Pub. L. 95-95, title I, §101(a), (b), Aug. 7, 1977, 91 Stat. 686, 687; Pub. L. 101-549, title IX, §901(a)-(c), Nov. 15, 1990, 104 Stat. 2700-2703.)

REFERENCES IN TEXT

The Acid Precipitation Act of 1980, referred to in subsec. (j)(1), (3)(A), is title VII of Pub. L. 96-294, June 30, 1980, 94 Stat. 770, which is classified generally to chapter 97 (§8901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 8901 of this title and Tables.

CODIFICATION

In subsec. (b)(4), “section 3324(a) and (b) of title 31” substituted for reference to section 3648 of the Revised Statutes (31 U.S.C. 529) on authority of Pub. L. 97-258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

Section was formerly classified to section 1857b of this title.

PRIOR PROVISIONS

Provisions similar to those in subsec. (a)(3) of this section were contained in subsec. (a) of a prior section 1857b of this title, act July 14, 1955, ch. 360, §3, 69 Stat. 322, as amended Oct. 9, 1962, Pub. L. 87-761, §2, 76 Stat. 760, prior to the general amendment of this chapter by Pub. L. 88-206.

Provisions similar to those in this section were contained in prior sections 1857a to 1857d of this title, act July 14, 1955, ch. 360, §§2 to 5, 69 Stat. 322 (section 1857b as amended Oct. 9, 1962, Pub. L. 87-761, §2, 76 Stat. 760; section 1857d as amended Sept. 22, 1959, Pub. L. 86-365, §1, 73 Stat. 646 and Oct. 9, 1962, Pub. L. 87-761, §1, 76 Stat. 760), prior to the general amendment of this chapter by Pub. L. 88-206.

AMENDMENTS

1990—Subsec. (a)(1). Pub. L. 101-549, §901(a)(1), inserted “(including health and welfare effects)” after “effects”.

Subsec. (b)(8). Pub. L. 101-549, §901(a)(2), which directed amendment of subsec. (b) by adding par. (8) at end, was executed by adding par. (8) after par. (7) to reflect the probable intent of Congress.

Subsecs. (c) to (f). Pub. L. 101-549, §901(b), amended subsecs. (c) to (f) generally, substituting present provisions for provisions which related to: in subsec. (c), results of other scientific studies; in subsec. (d), construction of facilities; in subsec. (e), potential air pollution problems, conferences, and findings and recommendations of the Administrator; and, in subsec. (f), accelerated research programs.

Subsecs. (g) to (k). Pub. L. 101-549, §901(c), added subsecs. (g) to (k).

1977—Subsec. (a). Pub. L. 95-95, §101(b), struck out reference to “training” in par. (1) and added par. (5).

Subsec. (b). Pub. L. 95-95, §101(a), struck out par. (5) which provided for training and training grants to personnel of air pollution control agencies and other persons with suitable qualifications, redesignated pars. (6), (7), and (8) as (5), (6), and (7), respectively, and, following par. (7) as so redesignated, inserted provisions directing the Administrator, in carrying out subsec. (a),

²So in original. Probably should be “precursors”.

to provide training for, and make training grants to, personnel of air pollution control agencies and other persons with suitable qualifications and to make grants to such agencies, to other public or nonprofit private agencies, institutions, and organizations for the purposes stated in subsec. (a)(5) and allowing reasonable fees to be charged for such training provided to persons other than personnel of air pollution control agencies but requiring that such training be provided to such personnel of air pollution control agencies without charge.

1970—Subsec. (a). Pub. L. 91-604, §15(c)(2), substituted “Administrator” for “Secretary”.

Subsec. (b). Pub. L. 91-604, §15(c)(2), substituted “Administrator” for “Secretary” and “Environmental Protection Agency” for “Department of Health, Education, and Welfare”.

Subsec. (c). Pub. L. 91-604, §15(a)(2), (c)(2), substituted “Administrator” for “Secretary” and “air pollutants” for “air pollution agents (or combinations of agents)”.

Subsec. (d). Pub. L. 91-604, §15(c)(2), substituted “Administrator” for “Secretary”.

Subsec. (e). Pub. L. 91-604, §15(c)(2), substituted “Administrator” for “Secretary” wherever appearing, substituted “7415” for “7415(a)”, and inserted references to subsecs. (b) and (c) of section 7415 of this title.

Subsec. (f). Pub. L. 91-604, §2(a), added subsec. (f).

1967—Subsec. (a). Pub. L. 90-148 substituted “establish technical advisory committees composed of recognized experts in various aspects of air pollution to assist in the examination and evaluation of research progress and proposals and to avoid duplication of research” for “initiate and conduct a program of research directed toward the development of improved, low-cost techniques for extracting sulfur from fuels” as cl. (4) and struck out cl. (5) which related to research programs relating to the control of hydrocarbon emissions from evaporation of gasoline and nitrogen and aldehyde oxide emission from gasoline and diesel powered vehicles and relating to the development of improved low-cost techniques to reduce emissions of oxides of sulfur produced by the combustion of sulfur-containing fuels.

Subsec. (c). Pub. L. 90-148 struck out provision for promulgation of criteria in the case of particular air pollution agents present in the air in certain quantities reflecting the latest scientific knowledge and allowing for availability and revision and provided for recommendation by Secretary of air quality criteria.

Subsec. (e). Pub. L. 90-148 substituted references to subsections (d), (e), and (f) of section 7415 of this title for references to subsections (c), (d), and (e) of section 7415 of this title in provision for admission of advisory findings and recommendations together with the record of the conference and made such findings and recommendations part of the proceedings of the conference, not merely part of the record of proceedings.

1965—Subsec. (a)(5). Pub. L. 89-272, §103(3), added par. (5).

Subsecs. (d), (e). Pub. L. 89-272, §103(4), added subsecs. (d) and (e).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as a note under section 7401 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (i) of this section requiring quadrennial reports to Congress and of reporting provisions in subsec. (j)(3)(E) and (F) of this section, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 7th and 8th items on page 163 of House Document No. 103-7.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or

other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

PILOT DESIGN PROGRAMS

Pub. L. 106-246, div. B, title II, §2603, July 13, 2000, 114 Stat. 558, provided that:

“(a) The Administrator of the Environmental Protection Agency shall make a grant for the purpose of carrying out the first year of a 2-year program to implement in five metropolitan areas pilot design programs developed under section 365(a)(2) of the Department of Transportation and Related Agencies Appropriations Act, 2000 [Pub. L. 106-69] (113 Stat. 1028-1029).

“(b) The Administrator shall ensure that each pilot design program is implemented in accordance with recommendations developed by the National Telecommuting and Air Quality Steering Committee, in consultation with the local design teams.

“(c) Grants received under subsection (a) may be used for—

“(1) protocol development in the five metropolitan areas;

“(2) marketing of the telecommute, emissions reduction, pollution credits strategy and recruitment of participating employers; and

“(3) data gathering on emissions reductions.

“(d) In addition to the grant under subsection (a), for the purpose of carrying out the second year of the 2-year program referred to in subsection (a), the Administrator shall—

“(1) make a grant of \$750,000 to the National Environmental Policy Institute (a nonprofit private entity incorporated under the laws of and located in the District of Columbia); and

“(2) make grants totaling \$1,250,000 to local agencies within the five metropolitan areas referred to in subsection (a).

“(e) Not later than 360 days from first day of the second year of the 2-year program referred to in subsection (a), the Administrator shall transmit to Congress a report on the results of the program.

“(f) The Administrator shall carry out this section in collaboration with the Secretary of Transportation.

“(g) There is appropriated to the Department of Transportation, ‘Office of the Assistant Secretary for Policy’, \$2,000,000 to carry out this section. Such amounts shall be transferred to and administered by the Environmental Protection Agency and shall remain available until expended: *Provided*, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended [2 U.S.C. 901(b)(2)(A)]: *Provided further*, That the entire amount shall be available only to the extent an official budget request for a specific dollar amount, that includes designation of the entire amount of the request as an emergency requirement as defined by such Act, is transmitted by the President to the Congress.”

NATIONAL ACID LAKES REGISTRY

Section 405 of Pub. L. 101-549 provided that: "The Administrator of the Environmental Protection Agency shall create a National Acid Lakes Registry that shall list, to the extent practical, all lakes that are known to be acidified due to acid deposition, and shall publish such list within one year of the enactment of this Act [Nov. 15, 1990]. Lakes shall be added to the registry as they become acidic or as data becomes available to show they are acidic. Lakes shall be deleted from the registry as they become nonacidic."

ASSESSMENT OF INTERNATIONAL AIR POLLUTION CONTROL TECHNOLOGIES

Section 901(e) of Pub. L. 101-549 directed Administrator of Environmental Protection Agency to conduct a study that compares international air pollution control technologies of selected industrialized countries to determine if there exist air pollution control technologies in countries outside the United States that may have beneficial applications to this Nation's air pollution control efforts, including, with respect to each country studied, the topics of urban air quality, motor vehicle emissions, toxic air emissions, and acid deposition, and within 2 years after Nov. 15, 1990, submit to Congress a report detailing the results of such study.

WESTERN STATES ACID DEPOSITION RESEARCH

Section 901(g) of Pub. L. 101-549 provided that:

"(1) The Administrator of the Environmental Protection Agency shall sponsor monitoring and research and submit to Congress annual and periodic assessment reports on—

"(A) the occurrence and effects of acid deposition on surface waters located in that part of the United States west of the Mississippi River;

"(B) the occurrence and effects of acid deposition on high elevation ecosystems (including forests, and surface waters); and

"(C) the occurrence and effects of episodic acidification, particularly with respect to high elevation watersheds.

"(2) The Administrator of the Environmental Protection Agency shall analyze data generated from the studies conducted under paragraph (1), data from the Western Lakes Survey, and other appropriate research and utilize predictive modeling techniques that take into account the unique geographic, climatological, and atmospheric conditions which exist in the western United States to determine the potential occurrence and effects of acid deposition due to any projected increases in the emission of sulfur dioxide and nitrogen oxides in that part of the United States located west of the Mississippi River. The Administrator shall include the results of the project conducted under this paragraph in the reports issued to Congress under paragraph (1)."

CONSULTATION WITH COMMITTEE ON SCIENCE OF HOUSE OF REPRESENTATIVES

Section 101(c) of Pub. L. 95-95 provided that: "The Administrator of the Environmental Protection Agency shall consult with the House Committee on Science and Technology [now Committee on Science] on the environmental and atmospheric research, development, and demonstration aspects of this Act [see Short Title of 1977 Amendment note set out under section 7401 of this title]. In addition, the reports and studies required by this Act that relate to research, development, and demonstration issues shall be transmitted to the Committee on Science and Technology [now Committee on Science] at the same time they are made available to other committees of the Congress."

STUDY OF SUBSTANCES DISCHARGED FROM EXHAUSTS OF MOTOR VEHICLES

Pub. L. 86-493, June 8, 1960, 74 Stat. 162, directed Surgeon General of Public Health Service to conduct a

thorough study for purposes of determining, with respect to the various substances discharged from exhausts of motor vehicles, the amounts and kinds of such substances which, from the standpoint of human health, it is safe for motor vehicles to discharge into the atmosphere under the various conditions under which such vehicles may operate, and, not later than two years after June 8, 1960, submit to Congress a report on results of the study, together with such recommendations, if any, based upon the findings made in such study, as he deemed necessary for the protection of the public health.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7412 of this title.

§ 7404. Research relating to fuels and vehicles

(a) Research programs; grants; contracts; pilot and demonstration plants; byproducts research

The Administrator shall give special emphasis to research and development into new and improved methods, having industry-wide application, for the prevention and control of air pollution resulting from the combustion of fuels. In furtherance of such research and development he shall—

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

(A) control of combustion byproducts of fuels,

(B) removal of potential air pollutants from fuels prior to combustion,

(C) control of emissions from the evaporation of fuels,

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

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

(2) provide for Federal grants to public or nonprofit agencies, institutions, and organizations and to individuals, and contracts with public or private agencies, institutions, or persons, for payment of (A) part of the cost of acquiring, constructing, or otherwise securing for research and development purposes, new or improved devices or methods having industry-wide application of preventing or controlling discharges into the air of various types of pollutants; (B) part of the cost of programs to develop low emission alternatives to the present internal combustion engine; (C) the cost to purchase vehicles and vehicle engines, or portions thereof, for research, development, and testing purposes; and (D) carrying out the other provisions of this section, without regard to section 3324(a) and (b) of title 31 and section 5 of title 41: *Provided*, That research or demonstration contracts awarded pursuant to this subsection (including contracts for construction) may be made in accordance with, and subject to the limitations provided with respect to research contracts of the military departments in, section 2353 of title 10, except that the determination, approval, and certification required thereby shall be made by the Administrator; *Provided further*, That no grant may be made under this paragraph in excess of \$1,500,000;

(3) determine, by laboratory and pilot plant testing, the results of air pollution research and studies in order to develop new or improved processes and plant designs to the point where they can be demonstrated on a large and practical scale;

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

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

(b) Powers of Administrator in establishing research and development programs

In carrying out the provisions of this section, the Administrator may—

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

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

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

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

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

(c) Clean alternative fuels

The Administrator shall conduct a research program to identify, characterize, and predict air emissions related to the production, distribution, storage, and use of clean alternative fuels to determine the risks and benefits to human health and the environment relative to those from using conventional gasoline and diesel fuels. The Administrator shall consult with other Federal agencies to ensure coordination and to avoid duplication of activities authorized under this subsection.

(July 14, 1955, ch. 360, title I, §104, as added Pub. L. 90-148, §2, Nov. 21, 1967, 81 Stat. 487; amended Pub. L. 91-137, Dec. 5, 1969, 83 Stat. 283; Pub. L. 91-604, §§2(b), (c), 13(a), 15(c)(2), Dec. 31, 1970, 84 Stat. 1676, 1677, 1709, 1713; Pub. L. 93-15, §1(a), Apr. 9, 1973, 87 Stat. 11; Pub. L. 93-319, §13(a), June 22, 1974, 88 Stat. 265; Pub. L. 101-549, title IX, §901(d), Nov. 15, 1990, 104 Stat. 2706.)

CODIFICATION

In subsec. (a)(2), “section 3324(a) and (b) of title 31” substituted for reference to section 3648 of the Revised Statutes (31 U.S.C. 529) on authority of Pub. L. 97-258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

Section was formerly classified to section 1857b-1 of this title.

PRIOR PROVISIONS

A prior section 104 of act July 14, 1955, was renumbered section 105 by Pub. L. 90-148 and is classified to section 7405 of this title.

AMENDMENTS

1990—Subsecs. (a)(1), (b)(1). Pub. L. 101-549, §901(d)(1), substituted “cost-effective” for “low-cost”.

Subsec. (c). Pub. L. 101-549, §901(d)(2), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “For the purposes of this section there are authorized to be appropriated \$75,000,000 for the fiscal year ending June 30, 1971, \$125,000,000 for the fiscal year ending June 30, 1972, \$150,000,000 for the fiscal year ending June 30, 1973, and \$150,000,000 for the fiscal year ending June 30, 1974, and \$150,000,000 for the fiscal year ending June 30, 1975. Amounts appropriated pursuant to this subsection shall remain available until expended.”

1974—Subsec. (c). Pub. L. 93-319 authorized appropriation of \$150,000,000 for fiscal year ending June 30, 1975. 1973—Subsec. (c). Pub. L. 93-15 authorized appropriation of \$150,000,000 for fiscal year ending June 30, 1974.

1970—Subsec. (a). Pub. L. 91-604, §15(c)(2), substituted “Administrator” for “Secretary”.

Subsec. (a)(1). Pub. L. 91-604, §2(b), inserted provisions authorizing research programs directed toward development of techniques for improving the efficiency of fuels combustion so as to decrease atmospheric emissions, and producing synthetic or new fuels which result in decreased atmospheric emissions.

Subsec. (a)(2). Pub. L. 91-604, §2(c), added cls. (B) and (C) and redesignated former cl. (B) as (D).

Subsec. (b). Pub. L. 91-604, §15(c)(2), substituted “Administrator” for “Secretary”.

Subsec. (c). Pub. L. 91-604, §13(a), substituted provisions authorizing appropriations for fiscal years ending June 30, 1971, 1972, and 1973, for provisions authorizing appropriations for fiscal years ending June 30, 1968 and 1969.

1969—Subsec. (c). Pub. L. 91-137 authorized appropriation of \$45,000,000 for fiscal year ending June 30, 1970.

HYDROGEN FUEL CELL VEHICLE STUDY AND TEST PROGRAM

Section 807 of Pub. L. 101-549 provided that: “The Administrator of the Environmental Protection Agency, in conjunction with the National Aeronautics and Space Administration and the Department of Energy, shall conduct a study and test program on the development of a hydrogen fuel cell electric vehicle. The study and test program shall determine how best to transfer existing NASA hydrogen fuel cell technology into the form of a mass-producible, cost effective hydrogen fuel cell vehicle. Such study and test program shall include at a minimum a feasibility-design study, the construction of a prototype, and a demonstration. This study and test program should be completed and a report submitted to Congress within 3 years after the enactment of the Clean Air Act Amendments of 1990 [Nov. 15, 1990]. This study and test program should be performed in the university or universities which are best exhibiting the facilities and expertise to develop such a fuel cell vehicle.”

COMBUSTION OF CONTAMINATED USED OIL IN SHIPS

Section 813 of Pub. L. 101-549 provided that: “Within 2 years after the enactment of the Clean Air Act Amendments of 1990 [Nov. 15, 1990], the Administrator of the Environmental Protection Agency shall complete a study and submit a report to Congress evaluating the health and environmental impacts of the combustion of contaminated used oil in ships, the reasons for using such oil for such purposes, the alternatives to such use, the costs of such alternatives, and other relevant factors and impacts. In preparing such study, the Administrator shall obtain the view and comments of

all interested persons and shall consult with the Secretary of Transportation and the Secretary of the department in which the Coast Guard is operating.”

EXTENSION TO AUG. 31, 1970 OF AUTHORIZATION PERIOD
FOR FISCAL YEAR 1970

Pub. L. 91-316, July 10, 1970, 84 Stat. 416, provided in part that the authorization contained in section 104(c) of the Clean Air Act [subsec. (c) of this section] for the fiscal year ending June 30, 1970, should remain available through Aug. 31, 1970, notwithstanding any provisions of this section.

§ 7405. Grants for support of air pollution planning and control programs

(a) Amounts; limitations; assurances of plan development capability

(1)(A) The Administrator may make grants to air pollution control agencies, within the meaning of paragraph (1), (2), (3), (4), or (5) of section 7602 of this title, in an amount up to three-fifths of the cost of implementing programs for the prevention and control of air pollution or implementation of national primary and secondary ambient air quality standards. For the purpose of this section, “implementing” means any activity related to the planning, developing, establishing, carrying-out, improving, or maintaining of such programs.

(B) Subject to subsections (b) and (c) of this section, an air pollution control agency which receives a grant under subparagraph (A) and which contributes less than the required two-fifths minimum shall have 3 years following November 15, 1990, in which to contribute such amount. If such an agency fails to meet and maintain this required level, the Administrator shall reduce the amount of the Federal contribution accordingly.

(C) With respect to any air quality control region or portion thereof for which there is an applicable implementation plan under section 7410 of this title, grants under subparagraph (A) may be made only to air pollution control agencies which have substantial responsibilities for carrying out such applicable implementation plan.

(2) Before approving any grant under this subsection to any air pollution control agency within the meaning of sections 7602(b)(2) and 7602(b)(4) of this title, the Administrator shall receive assurances that such agency provides for adequate representation of appropriate State, interstate, local, and (when appropriate) international, interests in the air quality control region.

(3) Before approving any planning grant under this subsection to any air pollution control agency within the meaning of sections 7602(b)(2) and 7602(b)(4) of this title, the Administrator shall receive assurances that such agency has the capability of developing a comprehensive air quality plan for the air quality control region, which plan shall include (when appropriate) a recommended system of alerts to avert and reduce the risk of situations in which there may be imminent and serious danger to the public health or welfare from air pollutants and the various aspects relevant to the establishment of air quality standards for such air quality control region, including the concentration of industries, other commercial establishments, popu-

lation and naturally occurring factors which shall affect such standards.

(b) Terms and conditions; regulations; factors for consideration; State expenditure limitations

(1) From the sums available for the purposes of subsection (a) of this section for any fiscal year, the Administrator shall from time to time make grants to air pollution control agencies upon such terms and conditions as the Administrator may find necessary to carry out the purpose of this section. In establishing regulations for the granting of such funds the Administrator shall, so far as practicable, give due consideration to (A) the population, (B) the extent of the actual or potential air pollution problem, and (C) the financial need of the respective agencies.

(2) Not more than 10 per centum of the total of funds appropriated or allocated for the purposes of subsection (a) of this section shall be granted for air pollution control programs in any one State. In the case of a grant for a program in an area crossing State boundaries, the Administrator shall determine the portion of such grant that is chargeable to the percentage limitation under this subsection for each State into which such area extends. Subject to the provisions of paragraph (1) of this subsection, no State shall have made available to it for application less than one-half of 1 per centum of the annual appropriation for grants under this section for grants to agencies within such State.

(c) Maintenance of effort

(1) No agency shall receive any grant under this section during any fiscal year when its expenditures of non-Federal funds for recurrent expenditures for air pollution control programs will be less than its expenditures were for such programs during the preceding fiscal year. In order for the Administrator to award grants under this section in a timely manner each fiscal year, the Administrator shall compare an agency's prospective expenditure level to that of its second preceding fiscal year. The Administrator shall revise the current regulations which define applicable nonrecurrent and recurrent expenditures, and in so doing, give due consideration to exempting an agency from the limitations of this paragraph and subsection (a) of this section due to periodic increases experienced by that agency from time to time in its annual expenditures for purposes acceptable to the Administrator for that fiscal year.

(2) The Administrator may still award a grant to an agency not meeting the requirements of paragraph (1)¹ of this subsection if the Administrator, after notice and opportunity for public hearing, determines that a reduction in expenditures is attributable to a non-selective reduction in the expenditures in the programs of all Executive branch agencies of the applicable unit of Government. No agency shall receive any grant under this section with respect to the maintenance of a program for the prevention and control of air pollution unless the Administrator is satisfied that such a grant will be so used to supplement and, to the extent practicable, increase the level of State, local, or other non-Federal funds. No grants shall be

¹ So in original. Probably should be paragraph “(1)”.

made under this section until the Administrator has consulted with the appropriate official as designated by the Governor or Governors of the State or States affected.

(d) Reduction of payments; availability of reduced amounts; reduced amount as deemed paid to agency for purpose of determining amount of grant

The Administrator, with the concurrence of any recipient of a grant under this section, may reduce the payments to such recipient by the amount of the pay, allowances, traveling expenses, and any other costs in connection with the detail of any officer or employee to the recipient under section 7601 of this title, when such detail is for the convenience of, and at the request of, such recipient and for the purpose of carrying out the provisions of this chapter. The amount by which such payments have been reduced shall be available for payment of such costs by the Administrator, but shall, for the purpose of determining the amount of any grant to a recipient under subsection (a) of this section, be deemed to have been paid to such agency.

(e) Notice and opportunity for hearing when affected by adverse action

No application by a State for a grant under this section may be disapproved by the Administrator without prior notice and opportunity for a public hearing in the affected State, and no commitment or obligation of any funds under any such grant may be revoked or reduced without prior notice and opportunity for a public hearing in the affected State (or in one of the affected States if more than one State is affected).

(July 14, 1955, ch. 360, title I, §105, formerly §4, as added Pub. L. 88-206, §1, Dec. 17, 1963, 77 Stat. 395; renumbered §104 and amended Pub. L. 89-272, title I, §101(2)-(4), Oct. 20, 1965, 79 Stat. 992; Pub. L. 89-675, §3, Oct. 15, 1966, 80 Stat. 954; renumbered §105 and amended Pub. L. 90-148, §2, Nov. 21, 1967, 81 Stat. 489; Pub. L. 91-604, §§3(a), (b)(1), 15(c)(2), Dec. 31, 1970, 84 Stat. 1677, 1713; Pub. L. 95-95, title I, §102, title III, §305(b), Aug. 7, 1977, 91 Stat. 687, 776; Pub. L. 101-549, title VIII, §802(a)-(e), Nov. 15, 1990, 104 Stat. 2687, 2688.)

CODIFICATION

Section was formerly classified to section 1857c of this title.

PRIOR PROVISIONS

A prior section 105 of act July 14, 1955, was renumbered section 108 by Pub. L. 90-148 and is classified to section 7415 of this title.

Provisions similar to those in subsecs. (a) and (b) of this section were contained in a prior section 1857d of this title, act July 14, 1955, ch. 360, §5, 69 Stat. 322, as amended Sept. 22, 1959, Pub. L. 86-365, §1, 73 Stat. 646; Oct. 9, 1962, Pub. L. 87-761, §1, 76 Stat. 760, prior to the general amendment by Pub. L. 88-206.

AMENDMENTS

1990—Subsec. (a)(1)(A), (B). Pub. L. 101-549, §802(a), amended subpars. (A) and (B) generally. Prior to amendment, subpars. (A) and (B) read as follows:

“(A) The Administrator may make grants to air pollution control agencies in an amount up to two-thirds of the cost of planning, developing, establishing, or im-

proving, and up to one-half of the cost of maintaining, programs for the prevention and control of air pollution or implementation of national primary and secondary [sic] ambient air quality standards.

“(B) Subject to subparagraph (C), the Administrator may make grants to air pollution control agencies within the meaning of paragraph (1), (2), or (4) of section 7602(b) of this title in an amount up to three-fourths of the cost of planning, developing, establishing, or improving, and up to three-fifths of the cost of maintaining, any program for the prevention and control of air pollution or implementation of national primary and secondary ambient air quality standards in an area that includes two or more municipalities, whether in the same or different States.”

Subsec. (a)(1)(C). Pub. L. 101-549, §802(b), substituted “subparagraph (A)” for “subparagraph (B)”.

Subsec. (b)(1). Pub. L. 101-549, §802(c), designated existing provisions of subsec. (b) as par. (1), redesignated former cls. (1) to (3) as cls. (A) to (C), respectively, and struck out at end “No agency shall receive any grant under this section during any fiscal year when its expenditures of non-Federal funds for other than non-recurrent expenditures for air pollution control programs will be less than its expenditures were for such programs during the preceding fiscal year, unless the Administrator, after notice and opportunity for public hearing, determines that a reduction in expenditures is attributable to a nonselective reduction in expenditures in the programs of all executive branch agencies of the applicable unit of Government; and no agency shall receive any grant under this section with respect to the maintenance of a program for the prevention and control of air pollution unless the Administrator is satisfied that such grant will be so used to supplement and, to the extent practicable, increase the level of State, local, or other non-Federal funds that would in the absence of such grant be made available for the maintenance of such program, and will in no event supplant such State, local, or other non-Federal funds. No grant shall be made under this section until the Administrator has consulted with the appropriate official as designated by the Governor or Governors of the State or States affected.”

Subsec. (b)(2). Pub. L. 101-549, §802(d), redesignated subsec. (c) as subsec. (b)(2) and substituted “Subject to the provisions of paragraph (1) of this subsection, no State shall have made available to it for application less than one-half of 1 per centum of the annual appropriation for grants under this section for grants to agencies within such State.” for “In fiscal year 1978 and subsequent fiscal years, subject to the provisions of subsection (b) of this section, no State shall receive less than one-half of 1 per centum of the annual appropriation for grants under this section for grants to agencies within such State.”

Subsec. (c). Pub. L. 101-549, §802(e), added subsec. (c). Former subsec. (c) redesignated (b)(2).

1977—Subsec. (b). Pub. L. 95-95, §102(a), inserted “, unless the Administrator, after notice and opportunity for hearing, determines that a reduction in expenditures is attributable to a nonselective reduction in expenditures in the programs of all executive branch agencies of the applicable unit of Government” after “will be less than its expenditures were for such programs during the preceding fiscal year”.

Subsec. (c). Pub. L. 95-95, §102(b), provided that in fiscal year 1978 and subsequent fiscal years, subject to provisions of subsec. (b) of this section, no State shall receive less than one-half of 1 per centum of the annual appropriation for grants under this section for grants to agencies within such State.

Subsec. (e). Pub. L. 95-95, §305(b), added subsec. (e).

1970—Subsec. (a)(1). Pub. L. 91-604, §3(a), substituted provisions authorizing the Administrator to make grants, for provisions authorizing the Secretary to make grants, and provisions authorizing grants for programs implementing national primary and secondary ambient air quality standards, for provisions authorizing grants for programs implementing air quality

standards authorized by this subchapter, and inserted the provision requiring grants to air pollution control agencies be made to agencies having substantial responsibilities for carrying out the applicable implementation plan with respect to the air quality control region or portion thereof.

Subsecs. (a)(2), (3), (b), (c). Pub. L. 91-604, §15(c)(2), substituted "Administrator" for "Secretary" wherever appearing.

Subsec. (d). Pub. L. 91-604, §3(b)(1), added subsec. (d). 1967—Subsec. (a). Pub. L. 90-148 designated existing provisions as par. (1), substituted "regional air quality control program" for "regional air pollution control program," added planning to list of authorized activities, and added programs for implementation of air quality standards authorized by this chapter to list of authorized programs, and added pars. (2) and (3).

Subsec. (b). Pub. L. 90-148 made minor changes in the order of provisions.

Subsec. (c). Pub. L. 90-148 reduced percentage limitation on portion of total funds which might be granted for air pollution control programs in any one State from 12½ per centum to 10 per centum.

1966—Subsec. (a). Pub. L. 89-675, §3(a)(1), struck out provisions limiting available funds to 20 per centum of sums appropriated annually for purpose of this subchapter, inserted provisions allowing grants to air pollution control agencies up to one-half of cost of maintaining programs for prevention and control of air pollution, and authorized Secretary to make grants of up to three-fifths of cost of maintaining regional air pollution control programs.

Subsec. (b). Pub. L. 89-675, §3(a)(2), substituted "for the purpose of" for "under", permitted grantees to reduce annual expenditures to the extent that nonrecurrent costs are involved for purposes of application of the provision that no agency may receive grants during any fiscal year when its expenditures of non-Federal funds for air pollution control programs are less than its expenditures for such programs during the preceding year, and inserted provisions insuring that Federal funds will in no event be used to supplant State or local government funds in maintaining air pollution control programs.

Subsec. (c). Pub. L. 89-675, §3(b), substituted "total of funds appropriated or allocated for the purposes of subsection (a) of this section shall be granted for air pollution control programs" for "grant funds available under subsection (a) of this section shall be expended" and authorized the Secretary to determine the portion of grants to interstate agencies to be charged against the twelve and one-half percent limitation of grant funds to any one State.

1965—Subsec. (a). Pub. L. 89-272 substituted "this title" for "this Act", which for purposes of codification has been changed to "this subchapter", and "section 302(b)(2) and (4)" for "section 9(b)(2) and (4)", which for purposes of codification has been changed to "section 7602(b)(2) and (4) of this title".

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as a note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective

Date of 1977 Amendment note under section 7401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7509, 7601 of this title.

§ 7406. Interstate air quality agencies; program cost limitations

For the purpose of developing implementation plans for any interstate air quality control region designated pursuant to section 7407 of this title or of implementing section 7506a of this title (relating to control of interstate air pollution) or section 7511c of this title (relating to control of interstate ozone pollution), the Administrator is authorized to pay, for two years, up to 100 per centum of the air quality planning program costs of any commission established under section 7506a of this title (relating to control of interstate air pollution) or section 7511c of this title (relating to control of interstate ozone pollution) or any agency designated by the Governors of the affected States, which agency shall be capable of recommending to the Governors plans for implementation of national primary and secondary ambient air quality standards and shall include representation from the States and appropriate political subdivisions within the air quality control region. After the initial two-year period the Administrator is authorized to make grants to such agency or such commission in an amount up to three-fifths of the air quality implementation program costs of such agency or commission.

(July 14, 1955, ch. 360, title I, §106, as added Pub. L. 90-148, §2, Nov. 21, 1967, 81 Stat. 490; amended Pub. L. 91-604, §3(c), Dec. 31, 1970, 84 Stat. 1677; Pub. L. 101-549, title I, §102(f)(2), title VIII, §802(f), Nov. 15, 1990, 104 Stat. 2420, 2688.)

CODIFICATION

Section was formerly classified to section 1857c-1 of this title.

PRIOR PROVISIONS

A prior section 106 of act July 14, 1955, was renumbered section 117 by Pub. L. 91-604 and is classified to section 7417 of this title.

AMENDMENTS

1990—Pub. L. 101-549, §102(f)(2)(A), inserted "or of implementing section 7506a of this title (relating to control of interstate air pollution) or section 7511c of this title (relating to control of interstate ozone pollution)" after "section 7407 of this title".

Pub. L. 101-549, §102(f)(2)(B), which directed insertion of "any commission established under section 7506a of this title (relating to control of interstate air pollution) or section 7511c of this title (relating to control of interstate ozone pollution) or" after "program costs of", was executed by making the insertion after that phrase the first place it appeared to reflect the probable intent of Congress.

Pub. L. 101-549, §102(f)(2)(C), which directed insertion of "or such commission" after "such agency" in last sentence, was executed by making insertion after "such agency" the first place it appeared in the last sentence to reflect the probable intent of Congress.

Pub. L. 101-549, §§102(f)(2)(D), 802(f), substituted "three-fifths of the air quality implementation program costs of such agency or commission" for "three-fourths of the air quality planning program costs of such agency".

1970—Pub. L. 91-604 struck out designation “(a)”, substituted provisions authorizing Federal grants for the purpose of developing implementation plans and provisions requiring the designated State agency to be capable of recommending plans for implementation of national primary and secondary ambient air quality standards, for provisions authorizing Federal grants for the purpose of expediting the establishment of air quality standards and provisions requiring the designated State agency to be capable of recommending standards of air quality and plans for implementation thereof, respectively, and struck out subsec. (b) which authorized establishment of air quality planning commissions.

§ 7407. Air quality control regions

(a) Responsibility of each State for air quality; submission of implementation plan

Each State shall have the primary responsibility for assuring air quality within the entire geographic area comprising such State by submitting an implementation plan for such State which will specify the manner in which national primary and secondary ambient air quality standards will be achieved and maintained within each air quality control region in such State.

(b) Designated regions

For purposes of developing and carrying out implementation plans under section 7410 of this title—

(1) an air quality control region designated under this section before December 31, 1970, or a region designated after such date under subsection (c) of this section, shall be an air quality control region; and

(2) the portion of such State which is not part of any such designated region shall be an air quality control region, but such portion may be subdivided by the State into two or more air quality control regions with the approval of the Administrator.

(c) Authority of Administrator to designate regions; notification of Governors of affected States

The Administrator shall, within 90 days after December 31, 1970, after consultation with appropriate State and local authorities, designate as an air quality control region any interstate area or major intrastate area which he deems necessary or appropriate for the attainment and maintenance of ambient air quality standards. The Administrator shall immediately notify the Governors of the affected States of any designation made under this subsection.

(d) Designations

(1) Designations generally

(A) Submission by Governors of initial designations following promulgation of new or revised standards

By such date as the Administrator may reasonably require, but not later than 1 year after promulgation of a new or revised national ambient air quality standard for any pollutant under section 7409 of this title, the Governor of each State shall (and at any other time the Governor of a State deems appropriate the Governor may) submit to the Administrator a list of all areas (or portions thereof) in the State, designating as—

(i) nonattainment, any area that does not meet (or that contributes to ambient

air quality in a nearby area that does not meet) the national primary or secondary ambient air quality standard for the pollutant,

(ii) attainment, any area (other than an area identified in clause (i)) that meets the national primary or secondary ambient air quality standard for the pollutant, or

(iii) unclassifiable, any area that cannot be classified on the basis of available information as meeting or not meeting the national primary or secondary ambient air quality standard for the pollutant.

The Administrator may not require the Governor to submit the required list sooner than 120 days after promulgating a new or revised national ambient air quality standard.

(B) Promulgation by EPA of designations

(i) Upon promulgation or revision of a national ambient air quality standard, the Administrator shall promulgate the designations of all areas (or portions thereof) submitted under subparagraph (A) as expeditiously as practicable, but in no case later than 2 years from the date of promulgation of the new or revised national ambient air quality standard. Such period may be extended for up to one year in the event the Administrator has insufficient information to promulgate the designations.

(ii) In making the promulgations required under clause (i), the Administrator may make such modifications as the Administrator deems necessary to the designations of the areas (or portions thereof) submitted under subparagraph (A) (including to the boundaries of such areas or portions thereof). Whenever the Administrator intends to make a modification, the Administrator shall notify the State and provide such State with an opportunity to demonstrate why any proposed modification is inappropriate. The Administrator shall give such notification no later than 120 days before the date the Administrator promulgates the designation, including any modification thereto. If the Governor fails to submit the list in whole or in part, as required under subparagraph (A), the Administrator shall promulgate the designation that the Administrator deems appropriate for any area (or portion thereof) not designated by the State.

(iii) If the Governor of any State, on the Governor's own motion, under subparagraph (A), submits a list of areas (or portions thereof) in the State designated as non-attainment, attainment, or unclassifiable, the Administrator shall act on such designations in accordance with the procedures under paragraph (3) (relating to redesignation).

(iv) A designation for an area (or portion thereof) made pursuant to this subsection shall remain in effect until the area (or portion thereof) is redesignated pursuant to paragraph (3) or (4).

(C) Designations by operation of law

(i) Any area designated with respect to any air pollutant under the provisions of para-

graph (1)(A), (B), or (C) of this subsection (as in effect immediately before November 15, 1990) is designated, by operation of law, as a nonattainment area for such pollutant within the meaning of subparagraph (A)(i).

(ii) Any area designated with respect to any air pollutant under the provisions of paragraph (1)(E) (as in effect immediately before November 15, 1990) is designated by operation of law, as an attainment area for such pollutant within the meaning of subparagraph (A)(ii).

(iii) Any area designated with respect to any air pollutant under the provisions of paragraph (1)(D) (as in effect immediately before November 15, 1990) is designated, by operation of law, as an unclassifiable area for such pollutant within the meaning of subparagraph (A)(iii).

(2) Publication of designations and redesignations

(A) The Administrator shall publish a notice in the Federal Register promulgating any designation under paragraph (1) or (5), or announcing any designation under paragraph (4), or promulgating any redesignation under paragraph (3).

(B) Promulgation or announcement of a designation under paragraph (1), (4) or (5) shall not be subject to the provisions of sections 553 through 557 of title 5 (relating to notice and comment), except nothing herein shall be construed as precluding such public notice and comment whenever possible.

(3) Redesignation

(A) Subject to the requirements of subparagraph (E), and on the basis of air quality data, planning and control considerations, or any other air quality-related considerations the Administrator deems appropriate, the Administrator may at any time notify the Governor of any State that available information indicates that the designation of any area or portion of an area within the State or interstate area should be revised. In issuing such notification, which shall be public, to the Governor, the Administrator shall provide such information as the Administrator may have available explaining the basis for the notice.

(B) No later than 120 days after receiving a notification under subparagraph (A), the Governor shall submit to the Administrator such redesignation, if any, of the appropriate area (or areas) or portion thereof within the State or interstate area, as the Governor considers appropriate.

(C) No later than 120 days after the date described in subparagraph (B) (or paragraph (1)(B)(iii)), the Administrator shall promulgate the redesignation, if any, of the area or portion thereof, submitted by the Governor in accordance with subparagraph (B), making such modifications as the Administrator may deem necessary, in the same manner and under the same procedure as is applicable under clause (ii) of paragraph (1)(B), except that the phrase "60 days" shall be substituted for the phrase "120 days" in that clause. If the Governor does not submit, in accordance with subparagraph (B), a redesignation for an area

(or portion thereof) identified by the Administrator under subparagraph (A), the Administrator shall promulgate such redesignation, if any, that the Administrator deems appropriate.

(D) The Governor of any State may, on the Governor's own motion, submit to the Administrator a revised designation of any area or portion thereof within the State. Within 18 months of receipt of a complete State redesignation submittal, the Administrator shall approve or deny such redesignation. The submission of a redesignation by a Governor shall not affect the effectiveness or enforceability of the applicable implementation plan for the State.

(E) The Administrator may not promulgate a redesignation of a nonattainment area (or portion thereof) to attainment unless—

(i) the Administrator determines that the area has attained the national ambient air quality standard;

(ii) the Administrator has fully approved the applicable implementation plan for the area under section 7410(k) of this title;

(iii) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions;

(iv) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 7505a of this title; and

(v) the State containing such area has met all requirements applicable to the area under section 7410 of this title and part D of this subchapter.

(F) The Administrator shall not promulgate any redesignation of any area (or portion thereof) from nonattainment to unclassifiable.

(4) Nonattainment designations for ozone, carbon monoxide and particulate matter (PM-10)

(A) Ozone and carbon monoxide

(i) Within 120 days after November 15, 1990, each Governor of each State shall submit to the Administrator a list that designates, affirms or reaffirms the designation of, or redesignates (as the case may be), all areas (or portions thereof) of the Governor's State as attainment, nonattainment, or unclassifiable with respect to the national ambient air quality standards for ozone and carbon monoxide.

(ii) No later than 120 days after the date the Governor is required to submit the list of areas (or portions thereof) required under clause (i) of this subparagraph, the Administrator shall promulgate such designations, making such modifications as the Administrator may deem necessary, in the same manner, and under the same procedure, as is applicable under clause (ii) of paragraph (1)(B), except that the phrase "60 days" shall be substituted for the phrase "120 days" in that clause. If the Governor does not submit, in accordance with clause (i) of this subpara-

graph, a designation for an area (or portion thereof), the Administrator shall promulgate the designation that the Administrator deems appropriate.

(iii) No nonattainment area may be redesignated as an attainment area under this subparagraph.

(iv) Notwithstanding paragraph (1)(C)(ii) of this subsection, if an ozone or carbon monoxide nonattainment area located within a metropolitan statistical area or consolidated metropolitan statistical area (as established by the Bureau of the Census) is classified under part D of this subchapter as a Serious, Severe, or Extreme Area, the boundaries of such area are hereby revised (on the date 45 days after such classification) by operation of law to include the entire metropolitan statistical area or consolidated metropolitan statistical area, as the case may be, unless within such 45-day period the Governor (in consultation with State and local air pollution control agencies) notifies the Administrator that additional time is necessary to evaluate the application of clause (v). Whenever a Governor has submitted such a notice to the Administrator, such boundary revision shall occur on the later of the date 8 months after such classification or 14 months after November 15, 1990, unless the Governor makes the finding referred to in clause (v), and the Administrator concurs in such finding, within such period. Except as otherwise provided in this paragraph, a boundary revision under this clause or clause (v) shall apply for purposes of any State implementation plan revision required to be submitted after November 15, 1990.

(v) Whenever the Governor of a State has submitted a notice under clause (iv), the Governor, in consultation with State and local air pollution control agencies, shall undertake a study to evaluate whether the entire metropolitan statistical area or consolidated metropolitan statistical area should be included within the nonattainment area. Whenever a Governor finds and demonstrates to the satisfaction of the Administrator, and the Administrator concurs in such finding, that with respect to a portion of a metropolitan statistical area or consolidated metropolitan statistical area, sources in the portion do not contribute significantly to violation of the national ambient air quality standard, the Administrator shall approve the Governor's request to exclude such portion from the nonattainment area. In making such finding, the Governor and the Administrator shall consider factors such as population density, traffic congestion, commercial development, industrial development, meteorological conditions, and pollution transport.

(B) PM-10 designations

By operation of law, until redesignation by the Administrator pursuant to paragraph (3)—

(i) each area identified in 52 Federal Register 29383 (Aug. 7, 1987) as a Group I area (except to the extent that such identifica-

tion was modified by the Administrator before November 15, 1990) is designated nonattainment for PM-10;

(ii) any area containing a site for which air quality monitoring data show a violation of the national ambient air quality standard for PM-10 before January 1, 1989 (as determined under part 50, appendix K of title 40 of the Code of Federal Regulations) is hereby designated nonattainment for PM-10; and

(iii) each area not described in clause (i) or (ii) is hereby designated unclassifiable for PM-10.

Any designation for particulate matter (measured in terms of total suspended particulates) that the Administrator promulgated pursuant to this subsection (as in effect immediately before November 15, 1990) shall remain in effect for purposes of implementing the maximum allowable increases in concentrations of particulate matter (measured in terms of total suspended particulates) pursuant to section 7473(b) of this title, until the Administrator determines that such designation is no longer necessary for that purpose.

(5) Designations for lead

The Administrator may, in the Administrator's discretion at any time the Administrator deems appropriate, require a State to designate areas (or portions thereof) with respect to the national ambient air quality standard for lead in effect as of November 15, 1990, in accordance with the procedures under subparagraphs (A) and (B) of paragraph (1), except that in applying subparagraph (B)(i) of paragraph (1) the phrase "2 years from the date of promulgation of the new or revised national ambient air quality standard" shall be replaced by the phrase "1 year from the date the Administrator notifies the State of the requirement to designate areas with respect to the standard for lead".

(e) Redesignation of air quality control regions

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

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

(3) No compliance date extension granted under section 7413(d)(5)¹ of this title (relating to

¹ See References in Text note below.

coal conversion) shall cease to be effective by reason of the regional limitation provided in section 7413(d)(5)¹ of this title if the violation of such limitation is due solely to a redesignation of a region under this subsection.

(July 14, 1955, ch. 360, title I, §107, as added Pub. L. 91-604, §4(a), Dec. 31, 1970, 84 Stat. 1678; amended Pub. L. 95-95, title I, §103, Aug. 7, 1977, 91 Stat. 687; Pub. L. 101-549, title I, §101(a), Nov. 15, 1990, 104 Stat. 2399.)

REFERENCES IN TEXT

Section 7413 of this title, referred to in subsec. (e)(3), was amended generally by Pub. L. 101-549, title VII, §701, Nov. 15, 1990, 104 Stat. 2672, and, as so amended, subsec. (d) of section 7413 no longer relates to final compliance orders.

CODIFICATION

Section was formerly classified to section 1857c-2 of this title.

PRIOR PROVISIONS

A prior section 107 of act July 14, 1955, as added Nov. 21, 1967, Pub. L. 90-148, §2, 81 Stat. 490, related to air quality control regions and was classified to section 1857c-2 of this title, prior to repeal by Pub. L. 91-604.

Another prior section 107 of act July 14, 1955, as added Dec. 17, 1963, Pub. L. 88-206, §1, 77 Stat. 399, was renumbered section 111 by Pub. L. 90-148 and is classified to section 7411 of this title.

AMENDMENTS

1990—Subsec. (d). Pub. L. 101-549 amended subsec. (d) generally, substituting present provisions for provisions which required States to submit lists of regions not in compliance on Aug. 7, 1977, with certain air quality standards to be submitted to the Administrator, and which authorized States to revise and resubmit such lists from time to time.

1977—Subsecs. (d), (e). Pub. L. 95-95 added subsecs. (d) and (e).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as a note under section 7401 of this title.

OZONE AND PARTICULATE MATTER STANDARDS

Pub. L. 105-178, title VI, June 9, 1998, 112 Stat. 463, provided that:

“SEC. 6101. FINDINGS AND PURPOSE.

“(a) The Congress finds that—

“(1) there is a lack of air quality monitoring data for fine particle levels, measured as PM_{2.5}, in the United States and the States should receive full funding for the monitoring efforts;

“(2) such data would provide a basis for designating areas as attainment or nonattainment for any PM_{2.5} national ambient air quality standards pursuant to the standards promulgated in July 1997;

“(3) the President of the United States directed the Administrator of the Environmental Protection Agency (referred to in this title as the ‘Administrator’) in a memorandum dated July 16, 1997, to complete the next periodic review of the particulate matter national ambient air quality standards by July 2002 in order to determine ‘whether to revise or maintain the standards’;

“(4) the Administrator has stated that 3 years of air quality monitoring data for fine particle levels, measured as PM_{2.5} and performed in accordance with any applicable Federal reference methods, is appropriate for designating areas as attainment or nonattainment pursuant to the July 1997 promulgated standards; and

“(5) the Administrator has acknowledged that in drawing boundaries for attainment and nonattainment areas for the July 1997 ozone national air quality standards, Governors would benefit from considering implementation guidance from EPA on drawing area boundaries.

“(b) The purposes of this title are—

“(1) to ensure that 3 years of air quality monitoring data regarding fine particle levels are gathered for use in the determination of area attainment or nonattainment designations respecting any PM_{2.5} national ambient air quality standards;

“(2) to ensure that the Governors have adequate time to consider implementation guidance from EPA on drawing area boundaries prior to submitting area designations respecting the July 1997 ozone national ambient air quality standards;

“(3) to ensure that the schedule for implementation of the July 1997 revisions of the ambient air quality standards for particulate matter and the schedule for the Environmental Protection Agency’s visibility regulations related to regional haze are consistent with the timetable for implementation of such particulate matter standards as set forth in the President’s Implementation Memorandum dated July 16, 1997.

“SEC. 6102. PARTICULATE MATTER MONITORING PROGRAM.

“(a) Through grants under section 103 of the Clean Air Act [42 U.S.C. 7403] the Administrator of the Environmental Protection Agency shall use appropriated funds no later than fiscal year 2000 to fund 100 percent of the cost of the establishment, purchase, operation and maintenance of a PM_{2.5} monitoring network necessary to implement the national ambient air quality standards for PM_{2.5} under section 109 of the Clean Air Act [42 U.S.C. 7409]. This implementation shall not result in a diversion or reprogramming of funds from other Federal, State or local Clean Air Act activities. Any funds previously diverted or reprogrammed from section 105 Clean Air Act [42 U.S.C. 7405] grants for PM_{2.5} monitors must be restored to State or local air programs in fiscal year 1999.

“(b) EPA and the States, consistent with their respective authorities under the Clean Air Act [42 U.S.C. 7401 et seq.], shall ensure that the national network (designated in subsection (a)) which consists of the PM_{2.5} monitors necessary to implement the national ambient air quality standards is established by December 31, 1999.

“(c)(1) The Governors shall be required to submit designations referred to in section 107(d)(1) of the Clean Air Act [42 U.S.C. 7407(d)(1)] for each area following promulgation of the July 1997 PM_{2.5} national ambient air quality standard within 1 year after receipt of 3 years of air quality monitoring data performed in accordance with any applicable Federal reference methods for the relevant areas. Only data from the monitoring network designated in subsection (a) and other Federal reference method PM_{2.5} monitors shall be considered for such designations. Nothing in the previous sentence shall be construed as affecting the Governor’s authority to designate an area initially as nonattainment, and the Administrator’s authority to promulgate the designation of an area as nonattainment, under section 107(d)(1) of the Clean Air Act, based on its contribution to ambient air quality in a nearby nonattainment area.

“(2) For any area designated as nonattainment for the July 1997 PM_{2.5} national ambient air quality standard in accordance with the schedule set forth in this section, notwithstanding the time limit prescribed in paragraph (2) of section 169B(e) of the Clean Air Act [42 U.S.C. 7492(e)(2)], the Administrator shall require State implementation plan revisions referred to in such paragraph (2) to be submitted at the same time as State implementation plan revisions referred to in section 172 of the Clean Air Act [42 U.S.C. 7502] implementing the revised national ambient air quality standard for fine

particulate matter are required to be submitted. For any area designated as attainment or unclassifiable for such standard, the Administrator shall require the State implementation plan revisions referred to in such paragraph (2) to be submitted 1 year after the area has been so designated. The preceding provisions of this paragraph shall not preclude the implementation of the agreements and recommendations set forth in the Grand Canyon Visibility Transport Commission Report dated June 1996.

“(d) The Administrator shall promulgate the designations referred to in section 107(d)(1) of the Clean Air Act [42 U.S.C. 7407(d)(1)] for each area following promulgation of the July 1997 PM_{2.5} national ambient air quality standard by the earlier of 1 year after the initial designations required under subsection (c)(1) are required to be submitted or December 31, 2005.

“(e) The Administrator shall conduct a field study of the ability of the PM_{2.5} Federal Reference Method to differentiate those particles that are larger than 2.5 micrograms in diameter. This study shall be completed and provided to the Committee on Commerce [now Committee on Energy and Commerce] of the House of Representatives and the Committee on Environment and Public Works of the United States Senate no later than 2 years from the date of enactment of this Act [June 9, 1998].

“SEC. 6103. OZONE DESIGNATION REQUIREMENTS.

“(a) The Governors shall be required to submit the designations referred to in section 107(d)(1) of the Clean Air Act [42 U.S.C. 7407(d)(1)] within 2 years following the promulgation of the July 1997 ozone national ambient air quality standards.

“(b) The Administrator shall promulgate final designations no later than 1 year after the designations required under subsection (a) are required to be submitted.

“SEC. 6104. ADDITIONAL PROVISIONS.

“Nothing in sections 6101 through 6103 shall be construed by the Administrator of Environmental Protection Agency or any court, State, or person to affect any pending litigation or to be a ratification of the ozone or PM_{2.5} standards.”

PENDING ACTIONS AND PROCEEDINGS

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95-95 [Aug. 7, 1977], not to abate by reason of the taking effect of Pub. L. 95-95, see section 406(a) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7406, 7429, 7471, 7472, 7477, 7501, 7502, 7505a, 7506, 7509, 7511, 7511e, 7512, 7513, 7513a, 7514, 7545, 7607, 7651d of this title; title 23 sections 101, 109, 149.

§ 7408. Air quality criteria and control techniques

(a) Air pollutant list; publication and revision by Administrator; issuance of air quality criteria for air pollutants

(1) For the purpose of establishing national primary and secondary ambient air quality standards, the Administrator shall within 30 days after December 31, 1970, publish, and shall from time to time thereafter revise, a list which includes each air pollutant—

(A) emissions of which, in his judgment, cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare;

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

(C) for which air quality criteria had not been issued before December 31, 1970 but for which he plans to issue air quality criteria under this section.

(2) The Administrator shall issue air quality criteria for an air pollutant within 12 months after he has included such pollutant in a list under paragraph (1). Air quality criteria for an air pollutant shall accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of such pollutant in the ambient air, in varying quantities. The criteria for an air pollutant, to the extent practicable, shall include information on—

(A) those variable factors (including atmospheric conditions) which of themselves or in combination with other factors may alter the effects on public health or welfare of such air pollutant;

(B) the types of air pollutants which, when present in the atmosphere, may interact with such pollutant to produce an adverse effect on public health or welfare; and

(C) any known or anticipated adverse effects on welfare.

(b) Issuance by Administrator of information on air pollution control techniques; standing consulting committees for air pollutants; establishment; membership

(1) Simultaneously with the issuance of criteria under subsection (a) of this section, the Administrator shall, after consultation with appropriate advisory committees and Federal departments and agencies, issue to the States and appropriate air pollution control agencies information on air pollution control techniques, which information shall include data relating to the cost of installation and operation, energy requirements, emission reduction benefits, and environmental impact of the emission control technology. Such information shall include such data as are available on available technology and alternative methods of prevention and control of air pollution. Such information shall also include data on alternative fuels, processes, and operating methods which will result in elimination or significant reduction of emissions.

(2) In order to assist in the development of information on pollution control techniques, the

Administrator may establish a standing consulting committee for each air pollutant included in a list published pursuant to subsection (a)(1) of this section, which shall be comprised of technically qualified individuals representative of State and local governments, industry, and the academic community. Each such committee shall submit, as appropriate, to the Administrator information related to that required by paragraph (1).

(c) Review, modification, and reissuance of criteria or information

The Administrator shall from time to time review, and, as appropriate, modify, and reissue any criteria or information on control techniques issued pursuant to this section. Not later than six months after August 7, 1977, the Administrator shall revise and reissue criteria relating to concentrations of NO₂ over such period (not more than three hours) as he deems appropriate. Such criteria shall include a discussion of nitric and nitrous acids, nitrites, nitrates, nitrosamines, and other carcinogenic and potentially carcinogenic derivatives of oxides of nitrogen.

(d) Publication in Federal Register; availability of copies for general public

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

(e) Transportation planning and guidelines

The Administrator shall, after consultation with the Secretary of Transportation, and after providing public notice and opportunity for comment, and with State and local officials, within nine months after November 15, 1990,¹ and periodically thereafter as necessary to maintain a continuous transportation-air quality planning process, update the June 1978 Transportation-Air Quality Planning Guidelines and publish guidance on the development and implementation of transportation and other measures necessary to demonstrate and maintain attainment of national ambient air quality standards. Such guidelines shall include information on—

- (1) methods to identify and evaluate alternative planning and control activities;
- (2) methods of reviewing plans on a regular basis as conditions change or new information is presented;
- (3) identification of funds and other resources necessary to implement the plan, including interagency agreements on providing such funds and resources;
- (4) methods to assure participation by the public in all phases of the planning process; and
- (5) such other methods as the Administrator determines necessary to carry out a continuous planning process.

(f) Information regarding processes, procedures, and methods to reduce or control pollutants in transportation; reduction of mobile source related pollutants; reduction of impact on public health

(1) The Administrator shall publish and make available to appropriate Federal, State, and

local environmental and transportation agencies not later than one year after November 15, 1990, and from time to time thereafter—

(A) information prepared, as appropriate, in consultation with the Secretary of Transportation, and after providing public notice and opportunity for comment, regarding the formulation and emission reduction potential of transportation control measures related to criteria pollutants and their precursors, including, but not limited to—

- (i) programs for improved public transit;
- (ii) restriction of certain roads or lanes to, or construction of such roads or lanes for use by, passenger buses or high occupancy vehicles;
- (iii) employer-based transportation management plans, including incentives;
- (iv) trip-reduction ordinances;
- (v) traffic flow improvement programs that achieve emission reductions;
- (vi) fringe and transportation corridor parking facilities serving multiple occupancy vehicle programs or transit service;
- (vii) programs to limit or restrict vehicle use in downtown areas or other areas of emission concentration particularly during periods of peak use;
- (viii) programs for the provision of all forms of high-occupancy, shared-ride services;
- (ix) programs to limit portions of road surfaces or certain sections of the metropolitan area to the use of non-motorized vehicles or pedestrian use, both as to time and place;
- (x) programs for secure bicycle storage facilities and other facilities, including bicycle lanes, for the convenience and protection of bicyclists, in both public and private areas;
- (xi) programs to control extended idling of vehicles;
- (xii) programs to reduce motor vehicle emissions, consistent with subchapter II of this chapter, which are caused by extreme cold start conditions;
- (xiii) employer-sponsored programs to permit flexible work schedules;
- (xiv) programs and ordinances to facilitate non-automobile travel, provision and utilization of mass transit, and to generally reduce the need for single-occupant vehicle travel, as part of transportation planning and development efforts of a locality, including programs and ordinances applicable to new shopping centers, special events, and other centers of vehicle activity;
- (xv) programs for new construction and major reconstructions of paths, tracks or areas solely for the use by pedestrian or other non-motorized means of transportation when economically feasible and in the public interest. For purposes of this clause, the Administrator shall also consult with the Secretary of the Interior; and
- (xvi) program to encourage the voluntary removal from use and the marketplace of pre-1980 model year light duty vehicles and pre-1980 model light duty trucks.

(B) information on additional methods or strategies that will contribute to the reduc-

¹ See Codification note below.

tion of mobile source related pollutants during periods in which any primary ambient air quality standard will be exceeded and during episodes for which an air pollution alert, warning, or emergency has been declared;

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

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

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

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

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

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

(g) Assessment of risks to ecosystems

The Administrator may assess the risks to ecosystems from exposure to criteria air pollutants (as identified by the Administrator in the Administrator's sole discretion).

(h) RACT/BACT/LAER clearinghouse

The Administrator shall make information regarding emission control technology available to the States and to the general public through a central database. Such information shall include all control technology information received pursuant to State plan provisions requiring permits for sources, including operating permits for existing sources.

(July 14, 1955, ch. 360, title I, § 108, as added Pub. L. 91-604, § 4(a), Dec. 31, 1970, 84 Stat. 1678; amended Pub. L. 95-95, title I, §§ 104, 105, title IV, § 401(a), Aug. 7, 1977, 91 Stat. 689, 790; Pub. L. 101-549, title I, §§ 108(a)-(c), (o), 111, Nov. 15, 1990, 104 Stat. 2465, 2466, 2469, 2470; Pub. L. 105-362, title XV, § 1501(b), Nov. 10, 1998, 112 Stat. 3294.)

CODIFICATION

November 15, 1990, referred to in subsec. (e), was in the original "enactment of the Clean Air Act Amendments of 1989", and was translated as meaning the date of the enactment of Pub. L. 101-549, popularly known as the Clean Air Act Amendments of 1990, to reflect the probable intent of Congress.

Section was formerly classified to section 1857c-3 of this title.

PRIOR PROVISIONS

A prior section 108 of act July 14, 1955, was renumbered section 115 by Pub. L. 91-604 and is classified to section 7415 of this title.

AMENDMENTS

1998—Subsec. (f)(3), (4). Pub. L. 105-362 struck out par. (3), which required reports by the Secretary of Transportation and the Administrator to be submitted to Congress by Jan. 1, 1993, and every 3 years thereafter, reviewing and analyzing existing State and local air quality related transportation programs, evaluating achievement of goals, and recommending changes to existing programs, and par. (4), which required that in

each report after the first report the Secretary of Transportation include a description of the actions taken to implement the changes recommended in the preceding report.

1990—Subsec. (e). Pub. L. 101-549, § 108(a), inserted first sentence and struck out former first sentence which read as follows: "The Administrator shall, after consultation with the Secretary of Transportation and the Secretary of Housing and Urban Development and State and local officials and within 180 days after August 7, 1977, and from time to time thereafter, publish guidelines on the basic program elements for the planning process assisted under section 7505 of this title."

Subsec. (f)(1). Pub. L. 101-549, § 108(b), in introductory provisions, substituted present provisions for provisions relating to Federal agencies, States, and air pollution control agencies within either 6 months or one year after Aug. 7, 1977.

Subsec. (f)(1)(A). Pub. L. 101-549, § 108(b), substituted present provisions for provisions relating to information prepared in cooperation with Secretary of Transportation, regarding processes, procedures, and methods to reduce certain pollutants.

Subsec. (f)(3), (4). Pub. L. 101-549, § 111, added pars. (3) and (4).

Subsec. (g). Pub. L. 101-549, § 108(o), added subsec. (g).

Subsec. (h). Pub. L. 101-549, § 108(c), added subsec. (h).

1977—Subsec. (a)(1)(A). Pub. L. 95-95, § 401(a), substituted "emissions of which, in his judgment, cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare" for "which in his judgment has an adverse effect on public health or welfare".

Subsec. (b)(1). Pub. L. 95-95, § 104(a), substituted "cost of installation and operation, energy requirements, emission reduction benefits, and environmental impact of the emission control technology" for "technology and costs of emission control".

Subsec. (c). Pub. L. 95-95, § 104(b), inserted provision directing the Administrator, not later than six months after Aug. 7, 1977, to revise and reissue criteria relating to concentrations of NO₂ over such period (not more than three hours) as he deems appropriate, with the criteria to include a discussion of nitric and nitrous acids, nitrites, nitrates, nitrosamines, and other carcinogenic and potentially carcinogenic derivatives of oxides of nitrogen.

Subsecs. (e), (f). Pub. L. 95-95, § 105, added subsecs. (e) and (f).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as a note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7403, 7409, 7411, 7412, 7417, 7422, 7504, 7508, 7511a, 7511b, 7513b, 7602 of this title; title 23 sections 133, 149.

§ 7409. National primary and secondary ambient air quality standards

(a) Promulgation

(1) The Administrator—

(A) within 30 days after December 31, 1970, shall publish proposed regulations prescribing a national primary ambient air quality standard and a national secondary ambient air quality standard for each air pollutant for which air quality criteria have been issued prior to such date; and

(B) after a reasonable time for interested persons to submit written comments thereon (but no later than 90 days after the initial publication of such proposed standards) shall by regulation promulgate such proposed national primary and secondary ambient air quality standards with such modifications as he deems appropriate.

(2) With respect to any air pollutant for which air quality criteria are issued after December 31, 1970, the Administrator shall publish, simultaneously with the issuance of such criteria and information, proposed national primary and secondary ambient air quality standards for any such pollutant. The procedure provided for in paragraph (1)(B) of this subsection shall apply to the promulgation of such standards.

(b) Protection of public health and welfare

(1) National primary ambient air quality standards, prescribed under subsection (a) of this section shall be ambient air quality standards the attainment and maintenance of which in the judgment of the Administrator, based on such criteria and allowing an adequate margin of safety, are requisite to protect the public health. Such primary standards may be revised in the same manner as promulgated.

(2) Any national secondary ambient air quality standard prescribed under subsection (a) of this section shall specify a level of air quality the attainment and maintenance of which in the judgment of the Administrator, based on such criteria, is requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of such air pollutant in the ambient air. Such secondary standards may be revised in the same manner as promulgated.

(c) National primary ambient air quality standard for nitrogen dioxide

The Administrator shall, not later than one year after August 7, 1977, promulgate a national primary ambient air quality standard for NO₂ concentrations over a period of not more than 3 hours unless, based on the criteria issued under section 7408(c) of this title, he finds that there is no significant evidence that such a standard for such a period is requisite to protect public health.

(d) Review and revision of criteria and standards; independent scientific review committee; appointment; advisory functions

(1) Not later than December 31, 1980, and at five-year intervals thereafter, the Administrator shall complete a thorough review of the criteria published under section 7408 of this title and the national ambient air quality standards promulgated under this section and shall make such revisions in such criteria and standards and promulgate such new standards as may be appropriate in accordance with section 7408 of this title and subsection (b) of this section. The Ad-

ministrator may review and revise criteria or promulgate new standards earlier or more frequently than required under this paragraph.

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

(B) Not later than January 1, 1980, and at five-year intervals thereafter, the committee referred to in subparagraph (A) shall complete a review of the criteria published under section 7408 of this title and the national primary and secondary ambient air quality standards promulgated under this section and shall recommend to the Administrator any new national ambient air quality standards and revisions of existing criteria and standards as may be appropriate under section 7408 of this title and subsection (b) of this section.

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

(July 14, 1955, ch. 360, title I, § 109, as added Pub. L. 91-604, § 4(a), Dec. 31, 1970, 84 Stat. 1679; amended Pub. L. 95-95, title I, § 106, Aug. 7, 1977, 91 Stat. 691.)

CODIFICATION

Section was formerly classified to section 1857c-4 of this title.

PRIOR PROVISIONS

A prior section 109 of act July 14, 1955, was renumbered section 116 by Pub. L. 91-604 and is classified to section 7416 of this title.

AMENDMENTS

1977—Subsec. (c). Pub. L. 95-95, § 106(b), added subsec. (c).

Subsec. (d). Pub. L. 95-95, § 106(a), added subsec. (d).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as a note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see

section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law. See section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

ROLE OF SECONDARY STANDARDS

Pub. L. 101-549, title VIII, §817, Nov. 15, 1990, 104 Stat. 2697, provided that:

“(a) REPORT.—The Administrator shall request the National Academy of Sciences to prepare a report to the Congress on the role of national secondary ambient air quality standards in protecting welfare and the environment. The report shall:

“(1) include information on the effects on welfare and the environment which are caused by ambient concentrations of pollutants listed pursuant to section 108 [42 U.S.C. 7408] and other pollutants which may be listed;

“(2) estimate welfare and environmental costs incurred as a result of such effects;

“(3) examine the role of secondary standards and the State implementation planning process in preventing such effects;

“(4) determine ambient concentrations of each such pollutant which would be adequate to protect welfare and the environment from such effects;

“(5) estimate the costs and other impacts of meeting secondary standards; and

“(6) consider other means consistent with the goals and objectives of the Clean Air Act [42 U.S.C. 7401 et seq.] which may be more effective than secondary standards in preventing or mitigating such effects.

“(b) SUBMISSION TO CONGRESS; COMMENTS; AUTHORIZATION.—(1) The report shall be transmitted to the Congress not later than 3 years after the date of enactment of the Clean Air Act Amendments of 1990 [Nov. 15, 1990].

“(2) At least 90 days before issuing a report the Administrator shall provide an opportunity for public comment on the proposed report. The Administrator shall include in the final report a summary of the comments received on the proposed report.

“(3) There are authorized to be appropriated such sums as are necessary to carry out this section.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7407, 7410, 7415, 7607, 7612, 7651d of this title; title 10 section 2259.

§ 7410. State implementation plans for national primary and secondary ambient air quality standards

(a) Adoption of plan by State; submission to Administrator; content of plan; revision; new sources; indirect source review program; supplemental or intermittent control systems

(1) Each State shall, after reasonable notice and public hearings, adopt and submit to the Administrator, within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof) under section 7409 of this title for any air pollutant, a plan which provides for implementation,

and enforcement of such primary standard in each air quality control region (or portion thereof) within such State. In addition, such State shall adopt and submit to the Administrator (either as a part of a plan submitted under the preceding sentence or separately) within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national ambient air quality secondary standard (or revision thereof), a plan which provides for implementation, maintenance, and enforcement of such secondary standard in each air quality control region (or portion thereof) within such State. Unless a separate public hearing is provided, each State shall consider its plan implementing such secondary standard at the hearing required by the first sentence of this paragraph.

(2) Each implementation plan submitted by a State under this chapter shall be adopted by the State after reasonable notice and public hearing. Each such plan shall—

(A) include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this chapter;

(B) provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to—

(i) monitor, compile, and analyze data on ambient air quality, and

(ii) upon request, make such data available to the Administrator;

(C) include a program to provide for the enforcement of the measures described in subparagraph (A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D of this subchapter;

(D) contain adequate provisions—

(i) prohibiting, consistent with the provisions of this subchapter, any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will—

(I) contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard, or

(II) interfere with measures required to be included in the applicable implementation plan for any other State under part C of this subchapter to prevent significant deterioration of air quality or to protect visibility,

(ii) insuring compliance with the applicable requirements of sections 7426 and 7415 of this title (relating to interstate and international pollution abatement);

(E) provide (i) necessary assurances that the State (or, except where the Administrator deems inappropriate, the general purpose local

government or governments, or a regional agency designated by the State or general purpose local governments for such purpose) will have adequate personnel, funding, and authority under State (and, as appropriate, local) law to carry out such implementation plan (and is not prohibited by any provision of Federal or State law from carrying out such implementation plan or portion thereof), (ii) requirements that the State comply with the requirements respecting State boards under section 7428 of this title, and (iii) necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the State has responsibility for ensuring adequate implementation of such plan provision;

(F) require, as may be prescribed by the Administrator—

(i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources,

(ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and

(iii) correlation of such reports by the State agency with any emission limitations or standards established pursuant to this chapter, which reports shall be available at reasonable times for public inspection;

(G) provide for authority comparable to that in section 7603 of this title and adequate contingency plans to implement such authority;

(H) provide for revision of such plan—

(i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and

(ii) except as provided in paragraph (3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the plan is substantially inadequate to attain the national ambient air quality standard which it implements or to otherwise comply with any additional requirements established under this chapter;

(I) in the case of a plan or plan revision for an area designated as a nonattainment area, meet the applicable requirements of part D of this subchapter (relating to nonattainment areas);

(J) meet the applicable requirements of section 7421 of this title (relating to consultation), section 7427 of this title (relating to public notification), and part C of this subchapter (relating to prevention of significant deterioration of air quality and visibility protection);

(K) provide for—

(i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a national ambient air quality standard, and

(ii) the submission, upon request, of data related to such air quality modeling to the Administrator;

(L) require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this chapter, a fee sufficient to cover—

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

(ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action),

until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under subchapter V of this chapter; and

(M) provide for consultation and participation by local political subdivisions affected by the plan.

(3)(A) Repealed. Pub. L. 101-549, title I, § 101(d)(1), Nov. 15, 1990, 104 Stat. 2409.

(B) As soon as practicable, the Administrator shall, consistent with the purposes of this chapter and the Energy Supply and Environmental Coordination Act of 1974 [15 U.S.C. 791 et seq.], review each State's applicable implementation plans and report to the State on whether such plans can be revised in relation to fuel burning stationary sources (or persons supplying fuel to such sources) without interfering with the attainment and maintenance of any national ambient air quality standard within the period permitted in this section. If the Administrator determines that any such plan can be revised, he shall notify the State that a plan revision may be submitted by the State. Any plan revision which is submitted by the State shall, after public notice and opportunity for public hearing, be approved by the Administrator if the revision relates only to fuel burning stationary sources (or persons supplying fuel to such sources), and the plan as revised complies with paragraph (2) of this subsection. The Administrator shall approve or disapprove any revision no later than three months after its submission.

(C) Neither the State, in the case of a plan (or portion thereof) approved under this subsection, nor the Administrator, in the case of a plan (or portion thereof) promulgated under subsection (c) of this section, shall be required to revise an applicable implementation plan because one or more exemptions under section 7418 of this title (relating to Federal facilities), enforcement orders under section 7413(d)¹ of this title, suspensions under subsection (f) or (g) of this section (relating to temporary energy or economic authority), orders under section 7419 of this title (relating to primary nonferrous smelters), or extensions of compliance in decrees entered under section 7413(e)¹ of this title (relating to iron- and steel-producing operations) have been granted, if such plan would have met the require-

¹ See References in Text note below.

ments of this section if no such exemptions, orders, or extensions had been granted.

(4) Repealed. Pub. L. 101-549, title I, §101(d)(2), Nov. 15, 1990, 104 Stat. 2409.

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

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

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

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

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

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

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

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

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

(6) No State plan shall be treated as meeting the requirements of this section unless such plan provides that in the case of any source which uses a supplemental, or intermittent control system for purposes of meeting the requirements of an order under section 7413(d)¹ of this

title or section 7419 of this title (relating to primary nonferrous smelter orders), the owner or operator of such source may not temporarily reduce the pay of any employee by reason of the use of such supplemental or intermittent or other dispersion dependent control system.

(b) Extension of period for submission of plans

The Administrator may, wherever he determines necessary, extend the period for submission of any plan or portion thereof which implements a national secondary ambient air quality standard for a period not to exceed 18 months from the date otherwise required for submission of such plan.

(c) Preparation and publication by Administrator of proposed regulations setting forth implementation plan; transportation regulations study and report; parking surcharge; suspension authority; plan implementation

(1) The Administrator shall promulgate a Federal implementation plan at any time within 2 years after the Administrator—

(A) finds that a State has failed to make a required submission or finds that the plan or plan revision submitted by the State does not satisfy the minimum criteria established under subsection (k)(1)(A) of this section, or

(B) disapproves a State implementation plan submission in whole or in part,

unless the State corrects the deficiency, and the Administrator approves the plan or plan revision, before the Administrator promulgates such Federal implementation plan.

(2)(A) Repealed. Pub. L. 101-549, title I, §101(d)(3)(A), Nov. 15, 1990, 104 Stat. 2409.

(B) No parking surcharge regulation may be required by the Administrator under paragraph (1) of this subsection as a part of an applicable implementation plan. All parking surcharge regulations previously required by the Administrator shall be void upon June 22, 1974. This subparagraph shall not prevent the Administrator from approving parking surcharges if they are adopted and submitted by a State as part of an applicable implementation plan. The Administrator may not condition approval of any implementation plan submitted by a State on such plan's including a parking surcharge regulation.

(C) Repealed. Pub. L. 101-549, title I, §101(d)(3)(B), Nov. 15, 1990, 104 Stat. 2409.

(D) For purposes of this paragraph—

(i) The term "parking surcharge regulation" means a regulation imposing or requiring the imposition of any tax, surcharge, fee, or other charge on parking spaces, or any other area used for the temporary storage of motor vehicles.

(ii) The term "management of parking supply" shall include any requirement providing that any new facility containing a given number of parking spaces shall receive a permit or other prior approval, issuance of which is to be conditioned on air quality considerations.

(iii) The term "preferential bus/carpool lane" shall include any requirement for the setting aside of one or more lanes of a street or highway on a permanent or temporary basis for the exclusive use of buses or carpools, or both.

(E) No standard, plan, or requirement, relating to management of parking supply or preferential bus/carpool lanes shall be promulgated after June 22, 1974, by the Administrator pursuant to this section, unless such promulgation has been subjected to at least one public hearing which has been held in the area affected and for which reasonable notice has been given in such area. If substantial changes are made following public hearings, one or more additional hearings shall be held in such area after such notice.

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

(4) Repealed. Pub. L. 101-549, title I, § 101(d)(3)(C), Nov. 15, 1990, 104 Stat. 2409.

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

(B) In the case of any applicable implementation plan with respect to which a measure has been eliminated under subparagraph (A), such plan shall, not later than one year after August 7, 1977, be revised to include comprehensive measures to:

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

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

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

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

(d), (e) Repealed. Pub. L. 101-549, title I, § 101(d)(4), (5), Nov. 15, 1990, 104 Stat. 2409

(f) National or regional energy emergencies; determination by President

(1) Upon application by the owner or operator of a fuel burning stationary source, and after no-

tice and opportunity for public hearing, the Governor of the State in which such source is located may petition the President to determine that a national or regional energy emergency exists of such severity that—

(A) a temporary suspension of any part of the applicable implementation plan or of any requirement under section 7651j of this title (concerning excess emissions penalties or offsets) may be necessary, and

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

Such determination shall not be delegable by the President to any other person. If the President determines that a national or regional energy emergency of such severity exists, a temporary emergency suspension of any part of an applicable implementation plan or of any requirement under section 7651j of this title (concerning excess emissions penalties or offsets) adopted by the State may be issued by the Governor of any State covered by the President's determination under the condition specified in paragraph (2) and may take effect immediately.

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

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

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

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

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

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

(5) The Governor may include in any temporary emergency suspension issued under this subsection a provision delaying for a period identical to the period of such suspension any compliance schedule (or increment of progress) to which such source is subject under section 1857c-10² of this title, as in effect before August 7, 1977, or section 7413(d)² of this title, upon a finding that such source is unable to comply with such schedule (or increment) solely because of the conditions on the basis of which a suspension was issued under this subsection.

² See References in Text note below.

(g) Governor's authority to issue temporary emergency suspensions

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

(A) meets the requirements of this section, and

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

which the Administrator has not approved or disapproved under this section within 12 months of submission of the proposed plan revision, the Governor may issue a temporary emergency suspension of the part of the applicable implementation plan for such State which is proposed to be revised with respect to such source. The determination under subparagraph (B) may not be made with respect to a source which would close without regard to whether or not the proposed plan revision is approved.

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

(3) The Governor may include in any temporary emergency suspension issued under this subsection a provision delaying for a period identical to the period of such suspension any compliance schedule (or increment of progress) to which such source is subject under section 1857c-10² of this title as in effect before August 7, 1977, or under section 7413(d)² of this title upon a finding that such source is unable to comply with such schedule (or increment) solely because of the conditions on the basis of which a suspension was issued under this subsection.

(h) Publication of comprehensive document for each State setting forth requirements of applicable implementation plan

(1) Not later than 5 years after November 15, 1990, and every 3 years thereafter, the Administrator shall assemble and publish a comprehensive document for each State setting forth all requirements of the applicable implementation plan for such State and shall publish notice in the Federal Register of the availability of such documents.

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

(i) Modification of requirements prohibited

Except for a primary nonferrous smelter order under section 7419 of this title, a suspension under subsection (f) or (g) of this section (relating to emergency suspensions), an exemption under section 7418 of this title (relating to certain Federal facilities), an order under section 7413(d)² of this title (relating to compliance orders), a plan promulgation under subsection (c) of this section, or a plan revision under subsection (a)(3) of this section; no order, suspension, plan revision, or other action modifying

any requirement of an applicable implementation plan may be taken with respect to any stationary source by the State or by the Administrator.

(j) Technological systems of continuous emission reduction on new or modified stationary sources; compliance with performance standards

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

(k) Environmental Protection Agency action on plan submissions

(1) Completeness of plan submissions

(A) Completeness criteria

Within 9 months after November 15, 1990, the Administrator shall promulgate minimum criteria that any plan submission must meet before the Administrator is required to act on such submission under this subsection. The criteria shall be limited to the information necessary to enable the Administrator to determine whether the plan submission complies with the provisions of this chapter.

(B) Completeness finding

Within 60 days of the Administrator's receipt of a plan or plan revision, but no later than 6 months after the date, if any, by which a State is required to submit the plan or revision, the Administrator shall determine whether the minimum criteria established pursuant to subparagraph (A) have been met. Any plan or plan revision that a State submits to the Administrator, and that has not been determined by the Administrator (by the date 6 months after receipt of the submission) to have failed to meet the minimum criteria established pursuant to subparagraph (A), shall on that date be deemed by operation of law to meet such minimum criteria.

(C) Effect of finding of incompleteness

Where the Administrator determines that a plan submission (or part thereof) does not meet the minimum criteria established pursuant to subparagraph (A), the State shall be treated as not having made the submission (or, in the Administrator's discretion, part thereof).

(2) Deadline for action

Within 12 months of a determination by the Administrator (or a determination deemed by operation of law) under paragraph (1) that a State has submitted a plan or plan revision (or, in the Administrator's discretion, part thereof) that meets the minimum criteria es-

tablished pursuant to paragraph (1), if applicable (or, if those criteria are not applicable, within 12 months of submission of the plan or revision), the Administrator shall act on the submission in accordance with paragraph (3).

(3) Full and partial approval and disapproval

In the case of any submittal on which the Administrator is required to act under paragraph (2), the Administrator shall approve such submittal as a whole if it meets all of the applicable requirements of this chapter. If a portion of the plan revision meets all the applicable requirements of this chapter, the Administrator may approve the plan revision in part and disapprove the plan revision in part. The plan revision shall not be treated as meeting the requirements of this chapter until the Administrator approves the entire plan revision as complying with the applicable requirements of this chapter.

(4) Conditional approval

The Administrator may approve a plan revision based on a commitment of the State to adopt specific enforceable measures by a date certain, but not later than 1 year after the date of approval of the plan revision. Any such conditional approval shall be treated as a disapproval if the State fails to comply with such commitment.

(5) Calls for plan revisions

Whenever the Administrator finds that the applicable implementation plan for any area is substantially inadequate to attain or maintain the relevant national ambient air quality standard, to mitigate adequately the interstate pollutant transport described in section 7506a of this title or section 7511c of this title, or to otherwise comply with any requirement of this chapter, the Administrator shall require the State to revise the plan as necessary to correct such inadequacies. The Administrator shall notify the State of the inadequacies, and may establish reasonable deadlines (not to exceed 18 months after the date of such notice) for the submission of such plan revisions. Such findings and notice shall be public. Any finding under this paragraph shall, to the extent the Administrator deems appropriate, subject the State to the requirements of this chapter to which the State was subject when it developed and submitted the plan for which such finding was made, except that the Administrator may adjust any dates applicable under such requirements as appropriate (except that the Administrator may not adjust any attainment date prescribed under part D of this subchapter, unless such date has elapsed).

(6) Corrections

Whenever the Administrator determines that the Administrator's action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification, or reclassification was in error, the Administrator may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further

submission from the State. Such determination and the basis thereof shall be provided to the State and public.

(l) Plan revisions

Each revision to an implementation plan submitted by a State under this chapter shall be adopted by such State after reasonable notice and public hearing. The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 7501 of this title), or any other applicable requirement of this chapter.

(m) Sanctions

The Administrator may apply any of the sanctions listed in section 7509(b) of this title at any time (or at any time after) the Administrator makes a finding, disapproval, or determination under paragraphs (1) through (4), respectively, of section 7509(a) of this title in relation to any plan or plan item (as that term is defined by the Administrator) required under this chapter, with respect to any portion of the State the Administrator determines reasonable and appropriate, for the purpose of ensuring that the requirements of this chapter relating to such plan or plan item are met. The Administrator shall, by rule, establish criteria for exercising his authority under the previous sentence with respect to any deficiency referred to in section 7509(a) of this title to ensure that, during the 24-month period following the finding, disapproval, or determination referred to in section 7509(a) of this title, such sanctions are not applied on a statewide basis where one or more political subdivisions covered by the applicable implementation plan are principally responsible for such deficiency.

(n) Savings clauses

(1) Existing plan provisions

Any provision of any applicable implementation plan that was approved or promulgated by the Administrator pursuant to this section as in effect before November 15, 1990, shall remain in effect as part of such applicable implementation plan, except to the extent that a revision to such provision is approved or promulgated by the Administrator pursuant to this chapter.

(2) Attainment dates

For any area not designated nonattainment, any plan or plan revision submitted or required to be submitted by a State—

(A) in response to the promulgation or revision of a national primary ambient air quality standard in effect on November 15, 1990, or

(B) in response to a finding of substantial inadequacy under subsection (a)(2) of this section (as in effect immediately before November 15, 1990),

shall provide for attainment of the national primary ambient air quality standards within 3 years of November 15, 1990, or within 5 years of issuance of such finding of substantial inadequacy, whichever is later.

(3) Retention of construction moratorium in certain areas

In the case of an area to which, immediately before November 15, 1990, the prohibition on construction or modification of major stationary sources prescribed in subsection (a)(2)(I) of this section (as in effect immediately before November 15, 1990) applied by virtue of a finding of the Administrator that the State containing such area had not submitted an implementation plan meeting the requirements of section 7502(b)(6) of this title (relating to establishment of a permit program) (as in effect immediately before November 15, 1990) or 7502(a)(1) of this title (to the extent such requirements relate to provision for attainment of the primary national ambient air quality standard for sulfur oxides by December 31, 1982) as in effect immediately before November 15, 1990, no major stationary source of the relevant air pollutant or pollutants shall be constructed or modified in such area until the Administrator finds that the plan for such area meets the applicable requirements of section 7502(c)(5) of this title (relating to permit programs) or subpart 5 of part D of this subchapter (relating to attainment of the primary national ambient air quality standard for sulfur dioxide), respectively.

(o) Indian tribes

If an Indian tribe submits an implementation plan to the Administrator pursuant to section 7601(d) of this title, the plan shall be reviewed in accordance with the provisions for review set forth in this section for State plans, except as otherwise provided by regulation promulgated pursuant to section 7601(d)(2) of this title. When such plan becomes effective in accordance with the regulations promulgated under section 7601(d) of this title, the plan shall become applicable to all areas (except as expressly provided otherwise in the plan) located within the exterior boundaries of the reservation, notwithstanding the issuance of any patent and including rights-of-way running through the reservation.

(p) Reports

Any State shall submit, according to such schedule as the Administrator may prescribe, such reports as the Administrator may require relating to emission reductions, vehicle miles traveled, congestion levels, and any other information the Administrator may deem necessary to assess the development effectiveness, need for revision, or implementation of any plan or plan revision required under this chapter.

(July 14, 1955, ch. 360, title I, §110, as added Pub. L. 91-604, §4(a), Dec. 31, 1970, 84 Stat. 1680; amended Pub. L. 93-319, §4, June 22, 1974, 88 Stat. 256; Pub. L. 95-95, title I, §§107, 108, Aug. 7, 1977, 91 Stat. 691, 693; Pub. L. 95-190, §14(a)(1)-(6), Nov. 16, 1977, 91 Stat. 1399; Pub. L. 97-23, §3, July 17, 1981, 95 Stat. 142; Pub. L. 101-549, title I, §§101(b)-(d), 102(h), 107(c), 108(d), title IV, §412, Nov. 15, 1990, 104 Stat. 2404-2408, 2422, 2464, 2466, 2634.)

REFERENCES IN TEXT

The Energy Supply and Environmental Coordination Act of 1974, referred to in subsec. (a)(3)(B), is Pub. L.

93-319, June 22, 1974, 88 Stat. 246, as amended, which is classified principally to chapter 16C (§791 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 791 of Title 15 and Tables.

Section 7413 of this title, referred to in subsecs. (a)(3)(C), (6), (f)(5), (g)(3), and (i), was amended generally by Pub. L. 101-549, title VII, §701, Nov. 15, 1990, 104 Stat. 2672, and, as so amended, subsecs. (d) and (e) of section 7413 no longer relates to final compliance orders and steel industry compliance extension, respectively.

Section 1857c-10 of this title, as in effect before August 7, 1977, referred to in subsecs. (f)(5) and (g)(3), was in the original "section 119, as in effect before the date of the enactment of this paragraph", meaning section 119 of act July 14, 1955, ch. 360, title I, as added June 22, 1974, Pub. L. 93-319, §3, 88 Stat. 248, (which was classified to section 1857c-10 of this title) as in effect prior to the enactment of subsecs. (f)(5) and (g)(3) of this section by Pub. L. 95-95, §107, Aug. 7, 1977, 91 Stat. 691, effective Aug. 7, 1977. Section 112(b)(1) of Pub. L. 95-95 repealed section 119 of act July 14, 1955, ch. 360, title I, as added by Pub. L. 93-319, and provided that all references to such section 119 in any subsequent enactment which supersedes Pub. L. 93-319 shall be construed to refer to section 113(d) of the Clean Air Act and to paragraph (5) thereof in particular which is classified to section 7413(d)(5) of this title. Section 7413 of this title was subsequently amended generally by Pub. L. 101-549, title VII, §701, Nov. 15, 1990, 104 Stat. 2672, see note above. Section 117(b) of Pub. L. 95-95 added a new section 119 of act July 14, 1955, which is classified to section 7419 of this title.

CODIFICATION

Section was formerly classified to section 1857c-5 of this title.

PRIOR PROVISIONS

A prior section 110 of act July 14, 1955, was renumbered section 117 by Pub. L. 91-604 and is classified to section 7417 of this title.

AMENDMENTS

1990—Subsec. (a)(1). Pub. L. 101-549, §101(d)(8), substituted "3 years (or such shorter period as the Administrator may prescribe)" for "nine months" in two places.

Subsec. (a)(2). Pub. L. 101-549, §101(b), amended par. (2) generally, substituting present provisions for provisions setting the time within which the Administrator was to approve or disapprove a plan or portion thereof and listing the conditions under which the plan or portion thereof was to be approved after reasonable notice and hearing.

Subsec. (a)(3)(A). Pub. L. 101-549, §101(d)(1), struck out subpar. (A) which directed Administrator to approve any revision of an implementation plan if it met certain requirements and had been adopted by the State after reasonable notice and public hearings.

Subsec. (a)(3)(D). Pub. L. 101-549, §101(d)(1), struck out subpar. (D) which directed that certain implementation plans be revised to include comprehensive measures and requirements.

Subsec. (a)(4). Pub. L. 101-549, §101(d)(2), struck out par. (4) which set forth requirements for review procedure.

Subsec. (c)(1). Pub. L. 101-549, §102(h), amended par. (1) generally, substituting present provisions for provisions relating to preparation and publication of regulations setting forth an implementation plan, after opportunity for a hearing, upon failure of a State to make required submission or revision.

Subsec. (c)(2)(A). Pub. L. 101-549, §101(d)(3)(A), struck out subpar. (A) which required a study and report on necessity of parking surcharge, management of parking supply, and preferential bus/carpool lane regulations to achieve and maintain national primary ambient air quality standards.

Subsec. (c)(2)(C). Pub. L. 101-549, § 101(d)(3)(B), struck out subpar. (C) which authorized suspension of certain regulations and requirements relating to management of parking supply.

Subsec. (c)(4). Pub. L. 101-549, § 101(d)(3)(C), struck out par. (4) which permitted Governors to temporarily suspend measures in implementation plans relating to retrofits, gas rationing, and reduction of on-street parking.

Subsec. (c)(5)(B). Pub. L. 101-549, § 101(d)(3)(D), struck out "(including the written evidence required by part D)." after "include comprehensive measures".

Subsec. (d). Pub. L. 101-549, § 101(d)(4), struck out subsec. (d) which defined an applicable implementation plan for purposes of this chapter.

Subsec. (e). Pub. L. 101-549, § 101(d)(5), struck out subsec. (e) which permitted an extension of time for attainment of a national primary ambient air quality standard.

Subsec. (f)(1). Pub. L. 101-549, § 412, inserted "or of any requirement under section 7651j of this title (concerning excess emissions penalties or offsets)" in subpar. (A) and in last sentence.

Subsec. (g)(1). Pub. L. 101-549, § 101(d)(6), substituted "12 months of submission of the proposed plan revision" for "the required four month period" in closing provisions.

Subsec. (h)(1). Pub. L. 101-549, § 101(d)(7), substituted "5 years after November 15, 1990, and every three years thereafter" for "one year after August 7, 1977, and annually thereafter" and struck out at end "Each such document shall be revised as frequently as practicable but not less often than annually."

Subsecs. (k) to (n). Pub. L. 101-549, § 101(c), added subsecs. (k) to (n).

Subsec. (o). Pub. L. 101-549, § 107(c), added subsec. (o).

Subsec. (p). Pub. L. 101-549, § 108(d), added subsec. (p). 1981—Subsec. (a)(3)(C). Pub. L. 97-23 inserted reference to extensions of compliance in decrees entered under section 7413(e) of this title (relating to iron- and steel-producing operations).

1977—Subsec. (a)(2)(A). Pub. L. 95-95, § 108(a)(1), substituted "(A) except as may be provided in subparagraph (I)(i) in the case of a plan" for "(A)(i) in the case of a plan".

Subsec. (a)(2)(B). Pub. L. 95-95, § 108(a)(2), substituted "transportation controls, air quality maintenance plans, and preconstruction review of direct sources of air pollution as provided in subparagraph (D)" for "land use and transportation controls".

Subsec. (a)(2)(D). Pub. L. 95-95, § 108(a)(3), substituted "it includes a program to provide for the enforcement of emission limitations and regulation of the modification, construction, and operation of any stationary source, including a permit program as required in parts C and D and a permit or equivalent program for any major emitting facility, within such region as necessary to assure (i) that national ambient air quality standards are achieved and maintained, and (ii) a procedure" for "it includes a procedure".

Subsec. (a)(2)(E). Pub. L. 95-95, § 108(a)(4), substituted "it contains adequate provisions (i) prohibiting any stationary source within the State from emitting any air pollutant in amounts which will (I) prevent attainment or maintenance by any other State of any such national primary or secondary ambient air quality standard, or (II) interfere with measures required to be included in the applicable implementation plan for any other State under part C to prevent significant deterioration of air quality or to protect visibility, and (ii) insuring compliance with the requirements of section 7426 of this title, relating to interstate pollution abatement" for "it contains adequate provisions for intergovernmental cooperation, including measures necessary to insure that emissions of air pollutants from sources located in any air quality control region will not interfere with the attainment or maintenance of such primary or secondary standard in any portion of such region outside of such State or in any other air quality control region".

Subsec. (a)(2)(F). Pub. L. 95-95, § 108(a)(5), added cl. (vi).

Subsec. (a)(2)(H). Pub. L. 95-190, § 14(a)(1), substituted "1977;" for "1977".

Pub. L. 95-95, § 108(a)(6), inserted "except as provided in paragraph (3)(C)," after "or (ii)" and "or to otherwise comply with any additional requirements established under the Clean Air Act Amendments of 1977" after "to achieve the national ambient air quality primary or secondary standard which it implements".

Subsec. (a)(2)(I). Pub. L. 95-95, § 108(b), added subpar. (I).

Subsec. (a)(2)(J). Pub. L. 95-190, § 14(a)(2), substituted "; and" for "and".

Pub. L. 95-95, § 108(b), added subpar. (J).

Subsec. (a)(2)(K). Pub. L. 95-95, § 108(b) added subpar. (K).

Subsec. (a)(3)(C). Pub. L. 95-95, § 108(c), added subpar. (C).

Subsec. (a)(3)(D). Pub. L. 95-190, § 14(a)(4), added subpar. (D).

Subsec. (a)(5). Pub. L. 95-95, § 108(3), added par. (5).

Subsec. (a)(5)(D). Pub. L. 95-190, § 14(a)(3), struck out "preconstruction or premodification" before "review".

Subsec. (a)(6). Pub. L. 95-95, § 108(3), added par. (6).

Subsec. (c)(1). Pub. L. 95-95, § 108(d)(1), (2), substituted "plan which meets the requirements of this section" for "plan for any national ambient air quality primary or secondary standard within the time prescribed" in subpar. (A) and, in provisions following subpar. (C), directed that any portion of a plan relating to any measure described in first sentence of 7421 of this title (relating to consultation) or the consultation process required under such section 7421 of this title not be required to be promulgated before the date eight months after such date required for submission.

Subsec. (c)(3) to (5). Pub. L. 95-95, § 108(d)(3), added pars. (3) to (5).

Subsec. (d). Pub. L. 95-95, § 108(f), substituted "and which implements the requirements of this section" for "and which implements a national primary or secondary ambient air quality standard in a State".

Subsec. (f). Pub. L. 95-95, § 107(a), substituted provisions relating to the handling of national or regional energy emergencies for provisions relating to the postponement of compliance by stationary sources or classes of moving sources with any requirement of applicable implementation plans.

Subsec. (g). Pub. L. 95-95, § 108(g), added subsec. (g) relating to publication of comprehensive document.

Pub. L. 95-95, § 107(b), added subsec. (g) relating to Governor's authority to issue temporary emergency suspensions.

Subsec. (h). Pub. L. 95-190, § 14(a)(5), redesignated subsec. (g), added by Pub. L. 95-95, § 108(g), as (h). Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 95-190, § 14(a)(5), redesignated subsec. (h), added by Pub. L. 95-95, § 108(g), as (i). Former subsec. (i) redesignated (j) and amended.

Subsec. (j). Pub. L. 95-190 § 14(a)(5), (6), redesignated subsec. (i), added by Pub. L. 95-95, § 108(g), as (j) and in subsec. (j) as so redesignated, substituted "will enable such source" for "at such source will enable it".

1974—Subsec. (a)(3). Pub. L. 93-319, § 4(a), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (c). Pub. L. 93-319, § 4(b), designated existing provisions as par. (1) and existing pars. (1), (2), and (3) as subpars. (A), (B), and (C), respectively, of such redesignated par. (1), and added par. (2).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as a note under section 7401 of this title.

PENDING ACTIONS AND PROCEEDINGS

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other

officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95-95 [Aug. 7, 1977], not to abate by reason of the taking effect of Pub. L. 95-95, see section 406(a) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF IMPLEMENTATION PLANS APPROVED AND IN EFFECT PRIOR TO AUG. 7, 1977

Nothing in the Clean Air Act Amendments of 1977 [Pub. L. 95-95] to affect any requirement of an approved implementation plan under this section or any other provision in effect under this chapter before Aug. 7, 1977, until modified or rescinded in accordance with this chapter as amended by the Clean Air Act Amendments of 1977, see section 406(c) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

SAVINGS PROVISION

Section 16 of Pub. L. 91-604 provided that:

“(a)(1) Any implementation plan adopted by any State and submitted to the Secretary of Health, Education, and Welfare, or to the Administrator pursuant to the Clean Air Act [this chapter] prior to enactment of this Act [Dec. 31, 1970] may be approved under section 110 of the Clean Air Act [this section] (as amended by this Act) [Pub. L. 91-604] and shall remain in effect, unless the Administrator determines that such implementation plan, or any portion thereof, is not consistent with applicable requirements of the Clean Air Act [this chapter] (as amended by this Act) and will not provide for the attainment of national primary ambient air quality standards in the time required by such Act. If the Administrator so determines, he shall, within 90 days after promulgation of any national ambient air quality standards pursuant to section 109(a) of the Clean Air Act [section 7409(a) of this title], notify the State and specify in what respects changes are needed to meet the additional requirements of such Act, including requirements to implement national secondary ambient air quality standards. If such changes are not adopted by the State after public hearings and within six months after such notification, the Administrator shall promulgate such changes pursuant to section 110(c) of such Act [subsec. (c) of this section].

“(2) The amendments made by section 4(b) [amending sections 7403 and 7415 of this title] shall not be construed as repealing or modifying the powers of the Administrator with respect to any conference convened under section 108(d) of the Clean Air Act [section 7415 of this title] before the date of enactment of this Act [Dec. 31, 1970].

“(b) Regulations or standards issued under this title II of the Clean Air Act [subchapter II of this chapter] prior to the enactment of this Act [Dec. 31, 1970] shall continue in effect until revised by the Administrator consistent with the purposes of such Act [this chapter].”

FEDERAL ENERGY ADMINISTRATOR

“Federal Energy Administrator”, for purposes of this chapter, to mean Administrator of Federal Energy Administration established by Pub. L. 93-275, May 7, 1974, 88 Stat. 97, which is classified to section 761 et seq. of Title 15, Commerce and Trade, but with the term to mean any officer of the United States designated as such by the President until Federal Energy Administrator takes office and after Federal Energy Administration ceases to exist, see section 798 of Title 15, Commerce and Trade.

Federal Energy Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6215, 7405, 7407, 7411, 7414, 7415, 7419, 7420, 7425, 7426, 7475, 7476, 7491, 7492, 7502, 7503, 7506, 7506a, 7509, 7511, 7511a, 7511c, 7512, 7545, 7586, 7589, 7590, 7602, 7607, 7619, 7625-1, 7651g, 7651j, 7661f, 8374, 9601 of this title.

§ 7411. Standards of performance for new stationary sources

(a) Definitions

For purposes of this section:

(1) The term “standard of performance” means a standard for emissions of air pollutants which reflects the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated.

(2) The term “new source” means any stationary source, the construction or modification of which is commenced after the publication of regulations (or, if earlier, proposed regulations) prescribing a standard of performance under this section which will be applicable to such source.

(3) The term “stationary source” means any building, structure, facility, or installation which emits or may emit any air pollutant. Nothing in subchapter II of this chapter relating to nonroad engines shall be construed to apply to stationary internal combustion engines.

(4) The term “modification” means any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted.

(5) The term “owner or operator” means any person who owns, leases, operates, controls, or supervises a stationary source.

(6) The term “existing source” means any stationary source other than a new source.

(7) The term “technological system of continuous emission reduction” means—

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

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

(8) A conversion to coal (A) by reason of an order under section 2(a) of the Energy Supply and Environmental Coordination Act of 1974 [15 U.S.C. 792(a)] or any amendment thereto, or any subsequent enactment which supercedes such Act [15 U.S.C. 791 et seq.], or (B) which qualifies under section 7413(d)(5)(A)(ii)¹ of this title, shall not be deemed to be a modification for purposes of paragraphs (2) and (4) of this subsection.

(b) List of categories of stationary sources; standards of performance; information on pollution control techniques; sources owned or operated by United States; particular systems; revised standards

(1)(A) The Administrator shall, within 90 days after December 31, 1970, publish (and from time to time thereafter shall revise) a list of categories of stationary sources. He shall include a category of sources in such list if in his judgment it causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare.

(B) Within one year after the inclusion of a category of stationary sources in a list under subparagraph (A), the Administrator shall publish proposed regulations, establishing Federal standards of performance for new sources within such category. The Administrator shall afford interested persons an opportunity for written comment on such proposed regulations. After considering such comments, he shall promulgate, within one year after such publication, such standards with such modifications as he deems appropriate. The Administrator shall, at least every 8 years, review and, if appropriate, revise such standards following the procedure required by this subsection for promulgation of such standards. Notwithstanding the requirements of the previous sentence, the Administrator need not review any such standard if the Administrator determines that such review is not appropriate in light of readily available information on the efficacy of such standard. Standards of performance or revisions thereof shall become effective upon promulgation. When implementation and enforcement of any requirement of this chapter indicate that emission limitations and percent reductions beyond those required by the standards promulgated under this section are achieved in practice, the Administrator shall, when revising standards promulgated under this section, consider the emission limitations and percent reductions achieved in practice.

(2) The Administrator may distinguish among classes, types, and sizes within categories of new sources for the purpose of establishing such standards.

(3) The Administrator shall, from time to time, issue information on pollution control techniques for categories of new sources and air pollutants subject to the provisions of this section.

(4) The provisions of this section shall apply to any new source owned or operated by the United States.

(5) Except as otherwise authorized under subsection (h) of this section, nothing in this sec-

tion shall be construed to require, or to authorize the Administrator to require, any new or modified source to install and operate any particular technological system of continuous emission reduction to comply with any new source standard of performance.

(6) The revised standards of performance required by enactment of subsection (a)(1)(A)(i) and (ii)¹ of this section shall be promulgated not later than one year after August 7, 1977. Any new or modified fossil fuel fired stationary source which commences construction prior to the date of publication of the proposed revised standards shall not be required to comply with such revised standards.

(c) State implementation and enforcement of standards of performance

(1) Each State may develop and submit to the Administrator a procedure for implementing and enforcing standards of performance for new sources located in such State. If the Administrator finds the State procedure is adequate, he shall delegate to such State any authority he has under this chapter to implement and enforce such standards.

(2) Nothing in this subsection shall prohibit the Administrator from enforcing any applicable standard of performance under this section.

(d) Standards of performance for existing sources; remaining useful life of source

(1) The Administrator shall prescribe regulations which shall establish a procedure similar to that provided by section 7410 of this title under which each State shall submit to the Administrator a plan which (A) establishes standards of performance for any existing source for any air pollutant (i) for which air quality criteria have not been issued or which is not included on a list published under section 7408(a) of this title or emitted from a source category which is regulated under section 7412 of this title but (ii) to which a standard of performance under this section would apply if such existing source were a new source, and (B) provides for the implementation and enforcement of such standards of performance. Regulations of the Administrator under this paragraph shall permit the State in applying a standard of performance to any particular source under a plan submitted under this paragraph to take into consideration, among other factors, the remaining useful life of the existing source to which such standard applies.

(2) The Administrator shall have the same authority—

(A) to prescribe a plan for a State in cases where the State fails to submit a satisfactory plan as he would have under section 7410(c) of this title in the case of failure to submit an implementation plan, and

(B) to enforce the provisions of such plan in cases where the State fails to enforce them as he would have under sections 7413 and 7414 of this title with respect to an implementation plan.

In promulgating a standard of performance under a plan prescribed under this paragraph, the Administrator shall take into consideration, among other factors, remaining useful lives of

¹ See References in Text note below.

the sources in the category of sources to which such standard applies.

(e) Prohibited acts

After the effective date of standards of performance promulgated under this section, it shall be unlawful for any owner or operator of any new source to operate such source in violation of any standard of performance applicable to such source.

(f) New source standards of performance

(1) For those categories of major stationary sources that the Administrator listed under subsection (b)(1)(A) of this section before November 15, 1990, and for which regulations had not been proposed by the Administrator by November 15, 1990, the Administrator shall—

(A) propose regulations establishing standards of performance for at least 25 percent of such categories of sources within 2 years after November 15, 1990;

(B) propose regulations establishing standards of performance for at least 50 percent of such categories of sources within 4 years after November 15, 1990; and

(C) propose regulations for the remaining categories of sources within 6 years after November 15, 1990.

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

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

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

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

(3) Before promulgating any regulations under this subsection or listing any category of major stationary sources as required under this subsection, the Administrator shall consult with appropriate representatives of the Governors and of State air pollution control agencies.

(g) Revision of regulations

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

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

(3) Upon application of the Governor of a State showing that the Administrator has failed to apply properly the criteria required to be con-

sidered under subsection (f)(2) of this section, the Administrator shall revise the list under subsection (b)(1)(A) of this section to apply properly such criteria.

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

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

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

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

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

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

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

(6) Before taking any action required by subsection (f) of this section or by this subsection, the Administrator shall provide notice and opportunity for public hearing.

(h) Design, equipment, work practice, or operational standard; alternative emission limitation

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

(2) For the purpose of this subsection, the phrase "not feasible to prescribe or enforce a standard of performance" means any situation in which the Administrator determines that (A) a pollutant or pollutants cannot be emitted through a conveyance designed and constructed to emit or capture such pollutant, or that any requirement for, or use of, such a conveyance would be inconsistent with any Federal, State,

or local law, or (B) the application of measurement methodology to a particular class of sources is not practicable due to technological or economic limitations.

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

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

(5) Any design, equipment, work practice, or operational standard, or any combination thereof, described in this subsection shall be treated as a standard of performance for purposes of the provisions of this chapter (other than the provisions of subsection (a) of this section and this subsection).

(i) Country elevators

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

(j) Innovative technological systems of continuous emission reduction

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

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

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

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

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

In making any determination under clause (ii), the Administrator shall take into account any

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

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

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

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

Any such term or condition shall be treated as a standard of performance for the purposes of subsection (e) of this section and section 7413 of this title.

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

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

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

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

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

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

and that such failure cannot be corrected.

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

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

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

whichever is earlier.

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

(2)(A) If a waiver under paragraph (1) is terminated under clause (ii) of paragraph (1)(D), the Administrator shall grant an extension of the requirements of this section for such source for such minimum period as may be necessary to comply with the applicable standard of performance under this section. Such period shall not extend beyond the date three years from the time such waiver is terminated.

(B) An extension granted under this paragraph shall set forth emission limits and a compliance schedule containing increments of progress which require compliance with the applicable standards of performance as expeditiously as practicable and include such measures as are necessary and practicable in the interim to minimize emissions. Such schedule shall be treated as a standard of performance for purposes of subsection (e) of this section and section 7413 of this title.

(July 14, 1955, ch. 360, title I, §111, as added Pub. L. 91-604, §4(a), Dec. 31, 1970, 84 Stat. 1683; amended Pub. L. 92-157, title III, §302(f), Nov. 18, 1971, 85 Stat. 464; Pub. L. 95-95, title I, §109(a)-(d)(1), (e), (f), title IV, §401(b), Aug. 7, 1977, 91 Stat. 697-703, 791; Pub. L. 95-190, §14(a)(7)-(9), Nov. 16, 1977, 91 Stat. 1399; Pub. L. 95-623, §13(a), Nov. 9, 1978, 92 Stat. 3457; Pub. L. 101-549, title I, §108(e)-(g), title III, §302(a), (b), title IV, §403(a), Nov. 15, 1990, 104 Stat. 2467, 2574, 2631.)

REFERENCES IN TEXT

Such Act, referred to in subsec. (a)(8), means Pub. L. 93-319, June 22, 1974, 88 Stat. 246, as amended, known as the Energy Supply and Environmental Coordination Act of 1974, which is classified principally to chapter 16C (§791 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 791 of Title 15 and Tables.

Section 7413 of this title, referred to in subsec. (a)(8), was amended generally by Pub. L. 101-549, title VII, §701, Nov. 15, 1990, 104 Stat. 2672, and, as so amended, subsec. (d) of section 7413 no longer relates to final compliance orders.

Subsection (a)(1) of this section, referred to in subsec. (b)(6), was amended generally by Pub. L. 101-549, title VII, §403(a), Nov. 15, 1990, 104 Stat. 2631, and, as so amended, no longer contains subpars.

CODIFICATION

Section was formerly classified to section 1857c-6 of this title.

PRIOR PROVISIONS

A prior section 111 of act July 14, 1955, was renumbered section 118 by Pub. L. 91-604 and is classified to section 7418 of this title.

AMENDMENTS

1990—Subsec. (a)(1). Pub. L. 101-549, §403(a), amended par. (1) generally, substituting provisions defining “standard of performance” with respect to any air pol-

lutant for provisions defining such term with respect to subsec. (b) fossil fuel fired and other stationary sources and subsec. (d) particular sources.

Subsec. (a)(3). Pub. L. 101-549, §108(f), inserted at end “Nothing in subchapter II of this chapter relating to nonroad engines shall be construed to apply to stationary internal combustion engines.”

Subsec. (b)(1)(B). Pub. L. 101-549, §108(e)(1), substituted “Within one year” for “Within 120 days”, “within one year” for “within 90 days”, and “every 8 years” for “every four years”, inserted before last sentence “Notwithstanding the requirements of the previous sentence, the Administrator need not review any such standard if the Administrator determines that such review is not appropriate in light of readily available information on the efficacy of such standard.”, and inserted at end “When implementation and enforcement of any requirement of this chapter indicate that emission limitations and percent reductions beyond those required by the standards promulgated under this section are achieved in practice, the Administrator shall, when revising standards promulgated under this section, consider the emission limitations and percent reductions achieved in practice.”

Subsec. (d)(1)(A)(i). Pub. L. 101-549, §302(a), which directed the substitution of “7412(b)” for “7412(b)(1)(A)”, could not be executed, because of the prior amendment by Pub. L. 101-549, §108(g), see below.

Pub. L. 101-549, §108(g), substituted “or emitted from a source category which is regulated under section 7412 of this title” for “or 7412(b)(1)(A)”.

Subsec. (f)(1). Pub. L. 101-549, §108(e)(2), amended par. (1) generally, substituting present provisions for provisions requiring the Administrator to promulgate regulations listing the categories of major stationary sources not on the required list by Aug. 7, 1977, and regulations establishing standards of performance for such categories.

Subsec. (g)(5) to (8). Pub. L. 101-549, §302(b), redesignated par. (7) as (5) and struck out “or section 7412 of this title” after “this section”, redesignated par. (8) as (6), and struck out former pars. (5) and (6) which read as follows:

“(5) Upon application by the Governor of a State showing that the Administrator has failed to list any air pollutant which causes, or contributes to, air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness as a hazardous air pollutant under section 7412 of this title the Administrator shall revise the list of hazardous air pollutants under such section to include such pollutant.

“(6) Upon application by the Governor of a State showing that any category of stationary sources of a hazardous air pollutant listed under section 7412 of this title is not subject to emission standards under such section, the Administrator shall propose and promulgate such emission standards applicable to such category of sources.”

1978—Subsecs. (d)(1)(A)(ii), (g)(4)(B). Pub. L. 95-623, §13(a)(2), substituted “under this section” for “under subsection (b) of this section”.

Subsec. (h)(5). Pub. L. 95-623, §13(a)(1), added par. (5).

Subsec. (j). Pub. L. 95-623, §13(a)(3), substituted in pars. (1)(A) and (2)(A) “standards under this section” and “under this section” for “standards under subsection (b) of this section” and “under subsection (b) of this section”, respectively.

1977—Subsec. (a)(1). Pub. L. 95-95, §109(c)(1)(A), added subpars. (A), (B), and (C), substituted “For the purpose of subparagraphs (A)(i) and (ii) and (B), a standard of performance shall reflect” for “a standard for emissions of air pollutants which reflects”, “and the percentage reduction achievable” for “achievable”, and “technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environment impact and energy requirements)” for “system of emission reduction which (taking into account the cost of achieving such reduc-

tion)" in existing provisions, and inserted provision that, for the purpose of subparagraph (1)(A)(ii), any cleaning of the fuel or reduction in the pollution characteristics of the fuel after extraction and prior to combustion may be credited, as determined under regulations promulgated by the Administrator, to a source which burns such fuel.

Subsec. (a)(7). Pub. L. 95-95, §109(c)(1)(B), added par. (7) defining "technological system of continuous emission reduction".

Pub. L. 95-95, §109(f), added par. (7) directing that under certain circumstances a conversion to coal not be deemed a modification for purposes of pars. (2) and (4).

Subsec. (a)(7), (8). Pub. L. 95-190, §14(a)(7), redesignated second par. (7) as (8).

Subsec. (b)(1)(A). Pub. L. 95-95, §401(b), substituted "such list if in his judgment it causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger" for "such list if he determines it may contribute significantly to air pollution which causes or contributes to the endangerment of".

Subsec. (b)(1)(B). Pub. L. 95-95, §109(c)(2), substituted "shall, at least every four years, review and, if appropriate," for "may, from time to time,".

Subsec. (b)(5), (6). Pub. L. 95-95, §109(c)(3), added pars. (5) and (6).

Subsec. (c)(1). Pub. L. 95-95, §109(d)(1), struck out "(except with respect to new sources owned or operated by the United States)" after "implement and enforce such standards".

Subsec. (d)(1). Pub. L. 95-95, §109(b)(1), substituted "standards of performance" for "emission standards" and inserted provisions directing that regulations of the Administrator permit the State, in applying a standard of performance to any particular source under a submitted plan, to take into consideration, among other factors, the remaining useful life of the existing source to which the standard applies.

Subsec. (d)(2). Pub. L. 95-95, §109(b)(2), provided that, in promulgating a standard of performance under a plan, the Administrator take into consideration, among other factors, the remaining useful lives of the sources in the category of sources to which the standard applies.

Subsecs. (f) to (i). Pub. L. 95-95, §109(a), added subsecs. (f) to (i).

Subsecs. (j), (k). Pub. L. 95-190, §14(a)(8), (9), redesignated subsec. (k) as (j) and, as so redesignated, substituted "(B)" for "(8)" as designation for second subpar. in par. (2). Former subsec. (j), added by Pub. L. 95-95, §109(e), which related to compliance with applicable standards of performance, was struck out.

Pub. L. 95-95, §109(e), added subsec. (k).

1971—Subsec. (b)(1)(B). Pub. L. 92-157 substituted in first sentence "publish proposed" for "propose".

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as a note under section 7401 of this title.

REGULATIONS

Section 403(b), (c) of Pub. L. 101-549 provided that:
 "(b) REVISED REGULATIONS.—Not later than three years after the date of enactment of the Clean Air Act Amendments of 1990 [Nov. 15, 1990], the Administrator shall promulgate revised regulations for standards of performance for new fossil fuel fired electric utility units commencing construction after the date on which such regulations are proposed that, at a minimum, require any source subject to such revised standards to emit sulfur dioxide at a rate not greater than would have resulted from compliance by such source with the applicable standards of performance under this section [amending sections 7411 and 7479 of this title] prior to such revision.

"(c) APPLICABILITY.—The provisions of subsections (a) [amending this section] and (b) apply only so long as

the provisions of section 403(e) of the Clean Air Act [42 U.S.C. 7651b(e)] remain in effect."

TRANSFER OF FUNCTIONS

Enforcement functions of Administrator or other official in Environmental Protection Agency related to compliance with new source performance standards under this section with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas transferred to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until first anniversary of date of initial operation of Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, eff. July 1, 1979, §§102(a), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, set out in the Appendix to Title 5, Government Organization and Employees. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102-486, set out as an Abolition of Office of Federal Inspector note under section 719e of Title 15, Commerce and Trade.

PENDING ACTIONS AND PROCEEDINGS

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95-95 [Aug. 7, 1977], not to abate by reason of the taking effect of Pub. L. 95-95, see section 406(a) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7412, 7413, 7414, 7416, 7417, 7418, 7420, 7422, 7425, 7429, 7475, 7479, 7501, 7511a, 7511b, 7550, 7604, 7607, 7608, 7616, 7617, 7625-1, 7627, 7651a, 7651d, 7651f, 7651h, 7651n, 7661a, 9601 of this title.

§ 7412. Hazardous air pollutants

(a) Definitions

For purposes of this section, except subsection (r) of this section—

(1) Major source

The term "major source" means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants. The Administrator may establish a lesser quantity, or in the case of radionuclides different criteria, for a major source than that

specified in the previous sentence, on the basis of the potency of the air pollutant, persistence, potential for bioaccumulation, other characteristics of the air pollutant, or other relevant factors.

(2) Area source

The term "area source" means any stationary source of hazardous air pollutants that is not a major source. For purposes of this section, the term "area source" shall not include motor vehicles or nonroad vehicles subject to regulation under subchapter II of this chapter.

(3) Stationary source

The term "stationary source" shall have the same meaning as such term has under section 7411(a) of this title.

(4) New source

The term "new source" means a stationary source the construction or reconstruction of which is commenced after the Administrator first proposes regulations under this section establishing an emission standard applicable to such source.

(5) Modification

The term "modification" means any physical change in, or change in the method of operation of, a major source which increases the actual emissions of any hazardous air pollutant emitted by such source by more than a de minimis amount or which results in the emission of any hazardous air pollutant not previously emitted by more than a de minimis amount.

(6) Hazardous air pollutant

The term "hazardous air pollutant" means any air pollutant listed pursuant to subsection (b) of this section.

(7) Adverse environmental effect

The term "adverse environmental effect" means any significant and widespread adverse effect, which may reasonably be anticipated, to wildlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas.

(8) Electric utility steam generating unit

The term "electric utility steam generating unit" means any fossil fuel fired combustion unit of more than 25 megawatts that serves a generator that produces electricity for sale. A unit that cogenerates steam and electricity and supplies more than one-third of its potential electric output capacity and more than 25 megawatts electrical output to any utility power distribution system for sale shall be considered an electric utility steam generating unit.

(9) Owner or operator

The term "owner or operator" means any person who owns, leases, operates, controls, or supervises a stationary source.

(10) Existing source

The term "existing source" means any stationary source other than a new source.

(11) Carcinogenic effect

Unless revised, the term "carcinogenic effect" shall have the meaning provided by the Administrator under Guidelines for Carcinogenic Risk Assessment as of the date of enactment.¹ Any revisions in the existing Guidelines shall be subject to notice and opportunity for comment.

(b) List of pollutants

(1) Initial list

The Congress establishes for purposes of this section a list of hazardous air pollutants as follows:

CAS number	Chemical name
75070	Acetaldehyde
60355	Acetamide
75058	Acetonitrile
98862	Acetophenone
53963	2-Acetylaminofluorene
107028	Acrolein
79061	Acrylamide
79107	Acrylic acid
107131	Acrylonitrile
107051	Allyl chloride
92671	4-Aminobiphenyl
62533	Aniline
90040	o-Anisidine
1332214	Asbestos
71432	Benzene (including benzene from gasoline)
92875	Benzidine
98077	Benzotrichloride
100447	Benzyl chloride
92524	Biphenyl
117817	Bis(2-ethylhexyl)phthalate (DEHP)
542881	Bis(chloromethyl)ether
75252	Bromoform
106990	1,3-Butadiene
156627	Calcium cyanamide
105602	Caprolactam
133062	Captan
63252	Carbaryl
75150	Carbon disulfide
56235	Carbon tetrachloride
463581	Carbonyl sulfide
120809	Catechol
133904	Chloramben
57749	Chlordane
7782505	Chlorine
79118	Chloroacetic acid
532274	2-Chloroacetophenone
108907	Chlorobenzene
510156	Chlorobenzilate
67663	Chloroform
107302	Chloromethyl methyl ether
126998	Chloroprene
1319773	Cresols/Cresylic acid (isomers and mixture)
95487	o-Cresol
108394	m-Cresol
106445	p-Cresol
98828	Cumene
94757	2,4-D, salts and esters
3547044	DDE
334883	Diazomethane
132649	Dibenzofurans
96128	1,2-Dibromo-3-chloropropane
84742	Dibutylphthalate
106467	1,4-Dichlorobenzene(p)
91941	3,3-Dichlorobenzidene
111444	Dichloroethyl ether (Bis(2-chloroethyl)ether)
542756	1,3-Dichloropropene
62737	Dichlorvos
111422	Diethanolamine

¹ See References in Text note below.

CAS number	Chemical name	CAS number	Chemical name
121697	N,N-Diethyl aniline (N,N-Dimethylaniline)	1336363	Polychlorinated biphenyls (Aroclors)
64675	Diethyl sulfate	1120714	1,3-Propane sultone
119904	3,3-Dimethoxybenzidine	57578	beta-Propiolactone
60117	Dimethyl aminoazobenzene	123386	Propionaldehyde
119937	3,3'-Dimethyl benzidine	114261	Propoxur (Baygon)
79447	Dimethyl carbamoyl chloride	78875	Propylene dichloride (1,2-Dichloropropane)
68122	Dimethyl formamide	75569	Propylene oxide
57147	1,1-Dimethyl hydrazine	75558	1,2-Propylenimine (2-Methyl aziridine)
131113	Dimethyl phthalate	91225	Quinoline
77781	Dimethyl sulfate	106514	Quinone
534521	4,6-Dinitro-o-cresol, and salts	100425	Styrene
51285	2,4-Dinitrophenol	96093	Styrene oxide
121142	2,4-Dinitrotoluene	1746016	2,3,7,8-Tetrachlorodibenzo-p-dioxin
123911	1,4-Dioxane (1,4-Diethyleneoxide)	79345	1,1,2,2-Tetrachloroethane
122667	1,2-Diphenylhydrazine	127184	Tetrachloroethylene (Perchloroethylene)
106898	Epichlorohydrin (1-Chloro-2,3-epoxypropane)	7550450	Titanium tetrachloride
106887	1,2-Epoxybutane	108883	Toluene
140885	Ethyl acrylate	95807	2,4-Toluene diamine
100414	Ethyl benzene	584849	2,4-Toluene diisocyanate
51796	Ethyl carbamate (Urethane)	95534	o-Toluidine
75003	Ethyl chloride (Chloroethane)	8001352	Toxaphene (chlorinated camphene)
106934	Ethylene dibromide (Dibromoethane)	120821	1,2,4-Trichlorobenzene
107062	Ethylene dichloride (1,2-Dichloroethane)	79005	1,1,2-Trichloroethane
107211	Ethylene glycol	79016	Trichloroethylene
151564	Ethylene imine (Aziridine)	95954	2,4,5-Trichlorophenol
75218	Ethylene oxide	88062	2,4,6-Trichlorophenol
96457	Ethylene thiourea	121448	Triethylamine
75343	Ethylidene dichloride (1,1-Dichloroethane)	1582098	Trifluralin
50000	Formaldehyde	540841	2,2,4-Trimethylpentane
76448	Heptachlor	108054	Vinyl acetate
118741	Hexachlorobenzene	593602	Vinyl bromide
87683	Hexachlorobutadiene	75014	Vinyl chloride
77474	Hexachlorocyclopentadiene	75354	Vinylidene chloride (1,1-Dichloroethylene)
67721	Hexachloroethane	1330207	Xylenes (isomers and mixture)
822060	Hexamethylene-1,6-diisocyanate	95476	o-Xylenes
680319	Hexamethylphosphoramide	108383	m-Xylenes
110543	Hexane	106423	p-Xylenes
302012	Hydrazine	0	Antimony Compounds
7647010	Hydrochloric acid	0	Arsenic Compounds (inorganic including arsine)
7664393	Hydrogen fluoride (Hydrofluoric acid)	0	Beryllium Compounds
123319	Hydroquinone	0	Cadmium Compounds
78591	Isophorone	0	Chromium Compounds
58899	Lindane (all isomers)	0	Cobalt Compounds
108316	Maleic anhydride	0	Coke Oven Emissions
67561	Methanol	0	Cyanide Compounds ¹
72435	Methoxychlor	0	Glycol ethers ²
74839	Methyl bromide (Bromomethane)	0	Lead Compounds
74873	Methyl chloride (Chloromethane)	0	Manganese Compounds
71556	Methyl chloroform (1,1,1-Trichloroethane)	0	Mercury Compounds
78933	Methyl ethyl ketone (2-Butanone)	0	Fine mineral fibers ³
60344	Methyl hydrazine	0	Nickel Compounds
74884	Methyl iodide (Iodomethane)	0	Polycyclic Organic Matter ⁴
108101	Methyl isobutyl ketone (Hexone)	0	Radionuclides (including radon) ⁵
624839	Methyl isocyanate	0	Selenium Compounds
80626	Methyl methacrylate		
1634044	Methyl tert butyl ether		
101144	4,4-Methylene bis(2-chloroaniline)		
75092	Methylene chloride (Dichloromethane)		
101688	Methylene diphenyl diisocyanate (MDI)		
101779	4,4'-Methylenedianiline		
91203	Naphthalene		
98953	Nitrobenzene		
92933	4-Nitrobiphenyl		
100027	4-Nitrophenol		
79469	2-Nitropropane		
684935	N-Nitroso-N-methylurea		
62759	N-Nitrosodimethylamine		
59892	N-Nitrosomorpholine		
56382	Parathion		
82688	Pentachloronitrobenzene (Quintobenzene)		
87865	Pentachlorophenol		
108952	Phenol		
106503	p-Phenylenediamine		
75445	Phosgene		
7803512	Phosphine		
7723140	Phosphorus		
85449	Phthalic anhydride		

NOTE: For all listings above which contain the word "compounds" and for glycol ethers, the following applies: Unless otherwise specified, these listings are defined as including any unique chemical substance that contains the named chemical (i.e., antimony, arsenic, etc.) as part of that chemical's infrastructure.

¹X'CN where X = H' or any other group where a formal dissociation may occur. For example KCN or Ca(CN)₂.

²Includes mono- and di- ethers of ethylene glycol, diethylene glycol, and triethylene glycol R-(OCH₂CH₂)_n-OR' where

n = 1, 2, or 3

R = alkyl or aryl groups

R' = R, H, or groups which, when removed, yield glycol ethers with the structure: R-(OCH₂CH₂)_n-OH. Polymers are excluded from the glycol category.

³Includes mineral fiber emissions from facilities manufacturing or processing glass, rock, or slag fibers (or other mineral derived fibers) of average diameter 1 micrometer or less.

⁴Includes organic compounds with more than one benzene ring, and which have a boiling point greater than or equal to 100°C.

⁵A type of atom which spontaneously undergoes radioactive decay.

(2) Revision of the list

The Administrator shall periodically review the list established by this subsection and publish the results thereof and, where appropriate, revise such list by rule, adding pollutants which present, or may present, through inhalation or other routes of exposure, a threat of adverse human health effects (including, but not limited to, substances which are known to be, or may reasonably be anticipated to be, carcinogenic, mutagenic, teratogenic, neurotoxic, which cause reproductive dysfunction, or which are acutely or chronically toxic) or adverse environmental effects whether through ambient concentrations, bioaccumulation, deposition, or otherwise, but not including releases subject to regulation under subsection (r) of this section as a result of emissions to the air. No air pollutant which is listed under section 7408(a) of this title may be added to the list under this section, except that the prohibition of this sentence shall not apply to any pollutant which independently meets the listing criteria of this paragraph and is a precursor to a pollutant which is listed under section 7408(a) of this title or to any pollutant which is in a class of pollutants listed under such section. No substance, practice, process or activity regulated under subchapter VI of this chapter shall be subject to regulation under this section solely due to its adverse effects on the environment.

(3) Petitions to modify the list

(A) Beginning at any time after 6 months after November 15, 1990, any person may petition the Administrator to modify the list of hazardous air pollutants under this subsection by adding or deleting a substance or, in case of listed pollutants without CAS numbers (other than coke oven emissions, mineral fibers, or polycyclic organic matter) removing certain unique substances. Within 18 months after receipt of a petition, the Administrator shall either grant or deny the petition by publishing a written explanation of the reasons for the Administrator's decision. Any such petition shall include a showing by the petitioner that there is adequate data on the health or environmental defects² of the pollutant or other evidence adequate to support the petition. The Administrator may not deny a petition solely on the basis of inadequate resources or time for review.

(B) The Administrator shall add a substance to the list upon a showing by the petitioner or on the Administrator's own determination that the substance is an air pollutant and that emissions, ambient concentrations, bioaccumulation or deposition of the substance are known to cause or may reasonably be anticipated to cause adverse effects to human health or adverse environmental effects.

(C) The Administrator shall delete a substance from the list upon a showing by the petitioner or on the Administrator's own determination that there is adequate data on the

health and environmental effects of the substance to determine that emissions, ambient concentrations, bioaccumulation or deposition of the substance may not reasonably be anticipated to cause any adverse effects to the human health or adverse environmental effects.

(D) The Administrator shall delete one or more unique chemical substances that contain a listed hazardous air pollutant not having a CAS number (other than coke oven emissions, mineral fibers, or polycyclic organic matter) upon a showing by the petitioner or on the Administrator's own determination that such unique chemical substances that contain the named chemical of such listed hazardous air pollutant meet the deletion requirements of subparagraph (C). The Administrator must grant or deny a deletion petition prior to promulgating any emission standards pursuant to subsection (d) of this section applicable to any source category or subcategory of a listed hazardous air pollutant without a CAS number listed under subsection (b) of this section for which a deletion petition has been filed within 12 months of November 15, 1990.

(4) Further information

If the Administrator determines that information on the health or environmental effects of a substance is not sufficient to make a determination required by this subsection, the Administrator may use any authority available to the Administrator to acquire such information.

(5) Test methods

The Administrator may establish, by rule, test measures and other analytic procedures for monitoring and measuring emissions, ambient concentrations, deposition, and bioaccumulation of hazardous air pollutants.

(6) Prevention of significant deterioration

The provisions of part C of this subchapter (prevention of significant deterioration) shall not apply to pollutants listed under this section.

(7) Lead

The Administrator may not list elemental lead as a hazardous air pollutant under this subsection.

(c) List of source categories

(1) In general

Not later than 12 months after November 15, 1990, the Administrator shall publish, and shall from time to time, but no less often than every 8 years, revise, if appropriate, in response to public comment or new information, a list of all categories and subcategories of major sources and area sources (listed under paragraph (3)) of the air pollutants listed pursuant to subsection (b) of this section. To the extent practicable, the categories and subcategories listed under this subsection shall be consistent with the list of source categories established pursuant to section 7411 of this title and part C of this subchapter. Nothing in the preceding sentence limits the Administrator's authority to establish subcategories under this section, as appropriate.

²So in original. Probably should be "effects".

(2) Requirement for emissions standards

For the categories and subcategories the Administrator lists, the Administrator shall establish emissions standards under subsection (d) of this section, according to the schedule in this subsection and subsection (e) of this section.

(3) Area sources

The Administrator shall list under this subsection each category or subcategory of area sources which the Administrator finds presents a threat of adverse effects to human health or the environment (by such sources individually or in the aggregate) warranting regulation under this section. The Administrator shall, not later than 5 years after November 15, 1990, and pursuant to subsection (k)(3)(B) of this section, list, based on actual or estimated aggregate emissions of a listed pollutant or pollutants, sufficient categories or subcategories of area sources to ensure that area sources representing 90 percent of the area source emissions of the 30 hazardous air pollutants that present the greatest threat to public health in the largest number of urban areas are subject to regulation under this section. Such regulations shall be promulgated not later than 10 years after November 15, 1990.

(4) Previously regulated categories

The Administrator may, in the Administrator's discretion, list any category or subcategory of sources previously regulated under this section as in effect before November 15, 1990.

(5) Additional categories

In addition to those categories and subcategories of sources listed for regulation pursuant to paragraphs (1) and (3), the Administrator may at any time list additional categories and subcategories of sources of hazardous air pollutants according to the same criteria for listing applicable under such paragraphs. In the case of source categories and subcategories listed after publication of the initial list required under paragraph (1) or (3), emission standards under subsection (d) of this section for the category or subcategory shall be promulgated within 10 years after November 15, 1990, or within 2 years after the date on which such category or subcategory is listed, whichever is later.

(6) Specific pollutants

With respect to alkylated lead compounds, polycyclic organic matter, hexachlorobenzene, mercury, polychlorinated biphenyls, 2,3,7,8-tetrachlorodibenzofurans and 2,3,7,8-tetrachlorodibenzo-p-dioxin, the Administrator shall, not later than 5 years after November 15, 1990, list categories and subcategories of sources assuring that sources accounting for not less than 90 per centum of the aggregate emissions of each such pollutant are subject to standards under subsection (d)(2) or (d)(4) of this section. Such standards shall be promulgated not later than 10 years after November 15, 1990. This paragraph shall not be construed to require the Administrator to promulgate standards for such pollutants emitted by electric utility steam generating units.

(7) Research facilities

The Administrator shall establish a separate category covering research or laboratory facilities, as necessary to assure the equitable treatment of such facilities. For purposes of this section, "research or laboratory facility" means any stationary source whose primary purpose is to conduct research and development into new processes and products, where such source is operated under the close supervision of technically trained personnel and is not engaged in the manufacture of products for commercial sale in commerce, except in a de minimis manner.

(8) Boat manufacturing

When establishing emissions standards for styrene, the Administrator shall list boat manufacturing as a separate subcategory unless the Administrator finds that such listing would be inconsistent with the goals and requirements of this chapter.

(9) Deletions from the list

(A) Where the sole reason for the inclusion of a source category on the list required under this subsection is the emission of a unique chemical substance, the Administrator shall delete the source category from the list if it is appropriate because of action taken under either subparagraphs (C) or (D) of subsection (b)(3) of this section.

(B) The Administrator may delete any source category from the list under this subsection, on petition of any person or on the Administrator's own motion, whenever the Administrator makes the following determination or determinations, as applicable:

(i) In the case of hazardous air pollutants emitted by sources in the category that may result in cancer in humans, a determination that no source in the category (or group of sources in the case of area sources) emits such hazardous air pollutants in quantities which may cause a lifetime risk of cancer greater than one in one million to the individual in the population who is most exposed to emissions of such pollutants from the source (or group of sources in the case of area sources).

(ii) In the case of hazardous air pollutants that may result in adverse health effects in humans other than cancer or adverse environmental effects, a determination that emissions from no source in the category or subcategory concerned (or group of sources in the case of area sources) exceed a level which is adequate to protect public health with an ample margin of safety and no adverse environmental effect will result from emissions from any source (or from a group of sources in the case of area sources).

The Administrator shall grant or deny a petition under this paragraph within 1 year after the petition is filed.

(d) Emission standards**(1) In general**

The Administrator shall promulgate regulations establishing emission standards for each category or subcategory of major sources and

area sources of hazardous air pollutants listed for regulation pursuant to subsection (c) of this section in accordance with the schedules provided in subsections (c) and (e) of this section. The Administrator may distinguish among classes, types, and sizes of sources within a category or subcategory in establishing such standards except that, there shall be no delay in the compliance date for any standard applicable to any source under subsection (i) of this section as the result of the authority provided by this sentence.

(2) Standards and methods

Emissions standards promulgated under this subsection and applicable to new or existing sources of hazardous air pollutants shall require the maximum degree of reduction in emissions of the hazardous air pollutants subject to this section (including a prohibition on such emissions, where achievable) that the Administrator, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable for new or existing sources in the category or subcategory to which such emission standard applies, through application of measures, processes, methods, systems or techniques including, but not limited to, measures which—

(A) reduce the volume of, or eliminate emissions of, such pollutants through process changes, substitution of materials or other modifications,

(B) enclose systems or processes to eliminate emissions,

(C) collect, capture or treat such pollutants when released from a process, stack, storage or fugitive emissions point,

(D) are design, equipment, work practice, or operational standards (including requirements for operator training or certification) as provided in subsection (h) of this section, or

(E) are a combination of the above.

None of the measures described in subparagraphs (A) through (D) shall, consistent with the provisions of section 7414(c) of this title, in any way compromise any United States patent or United States trademark right, or any confidential business information, or any trade secret or any other intellectual property right.

(3) New and existing sources

The maximum degree of reduction in emissions that is deemed achievable for new sources in a category or subcategory shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source, as determined by the Administrator. Emission standards promulgated under this subsection for existing sources in a category or subcategory may be less stringent than standards for new sources in the same category or subcategory but shall not be less stringent, and may be more stringent than—

(A) the average emission limitation achieved by the best performing 12 percent

of the existing sources (for which the Administrator has emissions information), excluding those sources that have, within 18 months before the emission standard is proposed or within 30 months before such standard is promulgated, whichever is later, first achieved a level of emission rate or emission reduction which complies, or would comply if the source is not subject to such standard, with the lowest achievable emission rate (as defined by section 7501 of this title) applicable to the source category and prevailing at the time, in the category or subcategory for categories and subcategories with 30 or more sources, or

(B) the average emission limitation achieved by the best performing 5 sources (for which the Administrator has or could reasonably obtain emissions information) in the category or subcategory for categories or subcategories with fewer than 30 sources.

(4) Health threshold

With respect to pollutants for which a health threshold has been established, the Administrator may consider such threshold level, with an ample margin of safety, when establishing emission standards under this subsection.

(5) Alternative standard for area sources

With respect only to categories and subcategories of area sources listed pursuant to subsection (c) of this section, the Administrator may, in lieu of the authorities provided in paragraph (2) and subsection (f) of this section, elect to promulgate standards or requirements applicable to sources in such categories or subcategories which provide for the use of generally available control technologies or management practices by such sources to reduce emissions of hazardous air pollutants.

(6) Review and revision

The Administrator shall review, and revise as necessary (taking into account developments in practices, processes, and control technologies), emission standards promulgated under this section no less often than every 8 years.

(7) Other requirements preserved

No emission standard or other requirement promulgated under this section shall be interpreted, construed or applied to diminish or replace the requirements of a more stringent emission limitation or other applicable requirement established pursuant to section 7411 of this title, part C or D of this subchapter, or other authority of this chapter or a standard issued under State authority.

(8) Coke ovens

(A) Not later than December 31, 1992, the Administrator shall promulgate regulations establishing emission standards under paragraphs (2) and (3) of this subsection for coke oven batteries. In establishing such standards, the Administrator shall evaluate—

(i) the use of sodium silicate (or equivalent) luting compounds to prevent door leaks, and other operating practices and technologies for their effectiveness in reduc-

ing coke oven emissions, and their suitability for use on new and existing coke oven batteries, taking into account costs and reasonable commercial door warranties; and

(ii) as a basis for emission standards under this subsection for new coke oven batteries that begin construction after the date of proposal of such standards, the Jewell design Thompson non-recovery coke oven batteries and other non-recovery coke oven technologies, and other appropriate emission control and coke production technologies, as to their effectiveness in reducing coke oven emissions and their capability for production of steel quality coke.

Such regulations shall require at a minimum that coke oven batteries will not exceed 8 per centum leaking doors, 1 per centum leaking lids, 5 per centum leaking offtakes, and 16 seconds visible emissions per charge, with no exclusion for emissions during the period after the closing of self-sealing oven doors. Notwithstanding subsection (i) of this section, the compliance date for such emission standards for existing coke oven batteries shall be December 31, 1995.

(B) The Administrator shall promulgate work practice regulations under this subsection for coke oven batteries requiring, as appropriate—

(i) the use of sodium silicate (or equivalent) luting compounds, if the Administrator determines that use of sodium silicate is an effective means of emissions control and is achievable, taking into account costs and reasonable commercial warranties for doors and related equipment; and

(ii) door and jam cleaning practices.

Notwithstanding subsection (i) of this section, the compliance date for such work practice regulations for coke oven batteries shall be not later than the date 3 years after November 15, 1990.

(C) For coke oven batteries electing to qualify for an extension of the compliance date for standards promulgated under subsection (f) of this section in accordance with subsection (i)(8) of this section, the emission standards under this subsection for coke oven batteries shall require that coke oven batteries not exceed 8 per centum leaking doors, 1 per centum leaking lids, 5 per centum leaking offtakes, and 16 seconds visible emissions per charge, with no exclusion for emissions during the period after the closing of self-sealing doors. Notwithstanding subsection (i) of this section, the compliance date for such emission standards for existing coke oven batteries seeking an extension shall be not later than the date 3 years after November 15, 1990.

(9) Sources licensed by the Nuclear Regulatory Commission

No standard for radionuclide emissions from any category or subcategory of facilities licensed by the Nuclear Regulatory Commission (or an Agreement State) is required to be promulgated under this section if the Administrator determines, by rule, and after consulta-

tion with the Nuclear Regulatory Commission, that the regulatory program established by the Nuclear Regulatory Commission pursuant to the Atomic Energy Act [42 U.S.C. 2011 et seq.] for such category or subcategory provides an ample margin of safety to protect the public health. Nothing in this subsection shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce any standard or limitation respecting emissions of radionuclides which is more stringent than the standard or limitation in effect under section 7411 of this title or this section.

(10) Effective date

Emission standards or other regulations promulgated under this subsection shall be effective upon promulgation.

(e) Schedule for standards and review

(1) In general

The Administrator shall promulgate regulations establishing emission standards for categories and subcategories of sources initially listed for regulation pursuant to subsection (c)(1) of this section as expeditiously as practicable, assuring that—

(A) emission standards for not less than 40 categories and subcategories (not counting coke oven batteries) shall be promulgated not later than 2 years after November 15, 1990;

(B) emission standards for coke oven batteries shall be promulgated not later than December 31, 1992;

(C) emission standards for 25 per centum of the listed categories and subcategories shall be promulgated not later than 4 years after November 15, 1990;

(D) emission standards for an additional 25 per centum of the listed categories and subcategories shall be promulgated not later than 7 years after November 15, 1990; and

(E) emission standards for all categories and subcategories shall be promulgated not later than 10 years after November 15, 1990.

(2) Priorities

In determining priorities for promulgating standards under subsection (d) of this section, the Administrator shall consider—

(A) the known or anticipated adverse effects of such pollutants on public health and the environment;

(B) the quantity and location of emissions or reasonably anticipated emissions of hazardous air pollutants that each category or subcategory will emit; and

(C) the efficiency of grouping categories or subcategories according to the pollutants emitted, or the processes or technologies used.

(3) Published schedule

Not later than 24 months after November 15, 1990, and after opportunity for comment, the Administrator shall publish a schedule establishing a date for the promulgation of emission standards for each category and subcategory of sources listed pursuant to subsection (c)(1) and (3) of this section which shall be consistent with the requirements of para-

graphs (1) and (2). The determination of priorities for the promulgation of standards pursuant to this paragraph is not a rulemaking and shall not be subject to judicial review, except that, failure to promulgate any standard pursuant to the schedule established by this paragraph shall be subject to review under section 7604 of this title.

(4) Judicial review

Notwithstanding section 7607 of this title, no action of the Administrator adding a pollutant to the list under subsection (b) of this section or listing a source category or subcategory under subsection (c) of this section shall be a final agency action subject to judicial review, except that any such action may be reviewed under such section 7607 of this title when the Administrator issues emission standards for such pollutant or category.

(5) Publicly owned treatment works

The Administrator shall promulgate standards pursuant to subsection (d) of this section applicable to publicly owned treatment works (as defined in title II of the Federal Water Pollution Control Act [33 U.S.C. 1281 et seq.]) not later than 5 years after November 15, 1990.

(f) Standard to protect health and environment

(1) Report

Not later than 6 years after November 15, 1990, the Administrator shall investigate and report, after consultation with the Surgeon General and after opportunity for public comment, to Congress on—

(A) methods of calculating the risk to public health remaining, or likely to remain, from sources subject to regulation under this section after the application of standards under subsection (d) of this section;

(B) the public health significance of such estimated remaining risk and the technologically and commercially available methods and costs of reducing such risks;

(C) the actual health effects with respect to persons living in the vicinity of sources, any available epidemiological or other health studies, risks presented by background concentrations of hazardous air pollutants, any uncertainties in risk assessment methodology or other health assessment technique, and any negative health or environmental consequences to the community of efforts to reduce such risks; and

(D) recommendations as to legislation regarding such remaining risk.

(2) Emission standards

(A) If Congress does not act on any recommendation submitted under paragraph (1), the Administrator shall, within 8 years after promulgation of standards for each category or subcategory of sources pursuant to subsection (d) of this section, promulgate standards for such category or subcategory if promulgation of such standards is required in order to provide an ample margin of safety to protect public health in accordance with this section (as in effect before November 15, 1990) or to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse

environmental effect. Emission standards promulgated under this subsection shall provide an ample margin of safety to protect public health in accordance with this section (as in effect before November 15, 1990), unless the Administrator determines that a more stringent standard is necessary to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. If standards promulgated pursuant to subsection (d) of this section and applicable to a category or subcategory of sources emitting a pollutant (or pollutants) classified as a known, probable or possible human carcinogen do not reduce lifetime excess cancer risks to the individual most exposed to emissions from a source in the category or subcategory to less than one in one million, the Administrator shall promulgate standards under this subsection for such source category.

(B) Nothing in subparagraph (A) or in any other provision of this section shall be construed as affecting, or applying to the Administrator's interpretation of this section, as in effect before November 15, 1990, and set forth in the Federal Register of September 14, 1989 (54 Federal Register 38044).

(C) The Administrator shall determine whether or not to promulgate such standards and, if the Administrator decides to promulgate such standards, shall promulgate the standards 8 years after promulgation of the standards under subsection (d) of this section for each source category or subcategory concerned. In the case of categories or subcategories for which standards under subsection (d) of this section are required to be promulgated within 2 years after November 15, 1990, the Administrator shall have 9 years after promulgation of the standards under subsection (d) of this section to make the determination under the preceding sentence and, if required, to promulgate the standards under this paragraph.

(3) Effective date

Any emission standard established pursuant to this subsection shall become effective upon promulgation.

(4) Prohibition

No air pollutant to which a standard under this subsection applies may be emitted from any stationary source in violation of such standard, except that in the case of an existing source—

(A) such standard shall not apply until 90 days after its effective date, and

(B) the Administrator may grant a waiver permitting such source a period of up to 2 years after the effective date of a standard to comply with the standard if the Administrator finds that such period is necessary for the installation of controls and that steps will be taken during the period of the waiver to assure that the health of persons will be protected from imminent endangerment.

(5) Area sources

The Administrator shall not be required to conduct any review under this subsection or promulgate emission limitations under this

subsection for any category or subcategory of area sources that is listed pursuant to subsection (c)(3) of this section and for which an emission standard is promulgated pursuant to subsection (d)(5) of this section.

(6) Unique chemical substances

In establishing standards for the control of unique chemical substances of listed pollutants without CAS numbers under this subsection, the Administrator shall establish such standards with respect to the health and environmental effects of the substances actually emitted by sources and direct transformation byproducts of such emissions in the categories and subcategories.

(g) Modifications

(1) Offsets

(A) A physical change in, or change in the method of operation of, a major source which results in a greater than de minimis increase in actual emissions of a hazardous air pollutant shall not be considered a modification, if such increase in the quantity of actual emissions of any hazardous air pollutant from such source will be offset by an equal or greater decrease in the quantity of emissions of another hazardous air pollutant (or pollutants) from such source which is deemed more hazardous, pursuant to guidance issued by the Administrator under subparagraph (B). The owner or operator of such source shall submit a showing to the Administrator (or the State) that such increase has been offset under the preceding sentence.

(B) The Administrator shall, after notice and opportunity for comment and not later than 18 months after November 15, 1990, publish guidance with respect to implementation of this subsection. Such guidance shall include an identification, to the extent practicable, of the relative hazard to human health resulting from emissions to the ambient air of each of the pollutants listed under subsection (b) of this section sufficient to facilitate the offset showing authorized by subparagraph (A). Such guidance shall not authorize offsets between pollutants where the increased pollutant (or more than one pollutant in a stream of pollutants) causes adverse effects to human health for which no safety threshold for exposure can be determined unless there are corresponding decreases in such types of pollutant(s).

(2) Construction, reconstruction and modifications

(A) After the effective date of a permit program under subchapter V of this chapter in any State, no person may modify a major source of hazardous air pollutants in such State, unless the Administrator (or the State) determines that the maximum achievable control technology emission limitation under this section for existing sources will be met. Such determination shall be made on a case-by-case basis where no applicable emissions limitations have been established by the Administrator.

(B) After the effective date of a permit program under subchapter V of this chapter in any State, no person may construct or recon-

struct any major source of hazardous air pollutants, unless the Administrator (or the State) determines that the maximum achievable control technology emission limitation under this section for new sources will be met. Such determination shall be made on a case-by-case basis where no applicable emission limitations have been established by the Administrator.

(3) Procedures for modifications

The Administrator (or the State) shall establish reasonable procedures for assuring that the requirements applying to modifications under this section are reflected in the permit.

(h) Work practice standards and other requirements

(1) In general

For purposes of this section, if it is not feasible in the judgment of the Administrator to prescribe or enforce an emission standard for control of a hazardous air pollutant or pollutants, the Administrator may, in lieu thereof, promulgate a design, equipment, work practice, or operational standard, or combination thereof, which in the Administrator's judgment is consistent with the provisions of subsection (d) or (f) of this section. In the event the Administrator promulgates a design or equipment standard under this subsection, the Administrator shall include as part of such standard such requirements as will assure the proper operation and maintenance of any such element of design or equipment.

(2) Definition

For the purpose of this subsection, the phrase "not feasible to prescribe or enforce an emission standard" means any situation in which the Administrator determines that—

(A) a hazardous air pollutant or pollutants cannot be emitted through a conveyance designed and constructed to emit or capture such pollutant, or that any requirement for, or use of, such a conveyance would be inconsistent with any Federal, State or local law, or

(B) the application of measurement methodology to a particular class of sources is not practicable due to technological and economic limitations.

(3) Alternative standard

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

(4) Numerical standard required

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

(i) Schedule for compliance**(1) Preconstruction and operating requirements**

After the effective date of any emission standard, limitation, or regulation under subsection (d), (f) or (h) of this section, no person may construct any new major source or reconstruct any existing major source subject to such emission standard, regulation or limitation unless the Administrator (or a State with a permit program approved under subchapter V of this chapter) determines that such source, if properly constructed, reconstructed and operated, will comply with the standard, regulation or limitation.

(2) Special rule

Notwithstanding the requirements of paragraph (1), a new source which commences construction or reconstruction after a standard, limitation or regulation applicable to such source is proposed and before such standard, limitation or regulation is promulgated shall not be required to comply with such promulgated standard until the date 3 years after the date of promulgation if—

(A) the promulgated standard, limitation or regulation is more stringent than the standard, limitation or regulation proposed; and

(B) the source complies with the standard, limitation, or regulation as proposed during the 3-year period immediately after promulgation.

(3) Compliance schedule for existing sources

(A) After the effective date of any emissions standard, limitation or regulation promulgated under this section and applicable to a source, no person may operate such source in violation of such standard, limitation or regulation except, in the case of an existing source, the Administrator shall establish a compliance date or dates for each category or subcategory of existing sources, which shall provide for compliance as expeditiously as practicable, but in no event later than 3 years after the effective date of such standard, except as provided in subparagraph (B) and paragraphs (4) through (8).

(B) The Administrator (or a State with a program approved under subchapter V of this chapter) may issue a permit that grants an extension permitting an existing source up to 1 additional year to comply with standards under subsection (d) of this section if such additional period is necessary for the installation of controls. An additional extension of up to 3 years may be added for mining waste operations, if the 4-year compliance time is insufficient to dry and cover mining waste in order to reduce emissions of any pollutant listed under subsection (b) of this section.

(4) Presidential exemption

The President may exempt any stationary source from compliance with any standard or limitation under this section for a period of not more than 2 years if the President determines that the technology to implement such standard is not available and that it is in the

national security interests of the United States to do so. An exemption under this paragraph may be extended for 1 or more additional periods, each period not to exceed 2 years. The President shall report to Congress with respect to each exemption (or extension thereof) made under this paragraph.

(5) Early reduction

(A) The Administrator (or a State acting pursuant to a permit program approved under subchapter V of this chapter) shall issue a permit allowing an existing source, for which the owner or operator demonstrates that the source has achieved a reduction of 90 per centum or more in emissions of hazardous air pollutants (95 per centum in the case of hazardous air pollutants which are particulates) from the source, to meet an alternative emission limitation reflecting such reduction in lieu of an emission limitation promulgated under subsection (d) of this section for a period of 6 years from the compliance date for the otherwise applicable standard, provided that such reduction is achieved before the otherwise applicable standard under subsection (d) of this section is first proposed. Nothing in this paragraph shall preclude a State from requiring reductions in excess of those specified in this subparagraph as a condition of granting the extension authorized by the previous sentence.

(B) An existing source which achieves the reduction referred to in subparagraph (A) after the proposal of an applicable standard but before January 1, 1994, may qualify under subparagraph (A), if the source makes an enforceable commitment to achieve such reduction before the proposal of the standard. Such commitment shall be enforceable to the same extent as a regulation under this section.

(C) The reduction shall be determined with respect to verifiable and actual emissions in a base year not earlier than calendar year 1987, provided that, there is no evidence that emissions in the base year are artificially or substantially greater than emissions in other years prior to implementation of emissions reduction measures. The Administrator may allow a source to use a baseline year of 1985 or 1986 provided that the source can demonstrate to the satisfaction of the Administrator that emissions data for the source reflects verifiable data based on information for such source, received by the Administrator prior to November 15, 1990, pursuant to an information request issued under section 7414 of this title.

(D) For each source granted an alternative emission limitation under this paragraph there shall be established by a permit issued pursuant to subchapter V of this chapter an enforceable emission limitation for hazardous air pollutants reflecting the reduction which qualifies the source for an alternative emission limitation under this paragraph. An alternative emission limitation under this paragraph shall not be available with respect to standards or requirements promulgated pursuant to subsection (f) of this section and the Administrator shall, for the purpose of determining whether a standard under subsection (f) of this section is necessary, review emis-

sions from sources granted an alternative emission limitation under this paragraph at the same time that other sources in the category or subcategory are reviewed.

(E) With respect to pollutants for which high risks of adverse public health effects may be associated with exposure to small quantities including, but not limited to, chlorinated dioxins and furans, the Administrator shall by regulation limit the use of offsetting reductions in emissions of other hazardous air pollutants from the source as counting toward the 90 per centum reduction in such high-risk pollutants qualifying for an alternative emissions limitation under this paragraph.

(6) Other reductions

Notwithstanding the requirements of this section, no existing source that has installed—

(A) best available control technology (as defined in section 7479(3) of this title), or

(B) technology required to meet a lowest achievable emission rate (as defined in section 7501 of this title),

prior to the promulgation of a standard under this section applicable to such source and the same pollutant (or stream of pollutants) controlled pursuant to an action described in subparagraph (A) or (B) shall be required to comply with such standard under this section until the date 5 years after the date on which such installation or reduction has been achieved, as determined by the Administrator. The Administrator may issue such rules and guidance as are necessary to implement this paragraph.

(7) Extension for new sources

A source for which construction or reconstruction is commenced after the date an emission standard applicable to such source is proposed pursuant to subsection (d) of this section but before the date an emission standard applicable to such source is proposed pursuant to subsection (f) of this section shall not be required to comply with the emission standard under subsection (f) of this section until the date 10 years after the date construction or reconstruction is commenced.

(8) Coke ovens

(A) Any coke oven battery that complies with the emission limitations established under subsection (d)(8)(C) of this section, subparagraph (B), and subparagraph (C), and complies with the provisions of subparagraph (E), shall not be required to achieve emission limitations promulgated under subsection (f) of this section until January 1, 2020.

(B)(i) Not later than December 31, 1992, the Administrator shall promulgate emission limitations for coke oven emissions from coke oven batteries. Notwithstanding paragraph (3) of this subsection, the compliance date for such emission limitations for existing coke oven batteries shall be January 1, 1998. Such emission limitations shall reflect the lowest achievable emission rate as defined in section 7501 of this title for a coke oven battery that is rebuilt or a replacement at a coke oven plant for an existing battery. Such emission limitations shall be no less stringent than—

(I) 3 per centum leaking doors (5 per centum leaking doors for six meter batteries);

(II) 1 per centum leaking lids;

(III) 4 per centum leaking offtakes; and

(IV) 16 seconds visible emissions per charge,

with an exclusion for emissions during the period after the closing of self-sealing oven doors (or the total mass emissions equivalent). The rulemaking in which such emission limitations are promulgated shall also establish an appropriate measurement methodology for determining compliance with such emission limitations, and shall establish such emission limitations in terms of an equivalent level of mass emissions reduction from a coke oven battery, unless the Administrator finds that such a mass emissions standard would not be practicable or enforceable. Such measurement methodology, to the extent it measures leaking doors, shall take into consideration alternative test methods that reflect the best technology and practices actually applied in the affected industries, and shall assure that the final test methods are consistent with the performance of such best technology and practices.

(ii) If the Administrator fails to promulgate such emission limitations under this subparagraph prior to the effective date of such emission limitations, the emission limitations applicable to coke oven batteries under this subparagraph shall be—

(I) 3 per centum leaking doors (5 per centum leaking doors for six meter batteries);

(II) 1 per centum leaking lids;

(III) 4 per centum leaking offtakes; and

(IV) 16 seconds visible emissions per charge,

or the total mass emissions equivalent (if the total mass emissions equivalent is determined to be practicable and enforceable), with no exclusion for emissions during the period after the closing of self-sealing oven doors.

(C) Not later than January 1, 2007, the Administrator shall review the emission limitations promulgated under subparagraph (B) and revise, as necessary, such emission limitations to reflect the lowest achievable emission rate as defined in section 7501 of this title at the time for a coke oven battery that is rebuilt or a replacement at a coke oven plant for an existing battery. Such emission limitations shall be no less stringent than the emission limitation promulgated under subparagraph (B). Notwithstanding paragraph (2) of this subsection, the compliance date for such emission limitations for existing coke oven batteries shall be January 1, 2010.

(D) At any time prior to January 1, 1998, the owner or operator of any coke oven battery may elect to comply with emission limitations promulgated under subsection (f) of this section by the date such emission limitations would otherwise apply to such coke oven battery, in lieu of the emission limitations and the compliance dates provided under subparagraphs (B) and (C) of this paragraph. Any such owner or operator shall be legally bound to comply with such emission limitations pro-

mulgated under subsection (f) of this section with respect to such coke oven battery as of January 1, 2003. If no such emission limitations have been promulgated for such coke oven battery, the Administrator shall promulgate such emission limitations in accordance with subsection (f) of this section for such coke oven battery.

(E) Coke oven batteries qualifying for an extension under subparagraph (A) shall make available not later than January 1, 2000, to the surrounding communities the results of any risk assessment performed by the Administrator to determine the appropriate level of any emission standard established by the Administrator pursuant to subsection (f) of this section.

(F) Notwithstanding the provisions of this section, reconstruction of any source of coke oven emissions qualifying for an extension under this paragraph shall not subject such source to emission limitations under subsection (f) of this section more stringent than those established under subparagraphs (B) and (C) until January 1, 2020. For the purposes of this subparagraph, the term "reconstruction" includes the replacement of existing coke oven battery capacity with new coke oven batteries of comparable or lower capacity and lower potential emissions.

(j) Equivalent emission limitation by permit

(1) Effective date

The requirements of this subsection shall apply in each State beginning on the effective date of a permit program established pursuant to subchapter V of this chapter in such State, but not prior to the date 42 months after November 15, 1990.

(2) Failure to promulgate a standard

In the event that the Administrator fails to promulgate a standard for a category or subcategory of major sources by the date established pursuant to subsection (e)(1) and (3) of this section, and beginning 18 months after such date (but not prior to the effective date of a permit program under subchapter V of this chapter), the owner or operator of any major source in such category or subcategory shall submit a permit application under paragraph (3) and such owner or operator shall also comply with paragraphs (5) and (6).

(3) Applications

By the date established by paragraph (2), the owner or operator of a major source subject to this subsection shall file an application for a permit. If the owner or operator of a source has submitted a timely and complete application for a permit required by this subsection, any failure to have a permit shall not be a violation of paragraph (2), unless the delay in final action is due to the failure of the applicant to timely submit information required or requested to process the application. The Administrator shall not later than 18 months after November 15, 1990, and after notice and opportunity for comment, establish requirements for applications under this subsection including a standard application form and criteria for determining in a timely manner the completeness of applications.

(4) Review and approval

Permit applications submitted under this subsection shall be reviewed and approved or disapproved according to the provisions of section 7661d of this title. In the event that the Administrator (or the State) disapproves a permit application submitted under this subsection or determines that the application is incomplete, the applicant shall have up to 6 months to revise the application to meet the objections of the Administrator (or the State).

(5) Emission limitation

The permit shall be issued pursuant to subchapter V of this chapter and shall contain emission limitations for the hazardous air pollutants subject to regulation under this section and emitted by the source that the Administrator (or the State) determines, on a case-by-case basis, to be equivalent to the limitation that would apply to such source if an emission standard had been promulgated in a timely manner under subsection (d) of this section. In the alternative, if the applicable criteria are met, the permit may contain an emissions limitation established according to the provisions of subsection (i)(5) of this section. For purposes of the preceding sentence, the reduction required by subsection (i)(5)(A) of this section shall be achieved by the date on which the relevant standard should have been promulgated under subsection (d) of this section. No such pollutant may be emitted in amounts exceeding an emission limitation contained in a permit immediately for new sources and, as expeditiously as practicable, but not later than the date 3 years after the permit is issued for existing sources or such other compliance date as would apply under subsection (i) of this section.

(6) Applicability of subsequent standards

If the Administrator promulgates an emission standard that is applicable to the major source prior to the date on which a permit application is approved, the emission limitation in the permit shall reflect the promulgated standard rather than the emission limitation determined pursuant to paragraph (5), provided that the source shall have the compliance period provided under subsection (i) of this section. If the Administrator promulgates a standard under subsection (d) of this section that would be applicable to the source in lieu of the emission limitation established by permit under this subsection after the date on which the permit has been issued, the Administrator (or the State) shall revise such permit upon the next renewal to reflect the standard promulgated by the Administrator providing such source a reasonable time to comply, but no longer than 8 years after such standard is promulgated or 8 years after the date on which the source is first required to comply with the emissions limitation established by paragraph (5), whichever is earlier.

(k) Area source program

(1) Findings and purpose

The Congress finds that emissions of hazardous air pollutants from area sources may indi-

vidually, or in the aggregate, present significant risks to public health in urban areas. Considering the large number of persons exposed and the risks of carcinogenic and other adverse health effects from hazardous air pollutants, ambient concentrations characteristic of large urban areas should be reduced to levels substantially below those currently experienced. It is the purpose of this subsection to achieve a substantial reduction in emissions of hazardous air pollutants from area sources and an equivalent reduction in the public health risks associated with such sources including a reduction of not less than 75 per centum in the incidence of cancer attributable to emissions from such sources.

(2) Research program

The Administrator shall, after consultation with State and local air pollution control officials, conduct a program of research with respect to sources of hazardous air pollutants in urban areas and shall include within such program—

(A) ambient monitoring for a broad range of hazardous air pollutants (including, but not limited to, volatile organic compounds, metals, pesticides and products of incomplete combustion) in a representative number of urban locations;

(B) analysis to characterize the sources of such pollution with a focus on area sources and the contribution that such sources make to public health risks from hazardous air pollutants; and

(C) consideration of atmospheric transformation and other factors which can elevate public health risks from such pollutants.

Health effects considered under this program shall include, but not be limited to, carcinogenicity, mutagenicity, teratogenicity, neurotoxicity, reproductive dysfunction and other acute and chronic effects including the role of such pollutants as precursors of ozone or acid aerosol formation. The Administrator shall report the preliminary results of such research not later than 3 years after November 15, 1990.

(3) National strategy

(A) Considering information collected pursuant to the monitoring program authorized by paragraph (2), the Administrator shall, not later than 5 years after November 15, 1990, and after notice and opportunity for public comment, prepare and transmit to the Congress a comprehensive strategy to control emissions of hazardous air pollutants from area sources in urban areas.

(B) The strategy shall—

(i) identify not less than 30 hazardous air pollutants which, as the result of emissions from area sources, present the greatest threat to public health in the largest number of urban areas and that are or will be listed pursuant to subsection (b) of this section, and

(ii) identify the source categories or subcategories emitting such pollutants that are or will be listed pursuant to subsection (c) of this section. When identifying categories

and subcategories of sources under this subparagraph, the Administrator shall assure that sources accounting for 90 per centum or more of the aggregate emissions of each of the 30 identified hazardous air pollutants are subject to standards pursuant to subsection (d) of this section.

(C) The strategy shall include a schedule of specific actions to substantially reduce the public health risks posed by the release of hazardous air pollutants from area sources that will be implemented by the Administrator under the authority of this or other laws (including, but not limited to, the Toxic Substances Control Act [15 U.S.C. 2601 et seq.], the Federal Insecticide, Fungicide and Rodenticide Act [7 U.S.C. 136 et seq.] and the Resource Conservation and Recovery Act [42 U.S.C. 6901 et seq.]) or by the States. The strategy shall achieve a reduction in the incidence of cancer attributable to exposure to hazardous air pollutants emitted by stationary sources of not less than 75 per centum, considering control of emissions of hazardous air pollutants from all stationary sources and resulting from measures implemented by the Administrator or by the States under this or other laws.

(D) The strategy may also identify research needs in monitoring, analytical methodology, modeling or pollution control techniques and recommendations for changes in law that would further the goals and objectives of this subsection.

(E) Nothing in this subsection shall be interpreted to preclude or delay implementation of actions with respect to area sources of hazardous air pollutants under consideration pursuant to this or any other law and that may be promulgated before the strategy is prepared.

(F) The Administrator shall implement the strategy as expeditiously as practicable assuring that all sources are in compliance with all requirements not later than 9 years after November 15, 1990.

(G) As part of such strategy the Administrator shall provide for ambient monitoring and emissions modeling in urban areas as appropriate to demonstrate that the goals and objectives of the strategy are being met.

(4) Areawide activities

In addition to the national urban air toxics strategy authorized by paragraph (3), the Administrator shall also encourage and support areawide strategies developed by State or local air pollution control agencies that are intended to reduce risks from emissions by area sources within a particular urban area. From the funds available for grants under this section, the Administrator shall set aside not less than 10 per centum to support areawide strategies addressing hazardous air pollutants emitted by area sources and shall award such funds on a demonstration basis to those States with innovative and effective strategies. At the request of State or local air pollution control officials, the Administrator shall prepare guidelines for control technologies or management practices which may be applicable to various categories or subcategories of area sources.

(5) Report

The Administrator shall report to the Congress at intervals not later than 8 and 12 years after November 15, 1990, on actions taken under this subsection and other parts of this chapter to reduce the risk to public health posed by the release of hazardous air pollutants from area sources. The reports shall also identify specific metropolitan areas that continue to experience high risks to public health as the result of emissions from area sources.

(I) State programs**(1) In general**

Each State may develop and submit to the Administrator for approval a program for the implementation and enforcement (including a review of enforcement delegations previously granted) of emission standards and other requirements for air pollutants subject to this section or requirements for the prevention and mitigation of accidental releases pursuant to subsection (r) of this section. A program submitted by a State under this subsection may provide for partial or complete delegation of the Administrator's authorities and responsibilities to implement and enforce emissions standards and prevention requirements but shall not include authority to set standards less stringent than those promulgated by the Administrator under this chapter.

(2) Guidance

Not later than 12 months after November 15, 1990, the Administrator shall publish guidance that would be useful to the States in developing programs for submittal under this subsection. The guidance shall also provide for the registration of all facilities producing, processing, handling or storing any substance listed pursuant to subsection (r) of this section in amounts greater than the threshold quantity. The Administrator shall include as an element in such guidance an optional program begun in 1986 for the review of high-risk point sources of air pollutants including, but not limited to, hazardous air pollutants listed pursuant to subsection (b) of this section.

(3) Technical assistance

The Administrator shall establish and maintain an air toxics clearinghouse and center to provide technical information and assistance to State and local agencies and, on a cost recovery basis, to others on control technology, health and ecological risk assessment, risk analysis, ambient monitoring and modeling, and emissions measurement and monitoring. The Administrator shall use the authority of section 7403 of this title to examine methods for preventing, measuring, and controlling emissions and evaluating associated health and ecological risks. Where appropriate, such activity shall be conducted with not-for-profit organizations. The Administrator may conduct research on methods for preventing, measuring and controlling emissions and evaluating associated health and environment risks. All information collected under this paragraph shall be available to the public.

(4) Grants

Upon application of a State, the Administrator may make grants, subject to such terms and conditions as the Administrator deems appropriate, to such State for the purpose of assisting the State in developing and implementing a program for submittal and approval under this subsection. Programs assisted under this paragraph may include program elements addressing air pollutants or extremely hazardous substances other than those specifically subject to this section. Grants under this paragraph may include support for high-risk point source review as provided in paragraph (2) and support for the development and implementation of area-wide area source programs pursuant to subsection (k) of this section.

(5) Approval or disapproval

Not later than 180 days after receiving a program submitted by a State, and after notice and opportunity for public comment, the Administrator shall either approve or disapprove such program. The Administrator shall disapprove any program submitted by a State, if the Administrator determines that—

(A) the authorities contained in the program are not adequate to assure compliance by all sources within the State with each applicable standard, regulation or requirement established by the Administrator under this section;

(B) adequate authority does not exist, or adequate resources are not available, to implement the program;

(C) the schedule for implementing the program and assuring compliance by affected sources is not sufficiently expeditious; or

(D) the program is otherwise not in compliance with the guidance issued by the Administrator under paragraph (2) or is not likely to satisfy, in whole or in part, the objectives of this chapter.

If the Administrator disapproves a State program, the Administrator shall notify the State of any revisions or modifications necessary to obtain approval. The State may revise and re-submit the proposed program for review and approval pursuant to the provisions of this subsection.

(6) Withdrawal

Whenever the Administrator determines, after public hearing, that a State is not administering and enforcing a program approved pursuant to this subsection in accordance with the guidance published pursuant to paragraph (2) or the requirements of paragraph (5), the Administrator shall so notify the State and, if action which will assure prompt compliance is not taken within 90 days, the Administrator shall withdraw approval of the program. The Administrator shall not withdraw approval of any program unless the State shall have been notified and the reasons for withdrawal shall have been stated in writing and made public.

(7) Authority to enforce

Nothing in this subsection shall prohibit the Administrator from enforcing any applicable

emission standard or requirement under this section.

(8) Local program

The Administrator may, after notice and opportunity for public comment, approve a program developed and submitted by a local air pollution control agency (after consultation with the State) pursuant to this subsection and any such agency implementing an approved program may take any action authorized to be taken by a State under this section.

(9) Permit authority

Nothing in this subsection shall affect the authorities and obligations of the Administrator or the State under subchapter V of this chapter.

(m) Atmospheric deposition to Great Lakes and coastal waters

(1) Deposition assessment

The Administrator, in cooperation with the Under Secretary of Commerce for Oceans and Atmosphere, shall conduct a program to identify and assess the extent of atmospheric deposition of hazardous air pollutants (and in the discretion of the Administrator, other air pollutants) to the Great Lakes, the Chesapeake Bay, Lake Champlain and coastal waters. As part of such program, the Administrator shall—

(A) monitor the Great Lakes, the Chesapeake Bay, Lake Champlain and coastal waters, including monitoring of the Great Lakes through the monitoring network established pursuant to paragraph (2) of this subsection and designing and deploying an atmospheric monitoring network for coastal waters pursuant to paragraph (4);

(B) investigate the sources and deposition rates of atmospheric deposition of air pollutants (and their atmospheric transformation precursors);

(C) conduct research to develop and improve monitoring methods and to determine the relative contribution of atmospheric pollutants to total pollution loadings to the Great Lakes, the Chesapeake Bay, Lake Champlain, and coastal waters;

(D) evaluate any adverse effects to public health or the environment caused by such deposition (including effects resulting from indirect exposure pathways) and assess the contribution of such deposition to violations of water quality standards established pursuant to the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.] and drinking water standards established pursuant to the Safe Drinking Water Act [42 U.S.C. 300f et seq.]; and

(E) sample for such pollutants in biota, fish, and wildlife of the Great Lakes, the Chesapeake Bay, Lake Champlain and coastal waters and characterize the sources of such pollutants.

(2) Great Lakes monitoring network

The Administrator shall oversee, in accordance with Annex 15 of the Great Lakes Water Quality Agreement, the establishment and operation of a Great Lakes atmospheric deposi-

tion network to monitor atmospheric deposition of hazardous air pollutants (and in the Administrator's discretion, other air pollutants) to the Great Lakes.

(A) As part of the network provided for in this paragraph, and not later than December 31, 1991, the Administrator shall establish in each of the 5 Great Lakes at least 1 facility capable of monitoring the atmospheric deposition of hazardous air pollutants in both dry and wet conditions.

(B) The Administrator shall use the data provided by the network to identify and track the movement of hazardous air pollutants through the Great Lakes, to determine the portion of water pollution loadings attributable to atmospheric deposition of such pollutants, and to support development of remedial action plans and other management plans as required by the Great Lakes Water Quality Agreement.

(C) The Administrator shall assure that the data collected by the Great Lakes atmospheric deposition monitoring network is in a format compatible with databases sponsored by the International Joint Commission, Canada, and the several States of the Great Lakes region.

(3) Monitoring for the Chesapeake Bay and Lake Champlain

The Administrator shall establish at the Chesapeake Bay and Lake Champlain atmospheric deposition stations to monitor deposition of hazardous air pollutants (and in the Administrator's discretion, other air pollutants) within the Chesapeake Bay and Lake Champlain watersheds. The Administrator shall determine the role of air deposition in the pollutant loadings of the Chesapeake Bay and Lake Champlain, investigate the sources of air pollutants deposited in the watersheds, evaluate the health and environmental effects of such pollutant loadings, and shall sample such pollutants in biota, fish and wildlife within the watersheds, as necessary to characterize such effects.

(4) Monitoring for coastal waters

The Administrator shall design and deploy atmospheric deposition monitoring networks for coastal waters and their watersheds and shall make any information collected through such networks available to the public. As part of this effort, the Administrator shall conduct research to develop and improve deposition monitoring methods, and to determine the relative contribution of atmospheric pollutants to pollutant loadings. For purposes of this subsection, "coastal waters" shall mean estuaries selected pursuant to section 320(a)(2)(A) of the Federal Water Pollution Control Act [33 U.S.C. 1330(a)(2)(A)] or listed pursuant to section 320(a)(2)(B) of such Act [33 U.S.C. 1330(a)(2)(B)] or estuarine research reserves designated pursuant to section 1461 of title 16.

(5) Report

Within 3 years of November 15, 1990, and biennially thereafter, the Administrator, in cooperation with the Under Secretary of Commerce for Oceans and Atmosphere, shall sub-

mit to the Congress a report on the results of any monitoring, studies, and investigations conducted pursuant to this subsection. Such report shall include, at a minimum, an assessment of—

(A) the contribution of atmospheric deposition to pollution loadings in the Great Lakes, the Chesapeake Bay, Lake Champlain and coastal waters;

(B) the environmental and public health effects of any pollution which is attributable to atmospheric deposition to the Great Lakes, the Chesapeake Bay, Lake Champlain and coastal waters;

(C) the source or sources of any pollution to the Great Lakes, the Chesapeake Bay, Lake Champlain and coastal waters which is attributable to atmospheric deposition;

(D) whether pollution loadings in the Great Lakes, the Chesapeake Bay, Lake Champlain or coastal waters cause or contribute to exceedances of drinking water standards pursuant to the Safe Drinking Water Act [42 U.S.C. 300f et seq.] or water quality standards pursuant to the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.] or, with respect to the Great Lakes, exceedances of the specific objectives of the Great Lakes Water Quality Agreement; and

(E) a description of any revisions of the requirements, standards, and limitations pursuant to this chapter and other applicable Federal laws as are necessary to assure protection of human health and the environment.

(6) Additional regulation

As part of the report to Congress, the Administrator shall determine whether the other provisions of this section are adequate to prevent serious adverse effects to public health and serious or widespread environmental effects, including such effects resulting from indirect exposure pathways, associated with atmospheric deposition to the Great Lakes, the Chesapeake Bay, Lake Champlain and coastal waters of hazardous air pollutants (and their atmospheric transformation products). The Administrator shall take into consideration the tendency of such pollutants to bioaccumulate. Within 5 years after November 15, 1990, the Administrator shall, based on such report and determination, promulgate, in accordance with this section, such further emission standards or control measures as may be necessary and appropriate to prevent such effects, including effects due to bioaccumulation and indirect exposure pathways. Any requirements promulgated pursuant to this paragraph with respect to coastal waters shall only apply to the coastal waters of the States which are subject to section 7627(a) of this title.

(n) Other provisions

(1) Electric utility steam generating units

(A) The Administrator shall perform a study of the hazards to public health reasonably anticipated to occur as a result of emissions by electric utility steam generating units of pollutants listed under subsection (b) of this section after imposition of the requirements of

this chapter. The Administrator shall report the results of this study to the Congress within 3 years after November 15, 1990. The Administrator shall develop and describe in the Administrator's report to Congress alternative control strategies for emissions which may warrant regulation under this section. The Administrator shall regulate electric utility steam generating units under this section, if the Administrator finds such regulation is appropriate and necessary after considering the results of the study required by this subparagraph.

(B) The Administrator shall conduct, and transmit to the Congress not later than 4 years after November 15, 1990, a study of mercury emissions from electric utility steam generating units, municipal waste combustion units, and other sources, including area sources. Such study shall consider the rate and mass of such emissions, the health and environmental effects of such emissions, technologies which are available to control such emissions, and the costs of such technologies.

(C) The National Institute of Environmental Health Sciences shall conduct, and transmit to the Congress not later than 3 years after November 15, 1990, a study to determine the threshold level of mercury exposure below which adverse human health effects are not expected to occur. Such study shall include a threshold for mercury concentrations in the tissue of fish which may be consumed (including consumption by sensitive populations) without adverse effects to public health.

(2) Coke oven production technology study

(A) The Secretary of the Department of Energy and the Administrator shall jointly undertake a 6-year study to assess coke oven production emission control technologies and to assist in the development and commercialization of technically practicable and economically viable control technologies which have the potential to significantly reduce emissions of hazardous air pollutants from coke oven production facilities. In identifying control technologies, the Secretary and the Administrator shall consider the range of existing coke oven operations and battery design and the availability of sources of materials for such coke ovens as well as alternatives to existing coke oven production design.

(B) The Secretary and the Administrator are authorized to enter into agreements with persons who propose to develop, install and operate coke production emission control technologies which have the potential for significant emissions reductions of hazardous air pollutants provided that Federal funds shall not exceed 50 per centum of the cost of any project assisted pursuant to this paragraph.

(C) On completion of the study, the Secretary shall submit to Congress a report on the results of the study and shall make recommendations to the Administrator identifying practicable and economically viable control technologies for coke oven production facilities to reduce residual risks remaining after implementation of the standard under subsection (d) of this section.

(D) There are authorized to be appropriated \$5,000,000 for each of the fiscal years 1992 through 1997 to carry out the program authorized by this paragraph.

(3) Publicly owned treatment works

The Administrator may conduct, in cooperation with the owners and operators of publicly owned treatment works, studies to characterize emissions of hazardous air pollutants emitted by such facilities, to identify industrial, commercial and residential discharges that contribute to such emissions and to demonstrate control measures for such emissions. When promulgating any standard under this section applicable to publicly owned treatment works, the Administrator may provide for control measures that include pretreatment of discharges causing emissions of hazardous air pollutants and process or product substitutions or limitations that may be effective in reducing such emissions. The Administrator may prescribe uniform sampling, modeling and risk assessment methods for use in implementing this subsection.

(4) Oil and gas wells; pipeline facilities

(A) Notwithstanding the provisions of subsection (a) of this section, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources, and in the case of any oil or gas exploration or production well (with its associated equipment), such emissions shall not be aggregated for any purpose under this section.

(B) The Administrator shall not list oil and gas production wells (with its associated equipment) as an area source category under subsection (c) of this section, except that the Administrator may establish an area source category for oil and gas production wells located in any metropolitan statistical area or consolidated metropolitan statistical area with a population in excess of 1 million, if the Administrator determines that emissions of hazardous air pollutants from such wells present more than a negligible risk of adverse effects to public health.

(5) Hydrogen sulfide

The Administrator is directed to assess the hazards to public health and the environment resulting from the emission of hydrogen sulfide associated with the extraction of oil and natural gas resources. To the extent practicable, the assessment shall build upon and not duplicate work conducted for an assessment pursuant to section 8002(m) of the Solid Waste Disposal Act [42 U.S.C. 6982(m)] and shall reflect consultation with the States. The assessment shall include a review of existing State and industry control standards, techniques and enforcement. The Administrator shall report to the Congress within 24 months after November 15, 1990, with the findings of such assessment, together with any recom-

mendations, and shall, as appropriate, develop and implement a control strategy for emissions of hydrogen sulfide to protect human health and the environment, based on the findings of such assessment, using authorities under this chapter including sections³ 7411 of this title and this section.

(6) Hydrofluoric acid

Not later than 2 years after November 15, 1990, the Administrator shall, for those regions of the country which do not have comprehensive health and safety regulations with respect to hydrofluoric acid, complete a study of the potential hazards of hydrofluoric acid and the uses of hydrofluoric acid in industrial and commercial applications to public health and the environment considering a range of events including worst-case accidental releases and shall make recommendations to the Congress for the reduction of such hazards, if appropriate.

(7) RCRA facilities

In the case of any category or subcategory of sources the air emissions of which are regulated under subtitle C of the Solid Waste Disposal Act [42 U.S.C. 6921 et seq.], the Administrator shall take into account any regulations of such emissions which are promulgated under such subtitle and shall, to the maximum extent practicable and consistent with the provisions of this section, ensure that the requirements of such subtitle and this section are consistent.

(o) National Academy of Sciences study

(1) Request of the Academy

Within 3 months of November 15, 1990, the Administrator shall enter into appropriate arrangements with the National Academy of Sciences to conduct a review of—

(A) risk assessment methodology used by the Environmental Protection Agency to determine the carcinogenic risk associated with exposure to hazardous air pollutants from source categories and subcategories subject to the requirements of this section; and

(B) improvements in such methodology.

(2) Elements to be studied

In conducting such review, the National Academy of Sciences should consider, but not be limited to, the following—

(A) the techniques used for estimating and describing the carcinogenic potency to humans of hazardous air pollutants; and

(B) the techniques used for estimating exposure to hazardous air pollutants (for hypothetical and actual maximally exposed individuals as well as other exposed individuals).

(3) Other health effects of concern

To the extent practicable, the Academy shall evaluate and report on the methodology for assessing the risk of adverse human health effects other than cancer for which safe thresholds of exposure may not exist, including, but not limited to, inheritable genetic

³So in original. Probably should be "section".

mutations, birth defects, and reproductive dysfunctions.

(4) Report

A report on the results of such review shall be submitted to the Senate Committee on Environment and Public Works, the House Committee on Energy and Commerce, the Risk Assessment and Management Commission established by section 303 of the Clean Air Act Amendments of 1990 and the Administrator not later than 30 months after November 15, 1990.

(5) Assistance

The Administrator shall assist the Academy in gathering any information the Academy deems necessary to carry out this subsection. The Administrator may use any authority under this chapter to obtain information from any person, and to require any person to conduct tests, keep and produce records, and make reports respecting research or other activities conducted by such person as necessary to carry out this subsection.

(6) Authorization

Of the funds authorized to be appropriated to the Administrator by this chapter, such amounts as are required shall be available to carry out this subsection.

(7) Guidelines for carcinogenic risk assessment

The Administrator shall consider, but need not adopt, the recommendations contained in the report of the National Academy of Sciences prepared pursuant to this subsection and the views of the Science Advisory Board, with respect to such report. Prior to the promulgation of any standard under subsection (f) of this section, and after notice and opportunity for comment, the Administrator shall publish revised Guidelines for Carcinogenic Risk Assessment or a detailed explanation of the reasons that any recommendations contained in the report of the National Academy of Sciences will not be implemented. The publication of such revised Guidelines shall be a final Agency action for purposes of section 7607 of this title.

(p) Mickey Leland National Urban Air Toxics Research Center

(1) Establishment

The Administrator shall oversee the establishment of a National Urban Air Toxics Research Center, to be located at a university, a hospital, or other facility capable of undertaking and maintaining similar research capabilities in the areas of epidemiology, oncology, toxicology, pulmonary medicine, pathology, and biostatistics. The center shall be known as the Mickey Leland National Urban Air Toxics Research Center. The geographic site of the National Urban Air Toxics Research Center should be further directed to Harris County, Texas, in order to take full advantage of the well developed scientific community presence on-site at the Texas Medical Center as well as the extensive data previously compiled for the comprehensive monitoring system currently in place.

(2) Board of Directors

The National Urban Air Toxics Research Center shall be governed by a Board of Directors to be comprised of 9 members, the appointment of which shall be allocated pro rata among the Speaker of the House, the Majority Leader of the Senate and the President. The members of the Board of Directors shall be selected based on their respective academic and professional backgrounds and expertise in matters relating to public health, environmental pollution and industrial hygiene. The duties of the Board of Directors shall be to determine policy and research guidelines, submit views from center sponsors and the public and issue periodic reports of center findings and activities.

(3) Scientific Advisory Panel

The Board of Directors shall be advised by a Scientific Advisory Panel, the 13 members of which shall be appointed by the Board, and to include eminent members of the scientific and medical communities. The Panel membership may include scientists with relevant experience from the National Institute of Environmental Health Sciences, the Center for Disease Control, the Environmental Protection Agency, the National Cancer Institute, and others, and the Panel shall conduct peer review and evaluate research results. The Panel shall assist the Board in developing the research agenda, reviewing proposals and applications, and advise on the awarding of research grants.

(4) Funding

The center shall be established and funded with both Federal and private source funds.

(q) Savings provision

(1) Standards previously promulgated

Any standard under this section in effect before the date of enactment of the Clean Air Act Amendments of 1990 [November 15, 1990] shall remain in force and effect after such date unless modified as provided in this section before the date of enactment of such Amendments or under such Amendments. Except as provided in paragraph (4), any standard under this section which has been promulgated, but has not taken effect, before such date shall not be affected by such Amendments unless modified as provided in this section before such date or under such Amendments. Each such standard shall be reviewed and, if appropriate, revised, to comply with the requirements of subsection (d) of this section within 10 years after the date of enactment of the Clean Air Act Amendments of 1990. If a timely petition for review of any such standard under section 7607 of this title is pending on such date of enactment, the standard shall be upheld if it complies with this section as in effect before that date. If any such standard is remanded to the Administrator, the Administrator may in the Administrator's discretion apply either the requirements of this section, or those of this section as in effect before the date of enactment of the Clean Air Act Amendments of 1990.

(2) Special rule

Notwithstanding paragraph (1), no standard shall be established under this section, as amended by the Clean Air Act Amendments of 1990, for radionuclide emissions from (A) elemental phosphorous plants, (B) grate calcination elemental phosphorous plants, (C) phosphogypsum stacks, or (D) any subcategory of the foregoing. This section, as in effect prior to the date of enactment of the Clean Air Act Amendments of 1990 [November 15, 1990], shall remain in effect for radionuclide emissions from such plants and stacks.

(3) Other categories

Notwithstanding paragraph (1), this section, as in effect prior to the date of enactment of the Clean Air Act Amendments of 1990 [November 15, 1990], shall remain in effect for radionuclide emissions from non-Department of Energy Federal facilities that are not licensed by the Nuclear Regulatory Commission, coal-fired utility and industrial boilers, underground uranium mines, surface uranium mines, and disposal of uranium mill tailings piles, unless the Administrator, in the Administrator's discretion, applies the requirements of this section as modified by the Clean Air Act Amendments of 1990 to such sources of radionuclides.

(4) Medical facilities

Notwithstanding paragraph (1), no standard promulgated under this section prior to November 15, 1990, with respect to medical research or treatment facilities shall take effect for two years following November 15, 1990, unless the Administrator makes a determination pursuant to a rulemaking under subsection (d)(9) of this section. If the Administrator determines that the regulatory program established by the Nuclear Regulatory Commission for such facilities does not provide an ample margin of safety to protect public health, the requirements of this section shall fully apply to such facilities. If the Administrator determines that such regulatory program does provide an ample margin of safety to protect the public health, the Administrator is not required to promulgate a standard under this section for such facilities, as provided in subsection (d)(9) of this section.

(r) Prevention of accidental releases**(1) Purpose and general duty**

It shall be the objective of the regulations and programs authorized under this subsection to prevent the accidental release and to minimize the consequences of any such release of any substance listed pursuant to paragraph (3) or any other extremely hazardous substance. The owners and operators of stationary sources producing, processing, handling or storing such substances have a general duty in the same manner and to the same extent as section 654 of title 29 to identify hazards which may result from such releases using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental re-

leases which do occur. For purposes of this paragraph, the provisions of section 7604 of this title shall not be available to any person or otherwise be construed to be applicable to this paragraph. Nothing in this section shall be interpreted, construed, implied or applied to create any liability or basis for suit for compensation for bodily injury or any other injury or property damages to any person which may result from accidental releases of such substances.

(2) Definitions

(A) The term "accidental release" means an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

(B) The term "regulated substance" means a substance listed under paragraph (3).

(C) The term "stationary source" means any buildings, structures, equipment, installations or substance emitting stationary activities (i) which belong to the same industrial group, (ii) which are located on one or more contiguous properties, (iii) which are under the control of the same person (or persons under common control), and (iv) from which an accidental release may occur.

(D) The term "retail facility" means a stationary source at which more than one-half of the income is obtained from direct sales to end users or at which more than one-half of the fuel sold, by volume, is sold through a cylinder exchange program.

(3) List of substances

The Administrator shall promulgate not later than 24 months after November 15, 1990, an initial list of 100 substances which, in the case of an accidental release, are known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment. For purposes of promulgating such list, the Administrator shall use, but is not limited to, the list of extremely hazardous substances published under the Emergency Planning and Community Right-to-Know Act of 1986 [42 U.S.C. 11001 et seq.], with such modifications as the Administrator deems appropriate. The initial list shall include chlorine, anhydrous ammonia, methyl chloride, ethylene oxide, vinyl chloride, methyl isocyanate, hydrogen cyanide, ammonia, hydrogen sulfide, toluene diisocyanate, phosgene, bromine, anhydrous hydrogen chloride, hydrogen fluoride, anhydrous sulfur dioxide, and sulfur trioxide. The initial list shall include at least 100 substances which pose the greatest risk of causing death, injury, or serious adverse effects to human health or the environment from accidental releases. Regulations establishing the list shall include an explanation of the basis for establishing the list. The list may be revised from time to time by the Administrator on the Administrator's own motion or by petition and shall be reviewed at least every 5 years. No air pollutant for which a national primary ambient air quality standard has been established shall be included on any such list. No substance, practice, process, or activity regulated under subchapter VI of this chapter shall be subject to

regulations under this subsection. The Administrator shall establish procedures for the addition and deletion of substances from the list established under this paragraph consistent with those applicable to the list in subsection (b) of this section.

(4) Factors to be considered

In listing substances under paragraph (3), the Administrator—

(A) shall consider—

(i) the severity of any acute adverse health effects associated with accidental releases of the substance;

(ii) the likelihood of accidental releases of the substance; and

(iii) the potential magnitude of human exposure to accidental releases of the substance; and

(B) shall not list a flammable substance when used as a fuel or held for sale as a fuel at a retail facility under this subsection solely because of the explosive or flammable properties of the substance, unless a fire or explosion caused by the substance will result in acute adverse health effects from human exposure to the substance, including the unburned fuel or its combustion byproducts, other than those caused by the heat of the fire or impact of the explosion.

(5) Threshold quantity

At the time any substance is listed pursuant to paragraph (3), the Administrator shall establish by rule, a threshold quantity for the substance, taking into account the toxicity, reactivity, volatility, dispersibility, combustibility, or flammability of the substance and the amount of the substance which, as a result of an accidental release, is known to cause or may reasonably be anticipated to cause death, injury or serious adverse effects to human health for which the substance was listed. The Administrator is authorized to establish a greater threshold quantity for, or to exempt entirely, any substance that is a nutrient used in agriculture when held by a farmer.

(6) Chemical Safety Board

(A) There is hereby established an independent safety board to be known as the Chemical Safety and Hazard Investigation Board.

(B) The Board shall consist of 5 members, including a Chairperson, who shall be appointed by the President, by and with the advice and consent of the Senate. Members of the Board shall be appointed on the basis of technical qualification, professional standing, and demonstrated knowledge in the fields of accident reconstruction, safety engineering, human factors, toxicology, or air pollution regulation. The terms of office of members of the Board shall be 5 years. Any member of the Board, including the Chairperson, may be removed for inefficiency, neglect of duty, or malfeasance in office. The Chairperson shall be the Chief Executive Officer of the Board and shall exercise the executive and administrative functions of the Board.

(C) The Board shall—

(i) investigate (or cause to be investigated), determine and report to the public

in writing the facts, conditions, and circumstances and the cause or probable cause of any accidental release resulting in a fatality, serious injury or substantial property damages;

(ii) issue periodic reports to the Congress, Federal, State and local agencies, including the Environmental Protection Agency and the Occupational Safety and Health Administration, concerned with the safety of chemical production, processing, handling and storage, and other interested persons recommending measures to reduce the likelihood or the consequences of accidental releases and proposing corrective steps to make chemical production, processing, handling and storage as safe and free from risk of injury as is possible and may include in such reports proposed rules or orders which should be issued by the Administrator under the authority of this section or the Secretary of Labor under the Occupational Safety and Health Act [29 U.S.C. 651 et seq.] to prevent or minimize the consequences of any release of substances that may cause death, injury or other serious adverse effects on human health or substantial property damage as the result of an accidental release; and

(iii) establish by regulation requirements binding on persons for reporting accidental releases into the ambient air subject to the Board's investigatory jurisdiction. Reporting releases to the National Response Center, in lieu of the Board directly, shall satisfy such regulations. The National Response Center shall promptly notify the Board of any releases which are within the Board's jurisdiction.

(D) The Board may utilize the expertise and experience of other agencies.

(E) The Board shall coordinate its activities with investigations and studies conducted by other agencies of the United States having a responsibility to protect public health and safety. The Board shall enter into a memorandum of understanding with the National Transportation Safety Board to assure coordination of functions and to limit duplication of activities which shall designate the National Transportation Safety Board as the lead agency for the investigation of releases which are transportation related. The Board shall not be authorized to investigate marine oil spills, which the National Transportation Safety Board is authorized to investigate. The Board shall enter into a memorandum of understanding with the Occupational Safety and Health Administration so as to limit duplication of activities. In no event shall the Board forego an investigation where an accidental release causes a fatality or serious injury among the general public, or had the potential to cause substantial property damage or a number of deaths or injuries among the general public.

(F) The Board is authorized to conduct research and studies with respect to the potential for accidental releases, whether or not an accidental release has occurred, where there is evidence which indicates the presence of a potential hazard or hazards. To the extent prac-

licable, the Board shall conduct such studies in cooperation with other Federal agencies having emergency response authorities, State and local governmental agencies and associations and organizations from the industrial, commercial, and nonprofit sectors.

(G) No part of the conclusions, findings, or recommendations of the Board relating to any accidental release or the investigation thereof shall be admitted as evidence or used in any action or suit for damages arising out of any matter mentioned in such report.

(H) Not later than 18 months after November 15, 1990, the Board shall publish a report accompanied by recommendations to the Administrator on the use of hazard assessments in preventing the occurrence and minimizing the consequences of accidental releases of extremely hazardous substances. The recommendations shall include a list of extremely hazardous substances which are not regulated substances (including threshold quantities for such substances) and categories of stationary sources for which hazard assessments would be an appropriate measure to aid in the prevention of accidental releases and to minimize the consequences of those releases that do occur. The recommendations shall also include a description of the information and analysis which would be appropriate to include in any hazard assessment. The Board shall also make recommendations with respect to the role of risk management plans as required by paragraph (8)(B)⁴ in preventing accidental releases. The Board may from time to time review and revise its recommendations under this subparagraph.

(I) Whenever the Board submits a recommendation with respect to accidental releases to the Administrator, the Administrator shall respond to such recommendation formally and in writing not later than 180 days after receipt thereof. The response to the Board's recommendation by the Administrator shall indicate whether the Administrator will—

- (i) initiate a rulemaking or issue such orders as are necessary to implement the recommendation in full or in part, pursuant to any timetable contained in the recommendation;
- (ii) decline to initiate a rulemaking or issue orders as recommended.

Any determination by the Administrator not to implement a recommendation of the Board or to implement a recommendation only in part, including any variation from the schedule contained in the recommendation, shall be accompanied by a statement from the Administrator setting forth the reasons for such determination.

(J) The Board may make recommendations with respect to accidental releases to the Secretary of Labor. Whenever the Board submits such recommendation, the Secretary shall respond to such recommendation formally and in writing not later than 180 days after receipt thereof. The response to the Board's recommendation by the Administrator shall indicate whether the Secretary will—

- (i) initiate a rulemaking or issue such orders as are necessary to implement the recommendation in full or in part, pursuant to any timetable contained in the recommendation;
- (ii) decline to initiate a rulemaking or issue orders as recommended.

Any determination by the Secretary not to implement a recommendation or to implement a recommendation only in part, including any variation from the schedule contained in the recommendation, shall be accompanied by a statement from the Secretary setting forth the reasons for such determination.

(K) Within 2 years after November 15, 1990, the Board shall issue a report to the Administrator of the Environmental Protection Agency and to the Administrator of the Occupational Safety and Health Administration recommending the adoption of regulations for the preparation of risk management plans and general requirements for the prevention of accidental releases of regulated substances into the ambient air (including recommendations for listing substances under paragraph (3)) and for the mitigation of the potential adverse effect on human health or the environment as a result of accidental releases which should be applicable to any stationary source handling any regulated substance in more than threshold amounts. The Board may include proposed rules or orders which should be issued by the Administrator under authority of this subsection or by the Secretary of Labor under the Occupational Safety and Health Act [29 U.S.C. 651 et seq.]. Any such recommendations shall be specific and shall identify the regulated substance or class of regulated substances (or other substances) to which the recommendations apply. The Administrator shall consider such recommendations before promulgating regulations required by paragraph (7)(B).

(L) The Board, or upon authority of the Board, any member thereof, any administrative law judge employed by or assigned to the Board, or any officer or employee duly designated by the Board, may for the purpose of carrying out duties authorized by subparagraph (C)—

- (i) hold such hearings, sit and act at such times and places, administer such oaths, and require by subpoena or otherwise attendance and testimony of such witnesses and the production of evidence and may require by order that any person engaged in the production, processing, handling, or storage of extremely hazardous substances submit written reports and responses to requests and questions within such time and in such form as the Board may require; and
- (ii) upon presenting appropriate credentials and a written notice of inspection authority, enter any property where an accidental release causing a fatality, serious injury or substantial property damage has occurred and do all things therein necessary for a proper investigation pursuant to subparagraph (C) and inspect at reasonable times records, files, papers, processes, controls, and facilities and take such samples as are relevant to such investigation.

⁴So in original. Probably should be paragraph "(7)(B)".

Whenever the Administrator or the Board conducts an inspection of a facility pursuant to this subsection, employees and their representatives shall have the same rights to participate in such inspections as provided in the Occupational Safety and Health Act [29 U.S.C. 651 et seq.].

(M) In addition to that described in subparagraph (L), the Board may use any information gathering authority of the Administrator under this chapter, including the subpoena power provided in section 7607(a)(1) of this title.

(N) The Board is authorized to establish such procedural and administrative rules as are necessary to the exercise of its functions and duties. The Board is authorized without regard to section 5 of title 41 to enter into contracts, leases, cooperative agreements or other transactions as may be necessary in the conduct of the duties and functions of the Board with any other agency, institution, or person.

(O) After the effective date of any reporting requirement promulgated pursuant to subparagraph (C)(iii) it shall be unlawful for any person to fail to report any release of any extremely hazardous substance as required by such subparagraph. The Administrator is authorized to enforce any regulation or requirements established by the Board pursuant to subparagraph (C)(iii) using the authorities of sections 7413 and 7414 of this title. Any request for information from the owner or operator of a stationary source made by the Board or by the Administrator under this section shall be treated, for purposes of sections 7413, 7414, 7416, 7420, 7603, 7604 and 7607 of this title and any other enforcement provisions of this chapter, as a request made by the Administrator under section 7414 of this title and may be enforced by the Chairperson of the Board or by the Administrator as provided in such section.

(P) The Administrator shall provide to the Board such support and facilities as may be necessary for operation of the Board.

(Q) Consistent with subsection⁵ (G) and section 7414(c) of this title any records, reports or information obtained by the Board shall be available to the Administrator, the Secretary of Labor, the Congress and the public, except that upon a showing satisfactory to the Board by any person that records, reports, or information, or particular part thereof (other than release or emissions data) to which the Board has access, if made public, is likely to cause substantial harm to the person's competitive position, the Board shall consider such record, report, or information or particular portion thereof confidential in accordance with section 1905 of title 18, except that such record, report, or information may be disclosed to other officers, employees, and authorized representatives of the United States concerned with carrying out this chapter or when relevant under any proceeding under this chapter. This subparagraph does not constitute authority to withhold records, reports, or information from the Congress.

(R) Whenever the Board submits or transmits any budget estimate, budget request,

supplemental budget request, or other budget information, legislative recommendation, prepared testimony for congressional hearings, recommendation or study to the President, the Secretary of Labor, the Administrator, or the Director of the Office of Management and Budget, it shall concurrently transmit a copy thereof to the Congress. No report of the Board shall be subject to review by the Administrator or any Federal agency or to judicial review in any court. No officer or agency of the United States shall have authority to require the Board to submit its budget requests or estimates, legislative recommendations, prepared testimony, comments, recommendations or reports to any officer or agency of the United States for approval or review prior to the submission of such recommendations, testimony, comments or reports to the Congress. In the performance of their functions as established by this chapter, the members, officers and employees of the Board shall not be responsible to or subject to supervision or direction, in carrying out any duties under this subsection, of any officer or employee or agent of the Environmental Protection Agency, the Department of Labor or any other agency of the United States except that the President may remove any member, officer or employee of the Board for inefficiency, neglect of duty or malfeasance in office. Nothing in this section shall affect the application of title 5 to officers or employees of the Board.

(S) The Board shall submit an annual report to the President and to the Congress which shall include, but not be limited to, information on accidental releases which have been investigated by or reported to the Board during the previous year, recommendations for legislative or administrative action which the Board has made, the actions which have been taken by the Administrator or the Secretary of Labor or the heads of other agencies to implement such recommendations, an identification of priorities for study and investigation in the succeeding year, progress in the development of risk-reduction technologies and the response to and implementation of significant research findings on chemical safety in the public and private sector.

(7) Accident prevention

(A) In order to prevent accidental releases of regulated substances, the Administrator is authorized to promulgate release prevention, detection, and correction requirements which may include monitoring, record-keeping, reporting, training, vapor recovery, secondary containment, and other design, equipment, work practice, and operational requirements. Regulations promulgated under this paragraph may make distinctions between various types, classes, and kinds of facilities, devices and systems taking into consideration factors including, but not limited to, the size, location, process, process controls, quantity of substances handled, potency of substances, and response capabilities present at any stationary source. Regulations promulgated pursuant to this subparagraph shall have an effective date, as determined by the Administrator, as-

⁵ So in original. Probably should be "subparagraph".

sure compliance as expeditiously as practicable.

(B)(i) Within 3 years after November 15, 1990, the Administrator shall promulgate reasonable regulations and appropriate guidance to provide, to the greatest extent practicable, for the prevention and detection of accidental releases of regulated substances and for response to such releases by the owners or operators of the sources of such releases. The Administrator shall utilize the expertise of the Secretaries of Transportation and Labor in promulgating such regulations. As appropriate, such regulations shall cover the use, operation, repair, replacement, and maintenance of equipment to monitor, detect, inspect, and control such releases, including training of persons in the use and maintenance of such equipment and in the conduct of periodic inspections. The regulations shall include procedures and measures for emergency response after an accidental release of a regulated substance in order to protect human health and the environment. The regulations shall cover storage, as well as operations. The regulations shall, as appropriate, recognize differences in size, operations, processes, class and categories of sources and the voluntary actions of such sources to prevent such releases and respond to such releases. The regulations shall be applicable to a stationary source 3 years after the date of promulgation, or 3 years after the date on which a regulated substance present at the source in more than threshold amounts is first listed under paragraph (3), whichever is later.

(ii) The regulations under this subparagraph shall require the owner or operator of stationary sources at which a regulated substance is present in more than a threshold quantity to prepare and implement a risk management plan to detect and prevent or minimize accidental releases of such substances from the stationary source, and to provide a prompt emergency response to any such releases in order to protect human health and the environment. Such plan shall provide for compliance with the requirements of this subsection and shall also include each of the following:

(I) a hazard assessment to assess the potential effects of an accidental release of any regulated substance. This assessment shall include an estimate of potential release quantities and a determination of downwind effects, including potential exposures to affected populations. Such assessment shall include a previous release history of the past 5 years, including the size, concentration, and duration of releases, and shall include an evaluation of worst case accidental releases;

(II) a program for preventing accidental releases of regulated substances, including safety precautions and maintenance, monitoring and employee training measures to be used at the source; and

(III) a response program providing for specific actions to be taken in response to an accidental release of a regulated substance so as to protect human health and the environment, including procedures for informing

the public and local agencies responsible for responding to accidental releases, emergency health care, and employee training measures.

At the time regulations are promulgated under this subparagraph, the Administrator shall promulgate guidelines to assist stationary sources in the preparation of risk management plans. The guidelines shall, to the extent practicable, include model risk management plans.

(iii) The owner or operator of each stationary source covered by clause (ii) shall register a risk management plan prepared under this subparagraph with the Administrator before the effective date of regulations under clause (i) in such form and manner as the Administrator shall, by rule, require. Plans prepared pursuant to this subparagraph shall also be submitted to the Chemical Safety and Hazard Investigation Board, to the State in which the stationary source is located, and to any local agency or entity having responsibility for planning for or responding to accidental releases which may occur at such source, and shall be available to the public under section 7414(c) of this title. The Administrator shall establish, by rule, an auditing system to regularly review and, if necessary, require revision in risk management plans to assure that the plans comply with this subparagraph. Each such plan shall be updated periodically as required by the Administrator, by rule.

(C) Any regulations promulgated pursuant to this subsection shall to the maximum extent practicable, consistent with this subsection, be consistent with the recommendations and standards established by the American Society of Mechanical Engineers (ASME), the American National Standards Institute (ANSI) or the American Society of Testing Materials (ASTM). The Administrator shall take into consideration the concerns of small business in promulgating regulations under this subsection.

(D) In carrying out the authority of this paragraph, the Administrator shall consult with the Secretary of Labor and the Secretary of Transportation and shall coordinate any requirements under this paragraph with any requirements established for comparable purposes by the Occupational Safety and Health Administration or the Department of Transportation. Nothing in this subsection shall be interpreted, construed or applied to impose requirements affecting, or to grant the Administrator, the Chemical Safety and Hazard Investigation Board, or any other agency any authority to regulate (including requirements for hazard assessment), the accidental release of radionuclides arising from the construction and operation of facilities licensed by the Nuclear Regulatory Commission.

(E) After the effective date of any regulation or requirement imposed under this subsection, it shall be unlawful for any person to operate any stationary source subject to such regulation or requirement in violation of such regulation or requirement. Each regulation or requirement under this subsection shall for purposes of sections 7413, 7414, 7416, 7420, 7604, and

7607 of this title and other enforcement provisions of this chapter, be treated as a standard in effect under subsection (d) of this section.

(F) Notwithstanding the provisions of subchapter V of this chapter or this section, no stationary source shall be required to apply for, or operate pursuant to, a permit issued under such subchapter solely because such source is subject to regulations or requirements under this subsection.

(G) In exercising any authority under this subsection, the Administrator shall not, for purposes of section 653(b)(1) of title 29, be deemed to be exercising statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health.

(H) PUBLIC ACCESS TO OFF-SITE CONSEQUENCE ANALYSIS INFORMATION.—

(i) DEFINITIONS.—In this subparagraph:

(I) COVERED PERSON.—The term “covered person” means—

(aa) an officer or employee of the United States;

(bb) an officer or employee of an agent or contractor of the Federal Government;

(cc) an officer or employee of a State or local government;

(dd) an officer or employee of an agent or contractor of a State or local government;

(ee) an individual affiliated with an entity that has been given, by a State or local government, responsibility for preventing, planning for, or responding to accidental releases;

(ff) an officer or employee or an agent or contractor of an entity described in item (ee); and

(gg) a qualified researcher under clause (vii).

(II) OFFICIAL USE.—The term “official use” means an action of a Federal, State, or local government agency or an entity referred to in subclause (I)(ee) intended to carry out a function relevant to preventing, planning for, or responding to accidental releases.

(III) OFF-SITE CONSEQUENCE ANALYSIS INFORMATION.—The term “off-site consequence analysis information” means those portions of a risk management plan, excluding the executive summary of the plan, consisting of an evaluation of 1 or more worst-case release scenarios or alternative release scenarios, and any electronic data base created by the Administrator from those portions.

(IV) RISK MANAGEMENT PLAN.—The term “risk management plan” means a risk management plan submitted to the Administrator by an owner or operator of a stationary source under subparagraph (B)(iii).

(ii) REGULATIONS.—Not later than 1 year after August 5, 1999, the President shall—

(I) assess—

(aa) the increased risk of terrorist and other criminal activity associated with the posting of off-site consequence

analysis information on the Internet; and

(bb) the incentives created by public disclosure of off-site consequence analysis information for reduction in the risk of accidental releases; and

(II) based on the assessment under subclause (I), promulgate regulations governing the distribution of off-site consequence analysis information in a manner that, in the opinion of the President, minimizes the likelihood of accidental releases and the risk described in subclause (I)(aa) and the likelihood of harm to public health and welfare, and—

(aa) allows access by any member of the public to paper copies of off-site consequence analysis information for a limited number of stationary sources located anywhere in the United States, without any geographical restriction;

(bb) allows other public access to off-site consequence analysis information as appropriate;

(cc) allows access for official use by a covered person described in any of items (cc) through (ff) of clause (i)(I) (referred to in this subclause as a “State or local covered person”) to off-site consequence analysis information relating to stationary sources located in the person’s State;

(dd) allows a State or local covered person to provide, for official use, off-site consequence analysis information relating to stationary sources located in the person’s State to a State or local covered person in a contiguous State; and

(ee) allows a State or local covered person to obtain for official use, by request to the Administrator, off-site consequence analysis information that is not available to the person under item (cc).

(iii) AVAILABILITY UNDER FREEDOM OF INFORMATION ACT.—

(I) FIRST YEAR.—Off-site consequence analysis information, and any ranking of stationary sources derived from the information, shall not be made available under section 552 of title 5 during the 1-year period beginning on August 5, 1999.

(II) AFTER FIRST YEAR.—If the regulations under clause (ii) are promulgated on or before the end of the period described in subclause (I), off-site consequence analysis information covered by the regulations, and any ranking of stationary sources derived from the information, shall not be made available under section 552 of title 5 after the end of that period.

(III) APPLICABILITY.—Subclauses (I) and (II) apply to off-site consequence analysis information submitted to the Administrator before, on, or after August 5, 1999.

(iv) AVAILABILITY OF INFORMATION DURING TRANSITION PERIOD.—The Administrator shall make off-site consequence analysis information available to covered persons for official use in a manner that meets the re-

quirements of items (cc) through (ee) of clause (ii)(II), and to the public in a form that does not make available any information concerning the identity or location of stationary sources, during the period—

(I) beginning on August 5, 1999; and

(II) ending on the earlier of the date of promulgation of the regulations under clause (ii) or the date that is 1 year after August 5, 1999.

(v) PROHIBITION ON UNAUTHORIZED DISCLOSURE OF INFORMATION BY COVERED PERSONS.—

(I) IN GENERAL.—Beginning on August 5, 1999, a covered person shall not disclose to the public off-site consequence analysis information in any form, or any statewide or national ranking of identified stationary sources derived from such information, except as authorized by this subparagraph (including the regulations promulgated under clause (ii)). After the end of the 1-year period beginning on August 5, 1999, if regulations have not been promulgated under clause (ii), the preceding sentence shall not apply.

(II) CRIMINAL PENALTIES.—Notwithstanding section 7413 of this title, a covered person that willfully violates a restriction or prohibition established by this subparagraph (including the regulations promulgated under clause (ii)) shall, upon conviction, be fined for an infraction under section 3571 of title 18 (but shall not be subject to imprisonment) for each unauthorized disclosure of off-site consequence analysis information, except that subsection (d) of such section 3571 shall not apply to a case in which the offense results in pecuniary loss unless the defendant knew that such loss would occur. The disclosure of off-site consequence analysis information for each specific stationary source shall be considered a separate offense. The total of all penalties that may be imposed on a single person or organization under this item shall not exceed \$1,000,000 for violations committed during any 1 calendar year.

(III) APPLICABILITY.—If the owner or operator of a stationary source makes off-site consequence analysis information relating to that stationary source available to the public without restriction—

(aa) subclauses (I) and (II) shall not apply with respect to the information; and

(bb) the owner or operator shall notify the Administrator of the public availability of the information.

(IV) LIST.—The Administrator shall maintain and make publicly available a list of all stationary sources that have provided notification under subclause (III)(bb).

(vi) NOTICE.—The Administrator shall provide notice of the definition of official use as provided in clause (i)(III) and examples of actions that would and would not meet that definition, and notice of the restrictions on further dissemination and the penalties es-

tablished by this chapter to each covered person who receives off-site consequence analysis information under clause (iv) and each covered person who receives off-site consequence analysis information for an official use under the regulations promulgated under clause (ii).

(vii) QUALIFIED RESEARCHERS.—

(I) IN GENERAL.—Not later than 180 days after August 5, 1999, the Administrator, in consultation with the Attorney General, shall develop and implement a system for providing off-site consequence analysis information, including facility identification, to any qualified researcher, including a qualified researcher from industry or any public interest group.

(II) LIMITATION ON DISSEMINATION.—The system shall not allow the researcher to disseminate, or make available on the Internet, the off-site consequence analysis information, or any portion of the off-site consequence analysis information, received under this clause.

(viii) READ-ONLY INFORMATION TECHNOLOGY SYSTEM.—In consultation with the Attorney General and the heads of other appropriate Federal agencies, the Administrator shall establish an information technology system that provides for the availability to the public of off-site consequence analysis information by means of a central data base under the control of the Federal Government that contains information that users may read, but that provides no means by which an electronic or mechanical copy of the information may be made.

(ix) VOLUNTARY INDUSTRY ACCIDENT PREVENTION STANDARDS.—The Environmental Protection Agency, the Department of Justice, and other appropriate agencies may provide technical assistance to owners and operators of stationary sources and participate in the development of voluntary industry standards that will help achieve the objectives set forth in paragraph (1).

(x) EFFECT ON STATE OR LOCAL LAW.—

(I) IN GENERAL.—Subject to subclause (II), this subparagraph (including the regulations promulgated under this subparagraph) shall supersede any provision of State or local law that is inconsistent with this subparagraph (including the regulations).

(II) AVAILABILITY OF INFORMATION UNDER STATE LAW.—Nothing in this subparagraph precludes a State from making available data on the off-site consequences of chemical releases collected in accordance with State law.

(xi) REPORT.—

(I) IN GENERAL.—Not later than 3 years after August 5, 1999, the Attorney General, in consultation with appropriate State, local, and Federal Government agencies, affected industry, and the public, shall submit to Congress a report that describes the extent to which regulations promulgated under this paragraph have resulted in actions, including the design and main-

tenance of safe facilities, that are effective in detecting, preventing, and minimizing the consequences of releases of regulated substances that may be caused by criminal activity. As part of this report, the Attorney General, using available data to the extent possible, and a sampling of covered stationary sources selected at the discretion of the Attorney General, and in consultation with appropriate State, local, and Federal governmental agencies, affected industry, and the public, shall review the vulnerability of covered stationary sources to criminal and terrorist activity, current industry practices regarding site security, and security of transportation of regulated substances. The Attorney General shall submit this report, containing the results of the review, together with recommendations, if any, for reducing vulnerability of covered stationary sources to criminal and terrorist activity, to the Committee on Commerce of the United States House of Representatives and the Committee on Environment and Public Works of the United States Senate and other relevant committees of Congress.

(II) INTERIM REPORT.—Not later than 12 months after August 5, 1999, the Attorney General shall submit to the Committee on Commerce of the United States House of Representatives and the Committee on Environment and Public Works of the United States Senate, and other relevant committees of Congress, an interim report that includes, at a minimum—

(aa) the preliminary findings under subclause (I);

(bb) the methods used to develop the findings; and

(cc) an explanation of the activities expected to occur that could cause the findings of the report under subclause (I) to be different than the preliminary findings.

(III) AVAILABILITY OF INFORMATION.—Information that is developed by the Attorney General or requested by the Attorney General and received from a covered stationary source for the purpose of conducting the review under subclauses (I) and (II) shall be exempt from disclosure under section 552 of title 5 if such information would pose a threat to national security.

(xii) SCOPE.—This subparagraph—

(I) applies only to covered persons; and

(II) does not restrict the dissemination of off-site consequence analysis information by any covered person in any manner or form except in the form of a risk management plan or an electronic data base created by the Administrator from off-site consequence analysis information.

(xiii) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Administrator and the Attorney General such sums as are necessary to carry out this subparagraph (including the regulations promulgated under clause (ii)), to remain available until expended.

(8) Research on hazard assessments

The Administrator may collect and publish information on accident scenarios and consequences covering a range of possible events for substances listed under paragraph (3). The Administrator shall establish a program of long-term research to develop and disseminate information on methods and techniques for hazard assessment which may be useful in improving and validating the procedures employed in the preparation of hazard assessments under this subsection.

(9) Order authority

(A) In addition to any other action taken, when the Administrator determines that there may be an imminent and substantial endangerment to the human health or welfare or the environment because of an actual or threatened accidental release of a regulated substance, the Administrator may secure such relief as may be necessary to abate such danger or threat, and the district court of the United States in the district in which the threat occurs shall have jurisdiction to grant such relief as the public interest and the equities of the case may require. The Administrator may also, after notice to the State in which the stationary source is located, take other action under this paragraph including, but not limited to, issuing such orders as may be necessary to protect human health. The Administrator shall take action under section 7603 of this title rather than this paragraph whenever the authority of such section is adequate to protect human health and the environment.

(B) Orders issued pursuant to this paragraph may be enforced in an action brought in the appropriate United States district court as if the order were issued under section 7603 of this title.

(C) Within 180 days after November 15, 1990, the Administrator shall publish guidance for using the order authorities established by this paragraph. Such guidance shall provide for the coordinated use of the authorities of this paragraph with other emergency powers authorized by section 9606 of this title, sections 311(c), 308, 309 and 504(a) of the Federal Water Pollution Control Act [33 U.S.C. 1321(c), 1318, 1319, 1364(a)], sections 3007, 3008, 3013, and 7003 of the Solid Waste Disposal Act [42 U.S.C. 6927, 6928, 6934, 6973], sections 1445 and 1431 of the Safe Drinking Water Act [42 U.S.C. 300j-4, 300i], sections 5 and 7 of the Toxic Substances Control Act [15 U.S.C. 2604, 2606], and sections 7413, 7414, and 7603 of this title.

(10) Presidential review

The President shall conduct a review of release prevention, mitigation and response authorities of the various Federal agencies and shall clarify and coordinate agency responsibilities to assure the most effective and efficient implementation of such authorities and to identify any deficiencies in authority or resources which may exist. The President may utilize the resources and solicit the recommendations of the Chemical Safety and Hazard Investigation Board in conducting such review. At the conclusion of such review, but not

later than 24 months after November 15, 1990, the President shall transmit a message to the Congress on the release prevention, mitigation and response activities of the Federal Government making such recommendations for change in law as the President may deem appropriate. Nothing in this paragraph shall be interpreted, construed or applied to authorize the President to modify or reassign release prevention, mitigation or response authorities otherwise established by law.

(11) State authority

Nothing in this subsection shall preclude, deny or limit any right of a State or political subdivision thereof to adopt or enforce any regulation, requirement, limitation or standard (including any procedural requirement) that is more stringent than a regulation, requirement, limitation or standard in effect under this subsection or that applies to a substance not subject to this subsection.

(s) Periodic report

Not later than January 15, 1993 and every 3 years thereafter, the Administrator shall prepare and transmit to the Congress a comprehensive report on the measures taken by the Agency and by the States to implement the provisions of this section. The Administrator shall maintain a database on pollutants and sources subject to the provisions of this section and shall include aggregate information from the database in each annual report. The report shall include, but not be limited to—

- (1) a status report on standard-setting under subsections (d) and (f) of this section;
- (2) information with respect to compliance with such standards including the costs of compliance experienced by sources in various categories and subcategories;
- (3) development and implementation of the national urban air toxics program; and
- (4) recommendations of the Chemical Safety and Hazard Investigation Board with respect to the prevention and mitigation of accidental releases.

(July 14, 1955, ch. 360, title I, §112, as added Pub. L. 91-604, §4(a), Dec. 31, 1970, 84 Stat. 1685; amended Pub. L. 95-95, title I, §§109(d)(2), 110, title IV, §401(c), Aug. 7, 1977, 91 Stat. 701, 703, 791; Pub. L. 95-623, §13(b), Nov. 9, 1978, 92 Stat. 3458; Pub. L. 101-549, title III, §301, Nov. 15, 1990, 104 Stat. 2531; Pub. L. 102-187, Dec. 4, 1991, 105 Stat. 1285; Pub. L. 105-362, title IV, §402(b), Nov. 10, 1998, 112 Stat. 3283; Pub. L. 106-40, §§2, 3(a), Aug. 5, 1999, 113 Stat. 207, 208.)

REFERENCES IN TEXT

The date of enactment, referred to in subsec. (a)(11), probably means the date of enactment of Pub. L. 101-549, which amended this section generally and was approved Nov. 15, 1990.

The Atomic Energy Act, referred to in subsec. (d)(9), probably means the Atomic Energy Act of 1954, act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

The Federal Water Pollution Control Act, referred to in subsecs. (e)(5) and (m)(1)(D), (5)(D), is act June 30,

1948, ch. 758, as amended generally by Pub. L. 92-500, §2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§1251 et seq.) of Title 33, Navigation and Navigable Waters. Title II of the Act is classified generally to subchapter II (§1281 et seq.) of chapter 26 of Title 33. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Toxic Substances Control Act, referred to in subsec. (k)(3)(C), is Pub. L. 94-469, Oct. 11, 1976, 90 Stat. 2003, as amended, which is classified generally to chapter 53 (§2601 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 15 and Tables.

The Federal Insecticide, Fungicide and Rodenticide Act, referred to in subsec. (k)(3)(C), probably means the Federal Insecticide, Fungicide, and Rodenticide Act, act June 25, 1947, ch. 125, as amended generally by Pub. L. 92-516, Oct. 21, 1972, 86 Stat. 973, which is classified generally to subchapter II (§136 et seq.) of chapter 6 of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 136 of Title 7 and Tables.

The Resource Conservation and Recovery Act, referred to in subsec. (k)(3)(C), probably means the Resource Conservation and Recovery Act of 1976, Pub. L. 94-580, Oct. 21, 1976, 90 Stat. 2796, as amended, which is classified generally to chapter 82 (§6901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title of 1976 Amendment note set out under section 6901 of this title and Tables.

The Safe Drinking Water Act, referred to in subsec. (m)(1)(D), (5)(D), is title XIV of act July 1, 1944, as added Dec. 16, 1974, Pub. L. 93-523, §2(a), 88 Stat. 1660, as amended, which is classified generally to subchapter XII (§300f et seq.) of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

The Solid Waste Disposal Act, referred to in subsec. (n)(7), is title II of Pub. L. 89-272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2795. Subtitle C of the Act is classified generally to subchapter III (§6921 et seq.) of chapter 82 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

Section 303 of the Clean Air Act Amendments of 1990, referred to in subsec. (o)(4), probably means section 303 of Pub. L. 101-549, which is set out below.

The Clean Air Act Amendments of 1990, referred to in subsec. (q)(1)-(3), probably means Pub. L. 101-549, Nov. 15, 1990, 104 Stat. 2399. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

The Emergency Planning and Community Right-to-Know Act of 1986, referred to in subsec. (r)(3), is title III of Pub. L. 99-499, Oct. 17, 1986, 100 Stat. 1728, which is classified generally to chapter 116 (§11001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 11001 of this title and Tables.

The Occupational Safety and Health Act, referred to in subsec. (r)(6)(C)(ii), (K), (L), probably means the Occupational Safety and Health Act of 1970, Pub. L. 91-596, Dec. 29, 1970, 84 Stat. 1590, as amended, which is classified principally to chapter 15 (§651 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 651 of Title 29 and Tables.

CODIFICATION

Section was formerly classified to section 1857c-7 of this title.

AMENDMENTS

1999—Subsec. (r)(2)(D). Pub. L. 106-40, §2(5), added subpar. (D).

Subsec. (r)(4). Pub. L. 106-40, §2, substituted "Administrator—

"(A) shall consider—"

for "Administrator shall consider each of the following criteria—" in introductory provisions, redesignated subpars. (A) to (C) as cls. (i) to (iii), respectively, of subpar. (A) and added subpar. (B).

Subsec. (r)(7)(H). Pub. L. 106-40, §3(a), added subpar. (H).

1998—Subsec. (n)(2)(C). Pub. L. 105-362 substituted "On completion of the study, the Secretary shall submit to Congress a report on the results of the study and" for "The Secretary shall prepare annual reports to Congress on the status of the research program and at the completion of the study".

1991—Subsec. (b)(1). Pub. L. 102-187 struck out "7783064 Hydrogen sulfide" from list of pollutants.

1990—Pub. L. 101-549 amended section generally, substituting present provisions for provisions which related to: in subsec. (a), definitions; in subsec. (b), list of hazardous air pollutants, emission standards, and pollution control techniques; in subsec. (c), prohibited acts and exemption; in subsec. (d), State implementation and enforcement; and in subsec. (e), design, equipment, work practice, and operational standards.

1978—Subsec. (e)(5). Pub. L. 95-623 added par. (5).

1977—Subsec. (a)(1). Pub. L. 95-95, §401(c), substituted "causes, or contributes to, air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness" for "may cause, or contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness".

Subsec. (d)(1). Pub. L. 95-95, §109(d)(2), struck out "(except with respect to stationary sources owned or operated by the United States)" after "implement and enforce such standards".

Subsec. (e). Pub. L. 95-95, §110, added subsec. (e).

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as a note under section 7401 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103-7 (in which reports required under subsecs. (m)(5), (r)(6)(C)(ii), and (s) of this section are listed, respectively, as the 8th item on page 162, the 9th item on page 198, and the 9th item on page 162), see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

PENDING ACTIONS AND PROCEEDINGS

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95-95 [Aug. 7, 1977], not to abate by reason of the taking

effect of Pub. L. 95-95, see section 406(a) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

DELEGATION OF AUTHORITY

Memorandum of President of the United States, Aug. 19, 1993, 58 F.R. 52397, provided:

Memorandum for the Administrator of the Environmental Protection Agency

WHEREAS, the Environmental Protection Agency, the agencies and departments that are members of the National Response Team (authorized under Executive Order No. 12580, 52 Fed. Reg. 2923 (1987) [42 U.S.C. 9615 note]), and other Federal agencies and departments undertake emergency release prevention, mitigation, and response activities pursuant to various authorities;

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 112(r)(10) of the Clean Air Act (the "Act") (section 7412(r)(10) of title 42 of the United States Code) and section 301 of title 3 of the United States Code, and in order to provide for the delegation of certain functions under the Act [42 U.S.C. 7401 et seq.], I hereby:

(1) Authorize you, in coordination with agencies and departments that are members of the National Response Team and other appropriate agencies and departments, to conduct a review of release prevention, mitigation, and response authorities of Federal agencies in order to assure the most effective and efficient implementation of such authorities and to identify any deficiencies in authority or resources that may exist, to the extent such review is required by section 112(r)(10) of the Act; and

(2) Authorize you, in coordination with agencies and departments that are members of the National Response Team and other appropriate agencies and departments, to prepare and transmit a message to the Congress concerning the release prevention, mitigation, and response activities of the Federal Government with such recommendations for change in law as you deem appropriate, to the extent such message is required by section 112(r)(10) of the Act.

The authority delegated by this memorandum may be further redelegated within the Environmental Protection Agency.

You are hereby authorized and directed to publish this memorandum in the Federal Register.

WILLIAM J. CLINTON.

Memorandum of President of the United States, Jan. 27, 2000, 65 F.R. 8631, provided:

Memorandum for the Attorney General[,] the Administrator of the Environmental Protection Agency[, and] the Director of the Office of Management and Budget

By the authority vested in me as President by the Constitution and laws of the United States of America, including section 112(r)(7)(H) of the Clean Air Act ("Act") (42 U.S.C. 7412(r)(7)(H)), as added by section 3 of the Chemical Safety Information, Site Security and Fuels Regulatory Relief Act (Public Law 106-40), and section 301 of title 3, United States Code, I hereby delegate to:

(1) the Attorney General the authority vested in the President under section 112(r)(7)(H)(ii)(I)(aa) of the Act

to assess the increased risk of terrorist and other criminal activity associated with the posting of off-site consequence analysis information on the Internet;

(2) the Administrator of the Environmental Protection Agency (EPA) the authority vested in the President under section 112(r)(7)(H)(ii)(I)(bb) of the Act to assess the incentives created by public disclosure of off-site consequence analysis information for reduction in the risk of accidental releases; and

(3) the Attorney General and the Administrator of EPA, jointly, the authority vested in the President under section 112(r)(7)(H)(ii)(II) of the Act to promulgate regulations, based on these assessments, governing the distribution of off-site consequence analysis information. These regulations, in proposed and final form, shall be subject to review and approval by the Director of the Office of Management and Budget.

The Administrator of EPA is authorized and directed to publish this memorandum in the Federal Register.

WILLIAM J. CLINTON.

REPORTS

Pub. L. 106-40, §3(b), Aug. 5, 1999, 113 Stat. 213, provided that:

“(1) DEFINITION OF ACCIDENTAL RELEASE.—In this subsection, the term ‘accidental release’ has the meaning given the term in section 112(r)(2) of the Clean Air Act (42 U.S.C. 7412(r)(2)).

“(2) REPORT ON STATUS OF CERTAIN AMENDMENTS.—Not later than 2 years after the date of enactment of this Act [Aug. 5, 1999], the Comptroller General of the United States shall submit to Congress a report on the status of the development of amendments to the National Fire Protection Association Code for Liquefied Petroleum Gas that will result in the provision of information to local emergency response personnel concerning the off-site effects of accidental releases of substances exempted from listing under section 112(r)(4)(B) of the Clean Air Act (as added by section 3).

“(3) REPORT ON COMPLIANCE WITH CERTAIN INFORMATION SUBMISSION REQUIREMENTS.—Not later than 3 years after the date of enactment of this Act, the Comptroller General of the United States shall submit to Congress a report that—

“(A) describes the level of compliance with Federal and State requirements relating to the submission to local emergency response personnel of information intended to help the local emergency response personnel respond to chemical accidents or related environmental or public health threats; and

“(B) contains an analysis of the adequacy of the information required to be submitted and the efficacy of the methods for delivering the information to local emergency response personnel.”

REEVALUATION OF REGULATIONS

Pub. L. 106-40, §3(c), Aug. 5, 1999, 113 Stat. 213, provided that: “The President shall reevaluate the regulations promulgated under this section within 6 years after the enactment of this Act [Aug. 5, 1999]. If the President determines not to modify such regulations, the President shall publish a notice in the Federal Register stating that such reevaluation has been completed and that a determination has been made not to modify the regulations. Such notice shall include an explanation of the basis of such decision.”

PUBLIC MEETING DURING MORATORIUM PERIOD

Pub. L. 106-40, §4, Aug. 5, 1999, 113 Stat. 214, provided that:

“(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act [Aug. 5, 1999], each owner or operator of a stationary source covered by section 112(r)(7)(B)(ii) of the Clean Air Act [42 U.S.C. 7412(r)(7)(B)(ii)] shall convene a public meeting, after reasonable public notice, in order to describe and discuss the local implications of the risk management plan submitted by the stationary source pursuant to section 112(r)(7)(B)(iii) of the Clean Air Act, including a

summary of the off-site consequence analysis portion of the plan. Two or more stationary sources may conduct a joint meeting. In lieu of conducting such a meeting, small business stationary sources as defined in section 507(c)(1) of the Clean Air Act [42 U.S.C. 7661f(c)(1)] may comply with this section by publicly posting a summary of the off-site consequence analysis information for their facility not later than 180 days after the enactment of this Act. Not later than 10 months after the date of enactment of this Act, each such owner or operator shall send a certification to the director of the Federal Bureau of Investigation stating that such meeting has been held, or that such summary has been posted, within 1 year prior to, or within 6 months after, the date of the enactment of this Act. This section shall not apply to sources that employ only Program 1 processes within the meaning of regulations promulgated under section 112(r)(7)(B)(i) of the Clean Air Act.

“(b) ENFORCEMENT.—The Administrator of the Environmental Protection Agency may bring an action in the appropriate United States district court against any person who fails or refuses to comply with the requirements of this section, and such court may issue such orders, and take such other actions, as may be necessary to require compliance with such requirements.”

RISK ASSESSMENT AND MANAGEMENT COMMISSION

Section 303 of Pub. L. 101-549 provided that:

“(a) ESTABLISHMENT.—There is hereby established a Risk Assessment and Management Commission (hereafter referred to in this section as the ‘Commission’), which shall commence proceedings not later than 18 months after the date of enactment of the Clean Air Act Amendments of 1990 [Nov. 15, 1990] and which shall make a full investigation of the policy implications and appropriate uses of risk assessment and risk management in regulatory programs under various Federal laws to prevent cancer and other chronic human health effects which may result from exposure to hazardous substances.

“(b) CHARGE.—The Commission shall consider—

“(1) the report of the National Academy of Sciences authorized by section 112(o) of the Clean Air Act [42 U.S.C. 7412(o)], the use and limitations of risk assessment in establishing emission or effluent standards, ambient standards, exposure standards, acceptable concentration levels, tolerances or other environmental criteria for hazardous substances that present a risk of carcinogenic effects or other chronic health effects and the suitability of risk assessment for such purposes;

“(2) the most appropriate methods for measuring and describing cancer risks or risks of other chronic health effects from exposure to hazardous substances considering such alternative approaches as the lifetime risk of cancer or other effects to the individual or individuals most exposed to emissions from a source or sources on both an actual and worst case basis, the range of such risks, the total number of health effects avoided by exposure reductions, effluent standards, ambient standards, exposures standards, acceptable concentration levels, tolerances and other environmental criteria, reductions in the number of persons exposed at various levels of risk, the incidence of cancer, and other public health factors;

“(3) methods to reflect uncertainties in measurement and estimation techniques, the existence of synergistic or antagonistic effects among hazardous substances, the accuracy of extrapolating human health risks from animal exposure data, and the existence of unquantified direct or indirect effects on human health in risk assessment studies;

“(4) risk management policy issues including the use of lifetime cancer risks to individuals most exposed, incidence of cancer, the cost and technical feasibility of exposure reduction measures and the use of site-specific actual exposure information in setting emissions standards and other limitations applicable to sources of exposure to hazardous substances; and

“(5) and comment on the degree to which it is possible or desirable to develop a consistent risk assessment methodology, or a consistent standard of acceptable risk, among various Federal programs.

“(c) MEMBERSHIP.—Such Commission shall be composed of ten members who shall have knowledge or experience in fields of risk assessment or risk management, including three members to be appointed by the President, two members to be appointed by the Speaker of the House of Representatives, one member to be appointed by the Minority Leader of the House of Representatives, two members to be appointed by the Majority Leader of the Senate, one member to be appointed by the Minority Leader of the Senate, and one member to be appointed by the President of the National Academy of Sciences. Appointments shall be made not later than 18 months after the date of enactment of the Clean Air Act Amendments of 1990 [Nov. 15, 1990].

“(d) ASSISTANCE FROM AGENCIES.—The Administrator of the Environmental Protection Agency and the heads of all other departments, agencies, and instrumentalities of the executive branch of the Federal Government shall, to the maximum extent practicable, assist the Commission in gathering such information as the Commission deems necessary to carry out this section subject to other provisions of law.

“(e) STAFF AND CONTRACTS.—

“(1) In the conduct of the study required by this section, the Commission is authorized to contract (in accordance with Federal contract law) with non-governmental entities that are competent to perform research or investigations within the Commission’s mandate, and to hold public hearings, forums, and workshops to enable full public participation.

“(2) The Commission may appoint and fix the pay of such staff as it deems necessary in accordance with the provisions of title 5, United States Code. The Commission may request the temporary assignment of personnel from the Environmental Protection Agency or other Federal agencies.

“(3) The members of the Commission who are not officers or employees of the United States, while attending conferences or meetings of the Commission or while otherwise serving at the request of the Chair, shall be entitled to receive compensation at a rate not in excess of the maximum rate of pay for Grade GS-18, as provided in the General Schedule under section 5332 of title 5 of the United States Code, including travel time, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence as authorized by law for persons in the Government service employed intermittently.

“(f) REPORT.—A report containing the results of all Commission studies and investigations under this section, together with any appropriate legislative recommendations or administrative recommendations, shall be made available to the public for comment not later than 42 months after the date of enactment of the Clean Air Act Amendments of 1990 [Nov. 15, 1990] and shall be submitted to the President and to the Congress not later than 48 months after such date of enactment. In the report, the Commission shall make recommendations with respect to the appropriate use of risk assessment and risk management in Federal regulatory programs to prevent cancer or other chronic health effects which may result from exposure to hazardous substances. The Commission shall cease to exist upon the date determined by the Commission, but not later than 9 months after the submission of such report.

“(g) AUTHORIZATION.—There are authorized to be appropriated such sums as are necessary to carry out the activities of the Commission established by this section.”

[References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)]

of Pub. L. 101-509, set out in a note under section 5376 of Title 5.]

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7403, 7411, 7413, 7414, 7416, 7417, 7418, 7420, 7422, 7429, 7479, 7511b, 7604, 7607, 7608, 7612, 7616, 7625-1, 7627, 7661, 7661a, 7661f, 9601 of this title.

§ 7413. Federal enforcement

(a) In general

(1) Order to comply with SIP

Whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated or is in violation of any requirement or prohibition of an applicable implementation plan or permit, the Administrator shall notify the person and the State in which the plan applies of such finding. At any time after the expiration of 30 days following the date on which such notice of a violation is issued, the Administrator may, without regard to the period of violation (subject to section 2462 of title 28)—

(A) issue an order requiring such person to comply with the requirements or prohibitions of such plan or permit,

(B) issue an administrative penalty order in accordance with subsection (d) of this section, or

(C) bring a civil action in accordance with subsection (b) of this section.

(2) State failure to enforce SIP or permit program

Whenever, on the basis of information available to the Administrator, the Administrator finds that violations of an applicable implementation plan or an approved permit program under subchapter V of this chapter are so widespread that such violations appear to result from a failure of the State in which the plan or permit program applies to enforce the plan or permit program effectively, the Administrator shall so notify the State. In the case of a permit program, the notice shall be made in accordance with subchapter V of this chapter. If the Administrator finds such failure extends beyond the 30th day after such notice (90 days in the case of such permit program), the Administrator shall give public notice of such finding. During the period beginning with such public notice and ending when such State satisfies the Administrator that it will enforce such plan or permit program (hereafter referred to in this section as “period of federally assumed enforcement”), the Administrator may enforce any requirement or prohibition of such plan or permit program with respect to any person by—

(A) issuing an order requiring such person to comply with such requirement or prohibition,

(B) issuing an administrative penalty order in accordance with subsection (d) of this section, or

(C) bringing a civil action in accordance with subsection (b) of this section.

(3) EPA enforcement of other requirements

Except for a requirement or prohibition enforceable under the preceding provisions of

this subsection, whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated, or is in violation of, any other requirement or prohibition of this subchapter, section 7603 of this title, subchapter IV-A, subchapter V, or subchapter VI of this chapter, including, but not limited to, a requirement or prohibition of any rule, plan, order, waiver, or permit promulgated, issued, or approved under those provisions or subchapters, or for the payment of any fee owed to the United States under this chapter (other than subchapter II of this chapter), the Administrator may—

(A) issue an administrative penalty order in accordance with subsection (d) of this section,

(B) issue an order requiring such person to comply with such requirement or prohibition,

(C) bring a civil action in accordance with subsection (b) of this section or section 7605 of this title, or

(D) request the Attorney General to commence a criminal action in accordance with subsection (c) of this section.

(4) Requirements for orders

An order issued under this subsection (other than an order relating to a violation of section 7412 of this title) shall not take effect until the person to whom it is issued has had an opportunity to confer with the Administrator concerning the alleged violation. A copy of any order issued under this subsection shall be sent to the State air pollution control agency of any State in which the violation occurs. Any order issued under this subsection shall state with reasonable specificity the nature of the violation and specify a time for compliance which the Administrator determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. In any case in which an order under this subsection (or notice to a violator under paragraph (1)) is issued to a corporation, a copy of such order (or notice) shall be issued to appropriate corporate officers. An order issued under this subsection shall require the person to whom it was issued to comply with the requirement as expeditiously as practicable, but in no event longer than one year after the date the order was issued, and shall be nonrenewable. No order issued under this subsection shall prevent the State or the Administrator from assessing any penalties nor otherwise affect or limit the State's or the United States authority to enforce under other provisions of this chapter, nor affect any person's obligations to comply with any section of this chapter or with a term or condition of any permit or applicable implementation plan promulgated or approved under this chapter.

(5) Failure to comply with new source requirements

Whenever, on the basis of any available information, the Administrator finds that a State is not acting in compliance with any requirement or prohibition of the chapter relating to the construction of new sources or the

modification of existing sources, the Administrator may—

(A) issue an order prohibiting the construction or modification of any major stationary source in any area to which such requirement applies;¹

(B) issue an administrative penalty order in accordance with subsection (d) of this section, or

(C) bring a civil action under subsection (b) of this section.

Nothing in this subsection shall preclude the United States from commencing a criminal action under subsection (c) of this section at any time for any such violation.

(b) Civil judicial enforcement

The Administrator shall, as appropriate, in the case of any person that is the owner or operator of an affected source, a major emitting facility, or a major stationary source, and may, in the case of any other person, commence a civil action for a permanent or temporary injunction, or to assess and recover a civil penalty of not more than \$25,000 per day for each violation, or both, in any of the following instances:

(1) Whenever such person has violated, or is in violation of, any requirement or prohibition of an applicable implementation plan or permit. Such an action shall be commenced (A) during any period of federally assumed enforcement, or (B) more than 30 days following the date of the Administrator's notification under subsection (a)(1) of this section that such person has violated, or is in violation of, such requirement or prohibition.

(2) Whenever such person has violated, or is in violation of, any other requirement or prohibition of this subchapter, section 7603 of this title, subchapter IV-A, subchapter V, or subchapter VI of this chapter, including, but not limited to, a requirement or prohibition of any rule, order, waiver or permit promulgated, issued, or approved under this chapter, or for the payment of any fee owed the United States under this chapter (other than subchapter II of this chapter).

(3) Whenever such person attempts to construct or modify a major stationary source in any area with respect to which a finding under subsection (a)(5) of this section has been made.

Any action under this subsection may be brought in the district court of the United States for the district in which the violation is alleged to have occurred, or is occurring, or in which the defendant resides, or where the defendant's principal place of business is located, and such court shall have jurisdiction to restrain such violation, to require compliance, to assess such civil penalty, to collect any fees owed the United States under this chapter (other than subchapter II of this chapter) and any noncompliance assessment and nonpayment penalty owed under section 7420 of this title, and to award any other appropriate relief. Notice of the commencement of such action shall be given to the appropriate State air pollution control agency. In the case of any action brought by the

¹ So in original. The semicolon probably should be a comma.

Administrator under this subsection, the court may award costs of litigation (including reasonable attorney and expert witness fees) to the party or parties against whom such action was brought if the court finds that such action was unreasonable.

(c) Criminal penalties

(1) Any person who knowingly violates any requirement or prohibition of an applicable implementation plan (during any period of federally assumed enforcement or more than 30 days after having been notified under subsection (a)(1) of this section by the Administrator that such person is violating such requirement or prohibition), any order under subsection (a) of this section, requirement or prohibition of section 7411(e) of this title (relating to new source performance standards), section 7412 of this title, section 7414 of this title (relating to inspections, etc.), section 7429 of this title (relating to solid waste combustion), section 7475(a) of this title (relating to preconstruction requirements), an order under section 7477 of this title (relating to preconstruction requirements), an order under section 7603 of this title (relating to emergency orders), section 7661a(a) or 7661b(c) of this title (relating to permits), or any requirement or prohibition of subchapter IV-A of this chapter (relating to acid deposition control), or subchapter VI of this chapter (relating to stratospheric ozone control), including a requirement of any rule, order, waiver, or permit promulgated or approved under such sections or subchapters, and including any requirement for the payment of any fee owed the United States under this chapter (other than subchapter II of this chapter) shall, upon conviction, be punished by a fine pursuant to title 18 or by imprisonment for not to exceed 5 years, or both. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

(2) Any person who knowingly—

(A) makes any false material statement, representation, or certification in, or omits material information from, or knowingly alters, conceals, or fails to file or maintain any notice, application, record, report, plan, or other document required pursuant to this chapter to be either filed or maintained (whether with respect to the requirements imposed by the Administrator or by a State);

(B) fails to notify or report as required under this chapter; or

(C) falsifies, tampers with, renders inaccurate, or fails to install any monitoring device or method required to be maintained or followed under this chapter²

shall, upon conviction, be punished by a fine pursuant to title 18 or by imprisonment for not more than 2 years, or both. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

(3) Any person who knowingly fails to pay any fee owed the United States under this subchapter, subchapter III, IV-A, V, or VI of this chapter shall, upon conviction, be punished by a fine pursuant to title 18 or by imprisonment for not more than 1 year, or both. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

(4) Any person who negligently releases into the ambient air any hazardous air pollutant listed pursuant to section 7412 of this title or any extremely hazardous substance listed pursuant to section 11002(a)(2) of this title that is not listed in section 7412 of this title, and who at the time negligently places another person in imminent danger of death or serious bodily injury shall, upon conviction, be punished by a fine under title 18 or by imprisonment for not more than 1 year, or both. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

(5)(A) Any person who knowingly releases into the ambient air any hazardous air pollutant listed pursuant to section 7412 of this title or any extremely hazardous substance listed pursuant to section 11002(a)(2) of this title that is not listed in section 7412 of this title, and who knows at the time that he thereby places another person in imminent danger of death or serious bodily injury shall, upon conviction, be punished by a fine under title 18 or by imprisonment of not more than 15 years, or both. Any person committing such violation which is an organization shall, upon conviction under this paragraph, be subject to a fine of not more than \$1,000,000 for each violation. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment. For any air pollutant for which the Administrator has set an emissions standard or for any source for which a permit has been issued under subchapter V of this chapter, a release of such pollutant in accordance with that standard or permit shall not constitute a violation of this paragraph or paragraph (4).

(B) In determining whether a defendant who is an individual knew that the violation placed another person in imminent danger of death or serious bodily injury—

(i) the defendant is responsible only for actual awareness or actual belief possessed; and

(ii) knowledge possessed by a person other than the defendant, but not by the defendant, may not be attributed to the defendant;

except that in proving a defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to be shielded from relevant information.

(C) It is an affirmative defense to a prosecution that the conduct charged was freely consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of—

² So in original. Probably should be followed by a comma.

- (i) an occupation, a business, or a profession; or
- (ii) medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent.

The defendant may establish an affirmative defense under this subparagraph by a preponderance of the evidence.

(D) All general defenses, affirmative defenses, and bars to prosecution that may apply with respect to other Federal criminal offenses may apply under subparagraph (A) of this paragraph and shall be determined by the courts of the United States according to the principles of common law as they may be interpreted in the light of reason and experience. Concepts of justification and excuse applicable under this section may be developed in the light of reason and experience.

(E) The term “organization” means a legal entity, other than a government, established or organized for any purpose, and such term includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons.

(F) The term “serious bodily injury” means bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(6) For the purpose of this subsection, the term “person” includes, in addition to the entities referred to in section 7602(e) of this title, any responsible corporate officer.

(d) Administrative assessment of civil penalties

(1) The Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to \$25,000, per day of violation, whenever, on the basis of any available information, the Administrator finds that such person—

(A) has violated or is violating any requirement or prohibition of an applicable implementation plan (such order shall be issued (i) during any period of federally assumed enforcement, or (ii) more than thirty days following the date of the Administrator’s notification under subsection (a)(1) of this section of a finding that such person has violated or is violating such requirement or prohibition); or

(B) has violated or is violating any other requirement or prohibition of this subchapter or subchapter III, IV–A, V, or VI of this chapter, including, but not limited to, a requirement or prohibition of any rule, order, waiver, permit, or plan promulgated, issued, or approved under this chapter, or for the payment of any fee owed the United States under this chapter (other than subchapter II of this chapter); or

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

The Administrator’s authority under this paragraph shall be limited to matters where the

total penalty sought does not exceed \$200,000 and the first alleged date of violation occurred no more than 12 months prior to the initiation of the administrative action, except where the Administrator and the Attorney General jointly determine that a matter involving a larger penalty amount or longer period of violation is appropriate for administrative penalty action. Any such determination by the Administrator and the Attorney General shall not be subject to judicial review.

(2)(A) An administrative penalty assessed under paragraph (1) shall be assessed by the Administrator by an order made after opportunity for a hearing on the record in accordance with sections 554 and 556 of title 5. The Administrator shall issue reasonable rules for discovery and other procedures for hearings under this paragraph. Before issuing such an order, the Administrator shall give written notice to the person to be assessed an administrative penalty of the Administrator’s proposal to issue such order and provide such person an opportunity to request such a hearing on the order, within 30 days of the date the notice is received by such person.

(B) The Administrator may compromise, modify, or remit, with or without conditions, any administrative penalty which may be imposed under this subsection.

(3) The Administrator may implement, after consultation with the Attorney General and the States, a field citation program through regulations establishing appropriate minor violations for which field citations assessing civil penalties not to exceed \$5,000 per day of violation may be issued by officers or employees designated by the Administrator. Any person to whom a field citation is assessed may, within a reasonable time as prescribed by the Administrator through regulation, elect to pay the penalty assessment or to request a hearing on the field citation. If a request for a hearing is not made within the time specified in the regulation, the penalty assessment in the field citation shall be final. Such hearing shall not be subject to section 554 or 556 of title 5, but shall provide a reasonable opportunity to be heard and to present evidence. Payment of a civil penalty required by a field citation shall not be a defense to further enforcement by the United States or a State to correct a violation, or to assess the statutory maximum penalty pursuant to other authorities in the chapter, if the violation continues.

(4) Any person against whom a civil penalty is assessed under paragraph (3) of this subsection or to whom an administrative penalty order is issued under paragraph (1) of this subsection may seek review of such assessment in the United States District Court for the District of Columbia or for the district in which the violation is alleged to have occurred, in which such person resides, or where such person’s principal place of business is located, by filing in such court within 30 days following the date the administrative penalty order becomes final under paragraph (2), the assessment becomes final under paragraph (3), or a final decision following a hearing under paragraph (3) is rendered, and by simultaneously sending a copy of the filing by certified mail to the Administrator and the Attorney General. Within 30 days thereafter, the

Administrator shall file in such court a certified copy, or certified index, as appropriate, of the record on which the administrative penalty order or assessment was issued. Such court shall not set aside or remand such order or assessment unless there is not substantial evidence in the record, taken as a whole, to support the finding of a violation or unless the order or penalty assessment constitutes an abuse of discretion. Such order or penalty assessment shall not be subject to review by any court except as provided in this paragraph. In any such proceedings, the United States may seek to recover civil penalties ordered or assessed under this section.

(5) If any person fails to pay an assessment of a civil penalty or fails to comply with an administrative penalty order—

(A) after the order or assessment has become final, or

(B) after a court in an action brought under paragraph (4) has entered a final judgment in favor of the Administrator,

the Administrator shall request the Attorney General to bring a civil action in an appropriate district court to enforce the order or to recover the amount ordered or assessed (plus interest at rates established pursuant to section 6621(a)(2) of title 26 from the date of the final order or decision or the date of the final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of such order or assessment shall not be subject to review. Any person who fails to pay on a timely basis a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, the United States enforcement expenses, including but not limited to attorneys fees and costs incurred by the United States for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be 10 percent of the aggregate amount of such person's outstanding penalties and nonpayment penalties accrued as of the beginning of such quarter.

(e) Penalty assessment criteria

(1) In determining the amount of any penalty to be assessed under this section or section 7604(a) of this title, the Administrator or the court, as appropriate, shall take into consideration (in addition to such other factors as justice may require) the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation. The court shall not assess penalties for noncompliance with administrative subpoenas under section 7607(a) of this title, or actions under section 7414 of this title, where the violator had sufficient cause to violate or fail or refuse to comply with such subpoena or action.

(2) A penalty may be assessed for each day of violation. For purposes of determining the num-

ber of days of violation for which a penalty may be assessed under subsection (b) or (d)(1) of this section, or section 7604(a) of this title, or an assessment may be made under section 7420 of this title, where the Administrator or an air pollution control agency has notified the source of the violation, and the plaintiff makes a prima facie showing that the conduct or events giving rise to the violation are likely to have continued or recurred past the date of notice, the days of violation shall be presumed to include the date of such notice and each and every day thereafter until the violator establishes that continuous compliance has been achieved, except to the extent that the violator can prove by a preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature.

(f) Awards

The Administrator may pay an award, not to exceed \$10,000, to any person who furnishes information or services which lead to a criminal conviction or a judicial or administrative civil penalty for any violation of this subchapter or subchapter III, IV-A, V, or VI of this chapter enforced under this section. Such payment is subject to available appropriations for such purposes as provided in annual appropriation Acts. Any officer, or employee of the United States or any State or local government who furnishes information or renders service in the performance of an official duty is ineligible for payment under this subsection. The Administrator may, by regulation, prescribe additional criteria for eligibility for such an award.

(g) Settlements; public participation

At least 30 days before a consent order or settlement agreement of any kind under this chapter to which the United States is a party (other than enforcement actions under this section, section 7420 of this title, or subchapter II of this chapter, whether or not involving civil or criminal penalties, or judgments subject to Department of Justice policy on public participation) is final or filed with a court, the Administrator shall provide a reasonable opportunity by notice in the Federal Register to persons who are not named as parties or intervenors to the action or matter to comment in writing. The Administrator or the Attorney General, as appropriate, shall promptly consider any such written comments and may withdraw or withhold his consent to the proposed order or agreement if the comments disclose facts or considerations which indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of this chapter. Nothing in this subsection shall apply to civil or criminal penalties under this chapter.

(h) Operator

For purposes of the provisions of this section and section 7420 of this title, the term "operator", as used in such provisions, shall include any person who is senior management personnel or a corporate officer. Except in the case of knowing and willful violations, such term shall not include any person who is a stationary engineer or technician responsible for the operation,

maintenance, repair, or monitoring of equipment and facilities and who often has supervisory and training duties but who is not senior management personnel or a corporate officer. Except in the case of knowing and willful violations, for purposes of subsection (c)(4) of this section, the term "a person" shall not include an employee who is carrying out his normal activities and who is not a part of senior management personnel or a corporate officer. Except in the case of knowing and willful violations, for purposes of paragraphs (1), (2), (3), and (5) of subsection (c) of this section the term "a person" shall not include an employee who is carrying out his normal activities and who is acting under orders from the employer.

(July 14, 1955, ch. 360, title I, § 113, as added Pub. L. 91-604, § 4(a), Dec. 31, 1970, 84 Stat. 1686; amended Pub. L. 92-157, title III, § 302(b), (c), Nov. 18, 1971, 85 Stat. 464; Pub. L. 93-319, § 6(a)(1)-(3), June 22, 1974, 88 Stat. 259; Pub. L. 95-95, title I, §§ 111, 112(a), Aug. 7, 1977, 91 Stat. 704, 705; Pub. L. 95-190, § 14(a)(10)-(21), (b)(1), Nov. 16, 1977, 91 Stat. 1400, 1404; Pub. L. 97-23, § 2, July 17, 1981, 95 Stat. 139; Pub. L. 101-549, title VII, § 701, Nov. 15, 1990, 104 Stat. 2672.)

CODIFICATION

Section was formerly classified to section 1857c-8 of this title.

AMENDMENTS

1990—Pub. L. 101-549 amended section generally, substituting present provisions for provisions which related to: in subsec. (a), finding of violation, notice, compliance order, civil action, State failure to enforce plan, and construction or modification of major stationary sources; in subsec. (b), violations by owners or operators of major stationary sources; in subsec. (c), penalties; in subsec. (d), final compliance orders; and in subsec. (e), steel industry compliance extension.

1981—Subsec. (e), Pub. L. 97-23 added subsec. (e).

1977—Subsec. (a)(5), Pub. L. 95-95, § 111(a), added par. (5).

Subsec. (b), Pub. L. 95-95, § 111(b), (c), substituted "shall, in the case of any person which is the owner or operator of a major stationary source, and may, in the case of any other person, commence a civil action for a permanent or temporary injunction, or to assess and recover a civil penalty of not more than \$25,000 per day of violation, or both, whenever such person" for "may commence a civil action for appropriate relief, including a permanent or temporary injunction, whenever any person" in provisions preceding par. (1), inserted references to subsec. (d)(5) of this section, sections 7419 and 7620 of this title, and regulations under part in par. (3), inserted reference to subsec. (d) of this section in par. (4), added par. (5), and, in provisions following par. (5), authorized the commencement of civil actions to recover noncompliance penalties and nonpayment penalties under section 7420 of this title, expanded jurisdictional provisions to authorize actions in districts in which the violation occurred and to authorize the district court to restrain violations, to require compliance, to assess civil penalties, and to collect penalties under section 7420 of this title, enumerated factors to be taken into consideration in determining the amount of civil penalties, and authorized awarding of costs to the party or parties against whom the action was brought in cases where the court finds that the action was unreasonable.

Subsec. (b)(3), Pub. L. 95-190, § 14(a)(10), (11), inserted "or" after "ozone"; and substituted "7624" for "7620", "conversion), section" for "conversion) section", and "orders), or" for "orders) or".

Subsec. (c)(1), Pub. L. 95-95, § 111(d)(1), (2), substituted "any order issued under section 7419 of this title or

under subsection (a) or (d) of this section" for "any order issued by the Administrator under subsection (a) of this section" in subpar. (B), struck out reference to section 119(g) (as in effect before the date of the enactment of Pub. L. 95-95) in subpar. (C), and added subpar. (D).

Subsec. (c)(1)(B), Pub. L. 95-190, § 14(a)(12), inserted "or" after "section."

Subsec. (c)(1)(D), Pub. L. 95-190, § 14(a)(13), substituted "1977 subsection" for "1977) subsection" and "penalties), or" for "penalties) or".

Subsec. (c)(3), Pub. L. 95-95, § 111(d)(3), added par. (3).

Subsec. (d), Pub. L. 95-95, § 112(a), added subsec. (d).

Subsec. (d)(1), Pub. L. 95-190, § 14(a)(14), substituted "to any stationary source which is unable to comply with any requirement of an applicable implementation plan an order" for "an order for any stationary source" and "such requirement" for "any requirement of an applicable implementation plan".

Subsec. (d)(1)(E), Pub. L. 95-190, § 14(a)(15), inserted provision relating to exemption under section 7420(a)(2)(B) or (C) of this title, provision relating to noncompliance penalties effective July 1, 1979, and reference to subsec. (b)(3) or (g) of section 7420 of this title.

Subsec. (d)(2), Pub. L. 95-190, § 14(a)(16), inserted provisions relating to determinations by the Administrator of compliance with requirements of this chapter of State orders issued under this subsection.

Subsec. (d)(4)(A), Pub. L. 95-190, § 14(a)(17), substituted "title) upon" for "title upon".

Subsec. (d)(5)(A), Pub. L. 95-190, § 14(a)(18), substituted "an additional period for" for "an additional period of".

Subsec. (d)(8), Pub. L. 95-190, § 14(a)(19), struck out reference to par. (3) of this subsection.

Subsec. (d)(10), Pub. L. 95-190, § 14(a)(20), substituted "in effect" for "issued", "Federal" for "other", and "and no action under" for "or".

Subsec. (d)(11), Pub. L. 95-190, § 14(a)(21), substituted "and in effect" for "(and approved by the Administrator)".

1974—Subsec. (a)(3), Pub. L. 93-319, § 6(a)(1), inserted reference to section 1857c-10(g) of this title (relating to energy-related authorities).

Subsecs. (b)(3), (c)(1)(C), Pub. L. 93-319, § 6(a)(2), (3), inserted reference to section 1857c-10(g) of this title.

1971—Subsec. (b)(2), Pub. L. 92-157, § 302(b), inserted "(A)" before "during" and " or (B)" after "assumed enforcement".

Subsec. (c)(1)(A), Pub. L. 92-157, § 302(c), inserted "(i)" before "during" and " or (ii)" after "assumed enforcement".

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as a note under section 7401 of this title.

PENDING ACTIONS AND PROCEEDINGS

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95-95 [Aug. 7, 1977], not to abate by reason of the taking effect of Pub. L. 95-95, see section 406(a) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursu-

ant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

TRANSFER OF FUNCTIONS

Federal Power Commission terminated and its functions, personnel, property, funds, etc., transferred to Secretary of Energy (except for certain functions transferred to Federal Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a), 7291, and 7293 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7407, 7410, 7411, 7412, 7414, 7419, 7420, 7421, 7425, 7426, 7429, 7604, 7606, 7607, 7627, 7651g, 7651j, 9606 of this title; title 15 section 792.

§ 7414. Recordkeeping, inspections, monitoring, and entry

(a) Authority of Administrator or authorized representative

For the purpose (i) of developing or assisting in the development of any implementation plan under section 7410 or section 7411(d) of this title, any standard of performance under section 7411 of this title, any emission standard under section 7412 of this title,¹ or any regulation of solid waste combustion under section 7429 of this title, or any regulation under section 7429 of this title (relating to solid waste combustion), (ii) of determining whether any person is in violation of any such standard or any requirement of such a plan, or (iii) carrying out any provision of this chapter (except a provision of subchapter II of this chapter with respect to a manufacturer of new motor vehicles or new motor vehicle engines)—

(1) the Administrator may require any person who owns or operates any emission source, who manufactures emission control equipment or process equipment, who the Administrator believes may have information necessary for the purposes set forth in this subsection, or who is subject to any requirement of this chapter (other than a manufacturer subject to the provisions of section 7525(c) or 7542 of this title with respect to a provision of subchapter II of this chapter) on a one-time, periodic or continuous basis to—

- (A) establish and maintain such records;
- (B) make such reports;
- (C) install, use, and maintain such monitoring equipment, and use such audit procedures, or methods;
- (D) sample such emissions (in accordance with such procedures or methods, at such locations, at such intervals, during such periods and in such manner as the Administrator shall prescribe);
- (E) keep records on control equipment parameters, production variables or other indirect data when direct monitoring of emissions is impractical;

(F) submit compliance certifications in accordance with subsection (a)(3) of this section; and

(G) provide such other information as the Administrator may reasonably require; and

(2) the Administrator or his authorized representative, upon presentation of his credentials—

(A) shall have a right of entry to, upon, or through any premises of such person or in which any records required to be maintained under paragraph (1) of this section are located, and

(B) may at reasonable times have access to and copy any records, inspect any monitoring equipment or method required under paragraph (1), and sample any emissions which such person is required to sample under paragraph (1).²

(3) The³ Administrator shall in the case of any person which is the owner or operator of a major stationary source, and may, in the case of any other person, require enhanced monitoring and submission of compliance certifications. Compliance certifications shall include (A) identification of the applicable requirement that is the basis of the certification, (B) the method used for determining the compliance status of the source, (C) the compliance status, (D) whether compliance is continuous or intermittent, (E) such other facts as the Administrator may require. Compliance certifications and monitoring data shall be subject to subsection (c) of this section. Submission of a compliance certification shall in no way limit the Administrator's authorities to investigate or otherwise implement this chapter. The Administrator shall promulgate rules to provide guidance and to implement this paragraph within 2 years after November 15, 1990.

(b) State enforcement

(1) Each State may develop and submit to the Administrator a procedure for carrying out this section in such State. If the Administrator finds the State procedure is adequate, he may delegate to such State any authority he has to carry out this section.

(2) Nothing in this subsection shall prohibit the Administrator from carrying out this section in a State.

(c) Availability of records, reports, and information to public; disclosure of trade secrets

Any records, reports or information obtained under subsection (a) of this section shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that records, reports, or information, or particular part thereof, (other than emission data) to which the Administrator has access under this section if made public, would divulge methods or processes entitled to protection as trade secrets of such person, the Administrator shall consider such record, report, or information or particular portion thereof confidential in accordance with the purposes of section 1905 of title 18, except that such record, report, or information may be disclosed to other officers, employees, or authorized representatives of the

²The period probably should be “; and”.

³So in original. Probably should not be capitalized.

¹So in original.

United States concerned with carrying out this chapter or when relevant in any proceeding under this chapter.

(d) Notice of proposed entry, inspection, or monitoring

(1) In the case of any emission standard or limitation or other requirement which is adopted by a State, as part of an applicable implementation plan or as part of an order under section 7413(d)⁴ of this title, before carrying out an entry, inspection, or monitoring under paragraph (2) of subsection (a) of this section with respect to such standard, limitation, or other requirement, the Administrator (or his representatives) shall provide the State air pollution control agency with reasonable prior notice of such action, indicating the purpose of such action. No State agency which receives notice under this paragraph of an action proposed to be taken may use the information contained in the notice to inform the person whose property is proposed to be affected of the proposed action. If the Administrator has reasonable basis for believing that a State agency is so using or will so use such information, notice to the agency under this paragraph is not required until such time as the Administrator determines the agency will no longer so use information contained in a notice under this paragraph. Nothing in this section shall be construed to require notification to any State agency of any action taken by the Administrator with respect to any standard, limitation, or other requirement which is not part of an applicable implementation plan or which was promulgated by the Administrator under section 7410(c) of this title.

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

(July 14, 1955, ch. 360, title I, § 114, as added Pub. L. 91-604, § 4(a), Dec. 31, 1970, 84 Stat. 1687; amended Pub. L. 93-319, § 6(a)(4), June 22, 1974, 88 Stat. 259; Pub. L. 95-95, title I, §§ 109(d)(3), 113, title III, § 305(d), Aug. 7, 1977, 91 Stat. 701, 709, 776; Pub. L. 95-190, § 14(a)(22), (23), Nov. 16, 1977, 91 Stat. 1400; Pub. L. 101-549, title III, § 302(c), title VII, § 702(a), (b), Nov. 15, 1990, 104 Stat. 2574, 2680, 2681.)

REFERENCES IN TEXT

Section 7413(d) of this title, referred to in subsec. (d)(1), was amended generally by Pub. L. 101-549, title VII, § 701, Nov. 15, 1990, 104 Stat. 2672, and, as so amended, no longer relates to final compliance orders.

CODIFICATION

Section was formerly classified to section 1857c-9 of this title.

AMENDMENTS

1990—Subsec. (a). Pub. L. 101-549, § 702(a)(1), which directed that “or” be struck out in first sentence immediately before “any emission standard under section

7412 of this title,” could not be executed because of the prior amendment by Pub. L. 101-549, § 302(c), see below.

Pub. L. 101-549, § 702(a)(2), inserted “or any regulation under section 7429 of this title (relating to solid waste combustion),” before “(ii) of determining”.

Pub. L. 101-549, § 302(c), struck out “or” after “performance under section 7411 of this title,” and inserted “, or any regulation of solid waste combustion under section 7429 of this title,” after “standard under section 7412 of this title”.

Subsec. (a)(1). Pub. L. 101-549, § 702(a)(3), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “the Administrator may require any person who owns or operates any emission source or who is subject to any requirement of this chapter (other than a manufacturer subject to the provisions of section 7525(c) or 7542 of this title) with respect to a provision of subchapter II of this chapter to (A) establish and maintain such records, (B) make such reports, (C) install, use, and maintain such monitoring equipment or methods, (D) sample such emissions (in accordance with such methods, at such locations, at such intervals, and in such manner as the Administrator shall prescribe), and (E) provide such other information as he may reasonably require; and”.

Subsec. (a)(3). Pub. L. 101-549, § 702(b), added par. (3). 1977—Subsec. (a). Pub. L. 95-190, § 14(a)(22), inserted reference to subchapter II of this chapter and “new” before “motor” in two places.

Pub. L. 95-95, § 305(d), substituted “carrying out any provision of this chapter (except with respect to a manufacturer of motor vehicles or motor vehicle engines)” for “carrying out sections 119 or 303” in cl. (iii) preceding par. (1), substituted “any person subject to any requirement of this chapter (other than a manufacturer subject to the provisions of sections 7525(c) or 7542 of this title)” for “the owner or operator of any emission source” in par. (1), substituted “any premises of such person” for “any premises in which an emission source is located” in subpar. (A) of par. (2), and substituted “emissions which such person is required to sample” for “emissions which the owner or operator of such source is required to sample” in subpar. (B) of subpar. (2).

Subsec. (a)(1). Pub. L. 95-190, § 14(a)(23), inserted reference to subchapter II of this chapter and “who owns or operates any emission source or who is” after “any person”.

Subsec. (b)(1). Pub. L. 95-95, § 109(d)(3), struck out “(except with respect to new sources owned or operated by the United States)” after “to carry out this section”.

Subsec. (d). Pub. L. 95-95, § 113, added subsec. (d). 1974—Subsec. (a). Pub. L. 93-319 inserted reference to section 119.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as a note under section 7401 of this title.

PENDING ACTIONS AND PROCEEDINGS

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95-95 [Aug. 7, 1977], not to abate by reason of the taking effect of Pub. L. 95-95, see section 406(a) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or

⁴ See References in Text note below.

other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7411, 7412, 7413, 7429, 7607, 7627, 7651j, 7661a, 7661b, 7671k, 9606 of this title.

§ 7415. International air pollution

(a) Endangerment of public health or welfare in foreign countries from pollution emitted in United States

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

(b) Prevention or elimination of endangerment

The notice of the Administrator shall be deemed to be a finding under section 7410(a)(2)(H)(ii) of this title which requires a plan revision with respect to so much of the applicable implementation plan as is inadequate to prevent or eliminate the endangerment referred to in subsection (a) of this section. Any foreign country so affected by such emission of pollutant or pollutants shall be invited to appear at any public hearing associated with any revision of the appropriate portion of the applicable implementation plan.

(c) Reciprocity

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

(d) Recommendations

Recommendations issued following any abatement conference conducted prior to August 7, 1977, shall remain in effect with respect to any pollutant for which no national ambient air quality standard has been established under section 7409 of this title unless the Administrator, after consultation with all agencies which were party to the conference, rescinds any such recommendation on grounds of obsolescence.

(July 14, 1955, ch. 360, title I, §115, formerly §5, as added Pub. L. 88-206, §1, Dec. 17, 1963, 77 Stat. 396; renumbered §105 and amended Pub. L. 89-272, title I, §§101(2), (3), 102, Oct. 20, 1965, 79 Stat. 992, 995, renumbered §108 and amended Pub. L. 90-148, §2, Nov. 21, 1967, 81 Stat. 491, renumbered §115 and amended Pub. L. 91-604,

§§4(a), (b)(2)-(10), 15(c)(2), Dec. 31, 1970, 84 Stat. 1678, 1688, 1689, 1713; Pub. L. 95-95, title I, §114, Aug. 7, 1977, 91 Stat. 710.)

CODIFICATION

Section was formerly classified to section 1857d of this title.

AMENDMENTS

1977—Pub. L. 95-95 completely revised section by substituting provisions establishing a mechanism for the Administrator to trigger a revision of a State implementation plan under section 7410(a)(2)(H) upon a petition of an international agency or the Secretary of State if he finds that emissions originating in a State endanger the health or welfare of persons in a foreign country for provisions calling for the abatement of air pollution by means of conference procedures.

1970—Subsec. (a). Pub. L. 91-604, §4(b)(2), inserted “and which is covered by subsection (b) or (c) of this section” after “persons”.

Subsec. (b). Pub. L. 91-604, §§4(b)(3), (4), (5), 15(c)(2), redesignated former subsec. (d)(1)(A), (B), and (C) as (b)(1), (2), and (3), substituted “Administrator” for “Secretary” wherever appearing, and added subsec. (b)(4). Former subsec. (b), which related to the encouragement of municipal, State, and interstate action to abate air pollution, was struck out.

Subsec. (c). Pub. L. 91-604, §§4(b)(3), (6), 15(c)(2), redesignated former subsec. (d)(1)(D) as (c) and substituted “Administrator” for “Secretary” and “Secretary of Health, Education, and Welfare” wherever appearing and “subsection” for “subparagraph” wherever appearing. Former subsec. (c), which related to the procedure for the promulgation of State air quality standards, was struck out.

Subsec. (d). Pub. L. 91-604, §§4(b)(4), (6), (7), (8), 15(c)(2), redesignated former subsec. (d)(2) and (3) as (d)(1) and (2), in (d)(1) substituted “Administrator” for “Secretary” wherever appearing and “any conference under this section” for “such conference”, and in (d)(2) substituted “Administrator” for “Secretary”. Former subsec. (d)(1)(A), (B), and (C) were redesignated as (b)(1), (2), and (3), respectively, and subsec. (d)(1)(D) was redesignated as (c).

Subsec. (e). Pub. L. 91-604, §15(c)(2), substituted “Administrator” for “Secretary” wherever appearing.

Subsec. (f). Pub. L. 91-604, §15(c)(2), substituted “Administrator” for “Secretary” wherever appearing and “Environmental Protection Agency” for “Department of Health, Education, and Welfare”.

Subsec. (g). Pub. L. 91-604, §§4(b)(9), 15(c)(2), substituted “Administrator” for “Secretary” and “subsection (c)” for “subparagraph (D) of subsection (d)”.

Subsecs. (i), (j). Pub. L. 91-604, §15(c)(2), substituted “Administrator” for “Secretary” wherever appearing.

Subsec. (k). Pub. L. 91-604, §4(b)(3), (10), substituted provisions relating to compliance with any requirement of an applicable implementation plan or with any standard prescribed under section 7411 of this title or section 7412 of this title, for provisions relating to the enjoining of imminent and substantial endangerment from pollution sources.

1967—Subsec. (b). Pub. L. 90-148 substituted reference to subsec. (c), (h), or (k) of this section for reference to subsec. (g) of this section.

Subsecs. (c), (d). Pub. L. 90-148 added subsec. (c), redesignated former subsec. (c) as (d), inserted in par. (2) provisions for the delivery prior to the conference of a Federal report to agencies and interested parties covering matters before the conference, raised from three weeks to thirty days the required notice of the conference, and inserted provisions for notice by newspapers, presentation of views on the Federal report, and transcript of proceedings. Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 90-148 redesignated former subsec. (d) as (e). Former subsec. (e) redesignated (f) and amended.

Subsec. (f). Pub. L. 90-148 redesignated former subsec. (e) as (f) and inserted in par. (1) requirement that all interested parties be given a reasonable opportunity to present evidence to the hearing board. Former subsec. (f) redesignated (g) and amended.

Subsec. (g). Pub. L. 90-148 redesignated former subsec. (f) as (g) and substituted reference to subsec. (d) of this section for reference to subsec. (c) of this section. Former subsec. (g) redesignated (h) and amended.

Subsec. (h). Pub. L. 90-148 redesignated former subsec. (g) as (h) and substituted reference to subsec. (g) of this section for reference to subsec. (f) of this section. Former subsec. (h) redesignated (i) and amended.

Subsec. (i). Pub. L. 90-148 redesignated former subsec. (h) as (i) and substituted reference to subsec. (f) of this section for reference to subsec. (e) of this section and raised the per diem maximum from \$50 to \$100. Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 90-148 redesignated former subsec. (i) as (j).

Subsec. (k). Pub. L. 90-148 added subsec. (k).

1965—Subsec. (b). Pub. L. 89-272, §101(2), substituted “this title” for “this Act”, which for purposes of codification has been changed to “this subchapter”.

Subsec. (c)(1)(D). Pub. L. 89-272, §102(a), added subpar. (D).

Subsec. (d)(3). Pub. L. 89-272, §101(2), substituted “subchapter” for “chapter”.

Subsec. (f)(1). Pub. L. 89-272, §102(b), designated existing provisions as cl. (A) and added cl. (B).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as a note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

UNITED STATES-CANADIAN NEGOTIATIONS ON AIR QUALITY

Pub. L. 95-426, title VI, §612, Oct. 7, 1978, 92 Stat. 990, provided that:

“(a) The Congress finds that—

“(1) the United States and Canada share a common environment along a 5,500 mile border;

“(2) the United States and Canada are both becoming increasingly concerned about the effects of pollution, particularly that resulting from power generation facilities, since the facilities of each country affect the environment of the other;

“(3) the United States and Canada have subscribed to international conventions; have joined in the environmental work of the United Nations, the Organization for Economic Cooperation and Development, and other international environmental forums; and have entered into and implemented effectively the provisions of the historic Boundary Waters Treaty of 1909; and

“(4) the United States and Canada have a tradition of cooperative resolution of issues of mutual concern which is nowhere more evident than in the environmental area.

“(b) It is the sense of the Congress that the President should make every effort to negotiate a cooperative

agreement with the Government of Canada aimed at preserving the mutual airshed of the United States and Canada so as to protect and enhance air resources and insure the attainment and maintenance of air quality protective of public health and welfare.

“(c) It is further the sense of the Congress that the President, through the Secretary of State working in concert with interested Federal agencies and the affected States, should take whatever diplomatic actions appear necessary to reduce or eliminate any undesirable impact upon the United States and Canada resulting from air pollution from any source.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7410 of this title.

§ 7416. Retention of State authority

Except as otherwise provided in sections 1857c-10(c), (e), and (f) (as in effect before August 7, 1977), 7543, 7545(c)(4), and 7573 of this title (preempting certain State regulation of moving sources) nothing in this chapter shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce (1) any standard or limitation respecting emissions of air pollutants or (2) any requirement respecting control or abatement of air pollution; except that if an emission standard or limitation is in effect under an applicable implementation plan or under section 7411 or section 7412 of this title, such State or political subdivision may not adopt or enforce any emission standard or limitation which is less stringent than the standard or limitation under such plan or section.

(July 14, 1955, ch. 360, title I, §116, formerly §109, as added Pub. L. 90-148, §2, Nov. 21, 1967, 81 Stat. 497; renumbered §116 and amended Pub. L. 91-604, §4(a), (c), Dec. 31, 1970, 84 Stat. 1678, 1689; Pub. L. 93-319, §6(b), June 22, 1974, 88 Stat. 259; Pub. L. 95-190, §14(a)(24), Nov. 16, 1977, 91 Stat. 1400.)

REFERENCES IN TEXT

1857c-10(c), (e), and (f) (as in effect before August 7, 1977), referred to in text, was in the original “119(c), (e), and (f) (as in effect before the date of the enactment of the Clean Air Act Amendments of 1977)” meaning section 119 of act July 14, 1955, ch. 360, title I, as added June 22, 1974, Pub. L. 93-319, §3, 88 Stat. 248, (which was classified to section 1857c-10 of this title) as in effect prior to the enactment of Pub. L. 95-95, Aug. 7, 1977, 91 Stat. 691, effective Aug. 7, 1977. Section 112(b)(1) of Pub. L. 95-95 repealed section 119 of act July 14, 1955, ch. 360, title I, as added by Pub. L. 93-319, and provided that all references to such section 119 in any subsequent enactment which supersedes Pub. L. 93-319 shall be construed to refer to section 113(d) of the Clean Air Act and to paragraph (5) thereof in particular which is classified to subsec. (d)(5) of section 7413 of this title. Section 7413 of this title was subsequently amended generally by Pub. L. 101-549, title VII, §701, Nov. 15, 1990, 104 Stat. 2672, and, as so amended, no longer relates to final compliance orders. Section 117(b) of Pub. L. 95-95 added a new section 119 of act July 14, 1955, which is classified to section 7419 of this title.

CODIFICATION

Section was formerly classified to section 1857d-1 of this title.

AMENDMENTS

1977—Pub. L. 95-190 inserted reference to specified provisions in effect before Aug. 7, 1977.

1974—Pub. L. 93-319 inserted reference to section 1857c-10(c), (e), and (f).

1970—Pub. L. 91-604, §4(c), substituted provisions which authorized any State or political subdivision thereof to adopt or enforce, except as otherwise provided, emission standards or limitations under the specified conditions, or any requirement respecting control or abatement of air pollution, for provisions which authorized any State, political subdivision, or intermunicipal or interstate agency to adopt standards and plans to achieve a higher level of air quality than approved by the Secretary.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7412, 7429, 7627, 7671m, 7671q of this title; title 49 section 47140.

§ 7417. Advisory committees

(a) Establishment; membership

In order to obtain assistance in the development and implementation of the purposes of this chapter including air quality criteria, recommended control techniques, standards, research and development, and to encourage the continued efforts on the part of industry to improve air quality and to develop economically feasible methods for the control and abatement of air pollution, the Administrator shall from time to time establish advisory committees. Committee members shall include, but not be limited to, persons who are knowledgeable concerning air quality from the standpoint of health, welfare, economics or technology.

(b) Compensation

The members of any other advisory committees appointed pursuant to this chapter who are not officers or employees of the United States while attending conferences or meetings or while otherwise serving at the request of the Administrator, shall be entitled to receive compensation at a rate to be fixed by the Administrator, but not exceeding \$100 per diem, including traveltime, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 for persons in the Government service employed intermittently.

(c)¹ Consultations by Administrator

Prior to—

(1) issuing criteria for an air pollutant under section 7408(a)(2) of this title,

(2) publishing any list under section 7411(b)(1)(A)² or section 7412(b)(1)(A) of this title,

(3) publishing any standard under section 7411 or section 7412 of this title, or

(4) publishing any regulation under section 7521(a) of this title,

the Administrator shall, to the maximum extent practicable within the time provided, consult with appropriate advisory committees, independence experts, and Federal departments and agencies.

(July 14, 1955, ch. 360, title I, §117 formerly §6, as added Pub. L. 88-206, §1, Dec. 17, 1963, 77 Stat. 399; renumbered §106, Pub. L. 89-272, title I, §101(3), Oct. 20, 1965, 79 Stat. 992; renumbered §110 and amended Pub. L. 90-148, §2, Nov. 21, 1967, 81 Stat. 498; renumbered §117 and amended Pub. L. 91-604, §§4(a), (d), 15(c)(2), Dec. 31, 1970, 84 Stat. 1678, 1689, 1713; Pub. L. 95-95, title I, §115, Aug. 7, 1977, 91 Stat. 711; Pub. L. 95-623, §13(c), Nov. 9, 1978, 92 Stat. 3458.)

REFERENCES IN TEXT

Section 7412(b)(1), referred to in subsec. (c)(2), was amended generally by Pub. L. 101-549, title III, §301, Nov. 15, 1990, 104 Stat. 2531, and, as so amended, no longer contains a subpar. (A).

CODIFICATION

Subsec. (c) was originally enacted as subsec. (f) but has been redesignated (c) for purposes of codification in view of the failure of Pub. L. 95-95 to redesignate subsec. (f) as (c) after repealing former subssecs. (a) and (b) and redesignating former subssecs. (d) and (e) as (a) and (b).

Section was formerly classified to section 1857e of this title.

AMENDMENTS

1978—Subsec. (c)(3). Pub. L. 95-623 substituted “7411” for “7411(b)(1)(B)” and “7412” for “7412(b)(1)(B)”.

1977—Subsec. (a). Pub. L. 95-95, §115(1), (2), redesignated subsec. (d) as (a). Former subsec. (a), establishing an Air Quality Advisory Board in the Environmental Protection Agency, was struck out.

Subsec. (b). Pub. L. 95-95, §115(1)-(3), redesignated subsec. (e) as (b) and substituted “The members of any other advisory committees” for “The members of the Board and other advisory committees” and “conferences or meetings or while otherwise serving” for “conferences or meetings of the Board or while otherwise serving”. Former subsec. (b), setting out the duties of the Air Quality Advisory Board, was struck out.

Subsecs. (c) to (e). Pub. L. 95-95, §115(1), (2), struck out subsec. (c) which related to clerical and technical assistance for the Air Quality Advisory Board, and redesignated subssecs. (d) and (e) as (a) and (b), respectively.

1970—Subsec. (a). Pub. L. 91-604, §15(c)(2), substituted “Environmental Protection Agency” for “Department of Health, Education, and Welfare” and “Administrator” for “Secretary”.

Subsec. (b). Pub. L. 91-604, §15(c)(2), substituted “Administrator” for “Secretary” wherever appearing.

Subsec. (c). Pub. L. 91-604, §15(c)(2), substituted “Environmental Protection Agency” for “Department of Health, Education, and Welfare”.

Subsecs. (d), (e). Pub. L. 91-604, §15(c)(2), substituted “Administrator” for “Secretary” wherever appearing.

Subsec. (f). Pub. L. 91-604, §4(d), added subsec. (f).

1967—Subsec. (a). Pub. L. 90-148 substituted provisions establishing in the Department of Health, Education, and Welfare an Air Quality Advisory Board and providing for the appointment and term of its members for provisions directing the Secretary to maintain liaison with manufacturers looking toward development of devices and fuels to reduce pollutants in automotive exhaust and to appoint a technical committee and call

¹ See Codification note below.

² See References in Text note below.

it together from time to time to evaluate progress and develop and recommend research programs.

Subsec. (b). Pub. L. 90-148 substituted provision setting out the duties of the Air Quality Advisory Board for provisions requiring the Secretary to make semi-annual reports to Congress on measures being taken toward the resolution of vehicle exhaust pollution problems.

Subsecs. (c) to (e). Pub. L. 90-148 added subsecs. (c) to (e).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as a note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 7418. Control of pollution from Federal facilities

(a) General compliance

Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any property or facility, or (2) engaged in any activity resulting, or which may result, in the discharge of air pollutants, and each officer, agent, or employee thereof, shall be subject to, and comply with, all Federal, State, interstate, and local requirements, administrative authority, and process and sanctions respecting the control and abatement of air pollution in the same manner, and to the same extent as any nongovernmental entity. The preceding sentence shall apply (A) to any requirement whether substantive or procedural (including any recordkeeping or reporting requirement, any requirement respecting permits and any other requirement whatsoever), (B) to any requirement to pay a fee or charge imposed by any

State or local agency to defray the costs of its air pollution regulatory program, (C) to the exercise of any Federal, State, or local administrative authority, and (D) to any process and sanction, whether enforced in Federal, State, or local courts, or in any other manner. This subsection shall apply notwithstanding any immunity of such agencies, officers, agents, or employees under any law or rule of law. No officer, agent, or employee of the United States shall be personally liable for any civil penalty for which he is not otherwise liable.

(b) Exemption

The President may exempt any emission source of any department, agency, or instrumentality in the executive branch from compliance with such a requirement if he determines it to be in the paramount interest of the United States to do so, except that no exemption may be granted from section 7411 of this title, and an exemption from section 7412 of this title may be granted only in accordance with section 7412(i)(4) of this title. No such exemption shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation. Any exemption shall be for a period not in excess of one year, but additional exemptions may be granted for periods of not to exceed one year upon the President's making a new determination. In addition to any such exemption of a particular emission source, the President may, if he determines it to be in the paramount interest of the United States to do so, issue regulations exempting from compliance with the requirements of this section any weaponry, equipment, aircraft, vehicles, or other classes or categories of property which are owned or operated by the Armed Forces of the United States (including the Coast Guard) or by the National Guard of any State and which are uniquely military in nature. The President shall reconsider the need for such regulations at three-year intervals. The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with his reason for granting each such exemption.

(c) Government vehicles

Each department, agency, and instrumentality of executive, legislative, and judicial branches of the Federal Government shall comply with all applicable provisions of a valid inspection and maintenance program established under the provisions of subpart 2 of part D of this subchapter or subpart 3 of part D of this subchapter except for such vehicles that are considered military tactical vehicles.

(d) Vehicles operated on Federal installations

Each department, agency, and instrumentality of executive, legislative, and judicial branches of the Federal Government having jurisdiction over any property or facility shall require all employees which operate motor vehicles on the property or facility to furnish proof of compliance with the applicable requirements of any vehicle inspection and maintenance pro-

gram established under the provisions of subpart 2 of part D of this subchapter or subpart 3 of part D of this subchapter for the State in which such property or facility is located (without regard to whether such vehicles are registered in the State). The installation shall use one of the following methods to establish proof of compliance—

(1) presentation by the vehicle owner of a valid certificate of compliance from the vehicle inspection and maintenance program;

(2) presentation by the vehicle owner of proof of vehicle registration within the geographic area covered by the vehicle inspection and maintenance program (except for any program whose enforcement mechanism is not through the denial of vehicle registration);

(3) another method approved by the vehicle inspection and maintenance program administrator.

(July 14, 1955, ch. 360, title I, § 118, formerly, § 7, as added Pub. L. 88-206, § 1, Dec. 17, 1963, 77 Stat. 399; renumbered § 107, Pub. L. 89-272, title I, § 101(3), Oct. 20, 1965, 79 Stat. 992; renumbered § 111 and amended Pub. L. 90-148, § 2, Nov. 21, 1967, 81 Stat. 499; renumbered § 118 and amended Pub. L. 91-604, §§ 4(a), 5, Dec. 31, 1970, 84 Stat. 1678, 1689; Pub. L. 95-95, title I, § 116, Aug. 7, 1977, 91 Stat. 711; Pub. L. 101-549, title I, § 101(e), title II, § 235, title III, § 302(d), Nov. 15, 1990, 104 Stat. 2409, 2530, 2574.)

CODIFICATION

Section was formerly classified to section 1857f of this title.

AMENDMENTS

1990—Subsec. (a). Pub. L. 101-549, § 235, inserted heading.

Pub. L. 101-549, § 101(e), amended second sentence generally. Prior to amendment, second sentence read as follows: "The preceding sentence shall apply (A) to any requirement whether substantive or procedural (including any recordkeeping or reporting requirement, any requirement respecting permits and any other requirement whatsoever), (B) to the exercise of any Federal, State, or local administrative authority, and (C) to any process and sanction, whether enforced in Federal, State, or local courts or in any other manner."

Subsec. (b). Pub. L. 101-549, § 302(d), substituted "section 7412(i)(4) of this title" for "section 7412(c) of this title".

Subsecs. (c), (d). Pub. L. 101-549, § 235, added subsecs. (c) and (d).

1977—Subsec. (a). Pub. L. 95-95, § 116(a), designated existing first sentence as subsec. (a) and inserted provisions enumerating the legal and administrative areas to which the compliance requirements apply and directing that agencies, officers, agents, and employees not be immune and that officers, agents, or employees of the United States not be personally liable for civil penalties for which they are not otherwise liable.

Subsec. (b). Pub. L. 95-95, § 116(b), designated second and following existing sentences as subsec. (b) and inserted provisions authorizing the President to exempt weaponry, equipment, aircraft, vehicles, and other classes and categories of property of the Armed Forces and the National Guard from compliance but to reconsider the need for such an exemption at three-year intervals.

1970—Pub. L. 91-604, § 5, struck out lettered designations (a) and (b), and, as so redesignated, substituted provisions requiring Federal facilities to comply with Federal, State, local, and interstate air pollution control and abatement requirements and provisions au-

thorizing the President to exempt, under the specified terms and conditions, any emission source of any department, etc., in the executive branch from compliance with control and abatement requirements, for provisions requiring, to the extent practicable and consistent with the interests of the United States and within any available appropriations, Federal facilities to cooperate with the Department of Health, Education, and Welfare and with any air pollution control agency to prevent and control air pollution and provisions authorizing the Secretary to establish classes of potential pollution sources for which any Federal department or agency having jurisdiction over any facility was required to obtain a permit, under the specified terms and conditions, for the discharge of any matter into the air of the United States.

1967—Pub. L. 90-148 reenacted section without change.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as a note under section 7401 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (b) of this section relating to annual reports to Congress, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 12th item on page 20 of House Document No. 103-7.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

PENDING ACTIONS AND PROCEEDINGS

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95-95 [Aug. 7, 1977], not to abate by reason of the taking effect of Pub. L. 95-95, see section 406(a) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

EXECUTIVE ORDER NO. 11282

Ex. Ord. No. 11282, May 26, 1966, 31 F.R. 7663, which provided for the prevention, control, and abatement of air pollution from Federal activities, was superseded by Ex. Ord. No. 11507, Feb. 4, 1970, 35 F.R. 2573.

EXECUTIVE ORDER NO. 11507

Ex. Ord. No. 11507, Feb. 4, 1970, 35 F.R. 2573, which provided for the prevention, control, and abatement of air

pollution at Federal facilities, was superseded by Ex. Ord. No. 11752, Dec. 17, 1973, 38 F.R. 34793, formerly set out as a note under section 4331 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7410, 7423, 7604, 7671q of this title.

§ 7419. Primary nonferrous smelter orders

(a) Issuance; hearing; enforcement orders; statement of grounds for application; findings

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

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

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

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

(2)(A) An order issued under this section to a primary nonferrous smelter shall be referred to as a "primary nonferrous smelter order". No primary nonferrous smelter may receive both an enforcement order under section 7413(d)¹ of this title and a primary nonferrous smelter order under this section.

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

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

(3) For the purposes of sections 7410, 7604, and 7607 of this title, any order issued by the State and in effect pursuant to this subsection shall become part of the applicable implementation plan.

(b) Prerequisites to issuance of orders

A primary nonferrous smelter order under this section may be issued to a primary nonferrous smelter if—

(1) such smelter is in existence on August 7, 1977;

(2) the requirement of the applicable implementation plan with respect to which the order is issued is an emission limitation or standard for sulfur oxides which is necessary and intended to be itself sufficient to enable attainment and maintenance of national primary and secondary ambient air quality standards for sulfur oxides; and

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

(c) Second orders

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

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

(d) Interim measures; continuous emission reduction technology

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

¹ See References in Text note below.

(B) Such interim requirements shall include—

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

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

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

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

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

(2) The requirement of paragraph (1) for the use of continuous emission reduction technology may be waived with respect to a particular smelter by the State or the Administrator, after notice and a hearing on the record, and upon a showing by the owner or operator of the smelter that such requirement would be so costly as to necessitate permanent or prolonged temporary cessation of operations of the smelter. Upon application for such waiver, the Administrator shall be notified and shall, within ninety days, hold a hearing on the record in accordance with section 554 of title 5. At such hearing the Administrator shall require the smelter involved to present information relating to any alleged cessation of operations and the detailed reasons or justifications therefor. On the basis of such hearing the Administrator shall make findings of fact as to the effect of such requirement and on the alleged cessation of operations and shall make such recommendations as he deems appropriate. Such report, findings, and recommendations shall be available to the public, and shall be taken into account by the State or the Administrator in making the decision whether or not to grant such waiver.

(3) In order to obtain information for purposes of a waiver under paragraph (2), the Administrator may, on his own motion, conduct an investigation and use the authority of section 7621 of this title.

(4) In the case of any smelter which on August 7, 1977, uses continuous emission reduction technology and supplemental controls and which receives an initial primary nonferrous smelter order under this section, no additional continuous emission reduction technology shall be required as a condition of such order unless the Administrator determines, at any time, after notice and public hearing, that such additional continuous emission reduction technology is adequately demonstrated to be reasonably available for the primary nonferrous smelter industry.

(e) Termination of orders

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

(f) Violation of requirements

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

(1) enforce such requirement under section 7413 of this title,

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

(3) give notice of noncompliance and commence action under section 7420 of this title, or

(4) take any appropriate combination of such actions.

(July 14, 1955, ch. 360, title I, § 119, as added Pub. L. 95-95, title I, § 117(b), Aug. 7, 1977, 91 Stat. 712; amended Pub. L. 95-190, § 14(a)(25)-(27), Nov. 16, 1977, 91 Stat. 1401.)

REFERENCES IN TEXT

Section 7413(d) of this title, referred to in subsec. (a)(2)(A), was amended generally by Pub. L. 101-549, title VII, § 701, Nov. 15, 1990, 104 Stat. 2672, and, as so amended, no longer relates to final compliance orders.

PRIOR PROVISIONS

A prior section 119 of act July 14, 1955, ch. 360, title I, as added June 22, 1974, Pub. L. 93-319, § 3, 88 Stat. 248, was classified to section 1857c-10 of this title and provided for the authority to deal with energy shortages, prior to repeal by Pub. L. 95-95, title I, § 112(b)(1), Aug. 7, 1977, 91 Stat. 709, which provided that all references to such section 119 in any subsequent enactment which supersedes Pub. L. 93-319 shall be construed to refer to section 113(d) of the Clean Air Act and to paragraph (5) thereof in particular which is classified to section 7413(d)(5) of this title.

AMENDMENTS

1977—Subsec. (a)(3). Pub. L. 95-190, § 14(a)(25), added par. (3).

Subsec. (d)(3). Pub. L. 95-190, § 14(a)(26), substituted “7621” for “7619”.

Subsec. (e). Pub. L. 95-190, § 14(a)(27), substituted “an order under this section” for “such order”.

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set

out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7410, 7420, 7604, 7607, 7621 of this title; title 15 sections 793, 798.

§ 7420. Noncompliance penalty

(a) Assessment and collection

(1)(A) Not later than 6 months after August 7, 1977, and after notice and opportunity for a public hearing, the Administrator shall promulgate regulations requiring the assessment and collection of a noncompliance penalty against persons referred to in paragraph (2)(A).

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

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

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

(i) a major stationary source (other than a primary nonferrous smelter which has received a primary nonferrous smelter order under section 7419 of this title), which is not in compliance with any emission limitation, emission standard or compliance schedule under any applicable implementation plan (whether or not such source is subject to a Federal or State consent decree), or

(ii) a stationary source which is not in compliance with an emission limitation, emission standard, standard of performance, or other requirement established under section 7411, 7477, 7603, or 7412 of this title, or

(iii) a stationary source which is not in compliance with any requirement of subchapter IV-A, V, or VI of this chapter, or

(iv) any source referred to in clause (i), (ii), or (iii) (for which an extension, order, or suspension referred to in subparagraph (B), or Federal or State consent decree is in effect), or a primary nonferrous smelter which has received a primary nonferrous smelter order under section 7419 of this title which is not in compliance with any interim emission control

requirement or schedule of compliance under such extension, order, suspension, or consent decree.

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

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

(i) a conversion by such source from the burning of petroleum products or natural gas, or both, as the permanent primary energy source to the burning of coal pursuant to an order under section 7413(d)(5)¹ of this title or section 1857c-10¹ of this title (as in effect before August 7, 1977);

(ii) in the case of a coal-burning source granted an extension under the second sentence of section 1857c-10(c)(1)¹ of this title (as in effect before August 7, 1977), a prohibition from using petroleum products or natural gas or both, by reason of an order under the provisions of section 792(a) and (b) of title 15 or under any legislation which amends or supercedes such provisions;

(iii) the use of innovative technology sanctioned by an enforcement order under section 7413(d)(4)¹ of this title;

(iv) an inability to comply with any such requirement, for which inability the source has received an order under section 7413(d)¹ of this title (or an order under section 7413 of this title issued before August 7, 1977) which has the effect of permitting a delay or violation of any requirement of this chapter (including a requirement of an applicable implementation plan) which inability results from reasons entirely beyond the control of the owner or operator of such source or of any entity controlling, controlled by, or under common control with the owner or operator of such source; or

(v) the conditions by reason of which a temporary emergency suspension is authorized under section 7410(f) or (g) of this title.

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

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

¹ See References in Text note below.

(b) Regulations

Regulations under subsection (a) of this section shall—

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

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

(A) the State does not have a delegation of authority in effect under subsection (a)(1)(B)(i) of this section, or

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

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

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

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

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

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

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

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

(8) authorize the State or the Administrator to adjust (and from time to time to readjust) the amount of the penalty assessment calculated or the payment schedule proposed by such owner or operator under paragraph (4), if the Administrator finds after notice and opportunity for a hearing on the record that the penalty or schedule does not meet the requirements of this section; and

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

In any case in which the State establishes a noncompliance penalty under this section, the State shall provide notice thereof to the Administrator. A noncompliance penalty established by a State under this section shall apply unless the Administrator, within ninety days after the date of receipt of notice of the State penalty assessment under this section, objects in writing to the amount of the penalty as less than would be required to comply with guidelines established by the Administrator. If the Administrator objects, he shall immediately establish a substitute noncompliance penalty applicable to such source.

(c) Contract to assist in determining amount of penalty assessment or payment schedule

If the owner or operator of any stationary source to whom a notice is issued under subsection (b)(3) of this section—

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

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

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

(d) Payment

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

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

(A) the amount determined in accordance with regulations promulgated by the Adminis-

trator under subsection (a) of this section, which is no less than the economic value which a delay in compliance beyond July 1, 1979, may have for the owner of such source, including the quarterly equivalent of the capital costs of compliance and debt service over a normal amortization period, not to exceed ten years, operation and maintenance costs foregone as a result of noncompliance, and any additional economic value which such a delay may have for the owner or operator of such source, minus

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

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

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

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

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

(i) two years after August 7, 1977, in the case of a source for which notice of noncompliance under subsection (b)(3) of this section is issued on or before the date two years after August 7, 1977, or

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

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

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

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

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

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

(e) Judicial review

Any action pursuant to this section, including any objection of the Administrator under the last sentence of subsection (b) of this section, shall be considered a final action for purposes of judicial review of any penalty under section 7607 of this title.

(f) Other orders, payments, sanctions, or requirements

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

(g) More stringent emission limitations or other requirements

In the case of any emission limitation or other requirement approved or promulgated by the Administrator under this chapter after August 7, 1977, which is more stringent than the emission limitation or requirement for the source in effect prior to such approval or promulgation, if any, or where there was no emission limitation or requirement approved or promulgated before August 7, 1977, the date for imposition of the non-compliance penalty under this section, shall be either July 1, 1979, or the date on which the source is required to be in full compliance with such emission limitation or requirement, whichever is later, but in no event later than three years after the approval or promulgation of such emission limitation or requirement.

(July 14, 1955, ch. 360, title I, § 120, as added Pub. L. 95-95, title I, § 118, Aug. 7, 1977, 91 Stat. 714; amended Pub. L. 95-190, § 14(a)(28)-(38), Nov. 16, 1977, 91 Stat. 1401; Pub. L. 101-549, title VII, § 710(a), Nov. 15, 1990, 104 Stat. 2684.)

REFERENCES IN TEXT

Section 7413(d) of this title, referred to in subsec. (a)(2)(B), was amended generally by Pub. L. 101-549, title VII, § 701, Nov. 15, 1990, 104 Stat. 2672, and, as so amended, no longer relates to final compliance orders.

Section 1857c-10 of this title (as in effect before August 7, 1977), referred to in subsec. (a)(2)(B)(i), was in

the original "section 119 (as in effect before the date of the enactment of the Clean Air Act Amendments of 1977)", meaning section 119 of act July 14, 1955, ch. 360, title I, as added June 22, 1974, Pub. L. 93-319, § 3, 88 Stat. 248, (which was classified to section 1857c-10 of this title) as in effect prior to the enactment of Pub. L. 95-95, Aug. 7, 1977, 91 Stat. 691, effective Aug. 7, 1977. Section 112(b)(1) of Pub. L. 95-95 repealed section 119 of act July 14, 1955, ch. 360, title I, as added by Pub. L. 93-319, and provided that all references to such section 119 in any subsequent enactment which supersedes Pub. L. 93-319 shall be construed to refer to section 113(d) of the Clean Air Act and to paragraph (5) thereof in particular which is classified to subsec. (d)(5) of section 7413 of this title. Section 7413(d) of this title was subsequently amended generally by Pub. L. 101-549, title VII, § 701, Nov. 15, 1990, 104 Stat. 2672, and, as so amended, no longer relates to final compliance orders. Section 117(b) of Pub. L. 95-95 added a new section 119 of act July 14, 1955, which is classified to section 7419 of this title.

Section 1857c-10(c)(1) of this title (as in effect before August 7, 1977), referred to in subsec. (a)(2)(B)(ii), was in the original "section 119(c)(1) (as in effect before the date of the enactment of the Clean Air Act Amendments of 1977)." See paragraph set out above for explanation of codification.

AMENDMENTS

1990—Subsec. (a)(2)(A). Pub. L. 101-549 inserted reference to sections 7477 and 7603 of this title in cl. (ii), added cl. (iii), and redesignated former cl. (iii) as (iv) and inserted reference to cl. (iii).

1977—Subsec. (a)(2)(A). Pub. L. 95-190, § 14(a)(28), (29), in cls. (i) and (iii) inserted provisions relating to consent decrees wherever appearing.

Subsec. (a)(2)(B). Pub. L. 95-190, § 14(a)(30), (31), in cl. (i) inserted reference to section 7413(d)(5) of this title, and in cls. (i) and (ii) inserted provision relating to orders in effect under section 1857c-10 of this title before Aug. 7, 1977, wherever appearing.

Subsec. (b). Pub. L. 95-190, § 14(a)(34)-(36), in closing provisions inserted provisions relating to notice to the Administrator when a noncompliance penalty is established by a State, and substituted references to noncompliance for references to delayed compliance in two places, "source" for "facility", and "receipt of notice of the State penalty assessment" for "publication of the proposed penalty".

Subsec. (b)(2)(A). Pub. L. 95-190, § 14(a)(33), substituted "(a)(1)(B)(i)" for "(e)".

Subsec. (b)(8). Pub. L. 95-190, § 14(a)(32), substituted "(4)" for "(6)".

Subsec. (d)(2)(A). Pub. L. 95-190, § 14(a)(37), inserted provisions relating to inclusion of the economic value of a delay in compliance, and substituted "such a delay" for "a delay in compliance beyond July 1, 1979".

Subsec. (e). Pub. L. 95-190, § 14(a)(38), substituted "subsection, shall" for "subsection shall".

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7412, 7413, 7419, 7425, 7429, 7607, 7627, 7651j of this title.

§ 7421. Consultation

In carrying out the requirements of this chapter requiring applicable implementation plans to contain—

(1) any transportation controls, air quality maintenance plan requirements or pre-construction review of direct sources of air pollution, or

(2) any measure referred to—

(A) in part D of this subchapter (pertaining to nonattainment requirements), or

(B) in part C of this subchapter (pertaining to prevention of significant deterioration),

and in carrying out the requirements of section 7413(d)¹ of this title (relating to certain enforcement orders), the State shall provide a satisfactory process of consultation with general purpose local governments, designated organizations of elected officials of local governments and any Federal land manager having authority over Federal land to which the State plan applies, effective with respect to any such requirement which is adopted more than one year after August 7, 1977, as part of such plan. Such process shall be in accordance with regulations promulgated by the Administrator to assure adequate consultation. The Administrator shall update as necessary the original regulations required and promulgated under this section (as in effect immediately before November 15, 1990) to ensure adequate consultation. Only a general purpose unit of local government, regional agency, or council of governments adversely affected by action of the Administrator approving any portion of a plan referred to in this subsection may petition for judicial review of such action on the basis of a violation of the requirements of this section.

(July 14, 1955, ch. 360, title I, § 121, as added Pub. L. 95-95, title I, § 119, Aug. 7, 1977, 91 Stat. 719; amended Pub. L. 101-549, title I, § 108(h), Nov. 15, 1990, 104 Stat. 2467.)

REFERENCES IN TEXT

Section 7413(d) of this title, referred to in text, was amended generally by Pub. L. 101-549, title VII, § 701, Nov. 15, 1990, 104 Stat. 2672, and, as so amended, no longer relates to final compliance orders.

AMENDMENTS

1990—Pub. L. 101-549 amended penultimate sentence generally. Prior to amendment, penultimate sentence read as follows: "Such regulations shall be promulgated after notice and opportunity for public hearing and not later than 6 months after August 7, 1977."

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7410 of this title; title 15 section 1410.

§ 7422. Listing of certain unregulated pollutants

(a) Radioactive pollutants, cadmium, arsenic, and polycyclic organic matter

Not later than one year after August 7, 1977 (two years for radioactive pollutants) and after notice and opportunity for public hearing, the Administrator shall review all available relevant information and determine whether or not emissions of radioactive pollutants (including source material, special nuclear material, and byproduct material), cadmium, arsenic and polycyclic organic matter into the ambient air

¹ See References in Text note below.

will cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health. If the Administrator makes an affirmative determination with respect to any such substance, he shall simultaneously with such determination include such substance in the list published under section 7408(a)(1) or 7412(b)(1)(A)¹ of this title (in the case of a substance which, in the judgment of the Administrator, causes, or contributes to, air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness), or shall include each category of stationary sources emitting such substance in significant amounts in the list published under section 7411(b)(1)(A) of this title, or take any combination of such actions.

(b) Revision authority

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

(c) Consultation with Nuclear Regulatory Commission; interagency agreement; notice and hearing

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

(2) Not later than six months after listing any such material (or component or derivative thereof) the Administrator and the Nuclear Regulatory Commission shall enter into an interagency agreement with respect to those sources or facilities which are under the jurisdiction of the Commission. This agreement shall, to the maximum extent practicable consistent with this chapter, minimize duplication of effort and conserve administrative resources in the establishment, implementation, and enforcement of emission limitations, standards of performance, and other requirements and authorities (substantive and procedural) under this chapter respecting the emission of such material (or component or derivative thereof) from such sources or facilities.

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

(July 14, 1955, ch. 360, title I, § 122, as added Pub. L. 95-95, title I, § 120(a), Aug. 7, 1977, 91 Stat. 720.)

¹ See References in Text note below.

REFERENCES IN TEXT

Section 7412(b)(1), referred to in subsec. (a), was amended generally by Pub. L. 101-549, title III, § 301, Nov. 15, 1990, 104 Stat. 2531, and, as so amended, no longer contains a subpar. (A).

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

TRANSFER OF FUNCTIONS

For transfer of certain functions from Nuclear Regulatory Commission to Chairman thereof, see Reorg. Plan No. 1 of 1980, 45 F.R. 40561, 94 Stat. 3585, set out as a note under section 5841 of this title.

STUDY BY ADMINISTRATOR OF ENVIRONMENTAL PROTECTION AGENCY

Section 120(b) of Pub. L. 95-95 directed Administrator of Environmental Protection Agency to conduct a study, in conjunction with other appropriate agencies, concerning effect on public health and welfare of sulfates, radioactive pollutants, cadmium, arsenic, and polycyclic organic matter which are present or may reasonably be anticipated to occur in the ambient air, such study to include a thorough investigation of how sulfates are formed and how to protect public health and welfare from the injurious effects, if any, of sulfates, cadmium, arsenic, and polycyclic organic matter.

§ 7423. Stack heights

(a) Heights in excess of good engineering practice; other dispersion techniques

The degree of emission limitation required for control of any air pollutant under an applicable implementation plan under this subchapter shall not be affected in any manner by—

- (1) so much of the stack height of any source as exceeds good engineering practice (as determined under regulations promulgated by the Administrator), or
- (2) any other dispersion technique.

The preceding sentence shall not apply with respect to stack heights in existence before December 31, 1970, or dispersion techniques implemented before such date. In establishing an emission limitation for coal-fired steam electric generating units which are subject to the provisions of section 7418 of this title and which commenced operation before July 1, 1957, the effect of the entire stack height of stacks for which a construction contract was awarded before February 8, 1974, may be taken into account.

(b) Dispersion technique

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

(c) Regulations; good engineering practice

Not later than six months after August 7, 1977, the Administrator, shall after notice and opportunity for public hearing, promulgate regulations to carry out this section. For purposes of this section, good engineering practice means, with respect to stack heights, the height necessary to insure that emissions from the stack do not result in excessive concentrations of any air pollutant in the immediate vicinity of the source as a result of atmospheric downwash, ed-

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

(July 14, 1955, ch. 360, title I, §123, as added Pub. L. 95-95, title I, §121, Aug. 7, 1977, 91 Stat. 721.)

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7424. Assurance of adequacy of State plans

(a) State review of implementation plans which relate to major fuel burning sources

As expeditiously as practicable but not later than one year after August 7, 1977, each State shall review the provisions of its implementation plan which relate to major fuel burning sources and shall determine—

- (1) the extent to which compliance with requirements of such plan is dependent upon the use by major fuel burning stationary sources of petroleum products or natural gas,
- (2) the extent to which such plan may reasonably be anticipated to be inadequate to meet the requirements of this chapter in such State on a reliable and long-term basis by reason of its dependence upon the use of such fuels, and
- (3) the extent to which compliance with the requirements of such plan is dependent upon use of coal or coal derivatives which is not locally or regionally available.

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

(b) Plan revision

(1) Not later than eighteen months after August 7, 1977, the Administrator shall review the submissions of the States under subsection (a) of this section and shall require each State to revise its plan if, in the judgment of the Administrator, such plan revision is necessary to assure that such plan will be adequate to assure compliance with the requirements of this chapter in such State on a reliable and long-term basis, taking into account the actual or potential prohibitions on use of petroleum products or natural gas, or both, under any other authority of law.

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

(July 14, 1955, ch. 360, title I, §124, as added Pub. L. 95-95, title I, §122, Aug. 7, 1977, 91 Stat. 722.)

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7425. Measures to prevent economic disruption or unemployment

(a) Determination that action is necessary

After notice and opportunity for a public hearing—

- (1) the Governor of any State in which a major fuel burning stationary source referred to in this subsection (or class or category thereof) is located,
- (2) the Administrator, or
- (3) the President (or his designee),

may determine that action under subsection (b) of this section is necessary to prevent or minimize significant local or regional economic disruption or unemployment which would otherwise result from use by such source (or class or category) of—

- (A) coal or coal derivatives other than locally or regionally available coal,
- (B) petroleum products,
- (C) natural gas, or
- (D) any combination of fuels referred to in subparagraphs (A) through (C),

to comply with the requirements of a State implementation plan.

(b) Use of locally or regionally available coal or coal derivatives to comply with implementation plan requirements

Upon a determination under subsection (a) of this section—

- (1) such Governor, with the written consent of the President or his designee,
- (2) the President's designee with the written consent of such Governor, or
- (3) the President

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

(c) Contracts; schedules

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

- (1) enter into long-term contracts of at least ten years in duration (except as the President or his designee may otherwise permit or require by rule or order for good cause) for supplies of regionally available coal or coal derivatives,
- (2) enter into contracts to acquire any additional means of emission limitation which the

Administrator or the State determines may be necessary to comply with the requirements of this chapter while using such coal or coal derivatives as fuel, and

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

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

(d) Existing or new major fuel burning stationary sources

This section applies only to existing or new major fuel burning stationary sources—

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

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

(e) Actions not to be deemed modifications of major fuel burning stationary sources

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

(f) Treatment of prohibitions, rules, or orders as requirements or parts of plans under other provisions

For purposes of sections 7413 and 7420 of this title a prohibition under subsection (b) of this section, and a corresponding rule or order under subsection (c) of this section, shall be treated as a requirement of section 7413 of this title. For purposes of any plan (or portion thereof) promulgated under section 7410(c) of this title, any rule or order under subsection (c) of this section corresponding to a prohibition under subsection (b) of this section, shall be treated as a part of such plan. For purposes of section 7413 of this title, a prohibition under subsection (b) of this section, applicable to any source, and a corresponding rule or order under subsection (c) of this section, shall be treated as part of the applicable implementation plan for the State in which subject source is located.

(g) Delegation of Presidential authority

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

(h) "Locally or regionally available coal or coal derivatives" defined

For the purpose of this section the term "locally or regionally available coal or coal derivatives" means coal or coal derivatives which is, or can in the judgment of the State or the Ad-

ministrator feasibly be, mined or produced in the local or regional area (as determined by the Administrator) in which the major fuel burning stationary source is located.

(July 14, 1955, ch. 360, title I, §125, as added Pub. L. 95-95, title I, §122, Aug. 7, 1977, 91 Stat. 722.)

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6215 of this title.

§ 7426. Interstate pollution abatement

(a) Written notice to all nearby States

Each applicable implementation plan shall—

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

(A) subject to part C of this subchapter (relating to significant deterioration of air quality) or

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

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

(2) identify all major existing stationary sources which may have the impact described in paragraph (1) with respect to new or modified sources and provide notice to all nearby States of the identity of such sources not later than three months after August 7, 1977.

(b) Petition for finding that major sources emit or would emit prohibited air pollutants

Any State or political subdivision may petition the Administrator for a finding that any major source or group of stationary sources emits or would emit any air pollutant in violation of the prohibition of section 7410(a)(2)(D)(ii) of this title or this section. Within 60 days after receipt of any petition under this subsection and after public hearing, the Administrator shall make such a finding or deny the petition.

(c) Violations; allowable continued operation

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

(1) for any major proposed new (or modified) source with respect to which a finding has been made under subsection (b) of this section to be constructed or to operate in violation of the prohibition of section 7410(a)(2)(D)(ii) of this title or this section, or

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

The Administrator may permit the continued operation of a source referred to in paragraph (2)

beyond the expiration of such three-month period if such source complies with such emission limitations and compliance schedules (containing increments of progress) as may be provided by the Administrator to bring about compliance with the requirements contained in section 7410(a)(2)(D)(ii) of this title or this section as expeditiously as practicable, but in no case later than three years after the date of such finding. Nothing in the preceding sentence shall be construed to preclude any such source from being eligible for an enforcement order under section 7413(d)¹ of this title after the expiration of such period during which the Administrator has permitted continuous operation.

(July 14, 1955, ch. 360, title I, § 126, as added Pub. L. 95-95, title I, § 123, Aug. 7, 1977, 91 Stat. 724; amended Pub. L. 95-190, § 14(a)(39), Nov. 16, 1977, 91 Stat. 1401; Pub. L. 101-549, title I, § 109(a), Nov. 15, 1990, 104 Stat. 2469.)

REFERENCES IN TEXT

Section 7413(d) of this title, referred to in subsec. (c), was amended generally by Pub. L. 101-549, title VII, § 701, Nov. 15, 1990, 104 Stat. 2672, and, as so amended, no longer relates to final compliance orders.

AMENDMENTS

1990—Subsec. (b). Pub. L. 101-549, § 109(a)(1), inserted “or group of stationary sources” after “any major source” and substituted “section 7410(a)(2)(D)(ii) of this title or this section” for “section 7410(a)(2)(E)(i) of this title”.

Subsec. (c). Pub. L. 101-549, § 109(a)(2)(A), which directed the insertion of “this section and” after “violation of”, was executed by making the insertion after first reference to “violation of” to reflect the probable intent of Congress.

Pub. L. 101-549, § 109(a)(2)(B), substituted “section 7410(a)(2)(D)(ii) of this title or this section” for “section 7410(a)(2)(E)(i) of this title” in par. (1) and penultimate sentence.

1977—Subsec. (a)(1). Pub. L. 95-190 substituted “(relating to significant deterioration of air quality)” for “, relating to significant deterioration of air quality”.

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7410, 7607 of this title.

§ 7427. Public notification

(a) Warning signs; television, radio, or press notices or information

Each State plan shall contain measures which will be effective to notify the public during any calendar¹ on a regular basis of instances or areas in which any national primary ambient air quality standard is exceeded or was exceeded during any portion of the preceding calendar year to advise the public of the health hazards associated with such pollution, and to enhance public awareness of the measures which can be taken to prevent such standards from being exceeded and the ways in which the public can par-

¹ See References in Text note below.

¹ So in original. Probably should be “calendar year”.

ticipate in regulatory and other efforts to improve air quality. Such measures may include the posting of warning signs on interstate highway access points to metropolitan areas or television, radio, or press notices or information.

(b) Grants

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

(July 14, 1955, ch. 360, title I, § 127, as added Pub. L. 95-95, title I, § 124, Aug. 7, 1977, 91 Stat. 725.)

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7410 of this title.

§ 7428. State boards

(a)¹ Not later than the date one year after August 7, 1977, each applicable implementation plan shall contain requirements that—

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

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

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

(July 14, 1955, ch. 360, title I, § 128, as added Pub. L. 95-95, title I, § 125, Aug. 7, 1977, 91 Stat. 725.)

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7410 of this title.

§ 7429. Solid waste combustion

(a) New source performance standards

(1) In general

(A) The Administrator shall establish performance standards and other requirements pursuant to section 7411 of this title and this section for each category of solid waste incineration units. Such standards shall include emissions limitations and other requirements applicable to new units and guidelines (under section 7411(d) of this title and this section)

¹ So in original. Section enacted without a subsec. (b).

and other requirements applicable to existing units.

(B) Standards under section 7411 of this title and this section applicable to solid waste incineration units with capacity greater than 250 tons per day combusting municipal waste shall be promulgated not later than 12 months after November 15, 1990. Nothing in this subparagraph shall alter any schedule for the promulgation of standards applicable to such units under section 7411 of this title pursuant to any settlement and consent decree entered by the Administrator before November 15, 1990: *Provided*, That, such standards are subsequently modified pursuant to the schedule established in this subparagraph to include each of the requirements of this section.

(C) Standards under section 7411 of this title and this section applicable to solid waste incineration units with capacity equal to or less than 250 tons per day combusting municipal waste and units combusting hospital waste, medical waste and infectious waste shall be promulgated not later than 24 months after November 15, 1990.

(D) Standards under section 7411 of this title and this section applicable to solid waste incineration units combusting commercial or industrial waste shall be proposed not later than 36 months after November 15, 1990, and promulgated not later than 48 months after November 15, 1990.

(E) Not later than 18 months after November 15, 1990, the Administrator shall publish a schedule for the promulgation of standards under section 7411 of this title and this section applicable to other categories of solid waste incineration units.

(2) Emissions standard

Standards applicable to solid waste incineration units promulgated under section 7411 of this title and this section shall reflect the maximum degree of reduction in emissions of air pollutants listed under section¹ (a)(4) that the Administrator, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable for new or existing units in each category. The Administrator may distinguish among classes, types (including mass-burn, refuse-derived fuel, modular and other types of units), and sizes of units within a category in establishing such standards. The degree of reduction in emissions that is deemed achievable for new units in a category shall not be less stringent than the emissions control that is achieved in practice by the best controlled similar unit, as determined by the Administrator. Emissions standards for existing units in a category may be less stringent than standards for new units in the same category but shall not be less stringent than the average emissions limitation achieved by the best performing 12 percent of units in the category (excluding units which first met lowest achievable emissions rates 18 months before the date such standards are pro-

posed or 30 months before the date such standards are promulgated, whichever is later).

(3) Control methods and technologies

Standards under section 7411 of this title and this section applicable to solid waste incineration units shall be based on methods and technologies for removal or destruction of pollutants before, during, or after combustion, and shall incorporate for new units siting requirements that minimize, on a site specific basis, to the maximum extent practicable, potential risks to public health or the environment.

(4) Numerical emissions limitations

The performance standards promulgated under section 7411 of this title and this section and applicable to solid waste incineration units shall specify numerical emission limitations for the following substances or mixtures: particulate matter (total and fine), opacity (as appropriate), sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxins and dibenzofurans. The Administrator may promulgate numerical emissions limitations or provide for the monitoring of postcombustion concentrations of surrogate substances, parameters or periods of residence time in excess of stated temperatures with respect to pollutants other than those listed in this paragraph.

(5) Review and revision

Not later than 5 years following the initial promulgation of any performance standards and other requirements under this section and section 7411 of this title applicable to a category of solid waste incineration units, and at 5 year intervals thereafter, the Administrator shall review, and in accordance with this section and section 7411 of this title, revise such standards and requirements.

(b) Existing units

(1) Guidelines

Performance standards under this section and section 7411 of this title for solid waste incineration units shall include guidelines promulgated pursuant to section 7411(d) of this title and this section applicable to existing units. Such guidelines shall include, as provided in this section, each of the elements required by subsection (a) of this section (emissions limitations, notwithstanding any restriction in section 7411(d) of this title regarding issuance of such limitations), subsection (c) of this section (monitoring), subsection (d) of this section (operator training), subsection (e) of this section (permits), and subsection (h)(4)² of this section (residual risk).

(2) State plans

Not later than 1 year after the Administrator promulgates guidelines for a category of solid waste incineration units, each State in which units in the category are operating shall submit to the Administrator a plan to implement and enforce the guidelines with respect to such units. The State plan shall be at

¹ So in original. Probably should be "subsection".

² So in original. Probably should be subsection "(h)(3)".

least as protective as the guidelines promulgated by the Administrator and shall provide that each unit subject to the guidelines shall be in compliance with all requirements of this section not later than 3 years after the State plan is approved by the Administrator but not later than 5 years after the guidelines were promulgated. The Administrator shall approve or disapprove any State plan within 180 days of the submission, and if a plan is disapproved, the Administrator shall state the reasons for disapproval in writing. Any State may modify and resubmit a plan which has been disapproved by the Administrator.

(3) Federal plan

The Administrator shall develop, implement and enforce a plan for existing solid waste incineration units within any category located in any State which has not submitted an approvable plan under this subsection with respect to units in such category within 2 years after the date on which the Administrator promulgated the relevant guidelines. Such plan shall assure that each unit subject to the plan is in compliance with all provisions of the guidelines not later than 5 years after the date the relevant guidelines are promulgated.

(c) Monitoring

The Administrator shall, as part of each performance standard promulgated pursuant to subsection (a) of this section and section 7411 of this title, promulgate regulations requiring the owner or operator of each solid waste incineration unit—

(1) to monitor emissions from the unit at the point at which such emissions are emitted into the ambient air (or within the stack, combustion chamber or pollution control equipment, as appropriate) and at such other points as necessary to protect public health and the environment;

(2) to monitor such other parameters relating to the operation of the unit and its pollution control technology as the Administrator determines are appropriate; and

(3) to report the results of such monitoring.

Such regulations shall contain provisions regarding the frequency of monitoring, test methods and procedures validated on solid waste incineration units, and the form and frequency of reports containing the results of monitoring and shall require that any monitoring reports or test results indicating an exceedance of any standard under this section shall be reported separately and in a manner that facilitates review for purposes of enforcement actions. Such regulations shall require that copies of the results of such monitoring be maintained on file at the facility concerned and that copies shall be made available for inspection and copying by interested members of the public during business hours.

(d) Operator training

Not later than 24 months after November 15, 1990, the Administrator shall develop and promote a model State program for the training and certification of solid waste incineration unit operators and high-capacity fossil fuel fired plant operators. The Administrator may authorize any State to implement a model program for

the training of solid waste incineration unit operators and high-capacity fossil fuel fired plant operators, if the State has adopted a program which is at least as effective as the model program developed by the Administrator. Beginning on the date 36 months after the date on which performance standards and guidelines are promulgated under subsection (a) of this section and section 7411 of this title for any category of solid waste incineration units it shall be unlawful to operate any unit in the category unless each person with control over processes affecting emissions from such unit has satisfactorily completed a training program meeting the requirements established by the Administrator under this subsection.

(e) Permits

Beginning (1) 36 months after the promulgation of a performance standard under subsection (a) of this section and section 7411 of this title applicable to a category of solid waste incineration units, or (2) the effective date of a permit program under subchapter V of this chapter in the State in which the unit is located, whichever is later, each unit in the category shall operate pursuant to a permit issued under this subsection and subchapter V of this chapter. Permits required by this subsection may be renewed according to the provisions of subchapter V of this chapter. Notwithstanding any other provision of this chapter, each permit for a solid waste incineration unit combusting municipal waste issued under this chapter shall be issued for a period of up to 12 years and shall be reviewed every 5 years after date of issuance or reissuance. Each permit shall continue in effect after the date of issuance until the date of termination, unless the Administrator or State determines that the unit is not in compliance with all standards and conditions contained in the permit. Such determination shall be made at regular intervals during the term of the permit, such intervals not to exceed 5 years, and only after public comment and public hearing. No permit for a solid waste incineration unit may be issued under this chapter by an agency, instrumentality or person that is also responsible, in whole or part, for the design and construction or operation of the unit. Notwithstanding any other provision of this subsection, the Administrator or the State shall require the owner or operator of any unit to comply with emissions limitations or implement any other measures, if the Administrator or the State determines that emissions in the absence of such limitations or measures may reasonably be anticipated to endanger public health or the environment. The Administrator's determination under the preceding sentence is a discretionary decision.

(f) Effective date and enforcement

(1) New units

Performance standards and other requirements promulgated pursuant to this section and section 7411 of this title and applicable to new solid waste incineration units shall be effective as of the date 6 months after the date of promulgation.

(2) Existing units

Performance standards and other requirements promulgated pursuant to this section

and section 7411 of this title and applicable to existing solid waste incineration units shall be effective as expeditiously as practicable after approval of a State plan under subsection (b)(2) of this section (or promulgation of a plan by the Administrator under subsection (b)(3) of this section) but in no event later than 3 years after the State plan is approved or 5 years after the date such standards or requirements are promulgated, whichever is earlier.

(3) Prohibition

After the effective date of any performance standard, emission limitation or other requirement promulgated pursuant to this section and section 7411 of this title, it shall be unlawful for any owner or operator of any solid waste incineration unit to which such standard, limitation or requirement applies to operate such unit in violation of such limitation, standard or requirement or for any other person to violate an applicable requirement of this section.

(4) Coordination with other authorities

For purposes of sections 7411(e), 7413, 7414, 7416, 7420, 7603, 7604, 7607 of this title and other provisions for the enforcement of this chapter, each performance standard, emission limitation or other requirement established pursuant to this section by the Administrator or a State or local government, shall be treated in the same manner as a standard of performance under section 7411 of this title which is an emission limitation.

(g) Definitions

For purposes of section 306 of the Clean Air Act Amendments of 1990 and this section only—

(1) Solid waste incineration unit

The term “solid waste incineration unit” means a distinct operating unit of any facility which combusts any solid waste material from commercial or industrial establishments or the general public (including single and multiple residences, hotels, and motels). Such term does not include incinerators or other units required to have a permit under section 3005 of the Solid Waste Disposal Act [42 U.S.C. 6925]. The term “solid waste incineration unit” does not include (A) materials recovery facilities (including primary or secondary smelters) which combust waste for the primary purpose of recovering metals, (B) qualifying small power production facilities, as defined in section 796(17)(C) of title 16, or qualifying cogeneration facilities, as defined in section 796(18)(B) of title 16, which burn homogeneous waste (such as units which burn tires or used oil, but not including refuse-derived fuel) for the production of electric energy or in the case of qualifying cogeneration facilities which burn homogeneous waste for the production of electric energy and steam or forms of useful energy (such as heat) which are used for industrial, commercial, heating or cooling purposes, or (C) air curtain incinerators provided that such incinerators only burn wood wastes, yard wastes and clean lumber and that such air curtain incinerators comply with opacity limitations to be established by the Administrator by rule.

(2) New solid waste incineration unit

The term “new solid waste incineration unit” means a solid waste incineration unit the construction of which is commenced after the Administrator proposes requirements under this section establishing emissions standards or other requirements which would be applicable to such unit or a modified solid waste incineration unit.

(3) Modified solid waste incineration unit

The term “modified solid waste incineration unit” means a solid waste incineration unit at which modifications have occurred after the effective date of a standard under subsection (a) of this section if (A) the cumulative cost of the modifications, over the life of the unit, exceed 50 per centum of the original cost of construction and installation of the unit (not including the cost of any land purchased in connection with such construction or installation) updated to current costs, or (B) the modification is a physical change in or change in the method of operation of the unit which increases the amount of any air pollutant emitted by the unit for which standards have been established under this section or section 7411 of this title.

(4) Existing solid waste incineration unit

The term “existing solid waste incineration unit” means a solid waste unit which is not a new or modified solid waste incineration unit.

(5) Municipal waste

The term “municipal waste” means refuse (and refuse-derived fuel) collected from the general public and from residential, commercial, institutional, and industrial sources consisting of paper, wood, yard wastes, food wastes, plastics, leather, rubber, and other combustible materials and non-combustible materials such as metal, glass and rock, provided that: (A) the term does not include industrial process wastes or medical wastes that are segregated from such other wastes; and (B) an incineration unit shall not be considered to be combusting municipal waste for purposes of section 7411 of this title or this section if it combusts a fuel feed stream, 30 percent or less of the weight of which is comprised, in aggregate, of municipal waste.

(6) Other terms

The terms “solid waste” and “medical waste” shall have the meanings established by the Administrator pursuant to the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.].

(h) Other authority

(1) State authority

Nothing in this section shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce any regulation, requirement, limitation or standard relating to solid waste incineration units that is more stringent than a regulation, requirement, limitation or standard in effect under this section or under any other provision of this chapter.

(2) Other authority under this chapter

Nothing in this section shall diminish the authority of the Administrator or a State to

establish any other requirements applicable to solid waste incineration units under any other authority of law, including the authority to establish for any air pollutant a national ambient air quality standard, except that no solid waste incineration unit subject to performance standards under this section and section 7411 of this title shall be subject to standards under section 7412(d) of this title.

(3) Residual risk

The Administrator shall promulgate standards under section 7412(f) of this title for a category of solid waste incineration units, if promulgation of such standards is required under section 7412(f) of this title. For purposes of this³ preceding sentence only—

(A) the performance standards under subsection (a) of this section and section 7411 of this title applicable to a category of solid waste incineration units shall be deemed standards under section 7412(d)(2) of this title, and

(B) the Administrator shall consider and regulate, if required, the pollutants listed under subsection (a)(4) of this section and no others.

(4) Acid rain

A solid waste incineration unit shall not be a utility unit as defined in subchapter IV–A of this chapter: *Provided*, That, more than 80 per centum of its annual average fuel consumption measured on a Btu basis, during a period or periods to be determined by the Administrator, is from a fuel (including any waste burned as a fuel) other than a fossil fuel.

(5) Requirements of parts C and D

No requirement of an applicable implementation plan under section 7475 of this title (relating to construction of facilities in regions identified pursuant to section 7407(d)(1)(A)(ii) or (iii) of this title) or under section 7502(c)(5) of this title (relating to permits for construction and operation in nonattainment areas) may be used to weaken the standards in effect under this section.

(July 14, 1955, ch. 360, title I, § 129, as added Pub. L. 101–549, title III, § 305(a), Nov. 15, 1990, 104 Stat. 2577.)

REFERENCES IN TEXT

Section 306 of the Clean Air Act Amendments of 1990, referred to in subsec. (g), probably means section 306 of Pub. L. 101–549, which is set out as a note under section 6921 of this title.

The Solid Waste Disposal Act, referred to in subsec. (g)(6), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§ 6901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

REVIEW OF ACID GAS SCRUBBING REQUIREMENTS

Section 305(c) of Pub. L. 101–549 provided that: “Prior to the promulgation of any performance standard for solid waste incineration units combusting municipal waste under section 111 or section 129 of the Clean Air Act [42 U.S.C. 7411, 7429], the Administrator shall re-

view the availability of acid gas scrubbers as a pollution control technology for small new units and for existing units (as defined in 54 Federal Register 52190 (December 20, 1989)[]), taking into account the provisions of subsection (a)(2) of section 129 of the Clean Air Act.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7413, 7414, 7607 of this title.

§ 7430. Emission factors

Within 6 months after November 15, 1990, and at least every 3 years thereafter, the Administrator shall review and, if necessary, revise, the methods (“emission factors”) used for purposes of this chapter to estimate the quantity of emissions of carbon monoxide, volatile organic compounds, and oxides of nitrogen from sources of such air pollutants (including area sources and mobile sources). In addition, the Administrator shall establish emission factors for sources for which no such methods have previously been established by the Administrator. The Administrator shall permit any person to demonstrate improved emissions estimating techniques, and following approval of such techniques, the Administrator shall authorize the use of such techniques. Any such technique may be approved only after appropriate public participation. Until the Administrator has completed the revision required by this section, nothing in this section shall be construed to affect the validity of emission factors established by the Administrator before November 15, 1990.

(July 14, 1955, ch. 360, title I, § 130, as added Pub. L. 101–549, title VIII, § 804, Nov. 15, 1990, 104 Stat. 2689.)

§ 7431. Land use authority

Nothing in this chapter constitutes an infringement on the existing authority of counties and cities to plan or control land use, and nothing in this chapter provides or transfers authority over such land use.

(July 14, 1955, ch. 360, title I, § 131, as added Pub. L. 101–549, title VIII, § 805, Nov. 15, 1990, 104 Stat. 2689.)

PART B—OZONE PROTECTION

§§ 7450 to 7459. Repealed. Pub. L. 101–549, title VI, § 601, Nov. 15, 1990, 104 Stat. 2648

Section 7450, act July 14, 1955, ch. 360, title I, § 150, as added Aug. 7, 1977, Pub. L. 95–95, title I, § 126, 91 Stat. 725, set forth Congressional declaration of purpose.

Section 7451, act July 14, 1955, ch. 360, title I, § 151, as added Aug. 7, 1977, Pub. L. 95–95, title I, § 126, 91 Stat. 726, set forth Congressional findings.

Section 7452, act July 14, 1955, ch. 360, title I, § 152, as added Aug. 7, 1977, Pub. L. 95–95, title I, § 126, 91 Stat. 726, set forth definitions applicable to this part.

Section 7453, act July 14, 1955, ch. 360, title I, § 153, as added Aug. 7, 1977, Pub. L. 95–95, title I, § 126, 91 Stat. 726, related to studies by Environmental Protection Agency.

Section 7454, act July 14, 1955, ch. 360, title I, § 154, as added Aug. 7, 1977, Pub. L. 95–95, title I, § 126, 91 Stat. 728; amended Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695, related to research and monitoring activities by Federal agencies.

Section 7455, act July 14, 1955, ch. 360, title I, § 155, as added Aug. 7, 1977, Pub. L. 95–95, title I, § 126, 91 Stat. 729, related to reports on progress of regulation.

³ So in original. Probably should be “the”.

Section 7456, act July 14, 1955, ch. 360, title I, § 156, as added Aug. 7, 1977, Pub. L. 95-95, title I, § 126, 91 Stat. 729, authorized President to enter into international agreements to foster cooperative research.

Section 7457, act July 14, 1955, ch. 360, title I, § 157, as added Aug. 7, 1977, Pub. L. 95-95, title I, § 126, 91 Stat. 729, related to promulgation of regulations.

Section 7458, act July 14, 1955, ch. 360, title I, § 158, as added Aug. 7, 1977, Pub. L. 95-95, title I, § 126, 91 Stat. 730, set forth other provisions of law that would be unaffected by this part.

Section 7459, act July 14, 1955, ch. 360, title I, § 159, as added Aug. 7, 1977, Pub. L. 95-95, title I, § 126, 91 Stat. 730, related to authority of States to protect the stratosphere.

SIMILAR PROVISIONS

For provisions relating to stratospheric ozone protection, see section 7671 et seq. of this title.

PART C—PREVENTION OF SIGNIFICANT DETERIORATION OF AIR QUALITY

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 7410, 7412, 7421, 7426, 7429, 7604, 7607, 7616, 7617, 7620, 7627, 7651h, 7651n, 7661a, 7661c, 9601 of this title; title 16 section 460m-24.

SUBPART I—CLEAN AIR

§ 7470. Congressional declaration of purpose

The purposes of this part are as follows:

(1) to protect public health and welfare from any actual or potential adverse effect which in the Administrator's judgment may reasonably be anticipated¹ to occur from air pollution or from exposures to pollutants in other media, which pollutants originate as emissions to the ambient air², notwithstanding attainment and maintenance of all national ambient air quality standards;

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

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

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

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

(July 14, 1955, ch. 360, title I, § 160, as added Pub. L. 95-95, title I, § 127(a), Aug. 7, 1977, 91 Stat. 731.)

EFFECTIVE DATE

Subpart effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

¹ So in original. Probably should be "anticipated".

² So in original. Section was enacted without an opening parenthesis.

GUIDANCE DOCUMENT

Section 127(c) of Pub. L. 95-95 required Administrator, not later than 1 year after Aug. 7, 1977, to publish a guidance document to assist States in carrying out their functions under part C of title I of the Clean Air Act (this part) with respect to pollutants for which national ambient air quality standards are promulgated.

STUDY AND REPORT ON PROGRESS MADE IN PROGRAM RELATING TO SIGNIFICANT DETERIORATION OF AIR QUALITY

Section 127(d) of Pub. L. 95-95 directed Administrator, not later than 2 years after Aug. 7, 1977, to complete a study and report to Congress on progress made in carrying out part C of title I of the Clean Air Act (this part) and the problems associated in carrying out such section.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7476 of this title.

§ 7471. Plan requirements

In accordance with the policy of section 7401(b)(1) of this title, each applicable implementation plan shall contain emission limitations and such other measures as may be necessary, as determined under regulations promulgated under this part, to prevent significant deterioration of air quality in each region (or portion thereof) designated pursuant to section 7407 of this title as attainment or unclassifiable.

(July 14, 1955, ch. 360, title I, § 161, as added Pub. L. 95-95, title I, § 127(a), Aug. 7, 1977, 91 Stat. 731; amended Pub. L. 101-549, title I, § 110(1), Nov. 15, 1990, 104 Stat. 2470.)

AMENDMENTS

1990—Pub. L. 101-549 substituted "designated pursuant to section 7407 of this title as attainment or unclassifiable" for "identified pursuant to section 7407(d)(1)(D) or (E) of this title".

§ 7472. Initial classifications

(a) Areas designated as class I

Upon the enactment of this part, all—

- (1) international parks,
- (2) national wilderness areas which exceed 5,000 acres in size,
- (3) national memorial parks which exceed 5,000 acres in size, and
- (4) national parks which exceed six thousand acres in size,

and which are in existence on August 7, 1977, shall be class I areas and may not be redesignated. All areas which were redesignated as class I under regulations promulgated before August 7, 1977, shall be class I areas which may be redesignated as provided in this part. The extent of the areas designated as Class I under this section shall conform to any changes in the boundaries of such areas which have occurred subsequent to August 7, 1977, or which may occur subsequent to November 15, 1990.

(b) Areas designated as class II

All areas in such State designated pursuant to section 7407(d) of this title as attainment or unclassifiable which are not established as class I under subsection (a) of this section shall be class II areas unless redesignated under section 7474 of this title.

(July 14, 1955, ch. 360, title I, § 162, as added Pub. L. 95-95, title I, § 127(a), Aug. 7, 1977, 91 Stat. 731; amended Pub. L. 95-190, § 14(a)(40), Nov. 16, 1977, 91 Stat. 1401; Pub. L. 101-549, title I, §§ 108(m), 110(2), Nov. 15, 1990, 104 Stat. 2469, 2470.)

AMENDMENTS

1990—Subsec. (a). Pub. L. 101-549, § 108(m), inserted at end “The extent of the areas designated as Class I under this section shall conform to any changes in the boundaries of such areas which have occurred subsequent to August 7, 1977, or which may occur subsequent to November 15, 1990.”

Subsec. (b). Pub. L. 101-549, § 110(2), substituted “designated pursuant to section 7407(d) of this title as attainment or unclassifiable” for “identified pursuant to section 7407(d)(1)(D) or (E) of this title”.

1977—Subsec. (a)(4). Pub. L. 95-190 inserted a comma after “size”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7474, 7478 of this title.

§ 7473. Increments and ceilings

(a) Sulfur oxide and particulate matter; requirement that maximum allowable increases and maximum allowable concentrations not be exceeded

In the case of sulfur oxide and particulate matter, each applicable implementation plan shall contain measures assuring that maximum allowable increases over baseline concentrations of, and maximum allowable concentrations of, such pollutant shall not be exceeded. In the case of any maximum allowable increase (except an allowable increase specified under section 7475(d)(2)(C)(iv) of this title) for a pollutant based on concentrations permitted under national ambient air quality standards for any period other than an annual period, such regulations shall permit such maximum allowable increase to be exceeded during one such period per year.

(b) Maximum allowable increases in concentrations over baseline concentrations

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

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

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

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

Twenty-four-hour maximum	91
Three-hour maximum	512

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

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

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

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

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

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

(c) Orders or rules for determining compliance with maximum allowable increases in ambient concentrations of air pollutants

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

(A) concentrations of such pollutant attributable to the increase in emissions from stationary sources which have converted from the use of petroleum products, or natural gas, or both, by reason of an order which is in effect under the provisions of sections 792(a) and (b) of title 15 (or any subsequent legislation which supersedes such provisions) over the emissions from such sources before the effective date of such order.¹

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

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

(D) the increase in concentrations attributable to new sources outside the United States over the concentrations attributable to existing sources which are included in the

¹ So in original. The period probably should be a comma.

baseline concentration determined in accordance with section 7479(4) of this title.

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

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

(July 14, 1955, ch. 360, title I, § 163, as added Pub. L. 95-95, title I, § 127(a), Aug. 7, 1977, 91 Stat. 732; amended Pub. L. 95-190, § 14(a)(41), Nov. 16, 1977, 91 Stat. 1401.)

REFERENCES IN TEXT

The Federal Power Act, referred to in subsec. (c)(1)(B), is act June 10, 1920, ch. 285, 41 Stat. 1063, as amended, which is classified generally to chapter 12 (§ 791a et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see section 791a of Title 16 and Tables.

AMENDMENTS

1977—Subsec. (a). Pub. L. 95-190 inserted “section” before “7475”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7407, 7476, 7478 of this title.

§ 7474. Area redesignation

(a) Authority of States to redesignate areas

Except as otherwise provided under subsection (c) of this section, a State may redesignate such areas as it deems appropriate as class I areas. The following areas may be redesignated only as class I or II:

- (1) an area which exceeds ten thousand acres in size and is a national monument, a national primitive area, a national preserve, a national recreation area, a national wild and scenic river, a national wildlife refuge, a national lakeshore or seashore, and
- (2) a national park or national wilderness area established after August 7, 1977, which exceeds ten thousand acres in size.

The extent of the areas referred to in paragraph¹ (1) and (2) shall conform to any changes in the boundaries of such areas which have occurred subsequent to August 7, 1977, or which may occur subsequent to November 15, 1990. Any area (other than an area referred to in paragraph (1) or (2) or an area established as class I under the first sentence of section 7472(a) of this title) may be redesignated by the State as class III if—

(A) such redesignation has been specifically approved by the Governor of the State, after consultation with the appropriate Committees of the legislature if it is in session or with the leadership of the legislature if it is not in ses-

sion (unless State law provides that such redesignation must be specifically approved by State legislation) and if general purpose units of local government representing a majority of the residents of the area so redesignated enact legislation (including for such units of local government resolutions where appropriate) concurring in the State’s redesignation;

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

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

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

(b) Notice and hearing; notice to Federal land manager; written comments and recommendations; regulations; disapproval of redesignation

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

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

(C) The Administrator shall promulgate regulations not later than six months after August 7, 1977, to assure, insofar as practicable, that prior to any public hearing on redesignation of any area, there shall be available for public inspection any specific plans for any new or modified major emitting facility which may be permitted to be constructed and operated only if the area in question is designated or redesignated as class III.

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

¹ So in original. Probably should be “paragraphs”.

with the requirements of section 7472(a) of this title or of subsection (a) of this section. If any such disapproval occurs, the classification of the area shall be that which was in effect prior to the redesignation which was disapproved.

(c) Indian reservations

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

(d) Review of national monuments, primitive areas, and national preserves

The Federal Land Manager shall review all national monuments, primitive areas, and national preserves, and shall recommend any appropriate areas for redesignation as class I where air quality related values are important attributes of the area. The Federal Land Manager shall report such recommendations, within² supporting analysis, to the Congress and the affected States within one year after August 7, 1977. The Federal Land Manager shall consult with the appropriate States before making such recommendations.

(e) Resolution of disputes between State and Indian tribes

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

(July 14, 1955, ch. 360, title I, § 164, as added Pub. L. 95-95, title I, § 127(a), Aug. 7, 1977, 91 Stat. 733; amended Pub. L. 95-190, § 14(a)(42), (43), Nov. 16, 1977, 91 Stat. 1402; Pub. L. 101-549, title I, § 108(n), Nov. 15, 1990, 104 Stat. 2469.)

AMENDMENTS

1990—Subsec. (a). Pub. L. 101-549, which directed the insertion of “The extent of the areas referred to in

²So in original. Probably should be “with”.

paragraph (1) and (2) shall conform to any changes in the boundaries of such areas which have occurred subsequent to August 7, 1977, or which may occur subsequent to November 15, 1990.” before “Any area (other than an area referred to in paragraph (1) or (2))”, was executed by making the insertion before “Any area (other than an area referred to in paragraph (1) or (2))”, to reflect the probable intent of Congress.

1977—Subsec. (b)(2). Pub. L. 95-190, § 14(a)(42), inserted “or is inconsistent with the requirements of section 7472(a) of this title or of subsection (a) of this section” after “this section”.

Subsec. (e). Pub. L. 95-190, § 14(a)(43), inserted “an” after “If any State affected by the redesignation of”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7472, 7478 of this title.

§ 7475. Preconstruction requirements

(a) Major emitting facilities on which construction is commenced

No major emitting facility on which construction is commenced after August 7, 1977, may be constructed in any area to which this part applies unless—

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

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

(3) the owner or operator of such facility demonstrates, as required pursuant to section 7410(j) of this title, that emissions from construction or operation of such facility will not cause, or contribute to, air pollution in excess of any (A) maximum allowable increase or maximum allowable concentration for any pollutant in any area to which this part applies more than one time per year, (B) national ambient air quality standard in any air quality control region, or (C) any other applicable emission standard or standard of performance under this chapter;

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

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

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

(7) the person who owns or operates, or proposes to own or operate, a major emitting facility for which a permit is required under this part agrees to conduct such monitoring as

may be necessary to determine the effect which emissions from any such facility may have, or is having, on air quality in any area which may be affected by emissions from such source; and

(8) In the case of a source which proposes to construct in a class III area, emissions from which would cause or contribute to exceeding the maximum allowable increments applicable in a class II area and where no standard under section 7411 of this title has been promulgated subsequent to August 7, 1977, for such source category, the Administrator has approved the determination of best available technology as set forth in the permit.

(b) Exception

The demonstration pertaining to maximum allowable increases required under subsection (a)(3) of this section shall not apply to maximum allowable increases for class II areas in the case of an expansion or modification of a major emitting facility which is in existence on August 7, 1977, whose allowable emissions of air pollutants, after compliance with subsection (a)(4) of this section, will be less than fifty tons per year and for which the owner or operator of such facility demonstrates that emissions of particulate matter and sulfur oxides will not cause or contribute to ambient air quality levels in excess of the national secondary ambient air quality standard for either of such pollutants.

(c) Permit applications

Any completed permit application under section 7410 of this title for a major emitting facility in any area to which this part applies shall be granted or denied not later than one year after the date of filing of such completed application.

(d) Action taken on permit applications; notice; adverse impact on air quality related values; variance; emission limitations

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

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

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

(C)(i) In any case where the Federal official charged with direct responsibility for management of any lands within a class I area or the Federal Land Manager of such lands, or the Administrator, or the Governor of an adjacent State containing such a class I area files a notice alleging that emissions from a proposed

major emitting facility may cause or contribute to a change in the air quality in such area and identifying the potential adverse impact of such change, a permit shall not be issued unless the owner or operator of such facility demonstrates that emissions of particulate matter and sulfur dioxide will not cause or contribute to concentrations which exceed the maximum allowable increases for a class I area.

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

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

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

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

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

(ii) In any case in which the Governor recommends a variance under this subparagraph in

which the Federal Land Manager does not concur, the recommendations of the Governor and the Federal Land Manager shall be transmitted to the President. The President may approve the Governor's recommendation if he finds that such variance is in the national interest. No Presidential finding shall be reviewable in any court. The variance shall take effect if the President approves the Governor's recommendations. The President shall approve or disapprove such recommendation within ninety days after his receipt of the recommendations of the Governor and the Federal Land Manager.

(iii) In the case of a permit issued pursuant to this subparagraph, such facility shall comply with such emission limitations under such permit as may be necessary to assure that emissions of sulfur oxides from such facility will not (during any day on which the otherwise applicable maximum allowable increases are exceeded) cause or contribute to concentrations which exceed the following maximum allowable increases for such areas over the baseline concentration for such pollutant and to assure that such emissions will not cause or contribute to concentrations which exceed the otherwise applicable maximum allowable increases for periods of exposure of 24 hours or less on more than 18 days during any annual period:

MAXIMUM ALLOWABLE INCREASE
(In micrograms per cubic meter)

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

(iv) For purposes of clause (iii), the term "high terrain area" means with respect to any facility, any area having an elevation of 900 feet or more above the base of the stack of such facility, and the term "low terrain area" means any area other than a high terrain area.

(e) Analysis; continuous air quality monitoring data; regulations; model adjustments

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

(2) Effective one year after August 7, 1977, the analysis required by this subsection shall include continuous air quality monitoring data gathered for purposes of determining whether emissions from such facility will exceed the maximum allowable increases or the maximum allowable concentration permitted under this part. Such data shall be gathered over a period of one calendar year preceding the date of application for a permit under this part unless the State, in accordance with regulations promulgated by the Administrator, determines that a complete and adequate analysis for such pur-

poses may be accomplished in a shorter period. The results of such analysis shall be available at the time of the public hearing on the application for such permit.

(3) The Administrator shall within six months after August 7, 1977, promulgate regulations respecting the analysis required under this subsection which regulations—

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

(B) shall require an analysis of the ambient air quality, climate and meteorology, terrain, soils and vegetation, and visibility at the site of the proposed major emitting facility and in the area potentially affected by the emissions from such facility for each pollutant regulated under this chapter which will be emitted from, or which results from the construction or operation of, such facility, the size and nature of the proposed facility, the degree of continuous emission reduction which could be achieved by such facility, and such other factors as may be relevant in determining the effect of emissions from a proposed facility on any air quality control region,

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

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

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

(July 14, 1955, ch. 360, title I, §165, as added Pub. L. 95-95, title I, §127(a), Aug. 7, 1977, 91 Stat. 735; amended Pub. L. 95-190, §14(a)(44)-(51), Nov. 16, 1977, 91 Stat. 1402.)

AMENDMENTS

1977—Subsec. (a)(1). Pub. L. 95-190, §14(a)(44), substituted "part;" for "part:".

Subsec. (a)(3). Pub. L. 95-190, §14(a)(45), inserted provision making applicable requirement of section 7410(j) of this title.

Subsec. (b). Pub. L. 95-190, §14(a)(46), inserted "cause or" before "contribute" and struck out "actual" before "allowable emissions".

Subsec. (d)(2)(C). Pub. L. 95-190, §14(a)(47)-(49), in cl. (ii) substituted "contribute" for "contribute", in cl. (iii) substituted "quality-related" for "quality related" and "concentrations which" for "concentrations, which", and in cl. (iv) substituted "such facility" for "such sources" and "will not cause or contribute to concentrations of such pollutant which exceed" for "together with all other sources, will not exceed".

Subsec. (d)(2)(D). Pub. L. 95-190, §14(a)(50), (51), in cl. (iii) substituted provisions relating to determinations of amounts of emissions of sulfur oxides from facilities, for provisions relating to determinations of amounts of emissions of sulfur oxides from sources operating under permits issued pursuant to this subpar., together with all other sources, and added cl. (iv).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7413, 7429, 7473, 7476 of this title.

§ 7476. Other pollutants**(a) Hydrocarbons, carbon monoxide, petrochemical oxidants, and nitrogen oxides**

In the case of the pollutants hydrocarbons, carbon monoxide, photochemical oxidants, and nitrogen oxides, the Administrator shall conduct a study and not later than two years after August 7, 1977, promulgate regulations to prevent the significant deterioration of air quality which would result from the emissions of such pollutants. In the case of pollutants for which national ambient air quality standards are promulgated after August 7, 1977, he shall promulgate such regulations not more than 2 years after the date of promulgation of such standards.

(b) Effective date of regulations

Regulations referred to in subsection (a) of this section shall become effective one year after the date of promulgation. Within 21 months after such date of promulgation such plan revision shall be submitted to the Administrator who shall approve or disapprove the plan within 25 months after such date or promulgation in the same manner as required under section 7410 of this title.

(c) Contents of regulations

Such regulations shall provide specific numerical measures against which permit applications may be evaluated, a framework for stimulating improved control technology, protection of air quality values, and fulfill the goals and purposes set forth in section 7401 and section 7470 of this title.

(d) Specific measures to fulfill goals and purposes

The regulations of the Administrator under subsection (a) of this section shall provide specific measures at least as effective as the increments established in section 7473 of this title to fulfill such goals and purposes, and may contain air quality increments, emission density requirements, or other measures.

(e) Area classification plan not required

With respect to any air pollutant for which a national ambient air quality standard is established other than sulfur oxides or particulate matter, an area classification plan shall not be required under this section if the implementation plan adopted by the State and submitted for the Administrator's approval or promulgated by the Administrator under section 7410(c) of this title contains other provisions which when considered as a whole, the Administrator finds will carry out the purposes in section 7470 of this title at least as effectively as an area classification plan for such pollutant. Such other provisions referred to in the preceding sentence need not require the establishment of maximum allowable increases with respect to such pollutant for any area to which this section applies.

(f) PM-10 increments

The Administrator is authorized to substitute, for the maximum allowable increases in particulate matter specified in section 7473(b) of this title and section 7475(d)(2)(C)(iv) of this title, maximum allowable increases in particulate

matter with an aerodynamic diameter smaller than or equal to 10 micrometers. Such substituted maximum allowable increases shall be of equal stringency in effect as those specified in the provisions for which they are substituted. Until the Administrator promulgates regulations under the authority of this subsection, the current maximum allowable increases in concentrations of particulate matter shall remain in effect.

(July 14, 1955, ch. 360, title I, § 166, as added Pub. L. 95-95, title I, § 127(a), Aug. 7, 1977, 91 Stat. 739; amended Pub. L. 101-549, title I, § 105(b), Nov. 15, 1990, 104 Stat. 2462.)

AMENDMENTS

1990—Subsec. (f). Pub. L. 101-549 added subsec. (f).

§ 7477. Enforcement

The Administrator shall, and a State may, take such measures, including issuance of an order, or seeking injunctive relief, as necessary to prevent the construction or modification of a major emitting facility which does not conform to the requirements of this part, or which is proposed to be constructed in any area designated pursuant to section 7407(d) of this title as attainment or unclassifiable and which is not subject to an implementation plan which meets the requirements of this part.

(July 14, 1955, ch. 360, title I, § 167, as added Pub. L. 95-95, title I, § 127(a), Aug. 7, 1977, 91 Stat. 740; amended Pub. L. 101-549, title I, § 110(3), title VII, § 708, Nov. 15, 1990, 104 Stat. 2470, 2684.)

AMENDMENTS

1990—Pub. L. 101-549, § 708, substituted "construction or modification of a major emitting facility" for "construction of a major emitting facility".

Pub. L. 101-549, § 110(3), substituted "designated pursuant to section 7407(d) as attainment or unclassifiable" for "included in the list promulgated pursuant to paragraph (1)(D) or (E) of subsection (d) of section 7407 of this title".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7413, 7420, 7607 of this title.

§ 7478. Period before plan approval**(a) Existing regulations to remain in effect**

Until such time as an applicable implementation plan is in effect for any area, which plan meets the requirements of this part to prevent significant deterioration of air quality with respect to any air pollutant, applicable regulations under this chapter prior to August 7, 1977, shall remain in effect to prevent significant deterioration of air quality in any such area for any such pollutant except as otherwise provided in subsection (b) of this section.

(b) Regulations deemed amended; construction commenced after June 1, 1975

If any regulation in effect prior to August 7, 1977, to prevent significant deterioration of air quality would be inconsistent with the requirements of section 7472(a), section 7473(b) or section 7474(a) of this title, then such regulations shall be deemed amended so as to conform with such requirements. In the case of a facility on

which construction was commenced (in accordance with the definition of "commenced" in section 7479(2) of this title) after June 1, 1975, and prior to August 7, 1977, the review and permitting of such facility shall be in accordance with the regulations for the prevention of significant deterioration in effect prior to August 7, 1977.

(July 14, 1955, ch. 360, title I, § 168, as added Pub. L. 95-95, title I, § 127(a), Aug. 7, 1977, 91 Stat. 740; amended Pub. L. 95-190, § 14(a)(52), Nov. 16, 1977, 91 Stat. 1402.)

AMENDMENTS

1977—Subsec. (b). Pub. L. 95-190 substituted "(in accordance with the definition of 'commenced' in section 7479(2) of this title)" for "in accordance with this definition".

§ 7479. Definitions

For purposes of this part—

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

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

(B) The term "necessary preconstruction approvals or permits" means those permits or

approvals, required by the permitting authority as a precondition to undertaking any activity under clauses (i) or (ii) of subparagraph (A) of this paragraph.

(C) The term "construction" when used in connection with any source or facility, includes the modification (as defined in section 7411(a) of this title) of any source or facility.

(3) The term "best available control technology" means an emission limitation based on the maximum degree of reduction of each pollutant subject to regulation under this chapter emitted from or which results from any major emitting facility, which the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such facility through application of production processes and available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques for control of each such pollutant. In no event shall application of "best available control technology" result in emissions of any pollutants which will exceed the emissions allowed by any applicable standard established pursuant to section 7411 or 7412 of this title. Emissions from any source utilizing clean fuels, or any other means, to comply with this paragraph shall not be allowed to increase above levels that would have been required under this paragraph as it existed prior to November 15, 1990.

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

(July 14, 1955, ch. 360, title I, § 169, as added Pub. L. 95-95, title I, § 127(a), Aug. 7, 1977, 91 Stat. 740; amended Pub. L. 95-190, § 14(a)(54), Nov. 16, 1977, 91 Stat. 1402; Pub. L. 101-549, title III, § 305(b), title IV, § 403(d), Nov. 15, 1990, 104 Stat. 2583, 2631.)

AMENDMENTS

1990—Par. (1). Pub. L. 101-549, § 305(b), struck out "two hundred and" after "municipal incinerators capable of charging more than".

Par. (3). Pub. L. 101-549, § 403(d), directed the insertion of "clean fuels," after "including fuel cleaning," which was executed by making the insertion after "including fuel cleaning" to reflect the probable intent of

Congress, and inserted at end "Emissions from any source utilizing clean fuels, or any other means, to comply with this paragraph shall not be allowed to increase above levels that would have been required under this paragraph as it existed prior to November 15, 1990."

1977—Par. (2)(C). Pub. L. 95-190 added subpar. (C).

STUDY OF MAJOR EMITTING FACILITIES WITH
POTENTIAL OF EMITTING 250 TONS PER YEAR

Section 127(b) of Pub. L. 95-95 directed Administrator, within 1 year after Aug. 7, 1977, to report to Congress on consequences of that portion of definition of "major emitting facility" under this subpart which applies to facilities with potential to emit 250 tons per year or more.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7412, 7473, 7478, 7511a of this title.

SUBPART II—VISIBILITY PROTECTION

CODIFICATION

As originally enacted, subpart II of part C of chapter I of this chapter was added following section 7478 of this title. Pub. L. 95-190, §14(a)(53), Nov. 16, 1977, 91 Stat. 1402, struck out subpart II and inserted such subpart following section 7479 of this title.

§ 7491. Visibility protection for Federal class I areas

(a) Impairment of visibility; list of areas; study and report

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

(2) Not later than six months after August 7, 1977, the Secretary of the Interior in consultation with other Federal land managers shall review all mandatory class I Federal areas and identify those where visibility is an important value of the area. From time to time the Secretary of the Interior may revise such identifications. Not later than one year after August 7, 1977, the Administrator shall, after consultation with the Secretary of the Interior, promulgate a list of mandatory class I Federal areas in which he determines visibility is an important value.

(3) Not later than eighteen months after August 7, 1977, the Administrator shall complete a study and report to Congress on available methods for implementing the national goal set forth in paragraph (1). Such report shall include recommendations for—

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

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

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

Such report shall also identify the classes or categories of sources and the types of air pollutants which, alone or in conjunction with other

sources or pollutants, may reasonably be anticipated to cause or contribute significantly to impairment of visibility.

(4) Not later than twenty-four months after August 7, 1977, and after notice and public hearing, the Administrator shall promulgate regulations to assure (A) reasonable progress toward meeting the national goal specified in paragraph (1), and (B) compliance with the requirements of this section.

(b) Regulations

Regulations under subsection (a)(4) of this section shall—

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

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

(A) except as otherwise provided pursuant to subsection (c) of this section, a requirement that each major stationary source which is in existence on August 7, 1977, but which has not been in operation for more than fifteen years as of such date, and which, as determined by the State (or the Administrator in the case of a plan promulgated under section 7410(c) of this title) emits any air pollutant which may reasonably be anticipated to cause or contribute to any impairment of visibility in any such area, shall procure, install, and operate, as expeditiously as practicable (and maintain thereafter) the best available retrofit technology, as determined by the State (or the Administrator in the case of a plan promulgated under section 7410(c) of this title) for controlling emissions from such source for the purpose of eliminating or reducing any such impairment, and

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

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

(c) Exemptions

(1) The Administrator may, by rule, after notice and opportunity for public hearing, exempt any major stationary source from the requirement of subsection (b)(2)(A) of this section, upon his determination that such source does not or will not, by itself or in combination with other

sources, emit any air pollutant which may reasonably be anticipated to cause or contribute to a significant impairment of visibility in any mandatory class I Federal area.

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

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

(d) Consultations with appropriate Federal land managers

Before holding the public hearing on the proposed revision of an applicable implementation plan to meet the requirements of this section, the State (or the Administrator, in the case of a plan promulgated under section 7410(c) of this title) shall consult in person with the appropriate Federal land manager or managers and shall include a summary of the conclusions and recommendations of the Federal land managers in the notice to the public.

(e) Buffer zones

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

(f) Nondiscretionary duty

For purposes of section 7604(a)(2) of this title, the meeting of the national goal specified in subsection (a)(1) of this section by any specific date or dates shall not be considered a "nondiscretionary duty" of the Administrator.

(g) Definitions

For the purpose of this section—

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

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

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

(4) the term "as expeditiously as practicable" means as expeditiously as practicable but in no event later than five years after the date of approval of a plan revision under this section (or the date of promulgation of such a plan revision in the case of action by the Administrator under section 7410(c) of this title for purposes of this section);

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

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

(7) the term "major stationary source" means the following types of stationary sources with the potential to emit 250 tons or more of any pollutant: fossil-fuel fired steam electric plants of more than 250 million British thermal units per hour heat input, coal cleaning plants (thermal dryers), kraft pulp mills, Portland Cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than 250 tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production facilities, chemical process plants, fossil-fuel boilers of more than 250 million British thermal units per hour heat input, petroleum storage and transfer facilities with a capacity exceeding 300,000 barrels, taconite ore processing facilities, glass fiber processing plants, charcoal production facilities.

(July 14, 1955, ch. 360, title I, §169A, as added Pub. L. 95-95, title I, §128, Aug. 7, 1977, 91 Stat. 742.)

EFFECTIVE DATE

Subpart effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7492, 7604 of this title.

§ 7492. Visibility

(a) Studies

(1) The Administrator, in conjunction with the National Park Service and other appropriate Federal agencies, shall conduct research to identify and evaluate sources and source regions of both visibility impairment and regions that provide predominantly clean air in class I areas. A total of \$8,000,000 per year for 5 years is authorized to be appropriated for the Environmental Protection Agency and the other Federal agencies to conduct this research. The research shall include—

(A) expansion of current visibility related monitoring in class I areas;

(B) assessment of current sources of visibility impairing pollution and clean air corridors;

(C) adaptation of regional air quality models for the assessment of visibility;

(D) studies of atmospheric chemistry and physics of visibility.

(2) Based on the findings available from the research required in subsection (a)(1) of this section as well as other available scientific and technical data, studies, and other available information pertaining to visibility source-receptor relationships, the Administrator shall conduct an assessment and evaluation that identifies, to the extent possible, sources and source regions of visibility impairment including natural sources as well as source regions of clear air for class I areas. The Administrator shall produce interim findings from this study within 3 years after November 15, 1990.

(b) Impacts of other provisions

Within 24 months after November 15, 1990, the Administrator shall conduct an assessment of the progress and improvements in visibility in class I areas that are likely to result from the implementation of the provisions of the Clean Air Act Amendments of 1990 other than the provisions of this section. Every 5 years thereafter the Administrator shall conduct an assessment of actual progress and improvement in visibility in class I areas. The Administrator shall prepare a written report on each assessment and transmit copies of these reports to the appropriate committees of Congress.

(c) Establishment of visibility transport regions and commissions

(1) Authority to establish visibility transport regions

Whenever, upon the Administrator's motion or by petition from the Governors of at least two affected States, the Administrator has reason to believe that the current or projected interstate transport of air pollutants from one or more States contributes significantly to visibility impairment in class I areas located in the affected States, the Administrator may establish a transport region for such pollutants that includes such States. The Administrator, upon the Administrator's own motion or upon petition from the Governor of any affected State, or upon the recommendations of a transport commission established under subsection (b) of this section¹ may—

(A) add any State or portion of a State to a visibility transport region when the Administrator determines that the interstate transport of air pollutants from such State significantly contributes to visibility impairment in a class I area located within the transport region, or

(B) remove any State or portion of a State from the region whenever the Administrator has reason to believe that the control of emissions in that State or portion of the State pursuant to this section will not significantly contribute to the protection or

enhancement of visibility in any class I area in the region.

(2) Visibility transport commissions

Whenever the Administrator establishes a transport region under subsection (c)(1) of this section, the Administrator shall establish a transport commission comprised of (as a minimum) each of the following members:

(A) the Governor of each State in the Visibility Transport Region, or the Governor's designee;

(B) The² Administrator or the Administrator's designee; and

(C) A² representative of each Federal agency charged with the direct management of each class I area or areas within the Visibility Transport Region.

(3) Ex officio members

All representatives of the Federal Government shall be ex officio members.

(4) Federal Advisory Committee Act

The visibility transport commissions shall be exempt from the requirements of the Federal Advisory Committee Act [5 U.S.C. App.].

(d) Duties of visibility transport commissions

A Visibility Transport Commission—

(1) shall assess the scientific and technical data, studies, and other currently available information, including studies conducted pursuant to subsection (a)(1) of this section, pertaining to adverse impacts on visibility from potential or projected growth in emissions from sources located in the Visibility Transport Region; and

(2) shall, within 4 years of establishment, issue a report to the Administrator recommending what measures, if any, should be taken under this chapter to remedy such adverse impacts. The report required by this subsection shall address at least the following measures:

(A) the establishment of clean air corridors, in which additional restrictions on increases in emissions may be appropriate to protect visibility in affected class I areas;

(B) the imposition of the requirements of part D of this subchapter affecting the construction of new major stationary sources or major modifications to existing sources in such clean air corridors specifically including the alternative siting analysis provisions of section 7503(a)(5) of this title; and

(C) the promulgation of regulations under section 7491 of this title to address long range strategies for addressing regional haze which impairs visibility in affected class I areas.

(e) Duties of Administrator

(1) The Administrator shall, taking into account the studies pursuant to subsection (a)(1) of this section and the reports pursuant to subsection (d)(2) of this section and any other relevant information, within eighteen months of receipt of the report referred to in subsection (d)(2) of this section, carry out the Administrator's regulatory responsibilities under section

¹So in original. Words "subsection (b) of this section" probably should be "paragraph (2)".

²So in original. Probably should not be capitalized.

7491 of this title, including criteria for measuring “reasonable progress” toward the national goal.

(2) Any regulations promulgated under section 7491 of this title pursuant to this subsection shall require affected States to revise within 12 months their implementation plans under section 7410 of this title to contain such emission limits, schedules of compliance, and other measures as may be necessary to carry out regulations promulgated pursuant to this subsection.

(f) Grand Canyon visibility transport commission

The Administrator pursuant to subsection (c)(1) of this section shall, within 12 months, establish a visibility transport commission for the region affecting the visibility of the Grand Canyon National Park.

(July 14, 1955, ch. 360, title I, §169B, as added Pub. L. 101-549, title VIII, §816, Nov. 15, 1990, 104 Stat. 2695.)

REFERENCES IN TEXT

The Clean Air Act Amendments of 1990, referred to in subsec. (b), probably means Pub. L. 101-549, Nov. 15, 1990, 104 Stat. 2399. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

The Federal Advisory Committee Act, referred to in subsec. (c)(4), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

PART D—PLAN REQUIREMENTS FOR
NONATTAINMENT AREAS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 7407, 7410, 7412, 7421, 7429, 7492, 7543, 7545, 7586, 7589, 7590, 7604, 7616, 7625-1, 7651h, 7651n, 7661, 7661a, 9601 of this title.

SUBPART 1—NONATTAINMENT AREAS IN GENERAL

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in sections 7511, 7512, 7514 of this title.

§ 7501. Definitions

For the purpose of this part—

(1) **REASONABLE FURTHER PROGRESS.**—The term “reasonable further progress” means such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date.

(2) **NONATTAINMENT AREA.**—The term “nonattainment area” means, for any air pollutant, an area which is designated “nonattainment” with respect to that pollutant within the meaning of section 7407(d) of this title.

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

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

(B) the most stringent emission limitation which is achieved in practice by such class

or category of source, whichever is more stringent.

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

(4) The terms “modifications” and “modified” mean the same as the term “modification” as used in section 7411(a)(4) of this title.

(July 14, 1955, ch. 360, title I, §171, as added Pub. L. 95-95, title I, §129(b), Aug. 7, 1977, 91 Stat. 745; amended Pub. L. 101-549, title I, §102(a)(2), Nov. 15, 1990, 104 Stat. 2412.)

AMENDMENTS

1990—Pub. L. 101-549, §102(a)(2)(A), struck out “and section 7410(a)(2)(I) of this title” after “purpose of this part”.

Pars. (1), (2), Pub. L. 101-549, §102(a)(2)(B), (C), amended pars. (1) and (2) generally. Prior to amendment, pars. (1) and (2) read as follows:

“(1) The term ‘reasonable further progress’ means annual incremental reductions in emissions of the applicable air pollutant (including substantial reductions in the early years following approval or promulgation of plan provisions under this part and section 7410(a)(2)(I) of this title and regular reductions thereafter) which are sufficient in the judgment of the Administrator, to provide for attainment of the applicable national ambient air quality standard by the date required in section 7502(a) of this title.

“(2) The term ‘nonattainment area’ means, for any air pollutant an area which is shown by monitored data or which is calculated by air quality modeling (or other methods determined by the Administrator to be reliable) to exceed any national ambient air quality standard for such pollutant. Such term includes any area identified under subparagraphs (A) through (C) of section 7407(d)(1) of this title.”

EFFECTIVE DATE

Part effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7410, 7412, 7503, 7513a of this title; title 49 sections 40117, 47102, 47136, 47140.

§ 7502. Nonattainment plan provisions in general

(a) Classifications and attainment dates

(1) Classifications

(A) On or after the date the Administrator promulgates the designation of an area as a nonattainment area pursuant to section 7407(d) of this title with respect to any national ambient air quality standard (or any revised standard, including a revision of any standard in effect on November 15, 1990), the Administrator may classify the area for the purpose of applying an attainment date pursuant to paragraph (2), and for other purposes. In determining the appropriate classification, if any, for a nonattainment area, the Administrator may consider such factors as the severity of nonattainment in such area and the availability and feasibility of the pollution control measures that the Administrator believes may be necessary to provide for attainment of such standard in such area.

(B) The Administrator shall publish a notice in the Federal Register announcing each classification under subparagraph (A), except the Administrator shall provide an opportunity for at least 30 days for written comment. Such classification shall not be subject to the provisions of sections 553 through 557 of title 5 (concerning notice and comment) and shall not be subject to judicial review until the Administrator takes final action under subsection (k) or (l) of section 7410 of this title (concerning action on plan submissions) or section 7509 of this title (concerning sanctions) with respect to any plan submissions required by virtue of such classification.

(C) This paragraph shall not apply with respect to nonattainment areas for which classifications are specifically provided under other provisions of this part.

(2) Attainment dates for nonattainment areas

(A) The attainment date for an area designated nonattainment with respect to a national primary ambient air quality standard shall be the date by which attainment can be achieved as expeditiously as practicable, but no later than 5 years from the date such area was designated nonattainment under section 7407(d) of this title, except that the Administrator may extend the attainment date to the extent the Administrator determines appropriate, for a period no greater than 10 years from the date of designation as nonattainment, considering the severity of nonattainment and the availability and feasibility of pollution control measures.

(B) The attainment date for an area designated nonattainment with respect to a secondary national ambient air quality standard shall be the date by which attainment can be achieved as expeditiously as practicable after the date such area was designated nonattainment under section 7407(d) of this title.

(C) Upon application by any State, the Administrator may extend for 1 additional year (hereinafter referred to as the "Extension Year") the attainment date determined by the Administrator under subparagraph (A) or (B) if—

(i) the State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan, and

(ii) in accordance with guidance published by the Administrator, no more than a minimal number of exceedances of the relevant national ambient air quality standard has occurred in the area in the year preceding the Extension Year.

No more than 2 one-year extensions may be issued under this subparagraph for a single nonattainment area.

(D) This paragraph shall not apply with respect to nonattainment areas for which attainment dates are specifically provided under other provisions of this part.

(b) Schedule for plan submissions

At the time the Administrator promulgates the designation of an area as nonattainment with respect to a national ambient air quality

standard under section 7407(d) of this title, the Administrator shall establish a schedule according to which the State containing such area shall submit a plan or plan revision (including the plan items) meeting the applicable requirements of subsection (c) of this section and section 7410(a)(2) of this title. Such schedule shall at a minimum, include a date or dates, extending no later than 3 years from the date of the nonattainment designation, for the submission of a plan or plan revision (including the plan items) meeting the applicable requirements of subsection (c) of this section and section 7410(a)(2) of this title.

(c) Nonattainment plan provisions

The plan provisions (including plan items) required to be submitted under this part shall comply with each of the following:

(1) In general

Such plan provisions shall provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology) and shall provide for attainment of the national primary ambient air quality standards.

(2) RFP

Such plan provisions shall require reasonable further progress.

(3) Inventory

Such plan provisions shall include a comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant or pollutants in such area, including such periodic revisions as the Administrator may determine necessary to assure that the requirements of this part are met.

(4) Identification and quantification

Such plan provisions shall expressly identify and quantify the emissions, if any, of any such pollutant or pollutants which will be allowed, in accordance with section 7503(a)(1)(B) of this title, from the construction and operation of major new or modified stationary sources in each such area. The plan shall demonstrate to the satisfaction of the Administrator that the emissions quantified for this purpose will be consistent with the achievement of reasonable further progress and will not interfere with attainment of the applicable national ambient air quality standard by the applicable attainment date.

(5) Permits for new and modified major stationary sources

Such plan provisions shall require permits for the construction and operation of new or modified major stationary sources anywhere in the nonattainment area, in accordance with section 7503 of this title.

(6) Other measures

Such plan provisions shall include enforceable emission limitations, and such other control measures, means or techniques (including economic incentives such as fees, marketable

permits, and auctions of emission rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to provide for attainment of such standard in such area by the applicable attainment date specified in this part.

(7) Compliance with section 7410(a)(2)

Such plan provisions shall also meet the applicable provisions of section 7410(a)(2) of this title.

(8) Equivalent techniques

Upon application by any State, the Administrator may allow the use of equivalent modeling, emission inventory, and planning procedures, unless the Administrator determines that the proposed techniques are, in the aggregate, less effective than the methods specified by the Administrator.

(9) Contingency measures

Such plan shall provide for the implementation of specific measures to be undertaken if the area fails to make reasonable further progress, or to attain the national primary ambient air quality standard by the attainment date applicable under this part. Such measures shall be included in the plan revision as contingency measures to take effect in any such case without further action by the State or the Administrator.

(d) Plan revisions required in response to finding of plan inadequacy

Any plan revision for a nonattainment area which is required to be submitted in response to a finding by the Administrator pursuant to section 7410(k)(5) of this title (relating to calls for plan revisions) must correct the plan deficiency (or deficiencies) specified by the Administrator and meet all other applicable plan requirements of section 7410 of this title and this part. The Administrator may reasonably adjust the dates otherwise applicable under such requirements to such revision (except for attainment dates that have not yet elapsed), to the extent necessary to achieve a consistent application of such requirements. In order to facilitate submittal by the States of adequate and approvable plans consistent with the applicable requirements of this chapter, the Administrator shall, as appropriate and from time to time, issue written guidelines, interpretations, and information to the States which shall be available to the public, taking into consideration any such guidelines, interpretations, or information provided before November 15, 1990.

(e) Future modification of standard

If the Administrator relaxes a national primary ambient air quality standard after November 15, 1990, the Administrator shall, within 12 months after the relaxation, promulgate requirements applicable to all areas which have not attained that standard as of the date of such relaxation. Such requirements shall provide for controls which are not less stringent than the controls applicable to areas designated nonattainment before such relaxation.

(July 14, 1955, ch. 360, title I, § 172, as added Pub. L. 95-95, title I, § 129(b), Aug. 7, 1977, 91 Stat. 746;

amended Pub. L. 95-190, § 14(a)(55), (56), Nov. 16, 1977, 91 Stat. 1402; Pub. L. 101-549, title I, § 102(b), Nov. 15, 1990, 104 Stat. 2412.)

AMENDMENTS

1990—Pub. L. 101-549 amended section generally, substituting present provisions for provisions which related to: in subsec. (a), expeditious attainment of national ambient air quality standards; in subsec. (b), requisite provisions of plan; and in subsec. (c), attainment of applicable standard not later than July 1, 1987.

1977—Subsec. (b)(4). Pub. L. 95-190, § 14(a)(55), substituted “subsection (a) of this section” for “paragraph (1)”.

Subsec. (c). Pub. L. 95-190, § 14(a)(56), substituted “December 31” for “July 1”.

NONATTAINMENT AREAS

Section 129(a) of Pub. L. 95-95, as amended by Pub. L. 95-190, § 14(b)(2), (3), Nov. 16, 1977, 91 Stat. 1404, provided that:

“(1) Before July 1, 1979, the interpretative regulation of the Administrator of the Environmental Protection Agency published in 41 Federal Register 55524-30, December 21, 1976, as may be modified by rule of the Administrator, shall apply except that the baseline to be used for determination of appropriate emission offsets under such regulation shall be the applicable implementation plan of the State in effect at the time of application for a permit by a proposed major stationary source (within the meaning of section 302 of the Clean Air Act) [section 7602 of this title].

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

“(A) an inventory of emissions of the applicable pollutant for each nonattainment area (as defined in section 171 of the Clean Air Act [section 7501 of this title]) that identifies the type, quantity, and source of such pollutant so as to provide information sufficient to demonstrate that the requirements of subparagraph (C) are being met;

“(B) an enforceable permit program which—

“(i) requires new or modified major stationary sources to meet emission limitations at least as stringent as required under the permit requirements referred to in paragraphs (2) and (3) of section 173 of the Clean Air Act [section 7503 of this title] (relating to lowest achievable emission rate and compliance by other sources) and which assures compliance with the annual reduction requirements of subparagraph (C); and

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

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

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

“(3) Operating permits may be issued to those applicants who were properly granted construction permits, in accordance with the law and applicable regulations in effect at the time granted, for construction of a new or modified source in areas exceeding national primary air quality standards on or before the date of the enactment of this Act [Aug. 7, 1977] if such construction per-

mits were granted prior to the date of the enactment of this Act and the person issued any such permit is able to demonstrate that the emissions from the source will be within the limitations set forth in such construction permit.”

STATE IMPLEMENTATION PLAN REVISION

Section 129(c) of Pub. L. 95-95, as amended by Pub. L. 95-190, §14(b)(4), Nov. 16, 1977, 91 Stat. 1405, provided that: “Notwithstanding the requirements of section 406(d)(2) [set out as an Effective Date of 1977 Amendment note under section 7401 of this title] (relating to date required for submission of certain implementation plan revisions), for purposes of section 110(a)(2) of the Clean Air Act [section 7410(a)(2) of this title] each State in which there is any nonattainment area (as defined in part D of title I of the Clean Air Act) [this part] shall adopt and submit an implementation plan revision which meets the requirements of section 110(a)(2)(I) [section 7410(a)(2)(I) of this title] and part D of title I of the Clean Air Act [this part] not later than January 1, 1979. In the case of any State for which a plan revision adopted and submitted before such date has made the demonstration required under section 172(a)(2) of the Clean Air Act [subsec. (a)(2) of this section] (respecting impossibility of attainment before 1983), such State shall adopt and submit to the Administrator a plan revision before July 1, 1982, which meets the requirements of section 172(b) and (c) of such Act [subsecs. (b) and (c) of this section].”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7410, 7429, 7503, 7509, 7511, 7511a, 7512, 7512a, 7513, 7513a, 7607 of this title.

§ 7503. Permit requirements

(a) In general

The permit program required by section 7502(b)(6)¹ of this title shall provide that permits to construct and operate may be issued if—

(1) in accordance with regulations issued by the Administrator for the determination of baseline emissions in a manner consistent with the assumptions underlying the applicable implementation plan approved under section 7410 of this title and this part, the permitting agency determines that—

(A) by the time the source is to commence operation, sufficient offsetting emissions reductions have been obtained, such that total allowable emissions from existing sources in the region, from new or modified sources which are not major emitting facilities, and from the proposed source will be sufficiently less than total emissions from existing sources (as determined in accordance with the regulations under this paragraph) prior to the application for such permit to construct or modify so as to represent (when considered together with the plan provisions required under section 7502 of this title) reasonable further progress (as defined in section 7501 of this title); or

(B) in the case of a new or modified major stationary source which is located in a zone (within the nonattainment area) identified by the Administrator, in consultation with the Secretary of Housing and Urban Development, as a zone to which economic development should be targeted, that emissions of such pollutant resulting from the proposed new or modified major stationary source

will not cause or contribute to emissions levels which exceed the allowance permitted for such pollutant for such area from new or modified major stationary sources under section 7502(c) of this title;

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

(3) the owner or operator of the proposed new or modified source has demonstrated that all major stationary sources owned or operated by such person (or by any entity controlling, controlled by, or under common control with such person) in such State are subject to emission limitations and are in compliance, or on a schedule for compliance, with all applicable emission limitations and standards under this chapter; and²

(4) the Administrator has not determined that the applicable implementation plan is not being adequately implemented for the nonattainment area in which the proposed source is to be constructed or modified in accordance with the requirements of this part; and

(5) an analysis of alternative sites, sizes, production processes, and environmental control techniques for such proposed source demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

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

(b) Prohibition on use of old growth allowances

Any growth allowance included in an applicable implementation plan to meet the requirements of section 7502(b)(5) of this title (as in effect immediately before November 15, 1990) shall not be valid for use in any area that received or receives a notice under section 7410(a)(2)(H)(ii) of this title (as in effect immediately before November 15, 1990) or under section 7410(k)(1) of this title that its applicable implementation plan containing such allowance is substantially inadequate.

(c) Offsets

(1) The owner or operator of a new or modified major stationary source may comply with any offset requirement in effect under this part for increased emissions of any air pollutant only by obtaining emission reductions of such air pollutant from the same source or other sources in the same nonattainment area, except that the State may allow the owner or operator of a source to obtain such emission reductions in another nonattainment area if (A) the other area has an equal or higher nonattainment classification than the area in which the source is located and (B) emissions from such other area contribute to a violation of the national ambient air quality standard in the nonattainment area in which the source is located. Such emission reductions shall be, by the time a new or modified source commences operation, in effect and enforceable and shall assure that the total tonnage of increased emissions of the air pollutant from the

¹ See References in Text note below.

² So in original. The word “and” probably should not appear.

new or modified source shall be offset by an equal or greater reduction, as applicable, in the actual emissions of such air pollutant from the same or other sources in the area.

(2) Emission reductions otherwise required by this chapter shall not be creditable as emissions reductions for purposes of any such offset requirement. Incidental emission reductions which are not otherwise required by this chapter shall be creditable as emission reductions for such purposes if such emission reductions meet the requirements of paragraph (1).

(d) Control technology information

The State shall provide that control technology information from permits issued under this section will be promptly submitted to the Administrator for purposes of making such information available through the RACT/BACT/LAER clearinghouse to other States and to the general public.

(e) Rocket engines or motors

The permitting authority of a State shall allow a source to offset by alternative or innovative means emission increases from rocket engine and motor firing, and cleaning related to such firing, at an existing or modified major source that tests rocket engines or motors under the following conditions:

(1) Any modification proposed is solely for the purpose of expanding the testing of rocket engines or motors at an existing source that is permitted to test such engines on November 15, 1990.

(2) The source demonstrates to the satisfaction of the permitting authority of the State that it has used all reasonable means to obtain and utilize offsets, as determined on an annual basis, for the emissions increases beyond allowable levels, that all available offsets are being used, and that sufficient offsets are not available to the source.

(3) The source has obtained a written finding from the Department of Defense, Department of Transportation, National Aeronautics and Space Administration or other appropriate Federal agency, that the testing of rocket motors or engines at the facility is required for a program essential to the national security.

(4) The source will comply with an alternative measure, imposed by the permitting authority, designed to offset any emission increases beyond permitted levels not directly offset by the source. In lieu of imposing any alternative offset measures, the permitting authority may impose an emissions fee to be paid to such authority of a State which shall be an amount no greater than 1.5 times the average cost of stationary source control measures adopted in that area during the previous 3 years. The permitting authority shall utilize the fees in a manner that maximizes the emissions reductions in that area.

(July 14, 1955, ch. 360, title I, § 173, as added Pub. L. 95-95, title I, § 129(b), Aug. 7, 1977, 91 Stat. 748; amended Pub. L. 95-190, § 14(a)(57), (58), Nov. 16, 1977, 91 Stat. 1403; Pub. L. 101-549, title I, § 102(c), Nov. 15, 1990, 104 Stat. 2415.)

REFERENCES IN TEXT

Section 7502(b) of this title, referred to in subsec. (a), was amended generally by Pub. L. 101-549, title I,

§ 102(b), Nov. 15, 1990, 104 Stat. 2412, and, as so amended, does not contain a par. (6). See section 7502(c)(5) of this title.

AMENDMENTS

1990—Pub. L. 101-549, § 102(c)(1), made technical amendment to section catchline.

Pub. L. 101-549, § 102(c)(2), (8), designated existing provisions as subsec. (a), inserted heading, and substituted “(1) shall be federally enforceable” for “(1)(A) shall be legally binding” in last sentence.

Subsec. (a)(1). Pub. L. 101-549, § 102(c)(3), inserted at beginning “in accordance with regulations issued by the Administrator for the determination of baseline emissions in a manner consistent with the assumptions underlying the applicable implementation plan approved under section 7410 of this title and this part.”.

Subsec. (a)(1)(A). Pub. L. 101-549, § 102(c)(4), inserted “sufficient offsetting emissions reductions have been obtained, such that” after “to commence operation,” and substituted “(as determined in accordance with the regulations under this paragraph)” for “allowed under the applicable implementation plan”.

Subsec. (a)(1)(B). Pub. L. 101-549, § 102(c)(5), inserted at beginning “in the case of a new or modified major stationary source which is located in a zone (within the nonattainment area) identified by the Administrator, in consultation with the Secretary of Housing and Urban Development, as a zone to which economic development should be targeted,” and substituted “7502(c)” for “7502(b)”.

Subsec. (a)(4). Pub. L. 101-549, § 102(c)(6), inserted at beginning “the Administrator has not determined that”, substituted “not being adequately implemented” for “being carried out”, and substituted “; and” for period at end.

Subsec. (a)(5). Pub. L. 101-549, § 102(c)(7), added par. (5).

Subsec. (b). Pub. L. 101-549, § 102(c)(9), added subsec. (b).

Subsecs. (c) to (e). Pub. L. 101-549, § 102(c)(10), added subsecs. (c) to (e).

1977—Par. (1)(A). Pub. L. 95-190, § 14(a)(57), inserted “or modified” after “from new” and “applicable” before “implementation plan”, and substituted “source” for “facility” wherever appearing.

Par. (4). Pub. L. 95-190, § 14(a)(58), added par. (4).

FAILURE TO ATTAIN NATIONAL PRIMARY AMBIENT AIR QUALITY STANDARDS UNDER CLEAN AIR ACT

Pub. L. 100-202, § 101(f) [title II], Dec. 22, 1987, 101 Stat. 1329-187, 1329-199, provided that: “No restriction or prohibition on construction, permitting, or funding under sections 110(a)(2)(I), 173(4), 176(a), 176(b), or 316 of the Clean Air Act [sections 7410(a)(2)(I), 7503(4), 7506(a), (b), 7616 of this title] shall be imposed or take effect during the period prior to August 31, 1988, by reason of (1) the failure of any nonattainment area to attain the national primary ambient air quality standard under the Clean Air Act [this chapter] for photochemical oxidants (ozone) or carbon monoxide (or both) by December 31, 1987, (2) the failure of any State to adopt and submit to the Administrator of the Environmental Protection Agency an implementation plan that meets the requirements of part D of title I of such Act [this part] and provides for attainment of such standards by December 31, 1987, (3) the failure of any State or designated local government to implement the applicable implementation plan, or (4) any combination of the foregoing. During such period and consistent with the preceding sentence, the issuance of a permit (including required offsets) under section 173 of such Act [this section] for the construction or modification of a source in a nonattainment area shall not be denied solely or partially by reason of the reference contained in section 171(l) of such Act [section 7501(l) of this title] to the applicable date established in section 172(a) [section 7502(a) of this title]. This subsection [probably means the first 3 sentences of this note] shall not apply to any

restriction or prohibition in effect under sections 110(a)(2)(I), 173(4), 176(a), 176(b), or 316 of such Act prior to the enactment of this section [Dec. 22, 1987]. Prior to August 31, 1988, the Administrator of the Environmental Protection Agency shall evaluate air quality data and make determinations with respect to which areas throughout the nation have attained, or failed to attain, either or both of the national primary ambient air quality standards referred to in subsection (a) [probably means the first 3 sentences of this note] and shall take appropriate steps to designate those areas failing to attain either or both of such standards as nonattainment areas within the meaning of part D of title I of the Clean Air Act."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7492, 7502, 7509, 7511a, 7513a of this title.

§ 7504. Planning procedures

(a) In general

For any ozone, carbon monoxide, or PM-10 nonattainment area, the State containing such area and elected officials of affected local governments shall, before the date required for submittal of the inventory described under sections 7511a(a)(1) and 7512a(a)(1) of this title, jointly review and update as necessary the planning procedures adopted pursuant to this subsection as in effect immediately before November 15, 1990, or develop new planning procedures pursuant to this subsection, as appropriate. In preparing such procedures the State and local elected officials shall determine which elements of a revised implementation plan will be developed, adopted, and implemented (through means including enforcement) by the State and which by local governments or regional agencies, or any combination of local governments, regional agencies, or the State. The implementation plan required by this part shall be prepared by an organization certified by the State, in consultation with elected officials of local governments and in accordance with the determination under the second sentence of this subsection. Such organization shall include elected officials of local governments in the affected area, and representatives of the State air quality planning agency, the State transportation planning agency, the metropolitan planning organization designated to conduct the continuing, cooperative and comprehensive transportation planning process for the area under section 134 of title 23, the organization responsible for the air quality maintenance planning process under regulations implementing this chapter, and any other organization with responsibilities for developing, submitting, or implementing the plan required by this part. Such organization may be one that carried out these functions before November 15, 1990.

(b) Coordination

The preparation of implementation plan provisions and subsequent plan revisions under the continuing transportation-air quality planning process described in section 7408(e) of this title shall be coordinated with the continuing, cooperative and comprehensive transportation planning process required under section 134 of title 23, and such planning processes shall take into account the requirements of this part.

(c) Joint planning

In the case of a nonattainment area that is included within more than one State, the affected States may jointly, through interstate compact or otherwise, undertake and implement all or part of the planning procedures described in this section.

(July 14, 1955, ch. 360, title I, § 174, as added Pub. L. 95-95, title I, § 129(b), Aug. 7, 1977, 91 Stat. 748; amended Pub. L. 101-549, title I, § 102(d), Nov. 15, 1990, 104 Stat. 2417.)

AMENDMENTS

1990—Pub. L. 101-549 amended section generally, substituting present provisions for provisions which related to: in subsec. (a), preparation of implementation plan by designated organization; and in subsec. (b), coordination of plan preparation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7505, 7511a of this title.

§ 7505. Environmental Protection Agency grants

(a) Plan revision development costs

The Administrator shall make grants to any organization of local elected officials with transportation or air quality maintenance planning responsibilities recognized by the State under section 7504(a) of this title for payment of the reasonable costs of developing a plan revision under this part.

(b) Uses of grant funds

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

(July 14, 1955, ch. 360, title I, § 175, as added Pub. L. 95-95, title I, § 129(b), Aug. 7, 1977, 91 Stat. 749.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7626 of this title.

§ 7505a. Maintenance plans

(a) Plan revision

Each State which submits a request under section 7407(d) of this title for redesignation of a nonattainment area for any air pollutant as an area which has attained the national primary ambient air quality standard for that air pollutant shall also submit a revision of the applicable State implementation plan to provide for the maintenance of the national primary ambient air quality standard for such air pollutant in the area concerned for at least 10 years after the redesignation. The plan shall contain such additional measures, if any, as may be necessary to ensure such maintenance.

(b) Subsequent plan revisions

8 years after redesignation of any area as an attainment area under section 7407(d) of this title, the State shall submit to the Adminis-

trator an additional revision of the applicable State implementation plan for maintaining the national primary ambient air quality standard for 10 years after the expiration of the 10-year period referred to in subsection (a) of this section.

(c) Nonattainment requirements applicable pending plan approval

Until such plan revision is approved and an area is redesignated as attainment for any area designated as a nonattainment area, the requirements of this part shall continue in force and effect with respect to such area.

(d) Contingency provisions

Each plan revision submitted under this section shall contain such contingency provisions as the Administrator deems necessary to assure that the State will promptly correct any violation of the standard which occurs after the redesignation of the area as an attainment area. Such provisions shall include a requirement that the State will implement all measures with respect to the control of the air pollutant concerned which were contained in the State implementation plan for the area before redesignation of the area as an attainment area. The failure of any area redesignated as an attainment area to maintain the national ambient air quality standard concerned shall not result in a requirement that the State revise its State implementation plan unless the Administrator, in the Administrator's discretion, requires the State to submit a revised State implementation plan.

(July 14, 1955, ch. 360, title I, §175A, as added Pub. L. 101-549, title I, §102(e), Nov. 15, 1990, 104 Stat. 2418.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7407, 7506 of this title; title 23 section 109; title 49 sections 40117, 47102, 47140.

§ 7506. Limitations on certain Federal assistance

(a), (b) Repealed. Pub. L. 101-549, title I, § 110(4), Nov. 15, 1990, 104 Stat. 2470

(c) Activities not conforming to approved or promulgated plans

(1) No department, agency, or instrumentality of the Federal Government shall engage in, support in any way or provide financial assistance for, license or permit, or approve, any activity which does not conform to an implementation plan after it has been approved or promulgated under section 7410 of this title. No metropolitan planning organization designated under section 134 of title 23, shall give its approval to any project, program, or plan which does not conform to an implementation plan approved or promulgated under section 7410 of this title. The assurance of conformity to such an implementation plan shall be an affirmative responsibility of the head of such department, agency, or instrumentality. Conformity to an implementation plan means—

(A) conformity to an implementation plan's purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards and achieving expeditious attainment of such standards; and

(B) that such activities will not—

(i) cause or contribute to any new violation of any standard in any area;

(ii) increase the frequency or severity of any existing violation of any standard in any area; or

(iii) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

The determination of conformity shall be based on the most recent estimates of emissions, and such estimates shall be determined from the most recent population, employment, travel and congestion estimates as determined by the metropolitan planning organization or other agency authorized to make such estimates.

(2) Any transportation plan or program developed pursuant to title 23 or chapter 53 of title 49 shall implement the transportation provisions of any applicable implementation plan approved under this chapter applicable to all or part of the area covered by such transportation plan or program. No Federal agency may approve, accept or fund any transportation plan, program or project unless such plan, program or project has been found to conform to any applicable implementation plan in effect under this chapter. In particular—

(A) no transportation plan or transportation improvement program may be adopted by a metropolitan planning organization designated under title 23 or chapter 53 of title 49, or be found to be in conformity by a metropolitan planning organization until a final determination has been made that emissions expected from implementation of such plans and programs are consistent with estimates of emissions from motor vehicles and necessary emissions reductions contained in the applicable implementation plan, and that the plan or program will conform to the requirements of paragraph (1)(B);

(B) no metropolitan planning organization or other recipient of funds under title 23 or chapter 53 of title 49 shall adopt or approve a transportation improvement program of projects until it determines that such program provides for timely implementation of transportation control measures consistent with schedules included in the applicable implementation plan;

(C) a transportation project may be adopted or approved by a metropolitan planning organization or any recipient of funds designated under title 23 or chapter 53 of title 49, or found in conformity by a metropolitan planning organization or approved, accepted, or funded by the Department of Transportation only if it meets either the requirements of subparagraph (D) or the following requirements—

(i) such a project comes from a conforming plan and program;

(ii) the design concept and scope of such project have not changed significantly since the conformity finding regarding the plan and program from which the project derived; and

(iii) the design concept and scope of such project at the time of the conformity determination for the program was adequate to determine emissions.

(D) Any project not referred to in subparagraph (C) shall be treated as conforming to the applicable implementation plan only if it is demonstrated that the projected emissions from such project, when considered together with emissions projected for the conforming transportation plans and programs within the nonattainment area, do not cause such plans and programs to exceed the emission reduction projections and schedules assigned to such plans and programs in the applicable implementation plan.

(3) Until such time as the implementation plan revision referred to in paragraph (4)(C) is approved, conformity of such plans, programs, and projects will be demonstrated if—

(A) the transportation plans and programs—

(i) are consistent with the most recent estimates of mobile source emissions;

(ii) provide for the expeditious implementation of transportation control measures in the applicable implementation plan; and

(iii) with respect to ozone and carbon monoxide nonattainment areas, contribute to annual emissions reductions consistent with sections 7511a(b)(1) and 7512a(a)(7) of this title; and

(B) the transportation projects—

(i) come from a conforming transportation plan and program as defined in subparagraph (A) or for 12 months after November 15, 1990, from a transportation program found to conform within 3 years prior to November 15, 1990; and

(ii) in carbon monoxide nonattainment areas, eliminate or reduce the severity and number of violations of the carbon monoxide standards in the area substantially affected by the project.

With regard to subparagraph (B)(ii), such determination may be made as part of either the conformity determination for the transportation program or for the individual project taken as a whole during the environmental review phase of project development.

(4)(A) No later than one year after November 15, 1990, the Administrator shall promulgate criteria and procedures for determining conformity (except in the case of transportation plans, programs, and projects) of, and for keeping the Administrator informed about, the activities referred to in paragraph (1). No later than one year after November 15, 1990, the Administrator, with the concurrence of the Secretary of Transportation, shall promulgate criteria and procedures for demonstrating and assuring conformity in the case of transportation plans, programs, and projects. A suit may be brought against the Administrator and the Secretary of Transportation under section 7604 of this title to compel promulgation of such criteria and procedures and the Federal district court shall have jurisdiction to order such promulgation.

(B) The procedures and criteria shall, at a minimum—

(i) address the consultation procedures to be undertaken by metropolitan planning organizations and the Secretary of Transportation with State and local air quality agencies and

State departments of transportation before such organizations and the Secretary make conformity determinations;

(ii) address the appropriate frequency for making conformity determinations, but in no case shall such determinations for transportation plans and programs be less frequent than every three years; and

(iii) address how conformity determinations will be made with respect to maintenance plans.

(C) Such procedures shall also include a requirement that each State shall submit to the Administrator and the Secretary of Transportation within 24 months of November 15, 1990, a revision to its implementation plan that includes criteria and procedures for assessing the conformity of any plan, program, or project subject to the conformity requirements of this subsection.

(D) Compliance with the rules of the Administrator for determining the conformity of transportation plans, programs, and projects funded or approved under title 23 or chapter 53 of title 49 to State or Federal implementation plans shall not be required for traffic signal synchronization projects prior to the funding, approval or implementation of such projects. The supporting regional emissions analysis for any conformity determination made with respect to a transportation plan, program, or project shall consider the effect on emissions of any such project funded, approved, or implemented prior to the conformity determination.

(5) APPLICABILITY.—This subsection shall apply only with respect to—

(A) a nonattainment area and each pollutant for which the area is designated as a nonattainment area; and

(B) an area that was designated as a nonattainment area but that was later redesignated by the Administrator as an attainment area and that is required to develop a maintenance plan under section 7505a of this title with respect to the specific pollutant for which the area was designated nonattainment.

(6) Notwithstanding paragraph 5,¹ this subsection shall not apply with respect to an area designated nonattainment under section 7407(d)(1) of this title until 1 year after that area is first designated nonattainment for a specific national ambient air quality standard. This paragraph only applies with respect to the national ambient air quality standard for which an area is newly designated nonattainment and does not affect the area's requirements with respect to all other national ambient air quality standards for which the area is designated nonattainment or has been redesignated from nonattainment to attainment with a maintenance plan pursuant to section 7505a² of this title (including any pre-existing national ambient air quality standard for a pollutant for which a new or revised standard has been issued).

(d) Priority of achieving and maintaining national primary ambient air quality standards

Each department, agency, or instrumentality of the Federal Government having authority to

¹ So in original. Probably should be "paragraph (5)."

² See References in Text note below.

conduct or support any program with air-quality related transportation consequences shall give priority in the exercise of such authority, consistent with statutory requirements for allocation among States or other jurisdictions, to the implementation of those portions of plans prepared under this section to achieve and maintain the national primary ambient air-quality standard. This paragraph extends to, but is not limited to, authority exercised under chapter 53 of title 49, title 23, and the Housing and Urban Development Act.

(July 14, 1955, ch. 360, title I, §176, as added Pub. L. 95-95, title I, §129(b), Aug. 7, 1977, 91 Stat. 749; amended Pub. L. 95-190, §14(a)(59), Nov. 16, 1977, 91 Stat. 1403; Pub. L. 101-549, title I, §§101(f), 110(4), Nov. 15, 1990, 104 Stat. 2409, 2470; Pub. L. 104-59, title III, §305(b), Nov. 28, 1995, 109 Stat. 580; Pub. L. 104-260, §1, Oct. 9, 1996, 110 Stat. 3175; Pub. L. 106-377, §1(a)(1) [title III], Oct. 27, 2000, 114 Stat. 1441, 1441A-44.)

REFERENCES IN TEXT

Section 7505a of this title, referred to in subsec. (c)(6), was in the original "section 175(A)" and was translated as reading "section 175A", meaning section 175A of act July 14, 1955, which is classified to section 7505a of this title, to reflect the probable intent of Congress.

The Housing and Urban Development Act, referred to in subsec. (d), may be the name for a series of acts sharing the same name but enacted in different years by Pub. L. 89-117, Aug. 10, 1965, 79 Stat. 451; Pub. L. 90-448, Aug. 1, 1968, 82 Stat. 476; Pub. L. 91-152, Dec. 24, 1969, 83 Stat. 379; and Pub. L. 91-609, Dec. 31, 1970, 84 Stat. 1770, respectively. For complete classification of these Acts to the Code, see Short Title notes set out under section 1701 of Title 12, Banks and Banking, and Tables.

CODIFICATION

In subsecs. (c)(2) and (d), "chapter 53 of title 49" substituted for "the Urban Mass Transportation Act [49 App. U.S.C. 1601 et seq.]" and in subsec. (c)(4)(D) substituted for "Federal Transit Act" on authority of Pub. L. 103-272, §6(b), July 5, 1994, 108 Stat. 1378 (the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation), and of Pub. L. 102-240, title III, §3003(b), Dec. 18, 1991, 105 Stat. 2088, which provided that references in laws to the Urban Mass Transportation Act of 1964 be deemed to be references to the Federal Transit Act.

AMENDMENTS

2000—Subsec. (c)(6). Pub. L. 106-377 added par. (6).
1996—Subsec. (c)(4)(D). Pub. L. 104-260 added subpar. (D).

1995—Subsec. (c)(5). Pub. L. 104-59 added par. (5).
1990—Subsecs. (a), (b). Pub. L. 101-549, §110(4), struck out subsec. (a) which related to approval of projects or award of grants, and subsec. (b) which related to implementation of approved or promulgated plans.

Subsec. (c). Pub. L. 101-549, §101(f), designated existing provisions as par. (1), struck out "(1)", "(2)", "(3)", and "(4)" before "engage in", "support in", "license or", and "approve, any", respectively, substituted "conform to an implementation plan after it" for "conform to a plan after it", "conform to an implementation plan approved" for "conform to a plan approved", and "conformity to such an implementation plan shall" for "conformity to such a plan shall", inserted "Conformity to an implementation plan means—" followed immediately by subpars. (A) and (B) and closing provisions relating to determination of conformity being based on recent estimates of emissions and the determination of such estimates, and added pars. (2) to (4).

1977—Subsec. (a)(1). Pub. L. 95-190 inserted "national" before "primary".

§ 7506a. Interstate transport commissions

(a) Authority to establish interstate transport regions

Whenever, on the Administrator's own motion or by petition from the Governor of any State, the Administrator has reason to believe that the interstate transport of air pollutants from one or more States contributes significantly to a violation of a national ambient air quality standard in one or more other States, the Administrator may establish, by rule, a transport region for such pollutant that includes such States. The Administrator, on the Administrator's own motion or upon petition from the Governor of any State, or upon the recommendation of a transport commission established under subsection (b) of this section, may—

(1) add any State or portion of a State to any region established under this subsection whenever the Administrator has reason to believe that the interstate transport of air pollutants from such State significantly contributes to a violation of the standard in the transport region, or

(2) remove any State or portion of a State from the region whenever the Administrator has reason to believe that the control of emissions in that State or portion of the State pursuant to this section will not significantly contribute to the attainment of the standard in any area in the region.

The Administrator shall approve or disapprove any such petition or recommendation within 18 months of its receipt. The Administrator shall establish appropriate proceedings for public participation regarding such petitions and motions, including notice and comment.

(b) Transport commissions

(1) Establishment

Whenever the Administrator establishes a transport region under subsection (a) of this section, the Administrator shall establish a transport commission comprised of (at a minimum) each of the following members:

(A) The Governor of each State in the region or the designee of each such Governor.

(B) The Administrator or the Administrator's designee.

(C) The Regional Administrator (or the Administrator's designee) for each Regional Office for each Environmental Protection Agency Region affected by the transport region concerned.

(D) An air pollution control official representing each State in the region, appointed by the Governor.

Decisions of, and recommendations and requests to, the Administrator by each transport commission may be made only by a majority vote of all members other than the Administrator and the Regional Administrators (or designees thereof).

(2) Recommendations

The transport commission shall assess the degree of interstate transport of the pollutant or precursors to the pollutant throughout the transport region, assess strategies for mitigating the interstate pollution, and recommend

to the Administrator such measures as the Commission determines to be necessary to ensure that the plans for the relevant States meet the requirements of section 7410(a)(2)(D) of this title. Such commission shall not be subject to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.).

(c) Commission requests

A transport commission established under subsection (b) of this section may request the Administrator to issue a finding under section 7410(k)(5) of this title that the implementation plan for one or more of the States in the transport region is substantially inadequate to meet the requirements of section 7410(a)(2)(D) of this title. The Administrator shall approve, disapprove, or partially approve and partially disapprove such a request within 18 months of its receipt and, to the extent the Administrator approves such request, issue the finding under section 7410(k)(5) of this title at the time of such approval. In acting on such request, the Administrator shall provide an opportunity for public participation and shall address each specific recommendation made by the commission. Approval or disapproval of such a request shall constitute final agency action within the meaning of section 7607(b) of this title.

(July 14, 1955, ch. 360, title I, §176A, as added Pub. L. 101-549, title I, §102(f)(1), Nov. 15, 1990, 104 Stat. 2419.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (b)(2), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7406, 7410, 7511c of this title.

§ 7507. New motor vehicle emission standards in nonattainment areas

Notwithstanding section 7543(a) of this title, any State which has plan provisions approved under this part may adopt and enforce for any model year standards relating to control of emissions from new motor vehicles or new motor vehicle engines and take such other actions as are referred to in section 7543(a) of this title respecting such vehicles if—

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

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

Nothing in this section or in subchapter II of this chapter shall be construed as authorizing any such State to prohibit or limit, directly or indirectly, the manufacture or sale of a new motor vehicle or motor vehicle engine that is certified in California as meeting California standards, or to take any action of any kind to create, or have the effect of creating, a motor vehicle or motor vehicle engine different than a motor vehicle or engine certified in California under California standards (a “third vehicle”) or otherwise create such a “third vehicle”.

(July 14, 1955, ch. 360, title I, §177, as added Pub. L. 95-95, title I, §129(b), Aug. 7, 1977, 91 Stat. 750; amended Pub. L. 101-549, title II, §232, Nov. 15, 1990, 104 Stat. 2529.)

AMENDMENTS

1990—Pub. L. 101-549 added sentence at end prohibiting States from limiting or prohibiting sale or manufacture of new vehicles or engines certified in California as having met California standards and from taking any actions where effect of those actions would be to create a “third vehicle”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7589 of this title.

§ 7508. Guidance documents

The Administrator shall issue guidance documents under section 7408 of this title for purposes of assisting States in implementing requirements of this part respecting the lowest achievable emission rate. Such a document shall be published not later than nine months after August 7, 1977, and shall be revised at least every two years thereafter.

(July 14, 1955, ch. 360, title I, §178, as added Pub. L. 95-95, title I, §129(b), Aug. 7, 1977, 91 Stat. 750.)

§ 7509. Sanctions and consequences of failure to attain

(a) State failure

For any implementation plan or plan revision required under this part (or required in response to a finding of substantial inadequacy as described in section 7410(k)(5) of this title), if the Administrator—

(1) finds that a State has failed, for an area designated nonattainment under section 7407(d) of this title, to submit a plan, or to submit 1 or more of the elements (as determined by the Administrator) required by the provisions of this chapter applicable to such an area, or has failed to make a submission for such an area that satisfies the minimum criteria established in relation to any such element under section 7410(k) of this title,

(2) disapproves a submission under section 7410(k) of this title, for an area designated nonattainment under section 7407 of this title, based on the submission's failure to meet one or more of the elements required by the provisions of this chapter applicable to such an area,

(3)(A) determines that a State has failed to make any submission as may be required under this chapter, other than one described under paragraph (1) or (2), including an adequate maintenance plan, or has failed to make any submission, as may be required under this chapter, other than one described under paragraph (1) or (2), that satisfies the minimum criteria established in relation to such submission under section 7410(k)(1)(A) of this title, or

(B) disapproves in whole or in part a submission described under subparagraph (A), or

(4) finds that any requirement of an approved plan (or approved part of a plan) is not being implemented,

unless such deficiency has been corrected within 18 months after the finding, disapproval, or de-

termination referred to in paragraphs (1), (2), (3), and (4), one of the sanctions referred to in subsection (b) of this section shall apply, as selected by the Administrator, until the Administrator determines that the State has come into compliance, except that if the Administrator finds a lack of good faith, sanctions under both paragraph (1) and paragraph (2) of subsection (b) of this section shall apply until the Administrator determines that the State has come into compliance. If the Administrator has selected one of such sanctions and the deficiency has not been corrected within 6 months thereafter, sanctions under both paragraph (1) and paragraph (2) of subsection (b) of this section shall apply until the Administrator determines that the State has come into compliance. In addition to any other sanction applicable as provided in this section, the Administrator may withhold all or part of the grants for support of air pollution planning and control programs that the Administrator may award under section 7405 of this title.

(b) Sanctions

The sanctions available to the Administrator as provided in subsection (a) of this section are as follows:

(1) Highway sanctions

(A) The Administrator may impose a prohibition, applicable to a nonattainment area, on the approval by the Secretary of Transportation of any projects or the awarding by the Secretary of any grants, under title 23 other than projects or grants for safety where the Secretary determines, based on accident or other appropriate data submitted by the State, that the principal purpose of the project is an improvement in safety to resolve a demonstrated safety problem and likely will result in a significant reduction in, or avoidance of, accidents. Such prohibition shall become effective upon the selection by the Administrator of this sanction.

(B) In addition to safety, projects or grants that may be approved by the Secretary, notwithstanding the prohibition in subparagraph (A), are the following—

- (i) capital programs for public transit;
- (ii) construction or restriction of certain roads or lanes solely for the use of passenger buses or high occupancy vehicles;
- (iii) planning for requirements for employers to reduce employee work-trip-related vehicle emissions;
- (iv) highway ramp metering, traffic signalization, and related programs that improve traffic flow and achieve a net emission reduction;
- (v) fringe and transportation corridor parking facilities serving multiple occupancy vehicle programs or transit operations;
- (vi) programs to limit or restrict vehicle use in downtown areas or other areas of emission concentration particularly during periods of peak use, through road use charges, tolls, parking surcharges, or other pricing mechanisms, vehicle restricted zones or periods, or vehicle registration programs;
- (vii) programs for breakdown and accident scene management, nonrecurring congest-

tion, and vehicle information systems, to reduce congestion and emissions; and

(viii) such other transportation-related programs as the Administrator, in consultation with the Secretary of Transportation, finds would improve air quality and would not encourage single occupancy vehicle capacity.

In considering such measures, the State should seek to ensure adequate access to downtown, other commercial, and residential areas, and avoid increasing or relocating emissions and congestion rather than reducing them.

(2) Offsets

In applying the emissions offset requirements of section 7503 of this title to new or modified sources or emissions units for which a permit is required under this part, the ratio of emission reductions to increased emissions shall be at least 2 to 1.

(c) Notice of failure to attain

(1) As expeditiously as practicable after the applicable attainment date for any nonattainment area, but not later than 6 months after such date, the Administrator shall determine, based on the area's air quality as of the attainment date, whether the area attained the standard by that date.

(2) Upon making the determination under paragraph (1), the Administrator shall publish a notice in the Federal Register containing such determination and identifying each area that the Administrator has determined to have failed to attain. The Administrator may revise or supplement such determination at any time based on more complete information or analysis concerning the area's air quality as of the attainment date.

(d) Consequences for failure to attain

(1) Within 1 year after the Administrator publishes the notice under subsection (c)(2) of this section (relating to notice of failure to attain), each State containing a nonattainment area shall submit a revision to the applicable implementation plan meeting the requirements of paragraph (2) of this subsection.

(2) The revision required under paragraph (1) shall meet the requirements of section 7410 of this title and section 7502 of this title. In addition, the revision shall include such additional measures as the Administrator may reasonably prescribe, including all measures that can be feasibly implemented in the area in light of technological achievability, costs, and any nonair quality and other air quality-related health and environmental impacts.

(3) The attainment date applicable to the revision required under paragraph (1) shall be the same as provided in the provisions of section 7502(a)(2) of this title, except that in applying such provisions the phrase "from the date of the notice under section 7509(c)(2) of this title" shall be substituted for the phrase "from the date such area was designated nonattainment under section 7407(d) of this title" and for the phrase "from the date of designation as nonattainment".

(July 14, 1955, ch. 360, title I, § 179, as added Pub. L. 101-549, title I, § 102(g), Nov. 15, 1990, 104 Stat. 2420.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7410, 7502, 7511a, 7511d, 7512a, 7661a of this title.

§ 7509a. International border areas

(a) Implementation plans and revisions

Notwithstanding any other provision of law, an implementation plan or plan revision required under this chapter shall be approved by the Administrator if—

(1) such plan or revision meets all the requirements applicable to it under the¹ chapter other than a requirement that such plan or revision demonstrate attainment and maintenance of the relevant national ambient air quality standards by the attainment date specified under the applicable provision of this chapter, or in a regulation promulgated under such provision, and

(2) the submitting State establishes to the satisfaction of the Administrator that the implementation plan of such State would be adequate to attain and maintain the relevant national ambient air quality standards by the attainment date specified under the applicable provision of this chapter, or in a regulation promulgated under such provision, but for emissions emanating from outside of the United States.

(b) Attainment of ozone levels

Notwithstanding any other provision of law, any State that establishes to the satisfaction of the Administrator that, with respect to an ozone nonattainment area in such State, such State would have attained the national ambient air quality standard for ozone by the applicable attainment date, but for emissions emanating from outside of the United States, shall not be subject to the provisions of section 7511(a)(2) or (5) of this title or section 7511d of this title.

(c) Attainment of carbon monoxide levels

Notwithstanding any other provision of law, any State that establishes to the satisfaction of the Administrator, with respect to a carbon monoxide nonattainment area in such State, that such State has attained the national ambient air quality standard for carbon monoxide by the applicable attainment date, but for emissions emanating from outside of the United States, shall not be subject to the provisions of section 7512(b)(2) or (9)² of this title.

(d) Attainment of PM-10 levels

Notwithstanding any other provision of law, any State that establishes to the satisfaction of the Administrator that, with respect to a PM-10 nonattainment area in such State, such State would have attained the national ambient air quality standard for carbon monoxide by the applicable attainment date, but for emissions emanating from outside the United States, shall not be subject to the provisions of section 7513(b)(2) of this title.

¹ So in original. Probably should be "this".

² So in original. Section 7512(b) of this title does not contain a par. (9).

(July 14, 1955, ch. 360, title I, § 179B, as added Pub. L. 101-549, title VIII, § 818, Nov. 15, 1990, 104 Stat. 2697.)

ESTABLISHMENT OF PROGRAM TO MONITOR AND IMPROVE AIR QUALITY IN REGIONS ALONG BORDER BETWEEN UNITED STATES AND MEXICO

Section 815 of Pub. L. 101-549 provided that:

“(a) IN GENERAL.—The Administrator of the Environmental Protection Agency (hereinafter referred to as the ‘Administrator’) is authorized, in cooperation with the Department of State and the affected States, to negotiate with representatives of Mexico to authorize a program to monitor and improve air quality in regions along the border between the United States and Mexico. The program established under this section shall not extend beyond July 1, 1995.

“(b) MONITORING AND REMEDIATION.—

“(1) MONITORING.—The monitoring component of the program conducted under this section shall identify and determine sources of pollutants for which national ambient air quality standards (hereinafter referred to as ‘NAAQS’) and other air quality goals have been established in regions along the border between the United States and Mexico. Any such monitoring component of the program shall include, but not be limited to, the collection of meteorological data, the measurement of air quality, the compilation of an emissions inventory, and shall be sufficient to the extent necessary to successfully support the use of a state-of-the-art mathematical air modeling analysis. Any such monitoring component of the program shall collect and produce data projecting the level of emission reductions necessary in both Mexico and the United States to bring about attainment of both primary and secondary NAAQS, and other air quality goals, in regions along the border in the United States. Any such monitoring component of the program shall include to the extent possible, data from monitoring programs undertaken by other parties.

“(2) REMEDIATION.—The Administrator is authorized to negotiate with appropriate representatives of Mexico to develop joint remediation measures to reduce the level of airborne pollutants to achieve and maintain primary and secondary NAAQS, and other air quality goals, in regions along the border between the United States and Mexico. Such joint remediation measures may include, but not be limited to measures included in the Environmental Protection Agency’s Control Techniques and Control Technology documents. Any such remediation program shall also identify those control measures implementation of which in Mexico would be expedited by the use of material and financial assistance of the United States.

“(c) ANNUAL REPORTS.—The Administrator shall, each year the program authorized in this section is in operation, report to Congress on the progress of the program in bringing nonattainment areas along the border of the United States into attainment with primary and secondary NAAQS. The report issued by the Administrator under this paragraph shall include recommendations on funding mechanisms to assist in implementation of monitoring and remediation efforts.

“(d) FUNDING AND PERSONNEL.—The Administrator may, where appropriate, make available, subject to the appropriations, such funds, personnel, and equipment as may be necessary to implement the provisions of this section. In those cases where direct financial assistance of the United States is provided to implement monitoring and remediation programs in Mexico, the Administrator shall develop grant agreements with appropriate representatives of Mexico to assure the accuracy and completeness of monitoring data and the performance of remediation measures which are financed by the United States. With respect to any control measures within Mexico funded by the United States, the Administrator shall, to the maximum extent practicable, utilize resources of Mexico where such utiliza-

tion would reduce costs to the United States. Such funding agreements shall include authorization for the Administrator to—

“(1) review and agree to plans for monitoring and remediation;

“(2) inspect premises, equipment and records to insure compliance with the agreements established under and the purposes set forth in this section; and

“(3) where necessary, develop grant agreements with affected States to carry out the provisions of this section.”

SUBPART 2—ADDITIONAL PROVISIONS FOR OZONE
NONATTAINMENT AREAS

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in sections 7418, 7545, 7586, 7626 of this title; title 23 section 104; title 49 section 5308.

§ 7511. Classifications and attainment dates

(a) Classification and attainment dates for 1989 nonattainment areas

(1) Each area designated nonattainment for ozone pursuant to section 7407(d) of this title shall be classified at the time of such designation, under table 1, by operation of law, as a Marginal Area, a Moderate Area, a Serious Area, a Severe Area, or an Extreme Area based on the design value for the area. The design value shall be calculated according to the interpretation methodology issued by the Administrator most recently before November 15, 1990. For each area classified under this subsection, the primary standard attainment date for ozone shall be as expeditiously as practicable but not later than the date provided in table 1.

TABLE 1

Area class	Design value*	Primary standard attainment date**
Marginal ..	0.121 up to 0.138 ...	3 years after November 15, 1990
Moderate ..	0.138 up to 0.160 ...	6 years after November 15, 1990
Serious	0.160 up to 0.180 ...	9 years after November 15, 1990
Severe	0.180 up to 0.280 ...	15 years after November 15, 1990
Extreme ...	0.280 and above ...	20 years after November 15, 1990

*The design value is measured in parts per million (ppm).

**The primary standard attainment date is measured from November 15, 1990.

(2) Notwithstanding table 1, in the case of a severe area with a 1988 ozone design value between 0.190 and 0.280 ppm, the attainment date shall be 17 years (in lieu of 15 years) after November 15, 1990.

(3) At the time of publication of the notice under section 7407(d)(4) of this title (relating to area designations) for each ozone nonattainment area, the Administrator shall publish a notice announcing the classification of such ozone nonattainment area. The provisions of section 7502(a)(1)(B) of this title (relating to lack of notice and comment and judicial review) shall apply to such classification.

(4) If an area classified under paragraph (1) (Table 1) would have been classified in another category if the design value in the area were 5

percent greater or 5 percent less than the level on which such classification was based, the Administrator may, in the Administrator's discretion, within 90 days after the initial classification, by the procedure required under paragraph (3), adjust the classification to place the area in such other category. In making such adjustment, the Administrator may consider the number of exceedances of the national primary ambient air quality standard for ozone in the area, the level of pollution transport between the area and other affected areas, including both intrastate and interstate transport, and the mix of sources and air pollutants in the area.

(5) Upon application by any State, the Administrator may extend for 1 additional year (hereinafter referred to as the "Extension Year") the date specified in table 1 of paragraph (1) of this subsection if—

(A) the State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan, and

(B) no more than 1 exceedance of the national ambient air quality standard level for ozone has occurred in the area in the year preceding the Extension Year.

No more than 2 one-year extensions may be issued under this paragraph for a single nonattainment area.

(b) New designations and reclassifications

(1) New designations to nonattainment

Any area that is designated attainment or unclassifiable for ozone under section 7407(d)(4) of this title, and that is subsequently redesignated to nonattainment for ozone under section 7407(d)(3) of this title, shall, at the time of the redesignation, be classified by operation of law in accordance with table 1 under subsection (a) of this section. Upon its classification, the area shall be subject to the same requirements under section 7410 of this title, subpart 1 of this part, and this subpart that would have applied had the area been so classified at the time of the notice under subsection (a)(3) of this section, except that any absolute, fixed date applicable in connection with any such requirement is extended by operation of law by a period equal to the length of time between November 15, 1990, and the date the area is classified under this paragraph.

(2) Reclassification upon failure to attain

(A) Within 6 months following the applicable attainment date (including any extension thereof) for an ozone nonattainment area, the Administrator shall determine, based on the area's design value (as of the attainment date), whether the area attained the standard by that date. Except for any Severe or Extreme area, any area that the Administrator finds has not attained the standard by that date shall be reclassified by operation of law in accordance with table 1 of subsection (a) of this section to the higher of—

(i) the next higher classification for the area, or

(ii) the classification applicable to the area's design value as determined at the

time of the notice required under subparagraph (B).

No area shall be reclassified as Extreme under clause (ii).

(B) The Administrator shall publish a notice in the Federal Register, no later than 6 months following the attainment date, identifying each area that the Administrator has determined under subparagraph (A) as having failed to attain and identifying the reclassification, if any, described under subparagraph (A).

(3) Voluntary reclassification

The Administrator shall grant the request of any State to reclassify a nonattainment area in that State in accordance with table 1 of subsection (a) of this section to a higher classification. The Administrator shall publish a notice in the Federal Register of any such request and of action by the Administrator granting the request.

(4) Failure of Severe Areas to attain standard

(A) If any Severe Area fails to achieve the national primary ambient air quality standard for ozone by the applicable attainment date (including any extension thereof), the fee provisions under section 7511d of this title shall apply within the area, the percent reduction requirements of section 7511a(c)(2)(B) and (C) of this title (relating to reasonable further progress demonstration and NO_x control) shall continue to apply to the area, and the State shall demonstrate that such percent reduction has been achieved in each 3-year interval after such failure until the standard is attained. Any failure to make such a demonstration shall be subject to the sanctions provided under this part.

(B) In addition to the requirements of subparagraph (A), if the ozone design value for a Severe Area referred to in subparagraph (A) is above 0.140 ppm for the year of the applicable attainment date, or if the area has failed to achieve its most recent milestone under section 7511a(g) of this title, the new source review requirements applicable under this subpart in Extreme Areas shall apply in the area and the term¹ "major source" and "major stationary source" shall have the same meaning as in Extreme Areas.

(C) In addition to the requirements of subparagraph (A) for those areas referred to in subparagraph (A) and not covered by subparagraph (B), the provisions referred to in subparagraph (B) shall apply after 3 years from the applicable attainment date unless the area has attained the standard by the end of such 3-year period.

(D) If, after November 15, 1990, the Administrator modifies the method of determining compliance with the national primary ambient air quality standard, a design value or other indicator comparable to 0.140 in terms of its relationship to the standard shall be used in lieu of 0.140 for purposes of applying the provisions of subparagraphs (B) and (C).

¹ So in original. Probably should be "terms".

(c) References to terms

(1) Any reference in this subpart to a "Marginal Area", a "Moderate Area", a "Serious Area", a "Severe Area", or an "Extreme Area" shall be considered a reference to a Marginal Area, a Moderate Area, a Serious Area, a Severe Area, or an Extreme Area as respectively classified under this section.

(2) Any reference in this subpart to "next higher classification" or comparable terms shall be considered a reference to the classification related to the next higher set of design values in table 1.

(July 14, 1955, ch. 360, title I, §181, as added Pub. L. 101-549, title I, §103, Nov. 15, 1990, 104 Stat. 2423.)

EXEMPTIONS FOR STRIPPER WELLS

Section 819 of Pub. L. 101-549 provided that: "Notwithstanding any other provision of law, the amendments to the Clean Air Act made by section 103 of the Clean Air Act Amendments of 1990 [enacting this section and sections 7511a to 7511f of this title] (relating to additional provisions for ozone nonattainment areas), by section 104 of such amendments [enacting sections 7512 and 7512a of this title] (relating to additional provisions for carbon monoxide nonattainment areas), by section 105 of such amendments [enacting sections 7513 to 7513b of this title and amending section 7476 of this title] (relating to additional provisions for PM-10 nonattainment areas), and by section 106 of such amendments [enacting sections 7514 and 7514a of this title] (relating to additional provisions for areas designated as nonattainment for sulfur oxides, nitrogen dioxide, and lead) shall not apply with respect to the production of and equipment used in the exploration, production, development, storage or processing of—

"(1) oil from a stripper well property, within the meaning of the June 1979 energy regulations (within the meaning of section 4996(b)(7) of the Internal Revenue Code of 1986 [26 U.S.C. 4996(b)(7)], as in effect before the repeal of such section); and

"(2) stripper well natural gas, as defined in section 108(b) of the Natural Gas Policy Act of 1978 (15 U.S.C. 3318(b)).[.]

except to the extent that provisions of such amendments cover areas designated as Serious pursuant to part D of title I of the Clean Air Act [this part] and having a population of 350,000 or more, or areas designated as Severe or Extreme pursuant to such part D."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7509a, 7511a, 7511b, 7511d, 7521, 7545, 7607 of this title; title 23 section 149.

§ 7511a. Plan submissions and requirements

(a) Marginal Areas

Each State in which all or part of a Marginal Area is located shall, with respect to the Marginal Area (or portion thereof, to the extent specified in this subsection), submit to the Administrator the State implementation plan revisions (including the plan items) described under this subsection except to the extent the State has made such submissions as of November 15, 1990.

(1) Inventory

Within 2 years after November 15, 1990, the State shall submit a comprehensive, accurate, current inventory of actual emissions from all sources, as described in section 7502(c)(3) of this title, in accordance with guidance provided by the Administrator.

(2) Corrections to the State implementation plan

Within the periods prescribed in this paragraph, the State shall submit a revision to the State implementation plan that meets the following requirements—

(A) Reasonably available control technology corrections

For any Marginal Area (or, within the Administrator's discretion, portion thereof) the State shall submit, within 6 months of the date of classification under section 7511(a) of this title, a revision that includes such provisions to correct requirements in (or add requirements to) the plan concerning reasonably available control technology as were required under section 7502(b) of this title (as in effect immediately before November 15, 1990), as interpreted in guidance issued by the Administrator under section 7408 of this title before November 15, 1990.

(B) Savings clause for vehicle inspection and maintenance

(i) For any Marginal Area (or, within the Administrator's discretion, portion thereof), the plan for which already includes, or was required by section 7502(b)(11)(B) of this title (as in effect immediately before November 15, 1990) to have included, a specific schedule for implementation of a vehicle emission control inspection and maintenance program, the State shall submit, immediately after November 15, 1990, a revision that includes any provisions necessary to provide for a vehicle inspection and maintenance program of no less stringency than that of either the program defined in House Report Numbered 95-294, 95th Congress, 1st Session, 281-291 (1977) as interpreted in guidance of the Administrator issued pursuant to section 7502(b)(11)(B) of this title (as in effect immediately before November 15, 1990) or the program already included in the plan, whichever is more stringent.

(ii) Within 12 months after November 15, 1990, the Administrator shall review, revise, update, and republish in the Federal Register the guidance for the States for motor vehicle inspection and maintenance programs required by this chapter, taking into consideration the Administrator's investigations and audits of such program. The guidance shall, at a minimum, cover the frequency of inspections, the types of vehicles to be inspected (which shall include leased vehicles that are registered in the non-attainment area), vehicle maintenance by owners and operators, audits by the State, the test method and measures, including whether centralized or decentralized, inspection methods and procedures, quality of inspection, components covered, assurance that a vehicle subject to a recall notice from a manufacturer has complied with that notice, and effective implementation and enforcement, including ensuring that any retesting of a vehicle after a failure shall include proof of corrective action and providing for denial of vehicle registration in the

case of tampering or misfueling. The guidance which shall be incorporated in the applicable State implementation plans by the States shall provide the States with continued reasonable flexibility to fashion effective, reasonable, and fair programs for the affected consumer. No later than 2 years after the Administrator promulgates regulations under section 7521(m)(3) of this title (relating to emission control diagnostics), the State shall submit a revision to such program to meet any requirements that the Administrator may prescribe under that section.

(C) Permit programs

Within 2 years after November 15, 1990, the State shall submit a revision that includes each of the following:

(i) Provisions to require permits, in accordance with sections 7502(c)(5) and 7503 of this title, for the construction and operation of each new or modified major stationary source (with respect to ozone) to be located in the area.

(ii) Provisions to correct requirements in (or add requirements to) the plan concerning permit programs as were required under section 7502(b)(6) of this title (as in effect immediately before November 15, 1990), as interpreted in regulations of the Administrator promulgated as of November 15, 1990.

(3) Periodic inventory

(A) General requirement

No later than the end of each 3-year period after submission of the inventory under paragraph (1) until the area is redesignated to attainment, the State shall submit a revised inventory meeting the requirements of subsection (a)(1) of this section.

(B) Emissions statements

(i) Within 2 years after November 15, 1990, the State shall submit a revision to the State implementation plan to require that the owner or operator of each stationary source of oxides of nitrogen or volatile organic compounds provide the State with a statement, in such form as the Administrator may prescribe (or accept an equivalent alternative developed by the State), for classes or categories of sources, showing the actual emissions of oxides of nitrogen and volatile organic compounds from that source. The first such statement shall be submitted within 3 years after November 15, 1990. Subsequent statements shall be submitted at least every year thereafter. The statement shall contain a certification that the information contained in the statement is accurate to the best knowledge of the individual certifying the statement.

(ii) The State may waive the application of clause (i) to any class or category of stationary sources which emit less than 25 tons per year of volatile organic compounds or oxides of nitrogen if the State, in its submissions under subparagraphs¹ (1) or (3)(A), provides

¹ So in original. Probably should be "subparagraph".

an inventory of emissions from such class or category of sources, based on the use of the emission factors established by the Administrator or other methods acceptable to the Administrator.

(4) General offset requirement

For purposes of satisfying the emission offset requirements of this part, the ratio of total emission reductions of volatile organic compounds to total increased emissions of such air pollutant shall be at least 1.1 to 1.

The Administrator may, in the Administrator's discretion, require States to submit a schedule for submitting any of the revisions or other items required under this subsection. The requirements of this subsection shall apply in lieu of any requirement that the State submit a demonstration that the applicable implementation plan provides for attainment of the ozone standard by the applicable attainment date in any Marginal Area. Section 7502(c)(9) of this title (relating to contingency measures) shall not apply to Marginal Areas.

(b) Moderate Areas

Each State in which all or part of a Moderate Area is located shall, with respect to the Moderate Area, make the submissions described under subsection (a) of this section (relating to Marginal Areas), and shall also submit the revisions to the applicable implementation plan described under this subsection.

(1) Plan provisions for reasonable further progress

(A) General rule

(i) By no later than 3 years after November 15, 1990, the State shall submit a revision to the applicable implementation plan to provide for volatile organic compound emission reductions, within 6 years after November 15, 1990, of at least 15 percent from baseline emissions, accounting for any growth in emissions after 1990. Such plan shall provide for such specific annual reductions in emissions of volatile organic compounds and oxides of nitrogen as necessary to attain the national primary ambient air quality standard for ozone by the attainment date applicable under this chapter. This subparagraph shall not apply in the case of oxides of nitrogen for those areas for which the Administrator determines (when the Administrator approves the plan or plan revision) that additional reductions of oxides of nitrogen would not contribute to attainment.

(ii) A percentage less than 15 percent may be used for purposes of clause (i) in the case of any State which demonstrates to the satisfaction of the Administrator that—

(I) new source review provisions are applicable in the nonattainment areas in the same manner and to the same extent as required under subsection (e) of this section in the case of Extreme Areas (with the exception that, in applying such provisions, the terms "major source" and "major stationary source" shall include (in addition to the sources described in section 7602 of this title) any stationary source or group

of sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 5 tons per year of volatile organic compounds);

(II) reasonably available control technology is required for all existing major sources (as defined in subclause (I)); and

(III) the plan reflecting a lesser percentage than 15 percent includes all measures that can feasibly be implemented in the area, in light of technological achievability.

To qualify for a lesser percentage under this clause, a State must demonstrate to the satisfaction of the Administrator that the plan for the area includes the measures that are achieved in practice by sources in the same source category in nonattainment areas of the next higher category.

(B) Baseline emissions

For purposes of subparagraph (A), the term "baseline emissions" means the total amount of actual VOC or NO_x emissions from all anthropogenic sources in the area during the calendar year 1990, excluding emissions that would be eliminated under the regulations described in clauses (i) and (ii) of subparagraph (D).

(C) General rule for creditability of reductions

Except as provided under subparagraph (D), emissions reductions are creditable toward the 15 percent required under subparagraph (A) to the extent they have actually occurred, as of 6 years after November 15, 1990, from the implementation of measures required under the applicable implementation plan, rules promulgated by the Administrator, or a permit under subchapter V of this chapter.

(D) Limits on creditability of reductions

Emission reductions from the following measures are not creditable toward the 15 percent reductions required under subparagraph (A):

(i) Any measure relating to motor vehicle exhaust or evaporative emissions promulgated by the Administrator by January 1, 1990.

(ii) Regulations concerning Reid Vapor Pressure promulgated by the Administrator by November 15, 1990, or required to be promulgated under section 7545(h) of this title.

(iii) Measures required under subsection (a)(2)(A) of this section (concerning corrections to implementation plans prescribed under guidance by the Administrator).

(iv) Measures required under subsection (a)(2)(B) of this section to be submitted immediately after November 15, 1990 (concerning corrections to motor vehicle inspection and maintenance programs).

(2) Reasonably available control technology

The State shall submit a revision to the applicable implementation plan to include provisions to require the implementation of reason-

ably available control technology under section 7502(c)(1) of this title with respect to each of the following:

(A) Each category of VOC sources in the area covered by a CTG document issued by the Administrator between November 15, 1990, and the date of attainment.

(B) All VOC sources in the area covered by any CTG issued before November 15, 1990.

(C) All other major stationary sources of VOCs that are located in the area.

Each revision described in subparagraph (A) shall be submitted within the period set forth by the Administrator in issuing the relevant CTG document. The revisions with respect to sources described in subparagraphs (B) and (C) shall be submitted by 2 years after November 15, 1990, and shall provide for the implementation of the required measures as expeditiously as practicable but no later than May 31, 1995.

(3) Gasoline vapor recovery

(A) General rule

Not later than 2 years after November 15, 1990, the State shall submit a revision to the applicable implementation plan to require all owners or operators of gasoline dispensing systems to install and operate, by the date prescribed under subparagraph (B), a system for gasoline vapor recovery of emissions from the fueling of motor vehicles. The Administrator shall issue guidance as appropriate as to the effectiveness of such system. This subparagraph shall apply only to facilities which sell more than 10,000 gallons of gasoline per month (50,000 gallons per month in the case of an independent small business marketer of gasoline as defined in section 7625-1² of this title).

(B) Effective date

The date required under subparagraph (A) shall be—

(i) 6 months after the adoption date, in the case of gasoline dispensing facilities for which construction commenced after November 15, 1990;

(ii) one year after the adoption date, in the case of gasoline dispensing facilities which dispense at least 100,000 gallons of gasoline per month, based on average monthly sales for the 2-year period before the adoption date; or

(iii) 2 years after the adoption date, in the case of all other gasoline dispensing facilities.

Any gasoline dispensing facility described under both clause (i) and clause (ii) shall meet the requirements of clause (i).

(C) Reference to terms

For purposes of this paragraph, any reference to the term "adoption date" shall be considered a reference to the date of adoption by the State of requirements for the installation and operation of a system for gasoline vapor recovery of emissions from the fueling of motor vehicles.

(4) Motor vehicle inspection and maintenance

For all Moderate Areas, the State shall submit, immediately after November 15, 1990, a revision to the applicable implementation plan that includes provisions necessary to provide for a vehicle inspection and maintenance program as described in subsection (a)(2)(B) of this section (without regard to whether or not the area was required by section 7502(b)(11)(B) of this title (as in effect immediately before November 15, 1990) to have included a specific schedule for implementation of such a program).

(5) General offset requirement

For purposes of satisfying the emission offset requirements of this part, the ratio of total emission reductions of volatile organic compounds to total increase emissions of such air pollutant shall be at least 1.15 to 1.

(c) Serious Areas

Except as otherwise specified in paragraph (4), each State in which all or part of a Serious Area is located shall, with respect to the Serious Area (or portion thereof, to the extent specified in this subsection), make the submissions described under subsection (b) of this section (relating to Moderate Areas), and shall also submit the revisions to the applicable implementation plan (including the plan items) described under this subsection. For any Serious Area, the terms "major source" and "major stationary source" include (in addition to the sources described in section 7602 of this title) any stationary source or group of sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 50 tons per year of volatile organic compounds.

(1) Enhanced monitoring

In order to obtain more comprehensive and representative data on ozone air pollution, not later than 18 months after November 15, 1990, the Administrator shall promulgate rules, after notice and public comment, for enhanced monitoring of ozone, oxides of nitrogen, and volatile organic compounds. The rules shall, among other things, cover the location and maintenance of monitors. Immediately following the promulgation of rules by the Administrator relating to enhanced monitoring, the State shall commence such actions as may be necessary to adopt and implement a program based on such rules, to improve monitoring for ambient concentrations of ozone, oxides of nitrogen and volatile organic compounds and to improve monitoring of emissions of oxides of nitrogen and volatile organic compounds. Each State implementation plan for the area shall contain measures to improve the ambient monitoring of such air pollutants.

(2) Attainment and reasonable further progress demonstrations

Within 4 years after November 15, 1990, the State shall submit a revision to the applicable implementation plan that includes each of the following:

(A) Attainment demonstration

A demonstration that the plan, as revised, will provide for attainment of the ozone na-

²So in original. Probably should be section "7625".

tional ambient air quality standard by the applicable attainment date. This attainment demonstration must be based on photochemical grid modeling or any other analytical method determined by the Administrator, in the Administrator's discretion, to be at least as effective.

(B) Reasonable further progress demonstration

A demonstration that the plan, as revised, will result in VOC emissions reductions from the baseline emissions described in subsection (b)(1)(B) of this section equal to the following amount averaged over each consecutive 3-year period beginning 6 years after November 15, 1990, until the attainment date:

(i) at least 3 percent of baseline emissions each year; or

(ii) an amount less than 3 percent of such baseline emissions each year, if the State demonstrates to the satisfaction of the Administrator that the plan reflecting such lesser amount includes all measures that can feasibly be implemented in the area, in light of technological achievability.

To lessen the 3 percent requirement under clause (ii), a State must demonstrate to the satisfaction of the Administrator that the plan for the area includes the measures that are achieved in practice by sources in the same source category in nonattainment areas of the next higher classification. Any determination to lessen the 3 percent requirement shall be reviewed at each milestone under subsection (g) of this section and revised to reflect such new measures (if any) achieved in practice by sources in the same category in any State, allowing a reasonable time to implement such measures. The emission reductions described in this subparagraph shall be calculated in accordance with subsection (b)(1)(C) and (D) of this section (concerning creditability of reductions). The reductions creditable for the period beginning 6 years after November 15, 1990, shall include reductions that occurred before such period, computed in accordance with subsection (b)(1) of this section, that exceed the 15-percent amount of reductions required under subsection (b)(1)(A) of this section.

(C) NO_x control

The revision may contain, in lieu of the demonstration required under subparagraph (B), a demonstration to the satisfaction of the Administrator that the applicable implementation plan, as revised, provides for reductions of emissions of VOC's and oxides of nitrogen (calculated according to the creditability provisions of subsection (b)(1)(C) and (D) of this section), that would result in a reduction in ozone concentrations at least equivalent to that which would result from the amount of VOC emission reductions required under subparagraph (B). Within 1 year after November 15, 1990, the Administrator shall issue guidance concerning the conditions under which NO_x control may be sub-

stituted for VOC control or may be combined with VOC control in order to maximize the reduction in ozone air pollution. In accord with such guidance, a lesser percentage of VOCs may be accepted as an adequate demonstration for purposes of this subsection.

(3) Enhanced vehicle inspection and maintenance program

(A) Requirement for submission

Within 2 years after November 15, 1990, the State shall submit a revision to the applicable implementation plan to provide for an enhanced program to reduce hydrocarbon emissions and NO_x emissions from in-use motor vehicles registered in each urbanized area (in the nonattainment area), as defined by the Bureau of the Census, with a 1980 population of 200,000 or more.

(B) Effective date of State programs; guidance

The State program required under subparagraph (A) shall take effect no later than 2 years from November 15, 1990, and shall comply in all respects with guidance published in the Federal Register (and from time to time revised) by the Administrator for enhanced vehicle inspection and maintenance programs. Such guidance shall include—

(i) a performance standard achievable by a program combining emission testing, including on-road emission testing, with inspection to detect tampering with emission control devices and misfueling for all light-duty vehicles and all light-duty trucks subject to standards under section 7521 of this title; and

(ii) program administration features necessary to reasonably assure that adequate management resources, tools, and practices are in place to attain and maintain the performance standard.

Compliance with the performance standard under clause (i) shall be determined using a method to be established by the Administrator.

(C) State program

The State program required under subparagraph (A) shall include, at a minimum, each of the following elements—

(i) Computerized emission analyzers, including on-road testing devices.

(ii) No waivers for vehicles and parts covered by the emission control performance warranty as provided for in section 7541(b) of this title unless a warranty remedy has been denied in writing, or for tampering-related repairs.

(iii) In view of the air quality purpose of the program, if, for any vehicle, waivers are permitted for emissions-related repairs not covered by warranty, an expenditure to qualify for the waiver of an amount of \$450 or more for such repairs (adjusted annually as determined by the Administrator on the basis of the Consumer Price Index in the same manner as provided in subsection V of this chapter).

(iv) Enforcement through denial of vehicle registration (except for any program in operation before November 15, 1990, whose enforcement mechanism is demonstrated to the Administrator to be more effective than the applicable vehicle registration program in assuring that noncomplying vehicles are not operated on public roads).

(v) Annual emission testing and necessary adjustment, repair, and maintenance, unless the State demonstrates to the satisfaction of the Administrator that a biennial inspection, in combination with other features of the program which exceed the requirements of this chapter, will result in emission reductions which equal or exceed the reductions which can be obtained through such annual inspections.

(vi) Operation of the program on a centralized basis, unless the State demonstrates to the satisfaction of the Administrator that a decentralized program will be equally effective. An electronically connected testing system, a licensing system, or other measures (or any combination thereof) may be considered, in accordance with criteria established by the Administrator, as equally effective for such purposes.

(vii) Inspection of emission control diagnostic systems and the maintenance or repair of malfunctions or system deterioration identified by or affecting such diagnostics systems.

Each State shall biennially prepare a report to the Administrator which assesses the emission reductions achieved by the program required under this paragraph based on data collected during inspection and repair of vehicles. The methods used to assess the emission reductions shall be those established by the Administrator.

(4) Clean-fuel vehicle programs

(A) Except to the extent that substitute provisions have been approved by the Administrator under subparagraph (B), the State shall submit to the Administrator, within 42 months of November 15, 1990, a revision to the applicable implementation plan for each area described under part C of subchapter II of this chapter to include such measures as may be necessary to ensure the effectiveness of the applicable provisions of the clean-fuel vehicle program prescribed under part C of subchapter II of this chapter, including all measures necessary to make the use of clean alternative fuels in clean-fuel vehicles (as defined in part C of subchapter II of this chapter) economic from the standpoint of vehicle owners. Such a revision shall also be submitted for each area that opts into the clean fuel-vehicle program as provided in part C of subchapter II of this chapter.

(B) The Administrator shall approve, as a substitute for all or a portion of the clean-fuel vehicle program prescribed under part C of subchapter II of this chapter, any revision to the relevant applicable implementation plan that in the Administrator's judgment will achieve long-term reductions in ozone-produc-

ing and toxic air emissions equal to those achieved under part C of subchapter II of this chapter, or the percentage thereof attributable to the portion of the clean-fuel vehicle program for which the revision is to substitute. The Administrator may approve such revision only if it consists exclusively of provisions other than those required under this chapter for the area. Any State seeking approval of such revision must submit the revision to the Administrator within 24 months of November 15, 1990. The Administrator shall approve or disapprove any such revision within 30 months of November 15, 1990. The Administrator shall publish the revision submitted by a State in the Federal Register upon receipt. Such notice shall constitute a notice of proposed rulemaking on whether or not to approve such revision and shall be deemed to comply with the requirements concerning notices of proposed rulemaking contained in sections 553 through 557 of title 5 (related to notice and comment). Where the Administrator approves such revision for any area, the State need not submit the revision required by subparagraph (A) for the area with respect to the portions of the Federal clean-fuel vehicle program for which the Administrator has approved the revision as a substitute.

(C) If the Administrator determines, under section 7509 of this title, that the State has failed to submit any portion of the program required under subparagraph (A), then, in addition to any sanctions available under section 7509 of this title, the State may not receive credit, in any demonstration of attainment or reasonable further progress for the area, for any emission reductions from implementation of the corresponding aspects of the Federal clean-fuel vehicle requirements established in part C of subchapter II of this chapter.

(5) Transportation control

(A)³ Beginning 6 years after November 15, 1990, and each third year thereafter, the State shall submit a demonstration as to whether current aggregate vehicle mileage, aggregate vehicle emissions, congestion levels, and other relevant parameters are consistent with those used for the area's demonstration of attainment. Where such parameters and emissions levels exceed the levels projected for purposes of the area's attainment demonstration, the State shall within 18 months develop and submit a revision of the applicable implementation plan that includes a transportation control measures program consisting of measures from, but not limited to, section 7408(f) of this title that will reduce emissions to levels that are consistent with emission levels projected in such demonstration. In considering such measures, the State should ensure adequate access to downtown, other commercial, and residential areas and should avoid measures that increase or relocate emissions and congestion rather than reduce them. Such revision shall be developed in accordance with guidance issued by the Administrator pursu-

³ So in original. No subpar. (B) has been enacted.

ant to section 7408(e) of this title and with the requirements of section 7504(b) of this title and shall include implementation and funding schedules that achieve expeditious emissions reductions in accordance with implementation plan projections.

(6) De minimis rule

The new source review provisions under this part shall ensure that increased emissions of volatile organic compounds resulting from any physical change in, or change in the method of operation of, a stationary source located in the area shall not be considered de minimis for purposes of determining the applicability of the permit requirements established by this chapter unless the increase in net emissions of such air pollutant from such source does not exceed 25 tons when aggregated with all other net increases in emissions from the source over any period of 5 consecutive calendar years which includes the calendar year in which such increase occurred.

(7) Special rule for modifications of sources emitting less than 100 tons

In the case of any major stationary source of volatile organic compounds located in the area (other than a source which emits or has the potential to emit 100 tons or more of volatile organic compounds per year), whenever any change (as described in section 7411(a)(4) of this title) at that source results in any increase (other than a de minimis increase) in emissions of volatile organic compounds from any discrete operation, unit, or other pollutant emitting activity at the source, such increase shall be considered a modification for purposes of section 7502(c)(5) of this title and section 7503(a) of this title, except that such increase shall not be considered a modification for such purposes if the owner or operator of the source elects to offset the increase by a greater reduction in emissions of volatile organic compounds concerned from other operations, units, or activities within the source at an internal offset ratio of at least 1.3 to 1. If the owner or operator does not make such election, such change shall be considered a modification for such purposes, but in applying section 7503(a)(2) of this title in the case of any such modification, the best available control technology (BACT), as defined in section 7479 of this title, shall be substituted for the lowest achievable emission rate (LAER). The Administrator shall establish and publish policies and procedures for implementing the provisions of this paragraph.

(8) Special rule for modifications of sources emitting 100 tons or more

In the case of any major stationary source of volatile organic compounds located in the area which emits or has the potential to emit 100 tons or more of volatile organic compounds per year, whenever any change (as described in section 7411(a)(4) of this title) at that source results in any increase (other than a de minimis increase) in emissions of volatile organic compounds from any discrete operation, unit, or other pollutant emitting activity at the source, such increase shall be considered a

modification for purposes of section 7502(c)(5) of this title and section 7503(a) of this title, except that if the owner or operator of the source elects to offset the increase by a greater reduction in emissions of volatile organic compounds from other operations, units, or activities within the source at an internal offset ratio of at least 1.3 to 1, the requirements of section 7503(a)(2) of this title (concerning the lowest achievable emission rate (LAER)) shall not apply.

(9) Contingency provisions

In addition to the contingency provisions required under section 7502(c)(9) of this title, the plan revision shall provide for the implementation of specific measures to be undertaken if the area fails to meet any applicable milestone. Such measures shall be included in the plan revision as contingency measures to take effect without further action by the State or the Administrator upon a failure by the State to meet the applicable milestone.

(10) General offset requirement

For purposes of satisfying the emission offset requirements of this part, the ratio of total emission reductions of volatile organic compounds to total increase emissions of such air pollutant shall be at least 1.2 to 1.

Any reference to "attainment date" in subsection (b) of this section, which is incorporated by reference into this subsection, shall refer to the attainment date for serious areas.

(d) Severe Areas

Each State in which all or part of a Severe Area is located shall, with respect to the Severe Area, make the submissions described under subsection (c) of this section (relating to Serious Areas), and shall also submit the revisions to the applicable implementation plan (including the plan items) described under this subsection. For any Severe Area, the terms "major source" and "major stationary source" include (in addition to the sources described in section 7602 of this title) any stationary source or group of sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 25 tons per year of volatile organic compounds.

(1) Vehicle miles traveled

(A) Within 2 years after November 15, 1990, the State shall submit a revision that identifies and adopts specific enforceable transportation control strategies and transportation control measures to offset any growth in emissions from growth in vehicle miles traveled or numbers of vehicle trips in such area and to attain reduction in motor vehicle emissions as necessary, in combination with other emission reduction requirements of this subpart, to comply with the requirements of subsection⁴ (b)(2)(B) and (c)(2)(B) of this section (pertaining to periodic emissions reduction requirements). The State shall consider measures specified in section 7408(f) of this title, and choose from among and implement such measures as necessary to demonstrate attainment

⁴So in original. Probably should be "subsections".

with the national ambient air quality standards; in considering such measures, the State should ensure adequate access to downtown, other commercial, and residential areas and should avoid measures that increase or relocate emissions and congestion rather than reduce them.

(B) The State may also, in its discretion, submit a revision at any time requiring employers in such area to implement programs to reduce work-related vehicle trips and miles travelled by employees. Such revision shall be developed in accordance with guidance issued by the Administrator pursuant to section 7408(f) of this title and may require that employers in such area increase average passenger occupancy per vehicle in commuting trips between home and the workplace during peak travel periods. The guidance of the Administrator may specify average vehicle occupancy rates which vary for locations within a nonattainment area (suburban, center city, business district) or among nonattainment areas reflecting existing occupancy rates and the availability of high occupancy modes. Any State required to submit a revision under this subparagraph (as in effect before December 23, 1995) containing provisions requiring employers to reduce work-related vehicle trips and miles travelled by employees may, in accordance with State law, remove such provisions from the implementation plan, or withdraw its submission, if the State notifies the Administrator, in writing, that the State has undertaken, or will undertake, one or more alternative methods that will achieve emission reductions equivalent to those to be achieved by the removed or withdrawn provisions.

(2) Offset requirement

For purposes of satisfying the offset requirements pursuant to this part, the ratio of total emission reductions of VOCs to total increased emissions of such air pollutant shall be at least 1.3 to 1, except that if the State plan requires all existing major sources in the nonattainment area to use best available control technology (as defined in section 7479(3) of this title) for the control of volatile organic compounds, the ratio shall be at least 1.2 to 1.

(3) Enforcement under section 7511d

By December 31, 2000, the State shall submit a plan revision which includes the provisions required under section 7511d of this title.

Any reference to the term "attainment date" in subsection (b) or (c) of this section, which is incorporated by reference into this subsection (d), shall refer to the attainment date for Severe Areas.

(e) Extreme Areas

Each State in which all or part of an Extreme Area is located shall, with respect to the Extreme Area, make the submissions described under subsection (d) of this section (relating to Severe Areas), and shall also submit the revisions to the applicable implementation plan (including the plan items) described under this subsection. The provisions of clause (ii) of subsection (c)(2)(B) of this section (relating to reductions of less than 3 percent), the provisions

of paragraphs⁵ (6), (7) and (8) of subsection (c) of this section (relating to de minimus rule and modification of sources), and the provisions of clause (ii) of subsection (b)(1)(A) of this section (relating to reductions of less than 15 percent) shall not apply in the case of an Extreme Area. For any Extreme Area, the terms "major source" and "major stationary source" includes (in addition to the sources described in section 7602 of this title) any stationary source or group of sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 10 tons per year of volatile organic compounds.

(1) Offset requirement

For purposes of satisfying the offset requirements pursuant to this part, the ratio of total emission reductions of VOCs to total increased emissions of such air pollutant shall be at least 1.5 to 1, except that if the State plan requires all existing major sources in the nonattainment area to use best available control technology (as defined in section 7479(3) of this title) for the control of volatile organic compounds, the ratio shall be at least 1.2 to 1.

(2) Modifications

Any change (as described in section 7411(a)(4) of this title) at a major stationary source which results in any increase in emissions from any discrete operation, unit, or other pollutant emitting activity at the source shall be considered a modification for purposes of section 7502(c)(5) of this title and section 7503(a) of this title, except that for purposes of complying with the offset requirement pursuant to section 7503(a)(1) of this title, any such increase shall not be considered a modification if the owner or operator of the source elects to offset the increase by a greater reduction in emissions of the air pollutant concerned from other discrete operations, units, or activities within the source at an internal offset ratio of at least 1.3 to 1. The offset requirements of this part shall not be applicable in Extreme Areas to a modification of an existing source if such modification consists of installation of equipment required to comply with the applicable implementation plan, permit, or this chapter.

(3) Use of clean fuels or advanced control technology

For Extreme Areas, a plan revision shall be submitted within 3 years after November 15, 1990, to require, effective 8 years after November 15, 1990, that each new, modified, and existing electric utility and industrial and commercial boiler which emits more than 25 tons per year of oxides of nitrogen—

(A) burn as its primary fuel natural gas, methanol, or ethanol (or a comparably low polluting fuel), or

(B) use advanced control technology (such as catalytic control technology or other comparably effective control methods) for reduction of emissions of oxides of nitrogen.

For purposes of this subsection, the term "primary fuel" means the fuel which is used 90

⁵ So in original. Probably should be "paragraphs".

percent or more of the operating time. This paragraph shall not apply during any natural gas supply emergency (as defined in title III of the Natural Gas Policy Act of 1978 [15 U.S.C. 3361 et seq.]).

(4) Traffic control measures during heavy traffic hours

For Extreme Areas, each implementation plan revision under this subsection may contain provisions establishing traffic control measures applicable during heavy traffic hours to reduce the use of high polluting vehicles or heavy-duty vehicles, notwithstanding any other provision of law.

(5) New technologies

The Administrator may, in accordance with section 7410 of this title, approve provisions of an implementation plan for an Extreme Area which anticipate development of new control techniques or improvement of existing control technologies, and an attainment demonstration based on such provisions, if the State demonstrates to the satisfaction of the Administrator that—

(A) such provisions are not necessary to achieve the incremental emission reductions required during the first 10 years after November 15, 1990; and

(B) the State has submitted enforceable commitments to develop and adopt contingency measures to be implemented as set forth herein if the anticipated technologies do not achieve planned reductions.

Such contingency measures shall be submitted to the Administrator no later than 3 years before proposed implementation of the plan provisions and approved or disapproved by the Administrator in accordance with section 7410 of this title. The contingency measures shall be adequate to produce emission reductions sufficient, in conjunction with other approved plan provisions, to achieve the periodic emission reductions required by subsection (b)(1) or (c)(2) of this section and attainment by the applicable dates. If the Administrator determines that an Extreme Area has failed to achieve an emission reduction requirement set forth in subsection (b)(1) or (c)(2) of this section, and that such failure is due in whole or part to an inability to fully implement provisions approved pursuant to this subsection, the Administrator shall require the State to implement the contingency measures to the extent necessary to assure compliance with subsections (b)(1) and (c)(2) of this section.

Any reference to the term "attainment date" in subsection (b), (c), or (d) of this section which is incorporated by reference into this subsection, shall refer to the attainment date for Extreme Areas.

(f) NO_x requirements

(1) The plan provisions required under this subpart for major stationary sources of volatile organic compounds shall also apply to major stationary sources (as defined in section 7602 of this title and subsections (c), (d), and (e) of this section) of oxides of nitrogen. This subsection shall not apply in the case of oxides of nitrogen

for those sources for which the Administrator determines (when the Administrator approves a plan or plan revision) that net air quality benefits are greater in the absence of reductions of oxides of nitrogen from the sources concerned. This subsection shall also not apply in the case of oxides of nitrogen for—

(A) nonattainment areas not within an ozone transport region under section 7511c of this title, if the Administrator determines (when the Administrator approves a plan or plan revision) that additional reductions of oxides of nitrogen would not contribute to attainment of the national ambient air quality standard for ozone in the area, or

(B) nonattainment areas within such an ozone transport region if the Administrator determines (when the Administrator approves a plan or plan revision) that additional reductions of oxides of nitrogen would not produce net ozone air quality benefits in such region.

The Administrator shall, in the Administrator's determinations, consider the study required under section 7511f of this title.

(2)(A) If the Administrator determines that excess reductions in emissions of NO_x would be achieved under paragraph (1), the Administrator may limit the application of paragraph (1) to the extent necessary to avoid achieving such excess reductions.

(B) For purposes of this paragraph, excess reductions in emissions of NO_x are emission reductions for which the Administrator determines that net air quality benefits are greater in the absence of such reductions. Alternatively, for purposes of this paragraph, excess reductions in emissions of NO_x are, for—

(i) nonattainment areas not within an ozone transport region under section 7511c of this title, emission reductions that the Administrator determines would not contribute to attainment of the national ambient air quality standard for ozone in the area, or

(ii) nonattainment areas within such ozone transport region, emission reductions that the Administrator determines would not produce net ozone air quality benefits in such region.

(3) At any time after the final report under section 7511f of this title is submitted to Congress, a person may petition the Administrator for a determination under paragraph (1) or (2) with respect to any nonattainment area or any ozone transport region under section 7511c of this title. The Administrator shall grant or deny such petition within 6 months after its filing with the Administrator.

(g) Milestones

(1) Reductions in emissions

6 years after November 15, 1990, and at intervals of every 3 years thereafter, the State shall determine whether each nonattainment area (other than an area classified as Marginal or Moderate) has achieved a reduction in emissions during the preceding intervals equivalent to the total emission reductions required to be achieved by the end of such interval pursuant to subsection (b)(1) of this section and the corresponding requirements of subsections (c)(2)(B) and (C), (d), and (e) of this section.

Such reduction shall be referred to in this section as an applicable milestone.

(2) Compliance demonstration

For each nonattainment area referred to in paragraph (1), not later than 90 days after the date on which an applicable milestone occurs (not including an attainment date on which a milestone occurs in cases where the standard has been attained), each State in which all or part of such area is located shall submit to the Administrator a demonstration that the milestone has been met. A demonstration under this paragraph shall be submitted in such form and manner, and shall contain such information and analysis, as the Administrator shall require, by rule. The Administrator shall determine whether or not a State's demonstration is adequate within 90 days after the Administrator's receipt of a demonstration which contains the information and analysis required by the Administrator.

(3) Serious and Severe Areas; State election

If a State fails to submit a demonstration under paragraph (2) for any Serious or Severe Area within the required period or if the Administrator determines that the area has not met any applicable milestone, the State shall elect, within 90 days after such failure or determination—

(A) to have the area reclassified to the next higher classification,

(B) to implement specific additional measures adequate, as determined by the Administrator, to meet the next milestone as provided in the applicable contingency plan, or

(C) to adopt an economic incentive program as described in paragraph (4).

If the State makes an election under subparagraph (B), the Administrator shall, within 90 days after the election, review such plan and shall, if the Administrator finds the contingency plan inadequate, require further measures necessary to meet such milestone. Once the State makes an election, it shall be deemed accepted by the Administrator as meeting the election requirement. If the State fails to make an election required under this paragraph within the required 90-day period or within 6 months thereafter, the area shall be reclassified to the next higher classification by operation of law at the expiration of such 6-month period. Within 12 months after the date required for the State to make an election, the State shall submit a revision of the applicable implementation plan for the area that meets the requirements of this paragraph. The Administrator shall review such plan revision and approve or disapprove the revision within 9 months after the date of its submission.

(4) Economic incentive program

(A) An economic incentive program under this paragraph shall be consistent with rules published by the Administrator and sufficient, in combination with other elements of the State plan, to achieve the next milestone. The State program may include a nondiscriminatory system, consistent with applicable law regarding interstate commerce, of State estab-

lished emissions fees or a system of marketable permits, or a system of State fees on sale or manufacture of products the use of which contributes to ozone formation, or any combination of the foregoing or other similar measures. The program may also include incentives and requirements to reduce vehicle emissions and vehicle miles traveled in the area, including any of the transportation control measures identified in section 7408(f) of this title.

(B) Within 2 years after November 15, 1990, the Administrator shall publish rules for the programs to be adopted pursuant to subparagraph (A). Such rules shall include model plan provisions which may be adopted for reducing emissions from permitted stationary sources, area sources, and mobile sources. The guidelines shall require that any revenues generated by the plan provisions adopted pursuant to subparagraph (A) shall be used by the State for any of the following:

(i) Providing incentives for achieving emission reductions.

(ii) Providing assistance for the development of innovative technologies for the control of ozone air pollution and for the development of lower-polluting solvents and surface coatings. Such assistance shall not provide for the payment of more than 75 percent of either the costs of any project to develop such a technology or the costs of development of a lower-polluting solvent or surface coating.

(iii) Funding the administrative costs of State programs under this chapter. Not more than 50 percent of such revenues may be used for purposes of this clause.

(5) Extreme Areas

If a State fails to submit a demonstration under paragraph (2) for any Extreme Area within the required period, or if the Administrator determines that the area has not met any applicable milestone, the State shall, within 9 months after such failure or determination, submit a plan revision to implement an economic incentive program which meets the requirements of paragraph (4). The Administrator shall review such plan revision and approve or disapprove the revision within 9 months after the date of its submission.

(h) Rural transport areas

(1) Notwithstanding any other provision of section 7511 of this title or this section, a State containing an ozone nonattainment area that does not include, and is not adjacent to, any part of a Metropolitan Statistical Area or, where one exists, a Consolidated Metropolitan Statistical Area (as defined by the United States Bureau of the Census), which area is treated by the Administrator, in the Administrator's discretion, as a rural transport area within the meaning of paragraph (2), shall be treated by operation of law as satisfying the requirements of this section if it makes the submissions required under subsection (a) of this section (relating to marginal areas).

(2) The Administrator may treat an ozone nonattainment area as a rural transport area if the Administrator finds that sources of VOC (and, where the Administrator determines relevant,

NO_x) emissions within the area do not make a significant contribution to the ozone concentrations measured in the area or in other areas.

(i) Reclassified areas

Each State containing an ozone nonattainment area reclassified under section 7511(b)(2) of this title shall meet such requirements of subsections (b) through (d) of this section as may be applicable to the area as reclassified, according to the schedules prescribed in connection with such requirements, except that the Administrator may adjust any applicable deadlines (other than attainment dates) to the extent such adjustment is necessary or appropriate to assure consistency among the required submissions.

(j) Multi-State ozone nonattainment areas

(1) Coordination among States

Each State in which there is located a portion of a single ozone nonattainment area which covers more than one State (hereinafter in this section referred to as a "multi-State ozone nonattainment area") shall—

(A) take all reasonable steps to coordinate, substantively and procedurally, the revisions and implementation of State implementation plans applicable to the nonattainment area concerned; and

(B) use photochemical grid modeling or any other analytical method determined by the Administrator, in his discretion, to be at least as effective.

The Administrator may not approve any revision of a State implementation plan submitted under this part for a State in which part of a multi-State ozone nonattainment area is located if the plan revision for that State fails to comply with the requirements of this subsection.

(2) Failure to demonstrate attainment

If any State in which there is located a portion of a multi-State ozone nonattainment area fails to provide a demonstration of attainment of the national ambient air quality standard for ozone in that portion within the required period, the State may petition the Administrator to make a finding that the State would have been able to make such demonstration but for the failure of one or more other States in which other portions of the area are located to commit to the implementation of all measures required under this section (relating to plan submissions and requirements for ozone nonattainment areas). If the Administrator makes such finding, the provisions of section 7509 of this title (relating to sanctions) shall not apply, by reason of the failure to make such demonstration, in the portion of the multi-State ozone nonattainment area within the State submitting such petition.

(July 14, 1955, ch. 360, title I, § 182, as added Pub. L. 101-549, title I, § 103, Nov. 15, 1990, 104 Stat. 2426; amended Pub. L. 104-70, § 1, Dec. 23, 1995, 109 Stat. 773.)

REFERENCES IN TEXT

The Natural Gas Policy Act of 1978, referred to in subsec. (e)(3), is Pub. L. 95-621, Nov. 9, 1978, 92 Stat. 3350,

as amended. Title III of the Act is classified generally to subchapter III (§3361 et seq.) of chapter 60 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 3301 of Title 15 and Tables.

AMENDMENTS

1995—Subsec. (d)(1)(B). Pub. L. 104-70 amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "Within 2 years after November 15, 1990, the State shall submit a revision requiring employers in such area to implement programs to reduce work-related vehicle trips and miles traveled by employees. Such revision shall be developed in accordance with guidance issued by the Administrator pursuant to section 7408(f) of this title and shall, at a minimum, require that each employer of 100 or more persons in such area increase average passenger occupancy per vehicle in commuting trips between home and the workplace during peak travel periods by not less than 25 percent above the average vehicle occupancy for all such trips in the area at the time the revision is submitted. The guidance of the Administrator may specify average vehicle occupancy rates which vary for locations within a nonattainment area (suburban, center city, business district) or among nonattainment areas reflecting existing occupancy rates and the availability of high occupancy modes. The revision shall provide that each employer subject to a vehicle occupancy requirement shall submit a compliance plan within 2 years after the date the revision is submitted which shall convincingly demonstrate compliance with the requirements of this paragraph not later than 4 years after such date."

MORATORIUM ON CERTAIN EMISSIONS TESTING REQUIREMENTS

Pub. L. 104-59, title III, § 348, Nov. 28, 1995, 109 Stat. 617, provided that:

"(a) IN GENERAL.—The Administrator of the Environmental Protection Agency (hereinafter in this section referred to as the 'Administrator') shall not require adoption or implementation by a State of a test-only I/M240 enhanced vehicle inspection and maintenance program as a means of compliance with section 182 or 187 of the Clean Air Act (42 U.S.C. 7511a; 7512a), but the Administrator may approve such a program if a State chooses to adopt the program as a means of compliance with such section.

"(b) LIMITATION ON PLAN DISAPPROVAL.—The Administrator shall not disapprove or apply an automatic discount to a State implementation plan revision under section 182 or 187 of the Clean Air Act (42 U.S.C. 7511a; 7512a) on the basis of a policy, regulation, or guidance providing for a discount of emissions credits because the inspection and maintenance program in such plan revision is decentralized or a test-and-repair program.

"(c) EMISSIONS REDUCTION CREDITS.—

"(1) STATE PLAN REVISION; APPROVAL.—Within 120 days of the date of the enactment of this subsection [Nov. 28, 1995], a State may submit an implementation plan revision proposing an interim inspection and maintenance program under section 182 or 187 of the Clean Air Act (42 U.S.C. 7511a; 7512a). The Administrator shall approve the program based on the full amount of credits proposed by the State for each element of the program if the proposed credits reflect good faith estimates by the State and the revision is otherwise in compliance with such Act. If, within such 120-day period, the State submits to the Administrator proposed revisions to the implementation plan, has all of the statutory authority necessary to implement the revisions, and has proposed a regulation to make the revisions, the Administrator may approve the revisions without regard to whether or not such regulation has been issued as a final regulation by the State.

"(2) EXPIRATION OF INTERIM APPROVAL.—The interim approval shall expire on the earlier of (A) the last day of the 18-month period beginning on the date of the

interim approval, or (B) the date of final approval. The interim approval may not be extended.

“(3) FINAL APPROVAL.—The Administrator shall grant final approval of the revision based on the credits proposed by the State during or after the period of interim approval if data collected on the operation of the State program demonstrates that the credits are appropriate and the revision is otherwise in compliance with the Clean Air Act [42 U.S.C. 7401 et seq.].

“(4) BASIS OF APPROVAL; NO AUTOMATIC DISCOUNT.—Any determination with respect to interim or full approval shall be based on the elements of the program and shall not apply any automatic discount because the program is decentralized or a test-and-repair program.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7504, 7506, 7511, 7511c, 7511d, 7512a, 7521 of this title.

§ 7511b. Federal ozone measures

(a) Control techniques guidelines for VOC sources

Within 3 years after November 15, 1990, the Administrator shall issue control techniques guidelines, in accordance with section 7408 of this title, for 11 categories of stationary sources of VOC emissions for which such guidelines have not been issued as of November 15, 1990, not including the categories referred to in paragraphs (3) and (4) of subsection (b) of this section. The Administrator may issue such additional control techniques guidelines as the Administrator deems necessary.

(b) Existing and new CTGS

(1) Within 36 months after November 15, 1990, and periodically thereafter, the Administrator shall review and, if necessary, update control technique guidance issued under section 7408 of this title before November 15, 1990.

(2) In issuing the guidelines the Administrator shall give priority to those categories which the Administrator considers to make the most significant contribution to the formation of ozone air pollution in ozone nonattainment areas, including hazardous waste treatment, storage, and disposal facilities which are permitted under subtitle C of the Solid Waste Disposal Act [42 U.S.C. 6921 et seq.]. Thereafter the Administrator shall periodically review and, if necessary, revise such guidelines.

(3) Within 3 years after November 15, 1990, the Administrator shall issue control techniques guidelines in accordance with section 7408 of this title to reduce the aggregate emissions of volatile organic compounds into the ambient air from aerospace coatings and solvents. Such control techniques guidelines shall, at a minimum, be adequate to reduce aggregate emissions of volatile organic compounds into the ambient air from the application of such coatings and solvents to such level as the Administrator determines may be achieved through the adoption of best available control measures. Such control technology guidance shall provide for such reductions in such increments and on such schedules as the Administrator determines to be reasonable, but in no event later than 10 years after the final issuance of such control technology guidance. In developing control technology guidance under this subsection, the Administrator shall consult with the Secretary of Defense, the

Secretary of Transportation, and the Administrator of the National Aeronautics and Space Administration with regard to the establishment of specifications for such coatings. In evaluating VOC reduction strategies, the guidance shall take into account the applicable requirements of section 7412 of this title and the need to protect stratospheric ozone.

(4) Within 3 years after November 15, 1990, the Administrator shall issue control techniques guidelines in accordance with section 7408 of this title to reduce the aggregate emissions of volatile organic compounds and PM-10 into the ambient air from paints, coatings, and solvents used in shipbuilding operations and ship repair. Such control techniques guidelines shall, at a minimum, be adequate to reduce aggregate emissions of volatile organic compounds and PM-10 into the ambient air from the removal or application of such paints, coatings, and solvents to such level as the Administrator determines may be achieved through the adoption of the best available control measures. Such control techniques guidelines shall provide for such reductions in such increments and on such schedules as the Administrator determines to be reasonable, but in no event later than 10 years after the final issuance of such control technology guidance. In developing control techniques guidelines under this subsection, the Administrator shall consult with the appropriate Federal agencies.

(c) Alternative control techniques

Within 3 years after November 15, 1990, the Administrator shall issue technical documents which identify alternative controls for all categories of stationary sources of volatile organic compounds and oxides of nitrogen which emit, or have the potential to emit 25 tons per year or more of such air pollutant. The Administrator shall revise and update such documents as the Administrator determines necessary.

(d) Guidance for evaluating cost-effectiveness

Within 1 year after November 15, 1990, the Administrator shall provide guidance to the States to be used in evaluating the relative cost-effectiveness of various options for the control of emissions from existing stationary sources of air pollutants which contribute to nonattainment of the national ambient air quality standards for ozone.

(e) Control of emissions from certain sources

(1) Definitions

For purposes of this subsection—

(A) Best available controls

The term “best available controls” means the degree of emissions reduction that the Administrator determines, on the basis of technological and economic feasibility, health, environmental, and energy impacts, is achievable through the application of the most effective equipment, measures, processes, methods, systems or techniques, including chemical reformulation, product or feedstock substitution, repackaging, and directions for use, consumption, storage, or disposal.

(B) Consumer or commercial product

The term “consumer or commercial product” means any substance, product (including paints, coatings, and solvents), or article (including any container or packaging) held by any person, the use, consumption, storage, disposal, destruction, or decomposition of which may result in the release of volatile organic compounds. The term does not include fuels or fuel additives regulated under section 7545 of this title, or motor vehicles, non-road vehicles, and non-road engines as defined under section 7550 of this title.

(C) Regulated entities

The term “regulated entities” means—

(i) manufacturers, processors, wholesale distributors, or importers of consumer or commercial products for sale or distribution in interstate commerce in the United States; or

(ii) manufacturers, processors, wholesale distributors, or importers that supply the entities listed under clause (i) with such products for sale or distribution in interstate commerce in the United States.

(2) Study and report**(A) Study**

The Administrator shall conduct a study of the emissions of volatile organic compounds into the ambient air from consumer and commercial products (or any combination thereof) in order to—

(i) determine their potential to contribute to ozone levels which violate the national ambient air quality standard for ozone; and

(ii) establish criteria for regulating consumer and commercial products or classes or categories thereof which shall be subject to control under this subsection.

The study shall be completed and a report submitted to Congress not later than 3 years after November 15, 1990.

(B) Consideration of certain factors

In establishing the criteria under subparagraph (A)(ii), the Administrator shall take into consideration each of the following:

(i) The uses, benefits, and commercial demand of consumer and commercial products.

(ii) The health or safety functions (if any) served by such consumer and commercial products.

(iii) Those consumer and commercial products which emit highly reactive volatile organic compounds into the ambient air.

(iv) Those consumer and commercial products which are subject to the most cost-effective controls.

(v) The availability of alternatives (if any) to such consumer and commercial products which are of comparable costs, considering health, safety, and environmental impacts.

(3) Regulations to require emission reductions**(A) In general**

Upon submission of the final report under paragraph (2), the Administrator shall list

those categories of consumer or commercial products that the Administrator determines, based on the study, account for at least 80 percent of the VOC emissions, on a reactivity-adjusted basis, from consumer or commercial products in areas that violate the NAAQS for ozone. Credit toward the 80 percent emissions calculation shall be given for emission reductions from consumer or commercial products made after November 15, 1990. At such time, the Administrator shall divide the list into 4 groups establishing priorities for regulation based on the criteria established in paragraph (2). Every 2 years after promulgating such list, the Administrator shall regulate one group of categories until all 4 groups are regulated. The regulations shall require best available controls as defined in this section. Such regulations may exempt health use products for which the Administrator determines there is no suitable substitute. In order to carry out this section, the Administrator may, by regulation, control or prohibit any activity, including the manufacture or introduction into commerce, offering for sale, or sale of any consumer or commercial product which results in emission of volatile organic compounds into the ambient air.

(B) Regulated entities

Regulations under this subsection may be imposed only with respect to regulated entities.

(C) Use of CTGS

For any consumer or commercial product the Administrator may issue control techniques guidelines under this chapter in lieu of regulations required under subparagraph (A) if the Administrator determines that such guidance will be substantially as effective as regulations in reducing emissions of volatile organic compounds which contribute to ozone levels in areas which violate the national ambient air quality standard for ozone.

(4) Systems of regulation

The regulations under this subsection may include any system or systems of regulation as the Administrator may deem appropriate, including requirements for registration and labeling, self-monitoring and reporting, prohibitions, limitations, or economic incentives (including marketable permits and auctions of emissions rights) concerning the manufacture, processing, distribution, use, consumption, or disposal of the product.

(5) Special fund

Any amounts collected by the Administrator under such regulations shall be deposited in a special fund in the United States Treasury for licensing and other services, which thereafter shall be available until expended, subject to annual appropriation Acts, solely to carry out the activities of the Administrator for which such fees, charges, or collections are established or made.

(6) Enforcement

Any regulation established under this subsection shall be treated, for purposes of en-

forcement of this chapter, as a standard under section 7411 of this title and any violation of such regulation shall be treated as a violation of a requirement of section 7411(e) of this title.

(7) State administration

Each State may develop and submit to the Administrator a procedure under State law for implementing and enforcing regulations promulgated under this subsection. If the Administrator finds the State procedure is adequate, the Administrator shall approve such procedure. Nothing in this paragraph shall prohibit the Administrator from enforcing any applicable regulations under this subsection.

(8) Size, etc.

No regulations regarding the size, shape, or labeling of a product may be promulgated, unless the Administrator determines such regulations to be useful in meeting any national ambient air quality standard.

(9) State consultation

Any State which proposes regulations other than those adopted under this subsection shall consult with the Administrator regarding whether any other State or local subdivision has promulgated or is promulgating regulations on any products covered under this part. The Administrator shall establish a clearinghouse of information, studies, and regulations proposed and promulgated regarding products covered under this subsection and disseminate such information collected as requested by State or local subdivisions.

(f) Tank vessel standards

(1) Schedule for standards

(A) Within 2 years after November 15, 1990, the Administrator, in consultation with the Secretary of the Department in which the Coast Guard is operating, shall promulgate standards applicable to the emission of VOCs and any other air pollutant from loading and unloading of tank vessels (as that term is defined in section 2101 of title 46) which the Administrator finds causes, or contributes to, air pollution that may be reasonably anticipated to endanger public health or welfare. Such standards shall require the application of reasonably available control technology, considering costs, any nonair-quality benefits, environmental impacts, energy requirements and safety factors associated with alternative control techniques. To the extent practicable such standards shall apply to loading and unloading facilities and not to tank vessels.

(B) Any regulation prescribed under this subsection (and any revision thereof) shall take effect after such period as the Administrator finds (after consultation with the Secretary of the department¹ in which the Coast Guard is operating) necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period, except that the effective date shall not be

more than 2 years after promulgation of such regulations.

(2) Regulations on equipment safety

Within 6 months after November 15, 1990, the Secretary of the Department in which the Coast Guard is operating shall issue regulations to ensure the safety of the equipment and operations which are to control emissions from the loading and unloading of tank vessels, under section 3703 of title 46 and section 1225 of title 33. The standards promulgated by the Administrator under paragraph (1) and the regulations issued by a State or political subdivision regarding emissions from the loading and unloading of tank vessels shall be consistent with the regulations regarding safety of the Department in which the Coast Guard is operating.

(3) Agency authority

(A) The Administrator shall ensure compliance with the tank vessel emission standards prescribed under paragraph (1)(A). The Secretary of the Department in which the Coast Guard is operating shall also ensure compliance with the tank vessel standards prescribed under paragraph (1)(A).

(B) The Secretary of the Department in which the Coast Guard is operating shall ensure compliance with the regulations issued under paragraph (2).

(4) State or local standards

After the Administrator promulgates standards under this section, no State or political subdivision thereof may adopt or attempt to enforce any standard respecting emissions from tank vessels subject to regulation under paragraph (1) unless such standard is no less stringent than the standards promulgated under paragraph (1).

(5) Enforcement

Any standard established under paragraph (1)(A) shall be treated, for purposes of enforcement of this chapter, as a standard under section 7411 of this title and any violation of such standard shall be treated as a violation of a requirement of section 7411(e) of this title.

(g) Ozone design value study

The Administrator shall conduct a study of whether the methodology in use by the Environmental Protection Agency as of November 15, 1990, for establishing a design value for ozone provides a reasonable indicator of the ozone air quality of ozone nonattainment areas. The Administrator shall obtain input from States, local subdivisions thereof, and others. The study shall be completed and a report submitted to Congress not later than 3 years after November 15, 1990. The results of the study shall be subject to peer and public review before submitting it to Congress.

(h) Vehicles entering ozone nonattainment areas

(1) Authority regarding ozone inspection and maintenance testing

(A) In general

No noncommercial motor vehicle registered in a foreign country and operated by

¹ So in original. Probably should be capitalized.

a United States citizen or by an alien who is a permanent resident of the United States, or who holds a visa for the purposes of employment or educational study in the United States, may enter a covered ozone nonattainment area from a foreign country bordering the United States and contiguous to the nonattainment area more than twice in a single calendar-month period, if State law has requirements for the inspection and maintenance of such vehicles under the applicable implementation plan in the nonattainment area.

(B) Applicability

Subparagraph (A) shall not apply if the operator presents documentation at the United States border entry point establishing that the vehicle has complied with such inspection and maintenance requirements as are in effect and are applicable to motor vehicles of the same type and model year.

(2) Sanctions for violations

The President may impose and collect from the operator of any motor vehicle who violates, or attempts to violate, paragraph (1) a civil penalty of not more than \$200 for the second violation or attempted violation and \$400 for the third and each subsequent violation or attempted violation.

(3) State election

The prohibition set forth in paragraph (1) shall not apply in any State that elects to be exempt from the prohibition. Such an election shall take effect upon the President's receipt of written notice from the Governor of the State notifying the President of such election.

(4) Alternative approach

The prohibition set forth in paragraph (1) shall not apply in a State, and the President may implement an alternative approach, if—

(A) the Governor of the State submits to the President a written description of an alternative approach to facilitate the compliance, by some or all foreign-registered motor vehicles, with the motor vehicle inspection and maintenance requirements that are—

- (i) related to emissions of air pollutants;
- (ii) in effect under the applicable implementation plan in the covered ozone nonattainment area; and
- (iii) applicable to motor vehicles of the same types and model years as the foreign-registered motor vehicles; and

(B) the President approves the alternative approach as facilitating compliance with the motor vehicle inspection and maintenance requirements referred to in subparagraph (A).

(5) Definition of covered ozone nonattainment area

In this section, the term “covered ozone nonattainment area” means a Serious Area, as classified under section 7511 of this title as of October 27, 1998.

(July 14, 1955, ch. 360, title I, § 183, as added Pub. L. 101-549, title I, § 103, Nov. 15, 1990, 104 Stat.

2443; amended Pub. L. 105-286, § 2, Oct. 27, 1998, 112 Stat. 2773.)

REFERENCES IN TEXT

The Solid Waste Disposal Act, referred to in subsec. (b)(2), is title II of Pub. L. 89-272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94-580, § 2, Oct. 21, 1976, 90 Stat. 2795. Subtitle C of the Act is classified generally to subchapter III (§ 6921 et seq.) of chapter 82 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

AMENDMENTS

1998—Subsec. (h). Pub. L. 105-286 added subsec. (h).

EFFECTIVE DATE OF 1998 AMENDMENT; PUBLICATION OF PROHIBITION

Pub. L. 105-286, § 3, Oct. 27, 1998, 112 Stat. 2774, provided that:

“(a) IN GENERAL.—The amendment made by section 2 [amending this section] takes effect 180 days after the date of the enactment of this Act [Oct. 27, 1998]. Nothing in that amendment shall require action that is inconsistent with the obligations of the United States under any international agreement.

“(b) INFORMATION.—As soon as practicable after the date of the enactment of this Act, the appropriate agency of the United States shall distribute information to publicize the prohibition set forth in the amendment made by section 2.”

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7607 of this title.

§ 7511c. Control of interstate ozone air pollution

(a) Ozone transport regions

A single transport region for ozone (within the meaning of section 7506a(a) of this title), comprised of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and the Consolidated Metropolitan Statistical Area that includes the District of Columbia, is hereby established by operation of law. The provisions of section 7506a(a)(1) and (2) of this title shall apply with respect to the transport region established under this section and any other transport region established for ozone, except to the extent inconsistent with the provisions of this section. The Administrator shall convene the commission required (under section 7506a(b) of this title) as a result of the establishment of such region within 6 months of November 15, 1990.

(b) Plan provisions for States in ozone transport regions

(1) In accordance with section 7410 of this title, not later than 2 years after November 15, 1990 (or 9 months after the subsequent inclusion of a State in a transport region established for ozone), each State included within a transport

region established for ozone shall submit a State implementation plan or revision thereof to the Administrator which requires the following—

(A) that each area in such State that is in an ozone transport region, and that is a metropolitan statistical area or part thereof with a population of 100,000 or more comply with the provisions of section 7511a(c)(2)(A) of this title (pertaining to enhanced vehicle inspection and maintenance programs); and

(B) implementation of reasonably available control technology with respect to all sources of volatile organic compounds in the State covered by a control techniques guideline issued before or after November 15, 1990.

(2) Within 3 years after November 15, 1990, the Administrator shall complete a study identifying control measures capable of achieving emission reductions comparable to those achievable through vehicle refueling controls contained in section 7511a(b)(3) of this title, and such measures or such vehicle refueling controls shall be implemented in accordance with the provisions of this section. Notwithstanding other deadlines in this section, the applicable implementation plan shall be revised to reflect such measures within 1 year of completion of the study. For purposes of this section any stationary source that emits or has the potential to emit at least 50 tons per year of volatile organic compounds shall be considered a major stationary source and subject to the requirements which would be applicable to major stationary sources if the area were classified as a Moderate nonattainment area.

(c) Additional control measures

(1) Recommendations

Upon petition of any State within a transport region established for ozone, and based on a majority vote of the Governors on the Commission¹ (or their designees), the Commission¹ may, after notice and opportunity for public comment, develop recommendations for additional control measures to be applied within all or a part of such transport region if the commission determines such measures are necessary to bring any area in such region into attainment by the dates provided by this subpart. The commission shall transmit such recommendations to the Administrator.

(2) Notice and review

Whenever the Administrator receives recommendations prepared by a commission pursuant to paragraph (1) (the date of receipt of which shall hereinafter in this section be referred to as the “receipt date”), the Administrator shall—

(A) immediately publish in the Federal Register a notice stating that the recommendations are available and provide an opportunity for public hearing within 90 days beginning on the receipt date; and

(B) commence a review of the recommendations to determine whether the control measures in the recommendations are necessary to bring any area in such region into attainment by the dates provided by

this subpart and are otherwise consistent with this chapter.

(3) Consultation

In undertaking the review required under paragraph (2)(B), the Administrator shall consult with members of the commission of the affected States and shall take into account the data, views, and comments received pursuant to paragraph (2)(A).

(4) Approval and disapproval

Within 9 months after the receipt date, the Administrator shall (A) determine whether to approve, disapprove, or partially disapprove and partially approve the recommendations; (B) notify the commission in writing of such approval, disapproval, or partial disapproval; and (C) publish such determination in the Federal Register. If the Administrator disapproves or partially disapproves the recommendations, the Administrator shall specify—

(i) why any disapproved additional control measures are not necessary to bring any area in such region into attainment by the dates provided by this subpart or are otherwise not consistent with the² chapter; and

(ii) recommendations concerning equal or more effective actions that could be taken by the commission to conform the disapproved portion of the recommendations to the requirements of this section.

(5) Finding

Upon approval or partial approval of recommendations submitted by a commission, the Administrator shall issue to each State which is included in the transport region and to which a requirement of the approved plan applies, a finding under section 7410(k)(5) of this title that the implementation plan for such State is inadequate to meet the requirements of section 7410(a)(2)(D) of this title. Such finding shall require each such State to revise its implementation plan to include the approved additional control measures within one year after the finding is issued.

(d) Best available air quality monitoring and modeling

For purposes of this section, not later than 6 months after November 15, 1990, the Administrator shall promulgate criteria for purposes of determining the contribution of sources in one area to concentrations of ozone in another area which is a nonattainment area for ozone. Such criteria shall require that the best available air quality monitoring and modeling techniques be used for purposes of making such determinations.

(July 14, 1955, ch. 360, title I, §184, as added Pub. L. 101-549, title I, §103, Nov. 15, 1990, 104 Stat. 2448.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7406, 7410, 7511a of this title.

¹ So in original. Probably should not be capitalized.

² So in original. Probably should be “this”.

§ 7511d. Enforcement for Severe and Extreme ozone nonattainment areas for failure to attain

(a) General rule

Each implementation plan revision required under section 7511a(d) and (e) of this title (relating to the attainment plan for Severe and Extreme ozone nonattainment areas) shall provide that, if the area to which such plan revision applies has failed to attain the national primary ambient air quality standard for ozone by the applicable attainment date, each major stationary source of VOCs located in the area shall, except as otherwise provided under subsection (c) of this section, pay a fee to the State as a penalty for such failure, computed in accordance with subsection (b) of this section, for each calendar year beginning after the attainment date, until the area is redesignated as an attainment area for ozone. Each such plan revision should include procedures for assessment and collection of such fees.

(b) Computation of fee

(1) Fee amount

The fee shall equal \$5,000, adjusted in accordance with paragraph (3), per ton of VOC emitted by the source during the calendar year in excess of 80 percent of the baseline amount, computed under paragraph (2).

(2) Baseline amount

For purposes of this section, the baseline amount shall be computed, in accordance with such guidance as the Administrator may provide, as the lower of the amount of actual VOC emissions (“actuals”) or VOC emissions allowed under the permit applicable to the source (or, if no such permit has been issued for the attainment year, the amount of VOC emissions allowed under the applicable implementation plan (“allowables”)) during the attainment year. Notwithstanding the preceding sentence, the Administrator may issue guidance authorizing the baseline amount to be determined in accordance with the lower of average actuals or average allowables, determined over a period of more than one calendar year. Such guidance may provide that such average calculation for a specific source may be used if that source’s emissions are irregular, cyclical, or otherwise vary significantly from year to year.

(3) Annual adjustment

The fee amount under paragraph (1) shall be adjusted annually, beginning in the year beginning after 1990, in accordance with section 7661a(b)(3)(B)(v) of this title (relating to inflation adjustment).

(c) Exception

Notwithstanding any provision of this section, no source shall be required to pay any fee under subsection (a) of this section with respect to emissions during any year that is treated as an Extension Year under section 7511(a)(5) of this title.

(d) Fee collection by Administrator

If the Administrator has found that the fee provisions of the implementation plan do not

meet the requirements of this section, or if the Administrator makes a finding that the State is not administering and enforcing the fee required under this section, the Administrator shall, in addition to any other action authorized under this subchapter, collect, in accordance with procedures promulgated by the Administrator, the unpaid fees required under subsection (a) of this section. If the Administrator makes such a finding under section 7509(a)(4) of this title, the Administrator may collect fees for periods before the determination, plus interest computed in accordance with section 6621(a)(2) of title 26 (relating to computation of interest on underpayment of Federal taxes), to the extent the Administrator finds such fees have not been paid to the State. The provisions of clauses (ii) through (iii) of section 7661a(b)(3)(C) of this title (relating to penalties and use of the funds, respectively) shall apply with respect to fees collected under this subsection.

(e) Exemptions for certain small areas

For areas with a total population under 200,000 which fail to attain the standard by the applicable attainment date, no sanction under this section or under any other provision of this chapter shall apply if the area can demonstrate, consistent with guidance issued by the Administrator, that attainment in the area is prevented because of ozone or ozone precursors transported from other areas. The prohibition applies only in cases in which the area has met all requirements and implemented all measures applicable to the area under this chapter.

(July 14, 1955, ch. 360, title I, §185, as added Pub. L. 101-549, title I, §103, Nov. 15, 1990, 104 Stat. 2450.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7509a, 7511, 7511a of this title.

§ 7511e. Transitional areas

If an area designated as an ozone nonattainment area as of November 15, 1990, has not violated the national primary ambient air quality standard for ozone for the 36-month period commencing on January 1, 1987, and ending on December 31, 1989, the Administrator shall suspend the application of the requirements of this subpart to such area until December 31, 1991. By June 30, 1992, the Administrator shall determine by order, based on the area’s design value as of the attainment date, whether the area attained such standard by December 31, 1991. If the Administrator determines that the area attained the standard, the Administrator shall require, as part of the order, the State to submit a maintenance plan for the area within 12 months of such determination. If the Administrator determines that the area failed to attain the standard, the Administrator shall, by June 30, 1992, designate the area as nonattainment under section 7407(d)(4) of this title.

(July 14, 1955, ch. 360, title I, §185A, as added Pub. L. 101-549, title I, §103, Nov. 15, 1990, 104 Stat. 2451.)

§ 7511f. NO_x and VOC study

The Administrator, in conjunction with the National Academy of Sciences, shall conduct a

study on the role of ozone precursors in tropospheric ozone formation and control. The study shall examine the roles of NO_x and VOC emission reductions, the extent to which NO_x reductions may contribute (or be counterproductive) to achievement of attainment in different nonattainment areas, the sensitivity of ozone to the control of NO_x, the availability and extent of controls for NO_x, the role of biogenic VOC emissions, and the basic information required for air quality models. The study shall be completed and a proposed report made public for 30 days comment within 1 year of November 15, 1990, and a final report shall be submitted to Congress within 15 months after November 15, 1990. The Administrator shall utilize all available information and studies, as well as develop additional information, in conducting the study required by this section.

(July 14, 1955, ch. 360, title I, §185B, as added Pub. L. 101-549, title I, §103, Nov. 15, 1990, 104 Stat. 2452.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7511a of this title.

SUBPART 3—ADDITIONAL PROVISIONS FOR CARBON MONOXIDE NONATTAINMENT AREAS

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in sections 7418, 7626 of this title; title 23 section 104; title 49 section 5308.

§ 7512. Classification and attainment dates

(a) Classification by operation of law and attainment dates for nonattainment areas

(1) Each area designated nonattainment for carbon monoxide pursuant to section 7407(d) of this title shall be classified at the time of such designation under table 1, by operation of law, as a Moderate Area or a Serious Area based on the design value for the area. The design value shall be calculated according to the interpretation methodology issued by the Administrator most recently before November 15, 1990. For each area classified under this subsection, the primary standard attainment date for carbon monoxide shall be as expeditiously as practicable but not later than the date provided in table 1:

TABLE 3¹

Area classification	Design value	Primary standard attainment date
Moderate	9.1-16.4 ppm	December 31, 1995
Serious	16.5 and above ...	December 31, 2000

(2) At the time of publication of the notice required under section 7407 of this title (designating carbon monoxide nonattainment areas), the Administrator shall publish a notice announcing the classification of each such carbon monoxide nonattainment area. The provisions of section 7502(a)(1)(B) of this title (relating to lack of notice-and-comment and judicial review) shall apply with respect to such classification.

(3) If an area classified under paragraph (1), table 1, would have been classified in another

category if the design value in the area were 5 percent greater or 5 percent less than the level on which such classification was based, the Administrator may, in the Administrator's discretion, within 90 days after November 15, 1990, by the procedure required under paragraph (2), adjust the classification of the area. In making such adjustment, the Administrator may consider the number of exceedances of the national primary ambient air quality standard for carbon monoxide in the area, the level of pollution transport between the area and the other affected areas, and the mix of sources and air pollutants in the area. The Administrator may make the same adjustment for purposes of paragraphs (2), (3), (6), and (7) of section 7512a(a) of this title.

(4) Upon application by any State, the Administrator may extend for 1 additional year (hereinafter in this subpart referred to as the "Extension Year") the date specified in table 1 of subsection (a) of this section if—

(A) the State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan, and

(B) no more than one exceedance of the national ambient air quality standard level for carbon monoxide has occurred in the area in the year preceding the Extension Year.

No more than 2 one-year extensions may be issued under this paragraph for a single nonattainment area.

(b) New designations and reclassifications

(1) New designations to nonattainment

Any area that is designated attainment or unclassifiable for carbon monoxide under section 7407(d)(4) of this title, and that is subsequently redesignated to nonattainment for carbon monoxide under section 7407(d)(3) of this title, shall, at the time of the redesignation, be classified by operation of law in accordance with table 1 under subsections (a)(1) and (a)(4) of this section. Upon its classification, the area shall be subject to the same requirements under section 7410 of this title, subpart 1 of this part, and this subpart that would have applied had the area been so classified at the time of the notice under subsection (a)(2) of this section, except that any absolute, fixed date applicable in connection with any such requirement is extended by operation of law by a period equal to the length of time between November 15, 1990, and the date the area is classified.

(2) Reclassification of Moderate Areas upon failure to attain

(A) General rule

Within 6 months following the applicable attainment date for a carbon monoxide nonattainment area, the Administrator shall determine, based on the area's design value as of the attainment date, whether the area has attained the standard by that date. Any Moderate Area that the Administrator finds has not attained the standard by that date shall be reclassified by operation of law in accordance with table 1 of subsection (a)(1) of this section as a Serious Area.

¹ So in original. Probably should be "TABLE 1".

(B) Publication of notice

The Administrator shall publish a notice in the Federal Register, no later than 6 months following the attainment date, identifying each area that the Administrator has determined, under subparagraph (A), as having failed to attain and identifying the reclassification, if any, described under subparagraph (A).

(c) References to terms

Any reference in this subpart to a "Moderate Area" or a "Serious Area" shall be considered a reference to a Moderate Area or a Serious Area, respectively, as classified under this section.

(July 14, 1955, ch. 360, title I, §186, as added Pub. L. 101-549, title I, §104, Nov. 15, 1990, 104 Stat. 2452.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7509a, 7512a, 7545, 7607 of this title; title 23 section 149.

§ 7512a. Plan submissions and requirements**(a) Moderate Areas**

Each State in which all or part of a Moderate Area is located shall, with respect to the Moderate Area (or portion thereof, to the extent specified in guidance of the Administrator issued before November 15, 1990), submit to the Administrator the State implementation plan revisions (including the plan items) described under this subsection, within such periods as are prescribed under this subsection, except to the extent the State has made such submissions as of November 15, 1990:

(1) Inventory

No later than 2 years from November 15, 1990, the State shall submit a comprehensive, accurate, current inventory of actual emissions from all sources, as described in section 7502(c)(3) of this title, in accordance with guidance provided by the Administrator.

(2)(A) Vehicle miles traveled

No later than 2 years after November 15, 1990, for areas with a design value above 12.7 ppm at the time of classification, the plan revision shall contain a forecast of vehicle miles traveled in the nonattainment area concerned for each year before the year in which the plan projects the national ambient air quality standard for carbon monoxide to be attained in the area. The forecast shall be based on guidance which shall be published by the Administrator, in consultation with the Secretary of Transportation, within 6 months after November 15, 1990. The plan revision shall provide for annual updates of the forecasts to be submitted to the Administrator together with annual reports regarding the extent to which such forecasts proved to be accurate. Such annual reports shall contain estimates of actual vehicle miles traveled in each year for which a forecast was required.

(B) Special rule for Denver

Within 2 years after November 15, 1990, in the case of Denver, the State shall submit a revision that includes the transportation con-

trol measures as required in section 7511a(d)(1)(A) of this title except that such revision shall be for the purpose of reducing CO emissions rather than volatile organic compound emissions. If the State fails to include any such measure, the implementation plan shall contain an explanation of why such measure was not adopted and what emissions reduction measure was adopted to provide a comparable reduction in emissions, or reasons why such reduction is not necessary to attain the national primary ambient air quality standard for carbon monoxide.

(3) Contingency provisions

No later than 2 years after November 15, 1990, for areas with a design value above 12.7 ppm at the time of classification, the plan revision shall provide for the implementation of specific measures to be undertaken if any estimate of vehicle miles traveled in the area which is submitted in an annual report under paragraph (2) exceeds the number predicted in the most recent prior forecast or if the area fails to attain the national primary ambient air quality standard for carbon monoxide by the primary standard attainment date. Such measures shall be included in the plan revision as contingency measures to take effect without further action by the State or the Administrator if the prior forecast has been exceeded by an updated forecast or if the national standard is not attained by such deadline.

(4) Savings clause for vehicle inspection and maintenance provisions of the State implementation plan

Immediately after November 15, 1990, for any Moderate Area (or, within the Administrator's discretion, portion thereof), the plan for which is of the type described in section 7511a(a)(2)(B) of this title any provisions necessary to ensure that the applicable implementation plan includes the vehicle inspection and maintenance program described in section 7511a(a)(2)(B) of this title.

(5) Periodic inventory

No later than September 30, 1995, and no later than the end of each 3 year period thereafter, until the area is redesignated to attainment, a revised inventory meeting the requirements of subsection (a)(1) of this section.

(6) Enhanced vehicle inspection and maintenance

No later than 2 years after November 15, 1990, in the case of Moderate Areas with a design value greater than 12.7 ppm at the time of classification, a revision that includes provisions for an enhanced vehicle inspection and maintenance program as required in section 7511a(c)(3) of this title (concerning serious ozone nonattainment areas), except that such program shall be for the purpose of reducing carbon monoxide rather than hydrocarbon emissions.

(7) Attainment demonstration and specific annual emission reductions

In the case of Moderate Areas with a design value greater than 12.7 ppm at the time of classification, no later than 2 years after No-

vember 15, 1990, a revision to provide, and a demonstration that the plan as revised will provide, for attainment of the carbon monoxide NAAQS by the applicable attainment date and provisions for such specific annual emission reductions as are necessary to attain the standard by that date.

The Administrator may, in the Administrator's discretion, require States to submit a schedule for submitting any of the revisions or other items required under this subsection. In the case of Moderate Areas with a design value of 12.7 ppm or lower at the time of classification, the requirements of this subsection shall apply in lieu of any requirement that the State submit a demonstration that the applicable implementation plan provides for attainment of the carbon monoxide standard by the applicable attainment date.

(b) Serious Areas

(1) In general

Each State in which all or part of a Serious Area is located shall, with respect to the Serious Area, make the submissions (other than those required under subsection (a)(1)(B)¹ of this section) applicable under subsection (a) of this section to Moderate Areas with a design value of 12.7 ppm or greater at the time of classification, and shall also submit the revision and other items described under this subsection.

(2) Vehicle miles traveled

Within 2 years after November 15, 1990, the State shall submit a revision that includes the transportation control measures as required in section 7511a(d)(1) of this title except that such revision shall be for the purpose of reducing CO emissions rather than volatile organic compound emissions. In the case of any such area (other than an area in New York State) which is a covered area (as defined in section 7586(a)(2)(B) of this title) for purposes of the Clean Fuel Fleet program under part C of subchapter II of this chapter, if the State fails to include any such measure, the implementation plan shall contain an explanation of why such measure was not adopted and what emissions reduction measure was adopted to provide a comparable reduction in emissions, or reasons why such reduction is not necessary to attain the national primary ambient air quality standard for carbon monoxide.

(3) Oxygenated gasoline

(A) Within 2 years after November 15, 1990, the State shall submit a revision to require that gasoline sold, supplied, offered for sale or supply, dispensed, transported or introduced into commerce in the larger of—

(i) the Consolidated Metropolitan Statistical Area (as defined by the United States Office of Management and Budget) (CMSA) in which the area is located, or

(ii) if the area is not located in a CMSA, the Metropolitan Statistical Area (as defined by the United States Office of Manage-

ment and Budget) in which the area is located,

be blended, during the portion of the year in which the area is prone to high ambient concentrations of carbon monoxide (as determined by the Administrator), with fuels containing such level of oxygen as is necessary, in combination with other measures, to provide for attainment of the carbon monoxide national ambient air quality standard by the applicable attainment date and maintenance of the national ambient air quality standard thereafter in the area. The revision shall provide that such requirement shall take effect no later than October 1, 1993, and shall include a program for implementation and enforcement of the requirement consistent with guidance to be issued by the Administrator.

(B) Notwithstanding subparagraph (A), the revision described in this paragraph shall not be required for an area if the State demonstrates to the satisfaction of the Administrator that the revision is not necessary to provide for attainment of the carbon monoxide national ambient air quality standard by the applicable attainment date and maintenance of the national ambient air quality standard thereafter in the area.

(c) Areas with significant stationary source emissions of CO

(1) Serious Areas

In the case of Serious Areas in which stationary sources contribute significantly to carbon monoxide levels (as determined under rules issued by the Administrator), the State shall submit a plan revision within 2 years after November 15, 1990, which provides that the term "major stationary source" includes (in addition to the sources described in section 7602 of this title) any stationary source which emits, or has the potential to emit, 50 tons per year or more of carbon monoxide.

(2) Waivers for certain areas

The Administrator may, on a case-by-case basis, waive any requirements that pertain to transportation controls, inspection and maintenance, or oxygenated fuels where the Administrator determines by rule that mobile sources of carbon monoxide do not contribute significantly to carbon monoxide levels in the area.

(3) Guidelines

Within 6 months after November 15, 1990, the Administrator shall issue guidelines for and rules determining whether stationary sources contribute significantly to carbon monoxide levels in an area.

(d) CO milestone

(1) Milestone demonstration

By March 31, 1996, each State in which all or part of a Serious Area is located shall submit to the Administrator a demonstration that the area has achieved a reduction in emissions of CO equivalent to the total of the specific annual emission reductions required by December 31, 1995. Such reductions shall be referred to in this subsection as the milestone.

¹ So in original. Subsec. (a)(1) of this section does not contain a subpar. (B).

(2) Adequacy of demonstration

A demonstration under this paragraph shall be submitted in such form and manner, and shall contain such information and analysis, as the Administrator shall require. The Administrator shall determine whether or not a State's demonstration is adequate within 90 days after the Administrator's receipt of a demonstration which contains the information and analysis required by the Administrator.

(3) Failure to meet emission reduction milestone

If a State fails to submit a demonstration under paragraph (1) within the required period, or if the Administrator notifies the State that the State has not met the milestone, the State shall, within 9 months after such a failure or notification, submit a plan revision to implement an economic incentive and transportation control program as described in section 7511a(g)(4) of this title. Such revision shall be sufficient to achieve the specific annual reductions in carbon monoxide emissions set forth in the plan by the attainment date.

(e) Multi-State CO nonattainment areas**(1) Coordination among States**

Each State in which there is located a portion of a single nonattainment area for carbon monoxide which covers more than one State ("multi-State nonattainment area") shall take all reasonable steps to coordinate, substantively and procedurally, the revisions and implementation of State implementation plans applicable to the nonattainment area concerned. The Administrator may not approve any revision of a State implementation plan submitted under this part for a State in which part of a multi-State nonattainment area is located if the plan revision for that State fails to comply with the requirements of this subsection.

(2) Failure to demonstrate attainment

If any State in which there is located a portion of a multi-State nonattainment area fails to provide a demonstration of attainment of the national ambient air quality standard for carbon monoxide in that portion within the period required under this part the State may petition the Administrator to make a finding that the State would have been able to make such demonstration but for the failure of one or more other States in which other portions of the area are located to commit to the implementation of all measures required under this section (relating to plan submissions for carbon monoxide nonattainment areas). If the Administrator makes such finding, in the portion of the nonattainment area within the State submitting such petition, no sanction shall be imposed under section 7509 of this title or under any other provision of this chapter, by reason of the failure to make such demonstration.

(f) Reclassified areas

Each State containing a carbon monoxide nonattainment area reclassified under section 7512(b)(2) of this title shall meet the requirements of subsection (b) of this section, as may

be applicable to the area as reclassified, according to the schedules prescribed in connection with such requirements, except that the Administrator may adjust any applicable deadlines (other than the attainment date) where such deadlines are shown to be infeasible.

(g) Failure of Serious Area to attain standard

If the Administrator determines under section 7512(b)(2) of this title that the national primary ambient air quality standard for carbon monoxide has not been attained in a Serious Area by the applicable attainment date, the State shall submit a plan revision for the area within 9 months after the date of such determination. The plan revision shall provide that a program of incentives and requirements as described in section 7511a(g)(4) of this title shall be applicable in the area, and such program, in combination with other elements of the revised plan, shall be adequate to reduce the total tonnage of emissions of carbon monoxide in the area by at least 5 percent per year in each year after approval of the plan revision and before attainment of the national primary ambient air quality standard for carbon monoxide.

(July 14, 1955, ch. 360, title I, §187, as added Pub. L. 101-549, title I, §104, Nov. 15, 1990, 104 Stat. 2454.)

MORATORIUM ON CERTAIN EMISSIONS TESTING
REQUIREMENTS

For provisions prohibiting Administrator of Environmental Protection Agency from requiring adoption or implementation by State of test-only I/M240 enhanced vehicle inspection and maintenance program as means of compliance with this section, with further provisions relating to plan disapproval and emissions reduction credits, see section 348 of Pub. L. 104-59, set out as a note under section 7511a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7504, 7506, 7512 of this title.

SUBPART 4—ADDITIONAL PROVISIONS FOR
PARTICULATE MATTER NONATTAINMENT AREAS

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in section 7626 of this title.

§ 7513. Classifications and attainment dates**(a) Initial classifications**

Every area designated nonattainment for PM-10 pursuant to section 7407(d) of this title shall be classified at the time of such designation, by operation of law, as a moderate PM-10 nonattainment area (also referred to in this subpart as a "Moderate Area") at the time of such designation. At the time of publication of the notice under section 7407(d)(4) of this title (relating to area designations) for each PM-10 nonattainment area, the Administrator shall publish a notice announcing the classification of such area. The provisions of section 7502(a)(1)(B) of this title (relating to lack of notice-and-comment and judicial review) shall apply with respect to such classification.

(b) Reclassification as Serious**(1) Reclassification before attainment date**

The Administrator may reclassify as a Serious PM-10 nonattainment area (identified in

this subpart also as a “Serious Area”) any area that the Administrator determines cannot practicably attain the national ambient air quality standard for PM-10 by the attainment date (as prescribed in subsection (c) of this section) for Moderate Areas. The Administrator shall reclassify appropriate areas as Serious by the following dates:

(A) For areas designated nonattainment for PM-10 under section 7407(d)(4) of this title, the Administrator shall propose to reclassify appropriate areas by June 30, 1991, and take final action by December 31, 1991.

(B) For areas subsequently designated nonattainment, the Administrator shall reclassify appropriate areas within 18 months after the required date for the State’s submission of a SIP for the Moderate Area.

(2) Reclassification upon failure to attain

Within 6 months following the applicable attainment date for a PM-10 nonattainment area, the Administrator shall determine whether the area attained the standard by that date. If the Administrator finds that any Moderate Area is not in attainment after the applicable attainment date—

(A) the area shall be reclassified by operation of law as a Serious Area; and

(B) the Administrator shall publish a notice in the Federal Register no later than 6 months following the attainment date, identifying the area as having failed to attain and identifying the reclassification described under subparagraph (A).

(c) Attainment dates

Except as provided under subsection (d) of this section, the attainment dates for PM-10 nonattainment areas shall be as follows:

(1) Moderate Areas

For a Moderate Area, the attainment date shall be as expeditiously as practicable but no later than the end of the sixth calendar year after the area’s designation as nonattainment, except that, for areas designated nonattainment for PM-10 under section 7407(d)(4) of this title, the attainment date shall not extend beyond December 31, 1994.

(2) Serious Areas

For a Serious Area, the attainment date shall be as expeditiously as practicable but no later than the end of the tenth calendar year beginning after the area’s designation as nonattainment, except that, for areas designated nonattainment for PM-10 under section 7407(d)(4) of this title, the date shall not extend beyond December 31, 2001.

(d) Extension of attainment date for Moderate Areas

Upon application by any State, the Administrator may extend for 1 additional year (hereinafter referred to as the “Extension Year”) the date specified in paragraph¹ (c)(1) if—

(1) the State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan; and

(2) no more than one exceedance of the 24-hour national ambient air quality standard level for PM-10 has occurred in the area in the year preceding the Extension Year, and the annual mean concentration of PM-10 in the area for such year is less than or equal to the standard level.

No more than 2 one-year extensions may be issued under the subsection for a single nonattainment area.

(e) Extension of attainment date for Serious Areas

Upon application by any State, the Administrator may extend the attainment date for a Serious Area beyond the date specified under subsection (c) of this section, if attainment by the date established under subsection (c) of this section would be impracticable, the State has complied with all requirements and commitments pertaining to that area in the implementation plan, and the State demonstrates to the satisfaction of the Administrator that the plan for that area includes the most stringent measures that are included in the implementation plan of any State or are achieved in practice in any State, and can feasibly be implemented in the area. At the time of such application, the State must submit a revision to the implementation plan that includes a demonstration of attainment by the most expeditious alternative date practicable. In determining whether to grant an extension, and the appropriate length of time for any such extension, the Administrator may consider the nature and extent of nonattainment, the types and numbers of sources or other emitting activities in the area (including the influence of uncontrollable natural sources and transboundary emissions from foreign countries), the population exposed to concentrations in excess of the standard, the presence and concentration of potentially toxic substances in the mix of particulate emissions in the area, and the technological and economic feasibility of various control measures. The Administrator may not approve an extension until the State submits an attainment demonstration for the area. The Administrator may grant at most one such extension for an area, of no more than 5 years.

(f) Waivers for certain areas

The Administrator may, on a case-by-case basis, waive any requirement applicable to any Serious Area under this subpart where the Administrator determines that anthropogenic sources of PM-10 do not contribute significantly to the violation of the PM-10 standard in the area. The Administrator may also waive a specific date for attainment of the standard where the Administrator determines that non-anthropogenic sources of PM-10 contribute significantly to the violation of the PM-10 standard in the area.

(July 14, 1955, ch. 360, title I, §188, as added Pub. L. 101-549, title I, §105(a), Nov. 15, 1990, 104 Stat. 2458.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7509a, 7513a of this title; title 23 section 149.

¹ So in original. Probably should be “subsection”.

§ 7513a. Plan provisions and schedules for plan submissions

(a) Moderate Areas

(1) Plan provisions

Each State in which all or part of a Moderate Area is located shall submit, according to the applicable schedule under paragraph (2), an implementation plan that includes each of the following:

(A) For the purpose of meeting the requirements of section 7502(c)(5) of this title, a permit program providing that permits meeting the requirements of section 7503 of this title are required for the construction and operation of new and modified major stationary sources of PM-10.

(B) Either (i) a demonstration (including air quality modeling) that the plan will provide for attainment by the applicable attainment date; or (ii) a demonstration that attainment by such date is impracticable.

(C) Provisions to assure that reasonably available control measures for the control of PM-10 shall be implemented no later than December 10, 1993, or 4 years after designation in the case of an area classified as moderate after November 15, 1990.

(2) Schedule for plan submissions

A State shall submit the plan required under subparagraph (1) no later than the following:

(A) Within 1 year of November 15, 1990, for areas designated nonattainment under section 7407(d)(4) of this title, except that the provision required under subparagraph (1)(A) shall be submitted no later than June 30, 1992.

(B) 18 months after the designation as nonattainment, for those areas designated nonattainment after the designations prescribed under section 7407(d)(4) of this title.

(b) Serious Areas

(1) Plan provisions

In addition to the provisions submitted to meet the requirements of paragraph¹ (a)(1) (relating to Moderate Areas), each State in which all or part of a Serious Area is located shall submit an implementation plan for such area that includes each of the following:

(A) A demonstration (including air quality modeling)—

(i) that the plan provides for attainment of the PM-10 national ambient air quality standard by the applicable attainment date, or

(ii) for any area for which the State is seeking, pursuant to section 7513(e) of this title, an extension of the attainment date beyond the date set forth in section 7513(c) of this title, that attainment by that date would be impracticable, and that the plan provides for attainment by the most expeditious alternative date practicable.

(B) Provisions to assure that the best available control measures for the control of PM-10 shall be implemented no later than 4 years after the date the area is classified (or reclassified) as a Serious Area.

(2) Schedule for plan submissions

A State shall submit the demonstration required for an area under paragraph (1)(A) no later than 4 years after reclassification of the area to Serious, except that for areas reclassified under section 7513(b)(2) of this title, the State shall submit the attainment demonstration within 18 months after reclassification to Serious. A State shall submit the provisions described under paragraph (1)(B) no later than 18 months after reclassification of the area as a Serious Area.

(3) Major sources

For any Serious Area, the terms “major source” and “major stationary source” include any stationary source or group of stationary sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 70 tons per year of PM-10.

(c) Milestones

(1) Plan revisions demonstrating attainment submitted to the Administrator for approval under this subpart shall contain quantitative milestones which are to be achieved every 3 years until the area is redesignated attainment and which demonstrate reasonable further progress, as defined in section 7501(1) of this title, toward attainment by the applicable date.

(2) Not later than 90 days after the date on which a milestone applicable to the area occurs, each State in which all or part of such area is located shall submit to the Administrator a demonstration that all measures in the plan approved under this section have been implemented and that the milestone has been met. A demonstration under this subsection shall be submitted in such form and manner, and shall contain such information and analysis, as the Administrator shall require. The Administrator shall determine whether or not a State's demonstration under this subsection is adequate within 90 days after the Administrator's receipt of a demonstration which contains the information and analysis required by the Administrator.

(3) If a State fails to submit a demonstration under paragraph (2) with respect to a milestone within the required period or if the Administrator determines that the area has not met any applicable milestone, the Administrator shall require the State, within 9 months after such failure or determination to submit a plan revision that assures that the State will achieve the next milestone (or attain the national ambient air quality standard for PM-10, if there is no next milestone) by the applicable date.

(d) Failure to attain

In the case of a Serious PM-10 nonattainment area in which the PM-10 standard is not attained by the applicable attainment date, the State in which such area is located shall, after notice and opportunity for public comment, submit within 12 months after the applicable attainment date, plan revisions which provide for attainment of the PM-10 air quality standard and, from the date of such submission until attainment, for an annual reduction in PM-10 or PM-10 precursor emissions within the area of not less than 5 percent of the amount of such

¹ So in original. Probably should be “subsection”.

emissions as reported in the most recent inventory prepared for such area.

(e) PM-10 precursors

The control requirements applicable under plans in effect under this part for major stationary sources of PM-10 shall also apply to major stationary sources of PM-10 precursors, except where the Administrator determines that such sources do not contribute significantly to PM-10 levels which exceed the standard in the area. The Administrator shall issue guidelines regarding the application of the preceding sentence.

(July 14, 1955, ch. 360, title I, §189, as added Pub. L. 101-549, title I, §105(a), Nov. 15, 1990, 104 Stat. 2460.)

§ 7513b. Issuance of RACM and BACM guidance

The Administrator shall issue, in the same manner and according to the same procedure as guidance is issued under section 7408(c) of this title, technical guidance on reasonably available control measures and best available control measures for urban fugitive dust, and emissions from residential wood combustion (including curtailments and exemptions from such curtailments) and prescribed silvicultural and agricultural burning, no later than 18 months following November 15, 1990. The Administrator shall also examine other categories of sources contributing to nonattainment of the PM-10 standard, and determine whether additional guidance on reasonably available control measures and best available control measures is needed, and issue any such guidance no later than 3 years after November 15, 1990. In issuing guidelines and making determinations under this section, the Administrator (in consultation with the State) shall take into account emission reductions achieved, or expected to be achieved, under subchapter IV-A of this chapter and other provisions of this chapter.

(July 14, 1955, ch. 360, title I, §190, as added Pub. L. 101-549, title I, §105(a), Nov. 15, 1990, 104 Stat. 2462.)

SUBPART 5—ADDITIONAL PROVISIONS FOR AREAS DESIGNATED NONATTAINMENT FOR SULFUR OXIDES, NITROGEN DIOXIDE, OR LEAD

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in section 7410 of this title.

§ 7514. Plan submission deadlines

(a) Submission

Any State containing an area designated or redesignated under section 7407(d) of this title as nonattainment with respect to the national primary ambient air quality standards for sulfur oxides, nitrogen dioxide, or lead subsequent to November 15, 1990, shall submit to the Administrator, within 18 months of the designation, an applicable implementation plan meeting the requirements of this part.

(b) States lacking fully approved State implementation plans

Any State containing an area designated nonattainment with respect to national primary ambient air quality standards for sulfur oxides

or nitrogen dioxide under section 7407(d)(1)(C)(i) of this title, but lacking a fully approved implementation plan complying with the requirements of this chapter (including this part) as in effect immediately before November 15, 1990, shall submit to the Administrator, within 18 months of November 15, 1990, an implementation plan meeting the requirements of subpart 1 (except as otherwise prescribed by section 7514a of this title).

(July 14, 1955, ch. 360, title I, §191, as added Pub. L. 101-549, title I, §106, Nov. 15, 1990, 104 Stat. 2463.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7514a of this title.

§ 7514a. Attainment dates

(a) Plans under section 7514(a)

Implementation plans required under section 7514(a) of this title shall provide for attainment of the relevant primary standard as expeditiously as practicable but no later than 5 years from the date of the nonattainment designation.

(b) Plans under section 7514(b)

Implementation plans required under section 7514(b) of this title shall provide for attainment of the relevant primary national ambient air quality standard within 5 years after November 15, 1990.

(c) Inadequate plans

Implementation plans for nonattainment areas for sulfur oxides or nitrogen dioxide with plans that were approved by the Administrator before November 15, 1990, but, subsequent to such approval, were found by the Administrator to be substantially inadequate, shall provide for attainment of the relevant primary standard within 5 years from the date of such finding.

(July 14, 1955, ch. 360, title I, §192, as added Pub. L. 101-549, title I, §106, Nov. 15, 1990, 104 Stat. 2463.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7514 of this title.

SUBPART 6—SAVINGS PROVISIONS

§ 7515. General savings clause

Each regulation, standard, rule, notice, order and guidance promulgated or issued by the Administrator under this chapter, as in effect before November 15, 1990, shall remain in effect according to its terms, except to the extent otherwise provided under this chapter, inconsistent with any provision of this chapter, or revised by the Administrator. No control requirement in effect, or required to be adopted by an order, settlement agreement, or plan in effect before November 15, 1990, in any area which is a nonattainment area for any air pollutant may be modified after November 15, 1990, in any manner unless the modification insures equivalent or greater emission reductions of such air pollutant.

(July 14, 1955, ch. 360, title I, §193, as added Pub. L. 101-549, title I, §108(l), Nov. 15, 1990, 104 Stat. 2469.)

SUBCHAPTER II—EMISSION STANDARDS
FOR MOVING SOURCES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 7408, 7411, 7412, 7413, 7414, 7507, 7612, 13257 of this title.

PART A—MOTOR VEHICLE EMISSION AND FUEL
STANDARDS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 7581 of this title.

§ 7521. Emission standards for new motor vehicles or new motor vehicle engines

(a) Authority of Administrator to prescribe by regulation

Except as otherwise provided in subsection (b) of this section—

(1) The Administrator shall by regulation prescribe (and from time to time revise) in accordance with the provisions of this section, standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines, which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare. Such standards shall be applicable to such vehicles and engines for their useful life (as determined under subsection (d) of this section, relating to useful life of vehicles for purposes of certification), whether such vehicles and engines are designed as complete systems or incorporate devices to prevent or control such pollution.

(2) Any regulation prescribed under paragraph (1) of this subsection (and any revision thereof) shall take effect after such period as the Administrator finds necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period.

(3)(A) IN GENERAL.—(i) Unless the standard is changed as provided in subparagraph (B), regulations under paragraph (1) of this subsection applicable to emissions of hydrocarbons, carbon monoxide, oxides of nitrogen, and particulate matter from classes or categories of heavy-duty vehicles or engines manufactured during or after model year 1983 shall contain standards which reflect the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available for the model year to which such standards apply, giving appropriate consideration to cost, energy, and safety factors associated with the application of such technology.

(ii) In establishing classes or categories of vehicles or engines for purposes of regulations under this paragraph, the Administrator may base such classes or categories on gross vehicle weight, horsepower, type of fuel used, or other appropriate factors.

(B) REVISED STANDARDS FOR HEAVY DUTY TRUCKS.—(i) On the basis of information available to the Administrator concerning the effects of air pollutants emitted from heavy-duty vehicles or engines and from other sources of mobile source related pollutants on the public health and welfare, and taking costs into account, the Administrator may promulgate regulations

under paragraph (1) of this subsection revising any standard promulgated under, or before the date of, the enactment of the Clean Air Act Amendments of 1990 (or previously revised under this subparagraph) and applicable to classes or categories of heavy-duty vehicles or engines.

(ii) Effective for the model year 1998 and thereafter, the regulations under paragraph (1) of this subsection applicable to emissions of oxides of nitrogen (NO_x) from gasoline and diesel-fueled heavy duty trucks shall contain standards which provide that such emissions may not exceed 4.0 grams per brake horsepower hour (gbh).

(C) LEAD TIME AND STABILITY.—Any standard promulgated or revised under this paragraph and applicable to classes or categories of heavy-duty vehicles or engines shall apply for a period of no less than 3 model years beginning no earlier than the model year commencing 4 years after such revised standard is promulgated.

(D) REBUILDING PRACTICES.—The Administrator shall study the practice of rebuilding heavy-duty engines and the impact rebuilding has on engine emissions. On the basis of that study and other information available to the Administrator, the Administrator may prescribe requirements to control rebuilding practices, including standards applicable to emissions from any rebuilt heavy-duty engines (whether or not the engine is past its statutory useful life), which in the Administrator's judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare taking costs into account. Any regulation shall take effect after a period the Administrator finds necessary to permit the development and application of the requisite control measures, giving appropriate consideration to the cost of compliance within the period and energy and safety factors.

(E) MOTORCYCLES.—For purposes of this paragraph, motorcycles and motorcycle engines shall be treated in the same manner as heavy-duty vehicles and engines (except as otherwise permitted under section 7525(f)(1)¹ of this title) unless the Administrator promulgates a rule reclassifying motorcycles as light-duty vehicles within the meaning of this section or unless the Administrator promulgates regulations under subsection (a) of this section applying standards applicable to the emission of air pollutants from motorcycles as a separate class or category. In any case in which such standards are promulgated for such emissions from motorcycles as a separate class or category, the Administrator, in promulgating such standards, shall consider the need to achieve equivalency of emission reductions between motorcycles and other motor vehicles to the maximum extent practicable.

(4)(A) Effective with respect to vehicles and engines manufactured after model year 1978, no emission control device, system, or element of design shall be used in a new motor vehicle or new motor vehicle engine for purposes of complying with requirements prescribed under this subchapter if such device, system, or element of design will cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function.

¹ See References in Text note below.

(B) In determining whether an unreasonable risk exists under subparagraph (A), the Administrator shall consider, among other factors, (i) whether and to what extent the use of any device, system, or element of design causes, increases, reduces, or eliminates emissions of any unregulated pollutants; (ii) available methods for reducing or eliminating any risk to public health, welfare, or safety which may be associated with the use of such device, system, or element of design, and (iii) the availability of other devices, systems, or elements of design which may be used to conform to requirements prescribed under this subchapter without causing or contributing to such unreasonable risk. The Administrator shall include in the consideration required by this paragraph all relevant information developed pursuant to section 7548 of this title.

(5)(A) If the Administrator promulgates final regulations which define the degree of control required and the test procedures by which compliance could be determined for gasoline vapor recovery of uncontrolled emissions from the fueling of motor vehicles, the Administrator shall, after consultation with the Secretary of Transportation with respect to motor vehicle safety, prescribe, by regulation, fill pipe standards for new motor vehicles in order to insure effective connection between such fill pipe and any vapor recovery system which the Administrator determines may be required to comply with such vapor recovery regulations. In promulgating such standards the Administrator shall take into consideration limits on fill pipe diameter, minimum design criteria for nozzle retainer lips, limits on the location of the unleaded fuel restrictors, a minimum access zone surrounding a fill pipe, a minimum pipe or nozzle insertion angle, and such other factors as he deems pertinent.

(B) Regulations prescribing standards under subparagraph (A) shall not become effective until the introduction of the model year for which it would be feasible to implement such standards, taking into consideration the restraints of an adequate leadtime for design and production.

(C) Nothing in subparagraph (A) shall (i) prevent the Administrator from specifying different nozzle and fill neck sizes for gasoline with additives and gasoline without additives or (ii) permit the Administrator to require a specific location, configuration, modeling, or styling of the motor vehicle body with respect to the fuel tank fill neck or fill nozzle clearance envelope.

(D) For the purpose of this paragraph, the term "fill pipe" shall include the fuel tank fill pipe, fill neck, fill inlet, and closure.

(6) ONBOARD VAPOR RECOVERY.—Within 1 year after November 15, 1990, the Administrator shall, after consultation with the Secretary of Transportation regarding the safety of vehicle-based ("onboard") systems for the control of vehicle refueling emissions, promulgate standards under this section requiring that new light-duty vehicles manufactured beginning in the fourth model year after the model year in which the standards are promulgated and thereafter shall be equipped with such systems. The standards required under this paragraph shall apply to a

percentage of each manufacturer's fleet of new light-duty vehicles beginning with the fourth model year after the model year in which the standards are promulgated. The percentage shall be as specified in the following table:

IMPLEMENTATION SCHEDULE FOR ONBOARD VAPOR RECOVERY REQUIREMENTS

Model year commencing after standards promulgated	Percentage*
Fourth	40
Fifth	80
After Fifth	100

*Percentages in the table refer to a percentage of the manufacturer's sales volume.

The standards shall require that such systems provide a minimum evaporative emission capture efficiency of 95 percent. The requirements of section 7511a(b)(3) of this title (relating to stage II gasoline vapor recovery) for areas classified under section 7511 of this title as moderate for ozone shall not apply after promulgation of such standards and the Administrator may, by rule, revise or waive the application of the requirements of such section 7511a(b)(3) of this title for areas classified under section 7511 of this title as Serious, Severe, or Extreme for ozone, as appropriate, after such time as the Administrator determines that onboard emissions control systems required under this paragraph are in widespread use throughout the motor vehicle fleet.

(b) Emissions of carbon monoxide, hydrocarbons, and oxides of nitrogen; annual report to Congress; waiver of emission standards; research objectives

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

(B) The regulations under subsection (a) of this section applicable to emissions of oxides of nitrogen from light-duty vehicles and engines manufactured during model years 1977 through 1980 shall contain standards which provide that such emissions from such vehicles and engines may not exceed 2.0 grams per vehicle mile. The regulations under subsection (a) of this section applicable to emissions of oxides of nitrogen from light-duty vehicles and engines manufactured during the model year 1981 and thereafter shall contain standards which provide that such emissions from such vehicles and engines may not exceed 1.0 gram per vehicle mile. The Administrator shall prescribe standards in lieu of those required by the preceding sentence, which provide that emissions of oxides of nitrogen may not exceed 2.0 grams per vehicle mile for any light-duty vehicle manufactured during model years 1981 and 1982 by any manufacturer whose production, by corporate identity, for calendar year 1976 was less than three hundred thousand light-duty motor vehicles worldwide if the Administrator determines that—

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

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

(C) The Administrator may promulgate regulations under subsection (a)(1) of this section revising any standard prescribed or previously revised under this subsection, as needed to protect public health or welfare, taking costs, energy, and safety into account. Any revised standard shall require a reduction of emissions from the standard that was previously applicable. Any such revision under this subchapter may provide for a phase-in of the standard. It is the intent of Congress that the numerical emission standards specified in subsections (a)(3)(B)(ii), (g), (h), and (i) of this section shall not be modified by the Administrator after November 15, 1990, for any model year before the model year 2004.

(2) Emission standards under paragraph (1), and measurement techniques on which such standards are based (if not promulgated prior to November 15, 1990), shall be promulgated by regulation within 180 days after November 15, 1990.

(3) For purposes of this part—

(A)(i) The term “model year” with reference to any specific calendar year means the manufacturer’s annual production period (as determined by the Administrator) which includes January 1 of such calendar year. If the manufacturer has no annual production period, the term “model year” shall mean the calendar year.

(ii) For the purpose of assuring that vehicles and engines manufactured before the beginning of a model year were not manufactured for purposes of circumventing the effective date of a standard required to be prescribed by subsection (b) of this section, the Administrator may prescribe regulations defining “model year” otherwise than as provided in clause (i).

(B) Repealed. Pub. L. 101-549, title II, § 230(1), Nov. 15, 1990, 104 Stat. 2529.

(C) The term “heavy duty vehicle” means a truck, bus, or other vehicle manufactured primarily for use on the public streets, roads, and highways (not including any vehicle operated exclusively on a rail or rails) which has a gross vehicle weight (as determined under regulations promulgated by the Administrator) in excess of six thousand pounds. Such term includes any such vehicle which has special features enabling off-street or off-highway operation and use.

(3)² Upon the petition of any manufacturer, the Administrator, after notice and opportunity for public hearing, may waive the standard required under subparagraph (B) of paragraph (1) to not exceed 1.5 grams of oxides of nitrogen per vehicle mile for any class or category of light-duty vehicles or engines manufactured by such manufacturer during any period of up to four model years beginning after the model year 1980 if the manufacturer demonstrates that such waiver is necessary to permit the use of an innovative power train technology, or innovative emission control device or system, in such class or category of vehicles or engines and that such technology or system was not utilized by more than 1 percent of the light-duty vehicles sold in the United States in the 1975 model year. Such waiver may be granted only if the Administrator determines—

(A) that such waiver would not endanger public health,

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

(C) that the technology or system has a potential for long-term air quality benefit and has the potential to meet or exceed the average fuel economy standard applicable under the Energy Policy and Conservation Act [42 U.S.C. 6201 et seq.] upon the expiration of the waiver.

No waiver under this subparagraph³ granted to any manufacturer shall apply to more than 5 percent of such manufacturer’s production or more than fifty thousand vehicles or engines, whichever is greater.

(c) Feasibility study and investigation by National Academy of Sciences; reports to Administrator and Congress; availability of information

(1) The Administrator shall undertake to enter into appropriate arrangements with the National Academy of Sciences to conduct a comprehensive study and investigation of the technological feasibility of meeting the emissions standards required to be prescribed by the Administrator by subsection (b) of this section.

(2) Of the funds authorized to be appropriated to the Administrator by this chapter, such amounts as are required shall be available to carry out the study and investigation authorized by paragraph (1) of this subsection.

² So in original. Probably should be “(4)”.

³ So in original. Probably should be “paragraph”.

(3) In entering into any arrangement with the National Academy of Sciences for conducting the study and investigation authorized by paragraph (1) of this subsection, the Administrator shall request the National Academy of Sciences to submit semiannual reports on the progress of its study and investigation to the Administrator and the Congress, beginning not later than July 1, 1971, and continuing until such study and investigation is completed.

(4) The Administrator shall furnish to such Academy at its request any information which the Academy deems necessary for the purpose of conducting the investigation and study authorized by paragraph (1) of this subsection. For the purpose of furnishing such information, the Administrator may use any authority he has under this chapter (A) to obtain information from any person, and (B) to require such person to conduct such tests, keep such records, and make such reports respecting research or other activities conducted by such person as may be reasonably necessary to carry out this subsection.

(d) Useful life of vehicles

The Administrator shall prescribe regulations under which the useful life of vehicles and engines shall be determined for purposes of subsection (a)(1) of this section and section 7541 of this title. Such regulations shall provide that except where a different useful life period is specified in this subchapter useful life shall—

(1) in the case of light duty vehicles and light duty vehicle engines and light-duty trucks up to 3,750 lbs. LVW and up to 6,000 lbs. GVWR, be a period of use of five years or fifty thousand miles (or the equivalent), whichever first occurs, except that in the case of any requirement of this section which first becomes applicable after November 15, 1990, where the useful life period is not otherwise specified for such vehicles and engines, the period shall be 10 years or 100,000 miles (or the equivalent), whichever first occurs, with testing for purposes of in-use compliance under section 7541 of this title up to (but not beyond) 7 years or 75,000 miles (or the equivalent), whichever first occurs;

(2) in the case of any other motor vehicle or motor vehicle engine (other than motorcycles or motorcycle engines), be a period of use set forth in paragraph (1) unless the Administrator determines that a period of use of greater duration or mileage is appropriate; and

(3) in the case of any motorcycle or motorcycle engine, be a period of use the Administrator shall determine.

(e) New power sources or propulsion systems

In the event of a new power source or propulsion system for new motor vehicles or new motor vehicle engines is submitted for certification pursuant to section 7525(a) of this title, the Administrator may postpone certification until he has prescribed standards for any air pollutants emitted by such vehicle or engine which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger the public health or welfare but for

which standards have not been prescribed under subsection (a) of this section.

(f)⁴ High altitude regulations

(1) The high altitude regulation in effect with respect to model year 1977 motor vehicles shall not apply to the manufacture, distribution, or sale of 1978 and later model year motor vehicles. Any future regulation affecting the sale or distribution of motor vehicles or engines manufactured before the model year 1984 in high altitude areas of the country shall take effect no earlier than model year 1981.

(2) Any such future regulation applicable to high altitude vehicles or engines shall not require a percentage of reduction in the emissions of such vehicles which is greater than the required percentage of reduction in emissions from motor vehicles as set forth in subsection (b) of this section. This percentage reduction shall be determined by comparing any proposed high altitude emission standards to high altitude emissions from vehicles manufactured during model year 1970. In no event shall regulations applicable to high altitude vehicles manufactured before the model year 1984 establish a numerical standard which is more stringent than that applicable to vehicles certified under non-high altitude conditions.

(3) Section 7607(d) of this title shall apply to any high altitude regulation referred to in paragraph (2) and before promulgating any such regulation, the Administrator shall consider and make a finding with respect to—

(A) the economic impact upon consumers, individual high altitude dealers, and the automobile industry of any such regulation, including the economic impact which was experienced as a result of the regulation imposed during model year 1977 with respect to high altitude certification requirements;

(B) the present and future availability of emission control technology capable of meeting the applicable vehicle and engine emission requirements without reducing model availability; and

(C) the likelihood that the adoption of such a high altitude regulation will result in any significant improvement in air quality in any area to which it shall apply.

(g) Light-duty trucks up to 6,000 lbs. GVWR and light-duty vehicles; standards for model years after 1993

(1) NMHC, CO, and NO_x

Effective with respect to the model year 1994 and thereafter, the regulations under subsection (a) of this section applicable to emissions of nonmethane hydrocarbons (NMHC), carbon monoxide (CO), and oxides of nitrogen (NO_x) from light-duty trucks (LDTs) of up to 6,000 lbs. gross vehicle weight rating (GVWR) and light-duty vehicles (LDVs) shall contain standards which provide that emissions from a percentage of each manufacturer's sales volume of such vehicles and trucks shall comply with the levels specified in table G. The percentage shall be as specified in the implementation schedule below:

⁴ Another subsec. (f) is set out after subsec. (m).

TABLE G—EMISSION STANDARDS FOR NMHC, CO, AND NO_x FROM LIGHT-DUTY TRUCKS OF UP TO 6,000 LBS. GVWR AND LIGHT-DUTY VEHICLES

Vehicle type	Column A			Column B		
	(5 yrs/50,000 mi)			(10 yrs/100,000 mi)		
	NMHC	CO	NO _x	NMHC	CO	NO _x
LDTs (0-3,750 lbs. LVW) and light-duty vehicles	0.25	3.4	0.4*	0.31	4.2	0.6*
LDTs (3,751-5,750 lbs. LVW)	0.32	4.4	0.7**	0.40	5.5	0.97

Standards are expressed in grams per mile (gpm).
 For standards under column A, for purposes of certification under section 7525 of this title, the applicable useful life shall be 5 years or 50,000 miles (or the equivalent), whichever first occurs.
 For standards under column B, for purposes of certification under section 7525 of this title, the applicable useful life shall be 10 years or 100,000 miles (or the equivalent), whichever first occurs.
 *In the case of diesel-fueled LDTs (0-3,750 lvw) and light-duty vehicles, before the model year 2004, in lieu of the 0.4 and 0.6 standards for NO_x, the applicable standards for NO_x shall be 1.0 gpm for a useful life of 5 years or 50,000 miles (or the equivalent), whichever first occurs, and 1.25 gpm for a useful life of 10 years or 100,000 miles (or the equivalent) whichever first occurs.
 **This standard does not apply to diesel-fueled LDTs (3,751-5,750 lbs. LVW).

IMPLEMENTATION SCHEDULE FOR TABLE G STANDARDS

Model year	Percentage*
1994	40
1995	80
after 1995	100

*Percentages in the table refer to a percentage of each manufacturer's sales volume.

(2) PM Standard

Effective with respect to model year 1994 and thereafter in the case of light-duty vehicles, and effective with respect to the model year 1995 and thereafter in the case of light-duty trucks (LDTs) of up to 6,000 lbs. gross vehicle weight rating (GVWR), the regulations under subsection (a) of this section applicable to emissions of particulate matter (PM) from such vehicles and trucks shall contain standards which provide that such emissions from a percentage of each manufacturer's sales volume of such vehicles and trucks shall not exceed the levels specified in the table below. The percentage shall be as specified in the Implementation Schedule below.

PM STANDARD FOR LDTs OF UP TO 6,000 LBS. GVWR

Useful life period	Standard
5/50,000	0.08 gpm
10/100,000	0.10 gpm

The applicable useful life, for purposes of certification under section 7525 of this title and for purposes of in-use compliance under section 7541 of this title, shall be 5 years or 50,000 miles (or the equivalent), whichever first occurs, in the case of the 5/50,000 standard.

TABLE H—EMISSION STANDARDS FOR NMHC AND CO FROM GASOLINE AND DIESEL FUELED LIGHT-DUTY TRUCKS OF MORE THAN 6,000 LBS. GVWR

LDT Test weight	Column A			Column B			
	(5 yrs/50,000 mi)			(11 yrs/120,000 mi)			
	NMHC	CO	NO _x	NMHC	CO	NO _x	PM
3,751-5,750 lbs. TW	0.32	4.4	0.7*	0.46	6.4	0.98	0.10
Over 5,750 lbs. TW	0.39	5.0	1.1*	0.56	7.3	1.53	0.12

Standards are expressed in grams per mile (GPM).
 For standards under column A, for purposes of certification under section 7525 of this title, the applicable useful life shall be 5 years or 50,000 miles (or the equivalent) whichever first occurs.

The applicable useful life, for purposes of certification under section 7525 of this title and for purposes of in-use compliance under section 7541 of this title, shall be 10 years or 100,000 miles (or the equivalent), whichever first occurs in the case of the 10/100,000 standard.

IMPLEMENTATION SCHEDULE FOR PM STANDARDS

Model year	Light-duty vehicles	LDTs
1994	40%*	
1995	80%*	40%*
1996	100%*	80%*
after 1996	100%*	100%*

*Percentages in the table refer to a percentage of each manufacturer's sales volume.

(h) Light-duty trucks of more than 6,000 lbs. GVWR; standards for model years after 1995

Effective with respect to the model year 1996 and thereafter, the regulations under subsection (a) of this section applicable to emissions of nonmethane hydrocarbons (NMHC), carbon monoxide (CO), oxides of nitrogen (NO_x), and particulate matter (PM) from light-duty trucks (LDTs) of more than 6,000 lbs. gross vehicle weight rating (GVWR) shall contain standards which provide that emissions from a specified percentage of each manufacturer's sales volume of such trucks shall comply with the levels specified in table H. The specified percentage shall be 50 percent in model year 1996 and 100 percent thereafter.

For standards under column B, for purposes of certification under section 7525 of this title, the applicable useful life shall be 11 years or 120,000 miles (or the equivalent), whichever first occurs.

*Not applicable to diesel-fueled LDTs.

(i) Phase II study for certain light-duty vehicles and light-duty trucks

(1) The Administrator, with the participation of the Office of Technology Assessment, shall study whether or not further reductions in emissions from light-duty vehicles and light-duty trucks should be required pursuant to this subchapter. The study shall consider whether to establish with respect to model years commencing after January 1, 2003, the standards and useful life period for gasoline and diesel-fueled light-duty vehicles and light-duty trucks with a loaded vehicle weight (LVW) of 3,750 lbs. or less specified in the following table:

TABLE 3—PENDING EMISSION STANDARDS FOR GASOLINE AND DIESEL FUELED LIGHT-DUTY VEHICLES AND LIGHT-DUTY TRUCKS 3,750 LBS. LVW OR LESS

Pollutant	Emission level*
NMHC	0.125 GPM
NO _x	0.2 GPM
CO	1.7 GPM

*Emission levels are expressed in grams per mile (GPM). For vehicles and engines subject to this subsection for purposes of subsection (d) of this section and any reference thereto, the useful life of such vehicles and engines shall be a period of 10 years or 100,000 miles (or the equivalent), whichever first occurs.

Such study shall also consider other standards and useful life periods which are more stringent or less stringent than those set forth in table 3 (but more stringent than those referred to in subsections (g) and (h) of this section).

(2)(A) As part of the study under paragraph (1), the Administrator shall examine the need for further reductions in emissions in order to attain or maintain the national ambient air quality standards, taking into consideration the waiver provisions of section 7543(b) of this title. As part of such study, the Administrator shall also examine—

(i) the availability of technology (including the costs thereof), in the case of light-duty vehicles and light-duty trucks with a loaded vehicle weight (LVW) of 3,750 lbs. or less, for meeting more stringent emission standards than those provided in subsections (g) and (h) of this section for model years commencing not earlier than after January 1, 2003, and not later than model year 2006, including the lead time and safety and energy impacts of meeting more stringent emission standards; and

(ii) the need for, and cost effectiveness of, obtaining further reductions in emissions from such light-duty vehicles and light-duty trucks, taking into consideration alternative means of attaining or maintaining the national primary ambient air quality standards pursuant to State implementation plans and other requirements of this chapter, including their feasibility and cost effectiveness.

(B) The Administrator shall submit a report to Congress no later than June 1, 1997, containing the results of the study under this subsection, including the results of the examination conducted under subparagraph (A). Before submit-

tal of such report the Administrator shall provide a reasonable opportunity for public comment and shall include a summary of such comments in the report to Congress.

(3)(A) Based on the study under paragraph (1) the Administrator shall determine, by rule, within 3 calendar years after the report is submitted to Congress, but not later than December 31, 1999, whether—

(i) there is a need for further reductions in emissions as provided in paragraph (2)(A);

(ii) the technology for meeting more stringent emission standards will be available, as provided in paragraph (2)(A)(i), in the case of light-duty vehicles and light-duty trucks with a loaded vehicle weight (LVW) of 3,750 lbs. or less, for model years commencing not earlier than January 1, 2003, and not later than model year 2006, considering the factors listed in paragraph (2)(A)(i); and

(iii) obtaining further reductions in emissions from such vehicles will be needed and cost effective, taking into consideration alternatives as provided in paragraph (2)(A)(ii).

The rulemaking under this paragraph shall commence within 3 months after submission of the report to Congress under paragraph (2)(B).

(B) If the Administrator determines under subparagraph (A) that—

(i) there is no need for further reductions in emissions as provided in paragraph (2)(A);

(ii) the technology for meeting more stringent emission standards will not be available as provided in paragraph (2)(A)(i), in the case of light-duty vehicles and light-duty trucks with a loaded vehicle weight (LVW) of 3,750 lbs. or less, for model years commencing not earlier than January 1, 2003, and not later than model year 2006, considering the factors listed in paragraph (2)(A)(i); or

(iii) obtaining further reductions in emissions from such vehicles will not be needed or cost effective, taking into consideration alternatives as provided in paragraph (2)(A)(ii),

the Administrator shall not promulgate more stringent standards than those in effect pursuant to subsections (g) and (h) of this section. Nothing in this paragraph shall prohibit the Administrator from exercising the Administrator's authority under subsection (a) of this section to promulgate more stringent standards for light-duty vehicles and light-duty trucks with a loaded vehicle weight (LVW) of 3,750 lbs. or less at any other time thereafter in accordance with subsection (a) of this section.

(C) If the Administrator determines under subparagraph (A) that—

(i) there is a need for further reductions in emissions as provided in paragraph (2)(A);

(ii) the technology for meeting more stringent emission standards will be available, as provided in paragraph (2)(A)(i), in the case of light-duty vehicles and light-duty trucks with a loaded vehicle weight (LVW) of 3,750 lbs. or less, for model years commencing not earlier than January 1, 2003, and not later than model year 2006, considering the factors listed in paragraph (2)(A)(i); and

(iii) obtaining further reductions in emissions from such vehicles will be needed and cost effective, taking into consideration alternatives as provided in paragraph (2)(A)(ii),

the Administrator shall either promulgate the standards (and useful life periods) set forth in Table 3 in paragraph (1) or promulgate alternative standards (and useful life periods) which are more stringent than those referred to in subsections (g) and (h) of this section. Any such standards (or useful life periods) promulgated by the Administrator shall take effect with respect to any such vehicles or engines no earlier than the model year 2003 but not later than model year 2006, as determined by the Administrator in the rule.

(D) Nothing in this paragraph shall be construed by the Administrator or by a court as a presumption that any standards (or useful life period) set forth in Table 3 shall be promulgated in the rulemaking required under this paragraph. The action required of the Administrator in accordance with this paragraph shall be treated as a nondiscretionary duty for purposes of section 7604(a)(2) of this title (relating to citizen suits).

(E) Unless the Administrator determines not to promulgate more stringent standards as provided in subparagraph (B) or to postpone the effective date of standards referred to in Table 3 in paragraph (1) or to establish alternative standards as provided in subparagraph (C), effective with respect to model years commencing after January 1, 2003, the regulations under subsection (a) of this section applicable to emissions of nonmethane hydrocarbons (NMHC), oxides of nitrogen (NO_x), and carbon monoxide (CO) from motor vehicles and motor vehicle engines in the classes specified in Table 3 in paragraph (1) above shall contain standards which provide that emissions may not exceed the pending emission levels specified in Table 3 in paragraph (1).

(j) Cold CO standard

(1) Phase I

Not later than 12 months after November 15, 1990, the Administrator shall promulgate regulations under subsection (a) of this section applicable to emissions of carbon monoxide from 1994 and later model year light-duty vehicles and light-duty trucks when operated at 20 degrees Fahrenheit. The regulations shall contain standards which provide that emissions of carbon monoxide from a manufacturer's vehicles when operated at 20 degrees Fahrenheit may not exceed, in the case of light-duty vehicles, 10.0 grams per mile, and in the case of light-duty trucks, a level comparable in stringency to the standard applicable to light-duty vehicles. The standards shall take effect after model year 1993 according to a phase-in schedule which requires a percentage of each manufacturer's sales volume of light-duty vehicles and light-duty trucks to comply with applicable standards after model year 1993. The percentage shall be as specified in the following table:

PHASE-IN SCHEDULE FOR COLD START STANDARDS

Model Year	Percentage
1994	40
1995	80
1996 and after	100

(2) Phase II

(A) Not later than June 1, 1997, the Administrator shall complete a study assessing the need for further reductions in emissions of carbon monoxide and the maximum reductions in such emissions achievable from model year 2001 and later model year light-duty vehicles and light-duty trucks when operated at 20 degrees Fahrenheit.

(B)(i) If as of June 1, 1997, 6 or more non-attainment areas have a carbon monoxide design value of 9.5 ppm or greater, the regulations under subsection (a)(1) of this section applicable to emissions of carbon monoxide from model year 2002 and later model year light-duty vehicles and light-duty trucks shall contain standards which provide that emissions of carbon monoxide from such vehicles and trucks when operated at 20 degrees Fahrenheit may not exceed 3.4 grams per mile (gpm) in the case of light-duty vehicles and 4.4 grams per mile (gpm) in the case of light-duty trucks up to 6,000 GVWR and a level comparable in stringency in the case of light-duty trucks 6,000 GVWR and above.

(ii) In determining for purposes of this subparagraph whether 6 or more nonattainment areas have a carbon monoxide design value of 9.5 ppm or greater, the Administrator shall exclude the areas of Steubenville, Ohio, and Oshkosh, Wisconsin.

(3) Useful-life for phase I and phase II standards

In the case of the standards referred to in paragraphs (1) and (2), for purposes of certification under section 7525 of this title and in-use compliance under section 7541 of this title, the applicable useful life period shall be 5 years or 50,000 miles, whichever first occurs, except that the Administrator may extend such useful life period (for purposes of section 7525 of this title, or section 7541 of this title, or both) if he determines that it is feasible for vehicles and engines subject to such standards to meet such standards for a longer useful life. If the Administrator extends such useful life period, the Administrator may make an appropriate adjustment of applicable standards for such extended useful life. No such extended useful life shall extend beyond the useful life period provided in regulations under subsection (d) of this section.

(4) Heavy-duty vehicles and engines

The Administrator may also promulgate regulations under subsection (a)(1) of this section applicable to emissions of carbon monoxide from heavy-duty vehicles and engines when operated at cold temperatures.

(k) Control of evaporative emissions

The Administrator shall promulgate (and from time to time revise) regulations applicable to

evaporative emissions of hydrocarbons from all gasoline-fueled motor vehicles—

- (1) during operation; and
- (2) over 2 or more days of nonuse;

under ozone-prone summertime conditions (as determined by regulations of the Administrator). The regulations shall take effect as expeditiously as possible and shall require the greatest degree of emission reduction achievable by means reasonably expected to be available for production during any model year to which the regulations apply, giving appropriate consideration to fuel volatility, and to cost, energy, and safety factors associated with the application of the appropriate technology. The Administrator shall commence a rulemaking under this subsection within 12 months after November 15, 1990. If final regulations are not promulgated under this subsection within 18 months after November 15, 1990, the Administrator shall submit a statement to the Congress containing an explanation of the reasons for the delay and a date certain for promulgation of such final regulations in accordance with this chapter. Such date certain shall not be later than 15 months after the expiration of such 18 month deadline.

(l) Mobile source-related air toxics

(1) Study

Not later than 18 months after November 15, 1990, the Administrator shall complete a study of the need for, and feasibility of, controlling emissions of toxic air pollutants which are unregulated under this chapter and associated with motor vehicles and motor vehicle fuels, and the need for, and feasibility of, controlling such emissions and the means and measures for such controls. The study shall focus on those categories of emissions that pose the greatest risk to human health or about which significant uncertainties remain, including emissions of benzene, formaldehyde, and 1,3 butadiene. The proposed report shall be available for public review and comment and shall include a summary of all comments.

(2) Standards

Within 54 months after November 15, 1990, the Administrator shall, based on the study under paragraph (1), promulgate (and from time to time revise) regulations under subsection (a)(1) of this section or section 7545(c)(1) of this title containing reasonable requirements to control hazardous air pollutants from motor vehicles and motor vehicle fuels. The regulations shall contain standards for such fuels or vehicles, or both, which the Administrator determines reflect the greatest degree of emission reduction achievable through the application of technology which will be available, taking into consideration the standards established under subsection (a) of this section, the availability and costs of the technology, and noise, energy, and safety factors, and lead time. Such regulations shall not be inconsistent with standards under subsection (a) of this section. The regulations shall, at a minimum, apply to emissions of benzene and formaldehyde.

(m) Emissions control diagnostics

(1) Regulations

Within 18 months after November 15, 1990, the Administrator shall promulgate regulations under subsection (a) of this section requiring manufacturers to install on all new light duty vehicles and light duty trucks diagnostics systems capable of—

(A) accurately identifying for the vehicle's useful life as established under this section, emission-related systems deterioration or malfunction, including, at a minimum, the catalytic converter and oxygen sensor, which could cause or result in failure of the vehicles to comply with emission standards established under this section,

(B) alerting the vehicle's owner or operator to the likely need for emission-related components or systems maintenance or repair,

(C) storing and retrieving fault codes specified by the Administrator, and

(D) providing access to stored information in a manner specified by the Administrator.

The Administrator may, in the Administrator's discretion, promulgate regulations requiring manufacturers to install such onboard diagnostic systems on heavy-duty vehicles and engines.

(2) Effective date

The regulations required under paragraph (1) of this subsection shall take effect in model year 1994, except that the Administrator may waive the application of such regulations for model year 1994 or 1995 (or both) with respect to any class or category of motor vehicles if the Administrator determines that it would be infeasible to apply the regulations to that class or category in such model year or years, consistent with corresponding regulations or policies adopted by the California Air Resources Board for such systems.

(3) State inspection

The Administrator shall by regulation require States that have implementation plans containing motor vehicle inspection and maintenance programs to amend their plans within 2 years after promulgation of such regulations to provide for inspection of onboard diagnostics systems (as prescribed by regulations under paragraph (1) of this subsection) and for the maintenance or repair of malfunctions or system deterioration identified by or affecting such diagnostics systems. Such regulations shall not be inconsistent with the provisions for warranties promulgated under section 7541(a) and (b) of this title.

(4) Specific requirements

In promulgating regulations under this subsection, the Administrator shall require—

(A) that any connectors through which the emission control diagnostics system is accessed for inspection, diagnosis, service, or repair shall be standard and uniform on all motor vehicles and motor vehicle engines;

(B) that access to the emission control diagnostics system through such connectors shall be unrestricted and shall not require

any access code or any device which is only available from a vehicle manufacturer; and

(C) that the output of the data from the emission control diagnostics system through such connectors shall be usable without the need for any unique decoding information or device.

(5) Information availability

The Administrator, by regulation, shall require (subject to the provisions of section 7542(c) of this title regarding the protection of methods or processes entitled to protection as trade secrets) manufacturers to provide promptly to any person engaged in the repairing or servicing of motor vehicles or motor vehicle engines, and the Administrator for use by any such persons, with any and all information needed to make use of the emission control diagnostics system prescribed under this subsection and such other information including instructions for making emission related diagnosis and repairs. No such information may be withheld under section 7542(c) of this title if that information is provided (directly or indirectly) by the manufacturer to franchised dealers or other persons engaged in the repair, diagnosing, or servicing of motor vehicles or motor vehicle engines. Such information shall also be available to the Administrator, subject to section 7542(c) of this title, in carrying out the Administrator's responsibilities under this section.

(f) ⁵ Model years after 1990

For model years prior to model year 1994, the regulations under subsection (a) of this section applicable to buses other than those subject to standards under section 7554 of this title shall contain a standard which provides that emissions of particulate matter (PM) from such buses may not exceed the standards set forth in the following table:

PM STANDARD FOR BUSES	
Model year	Standard*
1991	0.25
1992	0.25
1993 and thereafter	0.10

*Standards are expressed in grams per brake horsepower hour (g/bhp/hr).

(July 14, 1955, ch. 360, title II, § 202, as added Pub. L. 89-272, title I, § 101(8), Oct. 20, 1965, 79 Stat. 992; amended Pub. L. 90-148, § 2, Nov. 21, 1967, 81 Stat. 499; Pub. L. 91-604, § 6(a), Dec. 31, 1970, 84 Stat. 1690; Pub. L. 93-319, § 5, June 22, 1974, 88 Stat. 258; Pub. L. 95-95, title II, §§ 201, 202(b), 213(b), 214(a), 215-217, 224(a), (b), (g), title IV, § 401(d), Aug. 7, 1977, 91 Stat. 751-753, 758-761, 765, 767, 769, 791; Pub. L. 95-190, § 14(a)(60)-(65), (b)(5), Nov. 16, 1977, 91 Stat. 1403, 1405; Pub. L. 101-549, title II, §§ 201-207, 227(b), 230(1)-(5), Nov. 15, 1990, 104 Stat. 2472-2481, 2507, 2529.)

REFERENCES IN TEXT

The enactment of the Clean Air Act Amendments of 1990, referred to in subsec. (a)(3)(B), probably means the enactment of Pub. L. 101-549, Nov. 15, 1990, 104 Stat.

⁵ So in original. Probably should be "(n)".

2399, which was approved Nov. 15, 1990. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

Section 7525(f)(1) of this title, referred to in subsec. (a)(3)(E), was redesignated section 7525(f) of this title by Pub. L. 101-549, title II, § 230(8), Nov. 15, 1990, 104 Stat. 2529.

The Energy Policy and Conservation Act, referred to in subsec. (b)(3)(C), is Pub. L. 94-163, Dec. 22, 1975, 89 Stat. 871, as amended, which is classified principally to chapter 77 (§ 6201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

CODIFICATION

Section was formerly classified to section 1857f-1 of this title.

AMENDMENTS

1990—Subsec. (a)(3)(A). Pub. L. 101-549, § 201(1), added subpar. (A) and struck out former subpar. (A) which related to promulgation of regulations applicable to reduction of emissions from heavy-duty vehicles or engines manufactured during and after model year 1979 in the case of carbon monoxide, hydrocarbons, and oxides of nitrogen, and from vehicles manufactured during and after model year 1981 in the case of particulate matter.

Subsec. (a)(3)(B). Pub. L. 101-549, § 201(1), added subpar. (B) and struck out former subpar. (B) which read as follows: "During the period of June 1 through December 31, 1978, in the case of hydrocarbons and carbon monoxide, or during the period of June 1 through December 31, 1980, in the case of oxides of nitrogen, and during each period of June 1 through December 31 of each third year thereafter, the Administrator may, after notice and opportunity for a public hearing promulgate regulations revising any standard prescribed as provided in subparagraph (A)(ii) for any class or category of heavy-duty vehicles or engines. Such standard shall apply only for the period of three model years beginning four model years after the model year in which such revised standard is promulgated. In revising any standard under this subparagraph for any such three model year period, the Administrator shall determine the maximum degree of emission reduction which can be achieved by means reasonably expected to be available for production of such period and shall prescribe a revised emission standard in accordance with such determination. Such revised standard shall require a reduction of emissions from any standard which applies in the previous model year."

Subsec. (a)(3)(C). Pub. L. 101-549, § 201(1), added subpar. (C) and struck out former subpar. (C) which read as follows: "Action revising any standard for any period may be taken by the Administrator under subparagraph (B) only if he finds—

"(i) that compliance with the emission standards otherwise applicable for such model year cannot be achieved by technology, processes, operating methods, or other alternatives reasonably expected to be available for production for such model year without increasing cost or decreasing fuel economy to an excessive and unreasonable degree; and

"(ii) the National Academy of Sciences has not, pursuant to its study and investigation under subsection (c) of this section, issued a report substantially contrary to the findings of the Administrator under clause (i)."

Subsec. (a)(3)(D). Pub. L. 101-549, § 201(1), added subpar. (D) and struck out former subpar. (D) which read as follows: "A report shall be made to the Congress with respect to any standard revised under subparagraph (B) which shall contain—

"(i) a summary of the health effects found, or believed to be associated with, the pollutant covered by such standard,

"(ii) an analysis of the cost-effectiveness of other strategies for attaining and maintaining national ambient air quality standards and carrying out regu-

lations under part C of subchapter I (relating to significant deterioration) in relation to the cost-effectiveness for such purposes of standards which, but for such revision, would apply.

“(iii) a summary of the research and development efforts and progress being made by each manufacturer for purposes of meeting the standards promulgated as provided in subparagraph (A)(ii) or, if applicable, subparagraph (E), and

“(iv) specific findings as to the relative costs of compliance, and relative fuel economy, which may be expected to result from the application for any model year of such revised standard and the application for such model year of the standard, which, but for such revision, would apply.”

Subsec. (a)(3)(E), (F). Pub. L. 101-549, §201, redesignated subpar. (F) as (E), inserted heading, and struck out former subpar. (E) which read as follows:

“(i) The Administrator shall conduct a continuing pollutant-specific study concerning the effects of each air pollutant emitted from heavy-duty vehicles or engines and from other sources of mobile source related pollutants on the public health and welfare. The results of such study shall be published in the Federal Register and reported to the Congress not later than June 1, 1978, in the case of hydrocarbons and carbon monoxide, and June 1, 1980, in the case of oxides of nitrogen, and before June 1 of each third year thereafter.

“(ii) On the basis of such study and such other information as is available to him (including the studies under section 7548 of this title), the Administrator may, after notice and opportunity for a public hearing, promulgate regulations under paragraph (1) of this subsection changing any standard prescribed in subparagraph (A)(ii) (or revised under subparagraph (B) or previously changed under this subparagraph). No such changed standard shall apply for any model year before the model year four years after the model year during which regulations containing such changed standard are promulgated.”

Subsec. (a)(4)(A), (B). Pub. L. 101-549, §227(b), substituted “requirements prescribed under this subchapter” for “standards prescribed under this subsection”.

Subsec. (a)(6). Pub. L. 101-549, §202, amended par. (6) generally. Prior to amendment, par. (6) read as follows: “The Administrator shall determine the feasibility and desirability of requiring new motor vehicles to utilize onboard hydrocarbon control technology which would avoid the necessity of gasoline vapor recovery of uncontrolled emissions emanating from the fueling of motor vehicles. The Administrator shall compare the costs and effectiveness of such technology to that of implementing and maintaining vapor recovery systems (taking into consideration such factors as fuel economy, economic costs of such technology, administrative burdens, and equitable distribution of costs). If the Administrator finds that it is feasible and desirable to employ such technology, he shall, after consultation with the Secretary of Transportation with respect to motor vehicle safety, prescribe, by regulation, standards requiring the use of onboard hydrocarbon technology which shall not become effective until the introduction to the model year for which it would be feasible to implement such standards, taking into consideration compliance costs and the restraints of an adequate lead time for design and production.”

Subsec. (b)(1)(C). Pub. L. 101-549, §203(c), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: “Effective with respect to vehicles and engines manufactured after model year 1978 (or in the case of heavy-duty vehicles or engines, such later model year as the Administrator determines is the earliest feasible model year), the test procedure promulgated under paragraph (2) for measurement of evaporative emissions of hydrocarbons shall require that such emissions be measured from the vehicle or engine as a whole. Regulations to carry out this subparagraph shall be promulgated not later than two hundred and seventy days after August 7, 1977.”

Subsec. (b)(2). Pub. L. 101-549, §203(d), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “Emission standards under paragraph (1), and measurement techniques on which such standards are based (if not promulgated prior to December 31, 1970), shall be prescribed by regulation within 180 days after such date.”

Subsec. (b)(3). Pub. L. 101-549, §230(4), redesignated par. (6) relating to waiver of standards for oxides of nitrogen as par. (3), struck out subpar. (A) designation before “Upon the petition”, redesignated former cls. (i) to (iii) as subpars. (A) to (C), respectively, and struck out former subpar. (B) which authorized the Administrator to waive the standard under subsec. (b)(1)(B) of this section for emissions of oxides of nitrogen from light-duty vehicles and engines beginning in model year 1981 after providing notice and opportunity for a public hearing, and set forth conditions under which a waiver could be granted.

Subsec. (b)(3)(B). Pub. L. 101-549, §230(1), in the par. (3) defining terms for purposes of this part struck out subpar. (B) which defined “light duty vehicles and engines”.

Subsec. (b)(4). Pub. L. 101-549, §230(2), struck out par. (4) which read as follows: “On July 1 of 1971, and of each year thereafter, the Administrator shall report to the Congress with respect to the development of systems necessary to implement the emission standards established pursuant to this section. Such reports shall include information regarding the continuing effects of such air pollutants subject to standards under this section on the public health and welfare, the extent and progress of efforts being made to develop the necessary systems, the costs associated with development and application of such systems, and following such hearings as he may deem advisable, any recommendations for additional congressional action necessary to achieve the purposes of this chapter. In gathering information for the purposes of this paragraph and in connection with any hearing, the provisions of section 7607(a) of this title (relating to subpoenas) shall apply.”

Subsec. (b)(5). Pub. L. 101-549, §230(3), struck out par. (5) which related to waivers for model years 1981 and 1982 of the effective date of the emissions standard required under par. (1)(A) for carbon monoxide applicable to light-duty vehicles and engines manufactured in those model years.

Subsec. (b)(6). Pub. L. 101-549, §230(4), redesignated par. (6) as (3).

Subsec. (b)(7). Pub. L. 101-549, §230(5), struck out par. (7) which read as follows: “The Congress hereby declares and establishes as a research objective, the development of propulsion systems and emission control technology to achieve standards which represent a reduction of at least 90 per centum from the average emissions of oxides of nitrogen actually measured from light duty motor vehicles manufactured in model year 1971 not subject to any Federal or State emission standard for oxides of nitrogen. The Administrator shall, by regulations promulgated within one hundred and eighty days after August 7, 1977, require each manufacturer whose sales represent at least 0.5 per centum of light duty motor vehicle sales in the United States, to build and, on a regular basis, demonstrate the operation of light duty motor vehicles that meet this research objective, in addition to any other applicable standards or requirements for other pollutants under this chapter. Such demonstration vehicles shall be submitted to the Administrator no later than model year 1979 and in each model year thereafter. Such demonstration shall, in accordance with applicable regulations, to the greatest extent possible, (A) be designed to encourage the development of new powerplant and emission control technologies that are fuel efficient, (B) assure that the demonstration vehicles are or could reasonably be expected to be within the productive capability of the manufacturers, and (C) assure the utilization of optimum engine, fuel, and emission control systems.”

Subsec. (d). Pub. L. 101-549, §203(b)(1), substituted "provide that except where a different useful life period is specified in this subchapter" for "provide that".

Subsec. (d)(1). Pub. L. 101-549, §203(b)(2), (3), inserted "and light-duty trucks up to 3,750 lbs. LVW and up to 6,000 lbs. GVWR" after "engines" and substituted for semicolon at end " , except that in the case of any requirement of this section which first becomes applicable after November 15, 1990, where the useful life period is not otherwise specified for such vehicles and engines, the period shall be 10 years or 100,000 miles (or the equivalent), whichever first occurs, with testing for purposes of in-use compliance under section 7541 of this title up to (but not beyond) 7 years or 75,000 miles (or the equivalent), whichever first occurs;"

Subsec. (f). Pub. L. 101-549, §207(b), added (after subsec. (m) at end) subsec. (f) relating to regulations applicable to buses for model years after 1990.

Subsecs. (g) to (i). Pub. L. 101-549, §203(a), added subsecs. (g) to (i).

Subsecs. (j) to (m). Pub. L. 101-549, §§204-207(a), added subsecs. (j) to (m).

1977—Subsec. (a)(1). Pub. L. 95-190, §14(a)(60), restructured subsec. (a) by providing for designation of par. (1) to precede "The Administrator" in place of "Except as".

Pub. L. 95-95, §401(d)(1), substituted "Except as otherwise provided in subsection (b) of this section the Administrator" for "The Administrator", "cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare" for "causes or contributes to, or is likely to cause or contribute to, air pollution which endangers the public health or welfare", and "useful life (as determined under subsection (d) of this section, relating to useful life of vehicles for purposes of certification), whether such vehicles and engines are designed as complete systems or incorporate devices" for "useful life (as determined under subsection (d) of this section) whether such vehicles and engines are designed as complete systems or incorporated devices".

Subsec. (a)(2). Pub. L. 95-95, §214(a), substituted "prescribed under paragraph (1) of this subsection" for "prescribed under this subsection".

Subsec. (a)(3). Pub. L. 95-95, §224(a), added par. (3).

Subsec. (a)(3)(B). Pub. L. 95-190, §14(a)(61), (62), substituted provisions setting forth applicable periods of from June 1 through Dec. 31, 1978, June 1 through Dec. 31, 1980, and during each period of June 1 through Dec. 31 of each third year thereafter, for provisions setting forth applicable periods of from June 1 through Dec. 31, 1979, and during each period of June 1 through Dec. 31 of each third year after 1979, and substituted "from any" for "of from any".

Subsec. (a)(3)(E). Pub. L. 95-190, §14(a)(63), substituted "1978, in the case of hydrocarbons and carbon monoxide, and June 1, 1980, in the case of oxides of nitrogen" for "1979".

Subsec. (a)(4). Pub. L. 95-95, §214(a), added par. (4).

Subsec. (a)(5). Pub. L. 95-95, §215, added par. (5).

Subsec. (a)(6). Pub. L. 95-95, §216, added par. (6).

Subsec. (b)(1)(A). Pub. L. 95-95, §201(a), substituted provisions setting the standards for emissions from light-duty vehicles and engines manufactured during the model years 1977 through 1980 for provisions which had set the standards for emissions from light-duty vehicles and engines manufactured during the model years 1975 and 1976, substituted "model year 1980" for "model year 1977" in provisions requiring a reduction of at least 90 per centum from the emissions allowable under standards for model year 1970, and inserted provisions that, unless waived as provided in par. (5), the standards for vehicles and engines manufactured during or after the model year 1981 represent a reduction of at least 90 per centum from the emissions allowable under standards for model year 1970.

Subsec. (b)(1)(B). Pub. L. 95-190, §14(a)(64), (65), substituted "calendar year 1976" for "model year 1976" and in cl. (i) substituted "other" for "United States".

Pub. L. 95-95, §201(b), substituted provisions setting the standards for emissions from light-duty vehicles

and engines manufactured during the model years 1977 through 1980 for provisions which had set the standards for emissions from light-duty vehicles and engines manufactured during the model years 1975 through 1977, substituted provisions that the standards for model years 1981 and after allow emissions of no more than 1.0 gram per vehicle mile for provisions that the standards for model year 1978 and after require a reduction of at least 90 per centum from the average of emissions actually measured from light-duty vehicles manufactured during model year 1971 which were not subject to any Federal or State emission standards for oxides of nitrogen, and inserted provisions directing the Administrator to prescribe separate standards for model years 1981 and 1982 for manufacturers whose production, by corporate identity, for model year 1976 was less than three hundred thousand light-duty motor vehicles worldwide if the manufacturer's capability to meet emission standards depends upon United States technology and if the manufacturer cannot develop one.

Subsec. (b)(1)(C). Pub. L. 95-95, §217, added subpar. (C).

Subsec. (b)(3)(C). Pub. L. 95-95, §224(b), added subpar. (C).

Subsec. (b)(5). Pub. L. 95-95, §201(c), substituted provisions setting up a procedure under which a manufacturer may apply for a waiver for model years 1981 and 1982 of the effective date of the emission standards for carbon monoxide required by par. (1)(A) for provisions which had set up a procedure under which a manufacturer, after Jan. 1, 1975, could apply for a one-year suspension of the effective date of any emission standard required by par. (1)(A) for model year 1977.

Subsec. (b)(6). Pub. L. 95-95, §201(c), added par. (6).

Subsec. (b)(7). Pub. L. 95-95, §202(b), added par. (7).

Subsec. (d)(2). Pub. L. 95-95, §224(g), as amended by Pub. L. 95-190, §14(b)(5), to correct typographical error in directory language, inserted "(other than motorcycles or motorcycle engines)" after "motor vehicle or motor vehicle engine".

Subsec. (d)(3). Pub. L. 95-95, §224(g), added par. (3).

Subsec. (e). Pub. L. 95-95, §401(d)(2), substituted "which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger" for "which cause or contribute to, or are likely to cause or contribute to, air pollution which endangers".

Subsec. (f). Pub. L. 95-95, §213(b), added subsec. (f).

1974—Subsec. (b)(1)(A). Pub. L. 93-319, §5(a), substituted "model year 1977" for "model year 1975" in provisions requiring a reduction of at least 90 per centum from the emissions allowable under standards for model year 1970 and inserted provisions covering regulations for model years 1975 and 1976.

Subsec. (b)(1)(B). Pub. L. 93-319, §5(b), substituted "model year 1978" for "model year 1976" in provisions requiring a reduction of at least 90 per centum from the average of emissions actually measured from vehicles manufactured during model year 1971 and inserted provisions covering regulations for model years 1975, 1976, and 1977.

Subsec. (b)(5). Pub. L. 93-319, §5(c), (d), substituted in subpar. (A), "At any time after January 1, 1975" for "At any time after January 1, 1972", "with respect to such manufacturer for light-duty vehicles and engines manufactured in model year 1977" for "with respect to such manufacturer", "sixty days" for "60 days", "paragraph (1)(A) of this subsection" for "paragraph (1)(A)", and "vehicles and engines manufactured during model year 1977" for "vehicles and engines manufactured during model year 1975", redesignated subpars. (C) to (E) as (B) to (D), respectively, and struck out former subpar. (B) which had allowed manufacturers, at any time after Jan. 1, 1973, to file with the Administrator an application requesting a 1-year suspension of the effective date of any emission standard required by subsec. (b)(1)(B) with respect to such manufacturer.

1970—Subsec. (a). Pub. L. 91-604 redesignated existing provisions as par. (1), substituted Administrator for Secretary as the issuing authority for standards, inserted references to the useful life of engines, and sub-

stituted the emission of any air pollutant for the emission of any kind of substance as the subject to be regulated, and added par. (2).

Subsec. (b). Pub. L. 91-604 added subsec. (b). Former subsec. (b) redesignated as par. (2) of subsec. (a).

Subsecs. (c) to (e). Pub. L. 91-604 added subsecs. (c) to (e).

1967—Pub. L. 90-148 reenacted section without change.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as a note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

STUDY ON OXIDES OF NITROGEN FROM LIGHT-DUTY VEHICLES

Section 202(a) of Pub. L. 95-95 provided that the Administrator of the Environmental Protection Agency conduct a study of the public health implications of attaining an emission standard on oxides of nitrogen from light-duty vehicles of 0.4 gram per vehicle mile, the cost and technological capability of attaining such standard, and the need for such a standard to protect public health or welfare and that the Administrator submit a report of such study to the Congress, together with recommendations not later than July 1, 1980.

STUDY OF CARBON MONOXIDE INTRUSION INTO SUSTAINED-USE VEHICLES

Section 226 of Pub. L. 95-95 provided that the Administrator, in conjunction with the Secretary of Transportation, study the problem of carbon monoxide intrusion into the passenger area of sustained-use motor vehicles and that within one year the Administrator report to the Congress respecting the results of such study.

CONTINUING COMPREHENSIVE STUDIES AND INVESTIGATIONS BY NATIONAL ACADEMY OF SCIENCES

Section 403(f) of Pub. L. 95-95 provided that: "The Administrator of the Environmental Protection Agency shall undertake to enter into appropriate arrangements with the National Academy of Sciences to conduct continuing comprehensive studies and investigations of the effects on public health and welfare of emissions subject to section 202(a) of the Clean Air Act [subsec. (a) of this section] (including sulfur compounds) and the technological feasibility of meeting emission standards required to be prescribed by the Administrator by section 202(b) of such Act [subsec. (b) of this section]. The Administrator shall report to the Congress within six months of the date of enactment of this section [Aug. 7, 1977] and each year thereafter regarding the status of the contractual arrangements and conditions necessary to implement this paragraph."

[For termination, effective May 15, 2000, of provisions relating to annual report to Congress in section 403(f) of Pub. L. 95-95, set out above, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section

1113 of Title 31, Money and Finance, and the 2nd item on page 165 of House Document No. 103-7.]

STUDY ON EMISSION OF SULFUR-BEARING COMPOUNDS FROM MOTOR VEHICLES AND MOTOR VEHICLE AND AIRCRAFT ENGINES

Section 403(g) of Pub. L. 95-95 provided that the Administrator of the Environmental Protection Agency conduct a study and report to the Congress by the date one year after Aug. 7, 1977, on the emission of sulfur-bearing compounds from motor vehicles and motor vehicle engines and aircraft engines.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7417, 7511a, 7522, 7525, 7541, 7543, 7545, 7547, 7548, 7549, 7550, 7554, 7585, 7607, 7608, 7617 of this title; title 49 section 30113.

§ 7522. Prohibited acts

(a) Enumerated prohibitions

The following acts and the causing thereof are prohibited—

(1) in the case of a manufacturer of new motor vehicles or new motor vehicle engines for distribution in commerce, the sale, or the offering for sale, or the introduction, or delivery for introduction, into commerce, or (in the case of any person, except as provided by regulation of the Administrator), the importation into the United States, of any new motor vehicle or new motor vehicle engine, manufactured after the effective date of regulations under this part which are applicable to such vehicle or engine unless such vehicle or engine is covered by a certificate of conformity issued (and in effect) under regulations prescribed under this part or part C in the case of clean-fuel vehicles (except as provided in subsection (b) of this section);

(2)(A) for any person to fail or refuse to permit access to or copying of records or to fail to make reports or provide information required under section 7542 of this title;

(B) for any person to fail or refuse to permit entry, testing or inspection authorized under section 7525(c) of this title or section 7542 of this title;

(C) for any person to fail or refuse to perform tests, or have tests performed as required under section 7542 of this title;

(D) for any manufacturer to fail to make information available as provided by regulation under section 7521(m)(5) of this title;

(3)(A) for any person to remove or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this subchapter prior to its sale and delivery to the ultimate purchaser, or for any person knowingly to remove or render inoperative any such device or element of design after such sale and delivery to the ultimate purchaser; or

(B) for any person to manufacture or sell, or offer to sell, or install, any part or component intended for use with, or as part of, any motor vehicle or motor vehicle engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this subchapter, and

where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use; or

(4) for any manufacturer of a new motor vehicle or new motor vehicle engine subject to standards prescribed under section 7521 of this title or part C of this subchapter—

(A) to sell or lease any such vehicle or engine unless such manufacturer has complied with (i) the requirements of section 7541(a) and (b) of this title with respect to such vehicle or engine, and unless a label or tag is affixed to such vehicle or engine in accordance with section 7541(c)(3) of this title, or (ii) the corresponding requirements of part C of this subchapter in the case of clean fuel vehicles unless the manufacturer has complied with the corresponding requirements of part C of this subchapter¹

(B) to fail or refuse to comply with the requirements of section 7541(c) or (e) of this title, or the corresponding requirements of part C of this subchapter in the case of clean fuel vehicles¹

(C) except as provided in subsection (c)(3) of section 7541 of this title and the corresponding requirements of part C of this subchapter in the case of clean fuel vehicles, to provide directly or indirectly in any communication to the ultimate purchaser or any subsequent purchaser that the coverage of any warranty under this chapter is conditioned upon use of any part, component, or system manufactured by such manufacturer or any person acting for such manufacturer or under his control, or conditioned upon service performed by any such person, or

(D) to fail or refuse to comply with the terms and conditions of the warranty under section 7541(a) or (b) of this title or the corresponding requirements of part C of this subchapter in the case of clean fuel vehicles with respect to any vehicle; or

(5) for any person to violate section 7553 of this title, 7554 of this title, or part C of this subchapter or any regulations under section 7553 of this title, 7554 of this title, or part C of this subchapter.

No action with respect to any element of design referred to in paragraph (3) (including any adjustment or alteration of such element) shall be treated as a prohibited act under such paragraph (3) if such action is in accordance with section 7549 of this title. Nothing in paragraph (3) shall be construed to require the use of manufacturer parts in maintaining or repairing any motor vehicle or motor vehicle engine. For the purposes of the preceding sentence, the term “manufacturer parts” means, with respect to a motor vehicle engine, parts produced or sold by the manufacturer of the motor vehicle or motor vehicle engine. No action with respect to any device or element of design referred to in paragraph (3) shall be treated as a prohibited act under that paragraph if (i) the action is for the purpose of repair or replacement of the device or element, or is a necessary and temporary procedure to re-

pair or replace any other item and the device or element is replaced upon completion of the procedure, and (ii) such action thereafter results in the proper functioning of the device or element referred to in paragraph (3). No action with respect to any device or element of design referred to in paragraph (3) shall be treated as a prohibited act under that paragraph if the action is for the purpose of a conversion of a motor vehicle for use of a clean alternative fuel (as defined in this subchapter) and if such vehicle complies with the applicable standard under section 7521 of this title when operating on such fuel, and if in the case of a clean alternative fuel vehicle (as defined by rule by the Administrator), the device or element is replaced upon completion of the conversion procedure and such action results in proper functioning of the device or element when the motor vehicle operates on conventional fuel.

(b) Exemptions; refusal to admit vehicle or engine into United States; vehicles or engines intended for export

(1) The Administrator may exempt any new motor vehicle or new motor vehicle engine, from subsection (a) of this section, upon such terms and conditions as he may find necessary for the purpose of research, investigations, studies, demonstrations, or training, or for reasons of national security.

(2) A new motor vehicle or new motor vehicle engine offered for importation or imported by any person in violation of subsection (a) of this section shall be refused admission into the United States, but the Secretary of the Treasury and the Administrator may, by joint regulation, provide for deferring final determination as to admission and authorizing the delivery of such a motor vehicle or engine offered for import to the owner or consignee thereof upon such terms and conditions (including the furnishing of a bond) as may appear to them appropriate to insure that any such motor vehicle or engine will be brought into conformity with the standards, requirements, and limitations applicable to it under this part. The Secretary of the Treasury shall, if a motor vehicle or engine is finally refused admission under this paragraph, cause disposition thereof in accordance with the customs laws unless it is exported, under regulations prescribed by such Secretary, within ninety days of the date of notice of such refusal or such additional time as may be permitted pursuant to such regulations, except that disposition in accordance with the customs laws may not be made in such manner as may result, directly or indirectly, in the sale, to the ultimate consumer, of a new motor vehicle or new motor vehicle engine that fails to comply with applicable standards of the Administrator under this part.

(3) A new motor vehicle or new motor vehicle engine intended solely for export, and so labeled or tagged on the outside of the container and on the vehicle or engine itself, shall be subject to the provisions of subsection (a) of this section, except that if the country which is to receive such vehicle or engine has emission standards which differ from the standards prescribed under section 7521 of this title, then such vehicle or engine shall comply with the standards of such

¹ So in original. Probably should be followed by a comma.

country which is to receive such vehicle or engine.

(July 14, 1955, ch. 360, title II, § 203, as added Pub. L. 89-272, title I, § 101(8), Oct. 20, 1965, 79 Stat. 993; amended Pub. L. 90-148, § 2, Nov. 21, 1967, 81 Stat. 499; Pub. L. 91-604, §§ 7(a), 11(a)(2)(A), 15(c)(2), Dec. 31, 1970, 84 Stat. 1693, 1705, 1713; Pub. L. 95-95, title II, §§ 206, 211(a), 218(a), (d), 219(a), (b), Aug. 7, 1977, 91 Stat. 755, 757, 761, 762; Pub. L. 95-190, § 14(a)(66)-(68), Nov. 16, 1977, 91 Stat. 1403; Pub. L. 101-549, title II, §§ 228(a), (b), (e), 230(6), Nov. 15, 1990, 104 Stat. 2507, 2511, 2529.)

CODIFICATION

Section was formerly classified to section 1857f-2 of this title.

AMENDMENTS

1990—Subsec. (a). Pub. L. 101-549, § 228(b)(2), inserted two sentences at end which set forth conditions under which actions with respect to devices or elements of design, referred to in par. (3), would not be deemed prohibited acts.

Subsec. (a)(1). Pub. L. 101-549, § 228(e)(1), inserted “or part C of this subchapter in the case of clean-fuel vehicles” before “(except”.

Subsec. (a)(2). Pub. L. 101-549, § 228(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “for any person to fail or refuse to permit access to or copying of records or to fail to make reports or provide information, required under section 7542 of this title or for any person to fail or refuse to permit entry, testing, or inspection authorized under section 7525(c) of this title;”.

Subsec. (a)(3). Pub. L. 101-549, § 228(b)(1), amended par. (3) generally. Prior to amendment, par. (3) read as follows:

“(A) for any person to remove or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this subchapter prior to its sale and delivery to the ultimate purchaser, or for any manufacturer or dealer knowingly to remove or render inoperative any such device or element of design after such sale and delivery to the ultimate purchaser; or

“(B) for any person engaged in the business of repairing, servicing, selling, leasing, or trading motor vehicles or motor vehicle engines, or who operates a fleet of motor vehicles, knowingly to remove or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this subchapter following its sale and delivery to the ultimate purchaser; or”.

Subsec. (a)(4). Pub. L. 101-549, § 228(e)(2), inserted “part C of this subchapter” after “section 7521 of this title”.

Subsec. (a)(4)(A). Pub. L. 101-549, § 228(e)(3), inserted cl. (i) designation and added cl. (ii).

Subsec. (a)(4)(B). Pub. L. 101-549, § 228(e)(4), inserted at end “or the corresponding requirements of part C of this subchapter in the case of clean fuel vehicles”.

Subsec. (a)(4)(C). Pub. L. 101-549, § 228(e)(5), inserted “and the corresponding requirements of part C of this subchapter in the case of clean fuel vehicles” after “section 7541 of this title”.

Subsec. (a)(4)(D). Pub. L. 101-549, § 228(e)(6), inserted “or the corresponding requirements of part C of this subchapter in the case of clean fuel vehicles” before “with respect to any vehicle”.

Subsec. (a)(5). Pub. L. 101-549, § 228(e)(7), added par. (5).

Subsec. (c). Pub. L. 101-549, § 230(6), struck out subsec. (c) which related to exemptions to permit modifications of emission control devices or systems.

1977—Subsec. (a). Pub. L. 95-190, § 14(a)(68), in closing text inserted a period after “section 7549 of this title”.

Pub. L. 95-95, §§ 206, 211(a), 218(a), 219(a), (b), inserted “or for any person to fail or refuse to permit entry,

testing, or inspection authorized under section 7525(c) of this title” in par. (2), designated existing provisions of par. (3) as subpar. (A) and added subpar. (B), added subpars. (C) and (D) in par. (4), and, following par. (4), inserted provisions that no action with respect to any element of design referred to in par. (3) (including adjustment or alteration of such element) be treated as a prohibited act under par. (3) if the action is in accordance with section 7549 of this title and that nothing in par. (3) be construed to require the use of manufacturer parts in maintaining or repairing motor vehicles or motor vehicle engines.

Subsec. (a)(3)(B). Pub. L. 95-190, § 14(a)(66), substituted “purchaser;” for “purchaser.”.

Subsec. (a)(4)(C). Pub. L. 95-190, § 14(a)(67), inserted “or” after “such person.”.

Subsec. (b)(3). Pub. L. 95-95, § 218(d), substituted “section 7521 of this title” for “subsection (a) of this section” and “country which is to receive such vehicle or engine” for “country of export”.

1970—Subsec. (a)(1). Pub. L. 91-604, § 7(a)(1), struck out reference to the manufacture of new motor vehicles or new motor vehicle engines for sale, inserted provision for issuance by the Administrator of regulations regarding exceptions in the case of importation of new motor vehicles or new motor vehicle engines, and substituted “importation” into the United States of such units for “importation for sale or resale” into the United States of such units.

Subsec. (a)(2). Pub. L. 91-604, § 7(a)(2), substituted “section 208” for “section 207”, both of which, for purposes of codification, are translated as “section 7542 of this title”.

Subsec. (a)(3). Pub. L. 91-604, §§ 7(a)(3), 11(a)(2)(A), substituted “part” for “subchapter” and inserted provisions prohibiting the knowing removal or inoperation by manufacturers or dealers of devices or elements of design after sale and delivery to the ultimate purchaser.

Subsec. (a)(4). Pub. L. 91-604, § 7(a)(4), added par. (4).

Subsec. (b)(1). Pub. L. 91-604, §§ 7(a)(5), 15(c)(2), struck out reference to the exemption of a class of new motor vehicles or new motor vehicle engines, struck out the protection of the public health and welfare from the enumeration of purposes for which exemptions may be made, and substituted “Administrator” for “Secretary”.

Subsec. (b)(2). Pub. L. 91-604, §§ 7(a)(6), 11(a)(2)(A), 15(c)(2), substituted “Administrator” for “Secretary of Health, Education, and Welfare”, “importation or imported by any person” for “importation by a manufacturer”, and “part” for “subchapter”.

Subsec. (b)(3). Pub. L. 91-604, § 7(a)(7)(A), inserted provision that, if the country of export has emission standards which differ from the standards prescribed under subsec. (a), such vehicle or engine must comply with the standards of such country of export.

Subsec. (c). Pub. L. 91-604, § 7(a)(7)(B), added subsec. (c).

1967—Subsec. (a). Pub. L. 90-148 substituted “conformity with regulations prescribed under this subchapter” for “conformity with regulations prescribed under section 7521 of this title” in par. (1).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as a note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L.

95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7523, 7524, 7549, 7550, 7587 of this title.

§ 7523. Actions to restrain violations

(a) Jurisdiction

The district courts of the United States shall have jurisdiction to restrain violations of section 7522(a) of this title.

(b) Actions brought by or in name of United States; subpoenas

Actions to restrain such violations shall be brought by and in the name of the United States. In any such action, subpoenas for witnesses who are required to attend a district court in any district may run into any other district.

(July 14, 1955, ch. 360, title II, § 204, as added Pub. L. 89-272, title I, § 101(8), Oct. 20, 1965, 79 Stat. 994; amended Pub. L. 90-148, § 2, Nov. 21, 1967, 81 Stat. 500; Pub. L. 91-604, § 7(b), Dec. 31, 1970, 84 Stat. 1694; Pub. L. 95-95, title II, § 218(b), Aug. 7, 1977, 91 Stat. 761.)

CODIFICATION

Section was formerly classified to section 1857f-3 of this title.

AMENDMENTS

1977—Subsec. (a). Pub. L. 95-95 struck out “paragraph (1), (2), (3), or (4)” after “restrain violations of”.

1970—Subsec. (a). Pub. L. 91-604 inserted reference to par. (4) of section 7522(a) of this title.

1967—Pub. L. 90-148 reenacted section without change.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as a note under section 7401 of this title.

PENDING ACTIONS AND PROCEEDINGS

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95-95 [Aug. 7, 1977], not to abate by reason of the taking effect of Pub. L. 95-95, see section 406(a) of Pub. L. 95-95, set out as an Effective Date of 1977 amendment note under section 7401 of this title.

§ 7524. Civil penalties

(a) Violations

Any person who violates sections¹ 7522(a)(1), 7522(a)(4), or 7522(a)(5) of this title or any manufacturer or dealer who violates section 7522(a)(3)(A) of this title shall be subject to a civil penalty of not more than \$25,000. Any person other than a manufacturer or dealer who violates section 7522(a)(3)(A) of this title or any

person who violates section 7522(a)(3)(B) of this title shall be subject to a civil penalty of not more than \$2,500. Any such violation with respect to paragraph (1), (3)(A), or (4) of section 7522(a) of this title shall constitute a separate offense with respect to each motor vehicle or motor vehicle engine. Any such violation with respect to section 7522(a)(3)(B) of this title shall constitute a separate offense with respect to each part or component. Any person who violates section 7522(a)(2) of this title shall be subject to a civil penalty of not more than \$25,000 per day of violation.

(b) Civil actions

The Administrator may commence a civil action to assess and recover any civil penalty under subsection (a) of this section, section 7545(d) of this title, or section 7547(d) of this title. Any action under this subsection may be brought in the district court of the United States for the district in which the violation is alleged to have occurred or in which the defendant resides or has the Administrator's principal place of business, and the court shall have jurisdiction to assess a civil penalty. In determining the amount of any civil penalty to be assessed under this subsection, the court shall take into account the gravity of the violation, the economic benefit or savings (if any) resulting from the violation, the size of the violator's business, the violator's history of compliance with this subchapter, action taken to remedy the violation, the effect of the penalty on the violator's ability to continue in business, and such other matters as justice may require. In any such action, subpoenas for witnesses who are required to attend a district court in any district may run into any other district.

(c) Administrative assessment of certain penalties

(1) Administrative penalty authority

In lieu of commencing a civil action under subsection (b) of this section, the Administrator may assess any civil penalty prescribed in subsection (a) of this section, section 7545(d) of this title, or section 7547(d) of this title, except that the maximum amount of penalty sought against each violator in a penalty assessment proceeding shall not exceed \$200,000, unless the Administrator and the Attorney General jointly determine that a matter involving a larger penalty amount is appropriate for administrative penalty assessment. Any such determination by the Administrator and the Attorney General shall not be subject to judicial review. Assessment of a civil penalty under this subsection shall be by an order made on the record after opportunity for a hearing in accordance with sections 554 and 556 of title 5. The Administrator shall issue reasonable rules for discovery and other procedures for hearings under this paragraph. Before issuing such an order, the Administrator shall give written notice to the person to be assessed an administrative penalty of the Administrator's proposal to issue such order and provide such person an opportunity to request such a hearing on the order, within 30 days of the date the notice is received by such person.

¹ So in original. Probably should be “section”.

The Administrator may compromise, or remit, with or without conditions, any administrative penalty which may be imposed under this section.

(2) Determining amount

In determining the amount of any civil penalty assessed under this subsection, the Administrator shall take into account the gravity of the violation, the economic benefit or savings (if any) resulting from the violation, the size of the violator's business, the violator's history of compliance with this subchapter, action taken to remedy the violation, the effect of the penalty on the violator's ability to continue in business, and such other matters as justice may require.

(3) Effect of Administrator's action

(A) Action by the Administrator under this subsection shall not affect or limit the Administrator's authority to enforce any provision of this chapter; except that any violation,

(i) with respect to which the Administrator has commenced and is diligently prosecuting an action under this subsection, or

(ii) for which the Administrator has issued a final order not subject to further judicial review and the violator has paid a penalty assessment under this subsection,

shall not be the subject of civil penalty action under subsection (b) of this section.

(B) No action by the Administrator under this subsection shall affect any person's obligation to comply with any section of this chapter.

(4) Finality of order

An order issued under this subsection shall become final 30 days after its issuance unless a petition for judicial review is filed under paragraph (5).

(5) Judicial review

Any person against whom a civil penalty is assessed in accordance with this subsection may seek review of the assessment in the United States District Court for the District of Columbia, or for the district in which the violation is alleged to have occurred, in which such person resides, or where such person's principal place of business is located, within the 30-day period beginning on the date a civil penalty order is issued. Such person shall simultaneously send a copy of the filing by certified mail to the Administrator and the Attorney General. The Administrator shall file in the court a certified copy, or certified index, as appropriate, of the record on which the order was issued within 30 days. The court shall not set aside or remand any order issued in accordance with the requirements of this subsection unless there is not substantial evidence in the record, taken as a whole, to support the finding of a violation or unless the Administrator's assessment of the penalty constitutes an abuse of discretion, and the court shall not impose additional civil penalties unless the Administrator's assessment of the penalty constitutes an abuse of discretion. In any proceedings, the United States may seek to recover civil penalties assessed under this section.

(6) Collection

If any person fails to pay an assessment of a civil penalty imposed by the Administrator as provided in this subsection—

(A) after the order making the assessment has become final, or

(B) after a court in an action brought under paragraph (5) has entered a final judgment in favor of the Administrator,

the Administrator shall request the Attorney General to bring a civil action in an appropriate district court to recover the amount assessed (plus interest at rates established pursuant to section 6621(a)(2) of title 26 from the date of the final order or the date of the final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of the penalty shall not be subject to review. Any person who fails to pay on a timely basis the amount of an assessment of a civil penalty as described in the first sentence of this paragraph shall be required to pay, in addition to that amount and interest, the United States' enforcement expenses, including attorneys fees and costs for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. The nonpayment penalty shall be in an amount equal to 10 percent of the aggregate amount of that person's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

(July 14, 1955, ch. 360, title I, §205, as added Pub. L. 89-272, title I, §101(8), Oct. 20, 1965, 79 Stat. 994; amended Pub. L. 90-148, §2, Nov. 21, 1967, 81 Stat. 500; Pub. L. 91-604, §7(c), Dec. 31, 1970, 84 Stat. 1694; Pub. L. 95-95, title II, §219(c), Aug. 7, 1977, 91 Stat. 762; Pub. L. 101-549, title II, §228(c), Nov. 15, 1990, 104 Stat. 2508.)

CODIFICATION

Section was formerly classified to section 1857f-4 of this title.

AMENDMENTS

1990—Pub. L. 101-549 amended section generally. Prior to amendment, section read as follows: "Any person who violates paragraph (1), (2), or (4) of section 7522(a) of this title or any manufacturer, dealer, or other person who violates paragraph (3)(A) of section 7522(a) of this title shall be subject to a civil penalty of not more than \$10,000. Any person who violates paragraph (3)(B) of such section 7522(a) shall be subject to a civil penalty of not more than \$2,500. Any such violation with respect to paragraph (1), (3), or (4) of section 7522(a) of this title shall constitute a separate offense with respect to each motor vehicle or motor vehicle engine."

1977—Pub. L. 95-95 substituted "Any person who violates paragraph (1), (2), or (4) of section 7522(a) of this title, or any manufacturer, dealer, or other person who violates paragraph (3)(A) of section 7522(a) of this title" for "Any person who violates paragraph (1), (2), (3), or (4) of section 7522(a) of this title" in provisions covering the civil penalty of \$10,000, and inserted provisions for a civil penalty of not more than \$2,500 for violations of par. (3)(B) of section 7522(a) of this title.

1970—Pub. L. 91-604 increased the upper limit of the allowable fine from "\$1,000" to "\$10,000".

1967—Pub. L. 90-148 reenacted section without change.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d)

of Pub. L. 95-95, set out as a note under section 7401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7545, 7549, 7607 of this title.

§ 7525. Motor vehicle and motor vehicle engine compliance testing and certification

(a) Testing and issuance of certificate of conformity

(1) The Administrator shall test, or require to be tested in such manner as he deems appropriate, any new motor vehicle or new motor vehicle engine submitted by a manufacturer to determine whether such vehicle or engine conforms with the regulations prescribed under section 7521 of this title. If such vehicle or engine conforms to such regulations, the Administrator shall issue a certificate of conformity upon such terms, and for such period (not in excess of one year), as he may prescribe. In the case of any original equipment manufacturer (as defined by the Administrator in regulations promulgated before November 15, 1990) of vehicles or vehicle engines whose projected sales in the United States for any model year (as determined by the Administrator) will not exceed 300, the Administrator shall not require, for purposes of determining compliance with regulations under section 7521 of this title for the useful life of the vehicle or engine, operation of any vehicle or engine manufactured during such model year for more than 5,000 miles or 160 hours, respectively, unless the Administrator, by regulation, prescribes otherwise. The Administrator shall apply any adjustment factors that the Administrator deems appropriate to assure that each vehicle or engine will comply during its useful life (as determined under section 7521(d) of this title) with the regulations prescribed under section 7521 of this title.

(2) The Administrator shall test any emission control system incorporated in a motor vehicle or motor vehicle engine submitted to him by any person, in order to determine whether such system enables such vehicle or engine to conform to the standards required to be prescribed under section 7521(b) of this title. If the Administrator finds on the basis of such tests that such vehicle or engine conforms to such standards, the Administrator shall issue a verification of compliance with emission standards for such system when incorporated in vehicles of a class of which the tested vehicle is representative. He shall inform manufacturers and the National Academy of Sciences, and make available to the public, the results of such tests. Tests under this paragraph shall be conducted under such terms and conditions (including requirements for preliminary testing by qualified independent laboratories) as the Administrator may prescribe by regulations.

(3)(A) A certificate of conformity may be issued under this section only if the Administrator determines that the manufacturer (or in the case of a vehicle or engine for import, any person) has established to the satisfaction of the Administrator that any emission control device, system, or element of design installed on, or incorporated in, such vehicle or engine conforms

to applicable requirements of section 7521(a)(4) of this title.

(B) The Administrator may conduct such tests and may require the manufacturer (or any such person) to conduct such tests and provide such information as is necessary to carry out subparagraph (A) of this paragraph. Such requirements shall include a requirement for prompt reporting of the emission of any unregulated pollutant from a system, device, or element of design if such pollutant was not emitted, or was emitted in significantly lesser amounts, from the vehicle or engine without use of the system, device, or element of design.

(4)(A) Not later than 12 months after November 15, 1990, the Administrator shall revise the regulations promulgated under this subsection to add test procedures capable of determining whether model year 1994 and later model year light-duty vehicles and light-duty trucks, when properly maintained and used, will pass the inspection methods and procedures established under section 7541(b) of this title for that model year, under conditions reasonably likely to be encountered in the conduct of inspection and maintenance programs, but which those programs cannot reasonably influence or control. The conditions shall include fuel characteristics, ambient temperature, and short (30 minutes or less) waiting periods before tests are conducted. The Administrator shall not grant a certificate of conformity under this subsection for any 1994 or later model year vehicle or engine that the Administrator concludes cannot pass the test procedures established under this paragraph.

(B) From time to time, the Administrator may revise the regulations promulgated under subparagraph (A), as the Administrator deems appropriate.

(b) Testing procedures; hearing; judicial review; additional evidence

(1) In order to determine whether new motor vehicles or new motor vehicle engines being manufactured by a manufacturer do in fact conform with the regulations with respect to which the certificate of conformity was issued, the Administrator is authorized to test such vehicles or engines. Such tests may be conducted by the Administrator directly or, in accordance with conditions specified by the Administrator, by the manufacturer.

(2)(A)(i) If, based on tests conducted under paragraph (1) on a sample of new vehicles or engines covered by a certificate of conformity, the Administrator determines that all or part of the vehicles or engines so covered do not conform with the regulations with respect to which the certificate of conformity was issued and with the requirements of section 7521(a)(4) of this title, he may suspend or revoke such certificate in whole or in part, and shall so notify the manufacturer. Such suspension or revocation shall apply in the case of any new motor vehicles or new motor vehicle engines manufactured after the date of such notification (or manufactured before such date if still in the hands of the manufacturer), and shall apply until such time as the Administrator finds that vehicles and engines manufactured by the manufacturer do con-

form to such regulations and requirements. If, during any period of suspension or revocation, the Administrator finds that a vehicle or engine actually conforms to such regulations and requirements, he shall issue a certificate of conformity applicable to such vehicle or engine.

(ii) If, based on tests conducted under paragraph (1) on any new vehicle or engine, the Administrator determines that such vehicle or engine does not conform with such regulations and requirements, he may suspend or revoke such certificate insofar as it applies to such vehicle or engine until such time as he finds such vehicle or engine actually so conforms with such regulations and requirements, and he shall so notify the manufacturer.

(B)(i) At the request of any manufacturer the Administrator shall grant such manufacturer a hearing as to whether the tests have been properly conducted or any sampling methods have been properly applied, and make a determination on the record with respect to any suspension or revocation under subparagraph (A); but suspension or revocation under subparagraph (A) shall not be stayed by reason of such hearing.

(ii) In any case of actual controversy as to the validity of any determination under clause (i), the manufacturer may at any time prior to the 60th day after such determination is made file a petition with the United States court of appeals for the circuit wherein such manufacturer resides or has his principal place of business for a judicial review of such determination. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Administrator or other officer designated by him for that purpose. The Administrator thereupon shall file in the court the record of the proceedings on which the Administrator based his determination, as provided in section 2112 of title 28.

(iii) If the petitioner applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Administrator, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Administrator, in such manner and upon such terms and conditions as the court may deem proper. The Administrator may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken and he shall file such modified or new findings, and his recommendation, if any, for the modification or setting aside of his original determination, with the return of such additional evidence.

(iv) Upon the filing of the petition referred to in clause (ii), the court shall have jurisdiction to review the order in accordance with chapter 7 of title 5 and to grant appropriate relief as provided in such chapter.

(c) Inspection

For purposes of enforcement of this section, officers or employees duly designated by the Administrator, upon presenting appropriate credentials to the manufacturer or person in charge, are authorized (1) to enter, at reasonable times, any plant or other establishment of such

manufacturer, for the purpose of conducting tests of vehicles or engines in the hands of the manufacturer, or (2) to inspect, at reasonable times, records, files, papers, processes, controls, and facilities used by such manufacturer in conducting tests under regulations of the Administrator. Each such inspection shall be commenced and completed with reasonable promptness.

(d) Rules and regulations

The Administrator shall by regulation establish methods and procedures for making tests under this section.

(e) Publication of test results

The Administrator shall make available to the public the results of his tests of any motor vehicle or motor vehicle engine submitted by a manufacturer under subsection (a) of this section as promptly as possible after December 31, 1970, and at the beginning of each model year which begins thereafter. Such results shall be described in such nontechnical manner as will reasonably disclose to prospective ultimate purchasers of new motor vehicles and new motor vehicle engines the comparative performance of the vehicles and engines tested in meeting the standards prescribed under section 7521 of this title.

(f) High altitude regulations

All light duty¹ vehicles and engines manufactured during or after model year 1984 and all light-duty trucks manufactured during or after model year 1995 shall comply with the requirements of section 7521 of this title regardless of the altitude at which they are sold.

(g) Nonconformance penalty

(1) In the case of any class or category of heavy-duty vehicles or engines to which a standard promulgated under section 7521(a) of this title applies, except as provided in paragraph (2), a certificate of conformity shall be issued under subsection (a) of this section and shall not be suspended or revoked under subsection (b) of this section for such vehicles or engines manufactured by a manufacturer notwithstanding the failure of such vehicles or engines to meet such standard if such manufacturer pays a nonconformance penalty as provided under regulations promulgated by the Administrator after notice and opportunity for public hearing. In the case of motorcycles to which such a standard applies, such a certificate may be issued notwithstanding such failure if the manufacturer pays such a penalty.

(2) No certificate of conformity may be issued under paragraph (1) with respect to any class or category of vehicle or engine if the degree by which the manufacturer fails to meet any standard promulgated under section 7521(a) of this title with respect to such class or category exceeds the percentage determined under regulations promulgated by the Administrator to be practicable. Such regulations shall require such testing of vehicles or engines being produced as may be necessary to determine the percentage of the classes or categories of vehicles or en-

¹ So in original. Probably should be "light-duty".

gines which are not in compliance with the regulations with respect to which a certificate of conformity was issued and shall be promulgated not later than one year after August 7, 1977.

(3) The regulations promulgated under paragraph (1) shall, not later than one year after August 7, 1977, provide for nonconformance penalties in amounts determined under a formula established by the Administrator. Such penalties under such formula—

(A) may vary from pollutant-to-pollutant;

(B) may vary by class or category or vehicle or engine;

(C) shall take into account the extent to which actual emissions of any air pollutant exceed allowable emissions under the standards promulgated under section 7521 of this title;

(D) shall be increased periodically in order to create incentives for the development of production vehicles or engines which achieve the required degree of emission reduction; and

(E) shall remove any competitive disadvantage to manufacturers whose engines or vehicles achieve the required degree of emission reduction (including any such disadvantage arising from the application of paragraph (4)).

(4) In any case in which a certificate of conformity has been issued under this subsection, any warranty required under section 7541(b)(2) of this title and any action under section 7541(c) of this title shall be required to be effective only for the emission levels which the Administrator determines that such certificate was issued and not for the emission levels required under the applicable standard.

(5) The authorities of section 7542(a) of this title shall apply, subject to the conditions of section 7542(b)² of this title, for purposes of this subsection.

(h) Review and revision of regulations

Within 18 months after November 15, 1990, the Administrator shall review and revise as necessary the regulations under subsection³ (a) and (b) of this section regarding the testing of motor vehicles and motor vehicle engines to insure that vehicles are tested under circumstances which reflect the actual current driving conditions under which motor vehicles are used, including conditions relating to fuel, temperature, acceleration, and altitude.

(July 14, 1955, ch. 360, title II, § 206, as added Pub. L. 91-604, § 8(a), Dec. 31, 1970, 84 Stat. 1694; amended Pub. L. 95-95, title II, §§ 213(a), 214(b), (c), 220, 224(e), Aug. 7, 1977, 91 Stat. 758-760, 762, 768; Pub. L. 95-190, § 14(a)(69), Nov. 16, 1977, 91 Stat. 1403; Pub. L. 101-549, title II, §§ 208, 230(7), (8), Nov. 15, 1990, 104 Stat. 2483, 2529.)

REFERENCES IN TEXT

Section 7542 of this title, referred to in subsec. (g)(5), was amended generally by Pub. L. 101-549, title II, § 211, Nov. 15, 1990, 104 Stat. 2487, and provisions formerly contained in section 7542(b) of this title are contained in section 7542(c).

CODIFICATION

Section was formerly classified to section 1857f-5 of this title.

² See References in Text note below.

³ So in original. Probably should be "subsections".

PRIOR PROVISIONS

A prior section 206 of act July 14, 1955, related to testing of motor vehicles and motor vehicle engines and was classified to section 1857f-5 of this title, prior to repeal by Pub. L. 91-604.

AMENDMENTS

1990—Subsec. (a)(1). Pub. L. 101-549, § 208(b), inserted new third sentence and struck out former third sentence which read as follows: "In the case of any manufacturer of vehicles or vehicle engines whose projected sales in the United States for any model year (as determined by the Administrator) will not exceed three hundred, the regulations prescribed by the Administrator concerning testing by the manufacturer for purposes of determining compliance with regulations under section 7521 of this title for the useful life of the vehicle or engine shall not require operation of any vehicle or engine manufactured during such model year for more than five thousand miles or one hundred and sixty hours, respectively, but the Administrator shall apply such adjustment factors as he deems appropriate to assure that each such vehicle or engine will comply during its useful life (as determined under section 7521(d) of this title) with the regulations prescribed under section 7521 of this title."

Subsec. (a)(4). Pub. L. 101-549, § 208(a), added par. (4).

Subsec. (e). Pub. L. 101-549, § 230(7), struck out "announcement in the Federal Register and" after "The Administrator shall".

Subsec. (f). Pub. L. 101-549, § 230(8), struck out par. (1) designation before "All light duty vehicles", inserted reference to all light-duty trucks manufactured during or after model year 1995, and struck out par. (2) which required the Administrator to report to Congress by Oct. 1, 1978, on the economic impact and technological feasibility of the requirements of former par. (1).

Subsec. (h). Pub. L. 101-549, § 208(c), added subsec. (h). 1977—Subsec. (a)(1). Pub. L. 95-95, § 220, inserted provisions covering testing by small manufacturers.

Subsec. (a)(3). Pub. L. 95-95, § 214(b), added par. (3).

Subsec. (b)(2)(A)(i). Pub. L. 95-95, § 214(c)(1), (2), substituted "certificate of conformity was issued and with the requirements of section 7521(a)(4) of this title, he may suspend" for "certificate of conformity was issued, he may suspend" and "such regulations and requirements" for "such regulations".

Subsec. (b)(2)(A)(ii). Pub. L. 95-95, § 214(c)(2), substituted "such regulations and requirements" for "such regulations".

Subsec. (f). Pub. L. 95-95, § 213(a), added subsec. (f).

Subsec. (g). Pub. L. 95-95, § 224(e), added subsec. (g).

Subsec. (g)(3)(D). Pub. L. 95-190 inserted "shall" before "be".

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as a note under section 7401 of this title.

EFFECTIVE DATE

Section 8(b) of Pub. L. 91-604 provided that: "The amendments made by this section [enacting this section and section 7541 of this title] shall not apply to vehicles or engines imported into the United States before the sixtieth day after the date of enactment of this Act [Dec. 31, 1970]."

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L.

95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7414, 7521, 7522, 7541, 7545, 7547, 7550, 7552, 7554, 7583, 7587, 7607 of this title; title 15 section 2702; title 26 section 4064; title 49 section 32904.

§ 7541. Compliance by vehicles and engines in actual use

(a) Warranty; certification; payment of replacement costs of parts, devices, or components designed for emission control

(1) Effective with respect to vehicles and engines manufactured in model years beginning more than 60 days after December 31, 1970, the manufacturer of each new motor vehicle and new motor vehicle engine shall warrant to the ultimate purchaser and each subsequent purchaser that such vehicle or engine is (A) designed, built, and equipped so as to conform at the time of sale with applicable regulations under section 7521 of this title, and (B) free from defects in materials and workmanship which cause such vehicle or engine to fail to conform with applicable regulations for its useful life (as determined under section 7521(d) of this title). In the case of vehicles and engines manufactured in the model year 1995 and thereafter such warranty shall require that the vehicle or engine is free from any such defects for the warranty period provided under subsection (i) of this section.

(2) In the case of a motor vehicle part or motor vehicle engine part, the manufacturer or rebuilder of such part may certify that use of such part will not result in a failure of the vehicle or engine to comply with emission standards promulgated under section 7521 of this title. Such certification shall be made only under such regulations as may be promulgated by the Administrator to carry out the purposes of subsection (b) of this section. The Administrator shall promulgate such regulations no later than two years following August 7, 1977.

(3) The cost of any part, device, or component of any light-duty vehicle that is designed for emission control and which in the instructions issued pursuant to subsection (c)(3) of this section is scheduled for replacement during the useful life of the vehicle in order to maintain compliance with regulations under section 7521 of this title, the failure of which shall not interfere with the normal performance of the vehicle, and the expected retail price of which, including installation costs, is greater than 2 percent of the suggested retail price of such vehicle, shall be borne or reimbursed at the time of replacement by the vehicle manufacturer and such replacement shall be provided without cost to the ultimate purchaser, subsequent purchaser, or dealer. The term "designed for emission control" as used in the preceding sentence means a catalytic converter, thermal reactor, or other component installed on or in a vehicle for the sole or primary purpose of reducing vehicle

emissions (not including those vehicle components which were in general use prior to model year 1968 and the primary function of which is not related to emission control).

(b) Testing methods and procedures

If the Administrator determines that (i) there are available testing methods and procedures to ascertain whether, when in actual use throughout its¹ the warranty period (as determined under subsection (i) of this section), each vehicle and engine to which regulations under section 7521 of this title apply complies with the emission standards of such regulations, (ii) such methods and procedures are in accordance with good engineering practices, and (iii) such methods and procedures are reasonably capable of being correlated with tests conducted under section 7525(a)(1) of this title, then—

(1) he shall establish such methods and procedures by regulation, and

(2) at such time as he determines that inspection facilities or equipment are available for purposes of carrying out testing methods and procedures established under paragraph (1), he shall prescribe regulations which shall require manufacturers to warrant the emission control device or system of each new motor vehicle or new motor vehicle engine to which a regulation under section 7521 of this title applies and which is manufactured in a model year beginning after the Administrator first prescribes warranty regulations under this paragraph (2). The warranty under such regulations shall run to the ultimate purchaser and each subsequent purchaser and shall provide that if—

(A) the vehicle or engine is maintained and operated in accordance with instructions under subsection (c)(3) of this section,

(B) it fails to conform at any time during its¹ the warranty period (as determined under subsection (i) of this section) to the regulations prescribed under section 7521 of this title, and

(C) such nonconformity results in the ultimate purchaser (or any subsequent purchaser) of such vehicle or engine having to bear any penalty or other sanction (including the denial of the right to use such vehicle or engine) under State or Federal law,

then such manufacturer shall remedy such nonconformity under such warranty with the cost thereof to be borne by the manufacturer. No such warranty shall be invalid on the basis of any part used in the maintenance or repair of a vehicle or engine if such part was certified as provided under subsection (a)(2) of this section.

(c) Nonconforming vehicles; plan for remedying nonconformity; instructions for maintenance and use; label or tag

Effective with respect to vehicles and engines manufactured during model years beginning more than 60 days after December 31, 1970—

(1) If the Administrator determines that a substantial number of any class or category of vehicles or engines, although properly main-

¹ So in original. The word "its" probably should not appear.

tained and used, do not conform to the regulations prescribed under section 7521 of this title, when in actual use throughout their useful life (as determined under section 7521(d) of this title), he shall immediately notify the manufacturer thereof of such nonconformity, and he shall require the manufacturer to submit a plan for remedying the nonconformity of the vehicles or engines with respect to which such notification is given. The plan shall provide that the nonconformity of any such vehicles or engines which are properly used and maintained will be remedied at the expense of the manufacturer. If the manufacturer disagrees with such determination of nonconformity and so advises the Administrator, the Administrator shall afford the manufacturer and other interested persons an opportunity to present their views and evidence in support thereof at a public hearing. Unless, as a result of such hearing the Administrator withdraws such determination of nonconformity, he shall, within 60 days after the completion of such hearing, order the manufacturer to provide prompt notification of such nonconformity in accordance with paragraph (2).

(2) Any notification required by paragraph (1) with respect to any class or category of vehicles or engines shall be given to dealers, ultimate purchasers, and subsequent purchasers (if known) in such manner and containing such information as the Administrator may by regulations require.

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

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

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

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

(C) In addition, the manufacturer shall indicate by means of a label or tag permanently affixed to such vehicle or engine that such vehicle or engine is covered by a certificate of conformity issued for the purpose of assuring achievement of emissions standards prescribed under section 7521 of this title. Such label or tag shall contain such other information relating to control of motor vehicle emissions as the Administrator shall prescribe by regulation.

(4) INTERMEDIATE IN-USE STANDARDS.—

(A) MODEL YEARS 1994 AND 1995.—For light-duty trucks of up to 6,000 lbs. gross vehicle weight rating (GVWR) and light-duty vehicles which are subject to standards under table G of section 7521(g)(1) of this title in model years 1994 and 1995 (40 percent of the manufacturer's sales volume in model year 1994 and 80 percent in model year 1995), the standards applicable to NMHC, CO, and NO_x for purposes of this subsection shall be those set forth in table A below in lieu of the standards for such air pollutants otherwise applicable under this subchapter.

TABLE A—INTERMEDIATE IN-USE STANDARDS LDTS UP TO 6,000 LBS. GVWR AND LIGHT-DUTY VEHICLES

Vehicle type	NMHC	CO	NO _x
Light-duty vehicles	0.32	3.4	0.4*
LDT's (0-3,750 LVW)	0.32	5.2	0.4*
LDT's (3,751-5,750 LVW)	0.41	6.7	0.7*

*Not applicable to diesel-fueled vehicles.

(B) MODEL YEARS 1996 AND THEREAFTER.—(i) In the model years 1996 and 1997, light-duty trucks (LDTs) up to 6,000 lbs. gross vehicle weight rating (GVWR) and light-duty vehicles which are not subject to final in-use standards under paragraph (5) (60 percent of the manufacturer's sales volume in model year 1996 and 20 percent in model year 1997) shall be subject to the standards set forth in table A of subparagraph (A) for NMHC, CO, and NO_x for purposes of this subsection in lieu of those set forth in paragraph (5).

(ii) For LDTs of more than 6,000 lbs. GVWR—

(I) in model year 1996 which are subject to the standards set forth in Table H of section 7521(h) of this title (50%);

(II) in model year 1997 (100%); and

(III) in model year 1998 which are not subject to final in-use standards under paragraph (5) (50%);

the standards for NMHC, CO, and NO_x for purposes of this subsection shall be those set forth in Table B below in lieu of the standards for such air pollutants otherwise applicable under this subchapter.

TABLE B—INTERMEDIATE IN-USE STANDARDS
LDTs MORE THAN 6,000 LBS. GVWR

Vehicle type	NMHC	CO	NO _x
LDTs (3,751-5,750 lbs. TW)	0.40	5.5	0.88*
LDTs (over 5,750 lbs. TW)	0.49	6.2	1.38*

*Not applicable to diesel-fueled vehicles.

(C) USEFUL LIFE.—In the case of the in-use standards applicable under this paragraph, for purposes of applying this subsection, the applicable useful life shall be 5 years or 50,000 miles or the equivalent (whichever first occurs).

(5) FINAL IN-USE STANDARDS.—(A) After the model year 1995, for purposes of applying this subsection, in the case of the percentage specified in the implementation schedule below of each manufacturer's sales volume of light-duty trucks of up to 6,000 lbs. gross vehicle weight rating (GVWR) and light duty² vehicles, the standards for NMHC, CO, and NO_x shall be as provided in Table G in section 7521(g) of this title, except that in applying the standards set forth in Table G for purposes of determining compliance with this subsection, the applicable useful life shall be (i) 5 years or 50,000 miles (or the equivalent) whichever first occurs in the case of standards applicable for purposes of certification at 50,000 miles; and (ii) 10 years or 100,000 miles (or the equivalent), whichever first occurs in the case of standards applicable for purposes of certification at 100,000 miles, except that no testing shall be done beyond 7 years or 75,000 miles, or the equivalent whichever first occurs.

LDTs UP TO 6,000 LBS. GVWR AND LIGHT-DUTY
VEHICLE SCHEDULE FOR IMPLEMENTATION OF
FINAL IN-USE STANDARDS

Model year	Percent
1996	40
1997	80
1998	100

(B) After the model year 1997, for purposes of applying this subsection, in the case of the percentage specified in the implementation schedule below of each manufacturer's sales volume of light-duty trucks of more than 6,000 lbs. gross vehicle weight rating (GVWR), the standards for NMHC, CO, and NO_x shall be as provided in Table H in section 7521(h) of this title, except that in applying the standards set forth in Table H for purposes of determining compliance with this subsection, the applicable useful life shall be (i) 5 years or 50,000 miles (or the equivalent) whichever first occurs in the case of standards applicable for purposes of certification at 50,000 miles; and (ii) 11 years or 120,000 miles (or the equivalent), whichever first occurs in the case of standards applicable for purposes of certification at 120,000 miles, except that no testing shall be done beyond 7 years or 90,000 miles (or the equivalent) whichever first occurs.

²So in original. Probably should be "light-duty".

LDTs OF MORE THAN 6,000 LBS. GVWR IMPLEMENTATION SCHEDULE FOR IMPLEMENTATION OF FINAL IN-USE STANDARDS

Model year	Percent
1998	50
1999	100

(6) DIESEL VEHICLES; IN-USE USEFUL LIFE AND TESTING.—(A) In the case of diesel-fueled light-duty trucks up to 6,000 lbs. GVWR and light-duty vehicles, the useful life for purposes of determining in-use compliance with the standards under section 7521(g) of this title for NO_x shall be a period of 10 years or 100,000 miles (or the equivalent), whichever first occurs, in the case of standards applicable for purposes of certification at 100,000 miles, except that testing shall not be done for a period beyond 7 years or 75,000 miles (or the equivalent) whichever first occurs.

(B) In the case of diesel-fueled light-duty trucks of 6,000 lbs. GVWR or more, the useful life for purposes of determining in-use compliance with the standards under section 7521(h) of this title for NO_x shall be a period of 11 years or 120,000 miles (or the equivalent), whichever first occurs, in the case of standards applicable for purposes of certification at 120,000 miles, except that testing shall not be done for a period beyond 7 years or 90,000 miles (or the equivalent) whichever first occurs.

(d) Dealer costs borne by manufacturer

Any cost obligation of any dealer incurred as a result of any requirement imposed by subsection (a), (b), or (c) of this section shall be borne by the manufacturer. The transfer of any such cost obligation from a manufacturer to any dealer through franchise or other agreement is prohibited.

(e) Cost statement

If a manufacturer includes in any advertisement a statement respecting the cost or value of emission control devices or systems, such manufacturer shall set forth in such statement the cost or value attributed to such devices or systems by the Secretary of Labor (through the Bureau of Labor Statistics). The Secretary of Labor, and his representatives, shall have the same access for this purpose to the books, documents, papers, and records of a manufacturer as the Comptroller General has to those of a recipient of assistance for purposes of section 7611 of this title.

(f) Inspection after sale to ultimate purchaser

Any inspection of a motor vehicle or a motor vehicle engine for purposes of subsection (c)(1) of this section, after its sale to the ultimate purchaser, shall be made only if the owner of such vehicle or engine voluntarily permits such inspection to be made, except as may be provided by any State or local inspection program.

(g) Replacement and maintenance costs borne by owner

For the purposes of this section, the owner of any motor vehicle or motor vehicle engine warranted under this section is responsible in the proper maintenance of such vehicle or engine to

replace and to maintain, at his expense at any service establishment or facility of his choosing, such items as spark plugs, points, condensers, and any other part, item, or device related to emission control (but not designed for emission control under the terms of the last sentence of subsection (a)(3) of this section)),³ unless such part, item, or device is covered by any warranty not mandated by this chapter.

(h) Dealer certification

(1) Upon the sale of each new light-duty motor vehicle by a dealer, the dealer shall furnish to the purchaser a certificate that such motor vehicle conforms to the applicable regulations under section 7521 of this title, including notice of the purchaser's rights under paragraph (2).

(2) If at any time during the period for which the warranty applies under subsection (b) of this section, a motor vehicle fails to conform to the applicable regulations under section 7521 of this title as determined under subsection (b) of this section such nonconformity shall be remedied by the manufacturer at the cost of the manufacturer pursuant to such warranty as provided in subsection (b)(2) of this section (without regard to subparagraph (C) thereof).

(3) Nothing in section 7543(a) of this title shall be construed to prohibit a State from testing, or requiring testing of, a motor vehicle after the date of sale of such vehicle to the ultimate purchaser (except that no new motor vehicle manufacturer or dealer may be required to conduct testing under this paragraph).

(i) Warranty period

(1) In general

For purposes of subsection (a)(1) of this section and subsection (b) of this section, the warranty period, effective with respect to new light-duty trucks and new light-duty vehicles and engines, manufactured in the model year 1995 and thereafter, shall be the first 2 years or 24,000 miles of use (whichever first occurs), except as provided in paragraph (2). For purposes of subsection (a)(1) of this section and subsection (b) of this section, for other vehicles and engines the warranty period shall be the period established by the Administrator by regulation (promulgated prior to November 15, 1990) for such purposes unless the Administrator subsequently modifies such regulation.

(2) Specified major emission control components

In the case of a specified major emission control component, the warranty period for new light-duty trucks and new light-duty vehicles and engines manufactured in the model year 1995 and thereafter for purposes of subsection (a)(1) of this section and subsection (b) of this section shall be 8 years or 80,000 miles of use (whichever first occurs). As used in this paragraph, the term "specified major emission control component" means only a catalytic converter, an electronic emissions control unit, and an onboard emissions diagnostic device, except that the Administrator may designate any other pollution control device or

component as a specified major emission control component if—

(A) the device or component was not in general use on vehicles and engines manufactured prior to the model year 1990; and

(B) the Administrator determines that the retail cost (exclusive of installation costs) of such device or component exceeds \$200 (in 1989 dollars), adjusted for inflation or deflation as calculated by the Administrator at the time of such determination.

For purposes of this paragraph, the term "on-board emissions diagnostic device" means any device installed for the purpose of storing or processing emissions related diagnostic information, but not including any parts or other systems which it monitors except specified major emissions control components. Nothing in this chapter shall be construed to provide that any part (other than a part referred to in the preceding sentence) shall be required to be warranted under this chapter for the period of 8 years or 80,000 miles referred to in this paragraph.

(3) Instructions

Subparagraph (A) of subsection (b)(2) of this section shall apply only where the Administrator has made a determination that the instructions concerned conform to the requirements of subsection (c)(3) of this section.

(July 14, 1955, ch. 360, title II, §207, as added Pub. L. 91-604, §8(a), Dec. 31, 1970, 84 Stat. 1696; amended Pub. L. 95-95, title II, §§205, 208-210, 212, Aug. 7, 1977, 91 Stat. 754-756, 758; Pub. L. 95-190, §14(a)(70)-(72), Nov. 16, 1977, 91 Stat. 1403; Pub. L. 101-549, title II, §§209, 210, 230(9), Nov. 15, 1990, 104 Stat. 2484, 2485, 2529.)

CODIFICATION

Section was formerly classified to section 1857f-5a of this title.

PRIOR PROVISIONS

A prior section 207 of act July 14, 1955, was renumbered section 208 by Pub. L. 91-604 and is classified to section 7542 of this title.

AMENDMENTS

1990—Subsec. (a)(1). Pub. L. 101-549, §209(4), inserted at end "In the case of vehicles and engines manufactured in the model year 1995 and thereafter such warranty shall require that the vehicle or engine is free from any such defects for the warranty period provided under subsection (i) of this section."

Subsec. (b). Pub. L. 101-549, §209(1), (2), substituted "the warranty period (as determined under subsection (i) of this section)" for "useful life (as determined under section 7521(d) of this title)" in introductory provisions and par. (2)(B), and struck out closing provisions which read as follows: "For purposes of the warranty under this subsection, for the period after twenty-four months or twenty-four thousand miles (whichever first occurs) the term 'emission control device or system' means a catalytic converter, thermal reactor, or other component installed on or in a vehicle for the sole or primary purpose of reducing vehicle emissions. Such term shall not include those vehicle components which were in general use prior to model year 1968."

Subsec. (c)(4) to (6). Pub. L. 101-549, §210, added pars. (4) to (6).

Subsec. (g). Pub. L. 101-549, §230(9), substituted "the last sentence of subsection (a)(3) of this section" for "the last three sentences of subsection (a)(1) of this section".

³So in original. The second closing parenthesis probably should not appear.

Subsec. (i). Pub. L. 101-549, §209(3), added subsec. (i). 1977—Subsec. (a). Pub. L. 95-190, §14(a)(70), designated provisions contained in cl. (3) of subsec. (a), formerly set out as containing cls. (1), (2), and (3), to be par. (3) of subsec. (a) after the amendment by Pub. L. 95-95, §209(b), which designated provisions of former subsec. (a) as par. (1) and former cls. (1) and (2) as (A) and (B) of par. (1) and added a new par. (2).

Pub. L. 95-95, §205, added cl. (3).

Subsec. (b). Pub. L. 95-95, §209(a), (c), inserted provisions to par. (2) that no warranty be held invalid on the basis of any part used in the maintenance or repair of a vehicle or engine if the part was certified as provided in subsec. (a)(2) of this section, and, following par. (2), inserted provisions defining “emission control device or system”.

Subsec. (c)(3). Pub. L. 95-95, §208, designated existing provisions as subpars. (A) and (C), added requirement for the bold face printing of a required notice on the first page of the written maintenance instructions in subpar. (A), and added subpar. (B).

Subsec. (f). Pub. L. 95-190, §14(a)(71), redesignated subsec. (f) as added by Pub. L. 95-95, §212, as (h).

Subsec. (g). Pub. L. 95-95, §210, added subsec. (g).

Subsec. (h). Pub. L. 95-190, §14(a)(71), redesignated subsec. (f) as added by Pub. L. 95-95, §212, as (h).

Subsec. (h)(2). Pub. L. 95-190, §14(a)(72), substituted “determined under” for “determined and”.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 209 of Pub. L. 101-549 provided that the amendments made by that section are effective with respect to new motor vehicles and engines manufactured in model year 1995 and thereafter.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as a note under section 7401 of this title.

EFFECTIVE DATE

Section not applicable to vehicles or engines imported into United States before sixtieth day after Dec. 31, 1970, see section 8(b) of Pub. L. 91-604, set out as a note under section 7525 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7511a, 7521, 7522, 7525, 7543, 7547, 7550, 7552, 7587, 7607 of this title.

§ 7542. Information collection

(a) Manufacturer's responsibility

Every manufacturer of new motor vehicles or new motor vehicle engines, and every manufacturer of new motor vehicle or engine parts or components, and other persons subject to the requirements of this part or part C of this subchapter, shall establish and maintain records, perform tests where such testing is not otherwise reasonably available under this part and

part C of this subchapter (including fees for testing), make reports and provide information the Administrator may reasonably require to determine whether the manufacturer or other person has acted or is acting in compliance with this part and part C of this subchapter and regulations thereunder, or to otherwise carry out the provision of this part and part C of this subchapter, and shall, upon request of an officer or employee duly designated by the Administrator, permit such officer or employee at reasonable times to have access to and copy such records.

(b) Enforcement authority

For the purposes of enforcement of this section, officers or employees duly designated by the Administrator upon presenting appropriate credentials are authorized—

(1) to enter, at reasonable times, any establishment of the manufacturer, or of any person whom the manufacturer engages to perform any activity required by subsection (a) of this section, for the purposes of inspecting or observing any activity conducted pursuant to subsection (a) of this section, and

(2) to inspect records, files, papers, processes, controls, and facilities used in performing any activity required by subsection (a) of this section, by such manufacturer or by any person whom the manufacturer engages to perform any such activity.

(c) Availability to public; trade secrets

Any records, reports, or information obtained under this part or part C of this subchapter shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that records, reports, or information, or a particular portion thereof (other than emission data), to which the Administrator has access under this section, if made public, would divulge methods or processes entitled to protection as trade secrets of that person, the Administrator shall consider the record, report, or information or particular portion thereof confidential in accordance with the purposes of section 1905 of title 18. Any authorized representative of the Administrator shall be considered an employee of the United States for purposes of section 1905 of title 18. Nothing in this section shall prohibit the Administrator or authorized representative of the Administrator from disclosing records, reports or information to other officers, employees or authorized representatives of the United States concerned with carrying out this chapter or when relevant in any proceeding under this chapter. Nothing in this section shall authorize the withholding of information by the Administrator or any officer or employee under the Administrator's control from the duly authorized committees of the Congress.

(July 14, 1955, ch. 360, title II, §208, formerly §207, as added Pub. L. 89-272, title I, §101(8), Oct. 20, 1965, 79 Stat. 994; amended Pub. L. 90-148, §2, Nov. 21, 1967, 81 Stat. 501; renumbered and amended Pub. L. 91-604, §§8(a), 10(a), 11(a)(2)(A), 15(c)(2), Dec. 31, 1970, 84 Stat. 1694, 1700, 1705, 1713; Pub. L. 101-549, title II, §211, Nov. 15, 1990, 104 Stat. 2487.)

CODIFICATION

Section was formerly classified to section 1857f-6 of this title.

PRIOR PROVISIONS

A prior section 208 of act July 14, 1955, as added Nov. 21, 1967, Pub. L. 90-148, § 2, 81 Stat. 501, was renumbered section 209 by Pub. L. 91-604 and is classified to section 7543 of this title.

Another prior section 208 of act July 14, 1955, as added Oct. 20, 1965, Pub. L. 89-272, title I, § 101(8), 79 Stat. 994, was renumbered section 212 by Pub. L. 90-148, renumbered section 213 by Pub. L. 91-604, renumbered 214 by Pub. L. 93-319, and renumbered section 216 by Pub. L. 95-95, and is classified to section 7550 of this title.

AMENDMENTS

1990—Pub. L. 101-549 amended section generally, substituting present provisions for provisions which related to: in subsec. (a), manufacturer's responsibility; and in subsec. (b), availability to public except for trade secrets.

1970—Subsec. (a). Pub. L. 91-604, §§ 11(a)(2)(A), 15(c)(2), substituted "Administrator" for "Secretary" wherever appearing and "part" for "subchapter".

Subsec. (b). Pub. L. 91-604, §§ 10(a), 15(c)(2), substituted provisions authorizing the Administrator to make available to the public any records, reports, of information obtained under subsec. (a) of this section, except those shown to the Administrator to be entitled to protection as trade secrets, for provisions that all information reported or otherwise obtained by the Secretary or his representative pursuant to subsec. (a) of this section, which information contains or relates to a trade secret or other matter referred to in section 1905 of title 18, be considered confidential for the purpose of such section 1905, and substituted "Administrator" for "Secretary".

1967—Pub. L. 90-148 reenacted section without change.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7414, 7521, 7522, 7525, 7547, 7550, 7607 of this title.

§ 7543. State standards**(a) Prohibition**

No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part. No State shall require certification, inspection, or any other approval relating to the control of emissions from any new motor vehicle or new motor vehicle engine as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment.

(b) Waiver

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

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

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

(C) such State standards and accompanying enforcement procedures are not consistent with section 7521(a) of this title.

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

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

(c) Certification of vehicle parts or engine parts

Whenever a regulation with respect to any motor vehicle part or motor vehicle engine part is in effect under section 7541(a)(2) of this title, no State or political subdivision thereof shall adopt or attempt to enforce any standard or any requirement of certification, inspection, or approval which relates to motor vehicle emissions and is applicable to the same aspect of such part. The preceding sentence shall not apply in the case of a State with respect to which a waiver is in effect under subsection (b) of this section.

(d) Control, regulation, or restrictions on registered or licensed motor vehicles

Nothing in this part shall preclude or deny to any State or political subdivision thereof the right otherwise to control, regulate, or restrict the use, operation, or movement of registered or licensed motor vehicles.

(e) Nonroad engines or vehicles**(1) Prohibition on certain State standards**

No State or any political subdivision thereof shall adopt or attempt to enforce any standard or other requirement relating to the control of emissions from either of the following new nonroad engines or nonroad vehicles subject to regulation under this chapter—

(A) New engines which are used in construction equipment or vehicles or used in farm equipment or vehicles and which are smaller than 175 horsepower.

(B) New locomotives or new engines used in locomotives.

Subsection (b) of this section shall not apply for purposes of this paragraph.

(2) Other nonroad engines or vehicles

(A) In the case of any nonroad vehicles or engines other than those referred to in subparagraph (A) or (B) of paragraph (1), the Administrator shall, after notice and opportunity for public hearing, authorize California to adopt and enforce standards and other requirements relating to the control of emissions from such vehicles or engines if California determines that California standards will be, in the aggregate, at least as protective of public health and welfare as applicable Fed-

eral standards. No such authorization shall be granted if the Administrator finds that—

- (i) the determination of California is arbitrary and capricious,
- (ii) California does not need such California standards to meet compelling and extraordinary conditions, or
- (iii) California standards and accompanying enforcement procedures are not consistent with this section.

(B) Any State other than California which has plan provisions approved under part D of subchapter I of this chapter may adopt and enforce, after notice to the Administrator, for any period, standards relating to control of emissions from nonroad vehicles or engines (other than those referred to in subparagraph (A) or (B) of paragraph (1)) and take such other actions as are referred to in subparagraph (A) of this paragraph respecting such vehicles or engines if—

- (i) such standards and implementation and enforcement are identical, for the period concerned, to the California standards authorized by the Administrator under subparagraph (A), and
- (ii) California and such State adopt such standards at least 2 years before commencement of the period for which the standards take effect.

The Administrator shall issue regulations to implement this subsection.

(July 14, 1955, ch. 360, title II, §209, formerly §208, as added Pub. L. 90-148, §2, Nov. 21, 1967, 81 Stat. 501; renumbered and amended Pub. L. 91-604, §§8(a), 11(a)(2)(A), 15(c)(2), Dec. 31, 1970, 84 Stat. 1694, 1705, 1713; Pub. L. 95-95, title II, §§207, 221, Aug. 7, 1977, 91 Stat. 755, 762; Pub. L. 101-549, title II, §222(b), Nov. 15, 1990, 104 Stat. 2502.)

CODIFICATION

Section was formerly classified to section 1857f-6a of this title.

PRIOR PROVISIONS

A prior section 209 of act July 14, 1955, as added Nov. 21, 1967, Pub. L. 90-148, §2, 81 Stat. 502, was renumbered section 210 by Pub. L. 91-604 and is classified to section 7544 of this title.

Another prior section 209 of act July 14, 1955, ch. 360, title II, as added Oct. 20, 1965, Pub. L. 89-272, title I, §101(8), 79 Stat. 995, related to appropriations for the fiscal years ending June 30, 1966, 1967, 1968, and 1969, and was classified to section 1857f-8 of this title, prior to repeal by Pub. L. 89-675, §2(b), Oct. 15, 1966, 80 Stat. 954.

AMENDMENTS

1990—Subsec. (e). Pub. L. 101-549 added subsec. (e).

1977—Subsec. (b). Pub. L. 95-95, §207, designated existing provisions as par. (1), substituted “March 30, 1966, if the State determines that the State standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards” for “March 30, 1966, unless he finds that such State does not require standards more stringent than applicable Federal standards to meet compelling the extraordinary conditions or that such State standards and accompanying enforcement procedures are not consistent with section 7521(a) of this title”, added subpars. (A), (B), and (C), and added pars. (2) and (3).

Subsecs. (c), (d). Pub. L. 95-95, §221, added subsec. (c) and redesignated former subsec. (c) as (d).

1970—Subsec. (a). Pub. L. 91-604, §11(a)(2)(A), substituted “part” for “subchapter”.

Subsec. (b). Pub. L. 91-604, §15(c)(2), substituted “Administrator” for “Secretary”.

Subsec. (c). Pub. L. 91-604, §11(a)(2)(A), substituted “part” for “subchapter”.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as a note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7416, 7507, 7521, 7541, 7545, 7547, 7583, 7584 of this title.

§ 7544. State grants

The Administrator is authorized to make grants to appropriate State agencies in an amount up to two-thirds of the cost of developing and maintaining effective vehicle emission devices and systems inspection and emission testing and control programs, except that—

(1) no such grant shall be made for any part of any State vehicle inspection program which does not directly relate to the cost of the air pollution control aspects of such a program;

(2) no such grant shall be made unless the Secretary of Transportation has certified to the Administrator that such program is consistent with any highway safety program developed pursuant to section 402 of title 23; and

(3) no such grant shall be made unless the program includes provisions designed to insure that emission control devices and systems on vehicles in actual use have not been discontinued or rendered inoperative.

Grants may be made under this section by way of reimbursement in any case in which amounts have been expended by the State before the date on which any such grant was made.

(July 14, 1955, ch. 360, title II, §210, formerly §209, as added Pub. L. 90-148, §2, Nov. 21, 1967, 81 Stat. 502; renumbered and amended Pub. L. 91-604, §§8(a), 10(b), Dec. 31, 1970, 84 Stat. 1694, 1700; Pub. L. 95-95, title II, §204, Aug. 7, 1977, 91 Stat. 754.)

CODIFICATION

Section was formerly classified to section 1857f-6b of this title.

PRIOR PROVISIONS

A prior section 210 of act July 14, 1955, was renumbered section 211 by Pub. L. 91-604 and is classified to section 7545 of this title.

AMENDMENTS

1977—Pub. L. 95-95 inserted provision allowing grants to be made by way of reimbursement in any case in

which amounts have been expended by States before the date on which the grants were made.

1970—Pub. L. 91-604, §10(b), substituted provisions authorizing the Administrator to make grants to appropriate State agencies for the development and maintenance of effective vehicle emission devices and systems inspection and emission testing and control programs, for provisions authorizing the Secretary to make grants to appropriate State air pollution control agencies for the development of meaningful uniform motor vehicle emission device inspection and emission testing programs.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as a note under section 7401 of this title.

§ 7545. Regulation of fuels

(a) Authority of Administrator to regulate

The Administrator may by regulation designate any fuel or fuel additive (including any fuel or fuel additive used exclusively in nonroad engines or nonroad vehicles) and, after such date or dates as may be prescribed by him, no manufacturer or processor of any such fuel or additive may sell, offer for sale, or introduce into commerce such fuel or additive unless the Administrator has registered such fuel or additive in accordance with subsection (b) of this section.

(b) Registration requirement

(1) For the purpose of registration of fuels and fuel additives, the Administrator shall require—

(A) the manufacturer of any fuel to notify him as to the commercial identifying name and manufacturer of any additive contained in such fuel; the range of concentration of any additive in the fuel; and the purpose-in-use of any such additive; and

(B) the manufacturer of any additive to notify him as to the chemical composition of such additive.

(2) For the purpose of registration of fuels and fuel additives, the Administrator may also require the manufacturer of any fuel or fuel additive—

(A) to conduct tests to determine potential public health effects of such fuel or additive (including, but not limited to, carcinogenic, teratogenic, or mutagenic effects), and

(B) to furnish the description of any analytical technique that can be used to detect and measure any additive in such fuel, the recommended range of concentration of such additive, and the recommended purpose-in-use of such additive, and such other information as is reasonable and necessary to determine the emissions resulting from the use of the fuel or additive contained in such fuel, the effect of such fuel or additive on the emission control performance of any vehicle, vehicle engine, nonroad engine or nonroad vehicle, or the extent to which such emissions affect the public health or welfare.

Tests under subparagraph (A) shall be conducted in conformity with test procedures and protocols established by the Administrator. The result of such tests shall not be considered confidential.

(3) Upon compliance with the provision of this subsection, including assurances that the Ad-

ministrator will receive changes in the information required, the Administrator shall register such fuel or fuel additive.

(c) Offending fuels and fuel additives; control; prohibition

(1) The Administrator may, from time to time on the basis of information obtained under subsection (b) of this section or other information available to him, by regulation, control or prohibit the manufacture, introduction into commerce, offering for sale, or sale of any fuel or fuel additive for use in a motor vehicle, motor vehicle engine, or nonroad engine or nonroad vehicle (A) if in the judgment of the Administrator any emission product of such fuel or fuel additive causes, or contributes, to air pollution which may reasonably be anticipated to endanger the public health or welfare, or (B) if emission products of such fuel or fuel additive will impair to a significant degree the performance of any emission control device or system which is in general use, or which the Administrator finds has been developed to a point where in a reasonable time it would be in general use were such regulation to be promulgated.

(2)(A) No fuel, class of fuels, or fuel additive may be controlled or prohibited by the Administrator pursuant to clause (A) of paragraph (1) except after consideration of all relevant medical and scientific evidence available to him, including consideration of other technologically or economically feasible means of achieving emission standards under section 7521 of this title.

(B) No fuel or fuel additive may be controlled or prohibited by the Administrator pursuant to clause (B) of paragraph (1) except after consideration of available scientific and economic data, including a cost benefit analysis comparing emission control devices or systems which are or will be in general use and require the proposed control or prohibition with emission control devices or systems which are or will be in general use and do not require the proposed control or prohibition. On request of a manufacturer of motor vehicles, motor vehicle engines, fuels, or fuel additives submitted within 10 days of notice of proposed rulemaking, the Administrator shall hold a public hearing and publish findings with respect to any matter he is required to consider under this subparagraph. Such findings shall be published at the time of promulgation of final regulations.

(C) No fuel or fuel additive may be prohibited by the Administrator under paragraph (1) unless he finds, and publishes such finding, that in his judgment such prohibition will not cause the use of any other fuel or fuel additive which will produce emissions which will endanger the public health or welfare to the same or greater degree than the use of the fuel or fuel additive proposed to be prohibited.

(3)(A) For the purpose of obtaining evidence and data to carry out paragraph (2), the Administrator may require the manufacturer of any motor vehicle or motor vehicle engine to furnish any information which has been developed concerning the emissions from motor vehicles resulting from the use of any fuel or fuel additive, or the effect of such use on the performance of any emission control device or system.

(B) In obtaining information under subparagraph (A), section 7607(a) of this title (relating to subpoenas) shall be applicable.

(4)(A) Except as otherwise provided in subparagraph (B) or (C), no State (or political subdivision thereof) may prescribe or attempt to enforce, for purposes of motor vehicle emission control, any control or prohibition respecting any characteristic or component of a fuel or fuel additive in a motor vehicle or motor vehicle engine—

(i) if the Administrator has found that no control or prohibition of the characteristic or component of a fuel or fuel additive under paragraph (1) is necessary and has published his finding in the Federal Register, or

(ii) if the Administrator has prescribed under paragraph (1) a control or prohibition applicable to such characteristic or component of a fuel or fuel additive, unless State prohibition or control is identical to the prohibition or control prescribed by the Administrator.

(B) Any State for which application of section 7543(a) of this title has at any time been waived under section 7543(b) of this title may at any time prescribe and enforce, for the purpose of motor vehicle emission control, a control or prohibition respecting any fuel or fuel additive.

(C) A State may prescribe and enforce, for purposes of motor vehicle emission control, a control or prohibition respecting the use of a fuel or fuel additive in a motor vehicle or motor vehicle engine if an applicable implementation plan for such State under section 7410 of this title so provides. The Administrator may approve such provision in an implementation plan, or promulgate an implementation plan containing such a provision, only if he finds that the State control or prohibition is necessary to achieve the national primary or secondary ambient air quality standard which the plan implements. The Administrator may find that a State control or prohibition is necessary to achieve that standard if no other measures that would bring about timely attainment exist, or if other measures exist and are technically possible to implement, but are unreasonable or impracticable. The Administrator may make a finding of necessity under this subparagraph even if the plan for the area does not contain an approved demonstration of timely attainment.

(d) Penalties and injunctions

(1) Civil penalties

Any person who violates subsection (a), (f), (g), (k), (l), (m), or (n) of this section or the regulations prescribed under subsection (c), (h), (i), (k), (l), (m), or (n) of this section or who fails to furnish any information or conduct any tests required by the Administrator under subsection (b) of this section shall be liable to the United States for a civil penalty of not more than the sum of \$25,000 for every day of such violation and the amount of economic benefit or savings resulting from the violation. Any violation with respect to a regulation prescribed under subsection (c), (k), (l), or (m) of this section which establishes a regulatory standard based upon a multiday averaging period shall constitute a separate day of

violation for each and every day in the averaging period. Civil penalties shall be assessed in accordance with subsections (b) and (c) of section 7524 of this title.

(2) Injunctive authority

The district courts of the United States shall have jurisdiction to restrain violations of subsections (a), (f), (g), (k), (l), (m), and (n) of this section and of the regulations prescribed under subsections (c), (h), (i), (k), (l), (m), and (n) of this section, to award other appropriate relief, and to compel the furnishing of information and the conduct of tests required by the Administrator under subsection (b) of this section. Actions to restrain such violations and compel such actions shall be brought by and in the name of the United States. In any such action, subpoenas for witnesses who are required to attend a district court in any district may run into any other district.

(e) Testing of fuels and fuel additives

(1) Not later than one year after August 7, 1977, and after notice and opportunity for a public hearing, the Administrator shall promulgate regulations which implement the authority under subsection (b)(2)(A) and (B) of this section with respect to each fuel or fuel additive which is registered on the date of promulgation of such regulations and with respect to each fuel or fuel additive for which an application for registration is filed thereafter.

(2) Regulations under subsection (b) of this section to carry out this subsection shall require that the requisite information be provided to the Administrator by each such manufacturer—

(A) prior to registration, in the case of any fuel or fuel additive which is not registered on the date of promulgation of such regulations; or

(B) not later than three years after the date of promulgation of such regulations, in the case of any fuel or fuel additive which is registered on such date.

(3) In promulgating such regulations, the Administrator may—

(A) exempt any small business (as defined in such regulations) from or defer or modify the requirements of, such regulations with respect to any such small business;

(B) provide for cost-sharing with respect to the testing of any fuel or fuel additive which is manufactured or processed by two or more persons or otherwise provide for shared responsibility to meet the requirements of this section without duplication; or

(C) exempt any person from such regulations with respect to a particular fuel or fuel additive upon a finding that any additional testing of such fuel or fuel additive would be duplicative of adequate existing testing.

(f) New fuels and fuel additives

(1)(A) Effective upon March 31, 1977, it shall be unlawful for any manufacturer of any fuel or fuel additive to first introduce into commerce, or to increase the concentration in use of, any fuel or fuel additive for general use in light duty motor vehicles manufactured after model year 1974 which is not substantially similar to any

fuel or fuel additive utilized in the certification of any model year 1975, or subsequent model year, vehicle or engine under section 7525 of this title.

(B) Effective upon November 15, 1990, it shall be unlawful for any manufacturer of any fuel or fuel additive to first introduce into commerce, or to increase the concentration in use of, any fuel or fuel additive for use by any person in motor vehicles manufactured after model year 1974 which is not substantially similar to any fuel or fuel additive utilized in the certification of any model year 1975, or subsequent model year, vehicle or engine under section 7525 of this title.

(2) Effective November 30, 1977, it shall be unlawful for any manufacturer of any fuel to introduce into commerce any gasoline which contains a concentration of manganese in excess of .0625 grams per gallon of fuel, except as otherwise provided pursuant to a waiver under paragraph (4).

(3) Any manufacturer of any fuel or fuel additive which prior to March 31, 1977, and after January 1, 1974, first introduced into commerce or increased the concentration in use of a fuel or fuel additive that would otherwise have been prohibited under paragraph (1)(A) if introduced on or after March 31, 1977 shall, not later than September 15, 1978, cease to distribute such fuel or fuel additive in commerce. During the period beginning 180 days after August 7, 1977, and before September 15, 1978, the Administrator shall prohibit, or restrict the concentration of any fuel additive which he determines will cause or contribute to the failure of an emission control device or system (over the useful life of any vehicle in which such device or system is used) to achieve compliance by the vehicle with the emission standards with respect to which it has been certified under section 7525 of this title.

(4) The Administrator, upon application of any manufacturer of any fuel or fuel additive, may waive the prohibitions established under paragraph (1) or (3) of this subsection or the limitation specified in paragraph (2) of this subsection, if he determines that the applicant has established that such fuel or fuel additive or a specified concentration thereof, and the emission products of such fuel or additive or specified concentration thereof, will not cause or contribute to a failure of any emission control device or system (over the useful life of any vehicle in which such device or system is used) to achieve compliance by the vehicle with the emission standards with respect to which it has been certified pursuant to section 7525 of this title. If the Administrator has not acted to grant or deny an application under this paragraph within one hundred and eighty days of receipt of such application, the waiver authorized by this paragraph shall be treated as granted.

(5) No action of the Administrator under this section may be stayed by any court pending judicial review of such action.

(g) Misfueling

(1) No person shall introduce, or cause or allow the introduction of, leaded gasoline into any motor vehicle which is labeled "unleaded gasoline only," which is equipped with a gasoline

tank filler inlet designed for the introduction of unleaded gasoline, which is a 1990 or later model year motor vehicle, or which such person knows or should know is a vehicle designed solely for the use of unleaded gasoline.

(2) Beginning October 1, 1993, no person shall introduce or cause or allow the introduction into any motor vehicle of diesel fuel which such person knows or should know contains a concentration of sulfur in excess of 0.05 percent (by weight) or which fails to meet a cetane index minimum of 40 or such equivalent alternative aromatic level as prescribed by the Administrator under subsection (i)(2) of this section.

(h) Reid Vapor Pressure requirements

(1) Prohibition

Not later than 6 months after November 15, 1990, the Administrator shall promulgate regulations making it unlawful for any person during the high ozone season (as defined by the Administrator) to sell, offer for sale, dispense, supply, offer for supply, transport, or introduce into commerce gasoline with a Reid Vapor Pressure in excess of 9.0 pounds per square inch (psi). Such regulations shall also establish more stringent Reid Vapor Pressure standards in a nonattainment area as the Administrator finds necessary to generally achieve comparable evaporative emissions (on a per-vehicle basis) in nonattainment areas, taking into consideration the enforceability of such standards, the need of an area for emission control, and economic factors.

(2) Attainment areas

The regulations under this subsection shall not make it unlawful for any person to sell, offer for supply, transport, or introduce into commerce gasoline with a Reid Vapor Pressure of 9.0 pounds per square inch (psi) or lower in any area designated under section 7407 of this title as an attainment area. Notwithstanding the preceding sentence, the Administrator may impose a Reid vapor pressure requirement lower than 9.0 pounds per square inch (psi) in any area, formerly an ozone non-attainment area, which has been redesignated as an attainment area.

(3) Effective date; enforcement

The regulations under this subsection shall provide that the requirements of this subsection shall take effect not later than the high ozone season for 1992, and shall include such provisions as the Administrator determines are necessary to implement and enforce the requirements of this subsection.

(4) Ethanol waiver

For fuel blends containing gasoline and 10 percent denatured anhydrous ethanol, the Reid vapor pressure limitation under this subsection shall be one pound per square inch (psi) greater than the applicable Reid vapor pressure limitations established under paragraph (1); *Provided, however*, That a distributor, blender, marketer, reseller, carrier, retailer, or wholesale purchaser-consumer shall be deemed to be in full compliance with the provisions of this subsection and the regulations promulgated thereunder if it can dem-

onstrate (by showing receipt of a certification or other evidence acceptable to the Administrator) that—

(A) the gasoline portion of the blend complies with the Reid vapor pressure limitations promulgated pursuant to this subsection;

(B) the ethanol portion of the blend does not exceed its waiver condition under subsection (f)(4) of this section; and

(C) no additional alcohol or other additive has been added to increase the Reid Vapor Pressure of the ethanol portion of the blend.

(5) Areas covered

The provisions of this subsection shall apply only to the 48 contiguous States and the District of Columbia.

(i) Sulfur content requirements for diesel fuel

(1) Effective October 1, 1993, no person shall manufacture, sell, supply, offer for sale or supply, dispense, transport, or introduce into commerce motor vehicle diesel fuel which contains a concentration of sulfur in excess of 0.05 percent (by weight) or which fails to meet a cetane index minimum of 40.

(2) Not later than 12 months after November 15, 1990, the Administrator shall promulgate regulations to implement and enforce the requirements of paragraph (1). The Administrator may require manufacturers and importers of diesel fuel not intended for use in motor vehicles to dye such fuel in a particular manner in order to segregate it from motor vehicle diesel fuel. The Administrator may establish an equivalent alternative aromatic level to the cetane index specification in paragraph (1).

(3) The sulfur content of fuel required to be used in the certification of 1991 through 1993 model year heavy-duty diesel vehicles and engines shall be 0.10 percent (by weight). The sulfur content and cetane index minimum of fuel required to be used in the certification of 1994 and later model year heavy-duty diesel vehicles and engines shall comply with the regulations promulgated under paragraph (2).

(4) The States of Alaska and Hawaii may be exempted from the requirements of this subsection in the same manner as provided in section 7625¹ of this title. The Administrator shall take final action on any petition filed under section 7625¹ of this title or this paragraph for an exemption from the requirements of this subsection, within 12 months from the date of the petition.

(j) Lead substitute gasoline additives

(1) After November 15, 1990, any person proposing to register any gasoline additive under subsection (a) of this section or to use any previously registered additive as a lead substitute may also elect to register the additive as a lead substitute gasoline additive for reducing valve seat wear by providing the Administrator with such relevant information regarding product identity and composition as the Administrator deems necessary for carrying out the responsibilities of paragraph (2) of this subsection (in addition to other information which may be required under subsection (b) of this section).

(2) In addition to the other testing which may be required under subsection (b) of this section, in the case of the lead substitute gasoline additives referred to in paragraph (1), the Administrator shall develop and publish a test procedure to determine the additives' effectiveness in reducing valve seat wear and the additives' tendencies to produce engine deposits and other adverse side effects. The test procedures shall be developed in cooperation with the Secretary of Agriculture and with the input of additive manufacturers, engine and engine components manufacturers, and other interested persons. The Administrator shall enter into arrangements with an independent laboratory to conduct tests of each additive using the test procedures developed and published pursuant to this paragraph. The Administrator shall publish the results of the tests by company and additive name in the Federal Register along with, for comparison purposes, the results of applying the same test procedures to gasoline containing 0.1 gram of lead per gallon in lieu of the lead substitute gasoline additive. The Administrator shall not rank or otherwise rate the lead substitute additives. Test procedures shall be established within 1 year after November 15, 1990. Additives shall be tested within 18 months of November 15, 1990, or 6 months after the lead substitute additives are identified to the Administrator, whichever is later.

(3) The Administrator may impose a user fee to recover the costs of testing of any fuel additive referred to in this subsection. The fee shall be paid by the person proposing to register the fuel additive concerned. Such fee shall not exceed \$20,000 for a single fuel additive.

(4) There are authorized to be appropriated to the Administrator not more than \$1,000,000 for the second full fiscal year after November 15, 1990, to establish test procedures and conduct engine tests as provided in this subsection. Not more than \$500,000 per year is authorized to be appropriated for each of the 5 subsequent fiscal years.

(5) Any fees collected under this subsection shall be deposited in a special fund in the United States Treasury for licensing and other services which thereafter shall be available for appropriation, to remain available until expended, to carry out the Agency's activities for which the fees were collected.

(k) Reformulated gasoline for conventional vehicles

(1) EPA regulations

Within 1 year after November 15, 1990, the Administrator shall promulgate regulations under this section establishing requirements for reformulated gasoline to be used in gasoline-fueled vehicles in specified nonattainment areas. Such regulations shall require the greatest reduction in emissions of ozone forming volatile organic compounds (during the high ozone season) and emissions of toxic air pollutants (during the entire year) achievable through the reformulation of conventional gasoline, taking into consideration the cost of achieving such emission reductions, any nonair-quality and other air-quality related health and environmental impacts and energy requirements.

¹ So in original. Probably should be section "7625-1".

(2) General requirements

The regulations referred to in paragraph (1) shall require that reformulated gasoline comply with paragraph (3) and with each of the following requirements (subject to paragraph (7)):

(A) NO_x emissions

The emissions of oxides of nitrogen (NO_x) from baseline vehicles when using the reformulated gasoline shall be no greater than the level of such emissions from such vehicles when using baseline gasoline. If the Administrator determines that compliance with the limitation on emissions of oxides of nitrogen under the preceding sentence is technically infeasible, considering the other requirements applicable under this subsection to such gasoline, the Administrator may, as appropriate to ensure compliance with this subparagraph, adjust (or waive entirely), any other requirements of this paragraph (including the oxygen content requirement contained in subparagraph (B)) or any requirements applicable under paragraph (3)(A).

(B) Oxygen content

The oxygen content of the gasoline shall equal or exceed 2.0 percent by weight (subject to a testing tolerance established by the Administrator) except as otherwise required by this chapter. The Administrator may waive, in whole or in part, the application of this subparagraph for any ozone nonattainment area upon a determination by the Administrator that compliance with such requirement would prevent or interfere with the attainment by the area of a national primary ambient air quality standard.

(C) Benzene content

The benzene content of the gasoline shall not exceed 1.0 percent by volume.

(D) Heavy metals

The gasoline shall have no heavy metals, including lead or manganese. The Administrator may waive the prohibition contained in this subparagraph for a heavy metal (other than lead) if the Administrator determines that addition of the heavy metal to the gasoline will not increase, on an aggregate mass or cancer-risk basis, toxic air pollutant emissions from motor vehicles.

(3) More stringent of formula or performance standards

The regulations referred to in paragraph (1) shall require compliance with the more stringent of either the requirements set forth in subparagraph (A) or the requirements of subparagraph (B) of this paragraph. For purposes of determining the more stringent provision, clause (i) and clause (ii) of subparagraph (B) shall be considered independently.

(A) Formula**(i) Benzene**

The benzene content of the reformulated gasoline shall not exceed 1.0 percent by volume.

(ii) Aromatics

The aromatic hydrocarbon content of the reformulated gasoline shall not exceed 25 percent by volume.

(iii) Lead

The reformulated gasoline shall have no lead content.

(iv) Detergents

The reformulated gasoline shall contain additives to prevent the accumulation of deposits in engines or vehicle fuel supply systems.

(v) Oxygen content

The oxygen content of the reformulated gasoline shall equal or exceed 2.0 percent by weight (subject to a testing tolerance established by the Administrator) except as otherwise required by this chapter.

(B) Performance standard**(i) VOC emissions**

During the high ozone season (as defined by the Administrator), the aggregate emissions of ozone forming volatile organic compounds from baseline vehicles when using the reformulated gasoline shall be 15 percent below the aggregate emissions of ozone forming volatile organic compounds from such vehicles when using baseline gasoline. Effective in calendar year 2000 and thereafter, 25 percent shall be substituted for 15 percent in applying this clause, except that the Administrator may adjust such 25 percent requirement to provide for a lesser or greater reduction based on technological feasibility, considering the cost of achieving such reductions in VOC emissions. No such adjustment shall provide for less than a 20 percent reduction below the aggregate emissions of such air pollutants from such vehicles when using baseline gasoline. The reductions required under this clause shall be on a mass basis.

(ii) Toxics

During the entire year, the aggregate emissions of toxic air pollutants from baseline vehicles when using the reformulated gasoline shall be 15 percent below the aggregate emissions of toxic air pollutants from such vehicles when using baseline gasoline. Effective in calendar year 2000 and thereafter, 25 percent shall be substituted for 15 percent in applying this clause, except that the Administrator may adjust such 25 percent requirement to provide for a lesser or greater reduction based on technological feasibility, considering the cost of achieving such reductions in toxic air pollutants. No such adjustment shall provide for less than a 20 percent reduction below the aggregate emissions of such air pollutants from such vehicles when using baseline gasoline. The reductions required under this clause shall be on a mass basis.

Any reduction greater than a specific percentage reduction required under this subparagraph shall be treated as satisfying such percentage reduction requirement.

(4) Certification procedures**(A) Regulations**

The regulations under this subsection shall include procedures under which the Administrator shall certify reformulated gasoline as complying with the requirements established pursuant to this subsection. Under such regulations, the Administrator shall establish procedures for any person to petition the Administrator to certify a fuel formulation, or slate of fuel formulations. Such procedures shall further require that the Administrator shall approve or deny such petition within 180 days of receipt. If the Administrator fails to act within such 180-day period, the fuel shall be deemed certified until the Administrator completes action on the petition.

(B) Certification; equivalency

The Administrator shall certify a fuel formulation or slate of fuel formulations as complying with this subsection if such fuel or fuels—

- (i) comply with the requirements of paragraph (2), and
- (ii) achieve equivalent or greater reductions in emissions of ozone forming volatile organic compounds and emissions of toxic air pollutants than are achieved by a reformulated gasoline meeting the applicable requirements of paragraph (3).

(C) EPA determination of emissions level

Within 1 year after November 15, 1990, the Administrator shall determine the level of emissions of ozone forming volatile organic compounds and emissions of toxic air pollutants emitted by baseline vehicles when operating on baseline gasoline. For purposes of this subsection, within 1 year after November 15, 1990, the Administrator shall, by rule, determine appropriate measures of, and methodology for, ascertaining the emissions of air pollutants (including calculations, equipment, and testing tolerances).

(5) Prohibition

Effective beginning January 1, 1995, each of the following shall be a violation of this subsection:

(A) The sale or dispensing by any person of conventional gasoline to ultimate consumers in any covered area.

(B) The sale or dispensing by any refiner, blender, importer, or marketer of conventional gasoline for resale in any covered area, without (i) segregating such gasoline from reformulated gasoline, and (ii) clearly marking such conventional gasoline as “conventional gasoline, not for sale to ultimate consumer in a covered area”.

Any refiner, blender, importer or marketer who purchases property segregated and marked conventional gasoline, and thereafter labels, represents, or wholesales such gasoline as reformulated gasoline shall also be in violation of this subsection. The Administrator may impose sampling, testing, and record-keeping requirements upon any refiner, blender, importer, or marketer to prevent violations of this section.

(6) Opt-in areas

(A) Upon the application of the Governor of a State, the Administrator shall apply the prohibition set forth in paragraph (5) in any area in the State classified under subpart 2 of part D of subchapter I of this chapter as a Marginal, Moderate, Serious, or Severe Area (without regard to whether or not the 1980 population of the area exceeds 250,000). In any such case, the Administrator shall establish an effective date for such prohibition as he deems appropriate, not later than January 1, 1995, or 1 year after such application is received, whichever is later. The Administrator shall publish such application in the Federal Register upon receipt.

(B) If the Administrator determines, on the Administrator's own motion or on petition of any person, after consultation with the Secretary of Energy, that there is insufficient domestic capacity to produce gasoline certified under this subsection, the Administrator shall, by rule, extend the effective date of such prohibition in Marginal, Moderate, Serious, or Severe Areas referred to in subparagraph (A) for one additional year, and may, by rule, renew such extension for 2 additional one-year periods. The Administrator shall act on any petition submitted under this paragraph within 6 months after receipt of the petition. The Administrator shall issue such extensions for areas with a lower ozone classification before issuing any such extension for areas with a higher classification.

(7) Credits

(A) The regulations promulgated under this subsection shall provide for the granting of an appropriate amount of credits to a person who refines, blends, or imports and certifies a gasoline or slate of gasoline that—

- (i) has an oxygen content (by weight) that exceeds the minimum oxygen content specified in paragraph (2);
- (ii) has an aromatic hydrocarbon content (by volume) that is less than the maximum aromatic hydrocarbon content required to comply with paragraph (3); or
- (iii) has a benzene content (by volume) that is less than the maximum benzene content specified in paragraph (2).

(B) The regulations described in subparagraph (A) shall also provide that a person who is granted credits may use such credits, or transfer all or a portion of such credits to another person for use within the same non-attainment area, for the purpose of complying with this subsection.

(C) The regulations promulgated under subparagraphs (A) and (B) shall ensure the enforcement of the requirements for the issuance, application, and transfer of the credits. Such regulations shall prohibit the granting or transfer of such credits for use with respect to any gasoline in a nonattainment area, to the extent the use of such credits would result in any of the following:

- (i) An average gasoline aromatic hydrocarbon content (by volume) for the non-attainment (taking into account all gasoline sold for use in conventional gasoline-fueled

vehicles in the nonattainment area) higher than the average fuel aromatic hydrocarbon content (by volume) that would occur in the absence of using any such credits.

(ii) An average gasoline oxygen content (by weight) for the nonattainment area (taking into account all gasoline sold for use in conventional gasoline-fueled vehicles in the nonattainment area) lower than the average gasoline oxygen content (by weight) that would occur in the absence of using any such credits.

(iii) An average benzene content (by volume) for the nonattainment area (taking into account all gasoline sold for use in conventional gasoline-fueled vehicles in the nonattainment area) higher than the average benzene content (by volume) that would occur in the absence of using any such credits.

(8) Anti-dumping rules

(A) In general

Within 1 year after November 15, 1990, the Administrator shall promulgate regulations applicable to each refiner, blender, or importer of gasoline ensuring that gasoline sold or introduced into commerce by such refiner, blender, or importer (other than reformulated gasoline subject to the requirements of paragraph (1)) does not result in average per gallon emissions (measured on a mass basis) of (i) volatile organic compounds, (ii) oxides of nitrogen, (iii) carbon monoxide, and (iv) toxic air pollutants in excess of such emissions of such pollutants attributable to gasoline sold or introduced into commerce in calendar year 1990 by that refiner, blender, or importer. Such regulations shall take effect beginning January 1, 1995.

(B) Adjustments

In evaluating compliance with the requirements of subparagraph (A), the Administrator shall make appropriate adjustments to insure that no credit is provided for improvement in motor vehicle emissions control in motor vehicles sold after the calendar year 1990.

(C) Compliance determined for each pollutant independently

In determining whether there is an increase in emissions in violation of the prohibition contained in subparagraph (A) the Administrator shall consider an increase in each air pollutant referred to in clauses (i) through (iv) as a separate violation of such prohibition, except that the Administrator shall promulgate regulations to provide that any increase in emissions of oxides of nitrogen resulting from adding oxygenates to gasoline may be offset by an equivalent or greater reduction (on a mass basis) in emissions of volatile organic compounds, carbon monoxide, or toxic air pollutants, or any combination of the foregoing.

(D) Compliance period

The Administrator shall promulgate an appropriate compliance period or appro-

priate compliance periods to be used for assessing compliance with the prohibition contained in subparagraph (A).

(E) Baseline for determining compliance

If the Administrator determines that no adequate and reliable data exists regarding the composition of gasoline sold or introduced into commerce by a refiner, blender, or importer in calendar year 1990, for such refiner, blender, or importer, baseline gasoline shall be substituted for such 1990 gasoline in determining compliance with subparagraph (A).

(9) Emissions from entire vehicle

In applying the requirements of this subsection, the Administrator shall take into account emissions from the entire motor vehicle, including evaporative, running, refueling, and exhaust emissions.

(10) Definitions

For purposes of this subsection—

(A) Baseline vehicles

The term “baseline vehicles” mean representative model year 1990 vehicles.

(B) Baseline gasoline

(i) Summertime

The term “baseline gasoline” means in the case of gasoline sold during the high ozone period (as defined by the Administrator) a gasoline which meets the following specifications:

BASELINE GASOLINE FUEL	
PROPERTIES	
API Gravity	57.4
Sulfur, ppm	339
Benzene, %	1.53
RVP, psi	8.7
Octane, R+M/2	87.3
IBP, F	91
10%, F	128
50%, F	218
90%, F	330
End Point, F	415
Aromatics, %	32.0
Olefins, %	9.2
Saturates, %	58.8

(ii) Wintertime

The Administrator shall establish the specifications of “baseline gasoline” for gasoline sold at times other than the high ozone period (as defined by the Administrator). Such specifications shall be the specifications of 1990 industry average gasoline sold during such period.

(C) Toxic air pollutants

The term “toxic air pollutants” means the aggregate emissions of the following:

- Benzene
- 1,3 Butadiene
- Polycyclic organic matter (POM)
- Acetaldehyde
- Formaldehyde.

(D) Covered area

The 9 ozone nonattainment areas having a 1980 population in excess of 250,000 and having the highest ozone design value during

the period 1987 through 1989 shall be "covered areas" for purposes of this subsection. Effective one year after the reclassification of any ozone nonattainment area as a Severe ozone nonattainment area under section 7511(b) of this title, such Severe area shall also be a "covered area" for purposes of this subsection.

(E) Reformulated gasoline

The term "reformulated gasoline" means any gasoline which is certified by the Administrator under this section as complying with this subsection.

(F) Conventional gasoline

The term "conventional gasoline" means any gasoline which does not meet specifications set by a certification under this subsection.

(I) Detergents

Effective beginning January 1, 1995, no person may sell or dispense to an ultimate consumer in the United States, and no refiner or marketer may directly or indirectly sell or dispense to persons who sell or dispense to ultimate consumers in the United States any gasoline which does not contain additives to prevent the accumulation of deposits in engines or fuel supply systems. Not later than 2 years after November 15, 1990, the Administrator shall promulgate a rule establishing specifications for such additives.

(m) Oxygenated fuels

(1) Plan revisions for CO nonattainment areas

(A) Each State in which there is located all or part of an area which is designated under subchapter I of this chapter as a nonattainment area for carbon monoxide and which has a carbon monoxide design value of 9.5 parts per million (ppm) or above based on data for the 2-year period of 1988 and 1989 and calculated according to the most recent interpretation methodology issued by the Administrator prior to November 15, 1990, shall submit to the Administrator a State implementation plan revision under section 7410 of this title and part D of subchapter I of this chapter for such area which shall contain the provisions specified under this subsection regarding oxygenated gasoline.

(B) A plan revision which contains such provisions shall also be submitted by each State in which there is located any area which, for any 2-year period after 1989 has a carbon monoxide design value of 9.5 ppm or above. The revision shall be submitted within 18 months after such 2-year period.

(2) Oxygenated gasoline in CO nonattainment areas

Each plan revision under this subsection shall contain provisions to require that any gasoline sold, or dispensed, to the ultimate consumer in the carbon monoxide nonattainment area or sold or dispensed directly or indirectly by fuel refiners or marketers to persons who sell or dispense to ultimate consumers, in the larger of—

(A) the Consolidated Metropolitan Statistical Area (CMSA) in which the area is located, or

(B) if the area is not located in a CMSA, the Metropolitan Statistical Area in which the area is located,

be blended, during the portion of the year in which the area is prone to high ambient concentrations of carbon monoxide to contain not less than 2.7 percent oxygen by weight (subject to a testing tolerance established by the Administrator). The portion of the year in which the area is prone to high ambient concentrations of carbon monoxide shall be as determined by the Administrator, but shall not be less than 4 months. At the request of a State with respect to any area designated as nonattainment for carbon monoxide, the Administrator may reduce the period specified in the preceding sentence if the State can demonstrate that because of meteorological conditions, a reduced period will assure that there will be no exceedances of the carbon monoxide standard outside of such reduced period. For areas with a carbon monoxide design value of 9.5 ppm or more of² November 15, 1990, the revision shall provide that such requirement shall take effect no later than November 1, 1992 (or at such other date during 1992 as the Administrator establishes under the preceding provisions of this paragraph). For other areas, the revision shall provide that such requirement shall take effect no later than November 1 of the third year after the last year of the applicable 2-year period referred to in paragraph (1) (or at such other date during such third year as the Administrator establishes under the preceding provisions of this paragraph) and shall include a program for implementation and enforcement of the requirement consistent with guidance to be issued by the Administrator.

(3) Waivers

(A) The Administrator shall waive, in whole or in part, the requirements of paragraph (2) upon a demonstration by the State to the satisfaction of the Administrator that the use of oxygenated gasoline would prevent or interfere with the attainment by the area of a national primary ambient air quality standard (or a State or local ambient air quality standard) for any air pollutant other than carbon monoxide.

(B) The Administrator shall, upon demonstration by the State satisfactory to the Administrator, waive the requirement of paragraph (2) where the Administrator determines that mobile sources of carbon monoxide do not contribute significantly to carbon monoxide levels in an area.

(C)(i) Any person may petition the Administrator to make a finding that there is, or is likely to be, for any area, an inadequate domestic supply of, or distribution capacity for, oxygenated gasoline meeting the requirements of paragraph (2) or fuel additives (oxygenates) necessary to meet such requirements. The Administrator shall act on such petition within 6 months after receipt of the petition.

(ii) If the Administrator determines, in response to a petition under clause (i), that

² So in original. Probably should be "as of".

there is an inadequate supply or capacity described in clause (i), the Administrator shall delay the effective date of paragraph (2) for 1 year. Upon petition, the Administrator may extend such effective date for one additional year. No partial delay or lesser waiver may be granted under this clause.

(iii) In granting waivers under this subparagraph the Administrator shall consider distribution capacity separately from the adequacy of domestic supply and shall grant such waivers in such manner as will assure that, if supplies of oxygenated gasoline are limited, areas having the highest design value for carbon monoxide will have a priority in obtaining oxygenated gasoline which meets the requirements of paragraph (2).

(iv) As used in this subparagraph, the term distribution capacity includes capacity for transportation, storage, and blending.

(4) Fuel dispensing systems

Any person selling oxygenated gasoline at retail pursuant to this subsection shall be required under regulations promulgated by the Administrator to label the fuel dispensing system with a notice that the gasoline is oxygenated and will reduce the carbon monoxide emissions from the motor vehicle.

(5) Guidelines for credit

The Administrator shall promulgate guidelines, within 9 months after November 15, 1990, allowing the use of marketable oxygen credits from gasolines during that portion of the year specified in paragraph (2) with higher oxygen content than required to offset the sale or use of gasoline with a lower oxygen content than required. No credits may be transferred between nonattainment areas.

(6) Attainment areas

Nothing in this subsection shall be interpreted as requiring an oxygenated gasoline program in an area which is in attainment for carbon monoxide, except that in a carbon monoxide nonattainment area which is redesignated as attainment for carbon monoxide, the requirements of this subsection shall remain in effect to the extent such program is necessary to maintain such standard thereafter in the area.

(7) Failure to attain CO standard

If the Administrator determines under section 7512(b)(2) of this title that the national primary ambient air quality standard for carbon monoxide has not been attained in a Serious Area by the applicable attainment date, the State shall submit a plan revision for the area within 9 months after the date of such determination. The plan revision shall provide that the minimum oxygen content of gasoline referred to in paragraph (2) shall be 3.1 percent by weight unless such requirement is waived in accordance with the provisions of this subsection.

(n) Prohibition on leaded gasoline for highway use

After December 31, 1995, it shall be unlawful for any person to sell, offer for sale, supply, offer for supply, dispense, transport, or introduce into

commerce, for use as fuel in any motor vehicle (as defined in section 7554(2)³ of this title) any gasoline which contains lead or lead additives.

(o) Fuel and fuel additive importers and importation

For the purposes of this section, the term "manufacturer" includes an importer and the term "manufacture" includes importation.

(July 14, 1955, ch. 360, title II, §211, formerly §210, as added Pub. L. 90-148, §2, Nov. 21, 1967, 81 Stat. 502; renumbered and amended Pub. L. 91-604, §§8(a), 9(a), Dec. 31, 1970, 84 Stat. 1694, 1698; Pub. L. 92-157, title III, §302(d), (e), Nov. 18, 1971, 85 Stat. 464; Pub. L. 95-95, title II, §§222, 223, title IV, §401(e), Aug. 7, 1977, 91 Stat. 762, 764, 791; Pub. L. 95-190, §14(a)(73), (74), Nov. 16, 1977, 91 Stat. 1403, 1404; Pub. L. 101-549, title II, §§212-221, 228(d), Nov. 15, 1990, 104 Stat. 2488-2500, 2510.)

CODIFICATION

Section was formerly classified to section 1857f-6c of this title.

PRIOR PROVISIONS

A prior section 211 of act July 14, 1955, as added Nov. 21, 1967, Pub. L. 90-148, §2, 81 Stat. 503, provided for a national emissions standards study and was classified to section 1857f-6d of this title, prior to repeal by section 8(a) of Pub. L. 91-604.

AMENDMENTS

1990—Subsec. (a). Pub. L. 101-549, §212, inserted "(including any fuel or fuel additive used exclusively in nonroad engines or nonroad vehicles)" after "fuel or fuel additive".

Subsecs. (b)(2)(B), (c)(1). Pub. L. 101-549, §212(b), (c), inserted reference to nonroad engine or nonroad vehicle.

Subsec. (c)(4)(A). Pub. L. 101-549, §213(a), substituted "any characteristic or component of a" for "use of a", inserted "of the characteristic or component of a fuel or fuel additive" after "control or prohibition" in cl. (i), and inserted "characteristic or component of a" after "such" in cl. (ii).

Subsec. (c)(4)(C). Pub. L. 101-549, §213(b), inserted last two sentences, authorizing Administrator to make a finding that State control or prohibition is necessary to achieve the standard.

Subsec. (d). Pub. L. 101-549, §228(d), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: "Any person who violates subsection (a) or (f) of this section or the regulations prescribed under subsection (c) of this section or who fails to furnish any information required by the Administrator under subsection (b) of this section shall forfeit and pay to the United States a civil penalty of \$10,000 for each and every day of the continuance of such violation, which shall accrue to the United States and be recovered in a civil suit in the name of the United States, brought in the district where such person has his principal office or in any district in which he does business. The Administrator may, upon application therefor, remit or mitigate any forfeiture provided for in this subsection and he shall have authority to determine the facts upon all such applications."

Subsec. (f)(1). Pub. L. 101-549, §214(a), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (f)(3). Pub. L. 101-549, §214(b), substituted reference to paragraph (1)(A) for reference to paragraph (1).

Subsec. (g). Pub. L. 101-549, §215, amended subsec. (g) generally, substituting present provisions for provisions which defined "gasoline", "refinery", and "small

³ So in original. Probably should be section "7550(2)".

refinery" and which limited Administrator's authority to require small refineries to reduce average lead content per gallon of gasoline.

Subsec. (h). Pub. L. 101-549, §216, added subsec. (h).

Subsec. (i). Pub. L. 101-549, §217, added subsec. (i).

Subsec. (j). Pub. L. 101-549, §218(a), added subsec. (j).

Subsecs. (k) to (m). Pub. L. 101-549, §219, added subsecs. (k) to (m).

Subsec. (n). Pub. L. 101-549, §220, added subsec. (n).

Subsec. (o). Pub. L. 101-549, §221, added subsec. (o).

1977—Subsec. (c)(1)(A). Pub. L. 95-95, §401(e), substituted "if in the judgment of the Administrator any emission product of such fuel or fuel additive causes, or contributes, to air pollution which may reasonably be anticipated to endanger" for "if any emission products of such fuel or fuel additive will endanger".

Subsec. (d). Pub. L. 95-95, §222(b), inserted "or (f)" after "Any person who violates subsection (a)".

Subsecs. (e), (f). Pub. L. 95-95, §222(a), added subsecs. (e) and (f).

Subsec. (f)(2). Pub. L. 95-190, §14(a)(73), inserted provision relating to waiver under par. (4) of this subsec., and struck out "first" before "introduce".

Subsec. (f)(4). Pub. L. 95-190, §14(a)(74), inserted provision relating to applicability of limitation specified under par. (2) of this subsection.

Subsec. (g). Pub. L. 95-95, §223, added subsec. (g).

1971—Subsec. (c)(3)(A). Pub. L. 92-157, §302(d), substituted "purpose of obtaining" for "purpose of".

Subsec. (d). Pub. L. 92-157, §302(e), substituted "subsection (b)" for "subsection (c)" where appearing the second time.

1970—Subsec. (a). Pub. L. 91-604, §9(a), substituted "Administrator" for "Secretary" as the registering authority, inserted references to fuel additives, and substituted the selling, offering for sale, and introduction into commerce of fuel or fuel additives, for the delivery for introduction into interstate commerce or delivery to another person who can reasonably be expected to deliver fuel into interstate commerce.

Subsec. (b). Pub. L. 91-604, §9(a), designated existing provisions as pars. (1) and (3), added par. (2), and substituted "Administrator" for "Secretary" wherever appearing.

Subsec. (c). Pub. L. 91-604, §9(a), substituted provisions covering the control or prohibition of offending fuels and fuel additives, for provisions covering trade secrets and substituted "Administrator" for "Secretary" wherever appearing.

Subsec. (d). Pub. L. 91-604, §9(a), inserted references to failure to obey regulations prescribed under subsec. (c) and failure to furnish information required by the Administrator under subsec. (c), increased the daily civil penalty from \$1,000 to \$10,000 and substituted "Administrator" for "Secretary".

Subsec. (e). Pub. L. 91-604, §9(a), struck out subsec. (e) which directed the various United States Attorneys to prosecute for the recovery of forfeitures.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as a note under section 7401 of this title.

FINDINGS AND SENSE OF CONGRESS ON ETHANOL USAGE

Pub. L. 100-203, title I, §1508, Dec. 22, 1987, 101 Stat. 1330-29, provided that:

"(a) FINDINGS.—Congress finds that—

"(1) the United States is dependent for a large and growing share of its energy needs on the Middle East at a time when world petroleum reserves are declining;

"(2) the burning of gasoline causes pollution;

"(3) ethanol can be blended with gasoline to produce a cleaner source of fuel;

"(4) ethanol can be produced from grain, a renewable resource that is in considerable surplus in the United States;

"(5) the conversion of grain into ethanol would reduce farm program costs and grain surpluses; and

"(6) increasing the quantity of motor fuels that contain at least 10 percent ethanol from current levels to 50 percent by 1992 would create thousands of new jobs in ethanol production facilities.

"(b) SENSE OF CONGRESS.—It is the sense of Congress that the Administrator of the Environmental Protection Agency should use authority provided under the Clean Air Act (42 U.S.C. 7401 et seq.) to require greater use of ethanol as motor fuel."

AGRICULTURAL MACHINERY: STUDY OF UNLEADED FUEL

Pub. L. 99-198, title XVII, §1765, Dec. 23, 1985, 99 Stat. 1653, directed Administrator of EPA and Secretary of Agriculture jointly to conduct a study of use of fuel containing lead additives, and alternative lubricating additives, in gasoline engines that are used in agricultural machinery, and designed to combust fuel containing such additives, study to analyze potential for mechanical problems (including but not limited to valve recession) that may be associated with use of other fuels in such engines, and not later than Jan. 1, 1987, Administrator and Secretary to publish results of the study, with Administrator to publish in Federal Register notice of publication of such study and a summary thereof; directed Administrator, after notice and opportunity for hearing, but not later than 6 months after publication of the study, to make findings and recommendations on need for lead additives in gasoline to be used on a farm for farming purposes, including a determination of whether a modification of regulations limiting lead content of gasoline would be appropriate in the case of gasoline used on a farm for farming purposes, and submit to President and Congress a report containing the study, a summary of comments received during public hearing (including comments of Secretary), and findings and recommendations of Administrator made in accordance with clause (1), such report to be transmitted named congressional committees; directed Administrator between Jan. 1, 1986, and Dec. 31, 1987, to monitor actual lead content of leaded gasoline sold in the United States, with Administrator to determine average lead content of such gasoline for each 3-month period between Jan. 1, 1986, and Dec. 31, 1987, and if actual lead content falls below an average of 0.2 of a gram of lead per gallon in any such 3-month period, to report to Congress, and publish a notice thereof in Federal Register; provided that until Jan. 1, 1988, no regulation of Administrator issued under this section 211 could require an average lead content per gallon that is less than 0.1 of a gram per gallon; and authorized an appropriation.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7416, 7511a, 7511b, 7521, 7524, 7604, 7607, 7617, 7651i, 13220 of this title; title 26 section 4082.

§ 7546. Repealed. Pub. L. 101-549, title II, § 230(10), Nov. 15, 1990, 104 Stat. 2529

Section, act July 14, 1955, ch. 360, title II, §212, as added Dec. 31, 1970, Pub. L. 91-604, §10(c), 84 Stat. 1700;

amended Dec. 31, 1970, Pub. L. 91-605, §202(a), 84 Stat. 1739; Apr. 9, 1973, Pub. L. 93-15, §1(b), 87 Stat. 11; June 22, 1974, Pub. L. 93-319, §13(b), 88 Stat. 265, related to low-emission vehicles.

A prior section 212 of act July 14, 1955, was renumbered section 213 by Pub. L. 91-604, renumbered section 214 by Pub. L. 93-319, and renumbered section 216 by Pub. L. 95-95, and is classified to section 7550 of this title.

§ 7547. Nonroad engines and vehicles

(a) Emissions standards

(1) The Administrator shall conduct a study of emissions from nonroad engines and nonroad vehicles (other than locomotives or engines used in locomotives) to determine if such emissions cause, or significantly contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare. Such study shall be completed within 12 months of November 15, 1990.

(2) After notice and opportunity for public hearing, the Administrator shall determine within 12 months after completion of the study under paragraph (1), based upon the results of such study, whether emissions of carbon monoxide, oxides of nitrogen, and volatile organic compounds from new and existing nonroad engines or nonroad vehicles (other than locomotives or engines used in locomotives) are significant contributors to ozone or carbon monoxide concentrations in more than 1 area which has failed to attain the national ambient air quality standards for ozone or carbon monoxide. Such determination shall be included in the regulations under paragraph (3).

(3) If the Administrator makes an affirmative determination under paragraph (2) the Administrator shall, within 12 months after completion of the study under paragraph (1), promulgate (and from time to time revise) regulations containing standards applicable to emissions from those classes or categories of new nonroad engines and new nonroad vehicles (other than locomotives or engines used in locomotives) which in the Administrator's judgment cause, or contribute to, such air pollution. Such standards shall achieve the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available for the engines or vehicles to which such standards apply, giving appropriate consideration to the cost of applying such technology within the period of time available to manufacturers and to noise, energy, and safety factors associated with the application of such technology. In determining what degree of reduction will be available, the Administrator shall first consider standards equivalent in stringency to standards for comparable motor vehicles or engines (if any) regulated under section 7521 of this title, taking into account the technological feasibility, costs, safety, noise, and energy factors associated with achieving, as appropriate, standards of such stringency and lead time. The regulations shall apply to the useful life of the engines or vehicles (as determined by the Administrator).

(4) If the Administrator determines that any emissions not referred to in paragraph (2) from new nonroad engines or vehicles significantly

contribute to air pollution which may reasonably be anticipated to endanger public health or welfare, the Administrator may promulgate (and from time to time revise) such regulations as the Administrator deems appropriate containing standards applicable to emissions from those classes or categories of new nonroad engines and new nonroad vehicles (other than locomotives or engines used in locomotives) which in the Administrator's judgment cause, or contribute to, such air pollution, taking into account costs, noise, safety, and energy factors associated with the application of technology which the Administrator determines will be available for the engines and vehicles to which such standards apply. The regulations shall apply to the useful life of the engines or vehicles (as determined by the Administrator).

(5) Within 5 years after November 15, 1990, the Administrator shall promulgate regulations containing standards applicable to emissions from new locomotives and new engines used in locomotives. Such standards shall achieve the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available for the locomotives or engines to which such standards apply, giving appropriate consideration to the cost of applying such technology within the period of time available to manufacturers and to noise, energy, and safety factors associated with the application of such technology.

(b) Effective date

Standards under this section shall take effect at the earliest possible date considering the lead time necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period and energy and safety.

(c) Safe controls

Effective with respect to new engines or vehicles to which standards under this section apply, no emission control device, system, or element of design shall be used in such a new nonroad engine or new nonroad vehicle for purposes of complying with such standards if such device, system, or element of design will cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function. In determining whether an unreasonable risk exists, the Administrator shall consider factors including those described in section 7521(a)(4)(B) of this title.

(d) Enforcement

The standards under this section shall be subject to sections 7525, 7541, 7542, and 7543 of this title, with such modifications of the applicable regulations implementing such sections as the Administrator deems appropriate, and shall be enforced in the same manner as standards prescribed under section 7521 of this title. The Administrator shall revise or promulgate regulations as may be necessary to determine compliance with, and enforce, standards in effect under this section.

(July 14, 1955, ch. 360, title II, §213, as added Pub. L. 93-319, §10, June 22, 1974, 88 Stat. 261; amended Pub. L. 101-549, title II, §222(a), Nov. 15, 1990, 104 Stat. 2500.)

CODIFICATION

Section was formerly classified to section 1857f-6f of this title.

PRIOR PROVISIONS

A prior section 213 of act July 14, 1955, was renumbered section 214 by Pub. L. 93-319 and renumbered section 216 by Pub. L. 95-95, and is classified to section 7550 of this title.

AMENDMENTS

1990—Pub. L. 101-549 amended section generally, substituting present provisions for provisions requiring Administrator and Secretary of Transportation to conduct study on fuel economy improvement for new motor vehicles manufactured during and after model year 1980.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7524, 7607 of this title.

§ 7548. Study of particulate emissions from motor vehicles

(a) Study and analysis

(1) The Administrator shall conduct a study concerning the effects on health and welfare of particulate emissions from motor vehicles or motor vehicle engines to which section 7521 of this title applies. Such study shall characterize and quantify such emissions and analyze the relationship of such emissions to various fuels and fuel additives.

(2) The study shall also include an analysis of particulate emissions from mobile sources which are not related to engine emissions (including, but not limited to tire debris, and asbestos from brake lining).

(b) Report to Congress

The Administrator shall report to the Congress the findings and results of the study conducted under subsection (a) of this section not later than two years after August 7, 1977. Such report shall also include recommendations for standards or methods to regulate particulate emissions described in paragraph (2) of subsection (a) of this section.

(July 14, 1955, ch. 360, title II, § 214, as added Pub. L. 95-95, title II, § 224(d), Aug. 7, 1977, 91 Stat. 767.)

PRIOR PROVISIONS

A prior section 214 of act July 14, 1955, was renumbered section 216 by Pub. L. 95-95 and is classified to section 7550 of this title.

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

STUDY ON SUSPENDED PARTICULATE MATTER

Section 403(a) of Pub. L. 95-95 directed Administrator of EPA, not later than 18 months after Aug. 7, 1977, in cooperation with National Academy of Sciences, to study and report to Congress on relationship between size, weight, and chemical composition of suspended particulate matter and nature and degree of endangerment to public health or welfare presented by such particulate matter and availability of technology for controlling such particulate matter.

§ 7549. High altitude performance adjustments

(a) Instruction of the manufacturer

(1) Any action taken with respect to any element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this subchapter (including any alteration or adjustment of such element), shall be treated as not in violation of section 7522(a) of this title if such action is performed in accordance with high altitude adjustment instructions provided by the manufacturer under subsection (b) of this section and approved by the Administrator.

(2) If the Administrator finds that adjustments or modifications made pursuant to instructions of the manufacturer under paragraph (1) will not insure emission control performance with respect to each standard under section 7521 of this title at least equivalent to that which would result if no such adjustments or modifications were made, he shall disapprove such instructions. Such finding shall be based upon minimum engineering evaluations consistent with good engineering practice.

(b) Regulations

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

(2) Any knowing violation by a manufacturer of requirements of the Administrator under paragraph (1) shall be treated as a violation by such manufacturer of section 7522(a)(3) of this title for purposes of the penalties contained in section 7524 of this title.

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

(c) Manufacturer parts

No instructions under this section respecting adjustments or modifications may require the use of any manufacturer parts (as defined in section 7522(a) of this title) unless the manufacturer demonstrates to the satisfaction of the Administrator that the use of such manufacturer parts is necessary to insure emission control performance.

(d) State inspection and maintenance programs

Before January 1, 1981 the authority provided by this section shall be available in any high altitude State (as determined under regulations of the Administrator under regulations promulgated before August 7, 1977) but after December 31, 1980, such authority shall be available only in any such State in which an inspection and maintenance program for the testing of motor vehicle emissions has been instituted for the portions of the State where any national ambient air quality standard for auto-related pollutants has not been attained.

(e) High altitude testing

(1) The Administrator shall promptly establish at least one testing center (in addition to the

testing centers existing on November 15, 1990) located at a site that represents high altitude conditions, to ascertain in a reasonable manner whether, when in actual use throughout their useful life (as determined under section 7521(d) of this title), each class or category of vehicle and engines to which regulations under section 7521 of this title apply conforms to the emissions standards established by such regulations. For purposes of this subsection, the term "high altitude conditions" refers to high altitude as defined in regulations of the Administrator in effect as of November 15, 1990.

(2) The Administrator, in cooperation with the Secretary of Energy and the Administrator of the Federal Transit Administration, and such other agencies as the Administrator deems appropriate, shall establish a research and technology assessment center to provide for the development and evaluation of less-polluting heavy-duty engines and fuels for use in buses, heavy-duty trucks, and non-road engines and vehicles, which shall be located at a high-altitude site that represents high-altitude conditions. In establishing and funding such a center, the Administrator shall give preference to proposals which provide for local cost-sharing of facilities and recovery of costs of operation through utilization of such facility for the purposes of this section.

(3) The Administrator shall designate at least one center at high-altitude conditions to provide research on after-market emission components, dual-fueled vehicles and conversion kits, the effects of tampering on emissions equipment, testing of alternate fuels and conversion kits, and the development of curricula, training courses, and materials to maximize the effectiveness of inspection and maintenance programs as they relate to promoting effective control of vehicle emissions at high-altitude elevations. Preference shall be given to existing vehicle emissions testing and research centers that have established reputations for vehicle emissions research and development and training, and that possess in-house Federal Test Procedure capacity.

(July 14, 1955, ch. 360, title II, § 215, as added Pub. L. 95-95, title II, § 211(b), Aug. 7, 1977, 91 Stat. 757; amended Pub. L. 95-190, § 14(a)(75), Nov. 16, 1977, 91 Stat. 1404; Pub. L. 101-549, title II, § 224, Nov. 15, 1990, 104 Stat. 2503; Pub. L. 102-240, title III, § 3004(b), Dec. 18, 1991, 105 Stat. 2088.)

CODIFICATION

In subsec. (d), "August 7, 1977" substituted for "the date of enactment of this Act" to reflect the probable intent of Congress that such date of enactment meant the date of enactment of Pub. L. 95-95.

AMENDMENTS

1990—Subsec. (e). Pub. L. 101-549 added subsec. (e).
 1977—Subsec. (d). Pub. L. 95-190 substituted "December 31, 1980" for "December 31, 1981".

CHANGE OF NAME

"Federal Transit Administration" substituted for "Urban Mass Transit Administration" in subsec. (e)(2) pursuant to section 3004(a) of Pub. L. 102-240, set out as a note under section 107 of Title 49, Transportation.

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set

out as an Effective Date of 1977 Amendment note under section 7401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7522 of this title.

§ 7550. Definitions

As used in this part—

(1) The term "manufacturer" as used in sections 7521, 7522, 7525, 7541, and 7542 of this title means any person engaged in the manufacturing or assembling of new motor vehicles, new motor vehicle engines, new nonroad vehicles or new nonroad engines, or importing such vehicles or engines for resale, or who acts for and is under the control of any such person in connection with the distribution of new motor vehicles, new motor vehicle engines, new nonroad vehicles or new nonroad engines, but shall not include any dealer with respect to new motor vehicles, new motor vehicle engines, new nonroad vehicles or new nonroad engines received by him in commerce.

(2) The term "motor vehicle" means any self-propelled vehicle designed for transporting persons or property on a street or highway.

(3) Except with respect to vehicles or engines imported or offered for importation, the term "new motor vehicle" means a motor vehicle the equitable or legal title to which has never been transferred to an ultimate purchaser; and the term "new motor vehicle engine" means an engine in a new motor vehicle or a motor vehicle engine the equitable or legal title to which has never been transferred to the ultimate purchaser; and with respect to imported vehicles or engines, such terms mean a motor vehicle and engine, respectively, manufactured after the effective date of a regulation issued under section 7521 of this title which is applicable to such vehicle or engine (or which would be applicable to such vehicle or engine had it been manufactured for importation into the United States).

(4) The term "dealer" means any person who is engaged in the sale or the distribution of new motor vehicles or new motor vehicle engines to the ultimate purchaser.

(5) The term "ultimate purchaser" means, with respect to any new motor vehicle or new motor vehicle engine, the first person who in good faith purchases such new motor vehicle or new engine for purposes other than resale.

(6) The term "commerce" means (A) commerce between any place in any State and any place outside thereof; and (B) commerce wholly within the District of Columbia.

(7) VEHICLE CURB WEIGHT, GROSS VEHICLE WEIGHT RATING, LIGHT-DUTY TRUCK, LIGHT-DUTY VEHICLE, AND LOADED VEHICLE WEIGHT.—The terms "vehicle curb weight", "gross vehicle weight rating" (GVWR), "light-duty truck" (LDT), light-duty vehicle,¹ and "loaded vehicle weight" (LVW) have the meaning provided in regulations promulgated by the Administrator and in effect as of November 15, 1990. The abbreviations in parentheses corresponding to any term referred to in this paragraph shall

¹ So in original. Probably should be set off by quotation marks.

have the same meaning as the corresponding term.

(8) TEST WEIGHT.—The term “test weight” and the abbreviation “tw” mean the vehicle curb weight added to the gross vehicle weight rating (gvwr) and divided by 2.

(9) MOTOR VEHICLE OR ENGINE PART MANUFACTURER.—The term “motor vehicle or engine part manufacturer” as used in sections 7541 and 7542 of this title means any person engaged in the manufacturing, assembling or rebuilding of any device, system, part, component or element of design which is installed in or on motor vehicles or motor vehicle engines.

(10) NONROAD ENGINE.—The term “nonroad engine” means an internal combustion engine (including the fuel system) that is not used in a motor vehicle or a vehicle used solely for competition, or that is not subject to standards promulgated under section 7411 of this title or section 7521 of this title.

(11) NONROAD VEHICLE.—The term “nonroad vehicle” means a vehicle that is powered by a nonroad engine and that is not a motor vehicle or a vehicle used solely for competition.

(July 14, 1955, ch. 360, title II, §216, formerly §208, as added Pub. L. 89-272, title I, §101(8), Oct. 20, 1965, 79 Stat. 994; renumbered §212, and amended Pub. L. 90-148, §2, Nov. 21, 1967, 81 Stat. 503; renumbered §213, and amended Pub. L. 91-604, §§8(a), 10(d), 11(a)(2)(A), Dec. 31, 1970, 84 Stat. 1694, 1703, 1705; renumbered §214, Pub. L. 93-319, §10, June 22, 1974, 88 Stat. 261; renumbered §216, Pub. L. 95-95, title II, §224(d), Aug. 7, 1977, 91 Stat. 767; Pub. L. 101-549, title II, §223, Nov. 15, 1990, 104 Stat. 2503.)

CODIFICATION

Section was formerly classified to section 1857f-7 of this title.

AMENDMENTS

1990—Par. (1). Pub. L. 101-549, §223(b), inserted references to new nonroad vehicles or new nonroad engines.

Pars. (7) to (11). Pub. L. 101-549, §223(a), added pars. (7) to (11).

1970—Pub. L. 91-604, §11(a)(2)(A), substituted “part” for “subchapter”.

Par. (1). Pub. L. 91-604, §10(d)(1), inserted reference to section 7521 of this title.

Par. (3). Pub. L. 91-604, §10(d)(2), inserted provisions which defined such terms with respect to imported vehicles or engines.

1967—Pub. L. 90-148 inserted “as used in sections 7522, 7525, 7541, and 7542 of this title” after “manufacturer” in par. (1).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7511b, 7545, 7581, 7602, 13211, 13271 of this title.

§ 7551. Omitted

Section, Pub. L. 95-95, title II, §203, Aug. 7, 1977, 91 Stat. 754; Pub. L. 97-375, title I, §106(a), Dec. 21, 1982, 96 Stat. 1820, which required the Administrator of the Environmental Protection Agency to report to Congress respecting the motor vehicle fuel consumption associated with the standards applicable for the immediately preceding model year, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, the 5th item on page

165 of House Document No. 103-7. Section was enacted as part of the Clean Air Act Amendments of 1977, and not as part of the Clean Air Act which comprises this chapter.

§ 7552. Motor vehicle compliance program fees

(a) Fee collection

Consistent with section 9701 of title 31, the Administrator may promulgate (and from time to time revise) regulations establishing fees to recover all reasonable costs to the Administrator associated with—

(1) new vehicle or engine certification under section 7525(a) of this title or part C of this subchapter,

(2) new vehicle or engine compliance monitoring and testing under section 7525(b) of this title or part C of this subchapter, and

(3) in-use vehicle or engine compliance monitoring and testing under section 7541(c) of this title or part C of this subchapter.

The Administrator may establish for all foreign and domestic manufacturers a fee schedule based on such factors as the Administrator finds appropriate and equitable and nondiscriminatory, including the number of vehicles or engines produced under a certificate of conformity. In the case of heavy-duty engine and vehicle manufacturers, such fees shall not exceed a reasonable amount to recover an appropriate portion of such reasonable costs.

(b) Special Treasury fund

Any fees collected under this section shall be deposited in a special fund in the United States Treasury for licensing and other services which thereafter shall be available for appropriation, to remain available until expended, to carry out the Agency’s activities for which the fees were collected.

(c) Limitation on fund use

Moneys in the special fund referred to in subsection (b) of this section shall not be used until after the first fiscal year commencing after the first July 1 when fees are paid into the fund.

(d) Administrator’s testing authority

Nothing in this subsection shall be construed to limit the Administrator’s authority to require manufacturer or confirmatory testing as provided in this part.

(July 14, 1955, ch. 360, title II, §217, as added Pub. L. 101-549, title II, §225, Nov. 15, 1990, 104 Stat. 2504.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7607 of this title.

§ 7553. Prohibition on production of engines requiring leaded gasoline

The Administrator shall promulgate regulations applicable to motor vehicle engines and nonroad engines manufactured after model year 1992 that prohibit the manufacture, sale, or introduction into commerce of any engine that requires leaded gasoline.

(July 14, 1955, ch. 360, title II, §218, as added Pub. L. 101-549, title II, §226, Nov. 15, 1990, 104 Stat. 2505.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7522 of this title.

§ 7554. Urban bus standards**(a) Standards for model years after 1993**

Not later than January 1, 1992, the Administrator shall promulgate regulations under section 7521(a) of this title applicable to urban buses for the model year 1994 and thereafter. Such standards shall be based on the best technology that can reasonably be anticipated to be available at the time such measures are to be implemented, taking costs, safety, energy, lead time, and other relevant factors into account. Such regulations shall require that such urban buses comply with the provisions of subsection (b) of this section (and subsection (c) of this subsection,¹ if applicable) in addition to compliance with the standards applicable under section 7521(a) of this title for heavy-duty vehicles of the same type and model year.

(b) PM standard**(1) 50 percent reduction**

The standards under section 7521(a) of this title applicable to urban buses shall require that, effective for the model year 1994 and thereafter, emissions of particulate matter (PM) from urban buses shall not exceed 50 percent of the emissions of particulate matter (PM) allowed under the emission standard applicable under section 7521(a) of this title as of November 15, 1990, for particulate matter (PM) in the case of heavy-duty diesel vehicles and engines manufactured in the model year 1994.

(2) Revised reduction

The Administrator shall increase the level of emissions of particulate matter allowed under the standard referred to in paragraph (1) if the Administrator determines that the 50 percent reduction referred to in paragraph (1) is not technologically achievable, taking into account durability, costs, lead time, safety, and other relevant factors. The Administrator may not increase such level of emissions above 70 percent of the emissions of particulate matter (PM) allowed under the emission standard applicable under section 7521(a) of this title as of November 15, 1990, for particulate matter (PM) in the case of heavy-duty diesel vehicles and engines manufactured in the model year 1994.

(3) Determination as part of rule

As part of the rulemaking under subsection (a) of this section, the Administrator shall make a determination as to whether the 50 percent reduction referred to in paragraph (1) is technologically achievable, taking into account durability, costs, lead time, safety, and other relevant factors.

(c) Low-polluting fuel requirement**(1) Annual testing**

Beginning with model year 1994 buses, the Administrator shall conduct annual tests of a representative sample of operating urban buses subject to the particulate matter (PM)

standard applicable pursuant to subsection (b) of this section to determine whether such buses comply with such standard in use over their full useful life.

(2) Promulgation of additional low-polluting fuel requirement

(A) If the Administrator determines, based on the testing under paragraph (1), that urban buses subject to the particulate matter (PM) standard applicable pursuant to subsection (b) of this section do not comply with such standard in use over their full useful life, he shall revise the standards applicable to such buses to require (in addition to compliance with the PM standard applicable pursuant to subsection (b) of this section) that all new urban buses purchased or placed into service by owners or operators of urban buses in all metropolitan statistical areas or consolidated metropolitan statistical areas with a 1980 population of 750,000 or more shall be capable of operating, and shall be exclusively operated, on low-polluting fuels. The Administrator shall establish the pass-fail rate for purposes of testing under this subparagraph.

(B) The Administrator shall promulgate a schedule phasing in any low-polluting fuel requirement established pursuant to this paragraph to an increasing percentage of new urban buses purchased or placed into service in each of the first 5 model years commencing 3 years after the determination under subparagraph (A). Under such schedule 100 percent of new urban buses placed into service in the fifth model year commencing 3 years after the determination under subparagraph (A) shall comply with the low-polluting fuel requirement established pursuant to this paragraph.

(C) The Administrator may extend the requirements of this paragraph to metropolitan statistical areas or consolidated metropolitan statistical areas with a 1980 population of less than 750,000, if the Administrator determines that a significant benefit to public health could be expected to result from such extension.

(d) Retrofit requirements

Not later than 12 months after November 15, 1990, the Administrator shall promulgate regulations under section 7521(a) of this title requiring that urban buses which—

(1) are operating in areas referred to in subparagraph (A) of subsection (c)(2) of this section (or subparagraph (C) of subsection (c)(2) of this section if the Administrator has taken action under that subparagraph);

(2) were not subject to standards in effect under the regulations under subsection (a) of this section; and

(3) have their engines replaced or rebuilt after January 1, 1995,

shall comply with an emissions standard or emissions control technology requirement established by the Administrator in such regulations. Such emissions standard or emissions control technology requirement shall reflect the best retrofit technology and maintenance practices reasonably achievable.

¹ So in original. Probably should be "section,".

(e) Procedures for administration and enforcement

The Administrator shall establish, within 18 months after November 15, 1990, and in accordance with section 7525(h) of this title, procedures for the administration and enforcement of standards for buses subject to standards under this section, testing procedures, sampling protocols, in-use compliance requirements, and criteria governing evaluation of buses. Procedures for testing (including, but not limited to, certification testing) shall reflect actual operating conditions.

(f) Definitions

For purposes of this section—

(1) Urban bus

The term “urban bus” has the meaning provided under regulations of the Administrator promulgated under section 7521(a) of this title.

(2) Low-polluting fuel

The term “low-polluting fuel” means methanol, ethanol, propane, or natural gas, or any comparably low-polluting fuel. In determining whether a fuel is comparably low-polluting, the Administrator shall consider both the level of emissions of air pollutants from vehicles using the fuel and the contribution of such emissions to ambient levels of air pollutants. For purposes of this paragraph, the term “methanol” includes any fuel which contains at least 85 percent methanol unless the Administrator increases such percentage as he deems appropriate to protect public health and welfare.

(July 14, 1955, ch. 360, title II, § 219, as added Pub. L. 101-549, title II, § 227[(a)], Nov. 15, 1990, 104 Stat. 2505.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7521, 7522, 7545 of this title.

PART B—AIRCRAFT EMISSION STANDARDS

§ 7571. Establishment of standards**(a) Study; proposed standards; hearings; issuance of regulations**

(1) Within 90 days after December 31, 1970, the Administrator shall commence a study and investigation of emissions of air pollutants from aircraft in order to determine—

(A) the extent to which such emissions affect air quality in air quality control regions throughout the United States, and

(B) the technological feasibility of controlling such emissions.

(2)(A) The Administrator shall, from time to time, issue proposed emission standards applicable to the emission of any air pollutant from any class or classes of aircraft engines which in his judgment causes, or contributes to, air pollution which may reasonably be anticipated to endanger public health or welfare.

(B)(i) The Administrator shall consult with the Administrator of the Federal Aviation Administration on aircraft engine emission standards.

(ii) The Administrator shall not change the aircraft engine emission standards if such

change would significantly increase noise and adversely affect safety.

(3) The Administrator shall hold public hearings with respect to such proposed standards. Such hearings shall, to the extent practicable, be held in air quality control regions which are most seriously affected by aircraft emissions. Within 90 days after the issuance of such proposed regulations, he shall issue such regulations with such modifications as he deems appropriate. Such regulations may be revised from time to time.

(b) Effective date of regulations

Any regulation prescribed under this section (and any revision thereof) shall take effect after such period as the Administrator finds necessary (after consultation with the Secretary of Transportation) to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period.

(c) Regulations which create hazards to aircraft safety

Any regulations in effect under this section on August 7, 1977, or proposed or promulgated thereafter, or amendments thereto, with respect to aircraft shall not apply if disapproved by the President, after notice and opportunity for public hearing, on the basis of a finding by the Secretary of Transportation that any such regulation would create a hazard to aircraft safety. Any such finding shall include a reasonably specific statement of the basis upon which the finding was made.

(July 14, 1955, ch. 360, title II, § 231, as added Pub. L. 91-604, § 11(a)(1), Dec. 31, 1970, 84 Stat. 1703; amended Pub. L. 95-95, title II, § 225, title IV, § 401(f), Aug. 7, 1977, 91 Stat. 769, 791; Pub. L. 104-264, title IV, § 406(b), Oct. 9, 1996, 110 Stat. 3257.)

CODIFICATION

Section was formerly classified to section 1857f-9 of this title.

AMENDMENTS

1996—Subsec. (a)(2). Pub. L. 104-264 designated existing provisions as subpar. (A) and added subpar. (B).

1977—Subsec. (a)(2). Pub. L. 95-95, § 401(f), substituted “The Administrator shall, from time to time, issue proposed emission standards applicable to the emission of any air pollutant from any class or classes of aircraft engines which in his judgment causes, or contributes to, air pollution which may reasonably be anticipated to endanger public health or welfare” for “Within 180 days after commencing such study and investigation, the Administrator shall publish a report of such study and investigation and shall issue proposed emission standards applicable to emissions of any air pollutant from any class or classes of aircraft or aircraft engines which in his judgment cause or contribute to or are likely to cause or contribute to air pollution which endangers the public health or welfare”.

Subsec. (c). Pub. L. 95-95, § 225, substituted “Any regulations in effect under this section on August 7, 1977, or proposed or promulgated thereafter, or amendments thereto, with respect to aircraft shall not apply if disapproved by the President, after notice and opportunity for public hearing, on the basis of a finding by the Secretary of Transportation that any such regulation would create a hazard to aircraft safety” for “Any regulations under this section, or amendments thereto,

with respect to aircraft, shall be prescribed only after consultation with the Secretary of Transportation in order to assure appropriate consideration for aircraft safety” and inserted provision that findings include a reasonably specific statement of the basis upon which the finding was made.

EFFECTIVE DATE OF 1996 AMENDMENT

Except as otherwise specifically provided, amendment by Pub. L. 104-264 applicable only to fiscal years beginning after Sept. 30, 1996, and not to be construed as affecting funds made available for a fiscal year ending before Oct. 1, 1996, see section 3 of Pub. L. 104-264, set out as a note under section 106 of Title 49, Transportation.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as a note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

STUDY AND INVESTIGATION OF UNINSTALLED AIRCRAFT ENGINES

Pub. L. 101-549, title II, §233, Nov. 15, 1990, 104 Stat. 2529, provided that:

“(a) STUDY.—The Administrator of the Environmental Protection Agency and the Secretary of Transportation, in consultation with the Secretary of Defense, shall commence a study and investigation of the testing of uninstalled aircraft engines in enclosed test cells that shall address at a minimum the following issues and such other issues as they shall deem appropriate—

- “(1) whether technologies exist to control some or all emissions of oxides of nitrogen from test cells;
- “(2) the effectiveness of such technologies;
- “(3) the cost of implementing such technologies;
- “(4) whether such technologies affect the safety, design, structure, operation, or performance of aircraft engines;
- “(5) whether such technologies impair the effectiveness and accuracy of aircraft engine safety design, and performance tests conducted in test cells; and
- “(6) the impact of not controlling such oxides of nitrogen in the applicable nonattainment areas and on other sources, stationary and mobile, on oxides of nitrogen in such areas.

“(b) REPORT, AUTHORITY TO REGULATE.—Not later than 24 months after enactment of the Clean Air Act Amendments of 1990 [Nov. 15, 1990], the Administrator of the Environmental Protection Agency and the Secretary of Transportation shall submit to Congress a report of the study conducted under this section. Following the completion of such study, any of the States may adopt or enforce any standard for emissions of oxides of nitrogen from test cells only after issuing a public notice stating whether such standards are in accordance with the findings of the study.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7572, 7607, 7617 of this title; title 49 section 44714.

§ 7572. Enforcement of standards

(a) Regulations to insure compliance with standards

The Secretary of Transportation, after consultation with the Administrator, shall prescribe regulations to insure compliance with all standards prescribed under section 7571 of this title by the Administrator. The regulations of the Secretary of Transportation shall include provisions making such standards applicable in the issuance, amendment, modification, suspension, or revocation of any certificate authorized by part A of subtitle VII of title 49 or the Department of Transportation Act. Such Secretary shall insure that all necessary inspections are accomplished, and,¹ may execute any power or duty vested in him by any other provision of law in the execution of all powers and duties vested in him under this section.

(b) Notice and appeal rights

In any action to amend, modify, suspend, or revoke a certificate in which violation of an emission standard prescribed under section 7571 of this title or of a regulation prescribed under subsection (a) of this section is at issue, the certificate holder shall have the same notice and appeal rights as are prescribed for such holders in part A of subtitle VII of title 49 or the Department of Transportation Act, except that in any appeal to the National Transportation Safety Board, the Board may amend, modify, or revoke the order of the Secretary of Transportation only if it finds no violation of such standard or regulation and that such amendment, modification, or revocation is consistent with safety in air transportation.

(July 14, 1955, ch. 360, title II, §232, as added Pub. L. 91-604, §11(a)(1), Dec. 31, 1970, 84 Stat. 1704.)

REFERENCES IN TEXT

The Department of Transportation Act, referred to in subsecs. (a) and (b), is Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931, as amended, which was classified principally to sections 1651 to 1660 of former Title 49, Transportation. The Act was repealed and the provisions thereof reenacted in Title 49, Transportation, by Pub. L. 97-449, Jan. 12, 1983, 96 Stat. 2413, and Pub. L. 103-272, July 5, 1994, 108 Stat. 745. The Act was also repealed by Pub. L. 104-287, §7(5), Oct. 11, 1996, 110 Stat. 3400. For disposition of sections of former Title 49, see Table at the beginning of Title 49.

CODIFICATION

In subsecs. (a) and (b), “part A of subtitle VII of title 49” substituted for “the Federal Aviation Act [49 App. U.S.C. 1301 et seq.]” and “the Federal Aviation Act of 1958 [49 App. U.S.C. 1301 et seq.]” on authority of Pub. L. 103-272, §6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

Section was formerly classified to section 1857f-10 of this title.

§ 7573. State standards and controls

No State or political subdivision thereof may adopt or attempt to enforce any standard respecting emissions of any air pollutant from any aircraft or engine thereof unless such standard is identical to a standard applicable to such aircraft under this part.

¹ So in original. The comma probably should not appear.

(July 14, 1955, ch. 360, title II, § 233, as added Pub. L. 91-604, § 11(a)(1), Dec. 31, 1970, 84 Stat. 1704.)

CODIFICATION

Section was formerly classified to section 1857f-11 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7416 of this title.

§ 7574. Definitions

Terms used in this part (other than Administrator) shall have the same meaning as such terms have under section 40102(a) of title 49.

(July 14, 1955, ch. 360, title II, § 234, as added Pub. L. 91-604, § 11(a)(1), Dec. 31, 1970, 84 Stat. 1705.)

CODIFICATION

In text, "section 40102(a) of title 49" substituted for "section 101 of the Federal Aviation Act of 1958" on authority of Pub. L. 103-272, § 6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

Section was formerly classified to section 1857f-12 of this title.

PART C—CLEAN FUEL VEHICLES

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 7511a, 7512a, 7522, 7542, 7552, 7607, 13257 of this title.

§ 7581. Definitions

For purposes of this part—

(1) Terms defined in part A

The definitions applicable to part A under section 7550 of this title shall also apply for purposes of this part.

(2) Clean alternative fuel

The term "clean alternative fuel" means any fuel (including methanol, ethanol, or other alcohols (including any mixture thereof containing 85 percent or more by volume of such alcohol with gasoline or other fuels), reformulated gasoline, diesel, natural gas, liquefied petroleum gas, and hydrogen) or power source (including electricity) used in a clean-fuel vehicle that complies with the standards and requirements applicable to such vehicle under this subchapter when using such fuel or power source. In the case of any flexible fuel vehicle or dual fuel vehicle, the term "clean alternative fuel" means only a fuel with respect to which such vehicle was certified as a clean-fuel vehicle meeting the standards applicable to clean-fuel vehicles under section 7583(d)(2) of this title when operating on clean alternative fuel (or any CARB standards which replaces such standards pursuant to section 7583(e) of this title).

(3) NMOG

The term nonmethane organic gas ("NMOG") means the sum of nonoxygenated and oxygenated hydrocarbons contained in a gas sample, including, at a minimum, all oxygenated organic gases containing 5 or fewer carbon atoms (i.e., aldehydes, ketones, alcohols, ethers, etc.), and all known alkanes, alkenes, alkynes, and aromatics containing 12

or fewer carbon atoms. To demonstrate compliance with a NMOG standard, NMOG emissions shall be measured in accordance with the "California Non-Methane Organic Gas Test Procedures". In the case of vehicles using fuels other than base gasoline, the level of NMOG emissions shall be adjusted based on the reactivity of the emissions relative to vehicles using base gasoline.

(4) Base gasoline

The term "base gasoline" means gasoline which meets the following specifications:

Specifications of Base Gasoline Used	
as Basis for Reactivity Readjustment:	
API gravity	57.8
Sulfur, ppm	317
Color	Purple
Benzene, vol. %	1.35
Reid vapor pressure	8.7
Drivability	1195
Antiknock index	87.3
Distillation, D-86 °F	
IBP	92
10%	126
50%	219
90%	327
EP	414
Hydrocarbon Type, Vol. % FIA:	
Aromatics	30.9
Olefins	8.2
Saturates	60.9

The Administrator shall modify the definitions of NMOG, base gasoline, and the methods for making reactivity adjustments, to conform to the definitions and method used in California under the Low-Emission Vehicle and Clean Fuel Regulations of the California Air Resources Board, so long as the California definitions are, in the aggregate, at least as protective of public health and welfare as the definitions in this section.

(5) Covered fleet

The term "covered fleet" means 10 or more motor vehicles which are owned or operated by a single person. In determining the number of vehicles owned or operated by a single person for purposes of this paragraph, all motor vehicles owned or operated, leased or otherwise controlled by such person, by any person who controls such person, by any person controlled by such person, and by any person under common control with such person shall be treated as owned by such person. The term "covered fleet" shall not include motor vehicles held for lease or rental to the general public, motor vehicles held for sale by motor vehicle dealers (including demonstration vehicles), motor vehicles used for motor vehicle manufacturer product evaluations or tests, law enforcement and other emergency vehicles, or nonroad vehicles (including farm and construction vehicles).

(6) Covered fleet vehicle

The term "covered fleet vehicle" means only a motor vehicle which is—

- (i) in a vehicle class for which standards are applicable under this part; and
- (ii) in a covered fleet which is centrally fueled (or capable of being centrally fueled).

No vehicle which under normal operations is garaged at a personal residence at night shall be considered to be a vehicle which is capable of being centrally fueled within the meaning of this paragraph.

(7) Clean-fuel vehicle

The term "clean-fuel vehicle" means a vehicle in a class or category of vehicles which has been certified to meet for any model year the clean-fuel vehicle standards applicable under this part for that model year to clean-fuel vehicles in that class or category.

(July 14, 1955, ch. 360, title II, §241, as added Pub. L. 101-549, title II, §229(a), Nov. 15, 1990, 104 Stat. 2511.)

§ 7582. Requirements applicable to clean-fuel vehicles

(a) Promulgation of standards

Not later than 24 months after November 15, 1990, the Administrator shall promulgate regulations under this part containing clean-fuel vehicle standards for the clean-fuel vehicles specified in this part.

(b) Other requirements

Clean-fuel vehicles of up to 8,500 gvwr subject to standards set forth in this part shall comply with all motor vehicle requirements of this subchapter (such as requirements relating to on-board diagnostics, evaporative emissions, etc.) which are applicable to conventional gasoline-fueled vehicles of the same category and model year, except as provided in section 7584 of this title with respect to administration and enforcement, and except to the extent that any such requirement is in conflict with the provisions of this part. Clean-fuel vehicles of 8,500 gvwr or greater subject to standards set forth in this part shall comply with all requirements of this subchapter which are applicable in the case of conventional gasoline-fueled or diesel fueled vehicles of the same category and model year, except as provided in section 7584 of this title with respect to administration and enforcement, and except to the extent that any such requirement is in conflict with the provisions of this part.

(c) In-use useful life and testing

(1) In the case of light-duty vehicles and light-duty trucks up to 6,000 lbs gvwr, the useful life for purposes of determining in-use compliance with the standards under section 7583 of this title shall be—

(A) a period of 5 years or 50,000 miles (or the equivalent) whichever first occurs, in the case of standards applicable for purposes of certification at 50,000 miles; and

(B) a period of 10 years or 100,000 miles (or the equivalent) whichever first occurs, in the case of standards applicable for purposes of certification at 100,000 miles, except that in-use testing shall not be done for a period beyond 7 years or 75,000 miles (or the equivalent) whichever first occurs.

(2) In the case of light-duty trucks of more than 6,000 lbs gvwr, the useful life for purposes of determining in-use compliance with the standards under section 7583 of this title shall be—

(A) a period of 5 years or 50,000 miles (or the equivalent) whichever first occurs in the case of standards applicable for purposes of certification at 50,000 miles; and

(B) a period of 11 years or 120,000 miles (or the equivalent) whichever first occurs in the case of standards applicable for purposes of certification at 120,000 miles, except that in-use testing shall not be done for a period beyond 7 years or 90,000 miles (or the equivalent) whichever first occurs.

(July 14, 1955, ch. 360, title II, §242, as added Pub. L. 101-549, title II, §229(a), Nov. 15, 1990, 104 Stat. 2513.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7583, 7587 of this title.

§ 7583. Standards for light-duty clean-fuel vehicles

(a) Exhaust standards for light-duty vehicles and certain light-duty trucks

The standards set forth in this subsection shall apply in the case of clean-fuel vehicles which are light-duty trucks of up to 6,000 lbs. gross vehicle weight rating (gvwr) (but not including light-duty trucks of more than 3,750 lbs. loaded vehicle weight (lvw)) or light-duty vehicles:

(1) Phase I

Beginning with model year 1996, for the air pollutants specified in the following table, the clean-fuel vehicle standards under this section shall provide that vehicle exhaust emissions shall not exceed the levels specified in the following table:

PHASE I CLEAN FUEL VEHICLE EMISSION STANDARDS FOR LIGHT-DUTY TRUCKS OF UP TO 3,750 LBS. LVW AND UP TO 6,000 LBS. GVWR AND LIGHT-DUTY VEHICLES

Pollutant	NMOG	CO	NO _x	PM	HCHO (formaldehyde)
50,000 mile standard.	0.125	3.4	0.4	.....	0.015
100,000 mile standard.	0.156	4.2	0.6	0.08*	0.018

Standards are expressed in grams per mile (gpm).
*Standards for particulates (PM) shall apply only to diesel-fueled vehicles.

In the case of the 50,000 mile standards and the 100,000 mile standards, for purposes of certification, the applicable useful life shall be 50,000 miles or 100,000 miles, respectively.

(2) Phase II

Beginning with model year 2001, for air pollutants specified in the following table, the clean-fuel vehicle standards under this section shall provide that vehicle exhaust emissions shall not exceed the levels specified in the following table.

PHASE II CLEAN FUEL VEHICLE EMISSION STANDARDS FOR LIGHT-DUTY TRUCKS OF UP TO 3,750 LBS. LVW AND UP TO 6,000 LBS. GVWR AND LIGHT-DUTY VEHICLES

Pollutant	NMOG	CO	NO _x	PM*	HCHO (formaldehyde)
50,000 mile standard.	0.075	3.4	0.2	.....	0.015
100,000 mile standard.	0.090	4.2	0.3	0.08	0.018

Standards are expressed in grams per mile (gpm).
 *Standards for particulates (PM) shall apply only to diesel-fueled vehicles.
 In the case of the 50,000 mile standards and the 100,000 mile standards, for purposes of certification, the applicable useful life shall be 50,000 miles or 100,000 miles, respectively.

(b) Exhaust standards for light-duty trucks of more than 3,750 lbs. LVW and up to 5,750 lbs. LVW and up to 6,000 lbs. GVWR

The standards set forth in this paragraph shall apply in the case of clean-fuel vehicles which are light-duty trucks of more than 3,750 lbs. loaded vehicle weight (lvw) but not more than 5,750 lbs. lvw and not more than 6,000 lbs. gross weight rating (GVWR):

(1) Phase I

Beginning with model year 1996, for the air pollutants specified in the following table, the clean-fuel vehicle standards under this section shall provide that vehicle exhaust emissions shall not exceed the levels specified in the following table.

PHASE I CLEAN FUEL VEHICLE EMISSION STANDARDS FOR LIGHT-DUTY TRUCKS OF MORE THAN 3,750 LBS. AND UP TO 5,750 LBS. LVW AND UP TO 6,000 LBS. GVWR

Pollutant	NMOG	CO	NO _x	PM*	HCHO (formaldehyde)
50,000 mile standard.	0.160	4.4	0.7	.....	0.018
100,000 mile standard.	0.200	5.5	0.9	0.08	0.023

Standards are expressed in grams per mile (gpm).
 *Standards for particulates (PM) shall apply only to diesel-fueled vehicles.
 In the case of the 50,000 mile standards and the 100,000 mile standards, for purposes of certification, the applicable useful life shall be 50,000 miles or 100,000 miles, respectively.

(2) Phase II

Beginning with model year 2001, for the air pollutants specified in the following table, the clean-fuel vehicle standards under this section shall provide that vehicle exhaust emissions shall not exceed the levels specified in the following table.

PHASE II CLEAN FUEL VEHICLE EMISSION STANDARDS FOR LIGHT-DUTY TRUCKS OF MORE THAN 3,750 LBS. LVW AND UP TO 5,750 LBS. LVW AND UP TO 6,000 LBS. GVWR

Pollutant	NMOG	CO	NO _x	PM*	HCHO (formaldehyde)
50,000 mile standard.	0.100	4.4	0.4	.....	0.018
100,000 mile standard.	0.130	5.5	0.5	0.08	0.023

Standards are expressed in grams per mile (gpm).
 *Standards for particulates (PM) shall apply only to diesel-fueled vehicles.
 In the case of the 50,000 mile standards and the 100,000 mile standards, for purposes of certification, the applicable useful life shall be 50,000 miles or 100,000 miles, respectively.

(c) Exhaust standards for light-duty trucks greater than 6,000 lbs. GVWR

The standards set forth in this subsection shall apply in the case of clean-fuel vehicles which are light-duty trucks of more than 6,000 lbs. gross weight rating (GVWR) and less than or equal to 8,500 lbs. GVWR, beginning with model year 1998. For the air pollutants specified in the following table, the clean-fuel vehicle standards under this section shall provide that vehicle exhaust emissions of vehicles within the test weight categories specified in the following table shall not exceed the levels specified in such table.

CLEAN FUEL VEHICLE EMISSION STANDARDS FOR LIGHT DUTY TRUCKS GREATER THAN 6,000 LBS. GVWR

Test Weight Category: Up to 3,750 lbs. tw

Pollutant	NMOG	CO	NO _x	PM*	HCHO (formaldehyde)
50,000 mile standard.	0.125	3.4	0.4**	.....	0.015
120,000 mile standard.	0.180	5.0	0.6	0.08	0.022

Test Weight Category: Above 3,750 but not above 5,750 lbs. tw

Pollutant	NMOG	CO	NO _x	PM*	HCHO (formaldehyde)
50,000 mile standard.	0.160	4.4	0.7**	.....	0.018
120,000 mile standard.	0.230	6.4	1.0	0.10	0.027

Test Weight Category: Above 5,750 tw but not above 8,500 lbs. gvwr

Pollutant	NMOG	CO	NO _x	PM*	HCHO (formaldehyde)
50,000 mile standard.	0.195	5.0	1.1**	.....	0.022
120,000 mile standard.	0.280	7.3	1.5	0.12	0.032

Standards are expressed in grams per mile (gpm).
 *Standards for particulates (PM) shall apply only to diesel-fueled vehicles.

**Standard not applicable to diesel-fueled vehicles.
For the 50,000 mile standards and the 120,000 mile standards set forth in the table, the applicable useful life for purposes of certification shall be 50,000 miles or 120,000 miles, respectively.

(d) Flexible and dual-fuel vehicles

(1) In general

The Administrator shall establish standards and requirements under this section for the model year 1996 and thereafter for vehicles weighing not more than 8,500 lbs. gvwr which are capable of operating on more than one fuel. Such standards shall require that such vehicles meet the exhaust standards applicable under subsection¹ (a), (b), and (c) of this section for CO, NO_x, and HCHO, and if appropriate, PM for single-fuel vehicles of the same vehicle category and model year.

(2) Exhaust NMOG standard for operation on clean alternative fuel

In addition to standards for the pollutants referred to in paragraph (1), the standards established under paragraph (1) shall require that vehicle exhaust emissions of NMOG not exceed the levels (expressed in grams per mile) specified in the tables below when the vehicle is operated on the clean alternative fuel for which such vehicle is certified:

NMOG STANDARDS FOR FLEXIBLE- AND DUAL-FUELED VEHICLES WHEN OPERATING ON CLEAN ALTERNATIVE FUEL

Light-duty Trucks up to 6,000 lbs. GVWR and Light-duty vehicles

Vehicle Type	Column A (50,000 mi.) Standard (gpm)	Column B (100,000 mi.) Standard (gpm)
Beginning MY 1996: LDT's (0-3,750 lbs. LVW) and light-duty vehicles.	0.125	0.156
LDT's (3,751-5,750 lbs. LVW).	0.160	0.20
Beginning MY 2001: LDT's (0-3,750 lbs. LVW) and light-duty vehicles.	0.075	0.090
LDT's (3,751-5,750 lbs. LVW).	0.100	0.130

For standards under column A, for purposes of certification under section 7525 of this title, the applicable useful life shall be 50,000 miles.

For standards under column B, for purposes of certification under section 7525 of this title, the applicable useful life shall be 100,000 miles.

Light-duty Trucks More than 6,000 lbs. GVWR

Vehicle Type	Column A (50,000 mi.) Standard	Column B (120,000 mi.) Standard
Beginning MY 1998: LDT's (0-3,750 lbs. TW)	0.125	0.180
LDT's (3,751-5,750 lbs. TW)	0.160	0.230
LDT's (above 5,750 lbs. TW)	0.195	0.280

For standards under column A, for purposes of certification under section 7525 of this title, the applicable useful life shall be 50,000 miles.

For standards under column B, for purposes of certification under section 7525 of this title, the applicable useful life shall be 120,000 miles.

¹ So in original. Probably should be "subsections".

(3) NMOG standard for operation on conventional fuel

In addition to the standards referred to in paragraph (1), the standards established under paragraph (1) shall require that vehicle exhaust emissions of NMOG not exceed the levels (expressed in grams per mile) specified in the tables below:

NMOG STANDARDS FOR FLEXIBLE- AND DUAL-FUELED VEHICLES WHEN OPERATING ON CONVENTIONAL FUEL

Light-duty Trucks of up to 6,000 lbs. GVWR and Light-duty vehicles

Vehicle Type	Column A (50,000 mi.) Standard (gpm)	Column B (100,000 mi.) Standard (gpm)
Beginning MY 1996: LDT's (0-3,750 lbs. LVW) and light-duty vehicles.	0.25	0.31
LDT's (3,751-5,750 lbs. LVW).	0.32	0.40
Beginning MY 2001: LDT's (0-3,750 lbs. LVW) and light-duty vehicles.	0.125	0.156
LDT's (3,751-5,750 lbs. LVW).	0.160	0.200

For standards under column A, for purposes of certification under section 7525 of this title, the applicable useful life shall be 50,000 miles.

For standards under column B, for purposes of certification under section 7525 of this title, the applicable useful life shall be 100,000 miles.

Light-duty Trucks of up to 6,000 lbs. GVWR

Vehicle Type	Column A (50,000 mi.) Standard	Column B (120,000 mi.) Standard
Beginning MY 1998: LDT's (0-3,750 lbs. TW)	0.25	0.36
LDT's (3,751-5,750 lbs. TW)	0.32	0.46
LDT's (above 5,750 lbs. TW)	0.39	0.56

For standards under column A, for purposes of certification under section 7525 of this title, the applicable useful life shall be 50,000 miles.

For standards under column B, for purposes of certification under section 7525 of this title, the applicable useful life shall be 120,000 miles.

(e) Replacement by CARB standards

(1) Single set of CARB standards

If the State of California promulgates regulations establishing and implementing a single set of standards applicable in California pursuant to a waiver approved under section 7543 of this title to any category of vehicles referred to in subsection (a), (b), (c), or (d) of this section and such set of standards is, in the aggregate, at least as protective of public health and welfare as the otherwise applicable standards set forth in section 7582 of this title and subsection (a), (b), (c), or (d) of this section, such set of California standards shall apply to clean-fuel vehicles in such category in lieu of the standards otherwise applicable under section 7582 of this title and subsection (a), (b), (c), or (d) of this section, as the case may be.

(2) Multiple sets of CARB standards

If the State of California promulgates regulations establishing and implementing several

different sets of standards applicable in California pursuant to a waiver approved under section 7543 of this title to any category of vehicles referred to in subsection (a), (b), (c), or (d) of this section and each of such sets of California standards is, in the aggregate, at least as protective of public health and welfare as the otherwise applicable standards set forth in section 7582 of this title and subsection (a), (b), (c), or (d) of this section, such standards shall be treated as “qualifying California standards” for purposes of this paragraph. Where more than one set of qualifying standards are established and administered by the State of California, the least stringent set of qualifying California standards shall apply to the clean-fuel vehicles concerned in lieu of the standards otherwise applicable to such vehicles under section 7582 of this title and this section.

(f) Less stringent CARB standards

If the Low-Emission Vehicle and Clean Fuels Regulations of the California Air Resources Board applicable to any category of vehicles referred to in subsection (a), (b), (c), or (d) of this section are modified after November 15, 1990, to provide an emissions standard which is less stringent than the otherwise applicable standard set forth in subsection (a), (b), (c), or (d) of this section, or if any effective date contained in such regulations is delayed, such modified standards or such delay (or both, as the case may be) shall apply, for an interim period, in lieu of the standard or effective date otherwise applicable under subsection (a), (b), (c), or (d) of this section to any vehicles covered by such modified standard or delayed effective date. The interim period shall be a period of not more than 2 model years from the effective date otherwise applicable under subsection (a), (b), (c), or (d) of this section. After such interim period, the otherwise applicable standard set forth in subsection (a), (b), (c), or (d) of this section shall take effect with respect to such vehicles (unless subsequently replaced under subsection (e) of this section).

(g) Not applicable to heavy-duty vehicles

Notwithstanding any provision of the Low-Emission Vehicle and Clean Fuels Regulations of the California Air Resources Board nothing in this section shall apply to heavy-duty engines in vehicles of more than 8,500 lbs. GVWR.

(July 14, 1955, ch. 360, title II, §243, as added Pub. L. 101-549, title II, §229(a), Nov. 15, 1990, 104 Stat. 2514.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7581, 7582, 7586, 7587 of this title.

§ 7584. Administration and enforcement as per California standards

Where the numerical clean-fuel vehicle standards applicable under this part to vehicles of not more than 8,500 lbs. GVWR are the same as numerical emission standards applicable in California under the Low-Emission Vehicle and Clean Fuels Regulations of the California Air Resources Board (“CARB”), such standards shall

be administered and enforced by the Administrator—

(1) in the same manner and with the same flexibility as the State of California administers and enforces corresponding standards applicable under the Low-Emission Vehicle and Clean Fuels Regulations of the California Air Resources Board (“CARB”); and

(2) subject to the same requirements, and utilizing the same interpretations and policy judgments, as are applicable in the case of such CARB standards, including, but not limited to, requirements regarding certification, production-line testing, and in-use compliance,

unless the Administrator determines (in promulgating the rules establishing the clean fuel vehicle program under this section) that any such administration and enforcement would not meet the criteria for a waiver under section 7543 of this title. Nothing in this section shall apply in the case of standards under section 7585 of this title for heavy-duty vehicles.

(July 14, 1955, ch. 360, title II, §244, as added Pub. L. 101-549, title II, §229(a), Nov. 15, 1990, 104 Stat. 2519.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7582, 7587 of this title.

§ 7585. Standards for heavy-duty clean-fuel vehicles (GVWR above 8,500 up to 26,000 lbs.)

(a) Model years after 1997; combined NO_x and NMHC standard

For classes or categories of heavy-duty vehicles or engines manufactured for the model year 1998 or thereafter and having a GVWR greater than 8,500 lbs. and up to 26,000 lbs. GVWR, the standards under this part for clean-fuel vehicles shall require that combined emissions of oxides of nitrogen (NO_x) and nonmethane hydrocarbons (NMHC) shall not exceed 3.15 grams per brake horsepower hour (equivalent to 50 percent of the combined emission standards applicable under section 7521 of this title for such air pollutants in the case of a conventional model year 1994 heavy-duty diesel-fueled vehicle or engine). No standard shall be promulgated as provided in this section for any heavy-duty vehicle of more than 26,000 lbs. GVWR.

(b) Revised standards that are less stringent

(1) The Administrator may promulgate a revised less stringent standard for the vehicles or engines referred to in subsection (a) of this section if the Administrator determines that the 50 percent reduction required under subsection (a) of this section is not technologically feasible for clean diesel-fueled vehicles and engines, taking into account durability, costs, lead time, safety, and other relevant factors. To provide adequate lead time the Administrator shall make a determination with regard to the technological feasibility of such 50 percent reduction before December 31, 1993.

(2) Any person may at any time petition the Administrator to make a determination under paragraph (1). The Administrator shall act on such a petition within 6 months after the petition is filed.

(3) Any revised less stringent standards promulgated as provided in this subsection shall require at least a 30 percent reduction in lieu of the 50 percent reduction referred to in paragraph (1).

(July 14, 1955, ch. 360, title II, §245, as added Pub. L. 101-549, title II, §229(a), Nov. 15, 1990, 104 Stat. 2519.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7584, 7587, 7589 of this title.

§ 7586. Centrally fueled fleets

(a) Fleet program required for certain nonattainment areas

(1) SIP revision

Each State in which there is located all or part of a covered area (as defined in paragraph (2)) shall submit, within 42 months after November 15, 1990, a State implementation plan revision under section 7410 of this title and part D of subchapter I of this chapter to establish a clean-fuel vehicle program for fleets under this section.

(2) Covered areas

For purposes of this subsection, each of the following shall be a "covered area":

(A) Ozone nonattainment areas

Any ozone nonattainment area with a 1980 population of 250,000 or more classified under subpart 2 of part D of subchapter I of this chapter as Serious, Severe, or Extreme based on data for the calendar years 1987, 1988, and 1989. In determining the ozone nonattainment areas to be treated as covered areas pursuant to this subparagraph, the Administrator shall use the most recent interpretation methodology issued by the Administrator prior to November 15, 1990.

(B) Carbon monoxide nonattainment areas

Any carbon monoxide nonattainment area with a 1980 population of 250,000 or more and a carbon monoxide design value at or above 16.0 parts per million based on data for calendar years 1988 and 1989 (as calculated according to the most recent interpretation methodology issued prior to November 15, 1990, by the United States Environmental Protection Agency), excluding those carbon monoxide nonattainment areas in which mobile sources do not contribute significantly to carbon monoxide exceedances.

(3) Plan revisions for reclassified areas

In the case of ozone nonattainment areas reclassified as Serious, Severe, or Extreme under part D of subchapter I of this chapter with a 1980 population of 250,000 or more, the State shall submit a plan revision meeting the requirements of this subsection within 1 year after reclassification. Such plan revision shall implement the requirements applicable under this subsection at the time of reclassification and thereafter, except that the Administrator may adjust for a limited period the deadlines for compliance where compliance with such deadlines would be infeasible.

(4) Consultation; consideration of factors

Each State required to submit an implementation plan revision under this subsection shall develop such revision in consultation with fleet operators, vehicle manufacturers, fuel producers and distributors, motor vehicle fuel, and other interested parties, taking into consideration operational range, specialty uses, vehicle and fuel availability, costs, safety, resale values of vehicles and equipment and other relevant factors.

(b) Phase-in of requirements

The plan revision required under this section shall contain provisions requiring that at least a specified percentage of all new covered fleet vehicles in model year 1998 and thereafter purchased by each covered fleet operator in each covered area shall be clean-fuel vehicles and shall use clean alternative fuels when operating in the covered area. For the applicable model years (MY) specified in the following table and thereafter, the specified percentage shall be as provided in the table for the vehicle types set forth in the table:

CLEAN FUEL VEHICLE PHASE-IN REQUIREMENTS FOR FLEETS

Vehicle Type	MY1998	MY1999	MY2000
Light-duty trucks up to 6,000 lbs. GVWR and light-duty vehicles	30%	50%	70%
Heavy-duty trucks above 8,500 lbs. GVWR	50%	50%	50%

The term MY refers to model year.

(c) Accelerated standard for light-duty trucks up to 6,000 lbs. GVWR and light-duty vehicles

Notwithstanding the model years for which clean-fuel vehicle standards are applicable as provided in section 7583 of this title, for purposes of this section, light duty¹ trucks of up to 6,000 lbs. GVWR and light-duty vehicles manufactured in model years 1998 through model year 2000 shall be treated as clean-fuel vehicles only if such vehicles comply with the standards applicable under section 7583 of this title for vehicles in the same class for the model year 2001. The requirements of subsection (b) of this section shall take effect on the earlier of the following:

- (1) The first model year after model year 1997 in which new light-duty trucks up to 6,000 lbs. GVWR and light-duty vehicles which comply with the model year 2001 standards under section 7583 of this title are offered for sale in California.
- (2) Model year 2001.

Whenever the effective date of subsection (b) of this section is delayed pursuant to paragraph (1) of this subsection, the phase-in schedule under subsection (b) of this section shall be modified to commence with the model year referred to in paragraph (1) in lieu of model year 1998.

(d) Choice of vehicles and fuel

The plan revision under this subsection shall provide that the choice of clean-fuel vehicles

¹ So in original. Probably should be "light-duty".

and clean alternative fuels shall be made by the covered fleet operator subject to the requirements of this subsection.

(e) Availability of clean alternative fuel

The plan revision shall require fuel providers to make clean alternative fuel available to covered fleet operators at locations at which covered fleet vehicles are centrally fueled.

(f) Credits

(1) Issuance of credits

The State plan revision required under this section shall provide for the issuance by the State of appropriate credits to a fleet operator for any of the following (or any combination thereof):

(A) The purchase of more clean-fuel vehicles than required under this section.

(B) The purchase of clean fuel² vehicles which meet more stringent standards established by the Administrator pursuant to paragraph (4).

(C) The purchase of vehicles in categories which are not covered by this section but which meet standards established for such vehicles under paragraph (4).

(2) Use of credits; limitations based on weight classes

(A) Use of credits

Credits under this subsection may be used by the person holding such credits to demonstrate compliance with this section or may be traded or sold for use by any other person to demonstrate compliance with other requirements applicable under this section in the same nonattainment area. Credits obtained at any time may be held or banked for use at any later time, and when so used, such credits shall maintain the same value as if used at an earlier date.

(B) Limitations based on weight classes

Credits issued with respect to the purchase of vehicles of up to 8,500 lbs. GVWR may not be used to demonstrate compliance by any person with the requirements applicable under this subsection to vehicles of more than 8,500 lbs. GVWR. Credits issued with respect to the purchase of vehicles of more than 8,500 lbs. GVWR may not be used to demonstrate compliance by any person with the requirements applicable under this subsection to vehicles weighing up to 8,500 lbs. GVWR.

(C) Weighting

Credits issued for purchase of a clean fuel² vehicle under this subsection shall be adjusted with appropriate weighting to reflect the level of emission reduction achieved by the vehicle.

(3) Regulations and administration

Within 12 months after November 15, 1990, the Administrator shall promulgate regulations for such credit program. The State shall administer the credit program established under this subsection.

(4) Standards for issuing credits for cleaner vehicles

Solely for purposes of issuing credits under paragraph (1)(B), the Administrator shall establish under this paragraph standards for Ultra-Low Emission Vehicles ("ULEV"s) and Zero Emissions Vehicles ("ZEV"s) which shall be more stringent than those otherwise applicable to clean-fuel vehicles under this part. The Administrator shall certify clean fuel² vehicles as complying with such more stringent standards, and administer and enforce such more stringent standards, in the same manner as in the case of the otherwise applicable clean-fuel vehicle standards established under this section. The standards established by the Administrator under this paragraph for vehicles under 8,500 lbs. GVWR or greater shall conform as closely as possible to standards which are established by the State of California for ULEV and ZEV vehicles in the same class. For vehicles of 8,500 lbs. GVWR or more, the Administrator shall promulgate comparable standards for purposes of this subsection.

(5) Early fleet credits

The State plan revision shall provide credits under this subsection to fleet operators that purchase vehicles certified to meet clean-fuel vehicle standards under this part during any period after approval of the plan revision and prior to the effective date of the fleet program under this section.

(g) Availability to public

At any facility owned or operated by a department, agency, or instrumentality of the United States where vehicles subject to this subsection are supplied with clean alternative fuel, such fuel shall be offered for sale to the public for use in other vehicles during reasonable business times and subject to national security concerns, unless such fuel is commercially available for vehicles in the vicinity of such Federal facilities.

(h) Transportation control measures

The Administrator shall by rule, within 1 year after November 15, 1990, ensure that certain transportation control measures including time-of-day or day-of-week restrictions, and other similar measures that restrict vehicle usage, do not apply to any clean-fuel vehicle that meets the requirements of this section. This subsection shall apply notwithstanding subchapter I of this chapter.

(July 14, 1955, ch. 360, title II, §246, as added Pub. L. 101-549, title II, §229(a), Nov. 15, 1990, 104 Stat. 2520.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7512a, 7587, 7589 of this title.

§ 7587. Vehicle conversions

(a) Conversion of existing and new conventional vehicles to clean-fuel vehicles

The requirements of section 7586 of this title may be met through the conversion of existing or new gasoline or diesel-powered vehicles to

²So in original. Probably should be "clean-fuel".

clean-fuel vehicles which comply with the applicable requirements of that section. For purposes of such provisions the conversion of a vehicle to clean fuel¹ vehicle shall be treated as the purchase of a clean fuel¹ vehicle. Nothing in this part shall be construed to provide that any covered fleet operator subject to fleet vehicle purchase requirements under section 7586 of this title shall be required to convert existing or new gasoline or diesel-powered vehicles to clean-fuel vehicles or to purchase converted vehicles.

(b) Regulations

The Administrator shall, within 24 months after November 15, 1990, consistent with the requirements of this subchapter applicable to new vehicles, promulgate regulations governing conversions of conventional vehicles to clean-fuel vehicles. Such regulations shall establish criteria for such conversions which will ensure that a converted vehicle will comply with the standards applicable under this part to clean-fuel vehicles. Such regulations shall provide for the application to such conversions of the same provisions of this subchapter (including provisions relating to administration enforcement) as are applicable to standards under section² 7582, 7583, 7584, and 7585 of this title, except that in the case of conversions the Administrator may modify the applicable regulations implementing such provisions as the Administrator deems necessary to implement this part.

(c) Enforcement

Any person who converts conventional vehicles to clean fuel¹ vehicles pursuant to subsection (b) of this section, shall be considered a manufacturer for purposes of sections 7525 and 7541 of this title and related enforcement provisions. Nothing in the preceding sentence shall require a person who performs such conversions to warrant any part or operation of a vehicle other than as required under this part. Nothing in this paragraph shall limit the applicability of any other warranty to unrelated parts or operations.

(d) Tampering

The conversion from a vehicle capable of operating on gasoline or diesel fuel only to a clean-fuel vehicle shall not be considered a violation of section 7522(a)(3) of this title if such conversion complies with the regulations promulgated under subsection (b) of this section.

(e) Safety

The Secretary of Transportation shall, if necessary, promulgate rules under applicable motor vehicle laws regarding the safety of vehicles converted from existing and new vehicles to clean-fuel vehicles.

(July 14, 1955, ch. 360, title II, §247, as added Pub. L. 101-549, title II, §229(a), Nov. 15, 1990, 104 Stat. 2523.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13236, 13257 of this title.

¹ So in original. Probably should be "clean-fuel".

² So in original. Probably should be "sections".

§ 7588. Federal agency fleets

(a) Additional provisions applicable

The provisions of this section shall apply, in addition to the other provisions of this part, in the case of covered fleet vehicles owned or operated by an agency, department, or instrumentality of the United States, except as otherwise provided in subsection (e) of this section.

(b) Cost of vehicles to Federal agency

Notwithstanding the provisions of sections 601-611 of title 40, the Administrator of General Services shall not include the incremental costs of clean-fuel vehicles in the amount to be reimbursed by Federal agencies if the Administrator of General Services determines that appropriations provided pursuant to this paragraph are sufficient to provide for the incremental cost of such vehicles over the cost of comparable conventional vehicles.

(c) Limitations on appropriations

Funds appropriated pursuant to the authorization under this paragraph shall be applicable only—

(1) to the portion of the cost of acquisition, maintenance and operation of vehicles acquired under this subparagraph which exceeds the cost of acquisition, maintenance and operation of comparable conventional vehicles;

(2) to the portion of the costs of fuel storage and dispensing equipment attributable to such vehicles which exceeds the costs for such purposes required for conventional vehicles; and

(3) to the portion of the costs of acquisition of clean-fuel vehicles which represents a reduction in revenue from the disposal of such vehicles as compared to revenue resulting from the disposal of comparable conventional vehicles.

(d) Vehicle costs

The incremental cost of vehicles acquired under this part over the cost of comparable conventional vehicles shall not be applied to any calculation with respect to a limitation under law on the maximum cost of individual vehicles which may be required by the United States.

(e) Exemptions

The requirements of this part shall not apply to vehicles with respect to which the Secretary of Defense has certified to the Administrator that an exemption is needed based on national security consideration.

(f) Acquisition requirement

Federal agencies, to the extent practicable, shall obtain clean-fuel vehicles from original equipment manufacturers.

(g) Authorization of appropriations

There are authorized to be appropriated such sums as may be required to carry out the provisions of this section: *Provided*, That such sums as are appropriated for the Administrator of General Services pursuant to the authorization under this section shall be added to the General Supply Fund established in section 321 of title 40.

(July 14, 1955, ch. 360, title II, §248, as added Pub. L. 101-549, title II, §229(a), Nov. 15, 1990, 104 Stat. 2524.)

CODIFICATION

In subsec. (b), “sections 601-611 of title 40” substituted for “section 211 of the Federal Property and Administrative Services Act of 1949”, and, in subsec. (g), “the General Supply Fund established in section 321 of title 40” substituted for “the General Supply Fund established in section 109 of the Federal Property and Administrative Services Act of 1949”, on authority of Pub. L. 107-217, §5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

§ 7589. California pilot test program

(a) Establishment

The Administrator shall establish a pilot program in the State of California to demonstrate the effectiveness of clean-fuel vehicles in controlling air pollution in ozone nonattainment areas.

(b) Applicability

The provisions of this section shall only apply to light-duty trucks and light-duty vehicles, and such provisions shall apply only in the State of California, except as provided in subsection (f) of this section.

(c) Program requirements

Not later than 24 months after November 15, 1990, the Administrator shall promulgate regulations establishing requirements under this section applicable in the State of California. The regulations shall provide the following:

(1) Clean-fuel vehicles

Clean-fuel vehicles shall be produced, sold, and distributed (in accordance with normal business practices and applicable franchise agreements) to ultimate purchasers in California (including owners of covered fleets referred to in section 7586 of this title) in numbers that meet or exceed the following schedule:

Model Years	Number of Clean-Fuel Vehicles
1996, 1997, 1998	150,000 vehicles
1999 and thereafter	300,000 vehicles

(2) Clean alternative fuels

(A) Within 2 years after November 15, 1990, the State of California shall submit a revision of the applicable implementation plan under part D of subchapter I of this chapter and section 7410 of this title containing a clean fuel plan that requires that clean alternative fuels on which the clean-fuel vehicles required under this paragraph can operate shall be produced and distributed by fuel suppliers and made available in California. At a minimum, sufficient clean alternative fuels shall be produced, distributed and made available to assure that all clean-fuel vehicles required under this section can operate, to the maximum extent practicable, exclusively on such fuels in California. The State shall require that clean alternative fuels be made available and offered for sale at an adequate number of locations with sufficient geographic distribution to ensure convenient refueling with clean alternative fuels, considering the number of, and

type of, such vehicles sold and the geographic distribution of such vehicles within the State. The State shall determine the clean alternative fuels to be produced, distributed, and made available based on motor vehicle manufacturers’ projections of future sales of such vehicles and consultations with the affected local governments and fuel suppliers.

(B) The State may by regulation grant persons subject to the requirements prescribed under this paragraph an appropriate amount of credits for exceeding such requirements, and any person granted credits may transfer some or all of the credits for use by one or more persons in demonstrating compliance with such requirements. The State may make the credits available for use after consideration of enforceability, environmental, and economic factors and upon such terms and conditions as the State finds appropriate.

(C) The State may also by regulation establish specifications for any clean alternative fuel produced and made available under this paragraph as the State finds necessary to reduce or eliminate an unreasonable risk to public health, welfare, or safety associated with its use or to ensure acceptable vehicle maintenance and performance characteristics.

(D) If a retail gasoline dispensing facility would have to remove or replace one or more motor vehicle fuel underground storage tanks and accompanying piping in order to comply with the provisions of this section, and it had removed and replaced such tank or tanks and accompanying piping in order to comply with subtitle I of the Solid Waste Disposal Act [42 U.S.C. 6991 et seq.] prior to November 15, 1990, it shall not be required to comply with this subsection until a period of 7 years has passed from the date of the removal and replacement of such tank or tanks.

(E) Nothing in this section authorizes any State other than California to adopt provisions regarding clean alternative fuels.

(F) If the State of California fails to adopt a clean fuel program that meets the requirements of this paragraph, the Administrator shall, within 4 years after November 15, 1990, establish a clean fuel program for the State of California under this paragraph and section 7410(c) of this title that meets the requirements of this paragraph.

(d) Credits for motor vehicle manufacturers

(1) The Administrator may (by regulation) grant a motor vehicle manufacturer an appropriate amount of credits toward fulfillment of such manufacturer’s share of the requirements of subsection (c)(1) of this section for any of the following (or any combination thereof):

(A) The sale of more clean-fuel vehicles than required under subsection (c)(1) of this section.

(B) The sale of clean fuel¹ vehicles which meet standards established by the Administrator as provided in paragraph (3) which are more stringent than the clean-fuel vehicle standards otherwise applicable to such clean-fuel vehicle. A manufacturer granted credits under this paragraph may transfer some or all

¹ So in original. Probably should be “clean-fuel”.

of the credits for use by one or more other manufacturers in demonstrating compliance with the requirements prescribed under this paragraph. The Administrator may make the credits available for use after consideration of enforceability, environmental, and economic factors and upon such terms and conditions as he finds appropriate. The Administrator shall grant credits in accordance with this paragraph, notwithstanding any requirements of State law or any credits granted with respect to the same vehicles under any State law, rule, or regulation.

(2) **REGULATIONS AND ADMINISTRATION.**—The Administrator shall administer the credit program established under this subsection. Within 12 months after November 15, 1990, the Administrator shall promulgate regulations for such credit program.

(3) **STANDARDS FOR ISSUING CREDITS FOR CLEANER VEHICLES.**—The more stringent standards and other requirements (including requirements relating to the weighting of credits) established by the Administrator for purposes of the credit program under 7585(e)² of this title (relating to credits for clean fuel¹ vehicles in the fleets program) shall also apply for purposes of the credit program under this paragraph.

(e) Program evaluation

(1) Not later than June 30, 1994 and again in connection with the report under paragraph (2), the Administrator shall provide a report to the Congress on the status of the California Air Resources Board Low-Emissions Vehicles and Clean Fuels Program. Such report shall examine the capability, from a technological standpoint, of motor vehicle manufacturers and motor vehicle fuel suppliers to comply with the requirements of such program and with the requirements of the California Pilot Program under this section.

(2) Not later than June 30, 1998, the Administrator shall complete and submit a report to Congress on the effectiveness of the California pilot program under this section. The report shall evaluate the level of emission reductions achieved under the program, the costs of the program, the advantages and disadvantages of extending the program to other nonattainment areas, and desirability of continuing or expanding the program in California.

(3) The program under this section cannot be extended or terminated by the Administrator except by Act of Congress enacted after November 15, 1990. Section 7507 of this title does not apply to the program under this section.

(f) Voluntary opt-in for other States

(1) EPA regulations

Not later than 2 years after November 15, 1990, the Administrator shall promulgate regulations establishing a voluntary opt-in program under this subsection pursuant to which—

(A) clean-fuel vehicles which are required to be produced, sold, and distributed in the State of California under this section, and

(B) clean alternative fuels required to be produced and distributed under this section

by fuel suppliers and made available in California³

may also be sold and used in other States which submit plan revisions under paragraph (2).

(2) Plan revisions

Any State in which there is located all or part of an ozone nonattainment area classified under subpart D of subchapter I of this chapter as Serious, Severe, or Extreme may submit a revision of the applicable implementation plan under part D of subchapter I of this chapter and section 7410 of this title to provide incentives for the sale or use in such an area or State of clean-fuel vehicles which are required to be produced, sold, and distributed in the State of California, and for the use in such an area or State of clean alternative fuels required to be produced and distributed by fuel suppliers and made available in California. Such plan provisions shall not take effect until 1 year after the State has provided notice of such provisions to motor vehicle manufacturers and to fuel suppliers.

(3) Incentives

The incentives referred to in paragraph (2) may include any or all of the following:

(A) A State registration fee on new motor vehicles registered in the State which are not clean-fuel vehicles in the amount of at least 1 percent of the cost of the vehicle. The proceeds of such fee shall be used to provide financial incentives to purchasers of clean-fuel vehicles and to vehicle dealers who sell high volumes or high percentages of clean-fuel vehicles and to defray the administrative costs of the incentive program.

(B) Provisions to exempt clean-fuel vehicles from high occupancy vehicle or trip reduction requirements.

(C) Provisions to provide preference in the use of existing parking spaces for clean-fuel vehicles.

The incentives under this paragraph shall not apply in the case of covered fleet vehicles.

(4) No sales or production mandate

The regulations and plan revisions under paragraphs (1) and (2) shall not include any production or sales mandate for clean-fuel vehicles or clean alternative fuels. Such regulations and plan revisions shall also provide that vehicle manufacturers and fuel suppliers may not be subject to penalties or sanctions for failing to produce or sell clean-fuel vehicles or clean alternative fuels.

(July 14, 1955, ch. 360, title II, §249, as added Pub. L. 101-549, title II, §229(a), Nov. 15, 1990, 104 Stat. 2525.)

REFERENCES IN TEXT

The Solid Waste Disposal Act, referred to in subsec. (c)(2)(D), is title II of Pub. L. 89-272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2795. Subtitle I of the Act is classified generally to subchapter IX (§6991 et seq.) of chapter 82 of this title. For complete classification of this

² So in original. Probably should be "section 7586(f)".

³ So in original. Probably should be followed by a comma.

Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

November 15, 1990, referred to in subsec. (e)(3), was in the original "the date of the Clean Air Act Amendments of 1990", which was translated as meaning the date of enactment of Pub. L. 101-549, which enacted this section, to reflect the probable intent of Congress.

§ 7590. General provisions

(a) State refueling facilities

If any State adopts enforceable provisions in an implementation plan applicable to a non-attainment area which provides that existing State refueling facilities will be made available to the public for the purchase of clean alternative fuels or that State-operated refueling facilities for such fuels will be constructed and operated by the State and made available to the public at reasonable times, taking into consideration safety, costs, and other relevant factors, in approving such plan under section 7410 of this title and part D,¹ the Administrator may credit a State with the emission reductions for purposes of part D¹ attributable to such actions.

(b) No production mandate

The Administrator shall have no authority under this part to mandate the production of clean-fuel vehicles except as provided in the California pilot test program or to specify as applicable the models, lines, or types of, or marketing or price practices, policies, or strategies for, vehicles subject to this part. Nothing in this part shall be construed to give the Administrator authority to mandate marketing or pricing practices, policies, or strategies for fuels.

(c) Tank and fuel system safety

The Secretary of Transportation shall, in accordance with chapter 301 of title 49, promulgate applicable regulations regarding the safety and use of fuel storage cylinders and fuel systems, including appropriate testing and retesting, in conversions of motor vehicles.

(d) Consultation with Department of Energy and Department of Transportation

The Administrator shall coordinate with the Secretaries of the Department of Energy and the Department of Transportation in carrying out the Administrator's duties under this part.

(July 14, 1955, ch. 360, title II, § 250, as added Pub. L. 101-549, title II, § 229(a), Nov. 15, 1990, 104 Stat. 2528.)

CODIFICATION

In subsec. (c), "chapter 301 of title 49" substituted for "the National Motor Vehicle Traffic Safety Act of 1966 [15 U.S.C. 1381 et seq.]", meaning "the National Traffic and Motor Vehicle Safety Act of 1966 [15 U.S.C. 1381 et seq.]", on authority of Pub. L. 103-272, § 6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

SUBCHAPTER III—GENERAL PROVISIONS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 7413 of this title.

¹ So in original. Probably should be "part D of subchapter I of this chapter".

§ 7601. Administration

(a) Regulations; delegation of powers and duties; regional officers and employees

(1) The Administrator is authorized to prescribe such regulations as are necessary to carry out his functions under this chapter. The Administrator may delegate to any officer or employee of the Environmental Protection Agency such of his powers and duties under this chapter, except the making of regulations subject to section 7607(d) of this title, as he may deem necessary or expedient.

(2) Not later than one year after August 7, 1977, the Administrator shall promulgate regulations establishing general applicable procedures and policies for regional officers and employees (including the Regional Administrator) to follow in carrying out a delegation under paragraph (1), if any. Such regulations shall be designed—

(A) to assure fairness and uniformity in the criteria, procedures, and policies applied by the various regions in implementing and enforcing the chapter;

(B) to assure at least an adequate quality audit of each State's performance and adherence to the requirements of this chapter in implementing and enforcing the chapter, particularly in the review of new sources and in enforcement of the chapter; and

(C) to provide a mechanism for identifying and standardizing inconsistent or varying criteria, procedures, and policies being employed by such officers and employees in implementing and enforcing the chapter.

(b) Detail of Environmental Protection Agency personnel to air pollution control agencies

Upon the request of an air pollution control agency, personnel of the Environmental Protection Agency may be detailed to such agency for the purpose of carrying out the provisions of this chapter.

(c) Payments under grants; installments; advances or reimbursements

Payments under grants made under this chapter may be made in installments, and in advance or by way of reimbursement, as may be determined by the Administrator.

(d) Tribal authority

(1) Subject to the provisions of paragraph (2), the Administrator—

(A) is authorized to treat Indian tribes as States under this chapter, except for purposes of the requirement that makes available for application by each State no less than one-half of 1 percent of annual appropriations under section 7405 of this title; and

(B) may provide any such Indian tribe grant and contract assistance to carry out functions provided by this chapter.

(2) The Administrator shall promulgate regulations within 18 months after November 15, 1990, specifying those provisions of this chapter for which it is appropriate to treat Indian tribes as States. Such treatment shall be authorized only if—

(A) the Indian tribe has a governing body carrying out substantial governmental duties and powers;

(B) the functions to be exercised by the Indian tribe pertain to the management and protection of air resources within the exterior boundaries of the reservation or other areas within the tribe's jurisdiction; and

(C) the Indian tribe is reasonably expected to be capable, in the judgment of the Administrator, of carrying out the functions to be exercised in a manner consistent with the terms and purposes of this chapter and all applicable regulations.

(3) The Administrator may promulgate regulations which establish the elements of tribal implementation plans and procedures for approval or disapproval of tribal implementation plans and portions thereof.

(4) In any case in which the Administrator determines that the treatment of Indian tribes as identical to States is inappropriate or administratively infeasible, the Administrator may provide, by regulation, other means by which the Administrator will directly administer such provisions so as to achieve the appropriate purpose.

(5) Until such time as the Administrator promulgates regulations pursuant to this subsection, the Administrator may continue to provide financial assistance to eligible Indian tribes under section 7405 of this title.

(July 14, 1955, ch. 360, title III, § 301, formerly § 8, as added Pub. L. 88-206, § 1, Dec. 17, 1963, 77 Stat. 400, renumbered Pub. L. 89-272, title I, § 101(4), Oct. 20, 1965, 79 Stat. 992; amended Pub. L. 90-148, § 2, Nov. 21, 1967, 81 Stat. 504; Pub. L. 91-604, §§ 3(b)(2), 15(c)(2), Dec. 31, 1970, 84 Stat. 1677, 1713; Pub. L. 95-95, title III, § 305(e), Aug. 7, 1977, 91 Stat. 776; Pub. L. 101-549, title I, §§ 107(d), 108(i), Nov. 15, 1990, 104 Stat. 2464, 2467.)

CODIFICATION

Section was formerly classified to section 1857g of this title.

AMENDMENTS

1990—Subsec. (a)(1). Pub. L. 101-549, § 108(i), inserted “subject to section 7607(d) of this title” after “regulations”.

Subsec. (d). Pub. L. 101-549, § 107(d), added subsec. (d). 1977—Subsec. (a). Pub. L. 95-95 designated existing provisions as par. (1) and added par. (2).

1970—Subsec. (a). Pub. L. 91-604, § 15(c)(2), substituted “Administrator” for “Secretary” and “Environmental Protection Agency” for “Department of Health, Education, and Welfare”.

Subsec. (b). Pub. L. 91-604, § 3(b)(2), substituted “Environmental Protection Agency” for “Public Health Service” and struck out provisions covering the payment of salaries and allowances.

Subsec. (c). Pub. L. 91-604, § 15(c)(2), substituted “Administrator” for “Secretary”.

1967—Pub. L. 90-148 reenacted section without change.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as a note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or

other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

DISADVANTAGED BUSINESS CONCERNS; USE OF QUOTAS PROHIBITED

Title X of Pub. L. 101-549 provided that:

“SEC. 1001. DISADVANTAGED BUSINESS CONCERNS.

“(a) IN GENERAL.—In providing for any research relating to the requirements of the amendments made by the Clean Air Act Amendments of 1990 [Pub. L. 101-549, see Tables for classification] which uses funds of the Environmental Protection Agency, the Administrator of the Environmental Protection Agency shall, to the extent practicable, require that not less than 10 percent of total Federal funding for such research will be made available to disadvantaged business concerns.

“(b) DEFINITION.—

“(1)(A) For purposes of subsection (a), the term ‘disadvantaged business concern’ means a concern—

“(i) which is at least 51 percent owned by one or more socially and economically disadvantaged individuals or, in the case of a publicly traded company, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

“(ii) the management and daily business operations of which are controlled by such individuals.

“(B)(i) A for-profit business concern is presumed to be a disadvantaged business concern for purposes of subsection (a) if it is at least 51 percent owned by, or in the case of a concern which is a publicly traded company at least 51 percent of the stock of the company is owned by, one or more individuals who are members of the following groups:

“(I) Black Americans.

“(II) Hispanic Americans.

“(III) Native Americans.

“(IV) Asian Americans.

“(V) Women.

“(VI) Disabled Americans.

“(ii) The presumption established by clause (i) may be rebutted with respect to a particular business concern if it is reasonably established that the individual or individuals referred to in that clause with respect to that business concern are not experiencing impediments to establishing or developing such concern as a result of the individual's identification as a member of a group specified in that clause.

“(C) The following institutions are presumed to be disadvantaged business concerns for purposes of subsection (a):

“(i) Historically black colleges and universities, and colleges and universities having a student body in which 40 percent of the students are Hispanic.

“(ii) Minority institutions (as that term is defined by the Secretary of Education pursuant to the General Education Provision Act (20 U.S.C. 1221 et seq.)).

“(iii) Private and voluntary organizations controlled by individuals who are socially and economically disadvantaged.

“(D) A joint venture may be considered to be a disadvantaged business concern under subsection (a), notwithstanding the size of such joint venture, if—

“(i) a party to the joint venture is a disadvantaged business concern; and

“(ii) that party owns at least 51 percent of the joint venture.

A person who is not an economically disadvantaged individual or a disadvantaged business concern, as a party to a joint venture, may not be a party to more than 2 awarded contracts in a fiscal year solely by reason of this subparagraph.

“(E) Nothing in this paragraph shall prohibit any member of a racial or ethnic group that is not listed in subparagraph (B)(i) from establishing that they have been impeded in establishing or developing a business concern as a result of racial or ethnic discrimination.

“SEC. 1002. USE OF QUOTAS PROHIBITED.—Nothing in this title shall permit or require the use of quotas or a requirement that has the effect of a quota in determining eligibility under section 1001.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7405, 7410, 7602 of this title.

§ 7602. Definitions

When used in this chapter—

(a) The term “Administrator” means the Administrator of the Environmental Protection Agency.

(b) The term “air pollution control agency” means any of the following:

(1) A single State agency designated by the Governor of that State as the official State air pollution control agency for purposes of this chapter.

(2) An agency established by two or more States and having substantial powers or duties pertaining to the prevention and control of air pollution.

(3) A city, county, or other local government health authority, or, in the case of any city, county, or other local government in which there is an agency other than the health authority charged with responsibility for enforcing ordinances or laws relating to the prevention and control of air pollution, such other agency.

(4) An agency of two or more municipalities located in the same State or in different States and having substantial powers or duties pertaining to the prevention and control of air pollution.

(5) An agency of an Indian tribe.

(c) The term “interstate air pollution control agency” means—

(1) an air pollution control agency established by two or more States, or

(2) an air pollution control agency of two or more municipalities located in different States.

(d) The term “State” means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa and includes the Commonwealth of the Northern Mariana Islands.

(e) The term “person” includes an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.

(f) The term “municipality” means a city, town, borough, county, parish, district, or other public body created by or pursuant to State law.

(g) The term “air pollutant” means any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material, and byproduct material) substance or matter which is emitted into or other-

wise enters the ambient air. Such term includes any precursors to the formation of any air pollutant, to the extent the Administrator has identified such precursor or precursors for the particular purpose for which the term “air pollutant” is used.

(h) All language referring to effects on welfare includes, but is not limited to, effects on soils, water, crops, vegetation, manmade materials, animals, wildlife, weather, visibility, and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being, whether caused by transformation, conversion, or combination with other air pollutants.

(i) The term “Federal land manager” means, with respect to any lands in the United States, the Secretary of the department with authority over such lands.

(j) Except as otherwise expressly provided, the terms “major stationary source” and “major emitting facility” mean any stationary facility or source of air pollutants which directly emits, or has the potential to emit, one hundred tons per year or more of any air pollutant (including any major emitting facility or source of fugitive emissions of any such pollutant, as determined by rule by the Administrator).

(k) The terms “emission limitation” and “emission standard” mean a requirement established by the State or the Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction, and any design, equipment, work practice or operational standard promulgated under this chapter.¹

(l) The term “standard of performance” means a requirement of continuous emission reduction, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction.

(m) The term “means of emission limitation” means a system of continuous emission reduction (including the use of specific technology or fuels with specified pollution characteristics).

(n) The term “primary standard attainment date” means the date specified in the applicable implementation plan for the attainment of a national primary ambient air quality standard for any air pollutant.

(o) The term “delayed compliance order” means an order issued by the State or by the Administrator to an existing stationary source, postponing the date required under an applicable implementation plan for compliance by such source with any requirement of such plan.

(p) The term “schedule and timetable of compliance” means a schedule of required measures including an enforceable sequence of actions or operations leading to compliance with an emission limitation, other limitation, prohibition, or standard.

(q) For purposes of this chapter, the term “applicable implementation plan” means the portion (or portions) of the implementation plan, or most recent revision thereof, which has been ap-

¹ So in original.

proved under section 7410 of this title, or promulgated under section 7410(c) of this title, or promulgated or approved pursuant to regulations promulgated under section 7601(d) of this title and which implements the relevant requirements of this chapter.

(r) INDIAN TRIBE.—The term “Indian tribe” means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is Federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(s) VOC.—The term “VOC” means volatile organic compound, as defined by the Administrator.

(t) PM-10.—The term “PM-10” means particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers, as measured by such method as the Administrator may determine.

(u) NAAQS AND CTG.—The term “NAAQS” means national ambient air quality standard. The term “CTG” means a Control Technique Guideline published by the Administrator under section 7408 of this title.

(v) NO_x.—The term “NO_x” means oxides of nitrogen.

(w) CO.—The term “CO” means carbon monoxide.

(x) SMALL SOURCE.—The term “small source” means a source that emits less than 100 tons of regulated pollutants per year, or any class of persons that the Administrator determines, through regulation, generally lack technical ability or knowledge regarding control of air pollution.

(y) FEDERAL IMPLEMENTATION PLAN.—The term “Federal implementation plan” means a plan (or portion thereof) promulgated by the Administrator to fill all or a portion of a gap or otherwise correct all or a portion of an inadequacy in a State implementation plan, and which includes enforceable emission limitations or other control measures, means or techniques (including economic incentives, such as marketable permits or auctions of emissions allowances), and provides for attainment of the relevant national ambient air quality standard.

(z) STATIONARY SOURCE.—The term “stationary source” means generally any source of an air pollutant except those emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in section 7550 of this title.

(July 14, 1955, ch. 360, title III, § 302, formerly § 9, as added Pub. L. 88-206, § 1, Dec. 17, 1963, 77 Stat. 400, renumbered Pub. L. 89-272, title I, § 101(4), Oct. 20, 1965, 79 Stat. 992; amended Pub. L. 90-148, § 2, Nov. 21, 1967, 81 Stat. 504; Pub. L. 91-604, § 15(a)(1), (c)(1), Dec. 31, 1970, 84 Stat. 1710, 1713; Pub. L. 95-95, title II, § 218(c), title III, § 301, Aug. 7, 1977, 91 Stat. 761, 769; Pub. L. 95-190, § 14(a)(76), Nov. 16, 1977, 91 Stat. 1404; Pub. L. 101-549, title I, §§ 101(d)(4), 107(a), (b), 108(j), 109(b), title III, § 302(e), title VII, § 709, Nov. 15, 1990, 104 Stat. 2409, 2464, 2468, 2470, 2574, 2684.)

CODIFICATION

Section was formerly classified to section 1857h of this title.

PRIOR PROVISIONS

Provisions similar to those in subsections (b) and (d) of this section were contained in a section 1857e of this title, act July 14, 1955, ch. 360, § 6, 69 Stat. 323, prior to the general amendment of this chapter by Pub. L. 88-206.

AMENDMENTS

1990—Subsec. (b)(1) to (3). Pub. L. 101-549, § 107(a)(1), (2), struck out “or” at end of par. (3) and substituted periods for semicolons at end of pars. (1) to (3).

Subsec. (b)(5). Pub. L. 101-549, § 107(a)(3), added par. (5).

Subsec. (g). Pub. L. 101-549, § 108(j)(2), inserted at end “Such term includes any precursors to the formation of any air pollutant, to the extent the Administrator has identified such precursor or precursors for the particular purpose for which the term ‘air pollutant’ is used.”

Subsec. (h). Pub. L. 101-549, § 109(b), inserted before period at end “, whether caused by transformation, conversion, or combination with other air pollutants”.

Subsec. (k). Pub. L. 101-549, § 303(e), inserted before period at end “, and any design, equipment, work practice or operational standard promulgated under this chapter.”

Subsec. (q). Pub. L. 101-549, § 101(d)(4), added subsec. (q).

Subsec. (r). Pub. L. 101-549, § 107(b), added subsec. (r). Subsecs. (s) to (y). Pub. L. 101-549, § 108(j)(1), added subsecs. (s) to (y).

Subsec. (z). Pub. L. 101-549, § 709, added subsec. (z).

1977—Subsec. (d). Pub. L. 95-95, § 218(c), inserted “and includes the Commonwealth of the Northern Mariana Islands” after “American Samoa”.

Subsec. (e). Pub. L. 95-190 substituted “individual, corporation” for “individual corporation”.

Pub. L. 95-95, § 301(b), expanded definition of “person” to include agencies, departments, and instrumentalities of the United States and officers, agents, and employees thereof.

Subsec. (g). Pub. L. 95-95, § 301(c), expanded definition of “air pollutant” so as, expressly, to include physical, chemical, biological, and radioactive substances or matter emitted into or otherwise entering the ambient air.

Subsecs. (i) to (p). Pub. L. 95-95, § 301(a), added subsecs. (i) to (p).

1970—Subsec. (a). Pub. L. 91-604, § 15(c)(1), substituted definition of “Administrator” as meaning Administrator of the Environmental Protection Agency for definition of “Secretary” as meaning Secretary of Health, Education, and Welfare.

Subsecs. (g), (h). Pub. L. 91-604, § 15(a)(1), added subsec. (g) defining “air pollutant”, redesignated former subsec. (g) as (h) and substituted references to effects on soil, water, crops, vegetation, manmade materials, animals, wildlife, weather, visibility, and climate for references to injury to agricultural crops and livestock, and inserted references to effects on economic values and on personal comfort and well being.

1967—Pub. L. 90-148 reenacted section without change.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as a note under section 7401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7405, 7413, 7511a, 7512a, 7661, 8302 of this title; title 26 section 169.

§ 7603. Emergency powers

Notwithstanding any other provision of this chapter, the Administrator, upon receipt of evidence that a pollution source or combination of sources (including moving sources) is presenting

an imminent and substantial endangerment to public health or welfare, or the environment, may bring suit on behalf of the United States in the appropriate United States district court to immediately restrain any person causing or contributing to the alleged pollution to stop the emission of air pollutants causing or contributing to such pollution or to take such other action as may be necessary. If it is not practicable to assure prompt protection of public health or welfare or the environment by commencement of such a civil action, the Administrator may issue such orders as may be necessary to protect public health or welfare or the environment. Prior to taking any action under this section, the Administrator shall consult with appropriate State and local authorities and attempt to confirm the accuracy of the information on which the action proposed to be taken is based. Any order issued by the Administrator under this section shall be effective upon issuance and shall remain in effect for a period of not more than 60 days, unless the Administrator brings an action pursuant to the first sentence of this section before the expiration of that period. Whenever the Administrator brings such an action within the 60-day period, such order shall remain in effect for an additional 14 days or for such longer period as may be authorized by the court in which such action is brought.

(July 14, 1955, ch. 360, title III, §303, as added Pub. L. 91-604, §12(a), Dec. 31, 1970, 84 Stat. 1705; amended Pub. L. 95-95, title III, §302(a), Aug. 7, 1977, 91 Stat. 770; Pub. L. 101-549, title VII, §704, Nov. 15, 1990, 104 Stat. 2681.)

CODIFICATION

Section was formerly classified to section 1857h-1 of this title.

PRIOR PROVISIONS

A prior section 303 of act July 14, 1955, was renumbered section 310 by Pub. L. 91-604 and is classified to section 7610 of this title.

AMENDMENTS

1990—Pub. L. 101-549, §704(2)-(5), struck out subsec. (a) designation before “Notwithstanding any other”, struck out subsec. (b) which related to violation of or failure or refusal to comply with subsec. (a) orders, and substituted new provisions for provisions following first sentence which read as follows: “If it is not practicable to assure prompt protection of the health of persons solely by commencement of such a civil action, the Administrator may issue such orders as may be necessary to protect the health of persons who are, or may be, affected by such pollution source (or sources). Prior to taking any action under this section, the Administrator shall consult with the State and local authorities in order to confirm the correctness of the information on which the action proposed to be taken is based and to ascertain the action which such authorities are, or will be, taking. Such order shall be effective for a period of not more than twenty-four hours unless the Administrator brings an action under the first sentence of this subsection before the expiration of such period. Whenever the Administrator brings such an action within such period, such order shall be effective for a period of forty-eight hours or such longer period as may be authorized by the court pending litigation or thereafter.”

Pub. L. 101-549, §704(1), which directed that “public health or welfare, or the environment” be substituted for “the health of persons and that appropriate State

or local authorities have not acted to abate such sources”, was executed by making the substitution for “the health of persons, and that appropriate State or local authorities have not acted to abate such sources” to reflect the probable intent of Congress.

1977—Pub. L. 95-95 designated existing provisions as subsec. (a), inserted provisions that, if it is not practicable to assure prompt protection of the health of persons solely by commencement of a civil action, the Administrator may issue such orders as may be necessary to protect the health of persons who are, or may be, affected by such pollution source (or sources), that, prior to taking any action under this section, the Administrator consult with the State and local authorities in order to confirm the correctness of the information on which the action proposed to be taken is based and to ascertain the action which such authorities are, or will be, taking, that the order be effective for a period of not more than twenty-four hours unless the Administrator brings an action under the first sentence of this subsection before the expiration of such period, and that, whenever the Administrator brings such an action within such period, such order be effective for a period of forty-eight hours or such longer period as may be authorized by the court pending litigation or thereafter, and added subsec. (b).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as a note under section 7401 of this title.

PENDING ACTIONS AND PROCEEDINGS

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95-95 [Aug. 7, 1977], not to abate by reason of the taking effect of Pub. L. 95-95, see section 406(a) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7410, 7412, 7413, 7420, 7429, 7607, 7661c, 9606 of this title; title 15 section 717z.

§ 7604. Citizen suits

(a) Authority to bring civil action; jurisdiction

Except as provided in subsection (b) of this section, any person may commence a civil action on his own behalf—

(1) against any person (including (i) the United States, and (ii) any other governmental instrumentality or agency to the extent permitted by the Eleventh Amendment to the Constitution) who is alleged to have violated (if there is evidence that the alleged vio-

lation has been repeated) or to be in violation of (A) an emission standard or limitation under this chapter or (B) an order issued by the Administrator or a State with respect to such a standard or limitation.

(2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator, or

(3) against any person who proposes to construct or constructs any new or modified major emitting facility without a permit required under part C of subchapter I of this chapter (relating to significant deterioration of air quality) or part D of subchapter I of this chapter (relating to nonattainment) or who is alleged to have violated (if there is evidence that the alleged violation has been repeated) or to be in violation of any condition of such permit.

The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such an emission standard or limitation, or such an order, or to order the Administrator to perform such act or duty, as the case may be, and to apply any appropriate civil penalties (except for actions under paragraph (2)). The district courts of the United States shall have jurisdiction to compel (consistent with paragraph (2) of this subsection) agency action unreasonably delayed, except that an action to compel agency action referred to in section 7607(b) of this title which is unreasonably delayed may only be filed in a United States District Court within the circuit in which such action would be reviewable under section 7607(b) of this title. In any such action for unreasonable delay, notice to the entities referred to in subsection (b)(1)(A) of this section shall be provided 180 days before commencing such action.

(b) Notice

No action may be commenced—

(1) under subsection (a)(1) of this section—

(A) prior to 60 days after the plaintiff has given notice of the violation (i) to the Administrator, (ii) to the State in which the violation occurs, and (iii) to any alleged violator of the standard, limitation, or order, or

(B) if the Administrator or State has commenced and is diligently prosecuting a civil action in a court of the United States or a State to require compliance with the standard, limitation, or order, but in any such action in a court of the United States any person may intervene as a matter of right.

(2) under subsection (a)(2) of the section prior to 60 days after the plaintiff has given notice of such action to the Administrator,

except that such action may be brought immediately after such notification in the case of an action under this section respecting a violation of section 7412(i)(3)(A) or (f)(4) of this title or an order issued by the Administrator pursuant to section 7413(a) of this title. Notice under this subsection shall be given in such manner as the Administrator shall prescribe by regulation.

(c) Venue; intervention by Administrator; service of complaint; consent judgment

(1) Any action respecting a violation by a stationary source of an emission standard or limitation or an order respecting such standard or limitation may be brought only in the judicial district in which such source is located.

(2) In any action under this section, the Administrator, if not a party, may intervene as a matter of right at any time in the proceeding. A judgment in an action under this section to which the United States is not a party shall not, however, have any binding effect upon the United States.

(3) Whenever any action is brought under this section the plaintiff shall serve a copy of the complaint on the Attorney General of the United States and on the Administrator. No consent judgment shall be entered in an action brought under this section in which the United States is not a party prior to 45 days following the receipt of a copy of the proposed consent judgment by the Attorney General and the Administrator during which time the Government may submit its comments on the proposed consent judgment to the court and parties or may intervene as a matter of right.

(d) Award of costs; security

The court, in issuing any final order in any action brought pursuant to subsection (a) of this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(e) Nonrestriction of other rights

Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any emission standard or limitation or to seek any other relief (including relief against the Administrator or a State agency). Nothing in this section or in any other law of the United States shall be construed to prohibit, exclude, or restrict any State, local, or interstate authority from—

(1) bringing any enforcement action or obtaining any judicial remedy or sanction in any State or local court, or

(2) bringing any administrative enforcement action or obtaining any administrative remedy or sanction in any State or local administrative agency, department or instrumentality,

against the United States, any department, agency, or instrumentality thereof, or any officer, agent, or employee thereof under State or local law respecting control and abatement of air pollution. For provisions requiring compliance by the United States, departments, agencies, instrumentalities, officers, agents, and employees in the same manner as nongovernmental entities, see section 7418 of this title.

(f) "Emission standard or limitation under this chapter" defined

For purposes of this section, the term "emission standard or limitation under this chapter" means—

(1) a schedule or timetable of compliance, emission limitation, standard of performance or emission standard,

(2) a control or prohibition respecting a motor vehicle fuel or fuel additive, or¹

(3) any condition or requirement of a permit under part C of subchapter I of this chapter (relating to significant deterioration of air quality) or part D of subchapter I of this chapter (relating to nonattainment),² section 7419 of this title (relating to primary nonferrous smelter orders), any condition or requirement under an applicable implementation plan relating to transportation control measures, air quality maintenance plans, vehicle inspection and maintenance programs or vapor recovery requirements, section 7545(e) and (f) of this title (relating to fuels and fuel additives), section 7491 of this title (relating to visibility protection), any condition or requirement under subchapter VI of this chapter (relating to ozone protection), or any requirement under section 7411 or 7412 of this title (without regard to whether such requirement is expressed as an emission standard or otherwise);³ or

(4) any other standard, limitation, or schedule established under any permit issued pursuant to subchapter V of this chapter or under any applicable State implementation plan approved by the Administrator, any permit term or condition, and any requirement to obtain a permit as a condition of operations.⁴

which is in effect under this chapter (including a requirement applicable by reason of section 7418 of this title) or under an applicable implementation plan.

(g) Penalty fund

(1) Penalties received under subsection (a) of this section shall be deposited in a special fund in the United States Treasury for licensing and other services. Amounts in such fund are authorized to be appropriated and shall remain available until expended, for use by the Administrator to finance air compliance and enforcement activities. The Administrator shall annually report to the Congress about the sums deposited into the fund, the sources thereof, and the actual and proposed uses thereof.

(2) Notwithstanding paragraph (1) the court in any action under this subsection to apply civil penalties shall have discretion to order that such civil penalties, in lieu of being deposited in the fund referred to in paragraph (1), be used in beneficial mitigation projects which are consistent with this chapter and enhance the public health or the environment. The court shall obtain the view of the Administrator in exercising such discretion and selecting any such projects. The amount of any such payment in any such action shall not exceed \$100,000.

¹ So in original. The word "or" probably should not appear.

² So in original.

³ So in original. The semicolon probably should be a comma.

⁴ So in original. The period probably should be a comma.

(July 14, 1955, ch. 360, title III, §304, as added Pub. L. 91-604, §12(a), Dec. 31, 1970, 84 Stat. 1706; amended Pub. L. 95-95, title III, §303(a)-(c), Aug. 7, 1977, 91 Stat. 771, 772; Pub. L. 95-190, §14(a)(77), (78), Nov. 16, 1977, 91 Stat. 1404; Pub. L. 101-549, title III, §302(f), title VII, §707(a)-(g), Nov. 15, 1990, 104 Stat. 2574, 2682, 2683.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (d), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

CODIFICATION

Section was formerly classified to section 1857h-2 of this title.

PRIOR PROVISIONS

A prior section 304 of act July 14, 1955, was renumbered section 311 by Pub. L. 91-604 and is classified to section 7611 of this title.

AMENDMENTS

1990—Subsec. (a). Pub. L. 101-549, §707(a), (f), in closing provisions, inserted before period at end “, and to apply any appropriate civil penalties (except for actions under paragraph (2))” and inserted sentences at end giving courts jurisdiction to compel agency action unreasonably delayed and requiring 180 days notice prior to commencement of action.

Subsec. (a)(1), (3). Pub. L. 101-549, §707(g), inserted “to have violated (if there is evidence that the alleged violation has been repeated) or” before “to be in violation”.

Subsec. (b). Pub. L. 101-549, §302(f), substituted “section 7412(i)(3)(A) or (f)(4)” for “section 7412(c)(1)(B)” in closing provisions.

Subsec. (c)(2). Pub. L. 101-549, §707(c), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “In such action under this section, the Administrator, if not a party, may intervene as a matter of right.”

Subsec. (c)(3). Pub. L. 101-549, §707(d), added subsec. (c)(3).

Subsec. (f)(3). Pub. L. 101-549, §707(e), struck out “any condition or requirement of section 7413(d) of this title (relating to certain enforcement orders)” before “, section 7419 of this title”, substituted “subchapter VI of this chapter” for “part B of subchapter I of this chapter”, and substituted “; or” for period at end.

Subsec. (f)(4). Pub. L. 101-549, §707(e), which directed that par. (4) be added at end of subsec. (f), was executed by adding par. (4) after par. (3), to reflect the probable intent of Congress.

Subsec. (g). Pub. L. 101-549, §707(b), added subsec. (g). 1977—Subsec. (a)(3). Pub. L. 95-190, §14(a)(77), inserted “or modified” after “new”.

Pub. L. 95-95, §303(a), added subsec. (a)(3).

Subsec. (e). Pub. L. 95-95, §303(c), inserted provisions which prohibited any construction of this section or any other law of the United States which would prohibit, exclude, or restrict any State, local, or interstate authority from bringing any enforcement action or obtaining any judicial remedy or sanction in any State or local court against the United States or bringing any administrative enforcement action or obtaining any administrative remedy or sanction against the United States in any State or local administrative agency, department, or instrumentality under State or local law.

Subsec. (f)(3). Pub. L. 95-190, §14(a)(78), inserted “, or” after “(relating to ozone protection)”, substituted “any condition or requirement under an” for “requirements under an”, and struck out “or” before “section 7491”.

Pub. L. 95-95, §303(b), added par. (3).

EFFECTIVE DATE OF 1990 AMENDMENT

Section 707(g) of Pub. L. 101-549 provided that: “The amendment made by this subsection [amending this

section] shall take effect with respect to actions brought after the date 2 years after the enactment of the Clean Air Act Amendments of 1990 [Nov. 15, 1990].”

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as a note under section 7401 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of reporting provisions in subsec. (g)(1) of this section, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 6th item on page 165 of House Document No. 103-7.

PENDING ACTIONS AND PROCEEDINGS

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95-95 [Aug. 7, 1977], not to abate by reason of the taking effect of Pub. L. 95-95, see section 406(a) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7412, 7413, 7419, 7429, 7491, 7506, 7521, 7617, 7627, 7651j of this title.

§ 7605. Representation in litigation

(a) Attorney General; attorneys appointed by Administrator

The Administrator shall request the Attorney General to appear and represent him in any civil action instituted under this chapter to which the Administrator is a party. Unless the Attorney General notifies the Administrator that he will appear in such action, within a reasonable time, attorneys appointed by the Administrator shall appear and represent him.

(b) Memorandum of understanding regarding legal representation

In the event the Attorney General agrees to appear and represent the Administrator in any such action, such representation shall be conducted in accordance with, and shall include participation by, attorneys appointed by the Administrator to the extent authorized by, the memorandum of understanding between the Department of Justice and the Environmental Protection Agency, dated June 13, 1977, respecting representation of the agency by the department in civil litigation.

(July 14, 1955, ch. 360, title III, §305, as added Pub. L. 91-604, §12(a), Dec. 31, 1970, 84 Stat. 1707;

amended Pub. L. 95-95, title III, §304(a), Aug. 7, 1977, 91 Stat. 772.)

CODIFICATION

Section was formerly classified to section 1857h-3 of this title.

PRIOR PROVISIONS

A prior section 305 of act July 14, 1955, as added Nov. 21, 1967, Pub. L. 90-148, §2, 81 Stat. 505, was renumbered section 312 by Pub. L. 91-604 and is classified to section 7612 of this title.

Another prior section 305 of act July 14, 1955, ch. 360, title III, formerly §12, as added Dec. 17, 1963, Pub. L. 88-206, §1, 77 Stat. 401, was renumbered section 305 by Pub. L. 89-272, renumbered section 308 by Pub. L. 90-148, and renumbered section 315 by Pub. L. 91-604, and is classified to section 7615 of this title.

AMENDMENTS

1977—Pub. L. 95-95 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as a note under section 7401 of this title.

PENDING ACTIONS AND PROCEEDINGS

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95-95 [Aug. 7, 1977], not to abate by reason of the taking effect of Pub. L. 95-95, see section 406(a) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7413 of this title.

§ 7606. Federal procurement

(a) Contracts with violators prohibited

No Federal agency may enter into any contract with any person who is convicted of any offense under section 7413(c) of this title for the procurement of goods, materials, and services to perform such contract at any facility at which the violation which gave rise to such conviction occurred if such facility is owned, leased, or supervised by such person. The prohibition in the preceding sentence shall continue until the Administrator certifies that the condition giving rise to such a conviction has been corrected. For convictions arising under section 7413(c)(2) of this title, the condition giving rise to the con-

viction also shall be considered to include any substantive violation of this chapter associated with the violation of 7413(c)(2) of this title. The Administrator may extend this prohibition to other facilities owned or operated by the convicted person.

(b) Notification procedures

The Administrator shall establish procedures to provide all Federal agencies with the notification necessary for the purposes of subsection (a) of this section.

(c) Federal agency contracts

In order to implement the purposes and policy of this chapter to protect and enhance the quality of the Nation's air, the President shall, not more than 180 days after December 31, 1970, cause to be issued an order (1) requiring each Federal agency authorized to enter into contracts and each Federal agency which is empowered to extend Federal assistance by way of grant, loan, or contract to effectuate the purpose and policy of this chapter in such contracting or assistance activities, and (2) setting forth procedures, sanctions, penalties, and such other provisions, as the President determines necessary to carry out such requirement.

(d) Exemptions; notification to Congress

The President may exempt any contract, loan, or grant from all or part of the provisions of this section where he determines such exemption is necessary in the paramount interest of the United States and he shall notify the Congress of such exemption.

(July 14, 1955, ch. 360, title III, §306, as added Pub. L. 91-604, §12(a), Dec. 31, 1970, 84 Stat. 1707; amended Pub. L. 101-549, title VII, §705, Nov. 15, 1990, 104 Stat. 2682.)

CODIFICATION

Subsec. (e) of this section, which required the President to annually report to Congress on measures taken toward implementing the purpose and intent of this section, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, the 14th item on page 20 of House Document No. 103-7.

Section was formerly classified to section 1857h-4 of this title.

PRIOR PROVISIONS

A prior section 306 of act July 14, 1955, ch. 360, title III, as added Nov. 21, 1967, Pub. L. 90-148, §2, 81 Stat. 506, was renumbered section 313 by Pub. L. 91-604 and is classified to section 7613 of this title.

Another prior section 306 of act July 14, 1955, ch. 360, title III, formerly §13, as added Dec. 17, 1963, Pub. L. 88-206, §1, 77 Stat. 401, renumbered §306, Oct. 20, 1965, Pub. L. 89-272, title I, §101(4), 79 Stat. 992, renumbered §309, Nov. 21, 1967, Pub. L. 90-148, §2, 81 Stat. 506, renumbered §316, Dec. 31, 1970, Pub. L. 91-604, §12(a), 84 Stat. 1705, related to appropriations and was classified to section 1857f of this title, prior to repeal by section 306 of Pub. L. 95-95. See section 7626 of this title.

AMENDMENTS

1990—Subsec. (a). Pub. L. 101-549 substituted “section 7413(c)” for “section 7413(c)(1)” and inserted sentences at end relating to convictions arising under section

7413(c)(2) of this title and extension of prohibition to other facilities owned by convicted persons.

FEDERAL ACQUISITION REGULATION: CONTRACTOR CERTIFICATION OR CONTRACT CLAUSE FOR ACQUISITION OF COMMERCIAL ITEMS

Pub. L. 103-355, title VIII, §8301(g), Oct. 13, 1994, 108 Stat. 3397, provided that: “The Federal Acquisition Regulation may not contain a requirement for a certification by a contractor under a contract for the acquisition of commercial items, or a requirement that such a contract include a contract clause, in order to implement a prohibition or requirement of section 306 of the Clean Air Act (42 U.S.C. 7606) or a prohibition or requirement issued in the implementation of that section, since there is nothing in such section 306 that requires such a certification or contract clause.”

EXECUTIVE ORDER NO. 11602

Ex. Ord. No. 11602, June 29, 1971, 36 F.R. 12475, which related to the administration of the Clean Air Act with respect to Federal contracts, grants, or loans, was superseded by Ex. Ord. No. 11738, Sept. 10, 1973, 38 F.R. 25161, set out below.

EX. ORD. NO. 11738. ADMINISTRATION OF THE CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT WITH RESPECT TO FEDERAL CONTRACTS, GRANTS, OR LOANS

Ex. Ord. No. 11738, Sept. 10, 1973, 38 F.R. 25161, provided:

By virtue of the authority vested in me by the provisions of the Clean Air Act, as amended (42 U.S.C. 1857 et seq.) [42 U.S.C. 7401 et seq.], particularly section 306 of that Act as added by the Clean Air Amendments of 1970 (Public Law 91-604) [this section], and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), particularly section 508 of that Act as added by the Federal Water Pollution Control Act Amendments of 1972 (Public Law 92-500) [33 U.S.C. 1368], it is hereby ordered as follows:

SECTION 1. *Policy.* It is the policy of the Federal Government to improve and enhance environmental quality. In furtherance of that policy, the program prescribed in this Order is instituted to assure that each Federal agency empowered to enter into contracts for the procurement of goods, materials, or services and each Federal agency empowered to extend Federal assistance by way of grant, loan, or contract shall undertake such procurement and assistance activities in a manner that will result in effective enforcement of the Clean Air Act [this chapter] (hereinafter referred to as “the Air Act”) and the Federal Water Pollution Control Act (hereinafter referred to as “the Water Act”) [33 U.S.C. 1251 et seq.].

SEC. 2. *Designation of Facilities.* (a) The Administrator of the Environmental Protection Agency (hereinafter referred to as “the Administrator”) shall be responsible for the attainment of the purposes and objectives of this Order.

(b) In carrying out his responsibilities under this Order, the Administrator shall, in conformity with all applicable requirements of law, designate facilities which have given rise to a conviction for an offense under section 113(c)(1) of the Air Act [42 U.S.C. 7413(c)(1)] or section 309(c) of the Water Act [33 U.S.C. 1319(c)]. The Administrator shall, from time to time, publish and circulate to all Federal agencies lists of those facilities, together with the names and addresses of the persons who have been convicted of such offenses. Whenever the Administrator determines that the condition which gave rise to a conviction has been corrected, he shall promptly remove the facility and the name and address of the person concerned from the list.

SEC. 3. *Contracts, Grants, or Loans.* (a) Except as provided in section 8 of this Order, no Federal agency shall enter into any contract for the procurement of goods, materials, or services which is to be performed in whole

or in part in a facility then designated by the Administrator pursuant to section 2.

(b) Except as provided in section 8 of this Order, no Federal agency authorized to extend Federal assistance by way of grant, loan, or contract shall extend such assistance in any case in which it is to be used to support any activity or program involving the use of a facility then designated by the Administrator pursuant to section 2.

SEC. 4. *Procurement, Grant, and Loan Regulations.* The Federal Procurement Regulations, the Armed Services Procurement Regulations, and to the extent necessary, any supplemental or comparable regulations issued by any agency of the Executive Branch shall, following consultation with the Administrator, be amended to require, as a condition of entering into, renewing, or extending any contract for the procurement of goods, materials, or services or extending any assistance by way of grant, loan, or contract, inclusion of a provision requiring compliance with the Air Act, the Water Act, and standards issued pursuant thereto in the facilities in which the contract is to be performed, or which are involved in the activity or program to receive assistance.

SEC. 5. *Rules and Regulations.* The Administrator shall issue such rules, regulations, standards, and guidelines as he may deem necessary or appropriate to carry out the purposes of this Order.

SEC. 6. *Cooperation and Assistance.* The head of each Federal agency shall take such steps as may be necessary to insure that all officers and employees of this agency whose duties entail compliance or comparable functions with respect to contracts, grants, and loans are familiar with the provisions of this Order. In addition to any other appropriate action, such officers and employees shall report promptly any condition in a facility which may involve noncompliance with the Air Act or the Water Act or any rules, regulations, standards, or guidelines issued pursuant to this Order to the head of the agency, who shall transmit such reports to the Administrator.

SEC. 7. *Enforcement.* The Administrator may recommend to the Department of Justice or other appropriate agency that legal proceedings be brought or other appropriate action be taken whenever he becomes aware of a breach of any provision required, under the amendments issued pursuant to section 4 of this Order, to be included in a contract or other agreement.

SEC. 8. *Exemptions—Reports to Congress.* (a) Upon a determination that the paramount interest of the United States so requires—

(1) The head of a Federal agency may exempt any contract, grant, or loan, and, following consultation with the Administrator, any class of contracts, grants or loans from the provisions of this Order. In any such case, the head of the Federal agency granting such exemption shall (A) promptly notify the Administrator of such exemption and the justification therefor; (B) review the necessity for each such exemption annually; and (C) report to the Administrator annually all such exemptions in effect. Exemptions granted pursuant to this section shall be for a period not to exceed one year. Additional exemptions may be granted for periods not to exceed one year upon the making of a new determination by the head of the Federal agency concerned.

(2) The Administrator may, by rule or regulation, exempt any or all Federal agencies from any or all of the provisions of this Order with respect to any class or classes of contracts, grants, or loans, which (A) involve less than specified dollar amounts, or (B) have a minimal potential impact upon the environment, or (C) involve persons who are not prime contractors or direct recipients of Federal assistance by way of contracts, grants, or loans.

(b) Federal agencies shall reconsider any exemption granted under subsection (a) whenever requested to do so by the Administrator.

(c) The Administrator shall annually notify the President and the Congress of all exemptions granted, or in effect, under this Order during the preceding year.

SEC. 9. *Related Actions.* The imposition of any sanction or penalty under or pursuant to this Order shall not relieve any person of any legal duty to comply with any provisions of the Air Act or the Water Act.

SEC. 10. *Applicability.* This Order shall not apply to contracts, grants, or loans involving the use of facilities located outside the United States.

SEC. 11. *Uniformity.* Rules, regulations, standards, and guidelines issued pursuant to this order and section 508 of the Water Act [33 U.S.C. 1368] shall, to the maximum extent feasible, be uniform with regulations issued pursuant to this order, Executive Order No. 11602 of June 29, 1971 [formerly set out above], and section 306 of the Air Act [this section].

SEC. 12. *Order Superseded.* Executive Order No. 11602 of June 29, 1971, is hereby superseded.

RICHARD NIXON.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7607 of this title.

§ 7607. Administrative proceedings and judicial review

(a) Administrative subpoenas; confidentiality; witnesses

In connection with any determination under section 7410(f) of this title, or for purposes of obtaining information under section 7521(b)(4)¹ or 7545(c)(3) of this title, any investigation, monitoring, reporting requirement, entry, compliance inspection, or administrative enforcement proceeding under the² chapter (including but not limited to section 7413, section 7414, section 7420, section 7429, section 7477, section 7524, section 7525, section 7542, section 7603, or section 7606 of this title),³ the Administrator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and he may administer oaths. Except for emission data, upon a showing satisfactory to the Administrator by such owner or operator that such papers, books, documents, or information or particular part thereof, if made public, would divulge trade secrets or secret processes of such owner or operator, the Administrator shall consider such record, report, or information or particular portion thereof confidential in accordance with the purposes of section 1905 of title 18, except that such paper, book, document, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter, to persons carrying out the National Academy of Sciences' study and investigation provided for in section 7521(c) of this title, or when relevant in any proceeding under this chapter. Witnesses summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpoena served upon any person under this subparagraph, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Administrator to

¹ See References in Text note below.

² So in original. Probably should be "this".

³ So in original.

appear and produce papers, books, and documents before the Administrator, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(b) Judicial review

(1) A petition for review of action of the Administrator in promulgating any national primary or secondary ambient air quality standard, any emission standard or requirement under section 7412 of this title, any standard of performance or requirement under section 7411 of this title, any standard under section 7521 of this title (other than a standard required to be prescribed under section 7521(b)(1) of this title), any determination under section 7521(b)(5)¹ of this title, any control or prohibition under section 7545 of this title, any standard under section 7571 of this title, any rule issued under section 7413, 7419, or under section 7420 of this title, or any other nationally applicable regulations promulgated, or final action taken, by the Administrator under this chapter may be filed only in the United States Court of Appeals for the District of Columbia. A petition for review of the Administrator's action in approving or promulgating any implementation plan under section 7410 of this title or section 7411(d) of this title, any order under section 7411(j) of this title, under section 7412 of this title,³ under section 7419 of this title, or under section 7420 of this title, or his action under section 1857c-10(c)(2)(A), (B), or (C) of this title (as in effect before August 7, 1977) or under regulations thereunder, or revising regulations for enhanced monitoring and compliance certification programs under section 7414(a)(3) of this title, or any other final action of the Administrator under this chapter (including any denial or disapproval by the Administrator under subchapter I of this chapter) which is locally or regionally applicable may be filed only in the United States Court of Appeals for the appropriate circuit. Notwithstanding the preceding sentence a petition for review of any action referred to in such sentence may be filed only in the United States Court of Appeals for the District of Columbia if such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination. Any petition for review under this subsection shall be filed within sixty days from the date notice of such promulgation, approval, or action appears in the Federal Register, except that if such petition is based solely on grounds arising after such sixtieth day, then any petition for review under this subsection shall be filed within sixty days after such grounds arise. The filing of a petition for reconsideration by the Administrator of any otherwise final rule or action shall not affect the finality of such rule or action for purposes of judicial review nor extend the time within which a petition for judicial review of such rule or action under this section may be filed, and shall not postpone the effectiveness of such rule or action.

(2) Action of the Administrator with respect to which review could have been obtained under paragraph (1) shall not be subject to judicial re-

view in civil or criminal proceedings for enforcement. Where a final decision by the Administrator defers performance of any nondiscretionary statutory action to a later time, any person may challenge the deferral pursuant to paragraph (1).

(c) Additional evidence

In any judicial proceeding in which review is sought of a determination under this chapter required to be made on the record after notice and opportunity for hearing, if any party applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Administrator, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Administrator, in such manner and upon such terms and conditions as to⁴ the court may deem proper. The Administrator may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken and he shall file such modified or new findings, and his recommendation, if any, for the modification or setting aside of his original determination, with the return of such additional evidence.

(d) Rulemaking

(1) This subsection applies to—

(A) the promulgation or revision of any national ambient air quality standard under section 7409 of this title,

(B) the promulgation or revision of an implementation plan by the Administrator under section 7410(c) of this title,

(C) the promulgation or revision of any standard of performance under section 7411 of this title, or emission standard or limitation under section 7412(d) of this title, any standard under section 7412(f) of this title, or any regulation under section 7412(g)(1)(D) and (F) of this title, or any regulation under section 7412(m) or (n) of this title,

(D) the promulgation of any requirement for solid waste combustion under section 7429 of this title,

(E) the promulgation or revision of any regulation pertaining to any fuel or fuel additive under section 7545 of this title,

(F) the promulgation or revision of any aircraft emission standard under section 7571 of this title,

(G) the promulgation or revision of any regulation under subchapter IV-A of this chapter (relating to control of acid deposition),

(H) promulgation or revision of regulations pertaining to primary nonferrous smelter orders under section 7419 of this title (but not including the granting or denying of any such order),

(I) promulgation or revision of regulations under subchapter VI of this chapter (relating to stratosphere and ozone protection),

(J) promulgation or revision of regulations under part C of subchapter I of this chapter (relating to prevention of significant deterioration of air quality and protection of visibility),

⁴So in original. The word "to" probably should not appear.

(K) promulgation or revision of regulations under section 7521 of this title and test procedures for new motor vehicles or engines under section 7525 of this title, and the revision of a standard under section 7521(a)(3) of this title,

(L) promulgation or revision of regulations for noncompliance penalties under section 7420 of this title,

(M) promulgation or revision of any regulations promulgated under section 7541 of this title (relating to warranties and compliance by vehicles in actual use),

(N) action of the Administrator under section 7426 of this title (relating to interstate pollution abatement),

(O) the promulgation or revision of any regulation pertaining to consumer and commercial products under section 7511b(e) of this title,

(P) the promulgation or revision of any regulation pertaining to field citations under section 7413(d)(3) of this title,

(Q) the promulgation or revision of any regulation pertaining to urban buses or the clean-fuel vehicle, clean-fuel fleet, and clean fuel programs under part C of subchapter II of this chapter,

(R) the promulgation or revision of any regulation pertaining to nonroad engines or nonroad vehicles under section 7547 of this title,

(S) the promulgation or revision of any regulation relating to motor vehicle compliance program fees under section 7552 of this title,

(T) the promulgation or revision of any regulation under subchapter IV-A of this chapter (relating to acid deposition),

(U) the promulgation or revision of any regulation under section 7511b(f) of this title pertaining to marine vessels, and

(V) such other actions as the Administrator may determine.

The provisions of section 553 through 557 and section 706 of title 5 shall not, except as expressly provided in this subsection, apply to actions to which this subsection applies. This subsection shall not apply in the case of any rule or circumstance referred to in subparagraphs (A) or (B) of subsection 553(b) of title 5.

(2) Not later than the date of proposal of any action to which this subsection applies, the Administrator shall establish a rulemaking docket for such action (hereinafter in this subsection referred to as a "rule"). Whenever a rule applies only within a particular State, a second (identical) docket shall be simultaneously established in the appropriate regional office of the Environmental Protection Agency.

(3) In the case of any rule to which this subsection applies, notice of proposed rulemaking shall be published in the Federal Register, as provided under section 553(b) of title 5, shall be accompanied by a statement of its basis and purpose and shall specify the period available for public comment (hereinafter referred to as the "comment period"). The notice of proposed rulemaking shall also state the docket number, the location or locations of the docket, and the times it will be open to public inspection. The statement of basis and purpose shall include a summary of—

(A) the factual data on which the proposed rule is based;

(B) the methodology used in obtaining the data and in analyzing the data; and

(C) the major legal interpretations and policy considerations underlying the proposed rule.

The statement shall also set forth or summarize and provide a reference to any pertinent findings, recommendations, and comments by the Scientific Review Committee established under section 7409(d) of this title and the National Academy of Sciences, and, if the proposal differs in any important respect from any of these recommendations, an explanation of the reasons for such differences. All data, information, and documents referred to in this paragraph on which the proposed rule relies shall be included in the docket on the date of publication of the proposed rule.

(4)(A) The rulemaking docket required under paragraph (2) shall be open for inspection by the public at reasonable times specified in the notice of proposed rulemaking. Any person may copy documents contained in the docket. The Administrator shall provide copying facilities which may be used at the expense of the person seeking copies, but the Administrator may waive or reduce such expenses in such instances as the public interest requires. Any person may request copies by mail if the person pays the expenses, including personnel costs to do the copying.

(B)(i) Promptly upon receipt by the agency, all written comments and documentary information on the proposed rule received from any person for inclusion in the docket during the comment period shall be placed in the docket. The transcript of public hearings, if any, on the proposed rule shall also be included in the docket promptly upon receipt from the person who transcribed such hearings. All documents which become available after the proposed rule has been published and which the Administrator determines are of central relevance to the rulemaking shall be placed in the docket as soon as possible after their availability.

(ii) The drafts of proposed rules submitted by the Administrator to the Office of Management and Budget for any interagency review process prior to proposal of any such rule, all documents accompanying such drafts, and all written comments thereon by other agencies and all written responses to such written comments by the Administrator shall be placed in the docket no later than the date of proposal of the rule. The drafts of the final rule submitted for such review process prior to promulgation and all such written comments thereon, all documents accompanying such drafts, and written responses thereto shall be placed in the docket no later than the date of promulgation.

(5) In promulgating a rule to which this subsection applies (i) the Administrator shall allow any person to submit written comments, data, or documentary information; (ii) the Administrator shall give interested persons an opportunity for the oral presentation of data, views, or arguments, in addition to an opportunity to make written submissions; (iii) a transcript shall be kept of any oral presentation; and (iv)

the Administrator shall keep the record of such proceeding open for thirty days after completion of the proceeding to provide an opportunity for submission of rebuttal and supplementary information.

(6)(A) The promulgated rule shall be accompanied by (i) a statement of basis and purpose like that referred to in paragraph (3) with respect to a proposed rule and (ii) an explanation of the reasons for any major changes in the promulgated rule from the proposed rule.

(B) The promulgated rule shall also be accompanied by a response to each of the significant comments, criticisms, and new data submitted in written or oral presentations during the comment period.

(C) The promulgated rule may not be based (in part or whole) on any information or data which has not been placed in the docket as of the date of such promulgation.

(7)(A) The record for judicial review shall consist exclusively of the material referred to in paragraph (3), clause (i) of paragraph (4)(B), and subparagraphs (A) and (B) of paragraph (6).

(B) Only an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review. If the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within such time or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule, the Administrator shall convene a proceeding for reconsideration of the rule and provide the same procedural rights as would have been afforded had the information been available at the time the rule was proposed. If the Administrator refuses to convene such a proceeding, such person may seek review of such refusal in the United States court of appeals for the appropriate circuit (as provided in subsection (b) of this section). Such reconsideration shall not postpone the effectiveness of the rule. The effectiveness of the rule may be stayed during such reconsideration, however, by the Administrator or the court for a period not to exceed three months.

(8) The sole forum for challenging procedural determinations made by the Administrator under this subsection shall be in the United States court of appeals for the appropriate circuit (as provided in subsection (b) of this section) at the time of the substantive review of the rule. No interlocutory appeals shall be permitted with respect to such procedural determinations. In reviewing alleged procedural errors, the court may invalidate the rule only if the errors were so serious and related to matters of such central relevance to the rule that there is a substantial likelihood that the rule would have been significantly changed if such errors had not been made.

(9) In the case of review of any action of the Administrator to which this subsection applies, the court may reverse any such action found to be—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; or

(D) without observance of procedure required by law, if (i) such failure to observe such procedure is arbitrary or capricious, (ii) the requirement of paragraph (7)(B) has been met, and (iii) the condition of the last sentence of paragraph (8) is met.

(10) Each statutory deadline for promulgation of rules to which this subsection applies which requires promulgation less than six months after date of proposal may be extended to not more than six months after date of proposal by the Administrator upon a determination that such extension is necessary to afford the public, and the agency, adequate opportunity to carry out the purposes of this subsection.

(11) The requirements of this subsection shall take effect with respect to any rule the proposal of which occurs after ninety days after August 7, 1977.

(e) Other methods of judicial review not authorized

Nothing in this chapter shall be construed to authorize judicial review of regulations or orders of the Administrator under this chapter, except as provided in this section.

(f) Costs

In any judicial proceeding under this section, the court may award costs of litigation (including reasonable attorney and expert witness fees) whenever it determines that such award is appropriate.

(g) Stay, injunction, or similar relief in proceedings relating to noncompliance penalties

In any action respecting the promulgation of regulations under section 7420 of this title or the administration or enforcement of section 7420 of this title no court shall grant any stay, injunctive, or similar relief before final judgment by such court in such action.

(h) Public participation

It is the intent of Congress that, consistent with the policy of subchapter II of chapter 5 of title 5, the Administrator in promulgating any regulation under this chapter, including a regulation subject to a deadline, shall ensure a reasonable period for public participation of at least 30 days, except as otherwise expressly provided in section⁵ 7407(d), 7502(a), 7511(a) and (b), and 7512(a) and (b) of this title.

(July 14, 1955, ch. 360, title III, §307, as added Pub. L. 91-604, §12(a), Dec. 31, 1970, 84 Stat. 1707; amended Pub. L. 92-157, title III, §302(a), Nov. 18, 1971, 85 Stat. 464; Pub. L. 93-319, §6(c), June 22, 1974, 88 Stat. 259; Pub. L. 95-95, title III, §§303(d), 305(a), (c), (f)-(h), Aug. 7, 1977, 91 Stat. 772, 776, 777; Pub. L. 95-190, §14(a)(79), (80), Nov. 16, 1977, 91 Stat. 1404; Pub. L. 101-549, title I, §§108(p), 110(5), title III, §302(g), (h), title VII, §§702(c), 703, 706, 707(h), 710(b), Nov. 15, 1990, 104 Stat. 2469, 2470, 2574, 2681-2684.)

⁵ So in original. Probably should be "sections".

REFERENCES IN TEXT

Section 7521(b)(4) of this title, referred to in subsec. (a), was repealed by Pub. L. 101-549, title II, §203(2), Nov. 15, 1990, 104 Stat. 2529.

Section 7521(b)(5) of this title, referred to in subsec. (b)(1), was repealed by Pub. L. 101-549, title II, §203(3), Nov. 15, 1990, 104 Stat. 2529.

Section 1857c-10(c)(2)(A), (B), or (C) of this title (as in effect before August 7, 1977), referred to in subsec. (b)(1), was in the original "section 119(c)(2)(A), (B), or (C) (as in effect before the date of enactment of the Clean Air Act Amendments of 1977)", meaning section 119 of act July 14, 1955, ch. 360, title I, as added June 22, 1974, Pub. L. 93-319, §3, 88 Stat. 248, (which was classified to section 1857c-10 of this title) as in effect prior to the enactment of Pub. L. 95-95, Aug. 7, 1977, 91 Stat. 691, effective Aug. 7, 1977. Section 112(b)(1) of Pub. L. 95-95 repealed section 119 of act July 14, 1955, ch. 360, title I, as added by Pub. L. 93-319, and provided that all references to such section 119 in any subsequent enactment which supersedes Pub. L. 93-319 shall be construed to refer to section 113(d) of the Clean Air Act and to paragraph (5) thereof in particular which is classified to subsec. (d)(5) of section 7413 of this title. Section 7413(d) of this title was subsequently amended generally by Pub. L. 101-549, title VII, §701, Nov. 15, 1990, 104 Stat. 2672, and, as so amended, no longer relates to final compliance orders. Section 117(b) of Pub. L. 95-95 added a new section 119 of act July 14, 1955, which is classified to section 7419 of this title.

Part C of subchapter I of this chapter, referred to in subsec. (d)(1)(J), was in the original "subtitle C of title I", and was translated as reading "part C of title I" to reflect the probable intent of Congress, because title I does not contain subtitles.

CODIFICATION

In subsec. (h), "subchapter II of chapter 5 of title 5" was substituted for "the Administrative Procedures Act" on authority of Pub. L. 89-554, §7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

Section was formerly classified to section 1857h-5 of this title.

PRIOR PROVISIONS

A prior section 307 of act July 14, 1955, was renumbered section 314 by Pub. L. 91-604 and is classified to section 7614 of this title.

Another prior section 307 of act July 14, 1955, ch. 360, title III, formerly §14, as added Dec. 17, 1963, Pub. L. 88-206, §1, 77 Stat. 401, was renumbered section 307 by Pub. L. 89-272, renumbered section 310 by Pub. L. 90-148, and renumbered section 317 by Pub. L. 91-604, and is set out as a Short Title note under section 7401 of this title.

AMENDMENTS

1990—Subsec. (a), Pub. L. 101-549, §703, struck out par. (1) designation at beginning, inserted provisions authorizing issuance of subpoenas and administration of oaths for purposes of investigations, monitoring, reporting requirements, entries, compliance inspections, or administrative enforcement proceedings under this chapter, and struck out "or section 7521(b)(5)" after "section 7410(f)".

Subsec. (b)(1), Pub. L. 101-549, §706, struck out "under section 7413(d) of this title" before "under section 7419 of this title" and inserted at end: "The filing of a petition for reconsideration by the Administrator of any otherwise final rule or action shall not affect the finality of such rule or action for purposes of judicial review nor extend the time within which a petition for judicial review of such rule or action under this section may be filed, and shall not postpone the effectiveness of such rule or action."

Pub. L. 101-549, §702(c), inserted "or revising regulations for enhanced monitoring and compliance certification programs under section 7414(a)(3) of this title,"

before "or any other final action of the Administrator".

Pub. L. 101-549, §302(g), substituted "section 7412" for "section 7412(c)".

Subsec. (b)(2), Pub. L. 101-549, §707(h), inserted sentence at end authorizing challenge to deferrals of performance of nondiscretionary statutory actions.

Subsec. (d)(1)(C), Pub. L. 101-549, §110(5)(A), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: "the promulgation or revision of any standard of performance under section 7411 of this title or emission standard under section 7412 of this title."

Subsec. (d)(1)(D), (E), Pub. L. 101-549, §302(h), added subpar. (D) and redesignated former subpar. (D) as (E). Former subpar. (E) redesignated (F).

Subsec. (d)(1)(F), Pub. L. 101-549, §302(h), redesignated subpar. (E) as (F). Former subpar. (F) redesignated (G).

Pub. L. 101-549, §110(5)(B), amended subpar. (F) generally. Prior to amendment, subpar. (F) read as follows: "promulgation or revision of regulations pertaining to orders for coal conversion under section 7413(d)(5) of this title (but not including orders granting or denying any such orders)."

Subsec. (d)(1)(G), (H), Pub. L. 101-549, §302(h), redesignated subpars. (F) and (G) as (G) and (H), respectively. Former subpar. (H) redesignated (I).

Subsec. (d)(1)(I), Pub. L. 101-549, §710(b), which directed that subpar. (H) be amended by substituting "subchapter VI of this chapter" for "part B of subchapter I of this chapter", was executed by making the substitution in subpar. (I), to reflect the probable intent of Congress and the intervening redesignation of subpar. (H) as (I) by Pub. L. 101-549, §302(h), see below.

Pub. L. 101-549, §302(h), redesignated subpar. (H) as (I). Former subpar. (I) redesignated (J).

Subsec. (d)(1)(J) to (M), Pub. L. 101-549, §302(h), redesignated subpars. (I) to (L) as (J) to (M), respectively. Former subpar. (M) redesignated (N).

Subsec. (d)(1)(N), Pub. L. 101-549, §302(h), redesignated subpar. (M) as (N). Former subpar. (N) redesignated (O).

Pub. L. 101-549, §110(5)(C), added subpar. (N) and redesignated former subpar. (N) as (U).

Subsec. (d)(1)(O) to (T), Pub. L. 101-549, §302(h), redesignated subpars. (N) to (S) as (O) to (T), respectively. Former subpar. (T) redesignated (U).

Pub. L. 101-549, §110(5)(C), added subpars. (O) to (T).

Subsec. (d)(1)(U), Pub. L. 101-549, §302(h), redesignated subpar. (T) as (U). Former subpar. (U) redesignated (V).

Pub. L. 101-549, §110(5)(C), redesignated former subpar. (N) as (U).

Subsec. (d)(1)(V), Pub. L. 101-549, §302(h), redesignated subpar. (U) as (V).

Subsec. (h), Pub. L. 101-549, §108(p), added subsec. (h).

1977—Subsec. (b)(1), Pub. L. 95-190 in text relating to filing of petitions for review in the United States Court of Appeals for the District of Columbia inserted provision respecting requirements under sections 7411 and 7412 of this title, and substituted provisions authorizing review of any rule issued under section 7413, 7419, or 7420 of this title, for provisions authorizing review of any rule or order issued under section 7420 of this title, relating to noncompliance penalties, and in text relating to filing of petitions for review in the United States Court of Appeals for the appropriate circuit inserted provision respecting review under section 7411(j), 7412(c), 7413(d), or 7419 of this title, provision authorizing review under section 1857c-10(c)(2)(A), (B), or (C) to the period prior to Aug. 7, 1977, and provisions authorizing review of denials or disapprovals by the Administrator under subchapter I of this chapter.

Pub. L. 95-95, §305(c), (h), inserted rules or orders issued under section 7420 of this title (relating to noncompliance penalties) and any other nationally applicable regulations promulgated, or final action taken, by the Administrator under this chapter to the enumeration of actions of the Administrator for which a petition for review may be filed only in the United States Court of Appeals for the District of Columbia, added the approval or promulgation by the Administrator of orders under section 7420 of this title, or any

other final action of the Administrator under this chapter which is locally or regionally applicable to the enumeration of actions by the Administrator for which a petition for review may be filed only in the United States Court of Appeals for the appropriate circuit, inserted provision that petitions otherwise capable of being filed in the Court of Appeals for the appropriate circuit may be filed only in the Court of Appeals for the District of Columbia if the action is based on a determination of nationwide scope, and increased from 30 days to 60 days the period during which the petition must be filed.

Subsec. (d). Pub. L. 95-95, §305(a), added subsec. (d).

Subsec. (e). Pub. L. 95-95, §303(d), added subsec. (e).

Subsec. (f). Pub. L. 95-95, §305(f), added subsec. (f).

Subsec. (g). Pub. L. 95-95, §305(g), added subsec. (g).

1974—Subsec. (b)(1). Pub. L. 93-319 inserted reference to the Administrator's action under section 1857c-10(c)(2)(A), (B), or (C) of this title or under regulations thereunder and substituted reference to the filing of a petition within 30 days from the date of promulgation, approval, or action for reference to the filing of a petition within 30 days from the date of promulgation or approval.

1971—Subsec. (a)(1). Pub. L. 92-157 substituted reference to section "7545(c)(3)" for "7545(c)(4)" of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as a note under section 7401 of this title.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law. See section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

PENDING ACTIONS AND PROCEEDINGS

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95-95 [Aug. 7, 1977], not to abate by reason of the taking effect of Pub. L. 95-95, see section 406(a) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7412, 7413, 7419, 7420, 7429, 7506a, 7521, 7545, 7601, 7604, 7617, 7625-1, 7661d of this title.

§ 7608. Mandatory licensing

Whenever the Attorney General determines, upon application of the Administrator—

(1) that—

(A) in the implementation of the requirements of section 7411, 7412, or 7521 of this title, a right under any United States letters patent, which is being used or intended for public or commercial use and not otherwise reasonably available, is necessary to enable any person required to comply with such limitation to so comply, and

(B) there are no reasonable alternative methods to accomplish such purpose, and

(2) that the unavailability of such right may result in a substantial lessening of competition or tendency to create a monopoly in any line of commerce in any section of the country,

the Attorney General may so certify to a district court of the United States, which may issue an order requiring the person who owns such patent to license it on such reasonable terms and conditions as the court, after hearing, may determine. Such certification may be made to the district court for the district in which the person owning the patent resides, does business, or is found.

(July 14, 1955, ch. 360, title III, §308, as added Pub. L. 91-604, §12(a), Dec. 31, 1970, 84 Stat. 1708.)

CODIFICATION

Section was formerly classified to section 1857h-6 of this title.

PRIOR PROVISIONS

A prior section 308 of act July 14, 1955, was renumbered section 315 by Pub. L. 91-604 and is classified to section 7615 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7609. Policy review

(a) Environmental impact

The Administrator shall review and comment in writing on the environmental impact of any matter relating to duties and responsibilities granted pursuant to this chapter or other provisions of the authority of the Administrator, contained in any (1) legislation proposed by any Federal department or agency, (2) newly authorized Federal projects for construction and any major Federal agency action (other than a project for construction) to which section 4332(2)(C) of this title applies, and (3) proposed regulations published by any department or agency of the Federal Government. Such writ-

ten comment shall be made public at the conclusion of any such review.

(b) Unsatisfactory legislation, action, or regulation

In the event the Administrator determines that any such legislation, action, or regulation is unsatisfactory from the standpoint of public health or welfare or environmental quality, he shall publish his determination and the matter shall be referred to the Council on Environmental Quality.

(July 14, 1955, ch. 360, title III, §309, as added Pub. L. 91-604, §12(a), Dec. 31, 1970, 84 Stat. 1709.)

CODIFICATION

Section was formerly classified to section 1857h-7 of this title.

PRIOR PROVISIONS

A prior section 309 of act July 14, 1955, ch. 360, title III, formerly §13, as added Dec. 17, 1963, Pub. L. 88-206, §1, 77 Stat. 401; renumbered §306, Oct. 20, 1965, Pub. L. 89-272, title I, §101(4), 79 Stat. 992; renumbered §309, Nov. 21, 1967, Pub. L. 90-148, §2, 81 Stat. 506; renumbered §316, Dec. 31, 1970, Pub. L. 91-604, §12(a), 84 Stat. 1705, related to appropriations and was classified to section 1857i of this title, prior to repeal by section 306 of Pub. L. 95-95. See section 7626 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7610. Other authority

(a) Authority and responsibilities under other laws not affected

Except as provided in subsection (b) of this section, this chapter shall not be construed as superseding or limiting the authorities and responsibilities, under any other provision of law, of the Administrator or any other Federal officer, department, or agency.

(b) Nonduplication of appropriations

No appropriation shall be authorized or made under section 241, 243, or 246 of this title for any fiscal year after the fiscal year ending June 30, 1964, for any purpose for which appropriations may be made under authority of this chapter.

(July 14, 1955, ch. 360, title III, §310, formerly §10, as added Pub. L. 88-206, §1, Dec. 17, 1963, 77 Stat. 401; renumbered §303, Pub. L. 89-272, title I, §101(4), Oct. 20, 1965, 79 Stat. 992; amended Pub. L. 90-148, §2, Nov. 21, 1967, 81 Stat. 505; renumbered §310 and amended Pub. L. 91-604, §§12(a), 15(c)(2), Dec. 31, 1970, 84 Stat. 1705, 1713.)

CODIFICATION

Section was formerly classified to section 1857i of this title.

PRIOR PROVISIONS

A prior section 310 of act July 14, 1955, was renumbered section 317 by Pub. L. 91-604 and is set out as a Short Title note under section 7401 of this title.

Provisions similar to those in subsec. (a) of this section were contained in section 1857f of this title, act July 14, 1955, ch. 360, §7, 69 Stat. 323, prior to the general amendment of this chapter by Pub. L. 88-206.

AMENDMENTS

1970—Subsec. (a). Pub. L. 91-604, §15(c)(2), substituted “Administrator” for “Secretary”.

1967—Subsec. (b). Pub. L. 90-148 substituted reference to section 246 of this title for reference to section 246(c) of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7611. Records and audit

(a) Recipients of assistance to keep prescribed records

Each recipient of assistance under this chapter shall keep such records as the Administrator shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(b) Audits

The Administrator and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examinations to any books, documents, papers, and records of the recipients that are pertinent to the grants received under this chapter.

(July 14, 1955, ch. 360, title III, §311, formerly §11, as added Pub. L. 88-206, §1, Dec. 17, 1963, 77 Stat. 401; renumbered §304, Pub. L. 89-272, title I, §101(4), Oct. 20, 1965, 79 Stat. 992; amended Pub. L. 90-148, §2, Nov. 21, 1967, 81 Stat. 505; renumbered §311 and amended Pub. L. 91-604, §§12(a), 15(c)(2), Dec. 31, 1970, 84 Stat. 1705, 1713.)

CODIFICATION

Section was formerly classified to section 1857j of this title.

AMENDMENTS

1970—Pub. L. 91-604, §15(c)(2), substituted “Administrator” for “Secretary” and “Secretary of Health, Education, and Welfare”.

1967—Pub. L. 90-148 reenacted section without change.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4905, 7541 of this title.

§ 7612. Economic impact analyses

(a) Cost-benefit analysis

The Administrator, in consultation with the Secretary of Commerce, the Secretary of Labor, and the Council on Clean Air Compliance Analysis (as established under subsection (f) of this section), shall conduct a comprehensive analysis of the impact of this chapter on the public health, economy, and environment of the United States. In performing such analysis, the Administrator should consider the costs, benefits and other effects associated with compliance with each standard issued for—

- (1) a criteria air pollutant subject to a standard issued under section 7409 of this title;
- (2) a hazardous air pollutant listed under section 7412 of this title, including any technology-based standard and any risk-based standard for such pollutant;
- (3) emissions from mobile sources regulated under subchapter II of this chapter;
- (4) a limitation under this chapter for emissions of sulfur dioxide or nitrogen oxides;
- (5) a limitation under subchapter VI of this chapter on the production of any ozone-depleting substance; and
- (6) any other section of this chapter.

(b) Benefits

In describing the benefits of a standard described in subsection (a) of this section, the Administrator shall consider all of the economic, public health, and environmental benefits of efforts to comply with such standard. In any case where numerical values are assigned to such benefits, a default assumption of zero value shall not be assigned to such benefits unless supported by specific data. The Administrator shall assess how benefits are measured in order to assure that damage to human health and the environment is more accurately measured and taken into account.

(c) Costs

In describing the costs of a standard described in subsection (a) of this section, the Administrator shall consider the effects of such standard on employment, productivity, cost of living, economic growth, and the overall economy of the United States.

(d) Initial report

Not later than 12 months after November 15, 1990, the Administrator, in consultation with the Secretary of Commerce, the Secretary of Labor, and the Council on Clean Air Compliance Analysis, shall submit a report to the Congress that summarizes the results of the analysis described in subsection (a) of this section, which reports—

- (1) all costs incurred previous to November 15, 1990, in the effort to comply with such standards; and
- (2) all benefits that have accrued to the United States as a result of such costs.

(e) Omitted

(f) Appointment of Advisory Council on Clean Air Compliance Analysis

Not later than 6 months after November 15, 1990, the Administrator, in consultation with the Secretary of Commerce and the Secretary of Labor, shall appoint an Advisory Council on Clean Air Compliance Analysis of not less than nine members (hereafter in this section referred to as the “Council”). In appointing such members, the Administrator shall appoint recognized experts in the fields of the health and environmental effects of air pollution, economic analysis, environmental sciences, and such other fields that the Administrator determines to be appropriate.

(g) Duties of Advisory Council

The Council shall—

- (1) review the data to be used for any analysis required under this section and make recommendations to the Administrator on the use of such data;
- (2) review the methodology used to analyze such data and make recommendations to the Administrator on the use of such methodology; and
- (3) prior to the issuance of a report required under subsection (d) or (e) of this section, review the findings of such report, and make recommendations to the Administrator concerning the validity and utility of such findings.

(July 14, 1955, ch. 360, title III, §312, formerly §305, as added Pub. L. 90-148, §2, Nov. 21, 1967, 81 Stat. 505; renumbered §312 and amended Pub. L. 91-604, §§12(a), 15(c)(2), Dec. 31, 1970, 84 Stat. 1705, 1713; Pub. L. 95-95, title II, §224(c), Aug. 7, 1977, 91 Stat. 767; Pub. L. 101-549, title VIII, §812(a), Nov. 15, 1990, 104 Stat. 2691.)

CODIFICATION

Subsec. (e) of this section, which required the Administrator, in consultation with the Secretary of Commerce, the Secretary of Labor, and the Council on Clean Air Compliance Analysis, to submit a report to Congress that updates the report issued pursuant to subsec. (d) of this section, and which, in addition, makes projections into the future regarding expected costs, benefits, and other effects of compliance with standards pursuant to this chapter as listed in subsec. (a) of this section, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, the 4th item on page 163 of House Document No. 103-7.

Section was formerly classified to section 1857j-1 of this title.

AMENDMENTS

1990—Pub. L. 101-549 amended section generally, substituting present provisions for provisions which related to: in subsec. (a), detailed cost estimate, comprehensive cost and economic impact studies, and annual re-evaluation; in subsec. (b), personnel study and report to President and Congress; and in subsec. (c), cost-effectiveness analyses.

1977—Subsec. (c). Pub. L. 95-95 added subsec. (c).

1970—Pub. L. 91-604, §15(c)(2), substituted “Administrator” for “Secretary” wherever appearing.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as a note under section 7401 of this title.

TERMINATION OF ADVISORY COUNCILS

Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

EQUIVALENT AIR QUALITY CONTROLS AMONG TRADING NATIONS

Section 811 of Pub. L. 101-549 provided that:

“(a) FINDINGS.—The Congress finds that—

“(1) all nations have the responsibility to adopt and enforce effective air quality standards and requirements and the United States, in enacting this Act [see Tables for classification], is carrying out its responsibility in this regard;

“(2) as a result of complying with this Act, businesses in the United States will make significant capital investments and incur incremental costs in implementing control technology standards;

“(3) such compliance may impair the competitiveness of certain United States jobs, production, processes, and products if foreign goods are produced under less costly environmental standards and requirements than are United States goods; and

“(4) mechanisms should be sought through which the United States and its trading partners can agree to eliminate or reduce competitive disadvantages.

“(b) ACTION BY THE PRESIDENT.—

“(1) IN GENERAL.—Within 18 months after the date of the enactment of the Clean Air Act Amendments of 1990 [Nov. 15, 1990], the President shall submit to the Congress a report—

“(A) identifying and evaluating the economic effects of—

“(i) the significant air quality standards and controls required under this Act, and

“(ii) the differences between the significant standards and controls required under this Act and similar standards and controls adopted and enforced by the major trading partners of the United States,

on the international competitiveness of United States manufacturers; and

“(B) containing a strategy for addressing such economic effects through trade consultations and negotiations.

“(2) ADDITIONAL REPORTING REQUIREMENTS.—(A) The evaluation required under paragraph (1)(A) shall examine the extent to which the significant air quality standards and controls required under this Act are comparable to existing internationally-agreed norms.

“(B) The strategy required to be developed under paragraph (1)(B) shall include recommended options

(such as the harmonization of standards and trade adjustment measures) for reducing or eliminating competitive disadvantages caused by differences in standards and controls between the United States and each of its major trading partners.

“(3) PUBLIC COMMENT.—Interested parties shall be given an opportunity to submit comments regarding the evaluations and strategy required in the report under paragraph (1). The President shall take any such comment into account in preparing the report.

“(4) INTERIM REPORT.—Within 9 months after the date of the enactment of the Clean Air Act Amendments of 1990 [Nov. 15, 1990], the President shall submit to the Congress an interim report on the progress being made in complying with paragraph (1).”

GAO REPORTS ON COSTS AND BENEFITS

Section 812(b) of Pub. L. 101-549, which directed Comptroller General, commencing on second year after Nov. 15, 1990, and annually thereafter, in consultation with other agencies, to report to Congress on pollution control strategies and technologies required by Clean Air Act Amendments of 1990, was repealed by Pub. L. 104-316, title I, §122(r), Oct. 19, 1996, 110 Stat. 3838.

§ 7613. Repealed. Pub. L. 101-549, title VIII, § 803, Nov. 15, 1990, 104 Stat. 2689

Section, act July 14, 1955, ch. 360, title III, §313, formerly §306, as added Nov. 21, 1967, Pub. L. 90-148, §2, 81 Stat. 506; renumbered §313 and amended Dec. 31, 1970, Pub. L. 91-604, §§12(a), 15(c)(2), 84 Stat. 1705, 1713; Aug. 7, 1977, Pub. L. 95-95, title III, §302(b), 91 Stat. 771, required annual report to Congress on progress of programs under this chapter.

§ 7614. Labor standards

The Administrator shall take such action as may be necessary to insure that all laborers and mechanics employed by contractors or subcontractors on projects assisted under this chapter shall be paid wages at rates not less than those prevailing for the same type of work on similar construction in the locality as determined by the Secretary of Labor, in accordance with sections 3141-3144, 3146, and 3147 of title 40. The Secretary of Labor shall have, with respect to the labor standards specified in this subsection, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 3145 of title 40.

(July 14, 1955, ch. 360, title III, §314, formerly §307, as added Pub. L. 90-148, §2, Nov. 21, 1967, 81 Stat. 506; renumbered §314 and amended Pub. L. 91-604, §§12(a), 15(c)(2), Dec. 31, 1970, 84 Stat. 1705, 1713.)

REFERENCES IN TEXT

Reorganization Plan Numbered 14 of 1950, referred to in text, is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

In text, “sections 3141-3144, 3146, and 3147 of title 40” substituted for “the Act of March 3, 1931, as amended, known as the Davis-Bacon Act (46 Stat. 1494; 40 U.S.C. 276a-276a-5)” and “section 3145 of title 40” substituted for “section 2 of the Act of June 13, 1934, as amended (48 Stat. 948; 40 U.S.C. 276c)”, on authority of Pub. L. 107-217, §5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

Section was formerly classified to section 1857j-3 of this title.

AMENDMENTS

1970—Pub. L. 91-604, §15(c)(2), substituted “Administrator” for “Secretary” meaning the Secretary of Health, Education, and Welfare.

§ 7615. Separability

If any provision of this chapter, or the application of any provision of this chapter to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this chapter shall not be affected thereby.

(July 14, 1955, ch. 360, title III, §315, formerly §12, as added Pub. L. 88-206, §1, Dec. 17, 1963, 77 Stat. 401; renumbered §305, Pub. L. 89-272, title I, §101(4), Oct. 20, 1965, 79 Stat. 992; renumbered §308 and amended, Pub. L. 90-148, §2, Nov. 21, 1967, 81 Stat. 506; renumbered §315, Pub. L. 91-604, §12(a), Dec. 31, 1970, 84 Stat. 1705.)

CODIFICATION

Section was formerly classified to section 1857k of this title.

AMENDMENTS

1967—Pub. L. 90-148 reenacted section without change.

§ 7616. Sewage treatment grants**(a) Construction**

No grant which the Administrator is authorized to make to any applicant for construction of sewage treatment works in any area in any State may be withheld, conditioned, or restricted by the Administrator on the basis of any requirement of this chapter except as provided in subsection (b) of this section.

(b) Withholding, conditioning, or restriction of construction grants

The Administrator may withhold, condition, or restrict the making of any grant for construction referred to in subsection (a) of this section only if he determines that—

(1) such treatment works will not comply with applicable standards under section 7411 or 7412 of this title,

(2) the State does not have in effect, or is not carrying out, a State implementation plan approved by the Administrator which expressly quantifies and provides for the increase in emissions of each air pollutant (from stationary and mobile sources in any area to which either part C or part D of subchapter I of this chapter applies for such pollutant) which increase may reasonably be anticipated to result directly or indirectly from the new sewage treatment capacity which would be created by such construction.

(3) the construction of such treatment works would create new sewage treatment capacity which—

(A) may reasonably be anticipated to cause or contribute to, directly or indirectly, an increase in emissions of any air pollutant in excess of the increase provided for under the provisions referred to in paragraph (2) for any such area, or

(B) would otherwise not be in conformity with the applicable implementation plan, or

(4) such increase in emissions would interfere with, or be inconsistent with, the applicable implementation plan for any other State.

In the case of construction of a treatment works which would result, directly or indirectly, in an increase in emissions of any air pollutant from stationary and mobile sources in an area to which part D of subchapter I of this chapter applies, the quantification of emissions referred to in paragraph (2) shall include the emissions of any such pollutant resulting directly or indirectly from areawide and nonmajor stationary source growth (mobile and stationary) for each such area.

(c) National Environmental Policy Act

Nothing in this section shall be construed to amend or alter any provision of the National Environmental Policy Act [42 U.S.C. 4321 et seq.] or to affect any determination as to whether or not the requirements of such Act have been met in the case of the construction of any sewage treatment works.

(July 14, 1955, ch. 360, title III, §316, as added Pub. L. 95-95, title III, §306, Aug. 7, 1977, 91 Stat. 777.)

REFERENCES IN TEXT

The National Environmental Policy Act, referred to in subsec. (c), probably means the National Environmental Policy Act of 1969, Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

PRIOR PROVISIONS

A prior section 316 of act July 14, 1955, ch. 360, title III, formerly §13, as added Dec. 17, 1963, Pub. L. 88-206, §1, 77 Stat. 401; renumbered §306 and amended Oct. 20, 1965, Pub. L. 89-272, title I, §101(4), (6), (7), 79 Stat. 992; Oct. 15, 1966, Pub. L. 89-675, §2(a), 80 Stat. 954; renumbered §309 and amended Nov. 21, 1967, Pub. L. 90-148, §2, 81 Stat. 506; renumbered §316 and amended Dec. 31, 1970, Pub. L. 91-604, §§12(a), 13(b), 84 Stat. 1705, 1709; Apr. 9, 1973, Pub. L. 93-15, §1(c), 87 Stat. 11; June 22, 1974, Pub. L. 93-319, §13(c), 88 Stat. 265, authorized appropriations for air pollution control, prior to repeal by section 306 of Pub. L. 95-95. See section 7626 of this title.

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7617. Economic impact assessment**(a) Notice of proposed rulemaking; substantial revisions**

This section applies to action of the Administrator in promulgating or revising—

(1) any new source standard of performance under section 7411 of this title,

(2) any regulation under section 7411(d) of this title,

(3) any regulation under part B¹ of subchapter I of this chapter (relating to ozone and stratosphere protection),

(4) any regulation under part C of subchapter I of this chapter (relating to prevention of significant deterioration of air quality),

¹ See References in Text note below.

(5) any regulation establishing emission standards under section 7521 of this title and any other regulation promulgated under that section,

(6) any regulation controlling or prohibiting any fuel or fuel additive under section 7545(c) of this title, and

(7) any aircraft emission standard under section 7571 of this title.

Nothing in this section shall apply to any standard or regulation described in paragraphs (1) through (7) of this subsection unless the notice of proposed rulemaking in connection with such standard or regulation is published in the Federal Register after the date ninety days after August 7, 1977. In the case of revisions of such standards or regulations, this section shall apply only to revisions which the Administrator determines to be substantial revisions.

(b) Preparation of assessment by Administrator

Before publication of notice of proposed rulemaking with respect to any standard or regulation to which this section applies, the Administrator shall prepare an economic impact assessment respecting such standard or regulation. Such assessment shall be included in the docket required under section 7607(d)(2) of this title and shall be available to the public as provided in section 7607(d)(4) of this title. Notice of proposed rulemaking shall include notice of such availability together with an explanation of the extent and manner in which the Administrator has considered the analysis contained in such economic impact assessment in proposing the action. The Administrator shall also provide such an explanation in his notice of promulgation of any regulation or standard referred to in subsection (a) of this section. Each such explanation shall be part of the statements of basis and purpose required under sections 7607(d)(3) and 7607(d)(6) of this title.

(c) Analysis

Subject to subsection (d) of this section, the assessment required under this section with respect to any standard or regulation shall contain an analysis of—

(1) the costs of compliance with any such standard or regulation, including extent to which the costs of compliance will vary depending on (A) the effective date of the standard or regulation, and (B) the development of less expensive, more efficient means or methods of compliance with the standard or regulation;

(2) the potential inflationary or recessionary effects of the standard or regulation;

(3) the effects on competition of the standard or regulation with respect to small business;

(4) the effects of the standard or regulation on consumer costs; and

(5) the effects of the standard or regulation on energy use.

Nothing in this section shall be construed to provide that the analysis of the factors specified in this subsection affects or alters the factors which the Administrator is required to consider in taking any action referred to in subsection (a) of this section.

(d) Extensiveness of assessment

The assessment required under this section shall be as extensive as practicable, in the judgment of the Administrator taking into account the time and resources available to the Environmental Protection Agency and other duties and authorities which the Administrator is required to carry out under this chapter.

(e) Limitations on construction of section

Nothing in this section shall be construed—

(1) to alter the basis on which a standard or regulation is promulgated under this chapter;

(2) to preclude the Administrator from carrying out his responsibility under this chapter to protect public health and welfare; or

(3) to authorize or require any judicial review of any such standard or regulation, or any stay or injunction of the proposal, promulgation, or effectiveness of such standard or regulation on the basis of failure to comply with this section.

(f) Citizen suits

The requirements imposed on the Administrator under this section shall be treated as non-discretionary duties for purposes of section 7604(a)(2) of this title, relating to citizen suits. The sole method for enforcement of the Administrator's duty under this section shall be by bringing a citizen suit under such section 7604(a)(2) for a court order to compel the Administrator to perform such duty. Violation of any such order shall subject the Administrator to penalties for contempt of court.

(g) Costs

In the case of any provision of this chapter in which costs are expressly required to be taken into account, the adequacy or inadequacy of any assessment required under this section may be taken into consideration, but shall not be treated for purposes of judicial review of any such provision as conclusive with respect to compliance or noncompliance with the requirement of such provision to take cost into account.

(July 14, 1955, ch. 360, title III, §317, as added Pub. L. 95-95, title III, §307, Aug. 7, 1977, 91 Stat. 778; amended Pub. L. 95-623, §13(d), Nov. 9, 1978, 92 Stat. 3458.)

REFERENCES IN TEXT

Part B of subchapter I of this chapter, referred to in subsec. (a)(3), was repealed by Pub. L. 101-549, title VI, §601, Nov. 15, 1990, 104 Stat. 2648. See subchapter VI (§7671 et seq.) of this chapter.

CODIFICATION

Another section 317 of act July 14, 1955, is set out as a Short Title note under section 7401 of this title.

AMENDMENTS

1978—Subsec. (a)(1). Pub. L. 95-623 substituted “section 7411” for “section 7411(b)”.

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7618. Repealed. Pub. L. 101-549, title I, § 108(q), Nov. 15, 1990, 104 Stat. 2469

Section, act July 14, 1955, ch. 360, title III, §318, as added Aug. 7, 1977, Pub. L. 95-95, title III, §308, 91 Stat.

780, related to financial disclosure and conflicts of interest.

§ 7619. Air quality monitoring

Not later than one year after August 7, 1977, and after notice and opportunity for public hearing, the Administrator shall promulgate regulations establishing an air quality monitoring system throughout the United States which—

(1) utilizes uniform air quality monitoring criteria and methodology and measures such air quality according to a uniform air quality index,

(2) provides for air quality monitoring stations in major urban areas and other appropriate areas throughout the United States to provide monitoring such as will supplement (but not duplicate) air quality monitoring carried out by the States required under any applicable implementation plan,

(3) provides for daily analysis and reporting of air quality based upon such uniform air quality index, and

(4) provides for recordkeeping with respect to such monitoring data and for periodic analysis and reporting to the general public by the Administrator with respect to air quality based upon such data.

The operation of such air quality monitoring system may be carried out by the Administrator or by such other departments, agencies, or entities of the Federal Government (including the National Weather Service) as the President may deem appropriate. Any air quality monitoring system required under any applicable implementation plan under section 7410 of this title shall, as soon as practicable following promulgation of regulations under this section, utilize the standard criteria and methodology, and measure air quality according to the standard index, established under such regulations.

(July 14, 1955, ch. 360, title III, §319, as added Pub. L. 95-95, title III, §309, Aug. 7, 1977, 91 Stat. 781.)

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7620. Standardized air quality modeling

(a) Conferences

Not later than six months after August 7, 1977, and at least every three years thereafter, the Administrator shall conduct a conference on air quality modeling. In conducting such conference, special attention shall be given to appropriate modeling necessary for carrying out part C of subchapter I of this chapter (relating to prevention of significant deterioration of air quality).

(b) Conferees

The conference conducted under this section shall provide for participation by the National Academy of Sciences, representatives of State and local air pollution control agencies, and appropriate Federal agencies, including the National Science Foundation; the National Oceanic

and Atmospheric Administration, and the National Institute of Standards and Technology.

(c) Comments; transcripts

Interested persons shall be permitted to submit written comments and a verbatim transcript of the conference proceedings shall be maintained.

(d) Promulgation and revision of regulations relating to air quality modeling

The comments submitted and the transcript maintained pursuant to subsection (c) of this section shall be included in the docket required to be established for purposes of promulgating or revising any regulation relating to air quality modeling under part C of subchapter I of this chapter.

(July 14, 1955, ch. 360, title III, §320, as added Pub. L. 95-95, title III, §310, Aug. 7, 1977, 91 Stat. 782; amended Pub. L. 100-418, title V, §5115(c), Aug. 23, 1988, 102 Stat. 1433.)

AMENDMENTS

1988—Subsec. (b). Pub. L. 100-418 substituted “National Institute of Standards and Technology” for “National Bureau of Standards”.

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7621. Employment effects

(a) Continuous evaluation of potential loss or shifts of employment

The Administrator shall conduct continuing evaluations of potential loss or shifts of employment which may result from the administration or enforcement of the provision of this chapter and applicable implementation plans, including where appropriate, investigating threatened plant closures or reductions in employment allegedly resulting from such administration or enforcement.

(b) Request for investigation; hearings; record; report

Any employee, or any representative of such employee, who is discharged or laid off, threatened with discharge or layoff, or whose employment is otherwise adversely affected or threatened to be adversely affected because of the alleged results of any requirement imposed or proposed to be imposed under this chapter, including any requirement applicable to Federal facilities and any requirement imposed by a State or political subdivision thereof, may request the Administrator to conduct a full investigation of the matter. Any such request shall be reduced to writing, shall set forth with reasonable particularity the grounds for the request, and shall be signed by the employee, or representative of such employee, making the request. The Administrator shall thereupon investigate the matter and, at the request of any party, shall hold public hearings on not less than five days' notice. At such hearings, the Administrator shall require the parties, including the employer involved, to present information relating to the actual or potential effect of such requirements

on employment and the detailed reasons or justification therefor. If the Administrator determines that there are no reasonable grounds for conducting a public hearing he shall notify (in writing) the party requesting such hearing of such a determination and the reasons therefor. If the Administrator does convene such a hearing, the hearing shall be on the record. Upon receiving the report of such investigation, the Administrator shall make findings of fact as to the effect of such requirements on employment and on the alleged actual or potential discharge, lay-off, or other adverse effect on employment, and shall make such recommendations as he deems appropriate. Such report, findings, and recommendations shall be available to the public.

(c) Subpenas; confidential information; witnesses; penalty

In connection with any investigation or public hearing conducted under subsection (b) of this section or as authorized in section 7419 of this title (relating to primary nonferrous smelter orders), the Administrator may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books and documents, and he may administer oaths. Except for emission data, upon a showing satisfactory to the Administrator by such owner or operator that such papers, books, documents, or information or particular part thereof, if made public, would divulge trade secrets or secret processes of such owner, or operator, the Administrator shall consider such record, report, or information or particular portion thereof confidential in accordance with the purposes of section 1905 of title 18, except that such paper, book, document, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter, or when relevant in any proceeding under this chapter. Witnesses summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In cases of contumacy or refusal to obey a subpoena served upon any person under this subparagraph, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Administrator, to appear and produce papers, books, and documents before the Administrator, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(d) Limitations on construction of section

Nothing in this section shall be construed to require or authorize the Administrator, the States, or political subdivisions thereof, to modify or withdraw any requirement imposed or proposed to be imposed under this chapter.

(July 14, 1955, ch. 360, title III, §321, as added Pub. L. 95-95, title III, §311, Aug. 7, 1977, 91 Stat. 782.)

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set

out as an Effective Date of 1977 Amendment note under section 7401 of this title.

STUDY OF POTENTIAL DISLOCATION OF EMPLOYEES

Section 403(e) of Pub. L. 95-95 provided that the Secretary of Labor, in consultation with the Administrator, conduct a study of potential dislocation of employees due to implementation of laws administered by the Administrator and that the Secretary submit to Congress the results of the study not more than one year after Aug. 7, 1977.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7419 of this title.

§ 7622. Employee protection

(a) Discharge or discrimination prohibited

No employer may discharge any employee or otherwise discriminate against any employee with respect to his compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee)—

(1) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this chapter or a proceeding for the administration or enforcement of any requirement imposed under this chapter or under any applicable implementation plan,

(2) testified or is about to testify in any such proceeding, or

(3) assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other action to carry out the purposes of this chapter.

(b) Complaint charging unlawful discharge or discrimination; investigation; order

(1) Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of subsection (a) of this section may, within thirty days after such violation occurs, file (or have any person file on his behalf) a complaint with the Secretary of Labor (hereinafter in this subsection referred to as the "Secretary") alleging such discharge or discrimination. Upon receipt of such a complaint, the Secretary shall notify the person named in the complaint of the filing of the complaint.

(2)(A) Upon receipt of a complaint filed under paragraph (1), the Secretary shall conduct an investigation of the violation alleged in the complaint. Within thirty days of the receipt of such complaint, the Secretary shall complete such investigation and shall notify in writing the complainant (and any person acting in his behalf) and the person alleged to have committed such violation of the results of the investigation conducted pursuant to this subparagraph. Within ninety days of the receipt of such complaint the Secretary shall, unless the proceeding on the complaint is terminated by the Secretary on the basis of a settlement entered into by the Secretary and the person alleged to have committed such violation, issue an order either providing the relief prescribed by subparagraph (B) or denying the complaint. An order of the Secretary shall be made on the record after notice and opportunity for public hearing. The Secretary may not enter into a settlement terminating a pro-

ceeding on a complaint without the participation and consent of the complainant.

(B) If, in response to a complaint filed under paragraph (1), the Secretary determines that a violation of subsection (a) of this section has occurred, the Secretary shall order the person who committed such violation to (i) take affirmative action to abate the violation, and (ii) reinstate the complainant to his former position together with the compensation (including back pay), terms, conditions, and privileges of his employment, and the Secretary may order such person to provide compensatory damages to the complainant. If an order is issued under this paragraph, the Secretary, at the request of the complainant, shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorneys' and expert witness fees) reasonably incurred, as determined by the Secretary, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

(c) Review

(1) Any person adversely affected or aggrieved by an order issued under subsection (b) of this section may obtain review of the order in the United States court of appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred. The petition for review must be filed within sixty days from the issuance of the Secretary's order. Review shall conform to chapter 7 of title 5. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the Secretary's order.

(2) An order of the Secretary with respect to which review could have been obtained under paragraph (1) shall not be subject to judicial review in any criminal or other civil proceeding.

(d) Enforcement of order by Secretary

Whenever a person has failed to comply with an order issued under subsection (b)(2) of this section, the Secretary may file a civil action in the United States district court for the district in which the violation was found to occur to enforce such order. In actions brought under this subsection, the district courts shall have jurisdiction to grant all appropriate relief including, but not limited to, injunctive relief, compensatory, and exemplary damages.

(e) Enforcement of order by person on whose behalf order was issued

(1) Any person on whose behalf an order was issued under paragraph (2) of subsection (b) of this section may commence a civil action against the person to whom such order was issued to require compliance with such order. The appropriate United States district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such order.

(2) The court, in issuing any final order under this subsection, may award costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the court determines such award is appropriate.

(f) Mandamus

Any nondiscretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28.

(g) Deliberate violation by employee

Subsection (a) of this section shall not apply with respect to any employee who, acting without direction from his employer (or the employer's agent), deliberately causes a violation of any requirement of this chapter.

(July 14, 1955, ch. 360, title III, §322, as added Pub. L. 95-95, title III, §312, Aug. 7, 1977, 91 Stat. 783.)

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7623. Repealed. Pub. L. 96-300, § 1(c), July 2, 1980, 94 Stat. 831

Section, act July 14, 1955, ch. 360, title III, §323, as added Aug. 7, 1977, Pub. L. 95-95, title III, §313, 91 Stat. 785; amended Nov. 16, 1977, Pub. L. 95-190, §14(a)(81), 91 Stat. 1404; S. Res. 4, Feb. 4, 1977; H. Res. 549, Mar. 25, 1980; July 2, 1980, Pub. L. 96-300, §1(a), 94 Stat. 831, established a National Commission on Air Quality, prescribed numerous subjects for study and report to Congress, enumerated specific questions for study and investigation, required specific identification of loss or irretrievable commitment of resources, and provided for appointment and confirmation of its membership, cooperation of Federal executive agencies, submission of a National Academy of Sciences study to Congress, compensation and travel expenses, termination of Commission, appointment and compensation of staff, and public participation.

EFFECTIVE DATE OF REPEAL

Section 1(c) of Pub. L. 96-300 provided that this section is repealed on date on which National Commission on Air Quality ceases to exist pursuant to provisions of former subsec. (g) of this section, which provided that not later than Mar. 1, 1981, a report be submitted containing results of all Commission studies and investigations and that Commission cease to exist on Mar. 1, 1981, if report is not submitted on Mar. 1, 1981, or Commission would cease to exist on such date, but not later than May 1, 1981, as determined and ordered by Commission if report is submitted on Mar. 1, 1981.

NATIONAL COMMISSION ON AIR QUALITY; EXTENSION PROHIBITION

Section 1(d) of Pub. L. 96-300 provided that nothing in any other authority of law shall be construed to authorize or permit the extension of the National Commission on Air Quality pursuant to any Executive order or other Executive or agency action.

§ 7624. Cost of vapor recovery equipment

(a) Costs to be borne by owner of retail outlet

The regulations under this chapter applicable to vapor recovery with respect to mobile source fuels at retail outlets of such fuels shall provide that the cost of procurement and installation of such vapor recovery shall be borne by the owner of such outlet (as determined under such regulations). Except as provided in subsection (b) of this section, such regulations shall provide that no lease of a retail outlet by the owner thereof which is entered into or renewed after August 7, 1977, may provide for a payment by the lessee of

the cost of procurement and installation of vapor recovery equipment. Such regulations shall also provide that the cost of procurement and installation of vapor recovery equipment may be recovered by the owner of such outlet by means of price increases in the cost of any product sold by such owner, notwithstanding any provision of law.

(b) Payment by lessee

The regulations of the Administrator referred to in subsection (a) of this section shall permit a lease of a retail outlet to provide for payment by the lessee of the cost of procurement and installation of vapor recovery equipment over a reasonable period (as determined in accordance with such regulations), if the owner of such outlet does not sell, trade in, or otherwise dispense any product at wholesale or retail at such outlet.

(July 14, 1955, ch. 360, title III, §323, formerly §324, as added Pub. L. 95-95, title III, §314(a), Aug. 7, 1977, 91 Stat. 788; amended Pub. L. 95-190, §14(a)(82), Nov. 16, 1977, 91 Stat. 1404; renumbered §323 and amended Pub. L. 96-300, §1(b), (c), July 2, 1980, 94 Stat. 831.)

PRIOR PROVISIONS

A prior section 323 of act July 14, 1955, was classified to section 7623 of this title prior to repeal by Pub. L. 96-300, §1(c), July 2, 1980, 94 Stat. 831.

AMENDMENTS

1980—Pub. L. 96-300, §1(b), which directed that last sentence of this section be struck out was probably intended to strike sentence purportedly added by Pub. L. 95-190. See 1977 Amendment note below and section 7623(i) of this title.

1977—Pub. L. 95-190 which purported to amend subsec. (j) of this section by inserting "The Commission may appoint and fix the pay of such staff as it deems necessary." after "(j)" was not executed to this section because it did not contain a subsec. (j). See 1980 Amendment note above.

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7413, 7625a of this title.

§ 7625. Vapor recovery for small business marketers of petroleum products

(a) Marketers of gasoline

The regulations under this chapter applicable to vapor recovery from fueling of motor vehicles at retail outlets of gasoline shall not apply to any outlet owned by an independent small business marketer of gasoline having monthly sales of less than 50,000 gallons. In the case of any other outlet owned by an independent small business marketer, such regulations shall provide, with respect to independent small business marketers of gasoline, for a three-year phase-in period for the installation of such vapor recovery equipment at such outlets under which such marketers shall have—

- (1) 33 percent of such outlets in compliance at the end of the first year during which such regulations apply to such marketers,

- (2) 66 percent at the end of such second year, and

- (3) 100 percent at the end of the third year.

(b) State requirements

Nothing in subsection (a) of this section shall be construed to prohibit any State from adopting or enforcing, with respect to independent small business marketers of gasoline having monthly sales of less than 50,000 gallons, any vapor recovery requirements for mobile source fuels at retail outlets. Any vapor recovery requirement which is adopted by a State and submitted to the Administrator as part of its implementation plan may be approved and enforced by the Administrator as part of the applicable implementation plan for that State.

(c) Refiners

For purposes of this section, an independent small business marketer of gasoline is a person engaged in the marketing of gasoline who would be required to pay for procurement and installation of vapor recovery equipment under section 7624 of this title or under regulations of the Administrator, unless such person—

- (1)(A) is a refiner, or

(B) controls, is controlled by, or is under common control with, a refiner,

(C) is otherwise directly or indirectly affiliated (as determined under the regulations of the Administrator) with a refiner or with a person who controls, is controlled by, or is under a common control with a refiner (unless the sole affiliation referred to herein is by means of a supply contract or an agreement or contract to use a trademark, trade name, service mark, or other identifying symbol or name owned by such refiner or any such person), or

- (2) receives less than 50 percent of his annual income from refining or marketing of gasoline.

For the purpose of this section, the term "refiner" shall not include any refiner whose total refinery capacity (including the refinery capacity of any person who controls, is controlled by, or is under common control with, such refiner) does not exceed 65,000 barrels per day. For purposes of this section, "control" of a corporation means ownership of more than 50 percent of its stock.

(July 14, 1955, ch. 360, title III, §324, formerly §325, as added Pub. L. 95-95, title III, §314(b), Aug. 7, 1977, 91 Stat. 789; renumbered §324, Pub. L. 96-300, §1(c), July 2, 1980, 94 Stat. 831.)

PRIOR PROVISIONS

A prior section 324 of act July 14, 1955, was renumbered section 323 by Pub. L. 96-300 and is classified to section 7624 of this title.

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7511a of this title.

§ 7625-1. Exemptions for certain territories

(a)(1) Upon petition by the governor¹ of Guam, American Samoa, the Virgin Islands, or the Commonwealth of the Northern Mariana Islands, the Administrator is authorized to exempt any person or source or class of persons or sources in such territory from any requirement under this chapter other than section 7412 of this title or any requirement under section 7410 of this title or part D of subchapter I of this chapter necessary to attain or maintain a national primary ambient air quality standard. Such exemption may be granted if the Administrator finds that compliance with such requirement is not feasible or is unreasonable due to unique geographical, meteorological, or economic factors of such territory, or such other local factors as the Administrator deems significant. Any such petition shall be considered in accordance with section 7607(d) of this title and any exemption under this subsection shall be considered final action by the Administrator for the purposes of section 7607(b) of this title.

(2) The Administrator shall promptly notify the Committees on Energy and Commerce and on Natural Resources of the House of Representatives and the Committees on Environment and Public Works and on Energy and Natural Resources of the Senate upon receipt of any petition under this subsection and of the approval or rejection of such petition and the basis for such action.

(b) Notwithstanding any other provision of this chapter, any fossil fuel fired steam electric power plant operating within Guam as of December 8, 1983, is hereby exempted from:

(1) any requirement of the new source performance standards relating to sulfur dioxide promulgated under section 7411 of this title as of December 8, 1983; and

(2) any regulation relating to sulfur dioxide standards or limitations contained in a State implementation plan approved under section 7410 of this title as of December 8, 1983: *Provided*, That such exemption shall expire eighteen months after December 8, 1983, unless the Administrator determines that such plant is making all emissions reductions practicable to prevent exceedances of the national ambient air quality standards for sulfur dioxide.

(July 14, 1955, ch. 360, title III, §325, as added Pub. L. 98-213, §11, Dec. 8, 1983, 97 Stat. 1461; amended Pub. L. 101-549, title VIII, §806, Nov. 15, 1990, 104 Stat. 2689; Pub. L. 103-437, §15(s), Nov. 2, 1994, 108 Stat. 4594.)

PRIOR PROVISIONS

A prior section 325 of act July 14, 1955, was renumbered section 326 by Pub. L. 98-213 and is classified to section 7625a of this title.

Another prior section 325 of act July 14, 1955, was renumbered section 324 by Pub. L. 96-300 and is classified to section 7625 of this title.

AMENDMENTS

1994—Subsec. (a)(2). Pub. L. 103-437 substituted “Natural Resources” for “Interior and Insular Affairs” before “of the House”.

1990—Subsec. (a)(1). Pub. L. 101-549, which directed the insertion of “the Virgin Islands,” after “American

Samoa,” in “[s]ection 324(a)(1) of the Clean Air Act (42 U.S.C. 7625-1(a)(1))”, was executed by making the insertion in subsec. (a)(1) of this section to reflect the probable intent of Congress.

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives and Committee on Natural Resources of House of Representatives treated as referring to Committee on Resources of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7545 of this title.

§ 7625a. Statutory construction

The parenthetical cross references in any provision of this chapter to other provisions of the chapter, or other provisions of law, where the words “relating to” or “pertaining to” are used, are made only for convenience, and shall be given no legal effect.

(July 14, 1955, ch. 360, title III, §326, as added Pub. L. 95-190, §14(a)(84), Nov. 16, 1977, 91 Stat. 1404; renumbered §325, Pub. L. 96-300, §1(c), July 2, 1980, 94 Stat. 831; renumbered §326, Pub. L. 98-213, §11, Dec. 8, 1983, 97 Stat. 1461.)

PRIOR PROVISIONS

A prior section 326 of act July 14, 1955, was renumbered section 327 by Pub. L. 98-213 and is classified to section 7626 of this title.

§ 7626. Authorization of appropriations

(a) In general

There are authorized to be appropriated to carry out this chapter such sums as may be necessary for the 7 fiscal years commencing after November 15, 1990.

(b) Grants for planning

There are authorized to be appropriated (1) not more than \$50,000,000 to carry out section 7505 of this title beginning in fiscal year 1991, to be available until expended, to develop plan revisions required by subpart 2, 3, or 4 of part D of subchapter I of this chapter, and (2) not more than \$15,000,000 for each of the 7 fiscal years commencing after November 15, 1990, to make grants to the States to prepare implementation plans as required by subpart 2, 3, or 4 of part D of subchapter I of this chapter.

(July 14, 1955, ch. 360, title III, §327, formerly §325, as added Pub. L. 95-95, title III, §315, Aug. 7, 1977, 91 Stat. 790; renumbered §327 and amended Pub. L. 95-190, §14(a)(83), Nov. 16, 1977, 91 Stat. 1404; renumbered §326, Pub. L. 96-300, §1(c), July 2, 1980, 94 Stat. 831; renumbered §327, Pub. L. 98-213, §11, Dec. 8, 1983, 97 Stat. 1461; Pub. L. 101-549, title VIII, §822, Nov. 15, 1990, 104 Stat. 2699.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 1857f of this title, act July 14, 1955, ch.

¹ So in original. Probably should be capitalized.

360, title III, §316, formerly §13, as added Dec. 17, 1963, Pub. L. 88-206, §1, 77 Stat. 401; renumbered §306 and amended Oct. 20, 1965, Pub. L. 89-272, title I, §101(4), (6), (7), 79 Stat. 992; Oct. 15, 1966, Pub. L. 89-675, §2(a), 80 Stat. 954; renumbered §309 and amended Nov. 21, 1967, Pub. L. 90-148, §2, 81 Stat. 506; renumbered §316 and amended Dec. 31, 1970, Pub. L. 91-604, §§12(a), 13(b), 84 Stat. 1705, 1709; Apr. 9, 1973, Pub. L. 93-15, §1(c), 87 Stat. 11; June 22, 1974, Pub. L. 93-319, §13(c), 88 Stat. 265, prior to repeal by section 306 of Pub. L. 95-95.

AMENDMENTS

1990—Pub. L. 101-549 amended section generally, substituting present provisions for provisions authorizing specific appropriations for certain programs and periods and appropriations of \$200,000,000 for fiscal years 1978 through 1981 to carry out the other programs under this chapter.

1977—Subsec. (b)(4). Pub. L. 95-190 substituted “section 7403(a)(5)” for “section 7403(b)(5)”.

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7627. Air pollution from Outer Continental Shelf activities

(a) Applicable requirements for certain areas

(1) In general

Not later than 12 months after November 15, 1990, following consultation with the Secretary of the Interior and the Commandant of the United States Coast Guard, the Administrator, by rule, shall establish requirements to control air pollution from Outer Continental Shelf sources located offshore of the States along the Pacific, Arctic and Atlantic Coasts, and along the United States Gulf Coast off the State of Florida eastward of longitude 87 degrees and 30 minutes (“OCS sources”) to attain and maintain Federal and State ambient air quality standards and to comply with the provisions of part C of subchapter I of this chapter. For such sources located within 25 miles of the seaward boundary of such States, such requirements shall be the same as would be applicable if the source were located in the corresponding onshore area, and shall include, but not be limited to, State and local requirements for emission controls, emission limitations, offsets, permitting, monitoring, testing, and reporting. New OCS sources shall comply with such requirements on the date of promulgation and existing OCS sources shall comply on the date 24 months thereafter. The Administrator shall update such requirements as necessary to maintain consistency with onshore regulations. The authority of this subsection shall supersede section 5(a)(8) of the Outer Continental Shelf Lands Act [43 U.S.C. 1334(a)(8)] but shall not repeal or modify any other Federal, State, or local authorities with respect to air quality. Each requirement established under this section shall be treated, for purposes of sections 7413, 7414, 7416, 7420, and 7604 of this title, as a standard under section 7411 of this title and a violation of any such requirement shall be considered a violation of section 7411(e) of this title.

(2) Exemptions

The Administrator may exempt an OCS source from a specific requirement in effect

under regulations under this subsection if the Administrator finds that compliance with a pollution control technology requirement is technically infeasible or will cause an unreasonable threat to health and safety. The Administrator shall make written findings explaining the basis of any exemption issued pursuant to this subsection and shall impose another requirement equal to or as close in stringency to the original requirement as possible. The Administrator shall ensure that any increase in emissions due to the granting of an exemption is offset by reductions in actual emissions, not otherwise required by this chapter, from the same source or other sources in the area or in the corresponding onshore area. The Administrator shall establish procedures to provide for public notice and comment on exemptions proposed pursuant to this subsection.

(3) State procedures

Each State adjacent to an OCS source included under this subsection may promulgate and submit to the Administrator regulations for implementing and enforcing the requirements of this subsection. If the Administrator finds that the State regulations are adequate, the Administrator shall delegate to that State any authority the Administrator has under this chapter to implement and enforce such requirements. Nothing in this subsection shall prohibit the Administrator from enforcing any requirement of this section.

(4) Definitions

For purposes of subsections (a) and (b) of this section—

(A) Outer Continental Shelf

The term “Outer Continental Shelf” has the meaning provided by section 2 of the Outer Continental Shelf Lands Act (43 U.S.C. 1331).

(B) Corresponding onshore area

The term “corresponding onshore area” means, with respect to any OCS source, the onshore attainment or nonattainment area that is closest to the source, unless the Administrator determines that another area with more stringent requirements with respect to the control and abatement of air pollution may reasonably be expected to be affected by such emissions. Such determination shall be based on the potential for air pollutants from the OCS source to reach the other onshore area and the potential of such air pollutants to affect the efforts of the other onshore area to attain or maintain any Federal or State ambient air quality standard or to comply with the provisions of part C of subchapter I of this chapter.

(C) Outer Continental Shelf source

The terms “Outer Continental Shelf source” and “OCS source” include any equipment, activity, or facility which—

- (i) emits or has the potential to emit any air pollutant,
- (ii) is regulated or authorized under the Outer Continental Shelf Lands Act [43 U.S.C. 1331 et seq.], and

(iii) is located on the Outer Continental Shelf or in or on waters above the Outer Continental Shelf.

Such activities include, but are not limited to, platform and drill ship exploration, construction, development, production, processing, and transportation. For purposes of this subsection, emissions from any vessel servicing or associated with an OCS source, including emissions while at the OCS source or en route to or from the OCS source within 25 miles of the OCS source, shall be considered direct emissions from the OCS source.

(D) New and existing OCS sources

The term “new OCS source” means an OCS source which is a new source within the meaning of section 7411(a) of this title. The term “existing OCS source” means any OCS source other than a new OCS source.

(b) Requirements for other offshore areas

For portions of the United States Gulf Coast Outer Continental Shelf that are adjacent to the States not covered by subsection (a) of this section which are Texas, Louisiana, Mississippi, and Alabama, the Secretary shall consult with the Administrator to assure coordination of air pollution control regulation for Outer Continental Shelf emissions and emissions in adjacent onshore areas. Concurrently with this obligation, the Secretary shall complete within 3 years of November 15, 1990, a research study examining the impacts of emissions from Outer Continental Shelf activities in such areas that fail to meet the national ambient air quality standards for either ozone or nitrogen dioxide. Based on the results of this study, the Secretary shall consult with the Administrator and determine if any additional actions are necessary. There are authorized to be appropriated such sums as may be necessary to provide funding for the study required under this section.

(c) Coastal waters

(1) The study report of section 7412(n)¹ of this title shall apply to the coastal waters of the United States to the same extent and in the same manner as such requirements apply to the Great Lakes, the Chesapeake Bay, and their tributary waters.

(2) The regulatory requirements of section 7412(n)¹ of this title shall apply to the coastal waters of the States which are subject to subsection (a) of this section, to the same extent and in the same manner as such requirements apply to the Great Lakes, the Chesapeake Bay, and their tributary waters.

(July 14, 1955, ch. 360, title III, §328, as added Pub. L. 101-549, title VIII, §801, Nov. 15, 1990, 104 Stat. 2685.)

REFERENCES IN TEXT

The Outer Continental Shelf Lands Act, referred to in subsec. (a)(4)(C)(ii), is act Aug. 7, 1953, ch. 345, 67 Stat. 462, as amended, which is classified generally to subchapter III (§1331 et seq.) of chapter 29 of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1331 of Title 43 and Tables.

¹ So in original. Probably should be section “7412(m)”.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7412 of this title.

SUBCHAPTER IV—NOISE POLLUTION

CODIFICATION

Another title IV of act July 14, 1955, as added by Pub. L. 101-549, title IV, §401, Nov. 15, 1990, 104 Stat. 2584, is classified to subchapter IV-A (§7651 et seq.) of this chapter.

§ 7641. Noise abatement

(a) Office of Noise Abatement and Control

The Administrator shall establish within the Environmental Protection Agency an Office of Noise Abatement and Control, and shall carry out through such Office a full and complete investigation and study of noise and its effect on the public health and welfare in order to (1) identify and classify causes and sources of noise, and (2) determine—

(A) effects at various levels;

(B) projected growth of noise levels in urban areas through the year 2000;

(C) the psychological and physiological effect on humans;

(D) effects of sporadic extreme noise (such as jet noise near airports) as compared with constant noise;

(E) effect on wildlife and property (including values);

(F) effect of sonic booms on property (including values); and

(G) such other matters as may be of interest in the public welfare.

(b) Investigation techniques; report and recommendations

In conducting such investigation, the Administrator shall hold public hearings, conduct research, experiments, demonstrations, and studies. The Administrator shall report the results of such investigation and study, together with his recommendations for legislation or other action, to the President and the Congress not later than one year after December 31, 1970.

(c) Abatement of noise from Federal activities

In any case where any Federal department or agency is carrying out or sponsoring any activity resulting in noise which the Administrator determines amounts to a public nuisance or is otherwise objectionable, such department or agency shall consult with the Administrator to determine possible means of abating such noise.

(July 14, 1955, ch. 360, title IV, §402, as added Pub. L. 91-604, §14, Dec. 31, 1970, 84 Stat. 1709.)

CODIFICATION

Another section 402 of act July 14, 1955, as added by Pub. L. 101-549, title IV, §401, Nov. 15, 1990, 104 Stat. 2585, is classified to section 7651a of this title.

Section was formerly classified to section 1858 of this title.

§ 7642. Authorization of appropriations

There is authorized to be appropriated such amount, not to exceed \$30,000,000, as may be necessary for the purposes of this subchapter.

(July 14, 1955, ch. 360, title IV, §403, as added Pub. L. 91-604, §14, Dec. 31, 1970, 84 Stat. 1710.)

CODIFICATION

Another section 403 of act July 14, 1955, as added by Pub. L. 101-549, title IV, §401, Nov. 15, 1990, 104 Stat. 2589, is classified to section 7651b of this title.

Section was formerly classified to section 1858a of this title.

SUBCHAPTER IV-A—ACID DEPOSITION CONTROL

CODIFICATION

Another title IV of act July 14, 1955, as added by Pub. L. 91-604, §14, Dec. 31, 1970, 84 Stat. 1709, is classified principally to subchapter IV (§7641 et seq.) of this chapter.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 7403, 7413, 7420, 7429, 7513b, 7607, 7661, 7661a, 7661c, 7661e, 7661f of this title.

§ 7651. Findings and purposes

(a) Findings

The Congress finds that—

(1) the presence of acidic compounds and their precursors in the atmosphere and in deposition from the atmosphere represents a threat to natural resources, ecosystems, materials, visibility, and public health;

(2) the principal sources of the acidic compounds and their precursors in the atmosphere are emissions of sulfur and nitrogen oxides from the combustion of fossil fuels;

(3) the problem of acid deposition is of national and international significance;

(4) strategies and technologies for the control of precursors to acid deposition exist now that are economically feasible, and improved methods are expected to become increasingly available over the next decade;

(5) current and future generations of Americans will be adversely affected by delaying measures to remedy the problem;

(6) reduction of total atmospheric loading of sulfur dioxide and nitrogen oxides will enhance protection of the public health and welfare and the environment; and

(7) control measures to reduce precursor emissions from steam-electric generating units should be initiated without delay.

(b) Purposes

The purpose of this subchapter is to reduce the adverse effects of acid deposition through reductions in annual emissions of sulfur dioxide of ten million tons from 1980 emission levels, and, in combination with other provisions of this chapter, of nitrogen oxides emissions of approximately two million tons from 1980 emission levels, in the forty-eight contiguous States and the District of Columbia. It is the intent of this subchapter to effectuate such reductions by requir-

ing compliance by affected sources with prescribed emission limitations by specified deadlines, which limitations may be met through alternative methods of compliance provided by an emission allocation and transfer system. It is also the purpose of this subchapter to encourage energy conservation, use of renewable and clean alternative technologies, and pollution prevention as a long-range strategy, consistent with the provisions of this subchapter, for reducing air pollution and other adverse impacts of energy production and use.

(July 14, 1955, ch. 360, title IV, §401, as added Pub. L. 101-549, title IV, §401, Nov. 15, 1990, 104 Stat. 2584.)

CODIFICATION

Another section 401 of act July 14, 1955, as added by Pub. L. 91-604, §14, Dec. 31, 1970, 84 Stat. 1709, is set out as a Short Title note under section 7401 of this title.

ACID DEPOSITION STANDARDS

Section 404 of Pub. L. 101-549 directed Administrator of Environmental Protection Agency, not later than 36 months after Nov. 15, 1990, to transmit to Congress a report on the feasibility and effectiveness of an acid deposition standard or standards to protect sensitive and critically sensitive aquatic and terrestrial resources.

INDUSTRIAL SO₂ EMISSIONS

Section 406 of Pub. L. 101-549 provided that:

“(a) REPORT.—Not later than January 1, 1995 and every 5 years thereafter, the Administrator of the Environmental Protection Agency shall transmit to the Congress a report containing an inventory of national annual sulfur dioxide emissions from industrial sources (as defined in title IV of the Act [42 U.S.C. 7651 et seq.]), including units subject to section 405(g)(6) of the Clean Air Act [42 U.S.C. 7651d(g)(6)], for all years for which data are available, as well as the likely trend in such emissions over the following twenty-year period. The reports shall also contain estimates of the actual emission reduction in each year resulting from promulgation of the diesel fuel desulfurization regulations under section 214 [42 U.S.C. 7548].

“(b) 5.60 MILLION TON CAP.—Whenever the inventory required by this section indicates that sulfur dioxide emissions from industrial sources, including units subject to section 405(g)(5) of the Clean Air Act [42 U.S.C. 7651d(g)(5)], may reasonably be expected to reach levels greater than 5.60 million tons per year, the Administrator of the Environmental Protection Agency shall take such actions under the Clean Air Act [42 U.S.C. 7401 et seq.] as may be appropriate to ensure that such emissions do not exceed 5.60 million tons per year. Such actions may include the promulgation of new and revised standards of performance for new sources, including units subject to section 405(g)(5) of the Clean Air Act, under section 111(b) of the Clean Air Act [42 U.S.C. 7411(b)], as well as promulgation of standards of performance for existing sources, including units subject to section 405(g)(5) of the Clean Air Act, under authority of this section. For an existing source regulated under this section, ‘standard of performance’ means a standard which the Administrator determines is applicable to that source and which reflects the degree of emission reduction achievable through the application of the best system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated for that category of sources.

“(c) ELECTION.—Regulations promulgated under section 405(b) of the Clean Air Act [42 U.S.C. 7651d(b)] shall not prohibit a source from electing to become an affected unit under section 410 of the Clean Air Act [42 U.S.C. 7651i].”

[For termination, effective May 15, 2000, of reporting provisions in section 406(a) of Pub. L. 101-549, set out above, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 10th item on page 162 of House Document No. 103-7.]

SENSE OF CONGRESS ON EMISSION REDUCTIONS COSTS

Section 407 of Pub. L. 101-549 provided that: "It is the sense of the Congress that the Clean Air Act Amendments of 1990 [Pub. L. 101-549, see Tables for classification], through the allowance program, allocates the costs of achieving the required reductions in emissions of sulfur dioxide and oxides of nitrogen among sources in the United States. Broad based taxes and emissions fees that would provide for payment of the costs of achieving required emissions reductions by any party or parties other than the sources required to achieve the reductions are undesirable."

MONITORING OF ACID RAIN PROGRAM IN CANADA

Section 408 of Pub. L. 101-549 provided that:

"(a) REPORTS TO CONGRESS.—The Administrator of the Environmental Protection Agency, in consultation with the Secretary of State, the Secretary of Energy, and other persons the Administrator deems appropriate, shall prepare and submit a report to Congress on January 1, 1994, January 1, 1999, and January 1, 2005.

"(b) CONTENTS.—The report to Congress shall analyze the current emission levels of sulfur dioxide and nitrogen oxides in each of the provinces participating in Canada's acid rain control program, the amount of emission reductions of sulfur dioxide and oxides of nitrogen achieved by each province, the methods utilized by each province in making those reductions, the costs to each province and the employment impacts in each province of making and maintaining those reductions.

"(c) COMPLIANCE.—Beginning on January 1, 1999, the reports shall also assess the degree to which each province is complying with its stated emissions cap."

§ 7651a. Definitions

As used in this subchapter:

(1) The term "affected source" means a source that includes one or more affected units.

(2) The term "affected unit" means a unit that is subject to emission reduction requirements or limitations under this subchapter.

(3) The term "allowance" means an authorization, allocated to an affected unit by the Administrator under this subchapter, to emit, during or after a specified calendar year, one ton of sulfur dioxide.

(4) The term "baseline" means the annual quantity of fossil fuel consumed by an affected unit, measured in millions of British Thermal Units ("mmBtu's"), calculated as follows:

(A) For each utility unit that was in commercial operation prior to January 1, 1985, the baseline shall be the annual average quantity of mmBtu's consumed in fuel during calendar years 1985, 1986, and 1987, as recorded by the Department of Energy pursuant to Form 767. For any utility unit for which such form was not filed, the baseline shall be the level specified for such unit in the 1985 National Acid Precipitation Assessment Program (NAPAP) Emissions Inventory, Version 2, National Utility Reference File (NURF) or in a corrected data base as established by the Administrator pursuant to paragraph (3). For nonutility units, the baseline is the NAPAP Emissions Inventory, Version 2. The Administrator, in the Admin-

istrator's sole discretion, may exclude periods during which a unit is shutdown for a continuous period of four calendar months or longer, and make appropriate adjustments under this paragraph. Upon petition of the owner or operator of any unit, the Administrator may make appropriate baseline adjustments for accidents that caused prolonged outages.

(B) For any other nonutility unit that is not included in the NAPAP Emissions Inventory, Version 2, or a corrected data base as established by the Administrator pursuant to paragraph (3), the baseline shall be the annual average quantity, in mmBtu consumed in fuel by that unit, as calculated pursuant to a method which the administrator shall prescribe by regulation to be promulgated not later than eighteen months after November 15, 1990.

(C) The Administrator shall, upon application or on his own motion, by December 31, 1991, supplement data needed in support of this subchapter and correct any factual errors in data from which affected Phase II units' baselines or actual 1985 emission rates have been calculated. Corrected data shall be used for purposes of issuing allowances under the¹ subchapter. Such corrections shall not be subject to judicial review, nor shall the failure of the Administrator to correct an alleged factual error in such reports be subject to judicial review.

(5) The term "capacity factor" means the ratio between the actual electric output from a unit and the potential electric output from that unit.

(6) The term "compliance plan" means, for purposes of the requirements of this subchapter, either—

(A) a statement that the source will comply with all applicable requirements under this subchapter, or

(B) where applicable, a schedule and description of the method or methods for compliance and certification by the owner or operator that the source is in compliance with the requirements of this subchapter.

(7) The term "continuous emission monitoring system" (CEMS) means the equipment as required by section 7651k of this title, used to sample, analyze, measure, and provide on a continuous basis a permanent record of emissions and flow (expressed in pounds per million British thermal units (lbs/mmBtu), pounds per hour (lbs/hr) or such other form as the Administrator may prescribe by regulations under section 7651k of this title).

(8) The term "existing unit" means a unit (including units subject to section 7411 of this title) that commenced commercial operation before November 15, 1990. Any unit that commenced commercial operation before November 15, 1990, which is modified, reconstructed, or repowered after November 15, 1990, shall continue to be an existing unit for the purposes of this subchapter. For the purposes of this subchapter, existing units shall not in-

¹ So in original. Probably should be "this".

clude simple combustion turbines, or units which serve a generator with a nameplate capacity of 25MWe or less.

(9) The term "generator" means a device that produces electricity and which is reported as a generating unit pursuant to Department of Energy Form 860.

(10) The term "new unit" means a unit that commences commercial operation on or after November 15, 1990.

(11) The term "permitting authority" means the Administrator, or the State or local air pollution control agency, with an approved permitting program under part B² of title III of the Act.

(12) The term "repowering" means replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the Administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990. Notwithstanding the provisions of section 7651h(a) of this title, for the purpose of this subchapter, the term "repowering" shall also include any oil and/or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

(13) The term "reserve" means any bank of allowances established by the Administrator under this subchapter.

(14) The term "State" means one of the 48 contiguous States and the District of Columbia.

(15) The term "unit" means a fossil fuel-fired combustion device.

(16) The term "actual 1985 emission rate", for electric utility units means the annual sulfur dioxide or nitrogen oxides emission rate in pounds per million Btu as reported in the NAPAP Emissions Inventory, Version 2, National Utility Reference File. For nonutility units, the term "actual 1985 emission rate" means the annual sulfur dioxide or nitrogen oxides emission rate in pounds per million Btu as reported in the NAPAP Emission Inventory, Version 2.

(17)(A) The term "utility unit" means—

(i) a unit that serves a generator in any State that produces electricity for sale, or

(ii) a unit that, during 1985, served a generator in any State that produced electricity for sale.

(B) Notwithstanding subparagraph (A), a unit described in subparagraph (A) that—

(i) was in commercial operation during 1985, but

(ii) did not, during 1985, serve a generator in any State that produced electricity for sale shall not be a utility unit for purposes of this subchapter.

(C) A unit that cogenerates steam and electricity is not a "utility unit" for purposes of this subchapter unless the unit is constructed for the purpose of supplying, or commences construction after November 15, 1990, and supplies, more than one-third of its potential electric output capacity and more than 25 megawatts electrical output to any utility power distribution system for sale.

(18) The term "allowable 1985 emissions rate" means a federally enforceable emissions limitation for sulfur dioxide or oxides of nitrogen, applicable to the unit in 1985 or the limitation applicable in such other subsequent year as determined by the Administrator if such a limitation for 1985 does not exist. Where the emissions limitation for a unit is not expressed in pounds of emissions per million Btu, or the averaging period of that emissions limitation is not expressed on an annual basis, the Administrator shall calculate the annual equivalent of that emissions limitation in pounds per million Btu to establish the allowable 1985 emissions rate.

(19) The term "qualifying phase I technology" means a technological system of continuous emission reduction which achieves a 90 percent reduction in emissions of sulfur dioxide from the emissions that would have resulted from the use of fuels which were not subject to treatment prior to combustion.

(20) The term "alternative method of compliance" means a method of compliance in accordance with one or more of the following authorities:

(A) a substitution plan submitted and approved in accordance with subsections³ 7651c(b) and (c) of this title;

(B) a Phase I extension plan approved by the Administrator under section 7651c(d) of this title, using qualifying phase I technology as determined by the Administrator in accordance with that section; or

(C) repowering with a qualifying clean coal technology under section 7651h of this title.

(21) The term "commenced" as applied to construction of any new electric utility unit means that an owner or operator has undertaken a continuous program of construction or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction.

(22) The term "commenced commercial operation" means to have begun to generate electricity for sale.

(23) The term "construction" means fabrication, erection, or installation of an affected unit.

(24) The term "industrial source" means a unit that does not serve a generator that produces electricity, a "nonutility unit" as defined in this section, or a process source as defined in section 7651i(e)⁴ of this title.

³ So in original. Probably should be "section".

⁴ So in original. Probably should be section "7651i(d)".

² See References in Text note below.

(25) The term “nonutility unit” means a unit other than a utility unit.

(26) The term “designated representative” means a responsible person or official authorized by the owner or operator of a unit to represent the owner or operator in matters pertaining to the holding, transfer, or disposition of allowances allocated to a unit, and the submission of and compliance with permits, permit applications, and compliance plans for the unit.

(27) The term “life-of-the-unit, firm power contractual arrangement” means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of capacity and associated energy generated by a specified generating unit (or units) and pays its proportional amount of such unit’s total costs, pursuant to a contract either—

(A) for the life of the unit;

(B) for a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or

(C) for a period equal to or greater than 25 years or 70 percent of the economic useful life of the unit determined as of the time the unit was built, with option rights to purchase or re-lease some portion of the capacity and associated energy generated by the unit (or units) at the end of the period.

(28) The term “basic Phase II allowance allocations” means:

(A) For calendar years 2000 through 2009 inclusive, allocations of allowances made by the Administrator pursuant to section 7651b of this title and subsections (b)(1), (3), and (4); (c)(1), (2), (3), and (5); (d)(1), (2), (4), and (5); (e); (f); (g)(1), (2), (3), (4), and (5); (h)(1); (i) and (j) of section 7651d of this title.

(B) For each calendar year beginning in 2010, allocations of allowances made by the Administrator pursuant to section 7651b of this title and subsections (b)(1), (3), and (4); (c)(1), (2), (3), and (5); (d)(1), (2), (4) and (5); (e); (f); (g)(1), (2), (3), (4), and (5); (h)(1) and (3); (i) and (j) of section 7651d of this title.

(29) The term “Phase II bonus allowance allocations” means, for calendar year 2000 through 2009, inclusive, and only for such years, allocations made by the Administrator pursuant to section 7651b of this title, subsections (a)(2), (b)(2), (c)(4), (d)(3) (except as otherwise provided therein), and (h)(2) of section 7651d of this title, and section 7651e of this title.

(July 14, 1955, ch. 360, title IV, §402, as added Pub. L. 101-549, title IV, §401, Nov. 15, 1990, 104 Stat. 2585.)

REFERENCES IN TEXT

Part B of title III of the Act, referred to in par. (11), means title III of the Clean Air Act, act July 14, 1955, ch. 360, as added, which is classified to subchapter III of this chapter, but title III does not contain parts. For provisions of the Clean Air Act relating to permits, see subchapter V (§7661 et seq.) of this chapter.

CODIFICATION

Another section 402 of act July 14, 1955, as added by Pub. L. 91-604, §14, Dec. 31, 1970, 84 Stat. 1709, is classified to section 7641 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7651c, 7651g, 7651h of this title.

§ 7651b. Sulfur dioxide allowance program for existing and new units

(a) Allocations of annual allowances for existing and new units

(1)¹ For the emission limitation programs under this subchapter, the Administrator shall allocate annual allowances for the unit, to be held or distributed by the designated representative of the owner or operator of each affected unit at an affected source in accordance with this subchapter, in an amount equal to the annual tonnage emission limitation calculated under section 7651c, 7651d, 7651e, 7651h, or 7651i of this title except as otherwise specifically provided elsewhere in this subchapter. Except as provided in sections 7651d(a)(2), 7651d(a)(3), 7651h and 7651i of this title, beginning January 1, 2000, the Administrator shall not allocate annual allowances to emit sulfur dioxide pursuant to section 7651d of this title in such an amount as would result in total annual emissions of sulfur dioxide from utility units in excess of 8.90 million tons except that the Administrator shall not take into account unused allowances carried forward by owners and operators of affected units or by other persons holding such allowances, following the year for which they were allocated. If necessary to meeting the restrictions imposed in the preceding sentence, the Administrator shall reduce, pro rata, the basic Phase II allowance allocations for each unit subject to the requirements of section 7651d of this title. Subject to the provisions of section 7651o of this title, the Administrator shall allocate allowances for each affected unit at an affected source annually, as provided in paragraphs (2) and (3)¹ and section 7651g of this title. Except as provided in sections 7651h and 7651i of this title, the removal of an existing affected unit or source from commercial operation at any time after November 15, 1990 (whether before or after January 1, 1995, or January 1, 2000) shall not terminate or otherwise affect the allocation of allowances pursuant to section 7651c or 7651d of this title to which the unit is entitled. Allowances shall be allocated by the Administrator without cost to the recipient, except for allowances sold by the Administrator pursuant to section 7651o of this title. Not later than December 31, 1991, the Administrator shall publish a proposed list of the basic Phase II allowance allocations, the Phase II bonus allowance allocations and, if applicable, allocations pursuant to section 7651d(a)(3) of this title for each unit subject to the emissions limitation requirements of section 7651d of this title for the year 2000 and the year 2010. After notice and opportunity for public comment, but not later than December 31, 1992, the Administrator shall publish a final list

¹ So in original. No pars. (2) and (3) have been enacted.

of such allocations, subject to the provisions of section 7651d(a)(2) of this title. Any owner or operator of an existing unit subject to the requirements of section 7651d(b) or (c) of this title who is considering applying for an extension of the emission limitation requirement compliance deadline for that unit from January 1, 2000, until not later than December 31, 2000, pursuant to section 7651h of this title, shall notify the Administrator no later than March 31, 1991. Such notification shall be used as the basis for estimating the basic Phase II allowances under this subsection. Prior to June 1, 1998, the Administrator shall publish a revised final statement of allowance allocations, subject to the provisions of section 7651d(a)(2) of this title and taking into account the effect of any compliance date extensions granted pursuant to section 7651h of this title on such allocations. Any person who may make an election concerning the amount of allowances to be allocated to a unit or units shall make such election and so inform the Administrator not later than March 31, 1991, in the case of an election under section 7651d of this title (or June 30, 1991, in the case of an election under section 7651e of this title). If such person fails to make such election, the Administrator shall set forth for each unit owned or operated by such person, the amount of allowances reflecting the election that would, in the judgment of the Administrator, provide the greatest benefit for the owner or operator of the unit. If such person is a Governor who may make an election under section 7651e of this title and the Governor fails to make an election, the Administrator shall set forth for each unit in the State the amount of allowances reflecting the election that would, in the judgment of the Administrator, provide the greatest benefit for units in the State.

(b) Allowance transfer system

Allowances allocated under this subchapter may be transferred among designated representatives of the owners or operators of affected sources under this subchapter and any other person who holds such allowances, as provided by the allowance system regulations to be promulgated by the Administrator not later than eighteen months after November 15, 1990. Such regulations shall establish the allowance system prescribed under this section, including, but not limited to, requirements for the allocation, transfer, and use of allowances under this subchapter. Such regulations shall prohibit the use of any allowance prior to the calendar year for which the allowance was allocated, and shall provide, consistent with the purposes of this subchapter, for the identification of unused allowances, and for such unused allowances to be carried forward and added to allowances allocated in subsequent years, including allowances allocated to units subject to Phase I requirements (as described in section 7651c of this title) which are applied to emissions limitations requirements in Phase II (as described in section 7651d of this title). Transfers of allowances shall not be effective until written certification of the transfer, signed by a responsible official of each party to the transfer, is received and recorded by the Administrator. Such regulations shall permit the transfer of allowances prior to the is-

suance of such allowances. Recorded pre-allocation transfers shall be deducted by the Administrator from the number of allowances which would otherwise be allocated to the transferor, and added to those allowances allocated to the transferee. Pre-allocation transfers shall not affect the prohibition contained in this subsection against the use of allowances prior to the year for which they are allocated.

(c) Interpollutant trading

Not later than January 1, 1994, the Administrator shall furnish to the Congress a study evaluating the environmental and economic consequences of amending this subchapter to permit trading sulfur dioxide allowances for nitrogen oxides allowances.

(d) Allowance tracking system

(1) The Administrator shall promulgate, not later than 18 months after November 15, 1990, a system for issuing, recording, and tracking allowances, which shall specify all necessary procedures and requirements for an orderly and competitive functioning of the allowance system. All allowance allocations and transfers shall, upon recordation by the Administrator, be deemed a part of each unit's permit requirements pursuant to section 7651g of this title, without any further permit review and revision.

(2) In order to insure electric reliability, such regulations shall not prohibit or affect temporary increases and decreases in emissions within utility systems, power pools, or utilities entering into allowance pool agreements, that result from their operations, including emergencies and central dispatch, and such temporary emissions increases and decreases shall not require transfer of allowances among units nor shall it require recordation. The owners or operators of such units shall act through a designated representative. Notwithstanding the preceding sentence, the total tonnage of emissions in any calendar year (calculated at the end thereof) from all units in such a utility system, power pool, or allowance pool agreements shall not exceed the total allowances for such units for the calendar year concerned.

(e) New utility units

After January 1, 2000, it shall be unlawful for a new utility unit to emit an annual tonnage of sulfur dioxide in excess of the number of allowances to emit held for the unit by the unit's owner or operator. Such new utility units shall not be eligible for an allocation of sulfur dioxide allowances under subsection (a)(1) of this section, unless the unit is subject to the provisions of subsection (g)(2) or (3) of section 7651d of this title. New utility units may obtain allowances from any person, in accordance with this subchapter. The owner or operator of any new utility unit in violation of this subsection shall be liable for fulfilling the obligations specified in section 7651j of this title.

(f) Nature of allowances

An allowance allocated under this subchapter is a limited authorization to emit sulfur dioxide in accordance with the provisions of this subchapter. Such allowance does not constitute a property right. Nothing in this subchapter or in

any other provision of law shall be construed to limit the authority of the United States to terminate or limit such authorization. Nothing in this section relating to allowances shall be construed as affecting the application of, or compliance with, any other provision of this chapter to an affected unit or source, including the provisions related to applicable National Ambient Air Quality Standards and State implementation plans. Nothing in this section shall be construed as requiring a change of any kind in any State law regulating electric utility rates and charges or affecting any State law regarding such State regulation or as limiting State regulation (including any prudency review) under such a State law. Nothing in this section shall be construed as modifying the Federal Power Act [16 U.S.C. 791a et seq.] or as affecting the authority of the Federal Energy Regulatory Commission under that Act. Nothing in this subchapter shall be construed to interfere with or impair any program for competitive bidding for power supply in a State in which such program is established. Allowances, once allocated to a person by the Administrator, may be received, held, and temporarily or permanently transferred in accordance with this subchapter and the regulations of the Administrator without regard to whether or not a permit is in effect under subchapter V of this chapter or section 7651g of this title with respect to the unit for which such allowance was originally allocated and recorded. Each permit under this subchapter and each permit issued under subchapter V of this chapter for any affected unit shall provide that the affected unit may not emit an annual tonnage of sulfur dioxide in excess of the allowances held for that unit.

(g) Prohibition

It shall be unlawful for any person to hold, use, or transfer any allowance allocated under this subchapter, except in accordance with regulations promulgated by the Administrator. It shall be unlawful for any affected unit to emit sulfur dioxide in excess of the number of allowances held for that unit for that year by the owner or operator of the unit. Upon the allocation of allowances under this subchapter, the prohibition contained in the preceding sentence shall supersede any other emission limitation applicable under this subchapter to the units for which such allowances are allocated. Allowances may not be used prior to the calendar year for which they are allocated. Nothing in this section or in the allowance system regulations shall relieve the Administrator of the Administrator's permitting, monitoring and enforcement obligations under this chapter, nor relieve affected sources of their requirements and liabilities under this chapter.

(h) Competitive bidding for power supply

Nothing in this subchapter shall be construed to interfere with or impair any program for competitive bidding for power supply in a State in which such program is established.

(i) Applicability of antitrust laws

(1) Nothing in this section affects—

(A) the applicability of the antitrust laws to the transfer, use, or sale of allowances, or

(B) the authority of the Federal Energy Regulatory Commission under any provision of law respecting unfair methods of competition or anticompetitive acts or practices.

(2) As used in this section, “antitrust laws” means those Acts set forth in section 12 of title 15.

(j) Public Utility Holding Company Act

The acquisition or disposition of allowances pursuant to this subchapter including the issuance of securities or the undertaking of any other financing transaction in connection with such allowances shall not be subject to the provisions of the Public Utility Holding Company Act of 1935 [15 U.S.C. 79 et seq.].

(July 14, 1955, ch. 360, title IV, §403, as added Pub. L. 101-549, title IV, §401, Nov. 15, 1990, 104 Stat. 2589.)

REFERENCES IN TEXT

The Federal Power Act, referred to in subsec. (f), is act June 10, 1920, ch. 285, 41 Stat. 1063, as amended, which is classified generally to chapter 12 (§791a et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see section 791a of Title 16 and Tables.

The Public Utility Holding Company Act of 1935, referred to in subsec. (j), is act Aug. 26, 1935, ch. 687, title I, 49 Stat. 838, as amended, which is classified generally to chapter 2C (§79 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 79 of Title 15 and Tables.

CODIFICATION

Another section 403 of act July 14, 1955, as added by Pub. L. 91-604, §14, Dec. 31, 1970, 84 Stat. 1710, is classified to section 7642 of this title.

FOSSIL FUEL USE

Section 402 of title IV of Pub. L. 101-549 provided that:

“(a) CONTRACTS FOR HYDROELECTRIC ENERGY.—Any person who, after the date of the enactment of the Clean Air Act Amendments of 1990 [Nov. 15, 1990], enters into a contract under which such person receives hydroelectric energy in return for the provision of electric energy by such person shall use allowances held by such person as necessary to satisfy such person's obligations under such contract.

“(b) FEDERAL POWER MARKETING ADMINISTRATION.—A Federal Power Marketing Administration shall not be subject to the provisions and requirements of this title [enacting this subchapter, amending sections 7410, 7411, and 7479 of this title, and enacting provisions set out as notes under sections 7403, 7411, and 7651 of this title] with respect to electric energy generated by hydroelectric facilities and marketed by such Power Marketing Administration. Any person who sells or provides electric energy to a Federal Power Marketing Administration shall comply with the provisions and requirements of this title.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7651a, 7651c, 7651d, 7651e, 7651g, 7651h, 7651i, 7651j of this title.

§ 7651c. Phase I sulfur dioxide requirements

(a) Emission limitations

(1) After January 1, 1995, each source that includes one or more affected units listed in table A is an affected source under this section. After January 1, 1995, it shall be unlawful for any affected unit (other than an eligible phase I unit

under subsection (d)(2) of this section) to emit sulfur dioxide in excess of the tonnage limitation stated as a total number of allowances in table A for phase I, unless (A) the emissions reduction requirements applicable to such unit have been achieved pursuant to subsection (b) or (d) of this section, or (B) the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions, except that, after January 1, 2000, the emissions limitations established in this section shall be superseded by those established in section 7651d of this title. The owner or operator of any unit in violation of this section shall be fully liable for such violation including, but not limited to, liability for fulfilling the obligations specified in section 7651j of this title.

(2) Not later than December 31, 1991, the Administrator shall determine the total tonnage of reductions in the emissions of sulfur dioxide from all utility units in calendar year 1995 that will occur as a result of compliance with the emissions limitation requirements of this section, and shall establish a reserve of allowances equal in amount to the number of tons determined thereby not to exceed a total of 3.50 million tons. In making such a determination, the Administrator shall compute for each unit subject to the emissions limitation requirements of this section the difference between:

(A) the product of its baseline multiplied by the lesser of each unit's allowable 1985 emissions rate and its actual 1985 emissions rate, divided by 2,000, and

(B) the product of each unit's baseline multiplied by 2.50 lbs/mmBtu divided by 2,000,

and sum the computations. The Administrator shall adjust the foregoing calculation to reflect projected calendar year 1995 utilization of the units subject to the emissions limitations of this subchapter that the Administrator finds would have occurred in the absence of the imposition of such requirements. Pursuant to subsection (d) of this section, the Administrator shall allocate allowances from the reserve established hereinunder until the earlier of such time as all such allowances in the reserve are allocated or December 31, 1999.

(3) In addition to allowances allocated pursuant to paragraph (1), in each calendar year beginning in 1995 and ending in 1999, inclusive, the Administrator shall allocate for each unit on Table A that is located in the States of Illinois, Indiana, or Ohio (other than units at Kyger Creek, Clifty Creek and Joppa Steam), allowances in an amount equal to 200,000 multiplied by the unit's pro rata share of the total number of allowances allocated for all units on Table A in the 3 States (other than units at Kyger Creek, Clifty Creek, and Joppa Steam) pursuant to paragraph (1). Such allowances shall be excluded from the calculation of the reserve under paragraph (2).

(b) Substitutions

The owner or operator of an affected unit under subsection (a) of this section may include in its section 7651g of this title permit application and proposed compliance plan a proposal to reassign, in whole or in part, the affected unit's sulfur dioxide reduction requirements to any

other unit(s) under the control of such owner or operator. Such proposal shall specify—

(1) the designation of the substitute unit or units to which any part of the reduction obligations of subsection (a) of this section shall be required, in addition to, or in lieu of, any original affected units designated under such subsection;

(2) the original affected unit's baseline, the actual and allowable 1985 emissions rate for sulfur dioxide, and the authorized annual allowance allocation stated in table A;

(3) calculation of the annual average tonnage for calendar years 1985, 1986, and 1987, emitted by the substitute unit or units, based on the baseline for each unit, as defined in section 7651a(d)¹ of this title, multiplied by the lesser of the unit's actual or allowable 1985 emissions rate;

(4) the emissions rates and tonnage limitations that would be applicable to the original and substitute affected units under the substitution proposal;

(5) documentation, to the satisfaction of the Administrator, that the reassigned tonnage limits will, in total, achieve the same or greater emissions reduction than would have been achieved by the original affected unit and the substitute unit or units without such substitution; and

(6) such other information as the Administrator may require.

(c) Administrator's action on substitution proposals

(1) The Administrator shall take final action on such substitution proposal in accordance with section 7651g(c) of this title if the substitution proposal fulfills the requirements of this subsection. The Administrator may approve a substitution proposal in whole or in part and with such modifications or conditions as may be consistent with the orderly functioning of the allowance system and which will ensure the emissions reductions contemplated by this subchapter. If a proposal does not meet the requirements of subsection (b) of this section, the Administrator shall disapprove it. The owner or operator of a unit listed in table A shall not substitute another unit or units without the prior approval of the Administrator.

(2) Upon approval of a substitution proposal, each substitute unit, and each source with such unit, shall be deemed affected under this subchapter, and the Administrator shall issue a permit to the original and substitute affected source and unit in accordance with the approved substitution plan and section 7651g of this title. The Administrator shall allocate allowances for the original and substitute affected units in accordance with the approved substitution proposal pursuant to section 7651b of this title. It shall be unlawful for any source or unit that is allocated allowances pursuant to this section to emit sulfur dioxide in excess of the emissions limitation provided for in the approved substitution permit and plan unless the owner or operator of each unit governed by the permit and approved substitution plan holds allowances to

¹ So in original. Probably should be section "7651a(4)".

emit not less than the units total annual emissions. The owner or operator of any original or substitute affected unit operated in violation of this subsection shall be fully liable for such violation, including liability for fulfilling the obligations specified in section 7651j of this title. If a substitution proposal is disapproved, the Administrator shall allocate allowances to the original affected unit or units in accordance with subsection (a) of this section.

(d) Eligible phase I extension units

(1) The owner or operator of any affected unit subject to an emissions limitation requirement under this section may petition the Administrator in its permit application under section 7651g of this title for an extension of 2 years of the deadline for meeting such requirement, provided that the owner or operator of any such unit holds allowances to emit not less than the unit's total annual emissions for each of the 2 years of the period of extension. To qualify for such an extension, the affected unit must either employ a qualifying phase I technology, or transfer its phase I emissions reduction obligation to a unit employing a qualifying phase I technology. Such transfer shall be accomplished in accordance with a compliance plan, submitted and approved under section 7651g of this title, that shall govern operations at all units included in the transfer, and that specifies the emissions reduction requirements imposed pursuant to this subchapter.

(2) Such extension proposal shall—

(A) specify the unit or units proposed for designation as an eligible phase I extension unit;

(B) provide a copy of an executed contract, which may be contingent upon the Administrator approving the proposal, for the design engineering, and construction of the qualifying phase I technology for the extension unit, or for the unit or units to which the extension unit's emission reduction obligation is to be transferred;

(C) specify the unit's or units' baseline, actual 1985 emissions rate, allowable 1985 emissions rate, and projected utilization for calendar years 1995 through 1999;

(D) require CEMS on both the eligible phase I extension unit or units and the transfer unit or units beginning no later than January 1, 1995; and

(E) specify the emission limitation and number of allowances expected to be necessary for annual operation after the qualifying phase I technology has been installed.

(3) The Administrator shall review and take final action on each extension proposal in order of receipt, consistent with section 7651g of this title, and for an approved proposal shall designate the unit or units as an eligible phase I extension unit. The Administrator may approve an extension proposal in whole or in part, and with such modifications or conditions as may be necessary, consistent with the orderly functioning of the allowance system, and to ensure the emissions reductions contemplated by the² subchapter.

(4) In order to determine the number of proposals eligible for allocations from the reserve under subsection (a)(2) of this section and the number of allowances remaining available after each proposal is acted upon, the Administrator shall reduce the total number of allowances remaining available in the reserve by the number of allowances calculated according to subparagraphs (A), (B) and (C) until either no allowances remain available in the reserve for further allocation or all approved proposals have been acted upon. If no allowances remain available in the reserve for further allocation before all proposals have been acted upon by the Administrator, any pending proposals shall be disapproved. The Administrator shall calculate allowances equal to—

(A) the difference between the lesser of the average annual emissions in calendar years 1988 and 1989 or the projected emissions tonnage for calendar year 1995 of each eligible phase I extension unit, as designated under paragraph (3), and the product of the unit's baseline multiplied by an emission rate of 2.50 lbs/mmBtu, divided by 2,000;

(B) the difference between the lesser of the average annual emissions in calendar years 1988 and 1989 or the projected emissions tonnage for calendar year 1996 of each eligible phase I extension unit, as designated under paragraph (3), and the product of the unit's baseline multiplied by an emission rate of 2.50 lbs/mmBtu, divided by 2,000; and

(C) the amount by which (i) the product of each unit's baseline multiplied by an emission rate of 1.20 lbs/mmBtu, divided by 2,000, exceeds (ii) the tonnage level specified under subparagraph (E) of paragraph (2) of this subsection multiplied by a factor of 3.

(5) Each eligible Phase I extension unit shall receive allowances determined under subsection (a)(1) or (c) of this section. In addition, for calendar year 1995, the Administrator shall allocate to each eligible Phase I extension unit, from the allowance reserve created pursuant to subsection (a)(2) of this section, allowances equal to the difference between the lesser of the average annual emissions in calendar years 1988 and 1989 or its projected emissions tonnage for calendar year 1995 and the product of the unit's baseline multiplied by an emission rate of 2.50 lbs/mmBtu, divided by 2,000. In calendar year 1996, the Administrator shall allocate for each eligible unit, from the allowance reserve created pursuant to subsection (a)(2) of this section, allowances equal to the difference between the lesser of the average annual emissions in calendar years 1988 and 1989 or its projected emissions tonnage for calendar year 1996 and the product of the unit's baseline multiplied by an emission rate of 2.50 lbs/mmBtu, divided by 2,000. It shall be unlawful for any source or unit subject to an approved extension plan under this subsection to emit sulfur dioxide in excess of the emissions limitations provided for in the permit and approved extension plan, unless the owner or operator of each unit governed by the permit and approved plan holds allowances to emit not less than the unit's total annual emissions.

(6) In addition to allowances specified in paragraph (5), the Administrator shall allocate for

²So in original. Probably should be "this".

each eligible Phase I extension unit employing qualifying Phase I technology, for calendar years 1997, 1998, and 1999, additional allowances, from any remaining allowances in the reserve created pursuant to subsection (a)(2) of this section, following the reduction in the reserve provided for in paragraph (4), not to exceed the amount by which (A) the product of each eligible unit's baseline times an emission rate of 1.20 lbs/mmBtu, divided by 2,000, exceeds (B) the tonnage level specified under subparagraph (E) of paragraph (2) of this subsection.

(7) After January 1, 1997, in addition to any liability under this chapter, including under section 7651j of this title, if any eligible phase I extension unit employing qualifying phase I technology or any transfer unit under this subsection emits sulfur dioxide in excess of the annual tonnage limitation specified in the extension plan, as approved in paragraph (3) of this subsection, the Administrator shall, in the calendar year following such excess, deduct allowances equal to the amount of such excess from such unit's annual allowance allocation.

(e) Allocation of allowances

(1) In the case of a unit that receives authorization from the Governor of the State in which such unit is located to make reductions in the emissions of sulfur dioxide prior to calendar year 1995 and that is part of a utility system that meets the following requirements: (A) the total coal-fired generation within the utility system as a percentage of total system generation decreased by more than 20 percent between January 1, 1980, and December 31, 1985; and (B) the weighted capacity factor of all coal-fired units within the utility system averaged over the period from January 1, 1985, through December 31, 1987, was below 50 percent, the Administrator shall allocate allowances under this paragraph for the unit pursuant to this subsection. The Administrator shall allocate allowances for a unit that is an affected unit pursuant to section 7651d of this title (but is not also an affected unit under this section) and part of a utility system that includes 1 or more affected units under section 7651d of this title for reductions in the emissions of sulfur dioxide made during the period 1995-1999 if the unit meets the requirements of this subsection and the requirements of the preceding sentence, except that for the purposes of applying this subsection to any such unit, the prior year concerned as specified below, shall be any year after January 1, 1995 but prior to January 1, 2000.

(2) In the case of an affected unit under this section described in subparagraph (A), the allowances allocated under this subsection for early reductions in any prior year may not exceed the amount which (A) the product of the unit's baseline multiplied by the unit's 1985 actual sulfur dioxide emission rate (in lbs. per mmBtu), divided by 2,000, exceeds (B) the allowances specified for such unit in Table A. In the case of an affected unit under section 7651d of this title described in subparagraph (A), the allowances awarded under this subsection for early reductions in any prior year may not exceed the amount by which (i) the product of the quantity of fossil fuel consumed by the unit (in mmBtu)

in the prior year multiplied by the lesser of 2.50 or the most stringent emission rate (in lbs. per mmBtu) applicable to the unit under the applicable implementation plan, divided by 2,000, exceeds (ii) the unit's actual tonnage of sulfur dioxide emission for the prior year concerned. Allowances allocated under this subsection for units referred to in subparagraph (A) may be allocated only for emission reductions achieved as a result of physical changes or changes in the method of operation made after November 15, 1990, including changes in the type or quality of fossil fuel consumed.

(3) In no event shall the provisions of this paragraph be interpreted as an event of force majeure or a commercial impracticability³ or in any other way as a basis for excused non-performance by a utility system under a coal sales contract in effect before November 15, 1990.

TABLE A.—AFFECTED SOURCES AND UNITS IN PHASE I AND THEIR SULFUR DIOXIDE ALLOWANCES (TONS)

State	Plant Name	Generator	Phase I Allowances
Alabama	Colbert	1	13,570
		2	15,310
		3	15,400
		4	15,410
		5	37,180
	E.C. Gaston	1	18,100
		2	18,540
		3	18,310
		4	19,280
		5	59,840
Florida	Big Bend	1	28,410
		2	27,100
		3	26,740
Crist	6	19,200	
	7	31,680	
Georgia	Bowen	1	56,320
		2	54,770
		3	71,750
		4	71,740
	Hammond	1	8,780
		2	9,220
		3	8,910
		4	37,640
	J. McDonough	1	19,910
		2	20,600
	Wansley	1	70,770
		2	65,430
	Yates	1	7,210
2		7,040	
3		6,950	
4		8,910	
5		9,410	
6		24,760	
Illinois	Baldwin	7	21,480
		1	42,010
		2	44,420
		3	42,550
		1	11,790
		2	35,670
		4	5,910
	Grand Tower	4	5,910
		2	18,410
	Hennepin	1	12,590
		2	10,770
	Joppa Steam	3	12,270
		4	11,360
		5	11,420
Kincaid	6	10,620	
	1	31,530	
	2	33,810	

³ So in original. Probably should be "impracticability".

TABLE A.—AFFECTED SOURCES AND UNITS IN PHASE I AND THEIR SULFUR DIOXIDE ALLOWANCES (TONS)—CONTINUED

State	Plant Name	Generator	Phase I Allowances	
Indiana	Meredosia	3	13,890	
	Vermilion	2	8,880	
	Bailly	7	11,180	
			8	15,630
	Breed	1	18,500	
	Cayuga	1	33,370	
			2	34,130
	Clifty Creek	1	20,150	
			2	19,810
			3	20,410
			4	20,080
			5	19,360
			6	20,380
	E. W. Stout	5	3,880	
			6	4,770
			7	23,610
	F. B. Culley	2	4,290	
			3	16,970
	F. E. Ratts	1	8,330	
			2	8,480
	Gibson	1	40,400	
			2	41,010
			3	41,080
			4	40,320
	H. T. Pritchard ...	6	5,770	
	Michigan City	12	23,310	
	Petersburg	1	16,430	
		2	32,380	
R. Gallagher	1	6,490		
		2	7,280	
		3	6,530	
		4	7,650	
Tanners Creek	4	24,820		
Wabash River	1	4,000		
		2	2,860	
		3	3,750	
		5	3,670	
		6	12,280	
Warrick	4	26,980		
Iowa	Burlington	1	10,710	
	Des Moines	7	2,320	
	George Neal	1	1,290	
	M.L. Kapp	2	13,800	
	Prairie Creek	4	8,180	
	Riverside	5	3,990	
Kansas	Quindaro	2	4,220	
Kentucky	Coleman	1	11,250	
		2	12,840	
		3	12,340	
Cooper	1	7,450		
		2	15,320	
E.W. Brown	1	7,110		
		2	10,910	
		3	26,100	
Elmer Smith	1	6,520		
		2	14,410	
Ghent	1	28,410		
Green River	4	7,820		
H.L. Spurlock	1	22,780		
Henderson II	1	13,340		
		2	12,310	
Paradise	3	59,170		
Shawnee	10	10,170		
Maryland	Chalk Point	1	21,910	
		2	24,330	
C. P. Crane	1	10,330		
		2	9,230	
Morgantown	1	35,260		
		2	38,480	
Michigan	J. H. Campbell	1	19,280	
		2	23,060	
Minnesota	High Bridge	6	4,270	

TABLE A.—AFFECTED SOURCES AND UNITS IN PHASE I AND THEIR SULFUR DIOXIDE ALLOWANCES (TONS)—CONTINUED

State	Plant Name	Generator	Phase I Allowances
Mississippi	Jack Watson	4	17,910
		5	36,700
Missouri	Asbury	1	16,190
	James River	5	4,850
	Labadie	1	40,110
		2	37,710
		3	40,310
		4	35,940
	Montrose	1	7,390
		2	8,200
		3	10,090
	New Madrid	1	28,240
		2	32,480
	Sibley	3	15,580
	Sioux	1	22,570
		2	23,690
	Thomas Hill	1	10,250
		2	19,390
New Hampshire	Merrimack	1	10,190
		2	22,000
New Jersey	B.L. England	1	9,060
		2	11,720
New York	Dunkirk	3	12,600
		4	14,060
	Greenidge	4	7,540
	Milliken	1	11,170
		2	12,410
	Northport	1	19,810
		2	24,110
		3	26,480
	Port Jefferson	3	10,470
		4	12,330
Ohio	Ashtabula	5	16,740
	Avon Lake	8	11,650
		9	30,480
	Cardinal	1	34,270
		2	38,320
	Conesville	1	4,210
		2	4,890
		3	5,500
		4	48,770
	Eastlake	1	7,800
		2	8,640
		3	10,020
		4	14,510
		5	34,070
	Edgewater	4	5,050
	Gen. J.M. Gavin ..	1	79,080
		2	80,560
	Kyger Creek	1	19,280
		2	18,560
		3	17,910
		4	18,710
		5	18,740
	Miami Fort	5	760
		6	11,380
		7	38,510
	Muskingum River	1	14,880
		2	14,170
		3	13,950
		4	11,780
		5	40,470
	Niles	1	6,940
		2	9,100
	Picway	5	4,930
	R.E. Burger	3	6,150
		4	10,780
		5	12,430
	W.H. Sammis	5	24,170
		6	39,930
		7	43,220

TABLE A.—AFFECTED SOURCES AND UNITS IN PHASE I AND THEIR SULFUR DIOXIDE ALLOWANCES (TONS)—CONTINUED

State	Plant Name	Generator	Phase I Allowances
Pennsylvania ...	W.C. Beckjord	5	8,950
		6	23,020
	Armstrong	1	14,410
		2	15,430
	Brunner Island	1	27,760
		2	31,100
		3	53,820
	Cheswick	1	39,170
	Conemaugh	1	59,790
		2	66,450
	Hatfield's Ferry ..	1	37,830
		2	37,320
		3	40,270
	Martins Creek	1	12,660
		2	12,820
Portland	1	5,940	
	2	10,230	
Shawville	1	10,320	
	2	10,320	
	3	14,220	
	4	14,070	
Sunbury	3	8,760	
	4	11,450	
Tennessee	Allen	1	15,320
		2	16,770
		3	15,670
	Cumberland	1	86,700
		2	94,840
	Gallatin	1	17,870
		2	17,310
		3	20,020
	Johnsonville	4	21,260
		1	7,790
2		8,040	
3		8,410	
		4	7,990
		5	8,240
		6	7,890
		7	8,980
		8	8,700
		9	7,080
		10	7,550
West Virginia ..	Albright	3	12,000
		1	41,590
	Fort Martin	2	41,200
		1	48,620
		2	46,150
	Harrison	3	41,500
		1	18,740
		2	19,460
	Kammer	3	17,390
		1	43,980
2		45,510	
Mitchell	1	43,720	
	2	35,580	
	3	42,430	
Mount Storm	1	43,720	
	2	35,580	
	3	42,430	
Wisconsin	Edgewater	4	24,750
		3	22,700
	La Crosse/Genoa ..	1	6,010
		2	6,680
	Nelson Dewey	1	5,220
		2	5,140
		3	5,370
	Pulliam	4	6,320
		8	7,510
		5	9,670
S. Oak Creek	6	12,040	
	7	16,180	
	8	15,790	

(f) Energy conservation and renewable energy

(1) Definitions

As used in this subsection:

(A) Qualified energy conservation measure

The term “qualified energy conservation measure” means a cost effective measure, as identified by the Administrator in consultation with the Secretary of Energy, that increases the efficiency of the use of electricity provided by an electric utility to its customers.

(B) Qualified renewable energy

The term “qualified renewable energy” means energy derived from biomass, solar, geothermal, or wind as identified by the Administrator in consultation with the Secretary of Energy.

(C) Electric utility

The term “electric utility” means any person, State agency, or Federal agency, which sells electric energy.

(2) Allowances for emissions avoided through energy conservation and renewable energy

(A) In general

The regulations under paragraph (4) of this subsection shall provide that for each ton of sulfur dioxide emissions avoided by an electric utility, during the applicable period, through the use of qualified energy conservation measures or qualified renewable energy, the Administrator shall allocate a single allowance to such electric utility, on a first-come-first-served basis from the Conservation and Renewable Energy Reserve established under subsection (g) of this section, up to a total of 300,000 allowances for allocation from such Reserve.

(B) Requirements for issuance

The Administrator shall allocate allowances to an electric utility under this subsection only if all of the following requirements are met:

(i) Such electric utility is paying for the qualified energy conservation measures or qualified renewable energy directly or through purchase from another person.

(ii) The emissions of sulfur dioxide avoided through the use of qualified energy conservation measures or qualified renewable energy are quantified in accordance with regulations promulgated by the Administrator under this subsection.

(iii)(I) Such electric utility has adopted and is implementing a least cost energy conservation and electric power plan which evaluates a range of resources, including new power supplies, energy conservation, and renewable energy resources, in order to meet expected future demand at the lowest system cost.

(II) The qualified energy conservation measures or qualified renewable energy, or both, are consistent with that plan.

(III) Electric utilities subject to the jurisdiction of a State regulatory authority must have such plan approved by such authority. For electric utilities not subject

to the jurisdiction of a State regulatory authority such plan shall be approved by the entity with rate-making authority for such utility.

(iv) In the case of qualified energy conservation measures undertaken by a State regulated electric utility, the Secretary of Energy certifies that the State regulatory authority with jurisdiction over the electric rates of such electric utility has established rates and charges which ensure that the net income of such electric utility after implementation of specific cost effective energy conservation measures is at least as high as such net income would have been if the energy conservation measures had not been implemented. Upon the date of any such certification by the Secretary of Energy, all allowances which, but for this paragraph, would have been allocated under subparagraph (A) before such date, shall be allocated to the electric utility. This clause is not a requirement for qualified renewable energy.

(v) Such utility or any subsidiary of the utility's holding company owns or operates at least one affected unit.

(C) Period of applicability

Allowances under this subsection shall be allocated only with respect to kilowatt hours of electric energy saved by qualified energy conservation measures or generated by qualified renewable energy after January 1, 1992 and before the earlier of (i) December 31, 2000, or (ii) the date on which any electric utility steam generating unit owned or operated by the electric utility to which the allowances are allocated becomes subject to this subchapter (including those sources that elect to become affected by this subchapter, pursuant to section 7651i of this title).

(D) Determination of avoided emissions

(i) Application

In order to receive allowances under this subsection, an electric utility shall make an application which—

(I) designates the qualified energy conservation measures implemented and the qualified renewable energy sources used for purposes of avoiding emissions,⁴

(II) calculates, in accordance with subparagraphs (F) and (G), the number of tons of emissions avoided by reason of the implementation of such measures or the use of such renewable energy sources; and

(III) demonstrates that the requirements of subparagraph (B) have been met.

Such application for allowances by a State-regulated electric utility shall require approval by the State regulatory authority with jurisdiction over such electric utility. The authority shall review the application for accuracy and compliance with this subsection and the rules under

this subsection. Electric utilities whose retail rates are not subject to the jurisdiction of a State regulatory authority shall apply directly to the Administrator for such approval.

(E) Avoided emissions from qualified energy conservation measures

For the purposes of this subsection, the emission tonnage deemed avoided by reason of the implementation of qualified energy conservation measures for any calendar year shall be a tonnage equal to the product of multiplying—

(i) the kilowatt hours that would otherwise have been supplied by the utility during such year in the absence of such qualified energy conservation measures, by

(ii) 0.004,

and dividing by 2,000.

(F) Avoided emissions from the use of qualified renewable energy

The emissions tonnage deemed avoided by reason of the use of qualified renewable energy by an electric utility for any calendar year shall be a tonnage equal to the product of multiplying—

(i) the actual kilowatt hours generated by, or purchased from, qualified renewable energy, by

(ii) 0.004,

and dividing by 2,000.

(G) Prohibitions

(i) No allowances shall be allocated under this subsection for the implementation of programs that are exclusively informational or educational in nature.

(ii) No allowances shall be allocated for energy conservation measures or renewable energy that were operational before January 1, 1992.

(3) Savings provision

Nothing in this subsection precludes a State or State regulatory authority from providing additional incentives to utilities to encourage investment in demand-side resources.

(4) Regulations

Not later than 18 months after November 15, 1990, and in conjunction with the regulations required to be promulgated under subsections (b) and (c) of this section, the Administrator shall, in consultation with the Secretary of Energy, promulgate regulations under this subsection. Such regulations shall list energy conservation measures and renewable energy sources which may be treated as qualified energy conservation measures and qualified renewable energy for purposes of this subsection. Allowances shall only be allocated if all requirements of this subsection and the rules promulgated to implement this subsection are complied with. The Administrator shall review the determinations of each State regulatory authority under this subsection to encourage consistency from electric utility to electric utility and from State to State in accordance with the Administrator's rules. The Administrator shall publish the findings of this review no less than annually.

⁴So in original. The comma probably should be a semicolon.

(g) Conservation and Renewable Energy Reserve

The Administrator shall establish a Conservation and Renewable Energy Reserve under this subsection. Beginning on January 1, 1995, the Administrator may allocate from the Conservation and Renewable Energy Reserve an amount equal to a total of 300,000 allowances for emissions of sulfur dioxide pursuant to section 7651b of this title. In order to provide 300,000 allowances for such reserve, in each year beginning in calendar year 2000 and until calendar year 2009, inclusive, the Administrator shall reduce each unit's basic Phase II allowance allocation on the basis of its pro rata share of 30,000 allowances. If allowances remain in the reserve after January 2, 2010, the Administrator shall allocate such allowances for affected units under section 7651d of this title on a pro rata basis. For purposes of this subsection, for any unit subject to the emissions limitation requirements of section 7651d of this title, the term "pro rata basis" refers to the ratio which the reductions made in such unit's allowances in order to establish the reserve under this subsection bears to the total of such reductions for all such units.

(h) Alternative allowance allocation for units in certain utility systems with optional baseline**(1) Optional baseline for units in certain systems**

In the case of a unit subject to the emissions limitation requirements of this section which (as of November 15, 1990)—

(A) has an emission rate below 1.0 lbs/mmBtu,

(B) has decreased its sulfur dioxide emissions rate by 60 percent or greater since 1980, and

(C) is part of a utility system which has a weighted average sulfur dioxide emissions rate for all fossil fueled-fired units below 1.0 lbs/mmBtu,

at the election of the owner or operator of such unit, the unit's baseline may be calculated (i) as provided under section 7651a(d)⁵ of this title, or (ii) by utilizing the unit's average annual fuel consumption at a 60 percent capacity factor. Such election shall be made no later than March 1, 1991.

(2) Allowance allocation

Whenever a unit referred to in paragraph (1) elects to calculate its baseline as provided in clause (ii) of paragraph (1), the Administrator shall allocate allowances for the unit pursuant to section 7651b(a)(1) of this title, this section, and section 7651d of this title (as basic Phase II allowance allocations) in an amount equal to the baseline selected multiplied by the lower of the average annual emission rate for such unit in 1989, or 1.0 lbs./mmBtu. Such allowance allocation shall be in lieu of any allocation of allowances under this section and section 7651d of this title.

(July 14, 1955, ch. 360, title IV, § 404, as added Pub. L. 101-549, title IV, § 401, Nov. 15, 1990, 104 Stat. 2592.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7651a, 7651b, 7651d, 7651f, 7651g, 7651i, 7651j, 7651k, 7651o of this title.

§ 7651d. Phase II sulfur dioxide requirements**(a) Applicability**

(1) After January 1, 2000, each existing utility unit as provided below is subject to the limitations or requirements of this section. Each utility unit subject to an annual sulfur dioxide tonnage emission limitation under this section is an affected unit under this subchapter. Each source that includes one or more affected units is an affected source. In the case of an existing unit that was not in operation during calendar year 1985, the emission rate for a calendar year after 1985, as determined by the Administrator, shall be used in lieu of the 1985 rate. The owner or operator of any unit operated in violation of this section shall be fully liable under this chapter for fulfilling the obligations specified in section 7651j of this title.

(2) In addition to basic Phase II allowance allocations, in each year beginning in calendar year 2000 and ending in calendar year 2009, inclusive, the Administrator shall allocate up to 530,000 Phase II bonus allowances pursuant to subsections (b)(2), (c)(4), (d)(3)(A) and (B), and (h)(2) of this section and section 7651e of this title. Not later than June 1, 1998, the Administrator shall calculate, for each unit granted an extension pursuant to section 7651h of this title the difference between (A) the number of allowances allocated for the unit in calendar year 2000, and (B) the product of the unit's baseline multiplied by 1.20 lbs/mmBtu, divided by 2000, and sum the computations. In each year, beginning in calendar year 2000 and ending in calendar year 2009, inclusive, the Administrator shall deduct from each unit's basic Phase II allowance allocation its pro rata share of 10 percent of the sum calculated pursuant to the preceding sentence.

(3) In addition to basic Phase II allowance allocations and Phase II bonus allowance allocations, beginning January 1, 2000, the Administrator shall allocate for each unit listed on Table A in section 7651c of this title (other than units at Kyger Creek, Clifty Creek, and Joppa Steam) and located in the States of Illinois, Indiana, Ohio, Georgia, Alabama, Missouri, Pennsylvania, West Virginia, Kentucky, or Tennessee allowances in an amount equal to 50,000 multiplied by the unit's pro rata share of the total number of basic allowances allocated for all units listed on Table A (other than units at Kyger Creek, Clifty Creek, and Joppa Steam). Allowances allocated pursuant to this paragraph shall not be subject to the 8,900,000 ton limitation in section 7651b(a) of this title.

(b) Units equal to, or above, 75 MWe and 1.20 lbs/mmBtu

(1) Except as otherwise provided in paragraph (3), after January 1, 2000, it shall be unlawful for any existing utility unit that serves a generator with nameplate capacity equal to, or greater, than 75 MWe and an actual 1985 emission rate equal to or greater than 1.20 lbs/mmBtu to exceed an annual sulfur dioxide tonnage emission limitation equal to the product of the unit's

⁵ So in original. Probably should be section "7651a(4)".

baseline multiplied by an emission rate equal to 1.20 lbs/mmBtu, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions.

(2) In addition to allowances allocated pursuant to paragraph (1) and section 7651b(a)(1) of this title as basic Phase II allowance allocations, beginning January 1, 2000, and for each calendar year thereafter until and including 2009, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (1) with an actual 1985 emissions rate greater than 1.20 lbs/mmBtu and less than 2.50 lbs/mmBtu and a baseline capacity factor of less than 60 percent, allowances from the reserve created pursuant to subsection (a)(2) of this section in an amount equal to 1.20 lbs/mmBtu multiplied by 50 percent of the difference, on a Btu basis, between the unit's baseline and the unit's fuel consumption at a 60 percent capacity factor.

(3) After January 1, 2000, it shall be unlawful for any existing utility unit with an actual 1985 emissions rate equal to or greater than 1.20 lbs/mmBtu whose annual average fuel consumption during 1985, 1986, and 1987 on a Btu basis exceeded 90 percent in the form of lignite coal which is located in a State in which, as of July 1, 1989, no county or portion of a county was designated nonattainment under section 7407 of this title for any pollutant subject to the requirements of section 7409 of this title to exceed an annual sulfur dioxide tonnage limitation equal to the product of the unit's baseline multiplied by the lesser of the unit's actual 1985 emissions rate or its allowable 1985 emissions rate, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions.

(4) After January 1, 2000, the Administrator shall allocate annually for each unit, subject to the emissions limitation requirements of paragraph (1), which is located in a State with an installed electrical generating capacity of more than 30,000,000 kw in 1988 and for which was issued a prohibition order or a proposed prohibition order (from burning oil), which unit subsequently converted to coal between January 1, 1980 and December 31, 1985, allowances equal to the difference between (A) the product of the unit's annual fuel consumption, on a Btu basis, at a 65 percent capacity factor multiplied by the lesser of its actual or allowable emissions rate during the first full calendar year after conversion, divided by 2,000, and (B) the number of allowances allocated for the unit pursuant to paragraph (1): *Provided*, That the number of allowances allocated pursuant to this paragraph shall not exceed an annual total of five thousand. If necessary to meeting the restriction imposed in the preceding sentence the Administrator shall reduce, pro rata, the annual allowances allocated for each unit under this paragraph.

(c) Coal or oil-fired units below 75 MWe and above 1.20 lbs/mmBtu

(1) Except as otherwise provided in paragraph (3), after January 1, 2000, it shall be unlawful for a coal or oil-fired existing utility unit that

serves a generator with nameplate capacity of less than 75 MWe and an actual 1985 emission rate equal to, or greater than, 1.20 lbs/mmBtu and which is a unit owned by a utility operating company whose aggregate nameplate fossil fuel steam-electric capacity is, as of December 31, 1989, equal to, or greater than, 250 MWe to exceed an annual sulfur dioxide emissions limitation equal to the product of the unit's baseline multiplied by an emission rate equal to 1.20 lbs/mmBtu, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions.

(2) After January 1, 2000, it shall be unlawful for a coal or oil-fired existing utility unit that serves a generator with nameplate capacity of less than 75 MWe and an actual 1985 emission rate equal to, or greater than, 1.20 lbs/mmBtu (excluding units subject to section 7411 of this title or to a federally enforceable emissions limitation for sulfur dioxide equivalent to an annual rate of less than 1.20 lbs/mmBtu) and which is a unit owned by a utility operating company whose aggregate nameplate fossil fuel steam-electric capacity is, as of December 31, 1989, less than 250 MWe, to exceed an annual sulfur dioxide tonnage emissions limitation equal to the product of the unit's baseline multiplied by the lesser of its actual 1985 emissions rate or its allowable 1985 emissions rate, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions.

(3) After January 1, 2000, it shall be unlawful for any existing utility unit with a nameplate capacity below 75 MWe and an actual 1985 emissions rate equal to, or greater than, 1.20 lbs/mmBtu which became operational on or before December 31, 1965, which is owned by a utility operating company with, as of December 31, 1989, a total fossil fuel steam-electric generating capacity greater than 250 MWe, and less than 450 MWe which serves fewer than 78,000 electrical customers as of November 15, 1990, to exceed an annual sulfur dioxide emissions tonnage limitation equal to the product of its baseline multiplied by the lesser of its actual or allowable 1985 emission rate, divided by 2,000, unless the owner or operator holds allowances to emit not less than the unit's¹ total annual emissions. After January 1, 2010, it shall be unlawful for each unit subject to the emissions limitation requirements of this paragraph to exceed an annual emissions tonnage limitation equal to the product of its baseline multiplied by an emissions rate of 1.20 lbs/mmBtu, divided by 2,000, unless the owner or operator holds allowances to emit not less than the unit's total annual emissions.

(4) In addition to allowances allocated pursuant to paragraph (1) and section 7651b(a)(1) of this title as basic Phase II allowance allocations, beginning January 1, 2000, and for each calendar year thereafter until and including 2009, inclusive, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (1) with an actual 1985 emissions rate equal to, or greater than, 1.20 lbs/mmBtu and less than 2.50 lbs/mmBtu and a baseline capacity factor of less

¹ So in original. Probably should be "unit's".

than 60 percent, allowances from the reserve created pursuant to subsection (a)(2) of this section in an amount equal to 1.20 lbs/mmBtu multiplied by 50 percent of the difference, on a Btu basis, between the unit's baseline and the unit's fuel consumption at a 60 percent capacity factor.

(5) After January 1, 2000, it shall be unlawful for any existing utility unit with a nameplate capacity below 75 MWe and an actual 1985 emissions rate equal to, or greater than, 1.20 lbs/mmBtu which is part of an electric utility system which, as of November 15, 1990, (A) has at least 20 percent of its fossil-fuel capacity controlled by flue gas desulfurization devices, (B) has more than 10 percent of its fossil-fuel capacity consisting of coal-fired units of less than 75 MWe, and (C) has large units (greater than 400 MWe) all of which have difficult or very difficult FGD Retrofit Cost Factors (according to the Emissions and the FGD Retrofit Feasibility at the 200 Top Emitting Generating Stations, prepared for the United States Environmental Protection Agency on January 10, 1986) to exceed an annual sulfur dioxide emissions tonnage limitation equal to the product of its baseline multiplied by an emissions rate of 2.5 lbs/mmBtu, divided by 2,000, unless the owner or operator holds allowances to emit not less than the unit's total annual emissions. After January 1, 2010, it shall be unlawful for each unit subject to the emissions limitation requirements of this paragraph to exceed an annual emissions tonnage limitation equal to the product of its baseline multiplied by an emissions rate of 1.20 lbs/mmBtu, divided by 2,000, unless the owner or operator holds for use allowances to emit not less than the unit's total annual emissions.

(d) Coal-fired units below 1.20 lbs/mmBtu

(1) After January 1, 2000, it shall be unlawful for any existing coal-fired utility unit the lesser of whose actual or allowable 1985 sulfur dioxide emissions rate is less than 0.60 lbs/mmBtu to exceed an annual sulfur dioxide tonnage emission limitation equal to the product of the unit's baseline multiplied by (A) the lesser of 0.60 lbs/mmBtu or the unit's allowable 1985 emissions rate, and (B) a numerical factor of 120 percent, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions.

(2) After January 1, 2000, it shall be unlawful for any existing coal-fired utility unit the lesser of whose actual or allowable 1985 sulfur dioxide emissions rate is equal to, or greater than, 0.60 lbs/mmBtu and less than 1.20 lbs/mmBtu to exceed an annual sulfur dioxide tonnage emissions limitation equal to the product of the unit's baseline multiplied by (A) the lesser of its actual 1985 emissions rate or its allowable 1985 emissions rate, and (B) a numerical factor of 120 percent, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions.

(3)(A) In addition to allowances allocated pursuant to paragraph (1) and section 7651b(a)(1) of this title as basic Phase II allowance allocations, at the election of the designated representative of the operating company, beginning January 1, 2000, and for each calendar year

thereafter until and including 2009, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (1) allowances from the reserve created pursuant to subsection (a)(2) of this section in an amount equal to the amount by which (i) the product of the lesser of 0.60 lbs/mmBtu or the unit's allowable 1985 emissions rate multiplied by the unit's baseline adjusted to reflect operation at a 60 percent capacity factor, divided by 2,000, exceeds (ii) the number of allowances allocated for the unit pursuant to paragraph (1) and section 7651b(a)(1) of this title as basic Phase II allowance allocations.

(B) In addition to allowances allocated pursuant to paragraph (2) and section 7651b(a)(1) of this title as basic Phase II allowance allocations, at the election of the designated representative of the operating company, beginning January 1, 2000, and for each calendar year thereafter until and including 2009, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (2) allowances from the reserve created pursuant to subsection (a)(2) of this section in an amount equal to the amount by which (i) the product of the lesser of the unit's actual 1985 emissions rate or its allowable 1985 emissions rate multiplied by the unit's baseline adjusted to reflect operation at a 60 percent capacity factor, divided by 2,000, exceeds (ii) the number of allowances allocated for the unit pursuant to paragraph (2) and section 7651b(a)(1) of this title as basic Phase II allowance allocations.

(C) An operating company with units subject to the emissions limitation requirements of this subsection may elect the allocation of allowances as provided under subparagraphs (A) and (B). Such election shall apply to the annual allowance allocation for each and every unit in the operating company subject to the emissions limitation requirements of this subsection. The Administrator shall allocate allowances pursuant to subparagraphs (A) and (B) only in accordance with this subparagraph.

(4) Notwithstanding any other provision of this section, at the election of the owner or operator, after January 1, 2000, the Administrator shall allocate in lieu of allocation, pursuant to paragraph (1), (2), (3), (5), or (6), allowances for a unit subject to the emissions limitation requirements of this subsection which commenced commercial operation on or after January 1, 1981 and before December 31, 1985, which was subject to, and in compliance with, section 7411 of this title in an amount equal to the unit's annual fuel consumption, on a Btu basis, at a 65 percent capacity factor multiplied by the unit's allowable 1985 emissions rate, divided by 2,000.

(5) For the purposes of this section, in the case of an oil- and gas-fired unit which has been awarded a clean coal technology demonstration grant as of January 1, 1991, by the United States Department of Energy, beginning January 1, 2000, the Administrator shall allocate for the unit allowances in an amount equal to the unit's baseline multiplied by 1.20 lbs/mmBtu, divided by 2,000.

(e) Oil and gas-fired units equal to or greater than 0.60 lbs/mmBtu and less than 1.20 lbs/mmBtu

After January 1, 2000, it shall be unlawful for any existing oil and gas-fired utility unit the lesser of whose actual or allowable 1985 sulfur dioxide emission rate is equal to, or greater than, 0.60 lbs/mmBtu, but less than 1.20 lbs/mmBtu to exceed an annual sulfur dioxide tonnage limitation equal to the product of the unit's baseline multiplied by (A) the lesser of the unit's allowable 1985 emissions rate or its actual 1985 emissions rate and (B) a numerical factor of 120 percent divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions.

(f) Oil and gas-fired units less than 0.60 lbs/mmBtu

(1) After January 1, 2000, it shall be unlawful for any oil and gas-fired existing utility unit the lesser of whose actual or allowable 1985 emission rate is less than 0.60 lbs/mmBtu and whose average annual fuel consumption during the period 1980 through 1989 on a Btu basis was 90 percent or less in the form of natural gas to exceed an annual sulfur dioxide tonnage emissions limitation equal to the product of the unit's baseline multiplied by (A) the lesser of 0.60 lbs/mmBtu or the unit's allowable 1985 emissions, and (B) a numerical factor of 120 percent, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions.

(2) In addition to allowances allocated pursuant to paragraph (1) as basic Phase II allowance allocations and section 7651b(a)(1) of this title, beginning January 1, 2000, the Administrator shall, in the case of any unit operated by a utility that furnishes electricity, electric energy, steam, and natural gas within an area consisting of a city and 1 contiguous county, and in the case of any unit owned by a State authority, the output of which unit is furnished within that same area consisting of a city and 1 contiguous county, the Administrator shall allocate for each unit in the utility its pro rata share of 7,000 allowances and for each unit in the State authority its pro rata share of 2,000 allowances.

(g) Units that commence operation between 1986 and December 31, 1995

(1) After January 1, 2000, it shall be unlawful for any utility unit that has commenced commercial operation on or after January 1, 1986, but not later than September 30, 1990 to exceed an annual tonnage emission limitation equal to the product of the unit's annual fuel consumption, on a Btu basis, at a 65 percent capacity factor multiplied by the unit's allowable 1985 sulfur dioxide emission rate (converted, if necessary, to pounds per mmBtu), divided by 2,000 unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions.

(2) After January 1, 2000, the Administrator shall allocate allowances pursuant to section 7651b of this title to each unit which is listed in table B of this paragraph in an annual amount equal to the amount specified in table B.

TABLE B

Unit	Allowances
Brandon Shores	8,907
Miller 4	9,197
TNP One 2	4,000
Zimmer 1	18,458
Spruce 1	7,647
Clover 1	2,796
Clover 2	2,796
Twin Oak 2	1,760
Twin Oak 1	9,158
Cross 1	6,401
Malakoff 1	1,759

Notwithstanding any other paragraph of this subsection, for units subject to this paragraph, the Administrator shall not allocate allowances pursuant to any other paragraph of this subsection, Provided² that the owner or operator of a unit listed on Table B may elect an allocation of allowances under another paragraph of this subsection in lieu of an allocation under this paragraph.

(3) Beginning January 1, 2000, the Administrator shall allocate to the owner or operator of any utility unit that commences commercial operation, or has commenced commercial operation, on or after October 1, 1990, but not later than December 31, 1992 allowances in an amount equal to the product of the unit's annual fuel consumption, on a Btu basis, at a 65 percent capacity factor multiplied by the lesser of 0.30 lbs/mmBtu or the unit's allowable sulfur dioxide emission rate (converted, if necessary, to pounds per mmBtu), divided by 2,000.

(4) Beginning January 1, 2000, the Administrator shall allocate to the owner or operator of any utility unit that has commenced construction before December 31, 1990 and that commences commercial operation between January 1, 1993 and December 31, 1995, allowances in an amount equal to the product of the unit's annual fuel consumption, on a Btu basis, at a 65 percent capacity factor multiplied by the lesser of 0.30 lbs/mmBtu or the unit's allowable sulfur dioxide emission rate (converted, if necessary, to pounds per mmBtu), divided by 2,000.

(5) After January 1, 2000, it shall be unlawful for any existing utility unit that has completed conversion from predominantly gas fired existing operation to coal fired operation between January 1, 1985 and December 31, 1987, for which there has been allocated a proposed or final prohibition order pursuant to section 301(b)³ of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 et seq, repealed 1987) to exceed an annual sulfur dioxide tonnage emissions limitation equal to the product of the unit's annual fuel consumption, on a Btu basis, at a 65 percent capacity factor multiplied by the lesser of 1.20 lbs/mmBtu or the unit's allowable 1987 sulfur dioxide emissions rate, divided by 2,000, unless the owner or operator of such unit has obtained allowances equal to its actual emissions.

(6)(A)⁴ Unless the Administrator has approved a designation of such facility under section 7651i of this title, the provisions of this subchapter shall not apply to a "qualifying small power production facility" or "qualifying cogeneration

²So in original. Probably should not be capitalized.

³See References in Text note below.

⁴So in original. No subpar. (B) has been enacted.

facility” (within the meaning of section 796(17)(C) or 796(18)(B) of title 16) or to a “new independent power production facility” as defined in section 7651o of this title except that clause (iii)⁵ of such definition in section 7651o of this title shall not apply for purposes of this paragraph if, as of November 15, 1990,

(i) an applicable power sales agreement has been executed;

(ii) the facility is the subject of a State regulatory authority order requiring an electric utility to enter into a power sales agreement with, purchase capacity from, or (for purposes of establishing terms and conditions of the electric utility’s purchase of power) enter into arbitration concerning, the facility;

(iii) an electric utility has issued a letter of intent or similar instrument committing to purchase power from the facility at a previously offered or lower price and a power sales agreement is executed within a reasonable period of time; or

(iv) the facility has been selected as a winning bidder in a utility competitive bid solicitation.

(h) Oil and gas-fired units less than 10 percent oil consumed

(1) After January 1, 2000, it shall be unlawful for any oil- and gas-fired utility unit whose average annual fuel consumption during the period 1980 through 1989 on a Btu basis exceeded 90 percent in the form of natural gas to exceed an annual sulfur dioxide tonnage limitation equal to the product of the unit’s baseline multiplied by the unit’s actual 1985 emissions rate divided by 2,000 unless the owner or operator of such unit holds allowances to emit not less than the unit’s total annual emissions.

(2) In addition to allowances allocated pursuant to paragraph (1) and section 7651b(a)(1) of this title as basic Phase II allowance allocations, beginning January 1, 2000, and for each calendar year thereafter until and including 2009, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (1) allowances from the reserve created pursuant to subsection (a)(2) of this section in an amount equal to the unit’s baseline multiplied by 0.050 lbs/mmBtu, divided by 2,000.

(3) In addition to allowances allocated pursuant to paragraph (1) and section 7651b(a)(1) of this title, beginning January 1, 2010, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (1) allowances in an amount equal to the unit’s baseline multiplied by 0.050 lbs/mmBtu, divided by 2,000.

(i) Units in high growth States

(1) In addition to allowances allocated pursuant to this section and section 7651b(a)(1) of this title as basic Phase II allowance allocations, beginning January 1, 2000, the Administrator shall allocate annually allowances for each unit, subject to an emissions limitation requirement under this section, and located in a State that—

(A) has experienced a growth in population in excess of 25 percent between 1980 and 1988

according to State Population and Household Estimates, With Age, Sex, and Components of Change: 1981–1988 allocated by the United States Department of Commerce, and

(B) had an installed electrical generating capacity of more than 30,000,000 kw in 1988,

in an amount equal to the difference between (A) the number of allowances that would be allocated for the unit pursuant to the emissions limitation requirements of this section applicable to the unit adjusted to reflect the unit’s annual average fuel consumption on a Btu basis of any three consecutive calendar years between 1980 and 1989 (inclusive) as elected by the owner or operator and (B) the number of allowances allocated for the unit pursuant to the emissions limitation requirements of this section: *Provided*, That the number of allowances allocated pursuant to this subsection shall not exceed an annual total of 40,000. If necessary to meeting the 40,000 allowance restriction imposed under this subsection the Administrator shall reduce, pro rata, the additional annual allowances allocated to each unit under this subsection.

(2) Beginning January 1, 2000, in addition to allowances allocated pursuant to this section and section 7651b(a)(1) of this title as basic Phase II allowance allocations, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of subsection (b)(1) of this section, (A) the lesser of whose actual or allowable 1980 emissions rate has declined by 50 percent or more as of November 15, 1990, (B) whose actual emissions rate is less than 1.2 lbs/mmBtu as of January 1, 2000, (C) which commenced operation after January 1, 1970, (D) which is owned by a utility company whose combined commercial and industrial kilowatt-hour sales have increased by more than 20 percent between calendar year 1980 and November 15, 1990, and (E) whose company-wide fossil-fuel sulfur dioxide emissions rate has declined 40 percent or more from 1980 to 1988, allowances in an amount equal to the difference between (i) the number of allowances that would be allocated for the unit pursuant to the emissions limitation requirements of subsection (b)(1) of this section adjusted to reflect the unit’s annual average fuel consumption on a Btu basis for any three consecutive years between 1980 and 1989 (inclusive) as elected by the owner or operator and (ii) the number of allowances allocated for the unit pursuant to the emissions limitation requirements of subsection (b)(1) of this section: *Provided*, That the number of allowances allocated pursuant to this paragraph shall not exceed an annual total of 5,000. If necessary to meeting the 5,000-allowance restriction imposed in the last clause of the preceding sentence the Administrator shall reduce, pro rata, the additional allowances allocated to each unit pursuant to this paragraph.

(j) Certain municipally owned power plants

Beginning January 1, 2000, in addition to allowances allocated pursuant to this section and section 7651b(a)(1) of this title as basic Phase II allowance allocations, the Administrator shall allocate annually for each existing municipally owned oil and gas-fired utility unit with nameplate capacity equal to, or less than, 40 MWe,

⁵ So in original. Probably means clause “(C)”.

the lesser of whose actual or allowable 1985 sulfur dioxide emission rate is less than 1.20 lbs/mmBtu, allowances in an amount equal to the product of the unit's annual fuel consumption on a Btu basis at a 60 percent capacity factor multiplied by the lesser of its allowable 1985 emission rate or its actual 1985 emission rate, divided by 2,000.

(July 14, 1955, ch. 360, title IV, §405, as added Pub. L. 101-549, title IV, §401, Nov. 15, 1990, 104 Stat. 2605.)

REFERENCES IN TEXT

Section 301(b) of the Powerplant and Industrial Fuel Use Act of 1978, referred to in subsec. (g)(5), is section 301(b) of Pub. L. 95-620, which is classified to section 8341(b) of this title. A prior section 301(b) of Pub. L. 95-620, title III, Nov. 9, 1978, 92 Stat. 3305, which was formerly classified to section 8341(b) of this title, was repealed by Pub. L. 97-35, title X, §1021(a), Aug. 13, 1981, 95 Stat. 614.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7651a, 7651b, 7651c, 7651e, 7651f, 7651g, 7651h, 7651i, 7651j of this title.

§ 7651e. Allowances for States with emissions rates at or below 0.80 lbs/mmBtu

(a) Election of Governor

In addition to basic Phase II allowance allocations, upon the election of the Governor of any State, with a 1985 state-wide annual sulfur dioxide emissions rate equal to or less than, 0.80 lbs/mmBtu, averaged over all fossil fuel-fired utility steam generating units, beginning January 1, 2000, and for each calendar year thereafter until and including 2009, the Administrator shall allocate, in lieu of other Phase II bonus allowance allocations, allowances from the reserve created pursuant to section 7651d(a)(2) of this title to all such units in the State in an amount equal to 125,000 multiplied by the unit's pro rata share of electricity generated in calendar year 1985 at fossil fuel-fired utility steam units in all States eligible for the election.

(b) Notification of Administrator

Pursuant to section 7651b(a)(1) of this title, each Governor of a State eligible to make an election under paragraph¹ (a) shall notify the Administrator of such election. In the event that the Governor of any such State fails to notify the Administrator of the Governor's elections, the Administrator shall allocate allowances pursuant to section 7651d of this title.

(c) Allowances after January 1, 2010

After January 1, 2010, the Administrator shall allocate allowances to units subject to the provisions of this section pursuant to section 7651d of this title.

(July 14, 1955, ch. 360, title IV, §406, as added Pub. L. 101-549, title IV, §401, Nov. 15, 1990, 104 Stat. 2613.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7651a, 7651b, 7651d, 7651j of this title.

¹ So in original. Probably should be "subsection".

§ 7651f. Nitrogen oxides emission reduction program

(a) Applicability

On the date that a coal-fired utility unit becomes an affected unit pursuant to sections 7651c, 7651d,¹ 7651h of this title, or on the date a unit subject to the provisions of section 7651c(d) or 7651h(b) of this title, must meet the SO₂ reduction requirements, each such unit shall become an affected unit for purposes of this section and shall be subject to the emission limitations for nitrogen oxides set forth herein.

(b) Emission limitations

(1) Not later than eighteen months after November 15, 1990, the Administrator shall by regulation establish annual allowable emission limitations for nitrogen oxides for the types of utility boilers listed below, which limitations shall not exceed the rates listed below: *Provided*, That the Administrator may set a rate higher than that listed for any type of utility boiler if the Administrator finds that the maximum listed rate for that boiler type cannot be achieved using low NO_x burner technology. The maximum allowable emission rates are as follows:

- (A) for tangentially fired boilers, 0.45 lb/mmBtu;
- (B) for dry bottom wall-fired boilers (other than units applying cell burner technology), 0.50 lb/mmBtu.

After January 1, 1995, it shall be unlawful for any unit that is an affected unit on that date and is of the type listed in this paragraph to emit nitrogen oxides in excess of the emission rates set by the Administrator pursuant to this paragraph.

(2) Not later than January 1, 1997, the Administrator shall, by regulation, establish allowable emission limitations on a lb/mmBtu, annual average basis, for nitrogen oxides for the following types of utility boilers:

- (A) wet bottom wall-fired boilers;
- (B) cyclones;
- (C) units applying cell burner technology;
- (D) all other types of utility boilers.

The Administrator shall base such rates on the degree of reduction achievable through the retrofit application of the best system of continuous emission reduction, taking into account available technology, costs and energy and environmental impacts; and which is comparable to the costs of nitrogen oxides controls set pursuant to subsection (b)(1) of this section. Not later than January 1, 1997, the Administrator may revise the applicable emission limitations for tangentially fired and dry bottom, wall-fired boilers (other than cell burners) to be more stringent if the Administrator determines that more effective low NO_x burner technology is available: *Provided*, That, no unit that is an affected unit pursuant to section 7651c of this title and that is subject to the requirements of subsection (b)(1) of this section, shall be subject to the revised emission limitations, if any.

(c) Revised performance standards

(1) Not later than January 1, 1993, the Administrator shall propose revised standards of per-

¹ So in original. Probably should be followed by "or".

formance to section 7411 of this title for nitrogen oxides emissions from fossil-fuel fired steam generating units, including both electric utility and nonutility units. Not later than January 1, 1994, the Administrator shall promulgate such revised standards of performance. Such revised standards of performance shall reflect improvements in methods for the reduction of emissions of oxides of nitrogen.

(d) Alternative emission limitations

The permitting authority shall, upon request of an owner or operator of a unit subject to this section, authorize an emission limitation less stringent than the applicable limitation established under subsection (b)(1) or (b)(2) of this section upon a determination that—

(1) a unit subject to subsection (b)(1) of this section cannot meet the applicable limitation using low NO_x burner technology; or

(2) a unit subject to subsection (b)(2) of this section cannot meet the applicable rate using the technology on which the Administrator based the applicable emission limitation.

The permitting authority shall base such determination upon a showing satisfactory to the permitting authority, in accordance with regulations established by the Administrator not later than eighteen months after November 15, 1990, that the owner or operator—

(1) has properly installed appropriate control equipment designed to meet the applicable emission rate;

(2) has properly operated such equipment for a period of fifteen months (or such other period of time as the Administrator determines through the regulations), and provides operating and monitoring data for such period demonstrating that the unit cannot meet the applicable emission rate; and

(3) has specified an emission rate that such unit can meet on an annual average basis.

The permitting authority shall issue an operating permit for the unit in question, in accordance with section 7651g of this title and part B² of title III—

(i) that permits the unit during the demonstration period referred to in subparagraph (2) above, to emit at a rate in excess of the applicable emission rate;

(ii) at the conclusion of the demonstration period to revise the operating permit to reflect the alternative emission rate demonstrated in paragraphs (2) and (3) above.

Units subject to subsection (b)(1) of this section for which an alternative emission limitation is established shall not be required to install any additional control technology beyond low NO_x burners. Nothing in this section shall preclude an owner or operator from installing and operating an alternative NO_x control technology capable of achieving the applicable emission limitation. If the owner or operator of a unit subject to the emissions limitation requirements of subsection (b)(1) of this section demonstrates to the satisfaction of the Administrator that the technology necessary to meet such requirements is not in adequate supply to enable its installation

and operation at the unit, consistent with system reliability, by January 1, 1995, then the Administrator shall extend the deadline for compliance for the unit by a period of 15 months. Any owner or operator may petition the Administrator to make a determination under the previous sentence. The Administrator shall grant or deny such petition within 3 months of submittal.

(e) Emissions averaging

In lieu of complying with the applicable emission limitations under subsection (b)(1), (2), or (d) of this section, the owner or operator of two or more units subject to one or more of the applicable emission limitations set pursuant to these sections, may petition the permitting authority for alternative contemporaneous annual emission limitations for such units that ensure that (1) the actual annual emission rate in pounds of nitrogen oxides per million Btu averaged over the units in question is a rate that is less than or equal to (2) the Btu-weighted average annual emission rate for the same units if they had been operated, during the same period of time, in compliance with limitations set in accordance with the applicable emission rates set pursuant to subsections (b)(1) and (2) of this section.

If the permitting authority determines, in accordance with regulations issued by the Administrator not later than eighteen months after November 15, 1990;³ that the conditions in the paragraph above can be met, the permitting authority shall issue operating permits for such units, in accordance with section 7651g of this title and part B² of title III, that allow alternative contemporaneous annual emission limitations. Such emission limitations shall only remain in effect while both units continue operation under the conditions specified in their respective operating permits.

(July 14, 1955, ch. 360, title IV, §407, as added Pub. L. 101-549, title IV, §401, Nov. 15, 1990, 104 Stat. 2613.)

REFERENCES IN TEXT

Part B of title III, referred to in subsecs. (d) and (e), means title III of the Clean Air Act, act July 14, 1955, ch. 360, as added, which is classified to subchapter III of this chapter, but title III does not contain parts. For provisions of the Clean Air Act relating to permits, see subchapter V (§7661 et seq.) of this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7651g, 7651j of this title.

§ 7651g. Permits and compliance plans

(a) Permit program

The provisions of this subchapter shall be implemented, subject to section 7651b of this title, by permits issued to units subject to this subchapter (and enforced) in accordance with the provisions of subchapter V of this chapter, as modified by this subchapter. Any such permit issued by the Administrator, or by a State with an approved permit program, shall prohibit—

(1) annual emissions of sulfur dioxide in excess of the number of allowances to emit sul-

² See References in Text note below.

³ So in original. The semicolon probably should be a comma.

fur dioxide the owner or operator, or the designated representative of the owners or operators, of the unit hold for the unit,

(2) exceedances of applicable emissions rates,

(3) the use of any allowance prior to the year for which it was allocated, and

(4) contravention of any other provision of the permit.

Permits issued to implement this subchapter shall be issued for a period of 5 years, notwithstanding subchapter V of this chapter. No permit shall be issued that is inconsistent with the requirements of this subchapter, and subchapter V of this chapter as applicable.

(b) Compliance plan

Each initial permit application shall be accompanied by a compliance plan for the source to comply with its requirements under this subchapter. Where an affected source consists of more than one affected unit, such plan shall cover all such units, and for purposes of section 7661a(c) of this title, such source shall be considered a "facility". Nothing in this section regarding compliance plans or in subchapter V of this chapter shall be construed as affecting allowances. Except as provided under subsection (c)(1)(B) of this section, submission of a statement by the owner or operator, or the designated representative of the owners and operators, of a unit subject to the emissions limitation requirements of sections 7651c, 7651d, and 7651f of this title, that the unit will meet the applicable emissions limitation requirements of such sections in a timely manner or that, in the case of the emissions limitation requirements of sections 7651c and 7651d of this title, the owners and operators will hold allowances to emit not less than the total annual emissions of the unit, shall be deemed to meet the proposed and approved compliance planning requirements of this section and subchapter V of this chapter, except that, for any unit that will meet the requirements of this subchapter by means of an alternative method of compliance authorized under section 7651c(b), (c), (d), or (f) of this title¹ section 7651f(d) or (e) of this title, section 7651h of this title and section 7651i of this title, the proposed and approved compliance plan, permit application and permit shall include, pursuant to regulations promulgated by the Administrator, for each alternative method of compliance a comprehensive description of the schedule and means by which the unit will rely on one or more alternative methods of compliance in the manner and time authorized under this subchapter. Recordation by the Administrator of transfers of allowances shall amend automatically all applicable proposed or approved permit applications, compliance plans and permits. The Administrator may also require—

(1) for a source, a demonstration of attainment of national ambient air quality standards, and

(2) from the owner or operator of two or more affected sources, an integrated compliance plan providing an overall plan for achieving compliance at the affected sources.

(c) First phase permits

The Administrator shall issue permits to affected sources under sections 7651c and 7651f of this title.

(1) Permit application and compliance plan

(A) Not later than 27 months after November 15, 1990, the designated representative of the owners or operators, or the owner and operator, of each affected source under sections 7651c and 7651f of this title shall submit a permit application and compliance plan for that source in accordance with regulations issued by the Administrator under paragraph (3). The permit application and the compliance plan shall be binding on the owner or operator or the designated representative of owners and operators for purposes of this subchapter and section 7651a(a)² of this title, and shall be enforceable in lieu of a permit until a permit is issued by the Administrator for the source.

(B) In the case of a compliance plan for an affected source under sections 7651c and 7651f of this title for which the owner or operator proposes to meet the requirements of that section by reducing utilization of the unit as compared with its baseline or by shutting down the unit, the owner or operator shall include in the proposed compliance plan a specification of the unit or units that will provide electrical generation to compensate for the reduced output at the affected source, or a demonstration that such reduced utilization will be accomplished through energy conservation or improved unit efficiency. The unit to be used for such compensating generation, which is not otherwise an affected unit under sections 7651c and 7651f of this title, shall be deemed an affected unit under section 7651c of this title, subject to all of the requirements for such units under this subchapter, except that allowances shall be allocated to such compensating unit in the amount of an annual limitation equal to the product of the unit's baseline multiplied by the lesser of the unit's actual 1985 emissions rate or its allowable 1985 emissions rate, divided by 2,000.

(2) EPA action on compliance plans

The Administrator shall review each proposed compliance plan to determine whether it satisfies the requirements of this subchapter, and shall approve or disapprove such plan within 6 months after receipt of a complete submission. If a plan is disapproved, it may be resubmitted for approval with such changes as the Administrator shall require consistent with the requirements of this subchapter and within such period as the Administrator prescribes as part of such disapproval.

(3) Regulations; issuance of permits

Not later than 18 months after November 15, 1990, the Administrator shall promulgate regulations, in accordance with subchapter V of this chapter, to implement a Federal permit program to issue permits for affected sources under this subchapter. Following promulgation, the Administrator shall issue a permit to

¹ So in original. Probably should be followed by a comma.

² So in original. Section 7651a of this title does not contain subsections.

implement the requirements of section 7651c of this title and the allowances provided under section 7651b of this title to the owner or operator of each affected source under section 7651c of this title. Such a permit shall supersede any permit application and compliance plan submitted under paragraph (1).

(4) Fees

During the years 1995 through 1999 inclusive, no fee shall be required to be paid under section 7661a(b)(3) of this title or under section 7410(a)(2)(L) of this title with respect to emissions from any unit which is an affected unit under section 7651c of this title.

(d) Second phase permits

(1) To provide for permits for (A) new electric utility steam generating units required under section 7651b(e) of this title to have allowances, (B) affected units or sources under section 7651d of this title, and (C) existing units subject to nitrogen oxide emission reductions under section 7651f of this title, each State in which one or more such units or sources are located shall submit in accordance with subchapter V of this chapter, a permit program for approval as provided by that subchapter. Upon approval of such program, for the units or sources subject to such approved program the Administrator shall suspend the issuance of permits as provided in subchapter V of this chapter.

(2) The owner or operator or the designated representative of each affected source under section 7651d of this title shall submit a permit application and compliance plan for that source to the permitting authority, not later than January 1, 1996.

(3) Not later than December 31, 1997, each State with an approved permit program shall issue permits to the owner or operator, or the designated representative of the owners and operators, of affected sources under section 7651d of this title that satisfy the requirements of subchapter V of this chapter and this subchapter and that submitted to such State a permit application and compliance plan pursuant to paragraph (2). In the case of a State without an approved permit program by July 1, 1996, the Administrator shall, not later than January 1, 1998, issue a permit to the owner or operator or the designated representative of each such affected source. In the case of affected sources for which applications and plans are timely received under paragraph (2), the permit application and the compliance plan, including amendments thereto, shall be binding on the owner or operator or the designated representative of the owners or operators and shall be enforceable as a permit for purposes of this subchapter and subchapter V of this chapter until a permit is issued by the permitting authority for the affected source. The provisions of section 558(c) of title 5 (relating to renewals) shall apply to permits issued by a permitting authority under this subchapter and subchapter V of this chapter.

(4) The permit issued in accordance with this subsection for an affected source shall provide that the affected units at the affected source may not emit an annual tonnage of sulfur dioxide in excess of the number of allowances to emit sulfur dioxide the owner or operator or designated representative hold for the unit.

(e) New units

The owner or operator of each source that includes a new electric utility steam generating unit shall submit a permit application and compliance plan to the permitting authority not later than 24 months before the later of (1) January 1, 2000, or (2) the date on which the unit commences operation. The permitting authority shall issue a permit to the owner or operator, or the designated representative thereof, of the unit that satisfies the requirements of subchapter V of this chapter and this subchapter.

(f) Units subject to certain other limits

The owner or operator, or designated representative thereof, of any unit subject to an emission rate requirement under section 7651f of this title shall submit a permit application and compliance plan for such unit to the permitting authority, not later than January 1, 1998. The permitting authority shall issue a permit to the owner or operator that satisfies the requirements of subchapter V of this chapter and this subchapter, including any appropriate monitoring and reporting requirements.

(g) Amendment of application and compliance plan

At any time after the submission of an application and compliance plan under this section, the applicant may submit a revised application and compliance plan, in accordance with the requirements of this section. In considering any permit application and compliance plan under this subchapter, the permitting authority shall ensure coordination with the applicable electric ratemaking authority, in the case of regulated utilities, and with unregulated public utilities.

(h) Prohibition

(1) It shall be unlawful for an owner or operator, or designated representative, required to submit a permit application or compliance plan under this subchapter to fail to submit such application or plan in accordance with the deadlines specified in this section or to otherwise fail to comply with regulations implementing this section.

(2) It shall be unlawful for any person to operate any source subject to this subchapter except in compliance with the terms and requirements of a permit application and compliance plan (including amendments thereto) or permit issued by the Administrator or a State with an approved permit program. For purposes of this subsection, compliance, as provided in section 7661c(f) of this title, with a permit issued under subchapter V of this chapter which complies with this subchapter for sources subject to this subchapter shall be deemed compliance with this subsection as well as section 7661a(a) of this title.

(3) In order to ensure reliability of electric power, nothing in this subchapter or subchapter V of this chapter shall be construed as requiring termination of operations of an electric utility steam generating unit for failure to have an approved permit or compliance plan, except that any such unit may be subject to the applicable enforcement provisions of section 7413 of this title.

(i) Multiple owners

No permit shall be issued under this section to an affected unit until the designated representative of the owners or operators has filed a certificate of representation with regard to matters under this subchapter, including the holding and distribution of allowances and the proceeds of transactions involving allowances. Where there are multiple holders of a legal or equitable title to, or a leasehold interest in, such a unit, or where a utility or industrial customer purchases power from an affected unit (or units) under life-of-the-unit, firm power contractual arrangements, the certificate shall state (1) that allowances and the proceeds of transactions involving allowances will be deemed to be held or distributed in proportion to each holder's legal, equitable, leasehold, or contractual reservation or entitlement, or (2) if such multiple holders have expressly provided for a different distribution of allowances by contract, that allowances and the proceeds of transactions involving allowances will be deemed to be held or distributed in accordance with the contract. A passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the affected unit shall not be deemed to be a holder of a legal, equitable, leasehold, or contractual interest for the purpose of holding or distributing allowances as provided in this subsection, during either the term of such leasehold or thereafter, unless expressly provided for in the leasehold agreement. Except as otherwise provided in this subsection, where all legal or equitable title to or interest in an affected unit is held by a single person, the certification shall state that all allowances received by the unit are deemed to be held for that person.

(July 14, 1955, ch. 360, title IV, § 408, as added Pub. L. 101-549, title IV, § 401, Nov. 15, 1990, 104 Stat. 2616.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7651b, 7651c, 7651f, 7651h, 7651i of this title.

§ 7651h. Repowered sources**(a) Availability**

Not later than December 31, 1997, the owner or operator of an existing unit subject to the emissions limitation requirements of section 7651d(b) and (c) of this title may demonstrate to the permitting authority that one or more units will be repowered with a qualifying clean coal technology to comply with the requirements under section 7651d of this title. The owner or operator shall, as part of any such demonstration, provide, not later than January 1, 2000, satisfactory documentation of a preliminary design and engineering effort for such repowering and an executed and binding contract for the majority of the equipment to repower such unit and such other information as the Administrator may require by regulation. The replacement of an existing utility unit with a new utility unit using a repowering technology referred to in section 7651a(2)¹ of this title which is located at a dif-

ferent site, shall be treated as repowering of the existing unit for purposes of this subchapter, if—

(1) the replacement unit is designated by the owner or operator to replace such existing unit, and

(2) the existing unit is retired from service on or before the date on which the designated replacement unit enters commercial operation.

(b) Extension

(1) An owner or operator satisfying the requirements of subsection (a) of this section shall be granted an extension of the emission limitation requirement compliance date for that unit from January 1, 2000, to December 31, 2003. The extension shall be specified in the permit issued to the source under section 7651g of this title, together with any compliance schedule and other requirements necessary to meet second phase requirements by the extended date. Any unit that is granted an extension under this section shall not be eligible for a waiver under section 7411(j) of this title, and shall continue to be subject to requirements under this subchapter as if it were a unit subject to section 7651d of this title.

(2) If (A) the owner or operator of an existing unit has been granted an extension under paragraph (1) in order to repower such unit with a clean coal unit, and (B) such owner or operator demonstrates to the satisfaction of the Administrator that the repowering technology to be utilized by such unit has been properly constructed and tested on such unit, but nevertheless has been unable to achieve the emission reduction limitations and is economically or technologically infeasible, such existing unit may be retrofitted or repowered with equipment or facilities utilizing another clean coal technology or other available control technology.

(c) Allowances

(1) For the period of the extension under this section, the Administrator shall allocate to the owner or operator of the affected unit, annual allowances for sulfur dioxide equal to the affected unit's baseline multiplied by the lesser of the unit's federally approved State Implementation Plan emissions limitation or its actual emission rate for 1995 in lieu of any other allocation. Such allowances may not be transferred or used by any other source to meet emission requirements under this subchapter. The source owner or operator shall notify the Administrator sixty days in advance of the date on which the affected unit for which the extension has been granted is to be removed from operation to install the repowering technology.

(2) Effective on that date, the unit shall be subject to the requirements of section 7651d of this title. Allowances for the year in which the unit is removed from operation to install the repowering technology shall be calculated as the product of the unit's baseline multiplied by 1.20 lbs/mmBtu, divided by 2,000, and prorated accordingly, and are transferable.

(3) Allowances for such existing utility units for calendar years after the year the repowering is complete shall be calculated as the product of the existing unit's baseline multiplied by 1.20 lbs/mmBtu, divided by 2,000.

¹ So in original. Probably should be section "7651a(12)".

(4) Notwithstanding the provisions of section 7651b(a) and (e) of this title, allowances shall be allocated under this section for a designated replacement unit which replaces an existing unit (as provided in the last sentence of subsection (a) of this section) in lieu of any further allocations of allowances for the existing unit.

(5) For the purpose of meeting the aggregate emissions limitation requirement set forth in section 7651b(a)(1) of this title, the units with an extension under this subsection shall be treated in each calendar year during the extension period as holding allowances allocated under paragraph (3).

(d) Control requirements

Any unit qualifying for an extension under this section that does not increase actual hourly emissions for any pollutant regulated under the² chapter shall not be subject to any standard of performance under section 7411 of this title. Notwithstanding the provisions of this subsection, no new unit (1) designated as a replacement for an existing unit, (2) qualifying for the extension under subsection (b) of this section, and (3) located at a different site than the existing unit shall receive an exemption from the requirements imposed under section 7411 of this title.

(e) Expedited permitting

State permitting authorities and, where applicable, the Administrator, are encouraged to give expedited consideration to permit applications under parts C and D of subchapter I of this chapter for any source qualifying for an extension under this section.

(f) Prohibition

It shall be unlawful for the owner or operator of a repowered source to fail to comply with the requirement of this section, or any regulations of permit requirements to implement this section, including the prohibition against emitting sulfur dioxide in excess of allowances held.

(July 14, 1955, ch. 360, title IV, §409, as added Pub. L. 101-549, title IV, §401, Nov. 15, 1990, 104 Stat. 2619.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7651a, 7651b, 7651d, 7651f, 7651g, 7651j of this title.

§ 7651i. Election for additional sources

(a) Applicability

The owner or operator of any unit that is not, nor will become, an affected unit under section 7651b(e), 7651c, or 7651d of this title, or that is a process source under subsection (d) of this section, that emits sulfur dioxide, may elect to designate that unit or source to become an affected unit and to receive allowances under this subchapter. An election shall be submitted to the Administrator for approval, along with a permit application and proposed compliance plan in accordance with section 7651g of this title. The Administrator shall approve a designation that meets the requirements of this section, and such designated unit, or source, shall be allocated al-

lowances, and be an affected unit for purposes of this subchapter.

(b) Establishment of baseline

The baseline for a unit designated under this section shall be established by the Administrator by regulation, based on fuel consumption and operating data for the unit for calendar years 1985, 1986, and 1987, or if such data is not available, the Administrator may prescribe a baseline based on alternative representative data.

(c) Emission limitations

Annual emissions limitations for sulfur dioxide shall be equal to the product of the baseline multiplied by the lesser of the unit's 1985 actual or allowable emission rate in lbs/mmBtu, or, if the unit did not operate in 1985, by the lesser of the unit's actual or allowable emission rate for a calendar year after 1985 (as determined by the Administrator), divided by 2,000.

(d) Process sources

Not later than 18 months after November 15, 1990, the Administrator shall establish a program under which the owner or operator of a process source that emits sulfur dioxide may elect to designate that source as an affected unit for the purpose of receiving allowances under this subchapter. The Administrator shall, by regulation, define the sources that may be designated; specify the emissions limitation; specify the operating, emission baseline, and other data requirements; prescribe CEMS or other monitoring requirements; and promulgate permit, reporting, and any other requirements necessary to implement such a program.

(e) Allowances and permits

The Administrator shall issue allowances to an affected unit under this section in an amount equal to the emissions limitation calculated under subsection (c) or (d) of this section, in accordance with section 7651b of this title. Such allowance may be used in accordance with, and shall be subject to, the provisions of section 7651b of this title. Affected sources under this section shall be subject to the requirements of sections 7651b, 7651g, 7651j, 7651k, 7651l, and 7651m of this title.

(f) Limitation

Any unit designated under this section shall not transfer or bank allowances produced as a result of reduced utilization or shutdown, except that, such allowances may be transferred or carried forward for use in subsequent years to the extent that the reduced utilization or shutdown results from the replacement of thermal energy from the unit designated under this section, with thermal energy generated by any other unit or units subject to the requirements of this subchapter, and the designated unit's allowances are transferred or carried forward for use at such other replacement unit or units. In no case may the Administrator allocate to a source designated under this section allowances in an amount greater than the emissions resulting from operation of the source in full compliance with the requirements of this chapter. No such allowances shall authorize operation of a unit in violation of any other requirements of this chapter.

²So in original. Probably should be "this".

(g) Implementation

The Administrator shall issue regulations to implement this section not later than eighteen months after November 15, 1990.

(h) Small diesel refineries

The Administrator shall issue allowances to owners or operators of small diesel refineries who produce diesel fuel after October 1, 1993, meeting the requirements of subsection¹ 7545(i) of this title.

(1) Allowance period

Allowances may be allocated under this subsection only for the period from October 1, 1993, through December 31, 1999.

(2) Allowance determination

The number of allowances allocated pursuant to this paragraph shall equal the annual number of pounds of sulfur dioxide reduction attributable to desulfurization by a small refinery divided by 2,000. For the purposes of this calculation, the concentration of sulfur removed from diesel fuel shall be the difference between 0.274 percent (by weight) and 0.050 percent (by weight).

(3) Refinery eligibility

As used in this subsection, the term "small refinery" shall mean a refinery or portion of a refinery—

(A) which, as of November 15, 1990, has bona fide crude oil throughput of less than 18,250,000 barrels per year, as reported to the Department of Energy, and

(B) which, as of November 15, 1990, is owned or controlled by a refiner with a total combined bona fide crude oil throughput of less than 50,187,500 barrels per year, as reported to the Department of Energy.

(4) Limitation per refinery

The maximum number of allowances that can be annually allocated to a small refinery pursuant to this subsection is one thousand and five hundred.

(5) Limitation on total

In any given year, the total number of allowances allocated pursuant to this subsection shall not exceed thirty-five thousand.

(6) Required certification

The Administrator shall not allocate any allowances pursuant to this subsection unless the owner or operator of a small diesel refinery shall have certified, at a time and in a manner prescribed by the Administrator, that all motor diesel fuel produced by the refinery for which allowances are claimed, including motor diesel fuel for off-highway use, shall have met the requirements of subsection¹ 1545(i) of this title.

(July 14, 1955, ch. 360, title IV, § 410, as added Pub. L. 101-549, title IV, § 401, Nov. 15, 1990, 104 Stat. 2621.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7651a, 7651b, 7651c, 7651d, 7651g, 7651j, 7651o of this title.

¹ So in original. Probably should be "section".

§ 7651j. Excess emissions penalty**(a) Excess emissions penalty**

The owner or operator of any unit or process source subject to the requirements of sections¹ 7651b, 7651c, 7651d, 7651e, 7651f or 7651h of this title, or designated under section 7651i of this title, that emits sulfur dioxide or nitrogen oxides for any calendar year in excess of the unit's emissions limitation requirement or, in the case of sulfur dioxide, of the allowances the owner or operator holds for use for that calendar year shall be liable for the payment of an excess emissions penalty, except where such emissions were authorized pursuant to section 7410(f) of this title. That penalty shall be calculated on the basis of the number of tons emitted in excess of the unit's emissions limitation requirement or, in the case of sulfur dioxide, of the allowances the operator holds for use for the unit for that year, multiplied by \$2,000. Any such penalty shall be due and payable without demand to the Administrator as provided in regulations to be issued by the Administrator by no later than eighteen months after November 15, 1990. Any such payment shall be deposited in the United States Treasury pursuant to the Miscellaneous Receipts Act.² Any penalty due and payable under this section shall not diminish the liability of the unit's owner or operator for any fine, penalty or assessment against the unit for the same violation under any other section of this chapter.

(b) Excess emissions offset

The owner or operator of any affected source that emits sulfur dioxide during any calendar year in excess of the unit's emissions limitation requirement or of the allowances held for the unit for the calendar year, shall be liable to offset the excess emissions by an equal tonnage amount in the following calendar year, or such longer period as the Administrator may prescribe. The owner or operator of the source shall, within sixty days after the end of the year in which the excess emissions occurred,³ submit to the Administrator, and to the State in which the source is located, a proposed plan to achieve the required offsets. Upon approval of the proposed plan by the Administrator, as submitted, modified or conditioned, the plan shall be deemed a condition of the operating permit for the unit without further review or revision of the permit. The Administrator shall also deduct allowances equal to the excess tonnage from those allocated for the source for the calendar year, or succeeding years during which offsets are required, following the year in which the excess emissions occurred.

(c) Penalty adjustment

The Administrator shall, by regulation, adjust the penalty specified in subsection (a) of this section for inflation, based on the Consumer Price Index, on November 15, 1990, and annually thereafter.

(d) Prohibition

It shall be unlawful for the owner or operator of any source liable for a penalty and offset

¹ So in original. Probably should be "section".

² See References in Text note below.

³ So in original. Probably should be "occurred".

under this section to fail (1) to pay the penalty under subsection (a) of this section, (2) to provide, and thereafter comply with, a compliance plan as required by subsection (b) of this section, or (3) to offset excess emissions as required by subsection (b) of this section.

(e) Savings provision

Nothing in this subchapter shall limit or otherwise affect the application of section 7413, 7414, 7420, or 7604 of this title except as otherwise explicitly provided in this subchapter.

(July 14, 1955, ch. 360, title IV, § 411, as added Pub. L. 101-549, title IV, § 401, Nov. 15, 1990, 104 Stat. 2623.)

REFERENCES IN TEXT

The Miscellaneous Receipts Act, referred to in subsec. (a), is not a recognized popular name for an act. For provisions relating to deposit of monies, see section 3302 of Title 31, Money and Finance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7410, 7651b, 7651c, 7651d, 7651i, 7651k of this title.

§ 7651k. Monitoring, reporting, and record-keeping requirements

(a) Applicability

The owner and operator of any source subject to this subchapter shall be required to install and operate CEMS on each affected unit at the source, and to quality assure the data for sulfur dioxide, nitrogen oxides, opacity and volumetric flow at each such unit. The Administrator shall, by regulations issued not later than eighteen months after November 15, 1990, specify the requirements for CEMS, for any alternative monitoring system that is demonstrated as providing information with the same precision, reliability, accessibility, and timeliness as that provided by CEMS, and for recordkeeping and reporting of information from such systems. Such regulations may include limitations or the use of alternative compliance methods by units equipped with an alternative monitoring system as may be necessary to preserve the orderly functioning of the allowance system, and which will ensure the emissions reductions contemplated by this subchapter. Where 2 or more units utilize a single stack, a separate CEMS shall not be required for each unit, and for such units the regulations shall require that the owner or operator collect sufficient information to permit reliable compliance determinations for each such unit.

(b) First phase requirements

Not later than thirty-six months after November 15, 1990, the owner or operator of each affected unit under section 7651c of this title, including, but not limited to, units that become affected units pursuant to subsections (b) and (c) of this section and eligible units under subsection (d) of this section, shall install and operate CEMS, quality assure the data, and keep records and reports in accordance with the regulations issued under subsection (a) of this section.

(c) Second phase requirements

Not later than January 1, 1995, the owner or operator of each affected unit that has not pre-

viously met the requirements of subsections (a) and (b) of this section shall install and operate CEMS, quality assure the data, and keep records and reports in accordance with the regulations issued under subsection (a) of this section. Upon commencement of commercial operation of each new utility unit, the unit shall comply with the requirements of subsection (a) of this section.

(d) Unavailability of emissions data

If CEMS data or data from an alternative monitoring system approved by the Administrator under subsection (a) of this section is not available for any affected unit during any period of a calendar year in which such data is required under this subchapter, and the owner or operator cannot provide information, satisfactory to the Administrator, on emissions during that period, the Administrator shall deem the unit to be operating in an uncontrolled manner during the entire period for which the data was not available and shall, by regulation which shall be issued not later than eighteen months after November 15, 1990, prescribe means to calculate emissions for that period. The owner or operator shall be liable for excess emissions fees and offsets under section 7651j of this title in accordance with such regulations. Any fee due and payable under this subsection shall not diminish the liability of the unit's owner or operator for any fine, penalty, fee or assessment against the unit for the same violation under any other section of this chapter.

(e) Prohibition

It shall be unlawful for the owner or operator of any source subject to this subchapter to operate a source without complying with the requirements of this section, and any regulations implementing this section.

(July 14, 1955, ch. 360, title IV, § 412, as added Pub. L. 101-549, title IV, § 401, Nov. 15, 1990, 104 Stat. 2624.)

INFORMATION GATHERING ON GREENHOUSE GASES
CONTRIBUTING TO GLOBAL CLIMATE CHANGE

Section 821 of Pub. L. 101-549 provided that:

“(a) MONITORING.—The Administrator of the Environmental Protection Agency shall promulgate regulations within 18 months after the enactment of the Clean Air Act Amendments of 1990 [Nov. 15, 1990] to require that all affected sources subject to title V of the Clean Air Act [probably means title IV of the Clean Air Act as added by Pub. L. 101-549, which is classified to section 7651 et seq. of this title] shall also monitor carbon dioxide emissions according to the same timetable as in section 511(b) and (c) [probably means section 412(b) and (c) of the Clean Air Act, which is classified to section 7651k(b) and (c) of this title]. The regulations shall require that such data be reported to the Administrator. The provisions of section 511(e) of title V of the Clean Air Act [probably means section 412(e) of title IV of the Clean Air Act, which is classified to section 7651k(e) of this title] shall apply for purposes of this section in the same manner and to the same extent as such provision applies to the monitoring and data referred to in section 511 [probably means section 412 of the Clean Air Act, which is classified to section 7651k of this title].

“(b) PUBLIC AVAILABILITY OF CARBON DIOXIDE INFORMATION.—For each unit required to monitor and provide carbon dioxide data under subsection (a), the Administrator shall compute the unit's aggregate annual total carbon dioxide emissions, incorporate such data into a

computer data base, and make such aggregate annual data available to the public.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7651a, 7651i of this title.

§ 7651l. General compliance with other provisions

Except as expressly provided, compliance with the requirements of this subchapter shall not exempt or exclude the owner or operator of any source subject to this subchapter from compliance with any other applicable requirements of this chapter.

(July 14, 1955, ch. 360, title IV, §413, as added Pub. L. 101-549, title IV, §401, Nov. 15, 1990, 104 Stat. 2625.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7651i of this title.

§ 7651m. Enforcement

It shall be unlawful for any person subject to this subchapter to violate any prohibition of, requirement of, or regulation promulgated pursuant to this subchapter shall be a violation of this chapter. In addition to the other requirements and prohibitions provided for in this subchapter, the operation of any affected unit to emit sulfur dioxide in excess of allowances held for such unit shall be deemed a violation, with each ton emitted in excess of allowances held constituting a separate violation.

(July 14, 1955, ch. 360, title IV, §414, as added Pub. L. 101-549, title IV, §401, Nov. 15, 1990, 104 Stat. 2625.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7651i of this title.

§ 7651n. Clean coal technology regulatory incentives

(a) “Clean coal technology” defined

For purposes of this section, “clean coal technology” means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, process steam, or industrial products, which is not in widespread use as of November 15, 1990.

(b) Revised regulations for clean coal technology demonstrations

(1) Applicability

This subsection applies to physical or operational changes to existing facilities for the sole purpose of installation, operation, cessation, or removal of a temporary or permanent clean coal technology demonstration project. For the purposes of this section, a clean coal technology demonstration project shall mean a project using funds appropriated under the heading “Department of Energy—Clean Coal Technology”, up to a total amount

of \$2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The Federal contribution for a qualifying project shall be at least 20 percent of the total cost of the demonstration project.

(2) Temporary projects

Installation, operation, cessation, or removal of a temporary clean coal technology demonstration project that is operated for a period of five years or less, and which complies with the State implementation plans for the State in which the project is located and other requirements necessary to attain and maintain the national ambient air quality standards during and after the project is terminated, shall not subject such facility to the requirements of section 7411 of this title or part C or D of subchapter I of this chapter.

(3) Permanent projects

For permanent clean coal technology demonstration projects that constitute repowering as defined in section 7651a(7)¹ of this title, any qualifying project shall not be subject to standards of performance under section 7411 of this title or to the review and permitting requirements of part C² for any pollutant the potential emissions of which will not increase as a result of the demonstration project.

(4) EPA regulations

Not later than 12 months after November 15, 1990, the Administrator shall promulgate regulations or interpretive rulings to revise requirements under section 7411 of this title and parts C and D,² as appropriate, to facilitate projects consistent in³ this subsection. With respect to parts C and D,² such regulations or rulings shall apply to all areas in which EPA is the permitting authority. In those instances in which the State is the permitting authority under part C or D,² any State may adopt and submit to the Administrator for approval revisions to its implementation plan to apply the regulations or rulings promulgated under this subsection.

(c) Exemption for reactivation of very clean units

Physical changes or changes in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation shall not subject the unit to the requirements of section 7411 of this title or part C of the Act² where the unit (1) has not been in operation for the two-year period prior to the enactment of the Clean Air Act Amendments of 1990 [November 15, 1990], and the emissions from such unit continue to be carried in the permitting authority’s emissions inventory at the time of enactment, (2) was equipped prior to shut-down with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85 percent and a removal

¹ So in original. Probably should be section “7651a(12)”.

² See References in Text note below.

³ So in original. Probably should be “with”.

efficiency for particulates of no less than 98 percent, (3) is equipped with low-NO_x burners prior to the time of commencement, and (4) is otherwise in compliance with the requirements of this chapter.

(July 14, 1955, ch. 360, title IV, §415, as added Pub. L. 101-549, title IV, §401, Nov. 15, 1990, 104 Stat. 2625.)

REFERENCES IN TEXT

Parts C and D and part C of the Act, referred to in subsecs. (b)(3), (4) and (c), probably mean parts C and D of subchapter I of this chapter.

§ 7651o. Contingency guarantee, auctions, reserve

(a) Definitions

For purposes of this section—

(1) The term “independent power producer” means any person who owns or operates, in whole or in part, one or more new independent power production facilities.

(2) The term “new independent power production facility” means a facility that—

(A) is used for the generation of electric energy, 80 percent or more of which is sold at wholesale;

(B) is nonrecourse project-financed (as such term is defined by the Secretary of Energy within 3 months of November 15, 1990);

(C) does not generate electric energy sold to any affiliate (as defined in section 79b(a)(11) of title 15) of the facility’s owner or operator unless the owner or operator of the facility demonstrates that it cannot obtain allowances from the affiliate; and

(D) is a new unit required to hold allowances under this subchapter.

(3) The term “required allowances” means the allowances required to operate such unit for so much of the unit’s useful life as occurs after January 1, 2000.

(b) Special reserve of allowances

Within 36 months after November 15, 1990, the Administrator shall promulgate regulations establishing a Special Allowance Reserve containing allowances to be sold under this section. For purposes of establishing the Special Allowance Reserve, the Administrator shall withhold—

(1) 2.8 percent of the allocation of allowances for each year from 1995 through 1999 inclusive; and

(2) 2.8 percent of the basic Phase II allowance allocation of allowances for each year beginning in the year 2000

which would (but for this subsection) be issued for each affected unit at an affected source. The Administrator shall record such withholding for purposes of transferring the proceeds of the allowance sales under this subsection. The allowances so withheld shall be deposited in the Reserve under this section.

(c) Direct sale at \$1,500 per ton

(1) Subaccount for direct sales

In accordance with regulations under this section, the Administrator shall establish a Direct Sale Subaccount in the Special Allowance Reserve established under this section.

The Direct Sale Subaccount shall contain allowances in the amount of 50,000 tons per year for each year beginning in the year 2000.

(2) Sales

Allowances in the subaccount shall be offered for direct sale to any person at the times and in the amounts specified in table 1 at a price of \$1,500 per allowance, adjusted by the Consumer Price Index in the same manner as provided in paragraph (3). Requests to purchase allowances from the Direct Sale Subaccount established under paragraph (1) shall be approved in the order of receipt until no allowances remain in such subaccount, except that an opportunity to purchase such allowances shall be provided to the independent power producers referred to in this subsection before such allowances are offered to any other person. Each applicant shall be required to pay 50 percent of the total purchase price of the allowances within 6 months after the approval of the request to purchase. The remainder shall be paid on or before the transfer of the allowances.

TABLE 1—NUMBER OF ALLOWANCES AVAILABLE FOR SALE AT \$1,500 PER TON

Year of Sale	Spot Sale (same year)	Advance Sale
1993–1999 .....	.....	25,000
2000 and after	25,000	25,000

Allowances sold in the spot sale in any year are allowances which may only be used in that year (unless banked for use in a later year). Allowances sold in the advance sale in any year are allowances which may only be used in the 7th year after the year in which they are first offered for sale (unless banked for use in a later year).

(3) Entitlement to written guarantee

Any independent power producer that submits an application to the Administrator establishing that such independent power producer—

(A) proposes to construct a new independent power production facility for which allowances are required under this subchapter;

(B) will apply for financing to construct such facility after January 1, 1990, and before the date of the first auction under this section;

(C) has submitted to each owner or operator of an affected unit listed in table A (in section 7651c of this title) a written offer to purchase the required allowances for \$750 per ton; and

(D) has not received (within 180 days after submitting offers to purchase under subparagraph (C)) an acceptance of the offer to purchase the required allowances,

shall, within 30 days after submission of such application, be entitled to receive the Administrator’s written guarantee (subject to the eligibility requirements set forth in paragraph (4)) that such required allowances will be made available for purchase from the Direct Sale Subaccount established under this subsection and at a guaranteed price. The guaranteed price at which such allowances shall be made available for purchase shall be \$1,500 per ton,

adjusted by the percentage, if any, by which the Consumer Price Index (as determined under section 7661a(b)(3)(B)(v) of this title) for the year in which the allowance is purchased exceeds the Consumer Price Index for the calendar year 1990.

(4) Eligibility requirements

The guarantee issued by the Administrator under paragraph (3) shall be subject to a demonstration by the independent power producer, satisfactory to the Administrator, that—

- (A) the independent power producer has—
 - (i) made good faith efforts to purchase the required allowances from the owners or operators of affected units to which allowances will be allocated, including efforts to purchase at annual auctions under this section, and from industrial sources that have elected to become affected units pursuant to section 7651i of this title; and
 - (ii) such bids and efforts were unsuccessful in obtaining the required allowances; and

(B) the independent power producer will continue to make good faith efforts to purchase the required allowances from the owners or operators of affected units and from industrial sources.

(5) Issuance of guaranteed allowances from Direct Sale Subaccount under this section

From the allowances available in the Direct Sale Subaccount established under this subsection, upon payment of the guaranteed price, the Administrator shall issue to any person exercising the right to purchase allowances pursuant to a guarantee under this subsection the allowances covered by such guarantee. Persons to which guarantees under this subsection have been issued shall have the opportunity to purchase allowances pursuant to such guarantee from such subaccount before the allowances in such reserve are offered for sale to any other person.

(6) Proceeds

Notwithstanding section 3302 of title 31 or any other provision of law, the Administrator shall require that the proceeds of any sale under this subsection be transferred, within 90 days after the sale, without charge, on a pro rata basis to the owners or operators of the affected units from whom the allowances were withheld under subsection (b) of this section and that any unsold allowances be transferred to the Subaccount for Auction Sales established under subsection (d) of this section. No proceeds of any sale under this subsection shall be held by any officer or employee of the United States or treated for any purpose as revenue to the United States or to the Administrator.

(7) Termination of subaccount

If the Administrator determines that, during any period of 2 consecutive calendar years, less than 20 percent of the allowances available in the subaccount for direct sales established under this subsection have been purchased under this paragraph, the Administrator shall terminate the subaccount and

transfer such allowances to the Auction Subaccount under subsection (d) of this section.

(d) Auction sales

(1) Subaccount for auctions

The Administrator shall establish an Auction Subaccount in the Special Reserve established under this section. The Auction Subaccount shall contain allowances to be sold at auction under this section in the amount of 150,000 tons per year for each year from 1995 through 1999, inclusive and 250,000 tons per year for each year beginning in the calendar year 2000.

(2) Annual auctions

Commencing in 1993 and in each year thereafter, the Administrator shall conduct auctions at which the allowances referred to in paragraph (1) shall be offered for sale in accordance with regulations promulgated by the Administrator, in consultation with the Secretary of the Treasury, within 12 months of November 15, 1990. The allowances referred to in paragraph (1) shall be offered for sale at auction in the amounts specified in table 2. The auction shall be open to any person. A person wishing to bid for such allowances shall submit (by a date set by the Administrator) to the Administrator (on a sealed bid schedule provided by the Administrator) offers to purchase specified numbers of allowances at specified prices. Such regulations shall specify that the auctioned allowances shall be allocated and sold on the basis of bid price, starting with the highest-priced bid and continuing until all allowances for sale at such auction have been allocated. The regulations shall not permit that a minimum price be set for the purchase of withheld allowances. Allowances purchased at the auction may be used for any purpose and at any time after the auction, subject to the provisions of this subchapter.

TABLE 2—NUMBER OF ALLOWANCES AVAILABLE FOR AUCTION

Year of Sale	Spot Auction (same year)	Advance Auction
1993	50,000*	100,000
1994	50,000*	100,000
1995	50,000*	100,000
1996	150,000	100,000
1997	150,000	100,000
1998	150,000	100,000
1999	150,000	100,000
2000 and after	100,000	100,000

Allowances sold in the spot sale in any year are allowances which may only be used in that year (unless banked for use in a later year), except as otherwise noted. Allowances sold in the advance auction in any year are allowances which may only be used in the 7th year after the year in which they are first offered for sale (unless banked for use in a later year).

*Available for use only in 1995 (unless banked for use in a later year).

(3) Proceeds

(A) Notwithstanding section 3302 of title 31 or any other provision of law, within 90 days of receipt, the Administrator shall transfer the proceeds from the auction under this section,

on a pro rata basis, to the owners or operators of the affected units at an affected source from whom allowances were withheld under subsection (b) of this section. No funds transferred from a purchaser to a seller of allowances under this paragraph shall be held by any officer or employee of the United States or treated for any purpose as revenue to the United States or the Administrator.

(B) At the end of each year, any allowances offered for sale but not sold at the auction shall be returned without charge, on a pro rata basis, to the owner or operator of the affected units from whose allocation the allowances were withheld.

(4) Additional auction participants

Any person holding allowances or to whom allowances are allocated by the Administrator may submit those allowances to the Administrator to be offered for sale at auction under this subsection. The proceeds of any such sale shall be transferred at the time of sale by the purchaser to the person submitting such allowances for sale. The holder of allowances offered for sale under this paragraph may specify a minimum sale price. Any person may purchase allowances offered for auction under this paragraph. Such allowances shall be allocated and sold to purchasers on the basis of bid price after the auction under paragraph (2) is complete. No funds transferred from a purchaser to a seller of allowances under this paragraph shall be held by any officer or employee of the United States or treated for any purpose as revenue to the United States or the Administrator.

(5) Recording by EPA

The Administrator shall record and publicly report the nature, prices and results of each auction under this subsection, including the prices of successful bids, and shall record the transfers of allowances as a result of each auction in accordance with the requirements of this section. The transfer of allowances at such auction shall be recorded in accordance with the regulations promulgated by the Administrator under this subchapter.

(e) Changes in sales, auctions, and withholding

Pursuant to rulemaking after public notice and comment the Administrator may at any time after the year 1998 (in the case of advance sales or advance auctions) and 2005 (in the case of spot sales or spot auctions) decrease the number of allowances withheld and sold under this section.

(f) Termination of auctions

The Administrator may terminate the withholding of allowances and the auction sales under this section if the Administrator determines that, during any period of 3 consecutive calendar years after 2002, less than 20 percent of the allowances available in the auction sub-account have been purchased. Pursuant to regulations under this section, the Administrator may by delegation or contract provide for the conduct of sales or auctions under the Administrator's supervision by other departments or agencies of the United States Government or by

nongovernmental agencies, groups, or organizations.

(July 14, 1955, ch. 360, title IV, §416, as added Pub. L. 101-549, title IV, §401, Nov. 15, 1990, 104 Stat. 2626.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7651b, 7651d of this title.

SUBCHAPTER V—PERMITS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 7410, 7412, 7413, 7420, 7429, 7511a, 7604, 7651b, 7651g of this title.

§ 7661. Definitions

As used in this subchapter—

(1) Affected source

The term “affected source” shall have the meaning given such term in subchapter IV–A of this chapter.

(2) Major source

The term “major source” means any stationary source (or any group of stationary sources located within a contiguous area and under common control) that is either of the following:

(A) A major source as defined in section 7412 of this title.

(B) A major stationary source as defined in section 7602 of this title or part D of subchapter I of this chapter.

(3) Schedule of compliance

The term “schedule of compliance” means a schedule of remedial measures, including an enforceable sequence of actions or operations, leading to compliance with an applicable implementation plan, emission standard, emission limitation, or emission prohibition.

(4) Permitting authority

The term “permitting authority” means the Administrator or the air pollution control agency authorized by the Administrator to carry out a permit program under this subchapter.

(July 14, 1955, ch. 360, title V, §501, as added Pub. L. 101-549, title V, §501, Nov. 15, 1990, 104 Stat. 2635.)

§ 7661a. Permit programs

(a) Violations

After the effective date of any permit program approved or promulgated under this subchapter, it shall be unlawful for any person to violate any requirement of a permit issued under this subchapter, or to operate an affected source (as provided in subchapter IV–A of this chapter), a major source, any other source (including an area source) subject to standards or regulations under section 7411 or 7412 of this title, any other source required to have a permit under parts¹ C or D of subchapter I of this chapter, or any other stationary source in a category designated (in whole or in part) by regulations promulgated by

¹ So in original. Probably should be “part”.

the Administrator (after notice and public comment) which shall include a finding setting forth the basis for such designation, except in compliance with a permit issued by a permitting authority under this subchapter. (Nothing in this subsection shall be construed to alter the applicable requirements of this chapter that a permit be obtained before construction or modification.) The Administrator may, in the Administrator's discretion and consistent with the applicable provisions of this chapter, promulgate regulations to exempt one or more source categories (in whole or in part) from the requirements of this subsection if the Administrator finds that compliance with such requirements is impracticable, infeasible, or unnecessarily burdensome on such categories, except that the Administrator may not exempt any major source from such requirements.

(b) Regulations

The Administrator shall promulgate within 12 months after November 15, 1990, regulations establishing the minimum elements of a permit program to be administered by any air pollution control agency. These elements shall include each of the following:

(1) Requirements for permit applications, including a standard application form and criteria for determining in a timely fashion the completeness of applications.

(2) Monitoring and reporting requirements.

(3)(A) A requirement under State or local law or interstate compact that the owner or operator of all sources subject to the requirement to obtain a permit under this subchapter pay an annual fee, or the equivalent over some other period, sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the permit program requirements of this subchapter, including section 7661f of this title, including the reasonable costs of—

(i) reviewing and acting upon any application for such a permit,

(ii) if the owner or operator receives a permit for such source, whether before or after November 15, 1990, implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action),

(iii) emissions and ambient monitoring,

(iv) preparing generally applicable regulations, or guidance,

(v) modeling, analyses, and demonstrations, and

(vi) preparing inventories and tracking emissions.

(B) The total amount of fees collected by the permitting authority shall conform to the following requirements:

(i) The Administrator shall not approve a program as meeting the requirements of this paragraph unless the State demonstrates that, except as otherwise provided in subparagraphs (ii) through (v) of this subparagraph, the program will result in the collection, in the aggregate, from all sources subject to subparagraph (A), of an amount not less than \$25 per ton of each regulated pol-

lutant, or such other amount as the Administrator may determine adequately reflects the reasonable costs of the permit program.

(ii) As used in this subparagraph, the term "regulated pollutant" shall mean (I) a volatile organic compound; (II) each pollutant regulated under section 7411 or 7412 of this title; and (III) each pollutant for which a national primary ambient air quality standard has been promulgated (except that carbon monoxide shall be excluded from this reference).

(iii) In determining the amount under clause (i), the permitting authority is not required to include any amount of regulated pollutant emitted by any source in excess of 4,000 tons per year of that regulated pollutant.

(iv) The requirements of clause (i) shall not apply if the permitting authority demonstrates that collecting an amount less than the amount specified under clause (i) will meet the requirements of subparagraph (A).

(v) The fee calculated under clause (i) shall be increased (consistent with the need to cover the reasonable costs authorized by subparagraph (A)) in each year beginning after 1990, by the percentage, if any, by which the Consumer Price Index for the most recent calendar year ending before the beginning of such year exceeds the Consumer Price Index for the calendar year 1989. For purposes of this clause—

(I) the Consumer Price Index for any calendar year is the average of the Consumer Price Index for all-urban consumers published by the Department of Labor, as of the close of the 12-month period ending on August 31 of each calendar year, and

(II) the revision of the Consumer Price Index which is most consistent with the Consumer Price Index for calendar year 1989 shall be used.

(C)(i) If the Administrator determines, under subsection (d) of this section, that the fee provisions of the operating permit program do not meet the requirements of this paragraph, or if the Administrator makes a determination, under subsection (i) of this section, that the permitting authority is not adequately administering or enforcing an approved fee program, the Administrator may, in addition to taking any other action authorized under this subchapter, collect reasonable fees from the sources identified under subparagraph (A). Such fees shall be designed solely to cover the Administrator's costs of administering the provisions of the permit program promulgated by the Administrator.

(ii) Any source that fails to pay fees lawfully imposed by the Administrator under this subparagraph shall pay a penalty of 50 percent of the fee amount, plus interest on the fee amount computed in accordance with section 6621(a)(2) of title 26 (relating to computation of interest on underpayment of Federal taxes).

(iii) Any fees, penalties, and interest collected under this subparagraph shall be deposited in a special fund in the United States Treasury for licensing and other services,

which thereafter shall be available for appropriation, to remain available until expended, subject to appropriation, to carry out the Agency's activities for which the fees were collected. Any fee required to be collected by a State, local, or interstate agency under this subsection shall be utilized solely to cover all reasonable (direct and indirect) costs required to support the permit program as set forth in subparagraph (A).

(4) Requirements for adequate personnel and funding to administer the program.

(5) A requirement that the permitting authority have adequate authority to:

(A) issue permits and assure compliance by all sources required to have a permit under this subchapter with each applicable standard, regulation or requirement under this chapter;

(B) issue permits for a fixed term, not to exceed 5 years;

(C) assure that upon issuance or renewal permits incorporate emission limitations and other requirements in an applicable implementation plan;

(D) terminate, modify, or revoke and re-issue permits for cause;

(E) enforce permits, permit fee requirements, and the requirement to obtain a permit, including authority to recover civil penalties in a maximum amount of not less than \$10,000 per day for each violation, and provide appropriate criminal penalties; and

(F) assure that no permit will be issued if the Administrator objects to its issuance in a timely manner under this subchapter.

(6) Adequate, streamlined, and reasonable procedures for expeditiously determining when applications are complete, for processing such applications, for public notice, including offering an opportunity for public comment and a hearing, and for expeditious review of permit actions, including applications, renewals, or revisions, and including an opportunity for judicial review in State court of the final permit action by the applicant, any person who participated in the public comment process, and any other person who could obtain judicial review of that action under applicable law.

(7) To ensure against unreasonable delay by the permitting authority, adequate authority and procedures to provide that a failure of such permitting authority to act on a permit application or permit renewal application (in accordance with the time periods specified in section 7661b of this title or, as appropriate, subchapter IV-A of this chapter) shall be treated as a final permit action solely for purposes of obtaining judicial review in State court of an action brought by any person referred to in paragraph (6) to require that action be taken by the permitting authority on such application without additional delay.

(8) Authority, and reasonable procedures consistent with the need for expeditious action by the permitting authority on permit applications and related matters, to make available to the public any permit application, compliance plan, permit, and monitoring or compliance report under section 7661b(e) of this title, subject to the provisions of section 7414(c) of this title.

(9) A requirement that the permitting authority, in the case of permits with a term of 3 or more years for major sources, shall require revisions to the permit to incorporate applicable standards and regulations promulgated under this chapter after the issuance of such permit. Such revisions shall occur as expeditiously as practicable and consistent with the procedures established under paragraph (6) but not later than 18 months after the promulgation of such standards and regulations. No such revision shall be required if the effective date of the standards or regulations is a date after the expiration of the permit term. Such permit revision shall be treated as a permit renewal if it complies with the requirements of this subchapter regarding renewals.

(10) Provisions to allow changes within a permitted facility (or one operating pursuant to section 7661b(d) of this title) without requiring a permit revision, if the changes are not modifications under any provision of subchapter I of this chapter and the changes do not exceed the emissions allowable under the permit (whether expressed therein as a rate of emissions or in terms of total emissions:² *Provided*, That the facility provides the Administrator and the permitting authority with written notification in advance of the proposed changes which shall be a minimum of 7 days, unless the permitting authority provides in its regulations a different timeframe for emergencies.

(c) Single permit

A single permit may be issued for a facility with multiple sources.

(d) Submission and approval

(1) Not later than 3 years after November 15, 1990, the Governor of each State shall develop and submit to the Administrator a permit program under State or local law or under an interstate compact meeting the requirements of this subchapter. In addition, the Governor shall submit a legal opinion from the attorney general (or the attorney for those State air pollution control agencies that have independent legal counsel), or from the chief legal officer of an interstate agency, that the laws of the State, locality, or the interstate compact provide adequate authority to carry out the program. Not later than 1 year after receiving a program, and after notice and opportunity for public comment, the Administrator shall approve or disapprove such program, in whole or in part. The Administrator may approve a program to the extent that the program meets the requirements of this chapter, including the regulations issued under subsection (b) of this section. If the program is disapproved, in whole or in part, the Administrator shall notify the Governor of any revisions or modifications necessary to obtain approval. The Governor shall revise and resubmit the program for review under this section within 180 days after receiving notification.

(2)(A) If the Governor does not submit a program as required under paragraph (1) or if the Administrator disapproves a program submitted

²So in original. A closing parenthesis probably should precede the colon.

by the Governor under paragraph (1), in whole or in part, the Administrator may, prior to the expiration of the 18-month period referred to in subparagraph (B), in the Administrator's discretion, apply any of the sanctions specified in section 7509(b) of this title.

(B) If the Governor does not submit a program as required under paragraph (1), or if the Administrator disapproves any such program submitted by the Governor under paragraph (1), in whole or in part, 18 months after the date required for such submittal or the date of such disapproval, as the case may be, the Administrator shall apply sanctions under section 7509(b) of this title in the same manner and subject to the same deadlines and other conditions as are applicable in the case of a determination, disapproval, or finding under section 7509(a) of this title.

(C) The sanctions under section 7509(b)(2) of this title shall not apply pursuant to this paragraph in any area unless the failure to submit or the disapproval referred to in subparagraph (A) or (B) relates to an air pollutant for which such area has been designated a nonattainment area (as defined in part D of subchapter I of this chapter).

(3) If a program meeting the requirements of this subchapter has not been approved in whole for any State, the Administrator shall, 2 years after the date required for submission of such a program under paragraph (1), promulgate, administer, and enforce a program under this subchapter for that State.

(e) Suspension

The Administrator shall suspend the issuance of permits promptly upon publication of notice of approval of a permit program under this section, but may, in such notice, retain jurisdiction over permits that have been federally issued, but for which the administrative or judicial review process is not complete. The Administrator shall continue to administer and enforce federally issued permits under this subchapter until they are replaced by a permit issued by a permitting program. Nothing in this subsection should be construed to limit the Administrator's ability to enforce permits issued by a State.

(f) Prohibition

No partial permit program shall be approved unless, at a minimum, it applies, and ensures compliance with, this subchapter and each of the following:

(1) All requirements established under subchapter IV-A of this chapter applicable to "affected sources".

(2) All requirements established under section 7412 of this title applicable to "major sources", "area sources," and "new sources".

(3) All requirements of subchapter I of this chapter (other than section 7412 of this title) applicable to sources required to have a permit under this subchapter.

Approval of a partial program shall not relieve the State of its obligation to submit a complete program, nor from the application of any sanctions under this chapter for failure to submit an approvable permit program.

(g) Interim approval

If a program (including a partial permit program) submitted under this subchapter substantially meets the requirements of this subchapter, but is not fully approvable, the Administrator may by rule grant the program interim approval. In the notice of final rulemaking, the Administrator shall specify the changes that must be made before the program can receive full approval. An interim approval under this subsection shall expire on a date set by the Administrator not later than 2 years after such approval, and may not be renewed. For the period of any such interim approval, the provisions of subsection (d)(2) of this section, and the obligation of the Administrator to promulgate a program under this subchapter for the State pursuant to subsection (d)(3) of this section, shall be suspended. Such provisions and such obligation of the Administrator shall apply after the expiration of such interim approval.

(h) Effective date

The effective date of a permit program, or partial or interim program, approved under this subchapter, shall be the effective date of approval by the Administrator. The effective date of a permit program, or partial permit program, promulgated by the Administrator shall be the date of promulgation.

(i) Administration and enforcement

(1) Whenever the Administrator makes a determination that a permitting authority is not adequately administering and enforcing a program, or portion thereof, in accordance with the requirements of this subchapter, the Administrator shall provide notice to the State and may, prior to the expiration of the 18-month period referred to in paragraph (2), in the Administrator's discretion, apply any of the sanctions specified in section 7509(b) of this title.

(2) Whenever the Administrator makes a determination that a permitting authority is not adequately administering and enforcing a program, or portion thereof, in accordance with the requirements of this subchapter, 18 months after the date of the notice under paragraph (1), the Administrator shall apply the sanctions under section 7509(b) of this title in the same manner and subject to the same deadlines and other conditions as are applicable in the case of a determination, disapproval, or finding under section 7509(a) of this title.

(3) The sanctions under section 7509(b)(2) of this title shall not apply pursuant to this subsection in any area unless the failure to adequately enforce and administer the program relates to an air pollutant for which such area has been designated a nonattainment area.

(4) Whenever the Administrator has made a finding under paragraph (1) with respect to any State, unless the State has corrected such deficiency within 18 months after the date of such finding, the Administrator shall, 2 years after the date of such finding, promulgate, administer, and enforce a program under this subchapter for that State. Nothing in this paragraph shall be construed to affect the validity of a program which has been approved under this subchapter or the authority of any permitting

authority acting under such program until such time as such program is promulgated by the Administrator under this paragraph.

(July 14, 1955, ch. 360, title V, § 502, as added Pub. L. 101-549, title V, § 501, Nov. 15, 1990, 104 Stat. 2635.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7413, 7511d, 7651g, 7651o, 7661b, 7661c of this title.

§ 7661b. Permit applications

(a) Applicable date

Any source specified in section 7661a(a) of this title shall become subject to a permit program, and required to have a permit, on the later of the following dates—

- (1) the effective date of a permit program or partial or interim permit program applicable to the source; or
- (2) the date such source becomes subject to section 7661a(a) of this title.

(b) Compliance plan

(1) The regulations required by section 7661a(b) of this title shall include a requirement that the applicant submit with the permit application a compliance plan describing how the source will comply with all applicable requirements under this chapter. The compliance plan shall include a schedule of compliance, and a schedule under which the permittee will submit progress reports to the permitting authority no less frequently than every 6 months.

(2) The regulations shall further require the permittee to periodically (but no less frequently than annually) certify that the facility is in compliance with any applicable requirements of the permit, and to promptly report any deviations from permit requirements to the permitting authority.

(c) Deadline

Any person required to have a permit shall, not later than 12 months after the date on which the source becomes subject to a permit program approved or promulgated under this subchapter, or such earlier date as the permitting authority may establish, submit to the permitting authority a compliance plan and an application for a permit signed by a responsible official, who shall certify the accuracy of the information submitted. The permitting authority shall approve or disapprove a completed application (consistent with the procedures established under this subchapter for consideration of such applications), and shall issue or deny the permit, within 18 months after the date of receipt thereof, except that the permitting authority shall establish a phased schedule for acting on permit applications submitted within the first full year after the effective date of a permit program (or a partial or interim program). Any such schedule shall assure that at least one-third of such permits will be acted on by such authority annually over a period of not to exceed 3 years after such effective date. Such authority shall establish reasonable procedures to prioritize such approval or disapproval actions in the case of applications for construction or modification under the applicable requirements of this chapter.

(d) Timely and complete applications

Except for sources required to have a permit before construction or modification under the applicable requirements of this chapter, if an applicant has submitted a timely and complete application for a permit required by this subchapter (including renewals), but final action has not been taken on such application, the source's failure to have a permit shall not be a violation of this chapter, unless the delay in final action was due to the failure of the applicant timely to submit information required or requested to process the application. No source required to have a permit under this subchapter shall be in violation of section 7661a(a) of this title before the date on which the source is required to submit an application under subsection (c) of this section.

(e) Copies; availability

A copy of each permit application, compliance plan (including the schedule of compliance), emissions or compliance monitoring report, certification, and each permit issued under this subchapter, shall be available to the public. If an applicant or permittee is required to submit information entitled to protection from disclosure under section 7414(c) of this title, the applicant or permittee may submit such information separately. The requirements of section 7414(c) of this title shall apply to such information. The contents of a permit shall not be entitled to protection under section 7414(c) of this title.

(July 14, 1955, ch. 360, title V, § 503, as added Pub. L. 101-549, title V, § 501, Nov. 15, 1990, 104 Stat. 2641.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7413, 7661a, 7661c of this title.

§ 7661c. Permit requirements and conditions

(a) Conditions

Each permit issued under this subchapter shall include enforceable emission limitations and standards, a schedule of compliance, a requirement that the permittee submit to the permitting authority, no less often than every 6 months, the results of any required monitoring, and such other conditions as are necessary to assure compliance with applicable requirements of this chapter, including the requirements of the applicable implementation plan.

(b) Monitoring and analysis

The Administrator may by rule prescribe procedures and methods for determining compliance and for monitoring and analysis of pollutants regulated under this chapter, but continuous emissions monitoring need not be required if alternative methods are available that provide sufficiently reliable and timely information for determining compliance. Nothing in this subsection shall be construed to affect any continuous emissions monitoring requirement of subchapter IV-A of this chapter, or where required elsewhere in this chapter.

(c) Inspection, entry, monitoring, certification, and reporting

Each permit issued under this subchapter shall set forth inspection, entry, monitoring,

compliance certification, and reporting requirements to assure compliance with the permit terms and conditions. Such monitoring and reporting requirements shall conform to any applicable regulation under subsection (b) of this section. Any report required to be submitted by a permit issued to a corporation under this subchapter shall be signed by a responsible corporate official, who shall certify its accuracy.

(d) General permits

The permitting authority may, after notice and opportunity for public hearing, issue a general permit covering numerous similar sources. Any general permit shall comply with all requirements applicable to permits under this subchapter. No source covered by a general permit shall thereby be relieved from the obligation to file an application under section 7661b of this title.

(e) Temporary sources

The permitting authority may issue a single permit authorizing emissions from similar operations at multiple temporary locations. No such permit shall be issued unless it includes conditions that will assure compliance with all the requirements of this chapter at all authorized locations, including, but not limited to, ambient standards and compliance with any applicable increment or visibility requirements under part C of subchapter I of this chapter. Any such permit shall in addition require the owner or operator to notify the permitting authority in advance of each change in location. The permitting authority may require a separate permit fee for operations at each location.

(f) Permit shield

Compliance with a permit issued in accordance with this subchapter shall be deemed compliance with section 7661a of this title. Except as otherwise provided by the Administrator by rule, the permit may also provide that compliance with the permit shall be deemed compliance with other applicable provisions of this chapter that relate to the permittee if—

- (1) the permit includes the applicable requirements of such provisions, or
- (2) the permitting authority in acting on the permit application makes a determination relating to the permittee that such other provisions (which shall be referred to in such determination) are not applicable and the permit includes the determination or a concise summary thereof.

Nothing in the preceding sentence shall alter or affect the provisions of section 7603 of this title, including the authority of the Administrator under that section.

(July 14, 1955, ch. 360, title V, §504, as added Pub. L. 101-549, title V, §501, Nov. 15, 1990, 104 Stat. 2642.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7651g of this title.

§ 7661d. Notification to Administrator and contiguous States

(a) Transmission and notice

- (1) Each permitting authority—

- (A) shall transmit to the Administrator a copy of each permit application (and any application for a permit modification or renewal) or such portion thereof, including any compliance plan, as the Administrator may require to effectively review the application and otherwise to carry out the Administrator's responsibilities under this chapter, and

- (B) shall provide to the Administrator a copy of each permit proposed to be issued and issued as a final permit.

- (2) The permitting authority shall notify all States—

- (A) whose air quality may be affected and that are contiguous to the State in which the emission originates, or

- (B) that are within 50 miles of the source,

of each permit application or proposed permit forwarded to the Administrator under this section, and shall provide an opportunity for such States to submit written recommendations respecting the issuance of the permit and its terms and conditions. If any part of those recommendations are not accepted by the permitting authority, such authority shall notify the State submitting the recommendations and the Administrator in writing of its failure to accept those recommendations and the reasons therefor.

(b) Objection by EPA

- (1) If any permit contains provisions that are determined by the Administrator as not in compliance with the applicable requirements of this chapter, including the requirements of an applicable implementation plan, the Administrator shall, in accordance with this subsection, object to its issuance. The permitting authority shall respond in writing if the Administrator (A) within 45 days after receiving a copy of the proposed permit under subsection (a)(1) of this section, or (B) within 45 days after receiving notification under subsection (a)(2) of this section, objects in writing to its issuance as not in compliance with such requirements. With the objection, the Administrator shall provide a statement of the reasons for the objection. A copy of the objection and statement shall be provided to the applicant.

- (2) If the Administrator does not object in writing to the issuance of a permit pursuant to paragraph (1), any person may petition the Administrator within 60 days after the expiration of the 45-day review period specified in paragraph (1) to take such action. A copy of such petition shall be provided to the permitting authority and the applicant by the petitioner. The petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the permitting agency (unless the petitioner demonstrates in the petition to the Administrator that it was impracticable to raise such objections within such period or unless the grounds for such objection arose after such period). The petition shall identify all such objections. If the permit has been issued by the permitting agency, such petition shall not postpone the effectiveness of the permit. The Administrator shall grant or deny such petition within

60 days after the petition is filed. The Administrator shall issue an objection within such period if the petitioner demonstrates to the Administrator that the permit is not in compliance with the requirements of this chapter, including the requirements of the applicable implementation plan. Any denial of such petition shall be subject to judicial review under section 7607 of this title. The Administrator shall include in regulations under this subchapter provisions to implement this paragraph. The Administrator may not delegate the requirements of this paragraph.

(3) Upon receipt of an objection by the Administrator under this subsection, the permitting authority may not issue the permit unless it is revised and issued in accordance with subsection (c) of this section. If the permitting authority has issued a permit prior to receipt of an objection by the Administrator under paragraph (2) of this subsection, the Administrator shall modify, terminate, or revoke such permit and the permitting authority may thereafter only issue a revised permit in accordance with subsection (c) of this section.

(c) Issuance or denial

If the permitting authority fails, within 90 days after the date of an objection under subsection (b) of this section, to submit a permit revised to meet the objection, the Administrator shall issue or deny the permit in accordance with the requirements of this subchapter. No objection shall be subject to judicial review until the Administrator takes final action to issue or deny a permit under this subsection.

(d) Waiver of notification requirements

(1) The Administrator may waive the requirements of subsections (a) and (b) of this section at the time of approval of a permit program under this subchapter for any category (including any class, type, or size within such category) of sources covered by the program other than major sources.

(2) The Administrator may, by regulation, establish categories of sources (including any class, type, or size within such category) to which the requirements of subsections (a) and (b) of this section shall not apply. The preceding sentence shall not apply to major sources.

(3) The Administrator may exclude from any waiver under this subsection notification under subsection (a)(2) of this section. Any waiver granted under this subsection may be revoked or modified by the Administrator by rule.

(e) Refusal of permitting authority to terminate, modify, or revoke and reissue

If the Administrator finds that cause exists to terminate, modify, or revoke and reissue a permit under this subchapter, the Administrator shall notify the permitting authority and the source of the Administrator's finding. The permitting authority shall, within 90 days after receipt of such notification, forward to the Administrator under this section a proposed determination of termination, modification, or revocation and reissuance, as appropriate. The Administrator may extend such 90 day period for an additional 90 days if the Administrator finds that a new or revised permit application is nec-

essary, or that the permitting authority must require the permittee to submit additional information. The Administrator may review such proposed determination under the provisions of subsections (a) and (b) of this section. If the permitting authority fails to submit the required proposed determination, or if the Administrator objects and the permitting authority fails to resolve the objection within 90 days, the Administrator may, after notice and in accordance with fair and reasonable procedures, terminate, modify, or revoke and reissue the permit.

(July 14, 1955, ch. 360, title V, § 505, as added Pub. L. 101-549, title V, § 501, Nov. 15, 1990, 104 Stat. 2643.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7412 of this title.

§ 7661e. Other authorities

(a) In general

Nothing in this subchapter shall prevent a State, or interstate permitting authority, from establishing additional permitting requirements not inconsistent with this chapter.

(b) Permits implementing acid rain provisions

The provisions of this subchapter, including provisions regarding schedules for submission and approval or disapproval of permit applications, shall apply to permits implementing the requirements of subchapter IV-A of this chapter except as modified by that subchapter.

(July 14, 1955, ch. 360, title V, § 506, as added Pub. L. 101-549, title V, § 501, Nov. 15, 1990, 104 Stat. 2645.)

§ 7661f. Small business stationary source technical and environmental compliance assistance program

(a) Plan revisions

Consistent with sections 7410 and 7412 of this title, each State shall, after reasonable notice and public hearings, adopt and submit to the Administrator as part of the State implementation plan for such State or as a revision to such State implementation plan under section 7410 of this title, plans for establishing a small business stationary source technical and environmental compliance assistance program. Such submission shall be made within 24 months after November 15, 1990. The Administrator shall approve such program if it includes each of the following:

(1) Adequate mechanisms for developing, collecting, and coordinating information concerning compliance methods and technologies for small business stationary sources, and programs to encourage lawful cooperation among such sources and other persons to further compliance with this chapter.

(2) Adequate mechanisms for assisting small business stationary sources with pollution prevention and accidental release detection and prevention, including providing information concerning alternative technologies, process changes, products, and methods of operation that help reduce air pollution.

(3) A designated State office within the relevant State agency to serve as ombudsman for

small business stationary sources in connection with the implementation of this chapter.

(4) A compliance assistance program for small business stationary sources which assists small business stationary sources in determining applicable requirements and in receiving permits under this chapter in a timely and efficient manner.

(5) Adequate mechanisms to assure that small business stationary sources receive notice of their rights under this chapter in such manner and form as to assure reasonably adequate time for such sources to evaluate compliance methods and any relevant or applicable proposed or final regulation or standard issued under this chapter.

(6) Adequate mechanisms for informing small business stationary sources of their obligations under this chapter, including mechanisms for referring such sources to qualified auditors or, at the option of the State, for providing audits of the operations of such sources to determine compliance with this chapter.

(7) Procedures for consideration of requests from a small business stationary source for modification of—

(A) any work practice or technological method of compliance, or

(B) the schedule of milestones for implementing such work practice or method of compliance preceding any applicable compliance date,

based on the technological and financial capability of any such small business stationary source. No such modification may be granted unless it is in compliance with the applicable requirements of this chapter, including the requirements of the applicable implementation plan. Where such applicable requirements are set forth in Federal regulations, only modifications authorized in such regulations may be allowed.

(b) Program

The Administrator shall establish within 9 months after November 15, 1990, a small business stationary source technical and environmental compliance assistance program. Such program shall—

(1) assist the States in the development of the program required under subsection (a) of this section (relating to assistance for small business stationary sources);

(2) issue guidance for the use of the States in the implementation of these programs that includes alternative control technologies and pollution prevention methods applicable to small business stationary sources; and

(3) provide for implementation of the program provisions required under subsection (a)(4) of this section in any State that fails to submit such a program under that subsection.

(c) Eligibility

(1) Except as provided in paragraphs (2) and (3), for purposes of this section, the term "small business stationary source" means a stationary source that—

(A) is owned or operated by a person that employs 100 or fewer individuals,

(B) is a small business concern as defined in the Small Business Act [15 U.S.C. 631 et seq.];

(C) is not a major stationary source;

(D) does not emit 50 tons or more per year of any regulated pollutant; and

(E) emits less than 75 tons per year of all regulated pollutants.

(2) Upon petition by a source, the State may, after notice and opportunity for public comment, include as a small business stationary source for purposes of this section any stationary source which does not meet the criteria of subparagraphs¹ (C), (D), or (E) of paragraph (1) but which does not emit more than 100 tons per year of all regulated pollutants.

(3)(A) The Administrator, in consultation with the Administrator of the Small Business Administration and after providing notice and opportunity for public comment, may exclude from the small business stationary source definition under this section any category or subcategory of sources that the Administrator determines to have sufficient technical and financial capabilities to meet the requirements of this chapter without the application of this subsection.

(B) The State, in consultation with the Administrator and the Administrator of the Small Business Administration and after providing notice and opportunity for public hearing, may exclude from the small business stationary source definition under this section any category or subcategory of sources that the State determines to have sufficient technical and financial capabilities to meet the requirements of this chapter without the application of this subsection.

(d) Monitoring

The Administrator shall direct the Agency's Office of Small and Disadvantaged Business Utilization through the Small Business Ombudsman (hereinafter in this section referred to as the "Ombudsman") to monitor the small business stationary source technical and environmental compliance assistance program under this section. In carrying out such monitoring activities, the Ombudsman shall—

(1) render advisory opinions on the overall effectiveness of the Small Business Stationary Source Technical and Environmental Compliance Assistance Program, difficulties encountered, and degree and severity of enforcement;

(2) make periodic reports to the Congress on the compliance of the Small Business Stationary Source Technical and Environmental Compliance Assistance Program with the requirements of the Paperwork Reduction Act,² the Regulatory Flexibility Act [5 U.S.C. 601 et seq.], and the Equal Access to Justice Act;

(3) review information to be issued by the Small Business Stationary Source Technical and Environmental Compliance Assistance Program for small business stationary sources to ensure that the information is understandable by the layperson; and

(4) have the Small Business Stationary Source Technical and Environmental Compliance Assistance Program serve as the secretariat for the development and dissemination of such reports and advisory opinions.

¹ So in original. Probably should be "subparagraph".

² See References in Text note below.

(e) Compliance Advisory Panel

(1) There shall be created a Compliance Advisory Panel (hereinafter referred to as the "Panel") on the State level of not less than 7 individuals. This Panel shall—

(A) render advisory opinions concerning the effectiveness of the small business stationary source technical and environmental compliance assistance program, difficulties encountered, and degree and severity of enforcement;

(B) make periodic reports to the Administrator concerning the compliance of the State Small Business Stationary Source Technical and Environmental Compliance Assistance Program with the requirements of the Paperwork Reduction Act,² the Regulatory Flexibility Act [5 U.S.C. 601 et seq.], and the Equal Access to Justice Act;

(C) review information for small business stationary sources to assure such information is understandable by the layperson; and

(D) have the Small Business Stationary Source Technical and Environmental Compliance Assistance Program serve as the secretariat for the development and dissemination of such reports and advisory opinions.

(2) The Panel shall consist of—

(A) 2 members, who are not owners, or representatives of owners, of small business stationary sources, selected by the Governor to represent the general public;

(B) 2 members selected by the State legislature who are owners, or who represent owners, of small business stationary sources (1 member each by the majority and minority leadership of the lower house, or in the case of a unicameral State legislature, 2 members each shall be selected by the majority leadership and the minority leadership, respectively, of such legislature, and subparagraph (C) shall not apply);

(C) 2 members selected by the State legislature who are owners, or who represent owners, of small business stationary sources (1 member each by the majority and minority leadership of the upper house, or the equivalent State entity); and

(D) 1 member selected by the head of the department or agency of the State responsible for air pollution permit programs to represent that agency.

(f) Fees

The State (or the Administrator) may reduce any fee required under this chapter to take into account the financial resources of small business stationary sources.

(g) Continuous emission monitors

In developing regulations and CTGs under this chapter that contain continuous emission monitoring requirements, the Administrator, consistent with the requirements of this chapter, before applying such requirements to small business stationary sources, shall consider the necessity and appropriateness of such requirements for such sources. Nothing in this subsection shall affect the applicability of subchapter IV-A of this chapter provisions relating to continuous emissions monitoring.

(h) Control technique guidelines

The Administrator shall consider, consistent with the requirements of this chapter, the size, type, and technical capabilities of small business stationary sources (and sources which are eligible under subsection (c)(2) of this section to be treated as small business stationary sources) in developing CTGs applicable to such sources under this chapter.

(July 14, 1955, ch. 360, title V, § 507, as added Pub. L. 101-549, title V, § 501, Nov. 15, 1990, 104 Stat. 2645.)

REFERENCES IN TEXT

The Small Business Act, referred to in subsec. (c)(1)(B), is Pub. L. 85-536, July 18, 1958, 72 Stat. 384, as amended, which is classified generally to chapter 14A (§ 631 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 631 of Title 15 and Tables.

The Paperwork Reduction Act, referred to in subsecs. (d)(2) and (e)(1)(B), probably means the Paperwork Reduction Act of 1980, Pub. L. 96-511, Dec. 11, 1980, 94 Stat. 2812, as amended, which was classified principally to chapter 35 (§ 3501 et seq.) of Title 44, Public Printing and Documents, prior to the general amendment of that chapter by Pub. L. 104-13, § 2, May 22, 1995, 109 Stat. 163. For complete classification of this Act to the Code, see Short Title of 1980 Amendment note set out under section 101 of Title 44 and Tables.

The Regulatory Flexibility Act, referred to in subsecs. (d)(2) and (e)(1)(B), is Pub. L. 96-354, Sept. 19, 1980, 94 Stat. 1164, which is classified generally to chapter 6 (§ 601 et seq.) of Title 5, Government Organization and Employees. For complete classification of this Act to the Code, see Short Title note set out under section 601 of Title 5 and Tables.

The Equal Access to Justice Act, referred to in subsecs. (d)(2) and (e)(1)(B), is title II of Pub. L. 96-481, Oct. 21, 1980, 94 Stat. 2325. For complete classification of this Act to the Code, see Short Title note set out under section 504 of Title 5.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7661a of this title.

SUBCHAPTER VI—STRATOSPHERIC OZONE PROTECTION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 7412, 7413, 7420, 7604, 7607, 7612 of this title.

§ 7671. Definitions

As used in this subchapter—

(1) Appliance

The term "appliance" means any device which contains and uses a class I or class II substance as a refrigerant and which is used for household or commercial purposes, including any air conditioner, refrigerator, chiller, or freezer.

(2) Baseline year

The term "baseline year" means—

(A) the calendar year 1986, in the case of any class I substance listed in Group I or II under section 7671a(a) of this title,

(B) the calendar year 1989, in the case of any class I substance listed in Group III, IV, or V under section 7671a(a) of this title, and

(C) a representative calendar year selected by the Administrator, in the case of—

- (i) any substance added to the list of class I substances after the publication of the initial list under section 7671a(a) of this title, and
- (ii) any class II substance.

(3) Class I substance

The term “class I substance” means each of the substances listed as provided in section 7671a(a) of this title.

(4) Class II substance

The term “class II substance” means each of the substances listed as provided in section 7671a(b) of this title.

(5) Commissioner

The term “Commissioner” means the Commissioner of the Food and Drug Administration.

(6) Consumption

The term “consumption” means, with respect to any substance, the amount of that substance produced in the United States, plus the amount imported, minus the amount exported to Parties to the Montreal Protocol. Such term shall be construed in a manner consistent with the Montreal Protocol.

(7) Import

The term “import” means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States.

(8) Medical device

The term “medical device” means any device (as defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321)), diagnostic product, drug (as defined in the Federal Food, Drug, and Cosmetic Act), and drug delivery system—

- (A) if such device, product, drug, or drug delivery system utilizes a class I or class II substance for which no safe and effective alternative has been developed, and where necessary, approved by the Commissioner; and
- (B) if such device, product, drug, or drug delivery system, has, after notice and opportunity for public comment, been approved and determined to be essential by the Commissioner in consultation with the Administrator.

(9) Montreal Protocol

The terms “Montreal Protocol” and “the Protocol” mean the Montreal Protocol on Substances that Deplete the Ozone Layer, a protocol to the Vienna Convention for the Protection of the Ozone Layer, including adjustments adopted by Parties thereto and amendments that have entered into force.

(10) Ozone-depletion potential

The term “ozone-depletion potential” means a factor established by the Administrator to reflect the ozone-depletion potential of a sub-

stance, on a mass per kilogram basis, as compared to chlorofluorocarbon-11 (CFC-11). Such factor shall be based upon the substance’s atmospheric lifetime, the molecular weight of bromine and chlorine, and the substance’s ability to be photolytically disassociated, and upon other factors determined to be an accurate measure of relative ozone-depletion potential.

(11) Produce, produced, and production

The terms “produce”, “produced”, and “production”, refer to the manufacture of a substance from any raw material or feedstock chemical, but such terms do not include—

- (A) the manufacture of a substance that is used and entirely consumed (except for trace quantities) in the manufacture of other chemicals, or
- (B) the reuse or recycling of a substance.

(July 14, 1955, ch. 360, title VI, §601, as added Pub. L. 101-549, title VI, §602(a), Nov. 15, 1990, 104 Stat. 2649.)

REFERENCES IN TEXT

The customs laws of the United States, referred to in par. (7), are classified generally to Title 19, Customs Duties.

The Federal Food, Drug, and Cosmetic Act, referred to in par. (8), is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended, which is classified generally to chapter 9 (§301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7671a, 7671i of this title.

§ 7671a. Listing of class I and class II substances

(a) List of class I substances

Within 60 days after November 15, 1990, the Administrator shall publish an initial list of class I substances, which list shall contain the following substances:

Group I
chlorofluorocarbon-11 (CFC-11)
chlorofluorocarbon-12 (CFC-12)
chlorofluorocarbon-113 (CFC-113)
chlorofluorocarbon-114 (CFC-114)
chlorofluorocarbon-115 (CFC-115)

Group II
halon-1211
halon-1301
halon-2402

Group III
chlorofluorocarbon-13 (CFC-13)
chlorofluorocarbon-111 (CFC-111)
chlorofluorocarbon-112 (CFC-112)
chlorofluorocarbon-211 (CFC-211)
chlorofluorocarbon-212 (CFC-212)
chlorofluorocarbon-213 (CFC-213)
chlorofluorocarbon-214 (CFC-214)
chlorofluorocarbon-215 (CFC-215)
chlorofluorocarbon-216 (CFC-216)
chlorofluorocarbon-217 (CFC-217)

Group IV
carbon tetrachloride

Group V
methyl chloroform

The initial list under this subsection shall also include the isomers of the substances listed

above, other than 1,1,2-trichloroethane (an isomer of methyl chloroform). Pursuant to subsection (c) of this section, the Administrator shall add to the list of class I substances any other substance that the Administrator finds causes or contributes significantly to harmful effects on the stratospheric ozone layer. The Administrator shall, pursuant to subsection (c) of this section, add to such list all substances that the Administrator determines have an ozone depletion potential of 0.2 or greater.

(b) List of class II substances

Simultaneously with publication of the initial list of class I substances, the Administrator shall publish an initial list of class II substances, which shall contain the following substances:

hydrochlorofluorocarbon-21 (HCFC-21)
 hydrochlorofluorocarbon-22 (HCFC-22)
 hydrochlorofluorocarbon-31 (HCFC-31)
 hydrochlorofluorocarbon-121 (HCFC-121)
 hydrochlorofluorocarbon-122 (HCFC-122)
 hydrochlorofluorocarbon-123 (HCFC-123)
 hydrochlorofluorocarbon-124 (HCFC-124)
 hydrochlorofluorocarbon-131 (HCFC-131)
 hydrochlorofluorocarbon-132 (HCFC-132)
 hydrochlorofluorocarbon-133 (HCFC-133)
 hydrochlorofluorocarbon-141 (HCFC-141)
 hydrochlorofluorocarbon-142 (HCFC-142)
 hydrochlorofluorocarbon-221 (HCFC-221)
 hydrochlorofluorocarbon-222 (HCFC-222)
 hydrochlorofluorocarbon-223 (HCFC-223)
 hydrochlorofluorocarbon-224 (HCFC-224)
 hydrochlorofluorocarbon-225 (HCFC-225)
 hydrochlorofluorocarbon-226 (HCFC-226)
 hydrochlorofluorocarbon-231 (HCFC-231)
 hydrochlorofluorocarbon-232 (HCFC-232)
 hydrochlorofluorocarbon-233 (HCFC-233)
 hydrochlorofluorocarbon-234 (HCFC-234)
 hydrochlorofluorocarbon-235 (HCFC-235)
 hydrochlorofluorocarbon-241 (HCFC-241)
 hydrochlorofluorocarbon-242 (HCFC-242)
 hydrochlorofluorocarbon-243 (HCFC-243)
 hydrochlorofluorocarbon-244 (HCFC-244)
 hydrochlorofluorocarbon-251 (HCFC-251)
 hydrochlorofluorocarbon-252 (HCFC-252)
 hydrochlorofluorocarbon-253 (HCFC-253)
 hydrochlorofluorocarbon-261 (HCFC-261)
 hydrochlorofluorocarbon-262 (HCFC-262)
 hydrochlorofluorocarbon-271 (HCFC-271)

The initial list under this subsection shall also include the isomers of the substances listed above. Pursuant to subsection (c) of this section, the Administrator shall add to the list of class II substances any other substance that the Administrator finds is known or may reasonably be anticipated to cause or contribute to harmful effects on the stratospheric ozone layer.

(c) Additions to the lists

(1) The Administrator may add, by rule, in accordance with the criteria set forth in subsection (a) or (b) of this section, as the case may be, any substance to the list of class I or class II substances under subsection (a) or (b) of this section. For purposes of exchanges under section 7661f¹ of this title, whenever a substance is added to the list of class I substances the Administrator shall, to the extent consistent with the Montreal Protocol, assign such substance to existing Group I, II, III, IV, or V or place such substance in a new Group.

(2) Periodically, but not less frequently than every 3 years after November 15, 1990, the Ad-

ministrator shall list, by rule, as additional class I or class II substances those substances which the Administrator finds meet the criteria of subsection (a) or (b) of this section, as the case may be.

(3) At any time, any person may petition the Administrator to add a substance to the list of class I or class II substances. Pursuant to the criteria set forth in subsection (a) or (b) of this section as the case may be, within 180 days after receiving such a petition, the Administrator shall either propose to add the substance to such list or publish an explanation of the petition denial. In any case where the Administrator proposes to add a substance to such list, the Administrator shall add, by rule, (or make a final determination not to add) such substance to such list within 1 year after receiving such petition. Any petition under this paragraph shall include a showing by the petitioner that there are data on the substance adequate to support the petition. If the Administrator determines that information on the substance is not sufficient to make a determination under this paragraph, the Administrator shall use any authority available to the Administrator, under any law administered by the Administrator, to acquire such information.

(4) Only a class II substance which is added to the list of class I substances may be removed from the list of class II substances. No substance referred to in subsection (a) of this section, including methyl chloroform, may be removed from the list of class I substances.

(d) New listed substances

In the case of any substance added to the list of class I or class II substances after publication of the initial list of such substances under this section, the Administrator may extend any schedule or compliance deadline contained in section 7671c or 7671d of this title to a later date than specified in such sections if such schedule or deadline is unattainable, considering when such substance is added to the list. No extension under this subsection may extend the date for termination of production of any class I substance to a date more than 7 years after January 1 of the year after the year in which the substance is added to the list of class I substances. No extension under this subsection may extend the date for termination of production of any class II substance to a date more than 10 years after January 1 of the year after the year in which the substance is added to the list of class II substances.

(e) Ozone-depletion and global warming potential

Simultaneously with publication of the lists under this section and simultaneously with any addition to either of such lists, the Administrator shall assign to each listed substance a numerical value representing the substance's ozone-depletion potential. In addition, the Administrator shall publish the chlorine and bromine loading potential and the atmospheric lifetime of each listed substance. One year after November 15, 1990 (one year after the addition of a substance to either of such lists in the case of a substance added after the publication of the initial lists of such substances), and after notice

¹ So in original. Probably should be section "7671f".

and opportunity for public comment, the Administrator shall publish the global warming potential of each listed substance. The preceding sentence shall not be construed to be the basis of any additional regulation under this chapter. In the case of the substances referred to in table 1, the ozone-depletion potential shall be as specified in table 1, unless the Administrator adjusts the substance's ozone-depletion potential based on criteria referred to in section 7671(10) of this title:

TABLE 1

Substance	Ozone-depletion potential
chlorofluorocarbon-11 (CFC-11)	1.0
chlorofluorocarbon-12 (CFC-12)	1.0
chlorofluorocarbon-13 (CFC-13)	1.0
chlorofluorocarbon-111 (CFC-111)	1.0
chlorofluorocarbon-112 (CFC-112)	1.0
chlorofluorocarbon-113 (CFC-113)	0.8
chlorofluorocarbon-114 (CFC-114)	1.0
chlorofluorocarbon-115 (CFC-115)	0.6
chlorofluorocarbon-211 (CFC-211)	1.0
chlorofluorocarbon-212 (CFC-212)	1.0
chlorofluorocarbon-213 (CFC-213)	1.0
chlorofluorocarbon-214 (CFC-214)	1.0
chlorofluorocarbon-215 (CFC-215)	1.0
chlorofluorocarbon-216 (CFC-216)	1.0
chlorofluorocarbon-217 (CFC-217)	1.0
halon-1211	3.0
halon-1301	10.0
halon-2402	6.0
carbon tetrachloride	1.1
methyl chloroform	0.1
hydrochlorofluorocarbon-22 (HCFC-22)	0.05
hydrochlorofluorocarbon-123 (HCFC-123)	0.02
hydrochlorofluorocarbon-124 (HCFC-124)	0.02
hydrochlorofluorocarbon-141(b) (HCFC-141(b))	0.1
hydrochlorofluorocarbon-142(b) (HCFC-142(b))	0.06

Where the ozone-depletion potential of a substance is specified in the Montreal Protocol, the ozone-depletion potential specified for that substance under this section shall be consistent with the Montreal Protocol.

(July 14, 1955, ch. 360, title VI, § 602, as added Pub. L. 101-549, title VI, § 602(a), Nov. 15, 1990, 104 Stat. 2650.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7671, 7671f of this title.

§ 7671b. Monitoring and reporting requirements

(a) Regulations

Within 270 days after November 15, 1990, the Administrator shall amend the regulations of the Administrator in effect on such date regarding monitoring and reporting of class I and class II substances. Such amendments shall conform to the requirements of this section. The amended regulations shall include requirements with respect to the time and manner of monitoring and reporting as required under this section.

(b) Production, import, and export level reports

On a quarterly basis, or such other basis (not less than annually) as determined by the Administrator, each person who produced, imported, or

exported a class I or class II substance shall file a report with the Administrator setting forth the amount of the substance that such person produced, imported, and exported during the preceding reporting period. Each such report shall be signed and attested by a responsible officer. No such report shall be required from a person after April 1 of the calendar year after such person permanently ceases production, importation, and exportation of the substance and so notifies the Administrator in writing.

(c) Baseline reports for class I substances

Unless such information has previously been reported to the Administrator, on the date on which the first report under subsection (b) of this section is required to be filed, each person who produced, imported, or exported a class I substance (other than a substance added to the list of class I substances after the publication of the initial list of such substances under this section) shall file a report with the Administrator setting forth the amount of such substance that such person produced, imported, and exported during the baseline year. In the case of a substance added to the list of class I substances after publication of the initial list of such substances under this section, the regulations shall require that each person who produced, imported, or exported such substance shall file a report with the Administrator within 180 days after the date on which such substance is added to the list, setting forth the amount of the substance that such person produced, imported, and exported in the baseline year.

(d) Monitoring and reports to Congress

(1) The Administrator shall monitor and, not less often than every 3 years following November 15, 1990, submit a report to Congress on the production, use and consumption of class I and class II substances. Such report shall include data on domestic production, use and consumption, and an estimate of worldwide production, use and consumption of such substances. Not less frequently than every 6 years the Administrator shall report to Congress on the environmental and economic effects of any stratospheric ozone depletion.

(2) The Administrators of the National Aeronautics and Space Administration and the National Oceanic and Atmospheric Administration shall monitor, and not less often than every 3 years following November 15, 1990, submit a report to Congress on the current average tropospheric concentration of chlorine and bromine and on the level of stratospheric ozone depletion. Such reports shall include updated projections of—

- (A) peak chlorine loading;
- (B) the rate at which the atmospheric abundance of chlorine is projected to decrease after the year 2000; and
- (C) the date by which the atmospheric abundance of chlorine is projected to return to a level of two parts per billion.

Such updated projections shall be made on the basis of current international and domestic controls on substances covered by this subchapter as well as on the basis of such controls supplemented by a year 2000 global phase out of all

halocarbon emissions (the base case). It is the purpose of the Congress through the provisions of this section to monitor closely the production and consumption of class II substances to assure that the production and consumption of such substances will not:

(i) increase significantly the peak chlorine loading that is projected to occur under the base case established for purposes of this section;

(ii) reduce significantly the rate at which the atmospheric abundance of chlorine is projected to decrease under the base case; or

(iii) delay the date by which the average atmospheric concentration of chlorine is projected under the base case to return to a level of two parts per billion.

(e) Technology status report in 2015

The Administrator shall review, on a periodic basis, the progress being made in the development of alternative systems or products necessary to manufacture and operate appliances without class II substances. If the Administrator finds, after notice and opportunity for public comment, that as a result of technological development problems, the development of such alternative systems or products will not occur within the time necessary to provide for the manufacture of such equipment without such substances prior to the applicable deadlines under section 7671d of this title, the Administrator shall, not later than January 1, 2015, so inform the Congress.

(f) Emergency report

If, in consultation with the Administrators of the National Aeronautics and Space Administration and the National Oceanic and Atmospheric Administration, and after notice and opportunity for public comment, the Administrator determines that the global production, consumption, and use of class II substances are projected to contribute to an atmospheric chlorine loading in excess of the base case projections by more than $\frac{5}{10}$ ths parts per billion, the Administrator shall so inform the Congress immediately. The determination referred to in the preceding sentence shall be based on the monitoring under subsection (d) of this section and updated not less often than every 3 years.

(July 14, 1955, ch. 360, title VI, § 603, as added Pub. L. 101-549, title VI, § 602(a), Nov. 15, 1990, 104 Stat. 2653.)

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (d)(1) of this section relating to submittal of triennial report to Congress, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 12th item on page 162 of House Document No. 103-7.

METHANE STUDIES

Section 603 of Pub. L. 101-549 provided that:

“(a) ECONOMICALLY JUSTIFIED ACTIONS.—Not later than 2 years after enactment of this Act [Nov. 15, 1990], the Administrator shall prepare and submit a report to the Congress that identifies activities, substances, processes, or combinations thereof that could reduce methane emissions and that are economically and technologically justified with and without consideration of environmental benefit.

“(b) DOMESTIC METHANE SOURCE INVENTORY AND CONTROL.—Not later than 2 years after the enactment of this Act [Nov. 15, 1990], the Administrator, in consultation and coordination with the Secretary of Energy and the Secretary of Agriculture, shall prepare and submit to the Congress reports on each of the following:

“(1) Methane emissions associated with natural gas extraction, transportation, distribution, storage, and use. Such report shall include an inventory of methane emissions associated with such activities within the United States. Such emissions include, but are not limited to, accidental and intentional releases from natural gas and oil wells, pipelines, processing facilities, and gas burners. The report shall also include an inventory of methane generation with such activities.

“(2) Methane emissions associated with coal extraction, transportation, distribution, storage, and use. Such report shall include an inventory of methane emissions associated with such activities within the United States. Such emissions include, but are not limited to, accidental and intentional releases from mining shafts, degasification wells, gas recovery wells and equipment, and from the processing and use of coal. The report shall also include an inventory of methane generation with such activities.

“(3) Methane emissions associated with management of solid waste. Such report shall include an inventory of methane emissions associated with all forms of waste management in the United States, including storage, treatment, and disposal.

“(4) Methane emissions associated with agriculture. Such report shall include an inventory of methane emissions associated with rice and livestock production in the United States.

“(5) Methane emissions associated with biomass burning. Such report shall include an inventory of methane emissions associated with the intentional burning of agricultural wastes, wood, grasslands, and forests.

“(6) Other methane emissions associated with human activities. Such report shall identify and inventory other domestic sources of methane emissions that are deemed by the Administrator and other such agencies to be significant.

“(c) INTERNATIONAL STUDIES.—

“(1) METHANE EMISSIONS.—Not later than 2 years after the enactment of this Act [Nov. 15, 1990], the Administrator shall prepare and submit to the Congress a report on methane emissions from countries other than the United States. Such report shall include inventories of methane emissions associated with the activities listed in subsection (b).

“(2) PREVENTING INCREASES IN METHANE CONCENTRATIONS.—Not later than 2 years after the enactment of this Act [Nov. 15, 1990], the Administrator shall prepare and submit to the Congress a report that analyzes the potential for preventing an increase in atmospheric concentrations of methane from activities and sources in other countries. Such report shall identify and evaluate the technical options for reducing methane emission from each of the activities listed in subsection (b), as well as other activities or sources that are deemed by the Administrator in consultation with other relevant Federal agencies and departments to be significant and shall include an evaluation of costs. The report shall identify the emissions reductions that would need to be achieved to prevent increasing atmospheric concentrations of methane. The report shall also identify technology transfer programs that could promote methane emissions reductions in lesser developed countries.

“(d) NATURAL SOURCES.—Not later than 2 years after the enactment of this Act [Nov. 15, 1990], the Administrator shall prepare and submit to the Congress a report on—

“(1) methane emissions from biogenic sources such as (A) tropical, temperate, and subarctic forests, (B) tundra, and (C) freshwater and saltwater wetlands; and

“(2) the changes in methane emissions from biogenic sources that may occur as a result of potential increases in temperatures and atmospheric concentrations of carbon dioxide.

“(e) STUDY OF MEASURES TO LIMIT GROWTH IN METHANE CONCENTRATIONS.—Not later than 2 years after the completion of the studies in subsections (b), (c), and (d), the Administrator shall prepare and submit to the Congress a report that presents options outlining measures that could be implemented to stop or reduce the growth in atmospheric concentrations of methane from sources within the United States referred to in paragraphs (1) through (6) of subsection (b). This study shall identify and evaluate the technical options for reducing methane emissions from each of the activities listed in subsection (b), as well as other activities or sources deemed by such agencies to be significant, and shall include an evaluation of costs, technology, safety, energy, and other factors. The study shall be based on the other studies under this section. The study shall also identify programs of the United States and international lending agencies that could be used to induce lesser developed countries to undertake measures that will reduce methane emissions and the resource needs of such programs.

“(f) INFORMATION GATHERING.—In carrying out the studies under this section, the provisions and requirements of section 114 of the Clean Air Act [42 U.S.C. 7414] shall be available for purposes of obtaining information to carry out such studies.

“(g) CONSULTATION AND COORDINATION.—In preparing the studies under this section the Administrator shall consult and coordinate with the Secretary of Energy, the Administrators of the National Aeronautics and Space Administration and the National Oceanic and Atmospheric Administration, and the heads of other relevant Federal agencies and departments. In the case of the studies under subsections (a), (b), and (e), such consultation and coordination shall include the Secretary of Agriculture.”

§ 7671c. Phase-out of production and consumption of class I substances

(a) Production phase-out

Effective on January 1 of each year specified in Table 2, it shall be unlawful for any person to produce any class I substance in an annual quantity greater than the relevant percentage specified in Table 2. The percentages in Table 2 refer to a maximum allowable production as a percentage of the quantity of the substance produced by the person concerned in the baseline year.

TABLE 2

Date	Carbon tetrachloride	Methyl chloroform	Other class I substances
1991 ...	100%	100%	85%
1992 ...	90%	100%	80%
1993 ...	80%	90%	75%
1994 ...	70%	85%	65%
1995 ...	15%	70%	50%
1996 ...	15%	50%	40%
1997 ...	15%	50%	15%
1998 ...	15%	50%	15%
1999 ...	15%	50%	15%
2000 ...	.....	20% .....	.....
2001 ...	.....	20% .....	.....

(b) Termination of production of class I substances

Effective January 1, 2000 (January 1, 2002 in the case of methyl chloroform), it shall be unlawful for any person to produce any amount of a class I substance.

(c) Regulations regarding production and consumption of class I substances

The Administrator shall promulgate regulations within 10 months after November 15, 1990, phasing out the production of class I substances in accordance with this section and other applicable provisions of this subchapter. The Administrator shall also promulgate regulations to insure that the consumption of class I substances in the United States is phased out and terminated in accordance with the same schedule (subject to the same exceptions and other provisions) as is applicable to the phase-out and termination of production of class I substances under this subchapter.

(d) Exceptions for essential uses of methyl chloroform, medical devices, and aviation safety

(1) Essential uses of methyl chloroform

Notwithstanding the termination of production required by subsection (b) of this section, during the period beginning on January 1, 2002, and ending on January 1, 2005, the Administrator, after notice and opportunity for public comment, may, to the extent such action is consistent with the Montreal Protocol, authorize the production of limited quantities of methyl chloroform solely for use in essential applications (such as nondestructive testing for metal fatigue and corrosion of existing airplane engines and airplane parts susceptible to metal fatigue) for which no safe and effective substitute is available. Notwithstanding this paragraph, the authority to produce methyl chloroform for use in medical devices shall be provided in accordance with paragraph (2).

(2) Medical devices

Notwithstanding the termination of production required by subsection (b) of this section, the Administrator, after notice and opportunity for public comment, shall, to the extent such action is consistent with the Montreal Protocol, authorize the production of limited quantities of class I substances solely for use in medical devices if such authorization is determined by the Commissioner, in consultation with the Administrator, to be necessary for use in medical devices.

(3) Aviation safety

(A) Notwithstanding the termination of production required by subsection (b) of this section, the Administrator, after notice and opportunity for public comment, may, to the extent such action is consistent with the Montreal Protocol, authorize the production of limited quantities of halon-1211 (bromochlorodifluoromethane), halon-1301 (bromotrifluoromethane), and halon-2402 (dibromotetrafluoroethane) solely for purposes of aviation safety if the Administrator of the Federal Aviation Administration, in consultation with the Administrator, determines that no safe and effective substitute has been developed and that such authorization is necessary for aviation safety purposes.

(B) The Administrator of the Federal Aviation Administration shall, in consultation with the Administrator, examine whether safe

and effective substitutes for methyl chloroform or alternative techniques will be available for nondestructive testing for metal fatigue and corrosion of existing airplane engines and airplane parts susceptible to metal fatigue and whether an exception for such uses of methyl chloroform under this paragraph will be necessary for purposes of airline safety after January 1, 2005 and provide a report to Congress in 1998.

(4) Cap on certain exceptions

Under no circumstances may the authority set forth in paragraphs (1), (2), and (3) of subsection (d) of this section be applied to authorize any person to produce a class I substance in annual quantities greater than 10 percent of that produced by such person during the baseline year.

(5) Sanitation and food protection

To the extent consistent with the Montreal Protocol's quarantine and preshipment provisions, the Administrator shall exempt the production, importation, and consumption of methyl bromide to fumigate commodities entering or leaving the United States or any State (or political subdivision thereof) for purposes of compliance with Animal and Plant Health Inspection Service requirements or with any international, Federal, State, or local sanitation or food protection standard.

(6) Critical uses

To the extent consistent with the Montreal Protocol, the Administrator, after notice and the opportunity for public comment, and after consultation with other departments or instrumentalities of the Federal Government having regulatory authority related to methyl bromide, including the Secretary of Agriculture, may exempt the production, importation, and consumption of methyl bromide for critical uses.

(e) Developing countries

(1) Exception

Notwithstanding the phase-out and termination of production required under subsections (a) and (b) of this section, the Administrator, after notice and opportunity for public comment, may, consistent with the Montreal Protocol, authorize the production of limited quantities of a class I substance in excess of the amounts otherwise allowable under subsection (a) or (b) of this section, or both, solely for export to, and use in, developing countries that are Parties to the Montreal Protocol and are operating under article 5 of such Protocol. Any production authorized under this paragraph shall be solely for purposes of satisfying the basic domestic needs of such countries.

(2) Cap on exception

(A) Under no circumstances may the authority set forth in paragraph (1) be applied to authorize any person to produce a class I substance in any year for which a production percentage is specified in Table 2 of subsection (a) of this section in an annual quantity greater than the specified percentage, plus an amount

equal to 10 percent of the amount produced by such person in the baseline year.

(B) Under no circumstances may the authority set forth in paragraph (1) be applied to authorize any person to produce a class I substance in the applicable termination year referred to in subsection (b) of this section, or in any year thereafter, in an annual quantity greater than 15 percent of the baseline quantity of such substance produced by such person.

(C) An exception authorized under this subsection shall terminate no later than January 1, 2010 (2012 in the case of methyl chloroform).

(3) Methyl bromide

Notwithstanding the phaseout and termination of production of methyl bromide pursuant to subsection (h) of this section, the Administrator may, consistent with the Montreal Protocol, authorize the production of limited quantities of methyl bromide, solely for use in developing countries that are Parties to the Copenhagen Amendments to the Montreal Protocol.

(f) National security

The President may, to the extent such action is consistent with the Montreal Protocol, issue such orders regarding production and use of CFC-114 (chlorofluorocarbon-114), halon-1211, halon-1301, and halon-2402, at any specified site or facility or on any vessel as may be necessary to protect the national security interests of the United States if the President finds that adequate substitutes are not available and that the production and use of such substance are necessary to protect such national security interest. Such orders may include, where necessary to protect such interests, an exemption from any prohibition or requirement contained in this subchapter. The President shall notify the Congress within 30 days of the issuance of an order under this paragraph providing for any such exemption. Such notification shall include a statement of the reasons for the granting of the exemption. An exemption under this paragraph shall be for a specified period which may not exceed one year. Additional exemptions may be granted, each upon the President's issuance of a new order under this paragraph. Each such additional exemption shall be for a specified period which may not exceed one year. No exemption shall be granted under this paragraph due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation.

(g) Fire suppression and explosion prevention

(1) Notwithstanding the production phase-out set forth in subsection (a) of this section, the Administrator, after notice and opportunity for public comment, may, to the extent such action is consistent with the Montreal Protocol, authorize the production of limited quantities of halon-1211, halon-1301, and halon-2402 in excess of the amount otherwise permitted pursuant to the schedule under subsection (a) of this section solely for purposes of fire suppression or explosion prevention if the Administrator, in con-

sultation with the Administrator of the United States Fire Administration, determines that no safe and effective substitute has been developed and that such authorization is necessary for fire suppression or explosion prevention purposes. The Administrator shall not authorize production under this paragraph for purposes of fire safety or explosion prevention training or testing of fire suppression or explosion prevention equipment. In no event shall the Administrator grant an exception under this paragraph that permits production after December 31, 1999.

(2) The Administrator shall periodically monitor and assess the status of efforts to obtain substitutes for the substances referred to in paragraph (1) for purposes of fire suppression or explosion prevention and the probability of such substitutes being available by December 31, 1999. The Administrator, as part of such assessment, shall consider any relevant assessments under the Montreal Protocol and the actions of the Parties pursuant to Article 2B of the Montreal Protocol in identifying essential uses and in permitting a level of production or consumption that is necessary to satisfy such uses for which no adequate alternatives are available after December 31, 1999. The Administrator shall report to Congress the results of such assessment in 1994 and again in 1998.

(3) Notwithstanding the termination of production set forth in subsection (b) of this section, the Administrator, after notice and opportunity for public comment, may, to the extent consistent with the Montreal Protocol, authorize the production of limited quantities of halon-1211, halon-1301, and halon-2402 in the period after December 31, 1999, and before December 31, 2004, solely for purposes of fire suppression or explosion prevention in association with domestic production of crude oil and natural gas energy supplies on the North Slope of Alaska, if the Administrator, in consultation with the Administrator of the United States Fire Administration, determines that no safe and effective substitute has been developed and that such authorization is necessary for fire suppression and explosion prevention purposes. The Administrator shall not authorize production under the paragraph for purposes of fire safety or explosion prevention training or testing of fire suppression or explosion prevention equipment. In no event shall the Administrator authorize under this paragraph any person to produce any such halon in an amount greater than 3 percent of that produced by such person during the baseline year.

(h) Methyl bromide

Notwithstanding subsections (b) and (d) of this section, the Administrator shall not terminate production of methyl bromide prior to January 1, 2005. The Administrator shall promulgate rules for reductions in, and terminate the production, importation, and consumption of, methyl bromide under a schedule that is in accordance with, but not more stringent than, the phaseout schedule of the Montreal Protocol Treaty as in effect on October 21, 1998.

(July 14, 1955, ch. 360, title VI, § 604, as added Pub. L. 101-549, title VI, § 602(a), Nov. 15, 1990, 104 Stat. 2655; amended Pub. L. 105-277, div. A,

§ 101(a) [title VII, § 764], Oct. 21, 1998, 112 Stat. 2681, 2681-36.)

AMENDMENTS

1998—Subsec. (d)(5), (6). Pub. L. 105-277, § 101(a) [title VII, § 764(b)], added pars. (5) and (6).

Subsec. (e)(3). Pub. L. 105-277, § 101(a) [title VII, § 764(c)], added par. (3).

Subsec. (h). Pub. L. 105-277, § 101(a) [title VII, § 764(a)], added subsec. (h).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7671a, 7671e of this title.

§ 7671d. Phase-out of production and consumption of class II substances

(a) Restriction of use of class II substances

Effective January 1, 2015, it shall be unlawful for any person to introduce into interstate commerce or use any class II substance unless such substance—

(1) has been used, recovered, and recycled;

(2) is used and entirely consumed (except for trace quantities) in the production of other chemicals; or

(3) is used as a refrigerant in appliances manufactured prior to January 1, 2020.

As used in this subsection, the term “refrigerant” means any class II substance used for heat transfer in a refrigerating system.

(b) Production phase-out

(1) Effective January 1, 2015, it shall be unlawful for any person to produce any class II substance in an annual quantity greater than the quantity of such substance produced by such person during the baseline year.

(2) Effective January 1, 2030, it shall be unlawful for any person to produce any class II substance.

(c) Regulations regarding production and consumption of class II substances

By December 31, 1999, the Administrator shall promulgate regulations phasing out the production, and restricting the use, of class II substances in accordance with this section, subject to any acceleration of the phase-out of production under section 7671e of this title. The Administrator shall also promulgate regulations to insure that the consumption of class II substances in the United States is phased out and terminated in accordance with the same schedule (subject to the same exceptions and other provisions) as is applicable to the phase-out and termination of production of class II substances under this subchapter.

(d) Exceptions

(1) Medical devices

(A) In general

Notwithstanding the termination of production required under subsection (b)(2) of this section and the restriction on use referred to in subsection (a) of this section, the Administrator, after notice and opportunity for public comment, shall, to the extent such action is consistent with the Montreal Protocol, authorize the production and use of limited quantities of class II sub-

stances solely for purposes of use in medical devices if such authorization is determined by the Commissioner, in consultation with the Administrator, to be necessary for use in medical devices.

(B) Cap on exception

Under no circumstances may the authority set forth in subparagraph (A) be applied to authorize any person to produce a class II substance in annual quantities greater than 10 percent of that produced by such person during the baseline year.

(2) Developing countries

(A) In general

Notwithstanding the provisions of subsection (a) or (b) of this section, the Administrator, after notice and opportunity for public comment, may authorize the production of limited quantities of a class II substance in excess of the quantities otherwise permitted under such provisions solely for export to and use in developing countries that are Parties to the Montreal Protocol, as determined by the Administrator. Any production authorized under this subsection shall be solely for purposes of satisfying the basic domestic needs of such countries.

(B) Cap on exception

(i) Under no circumstances may the authority set forth in subparagraph (A) be applied to authorize any person to produce a class II substance in any year following the effective date of subsection (b)(1) of this section and before the year 2030 in annual quantities greater than 110 percent of the quantity of such substance produced by such person during the baseline year.

(ii) Under no circumstances may the authority set forth in subparagraph (A) be applied to authorize any person to produce a class II substance in the year 2030, or any year thereafter, in an annual quantity greater than 15 percent of the quantity of such substance produced by such person during the baseline year.

(iii) Each exception authorized under this paragraph shall terminate no later than January 1, 2040.

(July 14, 1955, ch. 360, title VI, § 605, as added Pub. L. 101-549, title VI, § 602(a), Nov. 15, 1990, 104 Stat. 2658.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7671a, 7671b, 7671e of this title.

§ 7671e. Accelerated schedule

(a) In general

The Administrator shall promulgate regulations, after notice and opportunity for public comment, which establish a schedule for phasing out the production and consumption of class I and class II substances (or use of class II substances) that is more stringent than set forth in section 7671c or 7671d of this title, or both, if—

(1) based on an assessment of credible current scientific information (including any assessment under the Montreal Protocol) regard-

ing harmful effects on the stratospheric ozone layer associated with a class I or class II substance, the Administrator determines that such more stringent schedule may be necessary to protect human health and the environment against such effects.

(2) based on the availability of substitutes for listed substances, the Administrator determines that such more stringent schedule is practicable, taking into account technological achievability, safety, and other relevant factors, or

(3) the Montreal Protocol is modified to include a schedule to control or reduce production, consumption, or use of any substance more rapidly than the applicable schedule under this subchapter.

In making any determination under paragraphs (1) and (2), the Administrator shall consider the status of the period remaining under the applicable schedule under this subchapter.

(b) Petition

Any person may petition the Administrator to promulgate regulations under this section. The Administrator shall grant or deny the petition within 180 days after receipt of any such petition. If the Administrator denies the petition, the Administrator shall publish an explanation of why the petition was denied. If the Administrator grants such petition, such final regulations shall be promulgated within 1 year. Any petition under this subsection shall include a showing by the petitioner that there are data adequate to support the petition. If the Administrator determines that information is not sufficient to make a determination under this subsection, the Administrator shall use any authority available to the Administrator, under any law administered by the Administrator, to acquire such information.

(July 14, 1955, ch. 360, title VI, § 606, as added Pub. L. 101-549, title VI, § 602(a), Nov. 15, 1990, 104 Stat. 2660.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7671d of this title.

§ 7671f. Exchange authority

(a) Transfers

The Administrator shall, within 10 months after November 15, 1990, promulgate rules under this subchapter providing for the issuance of allowances for the production of class I and II substances in accordance with the requirements of this subchapter and governing the transfer of such allowances. Such rules shall insure that the transactions under the authority of this section will result in greater total reductions in the production in each year of class I and class II substances than would occur in that year in the absence of such transactions.

(b) Interpollutant transfers

(1) The rules under this section shall permit a production allowance for a substance for any year to be transferred for a production allowance for another substance for the same year on an ozone depletion weighted basis.

(2) Allowances for substances in each group of class I substances (as listed pursuant to section 7671a of this title) may only be transferred for allowances for other substances in the same Group.

(3) The Administrator shall, as appropriate, establish groups of class II substances for trading purposes and assign class II substances to such groups. In the case of class II substances, allowances may only be transferred for allowances for other class II substances that are in the same Group.

(c) Trades with other persons

The rules under this section shall permit 2 or more persons to transfer production allowances (including interpollutant transfers which meet the requirements of subsections (a) and (b) of this section) if the transferor of such allowances will be subject, under such rules, to an enforceable and quantifiable reduction in annual production which—

- (1) exceeds the reduction otherwise applicable to the transferor under this subchapter,
- (2) exceeds the production allowances transferred to the transferee, and
- (3) would not have occurred in the absence of such transaction.

(d) Consumption

The rules under this section shall also provide for the issuance of consumption allowances in accordance with the requirements of this subchapter and for the trading of such allowances in the same manner as is applicable under this section to the trading of production allowances under this section.

(July 14, 1955, ch. 360, title VI, §607, as added Pub. L. 101-549, title VI, §602(a), Nov. 15, 1990, 104 Stat. 2660.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7671a of this title.

§ 7671g. National recycling and emission reduction program

(a) In general

(1) The Administrator shall, by not later than January 1, 1992, promulgate regulations establishing standards and requirements regarding the use and disposal of class I substances during the service, repair, or disposal of appliances and industrial process refrigeration. Such standards and requirements shall become effective not later than July 1, 1992.

(2) The Administrator shall, within 4 years after November 15, 1990, promulgate regulations establishing standards and requirements regarding use and disposal of class I and II substances not covered by paragraph (1), including the use and disposal of class II substances during service, repair, or disposal of appliances and industrial process refrigeration. Such standards and requirements shall become effective not later than 12 months after promulgation of the regulations.

(3) The regulations under this subsection shall include requirements that—

- (A) reduce the use and emission of such substances to the lowest achievable level, and

(B) maximize the recapture and recycling of such substances.

Such regulations may include requirements to use alternative substances (including substances which are not class I or class II substances) or to minimize use of class I or class II substances, or to promote the use of safe alternatives pursuant to section 7671k of this title or any combination of the foregoing.

(b) Safe disposal

The regulations under subsection (a) of this section shall establish standards and requirements for the safe disposal of class I and II substances. Such regulations shall include each of the following—

(1) Requirements that class I or class II substances contained in bulk in appliances, machines or other goods shall be removed from each such appliance, machine or other good prior to the disposal of such items or their delivery for recycling.

(2) Requirements that any appliance, machine or other good containing a class I or class II substance in bulk shall not be manufactured, sold, or distributed in interstate commerce or offered for sale or distribution in interstate commerce unless it is equipped with a servicing aperture or an equally effective design feature which will facilitate the recapture of such substance during service and repair or disposal of such item.

(3) Requirements that any product in which a class I or class II substance is incorporated so as to constitute an inherent element of such product shall be disposed of in a manner that reduces, to the maximum extent practicable, the release of such substance into the environment. If the Administrator determines that the application of this paragraph to any product would result in producing only insignificant environmental benefits, the Administrator shall include in such regulations an exception for such product.

(c) Prohibitions

(1) Effective July 1, 1992, it shall be unlawful for any person, in the course of maintaining, servicing, repairing, or disposing of an appliance or industrial process refrigeration, to knowingly vent or otherwise knowingly release or dispose of any class I or class II substance used as a refrigerant in such appliance (or industrial process refrigeration) in a manner which permits such substance to enter the environment. De minimis releases associated with good faith attempts to recapture and recycle or safely dispose of any such substance shall not be subject to the prohibition set forth in the preceding sentence.

(2) Effective 5 years after November 15, 1990, paragraph (1) shall also apply to the venting, release, or disposal of any substitute substance for a class I or class II substance by any person maintaining, servicing, repairing, or disposing of an appliance or industrial process refrigeration which contains and uses as a refrigerant any such substance, unless the Administrator determines that venting, releasing, or disposing of such substance does not pose a threat to the environment. For purposes of this paragraph, the term "appliance" includes any device which

contains and uses as a refrigerant a substitute substance and which is used for household or commercial purposes, including any air conditioner, refrigerator, chiller, or freezer.

(July 14, 1955, ch. 360, title VI, § 608, as added Pub. L. 101-549, title VI, § 602(a), Nov. 15, 1990, 104 Stat. 2661.)

§ 7671h. Servicing of motor vehicle air conditioners

(a) Regulations

Within 1 year after November 15, 1990, the Administrator shall promulgate regulations in accordance with this section establishing standards and requirements regarding the servicing of motor vehicle air conditioners.

(b) Definitions

As used in this section—

(1) The term “refrigerant” means any class I or class II substance used in a motor vehicle air conditioner. Effective 5 years after November 15, 1990, the term “refrigerant” shall also include any substitute substance.

(2)(A) The term “approved refrigerant recycling equipment” means equipment certified by the Administrator (or an independent standards testing organization approved by the Administrator) to meet the standards established by the Administrator and applicable to equipment for the extraction and reclamation of refrigerant from motor vehicle air conditioners. Such standards shall, at a minimum, be at least as stringent as the standards of the Society of Automotive Engineers in effect as of November 15, 1990, and applicable to such equipment (SAE standard J-1990).

(B) Equipment purchased before the proposal of regulations under this section shall be considered certified if it is substantially identical to equipment certified as provided in subparagraph (A).

(3) The term “properly using” means, with respect to approved refrigerant recycling equipment, using such equipment in conformity with standards established by the Administrator and applicable to the use of such equipment. Such standards shall, at a minimum, be at least as stringent as the standards of the Society of Automotive Engineers in effect as of November 15, 1990, and applicable to the use of such equipment (SAE standard J-1989).

(4) The term “properly trained and certified” means training and certification in the proper use of approved refrigerant recycling equipment for motor vehicle air conditioners in conformity with standards established by the Administrator and applicable to the performance of service on motor vehicle air conditioners. Such standards shall, at a minimum, be at least as stringent as specified, as of November 15, 1990, in SAE standard J-1989 under the certification program of the National Institute for Automotive Service Excellence (ASE) or under a similar program such as the training and certification program of the Mobile Air Conditioning Society (MACS).

(c) Servicing motor vehicle air conditioners

Effective January 1, 1992, no person repairing or servicing motor vehicles for consideration

may perform any service on a motor vehicle air conditioner involving the refrigerant for such air conditioner without properly using approved refrigerant recycling equipment and no such person may perform such service unless such person has been properly trained and certified. The requirements of the previous sentence shall not apply until January 1, 1993 in the case of a person repairing or servicing motor vehicles for consideration at an entity which performed service on fewer than 100 motor vehicle air conditioners during calendar year 1990 and if such person so certifies, pursuant to subsection (d)(2) of this section, to the Administrator by January 1, 1992.

(d) Certification

(1) Effective 2 years after November 15, 1990, each person performing service on motor vehicle air conditioners for consideration shall certify to the Administrator either—

(A) that such person has acquired, and is properly using, approved refrigerant recycling equipment in service on motor vehicle air conditioners involving refrigerant and that each individual authorized by such person to perform such service is properly trained and certified; or

(B) that such person is performing such service at an entity which serviced fewer than 100 motor vehicle air conditioners in 1991.

(2) Effective January 1, 1993, each person who certified under paragraph (1)(B) shall submit a certification under paragraph (1)(A).

(3) Each certification under this subsection shall contain the name and address of the person certifying under this subsection and the serial number of each unit of approved recycling equipment acquired by such person and shall be signed and attested by the owner or another responsible officer. Certifications under paragraph (1)(A) may be made by submitting the required information to the Administrator on a standard form provided by the manufacturer of certified refrigerant recycling equipment.

(e) Small containers of class I or class II substances

Effective 2 years after November 15, 1990, it shall be unlawful for any person to sell or distribute, or offer for sale or distribution, in interstate commerce to any person (other than a person performing service for consideration on motor vehicle air-conditioning systems in compliance with this section) any class I or class II substance that is suitable for use as a refrigerant in a motor vehicle air-conditioning system and that is in a container which contains less than 20 pounds of such refrigerant.

(July 14, 1955, ch. 360, title VI, § 609, as added Pub. L. 101-549, title VI, § 602(a), Nov. 15, 1990, 104 Stat. 2662.)

§ 7671i. Nonessential products containing chlorofluorocarbons

(a) Regulations

The Administrator shall promulgate regulations to carry out the requirements of this section within 1 year after November 15, 1990.

(b) Nonessential products

The regulations under this section shall identify nonessential products that release class I substances into the environment (including any release occurring during manufacture, use, storage, or disposal) and prohibit any person from selling or distributing any such product, or offering any such product for sale or distribution, in interstate commerce. At a minimum, such prohibition shall apply to—

(1) chlorofluorocarbon-propelled plastic party streamers and noise horns,

(2) chlorofluorocarbon-containing cleaning fluids for noncommercial electronic and photographic equipment, and

(3) other consumer products that are determined by the Administrator—

(A) to release class I substances into the environment (including any release occurring during manufacture, use, storage, or disposal), and

(B) to be nonessential.

In determining whether a product is nonessential, the Administrator shall consider the purpose or intended use of the product, the technological availability of substitutes for such product and for such class I substance, safety, health, and other relevant factors.

(c) Effective date

Effective 24 months after November 15, 1990, it shall be unlawful for any person to sell or distribute, or offer for sale or distribution, in interstate commerce any nonessential product to which regulations under subsection (a) of this section implementing subsection (b) of this section are applicable.

(d) Other products

(1) Effective January 1, 1994, it shall be unlawful for any person to sell or distribute, or offer for sale or distribution, in interstate commerce—

(A) any aerosol product or other pressurized dispenser which contains a class II substance; or

(B) any plastic foam product which contains, or is manufactured with, a class II substance.

(2) The Administrator is authorized to grant exceptions from the prohibition under subparagraph (A) of paragraph (1) where—

(A) the use of the aerosol product or pressurized dispenser is determined by the Administrator to be essential as a result of flammability or worker safety concerns, and

(B) the only available alternative to use of a class II substance is use of a class I substance which legally could be substituted for such class II substance.

(3) Subparagraph (B) of paragraph (1) shall not apply to—

(A) a foam insulation product, or

(B) an integral skin, rigid, or semi-rigid foam utilized to provide for motor vehicle safety in accordance with Federal Motor Vehicle Safety Standards where no adequate substitute substance (other than a class I or class II substance) is practicable for effectively meeting such Standards.

(e) Medical devices

Nothing in this section shall apply to any medical device as defined in section 7671(8) of this title.

(July 14, 1955, ch. 360, title VI, §610, as added Pub. L. 101-549, title VI, §602(a), Nov. 15, 1990, 104 Stat. 2664.)

§ 7671j. Labeling**(a) Regulations**

The Administrator shall promulgate regulations to implement the labeling requirements of this section within 18 months after November 15, 1990, after notice and opportunity for public comment.

(b) Containers containing class I or class II substances and products containing class I substances

Effective 30 months after November 15, 1990, no container in which a class I or class II substance is stored or transported, and no product containing a class I substance, shall be introduced into interstate commerce unless it bears a clearly legible and conspicuous label stating:

“Warning: Contains [insert name of substance], a substance which harms public health and environment by destroying ozone in the upper atmosphere”¹.

(c) Products containing class II substances

(1) After 30 months after November 15, 1990, and before January 1, 2015, no product containing a class II substance shall be introduced into interstate commerce unless it bears the label referred to in subsection (b) of this section if the Administrator determines, after notice and opportunity for public comment, that there are substitute products or manufacturing processes (A) that do not rely on the use of such class II substance, (B) that reduce the overall risk to human health and the environment, and (C) that are currently or potentially available.

(2) Effective January 1, 2015, the requirements of subsection (b) of this section shall apply to all products containing a class II substance.

(d) Products manufactured with class I and class II substances

(1) In the case of a class II substance, after 30 months after November 15, 1990, and before January 1, 2015, if the Administrator, after notice and opportunity for public comment, makes the determination referred to in subsection (c) of this section with respect to a product manufactured with a process that uses such class II substance, no such product shall be introduced into interstate commerce unless it bears a clearly legible and conspicuous label stating:

“Warning: Manufactured with [insert name of substance], a substance which harms public health and environment by destroying ozone in the upper atmosphere”¹

(2) In the case of a class I substance, effective 30 months after November 15, 1990, and before January 1, 2015, the labeling requirements of this subsection shall apply to all products manufactured with a process that uses such class I

¹ So in original. Probably should be followed by a period.

substance unless the Administrator determines that there are no substitute products or manufacturing processes that (A) do not rely on the use of such class I substance, (B) reduce the overall risk to human health and the environment, and (C) are currently or potentially available.

(e) Petitions

(1) Any person may, at any time after 18 months after November 15, 1990, petition the Administrator to apply the requirements of this section to a product containing a class II substance or a product manufactured with a class I or II substance which is not otherwise subject to such requirements. Within 180 days after receiving such petition, the Administrator shall, pursuant to the criteria set forth in subsection (c) of this section, either propose to apply the requirements of this section to such product or publish an explanation of the petition denial. If the Administrator proposes to apply such requirements to such product, the Administrator shall, by rule, render a final determination pursuant to such criteria within 1 year after receiving such petition.

(2) Any petition under this paragraph² shall include a showing by the petitioner that there are data on the product adequate to support the petition.

(3) If the Administrator determines that information on the product is not sufficient to make the required determination the Administrator shall use any authority available to the Administrator under any law administered by the Administrator to acquire such information.

(4) In the case of a product determined by the Administrator, upon petition or on the Administrator's own motion, to be subject to the requirements of this section, the Administrator shall establish an effective date for such requirements. The effective date shall be 1 year after such determination or 30 months after November 15, 1990, whichever is later.

(5) Effective January 1, 2015, the labeling requirements of this subsection³ shall apply to all products manufactured with a process that uses a class I or class II substance.

(f) Relationship to other law

(1) The labeling requirements of this section shall not constitute, in whole or part, a defense to liability or a cause for reduction in damages in any suit, whether civil or criminal, brought under any law, whether Federal or State, other than a suit for failure to comply with the labeling requirements of this section.

(2) No other approval of such label by the Administrator under any other law administered by the Administrator shall be required with respect to the labeling requirements of this section.

(July 14, 1955, ch. 360, title VI, § 611, as added Pub. L. 101-549, title VI, § 602(a), Nov. 15, 1990, 104 Stat. 2665.)

² So in original. Probably should be "paragraph".

³ So in original. Probably should be "section".

§ 7671k. Safe alternatives policy

(a) Policy

To the maximum extent practicable, class I and class II substances shall be replaced by chemicals, product substitutes, or alternative manufacturing processes that reduce overall risks to human health and the environment.

(b) Reviews and reports

The Administrator shall—

(1) in consultation and coordination with interested members of the public and the heads of relevant Federal agencies and departments, recommend Federal research programs and other activities to assist in identifying alternatives to the use of class I and class II substances as refrigerants, solvents, fire retardants, foam blowing agents, and other commercial applications and in achieving a transition to such alternatives, and, where appropriate, seek to maximize the use of Federal research facilities and resources to assist users of class I and class II substances in identifying and developing alternatives to the use of such substances as refrigerants, solvents, fire retardants, foam blowing agents, and other commercial applications;

(2) examine in consultation and coordination with the Secretary of Defense and the heads of other relevant Federal agencies and departments, including the General Services Administration, Federal procurement practices with respect to class I and class II substances and recommend measures to promote the transition by the Federal Government, as expeditiously as possible, to the use of safe substitutes;

(3) specify initiatives, including appropriate intergovernmental, international, and commercial information and technology transfers, to promote the development and use of safe substitutes for class I and class II substances, including alternative chemicals, product substitutes, and alternative manufacturing processes; and

(4) maintain a public clearinghouse of alternative chemicals, product substitutes, and alternative manufacturing processes that are available for products and manufacturing processes which use class I and class II substances.

(c) Alternatives for class I or II substances

Within 2 years after November 15, 1990, the Administrator shall promulgate rules under this section providing that it shall be unlawful to replace any class I or class II substance with any substitute substance which the Administrator determines may present adverse effects to human health or the environment, where the Administrator has identified an alternative to such replacement that—

(1) reduces the overall risk to human health and the environment; and

(2) is currently or potentially available.

The Administrator shall publish a list of (A) the substitutes prohibited under this subsection for specific uses and (B) the safe alternatives identified under this subsection for specific uses.

(d) Right to petition

Any person may petition the Administrator to add a substance to the lists under subsection (c)

of this section or to remove a substance from either of such lists. The Administrator shall grant or deny the petition within 90 days after receipt of any such petition. If the Administrator denies the petition, the Administrator shall publish an explanation of why the petition was denied. If the Administrator grants such petition the Administrator shall publish such revised list within 6 months thereafter. Any petition under this subsection shall include a showing by the petitioner that there are data on the substance adequate to support the petition. If the Administrator determines that information on the substance is not sufficient to make a determination under this subsection, the Administrator shall use any authority available to the Administrator, under any law administered by the Administrator, to acquire such information.

(e) Studies and notification

The Administrator shall require any person who produces a chemical substitute for a class I substance to provide the Administrator with such person's unpublished health and safety studies on such substitute and require producers to notify the Administrator not less than 90 days before new or existing chemicals are introduced into interstate commerce for significant new uses as substitutes for a class I substance. This subsection shall be subject to section 7414(c) of this title.

(July 14, 1955, ch. 360, title VI, § 612, as added Pub. L. 101-549, title VI, § 602(a), Nov. 15, 1990, 104 Stat. 2667.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7671g, 7671l of this title.

§ 7671l. Federal procurement

Not later than 18 months after November 15, 1990, the Administrator, in consultation with the Administrator of the General Services Administration and the Secretary of Defense, shall promulgate regulations requiring each department, agency, and instrumentality of the United States to conform its procurement regulations to the policies and requirements of this subchapter and to maximize the substitution of safe alternatives identified under section 7671k of this title for class I and class II substances. Not later than 30 months after November 15, 1990, each department, agency, and instrumentality of the United States shall so conform its procurement regulations and certify to the President that its regulations have been modified in accordance with this section.

(July 14, 1955, ch. 360, title VI, § 613, as added Pub. L. 101-549, title VI, § 602(a), Nov. 15, 1990, 104 Stat. 2668.)

EXECUTIVE ORDER No. 12843

Ex. Ord. No. 12843, Apr. 21, 1993, 58 F.R. 21881, which provided for Federal agencies to implement policies and programs to minimize procurement of ozone-depleting substances, was revoked by Ex. Ord. No. 13148, § 901, Apr. 21, 2000, 65 F.R. 24604, set out as a note under section 4321 of this title.

§ 7671m. Relationship to other laws

(a) State laws

Notwithstanding section 7416 of this title, during the 2-year period beginning on November 15, 1990, no State or local government may enforce any requirement concerning the design of any new or recalled appliance for the purpose of protecting the stratospheric ozone layer.

(b) Montreal Protocol

This subchapter as added by the Clean Air Act Amendments of 1990 shall be construed, interpreted, and applied as a supplement to the terms and conditions of the Montreal Protocol, as provided in Article 2, paragraph 11 thereof, and shall not be construed, interpreted, or applied to abrogate the responsibilities or obligations of the United States to implement fully the provisions of the Montreal Protocol. In the case of conflict between any provision of this subchapter and any provision of the Montreal Protocol, the more stringent provision shall govern. Nothing in this subchapter shall be construed, interpreted, or applied to affect the authority or responsibility of the Administrator to implement Article 4 of the Montreal Protocol with other appropriate agencies.

(c) Technology export and overseas investment

Upon November 15, 1990, the President shall—

(1) prohibit the export of technologies used to produce a class I substance;

(2) prohibit direct or indirect investments by any person in facilities designed to produce a class I or class II substance in nations that are not parties to the Montreal Protocol; and

(3) direct that no agency of the government provide bilateral or multilateral subsidies, aids, credits, guarantees, or insurance programs, for the purpose of producing any class I substance.

(July 14, 1955, ch. 360, title VI, § 614, as added Pub. L. 101-549, title VI, § 602(a), Nov. 15, 1990, 104 Stat. 2668.)

REFERENCES IN TEXT

The Clean Air Act Amendments of 1990, referred to in subsec. (b), probably means Pub. L. 101-549, Nov. 15, 1990, 104 Stat. 2399. For complete classification of this Act to the Code, see Short Title of 1990 Amendment note set out under section 7401 of this title and Tables.

§ 7671n. Authority of Administrator

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

(July 14, 1955, ch. 360, title VI, § 615, as added Pub. L. 101-549, title VI, § 602(a), Nov. 15, 1990, 104 Stat. 2669.)

§ 7671o. Transfers among Parties to Montreal Protocol

(a) In general

Consistent with the Montreal Protocol, the United States may engage in transfers with other Parties to the Protocol under the following conditions:

(1) The United States may transfer production allowances to another Party if, at the time of such transfer, the Administrator establishes revised production limits for the United States such that the aggregate national United States production permitted under the revised production limits equals the lesser of (A) the maximum production level permitted for the substance or substances concerned in the transfer year under the Protocol minus the production allowances transferred, (B) the maximum production level permitted for the substance or substances concerned in the transfer year under applicable domestic law minus the production allowances transferred, or (C) the average of the actual national production level of the substance or substances concerned for the 3 years prior to the transfer minus the production allowances transferred.

(2) The United States may acquire production allowances from another Party if, at the time of such transfer, the Administrator finds that the other Party has revised its domestic production limits in the same manner as provided with respect to transfers by the United States in this subsection.

(b) Effect of transfers on production limits

The Administrator is authorized to reduce the production limits established under this chapter as required as a prerequisite to transfers under paragraph (1) of subsection (a) of this section or to increase production limits established under this chapter to reflect production allowances acquired under a transfer under paragraph (2) of subsection (a) of this section.

(c) Regulations

The Administrator shall promulgate, within 2 years after November 15, 1990, regulations to implement this section.

(d) "Applicable domestic law" defined

In the case of the United States, the term "applicable domestic law" means this chapter.

(July 14, 1955, ch. 360, title VI, § 616, as added Pub. L. 101-549, title VI, § 602(a), Nov. 15, 1990, 104 Stat. 2669.)

§ 7671p. International cooperation

(a) In general

The President shall undertake to enter into international agreements to foster cooperative research which complements studies and research authorized by this subchapter, and to develop standards and regulations which protect the stratosphere consistent with regulations applicable within the United States. For these purposes the President through the Secretary of State and the Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs, shall negotiate multilateral

treaties, conventions, resolutions, or other agreements, and formulate, present, or support proposals at the United Nations and other appropriate international forums and shall report to the Congress periodically on efforts to arrive at such agreements.

(b) Assistance to developing countries

The Administrator, in consultation with the Secretary of State, shall support global participation in the Montreal Protocol by providing technical and financial assistance to developing countries that are Parties to the Montreal Protocol and operating under article 5 of the Protocol. There are authorized to be appropriated not more than \$30,000,000 to carry out this section in fiscal years 1991, 1992 and 1993 and such sums as may be necessary in fiscal years 1994 and 1995. If China and India become Parties to the Montreal Protocol, there are authorized to be appropriated not more than an additional \$30,000,000 to carry out this section in fiscal years 1991, 1992, and 1993.

(July 14, 1955, ch. 360, title VI, § 617, as added Pub. L. 101-549, title VI, § 602(a), Nov. 15, 1990, 104 Stat. 2669.)

AUTHORITY OF SECRETARY OF STATE

Except as otherwise provided, Secretary of State to have and exercise any authority vested by law in any official or office of Department of State and references to such officials or offices deemed to refer to Secretary of State or Department of State, as appropriate, see section 2651a of Title 22, Foreign Relations and Intercourse, and section 161(d) of Pub. L. 103-236, set out as a note under section 2651a of Title 22.

§ 7671q. Miscellaneous provisions

For purposes of section 7416 of this title, requirements concerning the areas addressed by this subchapter for the protection of the stratosphere against ozone layer depletion shall be treated as requirements for the control and abatement of air pollution. For purposes of section 7418 of this title, the requirements of this subchapter and corresponding State, interstate, and local requirements, administrative authority, and process, and sanctions respecting the protection of the stratospheric ozone layer shall be treated as requirements for the control and abatement of air pollution within the meaning of section 7418 of this title.

(July 14, 1955, ch. 360, title VI, § 618, as added Pub. L. 101-549, title VI, § 602(a), Nov. 15, 1990, 104 Stat. 2670.)

CHAPTER 86—EARTHQUAKE HAZARDS REDUCTION

Sec.	
7701.	Congressional findings.
7702.	Congressional statement of purpose.
7703.	Definitions.
7704.	National Earthquake Hazards Reduction Program.
	(a) Establishment.
	(b) Responsibilities of Program agencies.
	(c) Budget coordination.
7704a.	Report on seismic safety property standards.
	(a) Authority.
	(b) Standards.
	(c) Consultation.
7705, 7705a.	Repealed.

- Sec.
7705b. Seismic standards.
 (a) Buildings.
 (b) Lifelines.
- 7705c. Acceptance of gifts.
 (a) Authority.
 (b) Criteria.
- 7705d. Repealed.
- 7705e. Post-earthquake investigations program.
7706. Authorization of appropriations.
 (a) General authorization for program.
 (b) United States Geological Survey.
 (c) National Science Foundation.
 (d) National Institute of Standards and Technology.
7707. Advanced National Seismic Research and Monitoring System.
 (a) Establishment.
 (b) Management plan.
 (c) Authorization of appropriations.
7708. Network for Earthquake Engineering Simulation.
 (a) Establishment.
 (b) Authorization of appropriations.
7709. Scientific Earthquake Studies Advisory Committee.
 (a) Establishment.
 (b) Organization.
 (c) Meetings.
 (d) Duties.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 7704a of this title; title 15 section 7301.

§ 7701. Congressional findings

The Congress finds and declares the following:

(1) All 50 States are vulnerable to the hazards of earthquakes, and at least 39 of them are subject to major or moderate seismic risk, including Alaska, California, Hawaii, Illinois, Massachusetts, Missouri, Montana, Nevada, New Jersey, New York, South Carolina, Utah, and Washington. A large portion of the population of the United States lives in areas vulnerable to earthquake hazards.

(2) Earthquakes have caused, and can cause in the future, enormous loss of life, injury, destruction of property, and economic and social disruption. With respect to future earthquakes, such loss, destruction, and disruption can be substantially reduced through the development and implementation of earthquake hazards reduction measures, including (A) improved design and construction methods and practices, (B) land-use controls and redevelopment, (C) prediction techniques and early-warning systems, (D) coordinated emergency preparedness plans, and (E) public education and involvement programs.

(3) An expertly staffed and adequately financed earthquake hazards reduction program, based on Federal, State, local, and private research, planning, decisionmaking, and contributions would reduce the risk of such loss, destruction, and disruption in seismic areas by an amount far greater than the cost of such program.

(4) A well-funded seismological research program in earthquake prediction could provide data adequate for the design, of an operational system that could predict accurately the time, place, magnitude, and physical effects of earthquakes in selected areas of the United States.

(5) The geological study of active faults and features can reveal how recently and how frequently major earthquakes have occurred on those faults and how much risk they pose. Such long-term seismic risk assessments are needed in virtually every aspect of earthquake hazards management, whether emergency planning, public regulation, detailed building design, insurance rating, or investment decision.

(6) The vulnerability of buildings, lifelines, public works, and industrial and emergency facilities can be reduced through proper earthquake resistant design and construction practices. The economy and efficacy of such procedures can be substantially increased through research and development.

(7) Programs and practices of departments and agencies of the United States are important to the communities they serve; some functions, such as emergency communications and national defense, and lifelines, such as dams, bridges, and public works, must remain in service during and after an earthquake. Federally owned, operated, and influenced structures and lifelines should serve as models for how to reduce and minimize hazards to the community.

(8) The implementation of earthquake hazards reduction measures would, as an added benefit, also reduce the risk of loss, destruction, and disruption from other natural hazards and manmade hazards, including hurricanes, tornadoes, accidents, explosions, landslides, building and structural cave-ins, and fires.

(9) Reduction of loss, destruction, and disruption from earthquakes will depend on the actions of individuals, and organizations in the private sector and governmental units at Federal, State, and local levels. The current capability to transfer knowledge and information to these sectors is insufficient. Improved mechanisms are needed to translate existing information and research findings into reasonable and usable specifications, criteria, and practices so that individuals, organizations, and governmental units may make informed decisions and take appropriate actions.

(10) Severe earthquakes are a worldwide problem. Since damaging earthquakes occur infrequently in any one nation, international cooperation is desirable for mutual learning from limited experiences.

(11) An effective Federal program in earthquake hazards reduction will require input from and review by persons outside the Federal Government expert in the sciences of earthquake hazards reduction and in the practical application of earthquake hazards reduction measures.

(Pub. L. 95-124, § 2, Oct. 7, 1977, 91 Stat. 1098; Pub. L. 101-614, § 2, Nov. 16, 1990, 104 Stat. 3231.)

AMENDMENTS

1990—Pars. (5) to (11). Pub. L. 101-614 added pars. (5) to (7), struck out former pars. (5) and (6), and redesignated former pars. (7) to (10) as (8) to (11), respectively. Prior to amendment, pars. (5) and (6) read as follows:

“(5) An operational earthquake prediction system can produce significant social, economic, legal, and political consequences.

“(6) There is a scientific basis for hypothesizing that major earthquakes may be moderated, in at least some seismic areas, by application of the findings of earthquake control and seismological research.”

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106-503, title II, §201, Nov. 13, 2000, 114 Stat. 2304, provided that: “This title [enacting sections 7707 to 7709 of this title, amending sections 7703, 7704, and 7706 of this title, repealing section 7705d of this title, enacting provisions set out as a note under this section, and amending provisions set out as a note under section 7704 of this title] may be cited as the ‘Earthquake Hazards Reduction Authorization Act of 2000’.”

SHORT TITLE OF 1990 AMENDMENT

Section 1 of Pub. L. 101-614 provided that: “This Act [enacting sections 7705a to 7705e, amending this section and sections 7702 to 7705, and 7706 of this title, and enacting provisions set out as notes under sections 7704, 7705b, and 7705e of this title] may be cited as the ‘National Earthquake Hazards Reduction Program Reauthorization Act’.”

SHORT TITLE

Section 1 of Pub. L. 95-124 provided: “That this Act [enacting this chapter] may be cited as the ‘Earthquake Hazards Reduction Act of 1977’.”

DELEGATION OF FUNCTIONS

Functions of President under Earthquake Hazards Reduction Act of 1977 delegated, transferred, or re-assigned to Secretary of Homeland Security pursuant to sections 1-104 and 4-204 of Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239, as amended, set out as a note under section 5195 of this title.

REPORT ON AT-RISK POPULATIONS

Pub. L. 106-503, title II, §207, Nov. 13, 2000, 114 Stat. 2307, provided that: “Not later than 1 year after the date of the enactment of this Act [Nov. 13, 2000], and after a period for public comment, the Director of the Federal Emergency Management Agency shall transmit to the Congress a report describing the elements of the Program that specifically address the needs of at-risk populations, including the elderly, persons with disabilities, non-English-speaking families, single-parent households, and the poor. Such report shall also identify additional actions that could be taken to address those needs and make recommendations for any additional legislative authority required to take such actions.”

§ 7702. Congressional statement of purpose

It is the purpose of the Congress in this chapter to reduce the risks of life and property from future earthquakes in the United States through the establishment and maintenance of an effective earthquake hazards reduction program. The objectives of such program shall include—

(1) the education of the public, including State and local officials, as to earthquake phenomena, the identification of locations and structures which are especially susceptible to earthquake damage, ways to reduce the adverse consequences of an earthquake, and related matters;

(2) the development of technologically and economically feasible design and construction methods and procedures to make new and existing structures, in areas of seismic risk, earthquake resistant, giving priority to the development of such methods and procedures for power generating plants, dams, hospitals, schools, public utilities and other lifelines,

public safety structures, high occupancy buildings, and other structures which are especially needed in time of disaster;

(3) the implementation to the greatest extent practicable, in all areas of high or moderate seismic risk, of a system (including personnel, technology, and procedures) for predicting damaging earthquakes and for identifying, evaluating, and accurately characterizing seismic hazards;

(4) the development, publication, and promotion, in conjunction with State and local officials and professional organizations, of model building codes and other means to encourage consideration of information about seismic risk in making decisions about land-use policy and construction activity;

(5) the development, in areas of seismic risk, of improved understanding of, and capability with respect to, earthquake-related issues, including methods of mitigating the risks from earthquakes, planning to prevent such risks, disseminating warnings of earthquakes, organization emergency services, and planning for reconstruction and redevelopment after an earthquake;

(6) the development of ways to increase the use of existing scientific and engineering knowledge to mitigate earthquake hazards; and

(7) the development of ways to assure the availability of affordable earthquake insurance.

(Pub. L. 95-124, §3, Oct. 7, 1977, 91 Stat. 1099; Pub. L. 101-614, §3, Nov. 16, 1990, 104 Stat. 3231.)

AMENDMENTS

1990—Pub. L. 101-614 inserted sentence at end, listing objectives of program.

§ 7703. Definitions

As used in this chapter, unless the context otherwise requires:

(1) The term “includes” and variants thereof should be read as if the phrase “but is not limited to” were also set forth.

(2) The term “Program” means the National Earthquake Hazards Reduction Program established under section 7704 of this title.

(3) The term “seismic” and variants thereof mean having to do with, or caused by earthquakes.

(4) The term “State” means each of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Mariana Islands, and any other territory or possession of the United States.

(5) The term “United States” means, when used in a geographical sense, all of the States as defined in paragraph (4) of this section.

(6) The term “lifelines” means public works and utilities, including transportation facilities and infrastructure, oil and gas pipelines, electrical power and communication facilities and infrastructure, and water supply and sewage treatment facilities.

(7) The term “Program agencies” means the Federal Emergency Management Agency, the

United States Geological Survey, the National Science Foundation, and the National Institute of Standards and Technology.

(Pub. L. 95-124, § 4, Oct. 7, 1977, 91 Stat. 1099; Pub. L. 101-614, § 4, Nov. 16, 1990, 104 Stat. 3232; Pub. L. 106-503, title II, § 209, Nov. 13, 2000, 114 Stat. 2308.)

AMENDMENTS

2000—Par. (6). Pub. L. 106-503 inserted “and infrastructure” after “communication facilities”.

1990—Par. (2). Pub. L. 101-614, § 4(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “The term ‘program’ means the earthquake hazards reduction program established under section 7704 of this title.”

Pars. (6), (7). Pub. L. 101-614, § 4(2), added pars. (6) and (7).

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 313(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 7704. National Earthquake Hazards Reduction Program

(a) Establishment

There is established a National Earthquake Hazards Reduction Program.

(b) Responsibilities of Program agencies

(1) Lead agency

The Federal Emergency Management Agency (hereafter in this chapter referred to as the “Agency”) shall have the primary responsibility for planning and coordinating the Program. In carrying out this paragraph, the Director of the Agency shall—

(A) ensure that the Program includes the necessary steps to promote the implementation of earthquake hazard reduction measures by Federal, State, and local governments, national standards and model building code organizations, architects and engineers, and others with a role in planning and constructing buildings and lifelines;

(B) prepare, in conjunction with the other Program agencies, a written plan for the Program, which shall include specific tasks and milestones for each Program agency, and which shall be submitted to the Congress and updated at such times as may be required by significant Program events, but in no event less frequently than every 3 years;

(C) prepare, in conjunction with the other Program agencies, a biennial report, to be submitted to the Congress within 90 days after the end of each even-numbered fiscal year, which shall describe the activities and achievements of the Program during the preceding two fiscal years;

(D) request the assistance of Federal agencies other than the Program agencies, as necessary to assist in carrying out this chapter; and

(E) work with the National Science Foundation, the National Institute of Standards and Technology, and the United States Geological Survey, to develop a comprehensive plan for earthquake engineering research to effectively use existing testing facilities and laboratories (existing at the time of the development of the plan), upgrade facilities and equipment as needed, and integrate new, innovative testing approaches to the research infrastructure in a systematic manner.

The principal official carrying out the responsibilities described in this paragraph shall be at a level no lower than that of Associate Director.

(2) Federal Emergency Management Agency

(A) Program responsibilities

In addition to the lead agency responsibilities described in paragraph (1), the Director of the Agency shall—

(i) operate a program of grants and technical assistance which would enable States to develop preparedness and response plans, prepare inventories and conduct seismic safety inspections of critical structures and lifelines, update building and zoning codes and ordinances to enhance seismic safety, increase earthquake awareness and education, and encourage the development of multi-State groups for such purposes;

(ii) prepare and execute, in conjunction with the Program agencies, the Department of Education, other Federal agencies, and private sector groups, a comprehensive earthquake education and public awareness program, to include development of materials and their wide dissemination to schools and the general public, and development of means of increasing public access to available locality-specific information that may assist the public in preparing for or responding to earthquakes;

(iii) prepare and disseminate widely, with the assistance of the National Institute of Standards and Technology, other Federal agencies, and private sector groups, information on building codes and practices for structures and lifelines;

(iv) develop, and coordinate the execution of, Federal interagency plans to respond to an earthquake, with specific plans for each high-risk area which ensure the availability of adequate emergency medical resources, search and rescue personnel and equipment, and emergency broadcast capability;

(v) develop approaches to combine measures for earthquake hazards reduction with measures for reduction of other natural and technological hazards; and

(vi) provide response recommendations to communities after an earthquake prediction has been made under paragraph (3)(D).

In addition, the Director of the Agency may enter into cooperative agreements or con-

tracts with States and local jurisdictions to establish demonstration projects on earthquake hazard mitigation, to link earthquake research and mitigation efforts with emergency management programs, or to prepare educational materials for national distribution.

(B) State assistance program criteria

In order to qualify for assistance under subparagraph (A)(i), a State must—

- (i) demonstrate that the assistance will result in enhanced seismic safety in the State;
- (ii) provide a share of the costs of the activities for which assistance is being given, in accordance with subparagraph (C); and
- (iii) meet such other requirements as the Director of the Agency shall prescribe.

(C) Non-Federal cost sharing

(i) In the case of any State which has received, before October 1, 1990, a grant from the Agency for activities under this chapter which included a requirement for cost sharing by matching such grant, any grant obtained from the Agency for activities under subparagraph (A)(i) after such date shall not include a requirement for cost sharing in an amount greater than 50 percent of the cost of the project for which the grant is made.

(ii) In the case of any State which has not received, before October 1, 1990, a grant from the Agency for activities under this chapter which included a requirement for cost sharing by matching such grant, any grant obtained from the Agency for activities under subparagraph (A)(i) after such date—

(I) shall not include a requirement for cost sharing for the first fiscal year of such a grant;

(II) shall not include a requirement for cost sharing in an amount greater than 25 percent of the cost of the project for which the grant is made for the second fiscal year of such grant, and any cost sharing requirement may be satisfied through in-kind contributions;

(III) shall not include a requirement for cost sharing in an amount greater than 35 percent of the cost of the project for which the grant is made for the third fiscal year of such grant, and any cost sharing requirement may be satisfied through in-kind contributions; and

(IV) shall not include a requirement for cost sharing in an amount greater than 50 percent of the cost of the project for which the grant is made for the fourth and subsequent fiscal years of such grant.

(3) United States Geological Survey

The United States Geological Survey shall conduct research necessary to characterize and identify earthquake hazards, assess earthquake risks, monitor seismic activity, and improve earthquake predictions. In carrying out this paragraph, the Director of the United States Geological Survey shall—

- (A) conduct a systematic assessment of the seismic risks in each region of the Nation prone to earthquakes, including, where

appropriate, the establishment and operation of intensive monitoring projects on hazardous faults, seismic microzonation studies in urban and other developed areas where earthquake risk is determined to be significant, and engineering seismology studies;

(B) work with officials of State and local governments to ensure that they are knowledgeable about the specific seismic risks in their areas;

(C) develop standard procedures, in consultation with the Agency, for issuing earthquake predictions, including aftershock advisories;

(D) issue when necessary, and notify the Director of the Agency of, an earthquake prediction or other earthquake advisory, which may be evaluated by the National Earthquake Prediction Evaluation Council, which shall be exempt from the requirements of section 10(a)(2) of the Federal Advisory Committee Act when meeting for such purposes;

(E) establish, using existing facilities, a Center for the International Exchange of Earthquake Information which shall—

(i) promote the exchange of information on earthquake research and earthquake preparedness between the United States and other nations;

(ii) maintain a library containing selected reports, research papers, and data produced through the Program;

(iii) answer requests from other nations for information on United States earthquake research and earthquake preparedness programs; and

(iv) direct foreign requests to the agency involved in the Program which is best able to respond to the request;

(F) operate a National Seismic Network;

(G) support regional seismic networks, which shall complement the National Seismic Network; and

(H) work with the National Science Foundation, the Federal Emergency Management Agency, and the National Institute of Standards and Technology to develop a comprehensive plan for earthquake engineering research to effectively use existing testing facilities and laboratories (in existence at the time of the development of the plan), upgrade facilities and equipment as needed, and integrate new, innovative testing approaches to the research infrastructure in a systematic manner.

(4) National Science Foundation

The National Science Foundation shall be responsible for funding research on earth sciences to improve the understanding of the causes and behavior of earthquakes, on earthquake engineering, and on human response to earthquakes. In carrying out this paragraph, the Director of the National Science Foundation shall—

- (A) encourage prompt dissemination of significant findings, sharing of data, samples, physical collections, and other supporting materials, and development of intellectual

property so research results can be used by appropriate organizations to mitigate earthquake damage;

(B) in addition to supporting individual investigators, support university research consortia and centers for research in geosciences and in earthquake engineering;

(C) work closely with the United States Geological Survey to identify geographic regions of national concern that should be the focus of targeted solicitations for earthquake-related research proposals;

(D) emphasize, in earthquake engineering research, development of economically feasible methods to retrofit existing buildings and to protect lifelines to mitigate earthquake damage;

(E) support research that studies the political, economic, and social factors that influence the implementation of hazard reduction measures; and

(F) develop, in conjunction with the Federal Emergency Management Agency, the National Institute of Standards and Technology, and the United States Geological Survey, a comprehensive plan for earthquake engineering research to effectively use existing testing facilities and laboratories (in existence at the time of the development of the plan), upgrade facilities and equipment as needed, and integrate new, innovative testing approaches to the research infrastructure in a systematic manner.

(5) National Institute of Standards and Technology

The National Institute of Standards and Technology shall be responsible for carrying out research and development to improve building codes and standards and practices for structures and lifelines. In carrying out this paragraph, the Director of the National Institute of Standards and Technology shall—

(A) work closely with national standards and model building code organizations, in conjunction with the Agency, to promote the implementation of research results;

(B) promote better building practices among architects and engineers;

(C) work closely with national standards organizations to develop seismic safety standards and practices for new and existing lifelines; and

(D) work with the National Science Foundation, the Federal Emergency Management Agency, and the United States Geological Survey to develop a comprehensive plan for earthquake engineering research to effectively use existing testing facilities and laboratories (in existence at the time of the development of the plan), upgrade facilities and equipment as needed, and integrate new, innovative testing approaches to the research infrastructure in a systematic manner.

(c) Budget coordination

(1) Guidance

The Agency shall each year provide guidance to the other Program agencies concerning the preparation of requests for appropriations for

activities related to the Program, and shall prepare, in conjunction with the other Program agencies, an annual Program budget to be submitted to the Office of Management and Budget.

(2) Reports

Each Program agency shall include with its annual request for appropriations submitted to the Office of Management and Budget a report that—

(A) identifies each element of the proposed Program activities of the agency;

(B) specifies how each of these activities contributes to the Program; and

(C) states the portion of its request for appropriations allocated to each element of the Program.

(Pub. L. 95-124, § 5, Oct. 7, 1977, 91 Stat. 1099; Pub. L. 96-472, title I, § 101, Oct. 19, 1980, 94 Stat. 2257; Pub. L. 99-105, §§ 5, 6, Sept. 30, 1985, 99 Stat. 475; Pub. L. 100-252, § 2, Feb. 29, 1988, 102 Stat. 18; Pub. L. 100-418, title V, § 5115(c), Aug. 23, 1988, 102 Stat. 1433; Pub. L. 100-707, title I, § 109(u), Nov. 23, 1988, 102 Stat. 4710; Pub. L. 101-614, § 5, Nov. 16, 1990, 104 Stat. 3232; Pub. L. 105-47, § 3, Oct. 1, 1997, 111 Stat. 1162; Pub. L. 106-503, title II, §§ 206, 208, Nov. 13, 2000, 114 Stat. 2307.)

REFERENCES IN TEXT

Section 10(a)(2) of the Federal Advisory Committee Act, referred to in subsec. (b)(3)(D), is section 10(a)(2) of Pub. L. 92-463, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

2000—Subsec. (b)(1). Pub. L. 106-503, § 206(1), redesignated subpars. (B) to (F) as (A) to (E), respectively, and struck out former subpar. (A) which read as follows: “prepare, in conjunction with the other Program agencies, an annual budget for the Program to be submitted to the Office of Management and Budget;”.

Subsec. (b)(2)(A)(ii). Pub. L. 106-503, § 208, inserted before semicolon at end “, and development of means of increasing public access to available locality-specific information that may assist the public in preparing for or responding to earthquakes”.

Subsec. (c). Pub. L. 106-503, § 206(2), added subsec. (c). 1997—Subsec. (b)(1)(F). Pub. L. 105-47, § 3(b), added subpar. (F).

Subsec. (b)(3)(H). Pub. L. 105-47, § 3(c), added subpar. (H).

Subsec. (b)(4)(F). Pub. L. 105-47, § 3(a), added subpar. (F).

Subsec. (b)(5)(D). Pub. L. 105-47, § 3(d), added subpar. (D).

1990—Pub. L. 101-614 amended section generally, substituting present provisions consisting of subsecs. (a) and (b) for former provisions which provided for: in subsec. (a), establishment of program; in subsec. (b), duties of President and Director of Federal Emergency Management Agency; in subsec. (c), objectives of program; in subsec. (d), Federal participation; in subsec. (e), research elements; in subsec. (f), mitigation elements; in subsec. (g), State assistance; in subsec. (h), non-Federal participation; in subsec. (i), study and recommendations on disaster relief; and in subsec. (j), cost sharing.

1988—Subsec. (b)(2)(F). Pub. L. 100-418 substituted “National Institute of Standards and Technology” for “National Bureau of Standards”.

Subsecs. (g), (i). Pub. L. 100-707 substituted “Disaster Relief and Emergency Assistance Act” for “Disaster Relief Act of 1974”.

Subsec. (j). Pub. L. 100-252 added subsec. (j).

1985—Subsec. (b)(2)(E). Pub. L. 99-105, § 5, amended subpar. (E) generally, substituting “to be submitted to

the Congress and updated at such times as may be required by significant program events, but in no event less frequently than every three years;" for "which plan will recommend base and incremental budget options for the agencies to carry out the elements and programs specified through at least 1985, and which plan shall be completed by September 30, 1981, and transmitted to the Congress and shall be updated annually; and".

Subsec. (b)(2)(F), (G). Pub. L. 99-105, §6, added subpar. (F) and redesignated former subpar. (F) as (G).

1980—Subsec. (a). Pub. L. 96-472, §101(a), inserted provisions relating to non-Federal participation in par. (2), and substituted provisions respecting the elements described in subsec. (f) of this section, for provisions respecting the implementation plan described in subsec. (f) of this section in par. (3).

Subsec. (b). Pub. L. 96-472, §101(b), substituted provisions setting forth the duties of the President and the Director of the Federal Emergency Management Agency with respect to the Program for provisions setting forth the duties of the President with respect to the program and plan.

Subsec. (d). Pub. L. 96-472, §101(c), substituted "(1)(A)" for "(3)(B)", "Department of Commerce" for "National Bureau of Standards", and "Federal Emergency Management Agency" for "National Fire Prevention and Control Administration".

Subsec. (e)(6). Pub. L. 96-472, §101(d), substituted "potential" for "political".

Subsec. (f). Pub. L. 96-472, §101(e), substituted in provision preceding par. (1), provision directing that the mitigation elements of the program are to be as specified in pars. (1) to (8) for provision authorizing the establishment of a implementation plan, year-by-year targets, and Federal and non-Federal roles, in par. (1), substituted provision including as one of the mitigating elements, issuance of earthquake predictions for provision including in the implementation plan development of measures in preparing for earthquakes, actual predictions, warnings, and insuring a comprehensive response to an earthquake, added pars. (7) and (8), and struck out provision following par. (8), that when the implementation plan developed by the President contemplates specific action to be taken by a Federal agency, department, or entity, and at the end of the 30-day period beginning on the date the President submits such plan to the appropriate authorizing committees of Congress and such action has not been initiated, the President submit to such committees a report why such action has not been taken.

Subsec. (i). Pub. L. 96-472, §101(f), added subsec. (i).

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 313(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

REAL-TIME PUBLIC AVAILABILITY OF RAW SEISMOLOGICAL DATA

Pub. L. 107-228, div. B, title XVI, §1602, Sept. 30, 2002, 116 Stat. 1460, provided that: "The head of the Air Force Technical Applications Center shall make available to the public, immediately upon receipt or as soon after receipt as is practicable, all raw seismological data provided to the United States Government by any international monitoring organization that is directly responsible for seismological monitoring."

Pub. L. 106-113, div. B, §1000(a)(7) [div. B, title XI, §1116], Nov. 29, 1999, 113 Stat. 1536, 1501A-489, provided that: "The United States Government shall, to the maximum extent practicable, make available to the

public in real time, or as quickly as possible, all raw seismological data provided to the United States Government by any international organization that is directly responsible for seismological monitoring."

AUTHORIZATION OF REAL-TIME SEISMIC HAZARD WARNING SYSTEM DEVELOPMENT, AND OTHER ACTIVITIES

Section 2 of Pub. L. 105-47, as amended by Pub. L. 106-503, title II, §202(c), Nov. 13, 2000, 114 Stat. 2305; Pub. L. 107-110, title X, §1076(cc), Jan. 8, 2002, 115 Stat. 2093, provided that:

"(a) AUTOMATIC SEISMIC WARNING SYSTEM DEVELOPMENT.—

"(1) DEFINITIONS.—In this section:

"(A) DIRECTOR.—The term 'Director' means the Director of the United States Geological Survey.

"(B) HIGH-RISK ACTIVITY.—The term 'high-risk activity' means an activity that may be adversely affected by a moderate to severe seismic event (as determined by the Director). The term includes high-speed rail transportation.

"(C) REAL-TIME SEISMIC WARNING SYSTEM.—The term 'real-time seismic warning system' means a system that issues warnings in real-time from a network of seismic sensors to a set of analysis processors, directly to receivers related to high-risk activities.

"(2) IN GENERAL.—The Director shall conduct a program to develop a prototype real-time seismic warning system. The Director may enter into such agreements or contracts as may be necessary to carry out the program.

"(3) UPGRADE OF SEISMIC SENSORS.—In carrying out a program under paragraph (2), in order to increase the accuracy and speed of seismic event analysis to provide for timely warning signals, the Director shall provide for the upgrading of the network of seismic sensors participating in the prototype to increase the capability of the sensors—

"(A) to measure accurately large magnitude seismic events (as determined by the Director); and

"(B) to acquire additional parametric data.

"(4) DEVELOPMENT OF COMMUNICATIONS AND COMPUTATION INFRASTRUCTURE.—In carrying out a program under paragraph (2), the Director shall develop a communications and computation infrastructure that is necessary—

"(A) to process the data obtained from the upgraded seismic sensor network referred to in paragraph (3); and

"(B) to provide for, and carry out, such communications engineering and development as is necessary to facilitate—

"(i) the timely flow of data within a real-time seismic hazard warning system; and

"(ii) the issuance of warnings to receivers related to high-risk activities.

"(5) PROCUREMENT OF COMPUTER HARDWARE AND COMPUTER SOFTWARE.—In carrying out a program under paragraph (2), the Director shall procure such computer hardware and computer software as may be necessary to carry out the program.

"(6) REPORTS ON PROGRESS.—

"(A) IN GENERAL.—Not later than 120 days after the date of enactment of this Act [Oct. 1, 1997], the Director shall prepare and submit to Congress a report that contains a plan for implementing a real-time seismic hazard warning system.

"(B) ADDITIONAL REPORTS.—Not later than 1 year after the date on which the Director submits the report under subparagraph (A), and annually thereafter, the Director shall prepare and submit to Congress a report that summarizes the progress of the Director in implementing the plan referred to in subparagraph (A).

"(7) AUTHORIZATION OF APPROPRIATIONS.—In addition to the amounts made available to the Director under section 12(b) of the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7706(b)), there are authorized to be appropriated to the Department of the In-

terior, to be used by the Director to carry out paragraph (2), \$3,000,000 for each of fiscal years 1998 and 1999; \$2,600,000 for fiscal year 2001; \$2,710,000 for fiscal year 2002; and \$2,825,000 for fiscal year 2003.

“(b) SEISMIC MONITORING NETWORKS ASSESSMENT.—

“(1) IN GENERAL.—The Director shall provide for an assessment of regional seismic monitoring networks in the United States. The assessment shall address—

“(A) the need to update the infrastructure used for collecting seismological data for research and monitoring of seismic events in the United States;

“(B) the need for expanding the capability to record strong ground motions, especially for urban area engineering purposes;

“(C) the need to measure accurately large magnitude seismic events (as determined by the Director);

“(D) the need to acquire additional parametric data; and

“(E) projected costs for meeting the needs described in subparagraphs (A) through (D).

“(2) RESULTS.—The Director shall transmit the results of the assessment conducted under this subsection to Congress not later than 1 year after the date of enactment of this Act [Oct. 1, 1997].

“(c) EARTH SCIENCE TEACHING MATERIALS.—

“(1) DEFINITIONS.—In this subsection:

“(A) LOCAL EDUCATIONAL AGENCY.—The term ‘local educational agency’ has the meaning given that term in section 9101 of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 7801].

“(B) SCHOOL.—The term ‘school’ means a non-profit institutional day or residential school that provides education for any of the grades kindergarten through grade 12.

“(2) TEACHING MATERIALS.—In a manner consistent with the requirement under section 5(b)(4) of the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7704(b)(4)) and subject to a merit based competitive process, the Director of the National Science Foundation may use funds made available to him or her under section 12(c) of such Act (42 U.S.C. 7706(c)) to develop, and make available to schools and local educational agencies for use by schools, at a minimal cost, earth science teaching materials that are designed to meet the needs of elementary and secondary school teachers and students.

“(d) IMPROVED SEISMIC HAZARD ASSESSMENT.—

“(1) IN GENERAL.—As soon as practicable after the date of enactment of this Act [Oct. 1, 1997], the Director shall conduct a project to improve the seismic hazard assessment of seismic zones.

“(2) REPORTS.—

“(A) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, and annually during the period of the project, the Director shall prepare, and submit to Congress, a report on the findings of the project.

“(B) FINAL REPORT.—Not later than 60 days after the date of termination of the project conducted under this subsection, the Director shall prepare and submit to Congress a report concerning the findings of the project.

“(e) STUDY OF NATIONAL EARTHQUAKE EMERGENCY TRAINING CAPABILITIES.—

“(1) IN GENERAL.—The Director of the Federal Emergency Management Agency shall conduct an assessment of the need for additional Federal disaster-response training capabilities that are applicable to earthquake response.

“(2) CONTENTS OF ASSESSMENT.—The assessment conducted under this subsection shall include—

“(A) a review of the disaster training programs offered by the Federal Emergency Management Agency at the time of the assessment;

“(B) an estimate of the number and types of emergency response personnel that have, during the period beginning on January 1, 1990 and ending on July 1, 1997, sought the training referred to in subparagraph (A), but have been unable to receive that

training as a result of the oversubscription of the training capabilities of the Federal Emergency Management Agency; and

“(C) a recommendation on the need to provide additional Federal disaster-response training centers.

“(3) REPORT.—Not later than 180 days after the date of enactment of this Act [Oct. 1, 1997], the Director shall prepare and submit to Congress a report that addresses the results of the assessment conducted under this subsection.”

STUDIES ON ECONOMIC IMPACT OF CATASTROPHIC EARTHQUAKES AND IMPROVING EARTHQUAKE MITIGATION

Section 14 of Pub. L. 101-614 directed Director of Federal Emergency Management Agency to submit two reports to Congress within 12 months after Nov. 16, 1990, one report outlining results of a study on impact and repercussions of a catastrophic earthquake on local, regional, and national economies, and the other report outlining results of a study on adequacy of preparation and response capabilities for reducing and recovering from losses caused by a catastrophic earthquake.

EARTHQUAKE ENGINEERING RESEARCH

Pub. L. 100-570, title I, §115, Oct. 31, 1988, 102 Stat. 2871, directed National Academy of Sciences to conduct a study of earthquake engineering activities being carried out by the Foundation and other Federal agencies under the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7701 et seq.), such study to include (1) an assessment of adequacy of each agency's current Federal earthquake engineering efforts, including those designed to increase the implementation of new techniques; the need for specialized research facilities, including large-scale facilities; the division of responsibilities among the various Federal agencies; and recommended levels of funding that the Foundation and other agencies should provide, in the form of grants to individuals, groups, and centers, to non-Federal researchers principally engaged in earthquake engineering research; and (2) recommendations, if any, of the National Academy of Sciences for improvements in the current Federal efforts in the area of earthquake engineering research, with results of the study to be reported to Congress on or before expiration of 12-month period following Oct. 31, 1988.

EX. ORD. NO. 12699. SEISMIC SAFETY OF FEDERAL AND FEDERALLY ASSISTED OR REGULATED NEW BUILDING CONSTRUCTION

Ex. Ord. No. 12699, Jan. 5, 1990, 55 F.R. 835, as amended by Ex. Ord. No. 13286, §40, Feb. 28, 2003, 68 F.R. 10626, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, and in furtherance of the Earthquake Hazards Reduction Act of 1977, as amended (42 U.S.C. 7701 et seq.), which requires that Federal preparedness and mitigation activities are to include “development and promulgation of specifications, building standards, design criteria, and construction practices to achieve appropriate earthquake resistance for new . . . structures,” and “an examination of alternative provisions and requirements for reducing earthquake hazards through Federal and federally financed construction, loans, loan guarantees, and licenses. . . .” (42 U.S.C. 7704(f)(3, 4)), it is hereby ordered as follows:

SECTION 1. Requirements for Earthquake Safety of New Federal Buildings.

The purposes of these requirements are to reduce risks to the lives of occupants of buildings owned by the Federal Government and to persons who would be affected by the failures of Federal buildings in earthquakes, to improve the capability of essential Federal buildings to function during or after an earthquake, and to reduce earthquake losses of public buildings, all in a cost-effective manner. A building means any structure, fully or partially enclosed, used or intended for sheltering persons or property.

Each Federal agency responsible for the design and construction of each new Federal building shall ensure that the building is designed and constructed in accord with appropriate seismic design and construction standards. This requirement pertains to all building projects for which development of detailed plans and specifications is initiated subsequent to the issuance of the order. Seismic design and construction standards shall be adopted for agency use in accord with sections 3(a) and 4(a) of this order.

SEC. 2. Federally Leased, Assisted, or Regulated Buildings.

The purposes of these requirements are to reduce risks to the lives of occupants of buildings leased for Federal uses or purchased or constructed with Federal assistance, to reduce risks to the lives of persons who would be affected by earthquake failures of federally assisted or regulated buildings, and to protect public investments, all in a cost-effective manner. The provisions of this order shall apply to all the new construction activities specified in the subsections below.

(a) Space Leased for Federal Occupancy. Each Federal agency responsible for the construction and lease of a new building for Federal use shall ensure that the building is designed and constructed in accord with appropriate seismic design and construction standards. This requirement pertains to all leased building projects for which the agreement covering development of detailed plans and specifications is effected subsequent to the issuance of this order. Local building codes shall be used in design and construction by those concerned with such activities in accord with section 3(a) and 3(c) of this order and augmented when necessary to achieve appropriate seismic design and construction standards.

(b) Federal Domestic Assistance Programs. Each Federal agency assisting in the financing, through Federal grants or loans, or guaranteeing the financing, through loan or mortgage insurance programs, of newly constructed buildings shall plan, and shall initiate no later than 3 years subsequent to the issuance of this order, measures consistent with section 3(a) of this order, to assure appropriate consideration of seismic safety.

(c) Federally Regulated Buildings. Each Federal agency with generic responsibility for regulating the structural safety of buildings shall plan to require use of appropriate seismic design and construction standards for new buildings within the agency's purview. Implementation of the plan shall be initiated no later than 3 years subsequent to the issuance of this order.

SEC. 3. Concurrent Requirements. (a) In accord with Office of Management and Budget Circular A-119 of January 17, 1980, entitled "Federal Participation in the Development and Use of Voluntary Standards," nationally recognized private sector standards and practices shall be used for the purposes identified in sections 1 and 2 above unless the responsible agency finds that none is available that meets its requirements. The actions ordered herein shall consider the seismic hazards in various areas of the country to be as shown in the most recent edition of the American National Standards Institute Standards A58, *Minimum Design Loads for Buildings and Other Structures*, or subsequent maps adopted for Federal use in accord with this order. Local building codes determined by the responsible agency or by the Interagency Committee for Seismic Safety in Construction to provide adequately for seismic safety, or special seismic standards and practices required by unique agency mission needs, may be used.

(b) All orders, regulations, circulars, or other directives issued, and all other actions taken prior to the date of this order that meet the requirements of this order, are hereby confirmed and ratified and shall be deemed to have been issued under this order.

(c) Federal agencies that are as of this date requiring seismic safety levels that are higher than those imposed by this order in their assigned new building construction programs shall continue to maintain in force such levels.

(d) Nothing in this order shall apply to assistance provided for emergency work essential to save lives and

protect property and public health and safety, performed pursuant to Sections 402, 403, 502, and 503 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) (42 U.S.C. 5170a, 5170b, 5192, and 5193), or for temporary housing assistance programs and individual and family grants performed pursuant to Sections 408 and 411 of the Stafford Act (42 U.S.C. 5174 and former 5178). However, this order shall apply to other provisions of the Stafford Act [42 U.S.C. 5121 et seq.] after a presidentially declared major disaster or emergency when assistance actions involve new construction or total replacement of a building. Grantees and subgrantees shall be encouraged to adopt the standards established in section 3(a) of this order for use when the construction does not involve Federal funding as well as when Department of Homeland Security funding applies.

SEC. 4. Agency Responsibilities. (a) The Secretary of Homeland Security shall be responsible for reporting to the President on the execution of this order and providing support for the secretariat of the Interagency Committee on Seismic Safety in Construction (ICSSC). The ICSSC, using consensus procedures, shall be responsible to FEMA for the recommendation for adoption of cost-effective seismic design and construction standards and practices required by sections 1 and 2 of this order. Participation in ICSSC shall be open to all agencies with programs affected by this order.

(b) To the extent permitted by law, each agency shall issue or amend existing regulations or procedures to comply with this order within 3 years of its issuance and plan for their implementation through the usual budget process. Thereafter, each agency shall review, within a period not to exceed 3 years, its regulations or procedures to assess the need to incorporate new or revised standards and practices.

SEC. 5. Reporting. The Department of Homeland Security shall request, from each agency affected by this order, information on the status of its procedures, progress in its implementation plan, and the impact of this order on its operations. The Department of Homeland Security shall include an assessment of the execution of this order in its annual report to the Congress on the National Earthquake Hazards Reduction Program.

SEC. 6. Judicial Review. Nothing in this order is intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7703, 7706 of this title; title 23 section 502.

§ 7704a. Report on seismic safety property standards

(a) Authority

The Secretary of Housing and Urban Development (in this section referred to as the "Secretary") shall assess the risk of earthquake-related damage to properties assisted under programs administered by the Secretary and shall develop seismic safety standards for such properties. This section may not be construed to prohibit the Secretary from deferring to local building codes that meet the requirements of the seismic safety standards developed under this section.

(b) Standards

The standards shall be designed to reduce the risk of loss of life to building occupants to the maximum extent feasible and to reduce the risk of shake-related property damage to the maximum extent practicable.

(c) Consultation

In carrying out this section, the Secretary shall consult with the Director of the Federal

Emergency Management Agency and may utilize the resources under the National Earthquake Hazards Reduction Program (established under the Earthquake Hazards Reduction Act of 1977 [42 U.S.C. 7701 et seq.]) and any other resources as may be required to carry out the activities under this section.

(Pub. L. 101-625, title IX, §947, Nov. 28, 1990, 104 Stat. 4416.)

REFERENCES IN TEXT

The Earthquake Hazards Reduction Act of 1977, referred to in subsec. (c), is Pub. L. 95-124, Oct. 7, 1977, 91 Stat. 1098, as amended, which is classified generally to this chapter (§7701 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 7701 of this title and Tables.

CODIFICATION

Subsec. (d) of this section, which required the Secretary to submit a report to Congress not less than biennially on the findings of the risk assessment study conducted under this section and the activities undertaken, and the expenditures made, by the Secretary to carry out this section and Executive Order No. 12699, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, the 4th item on page 104 of House Document No. 103-7.

Section was enacted as part of the Cranston-Gonzalez National Affordable Housing Act, and not as part of the Earthquake Hazards Reduction Act of 1977 which comprises this chapter.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 313(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§§ 7705, 7705a. Repealed. Pub. L. 105-47, § 4, Oct. 1, 1997, 111 Stat. 1164

Section 7705, Pub. L. 95-124, § 6, Oct. 7, 1977, 91 Stat. 1102; Pub. L. 96-472, title I, §102(a), Oct. 19, 1980, 94 Stat. 2259; Pub. L. 101-614, § 6, Nov. 16, 1990, 104 Stat. 3236, related to Office of Science and Technology Policy report.

Section 7705a, Pub. L. 95-124, § 7, as added Pub. L. 101-614, § 7(2), Nov. 16, 1990, 104 Stat. 3236, related to establishment of a National Earthquake Hazards Reduction Program Advisory Committee.

§ 7705b. Seismic standards

(a) Buildings

(1) Adoption of standards

The President shall adopt, not later than December 1, 1994, standards for assessing and enhancing the seismic safety of existing buildings constructed for or leased by the Federal Government which were designed and constructed without adequate seismic design and construction standards. Such standards shall be developed by the Interagency Committee on Seismic Safety in Construction, whose chairman is the Director of the National Institute of Standards and Technology or his designee, and which shall work in consultation with appropriate private sector organizations.

(2) Report to Congress

The President shall report to the Congress, not later than December 1, 1994, on how the standards adopted under paragraph (1) could be applied with respect to buildings—

(A) for which Federal financial assistance has been obtained through grants, loans, financing guarantees, or loan or mortgage insurance programs; or

(B) the structural safety of which is regulated by a Federal agency.

(3) Regulations

The President shall ensure the issuance, before February 1, 1993, by all Federal agencies of final regulations required by section 4(b) of Executive Order numbered 12699, issued January 5, 1990.

(b) Lifelines

The Director of the Agency, in consultation with the Director of the National Institute of Standards and Technology, shall submit to the Congress, not later than June 30, 1992, a plan, including precise timetables and budget estimates, for developing and adopting, in consultation with appropriate private sector organizations, design and construction standards for lifelines. The plan shall include recommendations of ways Federal regulatory authority could be used to expedite the implementation of such standards.

(Pub. L. 95-124, § 8, as added Pub. L. 101-614, § 8(a), Nov. 16, 1990, 104 Stat. 3237.)

REFERENCES IN TEXT

Executive Order numbered 12699, referred to in subsec. (a)(3), is set out as a note under section 7704 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 313(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

REPORT ON VULNERABILITY OF BUILDINGS OWNED AND LEASED BY GOVERNMENT

Section 8(b) of Pub. L. 101-614 directed Comptroller General, not later than 18 months after Nov. 16, 1990, to report to Congress on vulnerability of buildings owned and leased by the Federal Government and on efforts of Federal agencies to improve the seismic resistance of buildings they own or lease, and for each such agency, the Comptroller General to enumerate the number of buildings owned or leased by the agency, the seriousness of the seismic risk to such buildings, and the value of the buildings at risk, as well as tabulate the expenditures each such agency had devoted to reducing earthquake damage and estimate the total expenditure necessary to address the problem adequately.

EX. ORD. NO. 12941. SEISMIC SAFETY OF EXISTING FEDERALLY OWNED OR LEASED BUILDINGS

Ex. Ord. No. 12941, Dec. 1, 1994, 59 F.R. 62545, provided: By the authority vested in me as President by the Constitution and the laws of the United States of America, and in furtherance of the Earthquake Hazards Reduction Act of 1977 [42 U.S.C. 7701 et seq.], as amended by Public Law 101-614, which requires the President

to adopt “standards for assessing and enhancing the seismic safety of existing buildings constructed for or leased by the Federal Government which were designed and constructed without adequate seismic design and construction standards” (42 U.S.C. 7705b(a)), it is hereby ordered as follows:

SECTION 1. Adoption of Minimum Standards. *The Standards of Seismic Safety for Existing Federally Owned or Leased Buildings* (Standards), developed, issued, and maintained by the Interagency Committee on Seismic Safety in Construction (ICSSC), are hereby adopted as the minimum level acceptable for use by Federal departments and agencies in assessing the seismic safety of their owned and leased buildings and in mitigating unacceptable seismic risks in those buildings. The Standards shall be applied, at a minimum, to those buildings identified in the Standards as requiring evaluation and, if necessary, mitigation. Evaluations and mitigations that were completed prior to the date of this order under agency programs that were based on standards deemed adequate and appropriate by the individual agency need not be reconsidered unless otherwise stipulated by the Standards.

For the purposes of this order, buildings are defined as any structure, fully or partially enclosed, located within the United States as defined in the Earthquake Hazards Reduction Act of 1977, as amended, (42 U.S.C. 7703(5)), used or intended for sheltering persons or property, except for the exclusions specified in the Standards.

SEC. 2. Estimating Costs of Mitigation. Each agency that owns or leases buildings for Federal use shall, within 4 years of the issuance of this order, develop an inventory of their owned and leased buildings and shall estimate the costs of mitigating unacceptable seismic risks in those buildings. The cost estimate shall be based on the exemptions and evaluation and mitigation requirements in the Standards. Guidance for the development of the inventory and cost estimates will be issued by the ICSSC no later than 1 year after the signing of this order. Cost estimates with supporting documentation shall be submitted to the Director of the Federal Emergency Management Agency (FEMA) no later than 4 years after the signing of this order.

SEC. 3. Implementation Responsibilities. (a) The Federal Emergency Management Agency is responsible for (1) notifying all Federal departments and agencies of the existence and content of this order; (2) preparing for the Congress, in consultation with the ICSSC, no later than 6 years after the issuance of this order, a comprehensive report on how to achieve an adequate level of seismic safety in federally owned and leased buildings in an economically feasible manner; and (3) preparing for the Congress on a biennial basis, a report on the execution of this order.

(b) The National Institute of Standards and Technology is responsible for providing technical assistance to the Federal departments and agencies in the implementation of this order.

(c) Federal departments and agencies may request an exemption from this order from the Director of the Office of Management and Budget.

SEC. 4. Updating Programs. The ICSSC shall update the Standards at least every 5 years. It shall also update the Standards within 2 years of the publication of the first edition of FEMA’s *Guidelines for Seismic Rehabilitation of Buildings and Commentary*.

SEC. 5. Judicial Review. Nothing in this order is intended to create any right to administrative or judicial review, or any other right, benefit, or trust responsibility, substantive or procedural, enforceable at law by any party against the United States, its agencies or instrumentalities, its officers or employees, or any person.

WILLIAM J. CLINTON.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 23 section 502.

§ 7705c. Acceptance of gifts

(a) Authority

In furtherance of the purposes of this chapter, the Director of the Agency may accept and use bequests, gifts, or donations of services, money, or property, notwithstanding section 1342 of title 31.

(b) Criteria

The Director of the Agency shall establish by regulation criteria for determining whether to accept bequests, gifts, or donations of services, money, or property. Such criteria shall take into consideration whether the acceptance of the bequest, gift, or donation would reflect unfavorably on the Director’s ability to carry out his responsibilities in a fair and objective manner, or would compromise the integrity of, or the appearance of the integrity of, the Program or any official involved in administering the Program.

(Pub. L. 95–124, §9, as added Pub. L. 101–614, §9, Nov. 16, 1990, 104 Stat. 3238.)

CODIFICATION

In subsec. (a), “section 1342 of title 31” was substituted for “section 3679 of the Revised Statutes (31 U.S.C. 1342)” on authority of Pub. L. 97–258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 313(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 7705d. Repealed. Pub. L. 106–503, title II, § 203, Nov. 13, 2000, 114 Stat. 2305

Section, Pub. L. 95–124, §10, as added Pub. L. 101–614, §10, Nov. 16, 1990, 104 Stat. 3238, related to non-Federal cost sharing for supplemental funds.

§ 7705e. Post-earthquake investigations program

There is established within the United States Geological Survey a post-earthquake investigations program, the purpose of which is to investigate major earthquakes, so as to learn lessons which can be applied to reduce the loss of lives and property in future earthquakes. The United States Geological Survey, in consultation with each Program agency, shall organize investigations to study the implications of the earthquake in the areas of responsibility of each Program agency. The investigations shall begin as rapidly as possible and may be conducted by grantees and contractors. The Program agencies shall ensure that the results of investigations are disseminated widely. The Director of the Survey is authorized to utilize earthquake expertise from the Agency, the National Science Foundation, the National Institute of Standards and Technology, other Federal agencies, and private contractors, on a reimbursable basis, in the conduct of such earthquake investigations. At a minimum, investigations under this section shall include—

(1) analysis by the National Science Foundation and the United States Geological Survey of the causes of the earthquake and the nature of the resulting ground motion;

(2) analysis by the National Science Foundation and the National Institute of Standards and Technology of the behavior of structures and lifelines, both those that were damaged and those that were undamaged; and

(3) analysis by each of the Program agencies of the effectiveness of the earthquake hazards mitigation programs and actions relating to its area of responsibility under the Program, and how those programs and actions could be strengthened.

(Pub. L. 95-124, §11, as added Pub. L. 101-614, §11(a), Nov. 16, 1990, 104 Stat. 3239.)

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 313(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

REPORT ON FUNDING OF PROGRAM

Section 11(b) of Pub. L. 101-614 directed Director of Federal Emergency Management Agency in consultation with other agencies of National Earthquake Hazards Reduction Program, not later than one year after Nov. 16, 1990, to report to Congress on possible options for funding a program for post-earthquake investigations, which would, at a minimum, consider funding such a program either by setting aside a percentage of disaster relief funds provided by Federal Emergency Management Agency after a major earthquake or by a revolving fund, and which would also include a recommendation on how the funding for such investigations would be allocated among the other Program agencies.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7706 of this title.

§ 7706. Authorization of appropriations

(a) General authorization for program

(1) There are authorized to be appropriated to the President to carry out the provisions of sections 7704 and 7705¹ of this title (in addition to any authorizations for similar purposes included in other Acts and the authorizations set forth in subsections (b) and (c) of this section), not to exceed \$1,000,000 for the fiscal year ending September 30, 1978, not to exceed \$2,000,000 for the fiscal year ending September 30, 1979, and not to exceed \$2,000,000 for the fiscal year ending September 30, 1980.

(2) There are authorized to be appropriated to the Director to carry out the provisions of sections 7704 and 7705¹ of this title for the fiscal year ending September 30, 1981—

(A) \$1,000,000 for continuation of the Interagency Committee on Seismic Safety in Construction and the Building Seismic Safety Council programs,

(B) \$1,500,000 for plans and preparedness for earthquake disasters,

(C) \$500,000 for prediction response planning,
(D) \$600,000 for architectural and engineering planning and practice programs,

(E) \$1,000,000 for development and application of a public education program,

(F) \$3,000,000 for use by the National Science Foundation in addition to the amount authorized to be appropriated under subsection (c) of this section, which amount includes \$2,400,000 for earthquake policy research and \$600,000 for the strong ground motion element of the siting program, and

(G) \$1,000,000 for use by the Center for Building Technology, National Institute of Standards and Technology in addition to the amount authorized to be appropriated under subsection (d) of this section for earthquake activities in the Center.

(3) There are authorized to be appropriated to the Director for the fiscal year ending September 30, 1982, \$2,000,000 to carry out the provisions of sections 7704 and 7705¹ of this title.

(4) There are authorized to be appropriated to the Director, to carry out the provisions of sections 7704 and 7705¹ of this title, \$1,281,000 for the fiscal year ending September 30, 1983.

(5) There are authorized to be appropriated to the Director, to carry out the provisions of sections 7704 and 7705¹ of this title, for the fiscal year ending September 30, 1984, \$3,705,000, and for the fiscal year ending September 30, 1985, \$6,096,000.

(6) There are authorized to be appropriated to the Director, to carry out the provisions of sections 7704 and 7705¹ of this title, for the fiscal year ending September 30, 1986, \$5,596,000, and for the fiscal year ending September 30, 1987, \$5,848,000.

(7) There are authorized to be appropriated to the Director of the Agency, to carry out this chapter, \$5,778,000 for the fiscal year ending September 30, 1988, \$5,788,000 for the fiscal year ending September 30, 1989, \$8,798,000 for the fiscal year ending September 30, 1990, \$14,750,000 for the fiscal year ending September 30, 1991, \$19,000,000 for the fiscal year ending September 30, 1992, \$22,000,000 for the fiscal year ending September 30, 1993, \$25,000,000 for the fiscal year ending September 30, 1995, \$25,750,000 for the fiscal year ending September 30, 1996, \$20,900,000 for the fiscal year ending September 30, 1998, \$21,500,000 for the fiscal year ending September 30, 1999; \$19,861,000 for the fiscal year ending September 30, 2001, of which \$450,000 is for National Earthquake Hazard Reduction Program-eligible efforts of an established multi-state consortium to reduce the unacceptable threat of earthquake damages in the New Madrid seismic region through efforts to enhance preparedness, response, recovery, and mitigation; \$20,705,000 for the fiscal year ending September 30, 2002; and \$21,585,000 for the fiscal year ending September 30, 2003.

(b) United States Geological Survey

There are authorized to be appropriated to the Secretary of the Interior for purposes for carrying out, through the Director of the United States Geological Survey, the responsibilities that may be assigned to the Director under this chapter not to exceed \$27,500,000 for the fiscal

¹ See References in Text note below.

year ending September 30, 1978; not to exceed \$35,000,000 for the fiscal year ending September 30, 1979; not to exceed \$40,000,000 for the fiscal year ending September 30, 1980; \$32,484,000 for the fiscal year ending September 30, 1981; \$34,425,000 for the fiscal year ending September 30, 1982; \$31,843,000 for the fiscal year ending September 30, 1983; \$35,524,000 for the fiscal year ending September 30, 1984; \$37,300,200 for the fiscal year ending September 30, 1985² \$35,578,000 for the fiscal year ending September 30, 1986; \$37,179,000 for the fiscal year ending September 30, 1987; \$38,540,000 for the fiscal year ending September 30, 1988; \$41,819,000 for the fiscal year ending September 30, 1989; \$55,283,000 for the fiscal year ending September 30, 1990, of which \$8,000,000 shall be for earthquake investigations under section 7705e of this title; \$50,000,000 for the fiscal year ending September 30, 1991; \$54,500,000 for the fiscal year ending September 30, 1992; \$62,500,000 for the fiscal year ending September 30, 1993; \$49,200,000 for the fiscal year ending September 30, 1995; \$50,676,000 for the fiscal year ending September 30, 1996; \$52,565,000 for the fiscal year ending September 30, 1998, of which \$3,800,000 shall be used for the Global Seismic Network operated by the Agency; and \$54,052,000 for the fiscal year ending September 30, 1999, of which \$3,800,000 shall be used for the Global Seismic Network operated by the Agency. There are authorized to be appropriated to the Secretary of the Interior for purposes of carrying out, through the Director of the United States Geological Survey, the responsibilities that may be assigned to the Director under this chapter \$48,360,000 for fiscal year 2001, of which \$3,500,000 is for the Global Seismic Network and \$100,000 is for the Scientific Earthquake Studies Advisory Committee established under section 7709 of this title; \$50,415,000 for fiscal year 2002, of which \$3,600,000 is for the Global Seismic Network and \$100,000 is for the Scientific Earthquake Studies Advisory Committee; and \$52,558,000 for fiscal year 2003, of which \$3,700,000 is for the Global Seismic Network and \$100,000 is for the Scientific Earthquake Studies Advisory Committee. Of the amounts authorized to be appropriated under this subsection, at least—

- (1) \$8,000,000 of the amount authorized to be appropriated for the fiscal year ending September 30, 1998;
- (2) \$8,250,000 of the amount authorized for the fiscal year ending September 30, 1999;
- (3) \$9,000,000 of the amount authorized to be appropriated for fiscal year 2001;
- (4) \$9,250,000 of the amount authorized to be appropriated for fiscal year 2002; and
- (5) \$9,500,000 of the amount authorized to be appropriated for fiscal year 2003,

shall be used for carrying out a competitive, peer-reviewed program under which the Director, in close coordination with and as a complement to related activities of the United States Geological Survey, awards grants to, or enters into cooperative agreements with, State and local governments and persons or entities from the academic community and the private sector.

² So in original. Probably should be followed by a semicolon.

(c) National Science Foundation

To enable the Foundation to carry out responsibilities that may be assigned to it under this chapter, there are authorized to be appropriated to the Foundation not to exceed \$27,500,000 for the fiscal year ending September 30, 1978; not to exceed \$35,000,000 for the fiscal year ending September 30, 1979; not to exceed \$40,000,000 for the fiscal year ending September 30, 1980; \$26,600,000 for the fiscal year ending September 30, 1981; \$27,150,000 for the fiscal year ending September 30, 1982; \$25,000,000 for the fiscal year ending September 30, 1983; \$25,800,000 for the fiscal year ending September 30, 1984; \$28,665,000 for the fiscal year ending September 30, 1985² \$27,760,000 for the fiscal year ending September 30, 1986; \$29,009,000 for the fiscal year ending September 30, 1987; \$28,235,000 for the fiscal year ending September 30, 1988; \$31,634,000 for the fiscal year ending September 30, 1989; \$38,454,000 for the fiscal year ending September 30, 1990. Of the amounts authorized for Engineering under section 101(d)(1)(B) of the National Science Foundation Authorization Act of 1988, \$24,000,000 is authorized for carrying out this chapter for the fiscal year ending September 30, 1991, and of the amounts authorized for Geosciences³ under section 101(d)(1)(D) of the National Science Foundation Authorization Act of 1988, \$13,000,000 is authorized for carrying out this chapter for the fiscal year ending September 30, 1991. Of the amounts authorized for Research and Related Activities under section 101(e)(1) of the National Science Foundation Authorization Act of 1988, \$29,000,000 is authorized for engineering research under this chapter, and \$14,750,000 is authorized for geosciences research under this chapter, for the fiscal year ending September 30, 1992. Of the amounts authorized for Research and Related Activities under section 101(f)(1) of the National Science Foundation Authorization Act of 1988, \$34,500,000 is authorized for engineering research under this chapter, and \$17,500,000 is authorized for geosciences research under this chapter, for the fiscal year ending September 30, 1993. There are authorized to be appropriated, out of funds otherwise authorized to be appropriated to the National Science Foundation: (1) \$16,200,000 for engineering research and \$10,900,000 for geosciences research for the fiscal year ending September 30, 1995, (2) \$16,686,000 for engineering research and \$11,227,000 for geosciences research for the fiscal year ending September 30, 1996, (3) \$18,450,000 for engineering research and \$11,920,000 for geosciences research for the fiscal year ending September 30, 1998, (4) \$19,000,000 for engineering research and \$12,280,000 for geosciences research for the fiscal year ending September 30, 1999. There are authorized to be appropriated to the National Science Foundation \$19,000,000 for engineering research and \$11,900,000 for geosciences research for fiscal year 2001; \$19,808,000 for engineering research and \$12,406,000 for geosciences research for fiscal year 2002; and \$20,650,000 for engineering research and \$12,933,000 for geosciences research for fiscal year 2003.

³ So in original. Probably should not be capitalized.

(d) National Institute of Standards and Technology

To enable the National Institute of Standards and Technology to carry out responsibilities that may be assigned to it under this chapter, there are authorized to be appropriated \$425,000 for the fiscal year ending September 30, 1981; \$425,000 for the fiscal year ending September 30, 1982; \$475,000 for the fiscal year ending September 30, 1983; \$475,000 for the fiscal year ending September 30, 1984; \$498,750 for the fiscal year ending September 30, 1985² \$499,000 for the fiscal year ending September 30, 1986; \$521,000 for the fiscal year ending September 30, 1987; \$525,000 for the fiscal year ending September 30, 1988; \$525,000 for the fiscal year ending September 30, 1989; \$2,525,000 for the fiscal year ending September 30, 1990; \$1,000,000 for the fiscal year ending September 30, 1991; \$3,000,000 for the fiscal year ending September 30, 1992; and \$4,750,000 for the fiscal year ending September 30, 1993. There are authorized to be appropriated, out of funds otherwise authorized to be appropriated to the National Institute of Standards and Technology, \$1,900,000 for the fiscal year ending September 30, 1995, \$1,957,000 for the fiscal year ending September 30, 1996, \$2,000,000 for the fiscal year ending September 30, 1998, \$2,060,000 for the fiscal year ending September 30, 1999, \$2,332,000 for fiscal year 2001, \$2,431,000 for fiscal year 2002, and \$2,534,300 for fiscal year 2003.

(Pub. L. 95-124, §12, formerly §7, Oct. 7, 1977, 91 Stat. 1102; Pub. L. 96-472, title I, §103, Oct. 19, 1980, 94 Stat. 2259; Pub. L. 97-80, title I, §101, Nov. 20, 1981, 95 Stat. 1081; Pub. L. 97-464, title I, §101, Jan. 12, 1983, 96 Stat. 2533; Pub. L. 98-241, title I, §101, Mar. 22, 1984, 98 Stat. 95; Pub. L. 99-105, §§1-4, Sept. 30, 1985, 99 Stat. 475; Pub. L. 100-252, §1, Feb. 29, 1988, 102 Stat. 18; Pub. L. 100-418, title V, §5115(c), Aug. 23, 1988, 102 Stat. 1433; renumbered §12 and amended Pub. L. 101-614, §§7(1), 12, Nov. 16, 1990, 104 Stat. 3236, 3240; Pub. L. 103-374, §1, Oct. 19, 1994, 108 Stat. 3492; Pub. L. 105-47, §1, Oct. 1, 1997, 111 Stat. 1159; Pub. L. 106-503, title II, §§202(a), (b), (d), (e), 203, Nov. 13, 2000, 114 Stat. 2304, 2305.)

REFERENCES IN TEXT

Section 7705 of this title, referred to in subsec. (a)(1) to (6), was repealed by Pub. L. 105-47, §4, Oct. 1, 1997, 111 Stat. 1164.

Section 101(d)(1)(B), (D), (e)(1), and (f)(1) of the National Science Foundation Authorization Act of 1988, referred to in subsec. (c), is section 101(d)(1)(B), (D), (e)(1), and (f)(1) of Pub. L. 100-570, Oct. 31, 1988, 102 Stat. 2865, 2866, which is not classified to the Code.

AMENDMENTS

2000—Subsec. (a)(7). Pub. L. 106-503, §202(a), struck out “and” after “1998,” and substituted “1999; \$19,861,000 for the fiscal year ending September 30, 2001, of which \$450,000 is for National Earthquake Hazard Reduction Program-eligible efforts of an established multi-state consortium to reduce the unacceptable threat of earthquake damages in the New Madrid seismic region through efforts to enhance preparedness, response, recovery, and mitigation; \$20,705,000 for the fiscal year ending September 30, 2002; and \$21,585,000 for the fiscal year ending September 30, 2003.” for “1999.”

Subsec. (b). Pub. L. 106-503, §202(b)(1), in introductory provisions, inserted after “operated by the Agency.” “There are authorized to be appropriated to the Secretary of the Interior for purposes of carrying out,

through the Director of the United States Geological Survey, the responsibilities that may be assigned to the Director under this chapter \$48,360,000 for fiscal year 2001, of which \$3,500,000 is for the Global Seismic Network and \$100,000 is for the Scientific Earthquake Studies Advisory Committee established under section 7709 of this title; \$50,415,000 for fiscal year 2002, of which \$3,600,000 is for the Global Seismic Network and \$100,000 is for the Scientific Earthquake Studies Advisory Committee; and \$52,558,000 for fiscal year 2003, of which \$3,700,000 is for the Global Seismic Network and \$100,000 is for the Scientific Earthquake Studies Advisory Committee.”

Subsec. (b)(3) to (5). Pub. L. 106-503, §202(b)(2)-(4), added pars. (3) to (5).

Subsec. (c). Pub. L. 106-503, §202(d), struck out “and” after “1998,” and inserted at end “There are authorized to be appropriated to the National Science Foundation \$19,000,000 for engineering research and \$11,900,000 for geosciences research for fiscal year 2001; \$19,808,000 for engineering research and \$12,406,000 for geosciences research for fiscal year 2002; and \$20,650,000 for engineering research and \$12,933,000 for geosciences research for fiscal year 2003.”

Subsec. (d). Pub. L. 106-503, §202(e), struck out “and” after “1998,” and substituted “1999, \$2,332,000 for fiscal year 2001, \$2,431,000 for fiscal year 2002, and \$2,534,300 for fiscal year 2003.” for “1999.”

Subsecs. (e), (f). Pub. L. 106-503, §203, struck out subsecs. (e) and (f), which related, respectively, to funds for certain required adjustments and availability of funds.

1997—Subsec. (a)(7). Pub. L. 105-47, §1(1), struck out “and” after “1995,” and inserted before period at end “, \$20,900,000 for the fiscal year ending September 30, 1998, and \$21,500,000 for the fiscal year ending September 30, 1999”.

Subsec. (b). Pub. L. 105-47, §1(2), substituted “\$50,676,000 for the fiscal year ending September 30, 1996; \$52,565,000 for the fiscal year ending September 30, 1998, of which \$3,800,000 shall be used for the Global Seismic Network operated by the Agency; and \$54,052,000 for the fiscal year ending September 30, 1999, of which \$3,800,000 shall be used for the Global Seismic Network operated by the Agency. Of the amounts authorized to be appropriated under this subsection, at least—

“(1) \$8,000,000 of the amount authorized to be appropriated for the fiscal year ending September 30, 1998; and

“(2) \$8,250,000 of the amount authorized for the fiscal year ending September 30, 1999, shall be used for carrying out a competitive, peer-reviewed program under which the Director, in close coordination with and as a complement to related activities of the United States Geological Survey, awards grants to, or enters into cooperative agreements with, State and local governments and persons or entities from the academic community and the private sector.” for “and \$50,676,000 for the fiscal year ending September 30, 1996.”

Subsec. (c). Pub. L. 105-47, §1(3), struck out “and” after “September 30, 1995,” and inserted before period at end “, (3) \$18,450,000 for engineering research and \$11,920,000 for geosciences research for the fiscal year ending September 30, 1998, and (4) \$19,000,000 for engineering research and \$12,280,000 for geosciences research for the fiscal year ending September 30, 1999”.

Subsec. (d). Pub. L. 105-47, §1(4), struck out “and” after “September 30, 1995,” and inserted before period at end “, \$2,000,000 for the fiscal year ending September 30, 1998, and \$2,060,000 for the fiscal year ending September 30, 1999”.

1994—Subsec. (a)(7). Pub. L. 103-374, §1(1), inserted “of the Agency” after “to the Director”, struck out “and” after “September 30, 1992,” and inserted before period at end “, \$25,000,000 for the fiscal year ending September 30, 1995, and \$25,750,000 for the fiscal year ending September 30, 1996” after “September 30, 1993”.

Subsec. (b). Pub. L. 103-374, §1(2), struck out “and” after “September 30, 1992;” and inserted before period

at end “; \$49,200,000 for the fiscal year ending September 30, 1995; and \$50,676,000 for the fiscal year ending September 30, 1996”.

Subsec. (c). Pub. L. 103-374, §1(3), inserted at end “There are authorized to be appropriated, out of funds otherwise authorized to be appropriated to the National Science Foundation: (1) \$16,200,000 for engineering research and \$10,900,000 for geosciences research for the fiscal year ending September 30, 1995, and (2) \$16,686,000 for engineering research and \$11,227,000 for geosciences research for the fiscal year ending September 30, 1996.”

Subsec. (d). Pub. L. 103-374, §1(4), inserted at end “There are authorized to be appropriated, out of funds otherwise authorized to be appropriated to the National Institute of Standards and Technology, \$1,900,000 for the fiscal year ending September 30, 1995, and \$1,957,000 for the fiscal year ending September 30, 1996.”

1990—Subsec. (a)(7). Pub. L. 101-614, §12(1), substituted “carry out this chapter” for “carry out the provisions of sections 7704 and 7705 of this title”, substituted “\$8,798,000” for “and \$5,798,000”, and inserted before period at end “, \$14,750,000 for the fiscal year ending September 30, 1991, \$19,000,000 for the fiscal year ending September 30, 1992, and \$22,000,000 for the fiscal year ending September 30, 1993”.

Subsec. (b). Pub. L. 101-614, §12(2), substituted “\$55,283,000” for “and \$43,283,000” and inserted before period at end “, of which \$8,000,000 shall be for earthquake investigations under section 7705e of this title; \$50,000,000 for the fiscal year ending September 30, 1991; \$54,500,000 for the fiscal year ending September 30, 1992; and \$62,500,000 for the fiscal year ending September 30, 1993”.

Subsec. (c). Pub. L. 101-614, §12(3), substituted “\$38,454,000” for “and \$35,454,000” and inserted at end “Of the amounts authorized for Engineering under section 101(d)(1)(B) of the National Science Foundation Authorization Act of 1988, \$24,000,000 is authorized for carrying out this chapter for the fiscal year ending September 30, 1991, and of the amounts authorized for Geosciences under section 101(d)(1)(D) of the National Science Foundation Authorization Act of 1988, \$13,000,000 is authorized for carrying out this chapter for the fiscal year ending September 30, 1991. Of the amounts authorized for Research and Related Activities under section 101(e)(1) of the National Science Foundation Authorization Act of 1988, \$29,000,000 is authorized for engineering research under this chapter, and \$14,750,000 is authorized for geosciences research under this chapter, for the fiscal year ending September 30, 1992. Of the amounts authorized for Research and Related Activities under section 101(f)(1) of the National Science Foundation Authorization Act of 1988, \$34,500,000 is authorized for engineering research under this chapter, and \$17,500,000 is authorized for geosciences research under this chapter, for the fiscal year ending September 30, 1993.”

Subsec. (d). Pub. L. 101-614, §12(4), substituted “National Institute of Standards and Technology” for “National Bureau of Standards” in heading and for “Bureau” in text, substituted “\$2,525,000” for “and \$525,000”, and inserted before period at end “; \$1,000,000 for the fiscal year ending September 30, 1991; \$3,000,000 for the fiscal year ending September 30, 1992; and \$4,750,000 for the fiscal year ending September 30, 1993”.

Subsec. (f). Pub. L. 101-614, §12(5), added subsec. (f).

1988—Subsec. (a)(2)(G). Pub. L. 100-418 substituted “Institute” for “Bureau”.

Subsec. (a)(7). Pub. L. 100-252, §1(a), added par. (7).

Subsec. (b). Pub. L. 100-252, §1(b), struck out “and” after “1986;” and inserted “; \$38,540,000 for the fiscal year ending September 30, 1988; \$41,819,000 for the fiscal year ending September 30, 1989; and \$43,283,000 for the fiscal year ending September 30, 1990”.

Subsec. (c). Pub. L. 100-252, §1(c), struck out “and” after “1986;” and inserted “; \$28,235,000 for the fiscal year ending September 30, 1988; \$31,634,000 for the fiscal year ending September 30, 1989; and \$35,454,000 for the fiscal year ending September 30, 1990”.

Subsec. (d). Pub. L. 100-252, §1(d), struck out “and” after “1986;” and inserted “; \$525,000 for the fiscal year ending September 30, 1988; \$525,000 for the fiscal year ending September 30, 1989; and \$525,000 for the fiscal year ending September 30, 1990”.

1985—Subsec. (a)(6). Pub. L. 99-105, §1, added par. (6).

Subsec. (b). Pub. L. 99-105, §2, substituted a semicolon for “, and” after “1984” and inserted “\$35,578,000 for the fiscal year ending September 30, 1986; and \$37,179,000 for the fiscal year ending September 30, 1987”.

Subsec. (c). Pub. L. 99-105, §3, struck out “and” after “1984;” and inserted “\$27,760,000 for the fiscal year ending September 30, 1986; and \$20,009,000 for the fiscal year ending September 30, 1987”.

Subsec. (d). Pub. L. 99-105, §4, struck out “and” after “1984;” and inserted “\$499,000 for the fiscal year ending September 30, 1986; and \$521,000 for the fiscal year ending September 30, 1987”.

1984—Subsec. (a). Pub. L. 98-241, §101(a), added par. (5).

Subsec. (b). Pub. L. 98-241, §101(b), struck out “and” after “1982;” and inserted “; \$35,524,000 for the fiscal year ending September 30, 1984, and \$37,300,200 for the fiscal year ending September 30, 1985”.

Subsec. (c). Pub. L. 98-241, §101(c), struck out “and” after “1982;” and inserted “; \$25,800,000 for the fiscal year ending September 30, 1984; and \$28,665,000 for the fiscal year ending September 30, 1985”.

Subsec. (d). Pub. L. 98-241, §101(d), struck out “and” after “1982;” and inserted “; \$475,000 for the fiscal year ending September 30, 1984; and \$498,750 for the fiscal year ending September 30, 1985”.

Subsec. (e). Pub. L. 98-241, §101(e), substituted “1982,” for “1982 and” and inserted “September 30, 1984, and September 30, 1985.”

1983—Subsec. (a)(4). Pub. L. 97-464, §101(a), added par. (4).

Subsecs. (b) to (d). Pub. L. 97-464, §101(b)-(d), inserted authorization for fiscal year ending Sept. 30, 1983.

Subsec. (e). Pub. L. 97-464, §101(e), substituted “each of the fiscal years ending September 30, 1982 and September 30, 1983” for “the fiscal year ending September 30, 1982”.

1981—Subsec. (a)(3). Pub. L. 97-80, §101(a), added par. (3).

Subsecs. (b) to (d). Pub. L. 97-80, §101(b)-(d), inserted authorization for fiscal year ending Sept. 30, 1982.

Subsec. (e). Pub. L. 97-80, §101(e), added subsec. (e).

1980—Subsec. (a). Pub. L. 96-472, §103(a), designated existing provisions as par. (1) and added par. (2).

Subsecs. (b), (c). Pub. L. 96-472, §103(b), (c), inserted authorization for fiscal year ending Sept. 30, 1981.

Subsec. (d). Pub. L. 96-472, §103(d), added subsec. (d).

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 313(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7707, 7708 of this title.

§ 7707. Advanced National Seismic Research and Monitoring System

(a) Establishment

The Director of the United States Geological Survey shall establish and operate an Advanced National Seismic Research and Monitoring System. The purpose of such system shall be to or-

ganize, modernize, standardize, and stabilize the national, regional, and urban seismic monitoring systems in the United States, including sensors, recorders, and data analysis centers, into a coordinated system that will measure and record the full range of frequencies and amplitudes exhibited by seismic waves, in order to enhance earthquake research and warning capabilities.

(b) Management plan

Not later than 90 days after November 13, 2000, the Director of the United States Geological Survey shall transmit to the Congress a 5-year management plan for establishing and operating the Advanced National Seismic Research and Monitoring System. The plan shall include annual cost estimates for both modernization and operation, milestones, standards, and performance goals, as well as plans for securing the participation of all existing networks in the Advanced National Seismic Research and Monitoring System and for establishing new, or enhancing existing, partnerships to leverage resources.

(c) Authorization of appropriations

(1) Expansion and modernization

In addition to amounts appropriated under section 7706(b) of this title, there are authorized to be appropriated to the Secretary of the Interior, to be used by the Director of the United States Geological Survey to establish the Advanced National Seismic Research and Monitoring System—

- (A) \$33,500,000 for fiscal year 2002;
- (B) \$33,700,000 for fiscal year 2003;
- (C) \$35,100,000 for fiscal year 2004;
- (D) \$35,000,000 for fiscal year 2005; and
- (E) \$33,500,000 for fiscal year 2006.

(2) Operation

In addition to amounts appropriated under section 7706(b) of this title, there are authorized to be appropriated to the Secretary of the Interior, to be used by the Director of the United States Geological Survey to operate the Advanced National Seismic Research and Monitoring System—

- (A) \$4,500,000 for fiscal year 2002; and
- (B) \$10,300,000 for fiscal year 2003.

(Pub. L. 95-124, §13, as added Pub. L. 106-503, title II, §204, Nov. 13, 2000, 114 Stat. 2305.)

§ 7708. Network for Earthquake Engineering Simulation

(a) Establishment

The Director of the National Science Foundation shall establish the George E. Brown, Jr. Network for Earthquake Engineering Simulation that will upgrade, link, and integrate a system of geographically distributed experimental facilities for earthquake engineering testing of full-sized structures and their components and partial-scale physical models. The system shall be integrated through networking software so that integrated models and databases can be used to create model-based simulation, and the components of the system shall be interconnected with a computer network and allow for remote access, information sharing, and collaborative research.

(b) Authorization of appropriations

In addition to amounts appropriated under section 7706(c) of this title, there are authorized to be appropriated to the National Science Foundation for the George E. Brown, Jr. Network for Earthquake Engineering Simulation—

- (1) \$28,200,000 for fiscal year 2001;
- (2) \$24,400,000 for fiscal year 2002;
- (3) \$4,500,000 for fiscal year 2003; and
- (4) \$17,000,000 for fiscal year 2004.

(Pub. L. 95-124, §14, as added Pub. L. 106-503, title II, §205, Nov. 13, 2000, 114 Stat. 2306.)

§ 7709. Scientific Earthquake Studies Advisory Committee

(a) Establishment

The Director of the United States Geological Survey shall establish a Scientific Earthquake Studies Advisory Committee.

(b) Organization

The Director shall establish procedures for selection of individuals not employed by the Federal Government who are qualified in the seismic sciences and other appropriate fields and may, pursuant to such procedures, select up to 10 individuals, one of whom shall be designated Chairman, to serve on the Advisory Committee. Selection of individuals for the Advisory Committee shall be based solely on established records of distinguished service, and the Director shall ensure that a reasonable cross-section of views and expertise is represented. In selecting individuals to serve on the Advisory Committee, the Director shall seek and give due consideration to recommendations from the National Academy of Sciences, professional societies, and other appropriate organizations.

(c) Meetings

The Advisory Committee shall meet at such times and places as may be designated by the Chairman in consultation with the Director.

(d) Duties

The Advisory Committee shall advise the Director on matters relating to the United States Geological Survey's participation in the National Earthquake Hazards Reduction Program, including the United States Geological Survey's roles, goals, and objectives within that Program, its capabilities and research needs, guidance on achieving major objectives, and establishing and measuring performance goals. The Advisory Committee shall issue an annual report to the Director for submission to Congress on or before September 30 of each year. The report shall describe the Advisory Committee's activities and address policy issues or matters that affect the United States Geological Survey's participation in the National Earthquake Hazards Reduction Program.

(Pub. L. 106-503, title II, §210, Nov. 13, 2000, 114 Stat. 2308.)

CODIFICATION

Section was enacted as part of the Earthquake Hazards Reduction Authorization Act of 2000, and not as part of the Earthquake Hazards Reduction Act of 1977 which comprises this chapter.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law. See section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7706 of this title.

CHAPTER 87—WATER RESEARCH AND DEVELOPMENT**§§ 7801, 7802. Repealed. Pub. L. 98-242, title I, § 110(a), Mar. 22, 1984, 98 Stat. 101**

Section 7801, Pub. L. 95-467, §2, Oct. 17, 1978, 92 Stat. 1305, set out Congressional findings and declarations for a water research and development program.

Section 7802, Pub. L. 95-467, §3, Oct. 17, 1978, 92 Stat. 1305, set out Congressional statement of purpose.

For similar provisions, see section 10301 et seq. of this title.

SAVINGS PROVISION

Section 110(b) of Pub. L. 98-242 provided that: "Rules and regulations issued prior to the date of enactment of this Act [Mar. 22, 1984] under the authority of Public Law 95-467 [this chapter] shall remain in full force and effect under this Act [repealing this chapter and enacting chapter 109 (§10301 et seq.) of this title] until superseded by new rules and regulations promulgated under this Act."

SHORT TITLE

Section 1 of Pub. L. 95-467, which provided that Pub. L. 95-467 was to be cited as the "Water Research and Development Act of 1978", was repealed by section 110(a) of Pub. L. 98-242.

SUBCHAPTER I—WATER RESOURCES RESEARCH AND DEVELOPMENT**§§ 7811 to 7819. Repealed. Pub. L. 98-242, title I, § 110(a), Mar. 22, 1984, 98 Stat. 101**

Section 7811, Pub. L. 95-467, title I, §101, Oct. 17, 1978, 92 Stat. 1306, related to establishment of research and technology institutes.

Section 7812, Pub. L. 95-467, title I, §102, Oct. 17, 1978, 92 Stat. 1307, authorized use of appropriated funds for printing and publishing of program results, and planning, coordinating, and conducting of cooperative research.

Section 7813, Pub. L. 95-467, title I, §103, Oct. 17, 1978, 92 Stat. 1308, set out responsibilities of Secretary of the Interior in prescribing procedures, rules, and regulations, and in developing a 5-year water resource research program.

Section 7814, Pub. L. 95-467, title I, §104, Oct. 17, 1978, 92 Stat. 1308, related to non-impairment of legal relationship between State governments and educational institutions involved in water research and to prohibition with regard to any Federal control of educational institutions.

Section 7815, Pub. L. 95-467, title I, §105, Oct. 17, 1978, 92 Stat. 1308, provided for making of grants and contracts.

Section 7816, Pub. L. 95-467, title I, §106, Oct. 17, 1978, 92 Stat. 1309, set out range of program issues and provided for due consideration to be given to priority problems.

Section 7817, Pub. L. 95-467, title I, §107, Oct. 17, 1978, 92 Stat. 1309, defined "State".

Section 7818, Pub. L. 95-467, title I, §108, Oct. 17, 1978, 92 Stat. 1309, authorized advance payment of initial expenses.

Section 7819, Pub. L. 95-467, title I, §109, Oct. 17, 1978, 92 Stat. 1309, provided for study and design of water resources programs and activities and for reports to Congress.

For similar provisions, see section 10301 et seq. of this title.

SUBCHAPTER II—WATER RESEARCH AND DEVELOPMENT FOR SALINE AND OTHER IMPAIRED WATERS**§§ 7831 to 7835. Repealed. Pub. L. 98-242, title I, § 110(a), Mar. 22, 1984, 98 Stat. 101**

Section 7831, Pub. L. 95-467, title II, §200, Oct. 17, 1978, 92 Stat. 1310, set out Congressional findings and declaration of policy in establishing a program for water research and development for saline and other impaired waters.

Section 7832, Pub. L. 95-467, title II, §201, Oct. 17, 1978, 92 Stat. 1310, set out functions of the Secretary.

Section 7833, Pub. L. 95-467, title II, §202, Oct. 17, 1978, 92 Stat. 1310, set out additional functions of the Secretary with regard to demonstrations and prototype plants, utilization of Federal expertise, and financial assistance from State or public agencies.

Section 7834, Pub. L. 95-467, title II, §203, Oct. 17, 1978, 92 Stat. 1311, authorized the Secretary to issue rules and regulations to carry out this subchapter.

Section 7835, Pub. L. 95-467, title II, §204, Oct. 17, 1978, 92 Stat. 1311, defined "saline and other impaired water", "United States", "pilot plant", "demonstration", and "prototype".

For similar provisions, see section 10301 et seq. of this title.

§ 7836. Transferred

CODIFICATION

Section, Pub. L. 95-84, §2, Aug. 2, 1977, 91 Stat. 400; Pub. L. 95-467, title II, §205(a), (b), Oct. 17, 1978, 92 Stat. 1311; Pub. L. 96-457, §3, Oct. 15, 1980, 94 Stat. 2032; Pub. L. 98-242, title I, §110(a), Mar. 22, 1984, 98 Stat. 101, which directed Secretary of the Interior to construct facilities demonstrating the engineering and economic viability of various desalting processes, was transferred, and is set out as a Desalting Plants note under section 10301 of this title.

ADDITIONAL AUTHORIZATION OF APPROPRIATIONS

Section 205(c) of Pub. L. 95-467, which authorized an appropriation of \$10,000,000 to remain available until expended for the fiscal year ending Sept. 30, 1980, and thereafter in addition to sums previously authorized to be appropriated to carry out the purpose of this section, was repealed by Pub. L. 96-457, §4, Oct. 15, 1980, 94 Stat. 2034, and Pub. L. 98-242, title I, §110(a), Mar. 22, 1984, 98 Stat. 101.

SUBCHAPTER III—TECHNOLOGY TRANSFER AND INFORMATION DISSEMINATION**§§ 7851 to 7853. Repealed. Pub. L. 98-242, title I, § 110(a), Mar. 22, 1984, 98 Stat. 101**

Section 7851, Pub. L. 95-467, title III, §300, Oct. 17, 1978, 92 Stat. 1312, provided for creation and operation of a research assessment and technology transfer program.

Section 7852, Pub. L. 95-467, title III, §301, Oct. 17, 1978, 92 Stat. 1312, authorized the Secretary to maintain a national center for acquisition, processing, and dissemination of information dealing with all areas of water research.

Section 7853, Pub. L. 95-467, title III, §302, Oct. 17, 1978, 92 Stat. 1312, provided for establishment of a center for cataloging current scientific research in all fields of water resources.

For similar provisions, see section 10301 et seq. of this title.

SUBCHAPTER IV—GENERAL PROVISIONS

§§ 7871 to 7883. Repealed. Pub. L. 98-242, title I, § 110(a), Mar. 22, 1984, 98 Stat. 101

Section 7871, Pub. L. 95-467, title IV, §400, Oct. 17, 1978, 92 Stat. 1313, enumerated powers of Secretary of the Interior in carrying out this chapter.

Section 7872, Pub. L. 95-467, title IV, §401, Oct. 17, 1978, 92 Stat. 1313; Pub. L. 96-457, §1.2(a), Oct. 15, 1980, 94 Stat. 2032, authorized appropriation of funds for programs under sections 7811(a) and (c), 7815(a) and (b), and 7819 of this title.

Section 7873, Pub. L. 95-467, title IV, §402, Oct. 17, 1978, 92 Stat. 1314; Pub. L. 96-457, §2(b)(1), Oct. 15, 1980, 94 Stat. 2032, authorized appropriation of funds for research, development, and demonstration plants.

Section 7874, Pub. L. 95-467, title IV, §403, Oct. 17, 1978, 92 Stat. 1314; Pub. L. 96-457, §2(b)(2), Oct. 15, 1980, 94 Stat. 2032, authorized appropriation of funds for programs conducted under this chapter for which there were no specific appropriations.

Section 7875, Pub. L. 95-467, title IV, §404, Oct. 17, 1978, 92 Stat. 1314, related to grant applications, approval of applications by the Secretary, and the basis of approvals.

Section 7876, Pub. L. 95-467, title IV, §405, Oct. 17, 1978, 92 Stat. 1315, related to payments to institutes and accounting for such payments.

Section 7877, Pub. L. 95-467, title IV, §406, Oct. 17, 1978, 92 Stat. 1315, related to cooperation in research programs between Federal agencies, State and local governments, private institutions, and individuals.

Section 7878, Pub. L. 95-467, title IV, §407, Oct. 17, 1978, 92 Stat. 1316, authorized conveyance of property acquired by the Secretary to a cooperating institute, educational institution, or cooperating nonprofit organization, and empowered the Secretary to dispose of water and byproducts resulting from operations under this chapter.

Section 7879, Pub. L. 95-467, title IV, §408, Oct. 17, 1978, 92 Stat. 1316, set out policy under this chapter with regard to patents.

Section 7880, Pub. L. 95-467, title IV, §409, Oct. 17, 1978, 92 Stat. 1316, provided for annual reports to the Secretary by various water research institutes.

Section 7881, Pub. L. 95-467, title IV, §410, Oct. 17, 1978, 92 Stat. 1316, provided that the chapter was not intended to repeal, supersede, or diminish existing authorities of agencies concerning water resources, or to be construed to alter existing law with respect to ownership and control of water.

Section 7882, Pub. L. 95-467, title IV, §411, Oct. 17, 1978, 92 Stat. 1317, Pub. L. 96-457, §2(b)(3), Oct. 15, 1980, 94 Stat. 2032, provided for transmittal of rules, regulations, etc., to the Speaker of the House and President of the Senate.

Section 7883, Pub. L. 95-467, title IV, §412, Oct. 17, 1978, 92 Stat. 1317, provided that authority to enter into contracts or cooperative agreements and to make payments under this chapter was effective only to the extent or in such amounts as were provided in advance in appropriations acts.

For prior provisions, see section 10301 of this title.

LIMITATIONS ON AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEARS 1982 TO 1984

Pub. L. 97-35, title XVIII, §1807(b), Aug. 13, 1979, 95 Stat. 765, provided that no funds were authorized to be appropriated to the Secretary of the Interior for the purposes of water resources research and development, saline water research, development, and demonstration, and associated activities in excess of \$23,650,000

per fiscal year for each of the fiscal years ending September 30, 1982, September 30, 1983, and September 30, 1984.

CHAPTER 88—URANIUM MILL TAILINGS RADIATION CONTROL

- Sec.
7901. Congressional findings and purposes.
- SUBCHAPTER I—REMEDIAL ACTION PROGRAM
7911. Definitions.
7912. Processing site designations.
- (a) Specific and other site locations; remedial action; consultations; boundaries; Grand Junction, Colorado, site restriction.
 - (b) Health hazard assessment; priorities for remedial action.
 - (c) Notification.
 - (d) Finality of determinations.
 - (e) Certain real property or improved areas.
 - (f) Designation of Moab Site as processing site.
7913. State cooperative agreements.
- (a) Authority of Secretary; prompt commencement of preparations.
 - (b) Terms and conditions; limitation of Federal assistance.
 - (c) Written consent of record interest holder; waiver.
 - (d) Inspection entries; termination of right of entry.
 - (e) Effective date.
 - (f) Reimbursement.
7914. Acquisition and disposition of lands and materials.
- (a) State acquisition; windfall profits prevention.
 - (b) Disposition and stabilization site for residual radioactive materials; Federal site available.
 - (c) Boundary limitations.
 - (d) Purchasers of sites; notification; rules and regulations.
 - (e) State disposition; terms and conditions; fair market value; offer of sale to prior owner.
 - (f) Transfer of title to Secretary; payment from funds for administrative and legal costs; custody of property; compliance with health and environmental standards for uranium mill tailings; transfer of title restriction.
 - (g) Reimbursement; fair market value; deposits in Treasury.
 - (h) Subsurface mineral rights; sale, lease, or other disposition; restoration costs for disturbance of residual radioactive materials.
7915. Indian tribe cooperative agreements.
- (a) Authority of Secretary; priorities for remedial action; use of Indian personnel; terms and conditions.
 - (b) Disposition and stabilization sites for residual radioactive materials; transfer to Secretary of the Interior.
7916. Acquisition of land by Secretary; transfer of public lands by Secretary of the Interior to Secretary; consultations with Governor; consent of Governor; transfer from Federal agency to Secretary.
7917. Financial assistance.
- (a) Federal and non-Federal funds; administrative costs.
 - (b) Indian land processing sites.
7918. Remedial action and mineral recovery activities.

- Sec.
- (a) General standards for remedial action; Federal performance and State participation; use of technology; promulgation of standards.
 - (b) Mineral concentration evaluation; terms and conditions for mineral recovery; payment of Federal and State share of net profits recovery costs; licenses.
7919. Rules.
7920. Enforcement.
- (a) Civil penalty; appellate review; action to recover civil penalty; sovereign immunity; equitable remedies.
 - (b) Atomic energy licensing requirements.
7921. Public participation; public hearings.
7922. Termination of authority of Secretary.
- (a) Exceptions; "byproduct material" defined.
 - (b) Authorization of appropriations.
7923. Limitation of contractual authority.
7924. Reports to Congress.
- (a) Information; consultations; separate official views; partial report concerning uranium mill tailings provisions.
 - (b) Identification of sites; Federal agency jurisdiction; contents; duplication prohibition; use and cooperation respecting other Federal agency information.
 - (c) Uranium mine wastes hazards elimination program.
 - (d) Reports to Congressional committees.
 - (e) Documentation of information; public availability; trade secrets and other disclosure exempt information.
7925. Active operations; liability for remedial action.

SUBCHAPTER II—STUDY AND DESIGNATION OF TWO MILL TAILING SITES IN NEW MEXICO

7941. Study of authority for regulation and control of residual radioactive materials at New Mexico sites for protection of public health, safety, and the environment; report to Congress and Secretary; basis for determination of inadequacy of authority; interim regulation pending completion of study.
7942. Designation by Secretary as processing sites for subchapter I purposes.
- (a) New Mexico cooperative agreement respecting certain residual radioactive materials; submission to Congressional committees.
 - (b) Effective date.
 - (c) Subchapter I provisions applicable.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 2296a-3 of this title; title 30 section 1240a.

§ 7901. Congressional findings and purposes

(a) The Congress finds that uranium mill tailings located at active and inactive mill operations may pose a potential and significant radiation health hazard to the public, and that the protection of the public health, safety, and welfare and the regulation of interstate commerce require that every reasonable effort be made to provide for the stabilization, disposal, and control in a safe and environmentally sound manner of such tailings in order to prevent or minimize radon diffusion into the environment and to prevent or minimize other environmental hazards from such tailings.

(b) The purposes of this chapter are to provide—

(1) in cooperation with the interested States, Indian tribes, and the persons who own or control inactive mill tailings sites, a program of assessment and remedial action at such sites, including, where appropriate, the reprocessing of tailings to extract residual uranium and other mineral values where practicable, in order to stabilize and control such tailings in a safe and environmentally sound manner and to minimize or eliminate radiation health hazards to the public, and

(2) a program to regulate mill tailings during uranium or thorium ore processing at active mill operations and after termination of such operations in order to stabilize and control such tailings in a safe and environmentally sound manner and to minimize or eliminate radiation health hazards to the public.

(Pub. L. 95-604, §2, Nov. 8, 1978, 92 Stat. 3021.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original "this Act", meaning Pub. L. 95-604, Nov. 8, 1978, 92 Stat. 3021, as amended, known as the Uranium Mill Tailings Radiation Control Act of 1978. For complete classification of this Act to the Code, see Short Title note below and Tables.

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100-616, §1, Nov. 5, 1988, 102 Stat. 3192, provided: "That this Act [amending sections 7916 and 7922 of this title] may be cited as the 'Uranium Mill Tailings Remedial Action Amendments Act of 1988'."

SHORT TITLE

Section 1 of Pub. L. 95-604 provided that: "This Act [enacting this chapter and sections 2022, 2113, and 2114 of this title, amending sections 2014, 2021, 2111, and 2201 of this title, and enacting provisions set out as notes under sections 2014, 2021, and 2113 of this title] may be cited as the 'Uranium Mill Tailings Radiation Control Act of 1978'."

SUBCHAPTER I—REMEDIAL ACTION PROGRAM

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 2022, 7942 of this title.

§ 7911. Definitions

For purposes of this subchapter—

(1) The term "Secretary" means the Secretary of Energy.

(2) The term "Commission" means the Nuclear Regulatory Commission.

(3) The term "Administrator" means the Administrator of the Environmental Protection Agency.

(4) The term "Indian tribe" means any tribe, band, clan, group, pueblo, or community of Indians recognized as eligible for services provided by the Secretary of the Interior to Indians.

(5) The term "person" means any individual, association, partnership, corporation, firm, joint venture, trust, government entity, and any other entity, except that such term does not include any Indian or Indian tribe.

(6) The term "processing site" means—

(A) any site, including the mill, containing residual radioactive materials at which all or substantially all of the uranium was produced for sale to any Federal agency prior to January 1, 1971 under a contract with any Federal agency, except in the case of a site at or near Slick Rock, Colorado, unless—

(i) such site was owned or controlled as of January 1, 1978, or is thereafter owned or controlled, by any Federal agency, or

(ii) a license (issued by the Commission or its predecessor agency under the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.] or by a State as permitted under section 274 of such Act [42 U.S.C. 2021]) for the production at such site of any uranium or thorium product derived from ores is in effect on January 1, 1978, or is issued or renewed after such date; and

(B) any other real property or improvement thereon which—

(i) is in the vicinity of such site, and

(ii) is determined by the Secretary, in consultation with the Commission, to be contaminated with residual radioactive materials derived from such site.

Any ownership or control of an area by a Federal agency which is acquired pursuant to a cooperative agreement under this subchapter shall not be treated as ownership or control by such agency for purposes of subparagraph (A)(i). A license for the production of any uranium product from residual radioactive materials shall not be treated as a license for production from ores within the meaning of subparagraph (A)(ii) if such production is in accordance with section 7918(b) of this title.

(7) The term “residual radioactive material” means—

(A) waste (which the Secretary determines to be radioactive) in the form of tailings resulting from the processing of ores for the extraction of uranium and other valuable constituents of the ores; and

(B) other waste (which the Secretary determines to be radioactive) at a processing site which relate to such processing, including any residual stock of unprocessed ores or low-grade materials.

(8) The term “tailings” means the remaining portion of a metal-bearing ore after some or all of such metal, such as uranium, has been extracted.

(9) The term “Federal agency” includes any executive agency as defined in section 105 of title 5.

(10) The term “United States” means the 48 contiguous States and Alaska, Hawaii, Puerto Rico, the District of Columbia, and the territories and possessions of the United States.

(Pub. L. 95–604, title I, §101, Nov. 8, 1978, 92 Stat. 3022.)

REFERENCES IN TEXT

The Atomic Energy Act of 1954, referred to in par. (6)(A)(ii), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2022, 7912, 7913, 7914, 7942 of this title.

§ 7912. Processing site designations

(a) Specific and other site locations; remedial action; consultations; boundaries; Grand Junction, Colorado, site restriction

(1) As soon as practicable, but no later than one year after November 8, 1978, the Secretary shall designate processing sites at or near the following locations:

Salt Lake City, Utah
 Green River, Utah
 Mexican Hat, Utah
 Durango, Colorado
 Grand Junction, Colorado
 Rifle, Colorado (two sites)
 Gunnison, Colorado
 Naturita, Colorado
 Maybell, Colorado
 Slick Rock, Colorado (two sites)
 Shiprock, New Mexico
 Ambrosia Lake, New Mexico
 Riverton, Wyoming
 Converse County, Wyoming
 Lakeview, Oregon
 Falls City, Texas
 Tuba City, Arizona
 Monument Valley, Arizona
 Lowman, Idaho
 Cannonsburg, Pennsylvania

Subject to the provisions of this subchapter, the Secretary shall complete remedial action at the above listed sites before his authority terminates under this subchapter. The Secretary shall within one year of November 8, 1978, also designate all other processing sites within the United States which he determines requires remedial action to carry out the purposes of this subchapter. In making such designation, the Secretary shall consult with the Administrator, the Commission, and the affected States, and in the case of Indian lands, the appropriate Indian tribe and the Secretary of the Interior.

(2) As part of his designation under this subsection, the Secretary, in consultation with the Commission, shall determine the boundaries of each such site.

(3) No site or structure with respect to which remedial action is authorized under Public Law 92–314 in Grand Junction, Colorado, may be designated by the Secretary as a processing site under this section.

(b) Health hazard assessment; priorities for remedial action

Within one year from November 8, 1978, the Secretary shall assess the potential health hazard to the public from the residual radioactive materials at designated processing sites. Based upon such assessment, the Secretary shall, within such one year period, establish priorities for carrying out remedial action at each such site. In establishing such priorities, the Secretary shall rely primarily on the advice of the Administrator.

(c) Notification

Within thirty days after making designations of processing sites and establishing the prior-

ities for such sites under this section, the Secretary shall notify the Governor of each affected State, and, where appropriate, the Indian tribes and the Secretary of the Interior.

(d) Finality of determinations

The designations made, and priorities established, by the Secretary under this section shall be final and not be subject to judicial review.

(e) Certain real property or improved areas

(1) The designation of processing sites within one year after November 8, 1978, under this section shall include, to the maximum extent practicable, the areas referred to in section 7911(6)(B) of this title.

(2) Notwithstanding the one year limitation contained in this section, the Secretary may, after such one year period, include any area described in section 7911(6)(B) of this title as part of a processing site designated under this section if he determines such inclusion to be appropriate to carry out the purposes of this subchapter.

(3) The Secretary shall designate as a processing site within the meaning of section 7911(6) of this title any real property, or improvements thereon, in Edgemont, South Dakota, that—

(A) is in the vicinity of the Tennessee Valley Authority uranium mill site at Edgemont (but not including such site), and

(B) is determined by the Secretary to be contaminated with residual radioactive materials.

In making the designation under this paragraph, the Secretary shall consult with the Administrator, the Commission and the State of South Dakota. The provisions of this subchapter shall apply to the site so designated in the same manner and to the same extent as to the sites designated under subsection (a) of this section except that, in applying such provisions to such site, any reference in this subchapter to November 8, 1978, shall be treated as a reference to January 4, 1983, and in determining the State share under section 7917 of this title of the costs of remedial action, there shall be credited to the State, expenditures made by the State prior to January 4, 1983, which the Secretary determines would have been made by the State or the United States in carrying out the requirements of this subchapter.

(f) Designation of Moab Site as processing site

(1) Designation

Notwithstanding any other provision of law, the Moab uranium milling site (referred to in this subsection as the "Moab site") located approximately three miles northwest of Moab, Utah, and identified in the Final Environmental Impact Statement issued by the Nuclear Regulatory Commission in March 1996 in conjunction with Source Materials License No. SUA-917, is designated as a processing site.

(2) Applicability

This subchapter applies to the Moab site in the same manner and to the same extent as to other processing sites designated under subsection (a) of this section, except that—

(A) sections 7913, 7914(b), 7917(a), 7922(a), and 7925(a) of this title shall not apply; and

(B) a reference in this subchapter to November 8, 1978, shall be treated as a reference to October 30, 2000.

(3) Remediation

Subject to the availability of appropriations for this purpose, the Secretary shall conduct remediation at the Moab site in a safe and environmentally sound manner that takes into consideration the remedial action plan prepared pursuant to section 3405(i) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (10 U.S.C. 7420 note; Public Law 105-261), including—

(A) ground water restoration; and

(B) the removal, to a site in the State of Utah, for permanent disposition and any necessary stabilization, of residual radioactive material and other contaminated material from the Moab site and the floodplain of the Colorado River.

(Pub. L. 95-604, title I, §102, Nov. 8, 1978, 92 Stat. 3023; Pub. L. 97-415, §21, Jan. 4, 1983, 96 Stat. 2079; Pub. L. 106-398, §1 [div. C, title XXXIV, §3403(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A-489.)

REFERENCES IN TEXT

Remedial action authorized under Public Law 92-314, referred to in subsec. (a)(3), means the remedial action authorized by title II of Pub. L. 92-314, June 16, 1972, 86 Stat. 222, which is not classified to the Code.

AMENDMENTS

2000—Subsec. (f). Pub. L. 106-398 added subsec. (f).
1983—Subsec. (e)(3). Pub. L. 97-415 added par. (3).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7913, 7915, 9601 of this title.

§ 7913. State cooperative agreements

(a) Authority of Secretary; prompt commencement of preparations

After notifying a State of the designation referred to in section 7912 of this title, the Secretary subject to section 7923 of this title, is authorized to enter into cooperative agreements with such State to perform remedial actions at each designated processing site in such State (other than a site located on Indian lands referred to in section 7915 of this title). The Secretary shall, to the greatest extent practicable, enter into such agreements and carry out such remedial actions in accordance with the priorities established by him under section 7912 of this title. The Secretary shall commence preparations for cooperative agreements with respect to each designated processing site as promptly as practicable following the designation of each site.

(b) Terms and conditions; limitation of Federal assistance

Each cooperative agreement under this section shall contain such terms and conditions as the Secretary deems appropriate and consistent with the purposes of this chapter, including, but not limited to, a limitation on the use of Federal assistance to those costs which are directly required to complete the remedial action selected pursuant to section 7918 of this title.

(c) Written consent of record interest holder; waiver

(1) Except where the State is required to acquire the processing site as provided in subsection (a) of section 7914 of this title, each cooperative agreement with a State under this section shall provide that the State shall obtain, in a form prescribed by the Secretary, written consent from any person holding any record interest in the designated processing site for the Secretary or any person designated by him to perform remedial action at such site.

(2) Such written consent shall include a waiver by each such person on behalf of himself, his heirs, successors, and assigns—

(A) releasing the United States of any liability or claim thereof by such person, his heirs, successors, and assigns concerning such remedial action, and

(B) holding the United States harmless against any claim by such person on behalf of himself, his heirs, successors, or assigns arising out of the performance of any such remedial action.

(d) Inspection entries; termination of right of entry

Each cooperative agreement under this section shall require the State to assure that the Secretary, the Commission, and the Administrator and their authorized representatives have a permanent right of entry at any time to inspect the processing site and the site provided pursuant to section 7914(b)(1) of this title in furtherance of the provisions of this subchapter and to carry out such agreement and enforce this chapter and any rules prescribed under this chapter. Such right of entry under this section or section 7916 of this title into an area described in section 7911(6)(B) of this title shall terminate on completion of the remedial action, as determined by the Secretary.

(e) Effective date

Each agreement under this section shall take effect only upon the concurrence of the Commission with the terms and conditions thereof.

(f) Reimbursement

The Secretary may, in any cooperative agreement entered into under this section or section 7915 of this title, provide for reimbursement of the actual costs, as determined by the Secretary, of any remedial action performed with respect to so much of a designated processing site as is described in section 7911(6)(B) of this title. Such reimbursement shall be made only to a property owner of record at the time such remedial action was undertaken and only with respect to costs incurred by such property owner. No such reimbursement may be made unless—

(1) such remedial action was completed prior to November 8, 1978, and unless the application for such reimbursement was filed by such owner within one year after an agreement under this section or section 7915 of this title is approved by the Secretary and the Commission, and

(2) the Secretary is satisfied that such action adequately achieves the purposes of this chapter with respect to the site concerned and is consistent with the standards established by

the Administrator pursuant to section 2022(a) of this title.

(Pub. L. 95-604, title I, §103, Nov. 8, 1978, 92 Stat. 3024.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7912, 7914, 7917 of this title.

§ 7914. Acquisition and disposition of lands and materials**(a) State acquisition; windfall profits prevention**

Each cooperative agreement under section 7913 of this title shall require the State, where determined appropriate by the Secretary with the concurrence of the Commission, to acquire any designated processing site, including where appropriate any interest therein. In determining whether to require the State to acquire a designated processing site or interest therein, consideration shall be given to the prevention of windfall profits.

(b) Disposition and stabilization site for residual radioactive materials; Federal site available

(1) If the Secretary with the concurrence of the Commission determines that removal of residual radioactive material from a processing site is appropriate, the cooperative agreement shall provide that the State shall acquire land (including, where appropriate, any interest therein) to be used as a site for the permanent disposition and stabilization of such residual radioactive materials in a safe and environmentally sound manner.

(2) Acquisition by the State shall not be required under this subsection if a site located on land controlled by the Secretary or made available by the Secretary of the Interior pursuant to section 7916(2) of this title is designated by the Secretary, with the concurrence of the Commission, for such disposition and stabilization.

(c) Boundary limitations

No State shall be required under subsection (a) or (b) of this section to acquire any real property or improvement outside the boundaries of—

(1) that portion of the processing site which is described in section 7911(6)(A) of this title, and

(2) the site used for disposition of the residual radioactive materials.

(d) Purchasers of sites; notification; rules and regulations

In the case of each processing site designated under this subchapter other than a site designated on Indian land, the State shall take such action as may be necessary, and pursuant to regulations of the Secretary under this subsection, to assure that any person who purchases such a processing site after the removal of radioactive materials from such site shall be notified in an appropriate manner prior to such purchase, of the nature and extent of residual radioactive materials removed from the site, including notice of the date when such action took place, and the condition of such site after such action. If the State is the owner of such site, the State shall so notify any prospective purchaser before entering into a contract, option, or other

arrangement to sell or otherwise dispose of such site. The Secretary shall issue appropriate rules and regulations to require notice in the local land records of the residual radioactive materials which were located at any processing site and notice of the nature and extent of residual radioactive materials removed from the site, including notice of the date when such action took place. For purposes of this subsection, the term "site" does not include any property described in section 7911(6)(B) of this title which is in a State which the Secretary has certified has a program which would achieve the purposes of this subsection.

(e) State disposition; terms and conditions; fair market value; offer of sale to prior owner

(1) The terms and conditions of any cooperative agreement with a State under section 7913 of this title shall provide that in the case of any lands or interests therein acquired by the State pursuant to subsection (a) of this section, the State, with the concurrence of the Secretary and the Commission, may—

(A) sell such lands and interests,

(B) permanently retain such land and interests in lands (or donate such lands and interests therein to another governmental entity within such State) for permanent use by such State or entity solely for park, recreational, or other public purposes, or

(C) transfer such lands and interests to the United States as provided in subsection (f) of this section.

No lands may be sold under subparagraph (A) without the consent of the Secretary and the Commission. No site may be sold under subparagraph (A) or retained under subparagraph (B) if such site is used for the disposition of residual radioactive materials.

(2) Before offering for sale any lands and interests therein which comprise a processing site, the State shall offer to sell such lands and interests at their fair market value to the person from whom the State acquired them.

(f) Transfer of title to Secretary; payment from funds for administrative and legal costs; custody of property; compliance with health and environmental standards for uranium mill tailings; transfer of title restriction

(1) Each agreement under section 7913 of this title shall provide that title to—

(A) the residual radioactive materials subject to the agreement, and

(B) any lands and interests therein which have been acquired by the State, under subsection (a) or (b) of this section, for the disposition of such materials,

shall be transferred by the State to the Secretary when the Secretary (with the concurrence of the Commission) determines that remedial action is completed in accordance with the requirements imposed pursuant to this subchapter. No payment shall be made in connection with the transfer of such property from funds appropriated for purposes of this chapter other than payments for any administrative and legal costs incurred in carrying out such transfer.

(2) Custody of any property transferred to the United States under this subsection shall be as-

sumed by the Secretary or such Federal agency as the President may designate. Notwithstanding any other provision of law, upon completion of the remedial action program authorized by this subchapter, such property and minerals shall be maintained pursuant to a license issued by the Commission in such manner as will protect the public health, safety, and the environment. The Commission may, pursuant to such license or by rule or order, require the Secretary or other Federal agency having custody of such property and minerals to undertake such monitoring, maintenance, and emergency measures necessary to protect public health and safety and other actions as the Commission deems necessary to comply with the standards of section 2022(a) of this title. The Secretary or such other Federal agency is authorized to carry out maintenance, monitoring and emergency measures under this subsection, but shall take no other action pursuant to such license, rule or order with respect to such property and minerals unless expressly authorized by Congress after November 8, 1978. The United States shall not transfer title to property or interest therein acquired under this subsection to any person or State, except as provided in subsection (h) of this section.

(g) Reimbursement; fair market value; deposits in Treasury

Each agreement under section 7913 of this title which permits any sale described in subsection (e)(1)(A) of this section shall provide for the prompt reimbursement to the Secretary from the proceeds of such sale. Such reimbursement shall be in an amount equal to the lesser of—

(1) that portion of the fair market value of the lands or interests therein which bears the same ratio to such fair market value as the Federal share of the costs of acquisition by the State to such lands or interest therein bears to the total cost of such acquisition, or

(2) the total amount paid by the Secretary with respect to such acquisition.

The fair market value of such lands or interest shall be determined by the Secretary as of the date of the sale by the State. Any amounts received by the Secretary under this subchapter shall be deposited in the Treasury of the United States as miscellaneous receipts.

(h) Subsurface mineral rights; sale, lease, or other disposition; restoration costs for disturbance of residual radioactive materials

No provision of any agreement under section 7913 of this title shall prohibit the Secretary of the Interior, with the concurrence of the Secretary of Energy and the Commission, from disposing of any subsurface mineral rights by sale or lease (in accordance with laws of the United States applicable to the sale, lease, or other disposal of such rights) which are associated with land on which residual radioactive materials are disposed and which are transferred to the United States as required under this section if the Secretary of the Interior takes such action as the Commission deems necessary pursuant to a license issued by the Commission to assure that the residual radioactive materials will not be disturbed by reason of any activity carried on

following such disposition. If any such materials are disturbed by any such activity, the Secretary of the Interior shall insure, prior to the disposition of the minerals, that such materials will be restored to a safe and environmentally sound condition as determined by the Commission, and that the costs of such restoration will be borne by the person acquiring such rights from the Secretary of the Interior or from his successor or assign.

(Pub. L. 95-604, title I, § 104, Nov. 8, 1978, 92 Stat. 3025; Pub. L. 104-259, § 4(a), Oct. 9, 1996, 110 Stat. 3174.)

AMENDMENTS

1996—Subsec. (d). Pub. L. 104-259 inserted at end “For purposes of this subsection, the term ‘site’ does not include any property described in section 7911(6)(B) of this title which is in a State which the Secretary has certified has a program which would achieve the purposes of this subsection.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2022, 2113, 7912, 7913, 7915 of this title.

§ 7915. Indian tribe cooperative agreements

(a) Authority of Secretary; priorities for remedial action; use of Indian personnel; terms and conditions

After notifying the Indian tribe of the designation pursuant to section 7912 of this title, the Secretary, in consultation with the Secretary of the Interior, is authorized to enter into a cooperative agreement, subject to section 7923 of this title, with any Indian tribe to perform remedial action at a designated processing site located on land of such Indian tribe. The Secretary shall, to the greatest extent practicable, enter into such agreements and carry out such remedial actions in accordance with the priorities established by him under section 7912 of this title. In performing any remedial action under this section and in carrying out any continued monitoring or maintenance respecting residual radioactive materials associated with any site subject to a cooperative agreement under this section, the Secretary shall make full use of any qualified members of Indian tribes resident in the vicinity of any such site. Each such agreement shall contain such terms and conditions as the Secretary deems appropriate and consistent with the purposes of this chapter. Such terms and conditions shall require the following:

(1) The Indian tribe and any person holding any interest in such land shall execute a waiver (A) releasing the United States of any liability or claim thereof by such tribe or person concerning such remedial action and (B) holding the United States harmless against any claim arising out of the performance of any such remedial action.

(2) The remedial action shall be selected and performed in accordance with section 7918 of this title by the Secretary or such person as he may designate.

(3) The Secretary, the Commission, and the Administrator and their authorized representatives shall have a permanent right of entry at any time to inspect such processing site in furtherance of the provisions of this sub-

chapter, to carry out such agreement, and to enforce any rules prescribed under this chapter.

Each agreement under this section shall take effect only upon concurrence of the Commission with the terms and conditions thereof.

(b) Disposition and stabilization sites for residual radioactive materials; transfer to Secretary of the Interior

When the Secretary with the concurrence of the Commission determines removal of residual radioactive materials from a processing site on lands described in subsection (a) of this section to be appropriate, he shall provide, consistent with other applicable provisions of law, a site or sites for the permanent disposition and stabilization in a safe and environmentally sound manner of such residual radioactive materials. Such materials shall be transferred to the Secretary (without payment therefor by the Secretary) and permanently retained and maintained by the Secretary under the conditions established in a license issued by the Commission, subject to section 7914(f)(2) and (h) of this title.

(Pub. L. 95-604, title I, § 105, Nov. 8, 1978, 92 Stat. 3028.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7913 of this title.

§ 7916. Acquisition of land by Secretary; transfer of public lands by Secretary of the Interior to Secretary; consultations with Governor; consent of Governor; transfer from Federal agency to Secretary

Where necessary or appropriate in order to consolidate in a safe and environmentally sound manner the location of residual radioactive materials which are removed from processing sites under cooperative agreements under this subchapter, or where otherwise necessary for the permanent disposition and stabilization of such materials in such manner—

(1) the Secretary may acquire land and interests in land for such purposes by purchase, donation, or under any other authority of law or

(2) the Secretary of the Interior may transfer permanently to the Secretary to carry out the purposes of this chapter, public lands under the jurisdiction of the Bureau of Land Management in the vicinity of processing sites in the following counties:

(A) Apache County in the State of Arizona;

(B) Mesa, Gunnison, Moffat, Montrose, Garfield, and San Miguel Counties in the State of Colorado;

(C) Boise County in the State of Idaho;

(D) Billings and Bowman Counties in the State of North Dakota;

(E) Grand and San Juan Counties in the State of Utah;

(F) Converse and Fremont Counties in the State of Wyoming; and

(G) Any other county in the vicinity of a processing site, if no site in the county in which a processing site is located is suitable.

Any permanent transfer of lands under the jurisdiction of the Bureau of Land Management by

the Secretary of the Interior to the Secretary shall not take place until the Secretary complies with the requirements of the National Environmental Policy Act (42 U.S.C. 4321 et seq.) with respect to the selection of a site for the permanent disposition and stabilization of residual radioactive materials. Section 1714 of title 43 shall not apply to this transfer of jurisdiction. Prior to acquisition of land under paragraph (1) or (2) of this subsection¹ in any State, the Secretary shall consult with the Governor of such State. No lands may be acquired under such paragraph (1) or (2) in any State in which there is no (1) processing site designated under this subchapter or (2) active uranium mill operation, unless the Secretary has obtained the consent of the Governor of such State. No lands controlled by any Federal agency may be transferred to the Secretary to carry out the purposes of this chapter without the concurrence of the chief administrative officer of such agency.

(Pub. L. 95-604, title I, § 106, Nov. 8, 1978, 92 Stat. 3029; Pub. L. 100-616, § 2, Nov. 5, 1988, 102 Stat. 3192.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 95-604, Nov. 8, 1978, 92 Stat. 3021, as amended, known as the Uranium Mill Tailings Radiation Control Act of 1978. For complete classification of this Act to the Code, see Short Title note set out under section 7901 of this title and Tables.

The National Environmental Policy Act, referred to in text, probably means the National Environmental Policy Act of 1969, Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

AMENDMENTS

1988—Par. (2). Pub. L. 100-616 added par. (2) and concluding provisions and struck out former par. (2) and concluding provisions which read as follows:

"(2) the Secretary of the Interior may make available public lands administered by him for such purposes in accordance with other applicable provisions of law.

Prior to acquisition of land under paragraph (1) or (2) of this subsection in any State, the Secretary shall consult with the Governor of such State. No lands may be acquired under such paragraph (1) or (2) in any State in which there is no (1) processing site designated under this subchapter or (2) active uranium mill operation, unless the Secretary has obtained the consent of the Governor of such State. No lands controlled by any Federal agency may be transferred to the Secretary to carry out the purposes of this chapter without the concurrence of the chief administrative officer of such agency."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7913, 7914 of this title.

§ 7917. Financial assistance

(a) Federal and non-Federal funds; administrative costs

In the case of any designated processing site for which an agreement is executed with any State for remedial action at such site, the Secretary shall pay 90 per centum of the actual cost

of such remedial action, including the actual costs of acquiring such site (and any interest therein) or any disposition site (and any interest therein) pursuant to section 7913 of this title, and the State shall pay the remainder of such costs from non-Federal funds. The Secretary shall not pay the administrative costs incurred by any State to develop, prepare, and carry out any cooperative agreement executed with such State under this subchapter, except the proportionate share of the administrative costs associated with the acquisition of lands and interests therein acquired by the State pursuant to this subchapter.

(b) Indian land processing sites

In the case of any designated processing site located on Indian lands, the Secretary shall pay the entire cost of such remedial action.

(Pub. L. 95-604, title I, § 107, Nov. 8, 1978, 92 Stat. 3029.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7912 of this title.

§ 7918. Remedial action and mineral recovery activities

(a) General standards for remedial action; Federal performance and State participation; use of technology; promulgation of standards

(1) The Secretary or such person as he may designate shall select and perform remedial actions at designated processing sites and disposal sites in accordance with the general standards prescribed by the Administrator pursuant to section 275 a. of the Atomic Energy Act of 1954 [42 U.S.C. 2022(a)]. The State shall participate fully in the selection and performance of a remedial action for which it pays part of the cost. Such remedial action shall be selected and performed with the concurrence of the Commission and in consultation, as appropriate, with the Indian tribe and the Secretary of the Interior. Residual radioactive material from a processing site designated under this subchapter may be disposed of at a facility licensed under title II under the administrative and technical requirements of such title. Disposal of such material at such a site in accordance with such requirements shall be considered to have been done in accordance with the administrative and technical requirements of this subchapter.

(2) The Secretary shall use technology in performing such remedial action as will insure compliance with the general standards promulgated by the Administrator under section 275 a. of the Atomic Energy Act of 1954 [42 U.S.C. 2022(a)] and will assure the safe and environmentally sound stabilization of residual radioactive materials, consistent with existing law.

(3) Notwithstanding paragraphs (1) and (2) of this subsection, after October 31, 1982, if the Administrator has not promulgated standards under section 275 a. of the Atomic Energy Act of 1954 [42 U.S.C. 2022(a)] in final form by such date, remedial action taken by the Secretary under this subchapter shall comply with the standards proposed by the Administrator under such section 275 a. until such time as the Administrator promulgates the standards in final form.

¹ So in original. Probably should be "section".

(b) Mineral concentration evaluation; terms and conditions for mineral recovery; payment of Federal and State share of net profits; recovery costs; licenses

Prior to undertaking any remedial action at a designated site pursuant to this subchapter, the Secretary shall request expressions of interest from private parties regarding the remilling of the residual radioactive materials and the site and, upon receipt of any expression of interest, the Secretary shall evaluate among other things the mineral concentration of the residual radioactive materials at each designated processing site to determine whether, as a part of any remedial action program, recovery of such minerals is practicable. The Secretary, with the concurrence of the Commission, may permit the recovery of such minerals, under such terms and conditions as he may prescribe to carry out the purposes of this subchapter. No such recovery shall be permitted unless such recovery is consistent with remedial action. Any person permitted by the Secretary to recover such mineral shall pay to the Secretary a share of the net profits derived from such recovery, as determined by the Secretary. Such share shall not exceed the total amount paid by the Secretary for carrying out remedial action at such designated site. After payment of such share to the United States under this subsection, such person shall pay to the State in which the residual radioactive materials are located a share of the net profits derived from such recovery, as determined by the Secretary. The person recovering such minerals shall bear all costs of such recovery. Any person carrying out mineral recovery activities under this paragraph shall be required to obtain any necessary license under the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.] or under State law as permitted under section 274 of such Act [42 U.S.C. 2021].

(Pub. L. 95-604, title I, §108, Nov. 8, 1978, 92 Stat. 3029; Pub. L. 97-415, §18(b), Jan. 4, 1983, 96 Stat. 2078; Pub. L. 104-259, §4(b), Oct. 9, 1996, 110 Stat. 3174.)

REFERENCES IN TEXT

Title II, referred to in subsec. (a)(1), is title II (§§201-209) of Pub. L. 95-604, Nov. 8, 1978, 92 Stat. 3033, as amended, which enacted sections 2022, 2113, and 2114 of this title, amended sections 2014, 2021, 2111, and 2201 of this title, and enacted provisions set out as notes under sections 2014, 2021, and 2113 of this title. For complete classification of title II to the Code, see Tables.

The Atomic Energy Act of 1954, referred to in subsec. (b), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104-259 inserted at end “Residual radioactive material from a processing site designated under this subchapter may be disposed of at a facility licensed under title II under the administrative and technical requirements of such title. Disposal of such material at such a site in accordance with such requirements shall be considered to have been done in accordance with the administrative and technical requirements of this subchapter.”

1983—Subsec. (a)(2). Pub. L. 97-415, §18(b)(2), struck out provision that no such remedial action could be

undertaken under this section before the promulgation by the Administrator of general standards pursuant to section 275 a. of the Atomic Energy Act of 1954.

Subsec. (a)(3). Pub. L. 97-415, §18(b)(1), added par. (3).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7911, 7913, 7915 of this title.

§ 7919. Rules

The Secretary may prescribe such rules consistent with the purposes of this chapter as he deems appropriate pursuant to title V of the Department of Energy Organization Act [42 U.S.C. 7191 et seq.].

(Pub. L. 95-604, title I, §109, Nov. 8, 1978, 92 Stat. 3030.)

REFERENCES IN TEXT

The Department of Energy Organization Act, referred to in text, is Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 565, as amended. Title V of the Department of Energy Organization Act is classified generally to subchapter V (§7191 et seq.) of chapter 84 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

§ 7920. Enforcement

(a) Civil penalty; appellate review; action to recover civil penalty; sovereign immunity; equitable remedies

(1) Any person who violates any provision of this subchapter or any cooperative agreement entered into pursuant to this subchapter or any rule prescribed under this chapter concerning any designated processing site, disposition site, or remedial action shall be subject to an assessment by the Secretary of a civil penalty of not more than \$1,000 per day per violation. Such assessment shall be made by order after notice and an opportunity for a public hearing, pursuant to section 554 of title 5.

(2) Any person against whom a penalty is assessed under this section may, within sixty calendar days after the date of the order of the Secretary assessing such penalty, institute an action in the United States court of appeals for the appropriate judicial circuit for judicial review of such order in accordance with chapter 7 of title 5. The court shall have jurisdiction to enter a judgment affirming, modifying, or setting aside in whole or in part, the order of the Secretary, or the court may remand the proceeding to the Secretary for such further action as the court may direct.

(3) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, the Secretary shall institute an action to recover the amount of such penalty in any appropriate district court of the United States. In such action, the validity and appropriateness of such final assessment order or judgment shall not be subject to review. Section 7172(d) of this title shall not apply with respect to the functions of the Secretary under this section.

(4) No civil penalty may be assessed against the United States or any State or political subdivision of a State or any official or employee of the foregoing.

(5) Nothing in this section shall prevent the Secretary from enforcing any provision of this

subchapter or any cooperative agreement or any such rule by injunction or other equitable remedy.

(b) Atomic energy licensing requirements

Subsection (a) of this section shall not apply to any licensing requirement under the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.]. Such licensing requirements shall be enforced by the Commission as provided in such Act.

(Pub. L. 95-604, title I, §110, Nov. 8, 1978, 92 Stat. 3030.)

REFERENCES IN TEXT

The Atomic Energy Act of 1954, referred to in subsec. (b), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

§ 7921. Public participation; public hearings

In carrying out the provisions of this subchapter, including the designation of processing sites, establishing priorities for such sites, the selection of remedial actions, and the execution of cooperative agreements, the Secretary, the Administrator, and the Commission shall encourage public participation and, where appropriate, the Secretary shall hold public hearings relative to such matters in the States where processing sites and disposal sites are located.

(Pub. L. 95-604, title I, §111, Nov. 8, 1978, 92 Stat. 3031.)

§ 7922. Termination of authority of Secretary

(a) Exceptions; “byproduct material” defined

(1) The authority of the Secretary to perform remedial action under this subchapter shall terminate on September 30, 1998, except that—

(A) the authority of the Secretary to perform groundwater restoration activities under this subchapter is without limitation, and

(B) the Secretary may continue operation of the disposal site in Mesa County, Colorado (known as the Cheney disposal cell) for receiving and disposing of residual radioactive material from processing sites and of byproduct material from property in the vicinity of the uranium milling site located in Monticello, Utah, until the Cheney disposal cell has been filled to the capacity for which it was designed, or September 30, 2023, whichever comes first.

(2) For purposes of this subsection, the term “byproduct material” has the meaning given that term in section 2014(e)(2) of this title.

(b) Authorization of appropriations

The amounts authorized to be appropriated to carry out the purposes of this subchapter by the Secretary, the Administrator, the Commission, and the Secretary of the Interior shall not exceed such amounts as are established in annual authorization Acts for fiscal year 1979 and each fiscal year thereafter applicable to the Department of Energy. Any sums appropriated for the purposes of this subchapter shall be available until expended.

(Pub. L. 95-604, title I, §112, Nov. 8, 1978, 92 Stat. 3031; Pub. L. 100-616, §3, Nov. 5, 1988, 102 Stat. 3193; Pub. L. 102-486, title X, §1031, Oct. 24, 1992, 106 Stat. 2951; Pub. L. 104-259, §2, Oct. 9, 1996, 110 Stat. 3173.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104-259 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “The authority of the Secretary to perform remedial action under this subchapter shall terminate on September 30, 1996, except that the authority of the Secretary to perform groundwater restoration activities under this subchapter is without limitation.”

1992—Subsec. (a). Pub. L. 102-486 substituted “1996” for “1994”.

1988—Subsec. (a). Pub. L. 100-616 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “The authority of the Secretary to perform remedial action under this subchapter shall terminate on the date seven years after the date of promulgation by the Administrator of general standards applicable to such remedial action unless such termination date is specifically extended by an Act of Congress enacted after November 8, 1978.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7912, 7942 of this title.

§ 7923. Limitation of contractual authority

The authority under this subchapter to enter into contracts or other obligations requiring the United States to make outlays may be exercised only to the extent provided in advance in annual authorization and appropriation Acts.

(Pub. L. 95-604, title I, §113, Nov. 8, 1978, 92 Stat. 3031.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7913, 7915 of this title.

§ 7924. Reports to Congress

(a) Information; consultations; separate official views; partial report concerning uranium mill tailings provisions

Beginning on January 1, 1980, and each year thereafter until January 1, 1986, the Secretary shall submit a report to the Congress with respect to the status of the actions required to be taken by the Secretary, the Commission, the Secretary of the Interior, the Administrator, and the States and Indian tribes under this chapter and any amendments to other laws made by this Act. Each report shall—

(1) include data on the actual and estimated costs of the program authorized by this subchapter;

(2) describe the extent of participation by the States and Indian tribes in this program;

(3) evaluate the effectiveness of remedial actions, and describe any problems associated with the performance of such actions; and

(4) contain such other information as may be appropriate.

Such report shall be prepared in consultation with the Commission, the Secretary of the Interior, and the Administrator and shall contain their separate views, comments, and recommendations, if any. The Commission shall submit to the Secretary and Congress such portion

of the report under this subsection as relates to the authorities of the Commission under title II of this Act.

(b) Identification of sites; Federal agency jurisdiction; contents; duplication prohibition; use and cooperation respecting other Federal agency information

Not later than July 1, 1979, the Secretary shall provide a report to the Congress which identifies all sites located on public or acquired lands of the United States containing residual radioactive materials and other radioactive¹ waste (other than waste resulting from the production of electric energy) and specifies which Federal agency has jurisdiction over such sites. The report shall include the identity of property and other structures in the vicinity of such site that are contaminated or may be contaminated by such materials and the actions planned or taken to remove such materials. The report shall describe in what manner such sites are adequately stabilized and otherwise controlled to prevent radon diffusion from such sites into the environment and other environmental harm. If any site is not so stabilized or controlled, the report shall describe the remedial actions planned for such site and the time frame for performing such actions. In preparing the reports under this section, the Secretary shall avoid duplication of previous or ongoing studies and shall utilize all information available from other departments and agencies of the United States respecting the subject matter of such report. Such agencies shall cooperate with the Secretary in the preparation of such report and furnish such information as available to them and necessary for such report.

(c) Uranium mine wastes hazards elimination program

Not later than January 1, 1980, the Administrator, in consultation with the Commission, shall provide a report to the Congress which identifies the location and potential health, safety, and environmental hazards of uranium mine wastes together with recommendations, if any, for a program to eliminate these hazards.

(d) Reports to Congressional committees

Copies of the reports required by this section to be submitted to the Congress shall be separately submitted to the Committees on Interior and Insular Affairs and on Energy and Commerce of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

(e) Documentation of information; public availability; trade secrets and other disclosure exempt information

The Commission, in cooperation with the Secretary, shall ensure that any relevant information, other than trade secrets and other proprietary information otherwise exempted from mandatory disclosure under any other provision of law, obtained from the conduct of each of the remedial actions authorized by this subchapter and the subsequent perpetual care of those residual radioactive materials is documented sys-

tematically, and made publicly available conveniently for use.

(Pub. L. 95-604, title I, § 114, Nov. 8, 1978, 92 Stat. 3032; H. Res. 549, Mar. 25, 1980.)

REFERENCES IN TEXT

This chapter and this Act, referred to in subsec. (a), mean Pub. L. 95-604, Nov. 8, 1978, 92 Stat. 3021, as amended, known as the Uranium Mill Tailings Radiation Control Act of 1978. For complete classification of this Act to the Code, see Short Title note set out under section 7901 of this title and Tables.

Title II of this Act, referred to in subsec. (a), is title II (§§ 201-209) of Pub. L. 95-604, Nov. 8, 1978, 92 Stat. 3033, as amended, which enacted sections 2022, 2113, and 2114 of this title, amended sections 2014, 2021, 2111, and 2201 of this title, and enacted provisions set out as notes under sections 2014, 2021, and 2113 of this title. For complete classification of title II to the Code, see Tables.

CHANGE OF NAME

Committee on Interior and Insular Affairs of the House of Representatives changed to Committee on Natural Resources of the House of Representatives on Jan. 5, 1993, by House Resolution No. 5, One Hundred Third Congress. Committee on Natural Resources of House of Representatives treated as referring to Committee on Resources of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

Committee on Interstate and Foreign Commerce of the House of Representatives changed to Committee on Energy and Commerce immediately prior to noon on Jan. 3, 1981, by House Resolution No. 549, Ninety-sixth Congress, Mar. 25, 1980. Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 7925. Active operations; liability for remedial action

(a) No amount may be expended under this subchapter with respect to any site licensed by the Commission under the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.] or by a State as permitted under section 274 of such Act [42 U.S.C. 2021] at which production of any uranium product from ores (other than from residual radioactive materials) takes place. This subsection does not prohibit the disposal of residual radioactive material from a processing site under this subchapter at a site licensed under title II or the expenditure of funds under this subchapter for such disposal.

(b) In the case of each processing site designated under this subchapter, the Attorney General shall conduct a study to determine the identity and legal responsibility which any person (other than the United States, a State, or Indian tribe) who owned or operated or controlled (as determined by the Attorney General) such site before November 8, 1978, may have under any law or rule of law for reclamation or other remedial action with respect to such site. The Attorney General shall publish the results of such study, and provide copies thereof to the

¹ So in original. Probably should be "radioactive".

Congress, as promptly as practicable following November 8, 1978. The Attorney General, based on such study, shall, to the extent he deems it appropriate and in the public interest, take such action under any provision of law in effect when uranium was produced at such site to require payment by such person of all or any part of the costs incurred by the United States for such remedial action for which he determines such person is liable.

(Pub. L. 95-604, title I, § 115, Nov. 8, 1978, 92 Stat. 3033; Pub. L. 104-259, § 4(c), Oct. 9, 1996, 110 Stat. 3174.)

REFERENCES IN TEXT

The Atomic Energy Act of 1954, referred to in subsec. (a), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

Title II, referred to in subsec. (a), is title II (§§201-209) of Pub. L. 95-604, Nov. 8, 1978, 92 Stat. 3033, as amended, which enacted sections 2022, 2113, 2114 of this title, amended sections 2014, 2021, 2111, and 2201 of this title, and enacted provisions set out as notes under sections 2014, 2021, and 2113 of this title. For complete classification of title II to the Code, see Tables.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104-259 inserted at end “This subsection does not prohibit the disposal of residual radioactive material from a processing site under this subchapter at a site licensed under title II or the expenditure of funds under this subchapter for such disposal.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7912, 7942 of this title.

SUBCHAPTER II—STUDY AND DESIGNATION OF TWO MILL TAILING SITES IN NEW MEXICO

§ 7941. Study of authority for regulation and control of residual radioactive materials at New Mexico sites for protection of public health, safety, and the environment; report to Congress and Secretary; basis for determination of inadequacy of authority; interim regulation pending completion of study

The Commission, in consultation with the Attorney General and the Attorney General of the State of New Mexico, shall conduct a study to determine the extent and adequacy of the authority of the Commission and the State of New Mexico to require, under the Atomic Energy Act of 1954 (as amended by title II of this Act) [42 U.S.C. 2011 et seq.] or under State authority as permitted under section 274 of such Act [42 U.S.C. 2021] or under other provision of law, the owners of the following active uranium mill sites to undertake appropriate action to regulate and control all residual radioactive materials at such sites to protect public health, safety, and the environment: the former Homestake-New Mexico Partners site near Milan, New Mexico, and the Anaconda carbonate process tailings site near Bluewater, New Mexico. Such study shall be completed and a report thereof submitted to the Congress and to the Secretary

within one year after November 8, 1978, together with such recommendations as may be appropriate. If the Commission determines that such authority is not adequate to regulate and control such materials at such sites in the manner provided in the first sentence of this section, the Commission shall include in the report a statement of the basis for such determination. Nothing in this chapter shall be construed to prevent or delay action by a State as permitted under section 274 of the Atomic Energy Act of 1954 [42 U.S.C. 2021] or under any other provision of law or by the Commission to regulate such residual radioactive materials at such sites prior to completion of such study.

(Pub. L. 95-604, title III, §301, Nov. 8, 1978, 92 Stat. 3042.)

REFERENCES IN TEXT

The Atomic Energy Act of 1954, referred to in text, is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

Title II of this Act, referred to in text, is title II (§§201-209) of Pub. L. 95-604, Nov. 8, 1978, 92 Stat. 3033, as amended, which enacted sections 2022, 2113, 2114 of this title, amended sections 2014, 2021, 2111, and 2201 of this title, and enacted provisions set out as notes under sections 2014, 2021, and 2113 of this title. For complete classification of title II to the Code, see Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7942 of this title.

§ 7942. Designation by Secretary as processing sites for subchapter I purposes

(a) New Mexico cooperative agreement respecting certain residual radioactive materials; submission to Congressional committees

Within ninety days from the date of his receipt of the report and recommendations submitted by the Commission under section 7941 of this title, notwithstanding the limitations contained in section 7911(6)(A) and in section 7925(a) of this title, if the Commission determines, based on such study, that such sites cannot be regulated and controlled by the State or the Commission in the manner described in section 7941 of this title, the Secretary may designate either or both of the sites referred to in section 7941 of this title as a processing site for purposes of subchapter I of this chapter. Following such designation, the Secretary may enter into cooperative agreements with New Mexico to perform remedial action pursuant to such subchapter I concerning only the residual radioactive materials at such site resulting from uranium produced for sale to a Federal agency prior to January 1, 1971, under contract with such agency. Any such designation shall be submitted by the Secretary, together with his estimate of the cost of carrying out such remedial action at the designated site, to the Committee on Interior and Insular Affairs and the Committee on Energy and Commerce of the House of Representatives and to the Committee on Energy and Natural Resources of the Senate.

(b) Effective date

(1)¹ No designation under subsection (a) of this section shall take effect before the expiration of one hundred and twenty calendar days (not including any day in which either House of Congress is not in session because of an adjournment of more than three calendar days to a day certain or an adjournment sine die) after receipt by such Committees of such designation.

(c) Subchapter I provisions applicable

Except as otherwise specifically provided in subsection (a) of this section, any remedial action under subchapter I of this chapter with respect to any sites designated under this subchapter shall be subject to the provisions of subchapter I of this chapter (including the authorization of appropriations referred to in section 7922(b) of this title).

(Pub. L. 95-604, title III, §302, Nov. 8, 1978, 92 Stat. 3042; H. Res. 549, Mar. 25, 1980.)

CHANGE OF NAME

Committee on Interior and Insular Affairs of the House of Representatives changed to Committee on Natural Resources of the House of Representatives on Jan. 5, 1993, by House Resolution No. 5, One Hundred Third Congress. Committee on Natural Resources of House of Representatives treated as referring to Committee on Resources of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

Committee on Interstate and Foreign Commerce of the House of Representatives changed to Committee on Energy and Commerce immediately prior to noon on Jan. 3, 1981, by House Resolution No. 549, Ninety-sixth Congress, Mar. 25, 1980. Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9601 of this title.

CHAPTER 89—CONGREGATE HOUSING SERVICES

Sec.	
8001.	Congressional findings.
8002.	Definitions.
8003.	Contracts to provide congregate services programs.
8004.	Congregate services program.
	(a) Essential services for maintaining independent living.
	(b) Duplication of services.
	(c) Consultation with Area Agency on Aging or other appropriate State agency.
	(d) Submission of proposed application to Area Agency on Aging or other appropriate State agency.
	(e) Nonelderly handicapped individuals as eligible project residents.
	(f) Manner of providing congregate services.

Sec.	
	(g) Amount of annual contributions of receiving agency.
	(h) Fees for meal and other services.
	(i) Standards for provision of services.
8005.	Eligibility for services.
	(a) Professional assessment committee for determination of eligibility.
	(b) Participation of other residents in meal services program.
	(c) Notification of change in membership of professional assessment committee.
	(d) Procedure for changes in membership of professional assessment committee.
8006.	Application procedure for assistance.
	(a) Matters included in application.
	(b) Deadlines for submission of application.
	(c) Review of performance of services program prior to submission of application for renewed funding.
8007.	Evaluation of applications and programs.
	(a) Application evaluations.
	(b) Program evaluations.
	(c) Report to Congress.
8008.	Funding procedures.
8009.	Miscellaneous provisions.
	(a) Utilization of elderly and permanently disabled adult persons.
	(b) Tax treatment of services received.
	(c) Individuals receiving aid considered residents of own household.
	(d) Regulations.
8010.	Authorization of appropriations.
8011.	Revised congregate housing services program.
	(a) Findings and purposes.
	(b) Contracts for congregate services programs.
	(c) Reservation of amounts.
	(d) Eligible activities.
	(e) Eligibility for services.
	(f) Eligible contract recipients and distribution of assistance.
	(g) Applications.
	(h) Selection and evaluation of applications and programs.
	(i) Congregate services program funding.
	(j) Miscellaneous provisions.
	(k) Definitions.
	(l) Reports to Congress.
	(m) Regulations.
	(n) Authorization of appropriations.
	(o) Reserve fund.
8012.	Hope for elderly independence.
	(a) Purpose.
	(b) Housing assistance.
	(c) Supportive services requirements and matching funding.
	(d) Applications.
	(e) Selection.
	(f) Required agreements.
	(g) Definitions.
	(h) Multifamily project demonstration.
	(i) Report.
	(j) Section 1437f funding.
	(k) Funding for services.
	(l) Implementation.
8013.	Supportive housing for persons with disabilities.
	(a) Purpose.
	(b) Authority to provide assistance.
	(c) General requirements.
	(d) Forms of assistance.
	(e) Term of commitment.
	(f) Applications.
	(g) Selection criteria.
	(h) Development cost limitations.
	(i) Tenant selection.

¹ So in original. Subsec. (b) enacted without a par. (2).

Sec.

- (j) Miscellaneous provisions.
- (k) Definitions.
- (l) Allocation of funds.
- (m) Authorization of appropriations.
- (n) Effective date and applicability.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 3535, 8011 of this title.

§ 8001. Congressional findings

The Congress finds that—

(1) congregate housing, coordinated with the delivery of supportive services, offers an innovative, proven, and cost-effective means of enabling temporarily disabled or handicapped individuals to maintain their dignity and independence and to avoid costly and unnecessary institutionalization;

(2) a large and growing number of elderly and handicapped residents of public housing projects and of nonprofit projects for the elderly and handicapped face premature and unnecessary institutionalization because of the absence of or deficiencies in the availability, adequacy, coordination, or delivery of the supportive services required for the successful development of adequate numbers of congregate housing projects; and

(3) supplemental supportive services, available on a secure and continuing basis, are essential to a successful congregate housing program.

(Pub. L. 95-557, title IV, §402, Oct. 31, 1978, 92 Stat. 2104.)

SHORT TITLE

Section 401 of title IV of Pub. L. 95-557 provided that: "This title [enacting this chapter and amending section 1437e of this title] may be cited as the 'Congregate Housing Services Act of 1978'."

§ 8002. Definitions

For the purpose of this chapter—

(1) the term "congregate housing" means (A) low-rent housing which, as of January 1, 1979, was built or under construction, with which there is connected a central dining facility where wholesome and economical meals can be served to such occupants; or (B) low-rent housing constructed after, but not under construction prior to, January 1, 1979, connected with which there is a central dining facility to provide wholesome and economical meals for such occupants;

(2) the term "congregate services programs" means programs to be undertaken by a public housing agency or a nonprofit corporation to provide assistance, including personal assistance and nutritional meals, to eligible project residents who, with such assistance, can remain independent and avoid unnecessary institutionalization;

(3) the term "elderly" means sixty-two years of age or over;

(4) the term "eligible project resident" means elderly handicapped individuals, non-elderly handicapped individuals, or temporarily disabled individuals, who are residents of congregate housing projects administered

by a public housing agency or by a nonprofit corporation;

(5) the term "handicapped" means having an impairment which (A) is expected to be of long-continued and indefinite duration, and (B) substantially impedes an individual's ability to live independently unless the individual receives supportive congregate services; such impairment may include a functional disability or frailty which is a normal consequence of the human aging process;

(6) the term "personal assistance" means service provided under this chapter which may include, but is not limited to, aid given to eligible project residents in grooming, dressing, and other activities which maintain personal appearance and hygiene;

(7) the term "professional assessment committee" means a group of at least three persons appointed by a local public housing agency or a nonprofit corporation and shall include qualified medical professionals and other persons professionally competent to appraise the functional abilities of elderly or permanently disabled adult persons, or both, in relation to the performance of the normal tasks of daily living;

(8) the term "temporarily disabled" means an impairment which (A) is expected to be of no more than six months' duration, and (B) substantially impedes an individual's ability to live independently unless the individual receives supportive congregate services; and

(9) the term "nonprofit corporation" means any corporation responsible for a housing project assisted under section 1701q of title 12.

(Pub. L. 95-557, title IV, §403, Oct. 31, 1978, 92 Stat. 2105.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8005 of this title.

§ 8003. Contracts to provide congregate services programs

The Secretary of Housing and Urban Development (hereinafter referred to as the "Secretary") is authorized to enter into contracts with local public housing agencies under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] (hereinafter referred to as "public housing agencies") and with nonprofit corporations, utilizing sums appropriated under this chapter, to provide congregate services programs for eligible project residents in order to promote and encourage maximum independence within a home environment for such residents capable of self-care with appropriate supportive congregate services. Each contract between the Secretary and a public housing agency or nonprofit corporation shall be for a term of not less than three years or more than five years and shall be renewable at the expiration of such term. Each public housing agency or nonprofit corporation entering into such a contract shall be reserved a sum equal to its total approved contract amount from the moneys authorized and appropriated for the fiscal year in which the notification date of funding approval falls.

(Pub. L. 95-557, title IV, §404, Oct. 31, 1978, 92 Stat. 2106.)

REFERENCES IN TEXT

The United States Housing Act of 1937, referred to in text, is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93-383, title II, §201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§1437 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of this title and Tables.

§ 8004. Congregate services program

(a) Essential services for maintaining independent living

Congregate services programs assisted under this chapter must include full meal service adequate to meet nutritional needs, and may also include housekeeping aid, personal assistance, and other services essential for maintaining independent living.

(b) Duplication of services

No services funded under this chapter may duplicate services which are already affordable, accessible, and sufficiently available on a long-term basis to eligible project residents under programs administered by or receiving appropriations through any department, agency, or instrumentality of the Federal Government or any other public or private department, agency, or organization.

(c) Consultation with Area Agency on Aging or other appropriate State agency

A public housing agency or nonprofit corporation applying for assistance to provide congregate services to elderly residents shall consult with the Area Agency on Aging (or, where no Area Agency on Aging exists, with the appropriate State agency under the Older Americans Act of 1965 [42 U.S.C. 3001 et seq.]) in determining the means of providing services under this chapter and in identifying alternative available sources of funding for such services.

(d) Submission of proposed application to Area Agency on Aging or other appropriate State agency

Prior to the submission of a final application for either new or renewed funding under this chapter for the provision of congregate services to elderly residents, a public housing agency and a nonprofit corporation shall present a copy of a proposed application to the Area Agency on Aging (or, where no Area Agency on Aging exists to the appropriate State agency under the Older Americans Act of 1965 [42 U.S.C. 3001 et seq.]) for review and comment. Such agency and nonprofit corporation shall consider such review and comment in the development of any final application for either new or renewed funding under this chapter.

(e) Nonelderly handicapped individuals as eligible project residents

(1) A public housing agency or nonprofit corporation applying for assistance to provide congregate services to nonelderly handicapped residents shall consult with the appropriate agency, if any, designated by applicable State law as having responsibility for the development, provision, or identification of social services to permanently disabled adults, for the purpose of determining the means of providing services under

this chapter and of identifying alternative available sources of funding for such services.

(2) Such public housing agency and nonprofit corporation shall also, prior to the submission of a final application for either new or renewed funding under this chapter, present a copy of the proposed application to such appropriate agency for review and comment. The public housing agency and nonprofit corporation shall consider such review and comment in the development of any final application for either new or renewed funding under this chapter.

(f) Manner of providing congregate services

Any nonprofit corporation or public housing agency receiving assistance under this chapter may provide congregate services directly to eligible project residents or may, by contract or lease, provide such services through other appropriate agencies or providers.

(g) Amount of annual contributions of receiving agency

Nonprofit corporations and public housing agencies receiving assistance for congregate services programs under this chapter shall be required to maintain the same dollar amount of annual contribution which they were making, if any, in support of the provision of services eligible for assistance under this chapter before the date of the submission of the application for such assistance unless the Secretary determines that the waiver of this requirement is necessary for the maintenance of adequate levels of services to eligible project residents. If any contract or lease entered into by a public housing agency or nonprofit corporation pursuant to subsection (f) of this section provides for adjustments in payments for services to reflect changes in the cost of living, then the amount of annual contribution required to be maintained by such public agency or nonprofit corporation under the preceding sentence shall be readjusted in the same manner.

(h) Fees for meal and other services

Each nonprofit corporation and public housing agency shall establish fees for meal service and other appropriate services provided to eligible project residents. These fees shall be reasonable, may not exceed the cost of providing the service, and shall be calculated on a sliding scale related to income which permits the provision of services to such residents who cannot afford meal and service fees. When meal services are provided to other project residents, fees shall be reasonable and may not exceed the cost of providing the meal service.

(i) Standards for provision of services

The Secretary shall establish standards for the provision of services under this chapter, and, in developing such service standards, the Secretary shall consult with the Secretary of Health and Human Services and with appropriate organizations representing the elderly and handicapped, as determined by the Secretary.

(Pub. L. 95-557, title IV, §405, Oct. 31, 1978, 92 Stat. 2106; Pub. L. 96-399, title II, §208, Oct. 8, 1980, 94 Stat. 1634; Pub. L. 98-479, title II, §201(j), Oct. 17, 1984, 98 Stat. 2228.)

REFERENCES IN TEXT

The Older Americans Act of 1965, referred to in subsecs. (c) and (d), is Pub. L. 89-73, July 14, 1965, 79 Stat. 218, as amended, which is classified generally to chapter 35 (§3001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

AMENDMENTS

1984—Subsec. (i). Pub. L. 98-479 substituted “Health and Human Services” for “the Department of Health, Education, and Welfare”.

1980—Subsecs. (c), (d). Pub. L. 96-399, §208(a), (b), inserted reference to congregate services to elderly residents.

Subsec. (e). Pub. L. 96-399, §208(c), in par. (1) substituted “A public housing agency or nonprofit corporation applying for assistance to provide congregate services to nonelderly handicapped residents shall consult with the appropriate agency” for “When non-elderly handicapped individuals are included among the eligible project residents, the public housing agency and nonprofit corporation shall consult with the appropriate local agency”, and in par. (2) substituted “appropriate agency” for “appropriate local agency”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8006 of this title.

§ 8005. Eligibility for services**(a) Professional assessment committee for determination of eligibility**

The identification of project residents eligible to participate in a congregate services program assisted under this chapter, and the designation of the services appropriate to their individual functional abilities and needs, shall be made by a professional assessment committee. Such committee shall utilize procedures which insure that the process of determining eligibility of individuals for services under this title shall accord such individuals fair treatment and due process and a right of appeal of such determination of eligibility, and shall also assure the confidentiality of personal and medical records.

(b) Participation of other residents in meal services program

Other residents may participate in a congregate meal service program assisted under this chapter if the local public housing agency or nonprofit corporation determines that the participation of these individuals will not adversely affect the cost-effectiveness or operation of the program.

(c) Notification of change in membership of professional assessment committee

Any public housing agency or nonprofit corporation receiving assistance under this chapter shall notify the Secretary of any change in the membership of the professional assessment committee within thirty days of such change. Such notification shall list the names and professional qualifications of new members of the committee.

(d) Procedure for changes in membership of professional assessment committee

Procedures shall be established to insure that changes in the membership of the professional assessment committee are consistent with the requirements of section 8002(7) of this title.

(Pub. L. 95-557, title IV, §406, Oct. 31, 1978, 92 Stat. 2107.)

§ 8006. Application procedure for assistance**(a) Matters included in application**

An application for assistance under this chapter shall include—

(1) a plan specifying the types and priorities of the basic services the public housing agency or nonprofit corporation proposes to provide during the term of the contract; such plan must be related to the needs and characteristics of the eligible project residents and, to the maximum extent practicable, provide for the changing needs and characteristics of all project residents; such plan shall be determined after consultation with eligible project residents and with the professional assessment committee;

(2) a list of names and professional qualifications of the members of the professional assessment committee;

(3) the fee schedule established pursuant to section 8004(h) of this title;

(4) any comment received in connection with any review of a proposed application pursuant to section 8004(d) or 8004(e)(2) of this title; and

(5) a statement affirming (A) that the nonprofit corporation or public housing agency has followed the consultation procedures required in subsections (c), (d), and (e) of section 8004 of this title, and (B) that such application complies with subsection (b) of such section.

(b) Deadlines for submission of application

The Secretary shall establish appropriate deadlines for each fiscal year for the submission of applications for funding under this chapter and shall notify any public housing agency and nonprofit corporation applying for assistance under this chapter of acceptance or rejection of its application within ninety days of such submission.

(c) Review of performance of services program prior to submission of application for renewed funding

Within twelve months prior to the submission of an application for renewed funding under this chapter, each nonprofit corporation and public housing agency shall review the performance, appropriateness, and fee schedules of their congregate services program with eligible project residents and with the professional assessment committee. The results of such review shall be included in any application for renewal and shall be considered in the development of the application for renewal by the nonprofit corporation or public housing agency and in its evaluation by the Secretary.

(Pub. L. 95-557, title IV, §407, Oct. 31, 1978, 92 Stat. 2108.)

§ 8007. Evaluation of applications and programs**(a) Application evaluations**

In evaluating applications for assistance under this chapter, the Secretary shall consider—

(1) the types and priorities of the basic services proposed to be provided, and the relationship of such proposal to the needs and characteristics of the eligible residents of the projects where the services are to be provided;

(2) how quickly services will be established following approval of the application;

(3) the degree to which local social services are adequate for the purpose of assisting eligible project residents to maintain independent living and avoid unnecessary institutionalization;

(4) the professional qualifications of the members of the professional assessment committee; and

(5) the reasonableness of fee schedules established for each congregate service.

(b) Program evaluations

In evaluating programs receiving assistance under this chapter, the Secretary shall—

(1) establish procedures for the review and evaluation of the performance of nonprofit corporations and public housing agencies receiving assistance under this chapter, including provisions for the submission of an annual report, by each such nonprofit corporation and public housing agency, which evaluates the impact and effectiveness of its congregate services program; and

(2) publish annually and submit to the Congress, a report on and evaluation of the impact and effectiveness of congregate services programs assisted under this chapter. Such report and evaluation shall be based, in part, on the evaluations required to be submitted pursuant to paragraph (1).

(c) Report to Congress

(1) The Secretary shall contract with a university or qualified research institution to produce a report—

(A) documenting the number of elderly living in federally assisted housing at risk of institutionalization;

(B) studying and comparing alternative delivery systems in the States, including the congregate housing services program, to provide services to older persons in assisted congregate housing;

(C) assessing existing and potential financial resources at the Federal, State, and local levels for the support of congregate housing services; and

(D) making legislative recommendations as to the feasibility of permitting State housing agencies and other appropriate State agencies to participate and operate the program on a matching grant basis.

(2) The Secretary shall submit the report to the Congress not later than September 30, 1988.

(Pub. L. 95-557, title IV, § 408, Oct. 31, 1978, 92 Stat. 2108; Pub. L. 98-181, title II, § 224(a), Nov. 30, 1983, 97 Stat. 1191; Pub. L. 100-242, title I, § 163(b), (c), Feb. 5, 1988, 101 Stat. 1860.)

AMENDMENTS

1988—Subsec. (c). Pub. L. 100-242 added subsec. (c) and struck out former subsec. (c) which required Secretary to prepare and submit a report to Congress evaluating the congregate housing services program, not later than March 15, 1984.

1983—Subsec. (c). Pub. L. 98-181 added subsec. (c).

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (b)(2) of this section relating to submitting the annually published report to Congress, see section

3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 8th item on page 106 of House Document No. 103-7.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8008 of this title.

§ 8008. Funding procedures

(a) The Secretary shall establish procedures—

(1) to assure timely payments to nonprofit corporations and public housing agencies for approved assisted congregate services programs with provision made for advance funding sufficient to meet necessary startup costs;

(2) to permit reallocation of funds approved for the establishment of congregate services in existing public housing projects and projects assisted under section 1701q of title 12 if the services are not established within six months of the notification date of funding approval;

(3) to assure that where such funding has been approved for the establishment of congregate services for public housing projects and projects assisted under section 1701q of title 12 under construction or approved for construction, these services shall be in place at the start of the project's occupancy by tenants requiring such services for maintaining independent living;

(4) to establish accounting and other standards in order to prevent any fraudulent or inappropriate use of funds under this chapter; and

(5) to assure that no more than 1 per centum of the funds appropriated under this chapter for any fiscal year may be used by public housing agencies and nonprofit corporations for evaluative purposes as required by section 8007(b)(1) of this title.

(b) The Secretary shall establish a reserve fund, not to exceed 10 per centum of the funds appropriated in each fiscal year for the provision of services under this chapter, in order to supplement grants awarded to public housing agencies and nonprofit corporations under this chapter when, in the determination of the Secretary, such supplemental adjustments are required to maintain adequate levels of services to eligible project residents.

(Pub. L. 95-557, title IV, § 409, Oct. 31, 1978, 92 Stat. 2109.)

§ 8009. Miscellaneous provisions

(a) Utilization of elderly and permanently disabled adult persons

Each public housing agency and nonprofit corporation shall, to the maximum extent practicable, utilize elderly and permanently disabled adult persons who are residents of public housing projects or projects assisted under section 1701q of title 12, but who are not eligible project residents, to participate in providing the services assisted under this chapter. Such persons shall be paid wages which shall not be lower than whichever is the highest of—

(1) the minimum wage which would be applicable to the employee under the Fair Labor Standards Act of 1938 [29 U.S.C. 201 et seq.], if section 6(a)(1) of such Act [29 U.S.C. 206(a)(1)] applied to the resident and if he or she were

not exempt under section 13 [29 U.S.C. 213] thereof;

(2) the State or local minimum wage for the most nearly comparable covered employment; or

(3) the prevailing rates of pay for persons employed in similar public occupations by the same employer.

(b) Tax treatment of services received

No service provided to a public housing resident or to a resident of a housing project assisted under section 1701q of title 12 under this chapter, except for wages paid under subsection (a) of this section, may be treated as income for the purpose of any other program or provision of State or Federal law.

(c) Individuals receiving aid considered residents of own household

Individuals receiving services assisted under this chapter shall be deemed to be residents of their own households, and not to be residents of a public institution, for the purpose of any other program or provision of State or Federal law.

(d) Regulations

The Secretary may issue regulations to carry out the provisions of this chapter.

(Pub. L. 95-557, title IV, §410, Oct. 31, 1978, 92 Stat. 2109.)

REFERENCES IN TEXT

The Fair Labor Standards Act of 1938, referred to in subsec. (a)(1), is act June 25, 1938, ch. 676, 52 Stat. 1060, as amended, which is classified generally to chapter 8 (§201 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see section 201 of Title 29 and Tables.

§ 8010. Authorization of appropriations

(a) There are authorized to be appropriated to carry out this chapter \$10,000,000 for each of the fiscal years 1988 and 1989.

(b) Sums appropriated pursuant to this section shall remain available until expended.

(Pub. L. 95-557, title IV, §411, Oct. 31, 1978, 92 Stat. 2110; Pub. L. 98-181, title II, §224(b), Nov. 30, 1983, 97 Stat. 1191; Pub. L. 98-479, title I, §102(f), Oct. 17, 1984, 98 Stat. 2222; Pub. L. 100-242, title I, §163(a), Feb. 5, 1988, 101 Stat. 1860.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100-242 amended subsec. (a) generally, substituting provisions authorizing appropriations to carry out this chapter for fiscal years 1988 and 1989, for provisions authorizing appropriations to carry out this chapter for fiscal years 1979 through 1982, 1984, and 1985.

1984—Subsec. (a)(4). Pub. L. 98-479 inserted a semicolon at end.

1983—Subsec. (a)(5), (6). Pub. L. 98-181 added pars. (5) and (6).

§ 8011. Revised congregate housing services program

(a) Findings and purposes

(1) Findings

The Congress finds that—

(A) the effective provision of congregate services may require the redesign of units and buildings to meet the special physical

needs of the frail elderly persons and the creation of congregate space to accommodate services that enhance independent living;

(B) congregate housing, coordinated with the delivery of supportive services, offers an innovative, proven, and cost-effective means of enabling frail older persons and persons with disabilities to maintain their dignity and independence;

(C) independent living with assistance is a preferable housing alternative to institutionalization for many frail older persons and persons with disabilities;

(D) 365,000 persons in federally assisted housing experience some form of frailty, and the number is expected to increase as the general population ages;

(E) an estimated 20 to 30 percent of older adults living in federally assisted housing experience some form of frailty;

(F) a large and growing number of frail elderly residents face premature or unnecessary institutionalization because of the absence of or deficiencies in the availability, adequacy, coordination, or delivery of supportive services;

(G) the support service needs of frail residents of assisted housing are beyond the resources and experience that housing managers have for meeting such needs;

(H) supportive services would promote the invaluable option of independent living for nonelderly persons with disabilities in federally assisted housing;

(I) approximately 25 percent of congregate housing services program sites provide congregate services to young individuals with disabilities;

(J) to the extent that institutionalized older adults do not need the full costly support provided by such care, public moneys could be more effectively spent providing the necessary services in a noninstitutional setting; and

(K) the Congregate Housing Services Program, established by Congress in 1978, and similar programs providing in-home services have been effective in preventing unnecessary institutionalization and encouraging deinstitutionalization.

(2) Purposes

The purposes of this section are—

(A) to provide assistance to retrofit individual dwelling units and renovate public and common areas in eligible housing to meet the special physical needs of eligible residents;

(B) to create and rehabilitate congregate space in or adjacent to such housing to accommodate supportive services that enhance independent living;

(C) to improve the capacity of management to assess the service needs of eligible residents, coordinate the provision of supportive services that meet the needs of eligible residents and ensure the long-term provision of such services;

(D) to provide services in federally assisted housing to prevent premature and inappro-

appropriate institutionalization in a manner that respects the dignity of the elderly and persons with disabilities;

(E) to provide readily available and efficient supportive services that provide a choice in supported living arrangements by utilizing the services of an on-site coordinator, with emphasis on maintaining a continuum of care for the vulnerable elderly;

(F) to improve the quality of life of older Americans living in federally assisted housing;

(G) to preserve the viability of existing affordable housing projects for lower-income older residents who are aging in place by assisting managers of such housing with the difficulties and challenges created by serving older residents;

(H) to develop partnerships between the Federal Government and State governments in providing services to the frail elderly and persons with disabilities; and

(I) to utilize Federal and State funds in a more cost-effective and humane way in serving the needs of older adults.

(b) Contracts for congregate services programs

(1) In general

The Secretary of Housing and Urban Development and the Secretary of Agriculture (through Administrator of the Farmers Home Administration) shall enter into contracts with States, Indian tribes, units of general local government and local nonprofit housing sponsors, utilizing any amounts appropriated under subsection (n) of this section—

(A) to provide congregate services programs for eligible project residents to promote and encourage maximum independence within a home environment for such residents capable of self-care with appropriate supportive services; or

(B) to adapt housing to better accommodate the physical requirements and service needs of eligible residents.

(2) Term of contracts

Each contract between the Secretary concerned and a State, Indian tribe, or unit of general local government, or local nonprofit housing sponsor, shall be for a term of 5 years and shall be renewable at the expiration of the term, except as otherwise provided in this section.

(c) Reservation of amounts

For each State, Indian tribe, unit of general local government, and nonprofit housing sponsor, receiving a contract under this subsection,¹ the Secretary concerned shall reserve a sum equal to the total approved contract amount from the amount authorized and appropriated for the fiscal year in which the notification date of funding approval occurs.

(d) Eligible activities

(1) In general

A congregate services program under this section shall provide meal and other services for eligible project residents (and other resi-

dents and nonresidents, as provided in subsection (e) of this section), as provided in this section, that are coordinated on site.

(2) Meal services

Congregate services programs assisted under this section shall include meal service adequate to meet at least one-third of the daily nutritional needs of eligible project residents, as follows:

(A) Food stamps and agricultural commodities

In providing meal services under this paragraph, each congregate services program—

(i) shall—

(I) apply for approval as a retail food store under section 2018 of title 7; and

(II) if approved under such section, accept coupons (as defined in section 2012(e) of title 7) as payment from individuals to whom such meal services are provided; and

(ii) shall request, and use to provide such meal services, agricultural commodities made available without charge by the Secretary of Agriculture.

(B) Preference for nutrition providers

In contracting for or otherwise providing for meal services under this paragraph, each congregate services program shall give preference to any provider of meal services who—

(i) receives assistance under title III of the Older Americans Act of 1965 [42 U.S.C. 3021 et seq.]; or

(ii) has experience, according to standards as the Secretary shall require, in providing meal services in a housing project under the Congregate Housing Services Act of 1978 [42 U.S.C. 8001 et seq.] or any other program for congregate services.

(3) Retrofit and renovation

Assistance under this section may be provided with respect to eligible housing for the elderly for—

(A) retrofitting of individual dwelling units to meet the special physical needs of current or future residents who are or are expected to be eligible residents, which retrofitting may include—

(i) widening of doors to allow passage by persons with disabilities in wheelchairs into and within units in the project;

(ii) placement of light switches, electrical outlets, thermostats and other environmental controls in accessible locations;

(iii) installation of grab bars in bathrooms or the placement of reinforcements in bathroom walls to allow later installation of grab bars;

(iv) redesign of usable kitchens and bathrooms to permit a person in a wheelchair to maneuver about the space; and

(v) such other features of adaptive design that the Secretary finds are appropriate to meet the special needs of such residents;

(B) such renovation as is necessary to ensure that public and common areas are read-

¹ So in original. Probably should be "section,".

ily accessible to and usable by eligible residents;

(C) renovation, conversion, or combination of vacant dwelling units to create congregate space to accommodate the provision of supportive services to eligible residents;

(D) renovation of existing congregate space to accommodate the provision of supportive services to eligible residents; and

(E) construction or renovation of facilities to create conveniently located congregate space to accommodate the provision of supportive services to eligible residents.

For purposes of this paragraph, the term “congregate space” shall include space for cafeterias or dining halls, community rooms or buildings, workshops, adult day health facilities, or other outpatient health facilities, or other essential service facilities.

(4) Service coordinator

Assistance under this section may be provided with respect to the employment of one or more individuals (hereinafter referred to as “service coordinator”) who may be responsible for—

(A) working with the professional assessment committee established under subsection (f)² of this section on an ongoing basis to assess the service needs of eligible residents;

(B) working with service providers and the professional assessment committee to tailor the provision of services to the needs and characteristics of eligible residents;

(C) mobilizing public and private resources to ensure that the qualifying supportive services identified pursuant to subsection (d) of this section can be funded over the time period identified under such subsection;

(D) monitoring and evaluating the impact and effectiveness of any supportive service program receiving capital or operating assistance under this section; and

(E) performing such other duties and functions that the Secretary deems appropriate to enable frail elderly persons residing in federally assisted housing to live with dignity and independence.

The Secretary shall establish such minimum qualifications and standards for the position of service coordinator that the Secretary deems necessary to ensure sound management. Such qualifications and standards shall include requiring each service coordinator to be trained in the aging process, elder services, disability services, eligibility for and procedures of Federal and applicable State entitlement programs, legal liability issues relating to providing service coordination, drug and alcohol use and abuse by the elderly, and mental health issues. The Secretary may fund the employment of service coordinators by using amounts appropriated under this section and by permitting owners to use existing sources of funds, including excess project reserves.

(5) Other services

Congregate services programs assisted under this section may include services for transpor-

tation, personal care, dressing, bathing, toileting, housekeeping, chore assistance, non-medical counseling, assessment of the safety of housing units, group and socialization activities, assistance with medications (in accordance with any applicable State law), case management, personal emergency response, and other services to prevent premature and unnecessary institutionalization of eligible project residents.

(6) Determination of needs

In determining the services to be provided to eligible project residents under a congregate services program assisted under this section, the program shall provide for consideration of the needs and wants of eligible project residents.

(7) Fees

(A) Eligible project residents

The owner of each eligible housing project shall establish fees for meals and other services provided under a congregate services program to eligible project residents, which shall be sufficient to provide 10 percent of the costs of the services provided. The Secretary concerned shall provide for the waiver of fees under this paragraph for individuals whose incomes are insufficient to provide for any payment. The fees for meals shall be in the following amounts:

(i) Full meal services

The fees for residents receiving more than 1 meal per day, 7 days per week, shall be reasonable and shall equal between 10 and 20 percent of the adjusted income of the project resident (as such income is determined under section 3(b) of the United States Housing Act of 1937 [42 U.S.C. 1437a(b)]), or the cost of providing the services, whichever is less.

(ii) Less than full meal services

The fees for residents receiving meal services less frequently than as described in the preceding sentence shall be in an amount equal to 10 percent of such adjusted income of the project resident or the cost of providing the services, whichever is less.

(B) Other residents and nonresidents

Fees shall be established under this paragraph for residents of eligible housing projects (other than eligible project residents) and for nonresidents that receive services from a congregate services program pursuant to subsection (e) of this section. Such fees shall be in an amount equal to the cost of providing the services.

(8) Direct and indirect provision of services

Any State, Indian tribe, unit of general local government, or nonprofit housing sponsor that receives assistance under this section may provide congregate services directly to eligible project residents or may, by contract or lease, provide such services through other appropriate agencies or providers.

²So in original. Probably should be subsection “(e)”.

(e) Eligibility for services**(1) Eligible project residents**

Any eligible resident who is a resident of an eligible housing project (or who with deinstitutionalization and appropriate supportive services under this section could become a resident of eligible federally assisted housing) shall be eligible for services under a congregate services program assisted under this section.

(2) Economic need

In providing services under a congregate services program, the program shall give consideration to serving eligible project residents with the greatest economic need.

(3) Identification**(A) In general**

A professional assessment committee under subparagraph (B) shall identify eligible project residents under paragraph (1) and shall designate services appropriate to the functional abilities and needs of each eligible project resident. The committee shall utilize procedures that ensure that the process of determining eligibility of individuals for congregate services shall accord such individuals fair treatment and due process and a right of appeal of the determination of eligibility, and shall also ensure the confidentiality of personal and medical records.

(B) Professional assessment committee

A professional assessment committee under this section shall consist of not less than 3 individuals, who shall be appointed to the committee by the officials of the eligible housing project responsible for the congregate services program, and shall include qualified medical and other health and social services professionals competent to appraise the functional abilities of the frail elderly and persons with disabilities in relation to the performance of tasks of daily living.

(4) Eligibility of other residents

The elderly and persons with disabilities who reside in an eligible housing project other than eligible project residents under paragraph (1) may receive services from a congregate services program under this section if the housing managers, congregate service coordinators, and the professional assessment committee jointly determine that the participation of such individuals will not negatively affect the provision of services to eligible project residents. Residents eligible for services under this paragraph shall pay fees as provided under subsection (d) of this section.

(5) Eligibility of nonresidents

The Secretary may permit the provision of services to elderly persons and persons with disabilities who are not residents if the participation of such persons will not adversely affect the cost-effectiveness or operation of the program or add significantly to the need for assistance under this section.

(f) Eligible contract recipients and distribution of assistance

The Secretary concerned may provide assistance under this section and enter into contracts under subsection (b) of this section with—

- (1) owners of eligible housing;
- (2) States that submit applications in behalf of owners of eligible housing; and
- (3) Indian tribes and units of general local government that submit applications on behalf of owners of eligible housing.

(g) Applications

The funds made available under this section shall be allocated by the Secretary among approvable applications submitted by or on behalf of owners. Applications for assistance under this section shall be submitted in such form and in accordance with such procedures as the Secretary shall establish. Applications for assistance shall contain—

- (1) a description of the type of assistance the applicant is applying for;

(2) in the case of an application involving rehabilitation or retrofit, a description of the activities to be carried out, the number of elderly persons to be served, the costs of such activities, and evidence of a commitment for the services to be associated with the project;

(3) a description of qualifying supportive services that can reasonably be expected to be made available to eligible residents over a 5-year period;

(4) a firm commitment from one or more sources of assistance ensuring that some or all of the qualifying supportive services identified under paragraph (3) will be provided for not less than 1 year following the completion of activities assisted under subsection (d) of this section;

(5) a description of public or private sources of assistance that are likely to fund or provide qualifying supportive services, including evidence of any intention to provide assistance expressed by State and local governments, private foundations, and other organizations (including for-profit and nonprofit organizations);

(6) a certifications³ from the appropriate State or local agency (as determined by the Secretary) that—

(A) the provision of the qualifying supportive services identified under paragraph (3) will enable eligible residents to live independently and avoid unnecessary institutionalization,

(B) there is a reasonable likelihood that such services will be funded or provided for the entire period specified under paragraph (3), and

(C) the agency and the applicant will, during the term of the contract, actively seek assistance for such services from other sources;

(7) a description of any fees that would be established pursuant to subsection (d) of this section; and

(8) such other information or certifications that the Secretary determines to be necessary

³ So in original. Probably should be "certification".

or appropriate to achieve the purposes of this section.

The Secretary shall act on each application within 60 days of its submission.

(h) Selection and evaluation of applications and programs

(1) In general

Each Secretary concerned shall establish criteria for selecting States, Indian tribes, units of general local government, and local nonprofit housing sponsors to receive assistance under this section, and shall select such entities to receive assistance. The criteria for selection shall include consideration of—

(A) the extent to which the activities described in subsection (d)(3) of this section will foster independent living and the provision of such services;

(B) the types and priorities of the basic services proposed to be provided, the appropriateness of the targeting of services, the methods of providing for deinstitutionalized older individuals and individuals with disabilities, and the relationship of the proposal to the needs and characteristics of the eligible residents of the projects where the services are to be provided;

(C) the schedule for establishment of services following approval of the application;

(D) the degree to which local social services are adequate for the purpose of assisting eligible project residents to maintain independent living and avoid unnecessary institutionalization;

(E) the professional qualifications of the members of the professional assessment committee;

(F) the reasonableness and application of fees schedules established for congregate services;

(G) the adequacy and accuracy of the proposed budgets; and

(H) the extent to which the owner will provide funds from other services in excess of that required by this section.

(2) Evaluation of provision of congregate services programs

The Secretary of Housing and Urban Development and the Secretary of Agriculture shall, by regulation under subsection (n)⁴ of this section, establish procedures for States, Indian tribes, and units of general local government receiving assistance under this section—

(A) to review and evaluate the performance of the congregate services programs of eligible housing projects receiving assistance under this section in such State; and

(B) to submit annually, to the Secretary concerned, a report evaluating the impact and effectiveness of congregate services programs in the entity assisted under this section.

(i) Congregate services program funding

(1) Cost distribution

(A) Contribution requirement

In providing contracts under subsection (b) of this section, each Secretary concerned

shall provide for the cost of providing the congregate services program assisted under this section to be distributed as follows:

(i) Each State, Indian tribe, unit of general⁵ government, or nonprofit housing sponsor that receives amounts under a contract under subsection (b) of this section shall supplement any such amount with amounts sufficient to provide 50 percent of the cost of providing the congregate services program. Any monetary or in-kind contributions received by a congregate services program under the Congregate Housing Services Act of 1978 [42 U.S.C. 8001 et seq.] may be considered for purposes of fulfilling the requirement under this clause. The Secretary concerned shall encourage owners to use excess residual receipts to the extent available to supplement funds for retrofit and supportive services under this section.

(ii) The Secretary concerned shall provide 40 percent of the cost, with amounts under contracts under subsection (b) of this section.

(iii) Fees under subsection (d)(7) of this section shall provide 10 percent of the cost.

(B) Exceptions

(i) For any congregate services program that was receiving assistance under a contract under the Congregate Housing Services Act of 1978 [42 U.S.C. 8001 et seq.] on November 28, 1990,⁶ the unit of general local government or nonprofit housing sponsor, in coordination with a local government with respect to such program shall not be subject to the requirement to provide supplemental contributions under subparagraph (A)(i) (for such program) for the 6-year period beginning on the expiration of the contract for such assistance. The Secretary concerned shall require each such program to maintain, for such 6-year period, the same dollar amount of annual contributions in support of the services eligible for assistance under this section as were contributed to such program during the year preceding November 28, 1990.⁶

(ii) To the extent that the limitations under subsection (d)(7) of this section regarding the percentage of income eligible residents may pay for services will result in collected fees for any congregate services program of less than 10 percent of the cost of providing the program, 50 percent of such remaining costs shall be provided by the recipient of amounts under the contract and 50 percent of such remaining costs shall be provided by the Secretary concerned under such contract.

(C) Eligible supplemental contributions

If provided by the State, Indian tribe, unit of general local government, or local nonprofit housing sponsor, any salary paid to staff from governmental sources to carry out the program of the recipient and salary paid to residents employed by the program

⁴ So in original. Probably should be subsection "(m)".

⁵ So in original. Probably should be "general local".

⁶ See Codification note below.

(other than from amounts under a contract under subsection (b) of this section), and any other in-kind contributions from governmental sources shall be considered as supplemental contributions for purposes of meeting the supplemental contribution requirement under subparagraph (A)(i), except that the amount of in-kind contributions considered for purposes of fulfilling such contribution requirement may not exceed 10 percent of the total amount to be provided by the State, Indian tribe, local government, or local nonprofit housing sponsor.

(D) Prohibition of substitution of funds

The Secretary concerned shall require each State, Indian tribe, unit of general local government, and local nonprofit housing sponsor, that receives assistance under this section to maintain the same dollar amount of annual contribution that such State, Indian tribe, local government, or sponsor was making, if any, in support of services eligible for assistance under this section before the date of the submission of the application for such assistance.

(E) Limitation

For purposes of complying with the requirement under subparagraph (A)(i), the appropriate Secretary concerned may not consider any amounts contributed or provided by any local government to any State receiving assistance under this section that exceed 10 percent of the amount required of the State under subparagraph (A)(i).

(2) Consultation

The Secretary shall consult with the Secretary of Health and Human Services regarding the availability of assistance from other Federal programs to support services under this section and shall make information available to applicants for assistance under this section.

(j) Miscellaneous provisions

(1) Use of residents in providing services

Each housing project that receives assistance under this section shall, to the maximum extent practicable, utilize the elderly and persons with disabilities who are residents of the housing project, but who are not eligible project residents, to participate in providing the services provided under congregate services programs under this section. Such individuals shall be paid wages that shall not be lower than the higher of—

(A) the minimum wage that would be applicable to the employee under the Fair Labor Standards Act of 1938 [29 U.S.C. 201 et seq.], if section 6(a)(1) of such Act [29 U.S.C. 206(a)(1)] applied to the resident and if the resident were not exempt under section 13 of such Act [29 U.S.C. 213];

(B) the State of⁷ local minimum wage for the most nearly comparable covered employment; or

(C) the prevailing rates of pay for persons employed in similar public occupations by the same employer.

(2) Effect of services

Except for wages paid under paragraph (1) of this subsection, services provided to a resident of an eligible housing project under a congregate services program under this section may not be considered as income for the purpose of determining eligibility for or the amount of assistance or aid furnished under any Federal, federally assisted, or State program based on need.

(3) Eligibility and priority for 1978 Act recipients

Notwithstanding any other provision of this section, any public housing agency, housing assisted under section 1701q of title 12, or nonprofit corporation that was receiving assistance under a contract under the Congregate Housing Services Act of 1978 [42 U.S.C. 8001 et seq.] on November 5, 1990,⁸ shall (subject to approval and allocation of sufficient amounts under the Congregate Housing Services Act of 1978 and appropriations Acts under such Act) receive assistance under the Congregate Housing Services Act of 1978 for the remainder of the term of the contract for assistance for such agency or corporation under such Act, and shall receive priority for assistance under this section after the expiration of such period.

(4) Administrative cost limitation

A recipient of assistance under this section may not use more than 10 percent of the sum of such assistance and the contribution amounts required under subsection (i)(1)(A)(i) of this section for administrative costs and shall ensure that any entity to which the recipient distributes amounts from such sum may not expend more than a reasonable amount from such distributed amounts for administrative costs. Administrative costs may not include any capital expenses.

(k) Definitions

For purposes of this section:

(1) The term “activity of daily living” means an activity regularly necessary for personal care and includes bathing, dressing, eating, getting in and out of bed and chairs, walking, going outdoors, and using the toilet.

(2) The term “case management” means assessment of the needs of a resident, ensuring access to and coordination of services for the resident, monitoring delivery of services to the resident, and periodic reassessment to ensure that services provided are appropriate to the needs and wants of the resident.

(3) The term “congregate housing” means low-rent housing that is connected to a central dining facility where wholesome and economical meals can be served to the residents.

(4) The term “congregate services” means services described in subsection (d) of this section.

(5) The term “congregate services program” means a program assisted under this section undertaken by an eligible housing project to provide congregate services to eligible residents.

⁷ So in original. Probably should be “or”.

⁸ See Codification note below.

(6) The term “eligible housing project” means—

(A) public housing (as such term is defined in section 3(b) of the United States Housing Act of 1937 [42 U.S.C. 1437a(b)] and lower income housing developed or operated pursuant to a contract between the Secretary of Housing and Urban Development and an Indian housing authority under title II⁹ of the United States Housing Act of 1937;

(B) housing assisted under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f] with a contract that is attached to the structure under subsection (d)(2) of such section or with a contract entered into in connection with the new construction or moderate rehabilitation of the structure under section 8(b)(2) of the United States Housing Act,⁹ as such section existed before October 1, 1983;

(C) housing assisted under section 1701q of title 12;

(D) housing assisted under section 1715(d) or 1715z-1 of title 12, with respect to which the owner has made a binding commitment to the Secretary of Housing and Urban Development not to prepay the mortgage or terminate the insurance contract under section 1715t of title 12 (unless the binding commitments have been made to extend the low-income use restrictions relating to such housing for the remaining useful life of the housing);

(E) housing assisted under section 1484 or 1485 of this title, with respect to which the owner has made a binding commitment to the Secretary of Agriculture not to prepay or refinance the mortgage (unless the binding commitments have been made to extend the low-income use restrictions relating to such housing for not less than the 20-year period under section 1472(c)(4) of this title); and

(F) housing assisted under section 1486 of this title.

(7) The term “eligible resident” means a person residing in eligible housing for the elderly who qualifies under the definition of frail elderly, person with disabilities (regardless of whether the person is elderly), or temporarily disabled.

(8) The term “frail elderly” means an elderly person who is unable to perform at least 3 activities of daily living adopted by the Secretary for purposes of this program. Owners may establish additional eligibility requirements (acceptable to the Secretary) based on the standards in local supportive services programs.

(9) The term “Indian tribe” means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.], that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(10) The term “instrumental activity of daily living” means a regularly necessary home management activity and includes preparing meals, shopping for personal items, managing money, using the telephone, and performing light or heavy housework.

(11) The term “local nonprofit housing sponsor” includes public housing agencies (as such term is defined in section 3(b)(6) of the United States Housing Act of 1937 [42 U.S.C. 1437a(b)(6)].¹⁰

(12) The term “nonprofit”, as applied to an organization, means no part of the net earnings of the organization inures, or may lawfully inure, to the benefit of any private shareholder or individual.

(13) The term “elderly person” means a person who is at least 62 years of age.

(14) The term “person with disabilities” has the meaning given the term by section 8013 of this title.

(15) The term “professional assessment committee” means a committee established under subsection (e)(3)(B) of this section.

(16) The term “qualifying supportive services” means new or significantly expanded services that the Secretary deems essential to enable eligible residents to live independently and avoid unnecessary institutionalization. Such services may include but not be limited to (A) meal service adequate to meet nutritional need; (B) housekeeping aid; (C) personal assistance (which may include, but is not limited to, aid given to eligible residents in grooming, dressing, and other activities which maintain personal appearance and hygiene); (D) transportation services; (E) health-related services; and (F) personal emergency response systems; the owner may provide the qualifying services directly to eligible residents or may, by contract or lease, provide such services through other appropriate agencies or providers.

(17) The term “Secretary concerned” means—

(A) the Secretary of Housing and Urban Development, with respect to eligible federally assisted housing administered by such Secretary; and

(B) the Secretary of Agriculture, with respect to eligible federally assisted housing administered by the Administrator of the Farmers Home Administration.

(18) The term “State” means the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

(19) The term “temporarily disabled” means having an impairment that—

(A) is expected to be of no more than 6 months duration; and

(B) impedes the ability of the individual to live independently unless the individual receives congregate services.

⁹ See References in Text note below.

¹⁰ So in original. Probably should be preceded by a closing parenthesis.

(20) The term “unit of general local government”—

(A) means any city, town, township, county, parish, village, or other general purpose political subdivision of a State; and

(B) includes a unit of general government acting as an applicant for assistance under this section in cooperation with a nonprofit housing sponsor and a nonprofit housing sponsor acting as an applicant for assistance under this section in cooperation with a unit of general local government, as provided under subsection (g)(1)(B)¹¹ of this section.

(I) Reports to Congress

(1) In general

Each Secretary concerned shall submit to the Congress, for each fiscal year for which assistance is provided for congregate services programs under this section, an annual report—

(A) describing the activities being carried out with assistance under this section and the population being served by such activities;

(B) evaluating the effectiveness of the program of providing assistance for congregate services under this section, and a comparison of the effectiveness of the program under this section with the HOPE for Elderly Independence Program under section 8012 of this title; and

(C) containing any other information that the Secretary concerned considers helpful to the Congress in evaluating the effectiveness of this section.

(2) Submission of data to Secretary concerned

The Secretary of Housing and Urban Development and the Secretary of Agriculture shall provide, by regulation under subsection (m) of this section, for the submission of data by recipients of assistance under this section to be used in the repeat¹² required by paragraph (1).

(m) Regulations

The Secretary of Housing and Urban Development and the Secretary of Agriculture shall, not later than the expiration of the 180-day period beginning on November 28, 1990, jointly issue any regulations necessary to carry out this section.

(n) Authorization of appropriations

(1) Authorization and use

There are authorized to be appropriated to carry out this section \$21,000,000 for fiscal year 1993, and \$21,882,000 for fiscal year 1994, of which not more than—

(A) the amount of such sums appropriated that, with respect to the total amount appropriated, represents the ratio of the total number of units of eligible federally assisted housing for elderly individuals assisted by programs administered by the Secretary of Housing and Urban Development to the total number of units assisted by programs administered by such Secretary and the Secretary of Agriculture, shall be used for as-

sistance for congregate services programs in eligible federally assisted housing administered by the Secretary of Housing and Urban Development;¹³ and

(B) the amount of such sums appropriated that, with respect to the total amount appropriated, represents the ratio of the total number of units of eligible federally assisted housing for elderly individuals assisted by programs administered by the Secretary of Agriculture to the total number of units assisted by programs administered by such Secretary and the Secretary of Housing and Urban Development, shall be used for assistance for congregate services programs in eligible federally assisted housing administered by the Secretary of Agriculture (through the Administrator of the Farmers Home Administration).

(2) Availability

Any amounts appropriated under this subsection shall remain available until expended.

(o) Reserve fund

The Secretary may reserve not more than 5 percent of the amounts made available in each fiscal year to supplement grants awarded to owners under this section when, in the determination of the Secretary, such supplemental adjustments are required to maintain adequate levels of services to eligible residents.

(Pub. L. 101-625, title VIII, §802, Nov. 28, 1990, 104 Stat. 4304; Pub. L. 102-550, title VI, §§604(a), (b), 672, Oct. 28, 1992, 106 Stat. 3805, 3826.)

REFERENCES IN TEXT

The Older Americans Act of 1965, referred to in subsec. (d)(2)(B)(i), is Pub. L. 89-73, July 14, 1965, 79 Stat. 218, as amended. Title III of the Act is classified generally to subchapter III (§3021 et seq.) of chapter 35 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of Title 42 and Tables.

The Congregate Housing Services Act of 1978, referred to in subsecs. (d)(2)(B)(ii), (i)(1)(A)(i), (B)(i), and (j)(3), is title IV of Pub. L. 95-557, Oct. 31, 1978, 92 Stat. 2104, as amended, which is classified principally to this chapter (§8001 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 8001 of this title and Tables.

The Fair Labor Standards Act of 1938, referred to in subsec. (j)(1)(A), is act June 25, 1938, ch. 676, 52 Stat. 1060, as amended, which is classified principally to chapter 8 (§201 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see section 201 of Title 29 and Tables.

The United States Housing Act of 1937, referred to in subsec. (k)(6)(A), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93-383, title II, §201(a), Aug. 22, 1974, 88 Stat. 653, and amended. Title II of the Act, which was classified generally to subchapter II (§1437aa et seq.) of chapter 8 of this title, was repealed by Pub. L. 104-330, title V, §501(a), Oct. 26, 1996, 110 Stat. 4041. For complete classification of this Act to the Code, see Short title note set out under section 1437 of this title and Tables.

Section 8(b)(2) of the United States Housing Act, referred to in subsec. (k)(6)(B), probably means section 8(b)(2) of the United States Housing Act of 1937, which was classified to section 1437f(b)(2) of this title and was repealed by Pub. L. 98-181, title II, §209(a)(2), Nov. 30, 1983, 97 Stat. 1183.

¹¹ So in original. Probably should be subsection “(h)(1)(B)”.

¹² So in original. Probably should be “report”.

¹³ So in original. The colon probably should be a semicolon.

The Alaska Native Claims Settlement Act, referred to in subsec. (k)(9), is Pub. L. 92-203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

CODIFICATION

Section was enacted as part of the Cranston-Gonzalez National Affordable Housing Act, and not as part of the Congregate Housing Services Act of 1978 which comprises this chapter.

Section is comprised of section 802 of Pub. L. 101-625. Subsec. (p) of section 802 of Pub. L. 101-625 amended section 1437g of this title.

November 28, 1990, referred to in subsecs. (i)(1)(B)(i) and (m), was in the original "the date of the enactment of this Act" and November 5, 1990, referred to in subsec. (j)(3), was in the original "the date of the enactment of this section", see Effective Date note below.

AMENDMENTS

1992—Subsec. (d)(4). Pub. L. 102-550, §672, inserted after first sentence of concluding provisions "Such qualifications and standards shall include requiring each service coordinator to be trained in the aging process, elder services, disability services, eligibility for and procedures of Federal and applicable State entitlement programs, legal liability issues relating to providing service coordination, drug and alcohol use and abuse by the elderly, and mental health issues."

Subsec. (i)(1)(B)(i). Pub. L. 102-550, §604(b), substituted "6-year" for "3-year" in two places.

Subsec. (n)(1). Pub. L. 102-550, §604(a), in introductory provisions, substituted provisions authorizing appropriations for fiscal years 1993 and 1994 for provisions authorizing appropriations of \$25,000,000 for fiscal year 1991 and \$26,100,000 for fiscal year 1992.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by subtitles B through F of title VI [§§ 621-685] of Pub. L. 102-550 applicable upon expiration of 6-month period beginning Oct. 28, 1992, except as otherwise provided, see section 13642 of this title.

EFFECTIVE DATE

This section was enacted as part of Pub. L. 101-625, which was approved Nov. 28, 1990. However, this section was deemed enacted as of Nov. 5, 1990, by Pub. L. 101-507, title II, Nov. 5, 1990, 104 Stat. 1358, set out as an Effective Date of 1990 Amendment note under section 1701q of Title 12, Banks and Banking.

REGULATIONS

Section 604(c) of Pub. L. 102-550 provided that:

"(1) INTERIM REGULATIONS.—Not later than the expiration of the 30-day period beginning on the date of the enactment of this Act [Oct. 28, 1992], the Secretary of Housing and Urban Development and the Secretary of Agriculture shall submit to the Congress a copy of proposed interim regulations implementing section 802 of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 8011] with respect to eligible federally assisted housing (as such term is defined in section 802(k) of such Act) administered by each such Secretary. Not later than the expiration of the 45-day period beginning on the date of the enactment of this Act, but not before the expiration of the 15-day period beginning upon the submission of the proposed interim regulations to the Congress, each such Secretary shall publish interim regulations implementing such section 802, which shall take effect upon publication.

"(2) FINAL REGULATIONS.—Not later than the expiration of the 90-day period beginning upon the publication of interim regulations under paragraph (1), each such Secretary shall issue final regulations implementing section 802 of the Cranston-Gonzalez National Affordable Housing Act after notice and opportunity for

public comment regarding the interim regulations, pursuant to the provisions of section 553 of title 5, United States Code (notwithstanding subsections (a)(2), (b)(B), and (d)(3) of such section). The duration of the period for public comment under such section 553 shall be not less than 60 days, and the final regulations shall take effect upon issuance.

"(3) FAILURE UNDER 1990 ACT.—This subsection may not be construed to authorize any failure to comply with the requirements of section 802(m) of the Cranston-Gonzalez National Affordable Housing Act."

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1485, 13631 of this title; title 12 section 1715w.

§ 8012. Hope for elderly independence

(a) Purpose

The purpose of this section is to establish a demonstration program to test the effectiveness of combining housing certificates and vouchers with supportive services to assist frail elderly persons to continue to live independently. The demonstration program under this section shall terminate upon the expiration of the 5-year period determined by the Secretary.

(b) Housing assistance

In connection with this demonstration, the Secretary of Housing and Urban Development may enter into contracts with public housing agencies to provide not more than 1,500 incremental vouchers and certificates under sections 1437f(b) and 1437f(o) of this title. A public housing agency may not require that a frail elderly person live in a particular structure or unit, but the agency may restrict the program under this section to a geographic area, where necessary to ensure that the provision of supportive services is feasible. At the end of the demonstration period, the public housing agency shall give each frail elderly person the option to continue to receive assistance under the housing certificate or voucher program of the agency. In the demonstration, the Secretary may also provide for supportive services in connection with existing contracts for housing assistance under sections 1437f(b) and 1437f(o) of this title.

(c) Supportive services requirements and matching funding

(1) Federal, PHA and,¹ individual contributions

The amount estimated by the public housing agency and approved by the Secretary as necessary to provide the supportive services for the demonstration period shall be funded as follows:

(A) The Secretary shall provide 40 percent, using amounts appropriated under this section.

(B) The public housing agency shall ensure the provision of at least 50 percent from sources other than under this section.

(C) Notwithstanding any other provision of law, each frail elderly person shall pay 10

¹ So in original. The comma probably should precede "and".

percent of the costs of the supportive services that the person receives, except that a frail elderly person may not be required to pay an amount that exceeds 20 percent of the adjusted income (as the term is defined in section 1437a(b)(5) of this title) of such person and the Secretary shall provide for the waiver of the requirement to pay costs under this subparagraph for persons whose income is determined to be insufficient to provide for any payment.

(D) To the extent that the limitation under subparagraph (C) regarding the percentage of income frail elderly persons may pay for services will result in collected amounts for any public housing agency of less than 10 percent of the cost of providing the services, 50 percent of such remaining costs shall be provided by the public housing agency and 50 percent of such remaining costs shall be provided by the Secretary from amounts appropriated under this section.

(2) Provision of services for entire demonstration

Each public housing agency shall ensure that supportive services appropriate to the needs of the frail elderly persons to be served under this demonstration are provided throughout the demonstration period. Expenditures for supportive services need not be made in equal amounts for each year, but may vary depending on the needs of the frail elderly persons assisted under this section. A public housing agency may use up to 20 percent of the Federal assistance provided for supportive services in each year of this demonstration and any amounts from any prior year in which the public housing agency did not use 20 percent of the available Federal assistance.

(3) Calculation of match

In determining compliance with paragraph (1)(B), an agency may include the value of such items as the Secretary determines to be appropriate, which may include the salary paid to staff to provide supportive services, if such items have a readily discernible market value.

(d) Applications

An application under this section shall be submitted by a public housing agency in such form and in accordance with such procedures as the Secretary shall establish. The Secretary shall require that an application contain at a minimum—

(1) an application for housing assistance under section 1437f of this title, if necessary, and a description of any such assistance already made available that will be used in the demonstration;

(2) a description of the size and characteristics of the population of frail elderly persons and of their housing and supportive services needs;

(3) a description of the proposed method of determining whether a person qualifies as a frail elderly person (specifying any additional eligibility requirements proposed by the agency), and of selecting frail elderly persons to participate;

(4) a statement that the public housing agency will create a professional assessment committee or will work with another entity which will assist the public housing agency in identifying and providing only services that each frail elderly person needs to remain living independently;

(5) a description of the mechanisms for developing housing and supportive services plans for each person and for monitoring the person's progress in meeting that plan;

(6) the identity of the proposed service providers and a statement of qualifications;

(7) a description of the supportive services the public housing agency proposes to make available for the frail elderly persons to be served, the estimated costs of such services, a description of the resources that are expected to be made available to cover the portion of the costs required by subsection (c)(1) of this section;

(8) assurances satisfactory to the Secretary that the supportive services will be provided for the demonstration period;

(9) the plan for coordinating the provision of housing assistance and supportive services;

(10) a description of how the public housing agency will ensure that the service providers are providing supportive services, at a reasonable cost, adequate to meet the needs of the persons to be served;

(11) a plan for continuing supportive services to frail elderly persons that continue to receive housing assistance under section 1437f of this title after the end of the demonstration period; and

(12) a statement that the application has been developed in consultation with the area agency on aging under title III of the Older Americans Act of 1965 [42 U.S.C. 3021 et seq.] and that the public housing agency will periodically consult with the area agency during the demonstration.

(e) Selection

(1) Criteria

The Secretary shall establish selection criteria for a national competition for assistance under this section, which shall include—

(A) the ability of the public housing agency to develop and operate the proposed housing assistance and supportive services program;

(B) the need for a program providing both housing assistance and supportive services for frail elderly persons in the area to be served;

(C) the quality of the proposed program for providing supportive services;

(D) the extent to which the proposed funding for the supportive services is or will be available;

(E) the extent to which the program would meet the needs of the frail elderly persons proposed to be served by the program; and

(F) such other factors as the Secretary specifies to be appropriate for purposes of carrying out the demonstration program established by this section in an effective and efficient manner.

(2) Consultation with HHS

In reviewing the applications, the Secretary shall consult with the Secretary of Health and

Human Services with respect to the supportive services aspects.

(3) Funding limitations

No more than 10 percent of the assistance made available under this section may be used for programs located within any one unit of general local government.

(f) Required agreements

The Secretary may not approve any assistance for any program under this section unless the public housing agency agrees—

(1) to operate the proposed program in accordance with the program requirements established by the Secretary;

(2) to conduct an ongoing assessment of the housing assistance and supportive services required by each frail elderly person participating in the program;

(3) to ensure the adequate provision of supportive services, at a reasonable cost, to each frail elderly person participating in the program; and

(4) to comply with such other terms and conditions as the Secretary may establish for purposes of carrying out the program in an effective and efficient manner.

(g) Definitions

For purposes of this section:

(1) The term “demonstration period” means the 5-year period referred to in subsection (a) of this section.

(2) The term “elderly person” means a person who is at least 62 years of age.

(3) The term “frail elderly person” means an elderly person who is unable to perform at least 3 activities of daily living adopted by the Secretary for purposes of this program. Owners may establish additional eligibility requirements (acceptable to the Secretary) based on the standards in local supportive services programs.

(4) The term “professional assessment committee” means a group of at least 3 persons appointed by a public housing agency which shall include at least 1 qualified medical professional and other persons professionally competent to appraise the functional abilities of the frail elderly in relation to the performance of activities of daily living.

(5) The term “public housing agency” has the meaning given such term in section 1437a(b)(6) of this title. The term includes an Indian Housing Authority, as defined in section 1437a(b)(11)² of this title.

(6) The term “Secretary” means the Secretary of Housing and Urban Development.

(7) The term “supportive services”—

(A) means assistance, that the Secretary determines—

(i) addresses the special needs of frail elderly persons; and

(ii) provides appropriate supportive services or assists such persons in obtaining appropriate services, including personal care, case management services, transportation, meal services, counseling, supervision, and other services essential for

achieving and maintaining independent living; and

(B) does not include medical services, as determined by the Secretary.

(h) Multifamily project demonstration

(1) In general

In addition to the demonstration program authorized by the preceding provisions of this section, the Secretary shall conduct a demonstration in one Federal region, subject to the terms and conditions of this subsection, to determine the feasibility of using housing assistance under section 1437f of this title to assist elderly persons who may become frail to live independently in housing specifically designed for occupancy by such persons in sufficient proportion to achieve economies of scale in the provision of services and facilities.

(2) Section 1437f allocation

From amounts provided pursuant to subsection (j) of this section and subject to availability in appropriation Acts, the Secretary shall enter into a contract with a public housing agency to provide housing assistance under section 1437f(b) of this title to assist elderly persons in at least 75 percent of the units in a single housing project with more than 100 units.

(3) Section 1437f terms

The assistance payment contract under section 1437f of this title shall be attached to the structure and shall be in an initial term of 5 years. The contract shall (at the option of the public housing agency and subject to availability of amounts approved in appropriations Acts) be renewable for 3 additional 5-year terms. Rents for units in the project assisted pursuant to this subsection shall be subject to the rent limitations in effect for the area under section 1437f of this title for projects for the elderly receiving loans under section 1701q of title 12.

(4) Supportive services

The Secretary shall allocate, for the project assisted pursuant to this subsection, a reasonable portion of the amounts appropriated pursuant to the authorization for funds for supportive services in subsection (k) of this section, based on the estimated number of project residents who will be frail elderly individuals during the 5-year period beginning on the date of initial occupancy of the project. Grants for supportive services may be used to assist any occupant in the demonstration project who is a frail elderly individual. Grants for supportive services under this subsection shall be subject to the other terms and conditions specified in this section.

(5) Applications

An application for assistance under this subsection may be submitted by any unit of general local government with a population under 50,000 and shall contain such information as the Secretary deems appropriate.

(6) Selection

The Secretary shall select one application for funding under this subsection based on the following criteria:

² See References in Text note below.

(A) The number of elderly persons residing in the applicant's jurisdiction.

(B) The extent of existing housing constructed prior to 1940 in the applicant's jurisdiction.

(C) The number of elderly persons living in adjacent projects to whom the services and facilities provided by the project would be available.

(D) The level of State and local contributions toward the cost of developing the project and of providing supportive services.

(E) The project's contribution to neighborhood improvement.

(i) Report

The Secretary shall submit to Congress an annual report evaluating the effectiveness of the demonstrations under this section. The report shall include a statement of the number of persons served, the types of services provided, the cost of providing such services, and any other information the Secretary considers appropriate in evaluating the demonstration.

(j) Section 1437f funding

The budget authority available under section 1437c(c) of this title for assistance under sections 1437f(b) and 1437f(o) of this title is authorized to be increased by \$38,288,000 on or after October 1, 1992, and by \$39,896,096 on or after October 1, 1993. The amounts made available under this subsection shall be used only in connection with the demonstration under this section.

(k) Funding for services

There are authorized to be appropriated for the Secretary to carry out the responsibilities for supportive services under the demonstrations under this section \$10,000,000 to become available in fiscal year 1993, and \$10,420,000 to become available in fiscal year 1994. Any such amounts appropriated under this subsection shall remain available until expended.

(l) Implementation

Not later than the expiration of the 180-day period beginning on the date that funds authorized for the demonstrations under this section first become available for obligation, the Secretary shall by notice establish such requirements as may be necessary to carry out the demonstration programs authorized under this section.

(Pub. L. 101-625, title VIII, § 803, Nov. 28, 1990, 104 Stat. 4317; Pub. L. 102-550, title VI, § 605, Oct. 28, 1992, 106 Stat. 3806.)

REFERENCES IN TEXT

The Older Americans Act of 1965, referred to in subsec. (d)(12), is Pub. L. 89-73, July 14, 1965, 79 Stat. 218, as amended. Title III of the Act is classified generally to subchapter III (§3021 et seq.) of chapter 35 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

Section 1437a(b)(11) of this title, referred to in subsec. (g)(5), was repealed by Pub. L. 104-330, title V, § 501(b)(1)(D), Oct. 26, 1996, 110 Stat. 4041, and a new section 1437a(b)(11), defining "public housing agency plan", was enacted by Pub. L. 105-276, title V, § 506(4), Oct. 21, 1998, 112 Stat. 2524.

CODIFICATION

Section was enacted as part of the Cranston-Gonzalez National Affordable Housing Act, and not as part of the

Congregate Housing Services Act of 1978 which comprises this chapter.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102-550, § 605(c)(1), substituted "determined by the Secretary" for "beginning on November 28, 1990".

Subsec. (g)(1). Pub. L. 102-550, § 605(c)(2), added par. (1) and struck out former par. (1) which read as follows: "The term 'demonstration period' means the period beginning on November 28, 1990, and ending upon the termination date under subsection (a) of this section."

Subsec. (j). Pub. L. 102-550, § 605(a), amended subsec. (j) generally. Prior to amendment, subsec. (j) read as follows: "The Secretary may provide assistance under sections 1437f(b) and 1437f(o) of this title in connection with the demonstrations under this section, in an amount not to exceed \$34,000,000 for fiscal year 1991, and \$35,500,000 for fiscal year 1992, subject to the approval of sufficient amounts in appropriations Acts under section 1437c of this title."

Subsec. (k). Pub. L. 102-550, § 605(b), amended subsec. (k) generally. Prior to amendment, subsec. (k) read as follows: "There are authorized to be appropriated for the Secretary to carry out the responsibilities for supportive services under the demonstrations under this section, \$10,000,000 to become available in fiscal year 1991, and \$10,400,000 to become available in fiscal year 1992, and remain available until expended."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8011 of this title.

§ 8013. Supportive housing for persons with disabilities

(a) Purpose

The purpose of this section is to enable persons with disabilities to live with dignity and independence within their communities by expanding the supply of supportive housing that—

- (1) is designed to accommodate the special needs of such persons; and
- (2) provides supportive services that address the individual health, mental health, and other needs of such persons.

(b) Authority to provide assistance

The Secretary is authorized—

- (1) to provide tenant-based rental assistance to eligible persons with disabilities, in accordance with subsection (d)(4) of this section; and
- (2) to provide assistance to private, non-profit organizations to expand the supply of supportive housing for persons with disabilities, which shall be provided as—

- (A) capital advances in accordance with subsection (d)(1) of this section, and
- (B) contracts for project rental assistance in accordance with subsection (d)(2) of this section;

assistance under this paragraph may be used to finance the acquisition, acquisition and moderate rehabilitation, construction, reconstruction, or moderate or substantial rehabilitation of housing, including the acquisition from the Resolution Trust Corporation, to be used as supportive housing for persons with disabilities and may include real property acquisition, site improvement, conversion, demolition, relocation, and other expenses that the Secretary determines are necessary to expand the supply of supportive housing for persons with disabilities.

(c) General requirements

The Secretary shall take such actions as may be necessary to ensure that—

(1) assistance made available under this section will be used to meet the special needs of persons with disabilities by providing a variety of housing options, ranging from group homes and independent living facilities to dwelling units in multifamily housing developments, condominium housing, and cooperative housing; and

(2) supportive housing for persons with disabilities assisted under this section shall—

(A) provide persons with disabilities occupying such housing with supportive services that address their individual needs;

(B) provide such persons with opportunities for optimal independent living and participation in normal daily activities,¹ and

(C) facilitate access by such persons to the community at large and to suitable employment opportunities within such community.

(d) Forms of assistance**(1) Capital advances**

A capital advance provided under subsection (b)(2) of this section shall bear no interest and its repayment shall not be required so long as the housing remains available for very-low-income persons with disabilities in accordance with this section. Such advance shall be in an amount calculated in accordance with the development cost limitation established in subsection (h) of this section.

(2) Project rental assistance

Contracts for project rental assistance shall obligate the Secretary to make monthly payments to cover any part of the costs attributed to units occupied (or, as approved by the Secretary, held for occupancy) by very low-income persons with disabilities that is not met from project income. The annual contract amount for any project shall not exceed the sum of the initial annual project rentals for all units and any initial utility allowances for such units, as approved by the Secretary. Any contract amounts not used by a project in any year shall remain available to the project until the expiration of the contract. The Secretary may adjust the annual contract amount if the sum of the project income and the amount of assistance payments available under this paragraph are inadequate to provide for reasonable project costs. In the case of an intermediate care facility which is the residence of persons assisted under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.], project income under this paragraph shall include the same amount as if such person were being assisted under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.].

(3) Rent contribution

A very low-income person shall pay as rent for a dwelling unit assisted under subsection (b)(2) of this section the higher of the following amounts, rounded to the nearest dollar: (A) 30 percent of the person's adjusted month-

ly income, (B) 10 percent of the person's monthly income, or (C) if the person is receiving payments for welfare assistance from a public agency and a part of such payments, adjusted in accordance with the person's actual housing costs, is specifically designated by such agency to meet the person's housing costs, the portion of such payments which is so designated; except that the gross income of a person occupying an intermediate care facility assisted under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] shall be the same amount as if the person were being assisted under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.].

(4) Tenant-based rental assistance**(A) Administering entities**

Tenant-based rental assistance provided under subsection (b)(1) of this section may be provided only through a public housing agency that has submitted and had approved a plan under section 1437e(d) of this title that provides for such assistance, or through a private nonprofit organization. A public housing agency shall be eligible to apply under this section only for the purposes of providing such tenant-based rental assistance.

(B) Program rules

Tenant-based rental assistance under subsection (b)(1) of this section shall be made available to eligible persons with disabilities and administered under the same rules that govern tenant-based rental assistance made available under section 1437f of this title, except that the Secretary may waive or modify such rules, but only to the extent necessary to provide for administering such assistance under subsection (b)(1) of this section through private nonprofit organizations rather than through public housing agencies.

(C) Allocation of assistance

In determining the amount of assistance provided under subsection (b)(1) of this section for a private nonprofit organization or public housing agency, the Secretary shall consider the needs and capabilities of the organization or agency, in the case of a public housing agency, as described in the plan for the agency under section 1437e of this title.

(e) Term of commitment**(1) Use limitations**

All units in housing assisted under subsection (b)(2) of this section shall be made available for occupancy by very low-income persons with disabilities for not less than 40 years.

(2) Contract terms

The initial term of a contract entered into under subsection (d)(2) of this section shall be 240 months. The Secretary shall, to the extent approved in appropriation Acts, extend any expiring contract for a term of not less than 60 months. In order to facilitate the orderly extension of expiring contracts, the Secretary is authorized to make commitments to extend expiring contracts during the year prior to the date of expiration.

¹ So in original. The comma probably should be a semicolon.

(f) Applications

Funds made available under subsection (b)(2) of this section shall be allocated by the Secretary among approvable applications submitted by private nonprofit organizations. Applications for assistance under subsection (b)(2) of this section shall be submitted in such form and in accordance with such procedures as the Secretary shall establish. Such applications shall contain—

- (1) a description of the proposed housing;
- (2) a description of the assistance the applicant seeks under this section;
- (3) a supportive service plan that contains—
 - (A) a description of the needs of persons with disabilities that the housing is expected to serve;
 - (B) assurances that persons with disabilities occupying such housing will receive supportive services based on their individual needs;
 - (C) evidence of the applicant's (or a designated service provider's) experience in providing such supportive services;
 - (D) a description of the manner in which such services will be provided to such persons, including evidence of such residential supervision as the Secretary determines is necessary to facilitate the adequate provision of such services; and
 - (E) identification of the extent of State and local funds available to assist in the provision of such services;
- (4) a certification from the appropriate State or local agency (as determined by the Secretary) that the provision of the services identified in paragraph (3) are well designed to serve the special needs of persons with disabilities;
- (5) reasonable assurances that the applicant will own or have control of an acceptable site for the proposed housing not later than 6 months after notification of an award for assistance;
- (6) a certification from the public official responsible for submitting a housing strategy for the jurisdiction to be served in accordance with section 12705 of this title that the proposed housing is consistent with the approved housing strategy; and
- (7) such other information or certifications that the Secretary determines to be necessary or appropriate to achieve the purposes of this section.

(g) Selection criteria

The Secretary shall establish selection criteria for assistance under subsection (b)(2) of this section, which shall include—

- (1) the ability of the applicant to develop and operate the proposed housing;
- (2) the need for housing for persons with disabilities in the area to be served;
- (3) the extent to which the proposed design of the housing will meet the special needs of persons with disabilities;
- (4) the extent to which the applicant has demonstrated that the necessary supportive services will be provided on a consistent, long-term basis;
- (5) the extent to which the proposed design of the housing will accommodate the provision of such services;

(6) the extent to which the applicant has control of the site of the proposed housing; and

(7) such other factors as the Secretary determines to be appropriate to ensure that funds made available under subsection (b)(2) of this section are used effectively.

(h) Development cost limitations**(1) In general**

The Secretary shall periodically establish development cost limitations by market area for various types and sizes of supportive housing for persons with disabilities by publishing a notice of the cost limitations in the Federal Register. The cost limitations shall reflect—

- (A) the cost of acquisition, construction, reconstruction, or rehabilitation of supportive housing for persons with disabilities that (i) meets applicable State and local housing and building codes; and (ii) conforms with the design characteristics of the neighborhood in which it is to be located;
- (B) the cost of movables necessary to the basic operation of the housing, as determined by the Secretary;
- (C) the cost of special design features necessary to make the housing accessible to persons with disabilities;
- (D) the cost of special design features necessary to make individual dwelling units meet the special needs of persons with disabilities;
- (E) the cost of congregate space necessary to accommodate the provision of supportive services to persons with disabilities;
- (F) if the housing is newly constructed, the cost of meeting the energy efficiency standards promulgated by the Secretary in accordance with section 12709 of this title; and
- (G) the cost of land, including necessary site improvement.

In establishing development cost limitations for a given market area, the Secretary shall use data that reflect currently prevailing costs of acquisition, construction, reconstruction, or rehabilitation, and land acquisition in the area. Neither this section nor any other provision of law may be construed as prohibiting or preventing the location and operation, in a project assisted under this section, of commercial facilities for the benefit of residents of the project and the community in which the project is located, except that assistance made available under this section may not be used to subsidize any such commercial facility.

(2) RTC properties

In the case of existing housing and related facilities from the Resolution Trust Corporation under section 1441a(c) of title 12, the cost limitations shall include—

- (A) the cost of acquiring such housing,
- (B) the cost of rehabilitation, alteration, conversion, or improvement, including the moderate rehabilitation thereof, and
- (C) the cost of the land on which the housing and related facilities are located.

(3) Annual adjustments

The Secretary shall adjust the cost limitation not less than once annually to reflect

changes in the general level of acquisition, construction, reconstruction, or rehabilitation costs.

(4) Incentives for savings

(A) Special project account

The Secretary shall use the development cost limitations established under paragraph (1) to calculate the amount of financing to be made available to individual owners. Owners which incur actual development costs that are less than the amount of financing shall be entitled to retain 50 percent of the savings in a special project account. Such percentage shall be increased to 75 percent for owners which add energy efficiency features which (i) exceed the energy efficiency standards promulgated by the Secretary in accordance with section 12709 of this title; (ii) substantially reduce the life-cycle cost of the housing; (iii) reduce gross rent requirements; and (iv) enhance tenant comfort and convenience.

(B) Uses

The special project account established under subparagraph (A) may be used (i) to supplement services provided to residents of the housing or funds set-aside for replacement reserves, or (ii) for such other purposes as determined by the Secretary.

(5) Funds from other sources

An owner shall be permitted voluntarily to provide funds from sources other than this section for amenities and other features of appropriate design and construction suitable for supportive housing for persons with disabilities if the cost of such amenities is (A) not financed with the advance, and (B) is not taken into account in determining the amount of Federal assistance or of the rent contribution of tenants. Notwithstanding any other provision of law, assistance amounts provided under this section may be treated as amounts not derived from a Federal grant.

(i) Tenant selection

(1) An owner shall adopt written tenant selection procedures that are satisfactory to the Secretary as (A) consistent with the purpose of improving housing opportunities for very low-income persons with disabilities; and (B) reasonably related to program eligibility and an applicant's ability to perform the obligations of the lease. Owners shall promptly notify in writing any rejected applicant of the grounds for any rejection.

(2) Notwithstanding any other provision of law, an owner may, with the approval of the Secretary, limit occupancy within housing developed under this section to persons with disabilities who have similar disabilities and require a similar set of supportive services in a supportive housing environment.

(j) Miscellaneous provisions

(1) Technical assistance

The Secretary shall make available appropriate technical assistance to assure that applicants having limited resources, particularly minority applicants, are able to participate

more fully in the program carried out under this section.

(2) Civil rights compliance

Each owner shall certify, to the satisfaction of the Secretary, that assistance made available under this section will be conducted and administered in conformity with title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], the Fair Housing Act [42 U.S.C. 3601 et seq.] and other Federal, State, and local laws prohibiting discrimination and promoting equal opportunity; and²

(3) Site control

An applicant may obtain ownership or control of a suitable site different from the site specified in the initial application. If an applicant fails to obtain ownership or control of the site within 1 year after notification of an award for assistance, the assistance shall be recaptured and reallocated.

(4) Owner deposit

The Secretary may require an owner to deposit an amount not to exceed \$10,000 in a special escrow account to assure the owner's commitment to the housing.

(5) Notice of appeal

The Secretary shall notify an owner not less than 30 days prior to canceling any reservation of assistance provided under this section. During the 30-day period following the receipt of a notice under the preceding sentence, an owner may appeal the proposed cancellation. Such appeal, including review by the Secretary, shall be completed not later than 45 days after the appeal is filed.

(6) Labor standards

(A) In general

The Secretary shall take such action as may be necessary to insure that all laborers and mechanics employed by contractors and subcontractors in the construction of housing with 12 or more units assisted under this section shall be paid wages at rates not less than those prevailing in the locality involved for the corresponding classes of laborers and mechanics employed on construction of a similar character, as determined by the Secretary of Labor in accordance with sections 3141-3144, 3146, and 3147 of title 40.

(B) Exemption

Subparagraph (A) shall not apply to any individual who—

- (i) performs services for which the individual volunteered;
- (ii) (I) does not receive compensation for such services; or
- (II) is paid expenses, reasonable benefits, or a nominal fee for such services; and
- (iii) is not otherwise employed at any time in the construction work.

(7) Use of project reserves

Amounts for project reserves for a project assisted under this section may be used for

²So in original. The word "opportunity" probably should be followed by a period.

costs, subject to reasonable limitations as the Secretary determines appropriate, for reducing the number of dwelling units in the project. Such use shall be subject to the approval of the Secretary to ensure that the use is designed to retrofit units that are currently obsolete or unmarketable.

(k) Definitions

As used in this section—

(1) The term “group home” means a single family residential structure designed or adapted for occupancy by not more than 8 persons with disabilities. The Secretary may waive the project size limitation contained in the previous sentence if the applicant demonstrates that local market conditions dictate the development of a larger project. Not more than 1 home may be located on any one site and no such home may be located on a site contiguous to another site containing such a home.

(2) The term “person with disabilities” means a household composed of one or more persons at least one of whom is an adult who has a disability. A person shall be considered to have a disability if such person is determined, pursuant to regulations issued by the Secretary to have a physical, mental, or emotional impairment which (A) is expected to be of long-continued and indefinite duration, (B) substantially impedes his or her ability to live independently, and (C) is of such a nature that such ability could be improved by more suitable housing conditions. A person shall also be considered to have a disability if such person has a developmental disability as defined in section 15002 of this title. The Secretary shall prescribe such regulations as may be necessary to prevent abuses in determining, under the definitions contained in this paragraph, the eligibility of families and persons for admission to and occupancy of housing assisted under this section. Notwithstanding the preceding provisions of this paragraph, the term “person with disabilities” includes two or more persons with disabilities living together, one or more such persons living with another person who is determined (under regulations prescribed by the Secretary) to be important to their care or well-being, and the surviving member or members of any household described in the first sentence of this paragraph who were living, in a unit assisted under this section, with the deceased member of the household at the time of his or her death.

(3) The term “supportive housing for persons with disabilities” means housing that—

(A) is designed to meet the special needs of persons with disabilities, and

(B) provides supportive services that address the individual health, mental health or other special needs of such persons.

(4) The term “independent living facility” means a project designed for occupancy by not more than 24 persons with disabilities (or such higher number of persons as permitted under criteria that the Secretary shall prescribe, subject to the limitation under subsection (h)(6)³ of this section) in separate dwelling

units where each dwelling unit includes a kitchen and a bath.

(5) The term “owner” means a private non-profit organization that receives assistance under this section to develop and operate a project for supportive housing for persons with disabilities.

(6) The term “private nonprofit organization” means any institution or foundation—

(A) that has received, or has temporary clearance to receive, tax-exempt status under section 501(c)(3) of title 26;

(B) no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual;

(C) which has a governing board (i) the membership of which is selected in a manner to assure that there is significant representation of the views of persons with disabilities, and (ii) which is responsible for the operation of the housing assisted under this section; and

(D) which is approved by the Secretary as to financial responsibility.

Such term includes a for-profit limited partnership the sole general partner of which is an organization meeting the requirements under subparagraphs (A), (B), (C), and (D) or a corporation wholly owned and controlled by an organization meeting the requirements under subparagraphs (A), (B), (C), and (D).

(7) The term “State” includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States.

(8) The term “Secretary” means the Secretary of Housing and Urban Development.

(9) The term “very low-income” has the same meaning as given the term “very low-income families” under section 1437a(b)(2) of this title.

(l) Allocation of funds

(1) Allocation

Of any amount made available for assistance under this section in any fiscal year, an amount shall be used for assistance under subsection (b)(2) of this section that is not less than the amount made available in appropriation Acts for such assistance in the preceding year.

(2) Capital advances

Of any amounts made available for assistance under subsection (b) of this section, such sums as may be necessary shall be available for funding capital advances in accordance with subsection (c)(1)⁴ of this section. Such amounts, the repayments from such advances, and the proceeds from notes or obligations issued under this section prior to November 28, 1990,⁵ shall constitute a revolving fund to be used by the Secretary in carrying out this section.

(3) Project rental assistance

Of any amounts made available for assistance under subsection (b) of this section, such

³So in original. No subsec. (h)(6) has been enacted.

⁴So in original. Probably should be subsection “(d)(1)”.

⁵See Codification note below.

sums as may be necessary shall be available for funding project rental assistance in accordance with subsection (c)(2)⁶ of this section.

(4) Size limitation

Of any amounts made available for any fiscal year and used for capital advances or project rental assistance under paragraphs (1) and (2) of subsection (d) of this section, not more than 25 percent may be used for supportive housing which contains more than 24 separate dwelling units.

(m) Authorization of appropriations

There are authorized to be appropriated for providing assistance under this section such sums as may be necessary for each of fiscal years 2001, 2002, and 2003.

(n) Effective date and applicability

(1) In general

The amendments made by this section shall take effect on October 1, 1991, with respect to projects approved on or after such date. The Secretary shall issue regulations for such purpose after notice and public comment.

(2) Earlier applicability

The Secretary shall, upon the request of an owner, apply the provisions of this section to any housing for which a loan reservation was made under section 1701q of title 12 before November 28, 1990,⁵ but for which no loan has been executed and recorded. In the absence of such a request, any housing identified under the preceding sentence shall continue to be subject to the provisions of section 1701q of title 12 as they were in effect when such assistance was made or reserved.

(3) Coordination

When responding to an owner's request under paragraph (1), the Secretary shall, notwithstanding any other provision of law, apply such portion of amounts obligated at the time of loan reservation, including amounts reserved with respect to such housing under section 1437f of this title, as are required for the owner's housing under the provisions of this section and shall make any remaining portion available for other housing under this section.

(Pub. L. 101-625, title VIII, § 811, Nov. 28, 1990, 104 Stat. 4324; Pub. L. 102-27, title II, Apr. 10, 1991, 105 Stat. 150; Pub. L. 102-550, title VI, §§ 601(d), 603, 623(a), title IX, § 913(b), Oct. 28, 1992, 106 Stat. 3803, 3805, 3818, 3877; Pub. L. 106-74, title V, §§ 512, 524(a), Oct. 20, 1999, 113 Stat. 1101, 1106; Pub. L. 106-402, title IV, § 401(b)(11), Oct. 30, 2000, 114 Stat. 1739; Pub. L. 106-569, title VIII, §§ 822, 841-845, Dec. 27, 2000, 114 Stat. 3020, 3022, 3023.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (d)(2), (3), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XVI and XIX of the Act are classified generally to subchapters XVI (§1381 et seq.) and XIX (§1396 et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Civil Rights Act of 1964, referred to in subsec. (j)(2), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as

amended. Title VI of the Act is classified generally to subchapter V (§2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

The Fair Housing Act, referred to in subsec. (j)(2), is title VIII of Pub. L. 90-284, Apr. 11, 1968, 82 Stat. 81, as amended, which is classified principally to subchapter I of chapter 45 (§3601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

CODIFICATION

Section was enacted as part of the Cranston-Gonzalez National Affordable Housing Act, and not as part of the Congregate Housing Services Act of 1978 which comprises this chapter.

In subsec. (j)(6)(A), "sections 3141-3144, 3146, and 3147 of title 40" substituted for "the Act of March 3, 1931 (commonly known as the Davis-Bacon Act)" on authority of Pub. L. 107-217, §5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

November 28, 1990, referred to in subsecs. (l)(2) and (n)(2), was in the original "the enactment of this Act" and "the date of enactment of this Act", respectively, see Enactment of Section note below.

AMENDMENTS

2000—Subsec. (d)(4). Pub. L. 106-569, §843(1), added par. (4) and struck out heading and text of former par. (4). Text read as follows: "Tenant-based rental assistance provided under subsection (b)(1) of this section may be provided only through a public housing agency that has submitted, and had approved, an allocation plan under section 1437e(f) of this title, and a public housing agency shall be eligible to apply under this section only for the purposes of providing such assistance. Such assistance shall be made available to eligible persons with disabilities and administered under the same rules that govern rental assistance made available under section 1437f of this title. In determining the amount of assistance provided under subsection (b)(1) of this section for a public housing agency, the Secretary shall consider the needs of the agency as described in the allocation plan."

Subsec. (h)(1). Pub. L. 106-569, §845, inserted at end of concluding provisions "Neither this section nor any other provision of law may be construed as prohibiting or preventing the location and operation, in a project assisted under this section, of commercial facilities for the benefit of residents of the project and the community in which the project is located, except that assistance made available under this section may not be used to subsidize any such commercial facility."

Subsec. (h)(5). Pub. L. 106-569, §842, substituted "sources other than this section" for "non-Federal sources" and inserted at end "Notwithstanding any other provision of law, assistance amounts provided under this section may be treated as amounts not derived from a Federal grant."

Subsec. (j)(7). Pub. L. 106-569, §844, added par. (7).

Subsec. (k)(2). Pub. L. 106-402 substituted "as defined in section 15002 of this title" for "as defined in section 6001(7) of this title" in third sentence.

Subsec. (k)(6). Pub. L. 106-569, §841, which directed insertion of concluding provisions after section 811(k)(6)(D) of the Housing Act of 1959, was executed by making the insertion in this section, which is section 811 of the Cranston-Gonzalez National Affordable Housing Act, to reflect the probable intent of Congress.

Subsec. (l)(1). Pub. L. 106-569, §843(2), substituted "subsection (b)(2) of this section" for "subsection (b) of this section" and struck out before period at end " , and the remainder shall be available for tenant-based assistance under subsection (n)".

Subsec. (m). Pub. L. 106-569, §822, added subsec. (m) and struck out heading and text of former subsec. (m). Text read as follows: "There is authorized to be appro-

⁶ So in original. Probably should be subsection "(d)(2)".

prated for providing assistance under this section \$201,000,000 for fiscal year 2000.”

1999—Subsec. (k)(4). Pub. L. 106-74, § 524(a)(1), inserted “, subject to the limitation under subsection (h)(6) of this section” after “prescribe”.

Subsec. (l)(4). Pub. L. 106-74, § 524(a)(2), added par. (4).
Subsecs. (m), (n). Pub. L. 106-74, § 512, added subsec. (m) and redesignated former subsec. (m) as (n).

1992—Pub. L. 102-550, § 623(a)(1), reenacted section catchline without change.

Subsec. (b). Pub. L. 102-550, § 623(a)(2), added heading, introductory provisions, and pars. (1) and (2) and struck out former heading “General authority”, introductory provisions, and pars. (1) and (2) which authorized assistance to private, nonprofit organizations to expand the supply of supportive housing for persons with disabilities, which assistance would be provided as capital advances and contracts for project rental assistance, and, in concluding provisions, realigned margin and substituted “assistance under this paragraph” for “Such assistance”.

Subsec. (d)(1). Pub. L. 102-550, § 623(a)(3)(A), which directed the substitution of “subsection (b)(2) of this section” for “this section”, was executed by making the substitution the first place appearing in first sentence, to reflect the probable intent of Congress.

Subsec. (d)(3). Pub. L. 102-550, § 623(a)(3)(A), substituted “subsection (b)(2) of this section” for “this section”.

Subsec. (d)(4). Pub. L. 102-550, § 623(a)(3)(B), added par. (4).

Subsec. (e)(1). Pub. L. 102-550, § 623(a)(4), substituted “subsection (b)(2) of this section” for “this section”.

Subsec. (f). Pub. L. 102-550, § 623(a)(5), substituted “subsection (b)(2) of this section” for “this section” in first and second sentences.

Subsec. (g). Pub. L. 102-550, § 623(a)(6), which directed the substitution of “subsection (b)(2) of this section” for “this section”, was executed by making the substitution in the introductory provisions and in par. (7), to reflect the probable intent of Congress.

Subsec. (j)(6). Pub. L. 102-550, § 913(b), designated existing provisions as subpar. (A), inserted subpar. heading, substituted “with 12 or more units assisted under this section” for “assisted under this section and designed for dwelling use by 12 or more persons with disabilities”, inserted “commonly known as” before “the Davis-Bacon Act”, struck out before period at end “; but the Secretary may waive the application of this paragraph in cases or classes of cases where laborers or mechanics, not otherwise employed at any time in the construction of such housing, voluntarily donate their services without full compensation for the purposes of lowering the costs of construction and the Secretary determines that any amounts saved thereby are fully credited to the corporation, cooperative, or public body or agency undertaking the construction”, and added subpar. (B).

Subsec. (k)(6). Pub. L. 102-550, § 603, struck out “incorporated private” before “institution” in introductory provisions, added subpar. (A), and redesignated former subpars. (A) to (C) as (B) to (D), respectively.

Subsec. (l). Pub. L. 102-550, § 601(d)(1), substituted “Allocation of funds” for “Authorizations” in heading.

Subsec. (l)(1). Pub. L. 102-550, § 601(d)(5), added par. (1). Former par. (1) redesignated (2).

Pub. L. 102-550, § 601(d)(2), inserted first sentence, struck out former first sentence which authorized an appropriation of \$271,000,000 for fiscal year 1992 for the purpose of funding capital advances in accordance with subsection (d)(1) of this section, and in second sentence, substituted “Such amounts” for “Amounts so appropriated”.

Subsec. (l)(2). Pub. L. 102-550, § 601(d)(4), redesignated par. (1) as (2). Former par. (2) redesignated (3).

Pub. L. 102-550, § 601(d)(3), added par. (2) and struck out former par. (2) which read as follows: “For the purpose of funding contracts for project rental assistance in accordance with subsection (d)(2) of this section, the Secretary may, to the extent approved in an appropria-

tions Act, reserve authority to enter into obligations aggregating \$246,000,000 for fiscal year 1992.”

Subsec. (l)(3). Pub. L. 102-550, § 601(d)(4), redesignated par. (2) as (3).

1991—Subsec. (k)(4). Pub. L. 102-27 substituted “24 persons with disabilities (or such higher number of persons as permitted under criteria that the Secretary shall prescribe)” for “20 persons with disabilities”.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by title VIII of Pub. L. 106-569 effective Dec. 27, 2000, unless effectiveness or applicability upon another date certain is specifically provided for, with provisions relating to effect of regulatory authority, see section 803 of Pub. L. 106-569, set out as a note under section 1701q of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by subtitles B through F of title VI [§§ 621-685] of Pub. L. 102-550 applicable upon expiration of 6-month period beginning Oct. 28, 1992, except as otherwise provided, see section 13642 of this title.

ENACTMENT OF SECTION

This section was enacted as part of Pub. L. 101-625, which was approved Nov. 28, 1990. However, this section was deemed enacted as of Nov. 5, 1990, by Pub. L. 101-507, title II, Nov. 5, 1990, 104 Stat. 1358, set out as an Effective Date of 1990 Amendment note under section 1701q of Title 12, Banks and Banking.

INAPPLICABILITY OF CERTAIN 1992 AMENDMENTS TO INDIAN PUBLIC HOUSING

Amendment by section 623(a) of Pub. L. 102-550 not applicable with respect to lower income housing developed or operated pursuant to contract between Secretary of Housing and Urban Development and Indian housing authority, see section 626 of Pub. L. 102-550, set out as a note under section 1437a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1437a, 1437f, 3535, 8011, 11403g, 13664 of this title; title 12 sections 1701z-11, 3702, 3705.

CHAPTER 90—NEIGHBORHOOD AND CITY REINVESTMENT, SELF-HELP AND REVITALIZATION

SUBCHAPTER I—NEIGHBORHOOD REINVESTMENT CORPORATION

Sec.	
8101.	Congressional findings and declaration of purpose.
8102.	Neighborhood Reinvestment Corporation. <ul style="list-style-type: none"> (a) Establishment. (b) Implementation and expansion of demonstration activities. (c) Principal office. (d) Exemption from taxation.
8103.	Board of Directors. <ul style="list-style-type: none"> (a) Membership. (b) Election of chairman. (c) Terms of office. (d) Compensation and expenses. (e) Bylaws, policies and administrative provisions. (f) Director absences; designated representatives. (g) Quorum. (h) Application of other laws. (i) Meetings of board.
8104.	Officers and employees. <ul style="list-style-type: none"> (a) Employment, compensation and benefits. (b) Appointment of executive director. (c) Appointment and removal of employees by executive director.

- Sec.
- (d) Prohibition of political tests and qualifications in selection, etc., of personnel.
 - (e) Employee status; applicability of administrative and cost standards of Office of Management and Budget.
8105. Powers and duties of corporation.
- (a) Continuance of work of Urban Reinvestment Task Force regarding neighborhood housing services programs and preservation projects.
 - (b) General administrative powers.
 - (c) Contracting powers.
 - (d) Non-profit nature of corporation.
8106. Reports and audits.
- (a) Annual report to President and Congress.
 - (b) Annual audit of accounts.
 - (c) Additional audits by General Accounting Office.
 - (d) Audit of grantees and contractors of corporation.
 - (e) Annual financial audit.
8107. Appropriations.
- (a) Authorization.
 - (b) Availability of funds until expended.
 - (c) Accounting and reporting of non-Federal funds.
 - (d) Preparation of business-type budget.

SUBCHAPTER II—NEIGHBORHOOD SELF-HELP DEVELOPMENT

8121 to 8124. Repealed.

SUBCHAPTER III—LIVABLE CITIES

- 8141. Congressional findings.
- 8142. Statement of purpose.
- 8143. Definitions.
- 8144. Grants to or contracts with organizations.
 - (a) Authorization; purposes.
 - (b) Establishment of criteria and procedures for evaluation and selection of projects; scope of criteria.
 - (c) Application requirements.
 - (d) Consultation requirements.
 - (e) Regulations respecting matching requirements; waiver, etc.
 - (f) Certification of application.
 - (g) Available funds not to supplant other public or private funds.
 - (h) Availability of funds for administrative expenses.
- 8145. Coordination and development of program with other Federal and non-Federal programs.
- 8146. Authorization of appropriations.

SUBCHAPTER I—NEIGHBORHOOD REINVESTMENT CORPORATION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 12 section 1834a.

§ 8101. Congressional findings and declaration of purpose

- (a) The Congress finds that—
 - (1) the neighborhood housing services demonstration of the Urban Reinvestment Task Force has proven its worth as a successful program to revitalize older urban neighborhoods by mobilizing public, private, and community resources at the neighborhood level; and
 - (2) the demand for neighborhood housing services programs in cities throughout the United States warrants the creation of a public corporation to institutionalize and expand

the neighborhood housing services program and other programs of the present Urban Reinvestment Task Force.

(b) The purpose of this subchapter is to establish a public corporation which will continue the joint efforts of the Federal financial supervisory agencies and the Department of Housing and Urban Development to promote reinvestment in older neighborhoods by local financial institutions working cooperatively with community people and local government, and which will continue the nonbureaucratic approach of the Urban Reinvestment Task Force, relying largely on local initiative for the specific design of local programs.

(Pub. L. 95-557, title VI, §602, Oct. 31, 1978, 92 Stat. 2115.)

SHORT TITLE

Section 601 of title VI of Pub. L. 95-557 provided that: "This title [enacting this subchapter] may be cited as the 'Neighborhood Reinvestment Corporation Act'."

Section 701 of title VII of Pub. L. 95-557, which provided that such title, which was classified to subchapter II of this chapter, was to be cited as the "Neighborhood Self-Help Development Act of 1978", was repealed by Pub. L. 97-35, title III, §313(a), Aug. 13, 1981, 95 Stat. 398.

Section 801 of title VIII of Pub. L. 95-557 provided that: "This title [enacting subchapter III of this chapter] may be cited as the 'Livable Cities Act of 1978'."

§ 8102. Neighborhood Reinvestment Corporation

(a) Establishment

There is established a Neighborhood Reinvestment Corporation (hereinafter referred to as the "corporation") which shall be a body corporate and shall possess the powers, and shall be subject to the direction and limitations specified herein.

(b) Implementation and expansion of demonstration activities

The corporation shall implement and expand the demonstration activities carried out by the Urban Reinvestment Task Force.

(c) Principal office

The corporation shall maintain its principal office in the District of Columbia or at such other place the corporation may from time to time prescribe.

(d) Exemption from taxation

The corporation, including its franchise, activities, assets, and income, shall be exempt from all taxation now or hereafter imposed by the United States, by any territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority, except that any real property of the corporation shall be subject to State, territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed.

(Pub. L. 95-557, title VI, §603, Oct. 31, 1978, 92 Stat. 2115; Pub. L. 96-399, title III, §315(1), Oct. 8, 1980, 94 Stat. 1645.)

AMENDMENTS

1980—Subsec. (a). Pub. L. 96-399 struck out "National" before "Neighborhood".

§ 8103. Board of Directors**(a) Membership**

The corporation shall be under the direction of a board of directors made up of the following members:

(1) the Chairman of the Federal Home Loan Bank Board or a member of the Federal Home Loan Bank Board to be designated by the Chairman;

(2) the Secretary of Housing and Urban Development;

(3) the Chairman of the Board of Governors of the Federal Reserve System, or a member of the Board of Governors of the Federal Reserve System to be designated by the Chairman;

(4) the Chairman of the Federal Deposit Insurance Corporation or the appointive member of the Board of Directors of the Federal Deposit Insurance Corporation if so designated by the Chairman;

(5) the Comptroller of the Currency; and

(6) the Chairman of the National Credit Union Administration or a member of the Board of the National Credit Union Administration to be designated by the Chairman.

(b) Election of chairman

The Board shall elect from among its members a chairman who shall serve for a term of two years, except that the Chairman of the Federal Home Loan Bank Board shall serve as Chairman of the Board of Directors for the first such two-year term.

(c) Terms of office

Each director of the corporation shall serve ex officio during the period he holds the office to which he is appointed by the President.

(d) Compensation and expenses

The directors of the corporation, as full-time officers of the United States, shall serve without additional compensation but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of their duties as directors of the corporation.

(e) Bylaws, policies and administrative provisions

The directors of the corporation shall adopt such bylaws, policies, and administrative provisions as are necessary to the functioning of the corporation and consistent with the provisions of this subchapter.

(f) Director absences; designated representatives

A director who is necessarily absent from a meeting of the board, or of a committee of the board, may participate in such meeting through a duly designated representative who is serving, pursuant to appointment by the President of the United States, by and with the advice and consent of the Senate, in the same department, agency, corporation, or instrumentality as the absent director, or in the case of the Comptroller of the Currency, through a duly designated Deputy Comptroller.

(g) Quorum

The presence of a majority of the board members, or their representatives as provided in subsection (f) of this section, shall constitute a quorum.

(h) Application of other laws

The corporation shall be subject to the provisions of section 552 of title 5.

(i) Meetings of board

All meetings of the board of directors will be conducted in accordance with the provisions of section 552b of title 5.

(Pub. L. 95-557, title VI, §604, Oct. 31, 1978, 92 Stat. 2115; Pub. L. 97-320, title VII, §710(a), Oct. 15, 1982, 96 Stat. 1544; Pub. L. 100-242, title V, §520(a), Feb. 5, 1988, 101 Stat. 1938; Pub. L. 100-628, title X, §1085, Nov. 7, 1988, 102 Stat. 3278.)

AMENDMENTS

1988—Subsec. (a)(1). Pub. L. 100-242, §520(a)(1), inserted “or a member of the Federal Home Loan Bank Board to be designated by the Chairman” before semicolon.

Subsec. (a)(3). Pub. L. 100-242, §520(a)(2), added par. (3) and struck out former par. (3) which read as follows: “a member of the Board of Governors of the Federal Reserve System, to be designated by the Chairman of the Board of Governors of the Federal Reserve System;”.

Subsec. (a)(4). Pub. L. 100-242, §520(a)(3), inserted “or the appointive member of the Board of Directors of the Federal Deposit Insurance Corporation if so designated by the Chairman” before semicolon.

Subsec. (a)(6). Pub. L. 100-628 struck out second of the two periods at end.

Pub. L. 100-242, §520(a)(4), substituted “Chairman” for “Administrator” and inserted “or a member of the Board of the National Credit Union Administration to be designated by the Chairman.” before period.

1982—Subsecs. (f) to (i). Pub. L. 97-320 added subsec. (f), redesignated former subsecs. (f) to (h) as (g) to (i), respectively, and in subsec. (g) inserted “, or their representatives as provided in subsection (f) of this section.”.

TRANSFER OF FUNCTIONS

Federal Home Loan Bank Board abolished and functions transferred, see sections 401 to 406 of Pub. L. 101-73, set out as a note under section 1437 of Title 12, Banks and Banking.

§ 8104. Officers and employees**(a) Employment, compensation and benefits**

The board shall have power to select, employ, and fix the compensation and benefits of such officers, employees, attorneys, and agents as shall be necessary for the performance of its duties under this subchapter, without regard to the provisions of title 5 governing appointments in the competitive service, classification, and General Schedule pay rates, except that no officer, employee, attorney, or agent of the corporation may be paid compensation at a rate in excess of the highest rate provided for GS-18 of the General Schedule under section 5332 of title 5.

(b) Appointment of executive director

The directors of the corporation shall appoint an executive director who shall serve as chief executive officer of the corporation.

(c) Appointment and removal of employees by executive director

The executive director of the corporation, subject to approval by the board, may appoint and remove such employees of the corporation as he determines necessary to carry out the purposes of the corporation.

(d) Prohibition of political tests and qualifications in selection, etc., of personnel

No political test or political qualification shall be used in selecting, appointing, promoting, or taking any other personnel action with respect to any officer, agent, or employee of the corporation or of any recipient, or in selecting or monitoring any grantee, contractor, or person or entity receiving financial assistance under this subchapter.

(e) Employee status; applicability of administrative and cost standards of Office of Management and Budget

Officers and employees of the corporation shall not be considered officers or employees of the United States, and the corporation shall not be considered a department, agency, or instrumentality of the Federal Government. The corporation shall be subject to administrative and cost standards issued by the Office of Management and Budget similar to standards applicable to non-profit grantees and educational institutions.

(Pub. L. 95-557, title VI, §605, Oct. 31, 1978, 92 Stat. 2116.)

REFERENCES IN TEXT

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (a), are classified to section 3301 et seq. of Title 5, Government Organization and Employees.

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

§ 8105. Powers and duties of corporation**(a) Continuance of work of Urban Reinvestment Task Force regarding neighborhood housing services programs and preservation projects**

(1) The corporation shall continue the work of the Urban Reinvestment Task Force in establishing neighborhood housing services programs in neighborhoods throughout the United States, monitoring their progress, and providing them with grants and technical assistance. For the purpose of this paragraph, a neighborhood housing services program may involve a partnership of neighborhood residents and representatives of local governmental and financial institutions, organized as a State-chartered non-profit corporation, working to bring about reinvestment in one or more neighborhoods through a program of systematic housing inspections, increased public investment, increased private lending, increased resident investment, and a revolving loan fund to make loans available at flexible rates and terms to homeowners not meeting private lending criteria.

(2) The corporation shall continue the work of the Urban Reinvestment Task Force in identifying, monitoring, evaluating, and providing grants and technical assistance to selected neighborhood preservation projects which show

promise as mechanisms for reversing neighborhood decline and improving the quality of neighborhood life.

(3) The corporation shall experimentally replicate neighborhood preservation projects which have demonstrated success, and after creating reliable developmental processes, bring the new programs to neighborhoods throughout the United States which in the judgment of the corporation can benefit therefrom, by providing assistance in organizing programs, providing grants in partial support of program costs, and providing technical assistance to ongoing programs.

(4) The corporation shall continue the work of the Urban Reinvestment Task Force in supporting Neighborhood Housing Services of America, a nonprofit corporation established to provide services to local neighborhood housing services programs, with support which may include technical assistance and grants to expand its national loan purchase pool and may contract with it for services which it can perform more efficiently or effectively than the corporation.

(5) The corporation shall, in making and providing the foregoing grants and technical and other assistance, determine the reporting and management restrictions or requirements with which the recipients of such grants or other assistance must comply. In making such determinations, the corporation shall assure that recipients of grants and other assistance make available to the corporation such information as may be necessary to determine compliance with applicable Federal laws.

(b) General administrative powers

To carry out the foregoing purposes and engage in the foregoing activities, the corporation is authorized—

- (1) to adopt, alter, and use a corporate seal;
- (2) to have succession until dissolved by Act of Congress;
- (3) to make and perform contracts, agreements, and commitments;
- (4) to sue and be sued, complain and defend, in any State, Federal, or other court;
- (5) to determine its necessary expenditures and the manner in which the same shall be incurred, allowed, and paid, and appoint, employ, and fix and provide for the compensation of consultants, without regard to any other law, except as provided in section 8107(d) of this title;
- (6) to settle, adjust, and compromise, and with or without compensation or benefit to the corporation to release or waive in whole or in part, in advance or otherwise, any claim, demand, or right of, by, or against the corporation;
- (7) to invest such funds of the corporation in such investments as the board of directors may prescribe;
- (8) to acquire, take, hold, and own, and to deal with and dispose of any property; and
- (9) to exercise all other powers that are necessary and proper to carry out the purposes of this subchapter.

(c) Contracting powers

(1) The corporation may contract with the Office of Neighborhood Reinvestment of the Fed-

eral home loan banks for all staff, services, facilities, and equipment now or in the future furnished by the Office of Neighborhood Reinvestment to the Urban Reinvestment Task Force, including receiving the services of the Director of the Office of Neighborhood Reinvestment as the corporation's executive director.

(2) The corporation shall have the power to award contracts and grants to—

(A) neighborhood housing services corporations and other nonprofit corporations engaged in neighborhood preservation activities; and

(B) local governmental bodies.

(3) The Secretary of Housing and Urban Development, the Federal Home Loan Bank Board and the Federal home loan banks, the Board of Governors of the Federal Reserve System and the Federal Reserve banks, the Federal Deposit Insurance Corporation, and the Comptroller of the Currency, the National Credit Union Administration or any other department, agency, or other instrumentality of the Federal Government are authorized to provide funds, services and facilities, with or without reimbursement, necessary to achieve the objectives and to carry out the purposes of this subchapter.

(d) Non-profit nature of corporation

(1) The corporation shall have no power to issue any shares of stocks, or to declare or pay any dividends.

(2) No part of the income or assets of the corporation shall inure to the benefit of any director, officer, or employee, except as reasonable compensation for services or reimbursement for expenses.

(3) The corporation may not contribute to or otherwise support any political party or candidate for elective public office.

(Pub. L. 95-557, title VI, §606, Oct. 31, 1978, 92 Stat. 2117; Pub. L. 96-399, title III, §315(2), Oct. 8, 1980, 94 Stat. 1645; Pub. L. 97-320, title VII, §710(b), Oct. 15, 1982, 96 Stat. 1544.)

AMENDMENTS

1982—Subsec. (c)(3). Pub. L. 97-320 inserted “funds,” after “provide”.

1980—Subsec. (a)(1). Pub. L. 96-399 substituted “monitoring” for “supervising”.

TRANSFER OF FUNCTIONS

Federal Home Loan Bank Board abolished and functions transferred, see sections 401 to 406 of Pub. L. 101-73, set out as a note under section 1437 of Title 12, Banks and Banking.

§ 8106. Reports and audits

(a) Annual report to President and Congress

The corporation shall publish an annual report which shall be transmitted by the corporation to the President and the Congress.

(b) Annual audit of accounts

The accounts of the corporation shall be audited annually. Such audits shall be conducted in accordance with generally accepted auditing standards by independent certified public accountants who are certified by a regulatory authority of the jurisdiction in which the audit is undertaken.

(c) Additional audits by General Accounting Office

In addition to the annual audit, the financial transactions of the corporation for any fiscal year during which Federal funds are available to finance any portion of its operations may be audited by the General Accounting Office in accordance with such rules and regulations as may be prescribed by the Comptroller General of the United States.

(d) Audit of grantees and contractors of corporation

For any fiscal year during which Federal funds are available to finance any portion of the corporation's grants or contracts, the General Accounting Office, in accordance with such rules and regulations as may be prescribed by the Comptroller General of the United States, may audit the grantees or contractors of the corporation.

(e) Annual financial audit

The corporation shall conduct or require each grantee or contractor to provide for an annual financial audit. The report of each such audit shall be maintained for a period of at least five years at the principal office of the corporation.

(Pub. L. 95-557, title VI, §607, Oct. 31, 1978, 92 Stat. 2118; Pub. L. 104-66, title II, §2161, Dec. 21, 1995, 109 Stat. 731.)

AMENDMENTS

1995—Subsec. (c). Pub. L. 104-66 struck out at end “The financial transactions of the corporation shall be audited by the General Accounting Office at least once during each three years.”

NATIONAL DEMONSTRATION PROGRAM OF MUTUAL HOUSING ASSOCIATIONS; REPORT TO CONGRESS

Pub. L. 96-399, title III, §316, Oct. 8, 1980, 94 Stat. 1645, directed submission to Congress, not later than Sept. 30, 1981, of report by Neighborhood Reinvestment Corporation, in conjunction with the National Consumer Cooperative Bank and the Secretary of Housing and Urban Development, on the findings, conclusions, and legislative recommendations reached as a result of the national demonstration program of mutual housing associations.

§ 8107. Appropriations

(a) Authorization

(1) There are authorized to be appropriated to the corporation to carry out this subchapter \$29,476,000 for fiscal year 1993 and \$30,713,992 for fiscal year 1994. Not more than 15 percent of any amount appropriated under this paragraph for any fiscal year may be used for administrative expenses.

(2) Of the amount appropriated pursuant to this subsection for any fiscal year, amounts appropriated in excess of the amount necessary to continue existing services of the Neighborhood Reinvestment Corporation in revitalizing declining neighborhoods shall be available—

(A) to expand the national neighborhood housing services network and to assist network capacity development, including expansion of rental housing resources;

(B) to expand the loan purchase capacity of the national neighborhood housing services secondary market operated by Neighborhood Housing Services of America;

(C) to make grants to provide incentives to extend low-income housing use in connection with properties subject to prepayment pursuant to the Low-Income Housing Preservation and Resident Ownership Act of 1990 [12 U.S.C. 4101 et seq.];

(D) to increase the resources available to the national neighborhood housing services network programs for the purchase of multifamily and single-family properties owned by the Secretary of Housing and Urban Development for rehabilitation (if necessary) and sale to low- and moderate-income families; and

(E) to provide matching capital grants, operating subsidies, and technical services to mutual housing associations for the development, acquisition, and rehabilitation of multifamily and single-family properties (including properties owned by the Secretary of Housing and Urban Development) to ensure affordability by low- and moderate-income families.

(b) Availability of funds until expended

Funds appropriated pursuant to this section shall remain available until expended.

(c) Accounting and reporting of non-Federal funds

Non-Federal funds received by the corporation, and funds received by any recipient from a source other than the corporation, shall be accounted for and reported as receipts and disbursements separate and distinct from Federal funds.

(d) Preparation of business-type budget

The corporation shall prepare annually a business-type budget which shall be submitted to the Office of Management and Budget, under such rules and regulations as the President may establish as to the date of submission, the form and content, the classifications of data, and the manner in which such budget program shall be prepared and presented. The budget of the corporation as modified, amended, or revised by the President shall be transmitted to the Congress as a part of the annual budget required by chapter 11 of title 31. Amendments to the annual budget program may be submitted from time to time.

(Pub. L. 95-557, title VI, § 608, Oct. 31, 1978, 92 Stat. 2119; Pub. L. 96-153, title III, § 307, Dec. 21, 1979, 93 Stat. 1113; Pub. L. 96-399, title III, § 315(3), Oct. 8, 1980, 94 Stat. 1645; Pub. L. 97-35, title III, § 314, Aug. 13, 1981, 95 Stat. 398; Pub. L. 98-181, title I, § 125, Nov. 30, 1983, 97 Stat. 1175; Pub. L. 98-479, title II, § 203(m), Oct. 17, 1984, 98 Stat. 2231; Pub. L. 100-242, title V, § 520(b), Feb. 5, 1988, 101 Stat. 1938; Pub. L. 101-625, title IX, § 917(c), Nov. 28, 1990, 104 Stat. 4398; Pub. L. 102-550, title VIII, § 831, Oct. 28, 1992, 106 Stat. 3851.)

REFERENCES IN TEXT

The Low-Income Housing Preservation and Resident Ownership Act of 1990, referred to in subsec. (a)(2)(C), probably means the Low-Income Housing Preservation and Resident Homeownership Act of 1990, title II of Pub. L. 100-242, as amended by Pub. L. 101-625, title VI, § 601(a), Nov. 28, 1990, 104 Stat. 4249, which is classified principally to chapter 42 (§ 4101 et seq.) of Title 12, Banks and Banking. For complete classification of this

Act to the Code, see Short Title note set out under section 4101 of Title 12 and Tables.

AMENDMENTS

1992—Subsec. (a)(1). Pub. L. 102-550, § 831(a), amended first sentence generally, substituting present provisions for provisions authorizing appropriations of \$35,000,000 for fiscal year 1991 and \$36,500,000 for fiscal year 1992.

Subsec. (a)(2). Pub. L. 102-550, § 831(b), substituted “any fiscal year” for “each of the fiscal years 1991 and 1992” in introductory provisions.

1990—Subsec. (a). Pub. L. 101-625 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “There are authorized to be appropriated to the corporation to carry out this subchapter \$19,000,000 for fiscal year 1988, and \$19,000,000 for fiscal year 1989.”

1988—Subsec. (a). Pub. L. 100-242 amended subsec. (a) generally, substituting appropriations authorization of \$19,000,000 for fiscal years 1988 and 1989 for prior authorizations not to exceed \$16,512,000 for fiscal year 1984, and such sums as may be necessary for fiscal year 1985.

1984—Subsec. (d). Pub. L. 98-479 substituted “chapter 11 of title 31” for “the Budget and Accounting Act, 1921”.

1983—Subsec. (a). Pub. L. 98-181 substituted appropriations authorization not in excess of \$16,512,000 for fiscal year 1984, and such sums as may be necessary for fiscal year 1985 for prior authorization not to exceed \$12,500,000, \$12,000,000, \$13,426,000, and \$14,950,000 for fiscal years 1979, 1980, 1981, and 1982, respectively.

1981—Subsec. (a). Pub. L. 97-35 inserted authorized of appropriations for fiscal year 1982.

1980—Subsec. (a). Pub. L. 96-399 authorized appropriations of not to exceed \$13,426,000 for fiscal year 1981.

1979—Subsec. (a). Pub. L. 96-153 authorized appropriation of \$12,000,000 for fiscal year 1980.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective Oct. 1, 1981, see section 371 of Pub. L. 97-35, set out as an Effective Date note under section 3701 of Title 12, Banks and Banking.

EXPANSION OF NATIONAL NEIGHBORHOOD HOUSING SERVICES NETWORK

Section 917(a), (b) of Pub. L. 101-625 provided that:

“(a) FINDINGS.—The Congress finds that—

“(1) protecting the existing stock of unsubsidized privately held lower income housing through the rehabilitation and revitalization of declining neighborhoods is essential to a national housing policy that seeks to increase the availability of affordable housing for low- and moderate-income families;

“(2) the Neighborhood Reinvestment Corporation, the anchor of the national neighborhood housing services network, was chartered by Congress more than 10 years ago to revitalize neighborhoods for the benefit of current residents by mobilizing public, private, and community resources at the neighborhood level;

“(3) the national neighborhood housing services network has proven its worth as a successful cost-effective program relying largely on local initiative for the specific design of local programs;

“(4) the national neighborhood housing services network has had more than 10 years of experience in revitalizing declining neighborhoods, creating housing for low- and moderate-income families, and equipping residents with skills and resources required to maintain safe and healthy communities; and

“(5) expanding upon the existing capabilities, resources, and potential of the national neighborhood housing services network is a cost-effective response to the affordable housing and neighborhood revitalization needs confronting the Nation, and is a strong preventive measure in addressing the national tragedy of homelessness.

“(b) PURPOSE.—It is the purpose of this section [amending this section] to authorize appropriations for

the Neighborhood Reinvestment Corporation for fiscal years 1991 and 1992 to permit the corporation—

“(1) to carefully expand the capacities of the national neighborhood housing services network;

“(2) to begin to meet the urgent need for neighborhood housing services and mutual housing associations in neighborhoods across the Nation as the effort to preserve affordable housing for low- and moderate-income American families increases;

“(3) to increase and provide ongoing technical and capacity development assistance to neighborhood housing services and related public-private partnership-based nonprofit institutions involved in the revitalization of neighborhoods for the benefit of current residents, rehabilitation, preservation of existing housing stock, and production of additional housing opportunities for low- and moderate-income families;

“(4) to expand the loan purchase capacity of the national neighborhood housing services secondary market, operated by Neighborhood Housing Services of America, for loans made by neighborhood housing services to residents who are unable to meet conventional lending standards, and other loans for community development purposes;

“(5) to provide increased capacity development and matching grants to preserve existing privately held unsubsidized rental housing affordable to low- and moderate-income households and to create flexible strategies effective in the diverse economic and geographic environments of the Nation;

“(6) to make grants to provide incentives to extend low-income housing use in connection with properties subject to prepayment pursuant to the Low-Income Housing Preservation and Resident Ownership [Homeownership] Act of 1990 [12 U.S.C. 4101 et seq.];

“(7) to increase the resources available to neighborhood housing services network programs for the purchase of multifamily and single-family properties owned by the Secretary of Housing and Urban Development for rehabilitation (if necessary) and sale to low- and moderate-income families;

“(8) to expand the national mutual housing association demonstration by providing technical assistance and matching grants to assist low- and moderate-income families to participate in such associations;

“(9) to increase resources available to neighborhood housing services network programs for foreclosure intervention and prevention; and

“(10) to create additional neighborhood housing services partnership organizations to serve rural communities, Native Americans, Native Hawaiians, and other communities in need.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8105 of this title.

SUBCHAPTER II—NEIGHBORHOOD SELF-HELP DEVELOPMENT

§§ 8121 to 8124. Repealed. Pub. L. 97-35, title III, § 313(a), Aug. 13, 1981, 95 Stat. 398

Section 8121, Pub. L. 95-557, title VII, § 702, Oct. 31, 1978, 92 Stat. 2119, set forth congressional findings and statement of purposes for neighborhood self-help development programs.

Section 8122, Pub. L. 95-557, title VII, § 703, Oct. 31, 1978, 92 Stat. 2120, defined terms applicable to subchapter.

Section 8123, Pub. L. 95-557, title VII, § 704, Oct. 31, 1978, 92 Stat. 2120; Pub. L. 96-153, title I, § 107(b), Dec. 21, 1979, 93 Stat. 1104, set forth provisions respecting grants and other forms of assistance.

Section 8124, Pub. L. 95-557, title VII, § 705, Oct. 31, 1978, 92 Stat. 2121; Pub. L. 96-153, title I, § 107(a), Dec. 21, 1979, 93 Stat. 1104; Pub. L. 96-399, title I, § 115, Oct. 8, 1980, 94 Stat. 1623, related to authorization of appropriations for grants.

EFFECTIVE DATE OF REPEAL

Sections 8121 to 8124 repealed effective Oct. 1, 1981, see section 371 of Pub. L. 97-35, set out as an Effective Date note under section 3701 of Title 12, Banks and Banking.

SUBCHAPTER III—LIVABLE CITIES

§ 8141. Congressional findings

The Congress finds and declares—

(1) that artistic, cultural, and historic resources, including urban design, constitute an integral part of a suitable living environment for the residents of the Nation's urban areas, and should be available to all residents of such areas, regardless of income;

(2) that the development or preservation of such resources is a significant and necessary factor in restoring and maintaining the vitality of the urban environment, and can serve as a catalyst for improving decaying or deteriorated urban communities and expanding economic opportunities, and for creating a sense of community identity, spirit, and pride; and

(3) that the encouragement and support of local initiatives to develop or preserve such resources, particularly in connection with federally assisted housing or community development activities or in communities with a high proportion of low-income residents, is an appropriate function of the Federal Government.

(Pub. L. 95-557, title VIII, § 802, Oct. 31, 1978, 92 Stat. 2122.)

SHORT TITLE

For short title of this subchapter as the “Livable Cities Act of 1978”, see section 801 of Pub. L. 95-557, set out as a note under section 8101 of this title.

§ 8142. Statement of purpose

The primary purpose of this subchapter is to assist the efforts of States, local governments, neighborhood and other organizations to provide a more suitable living environment, expand cultural opportunities, and to the extent practicable, stimulate economic opportunities, primarily for the low and moderate income residents of communities and neighborhoods in need of conservation and revitalization, through the utilization, design or development of artistic, cultural, or historic resources.

(Pub. L. 95-557, title VIII, § 803, Oct. 31, 1978, 92 Stat. 2122.)

§ 8143. Definitions

For the purpose of this subchapter—

(1) the terms “art” and “arts” include, but are not limited to, architecture (including preservation, restoration, or adaptive use of existing structures), landscape architecture, urban design, interior design, graphic arts, fine arts (including painting and sculpture), performing arts (including music, drama, and dance), literature, crafts, photography, communications media and film, as well as other similar activities which reflect the cultural heritage of the Nation's communities and their citizens;

(2) the term “nonprofit organization” means an organization in which no part of its net earnings inures to the benefit of any private

stockholder or stockholders, individual or individuals and, if a private entity, which is not disqualified for tax exemption under section 501(c)(3) of title 26 by reason of attempting to influence legislation and does not participate in or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office; such organizations may include States and units of local government (including public agencies or special authorities thereof), regional organizations of local governments and nonprofit societies, neighborhood groups, institutions, organizations, associations or museums;

(3) the term “project” means a program or activity intended to carry out the purposes of this subchapter, including programs for neighborhood and community-based arts programs, urban design, user needs design, and the encouragement of the preservation of historic or other structures which have neighborhood or community significance;

(4) the term “Secretary” means the Secretary of Housing and Urban Development;

(5) the term “Chairman” means the Chairman of the National Endowment for the Arts;

(6) the term “Department” means the Department of Housing and Urban Development; and

(7) the term “Endowment” means the National Endowment for the Arts.

(Pub. L. 95-557, title VIII, §804, Oct. 31, 1978, 92 Stat. 2122; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095.)

AMENDMENTS

1986—Par. (2). Pub. L. 99-514 substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”, which for purposes of codification was translated as “title 26” thus requiring no change in text.

§ 8144. Grants to or contracts with organizations

(a) Authorization; purposes

The Secretary is authorized to make grants to, or enter into contracts with, nonprofit organizations for the purpose of enabling such organizations to undertake or support in cities, urban communities, or neighborhoods, projects which the Secretary, in consultation with the Chairman, determines will carry out the purposes of this subchapter and which—

(1) have substantial artistic, cultural, historical, or design merit,

(2) represent community or neighborhood initiatives which have a significant potential for conserving or revitalizing communities or neighborhoods, and for enhancing community or neighborhood identity and pride, and

(3) meet the criteria established jointly by the Secretary and the Chairman pursuant to this section.

(b) Establishment of criteria and procedures for evaluation and selection of projects; scope of criteria

The Secretary and the Chairman shall establish jointly criteria and procedures for evaluating and selecting projects to be assisted under this subchapter. Such criteria shall address, but need not be limited to—

(1) artistic, cultural, historical, or design quality;

(2) the degree of broadly based, active involvement of neighborhood residents, community groups, local officials, and persons with expertise in the arts with the proposed project;

(3) the degree of or the potential for utilization or stimulation of assistance or cooperation from other Federal, State, and local public and private sources, including arts organizations;

(4) the feasibility of project implementation, including the capability of the sponsor organization;

(5) the potential contribution to neighborhood revitalization and the creation of a sense of community identity and pride;

(6) the potential for stimulating neighborhood economic and community development, particularly for the benefit of persons of low and moderate income; and

(7) the potential of utilization of the project by neighborhood residents, particularly residents of low and moderate income, senior citizens, and handicapped persons.

(c) Application requirements

No assistance shall be made under this subchapter except upon application therefor submitted to the Secretary in accordance with regulations and procedures established jointly by the Secretary and the Chairman.

(d) Consultation requirements

Prior to the approval of any application for assistance under this subchapter, the Secretary shall consult with the Chairman and, in accordance with regulations and procedures established jointly by the Secretary and the Chairman, seek the recommendations of State and local officials and private citizens who have broad knowledge of, or experience or expertise in, community and economic development and revitalization, and of such officials and citizens who have broad knowledge of, or expertise in, the arts.

(e) Regulations respecting matching requirements; waiver, etc.

The Secretary, in cooperation with the Chairman, shall prescribe regulations which require that specific portions of the cost of any projects assisted under this subchapter shall be provided from sources other than funds made available under this subchapter. Such matching requirements may vary depending on the type of applicant, and the Secretary may reduce or waive such requirements solely in order to take account of the financial capacity of the applicant.

(f) Certification of application

Grants and other assistance may be made available under this subchapter only if the application contains a certification by the unit of general local government in which the project will be located that the project is consistent with and supportive of the objectives of that government for the area in which the project is located.

(g) Available funds not to supplant other public or private funds

Funds made available under this subchapter shall not be used to supplant other public or private funds.

(h) Availability of funds for administrative expenses

No more than 10 per centum of the funds appropriated for any fiscal year under section 8146 of this title shall be available for administrative expenses.

(Pub. L. 95-557, title VIII, §805, Oct. 31, 1978, 92 Stat. 2123.)

§ 8145. Coordination and development of program with other Federal and non-Federal programs

The Secretary shall coordinate the administration of the provisions of this subchapter in cooperation with other Federal agencies and assure that projects assisted under this subchapter are coordinated with efforts undertaken by State and local public and private entities, including arts organizations.

(Pub. L. 95-557, title VIII, §806, Oct. 31, 1978, 92 Stat. 2124.)

§ 8146. Authorization of appropriations

There are authorized to be appropriated for carrying out the purposes of this subchapter not to exceed \$5,000,000 for fiscal year 1979, and not to exceed \$5,000,000 for fiscal year 1980. Any amounts appropriated under this section shall remain available until expended.

(Pub. L. 95-557, title VIII, §807, Oct. 31, 1978, 92 Stat. 2124; Pub. L. 96-153, title I, §108, Dec. 21, 1979, 93 Stat. 1105.)

AMENDMENTS

1979—Pub. L. 96-153 reduced authorization of appropriation for fiscal year 1980 from “\$10,000,000” to “\$5,000,000”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8144 of this title.

CHAPTER 91—NATIONAL ENERGY CONSERVATION POLICY**SUBCHAPTER I—GENERAL PROVISIONS**

Sec.

8201. Findings and statement of purposes.
 (a) Findings.
 (b) Statement of purposes.

SUBCHAPTER II—RESIDENTIAL ENERGY CONSERVATION**PART A—UTILITY PROGRAM**

8211 to 8229. Omitted.

PART B—MISCELLANEOUS

8231. Grants for energy conserving improvements; establishment of standards; authorization of appropriations.
 8232. Residential energy efficiency standards study.
 (a) General authority.
 (b) Specific factors.
 (c) Comments and findings by Secretary of Energy.

Sec.

- (d) Report date.
 8233. Weatherization study.
PART C—RESIDENTIAL ENERGY EFFICIENCY PROGRAMS
 8235. “Residential building” defined.
 8235a. Approval of plans for prototype residential energy efficiency programs and provision of financial assistance for such programs.
 (a) Plan approval.
 (b) Contract requirements.
 (c) Provision of financial assistance.
 (d) Limitation.
 8235b. Applications for approval of plans for prototype residential energy efficiency programs.
 8235c. Approval of applications for plans for prototype residential energy efficiency programs.
 (a) Approval requirements.
 (b) Factors in approving applications.
 8235d. Rules and regulations.
 (a) Proposed rules and regulations.
 (b) Final rules and regulations.
 8235e. Authority of Federal Energy Regulatory Commission to exempt application of certain laws.
 8235f. Application of other laws.
 (a) Lack of immunity.
 (b) Utility programs under part A.
 (c) “Antitrust laws” defined.
 8235g. Records and reports.
 (a) Records.
 (b) Reports.
 8235h. Revoking approval of plans and terminating financial assistance.
 8235i. Authorization of appropriations.
 (a) Authorization of appropriations.
 (b) Availability.

PART D—RESIDENTIAL ENERGY EFFICIENCY RATING GUIDELINES

8236. Voluntary rating guidelines.
 (a) In general.
 (b) Contents of guidelines.
 8236a. Technical assistance.
 8236b. Report.

SUBCHAPTER III—FEDERAL ENERGY INITIATIVE**PART A—DEMONSTRATION OF SOLAR HEATING AND COOLING IN FEDERAL BUILDINGS**

8241. Definitions.
 8242. Federal solar program.
 8243. Duties of Secretary.
 (a) Duties.
 (b) Contents of proposals.
 (c) Initial submission of proposals.
 (d) Program to disseminate information to Federal procurement and loan officers.
 8244. Authorization of appropriations.

PART B—FEDERAL ENERGY MANAGEMENT

8251. Findings.
 8252. Purpose.
 8253. Energy management requirements.
 (a) Energy performance requirement for Federal buildings.
 (b) Energy management requirement for Federal agencies.
 (c) Exclusions.
 (d) Implementation steps.
 8254. Establishment and use of life cycle cost methods and procedures.
 (a) Establishment of life cycle cost methods and procedures.
 (b) Use of life cycle cost methods and procedures.
 (c) Use in non-Federal structures.
 8255. Budget treatment for energy conservation measures.

- Sec. 8256. Incentives for agencies.
 - (a) Contracts.
 - (b) Federal Energy Efficiency Fund.
 - (c) Utility incentive programs.
 - (d) Financial incentive program for facility energy managers.
- 8257. Interagency Energy Management Task Force.
 - (a) In general.
 - (b) Members.
 - (c) Duties.
- 8258. Reports.
 - (a) Reports to Secretary.
 - (b) Reports to Congress.
 - (c) Other report.
- 8258a. Demonstration of new technology.
 - (a) Demonstration program.
 - (b) Selection criteria.
 - (c) Proposals.
 - (d) Participation by GSA.
 - (e) Study.
 - (f) Authorization of appropriations.
- 8258b. Survey of energy saving potential.
 - (a) In general.
 - (b) Implementation.
 - (c) Personnel.
 - (d) Report.
- 8259. Definitions.
- 8260, 8261. Omitted.
- 8262. Definitions.
- 8262a. Report by General Services Administration.
- 8262b. Intergovernmental energy management planning and coordination.
 - (a) Conference workshops.
 - (b) Focus of workshops.
 - (c) Establishment of workshop timetable.
- 8262c. Federal agency energy management training.
 - (a) Energy management training.
 - (b) Report to Task Force.
 - (c) Requirements at Federal facilities.
 - (d) Annual report to Secretary and Congress.
- 8262d. Energy audit teams.
 - (a) Establishment.
 - (b) Monitoring programs.
- 8262e. Federal energy cost accounting and management.
 - (a) Guidelines.
 - (b) Contents of guidelines.
 - (c) Federally leased space energy reporting requirement.
- 8262f. Inspector General review and agency accountability.
 - (a) Audit survey.
 - (b) President's Council on Integrity and Efficiency report to Congress.
 - (c) Inspector General review.
- 8262g. Procurement and identification of energy efficient products.
 - (a) Procurement.
 - (b) Identification program.
 - (c) Guidelines.
 - (d) Report to Congress.
- 8262h. United States Postal Service energy regulations.
 - (a) In general.
 - (b) Identification of energy efficiency products.
- 8262i. United States Postal Service energy management report.
- 8262j. Energy management requirements for United States Postal Service.
 - (a) Energy management requirements for postal facilities.
 - (b) Implementation steps.
- 8262k. Government contract incentives.
 - (a) Establishment of criteria.
 - (b) Purpose of criteria.

PART C—FEDERAL PHOTOVOLTAIC UTILIZATION

- 8271. "Federal facility" and "Secretary" defined.

- Sec. 8272. Photovoltaic energy program.
 - 8273. Purpose of program.
 - 8274. Acquisition of systems.
 - 8275. Administration.
 - 8276. System evaluation and purchase program.
 - (a) Program.
 - (b) Other procurement.
 - 8277. Advisory committee.
 - (a) Establishment.
 - (b) Membership.
 - (c) Termination.
 - 8278. Authorization of appropriations.
- SUBCHAPTER IV—ENERGY CONSERVATION FOR COMMERCIAL BUILDINGS AND MULTIFAMILY DWELLINGS
- PART A—GENERAL PROVISIONS
- 8281 to 8281b. Repealed.
- PART B—ENERGY CONSERVATION PLANS
- 8282 to 8282b. Repealed.
- PART C—UTILITY PROGRAMS
- 8283, 8283a. Repealed.
- PART D—FEDERAL IMPLEMENTATION
- 8284. Repealed.
- SUBCHAPTER V—ENERGY AUDITOR TRAINING AND CERTIFICATION
- 8285. Purpose.
 - 8285a. Definitions.
 - 8285b. Grants.
 - 8285c. Authorization of appropriations.
- SUBCHAPTER VI—COORDINATION OF FEDERAL ENERGY CONSERVATION FACTORS AND DATA
- 8286. Consensus on factors and data for energy conservation standards.
 - 8286a. Use of factors and data.
 - 8286b. Omitted.
- SUBCHAPTER VII—ENERGY SAVINGS PERFORMANCE CONTRACTS
- 8287. Authority to enter into contracts.
 - (a) In general.
 - (b) Implementation.
 - (c) Sunset requirements.
 - 8287a. Payment of costs.
 - 8287b. Reports.
 - 8287c. Definitions.
 - 8287d. Assistance to Federal agencies in achieving energy efficiency in Federal facilities and operations.

SUBCHAPTER I—GENERAL PROVISIONS

§ 8201. Findings and statement of purposes

(a) Findings

The Congress finds that—

(1) the United States has survived a period of energy shortage and has made significant progress toward improving energy efficiency in all sectors of the economy;

(2) effective measures must continue to be taken by the Federal Government and other users and suppliers of energy to control the rate of growth of demand for energy and the efficiency of its use;

(3) the continuation of this effort will permit the United States to become increasingly independent of the world oil market, less vulnerable to interruption of foreign oil supplies, and more able to provide energy to meet future needs; and

(4) all sectors of the economy of the United States should continue to reduce significantly the demand for nonrenewable energy resources such as oil and natural gas by implementing and maintaining effective conservation measures for the efficient use of these and other energy sources.

(b) Statement of purposes

The purposes of this chapter are to provide for the regulation of interstate commerce, to reduce the growth in demand for energy in the United States, and to conserve nonrenewable energy resources produced in this Nation and elsewhere, without inhibiting beneficial economic growth.

(Pub. L. 95-619, title I, § 102, Nov. 9, 1978, 92 Stat. 3208; Pub. L. 99-412, title I, § 101, Aug. 28, 1986, 100 Stat. 932.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original "this Act", meaning Pub. L. 95-619, Nov. 9, 1978, 92 Stat. 3206, as amended, known as the National Energy Conservation Policy Act. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

AMENDMENTS

1986—Subsec. (a). Pub. L. 99-412 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "The Congress finds that—

"(1) the United States faces an energy shortage arising from increasing demand for energy, particularly for oil and natural gas, and insufficient domestic supplies of oil and natural gas to satisfy that demand;

"(2) unless effective measures are promptly taken by the Federal Government and other users of energy to reduce the rate of growth of demand for energy, the United States will become increasingly dependent on the world oil market, increasingly vulnerable to interruptions of foreign oil supplies, and unable to provide the energy to meet future needs; and

"(3) all sectors of our Nation's economy must begin immediately to significantly reduce the demand for nonrenewable energy resources such as oil and natural gas by implementing and maintaining effective conservation measures for the efficient use of these and other energy sources."

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100-615, § 1, Nov. 5, 1988, 102 Stat. 3185, provided that: "This Act [enacting section 5001 of Title 15, Commerce and Trade, amending sections 6361 and 8251 to 8259 of this title, omitting sections 8260 and 8261 of this title, and enacting provisions set out as a note under section 8253 of this title] may be cited as the 'Federal Energy Management Improvement Act of 1988'."

SHORT TITLE OF 1986 AMENDMENT

Section 1 of Pub. L. 99-412 provided that: "This Act [enacting sections 8227 to 8229 of this title, amending sections 8201, 8211, 8213 to 8220, and 8226 of this title, repealing sections 8281 to 8281b, 8282 to 8282b, 8283, 8283a, and 8284 of this title, and enacting provisions set out as notes under sections 8211, 8216, 8217, 8281, and 8282 of this title] may be cited as the 'Conservation Service Reform Act of 1986'."

SHORT TITLE

Section 101(a) of Pub. L. 95-619 provided that: "This Act [enacting this chapter, sections 1490i, 6215, 6311 to 6317, 6344a, 6371, 6371a to 6371j, 6372, 6372a to 6372i, 6373, 6873, and 7141 of this title, and sections 1723f to 1723h of Title 12, Banks and Banking, amending sections 300k-2,

300n-1, 1437c, 1471, 1474, 1483, 6202, 6211, 6233 to 6241, 6243 to 6245, 6272 to 6274, 6291 to 6299, 6303 to 6309, 6321 to 6327, 6341 to 6346, 6361, 6381, 6383, 6392, 6836, 6862, 6863, 6865, and 6872 of this title, sections 1451, 1703, 1709, 1713, 1715z-6, 1717, and 1735f-4 of Title 12, and sections 2006 and 2008 of Title 15, Commerce and Trade, repealing section 6397 of this title, and enacting provisions set out as notes under this section, sections 6321, 6344a, 6345, 6371, and 6372 of this title, section 2006 of Title 15, and section 217 of Title 23, Highways] may be cited as the 'National Energy Conservation Policy Act'."

Section 561 of Pub. L. 95-619 provided that: "This part [part 4 (§§ 561-569) of title V of Pub. L. 95-619, enacting sections 8271 to 8278 of this title] may be cited as the 'Federal Photovoltaic Utilization Act'."

SUBCHAPTER II—RESIDENTIAL ENERGY CONSERVATION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 12 sections 1451, 1717.

PART A—UTILITY PROGRAM

§§ 8211 to 8229. Omitted

CODIFICATION

Sections were omitted pursuant to section 8229 of this title, which terminated authority under this part June 30, 1989.

Section 8211, Pub. L. 95-619, title II, § 210, Nov. 9, 1978, 92 Stat. 3209; Pub. L. 96-294, title V, §§ 541, 542(a), June 30, 1980, 94 Stat. 741; Pub. L. 99-412, title I, § 102(d)(1), (h)(1), Aug. 28, 1986, 100 Stat. 933, 934, defined terms for this part.

Section 8212, Pub. L. 95-619, title II, § 211, Nov. 9, 1978, 92 Stat. 3211, related to coverage of this part.

Section 8213, Pub. L. 95-619, title II, § 212, Nov. 9, 1978, 92 Stat. 3211; Pub. L. 96-294, title V, § 542(b), June 30, 1980, 94 Stat. 741; Pub. L. 99-412, title I, § 102(c), (d)(2), (h)(2), Aug. 28, 1986, 100 Stat. 933, 934; Pub. L. 100-418, title V, § 5115(c), Aug. 23, 1988, 102 Stat. 1433, related to rules of Secretary for submission and approval of plans.

Section 8214, Pub. L. 95-619, title II, § 213, Nov. 9, 1978, 92 Stat. 3213; Pub. L. 96-294, title V, §§ 542(c), 543, 546(b), (c), June 30, 1980, 94 Stat. 742, 744; Pub. L. 99-412, title I, § 102(b)(3), (h)(3), Aug. 28, 1986, 100 Stat. 933, 934, related to requirements for State residential energy conservation plans for regulated utilities.

Section 8215, Pub. L. 95-619, title II, § 214, Nov. 9, 1978, 92 Stat. 3214; Pub. L. 99-412, title I, § 102(h)(4), Aug. 28, 1986, 100 Stat. 934, related to plan requirements for non-regulated utilities and home heating suppliers.

Section 8216, Pub. L. 95-619, title II, § 215, Nov. 9, 1978, 92 Stat. 3215; Pub. L. 96-294, title V, § 544, June 30, 1980, 94 Stat. 742; Pub. L. 99-412, title I, § 102(a)(1), (2)(A), (b)(1), (e), (h)(5)-(7), Aug. 28, 1986, 100 Stat. 932-934, related to utility programs.

Section 8217, Pub. L. 95-619, title II, § 216, Nov. 9, 1978, 92 Stat. 3217; Pub. L. 96-294, title V, §§ 545, 546(a), 547, June 30, 1980, 94 Stat. 743, 744; Pub. L. 99-412, title I, §§ 102(h)(8), (9), 106(a)-(c), Aug. 28, 1986, 100 Stat. 934, 941, 942; Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 105-388, § 5(c)(2), Nov. 13, 1998, 112 Stat. 3479, related to supply and installation by public utilities.

Section 8218, Pub. L. 95-619, title II, § 217, Nov. 9, 1978, 92 Stat. 3219; Pub. L. 99-412, title I, § 102(a)(1), (b)(2), Aug. 28, 1986, 100 Stat. 932, 933, related to home heating supplier programs.

Section 8219, Pub. L. 95-619, title II, § 218, Nov. 9, 1978, 92 Stat. 3220; Pub. L. 99-412, title I, § 102(g), Aug. 28, 1986, 100 Stat. 934, related to temporary programs.

Section 8220, Pub. L. 95-619, title II, § 219, Nov. 9, 1978, 92 Stat. 3220; Pub. L. 99-412, title I, § 102(f), Aug. 28, 1986, 100 Stat. 933, related to Federal standby authority.

Section 8221, Pub. L. 95-619, title II, § 220, Nov. 9, 1978, 92 Stat. 3222; Pub. L. 96-294, title V, §§ 542(d), 550, June 30, 1980, 94 Stat. 742, 745, provided relationship to other laws.

Section 8222, Pub. L. 95-619, title II, §221, Nov. 9, 1978, 92 Stat. 3223, authorized promulgation of rules.

Section 8223, Pub. L. 95-619, title II, §222, Nov. 9, 1978, 92 Stat. 3223; Pub. L. 100-418, title V, §5115(c), Aug. 23, 1988, 102 Stat. 1433, related to product standards.

Section 8224, Pub. L. 95-619, title II, §223, Nov. 9, 1978, 92 Stat. 3223, authorized appropriations.

Section 8225, Pub. L. 95-619, title II, §224, Nov. 9, 1978, 92 Stat. 3223, required report on energy conservation in apartment buildings.

Section 8226, Pub. L. 95-619, title II, §225, Nov. 9, 1978, 92 Stat. 3224; Pub. L. 99-412, title I, §104(a), Aug. 28, 1986, 100 Stat. 939, provided for reports and dissemination of information.

Section 8227, Pub. L. 95-619, title II, §226, as added Pub. L. 99-412, title I, §103(a), Aug. 28, 1986, 100 Stat. 935, related to alternative State plans.

Section 8228, Pub. L. 95-619, title II, §227, as added Pub. L. 99-412, title I, §103(a), Aug. 28, 1986, 100 Stat. 937, related to waiver for regulated and nonregulated utilities.

Section 8229, Pub. L. 95-619, title II, §228, as added Pub. L. 99-412, title I, §105(a), Aug. 28, 1986, 100 Stat. 941, provided that all authority, including authority to enforce any prohibitions, under this part would terminate June 30, 1989, except that such expiration would not affect any action or proceeding based upon an act committed prior to midnight June 30, 1989, and not finally determined by such date.

PART B—MISCELLANEOUS

§ 8231. Grants for energy conserving improvements; establishment of standards; authorization of appropriations

(1) The Secretary of Housing and Urban Development is authorized to make grants to finance energy conserving improvements (as defined in subparagraph (2) of the last paragraph of section 1703(a) of title 12) to projects which are financed with loans under section 1701q of title 12, or which are subject to mortgages insured under section 1715(d)(3) or section 1715z-1 of title 12. The Secretary shall make assistance available under this section on a priority basis to those projects which are in financial difficulty as a result of high energy costs. In carrying out the program authorized by this section, the Secretary shall issue regulations requiring that any grant made under this section shall be made only on the condition that the recipient of such grant shall take steps (prescribed by the Secretary) to assure that the benefits derived from such grants in terms of lower energy costs shall accrue to tenants in the form of lower rentals or to the Federal Government in the form of a lower operating subsidy if such a subsidy is being paid to such recipient.

(2) The Secretary shall establish minimum standards for energy conserving improvements to multifamily dwelling units to be assisted under this section.

(3) There are authorized to be appropriated to carry out the provisions of this section not to exceed \$25,000,000.

(Pub. L. 95-619, title II, §251(b), Nov. 9, 1978, 92 Stat. 3235; Pub. L. 105-388, §5(c)(3), Nov. 13, 1998, 112 Stat. 3479.)

AMENDMENTS

1998—Par. (1). Pub. L. 105-388 inserted closing parenthesis after “section 1703(a) of title 12” and substituted “accrue” for “accure”.

§ 8232. Residential energy efficiency standards study

(a) General authority

The Secretary of Housing and Urban Development (hereinafter in this section referred to as the “Secretary”) shall, in coordination with the Secretary of Agriculture, the Secretary of the Treasury, the Secretary of Veterans Affairs, the Secretary of Energy, and such other representatives of Federal, State, and local governments as the Secretary shall designate, conduct a study, utilizing the services of the National Institute of Building Sciences pursuant to appropriate contractual arrangements, for the purpose of determining the need for, the feasibility of, and the problems of requiring, by mandatory Federal action, that all residential dwelling units meet applicable energy efficient standards. The subjects to be examined shall include, but not be limited to, mandatory notification to purchasers, and policies to prohibit exchange or sale, of properties which do not conform to such standards.

(b) Specific factors

In conducting such study, the Secretary shall consider at least the following factors—

(1) the extent to which such requirement would protect a prospective purchaser from the uncertainty of not knowing the energy efficiency of the property he proposes to purchase;

(2) the extent to which such requirement would contribute to the Nation’s energy conservation goals;

(3) the extent to which such a requirement would affect the real estate, home building, and mortgage banking industries;

(4) the sanctions which might be necessary to make such a requirement effective and the administrative impediments there might be to enforcement of such sanctions;

(5) the possible impact on sellers and purchasers as a result of the implementation of mandatory Federal actions, taking into account the experience of the Federal Government in imposing mandatory requirements concerning the purchase and sale of real property as occurred under the Real Estate Settlement Procedures Act of 1974 [12 U.S.C. 2601 et seq.] and the Federal Disaster Protection Act of 1973;

(6) an analysis of the effect of such a requirement on the economy as a whole and on the Nation’s security as compared to the impact on the credit and housing markets caused by such a requirement;

(7) the effect of such a requirement on availability of credit in the housing industry;

(8) the extent to which the imposition of mandatory Federal requirements would temporarily reduce the number of residential dwellings available for sale and the resulting effect of such mandatory actions on the price of those remaining dwelling units eligible for sale; and

(9) the possible uncertainty, during the period of developing the standards, as to what standards might be imposed and any resulting effect on major housing rehabilitation efforts and voluntary efforts for energy conservation.

(c) Comments and findings by Secretary of Energy

The Secretary shall incorporate into such study comments by the Secretary of Energy on the effects on the economy as a whole and on the Nation's security which may result from the requirement described in subsection (a) of this section as compared to the impact on the credit and housing markets likely to be caused by such a requirement. In addition, the Secretary shall incorporate into such study the following findings by the Secretary of Energy:

(1) the savings in energy costs resulting from the requirement described in subsection (a) of this section throughout the estimated remaining useful life of the existing residential buildings to which such requirement would apply; and

(2) the total cost per barrel of oil equivalent, in obtaining the energy savings likely to result from such requirement, computed for each class of existing residential buildings to which such requirement would apply.

(d) Report date

The Secretary shall report, no later than one year after November 9, 1978, to both Houses of the Congress with regard to the findings made as a result of such study along with any recommendations for legislative proposals which the Secretary determines should be enacted with respect to the subject of such study.

(Pub. L. 95-619, title II, § 253, Nov. 9, 1978, 92 Stat. 3236; Pub. L. 102-54, § 13(q)(12), June 13, 1991, 105 Stat. 281.)

REFERENCES IN TEXT

The Real Estate Settlement Procedures Act of 1974, referred to in subsec. (b)(5), is Pub. L. 93-533, Dec. 22, 1974, 88 Stat. 1724, as amended, which is classified principally to chapter 27 (§2601 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 12 and Tables.

The Federal Disaster Protection Act of 1973, referred to in subsec. (b)(5), probably means the Flood Disaster Protection Act of 1973, Pub. L. 93-234, Dec. 31, 1973, 87 Stat. 975, as amended, which enacted sections 4002, 4003, 4012a, 4104 to 4107, and 4128 of this title, amended sections 4001, 4013 to 4016, 4026, 4054, 4056, 4101, and 4121 of this title and sections 24 and 1709-1 of Title 12, repealed section 4021 of this title, and enacted a provision set out as a note under section 4001 of this title. For complete classification of this Act to the Code, see Short Title of 1973 Amendment note set out under section 4001 of this title and Tables.

AMENDMENTS

1991—Subsec. (a). Pub. L. 102-54 substituted “Secretary of Veterans Affairs” for “Administrator of Veterans’ Affairs”.

§ 8233. Weatherization study

The President shall conduct a study which shall monitor the weatherization activities authorized by this Act and amendments made thereby and those weatherization activities undertaken, independently of this Act and such amendments. The President shall report to the Congress within one year from November 9, 1978, and annually thereafter, concerning—

(1) the extent of progress being made through weatherization activities toward the

achievement of national energy conservation goals;

(2) adequacy and costs of materials necessary for weatherization activities; and

(3) the need for and desirability of modifying weatherization activities authorized by this Act, and amendments made thereby and of extending such activities to a broader range of income groups than are being assisted under this Act and such amendments.

(Pub. L. 95-619, title II, § 254, Nov. 9, 1978, 92 Stat. 3237.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 95-619, Nov. 9, 1978, 92 Stat. 3206, as amended, known as the National Energy Conservation Policy Act. For complete classification of this Act to the Code, see Short Title note set out under section 8201 of this title and Tables.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in this section relating to the requirement that the President report annually to Congress, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the last item on page 40 of House Document No. 103-7.

PART C—RESIDENTIAL ENERGY EFFICIENCY PROGRAMS

§ 8235. “Residential building” defined

As used in this part, the term “residential building” means any building used as a residence which is not a new building to which final standards under sections 6833(a) and 6834¹ of this title apply and which has a system for heating, cooling, or both.

(Pub. L. 95-619, title II, § 261, as added Pub. L. 96-294, title V, § 562, June 30, 1980, 94 Stat. 746.)

REFERENCES IN TEXT

Section 6834 of this title, referred to in text, was repealed by Pub. L. 97-35, title X, § 1041(b), Aug. 13, 1981, 95 Stat. 621.

STATEMENT OF PURPOSE

Section 561 of subtitle C (§§ 562-563) of title V of Pub. L. 96-294 provided that: “It is the purpose of this subtitle [enacting this part]—

“(1) to establish a program under which the Secretary of Energy may provide assistance to State and local governments to encourage up to four demonstration programs that make energy conservation measures available without charge to residential property owners and tenants under a plan designed to maximize the energy savings available in residential buildings in designated areas; and

“(2) to demonstrate through such program prototype residential energy efficiency plans under which State and local governments, State regulatory authorities, and public utilities may participate in a cooperative manner with public or private entities to install energy conservation measures in the greatest possible number of residential buildings within their respective jurisdictions or service areas.”

§ 8235a. Approval of plans for prototype residential energy efficiency programs and provision of financial assistance for such programs**(a) Plan approval**

The Secretary may approve any plan developed by a State or local government, for the es-

¹ See References in Text note below.

establishment of a prototype residential energy efficiency program, which is designed to demonstrate the feasibility, economics, and energy conserving potential of such program, if an application for such plan is submitted pursuant to section 8235b of this title, the application is approved pursuant to section 8235c of this title, and the plan provides for—

(1) the entering into a contract by a public utility with one or more persons not under the control of, and not affiliates or subsidiaries of, such utility for the implementation of a program to encourage energy conservation, including the supply and installation of the energy conservation measures as specified in such contract in residential buildings located in the portion of the utility's service area designated by the contract, which contract includes the provisions described in subsection (b) of this section;

(2) the selection by the public utility in a fair, open, and nondiscriminatory manner of the person or persons to contract with pursuant to paragraph (1);

(3) the payment by the public utility to the person or persons contracted with under paragraph (1) of a specified price for each unit of energy saved by such utility as a result of the program during the period the contract is in effect, which price is based on the value to the utility of the energy saved;

(4) the determination, by a procedure established by the State or local government developing the plan, of the amount of energy saved by a public utility as a result of the program carried out under the plan, which procedure is described in the contract;

(5) in the case of a regulated public utility, the approval in writing by the State regulatory authority exercising ratemaking authority over such utility of the contract described in paragraph (1), the manner of selection described in paragraph (2), the payment described in paragraph (3), and the procedure described in paragraph (4); and

(6) the enforcement of the provisions of the contract, entered into pursuant to paragraph (1), which are required to be included pursuant to subsection (b) of this section.

(b) Contract requirements

Any contract entered into by a public utility under subsection (a)(1) of this section shall require any person or persons entering into such contract with a public utility to offer to the owner or occupant of each residential building in the portion of the utility's service area designated in the contract, without charge—

(1) an inspection of such building to determine and inform such owner or occupant of—

(A) the energy conservation measures which will be supplied and installed in such residential building pursuant to paragraph (2);

(B) the savings in energy costs that are likely to result from the installation of such energy conservation measures;

(C) suggestions (including suggestions developed by the Secretary) of energy conservation techniques, including adjustments in energy use patterns and modifications in

household activities, which can be used by the owner or occupant of the building to save energy and which do not require the installation of energy conservation measures; and

(D) the savings in energy costs that are likely to result from the adoption of such suggested energy conservation techniques;

(2) the supply and installation, with the approval of the owner of the residential building, in such building in a timely manner of the energy conservation measures which are as specified in the contract and which the owner or occupant was informed (pursuant to the inspection under paragraph (1)) would be supplied and installed in such building; and

(3) a written warranty that at a minimum any defect in materials, manufacture, design, or installation of any energy conservation measures supplied and installed pursuant to paragraph (2), found not later than one year after the date of installation, will be remedied without charge and within a reasonable period of time.

(c) Provision of financial assistance

The Secretary may provide financial assistance to any State or local government to carry out any plan for the establishment of a prototype residential energy efficiency program if the plan is approved under subsection (a) of this section.

(d) Limitation

The Secretary may approve under subsection (a) of this section not more than 4 plans for the establishment of prototype residential energy efficiency programs.

(Pub. L. 95-619, title II, §262, as added Pub. L. 96-294, title V, §562, June 30, 1980, 94 Stat. 746.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8235b, 8235e, 8235f, 8235g, 8235h of this title.

§ 8235b. Applications for approval of plans for prototype residential energy efficiency programs

Each application for the approval of a plan under section 8235a(a) of this title for the establishment of a prototype residential energy efficiency program shall be submitted by a State or local government and shall include, at least—

(1) a description of the plan, including the provisions of the plan specified in section 8235a(a) of this title and a description of the portion of the service area of the public utility proposing to enter into a contract under section 8235a(a)(1) of this title which is designated under the contract;

(2) a description of the manner in which the provisions of the plan specified in section 8235a(a) of this title are to be met;

(3) a description of the contract to be entered into pursuant to section 8235a(a)(1) of this title and the manner in which the requirements of the contract contained in section 8235a(b) of this title are to be met;

(4) the record of the public hearing conducted pursuant to section 8235c(a)(2) of this title; and

(5) any other information determined by the Secretary to be necessary to carry out this part.

(Pub. L. 95-619, title II, §263, as added Pub. L. 96-294, title V, §562, June 30, 1980, 94 Stat. 748.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8235a, 8235c of this title.

§ 8235c. Approval of applications for plans for prototype residential energy efficiency programs

(a) Approval requirements

The Secretary may approve an application submitted under section 8235b of this title for a plan establishing a prototype residential energy efficiency program only if—

(1) the application is approved in writing—

(A) by the public utility which is to enter into the contract under the plan;

(B) by the State regulatory authority having ratemaking authority over such public utility, in the case of a regulated utility; and

(C) by the Governor (or any State agency specifically authorized under State law to approve such plans) of the State whose government is submitting the application (if the application is submitted by a State government) or of the State in which the local government is located (if the application is submitted by a local government); and

(2) the application has been published, a public hearing on the application has been conducted, after notice to the public, at which representatives of the public utility which is to enter into the contract under the plan, persons engaged in the supply or installation of residential energy conservation measures, and members of the public (including ratepayers of such public utility and other interested individuals) had an opportunity to provide comment on the application, and any amendments to the application, which may be made to take into account the proceedings of the hearing, are made.

(b) Factors in approving applications

The Secretary shall take into consideration in approving an application under subsection (a) of this section for a plan establishing a prototype residential energy efficiency program—

(1) the potential for energy savings from the demonstration of the program;

(2) the likelihood that the value of the energy saved by public utilities under the program will be sufficient to cover the estimated cost of the energy conservation measures to be supplied and installed under the program;

(3) the anticipated effects of the program on competition in the portion of the service area of the public utility designated in the contract entered into under the plan; and

(4) such other factors as the Secretary determines are appropriate.

(Pub. L. 95-619, title II, §264, as added Pub. L. 96-294, title V, §562, June 30, 1980, 94 Stat. 748.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8235a, 8235b of this title.

§ 8235d. Rules and regulations

(a) Proposed rules and regulations

The Secretary shall issue proposed rules and regulations to carry out this part not later than 120 days after June 30, 1980.

(b) Final rules and regulations

The Secretary shall issue final rules and regulations to carry out this part not later than 90 days after the issuance of proposed rules and regulations under subsection (a) of this section.

(Pub. L. 95-619, title II, §265, as added Pub. L. 96-294, title V, §562, June 30, 1980, 94 Stat. 749.)

§ 8235e. Authority of Federal Energy Regulatory Commission to exempt application of certain laws

The Federal Energy Regulatory Commission may exempt from any provisions in sections 4, 5, and 7 of the Natural Gas Act (15 U.S.C. 717c, 717d, and 717f) and titles II and IV of the Natural Gas Policy Act of 1978 (15 U.S.C. 3341 through 3348 and 3391 through 3394) the sale or transportation, by any public utility, local distribution company, interstate or intrastate pipeline, or any other person, of any natural gas which is determined (in the case of a regulated utility, company, pipeline, or person) by the State regulatory authority having rate-making authority over such utility, company, pipeline, or person, or (in the case of a nonregulated utility, company, pipeline, or person) by such utility, company, pipeline, or person, to have been conserved because of a prototype residential energy efficiency program which is established under a plan approved under section 8235a(a) of this title, if the Commission determines that such exemption is necessary to make feasible the demonstration of such prototype residential energy efficiency program.

(Pub. L. 95-619, title II, §266, as added Pub. L. 96-294, title V, §562, June 30, 1980, 94 Stat. 749; amended Pub. L. 105-388, §5(c)(4), Nov. 13, 1998, 112 Stat. 3479.)

REFERENCES IN TEXT

The Natural Gas Policy Act of 1978, referred to in text, is Pub. L. 95-621, Nov. 9, 1978, 92 Stat. 3350, as amended. Title II of the Natural Gas Policy Act of 1978 was classified generally to subchapter II (§3341 et seq.) of chapter 60 of Title 15, Commerce and Trade, prior to its repeal by Pub. L. 100-42, §2(a), May 21, 1987, 101 Stat. 314. Title IV of the Natural Gas Policy Act of 1978 is classified generally to subchapter IV (§3391 et seq.) of chapter 60 of Title 15. For complete classification of this Act to the Code, see Short Title note set out under section 3301 of Title 15 and Tables.

AMENDMENTS

1998—Pub. L. 105-388 substituted “(15 U.S.C. 717c” for “(17 U.S.C. 717c”.

§ 8235f. Application of other laws

(a) Lack of immunity

No provision contained in this part—

(1) shall restrict any agency of the United States or any State from exercising its powers under any law to prevent unfair methods of competition and unfair or deceptive acts or practices;

(2) shall provide to any person any immunity from civil or criminal liability;

(3) shall create any defenses to actions brought under the antitrust laws; or

(4) shall modify or abridge any private right of action under the antitrust laws.

(b) Utility programs under part A

Any public utility entering into a contract under a plan for the establishment of a prototype residential energy efficiency program approved under section 8235a(a) of this title shall not be required to carry out, with respect to any residential building located in the portion of the utility's service area designated in the contract, the actions required to be contained in such utility's program by subsections (a) and (b) of section 8216¹ of this title, if the contract requires such actions (or equivalent actions as determined by the Secretary) to be taken.

(c) "Antitrust laws" defined

For purposes of this section, the term "antitrust laws" means—

(1) the Sherman Act (15 U.S.C. 1 et seq.);

(2) the Clayton Act (15 U.S.C. 12 et seq.);

(3) the Federal Trade Commission Act (15 U.S.C. 41 et seq.);

(4) sections 73 and 74 of the Wilson Tariff Act (15 U.S.C. 8 and 9); and

(5) sections 2, 3, and 4 of the Act entitled "An Act to amend section 2 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes', approved October 15, 1914, as amended (U.S.C., title 15, sec. 13), and for other purposes" approved June 19, 1936 (15 U.S.C. 21a, 13a, and 13b, commonly known as the Robinson-Patman Antidiscrimination Act).

(Pub. L. 95-619, title II, §267, as added Pub. L. 96-294, title V, §562, June 30, 1980, 94 Stat. 749.)

REFERENCES IN TEXT

Section 8216 of this title, referred to in subsec. (b), was omitted from the Code pursuant to section 8229 of this title, which terminated authority under that section June 30, 1989.

The Sherman Act (15 U.S.C. 1 et seq.), referred to in subsec. (c)(1), is act July 2, 1890, ch. 647, 26 Stat. 209, as amended, which is classified to sections 1 to 7 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1 of Title 15 and Tables.

The Clayton Act (15 U.S.C. 12 et seq.), referred to in subsec. (c)(2), is act Oct. 15, 1914, ch. 323, 38 Stat. 730, as amended, which is classified generally to sections 12, 13, 14 to 19, 21, and 22 to 27 of Title 15, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of Title 15 and Tables.

The Federal Trade Commission Act (15 U.S.C. 41 et seq.), referred to in subsec. (c)(3), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of Title 15. For complete classification of this Act to the Code, see section 58 of Title 15 and Tables.

§ 8235g. Records and reports

(a) Records

Each State and local government submitting any application for a plan which is approved

¹ See References in Text note below.

under section 8235a(a) of this title, and each public utility and person or persons entering into a contract under such a plan, shall keep such records and make such reports as the Secretary may require. The Secretary and the Comptroller General of the United States shall have access, at reasonable times and under reasonable conditions, to any books, documents, papers, records, and reports of each such State and local government, utility, and person or persons which the Secretary determines, in consultation with the Comptroller General of the United States, are pertinent to this part.

(b) Reports

The Secretary shall make an annual report to the President on the activities carried out under this part which shall be submitted to the Congress with the annual report on the activities of the Department of Energy required by section 7267 of this title and which shall contain—

(1) an estimate of the total amount of energy saved as a result of the activities carried out under this part;

(2) an estimate of the annual savings in energy anticipated as a result of each prototype residential energy efficiency program established under a plan approved under section 8235a(a) of this title;

(3) an analysis, developed in consultation with the Federal Trade Commission and the Department of Justice, of the impact on competition of each prototype residential energy efficiency program established under a plan approved under section 8235a(a) of this title; and

(4) if the Secretary determines that it is appropriate, an analysis of the impact of expanding the approval of plans under section 8235a(a) of this title to establish prototype residential energy efficiency programs, and the provision of financial assistance to such programs, on a national basis and an assessment of the alternative methods by which such an expansion could be accomplished.

(Pub. L. 95-619, title II, §268, as added Pub. L. 96-294, title V, §562, June 30, 1980, 94 Stat. 750.)

§ 8235h. Revoking approval of plans and terminating financial assistance

The Secretary shall revoke the approval of any plan under section 8235a(a) of this title for the establishment of a prototype residential energy efficiency program, and shall terminate the provision of financial assistance under section 8235a(c) of this title to carry out such plan, if the Secretary determines, in consultation with the Federal Trade Commission and after notice and the opportunity for a hearing, that carrying out such plan—

(1) causes unfair methods of competition;

(2) has a substantial adverse effect on competition in the portion of the service area of the public utility designated by the contract entered into under the plan; or

(3) provides a supplier or contractor of energy conservation measures with an unreasonably large share of the contracts for the supply or installation of such measures under such plan in the service area of the public utility designated by the contract entered into under such plan.

(Pub. L. 95-619, title II, §269, as added Pub. L. 96-294, title V, §562, June 30, 1980, 94 Stat. 751.)

§ 8235i. Authorization of appropriations

(a) Authorization of appropriations

There is authorized to be appropriated to carry out this part—

(1) the sum of \$10,000,000 for the fiscal year ending on September 30, 1981; and

(2) the sum equal to \$10,000,000 minus the amount appropriated for the fiscal year ending on September 30, 1981, under the authorization contained in this section, for the fiscal year ending on September 30, 1982.

(b) Availability

Any funds appropriated under the authorization contained in this section shall remain available until expended.

(Pub. L. 95-619, title II, §270, as added Pub. L. 96-294, title V, §562, June 30, 1980, 94 Stat. 751.)

PART D—RESIDENTIAL ENERGY EFFICIENCY RATING GUIDELINES

§ 8236. Voluntary rating guidelines

(a) In general

Not later than 18 months after October 24, 1992, the Secretary, in consultation with the Secretary of Housing and Urban Development, the Secretary of Veterans Affairs, representatives of existing home energy rating programs, and other appropriate persons, shall, by rule, issue voluntary guidelines that may be used by State and local governments, utilities, builders, real estate agents, lenders, agencies in mortgage markets, and others, to enable and encourage the assignment of energy efficiency ratings to residential buildings.

(b) Contents of guidelines

The voluntary guidelines issued under subsection (a) of this section shall—

(1) encourage uniformity with regard to systems for rating the annual energy efficiency of residential buildings;

(2) establish protocols and procedures for—

(A) certification of the technical accuracy of building energy analysis tools used to determine energy efficiency ratings;

(B) training of personnel conducting energy efficiency ratings;

(C) data collection and reporting;

(D) quality control; and

(E) monitoring and evaluation;

(3) encourage consistency with, and support for, the uniform plan for Federal energy efficient mortgages, including that developed under section 946 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12712 note) and pursuant to sections 105 and 106 of the Energy Policy Act of 1992;

(4) provide that rating systems take into account local climate conditions and construction practices, solar energy collected on-site, and the benefits of peak load shifting construction practices, and not discriminate among fuel types; and

(5) establish procedures to ensure that residential buildings can receive an energy effi-

ciency rating at the time of sale and that such rating is communicated to potential buyers.

(Pub. L. 95-619, title II, §271, as added Pub. L. 102-486, title I, §102(a), Oct. 24, 1992, 106 Stat. 2787.)

REFERENCES IN TEXT

Section 946 of the Cranston-Gonzalez National Affordable Housing Act, referred to in subsec. (b)(3), is section 946 of Pub. L. 101-625, which is set out as a note under section 12712 of this title.

Sections 105 and 106 of the Energy Policy Act of 1992, referred to in subsec. (b)(3), are sections 105 and 106 of Pub. L. 102-486. Section 105 amended section 12704 of this title and provisions set out as a note under section 12712 of this title. Section 106 is set out as a note under section 12712 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8236a, 8236b of this title.

§ 8236a. Technical assistance

Not later than 2 years after October 24, 1992, the Secretary shall establish a program to provide technical assistance to State and local organizations to encourage the adoption of and use of residential energy efficiency rating systems consistent with the voluntary guidelines issued under section 8236 of this title.

(Pub. L. 95-619, title II, §272, as added Pub. L. 102-486, title I, §102(a), Oct. 24, 1992, 106 Stat. 2788.)

§ 8236b. Report

Not later than 3 years after October 24, 1992, the Secretary shall transmit to the President and the Congress a final report containing—

(1) a description of actions taken by the Secretary and other Federal agencies to implement this part;

(2) a description of the action taken by States, local governments, and other organizations to implement the voluntary guidelines issued under section 8236 of this title and any problems encountered in implementing such guidelines; and

(3) recommendations on the feasibility of requiring, as a prerequisite to receiving federally assisted, guaranteed, or insured mortgages, the achievement of a minimum energy efficiency rating.

(Pub. L. 95-619, title II, §273, as added Pub. L. 102-486, title I, §102(a), Oct. 24, 1992, 106 Stat. 2788.)

SUBCHAPTER III—FEDERAL ENERGY INITIATIVE

PART A—DEMONSTRATION OF SOLAR HEATING AND COOLING IN FEDERAL BUILDINGS

§ 8241. Definitions

As used in the part—

(1) The term “Federal agency” means—

(A) an Executive agency as defined in section 105 of title 5; and

(B) each entity specified in paragraphs (B) through (H) of subsection (1) of section 5721 of title 5.

(2) The term “Federal building” means any building or other structure owned in whole or part by the United States or any Federal agency, including any such structure occupied by a Federal agency under a lease-acquisition agreement under which the United States or a Federal agency will receive fee simple title under the terms of such agreement without further negotiation.

(3) The term “solar heating” means, with respect to any Federal building, the use of solar energy to meet all or part of the heating needs of such building (including hot water), or all or part of the needs of such building for hot water.

(4) The term “solar heating and cooling” means the use of solar energy to provide all or part of the heating needs of a Federal building (including hot water) and all or part of the cooling needs of such building, or all or part of the needs of such building for hot water.

(5) The term “solar energy equipment” means equipment for solar heating or solar heating and cooling.

(6) The term “Secretary” means the Secretary of Energy.

(Pub. L. 95-619, title V, §521, Nov. 9, 1978, 92 Stat. 3275.)

§ 8242. Federal solar program

The Secretary, in consultation with the Administrator of the General Services Administration, shall develop and carry out a program to demonstrate the application to buildings of solar heating and solar heating and cooling technology in Federal buildings.

(Pub. L. 95-619, title V, §522, Nov. 9, 1978, 92 Stat. 3276.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8243 of this title.

§ 8243. Duties of Secretary

(a) Duties

In exercising the authority provided by section 8242 of this title, the Secretary, in consultation with the Administrator of the General Services Administration, shall—

(1) promulgate, by rule—

(A) requirements under which Federal agencies shall submit proposals for the installation of solar energy equipment in Federal buildings which are under their control and which are selected in accordance with procedures set forth in such rule, and

(B) criteria by which proposals under subparagraph (A) will be evaluated, which criteria shall provide for the inclusion in each proposal of a complete analysis of the present value, as determined by the Secretary, of the costs and benefits of the proposal to the Federal agency, and for the demonstration, to the maximum extent practicable, of innovative and diverse applications to a variety of types of Federal buildings of solar heating and solar heating and cooling technology, and for location of demonstration projects in areas where a private sector market for solar energy equipment is likely to develop;

(2) evaluate in writing each such proposal pursuant to the criteria promulgated pursuant to paragraph (1)(B), and make such evaluation available to the agency and, upon request, to any person;

(3) provide technical and financial assistance by interagency agreement for implementing a proposal evaluated under paragraph (2) and approved by the Secretary; except that such assistance shall be limited to the design, acquisition, construction, and installation of solar energy equipment;

(4) provide, by rule, that Federal agencies report to the Secretary periodically such information as they acquire respecting maintenance and operation of solar energy equipment for which assistance is provided under paragraph (3);

(5) require that a life cycle cost analysis in accordance with part B be done for any Federal building for which a proposal is submitted under this section and the results of such analysis be included in such proposal; and

(6) if solar energy equipment for which assistance is to be provided under paragraph (3) is not the minimum life-cycle cost alternative, require the Federal agency involved to submit a report to the Secretary stating the amount by which the life-cycle cost of such equipment exceeds the minimum life-cycle cost.

(b) Contents of proposals

Proposals under paragraph (1)(A) of subsection (a) of this section shall include a list of the specific Federal buildings proposed to be provided with solar energy equipment, the funds necessary for the acquisition and installation of such equipment, the proposed implementation schedule, maintenance costs, the estimated savings in fossil fuels and electricity, the estimated payback time, and such other information as may be required by the Secretary.

(c) Initial submission of proposals

Under the requirements established under subsection (a)(1)(A) of this section, initial proposals for the installation of solar energy equipment in Federal buildings selected under subsection (a)(1)(A) of this section shall be submitted not later than 180 days after the date of promulgation of the rule under subsection (a)(1) of this section.

(d) Program to disseminate information to Federal procurement and loan officers

In order to more widely disseminate information about the program under this part and under part B and the benefits of renewable energy and energy efficiency technology, the Secretary shall establish a program which includes site visits and technical briefings, to disseminate such information to Federal procurement officers and Federal loan officers. The Secretary shall utilize available funds for the program under this subsection.

(Pub. L. 95-619, title V, §523, Nov. 9, 1978, 92 Stat. 3276; Pub. L. 101-218, §8(a), Dec. 11, 1989, 103 Stat. 1868.)

AMENDMENTS

1989—Subsec. (d). Pub. L. 101-218 added subsec. (d).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8244 of this title.

§ 8244. Authorization of appropriations

There are authorized to be appropriated to the Secretary through fiscal year ending September 30, 1980, to carry out the purposes of this part not to exceed \$100,000,000. Funds so appropriated may be transferred by the Secretary to any Federal agency to the extent necessary to carry out the purposes of section 8243(a)(3) of this title.

(Pub. L. 95-619, title V, § 524, Nov. 9, 1978, 92 Stat. 3277.)

PART B—FEDERAL ENERGY MANAGEMENT

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 8243, 8262f of this title.

§ 8251. Findings

The Congress finds that—

(1) the Federal Government is the largest single energy consumer in the Nation;

(2) the cost of meeting the Federal Government's energy requirement is substantial;

(3) there are significant opportunities in the Federal Government to conserve and make more efficient use of energy through improved operations and maintenance, the use of new energy efficient technologies, and the application and achievement of energy efficient design and construction;

(4) Federal energy conservation measures can be financed at little or no cost to the Federal Government by using private investment capital made available through contracts authorized by subchapter VII of this chapter; and

(5) an increase in energy efficiency by the Federal Government would benefit the Nation by reducing the cost of government, reducing national dependence on foreign energy resources, and demonstrating the benefits of greater energy efficiency to the Nation.

(Pub. L. 95-619, title V, § 541, Nov. 9, 1978, 92 Stat. 3277; Pub. L. 100-615, § 2(a), Nov. 5, 1988, 102 Stat. 3185.)

AMENDMENTS

1988—Pub. L. 100-615 amended Congressional findings provisions generally.

EX. ORD. NO. 13123. GREENING THE GOVERNMENT THROUGH EFFICIENT ENERGY MANAGEMENT

Ex. Ord. No. 13123, June 3, 1999, 64 F.R. 30851, provided: By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Energy Conservation Policy Act (Public Law 95-619, 92 Stat. 3206, 42 U.S.C. 8252 *et seq.*), as amended by the Energy Policy Act of 1992 (EPACT) (Public Law 102-486, 106 Stat. 2776), and section 301 of title 3, United States Code, it is hereby ordered as follows:

PART 1—PREAMBLE

SECTION 101. *Federal Leadership.* The Federal Government, as the Nation's largest energy consumer, shall significantly improve its energy management in order to save taxpayer dollars and reduce emissions that contribute to air pollution and global climate change. With more than 500,000 buildings, the Federal Government can lead the Nation in energy efficient building design, construction, and operation. As a major consumer that spends \$200 billion annually on products and services, the Federal Government can promote energy

efficiency, water conservation, and the use of renewable energy products, and help foster markets for emerging technologies. In encouraging effective energy management in the Federal Government, this order builds on work begun under EPACT and previous Executive orders.

PART 2—GOALS

SEC. 201. *Greenhouse Gases Reduction Goal.* Through life-cycle cost-effective energy measures, each agency shall reduce its greenhouse gas emissions attributed to facility energy use by 30 percent by 2010 compared to such emissions levels in 1990. In order to encourage optimal investment in energy improvements, agencies can count greenhouse gas reductions from improvements in nonfacility energy use toward this goal to the extent that these reductions are approved by the Office of Management and Budget (OMB).

SEC. 202. *Energy Efficiency Improvement Goals.* Through life-cycle cost-effective measures, each agency shall reduce energy consumption per gross square foot of its facilities, excluding facilities covered in section 203 of this order, by 30 percent by 2005 and 35 percent by 2010 relative to 1985. No facilities will be exempt from these goals unless they meet new criteria for exemptions, to be issued by the Department of Energy (DOE).

SEC. 203. *Industrial and Laboratory Facilities.* Through life-cycle cost-effective measures, each agency shall reduce energy consumption per square foot, per unit of production, or per other unit as applicable by 20 percent by 2005 and 25 percent by 2010 relative to 1990. No facilities will be exempt from these goals unless they meet new criteria for exemptions, as issued by DOE.

SEC. 204. *Renewable Energy.* Each agency shall strive to expand the use of renewable energy within its facilities and in its activities by implementing renewable energy projects and by purchasing electricity from renewable energy sources. In support of the Million Solar Roofs initiative, the Federal Government shall strive to install 2,000 solar energy systems at Federal facilities by the end of 2000, and 20,000 solar energy systems at Federal facilities by 2010.

SEC. 205. *Petroleum.* Through life-cycle cost-effective measures, each agency shall reduce the use of petroleum within its facilities. Agencies may accomplish this reduction by switching to a less greenhouse gas-intensive, nonpetroleum energy source, such as natural gas or renewable energy sources; by eliminating unnecessary fuel use; or by other appropriate methods. Where alternative fuels are not practical or life-cycle cost-effective, agencies shall strive to improve the efficiency of their facilities.

SEC. 206. *Source Energy.* The Federal Government shall strive to reduce total energy use and associated greenhouse gas and other air emissions, as measured at the source. To that end, agencies shall undertake life-cycle cost-effective projects in which source energy decreases, even if site energy use increases. In such cases, agencies will receive credit toward energy reduction goals through guidelines developed by DOE.

SEC. 207. *Water Conservation.* Through life-cycle cost-effective measures, agencies shall reduce water consumption and associated energy use in their facilities to reach the goals set under section 503(f) of this order. Where possible, water cost savings and associated energy cost savings shall be included in Energy-Savings Performance Contracts and other financing mechanisms.

PART 3—ORGANIZATION AND ACCOUNTABILITY

SEC. 301. *Annual Budget Submission.* Each agency's budget submission to OMB shall specifically request funding necessary to achieve the goals of this order. Budget submissions shall include the costs associated with: encouraging the use of, administering, and fulfilling agency responsibilities under Energy-Savings Performance Contracts, utility energy-efficiency service contracts, and other contractual platforms for achieving conservation goals; implementing life-cycle cost-ef-

fective measures; procuring life-cycle cost-effective products; and constructing sustainably designed new buildings, among other energy costs. OMB shall issue guidelines to assist agencies in developing appropriate requests that support sound investments in energy improvements and energy-using products. OMB shall explore the feasibility of establishing a fund that agencies could draw on to finance exemplary energy management activities and investments with higher initial costs but lower life-cycle costs. Budget requests to OMB in support of this order must be within each agency's planning guidance level.

SEC. 302. *Annual Implementation Plan.* Each agency shall develop an annual implementation plan for fulfilling the requirements of this order. Such plans shall be included in the annual reports to the President under section 303 of this order.

SEC. 303. *Annual Reports to the President.* (a) Each agency shall measure and report its progress in meeting the goals and requirements of this order on an annual basis. Agencies shall follow reporting guidelines as developed under section 306(b) of this order. In order to minimize additional reporting requirements, the guidelines will clarify how the annual report to the President should build on each agency's annual Federal energy reports submitted to DOE and the Congress. Annual reports to the President are due on January 1 of each year beginning in the year 2000.

(b) Each agency's annual report to the President shall describe how the agency is using each of the strategies described in Part 4 of this order to help meet energy and greenhouse gas reduction goals. The annual report to the President shall explain why certain strategies, if any, have not been used. It shall also include a listing and explanation of exempt facilities.

SEC. 304. *Designation of Senior Agency Official.* Each agency shall designate a senior official, at the Assistant Secretary level or above, to be responsible for meeting the goals and requirements of this order, including preparing the annual report to the President. Such designation shall be reported by each Cabinet Secretary or agency head to the Deputy Director for Management of OMB within 30 days of the date of this order. Designated officials shall participate in the Interagency Energy Policy Committee, described in section 306(d) of this order. The Committee shall communicate its activities to all designated officials to assure proper coordination and achievement of the goals and requirements of this order.

SEC. 305. *Designation of Agency Energy Teams.* Within 90 days of the date of this order, each agency shall form a technical support team consisting of appropriate procurement, legal, budget, management, and technical representatives to expedite and encourage the agency's use of appropriations, Energy-Savings Performance Contracts, and other alternative financing mechanisms necessary to meet the goals and requirements of this order. Agency energy team activities shall be undertaken in collaboration with each agency's representative to the Interagency Energy Management Task Force, as described in section 306(e) of this order.

SEC. 306. *Interagency Coordination.* (a) *Office of Management and Budget.* The Deputy Director for Management of OMB, in consultation with DOE, shall be responsible for evaluating each agency's progress in improving energy management and for submitting agency energy scorecards to the President to report progress.

(1) OMB, in consultation with DOE and other agencies, shall develop the agency energy scorecards and scoring system to evaluate each agency's progress in meeting the goals of this order. The scoring criteria shall include the extent to which agencies are taking advantage of key tools to save energy and reduce greenhouse gas emissions, such as Energy-Savings Performance Contracts, utility energy-efficiency service contracts, ENERGY STAR® and other energy efficient products, renewable energy technologies, electricity from renewable energy sources, and other strategies and requirements listed in Part 4 of this order, as well as overall efficiency and greenhouse gas metrics and

use of other innovative energy efficiency practices. The scorecards shall be based on the annual energy reports submitted to the President under section 303 of this order.

(2) The Deputy Director for Management of OMB shall also select outstanding agency energy management team(s), from among candidates nominated by DOE, for a new annual Presidential award for energy efficiency.

(b) *Federal Energy Management Program.* The DOE's Federal Energy Management Program (FEMP) shall be responsible for working with the agencies to ensure that they meet the goals of this order and report their progress. FEMP, in consultation with OMB, shall develop and issue guidelines for agencies' preparation of their annual reports to the President on energy management, as required in section 303 of this order. FEMP shall also have primary responsibility for collecting and analyzing the data, and shall assist OMB in ensuring that agency reports are received in a timely manner.

(c) *President's Management Council.* The President's Management Council (PMC), chaired by the Deputy Director for Management of OMB and consisting of the Chief Operating Officers (usually the Deputy Secretary) of the largest Federal departments and agencies, will periodically discuss agencies' progress in improving Federal energy management.

(d) *Interagency Energy Policy Committee.* This Committee was established by the Department of Energy Organization Act [42 U.S.C. 7101 et seq.]. It consists of senior agency officials designated in accordance with section 304 of this order. The Committee is responsible for encouraging implementation of energy efficiency policies and practices. The major energy-consuming agencies designated by DOE are required to participate in the Committee. The Committee shall communicate its activities to all designated senior agency officials to promote coordination and achievement of the goals of this order.

(e) *Interagency Energy Management Task Force.* The Task Force was established by the National Energy Conservation Policy Act. It consists of each agency's chief energy manager. The Committee shall continue to work toward improving agencies' use of energy management tools and sharing information on Federal energy management across agencies.

SEC. 307. *Public/Private Advisory Committee.* The Secretary of Energy will appoint an advisory committee consisting of representatives from Federal agencies, State governments, energy service companies, utility companies, equipment manufacturers, construction and architectural companies, environmental, energy and consumer groups, and other energy-related organizations. The committee will provide input on Federal energy management, including how to improve use of Energy-Savings Performance Contracts and utility energy-efficiency service contracts, improve procurement of ENERGY STAR® and other energy efficient products, improve building design, reduce process energy use, and enhance applications of efficient and renewable energy technologies at Federal facilities.

SEC. 308. *Applicability.* This order applies to all Federal departments and agencies. General Services Administration (GSA) is responsible for working with agencies to meet the requirements of this order for those facilities for which GSA has delegated operations and maintenance authority. The Department of Defense (DOD) is subject to this order to the extent that it does not impair or adversely affect military operations and training (including tactical aircraft, ships, weapons systems, combat training, and border security).

PART 4—PROMOTING FEDERAL LEADERSHIP IN ENERGY MANAGEMENT

SEC. 401. *Life-Cycle Cost Analysis.* Agencies shall use life-cycle cost analysis in making decisions about their investments in products, services, construction, and other projects to lower the Federal Government's costs

and to reduce energy and water consumption. Where appropriate, agencies shall consider the life-cycle costs of combinations of projects, particularly to encourage bundling of energy efficiency projects with renewable energy projects. Agencies shall also retire inefficient equipment on an accelerated basis where replacement results in lower life-cycle costs. Agencies that minimize life-cycle costs with efficiency measures will be recognized in their scorecard evaluations.

SEC. 402. *Facility Energy Audits.* Agencies shall continue to conduct energy and water audits for approximately 10 percent of their facilities each year, either independently or through Energy-Savings Performance Contracts or utility energy-efficiency service contracts.

SEC. 403. *Energy Management Strategies and Tools.* Agencies shall use a variety of energy management strategies and tools, where life-cycle cost-effective, to meet the goals of this order. An agency's use of these strategies and tools shall be taken into account in assessing the agency's progress and formulating its scorecard.

(a) ***Financing Mechanisms.*** Agencies shall maximize their use of available alternative financing contracting mechanisms, including Energy-Savings Performance Contracts and utility energy-efficiency service contracts, when life-cycle cost-effective, to reduce energy use and cost in their facilities and operations. Energy-Savings Performance Contracts, which are authorized under the National Energy Conservation Policy Act, as modified by the Energy Policy Act of 1992, and utility energy-efficiency service contracts provide significant opportunities for making Federal facilities more energy efficient at no net cost to taxpayers.

(b) ***ENERGY STAR® and Other Energy Efficient Products.***

(1) Agencies shall select, where life-cycle cost-effective, ENERGY STAR® and other energy efficient products when acquiring energy-using products. For product groups where ENERGY STAR® labels are not yet available, agencies shall select products that are in the upper 25 percent of energy efficiency as designated by FEMP. The Environmental Protection Agency (EPA) and DOE shall expedite the process of designating products as ENERGY STAR® and will merge their current efficiency rating procedures.

(2) GSA and the Defense Logistics Agency (DLA), with assistance from EPA and DOE, shall create clear catalogue listings that designate these products in both print and electronic formats. In addition, GSA and DLA shall undertake pilot projects from selected energy-using products to show a "second price tag", which means an accounting of the operating and purchase costs of the item, in both printed and electronic catalogues and assess the impact of providing this information on Federal purchasing decisions.

(3) Agencies shall incorporate energy efficient criteria consistent with ENERGY STAR® and other FEMP-designated energy efficiency levels into all guide specifications and project specifications developed for new construction and renovation, as well as into product specification language developed for Basic Ordering Agreements, Blanket Purchasing Agreements, Government Wide Acquisition Contracts, and all other purchasing procedures.

(4) DOE and OMB shall also explore the creation of financing agreements with private sector suppliers to provide private funding to offset higher up-front costs of efficient products. Within 9 months of the date of this order, DOE shall report back to the President's Management Council on the viability of such alternative financing options.

(c) ***ENERGY STAR® Buildings.*** Agencies shall strive to meet the ENERGY STAR® Building criteria for energy performance and indoor environmental quality in their eligible facilities to the maximum extent practicable by the end of 2002. Agencies may use Energy-Savings Performance Contracts, utility energy-efficiency service contracts, or other means to conduct evaluations and make improvements to buildings in order to meet

the criteria. Buildings that rank in the top 25 percent in energy efficiency relative to comparable commercial and Federal buildings will receive the ENERGY STAR® building label. Agencies shall integrate this building rating tool into their general facility audits.

(d) ***Sustainable Building Design.*** DOD and GSA, in consultation with DOE and EPA, shall develop sustainable design principles. Agencies shall apply such principles to the siting, design, and construction of new facilities. Agencies shall optimize life-cycle costs, pollution, and other environmental and energy costs associated with the construction, life-cycle operation, and decommissioning of the facility. Agencies shall consider using Energy-Savings Performance Contracts or utility energy-efficiency service contracts to aid them in constructing sustainably designed buildings.

(e) ***Model Lease Provisions.*** Agencies entering into leases, including the renegotiation or extension of existing leases, shall incorporate lease provisions that encourage energy and water efficiency wherever life-cycle cost-effective. Build-to-suit lease solicitations shall contain criteria encouraging sustainable design and development, energy efficiency, and verification of building performance. Agencies shall include a preference for buildings having the ENERGY STAR® building label in their selection criteria for acquiring leased buildings. In addition, all agencies shall encourage lessors to apply for the ENERGY STAR® building label and to explore and implement projects that would reduce costs to the Federal Government, including projects carried out through the lessors' Energy-Savings Performance Contracts or utility energy-efficiency service contracts.

(f) ***Industrial Facility Efficiency Improvements.*** Agencies shall explore efficiency opportunities in industrial facilities for steam systems, boiler operation, air compressor systems, industrial processes, and fuel switching, including cogeneration and other efficiency and renewable energy technologies.

(g) ***Highly Efficient Systems.*** Agencies shall implement district energy systems, and other highly efficient systems, in new construction or retrofit projects when life-cycle cost-effective. Agencies shall consider combined cooling, heat, and power when upgrading and assessing facility power needs and shall use combined cooling, heat, and power systems when life-cycle cost-effective. Agencies shall survey local natural resources to optimize use of available biomass, bioenergy, geothermal, or other naturally occurring energy sources.

(h) ***Off-Grid Generation.*** Agencies shall use off-grid generation systems, including solar hot water, solar electric, solar outdoor lighting, small wind turbines, fuel cells, and other off-grid alternatives, where such systems are life-cycle cost-effective and offer benefits including energy efficiency, pollution prevention, source energy reductions, avoided infrastructure costs, or expedited service.

SEC. 404. *Electricity Use.* To advance the greenhouse gas and renewable energy goals of this order, and reduce source energy use, each agency shall strive to use electricity from clean, efficient, and renewable energy sources. An agency's efforts in purchasing electricity from efficient and renewable energy sources shall be taken into account in assessing the agency's progress and formulating its score card.

(a) ***Competitive Power.*** Agencies shall take advantage of competitive opportunities in the electricity and natural gas markets to reduce costs and enhance services. Agencies are encouraged to aggregate demand across facilities or agencies to maximize their economic advantage.

(b) ***Reduced Greenhouse Gas Intensity of Electric Power.*** When selecting electricity providers, agencies shall purchase electricity from sources that use high efficiency electric generating technologies when life-cycle cost-effective. Agencies shall consider the greenhouse gas intensity of the source of the electricity and strive to minimize the greenhouse gas intensity of purchased electricity.

(c) ***Purchasing Electricity from Renewable Energy Sources.***

(1) Each agency shall evaluate its current use of electricity from renewable energy sources and report this level in its annual report to the President. Based on this review, each agency should adopt policies and pursue projects that increase the use of such electricity. Agencies should include provisions for the purchase of electricity from renewable energy sources as a component of their requests for bids whenever procuring electricity. Agencies may use savings from energy efficiency projects to pay additional incremental costs of electricity from renewable energy sources.

(2) In evaluating opportunities to comply with this section, agencies should consider: my Administration's goal of tripling nonhydroelectric renewable energy capacity in the United States by 2010; the renewable portfolio standard specified in the restructuring guidelines for the State in which the facility is located; GSA's efforts to make electricity from renewable energy sources available to Federal electricity purchasers; and EPA's guidelines on crediting renewable energy power in implementation of Clean Air Act [42 U.S.C. 7401 et seq.] standards.

SEC. 405. *Mobile Equipment.* Each agency shall seek to improve the design, construction, and operation of its mobile equipment, and shall implement all life-cycle cost-effective energy efficiency measures that result in cost savings while improving mission performance. To the extent that such measures are life-cycle cost-effective, agencies shall consider enhanced use of alternative or renewable-based fuels.

SEC. 406. *Management and Government Performance.* Agencies shall use the following management strategies in meeting the goals of this order.

(a) *Awards.* Agencies shall use employee incentive programs to reward exceptional performance in implementing this order.

(b) *Performance Evaluations.* Agencies shall include successful implementation of provisions of this order in areas such as Energy-Savings Performance Contracts, sustainable design, energy efficient procurement, energy efficiency, water conservation, and renewable energy projects in the position descriptions and performance evaluations of agency heads, members of the agency energy team, principal program managers, heads of field offices, facility managers, energy managers, and other appropriate employees.

(c) *Retention of Savings and Rebates.* Agencies granted statutory authority to retain a portion of savings generated from efficient energy and water management are encouraged to permit the retention of the savings at the facility or site where the savings occur to provide greater incentive for that facility and its site managers to undertake more energy management initiatives, invest in renewable energy systems, and purchase electricity from renewable energy sources.

(d) *Training and Education.* Agencies shall ensure that all appropriate personnel receive training for implementing this order.

(1) DOE, DOD, and GSA shall provide relevant training or training materials for those programs that they make available to all Federal agencies relating to the energy management strategies contained in this order.

(2) The Federal Acquisition Institute and the Defense Acquisition University shall incorporate into existing procurement courses information on Federal energy management tools, including Energy-Savings Performance Contracts, utility energy-efficiency service contracts, ENERGY STAR® and other energy efficient products, and life-cycle cost analysis.

(3) All agencies are encouraged to develop outreach programs that include education, training, and promotion of ENERGY STAR® and other energy-efficient products for Federal purchase card users. These programs may include promotions with billing statements, user training, catalogue awareness, and exploration of vendor data collection of purchases.

(e) *Showcase Facilities.* Agencies shall designate exemplary new and existing facilities with significant public access and exposure as showcase facilities to highlight energy or water efficiency and renewable energy improvements.

PART 5—TECHNICAL ASSISTANCE

SEC. 501. Within 120 days of this order, the Director of OMB shall:

(a) develop and issue guidance to agency budget officers on preparation of annual funding requests associated with the implementation of the order for the FY 2001 budget;

(b) in collaboration with the Secretary of Energy, explain to agencies how to retain savings and reinvest in other energy and water management projects; and

(c) in collaboration with the Secretary of Energy through the Office of Federal Procurement Policy, periodically brief agency procurement executives on the use of Federal energy management tools, including Energy-Savings Performance Contracts, utility energy-efficiency service contracts, and procurement of energy efficient products and electricity from renewable energy sources.

SEC. 502. Within 180 days of this order, the Secretary of Energy, in collaboration with other agency heads, shall:

(a) issue guidelines to assist agencies in measuring energy per square foot, per unit of production, or other applicable unit in industrial, laboratory, research, and other energy-intensive facilities;

(b) establish criteria for determining which facilities are exempt from the order. In addition, DOE must provide guidance for agencies to report proposed exemptions;

(c) develop guidance to assist agencies in calculating appropriate energy baselines for previously exempt facilities and facilities occupied after 1990 in order to measure progress toward goals;

(d) issue guidance to clarify how agencies determine the life-cycle cost for investments required by the order, including how to compare different energy and fuel options and assess the current tools;

(e) issue guidance for providing credit toward energy efficiency goals for cost-effective projects where source energy use declines but site energy use increases; and

(f) provide guidance to assist each agency to determine a baseline of water consumption.

SEC. 503. Within 1 year of this order, the Secretary of Energy, in collaboration with other agency heads, shall:

(a) provide guidance for counting renewable and highly efficient energy projects and purchases of electricity from renewable and highly efficient energy sources toward agencies' progress in reaching greenhouse gas and energy reduction goals;

(b) develop goals for the amount of energy generated at Federal facilities from renewable energy technologies;

(c) support efforts to develop standards for the certification of low environmental impact hydropower facilities in order to facilitate the Federal purchase of such power;

(d) work with GSA and DLA to develop a plan for purchasing advanced energy products in bulk quantities for use in by multiple agencies;

(e) issue guidelines for agency use estimating the greenhouse gas emissions attributable to facility energy use. These guidelines shall include emissions associated with the production, transportation, and use of energy consumed in Federal facilities; and

(f) establish water conservation goals for Federal agencies.

SEC. 504. Within 120 days of this order, the Secretary of Defense and the Administrator of GSA, in consultation with other agency heads, shall develop and issue sustainable design and development principles for the siting, design, and construction of new facilities.

SEC. 505. Within 180 days of this order, the Administrator of GSA, in collaboration with the Secretary of Defense, the Secretary of Energy, and other agency heads, shall:

(a) develop and issue guidance to assist agencies in ensuring that all project cost estimates, bids, and agency budget requests for design, construction, and ren-

ovation of facilities are based on life-cycle costs. Incentives for contractors involved in facility design and construction must be structured to encourage the contractors to design and build at the lowest life-cycle cost;

(b) make information available on opportunities to purchase electricity from renewable energy sources as defined by this order. This information should accommodate relevant State regulations and be updated periodically based on technological advances and market changes, at least every 2 years;

(c) develop Internet-based tools for both GSA and DLA customers to assist individual and agency purchasers in identifying and purchasing ENERGY STAR® and other energy efficient products for acquisition; and

(d) develop model lease provisions that incorporate energy efficiency and sustainable design.

PART 6—GENERAL PROVISIONS

SEC. 601. *Compliance by Independent Agencies.* Independent agencies are encouraged to comply with the provisions of this order.

SEC. 602. *Waivers.* If an agency determines that a provision in this order is inconsistent with its mission, the agency may ask DOE for a waiver of the provision. DOE will include a list of any waivers it grants in its Federal Energy Management Programs annual report to the Congress.

SEC. 603. *Scope.* (a) This order is intended only to improve the internal management of the executive branch and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable by law by a party against the United States, its agencies, its officers, or any other person.

(b) This order applies to agency facilities in any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, and any other territory or possession over which the United States has jurisdiction. Agencies with facilities outside of these areas, however, are encouraged to make best efforts to comply with the goals of this order for those facilities. In addition, agencies can report energy improvements made outside the United States in their annual report to the President; these improvements may be considered in agency scorecard evaluations.

SEC. 604. *Revocations.* Executive Order 12902 of March 9 [8], 1994, Executive Order 12759 of April 17, 1991, and Executive Order 12845 of April 21, 1993, are revoked.

SEC. 605. *Amendments to Federal Regulations.* The Federal Acquisition Regulation and other Federal regulations shall be amended to reflect changes made by this order, including an amendment to facilitate agency purchases of electricity from renewable energy sources.

PART 7—DEFINITIONS

For the purposes of this order:

SEC. 701. "Acquisition" means acquiring by contract supplies or services (including construction) by and for the use of the Federal Government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated, and evaluated. Acquisition begins at the point when agency needs are established and includes the description of requirements to satisfy agency needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling agency needs by contract.

SEC. 702. "Agency" means an executive agency as defined in 5 U.S.C. 105. For the purpose of this order, military departments, as defined in 5 U.S.C. 102, are covered under the auspices of DOD.

SEC. 703. "Energy-Savings Performance Contract" means a contract that provides for the performance of services for the design, acquisition, financing, installation, testing, operation, and where appropriate, main-

tenance and repair, of an identified energy or water conservation measure or series of measures at one or more locations. Such contracts shall provide that the contractor must incur costs of implementing energy savings measures, including at least the cost (if any) incurred in making energy audits, acquiring and installing equipment, and training personnel in exchange for a predetermined share of the value of the energy savings directly resulting from implementation of such measures during the term of the contract. Payment to the contractor is contingent upon realizing a guaranteed stream of future energy and cost savings. All additional savings will accrue to the Federal Government.

SEC. 704. "Exempt facility" or "Exempt mobile equipment" means a facility or a piece of mobile equipment for which an agency uses DOE-established criteria to determine that compliance with the Energy Policy Act of 1992 or this order is not practical.

SEC. 705. "Facility" means any individual building or collection of buildings, grounds, or structure, as well as any fixture or part thereof, including the associated energy or water-consuming support systems, which is constructed, renovated, or purchased in whole or in part for use by the Federal Government. It includes leased facilities where the Federal Government has a purchase option or facilities planned for purchase. In any provision of this order, the term "facility" also includes any building 100 percent leased for use by the Federal Government where the Federal Government pays directly or indirectly for the utility costs associated with its leased space. The term also includes Government-owned contractor-operated facilities.

SEC. 706. "Industrial facility" means any fixed equipment, building, or complex for production, manufacturing, or other processes that uses large amounts of capital equipment in connection with, or as part of, any process or system, and within which the majority of energy use is not devoted to the heating, cooling, lighting, ventilation, or to service the water heating energy load requirements of the facility.

SEC. 707. "Life-cycle costs" means the sum of the present values of investment costs, capital costs, installation costs, energy costs, operating costs, maintenance costs, and disposal costs, over the lifetime of the project, product, or measure. Additional guidance on measuring life-cycle costs is specified in 10 C.F.R. 436.19.

SEC. 708. "Life-cycle cost-effective" means the life-cycle costs of a product, project, or measure are estimated to be equal to or less than the base case (i.e., current or standard practice or product). Additional guidance on measuring cost-effectiveness is specified in 10 C.F.R. 436.18 (a), (b), and (c), 436.20, and 436.21.

SEC. 709. "Mobile equipment" means all Federally owned ships, aircraft, and nonroad vehicles.

SEC. 710. "Renewable energy" means energy produced by solar, wind, geothermal, and biomass power.

SEC. 711. "Renewable energy technology" means technologies that use renewable energy to provide light, heat, cooling, or mechanical or electrical energy for use in facilities or other activities. The term also means the use of integrated whole-building designs that rely upon renewable energy resources, including passive solar design.

SEC. 712. "Source energy" means the energy that is used at a site and consumed in producing and in delivering energy to a site, including, but not limited to, power generation, transmission, and distribution losses, and that is used to perform a specific function, such as space conditioning, lighting, or water heating.

SEC. 713. "Utility" means public agencies and privately owned companies that market, generate, and/or distribute energy or water, including electricity, natural gas, manufactured gas, steam, hot water, and chilled water as commodities for public use and that provide the service under Federal, State, or local regulated authority to all authorized customers. Utilities include: Federally owned nonprofit producers; municipal organizations; and investor or privately owned producers regulated by a State and/or the Federal Govern-

ment; cooperatives owned by members and providing services mostly to their members; and other nonprofit State and local government agencies serving in this capacity.

SEC. 714. "Utility energy-efficiency service" means demand side management services provided by a utility to improve the efficiency of use of the commodity (electricity, gas, etc.) being distributed. Services can include, but are not limited to, energy efficiency and renewable energy project auditing, financing, design, installation, operation, maintenance, and monitoring.

WILLIAM J. CLINTON.

EX. ORD. NO. 13221. ENERGY EFFICIENT STANDBY POWER DEVICES

Ex. Ord. No. 13221, July 31, 2001, 66 F.R. 40571, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Energy Conservation Policy Act (Public Law 95-619, 92 Stat. 3206, 42 U.S.C. 8252 *et seq.*), as amended by the Energy Policy Act of 1992 (EPACT) (Public Law 102-486, 106 Stat. 2776), and section 301 of title 3, United States Code, and in order to further encourage energy conservation by the Federal Government, it is hereby ordered as follows:

SECTION 1. *Energy Efficient Standby Power Devices.* Each agency, when it purchases commercially available, off-the-shelf products that use external standby power devices, or that contain an internal standby power function, shall purchase products that use no more than one watt in their standby power consuming mode. If such products are not available, agencies shall purchase products with the lowest standby power wattage while in their standby power consuming mode. Agencies shall adhere to these requirements, when life-cycle cost-effective and practicable and where the relevant product's utility and performance are not compromised as a result. By December 31, 2001, and on an annual basis thereafter, the Department of Energy, in consultation with the Department of Defense and the General Services Administration, shall compile a preliminary list of products to be subject to these requirements. The Department of Energy shall finalize the list and may remove products deemed inappropriate for listing.

SEC. 2. *Independent Agencies.* Independent agencies are encouraged to comply with the provisions of this order.

SEC. 3. *Definition.* "Agency" means an executive agency as defined in 5 U.S.C. 105. For the purpose of this order, military departments, as defined in 5 U.S.C. 102, are covered by the Department of Defense.

GEORGE W. BUSH.

§ 8252. Purpose

It is the purpose of this part to promote the conservation and the efficient use of energy and water, and the use of renewable energy sources, by the Federal Government.

(Pub. L. 95-619, title V, §542, Nov. 9, 1978, 92 Stat. 3277; Pub. L. 100-615, §2(a), Nov. 5, 1988, 102 Stat. 3185; Pub. L. 102-486, title I, §152(a), Oct. 24, 1992, 106 Stat. 2844.)

AMENDMENTS

1992—Pub. L. 102-486 inserted "and water, and the use of renewable energy sources," after "use of energy".

1988—Pub. L. 100-615 amended section generally, substituting statement of purpose for policy statement declaring it to be United States policy for Federal Government to have the opportunity and responsibility, with participation of industry, to further develop, demonstrate, and promote use of energy conservation, solar heating and cooling, and other renewable energy sources in Federal buildings.

§ 8253. Energy management requirements

(a) Energy performance requirement for Federal buildings

(1) Subject to paragraph (2), each agency shall apply energy conservation measures to, and shall improve the design for the construction of, its Federal buildings so that the energy consumption per gross square foot of its Federal buildings in use during the fiscal year 1995 is at least 10 percent less than the energy consumption per gross square foot of its Federal buildings in use during the fiscal year 1985 and so that the energy consumption per gross square foot of its Federal buildings in use during the fiscal year 2000 is at least 20 percent less than the energy consumption per gross square foot of its Federal buildings in use during fiscal year 1985.

(2) An agency may exclude from the requirements of paragraph (1) any building, and the associated energy consumption and gross square footage, in which energy intensive activities are carried out. Each agency shall identify and list in each report made under section 8258(a) of this title the buildings designated by it for such exclusion.

(b) Energy management requirement for Federal agencies

(1) Not later than January 1, 2005, each agency shall, to the maximum extent practicable, install in Federal buildings owned by the United States all energy and water conservation measures with payback periods of less than 10 years, as determined by using the methods and procedures developed pursuant to section 8254 of this title.

(2) The Secretary may waive the requirements of this subsection for any agency for such periods as the Secretary may determine if the Secretary finds that the agency is taking all practicable steps to meet the requirements and that the requirements of this subsection will pose an unacceptable burden upon the agency. If the Secretary waives the requirements of this subsection, the Secretary shall, as part of the report required under section 8258(b) of this title, notify the Congress in writing with an explanation and a justification of the reasons for such waiver.

(3) This subsection shall not apply to an agency's facilities that generate or transmit electric energy or to the uranium enrichment facilities operated by the Department of Energy.

(4) An agency may participate in the Environmental Protection Agency's "Green Lights" program for purposes of receiving technical assistance in complying with the requirements of this section.

(c) Exclusions

(1) An agency may exclude, from the energy consumption requirements for the year 2000 established under subsection (a) of this section and the requirements of subsection (b)(1) of this section, any Federal building or collection of Federal buildings, and the associated energy consumption and gross square footage, if the head of such agency finds that compliance with such requirements would be impractical. A finding of impracticability shall be based on the en-

ergy intensiveness of activities carried out in such Federal buildings or collection of Federal buildings, the type and amount of energy consumed, the technical feasibility of making the desired changes, and, in the cases of the Departments of Defense and Energy, the unique character of certain facilities operated by such Departments.

(2) Each agency shall identify and list, in each report made under section 8258(a) of this title, the Federal buildings designated by it for such exclusion. The Secretary shall review such findings for consistency with the impracticability standards set forth in paragraph (1), and may within 90 days after receipt of the findings, reverse a finding of impracticability. In the case of any such reversal, the agency shall comply with the energy consumption requirements for the building concerned.

(d) Implementation steps

The Secretary shall consult with the Secretary of Defense and the Administrator of General Services in developing guidelines for the implementation of this part. To meet the requirements of this section, each agency shall—

(1) prepare and submit to the Secretary, not later than December 31, 1993, a plan describing how the agency intends to meet such requirements, including how it will—

(A) designate personnel primarily responsible for achieving such requirements;

(B) identify high priority projects through calculation of payback periods;

(C) take maximum advantage of contracts authorized under subchapter VII of this chapter, of financial incentives and other services provided by utilities for efficiency investment, and of other forms of financing to reduce the direct costs to the Government; and

(D) otherwise implement this part;

(2) perform energy surveys of its Federal buildings to the extent necessary and update such surveys as needed, incorporating any relevant information obtained from the survey conducted pursuant to section 8258b of this title;

(3) using such surveys, determine the cost and payback period of energy and water conservation measures likely to achieve the requirements of this section;

(4) install energy and water conservation measures that will achieve the requirements of this section through the methods and procedures established pursuant to section 8254 of this title; and

(5) ensure that the operation and maintenance procedures applied under this section are continued.

(Pub. L. 95-619, title V, § 543, Nov. 9, 1978, 92 Stat. 3277; Pub. L. 100-615, § 2(a), Nov. 5, 1988, 102 Stat. 3185; Pub. L. 102-486, title I, § 152(b), (c), Oct. 24, 1992, 106 Stat. 2844, 2845; Pub. L. 104-66, title I, § 1052(b), Dec. 21, 1995, 109 Stat. 718.)

AMENDMENTS

1995—Subsec. (b)(2). Pub. L. 104-66 in last sentence inserted “, as part of the report required under section 8258(b) of this title,” after “the Secretary shall” and struck out “promptly” after “Congress”.

1992—Pub. L. 102-486, § 152(b)(1), substituted “requirements” for “goals” in section catchline.

Subsec. (a). Pub. L. 102-486, § 152(b)(2), (3), in heading substituted “requirement” for “goal” and in par. (1) inserted before period at end “and so that the energy consumption per gross square foot of its Federal buildings in use during the fiscal year 2000 is at least 20 percent less than the energy consumption per gross square foot of its Federal buildings in use during fiscal year 1985”.

Subsecs. (b), (c). Pub. L. 102-486, § 152(b)(4), added subsecs. (b) and (c). Former subsec. (b) redesignated (d).

Subsec. (d). Pub. L. 102-486, § 152(b)(4), (c)(1), redesignated subsec. (b) as (d) and in introductory provisions substituted “The Secretary shall consult with the Secretary of Defense and the Administrator of General Services in developing guidelines for the implementation of this part. To meet the requirements of this section,” for “To achieve the goal established in subsection (a) of this section,”.

Subsec. (d)(1). Pub. L. 102-486, § 152(c)(2), added par. (1) and struck out former par. (1) which read as follows: “prepare or update, within 6 months after November 5, 1988, a plan describing how the agency intends to meet such goal, including how it will implement this part, designate personnel primarily responsible for achieving such goal, and identify high priority projects;”.

Subsec. (d)(2). Pub. L. 102-486, § 152(c)(3), inserted before semicolon at end “and update such surveys as needed, incorporating any relevant information obtained from the survey conducted pursuant to section 8258b of this title”.

Subsec. (d)(3) to (5). Pub. L. 102-486, § 152(c)(4), (5), added pars. (3) and (4), redesignated former par. (4) as (5), and struck out former par. (3) which read as follows: “using such surveys, apply energy conservation measures in a manner which will attain the goal established in subsection (a) of this section in the most cost-effective manner practicable; and”.

1988—Pub. L. 100-615 amended section generally, substituting energy management goals statement for statement of purpose to promote (1) use of commonly accepted methods to establish and compare life cycle costs of operating Federal buildings, and life cycle fuel and energy requirements of such buildings, with and without special features for energy conservation and (2) use of solar heating and cooling and other renewable energy sources in Federal buildings.

SURVEY OF ENERGY SAVING POTENTIAL

Section 3 of Pub. L. 100-615, which authorized Secretary of Energy to carry out an energy survey to determine maximum potential cost effective energy savings in federally used buildings and recommend cost effective energy efficiency and renewable energy improvements in those buildings, devise a plan for implementing such survey, and report its findings and conclusions to Congress, was repealed by Pub. L. 102-486, title I, § 152(i)(3), Oct. 24, 1992, 106 Stat. 2851.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8256, 8257, 8258, 8258b, 8262f, 8262j of this title.

§ 8254. Establishment and use of life cycle cost methods and procedures

(a) Establishment of life cycle cost methods and procedures

The Secretary, in consultation with the Director of the Office of Management and Budget, the Secretary of Defense, the Director of the National Institute of Standards and Technology, and the Administrator of the General Services Administration, shall—

(1) establish practical and effective present value methods for estimating and comparing life cycle costs for Federal buildings, using the sum of all capital and operating expenses asso-

ciated with the energy system of the building involved over the expected life of such system or during a period of 25 years, whichever is shorter, and using average fuel costs and a discount rate determined by the Secretary; and

(2) develop and prescribe the procedures to be followed in applying and implementing the methods so established.

(b) Use of life cycle cost methods and procedures

(1) The design of new Federal buildings, and the application of energy conservation measures to existing Federal buildings, shall be made using life cycle cost methods and procedures established under subsection (a) of this section.

(2) In leasing buildings for its own use or that of another agency, each agency shall, after January 1, 1994, fully consider the efficiency of all potential building space at the time of renewing or entering into a new lease.

(c) Use in non-Federal structures

The Secretary shall make available information to the public on the use of life cycle cost methods in the construction of buildings, structures, and facilities in all segments of the economy.

(Pub. L. 95-619, title V, §544, Nov. 9, 1978, 92 Stat. 3277; Pub. L. 100-615, §2(a), Nov. 5, 1988, 102 Stat. 3186; Pub. L. 102-486, title I, §152(d), Oct. 24, 1992, 106 Stat. 2845.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102-486, §152(d)(1), substituted “National Institute of Standards and Technology” for “National Bureau of Standards”.

Subsec. (b)(2). Pub. L. 102-486, §152(d)(2), substituted “agency shall, after January 1, 1994, fully consider the efficiency of all potential building space at the time of renewing or entering into a new lease.” for “agency shall give appropriate preference to buildings which minimize life cycle costs.”

1988—Pub. L. 100-615 amended section generally, substituting provisions relating to establishment and use of life cycle cost methods and procedures for provisions defining terms (1) Secretary, (2) life cycle cost, (3) preliminary energy audit, (4) energy survey, (5) Federal building, (6) construction, and (7) energy performance target.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8253, 8258b, 8262g, 8262j of this title; title 10 sections 2394a, 2857.

§ 8255. Budget treatment for energy conservation measures

The President shall transmit to the Congress, along with each budget that is submitted to the Congress under section 1105 of title 31, a statement of the amount of appropriations requested in such budget, if any, on an individual agency basis, for—

(1) electric and other energy costs to be incurred in operating and maintaining agency facilities; and

(2) compliance with the provisions of this part, the Energy Policy and Conservation Act (42 U.S.C. 6201 et seq.), and all applicable Executive orders, including Executive Order 12003 (42 U.S.C. 6201 note) and Executive Order 12759 (56 Fed. Reg. 16257).

(Pub. L. 95-619, title V, §545, Nov. 9, 1978, 92 Stat. 3278; Pub. L. 96-294, title IV, §405, June 30, 1980,

94 Stat. 716; Pub. L. 99-509, title III, §3301, Oct. 21, 1986, 100 Stat. 1890; Pub. L. 100-615, §2(a), Nov. 5, 1988, 102 Stat. 3186; Pub. L. 102-486, title I, §152(e), Oct. 24, 1992, 106 Stat. 2846.)

REFERENCES IN TEXT

The Energy Policy and Conservation Act, referred to in par. (2), is Pub. L. 94-163, Dec. 22, 1975, 89 Stat. 871, as amended, which is classified principally to chapter 77 (§6201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

Executive Order 12003, referred to in par. (2), is Ex. Ord. No. 12003, July 20, 1977, 42 F.R. 37523 which amended Ex. Ord. No. 11912, April 13, 1976, 41 F.R. 15825, set out as a note under section 6201 of this title.

Executive Order 12759, referred to in par. (2), is Ex. Ord. No. 12759, April 17, 1991, 56 F.R. 16257, as amended, which was set out as a note under section 6201 of this title, prior to revocation by Ex. Ord. No. 13123, §604, June 3, 1999, 64 F.R. 30859, set out as a note under section 8251 of this title.

AMENDMENTS

1992—Pub. L. 102-486 amended section generally. Prior to amendment, section read as follows: “Each agency, in support of the President’s annual budget request to the Congress, shall specifically set forth and identify funds requested for energy conservation measures.”

1988—Pub. L. 100-615 amended section generally, substituting provision relating to budget treatment for energy conservation measures for provisions relating to establishment and use of life cycle cost methods, use of life cycle costs, and use in non-Federal structures.

1986—Subsec. (a)(2). Pub. L. 99-509 substituted “average” for “marginal”.

1980—Subsec. (a)(1). Pub. L. 96-294, which directed amendment of par. (1) by inserting provisions setting forth criteria for establishing life-cycle costs for Federal buildings before the period at end, was executed to par. (2) as the probable intent of Congress because par. (1) does not contain a period.

§ 8256. Incentives for agencies

(a) Contracts

(1) Each agency shall establish a program of incentives for conserving, and otherwise making more efficient use of, energy as a result of entering into contracts under subchapter VII of this chapter.

(2) The Secretary shall, not later than 18 months after October 24, 1992, and after consultation with the Director of the Office of Management and Budget, the Secretary of Defense, and the Administrator of General Services, develop appropriate procedures and methods for use by agencies to implement the incentives referred to in paragraph (1).

(b) Federal Energy Efficiency Fund

(1) The Secretary shall establish a Federal Energy Efficiency Fund to provide grants to agencies to assist them in meeting the requirements of section 8253 of this title.

(2) Not later than June 30, 1993, the Secretary shall issue guidelines to be followed by agencies submitting proposals for such grants. All agencies shall be eligible to submit proposals for grants under the Fund.

(3) The Secretary shall award grants from the Fund after a competitive assessment of the technical and economic effectiveness of each agency proposal. The Secretary shall consider the following factors in determining whether to provide funding under this subsection:

(A) The cost-effectiveness of the project.

(B) The amount of energy and cost savings anticipated to the Federal Government.

(C) The amount of funding committed to the project by the agency requesting financial assistance.

(D) The extent that a proposal leverages financing from other non-Federal sources.

(E) Any other factor which the Secretary determines will result in the greatest amount of energy and cost savings to the Federal Government.

(4) There are authorized to be appropriated, to remain available to be expended, to carry out this subsection not more than \$10,000,000 for fiscal year 1994, \$50,000,000 for fiscal year 1995, and such sums as may be necessary for fiscal years thereafter.

(c) Utility incentive programs

(1) Agencies are authorized and encouraged to participate in programs to increase energy efficiency and for water conservation or the management of electricity demand conducted by gas, water, or electric utilities and generally available to customers of such utilities.

(2) Each agency may accept any financial incentive, goods, or services generally available from any such utility, to increase energy efficiency or to conserve water or manage electricity demand.

(3) Each agency is encouraged to enter into negotiations with electric, water, and gas utilities to design cost-effective demand management and conservation incentive programs to address the unique needs of facilities utilized by such agency.

(4) If an agency satisfies the criteria which generally apply to other customers of a utility incentive program, such agency may not be denied collection of rebates or other incentives.

(5)(A) An amount equal to fifty percent of the energy and water cost savings realized by an agency (other than the Department of Defense) with respect to funds appropriated for any fiscal year beginning after fiscal year 1992 (including financial benefits resulting from energy savings performance contracts under subchapter VII of this chapter and utility energy efficiency rebates) shall, subject to appropriation, remain available for expenditure by such agency for additional energy efficiency measures which may include related employee incentive programs, particularly at those facilities at which energy savings were achieved.

(B) Agencies shall establish a fund and maintain strict financial accounting and controls for savings realized and expenditures made under this subsection. Records maintained pursuant to this subparagraph shall be made available for public inspection upon request.

(d) Financial incentive program for facility energy managers

(1) The Secretary shall, in consultation with the Task Force established pursuant to section 8257 of this title, establish a financial bonus program to reward, with funds made available for such purpose, outstanding Federal facility energy managers in agencies and the United States Postal Service.

(2) Not later than June 1, 1993, the Secretary shall issue procedures for implementing and conducting the award program, including the criteria to be used in selecting outstanding energy managers and contributors who have—

(A) improved energy performance through increased energy efficiency;

(B) implemented proven energy efficiency and energy conservation techniques, devices, equipment, or procedures;

(C) developed and implemented training programs for facility energy managers, operators, and maintenance personnel;

(D) developed and implemented employee awareness programs;

(E) succeeded in generating utility incentives, shared energy savings contracts, and other federally approved performance based energy savings contracts;

(F) made successful efforts to fulfill compliance with energy reduction mandates, including the provisions of section 8253 of this title; and

(G) succeeded in the implementation of the guidelines established under section 8262e¹ of this title.

(3) There is authorized to be appropriated to carry out this subsection not more than \$250,000 for each of the fiscal years 1993, 1994, and 1995.

(Pub. L. 95-619, title V, § 546, Nov. 9, 1978, 92 Stat. 3278; Pub. L. 100-615, § 2(a), Nov. 5, 1988, 102 Stat. 3187; Pub. L. 102-486, title I, § 152(f), Oct. 24, 1992, 106 Stat. 2846.)

REFERENCES IN TEXT

Section 8262e of this title, referred to in subsec. (d)(2)(G), was in the original "section 159" and was translated as meaning section 159 of Pub. L. 102-486, title I, Oct. 24, 1992, 106 Stat. 2857, which enacted section 8262e of this title, to reflect the probable intent of Congress.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102-486, § 152(f)(1), (2), substituted "Contracts" for "In general" in heading, designated existing provisions as par. (1), and redesignated former subsec. (b) as subsec. (a)(2) and amended it generally. Prior to amendment, par. (2) read as follows: "The head of each agency shall, no later than 120 days after November 5, 1988, implement procedures for entering into such contracts and for identifying, verifying, and utilizing, on a fiscal year basis, the cost savings resulting from such contracts."

Subsec. (b). Pub. L. 102-486, § 152(f)(4), added subsec. (b). Former subsec. (b) redesignated par. (2) of subsec. (a).

Subsecs. (c), (d). Pub. L. 102-486, § 152(f)(3), (4), added subsecs. (c) and (d) and struck out former subsec. (c) which read as follows: "The portion of the funds appropriated to an agency for energy expenses for a fiscal year that is equal to the amount of cost savings realized by such agency for such year from contracts entered into under subchapter VII of this chapter shall remain available for obligation, without further appropriation, to undertake additional energy conservation measures."

1988—Pub. L. 100-615 amended section generally, substituting statement of incentives for agencies for provisions relating to energy performance targets for Federal buildings.

¹ See References in Text note below.

ENERGY EFFICIENCY AND WATER CONSERVATION
MEASURES; USE OF REBATES AND SAVINGS

Pub. L. 104-52, title VI, §625, Nov. 19, 1995, 109 Stat. 502, provided that:

“(a) Beginning in fiscal year 1996 and thereafter, for each Federal agency, except the Department of Defense (which has separate authority), and except as provided in Public Law 102-393, title IV, section 13 (40 U.S.C. 490g) [now 40 U.S.C. 592(f)] with respect to the Fund established pursuant to 40 U.S.C. 490(f) [now 40 U.S.C. 592(a)-(c)(1), (d), (e)], an amount equal to 50 percent of—

“(1) the amount of each utility rebate received by the agency for energy efficiency and water conservation measures, which the agency has implemented; and

“(2) the amount of the agency’s share of the measured energy savings resulting from energy-savings performance contracts,

may be retained and credited to accounts that fund energy and water conservation activities at the agency’s facilities, and shall remain available until expended for additional specific energy efficiency or water conservation projects or activities, including improvements and retrofits, facility surveys, additional or improved utility metering, and employee training and awareness programs, as authorized by section 152(f) of the Energy Policy Act (Public Law 102-486) [amending this section].

“(b) The remaining 50 percent of each rebate, and the remaining 50 percent of the amount of the agency’s share of savings from energy-savings performance contracts, shall be transferred to the General Fund of the Treasury at the end of the fiscal year in which received.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8257, 8258 of this title.

§ 8257. Interagency Energy Management Task Force

(a) In general

To assist the interagency committee organized under section 7266 of this title to coordinate the activities of the Federal Government in promoting energy conservation and the efficient use of energy and in informing non-Federal entities of the Federal experience in energy conservation, the Secretary shall establish an Interagency Energy Management Task Force (hereafter in this section referred to as the “Task Force”).

(b) Members

The Task Force shall be composed of the chief energy managers of agencies represented on the interagency committee organized under section 7266 of this title.

(c) Duties

The Task Force shall meet when the Secretary requests, but not less often than twice a year, to—

(1) assess the progress of the various agencies in achieving energy savings;

(2) collect and disseminate information to agencies, States, local governments, and the public on effective survey techniques, innovative approaches to the efficient use of energy, incentive programs developed under section 8256 of this title, innovative contracting methods developed under subchapter VII of this chapter, the use of cogeneration facilities and renewable resources, and other technologies that promote the conservation and efficient use of energy;

(3) coordinate energy surveys conducted by the agencies;

(4) develop options for use in conserving energy;

(5) report to the committee organized under section 7266 of this title; and

(6) review, from time to time as may be necessary, the regulations relating to building temperature settings to determine whether changes in such regulations would be appropriate to assist in meeting the goals specified in section 8253 of this title.

(Pub. L. 95-619, title V, §547, Nov. 9, 1978, 92 Stat. 3279; Pub. L. 100-615, §2(a), Nov. 5, 1988, 102 Stat. 3187.)

AMENDMENTS

1988—Pub. L. 100-615 amended section generally, substituting provisions relating to creation of an Interagency Energy Management Task Force for provisions relating to energy audits and retrofitting of existing Federal buildings.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8256, 8258b, 8262 of this title.

§ 8258. Reports

(a) Reports to Secretary

Each agency shall transmit a report to the Secretary, at times specified by the Secretary but at least annually, with complete information on its activities under this part, including information on—

(1) the agency’s progress in achieving the goals established by section 8253 of this title; and

(2) the procedures being used by the agency pursuant to section 8256(a)(2) of this title, the number of contracts entered into by such agency under subchapter VII of this chapter, the energy and cost savings that have resulted from such contracts, the use of such cost savings under section 8256(c) of this title, and any problem encountered in entering into such contracts and otherwise implementing section 8256 of this title.

(b) Reports to Congress

The Secretary shall report, not later than April 2 of each year, with respect to each fiscal year beginning after November 5, 1988, to the Congress—

(1) on all activities carried out under this part and on the progress made toward achievement of the objectives of this part, including—

(A) a copy of the list of the exclusions made under sections 8253(a)(2) and 8253(c)(3) of this title;

(B) the information required under section 8253(b)(2) of this title; and

(C) a statement detailing the amount of funds awarded to each agency under section 8256(b) of this title, the energy and water conservation measures installed with such funds, the projected energy and water savings to be realized from installed measures, and, for each installed measure for which the projected energy and water savings reported in the previous year were not realized, the percentage of such projected sav-

ings that was not realized, the reasons such savings were not realized, and proposals for, and projected costs of, achieving such projected savings in the future;

(2) the number of contracts entered into by all agencies under subchapter VII of this chapter, the difficulties (if any) encountered in attempting to enter into such contracts, and proposed solutions to those difficulties;

(3) the extent and nature of interagency exchange of information concerning the conservation and efficient utilization of energy; and

(4) the information required under section 8262g(d) of this title.

(c) Other report

The Secretary, in consultation with the Administrator of General Services, shall—

(1) conduct a study and evaluate legal, institutional, and other constraints to connecting buildings owned or leased by the Federal Government to district heating and district cooling systems; and

(2) not later than 18 months after October 24, 1992, transmit to the Congress a report containing the findings and conclusions of such study, including recommendations for the development of streamlined processes for the consideration of connecting buildings owned or leased by the Federal Government to district heating and cooling systems.

(Pub. L. 95-619, title V, §548, Nov. 9, 1978, 92 Stat. 3279; Pub. L. 100-615, §2(a), Nov. 5, 1988, 102 Stat. 3187; Pub. L. 102-486, title I, §152(g), (i)(1), Oct. 24, 1992, 106 Stat. 2848, 2851; Pub. L. 104-66, title I, §1052(d), Dec. 21, 1995, 109 Stat. 718.)

AMENDMENTS

1995—Subsec. (b)(1). Pub. L. 104-66, §1052(d)(1), added subpar. (B) and redesignated former subpar. (B) as (C). Subsec. (b)(4). Pub. L. 104-66, §1052(d)(2)-(4), added par. (4).

1992—Subsec. (a)(2). Pub. L. 102-486, §152(i)(1)(A), substituted “8256(a)(2)” for “8256(b)”.

Subsec. (b). Pub. L. 102-486, §152(i)(1)(B), substituted “, not later than April 2 of each year,” for “annually.”.

Subsec. (b)(1). Pub. L. 102-486, §152(g)(1), substituted “including—” and subpars. (A) and (B) for “including a copy of the list of the exclusions made under section 8253(a)(2) of this title;”.

Subsec. (c). Pub. L. 102-486, §152(g)(2), added subsec. (c).

1988—Pub. L. 100-615 amended section generally, substituting provisions relating to reports to Secretary and Congress for former requirement that in leasing Federal buildings for its own use or that of another Federal agency, each Federal agency should give appropriate preference to buildings which used solar heating and cooling equipment or other renewable energy sources or which otherwise minimized life cycle costs.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103-7 (in which the 16th item on page 89 identifies a reporting provision which, as subsequently amended, is contained in subsec. (b) of this section), see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6361, 8253, 8262c, 8262e, 8262g of this title.

§ 8258a. Demonstration of new technology

(a) Demonstration program

Not later than January 1, 1994, the Secretary, in cooperation with the Administrator of General Services, shall establish a demonstration program to install, in federally owned facilities or federally assisted housing, energy conservation measures for which the Secretary has determined that such installation would accelerate commercial viability. In those cases where technologies are determined to be equivalent, priority shall be given to those technologies that have received or are receiving Federal financial assistance.

(b) Selection criteria

In addition to the determination under subsection (a) of this section, the Secretary shall select, in cooperation with the Administrator of General Services, proposals to be funded under this section on the basis of—

(1) cost-effectiveness;

(2) technical feasibility and system reliability in a working environment;

(3) lack of market penetration in the Federal sector;

(4) the potential needs of the proposing Federal agency for the technology, projected over 5 to 10 years;

(5) the potential Federal sector market, projected over 5 to 10 years;

(6) energy efficiency; and

(7) other environmental benefits, including the projected reduction of greenhouse gas emissions and indoor air pollution.

(c) Proposals

Federal agencies may submit to the Secretary, for each fiscal year, proposals for projects to be funded by the Secretary under this section. Each such proposal shall include—

(1) a description of the proposed project emphasizing the innovative use of technology in the Federal sector;

(2) a description of the technical reliability and cost-effectiveness data expected to be acquired;

(3) an identification of the potential needs of the Federal agency for the technology;

(4) a commitment to adopt the technology, if the project establishes its technical reliability and life cycle cost-effectiveness, to supply at least 10 percent of the Federal agency's potential needs identified under paragraph (3);

(5) schedules and milestones for installing additional units; and

(6) a technology transfer plan to publicize the results of the project.

(d) Participation by GSA

The Secretary may only select a project for funding under this section which is proposed to be carried out in a building under the jurisdiction of the General Services Administration if the project will be carried out by the Administrator of General Services. If such project involves a total expenditure in excess of \$1,600,000, no appropriation shall be made for such project unless such project has been approved by a resolution adopted by the Committee on Public Works and Transportation of the House of Rep-

representatives and the Committee on Environment and Public Works of the Senate.

(e) Study

The Secretary shall conduct a study to evaluate the potential use of the purchasing power of the Federal Government to promote the development and commercialization of energy efficient products. The study shall identify products for which there is a high potential for Federal purchasing power to substantially promote their development and commercialization, and shall include a plan to develop such potential. The study shall be conducted in consultation with utilities, manufacturers, and appropriate nonprofit organizations concerned with energy efficiency. The Secretary shall report to the Congress on the results of the study not later than two years after October 24, 1992.

(f) Authorization of appropriations

There are authorized to be appropriated to the Secretary for carrying out this section \$5,000,000 for each of the fiscal years 1993, 1994, and 1995.

(Pub. L. 95-619, title V, §549, as added Pub. L. 102-486, title I, §152(h)(2), Oct. 24, 1992, 106 Stat. 2848.)

PRIOR PROVISIONS

A prior section 549 of Pub. L. 95-619 was renumbered section 551 and is classified to section 8259 of this title.

CHANGE OF NAME

Committee on Public Works and Transportation of House of Representatives treated as referring to Committee on Transportation and Infrastructure of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

§ 8258b. Survey of energy saving potential

(a) In general

The Secretary shall, in consultation with the Interagency Energy Management Task Force established under section 8257 of this title, carry out an energy survey for the purposes of—

- (1) determining the maximum potential cost effective energy savings that may be achieved in a representative sample of buildings owned or leased by the Federal Government in different areas of the country;
- (2) making recommendations for cost effective energy efficiency and renewable energy improvements in those buildings and in other similar Federal buildings; and
- (3) identifying barriers which may prevent an agency's ability to comply with section 8253 of this title and other energy management goals.

(b) Implementation

(1) The Secretary shall transmit to the Committee on Energy and Natural Resources and the Committee on Governmental Affairs of the Senate and the Committee on Energy and Commerce, the Committee on Government Operations, and the Committee on Public Works and Transportation of the House of Representatives, within 180 days after October 24, 1992, a plan for implementing this section.

(2) The Secretary shall designate buildings to be surveyed in the project so as to obtain a sam-

ple of the buildings of the types and in the climates that is representative of buildings owned or leased by Federal agencies in the United States that consume the major portion of the energy consumed in Federal buildings. Such sample shall include, where appropriate, the following types of Federal facility space:

- (A) Housing.
- (B) Storage.
- (C) Office.
- (D) Services.
- (E) Schools.
- (F) Research and Development.
- (G) Industrial.
- (H) Prisons.
- (I) Hospitals.

(3) For purposes of this section, an improvement shall be considered cost effective if the cost of the energy saved or displaced by the improvement exceeds the cost of the improvement over the remaining life of a Federal building or the remaining term of a lease of a building leased by the Federal Government as determined by the life cycle costing methodology developed under section 8254 of this title.

(c) Personnel

(1) In carrying out this section, the Secretary shall utilize personnel who are—

(A) employees of the Department of Energy;

or

(B) selected by the agencies utilizing the buildings which are being surveyed under this section.

(2) Such personnel shall be detailed for the purpose of carrying out this section without any reduction of salary or benefits.

(d) Report

As soon as practicable after the completion of the project carried out under this section, the Secretary shall transmit a report of the findings and conclusions of the project to the Committee on Energy and Natural Resources and the Committee on Governmental Affairs of the Senate, the Committee on Energy and Commerce, the Committee on Government Operations, and the Committee on Public Works and Transportation of the House of Representatives, and the agencies who own the buildings involved in such project. Such report shall include an analysis of the probability of each agency achieving the 20 percent reduction goal established under section 8253(a) of this title.

(Pub. L. 95-619, title V, §550, as added Pub. L. 102-486, title I, §152(h)(2), Oct. 24, 1992, 106 Stat. 2850.)

PRIOR PROVISIONS

A prior section 550 of Pub. L. 95-619 was classified to section 8260 of this title prior to the general amendment of this part by Pub. L. 100-615.

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and

jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

Committee on Government Operations of House of Representatives treated as referring to Committee on Government Reform and Oversight of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2. Committee on Government Reform and Oversight of House of Representatives changed to Committee on Government Reform of House of Representatives by House Resolution No. 5, One Hundred Sixth Congress, Jan. 6, 1999.

Committee on Public Works and Transportation of House of Representatives treated as referring to Committee on Transportation and Infrastructure of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8253 of this title.

§ 8259. Definitions

For the purposes of this part—

(1) the term “agency” has the meaning given it in section 551(1) of title 5;

(2) the term “construction” means new construction or substantial rehabilitation of existing structures;

(3) the term “cogeneration facilities” has the same meaning given such term in section 796(18)(A) of title 16;

(4) the term “energy conservation measures” means measures that are applied to a Federal building that improve energy efficiency and are life cycle cost effective and that involve energy conservation, cogeneration facilities, renewable energy sources, improvements in operations and maintenance efficiencies, or retrofit activities;

(5) the term “energy survey” means a procedure used to determine energy and cost savings likely to result from the use of appropriate energy related maintenance and operating procedures and modifications, including the purchase and installation of particular energy-related equipment and the use of renewable energy sources;

(6) the term “Federal building” means any building, structure, or facility, or part thereof, including the associated energy consuming support systems, which is constructed, renovated, leased, or purchased in whole or in part for use by the Federal Government and which consumes energy; such term also means a collection of such buildings, structures, or facilities and the energy consuming support systems for such collection;

(7) the term “life cycle cost” means the total costs of owning, operating, and maintaining a building over its useful life (including such costs as fuel, energy, labor, and replacement components) determined on the basis of a systematic evaluation and comparison of alternative building systems, except that in the case of leased buildings, the life cycle costs shall be calculated over the effective remaining term of the lease;

(8) the term “renewable energy sources” includes, but is not limited to, sources such as agriculture and urban waste, geothermal energy, solar energy, and wind energy; and

(9) the term “Secretary” means the Secretary of Energy.

(Pub. L. 95-619, title V, § 551, formerly § 549, Nov. 9, 1978, 92 Stat. 3280; Pub. L. 100-615, § 2(a), Nov. 5, 1988, 102 Stat. 3188; renumbered § 551, Pub. L. 102-486, title I, § 152(h)(1), Oct. 24, 1992, 106 Stat. 2848; amended Pub. L. 105-388, § 5(c)(5), Nov. 13, 1998, 112 Stat. 3479.)

PRIOR PROVISIONS

A prior section 551 of Pub. L. 95-619 was classified to section 8261 of this title prior to the general amendment of this part by Pub. L. 100-615.

AMENDMENTS

1998—Par. (8). Pub. L. 105-388 substituted “geothermal” for “goothermal”.

1988—Pub. L. 100-615 amended section generally, substituting provisions relating to definitions for Federal energy management for former provision relating to budget treatment of energy conserving improvements by Federal agencies.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8262, 8287c of this title.

§§ 8260, 8261. Omitted

CODIFICATION

Sections 8260 and 8261 were omitted in the general amendment of this part by Pub. L. 100-615, § 2(a), Nov. 5, 1988, 102 Stat. 3185.

Section 8260, Pub. L. 95-619, title V, § 550, Nov. 9, 1978, 92 Stat. 3280, directed each Federal agency to periodically furnish Secretary with full and complete information on its activities under this part, and directed Secretary to annually submit to Congress a comprehensive report on all activities under this part and on progress made toward achievement of objectives of this part.

Section 8261, Pub. L. 95-619, title V, § 551, Nov. 9, 1978, 92 Stat. 3280, authorized to be appropriated to Secretary not to exceed \$2,000,000 for fiscal year ending Sept. 30, 1979, to enable Secretary to perform analytical and administrative functions under this part.

§ 8262. Definitions

For purposes of this subtitle—¹

(1) the term “agency” means² has the meaning given such term in section 551(1) of title 5, except that such term does not include the United States Postal Service;

(2) the term “facility energy supervisor” means the employee with responsibility for the daily operations of a Federal facility, including the management, installation, operation, and maintenance of energy systems in Federal facilities which may include more than one building;

(3) the term “trained energy manager” means a person who has demonstrated proficiency, or who has completed a course of study in the areas of fundamentals of building energy systems, building energy codes and applicable professional standards, energy accounting and analysis, life-cycle cost methodology, fuel supply and pricing, and instrumentation for energy surveys and audits;

(4) the term “Task Force” means the Interagency Energy Management Task Force established under section 8257 of this title; and

¹ See References in Text note below.

² So in original. The word “means” probably should not appear.

(5) the term “energy conservation measures” has the meaning given such term in section 8259(4) of this title.

(Pub. L. 102-486, title I, §151, Oct. 24, 1992, 106 Stat. 2843.)

REFERENCES IN TEXT

This subtitle, referred to in text, is subtitle F (§§151-168) of title I of Pub. L. 102-486, Oct. 24, 1992, 106 Stat. 2843, which enacted this section and sections 8258a, 8258b, 8262a to 8262k of this title, amended sections 8252 to 8256, 8258, 8259, 8287, and 8287c of this title and section 490 of former Title 40, Public Buildings, Property, and Works, enacted provisions set out as notes under section 8262h of this title and section 1815 of Title 2, The Congress, and repealed provisions set out as a note under section 8253 of this title. For complete classification of subtitle F to the Code, see Tables.

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of the National Energy Conservation Policy Act which comprises this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8262c of this title.

§ 8262a. Report by General Services Administration

Not later than one year after October 24, 1992, and annually thereafter, the Administrator of General Services shall report to the Committee on Governmental Affairs and the Committee on Energy and Natural Resources of the Senate and the Committee on Energy and Commerce, the Committee on Government Operations, and the Committee on Public Works and Transportation of the House of Representatives on the activities of the General Services Administration conducted pursuant to this subtitle.¹

(Pub. L. 102-486, title I, §154, Oct. 24, 1992, 106 Stat. 2852.)

REFERENCES IN TEXT

This subtitle, referred to in text, is subtitle F (§§151-168) of title I of Pub. L. 102-486, Oct. 24, 1992, 106 Stat. 2843, which enacted this section and sections 8258a, 8258b, 8262, 8262b to 8262k of this title, amended sections 8252 to 8256, 8258, 8259, 8287, and 8287c of this title and section 490 of former Title 40, Public Buildings, Property, and Works, enacted provisions set out as notes under section 8262h of this title and section 1815 of Title 2, The Congress, and repealed provisions set out as a note under section 8253 of this title. For complete classification of subtitle F to the Code, see Tables.

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of the National Energy Conservation Policy Act which comprises this chapter.

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and ex-

changes and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

Committee on Government Operations of House of Representatives treated as referring to Committee on Government Reform and Oversight of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2. Committee on Government Reform and Oversight of House of Representatives changed to Committee on Government Reform of House of Representatives by House Resolution No. 5, One Hundred Sixth Congress, Jan. 6, 1999.

Committee on Public Works and Transportation of House of Representatives treated as referring to Committee on Transportation and Infrastructure of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8262b, 8262e of this title.

§ 8262b. Intergovernmental energy management planning and coordination

(a) Conference workshops

The Administrator of General Services, in consultation with the Secretary and the Task Force, shall hold regular, biennial conference workshops in each of the 10 standard Federal regions on energy management, conservation, efficiency, and planning strategy. The Administrator shall work and consult with the Department of Energy and other Federal agencies to plan for particular regional conferences. The Administrator shall invite Department of Energy, State, local, tribal, and county public officials who have responsibilities for energy management or may have an interest in such conferences and shall seek the input of, and be responsive to, the views of such officials in the planning and organization of such workshops.

(b) Focus of workshops

Such workshops and conferences shall focus on the following (but may include other topics):

(1) Developing strategies among Federal, State, tribal, and local governments to coordinate energy management policies and to maximize available intergovernmental energy management resources within the region regarding the use of governmental facilities and buildings.

(2) The design, construction, maintenance, and retrofitting of governmental facilities to incorporate energy efficient techniques.

(3) Procurement and use of energy efficient products.

(4) Dissemination of energy information on innovative programs, technologies, and methods which have proven successful in government.

(5) Technical assistance to design and incorporate effective energy management strategies.

(c) Establishment of workshop timetable

As a part of the first report to be submitted pursuant to section 8262a of this title, the Administrator shall set forth the schedule for the regional energy management workshops to be conducted under this section. Not less than five such workshops shall be held by September 30,

¹ See References in Text note below.

1993, and at least one such workshop shall be held in each of the 10 Federal regions every two years beginning on September 30, 1993.

(Pub. L. 102-486, title I, §156, Oct. 24, 1992, 106 Stat. 2855.)

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of the National Energy Conservation Policy Act which comprises this chapter.

§ 8262c. Federal agency energy management training

(a) Energy management training

(1) Each executive department described under section 101 of title 5, the Environmental Protection Agency, the National Aeronautics and Space Administration, the General Services Administration, and the United States Postal Service shall establish and maintain a program to ensure that facility energy managers are trained energy managers. Such programs shall be managed—

(A) by the department or agency representative on the Task Force; or

(B) if a department or agency is not represented on the Task Force, by the designee of the head of such department or agency.

(2) Departments and agencies described in paragraph (1) shall encourage appropriate employees to participate in energy manager training courses. Employees may enroll in courses of study in the areas described in section 8262(3) of this title including, but not limited to, courses offered by—

(A) private or public educational institutions;

(B) Federal agencies; or

(C) professional associations.

(b) Report to Task Force

(1) Each department and agency described in subsection (a)(1) of this section shall, not later than 60 days following October 24, 1992, report to the Task Force the following information:

(A) Those individuals employed by such department or agency on October 24, 1992, who qualify as trained energy managers.

(B) The General Schedule (GS) or grade level at which each of the individuals described in subparagraph (A) is employed.

(C) The facility or facilities for which such individuals are responsible or otherwise stationed.

(2) The Secretary shall provide a summary of the reports described in paragraph (1) to the Congress as part of the first report submitted under section 8258 of this title after October 24, 1992.

(c) Requirements at Federal facilities

(1) Not later than one year after October 24, 1992, the departments and agencies described under subsection (a)(1) of this section shall upgrade their energy management capabilities by—

(A) designating facility energy supervisors;

(B) encouraging facility energy supervisors to become trained energy managers; and

(C) increasing the overall number of trained energy managers within such department or

agency to a sufficient level to ensure effective implementation of this Act.

(2) Departments and agencies described in subsection (a)(1) of this section may hire trained energy managers to be facility energy supervisors. Trained energy managers, including those who are facility supervisors as well as other trained personnel, shall focus their efforts on improving energy efficiency in the following facilities—

(A) department or agency facilities identified as most costly to operate or most energy inefficient; or

(B) other facilities identified by the department or agency head as having significant energy savings potential.

(d) Annual report to Secretary and Congress

Each department and agency listed in subsection (a)(1) of this section shall report to the Secretary on the status and implementation of the requirements of this section. The Secretary shall include a summary of each such report in the annual report to Congress as required under section 8258(b) of this title.

(Pub. L. 102-486, title I, §157, Oct. 24, 1992, 106 Stat. 2856.)

REFERENCES IN TEXT

The General Schedule, referred to in subsec. (b)(1)(B), is set out under section 5332 of Title 5, Government Organization and Employees.

This Act, referred to in subsec. (c)(1)(C), is Pub. L. 102-486, Oct. 24, 1992, 106 Stat. 2776, known as the Energy Policy Act of 1992. For complete classification of this Act to the Code, see Short Title note set out under section 13201 of this title and Tables.

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of the National Energy Conservation Policy Act which comprises this chapter.

§ 8262d. Energy audit teams

(a) Establishment

The Secretary shall assemble from existing personnel with appropriate expertise, and with particular utilization of the national laboratories, and make available to all Federal agencies, one or more energy audit teams which shall be equipped with instruments and other advanced equipment needed to perform energy audits of Federal facilities.

(b) Monitoring programs

The Secretary shall also assist in establishing, at each site that has utilized an energy audit team, a program for monitoring the implementation of energy efficiency improvements based upon energy audit team recommendations, and for recording the operating history of such improvements.

(Pub. L. 102-486, title I, §158, Oct. 24, 1992, 106 Stat. 2857.)

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of the National Energy Conservation Policy Act which comprises this chapter.

§ 8262e. Federal energy cost accounting and management

(a) Guidelines

Not later than 120 days after October 24, 1992, the Director of the Office of Management and Budget, in cooperation with the Secretary, the Administrator of General Services, and the Secretary of Defense, shall establish guidelines to be employed by each Federal agency to assess accurate energy consumption for all buildings or facilities which the agency owns, operates, manages or leases, where the Government pays utilities separate from the lease and the Government operates the leased space. Such guidelines are to be used in reports required under section 8258 of this title. Each agency shall implement such guidelines no later than 120 days after their establishment. Each facility energy manager shall maintain energy consumption and energy cost records for review by the Inspector General, the Congress, and the general public.

(b) Contents of guidelines

Such guidelines shall include the establishment of a monitoring system to determine—

- (1) which facilities are the most costly to operate when measured on an energy consumption per square foot basis or other relevant analytical basis;
- (2) unusual or abnormal changes in energy consumption; and
- (3) the accuracy of utility charges for electric and gas consumption.

(c) Federally leased space energy reporting requirement

The Administrator of General Services shall include, in each report submitted under section 8262a of this title, the estimated energy cost of leased buildings or space in which the Federal Government does not directly pay the utility bills.

(Pub. L. 102-486, title I, §159, Oct. 24, 1992, 106 Stat. 2857.)

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of the National Energy Conservation Policy Act which comprises this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8256 of this title.

§ 8262f. Inspector General review and agency accountability

(a) Audit survey

Not later than 120 days after October 24, 1992, each Inspector General created to conduct and supervise audits and investigations relating to the programs and operations of the establishments listed in section 11(2) of the Inspector General Act of 1978 (5 U.S.C. App.), and the Chief Postal Inspector of the United States Postal Service, in accordance with section 8E(f)(1) as established by section 8E(a)(2) of the Inspector General Act Amendments of 1988 (Public Law 100-504) shall—

- (1) identify agency compliance activities to meet the requirements of section 543 of the National Energy Conservation Policy Act (42

U.S.C. 8253) and any other matters relevant to implementing the goals of such Act; and

- (2) determine if the agency has the internal accounting mechanisms necessary to assess the accuracy and reliability of energy consumption and energy cost figures required under such section.

(b) President's Council on Integrity and Efficiency report to Congress

Not later than 150 days after October 24, 1992, the President's Council on Integrity and Efficiency shall submit a report to the Committee on Energy and Natural Resources and the Committee on Governmental Affairs of the Senate, the Committee on Energy and Commerce, the Committee on Government Operations, and the Committee on Public Works and Transportation of the House of Representatives, on the review conducted by the Inspector General of each agency under this section.

(c) Inspector General review

Each Inspector General established under section 2 of the Inspector General Act of 1978 (5 U.S.C. App.) is encouraged to conduct periodic reviews of agency compliance with part 3 of title V of the National Energy Conservation Policy Act [42 U.S.C. 8251 et seq.], the provisions of this subtitle,¹ and other laws relating to energy consumption. Such reviews shall not be inconsistent with the performance of the required duties of the Inspector General's office.

(Pub. L. 102-486, title I, §160, Oct. 24, 1992, 106 Stat. 2858.)

REFERENCES IN TEXT

Sections 2 and 11(2) of the Inspector General Act of 1978, referred to in subsecs. (a) and (c), are sections 2 and 11(2) of Pub. L. 95-452, which are set out in the Appendix to Title 5, Government Organization and Employees.

Section 8E as established by section 8E(a)(2) of the Inspector General Act Amendments of 1988, referred to in subsec. (a), probably means section 8E of the Inspector General Act of 1978, Pub. L. 95-452, as added by Pub. L. 100-504, title I, §104(a), Oct. 18, 1988, 102 Stat. 2522. Section 8E of the Inspector General Act of 1978 was successively renumbered section 8F by Pub. L. 103-82, title II, §202(g)(1), Sept. 21, 1993, 107 Stat. 889, then section 8G by Pub. L. 103-204, §23(a)(3), Dec. 17, 1993, 107 Stat. 2408, and is set out in the Appendix to Title 5.

The National Energy Conservation Policy Act, referred to in subsecs. (a)(1) and (c), is Pub. L. 95-619, Nov. 9, 1978, 92 Stat. 3206, as amended. Part 3 of title V of the Act is classified generally to part B (§8251 et seq.) of subchapter III of chapter 91 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 8201 of this title and Tables.

This subtitle, referred to in subsec. (c), is subtitle F (§§151-168), of title I of Pub. L. 102-486, Oct. 24, 1992, 106 Stat. 2843, which enacted this section and sections 8258a, 8258b, 8262a to 8262e, 8262g to 8262k of this title, amended sections 8252 to 8256, 8258, 8259, 8287, and 8287c of this title and section 490 of former Title 40, Public Buildings, Property, and Works, enacted provisions set out as notes under section 8262h of this title and section 1815 of Title 2, The Congress, and repealed provisions set out as a note under section 8253 of this title. For complete classification of subtitle F to the Code, see Tables.

¹ See References in Text note below.

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of the National Energy Conservation Policy Act which comprises this chapter.

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

Committee on Government Operations of House of Representatives treated as referring to Committee on Government Reform and Oversight of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2. Committee on Government Reform and Oversight of House of Representatives changed to Committee on Government Reform of House of Representatives by House Resolution No. 5, One Hundred Sixth Congress, Jan. 6, 1999.

Committee on Public Works and Transportation of House of Representatives treated as referring to Committee on Transportation and Infrastructure of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2.

§ 8262g. Procurement and identification of energy efficient products

(a) Procurement

The Administrator of General Services, the Secretary of Defense, and the Director of the Defense Logistics Agency, each shall undertake a program to include energy efficient products in carrying out their procurement and supply functions.

(b) Identification program

The Administrator of General Services, the Secretary of Defense, and the Director of the Defense Logistics Agency, in consultation with the Secretary of Energy, each shall implement, in conjunction with carrying out their procurement and supply functions, a program to identify and designate those energy efficient products that offer significant potential savings, using, to the extent practicable, the life cycle cost methods and procedures developed under section 8254 of this title. The Secretary of Energy shall, to the extent necessary to carry out this section and after consultation with the aforementioned agency heads, provide estimates of the degree of relative energy efficiency of products.

(c) Guidelines

The Administrator for Federal Procurement Policy, in consultation with the Administrator of General Services, the Secretary of Energy, the Secretary of Defense, and the Director of the Defense Logistics Agency, shall issue guidelines to encourage the acquisition and use by all Federal agencies of products identified pursuant to this section. The Secretary of Defense and the Director of the Defense Logistics Agency shall consider, and place emphasis on, the acquisition of such products as part of the Agency's ongoing review of military specifications.

(d) Report to Congress

Not later than December 31 of 1993 and thereafter as part of the report required under section 8258(b) of this title, the Secretary of Energy, in consultation with the Administrator for Federal Procurement Policy, the Administrator of General Services, the Secretary of Defense, and the Director of the Defense Logistics Agency, shall report on the progress, status, activities, and results of the programs under subsections (a), (b), and (c) of this section. The report shall include—

(1) the types and functions of each product identified under subsection (b) of this section, and efforts undertaken by the Administrator of General Services, the Secretary of Defense, and the Director of the Defense Logistics Agency to encourage the acquisition and use of such products;

(2) the actions taken by the Administrator of General Services, the Secretary of Defense, and the Director of the Defense Logistics Agency to identify products under subsection (b) of this section, the barriers which inhibit implementation of identification of such products, and recommendations for legislative action, if necessary;

(3) progress on the development and issuance of guidelines under subsection (c) of this section;

(4) an indication of whether energy cost savings technologies identified by the Advanced Building Technology Council, under section 1701j-2(h) of title 12, have been used in the identification of products under subsection (b) of this section;

(5) an estimate of the potential cost savings to the Federal Government from acquiring products identified under subsection (b) of this section with respect to which energy is a significant component of life cycle cost, based on the quantities of such products that could be utilized throughout the Government; and

(6) the actual quantities acquired of products described in paragraph (5).

(Pub. L. 102-486, title I, §161, Oct. 24, 1992, 106 Stat. 2858; Pub. L. 104-66, title I, §1052(c), Dec. 21, 1995, 109 Stat. 718.)

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of the National Energy Conservation Policy Act which comprises this chapter.

AMENDMENTS

1995—Subsec. (d). Pub. L. 104-66 substituted “thereafter as part of the report required under section 8258(b) of this title,” for “of each year thereafter,” in introductory provisions.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103-7 (in which the 12th item on page 85 identifies a reporting provision which, as subsequently amended, is contained in subsec. (d) of this section, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

EXECUTIVE ORDER NO. 12845

Ex. Ord. No. 12845, Apr. 21, 1993, 58 F.R. 21887, which required Federal agencies to procure computer equip-

ment that met EPA Energy Star requirements for energy efficiency, was revoked by Ex. Ord. No. 13123, §604, June 3, 1999, 64 F.R. 30859, set out as a note under section 8251 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8258 of this title.

§ 8262h. United States Postal Service energy regulations

(a) In general

The Postmaster General shall issue regulations to ensure the reliable and accurate accounting of energy consumption costs for all buildings or facilities which it owns, leases, operates, or manages. Such regulations shall—

- (1) establish a monitoring system to determine which facilities are the most costly to operate on an energy consumption per square foot basis or other relevant analytical basis;
- (2) identify unusual or abnormal changes in energy consumption; and
- (3) check the accuracy of utility charges for electricity and gas consumption.

(b) Identification of energy efficiency products

The Postmaster General shall actively undertake a program to identify and procure energy efficiency products for use in its facilities. In carrying out this subsection, the Postmaster General shall, to the maximum extent practicable, incorporate energy efficient information available on Federal Supply Schedules maintained by the General Services Administration and the Defense Logistics Agency.

(Pub. L. 102-486, title I, §163, Oct. 24, 1992, 106 Stat. 2860.)

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of the National Energy Conservation Policy Act which comprises this chapter.

UNITED STATES POSTAL SERVICE BUILDING ENERGY SURVEY AND REPORT

Section 164 of Pub. L. 102-486 directed Postmaster General to conduct an energy survey, as defined in 42 U.S.C. 8259(5), for purposes of determining maximum potential cost effective energy savings that may be achieved in a representative sample of buildings owned or leased by United States Postal Service in different areas of the country, making recommendations for cost effective energy efficiency and renewable energy improvements in those buildings and in other similar United States Postal Service buildings, and identifying barriers which may prevent the United States Postal Service from complying with energy management goals, and further directed Postmaster General to transmit to Congress within 180 days after Oct. 24, 1992, a plan for implementing this survey, and to report to Congress on the findings and conclusions of such survey as soon as practicable after its completion.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8262i of this title.

§ 8262i. United States Postal Service energy management report

Not later than one year after October 24, 1992, and not later than January 1 of each year thereafter, the Postmaster General shall submit a report to the Committee on Governmental Affairs

and the Committee on Energy and Natural Resources of the Senate and the Committee on Energy and Commerce and the Committee on Post Office and Civil Service of the House of Representatives on the United States Postal Service's building management program as it relates to energy efficiency. The report shall include, but not be limited to—

- (1) a description of actions taken to reduce energy consumption;
- (2) future plans to reduce energy consumption;
- (3) an assessment of the success of the energy conservation program;
- (4) a statement of energy costs incurred in operating and maintaining all United States Postal Service facilities; and
- (5) the status of the energy efficient procurement program established under section 8262h of this title.

(Pub. L. 102-486, title I, §165, Oct. 24, 1992, 106 Stat. 2861.)

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of the National Energy Conservation Policy Act which comprises this chapter.

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

ABOLITION OF HOUSE COMMITTEE ON POST OFFICE AND CIVIL SERVICE

Committee on Post Office and Civil Service of House of Representatives abolished by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995. References to Committee on Post Office and Civil Service treated as referring to Committee on Government Reform and Oversight of House of Representatives, see section 1(b) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Government Reform and Oversight of House of Representatives changed to Committee on Government Reform of House of Representatives by House Resolution No. 5, One Hundred Sixth Congress, Jan. 6, 1999.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8262j of this title.

§ 8262j. Energy management requirements for United States Postal Service

(a) Energy management requirements for postal facilities

(1) The Postmaster General shall, to the maximum extent practicable, ensure that each United States Postal Service facility meets the energy management requirements for Federal buildings and agencies specified in section 8253 of this title.

(2) The Postmaster General may exclude from the requirements of such section any facility or

collection of facilities, and the associated energy consumption and gross square footage if the Postmaster General finds that compliance with the requirements of such section would be impracticable. A finding of impracticability shall be based on the energy intensiveness of activities carried out in such facility or collection of facilities, the type and amount of energy consumed, or the technical feasibility of making the desired changes. The Postmaster General shall identify and list in the report required under section 8262i of this title the facilities designated by it for such exclusion.

(b) Implementation steps

In carrying subsection (a) of this section, the Postmaster General shall—

(1) not later than 1 year after October 24, 1992, prepare or update, as appropriate, a plan (which may be submitted as part of the first report submitted under section 8262i of this title)—

(A) describing how this section will be implemented;

(B) designating personnel primarily responsible for achieving the requirements of this section; and

(C) identifying high priority projects;

(2) perform energy surveys of United States Postal Service facilities as necessary to achieve the requirements of this section;

(3) install those energy conservation measures that will attain the requirements of this section in a cost-effective manner as defined in section 8254 of this title; and

(4) ensure that the operation and maintenance procedures applied under this section are continued.

(Pub. L. 102-486, title I, §166, Oct. 24, 1992, 106 Stat. 2861.)

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of the National Energy Conservation Policy Act which comprises this chapter.

§ 8262k. Government contract incentives

(a) Establishment of criteria

Each agency, in consultation with the Federal Acquisition Regulatory Council, shall establish criteria for the improvement of energy efficiency in Federal facilities operated by Federal Government contractors or subcontractors.

(b) Purpose of criteria

The criteria established under subsection (a) of this section shall be used to encourage Federal contractors, and their subcontractors, which manage and operate federally-owned facilities, to adopt and utilize energy conservation measures designed to reduce energy costs in Government-owned and contractor-operated facilities and which are ultimately borne by the Federal Government.

(Pub. L. 102-486, title I, §167, Oct. 24, 1992, 106 Stat. 2862.)

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of the National Energy Conservation Policy Act which comprises this chapter.

PART C—FEDERAL PHOTOVOLTAIC UTILIZATION

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 5593, 5594 of this title.

§ 8271. “Federal facility” and “Secretary” defined

For purposes of this part—

(1) The term “Federal facility” means any building, structure, or fixture or part thereof which is owned by the United States or any Federal agency or which is held by the United States or any Federal agency under a lease-acquisition agreement under which the United States or a Federal agency will receive fee simple title under the terms of such agreement without further negotiation. Such term also applies to facilities related to programs administered by Federal agencies.

(2) The term “Secretary” means the Secretary of Energy.

(Pub. L. 95-619, title V, §562, Nov. 9, 1978, 92 Stat. 3280; Pub. L. 96-294, title IV, §407(1), June 30, 1980, 94 Stat. 717.)

AMENDMENTS

1980—Par. (1). Pub. L. 96-294 inserted applicability to facilities related to programs administered by Federal agencies.

SHORT TITLE

For short title of this part as the “Federal Photovoltaic Utilization Act”, see section 561 of Pub. L. 95-619, set out as a note under section 8201 of this title.

§ 8272. Photovoltaic energy program

There is hereby established a photovoltaic energy commercialization program for the accelerated procurement and installation of photovoltaic solar electric systems for electric production in Federal facilities.

(Pub. L. 95-619, title V, §563, Nov. 9, 1978, 92 Stat. 3280.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8273, 8274, 8275 of this title.

§ 8273. Purpose of program

The purpose of the program established by section 8272 of this title is to—

(1) accelerate the growth of a commercially viable and competitive industry to make photovoltaic solar electric systems available to the general public as an option in order to reduce national consumption of fossil fuel;

(2) reduce fossil fuel costs to the Federal Government;

(3) stimulate the general use within the Federal Government of methods for the minimization of life cycle costs; and

(4) develop performance data on the program established by section 8272 of this title.

(Pub. L. 95-619, title V, §564, Nov. 9, 1978, 92 Stat. 3280.)

§ 8274. Acquisition of systems

The program established by section 8272 of this title shall provide for the acquisition of photo-

voltaic solar electric systems and associated storage capability by the Secretary for their use by Federal agencies, and for the acquisition of such systems and associated capability by Federal agencies for their own use in cases where the authority to make such acquisition has been delegated to the agency involved by the Secretary. The acquisition of photovoltaic solar electric systems shall be at an annual level substantial enough to allow use of low-cost production techniques by suppliers of such systems. The Secretary (or other Federal agency acting under delegation from the Secretary) is authorized to make such acquisitions through the use of multiyear contracts. Authority under this part to enter into acquisition contracts shall be only to the extent as may be provided in advance in appropriation Acts.

(Pub. L. 95-619, title V, § 565, Nov. 9, 1978, 92 Stat. 3281; Pub. L. 96-294, title IV, § 407(2)(A), (B), June 30, 1980, 94 Stat. 717.)

AMENDMENTS

1980—Pub. L. 96-294 inserted provisions relating to acquisition of systems and associated capability by Federal agencies and inserted “(or other Federal agency acting under delegation from the Secretary)”.

§ 8275. Administration

The Secretary shall administer the program established under section 8272 of this title and shall—

- (1) consult with the Secretary of Defense to insure that the installation and purchase of photovoltaic solar electric systems pursuant to this part shall not interfere with defense-related activities;
- (2) prescribe such requirements as may be appropriate to monitor and assess the performance and operation of photovoltaic electric systems installed pursuant to this part; and
- (3) report annually to the Congress on the status of the program.

Notwithstanding any other provision of law, the Secretary shall not be subject to the requirements of section 553 of title 5, in the performance of his functions under this part.

(Pub. L. 95-619, title V, § 566, Nov. 9, 1978, 92 Stat. 3281; Pub. L. 96-294, title IV, § 407(3), (4), June 30, 1980, 94 Stat. 717, 718.)

AMENDMENTS

1980—Pub. L. 96-294 inserted provisions relating to inapplicability of section 553 of title 5 and substituted “requirements” for “rules and regulations” in par. (2).

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of the reporting provision in par. (3) of this section, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 3rd item on page 87 of House Document No. 103-7.

§ 8276. System evaluation and purchase program

(a) Program

The Secretary shall establish, within 60 days after November 9, 1978, a photovoltaic systems evaluation and purchase program to provide such systems as are required by the Federal

agencies to carry out this part. In acquiring photovoltaic solar electric systems under this part, the Secretary (or other Federal agency acting under delegation from the Secretary) shall insure that such systems reflect to the maximum extent practicable the most advanced and reliable technologies and shall schedule purchases in a manner which will stimulate the early development of a permanent low-cost private photovoltaic production capability in the United States, and to stimulate the private sector market for photovoltaic power systems. The Secretary and other Federal agencies acting under delegation from the Secretary shall, subject to the availability of appropriated funds, procure not more than 30 megawatts of photovoltaic solar electric systems during fiscal years ending September 30, 1979, September 30, 1980, and September 30, 1981.

(b) Other procurement

Nothing in this part shall preclude any Federal agency from directly procuring a photovoltaic solar electric system (in lieu of obtaining one under the program under subsection (a) of this section), except that any such Federal agency shall consult with the Secretary before procuring such a system.

(Pub. L. 95-619, title V, § 567, Nov. 9, 1978, 92 Stat. 3281; Pub. L. 96-294, title IV, § 407(2)(C), (D), June 30, 1980, 94 Stat. 717.)

AMENDMENTS

1980—Subsec. (a). Pub. L. 96-294 inserted provisions relating to Federal agencies acting under delegations from the Secretary.

§ 8277. Advisory committee

(a) Establishment

There is hereby established an advisory committee to assist the Secretary in the establishment and conduct of the programs established under this part.

(b) Membership

Such committee shall be composed of the Secretary of Defense, the Secretary of Housing and Urban Development, the Administrator of the National Aeronautics and Space Administration, the Administrator of the General Services Administration, the Secretary of Transportation, the Administrator of the Small Business Administration, the chairman of the Federal Trade Commission, the Postmaster General, and such other persons as the Secretary deems necessary. The Secretary shall appoint such other nongovernmental persons to the extent necessary to assure that the membership of the committee will be fairly balanced in terms of the point of view represented and the functions to be performed by the committee.

(c) Termination

The advisory committee shall terminate October 1, 1981.

(Pub. L. 95-619, title V, § 568, Nov. 9, 1978, 92 Stat. 3281.)

§ 8278. Authorization of appropriations

For the purposes of this part, there is authorized to be appropriated to the Secretary not to

exceed \$98,000,000 for the period beginning October 1, 1978, and ending September 30, 1981.

(Pub. L. 95-619, title V, §569, Nov. 9, 1978, 92 Stat. 3282.)

SUBCHAPTER IV—ENERGY CONSERVATION FOR COMMERCIAL BUILDINGS AND MULTIFAMILY DWELLINGS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 12 sections 3602, 3618.

PART A—GENERAL PROVISIONS

§§ 8281 to 8281b. Repealed. Pub. L. 99-412, title II, § 201(a), Aug. 28, 1986, 100 Stat. 943

Section 8281, Pub. L. 95-619, title VII, §710, as added Pub. L. 96-294, title V, §565, June 30, 1980, 94 Stat. 752, provided that definitions in section 8211 of this title apply to this subchapter and defined additional terms.

Section 8281a, Pub. L. 95-619, title VII, §711, as added Pub. L. 96-294, title V, §565, June 30, 1980, 94 Stat. 754, provided that this subchapter apply to any public utility for which coverage is provided under section 8212 of this title.

Section 8281b, Pub. L. 95-619, title VII, §712, as added Pub. L. 96-294, title V, §565, June 30, 1980, 94 Stat. 754, related to rules of the Secretary for submission and approval of plans.

DEMONSTRATION PROJECTS FOR ENERGY EFFICIENCY IN COMMERCIAL BUILDINGS

Pub. L. 99-412, title II, §202, Aug. 28, 1986, 100 Stat. 943, provided that: "The Secretary of Energy shall, using funds appropriated for energy conservation activities of the Department of Energy, carry out demonstration projects by sharing the cost of the construction and development by nongovernmental entities of facilities which demonstrate innovative technologies for utility applications that increase energy efficiency in commercial buildings."

PART B—ENERGY CONSERVATION PLANS

§§ 8282 to 8282b. Repealed. Pub. L. 99-412, title II, § 201(a), Aug. 28, 1986, 100 Stat. 943

Section 8282, Pub. L. 95-619, title VII, §721, as added Pub. L. 96-294, title V, §565, June 30, 1980, 94 Stat. 754, related to procedures for submission and approval of State energy conservation plans for commercial buildings and multifamily dwellings.

Section 8282a, Pub. L. 95-619, title VII, §722, as added Pub. L. 96-294, title V, §565, June 30, 1980, 94 Stat. 755, related to requirements for State plans for regulated utilities.

Section 8282b, Pub. L. 95-619, title VII, §723, as added Pub. L. 96-294, title V, §565, June 30, 1980, 94 Stat. 756, related to plan requirements for nonregulated utilities and building heating suppliers.

AUTHORITY TO CONTINUE CERTAIN STATE ENERGY CONSERVATION PLANS

Pub. L. 99-412, title II, §201(c), Aug. 28, 1986, 100 Stat. 943, provided that: "Notwithstanding subsection (a) [repealing this subchapter], any State energy conservation plan for commercial buildings and multifamily dwellings approved under section 721 of the National Energy Conservation Policy Act [42 U.S.C. 8282] before August 1, 1984, may, with respect to regulated utilities, continue in effect until January 1, 1990."

PART C—UTILITY PROGRAMS

§§ 8283, 8283a. Repealed. Pub. L. 99-412, title II, § 201(a), Aug. 28, 1986, 100 Stat. 943

Section 8283, Pub. L. 95-619, title VII, §731, as added Pub. L. 96-294, title V, §565, June 30, 1980, 94 Stat. 756,

related to general requirements for utility programs and requirements concerning accounting and payment of costs.

Section 8283a, Pub. L. 95-619, title VII, §732, as added Pub. L. 96-294, title V, §565, June 30, 1980, 94 Stat. 757, related to requirements for building heating supplier programs and waiver of such requirements.

PART D—FEDERAL IMPLEMENTATION

§ 8284. Repealed. Pub. L. 99-412, title II, § 201(a), Aug. 28, 1986, 100 Stat. 943

Section, Pub. L. 95-619, title VII, §741, as added Pub. L. 96-294, title V, §565, June 30, 1980, 94 Stat. 757, related to Federal standby authority to promulgate plans.

SUBCHAPTER V—ENERGY AUDITOR TRAINING AND CERTIFICATION

CODIFICATION

This subchapter was enacted as part of the Energy Security Act, and not as part of the National Energy Conservation Policy Act which comprises this chapter.

§ 8285. Purpose

It is the purpose of this subchapter to encourage the training and certification of individuals to conduct energy audits for residential and commercial buildings in order to serve the various private and public needs of the Nation for energy audits.

(Pub. L. 96-294, title V, §581, June 30, 1980, 94 Stat. 760.)

§ 8285a. Definitions

For the purposes of this subchapter—

(1) the term "Governor" means the chief executive officer of each State, including the Mayor of the District of Columbia;

(2) the term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands;

(3) the term "energy audit" means an inspection as described in section 8216(b)(1)(A)¹ of this title, or an energy audit as defined in section 8281(b)(7)¹ of this title, which in addition may provide information on the utilization of renewable resources and may make energy-related improvements in the building; and

(4) the term "Secretary" means the Secretary of Energy.

(Pub. L. 96-294, title V, §582, June 30, 1980, 94 Stat. 761.)

REFERENCES IN TEXT

Section 8216 of this title, referred to in par. (3), was omitted from the Code pursuant to section 8229 of this title, which terminated authority under that section June 30, 1989.

Section 8281 of this title, referred to in par. (3), was repealed by Pub. L. 99-412, title II, §201(a), Aug. 28, 1986, 100 Stat. 943.

§ 8285b. Grants

(a) The Secretary may make grants to any Governor of a State for the training and certification of individuals to conduct energy audits.

¹ See References in Text note below.

(b) Before making a grant under subsection (a) of this section to a Governor, the Secretary must receive from the Governor an application containing—

(A) any information which the Secretary deems is necessary to carry out this subchapter; and

(B) an assurance that the grant will supplement and not supplant other funds available for such training and certification and will be used to increase the total amount of funds available for such training and certification.

(c)(1) Before making any grant under subsection (a) of this section the Secretary shall establish minimum standards for the training and certification of individuals to conduct energy audits.

(2) The Secretary shall require each Governor receiving any grant under this subchapter to agree to meet the standards established pursuant to paragraph (1) in any training and certification conducted using funds provided under this subchapter.

(Pub. L. 96-294, title V, §583, June 30, 1980, 94 Stat. 761.)

§ 8285c. Authorization of appropriations

(a) To carry out this subchapter there is authorized to be appropriated the sum of \$10,000,000 for the fiscal year ending on September 30, 1981, and the sum of \$15,000,000 for the fiscal year ending on September 30, 1982.

(b) Any funds appropriated under the authorization contained in this section shall remain available until expended.

(Pub. L. 96-294, title V, §584, June 30, 1980, 94 Stat. 761.)

SUBCHAPTER VI—COORDINATION OF FEDERAL ENERGY CONSERVATION FACTORS AND DATA

CODIFICATION

This subchapter was enacted as part of the Energy Security Act, and not as part of the National Energy Conservation Policy Act which comprises this chapter.

§ 8286. Consensus on factors and data for energy conservation standards

The Secretary of Energy shall assure that within 6 months after June 30, 1980, the Secretary of Energy, the Secretary of Housing and Urban Development, the Secretary of Agriculture, the Secretary of Health and Human Services, the Secretary of Defense, the Administrator of the General Services Administration, and the head of any other agency responsible for developing energy conservation standards for new or existing residential, commercial, or agricultural buildings shall reach a consensus regarding factors and data used to develop such standards. This consensus shall apply to, but not be limited to—

- (1) fuel price projections;
- (2) discount rates;
- (3) inflation rates;
- (4) climatic conditions and zones; and
- (5) the cost and energy saving characteristics of construction materials.

(Pub. L. 96-294, title V, §595, June 30, 1980, 94 Stat. 762.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8286a of this title.

§ 8286a. Use of factors and data

Factors and data consented to pursuant to section 8286 of this title may be revised and agreed to by a consensus of the heads of the various Federal agencies involved. Such factors and data shall be used by all Federal agencies in establishing and revising various energy conservation standards used by such agencies, except that other factors and data may be used with respect to the standards applicable to any program if—

(1) the other factors and data are approved by the Secretary of Energy solely on the basis that such other factors and data are critical to meet the unique needs of the program concerned;

(2) using the consented to factors and data would cause a violation of an express provision of law; or

(3) statutory requirements or responsibilities require a modification of the consented to factors and data.

(Pub. L. 96-294, title V, §596, June 30, 1980, 94 Stat. 762.)

§ 8286b. Omitted

CODIFICATION

Section, Pub. L. 96-294, title V, §597, June 30, 1980, 94 Stat. 762, which required the President (who delegated the duty to the Secretary of Energy by Memorandum of June 23, 1993, 58 F.R. 34519) to report annually to Congress on activities carried out under this subchapter and on other efforts to coordinate Federal energy conservation programs, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, the 15th item on page 19 of House Document No. 103-7.

SUBCHAPTER VII—ENERGY SAVINGS PERFORMANCE CONTRACTS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 8251, 8253, 8256, 8257, 8258 of this title.

§ 8287. Authority to enter into contracts

(a) In general

(1) The head of a Federal agency may enter into contracts under this subchapter solely for the purpose of achieving energy savings and benefits ancillary to that purpose. Each such contract may, notwithstanding any other provision of law, be for a period not to exceed 25 years. Such contract shall provide that the contractor shall incur costs of implementing energy savings measures, including at least the costs (if any) incurred in making energy audits, acquiring and installing equipment, and training personnel, in exchange for a share of any energy savings directly resulting from implementation of such measures during the term of the contract.

(2)(A) Contracts under this subchapter shall be energy savings performance contracts and shall require an annual energy audit and specify the terms and conditions of any Government pay-

ments and performance guarantees. Any such performance guarantee shall provide that the contractor is responsible for maintenance and repair services for any energy related equipment, including computer software systems.

(B) Aggregate annual payments by an agency to both utilities and energy savings performance contractors, under an energy savings performance contract, may not exceed the amount that the agency would have paid for utilities without an energy savings performance contract (as estimated through the procedures developed pursuant to this section) during contract years. The contract shall provide for a guarantee of savings to the agency, and shall establish payment schedules reflecting such guarantee, taking into account any capital costs under the contract.

(C) Federal agencies may incur obligations pursuant to such contracts to finance energy conservation measures provided guaranteed savings exceed the debt service requirements.

(D) A Federal agency may enter into a multi-year contract under this subchapter for a period not to exceed 25 years, without funding of cancellation charges before cancellation, if—

(i) such contract was awarded in a competitive manner pursuant to subsection (b)(2) of this section, using procedures and methods established under this subchapter;

(ii) funds are available and adequate for payment of the costs of such contract for the first fiscal year;

(iii) 30 days before the award of any such contract that contains a clause setting forth a cancellation ceiling in excess of \$10,000,000, the head of such agency gives written notification of such proposed contract and of the proposed cancellation ceiling for such contract to the appropriate authorizing and appropriating committees of the Congress; and

(iv) such contract is governed by part 17.1 of the Federal Acquisition Regulation promulgated under section 421 of title 41 or the applicable rules promulgated under this subchapter.

(b) Implementation

(1)(A) The Secretary, with the concurrence of the Federal Acquisition Regulatory Council established under section 421(a) of title 41, not later than 180 days after October 24, 1992, shall, by rule, establish appropriate procedures and methods for use by Federal agencies to select, monitor, and terminate contracts with energy service contractors in accordance with laws governing Federal procurement that will achieve the intent of this section in a cost-effective manner. In developing such procedures and methods, the Secretary, with the concurrence of the Federal Acquisition Regulatory Council, shall determine which existing regulations are inconsistent with the intent of this section and shall formulate substitute regulations consistent with laws governing Federal procurement.

(B) The procedures and methods established pursuant to subparagraph (A) shall be the procedures and contracting methods for selection, by an agency, of a contractor to provide energy savings performance services. Such procedures and methods shall provide for the calculation of energy savings based on sound engineering and financial practices.

(2) The procedures and methods established pursuant to paragraph (1)(A) shall—

(A) allow the Secretary to—

(i) request statements of qualifications, which shall, at a minimum, include prior experience and capabilities of contractors to perform the proposed types of energy savings services and financial and performance information, from firms engaged in providing energy savings services; and

(ii) from the statements received, designate and prepare a list, with an update at least annually, of those firms that are qualified to provide energy savings services;

(B) require each agency to use the list prepared by the Secretary pursuant to subparagraph (A)(ii) unless the agency elects to develop an agency list of firms qualified to provide energy savings performance services using the same selection procedures and methods as are required of the Secretary in preparing such lists; and

(C) allow the head of each agency to—

(i) select firms from the list prepared pursuant to subparagraph (A)(ii) or the list prepared by the agency pursuant to subparagraph (B) to conduct discussions concerning a particular proposed energy savings project, including requesting a technical and price proposal from such selected firms for such project;

(ii) select from such firms the most qualified firm to provide energy savings services based on technical and price proposals and any other relevant information;

(iii) permit receipt of unsolicited proposals for energy savings performance contracting services from a firm that such agency has determined is qualified to provide such services under the procedures established pursuant to paragraph (1)(A), and require agency facility managers to place a notice in the Commerce Business Daily announcing they have received such a proposal and invite other similarly qualified firms to submit competing proposals; and

(iv) enter into an energy savings performance contract with a firm qualified under clause (iii), consistent with the procedures and methods established pursuant to paragraph (1)(A).

(3) A firm not designated as qualified to provide energy savings services under paragraph (2)(A)(i) or paragraph (2)(B) may request a review of such decision to be conducted in accordance with procedures to be developed by the board of contract appeals of the General Services Administration.

(c) Sunset requirements

The authority to enter into new contracts under this section shall cease to be effective on October 1, 2003.

(Pub. L. 95-619, title VIII, §801, as added Pub. L. 99-272, title VII, §7201(a), Apr. 7, 1986, 100 Stat. 142; amended Pub. L. 102-486, title I, §155(a), Oct. 24, 1992, 106 Stat. 2852; Pub. L. 104-106, div. E, title LVI, §5607(e), Feb. 10, 1996, 110 Stat. 702; Pub. L. 104-316, title I, §122(s), Oct. 19, 1996, 110 Stat. 3838; Pub. L. 105-388, §4(a), Nov. 13, 1998, 112

Stat. 3477; Pub. L. 106-291, title III, §335, Oct. 11, 2000, 114 Stat. 997; Pub. L. 106-469, title IV, §401, Nov. 9, 2000, 114 Stat. 2037.)

AMENDMENTS

2000—Subsec. (a)(2)(D)(iii). Pub. L. 106-291 and Pub. L. 106-469 amended cl. (iii) identically, substituting “\$10,000,000” for “\$750,000”.

1998—Subsec. (c). Pub. L. 105-388 substituted “on October 1, 2003” for “five years after the date procedures and methods are established under subsection (b) of this section”.

1996—Subsec. (b)(3). Pub. L. 104-106 struck out at end “Procedures developed by the board of contract appeals under this paragraph shall be substantially equivalent to procedures established under section 759(f) of title 40.”

Subsec. (c). Pub. L. 104-316 struck out par. (1) designation before “The authority to” and struck out par. (2) which required Comptroller General of the United States to report annually for five years on implementation of this section, including an assessment of various energy issues.

1992—Pub. L. 102-486 inserted subsec. (a) designation and heading, designated existing provisions as par. (1), and added par. (2) and subsecs. (b) and (c).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-106 effective 180 days after Feb. 10, 1996, see section 5701 of Pub. L. 104-106, Feb. 10, 1996, 110 Stat. 702.

ARCHITECT OF THE CAPITOL AS AGENCY ELECTING TO DEVELOP LIST OF FIRMS QUALIFIED TO PROVIDE ENERGY SAVING SERVICES AND AS AGENCY HEAD SELECTING FROM LIST

Pub. L. 103-211, title III, §402, Feb. 12, 1994, 108 Stat. 40, provided that: “The Architect of the Capitol shall be considered the agency for the purposes of the election in section 801(b)(2)(B) of the National Energy Conservation Policy Act [42 U.S.C. 8287(b)(2)(B)] and the head of the agency for purposes of subsection (b)(2)(C) of such section.”

ENERGY EFFICIENCY INCENTIVE

Pub. L. 100-456, div. A, title VII, §736, Sept. 29, 1988, 102 Stat. 2006, as amended by Pub. L. 101-189, div. A, title III, §331, Nov. 29, 1989, 103 Stat. 1417, provided that:

“(a) ENERGY CONSERVATION INCENTIVE.—In order to provide additional incentive for the Secretary of a military department to enter into contracts under title VIII of the National Energy Conservation Policy Act (42 U.S.C. 8287 et seq.), the Secretary may use the energy cost savings realized by the United States during the first five years under any such contract in the manner provided in subsection (b). The amount of savings available for use under subsection (b) shall be determined as provided in subsection (c) and shall remain available for obligation until expended.

“(b) AUTHORIZED USES OF SAVINGS.—The energy cost savings realized by the United States in each of the first five years under a contract may be used as follows:

“(1) One-half of the amount of such savings may be used for the acquisition of energy conserving measures for military installations, and such measures may be in addition to any such energy conserving measures acquired for military installations under contracts entered into under title VIII of the National Energy Conservation Policy Act.

“(2) One-half of the amount of such savings may be used for any morale, welfare, or recreation facility or service that is normally provided with appropriated funds, or for any minor military construction project (as defined in section 2805(a) of title 10, United States Code), that will enhance the quality of life of members of the Armed Forces at the military installation at which the energy cost savings were realized.

“(c) DETERMINATION OF AMOUNT OF SAVINGS.—Not more than 90 days after the end of each of the first five

years during which energy savings measures have been in operation under a contract entered into by the Secretary of a military department under title VIII of the National Energy Conservation Policy Act, the Secretary of the military department concerned shall determine the amount of energy cost savings realized by the United States under the terms of the contract during that year by reason of the energy savings measures acquired and installed at that installation pursuant to that contract.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 40 section 591.

§ 8287a. Payment of costs

Any amount paid by a Federal agency pursuant to any contract entered into under this subchapter may be paid only from funds appropriated or otherwise made available to the agency for fiscal year 1986 or any fiscal year thereafter for the payment of energy expenses (and related operation and maintenance expenses).

(Pub. L. 95-619, title VIII, §802, as added Pub. L. 99-272, title VII, §7201(a), Apr. 7, 1986, 100 Stat. 142.)

§ 8287b. Reports

Each Federal agency shall periodically furnish the Secretary of Energy with full and complete information on its activities under this subchapter, and the Secretary shall include in the report submitted to Congress under section 8260¹ of this title a description of the progress made by each Federal agency in—

- (1) including the authority provided by this subchapter in its contracting practices; and
- (2) achieving energy savings under contracts entered into under this subchapter.

(Pub. L. 95-619, title VIII, §803, as added Pub. L. 99-272, title VII, §7201(a), Apr. 7, 1986, 100 Stat. 142.)

REFERENCES IN TEXT

Section 8260 of this title, referred to in text, was omitted in the general revision of part B (§8251 et seq.) of subchapter III of this chapter by Pub. L. 100-615, §2(a), Nov. 5, 1988, 102 Stat. 3185.

§ 8287c. Definitions

For purposes of this subchapter, the following definitions apply:

(1) The term “Federal agency” means each authority of the Government of the United States, whether or not it is within or subject to review by another agency.

(2) The term “energy savings” means a reduction in the cost of energy, from a base cost established through a methodology set forth in the contract, utilized in an existing federally owned building or buildings or other federally owned facilities as a result of—

(A) the lease or purchase of operating equipment, improvements, altered operation and maintenance, or technical services; or

(B) the increased efficient use of existing energy sources by cogeneration or heat recovery, excluding any cogeneration process for other than a federally owned building or buildings or other federally owned facilities.

¹ See References in Text note below.

(3) The terms “energy savings contract” and “energy savings performance contract” mean a contract which provides for the performance of services for the design, acquisition, installation, testing, operation, and, where appropriate, maintenance and repair, of an identified energy conservation measure or series of measures at one or more locations. Such contracts—

(A) may provide for appropriate software licensing agreements; and

(B) shall, with respect to an agency facility that is a public building as such term is defined in section 3301(a)(5) of title 40, be in compliance with the prospectus requirements and procedures of section 3307 of title 40.

(4) The term “energy conservation measures” has the meaning given such term in section 8259(4) of this title.

(Pub. L. 95-619, title VIII, §804, as added Pub. L. 99-272, title VII, §7201(a), Apr. 7, 1986, 100 Stat. 143; amended Pub. L. 102-486, title I, §155(b), Oct. 24, 1992, 106 Stat. 2855; Pub. L. 105-388, §4(b), Nov. 13, 1998, 112 Stat. 3477.)

CODIFICATION

In par. (3)(B), “section 3301(a)(5) of title 40” substituted for “section 13(1) of the Public Buildings Act of 1959 (40 U.S.C. 612(1))” and “section 3307 of title 40” substituted for “section 7 of the Public Buildings Act of 1959 (40 U.S.C. 606)” on authority of Pub. L. 107-217, §5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

AMENDMENTS

1998—Par. (1). Pub. L. 105-388 amended par. (1) generally. Prior to amendment, par. (1) read as follows: “The term ‘Federal agency’ means an agency defined in section 551(1) of title 5.”

1992—Pub. L. 102-486, §155(b)(1), substituted “subchapter, the following definitions apply:” for “subchapter—” in introductory provisions

Par. (1). Pub. L. 102-486, §155(b)(2), substituted “The” for “the” and a period for “,” and “” at end.

Par. (2). Pub. L. 102-486, §155(b)(3), substituted “The term” for “the term”.

Pars. (3), (4). Pub. L. 102-486, §155(b)(4), added pars. (3) and (4).

§ 8287d. Assistance to Federal agencies in achieving energy efficiency in Federal facilities and operations

The Secretary in fiscal year 1999 and thereafter, shall continue the process begun in fiscal year 1998 of accepting funds from other Federal agencies in return for assisting agencies in achieving energy efficiency in Federal facilities and operations by the use of privately financed, energy savings performance contracts and other private financing mechanisms. The funds may be provided after agencies begin to realize energy cost savings; may be retained by the Secretary until expended; and may be used only for the purpose of assisting Federal agencies in achieving greater efficiency, water conservation and use of renewable energy by means of privately financed mechanisms, including energy savings performance contracts and utility incentive programs. These recovered funds will continue to be used to administer even greater en-

ergy efficiency, water conservation and use of renewable energy by means of privately financed mechanisms such as utility efficiency service contracts and energy savings performance contracts. The recoverable funds will be used for all necessary program expenses, including contractor support and resources needed, to achieve overall Federal energy management program objectives for greater energy savings. Any such privately financed contracts shall meet the provisions of the Energy Policy Act of 1992, Public Law 102-486 regarding energy savings performance contracts and utility incentive programs.

(Pub. L. 105-277, div. A, §101(e) [title II], Oct. 21, 1998, 112 Stat. 2681-231, 2681-278.)

REFERENCES IN TEXT

The Energy Policy Act of 1992, referred to in text, is Pub. L. 102-486, Oct. 24, 1992, 106 Stat. 2776, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 13201 of this title and Tables.

CODIFICATION

Section was enacted as part of Department of the Interior and Related Agencies Appropriations Act, 1999, and also as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, and not as part of the National Energy Conservation Policy Act which comprises this chapter.

SIMILAR PROVISIONS

Similar provisions were contained in the following prior appropriation act:

Pub. L. 105-83, title II, Nov. 14, 1997, 111 Stat. 1582.

CHAPTER 92—POWERPLANT AND INDUSTRIAL FUEL USE

SUBCHAPTER I—GENERAL PROVISIONS

- | | |
|-------|---|
| Sec. | |
| 8301. | Findings; statement of purposes. <ul style="list-style-type: none"> (a) Findings. (b) Statement of purposes. |
| 8302. | Definitions. <ul style="list-style-type: none"> (a) Generally. (b) Special rules relating to definitions of natural gas and alternate fuel. |
| 8303. | Territorial application. |

SUBCHAPTER II—NEW FACILITIES

PART A—PROHIBITIONS

- | | |
|-------|---|
| 8311. | Coal capability of new electric powerplants; certification of compliance. <ul style="list-style-type: none"> (a) General prohibition. (b) Capability to use coal or alternate fuel. (c) Applicability to base load powerplants. (d) Self-certification. |
| 8312. | Repealed. |

PART B—EXEMPTIONS

- | | |
|-------|--|
| 8321. | Temporary exemptions. <ul style="list-style-type: none"> (a) General exemption due to lack of alternate fuel supply, site limitations, or environmental requirements. (b) Temporary exemption based upon future use of synthetic fuels. (c), (d) Repealed. (e) Duration of temporary exemptions. |
| 8322. | Permanent exemptions. <ul style="list-style-type: none"> (a) Permanent exemption due to lack of alternate fuel supply, site limitations, environmental requirements, or adequate capital. |

- Sec.
- (b) Permanent exemption due to certain State or local requirements.
 - (c) Permanent exemption for cogeneration.
 - (d) Permanent exemption for certain mixtures containing natural gas or petroleum.
 - (e) Permanent exemption for emergency purposes.
 - (f) Permanent exemption for powerplants necessary to maintain reliability of service.
8323. General requirements for exemptions.
- (a) Use of mixtures or fluidized bed combustion not feasible.
 - (b) State approval required for powerplant.
 - (c) No alternative power supply in the case of a powerplant.
8324. Terms and conditions; compliance plans.
- (a) Terms and conditions generally.
 - (b) Compliance plans.
- SUBCHAPTER III—EXISTING FACILITIES
- PART A—PROHIBITIONS
8341. Existing electric powerplants.
- (a) Certification by powerplants of coal capability.
 - (b) Authority of Secretary to prohibit where coal or alternate fuel capability exists.
 - (c) Authority of Secretary to prohibit excessive use in mixtures.
 - (d) Amendment of subsection (a) and (c) certifications.
8342. Repealed.
8343. Rules relating to case-by-case and category prohibitions.
- (a) Case-by-case prohibitions.
 - (b) Prohibitions applicable to categories of facilities.
- PART B—EXEMPTIONS
8351. Temporary exemptions.
- (a) Temporary exemption due to lack of alternate fuel supply, site limitations, or environmental requirements.
 - (b) Temporary exemption based upon future use of synthetic fuels.
 - (c) Temporary exemption based upon use of innovative technologies.
 - (d) Temporary exemption for units to be retired.
 - (e) Temporary public interest exemption.
 - (f) Temporary exemption for peakload powerplants.
 - (g) Temporary exemption for powerplants where necessary to maintain reliability of service.
 - (h) Duration of temporary exemptions.
8352. Permanent exemptions.
- (a) Permanent exemption due to lack of alternate fuel supply, site limitations, or environmental requirements.
 - (b) Permanent exemption due to certain State or local requirements.
 - (c) Permanent exemption for cogeneration.
 - (d) Permanent exemption for certain fuel mixtures containing natural gas or petroleum.
 - (e) Permanent exemption for emergency purposes.
 - (f) Permanent exemption for peakload powerplants.
 - (g) Permanent exemption for intermediate load powerplants.

- Sec.
- (h) Permanent exemption for use of natural gas by certain powerplants with capacities of less than 250 million Btu's per hour.
 - (i) Permanent exemption for use of LNG by certain powerplants.
8353. General requirements for exemptions.
- (a) Use of mixtures or fluidized bed combustion not feasible.
 - (b) No alternative power supply in case of a powerplant.
8354. Terms and conditions; compliance plans.
- (a) Terms and conditions generally.
 - (b) Compliance plans.
- SUBCHAPTER IV—ADDITIONAL PROHIBITIONS;
EMERGENCY AUTHORITIES
- 8371, 8372. Repealed.
8373. Conservation in Federal facilities, contracts, and financial assistance programs.
- (a) Federal facilities.
 - (b) Federal contracts and financial assistance.
8374. Emergency authorities.
- (a) Coal allocation authority.
 - (b) Emergency prohibition on use of natural gas or petroleum.
 - (c) Emergency stays.
 - (d) Duration of emergency orders.
 - (e) Delegation of authority prohibited.
 - (f) Publication and reports to Congress of orders.
8375. Repealed.
- SUBCHAPTER V—SYSTEM COMPLIANCE OPTION
8391. Repealed.
- SUBCHAPTER VI—FINANCIAL ASSISTANCE
8401. Assistance to areas impacted by increased coal or uranium production.
- (a) Designation of impacted areas.
 - (b) Planning grants.
 - (c) Land acquisition and development grants.
 - (d) General requirements regarding assistance.
 - (e) "Coal or uranium development activities" and "site development" defined.
 - (f) Reports.
 - (g) Administration.
 - (h) Appropriations authorization.
 - (i) Protection from certain hazardous actions.
 - (j) Reorganization.
- 8401a. "Local government" defined.
8402. Loans to assist powerplant acquisitions of air pollution control equipment.
- (a) Authority to make loans.
 - (b) Limitations and conditions.
 - (c) Allocation and priorities.
 - (d) Definitions.
 - (e) Records.
 - (f) Default.
 - (g) Deposit of receipts.
 - (h) Authorization of appropriation.
- SUBCHAPTER VII—ADMINISTRATION AND
ENFORCEMENT
- PART A—PROCEDURES
8411. Administrative procedures.
- (a) General rulemaking.
 - (b) Notices of rules and orders imposing prohibitions.
 - (c) Petitions for exemptions.
 - (d) Public comment on prohibitions and exemptions.
 - (e) Transcript.

- Sec. (f) Environmental Protection Agency comment.
(g) Repealed.
(h) Coordination with other provisions of law.
8412. Judicial review.
(a) Publication and delay of prohibition or exemption to allow for review.
(b) Publication of denial of exemption or permit.
(c) Judicial review.
- PART B—INFORMATION AND REPORTING
8421. Information.
(a) Authority of Secretary.
(b) Authority of President and Federal Energy Regulatory Commission.
(c) Natural gas usage by electric utilities.
8422. Compliance report.
(a) Generally.
(b) Report on implementation of section 8484 Plan.
- PART C—ENFORCEMENT
8431. Notice of violation; other general provisions.
(a) Notice of violation.
(b) Individual liability of corporate personnel.
(c) Repealed.
(d) Federal agencies.
8432. Criminal penalties.
8433. Civil penalties.
(a) General civil penalty.
(b) Civil penalty for operation in excess of exemption.
(c) Repealed.
(d) Assessment.
8434. Injunctions and other equitable relief.
8435. Citizens suits.
(a) General rule.
(b) Notice to Secretary or agency head.
(c) Authority of Secretary to intervene.
(d) Costs of litigation.
(e) Other remedies to remain available.
- PART D—PRESERVATION OF CONTRACTUAL RIGHTS
8441. Preservation of contractual interest.
(a) Right to transfer contractual interests.
(b) Determination of consideration.
(c) Restrictions on transfers unenforceable.
(d) Contractual obligations unaffected.
(e) Definitions.
(f) Coordination with Natural Gas Act.
(g) Volume limitation.
(h) Judicial review.
- PART E—STUDIES
8451. National coal policy study.
(a) Study.
(b) Report.
(c) Authorization of appropriations.
8452. Repealed.
8453. Impact on employees.
(a) Evaluation.
(b) Investigation and hearings.
(c) Rule of construction.
8454. Study of compliance problem of small electric utility systems.
(a) Study.
(b) Authorization of appropriations.
8455. Repealed.
8456. Socioeconomic impacts of increased coal production and other energy development.
(a) Committee.
(b) Functions of committee.

- Sec. (c) Report.
8457. Use of petroleum and natural gas in combustors.

PART F—APPROPRIATIONS AUTHORIZATION

8461. Authorization of appropriations.

PART G—COORDINATION WITH OTHER PROVISIONS OF LAW

8471. Effect on environmental requirements.
(a) Compliance with applicable environmental requirements.
(b) Local environmental requirements.
8472. Effect of orders under section 792 of title 15.
(a) Effect of construction orders.
(b) Effect of prohibition orders.
(c) Validity of orders.
8473. Environmental impact statements under section 4332 of this title.

SUBCHAPTER VIII—MISCELLANEOUS PROVISIONS

- 8481, 8482. Repealed.
8483. Submission of reports.
8484. Electric utility conservation plan.
(a) Applicability.
(b) Submission and approval of plan.
(c) Contents of plan.
(d) Plan approval.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 15 section 717y.

SUBCHAPTER I—GENERAL PROVISIONS

§ 8301. Findings; statement of purposes

(a) Findings

The Congress finds that—

(1) the protection of public health and welfare, the preservation of national security, and the regulation of interstate commerce require the establishment of a program for the expended¹ use, consistent with applicable environmental requirements, of coal and other alternate fuels as primary energy sources for existing and new electric powerplants; and

(2) the purposes of this chapter are furthered in cases in which coal or other alternate fuels are used by electric powerplants, consistent with applicable environmental requirements, as primary energy sources in lieu of natural gas or petroleum.

(b) Statement of purposes

The purpose² of this chapter, which shall be carried out in a manner consistent with applicable environmental requirements, are—

(1) to reduce the importation of petroleum and increase the Nation's capability to use indigenous energy resources of the United States to the extent such reduction and use further the goal of national energy self-sufficiency and otherwise are in the best interests of the United States;

(2) to encourage and foster the greater use of coal and other alternate fuels, in lieu of natural gas and petroleum, as a primary energy source;

(3) to the extent permitted by this chapter, to encourage the use of synthetic gas derived from coal or other alternate fuels;

¹ So in original. Probably should be "expanded".

² So in original. Probably should be "purposes".

(4) to encourage the rehabilitation and upgrading of railroad service and equipment necessary to transport coal to regions or States which can use coal in greater quantities;

(5) to encourage the modernization or replacement of existing and new electric powerplants which utilize natural gas or petroleum as a primary energy source and which cannot utilize coal or other alternate fuels where to do so furthers the conservation of natural gas and petroleum;

(6) to require that existing and new electric powerplants which utilize natural gas, petroleum, or coal or other alternate fuels pursuant to this chapter comply with applicable environmental requirements;

(7) to insure that all Federal agencies utilize their authorities fully in furtherance of the purposes of this chapter by carrying out programs designed to prohibit or discourage the use of natural gas and petroleum as a primary energy source and by taking such actions as lie within their authorities to maximize the efficient use of energy and conserve natural gas and petroleum in programs funded or carried out by such agencies;

(8) to insure that adequate supplies of natural gas are available for essential agricultural uses (including crop drying, seed drying, irrigation, fertilizer production, and production of essential fertilizer ingredients for such uses);

(9) to reduce the vulnerability of the United States to energy supply interruptions; and

(10) to regulate interstate commerce.

(Pub. L. 95-620, title I, §102, Nov. 9, 1978, 92 Stat. 3291; Pub. L. 100-42, §1(c)(1), May 21, 1987, 101 Stat. 310.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 95-620, Nov. 9, 1978, 92 Stat. 3289, as amended, known as the Powerplant and Industrial Fuel Use Act of 1978, which enacted this chapter, amended sections 6211 and 7193 of this title, section 796 of Title 15, Commerce and Trade, section 1202 of Title 19, Customs Duties, sections 821, 822, and 825 of Title 45, Railroads, and section 26b of former Title 49, Transportation, and enacted provisions set out as notes under this section and section 822 of Title 45. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

AMENDMENTS

1987—Subsec. (a)(1), (2). Pub. L. 100-42, §1(c)(1)(A), struck out "and major fuel-burning installations" after "electric powerplants".

Subsec. (b)(2). Pub. L. 100-42, §1(c)(1)(B), redesignated par. (3) as (2) and struck out former par. (2) relating to conservation of natural gas and petroleum for uses for which there are no alternatives.

Subsec. (b)(3), (4). Pub. L. 100-42, §1(c)(1)(B), redesignated pars. (4) and (5) as (3) and (4), respectively. Former par. (3) redesignated (2).

Subsec. (b)(5). Pub. L. 100-42, §1(c)(1), redesignated par. (7) as (5) and struck out "and major fuel-burning installations" after "electric powerplants". Former par. (5) redesignated (4).

Subsec. (b)(6). Pub. L. 100-42, §1(c)(1), redesignated par. (8) as (6) and struck out "and major fuel-burning installations" after "electric powerplants", and struck out former par. (6) which related to prohibition or minimization of use of natural gas and petroleum as a primary energy source.

Subsec. (b)(7) to (10). Pub. L. 100-42, §1(c)(1)(B), redesignated former pars. (9) to (12) as (7) to (10), respec-

tively. Former pars. (7) and (8) redesignated (5) and (6), respectively.

EFFECTIVE DATE

Section 901 of Pub. L. 95-620 provided that: "Unless otherwise provided in this Act [see Short Title note set out below] the provisions of this Act shall take effect 180 days after the date of the enactment of this Act [Nov. 9, 1978], except that the Secretary may issue rules pursuant to such provisions at any time after such date of enactment, which rules may take effect no earlier than 180 days after such date of enactment."

SHORT TITLE

Section 101(a) of Pub. L. 95-620 provided that: "This Act [enacting this chapter, amending sections 6211 and 7193 of this title, section 796 of Title 15, Commerce and Trade, section 1202 of Title 19, Customs Duties, sections 821, 822 and 825 of Title 45, Railroads, and section 26b of former Title 49, Transportation, and enacting provisions set out as notes under this section and section 822 of Title 45] may be cited as the 'Powerplant and Industrial Fuel Use Act of 1978'."

EXEMPTION FOR CERTAIN ELECTRIC POWERPLANTS AND TEMPORARY EXEMPTION ISSUED UNDER SECTION 8321(d) AS EFFECTIVE PRIOR TO 180 DAYS AFTER NOVEMBER 9, 1978

Section 902 of Pub. L. 95-620 provided that:

"(a) EXEMPTIONS IN THE CASE OF CERTAIN POWERPLANTS.—In the case of—

"(1) any electric powerplant which, as of April 20, 1977, has received a final decision from the appropriate State agency authorizing the construction of such powerplant, and

"(2) any electric powerplant (A) consisting of one or more combined cycle units owned or operated by an electric utility which serves at least 2,000,000 customers and (B) for which an application has been filed for at least one year before the date of the enactment of this Act [Nov. 9, 1978] with the appropriate State agency for authorization to construct such powerplant,

the Secretary may receive, consider, and grant (or deny) any petition for an exemption under title II or III [subchapters II and III of this chapter] notwithstanding section 901 [section 901 of Pub. L. 95-620, set out as a note above] or the fact that all rules related to such petition have not been prescribed at the time.

"(b) EXEMPTIONS UNDER SECTION 211(d).—The Secretary may receive, consider, and grant (or deny) any petition for any exemption under section 211(d) [section 8321(d) of this title] notwithstanding section 901 [section 901 of Pub. L. 95-620, set out as a note above], or the fact that all rules related to such petition have not been prescribed at the time."

§ 8302. Definitions

(a) Generally

Unless otherwise expressly provided, for the purposes of this chapter—

(1) The term "Secretary" means the Secretary of Energy.

(2) The term "person" means any (A) individual, corporation, company, partnership, association, firm, institution, society, trust, joint venture, or joint stock company, (B) any State, the District of Columbia, Puerto Rico, and any territory or possession of the United States, or (C) any agency or instrumentality (including any municipality) thereof.

(3)(A) Except as provided in subparagraph (B), the term "natural gas" means any fuel consisting in whole or in part of—

- (i) natural gas;
- (ii) liquid petroleum gas;

- (iii) synthetic gas derived from petroleum or natural gas liquids; or
- (iv) any mixture of natural gas and synthetic gas.

(B) The term "natural gas" does not include—

(i) natural gas which is commercially unmarketable (either by reason of quality or quantity), as determined under rules prescribed by the Secretary;

(ii) natural gas produced by the user from a well the maximum efficient production rate of which is less than 250 million Btu's per day;

(iii) natural gas to the extent the exclusion of such gas is provided for in subsection (b) of this section; or

(iv) synthetic gas, derived from coal or other alternate fuel, the heat content of which is less than 600 Btu's per cubic foot at 14.73 pounds per square inch (absolute) and 60 degrees Fahrenheit.

(4) The term "petroleum" means crude oil and products derived from crude oil, other than—

(A) synthetic gas derived from crude oil;

(B) liquid petroleum gas;

(C) liquid, solid, or gaseous waste byproducts of refinery operations which are commercially unmarketable, either by reason of quality or quantity, as determined under rules prescribed by the Secretary; or

(D) petroleum coke or waste gases from industrial operations.

(5) The term "coal" means anthracite and bituminous coal, lignite, and any fuel derivative thereof.

(6) The term "alternate fuel" means electricity or any fuel, other than natural gas or petroleum, and includes—

(A) petroleum coke, shale oil, uranium, biomass, and municipal, industrial, or agricultural wastes, wood, and renewable and geothermal energy sources;

(B) liquid, solid, or gaseous waste byproducts of refinery or industrial operations which are commercially unmarketable, either by reason of quality or quantity, as determined under rules prescribed by the Secretary; and

(C) waste gases from industrial operations.

(7)(A) The terms "electric powerplant" and "powerplant" mean any stationary electric generating unit, consisting of a boiler, a gas turbine, or a combined cycle unit, which produces electric power for purposes of sale or exchange and—

(i) has the design capability of consuming any fuel (or mixture thereof) at a fuel heat input rate of 100 million Btu's per hour or greater; or

(ii) is in a combination of two or more electric generating units which are located at the same site and which in the aggregate have a design capability of consuming any fuel (or mixture thereof) at a fuel heat input rate of 250 million Btu's per hour or greater.

(B) For purposes of subparagraph (A), the term "electric generating unit" does not include—

(i) any electric generating unit subject to the licensing jurisdiction of the Nuclear Regulatory Commission; and

(ii) any cogeneration facility, less than half of the annual electric power generation of which is sold or exchanged for resale, as determined by the Secretary.

(C) For purposes of clause (ii) of subparagraph (A), there shall be excluded any unit which has a design capability to consume any fuel (including any mixture thereof) that does not equal or exceed 100 million Btu's per hour and the exclusion of which for purposes of such clause is determined by the Secretary, by rule, to be appropriate.

(8) The term "new electric powerplant" means—

(A) any electric powerplant for which construction or acquisition began on a date on or after November 9, 1978; and

(B) any electric powerplant for which construction or acquisition began on a date after April 20, 1977, and before November 9, 1978, unless the Secretary finds the construction or acquisition of such powerplant could not be canceled, rescheduled, or modified to comply with the applicable requirements of this chapter without—

(i) adversely affecting electric system reliability (as determined by the Secretary after consultation with the Federal Energy Regulatory Commission and the appropriate State authority), or

(ii) imposing substantial financial penalty (as determined under rules prescribed by the Secretary).

(9)(A) The term "existing electric powerplant" means any electric powerplant other than a new electric powerplant.

(B) Any powerplant treated under this chapter as an existing electric powerplant shall not be treated thereafter as a new electric powerplant merely by reason of a transfer of ownership.

(10)(A) The terms "major fuel-burning installation" and "installation" means a stationary unit consisting of a boiler, gas turbine unit, combined cycle unit, or internal combustion engine which—

(i) has a design capability of consuming any fuel (or mixture thereof) at a fuel heat input rate of 100 million Btu's per hour or greater; or

(ii) is in a combination of two or more such units which are located at the same site and which in the aggregate have a design capability of consuming any fuel (or mixture thereof) at a fuel heat input rate of 250 million Btu's per hour or greater.

(B) The terms "major fuel-burning installation" and "installation" do not include—

(i) any electric powerplant; or

(ii) any pump or compressor used solely in connection with the production, gathering, transmission, storage, or distribution of gases or liquids, but only if there is certification to the Secretary of such use (in accordance with rules prescribed by the Secretary).

(C) For purposes of clause (ii) of subparagraph (A), there shall be excluded any unit

which has a design capability to consume any fuel (including any mixture thereof) that does not equal or exceed 100 million Btu's per hour and the exclusion of which for purposes of such clause is determined by the Secretary, by rule to be appropriate.

(11) The term "new major fuel-burning installation" means—

(A) any major fuel-burning installation on which construction or acquisition began on a date on or after November 9, 1978; and

(B) any major fuel-burning installation on which construction or acquisition began on a date after April 20, 1977, and before November 9, 1978, unless the Secretary finds the construction or acquisition of such installation could not be canceled, rescheduled, or modified to comply with applicable requirements of this chapter without—

(i) incurring significant operational detriment of the unit (as determined by the Secretary); or

(ii) imposing substantial financial penalty (as determined under rules prescribed by the Secretary).

(12)(A) The term "existing major fuel-burning installation" means any installation which is not a new major fuel-burning installation.

(B) Such term does not include a major fuel-burning installation for the extraction of mineral resources located—

(i) on or above the Continental Shelf of the United States, or

(ii) on wetlands areas adjacent to the Continental Shelf of the United States,

where coal storage is not practicable or would produce adverse effects on environmental quality.

(C) Any installation treated as an existing major fuel-burning installation shall not be treated thereafter as a new major fuel-burning installation merely by reason of a transfer of ownership.

(13) The term "construction or acquisition began" means, when used with reference to a certain date, that—

(A) construction in accordance with final drawings or equivalent design documents (as defined by the Secretary, by rule) began on or after that date; or

(B)(i) construction or acquisition had been contracted for on or after that date, or (ii) if the construction or acquisition had been contracted for before such date, such construction or acquisition could be canceled, rescheduled, or modified to comply with the applicable requirements of this chapter—

(I) without imposing substantial financial penalty, as determined under rules prescribed by the Secretary; and

(II) in the case of a powerplant, without adversely affecting electric system reliability (as determined by the Secretary after consultation with the Federal Energy Regulatory Commission and the appropriate State authority).

(14) The term "construction" means substantial onsite construction or reconstruction, as defined by rule by the Secretary.

(15) The term "primary energy source" means the fuel or fuels used by any existing or new electric powerplant, except it does not include, as determined under rules prescribed by the Secretary—

(A) the minimum amounts of fuel required for unit ignition, startup, testing, flame stabilization, and control uses, and

(B) the minimum amounts of fuel required to alleviate or prevent (i) unanticipated equipment outages and (ii) emergencies directly affecting the public health, safety, or welfare which would result from electric power outages.

(16) The term "site limitation" means, when used with respect to any powerplant, any specific physical limitation associated with a particular site which relates to the use of coal or other alternate fuels as a primary energy source for such powerplant, such as—

(A) inaccessibility to coal or other alternate fuels;

(B) lack of transportation facilities for coal or other alternate fuels;

(C) lack of adequate land or facilities for the handling, use, and storage of coal or other alternate fuels;

(D) lack of adequate land or facilities for the control or disposal of wastes from such powerplant, including lack of pollution control equipment or devices necessary to assure compliance with applicable environmental requirements; and

(E) lack of an adequate and reliable supply of water, including water for use in compliance with applicable environmental requirements.

(17) The term "applicable environmental requirements" includes—

(A) any standard, limitation, or other requirement established by or pursuant to Federal or State law (including any final order of any Federal or State court) applicable to emissions of environmental pollutants (including air and water pollutants) or disposal of solid waste residues resulting from the use of coal or other alternate fuels or natural gas or petroleum as a primary energy source or from the operation of pollution control equipment in connection with such use, taking into account any variance of law granted or issued in accordance with Federal law or in accordance with State law to the extent consistent with Federal law; and

(B) any other standard, limitation, or other requirement established by, or pursuant to, the Clean Air Act [42 U.S.C. 7401 et seq.], the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.], the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.], or the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.].

(18)(A) The term "peakload powerplant" means a powerplant the electrical generation of which in kilowatt hours does not exceed, for any 12-calendar-month period, such powerplant's design capacity multiplied by 1,500 hours.

(B) The term "intermediate load powerplant" means a powerplant (other than a peak-

load powerplant), the electrical generation of which in kilowatt hours does not exceed, for any 12-calendar-month period, such powerplant's design capacity multiplied by 3,500 hours.

(C) The term "base load powerplant" means a powerplant the electrical generation of which in kilowatt hours exceeds, for any 12-calendar-month period, such powerplant's design capacity multiplied by 3,500 hours.

(D) Not later than 90 days after November 9, 1978, the Federal Energy Regulatory Commission shall prescribe rules under which a powerplant's design capacity may be determined for purposes of this paragraph.

(19) the¹ term "cogeneration facility" means an electric powerplant which produces—

(A) electric power; and

(B) any other form of useful energy (such as steam, gas, or heat) which is, or will be, used for industrial, commercial, or space heating purposes.

(20) The term "cost", unless the context indicates otherwise, means total costs (both operating and capital) incurred over the estimated remaining useful life of an electric powerplant, discounted to present value, as determined by the Secretary (in the case of powerplants, in consultation with the State regulatory authorities). In the case of an electric powerplant, such costs shall take into account any change required in the use of existing electric powerplants in the relevant dispatching system and other economic factors which are included in planning for the production, transmission, and distribution of electric power within such system.

(21) The term "State regulatory authority" means any State agency which has rate-making authority with respect to the sale of electricity by any State regulated electric utility.

(22) The term "air pollution control agency" has the same meaning as given such term by section 302(b) of the Clean Air Act [42 U.S.C. 7602(b)].

(23) The term "electric utility" means any person, including any affiliate, or Federal agency which sells electric power.

(24) The term "affiliate", when used in relation to a person, means another person which controls, is controlled by, or is under common control with, such person.

(25) The term "Federal agency" means each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include—

(A) the Congress;

(B) the courts of the United States;

(C) the governments of the territories or possessions of the United States; and

(D) the government of the District of Columbia.

(26) The term "Btu" means British thermal unit.

(27) the term "Mcf" means, when used in relation to natural gas, 1,000 cubic feet of natural gas.

(28) The term "mixture", when used in relation to fuels used in a unit, means a mixture of such fuels or a combination of such fuels used simultaneously or alternately in such unit.

(29) The term "fluidized bed combustion" means combustion of fuel in connection with a bed of inert material, such as limestone or dolomite, which is held in a fluid-like state by the means of air or other gases being passed through such materials.

(b) Special rules relating to definitions of natural gas and alternate fuel

(1) Subject to paragraph (2), natural gas which is to be used by a powerplant shall for purposes of this chapter (other than this subsection), be excluded from the definition of "natural gas" under subsection (a)(3)(B)(iii) of this section and shall be included within the definition of "alternate fuel" under subsection (a)(6) of this section if the person proposing to use such natural gas certifies to the Secretary (together with such supporting documents as the Secretary may require) that—

(A) such person owns, or is entitled to receive, at the point of manufacture, synthetic gas derived from coal or another alternate fuel;

(B) the Btu content of such synthetic gas is equal to, or greater than, the Btu content of the natural gas to be covered by this subsection by reason of such certification, plus the approximate Btu content of any natural gas consumed or lost in transportation;

(C) such person delivers, or arranges for the delivery of, such synthetic gas to a pipeline or pipelines which by transport or displacement are capable of delivering such synthetic gas, mixed with natural gas, to such person; and

(D) all necessary permits, licenses, or approvals from appropriate Federal, State, and local agencies (including Indian tribes) have been obtained for construction and operation of the facilities for the manufacture of the synthetic gas involved.

(2) The application of paragraph (1) with respect to the use of natural gas by any powerplant shall be conditioned on the person using such natural gas submitting to the Secretary a report not later than one year after certification is made under paragraph (1), and annually thereafter, containing the following information:

(A) the source, amount, quality, and point of delivery to the pipeline of the synthetic gas to which paragraph (1) applied during the annual period ending with the calendar month preceding the date of such report; and

(B) the amount, quality, and point of delivery by the pipeline to such person of the natural gas covered by paragraph (1) which is used by the person during such annual period.

(3) Repealed. Pub. L. 100-42, §1(c)(2)(H), May 21, 1987, 101 Stat. 310.

(4) For purposes of this subsection, the term "pipeline" means any interstate or intrastate pipeline or local distribution company.

(Pub. L. 95-620, title I, §103, Nov. 9, 1978, 92 Stat. 3292; Pub. L. 100-42, §1(c)(2), May 21, 1987, 101 Stat. 310.)

¹ So in original. Probably should be capitalized.

REFERENCES IN TEXT

The Clean Air Act, referred to in subsec. (a)(17)(B), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§7401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

The Federal Water Pollution Control Act, referred to in subsec. (a)(17)(B), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92-500, §2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Solid Waste Disposal Act, referred to in subsec. (a)(17)(B), is title II of Pub. L. 89-272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§6901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

The National Environmental Policy Act of 1969, referred to in subsec. (a)(17)(B), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

AMENDMENTS

1987—Subsec. (a)(13)(B)(ii). Pub. L. 100-42, §1(c)(2)(A), inserted “and” at end of subcl. (I), substituted period for “; or” at end of subcl. (II), and struck out subcl. (III) which read as follows: “in the case of a major fuel-burning installation, without incurring significant operational detriment of the unit (as determined by the Secretary).”

Subsec. (a)(15). Pub. L. 100-42, §1(c)(2)(B), struck out “or major fuel-burning installation” after “electric powerplant”.

Subsec. (a)(16). Pub. L. 100-42, §1(c)(2)(C), struck out “or installation” after “any powerplant” in introductory provisions and after “such powerplant” in introductory provisions and subpar. (D).

Subsec. (a)(19). Pub. L. 100-42, §1(c)(2)(D), struck out “or a major fuel-burning installation” after “electric powerplant”.

Subsec. (a)(20). Pub. L. 100-42, §1(c)(2)(E), struck out “or major fuel-burning installation” after “life of an electric powerplant”.

Subsec. (b)(1). Pub. L. 100-42, §1(c)(2)(F), struck out “or major fuel-burning installation” after “used by a powerplant” in introductory provisions.

Subsec. (b)(1)(D). Pub. L. 100-42, §1(c)(2)(G), substituted a period for “, except that for purposes of the prohibition under section 8311(2) of this title against powerplants being constructed without the capability of using coal or another alternate fuel, only permits, licenses, and approvals for the construction of such synthetic gas facilities shall be required under this subparagraph to be certified and documented.”

Subsec. (b)(2). Pub. L. 100-42, §1(c)(2)(F), struck out “or major fuel-burning installation” after “by any powerplant” in introductory provisions.

Subsec. (b)(3). Pub. L. 100-42, §1(c)(2)(H), struck out par. (3) which read as follows: “In the case of any boiler subject to a prohibition under section 8371 of this title, the preceding provisions of this subsection shall apply with respect to such boiler to the same extent and in the same manner as they apply in the case of major fuel-burning installations.”

TRANSFER OF FUNCTIONS

For transfer of certain functions from Nuclear Regulatory Commission to Chairman thereof, see Reorg. Plan No. 1 of 1980, 45 F.R. 40561, 94 Stat. 3585, set out as a note under section 5841 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 15 section 717z.

§ 8303. Territorial application

The provisions of this chapter shall only apply within the contiguous 48 States and the District of Columbia.

(Pub. L. 95-620, title I, §104, Nov. 9, 1978, 92 Stat. 3298; Pub. L. 100-42, §1(c)(3), May 21, 1987, 101 Stat. 311.)

AMENDMENTS

1987—Pub. L. 100-42 amended section generally. Prior to amendment, section read as follows: “The provisions of this chapter shall apply in all the States, Puerto Rico, and the territories and possessions of the United States, except that—

“(1) the provisions of subchapters II and III of this chapter (other than section 8341 of this title) shall only apply to powerplants and installations situated within the contiguous 48 States, Alaska, and the District of Columbia; and

“(2) the provisions of section 8341 of this title shall only apply to powerplants situated within the contiguous 48 States and the District of Columbia.”

SUBCHAPTER II—NEW FACILITIES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 8472 of this title.

PART A—PROHIBITIONS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 8321, 8322 of this title.

§ 8311. Coal capability of new electric powerplants; certification of compliance

(a) General prohibition

Except to such extent as may be authorized under part B, no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source.

(b) Capability to use coal or alternate fuel

An electric powerplant has the capability to use coal or another alternate fuel for purposes of this section if such electric powerplant—

(1) has sufficient inherent design characteristics to permit the addition of equipment (including all necessary pollution devices) necessary to render such electric powerplant capable of using coal or another alternate fuel as its primary energy source; and

(2) is not physically, structurally, or technologically precluded from using coal or another alternate fuel as its primary energy source.

Capability to use coal or another alternate fuel shall not be interpreted to require any such powerplant to be immediately able to use coal or another alternate fuel as its primary energy source on its initial day of operation.

(c) Applicability to base load powerplants

(1) This section shall apply only to base load powerplants, and shall not apply to peakload powerplants or intermediate load powerplants.

(2) For the purposes of this section, hours of electrical generation pursuant to emergency situations, as defined by the Secretary and reported to the Secretary, shall not be included in a determination of whether a powerplant is being operated as a base load powerplant.

(d) Self-certification

(1) In order to meet the requirement of subsection (a) of this section, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source shall certify to the Secretary prior to construction, or prior to operation as a base load powerplant in the case of a new electric powerplant operated as a peakload powerplant or intermediate load powerplant, that such powerplant has capability to use coal or another alternate fuel, within the meaning of subsection (b) of this section. Such certification shall be effective to establish compliance with the requirement of subsection (a) of this section as of the date it is filed with the Secretary. Within 15 days after receipt of a certification submitted pursuant to this paragraph, the Secretary shall publish in the Federal Register a notice reciting that the certification has been filed.

(2) The Secretary, within 60 days after the filing of a certification under paragraph (1), may require the owner or operator of such powerplant to provide such supporting documents as may be necessary to verify the certification.

(Pub. L. 95-620, title II, §201, Nov. 9, 1978, 92 Stat. 3298; Pub. L. 100-42, §1(c)(4)(A), May 21, 1987, 101 Stat. 311.)

AMENDMENTS

1987—Pub. L. 100-42 substituted “Coal capability of new electric powerplants; certification of compliance” for “New electric powerplants” in section catchline and amended text generally. Prior to amendment, text read as follows: “Except to such extent as may be authorized under part B—

“(1) natural gas or petroleum shall not be used as a primary energy source in any new electric powerplant; and

“(2) no new electric powerplant may be constructed without the capability to use coal or any other alternate fuel as a primary energy source.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8321, 8323 of this title.

§ 8312. Repealed. Pub. L. 100-42, § 1(a)(1), May 21, 1987, 101 Stat. 310

Section, Pub. L. 95-620, title II, §202, Nov. 9, 1978, 92 Stat. 3298, prohibited, except to extent authorized under part B, use of natural gas or petroleum as primary energy source in new major fuel-burning installation consisting of a boiler, and authorized Secretary to prohibit nonboilers from using natural gas or petroleum.

PART B—EXEMPTIONS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 8311 of this title.

§ 8321. Temporary exemptions**(a) General exemption due to lack of alternate fuel supply, site limitations, or environmental requirements**

After consideration of a petition (and comments thereon) for an exemption for a powerplant from the prohibitions of part A, the Secretary shall, by order, grant an exemption under this subsection for the use of natural gas or pe-

troleum, if he finds that the petitioner has demonstrated that for the period of the proposed exemption, despite diligent good faith efforts—

(1) it is likely that an adequate and reliable supply of coal or other alternate fuel of the quality necessary to conform with design and operational requirements for use as a primary energy source will not be available to such powerplant at a cost (taking into account associated facilities for the transportation and use of such fuel) which, based upon the best practicable estimates, does not substantially exceed the cost, as determined by rule by the Secretary, of the fuel that would be used as a primary energy source;

(2) one or more site limitations exist which would not¹ permit the location or operation of such a powerplant using coal or any other alternate fuel as a primary energy source; or

(3) the prohibitions of section 8311 of this title could not be satisfied without violating applicable environmental requirements.

(b) Temporary exemption based upon future use of synthetic fuels

After consideration of a petition (and comments thereon) for an exemption for a powerplant from the prohibitions of part A, the Secretary shall, by order, grant an exemption under this subsection for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that—

(1) the petitioner will comply with the prohibitions of part A by the end of the proposed exemption by the use of a synthetic fuel derived from coal or another alternate fuel; and

(2) the petitioner is not able to comply with such prohibitions by the use of such synthetic fuel until the end of the proposed exemption.

The effectiveness of an exemption under this subsection is conditioned on the petitioner filing and maintaining a compliance plan meeting the requirements of section 8324(b) of this title.

(c), (d) Repealed. Pub. L. 100-42, § 1(c)(5)(E), May 21, 1987, 101 Stat. 312**(e) Duration of temporary exemptions**

(1) Except as provided in paragraph (2), exemptions under this section for any powerplant may not exceed, taking into account any extension or renewal, 5 years.

(2)(A) An exemption under subsection (a)(1) of this section may be granted for a period of more than 5 years, but may not exceed, taking into account any extension or renewal, 10 years.

(B) An exemption under subsection (b) of this section may be extended beyond the 5-year limit under paragraph (1), but such exemption, so extended, may not exceed 10 years.

(3) If an exemption is granted for any powerplant before the powerplant is placed in service, the period before it is placed in service shall not be taken into account in computing the 5-year and the 10-year limitations of paragraphs (1) and (2).

(Pub. L. 95-620, title II, §211, Nov. 9, 1978, 92 Stat. 3299; Pub. L. 100-42, §1(c)(5), May 21, 1987, 101 Stat. 312.)

¹ So in original. Probably should be “not”.

AMENDMENTS

1987—Subsec. (a). Pub. L. 100-42, §1(c)(5)(A)-(D), substituted “from” for “or installation from one or more of” in introductory provisions, substituted “the fuel that would be used” for “using imported petroleum” and struck out “or installation” after “powerplant” in par. (1), struck out “or installation” after “powerplant” in par. (2), and struck out “or 8312” after “8311” in par. (3).

Subsec. (b). Pub. L. 100-42, §1(c)(5)(A), substituted “from” for “or installation from one or more of”.

Subsec. (c). Pub. L. 100-42, §1(c)(5)(E), struck out subsec. (c) which read as follows: “After consideration of a petition (and comments thereon) for an exemption for a powerplant or installation from one or more of the prohibitions of part A, the Secretary may, by order, grant an exemption under this subsection for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that for the period of the proposed exemption the issuance of such exemption would be in the public interest and would be consistent with the purposes of this chapter.”

Subsec. (d). Pub. L. 100-42, §1(c)(5)(E), struck out subsec. (d) which read as follows: “After consideration of a petition (and comments thereon) for an exemption from the prohibition of the use of petroleum under section 8312 of this title for an installation with a design capacity of consuming any fuel (or any mixture thereof) at a fuel heat input rate which does not exceed 300 million Btu’s per hour, the Secretary may, by order, grant an exemption under this subsection for the use of petroleum if he finds that the petitioner has demonstrated, by the existence of binding contracts or other evidence, including appropriate State construction permits, that he will use coal or another alternate fuel for at least 75 percent of the annual fuel heat input rate upon the expiration of such exemption. For provisions relating to authority to receive, consider and granting (or denying) certain petitions [sic] for an exemption under this subsection, see section 902(b).”

Subsec. (e)(1), (3). Pub. L. 100-42, §1(c)(5)(B), struck out “or installation” after “powerplant” wherever appearing.

EXEMPTION FOR CERTAIN ELECTRIC POWERPLANTS AND TEMPORARY EXEMPTION ISSUED UNDER SUBSECTION (d) AS EFFECTIVE PRIOR TO 180 DAYS AFTER NOVEMBER 9, 1978

For effectiveness of exemption for certain electric powerplants and the temporary exemption issued under subsec. (d) of this section as prior to 180 days after Nov. 9, 1978, see section 902 of Pub. L. 95-620, set out as a note under section 8301 of this title.

§ 8322. Permanent exemptions

(a) Permanent exemption due to lack of alternate fuel supply, site limitations, environmental requirements, or adequate capital

(1) After consideration of a petition (and comments thereon) for an exemption for a powerplant from the prohibitions of part A, the Secretary shall, by order, grant a permanent exemption under this subsection with respect to natural gas or petroleum, if he finds that the petitioner has demonstrated that despite diligent good faith efforts—

(A) it is likely that an adequate and reliable supply of coal or other alternate fuel of the quality necessary to conform with design and operational requirements for use as a primary energy source (i) will not be available within the first 10 years of the useful life of the powerplant, or (ii) will not be available at a cost (taking into account associated facilities for the transportation and use of such fuel) which, based upon the best practicable esti-

mates, does not substantially exceed the cost, as determined by rule by the Secretary, of the fuel that would be used as a primary energy source during the useful life of the powerplant involved;

(B) one or more site limitations exist which would not permit the location or operation of such powerplant using coal or any other alternate fuel as a primary energy source;

(C) the prohibitions of part A could not be satisfied without violating applicable environmental requirements; or

(D) the required use of coal or any other alternate fuel would not allow the petitioner to obtain adequate capital for the financing of such powerplant.

(2) The demonstration required to be made by a petitioner under paragraph (1) shall be made with respect to the site of such powerplant and reasonable alternative sites.

(b) Permanent exemption due to certain State or local requirements

After consideration of a petition (and comments thereon) for an exemption for a powerplant from the prohibitions of part A, the Secretary may, by order, grant a permanent exemption under this subsection with respect to natural gas or petroleum, if he finds that the petitioner has demonstrated that—

(1) with respect to the proposed site of the powerplant, the construction or operation of such a facility using coal or any other alternate fuel is infeasible because of a State or local requirement (other than a building code or a nuisance or zoning law);

(2) there is no reasonable alternative site for such powerplant which meets the criteria set forth in subsection (a)(1)(A) through (D) of this section; and

(3) the granting of the exemption would be in the public interest and would be consistent with the purposes of this chapter.

(c) Permanent exemption for cogeneration

After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of part A for a cogeneration facility, the Secretary may, by order, grant a permanent exemption under this subsection with respect to natural gas or petroleum, if he—

(1) finds that the petitioner has demonstrated that economic and other benefits of cogeneration are unobtainable unless petroleum or natural gas, or both, are used in such facility, and

(2) includes in the final order a statement of the basis for such finding.

(d) Permanent exemption for certain mixtures containing natural gas or petroleum

After consideration of a petition (and comments thereon) for an exemption for a powerplant from the prohibitions of part A, the Secretary shall, by order, grant a permanent exemption under this subsection with respect to natural gas or petroleum, if he finds that the petitioner has demonstrated that—

(1) the powerplant uses, or proposes to use, a mixture of petroleum or natural gas and coal or another alternate fuel as a primary energy source; and

(2) the amount of the petroleum or natural gas used in such mixture will not exceed the minimum percentage of the total Btu heat input of the primary energy sources of such powerplant needed to maintain reliability of operation of such powerplant consistent with maintaining a reasonable level of fuel efficiency, as determined in accordance with rules prescribed by the Secretary.

(e) Permanent exemption for emergency purposes

After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of part A for a powerplant, the Secretary shall, by order, grant a permanent exemption under this subsection with respect to natural gas or petroleum, if he finds that the petitioner has demonstrated that such powerplant will be maintained and operated only for emergency purposes (as defined by rule by the Secretary).

(f) Permanent exemption for powerplants necessary to maintain reliability of service

After consideration of a petition (and comments thereon) for an exemption for a powerplant from one or more of the prohibitions of part A, the Secretary may, by order, grant a permanent exemption under this subsection with respect to natural gas or petroleum if he finds that the petitioner has demonstrated that—

(1) such exemption is necessary to prevent impairment of reliability of service, and

(2) the petitioner, despite diligent good faith efforts, is not able to make the demonstration necessary to obtain an exemption under subsection (a) or (b) of this section in the time required to prevent such impairment of service.

(Pub. L. 95-620, title II, §212, Nov. 9, 1978, 92 Stat. 3300; Pub. L. 100-42, §1(c)(6), May 21, 1987, 101 Stat. 312.)

AMENDMENTS

1987—Subsec. (a)(1). Pub. L. 100-42, §1(c)(6)(A)-(C), substituted “from” for “or installation from one or more of” in introductory provisions, substituted “the fuel that would be used” for “using imported petroleum” and struck out “or installation” after “powerplant” wherever appearing in subpar. (A), and struck out “or installation” after “powerplant” in subpars. (B) and (D).

Subsec. (a)(2). Pub. L. 100-42, §1(c)(1)(D), struck out “—

“(A) in the case of a new major fuel-burning installation, be made with respect to the site of such installation proposed by the petitioner; and

“(B) in the case of a new electric powerplant,” after “paragraph (1) shall”.

Subsec. (a)(3). Pub. L. 100-42, §1(c)(6)(E), struck out par. (3) which read as follows: “Notwithstanding the preceding provisions of this subsection, a powerplant which has been granted an exemption under subsection (h) of this section may not be granted an exemption under this subsection.”

Subsec. (b). Pub. L. 100-42, §1(c)(6)(A), (B), (F), in introductory provisions substituted “from” for “or installation from one or more of”, in par. (1) struck out “or installation” after “powerplant”, and in par. (2) struck out “in the case of a powerplant,” after “(2)”.

Subsec. (d). Pub. L. 100-42, §1(c)(6)(A), (B), (G), struck out “(1)” before “After consideration of”, substituted “from” for “installation from one or more of” in intro-

ductory provisions, redesignated subpars. (A) and (B) of former par. (1) as pars. (1) and (2), respectively, struck out “or installation” after “powerplant” wherever appearing in such pars., and struck out former par. (2) which read as follows: “In the case of a new major fuel-burning installation, the percentage determined by the Secretary under subparagraph (B) of paragraph (1) shall not be less than 25 percent.”

Subsec. (e). Pub. L. 100-42, §1(c)(6)(B), struck out “or installation” after “powerplant” wherever appearing.

Subsec. (g). Pub. L. 100-42, §1(c)(6)(H), struck out subsec. (g) which related to issuance, by order of Secretary of Energy, of permanent exemptions for use of natural gas or petroleum for peakload powerplants.

Subsec. (h). Pub. L. 100-42, §1(c)(6)(H), struck out subsec. (h) which related to issuance, by order of Secretary of Energy, of permanent exemptions for use of petroleum for intermediate load powerplants.

Subsec. (i). Pub. L. 100-42, §1(c)(6)(H), struck out subsec. (i) which related to issuance, by order of Secretary of Energy, of permanent exemptions for use of natural gas or petroleum for installations based upon product or process requirements.

Subsec. (j). Pub. L. 100-42, §1(c)(6)(H), struck out subsec. (j) which related to issuance, by order of Secretary of Energy, of permanent exemptions for use of natural gas or petroleum for installations necessary to meet scheduled equipment outages.

EXEMPTION FOR CERTAIN ELECTRIC POWERPLANTS AS EFFECTIVE PRIOR TO 180 DAYS AFTER NOVEMBER 9, 1978

For effectiveness of exemption for certain electric powerplants as prior to 180 days after Nov. 9, 1978, see section 902(a) of Pub. L. 95-620, set out as a note under section 8301 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8323, 8471 of this title.

§ 8323. General requirements for exemptions

(a) Use of mixtures or fluidized bed combustion not feasible

Except in the case of an exemption under section 8322(d) of this title, the Secretary may grant a permanent exemption for a powerplant under this part only—

(1) if the applicant has demonstrated that the use of a mixture of natural gas or petroleum and coal or another alternate fuel, for which an exemption under section 8322(d) of this title would be available, is not economically or technically feasible; and

(2) if the Secretary has not made a finding that the use of a method of fluidized bed combustion of coal or another alternate fuel is economically and technically feasible.

(b) State approval required for powerplant

If the appropriate State regulatory authority has not approved a powerplant for which a petition has been filed, such exemption, to the extent it applies to the prohibition under section 8311 of this title against construction without the capability of using coal or another alternate fuel, shall not take effect until all approvals required by such State regulatory authority which relate to construction have been obtained.

(c) No alternative power supply in the case of a powerplant

(1) Except in the case of an exemption under section 8322(c) of this title, the Secretary may not grant an exemption for a new powerplant

unless he finds that the petitioner has demonstrated that there is no alternative supply of electric power which is available within a reasonable distance at a reasonable cost without impairing short-run or long-run reliability of service and which can be obtained by the petitioner, despite reasonable good faith efforts.

(2) The Secretary shall forward a copy of any such petition to the Federal Energy Regulatory Commission promptly after it is filed with the Secretary and shall consult with such Commission before making any finding on such petition under paragraph (1).

(Pub. L. 95-620, title II, §213, Nov. 9, 1978, 92 Stat. 3304; Pub. L. 100-42, §1(c)(7), May 21, 1987, 101 Stat. 312.)

AMENDMENTS

1987—Subsec. (a). Pub. L. 100-42, §1(c)(7)(A), (B), in introductory provisions struck out “or (g)” after “8322(d)” and “or installation” after “powerplant”.

Subsec. (b). Pub. L. 100-42, §1(c)(7)(C), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “If the appropriate State regulatory authority has not approved a powerplant for which a petition has been filed, such exemption—

“(1) to the extent it applies to the prohibition under section 8311(2) of this title against construction without the capability of using coal or another alternate fuel, shall not take effect until all approvals required by such State regulatory authority which relate to construction have been obtained; and

“(2) to the extent it applies to the prohibition under section 8311(1) of this title against the use of natural gas or petroleum as a primary energy source, shall not take effect until all approvals required by such State regulatory authority which relate to construction or operation have been obtained.”

Subsec. (c)(1). Pub. L. 100-42, §1(c)(7)(A), in introductory provisions struck out “or (g)” after “section 8322(c)”.

EXEMPTION FOR CERTAIN ELECTRIC POWERPLANTS AS EFFECTIVE PRIOR TO 180 DAYS AFTER NOVEMBER 9, 1978

For effectiveness of exemption for certain electric powerplants as prior to 180 days after Nov. 9, 1978, see section 902(a) of Pub. L. 95-620, set out as a note under section 8301 of this title.

§ 8324. Terms and conditions; compliance plans

(a) Terms and conditions generally

Any exemption from any prohibition under this part shall be on such terms and conditions as the Secretary determines appropriate, including terms and conditions requiring the use of effective fuel conservation measures which are practicable and consistent with the purposes of this chapter. In the case of any temporary exemption, the terms and conditions (which may include a compliance plan meeting the requirements of subsection (b) of this section) shall be designed to insure that upon the expiration of such exemption, the persons and powerplant covered by such exemption will comply with the applicable prohibitions.

(b) Compliance plans

A compliance plan meets the requirements of this subsection if it is approved by the Secretary and—

(1) contains (A) a schedule indicating how compliance with applicable prohibitions of

this chapter will occur and (B) evidence of binding contracts for fuel, or facilities for the production of fuel, which would allow or¹ such compliance; and

(2) is revised at such times and to such extent as the Secretary may require to reflect changes in circumstances.

(Pub. L. 95-620, title II, §214, Nov. 9, 1978, 92 Stat. 3304; Pub. L. 100-42, §1(c)(8), May 21, 1987, 101 Stat. 312.)

AMENDMENTS

1987—Subsec. (a). Pub. L. 100-42 struck out “or installation” after “powerplant”.

EXEMPTION FOR CERTAIN ELECTRIC POWERPLANTS AS EFFECTIVE PRIOR TO 180 DAYS AFTER NOVEMBER 9, 1978

For effectiveness of exemption for certain electric powerplants as prior to 180 days after Nov. 9, 1978, see section 902(a) of Pub. L. 95-620, set out as a note under section 8301 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8321 of this title.

SUBCHAPTER III—EXISTING FACILITIES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 8402, 8441, 8472 of this title.

PART A—PROHIBITIONS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 8351, 8352 of this title.

§ 8341. Existing electric powerplants

(a) Certification by powerplants of coal capability

At any time, the owner or operator of an existing electric powerplant may certify to the Secretary, for purposes of subsection (b) of this section—

(1) whether or not such powerplant has or previously had the technical capability to use coal or another alternate fuel as a primary energy source;

(2) whether or not such powerplant could have the technical capability to use coal or another alternate fuel as a primary energy source without having—

(A) substantial physical modification of the powerplant, or

(B) substantial reduction in the rated capacity of the powerplant; and

(3) whether or not it is financially feasible to use coal or another alternate fuel as a primary energy source in such a powerplant.

(b) Authority of Secretary to prohibit where coal or alternate fuel capability exists

The Secretary may prohibit, in accordance with section 8343(a) or (b) of this title, the use of petroleum or natural gas, or both, as a primary energy source in any existing electric powerplant, if an affirmative certification under subsection (a)(1), (2), and (3) of this section is in effect with respect to such powerplant and if,

¹ So in original. Probably should be “for”.

after examining the basis for the certification, the Secretary concurs with the certification.

(c) Authority of Secretary to prohibit excessive use in mixtures

At any time, the owner or operator of an existing electric powerplant may certify to the Secretary for purposes of this subsection whether or not it is technically and financially feasible to use a mixture of petroleum or natural gas and coal or another alternate fuel as a primary energy source in that powerplant. If an affirmative certification under this subsection is in effect with respect to such powerplant and if, after examining the basis for the certification, the Secretary concurs with the certification, the Secretary may prohibit, in accordance with section 8343(a) of this title, the use of petroleum or natural gas, or both, in such powerplant in amounts in excess of the minimum amount necessary to maintain reliability of operation of the unit consistent with maintaining reasonable fuel efficiency of such mixture.

(d) Amendment of subsection (a) and (c) certifications

The owner or operator of any such powerplant may at any time amend any certification under subsection (a) or (c) of this section in order to take into account changes in relevant facts and circumstances; except that no such amendment to such a certification may be made after the date of any final prohibition under subsection (b) or (c) of this section based on that certification.

(Pub. L. 95-620, title III, §301, as added Pub. L. 97-35, title X, §1021(a), Aug. 13, 1981, 95 Stat. 614.)

PRIOR PROVISIONS

A prior section 8341, Pub. L. 95-620, title III, §301, Nov. 9, 1978, 92 Stat. 3305, related to existing electric powerplants, prior to repeal by Pub. L. 97-35, title X, §1021(a), Aug. 13, 1981, 95 Stat. 614.

EFFECTIVE DATE

Section effective Aug. 13, 1981, see section 1038 of Pub. L. 97-35, set out as an Effective Date of 1981 Amendment note under section 6240 of this title.

VALIDITY OF ORDERS UNDER FORMER PROVISIONS OF THIS SECTION

Section 1022 of Pub. L. 97-35 provided that:

“(a) The amendments made by section 1021 to section 301(b) and (c) of the Powerplant and Industrial Fuel Use Act of 1978 [subsecs. (b) and (c) of this section] shall not apply to any electric powerplant for which a final order was issued pursuant to section 301(b) or (c) of such Act before the date of the enactment of this Act [Aug. 13, 1981].

“(b) Any electric powerplant issued a proposed order under section 301(b) or (c) of such Act which is pending on the date of the enactment of this Act may elect not to have the amendments made by section 1021 to such section 301(b) or (c) apply with respect to that powerplant. Such an election shall be irrevocable and shall be made in such form and manner as the Secretary of Energy shall, within 45 days after the date of the enactment of this Act, prescribe. Such an election shall be made not later than 60 days after the date on which the Secretary of Energy prescribes the form and manner of making such election.

“(c)(1) The amendments made by section 1021 shall not affect the validity of any final order issued under section 301(b) or (c) of the Powerplant and Industrial Fuel Use Act of 1978 before the date of the enactment of this Act.

“(2) The validity of any proposed order issued under such section 301(b) or (c) shall not be affected in the case of powerplants covered by elections made under subsection (b).

“(3) The authority of the Secretary of Energy to amend, repeal, rescind, modify, or enforce any order referred to in paragraph (1) or (2), or rules applicable thereto, shall remain in effect notwithstanding any such amendments.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7651d, 8343, 8351, 8352 of this title.

§ 8342. Repealed. Pub. L. 100-42, § 1(a)(2), May 21, 1987, 101 Stat. 310

Section, Pub. L. 95-620, title III, §302, Nov. 9, 1978, 92 Stat. 3306, authorized Secretary to prohibit use of petroleum or natural gas as primary energy source in existing major fuel-burning installations having coal or alternate fuel capability and, in installations in which mixtures of petroleum or natural gas and coal or other alternate fuels are found feasible, to prohibit excessive use of petroleum or natural gas in such mixtures.

§ 8343. Rules relating to case-by-case and category prohibitions

(a) Case-by-case prohibitions

(1) Except to the extent authorized by subsection (b) of this section, the Secretary shall prohibit any powerplant from using natural gas or petroleum under the authority granted him under section 8341(b) or (c) of this title only by means of a final order issued by him which shall be limited to the particular powerplant involved.

(2) The Secretary may issue such a final order only with respect to a powerplant which is not, at the time the proposed order is issued, covered by a final rule issued under subsection (b) of this section.

(b) Prohibitions applicable to categories of facilities

(1) The Secretary may prohibit, by rule, the use of natural gas or petroleum under section 8341(b) of this title in existing electric powerplants.

(2) Each powerplant to be covered by any final rule issued under this subsection shall be specifically identified in the proposed rule published under section 8411(b) of this title.

(3) In prescribing any final rule under this subsection, the Secretary shall take into account any special circumstances or characteristics of each category of powerplants (such as the intermittent use, size, age, or geographic location of such powerplants). Any such rules shall not apply in the case of any existing electric powerplant with respect to which a comparable prohibition was issued by order.

(Pub. L. 95-620, title III, §303, Nov. 9, 1978, 92 Stat. 3306; Pub. L. 100-42, §1(c)(9), May 21, 1987, 101 Stat. 312.)

AMENDMENTS

1987—Subsec. (a)(1). Pub. L. 100-42, §1(c)(9)(A), (B), struck out “or installation” after “powerplant” in two places and “or 8342” after “section 8341(b) or (c)”.

Subsec. (a)(2). Pub. L. 100-42, §1(c)(9)(A), struck out “or installation” after “powerplant”.

Subsec. (a)(3). Pub. L. 100-42, §1(c)(9)(C), struck out par. (3) which read as follows:

“(A) Subject to subparagraph (B), the Secretary shall not issue a final order under this subsection to any powerplant if it is demonstrated that such powerplant would have been granted an exemption if such prohibition had been established by a final rule pursuant to subsection (b) of this section rather than by order pursuant to this subsection, except that if a temporary exemption would have been granted, such a final order may be issued but may not take effect until such time as the temporary exemption would have terminated.

“(B) In any case in which an order is not issued by reason of subparagraph (A) or in which the effective date of such order is delayed under subparagraph (A), the Secretary shall take such steps as may be necessary to assure the installation involved complies with the same requirements (including provisions of section 8354(a) of this title) as would have been applicable if an exemption had been granted based upon the grounds for which the order is not issued or the effective date of which is delayed.”

Subsec. (b)(1), Pub. L. 100-42, §1(c)(9)(D), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “The Secretary may, by rule, prohibit the use of natural gas or petroleum pursuant to section 8341(b) or 8342(a) of this title—

“(A) in the case of any category of existing electric powerplants identified in such rule; and

“(B) in the case of any category of existing major fuel-burning installations which have design capabilities of consuming fuel (or any mixture thereof) at a fuel heat input rate of 300 million Btu’s per hour or greater which are identified in such rule.”

Subsec. (b)(2), Pub. L. 100-42, §1(c)(9)(A), struck out “or installation” after “powerplant”.

Subsec. (b)(3), Pub. L. 100-42, §1(c)(9)(A), (E), struck out “or installations” after “powerplants” in two places in introductory provisions, and amended last sentence generally. Prior to amendment, last sentence read as follows: “Any such rules shall not apply in the case of any existing electric powerplant with respect to which a comparable prohibition was issued by order.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8341 of this title.

PART B—EXEMPTIONS

§ 8351. Temporary exemptions

(a) Temporary exemption due to lack of alternate fuel supply, site limitations, or environmental requirements

After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of part A for a powerplant, the Secretary shall, by order, grant such an exemption for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that for the period of the proposed exemption, despite diligent good faith efforts—

(1) it is likely that an adequate and reliable supply of coal or other alternate fuel of the quality necessary to conform with design and operational requirements for use as a primary energy source, will not be available to such powerplant at a cost (taking into account associated facilities for the transportation and use of such fuel) which, based upon the best practicable estimates, does not substantially exceed the costs, as determined by rule by the Secretary, of using imported petroleum as a primary energy source;

(2) one or more site limitations exist which would not permit the operation of such a powerplant using coal or any other alternate fuel as a primary energy source; or

(3) the prohibitions of section 8341 of this title could not be satisfied without violating applicable environmental requirements.

(b) Temporary exemption based upon future use of synthetic fuels

After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of part A for a powerplant, the Secretary, by order, shall grant an exemption under this subsection for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that—

(1) the petitioner will comply with the prohibitions of part A by the end of the proposed exemption by the use of a synthetic fuel derived from coal or another alternate fuel; and

(2) the petitioner is not able to comply with such prohibitions by the use of such synthetic fuel until the end of the proposed exemption.

The effectiveness of an exemption under this subsection is conditioned on the petitioner filing and maintaining a compliance plan meeting the requirements of section 8354(b) of this title.

(c) Temporary exemption based upon use of innovative technologies

After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of part A for a powerplant, the Secretary, by order, shall grant an exemption under this subsection for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that such powerplant will comply with such prohibitions at the expiration of such exemption by the adoption of a technology for the use of coal or another alternate fuel which at the time of the granting of the exemption is determined by the Secretary to be an innovative technology. The effectiveness of an exemption under this subsection is conditioned on the petitioner filing and maintaining a compliance plan meeting the requirements of section 8354(b) of this title.

(d) Temporary exemption for units to be retired

(1) After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of part A for a powerplant, the Secretary shall, by order, grant an exemption under this subsection for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that such powerplant is to permanently cease operation at or before the expiration of the exemption period. An exemption under this subsection is conditioned on the petitioner filing and maintaining a compliance plan meeting the requirements of section 8354(b) (other than paragraph (1)(B)) of this title.

(2) Notwithstanding any other provision of this chapter, an exemption under this part may not be granted for any powerplant once an exemption under this subsection has been granted for such powerplant.

(e) Temporary public interest exemption

After consideration of a petition (and comments thereon) for an exemption for a powerplant from one or more of the prohibitions of part A for a powerplant, the Secretary may, by order, grant an exemption under this subsection for the use of natural gas or petroleum, if he

finds that the petitioner has demonstrated that for the period of the proposed exemption the issuance of such exemption is in the public interest and is consistent with the purposes of this chapter.

(f) Temporary exemption for peakload powerplants

After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of part A for a powerplant, the Secretary shall, by order, grant an exemption under this subsection for the use of natural gas or petroleum, if the petitioner certifies that such powerplant is to be operated solely as a peakload powerplant.

(g) Temporary exemption for powerplants where necessary to maintain reliability of service

(1) After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of part A for a powerplant, the Secretary shall, by order, grant an exemption under this subsection for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that such exemption is necessary to prevent impairment of reliability of service.

(2) Notwithstanding any other provision of this chapter, an exemption under this part (other than a permanent exemption under section 8352(f) of this title for the use of petroleum) may not be granted for any powerplant for which an exemption under this subsection has been granted.

(h) Duration of temporary exemptions

(1) Except as provided in paragraphs (2) and (3), exemptions under this section for any powerplant may not exceed, taking into account any extension or renewal, 5 years.

(2)(A) An exemption under subsection (a)(1) of this section may be granted for a period of more than 5 years, but may not exceed, taking into account any extension or renewal, 10 years.

(B) Subject to paragraph (3), an exemption under subsections (b), (c), and (g) of this section may be extended beyond the 5-year limit under paragraph (1), but such exemption, so extended, may not exceed 10 years.

(3) An exemption under subsections (d), (f), and (g) of this section for the use of natural gas by a powerplant may not extend beyond December 31, 1994.

(4) In computing the 5-year and 10-year limitations of paragraphs (1) and (2) in the case of any exemption under this section, the period before the prohibition on the use of natural gas and petroleum would first apply (if the exemption had not been granted) shall be disregarded.

(Pub. L. 95-620, title III, §311, Nov. 9, 1978, 92 Stat. 3307; Pub. L. 100-42, §1(c)(10), (11), May 21, 1987, 101 Stat. 313.)

AMENDMENTS

1987—Subsec. (a). Pub. L. 100-42, §1(c)(10), (11), struck out “or installation” after “powerplant” in introductory provisions and in pars. (1) and (2) and struck out “or 8342” after “section 8341” in par. (3).

Subsecs. (b) to (e), (h)(1). Pub. L. 100-42, §1(c)(10), struck out “or installation” after “powerplant” whenever appearing.

EXEMPTION FOR CERTAIN ELECTRIC POWERPLANTS AS EFFECTIVE PRIOR TO 180 DAYS AFTER NOVEMBER 9, 1978

For effectiveness of exemption for certain electric powerplants as prior to 180 days after Nov. 9, 1978, see section 902(a) of Pub. L. 95-620, set out as a note under section 8301 of this title.

§ 8352. Permanent exemptions

(a) Permanent exemption due to lack of alternate fuel supply, site limitations, or environmental requirements

(1) After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of part A for a powerplant, the Secretary shall, by order, grant a permanent exemption under this subsection for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that despite diligent good faith efforts—

(A) it is likely that an adequate and reliable supply of coal or other alternate fuels of the quality necessary to conform with design and operational requirements for use as a primary energy source will not be available to such powerplant at a cost (taking into account associated facilities for the transportation and use of such fuel) which, based upon the best practicable estimates, does not substantially exceed the cost, as determined by rule by the Secretary, of using imported petroleum as a primary energy source during the remaining useful life of the powerplant;

(B) one or more site limitations exist which would not permit the operation of such a powerplant using coal or any other alternate fuel as a primary energy source; or

(C) the prohibitions of part A could not be satisfied without violating applicable environmental requirements.

(2) Notwithstanding the preceding provisions of this subsection, a powerplant which has been granted an exemption under subsection (g) of this section may not be granted an exemption under this subsection.

(b) Permanent exemption due to certain State or local requirements

After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of part A for a powerplant, the Secretary may, by order, grant a permanent exemption under this subsection, if he finds that the petitioner has demonstrated that—

(1) with respect to the site of the powerplant, the operation of such a facility using coal or any other alternate fuel is infeasible because of a State or local requirement;

(2) if such State or local requirement is under a building code or nuisance or zoning law, no other exemption under this part could be granted for such facility; and

(3) the granting of the exemption would be in the public interest and would be consistent with the purposes of this chapter.

(c) Permanent exemption for cogeneration

After consideration of a petition (and comments thereon) for an exemption from one or

more of the prohibitions of part A for a cogeneration facility, the Secretary may, by order, grant a permanent exemption under this subsection, if he—

(1) finds that the petitioner has demonstrated that economic and other benefits of cogeneration are unobtainable unless petroleum or natural gas, or both, are used in such facility, and

(2) includes in the final order a statement of the basis for such finding.

(d) Permanent exemption for certain fuel mixtures containing natural gas or petroleum

(1) After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of part A for a powerplant, the Secretary shall, by order, grant a permanent exemption under this subsection, if he finds that the petitioner has demonstrated that—

(A) the powerplant uses, or proposes to use, a mixture of petroleum or natural gas and coal or another alternate fuel as a primary energy source; and

(B) the amount of the petroleum or natural gas used in such mixture will not exceed the minimum percentage of the total Btu heat input of the primary energy sources of such powerplant needed to maintain reliability of operation of the unit consistent with maintaining a reasonable level of fuel efficiency, as determined in accordance with rules prescribed by the Secretary.

(2) Repealed. Pub. L. 100-42, §1(c)(12)(A), May 21, 1987, 101 Stat. 313.

(3) The Secretary may authorize a higher percentage than that referred to in paragraph (1)(B) if he finds that the higher percentage of natural gas allowed would be mixed with synthetic fuels derived from municipal wastes or agricultural wastes and would encourage the use of alternate or new technologies which use renewable sources of energy.

(e) Permanent exemption for emergency purposes

After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of part A for a powerplant, the Secretary shall, by order, grant a permanent exemption under this subsection, if he finds that the petitioner has demonstrated that such powerplant will be maintained and operated only for emergency purposes (as defined by rule by the Secretary).

(f) Permanent exemption for peakload powerplants

After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of part A for a powerplant, the Secretary shall, by order, grant a permanent exemption under this subsection, if he finds that—

(1) the powerplant is operated solely as a peakload powerplant;

(2) a denial of such petition is likely to result in an impairment of reliability of service; and

(3)(A) modification of the powerplant to permit compliance with such prohibitions is technically infeasible; or

(B) such modification would result in an unreasonable expense.

(g) Permanent exemption for intermediate load powerplants

(1) After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of part A on the use of petroleum by a powerplant, the Secretary may, by order, grant a permanent exemption under this subsection, if he finds that the petitioner has demonstrated that—

(A) the Administrator of the Environmental Protection Agency (or the appropriate State air pollution control agency) certifies to the Secretary that the use by such powerplant of coal or any available alternate fuel as a primary energy source will cause or contribute to a concentration, in an air quality control region or any area within such region, of a pollutant for which any national ambient air quality standard is or would be exceeded for such area;

(B) such powerplant is to be operated only to replace no more than the equivalent capacity of existing electric powerplants—

(i) which use natural gas or petroleum as a primary energy source,

(ii) which are owned by the same person who is to operate such powerplant, and

(iii) which, if they used coal as a primary energy source, would cause or contribute to such a concentration in such region;

(C) such powerplant is and shall continue to be operated solely as an intermediate load powerplant;

(D) the net fuel heat input rate for such powerplant will be maintained at or less than 9,500 Btu's per kilowatt hour throughout the remaining useful life of the powerplant; and

(E) the powerplant has the capability to use synthetic fuels derived from coal or other alternate fuel.

(2) The Secretary shall, from time to time, review each exemption granted to a powerplant under this subsection, and shall terminate such exemption if he finds that there is available a supply of synthetic fuel derived from coal or other alternate fuel suitable for use as a primary energy source by such powerplant.

(h) Permanent exemption for use of natural gas by certain powerplants with capacities of less than 250 million Btu's per hour

(1) Subject to paragraph (2), after consideration of a petition (and comments thereon) for an exemption from any prohibition of part A for the use of natural gas by a powerplant, the Secretary shall, by order, grant a permanent exemption under this subsection for such use, if he finds that the petitioner has demonstrated that—

(A) such powerplant has a design capability of consuming fuel (or any mixture thereof) at a fuel heat input rate of less than 250 million Btu's per hour;

(B) such powerplant was a baseload powerplant on April 20, 1977; and

(C) such powerplant is not capable of consuming coal without—

(i) substantial physical modification of the unit; or

(ii) substantial reduction in the rated capacity of the unit (as determined by the Secretary).

(2) An exemption under this subsection may only apply to the prohibitions under section 8341 of this title and prohibitions established by final rules or orders issued before January 1, 1990.

(i) Permanent exemption for use of LNG by certain powerplants

After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of part A for a powerplant, the Secretary shall, by order, grant a permanent exemption under this subsection for the use of liquefied natural gas if the Administrator of the Environmental Protection Agency (or the appropriate State air pollution control agency) has certified to the Secretary that the use of coal by such powerplant as a primary energy source will cause or contribute to a concentration, in an air quality control region or any area within such region, of a pollutant for which any national ambient air quality standard is or would be exceeded for such region or area and the use of coal would not comply with applicable environmental requirements.

(Pub. L. 95-620, title III, §312, Nov. 9, 1978, 92 Stat. 3309; Pub. L. 100-42, §1(c)(10), (12), May 21, 1987, 101 Stat. 313.)

AMENDMENTS

1987—Subsecs. (a)(1), (b), (d)(1). Pub. L. 100-42, §1(c)(10), struck out “or installation” after “powerplant” wherever appearing.

Subsec. (d)(2). Pub. L. 100-42, §1(c)(12)(A), struck out par. (2) which read as follows: “In the case of an existing major fuel-burning installation, the percentage determined by the Secretary under subparagraph (B) of paragraph (1) shall not be less than 25 percent.”

Subsec. (d)(3). Pub. L. 100-42, §1(c)(12)(B), substituted “The” for “In the case of an existing electric powerplant, the”.

Subsec. (e). Pub. L. 100-42, §1(c)(10), struck out “or installation” after “powerplant” wherever appearing.

Subsec. (j). Pub. L. 100-42, §1(c)(12)(C), struck out subsec. (j) which related to granting, by Secretary of Energy, of permanent exemptions for use of natural gas for installations served by international pipelines.

Subsec. (k). Pub. L. 100-42, §1(c)(12)(C), struck out subsec. (k) which related to granting, by Secretary of Energy, of permanent exemptions for use of natural gas or petroleum for installations based upon product or process requirements.

Subsec. (l). Pub. L. 100-42, §1(c)(12)(C), struck out subsec. (l) which related to granting, by Secretary of Energy, of permanent exemptions for use of natural gas or petroleum for installations necessary to meet scheduled equipment outages.

EXEMPTION FOR CERTAIN ELECTRIC POWERPLANTS AS EFFECTIVE PRIOR TO 180 DAYS AFTER NOVEMBER 9, 1978

For effectiveness of exemption for certain electric powerplants as prior to 180 days after Nov. 9, 1978, see section 902(a) of Pub. L. 95-620, set out as a note under section 8301 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8351, 8353, 8471, 8473 of this title.

§ 8353. General requirements for exemptions

(a) Use of mixtures or fluidized bed combustion not feasible

Except in the case of an exemption under section 8352(b), (f), or (i) of this title, the Secretary may grant a permanent exemption for a powerplant under this part only—

(1) if the applicant has demonstrated that the use of a mixture of natural gas or petroleum and coal (or other alternate fuels), for which an exemption under section 8352(b) of this title would be available, is not economically or technically feasible; and

(2) if the Secretary has not made a finding that the use of a method of fluidized bed combustion of coal or an alternate fuel is economically and technically feasible.

(b) No alternative power supply in case of a powerplant

(1) In the case of an exemption under section 8352(b) or (g) of this title, the Secretary may not grant an exemption for an existing powerplant unless he finds that the petitioner has demonstrated that there is no alternative supply of electric power which is available within a reasonable distance at a reasonable cost without impairing short-run or long-run reliability of service and which can be obtained by the petitioner, despite reasonable good faith efforts.

(2) The Secretary shall forward a copy of any such petition to the Federal Energy Regulatory Commission promptly after it is filed with the Secretary and shall consult with the Commission before making any finding on such petition under paragraph (1).

(Pub. L. 95-620, title III, §313, Nov. 9, 1978, 92 Stat. 3313; Pub. L. 100-42, §1(c)(10), (13), May 21, 1987, 101 Stat. 313.)

AMENDMENTS

1987—Subsec. (a). Pub. L. 100-42, §1(c)(13), struck out “or installation” after “powerplant” in introductory provisions.

Pub. L. 100-42, §1(c)(10), which directed the substitution of “or (i)” for “(i), or (j)” was executed by making the substitution for “(i) or (j)” to reflect the probable intent of Congress.

EXEMPTION FOR CERTAIN ELECTRIC POWERPLANTS AS EFFECTIVE PRIOR TO 180 DAYS AFTER NOVEMBER 9, 1978

For effectiveness of exemption for certain electric powerplants as prior to 180 days after Nov. 9, 1978, see section 902(a) of Pub. L. 95-620, set out as a note under section 8301 of this title.

§ 8354. Terms and conditions; compliance plans

(a) Terms and conditions generally

Any exemption from any prohibition under this part shall be on such terms and conditions as the Secretary determines appropriate, including terms and conditions requiring the use of effective fuel conservation measures which are practicable and consistent with the purposes of this chapter. In the case of any temporary exemption, the terms and conditions (which may include a compliance plan meeting the requirements of subsection (b) of this section) shall be designed to insure that upon the expiration of such exemption, the persons and powerplant

covered by such exemption will comply with the applicable prohibitions.

(b) Compliance plans

A compliance plan meets the requirements of this subsection if it is approved by the Secretary and—

(1) contains (A) a schedule indicating how compliance with applicable prohibition of this chapter will occur and (B) evidence of binding contracts for fuel, or facilities for the production of fuel, which would allow for such compliance; and

(2) is revised at such times and to such extent as the Secretary may require to reflect changes in circumstances.

(Pub. L. 95-620, title III, §314, Nov. 9, 1978, 92 Stat. 3314; Pub. L. 100-42, §1(c)(10), May 21, 1987, 101 Stat. 313.)

AMENDMENTS

1987—Subsec. (a). Pub. L. 100-42 struck out “or installation” after “powerplant”.

EXEMPTION FOR CERTAIN ELECTRIC POWERPLANTS AS EFFECTIVE PRIOR TO 180 DAYS AFTER NOVEMBER 9, 1978

For effectiveness of exemption for certain electric powerplants as prior to 180 days after Nov. 9, 1978, see section 902(a) of Pub. L. 95-620, set out as a note under section 8301 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8351 of this title.

SUBCHAPTER IV—ADDITIONAL PROHIBITIONS; EMERGENCY AUTHORITIES

§§ 8371, 8372. Repealed. Pub. L. 100-42, §1(a)(3), (4), May 21, 1987, 101 Stat. 310

Section 8371, Pub. L. 95-620, title IV, §401, Nov. 9, 1978, 92 Stat. 3314, authorized Secretary to prohibit by order the use of natural gas as primary energy source in existing boilers used for space heating purposes which consume 300 Mcf or more natural gas per day and have capability to use petroleum as primary energy source, and in new boilers to be used for space heating purposes which would be capable of consuming 300 Mcf or more of natural gas per day.

Section 8372, Pub. L. 95-620, title IV, §402, Nov. 9, 1978, 92 Stat. 3315; Pub. L. 97-35, title X, §1024, Aug. 13, 1981, 95 Stat. 617, prohibited installation of outdoor lighting fixtures using natural gas before Nov. 9, 1978, phased out distribution of natural gas to be used in outdoor lighting other than that installed for residential use before Nov. 9, 1978, and required distributors of natural gas to disseminate information to customers to discourage use of natural gas for outdoor lighting.

§ 8373. Conservation in Federal facilities, contracts, and financial assistance programs

(a) Federal facilities

(1) Each Federal agency owning or operating any electric powerplant shall comply with any prohibition, term, condition, or other substantial or procedural requirement under this chapter, to the same extent as would be the case if such powerplant were owned or operated by a nongovernmental person.

(2) The President may, by order, exempt from the application of paragraph (1) any powerplant owned or operated by any Federal agency, if the President determines that—

(A) such use is in the paramount interest of the United States and that the powerplant involved is a component of or is used solely in connection with any weaponry, equipment, aircraft, vessels, vehicles or other classes or categories of property which—

(i) are owned or operated by the Armed Forces of the United States (including the Coast Guard) or by the National Guard of any State; and

(ii) are uniquely military in nature; or

(B) there is a lack of appropriation for such use but only if the President specifically requested such appropriations as a part of the budgetary process and the Congress failed to make available such requested appropriation.

Such order shall not take effect until 60 days after a copy of such order has been transmitted to each House of the Congress. The President shall review each such determination every 2 years and submit a report to the Congress on the results of such review.

(b) Federal contracts and financial assistance

(1) In order to implement the purposes of this chapter, the President shall, not later than 30 days after the effective date of this chapter, issue an order—

(A) requiring each Federal agency which is authorized to extend Federal assistance by way of grant, loan, contract, or other form of financial assistance, to promptly effectuate the purposes of this chapter relating to the conservation of petroleum and natural gas, by rule, in such contracting or assistance activities within 180 days after issuance of such order, and

(B) setting forth procedures, sanctions, penalties, and such other provisions as the President determines necessary to carry out such requirement effectively, including a requirement that each agency annually transmit to the President, and make available to the public, a report on the actions taken and to be taken to implement such order.

(2) The President may exempt by order any specific grant, loan, contract, or other form of financial assistance from all or part of the provisions of this subsection if he determines such exemption is in the national interest. The President shall notify the Congress in writing of such exemption at least 60 days before it is effective.

(3) The President or any Federal agency may not use the authority granted under paragraph (1) to require compliance, including the use of coal, by any person or facility with any prohibition under other sections of this chapter if such person or facility has been specifically determined by the Secretary as subject to such prohibition or has been exempted from the application of such prohibition.

(Pub. L. 95-620, title IV, §403, Nov. 9, 1978, 92 Stat. 3317; Pub. L. 100-42, §1(c)(14), May 21, 1987, 101 Stat. 313; Pub. L. 102-486, title XXX, §3011, Oct. 24, 1992, 106 Stat. 3128.)

REFERENCES IN TEXT

The effective date of this chapter, referred to in subsec. (b)(1), is the effective date of Pub. L. 95-620. See section 901 of Pub. L. 95-620, set out as an Effective Date note under section 8301 of this title.

AMENDMENTS

1992—Subsec. (c). Pub. L. 102-486 struck out subsec. (c), which read as follows: “The President shall annually submit a detailed report to each House of the Congress on the actions taken by the President and each Federal agency to implement this section, including the progress and problems associated with implementation of this section.”

1987—Subsec. (a)(1). Pub. L. 100-42, §1(c)(14)(A), struck out “, major fuel-burning installation, or other unit” after “electric powerplant” and “, installation, or unit” after “such powerplant”.

Subsec. (a)(2). Pub. L. 100-42, §1(c)(14)(B), (C), struck out “, installation, or other unit” after “powerplant” in introductory provisions, “, installation, or unit” after “powerplant” in subpar. (A), and last sentence which read as follows: “Any powerplant, installation, or other unit permitted to use natural gas or petroleum under an exemption under this paragraph shall establish and carry out effective fuel conservation measures, as determined by the Secretary.”

Subsec. (a)(3). Pub. L. 100-42, §1(c)(14)(D), struck out par. (3) which read as follows: “Any powerplant, installation, or unit owned or operated by any such Federal agency shall be entitled to any exemption by the Secretary to the same extent, in the same manner, and under the same terms and conditions as would apply if it were owned or operated by a nongovernmental person.”

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103-7 (in which the report under the last sentence of subsec. (a)(2) of this section is listed as the 16th item on page 19), see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

EX. ORD. NO. 12185. EFFECTUATION OF CONSERVATION OF PETROLEUM AND NATURAL GAS BY RECIPIENTS OF FEDERAL FINANCIAL ASSISTANCE

Ex. Ord. No. 12185, Dec. 17, 1979, 44 F.R. 75093, provided:

By the authority vested in me as President of the United States of America by Section 403(b) of the Powerplant and Industrial Fuel Use Act of 1978 (92 Stat. 3318; Public Law 95-620) [42 U.S.C. 8373(b)] and Section 301 of Title 3 of the United States Code, in order to encourage additional conservation of petroleum and natural gas by recipients of Federal financial assistance, it is hereby ordered as follows:

1-101. Each Federal agency, as that term is defined in Section 103(a)(25) of the Powerplant and Industrial Fuel Use Act of 1978 (92 Stat. 3297) [42 U.S.C. 8302(a)(25)], shall effectuate through its financial assistance programs the purposes of that Act relating to the conservation of petroleum and natural gas.

1-102. Each Federal agency which extends financial assistance shall review those programs of financial assistance and identify those which are most likely to offer opportunities for significant conservation of petroleum and natural gas.

1-103. Within two months, and annually thereafter, each agency shall publish for comment a list of those programs which it has identified as likely to offer significant opportunity for conservation. The public shall

be given 60 days to submit comments, including suggestions for rules which would effectuate the conservation purposes of the Act [see Short Title note set out under 42 U.S.C. 8301].

1-104. After receiving public comment and suggestions, and after consulting with the Director of the Office of Management and Budget, each agency shall publish proposed rules designed to achieve conservation of petroleum and natural gas in connection with the receipt of financial assistance.

Proposed rules should be published within 30 days of the close of the comment period under Section 1-103.

1-105. Final rules shall be adopted by each agency in accordance with the provisions of Sections 102(b) [42 U.S.C. 8301(b)], 403(b) [42 U.S.C. 8373(b)] and 701(a) [42 U.S.C. 8411(a)] of the Powerplant and Industrial Fuel Use Act of 1978, and the provisions of this Order, not later than 180 days from the date of this Order.

1-106. No one shall be awarded any financial assistance unless that award complies with the provisions of the conservation rules adopted by the agency pursuant to this Order.

1-107. To the extent permitted by law and where not inconsistent with the financial assistance program, final rules may provide for the reduction or suspension of financial assistance under any award. Such reduction or suspension shall not be ordered until there has been an opportunity for a hearing on the record, and shall last for such time as the recipient fails to comply with the terms of the conservation rule.

1-108. No conservation rule shall be adopted which is inconsistent with the statutory provisions establishing the financial assistance program.

1-109. No conservation rule shall be used to enforce compliance with any prohibition under the Act [see Short Title note set out under 42 U.S.C. 8301] against any person or facility which has been specifically determined by the Secretary of Energy as subject to or exempt from a prohibition under the Act. The conservation rules shall be used to enforce other new ways of achieving the purposes of the Act related to the conservation of petroleum and natural gas.

1-110. In order to assess the effectiveness of this program, each agency shall annually prepare a report on its activities in accord with Section 403(b)(1)(B) of the Act [42 U.S.C. 8373(b)]. These reports shall be submitted to the President through the Secretary of Energy.

1-111. The Secretary of Energy shall prepare for the President's consideration and transmittal to the Congress the report required by Section 403(c) of the Act [42 U.S.C. 8373(c)].

1-112. The Director of the Office of Management and Budget may issue any rules, regulations, or orders he deems necessary to ensure the implementation of this Order. The Director may exercise any of the authority vested in the President by Section 403(b) of the Act [42 U.S.C. 8373(b)], and may redelegate such of that authority as he deems appropriate to the head of any other agency.

JIMMY CARTER.

EXECUTIVE ORDER NO. 12217

Ex. Ord. No. 12217, June 18, 1980, 45 F.R. 41623, which established the responsibilities and duties of Executive agencies for compliance with this chapter, was revoked by Ex. Ord. No. 12437, Aug. 11, 1983, 48 F.R. 36801.

§ 8374. Emergency authorities**(a) Coal allocation authority**

(1) If the President—

(A) declares a severe energy supply interruption, as defined in section 6202(8) of this title, or

(B) finds, and publishes such finding, that a national or regional fuel supply shortage exists or may exist which the President determines—

- (i) is, or is likely to be, of significant scope and duration, and of an emergency nature;
- (ii) causes, or may cause, major adverse impact on public health, safety, or welfare or on the economy; and
- (iii) results, or is likely to result, from an interruption in the supply of coal or from sabotage, or an act of God;

the President may, by order, allocate coal (and require the transportation thereof) for the use of any electric powerplant or major fuel-burning installation, in accordance with such terms and conditions as he may prescribe, to insure reliability of electric service or prevent unemployment, or protect public health, safety, or welfare.

(2) For purposes of this subsection, the term “coal” means anthracite and bituminous coal and lignite (but does not mean any fuel derivative thereof).

(b) Emergency prohibition on use of natural gas or petroleum

If the President declares a severe energy supply interruption, as defined in section 6202(8) of this title, the President may, by order, prohibit any electric powerplant or major fuel-burning installation from using natural gas or petroleum, or both, as a primary energy source for the duration of such interruption. Notwithstanding any other provision of this section, any suspension of emission limitations or other requirements of applicable implementation plans, as defined in section 7410(d)¹ of this title, required by such prohibition shall be issued only in accordance with section 7410(f) of this title.

(c) Emergency stays

The President may, by order, stay the application of any provision of this chapter, or any rule or order thereunder, applicable to any new or existing electric powerplant, if the President finds, and publishes such finding, that an emergency exists, due to national, regional, or systemwide shortages of coal or other alternate fuels, or disruption of transportation facilities, which emergency is likely to affect reliability of service of any such electric powerplant.

(d) Duration of emergency orders

(1) Except as provided in paragraph (3), any order issued by the President under this section shall not be effective for longer than the duration of the interruption or emergency, or 90 days, whichever is less.

(2) Any such order may be extended by a subsequent order which the President shall transmit to the Congress in accordance with section 6421 of this title. Such order shall be subject to congressional review pursuant to such section.

(3) Notwithstanding paragraph (1), the effectiveness of any order issued under this section shall not terminate under this subsection during the 15-calendar-day period during which any such subsequent order described in paragraph (2) is subject to congressional review under section 6421 of this title.

(4) For purposes of this subsection, the provisions of this subsection supersede the provisions of subchapter II of chapter 34 of title 50.

¹ See References in Text note below.

(e) Delegation of authority prohibited

The authority of the President to issue any order under this section may not be delegated. This subsection shall not be construed to prevent the President from directing any Federal agency to issue rules or regulations or take such other action, consistent with this section, in the implementation of such order.

(f) Publication and reports to Congress of orders

Any order issued under this section shall be published in the Federal Register. To the greatest extent practicable, the President shall, before issuing any order under this section, but in no event later than 5 days after issuing such order, report to the Congress of his intention to issue such order and state his reasons therefor.

(Pub. L. 95-620, title IV, §404, Nov. 9, 1978, 92 Stat. 3319; Pub. L. 100-42, §1(c)(15), May 21, 1987, 101 Stat. 313.)

REFERENCES IN TEXT

Section 7410(d) of this title, referred to in subsec. (b), was repealed by Pub. L. 101-549, title I, §101(d)(4), Nov. 15, 1990, 104 Stat. 2409.

Subchapter II (§1621 et seq.) of chapter 34 of title 50, referred to in subsec. (d)(4), was in the original “title II of the Act of September 14, 1976 (Public Law 94-412)”, which is known as the National Emergencies Act.

AMENDMENTS

1987—Subsec. (g). Pub. L. 100-42 struck out subsec. (g) which permitted use of natural gas or petroleum as primary energy source in peakload powerplant or major fuel-burning installation during temporary emergency condition (other than emergency conditions provided for under section 8302(a)(15) of this title).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8411, 8412, 8421, 8471 of this title.

§ 8375. Repealed. Pub. L. 100-42, § 1(a)(5), May 21, 1987, 101 Stat. 310

Section, Pub. L. 95-620, title IV, §405, Nov. 9, 1978, 92 Stat. 3320, prohibited increased use of petroleum as primary energy source in existing electric powerplants which, during calendar year 1977, used coal or another alternate fuel as primary energy source, unless permit authorizing such increased use had been issued by Secretary.

SUBCHAPTER V—SYSTEM COMPLIANCE
OPTION

§ 8391. Repealed. Pub. L. 100-42, § 1(a)(6), May 21, 1987, 101 Stat. 310

Section, Pub. L. 95-620, title V, §501, Nov. 9, 1978, 92 Stat. 3321, mandated that existing electric powerplants owned or operated by an electric utility be considered in compliance with prohibitions under subchapter III of this chapter relating to use of natural gas if there is in effect an approved plan of system compliance for such utility, and set forth requirements for approval of such plan.

SUBCHAPTER VI—FINANCIAL ASSISTANCE

§ 8401. Assistance to areas impacted by increased coal or uranium production

(a) Designation of impacted areas

(1) In accordance with such criteria and guidelines as the Secretary of Agriculture shall, by

rule, prescribe, the Governor of any State may designate any area within such State for the purposes of this section, if he finds that—

(A) either (i) employment in coal or uranium production development activities in such area has increased for the most recent calendar year by 8 percent or more from the immediately preceding year or (ii) employment in such activities will increase 8 percent or more per year during each of the 3 calendar years beginning after the date of such finding;

(B) such employment increase has required or will require substantial increases in housing or public facilities and services or a combination of both in such area; and

(C) the State and the local government or governments serving such area lack the financial and other resources to meet any such increases in public facilities and services within a reasonable time.

The Secretary of Agriculture shall prescribe a rule containing criteria and guidelines for making a designation under this subsection, after consultation with the Secretary of Labor and the Secretary of Energy, not later than 180 days after the effective date of this chapter.

(2) For purposes of paragraph (1)(C), increased revenues, including severance tax revenues, royalties, and similar fees to the State and local governments which are associated with the increase in coal or uranium development activities and which are not prohibited from being used under provisions of law in effect on November 9, 1978, shall be taken into account in determining if a State or local government lacks financial resources.

(3) The Secretary shall, after consultation with the Secretary of Agriculture, approve any designation of an area under paragraph (1) only if—

(A) the Governor of the State making the designation provides the Secretary in writing with the data and information on which such designation was made, together with such additional information as the Secretary may require to carry out the purposes of this section; and

(B) the Secretary determines that the requirements of subparagraphs (A), (B), and (C) of paragraph (1) have been met.

(b) Planning grants

(1) The Secretary of Agriculture may make a grant to any State in which there is an area designated and approved under subsection (a) of this section for the purposes of developing a plan for such area which shall include determinations of—

(A) the anticipated level of coal or uranium production activities in such area;

(B) the socio-economic impacts which have occurred or which are reasonably projected to occur as a result of the increase in coal or uranium production activities;

(C) the availability and location of resources within such area to meet the increased needs resulting from socio-economic impacts determined under subparagraph (B) (such as any increased need for housing, or public facilities and services); and

(D) the nature and expense of measures necessary to meet within a reasonable time the

increased needs resulting from such impact for which there are no resources reasonably available other than under this section.

(2)(A) Any grant for developing a plan under this subsection shall be for an amount equal to 100 percent of the costs of such plan, as determined by the Secretary of Agriculture.

(B) The aggregate amount granted under this subsection in any fiscal year may not exceed 10 percent of the total amount appropriated for purposes of this section for such year.

(3) The Governor of a State receiving a grant under this subsection for developing a plan shall submit a copy of such plan to the Secretary of Agriculture as soon as practicable after it has been prepared.

(c) Land acquisition and development grants

(1) In the case of any real property—

(A) within an area for which a plan meeting the requirements of subsection (b)(1) of this section has been approved;

(B) which is for housing or public facilities determined in such plan as necessary due to an increase in employment due to coal or uranium development activities;

(C) with respect to which the Secretary of Agriculture has determined that the State and the local governments serving such area do not have the financial resources to acquire or the legal authority to acquire by condemnation; and

(D) with respect to which there has been an approval in writing by the Governor of such State that the Secretary of Agriculture exercise his authority under this paragraph;

the Secretary of Agriculture may acquire such real property or interest therein, by purchase, donation, lease, or exchange. Property so acquired shall be transferred to the State under such terms and conditions as the Secretary of Agriculture deems appropriate. Such terms and conditions shall provide for the reimbursement to the Secretary of Agriculture for the fair market value of the property, as determined by the Secretary of Agriculture. The value of any improvement of such property made after such acquisition shall not be taken into account in determining the fair market value of such property under this subsection. Amounts so received by the Secretary of Agriculture shall be deposited in the Treasury of the United States as miscellaneous receipts.

(2) Any approval by a Governor of a State under paragraph (1)(D) shall constitute a binding commitment of such State to accept the property to be acquired and to provide reimbursement for the amount of the fair market value of such property, as determined under paragraph (1).

(3) The Secretary of Agriculture may acquire property under paragraph (1) by condemnation only if he finds that—

(A) such property is not available by means other than condemnation at a price which does not substantially exceed the fair market value of such property;

(B) other real property is not similarly available which is within the same designated area and which is suitable for the purposes to

which the property involved is to be applied; and

(C) the State and the local governments serving such area lack the legal authority to acquire such property by condemnation.

(4)(A) In the case of any real property which meets the requirements of subparagraphs (A), (B), and (C) of paragraph (1), the Secretary of Agriculture may make a grant to the State in which such property is located for the purposes of acquiring such property, and for any site development which is consistent with the plan developed under subsection (b) of this section.

(B) In the case of property acquired by the Secretary of Agriculture under paragraph (1) and transferred to the State, the Secretary of Agriculture may make a grant to such unit of government for the purposes of site development which is consistent with such plan.

(C) Grants for real property acquisition or site development or both under this paragraph may not exceed 75 percent of the costs thereof, as determined by the Secretary of Agriculture.

(5) In the selection of real property for acquisition and in such acquisition under this subsection, preference shall be given to real property which the Secretary of Agriculture determines at such time to be unoccupied or previously mined and abandoned.

(6)(A) Property held by the United States in trust for Indians or any Indian tribe may not be acquired by condemnation under this section.

(B) No property within the National Forest System (as defined in section 1609¹ of title 16) may be exchanged by the Secretary in any acquisition under paragraph (1).

(d) General requirements regarding assistance

(1) Assistance under this section shall be provided only upon application, which application shall contain such information as the Secretary of Agriculture shall prescribe.

(2) The Secretary of Agriculture may make any grant under this section in whole or in part to the local government or governments serving an area designated and approved under subsection (a) of this section, or to a council of local governments which includes one or more local governments serving such area (in lieu of making such grant solely to the State), if he has determined, after consultation with the Governor of the State, that to do so would be appropriate.

(3) The Secretary of Agriculture shall prescribe, by rule, criteria for the allocation of assistance under this section. Such criteria shall give due weight to the magnitude of the employment increase involved, the financial resources of the designated area, and the ratio of the financial burden on the area to the resources available to such area.

(4) Assistance under this section shall be provided only if the Secretary of Agriculture is satisfied that—

(A) the amounts expended by the State and the local governments involved for the same purposes for which such assistance is provided will not be reduced; and

(B) the amount of such assistance does not reflect any amount for which other Federal fi-

ancial assistance is provided or on proper application would be provided.

(e) "Coal or uranium development activities" and "site development" defined

For the purposes of this section—

(1) The term "coal or uranium development activities" means the production, processing, or transportation of coal or uranium.

(2) The term "site development" means necessary off-site improvements, such as the construction of sewer and water connections, construction of access roads, and appropriate site restoration, but does not include any portion of the construction of housing or public facilities.

(f) Reports

Any person regularly engaged in any coal or uranium development activity within an area designated and approved under subsection (a) of this section shall prepare and transmit a report to the Secretary of Energy within 90 days after a written request to such person by the Governor of the State in which such area is located. Such report shall include—

(1) projected employment levels for such activity by such person within such area during each of the following 3 calendar years;

(2) the projected increase in employees in such area to engage in such activity during each of such calendar years;

(3) the projected quantity of coal (or uranium) to be produced, processed, or transported by such person during each of such calendar years; and

(4) actions such companies plan to take or are taking to provide needed housing and other facilities for their employees directly or by providing funds to the States or local communities for this purpose.

Copies of the report shall be provided to the Secretary of Energy and the Secretary shall, subject to the provisions of section 796(d) of title 15, provide the report to the Secretary of Agriculture, the Governor, and the appropriate county or local officials and make it available for public review.

(g) Administration

The Secretary of Agriculture shall carry out his responsibilities under this section through the Farmers Home Administration and such other agencies within the Department of Agriculture as he may determine appropriate.

(h) Appropriations authorization

(1)² There is hereby authorized to be appropriated to the Secretary of Energy for purposes of this section, \$60,000,000 for fiscal year 1979 and \$120,000,000 for fiscal year 1980. The Secretary of Energy and the Secretary of Agriculture shall enter into an agreement for the allocation of funds appropriated pursuant to this section for carrying out their respective responsibilities under this section, including the amounts for personnel and administrative costs, and upon such agreement, the Secretary of Energy shall

¹ See References in Text note below.

² So in original. No par. (2) has been enacted.

transfer to the Secretary of Agriculture amounts determined under that agreement.

(i) Protection from certain hazardous actions

Federal agencies having responsibilities concerning the health and safety of any person working in any coal, uranium, metal, or non-metallic mine regulated by any Federal agency shall interpret and utilize their authorities fully and promptly, including the promulgation of standards and regulations, to protect existing and future housing, property, persons, and public facilities located adjacent to or near active and abandoned coal, uranium, metal, and non-metallic mines from actions occurring at such activities that pose a hazard to such property or persons.

(j) Reorganization

The authority of the Secretary of Agriculture and the authority of the Secretary of Energy under this section may not be transferred to any other Secretary or to any other Federal agency under chapter 9 of title 5 or under any other provision of law, other than under specific provisions of a law enacted after November 9, 1978. The preceding provisions of this subsection shall not preclude either Secretary from delegating any such authority to any officer, employee, or entity within such Secretary's department.

(Pub. L. 95-620, title VI, §601, Nov. 9, 1978, 92 Stat. 3323.)

REFERENCES IN TEXT

The effective date of this chapter, referred to in subsec. (a)(1), is the effective date of Pub. L. 95-620. See section 901 of Pub. L. 95-620, set out as an Effective Date note under section 8301 of this title.

Section 1609 of title 16, referred to in subsec. (c)(6)(B), was in the original "section 10 of the Forest and Rangeland Renewable Resources Planning Act of 1974". Such section 10 is classified to section 1608 of title 16 but has been editorially translated as section 1609 of title 16 as the probable intent of Congress in that the properties defined as being in the National Forest System appear in section 1609.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8401a of this title.

§ 8401a. "Local government" defined

For the purposes of section 8401 of this title, the term "local government" shall include—

(1) any county, parish, city, town, township, village or other general purpose political subdivision of a State with the power to levy taxes and expend Federal, State, and local funds and exercise governmental powers; and

(2) which (in whole or in part) is located in, or has authority over the energy impacted area: *Provided further*, That such term shall include a public or private nonprofit corporation, or a school, water, sewer, highway, or other public special purpose district, authority, or body, with the concurrence of the Governor: *Provided further*, That such term shall be applicable to all applications for assistance received since the effective date of section 8401 of this title.

(Pub. L. 96-514, title II, §201, Dec. 12, 1980, 94 Stat. 2975.)

REFERENCES IN TEXT

For effective date of section 8401 of this title, referred to in par. (2), see section 901 of Pub. L. 95-620, set out as an Effective Date note under section 8301 of this title.

CODIFICATION

Section was enacted as part of the Department of the Interior and Related Agencies Appropriations Act, 1981, and not as part of the Powerplant and Industrial Fuel Use Act of 1978 which comprises this chapter.

§ 8402. Loans to assist powerplant acquisitions of air pollution control equipment

(a) Authority to make loans

The Secretary may, in accordance with the provisions of this section and such rules and regulations as he shall prescribe, make a loan (and may make a commitment to loan) to any person who owns or operates any existing electric powerplant converting to coal or other alternate fuel as its primary energy source after the effective date of this chapter for the purpose of financing the purchase and installation of one or more certified air pollution control devices for such electric powerplant.

(b) Limitations and conditions

A loan made under this section shall—

(1) not exceed two-thirds of the cost of purchasing and installing the certified air pollution control devices;

(2) have a maturity date not extending beyond 10 years after the date such loan is made;

(3) bear interest at a rate not less than (A) a rate determined by the Secretary of the Treasury, taking into consideration the average market yield of outstanding Treasury obligations of comparable maturity, plus (B) 1 percent;

(4) be made on the condition of payment to the Secretary of a loan fee in an amount equal to (A) such insurance fee as the Secretary determines is necessary to avoid a Federal revenue loss under this section, plus (B) 1 percent of the loan amount; and

(5) be made only if the Secretary finds that—

(A) the financial assistance applied for is not otherwise available from other Federal agencies;

(B) the applicant is unable to obtain sufficient funds on reasonable terms and conditions from any other source;

(C) there is continued reasonable assurance of full repayment of the principal, interest, and fees; and

(D) competition among private entities for the provision of air pollution control devices for electric powerplants using coal as their primary energy source to be assisted under this section will be in no way limited or precluded.

(c) Allocation and priorities

In making loans or commitments to loan pursuant to this section, the Secretary shall—

(1) allocate a minimum of 25 percent of available financial assistance to existing small municipal and rural powerplants; and

(2) give priority consideration to requests for financial assistance by existing electric powerplants subject to any prohibition under

subchapter III of this chapter (or under section 792 of title 15).

(d) Definitions

For purposes of this section—

(1) The term “certified pollution control device” means a new identifiable device which—

(A) is used, in connection with a powerplant, to abate or control atmospheric pollution by removing, altering, disposing, storing, or preventing the emission of pollutants;

(B) the appropriate State air pollution control agency has certified to the Administrator of the Environmental Protection Agency that such device is needed to meet, and is in conformity with, State requirements for abatement or control of atmospheric pollution or contamination;

(C) the Administrator of the Environmental Protection Agency has certified to the Secretary as not duplicating or displacing existing air pollution control devices with a remaining useful economic life in excess of 2 years and as otherwise being in furtherance of the requirements and purposes of the Clean Air Act [42 U.S.C. 7401 et seq.];

(D) does not constitute or include a building, or a structural component of a building, other than a building used exclusively for the purposes set forth in subparagraph (A); and

(E) the construction of which began after the effective date of this chapter.

(2) The term “small municipal or rural cooperative electric powerplant” means an electric generating unit, which—

(A) by design is not capable of consuming fuel at a fuel heat input rate in excess of a rate determined appropriate by the Secretary by rule; and

(B) is owned or operated by a municipality or a rural electric cooperative.

(e) Records

(1) The Secretary shall require all persons receiving financial assistance under this section to keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance was given or used, the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(2) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall, until the later of—

(A) the expiration of 3 years after completion of the project or undertaking referred to in subsection (a) of this section, or

(B) full repayment of interest and principal on a loan made under this section, occurs,

have access for the purposes of audit, evaluation, examination to any books, documents, papers, and records of such receipts which in the opinion of the Secretary or the Comptroller General may be related or pertinent to such loan.

(f) Default

(1) If there is a default in any payment by the obligor of interest or principal due under a loan entered into by the Secretary under this section and such default has continued for 90 days, the Secretary has the right to demand payment of such unpaid amount, unless the Secretary finds that such default has been remedied, or a satisfactory plan to remedy such default by the obligor has been accepted by the Secretary.

(2) In demanding payment of unpaid interest or principal by the obligor, the Secretary has all rights specified in the loan-related agreements with respect to any security which he held with respect to the loan, including the authority to complete, maintain, operate, lease, sell, or otherwise dispose of any property acquired pursuant to such loan or related agreements.

(3) If there is a default under any loan, the Secretary shall notify the Attorney General who shall take such action against the obligor or other parties liable thereunder as is, in his discretion, necessary to protect the interests of the United States. The holder of such loan shall make available to the United States all records and evidence necessary to prosecute any such suit.

(g) Deposit of receipts

Amounts received by the Secretary as principal, interest, fees, proceeds from security acquired following default, or other amounts received by the Secretary in connection with loans made under this section shall be paid into the Treasury of the United States as miscellaneous receipts.

(h) Authorization of appropriation

There are hereby authorized to be appropriated to the Secretary such sums as may be necessary to carry out the purposes of this section, but not to exceed \$400,000,000 for fiscal year 1979 and \$400,000,000 for fiscal year 1980. Authority granted to the Secretary under subsection (a) of this section may be exercised only to the extent as may be provided in advance in appropriation Acts.

(Pub. L. 95-620, title VI, §602, Nov. 9, 1978, 92 Stat. 3327.)

REFERENCES IN TEXT

The effective date of this chapter, referred to in subsecs. (a) and (d)(1)(E), is the effective date of Pub. L. 95-620. See section 901 of Pub. L. 95-620, set out as an Effective Date note under section 8301 of this title.

The Clean Air Act, referred to in subsec. (d)(1)(C), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§7401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

SUBCHAPTER VII—ADMINISTRATION AND ENFORCEMENT

PART A—PROCEDURES

§ 8411. Administrative procedures

(a) General rulemaking

Except to the extent otherwise provided in this section or other provisions of this chapter, rules prescribed under this chapter shall be

made in accordance with the procedures set forth in section 553 of title 5.

(b) Notices of rules and orders imposing prohibitions

Before the Secretary prescribes any rule or issues any order imposing a prohibition under this chapter, he shall publish such proposed rule or order in the Federal Register, together with a statement of the reasons for such rule or order and, in the case of a rule, a detailed statement of any special circumstances or characteristics required to be taken into account in prescribing such rule. A copy shall be transmitted to the person who operates any such powerplant required to be specifically identified in such rule or order.

(c) Petitions for exemptions

(1) Any petition for an exemption from any prohibition under this chapter shall be filed at such time and shall be in such form as the Secretary shall by rule prescribe. The Secretary, upon receipt of such petition, shall publish a notice thereof in the Federal Register together with a statement of the reasons set forth in such a petition for requesting such exemption, and provide a period of public comment of at least 45 days for written comments thereon. Rules required under this paragraph shall be prescribed not later than 120 days after November 9, 1978.

(2) The Secretary, upon receipt of such petition, shall notify the appropriate State agencies having primary authority to permit or regulate the construction or operation of the electric powerplant which is the subject of such petition, and, to the maximum extent practicable, consult with such agencies.

(3) The Secretary, within 6 months after the period for public comment and hearing applicable to any petition for an exemption, shall issue a final order granting or denying the petition for such exemption, except that the Secretary may extend such period to a specified date if he publishes notice thereof in the Federal Register and includes with such notice a statement of the reasons for such extension.

(d) Public comment on prohibitions and exemptions

(1) In the case of any proposed rule or order by the Secretary imposing a prohibition or any petition for any order granting an exemption under this chapter, any interested person shall be afforded an opportunity to present oral data, views, and arguments at a public hearing. At such hearing any interested person shall have an opportunity to question—

(A) other interested persons who make oral presentations,

(B) employees and contractors of the United States who have made written or oral presentations or who have participated in the development of the proposed rule or order or in the consideration of such petition, and

(C) experts and consultants who have provided information to any person who makes an oral presentation and which is contained in or referred to in such presentation,

with respect to disputed issues of material fact, except that the Secretary may restrict questioning if he determines that such questioning is du-

plicative or is not likely to result in a timely and effective resolution of such issues. Any oral or documentary evidence may be received, but the Secretary as a matter of policy shall provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence.

(2) A rule or order subject to this section may not be issued except on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence.

(e) Transcript

A transcript shall be kept of any public hearing made in accordance with this section.

(f) Environmental Protection Agency comment

A copy of any proposed rule or order to be prescribed or issued by the Secretary which imposes a prohibition under this chapter (other than under section 8374 of this title), or a petition for an exemption (or permit) under this chapter (other than under section 8374 of this title), shall be transmitted by the Secretary to the Administrator of the Environmental Protection Agency and the Secretary shall request such agency to comment thereon within the period provided to the public unless a longer period is provided under the Clean Air Act [42 U.S.C. 7401 et seq.]. In any such case, the Administrator of the Environmental Protection Agency shall be afforded the same opportunity to comment and question as is provided other interested persons under subsection (d) of this section.

(g) Repealed. Pub. L. 100-42, § 1(c)(16)(E), May 21, 1987, 101 Stat. 313

(h) Coordination with other provisions of law

(1) Except as provided in sections 8412(c)(4), 8433(d)(5), and 8434 of this title, title V of the Department of Energy Organization Act (42 U.S.C. 7191, et seq.) shall not apply with respect to this chapter.

(2) The preceding provisions of this section shall not apply with respect to any exercise of authority under section 8374 of this title.

(3) The procedures applicable under this chapter shall not—

(A) be considered to be modified or affected by any other provision of law unless such other provision specifically amends this chapter (or provisions of law cited herein), or

(B) be considered to be superseded by any other provision of law unless such other provision does so in specific terms, referring to this chapter, and declaring that such provision supersedes, in whole or in part, the procedures of this chapter.

(Pub. L. 95-620, title VII, § 701, Nov. 9, 1978, 92 Stat. 3329; Pub. L. 100-42, § 1(c)(16), May 21, 1987, 101 Stat. 313.)

REFERENCES IN TEXT

The Clean Air Act, referred to in subsec. (f), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§ 7401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

The Department of Energy Organization Act, referred to in subsec. (h)(1), is Pub. L. 95-91, Aug. 4, 1977, 91 Stat.

567, as amended. Title V of the Department of Energy Organization Act is classified generally to subchapter V (§ 7191 et seq.) of chapter 84 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

AMENDMENTS

1987—Subsec. (b). Pub. L. 100-42, § 1(c)(16)(A), struck out “(other than under section 8372 of this title)” after “this chapter” and “or installation” after “powerplant”.

Subsec. (c)(1). Pub. L. 100-42, § 1(c)(16)(B)(i), (ii), struck out “or for any permit under section 8375 of this title” after “this chapter” and “or permit” after “such exemption”.

Subsec. (c)(2). Pub. L. 100-42, § 1(c)(16)(B)(iii), struck out “or, where appropriate, major fuel-burning installation” after “powerplant”.

Subsec. (c)(3). Pub. L. 100-42, § 1(c)(16)(B)(i), struck out “or permit” after “exemption” in two places.

Subsec. (c)(4). Pub. L. 100-42, § 1(c)(16)(B)(iv), struck out par. (4) which read as follows: “Any order for the approval of a system compliance plan under section 8391 of this title, and any petition for such an order, shall be treated for purposes of this subchapter the same as an order (or petition) for an exemption.”

Subsec. (d)(1). Pub. L. 100-42, § 1(c)(16)(C), struck out “(or permit)” after “an exemption” and “(other than under section 8372 of this title)” after “under this chapter”.

Subsec. (f). Pub. L. 100-42, § 1(c)(16)(D), struck out “8372 or” after “(other than under section” in two places.

Subsec. (g). Pub. L. 100-42, § 1(c)(16)(E), struck out subsec. (g) which read as follows: “A copy of any proposed rule or order to be prescribed or issued by the Secretary which imposes a prohibition under this chapter (other than under section 8372 or 8374 of this title) with respect to a major fuel-burning installation or a boiler subject to section 8371 of this title or a petition by such installation or boiler for an exemption (or permit) under this chapter (other than under section 8372 or 8374 of this title), shall be transmitted by the Secretary to the Federal Trade Commission and the Secretary shall request such Commission to comment thereon within the period provided to the public. In any such case, the Federal Trade Commission shall be afforded the same opportunity to comment and question as is provided other interested persons under subsection (d) of this section.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8343 of this title.

§ 8412. Judicial review

(a) Publication and delay of prohibition or exemption to allow for review

Any final rule or order prescribed by the Secretary imposing a prohibition or granting an exemption (or permit) under this chapter shall be published in the Federal Register, and shall not take effect earlier than the 60th calendar day after such rule or order is published.

(b) Publication of denial of exemption or permit

Any final order issued by the Secretary denying any petition for an exemption or a permit under this chapter shall be published in the Federal Register, together with the reasons for such action.

(c) Judicial review

(1) Any person aggrieved by any final rule or order referred to in subsection (a) of this section or in section 8374 of this title, or by the denial of a petition for an order granting an exemption

(or permit) referred to in subsection (b) of this section, may at any time before the 60th day after the date such rule, order, or denial is published under subsection (a) or (b) of this section, file a petition with the United States court of appeals for the circuit wherein such person resides, or has his principal place of business, for judicial review thereof. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the written submissions to, and transcript of, the written or oral proceedings on which the rule or order was based as provided in section 2112 of title 28.

(2) Upon the filing of the petition referred to in paragraph (1), the court shall have jurisdiction to review the rule, order, or denial in accordance with chapter 7 of title 5, and to grant appropriate relief as provided in such chapter. No rule or order (or denial thereof) may be affirmed unless supported by substantial evidence.

(3) The judgment of the court affirming or setting aside, in whole or in part, any such rule, order, or denial shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(4) Subject to the direction and control of the Attorney General, as provided in section 519 of title 28, attorneys appointed by the Secretary may appear for and represent the Secretary in any proceeding instituted under this section in accordance with section 7192(c) of this title.

(Pub. L. 95-620, title VII, § 702, Nov. 9, 1978, 92 Stat. 3331.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8343, 8411 of this title.

PART B—INFORMATION AND REPORTING

§ 8421. Information

(a) Authority of Secretary

For purposes of carrying out his responsibilities under this chapter, the Secretary may require, under the authority of this chapter or any other authority administered by him, any person owning, operating or controlling any electric powerplant, or any other person otherwise subject to this chapter to submit such information and reports of any kind or nature directly to the Secretary necessary to implement the provisions of this chapter, and insure compliance with the provisions of this chapter, and any rule or order thereunder. The provisions of section 796(d) of title 15 shall apply with respect to information obtained under this section to the same extent and in the same manner as it applies with respect to energy information obtained under section 796 of title 15.

(b) Authority of President and Federal Energy Regulatory Commission

In the case of responsibilities expressly given by this chapter to the President or the Federal Energy Regulatory Commission, subsection (a) of this section shall be applied as if the references to the Secretary were references to the President or the Federal Energy Regulatory Commission, as the case may be.

(c) Natural gas usage by electric utilities

(1) For purposes of section 8374(b) of this title and other emergency authorities, the Secretary shall obtain data necessary to determine—

(A) within 6 months after August 13, 1981, the total quantities of natural gas used as a primary energy source by each electric utility during calendar year 1977, and

(B) on a semiannual basis, the total quantities of natural gas used as a primary energy source during the previous 6-month period by each electric utility.

(2) Repealed. Pub. L. 104-66, title I, §1051(e), Dec. 21, 1995, 109 Stat. 716.

(Pub. L. 95-620, title VII, §711, Nov. 9, 1978, 92 Stat. 3332; Pub. L. 97-35, title X, §1021(b), Aug. 13, 1981, 95 Stat. 615; Pub. L. 100-42, §1(c)(17), May 21, 1987, 101 Stat. 313; Pub. L. 104-66, title I, §1051(e), Dec. 21, 1995, 109 Stat. 716.)

AMENDMENTS

1995—Subsec. (c)(2). Pub. L. 104-66 struck out par. (2) which read as follows: “The Secretary shall include in each annual report to the Congress under section 8482 of this title a summary of information received by the Secretary under this subsection.”

1987—Subsec. (a). Pub. L. 100-42 struck out “or major fuel-burning installation” after “powerplant”.

1981—Subsec. (c). Pub. L. 97-35 added subsec. (c).

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective Aug. 13, 1981, see section 1038 of Pub. L. 97-35, set out as a note under section 6240 of this title.

§ 8422. Compliance report**(a) Generally**

Any person owning, operating, or proposing to operate one or more existing electric powerplants required to come into compliance with the prohibitions of this chapter shall on or before January 1, 1980, and annually thereafter, submit to the Secretary a report identifying all such existing electric powerplants owned or operated by such person. Such report shall—

(1) set forth the anticipated schedule for compliance with the applicable requirements and prohibitions by each such electric powerplant;

(2) indicate proposed or existing contracts or other commitments or good faith negotiations for such contracts or commitments for coal or another alternate fuel, equipment, or combinations thereof, which would enable such powerplant to comply with such prohibitions; and

(3) identify those electric powerplants, if any, for which application for temporary or permanent exemption from the prohibitions of this chapter may be filed.

(b) Report on implementation of section 8484 plan

Any electric utility required to submit a conservation plan under section 8484 of this title shall annually submit to the Secretary a report identifying the steps taken during the preceding year to implement such plan.

(Pub. L. 95-620, title VII, §712, Nov. 9, 1978, 92 Stat. 3332; Pub. L. 97-35, title X, §1023(b), Aug. 13, 1981, 95 Stat. 617.)

AMENDMENTS

1981—Pub. L. 97-35 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective Aug. 13, 1981, see section 1038 of Pub. L. 97-35, set out as a note under section 6240 of this title.

PART C—ENFORCEMENT

§ 8431. Notice of violation; other general provisions**(a) Notice of violation**

(1) Whenever, on the basis of any information available, the Secretary finds that any person is in violation of any provision of this chapter, or any rule or order thereunder, the Secretary shall issue notice of such violation. Any notice issued under this subsection shall be in writing and shall state with reasonable specificity the nature of the violation.

(2) Paragraph (1) shall not be construed to relieve any person of liability under the other provisions of this chapter for any act or omission occurring before the issuance of notice.

(b) Individual liability of corporate personnel

Any individual director, officer, or agent of a corporation who willfully authorizes, orders, or performs any of the acts or practices constituting in whole or in part a violation of this chapter, or any rule or order thereunder, shall be subject to penalties under this section without regard to any penalties to which the corporation may be subject, except that no such individual director, officer, or agent shall be subject to imprisonment under section 8432 of this title, unless he also knew of noncompliance by the corporation or had received from the Secretary notice of noncompliance by the corporation.

(c) Repealed. Pub. L. 100-42, §1(c)(18), May 21, 1987, 101 Stat. 313

(d) Federal agencies

The provisions of sections 8432 and 8433 of this title shall not be construed to apply to any Federal agency or officer or employee thereof acting in his official capacity.

(Pub. L. 95-620, title VII, §721, Nov. 9, 1978, 92 Stat. 3333; Pub. L. 100-42, §1(c)(18), May 21, 1987, 101 Stat. 313.)

AMENDMENTS

1987—Subsec. (c). Pub. L. 100-42 struck out subsec. (c) which read as follows: “No person shall be subject to any penalty under this part with respect to the operation of any powerplant in excess of that allowed by an exemption granted on the basis of the operation of such powerplant as a peakload powerplant if it is demonstrated to the Secretary that such operation was necessary to meet peakload demand and that other peakload powerplants within the same system as such powerplant—

“(1) were unavailable for service—

“(A) due to unit or system outages; or

“(B) because operation of such other powerplants would result in their exceeding the hours of operation allowed under an exemption; and

“(2) have not been operated other than to meet peakload demand.”

§ 8432. Criminal penalties

Any person who willfully violates any provision of this chapter, or any rule or order there-

under, shall be subject to a fine of not more than \$50,000, or to imprisonment for not more than one year, or both, for each violation.

(Pub. L. 95-620, title VII, §722, Nov. 9, 1978, 92 Stat. 3333; Pub. L. 100-42, §1(c)(19), May 21, 1987, 101 Stat. 313.)

AMENDMENTS

1987—Pub. L. 100-42 struck out “(other than section 8372 of this title)” after “this chapter”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8431 of this title.

§ 8433. Civil penalties

(a) General civil penalty

Any person who violates any provision of this chapter, or rule or order thereunder, shall be subject to a civil penalty, which shall be assessed by the Secretary, of not more than \$25,000 for each violation. Each day of violation shall constitute a separate violation.

(b) Civil penalty for operation in excess of exemption

In the case of any electric powerplant granted an exemption, any person who operates such powerplant during any 12-calendar-month period in excess of that authorized in such exemption, shall be liable for a civil penalty, which shall be assessed by the Secretary. The amount of such civil penalty may not exceed \$10 per barrel of petroleum or \$3 per Mcf of natural gas used in operation of such powerplant in excess of that authorized in such exemption.

(c) Repealed. Pub. L. 100-42, § 1(c)(20)(C), May 21, 1987, 101 Stat. 314

(d) Assessment

(1) Before issuing an order assessing a civil penalty against any person under this chapter, the Secretary shall provide to such person notice of the proposed penalty. Such notice shall inform such person of his opportunity to elect in writing within 30 days after the date of receipt of such notice to have the procedures of paragraph (3) (in lieu of those of paragraph (2)) apply with respect to such assessment.

(2)(A) Unless an election is made within 30 calendar days after receipt of notice under paragraph (1) to have paragraph (3) apply with respect to such penalty, the Secretary shall assess the penalty, by order, after a determination of violation has been made on the record after an opportunity for an agency hearing pursuant to section 554 of title 5 before an administrative law judge appointed under section 3105 of such title 5. Such assessment order shall include the administrative law judge's findings and the basis for such assessment.

(B) Any person against whom a penalty is assessed under this paragraph may, within 60 calendar days after the date of the order of the Secretary assessing such penalty, institute an action in the United States court of appeals for the appropriate judicial circuit for judicial review of such order in accordance with chapter 7 of title 5. The court shall have jurisdiction to enter a judgment affirming, modifying, or setting aside in whole or in part, the order of the

Secretary, or the court may remand the proceeding to the Secretary for such further action as the court may direct.

(3)(A) In the case of any civil penalty with respect to which the procedures of this paragraph have been elected, the Secretary shall promptly assess such penalty, by order, after the date of the receipt of the notice under paragraph (1) of the proposed penalty.

(B) If the civil penalty has not been paid within 60 calendar days after the assessment order has been made under subparagraph (A), the Secretary shall institute an action in the appropriate district court of the United States for an order affirming the assessment of the civil penalty. The court shall have authority to review de novo the law and the facts involved, and shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part, such assessment.

(C) Any election to have this paragraph apply may not be revoked except with the consent of the Secretary.

(4) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order under paragraph (2), or after the appropriate district court has entered final judgment in favor of the Secretary under paragraph (3), the Secretary shall institute an action to recover the amount of such penalty in any appropriate district court of the United States. In such action, the validity and appropriateness of such final assessment order or judgment shall not be subject to review.

(5)(A) Notwithstanding the provisions of title 28, or of section 7192(c) of this title, the Secretary shall be represented by the general counsel of the Department of Energy (or any attorney or attorneys within the Department of Energy designated by the Secretary) who shall supervise, conduct, and argue any civil litigation to which paragraph (3) of this subsection applies (including any related collection action under paragraph (4)) in a court of the United States or in any other court, except the Supreme Court. However, the Secretary or the general counsel shall consult with the Attorney General concerning such litigation, and the Attorney General shall provide, on request, such assistance in the conduct of such litigation as may be appropriate.

(B) Subject to the provisions of section 7192(c) of this title, the Secretary shall be represented by the Attorney General, or the Solicitor General, as appropriate, in actions under this subsection, except to the extent provided in subparagraph (A) of this paragraph.

(C) Section 7172(d) of this title shall not apply with respect to the functions of the Secretary under this subsection.

(Pub. L. 95-620, title VII, §723, Nov. 9, 1978, 92 Stat. 3333; Pub. L. 100-42, §1(c)(20), May 21, 1987, 101 Stat. 313.)

AMENDMENTS

1987—Subsec. (a). Pub. L. 100-42, §1(c)(20)(A), struck out “(other than section 8372 of this title)” after “this chapter”.

Subsec. (b). Pub. L. 100-42, §1(c)(20)(B), (C), struck out “(1)” before “In the case of” and struck out par. (2) which read as follows: “Any person operating a major

fuel-burning installation granted an exemption which, for any 12-calendar-month period, uses petroleum or natural gas, or both, in excess of that use allowed by such exemption shall be liable for a civil penalty, which shall be assessed by the Secretary. The amount of such civil penalty may not exceed \$10 per barrel of petroleum or \$3 per Mcf of natural gas which was used in excess of that use allowed by such exemption.”

Subsec. (c), Pub. L. 100-42, §1(c)(20)(C), struck out subsec. (c) which set forth civil penalties for violation of section 8372 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8411, 8431 of this title.

§ 8434. Injunctions and other equitable relief

Whenever it appears to the Secretary that any person has engaged, is engaged, or is about to engage in acts or practices constituting a violation of this chapter, or any rule or order thereunder, a civil action,¹ may be brought, in accordance with section 7192(c) of this title, in the appropriate district court of the United States to enjoin such acts or practices, and, upon a proper showing, the court shall grant, without bond, mandatory or prohibitive injunctive relief, including interim equitable relief.

(Pub. L. 95-620, title VII, §724, Nov. 9, 1978, 92 Stat. 3335.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8411 of this title.

§ 8435. Citizens suits

(a) General rule

Except as otherwise provided in subsection (b) of this section, any aggrieved person may commence a civil action for mandatory or prohibitive injunctive relief, including interim equitable relief, against the Secretary or the head of any Federal agency which has a responsibility under this chapter if there is an alleged failure of the Secretary or such agency head to perform any act or duty under this chapter which is not discretionary. The United States district courts shall have jurisdiction over actions brought under this section, without regard to the amount in controversy or the citizenship of the parties.

(b) Notice to Secretary or agency head

No action may be commenced under subsection (a) of this section before the 60th calendar day after the date on which the plaintiff has given notice of such action to the Secretary or the agency head involved. Notice under this subsection shall be given in such manner as the Secretary shall prescribe by rule.

(c) Authority of Secretary to intervene

In any action brought under subsection (a) of this section, the Secretary, if not a party, may intervene as a matter of right.

(d) Costs of litigation

The court, in issuing any final order in any action brought under subsection (a) of this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any

party, whenever the court determines such award is appropriate.

(e) Other remedies to remain available

Nothing in this section shall restrict any right which any aggrieved person (or class of aggrieved persons) may have under any statute or common law to seek enforcement of this chapter or any rule thereunder, or to seek any other relief (including relief against the Secretary or the agency head involved).

(Pub. L. 95-620, title VII, §725, Nov. 9, 1978, 92 Stat. 3335.)

PART D—PRESERVATION OF CONTRACTUAL RIGHTS

§ 8441. Preservation of contractual interest

(a) Right to transfer contractual interests

(1) If any person receives natural gas, the use of which is prohibited by the provisions of subchapter III of this chapter or any rule or order thereunder, and if such natural gas is received pursuant to a contract in effect on April 20, 1977, between such person and any other person, such person receiving such natural gas may transfer all or any portion of such person's contractual interests under such contract and receive consideration from the person to whom such contractual interests are transferred. The consideration authorized by this subsection shall not exceed the maximum consideration established as just compensation under this section.

(2) Any person who would have transported or distributed the natural gas subject to a contract with respect to which contractual interests are transferred pursuant to paragraph (1) shall be entitled to receive just compensation (as determined by the Commission) from the person to whom such contractual interests are transferred.

(b) Determination of consideration

(1) The Commission shall, by rule, establish guidelines for the application on a regional or national basis (as may be appropriate) of the criteria specified in subsection (e)(1) of this section to determine the maximum consideration permitted as just compensation under this section.

(2) The person transferring contractual interests pursuant to subsection (a)(1) of this section and the person to whom such interests are transferred may agree on the amount of, or method of determining, the consideration to be paid for such transfer and certify such consideration to the Commission. Except as provided in paragraph (4), such agreed-upon consideration shall not exceed the consideration determined by application of the guidelines prescribed by the Commission under paragraph (1).

(3) In the event the person transferring contractual interests pursuant to subsection (a)(1) of this section and the person to whom such interests are to be transferred fail to agree, under paragraph (2), on the amount of, or method of determining, the consideration to be paid for such transfer, the Commission may, at the request of both such persons, prescribe the amount of, or method of determining, such consideration. Upon the request of either such person, the Commission shall make such determination

¹ So in original. The comma probably should not appear.

on the record, after an opportunity for agency hearing. In any such latter case, the determination of the Commission shall be binding upon the party requesting that such determination be made on the record of the agency hearing. The consideration prescribed by the Commission shall not exceed the maximum consideration permitted as just compensation under this section. In prescribing the amount of, or method of determining, consideration under this paragraph, to the maximum extent practicable, the Commission shall utilize any liquidated damages provision set forth in the applicable contract, but in no event may the Commission prescribe consideration in excess of the maximum consideration permitted as just compensation under this section.

(4) In the event that the consideration agreed upon under paragraph (2) exceeds the consideration determined by application of the guidelines prescribed by the Commission under paragraph (1), the Commission may approve such agreed-upon consideration if the Commission determines such agreed-upon consideration does not exceed the maximum consideration permitted as just compensation under this section.

(5) If consideration is agreed upon under paragraph (2) and such consideration exceeds the consideration determined by application of the guidelines prescribed under paragraph (1), but does not exceed the maximum consideration permitted as just compensation under this section, the Commission may not require a refund of any portion of the agreed-upon consideration paid with respect to deliveries of natural gas occurring prior to the Commission's action under paragraph (4) approving or disapproving such consideration unless the Commission determines—

(A) such agreed-upon consideration was fraudulently established;

(B) the processing of the request for approval of such agreed-upon consideration under paragraph (4) was willfully delayed by a party to the transfer; or

(C) such agreed-upon consideration exceeds the maximum consideration permitted as just compensation under this section.

(c) Restrictions on transfers unenforceable

(1) Any provision of any contract, which prohibits any transfer authorized by subsection (a)(1) of this section or terminates such contract on the basis of such transfer, shall be unenforceable in any court of the United States and in any court of any State.

(2) No State may enforce any prohibition on any transfer authorized by subsection (a)(1) of this section.

(d) Contractual obligations unaffected

The person acquiring contractual interests transferred pursuant to subsection (a)(1) of this section shall assume the contractual obligations which the person transferring such contractual interests has under such contract. This subsection shall not relieve the person transferring such contractual interests from any contractual obligation of such person under such contract if such obligation is not performed by the person acquiring such contractual interests.

(e) Definitions

For purposes of this section—

(1) The term “just compensation”, when used with respect to any transfer of contractual interests authorized by subsection (a)(1) of this section, means the maximum amount of, or method of determining, consideration which does not exceed the amount by which—

(A) the reasonable costs (excluding capital costs) incurred, during the remainder of the period of the contract with respect to which contractual interests are transferred under subsection (a)(1) of this section, in direct association with the use of a fuel, other than natural gas, as a primary energy source by the applicable existing electric powerplant, exceed

(B) the price of natural gas under such contract during such period.

For purposes of subparagraph (A), the reasonable costs associated with the use of a fuel, other than natural gas, as a primary energy source shall include an allowance for the amortization, over the remaining useful life, of the undepreciated value of depreciable assets located on the premises containing such electric powerplant, which assets were directly associated with the use of natural gas and are not usable in connection with the use of such other fuel.

(2) The term “just compensation”, when used with respect to subsection (a)(2) of this section, means an amount equal to any loss of revenue, during the remaining period of the contract with respect to which contractual interests are transferred pursuant to subsection (a)(1) of this section, to the extent such loss (A) is directly incurred by reason of the discontinuation of the transportation or distribution of natural gas resulting from the transfer of contractual interests pursuant to subsection (a)(1) of this section, and (B) is not offset by revenues derived from other transportation or distribution which would not have occurred if such contractual interests had not been transferred.

(3) The term “contractual interests”, with respect to a contract described in subsection (a)(1) of this section, includes the right to receive natural gas as affected by any applicable curtailment plan filed with the Commission or the appropriate State regulatory authority.

(4) The term “State” means each of the several States, the District of Columbia, Puerto Rico, any territory or possession of the United States, and any political subdivision of any of the foregoing.

(5) The term “interstate pipeline” means any person engaged in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission under the Natural Gas Act [15 U.S.C. 717 et seq.].

(6) The term “Commission” means the Federal Energy Regulatory Commission.

(7) The term “contract”, when used with respect to a contract for receipt of natural gas, which contract was in existence on April 20, 1977, does not include any renewal or extension occurring after such date unless such renewal or extension occurs pursuant to the exercise of an option by the person receiving natural gas under such contract.

(f) Coordination with Natural Gas Act

(1) Consideration paid by any interstate pipeline pursuant to this section shall be deemed

just and reasonable for purposes of sections 4, 5, and 7 of the Natural Gas Act [15 U.S.C. 717c, 717d, 717f]. The Commission shall not deny a passthrough by such interstate pipeline of such consideration based upon the amount of such consideration paid pursuant to this section.

(2) No person shall be subject to the jurisdiction of the Commission under the Natural Gas Act [15 U.S.C. 717 et seq.] or to regulation as a common carrier under any provision of Federal or State law solely by reason of making any sale, or engaging in any transportation, of natural gas with respect to which the transfer of contractual interests is authorized under subsection (a)(1) of this section.

(3) Nothing in this section shall exempt from the jurisdiction of the Commission under the Natural Gas Act [15 U.S.C. 717 et seq.] any transportation in interstate commerce of natural gas, any sale in interstate commerce for resale of natural gas, or any person engaged in such transportation or such sale to the extent such transportation, sale or person is subject to the jurisdiction¹ of the Commission under such Act without regard to the transfer of contractual interests under subsection (a)(1) of this section.

(4) Nothing in this section shall exempt any person from any obligation to obtain a certificate of public convenience and necessity for the transportation by an interstate pipeline of natural gas with respect to which the transfer of contractual interests is authorized under subsection (a)(1) of this section. The Commission shall not deny such a certificate for the transportation in interstate commerce of natural gas based upon the amount of consideration paid pursuant to this section.

(g) Volume limitation

No supplier of natural gas under any contract, with respect to which contractual interests have been transferred under subsection (a)(1) of this section, shall be required to supply natural gas during any relevant period in volume amounts which exceed the lesser of—

(1) the volume determined by reference to the maximum delivery obligations specified in such contract;

(2) the volume which such supplier would have been required to supply, under the curtailment plan in effect for such supplier, to the person, who transferred contractual interests under subsection (a)(1) of this section, if no such transfer had occurred;

(3) the volume which would have been delivered, or for which payment would have been made, pursuant to such contract but for the prohibition on the use of such natural gas under subchapter III of this chapter or any rule or order thereunder; and

(4) the volume actually delivered or for which payment would have been made pursuant to such contract during the 12-calendar-month period ending immediately before such transfer of contractual interests pursuant to this section.

(h) Judicial review

Any action by the Commission under this section is subject to judicial review in accordance with chapter 7 of title 5.

¹ So in original. Probably should be "jurisdiction".

(Pub. L. 95-620, title VII, §731, Nov. 9, 1978, 92 Stat. 3336; Pub. L. 100-42, §1(c)(21), May 21, 1987, 101 Stat. 314.)

REFERENCES IN TEXT

The Natural Gas Act, referred to in subsecs. (e)(5) and (f)(2), (3), is act June 21, 1938, ch. 556, 52 Stat. 821, as amended, which is classified generally to chapter 15B (§717 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 717w of Title 15 and Tables.

AMENDMENTS

1987—Subsec. (a)(1). Pub. L. 100-42, §1(c)(21)(A), struck out reference to subchapter II of this chapter.

Subsec. (e)(1). Pub. L. 100-42, §1(c)(21)(B), struck out "or major fuel-burning installation" after "powerplant" in subpar. (A) and "or major fuel-burning installation" after "powerplant" in last sentence.

Subsec. (g)(3). Pub. L. 100-42, §1(c)(21)(A), struck out reference to subchapter II of this chapter.

PART E—STUDIES

§ 8451. National coal policy study

(a) Study

The President, acting through the Secretary and the Administrator of the Environmental Protection Agency, shall make a full and complete investigation and study of the alternative national uses of coal available in the United States to meet the Nation's energy requirements consistent with national policies for the protection and enhancement of the quality of the environment and for economic recovery and full employment. In particular the study should identify and evaluate—

(1) current and prospective coal requirements of the United States;

(2) current and prospective voluntary and mandatory energy conservation measures and their potential for reduction of the United States coal requirements;

(3) current and prospective coal resource production, transportation, conversion, and utilization requirements;

(4) the extent and adequacy of coal research, development, and demonstration programs being carried out by Federal, State, local, and nongovernmental entities (including financial resources, manpower, and statutory authority);

(5) programs for the development of coal mining technologies which increase coal production and utilization while protecting the health and safety of coal miners;

(6) alternative strategies for meeting anticipated United States coal requirements, consistent with achieving other national goals, including national security and environmental protection;

(7) existing and prospective governmental policies and laws affecting the coal industry with the view of determining what, if any, changes in and implementation of such policies and laws may be advisable in order to consolidate, coordinate, and provide an effective and equitable national energy policy consistent with other national policies; and

(8) the most efficient use of the Nation's coal resources considering economic (including capital and consumer costs, and balance of

payments), social (including employment), environmental, technological, national defense, and other aspects.

(b) Report

Within 18 months after the effective date of this chapter, the President shall submit to the Congress a report with respect to the studies and investigations, together with findings and recommendations in order that the Congress may have such information in a timely fashion. Such report shall include the President's determinations and recommendations with respect to—

- (1) the Nation's projected coal needs nationally and regionally, for the next 2 decades with particular reference to electric power;
- (2) the coal resources available or which must be developed to meet those needs, including, as applicable, the programs for research, development, and demonstration necessary to provide technological advances which may greatly enhance the Nation's ability to efficiently and economically utilize its fuel resources, consistent with applicable environmental requirements;
- (3) the air, water, and other pollution created by coal requirements, including any programs to overcome promptly and efficiently any technological or economic barriers to the elimination of such pollution;
- (4) the existing policies and programs of the Federal Government and of State and local governments, which have any significant impact on the availability, production or efficient and economic utilization of coal resources and on the ability to meet the Nation's energy needs and environmental requirements; and
- (5) the adequacy of various transportation systems, including roads, railroads, and waterways to meet projected increases in coal production and utilization.

Before submitting a report to the Congress under subsection (b) of this section, the President shall publish in the Federal Register a notice and summary of the proposed report, make copies of such report available, and accord interested persons an opportunity (of not less than 90 days' duration) to present written comments; and shall make such modifications of such report as he may consider appropriate on the basis of such comments.

(c) Authorization of appropriations

There is hereby authorized to be appropriated to the Secretary for allocation between the Department of Energy and the Environmental Protection Agency for fiscal years 1979 and 1980, not to exceed \$18,000,000, for use in carrying out the purposes of this section.

(Pub. L. 95-620, title VII, §741, Nov. 9, 1978, 92 Stat. 3339.)

REFERENCES IN TEXT

The effective date of this chapter, referred to in subsec. (b), is the effective date of Pub. L. 95-620. See section 901 of Pub. L. 95-620, set out as an Effective Date note under section 8301 of this title.

§ 8452. Repealed. Pub. L. 97-375, title I, § 106(d), Dec. 21, 1982, 96 Stat. 1820

Section, Pub. L. 95-620, title VII, §742, Nov. 9, 1978, 92 Stat. 3341, related to an investigation by the Secretary of the performance and competition of the coal industry, to be reported to Congress in interim reports with a final report to be submitted not later than eighteen months after Nov. 9, 1978.

§ 8453. Impact on employees

(a) Evaluation

The Secretary shall conduct continuing evaluations of potential loss or shifts of employment which may result from any prohibition under this chapter, including, if appropriate, investigating threatened plant closures or reductions in employment allegedly resulting from such prohibition. The results of such evaluations and each investigation shall promptly be made available to the public.

(b) Investigation and hearings

On a written request filed with the Secretary by or on behalf of any employee who is discharged or laid off, threatened with discharge or layoff, or otherwise discriminated against, by any person because of the alleged effects of any such prohibition, the Secretary shall investigate the matter and, at the request of any party, shall hold public hearings, after not less than 30 days notice, at which the Secretary shall require the parties, including any employer involved, to present information on the actual or potential effect of such prohibition on employment and on any alleged employee discharge, layoff, or other discrimination relating to prohibitions and the detailed reasons or justification therefor. At the completion of such investigation, the Secretary shall make findings of fact as to the effect of such prohibition on employment and on the alleged employee discharge, layoff, or discrimination and shall make such recommendations as he deems appropriate. Such report, findings, and recommendations shall be available to the public. The Secretary of Labor shall participate in each such investigation.

(c) Rule of construction

Nothing in this section shall be construed to require or authorize the Secretary to modify or withdraw any prohibition under this chapter.

(Pub. L. 95-620, title VII, §743, Nov. 9, 1978, 92 Stat. 3342.)

§ 8454. Study of compliance problem of small electric utility systems

(a) Study

The Secretary shall conduct a study of the problems of compliance with this chapter experienced by those electric utility systems which have a total system generating capacity of less than 2,000 megawatts. The Secretary shall report his findings and his recommendations to the Congress not later than 2 years after the effective date of this chapter.

(b) Authorization of appropriations

There is authorized to be appropriated to the Secretary for the fiscal year 1979 not to exceed \$500,000 to carry out the provisions of this section.

(Pub. L. 95-620, title VII, §744, Nov. 9, 1978, 92 Stat. 3343.)

REFERENCES IN TEXT

The effective date of this chapter, referred to in subsec. (a), is the effective date of Pub. L. 95-620. See section 901 of Pub. L. 95-620, set out as an Effective Date note under section 8301 of this title.

§ 8455. Repealed. Pub. L. 104-66, title II, § 2021(j)(1), Dec. 21, 1995, 109 Stat. 727

Section, Pub. L. 95-620, title VII, § 745, Nov. 9, 1978, 92 Stat. 3343; Pub. L. 100-42, §1(c)(22), May 21, 1987, 101 Stat. 314, related to emissions monitoring.

§ 8456. Socioeconomic impacts of increased coal production and other energy development

(a) Committee

There is hereby established an interagency committee composed of the heads of the Departments of Energy, Commerce, Interior, Transportation, Housing and Urban Development, and Health and Human Services, the Environmental Protection Agency, the Appalachian Regional Commission, the Farmers' Home Administration, the Office of Management and Budget, and such other Federal agencies as the Secretary shall designate. In carrying out its functions the committee shall consult with the National Governors' Conference and interested persons, organizations, and entities. The chairman of the committee shall be designated by the President. The committee shall terminate 90 days after the submission of its report under subsection (c) of this section.

(b) Functions of committee

It is the function of the committee to conduct a study of the socioeconomic impacts of expanded coal production and rapid energy development in general, on States, including local communities, and on the public, including the adequacy of housing and public, recreational, and cultural facilities for coal miners and their families and the effect of any Federal or State laws or regulations on providing such housing and facilities. The committee shall gather data and information on—

- (1) the level of assistance provided under this chapter and any other programs related to impact assistance,
- (2) the timeliness of assistance in meeting impacts caused by Federal decisions on energy policy as well as private sector decisions, and
- (3) the obstacles to effective assistance contained in regulations of existing programs related to impact assistance.

(c) Report

Within 1 year after the effective date of this chapter, the committee shall submit a detailed report on the results of such study to the Congress, together with any recommendations for additional legislation it may consider appropriate.

(Pub. L. 95-620, title VII, §746, Nov. 9, 1978, 92 Stat. 3344; Pub. L. 96-88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695.)

REFERENCES IN TEXT

The effective date of this chapter, referred to in subsec. (c), is the effective date of Pub. L. 95-620. See sec-

tion 901 of Pub. L. 95-620, set out as an Effective Date note under section 8301 of this title.

CHANGE OF NAME

“Department of Health and Human Services” substituted for “Department of Health, Education, and Welfare” in subsec. (a), pursuant to section 509(b) of Pub. L. 96-88, which is classified to section 3508(b) of Title 20, Education.

§ 8457. Use of petroleum and natural gas in combustors

The Secretary shall conduct a detailed study of the uses of petroleum and natural gas as a primary energy source for combustors and installations not subject to the prohibitions of this chapter. In conducting such study, the Secretary shall—

- (1) identify those categories of major fuel-burning installations in which the substitution of coal or other alternate fuels for petroleum and natural gas is economically and technically feasible, and
- (2) determine the estimated savings of natural gas and petroleum expected from such substitution.

Within 1 year after the effective date of this chapter, the Secretary shall submit a detailed report on the results of such study to the Congress, together with any recommendations for legislation he may consider appropriate.

(Pub. L. 95-620, title VII, §747, Nov. 9, 1978, 92 Stat. 3344.)

REFERENCES IN TEXT

The effective date of this chapter, referred to in text, is the effective date of Pub. L. 95-620. See section 901 of Pub. L. 95-620, set out as an Effective Date note under section 8301 of this title.

PART F—APPROPRIATIONS AUTHORIZATION

§ 8461. Authorization of appropriations

There is authorized to be appropriated to the Secretary for fiscal year 1979 \$11,900,000, to carry out the provisions of this chapter (other than provisions for which an appropriations authorization is otherwise expressly provided in this chapter) and section 792 of title 15.

(Pub. L. 95-620, title VII, §751, Nov. 9, 1978, 92 Stat. 3344.)

PART G—COORDINATION WITH OTHER PROVISIONS OF LAW

§ 8471. Effect on environmental requirements

(a) Compliance with applicable environmental requirements

Except as provided in section 8374 of this title, nothing in this chapter shall be construed as permitting any existing or new electric powerplant to delay or avoid compliance with applicable environmental requirements.

(b) Local environmental requirements

In the case of any new or existing facility—

- (1) which is subject to any prohibition under this chapter, and
- (2) which is also subject to any requirement of any local environmental requirement which

may be stricter than any Federal or State environmental requirement,

the existence of such local requirement shall not be construed to affect the validity or applicability of such prohibition to such facility, except to the extent provided under section 8322(b) or section 8352(b) of this title; and the existence of such prohibition shall not be construed to preempt such local requirement with respect to that facility.

(Pub. L. 95-620, title VII, §761, Nov. 9, 1978, 92 Stat. 3345; Pub. L. 100-42, §1(c)(23), May 21, 1987, 101 Stat. 314.)

AMENDMENTS

1987—Subsec. (a). Pub. L. 100-42 struck out “or major fuel-burning installation” after “powerplant”.

§ 8472. Effect of orders under section 792 of title 15

(a) Effect of construction orders

Any electric powerplant or major fuel-burning installation issued an order pursuant to section 792(c) of title 15 that is pending on the effective date of this chapter shall, notwithstanding the provisions of such section 792(c) or any other provision of this chapter, be subject to the provisions of this chapter as if it were a new electric powerplant or new major fuel-burning installation, as the case may be, except that if such order became final before such date, the provisions of subchapter II of this chapter shall not apply to such powerplant or installation.

(b) Effect of prohibition orders

The provisions of subchapters II and III of this chapter shall not apply to any powerplant or installation for which an order issued pursuant to section 792(a) of title 15 before the effective date of this chapter is pending or final or which, on review, was held unlawful and set aside on the merits; except that any installation issued such an order under such section 792(a) which is pending on the effective date of this chapter may elect to be covered by subchapter II or III of this chapter (as the case may be) rather than such section 792. Such an election shall be irrevocable and shall be made in such form and manner as the Secretary shall, within 90 days after November 9, 1978, prescribe. Such an election shall be made not later than 60 days after the date on which the Secretary prescribes the form and manner of making such election.

(c) Validity of orders

The preceding provisions of this chapter shall not affect the validity of any order issued under subsection (a), or any final order under subsection (c), of section 792 of title 15, and the authority of the Secretary to amend, repeal, rescind, modify, or enforce any such order, or rules applicable thereto, shall remain in effect notwithstanding any limitation of time otherwise applicable to such authority. Except as provided in this section, the authority of the Secretary under section 792 of title 15 shall terminate on the effective date of this chapter.

(Pub. L. 95-620, title VII, §762(a)-(c), Nov. 9, 1978, 92 Stat. 3345.)

REFERENCES IN TEXT

The effective date of this chapter, referred to in text, is the effective date of Pub. L. 95-620. See section 901 of Pub. L. 95-620, set out as an Effective Date note under section 8301 of this title.

§ 8473. Environmental impact statements under section 4332 of this title

The following actions are not deemed to be major Federal actions for purposes of section 4332(2)(C) of this title:

(1) the grant or denial of any temporary exemption under this chapter for any electric powerplant;

(2) the grant or denial of any permanent exemption under this chapter for any existing electric powerplant, other than an exemption—

(A) under section 8352(c) of this title, relating to cogeneration;

(B) Repealed. Pub. L. 100-42, §1(c)(24)(B), May 21, 1987, 101 Stat. 314;

(C) under section 8352(b) of this title, relating to certain State or local requirements;

(D) under section 8352(g) of this title, relating to certain intermediate load powerplants; and

(3) the grant or denial of any exemption under this chapter for any powerplant for which the Secretary finds, in consultation with the appropriate Federal agency, and publishes such finding that an environmental impact statement is required in connection with another Federal action and such statement will be prepared by such agency and will reflect the exemption adequately.

Except as provided in the preceding provisions of this section, any determination of what constitutes or does not constitute a major Federal action shall be made under section 4332 of this title.

(Pub. L. 95-620, title VII, §763, Nov. 9, 1978, 92 Stat. 3346; Pub. L. 100-42, §1(c)(24), May 21, 1987, 101 Stat. 314.)

AMENDMENTS

1987—Par. (1). Pub. L. 100-42, §1(c)(24)(A), struck out “or major fuel-burning installation” after “powerplant”.

Par. (2). Pub. L. 100-42, §1(c)(24), struck out “or major fuel-burning installation” after “powerplant” and struck out subpar. (B) which read as follows: “under section 8352(l) of this title, relating to scheduled equipment outages;”.

Par. (3). Pub. L. 100-42, §1(c)(24)(A), struck out “or major fuel-burning installation” after “powerplant”.

SUBCHAPTER VIII—MISCELLANEOUS PROVISIONS

§ 8481. Repealed. Pub. L. 100-42, § 1(a)(7), May 21, 1987, 101 Stat. 310

Section, Pub. L. 95-620, title VIII, §801, Nov. 9, 1978, 92 Stat. 3346, required annual disclosure of extent, characteristics, and productive capacity of coal reserves, and of interests held therein, with discretionary exception for small reserves, and publication of such information by Secretary.

§ 8482. Repealed. Pub. L. 104-66, title I, § 1051(e), Dec. 21, 1995, 109 Stat. 716

Section, Pub. L. 95-620, title VIII, §806, Nov. 9, 1978, 92 Stat. 3348, directed Secretary of Energy to submit an-

nual report to Congress on actions already taken and actions to be taken under this chapter and under section 792 of title 15.

§ 8483. Submission of reports

Copies of any report required by this chapter to be submitted to the Congress shall be separately submitted to the Committee on Interstate and Foreign Commerce of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

(Pub. L. 95-620, title VIII, §807, Nov. 9, 1978, 92 Stat. 3348.)

CHANGE OF NAME

Committee on Interstate and Foreign Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives immediately prior to noon on Jan. 3, 1981, by House Resolution No. 549, Ninety-sixth Congress, Mar. 25, 1980. Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 8484. Electric utility conservation plan

(a) Applicability

An electric utility is subject to this subsection¹ if—

(1) the utility owns or operates any existing electric powerplant in which natural gas was used as a primary energy source at any time during the 1-year period ending on August 13, 1981, and

(2) the utility plans to use natural gas as a primary energy source in any electric powerplant.

(b) Submission and approval of plan

The Secretary shall require each electric utility subject to this section to—

(1) submit, within 1 year after August 13, 1981, and have approved by the Secretary, a conservation plan which meets the requirements of subsection (c) of this section; and

(2) implement such plan during the 5-year period beginning on the date of the initial approval of such plan.

(c) Contents of plan

(1) Any conservation plan under this section shall set forth means determined by the utility to achieve conservation of electric energy not later than the 5th year after its initial approval at a level, measured on an annual basis, at least equal to 10 percent of the electric energy output of that utility during the most recent 4 calendar quarters ending prior to August 13, 1981, which is attributable to natural gas.

(2) The conservation plan shall include—

(A) all activities required for such utility by part 1 of title II of the National Energy Conservation Policy Act [42 U.S.C. 8211 et seq.];

(B) an effective public information program for conservation; and

(C) such other measures as the utility may consider appropriate.

(3) Any such plan may set forth a program for the use of renewable energy sources (other than hydroelectric power).

(4) Any such plan shall contain procedures to permit the amounts expended by such utility in developing and implementing the plan to be recovered in a manner specified by the appropriate State regulatory authority (or by the utility in the case of a nonregulated utility).

(d) Plan approval

(1) The Secretary shall, by order, approve or disapprove any conservation plan proposed under this subsection¹ by an electric utility within 120 days after its submission. The Secretary shall approve any such proposed plan unless the Secretary finds that such plan does not meet the requirements of subsection (c) of this section and states in writing the reasons therefor.

(2) In the event the Secretary disapproves under paragraph (1) the plan originally submitted, the Secretary shall provide a reasonable period of time for resubmission.

(3) An electric utility may amend any approved plan, except that the plan as amended shall be subject to approval in accordance with paragraph (1).

(Pub. L. 95-620, title VIII, §808, as added Pub. L. 97-35, title X, § 1023(a), Aug. 13, 1981, 95 Stat. 616.)

REFERENCES IN TEXT

The National Energy Conservation Policy Act, referred to in subsec. (c)(2)(A), is Pub. L. 95-619, Nov. 9, 1978, 92 Stat. 3208, as amended. Part 1 of title II of the National Energy Conservation Policy Act was classified generally to part A (§8211 et seq.) of subchapter II of chapter 91 of this title, and was omitted from the Code pursuant to section 8229 of this title which terminated authority under that part June 30, 1989. For complete classification of this Act to the Code, see Short Title note set out under section 8201 of this title and Tables.

EFFECTIVE DATE

Section effective Aug. 13, 1981, see section 1038 of Pub. L. 97-35, set out as an Effective Date of 1981 Amendment note under section 6240 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8422 of this title.

CHAPTER 93—EMERGENCY ENERGY CONSERVATION

Sec.	
8501.	Congressional findings and purposes. (a) Findings. (b) Purposes.
8502.	Definitions.
	SUBCHAPTER I—EMERGENCY ENERGY CONSERVATION PROGRAM
8511.	National and State emergency conservation targets. (a) Determination and publication of targets. (b) Notification and publication of targets. (c) Establishment of targets for Federal agencies.

¹ So in original. Probably should be "section".

- Sec.
- (d) Review of targets.
 - (e) Determination and publication of actual consumption nationally and State-by-State.
 - (f) Presidential authority not to be delegated.
8512. State emergency conservation plan.
- (a) State emergency conservation plans.
 - (b) Conservation measures under State plans.
 - (c) Approval of State plans.
 - (d) State administration and enforcement.
 - (e) Civil penalty.
8513. Standby Federal conservation plan.
- (a) Establishment of standby conservation plan.
 - (b) Implementation of standby conservation plan.
 - (c) Basis for findings.
 - (d) Submission of State emergency conservation plan.
 - (e) State substitute emergency conservation measures.
 - (f) State authority to administer plan.
 - (g) Presidential authority not to be delegated.
 - (h) Requirements of plan.
 - (i) Plan may not authorize weekend closings of retail gasoline stations.
 - (j) Civil penalties.
8514. Judicial review.
- (a) State actions.
 - (b) Repealed.
 - (c) Injunctive relief.
8515. Reports.
- (a) Monitoring.
 - (b) Omitted.
- SUBCHAPTER II—OTHER AUTOMOBILE FUEL PURCHASE MEASURES
8521. Minimum automobile fuel purchase measures.
- (a) General rule.
 - (b) \$7.00 to be applicable in case of 8-cylinder vehicles.
 - (c) Applicability.
 - (d) Exemptions.
 - (e) Adjustment of minimum levels.
 - (f) Civil penalties.
 - (g) Administration and enforcement delegated to States.
 - (h) Coordination with other law.
8522. Out-of-State vehicles to be exempted from odd-even motor fuel purchase restrictions.
- (a) General rule.
 - (b) "Odd-even fuel purchase plan" defined.
- SUBCHAPTER III—STUDIES
8531. Study and report.
- (a) Study of commercial and industrial storage of fuel.
 - (b) Contents of report.
8532. Middle distillate monitoring program.
- (a) Monitoring program.
 - (b) Report.
- SUBCHAPTER IV—ADMINISTRATIVE PROVISIONS
8541. Administration.
- (a) Information.
 - (b) Effect on other laws.
 - (c) Termination.

§ 8501. Congressional findings and purposes

(a) Findings

The Congress finds that—

- (1) serious disruptions have recently occurred in the gasoline and diesel fuel markets of the United States;

(2) it is likely that such disruptions will recur;

(3) interstate commerce is significantly affected by those market disruptions;

(4) an urgent need exists to provide for emergency conservation and other measures with respect to gasoline, diesel fuel, home heating oil, and other energy sources in potentially short supply in order to cope with market disruptions and protect interstate commerce; and

(5) up-to-date and reliable information concerning the supply and demand of gasoline, diesel fuel, and other related data is not available to the President, the Congress, or the public.

(b) Purposes

The purposes of this chapter are to—

(1) provide a means for the Federal Government, States, and units of local government to establish emergency conservation measures with respect to gasoline, diesel fuel, home heating oil, and other energy sources which may be in short supply;

(2) establish other emergency measures to alleviate disruptions in gasoline and diesel fuel markets;

(3) obtain data concerning such fuels; and

(4) protect interstate commerce.

(Pub. L. 96-102, title II, § 201, Nov. 5, 1979, 93 Stat. 757.)

EFFECTIVE DATE

Section 302 of Pub. L. 96-102 provided that: "The amendments made by this Act [enacting this chapter, amending sections 6262, 6263, and 6422 of this title, and enacting provisions set out as notes under this section and section 6261 of this title] shall take effect on the date of the enactment of this Act [Nov. 5, 1979]."

SHORT TITLE

Section 1(a) of Pub. L. 96-102 provided that: "This Act [enacting this chapter, amending sections 6261, 6262, 6263, and 6422 of this title, and enacting provisions set out as notes under this section and section 6261 of this title] may be cited as the 'Emergency Energy Conservation Act of 1979'."

CONGRESSIONAL FINDINGS

Section 101 of Pub. L. 96-102 provided that: "The Congress finds that—

"(1) a standby rationing plan for gasoline and diesel fuel should provide, to the maximum extent practicable, that the burden of reduced supplies of gasoline and diesel fuel be shared by all persons in a fair and equitable manner and that the economic and social impacts of such plan be minimized; and

"(2) such a plan should be sufficiently flexible to respond to changed conditions and sufficiently simple to be effectively administered and enforced."

FUNDING FOR FISCAL YEARS 1979 AND 1980

Section 301 of Pub. L. 96-102 provided that: "For purposes of any law relating to appropriations or authorizations for appropriations as such law relates to the fiscal year ending September 30, 1979, or the fiscal year ending September 30, 1980, the provisions of this Act (including amendments made by this Act) [see Short Title note above] shall be treated as if it were a contingency plan under section 202 or 203 of the Energy Policy and Conservation Act [former sections 6262 and 6263 of this title] which was approved in accordance with the procedures under that Act [see Short Title note set out under section 6201 of this title] or as otherwise provided by law, and funds made available pursuant to such ap-

ropriations shall be available to carry out the provisions of this Act and the amendments made by this Act.”

§ 8502. Definitions

For purposes of this chapter—

(1) The term “severe energy supply interruption”, when used with respect to motor fuel or any other energy source, means a national energy supply shortage of such energy source which the President determines—

(A) is, or is likely to be, of significant scope and duration;

(B) may cause major adverse impact on national security or the national economy; and

(C) results, or is likely to result, from an interruption in the energy supplies of the United States, including supplies of imported petroleum products, or from sabotage or an act of God.

(2) The term “international energy program” has the meaning given that term in section 6202(7) of this title.

(3) The term “motor fuel” means gasoline and diesel fuel.

(4) The term “person” includes (A) any individual, (B) any corporation, company, association, firm, partnership, society, trust, joint venture, or joint stock company, and (C) the government or any agency of the United States or any State or political subdivision thereof.

(5) The term “vehicle” means any vehicle propelled by motor fuel and manufactured primarily for use on public streets, roads, and highways.

(6) The term “Secretary” means the Secretary of Energy.

(7) The term “Governor” means the chief executive officer of a State.

(8) The term “State” means a State, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

(Pub. L. 96-102, title II, §202, Nov. 5, 1979, 93 Stat. 757.)

SUBCHAPTER I—EMERGENCY ENERGY CONSERVATION PROGRAM

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 8541 of this title.

§ 8511. National and State emergency conservation targets

(a) Determination and publication of targets

(1) Whenever the President finds, with respect to any energy source for which the President determines a severe energy supply interruption exists or is imminent or that actions to restrain domestic energy demand are required in order to fulfill the obligations of the United States under the international energy program, the President, in furtherance of the purposes of this chapter, may establish monthly emergency conservation targets for any such energy source for the Nation generally and for each State.

(2) Any finding of the President under paragraph (1) shall be promptly transmitted to the

Congress, accompanied by such information and analysis as is necessary to provide the basis for such finding, and shall be disseminated to the public.

(3)(A) The State conservation target for any energy source shall be equal to (i) the State base period consumption reduced by (ii) a uniform national percentage.

(B) For the purposes of this subsection, the term “State base period consumption” means, for any month, the product of the following factors, as determined by the President:

(i) the consumption of the energy source for which a target is established during the corresponding month in the 12-month period prior to the first month for which the target is established; and

(ii) a growth adjustment factor, which shall be determined on the basis of the trends in the use in that State of such energy source during the 36-month period prior to the first month for which the target is established.

(C)(i) The President shall adjust, to the extent he determines necessary, any State base period consumption to insure that achievement of a target established for that State under this subsection will not impair the attainment of the objectives of section 753(b)(1)¹ of title 15.

(ii) The President may, to the extent he determines appropriate, further adjust any State base period consumption to reflect—

(I) reduction in energy consumption already achieved by energy conservation programs;

(II) energy shortages which may affect energy consumption; and

(III) variations in weather from seasonal norms.

(D) For purposes of this subsection, the uniform national percentage shall be designed by the President to minimize the impact on the domestic economy of the projected shortage in the energy source for which a target is established by saving an amount of such energy source equivalent to the projected shortage, taking into consideration such other factors related to that shortage as the President considers appropriate.

(b) Notification and publication of targets

The President shall notify the Governor of each State of each target established under subsection (a) of this section for that State, and shall publish in the Federal Register, the targets, the base period consumption for each State and other data on which the targets are based, and the factors considered under subsection (a)(3) of this section.

(c) Establishment of targets for Federal agencies

In connection with the establishment of any national target under subsection (a) of this section the President shall make effective an emergency energy conservation plan for the Federal Government, which plan shall be designed to achieve an equal or greater reduction in use of the energy source for which a target is established than the national percentage referred to in subsection (a)(3)(D) of this section. Such plan shall contain measures which the President will

¹ See References in Text note below.

implement, in accordance with other applicable provisions of law, to reduce on an emergency basis the use of energy by the Federal Government. In developing such plan the President shall consider the potential for emergency reductions in energy use—

(1) by buildings, facilities, and equipment owned, leased, or under contract by the Federal Government; and

(2) by Federal employees and officials through increased use of car and van pooling, preferential parking for multipassenger vehicles, and greater use of mass transit.

(d) Review of targets

(1) From time to time, the President shall review and, consistent with subsection (a) of this section, modify to the extent the President considers appropriate the national and State energy conservation targets established under this subsection.

(2) Any modification under this paragraph shall be accompanied by such information and analysis as is necessary to provide the basis therefor and shall be available to the Congress and the public.

(3)(A) Before the end of the 12th month following the establishment of any conservation target under this section, and annually thereafter while such target is in effect, the President shall determine, for the energy source for which that target was established, whether a severe energy supply interruption exists or is imminent or that actions to restrain domestic energy demand are required in order to fulfill the obligations of the United States under the international energy program. The President shall transmit to the Congress and make public the information and other data on which any determination under this subparagraph is based.

(B) If the President determines such an energy supply interruption does not exist or is not imminent or such actions are not required, the conservation targets established under this section with respect to such energy source shall cease to be effective.

(e) Determination and publication of actual consumption nationally and State-by-State

Each month the Secretary shall determine and publish in the Federal Register (1) the level of consumption for the most recent month for which the President determines accurate data is available, nationally and for each State, of any energy source for which a target under subsection (a) of this section is in effect, and (2) whether the targets under subsection (a) of this section have been substantially met or are likely to be met.

(f) Presidential authority not to be delegated

Notwithstanding any other provision of law, the authority vested in the President under this section may not be delegated.

(Pub. L. 96-102, title II, §211, Nov. 5, 1979, 93 Stat. 758.)

REFERENCES IN TEXT

Section 753 of title 15, referred to in subsec. (a)(3)(C)(i), was omitted from the Code pursuant to section 760g of Title 15, Commerce and Trade, which provided for the expiration of the President's authority under that section on Sept. 30, 1981.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103-7 (in which a report required under subsec. (d)(3)(A) of this section is listed in the 19th item on page 19), see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8512, 8513, 8514, 8541 of this title.

§ 8512. State emergency conservation plan

(a) State emergency conservation plans

(1)(A) Not later than 45 days after the date of the publication of an energy conservation target for a State under section 8511(b) of this title, the Governor of that State shall submit to the Secretary a State emergency conservation plan designed to meet or exceed the emergency conservation target in effect for that State under section 8511(a) of this title. Such plan shall contain such information as the Secretary may reasonably require. At any time, the Governor may, with the approval of the Secretary, amend a plan established under this section.

(B) The Secretary may, for good cause shown, extend to a specific date the period for the submission of any State's plan under subparagraph (A) if the Secretary publishes in the Federal Register notice of that extension together with the reasons therefor.

(2) Each State is encouraged to submit to the Secretary a State emergency conservation plan as soon as possible after November 5, 1979, and in advance of such publication of any such target. The Secretary may tentatively approve such a plan in accordance with the provisions of this section. For the purposes of this subchapter such tentative approval shall not be construed to result in a delegation of Federal authority to administer or enforce any measure contained in a State plan.

(b) Conservation measures under State plans

(1) Each State emergency conservation plan under this section shall provide for emergency reduction in the public and private use of each energy source for which an emergency conservation target is in effect under section 8511 of this title. Such State plan shall contain adequate assurances that measures contained therein will be effectively implemented in that State. Such plan may provide for reduced use of that energy source through voluntary programs or through the application of one or more of the following measures described in such plan:

(A) measures which are authorized under the laws of that State and which will be administered and enforced by officers and employees of the State (or political subdivisions of the State) pursuant to the laws of such State (or political subdivisions); and

(B) measures—

(i) which the Governor requests, and agrees to assume, the responsibility for administration and enforcement in accordance with subsection (d) of this section;

(ii) which the attorney general of that State has found that (I) absent a delegation

of authority under Federal law, the Governor lacks the authority under the laws of the State to invoke, (II) under applicable State law, the Governor and other appropriate State officers and employees are not prevented from administering and enforcing under a delegation of authority pursuant to Federal law; and (III) if implemented, would not be contrary to State law; and

(iii) which either the Secretary determines are contained in the standby Federal conservation plan established under section 8513 of this title or are approved by the Secretary, in his discretion.

(2) In the preparation of such plan (and any amendment to the plan) the Governor shall, to the maximum extent practicable, provide for consultation with representatives of affected businesses and local governments and provide an opportunity for public comment.

(3) Any State plan submitted to the Secretary under this section may permit persons affected by any measure in such plan to use alternative means of conserving at least as much energy as would be conserved by such measure. Such plan shall provide an effective procedure, as determined by the Secretary, for the approval and enforcement of such alternative means by such State or by any political subdivision of such State.

(c) Approval of State plans

(1) As soon as practicable after the date of the receipt of any State plan, but in no event later than 30 days after such date, the Secretary shall review such plan and shall approve it unless the Secretary finds—

(A) that, taken as a whole, the plan is not likely to achieve the emergency conservation target established for that State under section 8511(a) of this title for each energy source involved,

(B) that, taken as a whole, the plan is likely to impose an unreasonably disproportionate share of the burden of restrictions of energy use on any specific class of industry, business, or commercial enterprise, or any individual segment thereof,

(C) that the requirements of this subchapter regarding the plan have not been met, or

(D) that a measure described in subsection (b)(1) of this section is—

(i) inconsistent with any otherwise applicable Federal law (including any rule or regulation under such law),

(ii) an undue burden on interstate commerce, or

(iii) a tax, tariff, or user fee not authorized by State law.

(2) Any measure contained in a State plan shall become effective in that State on the date the Secretary approves the plan under this subsection or such later date as may be prescribed in, or pursuant to, the plan.

(d) State administration and enforcement

(1) The authority to administer and enforce any measure described in subsection (b)(1)(B) of this section which is in a State plan approved under this section is hereby delegated to the Governor of the State and the other State and

local officers and employees designated by the Governor. Such authority includes the authority to institute actions on behalf of the United States for the imposition and collection of civil penalties under subsection (e) of this section.

(2) All delegation of authority under paragraph (1) with respect to any State shall be considered revoked effective upon a determination by the President that such delegation should be revoked, but only to the extent of that determination.

(3) If at any time the conditions of subsection (b)(1)(B)(ii) of this section are no longer satisfied in any State with respect to any measure for which a delegation has been made under paragraph (1), the attorney general of that State shall transmit a written statement to that effect to the Governor of that State and to the President. Such delegation shall be considered revoked effective upon receipt by the President of such written statement and a determination by the President that such conditions are no longer satisfied, but only to the extent of that determination and consistent with such attorney general's statement.

(4) Any revocation under paragraph (2) or (3) shall not affect any action or pending proceedings, administrative or civil, not finally determined on the date of such revocation, nor any administrative or civil action or proceeding, whether or not pending, based upon any act committed or liability incurred prior to such revocation.

(e) Civil penalty

(1) Whoever violates the requirements of any measure described in subsection (b)(1)(B) of this section which is in a State plan in effect under this section shall be subject to a civil penalty of not to exceed \$1,000 for each violation.

(2) Any penalty under paragraph (1) may be assessed by the court in any action brought in any appropriate United States district court or any other court of competent jurisdiction. Except to the extent provided in paragraph (3), any such penalty collected shall be deposited into the general fund of the United States Treasury as miscellaneous receipts.

(3) The Secretary may enter into an agreement with the Governor of any State under which amounts collected pursuant to this subsection may be collected and retained by the State to the extent necessary to cover costs incurred by that State in connection with the administration and enforcement of measures the authority for which is delegated under subsection (d) of this section.

(Pub. L. 96-102, title II, § 212, Nov. 5, 1979, 93 Stat. 759.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8513, 8514 of this title.

§ 8513. Standby Federal conservation plan

(a) Establishment of standby conservation plan

(1) Within 90 days after November 5, 1979, the Secretary, in accordance with section 7191 of this title, shall establish a standby Federal emergency conservation plan. The Secretary

may amend such plan at any time, and shall make such amendments public upon their adoption.

(2) The plan under this section shall be consistent with the attainment of the objectives of section 753(b)(1)¹ of title 15, and shall provide for the emergency reduction in the public and private use of each energy source for which an emergency conservation target is in effect or may be in effect under section 8511 of this title.

(b) Implementation of standby conservation plan

(1) If the President finds—

(A) after a reasonable period of operation, but not less than 90 days, that a State emergency conservation plan approved and implemented under section 8512 of this title is not substantially meeting a conservation target established under section 8511(a) of this title for such State and it is likely that such target will continue to be unmet; and

(B) a shortage exists or is likely to exist in such State for the 60-day period beginning after such finding that is equal to or greater than 8 percent of the projected normal demand, as determined by the President, for an energy source for which such conservation target has been established under section 8511(a) of this title;

then the President shall, after consultation with the Governor of such State, make effective in such State all or any part of the standby Federal conservation plan established under subsection (a) of this section for such period or periods as the President determines appropriate to achieve the target in that State.

(2) If the President finds after a reasonable period of time, that the conservation target established under section 8511(a) of this title is not being substantially met and it is likely that such target will continue to be unmet in a State which—

(A) has no emergency conservation plan approved under section 8512 of this title; or

(B) the President finds has substantially failed to carry out the assurances regarding implementation set forth in the plan approved under section 8512 of this title,

then the President shall, after consultation with the Governor of such State, make effective in such State all or any part of the standby Federal conservation plan established under subsection (a) of this section for such period or periods as the President determines appropriate to achieve the target in that State.

(c) Basis for findings

Any finding under subsection (b) of this section shall be accompanied by such information and analysis as is necessary to provide a basis therefor and shall be available to the Congress and the public.

(d) Submission of State emergency conservation plan

(1)² The Governor of a State in which all or any portion of the standby Federal conservation plan is or will be in effect may submit at any

time a State emergency conservation plan, and if it is approved under section 8512(c) of this title, all or such portion of the standby Federal conservation plan shall cease to be effective in that State. Nothing in this paragraph shall affect any action or pending proceedings, administrative or civil, not finally determined on such date, nor any administrative or civil action or proceeding, whether or not pending, based upon any act committed or liability incurred prior to such cessation of effectiveness.

(e) State substitute emergency conservation measures

(1) After the President makes all or any part of the standby Federal conservation plan effective in any State or political subdivision under subsection (b) of this section, the Secretary shall provide procedures whereby such State or any political subdivision thereof may submit to the Secretary for approval one or more measures under authority of State or local law to be implemented by such State or political subdivision and to be substituted for any Federal measure in the Federal plan. The measures may include provisions whereby persons affected by such Federal measure are permitted to use alternative means of conserving at least as much energy as would be conserved by such Federal measure. Such measures shall provide effective procedures, as determined by the Secretary, for the approval and enforcement of such alternative means by such State or by any political subdivision thereof.

(2) The Secretary may approve the measures under paragraph (1) if he finds—

(A) that such measures when in effect will conserve at least as much energy as would be conserved by such Federal measure which would have otherwise been in effect in such State or political subdivision;

(B) such measures otherwise meet the requirements of this paragraph; and

(C) such measures would be approved under section 8512(c)(1)(B), (C), and (D) of this title.

(3) If the Secretary approves measures under this subsection such Federal measure shall cease to be effective in that State or political subdivision. Nothing in this paragraph shall affect any action or pending proceedings, administrative or civil, not finally determined on the date the Federal measure ceases to be effective in that State or political subdivision, nor any administrative or civil action or proceeding, whether or not pending, based upon any act committed or liability incurred prior to such cessation of effectiveness.

(4) If the Secretary finds after a reasonable period of time that the requirements of this subsection are not being met under the measures in effect under this subsection he may reimpose the Federal measure referred to in paragraph (1).

(f) State authority to administer plan

At the request of the Governor of any State, the President may provide that the administration and enforcement of all or a portion of the standby Federal conservation plan made effective in that State under subsection (b) of this section be in accordance with section 8512(d)(1), (2), and (4) of this title.

¹ See References in Text note below.

² So in original. No par. (2) has been enacted.

(g) Presidential authority not to be delegated

Notwithstanding any other provision of law (other than subsection (f) of this section), the authority vested in the President under this section may not be delegated.

(h) Requirements of plan

The plan established under subsection (a) of this section shall—

(1) taken as a whole, be designed so that the plan, if implemented, would be likely to achieve the emergency conservation target under section 8511 of this title for which it would be implemented,

(2) taken as a whole, be designed so as not to impose an unreasonably disproportionate share of the burden of restrictions on energy use on any specific class of industry, business, or commercial enterprise, or any individual segment thereof, and

(3) not contain any measure which the Secretary finds—

(A) is inconsistent with any otherwise applicable Federal law (including any rule or regulation under such law),

(B) is an undue burden on interstate commerce,

(C) is a tax, tariff, or user fee, or

(D) is a program for the assignment of rights for end-user purchases of gasoline or diesel fuel, as described in section 6263(a)(1)(A) and (B)³ of this title.

(i) Plan may not authorize weekend closings of retail gasoline stations

(1) Except as provided in paragraph (2), the plan established under subsection (a) of this section may not provide for the restriction of hours of sale of motor fuel at retail at any time between Friday noon and Sunday midnight.

(2) Paragraph (1) shall not preclude the restriction on such hours of sale if that restriction occurs in connection with a program for restricting hours of sale of motor fuel each day of the week on a rotating basis.

(j) Civil penalties

(1) Whoever violates the requirements of such a plan implemented under subsection (b) of this section shall be subject to a civil penalty not to exceed \$1,000 for each violation.

(2) Any penalty under paragraph (1) may be assessed by the court in any action brought in any appropriate United States district court or any other court of competent jurisdiction. Except to the extent provided under paragraph (3), any such penalty collected shall be deposited into the general fund of the United States Treasury as miscellaneous receipts.

(3) The Secretary may enter into an agreement with the Governor of any State under which amounts collected pursuant to this subsection may be collected and retained by the State to the extent necessary to cover costs incurred by that State in connection with the administration and enforcement of that portion of the standby Federal conservation plan for which authority is delegated to that State under subsection (f) of this section.

(Pub. L. 96-102, title II, §213, Nov. 5, 1979, 93 Stat. 762.)

³ See References in Text note below.

REFERENCES IN TEXT

Section 753 of title 15, referred to in subsec. (a)(2), was omitted from the Code pursuant to section 760g of Title 15, Commerce and Trade, which provided for the expiration of the President's authority under that section on Sept. 30, 1981.

Section 6263 of this title, referred to in subsec. (h)(3)(D), was repealed by Pub. L. 106-469, title I, §104(1), Nov. 9, 2000, 114 Stat. 2033.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8512, 8514, 8541 of this title.

§ 8514. Judicial review**(a) State actions**

(1) Any State may institute an action in the appropriate district court of the United States, including actions for declaratory judgment, for judicial review of—

(A) any target established by the President under section 8511(a) of this title;

(B) any finding by the President under section 8513(b)(1)(A) of this title, relating to the achievement of the emergency energy conservation target of such State, or 8513(b)(2) of this title, relating to the achievement of the emergency energy conservation target of such State or the failure to carry out the assurances regarding implementation contained in an approved plan of such State; or

(C) any determination by the Secretary disapproving a State plan under section 8512(c) of this title, including any determination by the Secretary under section 8512(c)(1)(B) of this title that the plan is likely to impose an unreasonably disproportionate share of the burden of restrictions of energy use on any specific class of industry, business, or commercial enterprise, or any individual segment thereof.

Such action shall be barred unless it is instituted within 30 calendar days after the date of publication of the establishment of a target referred to in subparagraph (A), the finding by the President referred to in subparagraph (B), or the determination by the Secretary referred to in subparagraph (C), as the case may be.

(2) The district court shall determine the questions of law and upon such determination certify such questions immediately to the United States court of appeals for the circuit involved, which shall hear the matter sitting en banc.

(3) Any decision by such court of appeals on a matter certified under paragraph (2) shall be reviewable by the Supreme Court upon attainment of a writ of certiorari. Any petition for such a writ shall be filed no later than 20 days after the decision of the court of appeals.

(b) Repealed. Pub. L. 98-620, title IV, § 402(42), Nov. 8, 1984, 98 Stat. 3360

(c) Injunctive relief

With respect to judicial review under subsection (a)(1)(A) of this section, the court shall not have jurisdiction to grant any injunctive relief except in conjunction with a final judgment entered in the case.

(Pub. L. 96-102, title II, §214, Nov. 5, 1979, 93 Stat. 764; Pub. L. 98-620, title IV, § 402(42), Nov. 8, 1984, 98 Stat. 3360.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-620 struck out subsec. (b) which required the court of appeals to advance on the docket and to expedite to the greatest possible extent the disposition of any matter certified under subsec. (a)(2).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

§ 8515. Reports**(a) Monitoring**

The Secretary shall monitor the implementation of State emergency conservation plans and of the standby Federal conservation plan and make such recommendations to the Governor of each affected State as he deems appropriate for modification to such plans.

(b) Omitted

(Pub. L. 96-102, title II, §215, Nov. 5, 1979, 93 Stat. 765.)

CODIFICATION

Subsec. (b) of this section, which required the President to report annually to Congress on any activities undertaken pursuant to this subchapter, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, the 20th item on page 19 of House Document No. 103-7.

SUBCHAPTER II—OTHER AUTOMOBILE
FUEL PURCHASE MEASURES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 8541 of this title.

§ 8521. Minimum automobile fuel purchase measures**(a) General rule**

If the provisions of this subsection are made applicable under subsection (c) of this section, no person shall purchase motor fuel from a motor fuel retailer in any transaction for use in any automobile or other vehicle unless—

(1) the price for the quantity purchased and placed into the fuel tank of that vehicle equals or exceeds \$5.00; or

(2) in any case in which the amount paid for the quantity of motor fuel necessary to fill the fuel tank of that vehicle to capacity is less than \$5.00, such person pays to the retailer an additional amount so that the total amount paid in that transaction equals \$5.00.

Any person selling motor fuel in transactions to which the provisions of this subsection apply shall display at the point of sale notice of such provisions in accordance with regulations prescribed by the Secretary.

(b) \$7.00 to be applicable in case of 8-cylinder vehicles

In applying subsection (a) of this section in the case of any vehicle with an engine having 8 cylinders (or more), “\$7.00” shall be substituted for “\$5.00”.

(c) Applicability

(1) Unless applicable pursuant to paragraph (2), the requirements of subsection (a) of this

section shall apply in any State and shall be administered and enforced as provided in subsection (g) of this section only if—

(A) the Governor of that State submits a request to the Secretary to have such requirements applicable in that State; and

(B) the attorney general of that State has found that (i) absent a delegation of authority under a Federal law, the Governor lacks the authority under the laws of the State to invoke comparable requirements, (ii) under applicable State law, the Governor and other appropriate State officers and employees are not prevented from administering and enforcing such requirements under a delegation of authority pursuant to Federal law, and (iii) if implemented such requirements would not be contrary to State law.

Subject to paragraph (2), such provisions shall cease to apply in any State if the Governor of the State withdraws any request under subparagraph (A).

(2) The requirements of subsection (a) of this section shall apply in every State if there is in effect a finding by the President that nationwide implementation of such requirements would be appropriate and consistent with the purposes of this chapter.

(3) Such requirements shall take effect in any State beginning on the 5th day after the Secretary or the President (as the case may be) publishes notice in the Federal Register of the applicability of the requirements to the State pursuant to paragraph (1) or (2).

(4) Notwithstanding any other provision of law, the authority vested in the President under paragraph (2) may not be delegated.

(d) Exemptions

The requirements of subsection (a) of this section shall not apply to any motorcycle or motorpowered bicycle, or to any comparable vehicle as may be determined by the Secretary by regulation.

(e) Adjustment of minimum levels

The Secretary may increase the \$5.00 and \$7.00 amounts specified in subsections (a) and (b) of this section if the Secretary considers it appropriate. Adjustments under this subsection shall be only in even dollar amounts.

(f) Civil penalties

(1) Whoever violates the requirements of subsection (a) of this section shall be subject to a civil penalty of not to exceed \$100 for each violation.

(2) Any penalty under paragraph (1) may be assessed by the court in any action under this section brought in any appropriate United States district court or any other court of competent jurisdiction. Except to the extent provided in paragraph (3), any such penalty collected shall be deposited into the general fund of the United States Treasury as miscellaneous receipts.

(3) The Secretary may enter into an agreement with the Governor of any State under which amounts collected pursuant to this subsection may be collected and retained by the State to the extent necessary to cover costs incurred by that State in connection with the administration and enforcement of the require-

ments of subsection (a) of this section the authority for which is delegated under subsection (g) of this section.

(g) Administration and enforcement delegated to States

(1) There is hereby delegated to the Governor of any State, and other State and local officers and employees designated by the Governor, the authority to administer and enforce, within that State, any provision of this subchapter which is to be administered and enforced in accordance with this section. Such authority includes the authority to institute actions on behalf of the United States for the imposition and collection of civil penalties under subsection (f) of this section.

(2)(A) All delegation of authority under paragraph (1) with respect to any State shall be considered revoked effective (i) upon the receipt of a written waiver of authority signed by the Governor of such State or (ii) upon a determination by the President that such delegation should be revoked, but only to the extent of that determination.

(B) If at any time the conditions of subsection (c)(1)(B) of this section are no longer satisfied in any State to which a delegation has been made under paragraph (1), the attorney general of that State shall transmit a written statement to that effect to the Governor of that State and to the President. Such delegation shall be considered revoked effective upon receipt by the President of such written statement and a determination by the President that such conditions are no longer satisfied, but only to the extent of that determination and consistent with such attorney general's statement.

(C) Any revocation under subparagraph (A) or (B) shall not affect any action or pending proceedings, administrative or civil, not finally determined on the date of such revocation, nor any administrative or civil action or proceeding, whether or not pending, based on any act committed or liability incurred prior to such revocation.

(D) The Secretary shall administer and enforce any provision of this subchapter which has been made effective under subsection (c)(2) of this section and for which a delegation of authority is considered revoked under subparagraph (A).

(h) Coordination with other law

The charging and collecting of amounts referred to in subsection (a)(2) of this section under the requirements of subsection (a) of this section, or similar amounts collected under comparable requirements under any State law, shall not be considered a violation of—

(1) the Emergency Petroleum Allocation Act of 1973¹ [15 U.S.C. 751 et seq.] or any regulation thereunder; or

(2) any Federal or State law requiring the labeling or disclosure of the maximum price per gallon of any fuel.

(Pub. L. 96-102, title II, §221, Nov. 5, 1979, 93 Stat. 765.)

¹ See References in Text note below.

REFERENCES IN TEXT

The Emergency Petroleum Allocation Act of 1973, referred to in subsec. (h)(1), is Pub. L. 93-159, Nov. 27, 1973, 87 Stat. 628, as amended, which was classified generally to chapter 16A (§751 et seq.) of Title 15, Commerce and Trade, and was omitted from the Code pursuant to section 760g of Title 15, which provided for the expiration of the President's authority under that chapter on Sept. 30, 1981.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8541 of this title.

§ 8522. Out-of-State vehicles to be exempted from odd-even motor fuel purchase restrictions

(a) General rule

Notwithstanding any provision of any Federal, State, or local law, any odd-even fuel purchase plan in effect in any State may not prohibit the sale of motor fuel to any person for use in a vehicle bearing a license plate issued by any authority other than that State or a State contiguous to that State.

(b) "Odd-even fuel purchase plan" defined

For purposes of this section the term "odd-even fuel purchase plan" means any motor fuel sales restriction under which a person may purchase motor fuel for use in any vehicle only on days (or other periods of time) determined on the basis of a number or letter appearing on the license plate of that vehicle (or on any similar basis).

(Pub. L. 96-102, title II, §222, Nov. 5, 1979, 93 Stat. 767.)

SUBCHAPTER III—STUDIES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 8541 of this title.

§ 8531. Study and report

(a) Study of commercial and industrial storage of fuel

Not later than 180 days after November 5, 1979, the Secretary shall conduct a study and report to the Congress regarding the commercial and industrial storage of gasoline and middle distillates (other than storage in facilities which have capacities of less than 500 gallons or storage used exclusively and directly for agricultural, residential, petroleum refining, or pipeline transportation purposes).

(b) Contents of report

Such report shall—

(1) indicate to what extent storage activities have increased since November 1, 1978, and what business establishments (including utilities) have been involved;

(2) the estimated amount of gasoline and middle distillates (in the aggregate and by type and region) which are in storage within the United States at the time of the study, the amounts which were in storage at the same time during the calendar year preceding the study, and the purposes for which such storage is maintained; and

(3) contain such findings and recommendations for legislation and administrative action

as the Secretary considers appropriate, including recommendations for improving the availability and quality of data concerning such storage.

(Pub. L. 96-102, title II, §241, Nov. 5, 1979, 93 Stat. 768.)

§ 8532. Middle distillate monitoring program

(a) Monitoring program

(1) Not later than 60 days after November 5, 1979, the Secretary shall establish and maintain a data collection program for monitoring, at the refining, wholesale, and retail levels, the supply and demand levels of middle distillates on a periodic basis in each State.

(2) The program to be established under paragraph (1) shall provide for—

(A) the prompt collection of relevant demand and supply data under the authority available to the Secretary under other law; and

(B) the submission to Congress of periodic reports each containing a concise narrative analysis of the most recent data which the Secretary determines are accurate, and a discussion on a State-by-State basis of trends in such data which the Secretary determines are significant.

(3) All data and information collected under this program shall be available to the Congress and committees of the Congress, and, in accordance with otherwise applicable law, to appropriate State and Federal agencies and the public.

(4) Nothing in this subsection authorizes the direct or indirect regulation of the price of any middle distillate.

(5) For purposes of this section, the term “middle distillate” has the same meaning as given that term in section 211.51 of title 10, Code of Federal Regulations, as in effect on November 5, 1979.

(b) Report

Before December 31, 1979, the President shall submit a report to Congress in which the President shall examine the middle distillate situation, summarizing the data, information, and analyses described in subsection (a) of this section and discussing in detail matters required to be addressed in findings made pursuant to section 760a(d)(1)¹ of title 15.

(Pub. L. 96-102, title II, §242, Nov. 5, 1979, 93 Stat. 768.)

REFERENCES IN TEXT

Section 760a of title 15, referred to in subsec. (b), was omitted from the Code pursuant to section 760g of Title 15, Commerce and Trade, which provided for the expiration of the President’s authority under that section on Sept. 30, 1981.

SUBCHAPTER IV—ADMINISTRATIVE PROVISIONS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 8541 of this title.

¹ See References in Text note below.

§ 8541. Administration

(a) Information

(1) The Secretary shall use the authority provided under section 796 of title 15 for the collection of such information as may be necessary for the enforcement of the provisions of subchapters I and II of this chapter.

(2) In carrying out his responsibilities under this chapter, the Secretary shall insure that timely and adequate information concerning the supplies, pricing, and distribution of motor fuels (and other energy sources which are the subject of targets in effect under section 8511 of this title) is obtained, analyzed, and made available to the public. Any Federal agency having responsibility for collection of such information under any other authority shall cooperate fully in facilitating the collection of such information.

(b) Effect on other laws

No State law or State program in effect on November 5, 1979, or which may become effective thereafter, shall be superseded by any provision of this chapter, or any rule, regulation, or order thereunder, except insofar as such State law or State program is in conflict with any such provision of section 8513 or 8521 of this title (or any rule, regulation, or order under this subchapter relating thereto) in any case in which measures have been implemented in that State under the authority of section 8513 or 8521 of this title (as the case may be).

(c) Termination

(1) The provisions of subchapters I, II, III, and IV of this chapter, including any actions taken thereunder, shall cease to have effect on July 1, 1983.

(2) Such expiration shall not affect any action or pending proceeding, administrative or civil, not finally determined on such date, nor any administrative or civil action or proceeding, whether or not pending, based upon any act committed or liability incurred prior to such expiration date.

(Pub. L. 96-102, title II, §251, Nov. 5, 1979, 93 Stat. 769.)

CHAPTER 94—LOW-INCOME ENERGY ASSISTANCE

SUBCHAPTER I—HOME ENERGY ASSISTANCE

Sec. 8601 to 8612. Repealed.

SUBCHAPTER II—LOW-INCOME HOME ENERGY ASSISTANCE

- 8621. Home energy grants.
 - (a) Authorization.
 - (b) Authorization of appropriations.
 - (c) Availability of appropriations.
 - (d) Authorization of appropriations for leveraged resources.
 - (e) Emergency funds.
- 8622. Definitions.
- 8623. State allotments.
 - (a) Amount; distribution, computation, etc.
 - (b) Allotments to insular areas.
 - (c) Energy crisis intervention.
 - (d) Allotments to Indian tribes.
 - (e) Allotment of emergency funds.

- Sec.
8624. Applications and requirements.
- (a) Form; assurances; public hearings.
 - (b) Certifications required for covered activities.
 - (c) State plan; revision; public inspection.
 - (d) Expending of funds.
 - (e) Conduct of audits.
 - (f) Payments or assistance not to be deemed income or resources for any purpose under Federal or State law; determination of excess shelter expense deduction.
 - (g) Repayment of funds expended improperly; offset.
 - (h) Periodic evaluation of expenditures by Comptroller General.
 - (i) Certain recipients of supplemental security income ineligible for payments or assistance.
 - (j) State verification of income eligibility; policies and procedures applicable.
 - (k) Limitation on use of funds; waiver.
 - (l) State tax credits to energy suppliers who supply home energy at reduced rates to low-income households.
8625. Nondiscrimination provisions.
- (a) Prohibitions.
 - (b) Procedures applicable to secure compliance.
 - (c) Maintenance of civil actions.
8626. Payments to States; fiscal year requirements respecting availability, etc.
- 8626a. Incentive program for leveraging non-Federal resources.
- (a) Allotment of funds.
 - (b) "Leveraged resources" defined.
 - (c) Formula for distribution of amounts.
 - (d) Dollar value of leveraged resources.
 - (e) Report to Secretary.
 - (f) Determination of State share; regulations; documentation.
- 8626b. Residential Energy Assistance Challenge option (R.E.A.Ch.).
- (a) Purpose.
 - (b) Funding.
 - (c) Criteria.
 - (d) Focus.
 - (e) State plans.
 - (f) Cost or function.
8627. Withholding of funds.
- (a) Improper utilization of funds; response to complaints respecting improprieties.
 - (b) Investigations; conduct, etc.
 - (c) Inspection of books, documents, etc.
 - (d) Request for information not readily available.
8628. Limitation on use of grants for construction.
- 8628a. Technical assistance, training, and compliance reviews.
8629. Studies and reports.

SUBCHAPTER I—HOME ENERGY ASSISTANCE

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 8623 of this title.

§§ 8601 to 8612. Repealed. Pub. L. 97-35, title XXVI, § 2611, Aug. 13, 1981, 95 Stat. 902

Section 8601, Pub. L. 96-223, title III, § 302, Apr. 2, 1980, 94 Stat. 288, set forth Congressional findings and declaration of purpose for low-income energy assistance program.

Section 8602, Pub. L. 96-223, title III, § 303, Apr. 2, 1980, 94 Stat. 288, defined "household", "home energy",

"lower living standard income level", "Secretary", and "State".

Section 8603, Pub. L. 96-223, title III, § 304, Apr. 2, 1980, 94 Stat. 289, related to authorizations for home energy grants.

Section 8604, Pub. L. 96-223, title III, § 305, Apr. 2, 1980, 94 Stat. 289, set forth eligibility requirements for households.

Section 8605, Pub. L. 96-223, title III, § 306, Apr. 2, 1980, 94 Stat. 289, set forth provisions respecting allotments for grants.

Section 8606, Pub. L. 96-223, title III, § 307, Apr. 2, 1980, 94 Stat. 293, set forth limitations on uses of home energy grants for fiscal year 1981.

Section 8607, Pub. L. 96-223, title III, § 308, Apr. 2, 1980, 94 Stat. 294, set forth provisions respecting submission, contents, etc., for State plans.

Section 8608, Pub. L. 96-223, title III, § 309, Apr. 2, 1980, 94 Stat. 298, related to uniform collection data.

Section 8609, Pub. L. 96-223, title III, § 310, Apr. 2, 1980, 94 Stat. 298, related to amount and methods of payment.

Section 8610, Pub. L. 96-223, title III, § 311, Apr. 2, 1980, 94 Stat. 298, related to withholding of payments.

Section 8611, Pub. L. 96-223, title III, § 312, Apr. 2, 1980, 94 Stat. 298, set forth criminal penalties for violations of provisions.

Section 8612, Pub. L. 96-223, title III, § 313(a)-(c)(1), (d)-(g), Apr. 2, 1980, 94 Stat. 298, 299, related to administration and implementation of energy assistance programs.

EFFECTIVE DATE OF REPEAL

Section 2611 of Pub. L. 97-35 provided that the repeal made by that section is effective Oct. 1, 1981.

SHORT TITLE

Section 301 of title III of Pub. L. 96-223 provided that title III of Pub. L. 96-223, which enacted sections 8601 to 8612 of this title, and amended section 2014(d) of Title 7, Agriculture, was to be cited as the "Home Energy Assistance Act of 1980", prior to repeal by Pub. L. 97-35, title XXVI, § 2611, Aug. 13, 1981, 95 Stat. 902.

SUBCHAPTER II—LOW-INCOME HOME ENERGY ASSISTANCE

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 3013, 6862, 9908 of this title; title 7 section 2014; title 31 section 3803.

§ 8621. Home energy grants

(a) Authorization

The Secretary is authorized to make grants, in accordance with the provisions of this subchapter, to States to assist low-income households, particularly those with the lowest incomes, that pay a high proportion of household income for home energy, primarily in meeting their immediate home energy needs.

(b) Authorization of appropriations

There are authorized to be appropriated to carry out the provisions of this subchapter (other than section 8626a of this title), \$2,000,000,000 for each of fiscal years 1995 through 1999, such sums as may be necessary for each of fiscal years 2000 and 2001, and \$2,000,000,000 for each of fiscal years 2002 through 2004. The authorizations of appropriations contained in this subsection are subject to the program year provisions of subsection (c) of this section.

(c) Availability of appropriations

Amounts appropriated under this section for any fiscal year for programs and activities

under this subchapter shall be made available for obligation in the succeeding fiscal year.

(d) Authorization of appropriations for leveraged resources

(1) There is authorized to be appropriated to carry out section 8626a of this title, \$30,000,000 for each of fiscal years 1999 through 2004, except as provided in paragraph (2).

(2) For any of fiscal years 1999 through 2004 for which the amount appropriated under subsection (b) of this section is not less than \$1,400,000,000, there is authorized to be appropriated \$50,000,000 to carry out section 8626a of this title.

(e) Emergency funds

There is authorized to be appropriated in each fiscal year for payments under this subchapter, in addition to amounts appropriated for distribution to all the States in accordance with section 8623 of this title (other than subsection (e) of such section), \$600,000,000 to meet the additional home energy assistance needs of one or more States arising from a natural disaster or other emergency. Funds appropriated pursuant to this subsection are hereby designated to be emergency requirements pursuant to section 251(b)(2)(D) of the Balanced Budget and Emergency Deficit Control Act of 1985 [2 U.S.C. 901(b)(2)(D)], except that such funds shall be made available only after the submission to Congress of a formal budget request by the President (for all or a part of the appropriation pursuant to this subsection) that includes a designation of the amount requested as an emergency requirement as defined in such Act [2 U.S.C. 900 et seq.].

(Pub. L. 97-35, title XXVI, §2602, Aug. 13, 1981, 95 Stat. 893; Pub. L. 98-558, title VI, §601, Oct. 30, 1984, 98 Stat. 2889; Pub. L. 99-425, title V, §501, Sept. 30, 1986, 100 Stat. 973; Pub. L. 101-501, title VII, §§701, 702, 707(b), Nov. 3, 1990, 104 Stat. 1258, 1261; Pub. L. 103-43, title XX, §2011, June 10, 1993, 107 Stat. 214; Pub. L. 103-252, title III, §§302-304(a), 311(c)(1), May 18, 1994, 108 Stat. 657, 658, 661; Pub. L. 105-285, title III, §302, Oct. 27, 1998, 112 Stat. 2756.)

REFERENCES IN TEXT

The Balanced Budget and Emergency Deficit Control Act of 1985, referred to in subsection (e), is title II of Pub. L. 99-177, Dec. 12, 1985, 99 Stat. 1038, as amended, which enacted chapter 20 (§900 et seq.) and sections 654 to 656 of Title 2, The Congress, amended sections 602, 622, 631 to 642, and 651 to 653 of Title 2, sections 1104 to 1106, and 1109 of Title 31, Money and Finance, and section 911 of this title, repealed section 661 of Title 2, enacted provisions set out as notes under section 900 of Title 2 and section 911 of this title, and amended provisions set out as a note under section 621 of Title 2. For complete classification of this Act to the Code, see Short Title note set out under section 900 of Title 2 and Tables.

AMENDMENTS

1998—Subsec. (b). Pub. L. 105-285, §302(a), inserted “, such sums as may be necessary for each of fiscal years 2000 and 2001, and \$2,000,000,000 for each of fiscal years 2002 through 2004” after “1995 through 1999”.

Subsec. (c). Pub. L. 105-285, §302(b), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows:

“(c)(1) In fiscal year 1993 and each fiscal year thereafter, amounts appropriated under this section for any

fiscal year for programs and activities under this subchapter shall be made available for obligation only on the basis of a program year. The program year shall begin on October 1 of the fiscal year following the year in which the appropriation is made.

“(2) Amounts appropriated for fiscal year 1993 shall be available both to fund activities for the period between October 1, 1992, and July 1, 1993, and for the program year beginning July 1, 1993.

“(3) There are authorized to be appropriated such additional sums as may be necessary for the transition to carry out this subsection.”

Subsec. (d). Pub. L. 105-285, §302(c), designated existing provisions as par. (1), substituted “There is authorized” for “There are authorized” and “\$30,000,000 for each of fiscal years 1999 through 2004, except as provided in paragraph (2)” for “\$50,000,000 for each of the fiscal years 1996 and 1997, and such sums as may be necessary for each of the fiscal years 1998 and 1999”, and added par. (2).

Subsec. (e). Pub. L. 105-285, §302(d), substituted “There is authorized” for “There are authorized” and “(other than subsection (e) of such section)” for “(other than subsection (g))”.

1994—Subsec. (a). Pub. L. 103-252, §302, amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “The Secretary of Health and Human Services is authorized to make grants, in accordance with the provisions of this subchapter, to States to assist eligible households to meet the costs of home energy.”

Subsec. (b). Pub. L. 103-252, §§303(a)(1), 311(c)(1)(A), substituted “this subchapter (other than section 8626a of this title), \$2,000,000,000 for each of fiscal years 1995 through 1999” for “this subchapter (other than section 8626a of this title) \$2,307,000,000 for fiscal year 1990, \$2,150,000,000 for fiscal year 1991, \$2,230,000,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993, 1994, and 1995” and struck out second period at end.

Subsec. (c)(1). Pub. L. 103-252, §311(c)(1)(B), made technical amendment to reference to this subchapter to correct reference to corresponding provision of original act.

Pub. L. 103-252, §303(a)(2), which directed the substitution of “October 1” for “July 1” and “following the year in which” for “for which” in last sentence of subsec. (c), was executed by making the substitutions in last sentence of subsec. (c)(1) to reflect the probable intent of Congress.

Subsec. (d). Pub. L. 103-252, §303(b), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: “There are authorized to be appropriated to carry out section 8626a of this title, \$25,000,000 in fiscal year 1992, and \$50,000,000 for each of the fiscal years 1993, 1994, and 1995.”

Subsec. (e). Pub. L. 103-252, §304(a), added subsec. (e). 1993—Subsec. (b). Pub. L. 103-43, §2011(1), substituted “1993, 1994, and 1995” for “1993 and 1994”.

Subsec. (d). Pub. L. 103-43, §2011(2), substituted “for each of the fiscal years 1993, 1994, and 1995” for “in each of the fiscal years 1993 and 1994”.

1990—Subsec. (b). Pub. L. 101-501, §707(b)(1), which directed the amendment of this section by inserting “(other than section 8626a of this title)” after “subchapter”, was executed to subsec. (b) to reflect the probable intent of Congress.

Pub. L. 101-501, §702, struck out “\$2,050,000,000 for fiscal year 1987, \$2,132,000,000 for fiscal year 1988, \$2,218,000,000 for fiscal year 1989, and” before “\$2,307,000,000” and inserted “, \$2,150,000,000 for fiscal year 1991, \$2,230,000,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993 and 1994. The authorizations of appropriations contained in this subsection are subject to the program year provisions of subsection (c) of this section.” after “1990”.

Subsec. (c). Pub. L. 101-501, §701, added subsec. (c).

Subsec. (d). Pub. L. 101-501, §707(b)(2), added subsec. (d).

1986—Subsec. (b). Pub. L. 99-425 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as fol-

lows: "There is authorized to be appropriated to carry out the provisions of this subchapter \$2,140,000,000 for the fiscal year 1985, and \$2,275,000,000 for the fiscal year 1986."

1984—Subsec. (b). Pub. L. 98-558 substituted "\$2,140,000,000 for fiscal year 1985, and \$2,275,000,000 for fiscal year 1986" for "\$1,875,000,000 for each of fiscal years 1982, 1983, and 1984".

EFFECTIVE DATE OF 1994 AMENDMENT

Section 314 of title III of Pub. L. 103-252 provided that: "The amendments and repeals made by this title [see Short Title of 1994 Amendment note below] shall become effective on October 1, 1994."

EFFECTIVE DATE OF 1990 AMENDMENT

Section 1001 of Pub. L. 101-501 provided that:

"(a) GENERAL EFFECTIVE DATE.—Except as provided in subsection (b), this Act and the amendments made by this Act [see Tables for classification] shall take effect on October 1, 1990.

"(b) SPECIAL EFFECTIVE DATES.—(1) The amendment made by section 207(b) [repealing a provision set out as a note preceding section 9861 of this title] shall take effect immediately before October 1, 1990.

"(2) Section 646(b) of the Head Start Act [section 9841(b) of this title], as added by section 115, shall take effect on April 1, 1990."

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1001 of Pub. L. 99-425 provided that:

"(a) GENERAL EFFECTIVE DATE.—Except as provided in subsections (b) and (c), this Act and the amendments made by this Act [enacting sections 8628a, 9812a, 9910b, and 10901 to 10905 of this title, amending this section, sections 8623, 8624, 8629, 9803, 9834, 9835, 9837, 9840, 9862, 9867, 9871, 9874, 9877, 9901 to 9904, 9905a, 9908 to 9910, and 9910a of this title and section 4033 of Title 20, Education, enacting provisions set out as notes under this section and sections 8623, 9801, and 10901 of this title, and amending provisions set out as notes under section 9861 of this title and section 1932 of Title 7, Agriculture] shall take effect on October 1, 1986, or the date of the enactment of this Act [Sept. 30, 1986], whichever occurs later.

"(b) EFFECTIVE DATE FOR ENERGY CRISIS INTERVENTION AMENDMENTS.—The amendments made by section 502(a) [amending section 8623 of this title and enacting provisions set out as a note under section 8623 of this title] shall take effect on December 1, 1986, or 60 days after the date of the enactment of this Act [Sept. 30, 1986], whichever occurs later.

"(c) APPLICATION OF CERTAIN OTHER AMENDMENTS RELATING TO ENERGY ASSISTANCE.—The amendments made by subsections (a), (b), (c), and (d) of section 504 [amending section 8624 of this title] shall not apply with respect to any fiscal year beginning in or before the 60-day period ending on the effective date of this Act [Oct. 1, 1986]."

EFFECTIVE DATE OF 1984 AMENDMENT

Section 609 of Pub. L. 98-558 provided that:

"(a) Except as provided in subsections (b), (c), and (d), the amendments made by this title [amending this section and sections 8622 to 8624, 8626, 8627, and 8629 of this title] shall take effect on the date of enactment of this Act [Oct. 30, 1984].

"(b) The amendments made by section 605 [amending section 8624 of this title] shall take effect on the first day of the first fiscal year beginning after the date of the enactment of this Act [Oct. 30, 1984].

"(c) The amendments made by section 606 [amending section 8626 of this title] shall apply to amounts held available for fiscal years beginning after September 30, 1985.

"(d) The amendment made by section 607 [amending section 8629 of this title] shall apply to data collected and compiled after the date of the enactment of this Act [Oct. 30, 1984]. Section 2610 of the Act [section 8629

of this title] as in effect before the date of the enactment of this Act shall apply with respect to the report submitted under such section 2610 for fiscal year 1984."

SHORT TITLE OF 1998 AMENDMENT

Pub. L. 105-285, title III, §301, Oct. 27, 1998, 112 Stat. 2756, provided that: "This title [amending this section and sections 8622 to 8624, 8626, 8626b, and 8628a of this title and enacting provisions set out as a note under section 8626b of this title] may be cited as the 'Low-Income Home Energy Assistance Amendments of 1998'."

SHORT TITLE OF 1994 AMENDMENT

Section 301(a) of title III of Pub. L. 103-252 provided that: "This title [enacting section 8626b of this title, amending this section and sections 8622 to 8624, 8626, 8626a, 8628a, and 8629 of this title, and enacting provisions set out above] may be cited as the 'Low-Income Home Energy Assistance Amendments of 1994'."

SHORT TITLE

Section 2601 of title XXVI of Pub. L. 97-35 provided that: "This title [enacting this subchapter and repealing subchapter I of this chapter] may be cited as the 'Low-Income Home Energy Assistance Act of 1981'."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6862, 8623, 8626a, 8626b, 8628a of this title.

§ 8622. Definitions

As used in this subchapter:

(1) The term "emergency" means—

(A) a natural disaster;

(B) a significant home energy supply shortage or disruption;

(C) a significant increase in the cost of home energy, as determined by the Secretary;

(D) a significant increase in home energy disconnections reported by a utility, a State regulatory agency, or another agency with necessary data;

(E) a significant increase in participation in a public benefit program such as the food stamp program carried out under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.), the national program to provide supplemental security income carried out under title XVI of the Social Security Act (42 U.S.C. 1381 et seq.), or the State temporary assistance for needy families program carried out under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.), as determined by the head of the appropriate Federal agency;

(F) a significant increase in unemployment, layoffs, or the number of households with an individual applying for unemployment benefits, as determined by the Secretary of Labor; or

(G) an event meeting such criteria as the Secretary, in the discretion of the Secretary, may determine to be appropriate.

(2) The term "energy burden" means the expenditures of the household for home energy divided by the income of the household.

(3) The term "energy crisis" means weather-related and supply shortage emergencies and other household energy-related emergencies.

(4) The term "highest home energy needs" means the home energy requirements of a household determined by taking into account both the energy burden of such household and

the unique situation of such household that results from having members of vulnerable populations, including very young children, individuals with disabilities, and frail older individuals.

(5) The term "household" means any individual or group of individuals who are living together as one economic unit for whom residential energy is customarily purchased in common or who make undesignated payments for energy in the form of rent.

(6) The term "home energy" means a source of heating or cooling in residential dwellings.

(7) The term "natural disaster" means a weather event (relating to cold or hot weather), flood, earthquake, tornado, hurricane, or ice storm, or an event meeting such other criteria as the Secretary, in the discretion of the Secretary, may determine to be appropriate.

(8) The term "poverty level" means, with respect to a household in any State, the income poverty line as prescribed and revised at least annually pursuant to section 9902(2) of this title, as applicable to such State.

(9) The term "Secretary" means the Secretary of Health and Human Services.

(10) The term "State" means each of the several States and the District of Columbia.

(11) The term "State median income" means the State median income promulgated by the Secretary in accordance with procedures established under section 1397a(a)(6) of this title (as such procedures were in effect on August 12, 1981) and adjusted, in accordance with regulations prescribed by the Secretary, to take into account the number of individuals in the household.

(Pub. L. 97-35, title XXVI, §2603, Aug. 13, 1981, 95 Stat. 894; Pub. L. 97-115, §16, Dec. 29, 1981, 95 Stat. 1609; Pub. L. 98-558, title VI, §602, Oct. 30, 1984, 98 Stat. 2890; Pub. L. 103-252, title III, §§304(b), 311(c)(2), May 18, 1994, 108 Stat. 658, 662; Pub. L. 105-285, title III, §§303, 304(a), Oct. 27, 1998, 112 Stat. 2756.)

REFERENCES IN TEXT

The Food Stamp Act of 1977, referred to in par. (1)(E), is Pub. L. 88-525, Aug. 31, 1964, 78 Stat. 703, as amended, which is classified generally to chapter 51 (§2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

The Social Security Act, referred to in par. (1)(E), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part A of title IV of the Act is classified generally to part A (§601 et seq.) of subchapter IV of chapter 7 of this title. Title XVI of the Act is classified generally to subchapter XVI (§1381 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

CODIFICATION

In par. (11), "August 12, 1981" substituted for "the day before the date of the enactment of this Act", which date of enactment is Aug. 13, 1981.

AMENDMENTS

1998—Pars. (1) to (3). Pub. L. 105-285, §304(a)(3), (4), added par. (1) and redesignated former pars. (1) and (2) as (2) and (3), respectively. Former par. (3) redesignated (4).

Par. (4). Pub. L. 105-285, §304(a)(3), redesignated par. (3) as (4). Former par. (4) redesignated (5).

Pub. L. 105-285, §303, substituted "The term" for "the term" and a period for the semicolon at end.

Pars. (5), (6). Pub. L. 105-285, §304(a)(3), redesignated pars. (4) and (5) as (5) and (6), respectively. Former par. (6) redesignated (8).

Pars. (7) to (11). Pub. L. 105-285, §304(a)(1), (2), added par. (7) and redesignated formers pars. (6) to (9) as (8) to (11), respectively.

1994—Par. (1). Pub. L. 103-252, §304(b)(1), (2), added par. (1). Former par. (1) redesignated (2).

Par. (2). Pub. L. 103-252, §311(c)(2), which directed the substitution of "The" for "the" and a period for the semicolon at end, could not be executed because the word "the" and a semicolon did not appear in par. (2) after the redesignations by Pub. L. 103-252, §304(b)(1). See below.

Pub. L. 103-252, §304(b)(1), redesignated par. (1) as (2). Former par. (2) redesignated (4).

Par. (3). Pub. L. 103-252, §304(b)(3), added par. (3). Former par. (3) redesignated (5).

Par. (4). Pub. L. 103-252, §304(b)(1), redesignated par. (2) as (4). Former par. (4) redesignated (6).

Pars. (5) to (9). Pub. L. 103-252, §304(b)(1), redesignated pars. (3) to (7) as (5) to (9), respectively.

1984—Par. (1). Pub. L. 98-558, §602(a), struck out "intervention" after "energy crisis" and inserted "and other household energy-related emergencies" at the end.

Par. (4). Pub. L. 98-558, §602(b), substituted "the income poverty line as prescribed and revised at least annually pursuant to section 9902(2) of this title," for "the income poverty guidelines for the nonfarm population of the United States as prescribed by the Office of Management and Budget (and as adjusted annually pursuant to section 9902(2) of this title)".

1981—Pub. L. 97-115 designated par. (2)(A) as par. (2), substituted provisions including individuals and groups of individuals who are living together as one economic unit for whom residential energy is customarily purchased in the form of rent in the definition of household, for provisions including individuals who occupy a housing unit in such definition, and struck out par. (2)(B), which provided that for purposes of subpar. (A), one or more rooms shall be treated as a housing unit when occupied as a separate living quarters.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-252 effective Oct. 1, 1994, see section 314 of Pub. L. 103-252, set out as a note under section 8621 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-558 effective Oct. 30, 1984, see section 609(a) of Pub. L. 98-558, set out as a note under section 8621 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8626b of this title.

§ 8623. State allotments

(a) Amount; distribution, computation, etc.

(1)(A) Except as provided in subparagraph (B), the Secretary shall, from that percentage of the amount appropriated under section 8621(b) of this title for each fiscal year which is remaining after reserving any amount permitted to be reserved under section 8628a of this title and after the amount of allotments for such fiscal year under subsection (b)(1) of this section is determined by the Secretary, allot to each State an amount equal to such remaining percentage multiplied by the State's allotment percentage.

(B) From the sums appropriated therefor after reserving any amount permitted to be reserved under section 8628a of this title, if for any period

a State has a plan which is described in section 8624(c)(1) of this title, the Secretary shall pay to such State an amount equal to 100 percent of the expenditures of such State made during such period in carrying out such plan, including administrative costs (subject to the provisions of section 8624(b)(9)(B) of this title), with respect to households described in section 8624(b)(2) of this title.

(2) For purposes of paragraph (1), for fiscal year 1985 and thereafter, a State's allotment percentage is the percentage which expenditures for home energy by low-income households in that State bears to such expenditures in all States, except that States which thereby receive the greatest proportional increase in allotments by reason of the application of this paragraph from the amount they received pursuant to Public Law 98-139 shall have their allotments reduced to the extent necessary to ensure that—

(A)(i) no State for fiscal year 1985 shall receive less than the amount of funds the State received in fiscal year 1984; and

(ii) no State for fiscal year 1986 and thereafter shall receive less than the amount of funds the State would have received in fiscal year 1984 if the appropriations for this subchapter for fiscal year 1984 had been \$1,975,000,000, and

(B) any State whose allotment percentage out of funds available to States from a total appropriation of \$2,250,000,000 would be less than 1 percent, shall not, in any year when total appropriations equal or exceed \$2,250,000,000, have its allotment percentage reduced from the percentage it would receive from a total appropriation of \$2,140,000,000.

(3) If the sums appropriated for any fiscal year for making grants under this subchapter are not sufficient to pay in full the total amount allocated to a State under paragraph (1) for such fiscal year, the amount which all States will receive under this subchapter for such fiscal year shall be ratably reduced.

(4) For the purpose of this section, the Secretary shall determine the expenditure for home energy by low-income households on the basis of the most recent satisfactory data available to the Secretary.

(b) Allotments to insular areas

(1) The Secretary shall apportion not less than one-tenth of 1 percent, and not more than one-half of 1 percent, of the amounts appropriated for each fiscal year to carry out this subchapter on the basis of need among the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands. The Secretary shall determine the total amount to be apportioned under this paragraph for any fiscal year (which shall not exceed one-half of 1 percent) after evaluating the extent to which each jurisdiction specified in the preceding sentence requires assistance under this paragraph for the fiscal year involved.

(2) Each jurisdiction to which paragraph (1) applies may receive grants under this subchapter upon an application submitted to the Secretary containing provisions which describe the programs for which assistance is sought

under this subchapter, and which are consistent with the requirements of section 8624 of this title.

(c) Energy crisis intervention

Of the funds available to each State under subsection (a) of this section, a reasonable amount based on data from prior years shall be reserved until March 15 of each program year by each State for energy crisis intervention. The program for which funds are reserved by this subsection shall be administered by public or non-profit entities which have experience in administering energy crisis programs under the Low-Income Energy Assistance Act of 1980, or under this subchapter,¹ experience in assisting low-income individuals in the area to be served, the capacity to undertake a timely and effective energy crisis intervention program, and the ability to carry out the program in local communities. The program for which funds are reserved under this subsection shall—

(1) not later than 48 hours after a household applies for energy crisis benefits, provide some form of assistance that will resolve the energy crisis if such household is eligible to receive such benefits;

(2) not later than 18 hours after a household applies for crisis benefits, provide some form of assistance that will resolve the energy crisis if such household is eligible to receive such benefits and is in a life-threatening situation; and

(3) require each entity that administers such program—

(A) to accept applications for energy crisis benefits at sites that are geographically accessible to all households in the area to be served by such entity; and

(B) to provide to low-income individuals who are physically infirm the means—

(i) to submit applications for energy crisis benefits without leaving their residences; or

(ii) to travel to the sites at which such applications are accepted by such entity.

The preceding sentence shall not apply to a program in a geographical area affected by a natural disaster in the United States designated by the Secretary, or by a major disaster or emergency designated by the President under the Disaster Relief Act of 1974¹ [42 U.S.C. 5121 et seq.], for so long as such designation remains in effect, if the Secretary determines that such disaster or such emergency makes compliance with such sentence impracticable.

(d) Allotments to Indian tribes

(1) If, with respect to any State, the Secretary—

(A) receives a request from the governing organization of an Indian tribe within the State that assistance under this subchapter be made directly to such organization; and

(B) determines that the members of such tribe would be better served by means of grants made directly to provide benefits under this subchapter;

the Secretary shall reserve from amounts which would otherwise be payable to such State from

¹ See References in Text note below.

amounts allotted to it under this subchapter for the fiscal year involved the amount determined under paragraph (2).

(2) The amount determined under this paragraph for a fiscal year is the amount which bears the same ratio to the amount which would (but for this subsection) be allotted to such State under this subchapter for such fiscal year (other than by reason of section 8626(b)(2) of this title) as the number of Indian households described in subparagraphs (A) and (B) of section 8624(b)(2) of this title and residing within the State on the reservation of the tribes or on trust lands adjacent to such reservation bears to the number of all households described in subparagraphs (A) and (B) of section 8624(b)(2) of this title in such State, or such greater amount as the Indian tribe and the State may agree upon. In cases where a tribe has no reservation, the Secretary, in consultation with the tribe and the State, shall define the number of Indian households for the determination under this paragraph.

(3) The sums reserved by the Secretary on the basis of a determination under this subsection shall be granted to—

(A) the tribal organization serving the individuals for whom such a determination has been made; or

(B) in any case where there is no tribal organization serving an individual for whom such a determination has been made, such other entity as the Secretary determines has the capacity to provide assistance pursuant to this subchapter.

(4) In order for a tribal organization or other entity to be eligible for an amount under this subsection for a fiscal year, it shall submit to the Secretary a plan (in lieu of being under the State's plan) for such fiscal year which meets such criteria as the Secretary may by regulations prescribe.

(e) Allotment of emergency funds

Notwithstanding subsections (a) through (d) of this section, the Secretary may allot amounts appropriated pursuant to section 8621(e) of this title to one or more than one State. In determining whether to make such an allotment to a State, the Secretary shall take into account the extent to which the State was affected by the natural disaster or other emergency involved, the availability to the State of other resources under the program carried out under this subchapter or any other program, and such other factors as the Secretary may find to be relevant. Not later than 30 days after making the determination, but prior to releasing an allotted amount to a State, the Secretary shall notify Congress of the allotments made pursuant to this subsection.

(Pub. L. 97-35, title XXVI, §2604, Aug. 13, 1981, 95 Stat. 894; Pub. L. 98-558, title VI, §§603, 604, Oct. 30, 1984, 98 Stat. 2890; Pub. L. 99-425, title V, §§502(a), 503, 505(b), Sept. 30, 1986, 100 Stat. 973-975; Pub. L. 101-501, title VII, §703, Nov. 3, 1990, 104 Stat. 1258; Pub. L. 103-252, title III, §§304(c), 311(c)(3), May 18, 1994, 108 Stat. 659, 662; Pub. L. 105-285, title III, §§304(b), 305, Oct. 27, 1998, 112 Stat. 2757.)

REFERENCES IN TEXT

Public Law 98-139, referred to in subsec. (a)(2), is Pub. L. 98-139, Oct. 31, 1983, 97 Stat. 871, known as the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriation Act, 1984. For complete classification of this Act to the Code see Tables.

The Low-Income Energy Assistance Act of 1980, referred to in subsec. (c), probably means the Home Energy Assistance Act of 1980, which is title III of Pub. L. 96-223, Apr. 2, 1980, 94 Stat. 288, and which was classified generally to subchapter I of this chapter prior to repeal by Pub. L. 97-35, title XXVI, §2611, Aug. 13, 1981, 95 Stat. 902. For complete classification of this Act to the Code, see Tables.

This subchapter, referred to in subsec. (c), was in the original "this Act" which was translated as reading "this title", meaning title XXVI of Pub. L. 97-35, as the probable intent of Congress.

The Disaster Relief Act of 1974, referred to in subsec. (c), is Pub. L. 93-288, May 22, 1974, 88 Stat. 143, as amended, which is classified principally to chapter 68 (§5121 et seq.) of this title. The 1974 Act was renamed "The Robert T. Stafford Disaster Relief and Emergency Assistance Act", and was substantially revised by Pub. L. 100-707, Nov. 23, 1988, 102 Stat. 4689. Section 102(b) of Pub. L. 100-707 provided that a reference in any other law to a provision of the Disaster Relief Act of 1974 shall be deemed to be a reference to such provision of the Robert T. Stafford Disaster Relief and Emergency Assistance Act. The name of the Act was subsequently changed to the "Robert T. Stafford Disaster Relief and Emergency Assistance Act" by Pub. L. 106-390, title III, §301, Oct. 30, 2000, 114 Stat. 1572. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables.

AMENDMENTS

1998—Subsec. (b)(1). Pub. L. 105-285, §305(1), substituted "and the Commonwealth of the Northern Mariana Islands." for "the Northern Mariana Islands, and the Trust Territory of the Pacific Islands."

Subsec. (c)(3)(B)(ii). Pub. L. 105-285, §305(2), substituted "applications" for "application".

Subsec. (e). Pub. L. 105-285, §305(5), redesignated subsec. (g) as (e).

Subsec. (f). Pub. L. 105-285, §305(3), struck out subsec. (f) relating to optional transfer of funds to block grants for community service programs, preventive health services, etc.

Subsec. (g). Pub. L. 105-285, §305(5), redesignated subsec. (g) as (e).

Pub. L. 105-285, §§304(b), 305(4), substituted "subsections (a) through (d) of this section" for "subsections (a) through (f) of this section" and "In determining whether to make such an allotment to a State, the Secretary shall take into account the extent to which the State was affected by the natural disaster or other emergency involved, the availability to the State of other resources under the program carried out under this subchapter or any other program, and such other factors as the Secretary may find to be relevant. Not later than 30 days after making the determination, but prior to releasing an allotted amount to a State, the Secretary shall notify Congress of the allotments made pursuant to this subsection." for "In determining to which State or States additional funds may be allotted, the Secretary shall take into account the extent to which a State was affected by the emergency or disaster, the availability to an affected State of other resources under this or any other program, and such other factors as the Secretary determines relevant. The Secretary shall notify Congress of the allotment pursuant to this subsection prior to releasing the allotted funds."

1994—Subsec. (b)(1). Pub. L. 103-252, §311(c)(3), inserted "of the United States" after "Virgin Islands".

Subsec. (g). Pub. L. 103-252, §304(c), added subsec. (g).
1990—Subsec. (f). Pub. L. 101-501 designated existing provisions as par. (1), redesignated former pars. (1) to

(3) as subpars. (A) to (C), respectively, substituted “in accordance with paragraph (2) a percentage” for “up to 10 percent”, “or a combination” for “or any combination”, and “subparagraphs (A), (B), and (C)” for “paragraphs (1), (2), and (3)”, and added par. (2).

1986—Subsec. (a)(1)(A). Pub. L. 99-425, § 505(b)(1), inserted “after reserving any amount permitted to be reserved under section 8628a of this title and” after “remaining”.

Subsec. (a)(1)(B). Pub. L. 99-425, § 505(b)(2), inserted “after reserving any amount permitted to be reserved under section 8628a of this title” after “therefor”.

Subsec. (c). Pub. L. 99-425, § 502(a), substituted “the capacity” for “and the capacity”, inserted “, and the ability to carry out the program in local communities”, and inserted provisions relating to hourly time periods in which the program must respond, application for benefits, and nonapplicability of the program to areas affected by a natural disaster or major disaster.

Subsec. (d)(2). Pub. L. 99-425, § 503, substituted “and residing within the State on the reservation of the tribes or on trust lands adjacent to such reservation” for “in such State with respect to which a determination under this subsection is made”, inserted “, or such greater amount as the Indian tribe and the State may agree upon”, and inserted “In cases where a tribe has no reservation, the Secretary, in consultation with the tribe and the State, shall define the number of Indian households for the determination under this paragraph.”

1984—Subsec. (a)(2). Pub. L. 98-558, § 604(a), amended par. (2) generally, substituting provisions relating to State allotment computation for former provisions which also related to computation of State allotment formulas and adding subpars. (A) and (B).

Subsec. (a)(4). Pub. L. 98-558, § 604(b), added par. (4).

Subsec. (c). Pub. L. 98-558, § 603(a), inserted “until March 15 of each program year” after “reserved” and inserted “The program for which funds are reserved by this subsection shall be administered by public or non-profit entities which have experience in administering energy crisis programs under the Low-Income Energy Assistance Act of 1980, or under this subchapter, experience in assisting low-income individuals in the area to be served, and the capacity to undertake a timely and effective energy crisis intervention program.”

Subsec. (d)(1). Pub. L. 98-558, § 603(b), substituted “otherwise be payable” for “otherwise be paid” in provisions following subpar. (B).

Subsec. (e). Pub. L. 98-558, § 603(c), struck out subsec. (e) which related to direct payments to households and State options.

Subsec. (f). Pub. L. 98-558, § 603(d), substituted “the funds payable to it” for “its allotment”.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-252 effective Oct. 1, 1994, see section 314 of Pub. L. 103-252, set out as a note under section 8621 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101-501, set out as a note under section 8621 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 502(a) of Pub. L. 99-425 effective Dec. 1, 1986, and amendment by sections 503 and 505(b) of Pub. L. 99-425 effective Oct. 1, 1986, see section 1001 of Pub. L. 99-425, set out as a note under section 8621 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-558 effective Oct. 30, 1984, see section 609(a) of Pub. L. 98-558, set out as a note under section 8621 of this title.

RULES FOR ENERGY CRISIS INTERVENTION

Section 502(b) of Pub. L. 99-425 provided that: “Not later than 60 days after the date of the enactment of

this Act [Sept. 30, 1986], the Secretary of Health and Human Services shall issue rules to carry out the amendments made by subsection (a) [amending this section].”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8621, 8624, 8626 of this title.

§ 8624. Applications and requirements

(a) Form; assurances; public hearings

(1) Each State desiring to receive an allotment for any fiscal year under this subchapter shall submit an application to the Secretary. Each such application shall be in such form as the Secretary shall require. Each such application shall contain assurances by the chief executive officer of the State that the State will meet the conditions enumerated in subsection (b) of this section.

(2) After the expiration of the first fiscal year for which a State receives funds under this subchapter, no funds shall be allotted to such State for any fiscal year under this subchapter unless such State conducts public hearings with respect to the proposed use and distribution of funds to be provided under this subchapter for such fiscal year.

(b) Certifications required for covered activities

As part of the annual application required by subsection (a) of this section, the chief executive officer of each State shall certify that the State agrees to—

(1) use the funds available under this subchapter to—

(A) conduct outreach activities and provide assistance to low income households in meeting their home energy costs, particularly those with the lowest incomes that pay a high proportion of household income for home energy, consistent with paragraph (5);

(B) intervene in energy crisis situations;

(C) provide low-cost residential weatherization and other cost-effective energy-related home repair; and

(D) plan, develop, and administer the State's program under this subchapter including leveraging programs,

and the State agrees not to use such funds for any purposes other than those specified in this subchapter;

(2) make payments under this subchapter only with respect to—

(A) households in which 1 or more individuals are receiving—

(i) assistance under the State program funded under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.];

(ii) supplemental security income payments under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.];

(iii) food stamps under the Food Stamp Act of 1977 [7 U.S.C. 2011 et seq.]; or

(iv) payments under section 1315, 1521, 1541, or 1542 of title 38, or under section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978; or

(B) households with incomes which do not exceed the greater of—

(i) an amount equal to 150 percent of the poverty level for such State; or

(ii) an amount equal to 60 percent of the State median income;

except that a State may not exclude a household from eligibility in a fiscal year solely on the basis of household income if such income is less than 110 percent of the poverty level for such State, but the State may give priority to those households with the highest home energy costs or needs in relation to household income;

(3) conduct outreach activities designed to assure that eligible households, especially households with elderly individuals or disabled individuals, or both, and households with high home energy burdens, are made aware of the assistance available under this subchapter, and any similar energy-related assistance available under subtitle B of title VI (relating to community services block grant program) [42 U.S.C. 9901 et seq.] or under any other provision of law which carries out programs which were administered under the Economic Opportunity Act of 1964 [42 U.S.C. 2701 et seq.] before August 13, 1981;

(4) coordinate its activities under this subchapter with similar and related programs administered by the Federal Government and such State, particularly low-income energy-related programs under subtitle B of title VI (relating to community services block grant program) [42 U.S.C. 9901 et seq.], under the supplemental security income program, under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.], under title XX of the Social Security Act [42 U.S.C. 1397 et seq.], under the low-income weatherization assistance program under title IV of the Energy Conservation and Production Act [42 U.S.C. 6851 et seq.], or under any other provision of law which carries out programs which were administered under the Economic Opportunity Act of 1964 [42 U.S.C. 2701 et seq.] before August 13, 1981;

(5) provide, in a timely manner, that the highest level of assistance will be furnished to those households which have the lowest incomes and the highest energy costs or needs in relation to income, taking into account family size, except that the State may not differentiate in implementing this section between the households described in clause (2)(A) and (2)(B) of this subsection;

(6) to the extent it is necessary to designate local administrative agencies in order to carry out the purposes of this subchapter, give special consideration, in the designation of such agencies, to any local public or private non-profit agency which was receiving Federal funds under any low-income energy assistance program or weatherization program under the Economic Opportunity Act of 1964 [42 U.S.C. 2701 et seq.] or any other provision of law on August 12, 1981, except that—

(A) the State shall, before giving such special consideration, determine that the agency involved meets program and fiscal requirements established by the State; and

(B) if there is no such agency because of any change in the assistance furnished to

programs for economically disadvantaged persons, then the State shall give special consideration in the designation of local administrative agencies to any successor agency which is operated in substantially the same manner as the predecessor agency which did receive funds for the fiscal year preceding the fiscal year for which the determination is made;

(7) if the State chooses to pay home energy suppliers directly, establish procedures to—

(A) notify each participating household of the amount of assistance paid on its behalf;

(B) assure that the home energy supplier will charge the eligible household, in the normal billing process, the difference between the actual cost of the home energy and the amount of the payment made by the State under this subchapter;

(C) assure that the home energy supplier will provide assurances that any agreement entered into with a home energy supplier under this paragraph will contain provisions to assure that no household receiving assistance under this subchapter will be treated adversely because of such assistance under applicable provisions of State law or public regulatory requirements; and

(D) ensure that the provision of vendored payments remains at the option of the State in consultation with local grantees and may be contingent on unregulated vendors taking appropriate measures to alleviate the energy burdens of eligible households, including providing for agreements between suppliers and individuals eligible for benefits under this subchapter¹ that seek to reduce home energy costs, minimize the risks of home energy crisis, and encourage regular payments by individuals receiving financial assistance for home energy costs;

(8) provide assurances that (A) the State will not exclude households described in clause (2)(B) of this subsection from receiving home energy assistance benefits under clause (2), and (B) the State will treat owners and renters equitably under the program assisted under this subchapter;

(9) provide that—

(A) the State may use for planning and administering the use of funds under this subchapter an amount not to exceed 10 percent of the funds payable to such State under this subchapter for a fiscal year; and

(B) the State will pay from non-Federal sources the remaining costs of planning and administering the program assisted under this subchapter and will not use Federal funds for such remaining costs (except for the costs of the activities described in paragraph (16));

(10) provide that such fiscal control and fund accounting procedures will be established as may be necessary to assure the proper disbursement of and accounting for Federal funds paid to the State under this subchapter, including procedures for monitoring the assistance provided under this subchapter, and pro-

¹ See References in Text note below.

vide that the State will comply with the provisions of chapter 75 of title 31 (commonly known as the "Single Audit Act");

(11) permit and cooperate with Federal investigations undertaken in accordance with section 8627 of this title;

(12) provide for timely and meaningful public participation in the development of the plan described in subsection (c) of this section;

(13) provide an opportunity for a fair administrative hearing to individuals whose claims for assistance under the plan described in subsection (c) of this section are denied or are not acted upon with reasonable promptness;

(14) cooperate with the Secretary with respect to data collecting and reporting under section 8629 of this title;

(15) beginning in fiscal year 1992, provide, in addition to such services as may be offered by State Departments of Public Welfare at the local level, outreach and intake functions for crisis situations and heating and cooling assistance that is administered by additional State and local governmental entities or community-based organizations (such as community action agencies, area agencies on aging, and not-for-profit neighborhood-based organizations), and in States where such organizations do not administer intake functions as of September 30, 1991, preference in awarding grants or contracts for intake services shall be provided to those agencies that administer the low-income weatherization or energy crisis intervention programs; and

(16) use up to 5 percent of such funds, at its option, to provide services that encourage and enable households to reduce their home energy needs and thereby the need for energy assistance, including needs assessments, counseling, and assistance with energy vendors, and report to the Secretary concerning the impact of such activities on the number of households served, the level of direct benefits provided to those households, and the number of households that remain unserved.

The Secretary may not prescribe the manner in which the States will comply with the provisions of this subsection. The Secretary shall issue regulations to prevent waste, fraud, and abuse in the programs assisted by this subchapter.

Not later than 18 months after May 18, 1994, the Secretary shall develop model performance goals and measurements in consultation with State, territorial, tribal, and local grantees, that the States may use to assess the success of the States in achieving the purposes of this subchapter. The model performance goals and measurements shall be made available to States to be incorporated, at the option of the States, into the plans for fiscal year 1997. The Secretary may request data relevant to the development of model performance goals and measurements.

(c) State plan; revision; public inspection

(1) As part of the annual application required in subsection (a) of this section, the chief executive officer of each State shall prepare and furnish to the Secretary, in such format as the Secretary may require, a plan which—

(A) describes the eligibility requirements to be used by the State for each type of assist-

ance to be provided under this subchapter, including criteria for designating an emergency under section 8623(c) of this title;

(B) describes the benefit levels to be used by the State for each type of assistance including assistance to be provided for emergency crisis intervention and for weatherization and other energy-related home repair;

(C) contains estimates of the amount of funds the State will use for each of the programs under such plan and describes the alternative use of funds reserved under section 8623(c) of this title in the event any portion of the amount so reserved is not expended for emergencies;

(D) describes weatherization and other energy-related home repair the State will provide under subsection (k) of this section, including any steps the State will take to address the weatherization and energy-related home repair needs of households that have high home energy burdens, and describes any rules promulgated by the Department of Energy for administration of its Low Income Weatherization Assistance Program which the State, to the extent permitted by the Secretary to increase consistency between federally assisted programs, will follow regarding the use of funds provided under this subchapter by the State for such weatherization and energy-related home repairs and improvements;

(E) describes any steps that will be taken (in addition to those necessary to carry out the assurance contained in paragraph (5) of subsection (b) of this section) to target assistance to households with high home energy burdens;

(F) describes how the State will carry out assurances in clauses (3), (4), (5), (6), (7), (8), (10), (12), (13), and (15) of subsection (b) of this section;

(G) states, with respect to the 12-month period specified by the Secretary, the number and income levels of households which apply and the number which are assisted with funds provided under this subchapter, and the number of households so assisted with—

(i) one or more members who had attained 60 years of age;

(ii) one or more members who were disabled; and

(iii) one or more young children; and

(H) contains any other information determined by the Secretary to be appropriate for purposes of this subchapter.

The chief executive officer may revise any plan prepared under this paragraph and shall furnish the revised plan to the Secretary.

(2) Each plan prepared under paragraph (1) and each substantial revision thereof shall be made available for public inspection within the State involved in such a manner as will facilitate timely and meaningful review of, and comment upon, such plan or substantial revision.

(3) Not later than April 1 of each fiscal year the Secretary shall make available to the States a model State plan format that may be used, at the option of each State, to prepare the plan required under paragraph (1) for the next fiscal year.

(d) Expending of funds

The State shall expend funds in accordance with the State plan under this subchapter or in accordance with revisions applicable to such plan.

(e) Conduct of audits

Each State shall, in carrying out the requirements of subsection (b)(10) of this section, obtain financial and compliance audits of any funds which the State receives under this subchapter. Such audits shall be made public within the State on a timely basis. The audits shall be conducted in accordance with chapter 75 of title 31.

(f) Payments or assistance not to be deemed income or resources for any purpose under Federal or State law; determination of excess shelter expense deduction

(1) Notwithstanding any other provision of law unless enacted in express limitation of this paragraph, the amount of any home energy assistance payments or allowances provided directly to, or indirectly for the benefit of, an eligible household under this subchapter shall not be considered income or resources of such household (or any member thereof) for any purpose under any Federal or State law, including any law relating to taxation, food stamps, public assistance, or welfare programs.

(2) For purposes of paragraph (1) of this subsection and for purposes of determining any excess shelter expense deduction under section 5(e) of the Food Stamp Act of 1977 (7 U.S.C. 2014(e))—

(A) the full amount of such payments or allowances shall be deemed to be expended by such household for heating or cooling expenses, without regard to whether such payments or allowances are provided directly to, or indirectly for the benefit of, such household; and

(B) no distinction may be made among households on the basis of whether such payments or allowances are provided directly to, or indirectly for the benefit of, any of such households.

(g) Repayment of funds expended improperly; offset

The State shall repay to the United States amounts found not to have been expended in accordance with this subchapter or the Secretary may offset such amounts against any other amount to which the State is or may become entitled under this subchapter.

(h) Periodic evaluation of expenditures by Comptroller General

The Comptroller General of the United States shall, from time to time² evaluate the expenditures by States of grants under this subchapter in order to assure that expenditures are consistent with the provisions of this subchapter and to determine the effectiveness of the State in accomplishing the purposes of this subchapter.

(i) Certain recipients of supplemental security income ineligible for payments or assistance

A household which is described in subsection (b)(2)(A) of this section solely by reason of

clause (ii) thereof shall not be treated as a household described in subsection (b)(2) of this section if the eligibility of the household is dependent upon—

(1) an individual whose annual supplemental security income benefit rate is reduced pursuant to section 1611(e)(1) of the Social Security Act [42 U.S.C. 1382(e)(1)] by reason of being in an institution receiving payments under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] with respect to such individual;

(2) an individual to whom the reduction specified in section 1612(a)(2)(A)(i) of the Social Security Act [42 U.S.C. 1382a(a)(2)(A)(i)] applies; or

(3) a child described in section 1614(f)(2) of the Social Security Act [42 U.S.C. 1382c(f)(2)] who is living together with a parent, or the spouse of a parent, of the child.

(j) State verification of income eligibility; policies and procedures applicable

In verifying income eligibility for purposes of subsection (b)(2)(B) of this section, the State may apply procedures and policies consistent with procedures and policies used by the State agency administering programs under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.], under title XX of the Social Security Act [42 U.S.C. 1397 et seq.], under subtitle B of title VI of this Act (relating to community services block grant program) [42 U.S.C. 9901 et seq.], under any other provision of law which carries out programs which were administered under the Economic Opportunity Act of 1964 [42 U.S.C. 2701 et seq.] before August 13, 1981, or under other income assistance or service programs (as determined by the State).

(k) Limitation on use of funds; waiver

(1) Except as provided in paragraph (2), not more than 15 percent of the greater of—

(A) the funds allotted to a State under this subchapter for any fiscal year; or

(B) the funds available to such State under this subchapter for such fiscal year;

may be used by the State for low-cost residential weatherization or other energy-related home repair for low-income households, particularly those low-income households with the lowest incomes that pay a high proportion of household income for home energy.

(2)(A) If a State receives a waiver granted under subparagraph (B) for a fiscal year, the State may use not more than the greater of 25 percent of—

(i) the funds allotted to a State under this subchapter for such fiscal year; or

(ii) the funds available to such State under this subchapter for such fiscal year;

for residential weatherization or other energy-related home repair for low-income households, particularly those low-income households with the lowest incomes that pay a high proportion of household income for home energy.

(B) For purposes of subparagraph (A), the Secretary may grant a waiver to a State for a fiscal year if the State submits a written request to the Secretary after March 31 of such fiscal year and if the Secretary determines, after reviewing such request and any public comments, that—

²So in original. Probably should be followed by a comma.

(i)(I) the number of households in the State that will receive benefits, other than weatherization and energy-related home repair, under this subchapter in such fiscal year will not be fewer than the number of households in the State that received benefits, other than weatherization and energy-related home repair, under this subchapter in the preceding fiscal year;

(II) the aggregate amounts of benefits that will be received under this subchapter by all households in the State in such fiscal year will not be less than the aggregate amount of such benefits that were received under this subchapter by all households in the State in the preceding fiscal year; and

(III) such weatherization activities have been demonstrated to produce measurable savings in energy expenditures by low-income households; or

(ii) in accordance with rules issued by the Secretary, the State demonstrates good cause for failing to satisfy the requirements specified in clause (i).

(I) State tax credits to energy suppliers who supply home energy at reduced rates to low-income households

(1) Any State may use amounts provided under this subchapter for the purpose of providing credits against State tax to energy suppliers who supply home energy at reduced rates to low-income households.

(2) Any such credit provided by a State shall not exceed the amount of the loss of revenue to such supplier on account of such reduced rate.

(3) Any certification for such tax credits shall be made by the State, but such State may use Federal data available to such State with respect to recipients of supplemental security income benefits if timely delivery of benefits to households described in subsection (b) of this section and suppliers will not be impeded by the use of such data.

(Pub. L. 97-35, title XXVI, §2605, Aug. 13, 1981, 95 Stat. 896; Pub. L. 98-558, title VI, §605, Oct. 30, 1984, 98 Stat. 2891; Pub. L. 99-425, title V, §504, Sept. 30, 1986, 100 Stat. 974; Pub. L. 101-501, title VII, §§704, 705, Nov. 3, 1990, 104 Stat. 1259; Pub. L. 102-83, §5(c)(2), Aug. 6, 1991, 105 Stat. 406; Pub. L. 103-252, title III, §§305-309, 311(a)(1), (b), (c)(4), (5), May 18, 1994, 108 Stat. 659-662; Pub. L. 104-66, title I, §1072(c), Dec. 21, 1995, 109 Stat. 721; Pub. L. 104-193, title I, §110(p), Aug. 22, 1996, 110 Stat. 2175; Pub. L. 105-285, title III, §306, Oct. 27, 1998, 112 Stat. 2758.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (b)(2)(A)(i), (ii), (4), (i)(1), and (j), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part A of title IV of the Social Security Act is classified generally to part A (§601 et seq.) of subchapter IV of chapter 7 of this title. Titles XVI, XIX, and XX of the Social Security Act are classified generally to subchapters XVI (§1381 et seq.), XIX (§1396 et seq.), and XX (§1397 et seq.) of chapter 7 of this title, respectively. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Food Stamp Act of 1977, referred to in subsec. (b)(2)(A)(iii), is Pub. L. 88-525, Aug. 31, 1964, 78 Stat. 703, as amended, which is classified generally to chapter 51

(§2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

Section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978, referred to in subsec. (b)(2)(A)(iv), is section 306 of Pub. L. 95-588, title III, Nov. 4, 1978, 92 Stat. 2508, which is set out as a note under section 521 of Title 38, Veterans' Benefits.

Subtitle B of title VI, referred to in subsecs. (b)(3), (4), and (j), is subtitle B of title VI of Pub. L. 97-35, §671 et seq., Aug. 13, 1981, 95 Stat. 511, as amended, known as the Community Services Block Grant Act, which is classified generally to chapter 106 (§9901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9901 of this title and Tables.

The Economic Opportunity Act of 1964, referred to in subsecs. (b)(3), (4), (6), and (j), is Pub. L. 88-452, Aug. 20, 1964, 78 Stat. 508, as amended, which was classified generally to chapter 34 (§2701 et seq.) of this title prior to repeal, except for titles VIII and X, by Pub. L. 97-35, title VI, §683(a), Aug. 13, 1981, 95 Stat. 519. Titles VIII and X of the Act are classified generally to subchapters VIII (§2991 et seq.) and X (§2996 et seq.) of chapter 34 of this title. For complete classification of this Act to the Code, see Tables.

The Energy Conservation and Production Act, referred to in subsec. (b)(4), is Pub. L. 94-385, Aug. 14, 1976, 90 Stat. 1142, as amended. Title IV of the Energy Conservation and Production Act is classified principally to subchapter III (§6851 et seq.) of chapter 81 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6801 of this title and Tables.

This subchapter, referred to in subsec. (b)(7)(D), was in the original "this Act" and was translated as reading "this title", meaning title XXVI of Pub. L. 97-35, known as the Low-Income Home Energy Assistance Act of 1981, to reflect the probable intent of Congress.

CODIFICATION

In subsec. (b)(6), "August 12, 1981" substituted for "the day before the date of the enactment of this Act", which date of enactment is Aug. 13, 1981.

AMENDMENTS

1998—Subsec. (b). Pub. L. 105-285, §306(1)(C), (D), struck out "The Secretary may not prescribe the manner in which the States will comply with the provisions of this subsection." in provisions after par. (14) and inserted identical language before "The Secretary shall issue" in concluding provisions after par. (16).

Subsec. (b)(9)(A). Pub. L. 105-285, §306(1)(A), struck out "and not transferred pursuant to section 8623(f) of this title for use under another block grant" before the semicolon.

Subsec. (b)(14). Pub. L. 105-285, §306(1)(B), struck out "and" at end.

Subsec. (c)(1)(B). Pub. L. 105-285, §306(2)(A), substituted "State" for "States".

Subsec. (c)(1)(G)(i). Pub. L. 105-285, §306(2)(B), substituted "had" for "has".

Subsec. (k)(1), (2)(A). Pub. L. 105-285, §306(3), inserted before period at end " , particularly those low-income households with the lowest incomes that pay a high proportion of household income for home energy".

1996—Subsec. (b)(2)(A)(i). Pub. L. 104-193 amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: "aid to families with dependent children under the State's plan approved under part A of title IV of the Social Security Act (other than such aid in the form of foster care in accordance with section 408 of such Act);".

1995—Subsec. (h). Pub. L. 104-66 struck out "(but not less frequently than every three years)," after "from time to time".

1994—Subsec. (b). Pub. L. 103-252, §311(c)(4), transferred the sentence immediately preceding par. (15) to appear as a flush sentence immediately after par. (16).

Pub. L. 103-252, §311(b), inserted at end "Not later than 18 months after May 18, 1994, the Secretary shall develop model performance goals and measurements in consultation with State, territorial, tribal, and local grantees, that the States may use to assess the success of the States in achieving the purposes of this subchapter. The model performance goals and measurements shall be made available to States to be incorporated, at the option of the States, into the plans for fiscal year 1997. The Secretary may request data relevant to the development of model performance goals and measurements."

Subsec. (b)(1). Pub. L. 103-252, §305(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "use the funds available under this subchapter for the purposes described in section 8621(a) of this title and otherwise in accordance with the requirements of this subchapter, and agrees not to use such funds for any payments other than payments specified in this section;"

Subsec. (b)(2)(B). Pub. L. 103-252, §306(a), in concluding provisions substituted "except that a State may not exclude a household from eligibility in a fiscal year solely on the basis of household income if such income is less than 110 percent of the poverty level for such State, but the State may give priority to those households with the highest home energy costs or needs in relation to household income;" for "except that no household may be excluded from eligibility under this subclause for payments under this subchapter for fiscal year 1986 and thereafter if the household has an income which is less than 110 percent of the poverty level for such State for such fiscal year".

Subsec. (b)(3). Pub. L. 103-252, §§306(b), 311(c)(3), substituted "disabled" for "handicapped" and "and households with high home energy burdens, are made aware" for "are made aware".

Subsec. (b)(5). Pub. L. 103-252, §306(c), inserted "or needs" after "highest energy costs".

Subsec. (b)(7)(D). Pub. L. 103-252, §311(a)(1), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: "assure that any home energy supplier receiving direct payments agrees not to discriminate, either in the cost of the goods supplied or the services provided, against the eligible household on whose behalf payments are made;"

Subsec. (b)(9)(B). Pub. L. 103-252, §305(b)(1), inserted before semicolon at end "(except for the costs of the activities described in paragraph (16))".

Subsec. (b)(10). Pub. L. 103-252, §307(1), substituted "and provide that the State will comply with the provisions of chapter 75 of title 31 (commonly known as the 'Single Audit Act')" for "and provide that at least every two years the State shall prepare an audit of its expenditures of amounts received under this subchapter and amounts transferred to carry out the purposes of this subchapter".

Subsec. (b)(16). Pub. L. 103-252, §305(b)(2), (3), added par. (16).

Subsec. (c)(1)(D). Pub. L. 103-252, §308, inserted before semicolon at end ", including any steps the State will take to address the weatherization and energy-related home repair needs of households that have high home energy burdens, and describes any rules promulgated by the Department of Energy for administration of its Low Income Weatherization Assistance Program which the State, to the extent permitted by the Secretary to increase consistency between federally assisted programs, will follow regarding the use of funds provided under this subchapter by the State for such weatherization and energy-related home repairs and improvements".

Subsec. (c)(1)(E). Pub. L. 103-252, §306(d)(2), added subpar. (E). Former subpar. (E) redesignated (F).

Subsec. (c)(1)(F). Pub. L. 103-252, §§306(d)(1), 309(1), redesignated subpar. (E) as (F), substituted "(13), and (15)" for "and (13)", and struck out "and" at end. Former subpar. (F) redesignated (H).

Subsec. (c)(1)(G). Pub. L. 103-252, §309(2), added subpar. (G).

Subsec. (c)(1)(H). Pub. L. 103-252, §306(d)(1), redesignated subpar. (F) as (H).

Subsec. (e). Pub. L. 103-252, §307(2), substituted "in accordance with chapter 75 of title 31" for "at least every two years by an organization or person independent of any agency administering activities under this subchapter. The audits shall be conducted in accordance with the Comptroller General's standards for audit of governmental organizations, programs, activities, and functions. Within 30 days after completion of each audit, the chief executive officer of the State shall submit a copy of the audit to the legislature of the State and to the Secretary".

1991—Subsec. (b)(2)(A)(iv). Pub. L. 102-83 substituted "section 1315, 1521, 1541, or 1542 of title 38" for "section 415, 521, 541, or 542 of title 38".

1990—Subsec. (b)(12). Pub. L. 101-501, §704(a)(1), inserted "timely and meaningful" after "provide for".

Subsec. (b)(15). Pub. L. 101-501, §704(a)(2)-(4), added par. (15) at end.

Subsec. (c)(2). Pub. L. 101-501, §704(b), inserted "timely and meaningful" after "will facilitate".

Subsec. (k). Pub. L. 101-501, §705, designated existing provisions as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, substituted "Except as provided in paragraph (2), not" for "Not", and added par. (2).

1986—Subsec. (b)(5). Pub. L. 99-425, §504(a), substituted "in a timely manner" for "in a manner consistent with the efficient and timely payment of benefits".

Subsec. (b)(14) to (17). Pub. L. 99-425, §504(b), redesignated cl. (17) as (14), and struck out former cls. (14) to (16) which read as follows:

"(14) describe the procedures by which households in the State are identified as eligible to participate under this subchapter and the manner in which the State determines benefit levels;

"(15) describe the amount that the State will reserve in accordance with section 8623(c) of this title in each fiscal year for energy crisis intervention activities together with the administrative procedures (A) for designating an emergency, (B) for determining the assistance to be provided in any such emergency, and (C) for the use of funds reserved under such section for the purposes under this subchapter in the event any portion of the amount so reserved is not expended for emergencies.

"(16) describe energy usage and the average cost of home energy in the State, identified by type of fuel and by region of the State;"

Subsec. (c)(1). Pub. L. 99-425, §504(c), revised provisions relating to requirements for State plans, restating as subpars. (A) to (F), provisions of former subpars. (A) to (E).

Subsec. (c)(3). Pub. L. 99-425, §504(d), added par. (3).

Subsec. (f). Pub. L. 99-425, §504(e), designated existing provisions as par. (1), substituted "provided directly to, or indirectly for the benefit of" for "provided to", and added par. (2).

1984—Subsec. (b). Pub. L. 98-558, §605(a)(9), inserted at end "The Secretary shall issue regulations to prevent waste, fraud, and abuse in the programs assisted by this subchapter."

Subsec. (b)(1). Pub. L. 98-558, §605(a)(1), substituted "section" for "subsection".

Subsec. (b)(2)(B). Pub. L. 98-558, §605(a)(2), inserted "except that no household may be excluded from eligibility under this subclause for payments under this subchapter for fiscal year 1986 and thereafter if the household has an income which is less than 110 percent of the poverty level for such State for such fiscal year".

Subsec. (b)(5). Pub. L. 98-558, §605(a)(3), inserted "except that the State may not differentiate in implementing this section between the households described in clause (2)(A) and (2)(B) of this subsection".

Subsec. (b)(7)(C). Pub. L. 98-558, §605(a)(4), substituted "adversely" for "any differently".

Subsec. (b)(8). Pub. L. 98-558, §605(a)(5), designated existing provisions as subpar. (B) and added subpar. (A).

Subsec. (b)(9)(A). Pub. L. 98-558, § 605(a)(6), in amending subpar. (A) generally, struck out “in each fiscal year” before “the State may” and substituted “for a fiscal year and not transferred pursuant to section 8623(f) of this title for use under another block grant” for “for such fiscal year”.

Subsec. (b)(10). Pub. L. 98-558, § 605(a)(7), substituted “every two years” for “every year”.

Subsec. (b)(14) to (17). Pub. L. 98-558, § 605(a)(8), which directed amendment of subsec. (b) by adding pars. (14) to (17) at the end thereof, was executed by adding those pars. after par. (13) to reflect the probable intent of Congress.

Subsec. (c)(1). Pub. L. 98-558, § 605(b)(1), in amending par. (1) generally, designated existing provisions as subpar. (A) and added subpars. (B) to (E).

Subsec. (c)(2). Pub. L. 98-558, § 605(b)(2), inserted “and each substantial revision thereof” and “or substantial revision” at the end.

Subsec. (d). Pub. L. 98-558, § 605(c), in amending subsec. (d) generally, substituted provisions that the State shall expend funds in accordance with the State plan or revisions thereto for former provisions which related to waiver of requirements.

Subsec. (e). Pub. L. 98-558, § 605(d), in amending subsec. (e) generally, inserted provisions requiring that the audits be made public and that they shall be conducted in accordance with the Comptroller General’s standards.

Subsec. (f). Pub. L. 98-558, § 605(e), inserted “unless enacted in express limitation of this paragraph”.

Subsec. (h). Pub. L. 98-558, § 605(f), inserted “(but not less frequently than every three years)”.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104-193, as amended, set out as an Effective Date note under section 601 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-252 effective Oct. 1, 1994, see section 314 of Pub. L. 103-252, set out as a note under section 8621 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101-501, set out as a note under section 8621 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 504(a)-(d) of Pub. L. 99-425 not applicable with respect to any fiscal year beginning in or before the 60-day period ending on Oct. 1, 1986, and amendment by section 504(e) effective Oct. 1, 1986, see section 1001 of Pub. L. 99-425, set out as a note under section 8621 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-558 effective on first day of first fiscal year beginning after Oct. 30, 1984, see section 609(b) of Pub. L. 98-558, set out as a note under section 8621 of this title.

CLARIFICATION ON UTILITY ALLOWANCES

Pub. L. 102-550, title IX, § 927, Oct. 28, 1992, 106 Stat. 3885, as amended by Pub. L. 103-185, § 1, Dec. 14, 1993, 107 Stat. 2244, provided that:

“(a) ELIGIBILITY.—Tenants who—

“(1) are responsible for making out-of-pocket payments for utility bills; and

“(2) receive energy assistance through utility allowances that include energy costs under programs identified in subsection (c);

shall not have their eligibility or benefits under other programs designed to assist low-income people with increases in energy costs since 1978 reduced or eliminated, except as provided in subsection (d).

“(b) EQUAL TREATMENT IN BENEFIT PROGRAMS.—Tenants described in subsection (a) shall be treated identically with other households eligible for or receiving energy assistance, including in the determination of the home energy costs for which they are individually responsible and in the determination of their incomes for any program in which eligibility or benefits are based on need, except as provided in subsection (d).

“(c) APPLICABILITY.—This section applies to programs under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.], the National Housing Act [12 U.S.C. 1701 et seq.], section 101 of the Housing and Urban Development Act of 1965 [12 U.S.C. 1701s], section 202 of the Housing Act of 1959 [12 U.S.C. 1701q], and title V of the Housing Act of 1949 [42 U.S.C. 1471 et seq.].

“(d) SPECIAL RULE FOR LOW-INCOME HOME ENERGY ASSISTANCE PROGRAM.—For purposes of the Low-Income Home Energy Assistance Program, tenants described in subsection (a)(2) who are responsible for paying some or all heating or cooling costs shall not have their eligibility automatically denied. A State may consider the amount of the heating or cooling component of utility allowances received by tenants described in subsection (a)(2) when setting benefit levels under the Low-Income Home Energy Assistance Program. The size of any reduction in Low-Income Home Energy Assistance Program benefits must be reasonably related to the amount of the heating or cooling component of the utility allowance received and must ensure that the highest level of assistance will be furnished to those households with the lowest incomes and the highest energy costs in relation to income, taking into account family size, in compliance with section 2605(b)(5) of the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8624(b)(5)).”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8623, 8626a, 8626b, 8627, 8629 of this title.

§ 8625. Nondiscrimination provisions

(a) Prohibitions

No person shall on the ground of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with funds made available under this subchapter. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.] or with respect to an otherwise qualified handicapped individual as provided in section 794 of title 29 also shall apply to any such program or activity.

(b) Procedures applicable to secure compliance

Whenever the Secretary determines that a State that has received a payment under this subchapter has failed to comply with subsection (a) of this section or an applicable regulation, he shall notify the chief executive officer of the State and shall request him to secure compliance. If within a reasonable period of time, not to exceed 60 days, the chief executive officer fails or refuses to secure compliance, the Secretary is authorized to (1) refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted; (2) exercise the powers and functions provided by

title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], or section 794 of title 29, as may be applicable; or (3) take such other action as may be provided by law.

(c) Maintenance of civil actions

When a matter is referred to the Attorney General pursuant to subsection (b) of this section, or whenever he has reason to believe that the State is engaged in a pattern or practice in violation of the provisions of this section, the Attorney General may bring a civil action in any appropriate United States district court for such relief as may be appropriate, including injunctive relief.

(Pub. L. 97-35, title XXVI, §2606, Aug. 13, 1981, 95 Stat. 900.)

REFERENCES IN TEXT

The Age Discrimination Act of 1975, referred to in subssecs. (a) and (b), is title III of Pub. L. 94-135, Nov. 28, 1975, 78 Stat. 728, as amended, which is classified generally to chapter 76 (§6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

The Civil Rights Act of 1964, referred to in subsec. (b), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Civil Rights Act of 1964 is classified generally to subchapter V (§2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8626b of this title.

§ 8626. Payments to States; fiscal year requirements respecting availability, etc.

(a)(1) From its allotment under section 8623 of this title, the Secretary shall make payments to each State in accordance with section 6503(a) of title 31, for use under this subchapter.

(2) Each State shall notify the Secretary, not later than 2 months prior to the close of a fiscal year, of the amount (if any) of its allotment for such year that will not be obligated in such year, and, if such State elects to submit a request described in subsection (b)(2) of this section, such State shall submit such request at the same time. The Secretary shall make no payment under paragraph (1) to a State for a fiscal year unless the State has complied with this paragraph with respect to the prior fiscal year.

(b)(1) If—

(A) the Secretary determines that, as of September 1 of any fiscal year, an amount allotted to a State under section 8623 of this title for any fiscal year will not be used by such State during such fiscal year;

(B) the Secretary—

(i) notifies the chief executive officer of such State; and

(ii) publishes a timely notice in the Federal Register;

that, after the 30-day period beginning on the date of the notice to such chief executive officer, such amount may be reallocated; and

(C) the State does not request, under paragraph (2), that such amount be held available for such State for the following fiscal year;

then such amount shall be treated by the Secretary for purposes of this subchapter as an amount appropriated for the following fiscal year to be allotted under section 8623 of this title for such following fiscal year.

(2)(A) Any State may request that an amount allotted to such State for a fiscal year be held available for such State for the following fiscal year. Such request shall include a statement of the reasons that the amount allotted to such State for a fiscal year will not be used by such State during such fiscal year and a description of the types of assistance to be provided with the amount held available for the following fiscal year. Any amount so held available for the following fiscal year shall not be taken into account in computing the allotment of or the amount payable to such State for such fiscal year under this subchapter.

(B) No amount may be held available under this paragraph for a State from a prior fiscal year to the extent such amount exceeds 10 percent of the amount payable to such State for such prior fiscal year. For purposes of the preceding sentence, the amount payable to a State for a fiscal year shall be determined without regard to any amount held available under this paragraph for such State for such fiscal year from the prior fiscal year.

(C) The Secretary shall reallocate amounts made available under this paragraph for the fiscal year following the fiscal year of the original allotment in accordance with paragraph (1) of this subsection.

(3) During the 30-day period described in paragraph (1)(B), comments may be submitted to the Secretary. After considering such comments, the Secretary shall notify the chief executive officer of the State of any decision to reallocate funds, and shall publish such decision in the Federal Register.

(Pub. L. 97-35, title XXVI, §2607, Aug. 13, 1981, 95 Stat. 900; Pub. L. 98-558, title VI, §606, Oct. 30, 1984, 98 Stat. 2892; Pub. L. 101-501, title VII, §706, Nov. 3, 1990, 104 Stat. 1260; Pub. L. 103-252, title III, §310, May 18, 1994, 108 Stat. 661; Pub. L. 105-285, title III, §307, Oct. 27, 1998, 112 Stat. 2758.)

CODIFICATION

In subsec. (a)(1), “section 6503(a) of title 31” substituted for “section 203 of the Intergovernmental Cooperation Act of 1968 [42 U.S.C. 4213]” on authority of Pub. L. 97-258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

1998—Subsec. (b)(2)(B). Pub. L. 105-285 struck out “and not transferred pursuant to section 8623(f) of this title” after “such prior fiscal year” in first sentence and “but not transferred by the State” after “the amount payable to a State” in second sentence.

1994—Subsec. (a). Pub. L. 103-252 designated existing provisions as par. (1) and added par. (2).

1990—Subsec. (b)(2)(B). Pub. L. 101-501 substituted “10 percent” for “15 percent”.

1984—Subsec. (b)(2)(A). Pub. L. 98-558, §606(a), inserted “Such request shall include a statement of the reasons that the amount allotted to such State for a fiscal year will not be used by such State during such fiscal year and a description of assistance to be provided with the amount held available for the

following fiscal year.” and “or the amount payable to” after “computing the allotment of”.

Subsec. (b)(2)(B). Pub. L. 98-558, §606(b), substituted “15 percent” for “25 percent”, “payable to such State for such prior fiscal year and not transferred pursuant to section 8623(f) of this title” for “allotted to such State for such prior fiscal year”, and “payable to a State but not transferred by the State” for “allotted to a State” in second sentence.

Subsec. (b)(2)(C). Pub. L. 98-558, §606(c), added subpar. (C).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-252 effective Oct. 1, 1994, see section 314 of Pub. L. 103-252, set out as a note under section 8621 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101-501, set out as a note under section 8621 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-558 applicable to amounts held available for fiscal years beginning after Sept. 30, 1985, see section 609(c) of Pub. L. 98-558, set out as a note under section 8621 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8623 of this title.

§ 8626a. Incentive program for leveraging non-Federal resources

(a) Allotment of funds

Beginning in fiscal year 1992, the Secretary may allocate amounts appropriated under section 8621(d) of this title to provide supplementary funds to States that have acquired non-Federal leveraged resources for the program established under this subchapter.

(b) “Leveraged resources” defined

For purposes of this section, the term “leveraged resources” means the benefits made available to the low-income home energy assistance program of the State, or to federally qualified low-income households, that—

(1) represent a net addition to the total energy resources available to State and federally qualified households in excess of the amount of such resources that could be acquired by such households through the purchase of energy at commonly available household rates; and

(2)(A) result from the acquisition or development by the State program of quantifiable benefits that are obtained from energy vendors through negotiation, regulation or competitive bid; or

(B) are appropriated or mandated by the State for distribution—

(i) through the State program; or

(ii) under the plan referred to in section 8624(c)(1)(A) of this title to federally qualified low-income households and such benefits are determined by the Secretary to be integrated with the State program.

(c) Formula for distribution of amounts

(1) Distribution of amounts made available under this section shall be based on a formula developed by the Secretary that is designed to take into account the success in leveraging ex-

isting appropriations in the preceding fiscal year as measured under subsection (d) of this section. Such formula shall take into account the size of the allocation of the State under this subchapter and the ratio of leveraged resources to such allocation.

(2) A State may expend funds allocated under this subchapter as are necessary, not to exceed 0.08 percent of such allocation or \$35,000 each fiscal year, whichever is greater, to identify, develop, and demonstrate leveraging programs. Funds allocated under this section shall only be used for increasing or maintaining benefits to households.

(d) Dollar value of leveraged resources

Each State shall quantify the dollar value of leveraged resources received or acquired by such State under this section by using the best available data to calculate such leveraged resources less the sum of any costs incurred by the State to leverage such resources and any cost imposed on the federally eligible low-income households in such State.

(e) Report to Secretary

Not later than 2 months after the close of the fiscal year during which the State provided leveraged resources to eligible households, as described in subsection (b) of this section, each State shall prepare and submit, to the Secretary, a report that quantifies the leveraged resources of such State in order to qualify for assistance under this section for the following fiscal year.

(f) Determination of State share; regulations; documentation

The Secretary shall determine the share of each State of the amounts made available under this section based on the formula described in subsection (c) of this section and the State reports. The Secretary shall promulgate regulations for the calculation of the leveraged resources of the State and for the submission of supporting documentation. The Secretary may request any documentation that the Secretary determines necessary for the verification of the application of the State for assistance under this section.

(Pub. L. 97-35, title XXVI, §2607A, as added Pub. L. 101-501, title VII, §707(a), Nov. 3, 1990, 104 Stat. 1260; amended Pub. L. 103-252, title III, §311(a)(2), (c)(6), May 18, 1994, 108 Stat. 661, 662.)

AMENDMENTS

1994—Subsec. (c)(2). Pub. L. 103-252, §311(c)(6), substituted “0.08 percent” for “.0008 percent”.

Subsec. (e). Pub. L. 103-252, §311(a)(2), substituted “2 months after the close of the fiscal year during which the State provided leveraged resources to eligible households, as described in subsection (b) of this section” for “July 31, of each year”.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-252 effective Oct. 1, 1994, see section 314 of Pub. L. 103-252, set out as a note under section 8621 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101-501, set out as an Effective Date of 1990 Amendment note under section 8621 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8621 of this title.

§ 8626b. Residential Energy Assistance Challenge option (R.E.A.Ch.)

(a) Purpose

The purpose of the Residential Energy Assistance Challenge (in this section referred to as “R.E.A.Ch.”) program is to—

- (1) minimize health and safety risks that result from high energy burdens on low-income Americans;
- (2) prevent homelessness as a result of inability to pay energy bills;
- (3) increase the efficiency of energy usage by low-income families; and
- (4) target energy assistance to individuals who are most in need.

(b) Funding

(1) Allocation

For each fiscal year, the Secretary may allocate not more than 25 percent of the amount made available pursuant to section 8621(d) of this title for such fiscal year to a R.E.A.Ch. fund for the purpose of making incentive grants to States that submit qualifying plans that are approved by the Secretary as R.E.A.Ch. initiatives. States may use such grants for the costs of planning, implementing, and evaluating the initiative.

(2) Reservation

The Secretary shall reserve from any funds allocated under this subsection, funds to make additional payments to State R.E.A.Ch. programs that—

- (A) have energy efficiency education services plans that meet quality standards established by the Secretary in consultation with the Secretary of Energy; and
- (B) have the potential for being replicable model designs for other programs.

States shall use such supplemental funds for the implementation and evaluation of the energy efficiency education services.

(c) Criteria

(1) In general

Not later than May 31, 1995, the Secretary shall establish criteria for approving State plans required by subsection (a) of this section, for energy efficiency education quality standards described in subsection (b)(2)(A) of this section, and for the distribution of funds to States with approved plans.

(2) Documentation

Notwithstanding the limitations of section 8624(b) of this title regarding the authority of the Secretary with respect to plans, the Secretary may require a State to provide appropriate documentation that its R.E.A.Ch. activities conform to the State plan as approved by the Secretary.

(d) Focus

The State may designate all or part of the State, or all or part of the client population, as a focus of its R.E.A.Ch. initiative.

(e) State plans

(1) In general

Each State plan shall include each of the elements described in paragraph (2), to be met by State and local agencies.

(2) Elements of State plans

Each State plan shall include—

(A) an assurance that such State will deliver services through community-based nonprofit entities in such State, by—

- (i) awarding grants to, or entering into contracts with, such entities for the purpose of providing such services and payments directly to individuals eligible for benefits; or
- (ii) if a State makes payments directly to eligible individuals or energy suppliers, making contracts with such entities to administer such programs, including—

- (I) determining eligibility;
- (II) providing outreach services; and
- (III) providing benefits other than payments;

(B) an assurance that, in awarding grants or entering into contracts to carry out its R.E.A.Ch. initiative, the State will give priority to organizations that—

(i) are described in section 9902(1) of this title, except where significant geographic portions of the State are not served by such entities;

(ii) the Secretary has determined have a record of successfully providing services under the Low-Income Home Energy Assistance Program; and

(iii) receive weatherization assistance program funds under part A of title IV of the Energy Conservation and Production Act [42 U.S.C. 6861 et seq.];

except that a State may not require any such entity to operate a R.E.A.Ch. program;

(C) an assurance that, subject to subparagraph (D), each entity that receives a grant or enters into a contract under subparagraph (A)(i) will provide a variety of services and benefits, including—

(i) payments to, or on behalf of, individuals eligible for residential energy assistance services and benefits under section 8624(b) of this title for home energy costs;

(ii) energy efficiency education;

(iii) residential energy demand management services, including any other energy related residential repair and energy efficiency improvements in coordination with, or delivered by, Department of Energy weatherization assistance programs at the discretion of the State;

(iv) family services, such as counseling and needs assessment, related to energy budget management, payment plans, and related services; and

(v) negotiation with home energy suppliers on behalf of households eligible for R.E.A.Ch. services and benefits;

(D) a description of the methodology the State and local agencies will use to determine—

(i) which households will receive one or more forms of benefits under the State R.E.A.Ch. initiative;

(ii) the cases in which nonmonetary benefits are likely to provide more cost-effective long-term outcomes than payment benefits alone; and

(iii) the amount of such benefit required to meet the goals of the program;

(E) a method for targeting nonmonetary benefits;

(F) a description of the crisis and emergency assistance activities the State will undertake that are designed to—

(i) discourage family energy crises;

(ii) encourage responsible vendor and consumer behavior; and

(iii) provide only financial incentives that encourage household payment;

(G) a description of the activities the State will undertake to—

(i) provide incentives for recipients of assistance to pay home energy costs; and

(ii) provide incentives for vendors to help reduce the energy burdens of recipients of assistance;

(H) an assurance that the State will require each entity that receives a grant or enters into a contract under this section to solicit and be responsive to the views of individuals who are financially eligible for benefits and services under this section in establishing its local program;

(I) a description of performance goals for the State R.E.A.Ch. initiative including—

(i) a reduction in the energy costs of participating households over one or more fiscal years;

(ii) an increase in the regularity of home energy bill payments by eligible households; and

(iii) an increase in energy vendor contributions towards reducing energy burdens of eligible households;

(J) a description of the indicators that will be used by the State to measure whether the performance goals have been achieved;

(K) a demonstration that the plan is consistent with section 8622 of this title, paragraphs (2), (3), (4), (5), (7), (9), (10), (11), (12), (13), and (14) of section 8624(b) of this title, subsections (d), (e), (f), (g), (h), (i), and (j) of section 8624 of this title, and section 8625 of this title;

(L) an assurance that benefits and services will be provided in addition to other benefit payments and services provided under this subchapter and in coordination with such benefit payments and services; and

(M) an assurance that no regulated utility covered by the plan will be required to act in a manner that is inconsistent with applicable regulatory requirements.

(f) Cost or function

None of the costs of providing services or benefits under this section shall be considered to be an administrative cost or function for purposes of any limitation on administrative costs or functions contained in this subchapter.

(Pub. L. 97-35, title XXVI, §2607B, as added Pub. L. 103-252, title III, §312, May 18, 1994, 108 Stat. 662; amended Pub. L. 105-285, title III, §308(c), (d), Oct. 27, 1998, 112 Stat. 2758.)

REFERENCES IN TEXT

The Energy Conservation and Production Act, referred to in subsec. (e)(2)(B)(iii), is Pub. L. 94-385, Aug. 14, 1976, 90 Stat. 1125, as amended. Part A of title IV of the Act is classified generally to part A (§6861 et seq.) of subchapter III of chapter 81 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6801 of this title and Tables.

AMENDMENTS

1998—Subsec. (b)(1). Pub. L. 105-285, §308(c), substituted “For each fiscal year” for “For each of the fiscal years 1996 through 1999”.

Subsec. (e)(2)(E) to (H). Pub. L. 105-285, §308(d)(1)(A), redesignated subpars. (F) to (I) as (E) to (H), respectively.

Subsec. (e)(2)(I). Pub. L. 105-285, §308(d)(1)(A), redesignated subpar. (J) as (I). Former subpar. (I) redesignated (H).

Subsec. (e)(2)(I)(i). Pub. L. 105-285, §308(d)(1)(B), substituted “of” for “on”.

Subsec. (e)(2)(J) to (N). Pub. L. 105-285, §308(d)(1)(A), redesignated subpars. (K) to (N) as (J) to (M), respectively.

Subsecs. (f), (g). Pub. L. 105-285, §308(d)(2), redesignated subsec. (g) as (f).

EFFECTIVE DATE

Section effective Oct. 1, 1994, see section 314 of Pub. L. 103-252, set out as an Effective Date of 1994 Amendment note under section 8621 of this title.

EVALUATION AND REPORT ON RESIDENTIAL ENERGY ASSISTANCE CHALLENGE OPTION

Pub. L. 105-285, title III, §308(a), (b), Oct. 27, 1998, 112 Stat. 2758, provided that:

“(a) EVALUATION.—The Comptroller General of the United States shall conduct an evaluation of the Residential Energy Assistance Challenge program described in section 2607B of the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8626b).

“(b) REPORT.—Not later than 2 years after the date of enactment of this Act [Oct. 27, 1998], the Comptroller General of the United States shall prepare and submit to Congress a report containing—

“(1) the findings resulting from the evaluation described in subsection (a); and

“(2) the State evaluations described in paragraphs (1) and (2) of subsection (b) of such section 2607B.”

§ 8627. Withholding of funds

(a) Improper utilization of funds; response to complaints respecting improprieties

(1) The Secretary shall, after adequate notice and an opportunity for a hearing conducted within the affected State, withhold funds from any State which does not utilize its allotment substantially in accordance with the provisions of this subchapter and the assurances such State provided under section 8624 of this title.

(2) The Secretary shall respond in writing in no more than 60 days to matters raised in complaints of a substantial or serious nature that a State has failed to use funds in accordance with the provisions of this subchapter or the assurances provided by the State under section 8624 of this title. For purposes of this paragraph, a violation of any one of the assurances contained in section 8624(b) of this title that constitutes a

disregard of such assurance shall be considered a serious complaint.

(b) Investigations; conduct, etc.

(1) The Secretary shall conduct in several States in each fiscal year investigations of the use of funds received by the States under this subchapter in order to evaluate compliance with the provisions of this subchapter.

(2) Whenever the Secretary determines that there is a pattern of complaints from any State in any fiscal year, the Secretary shall conduct an investigation of the use of funds received under this subchapter by such State in order to ensure compliance with the provisions of this subchapter.

(3) The Comptroller General of the United States may conduct an investigation of the use of funds received under this subchapter by a State in order to ensure compliance with the provisions of this subchapter.

(c) Inspection of books, documents, etc.

Pursuant to an investigation conducted under subsection (b) of this section, a State shall make appropriate books, documents, papers, and records available to the Secretary or the Comptroller General of the United States, or any of their duly authorized representatives, for examination, copying, or mechanical reproduction on or off the premises of the appropriate entity upon a reasonable request therefor.

(d) Request for information not readily available

In conducting any investigation under subsection (b) of this section, the Secretary may not request any information not readily available to such State or require that any information be compiled, collected, or transmitted in any new form not already available.

(Pub. L. 97-35, title XXVI, §2608, Aug. 13, 1981, 95 Stat. 901; Pub. L. 98-558, title VI, §608, Oct. 30, 1984, 98 Stat. 2893; Pub. L. 101-501, title VII, §708, Nov. 3, 1990, 104 Stat. 1261.)

AMENDMENTS

1990—Subsec. (a)(2). Pub. L. 101-501 substituted “in writing in no more than 60 days to matters raised in” for “in an expeditious and speedy manner to”.

1984—Subsec. (b)(2). Pub. L. 98-558 substituted “the Secretary” for “he” before “shall conduct”.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101-501, set out as a note under section 8621 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-558 effective Oct. 30, 1984, see section 609(a) of Pub. L. 98-558 set out as a note under section 8621 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8624 of this title.

§ 8628. Limitation on use of grants for construction

Grants made under this subchapter may not be used by the State, or by any other person with which the State makes arrangements to carry out the purposes of this subchapter, for the purchase or improvement of land, or the purchase, construction, or permanent improvement (other

than low-cost residential weatherization or other energy-related home repairs) of any building or other facility.

(Pub. L. 97-35, title XXVI, §2609, Aug. 13, 1981, 95 Stat. 902.)

§ 8628a. Technical assistance, training, and compliance reviews

(a) Of the amounts appropriated under section 8621(b) of this title for any fiscal year, not more than \$300,000 of such amounts may be reserved by the Secretary—

(1) to—

(A) make grants to State and public agencies and private nonprofit organizations; or

(B) enter into contracts or jointly financed cooperative arrangements or interagency agreements with States and public agencies (including Federal agencies) and private nonprofit organizations;

to provide for training and technical assistance related to the purposes of this subchapter, including collection and dissemination of information about programs and projects assisted under this subchapter, and ongoing matters of regional or national significance that the Secretary finds would assist in the more effective provision of services under this subchapter; or

(2) to conduct onsite compliance reviews of programs supported under this subchapter.

(b) No provision of this section shall be construed to prevent the Secretary from making a grant pursuant to subsection (a) of this section to one or more private nonprofit organizations that apply jointly with a business concern to receive such grant.

(Pub. L. 97-35, title XXVI, §2609A, as added Pub. L. 99-425, title V, §505(a), Sept. 30, 1986, 100 Stat. 975; amended Pub. L. 103-252, title III, §311(a)(3), May 18, 1994, 108 Stat. 661; Pub. L. 105-285, title III, §309, Oct. 27, 1998, 112 Stat. 2759.)

REFERENCES IN TEXT

This subchapter, the first and second time appearing in subsec. (a)(1), was in the original “this subtitle” which was translated as “this title”, meaning title XXVI of Pub. L. 97-35, as the probable intent of Congress.

AMENDMENTS

1998—Pub. L. 105-285, §309(b), substituted “Technical assistance, training, and compliance reviews” for “Technical assistance and training” as section catchline.

Subsec. (a). Pub. L. 105-285, §309(a), substituted “\$300,000” for “\$250,000” in introductory provisions, designated existing provisions as par. (1) and inserted “to—”, redesignated former par. (1) as subpar. (A), realigned margin, and substituted “make grants” for “to make grants”, redesignated former par. (2) as subpar. (B), realigned margin, substituted “enter into” for “to enter into” and inserted “or interagency agreements” after “cooperative arrangements” and “(including Federal agencies)” after “public agencies”, realigned margin of concluding provisions and substituted “; or” for period at end, and added par. (2).

1994—Subsec. (a). Pub. L. 103-252 substituted “\$250,000” for “\$500,000” in introductory provisions.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-252 effective Oct. 1, 1994, see section 314 of Pub. L. 103-252, set out as a note under section 8621 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1986, see section 1001 of Pub. L. 99-425, set out as an Effective Date of 1986 Amendment note under section 8621 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8623 of this title.

§ 8629. Studies and reports

(a) The Secretary, after consultation with the Secretary of Energy, shall provide for the collection of data, including—

(1) information concerning home energy consumption;

(2) the amount, cost and type of fuels used for households eligible for assistance under this subchapter;

(3) the type of fuel used by various income groups;

(4) the number and income levels of households assisted by this subchapter;

(5) the number of households which received such assistance and include one or more individuals who are 60 years or older or disabled or include young children; and

(6) any other information which the Secretary determines to be reasonably necessary to carry out the provisions of this subchapter.

Nothing in this subsection may be construed to require the Secretary to collect data which has been collected and made available to the Secretary by any other agency of the Federal Government.

(b) The Secretary shall, no later than June 30 of each fiscal year, submit a report to the Congress containing a detailed compilation of the data under subsection (a) of this section with respect to the prior fiscal year, and a report that describes for the prior fiscal year—

(1) the manner in which States carry out the requirements of clauses (2), (5), (8), and (15) of section 8624(b) of this title; and

(2) the impact of each State's program on recipient and eligible households.

(Pub. L. 97-35, title XXVI, § 2610, Aug. 13, 1981, 95 Stat. 902; Pub. L. 98-558, title VI, § 607, Oct. 30, 1984, 98 Stat. 2893; Pub. L. 99-425, title V, § 506, Sept. 30, 1986, 100 Stat. 976; Pub. L. 103-252, title III, § 311(c)(7), May 18, 1994, 108 Stat. 662.)

AMENDMENTS

1994—Subsec. (a)(2). Pub. L. 103-252, § 311(c)(7)(A), struck out semicolon after “used” and inserted semicolon after “subchapter”.

Subsec. (a)(5). Pub. L. 103-252, § 311(c)(7)(B), substituted “disabled or include young children” for “handicapped”.

1986—Subsec. (b). Pub. L. 99-425 inserted provisions relating to report describing for prior fiscal year the manner of carrying out requirements of clauses of section 8624 of this title and impact of State programs on recipient and eligible households.

1984—Subsec. (a). Pub. L. 98-558, § 607(c), inserted at end “Nothing in this subsection may be construed to require the Secretary to collect data which has been collected and made available to the Secretary by any other agency of the Federal Government.”

Subsec. (a)(2). Pub. L. 98-558, § 607(a), inserted “amount,” before “cost” and inserted at end “for households eligible for assistance under this subchapter”.

Subsec. (a)(5), (6). Pub. L. 98-558, § 607(b), added par. (5) and redesignated former par. (5) as (6).

Subsec. (b). Pub. L. 98-558, § 607(d), in amending subsec. (b) generally, inserted “no later than June 30 of each fiscal year,” and substituted “a detailed compilation of the data under subsection (a) of this section with respect to the prior fiscal year” for “a summary of data collected under subsection (a) of this section”.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-252 effective Oct. 1, 1994, see section 314 of Pub. L. 103-252, set out as a note under section 8621 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-425 effective Oct. 1, 1986, see section 1001 of Pub. L. 99-425, set out as a note under section 8621 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-558 applicable to data collected and compiled after Oct. 30, 1984, and this section as in effect before Oct. 30, 1984, applicable with respect to the report submitted under this section for fiscal year 1984, see section 609(d) of Pub. L. 98-558, set out as a note under section 8621 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103-7 (in which the 12th item on page 93 identifies a reporting provision which, as amended, is contained in subsec. (b) of this section), see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8624 of this title.

CHAPTER 95—UNITED STATES SYNTHETIC FUELS CORPORATION**§ 8701. Omitted**

CODIFICATION

Section, Pub. L. 96-294, title I, § 100, June 30, 1980, 94 Stat. 616, which related to Congressional findings, declarations, and purposes, was omitted from the Code in view of termination of United States Synthetic Fuels Corporation. See note set out under section 8791 of this title.

SUBCHAPTER I—INTRODUCTORY PROVISIONS**§ 8702. Omitted**

CODIFICATION

Section, Pub. L. 96-294, title I, § 112, June 30, 1980, 94 Stat. 633, which defined terms for this chapter, was omitted from the Code in view of termination of United States Synthetic Fuels Corporation. See note set out under section 8791 of this title.

SUBCHAPTER II—ESTABLISHMENT OF CORPORATION**§§ 8711 to 8719. Omitted**

CODIFICATION

Sections 8711 to 8719 were omitted from the Code in view of termination of United States Synthetic Fuels Corporation. See note set out under section 8791 of this title.

Section 8711, Pub. L. 96-294, title I, § 115, June 30, 1980, 94 Stat. 636, created the Corporation, provided for its offices and residence status, and referred to its general powers.

Section 8712, Pub. L. 96-294, title I, §116, June 30, 1980, 94 Stat. 636, provided for board of directors of Corporation.

Section 8713, Pub. L. 96-294, title I, §117, June 30, 1980, 94 Stat. 638; Pub. L. 98-473, title I, §101(c) [title II, §201], Oct. 12, 1984, 98 Stat. 1837, 1860, related to officers and employees of Corporation.

Section 8714, Pub. L. 96-294, title I, §118, June 30, 1980, 94 Stat. 638, related to conflicts of interest and financial disclosure.

Section 8715, Pub. L. 96-294, title I, §119, June 30, 1980, 94 Stat. 639, related to delegation of authority and transfer of functions.

Section 8716, Pub. L. 96-294, title I, §120, June 30, 1980, 94 Stat. 640, authorized administrative expenses.

Section 8717, Pub. L. 96-294, title I, §121, June 30, 1980, 94 Stat. 641, related to public access to information.

Section 8718, Pub. L. 96-294, title I, §122, June 30, 1980, 94 Stat. 641, related to Inspector General of Corporation.

Section 8719, Pub. L. 96-294, title I, §123, June 30, 1980, 94 Stat. 644, established an Advisory Committee to the Board of Directors. For continuation of Advisory Committee, see section 7404(c) of Pub. L. 99-272, set out as a note under section 8791 of this title.

SUBCHAPTER III—PRODUCTION GOAL OF THE CORPORATION

§§ 8721 to 8725. Omitted

CODIFICATION

Sections 8721 to 8725 were omitted from the Code in view of termination of United States Synthetic Fuels Corporation. See note set out under section 8791 of this title.

Section 8721, Pub. L. 96-294, title I, §125, June 30, 1980, 94 Stat. 644, established a national synthetic fuel production goal.

Section 8722, Pub. L. 96-294, title I, §126, June 30, 1980, 94 Stat. 644, related to production strategy.

Section 8723, Pub. L. 96-294, title I, §127, June 30, 1980, 94 Stat. 649, related to solicitation of proposals.

Section 8724, Pub. L. 96-294, title I, §128, June 30, 1980, 94 Stat. 650, related to Congressional disapproval procedure.

Section 8725, Pub. L. 96-294, title I, §129, June 30, 1980, 94 Stat. 652, related to Congressional approval procedure.

SUBCHAPTER IV—FINANCIAL ASSISTANCE

§§ 8731 to 8740. Omitted

CODIFICATION

Sections 8731 to 8740 were omitted from the Code in view of termination of United States Synthetic Fuels Corporation. See note set out under section 8791 of this title.

Section 8731, Pub. L. 96-294, title I, §131, June 30, 1980, 94 Stat. 654, authorized financial assistance.

Section 8732, Pub. L. 96-294, title I, §132, June 30, 1980, 94 Stat. 658, related to loans made by Corporation.

Section 8733, Pub. L. 96-294, title I, §133, June 30, 1980, 94 Stat. 660, related to loan guarantees made by Corporation.

Section 8734, Pub. L. 96-294, title I, §134, June 30, 1980, 94 Stat. 661, related to price guarantees by Corporation.

Section 8735, Pub. L. 96-294, title I, §135, June 30, 1980, 94 Stat. 661, related to purchase agreements made by Corporation.

Section 8736, Pub. L. 96-294, title I, §136, June 30, 1980, 94 Stat. 662, related to joint ventures by Corporation.

Section 8737, Pub. L. 96-294, title I, §137, June 30, 1980, 94 Stat. 663, related to control of assets.

Section 8738, Pub. L. 96-294, title I, §138, June 30, 1980, 94 Stat. 665, related to unlawful contracts.

Section 8739, Pub. L. 96-294, title I, §139, June 30, 1980, 94 Stat. 665, related to fees and application of receipts.

Section 8740, Pub. L. 96-294, title I, §140, June 30, 1980, 94 Stat. 665, related to disposition of securities.

SUBCHAPTER V—CORPORATION CONSTRUCTION PROJECTS

§§ 8741 to 8745. Omitted

CODIFICATION

Sections 8741 to 8745 were omitted from the Code in view of termination of United States Synthetic Fuels Corporation. See note set out under section 8791 of this title.

Section 8741, Pub. L. 96-294, title I, §141, June 30, 1980, 94 Stat. 665, related to construction and operation of synthetic fuel projects.

Section 8742, Pub. L. 96-294, title I, §142, June 30, 1980, 94 Stat. 666, limited construction projects.

Section 8743, Pub. L. 96-294, title I, §143, June 30, 1980, 94 Stat. 666, subjected construction projects and joint ventures to certain Federal laws and provided for monitoring of environmental and health related emissions.

Section 8744, Pub. L. 96-294, title I, §144, June 30, 1980, 94 Stat. 667, related to construction project reports.

Section 8745, Pub. L. 96-294, title I, §145, June 30, 1980, 94 Stat. 667, related to financial record requirements for contract recipients.

SUBCHAPTER VI—CAPITALIZATION AND FINANCE

§§ 8751 to 8755. Omitted

CODIFICATION

Sections 8751 to 8755 were omitted from the Code in view of termination of United States Synthetic Fuels Corporation. See note set out under section 8791 of this title.

Section 8751, Pub. L. 96-294, title I, §151, June 30, 1980, 94 Stat. 667, related to issue by Corporation of obligations purchasable by United States only.

Section 8752, Pub. L. 96-294, title I, §152, June 30, 1980, 94 Stat. 668, related to limitations on total amount of obligational authority.

Section 8753, Pub. L. 96-294, title I, §153, June 30, 1980, 94 Stat. 669, related to budgetary treatment.

Section 8754, Pub. L. 96-294, title I, §154, June 30, 1980, 94 Stat. 669, related to receipts of Corporation.

Section 8755, Pub. L. 96-294, title I, §155, June 30, 1980, 94 Stat. 669, related to tax status of Corporation.

SUBCHAPTER VII—UNLAWFUL ACTS, PENALTIES, AND SUITS AGAINST THE CORPORATION

§§ 8761 to 8768. Omitted

CODIFICATION

Sections 8761 to 8768 were omitted from the Code in view of termination of United States Synthetic Fuels Corporation. See note set out under section 8791 of this title.

Section 8761, Pub. L. 96-294, title I, §161, June 30, 1980, 94 Stat. 670, related to penalty for false statements.

Section 8762, Pub. L. 96-294, title I, §162, June 30, 1980, 94 Stat. 670, related to penalty for forgery.

Section 8763, Pub. L. 96-294, title I, §163, June 30, 1980, 94 Stat. 671, related to penalties and injunctive relief for misappropriation of funds and for unauthorized activities.

Section 8764, Pub. L. 96-294, title I, §164, June 30, 1980, 94 Stat. 671, related to penalty for conspiracy.

Section 8765, Pub. L. 96-294, title I, §165, June 30, 1980, 94 Stat. 672, related to deceptive use of corporate name.

Section 8766, Pub. L. 96-294, title I, §166, June 30, 1980, 94 Stat. 672, authorized an action for damages by Corporation in addition to penalties prescribed for violations.

Section 8767, Pub. L. 96-294, title I, §167, June 30, 1980, 94 Stat. 672, related to actions by Attorney General.

Section 8768, Pub. L. 96-294, title I, § 168, June 30, 1980, 94 Stat. 672; Pub. L. 98-473, title I, § 101(c) [title II, § 201], Oct. 12, 1984, 98 Stat. 1837, 1860, related to civil actions against Corporation.

SUBCHAPTER VIII—GENERAL PROVISIONS

§§ 8771 to 8780. Omitted

CODIFICATION

Sections 8771 to 8780 were omitted from the Code in view of termination of United States Synthetic Fuels Corporation. See note set out under section 8791 of this title.

Section 8771, Pub. L. 96-294, title I, § 171, June 30, 1980, 94 Stat. 673, related to general powers of Corporation.

Section 8772, Pub. L. 96-294, title I, § 172, June 30, 1980, 94 Stat. 674, related to coordination by Corporation with Federal entities.

Section 8773, Pub. L. 96-294, title I, § 173, June 30, 1980, 94 Stat. 675, related to patents.

Section 8774, Pub. L. 96-294, title I, § 174, June 30, 1980, 94 Stat. 676, related to utilization of small and disadvantaged businesses.

Section 8775, Pub. L. 96-294, title I, § 175, June 30, 1980, 94 Stat. 676; Pub. L. 98-426, § 27(d)(2), Sept. 28, 1984, 98 Stat. 1654, provided relationship to other Federal laws.

Section 8776, Pub. L. 96-294, title I, § 176, June 30, 1980, 94 Stat. 678, provided for severability of provisions.

Section 8777, Pub. L. 96-294, title I, § 177, June 30, 1980, 94 Stat. 678, specified Corporation's fiscal year and provided for audits and reports.

Section 8778, Pub. L. 96-294, title I, § 178, June 30, 1980, 94 Stat. 679, related to water rights.

Section 8779, Pub. L. 96-294, title I, § 179, June 30, 1980, 94 Stat. 679, related to Western Hemisphere projects.

Section 8780, Pub. L. 96-294, title I, § 180, June 30, 1980, 94 Stat. 680, related to a lender financial protection and completion guarantee study.

SUBCHAPTER IX—DISPOSAL OF ASSETS

§§ 8781, 8782. Omitted

CODIFICATION

Sections 8781 and 8782 were omitted from the Code in view of termination of United States Synthetic Fuels Corporation. See note set out under section 8791 of this title.

Section 8781, Pub. L. 96-294, title I, § 181, June 30, 1980, 94 Stat. 680, related to disposal of corporate tangible assets.

Section 8782, Pub. L. 96-294, title I, § 182, June 30, 1980, 94 Stat. 681, related to disposal of assets other than as provided for in section 8781.

SUBCHAPTER X—TERMINATION OF CORPORATION

§§ 8791 to 8793. Omitted

CODIFICATION

Sections 8791 to 8793 were omitted from the Code in view of termination of United States Synthetic Fuels Corporation. See note below.

Section 8791, Pub. L. 96-294, title I, § 191, June 30, 1980, 94 Stat. 681, related to dates for termination of awards or commitments by Corporation.

Section 8792, Pub. L. 96-294, title I, § 192, June 30, 1980, 94 Stat. 681, related to termination of Corporation's affairs.

Section 8793, Pub. L. 96-294, title I, § 193, June 30, 1980, 94 Stat. 681, transferred Corporation's powers to Department of the Treasury.

TERMINATION OF UNITED STATES SYNTHETIC FUELS CORPORATION

Pub. L. 99-272, title VII, subtitle E, Apr. 7, 1986, 100 Stat. 143, as amended by Pub. L. 101-508, title VI, § 6401, Nov. 5, 1990, 104 Stat. 1388-319, provided that:

“SEC. 7401. SHORT TITLE.

“This subtitle may be cited as the ‘Synthetic Fuels Corporation Act of 1985’.

“SEC. 7402. CESSATION OF FINANCIAL ASSISTANCE AUTHORITY.

“Effective on the date of enactment of this Act [Apr. 7, 1986], the United States Synthetic Fuels Corporation (hereafter in this subtitle referred to as the ‘Corporation’) may not make any legally binding awards or commitments for financial assistance (including any changes in an existing award or commitment) pursuant to the Energy Security Act [Pub. L. 96-294; see Short Title note set out under section 8801 of this title] for synthetic fuel project proposals, except that nothing in this Act [see Tables for classification] shall impair or alter the powers, duties, rights, obligations, privileges, or liabilities of the Corporation, its Board or Chairman, or project sponsors in the performance and completion of the terms and undertakings of a legally binding award or commitment entered into prior to the date of enactment of this Act.

“SEC. 7403. TERMINATION OF THE CORPORATION.

“(a) Within 60 days of the date of enactment of this Act [Apr. 7, 1986], the Directors of the Corporation shall terminate their duties under the Energy Security Act [Pub. L. 96-294; see Short Title note set out under section 8801 of this title] and be discharged.

“(b) Within 120 days of the date of enactment of this Act [Apr. 7, 1986], the Corporation shall terminate, except as otherwise provided in this subtitle, in accordance with subtitle J of part B of title I of the Energy Security Act [42 U.S.C. 8791 to 8793].

“SEC. 7404. DUTIES OF SECRETARY OF THE TREASURY.

“(a) Within 60 days of the date of enactment of this Act [Apr. 7, 1986] (or earlier, in the event of absence of a Chairman of the Board of Directors of the Corporation), the Secretary of the Treasury shall assume the duties of the Chairman of the Board of Directors of the Corporation. The Secretary of the Treasury shall have the authority to negotiate and execute agreements modifying an existing contract relating to the production of synthetic crude oil from oil shale, entered into under the Defense Production Act Amendments of 1980 [Pub. L. 96-294, title I, part A, see Short Title of 1980 Amendment note set out under section 2061 of Title 50, Appendix, War and National Defense] and subsequently transferred to the Secretary of the Treasury for administration, provided the terms and conditions of any modification(s) are revenue neutral or result in a fiscal savings to the United States Government, and in no event would increase the financial exposure of the United States Government under the contract: *Provided, however,* That the Secretary of the Treasury shall have no authority to increase the total amount of funds originally authorized for the existing contract: *And provided further,* That the Secretary shall have no authority to negotiate and execute any agreement modifying the existing contract if such modification(s) would increase or accelerate the financial support per unit for the synthetic fuel to be produced under the contract.

“(b) Notwithstanding any other provision of law, the duties and responsibilities of the Secretary of the Treasury under subtitle J of part B of title I of the Energy Security Act [42 U.S.C. 8791 to 8793] or this Act [see Tables for classification] may not be transferred to any other Federal department or agency.

“(c) Notwithstanding such termination of the Corporation, the Advisory Committee established under section 123 of the Energy Security Act (42 U.S.C. 8719) shall remain in effect to advise the Secretary of the Treasury regarding the administration of any contract or obligation of the Corporation pursuant to subtitle D of part B of title I of such Act [42 U.S.C. 8731 to 8740].

“(d) To the extent that the Secretary of the Treasury may be required to take an action under section 131(q) of the Energy Security Act [42 U.S.C. 8731(q)] in connec-

tion with an award or commitment of financial assistance under such Act [Pub. L. 96-294; see Short Title note set out under section 8801 of this title], the Secretary shall complete such action within 30 days of the date of enactment of this Act [Apr. 7, 1986].

“SEC. 7405. SALARIES AND COMPENSATION RIGHTS.

“(a) The Director of the Office of Personnel Management shall, before February 1, 1986, determine the amount of compensation or benefits which each Director, officer, or employee of the Corporation shall be legally entitled to under any contract as of the date of enactment of this Act [Apr. 7, 1986].

“(b) Effective on the date of enactment of this Act [Apr. 7, 1986], no change in any Director, officer, or employee compensation or benefits shall be allowed or permitted, unless the Director of the Office of Personnel Management agrees that such change is reasonable.

“(c) Effective on the date of enactment of this Act [Apr. 7, 1986]—

“(1) no officer or employee of the Corporation shall receive a salary in excess of the rate of basic pay payable for level IV of the Executive Schedule under title 5 of the United States Code; and

“(2) the Corporation shall not waive any requirements in its By-Laws which are necessary for a Director, officer, or employee to qualify for pension or termination benefits under the By-Laws and written personnel policies and procedures in effect on the date of enactment of this Act [Apr. 7, 1986].

“SEC. 7406. REPORT TO THE CONGRESS.

“The Corporation shall, within 60 days of the date of enactment of this Act [Apr. 7, 1986], transmit to the Committee on Energy and Natural Resources of the Senate and to the Committee on Energy and Commerce and Committee on Banking, Housing and Urban Affairs of the House of Representatives a report—

“(1) containing a review of implementation of its Phase I Business Plan dated February 19, 1985; and

“(2) fulfilling the requirements of section 126(b)(3) of the Energy Security Act (42 U.S.C. 8722(b)(3)).”

Similar provisions were contained in Pub. L. 99-190, §101(d) [title II, §201], Dec. 19, 1985, 99 Stat. 1224, 1249.

SUBCHAPTER XI—DEPARTMENT OF THE TREASURY

§ 8795. Omitted

CODIFICATION

Section, Pub. L. 96-294, title I, §195, June 30, 1980, 94 Stat. 682, which authorized appropriations to purchase corporate obligations and authorized public debt status for purchases and redemptions of corporate obligations, was omitted from the Code in view of termination of United States Synthetic Fuels Corporation. See note set out under section 8791 of this title.

CHAPTER 96—BIOMASS ENERGY AND ALCOHOL FUELS

- Sec.
- 8801. Congressional findings.
- 8802. Definitions.
- 8803. Funding.
 - (a) Authorization of appropriations.
 - (b) Availability of funds until expended.
 - (c) Determinations respecting amount of appropriations remaining available.
 - (d) Financial assistance provided only to extent advanced in appropriation Acts.
- 8804. Coordination with other authorities and programs.

SUBCHAPTER I—GENERAL BIOMASS ENERGY DEVELOPMENT

- 8811. Biomass energy development plans.

- Sec.
- (a) Plan respecting maximized production and use by December 31, 1982; preparation, transmission, etc.
- (b) Comprehensive plan respecting maximized production and use from January 1, 1983, to December 31, 1990, preparation, transmission, etc.
- (c) Required guidelines.
- 8812. Program responsibility and administration and effect on other programs.
 - (a) Duties and functions of Secretary of Agriculture and Secretary of Energy over projects.
 - (b) Procedural requirements applicable.
 - (c) Notice to and reviewing functions of other Secretary concerning application for financial assistance.
 - (d) Notification of applicant upon disapproval of application for financial assistance.
 - (e) Implementation of functions assigned to Secretary of Agriculture by administrative entities within Department of Agriculture; issuance of regulations; coordination of functions by designated entities.
 - (f) Implementation of functions assigned to Secretary of Energy by Office of Alcohol Fuels.
 - (g) Energy equivalency determinations respecting biomass energy and ethanol.
- 8813. Insured loans.
 - (a) Authority of Secretary of Agriculture; maximum amount per project.
 - (b) Estimated project construction costs as determinative of initial and revised amount of loan; interest rate.
 - (c) Funding requirements; “insured loan” defined.
 - (d) Preconditions.
- 8814. Loan guarantees.
 - (a) Authority of Secretary concerned.
 - (b) Estimated project construction costs as determinative of initial and revised amount of guarantee.
 - (c) Debt obligation; ineligibility for purchase, etc., by Federal Financing Bank or any Federal agency.
 - (d) Terms and conditions.
 - (e) Termination, cancellation, or revocation, and conclusive nature of guarantee.
 - (f) Payment to lender.
 - (g) Preconditions.
- 8815. Price guarantees.
 - (a) Authority of Secretary concerned; minimum sales price.
 - (b) Cost-plus arrangements as basis.
 - (c) Maximum dollar amount of liability of United States.
 - (d) Renegotiation of sales price and maximum liability.
- 8816. Purchase agreements.
 - (a) Authority of Secretary concerned; consultative requirements.
 - (b) Maximum sales price.
 - (c) Assurances required.
 - (d) Arrangements for delivery pursuant to agreement; charge to Federal agency receiving delivery.
 - (e) Consultative requirements.
 - (f) Terms and conditions.
 - (g) Maximum dollar amount of liability of United States.
 - (h) Renegotiation of sales price and maximum liability.
- 8817. General requirements regarding financial assistance.

- Sec. (a) Priorities, terms, availability, etc.
 (b) Terms, conditions, maturity, etc., for insured loans, and loan guarantees.
 (c) Application requirements.
 (d) Reports and recordkeeping.
 (e) Contracts and instruments of Secretary concerned backed by full faith and credit of United States.
 (f) Contestability of contracts.
 (g) Fees for loan guarantees, etc.
 (h) Deposit of amounts received by Secretary concerned.
8818. Reports.
 (a) Repealed.
 (b) Comprehensive list of loans, grants, etc.
 (c) Annual reports; report evaluating overall impact and plan for termination of Office of Alcohol Fuels.
8819. Review; reorganization.
8820. Office of Alcohol Fuels.
 (a) Establishment in Department of Energy; appointment and compensation of Director.
 (b) Responsibilities of Director.
 (c) Annual authorization and appropriation requests for support of Office.
 (d) Consultations respecting coordination of programs.
8821. Termination of authorities; modification of terms and conditions of conditional commitments for loan guarantees.
- SUBCHAPTER II—MUNICIPAL WASTE BIOMASS ENERGY
8831. Municipal waste energy development plan.
 (a) Preparation by Secretary of Energy; consultative requirements.
 (b) Transmittal to President and Congress.
 (c) Required statements.
 (d) Report to President and Congress; contents.
8832. Construction loans.
 (a) Authority of Secretary of Energy.
 (b) Estimated project construction costs as determinative of initial and revised amount of loan; interest rate.
 (c) Preconditions.
8833. Guaranteed construction loans.
 (a) Authority of Secretary of Energy.
 (b) Estimated project construction costs as determinative of revised amount of guarantee.
 (c) Terms and conditions.
 (d) Termination, cancellation, or revocation, and conclusive nature of guarantee.
 (e) Payment to lender.
 (f) Preconditions.
 (g) Payment of interest; tax consequences.
 (h) Fees.
8834. Price support loans and price guarantees.
 (a) Authority of Secretary of Energy with respect to loans for existing projects; disbursements, etc.
 (b) Authority of Secretary of Energy with respect to loans for new projects; disbursements, etc.
 (c) Authority of Secretary of Energy with respect to guarantees for new projects; pricing determinations, etc.
 (d) Definitions; sale price of retained fuel; rules relating to fuel displacement.
8835. General requirements regarding financial assistance.
- Sec. (a) Priorities, terms, availability, etc.
 (b) Terms, conditions, maturity, etc.
 (c) Application requirements.
 (d) Reports and recordkeeping.
 (e) Deposit of amounts received.
 (f) Contracts and instruments backed by full faith and credit of United States.
 (g) Contestability of contracts.
 (h) Eligibility of debt obligations for purchase, sale, or issuance to Federal Financing Bank or any Federal agency.
8836. Financial assistance program administration.
8837. Commercialization demonstration program pursuant to Federal nonnuclear energy research and development.
 (a) Establishment and conduct pursuant to other Federal statutory authorities; required undertakings subsequent to consultations.
 (b) Financial assistance.
 (c) Priority for funding.
 (d) Obligation and expenditure of funds.
 (e) Deposit of moneys received.
8838. Jurisdiction of Department of Energy and Environmental Protection Agency.
8839. Office of Energy from Municipal Waste.
 (a) Establishment in Department of Energy; appointment of Director.
 (b) Functions.
 (c) Consultations respecting implementation of functions.
 (d) Transfer of related functions and personnel from Department of Energy.
8840. Termination of authorities.
- SUBCHAPTER III—RURAL, AGRICULTURAL, AND FORESTRY BIOMASS ENERGY
8851. Model demonstration biomass energy facilities; establishment, public inspection, etc.; authorization of appropriations.
8852. Coordination of research and extension activities; consultative requirements.
8853. Lending for energy production and conservation projects by production credit associations, Federal land banks, and banks for cooperatives.
8854. Utilization of National Forest System in wood energy development projects.
8855. Forest Service leases and permits.
- SUBCHAPTER IV—MISCELLANEOUS BIOMASS PROVISIONS
8871. Use of gasohol in Federal motor vehicles.
 (a) Exercise of President's authority pursuant to executive order respecting use.
 (b) Exceptions.
 (c) Gasohol requirements.

§ 8801. Congressional findings

The Congress finds that—

(1) the dependence of the United States on imported petroleum and natural gas must be reduced by all economically and environmentally feasible means, including the use of biomass energy resources; and

(2) a national program for increased production and use of biomass energy that does not impair the Nation's ability to produce food and fiber on a sustainable basis for domestic and export use must be formulated and implemented within a multiple-use framework.

(Pub. L. 96-294, title II, §202, June 30, 1980, 94 Stat. 683.)

SHORT TITLE

Section 1 of Pub. L. 96-294 provided: "That this Act [enacting chapters 95 to 97, and sections 6347, 7361 to 7364, 7371 to 7375, 8235 to 8235i, 8281 to 8284, 8285 to 8285c, and 8286 to 8286b of this title, sections 1435 and 3129 of Title 7, Agriculture, sections 3601 to 3620 of Title 12, Banks and Banking, section 3391a of Title 15, Commerce and Trade, sections 1146, 1147, 1501, 1511 to 1516, 1521, 1522, 1531, 1541, and 1542 of Title 30, Mineral Lands and Mining, and sections 2075, 2076, and 2095 to 2098 of the Appendix to Title 50, War and National Defense, amending sections 6240, 6862 to 6872, 8211, 8213, 8214, 8216, 8217, 8221, 8255, 8271, and 8274 to 8276 of this title, sections 341, 342, 427, and 3154 of Title 7, section 7430 of Title 10, Armed Forces, sections 1451, 1454, 1717, 1723g, and 1723h of Title 12, section 753 of Title 15, sections 590h, 796, 824a-3, 824i, 824j, 1642, 2705, and 2708 of Title 16, Conservation, sections 1141 and 1143 of Title 30, and sections 2062, 2091 to 2093, 2151, 2161, and 2166 of the Appendix to Title 50, repealing section 1723f of Title 12, and enacting provisions set out as notes under this section and sections 6240, 7371, 8211, 8235, 8701, and 8901 of this title, section 3601 of Title 12, section 2701 of Title 16, section 1501 of Title 30, and sections 2061 and 2062 of the Appendix to Title 50] may be cited as the 'Energy Security Act'."

Section 201 of title II of Pub. L. 96-294 provided that: "This title [enacting this chapter, sections 1435 and 3129 of Title 7, Agriculture, and section 3391a of Title 15, Commerce and Trade, and amending sections 341, 342, 427, and 3154 of Title 7, section 753 of Title 15, and sections 590h and 1642 of Title 16, Conservation] may be cited as the 'Biomass Energy and Alcohol Fuels Act of 1980'."

§ 8802. Definitions

As used in this chapter—

(1) The term "alcohol" means alcohol (including methanol and ethanol) which is produced from biomass and which is suitable for use by itself or in combination with other substances as a fuel or as a substitute for petroleum or petrochemical feedstocks.

(2)(A) The term "biomass" means any organic matter which is available on a renewable basis, including agricultural crops and agricultural wastes and residues, wood and wood wastes and residues, animal wastes, municipal wastes, and aquatic plants.

(B) For purposes of subchapter I of this chapter, such term does not include municipal wastes; and for purposes of subchapter III of this chapter, such term does not include aquatic plants and municipal wastes.

(3) The term "biomass fuel" means any gaseous, liquid, or solid fuel produced by conversion of biomass.

(4) The term "biomass energy" means—

(A) biomass fuel; or
(B) energy or steam derived from the direct combustion of biomass for the generation of electricity, mechanical power, or industrial process heat.

(5) The term "biomass energy project" means any facility (or portion of a facility) located in the United States which is primarily for—

(A) the production of biomass fuel (and by-products); or

(B) the combustion of biomass for the purpose of generating industrial process heat, mechanical power, or electricity (including cogeneration).

(6) The term "Btu" means British thermal unit.

(7) The term "cogeneration" means the combined generation by any facility of—

(A) electrical or mechanical power, and

(B) steam or forms of useful energy (such as heat) which are used for industrial, commercial, heating, or cooling purposes.

(8) The term "cooperative" means any agricultural association, as that term is defined in section 1141j(a) of title 12.

(9)(A) The term "construction" means—

(i) the construction or acquisition of any biomass energy project;

(ii) the conversion of any facility to a biomass energy project; or

(iii) the expansion or improvement of any biomass energy project which increases the capacity or efficiency of that facility to produce biomass energy.

(B) Such term includes—

(i) the acquisition of equipment and machinery for use in or at the site of a biomass energy project; and

(ii) the acquisition of land and improvements thereon for the construction, expansion, or improvement of such a project, or the conversion of a facility to such a project.

(C) Such term does not include the acquisition of any facility which was operated as a biomass energy project before the acquisition.

(10) The term "Federal agency" means any Executive agency, as defined in section 105 of title 5.

(11)(A) The term "financial assistance" means any of the following forms of financial assistance provided under this chapter, or any combination of such forms:

(i) loans,

(ii) loan guarantees,

(iii) price guarantees, and

(iv) purchase agreements.

(B) Such term includes any commitment to provide such assistance.

(12) The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.] which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(13) The term "motor fuel" means gasoline, kerosene, and middle distillates (including diesel fuel).

(14)(A) The term "municipal waste" means any organic matter, including sewage, sewage sludge, and industrial or commercial waste, and mixtures of such matter and inorganic refuse—

(i) from any publicly or privately operated municipal waste collection or similar disposal system, or

(ii) from similar waste flows (other than such flows which constitute agricultural wastes or residues, or wood wastes or residues from wood harvesting activities or production of forest products).

(B) Such term does not include any hazardous waste, as determined by the Secretary of Energy for purposes of this chapter.

(15)(A) The term “municipal waste energy project” means any facility (or portion of a facility) located in the United States primarily for—

- (i) the production of biomass fuel (and by-products) from municipal waste; or
- (ii) the combustion of municipal waste for the purpose of generating steam or forms of useful energy, including industrial process heat, mechanical power, or electricity (including cogeneration).

(B) Such term includes any necessary transportation, preparation, and disposal equipment and machinery for use in or at the site of the facility involved.

(16) The term “Office of Alcohol Fuels” means the Office of Alcohol Fuels established under section 8820 of this title.

(17) The term “person” means any individual, company, cooperative, partnership, corporation, association, consortium, unincorporated organization, trust, estate, or any entity organized for a common business purpose, any State or local government (including any special purpose district or similar governmental unit) or any agency or instrumentality thereof, or any Indian tribe or tribal organization.

(18) The term “State” means any of the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(19) The term “small scale biomass energy project” means a biomass energy project with an anticipated annual production capacity of not more than 1,000,000 gallons of ethanol per year, or its energy equivalent of other forms of biomass energy.

(Pub. L. 96-294, title II, §203, June 30, 1980, 94 Stat. 683.)

REFERENCES IN TEXT

This chapter, referred to in provision preceding par. (1) and in pars. (11)(A) and (14)(B), was in the original “this title”, meaning title II of Pub. L. 96-294, June 30, 1980, 94 Stat. 683, as amended, known as the Biomass Energy and Alcohol Fuels Act of 1980, which enacted this chapter, sections 1435 and 3129 of Title 7, Agriculture, and section 3391a of Title 15, Commerce and Trade, and amended sections 341, 342, 427, and 3154 of Title 7, section 753 of Title 15, and sections 590h and 1642 of Title 16, Conservation. For complete classification of title II to the Code, see Short Title note set out under section 8801 of this title and Tables.

Subchapter III of this chapter, referred to in par. (2)(B), was in the original “subtitle C”, meaning subtitle C of title II of Pub. L. 96-294, June 30, 1980, 94 Stat. 705, which enacted subchapter III of this chapter and sections 1435 and 3129 of Title 7, and amended sections 341, 342, 427, and 3154 of Title 7 and sections 590h and 1642 of Title 16.

The Alaska Native Claims Settlement Act, referred to in par. (12), is Pub. L. 92-203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 section 4002.

§ 8803. Funding

(a) Authorization of appropriations

To the extent provided in advance in appropriation Acts, for the two year period beginning October 1, 1980, there is authorized to be appropriated and transferred \$1,170,000,000 from the Energy Security Reserve established in the Treasury of the United States under title II of the Act entitled “An Act making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1980, and for other purposes” (Public Law 96-126; 93 Stat. 970) and made available for obligation by such Act only to the extent provided in advance in appropriation Acts, as follows:

(1) \$460,000,000 to the Secretary of Agriculture for carrying out activities under subchapter I of this chapter, except of the amount of the financial assistance provided by the Secretary of Agriculture under subchapter I of this chapter, up to one-third shall be for small-scale biomass energy projects;

(2) \$460,000,000 to the Secretary of Energy for carrying out biomass energy activities under subchapter I of this chapter, of which at least \$500,000,000¹ shall be available to the Office of Alcohol Fuels for carrying out its activities, and any amount not made available to the Office of Alcohol Fuels shall be available to the Secretary to carry out the purposes of subchapter I of this chapter under available authorities of the Secretary, including authorities under subchapter I of this chapter; and

(3) \$250,000,000 shall be available to the Secretary of Energy for carrying out activities under subchapter II of this chapter.

(b) Availability of funds until expended

Funds made available under subsection (a) of this section shall remain available until expended.

(c) Determinations respecting amount of appropriations remaining available

(1) For purposes of determining the amount of such appropriations which remain available for purposes of this chapter—

(A) loans shall be counted at the initial face value of the loan;

(B) loan guarantees shall be counted at the initial face value of such loan guarantee;

(C) price guarantees and purchase agreements shall be counted at the value determined by the Secretary concerned as of the date of each such contract based upon the Secretary’s determination of the maximum potential liability of the United States under the contract; and

(D) any increase in the liability of the United States pursuant to any amendment or

¹So in original. Pub. L. 97-35 decreased appropriation to \$460,000,000 from \$600,000,000 without amending sum of \$500,000,000.

other modification to a contract for a loan, loan guarantee, price guarantee, or purchase agreement, shall be counted to the extent of such increase.

(2) Determinations under paragraph (1) shall be made in accordance with generally accepted accounting principles, consistently applied.

(3) If more than one form of financial assistance is to be provided to any one project, the obligations and commitments thereunder shall be counted at the maximum potential exposure of the United States on such project at any time during the life of such project.

(4) Any commitment to provide financial assistance shall be treated the same as such assistance for purposes of this subsection; except that any such commitment which is nullified or voided for any reason shall not be considered for purposes of this subsection.

(d) Financial assistance provided only to extent advanced in appropriation Acts

Financial assistance may be provided under this chapter only to the extent provided in advance in appropriation Acts.

(Pub. L. 96-294, title II, §204, June 30, 1980, 94 Stat. 685; Pub. L. 97-35, title X, §§1061-1063, Aug. 13, 1981, 95 Stat. 622.)

REFERENCES IN TEXT

The Energy Security Reserve established in the Treasury of the United States under title II of the Act entitled "An Act making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1980, and for other purposes" (Public Law 96-126; 93 Stat. 970), referred to in subsec. (a), was established by Pub. L. 96-126, title II, §201, Nov. 27, 1979, 93 Stat. 970, which is set out as a note under section 5915 of this title.

AMENDMENTS

1981—Subsec. (a). Pub. L. 97-35, §1063, substituted "\$1,170,000,000" for "\$1,450,000,000".

Subsec. (a)(1). Pub. L. 97-35, §1061, substituted "\$460,000,000" for "\$600,000,000".

Subsec. (a)(2). Pub. L. 97-35, §1062, substituted "\$460,000,000" for "\$600,000,000".

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective Aug. 13, 1981, see section 1038 of Pub. L. 97-35, set out as a note under section 6240 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8813 of this title.

§ 8804. Coordination with other authorities and programs

The authorities in this chapter are in addition to and do not modify (except to the extent expressly provided for in this chapter) authorities and programs of the Department of Energy and of the Department of Agriculture under other provisions of law.

(Pub. L. 96-294, title II, §205, June 30, 1980, 94 Stat. 686.)

SUBCHAPTER I—GENERAL BIOMASS ENERGY DEVELOPMENT

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 8802, 8803 of this title.

§ 8811. Biomass energy development plans

(a) Plan respecting maximized production and use by December 31, 1982; preparation, transmission, etc.

Not later than 180 days after June 30, 1980, the Secretary of Agriculture and the Secretary of Energy shall jointly prepare, and transmit to the President and the Congress, a plan for maximizing in accordance with this subchapter biomass energy production and use. Such plan shall be designed to achieve a total level of alcohol production and use within the United States of at least 60,000 barrels per day of alcohol by December 31, 1982.

(b) Comprehensive plan respecting maximized production and use from January 1, 1983, to December 31, 1990, preparation, transmission, etc.

(1) Not later than January 1, 1982, the Secretary of Agriculture and the Secretary of Energy shall jointly prepare, and transmit to the President and the Congress, a comprehensive plan for maximizing in accordance with this subchapter biomass energy production and use, for the period beginning January 1, 1983, and ending December 31, 1990. Such plan shall be designed to achieve a level of alcohol production within the United States equal to at least 10 percent of the level of gasoline consumption within the United States as estimated by the Secretary of Energy for the calendar year 1990.

(2) The plan prepared under this subsection shall evaluate the feasibility of reaching the goals set forth in such subsection.

(c) Required guidelines

The plans prepared under subsections (a) and (b) of this section shall each include guidelines for use in awarding financial assistance under this subchapter which are designed to increase, during the period covered by the plan, the amount of motor fuel displaced by biomass energy.

(Pub. L. 96-294, title II, §211, June 30, 1980, 94 Stat. 686.)

§ 8812. Program responsibility and administration and effect on other programs

(a) Duties and functions of Secretary of Agriculture and Secretary of Energy over projects

(1) Except as provided in paragraph (2), in the case of any financial assistance under this subchapter for a biomass energy project, the Secretary concerned shall be—

(A) the Secretary of Agriculture, in the case of any biomass energy project which will have an anticipated annual production capacity of less than 15,000,000 gallons of ethanol (or the energy equivalent of other forms of biomass energy) and which will use feedstocks other than aquatic plants; and

(B) the Secretary of Energy, in the case of any biomass energy project which will use aquatic plants as feedstocks or which will have an anticipated annual production capacity of 15,000,000 gallons or more of ethanol (or the energy equivalent of other forms of biomass energy).

(2)(A) Either the Secretary of Agriculture or the Secretary of Energy may be the Secretary concerned in the case of any biomass energy project which will have an anticipated annual production capacity of 15,000,000 gallons or more of ethanol (or the energy equivalent of other forms of biomass energy) and—

(i) which will use wood or wood wastes or residue, or

(ii) which is owned and operated by a cooperative and will use feedstocks other than aquatic plants.

(B) Financial assistance may not be provided by either Secretary under subparagraph (A) without the written concurrence of the other Secretary. Such concurrence shall be granted or denied by such Secretary in accordance with subparagraph (C) and on the same standards as that Secretary applies in making his own awards of financial assistance under this paragraph.

(C)(i) In the case of a project described in subparagraph (A), the Secretary concerned shall provide the other Secretary a copy of the application and such supporting information as may be material, and shall provide the other Secretary at least 15 days to review the project. If during such 15-day period the reviewing Secretary provides written notification to the Secretary concerned specifying reasons why such project should not proceed, the Secretary concerned shall defer the final decision on the application for an additional 30 days. During such 30-day period, both Secretaries shall attempt to reach agreement regarding all issues raised in the written notice. Before the end of the 30-day period, the reviewing Secretary shall notify the Secretary concerned of his decision regarding concurrence. If the reviewing Secretary fails to provide such notice before the end of such period, concurrence shall be deemed to have been given.

(ii) The project applicant may reapply for financial assistance for such project, after making such modifications to the project as may be necessary to address issues raised by the reviewing Secretary in the original notice of objection. The subsequent review of such project by the reviewing Secretary shall be limited to the issues originally raised by the reviewing Secretary and any issues raised by changed circumstances.

(D) Both Secretaries may jointly act as the Secretary concerned in accordance with such procedures as the Secretaries may jointly prescribe, in which case—

(i) subparagraphs (B) and (C) and subsection (c) of this section shall not apply, and

(ii) the proportion of financial assistance provided by each Secretary shall be determined in accordance with the procedures jointly prescribed.

(b) Procedural requirements applicable

(1) Each Secretary shall take such action as may be necessary to assure that—

(A) guidelines for soliciting and receiving applications for financial assistance are established within 90 days after June 30, 1980;

(B) applications for financial assistance for biomass energy projects are initially solicited within 30 days after such guidelines are established;

(C) additional applications for financial assistance are solicited within 1 year after the date of the initial solicitation;

(D) any application is evaluated and a decision made on such application within 120 days after the receipt of the application, including review under subsections (a)(2)(C), (a)(2)(D), or (c) of this section; and

(E) all interested persons are provided the easiest possible access to the application process, including procedures which assure that—

(i) information concerning financial assistance from either Secretary is available through all appropriate offices of the Department of Agriculture and the Department of Energy, and other regional and local offices of the Federal Government, as may be appropriate;

(ii) all such locations where such information is available will be able to accept and file applications, and will forward them to the Secretary concerned; and

(iii) the procedures established for accepting, evaluating, and awarding financial assistance will provide for categories of biomass energy projects, according to size and provide to the maximum extent practicable the simplest procedures for small producers.

(2) The procedural requirements of subparagraphs (A) through (D) of paragraph (1) shall not apply to either Secretary to the extent that the Secretary finds that other procedures are adopted for the solicitation, evaluation, and awarding of financial assistance which will result in applications being processed more expeditiously.

(c) Notice to and reviewing functions of other Secretary concerning application for financial assistance

(1) After evaluating any application and before awarding any financial assistance on the basis of that application, the Secretary concerned shall provide the other Secretary with—

(A) a copy of the application and such supporting material as may be appropriate, and

(B) an opportunity of not less than 15 days to review the application.

This subsection shall not apply in the case of a project subject to review under subsection (a)(2)(C) of this section.

(2) If the reviewing Secretary provides written notice specifying any issues regarding matters subject to the Secretary's review to the Secretary concerned before the end of the 15-day review period, the Secretary concerned shall defer a final decision on the application for an additional 30 days to provide an opportunity for both Secretaries to answer and resolve such issues. At the expiration of the 30-day period, the Secretary concerned may make a final decision with respect to the application, using the best judgment of the Secretary concerned to resolve any remaining issues.

(3) Reviews of projects under the provisions of subsection (a)(2)(C) of this section or paragraph (1)(B) by the Secretary of Agriculture shall be for the purpose of considering the national, regional, and local agricultural policy impacts of such project on agricultural supply, production, and use, and reviews by the Secretary of Energy

under such provisions shall be for the purpose of considering national energy policy impacts and the technical feasibility of the project.

(4) The Secretary of Agriculture and the Secretary of Energy may jointly establish categories of projects to which paragraphs (1) and (2) shall not apply. Within 90 days after June 30, 1980, the Secretaries shall identify potential categories and make an initial determination of exempted categories.

(d) Notification of applicant upon disapproval of application for financial assistance

If any application for financial assistance under this subchapter is disapproved, the applicant shall be provided written notice of the reasons for the disapproval.

(e) Implementation of functions assigned to Secretary of Agriculture by administrative entities within Department of Agriculture; issuance of regulations; coordination of functions by designated entities

(1) The functions assigned under this subchapter to the Secretary of Agriculture may be carried out by any of the administrative entities in the Department of Agriculture which the Secretary of Agriculture may designate. Within 30 days after June 30, 1980, the Secretary of Agriculture shall make such designations and notify the Congress of the administrative entity or entities so designated and the officials in such administrative entity or entities who are to be responsible for such functions.

(2) The Secretary of Agriculture may issue such regulations as are necessary to carry out functions assigned to the Secretary of Agriculture under this subchapter.

(3) The entities or entity designated under paragraph (1) shall coordinate the administration of functions assigned to it under this subsection with any other biomass energy programs within the Department of Agriculture established under other provisions of law.

(f) Implementation of functions assigned to Secretary of Energy by Office of Alcohol Fuels

The functions under this subchapter which are assigned to the Secretary of Energy and which relate to alcohol production shall be carried out by the Office of Alcohol Fuels.

(g) Energy equivalency determinations respecting biomass energy and ethanol

For purposes of this subchapter, the quantity of any biomass energy which is the energy equivalent to 15,000,000 gallons of ethanol shall be prescribed jointly by the Secretary of Agriculture and the Secretary of Energy within 30 days after June 30, 1980.

(Pub. L. 96-294, title II, § 212, June 30, 1980, 94 Stat. 687.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8813, 8814, 8815, 8816 of this title.

§ 8813. Insured loans

(a) Authority of Secretary of Agriculture; maximum amount per project

Subject to sections 8812 and 8817 of this title, the Secretary of Agriculture may commit to

make, and make, insured loans in amounts not to exceed \$1,000,000 per project for the construction of small-scale biomass energy projects.

(b) Estimated project construction costs as determinative of initial and revised amount of loan; interest rate

(1) Any insured loan under this section—

(A) may not exceed 90 per centum of the total estimated cost of construction of the biomass energy project involved, and

(B) shall bear interest at rates determined by the Secretary of Agriculture, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans, plus not to exceed one per centum, as determined by the Secretary of Agriculture, and adjusted to the nearest one-eighth of one per centum.

(2) In the event the total estimated costs of construction of the project thereafter exceed the total estimated costs initially determined by the Secretary of Agriculture, the Secretary may in addition, upon application therefor, make an insured loan for so much of the additional estimated total costs as does not exceed 10 per centum of the total costs initially estimated.

(c) Funding requirements; "insured loan" defined

(1) The Secretary of Agriculture shall make insured loans under this section using, to the extent provided in advance in appropriations Acts, the Agricultural Credit Insurance Fund in section 309 of the Consolidated Farm and Rural Development Act [7 U.S.C. 1929] or the Rural Development Insurance Fund in section 309A of such Act [7 U.S.C. 1929a] (hereinafter in this section referred to as the "Funds"). The Secretary of Agriculture may not use an aggregate amount of funds to make or commit to make insured loans under this section in excess of the aggregate amount for insured loans and administrative costs appropriated and transferred under section 8803 of this title. The terms, conditions, and requirements applicable to such insured loans shall be in accordance with this subchapter.

(2) There shall be reimbursed to the Funds, from appropriations made under section 8803 of this title, amounts equal to the operating and administrative costs incurred by the Secretary of Agriculture in insuring loans under this section.

(3) Notwithstanding any provision of the Consolidated Farm and Rural Development Act [7 U.S.C. 1921 et seq.], no funds made available to the Secretary of Agriculture under this section for insured loans shall be used for any other purpose.

(4) For purposes of this section, the term "insured loan" means a loan which is made, sold, and insured.

(d) Preconditions

An insured loan may not be made under this section unless the applicant for such loan has established to the satisfaction of the Secretary that the applicant is unable without such a loan to obtain sufficient credit elsewhere at reasonable rates and terms, taking into consideration

prevailing private and cooperative rates and terms for loans for similar purposes and periods of time, to finance the construction of the biomass energy project for which such loan is sought.

(Pub. L. 96-294, title II, §213, June 30, 1980, 94 Stat. 690.)

REFERENCES IN TEXT

The Consolidated Farm and Rural Development Act, referred to in subsec. (c)(3), is title III of Pub. L. 87-128, Aug. 8, 1961, 75 Stat. 307, as amended, which is classified principally to chapter 50 (§1921 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 1921 of Title 7 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8817 of this title.

§ 8814. Loan guarantees

(a) Authority of Secretary concerned

Subject to sections 8812 and 8817 of this title, the Secretary concerned may commit to guarantee, and guarantee, against loss of principal and interest, loans which are made to provide funds for the construction of biomass energy projects.

(b) Estimated project construction costs as determinative of initial and revised amount of guarantee

(1) Any guarantee of a loan under this section may not exceed 90 per centum of the cost of the construction of the biomass energy project involved, as estimated by the Secretary on the date of the guarantee or commitment to guarantee.

(2) In the event the construction costs of the project are thereafter estimated by the Secretary concerned to exceed the construction costs initially estimated by the Secretary, the Secretary may in addition, upon application therefor, guarantee, against loss of principal and interest, a loan for up to 60 per centum of the difference between the construction costs then estimated and the construction costs initially estimated.

(c) Debt obligation; ineligibility for purchase, etc., by Federal Financing Bank or any Federal agency

Notwithstanding the provisions of the Federal Financing Bank Act of 1973 (12 U.S.C. 2281 et seq.) or any other provision of law (except as may be specifically provided by reference to this subsection in any Act enacted after June 30, 1980), no debt obligation which is guaranteed or committed to be guaranteed by the Secretary of Agriculture or the Secretary of Energy under this section shall be eligible for purchase by, or commitment to purchase by, or sale or issuance to, the Federal Financing Bank or any Federal agency.

(d) Terms and conditions

The terms and conditions of loan guarantees under this section shall provide that, if the Secretary concerned makes a payment of principal or interest upon the default by a borrower, the Secretary shall be subrogated to the rights of the recipient of such payment (and such subrogation shall be expressly set forth in the loan guarantee or related agreements).

(e) Termination, cancellation, or revocation, and conclusive nature of guarantee

Any loan guarantee under this section shall not be terminated, canceled, or otherwise revoked, except in accordance with the terms thereof and shall be conclusive evidence that such guarantee complies fully with the provisions of this chapter and of the approval and legality of the principal amount, interest rate, and all other terms of the securities, obligations, or loans and of the guarantee.

(f) Payment to lender

If the Secretary concerned determines that—

(1) the borrower is unable to meet payments and is not in default,

(2) it is in the public interest to permit the borrower to continue with such project, and

(3) the probable net benefit to the United States in paying the principal and interest due under the loan will be greater than that which would result in the event of a default,

then the Secretary may pay to the lender under a loan guarantee agreement an amount not greater than the principal and interest which the borrower is obligated to pay to such lender, if the borrower agrees to reimburse the Secretary for such payment on terms and conditions, including interest, which the Secretary determines are sufficient to protect the financial interests of the United States.

(g) Preconditions

(1) A loan may not be guaranteed under this section unless the applicant for such loan has established to the satisfaction of the Secretary concerned that the lender is not willing without such a guarantee to extend credit to the applicant at reasonable rates and terms, taking into consideration prevailing rates and terms for loans for similar purposes and periods of time, to finance the construction of the biomass energy project for which such loan is sought.

(2) The Secretary concerned shall ensure that the lender bears a reasonable degree of risk in the financing of such project.

(Pub. L. 96-294, title II §214, June 30, 1980, 94 Stat. 690.)

REFERENCES IN TEXT

The Federal Financing Bank Act of 1973, referred to in subsec. (c), is Pub. L. 93-224, Dec. 29, 1973, 87 Stat. 937, as amended, which is classified generally to chapter 24 (§2281 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 2281 of Title 12 and Tables.

DEFAULTED LOANS UNDER DEPARTMENT OF ENERGY ALCOHOL FUELS LOAN GUARANTEE PROGRAM; SALE OF ASSETS; UNOBLIGATED FUNDS

Pub. L. 101-121, title II, Oct. 23, 1989, 103 Stat. 732, provided that:

“Notwithstanding 31 U.S.C. 3302, funds derived from the sale of assets as a result of defaulted loans made under the Department of Energy Alcohol Fuels Loan Guarantee program, or any other funds received in connection with this program, shall hereafter be credited to the Biomass Energy Development account, and shall be available solely for payment of the guaranteed portion of defaulted loans and associated costs of the Department of Energy Alcohol Fuels Loan Guarantee program for loans guaranteed prior to January 1, 1987.

“Unobligated balances available in the ‘Alternative fuels production’ account may hereafter be used for payment of the guaranteed portion of defaulted loans and associated costs of the Department of Energy Alcohol Fuels Loan Guarantee program, subject to the determination by the Secretary of Energy that such unobligated funds are not needed for carrying out the purposes of the Alternative Fuels Production program: *Provided*, That the use of these unobligated funds for payment of defaulted loans and associated costs shall be available only for loans guaranteed prior to January 1, 1987: *Provided further*, That such funds shall be used only after the unobligated balance in the Department of Energy Alcohol Fuel Loan Guarantee reserve has been exhausted.”

§ 8815. Price guarantees

(a) Authority of Secretary concerned; minimum sales price

Subject to sections 8812 and 8817 of this title, the Secretary concerned may commit to guarantee, and guarantee, that the price that the owner or operator of any biomass energy project will receive for all or part of the production from that project shall not be less than a specified sales price determined as of the date of execution of the price guarantee or commitment to guarantee.

(b) Cost-plus arrangements as basis

(1) No price guarantee under this section may be based upon a cost-plus arrangement, or variant thereof, which guarantees a profit to the owner or operator involved.

(2) The use of a cost-of-service pricing mechanism by a person pursuant to law, or by a regulatory body establishing rates for a regulated person, shall not be deemed to be a cost-plus arrangement, or variant thereof, for purposes of paragraph (1).

(c) Maximum dollar amount of liability of United States

Each price guarantee, or commitment to guarantee, which is made under this section shall specify the maximum dollar amount of liability of the United States under that guarantee.

(d) Renegotiation of sales price and maximum liability

If the Secretary determines, in the discretion of the Secretary, that—

(1) a biomass energy project would not otherwise be satisfactorily completed or continued, and

(2) completion or continuation of such project would be necessary to achieve the purposes of this chapter,

the sales price set forth in the price guarantee, and maximum liability under such guarantee, may be renegotiated.

(Pub. L. 96-294, title II, § 215, June 30, 1980, 94 Stat. 692.)

§ 8816. Purchase agreements

(a) Authority of Secretary concerned; consultative requirements

Subject to sections 8812 and 8817 of this title, the Secretary concerned may commit to make, and make, purchase agreements for all or part of the biomass energy production of any biomass energy project, if the Secretary determines—

(1) that such biomass energy is of a type, quantity, and quality that can be used by Federal agencies; and

(2) that the quantity of such biomass energy, if delivery is accepted, would not exceed the likely needs of Federal agencies.

Each Secretary concerned shall consult with the other Secretary before making any determination under paragraph (2).

(b) Maximum sales price

The sales price specified in a purchase agreement under this section may not exceed the estimated prevailing market price as of the date of delivery, as determined by the Secretary of Energy, unless the Secretary concerned determines that such sales price must exceed the estimated prevailing market price in order to ensure the production of biomass energy to achieve the purposes of this chapter.

(c) Assurances required

The Secretary concerned in entering into, or committing to enter into, a purchase agreement under this section shall require—

(1) assurances that the quality of the biomass energy purchased will meet standards for the use for which such energy is purchased;

(2) assurances that the ordered quantities of such energy will be delivered on a timely basis; and

(3) such other assurances as may reasonably be required.

(d) Arrangements for delivery pursuant to agreement; charge to Federal agency receiving delivery

The Secretary concerned may take delivery of biomass energy pursuant to a purchase agreement under this section if appropriate arrangements have been made for its distribution to and use by one or more Federal agencies. Any Federal agency receiving such energy shall be charged (in accordance with otherwise applicable law), from sums appropriated to such Federal agency, for the prevailing market price as of the date of delivery, as determined by the Secretary of Energy, for the product which the biomass energy is replacing.

(e) Consultative requirements

The Secretary concerned shall consult with the Secretary of Defense and the Administrator of the General Services Administration in carrying out this section.

(f) Terms and conditions

Each purchase agreement, and commitment to enter into a purchase agreement, under this section shall provide that the Secretary concerned retains the right to refuse delivery of the biomass energy involved upon such terms and conditions as shall be specified in the purchase agreement.

(g) Maximum dollar amount of liability of United States

Each purchase agreement, or commitment to enter into a purchase agreement, which is made under this section shall specify the maximum dollar amount of liability of the United States under that agreement.

(h) Renegotiation of sales price and maximum liability

If the Secretary concerned determines, in the discretion of the Secretary, that—

(1) a biomass energy project would not otherwise be satisfactorily completed or continued, and

(2) completion or continuation of such project would be necessary to achieve the purposes of this chapter,

the sales price set forth in the purchase agreement, and maximum liability under such agreement, may be renegotiated.

(Pub. L. 96-294, title II, §216, June 30, 1980, 94 Stat. 692.)

§ 8817. General requirements regarding financial assistance**(a) Priorities, terms, availability, etc.**

(1) Priority for financial assistance under this subchapter, and the most favorable financial terms available, shall be provided to a person for any biomass energy project that—

(A) uses a primary fuel other than petroleum or natural gas in the production of biomass fuel, such as geothermal energy resources, solar energy resources, or waste heat; or

(B) applies new technologies which expand the possible feedstocks, produces new forms of biomass energy, or produces biomass fuel using improved or new technologies.

Nothing in this paragraph shall be construed to exclude financial assistance for any project which does not use such a fuel or apply such a technology.

(2)(A) Financial assistance under this subchapter shall be available for a biomass energy project only if the Secretary concerned finds that the Btu content of the motor fuels to be used in the facility involved to produce the biomass fuel will not exceed the Btu content of the biomass fuel produced in the facility.

(B) In making the determination under subparagraph (A), the Secretary concerned shall take into account any displacement of motor fuel or other petroleum products which the applicant has demonstrated to the satisfaction of the Secretary would result from the use of the biomass fuel produced in the facility involved.

(3) No financial assistance may be provided under this subchapter to any person for any biomass energy project if the Secretary concerned finds that the process to be used by the project will not extract the protein content of the feedstock for utilization as food or feed for readily available markets in any case in which to do so would be technically and economically practicable.

(4) Financial assistance may not be provided under this subchapter to any person unless the Secretary concerned—

(A) finds that necessary feedstocks are available and it is reasonable to expect they will continue to be available in the future, and, for biomass energy projects using wood or wood wastes or residues from the National Forest System, there shall be taken into account current levels of use by then existing facilities;

(B) has obtained assurance that the person receiving such financial assistance will bear a

reasonable degree of risk in the construction and operation of the project; and

(C) has determined that the amount of financial assistance provided for the project is not greater than is necessary to achieve the purposes of this chapter.

(5) In providing financial assistance under this subchapter, the Secretary concerned shall give due consideration to promoting competition.

(6) In determining the amount of financial assistance for any biomass energy project which will yield byproducts in addition to biomass energy, the Secretary shall consider the potential value of such byproducts and the costs attributable to their production.

(b) Terms, conditions, maturity, etc., for insured loans, and loan guarantees

An insured loan may not be made, and a loan guarantee may not be issued, under this subchapter unless the Secretary concerned determines that the terms, conditions, maturity, security, and schedule and amounts of repayments with respect to such loan are reasonable and meet such standards as the Secretary determines are sufficient to protect the financial interests of the United States.

(c) Application requirements

(1) No financial assistance may be provided to any person under this subchapter unless an application therefor—

(A) has been submitted to the Secretary concerned by that person in such form and under such procedures as the Secretary shall prescribe, consistent with the requirements of this subchapter, and

(B) has been approved by the Secretary in accordance with such procedures.

(2) Each such application shall include information regarding the construction costs of the biomass energy project involved, and estimates of operating costs and income relating to that project (including the sale of any byproducts from that project). In addition, each applicant shall provide—

(A) access at reasonable times to such other information, and

(B) such assurances,

as the Secretary concerned may require.

(d) Reports and recordkeeping

(1) Every recipient of financial assistance under this subchapter shall, as a condition precedent thereto, consent to such examinations and reports regarding the biomass energy project involved as the Secretary concerned may require.

(2) With respect to each biomass energy project for which financial assistance is provided under this subchapter, the Secretary shall—

(A) require from the recipient of financial assistance such reports and records relating to that project as the Secretary deems necessary;

(B) prescribe the manner in which such recipient shall keep such records; and

(C) have access to such records at reasonable times for the purpose of ensuring compliance with the terms and conditions upon which financial assistance is provided.

(e) Contracts and instruments of Secretary concerned backed by full faith and credit of United States

All contracts and instruments of the Secretary concerned to provide, or providing, for financial assistance shall be general obligations of the United States backed by its full faith and credit.

(f) Contestability of contracts

Subject to the conditions of any contract for financial assistance, such contract shall be incontestable in the hands of the holder, except as to fraud or material misrepresentation on the part of the holder.

(g) Fees for loan guarantees, etc.

(1) A fee or fees may be charged and collected by the Secretary concerned for any loan guarantee, price guarantee, or purchase agreement provided under this subchapter.

(2) The amount of such fee shall be based on the estimated administrative costs and risk of loss, except that such fee may not exceed 1 per centum of the amount of the financial assistance provided.

(h) Deposit of amounts received by Secretary concerned

All amounts received by the Secretary of Agriculture or the Secretary of Energy as fees, interest, repayment of principal, and any other moneys received by either Secretary from activities under this subchapter shall be deposited in the Treasury of the United States as miscellaneous receipts. The preceding sentence shall not apply to insured loans made under section 8813 of this title.

(Pub. L. 96-294, title II, §217, June 30, 1980, 94 Stat. 693.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8813, 8814, 8815, 8816 of this title.

§ 8818. Reports

(a) Repealed. Pub. L. 99-386, title I, § 101(a), Aug. 22, 1986, 100 Stat. 821

(b) Comprehensive list of loans, grants, etc.

Within 120 days after June 30, 1980, the Secretary of Energy and the Secretary of Agriculture shall submit to the Congress a comprehensive list of all the types of loans, grants, incentives, rebates, or any other such private, State, or Federal economic or financial benefits now in effect or proposed which can be or have been used for production of alcohol to be used as a motor fuel or petroleum substitute.

(c) Annual reports; report evaluating overall impact and plan for termination of Office of Alcohol Fuels

(1)(A) The Office of Alcohol Fuels shall submit to the Congress and the President annual reports containing a general description of the Office's operations during the year and a description and evaluation of each biomass energy project for which financial assistance by the Office is then in effect.

(B) Each annual report shall describe progress made toward meeting the goals of this sub-

chapter and contain specific recommendations on what actions the Congress could take in order to facilitate the work of the Office in achieving such goals.

(C) Each annual report under this subsection shall contain financial statements prepared by the Office.

(2) On or before September 30, 1990, the Office shall submit to the Congress and the President a report evaluating the overall impact made by the Office and describing the status of each biomass energy project which has received financial assistance under this subchapter from the Office. Such report shall contain a plan for the termination of the work of the Office.

(Pub. L. 96-294, title II, §218, June 30, 1980, 94 Stat. 695; Pub. L. 99-386, title I, §101(a), Aug. 22, 1986, 100 Stat. 821.)

AMENDMENTS

1986—Subsec. (a). Pub. L. 99-386 struck out subsec. (a) which related to submission of quarterly reports to the President and Congress by Secretary of Agriculture and Secretary of Energy.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (c)(1) of this section relating to the requirement that the Office of Alcohol Fuels submit annual reports to Congress, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 12th item on page 91 of House Document No. 103-7.

§ 8819. Review; reorganization

(a) The President shall review periodically the progress of the Secretary of Agriculture and the Secretary of Energy in carrying out the purposes of this subchapter.

(b) If the President determines it necessary in order to achieve such purposes the President may, in accordance with the provisions of chapter 9 of title 5, provide for a reorganization, including any required realignment of the respective programs of the Secretaries under this subchapter.

(Pub. L. 96-294, title II, §219, June 30, 1980, 94 Stat. 695.)

§ 8820. Office of Alcohol Fuels

(a) Establishment in Department of Energy; appointment and compensation of Director

There is hereby established within the Department of Energy an Office of Alcohol Fuels (hereinafter in this section referred to as the "Office") to be headed by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5.

(b) Responsibilities of Director

(1) The Director shall be responsible for carrying out the functions of the Secretary of Energy under this subchapter which relate to alcohol, including the terms and conditions of financial assistance and the selection of recipients for that assistance, subject to the general supervision of the Secretary of Energy.

(2) The Director shall be responsible directly to the Secretary of Energy.

(c) Annual authorization and appropriation requests for support of Office

In each annual authorization and appropriation request, the Secretary shall identify the portion thereof intended for the support of the Office and include a statement by the Office (1) showing the amount requested by the Office in its budgetary presentation to the Secretary and the Office of Management and Budget and (2) an assessment of the budgetary needs of the Office. Whenever the Office submits to the Secretary, the President, or the Office of Management and Budget, any formal legislative recommendation or testimony, or comments on legislation, prepared for submission to Congress, the Office shall concurrently transmit a copy thereof to the appropriate committees of Congress.

(d) Consultations respecting coordination of programs

The Secretary of Energy, after consultation with the Director, shall consult with the Secretary of the Treasury, the Secretary of Agriculture, the Secretary of Transportation, the Secretary of Commerce, the Administrator of the Community Services Administration, the Administrator of the Environmental Protection Agency, or their appointed representatives, in order to coordinate the programs under the Director's responsibility with other programs within the Department of Energy and in such Federal agencies, which are related to the production of alcohol.

(Pub. L. 96-294, title II, § 220, June 30, 1980, 94 Stat. 696.)

COMMUNITY SERVICES ADMINISTRATION

Community Services Administration, which was established by section 601 of Economic Opportunity Act of 1964, as amended (42 U.S.C. 2941), terminated when Economic Opportunity Act of 1964, Pub. L. 88-452, Aug. 20, 1964, 78 Stat. 508, as amended, was repealed, except for titles VIII and X, effective Oct. 1, 1981, by section 683(a) of Pub. L. 97-35, title VI, Aug. 13, 1981, 95 Stat. 519, which is classified to 42 U.S.C. 9912(a). An Office of Community Services, headed by a Director, was established in Department of Health and Human Services by section 676 of Pub. L. 97-35, which is classified to 42 U.S.C. 9905.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8802 of this title.

§ 8821. Termination of authorities; modification of terms and conditions of conditional commitments for loan guarantees

No insured loan, loan guarantee, price guarantee, or purchase agreement may be committed to or made under this subchapter after September 30, 1984, except that all conditional commitments for loan guarantees under this subchapter which were in existence on September 30, 1984, are hereby extended through June 30, 1987. This section shall not be construed to affect the authority of the Secretary concerned to spend funds after such date pursuant to any contract for financial assistance made on or before that date under this subchapter. Notwithstanding any other provision of this subchapter, the Secretary of Energy may modify the terms and conditions of any conditional commitment for a loan guarantee under this subchapter made be-

fore October 1, 1984, including the amount of the loan guarantee. Nothing in this section shall be interpreted as indicating Congressional approval with respect to any pending conditional commitments under this Act.

(Pub. L. 96-294, title II, § 221, June 30, 1980, 94 Stat. 696; Pub. L. 99-24, § 1(a), Apr. 16, 1985, 99 Stat. 50; Pub. L. 99-190, § 101(a), Dec. 19, 1985, 99 Stat. 1185; Pub. L. 99-272, title VII, § 7301, Apr. 7, 1986, 100 Stat. 143; Pub. L. 99-500, § 101(h) [title III, § 318], Oct. 18, 1986, 100 Stat. 1783-242, 1783-286, and Pub. L. 99-591, § 101(h) [title III, § 318], Oct. 30, 1986, 100 Stat. 3341-242, 3341-287; Pub. L. 100-202, § 106, Dec. 22, 1987, 101 Stat. 1329-433.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 96-294, June 30, 1980, 94 Stat. 611, as amended, known as the Energy Security Act. For complete classification of this Act to the Code, see Short Title note set out under section 8801 of this title and Tables.

CODIFICATION

Pub. L. 99-591 is a corrected version of Pub. L. 99-500. Amendment of section by Pub. L. 99-190 is based on section 630 of title VI of H.R. 3037 [Agriculture, Rural Development, and Related Agencies Appropriations Act, 1986], as incorporated by reference by section 101(a) of Pub. L. 99-190, and enacted into law by section 106 of Pub. L. 100-202.

AMENDMENTS

1987—For amendment by Pub. L. 100-202, see 1985 Amendment note below.

1986—Pub. L. 99-500 and Pub. L. 99-591 substituted “through June 30, 1987” for “through June 30, 1986”.

Pub. L. 99-272 made amendment substantially identical to that by Pub. L. 99-190, substituting “through June 30, 1986” for “through September 30, 1985” and inserting provisions authorizing the Secretary of Energy to modify the terms and conditions of any conditional commitment for a loan guarantee under this subchapter made before Oct. 1, 1984, including the amount of the guarantee, and further providing that nothing in this section shall be interpreted as indicating Congressional approval with respect to any pending conditional commitments.

1985—Pub. L. 99-190, § 101(a), as enacted by Pub. L. 100-202, substituted “through June 30, 1986” for “through September 30, 1985” and inserted provisions authorizing the Secretary of Energy to modify the terms and conditions of any conditional commitment for a loan guarantee under this subchapter made before Oct. 1, 1984, including the amount of the guarantee, and further providing that nothing in this section shall be interpreted as indicating Congressional approval with respect to any pending conditional commitments. See Codification note above.

Pub. L. 99-24 inserted “, except that all conditional commitments for loan guarantees under this subchapter which were in existence on September 30, 1984, are hereby extended through September 30, 1985”.

EFFECTIVE DATE OF 1985 AMENDMENT

Section 106 of Pub. L. 100-202 provided that the amendment made by that section is effective on date of enactment [Dec. 19, 1985] of the “pertinent joint resolution” making continuing appropriations for fiscal year 1986 [Pub. L. 99-190].

PENDING CONDITIONAL COMMITMENTS

Section 1(b) of Pub. L. 99-24 provided that: “Enactment of this Act [amending this section] shall not be interpreted as indicating congressional approval with respect to any pending conditional commitments under this Act.”

SUBCHAPTER II—MUNICIPAL WASTE
BIOMASS ENERGY

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 8803 of this title.

§ 8831. Municipal waste energy development plan

(a) Preparation by Secretary of Energy; consultative requirements

The Secretary of Energy shall prepare a comprehensive plan for carrying out this subchapter. In the preparation of such plan, the Secretary shall consult with the Administrator of the Environmental Protection Agency, the Secretary of Commerce, and the head of such other Federal agencies as the Secretary deems appropriate.

(b) Transmittal to President and Congress

Not later than 90 days after June 30, 1980, the Secretary shall transmit the comprehensive plan to the President and the Congress.

(c) Required statements

The comprehensive plan under this section shall include a statement setting forth—

- (1) the anticipated research, development, demonstration, and commercialization objectives to be achieved;
- (2) the management structure and approach to be adopted to carry out such plan;
- (3) the program strategies, including detailed milestone goals to be achieved;
- (4) the specific funding requirements for individual program elements and activities, including the total estimated construction costs of proposed projects; and
- (5) the estimated relative financial contributions of the Federal Government and non-Federal participants in the program.

(d) Report to President and Congress; contents

Not later than January 1, 1982, the Secretary shall prepare and submit to the President and the Congress a report containing a complete description of any financial, institutional, environmental, and social barriers to the development and application of technologies for the recovery of energy from municipal wastes.

(Pub. L. 96-294, title II, §231, June 30, 1980, 94 Stat. 696.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8836, 8837 of this title.

§ 8832. Construction loans

(a) Authority of Secretary of Energy

Subject to sections 8835 and 8836 of this title, the Secretary of Energy may commit to make, and make, loans for the construction of municipal waste energy projects.

(b) Estimated project construction costs as determinative of initial and revised amount of loan; interest rate

(1) Any loan under this section—

- (A) may not exceed 80 per centum of the total estimated cost of the construction of the municipal waste energy project involved, and

(B) shall bear interest at a rate determined by the Secretary of Energy (taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans) plus not to exceed one per centum, as determined by the Secretary of Energy, and adjusted to the nearest one-eighth of one per centum.

(2) In the event the total estimated costs of construction of the project thereafter exceed the total estimated costs initially determined by the Secretary of Energy, the Secretary may in addition, upon application therefor, make a loan for so much of the additional estimated costs as does not exceed 10 per centum of the initial total estimated costs of construction.

(c) Preconditions

A loan may not be made under this section unless the person applying for such loan has established to the satisfaction of the Secretary of Energy that the applicant is unable without such a loan to obtain sufficient credit elsewhere at reasonable rates and terms, taking into consideration prevailing market rates and terms for loans for similar periods of time, to finance the construction of the project for which such loan is sought.

(Pub. L. 96-294, title II, §232, June 30, 1980, 94 Stat. 697.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8835, 8836 of this title.

§ 8833. Guaranteed construction loans

(a) Authority of Secretary of Energy

Subject to sections 8835 and 8836 of this title, the Secretary of Energy may commit to guarantee, and guarantee, against loss on up to 90 per centum of the principal and interest, any loan which is made solely to provide funds for the construction of a municipal waste energy project and which does not exceed 90 per centum of the cost of the construction of the project involved, as estimated by the Secretary on the date of the guarantee or commitment to guarantee.

(b) Estimated project construction costs as determinative of revised amount of guarantee

In the event the total estimated costs of construction of the project thereafter exceed the total estimated costs initially determined by the Secretary of Energy, the Secretary may in addition, upon application therefor, guarantee, against loss on up to 90 per centum of the principal and interest, a loan for so much of the additional estimated total costs as does not exceed 10 per centum of the total estimated costs.

(c) Terms and conditions

The terms and conditions of loan guarantees under this section shall provide that, if the Secretary of Energy makes a payment of principal or interest upon the default by a borrower, the Secretary shall be subrogated to the rights of the recipient of such payment (and such subrogation shall be expressly set forth in the loan guarantee or related agreements).

(d) Termination, cancellation, or revocation, and conclusive nature of guarantee

Any loan guarantee under this section shall not be terminated, canceled, or otherwise revoked, except in accordance with the terms thereof and shall be conclusive evidence that such guarantee complies fully with the provisions of this chapter and of the approval and legality of the principal amount, interest rate, and all other terms of the securities, obligations, or loans and of the guarantee.

(e) Payment to lender

If the Secretary of Energy determines that—

(1) the borrower is unable to meet payments and is not in default,

(2) it is in the public interest to permit the borrower to continue to pursue the purposes of such project, and

(3) the probable net benefit to the United States in paying the principal and interest due under a loan guarantee agreement will be greater than that which would result in the event of a default,

then the Secretary may pay to the lender under a loan guarantee agreement an amount not greater than the principal and interest which the borrower is obligated to pay to such lender, if the borrower agrees to reimburse the Secretary for such payment on terms and conditions, including interest, which the Secretary determines are sufficient to protect the financial interests of the United States.

(f) Preconditions

A loan may not be guaranteed under this section unless the applicant for such loan has established to the satisfaction of the Secretary of Energy that the lender is not willing without such a guarantee to extend credit to the applicant at reasonable rates and terms, taking into consideration prevailing market rates and terms for loans for similar periods of time, to finance the construction of the project for which such loan is sought.

(g) Payment of interest; tax consequences

(1) With respect to any loan or debt obligation which is—

(A) issued after June 30, 1980, by, or on behalf of, any State or any political subdivision or governmental entity thereof,

(B) guaranteed by the Secretary of Energy under this section, and

(C) not supported by the full faith and credit of the issuer as a general obligation of the issuer,

the interest paid on such obligation and received by the purchaser thereof (or the purchaser's successors in interest) shall be included in gross income for the purposes of chapter 1 of title 26.

(2) With respect to the amount of obligations described in paragraph (1) that the issuer would have been able to issue as tax exempt obligations (other than obligations secured by the full faith and credit of the issuer as a general obligation of the issuer), the Secretary of Energy is authorized to pay only to the issuer any portion of the interest on such obligations, as determined by the Secretary of the Treasury after taking into account the interest rate which

would have been paid on the obligations had they been issued as tax exempt obligations without being so guaranteed by the Secretary of Energy and the interest rate actually paid on the obligations when issued as taxable obligations. Such payments shall be made in amounts determined by the Secretary of Energy, and in accordance with such terms and conditions as the Secretary of the Treasury shall require.

(h) Fees

(1) A fee or fees may be charged and collected by the Secretary of Energy for any loan guarantee under this section.

(2) The amount of such fee shall be based on the estimated administrative costs and risk of loss, except that such fee may not exceed 1 per centum of the maximum of the guarantee.

(Pub. L. 96-294, title II, §233, June 30, 1980, 94 Stat. 698; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (d), was in the original "this title", meaning title II of Pub. L. 96-294, June 30, 1980, 94 Stat. 683, as amended, known as the Biomass Energy and Alcohol Fuels Act of 1980, which enacted this chapter, sections 1435 and 3129 of Title 7, Agriculture, and section 3391a of Title 15, Commerce and Trade, and amended sections 341, 342, 427, and 3154 of Title 7, section 753 of Title 15, and sections 590h and 1642 of Title 16, Conservation. For complete classification of title II to the Code, see Short Title note set out under section 8801 of this title and Tables.

AMENDMENTS

1986—Subsec. (g)(1). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8835, 8836 of this title.

§ 8834. Price support loans and price guarantees**(a) Authority of Secretary of Energy with respect to loans for existing projects; disbursements, etc.**

(1) In the case of any existing municipal waste energy project which produces and sells biomass energy, the Secretary of Energy may commit to make, and make, a price support loan in amounts determined under paragraph (3) for the operation of such project. Payments under any such loan shall be disbursed on an annual basis, as determined (in accordance with paragraph (3)) on the basis of the amount of biomass energy produced and sold by that project during the 12-month period involved and the type and cost of fuel displaced by the biomass energy sold.

(2)(A) In the case of any support loan under this section for an existing municipal waste energy project—

(i) disbursements under such loan may not be made for more than 5 consecutive 12-month periods;

(ii) the amount of the disbursement for the second and any subsequent 12-month period for which disbursements are to be made under the support loan shall be reduced by an amount determined by multiplying the amount cal-

culated under paragraph (3) by a factor determined by dividing the number of 12-month periods for which disbursements are made under the support loan into the number of such periods which have elapsed;

(iii) commencing at the end of the last of such 12-month periods, the support loan shall be repayable over a period equal to the then remaining useful life of the project (as determined by the Secretary) or 10 years, whichever is shorter; and

(iv) commencing at the end of such last 12-month period, such loan shall bear interest at a rate determined by the Secretary of Energy (taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans) plus not to exceed one per centum, as determined by the Secretary of Energy, and adjusted to the nearest one-eighth of one per centum.

(3) The amount of the loan payment to be disbursed under this subsection for any year with respect to each type of biomass energy produced and sold by an existing municipal waste energy project shall be equal to—

(A)(i) the standard support price reduced by the cost of the fuel displaced by the biomass energy sold, or (ii) \$2.00, whichever is lower, multiplied by

(B) the amount of such biomass energy sold (in millions of Btu's).

(b) Authority of Secretary of Energy with respect to loans for new projects; disbursements, etc.

(1) In the case of any new municipal waste energy project which produces and sells biomass energy, the Secretary of Energy may commit to make, and make, a price support loan in amounts determined in accordance with the provisions of subsection (a) of this section, except as provided in paragraph (2).

(2) In the case of any loan under this subsection for a new municipal waste energy project—

(A) disbursements under such loan may not be made for more than 7 consecutive 12-month periods (with reductions as provided in subsection (a)(2)(A)(ii)) of this section;

(B) such loan shall bear interest at a rate not in excess of the rate prescribed under subsection (a) of this section; and

(C) the principal of or interest on such loan shall, in accordance with the support loan agreement, be repayable, commencing at the end of the last 12-month period covered by the support loan, over a period not in excess of the period equal to the then remaining useful life of the project (as determined by the Secretary) or 15 years, whichever is shorter.

(c) Authority of Secretary of Energy with respect to guarantees for new projects; pricing determinations, etc.

(1) In the case of any new municipal waste energy project which produces and sells biomass energy, the Secretary of Energy may commit to make, and make, a price guarantee for the operation of such project which guarantees that the price the owner or operator will receive for all

or part of the production from that project shall not be less than a specified sales price determined as of the date of execution of the guarantee agreement.

(2)(A) No price guarantee under this section may be based upon a cost-plus arrangement, or variant thereof, which guarantees a profit to the owner or operator involved.

(B) The use of a cost-of-service pricing mechanism by a person pursuant to law, or by a regulatory body establishing rates for a regulated person, shall not be deemed to be a cost-plus arrangement, or variant thereof, for purposes of subparagraph (A).

(3) In the case of any price guarantee under this subsection for a new municipal waste energy project—

(A) disbursements under such guarantee may not be made for more than 7 consecutive 12-month periods; and

(B) amounts paid under this subsection may be required to be repaid to the Secretary of Energy under such terms and conditions as the Secretary may prescribe, including interest at a rate not in excess of the rate prescribed under subsection (a) of this section.

(d) Definitions; sale price of retained fuel; rules relating to fuel displacement

For purposes of this section—

(1) The term “new municipal waste energy project” means any municipal waste energy project which—

(A) is initially placed in service after June 30, 1980; or

(B) if initially placed in service before June 30, 1980, has an increased capacity by reason of additional construction, and as such is placed in service after such date.

(2) The term “existing municipal waste energy project” means any municipal waste energy project which is not a new municipal waste project.

(3) The term “placed in service” means operated at more than 50 percent of the estimated operational capacity.

(4)(A) Except as provided in subparagraphs (B) and (C), the term “standard support price” means the average price (per million Btu's) for No. 6 fuel oil imported into the United States on June 30, 1980, as determined, by rule, by the Secretary of Energy not later than 90 days after June 30, 1980.

(B) In any case in which the fuel displaced is No. 6 fuel oil or any higher grade of petroleum (as determined by the Secretary of Energy), the term “standard support price” means 125 per centum of the price determined by rule under subparagraph (A).

(C) In any case in which biomass energy produced and sold by a project is steam or electricity, the term “standard support price” means the price determined by rule under subparagraph (A), subject to such adjustments as the Secretary of Energy may authorize by rule.

(5) The term “cost of the fuel displaced” means the cost of the fuel (per million Btu's) which the purchaser of biomass energy would have purchased if the biomass energy had not been available for sale to that purchaser.

(6) Any biomass energy produced by a municipal waste energy project which may be retained for use by the owner or operator of such project shall be considered to be sold at such price as the Secretary of Energy determines.

(7) Not later than 90 days after June 30, 1980, the Secretary of Energy shall prescribe, by rule, the manner of determining the fuel displaced by the sale of any biomass energy, and the price of the fuel displaced.

(Pub. L. 96-294, title II, § 234, June 30, 1980, 94 Stat. 699.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8835, 8836 of this title.

§ 8835. General requirements regarding financial assistance

(a) Priorities, terms, availability, etc.

(1) Priority for financial assistance under the provisions of sections 8832, 8833, and 8834 of this title and the most favorable financial terms available, shall be provided for any municipal waste energy project that will—

(A) produce a liquid fuel from municipal waste; or

(B) will displace petroleum or natural gas as a fuel.

(2)(A) With respect to projects producing biomass energy other than biomass fuel, financial assistance under the provisions of sections 8832, 8833, and 8834 of this title shall be available only if the Secretary of Energy finds that the project does not use petroleum or natural gas except for flame stabilization or start-up.

(B) With respect to projects producing biomass fuel, financial assistance under such provisions shall be available to such project only if the Secretary of Energy finds that the Btu content of the biomass fuel produced substantially exceeds the Btu content of any petroleum or natural gas used in the project to produce the biomass fuel.

(3) Financial assistance may not be provided under section 8832, 8833, or 8834 of this title unless the Secretary of Energy finds that necessary municipal waste feedstocks are available and it is reasonable to expect they will continue to be available for the expected economic life of the project.

(4) In providing financial assistance under section 8832, 8833, or 8834 of this title, the Secretary of Energy shall give due consideration to promoting competition.

(5) In determining the amount of financial assistance for any municipal waste energy project which will yield byproducts in addition to biomass energy, the Secretary shall consider the value of such byproducts and the costs attributable to their production.

(6) The Secretary of Energy shall not provide financial assistance under section 8832, 8833, or 8834 of this title for any municipal waste energy unless the Secretary determines—

(A) the project will be technically and economically viable;

(B) the financial assistance provided encourages and supplements, but does not compete with nor supplant, any private capital invest-

ment which otherwise would be available to the proposed municipal waste energy project on reasonable terms and conditions which would permit such project to be undertaken;

(C) assurances are provided that the project will not use, in any substantial quantities, waste paper which would otherwise be recycled for a use other than as a fuel and will not substantially compete with facilities in existence on the date of the financial assistance which are engaged in the separation or recovery of reuseable materials from municipal waste; and

(D) that the amount of financial assistance provided for the project is not greater than is necessary to achieve the purposes of this chapter.

(b) Terms, conditions, maturity, etc.

Financial assistance may not be provided under section 8832, 8833, or 8834 of this title unless the Secretary of Energy determines that—

(1) the terms, conditions, maturity, security and schedule and amounts of repayments with respect to such assistance are reasonable and meet such standards as the Secretary determines are sufficient to protect the financial interests of the United States; and

(2) the person receiving such financial assistance will bear a reasonable degree of risk with respect to the project.

(c) Application requirements

(1) No financial assistance may be provided to any person under section 8832, 8833, or 8834 of this title unless an application therefor—

(A) has been submitted to the Secretary of Energy by such person in such form and under such procedures as the Secretary shall prescribe, consistent with the requirements of this subchapter, and

(B) has been approved by the Secretary in accordance with such procedures.

(2) Each such application shall include information regarding the construction costs of the municipal waste energy project involved (if appropriate), and estimates of operating costs and income relating to that project (including the sale of any byproducts from that project). In addition, each applicant shall provide—

(A) access at reasonable times to such other information, and

(B) such assurances,

as the Secretary of Energy may require.

(d) Reports and recordkeeping

(1) Every person receiving financial assistance under section 8832, 8833, or 8834 of this title shall, as a condition precedent thereto, consent to such examinations and reports thereon regarding the municipal waste energy project involved as the Secretary of Energy may require.

(2) With respect to each municipal waste energy project for which financial assistance is provided under section 8832, 8833, or 8834 of this title, the Secretary shall—

(A) require from the recipient of financial assistance such reports and records relating to that project as the Secretary deems necessary;

(B) prescribe the manner in which such recipient shall keep such records; and

(C) have access to such records at reasonable times for the purpose of ensuring compliance with the terms and conditions upon which financial assistance is provided.

(e) Deposit of amounts received

All amounts received by the Secretary of Energy as fees, interest, repayment of principal, and any other moneys received by the Secretary from operations under section 8832, 8833, or 8834 of this title shall be deposited in the general fund of¹ Treasury of the United States as miscellaneous receipts.

(f) Contracts and instruments backed by full faith and credit of United States

All contracts and instruments of the Secretary of Energy to provide, or providing, for financial assistance shall be general obligations of the United States backed by its full faith and credit.

(g) Contestability of contracts

Subject to the conditions of any contract for financial assistance, such contract shall be incontestable in the hands of the holder, except as to fraud or material misrepresentation on the part of the holder.

(h) Eligibility of debt obligations for purchase, sale, or issuance to Federal Financing Bank or any Federal agency

Notwithstanding the provisions of the Federal Financing Bank Act of 1973 (12 U.S.C. 2281 et seq.) or any other provision of law (except as may be specifically provided by reference to this subsection in any Act enacted after June 30, 1980), no debt obligation which is made or committed to be made, or which is guaranteed or committed to be guaranteed by the Secretary of Energy under section 8832, 8833, or 8834 of this title shall be eligible for purchase by, or commitment to purchase by, or sale or issuance to, the Federal Financing Bank or any Federal agency.

(Pub. L. 96-294, title II, § 235, June 30, 1980, 94 Stat. 701.)

REFERENCES IN TEXT

The Federal Financing Bank Act of 1973, referred to in subsec. (h), is Pub. L. 93-224, Dec. 29, 1973, 87 Stat. 937, as amended, which is classified generally to chapter 24 (§ 2281 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 2281 of Title 12 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8832, 8833 of this title.

§ 8836. Financial assistance program administration

The Secretary of Energy shall establish procedures and take such other actions as may be necessary regarding the solicitation, review, and evaluation of applications, and awarding of financial assistance under section 8832, 8833, or 8834 of this title as may be necessary to carry out the plan established under section 8831 of this title.

¹ So in original. Probably should be "of the".

(Pub. L. 96-294, title II, § 236, June 30, 1980, 94 Stat. 703.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8832, 8833 of this title.

§ 8837. Commercialization demonstration program pursuant to Federal nonnuclear energy research and development

(a) Establishment and conduct pursuant to other Federal statutory authorities; required undertakings subsequent to consultations

(1) The Secretary of Energy shall establish and conduct, pursuant to the authorities contained in the Federal Nonnuclear Energy Research and Development Act of 1974 [42 U.S.C. 5901 et seq.], an accelerated research, development, and demonstration program for promoting the commercial viability of processes for the recovery of energy from municipal wastes.

(2) The provisions of subsections (d), (m), and (x)(2) of section 19 of such Act [42 U.S.C. 5919(d), (m), and (x)(2)] shall not apply with respect to the program established under this section.

(3) As part of the program established under this section, the Secretary, after consulting with the Administrator of the Environmental Protection Agency and the Secretary of Commerce, shall undertake—

(A) the research, development, and demonstration of technologies to recover energy from municipal wastes;

(B) the development and application of new municipal waste-to-energy recovery technologies;

(C) the assessment, evaluation, demonstration, and improvement of the performance of existing municipal waste-to-energy recovery technologies with respect to capital costs, operating and maintenance costs, total project financing, recovery efficiency, and the quality of recovered energy and energy intensive materials;

(D) the evaluation of municipal waste energy projects for the purpose of developing a base of engineering data that can be used in the design of future municipal waste energy projects to recover energy from municipal wastes; and

(E) research studies on the size and other significant characteristics of potential markets for municipal waste-to-energy recovery technologies, and recovered energy, and energy intensive materials.

(b) Financial assistance

Under such program, the Secretary of Energy may provide financial assistance consisting of price supports, loans, and loan guarantees, for the cost of planning, designing, constructing, operating, and maintaining demonstration facilities, and, in the case of existing facilities, modifications of such facilities solely for demonstration purposes, for the conversion of municipal wastes into energy or the recovery of materials.

(c) Priority for funding

Priority for funding of activities under subsection (a) of this section and financial assist-

ance under subsection (b) of this section shall be provided for any activity or project for the demonstration of technologies for the production of liquid fuels or biomass energy which substitute for petroleum or natural gas.

(d) Obligation and expenditure of funds

The Secretary of Energy may not obligate or expend any funds authorized under this chapter in carrying out subsection (b) of this section until the plan required under section 8831(a) of this title has been prepared and submitted to the Congress.

(e) Deposit of moneys received

All amounts received by the Secretary of Energy as fees, interest, repayment of principal, and any other moneys received by the Secretary from operations under this section shall be deposited in the general fund of the Treasury of the United States as miscellaneous receipts.

(Pub. L. 96-294, title II, §237, June 30, 1980, 94 Stat. 703.)

REFERENCES IN TEXT

The Federal Nonnuclear Energy Research and Development Act of 1974, referred to in subsec. (a)(1), is Pub. L. 93-577, Dec. 31, 1974, 88 Stat. 1878, as amended, which is classified generally to chapter 74 (§5901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5901 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8839 of this title.

§ 8838. Jurisdiction of Department of Energy and Environmental Protection Agency

The provisions of section 5920(c) of this title, relating to the responsibilities of the Environmental Protection Agency and the Department of Energy, shall apply with respect to actions under this subchapter to the same extent and in the same manner as such provisions apply to actions under section 5920 of this title.

(Pub. L. 96-294, title II, §238, June 30, 1980, 94 Stat. 704.)

§ 8839. Office of Energy from Municipal Waste

(a) Establishment in Department of Energy; appointment of Director

There is hereby established within the Department of Energy an Office of Energy from Municipal Waste (hereinafter in this section referred to as the "Office") to be headed by a Director, who shall be appointed by the Secretary of Energy.

(b) Functions

It shall be the function of the Office to perform—

(1) the research, development, demonstration, and commercialization activities authorized under this subchapter (including those authorized under section 8837 of this title), and

(2) such other duties relating to the production of energy from municipal waste as the Secretary of Energy may assign to the Office.

(c) Consultations respecting implementation of functions

In carrying out functions transferred¹ or assigned to the Office, the Secretary of Energy shall consult with the Administrator of the Environmental Protection Agency, the Secretary of Commerce, and the heads of such other Federal agencies, as appropriate.

(d) Transfer of related functions and personnel from Department of Energy

The Secretary shall provide for the transfer to the Office of the functions relating to, and personnel of the Department who are responsible for the administration of, programs in existence on June 30, 1980, which relate to the research, development, demonstration, and commercialization of technologies for the recovery of energy from municipal waste.

(Pub. L. 96-294, title II, §239, June 30, 1980, 94 Stat. 704.)

§ 8840. Termination of authorities

No financial assistance may be committed to or made under this subchapter after September 30, 1984. This section shall not be construed to affect the authority of the Secretary of Energy to spend funds after such date pursuant to any award of financial assistance made on or before that date.

(Pub. L. 96-294, title II, §240, June 30, 1980, 94 Stat. 705.)

SUBCHAPTER III—RURAL, AGRICULTURAL, AND FORESTRY BIOMASS ENERGY

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 8802 of this title.

§ 8851. Model demonstration biomass energy facilities; establishment, public inspection, etc.; authorization of appropriations

(a) The Secretary of Agriculture shall establish not more than ten model demonstration biomass energy facilities for purposes of exhibiting the most advanced technology available for producing biomass energy. Such facilities and information regarding the operation of such facilities shall be available for public inspection, and, to the extent practicable, such facilities shall be established in various regions in the United States. Such facilities may be established in cooperation with appropriate departments or agencies of the States, or appropriate in various regions in the United States. Such facilities may be established in cooperation with appropriate departments or agencies of the States, or appropriate departments, agencies, or other instrumentalities of the United States.

(b) For purposes of carrying out subsection (a) of this section, there is authorized to be appropriated \$5,000,000 for each of the fiscal years 1981, 1982, 1983, and 1984.

(Pub. L. 96-294, title II, §251, June 30, 1980, 94 Stat. 705.)

¹ So in original. Probably should be "transferred".

§ 8852. Coordination of research and extension activities; consultative requirements

(a) The Secretary of Agriculture shall coordinate the applied research and extension programs conducted under this subchapter and under the amendments made by this subchapter to section 1419 [7 U.S.C. 3154] and subtitle B of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 [7 U.S.C. 3129],¹ section 1 of the Bankhead-Jones Act [7 U.S.C. 427], section 3 of the Forest and Rangeland Renewable Resources Research Act of 1978 [16 U.S.C. 1642], and sections 1 and 2 of the Smith-Lever Act [7 U.S.C. 341, 342] with the programs of the Department of Energy.

(b) In carrying out this subchapter and the amendments made by this subchapter, the Secretary of Agriculture shall consult on a continuing basis with—

(1) the Subcommittee on Food, Agricultural, and Forestry Research of the Federal Coordinating Council for Science, Engineering, and Technology;

(2) the Joint Council on Food and Agricultural Sciences; and

(3) the National Agricultural Research and Extension Users Advisory Board;

for the purpose of coordinating research and extension activities.

(Pub. L. 96-294, title II, §257, June 30, 1980, 94 Stat. 708; Pub. L. 97-98, title XIV, §1406(c), Dec. 22, 1981, 95 Stat. 1299.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original “this subtitle”, meaning subtitle C (§§251-262) of title II of Pub. L. 96-294, June 30, 1980, 94 Stat. 705, as amended, which enacted this subchapter and sections 1435 and 3129 of Title 7, Agriculture, and amended sections 341, 342, 427, and 3154 of Title 7 and sections 590h and 1642 of Title 16, Conservation. For complete classification of subtitle C to the Code, see Tables.

7 U.S.C. 3129, referred to in subsec. (a), was repealed by Pub. L. 101-624, title XVI, §1601(f)(1)(C), Nov. 28, 1990, 104 Stat. 3704.

AMENDMENTS

1981—Subsec. (b)(1). Pub. L. 97-98 substituted “Subcommittee on Food, Agricultural, and Forestry Research” for “Subcommittee on Food and Renewable Resources”.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-98 effective Dec. 22, 1981, see section 1801 of Pub. L. 97-98, set out as an Effective Date note under section 4301 of Title 7, Agriculture.

§ 8853. Lending for energy production and conservation projects by production credit associations, Federal land banks, and banks for cooperatives

The Farm Credit Administration shall encourage production credit associations, Federal land banks, and banks for cooperatives to use existing authorities to make loans to eligible persons for commercially feasible biomass energy projects.

(Pub. L. 96-294, title II, §258, June 30, 1980, 94 Stat. 709.)

¹ See References in Text note below.

§ 8854. Utilization of National Forest System in wood energy development projects

The Secretary of Agriculture may make available the timber resources of the National Forest System, in accordance with appropriate timber appraisal and sale procedures, for use by biomass energy projects.

(Pub. L. 96-294, title II, §261, June 30, 1980, 94 Stat. 710.)

§ 8855. Forest Service leases and permits

It is the intent of the Congress that the Secretary of Agriculture shall process applications for leases of National Forest System lands and for permits to explore, drill, and develop resources on land leased from the Forest Service, notwithstanding the current status of any plan being prepared under section 1604 of title 16.

(Pub. L. 96-294, title II, §262, June 30, 1980, 94 Stat. 710.)

SUBCHAPTER IV—MISCELLANEOUS
BIOMASS PROVISIONS

§ 8871. Use of gasohol in Federal motor vehicles

(a) Exercise of President's authority pursuant to executive order respecting use

The President shall, by executive order, require that motor vehicles which are owned or leased by Federal agencies and are capable of operating on gasohol shall use gasohol where available at reasonable prices and in reasonable quantities.

(b) Exceptions

The President may provide for exceptions to the requirement of subsection (a) of this section where necessary, including to protect the national security.

(c) Gasohol requirements

Such executive order shall specify the alcohol-gasoline mixture or mixtures which shall constitute “gasohol” for purposes of such order, as well as specifications for its use.

(Pub. L. 96-294, title II, §271, June 30, 1980, 94 Stat. 710.)

REPORT ON EXEMPTIONS AND SENSE OF CONGRESS
REGARDING PURCHASE OF DOMESTIC GASOHOL

Pub. L. 102-190, div. A, title VIII, §841(c), (d), Dec. 5, 1991, 105 Stat. 1449, provided that:

“(c) REPORT ON EXEMPTIONS.—The Secretary of Defense shall review all exemptions granted for the Department of Defense, and the Administrator of the General Services Administration shall review all exemptions granted for Federal agencies and departments, to the requirements of section 2398 of title 10, United States Code, and section 271 of the Energy Security Act (Public Law 96-294; 42 U.S.C. 8871) and shall terminate any exemption that the Secretary or the Administrator determines is no longer appropriate. Not later than 90 days after the date of the enactment of this Act [Dec. 5, 1991], the Secretary and the Administrator shall submit jointly to Congress a report on the results of the review, with a justification for the exemptions that remain in effect under those provisions of law.

“(d) SENSE OF CONGRESS.—It is the sense of Congress that whenever any motor vehicle capable of operating on gasoline or alcohol-gasoline blends that is owned or operated by the Department of Defense or any other de-

partment or agency of the Federal Government is refueled, it shall be refueled with an alcohol-gasoline blend containing at least 10 percent domestically produced alcohol if available along the normal travel route of the vehicle at the same or lower price than unleaded gasoline."

EX. ORD. NO. 12261. IMPLEMENTATION OF USE OF GASOHOL IN FEDERAL MOTOR VEHICLES

Ex. Ord. No. 12261, Jan. 5, 1981, 46 F.R. 2023, provided: By the authority vested in me as President of the United States of America by Section 271 of the Energy Security Act (94 Stat. 710; Public Law 96-294; 42 U.S.C. 8871), in order to require Federal agencies which own or lease motor vehicles to use gasohol in those vehicles which are capable of operating on gasohol where it is available at reasonable prices and in reasonable quantities, it is hereby ordered as follows:

1-101. In procurement actions for unleaded gasoline motor fuel, Federal agencies shall, whenever feasible, specify that gasohol is an acceptable substitute motor fuel. In such procurements there shall be a preference for the purchase of gasohol.

1-102. Agencies may procure the components of gasohol and do their own blending.

1-103. In determining the feasibility of specifying gasohol as a substitute motor fuel in procurement actions for unleaded gasoline, agencies shall include in their considerations such factors as the availability of storage facilities for bulk purchases and the number of vehicles capable of operating on gasohol.

1-104. Agencies shall designate those vehicles which are capable of using gasohol, consistent with overall agency needs and sound vehicle management practices. Agencies shall specify the conditions governing the use of gasohol, including when gasohol shall be purchased from normal retail outlets by vehicle operators.

1-105. The use of gasohol by the Department of Defense pursuant to this Order shall be in accordance with Section 815 of the Department of Defense Authorization Act, 1980 (93 Stat. 817; Public Law 96-107; 10 U.S.C. 2388 note) which provides for the use of gasohol to the maximum extent feasible and consistent with overall defense needs and sound vehicle management practices, as determined by the Secretary of Defense.

1-106. Vehicles used in experimental programs to test fuels other than gasohol are excepted from this Order.

1-107. The authority vested in the President by Section 271(b) of the Energy Security Act (42 U.S.C. 8871(b)) is delegated to the Secretary of Defense with respect to gasohol use by the Department of Defense, and delegated to the Administrator of General Services with respect to gasohol use by other agencies.

1-108. Federal agencies shall make available to the Department of Energy, upon request, relevant data or information they possess concerning agency gasohol usage.

1-109. For purposes of this Order "Gasohol" means a motor fuel which has an octane rating of not less than 87 (R+M)/2 and which consists of approximately 90 percent unleaded gasoline and approximately 10 percent anhydrous (199 proof or above) ethyl alcohol derived from biomass, as defined in Section 203(2)(A) of the Energy Security Act (94 Stat. 683; Public Law 96-294; 42 U.S.C. 8802(2)(A)).

1-110. (a) The Secretary of Defense with respect to gasohol use by the Department of Defense, and the Administrator of General Services with respect to gasohol use by other agencies, shall issue such guidelines for the implementation of this Order as they deem appropriate.

(b) Such guidelines shall provide for a determination of reasonable prices and reasonable quantities based on the local prevailing price of unleaded gasolines, the octane requirements for vehicles in the Federal fleet, local market availability of gasohol or its components, and other such factors, as may be appropriate.

JIMMY CARTER.

CHAPTER 97—ACID PRECIPITATION PROGRAM AND CARBON DIOXIDE STUDY

SUBCHAPTER I—ACID PRECIPITATION

- Sec.
8901. Introductory provisions.
(a) Congressional statement of findings and purpose.
(b) Congressional declaration of purpose.
(c) "Acid precipitation" defined.
8902. Comprehensive ten-year program.
(a) Implementation by Acid Precipitation Task Force; membership, etc., of Task Force.
(b) Research management consortium; membership, responsibilities, etc.
(c) Director of research program.
8903. Comprehensive research plan.
(a) Preparation by Task Force for ten-year program; purposes.
(b) Scope.
(c) Procedures applicable.
(d) Convening of Task Force.
(e) Submission of annual report to President and Congress by Task Force.
(f) Applicability of other statutory provisions to Task Force or plan.
8904. Implementation of comprehensive plan; new or existing regulatory authorities, etc., not granted or modified.
8905. Authorization of appropriations.
8906. Updated data base on acid content in precipitation; new monitoring site not required.

SUBCHAPTER II—CARBON DIOXIDE

8911. Comprehensive study of projected impact on atmospheric levels of fossil fuel combustion, etc.
(a) Implementing agreement between Director of Office of Science and Technology and National Academy of Sciences; contents; conduct; status report by President respecting negotiations of Office.
(b) Final report by Office and Academy; contents; prior clearance or review of work of Academy; recommendations.
(c) Information from other Federal agencies and departments.
(d) Separate assessment by Office of interagency implementation requirements.
8912. Authorization of appropriations.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 7403 of this title.

SUBCHAPTER I—ACID PRECIPITATION

§ 8901. Introductory provisions

(a) Congressional statement of findings and purpose

The Congress finds and declares that acid precipitation resulting from other than natural sources—

- (1) could contribute to the increasing pollution of natural and man-made water systems;
- (2) could adversely affect agricultural and forest crops;
- (3) could adversely affect fish and wildlife and natural ecosystems generally;
- (4) could contribute to corrosion of metals, wood, paint, and masonry used in construction and ornamentation of buildings and public monuments;

(5) could adversely affect public health and welfare; and

(6) could affect areas distant from sources and thus involve issues of national and international policy.

(b) Congressional declaration of purpose

The Congress declares that it is the purpose of this subchapter—

(1) to identify the causes and sources of acid precipitation;

(2) to evaluate the environmental, social, and economic effects of acid precipitation; and

(3) based on the results of the research program established by this subchapter and to the extent consistent with existing law, to take action to the extent necessary and practicable (A) to limit or eliminate the identified emissions which are sources of acid precipitation, and (B) to remedy or otherwise ameliorate the harmful effects which may result from acid precipitation.

(c) "Acid precipitation" defined

For purposes of this subchapter the term "acid precipitation" means the wet or dry deposition from the atmosphere of acid chemical compounds.

(Pub. L. 96-294, title VII, §702, June 30, 1980, 94 Stat. 770.)

SHORT TITLE

Section 701 of title VII Pub. L. 96-294 provided that: "This title [enacting this chapter] may be cited as the 'Acid Precipitation Act of 1980'."

§ 8902. Comprehensive ten-year program

(a) Implementation by Acid Precipitation Task Force; membership, etc., of Task Force

There is hereby established a comprehensive ten-year program to carry out the provisions of this subchapter; and to implement this program there shall be formed an Acid Precipitation Task Force (hereafter in this subchapter referred to as the "Task Force"), of which the Secretary of Agriculture, the Administrator of the Environmental Protection Agency, and the Administrator of the National Oceanic and Atmospheric Administration shall be joint chairmen. The remaining membership of the Task Force shall consist of—

(1) one representative each from the Department of the Interior, the Department of Health and Human Services, the Department of Commerce, the Department of Energy, the Department of State, the National Aeronautics and Space Administration, the Council on Environmental Quality, the National Science Foundation, and the Tennessee Valley Authority;

(2) the director of the Argonne National Laboratory, the director of the Brookhaven National Laboratory, the director of the Oak Ridge National Laboratory, and the director of the Pacific Northwest National Laboratory; and

(3) four additional members to be appointed by the President.

(b) Research management consortium; membership, responsibilities, etc.

The four National Laboratories (referred to in subsection (a)(2) of this section) shall constitute

a research management consortium having the responsibilities described in section 8903(b)(13) of this title as well as the general responsibilities required by their representation on the Task Force. In carrying out these responsibilities the consortium shall report to, and act pursuant to direction from, the joint chairmen of the Task Force.

(c) Director of research program

The Administrator of the National Oceanic and Atmospheric Administration shall serve as the director of the research program established by this subchapter.

(Pub. L. 96-294, title VII, §703, June 30, 1980, 94 Stat. 771.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8905 of this title.

§ 8903. Comprehensive research plan

(a) Preparation by Task Force for ten-year program; purposes

The Task Force shall prepare a comprehensive research plan for the ten-year program (hereafter in this subchapter referred to as the "comprehensive plan"), setting forth a coordinated program (1) to identify the causes and effects of acid precipitation and (2) to identify actions to limit or ameliorate the harmful effects of acid precipitation.

(b) Scope

The comprehensive plan shall include programs for—

(1) identifying the sources of atmospheric emissions contributing to acid precipitation;

(2) establishing and operating a nationwide long-term monitoring network to detect and measure levels of acid precipitation;

(3) research in atmospheric physics and chemistry to facilitate understanding of the processes by which atmospheric emissions are transformed into acid precipitation;

(4) development and application of atmospheric transport models to enable prediction of long-range transport of substances causing acid precipitation;

(5) defining geographic areas of impact through deposition monitoring, identification of sensitive areas, and identification of areas at risk;

(6) broadening of impact data bases through collection of existing data on water and soil chemistry and through temporal trend analysis;

(7) development of dose-response functions with respect to soils, soil organisms, aquatic and amphibious organisms, crop plants, and forest plants;

(8) establishing and carrying out system studies with respect to plant physiology, aquatic ecosystems, soil chemistry systems, soil microbial systems, and forest ecosystems;

(9) economic assessments of (A) the environmental impacts caused by acid precipitation on crops, forests, fisheries, and recreational and aesthetic resources and structures, and (B) alternative technologies to remedy or otherwise ameliorate the harmful effects which may result from acid precipitation;

(10) documenting all current Federal activities related to research on acid precipitation and ensuring that such activities are coordinated in ways that prevent needless duplication and waste of financial and technical resources;

(11) effecting cooperation in acid precipitation research and development programs, ongoing and planned, with the affected and contributing States and with other sovereign nations having a commonality of interest;

(12) subject to subsection (f)(1) of this section, management by the Task Force of financial resources committed to Federal acid precipitation research and development;

(13) subject to subsection (f)(2) of this section, management of the technical aspects of Federal acid precipitation research and development programs, including but not limited to (A) the planning and management of research and development programs and projects, (B) the selection of contractors and grantees to carry out such programs and projects, and (C) the establishment of peer review procedures to assure the quality of research and development programs and their products; and

(14) analyzing the information available regarding acid precipitation in order to formulate and present periodic recommendations to the Congress and the appropriate agencies about actions to be taken by these bodies to alleviate acid precipitation and its effects.

(c) Procedures applicable

The comprehensive plan—

(1) shall be submitted in draft form to the Congress, and for public review, within six months after June 30, 1980;

(2) shall be available for public comment for a period of sixty days after its submission in draft form under paragraph (1);

(3) shall be submitted in final form, incorporating such needed revisions as arise from comments received during the review period, to the President and the Congress within forty-five days after the close of the period allowed for comments on the draft comprehensive plan under paragraph (2); and

(4) shall constitute the basis on which requests for authorizations and appropriations are to be made for the nine fiscal years following the fiscal year in which the comprehensive plan is submitted in final form under paragraph (3).

(d) Convening of Task Force

The Task Force shall convene as necessary, but no less than twice during each fiscal year of the ten-year period covered by the comprehensive plan.

(e) Submission of annual report to President and Congress by Task Force

The Task Force shall submit to the President and the Congress by January 15 of each year an annual report which shall detail the progress of the research program under this subchapter and which shall contain such recommendations as are developed under subsection (b)(14) of this section.

(f) Applicability of other statutory provisions to Task Force or plan

(1) Subsection (b)(12) of this section shall not be construed as modifying, or as authorizing the Task Force or the comprehensive plan to modify, any provision of an appropriation Act (or any other provision of law relating to the use of appropriated funds) which specifies (A) the department or agency to which funds are appropriated, or (B) the obligations of such department or agency with respect to the use of such funds.

(2) Subsection (b)(13) of this section shall not be construed as modifying, or as authorizing the Task Force or the comprehensive plan to modify, any provision of law (relating to or involving a department or agency) which specifies (A) procurement practices for the selection, award, or management of contracts or grants by such department or agency, or (B) program activities, limitations, obligations, or responsibilities of such department or agency.

(Pub. L. 96-294, title VII, §704, June 30, 1980, 94 Stat. 771.)

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (e) of this section relating to the requirement that the Task Force submit an annual report to Congress, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 1st item on page 153 of House Document No. 103-7.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8902, 8904, 8905 of this title.

§ 8904. Implementation of comprehensive plan; new or existing regulatory authorities, etc., not granted or modified

(a) The comprehensive plan shall be carried out during the nine fiscal years following the fiscal year in which the comprehensive plan is submitted in its final form under section 8903(c)(3) of this title; and—

(1) shall be carried out in accord with, and meet the program objectives specified in, paragraphs (1) through (11) of section 8903(b) of this title;

(2) shall be managed in accord with paragraphs (12) through (14) of such section; and

(3) shall be funded by annual appropriations, subject to annual authorizations which shall be made for each fiscal year of the program (as provided in section 8905 of this title) after the submission of the Task Force progress report which under section 8903(e) of this title is required to be submitted by January 15 of the calendar year in which such fiscal year begins.

(b) Nothing in this subchapter shall be deemed to grant any new regulatory authority or to limit, expand, or otherwise modify any regulatory authority under existing law, or to establish new criteria, standards, or requirements for regulation under existing law.

(Pub. L. 96-294, title VII, §705, June 30, 1980, 94 Stat. 773.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8905 of this title.

§ 8905. Authorization of appropriations

(a) For the purpose of establishing the Task Force and developing the comprehensive plan under section 8903 of this title there is authorized to be appropriated to the National Oceanic and Atmospheric Administration for fiscal year 1981 the sum of \$5,000,000 to remain available until expended.

(b) Authorizations of appropriations for the nine fiscal years following the fiscal year in which the comprehensive plan is submitted in final form under section 8903(c)(3) of this title, for purposes of carrying out the comprehensive ten-year program established by section 8902(a) of this title and implementing the comprehensive plan under sections 8903 and 8904 of this title, shall be provided on an annual basis in authorization Acts hereafter enacted; but the total sum of dollars authorized for such purposes for such nine fiscal years shall not exceed \$45,000,000 except as may be specifically provided by reference to this paragraph in the authorization Acts involved.

(Pub. L. 96-294, title VII, §706, June 30, 1980, 94 Stat. 773.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8904 of this title.

§ 8906. Updated data base on acid content in precipitation; new monitoring site not required

(a)(1) The National Weather Service of the National Oceanic and Atmospheric Administration shall maintain an updated data base describing the acid content in precipitation in the United States, using information from Federal acid precipitation monitoring sites.

(2) Such data shall be available to interested parties by Weather Service Forecast Offices in the National Weather Service, or through such other facilities or means as the Assistant Administrator for Weather Services, National Oceanic and Atmospheric Administration, shall direct, for those areas of the United States where and at such time as such information is presently available, within 120 days after November 17, 1988.

(3) Where other Federal agencies collect such data in the course of carrying out their statutory missions, the heads of those agencies and the Administrator of the National Oceanic and Atmospheric Administration shall arrange for the transfer of such data to the National Weather Service.

(b) Nothing in this section shall be construed to require any Federal agency to establish any new acid precipitation monitoring site.

(Pub. L. 100-685, title IV, §414, Nov. 17, 1988, 102 Stat. 4101.)

CODIFICATION

Section was enacted as part of the National Aeronautics and Space Administration Authorization Act, Fiscal Year 1989, and not as part of the Acid Precipitation Act of 1980 which comprises this chapter.

SUBCHAPTER II—CARBON DIOXIDE

§ 8911. Comprehensive study of projected impact on atmospheric levels of fossil fuel combustion, etc.**(a) Implementing agreement between Director of Office of Science and Technology and National Academy of Sciences; contents; conduct; status report by President respecting negotiations of Office**

(1) The Director of the Office of Science and Technology Policy shall enter into an agreement with the National Academy of Sciences to carry out a comprehensive study of the projected impact, on the level of carbon dioxide in the atmosphere, of fossil fuel combustion, coal-conversion and related synthetic fuels activities authorized in this Act, and other sources. Such study should also include an assessment of the economic, physical, climatic, and social effects of such impacts. In conducting such study the Office and the Academy are encouraged to work with domestic and foreign governmental and non-governmental entities, and international entities, so as to develop an international, worldwide assessment of the problems involved and to suggest such original research on any aspect of such problems as the Academy deems necessary.

(2) The President shall report to the Congress within six months after June 30, 1980, regarding the status of the Office's negotiations to implement the study required under this section.

(b) Final report by Office and Academy; contents; prior clearance or review of work of Academy; recommendations

A report including the major findings and recommendations resulting from the study required under this section shall be submitted to the Congress by the Office and the Academy not later than three years after June 30, 1980. The Academy contribution to such report shall not be subject to any prior clearance or review, nor shall any prior clearance or conditions be imposed on the Academy as part of the agreement made by the Office with the Academy under this section. Such report shall in any event include recommendations regarding—

(1) how a long-term program of domestic and international research, monitoring, modeling, and assessment of the causes and effects of varying levels of atmospheric carbon dioxide should be structured, including comments by the Office on the interagency requirements of such a program and comments by the Secretary of State on the international agreements required to carry out such a program;

(2) how the United States can best play a role in the development of such a long-term program on an international basis;

(3) what domestic resources should be made available to such a program;

(4) how the ongoing United States Government carbon dioxide assessment program should be modified so as to be of increased utility in providing information and recommendations of the highest possible value to government policy makers; and

(5) the need for periodic reports to the Congress in conjunction with any long-term pro-

gram the Office and the Academy may recommend under this section.

(c) Information from other Federal agencies and departments

The Secretary of Energy, the Secretary of Commerce, the Administrator of the Environmental Protection Agency, and the Director of the National Science Foundation shall furnish to the Office or the Academy upon request any information which the Office or the Academy determines to be necessary for purposes of conducting the study required by this section.

(d) Separate assessment by Office of interagency implementation requirements

The Office shall provide a separate assessment of the interagency requirements to implement a comprehensive program of the type described in the third sentence of subsection (b) of this section.

(Pub. L. 96-294, title VII, §711, June 30, 1980, 94 Stat. 774.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a), is Pub. L. 96-294, June 30, 1980, 94 Stat. 611, as amended, known as the Energy Security Act. For complete classification of this Act to the Code, see Short Title note set out under section 8801 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8912 of this title.

§ 8912. Authorization of appropriations

For the expenses of carrying out the carbon dioxide study authorized by section 8911 of this title (as determined by the Office of Science and Technology Policy) there are authorized to be appropriated such sums, not exceeding \$3,000,000 in the aggregate, as may be necessary. At least 80 percent of any amounts appropriated pursuant to the preceding sentence shall be provided to the National Academy of Sciences.

(Pub. L. 96-294, title VII, §712, June 30, 1980, 94 Stat. 775.)

CHAPTER 98—OCEAN THERMAL ENERGY CONVERSION RESEARCH AND DEVELOPMENT

Sec.	
9001.	Congressional findings and declaration of purpose.
9002.	Comprehensive program management plan. <ul style="list-style-type: none"> (a) Preparation of plan. (b) Transmittal of plan to Congress. (c) Requisite provisions of plan.
9003.	Research and development. <ul style="list-style-type: none"> (a) Initiation of research. (b) Evaluations, tests, and dissemination of information, data, and materials. (c) Consideration of new or improved technologies.
9004.	Pilot and demonstration plants. <ul style="list-style-type: none"> (a) Initiation of program. (b) Demonstration program goals. (c) Financial assistance.
9005.	Technology application. <ul style="list-style-type: none"> (a) Technology application and market development plan. (b) Transmittal of plan to Congress. (c) Respondent proposals.
9006.	Program selection criteria.

Sec.	
9007.	Technical Panel of Energy Research Advisory Board. <ul style="list-style-type: none"> (a) Establishment. (b) Membership. (c) Compliance with laws and regulations. (d) Review and recommendations. (e) Report. (f) Submittal of report to Secretary of Energy. (g) Cooperation by agency heads. (h) Staff, funds, and other support from Secretary of Energy.
9008.	Definitions.
9009.	Authorization of appropriations.

§ 9001. Congressional findings and declaration of purpose

(a) The Congress finds that—

(1) the supply of nonrenewable fuels in the United States is slowly being depleted;

(2) alternative sources of energy must be developed;

(3) ocean thermal energy is a renewable energy resource that can make a significant contribution to the energy needs of the United States;

(4) the technology base for ocean thermal energy conversion has improved over the past two years, and has consequently lowered the technical risk involved in constructing moderate-sized pilot plants with an electrical generating capacity of about ten to forty megawatts;

(5) while the Federal ocean thermal energy conversion program has grown in size and scope over the past several years, it is in the national interest to accelerate efforts to commercialize ocean thermal energy conversion by building pilot and demonstration facilities and to begin planning for the commercial demonstration of ocean thermal energy conversion technology;

(6) a strong and innovative domestic industry committed to the commercialization of ocean thermal energy conversion must be established, and many competent domestic industrial groups are already involved in ocean thermal energy conversion research and development activity; and

(7) consistent with the findings of the Domestic Policy Review on Solar Energy, ocean thermal energy conversion energy can potentially contribute at least one-tenth of quad of energy per year by the year 2000.

(b) Therefore, the purpose of this chapter is to accelerate ocean thermal energy conversion technology development to provide a technical base for meeting the following goals:

(1) demonstration by 1986 of at least one hundred megawatts of electrical capacity or energy product equivalent from ocean thermal energy conversion systems;

(2) demonstration by 1989 of at least five hundred megawatts of electrical capacity or energy product equivalent from ocean thermal energy conversion systems;

(3) achievement in the mid-1990's, for the gulf coast region of the continental United States and for islands in the United States, its possessions and its territories, an average cost

of electricity or energy product equivalent produced by installed ocean thermal energy conversion systems that is competitive with conventional energy sources; and

(4) establish as a national goal ten thousand megawatts of electrical capacity or energy product equivalent from ocean thermal energy conversion systems by the year 1999.

(Pub. L. 96-310, §2, July 17, 1980, 94 Stat. 941.)

SHORT TITLE

Section 1 of Pub. L. 96-310 provided: "That this Act [enacting this chapter] may be cited as the 'Ocean Thermal Energy Conversion Research, Development, and Demonstration Act'."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9005 of this title.

§ 9002. Comprehensive program management plan

(a) Preparation of plan

(1) The Secretary is authorized and directed to prepare a comprehensive program management plan for the conduct under this chapter of research, development, and demonstration activities consistent with the provisions of sections 9003, 9004, and 9005 of this title.

(2) In the preparation of such plan, the Secretary shall consult with the Administrator of the National Oceanic and Atmospheric Administration, the Administrator of the Maritime Administration, the Administrator of the National Aeronautics and Space Administration, and the heads of such other Federal agencies and such public and private organizations as he deems appropriate.

(b) Transmittal of plan to Congress

The Secretary shall transmit the comprehensive program management plan to the Committee on Science and Technology of the House of Representatives and the Committee on Energy and Natural Resources of the Senate within nine months after July 17, 1980.

(c) Requisite provisions of plan

The detailed description of the comprehensive plan under this section shall include, but need not be limited to—

(1) the anticipated research, development, and demonstration objectives to be achieved by the program;

(2) the program strategies and technology application and market development plans, including detailed milestone goals to be achieved during the next fiscal year for all major activities and projects;

(3) a five-year implementation schedule for program elements with associated budget and program management resources requirements;

(4) a detailed description of the functional organization of the program management including identification of permanent test facilities and of a lead center responsible for technology support and project management;

(5) the estimated relative financial contributions of the Federal Government and non-Federal participants in the pilot and demonstration projects;

(6) supporting research needed to solve problems which may inhibit or limit development

of ocean thermal energy conversion systems; and

(7) an analysis of the environmental, economic, and societal impacts of ocean thermal energy conversion facilities.

(Pub. L. 96-310, §3, July 17, 1980, 94 Stat. 942; Pub. L. 104-66, title I, §1051(c), Dec. 21, 1995, 109 Stat. 716.)

AMENDMENTS

1995—Subsec. (d). Pub. L. 104-66 struck out subsec. (d) which read as follows:

"(d)(1) Concurrently with the submission of the President's annual budget for each subsequent year, the Secretary shall transmit to the Congress a detailed description of modifications which may be necessary to revise appropriately the comprehensive plan as then in effect, setting forth any changes in circumstances which may have occurred since the plan or the last previous modification thereof was transmitted in accordance with this section.

"(2) Such description shall also include a detailed justification of any such changes, a detailed description of the progress made toward achieving the goals of this chapter, a statement on the status of interagency cooperation in meeting such goals, any comments on and recommendations for improvements in the comprehensive program management plan made by the Technical Panel established under section 9007 of this title, and any legislative or other recommendations which the Secretary may have to help attain such goals."

CHANGE OF NAME

Committee on Science and Technology of House of Representatives changed to Committee on Science, Space, and Technology of House of Representatives by House Resolution No. 5, One Hundredth Congress, Jan. 6, 1987. Committee on Science, Space, and Technology of House of Representatives treated as referring to Committee on Science of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9007 of this title.

§ 9003. Research and development

(a) Initiation of research

The Secretary shall initiate research or accelerate existing research in areas in which the lack of knowledge limits development of ocean thermal energy conversion systems in order to achieve the purposes of this chapter.

(b) Evaluations, tests, and dissemination of information, data, and materials

The Secretary shall conduct evaluations, arrange for tests, and disseminate to developers information, data, and materials necessary to support the design efforts undertaken pursuant to section 9004 of this title. Specific technical areas to be addressed shall include, but not be limited to—

(1) interface requirements between the platform and cold water pipe;

(2) cold water pipe deployment techniques;

(3) heat exchangers;

(4) control system simulation;

(5) stationkeeping requirements; and

(6) energy delivery systems, such as electric cable or energy product transport.

(c) Consideration of new or improved technologies

The Secretary shall, for the purpose of performing his responsibilities pursuant to this

chapter, solicit proposals and evaluate any reasonable new or improved technology, a description of which is submitted to the Secretary in writing, which could lead or contribute to the development of ocean thermal energy conversion system technology.

(Pub. L. 96-310, § 4, July 17, 1980, 94 Stat. 943.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9002 of this title.

§ 9004. Pilot and demonstration plants

(a) Initiation of program

The Secretary is authorized to initiate a program to design, construct, and operate well instrumented ocean thermal energy conversion facilities of sufficient size to demonstrate the technical feasibility and potential economic feasibility of utilizing the various forms of ocean thermal energy conversion to displace non-renewable fuels. To achieve the goals of this section and to facilitate development of a strong industrial basis for the application of ocean thermal energy conversion system technology, at least two independent parallel demonstration projects shall be competitively selected.

(b) Demonstration program goals

The specific goals of the demonstration program shall include at a minimum—

- (1) the demonstration of ocean thermal energy conversion technical feasibility through multiple pilot and demonstration plants with a combined capacity of at least one hundred megawatts of electrical capacity or energy product equivalent by the year 1986;
- (2) the delivery of baseload electricity to utilities located on land or the production of commercially attractive quantities of energy product; and
- (3) the continuous operation of each pilot and demonstration facility for a sufficient period of time to collect and analyze system performance and reliability data.

(c) Financial assistance

In providing any financial assistance under this section, the Secretary shall (1) give full consideration to those projects which will provide energy to United States offshore States, its territories, and its possessions and (2) seek satisfactory cost-sharing arrangements when he deems such arrangements to be appropriate.

(Pub. L. 96-310, § 5, July 17, 1980, 94 Stat. 943.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9002, 9003, 9009 of this title.

§ 9005. Technology application

(a) Technology application and market development plan

The Secretary shall, in consultation with the Administrator of the National Oceanic and Atmospheric Administration, the Administrator of the Maritime Administration, the Administrator of the National Aeronautics and Space Administration, and the Technical Panel established under section 9007 of this title, prepare a comprehensive technology application and mar-

ket development plan that will permit realization of the ten-thousand-megawatt national goal by the year 1999. Such plans shall include at a minimum—

- (1) an assessment of those Government actions required to achieve a two-hundred- to four-hundred-megawatt electrical-commercial demonstration of ocean thermal energy conversion systems in time to have industry meet the goal contained in section 9001(b)(2) of this title including a listing of those financial, property, and patent right packages most likely to lead to early commercial demonstration at minimum cost to the Federal Government;
- (2) an assessment of further Government actions required to permit expansion of the domestic ocean thermal energy conversion industry to meet the goal contained in section 9001(b)(3) of this title;
- (3) an analysis of further Government actions necessary to aid the industry in minimizing and removing any legal and institutional barriers such as the designation of a lead agency; and
- (4) an assessment of the necessary Government actions to assist in eliminating economic uncertainties through financial incentives, such as loan guarantees, price supports, or other inducements.

(b) Transmittal of plan to Congress

The Secretary shall transmit such comprehensive technology application and market development plan to the Congress within three years after July 17, 1980, and update the plan on an annual basis thereafter.

(c) Respondent proposals

As part of the competitive procurement initiative for design and construction of the pilot and demonstration projects authorized in section 9009(c) of this title, each respondent shall include in its proposal (1) a plan leading to a full-scale, first-of-a-kind facility based on a proposed demonstration system; and (2) the financial and other contributions the respondent will make toward meeting the national goals.

(Pub. L. 96-310, § 6, July 17, 1980, 94 Stat. 944.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9002 of this title.

§ 9006. Program selection criteria

The Secretary shall, in fulfilling his responsibilities under this chapter, select program activities and set priorities which are consistent with the following criteria:

- (1) realization of energy production costs for ocean thermal energy conversion systems that are competitive with costs from conventional energy production systems;
- (2) encouragement of projects for which contributions to project costs are forthcoming from private, industrial, utility, or governmental entities for the purpose of sharing with the Federal Government the costs of purchasing and installing ocean thermal energy conversion systems;
- (3) promotion of ocean thermal energy conversion facilities for coastal areas, islands, and isolated military institutions which are

vulnerable to interruption in the fossil fuel supply;

(4) preference for and priority to persons and domestic firms whose base of operations is in the United States as will assure that the program under this chapter promotes the development of a United States domestic technology for ocean thermal energy conversion; and

(5) preference for proposals for pilot and demonstration projects in which the respondents certify their intent to become an integral part of the industrial infrastructure necessary to meet the goals of this chapter.

(Pub. L. 96-310, §7, July 17, 1980, 94 Stat. 944.)

§ 9007. Technical Panel of Energy Research Advisory Board

(a) Establishment

A Technical Panel of the Energy Research Advisory Board shall be established to advise the Board on the conduct of the ocean thermal energy conversion program.

(b) Membership

(1) The Technical Panel shall be comprised of such representatives from domestic industry, universities, Government laboratories, financial, environmental and other organizations as the Chairman of the Energy Research Advisory Board deems appropriate based on his assessment of the technical and other qualifications of such representative.

(2) Members of the Technical Panel need not be members of the full Energy Research Advisory Board.

(c) Compliance with laws and regulations

The activities of the Technical Panel shall be in compliance with any laws and regulations guiding the activities of technical and fact-finding groups reporting to the Energy Research Advisory Board.

(d) Review and recommendations

The Technical Panel shall review and may make recommendations on the following items, among others:

(1) implementation and conduct of the programs established by this chapter;

(2) definition of ocean thermal energy conversion system performance requirements for various user applications; and

(3) economic, technological, and environmental consequences of the deployment of ocean thermal energy conversion systems.

(e) Report

The Technical Panel shall submit to the Energy Research Advisory Board on at least an annual basis a written report of its findings and recommendations with regard to the program. Such report, shall include at a minimum—

(1) a summary of the Panel's activities for the preceding year;

(2) an assessment and evaluation of the status of the programs mandated by this chapter; and

(3) comments on and recommendations for improvements in the comprehensive program management plan required under section 9002 of this title.

(f) Submittal of report to Secretary of Energy

After consideration of the Technical Panel report, the Energy Research Advisory Board shall submit such report, together with any comments such Board deems appropriate, to the Secretary.

(g) Cooperation by agency heads

The heads of the departments, agencies, and instrumentalities of the executive branch of the Federal Government shall cooperate with the Technical Panel in carrying out the requirements of this section and shall furnish to the Technical Panel such information as the Technical Panel deems necessary to carry out this section.

(h) Staff, funds, and other support from Secretary of Energy

The Secretary shall provide sufficient staff, funds, and other support as necessary to enable the Technical Panel to carry out the functions described in this section.

(Pub. L. 96-310, §8, July 17, 1980, 94 Stat. 945.)

TERMINATION OF ADVISORY PANELS

Advisory panels established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a panel established by the President or an officer of the Federal Government, such panel is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a panel established by the Congress, its duration is otherwise provided for by law. See sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9005 of this title.

§ 9008. Definitions

As used in this chapter, the term—

(1) "ocean thermal energy conversion" means a method of converting part of the heat from the Sun which is stored in the surface layers of a body of water into electrical energy or energy product equivalent;

(2) "energy product equivalent" means an energy carrier including, but not limited to, ammonia, hydrogen, or molten salts or an energy-intensive commodity, including, but not limited to, electrometals, fresh water, or nutrients for aquaculture; and

(3) "Secretary" means the Secretary of Energy.

(Pub. L. 96-310, §9, July 17, 1980, 94 Stat. 946.)

§ 9009. Authorization of appropriations

(a) There is hereby authorized to be appropriated to carry out the purposes of this chapter the sum of \$20,000,000 for operating expenses for the fiscal year ending September 30, 1981, in addition to any amounts authorized to be appropriated in the fiscal year 1981 Authorization Act pursuant to section 7270 of this title.

(b) There is hereby authorized to be appropriated to carry out the purposes of this chapter the sum of \$60,000,000 for operating expenses for the fiscal year ending September 30, 1982.

(c) Funds are hereby authorized to be appropriated for fiscal year 1981 to carry out the purposes of section 9004 of this title for plant and capital equipment as follows:

Project 81-ES-1, ocean thermal energy conversion demonstration plants with a combined capacity of at least one hundred megawatts electrical or the energy product equivalent, sites to be determined, conceptual and preliminary design activities only \$5,000,000.

(d) Funds are hereby authorized to be appropriated for fiscal year 1982 to carry out the purposes of section 9004 of this title for plant and capital equipment as follows:

Project 81-ES-1, ocean thermal energy conversion demonstration plants with a combined capacity of at least one hundred megawatts electrical or the energy product equivalent, sites to be determined, conceptual and preliminary design activities only \$25,000,000.

(Pub. L. 96-310, § 10, July 17, 1980, 94 Stat. 946.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9005 of this title.

CHAPTER 99—OCEAN THERMAL ENERGY CONVERSION

- Sec.
9101. Congressional declaration of policy.
9102. Definitions.
- SUBCHAPTER I—REGULATION OF OCEAN THERMAL ENERGY CONVERSION FACILITIES AND PLANTSHIPS
9111. License for ownership, construction, and operation of ocean thermal energy conversion facilities or plantships.
(a) License requirement.
(b) Documented plantships; documented facilities; facilities located in territorial sea; facilities connected to United States by pipeline or cable.
(c) License issuance prerequisites.
(d) Issuance conditions; written agreement of compliance; disposal or removal requirements.
(e) License transfer.
(f) License eligibility.
(g) License term and renewal.
9112. Procedure.
(a) Rules and regulations.
(b) Site evaluation and preconstruction testing.
(c) Expertise or statutory responsibility descriptions.
(d) Application.
(e) Area description; additional license applications.
(f) Copies of application to other agencies.
(g) Notice, comments, and hearing.
(h) Administrative fee.
(i) Approval or denial of application; applications for same area; factors determinative of facility selection.
9113. Protection of submarine electric transmission cables and equipment.
(a) Prohibited acts; misdemeanor; penalty and fine.
(b) Culpable negligence; misdemeanor; penalty and fine.
(c) Exceptions.
(d) Suits for damages.
(e) Indemnity.
(f) Repair costs.
9114. Antitrust review.

- Sec.
(a) Review of applications by Attorney General.
(b) Issuance of license as constituting no defense for antitrust violations.
9115. Adjacent coastal States.
(a) Designation of adjacent coastal State.
(b) State coastal zone management program.
(c) Agreements and compacts between States.
9116. Diligence requirements.
(a) Rules and regulations.
(b) Termination of license.
9117. Protection of the environment.
(a) Environmental assessment program.
(b) Program purposes.
(c) Plan submittal to Congress.
(d) Reduction of program to minimum necessary level.
(e) Environmental impact statement.
(f) Discharge of pollutants.
9118. Marine environmental protection and safety of life and property at sea.
(a) Coast Guard operations.
(b) Promotion of safety of life and property.
(c) Marking components for protection of navigation.
(d) Safety zones.
(e) Rules and regulations; vessels; "ocean thermal energy conversion facility" defined.
(f) Protection of navigation.
9119. Prevention of interference with other uses of high seas.
(a) License conditions.
(b) Rules and regulations.
(c) Coast Guard operations.
9120. Monitoring of licensees' activities.
9121. Suspension, revocation, and termination of licenses.
(a) Filing of action by Attorney General; automatic suspension.
(b) Immediate suspension of construction or operation pending completion of proceedings.
9122. Recordkeeping and public access to information.
(a) Records and reports.
(b) Confidential information.
9123. Relinquishment or surrender of license.
(a) Relinquishment or surrender authority; continuation of liability.
(b) Transfer of right of way.
9124. Civil actions.
(a) Jurisdiction.
(b) Notice.
(c) Right of Administrator or Attorney General to intervene.
(d) Award of costs.
(e) Other remedies not restricted.
9125. Judicial review.
9126. Exempt operations.
(a) Test platforms.
(b) Commercial demonstration ocean thermal energy conversion facilities or plantships.
9127. Periodic review and revision of regulations.
- SUBCHAPTER II—MARITIME FINANCING FOR OCEAN THERMAL ENERGY CONVERSION
9141. Determinations under Merchant Marine Act, 1936.
- SUBCHAPTER III—ENFORCEMENT
9151. Prohibited acts.
9152. Remedies and penalties.
(a) Issuance and enforcement of orders.
(b) Civil actions by Attorney General; equitable relief.

- Sec.
- (c) Civil penalties.
(d) Criminal penalties.
(e) In rem liability of vessels.
9153. Enforcement.
(a) Enforcement responsibility of Administrator of National Oceanic and Atmospheric Administration; Coast Guard.
(b) Enforcement activities of authorized officers.
(c) Jurisdiction; venue.
(d) Definitions.
- SUBCHAPTER IV—MISCELLANEOUS PROVISIONS
9161. Law of the sea treaty.
9162. International negotiations.
9163. Relationship to other laws.
(a) Facilities and plantships as comparable to areas of exclusive Federal jurisdiction located within a State.
(b) Responsibilities and authorities of States or United States within territorial seas; applicability of State law to facilities located beyond territorial seas.
(c) Customs laws.
9164. Submarine electric transmission cable and equipment safety.
(a) Standards and regulations.
(b) Report to Congress on appropriation and staffing needs.
9165. Omitted.
9166. Authorization of appropriations.
9167. Severability.
9168. Report to Congress on promotion and enhancement of export potential of ocean thermal energy conversion components, facilities, and plantships.

§ 9101. Congressional declaration of policy

(a) It is declared to be the purposes of the Congress in this chapter to—

- (1) authorize and regulate the construction, location, ownership, and operation of ocean thermal energy conversion facilities connected to the United States by pipeline or cable, or located in whole or in part between the highwater mark and the seaward boundary of the territorial sea of the United States consistent with the Convention on the High Seas, and general principles of international law;
- (2) authorize and regulate the construction, location, ownership, and operation of ocean thermal energy conversion plantships documented under the laws of the United States, consistent with the Convention on the High Seas and general principles of international law;
- (3) authorize and regulate the construction, location, ownership, and operation of ocean thermal energy conversion plantships by United States citizens, consistent with the Convention on the High Seas and general principles of international law;
- (4) establish a legal regime which will permit and encourage the development of ocean thermal energy conversion as a commercial energy technology;
- (5) provide for the protection of the marine and coastal environment, and consideration of the interests of ocean users, to prevent or minimize any adverse impact which might occur as a consequence of the development of such

ocean thermal energy conversion facilities or plantships;

(6) make applicable certain provisions of the Merchant Marine Act, 1936 (46 U.S.C. 1177 et seq.) [46 App. U.S.C. 1101 et seq.] to assist in financing of ocean thermal energy conversion facilities and plantships;

(7) protect the interests of the United States in the location, construction, and operation of ocean thermal energy conversion facilities and plantships; and

(8) protect the rights and responsibilities of adjacent coastal States in ensuring that Federal actions are consistent with approved State coastal zone management programs and other applicable State and local laws.

(b) The Congress declares that nothing in this chapter shall be construed to affect the legal status of the high seas, the superjacent airspace, or the seabed and subsoil, including the Continental Shelf.

(Pub. L. 96-320, § 2, Aug. 3, 1980, 94 Stat. 974; Pub. L. 98-623, title VI, § 602(a)(1), Nov. 8, 1984, 98 Stat. 3410.)

REFERENCES IN TEXT

The Merchant Marine Act, 1936, referred to in subsec. (a)(6), is act June 29, 1936, ch. 858, 49 Stat. 1985, as amended, which is classified principally to chapter 27 (§ 1101 et seq.) of Title 46, Appendix, Shipping. For complete classification of this Act to the Code, see section 1245 of Title 46, Appendix, and Tables.

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-623 substituted “located in whole or in part between the highwater mark and the seaward boundary of the territorial sea” for “located in the territorial sea”.

SHORT TITLE

Section 1 of Pub. L. 96-320 provided: “That this Act [enacting this chapter and section 1279c of Title 46, Appendix, Shipping, amending sections 1271, 1273, and 1274 of Title 46, Appendix, and enacting provisions set out as a note under section 1273 of Title 46, Appendix] may be cited as the ‘Ocean Thermal Energy Conversion Act of 1980.’”

TERRITORIAL SEA OF UNITED STATES

For extension of territorial sea of United States, see Proc. No. 5928, set out as a note under section 1331 of Title 43, Public Lands.

§ 9102. Definitions

As used in this chapter, unless the context otherwise requires, the term—

- (1) “adjacent coastal State” means any coastal State which is required to be designated as such by section 9115(a)(1) of this title or is designated as such by the Administrator in accordance with section 9115(a)(2) of this title;
- (2) “Administrator” means the Administrator of the National Oceanic and Atmospheric Administration;
- (3) “antitrust laws” includes the Act of July 2, 1890, as amended [15 U.S.C. 1 et seq.], the Act of October 15, 1914, as amended [15 U.S.C. 12 et seq.], and sections 73 and 74 of the Act of August 27, 1894, as amended [15 U.S.C. 8 and 9];
- (4) “application” means any application submitted under this chapter (A) for issuance of a

license for the ownership, construction, and operation of an ocean thermal energy conversion facility or plantship; (B) for transfer or renewal of any such license; or (C) for any substantial change in any of the conditions and provisions of any such license;

(5) "coastal State" means a State in, or bordering on, the Atlantic, Pacific, or Arctic Ocean, the Gulf of Mexico, Long Island Sound, or one or more of the Great Lakes;

(6) "construction" means any activities conducted at sea to supervise, inspect, actually build, or perform other functions incidental to the building, repairing, or expanding of an ocean thermal energy conversion facility or plantship or any of its components, including but not limited to, piledriving, emplacement of mooring devices, emplacement of cables and pipelines, and deployment of the cold water pipe, and alterations, modifications, or additions to an ocean thermal energy conversion facility or plantship;

(7) "facility" means an ocean thermal energy conversion facility;

(8) "Governor" means the Governor of a State or the person designated by law to exercise the powers granted to the Governor pursuant to this chapter;

(9) "high seas" means that part of the oceans lying seaward of the territorial sea of the United States and outside the territorial sea, as recognized by the United States, of any other nation;

(10) "licensee" means the holder of a valid license for the ownership, construction, and operation of an ocean thermal energy conversion facility or plantship that was issued, transferred, or renewed pursuant to this chapter;

(11) "ocean thermal energy conversion facility" means any facility which is standing, fixed or moored in whole or in part seaward of the highwater mark and which is designed to use temperature differences in ocean water to produce electricity or another form of energy capable of being used directly to perform work, and includes any equipment installed on such facility to use such electricity or other form of energy to produce, process, refine, or manufacture a product, and any cable or pipeline used to deliver such electricity, fresh water, or product to shore, and all other associated equipment and appurtenances of such facility, to the extent they are located seaward of the highwater mark;

(12) "ocean thermal energy conversion plantship" means any vessel which is designed to use temperature differences in ocean water while floating unmoored or moving through such water, to produce electricity or another form of energy capable of being used directly to perform work, and includes any equipment installed on such vessel to use such electricity or other form of energy to produce, process, refine, or manufacture a product, and any equipment used to transfer such product to other vessels for transportation to users, and all other associated equipment and appurtenances of such vessel;

(13) "plantship" means an ocean thermal energy conversion plantship;

(14) "person" means any individual (whether or not a citizen of the United States), any cor-

poration, partnership, association, or other entity organized or existing under the laws of any nation, and any Federal, State, local or foreign government or any entity of any such government;

(15) "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the United States Virgin Islands, Guam, the Commonwealth of the Northern Marianas, and any other Commonwealth, territory, or possession over which the United States has jurisdiction;

(16) "test platform" means any floating or moored platform, barge, ship, or other vessel which is designed for limited-scale, at sea operation in order to test or evaluate the operation of components or all of an ocean thermal energy conversion system and which will not operate as an ocean thermal energy conversion facility or plantship after the conclusion of such tests or evaluation;

(17) "thermal plume" means the area of the ocean in which a significant difference in temperature, as defined in regulations by the Administrator, occurs as a result of the operation of an ocean thermal energy conversion facility or plantship; and

(18) "United States citizen" means (A) any individual who is a citizen of the United States by law, birth, or naturalization; (B) any Federal, State, or local government in the United States, or any entity of any such government; or (C) any corporation, partnership, association, or other entity, organized or existing under the laws of the United States, or of any State, which has as its president or other executive officer and as its chairman of the board of directors, or holder of similar office, an individual who is a United States citizen and which has no more of its directors who are not United States citizens than constitute a minority of the number required for a quorum necessary to conduct the business of the board.

(Pub. L. 96-320, § 3, Aug. 3, 1980, 94 Stat. 975; Pub. L. 98-623, title VI, § 602(a)(2), (e)(7), Nov. 8, 1984, 98 Stat. 3410, 3412.)

REFERENCES IN TEXT

Act of July 2, 1890, as amended, referred to in par. (3), is act July 2, 1890, ch. 647, 26 Stat. 209, as amended, known as the Sherman Act, which is classified to sections 1 to 7 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1 of Title 15 and Tables.

Act of October 15, 1914, as amended, referred to in par. (3), is act Oct. 15, 1914, ch. 323, 78 Stat. 730, as amended, known as the Clayton Act, which is classified generally to sections 12, 13, 14 to 19, 21, and 22 to 27 of Title 15, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of Title 15 and Tables.

Sections 73 and 74 of the Act of August 27, 1894, as amended, referred to in par. (3), are sections 73 and 74 of act Aug. 27, 1894, ch. 349, 28 Stat. 570. Sections 73 to 77 of such Act are known as the Wilson Tariff Act. Sections 73 to 76 enacted sections 8 to 11 of Title 15. Section 77 is not classified to the Code. For complete classification of this Act to the Code, see Short Title note under section 8 of Title 15 and Tables.

AMENDMENTS

1984—Par. (11). Pub. L. 98-623, §602(a)(2), substituted “standing, fixed or moored in whole or in part seaward of the highwater mark” for “standing or moored in or beyond the territorial sea of the United States”.

Pub. L. 98-623, §602(e)(7), substituted “fresh water” for “freshwater”.

TERRITORIAL SEA OF UNITED STATES

For extension of territorial sea of United States, see Proc. No. 5928, set out as a note under section 1331 of Title 43, Public Lands.

SUBCHAPTER I—REGULATION OF OCEAN THERMAL ENERGY CONVERSION FACILITIES AND PLANTSHIPS

§ 9111. License for ownership, construction, and operation of ocean thermal energy conversion facilities or plantships**(a) License requirement**

No person may engage in the ownership, construction, or operation of an ocean thermal energy conversion facility which is documented under the laws of the United States, which is located in whole or in part between the highwater mark and the seaward boundary of the territorial sea of the United States, or which is connected to the United States by pipeline or cable, except in accordance with a license issued pursuant to this chapter. No citizen of the United States may engage in the ownership, construction or operation of an ocean thermal energy conversion plantship except in accordance with a license issued pursuant to this chapter, or in accordance with a license issued by a foreign nation whose licenses are found by the Administrator, after consultation with the Secretary of State, to be compatible with licenses issued pursuant to this chapter.

(b) Documented plantships; documented facilities; facilities located in territorial sea; facilities connected to United States by pipeline or cable

The Administrator shall, upon application and in accordance with the provisions of this chapter, issue, transfer, amend, or renew licenses for the ownership, construction, and operation of—

(1) ocean thermal energy conversion plantships documented under the laws of the United States, and

(2) ocean thermal energy conversion facilities documented under the laws of the United States, located in whole or in part between the highwater mark and the seaward boundary of the territorial sea of the United States, or connected to the United States by pipeline or cable.

(c) License issuance prerequisites

The Administrator may issue a license to a citizen of the United States in accordance with the provisions of this chapter unless—

(1) he determines that the applicant cannot or will not comply with applicable laws, regulations, and license conditions;

(2) he determines that the construction and operation of the ocean thermal energy conversion facility or plantship will not be in the national interest and consistent with national security and other national policy goals and

objectives, including energy self-sufficiency and environmental quality;

(3) he determines, after consultation with the Secretary of the department in which the Coast Guard is operating, that the ocean thermal energy conversion facility or plantship will not be operated with reasonable regard to the freedom of navigation or other reasonable uses of the high seas and authorized uses of the Continental Shelf, as defined by United States law, treaty, convention, or customary international law;

(4) he has been informed, within 45 days after the conclusion of public hearings on that application, or on proposed licenses for the designated application area, by the Administrator of the Environmental Protection Agency that the ocean thermal energy conversion facility or plantship will not conform with all applicable provisions of any law for which he has regulatory authority;

(5) he has received the opinion of the Attorney General, pursuant to section 9114 of this title, stating that issuance of the license would create a situation in violation of the antitrust laws, or the 90-day period provided in section 9114 of this title has not expired;

(6) he has consulted with the Secretary of Energy, the Secretary of Transportation, the Secretary of State, the Secretary of the Interior, and the Secretary of Defense, to determine their views on the adequacy of the application, and its effect on programs within their respective jurisdictions and determines on the basis thereof, that the application for a license is inadequate;

(7) the proposed ocean thermal energy conversion facility or plantship will be documented under the laws of a foreign nation;

(8) the applicant has not agreed to the condition that no vessel may be used for the transportation to the United States of things produced, processed, refined, or manufactured at the ocean thermal energy conversion facility or plantship unless such vessel is documented under the laws of the United States;

(9) when the license is for an ocean thermal energy conversion facility, he determines that the facility, including any submarine electric transmission cables and equipment or pipelines which are components of the facility, will not be located and designed so as to minimize interference with other uses of the high seas or the Continental Shelf, including cables or pipelines already in position on or in the seabed and the possibility of their repair;

(10) the Governor of any adjacent coastal State with an approved coastal zone management program in good standing pursuant to the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.) determines that, in his or her view, the application is inadequate or inconsistent with respect to programs within his or her jurisdiction;

(11) when the license is for an ocean thermal energy conversion facility, he determines that the thermal plume of the facility is expected to impinge on so as to degrade the thermal gradient used by any other ocean thermal energy conversion facility already licensed or operating, without the consent of its owner;

(12) when the license is for an ocean thermal energy conversion facility, he determines that the thermal plume of the facility is expected to impinge on so as to adversely affect the territorial sea or area of national resource jurisdiction, as recognized by the United States, of any other nation, unless the Secretary of State approves such impingement after consultation with such nation;

(13) when the license is for an ocean thermal energy conversion plantship, he determines that the applicant has not provided adequate assurance that the plantship will be operated in such a way as to prevent its thermal plume from impinging on so as to degrade the thermal gradient used by any other ocean thermal energy conversion facility or plantship without the consent of its owner, and from impinging on so as to adversely affect the territorial sea or area of national resource jurisdiction, as recognized by the United States, of any other nation unless the Secretary of State approves such impingement after consultation with such nation; or

(14) if a regulation has been adopted which places an upper limit on the number or total capacity of ocean thermal energy conversion facilities or plantships to be licensed under this chapter for simultaneous operation, either overall or within specific geographic areas, pursuant to a determination under the provisions of section 9117(b)(4) of this title, issuance of the license will cause such upper limit to be exceeded.

(d) Issuance conditions; written agreement of compliance; disposal or removal requirements

(1) In issuing a license for the ownership, construction, and operation of an ocean thermal energy conversion facility or plantship, the Administrator shall prescribe conditions which he deems necessary to carry out the provisions of this chapter, or which are otherwise required by any Federal department or agency pursuant to the terms of this chapter.

(2) No license shall be issued, transferred, or renewed under this chapter unless the applicant, licensee or transferee first agrees in writing that (A) there will be no substantial change from the plans, operational systems, and methods, procedures, and safeguards set forth in his application, as approved, without prior approval in writing from the Administrator, and (B) he will comply with conditions the Administrator may prescribe in accordance with the provisions of this chapter.

(3) The Administrator shall establish such bonding requirements or other assurances as he deems necessary to assure that, upon the revocation, termination, relinquishment, or surrender of a license, the licensee will dispose of or remove all components of the ocean thermal energy conversion facility or plantship as directed by the Administrator. In the case of components which another applicant or licensee desires to use, the Administrator may waive the disposal or removal requirements until he has reached a decision on the application. In the case of components lying on or below the seabed, the Administrator may waive the disposal or removal

requirements if he finds that such removal is not otherwise necessary and that the remaining components do not constitute any threat to the environment, navigation, fishing, or other uses of the seabed.

(e) License transfer

Upon application, a license issued under this chapter may be transferred if the Administrator determines that such transfer is in the public interest and that the transferee meets the requirements of this chapter and the prerequisites to issuance under subsection (c) of this section.

(f) License eligibility

Any United States citizen who otherwise qualifies under the terms of this chapter shall be eligible to be issued a license for the ownership, construction, and operation of an ocean thermal energy conversion facility or plantship.

(g) License term and renewal

Licenses issued under this chapter shall be for a term of not to exceed 25 years. Each licensee shall have a preferential right to renew his license subject to the requirements of subsection (c) of this section, upon such conditions and for such term, not to exceed an additional 10 years upon each renewal, as the Administrator determines to be reasonable and appropriate.

(Pub. L. 96-320, title I, §101, Aug. 3, 1980, 94 Stat. 976; Pub. L. 98-623, title VI, §602(a)(3)-(5), (b), (e)(8)-(11), Nov. 8, 1984, 98 Stat. 3410-3412.)

REFERENCES IN TEXT

The Coastal Zone Management Act of 1972, referred to in subsec. (c)(10), is title III of Pub. L. 89-454 as added by Pub. L. 92-583, Oct. 27, 1972, 86 Stat. 1280, and amended, which is classified generally to chapter 33 (§1451 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1451 of Title 16 and Tables.

AMENDMENTS

1984—Subsecs. (a), (b)(2). Pub. L. 98-623, §602(a)(3), (4), substituted “located in whole or in part between the highwater mark and the seaward boundary of the territorial sea” for “located in the territorial sea”.

Subsec. (c)(1). Pub. L. 98-623, §602(b)(1), substituted “cannot or will not” for “cannot and will not”.

Subsec. (c)(4). Pub. L. 98-623, §602(e)(8), substituted “regulatory authority” for “enforcement authority”.

Subsec. (c)(5). Pub. L. 98-623, §602(b)(2), substituted “has not expired” for “has expired”.

Subsec. (c)(6). Pub. L. 98-623, §602(e)(9), substituted “application for a license” for “application for license”.

Subsec. (c)(7). Pub. L. 98-623, §602(a)(5), substituted “will be documented under the laws of a foreign nation” for “will not be documented under the laws of the United States”.

Subsec. (c)(10). Pub. L. 98-623, §602(b)(3), (5), substituted “any adjacent” for “each adjacent” and “(16 U.S.C. 1451 et seq.)” for “(33 U.S.C. 1451 et seq.)”.

Subsec. (c)(13). Pub. L. 98-623, §602(b)(4), substituted “or” for “and” after the semicolon at the end.

Subsec. (c)(14). Pub. L. 98-623, §602(e)(10), substituted “if a regulation” for “when a regulation”.

Subsec. (d)(2). Pub. L. 98-623, §602(e)(11), substituted “applicant, licensee” for “licensee”.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security,

and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

TERRITORIAL SEA OF UNITED STATES

For extension of territorial sea of United States, see Proc. No. 5928, set out as a note under section 1331 of Title 43, Public Lands.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9112 of this title.

§ 9112. Procedure

(a) Rules and regulations

The Administrator shall, after consultation with the Secretary of Energy and the heads of other Federal agencies, issue regulations to carry out the purposes and provisions of this chapter, in accordance with the provisions of section 553 of title 5, without regard to subsection (a) thereof. Such regulations shall pertain to, but need not be limited to, application for issuance, transfer, renewal, suspension, and termination of licenses. Such regulations shall provide for full consultation and cooperation with all other interested Federal agencies and departments and with any potentially affected coastal State, and for consideration of the views of any interested members of the general public. The Administrator is further authorized, consistent with the purposes and provisions of this chapter, to amend or rescind any such regulation. The Administrator shall complete issuance of final regulations to implement this chapter within 1 year of August 3, 1980.

(b) Site evaluation and preconstruction testing

The Administrator, in consultation with the Secretary of the Interior and the Secretary of the department in which the Coast Guard is operating may, if he determines it to be necessary, prescribe regulations consistent with the purposes of this chapter, relating to those activities in site evaluation and preconstruction testing at potential ocean thermal energy conversion facility or plantship locations that may (1) adversely affect the environment; (2) interfere with other reasonable uses of the high seas or with authorized uses of the Outer Continental Shelf; or (3) pose a threat to human health and safety. If the Administrator prescribes regulations relating to such activities, such activities may not be undertaken after the effective date of such regulations except in accordance therewith.

(c) Expertise or statutory responsibility descriptions

Not later than 60 days after August 3, 1980, the Secretary of Energy, the Administrator of the Environmental Protection Agency, the Secretary of the department in which the Coast Guard is operating, the Secretary of the Interior, the Chief of Engineers of the United States Army Corps of Engineers, and the heads of any other Federal departments or agencies having expertise concerning, or jurisdiction over, any aspect of the construction or operation of ocean thermal energy conversion facilities or plantships, shall transmit to the Administrator written description of their expertise or statutory

responsibilities pursuant to this chapter or any other Federal law.

(d) Application

(1) Within 21 days after the receipt of an application, the Administrator shall determine whether the application appears to contain all of the information required by paragraph (2) of this subsection. If the Administrator determines that such information appears to be contained in the application, the Administrator shall, no later than 5 days after making such a determination, publish notice of the application and a summary of the plans in the Federal Register. If the Administrator determines that all of the required information does not appear to be contained in the application, the Administrator shall notify the applicant and take no further action with respect to the application until such deficiencies have been remedied.

(2) Each application shall include such financial, technical, and other information as the Administrator determines by regulation to be necessary or appropriate to process the license pursuant to section 9111 of this title.

(e) Area description; additional license applications

(1) At the time notice of an application for an ocean thermal energy conversion facility is published pursuant to subsection (d) of this section, the Administrator shall publish a description in the Federal Register of an application area encompassing the site proposed in the application for such facility and within which the thermal plume of one ocean thermal energy conversion facility might be expected to impinge on so as to degrade the thermal gradient used by another ocean thermal energy conversion facility, unless the application is for a license for an ocean thermal energy conversion facility to be located within an application area which has already been designated.

(2) The Administrator shall accompany such publication with a call for submission of any other applications for licenses for the ownership, construction, and operation of an ocean thermal energy conversion facility within the designated application area. Any person intending to file such an application shall submit a notice of intent to file an application to the Administrator not later than 60 days after the publication of notice pursuant to subsection (d) of this section, and shall submit the completed application no later than 90 days after publication of such notice. The Administrator shall publish notice of any such application received in accordance with subsection (d) of this section. No application for a license for the ownership, construction, and operation of an ocean thermal energy conversion facility within the designated application area for which a notice of intent to file was received after such 60-day period, or which is received after such 90-day period has elapsed, shall be considered until action has been completed on all timely filed applications pending with respect to such application area.

(f) Copies of application to other agencies

An application filed with the Administrator shall constitute an application for all Federal authorizations required for ownership, construc-

tion, and operation of an ocean thermal energy conversion facility or plantship, except for authorizations required by documentation, inspection, certification, construction, and manning laws and regulations administered by the Secretary of the department in which the Coast Guard is operating. At the time notice of any application is published pursuant to subsection (d) of this section, the Administrator shall forward a copy of such application to those Federal agencies and departments with jurisdiction over any aspect of such ownership, construction, or operation for comment, review, or recommendation as to conditions and for such other action as may be required by law. Each agency or department involved shall review the application and, based upon legal considerations within its area of responsibility, recommend to the Administrator the approval or disapproval of the application not later than 45 days after public hearings are concluded pursuant to subsection (g) of this section. In any case in which an agency or department recommends disapproval, it shall set forth in detail the manner in which the application does not comply with any law or regulation within its area of responsibility and shall notify the Administrator of the manner in which the application may be amended or the license conditioned so as to bring it into compliance with the law or regulation involved.

(g) Notice, comments, and hearing

A license may be issued, transferred, or renewed only after public notice, opportunity for comment, and public hearings in accordance with this subsection. At least one such public hearing shall be held in the District of Columbia and in any adjacent coastal State to which a facility is proposed to be directly connected by pipeline or electric transmission cable. Any interested person may present relevant material at any such hearing. After the hearings required by this subsection are concluded, if the Administrator determines that there exist one or more specific and material factual issues which may be resolved by a formal evidentiary hearing, at least one adjudicatory hearing shall be held in the District of Columbia in accordance with the provisions of section 554 of title 5. The record developed in any such adjudicatory hearing shall be part of the basis for the Administrator's decision to approve or deny a license. Hearings held pursuant to this subsection shall be consolidated insofar as practicable with hearings held by other agencies. All public hearings on all applications with respect to facilities for any designated application area shall be consolidated and shall be concluded not later than 240 days after notice of the initial application has been published pursuant to subsection (d) of this section.

(h) Administrative fee

The Administrator shall not take final action on any application unless the applicant has paid to the Administrator a reasonable administrative fee, which shall be deposited into miscellaneous receipts of the Treasury. The amount

of the fee imposed by the Administrator on any applicant shall reflect the reasonable administrative costs incurred by the National Oceanic and Atmospheric Administration in reviewing and processing the application.

(i) Approval or denial of application; applications for same area; factors determinative of facility selection

(1) The Administrator shall approve or deny any timely filed application with respect to a facility for a designated application area submitted in accordance with the provision of this chapter not later than 90 days after public hearings on proposed licenses for that area are concluded pursuant to subsection (g) of this section. The Administrator shall approve or deny an application for a license for ownership, construction, and operation of an ocean thermal energy conversion plantship submitted pursuant to this chapter no later than 90 days after the public hearings on that application are concluded pursuant to subsection (g) of this section.

(2) In the event more than one application for a license for ownership, construction, and operation of an ocean thermal energy conversion facility is submitted pursuant to this chapter for the same designated application area, the Administrator, unless one or a specific combination of the proposed facilities clearly best serves the national interest, shall make decisions on license applications in the order in which they were submitted to him.

(3) In determining whether any one or a specific combination of the proposed ocean thermal energy conversion facilities clearly best serves the national interest, the Administrator, in consultation with the Secretary of Energy, shall consider the following factors:

(A) the goal of making the greatest possible use of ocean thermal energy conversion by installing the largest capacity practicable in each application area;

(B) the amount of net energy impact of each of the proposed ocean thermal energy conversion facilities;

(C) the degree to which the proposed ocean thermal energy conversion facilities will affect the environment;

(D) any significant differences between anticipated dates and commencement of operation of the proposed ocean thermal energy conversion facilities; and

(E) any differences in costs of construction and operation of the proposed ocean thermal energy conversion facilities, to the extent that such differentials may significantly affect the ultimate cost of energy or products to the consumer.

(Pub. L. 96-320, title I, § 102, Aug. 3, 1980, 94 Stat. 979; Pub. L. 98-623, title VI, § 602(f), Nov. 8, 1984, 98 Stat. 3412.)

AMENDMENTS

1984—Subsec. (h). Pub. L. 98-623 substituted “The Administrator shall not take final action on any application unless the applicant has paid to the Administrator a reasonable administrative fee” for “Each person applying for a license pursuant to this chapter shall remit to the Administrator at the time the application is filed a nonrefundable application fee” and “imposed by the Administrator on any applicant shall reflect the

reasonable administrative costs incurred by the National Oceanic and Atmospheric Administration” for “shall be established by regulation by the Administrator, and shall reflect the reasonable administrative costs incurred”.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9115, 9117, 9118 of this title.

§ 9113. Protection of submarine electric transmission cables and equipment

(a) Prohibited acts; misdemeanor; penalty and fine

Any person who shall willfully and wrongfully break or injure, or attempt to break or injure, or who shall in any manner procure, counsel, aid, abet, or be accessory to such breaking or injury, or attempt to break or injure, any submarine electric transmission cable or equipment being constructed or operated under a license issued pursuant to this chapter shall be guilty of a misdemeanor and, on conviction thereof, shall be liable to imprisonment for a term not exceeding 2 years, or to a fine not exceeding \$5,000, or to both fine and imprisonment, at the discretion of the court.

(b) Culpable negligence; misdemeanor; penalty and fine

Any person who by culpable negligence shall break or injure any submarine electric transmission cable or equipment being constructed or operated under a license issued pursuant to this chapter shall be guilty of a misdemeanor and, on conviction thereof, shall be liable to imprisonment for a term not exceeding 3 months, or to a fine not exceeding \$500, or to both fine and imprisonment, at the discretion of the court.

(c) Exceptions

The provisions of subsections (a) and (b) of this section shall not apply to any person who, after having taken all necessary precautions to avoid such breaking or injury, breaks or injures any submarine electric transmission cable or equipment in an effort to save the life or limb of himself or of any other person, or to save his own or any other vessel.

(d) Suits for damages

The penalties provided in subsections (a) and (b) of this section for the breaking or injury of any submarine electric transmission cable or equipment shall not be a bar to a suit for damages on account of such breaking or injury.

(e) Indemnity

Whenever any vessel sacrifices any anchor, fishing net, or other fishing gear to avoid injuring any submarine electric transmission cable or equipment being constructed or operated

under a license issued pursuant to this chapter, the licensee shall indemnify the owner of such vessel for the items sacrificed: *Provided*, That the owner of the vessel had taken all reasonable precautionary measures beforehand.

(f) Repair costs

Any licensee who causes any break in or injury to any submarine cable or pipeline of any type shall bear the cost of the repairs.

(Pub. L. 96-320, title I, §103, Aug. 3, 1980, 94 Stat. 982.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9152 of this title.

§ 9114. Antitrust review

(a) Review of applications by Attorney General

Whenever any application for issuance, transfer, or renewal of any license is received, the Administrator shall transmit promptly to the Attorney General a complete copy of such application. Within 90 days of the receipt of the application, the Attorney General shall conduct such antitrust review of the application as he deems appropriate, and submit to the Administrator any advice or recommendations he deems advisable to avoid any action upon such application by the Administrator which would create a situation inconsistent with the antitrust laws. If the Attorney General fails to file such views within the 90-day period, the Administrator shall proceed as if such views had been received. The Administrator shall not issue, transfer, or renew the license during the 90-day period, except upon written confirmation by the Attorney General that he does not intend to submit any further advice or recommendation on the application during such period.

(b) Issuance of license as constituting no defense for antitrust violations

The issuance of a license under this chapter shall not be admissible in any way as a defense to any civil or criminal action for violation of the antitrust laws of the United States, nor shall it in any way modify or abridge any private right of action under such laws. Nothing in this section shall be construed to bar the Attorney General or the Federal Trade Commission from challenging any anticompetitive situation involved in the ownership, construction, or operation of an ocean thermal energy conversion facility or plantship.

(Pub. L. 96-320, title I, §104, Aug. 3, 1980, 94 Stat. 983.)

REFERENCES IN TEXT

The “antitrust laws”, referred to in text, are classified generally to chapter 1 (§1 et seq.) of Title 15, Commerce and Trade.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9111 of this title.

§ 9115. Adjacent coastal States

(a) Designation of adjacent coastal State

(1) The Administrator, in issuing notice of application pursuant to section 9112(d) of this title, shall designate as an “adjacent coastal

State" any coastal State which (A) would be directly connected by electric transmission cable or pipeline to an ocean thermal energy conversion facility as proposed in an application, or (B) in whose waters any part of such proposed ocean thermal energy conversion facility would be located, or (C) in whose waters an ocean thermal energy conversion plantship would be operated as proposed in an application.

(2) The Administrator shall, upon request of a State, designate such State as an "adjacent coastal State" if he determines (A) that there is a risk of damage to the coastal environment of such State equal to or greater than the risk posed to a State required to be designated as an "adjacent coastal State" by paragraph (1) of this subsection or (B) that the thermal plume of the proposed ocean thermal energy conversion facility or plantship is likely to impinge on so as to degrade the thermal gradient at possible locations for ocean thermal energy conversion facilities which could reasonably be expected to be directly connected by electric transmission cable or pipeline to such State. This paragraph shall apply only with respect to requests made by a State not later than the 14th day after the date of publication of notice of application for a proposed ocean thermal energy conversion facility in the Federal Register in accordance with section 9112(d) of this title. The Administrator shall make any designation required by this paragraph not later than the 45th day after the date he receives such a request from a State.

(b) State coastal zone management program

(1) Not later than 5 days after the designation of an adjacent coastal State pursuant to this section, the Administrator shall transmit a complete copy of the application to the Governor of such State. The Administrator shall not issue a license without consultation with the Governor of each adjacent coastal State which has an approved coastal zone management program in good standing pursuant to the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.). If the Governor of such a State has not transmitted his approval or disapproval to the Administrator by the 45th day after public hearings on the application are concluded pursuant to section 9112(g) of this title, such approval shall be conclusively presumed. If the Governor of such a State notifies the Administrator that an application which the Governor would otherwise approve pursuant to this paragraph is inconsistent in some respect with the State's coastal zone management program, the Administrator shall condition the license granted so as to make it consistent with such State program.

(2) Any adjacent coastal State which does not have an approved coastal zone management program in good standing, and any other interested State, shall have the opportunity to make its views known to, and to have them given full consideration by, the Administrator regarding the location, construction, and operation of an ocean thermal energy conversion facility or plantship.

(c) Agreements and compacts between States

The consent of Congress is given to 2 or more States to negotiate and enter into agreements or compacts, not in conflict with any law or

treaty of the United States, (1) to apply for a license for the ownership, construction, and operation of an ocean thermal energy conversion facility or plantship or for the transfer of such a license, and (2) to establish such agencies, joint or otherwise, as are deemed necessary or appropriate for implementing and carrying out the provisions of any such agreement or compact. Such agreement or compact shall be binding and obligatory upon any State or other party thereto without further approval by the Congress.

(Pub. L. 96-320, title I, §105, Aug. 3, 1980, 94 Stat. 983; Pub. L. 98-623, title VI, §602(e)(12)-(14), Nov. 8, 1984, 98 Stat. 3412.)

REFERENCES IN TEXT

The Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.), referred to in subsec. (b)(1), is title III of Pub. L. 89-454 as added by Pub. L. 92-583, Oct. 27, 1972, 86 Stat. 1280, and amended, which is classified generally to chapter 33 (§1451 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1451 of Title 16 and Tables.

AMENDMENTS

1984—Subsec. (a)(2). Pub. L. 98-623, §602(e)(12), substituted "(A) that" for "that (A)".

Subsec. (b)(1). Pub. L. 98-623, §602(e)(13), (14), substituted "of an adjacent coastal State" for "of adjacent coastal State" and "application are concluded" for "application is concluded".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9102 of this title.

§ 9116. Diligence requirements

(a) Rules and regulations

The Administrator shall promulgate regulations requiring each licensee to pursue diligently the construction and operation of the ocean thermal energy conversion facility or plantship to which the license applies.

(b) Termination of license

If the Administrator determines that a licensee is not pursuing diligently the construction and operation of the ocean thermal energy conversion facility or plantship to which the license applies, or that the project has apparently been abandoned, the Administrator shall cause proceedings to be instituted under section 9121 of this title to terminate the license.

(Pub. L. 96-320, title I, §106, Aug. 3, 1980, 94 Stat. 984.)

§ 9117. Protection of the environment

(a) Environmental assessment program

The Administrator shall initiate a program to assess the effects on the environment of ocean thermal energy conversion facilities and plantships. The program shall include baseline studies of locations where ocean thermal energy conversion facilities or plantships are likely to be sited or operated; and research; and monitoring of the effects of ocean thermal energy conversion facilities and plantships in actual operation. The purpose of the program shall be to assess the environmental effects of individual ocean thermal energy facilities and plantships, and to assess the magnitude of any cumulative

environmental effects of large numbers of ocean thermal energy facilities and plantships.

(b) Program purposes

The program shall be designed to determine, among other things—

(1) any short-term and long-term effects on the environment which may occur as a result of the operation of ocean thermal energy conversion facilities and plantships;

(2) the nature and magnitude of any oceanographic, atmospheric, weather, climatic, or biological changes in the environment which may occur as a result of deployment and operation of large numbers of ocean thermal energy conversion facilities and plantships;

(3) the nature and magnitude of any oceanographic, biological or other changes in the environment which may occur as a result of the operation of electric transmission cables and equipment located in the water column or on or in the seabed, including the hazards of accidentally severed transmission cables; and

(4) whether the magnitude of one or more of the cumulative environmental effects of deployment and operation of large numbers of ocean thermal energy conversion facilities and plantships requires that an upper limit be placed on the number or total capacity of such facilities or plantships to be licensed under this chapter for simultaneous operation, either overall or within specific geographic areas.

(c) Plan submittal to Congress

Within 180 days after August 3, 1980, the Administrator shall prepare a plan to carry out the program described in subsections (a) and (b) of this section, including necessary funding levels for the next 5 fiscal years, and submit the plan to the Congress.

(d) Reduction of program to minimum necessary level

The program established by subsections (a) and (b) of this section shall be reduced to the minimum necessary to perform baseline studies and to analyze monitoring data, when the Administrator determines that the program has resulted in sufficient knowledge to make the determinations enumerated in subsection (b) of this section with an acceptable level of confidence.

(e) Environmental impact statement

The issuance of any license for ownership, construction, and operation of an ocean thermal energy conversion facility or plantship shall be deemed to be a major Federal action significantly affecting the quality of the human environment for purposes of section 4332(2)(C) of this title. For all timely applications covering proposed facilities in a single application area, and for each application relating to a proposed plantship, the Administrator shall, pursuant to such section 4332(2)(C) of this title and in cooperation with other involved Federal agencies and departments, prepare a single environmental impact statement, which shall fulfill the requirement of all Federal agencies in carrying out their responsibilities pursuant to this chapter to prepare an environmental impact state-

ment. Each such draft environmental impact statement relating to proposed facilities shall be prepared and published within 180 days after notice of the initial application has been published pursuant to section 9112(d) of this title. Each such draft environmental impact statement relating to a proposed plantship shall be prepared and published within 180 days after notice of the application has been published pursuant to section 9112(d) of this title. Each final environmental impact statement shall be published not later than 90 days following the date on which public hearings are concluded pursuant to section 9112(g) of this title. The Administrator may extend the deadline for publication of a specific draft or final environmental impact statement to a later specified time for good cause shown in writing.

(f) Discharge of pollutants

An ocean thermal energy conversion facility or plantship licensed under this subchapter shall be deemed not to be a "vessel or other floating craft" for the purposes of section 1362(12)(B) of title 33.

(Pub. L. 96-320, title I, §107, Aug. 3, 1980, 94 Stat. 984.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9111 of this title.

§ 9118. Marine environmental protection and safety of life and property at sea

(a) Coast Guard operations

The Secretary of the department in which the Coast Guard is operating shall, subject to recognized principles of international law, prescribe by regulation and enforce procedures with respect to any ocean thermal energy conversion facility or plantship licensed under this chapter, including, but not limited to, rules governing vessel movement, procedures for transfer of materials between such a facility or plantship and transport vessels, designation and marking of anchorage areas, maintenance, law enforcement, and the equipment, training, and maintenance required (1) to promote the safety of life and property at sea, (2) to prevent pollution of the marine environment, (3) to clean up any pollutants which may be discharged, and (4) to otherwise prevent or minimize any adverse impact from the construction and operation of such ocean thermal energy conversion facility or plantship.

(b) Promotion of safety of life and property

The Secretary of the department in which the Coast Guard is operating shall issue and enforce regulations, subject to recognized principles of international law, with respect to lights and other warning devices, safety equipment, and other matters relating to the promotion of safety of life and property on any ocean thermal energy conversion facility or plantship licensed under this chapter.

(c) Marking components for protection of navigation

Whenever a licensee fails to mark any component of such an ocean thermal energy conversion facility or plantship in accordance with ap-

plicable regulations, the Secretary of the department in which the Coast Guard is operating shall mark such components for the protection of navigation, and the licensee shall pay the cost of such marking.

(d) Safety zones

(1) Subject to recognized principles of international law and after consultation with the Secretary of Commerce, the Secretary of the Interior, the Secretary of State, and the Secretary of Defense, the Secretary of the department in which the Coast Guard is operating shall designate a zone of appropriate size around and including any ocean thermal energy conversion facility licensed under this chapter and may designate such a zone around and including any ocean thermal energy conversion plantship licensed under this chapter for the purposes of navigational safety and protection of the facility or plantship. The Secretary of the department in which the Coast Guard is operating shall by regulation define permitted activities within such zone consistent with the purpose for which it was designated. The Secretary of the department in which the Coast Guard is operating shall, not later than 30 days after publication of notice pursuant to section 9112(d) of this title, designate such safety zone with respect to any proposed ocean thermal energy conversion facility or plantship.

(2) In addition to any other regulations, the Secretary of the department in which the Coast Guard is operating is authorized, in accordance with this subsection, to establish a safety zone to be effective during the period of construction of an ocean thermal energy conversion facility or plantship licensed under this chapter, and to issue rules and regulations relating thereto.

(3) Except in a situation involving force majeure, a licensee of an ocean thermal energy conversion facility or plantship shall not permit a vessel, registered in or flying the flag of a foreign state, to call at, load or unload cargo at, or otherwise utilize such a facility or plantship licensed under this chapter unless (A) the foreign state involved has agreed, by specific agreement with the United States, to recognize the jurisdiction of the United States over the vessel and its personnel, in accordance with the provisions of this chapter, while the vessel is located within the safety zone, and (B) the vessel owner or operator has designated an agent in the United States for receipt of service of process in the event of any claim or legal proceeding resulting from activities of the vessel or its personnel while located within such a safety zone.

(e) Rules and regulations; vessels; "ocean thermal energy conversion facility" defined

(1) The Secretary of the department in which the Coast Guard is operating shall promulgate and enforce regulations specified in paragraph (2) of this subsection and such other regulations as he deems necessary concerning the documentation, design, construction, alteration, equipment, maintenance, repair, inspection, certification, and manning of ocean thermal energy conversion facilities and plantships. In addition to other requirements prescribed under those regulations, the Secretary of the department in which the Coast Guard is operating may require

compliance with those vessel documentation, inspection, and manning laws which he determines to be appropriate.

(2) Within 1 year after August 3, 1980, the Secretary of the department in which the Coast Guard is operating shall promulgate regulations under paragraph (1) of this subsection which require that any ocean thermal energy conversion facility or plantship—

(A) be documented;

(B) comply with minimum standards of design, construction, alteration, and repair; and

(C) be manned or crewed by United States citizens or aliens lawfully admitted to the United States for permanent residence, unless—

(i) there is not a sufficient number of United States citizens, or aliens lawfully admitted to the United States for permanent residence, qualified and available for such work, or

(ii) the President makes a specific finding, with respect to the particular vessel, platform, or moored, fixed or standing structure, that application of this requirement would not be consistent with the national interest.

(3) For the purposes of the documentation laws, for which compliance is required under paragraph (1) of this subsection, ocean thermal energy conversion facilities and plantships shall be deemed to be vessels and, if documented, vessels of the United States for the purposes of chapters 301 and 313 of title 46.

(4) For the purposes of this subsection the term "ocean thermal energy conversion facility" refers only to an ocean thermal energy conversion facility which has major components other than water intake or discharge pipes located seaward of the highwater mark¹

(f) Protection of navigation

Subject to recognized principles of international law, the Secretary of the department in which the Coast Guard is operating shall promulgate and enforce such regulations as he deems necessary to protect navigation in the vicinity of a vessel engaged in the installation, repair, or maintenance of any submarine electric transmission cable or equipment, and to govern the markings and signals used by such a vessel.

(Pub. L. 96-320, title I, § 108, Aug. 3, 1980, 94 Stat. 986; Pub. L. 98-623, title VI, § 602(a)(6), (7), (e)(1), (15), Nov. 8, 1984, 98 Stat. 3410-3412.)

CODIFICATION

In subsec. (e)(3), "chapters 301 and 313 of title 46" substituted for "the Ship Mortgage Act, 1920 (46 U.S.C. 911-984)" on authority of Pub. L. 100-710, § 105(a), Nov. 23, 1988, 102 Stat. 4751, section 102(c) of which enacted subtitle III of Title 46, Shipping.

AMENDMENTS

1984—Subsec. (d)(1). Pub. L. 98-623, § 602(e)(1), substituted "navigational safety" for "reorganizational safety".

Subsec. (d)(3). Pub. L. 98-623, § 602(e)(15), added par. (3) by inserting text of former subsec. (b)(3) of section 9119 of this title.

Subsec. (e)(2)(C)(ii). Pub. L. 98-623, § 602(a)(6), substituted "moored, fixed or standing" for "moored or standing".

¹ So in original. Probably should be followed by a period.

Subsec. (e)(4). Pub. L. 98-623, § 602(a)(7), added par. (4).

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 9119. Prevention of interference with other uses of high seas

(a) License conditions

Each license shall include such conditions as may be necessary and appropriate to ensure that construction and operation of the ocean thermal energy conversion facility or plantship are conducted with reasonable regard for navigation, fishing, energy production, scientific research, or other uses of the high seas, either by citizens of the United States or by other nations in their exercise of the freedoms of the high seas as recognized under the Convention of the High Seas and the general principles of international law.

(b) Rules and regulations

The Administrator shall promulgate regulations specifying under what conditions and in what circumstances the thermal plume of an ocean thermal energy conversion facility or plantship licensed under this chapter will be deemed—

- (1) to impinge on so as to degrade the thermal gradient used by another ocean thermal energy conversion facility or plantship, or
- (2) to impinge on so as to adversely affect the territorial sea or area of national resource jurisdiction, as recognized by the United States, of any other nation.

Such regulations shall also provide for the Administrator to mediate or arbitrate any disputes among licensees regarding the extent to which the thermal plume of one licensee's facility or plantship impinges on the operation of another licensee's facility or plantship.

(c) Coast Guard operations

The Secretary of the department in which the Coast Guard is operating shall promulgate, after consultation with the Administrator, and shall enforce, regulations governing the movement and navigation of ocean thermal energy conversion plantships licensed under this chapter to ensure that the thermal plume of such an ocean thermal energy conversion plantship does not unreasonably impinge on so as to degrade the thermal gradient used by the operation of any other ocean thermal energy conversion plantship or facility except in case of force majeure or with the consent of owner of the other such plantship or facility, and to ensure that the thermal plume of such an ocean thermal energy conversion plantship does not impinge on so as to adversely affect the territorial sea or area of national resource jurisdiction, as recognized by the United States, of any other nation unless the Secretary of State has approved such impingement after consultation with such nation.

(Pub. L. 96-320, title I, § 109, Aug. 3, 1980, 94 Stat. 987; Pub. L. 98-623, title VI, § 602(e)(2), (15), (16), Nov. 8, 1984, 98 Stat. 3412.)

AMENDMENTS

1984—Subsec. (b)(2). Pub. L. 98-623, § 602(e)(2), substituted “national resource jurisdiction” for “natural resource jurisdiction”.

Subsec. (b)(3). Pub. L. 98-623, § 602(e)(15), struck out par. (3) which prohibited a licensee of an ocean thermal energy conversion facility or plantship under this chapter, except in the case of force majeure, from permitting foreign vessels to call at, or load or unload cargo at, or otherwise use such facility or plantship unless the foreign state involved had specifically agreed to recognize the jurisdiction of the United States over the vessel and its personnel while such vessel was located in the safety zone and the vessel owner or operator had designated an agent in the United States for receipt of service of process for legal claims or proceedings arising from activities of the vessel or its personnel while located in such zone. See section 9118(d)(3) of this title.

Subsec. (c). Pub. L. 98-623, § 602(e)(16), substituted “the thermal plume of such” for “the thermal plume such of” in second place appearing, and substituted “impingement” for “impingment”.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 9120. Monitoring of licensees' activities

Each license shall require the licensee—

- (1) to allow the Administrator to place appropriate Federal officers or employees in or aboard the ocean thermal energy conversion facility or plantship to which the license applies, at such times and to such extent as the Administrator deems reasonable and necessary to assess compliance with any condition or regulation applicable to the license, and to report to the Administrator whenever such officers or employees have reason to believe there is a failure to comply;

- (2) to cooperate with such officers and employees in the performance of monitoring functions; and

- (3) to monitor the environmental effects, if any, of the operation of the ocean thermal energy conversion facility or plantship in accordance with regulations issued by the Administrator, and to submit such information as the Administrator finds to be necessary and appropriate to assess environmental impacts and to develop and evaluate mitigation methods and possibilities.

(Pub. L. 96-320, title I, § 110, Aug. 3, 1980, 94 Stat. 988; Pub. L. 98-623, title VI, § 602(a)(8), Nov. 8, 1984, 98 Stat. 3411.)

AMENDMENTS

1984—Par. (1). Pub. L. 98-623 substituted “in or aboard” for “aboard”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9151 of this title.

§ 9121. Suspension, revocation, and termination of licenses

(a) Filing of action by Attorney General; automatic suspension

Whenever a licensee fails to comply with any applicable provision of this chapter or any applicable rule, regulation, restriction, or condition issued or imposed by the Administrator under the authority of this chapter, the Attorney General, at the request of the Administrator, shall file an action in the appropriate United States district court to—

- (1) suspend the license; or
- (2) if such failure is knowing and continues for a period of 30 days after the Administrator mails notification of such failure by registered letter to the licensee at his record post office address, revoke such license.

No proceeding under this section is necessary if the license, by its terms, provides for automatic suspension or termination upon the occurrence of a fixed or agreed upon condition, event, or time.

(b) Immediate suspension of construction or operation pending completion of proceedings

If the Administrator determines that immediate suspension of the construction or operation of an ocean thermal energy conversion facility or plantship or any component thereof is necessary to protect public health and safety or to eliminate imminent and substantial danger to the environment the Administrator may order the licensee to cease or alter such construction or operation pending the completion of a judicial proceeding pursuant to subsection (a) of this section.

(Pub. L. 96-320, title I, § 111, Aug. 3, 1980, 94 Stat. 988; Pub. L. 98-623, title VI, § 602(e)(17), Nov. 8, 1984, 98 Stat. 3412.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-623 substituted “environment” for “environment established by any treaty or convention.”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9116 of this title.

§ 9122. Recordkeeping and public access to information

(a) Records and reports

Each licensee shall establish and maintain such records, make such reports, and provide such information as the Administrator, after consultation with other interested Federal departments and agencies, shall by regulation prescribe to carry out the provisions of this chapter. Each licensee shall submit such reports and shall make available such records and information as the Administrator may request.

(b) Confidential information

Any information reported to or collected by the Administrator under this chapter which is exempt from disclosure pursuant to section 552(b)(4) of title 5 (relating to trade secrets and commercial or financial information which is privileged or confidential) shall not—

- (1) be publicly disclosed by the Administrator or by any other officer or employee of

the United States, unless the Administrator has—

(A) determined that the disclosure is necessary to protect the public health or safety or the environment against an unreasonable risk of injury, and

(B) notified the person who submitted the information 10 days before the disclosure is to be made, unless the delay resulting from such notice would be detrimental to the public health or safety or the environment, or

(2) be otherwise disclosed except—

(A)(i) to other Federal and adjacent coastal State government departments and agencies for official use,

(ii) to any committee of the Congress of appropriate jurisdiction, or

(iii) pursuant to court order, and

(B) when the Administrator has taken appropriate steps to inform the recipient of the confidential nature of the information.

(Pub. L. 96-320, title I, § 112, Aug. 3, 1980, 94 Stat. 989; Pub. L. 98-623, title VI, § 602(e)(3), (18), Nov. 8, 1984, 98 Stat. 3412.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-623, § 602(e)(3), substituted “(relating to trade secrets and commercial or financial information which is privileged or confidential)” for “(relating to trade secrets and confidential commercial and financial information)”.

Subsec. (b)(2)(B). Pub. L. 98-623, § 602(e)(18), substituted “Administrator” for “administrator”.

§ 9123. Relinquishment or surrender of license

(a) Relinquishment or surrender authority; continuation of liability

Any licensee may at any time, without penalty, surrender to the Administrator a license issued to him, or relinquish to the Administrator, in whole or in part, any right to conduct construction or operation of an ocean thermal energy conversion facility or plantship, including part or all of any right of way which may have been granted in conjunction with such license: *Provided*, That such surrender or relinquishment shall not relieve the licensee of any obligation or liability established by this chapter, or any other Act, or of any obligation or liability for actions taken by him prior to such surrender or relinquishment, or during disposal or removal of any components required to be disposed of or removed pursuant to this chapter.

(b) Transfer of right of way

If part or all of a right of way which is relinquished, or for which the license is surrendered, to the Administrator pursuant to subsection (a) of this section contains an electric transmission cable or pipeline which is used in conjunction with another license for an ocean thermal energy conversion facility, the Administrator shall allow the other licensee an opportunity to add such right of way to his license before informing the Secretary of the Interior that the right of way has been vacated.

(Pub. L. 96-320, title I, § 113, Aug. 3, 1980, 94 Stat. 989.)

§ 9124. Civil actions**(a) Jurisdiction**

Except as provided in subsection (b) of this section, any person having a valid legal interest which is or may be adversely affected may commence a civil action for equitable relief on his own behalf in the United States District Court for the District of Columbia whenever such action constitutes a case or controversy—

- (1) against any person who is alleged to be in violation of any provision of this chapter or any regulation or condition of a license issued pursuant to this chapter; or
- (2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary.

In suits brought under this chapter, the district courts of the United States shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce any provision of this chapter or any regulation or term or condition of a license issued pursuant to this chapter or to order the Administrator to perform such act or duty, as the case may be.

(b) Notice

No civil action may be commenced—

- (1) under subsection (a)(1) of this section—
 - (A) prior to 60 days after the plaintiff has given notice of the violation to the Administrator and to any alleged violator; or
 - (B) if the Administrator or the Attorney General has commenced and is diligently prosecuting a civil or criminal action with respect to such matters in a court of the United States, but in any such action any person may intervene as a matter of right; or
- (2) under subsection (a)(2) of this section prior to 60 days after the plaintiff has given notice of such action to the Administrator.

Notice under this subsection shall be given in such a manner as the Administrator shall prescribe by regulation.

(c) Right of Administrator or Attorney General to intervene

In any action under this section, the Administrator or the Attorney General, if not a party, may intervene as a matter of right.

(d) Award of costs

The court, in issuing any final order in any action brought pursuant to subsection (a) of this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the court determines that such an award is appropriate.

(e) Other remedies not restricted

Nothing in this section shall restrict any right which any person or class of persons may have under any statute or common law to seek enforcement or to seek any other relief.

(Pub. L. 96-320, title I, § 114, Aug. 3, 1980, 94 Stat. 990.)

§ 9125. Judicial review

Any person suffering legal wrong, or who is adversely affected or aggrieved by the Administra-

tor's decision to issue, transfer, modify, renew, suspend, or terminate a license may, not later than 60 days after such decision is made, seek judicial review of such decision in the United States Court of Appeals for the District of Columbia. A person shall be deemed to be aggrieved by the Administrator's decision within the meaning of this chapter if he—

- (1) has participated in the administrative proceedings before the Administrator (or if he did not so participate, he can show that his failure to do so was caused by the Administrator's failure to provide the required notice); and
- (2) is adversely affected by the Administrator's action.

(Pub. L. 96-320, title I, § 115, Aug. 3, 1980, 94 Stat. 990.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9153 of this title.

§ 9126. Exempt operations**(a) Test platforms**

The provisions of this subchapter shall not apply to any test platform which will not operate as an ocean thermal energy conversion facility or plantship after conclusion of the testing period.

(b) Commercial demonstration ocean thermal energy conversion facilities or plantships

The provisions of this subchapter shall not apply to ownership, construction, or operation of any ocean thermal energy conversion facility or plantship which the Secretary of Energy has designated in writing as a demonstration project for the development of alternative energy sources for the United States which is conducted by, participated in, or approved by the Department of Energy. The Secretary of Energy, after consultation with the Administrator, shall require such demonstration projects to abide by as many of the substantive requirements of this subchapter as he deems to be practicable without damaging the nature of or unduly delaying such projects.

(Pub. L. 96-320, title I, § 116, Aug. 3, 1980, 94 Stat. 991; Pub. L. 98-623, title VI, § 602(e)(4), Nov. 8, 1984, 98 Stat. 3412.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-623 substituted "facility or plantship" for "facility or platform".

§ 9127. Periodic review and revision of regulations

The Administrator and the Secretary of the department in which the Coast Guard is operating shall periodically, at intervals of not more than every 3 years, and in consultation with the Secretary of Energy, review any regulations promulgated pursuant to the provisions of this subchapter to determine the status and impact of such regulations on the continued development, evolution, and commercialization of ocean thermal energy conversion technology. The results of each such review shall be included in the next annual report required by section 9165¹ of this title. The Administrator and such

¹ See References in Text note below.

Secretary are authorized and directed to promulgate any revisions to the then effective regulations as are deemed necessary and appropriate based on such review, to ensure that any regulations promulgated pursuant to the provisions of this subchapter do not impede such development, evolution, and commercialization of such technology. Additionally, the Secretary of Energy is authorized to propose, based on such review, such revisions for the same purpose. The Administrator or such Secretary, as appropriate, shall have exclusive jurisdiction with respect to any such proposal by the Secretary of Energy and, pursuant to applicable procedures, shall consider and take final action on any such proposal in an expeditious manner. Such consideration shall include at least one informal hearing pursuant to the procedures in section 553 of title 5.

(Pub. L. 96-320, title I, § 117, Aug. 3, 1980, 94 Stat. 991.)

REFERENCES IN TEXT

Section 9165 of this title, referred to in text, was omitted from the Code.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

SUBCHAPTER II—MARITIME FINANCING FOR OCEAN THERMAL ENERGY CONVERSION

§ 9141. Determinations under Merchant Marine Act, 1936

(a)(1) For the purposes of section 607 of the Merchant Marine Act, 1936 (46 U.S.C. 1177) [46 App. U.S.C. 1177], any ocean thermal energy conversion facility or plantship licensed pursuant to this chapter, and any vessel providing shipping service to or from such an ocean thermal energy conversion facility or plantship, shall be deemed to be a vessel operated in the foreign commerce of the United States.

(2) The provisions of paragraph (1) of this subsection shall apply for taxable years beginning after December 31, 1981.

(b) For the purposes of the Merchant Marine Act, 1936 (46 U.S.C. 1177 et seq.) [46 App. U.S.C. 1101 et seq.], any vessel documented under the laws of the United States and used in providing shipping service to or from any ocean thermal energy conversion facility or plantship licensed pursuant to the provisions of this chapter shall be deemed to be used in, and used in an essential service in, the foreign commerce or foreign trade of the United States, as defined in section 905(a) of the Merchant Marine Act, 1936 (46 U.S.C. 1244(a)) [46 App. U.S.C. 1244(a)].

(Pub. L. 96-320, title II, § 201, Aug. 3, 1980, 94 Stat. 991.)

REFERENCES IN TEXT

The Merchant Marine Act, 1936, referred to in subsec. (b), is act June 29, 1936, ch. 858, 49 Stat. 1985, as amend-

ed, which is classified principally to chapter 27 (§ 1101 et seq.) of Title 46, Appendix, Shipping. For complete classification of this Act to the Code, see section 1245 of Title 46, Appendix, and Tables.

SUBCHAPTER III—ENFORCEMENT

§ 9151. Prohibited acts

It is unlawful for any person who is a United States citizen or national, or a foreign national in or on board an ocean thermal energy conversion facility or plantship or on board any vessel documented or numbered under the laws of the United States, or who is subject to the jurisdiction of the United States by an international agreement to which the United States is a party—

(1) to violate any provision of this chapter; or any rule, regulation, or order issued pursuant to this chapter; or any term or condition of any license issued to such person pursuant to this chapter;

(2) to refuse to permit any Federal officer or employee authorized to monitor or enforce the provisions of sections 9120 and 9153 of this title to enter or board an ocean thermal energy conversion facility or plantship or any vessel documented or numbered under the laws of the United States, for purposes of conducting any search or inspection in connection with the monitoring or enforcement of this chapter or any rule, regulation, order, term, or condition referred to in paragraph (1) of this section;

(3) to forcibly assault, resist, oppose, impede, intimidate, or interfere with any such authorized officer or employee in the conduct of any search or inspection described in paragraph (2) of this section;

(4) to resist a lawful arrest for any act prohibited by this section; or

(5) to interfere with, delay, or prevent, by any means, the apprehension or arrest of another person subject to this section knowing that the other person has committed any act prohibited by this section.

(Pub. L. 96-320, title III, § 301, Aug. 3, 1980, 94 Stat. 994; Pub. L. 98-623, title VI, § 602(a)(9), Nov. 8, 1984, 98 Stat. 3411.)

AMENDMENTS

1984—Pub. L. 98-623 substituted “in or on board an ocean thermal energy conversion facility or plantship or on board any vessel” for “on board an ocean thermal energy conversion facility or plantship or other vessel” in provisions preceding par. (1).

Par. (2). Pub. L. 98-623 substituted “to enter or board” for “to board”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9152, 9153 of this title.

§ 9152. Remedies and penalties

(a) Issuance and enforcement of orders

(1) The Administrator or his delegate shall have the authority to issue and enforce orders during proceedings brought under this chapter. Such authority shall include the authority to issue subpoenas, administer oaths, compel the attendance and testimony of witnesses and the production of books, papers, documents, and

other evidence, to take depositions before any designated individual competent to administer oaths, and to examine witnesses.

(2) Whenever on the basis of any information available to him the Administrator finds that any person subject to section 9151 of this title is in violation of any provision of this chapter or any rule, regulation, order, license, or term or condition thereof, or other requirements under this chapter, he may issue an order requiring such person to comply with such provision or requirement, or bring a civil action in accordance with subsection (b) of this section.

(3) Any compliance order issued under this subsection shall state with reasonable specificity the nature of the violation and a time for compliance, not to exceed 30 days, which the Administrator determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

(b) Civil actions by Attorney General; equitable relief

(1) Upon a request by the Administrator, the Attorney General shall commence a civil action for appropriate relief, including a permanent or temporary injunction, to halt any violation for which the Administrator is authorized to issue a compliance order under subsection (a)(2) of this section.

(2) Upon a request by the Administrator, the Attorney General shall bring an action in an appropriate district court of the United States for equitable relief to redress a violation, by any person subject to section 9151 of this title, of any provision of this chapter, any regulation issued pursuant to this chapter, or any license condition.

(c) Civil penalties

(1) Any person who is found by the Administrator, after notice and an opportunity for a hearing in accordance with section 554 of title 5, to have committed an act prohibited by section 9151 of this title shall be liable to the United States for a civil penalty, not to exceed \$25,000 for each violation. Each day of a continuing violation shall constitute a separate violation. The amount of such civil penalty shall be assessed by the Administrator, or his designee, by written notice. In determining the amount of such penalty, the Administrator shall take into account the nature, circumstances, extent and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.

(2) Any person against whom a civil penalty is assessed under paragraph (1) of this subsection may obtain a review thereof in the appropriate court of the United States by filing a notice of appeal in such court within 30 days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the Administrator. The Administrator shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed, as provided in section 2112 of title 28. The findings and order of the Administrator shall be set aside by such court if

they are not found to be supported by substantial evidence, as provided in section 706(2) of title 5.

(3) If any person subject to section 9151 of this title fails to pay an assessment of a civil penalty against him after it has become final, or after the appropriate court has entered final judgment in favor of the Administrator, the Administrator shall refer the matter to the Attorney General of the United States, who shall recover the amount assessed in any appropriate court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(4) The Administrator may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this subsection.

(d) Criminal penalties

(1) Any person subject to section 9151 of this title is guilty of an offense if he willfully commits any act prohibited by such section.

(2) Any offense, other than an offense for which the punishment is prescribed by section 9113 of this title, is punishable by a fine of not more than \$75,000 for each day during which the violation continues. Any offense described in paragraphs (2), (3), (4), and (5) of section 9151 of this title is punishable by the fine or imprisonment for not more than 6 months, or both. If, in the commission of any offense, the person subject to section 9151 of this title uses a dangerous weapon, engages in conduct that causes bodily injury to any Federal officer or employee, or places any Federal officer or employee in fear of imminent bodily injury, the offense is punishable by a fine of not more than \$100,000 or imprisonment for not more than 10 years, or both.

(e) In rem liability of vessels

Any ocean thermal energy conversion facility or plantship licensed pursuant to this chapter and any other vessel documented or numbered under the laws of the United States, except a public vessel engaged in noncommercial activities, used in any violation of this chapter or of any rule, regulation, order, license, or term or condition thereof, or other requirements of this chapter, shall be liable in rem for any civil penalty assessed or criminal fine imposed and may be proceeded against in any district court of the United States having jurisdiction thereof, whenever it shall appear that one or more of the owners, or bareboat charterers, was at the time of the violation a consenting party or privy to such violation.

(Pub. L. 96-320, title III, §302, Aug. 3, 1980, 94 Stat. 995; Pub. L. 98-623, title VI, §602(e)(5), Nov. 8, 1984, 98 Stat. 3412.)

AMENDMENTS

1984—Subsec. (b)(1). Pub. L. 98-623 substituted “to halt any violation” for “any violation”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9153 of this title.

§ 9153. Enforcement**(a) Enforcement responsibility of Administrator of National Oceanic and Atmospheric Administration; Coast Guard**

Except where a specific section of this chapter designates enforcement responsibility, the provisions of this chapter shall be enforced by the Administrator. The Secretary of the department in which the Coast Guard is operating shall have exclusive responsibility for enforcement measures which affect the safety of life and property at sea, shall exercise such other enforcement responsibilities with respect to vessels subject to the provisions of this chapter as are authorized under other provisions of law, and may, upon the specific request of the Administrator, assist the Administrator in the enforcement of any provision of this chapter. The Administrator and the Secretary of the department in which the Coast Guard is operating may, by agreement, on a reimbursable basis or otherwise, utilize the personnel, services, equipment, including aircraft and vessels, and facilities of any other Federal agency or department, and may authorize officers or employees of other departments or agencies to provide assistance as necessary in carrying out subsection (b) of this section. The Administrator and the Secretary of the department in which the Coast Guard is operating may issue regulations jointly or severally as may be necessary and appropriate to carry out their duties under this section.

(b) Enforcement activities of authorized officers

To enforce the provisions of this chapter in or on board any ocean thermal energy conversion facility or plantship or any vessel subject to the provisions of this chapter, any officer who is authorized by the Administrator or the Secretary of the department in which the Coast Guard is operating may—

- (1) enter or board, and inspect, any ocean thermal energy conversion facility or plantship or any vessel which is subject to the provisions of this chapter;
- (2) search the vessel if the officer has reasonable cause to believe that the vessel has been used or employed in the violation of any provision of this chapter;
- (3) arrest any person subject to section 9151 of this title if the officer has reasonable cause to believe that the person has committed a criminal act prohibited by sections 9151 and 9152(d) of this title;
- (4) seize the vessel together with its gear, furniture, appurtenances, stores, and cargo, used or employed in, or with respect to which it reasonably appears that such vessel was used or employed in, the violation of any provision of this chapter if such seizure is necessary to prevent evasion of the enforcement of this chapter;
- (5) seize any evidence related to any violation of any provision of this chapter;
- (6) execute any warrant or other process issued by any court of competent jurisdiction; and
- (7) exercise any other lawful authority.

(c) Jurisdiction; venue

Except as otherwise specified in section 9125 of this title, the district courts of the United

States shall have exclusive original jurisdiction over any case or controversy arising under the provisions of this chapter. Except as otherwise specified in this chapter, venue shall lie in any district wherein, or nearest to which, the cause of action arose, or wherein any defendant resides, may be found, or has his principal office. In the case of Guam, and any Commonwealth, territory, or possession of the United States in the Pacific Ocean, the appropriate court is the United States District Court for the District of Guam, except that in the case of American Samoa, the appropriate court is the United States District Court for the District of Hawaii. Any such court may, at any time—

- (1) enter restraining orders or prohibitions;
- (2) issue warrants, process in rem, or other process;
- (3) prescribe and accept satisfactory bonds or other security; and
- (4) take such other actions as are in the interest of justice.

(d) Definitions

For the purposes of this section, the term “vessel” includes an ocean thermal energy conversion facility or plantship, and the term “provisions of this chapter” or “provision of this chapter” includes any rule, regulation, or order issued pursuant to this chapter and any term or condition of any license issued pursuant to this chapter.

(Pub. L. 96-320, title III, §303, Aug. 3, 1980, 94 Stat. 996; Pub. L. 98-623, title VI, §602(a)(10), Nov. 8, 1984, 98 Stat. 3411.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-623 substituted “in or on board any ocean thermal energy conversion facility or plantship or any vessel” for “on board any ocean thermal energy conversion facility or plantship or other vessel” in provisions preceding par. (1).

Subsec. (b)(1). Pub. L. 98-623 substituted “enter or board, and inspect, any ocean thermal energy conversion facility or plantship or” for “board and inspect”.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9151 of this title.

SUBCHAPTER IV—MISCELLANEOUS PROVISIONS

§ 9161. Law of the sea treaty

If the United States ratifies a treaty, which includes provisions with respect to jurisdiction over ocean thermal energy conversion activities, resulting from any United Nations Conference on the Law of the Sea, the Administrator, after consultation with the Secretary of State, shall promulgate any amendment to the regulations promulgated under this chapter which is necessary and appropriate to conform such regula-

tions to the provisions of such treaty, in anticipation of the date when such treaty shall come into force and effect for, or otherwise be applicable to, the United States.

(Pub. L. 96-320, title IV, §401, Aug. 3, 1980, 94 Stat. 998.)

§ 9162. International negotiations

The Secretary of State, in cooperation with the Administrator and the Secretary of the department in which the Coast Guard is operating, shall seek effective international action and cooperation in support of the policy and purposes of this chapter and may initiate and conduct negotiations for the purpose of entering into international agreements designed to guarantee non-interference of ocean thermal energy conversion facilities and plantships with the thermal gradients used by other such facilities and plantships, to assure protection of such facilities and plantships and of navigational safety in the vicinity thereof, and to resolve such other matters relating to ocean thermal energy conversion facilities and plantships as need to be resolved in international agreements.

(Pub. L. 96-320, title IV, §402, Aug. 3, 1980, 94 Stat. 998.)

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 9163. Relationship to other laws

(a) Facilities and plantships as comparable to areas of exclusive Federal jurisdiction located within a State

(1) The Constitution, laws, and treaties of the United States shall apply to an ocean thermal energy conversion facility or plantship licensed under this chapter and all of which is located seaward of the highwater mark, and to activities connected, associated, or potentially interfering with the use or operation of any such facility or plantship, in the same manner as if such facility or plantship were an area of exclusive Federal jurisdiction located within a State. Nothing in this chapter shall be construed to relieve, exempt, or immunize any person from any other requirement imposed by Federal law, regulation, or treaty.

(2) Ocean thermal energy conversion facilities and plantships licensed under this chapter do not possess the status of islands and have no territorial seas of their own.

(b) Responsibilities and authorities of States or United States within territorial seas; applicability of State law to facilities located beyond territorial seas

(1) Except as may otherwise be provided by this chapter, nothing in this chapter shall in any way alter the responsibilities and authorities of a State or the United States within the territorial seas of the United States.

(2) The law of the nearest adjacent coastal State to which an ocean thermal energy conversion facility located beyond the territorial sea and licensed under this chapter is connected by electric transmission cable or pipeline, now in effect or hereafter adopted, amended, or repealed, is declared to be the law of the United States, and shall apply to such facility, to the extent applicable and not inconsistent with any provision or regulation under this chapter or other Federal laws and regulations now in effect or hereafter adopted, amended, or repealed: *Provided, however*, That the application of State taxation laws is not extended hereby outside the seaward boundary of any State. All such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States outside the seaward boundary of any State.

(c) Customs laws

(1) For the purposes of the customs laws administered by the Secretary of the Treasury, ocean thermal energy conversion facilities and plantships documented under the laws of the United States and licensed under this chapter shall be deemed to be vessels.

(2) Except insofar as they apply to vessels documented under the laws of the United States, the customs laws administered by the Secretary of the Treasury, including the provisions of the Tariff Act of 1930, as amended (19 U.S.C. 1202), and other laws codified in title 19, shall not apply to any ocean thermal energy conversion facility or plantship documented under the laws of the United States and licensed under the provisions of this chapter, but all foreign articles to be used in the construction of any such facility or plantship, including any component thereof, shall first be made subject to all applicable duties and taxes which would be imposed upon or by reason of their importation if they were imported for consumption in the United States. Duties and taxes shall be paid thereon in accordance with laws applicable to merchandise imported into the customs territory of the United States.

(Pub. L. 96-320, title IV, §403, Aug. 3, 1980, 94 Stat. 998; Pub. L. 98-623, title VI, §602(a)(11), (12), (e)(6), Nov. 8, 1984, 98 Stat. 3411, 3412.)

REFERENCES IN TEXT

The customs laws, referred to in subsec. (c), are classified generally to Title 19, Customs Duties.

The Tariff Act of 1930, as amended, referred to in subsec. (c)(2), is act June 17, 1930, ch. 497, 46 Stat. 590, as amended, which is classified generally to chapter 4 (§1202 et seq.) of Title 19. For complete classification of this Act to the Code, see section 1654 of Title 19 and Tables.

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-623, §602(a)(11), inserted “and all of which is located seaward of the highwater mark.”

Subsec. (c)(2). Pub. L. 98-623, §602(a)(12), substituted “ocean thermal energy conversion facility or plantship documented under the laws of the United States and licensed” for “ocean thermal energy conversion facility or plantship licensed”.

Pub. L. 98-623, §602(e)(6), substituted “Secretary of the Treasury, including the provisions of the Tariff Act of 1930, as amended (19 U.S.C. 1202), and other laws codified in title 19,” for “Secretary of the Treasury”.

TERRITORIAL SEA OF UNITED STATES

For extension of territorial sea of United States, see Proc. No. 5928, set out as a note under section 1331 of Title 43, Public Lands.

§ 9164. Submarine electric transmission cable and equipment safety

(a) Standards and regulations

The Secretary of Energy, in cooperation with other interested Federal agencies and departments, shall establish and enforce such standards and regulations as may be necessary to assure the safe construction and operation of submarine electric transmission cables and equipment subject to the jurisdiction of the United States. Such standards and regulations shall include, but not be limited to, requirements for the use of the safest and best available technology for submarine electric transmission cable shielding, and for the use of automatic switches to shut off electric current in the event of a break in such a cable.

(b) Report to Congress on appropriation and staffing needs

The Secretary of Energy, in cooperation with other interested Federal agencies and departments, is authorized and directed to report to the Congress within 60 days after August 3, 1980, on appropriations and staffing needed to monitor submarine electric transmission cables and equipment subject to the jurisdiction of the United States so as to assure that they meet all applicable standards for construction, operation, and maintenance.

(Pub. L. 96-320, title IV, § 404, Aug. 3, 1980, 94 Stat. 999.)

§ 9165. Omitted

CODIFICATION

Section, Pub. L. 96-320, title IV, § 405, Aug. 3, 1980, 94 Stat. 999; Pub. L. 98-623, title VI, § 602(c), Nov. 8, 1984, 98 Stat. 3411, which required the Administrator of the National Oceanic and Atmospheric Administration to submit an annual report on the administration of this chapter to the President of the Senate and the Speaker of the House of Representatives, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, the 8th item on page 54 of House Document No. 103-7.

§ 9166. Authorization of appropriations

There are authorized to be appropriated to the Secretary of Commerce, for the use of the Administrator in carrying out the provisions of this chapter, not to exceed \$3,000,000 for the fiscal year ending September 30, 1981, not to exceed \$3,500,000 for the fiscal year ending September 30, 1982, not to exceed \$3,500,000 for the fiscal year ending September 30, 1983, not to exceed \$480,000 for each of the fiscal years ending September 30, 1984 and September 30, 1985, and not to exceed \$630,000 for each of the fiscal years ending September 30, 1986 and September 30, 1987.

(Pub. L. 96-320, title IV, § 406, Aug. 3, 1980, 94 Stat. 1000; Pub. L. 98-623, title VI, § 601, Nov. 8, 1984, 98 Stat. 3410.)

AMENDMENTS

1984—Pub. L. 98-623 inserted provisions authorizing appropriations not to exceed \$480,000 for each of the fiscal years ending September 30, 1984 and September 30, 1985, and not to exceed \$630,000 for each of the fiscal years ending September 30, 1986 and September 30, 1987.

§ 9167. Severability

If any provision of this chapter or any application thereof is held invalid, the validity of the remainder of the chapter, or any other application, shall not be affected thereby.

(Pub. L. 96-320, title IV, § 407, Aug. 3, 1980, 94 Stat. 1000.)

§ 9168. Report to Congress on promotion and enhancement of export potential of ocean thermal energy conversion components, facilities, and plantships

Within 18 months after November 8, 1984, the Administrator shall submit to the President of the Senate and the Speaker of the House of Representatives a report detailing what steps the United States Government is taking and plans to take to promote and enhance the export potential of ocean thermal energy conversion components, facilities, and plantships manufactured by United States industry. Such report shall include—

(1) the relevant views of the National Oceanic and Atmospheric Administration, International Trade Administration, Maritime Administration, Department of Energy, Small Business Administration, United States International Development Cooperative Agency, the Office of the Special Trade Representative, and other relevant United States Government agencies;

(2) the findings of studies conducted by the Administrator to fulfill the intent of this section;

(3) a summary of activities, including consultations held with representatives of both the ocean thermal energy conversion and financial industries conducted by the Administrator to fulfill the intent of this section; and

(4) such recommendations as the Administrator deems appropriate for amending this chapter or other relevant Acts to better promote and enhance the export potential of ocean thermal energy conversion components, facilities and plantships manufactured by United States industry.

(Pub. L. 96-320, title IV, § 408, as added Pub. L. 98-623, title VI, § 602(d), Nov. 8, 1984, 98 Stat. 3411.)

CHAPTER 100—WIND ENERGY SYSTEMS

Sec.	
9201.	Congressional findings and declaration of purpose.
9202.	Definitions.
9203.	Comprehensive program management plan.
	(a) Program activities and periods; consultations with heads of Federal agencies and non-Federal organizations.
	(b) Initial transmittal to Congressional committees.

- Sec.
- (c) Subsequent transmittals to Congress; descriptive statement: current plan, changes, justification for changes, progress, interagency cooperation, and recommendations for achievement of goals.
 - 9204. Research, development, and demonstration.
 - (a) Areas of knowledge limiting system utilization.
 - (b) Development of system prototypes and improvements.
 - (c) Acquisition of economic, scientific, and technological information of system operations under various circumstances and conditions.
 - (d) Other provisions inapplicable.
 - 9205. Technology application programs.
 - (a) Unit, operating, and maintenance costs.
 - (b) Proposals for Federal assistance.
 - (c) Forms of Federal assistance.
 - (d) Quantity production and utilization.
 - (e) Procedure for direct grants for large systems; limitation of amount.
 - (f) Procedure for loans for small or large systems; limitation of amount; term; interest; prepayment; other terms and conditions.
 - (g) Funds for Federal agency systems; projects and activities for technology applications of systems.
 - (h) Observation, monitoring, and reporting requirements; public inspection.
 - (i) Termination of new Federal assistance and Federal assistance programs.
 - 9206. Wind resource assessment.
 - 9207. Criteria for program selection.
 - 9208. Administrative provisions.
 - (a) Monitoring of performance; collection and evaluation of data.
 - (b) Liaison.
 - (c) Availability of information.
 - 9209. Utilization of capabilities and facilities.
 - 9210. Analysis of applications of wind energy systems.
 - 9211. Encouragement and protection of small business.
 - (a) Opportunities for participation in programs.
 - (b) Protection of trade secrets and other proprietary information.
 - (c) Manufacture or sale of wind energy systems in compliance with anti-trust laws; restriction against creation of noncompetitive market situations.
 - 9212. General provisions.
 - (a) Additional projects or activities.
 - (b) Application to States, territories and possessions.
 - 9213. Authorization of appropriations.

§ 9201. Congressional findings and declaration of purpose

- (a) The Congress finds that—
 - (1) the United States is faced with a finite and diminishing resource base of native fossil fuels and, as a consequence, must develop as quickly as possible a diversified, pluralistic national energy capability and posture;
 - (2) the current imbalance between supply and demand for fuels and energy in the United States is likely to grow for many years;
 - (3) it is in the Nation's interest to provide opportunities for the increased production of electricity from renewable energy sources;

(4) the early wide-spread utilization of wind energy for the generation of electricity and for mechanical power could lead to relief on the demand for existing non-renewable fuel and energy supplies;

(5) the use of large wind energy systems for certain limited applications is already economically feasible;

(6) the use of small wind energy systems for certain applications is already economically feasible, and therefore, the Federal Government should not undertake any financial incentive or financial initiative which may detrimentally affect commercial markets for small wind energy systems;

(7) an aggressive research, development and demonstration program to accelerate widespread utilization of wind energy should solve existing technical problems of converting wind energy into electricity and mechanical energy and, supported by an assured and growing market for wind energy systems during the next decade, should maximize the future contribution of wind energy to the Nation's future energy production;

(8) it is the proper and appropriate role of the Federal Government to undertake research and development, to participate in demonstration programs for wind energy systems, and to assist private industry, other entities, and the general public in hastening the widespread utilization of such systems;

(9) the widespread use of wind energy systems to supplement and replace conventional methods for the generation of electricity and mechanical power would have a beneficial effect upon the environment;

(10) the evaluation of the performance and reliability of wind energy technologies can be expedited by the testing of prototypes under carefully controlled conditions;

(11) innovation and creativity in the development of components and systems for converting wind energy into electricity and mechanical energy can be fostered through encouraging direct contact between the manufacturers of such components and systems and utilities and other persons interested in utilizing such components and systems; and

(12) consistent with the findings of the Domestic Policy Review on Solar Energy, wind energy can potentially contribute 1.7 quads of energy per year by the year 2000.

(b) It is declared to be the policy of the United States and the purpose of this chapter to establish during the next eight years an aggressive research, development, demonstration, and technology applications program for converting wind energy into electricity and mechanical energy. It is declared to be the further policy of the United States and the purpose of this chapter that the objectives of such program are—

(1) to reduce the average cost of electricity produced by installed wind energy systems, by the end of fiscal year 1988, to a level competitive with conventional energy sources;

(2) to reach a total megawatt capacity in the United States from wind energy systems, by the end of fiscal year 1988, of at least eight hundred megawatts, of which at least one hundred megawatts are provided by small wind energy systems; and

(3) to accelerate the growth of a commercially viable and competitive industry to make wind energy systems available to the general public as an option in order to reduce national consumption of fossil fuel.

(Pub. L. 96-345, § 2, Sept. 8, 1980, 94 Stat. 1139.)

SHORT TITLE

Section 1 of Pub. L. 96-345 provided: "That this Act [enacting this chapter] may be cited as the 'Wind Energy Systems Act of 1980'."

§ 9202. Definitions

For purposes of this chapter—

(1) the term "wind energy system" means a system of components which converts the kinetic energy of the wind into electricity or mechanical power, and which comprises all necessary components, including energy storage, power conditioning, control systems, and transmission systems, where appropriate, to provide electricity or mechanical power for individual, residential, agricultural, commercial, industrial, utility, or governmental use;

(2) the term "small wind energy system" means a wind energy system having a maximum rated capacity of one hundred kilowatts or less;

(3) the term "large wind energy system" means a wind energy system which is not a small wind energy system;

(4) the term "public and private entity" means any individual, corporation, partnership, firm, association, agricultural cooperative, public- or investor-owned utility, public or private institution or group, any State or local government agency, or any other domestic entity;

(5) the term "known wind resource" means a site with an estimated average annual wind velocity of at least twelve miles per hour;

(6) the term "conventional energy source" means energy produced from oil, gas, coal, and nuclear fuels; and

(7) the term "Secretary" means the Secretary of Energy.

(Pub. L. 96-345, § 3, Sept. 8, 1980, 94 Stat. 1140.)

§ 9203. Comprehensive program management plan

(a) Program activities and periods; consultations with heads of Federal agencies and non-Federal organizations

The Secretary shall prepare a comprehensive program management plan for the research, development, demonstration, and technology application activities to carry out the purposes of this chapter. The program activities shall be conducted in accordance with such comprehensive plan which shall include—

(1) a five-year program for small wind energy systems,

(2) an eight-year program for large wind energy systems, and

(3) a three-year program for wind resource assessment¹

which shall be consistent with the provisions of sections 9204, 9205, and 9206 of this title. In the

preparation of such plan, the Secretary shall consult with the Administrator of the National Aeronautics and Space Administration, the Secretary of the Interior, and the heads of such other Federal agencies and such public and private organizations as he deems appropriate.

(b) Initial transmittal to Congressional committees

The Secretary shall transmit the comprehensive program management plan to the Committee on Science and Technology of the House of Representatives and the Committee on Energy and Natural Resources of the Senate within nine months after September 8, 1980.

(c) Subsequent transmittals to Congress; descriptive statement: current plan, changes, justification for changes, progress, interagency cooperation, and recommendations for achievement of goals

Concurrently with the submission of the President's annual budget to the Congress for each year after the year in which the comprehensive plan is initially transmitted under subsection (b) of this section, the Secretary shall transmit to the Congress a detailed description of the comprehensive plan as then in effect, setting forth the modifications which may be necessary to appropriately revise such plan and any changes in circumstances which may have occurred since the plan or the last previous modification thereof was transmitted in accordance with this section. The detailed description of the comprehensive plan under this subsection shall include but need not be limited to a statement setting forth with respect to each of the programs under this chapter any changes in—

(1) the anticipated research, development, demonstration, and technology application objectives to be achieved by the program;

(2) the program elements, management structure, and activities, including any regional aspects and field responsibilities thereof;

(3) the program strategies and technology applications plans, including detailed milestone goals to be achieved during the next fiscal year for all major activities and projects;

(4) any significant economic, environmental, and societal effects which the program may have;

(5) the total estimated cost of individual program items; and

(6) the estimated relative financial contributions of the Federal Government and non-Federal participants in the program.

Such description shall also include a detailed justification of any such changes, a detailed description of the progress made toward achieving the goals of this chapter, a statement on the status of interagency cooperation in meeting such goals, and any legislative or other recommendations which the Secretary may have to help attain such goals.

(Pub. L. 96-345, § 4, Sept. 8, 1980, 94 Stat. 1141.)

CHANGE OF NAME

Committee on Science and Technology of House of Representatives changed to Committee on Science, Space, and Technology of House of Representatives by

¹ So in original. Probably should be followed by a comma.

House Resolution No. 5, One Hundredth Congress, Jan. 6, 1987. Committee on Science, Space, and Technology of House of Representatives treated as referring to Committee on Science of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103-7 (in which a report required under subsec. (c) of this section is listed as the 6th item on page 87), see section 3003 of Pub. L. 104-66, as amended, and section 1(a)(4) [div. A, §1402(1)] of Pub. L. 106-554, set out as notes under section 1113 of Title 31, Money and Finance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9205 of this title.

§ 9204. Research, development, and demonstration

(a) Areas of knowledge limiting system utilization

The Secretary shall initiate research and development or accelerate existing research and development in areas in which the lack of knowledge limits the widespread utilization of wind energy systems in order to achieve the purposes of this chapter.

(b) Development of system prototypes and improvements

(1) The Secretary shall continue an aggressive program for the development of prototypes of advanced wind energy systems.

(2) As often as he deems appropriate, the Secretary shall solicit and evaluate proposals for the research and development of any new or improved technologies, which, in the Secretary's opinion, will contribute to the development of improvements in current wind energy systems.

(c) Acquisition of economic, scientific, and technological information of system operations under various circumstances and conditions

The Secretary is authorized to enter into contracts, grants, and cooperative agreements with public and private entities for the purchase, fabrication, installation, and testing to obtain scientific, technological, and economic information from the demonstration of a variety of prototypes of advanced wind energy systems under a variety of circumstances and conditions.

(d) Other provisions inapplicable

In carrying out the responsibilities under this section, the Secretary is not subject to the requirements of section 553 of title 5 or section 7191 of this title.

(Pub. L. 96-345, § 5, Sept. 8, 1980, 94 Stat. 1141.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9203, 9207 of this title.

§ 9205. Technology application programs

(a) Unit, operating, and maintenance costs

The Secretary shall establish a technology application program for wind energy systems to achieve the purposes of this chapter by reduc-

tion in unit costs of wind energy systems through mass production and by determination of operating and maintenance costs through broad operational systems experience.

(b) Proposals for Federal assistance

In achieving the objectives of this section, the Secretary shall solicit and evaluate proposals for Federal assistance pursuant to paragraphs (1), (2), and (3) of subsection (c) of this section for investigating, purchasing, and installing such wind energy systems from public or private entities wishing to utilize wind energy systems.

(c) Forms of Federal assistance

In achieving the objectives of this section, the Secretary is authorized to use various forms of Federal assistance including, but not limited to—

- (1) contracts and cooperative agreements;
- (2) grants;
- (3) loans; and
- (4) direct Federal procurement.

(d) Quantity production and utilization

In carrying out his duties under this chapter, the Secretary is authorized to enter into such contracts and cooperative agreements with any public or private entity as may be necessary or appropriate for the production and utilization of large and small wind energy systems in quantities sufficient to achieve the objectives of this section.

(e) Procedure for direct grants for large systems; limitation of amount

In carrying out his duties under this chapter, the Secretary shall, within six months of September 8, 1980, establish procedures to allow any public or private entity wishing to install a large wind energy system to apply for and, upon meeting such terms and conditions as the Secretary may prescribe, to receive a direct grant for a portion of the total purchase and installation cost of such wind energy system: *Provided*, That grants for the portion of such cost in the case of large wind energy systems shall not exceed (A) 50 per centum of such cost during the first six years of the program under this subsection, and (B) 25 per centum of such cost during the seventh or eighth year of the program.

(f) Procedure for loans for small or large systems; limitation of amount; term; interest; prepayment; other terms and conditions

(1) In carrying out his duties under this chapter, the Secretary shall, within six months of September 8, 1980, establish procedures to allow public or private entities wishing to install a small or large wind energy system to apply for and, upon meeting such terms and conditions as the Secretary may prescribe, to receive loans for up to 75 per centum of the total purchase and installation costs of wind energy systems providing in the aggregate up to three hundred and twenty megawatts peak generating capacity involving at a minimum four projects: *Provided*, That no such loan in any fiscal year shall be for more than 50 per centum of the amount appropriated under this chapter for such fiscal year.

(2) Each loan shall be for a term which the Secretary deems appropriate, but no loan shall exceed twenty years beyond the date the wind energy system becomes operational.

(3) Each loan made pursuant to this section shall bear interest at the discount or interest rate used at the time the loan is made for water resource planning projects under section 1962d-17 of this title. Such loan can be prepaid at any time without prepayment penalty and shall be contingent upon such other terms and conditions prescribed by the Secretary.

(g) Funds for Federal agency systems; projects and activities for technology applications of systems

(1) In carrying out his duties under this chapter, the Secretary is authorized to provide funds for the accelerated procurement and installation of small and large wind energy systems by Federal agencies.

(2) The Secretary is authorized to enter into arrangements with appropriate Federal agencies, including the Water and Power Resources Services and the Federal power marketing agencies for large wind energy systems, to carry out such projects and activities as may be appropriate for the broad technology applications of small and large wind energy systems which are suitable and effective for use by such Federal agencies.

(h) Observation, monitoring, and reporting requirements; public inspection

The terms and conditions prescribed by the Secretary under this subsection shall require such observation, monitoring, and reporting requirements as the Secretary deems necessary for a period of five years and shall provide for members of the public to view and inspect the system under reasonable conditions.

(i) Termination of new Federal assistance and Federal assistance programs

New Federal assistance for technology applications systems shall terminate upon the appropriate determination by the Secretary, in the annual update of the comprehensive program management plan pursuant to section 9203 of this title. Termination of the small wind energy systems program shall occur when the Secretary finds that such systems have become economically competitive with conventional energy sources, or on September 30, 1985, whichever occurs first. Termination of the large wind energy systems program shall occur when the Secretary finds that such systems have become economically competitive with conventional energy sources, or on September 30, 1988, whichever occurs first.

(Pub. L. 96-345, § 6, Sept. 8, 1980, 94 Stat. 1142.)

REFERENCES IN TEXT

Section 1962d-17 of this title, referred to in subsec. (f)(3), was in the original "section 80 of the Water Resources Development Act of 1974 (42 U.S.C. 1962(d)-17(a))". Section 80 of the Water Resources Development Act of 1974 is classified to section 1962d-17 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9203, 9207 of this title.

§ 9206. Wind resource assessment

The Secretary shall initiate a three-year national wind resource assessment program. As part of such program, the Secretary shall—

(1) conduct activities to validate existing assessments of known wind resources;

(2) perform wind resource assessments in regions of the United States where the use of wind energy may prove feasible;

(3) initiate a general site prospecting program;

(4) establish standard wind data collection and siting techniques; and

(5) establish, in consultation with the Administrator of the National Oceanic and Atmospheric Administration, the Administrator of the National Aeronautics and Space Administration, and the Administrator of the Environmental Protection Agency, a national wind data center which shall make public information available on the known wind energy resources of various regions throughout the United States.

(Pub. L. 96-345, § 7, Sept. 8, 1980, 94 Stat. 1143.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9203, 9207, 9213 of this title.

§ 9207. Criteria for program selection

The Secretary shall set priorities which are, as far as possible, consistent with the intent and purposes of this chapter and which are set in accordance with the following criteria:

(1) the construction, operation, and maintenance costs of wind energy systems shall be minimized;

(2) programs established under this chapter shall be conducted with the express intent of bringing wind energy system costs down to a level competitive with energy costs from conventional energy systems;

(3) priority shall be given in the conduct of programs established under this chapter to those projects in which cost-sharing funds are provided by private, industrial, agricultural, or governmental entities or utilities; and

(4) to the extent that the Secretary is limited by the availability of funds to carry out the objectives of this chapter, priority, but not exclusive emphasis, should be given in the early years of the programs to activities under sections 9204 and 9206 of this title and in the later years of the programs to activities under section 9205 of this title.

(Pub. L. 96-345, § 8, Sept. 8, 1980, 94 Stat. 1144.)

§ 9208. Administrative provisions

(a) Monitoring of performance; collection and evaluation of data

The Secretary, in coordination with such Government agencies as may be appropriate, shall—

(1) monitor the performance and operation of wind energy systems installed under this chapter; and

(2) collect and evaluate data and information on the performance and operation of wind energy systems installed under this chapter.

(b) Liaison

The Secretary shall also maintain continuing liaison with related industries and interests and with the scientific and technical community in order to assure that the benefits of programs

under this chapter are and will continue to be realized to the maximum extent feasible.

(c) Availability of information

The Secretary shall assure, subject to section 552 of title 5 and section 1905 of title 18, that full and complete information with respect to any program, project, or other activity conducted under this chapter is made available to Federal, State, and local authorities, relevant segments of the economy, the scientific community, and the public so that the early, widespread, and practical use of wind energy throughout the United States is promoted to the maximum extent feasible.

(Pub. L. 96-345, §9, Sept. 8, 1980, 94 Stat. 1144; Pub. L. 104-66, title I, §1051(b), Dec. 21, 1995, 109 Stat. 716.)

AMENDMENTS

1995—Subsec. (a)(3). Pub. L. 104-66 struck out par. (3) which read as follows: “from time to time carry out such studies and investigations and take such other actions, including the submission of special reports to the Congress when appropriate, as may be necessary to assure that the programs for which the Secretary is responsible under this chapter effectively carry out the purposes of this chapter.”

§ 9209. Utilization of capabilities and facilities

The Secretary shall utilize the technological and management capabilities, equipment, and facilities of the National Aeronautics and Space Administration to the maximum extent practicable in carrying out his duties under this chapter, and shall enter into such additional agreements with the Administrator of such Administration as may be necessary for this purpose.

(Pub. L. 96-345, §10, Sept. 8, 1980, 94 Stat. 1145.)

§ 9210. Analysis of applications of wind energy systems

The Secretary shall—

(1) initiate and conduct a federal applications study for wind energy systems, cooperatively with appropriate Federal agencies to determine the potential for the use of wind systems at specific Federal facilities; and this study shall—

(A) include an analysis which determines those sites at which wind energy systems are economically competitive with the marginal costs of new conventional energy sources in the areas;

(B) identify potential sites and uses of wind energy systems at the following agencies as well as any others which the Secretary deems necessary:

- (i) the Department of Defense;
- (ii) the Department of Transportation (including the United States Coast Guard, the Federal Aviation Administration, and the Federal Highway Administration);
- (iii) the Department of Commerce;
- (iv) the Department of Agriculture; and
- (v) the Department of the Interior;

(C) provide a preliminary report to the Congress within nine months after September 8, 1980; and

(D) include the presentation of a detailed plan for the use of wind energy systems for power generation at specific sites in Federal Government agencies to the Congress within twelve months after September 8, 1980;

(2) study the effects, at varying levels of market penetration, of the widespread utilization of wind energy systems on the existing electrical utility system;

(3) determine the necessity for, and make recommendations to the Committee on Energy and Natural Resources of the Senate and the Committee on Science and Technology of the House of Representatives within eighteen months after September 8, 1980, on, the need for any additional incentives for either users or manufacturers, in each of the potential markets for wind energy systems, to accelerate the widespread utilization of wind energy technologies;

(4) evaluate the actual performance of wind energy systems in various applications, including but not limited to residential, agricultural, large and small scale irrigation pumping, industrial, commercial, remote nonnetwork utility, and other applications, and report thereon to the Congress within two years after September 8, 1980; and

(5) in carrying out his functions under this section, consult with the appropriate government agencies, industry representatives, and members of the scientific and technical community having expertise and interest in this subject.

The Secretary, as appropriate, may merge any continuing or on-going studies within the Department of Energy or any other Federal agency with those required under this section to avoid any unnecessary duplication of effort or funding.

(Pub. L. 96-345, §11, Sept. 8, 1980, 94 Stat. 1145; Pub. L. 99-386, title I, §104(b), Aug. 22, 1986, 100 Stat. 821.)

AMENDMENTS

1986—Pars. (5), (6). Pub. L. 99-386 redesignated par. (6) as (5) and struck out former par. (5) which read as follows: “initiate and conduct a study involving the prospects for applications of wind energy systems for power generation in foreign countries, particularly lesser developed countries and the potential for the exploration of these energy systems. This study shall involve the cooperation of the Department of State and the Department of Commerce, as well as other Federal agencies which the Secretary deems appropriate. A final report shall be submitted to the Congress, as well as a preliminary report within twelve months of September 8, 1980; and”.

CHANGE OF NAME

Committee on Science and Technology of House of Representatives changed to Committee on Science, Space, and Technology of House of Representatives by House Resolution No. 5, One Hundredth Congress, Jan. 6, 1987. Committee on Science, Space, and Technology of House of Representatives treated as referring to Committee on Science of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities

and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 9211. Encouragement and protection of small business

(a) Opportunities for participation in programs

In carrying out his functions under this chapter, the Secretary shall take steps to assure that small business concerns will have realistic and adequate opportunities to participate in the programs under this chapter to the maximum extent practicable.

(b) Protection of trade secrets and other proprietary information

The Secretary shall, to the maximum extent practicable, use all authority provided by law to protect trade secrets and other proprietary information submitted by small business under this chapter and to avoid the unnecessary disclosure of such information.

(c) Manufacture or sale of wind energy systems in compliance with antitrust laws; restriction against creation of noncompetitive market situations

The Secretary shall take such steps as may be necessary to assure compliance with the antitrust laws in the conduct of activities related to the manufacture or sale of wind energy systems directly or indirectly assisted under this chapter and shall implement this chapter in a manner which will protect against the creation of noncompetitive market situations in the conduct of such activities.

(Pub. L. 96-345, § 12, Sept. 8, 1980, 94 Stat. 1146.)

REFERENCES IN TEXT

The antitrust laws, referred to in subsec. (c), are classified generally to chapter 1 (§ 1 et seq.) of Title 15, Commerce and Trade.

§ 9212. General provisions

(a) Additional projects or activities

Nothing in this chapter shall be construed as preventing the Secretary from undertaking projects or activities in addition to those specified in this chapter if such projects or activities appropriately further the purposes set forth in this subsection.¹

(b) Application to States, territories and possessions

This chapter applies to each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands and the territories and possessions of the United States including the Trust Territory of the Pacific Islands.

(Pub. L. 96-345, § 13, Sept. 8, 1980, 94 Stat. 1146.)

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

¹ So in original. Probably should be "chapter."

§ 9213. Authorization of appropriations

(a) There is authorized to be appropriated to the Secretary to carry out this chapter (1) for the fiscal year ending September 30, 1981, the sum of \$100,000,000 (of which \$10,000,000 shall be available exclusively for purposes of section 9206 of this title), and (2) for each fiscal year beginning after that date, such sum as may be authorized by legislation hereafter enacted.

(b) In each of the five years of the small wind energy systems program, at least 25 per centum of the total authorization for appropriations under subsection (a) of this section shall be for small wind energy systems activities, including supporting activities.

(Pub. L. 96-345, § 14, Sept. 8, 1980, 94 Stat. 1146.)

CHAPTER 101—MAGNETIC FUSION ENERGY ENGINEERING

Sec.	
9301.	Congressional findings and declaration of policy.
9302.	Definitions.
9303.	Program activities. <ol style="list-style-type: none"> (a) Development in areas where lack of knowledge limits magnetic fusion energy systems. (b) Research programs on plasma confinement, alternate confinement concepts, advanced fuels, and properties of materials likely to be used in construction of fusion engineering devices. (c) Fusion engineering device designs. (d) Operation of demonstration plant at turn of twenty-first century. (e) Assessment of factors in determining commercial introduction of magnetic fusion energy systems.
9304.	Comprehensive program management plan; submittal to Congressional committees.
9305.	Magnetic fusion engineering center. <ol style="list-style-type: none"> (a) Development plan. (b) Factors considered in formulation of development plan. (c) Report to Congressional committees.
9306.	Repealed.
9307.	Program advisory committees.
9308.	International cooperation; examination of impact on national magnetic fusion program; exploration of prospects for joint funding in construction of fusion engineering device; report to Congressional committees on results of examination and exploration.
9309.	Technical manpower requirements; report to President and Congress.
9310.	Dissemination of information.
9311.	Repealed.
9312.	Authorization of appropriations; contract authority.

§ 9301. Congressional findings and declaration of policy

(a) The Congress hereby finds that—

(1) the United States must formulate an energy policy designed to meet an impending worldwide shortage of many exhaustible, conventional energy resources in the next few decades;

(2) the energy policy of the United States must be designed to ensure that energy technologies using essentially inexhaustible resources are commercially available at a time

prior to serious depletion of conventional resources;

(3) fusion energy is one of the few known energy sources which are essentially inexhaustible, and thus constitutes a long-term energy option;

(4) major progress in all aspects of magnetic fusion energy technology during the past decade instills confidence that power production from fusion energy systems is achievable;

(5) the United States must aggressively pursue research and development programs in magnetic fusion designed to foster advanced concepts and advanced technology and to develop efficient, reliable components and subsystems;

(6) to ensure the timely commercialization of magnetic fusion energy systems, the United States must demonstrate at an early date the engineering feasibility of magnetic fusion energy systems;

(7) progress in magnetic fusion energy systems is currently limited by the funds made available rather than technical barriers;

(8) it is a proper role for the Federal Government to accelerate research, development, and demonstration programs in magnetic fusion energy technologies; and

(9) acceleration of the current magnetic fusion program will require a doubling within seven years of the present funding level without consideration of inflation and a 25 per centum increase in funding each of fiscal years 1982 and 1983.

(b) It is therefore declared to be the policy of the United States and the purpose of this chapter to accelerate the national effort in research, development, and demonstration activities related to magnetic fusion energy systems. Further, it is declared to be the policy of the United States and the purpose of this chapter that the objectives of such program shall be—

(1) to promote an orderly transition from the current research and development program through commercial development;

(2) to establish a national goal of demonstrating the engineering feasibility of magnetic fusion by the early 1990's;

(3) to achieve at the earliest practicable time, but not later than the year 1990, operation of a magnetic fusion engineering device based on the best available confinement concept;

(4) to establish as a national goal the operation of a magnetic fusion demonstration plant at the turn of the twenty-first century;

(5) to foster cooperation in magnetic fusion research and development among government, universities, industry, and national laboratories;

(6) to promote the broad participation of domestic industry in the national magnetic fusion program;

(7) to continue international cooperation in magnetic fusion research for the benefit of all nations;

(8) to promote greater public understanding of magnetic fusion; and

(9) to maintain the United States as the world leader in magnetic fusion.

(Pub. L. 96-386, § 2, Oct. 7, 1980, 94 Stat. 1539.)

SHORT TITLE

Section 1 of Pub. L. 96-386 provided: "That this Act [enacting this chapter] may be cited as the 'Magnetic Fusion Energy Engineering Act of 1980'."

§ 9302. Definitions

For the purposes of this chapter—

(1) "fusion" means a process whereby two light nuclei, such as deuterium and tritium, collide at high velocity, forming a compound nucleus, which subsequently separates into constituents which are different from the original colliding nuclei, and which carry away the accompanying energy release;

(2) "magnetic fusion" means the use of magnetic fields to confine a very hot, fully ionized gas of light nuclei, so that the fusion process can occur;

(3) "energy system" means a facility designed to utilize energy released in the magnetic fusion process for the generation of electricity and the production of hydrogen or other fuels;

(4) "fusion engineering device" means a magnetic fusion facility which achieves at least a burning plasma and serves to test components for engineering purposes;

(5) "demonstration plant" means a prototype energy system which is of sufficient size to provide safety, environmental reliability, availability, and ready engineering extrapolation of all components to commercial size but which system need not be economically competitive with then alternative energy sources; and

(6) "Secretary" means Secretary of Energy. (Pub. L. 96-386, § 3, Oct. 7, 1980, 94 Stat. 1540.)

§ 9303. Program activities

(a) Development in areas where lack of knowledge limits magnetic fusion energy systems

The Secretary shall initiate activities or accelerate existing activities in research areas in which the lack of knowledge limits magnetic fusion energy systems in order to ensure the achievement of the purposes of this chapter.

(b) Research programs on plasma confinement, alternate confinement concepts, advanced fuels, and properties of materials likely to be used in construction of fusion engineering devices

(1) The Secretary shall maintain an aggressive plasma confinement research program on the current lead concept to provide a full measure of support for the design, construction, and operation of the fusion engineering devices.

(2) The Secretary shall maintain a broadly based research program on alternate confinement concepts and on advanced fuels at a sufficient level of funding to achieve optimal design of each successive magnetic fusion facility using the then best available confinement and fuel concept.

(3) The Secretary shall ensure that research on properties of materials likely to be required for the construction of fusion engineering devices is adequate to provide timely information for the design of such devices.

(c) Fusion engineering device designs

(1) The Secretary shall initiate design activities on a fusion engineering device using the

best available confinement concept to ensure operation of such a device at the earliest practicable time, but not later than the year 1990.

(2) The Secretary shall develop and test the adequacy of the engineering design of components to be utilized in the fusion engineering device.

(d) Operation of demonstration plant at turn of twenty-first century

The Secretary shall initiate at the earliest practical time each activity which he deems necessary to achieve the national goal for operation of a demonstration plant at the turn of the twenty-first century.

(e) Assessment of factors in determining commercial introduction of magnetic fusion energy systems

The Secretary shall continue efforts to assess factors which will determine the commercial introduction of magnetic fusion energy systems including, but not limited to—

- (1) projected costs relative to other alternative energy sources;
- (2) projected growth rates in energy demand;
- (3) safety-related design limitations;
- (4) environmental impacts; and
- (5) limitations on the availability of strategic elements, such as helium, lithium, and special metals.

(Pub. L. 96-386, § 4, Oct. 7, 1980, 94 Stat. 1540.)

§ 9304. Comprehensive program management plan; submittal to Congressional committees

(a) The Secretary shall prepare a comprehensive program management plan for the conduct of the research, development, and demonstration activities under this chapter. Such plan shall include at a minimum—

- (1) a presentation of the program strategy which will be used to achieve the purposes of this chapter;
- (2) a five-year program implementation schedule, including identification of detailed milestone goals, with associated budget and program resources requirements;
- (3) risk assessments;
- (4) supporting research and development needed to solve problems which may inhibit or limit development of magnetic fusion energy systems; and
- (5) an analysis of institutional, environmental, and economic considerations which are limiting the national magnetic fusion program.

(b) The Secretary shall transmit the comprehensive program management plan to the Committee on Science and Technology of the House of Representatives and the Committee on Energy and Natural Resources of the Senate not later than January 1, 1982.

(Pub. L. 96-386, § 5, Oct. 7, 1980, 94 Stat. 1541.)

CHANGE OF NAME

Committee on Science and Technology of House of Representatives changed to Committee on Science, Space, and Technology of House of Representatives by House Resolution No. 5, One Hundredth Congress, Jan. 6, 1987. Committee on Science, Space, and Technology of House of Representatives treated as referring to

Committee on Science of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

§ 9305. Magnetic fusion engineering center

(a) Development plan

The Secretary shall develop a plan for the creation of a national magnetic fusion engineering center for the purpose of accelerating fusion technology development via the concentration and coordination of major magnetic fusion engineering devices and associated activities at such a national center.

(b) Factors considered in formulation of development plan

In developing the plan, the Secretary shall include relevant factors including, but not limited to—

- (1) means of saving cost and time through the establishment of the national center relative to the cost and schedule currently projected for the program;
- (2) means of providing common facilities to be shared by many magnetic fusion concepts;
- (3) assessment of the environmental and safety-related aspects of the national center;
- (4) provisions for international cooperation in magnetic fusion activities at the national center;
- (5) provision of access to facilities for the broader technical involvement of domestic industry and universities in the magnetic fusion energy program;
- (6) siting criteria for the national center including a list of potential sites;
- (7) the advisability of establishing such a center considering all factors, including the alternative means and associated costs of pursuing such technology; and
- (8) changes in the management structure of the magnetic fusion program to allow more effective direction of activities related to the national center.

(c) Report to Congressional committees

The Secretary shall submit not later than July 1, 1981, a report to the House Committee on Science and Technology and the Senate Committee on Energy and Natural Resources characterizing the plan and setting forth the steps necessary for implementation of the plan, including any steps already implemented.

(Pub. L. 96-386, § 6, Oct. 7, 1980, 94 Stat. 1541.)

CHANGE OF NAME

Committee on Science and Technology of House of Representatives changed to Committee on Science, Space, and Technology of House of Representatives by House Resolution No. 5, One Hundredth Congress, Jan. 6, 1987. Committee on Science, Space, and Technology of House of Representatives treated as referring to Committee on Science of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

§ 9306. Repealed. Pub. L. 104-46, title V, § 509, Nov. 13, 1995, 109 Stat. 421

Section, Pub. L. 96-386, § 7, Oct. 7, 1980, 94 Stat. 1542, related to establishment, membership, duties, etc., of technical panel on magnetic fusion and required panel to submit to Energy Research Advisory Board on at

least a triennial basis a written report of its findings and recommendations with regard to magnetic fusion program.

§ 9307. Program advisory committees

The Secretary may direct the director of each laboratory or installation at which a major magnetic fusion facility is operated for, or funded primarily by, the Federal Government to establish, for the sole purpose of providing advice to such director, a program advisory committee composed of persons with expertise in magnetic fusion from such domestic industry, universities, government laboratories, and other scientific and technical organizations as such director deems appropriate.

(Pub. L. 96-386, § 8, Oct. 7, 1980, 94 Stat. 1543.)

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law. See section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 9308. International cooperation; examination of impact on national magnetic fusion program; exploration of prospects for joint funding in construction of fusion engineering device; report to Congressional committees on results of examination and exploration

(a)(1) The Secretary in consultation with the Secretary of State shall actively seek to enter into or to strengthen existing international cooperative agreements in magnetic fusion research and development activities of mutual benefit to all parties.

(2) The Secretary shall seek to achieve equitable exchange of information, data, scientific personnel, and other considerations in the conduct of cooperative efforts with technologically advanced nations.

(b)(1) The Secretary shall examine the potential impacts on the national magnetic fusion program of United States participation in an international effort to construct fusion engineering devices.

(2) The Secretary shall explore, to the extent feasible, the prospects for joint financial participation by other nations with the United States in the construction of a fusion engineering device.

(3) Within two years of October 7, 1980, the Secretary shall transmit to the House Committee on Science and Technology and the Senate Committee on Energy and Natural Resources the results of such examinations and explorations with his recommendations for construction of a national or international fusion engineering device: *Provided, however*, That such examinations and explorations shall not have the effect of delaying design activities related to a national fusion engineering device.

(Pub. L. 96-386, § 9, Oct. 7, 1980, 94 Stat. 1543.)

CHANGE OF NAME

Committee on Science and Technology of House of Representatives changed to Committee on Science, Space, and Technology of House of Representatives by House Resolution No. 5, One Hundredth Congress, Jan. 6, 1987. Committee on Science, Space, and Technology of House of Representatives treated as referring to Committee on Science of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

§ 9309. Technical manpower requirements; report to President and Congress

(a) The Secretary shall assess the adequacy of the projected United States supply of manpower in the engineering and scientific disciplines required to achieve the purposes of this chapter taking cognizance of the other demands likely to be placed on such manpower supply.

(b) The Secretary shall within one year of October 7, 1980, submit a report to the President and to the Congress setting forth his assessment along with his recommendations regarding the need for increased support for education in such engineering and scientific disciplines.

(Pub. L. 96-386, § 10, Oct. 7, 1980, 94 Stat. 1543.)

§ 9310. Dissemination of information

(a) The Secretary shall take all necessary steps to assure that technical information relevant to the status and progress of the national magnetic fusion program is made readily available to interested persons in domestic industry and universities in the United States: *Provided, however*, That upon a showing to the Secretary by any person that any information or portion thereof provided to the Secretary directly or indirectly from such person would, if made public, divulge (1) trade secrets or (2) other proprietary information of such person, the Secretary shall not disclose such information and disclosure thereof shall be punishable under section 1905 of title 18.

(b) The Secretary shall maintain an aggressive program in the United States for the provision of public information and educational materials to promote widespread knowledge of magnetic fusion among educational, community, business, environmental, labor, and governmental entities and the public at large.

(Pub. L. 96-386, § 11, Oct. 7, 1980, 94 Stat. 1544.)

§ 9311. Repealed. Pub. L. 104-66, title I, § 1051(n), Dec. 21, 1995, 109 Stat. 717

Section, Pub. L. 96-386, § 12, Oct. 7, 1980, 94 Stat. 1544, directed Secretary of Energy to submit annual report of activities pursuant to this chapter as a separate part of the annual report submitted pursuant to section 7321 of this title.

§ 9312. Authorization of appropriations; contract authority

(a) There is hereby authorized to be appropriated to the Secretary, for the fiscal year ending September 30, 1981, such sums as are provided in the annual authorization Act pursuant to section 7270 of this title.

(b) In carrying out the provisions of this chapter, the Secretary is authorized to enter into contracts only to such extent or in such

amounts as may be provided in advance in appropriations Acts.

(Pub. L. 96-386, § 13, Oct. 7, 1980, 94 Stat. 1544.)

CHAPTER 102—MENTAL HEALTH SYSTEMS

Sec.

9401. Congressional statement of findings.

SUBCHAPTER I—GENERAL PROVISIONS

9411. Repealed.

9412. Definitions.

9421 to 9423. Repealed.

SUBCHAPTER II—GRANT PROGRAMS

9431 to 9438. Repealed.

SUBCHAPTER III—GENERAL PROVISIONS RESPECTING GRANT PROGRAMS

PART A—STATE MENTAL HEALTH SERVICE PROGRAMS

9451, 9452. Repealed.

PART B—APPLICATIONS AND RELATED PROVISIONS

9461 to 9465. Repealed.

PART C—PERFORMANCE

9471 to 9473. Repealed.

PART D—ENFORCEMENT

9481. Repealed.

PART E—MISCELLANEOUS

9491 to 9493. Repealed.

SUBCHAPTER IV—MENTAL HEALTH RIGHTS AND ADVOCACY

9501. Bill of Rights.

9502. Repealed.

SUBCHAPTER V—SEX OFFENSE PREVENTION AND CONTROL

9511. Grants for sex offense prevention and control.

(a) Authority of National Center for the Prevention and Control of Sex Offenses; functions.

(b) Advisory committee; functions, membership, etc.

(c) Submission and approval of application; form, manner and contents.

(d) Authorization of appropriations.

(e) "Sex offense" defined.

9512. Repealed.

SUBCHAPTER VI—MISCELLANEOUS

9521. Repealed.

9522. Report on shelter and basic living needs of chronically mentally ill individuals.

(a) Submission to Congressional committees by Secretaries of Health and Human Services and Housing and Urban Development.

(b) Contents.

(c) Submission date.

9523. Repealed.

§ 9401. Congressional statement of findings

The Congress finds—

(1) despite the significant progress that has been made in making community mental health services available and in improving residential mental health facilities since the original community mental health centers legislation was enacted in 1963, unserved and underserved populations remain and there are certain groups in the population, such as chronically mentally ill individuals, children

and youth, elderly individuals, racial and ethnic minorities, women, poor persons, and persons in rural areas, which often lack access to adequate private and public mental health services and support services;

(2) the process of transferring or diverting chronically mentally ill individuals from unwarranted or inappropriate institutionalized settings to their home communities has frequently not been accompanied by a process of providing those individuals with the mental health and support services they need in community-based settings;

(3) the shift in emphasis from institutional care to community-based care has not always been accompanied by a process of affording training, retraining, and job placement for employees affected by institutional closure and conversion;

(4) the delivery of mental health and support services is typically uncoordinated within and among local, State, and Federal entities;

(5) mentally ill persons are often inadequately served by (A) programs of the Department of Health and Human Services such as medicare, medicaid, supplemental security income, and social services, and (B) programs of the Department of Housing and Urban Development, the Department of Labor, and other Federal agencies;

(6) health care systems often lack general health care personnel with adequate mental health care training and often lack mental health care personnel and consequently many individuals with some level of mental disorder do not receive appropriate mental health care;

(7) present knowledge of methods to prevent mental illness through discovery and elimination of its causes and through early detection and treatment is too limited;

(8) a comprehensive and coordinated array of appropriate private and public mental health and support services for all people in need within specific geographic areas, based upon a cooperative local-State-Federal partnership, remains the most effective and humane way to provide a majority of mentally ill individuals with mental health care and needed support; and

(9) because of the rising demand for mental health services and the wide disparity in the distribution of psychiatrists, clinical psychologists, social workers, and psychiatric nurses, there is a shortage in the medical specialty of psychiatry and there are also shortages among the other health personnel who provide mental health services.

(Pub. L. 96-398, § 2, Oct. 7, 1980, 94 Stat. 1565.)

SHORT TITLE

Section 1 of Pub. L. 96-398 provided that: "This Act [enacting this chapter, amending sections 210, 225a, 229b, 242a, 246, 289k-1, 300l-2, 300m-2, 1396b, 2689a to 2689c, 2689e, 2689g, and 2689h of this title, repealing section 2689q of this title, and enacting provisions set out as notes under section 242a, 246, 289k-1, and 2689b of this title] may be cited as the 'Mental Health Systems Act'."

SUBCHAPTER I—GENERAL PROVISIONS

AMENDMENTS

1981—Pub. L. 97-35, title IX, § 902(e)(1), (f)(1)(A), Aug. 13, 1981, 95 Stat. 560, struck out heading "Part A—Defi-

nitions” before section 9411 and heading “Part B—State Administrative Responsibilities” before section 9421.

§ 9411. Repealed. Pub. L. 97-35, title IX, § 902(e)(1), Aug. 13, 1981, 95 Stat. 560

Section, Pub. L. 96-398, title I, §101, Oct. 7, 1980, 94 Stat. 1566, set forth general provisions respecting community mental health centers.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 902(h) of Pub. L. 97-35, set out as an Effective Date of 1981 Amendment note under section 238f of this title.

§ 9412. Definitions

For purposes of this chapter:

(1) The term “Secretary” means the Secretary of Health and Human Services.

(2) The term “State” includes (in addition to the fifty States) the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands.

(3) The term “nonprofit”, as applied to any entity, means an entity which is owned and operated by one or more corporations or associations no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or person.

(Pub. L. 96-398, title I, §102, Oct. 7, 1980, 94 Stat. 1569; Pub. L. 97-35, title IX, §902(f)(1)(B), (C), Aug. 13, 1981, 95 Stat. 560.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 96-398, Oct. 7, 1980, 94 Stat. 1564, as amended, known as the Mental Health Systems Act, which enacted this chapter, amended sections 210, 225a, 229b, 242a, 246, 289k-1, 300l-2, 300m-2, 1396b, 2689a to 2689c, 2689e, 2689g, and 2689h of this title, repealed section 2689q of this title, and enacted provisions set out as notes under sections 242a, 246, 289k-1, and 2689b of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9401 of this title and Tables.

AMENDMENTS

1981—Pub. L. 97-35 redesignated former par. (5) as (3). Former pars. (3), (4), (6), and (7), which defined “State mental health authority”, “mental health service area”, “priority population group”, and “Governor”, respectively, were struck out.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective Oct. 1, 1981, see section 902(h) of Pub. L. 97-35, set out as a note under section 238f of this title.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§§ 9421 to 9423. Repealed. Pub. L. 97-35, title IX, § 902(e)(1), Aug. 13, 1981, 95 Stat. 560

Section 9421, Pub. L. 96-398, title I, §105, Oct. 7, 1980, 94 Stat. 1570, related to designation of State agency for mental health programs.

Section 9422, Pub. L. 96-398, title I, §106, Oct. 7, 1980, 94 Stat. 1570, related to establishment, etc., of State mental health service areas.

Section 9423, Pub. L. 96-398, title I, §107(a)-(c), Oct. 7, 1980, 94 Stat. 1570, related to allotments to improve State administration of mental health programs.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 902(h) of Pub. L. 97-35, set out as an Effective Date of 1981 Amendment note under section 238f of this title.

SUBCHAPTER II—GRANT PROGRAMS

§§ 9431 to 9438. Repealed. Pub. L. 97-35, title IX, § 902(e)(1), Aug. 13, 1981, 95 Stat. 560

Section 9431, Pub. L. 96-398, title II, §201, Oct. 7, 1980, 94 Stat. 1571, set forth authority, etc., for grants for community mental health centers.

Section 9432, Pub. L. 96-398, title II, §202, Oct. 7, 1980, 94 Stat. 1573, set forth authority, etc., for grants for services for chronically, mentally ill individuals.

Section 9433, Pub. L. 96-398, title II, §203, Oct. 7, 1980, 94 Stat. 1575, set forth authority, etc., for grants for services for severely, mentally disturbed children and adults.

Section 9434, Pub. L. 96-398, title II, §204, Oct. 7, 1980, 94 Stat. 1577, set forth authority, etc., for grants for mental health services for elderly individuals and other priority populations.

Section 9435, Pub. L. 96-398, title II, §205, Oct. 7, 1980, 94 Stat. 1581, set forth authority, etc., for grants for non-revenue producing services.

Section 9436, Pub. L. 96-398, title II, §206, Oct. 7, 1980, 94 Stat. 1582, set forth authority, etc., for grants for mental health services in health care centers.

Section 9437, Pub. L. 96-398, title II, §207, Oct. 7, 1980, 94 Stat. 1583, set forth authority, etc., for grants and contracts for innovative projects.

Section 9438, Pub. L. 96-398, title II, §208, Oct. 7, 1980, 94 Stat. 1584, set forth authority, etc., for grants for prevention of mental illness and promotion of mental health.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 902(h) of Pub. L. 97-35, set out as an Effective Date of 1981 Amendment note under section 238f of this title.

SUBCHAPTER III—GENERAL PROVISIONS RESPECTING GRANT PROGRAMS

PART A—STATE MENTAL HEALTH SERVICE PROGRAMS

§§ 9451, 9452. Repealed. Pub. L. 97-35, title IX, § 902(e)(1), Aug. 13, 1981, 95 Stat. 560

Section 9451, Pub. L. 96-398, title III, §301, Oct. 7, 1980, 94 Stat. 1585, set forth requirements for State mental health services programs.

Section 9452, Pub. L. 96-398, title III, §302, Oct. 7, 1980, 94 Stat. 1585, related to contents of programs with respect to administrative and service parts.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 902(h) of Pub. L. 97-35, set out as an Effective Date of 1981 Amendment note under section 238f of this title.

PART B—APPLICATIONS AND RELATED PROVISIONS

§§ 9461 to 9465. Repealed. Pub. L. 97-35, title IX, § 902(e)(1), Aug. 13, 1981, 95 Stat. 560

Section 9461, Pub. L. 96-398, title III, §305, Oct. 7, 1980, 94 Stat. 1588, set forth provisions respecting State administration of programs, and authorized agreements, etc., for implementation.

Section 9462, Pub. L. 96-398, title III, §306, Oct. 7, 1980, 94 Stat. 1590, related to processing of applications by State mental health authorities.

Section 9463, Pub. L. 96-398, title III, § 307, Oct. 7, 1980, 94 Stat. 1592, set forth provisions relating to requirements for applications.

Section 9464, Pub. L. 96-398, title III, § 308, Oct. 7, 1980, 94 Stat. 1594, related to Indian tribes and organizations.

Section 9465, Pub. L. 96-398, title III, § 309, Oct. 7, 1980, 94 Stat. 1595, related to procedures for consideration of grant or contract application.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 902(h) of Pub. L. 97-35, set out as an Effective Date of 1981 Amendment note under section 2381 of this title.

PART C—PERFORMANCE

§§ 9471 to 9473. Repealed. Pub. L. 97-35, title IX, § 902(e)(1), Aug. 13, 1981, 95 Stat. 560

Section 9471, Pub. L. 96-398, title III, § 315, Oct. 7, 1980, 94 Stat. 1595, related to performance contracts.

Section 9472, Pub. L. 96-398, title III, § 316, Oct. 7, 1980, 94 Stat. 1595, related to performance standards.

Section 9473, Pub. L. 96-398, title III, § 317, Oct. 7, 1980, 94 Stat. 1595, related to evaluation and monitoring of projects and activities.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 902(h) of Pub. L. 97-35, set out as an Effective Date of 1981 Amendment note under section 2381 of this title.

PART D—ENFORCEMENT

§ 9481. Repealed. Pub. L. 97-35, title IX, § 902(e)(1), Aug. 13, 1981, 95 Stat. 560

Section, Pub. L. 96-398, title III, § 321, Oct. 7, 1980, 94 Stat. 1596, set forth enforcement procedures.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 902(h) of Pub. L. 97-35, set out as an Effective Date of 1981 Amendment note under section 2381 of this title.

PART E—MISCELLANEOUS

§§ 9491 to 9493. Repealed. Pub. L. 97-35, title IX, § 902(e)(1), Aug. 13, 1981, 95 Stat. 560

Section 9491, Pub. L. 96-398, title III, § 326, Oct. 7, 1980, 94 Stat. 1597, related to provision of technical assistance.

Section 9492, Pub. L. 96-398, title III, § 327, Oct. 7, 1980, 94 Stat. 1597, related to indirect provision of services.

Section 9493, Pub. L. 96-398, title III, § 328, Oct. 7, 1980, 94 Stat. 1597, related to cooperative agreements.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 902(h) of Pub. L. 97-35, set out as an Effective Date of 1981 Amendment note under section 2381 of this title.

SUBCHAPTER IV—MENTAL HEALTH RIGHTS AND ADVOCACY

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 10841 of this title.

§ 9501. Bill of Rights

It is the sense of the Congress that each State should review and revise, if necessary, its laws to ensure that mental health patients receive the protection and services they require; and in making such review and revision should take into account the recommendations of the Presi-

dent's Commission on Mental Health and the following:

(1) A person admitted to a program or facility for the purpose of receiving mental health services should be accorded the following:

(A) The right to appropriate treatment and related services in a setting and under conditions that—

(i) are the most supportive of such person's personal liberty; and

(ii) restrict such liberty only to the extent necessary consistent with such person's treatment needs, applicable requirements of law, and applicable judicial orders.

(B) The right to an individualized, written, treatment or service plan (such plan to be developed promptly after admission of such person), the right to treatment based on such plan, the right to periodic review and reassessment of treatment and related service needs, and the right to appropriate revision of such plan, including any revision necessary to provide a description of mental health services that may be needed after such person is discharged from such program or facility.

(C) The right to ongoing participation, in a manner appropriate to such person's capabilities, in the planning of mental health services to be provided such person (including the right to participate in the development and periodic revision of the plan described in subparagraph (B)), and, in connection with such participation, the right to be provided with a reasonable explanation, in terms and language appropriate to such person's condition and ability to understand, of—

(i) such person's general mental condition and, if such program or facility has provided a physical examination, such person's general physical condition;

(ii) the objectives of treatment;

(iii) the nature and significant possible adverse effects of recommended treatments;

(iv) the reasons why a particular treatment is considered appropriate;

(v) the reasons why access to certain visitors may not be appropriate; and

(vi) any appropriate and available alternative treatments, services, and types of providers of mental health services.

(D) The right not to receive a mode or course of treatment, established pursuant to the treatment plan, in the absence of such person's informed, voluntary, written consent to such mode or course of treatment, except treatment—

(i) during an emergency situation if such treatment is pursuant to or documented contemporaneously by the written order of a responsible mental health professional; or

(ii) as permitted under applicable law in the case of a person committed by a court to a treatment program or facility.

(E) The right not to participate in experimentation in the absence of such person's

informed, voluntary, written consent, the right to appropriate protections in connection with such participation, including the right to a reasonable explanation of the procedure to be followed, the benefits to be expected, the relative advantages of alternative treatments, and the potential discomforts and risks, and the right and opportunity to revoke such consent.

(F) The right to freedom from restraint or seclusion, other than as a mode or course of treatment or restraint or seclusion during an emergency situation if such restraint or seclusion is pursuant to or documented contemporaneously by the written order of a responsible mental health professional.

(G) The right to a humane treatment environment that affords reasonable protection from harm and appropriate privacy to such person with regard to personal needs.

(H) The right to confidentiality of such person's records.

(I) The right to access, upon request, to such person's mental health care records, except such person may be refused access to—

(i) information in such records provided by a third party under assurance that such information shall remain confidential; and

(ii) specific material in such records if the health professional responsible for the mental health services concerned has made a determination in writing that such access would be detrimental to such person's health, except that such material may be made available to a similarly licensed health professional selected by such person and such health professional may, in the exercise of professional judgment, provide such person with access to any or all parts of such material or otherwise disclose the information contained in such material to such person.

(J) The right, in the case of a person admitted on a residential or inpatient care basis, to converse with others privately, to have convenient and reasonable access to the telephone and mails, and to see visitors during regularly scheduled hours, except that, if a mental health professional treating such person determines that denial of access to a particular visitor is necessary for treatment purposes, such mental health professional may, for a specific, limited, and reasonable period of time, deny such access if such mental health professional has ordered such denial in writing and such order has been incorporated in the treatment plan for such person. An order denying such access should include the reasons for such denial.

(K) The right to be informed promptly at the time of admission and periodically thereafter, in language and terms appropriate to such person's condition and ability to understand, of the rights described in this section.

(L) The right to assert grievances with respect to infringement of the rights described in this section, including the right to have such grievances considered in a fair, timely, and impartial grievance procedure provided for or by the program or facility.

(M) Notwithstanding subparagraph (J), the right of access to (including the opportunities and facilities for private communication with) any available—

(i) rights protection service within the program or facility;

(ii) rights protection service within the State mental health system designed to be available to such person; and

(iii) qualified advocate;

for the purpose of receiving assistance to understand, exercise, and protect the rights described in this section and in other provisions of law.

(N) The right to exercise the rights described in this section without reprisal, including reprisal in the form of denial of any appropriate, available treatment.

(O) The right to referral as appropriate to other providers of mental health services upon discharge.

(2)(A) The rights described in this section should be in addition to and not in derogation of any other statutory or constitutional rights.

(B) The rights to confidentiality of and access to records as provided in subparagraphs (H) and (I) of paragraph (1) should remain applicable to records pertaining to a person after such person's discharge from a program or facility.

(3)(A) No otherwise eligible person should be denied admission to a program or facility for mental health services as a reprisal for the exercise of the rights described in this section.

(B) Nothing in this section should—

(i) obligate an individual mental health or health professional to administer treatment contrary to such professional's clinical judgment;

(ii) prevent any program or facility from discharging any person for whom the provision of appropriate treatment, consistent with the clinical judgment of the mental health professional primarily responsible for such person's treatment, is or has become impossible as a result of such person's refusal to consent to such treatment;

(iii) require a program or facility to admit any person who, while admitted on prior occasions to such program or facility, has repeatedly frustrated the purposes of such admissions by withholding consent to proposed treatment; or

(iv) obligate a program or facility to provide treatment services to any person who is admitted to such program or facility solely for diagnostic or evaluative purposes.

(C) In order to assist a person admitted to a program or facility in the exercise or protection of such person's rights, such person's attorney or legal representatives should have reasonable access to—

(i) such person;

(ii) the areas of the program or facility where such person has received treatment, resided, or had access; and

(iii) pursuant to the written authorization of such person, the records and information pertaining to such person's diagnosis, treat-

ment, and related services described in paragraph (1)(I).

(D) Each program and facility should post a notice listing and describing, in language and terms appropriate to the ability of the persons to whom such notice is addressed to understand, the rights described in this section of all persons admitted to such program or facility. Each such notice should conform to the format and content for such notices, and should be posted in all appropriate locations.

(4)(A) In the case of a person adjudicated by a court of competent jurisdiction as being incompetent to exercise the right to consent to treatment or experimentation described in subparagraph (D) or (E) of paragraph (1), or the right to confidentiality of or access to records described in subparagraph (H) or (I) of such paragraph, or to provide authorization as described in paragraph (3)(C)(iii), such right may be exercised or such authorization may be provided by the individual appointed by such court as such person's guardian or representative for the purpose of exercising such right or such authorization.

(B) In the case of a person who lacks capacity to exercise the right to consent to treatment or experimentation under subparagraph (D) or (E) of paragraph (1), or the right to confidentiality of or access to records described in subparagraph (H) or (I) of such paragraph, or to provide authorization as described in paragraph (3)(C)(iii), because such person has not attained an age considered sufficiently advanced under State law to permit the exercise of such right or such authorization to be legally binding, such right may be exercised or such authorization may be provided on behalf of such person by a parent or legal guardian of such person.

(C) Notwithstanding subparagraphs (A) and (B), in the case of a person admitted to a program or facility for the purpose of receiving mental health services, no individual employed by or receiving any remuneration from such program or facility should act as such person's guardian or representative.

(Pub. L. 96-398, title V, §501, Oct. 7, 1980, 94 Stat. 1598.)

§ 9502. Repealed. Pub. L. 97-35, title IX, § 902(e)(1), Aug. 13, 1981, 95 Stat. 560

Section, Pub. L. 96-398, title V, §502, Oct. 7, 1980, 94 Stat. 1601, related to grants for protection and advocacy programs.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 902(h) of Pub. L. 97-35, set out as an Effective Date of 1981 Amendment note under section 238f of this title.

SUBCHAPTER V—SEX OFFENSE
PREVENTION AND CONTROL

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 238d of this title.

§ 9511. Grants for sex offense prevention and control

(a) Authority of National Center for the Prevention and Control of Sex Offenses; functions

The Secretary, acting through the National Center for the Prevention and Control of Sex Offenses (hereafter in this section referred to as the "Center"), may, directly or by grant, carry out the following:

(1) A continuing study of sex offenses, including a study and investigation of—

(A) the effectiveness of existing Federal, State, and local laws dealing with sex offenses;

(B) the relationship, if any, between traditional legal and social attitudes toward sexual roles, sex offenses, and the formulation of laws dealing with rape;

(C) the treatment of the victims of sex offenses by law enforcement agencies, hospitals or other medical institutions, prosecutors, and the courts;

(D) the causes of sex offenses, identifying to the degree possible—

(i) social conditions which encourage sexual attacks, and

(ii) the motives of offenders, and

(E) the impact of a sex offense on the victim and family of the victim;

(F) sexual assaults in correctional institutions;

(G) the estimated actual incidence of forcible sex offenses as compared to the reported incidence of forcible sex offenses and the reasons for any difference between the two; and

(H) the effectiveness of existing private and local and State government educational, counseling, and other programs designed to prevent and control sex offenses.

(2) The compilation, analysis, and publication of summaries of the continuing study conducted under paragraph (1) and the research and demonstration projects conducted under paragraph (5). The Secretary shall submit not later than March 30, 1983, to the Congress a summary of such study and projects together with a review of their effectiveness and recommendations where appropriate.

(3) The development and maintenance of an information clearinghouse with regard to—

(A) the prevention and control of sex offenses;

(B) the treatment and counseling of the victims of sex offenses and their families; and

(C) the rehabilitation of offenders.

(4) The compilation and publication of training materials for personnel who are engaged or intend to engage in programs designed to prevent and control sex offense.

(5) Assistance to qualified public and non-profit private entities in conducting research and demonstration projects concerning the prevention and control of sex offense, including projects (A) for the planning, development, implementation, and evaluation of alternative methods used in the prevention and control of sex offense, the treatment and counseling of

the victims of sex offense and their families, and the rehabilitation of offenders; (B) for the application of such alternative methods; and (C) for the promotion of community awareness of the specific locations in which, and the specific social and other conditions under which sexual attacks are most likely to occur.

(b) Advisory committee; functions, membership, etc.

The Secretary shall appoint an advisory committee to advise, consult with, and make recommendations to the Secretary on the implementation of subsection (a) of this section. The recommendations of the committee shall be submitted directly to the Secretary without review or revision by any person without the consent of the committee. The Secretary shall appoint to such committee persons who are particularly qualified to assist in carrying out the functions of the committee. A majority of the members of the committee shall be women. Members of the advisory committee shall receive compensation at rates, not to exceed the daily equivalent of the annual rate in effect for grade GS-18 of the General Schedule, for each day (including traveltime) they are engaged in the performance of their duties as members of the advisory committee and, while so serving away from their homes or regular places of business, each member shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as authorized by section 5703 of title 5 for persons in Government service employed intermittently.

(c) Submission and approval of application; form, manner and contents

No grant may be made under subsection (a) of this section unless an application therefor is submitted to and approved by the Secretary. The application shall be submitted in such form and manner and contain such information as the Secretary may prescribe.

(d) Authorization of appropriations

For the purpose of carrying out subsection (a) of this section, there are authorized to be appropriated \$6,000,000 for the fiscal year ending September 30, 1981, \$1,500,000 for the fiscal year ending September 30, 1982, \$1,500,000 for the fiscal year ending September 30, 1983.

(e) "Sex offense" defined

For purposes of subsection (a) of this section, the term "sex offense" includes statutory and attempted rape and any other criminal sexual assault (whether homosexual or heterosexual) which involves force or the threat of force.

(Pub. L. 96-398, title VI, § 601(a)-(e), Oct. 7, 1980, 94 Stat. 1602, 1603; Pub. L. 97-35, title IX, § 902(f)(20), Aug. 13, 1981, 95 Stat. 560; Pub. L. 99-646, § 87(d)(3)-(7), Nov. 10, 1986, 100 Stat. 3624; Pub. L. 99-654, § 3(b)(3)-(7), Nov. 14, 1986, 100 Stat. 3663, 3664.)

AMENDMENTS

1986—Pub. L. 99-646, § 87(d)(3), and Pub. L. 99-654, § 3(b)(3), amended section catchline identically, substituting "sex offense" for "rape".

Subsec. (a). Pub. L. 99-646, § 87(d)(4)-(6), and Pub. L. 99-654, § 3(b)(4)-(6), in amending subsec. (a) identically, in introductory provision substituted "Sex Offenses" for "Rape", in par. (1) and in subpars. (A), (C), (D), (G),

and (H) of par. (1) substituted "sex offenses" for "rape" wherever appearing, in par. (1)(B) substituted "sex offenses" for "the act of rape", in par. (1)(E) substituted "a sex offense" for "rape", and in par. (3)(A) and (B) substituted "sex offenses" for "rape".

Subsec. (e). Pub. L. 99-646, § 87(d)(7), and Pub. L. 99-654, § 3(b)(7), amended subsec. (e) identically, substituting "the term 'sex offense'" for "the term 'rape'".

1981—Subsec. (a). Pub. L. 97-35 in par. (5) struck out "community mental health centers and other" after "Assistance to", and struck out par. (6) which related to provision of consultation and education services.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendments by Pub. L. 99-646 and Pub. L. 99-654 effective respectively 30 days after Nov. 10, 1986, and 30 days after Nov. 14, 1986, see section 87(e) of Pub. L. 99-646 and section 4 of Pub. L. 99-654, set out as an Effective Date note under section 2241 of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective Oct. 1, 1981, see section 902(h) of Pub. L. 97-35, set out as a note under section 2387 of this title.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law. See section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

§ 9512. Repealed. Pub. L. 97-35, title IX, § 902(e)(1), Aug. 13, 1981, 95 Stat. 560

Section, Pub. L. 96-398, title VI, § 602, Oct. 7, 1980, 94 Stat. 1604, related to grants for services for rape victims.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 902(h) of Pub. L. 97-35, set out as an Effective Date of 1981 Amendment note under section 2387 of this title.

SUBCHAPTER VI—MISCELLANEOUS

§ 9521. Repealed. Pub. L. 97-35, title IX, § 902(e)(1), Aug. 13, 1981, 95 Stat. 560

Section, Pub. L. 96-398, title VIII, § 801, Oct. 7, 1980, 94 Stat. 1605, related to employee protection arrangements.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 902(h) of Pub. L. 97-35, set out as an Effective Date of 1981 Amendment note under section 2387 of this title.

§ 9522. Report on shelter and basic living needs of chronically mentally ill individuals

(a) Submission to Congressional committees by Secretaries of Health and Human Services and Housing and Urban Development

The Secretary of Health and Human Services and the Secretary of Housing and Urban Development shall jointly submit a report to the Committees on Labor and Human Resources and Banking, Housing, and Urban Affairs of the Senate, and the Committees on Energy and Commerce and Banking, Finance, and Urban Affairs of the House of Representatives, relating to Federal efforts to respond to the shelter and basic living needs of chronically mentally ill individuals.

(b) Contents

The report required by subsection (a) of this section shall include—

(1) an analysis of the extent to which chronically mentally ill individuals remain inappropriately housed in institutional facilities or have otherwise inadequate or inappropriate housing arrangements;

(2) an analysis of available permanent non-institutional housing arrangements for the chronically mentally ill;

(3) an evaluation of ongoing permanent and demonstration programs, funded in whole or in part by Federal funds, which are designed to provide noninstitutional shelter and basic living services for the chronically mentally ill, including—

(A) a description of each program;

(B) the total number of individuals estimated to be eligible to participate in each program, the number of individuals served by each program, and an estimate of the total population each program expects to serve; and

(C) an assessment of the effectiveness of each program in the provision of shelter and basic living services;

(4) recommendations of measures to encourage States to coordinate and link the provisions in State health plans which relate to mental health and, in particular, the shelter and basic living needs of chronically mentally ill individuals, with local and State housing plans;

(5) recommendations for Federal legislation relating to the provision of permanent residential noninstitutional housing arrangements and basic living services for chronically mentally ill individuals, including an estimate of the cost of such recommendations; and

(6) any other recommendations for Federal initiatives which, in the judgment of the Secretary of Health and Human Services and the Secretary of Housing and Urban Development, will lead to improved shelter and basic living services for chronically mentally ill individuals.

(c) Submission date

The report required by subsection (a) of this section shall be submitted to the committees referred to in subsection (a) of this section no later than January 1, 1981.

(Pub. L. 96-398, title VIII, §802, Oct. 7, 1980, 94 Stat. 1606; H. Res. 549, Mar. 25, 1980.)

CHANGE OF NAME

Committee on Interstate and Foreign Commerce of the House of Representatives changed to Committee on Energy and Commerce immediately prior to noon on Jan. 3, 1981, by House Resolution No. 549, Ninety-sixth Congress, Mar. 25, 1980. Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 9523. Repealed. Pub. L. 97-35, title IX, § 902(e)(1), Aug. 13, 1981, 95 Stat. 560

Section, Pub. L. 96-398, title VIII, §806, Oct. 7, 1980, 94 Stat. 1609, related to contracting authority.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 902(h) of Pub. L. 97-35, set out as an Effective Date of 1981 Amendment note under section 238f of this title.

CHAPTER 103—COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY

SUBCHAPTER I—HAZARDOUS SUBSTANCES
RELEASES, LIABILITY, COMPENSATION

Sec. 9601.	Definitions.
9602.	Designation of additional hazardous substances and establishment of reportable released quantities; regulations.
9603.	Notification requirements respecting released substances. <ul style="list-style-type: none"> (a) Notice to National Response Center upon release from vessel or offshore or onshore facility by person in charge; conveyance of notice by Center. (b) Penalties for failure to notify; use of notice or information pursuant to notice in criminal case. (c) Notice to Administrator of EPA of existence of storage, etc., facility by owner or operator; exception; time, manner, and form of notice; penalties for failure to notify; use of notice or information pursuant to notice in criminal case. (d) Recordkeeping requirements; promulgation of rules and regulations by Administrator of EPA; penalties for violations; waiver of retention requirements. (e) Applicability to registered pesticide product.

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| <p>Sec.</p> <p>9604.</p> | <p>(f) Exemptions from notice and penalty provisions for substances reported under other Federal law or is in continuous release, etc.</p> <p>Response authorities.</p> <p>(a) Removal and other remedial action by President; applicability of national contingency plan; response by potentially responsible parties; public health threats; limitations on response; exception.</p> <p>(b) Investigations, monitoring, coordination, etc., by President.</p> <p>(c) Criteria for continuance of obligations from Fund over specified amount for response actions; consultation by President with affected States; contracts or cooperative agreements by States with President prior to remedial actions; cost-sharing agreements; selection by President of remedial actions; State credits; granting of credit, expenses before listing or agreement, response actions between 1978 and 1980, State expenses after December 11, 1980, in excess of 10 percent of costs, item-by-item approval, use of credits; operation and maintenance; limitation on source of funds for O&M; recontracting; siting.</p> <p>(d) Contracts or cooperative agreements by President with States or political subdivisions or Indian tribes; State applications, terms and conditions; reimbursements; cost-sharing provisions; enforcement requirements and procedures.</p> <p>(e) Information gathering and access.</p> <p>(f) Contracts for response actions; compliance with Federal health and safety standards.</p> <p>(g) Rates for wages and labor standards applicable to covered work.</p> <p>(h) Emergency procurement powers; exercise by President.</p> <p>(i) Agency for Toxic Substances and Disease Registry; establishment, functions, etc.</p> <p>(j) Acquisition of property.</p> <p>(k) Brownfields revitalization funding.</p> <p>9605. National contingency plan.</p> <p>(a) Revision and republication.</p> <p>(b) Revision of plan.</p> <p>(c) Hazard ranking system.</p> <p>(d) Petition for assessment of release.</p> <p>(e) Releases from earlier sites.</p> <p>(f) Minority contractors.</p> <p>(g) Special study wastes.</p> <p>(h) NPL deferral.</p> <p>9606. Abatement actions.</p> <p>(a) Maintenance, jurisdiction, etc.</p> <p>(b) Fines; reimbursement.</p> <p>(c) Guidelines for using imminent hazard, enforcement, and emergency response authorities; promulgation by Administrator of EPA, scope, etc.</p> <p>9607. Liability.</p> <p>(a) Covered persons; scope; recoverable costs and damages; interest rate; "comparable maturity" date.</p> <p>(b) Defenses.</p> <p>(c) Determination of amounts.</p> <p>(d) Rendering care or advice.</p> <p>(e) Indemnification, hold harmless, etc., agreements or conveyances; subrogation rights.</p> <p>(f) Natural resources liability; designation of public trustees of natural resources.</p> | <p>Sec.</p> <p>(g) Federal agencies.</p> <p>(h) Owner or operator of vessel.</p> <p>(i) Application of a registered pesticide product.</p> <p>(j) Obligations or liability pursuant to federally permitted release.</p> <p>(k) Transfer to, and assumption by, Post-Closure Liability Fund of liability of owner or operator of hazardous waste disposal facility in receipt of permit under applicable solid waste disposal law; time, criteria applicable, procedures, etc.; monitoring costs; reports.</p> <p>(l) Federal lien.</p> <p>(m) Maritime lien.</p> <p>(n) Liability of fiduciaries.</p> <p>(o) De micromis exemption.</p> <p>(p) Municipal solid waste exemption.</p> <p>(q) Contiguous properties.</p> <p>(r) Prospective purchaser and windfall lien.</p> <p>9608. Financial responsibility.</p> <p>(a) Establishment and maintenance by owner or operator of vessel; amount; failure to obtain certification of compliance.</p> <p>(b) Establishment and maintenance by owner or operator of production, etc., facilities; amount; adjustment; consolidated form of responsibility; coverage of motor carriers.</p> <p>(c) Direct Action.</p> <p>(d) Limitation of guarantor liability.</p> <p>9609. Civil penalties and awards.</p> <p>(a) Class I administrative penalty.</p> <p>(b) Class II administrative penalty.</p> <p>(c) Judicial assessment.</p> <p>(d) Awards.</p> <p>(e) Procurement procedures.</p> <p>(f) Savings clause.</p> <p>9610. Employee protection.</p> <p>(a) Activities of employee subject to protection.</p> <p>(b) Administrative grievance procedure in cases of alleged violations.</p> <p>(c) Assessment of costs and expenses against violator subsequent to issuance of order of abatement.</p> <p>(d) Defenses.</p> <p>(e) Presidential evaluations of potential loss of shifts of employment resulting from administration or enforcement of provisions; investigations; procedures applicable, etc.</p> <p>9611. Uses of Fund.</p> <p>(a) In general.</p> <p>(b) Additional authorized purposes.</p> <p>(c) Peripheral matters and limitations.</p> <p>(d) Additional limitations.</p> <p>(e) Funding requirements respecting moneys in Fund; limitation on certain claims; Fund use outside Federal property boundaries.</p> <p>(f) Obligation of moneys by Federal officials; obligation of moneys or settlement of claims by State officials or Indian tribe.</p> <p>(g) Notice to potential injured parties by owner and operator of vessel or facility causing release of substance; rules and regulations.</p> <p>(h) Repealed.</p> <p>(i) Restoration, etc., of natural resources.</p> <p>(j) Use of Post-closure Liability Fund.</p> <p>(k) Inspector General.</p> <p>(l) Foreign claimants.</p> <p>(m) Agency for Toxic Substances and Disease Registry.</p> |
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| <p>Sec.</p> <p>(n) Limitations on research, development, and demonstration program.</p> <p>(o) Notification procedures for limitations on certain payments.</p> <p>(p) General revenue share of Superfund.</p> <p>9612. Claims procedure.</p> <p>(a) Claims against Fund for response costs.</p> <p>(b) Forms and procedures applicable.</p> <p>(c) Subrogation rights; actions maintainable.</p> <p>(d) Statute of limitations.</p> <p>(e) Other statutory or common law claims not waived, etc.</p> <p>(f) Double recovery prohibited.</p> <p>9613. Civil proceedings.</p> <p>(a) Review of regulations in Circuit Court of Appeals of the United States for the District of Columbia.</p> <p>(b) Jurisdiction; venue.</p> <p>(c) Controversies or other matters resulting from tax collection or tax regulation review.</p> <p>(d) Litigation commenced prior to December 11, 1980.</p> <p>(e) Nationwide service of process.</p> <p>(f) Contribution.</p> <p>(g) Period in which action may be brought.</p> <p>(h) Timing of review.</p> <p>(i) Intervention.</p> <p>(j) Judicial review.</p> <p>(k) Administrative record and participation procedures.</p> <p>(l) Notice of actions.</p> <p>9614. Relationship to other law.</p> <p>(a) Additional State liability or requirements with respect to release of substances within State.</p> <p>(b) Recovery under other State or Federal law of compensation for removal costs or damages, or payment of claims.</p> <p>(c) Recycled oil.</p> <p>(d) Financial responsibility of owner or operator of vessel or facility under State or local law, rule, or regulation.</p> <p>9615. Presidential delegation and assignment of duties or powers and promulgation of regulations.</p> <p>9616. Schedules.</p> <p>(a) Assessment and listing of facilities.</p> <p>(b) Evaluation.</p> <p>(c) Explanations.</p> <p>(d) Commencement of RI/FS.</p> <p>(e) Commencement of remedial action.</p> <p>9617. Public participation.</p> <p>(a) Proposed plan.</p> <p>(b) Final plan.</p> <p>(c) Explanation of differences.</p> <p>(d) Publication.</p> <p>(e) Grants for technical assistance.</p> <p>9618. High priority for drinking water supplies.</p> <p>9619. Response action contractors.</p> <p>(a) Liability of response action contractors.</p> <p>(b) Savings provisions.</p> <p>(c) Indemnification.</p> <p>(d) Exception.</p> <p>(e) Definitions.</p> <p>(f) Competition.</p> <p>(g) Surety bonds.</p> <p>9620. Federal facilities.</p> <p>(a) Application of chapter to Federal Government.</p> <p>(b) Notice.</p> <p>(c) Federal Agency Hazardous Waste Compliance Docket.</p> | <p>Sec.</p> <p>(d) Assessment and evaluation.</p> <p>(e) Required action by department.</p> <p>(f) State and local participation.</p> <p>(g) Transfer of authorities.</p> <p>(h) Property transferred by Federal agencies.</p> <p>(i) Obligations under Solid Waste Disposal Act.</p> <p>(j) National security.</p> <p>9621. Cleanup standards.</p> <p>(a) Selection of remedial action.</p> <p>(b) General rules.</p> <p>(c) Review.</p> <p>(d) Degree of cleanup.</p> <p>(e) Permits and enforcement.</p> <p>(f) State involvement.</p> <p>9622. Settlements.</p> <p>(a) Authority to enter into agreements.</p> <p>(b) Agreements with potentially responsible parties.</p> <p>(c) Effect of agreement.</p> <p>(d) Enforcement.</p> <p>(e) Special notice procedures.</p> <p>(f) Covenant not to sue.</p> <p>(g) De minimis settlements.</p> <p>(h) Cost recovery settlement authority.</p> <p>(i) Settlement procedures.</p> <p>(j) Natural resources.</p> <p>(k) Section not applicable to vessels.</p> <p>(l) Civil penalties.</p> <p>(m) Applicability of general principles of law.</p> <p>9623. Reimbursement to local governments.</p> <p>(a) Application.</p> <p>(b) Reimbursement.</p> <p>(c) Amount.</p> <p>(d) Procedure.</p> <p>9624. Methane recovery.</p> <p>(a) In general.</p> <p>(b) Exceptions.</p> <p>9625. Section 6921(b)(3)(A)(i) waste.</p> <p>(a) Revision of hazard ranking system.</p> <p>(b) Inclusion prohibited.</p> <p>9626. Indian tribes.</p> <p>(a) Treatment generally.</p> <p>(b) Community relocation.</p> <p>(c) Study.</p> <p>(d) Limitation.</p> <p>9627. Recycling transactions.</p> <p>(a) Liability clarification.</p> <p>(b) Recyclable material defined.</p> <p>(c) Transactions involving scrap paper, plastic, glass, textiles, or rubber.</p> <p>(d) Transactions involving scrap metal.</p> <p>(e) Transactions involving batteries.</p> <p>(f) Exclusions.</p> <p>(g) Effect on other liability.</p> <p>(h) Regulations.</p> <p>(i) Effect on pending or concluded actions.</p> <p>(j) Liability for attorney's fees for certain actions.</p> <p>(k) Relationship to liability under other laws.</p> <p>(l) Limitation on statutory construction.</p> <p>9628. State response programs.</p> <p>(a) Assistance to States.</p> <p>(b) Enforcement in cases of a release subject to State program.</p> <p>(c) Effect on Federal laws.</p> <p style="text-align: center;">SUBCHAPTER II—HAZARDOUS SUBSTANCE
RESPONSE REVENUE</p> <p style="text-align: center;">PART A—HAZARDOUS SUBSTANCE RESPONSE TRUST
FUND</p> <p>9631 to 9633. Repealed.</p> <p style="text-align: center;">PART B—POST-CLOSURE LIABILITY TRUST FUND</p> <p>9641. Repealed.</p> |
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- Sec.
SUBCHAPTER III—MISCELLANEOUS PROVISIONS
9651. Reports and studies.
 (a) Implementation experiences; identification and disposal of waste.
 (b) Private insurance protection.
 (c) Regulations respecting assessment of damages to natural resources.
 (d) Issues, alternatives, and policy considerations involving selection of locations for waste treatment, storage, and disposal facilities.
 (e) Adequacy of existing common law and statutory remedies.
 (f) Modification of national contingency plan.
 (g) Insurability study.
9652. Effective dates; savings provisions.
9653. Repealed.
9654. Applicability of Federal water pollution control funding, etc., provisions.
9655. Legislative veto of rule or regulation.
 (a) Transmission to Congress upon promulgation or repromulgation of rule or regulation; disapproval procedures.
 (b) Approval; effective dates.
 (c) Sessions of Congress as applicable.
 (d) Congressional inaction on, or rejection of, resolution of disapproval.
9656. Transportation of hazardous substances; listing as hazardous material; liability for release.
9657. Separability; contribution.
9658. Actions under State law for damages from exposure to hazardous substances.
 (a) State statutes of limitations for hazardous substance cases.
 (b) Definitions.
9659. Citizens suits.
 (a) Authority to bring civil actions.
 (b) Venue.
 (c) Relief.
 (d) Rules applicable to subsection (a)(1) actions.
 (e) Rules applicable to subsection (a)(2) actions.
 (f) Costs.
 (g) Intervention.
 (h) Other rights.
 (i) Definitions.
9660. Research, development, and demonstration.
 (a) Hazardous substance research and training.
 (b) Alternative or innovative treatment technology research and demonstration program.
 (c) Hazardous substance research.
 (d) University hazardous substance research centers.
 (e) Report to Congress.
 (f) Saving provision.
 (g) Small business participation.
- 9660a. Grant program.
9661. Love Canal property acquisition.
 (a) Acquisition of property in emergency declaration area.
 (b) Procedures for acquisition.
 (c) State ownership.
 (d) Maintenance of property.
 (e) Habitability and land use study.
 (f) Funding.
 (g) Response.
 (h) Definitions.
9662. Limitation on contract and borrowing authority.
- SUBCHAPTER IV—POLLUTION INSURANCE
9671. Definitions.

- Sec.
9672. State laws; scope of subchapter.
 (a) State laws.
 (b) Scope of subchapter.
9673. Risk retention groups.
 (a) Exemption.
 (b) Exceptions.
 (c) Application of exemptions.
 (d) Agents or brokers.
9674. Purchasing groups.
 (a) Exemption.
 (b) Application of exemptions.
 (c) Agents or brokers.
9675. Applicability of securities laws.
 (a) Ownership interests.
 (b) Investment Company Act.
 (c) Blue sky law.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 300h-6, 300h-7, 6972, 11004 of this title; title 10 sections 2700, 2701, 2703; title 16 sections 410yy-3, 426n, 460III, 460III-46, 545b; title 26 sections 9507, 9508; title 30 section 1240a; title 33 sections 1272, 1321, 2701; title 43 sections 869-2, 1474b-1.

SUBCHAPTER I—HAZARDOUS SUBSTANCES RELEASES, LIABILITY, COMPENSATION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 9655, 9658, 9659 of this title; title 26 section 9507.

§ 9601. Definitions

For purpose of this subchapter—

(1) The term “act of God” means an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

(2) The term “Administrator” means the Administrator of the United States Environmental Protection Agency.

(3) The term “barrel” means forty-two United States gallons at sixty degrees Fahrenheit.

(4) The term “claim” means a demand in writing for a sum certain.

(5) The term “claimant” means any person who presents a claim for compensation under this chapter.

(6) The term “damages” means damages for injury or loss of natural resources as set forth in section 9607(a) or 9611(b) of this title.

(7) The term “drinking water supply” means any raw or finished water source that is or may be used by a public water system (as defined in the Safe Drinking Water Act [42 U.S.C. 300f et seq.]) or as drinking water by one or more individuals.

(8) The term “environment” means (A) the navigable waters, the waters of the contiguous zone, and the ocean waters of which the natural resources are under the exclusive management authority of the United States under the Magnuson-Stevens Fishery Conservation and Management Act [16 U.S.C. 1801 et seq.], and (B) any other surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the United States or under the jurisdiction of the United States.

(9) The term “facility” means (A) any building, structure, installation, equipment, pipe or

pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or (B) any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any vessel.

(10) The term “federally permitted release” means (A) discharges in compliance with a permit under section 402 of the Federal Water Pollution Control Act [33 U.S.C. 1342], (B) discharges resulting from circumstances identified and reviewed and made part of the public record with respect to a permit issued or modified under section 402 of the Federal Water Pollution Control Act and subject to a condition of such permit, (C) continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of the Federal Water Pollution Control Act, which are caused by events occurring within the scope of relevant operating or treatment systems, (D) discharges in compliance with a legally enforceable permit under section 404 of the Federal Water Pollution Control Act [33 U.S.C. 1344], (E) releases in compliance with a legally enforceable final permit issued pursuant to section 3005(a) through (d) of the Solid Waste Disposal Act [42 U.S.C. 6925(a)–(d)] from a hazardous waste treatment, storage, or disposal facility when such permit specifically identifies the hazardous substances and makes such substances subject to a standard of practice, control procedure or bioassay limitation or condition, or other control on the hazardous substances in such releases, (F) any release in compliance with a legally enforceable permit issued under section 1412 of title 33 of¹ section 1413 of title 33, (G) any injection of fluids authorized under Federal underground injection control programs or State programs submitted for Federal approval (and not disapproved by the Administrator of the Environmental Protection Agency) pursuant to part C of the Safe Drinking Water Act [42 U.S.C. 300h et seq.], (H) any emission into the air subject to a permit or control regulation under section 111 [42 U.S.C. 7411], section 112 [42 U.S.C. 7412], title I part C [42 U.S.C. 7470 et seq.], title I part D [42 U.S.C. 7501 et seq.], or State implementation plans submitted in accordance with section 110 of the Clean Air Act [42 U.S.C. 7410] (and not disapproved by the Administrator of the Environmental Protection Agency), including any schedule or waiver granted, promulgated, or approved under these sections, (I) any injection of fluids or other materials authorized under applicable State law (i) for the purpose of stimulating or treating wells for the production of crude oil, natural gas, or water, (ii) for the purpose of secondary, tertiary, or other enhanced recovery of crude oil or natural gas, or (iii) which are brought to the surface in conjunction with the production of crude oil or natural gas and which are reinjected, (J)

the introduction of any pollutant into a publicly owned treatment works when such pollutant is specified in and in compliance with applicable pretreatment standards of section 307(b) or (c) of the Clean Water Act [33 U.S.C. 1317(b), (c)] and enforceable requirements in a pretreatment program submitted by a State or municipality for Federal approval under section 402 of such Act [33 U.S.C. 1342], and (K) any release of source, special nuclear, or by-product material, as those terms are defined in the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.], in compliance with a legally enforceable license, permit, regulation, or order issued pursuant to the Atomic Energy Act of 1954.

(11) The term “Fund” or “Trust Fund” means the Hazardous Substance Superfund established by section 9507 of title 26.

(12) The term “ground water” means water in a saturated zone or stratum beneath the surface of land or water.

(13) The term “guarantor” means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this chapter.

(14) The term “hazardous substance” means (A) any substance designated pursuant to section 311(b)(2)(A) of the Federal Water Pollution Control Act [33 U.S.C. 1321(b)(2)(A)], (B) any element, compound, mixture, solution, or substance designated pursuant to section 9602 of this title, (C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act [42 U.S.C. 6921] (but not including any waste the regulation of which under the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.] has been suspended by Act of Congress), (D) any toxic pollutant listed under section 307(a) of the Federal Water Pollution Control Act [33 U.S.C. 1317(a)], (E) any hazardous air pollutant listed under section 112 of the Clean Air Act [42 U.S.C. 7412], and (F) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act [15 U.S.C. 2606]. The term does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of this paragraph, and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).

(15) The term “navigable waters” or “navigable waters of the United States” means the waters of the United States, including the territorial seas.

(16) The term “natural resources” means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Magnuson-Stevens Fishery Conservation and Management Act [16 U.S.C. 1801 et seq.]), any State or local government, any

¹ So in original. Probably should be “or”.

foreign government, any Indian tribe, or, if such resources are subject to a trust restriction on alienation, any member of an Indian tribe.

(17) The term “offshore facility” means any facility of any kind located in, on, or under, any of the navigable waters of the United States, and any facility of any kind which is subject to the jurisdiction of the United States and is located in, on, or under any other waters, other than a vessel or a public vessel.

(18) The term “onshore facility” means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land or nonnavigable waters within the United States.

(19) The term “otherwise subject to the jurisdiction of the United States” means subject to the jurisdiction of the United States by virtue of United States citizenship, United States vessel documentation or numbering, or as provided by international agreement to which the United States is a party.

(20)(A) The term “owner or operator” means (i) in the case of a vessel, any person owning, operating, or chartering by demise, such vessel, (ii) in the case of an onshore facility or an offshore facility, any person owning or operating such facility, and (iii) in the case of any facility, title or control of which was conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment, or similar means to a unit of State or local government, any person who owned, operated, or otherwise controlled activities at such facility immediately beforehand. Such term does not include a person, who, without participating in the management of a vessel or facility, holds indicia of ownership primarily to protect his security interest in the vessel or facility.

(B) In the case of a hazardous substance which has been accepted for transportation by a common or contract carrier and except as provided in section 9607(a)(3) or (4) of this title, (i) the term “owner or operator” shall mean such common carrier or other bona fide for hire carrier acting as an independent contractor during such transportation, (ii) the shipper of such hazardous substance shall not be considered to have caused or contributed to any release during such transportation which resulted solely from circumstances or conditions beyond his control.

(C) In the case of a hazardous substance which has been delivered by a common or contract carrier to a disposal or treatment facility and except as provided in section 9607(a)(3) or (4) of this title, (i) the term “owner or operator” shall not include such common or contract carrier, and (ii) such common or contract carrier shall not be considered to have caused or contributed to any release at such disposal or treatment facility resulting from circumstances or conditions beyond its control.

(D) The term “owner or operator” does not include a unit of State or local government which acquired ownership or control involuntarily through bankruptcy, tax delinquency, abandonment, or other circumstances in

which the government involuntarily acquires title by virtue of its function as sovereign. The exclusion provided under this paragraph shall not apply to any State or local government which has caused or contributed to the release or threatened release of a hazardous substance from the facility, and such a State or local government shall be subject to the provisions of this chapter in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity, including liability under section 9607 of this title.

(E) EXCLUSION OF LENDERS NOT PARTICIPANTS IN MANAGEMENT.—

(i) INDICIA OF OWNERSHIP TO PROTECT SECURITY.—The term “owner or operator” does not include a person that is a lender that, without participating in the management of a vessel or facility, holds indicia of ownership primarily to protect the security interest of the person in the vessel or facility.

(ii) FORECLOSURE.—The term “owner or operator” does not include a person that is a lender that did not participate in management of a vessel or facility prior to foreclosure, notwithstanding that the person—

(I) forecloses on the vessel or facility; and

(II) after foreclosure, sells, re-leases (in the case of a lease finance transaction), or liquidates the vessel or facility, maintains business activities, winds up operations, undertakes a response action under section 9607(d)(1) of this title or under the direction of an on-scene coordinator appointed under the National Contingency Plan, with respect to the vessel or facility, or takes any other measure to preserve, protect, or prepare the vessel or facility prior to sale or disposition,

if the person seeks to sell, re-lease (in the case of a lease finance transaction), or otherwise divest the person of the vessel or facility at the earliest practicable, commercially reasonable time, on commercially reasonable terms, taking into account market conditions and legal and regulatory requirements.

(F) PARTICIPATION IN MANAGEMENT.—For purposes of subparagraph (E)—

(i) the term “participate in management” —

(I) means actually participating in the management or operational affairs of a vessel or facility; and

(II) does not include merely having the capacity to influence, or the unexercised right to control, vessel or facility operations;

(ii) a person that is a lender and that holds indicia of ownership primarily to protect a security interest in a vessel or facility shall be considered to participate in management only if, while the borrower is still in possession of the vessel or facility encumbered by the security interest, the person—

(I) exercises decisionmaking control over the environmental compliance related to the vessel or facility, such that the person

has undertaken responsibility for the hazardous substance handling or disposal practices related to the vessel or facility; or

(II) exercises control at a level comparable to that of a manager of the vessel or facility, such that the person has assumed or manifested responsibility—

(aa) for the overall management of the vessel or facility encompassing day-to-day decisionmaking with respect to environmental compliance; or

(bb) over all or substantially all of the operational functions (as distinguished from financial or administrative functions) of the vessel or facility other than the function of environmental compliance;

(iii) the term “participate in management” does not include performing an act or failing to act prior to the time at which a security interest is created in a vessel or facility; and

(iv) the term “participate in management” does not include—

(I) holding a security interest or abandoning or releasing a security interest;

(II) including in the terms of an extension of credit, or in a contract or security agreement relating to the extension, a covenant, warranty, or other term or condition that relates to environmental compliance;

(III) monitoring or enforcing the terms and conditions of the extension of credit or security interest;

(IV) monitoring or undertaking 1 or more inspections of the vessel or facility;

(V) requiring a response action or other lawful means of addressing the release or threatened release of a hazardous substance in connection with the vessel or facility prior to, during, or on the expiration of the term of the extension of credit;

(VI) providing financial or other advice or counseling in an effort to mitigate, prevent, or cure default or diminution in the value of the vessel or facility;

(VII) restructuring, renegotiating, or otherwise agreeing to alter the terms and conditions of the extension of credit or security interest, exercising forbearance;

(VIII) exercising other remedies that may be available under applicable law for the breach of a term or condition of the extension of credit or security agreement; or

(IX) conducting a response action under section 9607(d) of this title or under the direction of an on-scene coordinator appointed under the National Contingency Plan,

if the actions do not rise to the level of participating in management (within the meaning of clauses (i) and (ii)).

(G) OTHER TERMS.—As used in this chapter:

(i) EXTENSION OF CREDIT.—The term “extension of credit” includes a lease finance transaction—

(I) in which the lessor does not initially select the leased vessel or facility and does

not during the lease term control the daily operations or maintenance of the vessel or facility; or

(II) that conforms with regulations issued by the appropriate Federal banking agency or the appropriate State bank supervisor (as those terms are defined in section 1813 of title 12² or with regulations issued by the National Credit Union Administration Board, as appropriate.

(ii) FINANCIAL OR ADMINISTRATIVE FUNCTION.—The term “financial or administrative function” includes a function such as that of a credit manager, accounts payable officer, accounts receivable officer, personnel manager, comptroller, or chief financial officer, or a similar function.

(iii) FORECLOSURE; FORECLOSE.—The terms “foreclosure” and “foreclose” mean, respectively, acquiring, and to acquire, a vessel or facility through—

(I)(aa) purchase at sale under a judgment or decree, power of sale, or nonjudicial foreclosure sale;

(bb) a deed in lieu of foreclosure, or similar conveyance from a trustee; or

(cc) repossession,

if the vessel or facility was security for an extension of credit previously contracted;

(II) conveyance pursuant to an extension of credit previously contracted, including the termination of a lease agreement; or

(III) any other formal or informal manner by which the person acquires, for subsequent disposition, title to or possession of a vessel or facility in order to protect the security interest of the person.

(iv) LENDER.—The term “lender” means—

(I) an insured depository institution (as defined in section 1813 of title 12);

(II) an insured credit union (as defined in section 1752 of title 12);

(III) a bank or association chartered under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.);

(IV) a leasing or trust company that is an affiliate of an insured depository institution;

(V) any person (including a successor or assignee of any such person) that makes a bona fide extension of credit to or takes or acquires a security interest from a non-affiliated person;

(VI) the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Agricultural Mortgage Corporation, or any other entity that in a bona fide manner buys or sells loans or interests in loans;

(VII) a person that insures or guarantees against a default in the repayment of an extension of credit, or acts as a surety with respect to an extension of credit, to a nonaffiliated person; and

(VIII) a person that provides title insurance and that acquires a vessel or facility as a result of assignment or conveyance in

²So in original. Probably should be followed by a closing parenthesis.

the course of underwriting claims and claims settlement.

(v) OPERATIONAL FUNCTION.—The term “operational function” includes a function such as that of a facility or plant manager, operations manager, chief operating officer, or chief executive officer.

(vi) SECURITY INTEREST.—The term “security interest” includes a right under a mortgage, deed of trust, assignment, judgment lien, pledge, security agreement, factoring agreement, or lease and any other right accruing to a person to secure the repayment of money, the performance of a duty, or any other obligation by a nonaffiliated person.

(21) The term “person” means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States Government, State, municipality, commission, political subdivision of a State, or any interstate body.

(22) The term “release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant), but excludes (A) any release which results in exposure to persons solely within a workplace, with respect to a claim which such persons may assert against the employer of such persons, (B) emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine, (C) release of source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.], if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under section 170 of such Act [42 U.S.C. 2210], or, for the purposes of section 9604 of this title or any other response action, any release of source byproduct, or special nuclear material from any processing site designated under section 7912(a)(1) or 7942(a) of this title, and (D) the normal application of fertilizer.

(23) The terms “remove” or “removal” means³ the cleanup or removal of released hazardous substances from the environment, such actions as may be necessary taken in the event of the threat of release of hazardous substances into the environment, such actions as may be necessary to monitor, assess, and evaluate the release or threat of release of hazardous substances, the disposal of removed material, or the taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or to the environment, which may otherwise result from a release or threat of release. The term includes, in addition, without being limited to, security fencing or other measures to limit access, provision of alternative water supplies, temporary evacuation and housing of threatened individuals not otherwise provided

for, action taken under section 9604(b) of this title, and any emergency assistance which may be provided under the Disaster Relief and Emergency Assistance Act [42 U.S.C. 5121 et seq.].

(24) The terms “remedy” or “remedial action” means³ those actions consistent with permanent remedy taken instead of or in addition to removal actions in the event of a release or threatened release of a hazardous substance into the environment, to prevent or minimize the release of hazardous substances so that they do not migrate to cause substantial danger to present or future public health or welfare or the environment. The term includes, but is not limited to, such actions at the location of the release as storage, confinement, perimeter protection using dikes, trenches, or ditches, clay cover, neutralization, cleanup of released hazardous substances and associated contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive wastes, dredging or excavations, repair or replacement of leaking containers, collection of leachate and runoff, on-site treatment or incineration, provision of alternative water supplies, and any monitoring reasonably required to assure that such actions protect the public health and welfare and the environment. The term includes the costs of permanent relocation of residents and businesses and community facilities where the President determines that, alone or in combination with other measures, such relocation is more cost-effective than and environmentally preferable to the transportation, storage, treatment, destruction, or secure disposition offsite of hazardous substances, or may otherwise be necessary to protect the public health or welfare; the term includes offsite transport and offsite storage, treatment, destruction, or secure disposition of hazardous substances and associated contaminated materials.

(25) The terms “respond” or “response” means³ remove, removal, remedy, and remedial action;⁴ all such terms (including the terms “removal” and “remedial action”) include enforcement activities related thereto.

(26) The terms “transport” or “transportation” means³ the movement of a hazardous substance by any mode, including a hazardous liquid pipeline facility (as defined in section 60101(a) of title 49), and in the case of a hazardous substance which has been accepted for transportation by a common or contract carrier, the term “transport” or “transportation” shall include any stoppage in transit which is temporary, incidental to the transportation movement, and at the ordinary operating convenience of a common or contract carrier, and any such stoppage shall be considered as a continuity of movement and not as the storage of a hazardous substance.

(27) The terms “United States” and “State” include the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Marianas, and

³ So in original. Probably should be “mean”.

⁴ So in original.

any other territory or possession over which the United States has jurisdiction.

(28) The term “vessel” means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

(29) The terms “disposal”, “hazardous waste”, and “treatment” shall have the meaning provided in section 1004 of the Solid Waste Disposal Act [42 U.S.C. 6903].

(30) The terms “territorial sea” and “contiguous zone” shall have the meaning provided in section 502 of the Federal Water Pollution Control Act [33 U.S.C. 1362].

(31) The term “national contingency plan” means the national contingency plan published under section 311(c)⁵ of the Federal Water Pollution Control Act or revised pursuant to section 9605 of this title.

(32) The terms “liable” or “liability” under this subchapter shall be construed to be the standard of liability which obtains under section 311 of the Federal Water Pollution Control Act [33 U.S.C. 1321].

(33) The term “pollutant or contaminant” shall include, but not be limited to, any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring; except that the term “pollutant or contaminant” shall not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of paragraph (14) and shall not include natural gas, liquefied natural gas, or synthetic gas of pipeline quality (or mixtures of natural gas and such synthetic gas).

(34) The term “alternative water supplies” includes, but is not limited to, drinking water and household water supplies.

(35)(A) The term “contractual relationship”, for the purpose of section 9607(b)(3) of this title, includes, but is not limited to, land contracts, deeds, easements, leases, or other instruments transferring title or possession, unless the real property on which the facility concerned is located was acquired by the defendant after the disposal or placement of the hazardous substance on, in, or at the facility, and one or more of the circumstances described in clause (i), (ii), or (iii) is also established by the defendant by a preponderance of the evidence:

(i) At the time the defendant acquired the facility the defendant did not know and had no reason to know that any hazardous substance which is the subject of the release or threatened release was disposed of on, in, or at the facility.

(ii) The defendant is a government entity which acquired the facility by escheat, or through any other involuntary transfer or acquisition, or through the exercise of eminent domain authority by purchase or condemnation.

(iii) The defendant acquired the facility by inheritance or bequest.

In addition to establishing the foregoing, the defendant must establish that the defendant has satisfied the requirements of section 9607(b)(3)(a) and (b) of this title, provides full cooperation, assistance, and facility access to the persons that are authorized to conduct response actions at the facility (including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response action at the facility), is in compliance with any land use restrictions established or relied on in connection with the response action at a facility, and does not impede the effectiveness or integrity of any institutional control employed at the facility in connection with a response action.

(B) REASON TO KNOW.—

(i) ALL APPROPRIATE INQUIRIES.—To establish that the defendant had no reason to know of the matter described in subparagraph (A)(i), the defendant must demonstrate to a court that—

(I) on or before the date on which the defendant acquired the facility, the defendant carried out all appropriate inquiries, as provided in clauses (ii) and (iv), into the previous ownership and uses of the facility in accordance with generally accepted good commercial and customary standards and practices; and

(II) the defendant took reasonable steps to—

(aa) stop any continuing release;
(bb) prevent any threatened future release; and

(cc) prevent or limit any human, environmental, or natural resource exposure to any previously released hazardous substance.

(ii) STANDARDS AND PRACTICES.—Not later than 2 years after January 11, 2002, the Administrator shall by regulation establish standards and practices for the purpose of satisfying the requirement to carry out all appropriate inquiries under clause (i).

(iii) CRITERIA.—In promulgating regulations that establish the standards and practices referred to in clause (ii), the Administrator shall include each of the following:

(I) The results of an inquiry by an environmental professional.

(II) Interviews with past and present owners, operators, and occupants of the facility for the purpose of gathering information regarding the potential for contamination at the facility.

(III) Reviews of historical sources, such as chain of title documents, aerial photographs, building department records, and land use records, to determine previous uses and occupancies of the real property since the property was first developed.

⁵ See References in Text note below.

(IV) Searches for recorded environmental cleanup liens against the facility that are filed under Federal, State, or local law.

(V) Reviews of Federal, State, and local government records, waste disposal records, underground storage tank records, and hazardous waste handling, generation, treatment, disposal, and spill records, concerning contamination at or near the facility.

(VI) Visual inspections of the facility and of adjoining properties.

(VII) Specialized knowledge or experience on the part of the defendant.

(VIII) The relationship of the purchase price to the value of the property, if the property was not contaminated.

(IX) Commonly known or reasonably ascertainable information about the property.

(X) The degree of obviousness of the presence or likely presence of contamination at the property, and the ability to detect the contamination by appropriate investigation.

(iv) INTERIM STANDARDS AND PRACTICES.—

(I) PROPERTY PURCHASED BEFORE MAY 31, 1997.—With respect to property purchased before May 31, 1997, in making a determination with respect to a defendant described in clause (i), a court shall take into account—

(aa) any specialized knowledge or experience on the part of the defendant;

(bb) the relationship of the purchase price to the value of the property, if the property was not contaminated;

(cc) commonly known or reasonably ascertainable information about the property;

(dd) the obviousness of the presence or likely presence of contamination at the property; and

(ee) the ability of the defendant to detect the contamination by appropriate inspection.

(II) PROPERTY PURCHASED ON OR AFTER MAY 31, 1997.—With respect to property purchased on or after May 31, 1997, and until the Administrator promulgates the regulations described in clause (ii), the procedures of the American Society for Testing and Materials, including the document known as “Standard E1527-97”, entitled “Standard Practice for Environmental Site Assessment: Phase 1 Environmental Site Assessment Process”, shall satisfy the requirements in clause (i).

(v) SITE INSPECTION AND TITLE SEARCH.—In the case of property for residential use or other similar use purchased by a nongovernmental or noncommercial entity, a facility inspection and title search that reveal no basis for further investigation shall be considered to satisfy the requirements of this subparagraph.

(C) Nothing in this paragraph or in section 9607(b)(3) of this title shall diminish the liability

of any previous owner or operator of such facility who would otherwise be liable under this chapter. Notwithstanding this paragraph, if the defendant obtained actual knowledge of the release or threatened release of a hazardous substance at such facility when the defendant owned the real property and then subsequently transferred ownership of the property to another person without disclosing such knowledge, such defendant shall be treated as liable under section 9607(a)(1) of this title and no defense under section 9607(b)(3) of this title shall be available to such defendant.

(D) Nothing in this paragraph shall affect the liability under this chapter of a defendant who, by any act or omission, caused or contributed to the release or threatened release of a hazardous substance which is the subject of the action relating to the facility.

(36) The term “Indian tribe” means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village but not including any Alaska Native regional or village corporation, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(37)(A) The term “service station dealer” means any person—

(i) who owns or operates a motor vehicle service station, filling station, garage, or similar retail establishment engaged in the business of selling, repairing, or servicing motor vehicles, where a significant percentage of the gross revenue of the establishment is derived from the fueling, repairing, or servicing of motor vehicles, and

(ii) who accepts for collection, accumulation, and delivery to an oil recycling facility, recycled oil that (I) has been removed from the engine of a light duty motor vehicle or household appliances by the owner of such vehicle or appliances, and (II) is presented, by such owner, to such person for collection, accumulation, and delivery to an oil recycling facility.

(B) For purposes of section 9614(c) of this title, the term “service station dealer” shall, notwithstanding the provisions of subparagraph (A), include any government agency that establishes a facility solely for the purpose of accepting recycled oil that satisfies the criteria set forth in subclauses (I) and (II) of subparagraph (A)(ii), and, with respect to recycled oil that satisfies the criteria set forth in subclauses (I) and (II), owners or operators of refuse collection services who are compelled by State law to collect, accumulate, and deliver such oil to an oil recycling facility.

(C) The President shall promulgate regulations regarding the determination of what constitutes a significant percentage of the gross revenues of an establishment for purposes of this paragraph.

(38) The term “incineration vessel” means any vessel which carries hazardous substances for the purpose of incineration of such substances, so long as such substances or residues of such substances are on board.

(39) BROWNFIELD SITE.—

(A) IN GENERAL.—The term “brownfield site” means real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.

(B) EXCLUSIONS.—The term “brownfield site” does not include—

(i) a facility that is the subject of a planned or ongoing removal action under this subchapter;

(ii) a facility that is listed on the National Priorities List or is proposed for listing;

(iii) a facility that is the subject of a unilateral administrative order, a court order, an administrative order on consent or judicial consent decree that has been issued to or entered into by the parties under this chapter;

(iv) a facility that is the subject of a unilateral administrative order, a court order, an administrative order on consent or judicial consent decree that has been issued to or entered into by the parties, or a facility to which a permit has been issued by the United States or an authorized State under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. 1321) [33 U.S.C. §1251 et seq.], the Toxic Substances Control Act (15 U.S.C. 2601 et seq.), or the Safe Drinking Water Act (42 U.S.C. 300f et seq.);

(v) a facility that—

(I) is subject to corrective action under section 3004(u) or 3008(h) of the Solid Waste Disposal Act (42 U.S.C. 6924(u), 6928(h)); and

(II) to which a corrective action permit or order has been issued or modified to require the implementation of corrective measures;

(vi) a land disposal unit with respect to which—

(I) a closure notification under subtitle C of the Solid Waste Disposal Act (42 U.S.C. 6921 et seq.) has been submitted; and

(II) closure requirements have been specified in a closure plan or permit;

(vii) a facility that is subject to the jurisdiction, custody, or control of a department, agency, or instrumentality of the United States, except for land held in trust by the United States for an Indian tribe;

(viii) a portion of a facility—

(I) at which there has been a release of polychlorinated biphenyls; and

(II) that is subject to remediation under the Toxic Substances Control Act (15 U.S.C. 2601 et seq.); or

(ix) a portion of a facility, for which portion, assistance for response activity has been obtained under subtitle I of the Solid Waste Disposal Act (42 U.S.C. 6991 et seq.) from the Leaking Underground Storage Tank Trust Fund established under section 9508 of title 26.

(C) SITE-BY-SITE DETERMINATIONS.—Notwithstanding subparagraph (B) and on a site-

by-site basis, the President may authorize financial assistance under section 9604(k) of this title to an eligible entity at a site included in clause (i), (iv), (v), (vi), (viii), or (ix) of subparagraph (B) if the President finds that financial assistance will protect human health and the environment, and either promote economic development or enable the creation of, preservation of, or addition to parks, greenways, undeveloped property, other recreational property, or other property used for nonprofit purposes.

(D) ADDITIONAL AREAS.—For the purposes of section 9604(k) of this title, the term “brownfield site” includes a site that—

(i) meets the definition of “brownfield site” under subparagraphs (A) through (C); and

(ii)(I) is contaminated by a controlled substance (as defined in section 802 of title 21);

(II)(aa) is contaminated by petroleum or a petroleum product excluded from the definition of “hazardous substance” under this section; and

(bb) is a site determined by the Administrator or the State, as appropriate, to be—

(AA) of relatively low risk, as compared with other petroleum-only sites in the State; and

(BB) a site for which there is no viable responsible party and which will be assessed, investigated, or cleaned up by a person that is not potentially liable for cleaning up the site; and

(cc) is not subject to any order issued under section 9003(h) of the Solid Waste Disposal Act (42 U.S.C. 6991b(h)); or

(III) is mine-scarred land.

(4) BONA FIDE PROSPECTIVE PURCHASER.—The term “bona fide prospective purchaser” means a person (or a tenant of a person) that acquires ownership of a facility after January 11, 2002, and that establishes each of the following by a preponderance of the evidence:

(A) DISPOSAL PRIOR TO ACQUISITION.—All disposal of hazardous substances at the facility occurred before the person acquired the facility.

(B) INQUIRIES.—

(i) IN GENERAL.—The person made all appropriate inquiries into the previous ownership and uses of the facility in accordance with generally accepted good commercial and customary standards and practices in accordance with clauses (ii) and (iii).

(ii) STANDARDS AND PRACTICES.—The standards and practices referred to in clauses (ii) and (iv) of paragraph (35)(B) shall be considered to satisfy the requirements of this subparagraph.

(iii) RESIDENTIAL USE.—In the case of property in residential or other similar use at the time of purchase by a nongovernmental or noncommercial entity, a facility inspection and title search that reveal no basis for further investigation shall be considered to satisfy the requirements of this subparagraph.

(C) NOTICES.—The person provides all legally required notices with respect to the discovery or release of any hazardous substances at the facility.

(D) CARE.—The person exercises appropriate care with respect to hazardous substances found at the facility by taking reasonable steps to—

- (i) stop any continuing release;
- (ii) prevent any threatened future release; and
- (iii) prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substance.

(E) COOPERATION, ASSISTANCE, AND ACCESS.—The person provides full cooperation, assistance, and access to persons that are authorized to conduct response actions or natural resource restoration at a vessel or facility (including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response actions or natural resource restoration at the vessel or facility).

(F) INSTITUTIONAL CONTROL.—The person—

- (i) is in compliance with any land use restrictions established or relied on in connection with the response action at a vessel or facility; and
- (ii) does not impede the effectiveness or integrity of any institutional control employed at the vessel or facility in connection with a response action.

(G) REQUESTS; SUBPOENAS.—The person complies with any request for information or administrative subpoena issued by the President under this chapter.

(H) NO AFFILIATION.—The person is not—

- (i) potentially liable, or affiliated with any other person that is potentially liable, for response costs at a facility through—
 - (I) any direct or indirect familial relationship; or
 - (II) any contractual, corporate, or financial relationship (other than a contractual, corporate, or financial relationship that is created by the instruments by which title to the facility is conveyed or financed or by a contract for the sale of goods or services); or
- (ii) the result of a reorganization of a business entity that was potentially liable.

(41) ELIGIBLE RESPONSE SITE.—

(A) IN GENERAL.—The term “eligible response site” means a site that meets the definition of a brownfield site in subparagraphs (A) and (B) of paragraph (39), as modified by subparagraphs (B) and (C) of this paragraph.

(B) INCLUSIONS.—The term “eligible response site” includes—

- (i) notwithstanding paragraph (39)(B)(ix), a portion of a facility, for which portion assistance for response activity has been obtained under subtitle I of the Solid Waste Disposal Act (42 U.S.C. 6991 et seq.) from the Leaking Underground Storage Tank Trust Fund established under section 9508 of title 26; or

- (ii) a site for which, notwithstanding the exclusions provided in subparagraph (C) or paragraph (39)(B), the President determines, on a site-by-site basis and after consultation with the State, that limitations on enforcement under section 9628 of this title at sites specified in clause (iv), (v), (vi) or (viii) of paragraph (39)(B) would be appropriate and will—
 - (I) protect human health and the environment; and
 - (II) promote economic development or facilitate the creation of, preservation of, or addition to a park, a greenway, undeveloped property, recreational property, or other property used for non-profit purposes.

(C) EXCLUSIONS.—The term “eligible response site” does not include—

- (i) a facility for which the President—
 - (I) conducts or has conducted a preliminary assessment or site inspection; and
 - (II) after consultation with the State, determines or has determined that the site obtains a preliminary score sufficient for possible listing on the National Priorities List, or that the site otherwise qualifies for listing on the National Priorities List; unless the President has made a determination that no further Federal action will be taken; or
- (ii) facilities that the President determines warrant particular consideration as identified by regulation, such as sites posing a threat to a sole-source drinking water aquifer or a sensitive ecosystem.

(Pub. L. 96-510, title I, §101, Dec. 11, 1980, 94 Stat. 2767; Pub. L. 96-561, title II, §238(b), Dec. 22, 1980, 94 Stat. 3300; Pub. L. 99-499, title I, §§101, 114(b), 127(a), title V, §517(c)(2), Oct. 17, 1986, 100 Stat. 1615, 1652, 1692, 1774; Pub. L. 100-707, title I, §109(v), Nov. 23, 1988, 102 Stat. 4710; Pub. L. 103-429, §7(e)(1), Oct. 31, 1994, 108 Stat. 4390; Pub. L. 104-208, div. A, title I, §101(a) [title II, §211(b)], title II, §2502(b), Sept. 30, 1996, 110 Stat. 3009, 3009-41, 3009-464; Pub. L. 104-287, §6(j)(1), Oct. 11, 1996, 110 Stat. 3399; Pub. L. 106-74, title IV, §427, Oct. 20, 1999, 113 Stat. 1095; Pub. L. 107-118, title II, §§211(a), 222(a), 223, 231(a), Jan. 11, 2002, 115 Stat. 2360, 2370, 2372, 2375.)

REFERENCES IN TEXT

This chapter, referred to in pars. (5), (13), (20)(D), (G), (35)(C), (D), (39)(B)(iii), and (40)(G), was in the original “this Act”, meaning Pub. L. 96-510, Dec. 11, 1980, 94 Stat. 2767, as amended, known as the Comprehensive Environmental Response, Compensation, and Liability Act of 1980. For complete classification of this Act to the Code, see Short Title note below and Tables.

The Safe Drinking Water Act, referred to in pars. (7), (10), and (39)(B)(iv), is title XIV of act July 1, 1944, as added Dec. 16, 1974, Pub. L. 93-523, §2(a), 88 Stat. 1660, as amended, which is classified generally to subchapter XII (§300f et seq.) of chapter 6A of this title. Part C of the Safe Drinking Water Act is classified generally to part C (§300h et seq.) of subchapter XII of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

The Magnuson-Stevens Fishery Conservation and Management Act, referred to in pars. (8) and (16), is

Pub. L. 94-265, Apr. 13, 1976, 90 Stat. 331, as amended, which is classified principally to chapter 38 (§1801 et seq.) of Title 16, Conservation. The fishery conservation zone established by this Act, referred to in par. (16), was established by section 101 of this Act (16 U.S.C. 1811), which as amended generally by Pub. L. 99-659, title I, §101(b), Nov. 14, 1986, 100 Stat. 3706, relates to United States sovereign rights and fishery management authority over fish within the exclusive economic zone as defined in section 1802 of Title 16. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of Title 16 and Tables.

The Clean Air Act, referred to in par. (10), is act July 14, 1955, ch. 360, as amended generally by Pub. L. 88-206, Dec. 17, 1963, 77 Stat. 392, and later by Pub. L. 95-95, Aug. 7, 1977, 91 Stat. 685. The Clean Air Act was originally classified to chapter 15B (§1857 et seq.) of this title. On enactment of Pub. L. 95-95, the Act was reclassified to chapter 85 (§7401 et seq.) of this title. Parts C and D of title I of the Clean Air Act are classified generally to parts C (§7470 et seq.) and D (§7501 et seq.), respectively, of subchapter I of chapter 85 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

The Atomic Energy Act of 1954, referred to in pars. (10) and (22), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

The Solid Waste Disposal Act, referred to in pars. (14), (39)(B)(iv), (vi)(I), (ix), and (41)(B)(i), is title II of Pub. L. 89-272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§6901 et seq.) of this title. Subtitles C and I of the Act are classified generally to subchapters III (§6921 et seq.) and IX (§6991 et seq.), respectively, of chapter 82 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

The Farm Credit Act of 1971, referred to in par. (20)(G)(iv)(III), is Pub. L. 92-181, Dec. 10, 1971, 85 Stat. 583, as amended, which is classified generally to chapter 23 (§2001 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 2001 of Title 12 and Tables.

The Disaster Relief and Emergency Assistance Act, referred to in par. (23), is Pub. L. 93-288, May 22, 1974, 88 Stat. 143, as amended, known as the Robert T. Stafford Disaster Relief and Emergency Assistance Act, which is classified principally to chapter 68 (§5121 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables.

The Federal Water Pollution Control Act, referred to in par. (39)(B)(iv), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92-500, §2, Oct. 18, 1972, 86 Stat. 816, also known as the Clean Water Act, which is classified generally to chapter 26 (§1251 et seq.) of Title 33, Navigation and Navigable Waters. Section 311(c) of the Act was amended generally by Pub. L. 101-380, title IV, §4201(a), Aug. 18, 1990, 104 Stat. 523, and no longer contains provisions directing the publishing of a National Contingency Plan. However, such provisions are contained in section 1321(d) of Title 33. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Toxic Substances Control Act, referred to in par. (39)(B)(iv), (viii)(II), is Pub. L. 94-469, Oct. 11, 1976, 90 Stat. 2003, as amended, which is classified generally to chapter 53 (§2601 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 15 and Tables.

AMENDMENTS

2002—Par. (35)(A). Pub. L. 107-118, §223(1), in introductory provisions substituted “deeds, easements, leases, or” for “deeds or” and in concluding provisions substituted “the defendant has satisfied” for “he has satisfied” and inserted before period at end “, provides full cooperation, assistance, and facility access to the persons that are authorized to conduct response actions at the facility (including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response action at the facility), is in compliance with any land use restrictions established or relied on in connection with the response action at a facility, and does not impede the effectiveness or integrity of any institutional control employed at the facility in connection with a response action”.

Par. (35)(B). Pub. L. 107-118, §223(2), added subpar. (B) and struck out former subpar. (B) which read as follows: “To establish that the defendant had no reason to know, as provided in clause (i) of subparagraph (A) of this paragraph, the defendant must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. For purposes of the preceding sentence the court shall take into account any specialized knowledge or experience on the part of the defendant, the relationship of the purchase price to the value of the property if uncontaminated, commonly known or reasonably ascertainable information about the property, the obviousness of the presence or likely presence of contamination at the property, and the ability to detect such contamination by appropriate inspection.”

Par. (39). Pub. L. 107-118, §211(a), added par. (39).

Par. (40). Pub. L. 107-118, §222(a), added par. (40).

Par. (41). Pub. L. 107-118, §231(a), added par. (41).

1999—Par. (20)(D). Pub. L. 106-74, which directed the amendment of subpar. (D) by inserting “through seizure or otherwise in connection with law enforcement activity” before “involuntary” the first place it appears, could not be executed because the word “involuntary” does not appear in subpar. (D).

1996—Pars. (8), (16). Pub. L. 104-208, §101(a) [title II, §211(b)], substituted “Magnuson-Stevens Fishery” for “Magnuson Fishery”.

Par. (20)(E) to (G). Pub. L. 104-208, §2502(b), added subpars. (E) to (G).

Par. (26). Pub. L. 104-287 substituted “section 60101(a) of title 49” for “the Pipeline Safety Act”.

1994—Par. (26). Pub. L. 103-429 substituted “a hazardous liquid pipeline facility” for “pipeline”.

1988—Par. (23). Pub. L. 100-707 substituted “Disaster Relief and Emergency Assistance Act” for “Disaster Relief Act of 1974”.

1986—Pub. L. 99-499, §101(f), struck out “, the term” after “subchapter” in introductory text.

Pars. (1) to (10). Pub. L. 99-499, §101(f), inserted “The term” and substituted a period for the semicolon at end.

Par. (11). Pub. L. 99-499, §517(c)(2), amended par. (11) generally. Prior to amendment, par. (11) read as follows: “The term ‘Fund’ or ‘Trust Fund’ means the Hazardous Substance Response Fund established by section 9631 of this title or, in the case of a hazardous waste disposal facility for which liability has been transferred under section 9607(k) of this title, the Post-closure Liability Fund established by section 9641 of this title.”

Pub. L. 99-499, §101(f), inserted “The term” and substituted a period for the semicolon at end.

Pars. (12) to (15). Pub. L. 99-499, §101(f), inserted “The term” and substituted a period for the semicolon at end.

Par. (16). Pub. L. 99-499, §101(a), (f), inserted “The term”, struck out “or” after “local government,” inserted “, any Indian tribe, or, if such resources are subject to a trust restriction on alienation, any member of

an Indian tribe", and substituted a period for the semicolon at end.

Pars. (17) to (19). Pub. L. 99-499, §101(f), inserted "The term" and substituted a period for the semicolon at end.

Par. (20)(A). Pub. L. 99-499, §101(f), inserted "The term".

Pub. L. 99-499, §101(b)(2), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: "in the case of any abandoned facility, any person who owned, operated, or otherwise controlled activities at such facility immediately prior to such abandonment."

Pub. L. 99-499, §101(b)(3), in provisions following subcl. (iii), substituted a period for the semicolon at end.

Par. (20)(B), (C). Pub. L. 99-499, §101(b)(3), substituted "In the case" for "in the case" and a period for the semicolon at end.

Par. (20)(D). Pub. L. 99-499, §101(b)(1), (f), added subpar. (D). The part of §101(f) of Pub. L. 99-499 which directed the amendment of par. (20) by changing the semicolon at end to a period could not be executed in view of the prior amendment of par. (20) by §101(b)(1) of Pub. L. 99-499 which added subpar. (D) ending in a period.

Par. (21). Pub. L. 99-499, §101(f), inserted "The term" and substituted a period for the semicolon at end.

Par. (22). Pub. L. 99-499, §101(c), (f), inserted "The term" and "(including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant)", substituted a period for the semicolon at end.

Par. (23). Pub. L. 99-499, §101(f), inserted "The terms" and substituted a period for the semicolon at end.

Par. (24). Pub. L. 99-499, §101(d), (f), inserted "The terms" and substituted "and associated contaminated materials" for "or contaminated materials" and "welfare; the term includes offsite transport and offsite storage, treatment, destruction, or secure disposition of hazardous substances and associated contaminated materials." for "welfare. The term does not include offsite transport of hazardous substances, or the storage, treatment, destruction, or secure disposition offsite of such hazardous substances or contaminated materials unless the President determines that such actions (A) are more cost-effective than other remedial actions, (B) will create new capacity to manage, in compliance with subtitle C of the Solid Waste Disposal Act [42 U.S.C. 6921 et seq.], hazardous substances in addition to those located at the affected facility, or (C) are necessary to protect public health or welfare or the environment from a present or potential risk which may be created by further exposure to the continued presence of such substances or materials;". The part of §101(f) of Pub. L. 99-499 which directed amendment of par. (24) by changing the semicolon at end to a period could not be executed in view of prior amendment of par. (24) by §101(d) of Pub. L. 99-499 which substituted language at end of par. (24) ending in a period for former language ending in a semicolon.

Par. (25). Pub. L. 99-499, §101(e), (f), inserted "The terms" and "all such terms (including the terms 'removal' and 'remedial action') include enforcement activities related thereto." The part of §101(f) of Pub. L. 99-499 which directed amendment of par. (25) by changing the semicolon at end to a period could not be executed in view of prior amendment of par. (25) by §101(e) of Pub. L. 99-499 inserting language and a period at end of par. (25).

Pars. (26), (27). Pub. L. 99-499, §101(f), inserted "The terms" and substituted a period for the semicolon at end.

Par. (28). Pub. L. 99-499, §101(f), inserted "The term" and substituted a period for the semicolon at end.

Par. (29). Pub. L. 99-499, §101(f), inserted "The terms" and substituted a period for the semicolon at end.

Par. (30). Pub. L. 99-499, §101(f), inserted "The terms".

Par. (31). Pub. L. 99-499, §101(f), inserted "The term" and substituted a period for "and".

Par. (32). Pub. L. 99-499, §101(f), inserted "The terms".

Pars. (33) to (36). Pub. L. 99-499, §101(f), added pars. (33) to (36).

Par. (37). Pub. L. 99-499, §114(b), added par. (37).

Par. (38). Pub. L. 99-499, §127(a), added par. (38).

1980—Pars. (8), (16). Pub. L. 96-561 substituted "Magnuson Fishery Conservation and Management Act" for "Fishery Conservation and Management Act of 1976".

EFFECTIVE DATE OF 1996 AMENDMENT

Section 101(a) [title II, §211(b)] of div. A of Pub. L. 104-208 provided that the amendment made by that section is effective 15 days after Oct. 11, 1996.

Amendment by section 2502(b) of Pub. L. 104-208 applicable with respect to any claim that has not been finally adjudicated as of Sept. 30, 1996, see section 2505 of Pub. L. 104-208, set out as a note under section 6991b of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 4 of Pub. L. 99-499 provided that: "Except as otherwise specified in section 121(b) of this Act [set out as an Effective Date note under section 9621 of this title] or in any other provision of titles I, II, III, and IV of this Act [see Tables for classification], the amendments made by titles I through IV of this Act [enacting subchapter IV of this chapter and sections 9616 to 9626, 9658 to 9660, and 9661 of this title and sections 2701 to 2707 and 2810 of Title 10, Armed Forces, amending sections 6926, 6928, 6991 to 6991d, 6991g, 9601 to 9609, 9611 to 9614, 9631, 9651, 9656, and 9657 of this title and section 1416 of Title 33, Navigation and Navigable Waters, and renumbering former section 2701 of Title 10 as section 2721 of Title 10] shall take effect on the enactment of this Act [Oct. 17, 1986]."

Amendment by section 517(c)(2) of Pub. L. 99-499 effective Jan. 1, 1987, see section 517(e) of Pub. L. 99-499, set out as an Effective Date note under section 9507 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 238(b) of Pub. L. 96-561 provided that the amendment made by that section is effective 15 days after Dec. 22, 1980.

SHORT TITLE OF 2002 AMENDMENTS

Pub. L. 107-118, §1, Jan. 11, 2002, 115 Stat. 2356, provided that: "This Act [enacting section 9628 of this title, amending this section and sections 9604, 9605, 9607, and 9622 of this title, and enacting provisions set out as notes under this section and section 9607 of this title] may be cited as the 'Small Business Liability Relief and Brownfields Revitalization Act'."

Pub. L. 107-118, title I, §101, Jan. 11, 2002, 115 Stat. 2356, provided that: "This title [amending sections 9607 and 9622 of this title and enacting provisions set out as a note under section 9607 of this title] may be cited as the 'Small Business Liability Protection Act'."

Pub. L. 107-118, title II, §201, Jan. 11, 2002, 115 Stat. 2360, provided that: "This title [enacting section 9628 of this title and amending this section and sections 9604, 9605, and 9607 of this title] may be cited as the 'Brownfields Revitalization and Environmental Restoration Act of 2001'."

SHORT TITLE OF 1996 AMENDMENT

Section 2501 of div. A of Pub. L. 104-208 provided that: "This subtitle [subtitle E (§§2501-2505) of title II of div. A of Pub. L. 104-208, amending this section and sections 6991b and 9607 of this title and enacting provisions set out as a note under section 6991b of this title] may be cited as the 'Asset Conservation, Lender Liability, and Deposit Insurance Protection Act of 1996'."

SHORT TITLE OF 1992 AMENDMENT

Pub. L. 102-426, §1, Oct. 19, 1992, 106 Stat. 2174, provided that: "This Act [amending section 9620 of this title and enacting provisions set out as a note under

section 9620 of this title] may be cited as the 'Community Environmental Response Facilitation Act'."

SHORT TITLE OF 1986 AMENDMENT

Section 1 of Pub. L. 99-499 provided that: "This Act [enacting subchapter IV of this chapter and sections 9616 to 9626, 9658 to 9662, 11001 to 11005, 11021 to 11023, and 11041 to 11050 of this title, sections 2701 to 2707 and 2810 of Title 10, Armed Forces, and sections 59A, 4671, 4672, 9507, and 9508 of Title 26, Internal Revenue Code, amending this section, sections 6926, 6928, 6991 to 6991d, 6991g, 9602 to 9609, 9611 to 9614, 9631, 9651, 9656, and 9657 of this title, sections 26, 164, 275, 936, 1561, 4041, 4042, 4081, 4221, 4611, 4612, 4661, 4662, 6154, 6416, 6420, 6421, 6425, 6427, 6655, 9502, 9503, and 9506 of Title 26, and section 1416 of Title 33, Navigation and Navigable Waters, renumbering former section 2701 of Title 10 as section 2721 of Title 10, repealing sections 9631 to 9633, 9641, and 9653 of this title and sections 4681 and 4682 of Title 26, and enacting provisions set out as notes under this section, sections 6921, 6991b, 7401, 9620, 9621, 9658, 9660, 9661, and 11001 of this title, section 2703 of Title 10, sections 1, 26, 4041, 4611, 4661, 4671, 4681, 9507, and 9508 of Title 26, and section 655 of Title 29, Labor] may be cited as the 'Superfund Amendments and Reauthorization Act of 1986'."

SHORT TITLE

Section 1 of Pub. L. 96-510 provided: "That this Act [enacting this chapter, section 6911a of this title, and sections 4611, 4612, 4661, 4662, 4681, and 4682 of Title 26, Internal Revenue Code, amending section 6911 of this title, section 1364 of Title 33, Navigation and Navigable Waters, and section 11901 of Title 49, Transportation, and enacting provisions set out as notes under section 6911 of this title and sections 1 and 4611 of Title 26] may be cited as the 'Comprehensive Environmental Response, Compensation, and Liability Act of 1980'."

TRANSFER OF FUNCTIONS

For transfer of certain functions from Nuclear Regulatory Commission to Chairman thereof, see Reorg. Plan No. 1 of 1980, 45 F.R. 40561, 94 Stat. 3585, set out as a note under section 5841 of this title.

TERRITORIAL SEA AND CONTIGUOUS ZONE OF UNITED STATES

For extension of territorial sea and contiguous zone of United States, see Proc. No. 5928 and Proc. No. 7219, respectively, set out as notes under section 1331 of Title 43, Public Lands.

DEFINITIONS

Section 2 of Pub. L. 99-499 provided that: "As used in this Act [see Short Title of 1986 Amendment note above]—

"(1) CERCLA.—The term 'CERCLA' means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.).

"(2) ADMINISTRATOR.—The term 'Administrator' means the Administrator of the Environmental Protection Agency."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300g-1, 6991, 6991b, 9602, 9603, 9604, 9607, 9613, 9624, 9656, 11004 of this title; title 7 section 1985; title 10 sections 2692, 2700, 2701, 2703, 2708; title 14 section 690; title 16 section 460III; title 26 section 198; title 33 section 2701; title 50 section 2811.

§ 9602. Designation of additional hazardous substances and establishment of reportable released quantities; regulations

(a) The Administrator shall promulgate and revise as may be appropriate, regulations designating as hazardous substances, in addition to

those referred to in section 9601(14) of this title, such elements, compounds, mixtures, solutions, and substances which, when released into the environment may present substantial danger to the public health or welfare or the environment, and shall promulgate regulations establishing that quantity of any hazardous substance the release of which shall be reported pursuant to section 9603 of this title. The Administrator may determine that one single quantity shall be the reportable quantity for any hazardous substance, regardless of the medium into which the hazardous substance is released. For all hazardous substances for which proposed regulations establishing reportable quantities were published in the Federal Register under this subsection on or before March 1, 1986, the Administrator shall promulgate under this subsection final regulations establishing reportable quantities not later than December 31, 1986. For all hazardous substances for which proposed regulations establishing reportable quantities were not published in the Federal Register under this subsection on or before March 1, 1986, the Administrator shall publish under this subsection proposed regulations establishing reportable quantities not later than December 31, 1986, and promulgate final regulations under this subsection establishing reportable quantities not later than April 30, 1988."

(b) Unless and until superseded by regulations establishing a reportable quantity under subsection (a) of this section for any hazardous substance as defined in section 9601(14) of this title, (1) a quantity of one pound, or (2) for those hazardous substances for which reportable quantities have been established pursuant to section 1321(b)(4) of title 33, such reportable quantity, shall be deemed that quantity, the release of which requires notification pursuant to section 9603(a) or (b) of this title.

(Pub. L. 96-510, title I, §102, Dec. 11, 1980, 94 Stat. 2772; Pub. L. 99-499, title I, §102, Oct. 17, 1986, 100 Stat. 1617.)

AMENDMENTS

1986—Subsec. (a). Pub. L. 99-499 inserted provisions setting deadlines for promulgation of proposed and final regulations.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9601, 9603, 11004 of this title; title 10 section 2692; title 26 section 198; title 33 section 1319.

§ 9603. Notification requirements respecting released substances

(a) Notice to National Response Center upon release from vessel or offshore or onshore facility by person in charge; conveyance of notice by Center

Any person in charge of a vessel or an offshore or an onshore facility shall, as soon as he has knowledge of any release (other than a federally permitted release) of a hazardous substance from such vessel or facility in quantities equal to or greater than those determined pursuant to section 9602 of this title, immediately notify the National Response Center established under the Clean Water Act [33 U.S.C. 1251 et seq.] of such release. The National Response Center shall con-

vey the notification expeditiously to all appropriate Government agencies, including the Governor of any affected State.

(b) Penalties for failure to notify; use of notice or information pursuant to notice in criminal case

Any person—

(1) in charge of a vessel from which a hazardous substance is released, other than a federally permitted release, into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or

(2) in charge of a vessel from which a hazardous substance is released, other than a federally permitted release, which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson-Stevens Fishery Conservation and Management Act [16 U.S.C. 1801 et seq.]), and who is otherwise subject to the jurisdiction of the United States at the time of the release, or

(3) in charge of a facility from which a hazardous substance is released, other than a federally permitted release,

in a quantity equal to or greater than that determined pursuant to section 9602 of this title who fails to notify immediately the appropriate agency of the United States Government as soon as he has knowledge of such release or who submits in such a notification any information which he knows to be false or misleading shall, upon conviction, be fined in accordance with the applicable provisions of title 18 or imprisoned for not more than 3 years (or not more than 5 years in the case of a second or subsequent conviction), or both. Notification received pursuant to this subsection or information obtained by the exploitation of such notification shall not be used against any such person in any criminal case, except a prosecution for perjury or for giving a false statement.

(c) Notice to Administrator of EPA of existence of storage, etc., facility by owner or operator; exception; time, manner, and form of notice; penalties for failure to notify; use of notice or information pursuant to notice in criminal case

Within one hundred and eighty days after December 11, 1980, any person who owns or operates or who at the time of disposal owned or operated, or who accepted hazardous substances for transport and selected, a facility at which hazardous substances (as defined in section 9601(14)(C) of this title) are or have been stored, treated, or disposed of shall, unless such facility has a permit issued under, or has been accorded interim status under, subtitle C of the Solid Waste Disposal Act [42 U.S.C. 6921 et seq.], notify the Administrator of the Environmental Protection Agency of the existence of such facility, specifying the amount and type of any hazardous substance to be found there, and any known, suspected, or likely releases of such substances from such facility. The Administrator may prescribe in greater detail the manner and form of the notice and the information included.

The Administrator shall notify the affected State agency, or any department designated by the Governor to receive such notice, of the existence of such facility. Any person who knowingly fails to notify the Administrator of the existence of any such facility shall, upon conviction, be fined not more than \$10,000, or imprisoned for not more than one year, or both. In addition, any such person who knowingly fails to provide the notice required by this subsection shall not be entitled to any limitation of liability or to any defenses to liability set out in section 9607 of this title: *Provided, however*, That notification under this subsection is not required for any facility which would be reportable hereunder solely as a result of any stoppage in transit which is temporary, incidental to the transportation movement, or at the ordinary operating convenience of a common or contract carrier, and such stoppage shall be considered as a continuity of movement and not as the storage of a hazardous substance. Notification received pursuant to this subsection or information obtained by the exploitation of such notification shall not be used against any such person in any criminal case, except a prosecution for perjury or for giving a false statement.

(d) Recordkeeping requirements; promulgation of rules and regulations by Administrator of EPA; penalties for violations; waiver of retention requirements

(1) The Administrator of the Environmental Protection Agency is authorized to promulgate rules and regulations specifying, with respect to—

(A) the location, title, or condition of a facility, and

(B) the identity, characteristics, quantity, origin, or condition (including containerization and previous treatment) of any hazardous substances contained or deposited in a facility;

the records which shall be retained by any person required to provide the notification of a facility set out in subsection (c) of this section. Such specification shall be in accordance with the provisions of this subsection.

(2) Beginning with December 11, 1980, for fifty years thereafter or for fifty years after the date of establishment of a record (whichever is later), or at any such earlier time as a waiver if obtained under paragraph (3) of this subsection, it shall be unlawful for any such person knowingly to destroy, mutilate, erase, dispose of, conceal, or otherwise render unavailable or unreadable or falsify any records identified in paragraph (1) of this subsection. Any person who violates this paragraph shall, upon conviction, be fined in accordance with the applicable provisions of title 18 or imprisoned for not more than 3 years (or not more than 5 years in the case of a second or subsequent conviction), or both.

(3) At any time prior to the date which occurs fifty years after December 11, 1980, any person identified under paragraph (1) of this subsection may apply to the Administrator of the Environmental Protection Agency for a waiver of the provisions of the first sentence of paragraph (2) of this subsection. The Administrator is authorized to grant such waiver if, in his discretion,

such waiver would not unreasonably interfere with the attainment of the purposes and provisions of this chapter. The Administrator shall promulgate rules and regulations regarding such a waiver so as to inform parties of the proper application procedure and conditions for approval of such a waiver.

(4) Notwithstanding the provisions of this subsection, the Administrator of the Environmental Protection Agency may in his discretion require any such person to retain any record identified pursuant to paragraph (1) of this subsection for such a time period in excess of the period specified in paragraph (2) of this subsection as the Administrator determines to be necessary to protect the public health or welfare.

(e) Applicability to registered pesticide product

This section shall not apply to the application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.] or to the handling and storage of such a pesticide product by an agricultural producer.

(f) Exemptions from notice and penalty provisions for substances reported under other Federal law or is in continuous release, etc.

No notification shall be required under subsection (a) or (b) of this section for any release of a hazardous substance—

(1) which is required to be reported (or specifically exempted from a requirement for reporting) under subtitle C of the Solid Waste Disposal Act [42 U.S.C. 6921 et seq.] or regulations thereunder and which has been reported to the National Response Center, or

(2) which is a continuous release, stable in quantity and rate, and is—

(A) from a facility for which notification has been given under subsection (c) of this section, or

(B) a release of which notification has been given under subsections (a) and (b) of this section for a period sufficient to establish the continuity, quantity, and regularity of such release:

Provided, That notification in accordance with subsections (a) and (b) of this paragraph shall be given for releases subject to this paragraph annually, or at such time as there is any statistically significant increase in the quantity of any hazardous substance or constituent thereof released, above that previously reported or occurring.

(Pub. L. 96-510, title I, § 103, Dec. 11, 1980, 94 Stat. 2772; Pub. L. 96-561, title II, § 238(b), Dec. 22, 1980, 94 Stat. 3300; Pub. L. 99-499, title I, §§ 103, 109(a)(1), (2), Oct. 17, 1986, 100 Stat. 1617, 1632, 1633; Pub. L. 104-208, div. A, title I, § 101(a) [title II, § 211(b)], Sept. 30, 1996, 110 Stat. 3009, 3009-41.)

REFERENCES IN TEXT

The Clean Water Act, referred to in subsec. (a), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92-500, § 2, Oct. 18, 1972, 86 Stat. 816, also known as the Federal Water Pollution Control Act, which is classified generally to chapter 26 (§1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Magnuson-Stevens Fishery Conservation and Management Act, referred to in subsec. (b)(2), is Pub. L. 94-265, Apr. 13, 1976, 90 Stat. 331, as amended, which is classified principally to chapter 38 (§1801 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of Title 16 and Tables.

The Solid Waste Disposal Act, referred to in subsecs. (c) and (f)(1), is title II of Pub. L. 89-272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94-580, § 2, Oct. 21, 1976, 90 Stat. 2795. Subtitle C of the Solid Waste Disposal Act is classified generally to subchapter III (§6921 et seq.) of chapter 82 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

The Federal Insecticide, Fungicide, and Rodenticide Act, referred to in subsec. (e), is act June 25, 1947, ch. 125, as amended generally by Pub. L. 92-516, Oct. 21, 1972, 86 Stat. 973, which is classified generally to subchapter II (§136 et seq.) of chapter 6 of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 136 of Title 7 and Tables.

AMENDMENTS

1996—Subsec. (b)(2). Pub. L. 104-208 substituted “Magnuson-Stevens Fishery” for “Magnuson Fishery”.

1986—Subsec. (b). Pub. L. 99-499, §§ 103, 109(a), adjusted left hand margin of text following “federally permitted release,” third place appearing so that there is no indentation of that text, inserted “or who submits in such a notification any information which he knows to be false or misleading”, and substituted “in accordance with the applicable provisions of title 18 or imprisoned for not more than 3 years (or not more than 5 years in the case of a second or subsequent conviction), or both” for “not more than \$10,000 or imprisoned for not more than one year, or both” and “subsection” for “paragraph”.

Subsec. (d)(2). Pub. L. 99-499, § 109(a)(2), substituted “in accordance with the applicable provisions of title 18 or imprisoned for not more than 3 years (or not more than 5 years in the case of a second or subsequent conviction), or both” for “not more than \$20,000, or imprisoned for not more than one year, or both” as the probable intent of Congress, notwithstanding directory language that the substitution be made for “not more than \$20,000, or imprisoned for not more than one year or both”.

1980—Subsec. (b)(2). Pub. L. 96-561 substituted “Magnuson Fishery Conservation and Management Act” for “Fishery Conservation and Management Act of 1976”.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 101(a) [title II, § 211(b)] of div. A of Pub. L. 104-208 provided that the amendment made by that section is effective 15 days after Oct. 11, 1996.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 238(b) of Pub. L. 96-561 provided that the amendment made by that section is effective 15 days after Dec. 22, 1980.

CONTIGUOUS ZONE OF UNITED STATES

For extension of contiguous zone of United States, see Proc. No. 7219, set out as a note under section 1331 of Title 43, Public Lands.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6937, 6991a, 9602, 9609, 9620, 9626, 11004 of this title.

§ 9604. Response authorities

(a) Removal and other remedial action by President; applicability of national contingency plan; response by potentially responsible parties; public health threats; limitations on response; exception

(1) Whenever (A) any hazardous substance is released or there is a substantial threat of such

a release into the environment, or (B) there is a release or substantial threat of release into the environment of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, the President is authorized to act, consistent with the national contingency plan, to remove or arrange for the removal of, and provide for remedial action relating to such hazardous substance, pollutant, or contaminant at any time (including its removal from any contaminated natural resource), or take any other response measure consistent with the national contingency plan which the President deems necessary to protect the public health or welfare or the environment. When the President determines that such action will be done properly and promptly by the owner or operator of the facility or vessel or by any other responsible party, the President may allow such person to carry out the action, conduct the remedial investigation, or conduct the feasibility study in accordance with section 9622 of this title. No remedial investigation or feasibility study (RI/FS) shall be authorized except on a determination by the President that the party is qualified to conduct the RI/FS and only if the President contracts with or arranges for a qualified person to assist the President in overseeing and reviewing the conduct of such RI/FS and if the responsible party agrees to reimburse the Fund for any cost incurred by the President under, or in connection with, the oversight contract or arrangement. In no event shall a potentially responsible party be subject to a lesser standard of liability, receive preferential treatment, or in any other way, whether direct or indirect, benefit from any such arrangements as a response action contractor, or as a person hired or retained by such a response action contractor, with respect to the release or facility in question. The President shall give primary attention to those releases which the President deems may present a public health threat.

(2) **REMOVAL ACTION.**—Any removal action undertaken by the President under this subsection (or by any other person referred to in section 9622 of this title) should, to the extent the President deems practicable, contribute to the efficient performance of any long term remedial action with respect to the release or threatened release concerned.

(3) **LIMITATIONS ON RESPONSE.**—The President shall not provide for a removal or remedial action under this section in response to a release or threat of release—

(A) of a naturally occurring substance in its unaltered form, or altered solely through naturally occurring processes or phenomena, from a location where it is naturally found;

(B) from products which are part of the structure of, and result in exposure within, residential buildings or business or community structures; or

(C) into public or private drinking water supplies due to deterioration of the system through ordinary use.

(4) **EXCEPTION TO LIMITATIONS.**—Notwithstanding paragraph (3) of this subsection, to the extent authorized by this section, the President may respond to any release or threat of release

if in the President's discretion, it constitutes a public health or environmental emergency and no other person with the authority and capability to respond to the emergency will do so in a timely manner.

(b) Investigations, monitoring, coordination, etc., by President

(1) Information; studies and investigations

Whenever the President is authorized to act pursuant to subsection (a) of this section, or whenever the President has reason to believe that a release has occurred or is about to occur, or that illness, disease, or complaints thereof may be attributable to exposure to a hazardous substance, pollutant, or contaminant and that a release may have occurred or be occurring, he may undertake such investigations, monitoring, surveys, testing, and other information gathering as he may deem necessary or appropriate to identify the existence and extent of the release or threat thereof, the source and nature of the hazardous substances, pollutants or contaminants involved, and the extent of danger to the public health or welfare or to the environment. In addition, the President may undertake such planning, legal, fiscal, economic, engineering, architectural, and other studies or investigations as he may deem necessary or appropriate to plan and direct response actions, to recover the costs thereof, and to enforce the provisions of this chapter.

(2) Coordination of investigations

The President shall promptly notify the appropriate Federal and State natural resource trustees of potential damages to natural resources resulting from releases under investigation pursuant to this section and shall seek to coordinate the assessments, investigations, and planning under this section with such Federal and State trustees.

(c) Criteria for continuance of obligations from Fund over specified amount for response actions; consultation by President with affected States; contracts or cooperative agreements by States with President prior to remedial actions; cost-sharing agreements; selection by President of remedial actions; State credits: granting of credit, expenses before listing or agreement, response actions between 1978 and 1980, State expenses after December 11, 1980, in excess of 10 percent of costs, item-by-item approval, use of credits; operation and maintenance; limitation on source of funds for O&M; recontracting; siting

(1) Unless (A) the President finds that (i) continued response actions are immediately required to prevent, limit, or mitigate an emergency, (ii) there is an immediate risk to public health or welfare or the environment, and (iii) such assistance will not otherwise be provided on a timely basis, or (B) the President has determined the appropriate remedial actions pursuant to paragraph (2) of this subsection and the State or States in which the source of the release is located have complied with the requirements of paragraph (3) of this subsection, or (C) continued response action is otherwise appro-

priate and consistent with the remedial action to be taken¹ obligations from the Fund, other than those authorized by subsection (b) of this section, shall not continue after \$2,000,000 has been obligated for response actions or 12 months has elapsed from the date of initial response to a release or threatened release of hazardous substances.

(2) The President shall consult with the affected State or States before determining any appropriate remedial action to be taken pursuant to the authority granted under subsection (a) of this section.

(3) The President shall not provide any remedial actions pursuant to this section unless the State in which the release occurs first enters into a contract or cooperative agreement with the President providing assurances deemed adequate by the President that (A) the State will assure all future maintenance of the removal and remedial actions provided for the expected life of such actions as determined by the President; (B) the State will assure the availability of a hazardous waste disposal facility acceptable to the President and in compliance with the requirements of subtitle C of the Solid Waste Disposal Act [42 U.S.C. 6921 et seq.] for any necessary offsite storage, destruction, treatment, or secure disposition of the hazardous substances; and (C) the State will pay or assure payment of (i) 10 per centum of the costs of the remedial action, including all future maintenance, or (ii) 50 percent (or such greater amount as the President may determine appropriate, taking into account the degree of responsibility of the State or political subdivision for the release) of any sums expended in response to a release at a facility, that was operated by the State or a political subdivision thereof, either directly or through a contractual relationship or otherwise, at the time of any disposal of hazardous substances therein. For the purpose of clause (ii) of this subparagraph, the term "facility" does not include navigable waters or the beds underlying those waters. In the case of remedial action to be taken on land or water held by an Indian tribe, held by the United States in trust for Indians, held by a member of an Indian tribe (if such land or water is subject to a trust restriction on alienation), or otherwise within the borders of an Indian reservation, the requirements of this paragraph for assurances regarding future maintenance and cost-sharing shall not apply, and the President shall provide the assurance required by this paragraph regarding the availability of a hazardous waste disposal facility.

(4) SELECTION OF REMEDIAL ACTION.—The President shall select remedial actions to carry out this section in accordance with section 9621 of this title (relating to cleanup standards).

(5) STATE CREDITS.—

(A) GRANTING OF CREDIT.—The President shall grant a State a credit against the share of the costs, for which it is responsible under paragraph (3) with respect to a facility listed on the National Priorities List under the National Contingency Plan, for amounts expended by a State for remedial action at such

facility pursuant to a contract or cooperative agreement with the President. The credit under this paragraph shall be limited to those State expenses which the President determines to be reasonable, documented, direct out-of-pocket expenditures of non-Federal funds.

(B) EXPENSES BEFORE LISTING OR AGREEMENT.—The credit under this paragraph shall include expenses for remedial action at a facility incurred before the listing of the facility on the National Priorities List or before a contract or cooperative agreement is entered into under subsection (d) of this section for the facility if—

(i) after such expenses are incurred the facility is listed on such list and a contract or cooperative agreement is entered into for the facility, and

(ii) the President determines that such expenses would have been credited to the State under subparagraph (A) had the expenditures been made after listing of the facility on such list and after the date on which such contract or cooperative agreement is entered into.

(C) RESPONSE ACTIONS BETWEEN 1978 AND 1980.—The credit under this paragraph shall include funds expended or obligated by the State or a political subdivision thereof after January 1, 1978, and before December 11, 1980, for cost-eligible response actions and claims for damages compensable under section 9611 of this title.

(D) STATE EXPENSES AFTER DECEMBER 11, 1980, IN EXCESS OF 10 PERCENT OF COSTS.—The credit under this paragraph shall include 90 percent of State expenses incurred at a facility owned, but not operated, by such State or by a political subdivision thereof. Such credit applies only to expenses incurred pursuant to a contract or cooperative agreement under subsection (d) of this section and only to expenses incurred after December 11, 1980, but before October 17, 1986.

(E) ITEM-BY-ITEM APPROVAL.—In the case of expenditures made after October 17, 1986, the President may require prior approval of each item of expenditure as a condition of granting a credit under this paragraph.

(F) USE OF CREDITS.—Credits granted under this paragraph for funds expended with respect to a facility may be used by the State to reduce all or part of the share of costs otherwise required to be paid by the State under paragraph (3) in connection with remedial actions at such facility. If the amount of funds for which credit is allowed under this paragraph exceeds such share of costs for such facility, the State may use the amount of such excess to reduce all or part of the share of such costs at other facilities in that State. A credit shall not entitle the State to any direct payment.

(6) OPERATION AND MAINTENANCE.—For the purposes of paragraph (3) of this subsection, in the case of ground or surface water contamination, completed remedial action includes the completion of treatment or other measures, whether taken onsite or offsite, necessary to restore ground and surface water quality to a level that

¹ So in original. Probably should be followed by a comma.

assures protection of human health and the environment. With respect to such measures, the operation of such measures for a period of up to 10 years after the construction or installation and commencement of operation shall be considered remedial action. Activities required to maintain the effectiveness of such measures following such period or the completion of remedial action, whichever is earlier, shall be considered operation or maintenance.

(7) **LIMITATION ON SOURCE OF FUNDS FOR O&M.**—During any period after the availability of funds received by the Hazardous Substance Superfund established under subchapter A of chapter 98 of title 26 from tax revenues or appropriations from general revenues, the Federal share of the payment of the cost of operation or maintenance pursuant to paragraph (3)(C)(i) or paragraph (6) of this subsection (relating to operation and maintenance) shall be from funds received by the Hazardous Substance Superfund from amounts recovered on behalf of such fund under this chapter.

(8) **RECONTRACTING.**—The President is authorized to undertake or continue whatever interim remedial actions the President determines to be appropriate to reduce risks to public health or the environment where the performance of a complete remedial action requires recontracting because of the discovery of sources, types, or quantities of hazardous substances not known at the time of entry into the original contract. The total cost of interim actions undertaken at a facility pursuant to this paragraph shall not exceed \$2,000,000.

(9) **SITING.**—Effective 3 years after October 17, 1986, the President shall not provide any remedial actions pursuant to this section unless the State in which the release occurs first enters into a contract or cooperative agreement with the President providing assurances deemed adequate by the President that the State will assure the availability of hazardous waste treatment or disposal facilities which—

(A) have adequate capacity for the destruction, treatment, or secure disposition of all hazardous wastes that are reasonably expected to be generated within the State during the 20-year period following the date of such contract or cooperative agreement and to be disposed of, treated, or destroyed,

(B) are within the State or outside the State in accordance with an interstate agreement or regional agreement or authority,

(C) are acceptable to the President, and

(D) are in compliance with the requirements of subtitle C of the Solid Waste Disposal Act [42 U.S.C. 6921 et seq.].

(d) Contracts or cooperative agreements by President with States or political subdivisions or Indian tribes; State applications, terms and conditions; reimbursements; cost-sharing provisions; enforcement requirements and procedures

(1) **COOPERATIVE AGREEMENTS.**—

(A) **STATE APPLICATIONS.**—A State or political subdivision thereof or Indian tribe may apply to the President to carry out actions authorized in this section. If the President determines that the State or political subdivision

or Indian tribe has the capability to carry out any or all of such actions in accordance with the criteria and priorities established pursuant to section 9605(a)(8) of this title and to carry out related enforcement actions, the President may enter into a contract or cooperative agreement with the State or political subdivision or Indian tribe to carry out such actions. The President shall make a determination regarding such an application within 90 days after the President receives the application.

(B) **TERMS AND CONDITIONS.**—A contract or cooperative agreement under this paragraph shall be subject to such terms and conditions as the President may prescribe. The contract or cooperative agreement may cover a specific facility or specific facilities.

(C) **REIMBURSEMENTS.**—Any State which expended funds during the period beginning September 30, 1985, and ending on October 17, 1986, for response actions at any site included on the National Priorities List and subject to a cooperative agreement under this chapter shall be reimbursed for the share of costs of such actions for which the Federal Government is responsible under this chapter.

(2) If the President enters into a cost-sharing agreement pursuant to subsection (c) of this section or a contract or cooperative agreement pursuant to this subsection, and the State or political subdivision thereof fails to comply with any requirements of the contract, the President may, after providing sixty days notice, seek in the appropriate Federal district court to enforce the contract or to recover any funds advanced or any costs incurred because of the breach of the contract by the State or political subdivision.

(3) Where a State or a political subdivision thereof is acting in behalf of the President, the President is authorized to provide technical and legal assistance in the administration and enforcement of any contract or subcontract in connection with response actions assisted under this subchapter, and to intervene in any civil action involving the enforcement of such contract or subcontract.

(4) Where two or more noncontiguous facilities are reasonably related on the basis of geography, or on the basis of the threat, or potential threat to the public health or welfare or the environment, the President may, in his discretion, treat these related facilities as one for purposes of this section.

(e) Information gathering and access

(1) Action authorized

Any officer, employee, or representative of the President, duly designated by the President, is authorized to take action under paragraph (2), (3), or (4) (or any combination thereof) at a vessel, facility, establishment, place, property, or location or, in the case of paragraph (3) or (4), at any vessel, facility, establishment, place, property, or location which is adjacent to the vessel, facility, establishment, place, property, or location referred to in such paragraph (3) or (4). Any duly designated officer, employee, or representative of a State or political subdivision under a contract or cooperative agreement under subsection (d)(1) of

this section is also authorized to take such action. The authority of paragraphs (3) and (4) may be exercised only if there is a reasonable basis to believe there may be a release or threat of release of a hazardous substance or pollutant or contaminant. The authority of this subsection may be exercised only for the purposes of determining the need for response, or choosing or taking any response action under this subchapter, or otherwise enforcing the provisions of this subchapter.

(2) Access to information

Any officer, employee, or representative described in paragraph (1) may require any person who has or may have information relevant to any of the following to furnish, upon reasonable notice, information or documents relating to such matter:

(A) The identification, nature, and quantity of materials which have been or are generated, treated, stored, or disposed of at a vessel or facility or transported to a vessel or facility.

(B) The nature or extent of a release or threatened release of a hazardous substance or pollutant or contaminant at or from a vessel or facility.

(C) Information relating to the ability of a person to pay for or to perform a cleanup.

In addition, upon reasonable notice, such person either (i) shall grant any such officer, employee, or representative access at all reasonable times to any vessel, facility, establishment, place, property, or location to inspect and copy all documents or records relating to such matters or (ii) shall copy and furnish to the officer, employee, or representative all such documents or records, at the option and expense of such person.

(3) Entry

Any officer, employee, or representative described in paragraph (1) is authorized to enter at reasonable times any of the following:

(A) Any vessel, facility, establishment, or other place or property where any hazardous substance or pollutant or contaminant may be or has been generated, stored, treated, disposed of, or transported from.

(B) Any vessel, facility, establishment, or other place or property from which or to which a hazardous substance or pollutant or contaminant has been or may have been released.

(C) Any vessel, facility, establishment, or other place or property where such release is or may be threatened.

(D) Any vessel, facility, establishment, or other place or property where entry is needed to determine the need for response or the appropriate response or to effectuate a response action under this subchapter.

(4) Inspection and samples

(A) Authority

Any officer, employee or representative described in paragraph (1) is authorized to inspect and obtain samples from any vessel, facility, establishment, or other place or property referred to in paragraph (3) or from

any location of any suspected hazardous substance or pollutant or contaminant. Any such officer, employee, or representative is authorized to inspect and obtain samples of any containers or labeling for suspected hazardous substances or pollutants or contaminants. Each such inspection shall be completed with reasonable promptness.

(B) Samples

If the officer, employee, or representative obtains any samples, before leaving the premises he shall give to the owner, operator, tenant, or other person in charge of the place from which the samples were obtained a receipt describing the sample obtained and, if requested, a portion of each such sample. A copy of the results of any analysis made of such samples shall be furnished promptly to the owner, operator, tenant, or other person in charge, if such person can be located.

(5) Compliance orders

(A) Issuance

If consent is not granted regarding any request made by an officer, employee, or representative under paragraph (2), (3), or (4), the President may issue an order directing compliance with the request. The order may be issued after such notice and opportunity for consultation as is reasonably appropriate under the circumstances.

(B) Compliance

The President may ask the Attorney General to commence a civil action to compel compliance with a request or order referred to in subparagraph (A). Where there is a reasonable basis to believe there may be a release or threat of a release of a hazardous substance or pollutant or contaminant, the court shall take the following actions:

(i) In the case of interference with entry or inspection, the court shall enjoin such interference or direct compliance with orders to prohibit interference with entry or inspection unless under the circumstances of the case the demand for entry or inspection is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law.

(ii) In the case of information or document requests or orders, the court shall enjoin interference with such information or document requests or orders or direct compliance with the requests or orders to provide such information or documents unless under the circumstances of the case the demand for information or documents is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law.

The court may assess a civil penalty not to exceed \$25,000 for each day of noncompliance against any person who unreasonably fails to comply with the provisions of paragraph (2), (3), or (4) or an order issued pursuant to subparagraph (A) of this paragraph.

(6) Other authority

Nothing in this subsection shall preclude the President from securing access or obtaining information in any other lawful manner.

(7) Confidentiality of information

(A) Any records, reports, or information obtained from any person under this section (including records, reports, or information obtained by representatives of the President) shall be available to the public, except that upon a showing satisfactory to the President (or the State, as the case may be) by any person that records, reports, or information, or particular part thereof (other than health or safety effects data), to which the President (or the State, as the case may be) or any officer, employee, or representative has access under this section if made public would divulge information entitled to protection under section 1905 of title 18, such information or particular portion thereof shall be considered confidential in accordance with the purposes of that section, except that such record, report, document or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter, or when relevant in any proceeding under this chapter.

(B) Any person not subject to the provisions of section 1905 of title 18 who knowingly and willfully divulges or discloses any information entitled to protection under this subsection shall, upon conviction, be subject to a fine of not more than \$5,000 or to imprisonment not to exceed one year, or both.

(C) In submitting data under this chapter, a person required to provide such data may (i) designate the data which such person believes is entitled to protection under this subsection and (ii) submit such designated data separately from other data submitted under this chapter. A designation under this paragraph shall be made in writing and in such manner as the President may prescribe by regulation.

(D) Notwithstanding any limitation contained in this section or any other provision of law, all information reported to or otherwise obtained by the President (or any representative of the President) under this chapter shall be made available, upon written request of any duly authorized committee of the Congress, to such committee.

(E) No person required to provide information under this chapter may claim that the information is entitled to protection under this paragraph unless such person shows each of the following:

(i) Such person has not disclosed the information to any other person, other than a member of a local emergency planning committee established under title III of the Amendments and Reauthorization Act of 1986 [42 U.S.C. 11001 et seq.], an officer or employee of the United States or a State or local government, an employee of such person, or a person who is bound by a confidentiality agreement, and such person has taken reasonable measures to protect the confidentiality of such information and intends to continue to take such measures.

(ii) The information is not required to be disclosed, or otherwise made available, to the public under any other Federal or State law.

(iii) Disclosure of the information is likely to cause substantial harm to the competitive position of such person.

(iv) The specific chemical identity, if sought to be protected, is not readily discoverable through reverse engineering.

(F) The following information with respect to any hazardous substance at the facility or vessel shall not be entitled to protection under this paragraph:

(i) The trade name, common name, or generic class or category of the hazardous substance.

(ii) The physical properties of the substance, including its boiling point, melting point, flash point, specific gravity, vapor density, solubility in water, and vapor pressure at 20 degrees celsius.

(iii) The hazards to health and the environment posed by the substance, including physical hazards (such as explosion) and potential acute and chronic health hazards.

(iv) The potential routes of human exposure to the substance at the facility, establishment, place, or property being investigated, entered, or inspected under this subsection.

(v) The location of disposal of any waste stream.

(vi) Any monitoring data or analysis of monitoring data pertaining to disposal activities.

(vii) Any hydrogeologic or geologic data.

(viii) Any groundwater monitoring data.

(f) Contracts for response actions; compliance with Federal health and safety standards

In awarding contracts to any person engaged in response actions, the President or the State, in any case where it is awarding contracts pursuant to a contract entered into under subsection (d) of this section, shall require compliance with Federal health and safety standards established under section 9651(f) of this title by contractors and subcontractors as a condition of such contracts.

(g) Rates for wages and labor standards applicable to covered work

(1) All laborers and mechanics employed by contractors or subcontractors in the performance of construction, repair, or alteration work funded in whole or in part under this section shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with sections 3141-3144, 3146, and 3147 of title 40. The President shall not approve any such funding without first obtaining adequate assurance that required labor standards will be maintained upon the construction work.

(2) The Secretary of Labor shall have, with respect to the labor standards specified in paragraph (1), the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 3145 of title 40.

(h) Emergency procurement powers; exercise by President

Notwithstanding any other provision of law, subject to the provisions of section 9611 of this title, the President may authorize the use of such emergency procurement powers as he deems necessary to effect the purpose of this chapter. Upon determination that such procedures are necessary, the President shall promulgate regulations prescribing the circumstances under which such authority shall be used and the procedures governing the use of such authority.

(i) Agency for Toxic Substances and Disease Registry; establishment, functions, etc.

(1) There is hereby established within the Public Health Service an agency, to be known as the Agency for Toxic Substances and Disease Registry, which shall report directly to the Surgeon General of the United States. The Administrator of said Agency shall, with the cooperation of the Administrator of the Environmental Protection Agency, the Commissioner of the Food and Drug Administration, the Directors of the National Institute of Medicine, National Institute of Environmental Health Sciences, National Institute of Occupational Safety and Health, Centers for Disease Control and Prevention, the Administrator of the Occupational Safety and Health Administration, the Administrator of the Social Security Administration, the Secretary of Transportation, and appropriate State and local health officials, effectuate and implement the health related authorities of this chapter. In addition, said Administrator shall—

(A) in cooperation with the States, establish and maintain a national registry of serious diseases and illnesses and a national registry of persons exposed to toxic substances;

(B) establish and maintain inventory of literature, research, and studies on the health effects of toxic substances;

(C) in cooperation with the States, and other agencies of the Federal Government, establish and maintain a complete listing of areas closed to the public or otherwise restricted in use because of toxic substance contamination;

(D) in cases of public health emergencies caused or believed to be caused by exposure to toxic substances, provide medical care and testing to exposed individuals, including but not limited to tissue sampling, chromosomal testing where appropriate, epidemiological studies, or any other assistance appropriate under the circumstances; and

(E) either independently or as part of other health status survey, conduct periodic survey and screening programs to determine relationships between exposure to toxic substances and illness. In cases of public health emergencies, exposed persons shall be eligible for admission to hospitals and other facilities and services operated or provided by the Public Health Service.

(2)(A) Within 6 months after October 17, 1986, the Administrator of the Agency for Toxic Substances and Disease Registry (ATSDR) and the Administrator of the Environmental Protection Agency ("EPA") shall prepare a list, in order of priority, of at least 100 hazardous substances

which are most commonly found at facilities on the National Priorities List and which, in their sole discretion, they determine are posing the most significant potential threat to human health due to their known or suspected toxicity to humans and the potential for human exposure to such substances at facilities on the National Priorities List or at facilities to which a response to a release or a threatened release under this section is under consideration.

(B) Within 24 months after October 17, 1986, the Administrator of ATSDR and the Administrator of EPA shall revise the list prepared under subparagraph (A). Such revision shall include, in order of priority, the addition of 100 or more such hazardous substances. In each of the 3 consecutive 12-month periods that follow, the Administrator of ATSDR and the Administrator of EPA shall revise, in the same manner as provided in the 2 preceding sentences, such list to include not fewer than 25 additional hazardous substances per revision. The Administrator of ATSDR and the Administrator of EPA shall not less often than once every year thereafter revise such list to include additional hazardous substances in accordance with the criteria in subparagraph (A).

(3) Based on all available information, including information maintained under paragraph (1)(B) and data developed and collected on the health effects of hazardous substances under this paragraph, the Administrator of ATSDR shall prepare toxicological profiles of each of the substances listed pursuant to paragraph (2). The toxicological profiles shall be prepared in accordance with guidelines developed by the Administrator of ATSDR and the Administrator of EPA. Such profiles shall include, but not be limited to each of the following:

(A) An examination, summary, and interpretation of available toxicological information and epidemiologic evaluations on a hazardous substance in order to ascertain the levels of significant human exposure for the substance and the associated acute, subacute, and chronic health effects.

(B) A determination of whether adequate information on the health effects of each substance is available or in the process of development to determine levels of exposure which present a significant risk to human health of acute, subacute, and chronic health effects.

(C) Where appropriate, an identification of toxicological testing needed to identify the types or levels of exposure that may present significant risk of adverse health effects in humans.

Any toxicological profile or revision thereof shall reflect the Administrator of ATSDR's assessment of all relevant toxicological testing which has been peer reviewed. The profiles required to be prepared under this paragraph for those hazardous substances listed under subparagraph (A) of paragraph (2) shall be completed, at a rate of no fewer than 25 per year, within 4 years after October 17, 1986. A profile required on a substance listed pursuant to subparagraph (B) of paragraph (2) shall be completed within 3 years after addition to the list. The profiles prepared under this paragraph shall be of those substances highest on the list of pri-

orities under paragraph (2) for which profiles have not previously been prepared. Profiles required under this paragraph shall be revised and republished as necessary, but no less often than once every 3 years. Such profiles shall be provided to the States and made available to other interested parties.

(4) The Administrator of the ATSDR shall provide consultations upon request on health issues relating to exposure to hazardous or toxic substances, on the basis of available information, to the Administrator of EPA, State officials, and local officials. Such consultations to individuals may be provided by States under cooperative agreements established under this chapter.

(5)(A) For each hazardous substance listed pursuant to paragraph (2), the Administrator of ATSDR (in consultation with the Administrator of EPA and other agencies and programs of the Public Health Service) shall assess whether adequate information on the health effects of such substance is available. For any such substance for which adequate information is not available (or under development), the Administrator of ATSDR, in cooperation with the Director of the National Toxicology Program, shall assure the initiation of a program of research designed to determine the health effects (and techniques for development of methods to determine such health effects) of such substance. Where feasible, such program shall seek to develop methods to determine the health effects of such substance in combination with other substances with which it is commonly found. Before assuring the initiation of such program, the Administrator of ATSDR shall consider recommendations of the Interagency Testing Committee established under section 4(e) of the Toxic Substances Control Act [15 U.S.C. 2603(e)] on the types of research that should be done. Such program shall include, to the extent necessary to supplement existing information, but shall not be limited to—

(i) laboratory and other studies to determine short, intermediate, and long-term health effects;

(ii) laboratory and other studies to determine organ-specific, site-specific, and system-specific acute and chronic toxicity;

(iii) laboratory and other studies to determine the manner in which such substances are metabolized or to otherwise develop an understanding of the biokinetics of such substances; and

(iv) where there is a possibility of obtaining human data, the collection of such information.

(B) In assessing the need to perform laboratory and other studies, as required by subparagraph (A), the Administrator of ATSDR shall consider—

(i) the availability and quality of existing test data concerning the substance on the suspected health effect in question;

(ii) the extent to which testing already in progress will, in a timely fashion, provide data that will be adequate to support the preparation of toxicological profiles as required by paragraph (3); and

(iii) such other scientific and technical factors as the Administrator of ATSDR may de-

termine are necessary for the effective implementation of this subsection.

(C) In the development and implementation of any research program under this paragraph, the Administrator of ATSDR and the Administrator of EPA shall coordinate such research program implemented under this paragraph with the National Toxicology Program and with programs of toxicological testing established under the Toxic Substances Control Act [15 U.S.C. 2601 et seq.] and the Federal Insecticide, Fungicide and Rodenticide Act [7 U.S.C. 136 et seq.]. The purpose of such coordination shall be to avoid duplication of effort and to assure that the hazardous substances listed pursuant to this subsection are tested thoroughly at the earliest practicable date. Where appropriate, consistent with such purpose, a research program under this paragraph may be carried out using such programs of toxicological testing.

(D) It is the sense of the Congress that the costs of research programs under this paragraph be borne by the manufacturers and processors of the hazardous substance in question, as required in programs of toxicological testing under the Toxic Substances Control Act [15 U.S.C. 2601 et seq.]. Within 1 year after October 17, 1986, the Administrator of EPA shall promulgate regulations which provide, where appropriate, for payment of such costs by manufacturers and processors under the Toxic Substances Control Act, and registrants under the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.], and recovery of such costs from responsible parties under this chapter.

(6)(A) The Administrator of ATSDR shall perform a health assessment for each facility on the National Priorities List established under section 9605 of this title. Such health assessment shall be completed not later than December 10, 1988, for each facility proposed for inclusion on such list prior to October 17, 1986, or not later than one year after the date of proposal for inclusion on such list for each facility proposed for inclusion on such list after October 17, 1986.

(B) The Administrator of ATSDR may perform health assessments for releases or facilities where individual persons or licensed physicians provide information that individuals have been exposed to a hazardous substance, for which the probable source of such exposure is a release. In addition to other methods (formal or informal) of providing such information, such individual persons or licensed physicians may submit a petition to the Administrator of ATSDR providing such information and requesting a health assessment. If such a petition is submitted and the Administrator of ATSDR does not initiate a health assessment, the Administrator of ATSDR shall provide a written explanation of why a health assessment is not appropriate.

(C) In determining the priority in which to conduct health assessments under this subsection, the Administrator of ATSDR, in consultation with the Administrator of EPA, shall give priority to those facilities at which there is documented evidence of the release of hazardous substances, at which the potential risk to human health appears highest, and for which in the judgment of the Administrator of ATSDR existing health assessment data are inadequate

to assess the potential risk to human health as provided in subparagraph (F). In determining the priorities for conducting health assessments under this subsection, the Administrator of ATSDR shall consider the National Priorities List schedules and the needs of the Environmental Protection Agency and other Federal agencies pursuant to schedules for remedial investigation and feasibility studies.

(D) Where a health assessment is done at a site on the National Priorities List, the Administrator of ATSDR shall complete such assessment promptly and, to the maximum extent practicable, before the completion of the remedial investigation and feasibility study at the facility concerned.

(E) Any State or political subdivision carrying out a health assessment for a facility shall report the results of the assessment to the Administrator of ATSDR and the Administrator of EPA and shall include recommendations with respect to further activities which need to be carried out under this section. The Administrator of ATSDR shall state such recommendation in any report on the results of any assessment carried out directly by the Administrator of ATSDR for such facility and shall issue periodic reports which include the results of all the assessments carried out under this subsection.

(F) For the purposes of this subsection and section 9611(c)(4) of this title, the term "health assessments" shall include preliminary assessments of the potential risk to human health posed by individual sites and facilities, based on such factors as the nature and extent of contamination, the existence of potential pathways of human exposure (including ground or surface water contamination, air emissions, and food chain contamination), the size and potential susceptibility of the community within the likely pathways of exposure, the comparison of expected human exposure levels to the short-term and long-term health effects associated with identified hazardous substances and any available recommended exposure or tolerance limits for such hazardous substances, and the comparison of existing morbidity and mortality data on diseases that may be associated with the observed levels of exposure. The Administrator of ATSDR shall use appropriate data, risk assessments, risk evaluations and studies available from the Administrator of EPA.

(G) The purpose of health assessments under this subsection shall be to assist in determining whether actions under paragraph (11) of this subsection should be taken to reduce human exposure to hazardous substances from a facility and whether additional information on human exposure and associated health risks is needed and should be acquired by conducting epidemiological studies under paragraph (7), establishing a registry under paragraph (8), establishing a health surveillance program under paragraph (9), or through other means. In using the results of health assessments for determining additional actions to be taken under this section, the Administrator of ATSDR may consider additional information on the risks to the potentially affected population from all sources of such hazardous substances including known point or nonpoint sources other than those from the facility in question.

(H) At the completion of each health assessment, the Administrator of ATSDR shall provide the Administrator of EPA and each affected State with the results of such assessment, together with any recommendations for further actions under this subsection or otherwise under this chapter. In addition, if the health assessment indicates that the release or threatened release concerned may pose a serious threat to human health or the environment, the Administrator of ATSDR shall so notify the Administrator of EPA who shall promptly evaluate such release or threatened release in accordance with the hazard ranking system referred to in section 9605(a)(8)(A) of this title to determine whether the site shall be placed on the National Priorities List or, if the site is already on the list, the Administrator of ATSDR may recommend to the Administrator of EPA that the site be accorded a higher priority.

(7)(A) Whenever in the judgment of the Administrator of ATSDR it is appropriate on the basis of the results of a health assessment, the Administrator of ATSDR shall conduct a pilot study of health effects for selected groups of exposed individuals in order to determine the desirability of conducting full scale epidemiological or other health studies of the entire exposed population.

(B) Whenever in the judgment of the Administrator of ATSDR it is appropriate on the basis of the results of such pilot study or other study or health assessment, the Administrator of ATSDR shall conduct such full scale epidemiological or other health studies as may be necessary to determine the health effects on the population exposed to hazardous substances from a release or threatened release. If a significant excess of disease in a population is identified, the letter of transmittal of such study shall include an assessment of other risk factors, other than a release, that may, in the judgment of the peer review group, be associated with such disease, if such risk factors were not taken into account in the design or conduct of the study.

(8) In any case in which the results of a health assessment indicate a potential significant risk to human health, the Administrator of ATSDR shall consider whether the establishment of a registry of exposed persons would contribute to accomplishing the purposes of this subsection, taking into account circumstances bearing on the usefulness of such a registry, including the seriousness or unique character of identified diseases or the likelihood of population migration from the affected area.

(9) Where the Administrator of ATSDR has determined that there is a significant increased risk of adverse health effects in humans from exposure to hazardous substances based on the results of a health assessment conducted under paragraph (6), an epidemiologic study conducted under paragraph (7), or an exposure registry that has been established under paragraph (8), and the Administrator of ATSDR has determined that such exposure is the result of a release from a facility, the Administrator of ATSDR shall initiate a health surveillance program for such population. This program shall include but not be limited to—

(A) periodic medical testing where appropriate of population subgroups to screen for

diseases for which the population or subgroup is at significant increased risk; and

(B) a mechanism to refer for treatment those individuals within such population who are screened positive for such diseases.

(10) Two years after October 17, 1986, and every 2 years thereafter, the Administrator of ATSDR shall prepare and submit to the Administrator of EPA and to the Congress a report on the results of the activities of ATSDR regarding—

(A) health assessments and pilot health effects studies conducted;

(B) epidemiologic studies conducted;

(C) hazardous substances which have been listed under paragraph (2), toxicological profiles which have been developed, and toxicologic testing which has been conducted or which is being conducted under this subsection;

(D) registries established under paragraph (8); and

(E) an overall assessment, based on the results of activities conducted by the Administrator of ATSDR, of the linkage between human exposure to individual or combinations of hazardous substances due to releases from facilities covered by this chapter or the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.] and any increased incidence or prevalence of adverse health effects in humans.

(11) If a health assessment or other study carried out under this subsection contains a finding that the exposure concerned presents a significant risk to human health, the President shall take such steps as may be necessary to reduce such exposure and eliminate or substantially mitigate the significant risk to human health. Such steps may include the use of any authority under this chapter, including, but not limited to—

(A) provision of alternative water supplies, and

(B) permanent or temporary relocation of individuals.

In any case in which information is insufficient, in the judgment of the Administrator of ATSDR or the President to determine a significant human exposure level with respect to a hazardous substance, the President may take such steps as may be necessary to reduce the exposure of any person to such hazardous substance to such level as the President deems necessary to protect human health.

(12) In any case which is the subject of a petition, a health assessment or study, or a research program under this subsection, nothing in this subsection shall be construed to delay or otherwise affect or impair the authority of the President, the Administrator of ATSDR, or the Administrator of EPA to exercise any authority vested in the President, the Administrator of ATSDR or the Administrator of EPA under any other provision of law (including, but not limited to, the imminent hazard authority of section 7003 of the Solid Waste Disposal Act [42 U.S.C. 6973]) or the response and abatement authorities of this chapter.

(13) All studies and results of research conducted under this subsection (other than health assessments) shall be reported or adopted only

after appropriate peer review. Such peer review shall be completed, to the maximum extent practicable, within a period of 60 days. In the case of research conducted under the National Toxicology Program, such peer review may be conducted by the Board of Scientific Counselors. In the case of other research, such peer review shall be conducted by panels consisting of no less than three nor more than seven members, who shall be disinterested scientific experts selected for such purpose by the Administrator of ATSDR or the Administrator of EPA, as appropriate, on the basis of their reputation for scientific objectivity and the lack of institutional ties with any person involved in the conduct of the study or research under review. Support services for such panels shall be provided by the Agency for Toxic Substances and Disease Registry, or by the Environmental Protection Agency, as appropriate.

(14) In the implementation of this subsection and other health-related authorities of this chapter, the Administrator of ATSDR shall assemble, develop as necessary, and distribute to the States, and upon request to medical colleges, physicians, and other health professionals, appropriate educational materials (including short courses) on the medical surveillance, screening, and methods of diagnosis and treatment of injury or disease related to exposure to hazardous substances (giving priority to those listed in paragraph (2)), through such means as the Administrator of ATSDR deems appropriate.

(15) The activities of the Administrator of ATSDR described in this subsection and section 9611(c)(4) of this title shall be carried out by the Administrator of ATSDR, either directly or through cooperative agreements with States (or political subdivisions thereof) which the Administrator of ATSDR determines are capable of carrying out such activities. Such activities shall include provision of consultations on health information, the conduct of health assessments, including those required under section 3019(b) of the Solid Waste Disposal Act [42 U.S.C. 6939a(b)], health studies, registries, and health surveillance.

(16) The President shall provide adequate personnel for ATSDR, which shall not be fewer than 100 employees. For purposes of determining the number of employees under this subsection, an employee employed by ATSDR on a part-time career employment basis shall be counted as a fraction which is determined by dividing 40 hours into the average number of hours of such employee's regularly scheduled workweek.

(17) In accordance with section 9620 of this title (relating to Federal facilities), the Administrator of ATSDR shall have the same authorities under this section with respect to facilities owned or operated by a department, agency, or instrumentality of the United States as the Administrator of ATSDR has with respect to any nongovernmental entity.

(18) If the Administrator of ATSDR determines that it is appropriate for purposes of this section to treat a pollutant or contaminant as a hazardous substance, such pollutant or contaminant shall be treated as a hazardous substance for such purpose.

(j) Acquisition of property**(1) Authority**

The President is authorized to acquire, by purchase, lease, condemnation, donation, or otherwise, any real property or any interest in real property that the President in his discretion determines is needed to conduct a remedial action under this chapter. There shall be no cause of action to compel the President to acquire any interest in real property under this chapter.

(2) State assurance

The President may use the authority of paragraph (1) for a remedial action only if, before an interest in real estate is acquired under this subsection, the State in which the interest to be acquired is located assures the President, through a contract or cooperative agreement or otherwise, that the State will accept transfer of the interest following completion of the remedial action.

(3) Exemption

No Federal, State, or local government agency shall be liable under this chapter solely as a result of acquiring an interest in real estate under this subsection.

(k) Brownfields revitalization funding**(1) Definition of eligible entity**

In this subsection, the term “eligible entity” means—

(A) a general purpose unit of local government;

(B) a land clearance authority or other quasi-governmental entity that operates under the supervision and control of or as an agent of a general purpose unit of local government;

(C) a government entity created by a State legislature;

(D) a regional council or group of general purpose units of local government;

(E) a redevelopment agency that is chartered or otherwise sanctioned by a State;

(F) a State;

(G) an Indian Tribe other than in Alaska; or

(H) an Alaska Native Regional Corporation and an Alaska Native Village Corporation as those terms are defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1601 and following) and the Metlakatla Indian community.

(2) Brownfield site characterization and assessment grant program**(A) Establishment of program**

The Administrator shall establish a program to—

(i) provide grants to inventory, characterize, assess, and conduct planning related to brownfield sites under subparagraph (B); and

(ii) perform targeted site assessments at brownfield sites.

(B) Assistance for site characterization and assessment**(i) In general**

On approval of an application made by an eligible entity, the Administrator may

make a grant to the eligible entity to be used for programs to inventory, characterize, assess, and conduct planning related to one or more brownfield sites.

(ii) Site characterization and assessment

A site characterization and assessment carried out with the use of a grant under clause (i) shall be performed in accordance with section 9601(35)(B) of this title.

(3) Grants and loans for brownfield remediation**(A) Grants provided by the President**

Subject to paragraphs (4) and (5), the President shall establish a program to provide grants to—

(i) eligible entities, to be used for capitalization of revolving loan funds; and

(ii) eligible entities or nonprofit organizations, where warranted, as determined by the President based on considerations under subparagraph (C), to be used directly for remediation of one or more brownfield sites owned by the entity or organization that receives the grant and in amounts not to exceed \$200,000 for each site to be remediated.

(B) Loans and grants provided by eligible entities

An eligible entity that receives a grant under subparagraph (A)(i) shall use the grant funds to provide assistance for the remediation of brownfield sites in the form of—

(i) one or more loans to an eligible entity, a site owner, a site developer, or another person; or

(ii) one or more grants to an eligible entity or other nonprofit organization, where warranted, as determined by the eligible entity that is providing the assistance, based on considerations under subparagraph (C), to remediate sites owned by the eligible entity or nonprofit organization that receives the grant.

(C) Considerations

In determining whether a grant under subparagraph (A)(ii) or (B)(ii) is warranted, the President or the eligible entity, as the case may be, shall take into consideration—

(i) the extent to which a grant will facilitate the creation of, preservation of, or addition to a park, a greenway, undeveloped property, recreational property, or other property used for nonprofit purposes;

(ii) the extent to which a grant will meet the needs of a community that has an inability to draw on other sources of funding for environmental remediation and subsequent redevelopment of the area in which a brownfield site is located because of the small population or low income of the community;

(iii) the extent to which a grant will facilitate the use or reuse of existing infrastructure;

(iv) the benefit of promoting the long-term availability of funds from a revolving loan fund for brownfield remediation; and

(v) such other similar factors as the Administrator considers appropriate to consider for the purposes of this subsection.

(D) Transition

Revolving loan funds that have been established before January 11, 2002, may be used in accordance with this paragraph.

(4) General provisions**(A) Maximum grant amount****(i) Brownfield site characterization and assessment****(I) In general**

A grant under paragraph (2) may be awarded to an eligible entity on a community-wide or site-by-site basis, and shall not exceed, for any individual brownfield site covered by the grant, \$200,000.

(II) Waiver

The Administrator may waive the \$200,000 limitation under subclause (I) to permit the brownfield site to receive a grant of not to exceed \$350,000, based on the anticipated level of contamination, size, or status of ownership of the site.

(ii) Brownfield remediation

A grant under paragraph (3)(A)(i) may be awarded to an eligible entity on a community-wide or site-by-site basis, not to exceed \$1,000,000 per eligible entity. The Administrator may make an additional grant to an eligible entity described in the previous sentence for any year after the year for which the initial grant is made, taking into consideration—

(I) the number of sites and number of communities that are addressed by the revolving loan fund;

(II) the demand for funding by eligible entities that have not previously received a grant under this subsection;

(III) the demonstrated ability of the eligible entity to use the revolving loan fund to enhance remediation and provide funds on a continuing basis; and

(IV) such other similar factors as the Administrator considers appropriate to carry out this subsection.

(B) Prohibition**(i) In general**

No part of a grant or loan under this subsection may be used for the payment of—

(I) a penalty or fine;

(II) a Federal cost-share requirement;

(III) an administrative cost;

(IV) a response cost at a brownfield site for which the recipient of the grant or loan is potentially liable under section 9607 of this title; or

(V) a cost of compliance with any Federal law (including a Federal law specified in section 9601(39)(B) of this title), excluding the cost of compliance with laws applicable to the cleanup.

(ii) Exclusions

For the purposes of clause (i)(III), the term “administrative cost” does not include the cost of—

(I) investigation and identification of the extent of contamination;

(II) design and performance of a response action; or

(III) monitoring of a natural resource.

(C) Assistance for development of local government site remediation programs

A local government that receives a grant under this subsection may use not to exceed 10 percent of the grant funds to develop and implement a brownfields program that may include—

(i) monitoring the health of populations exposed to one or more hazardous substances from a brownfield site; and

(ii) monitoring and enforcement of any institutional control used to prevent human exposure to any hazardous substance from a brownfield site.

(D) Insurance

A recipient of a grant or loan awarded under paragraph (2) or (3) that performs a characterization, assessment, or remediation of a brownfield site may use a portion of the grant or loan to purchase insurance for the characterization, assessment, or remediation of that site.

(5) Grant applications**(A) Submission****(i) In general****(I) Application**

An eligible entity may submit to the Administrator, through a regional office of the Environmental Protection Agency and in such form as the Administrator may require, an application for a grant under this subsection for one or more brownfield sites (including information on the criteria used by the Administrator to rank applications under subparagraph (C), to the extent that the information is available).

(II) NCP requirements

The Administrator may include in any requirement for submission of an application under subclause (I) a requirement of the National Contingency Plan only to the extent that the requirement is relevant and appropriate to the program under this subsection.

(ii) Coordination

The Administrator shall coordinate with other Federal agencies to assist in making eligible entities aware of other available Federal resources.

(iii) Guidance

The Administrator shall publish guidance to assist eligible entities in applying for grants under this subsection.

(B) Approval

The Administrator shall—

(i) at least annually, complete a review of applications for grants that are received from eligible entities under this subsection; and

(ii) award grants under this subsection to eligible entities that the Administrator

determines have the highest rankings under the ranking criteria established under subparagraph (C).

(C) Ranking criteria

The Administrator shall establish a system for ranking grant applications received under this paragraph that includes the following criteria:

(i) The extent to which a grant will stimulate the availability of other funds for environmental assessment or remediation, and subsequent reuse, of an area in which one or more brownfield sites are located.

(ii) The potential of the proposed project or the development plan for an area in which one or more brownfield sites are located to stimulate economic development of the area on completion of the cleanup.

(iii) The extent to which a grant would address or facilitate the identification and reduction of threats to human health and the environment, including threats in areas in which there is a greater-than-normal incidence of diseases or conditions (including cancer, asthma, or birth defects) that may be associated with exposure to hazardous substances, pollutants, or contaminants.

(iv) The extent to which a grant would facilitate the use or reuse of existing infrastructure.

(v) The extent to which a grant would facilitate the creation of, preservation of, or addition to a park, a greenway, undeveloped property, recreational property, or other property used for nonprofit purposes.

(vi) The extent to which a grant would meet the needs of a community that has an inability to draw on other sources of funding for environmental remediation and subsequent redevelopment of the area in which a brownfield site is located because of the small population or low income of the community.

(vii) The extent to which the applicant is eligible for funding from other sources.

(viii) The extent to which a grant will further the fair distribution of funding between urban and nonurban areas.

(ix) The extent to which the grant provides for involvement of the local community in the process of making decisions relating to cleanup and future use of a brownfield site.

(x) The extent to which a grant would address or facilitate the identification and reduction of threats to the health or welfare of children, pregnant women, minority or low-income communities, or other sensitive populations.

(6) Implementation of brownfields programs

(A) Establishment of program

The Administrator may provide, or fund eligible entities or nonprofit organizations to provide, training, research, and technical assistance to individuals and organizations, as appropriate, to facilitate the inventory of brownfield sites, site assessments, remediation of brownfield sites, community involvement, or site preparation.

(B) Funding restrictions

The total Federal funds to be expended by the Administrator under this paragraph shall not exceed 15 percent of the total amount appropriated to carry out this subsection in any fiscal year.

(7) Audits

(A) In general

The Inspector General of the Environmental Protection Agency shall conduct such reviews or audits of grants and loans under this subsection as the Inspector General considers necessary to carry out this subsection.

(B) Procedure

An audit under this subparagraph shall be conducted in accordance with the auditing procedures of the General Accounting Office, including chapter 75 of title 31.

(C) Violations

If the Administrator determines that a person that receives a grant or loan under this subsection has violated or is in violation of a condition of the grant, loan, or applicable Federal law, the Administrator may—

(i) terminate the grant or loan;

(ii) require the person to repay any funds received; and

(iii) seek any other legal remedies available to the Administrator.

(D) Report to Congress

Not later than 3 years after January 11, 2002, the Inspector General of the Environmental Protection Agency shall submit to Congress a report that provides a description of the management of the program (including a description of the allocation of funds under this subsection).

(8) Leveraging

An eligible entity that receives a grant under this subsection may use the grant funds for a portion of a project at a brownfield site for which funding is received from other sources if the grant funds are used only for the purposes described in paragraph (2) or (3).

(9) Agreements

Each grant or loan made under this subsection shall—

(A) include a requirement of the National Contingency Plan only to the extent that the requirement is relevant and appropriate to the program under this subsection, as determined by the Administrator; and

(B) be subject to an agreement that—

(i) requires the recipient to—

(I) comply with all applicable Federal and State laws; and

(II) ensure that the cleanup protects human health and the environment;

(ii) requires that the recipient use the grant or loan exclusively for purposes specified in paragraph (2) or (3), as applicable;

(iii) in the case of an application by an eligible entity under paragraph (3)(A), re-

quires the eligible entity to pay a matching share (which may be in the form of a contribution of labor, material, or services) of at least 20 percent, from non-Federal sources of funding, unless the Administrator determines that the matching share would place an undue hardship on the eligible entity; and

(iv) contains such other terms and conditions as the Administrator determines to be necessary to carry out this subsection.

(10) Facility other than brownfield site

The fact that a facility may not be a brownfield site within the meaning of section 9601(39)(A) of this title has no effect on the eligibility of the facility for assistance under any other provision of Federal law.

(11) Effect on Federal laws

Nothing in this subsection affects any liability or response authority under any Federal law, including—

(A) this chapter (including the last sentence of section 9601(14) of this title);

(B) the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.);

(C) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.);

(D) the Toxic Substances Control Act (15 U.S.C. 2601 et seq.); and

(E) the Safe Drinking Water Act (42 U.S.C. 300f et seq.).

(12) Funding

(A) Authorization of appropriations

There is authorized to be appropriated to carry out this subsection \$200,000,000 for each of fiscal years 2002 through 2006.

(B) Use of certain funds

Of the amount made available under subparagraph (A), \$50,000,000, or, if the amount made available is less than \$200,000,000, 25 percent of the amount made available, shall be used for site characterization, assessment, and remediation of facilities described in section 9601(39)(D)(ii)(II) of this title.

(Pub. L. 96-510, title I, §104, Dec. 11, 1980, 94 Stat. 2774; Pub. L. 99-499, title I, §§104, 110, title II, §207(b), Oct. 17, 1986, 100 Stat. 1617, 1636, 1705; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 102-531, title III, §312(h), Oct. 27, 1992, 106 Stat. 3506; Pub. L. 107-118, title II, §211(b), Jan. 11, 2002, 115 Stat. 2362.)

REFERENCES IN TEXT

The Solid Waste Disposal Act, referred to in subsecs. (c)(3), (9)(D), (i)(10)(E), and (k)(11)(B), is title II of Pub. L. 89-272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§6901 et seq.) of this title. Subtitle C of the Act is classified generally to subchapter III (§6921 et seq.) of chapter 82 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

Title III of the Amendments and Reauthorization Act of 1986, referred to in subsec. (e)(7)(E)(i), probably means title III of the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499, Oct. 17, 1986, 100 Stat. 1728, known as the Emergency Planning and Community Right-To-Know Act of 1986, which is classi-

fied generally to chapter 116 (§11001 et seq.) of this title. For complete classification of title III to the Code, see Short Title note set out under section 11001 of this title and Tables.

Reorganization Plan Numbered 14 of 1950, referred to in subsec. (g)(2), is set out in the Appendix to Title 5, Government Organization and Employees.

The Toxic Substances Control Act, referred to in subsecs. (i)(5)(C), (D) and (k)(11)(D), is Pub. L. 94-469, Oct. 11, 1976, 90 Stat. 2003, as amended, which is classified generally to chapter 53 (§2601 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 15 and Tables.

The Federal Insecticide, Fungicide, and Rodenticide Act, referred to in subsec. (i)(5)(C), (D), is act June 25, 1947, ch. 125, as amended generally by Pub. L. 92-516, Oct. 21, 1972, 86 Stat. 973, which is classified generally to subchapter II (§136 et seq.) of chapter 6 of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 136 of Title 7 and Tables.

The Alaska Native Claims Settlement Act, referred to in subsec. (k)(1)(H), is Pub. L. 92-203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

The Federal Water Pollution Control Act, referred to in subsec. (k)(11)(C), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92-500, §2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Safe Drinking Water Act, referred to in subsec. (k)(11)(E), is title XIV of act July 1, 1944, as added Dec. 16, 1974, Pub. L. 93-523, §2(a), 88 Stat. 1660, as amended, which is classified generally to subchapter XII (§300f et seq.) of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

CODIFICATION

In subsec. (g)(1), “sections 3141–3144, 3146, and 3147 of title 40” substituted for “the Davis-Bacon Act” and, in subsec. (g)(2), “section 3145 of title 40” substituted for “section 276c of title 40 of the United States Code”, on authority of Pub. L. 107-217, §5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

AMENDMENTS

2002—Subsec. (k). Pub. L. 107-118 added subsec. (k).

1992—Subsec. (i)(1). Pub. L. 102-531 substituted “Centers for Disease Control and Prevention” for “Centers for Disease Control”.

1986—Subsec. (a)(1). Pub. L. 99-499, §104(a), substituted provisions authorizing the President to allow owner or operator of facility or vessel or any other responsible party to carry out action, conduct the remedial investigation, or conduct feasibility study under section 9622 of this title, specifying conditions under which a remedial investigation or feasibility study would be authorized, providing for treatment of potentially responsible parties, and requiring President to give primary attention to those releases which the President deems may present a public health threat, for “, unless the President determines that such removal and remedial action will be done properly by the owner or operator of the vessel or facility from which the release or threat of release emanates, or by any other responsible party.”

Subsec. (a)(2). Pub. L. 99-499, §104(b), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “For the purposes of this section, ‘pollutant or contaminant’ shall include, but not be limited to, any ele-

ment, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring. The term does not include petroleum, including crude oil and any fraction thereof which is not otherwise specifically listed or designated as hazardous substances under section 9601(14)(A) through (F) of this title, nor does it include natural gas, liquefied natural gas, or synthetic gas of pipeline quality (or mixtures of natural gas and such synthetic gas)."

Subsec. (a)(3), (4). Pub. L. 99-499, §104(c), added pars. (3) and (4).

Subsec. (b). Pub. L. 99-499, §104(d), designated existing provisions as par. (1), inserted par. (1) heading, and added par. (2).

Subsec. (c)(1). Pub. L. 99-499, §104(e)(1), substituted "\$2,000,000" for "\$1,000,000" and "12 months" for "six months".

Subsec. (c)(1)(C). Pub. L. 99-499, §104(e)(2), added cl. (C).

Subsec. (c)(3). Pub. L. 99-499, §§104(f), 207(b), substituted text of cl. (C)(ii) and sentence providing that "facility" does not include navigable waters or beds underlying those waters for "(ii) at least 50 per centum or such greater amount as the President may determine appropriate, taking into account the degree of responsibility of the State or political subdivision, of any sums expended in response to a release at a facility that was owned at the time of any disposal of hazardous substances therein by the State or a political subdivision thereof. The President shall grant the State a credit against the share of the costs for which it is responsible under this paragraph for any documented direct out-of-pocket non-Federal funds expended or obligated by the State or a political subdivision thereof after January 1, 1978, and before December 11, 1980, for cost-eligible response actions and claims for damages compensable under section 9611 of this title relating to the specific release in question: *Provided, however*, That in no event shall the amount of the credit granted exceed the total response costs relating to the release." and inserted provisions relating to remedial action to be taken on land or water held by an Indian tribe, held by the United States in trust for Indians, held by a member of an Indian Tribe (if such land or water is subject to a trust restriction on alienation), or otherwise within the borders of an Indian reservation.

Subsec. (c)(4). Pub. L. 99-499, §104(g), amended par. (4) generally. Prior to amendment, par. (4) read as follows: "The President shall select appropriate remedial actions determined to be necessary to carry out this section which are to the extent practicable in accordance with the national contingency plan and which provide for that cost-effective response which provides a balance between the need for protection of public health and welfare and the environment at the facility under consideration, and the availability of amounts from the Fund established under subchapter II of this chapter to respond to other sites which present or may present a threat to public health or welfare or the environment, taking into consideration the need for immediate action."

Subsec. (c)(5). Pub. L. 99-499, §104(h), added par. (5).

Subsec. (c)(6). Pub. L. 99-499, §104(i), added par. (6).

Subsec. (c)(7). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

Pub. L. 99-499, §104(i), added par. (7).

Subsec. (c)(8). Pub. L. 99-499, §104(j), added par. (8).

Subsec. (c)(9). Pub. L. 99-499, §104(k), added par. (9).

Subsec. (d)(1). Pub. L. 99-499, §104(l), amended par. (1) generally. Prior to amendment, par. (1) read as follows:

"Where the President determines that a State or political subdivision thereof has the capability to carry out any or all of the actions authorized in this section, the President may, in his discretion, enter into a contract or cooperative agreement with such State or political subdivision to take such actions in accordance with criteria and priorities established pursuant to section 9605(8) of this title and to be reimbursed for the reasonable response costs thereof from the Fund. Any contract made hereunder shall be subject to the cost-sharing provisions of subsection (c) of this section."

Subsec. (e)(1). Pub. L. 99-499, §104(m), added par. (1), and struck out former par. (1) which provided for access to, and copying of, records relating to covered substances, and entry by officers, employees or representatives of the President or a State into places where hazardous substances were or had been generated, stored, treated or disposed of, or transported from, and inspection and obtaining of samples of such substances and samples of containers or labeling for such substances.

Subsec. (e)(2) to (6). Pub. L. 99-499, §104(m), added pars. (2) to (6). Former par. (2) redesignated (7).

Subsec. (e)(7). Pub. L. 99-499, §104(m), (n), redesignated par. (2) as (7), aligned margin of par. (7) with pars. (1) through (6), and added par. heading and subpars. (E) and (F).

Subsec. (i). Pub. L. 99-499, §110, designated existing provisions as par. (1), redesignated former pars. (1) to (5) as subpars. (A) to (E), respectively, of par. (1), in introductory provisions of par. (1), struck out "and" after "Health Administration," and inserted "the Secretary of Transportation, and appropriate State and local health officials," in par. (1)(D), inserted "where appropriate", and added pars. (2) to (18).

Subsec. (j). Pub. L. 99-499, §104(o)(1), added subsec. (j).

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (i)(10) of this section relating to the requirement that the Administrator of ATSDR submit a biennial report to Congress, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 13th item on page 154 of House Document No. 103-7.

COORDINATION OF TITLES I TO IV OF PUB. L. 99-499

Any provision of titles I to IV of Pub. L. 99-499, imposing any tax, premium, or fee; establishing any trust fund; or authorizing expenditures from any trust fund, to have no force or effect, see section 531 of Pub. L. 99-499, set out as a note under section 1 of Title 26, Internal Revenue Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6924, 6939a, 6939b, 6972, 9601, 9607, 9609, 9611, 9613, 9617, 9618, 9619, 9620, 9621, 9622, 9626, 9628, 9660, 9661 of this title; title 10 section 2704; title 26 section 198.

§ 9605. National contingency plan

(a) Revision and republication

Within one hundred and eighty days after December 11, 1980, the President shall, after notice and opportunity for public comments, revise and republish the national contingency plan for the removal of oil and hazardous substances, originally prepared and published pursuant to section 1321 of title 33, to reflect and effectuate the responsibilities and powers created by this chapter, in addition to those matters specified in section 1321(c)(2)¹ of title 33. Such revision shall include a section of the plan to be known as the national hazardous substance response plan which shall establish procedures and standards

¹ See References in Text note below.

for responding to releases of hazardous substances, pollutants, and contaminants, which shall include at a minimum:

(1) methods for discovering and investigating facilities at which hazardous substances have been disposed of or otherwise come to be located;

(2) methods for evaluating, including analyses of relative cost, and remedying any releases or threats of releases from facilities which pose substantial danger to the public health or the environment;

(3) methods and criteria for determining the appropriate extent of removal, remedy, and other measures authorized by this chapter;

(4) appropriate roles and responsibilities for the Federal, State, and local governments and for interstate and nongovernmental entities in effectuating the plan;

(5) provision for identification, procurement, maintenance, and storage of response equipment and supplies;

(6) a method for and assignment of responsibility for reporting the existence of such facilities which may be located on federally owned or controlled properties and any releases of hazardous substances from such facilities;

(7) means of assuring that remedial action measures are cost-effective over the period of potential exposure to the hazardous substances or contaminated materials;

(8)(A) criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable taking into account the potential urgency of such action, for the purpose of taking removal action. Criteria and priorities under this paragraph shall be based upon relative risk or danger to public health or welfare or the environment, in the judgment of the President, taking into account to the extent possible the population at risk, the hazard potential of the hazardous substances at such facilities, the potential for contamination of drinking water supplies, the potential for direct human contact, the potential for destruction of sensitive ecosystems, the damage to natural resources which may affect the human food chain and which is associated with any release or threatened release, the contamination or potential contamination of the ambient air which is associated with the release or threatened release, State preparedness to assume State costs and responsibilities, and other appropriate factors;

(B) based upon the criteria set forth in subparagraph (A) of this paragraph, the President shall list as part of the plan national priorities among the known releases or threatened releases throughout the United States and shall revise the list no less often than annually. Within one year after December 11, 1980, and annually thereafter, each State shall establish and submit for consideration by the President priorities for remedial action among known releases and potential releases in that State based upon the criteria set forth in subparagraph (A) of this paragraph. In assembling or revising the national list, the President shall

consider any priorities established by the States. To the extent practicable, the highest priority facilities shall be designated individually and shall be referred to as the "top priority among known response targets", and, to the extent practicable, shall include among the one hundred highest priority facilities one such facility from each State which shall be the facility designated by the State as presenting the greatest danger to public health or welfare or the environment among the known facilities in such State. A State shall be allowed to designate its highest priority facility only once. Other priority facilities or incidents may be listed singly or grouped for response priority purposes;

(9) specified roles for private organizations and entities in preparation for response and in responding to releases of hazardous substances, including identification of appropriate qualifications and capacity therefor and including consideration of minority firms in accordance with subsection (f) of this section; and

(10) standards and testing procedures by which alternative or innovative treatment technologies can be determined to be appropriate for utilization in response actions authorized by this chapter.

The plan shall specify procedures, techniques, materials, equipment, and methods to be employed in identifying, removing, or remedying releases of hazardous substances comparable to those required under section 1321(c)(2)(F) and (G) and (j)(1) of title 33. Following publication of the revised national contingency plan, the response to and actions to minimize damage from hazardous substances releases shall, to the greatest extent possible, be in accordance with the provisions of the plan. The President may, from time to time, revise and republish the national contingency plan.

(b) Revision of plan

Not later than 18 months after the enactment of the Superfund Amendments and Reauthorization Act of 1986 [October 17, 1986], the President shall revise the National Contingency Plan to reflect the requirements of such amendments. The portion of such Plan known as "the National Hazardous Substance Response Plan" shall be revised to provide procedures and standards for remedial actions undertaken pursuant to this chapter which are consistent with amendments made by the Superfund Amendments and Reauthorization Act of 1986 relating to the selection of remedial action.

(c) Hazard ranking system

(1) Revision

Not later than 18 months after October 17, 1986, and after publication of notice and opportunity for submission of comments in accordance with section 553 of title 5, the President shall by rule promulgate amendments to the hazard ranking system in effect on September 1, 1984. Such amendments shall assure, to the maximum extent feasible, that the hazard ranking system accurately assesses the relative degree of risk to human health and the environment posed by sites and facilities sub-

ject to review. The President shall establish an effective date for the amended hazard ranking system which is not later than 24 months after October 17, 1986. Such amended hazard ranking system shall be applied to any site or facility to be newly listed on the National Priorities List after the effective date established by the President. Until such effective date of the regulations, the hazard ranking system in effect on September 1, 1984, shall continue in full force and effect.

(2) Health assessment of water contamination risks

In carrying out this subsection, the President shall ensure that the human health risks associated with the contamination or potential contamination (either directly or as a result of the runoff of any hazardous substance or pollutant or contaminant from sites or facilities) of surface water are appropriately assessed where such surface water is, or can be, used for recreation or potable water consumption. In making the assessment required pursuant to the preceding sentence, the President shall take into account the potential migration of any hazardous substance or pollutant or contaminant through such surface water to downstream sources of drinking water.

(3) Reevaluation not required

The President shall not be required to reevaluate, after October 17, 1986, the hazard ranking of any facility which was evaluated in accordance with the criteria under this section before the effective date of the amendments to the hazard ranking system under this subsection and which was assigned a national priority under the National Contingency Plan.

(4) New information

Nothing in paragraph (3) shall preclude the President from taking new information into account in undertaking response actions under this chapter.

(d) Petition for assessment of release

Any person who is, or may be, affected by a release or threatened release of a hazardous substance or pollutant or contaminant, may petition the President to conduct a preliminary assessment of the hazards to public health and the environment which are associated with such release or threatened release. If the President has not previously conducted a preliminary assessment of such release, the President shall, within 12 months after the receipt of any such petition, complete such assessment or provide an explanation of why the assessment is not appropriate. If the preliminary assessment indicates that the release or threatened release concerned may pose a threat to human health or the environment, the President shall promptly evaluate such release or threatened release in accordance with the hazard ranking system referred to in paragraph (8)(A) of subsection (a) of this section to determine the national priority of such release or threatened release.

(e) Releases from earlier sites

Whenever there has been, after January 1, 1985, a significant release of hazardous sub-

stances or pollutants or contaminants from a site which is listed by the President as a "Site Cleaned Up To Date" on the National Priorities List (revised edition, December 1984) the site shall be restored to the National Priorities List, without application of the hazard ranking system.

(f) Minority contractors

In awarding contracts under this chapter, the President shall consider the availability of qualified minority firms. The President shall describe, as part of any annual report submitted to the Congress under this chapter, the participation of minority firms in contracts carried out under this chapter. Such report shall contain a brief description of the contracts which have been awarded to minority firms under this chapter and of the efforts made by the President to encourage the participation of such firms in programs carried out under this chapter.

(g) Special study wastes

(1) Application

This subsection applies to facilities—

(A) which as of October 17, 1986, were not included on, or proposed for inclusion on, the National Priorities List; and

(B) at which special study wastes described in paragraph (2), (3)(A)(ii) or (3)(A)(iii) of section 6921(b) of this title are present in significant quantities, including any such facility from which there has been a release of a special study waste.

(2) Considerations in adding facilities to NPL

Pending revision of the hazard ranking system under subsection (c) of this section, the President shall consider each of the following factors in adding facilities covered by this section to the National Priorities List:

(A) The extent to which hazard ranking system score for the facility is affected by the presence of any special study waste at, or any release from, such facility.

(B) Available information as to the quantity, toxicity, and concentration of hazardous substances that are constituents of any special study waste at, or released from such facility, the extent of or potential for release of such hazardous constituents, the exposure or potential exposure to human population and the environment, and the degree of hazard to human health or the environment posed by the release of such hazardous constituents at such facility. This subparagraph refers only to available information on actual concentrations of hazardous substances and not on the total quantity of special study waste at such facility.

(3) Savings provisions

Nothing in this subsection shall be construed to limit the authority of the President to remove any facility which as of October 17, 1986, is included on the National Priorities List from such List, or not to list any facility which as of such date is proposed for inclusion on such list.

(4) Information gathering and analysis

Nothing in this chapter shall be construed to preclude the expenditure of monies from the

Fund for gathering and analysis of information which will enable the President to consider the specific factors required by paragraph (2).

(h) NPL deferral

(1) Deferral to State voluntary cleanups

At the request of a State and subject to paragraphs (2) and (3), the President generally shall defer final listing of an eligible response site on the National Priorities List if the President determines that—

(A) the State, or another party under an agreement with or order from the State, is conducting a response action at the eligible response site—

(i) in compliance with a State program that specifically governs response actions for the protection of public health and the environment; and

(ii) that will provide long-term protection of human health and the environment; or

(B) the State is actively pursuing an agreement to perform a response action described in subparagraph (A) at the site with a person that the State has reason to believe is capable of conducting a response action that meets the requirements of subparagraph (A).

(2) Progress toward cleanup

If, after the last day of the 1-year period beginning on the date on which the President proposes to list an eligible response site on the National Priorities List, the President determines that the State or other party is not making reasonable progress toward completing a response action at the eligible response site, the President may list the eligible response site on the National Priorities List.

(3) Cleanup agreements

With respect to an eligible response site under paragraph (1)(B), if, after the last day of the 1-year period beginning on the date on which the President proposes to list the eligible response site on the National Priorities List, an agreement described in paragraph (1)(B) has not been reached, the President may defer the listing of the eligible response site on the National Priorities List for an additional period of not to exceed 180 days if the President determines deferring the listing would be appropriate based on—

(A) the complexity of the site;

(B) substantial progress made in negotiations; and

(C) other appropriate factors, as determined by the President.

(4) Exceptions

The President may decline to defer, or elect to discontinue a deferral of, a listing of an eligible response site on the National Priorities List if the President determines that—

(A) deferral would not be appropriate because the State, as an owner or operator or a significant contributor of hazardous substances to the facility, is a potentially responsible party;

(B) the criteria under the National Contingency Plan for issuance of a health advisory have been met; or

(C) the conditions in paragraphs (1) through (3), as applicable, are no longer being met.

(Pub. L. 96-510, title I, §105, Dec. 11, 1980, 94 Stat. 2779; Pub. L. 99-499, title I, §105, Oct. 17, 1986, 100 Stat. 1625; Pub. L. 107-118, title II, §232, Jan. 11, 2002, 115 Stat. 2379.)

REFERENCES IN TEXT

Section 1321(c)(2) of title 33, referred to in subsec. (a), was amended generally by Pub. L. 101-380, title IV, §4201(a), Aug. 18, 1990, 104 Stat. 523. Prior to general amendment, subsec. (c)(2) related to preparation of a National Contingency Plan. Provisions relating to a National Contingency Plan are contained in section 1321(d) of Title 33, Navigation and Navigable Waters.

Such amendments and the amendments made by the Superfund Amendments and Reauthorization Act of 1986, referred to in subsec. (b), are the amendments made by Pub. L. 99-499, Oct. 17, 1986, 100 Stat. 1613. For complete classification of this Act to the Code, see Short Title of 1986 Amendment note set out under section 9601 of this title and Tables.

AMENDMENTS

2002—Subsec. (h). Pub. L. 107-118 added subsec. (h).

1986—Subsec. (a). Pub. L. 99-499, §105(a)(1), designated existing provisions as subsec. (a) and added heading.

Subsec. (a)(8)(A). Pub. L. 99-499, §105(a)(2), inserted “the damage to natural resources which may affect the human food chain and which is associated with any release or threatened release, the contamination or potential contamination of the ambient air which is associated with the release or threatened release,” after “ecosystems.”

Subsec. (a)(8)(B). Pub. L. 99-499, §105(a)(3), struck out “at least four hundred of” after “To the extent practicable,” substituted “one hundred highest priority facilities” for “one hundred highest priority facilities at least”, and inserted “A State shall be allowed to designate its highest priority facility only once.”

Subsec. (a)(9). Pub. L. 99-499, §105(a)(4), inserted “and including consideration of minority firms in accordance with subsection (f) of this section”.

Subsec. (a)(10). Pub. L. 99-499, §105(a)(5), added par. (10).

Subsecs. (b) to (g). Pub. L. 99-499, §105(b), added subsecs. (b) to (g).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9601, 9604, 9607, 9611, 9616, 9620, 9622, 9626, 9651, 11003 of this title; title 26 sections 198, 468; title 33 section 2701; title 49 sections 5102, 5115.

§ 9606. Abatement actions

(a) Maintenance, jurisdiction, etc.

In addition to any other action taken by a State or local government, when the President determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility, he may require the Attorney General of the United States to secure such relief as may be necessary to abate such danger or threat, and the district court of the United States in the district in which the threat occurs shall have jurisdiction to grant such relief as the public interest and the equities of the case may require. The President may also, after notice to the affected State, take other action under this section including, but not limited to, issuing such orders as may be necessary to pro-

protect public health and welfare and the environment.

(b) Fines; reimbursement

(1) Any person who, without sufficient cause, willfully violates, or fails or refuses to comply with, any order of the President under subsection (a) of this section may, in an action brought in the appropriate United States district court to enforce such order, be fined not more than \$25,000 for each day in which such violation occurs or such failure to comply continues.

(2)(A) Any person who receives and complies with the terms of any order issued under subsection (a) of this section may, within 60 days after completion of the required action, petition the President for reimbursement from the Fund for the reasonable costs of such action, plus interest. Any interest payable under this paragraph shall accrue on the amounts expended from the date of expenditure at the same rate as specified for interest on investments of the Hazardous Substance Superfund established under subchapter A of chapter 98 of title 26.

(B) If the President refuses to grant all or part of a petition made under this paragraph, the petitioner may within 30 days of receipt of such refusal file an action against the President in the appropriate United States district court seeking reimbursement from the Fund.

(C) Except as provided in subparagraph (D), to obtain reimbursement, the petitioner shall establish by a preponderance of the evidence that it is not liable for response costs under section 9607(a) of this title and that costs for which it seeks reimbursement are reasonable in light of the action required by the relevant order.

(D) A petitioner who is liable for response costs under section 9607(a) of this title may also recover its reasonable costs of response to the extent that it can demonstrate, on the administrative record, that the President's decision in selecting the response action ordered was arbitrary and capricious or was otherwise not in accordance with law. Reimbursement awarded under this subparagraph shall include all reasonable response costs incurred by the petitioner pursuant to the portions of the order found to be arbitrary and capricious or otherwise not in accordance with law.

(E) Reimbursement awarded by a court under subparagraph (C) or (D) may include appropriate costs, fees, and other expenses in accordance with subsections (a) and (d) of section 2412 of title 28.

(c) Guidelines for using imminent hazard, enforcement, and emergency response authorities; promulgation by Administrator of EPA, scope, etc.

Within one hundred and eighty days after December 11, 1980, the Administrator of the Environmental Protection Agency shall, after consultation with the Attorney General, establish and publish guidelines for using the imminent hazard, enforcement, and emergency response authorities of this section and other existing statutes administered by the Administrator of the Environmental Protection Agency to effectuate the responsibilities and powers created by this chapter. Such guidelines shall to the extent

practicable be consistent with the national hazardous substance response plan, and shall include, at a minimum, the assignment of responsibility for coordinating response actions with the issuance of administrative orders, enforcement of standards and permits, the gathering of information, and other imminent hazard and emergency powers authorized by (1) sections 1321(c)(2),¹ 1318, 1319, and 1364(a) of title 33, (2) sections 6927, 6928, 6934, and 6973 of this title, (3) sections 300j-4 and 300i of this title, (4) sections 7413, 7414, and 7603 of this title, and (5) section 2606 of title 15.

(Pub. L. 96-510, title I, §106, Dec. 11, 1980, 94 Stat. 2780; Pub. L. 99-499, title I, §§106, 109(b), Oct. 17, 1986, 100 Stat. 1628, 1633; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (c), was in the original "this Act", meaning Pub. L. 96-510, Dec. 11, 1980, 94 Stat. 2767, as amended, known as the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, which enacted this chapter, section 6911a of this title, and sections 4611, 4612, 4661, 4662, 4681, and 4682 of Title 26, Internal Revenue Code, amended section 6911 of this title, section 1364 of Title 33, Navigation and Navigable Waters, and section 11901 of Title 49, Transportation, and enacted provisions set out as notes under section 6911 of this title and sections 1 and 4611 of Title 26. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of this title and Tables.

Section 1321(c)(2) of title 33, referred to in subsec. (c), was amended generally by Pub. L. 101-380, title IV, §4201(a), Aug. 18, 1990, 104 Stat. 523. Prior to general amendment, subsec. (c)(2) related to preparation of a National Contingency Plan. Provisions relating to a National Contingency Plan are contained in section 1321(d) of Title 33, Navigation and Navigable Waters.

AMENDMENTS

1986—Subsec. (b). Pub. L. 99-499 designated existing provisions as par. (1), substituted "who, without sufficient cause, willfully" for "who willfully" and "\$25,000" for "\$5,000", and added par. (2).

Subsec. (b)(2)(A). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

COORDINATION OF TITLES I TO IV OF PUB. L. 99-499

Any provision of titles I to IV of Pub. L. 99-499, imposing any tax, premium, or fee; establishing any trust fund; or authorizing expenditures from any trust fund, to have no force or effect, see section 531 of Pub. L. 99-499, set out as a note under section 1 of Title 26, Internal Revenue Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6924, 6939b, 6972, 7412, 9607, 9613, 9614, 9617, 9618, 9619, 9620, 9621, 9622, 9624, 9628 of this title; title 26 section 4662.

§ 9607. Liability

(a) Covered persons; scope; recoverable costs and damages; interest rate; "comparable maturity" date

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section—

(1) the owner and operator of a vessel or a facility,

¹ See References in Text note below.

(2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,

(3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances, and

(4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels or sites selected by such person, from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for—

(A) all costs of removal or remedial action incurred by the United States Government or a State or an Indian tribe not inconsistent with the national contingency plan;

(B) any other necessary costs of response incurred by any other person consistent with the national contingency plan;

(C) damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such a release; and

(D) the costs of any health assessment or health effects study carried out under section 9604(i) of this title.

The amounts recoverable in an action under this section shall include interest on the amounts recoverable under subparagraphs (A) through (D). Such interest shall accrue from the later of (i) the date payment of a specified amount is demanded in writing, or (ii) the date of the expenditure concerned. The rate of interest on the outstanding unpaid balance of the amounts recoverable under this section shall be the same rate as is specified for interest on investments of the Hazardous Substance Superfund established under subchapter A of chapter 98 of title 26. For purposes of applying such amendments to interest under this subsection, the term “comparable maturity” shall be determined with reference to the date on which interest accruing under this subsection commences.

(b) Defenses

There shall be no liability under subsection (a) of this section for a person otherwise liable who can establish by a preponderance of the evidence that the release or threat of release of a hazardous substance and the damages resulting therefrom were caused solely by—

(1) an act of God;

(2) an act of war;

(3) an act or omission of a third party other than an employee or agent of the defendant, or than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the defendant (except where the sole contractual arrangement arises from a published tariff and acceptance for carriage by a common carrier by rail), if the defendant establishes by a preponder-

ance of the evidence that (a) he exercised due care with respect to the hazardous substance concerned, taking into consideration the characteristics of such hazardous substance, in light of all relevant facts and circumstances, and (b) he took precautions against foreseeable acts or omissions of any third party and the consequences that could foreseeably result from such acts or omissions; or

(4) any combination of the foregoing paragraphs.

(c) Determination of amounts

(1) Except as provided in paragraph (2) of this subsection, the liability under this section of an owner or operator or other responsible person for each release of a hazardous substance or incident involving release of a hazardous substance shall not exceed—

(A) for any vessel, other than an incineration vessel, which carries any hazardous substance as cargo or residue, \$300 per gross ton, or \$5,000,000, whichever is greater;

(B) for any other vessel, other than an incineration vessel, \$300 per gross ton, or \$500,000, whichever is greater;

(C) for any motor vehicle, aircraft, hazardous liquid pipeline facility (as defined in section 60101(a) of title 49), or rolling stock, \$50,000,000 or such lesser amount as the President shall establish by regulation, but in no event less than \$5,000,000 (or, for releases of hazardous substances as defined in section 9601(14)(A) of this title into the navigable waters, \$8,000,000). Such regulations shall take into account the size, type, location, storage, and handling capacity and other matters relating to the likelihood of release in each such class and to the economic impact of such limits on each such class; or

(D) for any incineration vessel or any facility other than those specified in subparagraph (C) of this paragraph, the total of all costs of response plus \$50,000,000 for any damages under this subchapter.

(2) Notwithstanding the limitations in paragraph (1) of this subsection, the liability of an owner or operator or other responsible person under this section shall be the full and total costs of response and damages, if (A)(i) the release or threat of release of a hazardous substance was the result of willful misconduct or willful negligence within the privity or knowledge of such person, or (ii) the primary cause of the release was a violation (within the privity or knowledge of such person) of applicable safety, construction, or operating standards or regulations; or (B) such person fails or refuses to provide all reasonable cooperation and assistance requested by a responsible public official in connection with response activities under the national contingency plan with respect to regulated carriers subject to the provisions of title 49 or vessels subject to the provisions of title 33, 46, or 46 Appendix, subparagraph (A)(ii) of this paragraph shall be deemed to refer to Federal standards or regulations.

(3) If any person who is liable for a release or threat of release of a hazardous substance fails without sufficient cause to properly provide removal or remedial action upon order of the

President pursuant to section 9604 or 9606 of this title, such person may be liable to the United States for punitive damages in an amount at least equal to, and not more than three times, the amount of any costs incurred by the Fund as a result of such failure to take proper action. The President is authorized to commence a civil action against any such person to recover the punitive damages, which shall be in addition to any costs recovered from such person pursuant to section 9612(c) of this title. Any moneys received by the United States pursuant to this subsection shall be deposited in the Fund.

(d) Rendering care or advice

(1) In general

Except as provided in paragraph (2), no person shall be liable under this subchapter for costs or damages as a result of actions taken or omitted in the course of rendering care, assistance, or advice in accordance with the National Contingency Plan ("NCP") or at the direction of an onscene coordinator appointed under such plan, with respect to an incident creating a danger to public health or welfare or the environment as a result of any releases of a hazardous substance or the threat thereof. This paragraph shall not preclude liability for costs or damages as the result of negligence on the part of such person.

(2) State and local governments

No State or local government shall be liable under this subchapter for costs or damages as a result of actions taken in response to an emergency created by the release or threatened release of a hazardous substance generated by or from a facility owned by another person. This paragraph shall not preclude liability for costs or damages as a result of gross negligence or intentional misconduct by the State or local government. For the purpose of the preceding sentence, reckless, willful, or wanton misconduct shall constitute gross negligence.

(3) Savings provision

This subsection shall not alter the liability of any person covered by the provisions of paragraph (1), (2), (3), or (4) of subsection (a) of this section with respect to the release or threatened release concerned.

(e) Indemnification, hold harmless, etc., agreements or conveyances; subrogation rights

(1) No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer from the owner or operator of any vessel or facility or from any person who may be liable for a release or threat of release under this section, to any other person the liability imposed under this section. Nothing in this subsection shall bar any agreement to insure, hold harmless, or indemnify a party to such agreement for any liability under this section.

(2) Nothing in this subchapter, including the provisions of paragraph (1) of this subsection, shall bar a cause of action that an owner or operator or any other person subject to liability under this section, or a guarantor, has or would have, by reason of subrogation or otherwise against any person.

(f) Natural resources liability; designation of public trustees of natural resources

(1) Natural resources liability

In the case of an injury to, destruction of, or loss of natural resources under subparagraph (C) of subsection (a) of this section liability shall be to the United States Government and to any State for natural resources within the State or belonging to, managed by, controlled by, or appertaining to such State and to any Indian tribe for natural resources belonging to, managed by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation: *Provided, however*, That no liability to the United States or State or Indian tribe shall be imposed under subparagraph (C) of subsection (a) of this section, where the party sought to be charged has demonstrated that the damages to natural resources complained of were specifically identified as an irreversible and irretrievable commitment of natural resources in an environmental impact statement, or other comparable environment analysis, and the decision to grant a permit or license authorizes such commitment of natural resources, and the facility or project was otherwise operating within the terms of its permit or license, so long as, in the case of damages to an Indian tribe occurring pursuant to a Federal permit or license, the issuance of that permit or license was not inconsistent with the fiduciary duty of the United States with respect to such Indian tribe. The President, or the authorized representative of any State, shall act on behalf of the public as trustee of such natural resources to recover for such damages. Sums recovered by the United States Government as trustee under this subsection shall be retained by the trustee, without further appropriation, for use only to restore, replace, or acquire the equivalent of such natural resources. Sums recovered by a State as trustee under this subsection shall be available for use only to restore, replace, or acquire the equivalent of such natural resources by the State. The measure of damages in any action under subparagraph (C) of subsection (a) of this section shall not be limited by the sums which can be used to restore or replace such resources. There shall be no double recovery under this chapter for natural resource damages, including the costs of damage assessment or restoration, rehabilitation, or acquisition for the same release and natural resource. There shall be no recovery under the authority of subparagraph (C) of subsection (a) of this section where such damages and the release of a hazardous substance from which such damages resulted have occurred wholly before December 11, 1980.

(2) Designation of Federal and State officials

(A) Federal

The President shall designate in the National Contingency Plan published under section 9605 of this title the Federal officials who shall act on behalf of the public as

trustees for natural resources under this chapter and section 1321 of title 33. Such officials shall assess damages for injury to, destruction of, or loss of natural resources for purposes of this chapter and such section 1321 of title 33 for those resources under their trusteeship and may, upon request of and reimbursement from a State and at the Federal officials' discretion, assess damages for those natural resources under the State's trusteeship.

(B) State

The Governor of each State shall designate State officials who may act on behalf of the public as trustees for natural resources under this chapter and section 1321 of title 33 and shall notify the President of such designations. Such State officials shall assess damages to natural resources for the purposes of this chapter and such section 1321 of title 33 for those natural resources under their trusteeship.

(C) Rebuttable presumption

Any determination or assessment of damages to natural resources for the purposes of this chapter and section 1321 of title 33 made by a Federal or State trustee in accordance with the regulations promulgated under section 9651(c) of this title shall have the force and effect of a rebuttable presumption on behalf of the trustee in any administrative or judicial proceeding under this chapter or section 1321 of title 33.

(g) Federal agencies

For provisions relating to Federal agencies, see section 9620 of this title.

(h) Owner or operator of vessel

The owner or operator of a vessel shall be liable in accordance with this section, under maritime tort law, and as provided under section 9614 of this title notwithstanding any provision of the Act of March 3, 1851 (46 U.S.C. 183ff) [46 App. U.S.C. 182, 183, 184-188] or the absence of any physical damage to the proprietary interest of the claimant.

(i) Application of a registered pesticide product

No person (including the United States or any State or Indian tribe) may recover under the authority of this section for any response costs or damages resulting from the application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.]. Nothing in this paragraph shall affect or modify in any way the obligations or liability of any person under any other provision of State or Federal law, including common law, for damages, injury, or loss resulting from a release of any hazardous substance or for removal or remedial action or the costs of removal or remedial action of such hazardous substance.

(j) Obligations or liability pursuant to federally permitted release

Recovery by any person (including the United States or any State or Indian tribe) for response costs or damages resulting from a federally permitted release shall be pursuant to existing law in lieu of this section. Nothing in this paragraph

shall affect or modify in any way the obligations or liability of any person under any other provision of State or Federal law, including common law, for damages, injury, or loss resulting from a release of any hazardous substance or for removal or remedial action or the costs of removal or remedial action of such hazardous substance. In addition, costs of response incurred by the Federal Government in connection with a discharge specified in section 9601(10)(B) or (C) of this title shall be recoverable in an action brought under section 1319(b) of title 33.

(k) Transfer to, and assumption by, Post-Closure Liability Fund of liability of owner or operator of hazardous waste disposal facility in receipt of permit under applicable solid waste disposal law; time, criteria applicable, procedures, etc.; monitoring costs; reports

(1) The liability established by this section or any other law for the owner or operator of a hazardous waste disposal facility which has received a permit under subtitle C of the Solid Waste Disposal Act [42 U.S.C. 6921 et seq.], shall be transferred to and assumed by the Post-closure Liability Fund established by section 9641¹ of this title when—

(A) such facility and the owner and operator thereof has complied with the requirements of subtitle C of the Solid Waste Disposal Act [42 U.S.C. 6921 et seq.] and regulations issued thereunder, which may affect the performance of such facility after closure; and

(B) such facility has been closed in accordance with such regulations and the conditions of such permit, and such facility and the surrounding area have been monitored as required by such regulations and permit conditions for a period not to exceed five years after closure to demonstrate that there is no substantial likelihood that any migration offsite or release from confinement of any hazardous substance or other risk to public health or welfare will occur.

(2) Such transfer of liability shall be effective ninety days after the owner or operator of such facility notifies the Administrator of the Environmental Protection Agency (and the State where it has an authorized program under section 3006(b) of the Solid Waste Disposal Act [42 U.S.C. 6926(b)]) that the conditions imposed by this subsection have been satisfied. If within such ninety-day period the Administrator of the Environmental Protection Agency or such State determines that any such facility has not complied with all the conditions imposed by this subsection or that insufficient information has been provided to demonstrate such compliance, the Administrator or such State shall so notify the owner and operator of such facility and the administrator of the Fund established by section 9641¹ of this title, and the owner and operator of such facility shall continue to be liable with respect to such facility under this section and other law until such time as the Administrator and such State determines that such facility has complied with all conditions imposed by this subsection. A determination by the Administrator or such State that a facility has not

¹See References in Text note below.

complied with all conditions imposed by this subsection or that insufficient information has been supplied to demonstrate compliance, shall be a final administrative action for purposes of judicial review. A request for additional information shall state in specific terms the data required.

(3) In addition to the assumption of liability of owners and operators under paragraph (1) of this subsection, the Post-closure Liability Fund established by section 9641¹ of this title may be used to pay costs of monitoring and care and maintenance of a site incurred by other persons after the period of monitoring required by regulations under subtitle C of the Solid Waste Disposal Act [42 U.S.C. 6921 et seq.] for hazardous waste disposal facilities meeting the conditions of paragraph (1) of this subsection.

(4)(A) Not later than one year after December 11, 1980, the Secretary of the Treasury shall conduct a study and shall submit a report thereon to the Congress on the feasibility of establishing or qualifying an optional system of private insurance for postclosure financial responsibility for hazardous waste disposal facilities to which this subsection applies. Such study shall include a specification of adequate and realistic minimum standards to assure that any such privately placed insurance will carry out the purposes of this subsection in a reliable, enforceable, and practical manner. Such a study shall include an examination of the public and private incentives, programs, and actions necessary to make privately placed insurance a practical and effective option to the financing system for the Post-closure Liability Fund provided in subchapter II¹ of this chapter.

(B) Not later than eighteen months after December 11, 1980, and after a public hearing, the President shall by rule determine whether or not it is feasible to establish or qualify an optional system of private insurance for postclosure financial responsibility for hazardous waste disposal facilities to which this subsection applies. If the President determines the establishment or qualification of such a system would be infeasible, he shall promptly publish an explanation of the reasons for such a determination. If the President determines the establishment or qualification of such a system would be feasible, he shall promptly publish notice of such determination. Not later than six months after an affirmative determination under the preceding sentence and after a public hearing, the President shall by rule promulgate adequate and realistic minimum standards which must be met by any such privately placed insurance, taking into account the purposes of this chapter and this subsection. Such rules shall also specify reasonably expeditious procedures by which privately placed insurance plans can qualify as meeting such minimum standards.

(C) In the event any privately placed insurance plan qualifies under subparagraph (B), any person enrolled in, and complying with the terms of, such plan shall be excluded from the provisions of paragraphs (1), (2), and (3) of this subsection and exempt from the requirements to pay any tax or fee to the Post-closure Liability Fund under subchapter II¹ of this chapter.

(D) The President may issue such rules and take such other actions as are necessary to effectuate the purposes of this paragraph.

(5) SUSPENSION OF LIABILITY TRANSFER.—Notwithstanding paragraphs (1), (2), (3), and (4) of this subsection and subsection (j) of section 9611 of this title, no liability shall be transferred to or assumed by the Post-Closure Liability Trust Fund established by section 9641¹ of this title prior to completion of the study required under paragraph (6) of this subsection, transmission of a report of such study to both Houses of Congress, and authorization of such a transfer or assumption by Act of Congress following receipt of such study and report.

(6) STUDY OF OPTIONS FOR POST-CLOSURE PROGRAM.—

(A) STUDY.—The Comptroller General shall conduct a study of options for a program for the management of the liabilities associated with hazardous waste treatment, storage, and disposal sites after their closure which complements the policies set forth in the Hazardous and Solid Waste Amendments of 1984 and assures the protection of human health and the environment.

(B) PROGRAM ELEMENTS.—The program referred to in subparagraph (A) shall be designed to assure each of the following:

(i) Incentives are created and maintained for the safe management and disposal of hazardous wastes so as to assure protection of human health and the environment.

(ii) Members of the public will have reasonable confidence that hazardous wastes will be managed and disposed of safely and that resources will be available to address any problems that may arise and to cover costs of long-term monitoring, care, and maintenance of such sites.

(iii) Persons who are or seek to become owners and operators of hazardous waste disposal facilities will be able to manage their potential future liabilities and to attract the investment capital necessary to build, operate, and close such facilities in a manner which assures protection of human health and the environment.

(C) ASSESSMENTS.—The study under this paragraph shall include assessments of treatment, storage, and disposal facilities which have been or are likely to be issued a permit under section 3005 of the Solid Waste Disposal Act [42 U.S.C. 6925] and the likelihood of future insolvency on the part of owners and operators of such facilities. Separate assessments shall be made for different classes of facilities and for different classes of land disposal facilities and shall include but not be limited to—

(i) the current and future financial capabilities of facility owners and operators;

(ii) the current and future costs associated with facilities, including the costs of routine monitoring and maintenance, compliance monitoring, corrective action, natural resource damages, and liability for damages to third parties; and

(iii) the availability of mechanisms by which owners and operators of such facilities can assure that current and future costs, including post-closure costs, will be financed.

(D) PROCEDURES.—In carrying out the responsibilities of this paragraph, the Comptroller General shall consult with the Administrator, the Secretary of Commerce, the Secretary of the Treasury, and the heads of other appropriate Federal agencies.

(E) CONSIDERATION OF OPTIONS.—In conducting the study under this paragraph, the Comptroller General shall consider various mechanisms and combinations of mechanisms to complement the policies set forth in the Hazardous and Solid Waste Amendments of 1984 to serve the purposes set forth in subparagraph (B) and to assure that the current and future costs associated with hazardous waste facilities, including post-closure costs, will be adequately financed and, to the greatest extent possible, borne by the owners and operators of such facilities. Mechanisms to be considered include, but are not limited to—

(i) revisions to closure, post-closure, and financial responsibility requirements under subtitles C and I of the Solid Waste Disposal Act [42 U.S.C. 6921 et seq., 6991 et seq.];

(ii) voluntary risk pooling by owners and operators;

(iii) legislation to require risk pooling by owners and operators;

(iv) modification of the Post-Closure Liability Trust Fund previously established by section 9641² of this title, and the conditions for transfer of liability under this subsection, including limiting the transfer of some or all liability under this subsection only in the case of insolvency of owners and operators;

(v) private insurance;

(vi) insurance provided by the Federal Government;

(vii) coinsurance, reinsurance, or pooled-risk insurance, whether provided by the private sector or provided or assisted by the Federal Government; and

(viii) creation of a new program to be administered by a new or existing Federal agency or by a federally chartered corporation.

(F) RECOMMENDATIONS.—The Comptroller General shall consider options for funding any program under this section and shall, to the extent necessary, make recommendations to the appropriate committees of Congress for additional authority to implement such program.

(I) Federal lien

(1) In general

All costs and damages for which a person is liable to the United States under subsection (a) of this section (other than the owner or operator of a vessel under paragraph (1) of subsection (a) of this section) shall constitute a lien in favor of the United States upon all real property and rights to such property which—

(A) belong to such person; and

(B) are subject to or affected by a removal or remedial action.

(2) Duration

The lien imposed by this subsection shall arise at the later of the following:

(A) The time costs are first incurred by the United States with respect to a response action under this chapter.

(B) The time that the person referred to in paragraph (1) is provided (by certified or registered mail) written notice of potential liability.

Such lien shall continue until the liability for the costs (or a judgment against the person arising out of such liability) is satisfied or becomes unenforceable through operation of the statute of limitations provided in section 9613 of this title.

(3) Notice and validity

The lien imposed by this subsection shall be subject to the rights of any purchaser, holder of a security interest, or judgment lien creditor whose interest is perfected under applicable State law before notice of the lien has been filed in the appropriate office within the State (or county or other governmental subdivision), as designated by State law, in which the real property subject to the lien is located. Any such purchaser, holder of a security interest, or judgment lien creditor shall be afforded the same protections against the lien imposed by this subsection as are afforded under State law against a judgment lien which arises out of an unsecured obligation and which arises as of the time of the filing of the notice of the lien imposed by this subsection. If the State has not by law designated one office for the receipt of such notices of liens, the notice shall be filed in the office of the clerk of the United States district court for the district in which the real property is located. For purposes of this subsection, the terms “purchaser” and “security interest” shall have the definitions provided under section 6323(h) of title 26.

(4) Action in rem

The costs constituting the lien may be recovered in an action in rem in the United States district court for the district in which the removal or remedial action is occurring or has occurred. Nothing in this subsection shall affect the right of the United States to bring an action against any person to recover all costs and damages for which such person is liable under subsection (a) of this section.

(m) Maritime lien

All costs and damages for which the owner or operator of a vessel is liable under subsection (a)(1) of this section with respect to a release or threatened release from such vessel shall constitute a maritime lien in favor of the United States on such vessel. Such costs may be recovered in an action in rem in the district court of the United States for the district in which the vessel may be found. Nothing in this subsection shall affect the right of the United States to bring an action against the owner or operator of such vessel in any court of competent jurisdiction to recover such costs.

(n) Liability of fiduciaries

(1) In general

The liability of a fiduciary under any provision of this chapter for the release or threatened release of a hazardous substance at, from,

² See References in Text note below.

or in connection with a vessel or facility held in a fiduciary capacity shall not exceed the assets held in the fiduciary capacity.

(2) Exclusion

Paragraph (1) does not apply to the extent that a person is liable under this chapter independently of the person's ownership of a vessel or facility as a fiduciary or actions taken in a fiduciary capacity.

(3) Limitation

Paragraphs (1) and (4) do not limit the liability pertaining to a release or threatened release of a hazardous substance if negligence of a fiduciary causes or contributes to the release or threatened release.

(4) Safe harbor

A fiduciary shall not be liable in its personal capacity under this chapter for—

(A) undertaking or directing another person to undertake a response action under subsection (d)(1) of this section or under the direction of an on scene coordinator designated under the National Contingency Plan;

(B) undertaking or directing another person to undertake any other lawful means of addressing a hazardous substance in connection with the vessel or facility;

(C) terminating the fiduciary relationship;

(D) including in the terms of the fiduciary agreement a covenant, warranty, or other term or condition that relates to compliance with an environmental law, or monitoring, modifying or enforcing the term or condition;

(E) monitoring or undertaking 1 or more inspections of the vessel or facility;

(F) providing financial or other advice or counseling to other parties to the fiduciary relationship, including the settlor or beneficiary;

(G) restructuring, renegotiating, or otherwise altering the terms and conditions of the fiduciary relationship;

(H) administering, as a fiduciary, a vessel or facility that was contaminated before the fiduciary relationship began; or

(I) declining to take any of the actions described in subparagraphs (B) through (H).

(5) Definitions

As used in this chapter:

(A) Fiduciary

The term “fiduciary”—

(i) means a person acting for the benefit of another party as a bona fide—

(I) trustee;

(II) executor;

(III) administrator;

(IV) custodian;

(V) guardian of estates or guardian ad litem;

(VI) receiver;

(VII) conservator;

(VIII) committee of estates of incapacitated persons;

(IX) personal representative;

(X) trustee (including a successor to a trustee) under an indenture agreement,

trust agreement, lease, or similar financing agreement, for debt securities, certificates of interest or certificates of participation in debt securities, or other forms of indebtedness as to which the trustee is not, in the capacity of trustee, the lender; or

(XI) representative in any other capacity that the Administrator, after providing public notice, determines to be similar to the capacities described in subclauses (I) through (X); and

(ii) does not include—

(I) a person that is acting as a fiduciary with respect to a trust or other fiduciary estate that was organized for the primary purpose of, or is engaged in, actively carrying on a trade or business for profit, unless the trust or other fiduciary estate was created as part of, or to facilitate, 1 or more estate plans or because of the incapacity of a natural person; or

(II) a person that acquires ownership or control of a vessel or facility with the objective purpose of avoiding liability of the person or of any other person.

(B) Fiduciary capacity

The term “fiduciary capacity” means the capacity of a person in holding title to a vessel or facility, or otherwise having control of or an interest in the vessel or facility, pursuant to the exercise of the responsibilities of the person as a fiduciary.

(6) Savings clause

Nothing in this subsection—

(A) affects the rights or immunities or other defenses that are available under this chapter or other law that is applicable to a person subject to this subsection; or

(B) creates any liability for a person or a private right of action against a fiduciary or any other person.

(7) No effect on certain persons

Nothing in this subsection applies to a person if the person—

(A)(i) acts in a capacity other than that of a fiduciary or in a beneficiary capacity; and

(ii) in that capacity, directly or indirectly benefits from a trust or fiduciary relationship; or

(B)(i) is a beneficiary and a fiduciary with respect to the same fiduciary estate; and

(ii) as a fiduciary, receives benefits that exceed customary or reasonable compensation, and incidental benefits, permitted under other applicable law.

(8) Limitation

This subsection does not preclude a claim under this chapter against—

(A) the assets of the estate or trust administered by the fiduciary; or

(B) a nonemployee agent or independent contractor retained by a fiduciary.

(o) De micromis exemption

(1) In general

Except as provided in paragraph (2), a person shall not be liable, with respect to response

costs at a facility on the National Priorities List, under this chapter if liability is based solely on paragraph (3) or (4) of subsection (a) of this section, and the person, except as provided in paragraph (4) of this subsection, can demonstrate that—

(A) the total amount of the material containing hazardous substances that the person arranged for disposal or treatment of, arranged with a transporter for transport for disposal or treatment of, or accepted for transport for disposal or treatment, at the facility was less than 110 gallons of liquid materials or less than 200 pounds of solid materials (or such greater or lesser amounts as the Administrator may determine by regulation); and

(B) all or part of the disposal, treatment, or transport concerned occurred before April 1, 2001.

(2) Exceptions

Paragraph (1) shall not apply in a case in which—

(A) the President determines that—

(i) the materials containing hazardous substances referred to in paragraph (1) have contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration with respect to the facility; or

(ii) the person has failed to comply with an information request or administrative subpoena issued by the President under this chapter or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the facility; or

(B) a person has been convicted of a criminal violation for the conduct to which the exemption would apply, and that conviction has not been vitiated on appeal or otherwise.

(3) No judicial review

A determination by the President under paragraph (2)(A) shall not be subject to judicial review.

(4) Nongovernmental third-party contribution actions

In the case of a contribution action, with respect to response costs at a facility on the National Priorities List, brought by a party, other than a Federal, State, or local government, under this chapter, the burden of proof shall be on the party bringing the action to demonstrate that the conditions described in paragraph (1)(A) and (B) of this subsection are not met.

(p) Municipal solid waste exemption

(1) In general

Except as provided in paragraph (2) of this subsection, a person shall not be liable, with respect to response costs at a facility on the National Priorities List, under paragraph (3) of subsection (a) of this section for municipal solid waste disposed of at a facility if the person, except as provided in paragraph (5) of this subsection, can demonstrate that the person is—

(A) an owner, operator, or lessee of residential property from which all of the person's municipal solid waste was generated with respect to the facility;

(B) a business entity (including a parent, subsidiary, or affiliate of the entity) that, during its 3 taxable years preceding the date of transmittal of written notification from the President of its potential liability under this section, employed on average not more than 100 full-time individuals, or the equivalent thereof, and that is a small business concern (within the meaning of the Small Business Act (15 U.S.C. 631 et seq.)) from which was generated all of the municipal solid waste attributable to the entity with respect to the facility; or

(C) an organization described in section 501(c)(3) of title 26 and exempt from tax under section 501(a) of such title that, during its taxable year preceding the date of transmittal of written notification from the President of its potential liability under this section, employed not more than 100 paid individuals at the location from which was generated all of the municipal solid waste attributable to the organization with respect to the facility.

For purposes of this subsection, the term "affiliate" has the meaning of that term provided in the definition of "small business concern" in regulations promulgated by the Small Business Administration in accordance with the Small Business Act (15 U.S.C. 631 et seq.).

(2) Exception

Paragraph (1) shall not apply in a case in which the President determines that—

(A) the municipal solid waste referred to in paragraph (1) has contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration with respect to the facility;

(B) the person has failed to comply with an information request or administrative subpoena issued by the President under this chapter; or

(C) the person has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the facility.

(3) No judicial review

A determination by the President under paragraph (2) shall not be subject to judicial review.

(4) Definition of municipal solid waste

(A) In general

For purposes of this subsection, the term "municipal solid waste" means waste material—

(i) generated by a household (including a single or multifamily residence); and

(ii) generated by a commercial, industrial, or institutional entity, to the extent that the waste material—

(I) is essentially the same as waste normally generated by a household;

(II) is collected and disposed of with other municipal solid waste as part of normal municipal solid waste collection services; and

(III) contains a relative quantity of hazardous substances no greater than the relative quantity of hazardous substances contained in waste material generated by a typical single-family household.

(B) Examples

Examples of municipal solid waste under subparagraph (A) include food and yard waste, paper, clothing, appliances, consumer product packaging, disposable diapers, office supplies, cosmetics, glass and metal food containers, elementary or secondary school science laboratory waste, and household hazardous waste.

(C) Exclusions

The term “municipal solid waste” does not include—

(i) combustion ash generated by resource recovery facilities or municipal incinerators; or

(ii) waste material from manufacturing or processing operations (including pollution control operations) that is not essentially the same as waste normally generated by households.

(5) Burden of proof

In the case of an action, with respect to response costs at a facility on the National Priorities List, brought under this section or section 9613 of this title by—

(A) a party, other than a Federal, State, or local government, with respect to municipal solid waste disposed of on or after April 1, 2001; or

(B) any party with respect to municipal solid waste disposed of before April 1, 2001, the burden of proof shall be on the party bringing the action to demonstrate that the conditions described in paragraphs (1) and (4) for exemption for entities and organizations described in paragraph (1)(B) and (C) are not met.

(6) Certain actions not permitted

No contribution action may be brought by a party, other than a Federal, State, or local government, under this chapter with respect to circumstances described in paragraph (1)(A).

(7) Costs and fees

A nongovernmental entity that commences, after January 11, 2002, a contribution action under this chapter shall be liable to the defendant for all reasonable costs of defending the action, including all reasonable attorney’s fees and expert witness fees, if the defendant is not liable for contribution based on an exemption under this subsection or subsection (o) of this section.

(q) Contiguous properties

(1) Not considered to be an owner or operator

(A) In general

A person that owns real property that is contiguous to or otherwise similarly situ-

ated with respect to, and that is or may be contaminated by a release or threatened release of a hazardous substance from, real property that is not owned by that person shall not be considered to be an owner or operator of a vessel or facility under paragraph (1) or (2) of subsection (a) of this section solely by reason of the contamination if—

(i) the person did not cause, contribute, or consent to the release or threatened release;

(ii) the person is not—

(I) potentially liable, or affiliated with any other person that is potentially liable, for response costs at a facility through any direct or indirect familial relationship or any contractual, corporate, or financial relationship (other than a contractual, corporate, or financial relationship that is created by a contract for the sale of goods or services); or

(II) the result of a reorganization of a business entity that was potentially liable;

(iii) the person takes reasonable steps to—

(I) stop any continuing release;

(II) prevent any threatened future release; and

(III) prevent or limit human, environmental, or natural resource exposure to any hazardous substance released on or from property owned by that person;

(iv) the person provides full cooperation, assistance, and access to persons that are authorized to conduct response actions or natural resource restoration at the vessel or facility from which there has been a release or threatened release (including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response action or natural resource restoration at the vessel or facility);

(v) the person—

(I) is in compliance with any land use restrictions established or relied on in connection with the response action at the facility; and

(II) does not impede the effectiveness or integrity of any institutional control employed in connection with a response action;

(vi) the person is in compliance with any request for information or administrative subpoena issued by the President under this chapter;

(vii) the person provides all legally required notices with respect to the discovery or release of any hazardous substances at the facility; and

(viii) at the time at which the person acquired the property, the person—

(I) conducted all appropriate inquiry within the meaning of section 9601(35)(B) of this title with respect to the property; and

(II) did not know or have reason to know that the property was or could be

contaminated by a release or threatened release of one or more hazardous substances from other real property not owned or operated by the person.

(B) Demonstration

To qualify as a person described in subparagraph (A), a person must establish by a preponderance of the evidence that the conditions in clauses (i) through (viii) of subparagraph (A) have been met.

(C) Bona fide prospective purchaser

Any person that does not qualify as a person described in this paragraph because the person had, or had reason to have, knowledge specified in subparagraph (A)(viii) at the time of acquisition of the real property may qualify as a bona fide prospective purchaser under section 9601(40) of this title if the person is otherwise described in that section.

(D) Ground water

With respect to a hazardous substance from one or more sources that are not on the property of a person that is a contiguous property owner that enters ground water beneath the property of the person solely as a result of subsurface migration in an aquifer, subparagraph (A)(iii) shall not require the person to conduct ground water investigations or to install ground water remediation systems, except in accordance with the policy of the Environmental Protection Agency concerning owners of property containing contaminated aquifers, dated May 24, 1995.

(2) Effect of law

With respect to a person described in this subsection, nothing in this subsection—

(A) limits any defense to liability that may be available to the person under any other provision of law; or

(B) imposes liability on the person that is not otherwise imposed by subsection (a) of this section.

(3) Assurances

The Administrator may—

(A) issue an assurance that no enforcement action under this chapter will be initiated against a person described in paragraph (1); and

(B) grant a person described in paragraph (1) protection against a cost recovery or contribution action under section 9613(f) of this title.

(r) Prospective purchaser and windfall lien

(1) Limitation on liability

Notwithstanding subsection (a)(1) of this section, a bona fide prospective purchaser whose potential liability for a release or threatened release is based solely on the purchaser's being considered to be an owner or operator of a facility shall not be liable as long as the bona fide prospective purchaser does not impede the performance of a response action or natural resource restoration.

(2) Lien

If there are unrecovered response costs incurred by the United States at a facility for

which an owner of the facility is not liable by reason of paragraph (1), and if each of the conditions described in paragraph (3) is met, the United States shall have a lien on the facility, or may by agreement with the owner, obtain from the owner a lien on any other property or other assurance of payment satisfactory to the Administrator, for the unrecovered response costs.

(3) Conditions

The conditions referred to in paragraph (2) are the following:

(A) Response action

A response action for which there are unrecovered costs of the United States is carried out at the facility.

(B) Fair market value

The response action increases the fair market value of the facility above the fair market value of the facility that existed before the response action was initiated.

(4) Amount; duration

A lien under paragraph (2)—

(A) shall be in an amount not to exceed the increase in fair market value of the property attributable to the response action at the time of a sale or other disposition of the property;

(B) shall arise at the time at which costs are first incurred by the United States with respect to a response action at the facility;

(C) shall be subject to the requirements of subsection (l)(3) of this section; and

(D) shall continue until the earlier of—

(i) satisfaction of the lien by sale or other means; or

(ii) notwithstanding any statute of limitations under section 9613 of this title, recovery of all response costs incurred at the facility.

(Pub. L. 96-510, title I, §107, Dec. 11, 1980, 94 Stat. 2781; Pub. L. 99-499, title I, §§107(a)-(d)(2), (e), (f), 127(b), (e), title II, §§201, 207(c), Oct. 17, 1986, 100 Stat. 1628-1630, 1692, 1693, 1705; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 103-429, §7(e)(2), Oct. 31, 1994, 108 Stat. 4390; Pub. L. 104-208, div. A, title II, §2502(a), Sept. 30, 1996, 110 Stat. 3009-462; Pub. L. 104-287, §6(j)(2), Oct. 11, 1996, 110 Stat. 3400; Pub. L. 107-118, title I, §102(a), title II, §§221, 222(b), Jan. 11, 2002, 115 Stat. 2356, 2368, 2371.)

REFERENCES IN TEXT

Such amendments, referred to in the last sentence of subsec. (a), probably means the amendments made by Pub. L. 99-499, Oct. 17, 1986, 100 Stat. 1613, known as the "Superfund Amendments and Reauthorization Act of 1986". For complete classification of this Act to the Code, see Short Title of 1986 Amendment note set out under section 9601 of this title and Tables.

Act of March 3, 1851 (46 U.S.C. 183ff), referred to in subsec. (h), is act Mar. 3, 1851, ch. 43, 9 Stat. 635, which was incorporated into the Revised Statutes as R.S. §§4282 to 4287 and 4289, and is classified to sections 182, 183, and 184 to 188 of Title 46, Appendix, Shipping.

The Federal Insecticide, Fungicide, and Rodenticide Act, referred to in subsec. (i), is act June 25, 1947, ch. 125, as amended generally by Pub. L. 92-516, Oct. 21, 1972, 86 Stat. 973, which is classified generally to subchapter II (§136 et seq.) of chapter 6 of Title 7, Agri-

culture. For complete classification of this Act to the Code, see Short Title note set out under section 136 of Title 7 and Tables.

The Solid Waste Disposal Act, referred to in subsec. (k)(1), (3), (6)(E)(i), is title II of Pub. L. 89-272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94-580, § 2, Oct. 21, 1976, 90 Stat. 2795. Subtitles C and I of the Solid Waste Disposal Act are classified generally to subchapters III (§6921 et seq.) and IX (§6991 et seq.), respectively, of chapter 82 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

Section 9641 of this title, referred to in subsec. (k), was repealed by Pub. L. 99-499, title V, §514(b), Oct. 17, 1986, 100 Stat. 1767.

Subchapter II of this chapter, referred to in subsec. (k)(4)(A) and (C), was in the original "title II of this Act", meaning title II of Pub. L. 96-510, Dec. 11, 1980, 94 Stat. 2796, known as the Hazardous Substance Response Revenue Act of 1980, which enacted subchapter II of this chapter and sections 4611, 4612, 4661, 4662, 4681, and 4682 of Title 26, Internal Revenue Code. Sections 221 to 223 and 232 of Pub. L. 96-510, which were classified to sections 9631 to 9633 and 9641 of this title, comprising subchapter II of this chapter, were repealed by Pub. L. 99-499, title V, §§514(b), 517(c)(1), Oct. 17, 1986, 100 Stat. 1767, 1774. For complete classification of title II to the Code, see Short Title of 1980 Amendment note set out under section 1 of Title 26 and Tables.

The Hazardous and Solid Waste Amendments of 1984, referred to in subsec. (k)(6)(A), (E), is Pub. L. 98-616, Nov. 8, 1984, 98 Stat. 3221. For complete classification of this Act to the Code, see Short Title of 1984 Amendment note set out under section 6901 of this title and Tables.

The Small Business Act, referred to in subsec. (p)(1), is Pub. L. 85-536, July 18, 1958, 72 Stat. 384, as amended, which is classified generally to chapter 14A (§631 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 631 of Title 15 and Tables.

AMENDMENTS

2002—Subsecs. (o), (p). Pub. L. 107-118, §102(a), added subsecs. (o) and (p).

Subsec. (q). Pub. L. 107-118, §221, added subsec. (q).

Subsec. (r). Pub. L. 107-118, §222(b), added subsec. (r).

1996—Subsec. (c)(1)(C). Pub. L. 104-287 substituted "section 60101(a) of title 49" for "the Hazardous Liquid Pipeline Safety Act of 1979".

Subsec. (n). Pub. L. 104-208 added subsec. (n).

1994—Subsec. (c)(1)(C). Pub. L. 103-429 substituted "hazardous liquid pipeline facility" for "pipeline".

1986—Subsec. (a). Pub. L. 99-514, in penultimate sentence, substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

Pub. L. 99-499, §107(b), inserted concluding provisions relating to accrual and rate of interest on amounts recoverable under this section.

Subsec. (a)(1). Pub. L. 99-499, §107(a), struck out "(otherwise subject to the jurisdiction of the United States)" after "vessel".

Subsec. (a)(3). Pub. L. 99-499, §127(b)(1), inserted "or incineration vessel" after "facility".

Subsec. (a)(4). Pub. L. 99-499, §§107(b), 127(b)(2), 207(c)(1), in introductory provisions, inserted "incineration vessels" after "vessels", in subpar. (A), inserted "or an Indian tribe" after "State", and added subpar. (D).

Subsec. (c)(1)(A). Pub. L. 99-499, §127(b)(3), inserted "other than an incineration vessel," after "vessel".

Subsec. (c)(1)(B). Pub. L. 99-499, §127(b)(4), inserted "other than an incineration vessel," after "other vessel."

Subsec. (c)(1)(D). Pub. L. 99-499, §127(b)(5), inserted "any incineration vessel or" before "any facility".

Subsec. (d). Pub. L. 99-499, §107(c), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as

follows: "No person shall be liable under this subchapter for damages as a result of actions taken or omitted in the course of rendering care, assistance, or advice in accordance with the national contingency plan or at the direction of an onscene coordinator appointed under such plan, with respect to an incident creating a danger to public health or welfare or the environment as a result of any release of a hazardous substance or the threat thereof. This subsection shall not preclude liability for damages as the result of gross negligence or intentional misconduct on the part of such person. For the purposes of the preceding sentence, reckless, willful, or wanton misconduct shall constitute gross negligence."

Subsec. (f)(1). Pub. L. 99-499, §107(d)(1), designated existing provisions as par. (1) and added heading.

Pub. L. 99-499, §207(c)(2)(A), inserted "and to any Indian tribe for natural resources belonging to, managed by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation" after third reference to "State".

Pub. L. 99-499, §207(c)(2)(B), inserted "or Indian tribe" after fourth reference to "State".

Pub. L. 99-499, §207(c)(2)(C), inserted in first sentence "so long as, in the case of damages to an Indian tribe occurring pursuant to a Federal permit or license, the issuance of that permit or license was not inconsistent with the fiduciary duty of the United States with respect to such Indian tribe".

Pub. L. 99-499, §107(d)(2), substituted "Sums recovered by the United States Government as trustee under this subsection shall be retained by the trustee, without further appropriation, for use only to restore, replace, or acquire the equivalent of such natural resources. Sums recovered by a State as trustee under this subsection shall be available for use only to restore, replace, or acquire the equivalent of such natural resources by the State. The measure of damages in any action under subparagraph (C) of subsection (a) of this section shall not be limited by the sums which can be used to restore or replace such resources. There shall be no double recovery under this chapter for natural resource damages, including the costs of damage assessment or restoration, rehabilitation, or acquisition for the same release and natural resource" for "Sums recovered shall be available for use to restore, rehabilitate, or acquire the equivalent of such natural resources by the appropriate agencies of the Federal Government or the State government, but the measure of such damages shall not be limited by the sums which can be used to restore or replace such resources".

Pub. L. 99-499, §207(c)(2)(D), which directed the insertion of "or the Indian tribe" after "State government", could not be executed because the prior amendment by section 107(d)(2) of Pub. L. 99-499, struck out third sentence referring to "State government".

Subsec. (f)(2). Pub. L. 99-499, §107(d)(1), added par. (2).

Subsec. (g). Pub. L. 99-499, §107(e), amended subsec. (g) generally. Prior to amendment, subsec. (g) read as follows: "Each department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government shall be subject to, and comply with, this chapter in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity, including liability under this section."

Subsec. (h). Pub. L. 99-499, §127(e), inserted "under maritime tort law," after "with this section" and inserted "or the absence of any physical damage to the proprietary interest of the claimant" before the period at end.

Subsec. (i). Pub. L. 99-499, §207(c)(3), inserted "or Indian tribe" after "State".

Subsec. (j). Pub. L. 99-499, §207(c)(4), inserted "or Indian tribe" after first reference to "State".

Subsec. (k)(5), (6). Pub. L. 99-499, §201, added pars. (5) and (6).

Subsec. (l). Pub. L. 99-499, §107(f), added subsec. (l).

Subsec. (l)(3). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

Subsec. (m). Pub. L. 99-499, §107(f), added subsec. (m).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-208 applicable with respect to any claim that has not been finally adjudicated as of Sept. 30, 1996, see section 2505 of Pub. L. 104-208, set out as a note under section 6991b of this title.

EFFECT ON CONCLUDED ACTIONS

Pub. L. 107-118, title I, §103, Jan. 11, 2002, 115 Stat. 2360, provided that: "The amendments made by this title [amending this section and section 9622 of this title] shall not apply to or in any way affect any settlement lodged in, or judgment issued by, a United States District Court, or any administrative settlement or order entered into or issued by the United States or any State, before the date of the enactment of this Act [Jan. 11, 2002]."

RECOVERY OF COSTS

Pub. L. 104-303, title II, §209, Oct. 12, 1996, 110 Stat. 3681, provided that: "Amounts recovered under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607) for any response action taken by the Secretary in support of the civil works program of the Department of the Army and any other amounts recovered by the Secretary from a contractor, insurer, surety, or other person to reimburse the Department of the Army for any expenditure for environmental response activities in support of the Army civil works program shall be credited to the appropriate trust fund account from which the cost of such response action has been paid or will be charged."

COORDINATION OF TITLES I TO IV OF PUB. L. 99-499

Any provision of titles I to IV of Pub. L. 99-499, imposing any tax, premium, or fee; establishing any trust fund; or authorizing expenditures from any trust fund, to have no force or effect, see section 531 of Pub. L. 99-499, set out as a note under section 1 of Title 26, Internal Revenue Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6924, 6939a, 6991b, 6991c, 9601, 9603, 9604, 9606, 9608, 9611, 9612, 9613, 9614, 9619, 9620, 9622, 9624, 9627, 9628, 9651, 9656, 9658 of this title; title 14 section 692; title 16 sections 1437, 1443; title 26 section 9507.

§ 9608. Financial responsibility

(a) Establishment and maintenance by owner or operator of vessel; amount; failure to obtain certification of compliance

(1) The owner or operator of each vessel (except a nonself-propelled barge that does not carry hazardous substances as cargo) over three hundred gross tons that uses any port or place in the United States or the navigable waters or any offshore facility, shall establish and maintain, in accordance with regulations promulgated by the President, evidence of financial responsibility of \$300 per gross ton (or for a vessel carrying hazardous substances as cargo, or \$5,000,000, whichever is greater) to cover the liability prescribed under paragraph (1) of section 9607(a) of this title. Financial responsibility may be established by any one, or any combination, of the following: insurance, guarantee, surety bond, or qualification as a self-insurer. Any

bond filed shall be issued by a bonding company authorized to do business in the United States. In cases where an owner or operator owns, operates, or charters more than one vessel subject to this subsection, evidence of financial responsibility need be established only to meet the maximum liability applicable to the largest of such vessels.

(2) The Secretary of the Treasury shall withhold or revoke the clearance required by section 91 of title 46, Appendix, of any vessel subject to this subsection that does not have certification furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

(3) The Secretary of Transportation, in accordance with regulations issued by him, shall (A) deny entry to any port or place in the United States or navigable waters to, and (B) detain at the port or place in the United States from which it is about to depart for any other port or place in the United States, any vessel subject to this subsection that, upon request, does not produce certification furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

(4) In addition to the financial responsibility provisions of paragraph (1) of this subsection, the President shall require additional evidence of financial responsibility for incineration vessels in such amounts, and to cover such liabilities recognized by law, as the President deems appropriate, taking into account the potential risks posed by incineration and transport for incineration, and any other factors deemed relevant.

(b) Establishment and maintenance by owner or operator of production, etc., facilities; amount; adjustment; consolidated form of responsibility; coverage of motor carriers

(1) Beginning not earlier than five years after December 11, 1980, the President shall promulgate requirements (for facilities in addition to those under subtitle C of the Solid Waste Disposal Act [42 U.S.C. 6921 et seq.] and other Federal law) that classes of facilities establish and maintain evidence of financial responsibility consistent with the degree and duration of risk associated with the production, transportation, treatment, storage, or disposal of hazardous substances. Not later than three years after December 11, 1980, the President shall identify those classes for which requirements will be first developed and publish notice of such identification in the Federal Register. Priority in the development of such requirements shall be accorded to those classes of facilities, owners, and operators which the President determines present the highest level of risk of injury.

(2) The level of financial responsibility shall be initially established, and, when necessary, adjusted to protect against the level of risk which the President in his discretion believes is appropriate based on the payment experience of the Fund, commercial insurers, courts settlements and judgments, and voluntary claims satisfaction. To the maximum extent practicable, the President shall cooperate with and seek the advice of the commercial insurance industry in

developing financial responsibility requirements. Financial responsibility may be established by any one, or any combination, of the following: insurance, guarantee, surety bond, letter of credit, or qualification as a self-insurer. In promulgating requirements under this section, the President is authorized to specify policy or other contractual terms, conditions, or defenses which are necessary, or which are unacceptable, in establishing such evidence of financial responsibility in order to effectuate the purposes of this chapter.

(3) Regulations promulgated under this subsection shall incrementally impose financial responsibility requirements as quickly as can reasonably be achieved but in no event more than 4 years after the date of promulgation. Where possible, the level of financial responsibility which the President believes appropriate as a final requirement shall be achieved through incremental, annual increases in the requirements.

(4) Where a facility is owned or operated by more than one person, evidence of financial responsibility covering the facility may be established and maintained by one of the owners or operators, or, in consolidated form, by or on behalf of two or more owners or operators. When evidence of financial responsibility is established in a consolidated form, the proportional share of each participant shall be shown. The evidence shall be accompanied by a statement authorizing the applicant to act for and in behalf of each participant in submitting and maintaining the evidence of financial responsibility.

(5) The requirements for evidence of financial responsibility for motor carriers covered by this chapter shall be determined under section 31139 of title 49.

(c) Direct action

(1) Releases from vessels

In the case of a release or threatened release from a vessel, any claim authorized by section 9607 or 9611 of this title may be asserted directly against any guarantor providing evidence of financial responsibility for such vessel under subsection (a) of this section. In defending such a claim, the guarantor may invoke all rights and defenses which would be available to the owner or operator under this subchapter. The guarantor may also invoke the defense that the incident was caused by the willful misconduct of the owner or operator, but the guarantor may not invoke any other defense that the guarantor might have been entitled to invoke in a proceeding brought by the owner or operator against him.

(2) Releases from facilities

In the case of a release or threatened release from a facility, any claim authorized by section 9607 or 9611 of this title may be asserted directly against any guarantor providing evidence of financial responsibility for such facility under subsection (b) of this section, if the person liable under section 9607 of this title is in bankruptcy, reorganization, or arrangement pursuant to the Federal Bankruptcy Code, or if, with reasonable diligence, jurisdiction in the Federal courts cannot be obtained

over a person liable under section 9607 of this title who is likely to be solvent at the time of judgment. In the case of any action pursuant to this paragraph, the guarantor shall be entitled to invoke all rights and defenses which would have been available to the person liable under section 9607 of this title if any action had been brought against such person by the claimant and all rights and defenses which would have been available to the guarantor if an action had been brought against the guarantor by such person.

(d) Limitation of guarantor liability

(1) Total liability

The total liability of any guarantor in a direct action suit brought under this section shall be limited to the aggregate amount of the monetary limits of the policy of insurance, guarantee, surety bond, letter of credit, or similar instrument obtained from the guarantor by the person subject to liability under section 9607 of this title for the purpose of satisfying the requirement for evidence of financial responsibility.

(2) Other liability

Nothing in this subsection shall be construed to limit any other State or Federal statutory, contractual, or common law liability of a guarantor, including, but not limited to, the liability of such guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. Nothing in this subsection shall be construed, interpreted, or applied to diminish the liability of any person under section 9607 of this title or other applicable law.

(Pub. L. 96-510, title I, § 108, Dec. 11, 1980, 94 Stat. 2785; Pub. L. 99-499, title I, §§ 108, 127(c), Oct. 17, 1986, 100 Stat. 1631, 1692.)

REFERENCES IN TEXT

The Solid Waste Disposal Act, referred to in subsec. (b)(1), is title II of Pub. L. 89-272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94-580, § 2, Oct. 21, 1976, 90 Stat. 2795. Subtitle C of the Solid Waste Disposal Act is classified generally to subchapter III (§ 6921 et seq.) of chapter 82 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

The Federal Bankruptcy Code, referred to in subsec. (c)(2), probably means a reference to Title 11, Bankruptcy.

CODIFICATION

In subsec. (b)(5), "section 31139 of title 49" substituted for "section 30 of the Motor Carrier Act of 1980, Public Law 96-296" on authority of Pub. L. 103-272, § 6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

AMENDMENTS

1986—Subsec. (a)(1). Pub. L. 99-499, § 127(c)(1), inserted "to cover the liability prescribed under paragraph (1) of section 9607(a) of this title" after "whichever is greater)".

Subsec. (a)(4). Pub. L. 99-499, § 127(c)(2), added par. (4).
Subsec. (b)(2). Pub. L. 99-499, § 108(a), inserted provisions relating to evidence of financial responsibility and authority of the President regarding establishment of that evidence.

Subsec. (b)(3). Pub. L. 99-499, § 108(b), substituted "as quickly as can reasonably be achieved but in no event

more than 4 years” for “over a period of not less than three and no more than six years”.

Subsec. (c). Pub. L. 99-499, §108(c), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “Any claim authorized by section 9607 or 9611 of this title may be asserted directly against any guarantor providing evidence of financial responsibility as required under this section. In defending such a claim, the guarantor may invoke all rights and defenses which would be available to the owner or operator under this subchapter. The guarantor may also invoke the defense that the incident was caused by the willful misconduct of the owner or operator, but such guarantor may not invoke any other defense that such guarantor might have been entitled to invoke in a proceeding brought by the owner or operator against him.”

Subsec. (d). Pub. L. 99-499, §108(c), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: “Any guarantor acting in good faith against which claims under this chapter are asserted as a guarantor shall be liable under section 9607 of this title or section 9612(c) of this title only up to the monetary limits of the policy of insurance or indemnity contract such guarantor has undertaken or of the guaranty of other evidence of financial responsibility furnished under this section, and only to the extent that liability is not excluded by restrictive endorsement: *Provided*, That this subsection shall not alter the liability of any person under section 9607 of this title.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9609 of this title.

§ 9609. Civil penalties and awards

(a) Class I administrative penalty

(1) Violations

A civil penalty of not more than \$25,000 per violation may be assessed by the President in the case of any of the following—

(A) A violation of the requirements of section 9603(a) or (b) of this title (relating to notice).

(B) A violation of the requirements of section 9603(d)(2) of this title (relating to destruction of records, etc.).

(C) A violation of the requirements of section 9608 of this title (relating to financial responsibility, etc.), the regulations issued under section 9608 of this title, or with any denial or detention order under section 9608 of this title.

(D) A violation of an order under section 9622(d)(3) of this title (relating to settlement agreements for action under section 9604(b) of this title).

(E) Any failure or refusal referred to in section 9622(l) of this title (relating to violations of administrative orders, consent decrees, or agreements under section 9620 of this title).

(2) Notice and hearings

No civil penalty may be assessed under this subsection unless the person accused of the violation is given notice and opportunity for a hearing with respect to the violation.

(3) Determining amount

In determining the amount of any penalty assessed pursuant to this subsection, the President shall take into account the nature, circumstances, extent and gravity of the violation or violations and, with respect to the violator, ability to pay, any prior history of

such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require.

(4) Review

Any person against whom a civil penalty is assessed under this subsection may obtain review thereof in the appropriate district court of the United States by filing a notice of appeal in such court within 30 days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the President. The President shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed. If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order or after the appropriate court has entered final judgment in favor of the United States, the President may request the Attorney General of the United States to institute a civil action in an appropriate district court of the United States to collect the penalty, and such court shall have jurisdiction to hear and decide any such action. In hearing such action, the court shall have authority to review the violation and the assessment of the civil penalty on the record.

(5) Subpoenas

The President may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, or documents in connection with hearings under this subsection. In case of contumacy or refusal to obey a subpoena issued pursuant to this paragraph and served upon any person, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the administrative law judge or to appear and produce documents before the administrative law judge, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(b) Class II administrative penalty

A civil penalty of not more than \$25,000 per day for each day during which the violation continues may be assessed by the President in the case of any of the following—

(1) A violation of the notice requirements of section 9603(a) or (b) of this title.

(2) A violation of section 9603(d)(2) of this title (relating to destruction of records, etc.).

(3) A violation of the requirements of section 9608 of this title (relating to financial responsibility, etc.), the regulations issued under section 9608 of this title, or with any denial or detention order under section 9608 of this title.

(4) A violation of an order under section 9622(d)(3) of this title (relating to settlement agreements for action under section 9604(b) of this title).

(5) Any failure or refusal referred to in section 9622(l) of this title (relating to violations of administrative orders, consent decrees, or agreements under section 9620 of this title).

In the case of a second or subsequent violation the amount of such penalty may be not more than \$75,000 for each day during which the violation continues. Any civil penalty under this subsection shall be assessed and collected in the same manner, and subject to the same provisions, as in the case of civil penalties assessed and collected after notice and opportunity for hearing on the record in accordance with section 554 of title 5. In any proceeding for the assessment of a civil penalty under this subsection the President may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents and may promulgate rules for discovery procedures. Any person who requested a hearing with respect to a civil penalty under this subsection and who is aggrieved by an order assessing the civil penalty may file a petition for judicial review of such order with the United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business. Such a petition may only be filed within the 30-day period beginning on the date the order making such assessment was issued.

(c) Judicial assessment

The President may bring an action in the United States district court for the appropriate district to assess and collect a penalty of not more than \$25,000 per day for each day during which the violation (or failure or refusal) continues in the case of any of the following—

- (1) A violation of the notice requirements of section 9603(a) or (b) of this title.
- (2) A violation of section 9603(d)(2) of this title (relating to destruction of records, etc.).
- (3) A violation of the requirements of section 9608 of this title (relating to financial responsibility, etc.), the regulations issued under section 9608 of this title, or with any denial or detention order under section 9608 of this title.
- (4) A violation of an order under section 9622(d)(3) of this title (relating to settlement agreements for action under section 9604(b) of this title).
- (5) Any failure or refusal referred to in section 9622(l) of this title (relating to violations of administrative orders, consent decrees, or agreements under section 9620 of this title).

In the case of a second or subsequent violation (or failure or refusal), the amount of such penalty may be not more than \$75,000 for each day during which the violation (or failure or refusal) continues. For additional provisions providing for judicial assessment of civil penalties for failure to comply with a request or order under section 9604(e) of this title (relating to information gathering and access authorities), see section 9604(e) of this title.

(d) Awards

The President may pay an award of up to \$10,000 to any individual who provides information leading to the arrest and conviction of any person for a violation subject to a criminal penalty under this chapter, including any violation of section 9603 of this title and any other violation referred to in this section. The President shall, by regulation, prescribe criteria for such

an award and may pay any award under this subsection from the Fund, as provided in section 9611 of this title.

(e) Procurement procedures

Notwithstanding any other provision of law, any executive agency may use competitive procedures or procedures other than competitive procedures to procure the services of experts for use in preparing or prosecuting a civil or criminal action under this chapter, whether or not the expert is expected to testify at trial. The executive agency need not provide any written justification for the use of procedures other than competitive procedures when procuring such expert services under this chapter and need not furnish for publication in the Commerce Business Daily or otherwise any notice of solicitation or synopsis with respect to such procurement.

(f) Savings clause

Action taken by the President pursuant to this section shall not affect or limit the President's authority to enforce any provisions of this chapter.

(Pub. L. 96-510, title I, §109, Dec. 11, 1980, 94 Stat. 2787; Pub. L. 99-499, title I, §109(c), Oct. 17, 1986, 100 Stat. 1633.)

AMENDMENTS

1986—Pub. L. 99-499 amended section generally. Prior to amendment, section read as follows: "Any person who, after notice and an opportunity for a hearing, is found to have failed to comply with the requirements of section 9608 of this title, the regulations issued thereunder, or with any denial or detention order shall be liable to the United States for a civil penalty, not to exceed \$10,000 for each day of violation."

COORDINATION OF TITLES I TO IV OF PUB. L. 99-499

Any provision of titles I to IV of Pub. L. 99-499, imposing any tax, premium, or fee; establishing any trust fund; or authorizing expenditures from any trust fund, to have no force or effect, see section 531 of Pub. L. 99-499, set out as a note under section 1 of Title 26, Internal Revenue Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9611, 9622 of this title.

§ 9610. Employee protection

(a) Activities of employee subject to protection

No person shall fire or in any other way discriminate against, or cause to be fired or discriminated against, any employee or any authorized representative of employees by reason of the fact that such employee or representative has provided information to a State or to the Federal Government, filed, instituted, or caused to be filed or instituted any proceeding under this chapter, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this chapter.

(b) Administrative grievance procedure in cases of alleged violations

Any employee or a representative of employees who believes that he has been fired or otherwise discriminated against by any person in violation of subsection (a) of this section may,

within thirty days after such alleged violation occurs, apply to the Secretary of Labor for a review of such firing or alleged discrimination. A copy of the application shall be sent to such person, who shall be the respondent. Upon receipt of such application, the Secretary of Labor shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of any party to such review to enable the parties to present information relating to such alleged violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to section 554 of title 5. Upon receiving the report of such investigation, the Secretary of Labor shall make findings of fact. If he finds that such violation did occur, he shall issue a decision, incorporating an order therein and his findings, requiring the party committing such violation to take such affirmative action to abate the violation as the Secretary of Labor deems appropriate, including, but not limited to, the rehiring or reinstatement of the employee or representative of employees to his former position with compensation. If he finds that there was no such violation, he shall issue an order denying the application. Such order issued by the Secretary of Labor under this subparagraph shall be subject to judicial review in the same manner as orders and decisions are subject to judicial review under this chapter.

(c) Assessment of costs and expenses against violator subsequent to issuance of order of abatement

Whenever an order is issued under this section to abate such violation, at the request of the applicant a sum equal to the aggregate amount of all costs and expenses (including the attorney's fees) determined by the Secretary of Labor to have been reasonably incurred by the applicant for, or in connection with, the institution and prosecution of such proceedings, shall be assessed against the person committing such violation.

(d) Defenses

This section shall have no application to any employee who acting without discretion from his employer (or his agent) deliberately violates any requirement of this chapter.

(e) Presidential evaluations of potential loss of shifts of employment resulting from administration or enforcement of provisions; investigations; procedures applicable, etc.

The President shall conduct continuing evaluations of potential loss of shifts of employment which may result from the administration or enforcement of the provisions of this chapter, including, where appropriate, investigating threatened plant closures or reductions in employment allegedly resulting from such administration or enforcement. Any employee who is discharged, or laid off, threatened with discharge or layoff, or otherwise discriminated against by any person because of the alleged results of such administration or enforcement, or any representative of such employee, may request the President to conduct a full investiga-

tion of the matter and, at the request of any party, shall hold public hearings, require the parties, including the employer involved, to present information relating to the actual or potential effect of such administration or enforcement on employment and any alleged discharge, layoff, or other discrimination, and the detailed reasons or justification therefore.¹ Any such hearing shall be of record and shall be subject to section 554 of title 5. Upon receiving the report of such investigation, the President shall make findings of fact as to the effect of such administration or enforcement on employment and on the alleged discharge, layoff, or discrimination and shall make such recommendations as he deems appropriate. Such report, findings, and recommendations shall be available to the public. Nothing in this subsection shall be construed to require or authorize the President or any State to modify or withdraw any action, standard, limitation, or any other requirement of this chapter.

(Pub. L. 96-510, title I, § 110, Dec. 11, 1980, 94 Stat. 2787.)

§ 9611. Uses of Fund

(a) In general

For the purposes specified in this section there is authorized to be appropriated from the Hazardous Substance Superfund established under subchapter A of chapter 98 of title 26 not more than \$8,500,000,000 for the 5-year period beginning on October 17, 1986, and not more than \$5,100,000,000 for the period commencing October 1, 1991, and ending September 30, 1994, and such sums shall remain available until expended. The preceding sentence constitutes a specific authorization for the funds appropriated under title II of Public Law 99-160 (relating to payment to the Hazardous Substances Trust Fund). The President shall use the money in the Fund for the following purposes:

(1) Payment of governmental response costs incurred pursuant to section 9604 of this title, including costs incurred pursuant to the Intervention on the High Seas Act [33 U.S.C. 1471 et seq.].

(2) Payment of any claim for necessary response costs incurred by any other person as a result of carrying out the national contingency plan established under section 1321(c)¹ of title 33 and amended by section 9605 of this title: *Provided, however*, That such costs must be approved under said plan and certified by the responsible Federal official.

(3) Payment of any claim authorized by subsection (b) of this section and finally decided pursuant to section 9612 of this title, including those costs set out in subsection 9612(c)(3) of this title.

(4) Payment of costs specified under subsection (c) of this section.

(5) GRANTS FOR TECHNICAL ASSISTANCE.—The cost of grants under section 9617(e) of this title (relating to public participation grants for technical assistance).

(6) LEAD CONTAMINATED SOIL.—Payment of not to exceed \$15,000,000 for the costs of a pilot

¹ So in original.

¹ See References in Text note below.

program for removal, decontamination, or other action with respect to lead-contaminated soil in one to three different metropolitan areas.

The President shall not pay for any administrative costs or expenses out of the Fund unless such costs and expenses are reasonably necessary for and incidental to the implementation of this subchapter.

(b) Additional authorized purposes

(1) In general

Claims asserted and compensable but unsatisfied under provisions of section 1321 of title 33, which are modified by section 304 of this Act may be asserted against the Fund under this subchapter; and other claims resulting from a release or threat of release of a hazardous substance from a vessel or a facility may be asserted against the Fund under this subchapter for injury to, or destruction or loss of, natural resources, including cost for damage assessment: *Provided, however,* That any such claim may be asserted only by the President, as trustee, for natural resources over which the United States has sovereign rights, or natural resources within the territory or the fishery conservation zone of the United States to the extent they are managed or protected by the United States, or by any State for natural resources within the boundary of that State belonging to, managed by, controlled by, or appertaining to the State, or by any Indian tribe or by the United States acting on behalf of any Indian tribe for natural resources belonging to, managed by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation.

(2) Limitation on payment of natural resource claims

(A) General requirements

No natural resource claim may be paid from the Fund unless the President determines that the claimant has exhausted all administrative and judicial remedies to recover the amount of such claim from persons who may be liable under section 9607 of this title.

(B) Definition

As used in this paragraph, the term "natural resource claim" means any claim for injury to, or destruction or loss of, natural resources. The term does not include any claim for the costs of natural resource damage assessment.

(c) Peripheral matters and limitations

Uses of the Fund under subsection (a) of this section include—

(1) The costs of assessing both short-term and long-term injury to, destruction of, or loss of any natural resources resulting from a release of a hazardous substance.

(2) The costs of Federal or State or Indian tribe efforts in the restoration, rehabilitation, or replacement or acquiring the equivalent of

any natural resources injured, destroyed, or lost as a result of a release of a hazardous substance.

(3) Subject to such amounts as are provided in appropriation Acts, the costs of a program to identify, investigate, and take enforcement and abatement action against releases of hazardous substances.

(4) Any costs incurred in accordance with subsection (m) of this section (relating to ATSDR) and section 9604(i) of this title, including the costs of epidemiologic and laboratory studies, health assessments, preparation of toxicologic profiles, development and maintenance of a registry of persons exposed to hazardous substances to allow long-term health effect studies, and diagnostic services not otherwise available to determine whether persons in populations exposed to hazardous substances in connection with a release or a suspected release are suffering from long-latency diseases.

(5) Subject to such amounts as are provided in appropriation Acts, the costs of providing equipment and similar overhead, related to the purposes of this chapter and section 1321 of title 33, and needed to supplement equipment and services available through contractors or other non-Federal entities, and of establishing and maintaining damage assessment capability, for any Federal agency involved in strike forces, emergency task forces, or other response teams under the national contingency plan.

(6) Subject to such amounts as are provided in appropriation Acts, the costs of a program to protect the health and safety of employees involved in response to hazardous substance releases. Such program shall be developed jointly by the Environmental Protection Agency, the Occupational Safety and Health Administration, and the National Institute for Occupational Safety and Health and shall include, but not be limited to, measures for identifying and assessing hazards to which persons engaged in removal, remedy, or other response to hazardous substances may be exposed, methods to protect workers from such hazards, and necessary regulatory and enforcement measures to assure adequate protection of such employees.

(7) EVALUATION COSTS UNDER PETITION PROVISIONS OF SECTION 9605(d).—Costs incurred by the President in evaluating facilities pursuant to petitions under section 9605(d) of this title (relating to petitions for assessment of release).

(8) CONTRACT COSTS UNDER SECTION 9604(a)(1).—The costs of contracts or arrangements entered into under section 9604(a)(1) of this title to oversee and review the conduct of remedial investigations and feasibility studies undertaken by persons other than the President and the costs of appropriate Federal and State oversight of remedial activities at National Priorities List sites resulting from consent orders or settlement agreements.

(9) ACQUISITION COSTS UNDER SECTION 9604(j).—The costs incurred by the President in acquiring real estate or interests in real estate under section 9604(j) of this title (relating to acquisition of property).

(10) RESEARCH, DEVELOPMENT, AND DEMONSTRATION COSTS UNDER SECTION 9660.—The cost of carrying out section 9660 of this title (relating to research, development, and demonstration), except that the amounts available for such purposes shall not exceed the amounts specified in subsection (n) of this section.

(11) LOCAL GOVERNMENT REIMBURSEMENT.—Reimbursements to local governments under section 9623 of this title, except that during the 8-fiscal year period beginning October 1, 1986, not more than 0.1 percent of the total amount appropriated from the Fund may be used for such reimbursements.

(12) WORKER TRAINING AND EDUCATION GRANTS.—The costs of grants under section 9660a of this title for training and education of workers to the extent that such costs do not exceed \$20,000,000 for each of the fiscal years 1987, 1988, 1989, 1990, 1991, 1992, 1993, and 1994.

(13) AWARDS UNDER SECTION 9609.—The costs of any awards granted under section 9609(d) of this title.

(14) LEAD POISONING STUDY.—The cost of carrying out the study under subsection (f) of section 118 of the Superfund Amendments and Reauthorization Act of 1986 (relating to lead poisoning in children).

(d) Additional limitations

(1) No money in the Fund may be used under subsection (c)(1) and (2) of this section, nor for the payment of any claim under subsection (b) of this section, where the injury, destruction, or loss of natural resources and the release of a hazardous substance from which such damages resulted have occurred wholly before December 11, 1980.

(2) No money in the Fund may be used for the payment of any claim under subsection (b) of this section where such expenses are associated with injury or loss resulting from long-term exposure to ambient concentrations of air pollutants from multiple or diffuse sources.

(e) Funding requirements respecting moneys in Fund; limitation on certain claims; Fund use outside Federal property boundaries

(1) Claims against or presented to the Fund shall not be valid or paid in excess of the total money in the Fund at any one time. Such claims become valid only when additional money is collected, appropriated, or otherwise added to the Fund. Should the total claims outstanding at any time exceed the current balance of the Fund, the President shall pay such claims, to the extent authorized under this section, in full in the order in which they were finally determined.

(2) In any fiscal year, 85 percent of the money credited to the Fund under subchapter II² of this chapter shall be available only for the purposes specified in paragraphs (1), (2), and (4) of subsection (a) of this section. No money in the Fund may be used for the payment of any claim under subsection (a)(3) or subsection (b) of this section in any fiscal year for which the President determines that all of the Fund is needed for response

to threats to public health from releases or threatened releases of hazardous substances.

(3) No money in the Fund shall be available for remedial action, other than actions specified in subsection (c) of this section, with respect to federally owned facilities; except that money in the Fund shall be available for the provision of alternative water supplies (including the reimbursement of costs incurred by a municipality) in any case involving groundwater contamination outside the boundaries of a federally owned facility in which the federally owned facility is not the only potentially responsible party.

(4) Paragraphs (1) and (4) of subsection (a) of this section shall in the aggregate be subject to such amounts as are provided in appropriation Acts.

(f) Obligation of moneys by Federal officials; obligation of moneys or settlement of claims by State officials or Indian tribe

The President is authorized to promulgate regulations designating one or more Federal officials who may obligate money in the Fund in accordance with this section or portions thereof. The President is also authorized to delegate authority to obligate money in the Fund or to settle claims to officials of a State or Indian tribe operating under a contract or cooperative agreement with the Federal Government pursuant to section 9604(d) of this title.

(g) Notice to potential injured parties by owner and operator of vessel or facility causing release of substance; rules and regulations

The President shall provide for the promulgation of rules and regulations with respect to the notice to be provided to potential injured parties by an owner and operator of any vessel, or facility from which a hazardous substance has been released. Such rules and regulations shall consider the scope and form of the notice which would be appropriate to carry out the purposes of this subchapter. Upon promulgation of such rules and regulations, the owner and operator of any vessel or facility from which a hazardous substance has been released shall provide notice in accordance with such rules and regulations. With respect to releases from public vessels, the President shall provide such notification as is appropriate to potential injured parties. Until the promulgation of such rules and regulations, the owner and operator of any vessel or facility from which a hazardous substance has been released shall provide reasonable notice to potential injured parties by publication in local newspapers serving the affected area.

(h) Repealed. Pub. L. 99-499, title I, § 111(c)(2), Oct. 17, 1986, 100 Stat. 1643

(i) Restoration, etc., of natural resources

Except in a situation requiring action to avoid an irreversible loss of natural resources or to prevent or reduce any continuing danger to natural resources or similar need for emergency action, funds may not be used under this chapter for the restoration, rehabilitation, or replacement or acquisition of the equivalent of any natural resources until a plan for the use of such funds for such purposes has been developed and adopted by affected Federal agencies and the

² See References in Text note below.

Governor or Governors of any State having sustained damage to natural resources within its borders, belonging to, managed by or appertaining to such State, and by the governing body of any Indian tribe having sustained damage to natural resources belonging to, managed by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation, after adequate public notice and opportunity for hearing and consideration of all public comment.

(j) Use of Post-closure Liability Fund

The President shall use the money in the Post-closure Liability Fund for any of the purposes specified in subsection (a) of this section with respect to a hazardous waste disposal facility for which liability has transferred to such fund under section 9607(k) of this title, and, in addition, for payment of any claim or appropriate request for costs of response, damages, or other compensation for injury or loss under section 9607 of this title or any other State or Federal law, resulting from a release of a hazardous substance from such a facility.

(k) Inspector General

In each fiscal year, the Inspector General of each department, agency, or instrumentality of the United States which is carrying out any authority of this chapter shall conduct an annual audit of all payments, obligations, reimbursements, or other uses of the Fund in the prior fiscal year, to assure that the Fund is being properly administered and that claims are being appropriately and expeditiously considered. The audit shall include an examination of a sample of agreements with States (in accordance with the provisions of the Single Audit Act [31 U.S.C. 7501 et seq.]) carrying out response actions under this subchapter and an examination of remedial investigations and feasibility studies prepared for remedial actions. The Inspector General shall submit to the Congress an annual report regarding the audit report required under this subsection. The report shall contain such recommendations as the Inspector General deems appropriate. Each department, agency, or instrumentality of the United States shall cooperate with its inspector general in carrying out this subsection.

(l) Foreign claimants

To the extent that the provisions of this chapter permit, a foreign claimant may assert a claim to the same extent that a United States claimant may assert a claim if—

- (1) the release of a hazardous substance occurred (A) in the navigable waters or (B) in or on the territorial sea or adjacent shoreline of a foreign country of which the claimant is a resident;
- (2) the claimant is not otherwise compensated for his loss;
- (3) the hazardous substance was released from a facility or from a vessel located adjacent to or within the navigable waters or was discharged in connection with activities conducted under the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331 et seq.)

or the Deepwater Port Act of 1974, as amended (33 U.S.C. 1501 et seq.); and

(4) recovery is authorized by a treaty or an executive agreement between the United States and foreign country involved, or if the Secretary of State, in consultation with the Attorney General and other appropriate officials, certifies that such country provides a comparable remedy for United States claimants.

(m) Agency for Toxic Substances and Disease Registry

There shall be directly available to the Agency for Toxic Substances and Disease Registry to be used for the purpose of carrying out activities described in subsection (c)(4) of this section and section 9604(i) of this title not less than \$50,000,000 per fiscal year for each of fiscal years 1987 and 1988, not less than \$55,000,000 for fiscal year 1989, and not less than \$60,000,000 per fiscal year for each of fiscal years 1990, 1991, 1992, 1993, and 1994. Any funds so made available which are not obligated by the end of the fiscal year in which made available shall be returned to the Fund.

(n) Limitations on research, development, and demonstration program

(1) Section 9660(b)

For each of the fiscal years 1987, 1988, 1989, 1990, 1991, 1992, 1993, and 1994, not more than \$20,000,000 of the amounts available in the Fund may be used for the purposes of carrying out the applied research, development, and demonstration program for alternative or innovative technologies and training program authorized under section 9660(b) of this title (relating to research, development, and demonstration) other than basic research. Such amounts shall remain available until expended.

(2) Section 9660(a)

From the amounts available in the Fund, not more than the following amounts may be used for the purposes of section 9660(a) of this title (relating to hazardous substance research, demonstration, and training activities):

- (A) For the fiscal year 1987, \$3,000,000.
- (B) For the fiscal year 1988, \$10,000,000.
- (C) For the fiscal year 1989, \$20,000,000.
- (D) For the fiscal year 1990, \$30,000,000.
- (E) For each of the fiscal years 1991, 1992, 1993, and 1994, \$35,000,000.

No more than 10 percent of such amounts shall be used for training under section 9660(a) of this title in any fiscal year.

(3) Section 9660(d)

For each of the fiscal years 1987, 1988, 1989, 1990, 1991, 1992, 1993, and 1994, not more than \$5,000,000 of the amounts available in the Fund may be used for the purposes of section 9660(d) of this title (relating to university hazardous substance research centers).

(o) Notification procedures for limitations on certain payments

Not later than 90 days after October 17, 1986, the President shall develop and implement pro-

cedures to adequately notify, as soon as practicable after a site is included on the National Priorities List, concerned local and State officials and other concerned persons of the limitations, set forth in subsection (a)(2) of this section, on the payment of claims for necessary response costs incurred with respect to such site.

(p) General revenue share of Superfund

(1) In general

The following sums are authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, to the Hazardous Substance Superfund:

- (A) For fiscal year 1987, \$212,500,000.
- (B) For fiscal year 1988, \$212,500,000.
- (C) For fiscal year 1989, \$212,500,000.
- (D) For fiscal year 1990, \$212,500,000.
- (E) For fiscal year 1991, \$212,500,000.
- (F) For fiscal year 1992, \$212,500,000.
- (G) For fiscal year 1993, \$212,500,000.
- (H) For fiscal year 1994, \$212,500,000.

In addition there is authorized to be appropriated to the Hazardous Substance Superfund for each fiscal year an amount equal to so much of the aggregate amount authorized to be appropriated under this subsection (and paragraph (2) of section 9631(b)³ of this title) as has not been appropriated before the beginning of the fiscal year involved.

(2) Computation

The amounts authorized to be appropriated under paragraph (1) of this subsection in a given fiscal year shall be available only to the extent that such amount exceeds the amount determined by the Secretary under section 9507(b)(2) of title 26 for the prior fiscal year.

(Pub. L. 96-510, title I, §111, Dec. 11, 1980, 94 Stat. 2788; Pub. L. 99-499, title I, §111, title II, §207(d), Oct. 17, 1986, 100 Stat. 1642, 1706; Pub. L. 101-144, title III, Nov. 9, 1989, 103 Stat. 857; Pub. L. 101-508, title VI, §6301, Nov. 5, 1990, 104 Stat. 1388-319.)

REFERENCES IN TEXT

Title II of Public Law 99-160 (relating to payment to the Hazardous Substances Trust Fund), referred to in subsec. (a), is title II of Pub. L. 99-160, Nov. 25, 1985, 99 Stat. 914. Provisions of title II relating to the Hazardous Substance Response Trust Fund are not classified to the Code. For complete classification of this Act to the Code, see Tables.

The Intervention on the High Seas Act, referred to in subsec. (a)(1), is Pub. L. 93-248, Feb. 5, 1974, 88 Stat. 8, as amended, which is classified generally to chapter 28 (§1471 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1471 of Title 33 and Tables.

Section 1321(c) of title 33, referred to in subsec. (a)(2), was amended generally by Pub. L. 101-380, title IV, §4201(a), Aug. 18, 1990, 104 Stat. 523, and no longer contains provisions establishing a National Contingency Plan. However, such provisions are contained in section 1321(d) of Title 33, Navigation and Navigable Waters.

Section 304 of this Act, referred to in subsec. (b), is section 304 of Pub. L. 96-510, title III, Dec. 11, 1980, 94 Stat. 2809, which enacted section 9654 of this title and amended section 1364 of Title 33.

Fishery conservation zone, referred to in subsec. (b), probably means the fishery conservation zone estab-

lished by section 1811 of Title 16, Conservation, which as amended generally by Pub. L. 99-659, title I, §101(b), Nov. 14, 1986, 100 Stat. 3706, relates to United States sovereign rights and fishery management authority over fish within the exclusive economic zone as defined in section 1802 of Title 16.

Subsection (f) of section 118 of the Superfund Amendments and Reauthorization Act of 1986, referred to in subsec. (c)(14), is section 118(f) of Pub. L. 99-499, title I, Oct. 17, 1986, 100 Stat. 1657, which is not classified to the Code.

Subchapter II of this chapter, referred to in subsec. (e)(2), was in the original "title II of this Act", meaning title II of Pub. L. 96-510, Dec. 11, 1980, 94 Stat. 2796, known as the Hazardous Substance Response Revenue Act of 1980, which enacted subchapter II of this chapter and sections 4611, 4612, 4661, 4662, 4681, and 4682 of Title 26, Internal Revenue Code. Sections 221 to 223 and 232 of Pub. L. 96-510, which were classified to sections 9631 to 9633 and 9641 of this title, comprising subchapter II of this chapter, were repealed by Pub. L. 99-499, title V, §§514(b), 517(c)(1), Oct. 17, 1986, 100 Stat. 1767, 1774. For complete classification of title II to the Code, see Short Title of 1980 Amendment note set out under section 1 of Title 26 and Tables.

The Single Audit Act, referred to in subsec. (k), probably means the Single Audit Act of 1984, Pub. L. 98-502, Oct. 19, 1984, 98 Stat. 2327, as amended, which is classified generally to chapter 75 (§7501 et seq.) of Title 31, Money and Finance. For complete classification of this Act to the Code, see Short Title note set out under section 7501 of Title 31 and Tables.

The Outer Continental Shelf Lands Act as amended, referred to in subsec. (l)(3), is act Aug. 7, 1953, ch. 345, 67 Stat. 462, as amended, which is classified generally to subchapter III (§1331 et seq.) of chapter 29 of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1331 of Title 43 and Tables.

The Deepwater Port Act of 1974, as amended, referred to in subsec. (l)(3), is Pub. L. 93-627, Jan. 3, 1975, 88 Stat. 2126, as amended, which is classified generally to chapter 29 (§1501 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1501 of Title 33 and Tables.

Section 9631(b) of this title, referred to in subsec. (p)(1), was repealed by Pub. L. 99-499, title V, §517(c)(1), Oct. 17, 1986, 100 Stat. 1774.

AMENDMENTS

1990—Subsec. (a). Pub. L. 101-508, §6301(1), inserted "and not more than \$5,100,000,000 for the period commencing October 1, 1991, and ending September 30, 1994," after "October 17, 1986," in introductory provisions.

Subsec. (c)(11). Pub. L. 101-508, §6301(2), substituted "8-fiscal year period" for "5-fiscal-year period".

Subsec. (c)(12). Pub. L. 101-508, §6301(3), substituted "1991, 1992, 1993, and 1994" for "and 1991".

Subsec. (m). Pub. L. 101-508, §6301(4), substituted "1990, 1991, 1992, 1993, and 1994" for "1990 and 1991".

Subsec. (n)(1). Pub. L. 101-508, §6301(5), substituted "1991, 1992, 1993, and 1994" for "and 1991".

Subsec. (n)(2)(E). Pub. L. 101-508, §6301(6), added subpar. (E) and struck out former subpar. (E) which read as follows: "For the fiscal year 1991, \$35,000,000."

Subsec. (n)(3). Pub. L. 101-508, §6301(7), substituted "1991, 1992, 1993, and 1994" for "and 1991".

Subsec. (p)(1)(F) to (H). Pub. L. 101-508, §6301(8), added subpars. (F) to (H).

1989—Subsec. (c)(12). Pub. L. 101-144, which directed that section 9611(c)(12) of the Superfund Amendments and Reauthorization Act of 1986 be amended by substituting "\$20,000,000" for "\$10,000,000", was executed by making the substitution in subsec. (c)(12) of this section, as the probable intent of Congress because the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499, does not contain a section 9611, but section 111(d)(2) of Pub. L. 99-499 enacted subsec. (c)(12) of this section.

³ See References in Text note below.

1986—Subsec. (a). Pub. L. 99-499, §111(a), (b), inserted heading and “For the purposes specified in this section there is authorized to be appropriated from the Hazardous Substance Superfund established under subchapter A of chapter 98 of title 26 not more than \$8,500,000,000 for the 5-year period beginning on October 17, 1986, and such sums shall remain available until expended. The preceding sentence constitutes a specific authorization for the funds appropriated under title II of Public Law 99-160 (relating to payment to the Hazardous Substances Trust Fund).” in introductory provisions, substituted “Payment” for “payment” in pars. (1) to (4), a period for a semicolon in pars. (1) and (2), and a period for “; and” in par. (3), and added pars. (5) and (6).

Subsec. (b). Pub. L. 99-499, §§111(c)(1), 207(d)(1), designated existing provisions as par. (1), inserted “, or by any Indian tribe or by the United States acting on behalf of any Indian tribe for natural resources belonging to, managed by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation” in par. (1), and added par. (2).

Subsec. (c). Pub. L. 99-499, §§111(d), 207(d)(2), in par. (1), substituted “The” for “the” and substituted a period for the semicolon at end, in par. (2), substituted “The” for “the”, inserted “or Indian tribe” and substituted a period for the semicolon at end, in par. (3), substituted “Subject” for “subject” and substituted a period for the semicolon at end, in par. (4), substituted “Any costs incurred in accordance with subsection (m) of this section (relating to ATSDR) and section 9604(i) of this title, including the costs of epidemiologic and laboratory studies, health assessments, preparation of toxicologic profiles” for “the costs of epidemiologic studies” and substituted a period for the semicolon at end, in par. (5), substituted a period for “; and”, in pars. (5) and (6), substituted “Subject” for “subject”, and added pars. (7) to (14).

Subsec. (e)(2). Pub. L. 99-499, §111(e), inserted at end “No money in the Fund may be used for the payment of any claim under subsection (a)(3) or subsection (b) of this section in any fiscal year for which the President determines that all of the Fund is needed for response to threats to public health from releases or threatened releases of hazardous substances.”

Subsec. (e)(3). Pub. L. 99-499, §111(f), inserted before the period at end “; except that money in the Fund shall be available for the provision of alternative water supplies (including the reimbursement of costs incurred by a municipality) in any case involving groundwater contamination outside the boundaries of a federally owned facility in which the federally owned facility is not the only potentially responsible party”.

Subsec. (f). Pub. L. 99-499, §207(d)(3), inserted “or Indian tribe”.

Subsec. (h). Pub. L. 99-499, §111(c)(2), struck out subsec. (h) which read as follows:

“(1) In accordance with regulations promulgated under section 9651(c) of this title, damages for injury to, destruction of, or loss of natural resources resulting from a release of a hazardous substance, for the purposes of this chapter and section 1321(f)(4) and (5) of title 33, shall be assessed by Federal officials designated by the President under the national contingency plan published under section 9605 of this title, and such officials shall act for the President as trustee under this section and section 1321(f)(5) of title 33.

“(2) Any determination or assessment of damages for injury to, destruction of, or loss of natural resources for the purposes of this chapter and section 1321(f)(4) and (5) of title 33 shall have the force and effect of a rebuttable presumption on behalf of any claimant (including a trustee under section 9607 of this title or a Federal agency) in any judicial or adjudicatory administrative proceeding under this chapter or section 1321 of title 33.”

Subsec. (i). Pub. L. 99-499, §207(d)(4), inserted “and by the governing body of any Indian tribe having sustained damage to natural resources belonging to, man-

aged by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation,” after “State.”.

Subsec. (k). Pub. L. 99-499, §111(g), amended subsec. (k) generally. Prior to amendment, subsec. (k) read as follows: “The Inspector General of each department or agency to which responsibility to obligate money in the Fund is delegated shall provide an audit review team to audit all payments, obligations, reimbursements, or other uses of the Fund, to assure that the Fund is being properly administered and that claims are being appropriately and expeditiously considered. Each such Inspector General shall submit to the Congress an interim report one year after the establishment of the Fund and a final report two years after the establishment of the Fund. Each such Inspector General shall thereafter provide such auditing of the Fund as is appropriate. Each Federal agency shall cooperate with the Inspector General in carrying out this subsection.”

Subsecs. (m) to (p). Pub. L. 99-499, §111(h), (i), added subsecs. (m) to (p).

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (k) of this section relating to the requirement that the Inspector General submit an annual report to Congress on the audit report required under subsec. (k), see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 7th item on page 151 of House Document No. 103-7.

COORDINATION OF TITLES I TO IV OF PUB. L. 99-499

Any provision of titles I to IV of Pub. L. 99-499, imposing any tax, premium, or fee; establishing any trust fund; or authorizing expenditures from any trust fund, to have no force or effect, see section 531 of Pub. L. 99-499, set out as a note under section 1 of Title 26, Internal Revenue Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6924, 6991b, 6991c, 9601, 9604, 9607, 9608, 9609, 9612, 9619, 9661 of this title; title 26 section 9507.

§ 9612. Claims procedure

(a) Claims against Fund for response costs

No claim may be asserted against the Fund pursuant to section 9611(a) of this title unless such claim is presented in the first instance to the owner, operator, or guarantor of the vessel or facility from which a hazardous substance has been released, if known to the claimant, and to any other person known to the claimant who may be liable under section 9607 of this title. In any case where the claim has not been satisfied within 60 days of presentation in accordance with this subsection, the claimant may present the claim to the Fund for payment. No claim against the Fund may be approved or certified during the pendency of an action by the claimant in court to recover costs which are the subject of the claim.

(b) Forms and procedures applicable

(1) Prescribing forms and procedures

The President shall prescribe appropriate forms and procedures for claims filed hereunder, which shall include a provision requiring the claimant to make a sworn verification of the claim to the best of his knowledge. Any person who knowingly gives or causes to be given any false information as a part of any

such claim shall, upon conviction, be fined in accordance with the applicable provisions of title 18 or imprisoned for not more than 3 years (or not more than 5 years in the case of a second or subsequent conviction), or both.

(2) Payment or request for hearing

The President may, if satisfied that the information developed during the processing of the claim warrants it, make and pay an award of the claim, except that no claim may be awarded to the extent that a judicial judgment has been made on the costs that are the subject of the claim. If the President declines to pay all or part of the claim, the claimant may, within 30 days after receiving notice of the President's decision, request an administrative hearing.

(3) Burden of proof

In any proceeding under this subsection, the claimant shall bear the burden of proving his claim.

(4) Decisions

All administrative decisions made hereunder shall be in writing, with notification to all appropriate parties, and shall be rendered within 90 days of submission of a claim to an administrative law judge, unless all the parties to the claim agree in writing to an extension or unless the President, in his discretion, extends the time limit for a period not to exceed sixty days.

(5) Finality and appeal

All administrative decisions hereunder shall be final, and any party to the proceeding may appeal a decision within 30 days of notification of the award or decision. Any such appeal shall be made to the Federal district court for the district where the release or threat of release took place. In any such appeal, the decision shall be considered binding and conclusive, and shall not be overturned except for arbitrary or capricious abuse of discretion.

(6) Payment

Within 20 days after the expiration of the appeal period for any administrative decision concerning an award, or within 20 days after the final judicial determination of any appeal taken pursuant to this subsection, the President shall pay any such award from the Fund. The President shall determine the method, terms, and time of payment.

(c) Subrogation rights; actions maintainable

(1) Payment of any claim by the Fund under this section shall be subject to the United States Government acquiring by subrogation the rights of the claimant to recover those costs of removal or damages for which it has compensated the claimant from the person responsible or liable for such release.

(2) Any person, including the Fund, who pays compensation pursuant to this chapter to any claimant for damages or costs resulting from a release of a hazardous substance shall be subrogated to all rights, claims, and causes of action for such damages and costs of removal that the claimant has under this chapter or any other law.

(3) Upon request of the President, the Attorney General shall commence an action on behalf of the Fund to recover any compensation paid by the Fund to any claimant pursuant to this subchapter, and, without regard to any limitation of liability, all interest, administrative and adjudicative costs, and attorney's fees incurred by the Fund by reason of the claim. Such an action may be commenced against any owner, operator, or guarantor, or against any other person who is liable, pursuant to any law, to the compensated claimant or to the Fund, for the damages or costs for which compensation was paid.

(d) Statute of limitations

(1) Claims for recovery of costs

No claim may be presented under this section for recovery of the costs referred to in section 9607(a) of this title after the date 6 years after the date of completion of all response action.

(2) Claims for recovery of damages

No claim may be presented under this section for recovery of the damages referred to in section 9607(a) of this title unless the claim is presented within 3 years after the later of the following:

(A) The date of the discovery of the loss and its connection with the release in question.

(B) The date on which final regulations are promulgated under section 9651(c) of this title.

(3) Minors and incompetents

The time limitations contained herein shall not begin to run—

(A) against a minor until the earlier of the date when such minor reaches 18 years of age or the date on which a legal representative is duly appointed for the minor, or

(B) against an incompetent person until the earlier of the date on which such person's incompetency ends or the date on which a legal representative is duly appointed for such incompetent person.

(e) Other statutory or common law claims not waived, etc.

Regardless of any State statutory or common law to the contrary, no person who asserts a claim against the Fund pursuant to this subchapter shall be deemed or held to have waived any other claim not covered or assertable against the Fund under this subchapter arising from the same incident, transaction, or set of circumstances, nor to have split a cause of action. Further, no person asserting a claim against the Fund pursuant to this subchapter shall as a result of any determination of a question of fact or law made in connection with that claim be deemed or held to be collaterally estopped from raising such question in connection with any other claim not covered or assertable against the Fund under this subchapter arising from the same incident, transaction, or set of circumstances.

(f) Double recovery prohibited

Where the President has paid out of the Fund for any response costs or any costs specified

under section 9611(c)(1) or (2) of this title, no other claim may be paid out of the Fund for the same costs.

(Pub. L. 96-510, title I, §112, Dec. 11, 1980, 94 Stat. 2792; Pub. L. 99-499, title I, §§109(a)(3), 112, Oct. 17, 1986, 100 Stat. 1633, 1646.)

AMENDMENTS

1986—Subsec. (a). Pub. L. 99-499, §112(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “All claims which may be asserted against the Fund pursuant to section 9611 of this title shall be presented in the first instance to the owner, operator, or guarantor of the vessel or facility from which a hazardous substance has been released, if known to the claimant, and to any other person known to the claimant who may be liable under section 9607 of this title. In any case where the claim has not been satisfied within sixty days of presentation in accordance with this subsection, the claimant may elect to commence an action in court against such owner, operator, guarantor, or other person or to present the claim to the Fund for payment.”

Subsec. (b)(1). Pub. L. 99-499, §112(b), added heading. Pub. L. 99-499, §109(a)(3), substituted “in accordance with the applicable provisions of title 18 or imprisoned for not more than 3 years (or not more than 5 years in the case of a second or subsequent conviction), or both” for “up to \$5,000 or imprisoned for not more than one year, or both”.

Subsec. (b)(2) to (6). Pub. L. 99-499, §112(b), added pars. (2) to (6) and struck out former pars. (2) to (4) which related to the settlement and arbitration of claims against liable persons and against the Fund.

Subsec. (d). Pub. L. 99-499, §112(c), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: “No claim may be presented, nor may an action be commenced for damages under this subchapter, unless that claim is presented or action commenced within three years from the date of the discovery of the loss or December 11, 1980, whichever is later: *Provided, however,* That the time limitations contained herein shall not begin to run against a minor until he reaches eighteen years of age or a legal representative is duly appointed for him, nor against an incompetent person until his incompetency ends or a legal representative is duly appointed for him.”

Subsec. (f). Pub. L. 99-499, §112(d), added subsec. (f).

COORDINATION OF TITLES I TO IV OF PUB. L. 99-499

Any provision of titles I to IV of Pub. L. 99-499, imposing any tax, premium, or fee; establishing any trust fund; or authorizing expenditures from any trust fund, to have no force or effect, see section 531 of Pub. L. 99-499, set out as a note under section 1 of Title 26, Internal Revenue Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9607, 9611 of this title.

§ 9613. Civil proceedings

(a) Review of regulations in Circuit Court of Appeals of the United States for the District of Columbia

Review of any regulation promulgated under this chapter may be had upon application by any interested person only in the Circuit Court of Appeals of the United States for the District of Columbia. Any such application shall be made within ninety days from the date of promulgation of such regulations. Any matter with respect to which review could have been obtained under this subsection shall not be subject to judicial review in any civil or criminal proceeding

for enforcement or to obtain damages or recovery of response costs.

(b) Jurisdiction; venue

Except as provided in subsections (a) and (h) of this section, the United States district courts shall have exclusive original jurisdiction over all controversies arising under this chapter, without regard to the citizenship of the parties or the amount in controversy. Venue shall lie in any district in which the release or damages occurred, or in which the defendant resides, may be found, or has his principal office. For the purposes of this section, the Fund shall reside in the District of Columbia.

(c) Controversies or other matters resulting from tax collection or tax regulation review

The provisions of subsections (a) and (b) of this section shall not apply to any controversy or other matter resulting from the assessment or collection of any tax, as provided by subchapter II¹ of this chapter, or to the review of any regulation promulgated under title 26.

(d) Litigation commenced prior to December 11, 1980

No provision of this chapter shall be deemed or held to moot any litigation concerning any release of any hazardous substance, or any damages associated therewith, commenced prior to December 11, 1980.

(e) Nationwide service of process

In any action by the United States under this chapter, process may be served in any district where the defendant is found, resides, transacts business, or has appointed an agent for the service of process.

(f) Contribution

(1) Contribution

Any person may seek contribution from any other person who is liable or potentially liable under section 9607(a) of this title, during or following any civil action under section 9606 of this title or under section 9607(a) of this title. Such claims shall be brought in accordance with this section and the Federal Rules of Civil Procedure, and shall be governed by Federal law. In resolving contribution claims, the court may allocate response costs among liable parties using such equitable factors as the court determines are appropriate. Nothing in this subsection shall diminish the right of any person to bring an action for contribution in the absence of a civil action under section 9606 of this title or section 9607 of this title.

(2) Settlement

A person who has resolved its liability to the United States or a State in an administrative or judicially approved settlement shall not be liable for claims for contribution regarding matters addressed in the settlement. Such settlement does not discharge any of the other potentially liable persons unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement.

(3) Persons not party to settlement

(A) If the United States or a State has obtained less than complete relief from a person

¹ See References in Text note below.

who has resolved its liability to the United States or the State in an administrative or judicially approved settlement, the United States or the State may bring an action against any person who has not so resolved its liability.

(B) A person who has resolved its liability to the United States or a State for some or all of a response action or for some or all of the costs of such action in an administrative or judicially approved settlement may seek contribution from any person who is not party to a settlement referred to in paragraph (2).

(C) In any action under this paragraph, the rights of any person who has resolved its liability to the United States or a State shall be subordinate to the rights of the United States or the State. Any contribution action brought under this paragraph shall be governed by Federal law.

(g) Period in which action may be brought

(1) Actions for natural resource damages

Except as provided in paragraphs (3) and (4), no action may be commenced for damages (as defined in section 9601(6) of this title) under this chapter, unless that action is commenced within 3 years after the later of the following:

(A) The date of the discovery of the loss and its connection with the release in question.

(B) The date on which regulations are promulgated under section 9651(c) of this title.

With respect to any facility listed on the National Priorities List (NPL), any Federal facility identified under section 9620 of this title (relating to Federal facilities), or any vessel or facility at which a remedial action under this chapter is otherwise scheduled, an action for damages under this chapter must be commenced within 3 years after the completion of the remedial action (excluding operation and maintenance activities) in lieu of the dates referred to in subparagraph (A) or (B). In no event may an action for damages under this chapter with respect to such a vessel or facility be commenced (i) prior to 60 days after the Federal or State natural resource trustee provides to the President and the potentially responsible party a notice of intent to file suit, or (ii) before selection of the remedial action if the President is diligently proceeding with a remedial investigation and feasibility study under section 9604(b) of this title or section 9620 of this title (relating to Federal facilities). The limitation in the preceding sentence on commencing an action before giving notice or before selection of the remedial action does not apply to actions filed on or before October 17, 1986.

(2) Actions for recovery of costs

An initial action for recovery of the costs referred to in section 9607 of this title must be commenced—

(A) for a removal action, within 3 years after completion of the removal action, except that such cost recovery action must be brought within 6 years after a determination to grant a waiver under section 9604(c)(1)(C) of this title for continued response action; and

(B) for a remedial action, within 6 years after initiation of physical on-site construction of the remedial action, except that, if the remedial action is initiated within 3 years after the completion of the removal action, costs incurred in the removal action may be recovered in the cost recovery action brought under this subparagraph.

In any such action described in this subsection, the court shall enter a declaratory judgment on liability for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or damages. A subsequent action or actions under section 9607 of this title for further response costs at the vessel or facility may be maintained at any time during the response action, but must be commenced no later than 3 years after the date of completion of all response action. Except as otherwise provided in this paragraph, an action may be commenced under section 9607 of this title for recovery of costs at any time after such costs have been incurred.

(3) Contribution

No action for contribution for any response costs or damages may be commenced more than 3 years after—

(A) the date of judgment in any action under this chapter for recovery of such costs or damages, or

(B) the date of an administrative order under section 9622(g) of this title (relating to de minimis settlements) or 9622(h) of this title (relating to cost recovery settlements) or entry of a judicially approved settlement with respect to such costs or damages.

(4) Subrogation

No action based on rights subrogated pursuant to this section by reason of payment of a claim may be commenced under this subchapter more than 3 years after the date of payment of such claim.

(5) Actions to recover indemnification payments

Notwithstanding any other provision of this subsection, where a payment pursuant to an indemnification agreement with a response action contractor is made under section 9619 of this title, an action under section 9607 of this title for recovery of such indemnification payment from a potentially responsible party may be brought at any time before the expiration of 3 years from the date on which such payment is made.

(6) Minors and incompetents

The time limitations contained herein shall not begin to run—

(A) against a minor until the earlier of the date when such minor reaches 18 years of age or the date on which a legal representative is duly appointed for such minor, or

(B) against an incompetent person until the earlier of the date on which such incompetent's incompetency ends or the date on which a legal representative is duly appointed for such incompetent.

(h) Timing of review

No Federal court shall have jurisdiction under Federal law other than under section 1332 of title 28 (relating to diversity of citizenship jurisdiction) or under State law which is applicable or relevant and appropriate under section 9621 of this title (relating to cleanup standards) to review any challenges to removal or remedial action selected under section 9604 of this title, or to review any order issued under section 9606(a) of this title, in any action except one of the following:

- (1) An action under section 9607 of this title to recover response costs or damages or for contribution.
- (2) An action to enforce an order issued under section 9606(a) of this title or to recover a penalty for violation of such order.
- (3) An action for reimbursement under section 9606(b)(2) of this title.
- (4) An action under section 9659 of this title (relating to citizens suits) alleging that the removal or remedial action taken under section 9604 of this title or secured under section 9606 of this title was in violation of any requirement of this chapter. Such an action may not be brought with regard to a removal where a remedial action is to be undertaken at the site.
- (5) An action under section 9606 of this title in which the United States has moved to compel a remedial action.

(i) Intervention

In any action commenced under this chapter or under the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.] in a court of the United States, any person may intervene as a matter of right when such person claims an interest relating to the subject of the action and is so situated that the disposition of the action may, as a practical matter, impair or impede the person's ability to protect that interest, unless the President or the State shows that the person's interest is adequately represented by existing parties.

(j) Judicial review**(1) Limitation**

In any judicial action under this chapter, judicial review of any issues concerning the adequacy of any response action taken or ordered by the President shall be limited to the administrative record. Otherwise applicable principles of administrative law shall govern whether any supplemental materials may be considered by the court.

(2) Standard

In considering objections raised in any judicial action under this chapter, the court shall uphold the President's decision in selecting the response action unless the objecting party can demonstrate, on the administrative record, that the decision was arbitrary and capricious or otherwise not in accordance with law.

(3) Remedy

If the court finds that the selection of the response action was arbitrary and capricious or otherwise not in accordance with law, the court shall award (A) only the response costs

or damages that are not inconsistent with the national contingency plan, and (B) such other relief as is consistent with the National Contingency Plan.

(4) Procedural errors

In reviewing alleged procedural errors, the court may disallow costs or damages only if the errors were so serious and related to matters of such central relevance to the action that the action would have been significantly changed had such errors not been made.

(k) Administrative record and participation procedures**(1) Administrative record**

The President shall establish an administrative record upon which the President shall base the selection of a response action. The administrative record shall be available to the public at or near the facility at issue. The President also may place duplicates of the administrative record at any other location.

(2) Participation procedures**(A) Removal action**

The President shall promulgate regulations in accordance with chapter 5 of title 5 establishing procedures for the appropriate participation of interested persons in the development of the administrative record on which the President will base the selection of removal actions and on which judicial review of removal actions will be based.

(B) Remedial action

The President shall provide for the participation of interested persons, including potentially responsible parties, in the development of the administrative record on which the President will base the selection of remedial actions and on which judicial review of remedial actions will be based. The procedures developed under this subparagraph shall include, at a minimum, each of the following:

- (i) Notice to potentially affected persons and the public, which shall be accompanied by a brief analysis of the plan and alternative plans that were considered.
- (ii) A reasonable opportunity to comment and provide information regarding the plan.
- (iii) An opportunity for a public meeting in the affected area, in accordance with section 9617(a)(2) of this title (relating to public participation).
- (iv) A response to each of the significant comments, criticisms, and new data submitted in written or oral presentations.
- (v) A statement of the basis and purpose of the selected action.

For purposes of this subparagraph, the administrative record shall include all items developed and received under this subparagraph and all items described in the second sentence of section 9617(d) of this title. The President shall promulgate regulations in accordance with chapter 5 of title 5 to carry out the requirements of this subparagraph.

(C) Interim record

Until such regulations under subparagraphs (A) and (B) are promulgated, the ad-

ministrative record shall consist of all items developed and received pursuant to current procedures for selection of the response action, including procedures for the participation of interested parties and the public. The development of an administrative record and the selection of response action under this chapter shall not include an adjudicatory hearing.

(D) Potentially responsible parties

The President shall make reasonable efforts to identify and notify potentially responsible parties as early as possible before selection of a response action. Nothing in this paragraph shall be construed to be a defense to liability.

(I) Notice of actions

Whenever any action is brought under this chapter in a court of the United States by a plaintiff other than the United States, the plaintiff shall provide a copy of the complaint to the Attorney General of the United States and to the Administrator of the Environmental Protection Agency.

(Pub. L. 96-510, title I, § 113, Dec. 11, 1980, 94 Stat. 2795; Pub. L. 99-499, title I, § 113, Oct. 17, 1986, 100 Stat. 1647; Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095.)

REFERENCES IN TEXT

Subchapter II of this chapter, referred to in subsec. (c), was in the original "title II of this Act", meaning title II of Pub. L. 96-510, Dec. 11, 1980, 94 Stat. 2796, known as the Hazardous Substance Response Revenue Act of 1980, which enacted subchapter II of this chapter and sections 4611, 4612, 4661, 4662, 4681, and 4682 of Title 26, Internal Revenue Code. Sections 221 to 223 and 232 of Pub. L. 96-510, which were classified to sections 9631 to 9633 and 9641 of this title, comprising subchapter II of this chapter, were repealed by Pub. L. 99-499, title V, §§ 514(b), 517(c)(1), Oct. 17, 1986, 100 Stat. 1767, 1774. For complete classification of title II to the Code, see Short Title of 1980 Amendment note set out under section 1 of Title 26 and Tables.

The Federal Rules of Civil Procedure, referred to in subsec. (f)(1), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

The Solid Waste Disposal Act, referred to in subsec. (i), is title II of Pub. L. 89-272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94-580, § 2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§ 6901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

AMENDMENTS

1986—Subsec. (b). Pub. L. 99-499, § 113(c)(1), substituted "subsections (a) and (h)" for "subsection (a)".

Subsec. (c). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

Subsecs. (e) to (l). Pub. L. 99-499, § 113(a), (b), (c)(2), added subsecs. (e) to (l).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9607, 9659 of this title.

§ 9614. Relationship to other law

(a) Additional State liability or requirements with respect to release of substances within State

Nothing in this chapter shall be construed or interpreted as preempting any State from im-

posing any additional liability or requirements with respect to the release of hazardous substances within such State.

(b) Recovery under other State or Federal law of compensation for removal costs or damages, or payment of claims

Any person who receives compensation for removal costs or damages or claims pursuant to this chapter shall be precluded from recovering compensation for the same removal costs or damages or claims pursuant to any other State or Federal law. Any person who receives compensation for removal costs or damages or claims pursuant to any other Federal or State law shall be precluded from receiving compensation for the same removal costs or damages or claims as provided in this chapter.

(c) Recycled oil

(1) Service station dealers, etc.

No person (including the United States or any State) may recover, under the authority of subsection (a)(3) or (a)(4) of section 9607 of this title, from a service station dealer for any response costs or damages resulting from a release or threatened release of recycled oil, or use the authority of section 9606 of this title against a service station dealer other than a person described in subsection (a)(1) or (a)(2) of section 9607 of this title, if such recycled oil—

(A) is not mixed with any other hazardous substance, and

(B) is stored, treated, transported, or otherwise managed in compliance with regulations or standards promulgated pursuant to section 3014 of the Solid Waste Disposal Act [42 U.S.C. 6935] and other applicable authorities.

Nothing in this paragraph shall affect or modify in any way the obligations or liability of any person under any other provision of State or Federal law, including common law, for damages, injury, or loss resulting from a release or threatened release of any hazardous substance or for removal or remedial action or the costs of removal or remedial action.

(2) Presumption

Solely for the purposes of this subsection, a service station dealer may presume that a small quantity of used oil is not mixed with other hazardous substances if it—

(A) has been removed from the engine of a light duty motor vehicle or household appliances by the owner of such vehicle or appliances, and

(B) is presented, by such owner, to the dealer for collection, accumulation, and delivery to an oil recycling facility.

(3) Definition

For purposes of this subsection, the terms "used oil" and "recycled oil" have the same meanings as set forth in sections 1004(36) and 1004(37) of the Solid Waste Disposal Act [42 U.S.C. 6903(36), (37)] and regulations promulgated pursuant to that Act [42 U.S.C. 6901 et seq.].

(4) Effective date

The effective date of paragraphs (1) and (2) of this subsection shall be the effective date of

regulations or standards promulgated under section 3014 of the Solid Waste Disposal Act [42 U.S.C. 6935] that include, among other provisions, a requirement to conduct corrective action to respond to any releases of recycled oil under subtitle C or subtitle I of such Act [42 U.S.C. 6921 et seq., 6991 et seq.].

(d) Financial responsibility of owner or operator of vessel or facility under State or local law, rule, or regulation

Except as provided in this subchapter, no owner or operator of a vessel or facility who establishes and maintains evidence of financial responsibility in accordance with this subchapter shall be required under any State or local law, rule, or regulation to establish or maintain any other evidence of financial responsibility in connection with liability for the release of a hazardous substance from such vessel or facility. Evidence of compliance with the financial responsibility requirements of this subchapter shall be accepted by a State in lieu of any other requirement of financial responsibility imposed by such State in connection with liability for the release of a hazardous substance from such vessel or facility.

(Pub. L. 96-510, title I, §114, Dec. 11, 1980, 94 Stat. 2795; Pub. L. 99-499, title I, §114(a), Oct. 17, 1986, 100 Stat. 1652.)

REFERENCES IN TEXT

The Solid Waste Disposal Act, referred to in subsec. (c)(3), (4), is title II of Pub. L. 89-272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§6901 et seq.) of this title. Subtitles C and I of the Solid Waste Disposal Act are classified generally to subchapters III (§6921 et seq.) and IX (§6991 et seq.), respectively, of chapter 82 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

AMENDMENTS

1986—Subsec. (c). Pub. L. 99-499 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “Except as provided in this chapter, no person may be required to contribute to any fund, the purpose of which is to pay compensation for claims for any costs of response or damages or claims which may be compensated under this subchapter. Nothing in this section shall preclude any State from using general revenues for such a fund, or from imposing a tax or fee upon any person or upon any substance in order to finance the purchase or repositioning of hazardous substance response equipment or other preparations for the response to a release of hazardous substances which affects such State.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9601, 9607 of this title.

§ 9615. Presidential delegation and assignment of duties or powers and promulgation of regulations

The President is authorized to delegate and assign any duties or powers imposed upon or assigned to him and to promulgate any regulations necessary to carry out the provisions of this subchapter.

(Pub. L. 96-510, title I, §115, Dec. 11, 1980, 94 Stat. 2796.)

EX. ORD. NO. 12580. SUPERFUND IMPLEMENTATION

Ex. Ord. No. 12580, Jan. 23, 1987, 52 F.R. 2923, as amended by Ex. Ord. No. 12777, §1(a), Oct. 18, 1991, 56 F.R. 54757; Ex. Ord. No. 13016, Aug. 28, 1996, 61 F.R. 45871; Ex. Ord. No. 13286, §43, Feb. 28, 2003, 68 F.R. 10627; Ex. Ord. No. 13308, June 20, 2003, 68 F.R. 37691, provided:

By the authority vested in me as President of the United States of America by Section 115 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9615 *et seq.*) (“the Act”), and by Section 301 of Title 3 of the United States Code, it is hereby ordered as follows:

SECTION 1. *National Contingency Plan.* (a)(1) The National Contingency Plan (“the NCP”), shall provide for a National Response Team (“the NRT”) composed of representatives of appropriate Federal departments and agencies for national planning and coordination of preparedness and response actions, and Regional Response Teams as the regional counterparts to the NRT for planning and coordination of regional preparedness and response actions.

(2) The following agencies (in addition to other appropriate agencies) shall provide representatives to the National and Regional Response Teams to carry out their responsibilities under the NCP: Department of State, Department of Defense, Department of Justice, Department of the Interior, Department of Agriculture, Department of Commerce, Department of Labor, Department of Health and Human Services, Department of Transportation, Department of Energy, Department of Homeland Security, Environmental Protection Agency, [sic] United States Coast Guard, and the Nuclear Regulatory Commission.

(3) Except for periods of activation because of response action, the representative of the Environmental Protection Agency (“EPA”) shall be the chairman, and the representative of the United States Coast Guard shall be the vice chairman, of the NRT and these agencies’ representatives shall be co-chairs of the Regional Response Teams (“the RRTs”). When the NRT or an RRT is activated for a response action, the EPA representative shall be the chairman when the release or threatened release or discharge or threatened discharge occurs in the inland zone, and the United States Coast Guard representative shall be the chairman when the release or threatened release or discharge or threatened discharge occurs in the coastal zone, unless otherwise agreed upon by the EPA and the United States Coast Guard representatives (inland and coastal zones are defined in the NCP).

(4) The RRTs may include representatives from State governments, local governments (as agreed upon by the States), and Indian tribal governments. Subject to the functions and authorities delegated to Executive departments and agencies in other sections of this order, the NRT shall provide policy and program direction to the RRTs.

(b)(1) The responsibility for the revision of the NCP and all the other functions vested in the President by Sections 105(a), (b), (c), (g) and (h), 125, and 301(f) of the Act [42 U.S.C. 9605(a), (b), (c), (g), (h), 9625, 9651(f)], by Section 311(d)(1) of the Federal Water Pollution Control Act [33 U.S.C. 1321(d)(1)], and by Section 4201(c) of the Oil Pollution Act of 1990 [Pub. L. 101-380, 33 U.S.C. 1321 note] is delegated to the Administrator of the Environmental Protection Agency (“the Administrator”).

(2) The function vested in the President by Section 118(p) of the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99-499) (“SARA”) [100 Stat. 1662] is delegated to the Administrator.

(c) In accord with Section 107(f)(2)(A) of the Act [42 U.S.C. 9607(f)(2)(A)], Section 311(f)(5) of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1321(f)(5)), and Section 1006(b)(1) and (2) of the Oil Pollution Act of 1990 [33 U.S.C. 2706(b)(1), (2)], the following shall be among those designated in the NCP as Federal trustees for natural resources:

- (1) Secretary of Defense;
- (2) Secretary of the Interior;

- (3) Secretary of Agriculture;
- (4) Secretary of Commerce;
- (5) Secretary of Energy.

In the event of a spill, the above named Federal trustees for natural resources shall designate one trustee to act as Lead Administrative Trustee, the duties of which shall be defined in the regulations promulgated pursuant to Section 1006(e)(1) of OPA. If there are natural resource trustees other than those designated above which are acting in the event of a spill, those other trustees may join with the Federal trustees to name a Lead Administrative Trustee which shall exercise the duties defined in the regulations promulgated pursuant to Section 1006(e)(1) of OPA.

(d) Revisions to the NCP shall be made in consultation with members of the NRT prior to publication for notice and comment.

(e) All revisions to the NCP, whether in proposed or final form, shall be subject to review and approval by the Director of the Office of Management and Budget ("OMB").

SEC. 2. Response and Related Authorities. (a) The functions vested in the President by the first sentence of Section 104(b)(1) of the Act [42 U.S.C. 9604(b)(1)] relating to "illness, disease, or complaints thereof" are delegated to the Secretary of Health and Human Services who shall, in accord with Section 104(i) of the Act, perform those functions through the Public Health Service.

(b) The functions vested in the President by Sections 104(e)(7)(C), 113(k)(2), 119(c)(7), and 121(f)(1) of the Act [42 U.S.C. 9604(e)(7)(C), 9613(k)(2), 9619(c)(7), 9621(f)(1)], relating to promulgation of regulations and guidelines, are delegated to the Administrator, to be exercised in consultation with the NRT.

(c)(1) The functions vested in the President by Sections 104(a) and the second sentence of 126(b) of the Act [42 U.S.C. 9604(a), 9626(b)], to the extent they require permanent relocation of residents, businesses, and community facilities or temporary evacuation and housing of threatened individuals not otherwise provided for, are delegated to the Director of the Federal Emergency Management Agency.

(2) Subject to subsection (b) of this Section, the functions vested in the President by Sections 117(a) and (c), and 119 of the Act [42 U.S.C. 9617(a), (c), 9619], to the extent such authority is needed to carry out the functions delegated under paragraph (1) of this subsection, are delegated to the Director of the Federal Emergency Management Agency.

(d) Subject to subsections (a), (b) and (c) of this Section, the functions vested in the President by Sections 104(a), (b) and (c)(4), 113(k), 117(a) and (c), 119, and 121 of the Act [42 U.S.C. 9604(a), (b), (c)(4), 9613(k), 9617(a), (c), 9619, 9621] are delegated to the Secretaries of Defense and Energy, with respect to releases or threatened releases where either the release is on or the sole source of the release is from any facility or vessel under the jurisdiction, custody or control of their departments, respectively, including vessels bare-boat chartered and operated. These functions must be exercised consistent with the requirements of Section 120 of the Act [42 U.S.C. 9620].

(e)(1) Subject to subsections (a), (b), (c), and (d) of this Section, the functions vested in the President by Sections 104(a), (b), and (c)(4), and 121 of the Act [42 U.S.C. 9604(a), (b), (c)(4), 9621] are delegated to the heads of Executive departments and agencies, with respect to remedial actions for releases or threatened releases which are not on the National Priorities List ("the NPL") and removal actions other than emergencies, where either the release is on or the sole source of the release is from any facility or vessel under the jurisdiction, custody or control of those departments and agencies, including vessels bare-boat chartered and operated. The Administrator shall define the term "emergency", solely for the purposes of this subsection, either by regulation or by a memorandum of understanding with the head of an Executive department or agency.

(2) Subject to subsections (b), (c), and (d) of this Section, the functions vested in the President by Sections 104(b)(2), 113(k), 117(a) and (c), and 119 of the Act [42 U.S.C. 9604(b)(2), 9613(k), 9617(a), (c), 9619] are delegated to the heads of Executive departments and agencies, with respect to releases or threatened releases where either the release is on or the sole source of the release is from any facility or vessel under the jurisdiction, custody or control of those departments and agencies, including vessels bare-boat chartered and operated.

(f) Subject to subsections (a), (b), (c), (d), and (e) of this Section, the functions vested in the President by Sections 104(a), (b) and (c)(4), 113(k), 117(a) and (c), 119, and 121 of the Act [42 U.S.C. 9604(a), (b), (c)(4), 9613(k), 9617(a), (c), 9619, 9621] are delegated to the Secretary of the Department in which the Coast Guard is operating ("the Coast Guard"), with respect to any release or threatened release involving the coastal zone, Great Lakes waters, ports, and harbors.

(g) Subject to subsections (a), (b), (c), (d), (e), and (f) of this Section, the functions vested in the President by Sections 101(24), 104(a), (b), (c)(4) and (c)(9), 113(k), 117(a) and (c), 119, 121, and 126(b) of the Act [42 U.S.C. 9601(24), 9604(a), (b), (c)(4), (9), 9613(k), 9617(a), (c), 9619, 9621, 9626(b)] are delegated to the Administrator. The Administrator's authority under Section 119 of the Act is retroactive to the date of enactment of SARA [Oct. 17, 1986].

(h) The functions vested in the President by Section 104(c)(3) of the Act [42 U.S.C. 9604(c)(3)] are delegated to the Administrator, with respect to providing assurances for Indian tribes, to be exercised in consultation with the Secretary of the Interior.

(i) Subject to subsections (d), (e), (f), (g) and (h) of this Section, the functions vested in the President by Section 104(c) and (d) of the Act are delegated to the Coast Guard, the Secretary of Health and Human Services, the Director of the Federal Emergency Management Agency, and the Administrator in order to carry out the functions delegated to them by this Section.

(j)(1) The functions vested in the President by Section 104(e)(5)(A) are delegated to the heads of Executive departments and agencies, with respect to releases or threatened releases where either the release is on or the sole source of the release is from any facility or vessel under the jurisdiction, custody or control of those departments and agencies, to be exercised with the concurrence of the Attorney General.

(2) Subject to subsection (b) of this Section and paragraph (1) of this subsection, the functions vested in the President by Section 104(e) are delegated to the heads of Executive departments and agencies in order to carry out their functions under this Order or the Act.

(k) The functions vested in the President by Section 104(f), (g), (h), (i)(11), and (j) of the Act are delegated to the heads of Executive departments and agencies in order to carry out the functions delegated to them by this Section. The exercise of authority under Section 104(h) of the Act shall be subject to the approval of the Administrator of the Office of Federal Procurement Policy.

SEC. 3. Cleanup Schedules. (a) The functions vested in the President by Sections 116(a) and the first two sentences of 105(d) of the Act [42 U.S.C. 9616(a), 9605(d)] are delegated to the heads of Executive departments and agencies with respect to facilities under the jurisdiction, custody or control of those departments and agencies.

(b) Subject to subsection (a) of this Section, the functions vested in the President by Sections 116 and 105(d) are delegated to the Administrator.

SEC. 4. Enforcement. (a) The functions vested in the President by Sections 109(d) and 122(e)(3)(A) of the Act [42 U.S.C. 9609(d), 9622(e)(3)(A)], relating to development of regulations and guidelines, are delegated to the Administrator, to be exercised in consultation with the Attorney General.

(b)(1) Subject to subsection (a) of this Section, the functions vested in the President by Section 122 [42 U.S.C. 9622] (except subsection (b)(1)) are delegated to

the heads of Executive departments and agencies, with respect to releases or threatened releases not on the NPL where either the release is on or the sole source of the release is from any facility under the jurisdiction, custody or control of those Executive departments and agencies. These functions may be exercised only with the concurrence of the Attorney General.

(2) Subject to subsection (a) of this Section, the functions vested in the President by Section 109 of the Act [42 U.S.C. 9609], relating to violations of Section 122 of the Act, are delegated to the heads of Executive departments and agencies, with respect to releases or threatened releases not on the NPL where either the release is on or the sole source of the release is from any facility under the jurisdiction, custody or control of those Executive departments and agencies. These functions may be exercised only with the concurrence of the Attorney General.

(c)(1) Subject to subsection[s] (a) and (b)(1) of this Section, the functions vested in the President by Sections 106(a) and 122 of the Act [42 U.S.C. 9606(a), 9622] are delegated to the Coast Guard with respect to any release or threatened release involving the coastal zone, Great Lakes waters, ports, and harbors.

(2) Subject to subsection[s] (a) and (b)(2) of this Section, the functions vested in the President by Section 109 of the Act [42 U.S.C. 9609], relating to violations of Sections 103(a) and (b), and 122 of the Act [42 U.S.C. 9603(a), (b), 9622], are delegated to the Coast Guard with respect to any release or threatened release involving the coastal zone, Great Lakes waters, ports, and harbors.

(3) Subject to subsections (a) and (b)(1) of this section, the functions vested in the President by sections 106(a) [42 U.S.C. 9606(a)] and 122 [42 U.S.C. 9622] (except subsection (b)(1)) of the Act are delegated to the Secretary of the Interior, the Secretary of Commerce, the Secretary of Agriculture, the Secretary of Defense, and the Secretary of Energy, to be exercised only with the concurrence of the Coast Guard, with respect to any release or threatened release in the coastal zone, Great Lakes waters, ports, and harbors, affecting (1) natural resources under their trusteeship, or (2) a vessel or facility subject to their custody, jurisdiction, or control. Such authority shall not be exercised at any vessel or facility at which the Coast Guard is the lead Federal agency for the conduct or oversight of a response action. Such authority shall not be construed to authorize or permit use of the Hazardous Substance Superfund to implement section 106 or to fund performance of any response action in lieu of the payment by a person who receives but does not comply with an order pursuant to section 106(a), where such order has been issued by the Secretary of the Interior, the Secretary of Commerce, the Secretary of Agriculture, the Secretary of Defense, or the Secretary of Energy. This subsection shall not be construed to limit any authority delegated by any other section of this order. Authority granted under this subsection shall be exercised in a manner to ensure interagency coordination that enhances efficiency and effectiveness.

(d)(1) Subject to subsections (a), (b)(1), and (c)(1) of this Section, the functions vested in the President by Sections 106 and 122 of the Act [42 U.S.C. 9606, 9622] are delegated to the Administrator.

(2) Subject to subsections (a), (b)(2), and (c)(2) of this Section, the functions vested in the President by Section 109 of the Act [42 U.S.C. 9609], relating to violations of Sections 103 and 122 of the Act [42 U.S.C. 9603, 9622], are delegated to the Administrator.

(3) Subject to subsections (a), (b)(1), and (c)(1) of this section, the functions vested in the President by sections 106(a) [42 U.S.C. 9606(a)] and 122 [42 U.S.C. 9622] (except subsection (b)(1)) of the Act are delegated to the Secretary of the Interior, the Secretary of Commerce, the Secretary of Agriculture, the Secretary of Defense, and the Department of Energy, to be exercised only with the concurrence of the Administrator, with respect to any release or threatened release affecting (1) natural resources under their trusteeship, or (2) a

vessel or facility subject to their custody, jurisdiction, or control. Such authority shall not be exercised at any vessel or facility at which the Administrator is the lead Federal official for the conduct or oversight of a response action. Such authority shall not be construed to authorize or permit use of the Hazardous Substance Superfund to implement section 106 or to fund performance of any response action in lieu of the payment by a person who receives but does not comply with an order pursuant to section 106(a), where such order has been issued by the Secretary of the Interior, the Secretary of Commerce, the Secretary of Agriculture, the Secretary of Defense, or the Secretary of Energy. This subsection shall not be construed to limit any authority delegated by any other section of this order. Authority granted under this subsection shall be exercised in a manner to ensure interagency coordination that enhances efficiency and effectiveness.

(e) Notwithstanding any other provision of this Order, the authority under Sections 104(e)(5)(A) and 106(a) of the Act [42 U.S.C. 9604(e)(5)(A), 9606(a)] to seek information, entry, inspection, samples, or response actions from Executive departments and agencies may be exercised only with the concurrence of the Attorney General.

SEC. 5. *Liability.* (a) The function vested in the President by Section 107(c)(1)(C) of the Act [42 U.S.C. 9607(c)(1)(C)] is delegated to the Secretary of Transportation.

(b) The functions vested in the President by Section 107(c)(3) of the Act are delegated to the Coast Guard with respect to any release or threatened release involving the coastal zone, Great Lakes waters, ports and harbors.

(c) Subject to subsection (b) of this Section, the functions vested in the President by Section 107(c)(3) of the Act are delegated to the Administrator.

(d) The functions vested in the President by Section 107(f)(1) of the Act are delegated to each of the Federal trustees for natural resources designated in the NCP for resources under their trusteeship.

(e) The functions vested in the President by Section 107(f)(2)(B) of the Act, to receive notification of the state natural resource trustee designations, are delegated to the Administrator.

(f) The functions vested in the President by Section 107(o) and (p) of the Act are delegated to the heads of the Executive departments and agencies, to be exercised in consultation with the Administrator, with respect to releases or threatened releases where either the release is on or the sole source of the release is from any facility under the jurisdiction, custody, or control of those departments and agencies.

(g) Subject to subsection (f) of this Section, the functions vested in the President by Section 107(o) and (p) of the Act are delegated to the Administrator except that, with respect to determinations regarding natural resource restoration, the Administrator shall make such determinations in consultation with the appropriate Federal natural resource trustee.

SEC. 6. *Litigation.* (a) Notwithstanding any other provision of this Order, any representation pursuant to or under this Order in any judicial proceedings shall be by or through the Attorney General. The conduct and control of all litigation arising under the Act shall be the responsibility of the Attorney General.

(b) Notwithstanding any other provision of this Order, the authority under the Act to require the Attorney General to commence litigation is retained by the President.

(c) The functions vested in the President by Section 113(g) of the Act [42 U.S.C. 9613(g)], to receive notification of a natural resource trustee's intent to file suit, are delegated to the heads of Executive departments and agencies with respect to response actions for which they have been delegated authority under Section 2 of this Order. The Administrator shall promulgate procedural regulations for providing such notification.

(d) The functions vested in the President by Sections [sic] 310(d) and (e) of the Act [42 U.S.C. 9659(d), (e)], re-

lating to promulgation of regulations, are delegated to the Administrator.

SEC. 7. Financial Responsibility. (a) The functions vested in the President by Section 107(k)(4)(B) of the Act [42 U.S.C. 9607(k)(4)(B)] are delegated to the Secretary of the Treasury. The Administrator will provide the Secretary with such technical information and assistance as the Administrator may have available.

(b)(1) The functions vested in the President by Section 108(a)(1) of the Act [42 U.S.C. 9608(a)(1)] are delegated to the Coast Guard.

(2) Subject to Section 4(a) of this Order, the functions vested in the President by Section 109 of the Act [42 U.S.C. 9609], relating to violations of Section 108(a)(1) of the Act, are delegated to the Coast Guard.

(c)(1) The functions vested in the President by Section 108(b) of the Act are delegated to the Secretary of Transportation with respect to all transportation related facilities, including any pipeline, motor vehicle, rolling stock, or aircraft.

(2) Subject to Section 4(a) of this Order, the functions vested in the President by Section 109 of the Act, relating to violations of Section 108(a)(3) of the Act, are delegated to the Secretary of Transportation.

(3) Subject to Section 4(a) of this Order, the functions vested in the President by Section 109 of the Act, relating to violations of Section 108(b) of the Act, are delegated to the Secretary of Transportation with respect to all transportation related facilities, including any pipeline, motor vehicle, rolling stock, or aircraft.

(d)(1) Subject to subsection (c)(1) of this Section, the functions vested in the President by Section 108(a)(4) and (b) of the Act are delegated to the Administrator.

(2) Subject to Section 4(a) of this Order and subsection (c)(3) of this Section, the functions vested in the President by Section 109 of the Act, relating to violations of Section 108(a)(4) and (b) of the Act, are delegated to the Administrator.

SEC. 8. Employee Protection and Notice to Injured. (a) The functions vested in the President by Section 110(e) of the Act [42 U.S.C. 9610(e)] are delegated to the Administrator.

(b) The functions vested in the President by Section 111(g) of the Act [42 U.S.C. 9611(g)] are delegated to the Secretaries of Defense and Energy with respect to releases from facilities or vessels under the jurisdiction, custody or control of their departments, respectively, including vessels bare-boat chartered and operated.

(c) Subject to subsection (b) of this Section, the functions vested in the President by Section 111(g) of the Act are delegated to the Administrator.

SEC. 9. Management of the Hazardous Substance Superfund and Claims. (a) The functions vested in the President by Section 111(a) of the Act [42 U.S.C. 9611(a)] are delegated to the Administrator, subject to the provisions of this Section and other applicable provisions of this Order.

(b) The Administrator shall transfer to other agencies, from the Hazardous Substance Superfund out of sums appropriated, such amounts as the Administrator may determine necessary to carry out the purposes of the Act. These amounts shall be consistent with the President's Budget, within the total approved by the Congress, unless a revised amount is approved by OMB. Funds appropriated specifically for the Agency for Toxic Substances and Disease Registry ("ATSDR"), shall be directly transferred to ATSDR, consistent with fiscally responsible investment of trust fund money.

(c) The Administrator shall chair a budget task force composed of representatives of Executive departments and agencies having responsibilities under this Order or the Act. The Administrator shall also, as part of the budget request for the Environmental Protection Agency, submit to OMB a budget for the Hazardous Substance Superfund which is based on recommended levels developed by the budget task force. The Administrator may prescribe reporting and other forms, procedures, and guidelines to be used by the agencies of the Task Force in preparing the budget request, consistent with budgetary reporting requirements issued by OMB.

The Administrator shall prescribe forms to agency task force members for reporting the expenditure of funds on a site specific basis.

(d) The Administrator and each department and agency head to whom funds are provided pursuant to this Section, with respect to funds provided to them, are authorized in accordance with Section 111(f) of the Act [42 U.S.C. 9611(f)] to designate Federal officials who may obligate such funds.

(e) The functions vested in the President by Section 112 of the Act [42 U.S.C. 9612] are delegated to the Administrator for all claims presented pursuant to Section 111 of the Act.

(f) The functions vested in the President by Section 111(o) of the Act are delegated to the Administrator.

(g) The functions vested in the President by Section 117(e) of the Act [42 U.S.C. 9617(e)] are delegated to the Administrator, to be exercised in consultation with the Attorney General.

(h) The functions vested in the President by Section 123 of the Act [42 U.S.C. 9623] are delegated to the Administrator.

(i) Funds from the Hazardous Substance Superfund may be used, at the discretion of the Administrator or the Coast Guard, to pay for removal actions for releases or threatened releases from facilities or vessels under the jurisdiction, custody or control of Executive departments and agencies but must be reimbursed to the Hazardous Substance Superfund by such Executive department or agency.

SEC. 10. Federal Facilities. (a) When necessary, prior to selection of a remedial action by the Administrator under Section 120(e)(4)(A) of the Act [42 U.S.C. 9620(e)(4)(A)], Executive agencies shall have the opportunity to present their views to the Administrator after using the procedures under Section 1-6 of Executive Order No. 12088 of October 13, 1978 [set out as a note under section 4321 of this title], or any other mutually acceptable process. Notwithstanding subsection 1-602 of Executive Order No. 12088, the Director of the Office of Management and Budget shall facilitate resolution of any issues.

(b) Executive Order No. 12088 of October 13, 1978, is amended by renumbering the current Section 1-802 as Section 1-803 and inserting the following new Section 1-802.

"1-802. Nothing in this Order shall create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person."

SEC. 11. General Provisions. (a) The function vested in the President by Section 101(37) of the Act [42 U.S.C. 9601(37)] is delegated to the Administrator.

(b)(1) The function vested in the President by Section 105(f) of the Act [42 U.S.C. 9605(f)], relating to reporting on minority participation in contracts, is delegated to the Administrator.

(2) Subject to paragraph 1 of this subsection, the functions vested in the President by Section 105(f) of the Act are delegated to the heads of Executive departments and agencies in order to carry out the functions delegated to them by this Order. Each Executive department and agency shall provide to the Administrator any requested information on minority contracting for inclusion in the Section 105(f) annual report.

(c) The functions vested in the President by Section 126(c) of the Act [42 U.S.C. 9626(c)] are delegated to the Administrator, to be exercised in consultation with the Secretary of the Interior.

(d) The functions vested in the President by Section 301(c) of the Act [42 U.S.C. 9651(c)] are delegated to the Secretary of the Interior.

(e) Each agency shall have authority to issue such regulations as may be necessary to carry out the functions delegated to them by this Order.

(f) The performance of any function under this Order shall be done in consultation with interested Federal departments and agencies represented on the NRT, as well as with any other interested Federal agency.

(g) The following functions vested in the President by the Act which have been delegated or assigned by this

Order may be redelegated to the head of any Executive department or agency with his consent: functions set forth in Sections 2 (except subsection (b)), 3, 4(b), 4(c), 4(d), 5(b), 5(c), and 8(c) of this Order.

(h) Executive Order No. 12316 of August 14, 1981, is revoked.

SEC. 12. *Brownfields*. (a) The functions vested in the President by Sections 101(39) and (41) and 104(k) of the Act [42 U.S.C. 9601(39), (41), 9604(k)] are delegated to the Administrator.

(b) The functions vested in the President by Section 128(b)(1)(B)(ii) of the Act [42 U.S.C. 9628(b)(1)(B)(ii)] are delegated to the heads of the Executive departments and agencies, to be exercised in consultation with the Administrator, with respect to property subject to their jurisdiction, custody, or control.

(c) The functions vested in the President by Section 128(b)(1)(E) of the Act [42 U.S.C. 9628(b)(1)(E)] are delegated to the heads of Executive departments and agencies in cases where they have acted under subsection (b) of this Section.

(d) Subject to subsections (b) and (c) of this Section, the functions vested in the President by Section 128 of the Act [42 U.S.C. 9628] are delegated to the Administrator.

SEC. 13. *Preservation of Authorities*. Nothing in this order shall be construed to impair or otherwise affect the functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.

SEC. 14. *General Provision*. This order is intended only to improve the internal management of the Federal Government and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its departments, agencies, instrumentalities, or entities, its officers or employees, or any other person.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9627 of this title.

§ 9616. Schedules

(a) Assessment and listing of facilities

It shall be a goal of this chapter that, to the maximum extent practicable—

(1) not later than January 1, 1988, the President shall complete preliminary assessments of all facilities that are contained (as of October 17, 1986) on the Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS) including in each assessment a statement as to whether a site inspection is necessary and by whom it should be carried out; and

(2) not later than January 1, 1989, the President shall assure the completion of site inspections at all facilities for which the President has stated a site inspection is necessary pursuant to paragraph (1).

(b) Evaluation

Within 4 years after October 17, 1986, each facility listed (as of October 17, 1986) in the CERCLIS shall be evaluated if the President determines that such evaluation is warranted on the basis of a site inspection or preliminary assessment. The evaluation shall be in accordance with the criteria established in section 9605 of this title under the National Contingency Plan for determining priorities among release for inclusion on the National Priorities List. In the case of a facility listed in the CERCLIS after October 17, 1986, the facility shall be evaluated within 4 years after the date of such listing if

the President determines that such evaluation is warranted on the basis of a site inspection or preliminary assessment.

(c) Explanations

If any of the goals established by subsection (a) or (b) of this section are not achieved, the President shall publish an explanation of why such action could not be completed by the specified date.

(d) Commencement of RI/FS

The President shall assure that remedial investigations and feasibility studies (RI/FS) are commenced for facilities listed on the National Priorities List, in addition to those commenced prior to October 17, 1986, in accordance with the following schedule:

(1) not fewer than 275 by the date 36 months after October 17, 1986, and

(2) if the requirement of paragraph (1) is not met, not fewer than an additional 175 by the date 4 years after October 17, 1986, an additional 200 by the date 5 years after October 17, 1986, and a total of 650 by the date 5 years after October 17, 1986.

(e) Commencement of remedial action

The President shall assure that substantial and continuous physical on-site remedial action commences at facilities on the National Priorities List, in addition to those facilities on which remedial action has commenced prior to October 17, 1986, at a rate not fewer than:

(1) 175 facilities during the first 36-month period after October 17, 1986; and

(2) 200 additional facilities during the following 24 months after such 36-month period.

(Pub. L. 96-510, title I, §116, as added Pub. L. 99-499, title I, §116, Oct. 17, 1986, 100 Stat. 1653.)

§ 9617. Public participation

(a) Proposed plan

Before adoption of any plan for remedial action to be undertaken by the President, by a State, or by any other person, under section 9604, 9606, 9620, or 9622 of this title, the President or State, as appropriate, shall take both of the following actions:

(1) Publish a notice and brief analysis of the proposed plan and make such plan available to the public.

(2) Provide a reasonable opportunity for submission of written and oral comments and an opportunity for a public meeting at or near the facility at issue regarding the proposed plan and regarding any proposed findings under section 9621(d)(4) of this title (relating to cleanup standards). The President or the State shall keep a transcript of the meeting and make such transcript available to the public.

The notice and analysis published under paragraph (1) shall include sufficient information as may be necessary to provide a reasonable explanation of the proposed plan and alternative proposals considered.

(b) Final plan

Notice of the final remedial action plan adopted shall be published and the plan shall be made

available to the public before commencement of any remedial action. Such final plan shall be accompanied by a discussion of any significant changes (and the reasons for such changes) in the proposed plan and a response to each of the significant comments, criticisms, and new data submitted in written or oral presentations under subsection (a) of this section.

(c) Explanation of differences

After adoption of a final remedial action plan—

- (1) if any remedial action is taken,
- (2) if any enforcement action under section 9606 of this title is taken, or
- (3) if any settlement or consent decree under section 9606 of this title or section 9622 of this title is entered into,

and if such action, settlement, or decree differs in any significant respects from the final plan, the President or the State shall publish an explanation of the significant differences and the reasons such changes were made.

(d) Publication

For the purposes of this section, publication shall include, at a minimum, publication in a major local newspaper of general circulation. In addition, each item developed, received, published, or made available to the public under this section shall be available for public inspection and copying at or near the facility at issue.

(e) Grants for technical assistance

(1) Authority

Subject to such amounts as are provided in appropriations Acts and in accordance with rules promulgated by the President, the President may make grants available to any group of individuals which may be affected by a release or threatened release at any facility which is listed on the National Priorities List under the National Contingency Plan. Such grants may be used to obtain technical assistance in interpreting information with regard to the nature of the hazard, remedial investigation and feasibility study, record of decision, remedial design, selection and construction of remedial action, operation and maintenance, or removal action at such facility.

(2) Amount

The amount of any grant under this subsection may not exceed \$50,000 for a single grant recipient. The President may waive the \$50,000 limitation in any case where such waiver is necessary to carry out the purposes of this subsection. Each grant recipient shall be required, as a condition of the grant, to contribute at least 20 percent of the total of costs of the technical assistance for which such grant is made. The President may waive the 20 percent contribution requirement if the grant recipient demonstrates financial need and such waiver is necessary to facilitate public participation in the selection of remedial action at the facility. Not more than one grant may be made under this subsection with respect to a single facility, but the grant may be renewed to facilitate public participation at all stages of remedial action.

(Pub. L. 96-510, title I, §117, as added Pub. L. 99-499, title I, §117, Oct. 17, 1986, 100 Stat. 1654.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9611, 9613, 9620 of this title.

§ 9618. High priority for drinking water supplies

For purposes of taking action under section 9604 or 9606 of this title and listing facilities on the National Priorities List, the President shall give a high priority to facilities where the release of hazardous substances or pollutants or contaminants has resulted in the closing of drinking water wells or has contaminated a principal drinking water supply.

(Pub. L. 96-510, title I, §118, as added Pub. L. 99-499, title I, §118(a), Oct. 17, 1986, 100 Stat. 1655.)

§ 9619. Response action contractors

(a) Liability of response action contractors

(1) Response action contractors

A person who is a response action contractor with respect to any release or threatened release of a hazardous substance or pollutant or contaminant from a vessel or facility shall not be liable under this subchapter or under any other Federal law to any person for injuries, costs, damages, expenses, or other liability (including but not limited to claims for indemnification or contribution and claims by third parties for death, personal injury, illness or loss of or damage to property or economic loss) which results from such release or threatened release.

(2) Negligence, etc.

Paragraph (1) shall not apply in the case of a release that is caused by conduct of the response action contractor which is negligent, grossly negligent, or which constitutes intentional misconduct.

(3) Effect on warranties; employer liability

Nothing in this subsection shall affect the liability of any person under any warranty under Federal, State, or common law. Nothing in this subsection shall affect the liability of an employer who is a response action contractor to any employee of such employer under any provision of law, including any provision of any law relating to worker's compensation.

(4) Governmental employees

A state employee or an employee of a political subdivision who provides services relating to response action while acting within the scope of his authority as a governmental employee shall have the same exemption from liability (subject to the other provisions of this section) as is provided to the response action contractor under this section.

(b) Savings provisions

(1) Liability of other persons

The defense provided by section 9607(b)(3) of this title shall not be available to any potentially responsible party with respect to any costs or damages caused by any act or omission of a response action contractor. Except as provided in subsection (a)(4) of this section and the preceding sentence, nothing in this

section shall affect the liability under this chapter or under any other Federal or State law of any person, other than a response action contractor.

(2) Burden of plaintiff

Nothing in this section shall affect the plaintiff's burden of establishing liability under this subchapter.

(c) Indemnification

(1) In general

The President may agree to hold harmless and indemnify any response action contractor meeting the requirements of this subsection against any liability (including the expenses of litigation or settlement) for negligence arising out of the contractor's performance in carrying out response action activities under this subchapter, unless such liability was caused by conduct of the contractor which was grossly negligent or which constituted intentional misconduct.

(2) Applicability

This subsection shall apply only with respect to a response action carried out under written agreement with—

- (A) the President;
- (B) any Federal agency;
- (C) a State or political subdivision which has entered into a contract or cooperative agreement in accordance with section 9604(d)(1) of this title; or
- (D) any potentially responsible party carrying out any agreement under section 9622 of this title (relating to settlements) or section 9606 of this title (relating to abatement).

(3) Source of funding

This subsection shall not be subject to section 1301 or 1341 of title 31 or section 11 of title 41 or to section 9662 of this title. For purposes of section 9611 of this title, amounts expended pursuant to this subsection for indemnification of any response action contractor (except with respect to federally owned or operated facilities) shall be considered governmental response costs incurred pursuant to section 9604 of this title. If sufficient funds are unavailable in the Hazardous Substance Superfund established under subchapter A of chapter 98 of title 26 to make payments pursuant to such indemnification or if the Fund is repealed, there are authorized to be appropriated such amounts as may be necessary to make such payments.

(4) Requirements

An indemnification agreement may be provided under this subsection only if the President determines that each of the following requirements are met:

- (A) The liability covered by the indemnification agreement exceeds or is not covered by insurance available, at a fair and reasonable price, to the contractor at the time the contractor enters into the contract to provide response action, and adequate insurance to cover such liability is not generally available at the time the response action contract is entered into.

(B) The response action contractor has made diligent efforts to obtain insurance coverage from non-Federal sources to cover such liability.

(C) In the case of a response action contract covering more than one facility, the response action contractor agrees to continue to make such diligent efforts each time the contractor begins work under the contract at a new facility.

(5) Limitations

(A) Liability covered

Indemnification under this subsection shall apply only to response action contractor liability which results from a release of any hazardous substance or pollutant or contaminant if such release arises out of response action activities.

(B) Deductibles and limits

An indemnification agreement under this subsection shall include deductibles and shall place limits on the amount of indemnification to be made available.

(C) Contracts with potentially responsible parties

(i) Decision to indemnify

In deciding whether to enter into an indemnification agreement with a response action contractor carrying out a written contract or agreement with any potentially responsible party, the President shall determine an amount which the potentially responsible party is able to indemnify the contractor. The President may enter into such an indemnification agreement only if the President determines that such amount of indemnification is inadequate to cover any reasonable potential liability of the contractor arising out of the contractor's negligence in performing the contract or agreement with such party. The President shall make the determinations in the preceding sentences (with respect to the amount and the adequacy of the amount) taking into account the total net assets and resources of potentially responsible parties with respect to the facility at the time of such determinations.

(ii) Conditions

The President may pay a claim under an indemnification agreement referred to in clause (i) for the amount determined under clause (i) only if the contractor has exhausted all administrative, judicial, and common law claims for indemnification against all potentially responsible parties participating in the clean-up of the facility with respect to the liability of the contractor arising out of the contractor's negligence in performing the contract or agreement with such party. Such indemnification agreement shall require such contractor to pay any deductible established under subparagraph (B) before the contractor may recover any amount from the potentially responsible party or under the indemnification agreement.

(D) RCRA facilities

No owner or operator of a facility regulated under the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.] may be indemnified under this subsection with respect to such facility.

(E) Persons retained or hired

A person retained or hired by a person described in subsection (e)(2)(B) of this section shall be eligible for indemnification under this subsection only if the President specifically approves of the retaining or hiring of such person.

(6) Cost recovery

For purposes of section 9607 of this title, amounts expended pursuant to this subsection for indemnification of any person who is a response action contractor with respect to any release or threatened release shall be considered a cost of response incurred by the United States Government with respect to such release.

(7) Regulations

The President shall promulgate regulations for carrying out the provisions of this subsection. Before promulgation of the regulations, the President shall develop guidelines to carry out this section. Development of such guidelines shall include reasonable opportunity for public comment.

(8) Study

The Comptroller General shall conduct a study in the fiscal year ending September 30, 1989, on the application of this subsection, including whether indemnification agreements under this subsection are being used, the number of claims that have been filed under such agreements, and the need for this subsection. The Comptroller General shall report the findings of the study to Congress no later than September 30, 1989.

(d) Exception

The exemption provided under subsection (a) of this section and the authority of the President to offer indemnification under subsection (c) of this section shall not apply to any person covered by the provisions of paragraph (1), (2), (3), or (4) of section 9607(a) of this title with respect to the release or threatened release concerned if such person would be covered by such provisions even if such person had not carried out any actions referred to in subsection (e) of this section.

(e) Definitions

For purposes of this section—

(1) Response action contract

The term “response action contract” means any written contract or agreement entered into by a response action contractor (as defined in paragraph (2)(A) of this subsection) with—

(A) the President;

(B) any Federal agency;

(C) a State or political subdivision which has entered into a contract or cooperative agreement in accordance with section 9604(d)(1) of this title; or

(D) any potentially responsible party carrying out an agreement under section 9606 or 9622 of this title;

to provide any remedial action under this chapter at a facility listed on the National Priorities List, or any removal under this chapter, with respect to any release or threatened release of a hazardous substance or pollutant or contaminant from the facility or to provide any evaluation, planning, engineering, surveying and mapping, design, construction, equipment, or any ancillary services thereto for such facility.

(2) Response action contractor

The term “response action contractor” means—

(A) any—

(i) person who enters into a response action contract with respect to any release or threatened release of a hazardous substance or pollutant or contaminant from a facility and is carrying out such contract; and¹

(ii) person, public or nonprofit private entity, conducting a field demonstration pursuant to section 9660(b) of this title; and

(iii) Recipients² of grants (including subgrantees) under section 9660a³ of this title for the training and education of workers who are or may be engaged in activities related to hazardous waste removal, containment, or emergency response under this chapter; and¹

(B) any person who is retained or hired by a person described in subparagraph (A) to provide any services relating to a response action; and

(C) any surety who after October 16, 1990, provides a bid, performance or payment bond to a response action contractor, and begins activities to meet its obligations under such bond, but only in connection with such activities or obligations.

(3) Insurance

The term “insurance” means liability insurance which is fair and reasonably priced, as determined by the President, and which is made available at the time the contractor enters into the response action contract to provide response action.

(f) Competition

Response action contractors and subcontractors for program management, construction management, architectural and engineering, surveying and mapping, and related services shall be selected in accordance with title IX of the Federal Property and Administrative Services Act of 1949.³ The Federal selection procedures shall apply to appropriate contracts negotiated by all Federal governmental agencies involved in carrying out this chapter. Such procedures shall be followed by response action contractors and subcontractors.

¹ So in original. The word “and” probably should not appear.

² So in original. Probably should not be capitalized.

³ See References in Text note below.

(g) Surety bonds

(1) If under sections 3131 and 3133 of title 40, surety bonds are required for any direct Federal procurement of any response action contract and are not waived pursuant to section 3134 of title 40, they shall be issued in accordance with sections 3131 and 3133 of title 40.

(2) If under applicable Federal law surety bonds are required for any direct Federal procurement of any response action contract, no right of action shall accrue on the performance bond issued on such response action contract to or for the use of any person other than the obligee named in the bond.

(3) If under applicable Federal law surety bonds are required for any direct Federal procurement of any response action contract, unless otherwise provided for by the procuring agency in the bond, in the event of a default, the surety's liability on a performance bond shall be only for the cost of completion of the contract work in accordance with the plans and specifications less the balance of funds remaining to be paid under the contract, up to the penal sum of the bond. The surety shall in no event be liable on bonds to indemnify or compensate the obligee for loss or liability arising from personal injury or property damage whether or not caused by a breach of the bonded contract.

(4) Nothing in this subsection shall be construed as preempting, limiting, superseding, affecting, applying to, or modifying any State laws, regulations, requirements, rules, practices or procedures. Nothing in this subsection shall be construed as affecting, applying to, modifying, limiting, superseding, or preempting any rights, authorities, liabilities, demands, actions, causes of action, losses, judgments, claims, statutes of limitation, or obligations under Federal or State law, which do not arise on or under the bond.

(5) This subsection shall not apply to bonds executed before October 17, 1990.

(Pub. L. 96-510, title I, §119, as added Pub. L. 99-499, title I, §119, Oct. 17, 1986, 100 Stat. 1662; amended Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100-202, §101(f) [title II, §201], Dec. 22, 1987, 101 Stat. 1329-187, 1329-198; Pub. L. 101-584, §1, Nov. 15, 1990, 104 Stat. 2872; Pub. L. 102-484, div. A, title III, §331(a), Oct. 23, 1992, 106 Stat. 2373; Pub. L. 105-276, title III, Oct. 21, 1998, 112 Stat. 2497.)

REFERENCES IN TEXT

The Solid Waste Disposal Act, referred to in subsec. (c)(5)(D), is title II of Pub. L. 89-272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§6901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

Section 9660a of this title, referred to in subsec. (e)(2)(A)(iii), was in the original "section 126" probably meaning section 126 of Pub. L. 99-499, title I, Oct. 17, 1986, 100 Stat. 1690. Subsecs. (a) to (f) of section 126, which relate to worker protection standards, are set out as a note under section 655 of Title 29, Labor. Subsec. (g) of section 126, which relates grants for training and education of workers who are or may be engaged in activities related to hazardous waste removal, etc., is classified to section 9660a of this title.

The Federal Property and Administrative Services Act of 1949, referred to in subsec. (f), is act June 30,

1949, ch. 288, 63 Stat. 377, as amended. Title IX of the Act, which was classified generally to subchapter VI (§541 et seq.) of chapter 10 of former Title 40, Public Buildings, Property, and Works, was repealed and reenacted by Pub. L. 107-217, §§1, 6(b), Aug. 21, 2002, 116 Stat. 1062, 1304, as chapter 11 (§1101 et seq.) of Title 40, Public Buildings, Property, and Works. For disposition of sections of former Title 40 to revised Title 40, see Table preceding section 101 of Title 40. For complete classification of this Act to the Code, see Tables.

CODIFICATION

In subsec. (g)(1), "sections 3131 and 3133 of title 40" substituted for "the Act of August 24, 1935 (40 U.S.C. 270a-270d), commonly referred to as the 'Miller Act'" and for "such Act of August 24, 1935" and "section 3134 of title 40" substituted for "the Act of April 29, 1941 (40 U.S.C. 270e-270f)", on authority of Pub. L. 107-217, §5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

AMENDMENTS

1998—Subsec. (e)(2)(C). Pub. L. 105-276 struck out "and before January 1, 1996," after "1990,".

Subsec. (g)(5). Pub. L. 105-276 struck out "or after December 31, 1995" before period at end.

1992—Subsec. (e)(2)(C). Pub. L. 102-484, §321(a)(1)(A), substituted "January 1, 1996," for "January 1, 1993".

Subsec. (g)(1). Pub. L. 102-484, §331(a)(2), substituted "the Act of August 24, 1935 (40 U.S.C. 270a-270d), commonly referred to as the 'Miller Act'," for "the Miller Act, 40 U.S.C. sections 270a-270f.", inserted "and are not waived pursuant to the Act of April 29, 1941 (40 U.S.C. 270e-270f)", and substituted "in accordance with such Act of August 24, 1935." for "in accordance with 40 U.S.C. sections 270a-270d."

Subsec. (g)(5). Pub. L. 102-484, §331(a)(1)(B), substituted "December 31, 1995" for "December 31, 1992".

1990—Subsec. (e)(2)(C). Pub. L. 101-584, §1(1), (2), added subpar. (C).

Subsec. (g). Pub. L. 101-584, §1(3), added subsec. (g).

1987—Subsec. (e)(2)(A)(iii). Pub. L. 100-202 added cl. (iii).

1986—Subsec. (c)(3). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

COORDINATION OF TITLES I TO IV OF PUB. L. 99-499

Any provision of titles I to IV of Pub. L. 99-499, imposing any tax, premium, or fee; establishing any trust fund; or authorizing expenditures from any trust fund, to have no force or effect, see section 531 of Pub. L. 99-499, set out as a note under section 1 of Title 26, Internal Revenue Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9613 of this title; title 10 section 2701; title 14 section 691.

§ 9620. Federal facilities**(a) Application of chapter to Federal Government****(1) In general**

Each department, agency, and instrumentality of the United States (including the executive, legislative, and judicial branches of government) shall be subject to, and comply with, this chapter in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity, including liability under section 9607 of this title. Nothing in this section shall be construed to affect the liability of any person or entity under sections 9606 and 9607 of this title.

(2) Application of requirements to Federal facilities

All guidelines, rules, regulations, and criteria which are applicable to preliminary assessments carried out under this chapter for facilities at which hazardous substances are located, applicable to evaluations of such facilities under the National Contingency Plan, applicable to inclusion on the National Priorities List, or applicable to remedial actions at such facilities shall also be applicable to facilities which are owned or operated by a department, agency, or instrumentality of the United States in the same manner and to the extent as such guidelines, rules, regulations, and criteria are applicable to other facilities. No department, agency, or instrumentality of the United States may adopt or utilize any such guidelines, rules, regulations, or criteria which are inconsistent with the guidelines, rules, regulations, and criteria established by the Administrator under this chapter.

(3) Exceptions

This subsection shall not apply to the extent otherwise provided in this section with respect to applicable time periods. This subsection shall also not apply to any requirements relating to bonding, insurance, or financial responsibility. Nothing in this chapter shall be construed to require a State to comply with section 9604(c)(3) of this title in the case of a facility which is owned or operated by any department, agency, or instrumentality of the United States.

(4) State laws

State laws concerning removal and remedial action, including State laws regarding enforcement, shall apply to removal and remedial action at facilities owned or operated by a department, agency, or instrumentality of the United States or facilities that are the subject of a deferral under subsection (h)(3)(C) of this section when such facilities are not included on the National Priorities List. The preceding sentence shall not apply to the extent a State law would apply any standard or requirement to such facilities which is more stringent than the standards and requirements applicable to facilities which are not owned or operated by any such department, agency, or instrumentality.

(b) Notice

Each department, agency, and instrumentality of the United States shall add to the inventory of Federal agency hazardous waste facilities required to be submitted under section 3016 of the Solid Waste Disposal Act [42 U.S.C. 6937] (in addition to the information required under section 3016(a)(3) of such Act [42 U.S.C. 6937(a)(3)]) information on contamination from each facility owned or operated by the department, agency, or instrumentality if such contamination affects contiguous or adjacent property owned by the department, agency, or instrumentality or by any other person, including a description of the monitoring data obtained.

(c) Federal Agency Hazardous Waste Compliance Docket

The Administrator shall establish a special Federal Agency Hazardous Waste Compliance

Docket (hereinafter in this section referred to as the "docket") which shall contain each of the following:

(1) All information submitted under section 3016 of the Solid Waste Disposal Act [42 U.S.C. 6937] and subsection (b) of this section regarding any Federal facility and notice of each subsequent action taken under this chapter with respect to the facility.

(2) Information submitted by each department, agency, or instrumentality of the United States under section 3005 or 3010 of such Act [42 U.S.C. 6925, 6930].

(3) Information submitted by the department, agency, or instrumentality under section 9603 of this title.

The docket shall be available for public inspection at reasonable times. Six months after establishment of the docket and every 6 months thereafter, the Administrator shall publish in the Federal Register a list of the Federal facilities which have been included in the docket during the immediately preceding 6-month period. Such publication shall also indicate where in the appropriate regional office of the Environmental Protection Agency additional information may be obtained with respect to any facility on the docket. The Administrator shall establish a program to provide information to the public with respect to facilities which are included in the docket under this subsection.

(d) Assessment and evaluation

(1) In general

The Administrator shall take steps to assure that a preliminary assessment is conducted for each facility on the docket. Following such preliminary assessment, the Administrator shall, where appropriate—

(A) evaluate such facilities in accordance with the criteria established in accordance with section 9605 of this title under the National Contingency Plan for determining priorities among releases; and

(B) include such facilities on the National Priorities List maintained under such plan if the facility meets such criteria.

(2) Application of criteria

(A) In general

Subject to subparagraph (B), the criteria referred to in paragraph (1) shall be applied in the same manner as the criteria are applied to facilities that are owned or operated by persons other than the United States.

(B) Response under other law

It shall be an appropriate factor to be taken into consideration for the purposes of section 9605(a)(8)(A) of this title that the head of the department, agency, or instrumentality that owns or operates a facility has arranged with the Administrator or appropriate State authorities to respond appropriately, under authority of a law other than this chapter, to a release or threatened release of a hazardous substance.

(3) Completion

Evaluation and listing under this subsection shall be completed in accordance with a rea-

sonable schedule established by the Administrator.

(e) Required action by department

(1) RI/FS

Not later than 6 months after the inclusion of any facility on the National Priorities List, the department, agency, or instrumentality which owns or operates such facility shall, in consultation with the Administrator and appropriate State authorities, commence a remedial investigation and feasibility study for such facility. In the case of any facility which is listed on such list before October 17, 1986, the department, agency, or instrumentality which owns or operates such facility shall, in consultation with the Administrator and appropriate State authorities, commence such an investigation and study for such facility within one year after October 17, 1986. The Administrator and appropriate State authorities shall publish a timetable and deadlines for expeditious completion of such investigation and study.

(2) Commencement of remedial action; interagency agreement

The Administrator shall review the results of each investigation and study conducted as provided in paragraph (1). Within 180 days thereafter, the head of the department, agency, or instrumentality concerned shall enter into an interagency agreement with the Administrator for the expeditious completion by such department, agency, or instrumentality of all necessary remedial action at such facility. Substantial continuous physical onsite remedial action shall be commenced at each facility not later than 15 months after completion of the investigation and study. All such interagency agreements, including review of alternative remedial action plans and selection of remedial action, shall comply with the public participation requirements of section 9617 of this title.

(3) Completion of remedial actions

Remedial actions at facilities subject to interagency agreements under this section shall be completed as expeditiously as practicable. Each agency shall include in its annual budget submissions to the Congress a review of alternative agency funding which could be used to provide for the costs of remedial action. The budget submission shall also include a statement of the hazard posed by the facility to human health, welfare, and the environment and identify the specific consequences of failure to begin and complete remedial action.

(4) Contents of agreement

Each interagency agreement under this subsection shall include, but shall not be limited to, each of the following:

(A) A review of alternative remedial actions and selection of a remedial action by the head of the relevant department, agency, or instrumentality and the Administrator or, if unable to reach agreement on selection of a remedial action, selection by the Administrator.

(B) A schedule for the completion of each such remedial action.

(C) Arrangements for long-term operation and maintenance of the facility.

(5) Annual report

Each department, agency, or instrumentality responsible for compliance with this section shall furnish an annual report to the Congress concerning its progress in implementing the requirements of this section. Such reports shall include, but shall not be limited to, each of the following items:

(A) A report on the progress in reaching interagency agreements under this section.

(B) The specific cost estimates and budgetary proposals involved in each interagency agreement.

(C) A brief summary of the public comments regarding each proposed interagency agreement.

(D) A description of the instances in which no agreement was reached.

(E) A report on progress in conducting investigations and studies under paragraph (1).

(F) A report on progress in conducting remedial actions.

(G) A report on progress in conducting remedial action at facilities which are not listed on the National Priorities List.

With respect to instances in which no agreement was reached within the required time period, the department, agency, or instrumentality filing the report under this paragraph shall include in such report an explanation of the reasons why no agreement was reached. The annual report required by this paragraph shall also contain a detailed description on a State-by-State basis of the status of each facility subject to this section, including a description of the hazard presented by each facility, plans and schedules for initiating and completing response action, enforcement status (where appropriate), and an explanation of any postponements or failure to complete response action. Such reports shall also be submitted to the affected States.

(6) Settlements with other parties

If the Administrator, in consultation with the head of the relevant department, agency, or instrumentality of the United States, determines that remedial investigations and feasibility studies or remedial action will be done properly at the Federal facility by another potentially responsible party within the deadlines provided in paragraphs (1), (2), and (3) of this subsection, the Administrator may enter into an agreement with such party under section 9622 of this title (relating to settlements). Following approval by the Attorney General of any such agreement relating to a remedial action, the agreement shall be entered in the appropriate United States district court as a consent decree under section 9606 of this title.

(f) State and local participation

The Administrator and each department, agency, or instrumentality responsible for compliance with this section shall afford to relevant State and local officials the opportunity to participate in the planning and selection of the re-

medial action, including but not limited to the review of all applicable data as it becomes available and the development of studies, reports, and action plans. In the case of State officials, the opportunity to participate shall be provided in accordance with section 9621 of this title.

(g) Transfer of authorities

Except for authorities which are delegated by the Administrator to an officer or employee of the Environmental Protection Agency, no authority vested in the Administrator under this section may be transferred, by executive order of the President or otherwise, to any other officer or employee of the United States or to any other person.

(h) Property transferred by Federal agencies

(1) Notice

After the last day of the 6-month period beginning on the effective date of regulations under paragraph (2) of this subsection, whenever any department, agency, or instrumentality of the United States enters into any contract for the sale or other transfer of real property which is owned by the United States and on which any hazardous substance was stored for one year or more, known to have been released, or disposed of, the head of such department, agency, or instrumentality shall include in such contract notice of the type and quantity of such hazardous substance and notice of the time at which such storage, release, or disposal took place, to the extent such information is available on the basis of a complete search of agency files.

(2) Form of notice; regulations

Notice under this subsection shall be provided in such form and manner as may be provided in regulations promulgated by the Administrator. As promptly as practicable after October 17, 1986, but not later than 18 months after October 17, 1986, and after consultation with the Administrator of the General Services Administration, the Administrator shall promulgate regulations regarding the notice required to be provided under this subsection.

(3) Contents of certain deeds

(A) In general

After the last day of the 6-month period beginning on the effective date of regulations under paragraph (2) of this subsection, in the case of any real property owned by the United States on which any hazardous substance was stored for one year or more, known to have been released, or disposed of, each deed entered into for the transfer of such property by the United States to any other person or entity shall contain—

(i) to the extent such information is available on the basis of a complete search of agency files—

(I) a notice of the type and quantity of such hazardous substances,

(II) notice of the time at which such storage, release, or disposal took place, and

(III) a description of the remedial action taken, if any;

(ii) a covenant warranting that—

(I) all remedial action necessary to protect human health and the environment with respect to any such substance remaining on the property has been taken before the date of such transfer, and

(II) any additional remedial action found to be necessary after the date of such transfer shall be conducted by the United States; and

(iii) a clause granting the United States access to the property in any case in which remedial action or corrective action is found to be necessary after the date of such transfer.

(B) Covenant requirements

For purposes of subparagraphs (A)(ii)(I) and (C)(iii), all remedial action described in such subparagraph has been taken if the construction and installation of an approved remedial design has been completed, and the remedy has been demonstrated to the Administrator to be operating properly and successfully. The carrying out of long-term pumping and treating, or operation and maintenance, after the remedy has been demonstrated to the Administrator to be operating properly and successfully does not preclude the transfer of the property. The requirements of subparagraph (A)(ii) shall not apply in any case in which the person or entity to whom the real property is transferred is a potentially responsible party with respect to such property. The requirements of subparagraph (A)(ii) shall not apply in any case in which the transfer of the property occurs or has occurred by means of a lease, without regard to whether the lessee has agreed to purchase the property or whether the duration of the lease is longer than 55 years. In the case of a lease entered into after September 30, 1995, with respect to real property located at an installation approved for closure or realignment under a base closure law, the agency leasing the property, in consultation with the Administrator, shall determine before leasing the property that the property is suitable for lease, that the uses contemplated for the lease are consistent with protection of human health and the environment, and that there are adequate assurances that the United States will take all remedial action referred to in subparagraph (A)(ii) that has not been taken on the date of the lease.

(C) Deferral

(i) In general

The Administrator, with the concurrence of the Governor of the State in which the facility is located (in the case of real property at a Federal facility that is listed on the National Priorities List), or the Governor of the State in which the facility is located (in the case of real property at a Federal facility not listed on the National Priorities List) may defer the requirement of subparagraph (A)(ii)(I) with respect to the property if the Administrator or the Governor, as the case may be, determines

that the property is suitable for transfer, based on a finding that—

(I) the property is suitable for transfer for the use intended by the transferee, and the intended use is consistent with protection of human health and the environment;

(II) the deed or other agreement proposed to govern the transfer between the United States and the transferee of the property contains the assurances set forth in clause (ii);

(III) the Federal agency requesting deferral has provided notice, by publication in a newspaper of general circulation in the vicinity of the property, of the proposed transfer and of the opportunity for the public to submit, within a period of not less than 30 days after the date of the notice, written comments on the suitability of the property for transfer; and

(IV) the deferral and the transfer of the property will not substantially delay any necessary response action at the property.

(ii) Response action assurances

With regard to a release or threatened release of a hazardous substance for which a Federal agency is potentially responsible under this section, the deed or other agreement proposed to govern the transfer shall contain assurances that—

(I) provide for any necessary restrictions on the use of the property to ensure the protection of human health and the environment;

(II) provide that there will be restrictions on use necessary to ensure that required remedial investigations, response action, and oversight activities will not be disrupted;

(III) provide that all necessary response action will be taken and identify the schedules for investigation and completion of all necessary response action as approved by the appropriate regulatory agency; and

(IV) provide that the Federal agency responsible for the property subject to transfer will submit a budget request to the Director of the Office of Management and Budget that adequately addresses schedules for investigation and completion of all necessary response action, subject to congressional authorizations and appropriations.

(iii) Warranty

When all response action necessary to protect human health and the environment with respect to any substance remaining on the property on the date of transfer has been taken, the United States shall execute and deliver to the transferee an appropriate document containing a warranty that all such response action has been taken, and the making of the warranty shall be considered to satisfy the requirement of subparagraph (A)(ii)(I).

(iv) Federal responsibility

A deferral under this subparagraph shall not increase, diminish, or affect in any manner any rights or obligations of a Federal agency (including any rights or obligations under this section and sections 9606 and 9607 of this title existing prior to transfer) with respect to a property transferred under this subparagraph.

(4) Identification of uncontaminated property

(A) In the case of real property to which this paragraph applies (as set forth in subparagraph (E)), the head of the department, agency, or instrumentality of the United States with jurisdiction over the property shall identify the real property on which no hazardous substances and no petroleum products or their derivatives were known to have been released or disposed of. Such identification shall be based on an investigation of the real property to determine or discover the obviousness of the presence or likely presence of a release or threatened release of any hazardous substance or any petroleum product or its derivatives, including aviation fuel and motor oil, on the real property. The identification shall consist, at a minimum, of a review of each of the following sources of information concerning the current and previous uses of the real property:

(i) A detailed search of Federal Government records pertaining to the property.

(ii) Recorded chain of title documents regarding the real property.

(iii) Aerial photographs that may reflect prior uses of the real property and that are reasonably obtainable through State or local government agencies.

(iv) A visual inspection of the real property and any buildings, structures, equipment, pipe, pipeline, or other improvements on the real property, and a visual inspection of properties immediately adjacent to the real property.

(v) A physical inspection of property adjacent to the real property, to the extent permitted by owners or operators of such property.

(vi) Reasonably obtainable Federal, State, and local government records of each adjacent facility where there has been a release of any hazardous substance or any petroleum product or its derivatives, including aviation fuel and motor oil, and which is likely to cause or contribute to a release or threatened release of any hazardous substance or any petroleum product or its derivatives, including aviation fuel and motor oil, on the real property.

(vii) Interviews with current or former employees involved in operations on the real property.

Such identification shall also be based on sampling, if appropriate under the circumstances. The results of the identification shall be provided immediately to the Administrator and State and local government officials and made available to the public.

(B) The identification required under subparagraph (A) is not complete until concurrence in the results of the identification is ob-

tained, in the case of real property that is part of a facility on the National Priorities List, from the Administrator, or, in the case of real property that is not part of a facility on the National Priorities List, from the appropriate State official. In the case of a concurrence which is required from a State official, the concurrence is deemed to be obtained if, within 90 days after receiving a request for the concurrence, the State official has not acted (by either concurring or declining to concur) on the request for concurrence.

(C)(i) Except as provided in clauses (ii), (iii), and (iv), the identification and concurrence required under subparagraphs (A) and (B), respectively, shall be made at least 6 months before the termination of operations on the real property.

(ii) In the case of real property described in subparagraph (E)(i)(II) on which operations have been closed or realigned or scheduled for closure or realignment pursuant to a base closure law described in subparagraph (E)(ii)(I) or (E)(ii)(II) by October 19, 1992, the identification and concurrence required under subparagraphs (A) and (B), respectively, shall be made not later than 18 months after October 19, 1992.

(iii) In the case of real property described in subparagraph (E)(i)(II) on which operations are closed or realigned or become scheduled for closure or realignment pursuant to the base closure law described in subparagraph (E)(ii)(II) after October 19, 1992, the identification and concurrence required under subparagraphs (A) and (B), respectively, shall be made not later than 18 months after the date by which a joint resolution disapproving the closure or realignment of the real property under section 2904(b) of such base closure law must be enacted, and such a joint resolution has not been enacted.

(iv) In the case of real property described in subparagraphs (E)(i)(II) on which operations are closed or realigned pursuant to a base closure law described in subparagraph (E)(ii)(III) or (E)(ii)(IV), the identification and concurrence required under subparagraphs (A) and (B), respectively, shall be made not later than 18 months after the date on which the real property is selected for closure or realignment pursuant to such a base closure law.

(D) In the case of the sale or other transfer of any parcel of real property identified under subparagraph (A), the deed entered into for the sale or transfer of such property by the United States to any other person or entity shall contain—

(i) a covenant warranting that any response action or corrective action found to be necessary after the date of such sale or transfer shall be conducted by the United States; and

(ii) a clause granting the United States access to the property in any case in which a response action or corrective action is found to be necessary after such date at such property, or such access is necessary to carry out a response action or corrective action on adjoining property.

(E)(i) This paragraph applies to—

(I) real property owned by the United States and on which the United States plans

to terminate Federal Government operations, other than real property described in subclause (II); and

(II) real property that is or has been used as a military installation and on which the United States plans to close or realign military operations pursuant to a base closure law.

(ii) For purposes of this paragraph, the term “base closure law” includes the following:

(I) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526; 10 U.S.C. 2687 note).

(II) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note).

(III) Section 2687 of title 10.

(IV) Any provision of law authorizing the closure or realignment of a military installation enacted on or after October 19, 1992.

(F) Nothing in this paragraph shall affect, preclude, or otherwise impair the termination of Federal Government operations on real property owned by the United States.

(5) Notification of States regarding certain leases

In the case of real property owned by the United States, on which any hazardous substance or any petroleum product or its derivatives (including aviation fuel and motor oil) was stored for one year or more, known to have been released, or disposed of, and on which the United States plans to terminate Federal Government operations, the head of the department, agency, or instrumentality of the United States with jurisdiction over the property shall notify the State in which the property is located of any lease entered into by the United States that will encumber the property beyond the date of termination of operations on the property. Such notification shall be made before entering into the lease and shall include the length of the lease, the name of person to whom the property is leased, and a description of the uses that will be allowed under the lease of the property and buildings and other structures on the property.

(i) Obligations under Solid Waste Disposal Act

Nothing in this section shall affect or impair the obligation of any department, agency, or instrumentality of the United States to comply with any requirement of the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.] (including corrective action requirements).

(j) National security

(1) Site specific Presidential orders

The President may issue such orders regarding response actions at any specified site or facility of the Department of Energy or the Department of Defense as may be necessary to protect the national security interests of the United States at that site or facility. Such orders may include, where necessary to protect such interests, an exemption from any requirement contained in this subchapter or under title III of the Superfund Amendments

and Reauthorization Act of 1986 [42 U.S.C. 11001 et seq.] with respect to the site or facility concerned. The President shall notify the Congress within 30 days of the issuance of an order under this paragraph providing for any such exemption. Such notification shall include a statement of the reasons for the granting of the exemption. An exemption under this paragraph shall be for a specified period which may not exceed one year. Additional exemptions may be granted, each upon the President's issuance of a new order under this paragraph for the site or facility concerned. Each such additional exemption shall be for a specified period which may not exceed one year. It is the intention of the Congress that whenever an exemption is issued under this paragraph the response action shall proceed as expeditiously as practicable. The Congress shall be notified periodically of the progress of any response action with respect to which an exemption has been issued under this paragraph. No exemption shall be granted under this paragraph due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation.

(2) Classified information

Notwithstanding any other provision of law, all requirements of the Atomic Energy Act [42 U.S.C. 2011 et seq.] and all Executive orders concerning the handling of restricted data and national security information, including "need to know" requirements, shall be applicable to any grant of access to classified information under the provisions of this chapter or under title III of the Superfund Amendments and Reauthorization Act of 1986 [42 U.S.C. 11001 et seq.].

(Pub. L. 96-510, title I, § 120, as added Pub. L. 99-499, title I, § 120(a), Oct. 17, 1986, 100 Stat. 1666; amended Pub. L. 102-426, §§ 3-5, Oct. 19, 1992, 106 Stat. 2175-2177; Pub. L. 104-106, div. B, title XXVIII, § 2834, Feb. 10, 1996, 110 Stat. 559; Pub. L. 104-201, div. A, title III, §§ 330, 331, 334, Sept. 23, 1996, 110 Stat. 2484, 2486.)

REFERENCES IN TEXT

Section 2904(b) of such base closure law, referred to in subsec. (h)(4)(C)(iii), means section 2904(b) of Pub. L. 101-510, which is set out as a note under section 2687 of Title 10, Armed Forces.

The Solid Waste Disposal Act, referred to in subsec. (i), is title II of Pub. L. 89-272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94-580, § 2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§ 6901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

Title III of the Superfund Amendments and Reauthorization Act of 1986, referred to in subsec. (j), is title III of Pub. L. 99-499, Oct. 17, 1986, 100 Stat. 1728, known as the Emergency Planning and Community Right-To-Know Act of 1986, which is classified generally to chapter 116 (§ 11001 et seq.) of this title. For complete classification of title III to the Code, see Short Title note set out under section 11001 of this title and Tables.

The Atomic Energy Act, referred to in subsec. (j)(2), probably means the Atomic Energy Act of 1954, act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, and amended, which is classified

generally to chapter 23 (§ 2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

AMENDMENTS

1996—Subsec. (a)(4). Pub. L. 104-201, § 334(b), inserted "or facilities that are the subject of a deferral under subsection (h)(3)(C) of this section" after "United States".

Subsec. (d). Pub. L. 104-201, § 330(2)-(4), designated existing provisions as par. (1), inserted par. heading, substituted "The Administrator" for "Not later than 18 months after October 17, 1986, the Administrator", realigned margins of par. (1) and subpars. (A) and (B), and substituted pars. (2) and (3) for "Such criteria shall be applied in the same manner as the criteria are applied to facilities which are owned or operated by other persons. Evaluation and listing under this subsection shall be completed not later than 30 months after October 17, 1986. Upon the receipt of a petition from the Governor of any State, the Administrator shall make such an evaluation of any facility included in the docket."

Pub. L. 104-201, § 330(1), redesignated pars. (1) and (2) as subpars. (A) and (B), respectively.

Subsec. (h)(3). Pub. L. 104-201, § 334(a)(8), added subpar. (C).

Pub. L. 104-201, § 334(a)(6), (7), designated existing provisions as subpar. (B), inserted heading, substituted "For purposes of subparagraphs (A)(ii)(I) and (C)(iii)" for "For purposes of subparagraph (B)(i)", and substituted "subparagraph (A)(ii)" for "subparagraph (B)" in three places.

Pub. L. 104-201, § 334(a)(1)-(5), designated first sentence as subpar. (A), inserted heading, redesignated former subpar. (A) and cls. (i) to (iii) of that subpar. as cl. (i) of subpar. (A) and subcls. (I) to (III) of that cl., respectively, redesignated former subpar. (B) and cls. (i) and (ii) of that subpar. as cl. (ii) of subpar. (A) and subcls. (I) and (II) of that cl., respectively, redesignated former subpar. (C) as cl. (iii) of subpar. (A), and realigned margins of such cls. and subcls.

Pub. L. 104-106, § 2834(2), which directed that par. (3) be amended in the matter following subpar. (C) by adding at the end, flush to the paragraph margin, the following, was executed by inserting the following provision at the end of the concluding provisions "The requirements of subparagraph (B) shall not apply in any case in which the person or entity to whom the real property is transferred is a potentially responsible party with respect to such property. The requirements of subparagraph (B) shall not apply in any case in which the transfer of the property occurs or has occurred by means of a lease, without regard to whether the lessee has agreed to purchase the property or whether the duration of the lease is longer than 55 years. In the case of a lease entered into after September 30, 1995, with respect to real property located at an installation approved for closure or realignment under a base closure law, the agency leasing the property, in consultation with the Administrator, shall determine before leasing the property that the property is suitable for lease, that the uses contemplated for the lease are consistent with protection of human health and the environment, and that there are adequate assurances that the United States will take all remedial action referred to in subparagraph (B) that has not been taken on the date of the lease."

Pub. L. 104-106, § 2834(1), struck out first sentence of concluding provisions which read as follows: "The requirements of subparagraph (B) shall not apply in any case in which the person or entity to whom the property is transferred is a potentially responsible party with respect to such real property."

Subsec. (h)(4)(A). Pub. L. 104-201, § 331, substituted "known to have been released" for "stored for one year or more, known to have been released."

1992—Subsec. (h)(3). Pub. L. 102-426, § 4(a), inserted at end "For purposes of subparagraph (B)(i), all remedial action described in such subparagraph has been taken

if the construction and installation of an approved remedial design has been completed, and the remedy has been demonstrated to the Administrator to be operating properly and successfully. The carrying out of long-term pumping and treating, or operation and maintenance, after the remedy has been demonstrated to the Administrator to be operating properly and successfully does not preclude the transfer of the property."

Subsec. (h)(3)(C). Pub. L. 102-426, §4(b), added subpar. (C).

Subsec. (h)(4). Pub. L. 102-426, §3, added par. (4).

Subsec. (h)(5). Pub. L. 102-426, §5, added par. (5).

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103-7 (in which a report required under subsec. (e)(5) of this section is listed as the 5th item on page 151), see section 3003 of Pub. L. 104-66, as amended, and section 1(a)(4) [div. A, §1402(1)] of Pub. L. 106-554, set out as notes under section 1113 of Title 31, Money and Finance.

IDENTIFICATION OF UNCONTAMINATED PROPERTY AT INSTALLATIONS TO BE CLOSED

Pub. L. 103-160, div. B, title XXIX, §2910, Nov. 30, 1993, 107 Stat. 1924, provided that: "The identification by the Secretary of Defense required under section 120(h)(4)(A) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)(4)(A)), and the concurrence required under section 120(h)(4)(B) of such Act, shall be made not later than the earlier of—

"(1) the date that is 9 months after the date of the submittal, if any, to the transition coordinator for the installation concerned of a specific use proposed for all or a portion of the real property of the installation; or

"(2) the date specified in section 120(h)(4)(C)(iii) of such Act."

CONGRESSIONAL FINDINGS

Section 2 of Pub. L. 102-426 provided that: "The Congress finds the following:

"(1) The closure of certain Federal facilities is having adverse effects on the economies of local communities by eliminating jobs associated with such facilities, and delay in remediation of environmental contamination of real property at such facilities is preventing transfer and private development of such property.

"(2) Each department, agency, or instrumentality of the United States, in cooperation with local communities, should expeditiously identify real property that offers the greatest opportunity for reuse and redevelopment on each facility under the jurisdiction of the department, agency, or instrumentality where operations are terminating.

"(3) Remedial actions, including remedial investigations and feasibility studies, and corrective actions at such Federal facilities should be expedited in a manner to facilitate environmental protection and the sale or transfer of such excess real property for the purpose of mitigating adverse economic effects on the surrounding community.

"(4) Each department, agency, or instrumentality of the United States, in accordance with applicable law, should make available without delay such excess real property.

"(5) In the case of any real property owned by the United States and transferred to another person, the United States Government should remain responsible for conducting any remedial action or corrective action necessary to protect human health and the environment with respect to any hazardous substance or petroleum product or its derivatives, including aviation fuel and motor oil, that was present on such real property at the time of transfer."

APPLICABILITY

Section 120(b) of Pub. L. 99-499 provided that: "Section 120 of CERCLA [42 U.S.C. 9620] shall not apply to any response action or remedial action for which a plan is under development by the Department of Energy on the date of enactment of this Act [Oct. 17, 1986] with respect to facilities—

"(1) owned or operated by the United States and subject to the jurisdiction of such Department;

"(2) located in St. Charles and St. Louis counties, Missouri, or the city of St. Louis, Missouri, and

"(3) published in the National Priorities List.

In preparing such plans, the Secretary of Energy shall consult with the Administrator of the Environmental Protection Agency."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9604, 9607, 9609, 9613, 9617, 9622, 9659 of this title; title 10 section 2701; title 50 section 2811.

§ 9621. Cleanup standards

(a) Selection of remedial action

The President shall select appropriate remedial actions determined to be necessary to be carried out under section 9604 of this title or secured under section 9606 of this title which are in accordance with this section and, to the extent practicable, the national contingency plan, and which provide for cost-effective response. In evaluating the cost effectiveness of proposed alternative remedial actions, the President shall take into account the total short- and long-term costs of such actions, including the costs of operation and maintenance for the entire period during which such activities will be required.

(b) General rules

(1) Remedial actions in which treatment which permanently and significantly reduces the volume, toxicity or mobility of the hazardous substances, pollutants, and contaminants is a principal element, are to be preferred over remedial actions not involving such treatment. The off-site transport and disposal of hazardous substances or contaminated materials without such treatment should be the least favored alternative remedial action where practicable treatment technologies are available. The President shall conduct an assessment of permanent solutions and alternative treatment technologies or resource recovery technologies that, in whole or in part, will result in a permanent and significant decrease in the toxicity, mobility, or volume of the hazardous substance, pollutant, or contaminant. In making such assessment, the President shall specifically address the long-term effectiveness of various alternatives. In assessing alternative remedial actions, the President shall, at a minimum, take into account:

(A) the long-term uncertainties associated with land disposal;

(B) the goals, objectives, and requirements of the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.];

(C) the persistence, toxicity, mobility, and propensity to bioaccumulate of such hazardous substances and their constituents;

(D) short- and long-term potential for adverse health effects from human exposure;

(E) long-term maintenance costs;

(F) the potential for future remedial action costs if the alternative remedial action in question were to fail; and

(G) the potential threat to human health and the environment associated with excavation, transportation, and redisposal, or containment.

The President shall select a remedial action that is protective of human health and the environment, that is cost effective, and that utilizes permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable. If the President selects a remedial action not appropriate for a preference under this subsection, the President shall publish an explanation as to why a remedial action involving such reductions was not selected.

(2) The President may select an alternative remedial action meeting the objectives of this subsection whether or not such action has been achieved in practice at any other facility or site that has similar characteristics. In making such a selection, the President may take into account the degree of support for such remedial action by parties interested in such site.

(c) Review

If the President selects a remedial action that results in any hazardous substances, pollutants, or contaminants remaining at the site, the President shall review such remedial action no less often than each 5 years after the initiation of such remedial action to assure that human health and the environment are being protected by the remedial action being implemented. In addition, if upon such review it is the judgment of the President that action is appropriate at such site in accordance with section 9604 or 9606 of this title, the President shall take or require such action. The President shall report to the Congress a list of facilities for which such review is required, the results of all such reviews, and any actions taken as a result of such reviews.

(d) Degree of cleanup

(1) Remedial actions selected under this section or otherwise required or agreed to by the President under this chapter shall attain a degree of cleanup of hazardous substances, pollutants, and contaminants released into the environment and of control of further release at a minimum which assures protection of human health and the environment. Such remedial actions shall be relevant and appropriate under the circumstances presented by the release or threatened release of such substance, pollutant, or contaminant.

(2)(A) With respect to any hazardous substance, pollutant or contaminant that will remain onsite, if—

(i) any standard, requirement, criteria, or limitation under any Federal environmental law, including, but not limited to, the Toxic Substances Control Act [15 U.S.C. 2601 et seq.], the Safe Drinking Water Act [42 U.S.C. 300f et seq.], the Clean Air Act [42 U.S.C. 7401 et seq.], the Clean Water Act [33 U.S.C. 1251 et seq.], the Marine Protection, Research and Sanctuaries Act [16 U.S.C. 1431 et seq., 1447 et seq., 33 U.S.C. 1401 et seq., 2801 et seq.], or the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.]; or

(ii) any promulgated standard, requirement, criteria, or limitation under a State environ-

mental or facility siting law that is more stringent than any Federal standard, requirement, criteria, or limitation, including each such State standard, requirement, criteria, or limitation contained in a program approved, authorized or delegated by the Administrator under a statute cited in subparagraph (A), and that has been identified to the President by the State in a timely manner,

is legally applicable to the hazardous substance or pollutant or contaminant concerned or is relevant and appropriate under the circumstances of the release or threatened release of such hazardous substance or pollutant or contaminant, the remedial action selected under section 9604 of this title or secured under section 9606 of this title shall require, at the completion of the remedial action, a level or standard of control for such hazardous substance or pollutant or contaminant which at least attains such legally applicable or relevant and appropriate standard, requirement, criteria, or limitation. Such remedial action shall require a level or standard of control which at least attains Maximum Contaminant Level Goals established under the Safe Drinking Water Act [42 U.S.C. 300f et seq.] and water quality criteria established under section 304 or 303 of the Clean Water Act [33 U.S.C. 1314, 1313], where such goals or criteria are relevant and appropriate under the circumstances of the release or threatened release.

(B)(i) In determining whether or not any water quality criteria under the Clean Water Act [33 U.S.C. 1251 et seq.] is relevant and appropriate under the circumstances of the release or threatened release, the President shall consider the designated or potential use of the surface or groundwater, the environmental media affected, the purposes for which such criteria were developed, and the latest information available.

(ii) For the purposes of this section, a process for establishing alternate concentration limits to those otherwise applicable for hazardous constituents in groundwater under subparagraph (A) may not be used to establish applicable standards under this paragraph if the process assumes a point of human exposure beyond the boundary of the facility, as defined at the conclusion of the remedial investigation and feasibility study, except where—

(I) there are known and projected points of entry of such groundwater into surface water; and

(II) on the basis of measurements or projections, there is or will be no statistically significant increase of such constituents from such groundwater in such surface water at the point of entry or at any point where there is reason to believe accumulation of constituents may occur downstream; and

(III) the remedial action includes enforceable measures that will preclude human exposure to the contaminated groundwater at any point between the facility boundary and all known and projected points of entry of such groundwater into surface water

then the assumed point of human exposure may be at such known and projected points of entry.

(C)(i) Clause (ii) of this subparagraph shall be applicable only in cases where, due to the Presi-

dent's selection, in compliance with subsection (b)(1) of this section, of a proposed remedial action which does not permanently and significantly reduce the volume, toxicity, or mobility of hazardous substances, pollutants, or contaminants, the proposed disposition of waste generated by or associated with the remedial action selected by the President is land disposal in a State referred to in clause (ii).

(ii) Except as provided in clauses (iii) and (iv), a State standard, requirement, criteria, or limitation (including any State siting standard or requirement) which could effectively result in the statewide prohibition of land disposal of hazardous substances, pollutants, or contaminants shall not apply.

(iii) Any State standard, requirement, criteria, or limitation referred to in clause (ii) shall apply where each of the following conditions is met:

(I) The State standard, requirement, criteria, or limitation is of general applicability and was adopted by formal means.

(II) The State standard, requirement, criteria, or limitation was adopted on the basis of hydrologic, geologic, or other relevant considerations and was not adopted for the purpose of precluding onsite remedial actions or other land disposal for reasons unrelated to protection of human health and the environment.

(III) The State arranges for, and assures payment of the incremental costs of utilizing, a facility for disposition of the hazardous substances, pollutants, or contaminants concerned.

(iv) Where the remedial action selected by the President does not conform to a State standard and the State has initiated a law suit against the Environmental Protection Agency prior to May 1, 1986, to seek to have the remedial action conform to such standard, the President shall conform the remedial action to the State standard. The State shall assure the availability of an offsite facility for such remedial action.

(3) In the case of any removal or remedial action involving the transfer of any hazardous substance or pollutant or contaminant offsite, such hazardous substance or pollutant or contaminant shall only be transferred to a facility which is operating in compliance with section 3004 and 3005 of the Solid Waste Disposal Act [42 U.S.C. 6924, 6925] (or, where applicable, in compliance with the Toxic Substances Control Act [15 U.S.C. 2601 et seq.] or other applicable Federal law) and all applicable State requirements. Such substance or pollutant or contaminant may be transferred to a land disposal facility only if the President determines that both of the following requirements are met:

(A) The unit to which the hazardous substance or pollutant or contaminant is transferred is not releasing any hazardous waste, or constituent thereof, into the groundwater or surface water or soil.

(B) All such releases from other units at the facility are being controlled by a corrective action program approved by the Administrator under subtitle C of the Solid Waste Disposal Act [42 U.S.C. 6921 et seq.].

The President shall notify the owner or operator of such facility of determinations under this paragraph.

(4) The President may select a remedial action meeting the requirements of paragraph (1) that does not attain a level or standard of control at least equivalent to a legally applicable or relevant and appropriate standard, requirement, criteria, or limitation as required by paragraph (2) (including subparagraph (B) thereof), if the President finds that—

(A) the remedial action selected is only part of a total remedial action that will attain such level or standard of control when completed;

(B) compliance with such requirement at that facility will result in greater risk to human health and the environment than alternative options;

(C) compliance with such requirements is technically impracticable from an engineering perspective;

(D) the remedial action selected will attain a standard of performance that is equivalent to that required under the otherwise applicable standard, requirement, criteria, or limitation, through use of another method or approach;

(E) with respect to a State standard, requirement, criteria, or limitation, the State has not consistently applied (or demonstrated the intention to consistently apply) the standard, requirement, criteria, or limitation in similar circumstances at other remedial actions within the State; or

(F) in the case of a remedial action to be undertaken solely under section 9604 of this title using the Fund, selection of a remedial action that attains such level or standard of control will not provide a balance between the need for protection of public health and welfare and the environment at the facility under consideration, and the availability of amounts from the Fund to respond to other sites which present or may present a threat to public health or welfare or the environment, taking into consideration the relative immediacy of such threats.

The President shall publish such findings, together with an explanation and appropriate documentation.

(e) Permits and enforcement

(1) No Federal, State, or local permit shall be required for the portion of any removal or remedial action conducted entirely onsite, where such remedial action is selected and carried out in compliance with this section.

(2) A State may enforce any Federal or State standard, requirement, criteria, or limitation to which the remedial action is required to conform under this chapter in the United States district court for the district in which the facility is located. Any consent decree shall require the parties to attempt expeditiously to resolve disagreements concerning implementation of the remedial action informally with the appropriate Federal and State agencies. Where the parties agree, the consent decree may provide for administrative enforcement. Each consent decree shall also contain stipulated penalties for

violations of the decree in an amount not to exceed \$25,000 per day, which may be enforced by either the President or the State. Such stipulated penalties shall not be construed to impair or affect the authority of the court to order compliance with the specific terms of any such decree.

(f) State involvement

(1) The President shall promulgate regulations providing for substantial and meaningful involvement by each State in initiation, development, and selection of remedial actions to be undertaken in that State. The regulations, at a minimum, shall include each of the following:

(A) State involvement in decisions whether to perform a preliminary assessment and site inspection.

(B) Allocation of responsibility for hazard ranking system scoring.

(C) State concurrence in deleting sites from the National Priorities List.

(D) State participation in the long-term planning process for all remedial sites within the State.

(E) A reasonable opportunity for States to review and comment on each of the following:

(i) The remedial investigation and feasibility study and all data and technical documents leading to its issuance.

(ii) The planned remedial action identified in the remedial investigation and feasibility study.

(iii) The engineering design following selection of the final remedial action.

(iv) Other technical data and reports relating to implementation of the remedy.

(v) Any proposed finding or decision by the President to exercise the authority of subsection (d)(4) of this section.

(F) Notice to the State of negotiations with potentially responsible parties regarding the scope of any response action at a facility in the State and an opportunity to participate in such negotiations and, subject to paragraph (2), be a party to any settlement.

(G) Notice to the State and an opportunity to comment on the President's proposed plan for remedial action as well as on alternative plans under consideration. The President's proposed decision regarding the selection of remedial action shall be accompanied by a response to the comments submitted by the State, including an explanation regarding any decision under subsection (d)(4) of this section on compliance with promulgated State standards. A copy of such response shall also be provided to the State.

(H) Prompt notice and explanation of each proposed action to the State in which the facility is located.

Prior to the promulgation of such regulations, the President shall provide notice to the State of negotiations with potentially responsible parties regarding the scope of any response action at a facility in the State, and such State may participate in such negotiations and, subject to paragraph (2), any settlements.

(2)(A) This paragraph shall apply to remedial actions secured under section 9606 of this title.

At least 30 days prior to the entering of any consent decree, if the President proposes to select a remedial action that does not attain a legally applicable or relevant and appropriate standard, requirement, criteria, or limitation, under the authority of subsection (d)(4) of this section, the President shall provide an opportunity for the State to concur or not concur in such selection. If the State concurs, the State may become a signatory to the consent decree.

(B) If the State does not concur in such selection, and the State desires to have the remedial action conform to such standard, requirement, criteria, or limitation, the State shall intervene in the action under section 9606 of this title before entry of the consent decree, to seek to have the remedial action so conform. Such intervention shall be a matter of right. The remedial action shall conform to such standard, requirement, criteria, or limitation if the State establishes, on the administrative record, that the finding of the President was not supported by substantial evidence. If the court determines that the remedial action shall conform to such standard, requirement, criteria, or limitation, the remedial action shall be so modified and the State may become a signatory to the decree. If the court determines that the remedial action need not conform to such standard, requirement, criteria, or limitation, and the State pays or assures the payment of the additional costs attributable to meeting such standard, requirement, criteria, or limitation, the remedial action shall be so modified and the State shall become a signatory to the decree.

(C) The President may conclude settlement negotiations with potentially responsible parties without State concurrence.

(3)(A) This paragraph shall apply to remedial actions at facilities owned or operated by a department, agency, or instrumentality of the United States. At least 30 days prior to the publication of the President's final remedial action plan, if the President proposes to select a remedial action that does not attain a legally applicable or relevant and appropriate standard, requirement, criteria, or limitation, under the authority of subsection (d)(4) of this section, the President shall provide an opportunity for the State to concur or not concur in such selection. If the State concurs, or does not act within 30 days, the remedial action may proceed.

(B) If the State does not concur in such selection as provided in subparagraph (A), and desires to have the remedial action conform to such standard, requirement, criteria, or limitation, the State may maintain an action as follows:

(i) If the President has notified the State of selection of such a remedial action, the State may bring an action within 30 days of such notification for the sole purpose of determining whether the finding of the President is supported by substantial evidence. Such action shall be brought in the United States district court for the district in which the facility is located.

(ii) If the State establishes, on the administrative record, that the President's finding is not supported by substantial evidence, the remedial action shall be modified to conform to such standard, requirement, criteria, or limitation.

(iii) If the State fails to establish that the President's finding was not supported by substantial evidence and if the State pays, within 60 days of judgment, the additional costs attributable to meeting such standard, requirement, criteria, or limitation, the remedial action shall be selected to meet such standard, requirement, criteria, or limitation. If the State fails to pay within 60 days, the remedial action selected by the President shall proceed through completion.

(C) Nothing in this section precludes, and the court shall not enjoin, the Federal agency from taking any remedial action unrelated to or not inconsistent with such standard, requirement, criteria, or limitation.

(Pub. L. 96-510, title I, §121, as added Pub. L. 99-499, title I, §121(a), Oct. 17, 1986, 100 Stat. 1672.)

REFERENCES IN TEXT

The Solid Waste Disposal Act, referred to in subsec. (b)(1)(B) and (d)(2)(A)(i), (3)(B), is title II of Pub. L. 89-272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§6901 et seq.) of this title. Subtitle C of the Solid Waste Disposal Act is classified generally to subchapter III (§6921 et seq.) of chapter 82 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

The Toxic Substances Control Act, referred to in subsec. (d)(2)(A)(i), (3), is Pub. L. 94-469, Oct. 11, 1976, 90 Stat. 2003, as amended, which is classified generally to chapter 53 (§2601 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 15 and Tables.

The Safe Drinking Water Act, referred to in subsec. (d)(2)(A), is title XIV of act July 1, 1944, as added Dec. 16, 1974, Pub. L. 93-523, §2(a), 88 Stat. 1660, as amended, which is classified generally to subchapter XII (§300f et seq.) of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

The Clean Air Act, referred to in subsec. (d)(2)(A)(i), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§7401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

The Clean Water Act, referred to in subsec. (d)(2)(A)(i), (B)(i), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92-500, §2, Oct. 18, 1972, 86 Stat. 816, also known as the Federal Water Pollution Control Act, which is classified generally to chapter 26 (§1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Marine Protection, Research and Sanctuaries Act, referred to in subsec. (d)(2)(A)(i), probably means the Marine Protection, Research and Sanctuaries Act of 1972, Pub. L. 92-532, Oct. 23, 1972, 86 Stat. 1052, as amended, which enacted chapters 32 (§1431 et seq.) and 32A (§1447 et seq.) of Title 16, Conservation, and chapters 27 (§1401 et seq.) and 41 (§2801 et seq.) of Title 33. For complete classification of this Act to the Code, see Short Title note set out under section 1401 of Title 33 and Tables.

EFFECTIVE DATE

Section 121(b) of Pub. L. 99-499 provided that: "With respect to section 121 of CERCLA [this section], as added by this section—

"(1) The requirements of section 121 of CERCLA shall not apply to any remedial action for which the

Record of Decision (hereinafter in this section referred to as the 'ROD') was signed, or the consent decree was lodged, before date of enactment [Oct. 17, 1986].

"(2) If the ROD was signed, or the consent decree lodged, within the 30-day period immediately following enactment of the Act [Oct. 17, 1986], the Administrator shall certify in writing that the portion of the remedial action covered by the ROD or consent decree complies to the maximum extent practicable with section 121 of CERCLA. Any ROD signed before enactment of this Act [Oct. 17, 1986] and reopened after enactment of this Act to modify or supplement the selection of remedy shall be subject to the requirements of section 121 of CERCLA."

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103-7 (in which the report under subsec. (c) of this section appears to be the report listed as the 15th item on page 20), see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9604, 9613, 9617, 9620 of this title.

§ 9622. Settlements

(a) Authority to enter into agreements

The President, in his discretion, may enter into an agreement with any person (including the owner or operator of the facility from which a release or substantial threat of release emanates, or any other potentially responsible person), to perform any response action (including any action described in section 9604(b) of this title) if the President determines that such action will be done properly by such person. Whenever practicable and in the public interest, as determined by the President, the President shall act to facilitate agreements under this section that are in the public interest and consistent with the National Contingency Plan in order to expedite effective remedial actions and minimize litigation. If the President decides not to use the procedures in this section, the President shall notify in writing potentially responsible parties at the facility of such decision and the reasons why use of the procedures is inappropriate. A decision of the President to use or not to use the procedures in this section is not subject to judicial review.

(b) Agreements with potentially responsible parties

(1) Mixed funding

An agreement under this section may provide that the President will reimburse the parties to the agreement from the Fund, with interest, for certain costs of actions under the agreement that the parties have agreed to perform but which the President has agreed to finance. In any case in which the President provides such reimbursement, the President shall make all reasonable efforts to recover the amount of such reimbursement under section 9607 of this title or under other relevant authorities.

(2) Reviewability

The President's decisions regarding the availability of fund financing under this sub-

section shall not be subject to judicial review under subsection (d) of this section.

(3) Retention of funds

If, as part of any agreement, the President will be carrying out any action and the parties will be paying amounts to the President, the President may, notwithstanding any other provision of law, retain and use such amounts for purposes of carrying out the agreement.

(4) Future obligation of Fund

In the case of a completed remedial action pursuant to an agreement described in paragraph (1), the Fund shall be subject to an obligation for subsequent remedial actions at the same facility but only to the extent that such subsequent actions are necessary by reason of the failure of the original remedial action. Such obligation shall be in a proportion equal to, but not exceeding, the proportion contributed by the Fund for the original remedial action. The Fund's obligation for such future remedial action may be met through Fund expenditures or through payment, following settlement or enforcement action, by parties who were not signatories to the original agreement.

(c) Effect of agreement

(1) Liability

Whenever the President has entered into an agreement under this section, the liability to the United States under this chapter of each party to the agreement, including any future liability to the United States, arising from the release or threatened release that is the subject of the agreement shall be limited as provided in the agreement pursuant to a covenant not to sue in accordance with subsection (f) of this section. A covenant not to sue may provide that future liability to the United States of a settling potentially responsible party under the agreement may be limited to the same proportion as that established in the original settlement agreement. Nothing in this section shall limit or otherwise affect the authority of any court to review in the consent decree process under subsection (d) of this section any covenant not to sue contained in an agreement under this section. In determining the extent to which the liability of parties to an agreement shall be limited pursuant to a covenant not to sue, the President shall be guided by the principle that a more complete covenant not to sue shall be provided for a more permanent remedy undertaken by such parties.

(2) Actions against other persons

If an agreement has been entered into under this section, the President may take any action under section 9606 of this title against any person who is not a party to the agreement, once the period for submitting a proposal under subsection (e)(2)(B) of this section has expired. Nothing in this section shall be construed to affect either of the following:

(A) The liability of any person under section 9606 or 9607 of this title with respect to any costs or damages which are not included in the agreement.

(B) The authority of the President to maintain an action under this chapter against any person who is not a party to the agreement.

(d) Enforcement

(1) Cleanup agreements

(A) Consent decree

Whenever the President enters into an agreement under this section with any potentially responsible party with respect to remedial action under section 9606 of this title, following approval of the agreement by the Attorney General, except as otherwise provided in the case of certain administrative settlements referred to in subsection (g) of this section, the agreement shall be entered in the appropriate United States district court as a consent decree. The President need not make any finding regarding an imminent and substantial endangerment to the public health or the environment in connection with any such agreement or consent decree.

(B) Effect

The entry of any consent decree under this subsection shall not be construed to be an acknowledgment by the parties that the release or threatened release concerned constitutes an imminent and substantial endangerment to the public health or welfare or the environment. Except as otherwise provided in the Federal Rules of Evidence, the participation by any party in the process under this section shall not be considered an admission of liability for any purpose, and the fact of such participation shall not be admissible in any judicial or administrative proceeding, including a subsequent proceeding under this section.

(C) Structure

The President may fashion a consent decree so that the entering of such decree and compliance with such decree or with any determination or agreement made pursuant to this section shall not be considered an admission of liability for any purpose.

(2) Public participation

(A) Filing of proposed judgment

At least 30 days before a final judgment is entered under paragraph (1), the proposed judgment shall be filed with the court.

(B) Opportunity for comment

The Attorney General shall provide an opportunity to persons who are not named as parties to the action to comment on the proposed judgment before its entry by the court as a final judgment. The Attorney General shall consider, and file with the court, any written comments, views, or allegations relating to the proposed judgment. The Attorney General may withdraw or withhold its consent to the proposed judgment if the comments, views, and allegations concerning the judgment disclose facts or considerations which indicate that the proposed judgment is inappropriate, improper, or inadequate.

(3) 9604(b) agreements

Whenever the President enters into an agreement under this section with any potentially responsible party with respect to action under section 9604(b) of this title, the President shall issue an order or enter into a decree setting forth the obligations of such party. The United States district court for the district in which the release or threatened release occurs may enforce such order or decree.

(e) Special notice procedures**(1) Notice**

Whenever the President determines that a period of negotiation under this subsection would facilitate an agreement with potentially responsible parties for taking response action (including any action described in section 9604(b) of this title) and would expedite remedial action, the President shall so notify all such parties and shall provide them with information concerning each of the following:

(A) The names and addresses of potentially responsible parties (including owners and operators and other persons referred to in section 9607(a) of this title), to the extent such information is available.

(B) To the extent such information is available, the volume and nature of substances contributed by each potentially responsible party identified at the facility.

(C) A ranking by volume of the substances at the facility, to the extent such information is available.

The President shall make the information referred to in this paragraph available in advance of notice under this paragraph upon the request of a potentially responsible party in accordance with procedures provided by the President. The provisions of subsection (e) of section 9604 of this title regarding protection of confidential information apply to information provided under this paragraph. Disclosure of information generated by the President under this section to persons other than the Congress, or any duly authorized Committee thereof, is subject to other privileges or protections provided by law, including (but not limited to) those applicable to attorney work product. Nothing contained in this paragraph or in other provisions of this chapter shall be construed, interpreted, or applied to diminish the required disclosure of information under other provisions of this or other Federal or State laws.

(2) Negotiation**(A) Moratorium**

Except as provided in this subsection, the President may not commence action under section 9604(a) of this title or take any action under section 9606 of this title for 120 days after providing notice and information under this subsection with respect to such action. Except as provided in this subsection, the President may not commence a remedial investigation and feasibility study under section 9604(b) of this title for 90 days after providing notice and information under this subsection with respect to such action.

The President may commence any additional studies or investigations authorized under section 9604(b) of this title, including remedial design, during the negotiation period.

(B) Proposals

Persons receiving notice and information under paragraph (1) of this subsection with respect to action under section 9606 of this title shall have 60 days from the date of receipt of such notice to make a proposal to the President for undertaking or financing the action under section 9606 of this title. Persons receiving notice and information under paragraph (1) of this subsection with respect to action under section 9604(b) of this title shall have 60 days from the date of receipt of such notice to make a proposal to the President for undertaking or financing the action under section 9604(b) of this title.

(C) Additional parties

If an additional potentially responsible party is identified during the negotiation period or after an agreement has been entered into under this subsection concerning a release or threatened release, the President may bring the additional party into the negotiation or enter into a separate agreement with such party.

(3) Preliminary allocation of responsibility**(A) In general**

The President shall develop guidelines for preparing nonbinding preliminary allocations of responsibility. In developing these guidelines the President may include such factors as the President considers relevant, such as: volume, toxicity, mobility, strength of evidence, ability to pay, litigative risks, public interest considerations, precedential value, and inequities and aggravating factors. When it would expedite settlements under this section and remedial action, the President may, after completion of the remedial investigation and feasibility study, provide a nonbinding preliminary allocation of responsibility which allocates percentages of the total cost of response among potentially responsible parties at the facility.

(B) Collection of information

To collect information necessary or appropriate for performing the allocation under subparagraph (A) or for otherwise implementing this section, the President may by subpoena require the attendance and testimony of witnesses and the production of reports, papers, documents, answers to questions, and other information that the President deems necessary. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In the event of contumacy or failure or refusal of any person to obey any such subpoena, any district court of the United States in which venue is proper shall have jurisdiction to order any such person to comply with such subpoena. Any failure to obey such an order of the court is punishable by the court as a contempt thereof.

(C) Effect

The nonbinding preliminary allocation of responsibility shall not be admissible as evidence in any proceeding, and no court shall have jurisdiction to review the nonbinding preliminary allocation of responsibility. The nonbinding preliminary allocation of responsibility shall not constitute an apportionment or other statement on the divisibility of harm or causation.

(D) Costs

The costs incurred by the President in producing the nonbinding preliminary allocation of responsibility shall be reimbursed by the potentially responsible parties whose offer is accepted by the President. Where an offer under this section is not accepted, such costs shall be considered costs of response.

(E) Decision to reject offer

Where the President, in his discretion, has provided a nonbinding preliminary allocation of responsibility and the potentially responsible parties have made a substantial offer providing for response to the President which he rejects, the reasons for the rejection shall be provided in a written explanation. The President's decision to reject such an offer shall not be subject to judicial review.

(4) Failure to propose

If the President determines that a good faith proposal for undertaking or financing action under section 9606 of this title has not been submitted within 60 days of the provision of notice pursuant to this subsection, the President may thereafter commence action under section 9604(a) of this title or take an action against any person under section 9606 of this title. If the President determines that a good faith proposal for undertaking or financing action under section 9604(b) of this title has not been submitted within 60 days after the provision of notice pursuant to this subsection, the President may thereafter commence action under section 9604(b) of this title.

(5) Significant threats

Nothing in this subsection shall limit the President's authority to undertake response or enforcement action regarding a significant threat to public health or the environment within the negotiation period established by this subsection.

(6) Inconsistent response action

When either the President, or a potentially responsible party pursuant to an administrative order or consent decree under this chapter, has initiated a remedial investigation and feasibility study for a particular facility under this chapter, no potentially responsible party may undertake any remedial action at the facility unless such remedial action has been authorized by the President.

(f) Covenant not to sue**(1) Discretionary covenants**

The President may, in his discretion, provide any person with a covenant not to sue

concerning any liability to the United States under this chapter, including future liability, resulting from a release or threatened release of a hazardous substance addressed by a remedial action, whether that action is onsite or offsite, if each of the following conditions is met:

(A) The covenant not to sue is in the public interest.

(B) The covenant not to sue would expedite response action consistent with the National Contingency Plan under section 9605 of this title.

(C) The person is in full compliance with a consent decree under section 9606 of this title (including a consent decree entered into in accordance with this section) for response to the release or threatened release concerned.

(D) The response action has been approved by the President.

(2) Special covenants not to sue

In the case of any person to whom the President is authorized under paragraph (1) of this subsection to provide a covenant not to sue, for the portion of remedial action—

(A) which involves the transport and secure disposition offsite of hazardous substances in a facility meeting the requirements of sections 6924(c), (d), (e), (f), (g), (m), (o), (p), (u), and (v) and 6925(c) of this title, where the President has rejected a proposed remedial action that is consistent with the National Contingency Plan that does not include such offsite disposition and has thereafter required offsite disposition; or

(B) which involves the treatment of hazardous substances so as to destroy, eliminate, or permanently immobilize the hazardous constituents of such substances, such that, in the judgment of the President, the substances no longer present any current or currently foreseeable future significant risk to public health, welfare or the environment, no byproduct of the treatment or destruction process presents any significant hazard to public health, welfare or the environment, and all byproducts are themselves treated, destroyed, or contained in a manner which assures that such byproducts do not present any current or currently foreseeable future significant risk to public health, welfare or the environment,

the President shall provide such person with a covenant not to sue with respect to future liability to the United States under this chapter for a future release or threatened release of hazardous substances from such facility, and a person provided such covenant not to sue shall not be liable to the United States under section 9606 or 9607 of this title with respect to such release or threatened release at a future time.

(3) Requirement that remedial action be completed

A covenant not to sue concerning future liability to the United States shall not take effect until the President certifies that remedial action has been completed in accordance with

the requirements of this chapter at the facility that is the subject of such covenant.

(4) Factors

In assessing the appropriateness of a covenant not to sue under paragraph (1) and any condition to be included in a covenant not to sue under paragraph (1) or (2), the President shall consider whether the covenant or condition is in the public interest on the basis of such factors as the following:

(A) The effectiveness and reliability of the remedy, in light of the other alternative remedies considered for the facility concerned.

(B) The nature of the risks remaining at the facility.

(C) The extent to which performance standards are included in the order or decree.

(D) The extent to which the response action provides a complete remedy for the facility, including a reduction in the hazardous nature of the substances at the facility.

(E) The extent to which the technology used in the response action is demonstrated to be effective.

(F) Whether the Fund or other sources of funding would be available for any additional remedial actions that might eventually be necessary at the facility.

(G) Whether the remedial action will be carried out, in whole or in significant part, by the responsible parties themselves.

(5) Satisfactory performance

Any covenant not to sue under this subsection shall be subject to the satisfactory performance by such party of its obligations under the agreement concerned.

(6) Additional condition for future liability

(A) Except for the portion of the remedial action which is subject to a covenant not to sue under paragraph (2) or under subsection (g) of this section (relating to de minimis settlements), a covenant not to sue a person concerning future liability to the United States shall include an exception to the covenant that allows the President to sue such person concerning future liability resulting from the release or threatened release that is the subject of the covenant where such liability arises out of conditions which are unknown at the time the President certifies under paragraph (3) that remedial action has been completed at the facility concerned.

(B) In extraordinary circumstances, the President may determine, after assessment of relevant factors such as those referred to in paragraph (4) and volume, toxicity, mobility, strength of evidence, ability to pay, litigative risks, public interest considerations, precedential value, and inequities and aggravating factors, not to include the exception referred to in subparagraph (A) if other terms, conditions, or requirements of the agreement containing the covenant not to sue are sufficient to provide all reasonable assurances that public health and the environment will be protected from any future releases at or from the facility.

(C) The President is authorized to include any provisions allowing future enforcement action under section 9606 or 9607 of this title that in the discretion of the President are necessary and appropriate to assure protection of public health, welfare, and the environment.

(g) De minimis settlements

(1) Expedited final settlement

Whenever practicable and in the public interest, as determined by the President, the President shall as promptly as possible reach a final settlement with a potentially responsible party in an administrative or civil action under section 9606 or 9607 of this title if such settlement involves only a minor portion of the response costs at the facility concerned and, in the judgment of the President, the conditions in either of the following subparagraph (A) or (B) are met:

(A) Both of the following are minimal in comparison to other hazardous substances at the facility:

(i) The amount of the hazardous substances contributed by that party to the facility.

(ii) The toxic or other hazardous effects of the substances contributed by that party to the facility.

(B) The potentially responsible party—

(i) is the owner of the real property on or in which the facility is located;

(ii) did not conduct or permit the generation, transportation, storage, treatment, or disposal of any hazardous substance at the facility; and

(iii) did not contribute to the release or threat of release of a hazardous substance at the facility through any action or omission.

This subparagraph (B) does not apply if the potentially responsible party purchased the real property with actual or constructive knowledge that the property was used for the generation, transportation, storage, treatment, or disposal of any hazardous substance.

(2) Covenant not to sue

The President may provide a covenant not to sue with respect to the facility concerned to any party who has entered into a settlement under this subsection unless such a covenant would be inconsistent with the public interest as determined under subsection (f) of this section.

(3) Expedited agreement

The President shall reach any such settlement or grant any such covenant not to sue as soon as possible after the President has available the information necessary to reach such a settlement or grant such a covenant.

(4) Consent decree or administrative order

A settlement under this subsection shall be entered as a consent decree or embodied in an administrative order setting forth the terms of the settlement. In the case of any facility where the total response costs exceed \$500,000 (excluding interest), if the settlement is em-

bodied as an administrative order, the order may be issued only with the prior written approval of the Attorney General. If the Attorney General or his designee has not approved or disapproved the order within 30 days of this referral, the order shall be deemed to be approved unless the Attorney General and the Administrator have agreed to extend the time. The district court for the district in which the release or threatened release occurs may enforce any such administrative order.

(5) Effect of agreement

A party who has resolved its liability to the United States under this subsection shall not be liable for claims for contribution regarding matters addressed in the settlement. Such settlement does not discharge any of the other potentially responsible parties unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement.

(6) Settlements with other potentially responsible parties

Nothing in this subsection shall be construed to affect the authority of the President to reach settlements with other potentially responsible parties under this chapter.

(7) Reduction in settlement amount based on limited ability to pay

(A) In general

The condition for settlement under this paragraph is that the potentially responsible party is a person who demonstrates to the President an inability or a limited ability to pay response costs.

(B) Considerations

In determining whether or not a demonstration is made under subparagraph (A) by a person, the President shall take into consideration the ability of the person to pay response costs and still maintain its basic business operations, including consideration of the overall financial condition of the person and demonstrable constraints on the ability of the person to raise revenues.

(C) Information

A person requesting settlement under this paragraph shall promptly provide the President with all relevant information needed to determine the ability of the person to pay response costs.

(D) Alternative payment methods

If the President determines that a person is unable to pay its total settlement amount at the time of settlement, the President shall consider such alternative payment methods as may be necessary or appropriate.

(8) Additional conditions for expedited settlements

(A) Waiver of claims

The President shall require, as a condition for settlement under this subsection, that a potentially responsible party waive all of the claims (including a claim for contribution under this chapter) that the party may have against other potentially responsible

parties for response costs incurred with respect to the facility, unless the President determines that requiring a waiver would be unjust.

(B) Failure to comply

The President may decline to offer a settlement to a potentially responsible party under this subsection if the President determines that the potentially responsible party has failed to comply with any request for access or information or an administrative subpoena issued by the President under this chapter or has impeded or is impeding, through action or inaction, the performance of a response action with respect to the facility.

(C) Responsibility to provide information and access

A potentially responsible party that enters into a settlement under this subsection shall not be relieved of the responsibility to provide any information or access requested in accordance with subsection (e)(3)(B) of this section or section 9604(e) of this title.

(9) Basis of determination

If the President determines that a potentially responsible party is not eligible for settlement under this subsection, the President shall provide the reasons for the determination in writing to the potentially responsible party that requested a settlement under this subsection.

(10) Notification

As soon as practicable after receipt of sufficient information to make a determination, the President shall notify any person that the President determines is eligible under paragraph (1) of the person's eligibility for an expedited settlement.

(11) No judicial review

A determination by the President under paragraph (7), (8), (9), or (10) shall not be subject to judicial review.

(12) Notice of settlement

After a settlement under this subsection becomes final with respect to a facility, the President shall promptly notify potentially responsible parties at the facility that have not resolved their liability to the United States of the settlement.

(h) Cost recovery settlement authority

(1) Authority to settle

The head of any department or agency with authority to undertake a response action under this chapter pursuant to the national contingency plan may consider, compromise, and settle a claim under section 9607 of this title for costs incurred by the United States Government if the claim has not been referred to the Department of Justice for further action. In the case of any facility where the total response costs exceed \$500,000 (excluding interest), any claim referred to in the preceding sentence may be compromised and settled only with the prior written approval of the Attorney General.

(2) Use of arbitration

Arbitration in accordance with regulations promulgated under this subsection may be used as a method of settling claims of the United States where the total response costs for the facility concerned do not exceed \$500,000 (excluding interest). After consultation with the Attorney General, the department or agency head may establish and publish regulations for the use of arbitration or settlement under this subsection.

(3) Recovery of claims

If any person fails to pay a claim that has been settled under this subsection, the department or agency head shall request the Attorney General to bring a civil action in an appropriate district court to recover the amount of such claim, plus costs, attorneys' fees, and interest from the date of the settlement. In such an action, the terms of the settlement shall not be subject to review.

(4) Claims for contribution

A person who has resolved its liability to the United States under this subsection shall not be liable for claims for contribution regarding matters addressed in the settlement. Such settlement shall not discharge any of the other potentially liable persons unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement.

(i) Settlement procedures**(1) Publication in Federal Register**

At least 30 days before any settlement (including any settlement arrived at through arbitration) may become final under subsection (h) of this section, or under subsection (g) of this section in the case of a settlement embodied in an administrative order, the head of the department or agency which has jurisdiction over the proposed settlement shall publish in the Federal Register notice of the proposed settlement. The notice shall identify the facility concerned and the parties to the proposed settlement.

(2) Comment period

For a 30-day period beginning on the date of publication of notice under paragraph (1) of a proposed settlement, the head of the department or agency which has jurisdiction over the proposed settlement shall provide an opportunity for persons who are not parties to the proposed settlement to file written comments relating to the proposed settlement.

(3) Consideration of comments

The head of the department or agency shall consider any comments filed under paragraph (2) in determining whether or not to consent to the proposed settlement and may withdraw or withhold consent to the proposed settlement if such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate.

(j) Natural resources**(1) Notification of trustee**

Where a release or threatened release of any hazardous substance that is the subject of ne-

gotiations under this section may have resulted in damages to natural resources under the trusteeship of the United States, the President shall notify the Federal natural resource trustee of the negotiations and shall encourage the participation of such trustee in the negotiations.

(2) Covenant not to sue

An agreement under this section may contain a covenant not to sue under section 9607(a)(4)(C) of this title for damages to natural resources under the trusteeship of the United States resulting from the release or threatened release of hazardous substances that is the subject of the agreement, but only if the Federal natural resource trustee has agreed in writing to such covenant. The Federal natural resource trustee may agree to such covenant if the potentially responsible party agrees to undertake appropriate actions necessary to protect and restore the natural resources damaged by such release or threatened release of hazardous substances.

(k) Section not applicable to vessels

The provisions of this section shall not apply to releases from a vessel.

(l) Civil penalties

A potentially responsible party which is a party to an administrative order or consent decree entered pursuant to an agreement under this section or section 9620 of this title (relating to Federal facilities) or which is a party to an agreement under section 9620 of this title and which fails or refuses to comply with any term or condition of the order, decree or agreement shall be subject to a civil penalty in accordance with section 9609 of this title.

(m) Applicability of general principles of law

In the case of consent decrees and other settlements under this section (including covenants not to sue), no provision of this chapter shall be construed to preclude or otherwise affect the applicability of general principles of law regarding the setting aside or modification of consent decrees or other settlements.

(Pub. L. 96-510, title I, §122, as added Pub. L. 99-499, title I, §122(a), Oct. 17, 1986, 100 Stat. 1678; amended Pub. L. 107-118, title I, §102(b), Jan. 11, 2002, 115 Stat. 2359.)

REFERENCES IN TEXT

The Federal Rules of Evidence, referred to in subsec. (d)(1)(B), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

2002—Subsec. (g)(7) to (12). Pub. L. 107-118 added pars. (7) to (12).

EFFECT ON CONCLUDED ACTIONS

Amendment by Pub. L. 107-118 not to apply to or in any way affect any settlement lodged in, or judgment issued by, a United States District Court, or any administrative settlement or order entered into or issued by the United States or any State, before Jan. 11, 2002, see section 103 of Pub. L. 107-118, set out as a note under section 9607 of this title.

COORDINATION OF TITLES I TO IV OF PUB. L. 99-499

Any provision of titles I to IV of Pub. L. 99-499, imposing any tax, premium, or fee; establishing any trust

fund; or authorizing expenditures from any trust fund, to have no force or effect, see section 531 of Pub. L. 99-499, set out as a note under section 1 of Title 26, Internal Revenue Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9604, 9609, 9613, 9617, 9619, 9620, 9657 of this title; title 10 section 2701; title 14 section 691.

§ 9623. Reimbursement to local governments

(a) Application

Any general purpose unit of local government for a political subdivision which is affected by a release or threatened release at any facility may apply to the President for reimbursement under this section.

(b) Reimbursement

(1) Temporary emergency measures

The President is authorized to reimburse local community authorities for expenses incurred (before or after October 17, 1986) in carrying out temporary emergency measures necessary to prevent or mitigate injury to human health or the environment associated with the release or threatened release of any hazardous substance or pollutant or contaminant. Such measures may include, where appropriate, security fencing to limit access, response to fires and explosions, and other measures which require immediate response at the local level.

(2) Local funds not supplanted

Reimbursement under this section shall not supplant local funds normally provided for response.

(c) Amount

The amount of any reimbursement to any local authority under subsection (b)(1) of this section may not exceed \$25,000 for a single response. The reimbursement under this section with respect to a single facility shall be limited to the units of local government having jurisdiction over the political subdivision in which the facility is located.

(d) Procedure

Reimbursements authorized pursuant to this section shall be in accordance with rules promulgated by the Administrator within one year after October 17, 1986.

(Pub. L. 96-510, title I, §123, as added Pub. L. 99-499, title I, §123(a), Oct. 17, 1986, 100 Stat. 1688.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9611 of this title.

§ 9624. Methane recovery

(a) In general

In the case of a facility at which equipment for the recovery or processing (including recirculation of condensate) of methane has been installed, for purposes of this chapter:

(1) The owner or operator of such equipment shall not be considered an "owner or operator", as defined in section 9601(20) of this title, with respect to such facility.

(2) The owner or operator of such equipment shall not be considered to have arranged for

disposal or treatment of any hazardous substance at such facility pursuant to section 9607 of this title.

(3) The owner or operator of such equipment shall not be subject to any action under section 9606 of this title with respect to such facility.

(b) Exceptions

Subsection (a) of this section does not apply with respect to a release or threatened release of a hazardous substance from a facility described in subsection (a) of this section if either of the following circumstances exist:

(1) The release or threatened release was primarily caused by activities of the owner or operator of the equipment described in subsection (a) of this section.

(2) The owner or operator of such equipment would be covered by paragraph (1), (2), (3), or (4) of subsection (a) of section 9607 of this title with respect to such release or threatened release if he were not the owner or operator of such equipment.

In the case of any release or threatened release referred to in paragraph (1), the owner or operator of the equipment described in subsection (a) of this section shall be liable under this chapter only for costs or damages primarily caused by the activities of such owner or operator.

(Pub. L. 96-510, title I, §124, as added Pub. L. 99-499, title I, §124(a), Oct. 17, 1986, 100 Stat. 1688.)

§ 9625. Section 6921(b)(3)(A)(i) waste

(a) Revision of hazard ranking system

This section shall apply only to facilities which are not included or proposed for inclusion on the National Priorities List and which contain substantial volumes of waste described in section 6921(b)(3)(A)(i) of this title. As expeditiously as practicable, the President shall revise the hazard ranking system in effect under the National Contingency Plan with respect to such facilities in a manner which assures appropriate consideration of each of the following site-specific characteristics of such facilities:

(1) The quantity, toxicity, and concentrations of hazardous constituents which are present in such waste and a comparison thereof with other wastes.

(2) The extent of, and potential for, release of such hazardous constituents into the environment.

(3) The degree of risk to human health and the environment posed by such constituents.

(b) Inclusion prohibited

Until the hazard ranking system is revised as required by this section, the President may not include on the National Priorities List any facility which contains substantial volumes of waste described in section 6921(b)(3)(A)(i) of this title on the basis of an evaluation made principally on the volume of such waste and not on the concentrations of the hazardous constituents of such waste. Nothing in this section shall be construed to affect the President's authority to include any such facility on the National Priorities List based on the presence of other sub-

stances at such facility or to exercise any other authority of this chapter with respect to such other substances.

(Pub. L. 96-510, title I, §125, as added Pub. L. 99-499, title I, §125, Oct. 17, 1986, 100 Stat. 1689.)

§ 9626. Indian tribes

(a) Treatment generally

The governing body of an Indian tribe shall be afforded substantially the same treatment as a State with respect to the provisions of section 9603(a) of this title (regarding notification of releases), section 9604(c)(2) of this title (regarding consultation on remedial actions), section 9604(e) of this title (regarding access to information), section 9604(i) of this title (regarding health authorities) and section 9605 of this title (regarding roles and responsibilities under the national contingency plan and submittal of priorities for remedial action, but not including the provision regarding the inclusion of at least one facility per State on the National Priorities List).

(b) Community relocation

Should the President determine that proper remedial action is the permanent relocation of tribal members away from a contaminated site because it is cost effective and necessary to protect their health and welfare, such finding must be concurred in by the affected tribal government before relocation shall occur. The President, in cooperation with the Secretary of the Interior, shall also assure that all benefits of the relocation program are provided to the affected tribe and that alternative land of equivalent value is available and satisfactory to the tribe. Any lands acquired for relocation of tribal members shall be held in trust by the United States for the benefit of the tribe.

(c) Study

The President shall conduct a survey, in consultation with the Indian tribes, to determine the extent of hazardous waste sites on Indian lands. Such survey shall be included within a report which shall make recommendations on the program needs of tribes under this chapter, with particular emphasis on how tribal participation in the administration of such programs can be maximized. Such report shall be submitted to Congress along with the President's budget request for fiscal year 1988.

(d) Limitation

Notwithstanding any other provision of this chapter, no action under this chapter by an Indian tribe shall be barred until the later of the following:

(1) The applicable period of limitations has expired.

(2) 2 years after the United States, in its capacity as trustee for the tribe, gives written notice to the governing body of the tribe that it will not present a claim or commence an action on behalf of the tribe or fails to present a claim or commence an action within the time limitations specified in this chapter.

(Pub. L. 96-510, title I, §126, as added Pub. L. 99-499, title II, §207(e), Oct. 17, 1986, 100 Stat. 1706.)

§ 9627. Recycling transactions

(a) Liability clarification

(1) As provided in subsections (b), (c), (d), and (e) of this section, a person who arranged for recycling of recyclable material shall not be liable under sections 9607(a)(3) and 9607(a)(4) of this title with respect to such material.

(2) A determination whether or not any person shall be liable under section 9607(a)(3) of this title or section 9607(a)(4) of this title for any material that is not a recyclable material as that term is used in subsections (b) and (c), (d), or (e) of this section shall be made, without regard to subsections¹ (b), (c), (d), or (e) of this section.

(b) Recyclable material defined

For purposes of this section, the term "recyclable material" means scrap paper, scrap plastic, scrap glass, scrap textiles, scrap rubber (other than whole tires), scrap metal, or spent lead-acid, spent nickel-cadmium, and other spent batteries, as well as minor amounts of material incident to or adhering to the scrap material as a result of its normal and customary use prior to becoming scrap; except that such term shall not include—

(1) shipping containers of a capacity from 30 liters to 3,000 liters, whether intact or not, having any hazardous substance (but not metal bits and pieces or hazardous substance that form an integral part of the container) contained in or adhering thereto; or

(2) any item of material that contained polychlorinated biphenyls at a concentration in excess of 50 parts per million or any new standard promulgated pursuant to applicable Federal laws.

(c) Transactions involving scrap paper, plastic, glass, textiles, or rubber

Transactions involving scrap paper, scrap plastic, scrap glass, scrap textiles, or scrap rubber (other than whole tires) shall be deemed to be arranging for recycling if the person who arranged for the transaction (by selling recyclable material or otherwise arranging for the recycling of recyclable material) can demonstrate by a preponderance of the evidence that all of the following criteria were met at the time of the transaction:

(1) The recyclable material met a commercial specification grade.

(2) A market existed for the recyclable material.

(3) A substantial portion of the recyclable material was made available for use as feedstock for the manufacture of a new saleable product.

(4) The recyclable material could have been a replacement or substitute for a virgin raw material, or the product to be made from the recyclable material could have been a replacement or substitute for a product made, in whole or in part, from a virgin raw material.

(5) For transactions occurring 90 days or more after November 29, 1999, the person exercised reasonable care to determine that the facility where the recyclable material was handled, processed, reclaimed, or otherwise man-

¹ So in original. Probably should be "subsection".

aged by another person (hereinafter in this section referred to as a “consuming facility”) was in compliance with substantive (not procedural or administrative) provisions of any Federal, State, or local environmental law or regulation, or compliance order or decree issued pursuant thereto, applicable to the handling, processing, reclamation, storage, or other management activities associated with recyclable material.

(6) For purposes of this subsection, “reasonable care” shall be determined using criteria that include (but are not limited to)—

(A) the price paid in the recycling transaction;

(B) the ability of the person to detect the nature of the consuming facility’s operations concerning its handling, processing, reclamation, or other management activities associated with recyclable material; and

(C) the result of inquiries made to the appropriate Federal, State, or local environmental agency (or agencies) regarding the consuming facility’s past and current compliance with substantive (not procedural or administrative) provisions of any Federal, State, or local environmental law or regulation, or compliance order or decree issued pursuant thereto, applicable to the handling, processing, reclamation, storage, or other management activities associated with the recyclable material. For the purposes of this paragraph, a requirement to obtain a permit applicable to the handling, processing, reclamation, or other management activity associated with the recyclable materials shall be deemed to be a substantive provision.

(d) Transactions involving scrap metal

(1) Transactions involving scrap metal shall be deemed to be arranging for recycling if the person who arranged for the transaction (by selling recyclable material or otherwise arranging for the recycling of recyclable material) can demonstrate by a preponderance of the evidence that at the time of the transaction—

(A) the person met the criteria set forth in subsection (c) of this section with respect to the scrap metal;

(B) the person was in compliance with any applicable regulations or standards regarding the storage, transport, management, or other activities associated with the recycling of scrap metal that the Administrator promulgates under the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.] subsequent to November 29, 1999, and with regard to transactions occurring after the effective date of such regulations or standards; and

(C) the person did not melt the scrap metal prior to the transaction.

(2) For purposes of paragraph (1)(C), melting of scrap metal does not include the thermal separation of 2 or more materials due to differences in their melting points (referred to as “sweating”).

(3) For purposes of this subsection, the term “scrap metal” means bits and pieces of metal parts (e.g., bars, turnings, rods, sheets, wire) or metal pieces that may be combined together with bolts or soldering (e.g., radiators, scrap

automobiles, railroad box cars), which when worn or superfluous can be recycled, except for scrap metals that the Administrator excludes from this definition by regulation.

(e) Transactions involving batteries

Transactions involving spent lead-acid batteries, spent nickel-cadmium batteries, or other spent batteries shall be deemed to be arranging for recycling if the person who arranged for the transaction (by selling recyclable material or otherwise arranging for the recycling of recyclable material) can demonstrate by a preponderance of the evidence that at the time of the transaction—

(1) the person met the criteria set forth in subsection (c) of this section with respect to the spent lead-acid batteries, spent nickel-cadmium batteries, or other spent batteries, but the person did not recover the valuable components of such batteries; and

(2)(A) with respect to transactions involving lead-acid batteries, the person was in compliance with applicable Federal environmental regulations or standards, and any amendments thereto, regarding the storage, transport, management, or other activities associated with the recycling of spent lead-acid batteries;

(B) with respect to transactions involving nickel-cadmium batteries, Federal environmental regulations or standards are in effect regarding the storage, transport, management, or other activities associated with the recycling of spent nickel-cadmium batteries, and the person was in compliance with applicable regulations or standards or any amendments thereto; or

(C) with respect to transactions involving other spent batteries, Federal environmental regulations or standards are in effect regarding the storage, transport, management, or other activities associated with the recycling of such batteries, and the person was in compliance with applicable regulations or standards or any amendments thereto.

(f) Exclusions

(1) The exemptions set forth in subsections (c), (d), and (e) of this section shall not apply if—

(A) the person had an objectively reasonable basis to believe at the time of the recycling transaction—

(i) that the recyclable material would not be recycled;

(ii) that the recyclable material would be burned as fuel, or for energy recovery or incineration; or

(iii) for transactions occurring before 90 days after November 29, 1999, that the consuming facility was not in compliance with a substantive (not procedural or administrative) provision of any Federal, State, or local environmental law or regulation, or compliance order or decree issued pursuant thereto, applicable to the handling, processing, reclamation, or other management activities associated with the recyclable material;

(B) the person had reason to believe that hazardous substances had been added to the recyclable material for purposes other than processing for recycling; or

(C) the person failed to exercise reasonable care with respect to the management and handling of the recyclable material (including adhering to customary industry practices current at the time of the recycling transaction designed to minimize, through source control, contamination of the recyclable material by hazardous substances).

(2) For purposes of this subsection, an objectively reasonable basis for belief shall be determined using criteria that include (but are not limited to) the size of the person's business, customary industry practices (including customary industry practices current at the time of the recycling transaction designed to minimize, through source control, contamination of the recyclable material by hazardous substances), the price paid in the recycling transaction, and the ability of the person to detect the nature of the consuming facility's operations concerning its handling, processing, reclamation, or other management activities associated with the recyclable material.

(3) For purposes of this subsection, a requirement to obtain a permit applicable to the handling, processing, reclamation, or other management activities associated with recyclable material shall be deemed to be a substantive provision.

(g) Effect on other liability

Nothing in this section shall be deemed to affect the liability of a person under paragraph (1) or (2) of section 9607(a) of this title.

(h) Regulations

The Administrator has the authority, under section 9615 of this title, to promulgate additional regulations concerning this section.

(i) Effect on pending or concluded actions

The exemptions provided in this section shall not affect any concluded judicial or administrative action or any pending judicial action initiated by the United States prior to November 29, 1999.

(j) Liability for attorney's fees for certain actions

Any person who commences an action in contribution against a person who is not liable by operation of this section shall be liable to that person for all reasonable costs of defending that action, including all reasonable attorney's and expert witness fees.

(k) Relationship to liability under other laws

Nothing in this section shall affect—

(1) liability under any other Federal, State, or local statute or regulation promulgated pursuant to any such statute, including any requirements promulgated by the Administrator under the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.]; or

(2) the ability of the Administrator to promulgate regulations under any other statute, including the Solid Waste Disposal Act.

(l) Limitation on statutory construction

Nothing in this section shall be construed to—

(1) affect any defenses or liabilities of any person to whom subsection (a)(1) of this section does not apply; or

(2) create any presumption of liability against any person to whom subsection (a)(1) of this section does not apply.

(Pub. L. 96-510, title I, §127, as added Pub. L. 106-113, div. B, §1000(a)(9) [title VI, §6001(b)(1)], Nov. 29, 1999, 113 Stat. 1536, 1501A-599.)

REFERENCES IN TEXT

The Solid Waste Disposal Act, referred to in subsecs. (d)(1)(B) and (k), is title II of Pub. L. 89-272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§6901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

SUPERFUND RECYCLING EQUITY; PURPOSES

Pub. L. 106-113, div. B, §1000(a)(9) [title VI, §6001(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A-598, provided that: "The purposes of this section [enacting this section] are—

"(1) to promote the reuse and recycling of scrap material in furtherance of the goals of waste minimization and natural resource conservation while protecting human health and the environment;

"(2) to create greater equity in the statutory treatment of recycled versus virgin materials; and

"(3) to remove the disincentives and impediments to recycling created as an unintended consequence of the 1980 Superfund liability provisions."

§ 9628. State response programs

(a) Assistance to States

(1) In general

(A) States

The Administrator may award a grant to a State or Indian tribe that—

(i) has a response program that includes each of the elements, or is taking reasonable steps to include each of the elements, listed in paragraph (2); or

(ii) is a party to a memorandum of agreement with the Administrator for voluntary response programs.

(B) Use of grants by States

(i) In general

A State or Indian tribe may use a grant under this subsection to establish or enhance the response program of the State or Indian tribe.

(ii) Additional uses

In addition to the uses under clause (i), a State or Indian tribe may use a grant under this subsection to—

(I) capitalize a revolving loan fund for brownfield remediation under section 9604(k)(3) of this title; or

(II) purchase insurance or develop a risk sharing pool, an indemnity pool, or insurance mechanism to provide financing for response actions under a State response program.

(2) Elements

The elements of a State or Indian tribe response program referred to in paragraph (1)(A)(i) are the following:

(A) Timely survey and inventory of brownfield sites in the State.

(B) Oversight and enforcement authorities or other mechanisms, and resources, that are adequate to ensure that—

(i) a response action will—

- (I) protect human health and the environment; and
 - (II) be conducted in accordance with applicable Federal and State law; and
 - (ii) if the person conducting the response action fails to complete the necessary response activities, including operation and maintenance or long-term monitoring activities, the necessary response activities are completed.
- (C) Mechanisms and resources to provide meaningful opportunities for public participation, including—
- (i) public access to documents that the State, Indian tribe, or party conducting the cleanup is relying on or developing in making cleanup decisions or conducting site activities;
 - (ii) prior notice and opportunity for comment on proposed cleanup plans and site activities; and
 - (iii) a mechanism by which—
 - (I) a person that is or may be affected by a release or threatened release of a hazardous substance, pollutant, or contaminant at a brownfield site located in the community in which the person works or resides may request the conduct of a site assessment; and
 - (II) an appropriate State official shall consider and appropriately respond to a request under subclause (I).
- (D) Mechanisms for approval of a cleanup plan, and a requirement for verification by and certification or similar documentation from the State, an Indian tribe, or a licensed site professional to the person conducting a response action indicating that the response is complete.

(3) Funding

There is authorized to be appropriated to carry out this subsection \$50,000,000 for each of fiscal years 2002 through 2006.

(b) Enforcement in cases of a release subject to State program

(1) Enforcement

(A) In general

Except as provided in subparagraph (B) and subject to subparagraph (C), in the case of an eligible response site at which—

- (i) there is a release or threatened release of a hazardous substance, pollutant, or contaminant; and
- (ii) a person is conducting or has completed a response action regarding the specific release that is addressed by the response action that is in compliance with the State program that specifically governs response actions for the protection of public health and the environment,

the President may not use authority under this chapter to take an administrative or judicial enforcement action under section 9606(a) of this title or to take a judicial enforcement action to recover response costs under section 9607(a) of this title against the person regarding the specific release that is addressed by the response action.

(B) Exceptions

The President may bring an administrative or judicial enforcement action under this chapter during or after completion of a response action described in subparagraph (A) with respect to a release or threatened release at an eligible response site described in that subparagraph if—

- (i) the State requests that the President provide assistance in the performance of a response action;
- (ii) the Administrator determines that contamination has migrated or will migrate across a State line, resulting in the need for further response action to protect human health or the environment, or the President determines that contamination has migrated or is likely to migrate onto property subject to the jurisdiction, custody, or control of a department, agency, or instrumentality of the United States and may impact the authorized purposes of the Federal property;
- (iii) after taking into consideration the response activities already taken, the Administrator determines that—

(I) a release or threatened release may present an imminent and substantial endangerment to public health or welfare or the environment; and

(II) additional response actions are likely to be necessary to address, prevent, limit, or mitigate the release or threatened release; or

- (iv) the Administrator, after consultation with the State, determines that information, that on the earlier of the date on which cleanup was approved or completed, was not known by the State, as recorded in documents prepared or relied on in selecting or conducting the cleanup, has been discovered regarding the contamination or conditions at a facility such that the contamination or conditions at the facility present a threat requiring further remediation to protect public health or welfare or the environment. Consultation with the State shall not limit the ability of the Administrator to make this determination.

(C) Public record

The limitations on the authority of the President under subparagraph (A) apply only at sites in States that maintain, update not less than annually, and make available to the public a record of sites, by name and location, at which response actions have been completed in the previous year and are planned to be addressed under the State program that specifically governs response actions for the protection of public health and the environment in the upcoming year. The public record shall identify whether or not the site, on completion of the response action, will be suitable for unrestricted use and, if not, shall identify the institutional controls relied on in the remedy. Each State and tribe receiving financial assistance under subsection (a) of this section shall maintain and make available to the public a record of sites as provided in this paragraph.

(D) EPA notification

(i) In general

In the case of an eligible response site at which there is a release or threatened release of a hazardous substance, pollutant, or contaminant and for which the Administrator intends to carry out an action that may be barred under subparagraph (A), the Administrator shall—

(I) notify the State of the action the Administrator intends to take; and

(II)(aa) wait 48 hours for a reply from the State under clause (ii); or

(bb) if the State fails to reply to the notification or if the Administrator makes a determination under clause (iii), take immediate action under that clause.

(ii) State reply

Not later than 48 hours after a State receives notice from the Administrator under clause (i), the State shall notify the Administrator if—

(I) the release at the eligible response site is or has been subject to a cleanup conducted under a State program; and

(II) the State is planning to abate the release or threatened release, any actions that are planned.

(iii) Immediate Federal action

The Administrator may take action immediately after giving notification under clause (i) without waiting for a State reply under clause (ii) if the Administrator determines that one or more exceptions under subparagraph (B) are met.

(E) Report to Congress

Not later than 90 days after the date of initiation of any enforcement action by the President under clause (ii), (iii), or (iv) of subparagraph (B), the President shall submit to Congress a report describing the basis for the enforcement action, including specific references to the facts demonstrating that enforcement action is permitted under subparagraph (B).

(2) Savings provision

(A) Costs incurred prior to limitations

Nothing in paragraph (1) precludes the President from seeking to recover costs incurred prior to January 11, 2002, or during a period in which the limitations of paragraph (1)(A) were not applicable.

(B) Effect on agreements between States and EPA

Nothing in paragraph (1)—

(i) modifies or otherwise affects a memorandum of agreement, memorandum of understanding, or any similar agreement relating to this chapter between a State agency or an Indian tribe and the Administrator that is in effect on or before January 11, 2002 (which agreement shall remain in effect, subject to the terms of the agreement); or

(ii) limits the discretionary authority of the President to enter into or modify an

agreement with a State, an Indian tribe, or any other person relating to the implementation by the President of statutory authorities.

(3) Effective date

This subsection applies only to response actions conducted after February 15, 2001.

(c) Effect on Federal laws

Nothing in this section affects any liability or response authority under any Federal law, including—

(1) this chapter, except as provided in subsection (b) of this section;

(2) the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.);

(3) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.);

(4) the Toxic Substances Control Act (15 U.S.C. 2601 et seq.); and

(5) the Safe Drinking Water Act (42 U.S.C. 300f et seq.).

(Pub. L. 96-510, title I, §128, as added Pub. L. 107-118, title II, §231(b), Jan. 11, 2002, 115 Stat. 2375.)

REFERENCES IN TEXT

The Solid Waste Disposal Act, referred to in subsec. (c)(2), is title II of Pub. L. 89-272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§6901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

The Federal Water Pollution Control Act, referred to in subsec. (c)(3), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92-500, §2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Toxic Substances Control Act, referred to in subsec. (c)(4), is Pub. L. 94-469, Oct. 11, 1976, 90 Stat. 2003, as amended, which is classified generally to chapter 53 (§2601 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 15 and Tables.

The Safe Drinking Water Act, referred to in subsec. (c)(5), is title XIV of act July 1, 1944, as added Dec. 16, 1974, Pub. L. 93-523, §2(a), 88 Stat. 1660, as amended, which is classified generally to subchapter XII (§300f et seq.) of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9601 of this title.

SUBCHAPTER II—HAZARDOUS SUBSTANCE RESPONSE REVENUE

PART A—HAZARDOUS SUBSTANCE RESPONSE TRUST FUND

§§ 9631 to 9633. Repealed. Pub. L. 99-499, title V, § 517(c)(1), Oct. 17, 1986, 100 Stat. 1774

Section 9631, Pub. L. 96-510, title II, §221, Dec. 11, 1980, 94 Stat. 2801; Pub. L. 99-499, title II, §204, Oct. 17, 1986, 100 Stat. 1696, provided for establishment of a Hazardous Substances Superfund, so redesignated by section 204 of Pub. L. 99-499. See section 9507 of Title 26, Internal Revenue Code.

Section 9632, Pub. L. 96-510, title II, § 222, Dec. 11, 1980, 94 Stat. 2802, limited liability of United States to amount in Trust Fund.

Section 9633, Pub. L. 96-510, title II, § 223, Dec. 11, 1980, 94 Stat. 2802, contained administrative provisions.

EFFECTIVE DATE OF REPEAL

Repeal by Pub. L. 99-499 effective Jan. 1, 1987, see section 517(e) of Pub. L. 99-499, set out as an Effective Date note under section 9507 of Title 26, Internal Revenue Code.

PART B—POST-CLOSURE LIABILITY TRUST FUND

§ 9641. Repealed. Pub. L. 99-499, title V, § 514(b), Oct. 17, 1986, 100 Stat. 1767

Section, Pub. L. 96-510, title II, § 232, Dec. 11, 1980, 94 Stat. 2804, provided for establishment of the Post-closure Liability Trust Fund in the Treasury of the United States.

EFFECTIVE DATE OF REPEAL

Section 514(c) of Pub. L. 99-499 provided that:

“(1) IN GENERAL.—The amendments made by this section [repealing this section and sections 4681 and 4682 of Title 26, Internal Revenue Code] shall take effect on October 1, 1983.

“(2) WAIVER OF STATUTE OF LIMITATIONS.—If on the date of the enactment of this Act [Oct. 17, 1986] (or at any time within 1 year after such date of enactment) refund or credit of any overpayment of tax resulting from the application of this section is barred by any law or rule of law, refund or credit of such overpayment shall, nevertheless, be made or allowed if claim therefor is filed before the date 1 year after the date of the enactment of this Act.”

SUBCHAPTER III—MISCELLANEOUS PROVISIONS

§ 9651. Reports and studies

(a) Implementation experiences; identification and disposal of waste

(1) The President shall submit to the Congress, within four years after December 11, 1980, a comprehensive report on experience with the implementation of this chapter including, but not limited to—

(A) the extent to which the chapter and Fund are effective in enabling Government to respond to and mitigate the effects of releases of hazardous substances;

(B) a summary of past receipts and disbursements from the Fund;

(C) a projection of any future funding needs remaining after the expiration of authority to collect taxes, and of the threat to public health, welfare, and the environment posed by the projected releases which create any such needs;

(D) the record and experience of the Fund in recovering Fund disbursements from liable parties;

(E) the record of State participation in the system of response, liability, and compensation established by this chapter;

(F) the impact of the taxes imposed by subchapter II¹ of this chapter on the Nation's balance of trade with other countries;

(G) an assessment of the feasibility and desirability of a schedule of taxes which would

take into account one or more of the following: the likelihood of a release of a hazardous substance, the degree of hazard and risk of harm to public health, welfare, and the environment resulting from any such release, incentives to proper handling, recycling, incineration, and neutralization of hazardous wastes, and disincentives to improper or illegal handling or disposal of hazardous materials, administrative and reporting burdens on Government and industry, and the extent to which the tax burden falls on the substances and parties which create the problems addressed by this chapter. In preparing the report, the President shall consult with appropriate Federal, State, and local agencies, affected industries and claimants, and such other interested parties as he may find useful. Based upon the analyses and consultation required by this subsection, the President shall also include in the report any recommendations for legislative changes he may deem necessary for the better effectuation of the purposes of this chapter, including but not limited to recommendations concerning authorization levels, taxes, State participation, liability and liability limits, and financial responsibility provisions for the Response Trust Fund and the Post-closure Liability Trust Fund;

(H) an exemption from or an increase in the substances or the amount of taxes imposed by section 4661 of title 26 for copper, lead, and zinc oxide, and for feedstocks when used in the manufacture and production of fertilizers, based upon the expenditure experience of the Response Trust Fund;

(I) the economic impact of taxing coal-derived substances and recycled metals.

(2) The Administrator of the Environmental Protection Agency (in consultation with the Secretary of the Treasury) shall submit to the Congress (i) within four years after December 11, 1980, a report identifying additional wastes designated by rule as hazardous after the effective date of this chapter and pursuant to section 3001 of the Solid Waste Disposal Act [42 U.S.C. 6921] and recommendations on appropriate tax rates for such wastes for the Post-closure Liability Trust Fund. The report shall, in addition, recommend a tax rate, considering the quantity and potential danger to human health and the environment posed by the disposal of any wastes which the Administrator, pursuant to subsection 3001(b)(2)(B) and subsection 3001(b)(3)(A) of the Solid Waste Disposal Act of 1980 [42 U.S.C. 6921(b)(2)(B) and 6921(b)(3)(A)], has determined should be subject to regulation under subtitle C of such Act [42 U.S.C. 6921 et seq.], (ii) within three years after December 11, 1980, a report on the necessity for and the adequacy of the revenue raised, in relation to estimated future requirements, of the Post-closure Liability Trust Fund.

(b) Private insurance protection

The President shall conduct a study to determine (1) whether adequate private insurance protection is available on reasonable terms and conditions to the owners and operators of vessels and facilities subject to liability under sec-

¹ See References in Text note below.

tion 9607 of this title, and (2) whether the market for such insurance is sufficiently competitive to assure purchasers of features such as a reasonable range of deductibles, coinsurance provisions, and exclusions. The President shall submit the results of his study, together with his recommendations, within two years of December 11, 1980, and shall submit an interim report on his study within one year of December 11, 1980.

(c) Regulations respecting assessment of damages to natural resources

(1) The President, acting through Federal officials designated by the National Contingency Plan published under section 9605 of this title, shall study and, not later than two years after December 11, 1980, shall promulgate regulations for the assessment of damages for injury to, destruction of, or loss of natural resources resulting from a release of oil or a hazardous substance for the purposes of this chapter and section 1321(f)(4) and (5) of title 33. Notwithstanding the failure of the President to promulgate the regulations required under this subsection on the required date, the President shall promulgate such regulations not later than 6 months after October 17, 1986.

(2) Such regulations shall specify (A) standard procedures for simplified assessments requiring minimal field observation, including establishing measures of damages based on units of discharge or release or units of affected area, and (B) alternative protocols for conducting assessments in individual cases to determine the type and extent of short- and long-term injury, destruction, or loss. Such regulations shall identify the best available procedures to determine such damages, including both direct and indirect injury, destruction, or loss and shall take into consideration factors including, but not limited to, replacement value, use value, and ability of the ecosystem or resource to recover.

(3) Such regulations shall be reviewed and revised as appropriate every two years.

(d) Issues, alternatives, and policy considerations involving selection of locations for waste treatment, storage, and disposal facilities

The Administrator of the Environmental Protection Agency shall, in consultation with other Federal agencies and appropriate representatives of State and local governments and nongovernmental agencies, conduct a study and report to the Congress within two years of December 11, 1980, on the issues, alternatives, and policy considerations involved in the selection of locations for hazardous waste treatment, storage, and disposal facilities. This study shall include—

(A) an assessment of current and projected treatment, storage, and disposal capacity needs and shortfalls for hazardous waste by management category on a State-by-State basis;

(B) an evaluation of the appropriateness of a regional approach to siting and designing hazardous waste management facilities and the identification of hazardous waste management regions, interstate or intrastate, or both, with similar hazardous waste management needs;

(C) solicitation and analysis of proposals for the construction and operation of hazardous waste management facilities by nongovernmental entities, except that no proposal solicited under terms of this subsection shall be analyzed if it involves cost to the United States Government or fails to comply with the requirements of subtitle C of the Solid Waste Disposal Act [42 U.S.C. 6921 et seq.] and other applicable provisions of law;

(D) recommendations on the appropriate balance between public and private sector involvement in the siting, design, and operation of new hazardous waste management facilities;

(E) documentation of the major reasons for public opposition to new hazardous waste management facilities; and

(F) an evaluation of the various options for overcoming obstacles to siting new facilities, including needed legislation for implementing the most suitable option or options.

(e) Adequacy of existing common law and statutory remedies

(1) In order to determine the adequacy of existing common law and statutory remedies in providing legal redress for harm to man and the environment caused by the release of hazardous substances into the environment, there shall be submitted to the Congress a study within twelve months of December 11, 1980.

(2) This study shall be conducted with the assistance of the American Bar Association, the American Law Institute, the Association of American Trial Lawyers, and the National Association of State Attorneys General with the President of each entity selecting three members from each organization to conduct the study. The study chairman and one reporter shall be elected from among the twelve members of the study group.

(3) As part of their review of the adequacy of existing common law and statutory remedies, the study group shall evaluate the following:

(A) the nature, adequacy, and availability of existing remedies under present law in compensating for harm to man from the release of hazardous substances;

(B) the nature of barriers to recovery (particularly with respect to burdens of going forward and of proof and relevancy) and the role such barriers play in the legal system;

(C) the scope of the evidentiary burdens placed on the plaintiff in proving harm from the release of hazardous substances, particularly in light of the scientific uncertainty over causation with respect to—

(i) carcinogens, mutagens, and teratogens, and

(ii) the human health effects of exposure to low doses of hazardous substances over long periods of time;

(D) the nature and adequacy of existing remedies under present law in providing compensation for damages to natural resources from the release of hazardous substances;

(E) the scope of liability under existing law and the consequences, particularly with respect to obtaining insurance, of any changes in such liability;

(F) barriers to recovery posed by existing statutes of limitations.

(4) The report shall be submitted to the Congress with appropriate recommendations. Such recommendations shall explicitly address—

(A) the need for revisions in existing statutory or common law, and

(B) whether such revisions should take the form of Federal statutes or the development of a model code which is recommended for adoption by the States.

(5) The Fund shall pay administrative expenses incurred for the study. No expenses shall be available to pay compensation, except expenses on a per diem basis for the one reporter, but in no case shall the total expenses of the study exceed \$300,000.

(f) Modification of national contingency plan

The President, acting through the Administrator of the Environmental Protection Agency, the Secretary of Transportation, the Administrator of the Occupational Safety and Health Administration, and the Director of the National Institute for Occupational Safety and Health shall study and, not later than two years after December 11, 1980, shall modify the national contingency plan to provide for the protection of the health and safety of employees involved in response actions.

(g) Insurability study

(1) Study by Comptroller General

The Comptroller General of the United States, in consultation with the persons described in paragraph (2), shall undertake a study to determine the insurability, and effects on the standard of care, of the liability of each of the following:

(A) Persons who generate hazardous substances: liability for costs and damages under this chapter.

(B) Persons who own or operate facilities: liability for costs and damages under this chapter.

(C) Persons liable for injury to persons or property caused by the release of hazardous substances into the environment.

(2) Consultation

In conducting the study under this subsection, the Comptroller General shall consult with the following:

(A) Representatives of the Administrator.

(B) Representatives of persons described in subparagraphs (A) through (C) of the preceding paragraph.

(C) Representatives (i) of groups or organizations comprised generally of persons adversely affected by releases or threatened releases of hazardous substances and (ii) of groups organized for protecting the interests of consumers.

(D) Representatives of property and casualty insurers.

(E) Representatives of reinsurers.

(F) Persons responsible for the regulation of insurance at the State level.

(3) Items evaluated

The study under this section shall include, among other matters, an evaluation of the following:

(A) Current economic conditions in, and the future outlook for, the commercial market for insurance and reinsurance.

(B) Current trends in statutory and common law remedies.

(C) The impact of possible changes in traditional standards of liability, proof, evidence, and damages on existing statutory and common law remedies.

(D) The effect of the standard of liability and extent of the persons upon whom it is imposed under this chapter on the protection of human health and the environment and on the availability, underwriting, and pricing of insurance coverage.

(E) Current trends, if any, in the judicial interpretation and construction of applicable insurance contracts, together with the degree to which amendments in the language of such contracts and the description of the risks assumed, could affect such trends.

(F) The frequency and severity of a representative sample of claims closed during the calendar year immediately preceding October 17, 1986.

(G) Impediments to the acquisition of insurance or other means of obtaining liability coverage other than those referred to in the preceding subparagraphs.

(H) The effects of the standards of liability and financial responsibility requirements imposed pursuant to this chapter on the cost of, and incentives for, developing and demonstrating alternative and innovative treatment technologies, as well as waste generation minimization.

(4) Submission

The Comptroller General shall submit a report on the results of the study to Congress with appropriate recommendations within 12 months after October 17, 1986.

(Pub. L. 96-510, title III, §301, Dec. 11, 1980, 94 Stat. 2805; Pub. L. 99-499, title I, §107(d)(3), title II, §§208, 212, Oct. 17, 1986, 100 Stat. 1630, 1707, 1726; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1)(A), (E), (G), (c)(1), and (g), was in the original "this Act", meaning Pub. L. 96-510, Dec. 11, 1980, 94 Stat. 2767, as amended, known as the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, which enacted this chapter, section 6911a of this title, and sections 4611, 4612, 4661, 4662, 4681, and 4682 of Title 26, Internal Revenue Code, amended section 6911 of this title, section 1364 of Title 33, Navigation and Navigable Waters, and section 11901 of Title 49, Transportation, and enacted provisions set out as notes under section 6911 of this title and sections 1 and 4611 of Title 26. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of this title and Tables.

Subchapter II of this chapter, referred to in subsec. (a)(1)(F), was in the original "title II of this Act", meaning title II of Pub. L. 96-510, Dec. 11, 1980, 94 Stat. 2796, known as the Hazardous Substance Response Revenue Act of 1980, which enacted subchapter II of this chapter and sections 4611, 4612, 4661, 4662, 4681, and 4682 of Title 26. Sections 221 to 223 and 232 of Pub. L. 96-510, which were classified to sections 9631 to 9633 and 9641 of

this title, comprising subchapter II of this chapter, were repealed by Pub. L. 99-499, title V, §§514(b), 517(c)(1), Oct. 17, 1986, 100 Stat. 1767, 1774. For complete classification of title II to the Code, see Short Title of 1980 Amendment note set out under section 1 of Title 26 and Tables.

For effective date of this chapter, referred to in subsec. (a)(2), see section 9652 of this title.

Subsection 3001(b)(2)(B) and subsection 3001(b)(3)(A) of the Solid Waste Disposal Act of 1980, referred to in subsec. (a)(2), probably mean section 3001(b)(2)(B) and (3)(A) of the Solid Waste Disposal Act, as amended by the Solid Waste Disposal Act Amendments of 1980, which enacted section 6921(b)(2)(B) and (3)(A) of this title.

The Solid Waste Disposal Act, referred to in subsecs. (a)(2) and (d)(C), is title II of Pub. L. 89-272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2795. Subtitle C of the Solid Waste Disposal Act is classified generally to subchapter III (§6921 et seq.) of chapter 82 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

CODIFICATION

Subsec. (h) of this section, which required the Administrator of the Environmental Protection Agency to submit an annual report to Congress of such Agency on the progress achieved in implementing this chapter during the preceding fiscal year, required the Inspector General of the Agency to review the report for reasonableness and accuracy and submit to Congress, as a part of that report, a report on the results of the review, and required the appropriate authorizing committees of Congress, after receiving those reports, to conduct oversight hearings to ensure that this chapter is being implemented according to the purposes of this chapter and congressional intent in enacting this chapter, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, the 5th item on page 164 of House Document No. 103-7.

AMENDMENTS

1986—Subsec. (a)(1)(H). Pub. L. 99-514 substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”, which for purposes of codification was translated as “title 26” thus requiring no change in text.

Subsec. (c)(1). Pub. L. 99-499, §107(d)(3), inserted at end “Notwithstanding the failure of the President to promulgate the regulations required under this subsection on the required date, the President shall promulgate such regulations not later than 6 months after October 17, 1986.”

Subsec. (g). Pub. L. 99-499, §208, added subsec. (g).

Subsec. (h). Pub. L. 99-499, §212, added subsec. (h).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9604, 9607, 9612, 9613 of this title.

§ 9652. Effective dates; savings provisions

(a) Unless otherwise provided, all provisions of this chapter shall be effective on December 11, 1980.

(b) Any regulation issued pursuant to any provisions of section 1321 of title 33 which is repealed or superseded by this chapter and which is in effect on the date immediately preceding the effective date of this chapter shall be deemed to be a regulation issued pursuant to the authority of this chapter and shall remain in full force and effect unless or until superseded by new regulations issued thereunder.

(c) Any regulation—

- (1) respecting financial responsibility,
- (2) issued pursuant to any provision of law repealed or superseded by this chapter, and
- (3) in effect on the date immediately preceding the effective date of this chapter shall be deemed to be a regulation issued pursuant to the authority of this chapter and shall remain in full force and effect unless or until superseded by new regulations issued thereunder.

(d) Nothing in this chapter shall affect or modify in any way the obligations or liabilities of any person under other Federal or State law, including common law, with respect to releases of hazardous substances or other pollutants or contaminants. The provisions of this chapter shall not be considered, interpreted, or construed in any way as reflecting a determination, in part or whole, of policy regarding the inapplicability of strict liability, or strict liability doctrines, to activities relating to hazardous substances, pollutants, or contaminants or other such activities.

(Pub. L. 96-510, title III, §302, Dec. 11, 1980, 94 Stat. 2808.)

§ 9653. Repealed. Pub. L. 99-499, title V, §511(b), Oct. 17, 1986, 100 Stat. 1761

Section, Pub. L. 96-510, title III, §303, Dec. 11, 1980, 94 Stat. 2808, provided for termination of authority to collect taxes under this chapter.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 1987, see section 511(c) of Pub. L. 99-499, set out as an Effective Date of 1986 Amendment note under section 4611 of Title 26, Internal Revenue Code.

§ 9654. Applicability of Federal water pollution control funding, etc., provisions

(a) Omitted

(b) One-half of the unobligated balance remaining before December 11, 1980, under subsection (k)¹ of section 1321 of title 33 and all sums appropriated under section 1364(b)¹ of title 33 shall be transferred to the Fund established under subchapter II¹ of this chapter.

(c) In any case in which any provision of section 1321 of title 33 is determined to be in conflict with any provisions of this chapter, the provisions of this chapter shall apply.

(Pub. L. 96-510, title III, §304, Dec. 11, 1980, 94 Stat. 2809.)

REFERENCES IN TEXT

Subsection (k) of section 1321 of title 33, referred to in subsec. (b), was repealed by Pub. L. 101-380, title II, §2002(b)(2), Aug. 18, 1990, 104 Stat. 507.

Section 1364(b) of title 33, referred to in subsec. (b), was repealed by Pub. L. 96-510, title III, §304(a), Dec. 11, 1980, 94 Stat. 2809.

Subchapter II of this chapter, referred to in subsec. (b), was in the original “title II of this Act”, meaning title II of Pub. L. 96-510, Dec. 11, 1980, 94 Stat. 2796, known as the Hazardous Substance Response Revenue Act of 1980, which enacted subchapter II of this chapter and sections 4611, 4612, 4661, 4662, 4681, and 4682 of Title 26, Internal Revenue Code. Sections 221 to 223 and 232 of Pub. L. 96-510, which were classified to sections 9631 to

¹ See References in Text note below.

9633 and 9641 of this title, comprising subchapter II of this chapter, were repealed by Pub. L. 99-499, title V, §§ 514(b), 517(c)(1), Oct. 17, 1986, 100 Stat. 1767, 1774. For complete classification of title II to the Code, see Short Title of 1980 Amendment note set out under section 1 of Title 26 and Tables.

CODIFICATION

Subsec. (a) of this section repealed section 1364(b) of Title 33, Navigation and Navigable Waters.

§ 9655. Legislative veto of rule or regulation

(a) Transmission to Congress upon promulgation or repromulgation of rule or regulation; disapproval procedures

Notwithstanding any other provision of law, simultaneously with promulgation or repromulgation of any rule or regulation under authority of subchapter I of this chapter, the head of the department, agency, or instrumentality promulgating such rule or regulation shall transmit a copy thereof to the Secretary of the Senate and the Clerk of the House of Representatives. Except as provided in subsection (b) of this section, the rule or regulation shall not become effective, if—

(1) within ninety calendar days of continuous session of Congress after the date of promulgation, both Houses of Congress adopt a concurrent resolution, the matter after the resolving clause of which is as follows: "That Congress disapproves the rule or regulation promulgated by the _____ dealing with the matter of _____, which rule or regulation was transmitted to Congress on _____.", the blank spaces therein being appropriately filled; or

(2) within sixty calendar days of continuous session of Congress after the date of promulgation, one House of Congress adopts such a concurrent resolution and transmits such resolution to the other House, and such resolution is not disapproved by such other House within thirty calendar days of continuous session of Congress after such transmittal.

(b) Approval; effective dates

If, at the end of sixty calendar days of continuous session of Congress after the date of promulgation of a rule or regulation, no committee of either House of Congress has reported or been discharged from further consideration of a concurrent resolution disapproving the rule or regulation and neither House has adopted such a resolution, the rule or regulation may go into effect immediately. If, within such sixty calendar days, such a committee has reported or been discharged from further consideration of such a resolution, or either House has adopted such a resolution, the rule or regulation may go into effect not sooner than ninety calendar days of continuous session of Congress after such rule is prescribed unless disapproved as provided in subsection (a) of this section.

(c) Sessions of Congress as applicable

For purposes of subsections (a) and (b) of this section—

(1) continuity of session is broken only by an adjournment of Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more

than three days to a day certain are excluded in the computation of thirty, sixty, and ninety calendar days of continuous session of Congress.

(d) Congressional inaction on, or rejection of, resolution of disapproval

Congressional inaction on, or rejection of, a resolution of disapproval shall not be deemed an expression of approval of such rule or regulation.

(Pub. L. 96-510, title III, § 305, Dec. 11, 1980, 94 Stat. 2809.)

§ 9656. Transportation of hazardous substances; listing as hazardous material; liability for release

(a) Each hazardous substance which is listed or designated as provided in section 9601(14) of this title shall, within 30 days after October 17, 1986, or at the time of such listing or designation, whichever is later, be listed and regulated as a hazardous material under chapter 51 of title 49.

(b) A common or contract carrier shall be liable under other law in lieu of section 9607 of this title for damages or remedial action resulting from the release of a hazardous substance during the course of transportation which commenced prior to the effective date of the listing and regulation of such substance as a hazardous material under chapter 51 of title 49, or for substances listed pursuant to subsection (a) of this section, prior to the effective date of such listing: *Provided, however,* That this subsection shall not apply where such a carrier can demonstrate that he did not have actual knowledge of the identity or nature of the substance released.

(Pub. L. 96-510, title III, § 306(a), (b), Dec. 11, 1980, 94 Stat. 2810; Pub. L. 99-499, title II, § 202, Oct. 17, 1986, 100 Stat. 1695.)

CODIFICATION

In subsecs. (a) and (b), "chapter 51 of title 49" substituted for "the Hazardous Materials Transportation Act [49 App. U.S.C. 1801 et seq.]" on authority of Pub. L. 103-272, § 6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

AMENDMENTS

1986—Subsec. (a). Pub. L. 99-499, § 202(a), substituted "within 30 days after October 17, 1986" for "within ninety days after December 11, 1980" and inserted "and regulated" before "as a hazardous material".

Subsec. (b). Pub. L. 99-499, § 202(b), inserted "and regulation" after "prior to the effective date of the listing".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 49 section 31301.

§ 9657. Separability; contribution

If any provision of this chapter, or the application of any provision of this chapter to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances and the remainder of this chapter shall not be affected thereby. If an administrative settlement under section 9622 of this title has the effect of limiting any person's right to

obtain contribution from any party to such settlement, and if the effect of such limitation would constitute a taking without just compensation in violation of the fifth amendment of the Constitution of the United States, such person shall not be entitled, under other laws of the United States, to recover compensation from the United States for such taking, but in any such case, such limitation on the right to obtain contribution shall be treated as having no force and effect.

(Pub. L. 96-510, title III, §308, Dec. 11, 1980, 94 Stat. 2811; Pub. L. 99-499, title I, §122(b), Oct. 17, 1986, 100 Stat. 1688.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 96-510, Dec. 11, 1980, 94 Stat. 2767, as amended, known as the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, which enacted this chapter, section 6911a of this title, and sections 4611, 4612, 4661, 4662, 4681, and 4682 of Title 26, Internal Revenue Code, amended section 6911 of this title, section 1364 of Title 33, Navigation and Navigable Waters, and section 11901 of Title 49, Transportation, and enacted provisions set out as notes under section 6911 of this title and sections 1 and 4611 of Title 26. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of this title and Tables.

AMENDMENTS

1986—Pub. L. 99-499 inserted sentence at end relating to administrative settlements under section 9622 of this title which have effect of limiting any person's right to obtain contribution from any party to such settlement.

§ 9658. Actions under State law for damages from exposure to hazardous substances

(a) State statutes of limitations for hazardous substance cases

(1) Exception to State statutes

In the case of any action brought under State law for personal injury, or property damages, which are caused or contributed to by exposure to any hazardous substance, or pollutant or contaminant, released into the environment from a facility, if the applicable limitations period for such action (as specified in the State statute of limitations or under common law) provides a commencement date which is earlier than the federally required commencement date, such period shall commence at the federally required commencement date in lieu of the date specified in such State statute.

(2) State law generally applicable

Except as provided in paragraph (1), the statute of limitations established under State law shall apply in all actions brought under State law for personal injury, or property damages, which are caused or contributed to by exposure to any hazardous substance, or pollutant or contaminant, released into the environment from a facility.

(3) Actions under section 9607

Nothing in this section shall apply with respect to any cause of action brought under section 9607 of this title.

(b) Definitions

As used in this section—

(1) Subchapter I terms

The terms used in this section shall have the same meaning as when used in subchapter I of this chapter.

(2) Applicable limitations period

The term "applicable limitations period" means the period specified in a statute of limitations during which a civil action referred to in subsection (a)(1) of this section may be brought.

(3) Commencement date

The term "commencement date" means the date specified in a statute of limitations as the beginning of the applicable limitations period.

(4) Federally required commencement date

(A) In general

Except as provided in subparagraph (B), the term "federally required commencement date" means the date the plaintiff knew (or reasonably should have known) that the personal injury or property damages referred to in subsection (a)(1) of this section were caused or contributed to by the hazardous substance or pollutant or contaminant concerned.

(B) Special rules

In the case of a minor or incompetent plaintiff, the term "federally required commencement date" means the later of the date referred to in subparagraph (A) or the following:

- (i) In the case of a minor, the date on which the minor reaches the age of majority, as determined by State law, or has a legal representative appointed.
- (ii) In the case of an incompetent individual, the date on which such individual becomes competent or has had a legal representative appointed.

(Pub. L. 96-510, title III, §309, as added Pub. L. 99-499, title II, §203(a), Oct. 17, 1986, 100 Stat. 1695.)

EFFECTIVE DATE

Section 203(b) of Pub. L. 99-499 provided that: "The amendment made by subsection (a) of this section [enacting this section] shall take effect with respect to actions brought after December 11, 1980."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9659 of this title.

§ 9659. Citizens suits

(a) Authority to bring civil actions

Except as provided in subsections (d) and (e) of this section and in section 9613(h) of this title (relating to timing of judicial review), any person may commence a civil action on his own behalf—

- (1) against any person (including the United States and any other governmental instrumentality or agency, to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of any standard, regulation, condition, requirement, or order which has become effective pursuant

to this chapter (including any provision of an agreement under section 9620 of this title, relating to Federal facilities); or

(2) against the President or any other officer of the United States (including the Administrator of the Environmental Protection Agency and the Administrator of the ATSDR) where there is alleged a failure of the President or of such other officer to perform any act or duty under this chapter, including an act or duty under section 9620 of this title (relating to Federal facilities), which is not discretionary with the President or such other officer.

Paragraph (2) shall not apply to any act or duty under the provisions of section 9660 of this title (relating to research, development, and demonstration).

(b) Venue

(1) Actions under subsection (a)(1)

Any action under subsection (a)(1) of this section shall be brought in the district court for the district in which the alleged violation occurred.

(2) Actions under subsection (a)(2)

Any action brought under subsection (a)(2) of this section may be brought in the United States District Court for the District of Columbia.

(c) Relief

The district court shall have jurisdiction in actions brought under subsection (a)(1) of this section to enforce the standard, regulation, condition, requirement, or order concerned (including any provision of an agreement under section 9620 of this title), to order such action as may be necessary to correct the violation, and to impose any civil penalty provided for the violation. The district court shall have jurisdiction in actions brought under subsection (a)(2) of this section to order the President or other officer to perform the act or duty concerned.

(d) Rules applicable to subsection (a)(1) actions

(1) Notice

No action may be commenced under subsection (a)(1) of this section before 60 days after the plaintiff has given notice of the violation to each of the following:

(A) The President.

(B) The State in which the alleged violation occurs.

(C) Any alleged violator of the standard, regulation, condition, requirement, or order concerned (including any provision of an agreement under section 9620 of this title).

Notice under this paragraph shall be given in such manner as the President shall prescribe by regulation.

(2) Diligent prosecution

No action may be commenced under paragraph (1) of subsection (a) of this section if the President has commenced and is diligently prosecuting an action under this chapter, or under the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.] to require compliance with the standard, regulation, condition, requirement,

or order concerned (including any provision of an agreement under section 9620 of this title).

(e) Rules applicable to subsection (a)(2) actions

No action may be commenced under paragraph (2) of subsection (a) of this section before the 60th day following the date on which the plaintiff gives notice to the Administrator or other department, agency, or instrumentality that the plaintiff will commence such action. Notice under this subsection shall be given in such manner as the President shall prescribe by regulation.

(f) Costs

The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to the prevailing or the substantially prevailing party whenever the court determines such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(g) Intervention

In any action under this section, the United States or the State, or both, if not a party may intervene as a matter of right. For other provisions regarding intervention, see section 9613 of this title.

(h) Other rights

This chapter does not affect or otherwise impair the rights of any person under Federal, State, or common law, except with respect to the timing of review as provided in section 9613(h) of this title or as otherwise provided in section 9658 of this title (relating to actions under State law).

(i) Definitions

The terms used in this section shall have the same meanings as when used in subchapter I of this chapter.

(Pub. L. 96-510, title III, §310, as added Pub. L. 99-499, title II, §206, Oct. 17, 1986, 100 Stat. 1703.)

REFERENCES IN TEXT

The Solid Waste Disposal Act, referred to in subsec. (d)(2), is title II of Pub. L. 89-272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§6901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

The Federal Rules of Civil Procedure, referred to in subsec. (f), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9613 of this title.

§9660. Research, development, and demonstration

(a) Hazardous substance research and training

(1) Authorities of Secretary

The Secretary of Health and Human Services (hereinafter in this subsection referred to as the Secretary), in consultation with the Ad-

ministrator, shall establish and support a basic research and training program (through grants, cooperative agreements, and contracts) consisting of the following:

(A) Basic research (including epidemiologic and ecologic studies) which may include each of the following:

(i) Advanced techniques for the detection, assessment, and evaluation of the effects on human health of hazardous substances.

(ii) Methods to assess the risks to human health presented by hazardous substances.

(iii) Methods and technologies to detect hazardous substances in the environment and basic biological, chemical, and physical methods to reduce the amount and toxicity of hazardous substances.

(B) Training, which may include each of the following:

(i) Short courses and continuing education for State and local health and environment agency personnel and other personnel engaged in the handling of hazardous substances, in the management of facilities at which hazardous substances are located, and in the evaluation of the hazards to human health presented by such facilities.

(ii) Graduate or advanced training in environmental and occupational health and safety and in the public health and engineering aspects of hazardous waste control.

(iii) Graduate training in the geosciences, including hydrogeology, geological engineering, geophysics, geochemistry, and related fields necessary to meet professional personnel needs in the public and private sectors and to effectuate the purposes of this chapter.

(2) Director of NIEHS

The Director of the National Institute for Environmental Health Sciences shall cooperate fully with the relevant Federal agencies referred to in subparagraph (A) of paragraph (5) in carrying out the purposes of this section.

(3) Recipients of grants, etc.

A grant, cooperative agreement, or contract may be made or entered into under paragraph (1) with an accredited institution of higher education. The institution may carry out the research or training under the grant, cooperative agreement, or contract through contracts, including contracts with any of the following:

(A) Generators of hazardous wastes.

(B) Persons involved in the detection, assessment, evaluation, and treatment of hazardous substances.

(C) Owners and operators of facilities at which hazardous substances are located.

(D) State and local governments.

(4) Procedures

In making grants and entering into cooperative agreements and contracts under this subsection, the Secretary shall act through the Director of the National Institute for Environmental Health Sciences. In considering the allocation of funds for training purposes, the Di-

rector shall ensure that at least one grant, cooperative agreement, or contract shall be awarded for training described in each of clauses (i), (ii), and (iii) of paragraph (1)(B). Where applicable, the Director may choose to operate training activities in cooperation with the Director of the National Institute for Occupational Safety and Health. The procedures applicable to grants and contracts under title IV of the Public Health Service Act [42 U.S.C. 281 et seq.] shall be followed under this subsection.

(5) Advisory council

To assist in the implementation of this subsection and to aid in the coordination of research and demonstration and training activities funded from the Fund under this section, the Secretary shall appoint an advisory council (hereinafter in this subsection referred to as the "Advisory Council") which shall consist of representatives of the following:

(A) The relevant Federal agencies.

(B) The chemical industry.

(C) The toxic waste management industry.

(D) Institutions of higher education.

(E) State and local health and environmental agencies.

(F) The general public.

(6) Planning

Within nine months after October 17, 1986, the Secretary, acting through the Director of the National Institute for Environmental Health Sciences, shall issue a plan for the implementation of paragraph (1). The plan shall include priorities for actions under paragraph (1) and include research and training relevant to scientific and technological issues resulting from site specific hazardous substance response experience. The Secretary shall, to the maximum extent practicable, take appropriate steps to coordinate program activities under this plan with the activities of other Federal agencies in order to avoid duplication of effort. The plan shall be consistent with the need for the development of new technologies for meeting the goals of response actions in accordance with the provisions of this chapter. The Advisory Council shall be provided an opportunity to review and comment on the plan and priorities and assist appropriate coordination among the relevant Federal agencies referred to in subparagraph (A) of paragraph (5).

(b) Alternative or innovative treatment technology research and demonstration program

(1) Establishment

The Administrator is authorized and directed to carry out a program of research, evaluation, testing, development, and demonstration of alternative or innovative treatment technologies (hereinafter in this subsection referred to as the "program") which may be utilized in response actions to achieve more permanent protection of human health and welfare and the environment.

(2) Administration

The program shall be administered by the Administrator, acting through an office of technology demonstration and shall be coordi-

nated with programs carried out by the Office of Solid Waste and Emergency Response and the Office of Research and Development.

(3) Contracts and grants

In carrying out the program, the Administrator is authorized to enter into contracts and cooperative agreements with, and make grants to, persons, public entities, and non-profit private entities which are exempt from tax under section 501(c)(3) of title 26. The Administrator shall, to the maximum extent possible, enter into appropriate cost sharing arrangements under this subsection.

(4) Use of sites

In carrying out the program, the Administrator may arrange for the use of sites at which a response may be undertaken under section 9604 of this title for the purposes of carrying out research, testing, evaluation, development, and demonstration projects. Each such project shall be carried out under such terms and conditions as the Administrator shall require to assure the protection of human health and the environment and to assure adequate control by the Administrator of the research, testing, evaluation, development, and demonstration activities at the site.

(5) Demonstration assistance

(A) Program components

The demonstration assistance program shall include the following:

- (i) The publication of a solicitation and the evaluation of applications for demonstration projects utilizing alternative or innovative technologies.
- (ii) The selection of sites which are suitable for the testing and evaluation of innovative technologies.
- (iii) The development of detailed plans for innovative technology demonstration projects.
- (iv) The supervision of such demonstration projects and the providing of quality assurance for data obtained.
- (v) The evaluation of the results of alternative innovative technology demonstration projects and the determination of whether or not the technologies used are effective and feasible.

(B) Solicitation

Within 90 days after October 17, 1986, and no less often than once every 12 months thereafter, the Administrator shall publish a solicitation for innovative or alternative technologies at a stage of development suitable for full-scale demonstrations at sites at which a response action may be undertaken under section 9604 of this title. The purpose of any such project shall be to demonstrate the use of an alternative or innovative treatment technology with respect to hazardous substances or pollutants or contaminants which are located at the site or which are to be removed from the site. The solicitation notice shall prescribe information to be included in the application, including technical and economic data derived from the

applicant's own research and development efforts, and other information sufficient to permit the Administrator to assess the technology's potential and the types of remedial action to which it may be applicable.

(C) Applications

Any person and any public or private non-profit entity may submit an application to the Administrator in response to the solicitation. The application shall contain a proposed demonstration plan setting forth how and when the project is to be carried out and such other information as the Administrator may require.

(D) Project selection

In selecting technologies to be demonstrated, the Administrator shall fully review the applications submitted and shall consider at least the criteria specified in paragraph (7). The Administrator shall select or refuse to select a project for demonstration under this subsection within 90 days of receiving the completed application for such project. In the case of a refusal to select the project, the Administrator shall notify the applicant within such 90-day period of the reasons for his refusal.

(E) Site selection

The Administrator shall propose 10 sites at which a response may be undertaken under section 9604 of this title to be the location of any demonstration project under this subsection within 60 days after the close of the public comment period. After an opportunity for notice and public comment, the Administrator shall select such sites and projects. In selecting any such site, the Administrator shall take into account the applicant's technical data and preferences either for onsite operation or for utilizing the site as a source of hazardous substances or pollutants or contaminants to be treated off-site.

(F) Demonstration plan

Within 60 days after the selection of the site under this paragraph to be the location of a demonstration project, the Administrator shall establish a final demonstration plan for the project, based upon the demonstration plan contained in the application for the project. Such plan shall clearly set forth how and when the demonstration project will be carried out.

(G) Supervision and testing

Each demonstration project under this subsection shall be performed by the applicant, or by a person satisfactory to the applicant, under the supervision of the Administrator. The Administrator shall enter into a written agreement with each applicant granting the Administrator the responsibility and authority for testing procedures, quality control, monitoring, and other measurements necessary to determine and evaluate the results of the demonstration project. The Administrator may pay the costs of testing, monitoring, quality control, and other measurements required by the Admin-

istrator to determine and evaluate the results of the demonstration project, and the limitations established by subparagraph (J) shall not apply to such costs.

(H) Project completion

Each demonstration project under this subsection shall be completed within such time as is established in the demonstration plan.

(I) Extensions

The Administrator may extend any deadline established under this paragraph by mutual agreement with the applicant concerned.

(J) Funding restrictions

The Administrator shall not provide any Federal assistance for any part of a full-scale field demonstration project under this subsection to any applicant unless such applicant can demonstrate that it cannot obtain appropriate private financing on reasonable terms and conditions sufficient to carry out such demonstration project without such Federal assistance. The total Federal funds for any full-scale field demonstration project under this subsection shall not exceed 50 percent of the total cost of such project estimated at the time of the award of such assistance. The Administrator shall not expend more than \$10,000,000 for assistance under the program in any fiscal year and shall not expend more than \$3,000,000 for any single project.

(6) Field demonstrations

In carrying out the program, the Administrator shall initiate or cause to be initiated at least 10 field demonstration projects of alternative or innovative treatment technologies at sites at which a response may be undertaken under section 9604 of this title, in fiscal year 1987 and each of the succeeding three fiscal years. If the Administrator determines that 10 field demonstration projects under this subsection cannot be initiated consistent with the criteria set forth in paragraph (7) in any of such fiscal years, the Administrator shall transmit to the appropriate committees of Congress a report explaining the reasons for his inability to conduct such demonstration projects.

(7) Criteria

In selecting technologies to be demonstrated under this subsection, the Administrator shall, consistent with the protection of human health and the environment, consider each of the following criteria:

(A) The potential for contributing to solutions to those waste problems which pose the greatest threat to human health, which cannot be adequately controlled under present technologies, or which otherwise pose significant management difficulties.

(B) The availability of technologies which have been sufficiently developed for field demonstration and which are likely to be cost-effective and reliable.

(C) The availability and suitability of sites for demonstrating such technologies, taking

into account the physical, biological, chemical, and geological characteristics of the sites, the extent and type of contamination found at the site, and the capability to conduct demonstration projects in such a manner as to assure the protection of human health and the environment.

(D) The likelihood that the data to be generated from the demonstration project at the site will be applicable to other sites.

(8) Technology transfer

In carrying out the program, the Administrator shall conduct a technology transfer program including the development, collection, evaluation, coordination, and dissemination of information relating to the utilization of alternative or innovative treatment technologies for response actions. The Administrator shall establish and maintain a central reference library for such information. The information maintained by the Administrator shall be made available to the public, subject to the provisions of section 552 of title 5 and section 1905 of title 18, and to other Government agencies in a manner that will facilitate its dissemination; except, that upon a showing satisfactory to the Administrator by any person that any information or portion thereof obtained under this subsection by the Administrator directly or indirectly from such person, would, if made public, divulge—

(A) trade secrets; or

(B) other proprietary information of such person,

the Administrator shall not disclose such information and disclosure thereof shall be punishable under section 1905 of title 18. This subsection is not authority to withhold information from Congress or any committee of Congress upon the request of the chairman of such committee.

(9) Training

The Administrator is authorized and directed to carry out, through the Office of Technology Demonstration, a program of training and an evaluation of training needs for each of the following:

(A) Training in the procedures for the handling and removal of hazardous substances for employees who handle hazardous substances.

(B) Training in the management of facilities at which hazardous substances are located and in the evaluation of the hazards to human health presented by such facilities for State and local health and environment agency personnel.

(10) Definition

For purposes of this subsection, the term "alternative or innovative treatment technologies" means those technologies, including proprietary or patented methods, which permanently alter the composition of hazardous waste through chemical, biological, or physical means so as to significantly reduce the toxicity, mobility, or volume (or any combination thereof) of the hazardous waste or contaminated materials being treated. The term also includes technologies that characterize or

assess the extent of contamination, the chemical and physical character of the contaminants, and the stresses imposed by the contaminants on complex ecosystems at sites.

(c) Hazardous substance research

The Administrator may conduct and support, through grants, cooperative agreements, and contracts, research with respect to the detection, assessment, and evaluation of the effects on and risks to human health of hazardous substances and detection of hazardous substances in the environment. The Administrator shall coordinate such research with the Secretary of Health and Human Services, acting through the advisory council established under this section, in order to avoid duplication of effort.

(d) University hazardous substance research centers

(1) Grant program

The Administrator shall make grants to institutions of higher learning to establish and operate not fewer than 5 hazardous substance research centers in the United States. In carrying out the program under this subsection, the Administrator should seek to have established and operated 10 hazardous substance research centers in the United States.

(2) Responsibilities of centers

The responsibilities of each hazardous substance research center established under this subsection shall include, but not be limited to, the conduct of research and training relating to the manufacture, use, transportation, disposal, and management of hazardous substances and publication and dissemination of the results of such research.

(3) Applications

Any institution of higher learning interested in receiving a grant under this subsection shall submit to the Administrator an application in such form and containing such information as the Administrator may require by regulation.

(4) Selection criteria

The Administrator shall select recipients of grants under this subsection on the basis of the following criteria:

(A) The hazardous substance research center shall be located in a State which is representative of the needs of the region in which such State is located for improved hazardous waste management.

(B) The grant recipient shall be located in an area which has experienced problems with hazardous substance management.

(C) There is available to the grant recipient for carrying out this subsection demonstrated research resources.

(D) The capability of the grant recipient to provide leadership in making national and regional contributions to the solution of both long-range and immediate hazardous substance management problems.

(E) The grant recipient shall make a commitment to support ongoing hazardous substance research programs with budgeted institutional funds of at least \$100,000 per year.

(F) The grant recipient shall have an interdisciplinary staff with demonstrated expertise in hazardous substance management and research.

(G) The grant recipient shall have a demonstrated ability to disseminate results of hazardous substance research and educational programs through an interdisciplinary continuing education program.

(H) The projects which the grant recipient proposes to carry out under the grant are necessary and appropriate.

(5) Maintenance of effort

No grant may be made under this subsection in any fiscal year unless the recipient of such grant enters into such agreements with the Administrator as the Administrator may require to ensure that such recipient will maintain its aggregate expenditures from all other sources for establishing and operating a regional hazardous substance research center and related research activities at or above the average level of such expenditures in its 2 fiscal years preceding October 17, 1986.

(6) Federal share

The Federal share of a grant under this subsection shall not exceed 80 percent of the costs of establishing and operating the regional hazardous substance research center and related research activities carried out by the grant recipient.

(7) Limitation on use of funds

No funds made available to carry out this subsection shall be used for acquisition of real property (including buildings) or construction of any building.

(8) Administration through the Office of the Administrator

Administrative responsibility for carrying out this subsection shall be in the Office of the Administrator.

(9) Equitable distribution of funds

The Administrator shall allocate funds made available to carry out this subsection equitably among the regions of the United States.

(10) Technology transfer activities

Not less than five percent of the funds made available to carry out this subsection for any fiscal year shall be available to carry out technology transfer activities.

(e) Report to Congress

At the time of the submission of the annual budget request to Congress, the Administrator shall submit to the appropriate committees of the House of Representatives and the Senate and to the advisory council established under subsection (a) of this section, a report on the progress of the research, development, and demonstration program authorized by subsection (b) of this section, including an evaluation of each demonstration project completed in the preceding fiscal year, findings with respect to the efficacy of such demonstrated technologies in achieving permanent and significant reductions in risk from hazardous wastes, the costs of such demonstration projects, and the potential appli-

cability of, and projected costs for, such technologies at other hazardous substance sites.

(f) Saving provision

Nothing in this section shall be construed to affect the provisions of the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.].

(g) Small business participation

The Administrator shall ensure, to the maximum extent practicable, an adequate opportunity for small business participation in the program established by subsection (b) of this section.

(Pub. L. 96-510, title III, §311, as added Pub. L. 99-499, title II, §209(b), Oct. 17, 1986, 100 Stat. 1708; amended Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095.)

REFERENCES IN TEXT

The Public Health Service Act, referred to in subsec. (a)(4), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended. Title IV of the Public Health Service Act is classified generally to subchapter III (§281 et seq.) of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

The Solid Waste Disposal Act, referred to in subsec. (f), is title II of Pub. L. 89-272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§6901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

AMENDMENTS

1986—Subsec. (b)(3). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

GULF COAST HAZARDOUS SUBSTANCE RESEARCH, DEVELOPMENT, AND DEMONSTRATION CENTER

Section 118(l) of Pub. L. 99-499 provided that:

"(1) ESTABLISHMENT OF HAZARDOUS SUBSTANCE RESEARCH, DEVELOPMENT, AND DEMONSTRATION CENTER.—The Administrator shall establish a hazardous substance research, development, and demonstration center (hereinafter in this subsection referred to as the 'Center') for the purpose of conducting research to aid in more effective hazardous substance response and waste management throughout the Gulf Coast.

"(2) PURPOSES OF THE CENTER.—The Center shall carry out a program of research, evaluation, testing, development, and demonstration of alternative or innovative technologies which may be utilized in response actions or in normal handling of hazardous wastes to achieve better protection of human health and the environment.

"(3) OPERATION OF CENTER.—(A) For purposes of operating the Center, the Administrator is authorized to enter into contracts and cooperative agreements with, and make grants to, a university related institute involved with the improvement of waste management. Such institute shall be located in Jefferson County, Texas.

"(B) The Center shall be authorized to make grants, accept contributions, and enter into agreements with universities located in the States of Texas, Louisiana, Mississippi, Alabama, and Florida in order to carry out the purposes of the Center.

"(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Administrator for purposes of carrying out this subsection for fiscal years beginning after September 30, 1986, not more than \$5,000,000."

PACIFIC NORTHWEST HAZARDOUS SUBSTANCE RESEARCH, DEVELOPMENT, AND DEMONSTRATION CENTER

Section 118(o) of Pub. L. 99-499 provided that:

"(1) ESTABLISHMENT.—The Administrator shall establish a hazardous substance research, development, and demonstration center (hereinafter in this subsection referred to as the 'Center') for the purpose of conducting research to aid in more effective hazardous substance response in the Pacific Northwest.

"(2) PURPOSES OF CENTER.—The Center shall carry out a program of research, evaluation, testing, development, and demonstration of alternative or innovative technologies which may be utilized in response actions to achieve more permanent protection of human health and welfare and the environment.

"(3) OPERATION OF CENTER.—

"(A) NONPROFIT ENTITY.—For the purposes of operating the Center, the Administrator is authorized to enter into contracts and cooperative agreements with, and make grants to, a nonprofit private entity as defined in section 201(i) of Public Law 96-517 [probably means section 201(i) of Title 35, Patents, which was enacted by section 6(a) of Pub. L. 96-517, Dec. 12, 1980, 94 Stat. 3020] which entity shall agree to provide the basic technical and management personnel. Such nonprofit private entity shall also agree to provide at least two permanent research facilities, one of which shall be located in Benton County, Washington, and one of which shall be located in Clallam County, Washington.

"(B) AUTHORITIES.—The Center shall be authorized to make grants, accept contributions, and enter into agreements with universities located in the States of Washington, Oregon, Idaho, and Montana in order to carry out the purposes of the Center.

"(4) HAZARDOUS WASTE RESEARCH AT THE HANFORD SITE.—

"(A) INTERAGENCY AGREEMENTS.—The Administrator and the Secretary of Energy are authorized to enter into interagency agreements with one another for the purpose of providing for research, evaluation, testing, development, and demonstration into alternative or innovative technologies to characterize and assess the nature and extent of hazardous waste (including radioactive mixed waste) contamination at the Hanford site, in the State of Washington.

"(B) FUNDING.—There is authorized to be appropriated to the Secretary of Energy for purposes of carrying out this paragraph for fiscal years beginning after September 30, 1986, not more than \$5,000,000. All sums appropriated under this subparagraph shall be provided to the Administrator by the Secretary of Energy, pursuant to the interagency agreement entered into under subparagraph (A), for the purpose of the Administrator entering into contracts and cooperative agreements with, and making grants to, the Center in order to carry out the research, evaluation, testing, development, and demonstration described in paragraph (1).

"(5) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Administrator for purposes of carrying out this subsection (other than paragraph (4)) for fiscal years beginning after September 30, 1986, not more than \$5,000,000."

CONGRESSIONAL STATEMENT OF PURPOSE

Section 209(a) of Pub. L. 99-499 provided that: "The purposes of this section [enacting this section] are as follows:

"(1) To establish a comprehensive and coordinated Federal program of research, development, demonstration, and training for the purpose of promoting the development of alternative and innovative treatment technologies that can be used in response actions under the CERCLA program, to provide incentives for the development and use of such technologies, and to improve the scientific capability to assess, detect and evaluate the effects on and risks to human health from hazardous substances.

"(2) To establish a basic university research and education program within the Department of Health and Human Services and a research, demonstration, and training program within the Environmental Protection Agency.

“(3) To reserve certain funds from the Hazardous Substance Trust Fund to support a basic research program within the Department of Health and Human Services, and an applied and developmental research program within the Environmental Protection Agency.

“(4) To enhance the Environmental Protection Agency’s internal research capabilities related to CERCLA activities, including site assessment and technology evaluation.

“(5) To provide incentives for the development of alternative and innovative treatment technologies in a manner that supplements or coordinates with, but does not compete with or duplicate, private sector development of such technologies.”

TERMINATION OF ADVISORY COUNCILS

Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by the Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9611, 9619, 9659 of this title; title 10 section 2702.

§ 9660a. Grant program

(1) Grant purposes

Grants for the training and education of workers who are or may be engaged in activities related to hazardous waste removal or containment or emergency response may be made under this section.

(2) Administration

Grants under this section shall be administered by the National Institute of Environmental Health Sciences.

(3) Grant recipients

Grants shall be awarded to nonprofit organizations which demonstrate experience in implementing and operating worker health and safety training and education programs and demonstrate the ability to reach and involve in training programs target populations of workers who are or will be engaged in hazardous waste removal or containment or emergency response operations.

(Pub. L. 99-499, title I, § 126(g), Oct. 17, 1986, 100 Stat. 1692.)

CODIFICATION

Section was enacted as part of the Superfund Amendments and Reauthorization Act of 1986, and not as part of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 which comprises this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9611, 9619 of this title; title 49 section 5115; title 50 section 2731.

§ 9661. Love Canal property acquisition

(a) Acquisition of property in Emergency Declaration Area

The Administrator of the Environmental Protection Agency (hereinafter referred to as the

“Administrator”) may make grants not to exceed \$2,500,000 to the State of New York (or to any duly constituted public agency or authority thereof) for purposes of acquisition of private property in the Love Canal Emergency Declaration Area. Such acquisition shall include (but shall not be limited to) all private property within the Emergency Declaration Area, including non-owner occupied residential properties, commercial, industrial, public, religious, non-profit, and vacant properties.

(b) Procedures for acquisition

No property shall be acquired pursuant to this section unless the property owner voluntarily agrees to such acquisition. Compensation for any property acquired pursuant to this section shall be based upon the fair market value of the property as it existed prior to the emergency declaration. Valuation procedures for property acquired with funds provided under this section shall be in accordance with those set forth in the agreement entered into between the New York State Disaster Preparedness Commission and the Love Canal Revitalization Agency on October 9, 1980.

(c) State ownership

The Administrator shall not provide any funds under this section for the acquisition of any properties pursuant to this section unless a public agency or authority of the State of New York first enters into a cooperative agreement with the Administrator providing assurances deemed adequate by the Administrator that the State or an agency created under the laws of the State shall take title to the properties to be so acquired.

(d) Maintenance of property

The Administrator shall enter into a cooperative agreement with an appropriate public agency or authority of the State of New York under which the Administrator shall maintain or arrange for the maintenance of all properties within the Emergency Declaration Area that have been acquired by any public agency or authority of the State. Ninety (90) percent of the costs of such maintenance shall be paid by the Administrator. The remaining portion of such costs shall be paid by the State (unless a credit is available under section 9604(c) of this title). The Administrator is authorized, in his discretion, to provide technical assistance to any public agency or authority of the State of New York in order to implement the recommendations of the habitability and land-use study in order to put the land within the Emergency Declaration Area to its best use.

(e) Habitability and land use study

The Administrator shall conduct or cause to be conducted a habitability and land-use study. The study shall—

(1) assess the risks associated with inhabiting of the Love Canal Emergency Declaration Area;

(2) compare the level of hazardous waste contamination in that Area to that present in other comparable communities; and

(3) assess the potential uses of the land within the Emergency Declaration Area, including

but not limited to residential, industrial, commercial and recreational, and the risks associated with such potential uses.

The Administrator shall publish the findings of such study and shall work with the State of New York to develop recommendations based upon the results of such study.

(f) Funding

For purposes of section 9611 of this title [and 9631(c)¹ of this title], the expenditures authorized by this section shall be treated as a cost specified in section 9611(c) of this title.

(g) Response

The provisions of this section shall not affect the implementation of other response actions within the Emergency Declaration Area that the Administrator has determined (before October 17, 1986) to be necessary to protect the public health or welfare or the environment.

(h) Definitions

For purposes of this section:

(1) Emergency Declaration Area

The terms "Emergency Declaration Area" and "Love Canal Emergency Declaration Area" mean the Emergency Declaration Area as defined in section 950, paragraph (2) of the General Municipal Law of the State of New York, Chapter 259, Laws of 1980, as in effect on October 17, 1986.

(2) Private property

As used in subsection (a) of this section, the term "private property" means all property which is not owned by a department, agency, or instrumentality of—

- (A) the United States, or
- (B) the State of New York (or any public agency or authority thereof).

(Pub. L. 96-510, title III, §312, as added Pub. L. 99-499, title II, §213(b), Oct. 17, 1986, 100 Stat. 1727.)

REFERENCES IN TEXT

Section 9631 of this title, referred to in subsec. (f), was repealed by Pub. L. 99-499, title V, §517(c)(1), Oct. 17, 1986, 100 Stat. 1774.

LOVE CANAL PROPERTY ACQUISITION; CONGRESSIONAL FINDINGS

Section 213(a) of Pub. L. 99-499 provided that:

"(1) The area known as Love Canal located in the city of Niagara Falls and the town of Wheatfield, New York, was the first toxic waste site to receive national attention. As a result of that attention Congress investigated the problems associated with toxic waste sites and enacted CERCLA [Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.)] to deal with these problems.

"(2) Because Love Canal came to the Nation's attention prior to the passage of CERCLA and because the fund under CERCLA was not available to compensate for all of the hardships endured by the citizens in the area, Congress has determined that special provisions are required. These provisions do not affect the lawfulness, implementation, or selection of any other response actions at Love Canal or at any other facilities."

COORDINATION OF TITLES I TO IV OF PUB. L. 99-499

Any provision of titles I to IV of Pub. L. 99-499, imposing any tax, premium, or fee; establishing any trust

fund; or authorizing expenditures from any trust fund, to have no force or effect, see section 531 of Pub. L. 99-499, set out as a note under section 1 of Title 26, Internal Revenue Code.

§ 9662. Limitation on contract and borrowing authority

Any authority provided by this Act, including any amendment made by this Act, to enter into contracts to obligate the United States or to incur indebtedness for the repayment of which the United States is liable shall be effective only to such extent or in such amounts as are provided in appropriation Acts.

(Pub. L. 99-499, §3, Oct. 17, 1986, 100 Stat. 1614.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 99-499, Oct. 17, 1986, 100 Stat. 1613, as amended, known as the Superfund Amendments and Reauthorization Act of 1986. For complete classification of this Act to the Code, see Short Title of 1986 Amendment note set out under section 9601 of this title and Tables.

CODIFICATION

Section was enacted as part of the Superfund Amendments and Reauthorization Act of 1986, and not as part of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 which comprises this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9619 of this title.

SUBCHAPTER IV—POLLUTION INSURANCE

§ 9671. Definitions

As used in this subchapter—

(1) Insurance

The term "insurance" means primary insurance, excess insurance, reinsurance, surplus lines insurance, and any other arrangement for shifting and distributing risk which is determined to be insurance under applicable State or Federal law.

(2) Pollution liability

The term "pollution liability" means liability for injuries arising from the release of hazardous substances or pollutants or contaminants.

(3) Risk retention group

The term "risk retention group" means any corporation or other limited liability association taxable as a corporation, or as an insurance company, formed under the laws of any State—

(A) whose primary activity consists of assuming and spreading all, or any portion, of the pollution liability of its group members;

(B) which is organized for the primary purpose of conducting the activity described under subparagraph (A);

(C) which is chartered or licensed as an insurance company and authorized to engage in the business of insurance under the laws of any State; and

(D) which does not exclude any person from membership in the group solely to provide for members of such a group a competitive advantage over such a person.

¹ See References in Text note below.

(4) Purchasing group

The term “purchasing group” means any group of persons which has as one of its purposes the purchase of pollution liability insurance on a group basis.

(5) State

The term “State” means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Marianas, and any other territory or possession over which the United States has jurisdiction.

(Pub. L. 96-510, title IV, §401, as added Pub. L. 99-499, title II, §210(a), formerly §210, Oct. 17, 1986, 100 Stat. 1716; renumbered §210(a), Pub. L. 99-563, §11(c)(1), Oct. 27, 1986, 100 Stat. 3177.)

STATE POWERS AND AUTHORITIES UNDER RISK
RETENTION AMENDMENTS OF 1986

Section 210(b) of Pub. L. 99-499, as added by Pub. L. 99-563, §11(c)(1), Oct. 27, 1986, 100 Stat. 3177, provided that: “For purposes of subsection (a) of this section [enacting this subchapter], the powers and authorities of States addressed by the Risk Retention Amendments of 1986 [Pub. L. 99-563, see Short Title of 1986 Amendment note set out under section 3901 of Title 15, Commerce and Trade] are in addition to those of this Act [see Short Title of 1986 Amendment note set out under section 9601 of this title].”

§ 9672. State laws; scope of subchapter**(a) State laws**

Nothing in this subchapter shall be construed to affect either the tort law or the law governing the interpretation of insurance contracts of any State. The definitions of pollution liability and pollution liability insurance under any State law shall not be applied for the purposes of this subchapter, including recognition or qualification of risk retention groups or purchasing groups.

(b) Scope of subchapter

The authority to offer or to provide insurance under this subchapter shall be limited to coverage of pollution liability risks and this subchapter does not authorize a risk retention group or purchasing group to provide coverage of any other line of insurance.

(Pub. L. 96-510, title IV, §402, as added Pub. L. 99-499, title II, §210(a), formerly §210, Oct. 17, 1986, 100 Stat. 1716; renumbered §210(a), Pub. L. 99-563, §11(c)(1), Oct. 27, 1986, 100 Stat. 3177.)

§ 9673. Risk retention groups**(a) Exemption**

Except as provided in this section, a risk retention group shall be exempt from the following:

- (1) A State law, rule, or order which makes unlawful, or regulates, directly or indirectly, the operation of a risk retention group.
- (2) A State law, rule, or order which requires or permits a risk retention group to participate in any insurance insolvency guaranty association to which an insurer licensed in the State is required to belong.
- (3) A State law, rule, or order which requires any insurance policy issued to a risk retention

group or any member of the group to be countersigned by an insurance agent or broker residing in the State.

(4) A State law, rule, or order which otherwise discriminates against a risk retention group or any of its members.

(b) Exceptions**(1) State laws generally applicable**

Nothing in subsection (a) of this section shall be construed to affect the applicability of State laws generally applicable to persons or corporations. The State in which a risk retention group is chartered may regulate the formation and operation of the group.

(2) State regulations not subject to exemption

Subsection (a) of this section shall not apply to any State law which requires a risk retention group to do any of the following:

(A) Comply with the unfair claim settlement practices law of the State.

(B) Pay, on a nondiscriminatory basis, applicable premium and other taxes which are levied on admitted insurers and surplus line insurers, brokers, or policyholders under the laws of the State.

(C) Participate, on a nondiscriminatory basis, in any mechanism established or authorized under the law of the State for the equitable apportionment among insurers of pollution liability insurance losses and expenses incurred on policies written through such mechanism.

(D) Submit to the appropriate authority reports and other information required of licensed insurers under the laws of a State relating solely to pollution liability insurance losses and expenses.

(E) Register with and designate the State insurance commissioner as its agent solely for the purpose of receiving service of legal documents or process.

(F) Furnish, upon request, such commissioner a copy of any financial report submitted by the risk retention group to the commissioner of the chartering or licensing jurisdiction.

(G) Submit to an examination by the State insurance commissioner in any State in which the group is doing business to determine the group's financial condition, if—

(i) the commissioner has reason to believe the risk retention group is in a financially impaired condition; and

(ii) the commissioner of the jurisdiction in which the group is chartered has not begun or has refused to initiate an examination of the group.

(H) Comply with a lawful order issued in a delinquency proceeding commenced by the State insurance commissioner if the commissioner of the jurisdiction in which the group is chartered has failed to initiate such a proceeding after notice of a finding of financial impairment under subparagraph (G).

(c) Application of exemptions

The exemptions specified in subsection (a) of this section apply to—

- (1) pollution liability insurance coverage provided by a risk retention group for—

- (A) such group; or
- (B) any person who is a member of such group;
- (2) the sale of pollution liability insurance coverage for a risk retention group; and
- (3) the provision of insurance related services or management services for a risk retention group or any member of such a group.

(d) Agents or brokers

A State may require that a person acting, or offering to act, as an agent or broker for a risk retention group obtain a license from that State, except that a State may not impose any qualification or requirement which discriminates against a nonresident agent or broker.

(Pub. L. 96-510, title IV, §403, as added Pub. L. 99-499, title II, §210(a), formerly §210, Oct. 17, 1986, 100 Stat. 1717; renumbered §210(a), Pub. L. 99-563, §11(c)(1), Oct. 27, 1986, 100 Stat. 3177.)

§ 9674. Purchasing groups

(a) Exemption

Except as provided in this section, a purchasing group is exempt from the following:

- (1) A State law, rule, or order which prohibits the establishment of a purchasing group.
- (2) A State law, rule, or order which makes it unlawful for an insurer to provide or offer to provide insurance on a basis providing, to a purchasing group or its member, advantages, based on their loss and expense experience, not afforded to other persons with respect to rates, policy forms, coverages, or other matters.
- (3) A State law, rule, or order which prohibits a purchasing group or its members from purchasing insurance on the group basis described in paragraph (2) of this subsection.
- (4) A State law, rule, or order which prohibits a purchasing group from obtaining insurance on a group basis because the group has not been in existence for a minimum period of time or because any member has not belonged to the group for a minimum period of time.
- (5) A State law, rule, or order which requires that a purchasing group must have a minimum number of members, common ownership or affiliation, or a certain legal form.
- (6) A State law, rule, or order which requires that a certain percentage of a purchasing group must obtain insurance on a group basis.
- (7) A State law, rule, or order which requires that any insurance policy issued to a purchasing group or any members of the group be countersigned by an insurance agent or broker residing in that State.
- (8) A State law, rule, or order which otherwise discriminate¹ against a purchasing group or any of its members.

(b) Application of exemptions

The exemptions specified in subsection (a) of this section apply to the following:

- (1) Pollution liability insurance, and comprehensive general liability insurance which includes this coverage, provided to—
 - (A) a purchasing group; or

¹ So in original. Probably should be “discriminates”.

- (B) any person who is a member of a purchasing group.
- (2) The sale of any one of the following to a purchasing group or a member of the group:
 - (A) Pollution liability insurance and comprehensive general liability coverage.
 - (B) Insurance related services.
 - (C) Management services.

(c) Agents or brokers

A State may require that a person acting, or offering to act, as an agent or broker for a purchasing group obtain a license from that State, except that a State may not impose any qualification or requirement which discriminates against a nonresident agent or broker.

(Pub. L. 96-510, title IV, §404, as added Pub. L. 99-499, title II, §210(a), formerly §210, Oct. 17, 1986, 100 Stat. 1718; renumbered §210(a), Pub. L. 99-563, §11(c)(1), Oct. 27, 1986, 100 Stat. 3177.)

§ 9675. Applicability of securities laws

(a) Ownership interests

The ownership interests of members of a risk retention group shall be considered to be—

- (1) exempted securities for purposes of section 77e of title 15 and for purposes of section 78l of title 15; and
- (2) securities for purposes of the provisions of section 77q of title 15 and the provisions of section 78j of title 15.

(b) Investment Company Act

A risk retention group shall not be considered to be an investment company for purposes of the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.).

(c) Blue sky law

The ownership interests of members in a risk retention group shall not be considered securities for purposes of any State blue sky law.

(Pub. L. 96-510, title IV, §405, as added Pub. L. 99-499, title II, §210(a), formerly §210, Oct. 17, 1986, 100 Stat. 1719; renumbered §210(a), Pub. L. 99-563, §11(c)(1), Oct. 27, 1986, 100 Stat. 3177.)

REFERENCES IN TEXT

The Investment Company Act of 1940, referred to in subsec. (b), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, as amended, which is classified generally to subchapter I (§80a-1 et seq.) of chapter 2D of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 80a-51 of Title 15 and Tables.

CHAPTER 104—NUCLEAR SAFETY RESEARCH, DEVELOPMENT, AND DEMONSTRATION

Sec.	
9701.	Congressional findings and declaration of policy.
9702.	Definitions.
9703.	Research, development, and demonstration program; establishment; purposes; implementation.
9704.	National reactor engineering simulator feasibility study. <ul style="list-style-type: none"> (a) Consultative requirements; purpose. (b) Applicability of relevant factors. (c) Report to Congressional committees.
9705.	Federal Nuclear Operations Corps' study.

- Sec. (a) Cooperation and coordination requirements; purpose.
 (b) Assessments.
 (c) Report to Congress.
9706. Dissemination of information.
9707. Comprehensive program management plan.
 (a) Preparation; scope; consultative requirements.
 (b) Transmission to Congressional committees; revisions.
9708. Authorization of appropriations.

§ 9701. Congressional findings and declaration of policy

(a) The Congress finds that—

(1) nuclear energy is one of the two major energy sources available for electric energy production in the United States during the balance of the twentieth century;

(2) continued development of nuclear power is dependent upon maintaining an extremely high level of safety in the operation of nuclear plants, and on public recognition that these facilities do not constitute a significant threat to human health or safety;

(3) it is the responsibility of utilities, as owners and operators of nuclear powerplants, to assure that such plants are designed and operated safely and reliably; and

(4) a proper role of the Federal Government in assuring nuclear powerplant safety, in addition to its regulatory function, is the conduct of a research, development, and demonstration program to provide important scientific and technical information which can contribute to sound design and safe operation of these plants.

(b) It is declared to be the policy of the United States and the purpose of this chapter to establish a research, development, and demonstration program for developing practical improvements in the generic safety of nuclear powerplants during the next five years, beginning in the fiscal year 1981. The objectives of such program shall be—

(1) to reduce the likelihood and severity of potentially serious nuclear powerplant accidents; and

(2) to reduce the likelihood of disrupting the population in the vicinity of nuclear powerplants as the result of nuclear powerplant accidents.

Nothing in this chapter shall be construed as preventing the Secretary from undertaking projects or activities, in addition to those specified in this chapter, which appropriately further the purpose and objectives set forth in this subsection. Nothing in this chapter shall authorize the Secretary to assume responsibility for the management, cleanup or repair of any commercial nuclear powerplant. Nothing in this chapter shall be construed as limiting the authority of the Secretary under any other law.

(Pub. L. 96-567, § 2, Dec. 22, 1980, 94 Stat. 3329.)

SHORT TITLE

Section 1 of Pub. L. 96-567 provided: "That this Act [enacting this chapter] may be cited as the 'Nuclear Safety Research, Development, and Demonstration Act of 1980'."

§ 9702. Definitions

For purposes of this chapter—

(1) the term "Secretary" means the Secretary of Energy;

(2) the term "Government agency" means any department, agency, commission, or independent establishment in the executive branch of the Federal Government, or any corporation, wholly or partly owned by the United States, which is an instrumentality of the United States, or any board, bureau, division, service, office, officer, authority, administration, or other establishment in the executive branch of the Federal Government;

(3) the term "Commission" means the Nuclear Regulatory Commission; and

(4) the term "Advisory Committee" means the Advisory Committee on Reactor Safeguards established by section 2039 of this title.

(Pub. L. 96-567, § 3, Dec. 22, 1980, 94 Stat. 3329.)

§ 9703. Research, development, and demonstration program; establishment; purposes; implementation

(a) The Secretary shall establish a research, development, and demonstration program to carry out the purpose of this chapter. As part of such program, the Secretary shall at a minimum—

(1) refine further the assessment of risk factors associated with the generic design and operation of nuclear powerplants to determine the degree and consequences of propagation of failures of systems, subsystems, and components, including consideration of the interaction between the primary and secondary systems;

(2) develop potentially cost-beneficial changes in the generic design and operation of nuclear powerplants that can (A) significantly reduce the risks from unintentional release of radioactive material from the various engineered barriers of nuclear powerplants and (B) reduce the radiation exposure to workers during plant operation and maintenance;

(3) develop potentially cost-beneficial generic methods and designs that will significantly improve the performance of operators of nuclear powerplants under routine, abnormal, and accident conditions;

(4) identify the effect of total or partial automation of generic plant systems on reactor safety, operation, reliability, economics, and operator performance;

(5) conduct further experimental investigations under abnormal operational and postulated accident conditions primarily for light water reactors to determine the consequences of such conditions. These investigations shall include, but not be limited to, the following:

(A) fuel failure at higher than standard burn-up levels;

(B) fuel-cladding interactions;

(C) fuel and cladding interactions with coolant under various temperatures and pressures;

(D) thermohydraulic behavior in the reactor core;

(E) mechanisms to suppress and control the generation of hydrogen gas;

(F) improved instrumentation for monitoring reactor cores;

(G) engineered-barrier failure modes; and

(H) fission product release and transport from failed fuel;

(6) provide for the examination and analysis of any nuclear powerplant fuel, component, or system which the Secretary deems to offer significant benefit in safety analysis and which is made available to the Secretary for a nominal cost, such as \$1: *Provided, however,* That the Secretary shall accept only the number of samples of such fuel, component, or system necessary to carry out such examination and analysis; and

(7) identify the aptitudes, training, and manning levels which are necessary to assure reliable operator performance under normal, abnormal, and emergency conditions.

(b) In carrying out the generic safety research, development, and demonstration program established under this chapter, the Secretary—

(1) shall coordinate with the Commission and, to the extent necessary, enter into a new memorandum of understanding or revise existing memoranda for the purpose of eliminating unnecessary duplication and avoiding programmatic conflict with any reactor safety research program of the Commission, including the Improved Safety Systems Research program;

(2) shall, to the extent practical, coordinate his activities with such other Government agencies, foreign governments, and industry as he deems appropriate to utilize their expertise, to minimize duplication of effort, and to ensure that information useful for improved concepts applicable to nuclear powerplant safety can be applied in a timely manner. The Secretary may enter into agreements and memoranda of understanding to accomplish these ends, but no such agreement shall have the effect of delaying the development and implementation of programs authorized under this chapter;

(3) shall utilize, to the extent feasible, underutilized federally owned research reactors and facilities, along with the associated personnel, to maintain existing capabilities and to ensure that the research is generic in nature; and

(4) shall make such recommendations as are practical to minimize the complexity of nuclear powerplant systems, including secondary systems, and operations.

(Pub. L. 96-567, § 4, Dec. 22, 1980, 94 Stat. 3330.)

TRANSFER OF FUNCTIONS

For transfer of certain functions from Nuclear Regulatory Commission to Chairman thereof, see Reorg. Plan No. 1 of 1980, 45 F.R. 40561, 94 Stat. 3585, set out as a note under section 5841 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9707 of this title.

§ 9704. National reactor engineering simulator feasibility study

(a) Consultative requirements; purpose

The Secretary, in consultation with the Commission and the Advisory Committee, shall ini-

tiate a study of the need for and feasibility of establishing a reactor engineering simulator facility at a national laboratory, for the primary purpose of fostering research in generic design improvements and simplifications through the simulation of the performance of various types of light water reactors under a wide variety of abnormal conditions and postulated accident conditions.

(b) Applicability of relevant factors

In performing the study, the Secretary shall consider relevant factors including, but not limited to—

(1) the potential advantages that would accrue from the establishment of such a facility;

(2) the extent to which such a facility would further the generic safety research and development program established by this chapter;

(3) the extent to which such a facility can be established by nongovernmental entities;

(4) the opportunities for cost sharing by nongovernmental entities in the construction and operation of such a facility;

(5) the importance of such a facility in emergencies to limit the extent of any future nuclear powerplant excursions;

(6) the potential for international cooperation in the establishment and operation of such a facility; and

(7) the appropriate national laboratory for siting such a facility.

(c) Report to Congressional committees

The Secretary shall, by January 1, 1982, submit to the Committee on Science and Technology of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report characterizing the study and the resulting conclusions and recommendations.

(Pub. L. 96-567, § 5, Dec. 22, 1980, 94 Stat. 3331.)

CHANGE OF NAME

Committee on Science and Technology of House of Representatives changed to Committee on Science, Space, and Technology of House of Representatives by House Resolution No. 5, One Hundredth Congress, Jan. 6, 1987. Committee on Science, Space, and Technology of House of Representatives treated as referring to Committee on Science of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

TRANSFER OF FUNCTIONS

For transfer of certain functions from Nuclear Regulatory Commission to Chairman thereof, see Reorg. Plan No. 1 of 1980, 45 F.R. 40561, 94 Stat. 3585, set out as a note under section 5841 of this title.

§ 9705. Federal Nuclear Operations Corps' study

(a) Cooperation and coordination requirements; purpose

The Secretary, in cooperation with the Nuclear Regulatory Commission, shall initiate a study as to the sufficiency of efforts in the United States to provide specially trained professionals to operate the controls of nuclear powerplants and other facilities in the back-end of the nuclear fuel cycle. In carrying out the study, the Secretary shall coordinate his activities with the ongoing programs of the utility industry and other Federal governmental agencies

for obtaining high standards of operator performance.

(b) Assessments

(1) In conducting the study the Secretary shall assess the desirability and feasibility of creating a Federal Corps of such professionals to inspect and supervise such operations.

(2) The assessment shall consider the establishment of an academy to train Corps professionals in all aspects of nuclear technology, nuclear operations, nuclear regulatory and related law, and health science.

(3) The assessment shall include the appropriate organizational approach for the establishment of a Federal Corps within the executive branch.

(c) Report to Congress

The Secretary shall complete the study within one year after December 22, 1980, and shall submit a report along with his recommendations to the Congress.

(Pub. L. 96-567, § 6, Dec. 22, 1980, 94 Stat. 3332.)

TRANSFER OF FUNCTIONS

For transfer of certain functions from Nuclear Regulatory Commission to Chairman thereof, see Reorg. Plan No. 1 of 1980, 45 F.R. 40561, 94 Stat. 3585, set out as a note under section 5841 of this title.

§ 9706. Dissemination of information

The Secretary shall assure that full and complete safety-related information resulting from any project or other activity conducted under this chapter is made available in a timely manner to appropriate committees of Congress, Federal, State, and local authorities, relevant segments of private industry, the scientific community, and the public.

(Pub. L. 96-567, § 7, Dec. 22, 1980, 94 Stat. 3332.)

§ 9707. Comprehensive program management plan

(a) Preparation; scope; consultative requirements

The Secretary is authorized and directed to prepare a comprehensive program management plan for the conduct of research, development, and demonstration activities under this chapter consistent with the provisions of section 9703 of this title. In the preparation of such plan, the Secretary shall consult with the Commission and the Advisory Committee and with the heads of such other Government agencies and such public and private organizations as he deems appropriate.

(b) Transmission to Congressional committees; revisions

The Secretary shall transmit the comprehensive program management plan along with any comments by the Commission on the plan to the Committee on Science and Technology of the House of Representatives and the Committee on Energy and Natural Resources and the Committee on Environment and Public Works of the Senate within twelve months after December 22, 1980. Revisions to the plan shall be transmitted to such committees whenever deemed appropriate by the Secretary.

(Pub. L. 96-567, § 8, Dec. 22, 1980, 94 Stat. 3332; Pub. L. 104-66, title I, § 1051(l), Dec. 21, 1995, 109 Stat. 717.)

AMENDMENTS

1995—Subsec. (c). Pub. L. 104-66 struck out subsec. (c) which directed Secretary of Energy to transmit to Congress, concurrently with submission of President's annual budget to Congress, detailed description of comprehensive plan as then in effect.

CHANGE OF NAME

Committee on Science and Technology of House of Representatives changed to Committee on Science, Space, and Technology of House of Representatives by House Resolution No. 5, One Hundredth Congress, Jan. 6, 1987. Committee on Science, Space, and Technology of House of Representatives treated as referring to Committee on Science of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

TRANSFER OF FUNCTIONS

For transfer of certain functions from Nuclear Regulatory Commission to Chairman thereof, see Reorg. Plan No. 1 of 1980, 45 F.R. 40561, 94 Stat. 3585, set out as a note under section 5841 of this title.

§ 9708. Authorization of appropriations

There is authorized to be appropriated to the Secretary to carry out this chapter such sums as may be authorized by legislation hereafter enacted.

(Pub. L. 96-567, § 9, Dec. 22, 1980, 94 Stat. 3333.)

CHAPTER 105—COMMUNITY SERVICES PROGRAMS

SUBCHAPTER I—COMMUNITY ECONOMIC DEVELOPMENT

Sec.	
9801.	Statement of purpose.
9802.	“Community development corporation” defined.
9803.	Repealed.
9804.	Advisory Community Investment Board.
	(a) National Community Investment Board; functions, composition, etc.
	(b) Function.
	(c) Local advisory community investment boards; establishment, composition, etc.

PART A—URBAN AND RURAL SPECIAL IMPACT PROGRAMS

9805.	Statement of purpose.
9806.	Establishment and scope of programs.
9807.	Financial assistance requirements.
	(a) Conditions.
	(b) Relocations substantially increasing unemployment.
	(c) Community economic development program; application; specification of goals.
9808.	Federal share; amount; availability; ownership of property acquired with Federal financial assistance.

PART B—SPECIAL RURAL PROGRAMS

9809.	Statement of purpose.
9810.	Financial assistance to low-income families, local cooperative associations, and local public or private nonprofit organizations or entities; amount, purposes, etc.
9811.	Limitation on assistance.

PART C—DEVELOPMENT LOANS TO COMMUNITY ECONOMIC DEVELOPMENT PROGRAMS

9812.	Development loan fund.
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<p>Sec.</p> <p>(a) Authorities, scope, and purposes; conditions; interest rate; repayment.</p> <p>(b) Adjustment of interest rates, moratorium on principal and interest, etc.</p> <p>(c) Establishment, funding, etc.</p> <p>9812a. Interest rates payable on certain rural development loans; assignment of loan contracts.</p> <p>(a) Modification of interest rates.</p> <p>(b) Assignment of certain loan contracts.</p> <p>9813. Model Community Economic Development Finance Corporation; establishment; functions.</p> <p style="text-align: center;">PART D—SUPPORTIVE PROGRAMS AND ACTIVITIES</p> <p>9814. Training and technical assistance.</p> <p>(a) Grants, contracts, and other arrangements; preconditions.</p> <p>(b) Technical assistance to community development corporations and urban and rural cooperatives.</p> <p>(c) Training for employees of community development corporations and employees and members of urban and rural cooperatives.</p> <p>9815. Small Business Administration and Department of Commerce economic development programs; regulations.</p> <p>9816. Department of Housing and Urban Development programs.</p> <p>9817. Department of Agriculture; Rural Development Administration programs.</p> <p>9818. Coordination and eligibility.</p> <p>9819. Evaluation of programs; implementation and funding, etc.; research and demonstration projects; implementation and purposes.</p> <p>9820. Grants to plan economic development and cooperative programs.</p> <p>9821. Nondiscrimination provisions.</p> <p>9822. Availability of certain appropriated funds.</p> <p style="text-align: center;">SUBCHAPTER II—HEAD START PROGRAMS</p> <p>9831. Statement of purpose.</p> <p>9832. Definitions.</p> <p>9833. Financial assistance for Head Start programs.</p> <p>9834. Authorization of appropriations.</p> <p>9835. Allotment of funds.</p> <p>(a) Distribution of appropriations; priorities, etc.</p> <p>(b) Federal share.</p> <p>(c) Services covered.</p> <p>(d) Enrollment of children with disabilities and provision of services.</p> <p>(e) Distribution of benefits between residents of rural and urban areas.</p> <p>(f) Guidelines for local service delivery models.</p> <p>(g) Maintenance of current services; expansion of Head Start programs.</p> <p>(h) Full-working-day services.</p> <p>(i) Vehicle safety regulations.</p> <p>(j) Compensation of staff.</p> <p>(k) Flexibility in hours of service requirement.</p> <p>(l) Frequent relocation of migrant families.</p> <p>9835a. Repealed.</p> <p>9836. Designation of Head Start agencies.</p> <p>(a) Authorization; prerequisites.</p> <p>(b) Definition.</p> <p>(c) Priority.</p> <p>(d) Designation; Head Start agency; qualified applicants.</p> <p>(e) Designation of agency on an interim basis.</p> <p>(f) Involvement of parents and area residents in selection of agencies.</p> <p>(g) Priority for nonprofit agencies and applicants with demonstrated capacity.</p>	<p>Sec.</p> <p>9836a. Quality standards; monitoring of Head Start agencies and programs.</p> <p>(a) Quality standards.</p> <p>(b) Results-based performance measures.</p> <p>(c) Monitoring of local agencies and programs.</p> <p>(d) Corrective action; termination.</p> <p>(e) Summaries of monitoring outcomes.</p> <p>9837. Powers and functions of Head Start agencies.</p> <p>(a) Receipt, administration, and transfer of funds; sponsorship of projects; delegation of authority, etc.</p> <p>(b) Participation of parents in decision-making, implementation, etc.</p> <p>(c) Coordination with other agencies.</p> <p>(d) Transition coordination with schools.</p> <p>(e) Assessment when hiring or evaluating classroom teachers.</p> <p>9837a. Head Start transition.</p> <p>9838. Submission of plans to chief executive officer.</p> <p>9839. Administrative requirements and standards.</p> <p>(a) Employment practices, nonpartisanship, staff accountability, public access to information, etc.</p> <p>(b) Development and administrative costs of programs.</p> <p>(c) Rules and regulations; special or simplified requirements for small agencies; common or joint use of facilities.</p> <p>(d) Publication and notification of proposed rules, etc.</p> <p>(e) Neutrality concerning union organizing.</p> <p>(f) Purchase of facility; approval requirements; financial assistance.</p> <p>(g) Payments for capital expenditures.</p> <p>(h) Personnel preferences to Indian tribe members.</p> <p>9840. Participation in Head Start programs.</p> <p>(a) Criteria for eligibility.</p> <p>(b) Establishment of fee schedule or charging of fees; payment by families willing and able to pay.</p> <p>(c) Availability of more than one year of services; children eligible.</p> <p>(d) Indian tribes.</p> <p>9840a. Early Head Start programs for families with infants and toddlers.</p> <p>(a) In general.</p> <p>(b) Scope and design of programs.</p> <p>(c) Persons eligible to participate.</p> <p>(d) Eligible service providers.</p> <p>(e) Selection of grant recipients.</p> <p>(f) Distribution.</p> <p>(g) Monitoring, training, technical assistance, and evaluation.</p> <p>9841. Appeals, notice, hearing, and mediation; alternative agency for Indian tribe.</p> <p>(a) Notice requirements; suspension or termination of assistance stayed pending hearing; mediation.</p> <p>(b) Notification of conflict by Head Start agency to regional office.</p> <p>(c) Timeline for administrative hearing.</p> <p>(d) Termination of designation not stayed upon appeal.</p> <p>(e) Establishment of alternative agency by Indian tribe.</p> <p>9842. Records and audits.</p> <p>9843. Technical assistance and training.</p> <p>(a) Technical assistance and personnel training.</p> <p>(b) Consideration of local needs.</p> <p>(c) Prioritization of resource allocation.</p> <p>(d) Training in performing and visual arts and electronic media.</p> <p>(e) Child development and assessment program.</p>
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- Sec.
9843a. Staff qualifications and development.
(a) Classroom teachers.
(b) Mentor teachers.
(c) Family service workers.
(d) Head Start Fellowships.
(e) Model staffing plans.
9844. Research, demonstrations, and evaluation.
(a) In general.
(b) Conduct of research, demonstration, and evaluation activities.
(c) Consultation and collaboration.
(d) Specific objectives.
(e) Longitudinal studies.
(f) Ownership of results.
(g) National Head Start impact research.
(h) Quality improvement study.
9845. Repealed.
9846. Reports.
(a) Status of children.
(b) Facilities.
- 9846a, 9847. Repealed.
9848. Comparability of wages.
9849. Nondiscrimination provisions.
(a) Discrimination based on race, creed, color, etc., as basis for denial of financial assistance.
(b) Sex discrimination; enforcement provisions applicable.
(c) Discrimination based on handicapping condition as basis for denial of financial assistance.
9850. Limitation with respect to certain unlawful activities.
9851. Political activities.
9852. Advance funding.
- 9852a. Repealed.
- SUBCHAPTER II—A—HEAD START TRANSITION PROJECT
- 9855 to 9855g. Repealed.
- SUBCHAPTER II—B—CHILD CARE AND DEVELOPMENT BLOCK GRANT
9858. Authorization of appropriations.
- 9858a. Establishment of block grant program.
- 9858b. Lead agency.
(a) Designation.
(b) Duties.
- 9858c. Application and plan.
(a) Application.
(b) Period covered by plan.
(c) Requirements of a plan.
(d) Approval of application.
- 9858d. Limitations on State allotments.
(a) No entitlement to contract or grant.
(b) Construction of facilities.
- 9858e. Activities to improve quality of child care.
- 9858f. Repealed.
- 9858g. Administration and enforcement.
(a) Administration.
(b) Enforcement.
- 9858h. Payments.
(a) In general.
(b) Method of payment.
(c) Spending of funds by State.
- 9858i. Reports and audits.
(a) Reports.
(b) Audits.
- 9858j. Report by Secretary.
- 9858k. Limitations on use of financial assistance for certain purposes.
(a) Sectarian purposes and activities.
(b) Tuition.
- 9858l. Nondiscrimination.
(a) Religious nondiscrimination.
(b) Effect on State law.
- 9858m. Amounts reserved; allotments.
(a) Amounts reserved.
(b) State allotment.
- Sec.
(c) Payments for benefit of Indian children.
(d) Data and information.
(e) Reallotments.
(f) "State" defined.
- 9858n. Definitions.
- 9858o. Parental rights and responsibilities.
- 9858p. Severability.
- 9858q. Miscellaneous provisions.
- SUBCHAPTER II—C—CHILD CARE SAFETY AND HEALTH GRANTS
9859. Definitions.
- 9859a. Authorization of appropriations.
- 9859b. Programs.
- 9859c. Amounts reserved; allotments.
(a) Amounts reserved.
(b) State allotments.
(c) Data and information.
(d) Definition.
- 9859d. State applications.
- 9859e. Use of funds.
(a) In general.
(b) Supplement, not supplant.
- 9859f. Reports.
- SUBCHAPTER III—FOLLOW THROUGH PROGRAMS
- 9861 to 9869. Repealed.
- SUBCHAPTER IV—GRANTS TO STATES FOR PLANNING AND DEVELOPMENT OF DEPENDENT CARE PROGRAMS AND FOR OTHER PURPOSES
9871. Authorization of appropriations.
9872. Allotments.
9873. Payments under allotments to States.
9874. Use of allotments.
(a) Referral systems; information; contents.
(b) School-age child care services; assurances; estimates.
(c) Percentage of allotment; waiver.
(d) Prohibition; use of amounts.
(e) Federal share; cost of administration.
(f) Duplication of services.
(g) Technical assistance to States; planning and operational activities.
9875. Application and description of activities; requirements.
(a) Applications.
(b) Certifications.
(c) Description; intended use of payments; comments; revision.
(d) Application to Public Health Service Act.
9876. Report.
9877. Definitions.
- SUBCHAPTER V—COMPREHENSIVE CHILD DEVELOPMENT PROGRAM
- 9881 to 9887. Repealed.
- SUBCHAPTER I—COMMUNITY ECONOMIC DEVELOPMENT
- CODIFICATION
- Subchapter is based on subchapter A of chapter 8 of subtitle A of title VI of Pub. L. 97-35, Aug. 13, 1981, 95 Stat. 489, as amended.
- SUBCHAPTER REFERRED TO IN OTHER SECTIONS
- This subchapter is referred to in section 4953 of this title.
- § 9801. Statement of purpose**
- The purpose of this subchapter is to encourage the development of special programs by which the residents of urban and rural low-income

areas may, through self-help and mobilization of the community at large, with appropriate Federal assistance, improve the quality of their economic and social participation in community life in such a way as to contribute to the elimination of poverty and the establishment of permanent economic and social benefits.

(Pub. L. 97-35, title VI, §612, Aug. 13, 1981, 95 Stat. 489.)

SHORT TITLE OF 1998 AMENDMENT

Pub. L. 105-285, §1, Oct. 27, 1998, 112 Stat. 2702, provided that: "This Act [see Tables for classification] may be cited as the 'Community Opportunities, Accountability, and Training and Educational Services Act of 1998' or the 'Coats Human Services Reauthorization Act of 1998'."

Pub. L. 105-285, title I, §101, Oct. 27, 1998, 112 Stat. 2703, provided that: "This title [enacting section 9837a of this title, amending sections 9831 to 9835, 9836 to 9837, 9838 to 9840a, 9843 to 9844, and 9846 of this title, and repealing sections 9852a and 9855 to 9855g of this title and provisions set out as a note under this section] may be cited as the 'Head Start Amendments of 1998'."

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104-193, title VI, §601(a), Aug. 22, 1996, 110 Stat. 2278, provided that: "This title [enacting section 618 of this title, amending sections 9858, 9858b to 9858e, 9858g to 9858j, 9858m, and 9858n of this title, repealing section 9858f of this title, enacting provisions set out as notes under section 9858 of this title, and amending provisions set out as a note below] may be cited as the 'Child Care and Development Block Grant Amendments of 1996'."

SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103-252, §1, May 18, 1994, 108 Stat. 623, provided that: "This Act [see Tables for classification] may be cited as the 'Human Services Amendments of 1994'."

Pub. L. 103-252, title I, §101(a), May 18, 1994, 108 Stat. 624, provided that: "This title [enacting sections 9836a, 9840a, 9843a, and 9852a of this title, transferring sections 3161 to 3161g of Title 20, Education, to sections 1235 to 1235g of Title 20, respectively, amending sections 1396r-5, 9832 to 9835, 9836, 9837, 9839, 9840, 9841, 9843, 9844, 9846, 9855a, 9871, and 10905 of this title and sections 1235, 1235a, and 1235c to 1235e of Title 20, repealing sections 9835a, 9845, 9846a, 9847, and 9881 to 9887 of this title, enacting provisions set out as notes under sections 9832, 9839, 9844, and 9881 of this title, and repealing provisions set out as notes under this section and section 9881 of this title] may be cited as the 'Head Start Act Amendments of 1994'."

SHORT TITLE OF 1992 AMENDMENT

Pub. L. 102-401, §1, Oct. 7, 1992, 106 Stat. 1956, provided that: "This Act [amending sections 9835 to 9839, 9846, 9846a, and 9858n of this title and enacting provisions set out as notes under sections 9835 and 9836 of this title] may be cited as the 'Head Start Improvement Act of 1992'."

SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101-501, §1(a), Nov. 3, 1990, 104 Stat. 1222, provided that: "This Act [see Tables for classification] may be cited as the 'Augustus F. Hawkins Human Services Reauthorization Act of 1990'."

Pub. L. 101-501, title I, §101, Nov. 3, 1990, 104 Stat. 1224, provided that: "This subtitle [subtitle A (§§101-123) of title I of Pub. L. 101-501, enacting sections 9835a and 9846a of this title and amending sections 9831, 9832, 9834, 9835, 9836 to 9841, 9843 to 9846, 9847, and 9848 of this title] may be cited as the 'Head Start Expansion and Quality Improvement Act'."

Pub. L. 101-501, title I, §131, Nov. 3, 1990, 104 Stat. 1238, provided that subtitle B (§§131-140) of title I of

Pub. L. 101-501, enacting subchapter II-A of this chapter and amending section 9834 of this title, could be cited as the 'Head Start Transition Project Act', prior to repeal by Pub. L. 105-285, title I, §119, Oct. 27, 1998, 112 Stat. 2728.

SHORT TITLE OF 1989 AMENDMENT

Pub. L. 101-120, §1, Oct. 23, 1989, 103 Stat. 700, provided that: "This Act [amending section 9834 of this title] may be cited as the 'Head Start Supplemental Authorization Act of 1989'."

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100-297, title II, §2501, Apr. 28, 1988, 102 Stat. 325, provided that part E (§§2501-2504) of title II of Pub. L. 100-297, which enacted subchapter V of this chapter, amended section 9833 of this title, and enacted provisions set out as notes under this section and section 9881 of this title, could be cited as the "Comprehensive Child Development Centers Act of 1988", prior to repeal by Pub. L. 103-252, title I, §112(b)(1), (2)(A), May 18, 1994, 108 Stat. 640, 641.

SHORT TITLE OF 1986 AMENDMENT

Pub. L. 99-425, §1, Sept. 30, 1986, 100 Stat. 966, provided: "That this Act [enacting sections 8628a, 9812a, 9910b, and 10901 to 10905 of this title, amending sections 8621, 8623, 8624, 8629, 9803, 9834, 9835, 9837, 9840, 9862, 9867, 9871, 9874, 9877, 9901 to 9904, 9905a, 9908 to 9910, and 9910a of this title and section 4033 of Title 20, Education, enacting provisions set out as notes under this section and sections 8621, 8623, and 10901 of this title, and amending provisions set out as notes under section 9861 of this title and section 1932 of Title 7, Agriculture] may be cited as the 'Human Services Reauthorization Act of 1986'."

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98-558, §1, Oct. 30, 1984, 98 Stat. 2878, provided: "That this Act [enacting sections 9871 to 9877, 9905a, and 9910a of this title and sections 1070d-31 to 1070d-41, 1119d to 1119d-8, 1119e to 1119e-5, and 4201 to 4206 of Title 20, Education, amending sections 2991b, 2992b to 2992d, 6862, 6865, 8621 to 8624, 8626, 8627, 8629, 9832, 9834 to 9836, 9840, 9843, 9844, 9846, 9862, 9901, 9902, 9904, 9908, and 9910 of this title and section 4061 of Title 20, enacting provisions set out as notes under sections 2991, 8621, and 9904 of this title, and amending provisions set out as a note under section 9861 of this title] may be cited as the 'Human Services Reauthorization Act'."

SHORT TITLE

Section 611 of subchapter A (§§611-633) of chapter 8 of subtitle A of title VI of Pub. L. 97-35 provided that: "This subchapter [enacting this subchapter] may be cited as the 'Community Economic Development Act of 1981'."

Section 635 of subchapter B (§§635-657) of chapter 8 of subtitle A of title VI of Pub. L. 97-35 provided that: "This subchapter [enacting subchapter II of this chapter] may be cited as the 'Head Start Act'."

Section 658A(a) of subchapter C (§658A et seq.) of chapter 8 of subtitle A of title VI of Pub. L. 97-35, as added by Pub. L. 101-508, title V, §5082(2), Nov. 5, 1990, 104 Stat. 1388-236, and amended by Pub. L. 102-401, §3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102-586, §8(c)(1), Nov. 4, 1992, 106 Stat. 5036; Pub. L. 104-193, title VI, §602(2), Aug. 22, 1996, 110 Stat. 2279, provided that: "This subchapter [enacting subchapter II-B of this chapter] may be cited as the 'Child Care and Development Block Grant Act of 1990'."

Section 661 of subchapter D [formerly C] (§§661-670) of chapter 8 of subtitle A of title VI of Pub. L. 97-35, as renumbered by Pub. L. 101-508, title V, §5082(1), Nov. 5, 1990, 104 Stat. 1388-236, and amended by Pub. L. 102-401, §3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102-586, §8(c)(1), Nov. 4, 1992, 106 Stat. 5036, provided that former subchapter III of this chapter could be cited as the "Follow Through Act", prior to repeal by Pub. L. 103-382, title III, §391(w), Oct. 20, 1994, 108 Stat. 4025.

Section 670H of subchapter E [formerly D] (§§670A-670H) of chapter 8 of subtitle A of title VI of Pub. L. 97-35, as added by Pub. L. 99-425, title III, §304, Sept. 30, 1986, 100 Stat. 968, renumbered by Pub. L. 101-508, title V, §5082(1), Nov. 5, 1990, 104 Stat. 1388-236, and amended by Pub. L. 102-401, §3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102-586, §8(c)(1), Nov. 4, 1992, 106 Stat. 5036, provided that: "This subchapter [enacting subchapter IV of this chapter] may be cited as the 'State Dependent Care Development Grants Act'."

Section 670M of subchapter F [formerly E] (§§670M-670T) of chapter 8 of subtitle A of title VI of Pub. L. 97-35, as added by Pub. L. 100-297, title II, §2503, Apr. 28, 1988, 102 Stat. 325, renumbered by Pub. L. 101-508, title V, §5082(1), Nov. 5, 1990, 104 Stat. 1388-236, and amended by Pub. L. 102-401, §3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102-586, §8(c)(1), Nov. 4, 1992, 106 Stat. 5036, provided that former subchapter V of this chapter could be cited as the "Comprehensive Child Development Act", prior to repeal by Pub. L. 103-252, title I, §112(b)(1), (2)(B), May 18, 1994, 108 Stat. 640, 641.

INCONSISTENT LAWS SUPERSEDED DURING FISCAL
YEARS 1982, 1983, AND 1984

Section 601 of subtitle A (§§601-670) of title VI of Pub. L. 97-35 provided that:

"(a) Any provision of law which is not consistent with the provisions of this subtitle hereby is superseded and shall have only such force and effect during each of the fiscal years 1982, 1983, and 1984 which is consistent with this subtitle.

"(b) Notwithstanding any authorization of appropriations for fiscal year 1982, 1983, or 1984 contained in any provision of law which is specified in this subtitle, no funds are authorized to be appropriated in excess of the limitations imposed upon appropriations by the provisions of this subtitle."

§ 9802. "Community development corporation" defined

For purposes of this subchapter, the term "community development corporation" means a nonprofit organization responsible to residents of the area it serves which is receiving financial assistance under part A of this subchapter and any organization more than 50 percent of which is owned by such an organization, or otherwise controlled by such an organization, or designated by such an organization for the purpose of this subchapter.

(Pub. L. 97-35, title VI, §613, Aug. 13, 1981, 95 Stat. 489.)

§ 9803. Repealed. Pub. L. 105-285, title II, § 202(b)(1), Oct. 27, 1998, 112 Stat. 2755

Section, Pub. L. 97-35, title VI, §614, Aug. 13, 1981, 95 Stat. 489; Pub. L. 99-425, title IV, §405(c)(3), Sept. 30, 1986, 100 Stat. 970, related to source of funds for carrying out this subchapter.

§ 9804. Advisory Community Investment Board

(a) National Community Investment Board; functions, composition, etc.

(1) The President is authorized to establish a National Advisory Community Investment Board (hereinafter in this section referred to as the "Investment Board"). Such Investment Board shall be composed of 15 members appointed, for staggered terms and without regard to the civil service laws, by the President, in consultation with the Secretary of Health and Human Services (hereinafter in this subchapter referred to as the "Secretary"). Such members

shall be representative of the investment and business communities and appropriate fields of endeavor related to this subchapter. The Investment Board shall meet at the call of the chairperson, but not less often than 3 times each year. The Secretary and the administrator of community economic development programs shall be ex officio members of the Investment Board.

(2) The Secretary shall carry out the provisions of this subchapter through an appropriate office.

(b) Function

The Investment Board shall promote cooperation between private investors and businesses and community development corporation projects through—

(1) advising the Secretary and the community development corporations on ways to facilitate private investment;

(2) advising businesses and other investors of opportunities in community development corporation projects; and

(3) advising the Secretary, community development corporations, and private investors and businesses of ways in which they might engage in mutually beneficial efforts.

(c) Local advisory community investment boards; establishment, composition, etc.

The governing body of each Community Development Corporation may establish an advisory community investment board composed of not to exceed 15 members who shall be appointed by the governing body after consultation with appropriate local officials. Each such board shall promote cooperation between private investors and businesses and the governing body of the Community Development Corporation through—

(1) advising the governing body on ways to facilitate private investors;

(2) advising businesses and other investors of opportunities in Community Development Corporation projects; and

(3) advising the governing body, private investors, and businesses of ways in which they might engage in mutually beneficial efforts.

(Pub. L. 97-35, title VI, §615, Aug. 13, 1981, 95 Stat. 489; Pub. L. 105-285, title II, §202(b)(2), Oct. 27, 1998, 112 Stat. 2755.)

REFERENCES IN TEXT

The civil service laws, referred to in subsec. (a)(1), are set forth in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

AMENDMENTS

1998—Subsec. (a)(2). Pub. L. 105-285 substituted "through an appropriate office" for "through the Office of Community Services established in section 9905(a) of this title".

TERMINATION OF ADVISORY BOARDS

Advisory boards established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a board established by the Congress, its duration is otherwise pro-

vided for by law. See sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

PART A—URBAN AND RURAL SPECIAL IMPACT PROGRAMS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 9802, 9819 of this title; title 15 section 632.

§ 9805. Statement of purpose

The purpose of this part is to establish special programs of assistance to nonprofit private locally initiated community development corporations which (1) are directed to the solution of the critical problems existing in particular communities or neighborhoods (defined without regard to political or other subdivisions or boundaries) within those urban and rural areas having concentrations or substantial numbers of low-income persons; (2) are of sufficient size, scope, and duration to have an appreciable impact in such communities, neighborhoods, and rural areas in arresting tendencies toward dependency, chronic unemployment, and community deterioration; (3) hold forth the prospect of continuing to have such impact after the termination of financial assistance under this part; and (4) provide financial and other assistance to start, expand, or locate enterprises in or near the area to be served so as to provide employment and ownership opportunities for residents of such areas, including those who are disadvantaged in the labor market because of their limited speaking, reading, and writing abilities in the English language.

(Pub. L. 97-35, title VI, §616, Aug. 13, 1981, 95 Stat. 490.)

§ 9806. Establishment and scope of programs

(a) The Secretary is authorized to provide financial assistance in the form of grants to nonprofit and for profit community development corporations and other affiliated and supportive agencies and organizations associated with qualifying community development corporations for the payment of all or part of the cost of programs which are designed to carry out the purposes of this part. Financial assistance shall be provided so that each community economic development program is of sufficient size, scope, and duration to have an appreciable impact on the area served. Such programs may include—

(1) community business and commercial development programs, including (A) programs which provide financial and other assistance (including equity capital) to start, expand, or locate businesses in or near the area served so as to provide employment and ownership opportunities for residents of such areas; and (B) programs for small businesses located in or owned by residents of such areas;

(2) community physical development programs, including industrial parks and housing activities, which contribute to an improved environment and which create new training, employment and ownership opportunities for residents of such area;

(3) training and public service employment programs and related services for unemployed

or low-income persons which support and complement community development programs financed under this part, including, without limitation, activities such as the activities described in title I of the Workforce Investment Act of 1998 [29 U.S.C. 2801 et seq.]; and

(4) social service programs which support and complement community business and commercial development programs financed under this part, including child care, educational services, health services, credit counseling, energy conservation, recreation services, and programs for the maintenance of housing facilities.

(b) The Secretary shall conduct programs assisted under this part so as to contribute, on an equitable basis between urban and rural areas, to the elimination of poverty and the establishment of permanent economic and social benefits in such areas.

(Pub. L. 97-35, title VI, §617, Aug. 13, 1981, 95 Stat. 491; Pub. L. 105-277, div. A, §101(f) [title VIII, §405(d)(40), (f)(31)], Oct. 21, 1998, 112 Stat. 2681-337, 2681-427, 2681-434.)

REFERENCES IN TEXT

The Workforce Investment Act of 1998, referred to in subsec. (a)(3), is Pub. L. 105-220, Aug. 7, 1998, 112 Stat. 936, as amended. Title I of the Act is classified principally to chapter 30 (§2801 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

AMENDMENTS

1998—Subsec. (a)(3). Pub. L. 105-277, §101(f) [title VIII, §405(f)(31)], struck out “the Job Training Partnership Act or” after “activities described in”.

Pub. L. 105-277, §101(f) [title VIII, §405(d)(40)], substituted “activities such as the activities described in the Job Training Partnership Act or title I of the Workforce Investment Act of 1998” for “activities such as those described in the Comprehensive Employment and Training Act”.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 101(f) [title VIII, §405(d)(40)] of Pub. L. 105-277 effective Oct. 21, 1998, and amendment by section 101(f) [title VIII, §405(f)(31)] of Pub. L. 105-277 effective July 1, 2000, see section 101(f) [title VIII, §405(g)(1), (2)(B)] of Pub. L. 105-277, set out as a note under section 3502 of Title 5, Government Organization and Employees.

§ 9807. Financial assistance requirements

(a) Conditions

The Secretary, under such regulations as the Secretary may establish, shall not provide financial assistance for any community economic development program under this part unless the Secretary determines that—

(1) such community development corporation is responsible to residents of the area served (A) through a governing body not less than 50 percent of the members of which are area residents; and (B) in accordance with such other guidelines as may be established by the Secretary, except that the composition of the governing bodies of organizations owned or controlled by the community development corporation need not be subject to such residency requirement;

(2) the program will be appropriately coordinated with local planning under this subchapter with housing and community development programs, with employment and training programs, and with other relevant planning for physical and human resources in the areas served;

(3) adequate technical assistance is made available and committed to the programs being supported;

(4) such financial assistance will materially further the purposes of this part;

(5) the applicant is fulfilling or will fulfill a need for services, supplies, or facilities which is otherwise not being met;

(6) all projects and related facilities will, to the maximum feasible extent, be located in the areas served;

(7) projects will, where feasible, promote the development of entrepreneurial and management skills and the ownership or participation in ownership of assisted businesses and housing, cooperatively or otherwise, by residents of the area served;

(8) projects will be planned and carried out with the fullest possible participation of resident or local businessmen and representatives of financial institutions, including participation through contract, joint venture, partnership, stock ownership or membership on the governing boards or advisory councils of such projects consistent with the self-help purposes of this subchapter;

(9) no participant will be employed on projects involving political parties, or the construction, operation, or maintenance of so much of any facility as is used or to be used for sectarian instruction or as a place for religious worship;

(10) the program will not result in the displacement of employed workers or impair existing contracts for services, or result in the substitution of Federal or other funds in connection with work that would otherwise be performed;

(11) the rates of pay for time spent in work training and education, and other conditions of employment, will be appropriate and reasonable in the light of such factors as the type of work, geographical region, and proficiency of the participant;

(12) the program will, to the maximum extent feasible, contribute to the occupational development or upward mobility of individual participants;

(13) preference will be given to low-income or economically disadvantaged residents of the areas served in filling jobs and training opportunities; and

(14) training programs carried out in connection with projects financed under this part shall be designed wherever feasible to provide those persons who successfully complete such training with skills which are also in demand in communities, neighborhoods, or rural areas other than those for which programs are established under this part.

(b) Relocations substantially increasing unemployment

Financial assistance under this section shall not be extended to assist in the relocation of es-

tablishments from one location to another if such relocation would result in a substantial increase in unemployment in the area of original location.

(c) Community economic development program; application; specification of goals

Financial assistance for commercial development under this part shall not be extended until the community economic development program that has applied for assistance under this subchapter has specified in some detail its development goals and its development timetable. The Secretary, in providing continued financial assistance to a community economic development program, shall give serious consideration to the experience such program has had in meeting development goals or in adhering to development timetables.

(Pub. L. 97-35, title VI, §618, Aug. 13, 1981, 95 Stat. 491.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9808 of this title.

§ 9808. Federal share; amount; availability; ownership of property acquired with Federal financial assistance

(a)(1) Assistance provided under this subchapter to any program described in section 9807(a) of this title shall not exceed 90 percent of the cost of such program, including costs of administration, unless the Secretary determines that the assistance in excess of such percentage is required in furtherance of the purposes of this subchapter. Non-Federal contributions may be in cash or in kind, fairly evaluated, including but not limited to plant, equipment, and services.

(2) The assistance referred to in paragraph (1) shall be made available (A) for deposit to the order of grantees which have demonstrated successful program performance, under conditions which the Secretary deems appropriate, within 30 days following approval of the grant agreement by the Secretary and such grantee; or (B) whenever the Secretary deems appropriate, in accordance with applicable rules and regulations prescribed by the Secretary of the Treasury, and including any other conditions which the Secretary of Health and Human Services deems appropriate, within 30 days following approval of the grant agreement by the Secretary and such grantee.

(b) Property acquired as a result of capital investments made by any community development corporation with funds granted as its Federal share of the cost of programs carried out under this subchapter, and the proceeds from such property, shall become the property of the community development corporation and shall not be considered to be Federal property. The Federal Government retains the right to direct that on severance of the grant relationship the assets purchased with grant funds shall continue to be used for the original purpose for which they were granted.

(Pub. L. 97-35, title VI, §619, Aug. 13, 1981, 95 Stat. 493.)

PART B—SPECIAL RURAL PROGRAMS

§ 9809. Statement of purpose

It is the purpose of this part to meet the special economic needs of rural communities or areas with concentrations or substantial numbers of low-income persons by providing support to self-help programs which promote economic development and independence, as a supplement to existing similar programs conducted by other departments and agencies of the Federal Government. Such programs should encourage low-income families to pool their talents and resources so as to create and expand rural economic enterprise.

(Pub. L. 97-35, title VI, § 620, Aug. 13, 1981, 95 Stat. 493.)

§ 9810. Financial assistance to low-income families, local cooperative associations, and local public or private nonprofit organizations or entities; amount, purposes, etc.

(a) The Secretary is authorized to provide financial assistance, including loans having a maximum maturity of fifteen years and in amounts not resulting in an aggregate principal indebtedness of more than \$3,500 at any one time, to any low-income rural family where, in the judgment of the Secretary, such financial assistance has a reasonable possibility of effecting a permanent increase in the income of such families, or will contribute to the improvement of their living or housing conditions, by assisting or permitting them to—

- (1) acquire or improve real estate or reduce encumbrances or erect improvements thereon;
- (2) operate or improve the operation of farms not larger than family sized, including but not limited to the purchase of feed, seed, fertilizer, livestock, poultry, and equipment; or
- (3) participate in cooperative associations, or finance nonagricultural¹ enterprises which will enable such families to supplement their income.

(b) The Secretary is authorized to provide financial assistance to local cooperative associations or local public and private nonprofit organizations or agencies in rural areas containing concentrations or substantial numbers of low-income persons for the purpose of defraying all or part of the costs of establishing and operating cooperative programs for farming, purchasing, marketing, processing, and to improve their income as producers and their purchasing power as consumers, and to provide such essentials as credit and health services. Costs which may be defrayed shall include—

- (1) administrative costs of staff and overhead;
- (2) costs of planning and developing new enterprises;
- (3) costs of acquiring technical assistance; and
- (4) initial capital where it is determined by the Secretary that the poverty of the families participating in the program and the social conditions of the rural area require such assistance.

¹ So in original. Probably should be “nonagricultural”.

(Pub. L. 97-35, title VI, § 621, Aug. 13, 1981, 95 Stat. 493.)

§ 9811. Limitation on assistance

No financial assistance shall be provided under this part unless the Secretary determines that—

- (1) any cooperative association receiving assistance has a minimum of fifteen active members, a majority of which are low-income rural persons;
- (2) adequate technical assistance is made available and committed to the programs being supported;
- (3) such financial assistance will materially further the purposes of this part; and
- (4) the applicant is fulfilling or will fulfill a need for services, supplies, or facilities which is otherwise not being met.

(Pub. L. 97-35, title VI, § 622, Aug. 13, 1981, 95 Stat. 494.)

PART C—DEVELOPMENT LOANS TO COMMUNITY ECONOMIC DEVELOPMENT PROGRAMS

§ 9812. Development loan fund**(a) Authorities, scope, and purposes; conditions; interest rate; repayment**

The Secretary is authorized to make or guarantee loans (either directly or in cooperation with banks or other organizations through agreements to participate on an immediate or deferred basis) to community development corporations, to families and local cooperatives and the designated supportive organizations of cooperatives eligible for financial assistance under this subchapter, to private nonprofit organizations receiving assistance under chapter 106 of this title, or to public and private nonprofit organizations or agencies, for business facilities and community development projects, including community development credit unions, which the Secretary determines will carry out the purposes of this part. No loans, guarantees, or other financial assistance shall be provided under this section unless the Secretary determines that—

- (1) there is reasonable assurance of repayment of the loan;
- (2) the loan is not otherwise available on reasonable terms from private sources or other Federal, State, or local programs; and
- (3) the amount of the loan, together with other funds available, is adequate to assure completion of the project or achievement of the purposes for which the loan is made.

Loans made by the Secretary pursuant to this section shall bear interest at a rate not less than a rate determined by the Secretary of the Treasury taking into consideration the average market yield on outstanding Treasury obligations of comparable maturity, plus such additional charge, if any, toward covering other costs of the program as the Secretary of Health and Human Services may determine to be consistent with its purposes, except that, for the 5 years following the date in which funds are initially available to the borrower, the rate of interest shall be set at a rate considered appropriate by the Secretary in light of the particular needs of the borrower, which rate shall not be

lower than 1 percent. All such loans shall be repayable within a period of not more than 30 years.

(b) Adjustment of interest rates, moratorium on principal and interest, etc.

The Secretary is authorized to adjust interest rates, grant moratoriums on repayment of principal and interest, collect or compromise any obligations held by the Secretary, and to take such other actions in respect to such loans as the Secretary shall determine to be necessary or appropriate, consistent with the purposes of this section.

(c) Establishment, funding, etc.

(1) To carry out the lending and guaranty functions authorized under this part, there shall be established a Development Loan Fund consisting of two separate accounts, one of which shall be a revolving fund called the Rural Development Loan Fund and the other of which shall be a revolving fund called the Community Development Loan Fund. The capital of each such revolving fund shall remain available until expended.

(2) The Rural Development Loan Fund shall consist of the remaining funds provided for in part A of title III of the Economic Opportunity Act of 1964 [42 U.S.C. 2841 et seq.], as in effect on September 19, 1972, and such amounts as may be deposited in such fund by the Secretary out of funds made available from appropriations for purposes of carrying out this part. The Secretary shall utilize the services of the Farmers Home Administration,¹ or the Rural Development Administration in administering such fund.

(3) The Community Development Loan Fund shall consist of such amounts as may be deposited in such fund by the Secretary out of funds made available from appropriations for purposes of carrying out this subchapter. The Secretary may make deposits in the Community Development Loan Fund in any fiscal year in which the Secretary has made available for grants to community development corporations under this subchapter not less than \$60,000,000 out of funds made available from appropriations for purposes of carrying out this subchapter.

(Pub. L. 97-35, title VI, § 623, Aug. 13, 1981, 95 Stat. 494; Pub. L. 101-624, title XXIII, § 2303(f)(1), Nov. 28, 1990, 104 Stat. 3981.)

REFERENCES IN TEXT

Chapter 106 of this title, referred to in subsec. (a), was in the original "subtitle B of this title", meaning subtitle B (§ 671 et seq.) of title VI of Pub. L. 97-35, Aug. 13, 1981, 95 Stat. 511, as amended, known as the Community Services Block Grant Act, which is classified generally to chapter 106 (§ 9901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9901 of this title and Tables.

The Economic Opportunity Act of 1964, referred to in subsec. (c)(2), is Pub. L. 88-452, Aug. 20, 1964, 78 Stat. 508, as amended. Part A of title III of the Economic Opportunity Act of 1964 was classified generally to part A (§ 2841 et seq.) of subchapter III of chapter 34 of this title prior to repeal by Pub. L. 97-35, title VI, § 683(a), Aug. 13, 1981, 95 Stat. 519. For complete classification of this Act to the Code, see Tables.

¹ So in original. The comma probably should not appear.

AMENDMENTS

1990—Subsec. (c)(2). Pub. L. 101-624 inserted " or the Rural Development Administration" after "Farmers Home Administration".

TRANSFER OF FUNCTIONS

Functions relating to administration of Community Development Credit Union Revolving Loan Fund transferred from Secretary of Health and Human Services to National Credit Union Administration Board by Pub. L. 99-609, set out as a note under section 9822 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9812a, 9822 of this title.

§ 9812a. Interest rates payable on certain rural development loans; assignment of loan contracts

(a) Modification of interest rates

Notwithstanding any other provision of law—

(1) any outstanding loan made after December 31, 1982, by the Secretary of Health and Human Services; or

(2) any loan made after September 30, 1986;

with moneys from the Rural Development Loan Fund established by section 9812(c)(1) of this title or with funds available (before October 27, 1998) under section 9910(a) of this title (as in effect before October 27, 1998) to an intermediary borrower shall bear interest at a fixed rate equal to the rate of interest that was in effect on the date of issuance for loans made in 1980 with such moneys or such funds if the weighted average rate of interest for all loans made after December 31, 1982, by such intermediary borrower with such moneys or such funds does not exceed the sum of 6 percent and the rate of interest payable under this subsection by such intermediary borrower.

(b) Assignment of certain loan contracts

Any contract for a loan made during the period beginning on December 31, 1982, and ending on September 30, 1986, with—

(1) moneys from the Rural Development Loan Fund established by section 9812(c)(1) of this title; or

(2) funds available (before October 27, 1998) under section 9910(a) of this title (as in effect before October 27, 1998);

to an intermediary borrower that is a county government may be assigned by such borrower to an entity to which such loan could have been made for the purpose for which such contract was made. Any entity to which such contract is so assigned shall be substituted as a party to such contract and shall be obligated to carry out such contract and the purpose for which such contract was made.

(Pub. L. 99-425, title IV, § 407(a), (b), Sept. 30, 1986, 100 Stat. 971; Pub. L. 105-285, title II, § 202(c), Oct. 27, 1998, 112 Stat. 2755.)

REFERENCES IN TEXT

Section 9910 of this title, referred to in subsecs. (a) and (b)(2), was in the original a reference to section 681 of Pub. L. 97-35. Section 681 of Pub. L. 97-35 was omitted, and a new section 681 enacted, in the general amendment of chapter 106 of this title by Pub. L. 105-285, title II, § 201, Oct. 27, 1998, 112 Stat. 2728. The new section 681 is classified to section 9922 of this title.

CODIFICATION

Section was enacted as part of the Human Services Reauthorization Act of 1986, and not as part of the Community Economic Development Act of 1981 which comprises this subchapter.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105-285, §202(c)(1), in concluding provisions, inserted “(before October 27, 1998)” after “funds available” and “(as in effect before October 27, 1998)” after “9910(a) of this title”.

Subsec. (b)(2). Pub. L. 105-285, §202(c)(2), inserted “(before October 27, 1998)” after “funds available” and “(as in effect before October 27, 1998)” after “9910(a) of this title”.

EFFECTIVE DATE

Section effective Oct. 1, 1986, see section 1001 of Pub. L. 99-425, set out as an Effective Date of 1986 Amendment note under section 8621 of this title.

TRANSFER OF LOAN BY UTAH OR OHIO LOCAL PUBLIC BODY TO NONPROFIT CORPORATION

Pub. L. 99-500, §101(a) [title VI, §640], Oct. 18, 1986, 100 Stat. 1783, 1783-35, and Pub. L. 99-591, §101(a) [title VI, §640], Oct. 30, 1986, 100 Stat. 3341, 3341-35, purported to amend section 623B(b)(2) of the Community Economic Development Act of 1981, a nonexistent section of that Act (Pub. L. 99-35, title VI, §611 et seq.), by adding at the end thereof the following new sentence: “Notwithstanding any other provision of law, any Utah or Ohio local public body to which a loan was made after December 31, 1982, from the Rural Development Loan Fund may, at the discretion of such local public body and with the approval of the Secretary of Health and Human Services, transfer such loan to a nonprofit corporation designated by such body to serve as an intermediate borrower and to carry out the purposes of the loan.”

§ 9813. Model Community Economic Development Finance Corporation; establishment; functions

To the extent he deems appropriate, the Secretary shall utilize funds available under this part to prepare a plan of action for the establishment of a Model Community Economic Development Finance Corporation to provide a user-controlled independent and professionally operated long-term financing vehicle with the principal purpose of providing financial support for community economic development corporations, cooperatives, other affiliated and supportive agencies and organizations associated with community economic development corporations, and other entities eligible for assistance under this subchapter.

(Pub. L. 97-35, title VI, §624, Aug. 13, 1981, 95 Stat. 495.)

PART D—SUPPORTIVE PROGRAMS AND ACTIVITIES

§ 9814. Training and technical assistance**(a) Grants, contracts, and other arrangements; preconditions**

The Secretary shall provide, directly or through grants, contracts, or other arrangements, such technical assistance and training of personnel as may be required to effectively implement the purposes of this subchapter. No financial assistance shall be provided to any public or private organization under this section unless the Secretary provides the beneficiaries

of these services with opportunity to participate in the selection of and to review the quality and utility of the services furnished them by such organization.

(b) Technical assistance to community development corporations and urban and rural cooperatives

Technical assistance to community development corporations and both urban and rural cooperatives may include planning, management, legal assistance or support, preparation of feasibility studies, product development, marketing, and the provision of stipends to encourage skilled professionals to engage in full-time activities under the direction of a community organization financially assisted under this subchapter.

(c) Training for employees of community development corporations and employees and members of urban and rural cooperatives

Training for employees of community development corporations and for employees and members of urban and rural cooperatives shall include on-the-job training, classroom instruction, and scholarships to assist them in development, managerial, entrepreneurial, planning, and other technical and organizational skills which will contribute to the effectiveness of programs assisted under this subchapter.

(Pub. L. 97-35, title VI, §625, Aug. 13, 1981, 95 Stat. 496.)

§ 9815. Small Business Administration and Department of Commerce economic development programs; regulations

(a)(1) Funds granted under this subchapter which are invested directly or indirectly, in a small investment company, local development company, limited small business investment company, or small business investment company licensee under section 681(d)¹ of title 15 shall be included as “private paid-in capital and paid-in surplus”, “combined paid-in capital and paid-in surplus”, and “paid-in capital” for purposes of sections 682, 683, and 696, respectively, of title 15.

(2) Not later than 90 days after August 13, 1981, the Administrator of the Small Business Administration, after consultation with the Secretary, shall promulgate regulations to ensure the availability to community development corporations of such programs as shall further the purposes of this subchapter, including programs under section 637(a) of title 15.

(b)(1) Areas selected for assistance under this subchapter shall be deemed “redevelopment areas” within the meaning of section 401 of the Public² Works and Economic Development Act of 1965,¹ shall qualify for assistance under the provisions of title I and title II of such Act, and shall be deemed to have met the overall economic development program requirements of section 202(b)(10) of such Act.

(2) Not later than 90 days after August 13, 1981, the Secretary of Commerce shall prescribe regulations which will ensure that community devel-

¹ See References in Text note below.

² So in original. Probably should be “Public”.

opment corporations and cooperatives shall qualify for assistance and shall be eligible to receive such assistance under all such programs of the Economic Development Administration as shall further the purposes of this subchapter.

(Pub. L. 97-35, title VI, §626, Aug. 13, 1981, 95 Stat. 496.)

REFERENCES IN TEXT

Section 681(d) of title 15, referred to in subsec. (a)(1), was repealed by Pub. L. 104-208, div. D, title II, §208(b)(3)(A), Sept. 30, 1996, 110 Stat. 3009-742.

The Public Works and Economic Development Act of 1965, referred to in subsec. (b)(1), is Pub. L. 89-136, Aug. 26, 1965, 79 Stat. 552, as amended. Titles I to VI of the Act of 1965 were repealed and new titles I to VI were enacted by Pub. L. 105-393, title I, §102(a), Nov. 13, 1998, 112 Stat. 3597. As so enacted, section 401 of the Act no longer defines "redevelopment areas" and section 202 of the Act no longer contains a subsec. (b). For complete classification of this Act to the Code, see Short Title note set out under section 3121 of this title and Tables.

§ 9816. Department of Housing and Urban Development programs

The Secretary of Housing and Urban Development, after consultation with the Secretary, shall take all necessary steps to assist community development corporations and local cooperative associations to qualify for and receive (1) such assistance in connection with technical assistance, counseling to tenants and homeowners, and loans to sponsors of low-income and moderate-income housing under section 106 of the Housing and Urban Development Act of 1968 [12 U.S.C. 1701x], as amended by section 811 of the Housing and Community Development Act of 1974; (2) such land for housing and business location and expansion under title I of the Housing and Community Development Act of 1974 [42 U.S.C. 5301 et seq.]; and (3) such funds for comprehensive planning under section 701 of the Housing Act of 1954,¹ as amended by section 401 of the Housing and Community Development Act of 1974, as shall further the purposes of this subchapter.

(Pub. L. 97-35, title VI, §627, Aug. 13, 1981, 95 Stat. 497.)

REFERENCES IN TEXT

Section 811 of the Housing and Community Development Act of 1974, referred to in text, is section 811 of Pub. L. 93-383, title VIII, Aug. 22, 1974, 88 Stat. 735, which amended section 1701x of Title 12, Banks and Banking.

The Housing and Community Development Act of 1974, referred to in text, is Pub. L. 93-383, Aug. 22, 1974, 88 Stat. 633, as amended. Title I of the Housing and Community Development Act of 1974 is classified principally to chapter 69 (§5301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

Section 701 of the Housing Act of 1954, referred to in text, is section 701 of act Aug. 2, 1954, ch. 649, 68 Stat. 640, as amended, which was classified to section 461 of former Title 40, Public Buildings, Property, and Works, and was repealed by Pub. L. 97-35, title III, 313(b), Aug. 13, 1981, 95 Stat. 398.

Section 401 of the Housing and Community Development Act of 1974, referred to in text, is section 401 of

Pub. L. 93-383, title IV, Aug. 22, 1974, 88 Stat. 686, subsecs. (a) and (b) of which amended section 461 of former Title 40, Public Buildings, Property, and Works, prior to its repeal by Pub. L. 97-35, and subsec. (c) of which amended section 460 of former Title 40.

CAPACITY BUILDING FOR COMMUNITY DEVELOPMENT AND AFFORDABLE HOUSING

Pub. L. 103-120, §4, Oct. 27, 1993, 107 Stat. 1148, as amended by Pub. L. 105-18, title II, §10004, June 12, 1997, 111 Stat. 201, provided that:

"(a) IN GENERAL.—The Secretary is authorized to provide assistance through the National Community Development Initiative, Local Initiatives Support Corporation, The Enterprise Foundation, Habitat for Humanity, and Youthbuild USA to develop the capacity and ability of community development corporations and community housing development organizations to undertake community development and affordable housing projects and programs.

"(b) FORM OF ASSISTANCE.—Assistance under this section may be used for—

"(1) training, education, support, and advice to enhance the technical and administrative capabilities of community development corporations and community housing development organizations;

"(2) loans, grants, or predevelopment assistance to community development corporations and community housing development organizations to carry out community development and affordable housing activities that benefit low-income families; and

"(3) such other activities as may be determined by the National Community Development Initiative, Local Initiatives Support Corporation, The Enterprise Foundation, Habitat for Humanity, and Youthbuild USA in consultation with the Secretary.

"(c) MATCHING REQUIREMENT.—Assistance provided under this section shall be matched from private sources in an amount equal to 3 times the amount made available under this section.

"(d) IMPLEMENTATION.—The Secretary shall by notice establish such requirements as may be necessary to carry out the provisions of this section. The notice shall take effect upon issuance.

"(e) AUTHORIZATION.—There are authorized to be appropriated \$25,000,000 for fiscal year 1994 to carry out this section."

§ 9817. Department of Agriculture; Rural Development Administration programs

The Secretary of Agriculture or, where appropriate, the Administrator of the Farmers Home Administration, or of the Rural Development Administration, after consultation with the Secretary of Health and Human Services, shall take all necessary steps to ensure that community development corporations and local cooperative associations shall qualify for and shall receive—

(1) such assistance in connection with housing development under the Housing Act of 1949, as amended [42 U.S.C. 1441 et seq.];

(2) such assistance in connection with housing, business, industrial, and community development under the Consolidated Farmers Home Administration Act of 1961 [7 U.S.C. 1921 et seq.] and the Rural Development Act of 1972; and

(3) such further assistance under all such programs of the United States Department of Agriculture; as shall further the purposes of this subchapter.

(Pub. L. 97-35, title VI, §628, Aug. 13, 1981, 95 Stat. 497; Pub. L. 101-624, title XXIII, §2303(f)(2), Nov. 28, 1990, 104 Stat. 3981.)

REFERENCES IN TEXT

The Housing Act of 1949, referred to in par. (1), is act July 15, 1949, ch. 338, 63 Stat. 413, as amended, which is

¹ See References in Text note below.

classified principally to chapter 8A (§1441 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1441 of this title and Tables.

The Consolidated Farmers Home Administration Act of 1961, referred to in par. (2), is title III of Pub. L. 87-128, Aug. 8, 1961, 75 Stat. 307, as amended, which was redesignated the Consolidated Farm and Rural Development Act by Pub. L. 92-419, §101, Aug. 30, 1972, 86 Stat. 657, and is classified principally to chapter 50 (§1921 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 1921 of Title 7 and Tables.

The Rural Development Act of 1972, referred to in par. (2), is Pub. L. 92-419, Aug. 30, 1972, 86 Stat. 657, as amended. For complete classification of this Act to the Code, see Short Title of 1972 Amendment note set out under section 1921 of Title 7.

AMENDMENTS

1990—Pub. L. 101-624 substituted “Department of Agriculture; Rural Development Administration programs” for “Department of Agriculture and Farmers Home Administration programs” in section catchline and inserted “, or of the Rural Development Administration” after “of the Farmers Home Administration” in text.

§ 9818. Coordination and eligibility

(a) The Secretary shall take all necessary and appropriate steps to encourage Federal departments and agencies and State and local governments to make grants, provide technical assistance, enter into contracts, and generally support and cooperate with community development corporations and local cooperative associations.

(b) Eligibility for assistance under other Federal programs shall not be denied to any applicant on the ground that it is a community development corporation or any other entity assisted under this subchapter.

(Pub. L. 97-35, title VI, §629, Aug. 13, 1981, 95 Stat. 497.)

§ 9819. Evaluation of programs; implementation and funding, etc.; research and demonstration projects; implementation and purposes

(a) Each program for which grants are made under this subchapter shall provide for a thorough evaluation of the effectiveness of the program in achieving its purposes, which evaluation shall be conducted by such public or private organizations as the Secretary in consultation with existing grantees familiar with programs carried out under the Community Services Block Grant Act [42 U.S.C. 9901 et seq.] may designate, and all or part of the costs of evaluation may be paid from funds appropriated to carry out this part. In evaluating the performance of any community development corporation funded under part A of this subchapter, the criteria for evaluation shall be based upon such program objectives, goals, and priorities as are consistent with the purposes of this subchapter and were set forth by such community development corporation in its proposal for funding as approved and agreed upon by or as subsequently modified from time to time by mutual agreement between the Secretary and such community development corporation.

(b) The Secretary shall conduct, either directly or through grants or other arrangements,

research and demonstration projects designed to suggest new programs and policies to achieve the purposes of this subchapter in such ways as to provide opportunities for employment, ownership, and a better quality of life for low-income residents.

(Pub. L. 97-35, title VI, §630, Aug. 13, 1981, 95 Stat. 497.)

REFERENCES IN TEXT

The Community Services Block Grant Act, referred to in subsec. (a), is subtitle B (§671 et seq.) of title VI of Pub. L. 97-35, Aug. 13, 1981, 95 Stat. 511, as amended, which is classified generally to chapter 106 (§9901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9901 of this title and Tables.

§ 9820. Grants to plan economic development and cooperative programs

In order to facilitate the purposes of this subchapter, the Secretary is authorized to provide financial assistance to any public or private nonprofit agency or organization for planning of community economic development programs and cooperative programs under this subchapter.

(Pub. L. 97-35, title VI, §631, Aug. 13, 1981, 95 Stat. 498.)

§ 9821. Nondiscrimination provisions

(a) The Secretary shall not provide financial assistance for any program, project, or activity under this subchapter unless the grant or contract with respect thereto specifically provides that no person with responsibilities in the operation thereof will discriminate with respect to any such program, project, or activity because of race, creed, color, national origin, sex, political affiliation, or beliefs.

(b) No person in the United States shall on the ground of sex be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment in connection with any program or activity receiving assistance under this subchapter. The Secretary shall enforce the provisions of the preceding sentence in accordance with section 2000d-1 of this title. Section 2000d-2 of this title shall apply with respect to any action taken by the Secretary to enforce such sentence. This section shall not be construed as affecting any other legal remedy that a person may have if such person is excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with, any program, project, or activity receiving assistance under this subchapter.

(Pub. L. 97-35, title VI, §632, Aug. 13, 1981, 95 Stat. 498.)

§ 9822. Availability of certain appropriated funds

Funds appropriated to the Rural Development Loan Fund under title VII of the Economic Opportunity Act of 1964 [42 U.S.C. 2981 et seq.] (as in effect on August 12, 1981), and interest accumulated in such fund, shall be deposited in the Rural Development Loan Fund established under section 9812(c)(1) of this title and shall

continue to be available to carry out the purposes of such fund. Funds appropriated to the Community Development Credit Union Revolving Loan Fund under title VII of the Economic Opportunity Act of 1964 (as in effect on August 12, 1981), and interest accumulated in such fund, shall continue to be available to carry out the purposes of such fund.

(Pub. L. 97-35, title VI, §633, Aug. 13, 1981, 95 Stat. 498.)

REFERENCES IN TEXT

The Economic Opportunity Act of 1964, referred to in text, is Pub. L. 88-452, Aug. 20, 1964, 78 Stat. 508, as amended. Title VII of the Economic Opportunity Act of 1964 was classified generally to subchapter VII (§2981 et seq.) of chapter 34 of this title, prior to repeal by Pub. L. 97-35, title VI, §683(a), Aug. 13, 1981, 95 Stat. 519. For complete classification of this Act to the Code, see Tables.

CODIFICATION

“August 12, 1981” substituted in text for “the day before the date of the enactment of this Act”.

TRANSFER OF COMMUNITY DEVELOPMENT CREDIT UNION REVOLVING LOAN FUND

Pub. L. 99-609, Nov. 6, 1986, 100 Stat. 3475, provided that:

“SECTION 1. SHORT TITLE.

“This Act may be cited as the ‘Community Development Credit Union Revolving Loan Fund Transfer Act’.

“SEC. 2. TRANSFER OF COMMUNITY DEVELOPMENT CREDIT UNION REVOLVING LOAN FUND.

“(a) ADMINISTRATION OF FUND BY NCUA.—

“(1) IN GENERAL.—Beginning on the date of the enactment of this Act [Nov. 6, 1986], the National Credit Union Administration Board shall administer the Community Development Credit Union Revolving Loan Fund.

“(2) TRANSFER OF AUTHORITY.—All authority to carry out the purposes of the Fund and to prescribe regulations in connection with the administration of the Fund which, on the day before the date of the enactment of this Act, was vested in the Secretary of Health and Human Services shall vest on such date in the Board. Except as provided in subsection (c), the Secretary shall have no further responsibility with respect to the Fund.

“(b) CONTINUED AVAILABILITY OF APPROPRIATED FUNDS.—All funds appropriated to the Fund and interest accumulated in the Fund which continue to be available under section 633 of the Omnibus Budget Reconciliation Act of 1981 [42 U.S.C. 9822] shall continue to be available to the Board to carry out the purposes of the Fund.

“(c) TRANSFER OF ASSETS; ETC.—The Secretary shall transfer to the National Credit Union Administration all assets, liabilities, grants, contracts, property, records, and funds held, used, arising from, or available to the Secretary in connection with the administration of the Fund before the end of the 60-day period beginning on the date of the enactment of this Act [Nov. 6, 1986].

“(d) SAVINGS PROVISIONS.—

“(1) REGULATIONS.—Any regulations prescribed by the Secretary in connection with the administration of the Fund shall continue in effect until superseded by regulations prescribed by the Board.

“(2) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Subsection (a) shall not be construed as affecting the validity of any right, duty, or obligation of the United States or any other person arising under or pursuant to any contract, loan, or other instrument or agreement which was in effect on the day before the date of the enactment of this Act [Nov. 6, 1986].

“(3) CONTINUATION OF SUITS.—No action or other proceeding commenced by or against the Secretary in connection with the administration of the Fund shall abate by reason of the enactment of this Act, except that the Board shall be substituted for the Secretary as a party to any such action or proceeding.

“(e) DEFINITIONS.—For purposes of this section—

“(1) BOARD.—The term ‘Board’ means the National Credit Union Administration Board.

“(2) FUND.—The term ‘Fund’ means the Community Development Credit Union Revolving Loan Fund established under title VII of the Economic Opportunity Act of 1964 [see References in Text note above] (as in effect before the date of the enactment of the Omnibus Budget Reconciliation Act of 1981 [Aug. 13, 1981]).

“(3) SECRETARY.—The term ‘Secretary’ means the Secretary of Health and Human Services.”

SUBCHAPTER II—HEAD START PROGRAMS

CODIFICATION

Subchapter is based on subchapter B of chapter 8 of subtitle A of title VI of Pub. L. 97-35, Aug. 13, 1981, 95 Stat. 499, as amended.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 247b-16, 280g, 290bb-23, 290bb-25, 1396r-1a, 1758, 1766, 4953, 5011, 12653, 12653c of this title; title 8 section 1613; title 20 sections 1087ee, 6311, 6322, 6367, 6376, 6381a, 6775, 7544, 9252, 9501; title 31 section 6703; title 48 section 1921d.

§ 9831. Statement of purpose

It is the purpose of this subchapter to promote school readiness by enhancing the social and cognitive development of low-income children through the provision, to low-income children and their families, of health, educational, nutritional, social, and other services that are determined, based on family needs assessments, to be necessary.

(Pub. L. 97-35, title VI, §636, Aug. 13, 1981, 95 Stat. 499; Pub. L. 101-501, title I, §102, Nov. 3, 1990, 104 Stat. 1224; Pub. L. 105-285, title I, §102, Oct. 27, 1998, 112 Stat. 2703.)

AMENDMENTS

1998—Pub. L. 105-285 amended section catchline and text generally. Prior to amendment, text read as follows:

“(a) In recognition of the role which Project Head Start has played in the effective delivery of comprehensive health, educational, nutritional, social, and other services to economically disadvantaged children and their families, it is the purpose of this subchapter to extend the authority for the appropriation of funds for such program.

“(b) In carrying out the provisions of this subchapter, the Secretary of Health and Human Services shall continue the administrative arrangement responsible for meeting the needs of migrant, non-English language background, and Indian children and shall assure that appropriate funding is provided to meet such needs.”

1990—Subsec. (b). Pub. L. 101-501 inserted “, non-English language background,” after “migrant”.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101-501, set out as a note under section 8621 of this title.

SHORT TITLE

For short title of this subchapter as the “Head Start Act”, see section 635 of Pub. L. 97-35, set out as a note under section 9801 of this title.

§ 9832. Definitions

For purposes of this subchapter:

(1) The term “child with a disability” means—

(A) a child with a disability, as defined in section 1401(3) of title 20; and

(B) an infant or toddler with a disability, as defined in section 1432(5) of title 20.

(2) The term “delegate agency” means a public, private nonprofit, or for-profit organization or agency to which a grantee has delegated all or part of the responsibility of the grantee for operating a Head Start program.

(3) The term “family literacy services” means services that are of sufficient intensity in terms of hours, and of sufficient duration, to make sustainable changes in a family, and that integrate all of the following activities:

(A) Interactive literacy activities between parents and their children.

(B) Training for parents regarding how to be the primary teacher for their children and full partners in the education of their children.

(C) Parent literacy training that leads to economic self-sufficiency.

(D) An age-appropriate education to prepare children for success in school and life experiences.

(4) The term “financial assistance” includes assistance provided by grant, agreement, or contract, and payments may be made in installments and in advance or by way of reimbursement with necessary adjustments on account of overpayments or underpayments.

(5) The term “full calendar year” means all days of the year other than Saturday, Sunday, and a legal public holiday.

(6) The term “full-working-day” means not less than 10 hours per day. Nothing in this paragraph shall be construed to require an agency to provide services to a child who has not reached the age of compulsory school attendance for more than the number of hours per day permitted by State law (including regulation) for the provision of services to such a child.

(7) The term “Head Start classroom” means a group of children supervised and taught by two paid staff members (a teacher and a teacher’s aide or two teachers) and, where possible, a volunteer.

(8) The term “Head Start family day care” means Head Start services provided in a private residence other than the residence of the child receiving such services.

(9) The term “home-based Head Start program” means a Head Start program that provides Head Start services in the private residence of the child receiving such services.

(10) The term “Indian tribe” means any tribe, band, nation, pueblo, or other organized group or community of Indians, including any Native village described in section 3(c) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(c)) or established pursuant to such Act (43 U.S.C. 1601 et seq.), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(11) The term “local educational agency” has the meaning given such term in the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6301 et seq.].

(12) The term “migrant and seasonal Head Start program” means—

(A) with respect to services for migrant farmworkers, a Head Start program that serves families who are engaged in agricultural labor and who have changed their residence from one geographic location to another in the preceding 2-year period; and

(B) with respect to services for seasonal farmworkers, a Head Start program that serves families who are engaged primarily in seasonal agricultural labor and who have not changed their residence to another geographic location in the preceding 2-year period.

(13) The term “mobile Head Start program” means the provision of Head Start services utilizing transportable equipment set up in various community-based locations on a routine, weekly schedule, operating in conjunction with home-based Head Start programs, or as a Head Start classroom.

(14) The term “poverty line” means the official poverty line (as defined by the Office of Management and Budget)—

(A) adjusted to reflect the percentage change in the Consumer Price Index For¹ All Urban Consumers, issued by the Bureau of Labor Statistics, occurring in the 1-year period or other interval immediately preceding the date such adjustment is made; and

(B) adjusted for family size.

(15) The term “scientifically based reading research”—

(A) means the application of rigorous, systematic, and objective procedures to obtain valid knowledge relevant to reading development, reading instruction, and reading difficulties; and

(B) shall include research that—

(i) employs systematic, empirical methods that draw on observation or experiment;

(ii) involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn;

(iii) relies on measurements or observational methods that provide valid data across evaluators and observers and across multiple measurements and observations; and

(iv) has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.

(16) The term “Secretary” means the Secretary of Health and Human Services.

(17) The term “State” means a State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands, but for fiscal years ending before October 1, 2001 (and fiscal year 2002, if the legislation de-

¹ So in original. Probably should not be capitalized.

scribed in section 9835(a)(2)(B)(iii) of this title has not been enacted before September 30, 2001), also means the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

(Pub. L. 97-35, title VI, §637, Aug. 13, 1981, 95 Stat. 499; Pub. L. 98-558, title I, §101, Oct. 30, 1984, 98 Stat. 2878; Pub. L. 101-501, title I, §§104(b), 116(b), 117(b), 121(b), 123(a), Nov. 3, 1990, 104 Stat. 1228, 1232, 1233, 1237; Pub. L. 103-252, title I, §102, May 18, 1994, 108 Stat. 624; Pub. L. 105-285, title I, §103, Oct. 27, 1998, 112 Stat. 2703.)

REFERENCES IN TEXT

The Alaska Native Claims Settlement Act, referred to in par. (10), is Pub. L. 92-203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

The Elementary and Secondary Education Act of 1965, referred to in par. (11), is Pub. L. 89-10, Apr. 11, 1965, 79 Stat. 27, as amended, which is classified generally to chapter 70 (§6301 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20 and Tables.

AMENDMENTS

1998—Pars. (1), (2). Pub. L. 105-285, §103(2), added pars. (1) and (2). Former pars. (1) and (2) redesignated (16) and (17), respectively.

Pars. (3), (4). Pub. L. 105-285, §103(3)–(5), added par. (3), redesignated former par. (3) as (4), and struck out former par. (4) which read as follows: “The term ‘family literacy services’ means services and activities that include interactive literacy activities between parents and their children, training for parents on techniques for being the primary teacher of their children and full partners in the education of their children, parent literacy training (including training in English as a second language), and early childhood education.”

Par. (6). Pub. L. 105-285, §103(6), inserted at end “Nothing in this paragraph shall be construed to require an agency to provide services to a child who has not reached the age of compulsory school attendance for more than the number of hours per day permitted by State law (including regulation) for the provision of services to such a child.”

Par. (12). Pub. L. 105-285, §103(7), added par. (12) and struck out former par. (12) which read as follows: “The term ‘migrant Head Start program’ means a Head Start program that serves families who are engaged in agricultural work and who have changed their residence from one geographical location to another in the preceding 2-year period.”

Par. (15). Pub. L. 105-285, §103(8), added par. (15).

Par. (16). Pub. L. 105-285, §103(1), redesignated par. (1) as (16) and transferred it to appear after par. (15).

Par. (17). Pub. L. 105-285, §103(9)(B), (C), substituted “Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands, but for fiscal years ending before October 1, 2001 (and fiscal year 2002, if the legislation described in section 9835(a)(2)(B)(iii) of this title has not been enacted before September 30, 2001), also means” for “Virgin Islands,” and “and the Republic of Palau” for “Palau, and the Commonwealth of the Northern Mariana Islands”.

Pub. L. 105-285, §103(9)(A), which directed substitution of “term” for “Term”, could not be executed because “Term” does not appear in par. (17).

Pub. L. 105-285, §103(1), redesignated par. (2) as (17) and transferred it to appear after par. (16).

1994—Par. (4). Pub. L. 103-252, §102(1), (4), (5)(A), redesignated par. (12) as (4) and struck out former par. (4) which defined “adjusted appropriation”.

Par. (5). Pub. L. 103-252, §102(1), (4), (5)(B), redesignated par. (10) as (5) and struck out former par. (5) which defined “quality improvement funds”.

Par. (6). Pub. L. 103-252, §102(4), (5)(B), redesignated par. (11) as (6). Former par. (6) redesignated (7).

Pars. (7), (8). Pub. L. 103-252, §102(4), redesignated pars. (6) and (7) as (7) and (8), respectively. Former par. (8) redesignated (9).

Par. (9). Pub. L. 103-252, §102(4), redesignated par. (8) as (9). Former par. (9) redesignated (14).

Pub. L. 103-252, §102(2), added par. (9) and struck out former par. (9) which defined “poverty line”.

Par. (10). Pub. L. 103-252, §102(4), (5)(C), redesignated par. (13) as (10). Former par. (10) redesignated (5).

Par. (11). Pub. L. 103-252, §102(5)(D), added par. (11). Former par. (11) redesignated (6).

Par. (12). Pub. L. 103-252, §102(5)(D), added par. (12). Former par. (12) redesignated (4).

Pub. L. 103-252, §102(3), (4), added par. (12) and redesignated it as (4).

Par. (13). Pub. L. 103-252, §102(5)(D), added par. (13). Former par. (13) redesignated (10).

Pub. L. 103-252, §102(3), (4), added par. (13) and redesignated it as (10).

Par. (14). Pub. L. 103-252, §102(4), redesignated par. (9) as (14).

1990—Par. (2). Pub. L. 101-501, §104(b)(1), substituted “the Federated States of Micronesia, the Republic of the Marshall Islands, Palau” for “the Trust Territory of the Pacific Islands”.

Pars. (4), (5). Pub. L. 101-501, §104(b)(2), added pars. (4) and (5).

Par. (6). Pub. L. 101-501, §116(b), added par. (6).

Pars. (7), (8). Pub. L. 101-501, §117(b), added pars. (7) and (8).

Par. (9). Pub. L. 101-501, §121(b), added par. (9).

Pars. (10), (11). Pub. L. 101-501, §123(a), added pars. (10) and (11).

1984—Par. (2). Pub. L. 98-558 inserted “the Commonwealth of” before “the Northern Mariana Islands”.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 127 of title I of Pub. L. 103-252 provided that: “(a) EFFECTIVE DATE.—This title [see Short Title of 1994 Amendment note set out under section 9801 of this title], and the amendments made by this title, shall take effect on the date of enactment of this title [May 18, 1994].

“(b) APPLICATION.—The requirements of this title and the amendments made by this title shall not apply to Head Start agencies and other recipients of financial assistance under the Head Start Act [42 U.S.C. 9831 et seq.] until October 1, 1994.”

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101-501, set out as a note under section 8621 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9902 of this title.

§9833. Financial assistance for Head Start programs

The Secretary may, upon application by an agency which is eligible for designation as a Head Start agency pursuant to section 9836 of this title, provide financial assistance to such agency for the planning, conduct, administration, and evaluation of a Head Start program focused primarily upon children from low-income families who have not reached the age of compulsory school attendance which (1) will provide such comprehensive health, education, parental involvement, nutritional, social, and other services as will enable the children to attain their full potential and attain school readiness; and

(2) will provide for direct participation of the parents of such children in the development, conduct, and overall program direction at the local level.

(Pub. L. 97-35, title VI, §638, Aug. 13, 1981, 95 Stat. 499; Pub. L. 100-297, title II, §2504, Apr. 28, 1988, 102 Stat. 330; Pub. L. 103-252, title I, §§103, 112(c), May 18, 1994, 108 Stat. 625, 641; Pub. L. 105-285, title I, §104, Oct. 27, 1998, 112 Stat. 2705.)

AMENDMENTS

1998—Cl. (1). Pub. L. 105-285 substituted “enable the children” for “aid the children” and inserted “and attain school readiness” before the semicolon.

1994—Pub. L. 103-252 struck out subsec. (a) designation, in cl. (1), substituted “health, education, parental involvement, nutritional, social, and other services” for “health, nutritional, educational, social, and other services”, and struck out subsec. (b) which read as follows: “For purposes of providing financial assistance under subsection (a) of this section to agencies, the Secretary may not take into consideration whether such agency applies for or receives funds under subchapter V of this chapter.”

1988—Pub. L. 100-297 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-252 effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103-252, set out as a note under section 9832 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

For effective date and applicability of amendment by Pub. L. 100-297, see section 6303 of Pub. L. 100-297, set out as a note under section 1071 of Title 20, Education.

§ 9834. Authorization of appropriations

(a) There are authorized to be appropriated for carrying out the provisions of this subchapter such sums as may be necessary for fiscal years 1999 through 2003.

(b) From the amount appropriated under subsection (a) of this section, the Secretary shall make available—

(1) for each of fiscal years 1999 through 2003 to carry out activities authorized under section 9837a of this title, not more than \$35,000,000 but not less than the amount that was made available for such activities for fiscal year 1998;

(2) not more than \$5,000,000 for each of fiscal years 1999 through 2003 to carry out impact studies under section 9844(g) of this title; and

(3) not more than \$12,000,000 for fiscal year 1999, and such sums as may be necessary for each of fiscal years 2000 through 2003, to carry out other research, demonstration, and evaluation activities, including longitudinal studies, under section 9844 of this title.

(Pub. L. 97-35, title VI, §639, Aug. 13, 1981, 95 Stat. 499; Pub. L. 98-558, title I, §102, Oct. 30, 1984, 98 Stat. 2878; Pub. L. 99-425, title I, §101, Sept. 30, 1986, 100 Stat. 966; Pub. L. 101-120, §2, Oct. 23, 1989, 103 Stat. 700; Pub. L. 101-501, title I, §§103, 120(b), 140, Nov. 3, 1990, 104 Stat. 1224, 1236, 1242; Pub. L. 103-252, title I, §104, May 18, 1994, 108 Stat. 625; Pub. L. 105-285, title I, §105, Oct. 27, 1998, 112 Stat. 2705.)

AMENDMENTS

1998—Subsec. (a). Pub. L. 105-285, §105(1), substituted “1999 through 2003” for “1995 through 1998”.

Subsec. (b)(1) to (3). Pub. L. 105-285, §105(2), added pars. (1) to (3) and struck out former pars. (1) and (2) which read as follows:

“(1) \$35,000,000 for each of the fiscal years 1995 through 1998 to—

“(A) carry out the Head Start Transition Project Act; and

“(B) carry out activities authorized under section 9837(d) of this title; and

“(2) not more than \$3,000,000 for fiscal year 1995, and such sums as may be necessary for each of the fiscal years 1996 through 1998, to carry out longitudinal research under section 9844(e) of this title.”

1994—Subsec. (a). Pub. L. 103-252, §104(1), substituted “such sums as may be necessary for fiscal years 1995 through 1998” for “(other than section 9846a of this title) \$1,552,000,000 for fiscal year 1990, \$2,386,000,000 for fiscal year 1991, \$4,273,000,000 for fiscal year 1992, \$5,924,000,000 for fiscal year 1993, and \$7,660,000,000 for fiscal year 1994”.

Subsecs. (b), (c). Pub. L. 103-252, §104(2), added subsec. (b) and struck out former subsecs. (b) and (c) which read as follows:

“(b) There are authorized to be appropriated to carry out section 9846a of this title, such sums as may be necessary for fiscal years 1991 through 1996.

“(c)(1) If the amount appropriated under subsection (a) of this section for fiscal year 1991 exceeds the adjusted appropriation, the Secretary shall make available not less than \$20,000,000 to carry out the Head Start Transition Project Act.

“(2) The Secretary shall make available not less than \$20,000,000 for each of the fiscal years 1992, 1993, and 1994 to carry out the Head Start Transition Project Act.”

1990—Pub. L. 101-501, §140, added subsec. (c).

Pub. L. 101-501, §120(b), designated existing provisions as subsec. (a), inserted “(other than section 9846a of this title)” after “of this subchapter”, and added subsec. (b).

Pub. L. 101-501, §103, struck out “\$1,198,000,000 for fiscal year 1987, \$1,263,000,000 for fiscal year 1988, \$1,332,000,000 for fiscal year 1989, and” after “of this subchapter” and inserted “, \$2,386,000,000 for fiscal year 1991, \$4,273,000,000 for fiscal year 1992, \$5,924,000,000 for fiscal year 1993, and \$7,660,000,000 for fiscal year 1994” after “1990”.

1989—Pub. L. 101-120 substituted “\$1,552,000,000” for “\$1,405,000,000”.

1986—Pub. L. 99-425 amended section generally, substituting “\$1,198,000,000 for fiscal year 1987, \$1,263,000,000 for fiscal year 1988, \$1,332,000,000 for fiscal year 1989, and \$1,405,000,000 for fiscal year 1990” for “\$1,093,030,000 for fiscal year 1985, and \$1,221,000,000 for fiscal year 1986”.

1984—Pub. L. 98-558 substituted “\$1,093,030,000 for fiscal year 1985, and \$1,221,000,000 for fiscal year 1986” for “\$950,000,000 for fiscal year 1982, \$1,007,000,000 for fiscal year 1983, and \$1,058,357,000 for fiscal year 1984”.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-252 effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103-252, set out as a note under section 9832 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101-501, set out as a note under section 8621 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-425 effective Oct. 1, 1986, see section 1001 of Pub. L. 99-425, set out as a note under section 8621 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9835 of this title.

§ 9835. Allotment of funds**(a) Distribution of appropriations; priorities, etc.**

(1) Of the sums appropriated pursuant to section 9834 of this title for any fiscal year beginning after September 30, 1981, the Secretary shall allot such sums in accordance with paragraphs (2) through (4), and subject to paragraphs (5) and (6).

(2) The Secretary shall reserve 13 percent of the amount appropriated for each fiscal year for use in accordance with the following order of priorities—

(A) Indian Head Start programs, services for children with disabilities, and migrant and seasonal Head Start programs, except that there shall be made available for each fiscal year for use by Indian Head Start programs and by migrant and seasonal Head Start programs, on a nationwide basis, not less than the amount that was obligated for use by Indian Head Start programs and by migrant and seasonal Head Start programs for fiscal year 1998;

(B) payments, subject to paragraph (7)—

(i) to Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands of the United States;

(ii) for fiscal years ending before October 1, 2001, to the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau; and

(iii) if legislation approving renegotiated Compacts of Free Association for the jurisdictions described in clause (ii) has not been enacted before September 30, 2001, for fiscal year 2002 to those jurisdictions;

according to their respective needs, except that such amount shall not exceed one-half of 1 percent of the sums appropriated for any fiscal year;

(C) training and technical assistance activities which are sufficient to meet the needs associated with program expansion and to foster program and management improvement activities as described in section 9843 of this title, in an amount for each fiscal year which is not less than 2 percent of the amount appropriated for such fiscal year, of which not less than \$3,000,000 of the amount appropriated for such fiscal year shall be made available to carry out activities described in section 9843(c)(4) of this title;

(D) discretionary payments made by the Secretary (including payments for all costs (other than compensation of Federal employees) of reviews of Head Start agencies and programs under section 9836a(c) of this title, and of activities carried out under paragraph (1), (2), or (3) of section 9836a(d) of this title related to correcting deficiencies and conducting proceedings to terminate the designation of Head Start agencies;¹ and

(E) payments for research, demonstration, and evaluation activities under section 9844 of this title.

No funds reserved under this paragraph or paragraph (3) may be combined with funds appro-

priated under any other Act if the purpose of combining funds is to make a single discretionary grant or a single discretionary payment, unless such funds appropriated under this subchapter are separately identified in such grant or payment and are used for the purposes of this subchapter. No Freely Associated State may receive financial assistance under this subchapter after fiscal year 2002.

(3)(A)(i) In order to provide assistance for activities specified in subparagraph (C) directed at the goals specified in subparagraph (B), the Secretary shall reserve, from the amount (if any) by which the funds appropriated under section 9834(a) of this title for a fiscal year exceed the adjusted prior year appropriation, a share equal to the sum of—

(I) 60 percent of such excess amount for fiscal year 1999, 50 percent of such excess amount for fiscal year 2000, 47.5 percent of such excess amount for fiscal year 2001, 35 percent of such excess amount for fiscal year 2002, and 25 percent of such excess amount for fiscal year 2003; and

(II) any additional amount the Secretary may find necessary to address a demonstrated need for such activities.

(ii) As used in clause (i), the term “adjusted prior year appropriation” means, with respect to a fiscal year, the amount appropriated pursuant to section 9834(a) of this title for the preceding fiscal year, adjusted to reflect the percentage change in the Consumer Price Index for All Urban Consumers (issued by the Bureau of Labor Statistics) during such preceding fiscal year.

(B) Funds reserved under this paragraph (referred to in this paragraph as “quality improvement funds”) shall be used to accomplish any or all of the following goals:

(i) Ensuring that Head Start programs meet or exceed performance standards pursuant to section 9836a(a)(1)(A) of this title.

(ii) Ensuring that such programs have adequate numbers of qualified staff, and that such staff are furnished adequate training, including developing skills in working with children with non-English language background and children with disabilities, when appropriate.

(iii) Ensuring that salary levels and benefits are adequate to attract and retain qualified staff for such programs.

(iv) Using salary increases to improve staff qualifications, and to assist with the implementation of career development programs, for the staff of Head Start programs, and to encourage the staff to continually improve their skills and expertise by informing the staff of the availability of Federal and State incentive and loan forgiveness programs for professional development.

(v) Improving community-wide strategic planning and needs assessments for such programs and collaboration efforts for such programs.

(vi) Ensuring that the physical environments of Head Start programs are conducive to providing effective program services to children and families, and are accessible to children with disabilities and their parents.

(vii) Ensuring that such programs have qualified staff that can promote language

¹ So in original. Probably should be “agencies;”. See 1998 Amendment note below.

skills and literacy growth of children and that can provide children with a variety of skills that have been identified, through scientifically based reading research, as predictive of later reading achievement.

(viii) Making such other improvements in the quality of such programs as the Secretary may designate.

(C) Quality improvement funds shall be used to carry out any or all of the following activities:

(i)(I) Not less than one-half of the amount reserved under this paragraph, to improve the compensation (including benefits) of classroom teachers and other staff of Head Start agencies and thereby enhance recruitment and retention of qualified staff, including recruitment and retention pursuant to achieving the requirements set forth in section 9843a(a) of this title. The expenditure of funds under this clause shall be subject to section 9848 of this title. Preferences in awarding salary increases, in excess of cost-of-living allowances, with such funds shall be granted to classroom teachers and staff who obtain additional training or education related to their responsibilities as employees of a Head Start program.

(II) If a Head Start agency certifies to the Secretary for such fiscal year that part of the funds set aside under subclause (I) to improve wages cannot be expended by such agency to improve wages because of the operation of section 9848 of this title, then such agency may expend such part for any of the uses specified in this subparagraph (other than wages).

(III) From the remainder of the amount reserved under this paragraph (after the Secretary carries out subclause (I)), the Secretary shall carry out any or all of the activities described in clauses (ii) through (vii), placing the highest priority on the activities described in clause (ii).

(ii) To train classroom teachers and other staff to meet the education performance standards described in section 9836a(a)(1)(B) of this title, through activities—

(I) to promote children's language and literacy growth, through techniques identified through scientifically based reading research;

(II) to promote the acquisition of the English language for non-English background children and families;

(III) to foster children's school readiness skills through activities described in section 9843a(a)(1) of this title; and

(IV) to provide training necessary to improve the qualifications of the staff of the Head Start agencies and to support staff training, child counseling, and other services necessary to address the problems of children participating in Head Start programs, including children from dysfunctional families, children who experience chronic violence in their communities, and children who experience substance abuse in their families.

(iii) To employ additional Head Start staff, including staff necessary to reduce the child-staff ratio and staff necessary to coordinate a

Head Start program with other services available to children participating in such program and to their families.

(iv) To pay costs incurred by Head Start agencies to purchase insurance (other than employee benefits) and thereby maintain or expand Head Start services.

(v) To supplement amounts provided under paragraph (2)(C) to provide training necessary to improve the qualifications of the staff of the Head Start agencies, and to support staff training, child counseling, and other services necessary to address the problems of children participating in Head Start programs, including children from dysfunctional families, children who experience chronic violence in their communities, and children who experience substance abuse in their families.

(vi) Such other activities as the Secretary may designate.

(D)(i) Funds reserved under subparagraph (A) shall be allotted by the Secretary as follows:

(I) 80 percent of such funds shall be allotted among the States in the same proportion as the Secretary allots funds among the States under paragraph (4) for the respective fiscal year.

(II) 20 percent of such funds shall be allotted among the States, geographical areas specified in subsection (a)(2)(B) of this section and Indian Head Start programs and migrant and seasonal Head Start programs, and used to make grants to Head Start agencies, at the discretion of the Secretary.

(ii) Funds allotted under clause (i) shall be used by the Secretary to make grants to Head Start agencies that receive grants from funds allotted under paragraph (4) for such fiscal year, in such amounts as the Secretary considers to be appropriate, for expenditure for activities specified in subparagraph (C).

(iii) Funds received under this subparagraph shall be used to supplement, not to supplant, funds received under paragraph (2) or (4).

(4) Subject to section 9834(b) of this title, the Secretary shall allot the remaining amounts appropriated in each fiscal year among the States, in accordance with latest satisfactory data so that—

(A) each State receives an amount which is equal to the amount the State received for fiscal year 1998; and

(B) any amount available after all allotments are made under subparagraph (A) for such fiscal year shall be distributed proportionately on the basis of the number of children less than 5 years of age from families whose income is below the poverty line.

For purposes of this paragraph, for each fiscal year the Secretary shall use the most recent data available on the number of children less than 5 years of age from families whose income is below the poverty line, as published by the Department of Commerce, unless the Secretary and the Secretary of Commerce determine that use of the most recent data available would be inappropriate or unreliable. If the Secretary and the Secretary of Commerce determine that some or all of the data referred to in this paragraph are inappropriate or unreliable, the Secretaries

shall issue a report setting forth their reasons in detail.

(5)(A) From amounts reserved and allotted pursuant to paragraph (4), the Secretary shall reserve such sums as may be necessary to award the collaboration grants described in subparagraphs (B) and (D).

(B) From the reserved sums, the Secretary may award a collaboration grant to each State to facilitate collaboration regarding activities carried out in the State under this subchapter, and other activities carried out in, and by, the State that are designed to benefit low-income children and families and to encourage Head Start agencies to collaborate with entities involved in State and local planning processes (including the State lead agency administering the financial assistance received under subchapter II-B of this chapter and the entities providing resource and referral services in the State) in order to better meet the needs of low-income children and families.

(C) A State that receives a grant under subparagraph (B) shall—

(i) appoint an individual to serve as a State liaison between—

(I) the appropriate regional office of the Administration for Children and Families and agencies and individuals carrying out Head Start programs in the State; and

(II) agencies (including local educational agencies) and entities carrying out programs serving low-income children and families;

(ii) involve the State Head Start Association in the selection of the individual, and involve the association in determinations relating to the ongoing direction of the collaboration;

(iii) ensure that the individual holds a position with sufficient authority and access to ensure that the collaboration described in subparagraph (B) is effective and involves a range of State agencies;

(iv) ensure that the collaboration described in subparagraph (B) involves coordination of Head Start services with health care, welfare, child care, education, and community service activities, family literacy services, activities relating to children with disabilities (including coordination of services with those State officials who are responsible for administering part C and section 619 of the Individuals with Disabilities Education Act (20 U.S.C. 1431-1445, 1419)), and services for homeless children;

(v) include representatives of the State Head Start Association and local Head Start agencies in unified planning regarding early care and education services at both the State and local levels, including collaborative efforts to plan for the provision of full-working-day, full calendar year early care and education services for children; and

(vi) encourage local Head Start agencies to appoint a State level representative to represent Head Start agencies within the State in conducting collaborative efforts described in subparagraphs (B) and (D), and in clause (v).

(D) Following the award of collaboration grants described in subparagraph (B), the Secretary shall provide, from the reserved sums, supplemental funding for collaboration grants—

(i) to States that (in consultation with their State Head Start Associations) develop statewide, regional, or local unified plans for early childhood education and child care that include the participation of Head Start agencies; and

(ii) to States that engage in other innovative collaborative initiatives, including plans for collaborative training and professional development initiatives for child care, early childhood education and Head Start service managers, providers, and staff.

(E)(i) The Secretary shall—

(I) review on an ongoing basis evidence of barriers to effective collaboration between Head Start programs and other Federal, State, and local child care and early childhood education programs and resources;

(II) develop initiatives, including providing additional training and technical assistance and making regulatory changes, in necessary cases, to eliminate barriers to the collaboration; and

(III) develop a mechanism to resolve administrative and programmatic conflicts between programs described in subclause (I) that would be a barrier to service providers, parents, or children related to the provision of unified services and the consolidation of funding for child care services.

(ii) In the case of a collaborative activity funded under this subchapter and another provision of law providing for Federal child care or early childhood education, the use of equipment and nonconsumable supplies purchased with funds made available under this subchapter or such provision shall not be restricted to children enrolled or otherwise participating in the program carried out under that subchapter or provision, during a period in which the activity is predominantly funded under this subchapter or such provision.

(F) As used in this paragraph, the term “low-income”, used with respect to children or families, shall not be considered to refer only to children or families that meet the low-income criteria prescribed pursuant to section 9840(a)(1)(A) of this title.

(6)(A) From amounts reserved and allotted pursuant to paragraphs (2) and (4), the Secretary shall use, for grants for programs described in section 9840a(a) of this title, a portion of the combined total of such amounts equal to 7.5 percent for fiscal year 1999, 8 percent for fiscal year 2000, 9 percent for fiscal year 2001, 10 percent for fiscal year 2002, and 10 percent for fiscal year 2003, of the amount appropriated pursuant to section 9834(a) of this title, except as provided in subparagraph (B).

(B)(i) If the Secretary does not submit an interim report on the preliminary findings of the Early Head Start impact study currently being conducted by the Secretary (as of October 27, 1998) to the appropriate committees by June 1, 2001, the amount of the reserved portion for fiscal year 2002 that exceeds the reserved portion for fiscal year 2001, if any, shall be used for quality improvement activities described in subsection (a)(3) of this section and shall not be used to serve an increased number of eligible children under section 9840a of this title.

(ii) If the Secretary does not submit a final report on the Early Head Start impact study to the appropriate committees by June 1, 2002, or if the Secretary finds in the report that there are substantial deficiencies in the programs carried out under section 9840a of this title, the amount of the reserved portion for fiscal year 2003 that exceeds the reserved portion for fiscal year 2002, if any, shall be used for quality improvement activities described in subsection (a)(3) of this section and shall not be used to serve an increased number of eligible children under section 9840a of this title.

(iii) In this subparagraph:

(I) The term “appropriate committees” means the Committee on Education and the Workforce and the Committee on Appropriations of the House of Representatives and the Committee on Labor and Human Resources and the Committee on Appropriations of the Senate.

(II) The term “reserved portion”, used with respect to a fiscal year, means the amount required to be used in accordance with subparagraph (A) for that fiscal year.

(C)(i) For any fiscal year for which the Secretary determines that the amount appropriated under section 9834(a) of this title is not sufficient to permit the Secretary to reserve the portion described in subparagraph (A) without reducing the number of children served by Head Start programs or adversely affecting the quality of Head Start services, relative to the number of children served and the quality of the services during the preceding fiscal year, the Secretary may reduce the percentage of funds required to be reserved for the portion described in subparagraph (A) for the fiscal year for which the determination is made, but not below the percentage required to be so reserved for the preceding fiscal year.

(ii) For any fiscal year for which the amount appropriated under section 9834(a) of this title is reduced to a level that requires a lower amount to be made available under this subchapter to Head Start agencies and entities described in section 9840a of this title, relative to the amount made available to the agencies and entities for the preceding fiscal year, adjusted as described in paragraph (3)(A)(ii), the Secretary shall proportionately reduce—

(I) the amounts made available to the entities for programs carried out under section 9840a of this title; and

(II) the amounts made available to Head Start agencies for Head Start programs.

(7) For purposes of this subsection, the term “State” does not include Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, and Palau.

(b) Federal share

Financial assistance extended under this subchapter for a Head Start program shall not exceed 80 percent of the approved costs of the assisted program or activities, except that the Secretary may approve assistance in excess of such percentage if the Secretary determines

that such action is required in furtherance of the purposes of this subchapter. For the purpose of making such determination, the Secretary shall take into consideration with respect to the Head Start program involved—

(1) the lack of resources available in the community that may prevent the Head Start agency from providing all or a portion of the non-Federal contribution that may be required under this subsection;

(2) the impact of the cost the Head Start agency may incur in initial years it carries out such program;

(3) the impact of an unanticipated increase in the cost the Head Start agency may incur to carry out such program;

(4) whether the Head Start agency is located in a community adversely affected by a major disaster; and

(5) the impact on the community that would result if the Head Start agency ceased to carry out such program.

Non-Federal contributions may be in cash or in kind, fairly evaluated, including plant, equipment, or services. The Secretary shall not require non-Federal contributions in excess of 20 percent of the approved costs of programs or activities assisted under this subchapter.

(c) Services covered

No programs shall be approved for assistance under this subchapter unless the Secretary is satisfied that the services to be provided under such program will be in addition to, and not in substitution for, comparable services previously provided without Federal assistance. The requirement imposed by the preceding sentence shall be subject to such regulations as the Secretary may prescribe.

(d) Enrollment of children with disabilities and provision of services

The Secretary shall establish policies and procedures designed to assure that for fiscal year 1999 and thereafter no less than 10 percent of the total number of enrollment opportunities in Head Start programs in each State shall be available for children with disabilities and that services shall be provided to meet their special needs. Such policies and procedures shall require Head Start agencies to coordinate programmatic efforts with efforts to implement part C and section 619 of the Individuals with Disabilities Education Act (20 U.S.C. 1431–1445, 1419).

(e) Distribution of benefits between residents of rural and urban areas

The Secretary shall adopt appropriate administrative measures to assure that the benefits of this subchapter will be distributed equitably between residents of rural and urban areas.

(f) Guidelines for local service delivery models

The Secretary shall establish procedures to enable Head Start agencies to develop locally designed or specialized service delivery models to address local community needs.

(g) Maintenance of current services; expansion of Head Start programs

(1) If in any fiscal year, the amounts appropriated to carry out the program under this sub-

chapter exceed the amount appropriated in the prior fiscal year, the Secretary shall, prior to using such additional funds to serve an increased number of children, allocate such funds in a manner that makes available the funds necessary to maintain the level of services provided during the prior year, taking into consideration the percentage change in the Consumer Price Index For All Urban Consumers, as published by the Bureau of Labor Statistics.

(2) For the purpose of expanding Head Start programs, in allocating funds to an applicant within a State, from amounts allotted to a State pursuant to subsection (a)(4) of this section, the Secretary shall take into consideration—

(A) the quality of the applicant's programs (including Head Start and other child care or child development programs) in existence on the date of the allocation, including, in the case of Head Start programs in existence on the date of the allocation, the extent to which such programs meet or exceed performance standards and other requirements under this subchapter, and the performance history of the applicant in providing services under other Federal programs (other than the program carried out under this subchapter);

(B) the applicant's capacity to expand services (including, in the case of Head Start programs in existence on the date of the allocation, whether the applicant accomplished any prior expansions in an effective and timely manner);

(C) the extent to which the applicant has undertaken community-wide strategic planning and needs assessments involving other community organizations and public agencies serving children and families (including organizations serving families in whose homes English is not the language customarily spoken), and organizations and public entities serving children with disabilities;

(D) the extent to which the family and community needs assessment of the applicant reflects a need to provide full-working-day or full calendar year services and the extent to which, and manner in which, the applicant demonstrates the ability to collaborate and participate with other local community providers of child care or preschool services to provide full-working-day full calendar year services;

(E) the numbers of eligible children in each community who are not participating in a Head Start program or any other early childhood program;

(F) the concentration of low-income families in each community;

(G) the extent to which the applicant proposes to foster partnerships with other service providers in a manner that will enhance the resource capacity of the applicant; and

(H) the extent to which the applicant, in providing services, plans to coordinate with the local educational agency serving the community involved and with schools in which children participating in a Head Start program operated by such agency will enroll following such program, regarding such services and the education services provided by such local educational agency.

(3) In determining the amount of funds reserved pursuant to subparagraph (A) or (B) of subsection (a)(2) of this section to be used for expanding Head Start programs under this subchapter, the Secretary shall take into consideration, to the extent appropriate, the factors specified in paragraph (2).

(4) Notwithstanding subsection (a)(2) of this section, after taking into account paragraph (1), the Secretary may allocate a portion of the remaining additional funds under subsection (a)(2)(A) of this section for the purpose of increasing funds available for activities described in such subsection.

(h) Full-working-day services

Financial assistance provided under this subchapter may be used by each Head Start program to provide full-working-day Head Start services to any eligible child throughout the full calendar year.

(i) Vehicle safety regulations

The Secretary shall issue regulations establishing requirements for the safety features, and the safe operation, of vehicles used by Head Start agencies to transport children participating in Head Start programs.

(j) Compensation of staff

Any agency that receives financial assistance under this subchapter to improve the compensation of staff who provide services under this subchapter² shall use the financial assistance to improve the compensation of such staff, regardless of whether the agency has the ability to improve the compensation of staff employed by the agency who do not provide Head Start services.

(k) Flexibility in hours of service requirement

(1) The Secretary shall allow center-based Head Start programs the flexibility to satisfy the total number of hours of service required by the regulations in effect on May 18, 1994, to be provided to children in Head Start programs so long as such agencies do not—

(A) provide less than 3 hours of service per day;

(B) reduce the number of days of service per week; or

(C) reduce the number of days of service per year.

(2) The provisions of this subsection shall not be construed to restrict the authority of the Secretary to fund alternative program variations authorized under section 1306.35 of title 45 of the Code of Federal Regulations in effect on May 18, 1994.

(l) Frequent relocation of migrant families

(1) With funds made available under subsection (a)(2) of this section to migrant and seasonal Head Start programs, the Secretary shall give priority to migrant and seasonal Head Start programs that serve eligible children of migrant and seasonal farmworker families whose work requires them to relocate most frequently.

(2) For purposes of subsection (a)(2)(A) of this section, in determining the need and demand for

² See References in Text note below.

migrant and seasonal Head Start programs (and services provided through such programs), the Secretary shall consult with appropriate entities, including providers of services for migrant and seasonal Head Start programs. The Secretary shall, after taking into consideration the need and demand for migrant and seasonal Head Start programs (and such services), ensure that there is an adequate level of such services for eligible children of migrant farmworkers before approving an increase in the allocation of funds provided under such subsection for unserved eligible children of seasonal farmworkers. In serving the eligible children of seasonal farmworkers, the Secretary shall ensure that services provided by migrant and seasonal Head Start programs do not duplicate or overlap with other Head Start services available to eligible children of such farmworkers.

(3) In carrying out this subchapter, the Secretary shall continue the administrative arrangement responsible for meeting the needs of children of migrant and seasonal farmworkers and Indian children and shall ensure that appropriate funding is provided to meet such needs.

(Pub. L. 97-35, title VI, §640, Aug. 13, 1981, 95 Stat. 499; Pub. L. 98-558, title I, §103, Oct. 30, 1984, 98 Stat. 2878; Pub. L. 99-425, title I, §102, Sept. 30, 1986, 100 Stat. 966; Pub. L. 101-476, title IX, §901(d), Oct. 30, 1990, 104 Stat. 1151; Pub. L. 101-501, title I, §§104(a), 105, 123(b), Nov. 3, 1990, 104 Stat. 1224, 1228, 1237; Pub. L. 102-119, §26(g), Oct. 7, 1991, 105 Stat. 607; Pub. L. 102-401, §2(a)-(d), (k)(1), Oct. 7, 1992, 106 Stat. 1956, 1958; Pub. L. 103-252, title I, §105, May 18, 1994, 108 Stat. 626; Pub. L. 104-193, title I, §110(t), Aug. 22, 1996, 110 Stat. 2175; Pub. L. 105-285, title I, §106(a)-(d), Oct. 27, 1998, 112 Stat. 2705-2711.)

REFERENCES IN TEXT

The Individuals with Disabilities Education Act, referred to in subsecs. (a)(5)(C)(iv) and (d), is title VI of Pub. L. 91-230, Apr. 13, 1970, 84 Stat. 175, as amended. Part C of the Act is classified generally to subchapter III (§1431 et seq.) of chapter 33 of Title 20, Education. Section 619 of the Act is classified to section 1419 of Title 20. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

This subchapter, referred to in subsec. (j), was in the original "this Act" and was translated as reading "this subchapter", meaning subchapter B (§§635-657) of chapter 8 of subtitle A of title VI of Pub. L. 97-35, Aug. 13, 1981, 95 Stat. 499, known as the Head Start Act, which is classified generally to this subchapter, to reflect the probable intent of Congress.

AMENDMENTS

1998—Subsec. (a)(2). Pub. L. 105-285, §106(a)(1)(F), inserted at end of concluding provisions "No Freely Associated State may receive financial assistance under this subchapter after fiscal year 2002."

Subsec. (a)(2)(A). Pub. L. 105-285, §106(a)(1)(A), substituted "Head Start programs, services for children with disabilities, and migrant and seasonal Head Start programs" for "and migrant Head Start programs and services for handicapped children", "Head Start programs and by migrant and seasonal" for "and migrant" before "Head Start programs" in two places, and "1998" for "1994".

Subsec. (a)(2)(B). Pub. L. 105-285, §106(a)(1)(B), substituted "(B) payments, subject to paragraph (7)—", cls. (i) to (iii), and "according" for "(B) payments to Guam, American Samoa, the Federated States of Micronesia, the Republic of the Marshall Islands, Palau,

the Commonwealth of the Northern Mariana Islands, and the Virgin Islands according".

Subsec. (a)(2)(C). Pub. L. 105-285, §106(a)(1)(C), substituted " , of which not less than \$3,000,000 of the amount appropriated for such fiscal year shall be made available to carry out activities described in section 9843(c)(4) of this title;" for " ; and".

Subsec. (a)(2)(D). Pub. L. 105-285, §106(a)(1)(D), which directed substitution of "carried out under paragraph (1), (2), or (3) of section 9836a(d) of this title related to correcting deficiencies and conducting proceedings to terminate the designation of Head Start agencies; and" for "related to the development and implementation of quality improvement plans under section 9836a(d)(2) of this title.", was executed by making the substitution for "related to the development and implementation of quality improvement plans under section 9836a(d)(2) of this title."

Subsec. (a)(2)(E). Pub. L. 105-285, §106(a)(1)(E), added subpar. (E).

Subsec. (a)(3)(A)(i)(I). Pub. L. 105-285, §106(a)(2)(A), substituted "60 percent of such excess amount for fiscal year 1999, 50 percent of such excess amount for fiscal year 2000, 47.5 percent of such excess amount for fiscal year 2001, 35 percent of such excess amount for fiscal year 2002, and 25 percent of such excess amount for fiscal year 2003;" for "25 percent of such excess amount;".

Subsec. (a)(3)(B)(ii). Pub. L. 105-285, §106(a)(2)(B)(i), substituted "adequate numbers of qualified staff" for "adequate qualified staff" and inserted "and children with disabilities" before " , when appropriate".

Subsec. (a)(3)(B)(iv). Pub. L. 105-285, §106(a)(2)(B)(ii), inserted before period at end " , and to encourage the staff to continually improve their skills and expertise by informing the staff of the availability of Federal and State incentive and loan forgiveness programs for professional development".

Subsec. (a)(3)(B)(v). Pub. L. 105-285, §106(a)(2)(B)(iii), inserted "and collaboration efforts for such programs" before period at end.

Subsec. (a)(3)(B)(vi). Pub. L. 105-285, §106(a)(2)(B)(iv), inserted before period at end " , and are accessible to children with disabilities and their parents".

Subsec. (a)(3)(B)(vii), (viii). Pub. L. 105-285, §106(a)(2)(B)(v), (vi), added cl. (vii) and redesignated former cl. (vii) as (viii).

Subsec. (a)(3)(C)(i)(I). Pub. L. 105-285, §106(a)(2)(C)(i)(I), substituted "this paragraph" for "this subparagraph", "of classroom teachers and other staff" for "of staff", and "qualified staff, including recruitment and retention pursuant to achieving the requirements set forth in section 9843a(a) of this title" for "such staff", and inserted at end "Preferences in awarding salary increases, in excess of cost-of-living allowances, with such funds shall be granted to classroom teachers and staff who obtain additional training or education related to their responsibilities as employees of a Head Start program."

Subsec. (a)(3)(C)(i)(II). Pub. L. 105-285, §106(a)(2)(C)(i)(II), substituted "this subparagraph" for "the subparagraph".

Subsec. (a)(3)(C)(i)(III). Pub. L. 105-285, §106(a)(2)(C)(i)(III), added subcl. (III).

Subsec. (a)(3)(C)(ii). Pub. L. 105-285, §106(a)(2)(C)(ii), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: "To pay transportation costs incurred by Head Start agencies to enable eligible children to participate in a Head Start program."

Subsec. (a)(3)(C)(v) to (vii). Pub. L. 105-285, §106(a)(2)(C)(iii), (iv), redesignated cls. (vi) and (vii) as (v) and (vi), respectively, and struck out former cl. (v) which read as follows: "To make nonstructural and minor structural changes, and to acquire and install equipment, for the purpose of improving facilities necessary to expand the availability, or enhance the quality, of Head Start programs."

Subsec. (a)(3)(D)(i)(II). Pub. L. 105-285, §106(a)(2)(D), substituted "Head Start programs and migrant and seasonal" for "and migrant".

Subsec. (a)(4). Pub. L. 105-285, §106(a)(3)(C), inserted concluding provisions.

Subsec. (a)(4)(A). Pub. L. 105-285, §106(a)(3)(A), substituted "1998" for "1981".

Subsec. (a)(4)(B). Pub. L. 105-285, §106(a)(3)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows:

"(B)(i) 33½ percent of any amount available after all allotments have been made under subparagraph (A) for such fiscal year shall be distributed on the basis of the relative number of children from birth through 18 years of age, on whose behalf payments are made under the State program of assistance funded under part A of title IV of the Social Security Act in each State as compared to all States; and

"(ii) 66½ percent of such amount shall be distributed on the basis of the relative number of children from birth through 5 years of age living with families with incomes below the poverty line in each State as compared to all States."

Subsec. (a)(5)(A). Pub. L. 105-285, §106(a)(4)(A), substituted "subparagraphs (B) and (D)" for "subparagraph (B)".

Subsec. (a)(5)(B). Pub. L. 105-285, §106(a)(4)(B), inserted before period at end "and to encourage Head Start agencies to collaborate with entities involved in State and local planning processes (including the State lead agency administering the financial assistance received under subchapter II-B of this chapter and the entities providing resource and referral services in the State) in order to better meet the needs of low-income children and families".

Subsec. (a)(5)(C)(i)(I). Pub. L. 105-285, §106(a)(4)(C)(i), inserted "the appropriate regional office of the Administration for Children and Families and" before "agencies".

Subsec. (a)(5)(C)(iii). Pub. L. 105-285, §106(a)(4)(C)(ii), struck out "and" at end.

Subsec. (a)(5)(C)(iv). Pub. L. 105-285, §106(a)(4)(C)(iii), substituted "education, and community service activities," for "education, and national service activities," "activities" for "and activities" before "relating to children with disabilities", and "(including coordination of services with those State officials who are responsible for administering part C and section 619 of the Individuals with Disabilities Education Act (20 U.S.C. 1431-1445, 1419)), and services for homeless children:" for period at end.

Subsec. (a)(5)(C)(v), (vi). Pub. L. 105-285, §106(a)(4)(C)(iv), added cls. (v) and (vi).

Subsec. (a)(5)(D) to (F). Pub. L. 105-285, §106(a)(4)(D), (E), added subpars. (D) and (E) and redesignated former subpar. (D) as (F).

Subsec. (a)(6). Pub. L. 105-285, §106(a)(5), designated existing provisions as subpar. (A), substituted "7.5 percent for fiscal year 1999, 8 percent for fiscal year 2000, 9 percent for fiscal year 2001, 10 percent for fiscal year 2002, and 10 percent for fiscal year 2003, of the amount appropriated pursuant to section 9834(a) of this title, except as provided in subparagraph (B)." for "3 percent for fiscal year 1995, 4 percent for each of fiscal years 1996 and 1997, and 5 percent for fiscal year 1998, of the amount appropriated pursuant to section 9834(a) of this title.", and added subpars. (B) and (C).

Subsec. (d). Pub. L. 105-285, §106(b)(2), which directed striking out "(as defined in section 1401(a) of title 20)", was executed by striking out "(as defined in section 1401(a)(1) of title 20)" after "children with disabilities" to reflect the probable intent of Congress.

Pub. L. 105-285, §106(b)(1), (3), substituted "1999" for "1982" and inserted at end "Such policies and procedures shall require Head Start agencies to coordinate programmatic efforts with efforts to implement part C and section 619 of the Individuals with Disabilities Education Act (20 U.S.C. 1431-1445, 1419)."

Subsec. (g)(2)(A). Pub. L. 105-285, §106(c)(1)(A), inserted before semicolon at end " , and the performance history of the applicant in providing services under other Federal programs (other than the program carried out under this subchapter)".

Subsec. (g)(2)(C). Pub. L. 105-285, §106(c)(1)(B), inserted " , and organizations and public entities serving children with disabilities" before semicolon at end.

Subsec. (g)(2)(D). Pub. L. 105-285, §106(c)(1)(C), inserted before semicolon at end "and the extent to which, and manner in which, the applicant demonstrates the ability to collaborate and participate with other local community providers of child care or preschool services to provide full-working-day full calendar year services".

Subsec. (g)(2)(E). Pub. L. 105-285, §106(c)(1)(D), substituted "program or any other early childhood program;" for "program; and".

Subsec. (g)(2)(G), (H). Pub. L. 105-285, §106(c)(1)(E), (F), added subpars. (G) and (H).

Subsec. (g)(4). Pub. L. 105-285, §106(c)(2), added par. (4).

Subsec. (I). Pub. L. 105-285, §106(d), designated existing provisions as par. (1), substituted "migrant and seasonal Head Start programs" for "migrant Head Start programs" in two places and "migrant and seasonal farmworker families" for "migrant families", and added pars. (2) and (3).

1996—Subsec. (a)(4)(B)(i). Pub. L. 104-193 substituted "State program of assistance funded" for "program of aid to families with dependent children under a State plan approved".

1994—Subsec. (a)(1). Pub. L. 103-252, §105(b)(1), substituted "through (4), and subject to paragraphs (5) and (6)" for "through (5)".

Subsec. (a)(2)(A). Pub. L. 103-252, §105(b)(2)(A), substituted "1994" for "1990".

Subsec. (a)(2)(D). Pub. L. 103-252, §105(b)(2)(B), inserted "(including payments for all costs (other than compensation of Federal employees) of reviews of Head Start agencies and programs under section 9836a(c) of this title, and of activities related to the development and implementation of quality improvement plans under section 9836a(d)(2) of this title)" after "Secretary".

Subsec. (a)(3)(A), (B). Pub. L. 103-252, §105(a)(2), added subpars. (A) and (B). Former subpars. (A) and (B) redesignated subpars. (C) and (D), respectively.

Subsec. (a)(3)(C). Pub. L. 103-252, §105(a)(1)-(3), redesignated subpar. (A) as (C), substituted in introductory provisions "Quality improvement funds shall be used to carry out any or all of the following activities:" for "For any fiscal year for which the amount appropriated under section 9834(a) of this title exceeds the adjusted appropriation, the Secretary shall reserve the quality improvement funds for such fiscal year, for one or more of the following quality improvement activities:", and added cl. (vii).

Subsec. (a)(3)(D). Pub. L. 103-252, §105(a)(1), redesignated subpar. (B) as (D).

Subsec. (a)(3)(D)(i). Pub. L. 103-252, §105(a)(4)(A), (b)(3), struck out "for the first, second, and third fiscal years for which funds are so reserved" after "subparagraph (A)" in introductory provisions, substituted "paragraph (4)" for "paragraph (5)" in subcl. (I), and inserted "geographical areas specified in subsection (a)(2)(B) of this section and Indian and migrant Head Start programs," after "States," in subcl. (II).

Subsec. (a)(3)(D)(ii). Pub. L. 103-252, §105(b)(3), substituted "paragraph (4)" for "paragraph (5)".

Pub. L. 103-252, §105(a)(4)(B), (E), redesignated cl. (iv) as (ii) and struck out former cl. (ii) which read as follows: "Funds reserved under subparagraph (A) for any fiscal year subsequent to the third fiscal year for which funds are so reserved shall be allotted by the Secretary among the States in the same proportion as the Secretary allots funds among the States under paragraph (5) for the respective subsequent fiscal year."

Subsec. (a)(3)(D)(iii). Pub. L. 103-252, §105(a)(4)(B), (E), redesignated cl. (vi) as (iii) and struck out former cl. (iii) which read as follows: "To be expended for the activities specified in subparagraph (A) in the first fiscal, second, and third fiscal years for which funds are required by such subparagraph to be reserved, funds allotted under clause (i)(I) shall be used by the Secretary to make a grant to each Head Start agency that receives a grant from funds allotted under paragraph (5) for such fiscal year, in the amount that bears the same

ratio to the amount allotted under clause (i)(I) for such fiscal year for the State in which such agency is located as the number of children participating in the Head Start program of such agency in such fiscal year bears to the number of children participating in all Head Start programs in such State in such fiscal year."

Subsec. (a)(3)(D)(iv). Pub. L. 103-252, § 105(a)(4)(E), redesignated cl. (iv) as (ii).

Pub. L. 103-252, § 105(a)(4)(C), substituted "Funds" for "To be expended for the activities specified in subparagraph (A) in each subsequent fiscal year for which funds are required by such subparagraph to be reserved, funds" and "clause (i)" for "clause (ii)", inserted ", for expenditure for activities specified in subparagraph (C)", and struck out at end "The aggregate amount of grants made under this clause to Head Start agencies in a State for a fiscal year may not exceed the amount allotted under clause (ii) for such State for such fiscal year."

Subsec. (a)(3)(D)(v). Pub. L. 103-252, § 105(a)(4)(E), struck out cl. (v) which read as follows: "If a Head Start agency certifies for such fiscal year to the Secretary that it does not need any funds under subparagraph (A), or does not need part of such funds it would otherwise receive under clause (iii) or (iv), then unneeded funds shall be used by the Secretary to make grants under this subparagraph without regard to such agency."

Subsec. (a)(3)(D)(vi). Pub. L. 103-252, § 105(a)(4)(E), redesignated cl. (vi) as (iii).

Pub. L. 103-252, § 105(a)(4)(D), substituted "paragraph (2) or (4)" for "paragraphs (2), (4), and (5)".

Subsec. (a)(4). Pub. L. 103-252, § 105(b)(4), (5), redesignated par. (5) as (4), substituted "Subject to section 9834(b) of this title, the Secretary" for "The Secretary", and struck out former par. (4), which related to Secretary reserving sums for grants to carry out early childhood intervention programs, known as "Parent-Child Centers".

Subsec. (a)(5), (6). Pub. L. 103-252, § 105(b)(6), added pars. (5) and (6). Former pars. (5) and (6) redesignated (4) and (7), respectively.

Subsec. (a)(7). Pub. L. 103-252, § 105(b)(4), redesignated par. (6) as (7).

Subsec. (g). Pub. L. 103-252, § 105(c), designated existing provisions as par. (1) and added pars. (2) and (3).

Subsec. (h). Pub. L. 103-252, § 105(d), substituted "Financial assistance provided under this subchapter may be used by each Head Start program to" for "Each Head Start program may".

Subsecs. (j) to (l). Pub. L. 103-252, § 105(e), added subsecs. (j) to (l).

1992—Subsec. (a)(2)(A). Pub. L. 102-401, § 2(k)(1)(A)(i)(I), inserted "children" after "handicapped".

Subsec. (a)(2)(B). Pub. L. 102-401, § 2(k)(1)(A)(i)(II), substituted "Commonwealth of" for "Commonwealth of,".

Subsec. (a)(2)(C). Pub. L. 102-401, § 2(k)(1)(A)(i)(III), substituted "such fiscal year" for "any such fiscal year".

Subsec. (a)(3)(A)(vi). Pub. L. 102-401, § 2(k)(1)(A)(ii), substituted "paragraph (2)(C)" for "subsection (a)(2)(C) of this section".

Subsec. (a)(3)(B)(i). Pub. L. 102-401, § 2(a)(1), substituted ", second, and third" for "and second".

Subsec. (a)(3)(B)(ii). Pub. L. 102-401, § 2(a)(2), substituted "third" for "second".

Subsec. (a)(3)(B)(iii). Pub. L. 102-401, § 2(a)(1), substituted ", second, and third" for "and second".

Subsec. (a)(4)(B)(i)(II). Pub. L. 102-401, § 2(b), inserted ", literacy," after "skills".

Subsec. (a)(5)(B)(i). Pub. L. 102-401, § 2(k)(1)(A)(iii), substituted "subparagraph (A)" for "clause (A)".

Subsec. (b). Pub. L. 102-401, § 2(c), struck out ", in accordance with regulations establishing objective criteria," after "if the Secretary determines" and inserted after first sentence "For the purpose of making such determination, the Secretary shall take into consideration with respect to the Head Start program involved—" and cls. (1) to (5).

Subsec. (g). Pub. L. 102-401, § 2(k)(1)(B), substituted "Price Index For All" for "Price Index for all".

Subsec. (i). Pub. L. 102-401, § 2(d), added subsec. (i).

1991—Subsec. (d). Pub. L. 102-119 substituted "section 1401(a)(1) of title 20" for "paragraph (1) of section 1401 of title 20". The references to section 1401 of title 20 include the substitution of "Individuals with Disabilities Education Act" for "Education of the Handicapped Act" in the original.

1990—Subsec. (a)(1). Pub. L. 101-501, § 104(a)(1), substituted "through (5)" for "and (3)".

Subsec. (a)(2). Pub. L. 101-501, § 104(a)(2)(D), (E), struck out before last sentence "The minimum reservation contained in clause (C) of this paragraph shall not apply in any fiscal year in which the appropriation for the program authorized by this subchapter is less than the amount appropriated for fiscal year 1984." and inserted "or paragraph (3)" after "under this paragraph" in last sentence.

Subsec. (a)(2)(A). Pub. L. 101-501, § 104(a)(2)(A), substituted ", except that there shall be made available for each fiscal year for use by Indian and migrant Head Start programs, on a nationwide basis, not less than the amount that was obligated for use by Indian and migrant Head Start programs for fiscal year 1990" for "children, except that there shall be made available for use by Indian and migrant Head Start programs, on a nationwide basis, no less funds for fiscal year 1987 and each subsequent fiscal year than were obligated for use by Indian and migrant Head Start programs for fiscal year 1985".

Subsec. (a)(2)(B). Pub. L. 101-501, § 104(a)(2)(B), substituted "the Federated States of Micronesia, the Republic of the Marshall Islands, Palau, the Commonwealth of" for "the Trust Territory of the Pacific Islands".

Subsec. (a)(2)(C). Pub. L. 101-501, § 104(a)(2)(C), substituted "2 percent of the amount appropriated for any such fiscal year" for "the amount expended for training and technical assistance activities under this clause for fiscal year 1982".

Subsec. (a)(3), (4). Pub. L. 101-501, § 104(a)(5), added pars. (3) and (4). Former pars. (3) and (4) redesignated (5) and (6), respectively.

Subsec. (a)(5). Pub. L. 101-501, § 104(a)(3), (4), redesignated par. (3) as (5) and struck out "87 percent of the" after "allot the remaining".

Subsec. (a)(6). Pub. L. 101-501, § 104(a)(4), (6), redesignated par. (4) as (6), inserted "the Commonwealth of" before "the Northern Mariana", and substituted "the Federated States of Micronesia, the Republic of the Marshall Islands, and Palau" for "or the Trust Territory of the Pacific Islands".

Subsec. (d). Pub. L. 101-501, § 105(1), struck out sentence at end requiring Secretary to report to Congress at least annually on status of children with disabilities in Head Start programs.

Pub. L. 101-476, § 901(d), substituted "children with disabilities" for "handicapped children" in two places and substituted "disabling" for "handicapping".

Subsecs. (f), (g). Pub. L. 101-501, § 105(2), added subsecs. (f) and (g).

Subsec. (h). Pub. L. 101-501, § 123(b), added subsec. (h).

1986—Subsec. (a)(2)(A). Pub. L. 99-425, in amending cl. (A) generally, designated existing subcl. (i) as all of cl. (A), substituted "1987" for "1982" and "1985" for "1981", and struck out subcl. (ii) relating to cost-of-living adjustments.

1984—Subsec. (a)(2). Pub. L. 98-558 inserted "as described in section 9843 of this title, in an amount for each fiscal year which is not less than the amount expended for training and technical assistance activities under this clause for fiscal year 1982" in cl. (C), and inserted at end "The minimum reservation contained in clause (C) of this paragraph shall not apply in any fiscal year in which the appropriation for the program authorized by this subchapter is less than the amount appropriated for fiscal year 1984. No funds reserved under this paragraph may be combined with funds appropriated under any other Act if the purpose of combin-

ing funds is to make a single discretionary grant or a single discretionary payment, unless such funds appropriated under this subchapter are separately identified in such grant or payment and are used for the purposes of this subchapter.”

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104-193, as amended, set out as an Effective Date note under section 601 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-252 effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103-252, set out as a note under section 9832 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 4 of Pub. L. 102-401 provided that:

“(a) EFFECTIVE DATES.—(1) Except as provided in paragraph (2) and subsection (b), this Act [amending this section and sections 9835a to 9839, 9846, 9846a, and 9858n of this title and enacting provisions set out as a note under section 9836 of this title] and the amendments made by this Act shall take effect on the date of the enactment of this Act [Oct. 7, 1992].

“(2) The amendment made by section 2(e)(1) [amending section 9836 of this title] shall take effect on July 30, 1992.

“(b) APPLICATION OF AMENDMENTS.—The amendments made by this Act, other than the amendment made by section 2(e)(1), shall not apply with respect to fiscal years beginning before October 1, 1992.”

EFFECTIVE DATE OF 1990 AMENDMENTS

Amendment by Pub. L. 101-501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101-501, set out as a note under section 8621 of this title.

Amendment by Pub. L. 101-476 effective Oct. 1, 1990, see section 1001 of Pub. L. 101-476, set out as a note under section 1087ee of Title 20, Education.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-425 effective Oct. 1, 1986, see section 1001 of Pub. L. 99-425, set out as a note under section 8621 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9832, 9839, 9840, 9840a, 9843, 9843a, 9844, 9846 of this title; title 20 section 9409.

§ 9835a. Repealed. Pub. L. 103-252, title I, § 106, May 18, 1994, 108 Stat. 629

Section, Pub. L. 97-35, title VI, § 640A, as added Pub. L. 101-501, title I, § 106, Nov. 3, 1990, 104 Stat. 1229; amended Pub. L. 102-401, § 2(k)(2), Oct. 7, 1992, 106 Stat. 1958, directed Secretary to prepare both interim and final comprehensive reports to Congress on administration, funding, and demographics of Head Start programs.

EFFECTIVE DATE OF REPEAL

Repeal effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103-252,

set out as an Effective Date of 1994 Amendment note under section 9832 of this title.

§ 9836. Designation of Head Start agencies

(a) Authorization; prerequisites

The Secretary is authorized to designate as a Head Start agency any local public or private nonprofit or for-profit agency, within a community, which (1) has the power and authority to carry out the purposes of this subchapter and perform the functions set forth in section 9837 of this title within a community; and (2) is determined by the Secretary (in consultation with the chief executive officer of the State involved, if such State expends non-Federal funds to carry out Head Start programs) to be capable of planning, conducting, administering, and evaluating, either directly or by other arrangements, a Head Start program.

(b) Definition

For purposes of this subchapter, a community may be a city, county, or multicounty or multicounty unit within a State, an Indian reservation (including Indians in any off-reservation area designated by an appropriate tribal government in consultation with the Secretary), or a neighborhood or other area (irrespective of boundaries or political subdivisions) which provides a suitable organizational base and possesses the commonality of interest needed to operate a Head Start program.

(c) Priority

(1) In the administration of the provisions of this section (subject to paragraph (2)), the Secretary shall, in consultation with the chief executive officer of the State involved if such State expends non-Federal funds to carry out Head Start programs, give priority in the designation of Head Start agencies to any local public or private nonprofit or for-profit agency which is receiving funds under any Head Start program on August 13, 1981, unless the Secretary determines that the agency involved fails to meet program and financial management requirements, performance standards described in section 9836a(a)(1) of this title, results-based performance measures developed by the Secretary under section 9836a(b) of this title, or other requirements established by the Secretary.

(2) If there is no agency of the type referred to in paragraph (1) because of any change in the assistance furnished to programs for economically disadvantaged persons, the Secretary shall, in consultation with the chief executive officer of the State if such State expends non-Federal funds to carry out Head Start programs, give priority in the designation of Head Start agencies to any successor agency that is operating a Head Start program in substantially the same manner as the predecessor agency that did receive funds in the fiscal year preceding the fiscal year for which the determination is made.

(3) Notwithstanding any other provision of this subsection, the Secretary shall not give such priority to any agency with respect to which financial assistance has been terminated, or an application for refunding has been denied, under this subchapter by the Secretary after affording such agency reasonable notice and op-

portunity for a full and fair hearing in accordance with section 9841(a)(3) of this title.

(d) Designation; Head Start agency; qualified applicants

If no entity in a community is entitled to the priority specified in subsection (c) of this section, then the Secretary may designate a Head Start agency from among qualified applicants in such community. In selecting from among qualified applicants for designation as a Head Start agency, the Secretary shall give priority to any qualified agency that functioned as a Head Start delegate agency in the community and carried out a Head Start program that the Secretary determines met or exceeded such performance standards and such results-based performance measures. In selecting from among qualified applicants for designation as a Head Start agency, the Secretary shall consider the effectiveness of each such applicant to provide Head Start services, based on—

(1) any past performance of such applicant in providing services comparable to Head Start services, including how effectively such applicant provided such comparable services;

(2) the plan of such applicant to provide comprehensive health, nutritional, educational, social, and other services needed to aid participating children in attaining their full potential;

(3) the plan of such applicant to coordinate the Head Start program it proposes to carry out, with other preschool programs, including Even Start programs under part B of chapter 1 of title I of the Elementary and Secondary Education Act of 1965¹ (20 U.S.C. 2741 et seq.) and programs under part C and section 619 of the Individuals with Disabilities Education Act (20 U.S.C. 1431–1445, 1419), and with the educational programs such children will enter at the age of compulsory school attendance;

(4) the plan of such applicant—

(A) to seek the involvement of parents of participating children in activities (at home and in the center involved where practicable) designed to help such parents become full partners in the education of their children;

(B) to afford such parents the opportunity to participate in the development, conduct, and overall performance of the program at the local level;

(C) to offer (directly or through referral to local entities, such as entities carrying out Even Start programs under part B of chapter 1 of title I of the Elementary and Secondary Education Act of 1965¹ (20 U.S.C. 2741 et seq.), public and school libraries, and family support programs) to such parents—

(i) family literacy services; and
(ii) parenting skills training;

(D) to offer to parents of participating children substance abuse counseling (either directly or through referral to local entities), including information on drug-exposed infants and fetal alcohol syndrome;

(E) at the option of such applicant, to offer (directly or through referral to local entities) to such parents—

(i) training in basic child development;
(ii) assistance in developing communication skills;

(iii) opportunities for parents to share experiences with other parents; or

(iv) any other activity designed to help such parents become full partners in the education of their children; and

(F) to provide, with respect to each participating family, a family needs assessment that includes consultation with such parents about the benefits of parent involvement and about the activities described in subparagraphs (C), (D), and (E) in which such parents may choose to become involved (taking into consideration their specific family needs, work schedules, and other responsibilities);

(5) the ability of such applicant to carry out the plans described in paragraphs (2), (3), and (4);

(6) other factors related to the requirements of this subchapter;

(7) the plan of such applicant to meet the needs of non-English background children and their families, including needs related to the acquisition of the English language;

(8) the plan of such applicant to meet the needs of children with disabilities;

(9) the plan of such applicant who chooses to assist younger siblings of children who will participate in the proposed Head Start program to obtain health services from other sources; and

(10) the plan of such applicant to collaborate with other entities carrying out early childhood education and child care programs in the community.

(e) Designation of agency on an interim basis

If no agency in the community receives priority designation under subsection (c) of this section, and there is no qualified applicant in the community, the Secretary shall designate a qualified agency to carry out the Head Start program in the community on an interim basis until a qualified applicant from the community is so designated.

(f) Involvement of parents and area residents in selection of agencies

The Secretary shall require that the practice of significantly involving parents and area residents affected by the program in selection of Head Start agencies be continued.

(g) Priority for nonprofit agencies and applicants with demonstrated capacity

If the Secretary determines that a nonprofit agency and a for-profit agency have submitted applications for designation of equivalent quality under subsection (d) of this section, the Secretary may give priority to the nonprofit agency. In selecting from among qualified applicants for designation as a Head Start agency under subsection (d) of this section, the Secretary shall give priority to applicants that have demonstrated capacity in providing comprehensive early childhood services to children and their families.

(Pub. L. 97–35, title VI, §641, Aug. 13, 1981, 95 Stat. 501; Pub. L. 98–558, title I, §104, Oct. 30,

¹ See References in Text note below.

1984, 98 Stat. 2878; Pub. L. 101-501, title I, §§ 107, 108, Nov. 3, 1990, 104 Stat. 1229, 1230; Pub. L. 102-401, § 2(e)(1), (f)-(h), Oct. 7, 1992, 106 Stat. 1957; Pub. L. 103-252, title I, § 107, May 18, 1994, 108 Stat. 629; Pub. L. 105-285, title I, § 107, Oct. 27, 1998, 112 Stat. 2712.)

REFERENCES IN TEXT

Part B of chapter 1 of title I of the Elementary and Secondary Education Act of 1965, referred to in subsec. (d)(3), (4)(C), means part B of chapter 1 of title I of Pub. L. 89-10 which was classified generally to part B (§ 2741 et seq.) of division 1 of subchapter I of chapter 47 of Title 20, Education, prior to being omitted in the general amendment of Pub. L. 89-10 by Pub. L. 103-382, title I, § 101, Oct. 20, 1994, 108 Stat. 3519. See section 6381 et seq. of Title 20.

The Individuals with Disabilities Education Act, referred to in subsec. (d)(3), is title VI of Pub. L. 91-230, Apr. 13, 1970, 84 Stat. 175, as amended. Part C of the Act is classified generally to subchapter III (§ 1431 et seq.) of chapter 33 of Title 20, Education. Section 619 of the Act is classified to section 1419 of Title 20. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105-285, § 107(1), inserted “or for-profit” after “nonprofit” and “(in consultation with the chief executive officer of the State involved, if such State expends non-Federal funds to carry out Head Start programs)” after “Secretary” in cl. (2).

Subsec. (b). Pub. L. 105-285, § 107(2), substituted “off-reservation area designated by an appropriate tribal government in consultation with the Secretary” for “area designated by the Bureau of Indian Affairs as near-reservation”.

Subsec. (c)(1). Pub. L. 105-285, § 107(3)(A), inserted “, in consultation with the chief executive officer of the State involved if such State expends non-Federal funds to carry out Head Start programs,” after “Secretary shall” and “or for-profit” after “nonprofit” and substituted “determines that the agency involved fails to meet program and financial management requirements, performance standards described in section 9836a(a)(1) of this title, results-based performance measures developed by the Secretary under section 9836a(b) of this title, or other requirements established by the Secretary” for “makes a finding that the agency involved fails to meet program, financial management, and other requirements established by the Secretary”.

Subsec. (c)(2). Pub. L. 105-285, § 107(3)(B), (C), inserted “, in consultation with the chief executive officer of the State if such State expends non-Federal funds to carry out Head Start programs,” after “Secretary shall” and realigned margins.

Subsec. (c)(3). Pub. L. 105-285, § 107(3)(C), realigned margins.

Subsec. (d). Pub. L. 105-285, § 107(4)(A), inserted in introductory provisions “In selecting from among qualified applicants for designation as a Head Start agency, the Secretary shall give priority to any qualified agency that functioned as a Head Start delegate agency in the community and carried out a Head Start program that the Secretary determines met or exceeded such performance standards and such results-based performance measures.”

Subsec. (d)(3). Pub. L. 105-285, § 107(4)(B), inserted “and programs under part C and section 619 of the Individuals with Disabilities Education Act (20 U.S.C. 1431-1445, 1419)” after “(20 U.S.C. 2741 et seq.)”.

Subsec. (d)(4)(A). Pub. L. 105-285, § 107(4)(C)(i), inserted “(at home and in the center involved where practicable)” after “activities”.

Subsec. (d)(4)(D). Pub. L. 105-285, § 107(4)(C)(v), added subpar. (D). Former subpar. (D) redesignated (E).

Subsec. (d)(4)(D)(iii). Pub. L. 105-285, § 107(4)(C)(ii)(I), inserted “or” at end.

Subsec. (d)(4)(D)(iv), (v). Pub. L. 105-285, § 107(4)(C)(ii)(II), (III), redesignated cl. (v) as (iv) and

struck out former cl. (iv) which read as follows: “substance abuse counseling; or”.

Subsec. (d)(4)(E). Pub. L. 105-285, § 107(4)(C)(iv), redesignated subpar. (D) as (E). Former subpar. (E) redesignated (F).

Pub. L. 105-285, § 107(4)(C)(iii), substituted “, (D), and (E)” for “and (D)”.

Subsec. (d)(4)(F). Pub. L. 105-285, § 107(4)(C)(iv), redesignated subpar. (E) as (F).

Subsec. (d)(7). Pub. L. 105-285, § 107(4)(D), amended par. (7) generally. Prior to amendment, par. (7) read as follows: “the plan of such applicant to meet the needs of non-English language background children and their families in the community; and”.

Subsec. (d)(8) to (10). Pub. L. 105-285, § 107(4)(E)-(G), added pars. (8) and (10) and redesignated former par. (8) as (9).

Subsec. (e). Pub. L. 105-285, § 107(5), added subsec. (e) and struck out former subsec. (e) which read as follows: “If, in a community served by a Head Start program, there is no applicant qualified for designation as a Head Start agency to carry out such program, the Secretary may appoint an interim grantee to carry out such program until a qualified applicant is so designated.”

Subsec. (g). Pub. L. 105-285, § 107(6), added subsec. (g). 1994—Subsec. (b). Pub. L. 103-252, § 107(a), inserted “(including Indians in any area designated by the Bureau of Indian Affairs as near-reservation)” after “Indian reservation”.

Subsec. (c)(1). Pub. L. 103-252, § 107(b)(2), (3), (5), inserted “(subject to paragraph (2))” after “the provisions of this section”, struck out subpar. (A), inserted “the Secretary makes a finding that the agency involved fails to meet program, financial management, and other requirements established by the Secretary.” after “unless”, and redesignated subpar. (B) as par. (2) and concluding provisions as par. (3).

Subsec. (c)(2). Pub. L. 103-252, § 107(b)(1), (3), (4), (6), redesignated par. (1)(B) as (2) and realigned margins, substituted “If” for “except that, if” and “paragraph (1)” for “subparagraph (A)”, and struck out former par. (2) which read as follows:

“(2)(A) The Secretary shall conduct a full review of each designated Head Start agency at least once during each 3-year period, and shall determine whether each agency meets program and fiscal requirements established by the Secretary.

“(B) The Secretary shall conduct a review of each newly designated Head Start agency immediately after the completion of the first year such agency carries out a Head Start program.

“(C) The Secretary shall conduct followup reviews of Head Start agencies when appropriate.”

Subsec. (c)(3). Pub. L. 103-252, § 107(b)(1), (5), redesignated concluding provisions of par. (1) as (3), substituted “this subsection” for “this paragraph”, and struck out former par. (3) which read as follows: “In carrying out a review of each Head Start agency under paragraph (2), the Secretary shall—

“(A) to the maximum extent practicable, carry out such review by using employees of the Department of Health and Human Services who are knowledgeable about Head Start programs;

“(B) ensure that an employee of the Department of Health and Human Services who is knowledgeable about Head Start programs supervises such review at the site of such agency;

“(C) measure the compliance of the programs of such agency with the performance standards in effect under section 9846(b) of this title; and

“(D) identify the types and conditions of facilities in which such programs are located.”

Subsec. (c)(4). Pub. L. 103-252, § 107(b)(1), struck out par. (4) which read as follows: “The results of a review conducted under this subsection shall not be sufficient alone for the purpose of determining whether to continue, or to discontinue, providing funds to a particular Head Start agency.”

Subsec. (d). Pub. L. 103-252, § 107(c)(1)-(3)(A), in introductory provisions substituted “If no entity in a com-

munity is entitled to the priority specified in subsection (c) of this section.” for “If there is no Head Start agency as described in subsection (c)(2) of this section, and no existing Head Start program serving a community,” and struck out “Any such designation shall be governed by the program and fiscal requirements, criteria, and standards applicable on September 1, 1983, to then existing Head Start agencies.” after first sentence and “subject to the preceding sentence” after “as a Head Start agency”.

Subsec. (d)(3). Pub. L. 103-252, §107(c)(3)(B), inserted “, including Even Start programs under part B of chapter 1 of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2741 et seq.)” after “pre-school programs”.

Subsec. (d)(4). Pub. L. 103-252, §107(c)(3)(C), amended par. (4) generally. Prior to amendment, par. (4) read as follows: “the plan of such applicant to involve parents of children who will participate in the proposed Head Start program in appropriate educational services (in accordance with the performance standards in effect under section 9846(b) of this title or through referral of such parents to educational services available in the community) in order to aid their children to attain their full potential;”.

Subsec. (d)(7). Pub. L. 103-252, §107(c)(4), substituted “non-English language background children and their families” for “non-English language children” and inserted “and” after semicolon.

Subsec. (d)(8), (9). Pub. L. 103-252, §107(c)(5), (6), redesignated par. (9) as (8) and struck out former par. (8) which read as follows: “the plan of such applicant to provide (directly or through referral to educational services available in the community) parents of children who will participate in the proposed Head Start program with child development and literacy skills training in order to aid their children to attain their full potential; and”.

Subsecs. (f), (g). Pub. L. 103-252, §107(d), redesignated subsec. (g) as (f) and struck out former subsec. (f) which read as follows: “The provisions of subsections (c), (d), and (e) of this section shall be applied by the Secretary in the distribution of any additional appropriations made available under this subchapter during any fiscal year as well as to initial designations of Head Start agencies.”

1992—Subsec. (c)(1). Pub. L. 102-401, §2(e)(1), inserted at end “Notwithstanding any other provision of this paragraph, the Secretary shall not give such priority to any agency with respect to which financial assistance has been terminated, or an application for refunding has been denied, under this subchapter by the Secretary after affording such agency reasonable notice and opportunity for a full and fair hearing in accordance with section 9841(a)(3) of this title.”

Subsec. (c)(2). Pub. L. 102-401, §2(f), designated existing provisions as subpar. (A) and added subpars. (B) and (C).

Subsec. (d)(8), (9). Pub. L. 102-401, §2(g), added pars. (8) and (9).

Subsec. (e). Pub. L. 102-401, §2(h)(3), added subsec. (e). Former subsec. (e) redesignated (f).

Pub. L. 102-401, §2(h)(1), substituted “(c), (d), and (e)” for “(c) and (d)”.

Subsecs. (f), (g). Pub. L. 102-401, §2(h)(2), redesignated subsecs. (e) and (f) as (f) and (g), respectively.

1990—Subsec. (c). Pub. L. 101-501, §107, designated existing provisions as par. (1), redesignated former par. (1) as subpar. (A), added subpar. (B) and pars. (2) to (4), and struck out former par. (2) and last sentence which read as follows:

“(2) except that if there is no such agency because of any change in the assistance furnished to programs for economically disadvantaged persons, then the Secretary shall give priority in the designation of Head Start agencies to any successor agency which is operated in substantially the same manner as the predecessor agency which did receive funds in the fiscal year preceding the fiscal year for which the determination is made.

The provisions of clause (2) shall apply only to agencies actually operating Head Start programs.”

Subsec. (d). Pub. L. 101-501, §108, inserted at end “In selecting from among qualified applicants for designation as a Head Start agency and subject to the preceding sentence, the Secretary shall consider the effectiveness of each such applicant to provide Head Start services, based on—” and pars. (1) to (7).

1984—Subsec. (a). Pub. L. 98-558, §104(a), inserted “, within a community,” after “private nonprofit agency”.

Subsec. (c). Pub. L. 98-558, §104(b)(1), substituted “unless” for “, except that” in provisions preceding cl. (1).

Subsec. (c)(1). Pub. L. 98-558, §104(b)(2), (3), substituted “makes a finding” for “shall, before giving such priority, determine” and “fails to meet” for “meet”.

Subsec. (c)(2). Pub. L. 98-558, §104(b)(4), inserted “except that” before “if”.

Subsecs. (d) to (f). Pub. L. 98-558, §104(c), added subsecs. (d) and (e) and redesignated former subsec. (d) as (f).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-252 effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103-252, set out as a note under section 9832 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 2(e)(2) of Pub. L. 102-401 provided that: “The amendment made by paragraph (1) [amending this section] shall apply only with respect to terminations of financial assistance, and denials of refunding, occurring after July 29, 1992.”

Amendment by section 2(f)–(h) of Pub. L. 102-401 effective Oct. 7, 1992, but not applicable with respect to fiscal years beginning before Oct. 1, 1992, and amendment by section 2(e)(1) of Pub. L. 102-401 effective July 30, 1992, see section 4 of Pub. L. 102-401, set out as a note under section 9835 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101-501, set out as a note under section 8621 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9833, 9836a, 9841, 9846 of this title; title 20 section 6312.

§ 9836a. Quality standards; monitoring of Head Start agencies and programs

(a) Quality standards

(1) Establishment of standards

The Secretary shall establish by regulation standards, including minimum levels of overall accomplishment, applicable to Head Start agencies, programs, and projects under this subchapter, including—

(A) performance standards with respect to services required to be provided, including health, parental involvement, nutritional, social, transition activities described in section 9837(d) of this title, and other services;

(B)(i) education performance standards to ensure the school readiness of children participating in a Head Start program, on completion of the Head Start program and prior to entering school; and

(ii) additional education performance standards to ensure that the children participating in the program, at a minimum—

(I) develop phonemic, print, and numeracy awareness;

(II) understand and use language to communicate for various purposes;

(III) understand and use increasingly complex and varied vocabulary;

(IV) develop and demonstrate an appreciation of books; and

(V) in the case of non-English background children, progress toward acquisition of the English language.¹

(C) administrative and financial management standards;

(D) standards relating to the condition and location of facilities for such agencies, programs, and projects; and

(E) such other standards as the Secretary finds to be appropriate.

(2) Considerations in developing standards

In developing the regulations required under paragraph (1), the Secretary shall—

(A) consult with experts in the fields of child development, early childhood education, child health care, family services (including linguistically and culturally appropriate services to non-English language background children and their families), administration, and financial management, and with persons with experience in the operation of Head Start programs;

(B) take into consideration—

(i) past experience with use of the standards in effect under this subchapter on May 18, 1994;

(ii) changes over the period since August 31, 1981, in the circumstances and problems typically facing children and families served by Head Start agencies;

(iii) developments concerning best practices with respect to early childhood education and development, children with disabilities, family services, program administration, and financial management;

(iv) projected needs of an expanding Head Start program;

(v) guidelines and standards currently in effect or under consideration that promote child health services, and projected needs of expanding Head Start programs;

(vi) changes in the population of children who are eligible to participate in Head Start programs, including the language background and family structure of such children; and

(vii) the need for, and state-of-the-art developments relating to, local policies and activities designed to ensure that children participating in Head Start programs make a successful transition to public schools; and

(C)(i) review and revise as necessary the performance standards in effect under this subsection; and

(ii) ensure that any such revisions in the performance standards will not result in the elimination of or any reduction in the scope or types of health, education, parental in-

volvement, nutritional, social, or other services required to be provided under such standards as in effect on October 27, 1998.

(3) Standards relating to obligations to delegate agencies

In developing standards under this subsection, the Secretary shall describe the obligations of a Head Start agency to a delegate agency to which the Head Start agency has delegated responsibility for providing services under this subchapter and determine whether the Head Start agency complies with the standards. The Secretary shall consider such compliance during the review described in subsection (c)(1)(A) of this section and in determining whether to renew financial assistance to the Head Start agency under this subchapter.

(b) Results-based performance measures

(1) In general

The Secretary, in consultation with representatives of Head Start agencies and with experts in the fields of early childhood education and development, family services, and program management, shall develop methods and procedures for measuring, annually and over longer periods, the quality and effectiveness of programs operated by Head Start agencies, and the impact of the services provided through the programs to children and their families (referred to in this subchapter as “results-based performance measures”).

(2) Characteristics of measures

The performance measures developed under this subsection shall—

(A) be used to assess the impact of the various services provided by Head Start programs and, to the extent the Secretary finds appropriate, administrative and financial management practices of such programs;

(B) be adaptable for use in self-assessment, peer review, and program evaluation of individual Head Start agencies and programs, not later than July 1, 1999; and

(C) be developed for other program purposes as determined by the Secretary.

The performance measures shall include the performance standards described in subsection (a)(1)(B)(ii) of this section.

(3) Use of measures

The Secretary shall use the performance measures developed pursuant to this subsection—

(A) to identify strengths and weaknesses in the operation of Head Start programs nationally, regionally, and locally; and

(B) to identify problem areas that may require additional training and technical assistance resources.

(4) Educational performance measures

Such results-based performance measures shall include educational performance measures that ensure that children participating in Head Start programs—

(A) know that letters of the alphabet are a special category of visual graphics that can be individually named;

¹ So in original. The period should probably be a semicolon.

- (B) recognize a word as a unit of print;
- (C) identify at least 10 letters of the alphabet; and
- (D) associate sounds with written words.

(5) Additional local results-based performance measures

In addition to other applicable results-based performance measures, Head Start agencies may establish local results-based educational performance measures.

(c) Monitoring of local agencies and programs

(1) In general

In order to determine whether Head Start agencies meet standards established under this subchapter and results-based performance measures developed by the Secretary under subsection (b) of this section with respect to program, administrative, financial management, and other requirements, the Secretary shall conduct the following reviews of designated Head Start agencies, and of the Head Start programs operated by such agencies:

- (A) A full review of each such agency at least once during each 3-year period.
- (B) A review of each newly designated agency immediately after the completion of the first year such agency carries out a Head Start program.
- (C) Followup reviews including prompt return visits to agencies and programs that fail to meet the standards.
- (D) Other reviews as appropriate.

(2) Conduct of reviews

The Secretary shall ensure that reviews described in subparagraphs (A) through (C) of paragraph (1)—

- (A) are performed, to the maximum extent practicable, by employees of the Department of Health and Human Services who are knowledgeable about Head Start programs;
- (B) are supervised by such an employee at the site of such Head Start agency;
- (C) are conducted by review teams that shall include individuals who are knowledgeable about Head Start programs and, to the maximum extent practicable, the diverse (including linguistic and cultural) needs of eligible children (including children with disabilities) and their families;
- (D) include as part of the reviews of the programs, a review and assessment of program effectiveness, as measured in accordance with the results-based performance measures developed by the Secretary pursuant to subsection (b) of this section and with the performance standards established pursuant to subparagraphs (A) and (B) of subsection (a)(1) of this section; and
- (E) seek information from the communities and the States involved about the performance of the programs and the efforts of the Head Start agencies to collaborate with other entities carrying out early childhood education and child care programs in the community.

(d) Corrective action; termination

(1) Determination

If the Secretary determines, on the basis of a review pursuant to subsection (c) of this sec-

tion, that a Head Start agency designated pursuant to section 9836 of this title fails to meet the standards described in subsection (a) of this section or results-based performance measures developed by the Secretary under subsection (b) of this section, the Secretary shall—

- (A) inform the agency of the deficiencies that shall be corrected;
- (B) with respect to each identified deficiency, require the agency—
 - (i) to correct the deficiency immediately, if the Secretary finds that the deficiency threatens the health or safety of staff or program participants or poses a threat to the integrity of Federal funds;
 - (ii) to correct the deficiency not later than 90 days after the identification of the deficiency if the Secretary finds, in the discretion of the Secretary, that such a 90-day period is reasonable, in light of the nature and magnitude of the deficiency; or
 - (iii) in the discretion of the Secretary (taking into consideration the seriousness of the deficiency and the time reasonably required to correct the deficiency), to comply with the requirements of paragraph (2) concerning a quality improvement plan; and
- (C) initiate proceedings to terminate the designation of the agency unless the agency corrects the deficiency.

(2) Quality improvement plan

(A) Agency responsibilities

In order to retain a designation as a Head Start agency under this subchapter, a Head Start agency that is the subject of a determination described in paragraph (1) (other than an agency required to correct a deficiency immediately or during a 90-day period under clause (i) or (ii) of paragraph (1)(B)) shall—

- (i) develop in a timely manner, obtain the approval of the Secretary regarding, and implement a quality improvement plan that specifies—
 - (I) the deficiencies to be corrected;
 - (II) the actions to be taken to correct such deficiencies; and
 - (III) the timetable for accomplishment of the corrective actions specified; and
- (ii) eliminate each deficiency identified, not later than the date for elimination of such deficiency specified in such plan (which shall not be later than 1 year after the date the agency received notice of the determination and of the specific deficiency to be corrected).

(B) Secretarial responsibility

Not later than 30 days after receiving from a Head Start agency a proposed quality improvement plan pursuant to subparagraph (A), the Secretary shall either approve such proposed plan or specify the reasons why the proposed plan cannot be approved.

(3) Training and technical assistance

The Secretary shall provide training and technical assistance to Head Start agencies

with respect to the development or implementation of such quality improvement plans to the extent the Secretary finds such provision to be feasible and appropriate given available funding and other statutory responsibilities.

(e) Summaries of monitoring outcomes

Not later than 120 days after the end of each fiscal year, the Secretary shall publish a summary report on the findings of reviews conducted under subsection (c) of this section and on the outcomes of quality improvement plans implemented under subsection (d) of this section, during such fiscal year. Such report shall be widely disseminated and available for public review in both written and electronic formats.

(Pub. L. 97-35, title VI, §641A, as added Pub. L. 103-252, title I, §108, May 18, 1994, 108 Stat. 631; amended Pub. L. 105-285, title I, §108, Oct. 27, 1998, 112 Stat. 2713.)

AMENDMENTS

1998—Subsec. (a)(1). Pub. L. 105-285, §108(a)(1)(A), inserted “, including minimum levels of overall accomplishment,” after “regulation standards” in introductory provisions.

Subsec. (a)(1)(A). Pub. L. 105-285, §108(a)(1)(B), struck out “education,” after “including health,”.

Subsec. (a)(1)(B) to (E). Pub. L. 105-285, §108(a)(1)(C), (D), added subpar. (B) and redesignated former subpars. (B) to (D) as (C) to (E), respectively.

Subsec. (a)(2). Pub. L. 105-285, §108(a)(2), (3), redesignated par. (3) as (2) and struck out heading and text of former par. (2). Text read as follows: “The regulations promulgated under this subsection shall establish the minimum levels of overall accomplishment that a Head Start agency shall achieve in order to meet the standards specified in paragraph (1).”

Subsec. (a)(2)(B)(iii). Pub. L. 105-285, §108(a)(4)(A), substituted “early childhood education and” for “child”.

Subsec. (a)(2)(C)(i). Pub. L. 105-285, §108(a)(4)(B)(i), struck out “not later than 1 year after May 18, 1994,” before “review” and substituted “this subsection; and” for “section 9846(b) of this title on the day before May 18, 1994; and”.

Subsec. (a)(2)(C)(ii). Pub. L. 105-285, §108(a)(4)(B)(ii), substituted “October 27, 1998” for “November 2, 1978”.

Subsec. (a)(3). Pub. L. 105-285, §108(a)(5), substituted “to a delegate agency” for “to an agency (referred to in this subchapter as the ‘delegate agency’)”.

Pub. L. 105-285, §108(a)(3), redesignated par. (4) as (3). Former par. (3) redesignated (2).

Subsec. (a)(4). Pub. L. 105-285, §108(a)(3), redesignated par. (4) as (3).

Subsec. (b). Pub. L. 105-285, §108(b)(1), inserted “Results-based” in heading.

Subsec. (b)(1). Pub. L. 105-285, §108(b)(2), substituted “The Secretary” for “Not later than 1 year after May 18, 1994, the Secretary”, “early childhood education and” for “child”, and “results-based performance measures” for “performance measures” and inserted “, and the impact of the services provided through the programs to children and their families” before “(referred)”.

Subsec. (b)(2). Pub. L. 105-285, §108(b)(3)(A), (B), (F), substituted “Characteristics” for “Design” in heading and “shall—” for “shall be designed—” in introductory provisions and inserted concluding provisions.

Subsec. (b)(2)(A). Pub. L. 105-285, §108(b)(3)(C), substituted “be used to assess the impact of” for “to assess”.

Subsec. (b)(2)(B). Pub. L. 105-285, §108(b)(3)(D), substituted “be adaptable” for “to be adaptable” and “, peer review, and program evaluation” for “and peer review” and inserted “, not later than July 1, 1999” before semicolon.

Subsec. (b)(2)(C). Pub. L. 105-285, §108(b)(3)(E), inserted “be developed” before “for other”.

Subsec. (b)(3)(A). Pub. L. 105-285, §108(b)(4), substituted “, regionally, and locally” for “and by region”.

Subsec. (b)(4), (5). Pub. L. 105-285, §108(b)(5), added pars. (4) and (5).

Subsec. (c)(1). Pub. L. 105-285, §108(c)(1), inserted “and results-based performance measures developed by the Secretary under subsection (b) of this section” after “standards established under this subchapter”.

Subsec. (c)(2)(B). Pub. L. 105-285, §108(c)(2)(A), struck out “and” at end.

Subsec. (c)(2)(C). Pub. L. 105-285, §108(c)(2)(B), inserted “(including children with disabilities)” after “eligible children” and substituted semicolon for period at end.

Subsec. (c)(2)(D), (E). Pub. L. 105-285, §108(c)(2)(C), added subpars. (D) and (E).

Subsec. (d)(1). Pub. L. 105-285, §108(d)(1)(A), inserted “or results-based performance measures developed by the Secretary under subsection (b) of this section” after “subsection (a) of this section” in introductory provisions.

Subsec. (d)(1)(B). Pub. L. 105-285, §108(d)(1)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “with respect to each identified deficiency, require the agency—

“(i) to correct the deficiency immediately; or

“(ii) at the discretion of the Secretary (taking into consideration the seriousness of the deficiency and the time reasonably required to correct the deficiency), to comply with the requirements of paragraph (2) concerning a quality improvement plan; and”.

Subsec. (d)(2)(A). Pub. L. 105-285, §108(d)(2), substituted “required to correct a deficiency immediately or during a 90-day period under clause (i) or (ii) of paragraph (1)(B)” for “able to correct a deficiency immediately” in introductory provisions.

Subsec. (e). Pub. L. 105-285, §108(e), inserted at end “Such report shall be widely disseminated and available for public review in both written and electronic formats.”

EFFECTIVE DATE

Section effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103-252, set out as an Effective Date of 1994 Amendment note under section 9832 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9835, 9836, 9841, 9843, 9846 of this title; title 20 section 6312.

§ 9837. Powers and functions of Head Start agencies

(a) Receipt, administration, and transfer of funds; sponsorship of projects; delegation of authority, etc.

In order to be designated as a Head Start agency under this subchapter, an agency must have authority under its charter or applicable law to receive and administer funds under this subchapter, funds and contributions from private or local public sources which may be used in support of a Head Start program, and funds under any Federal or State assistance program pursuant to which a public or private nonprofit or for-profit agency (as the case may be) organized in accordance with this subchapter, could act as grantee, contractor, or sponsor of projects appropriate for inclusion in a Head Start program. Such an agency must also be empowered to

transfer funds so received, and to delegate powers to other agencies, subject to the powers of its governing board and its overall program responsibilities. The power to transfer funds and delegate powers must include the power to make transfers and delegations covering component projects in all cases where this will contribute to efficiency and effectiveness or otherwise further program objectives.

(b) Participation of parents in decisionmaking, implementation, etc.

In order to be so designated, a Head Start agency shall also—

(1) establish effective procedures by which parents and area residents concerned will be enabled to directly participate in decisions that influence the character of programs affecting their interests;

(2) provide for their regular participation in the implementation of such programs;

(3) provide technical and other support needed to enable parents and area residents to secure on their own behalf available assistance from public and private sources;

(4) seek the involvement of parents of participating children in activities designed to help such parents become full partners in the education of their children, and to afford such parents the opportunity to participate in the development, conduct, and overall performance of the program at the local level;

(5) offer (directly or through referral to local entities, such as entities carrying out Even Start programs under part B of chapter 1 of title I of the Elementary and Secondary Education Act of 1965¹ (20 U.S.C. 2741 et seq.)), to parents of participating children, family literacy services and parenting skills training;

(6) offer to parents of participating children substance abuse counseling (either directly or through referral to local entities), including information on drug-exposed infants and fetal alcohol syndrome;

(7) at the option of such agency, offer (directly or through referral to local entities), to such parents—

(A) training in basic child development;

(B) assistance in developing communication skills;

(C) opportunities to share experiences with other parents;

(D) regular in-home visitation; or

(E) any other activity designed to help such parents become full partners in the education of their children;

(8) provide, with respect to each participating family, a family needs assessment that includes consultation with such parents about the benefits of parent involvement and about the activities described in paragraphs (4) through (7) in which such parents may choose to be involved (taking into consideration their specific family needs, work schedules, and other responsibilities);

(9) consider providing services to assist younger siblings of children participating in its Head Start program to obtain health services from other sources;

(10) perform community outreach to encourage individuals previously unaffiliated with Head Start programs to participate in its Head Start program as volunteers; and

(11)(A) inform custodial parents in single-parent families that participate in programs, activities, or services carried out or provided under this subchapter about the availability of child support services for purposes of establishing paternity and acquiring child support; and

(B) refer eligible parents to the child support offices of State and local governments.

(c) Coordination with other agencies

The head of each Head Start agency shall coordinate and collaborate with the State agency responsible for administering the State program carried out under subchapter II-B of this chapter, and other early childhood education and development programs, including Even Start programs under part B of chapter 1 of title I of the Elementary and Secondary Education Act of 1965¹ (20 U.S.C. 2741 et seq.) and programs under part C and section 619 of the Individuals with Disabilities Education Act (20 U.S.C. 1431-1445, 1419), serving the children and families served by the Head Start agency to carry out the provisions of this subchapter.

(d) Transition coordination with schools

(1) Each Head Start agency shall take steps to ensure, to the maximum extent possible, that children maintain the developmental and educational gains achieved in Head Start programs and build upon such gains in further schooling.

(2) A Head Start agency may take steps to coordinate with the local educational agency serving the community involved and with schools in which children participating in a Head Start program operated by such agency will enroll following such program, including—

(A) collaborating on the shared use of transportation and facilities; and

(B) exchanging information on the provision of noneducational services to such children.

(3) In order to promote the continued involvement of the parents of children that participate in Head Start programs in the education of their children upon transition to school, the Head Start agency shall—

(A) provide training to the parents—

(i) to inform the parents about their rights and responsibilities concerning the education of their children; and

(ii) to enable the parents to understand and work with schools in order to communicate with teachers and other school personnel, to support the school work of their children, and to participate as appropriate in decisions relating to the education of their children; and

(B) take other actions, as appropriate and feasible, to support the active involvement of the parents with schools, school personnel, and school-related organizations.

(4) The Secretary, in cooperation with the Secretary of Education, shall—

(A) evaluate the effectiveness of the projects and activities funded under section 9837a of this title;

¹ See References in Text note below.

(B) disseminate to Head Start agencies information (including information from the evaluation required by subparagraph (A)) on effective policies and activities relating to the transition of children from Head Start programs to public schools; and

(C) provide technical assistance to such agencies to promote and assist such agencies to adopt and implement such effective policies and activities.

(e) Assessment when hiring or evaluating classroom teachers

Head Start agencies shall adopt, in consultation with experts in child development and with classroom teachers, an assessment to be used when hiring or evaluating any classroom teacher in a center-based Head Start program. Such assessment shall measure whether such teacher has mastered the functions described in section 9843a(a)(1) of this title.

(Pub. L. 97-35, title VI, §642, Aug. 13, 1981, 95 Stat. 502; Pub. L. 99-425, title I, §103, Sept. 30, 1986, 100 Stat. 966; Pub. L. 101-501, title I, §109, Nov. 3, 1990, 104 Stat. 1231; Pub. L. 102-401, §2(i), (k)(3), Oct. 7, 1992, 106 Stat. 1957, 1959; Pub. L. 103-252, title I, §109, May 18, 1994, 108 Stat. 634; Pub. L. 105-285, title I, §109, Oct. 27, 1998, 112 Stat. 2716.)

REFERENCES IN TEXT

Part B of chapter 1 of title I of the Elementary and Secondary Education Act of 1965, referred to in subsecs. (b)(5) and (c), means part B of chapter 1 of title I of Pub. L. 89-10 which was classified generally to part B (§2741 et seq.) of division 1 of subchapter I of chapter 47 of Title 20, Education, prior to being omitted in the general amendment of Pub. L. 89-10 by Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3519. See section 6381 et seq. of Title 20.

The Individuals with Disabilities Education Act, referred to in subsec. (c), is title VI of Pub. L. 91-230, Apr. 13, 1970, 84 Stat. 175, as amended. Part C of the Act is classified generally to subchapter III (§1431 et seq.) of chapter 33 of Title 20, Education. Section 619 of the Act is classified to section 1419 of Title 20. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105-285, §109(1), inserted “or for-profit” after “nonprofit”.

Subsec. (b)(6). Pub. L. 105-285, §109(2)(E), added par. (6). Former par. (6) redesignated (7).

Subsec. (b)(6)(D) to (F). Pub. L. 105-285, §109(2)(A), struck out subpar. (D) which read as follows: “substance abuse counseling;” and further directed the amendment of par. (6) “by redesignating subparagraphs (E) and (F) and subparagraphs (D) and (E), respectively”, which was executed by redesignating subpars. (E) and (F) as (D) and (E), respectively, to reflect the probable intent of Congress.

Subsec. (b)(7). Pub. L. 105-285, §109(2)(D), redesignated par. (6) as (7). Former par. (7) redesignated (8).

Subsec. (b)(8). Pub. L. 105-285, §109(2)(D), (F), redesignated par. (7) as (8) and substituted “paragraphs (4) through (7)” for “paragraphs (4) through (6)”. Former par. (8) redesignated (9).

Pub. L. 105-285, §109(2)(B), struck out “and” at end.

Subsec. (b)(9). Pub. L. 105-285, §109(2)(D), redesignated par. (8) as (9). Former par. (9) redesignated (10).

Pub. L. 105-285, §109(2)(C), substituted “; and” for period at end.

Subsec. (b)(10). Pub. L. 105-285, §109(2)(D), redesignated par. (9) as (10).

Subsec. (b)(11). Pub. L. 105-285, §109(2)(G), added par. (11).

Subsec. (c). Pub. L. 105-285, §109(3), inserted “and collaborate” after “shall coordinate” and “and programs under part C and section 619 of the Individuals with Disabilities Education Act (20 U.S.C. 1431-1445, 1419)” after “(20 U.S.C. 2741 et seq.)” and substituted “the State program carried out under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858 et seq.), and other early childhood education and development” for “section 602(g) of this title, and other”.

Subsec. (d)(1). Pub. L. 105-285, §109(4)(A), substituted “take steps to ensure, to the maximum extent possible, that children maintain” for “carry out the actions specified in this subsection, to the extent feasible and appropriate in the circumstances (including the extent to which such agency is able to secure the cooperation of parents and schools) to enable children to maintain” and “build” for “to build” and inserted “and educational” after “developmental”.

Subsec. (d)(2), (3). Pub. L. 105-285, §109(4)(B), (C), redesignated pars. (3) and (4) as (2) and (3), respectively, and struck out former par. (2) which related to coordination between Head Start agency and local education agency and schools.

Subsec. (d)(4). Pub. L. 105-285, §109(4)(C), redesignated par. (5) as (4). Former par. (4) redesignated (3).

Subsec. (d)(4)(A). Pub. L. 105-285, §109(4)(D), substituted “section 9837a of this title” for “the Head Start Transition Project Act (42 U.S.C. 9855 et seq.)”.

Subsec. (d)(5). Pub. L. 105-285, §109(4)(C), redesignated par. (5) as (4).

Subsec. (e). Pub. L. 105-285, §109(5), added subsec. (e). 1994—Subsec. (b). Pub. L. 103-252, §109(1), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “In order to be so designated, a Head Start agency must also (1) establish effective procedures by which parents and area residents concerned will be enabled to directly participate in decisions that influence the character of programs affecting their interests; (2) provide for their regular participation in the implementation of such programs; (3) provide technical and other support needed to enable parents and area residents to secure on their own behalf available assistance from public and private sources; (4) involve parents of children participating in its Head Start program in appropriate educational services (in accordance with the performance standards in effect upon section 9846(b) of this title or through referral of such parents to educational services available in the community) in order to aid their children to attain their full potential; (5) establish procedures to seek reimbursement, to the extent feasible, from other agencies for services for which any such other agency is responsible, which are provided to a Head Start participant by the Head Start agency; (6) provide (directly or through referral to educational services available in the community) parents of children participating in its Head Start program with child development and literacy skills training in order to aid their children to attain their full potential; and (7) consider providing services to assist younger siblings of children participating in its Head Start program to obtain health services from other sources.”

Subsec. (c). Pub. L. 103-252, §109(2), struck out “schools that will subsequently serve children in Head Start programs,” after “coordinate with” and inserted “, including Even Start programs under part B of chapter 1 of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2741 et seq.),” after “other programs”.

Subsec. (d). Pub. L. 103-252, §109(3), added subsec. (d). 1992—Subsec. (b)(6), (7). Pub. L. 102-401, §2(i), added cls. (6) and (7).

Subsec. (c). Pub. L. 102-401, §2(k)(3), substituted “subchapter” for “subtitle”.

1990—Subsec. (b)(4), (5). Pub. L. 101-501, §109(1), added cl. (4) and redesignated former cl. (4) as (5).

Subsec. (c). Pub. L. 101-501, §109(2), substituted “with schools that will subsequently serve children in Head Start programs, the State agency responsible for administering section 602(g) of this title, and other pro-

grams serving the children and families served by the Head Start agency to carry out the provisions of this subtitle” for “with other State and local programs serving the children in the Head Start agency to carry out the provisions of this subsection”.

1986—Subsec. (c). Pub. L. 99-425 inserted “State and local” before “programs”.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-252 effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103-252, set out as a note under section 9832 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-401 effective Oct. 7, 1992, but not applicable with respect to fiscal years beginning before Oct. 1, 1992, see section 4 of Pub. L. 102-401, set out as a note under section 9835 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101-501, set out as a note under section 8621 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-425 effective Oct. 1, 1986, see section 1001 of Pub. L. 99-425, set out as a note under section 8621 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9836, 9836a of this title.

§ 9837a. Head Start transition

Each Head Start agency shall take steps to coordinate with the local educational agency serving the community involved and with schools in which children participating in a Head Start program operated by such agency will enroll following such program, including—

- (1) developing and implementing a systematic procedure for transferring, with parental consent, Head Start program records for each participating child to the school in which such child will enroll;
- (2) establishing channels of communication between Head Start staff and their counterparts in the schools (including teachers, social workers, and health staff) to facilitate coordination of programs;
- (3) conducting meetings involving parents, kindergarten or elementary school teachers, and Head Start program teachers to discuss the educational, developmental, and other needs of individual children;
- (4) organizing and participating in joint transition-related training of school staff and Head Start staff;
- (5) developing and implementing a family outreach and support program in cooperation with entities carrying out parental involvement efforts under title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.);
- (6) assisting families, administrators, and teachers in enhancing educational and developmental continuity between Head Start services and elementary school classes; and
- (7) linking the services provided in such Head Start program with the education serv-

ices provided by such local educational agency.

(Pub. L. 97-35, title VI, § 642A, as added Pub. L. 105-285, title I, § 110, Oct. 27, 1998, 112 Stat. 2717.)

REFERENCES IN TEXT

The Elementary and Secondary Education Act of 1965, referred to in par. (5), is Pub. L. 89-10, Apr. 11, 1965, 79 Stat. 27, as amended. Title I of the Act is classified generally to subchapter I (§ 6301 et seq.) of chapter 70 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9834, 9837 of this title.

§ 9838. Submission of plans to chief executive officer

In carrying out the provisions of this subchapter, no contract, agreement, grant, or other assistance shall be made for the purpose of carrying out a Head Start program within a State unless a plan setting forth such proposed contract, agreement, grant, or other assistance has been submitted to the chief executive officer of the State, and such plan has not been disapproved by such officer within 45 days of such submission, or, if disapproved (for reasons other than failure of the program to comply with State health, safety, and child care laws, including regulations applicable to comparable child care programs in the State), has been reconsidered by the Secretary and found by the Secretary to be fully consistent with the provisions and in furtherance of the purposes of this subchapter, as evidenced by a written statement of the Secretary's findings that is transmitted to such officer. Funds to cover the costs of the proposed contract, agreement, grant, or other assistance shall be obligated from the appropriation which is current at the time the plan is submitted to such officer. This section shall not, however, apply to contracts, agreements, grants, loans, or other assistance to any institution of higher education in existence on August 13, 1981.

(Pub. L. 97-35, title VI, § 643, Aug. 13, 1981, 95 Stat. 502; Pub. L. 101-501, title I, § 110, Nov. 3, 1990, 104 Stat. 1231; Pub. L. 102-401, § 2(k)(4), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 105-285, title I, § 111, Oct. 27, 1998, 112 Stat. 2718.)

AMENDMENTS

1998—Pub. L. 105-285, in first sentence, substituted “45 days” for “30 days” and “disapproved (for reasons other than failure of the program to comply with State health, safety, and child care laws, including regulations applicable to comparable child care programs in the State)” for “so disapproved” and inserted “, as evidenced by a written statement of the Secretary's findings that is transmitted to such officer” before period.

1992—Pub. L. 102-401 substituted “such officer” for “the such officer” in two places.

1990—Pub. L. 101-501 substituted “chief executive officer” for first reference to “Governor” and “such officer” for second and third references to “Governor”.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-401 effective Oct. 7, 1992, but not applicable with respect to fiscal years beginning before Oct. 1, 1992, see section 4 of Pub. L. 102-401, set out as a note under section 9835 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101-501, set out as a note under section 8621 of this title.

§ 9839. Administrative requirements and standards

(a) Employment practices, nonpartisanship, staff accountability, public access to information, etc.

Each Head Start agency shall observe standards of organization, management, and administration which will assure, so far as reasonably possible, that all program activities are conducted in a manner consistent with the purposes of this subchapter and the objective of providing assistance effectively, efficiently, and free of any taint of partisan political bias or personal or family favoritism. Each such agency shall establish or adopt rules to carry out this section, which shall include rules to assure full staff accountability in matters governed by law, regulations, or agency policy. Each agency shall also provide for reasonable public access to information, including public hearings at the request of appropriate community groups and reasonable public access to books and records of the agency or other agencies engaged in program activities or operations involving the use of authority or funds for which it is responsible. Each such agency shall adopt for itself and other agencies using funds or exercising authority for which it is responsible, rules designed to (1) establish specific standards governing salaries, salary increases, travel and per diem allowances, and other employee benefits; (2) assure that only persons capable of discharging their duties with competence and integrity are employed and that employees are promoted or advanced under impartial procedures calculated to improve agency performance and effectiveness; (3) guard against personal or financial conflicts of interest; and (4) define employee duties in an appropriate manner which will in any case preclude employees from participating, in connection with the performance of their duties, in any form of picketing, protest, or other direct action which is in violation of law.

(b) Development and administrative costs of programs

Except as provided in subsection (f) of this section, no financial assistance shall be extended under this subchapter in any case in which the Secretary determines that the costs of developing and administering a program assisted under this subchapter exceed 15 percent of the total costs, including the required non-Federal contributions to such costs, of such program. The Secretary shall establish by regulation, criteria for determining (1) the costs of developing and administering such program; and (2) the total costs of such program. In any case in which the Secretary determines that the cost of administering such program does not exceed 15 percent of such total costs but is, in the judgment of the Secretary, excessive, the Secretary shall forthwith require the recipient of such financial assistance to take such steps prescribed by the Secretary as will eliminate such excessive administrative cost, including the sharing by one

or more Head Start agencies of a common director and other administrative personnel. The Secretary may waive the limitation prescribed by this subsection for specific periods of time not to exceed 12 months whenever the Secretary determines that such a waiver is necessary in order to carry out the purposes of this subchapter.

(c) Rules and regulations; special or simplified requirements for small agencies; common or joint use of facilities

The Secretary shall prescribe rules or regulations to supplement subsections (a) and (f) of this section, which shall be binding on all agencies carrying on Head Start program activities with financial assistance under this subchapter. The Secretary may, where appropriate, establish special or simplified requirements for smaller agencies or agencies operating in rural areas. Policies and procedures shall be established to ensure that indirect costs attributable to the common or joint use of facilities and services by programs assisted under this subchapter and other programs shall be fairly allocated among the various programs which utilize such facilities and services.

(d) Publication and notification of proposed rules, etc.

At least 30 days prior to their effective date, all rules, regulations, and application forms shall be published in the Federal Register and shall be sent to each grantee with the notification that each such grantee has the right to submit comments pertaining thereto to the Secretary prior to the final adoption thereof.

(e) Neutrality concerning union organizing

Funds appropriated to carry out this subchapter shall not be used to assist, promote, or deter union organizing.

(f) Purchase of facility; approval requirements; financial assistance

(1) The Secretary shall establish uniform procedures for Head Start agencies to request approval to purchase facilities, or to request approval of the purchase (after December 31, 1986) of facilities, to be used to carry out Head Start programs. The Secretary shall suspend any proceedings pending against any Head Start agency to claim costs incurred in purchasing such facilities until the agency has been afforded an opportunity to apply for approval of the purchase and the Secretary has determined whether the purchase will be approved. The Secretary shall not be required to repay claims previously satisfied by Head Start agencies for costs incurred in the purchase of such facilities.

(2) Financial assistance provided under this subchapter may not be used by a Head Start agency to purchase a facility (including paying the cost of amortizing the principal, and paying interest on, loans) to be used to carry out a Head Start program unless the Secretary approves a request that is submitted by such agency and contains—

(A) a description of the site of the facility proposed to be purchased or that was previously purchased;

(B) the plans and specifications of such facility;

(C) information demonstrating that—

(i) the proposed purchase will result, or the previous purchase has resulted, in savings when compared to the costs that would be incurred to acquire the use of an alternative facility to carry out such program; or

(ii) the lack of alternative facilities will prevent, or would have prevented, the operation of such program;

(D) in the case of a request regarding a previously purchased facility, information demonstrating that the facility will be used principally as a Head Start center, or a direct support facility for a Head Start program; and

(E) such other information and assurances as the Secretary may require.

(3) Upon a determination by the Secretary that suitable facilities are not otherwise available to Indian tribes to carry out Head Start programs, and that the lack of suitable facilities will inhibit the operation of such programs, the Secretary, in the discretion of the Secretary, may authorize the use of financial assistance, from the amount reserved under section 9835(a)(2)(A) of this title, to make payments for the purchase of facilities owned by such tribes. The amount of such a payment for such a facility shall not exceed the fair market value of the facility.

(g) Payments for capital expenditures

(1) Upon a determination by the Secretary that suitable facilities (including public school facilities) are not otherwise available to Indian tribes, rural communities, and other low-income communities to carry out Head Start programs, that the lack of suitable facilities will inhibit the operation of such programs, and that construction of such facilities is more cost effective than purchase of available facilities or renovation, the Secretary, in the discretion of the Secretary, may authorize the use of financial assistance under this subchapter to make payments for capital expenditures related to facilities that will be used to carry out such programs. The Secretary shall establish uniform procedures for Head Start agencies to request approval for such payments, and shall promote, to the extent practicable, the collocation of Head Start programs with other programs serving low-income children and families.

(2) Such payments may be used for capital expenditures (including paying the cost of amortizing the principal, and paying interest on, loans) such as expenditures for—

(A) construction of facilities that are not in existence on the date of the determination;

(B) major renovation of facilities in existence on such date; and

(C) purchase of vehicles used for programs conducted at the Head Start facilities.

(3) All laborers and mechanics employed by contractors or subcontractors in the construction or renovation of facilities to be used to carry out Head Start programs shall be paid wages at not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor in accordance with sections 3141–3144, 3146, and 3147 of title 40.

(h) Personnel preferences to Indian tribe members

In all personnel actions of the American Indian Programs Branch of the Head Start Bureau of the Administration for Children and Families, the Secretary shall give the same preference to individuals who are members of an Indian tribe as the Secretary gives to a disabled veteran, as defined in section 2108(3)(C) of title 5. The Secretary shall take such additional actions as may be necessary to promote recruitment of such individuals for employment in the Administration.

(Pub. L. 97–35, title VI, § 644, Aug. 13, 1981, 95 Stat. 502; Pub. L. 101–501, title I, §§ 111, 112, Nov. 3, 1990, 104 Stat. 1231; Pub. L. 102–401, § 2(j), Oct. 7, 1992, 106 Stat. 1958; Pub. L. 103–218, title IV, § 403, Mar. 9, 1994, 108 Stat. 96; Pub. L. 103–252, title I, § 110, May 18, 1994, 108 Stat. 636; Pub. L. 105–285, title I, § 106(e), Oct. 27, 1998, 112 Stat. 2712.)

CODIFICATION

In subsec. (g)(3), “sections 3141–3144, 3146, and 3147 of title 40” substituted for “the Act of March 3, 1931, as amended (40 U.S.C. 276a et seq., commonly known as the ‘Davis-Bacon Act’)” on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

AMENDMENTS

1998—Subsec. (f)(2). Pub. L. 105–285 substituted “Financial assistance” for “Except as provided in section 9835(a)(3)(C)(v) of this title, financial assistance”.

1994—Subsec. (d). Pub. L. 103–252, § 110(1), struck out “guidelines, instructions,” after “all rules, regulations,”.

Subsec. (f)(1). Pub. L. 103–218, § 403(1), inserted “, or to request approval of the purchase (after December 31, 1986) of facilities,” after “to purchase facilities” and inserted at end “The Secretary shall suspend any proceedings pending against any Head Start agency to claim costs incurred in purchasing such facilities until the agency has been afforded an opportunity to apply for approval of the purchase and the Secretary has determined whether the purchase will be approved. The Secretary shall not be required to repay claims previously satisfied by Head Start agencies for costs incurred in the purchase of such facilities.”

Subsec. (f)(2). Pub. L. 103–252, § 110(2)(A), substituted “section 9835(a)(3)(C)(v)” for “section 9835(a)(3)(A)(v)”.

Subsec. (f)(2)(A). Pub. L. 103–218, § 403(2)(A), inserted before semicolon at end “or that was previously purchased”.

Subsec. (f)(2)(C)(i). Pub. L. 103–218, § 403(2)(B)(i), inserted “, or the previous purchase has resulted,” after “purchase will result”.

Subsec. (f)(2)(C)(ii). Pub. L. 103–218, § 403(2)(B)(ii), inserted “, or would have prevented,” after “will prevent” and struck out “and” after semicolon at end.

Subsec. (f)(2)(D), (E). Pub. L. 103–218, § 403(2)(C), (D), added subpar. (D) and redesignated former subpar. (D) as (E).

Subsec. (f)(3). Pub. L. 103–252, § 110(2)(B), added par. (3).

Subsecs. (g), (h). Pub. L. 103–252, § 110(3), added subsecs. (g) and (h).

1992—Subsec. (b). Pub. L. 102–401, § 2(j)(1), substituted “Except as provided in subsection (f) of this section, no” for “No”.

Subsec. (c). Pub. L. 102–401, § 2(j)(2), substituted “subsections (a) and (f) of this section” for “subsection (a) of this section”.

Subsec. (f). Pub. L. 102–401, § 2(j)(3), added subsec. (f). 1990—Subsec. (b). Pub. L. 101–501, § 111, inserted “the required” before “non-Federal contributions”.

Subsec. (e). Pub. L. 101-501, § 112, added subsec. (e).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-252 effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103-252, set out as a note under section 9832 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-401 effective Oct. 7, 1992, but not applicable with respect to fiscal years beginning before Oct. 1, 1992, see section 4 of Pub. L. 102-401, set out as a note under section 9835 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101-501, set out as a note under section 8621 of this title.

STUDY OF BENEFITS FOR HEAD START EMPLOYEES

Section 120 of Pub. L. 103-252 provided that:

“(a) STUDY.—The Secretary of Health and Human Services shall conduct a study regarding the benefits available to individuals employed by Head Start agencies under the Head Start Act (42 U.S.C. 9831 et seq.).

“(b) REPORT.—

“(1) PREPARATION.—The Secretary shall prepare a report, containing the results of the study, that—

“(A) describes the benefits, including health care benefits, family and medical leave, and retirement pension benefits, available to such individuals;

“(B) includes recommendations for increasing the access of the individuals to benefits, including access to a retirement pension program; and

“(C) addresses the feasibility of participation by such individuals in the Federal Employees' Retirement System under chapter 84 of title 5, United States Code.

“(2) SUBMISSION.—The Secretary shall submit the report to the appropriate committees of Congress.”

§ 9840. Participation in Head Start programs

(a) Criteria for eligibility

(1) The Secretary shall by regulation prescribe eligibility for the participation of persons in Head Start programs assisted under this subchapter. Except as provided in paragraph (2), such criteria may provide—

(A) that children from low-income families shall be eligible for participation in programs assisted under this subchapter if their families' incomes are below the poverty line, or if their families are eligible or, in the absence of child care, would potentially be eligible for public assistance; and

(B) pursuant to such regulations as the Secretary shall prescribe, that—

(i) programs assisted under this subchapter may include, to a reasonable extent, participation of children in the area served who would benefit from such programs but whose families do not meet the low-income criteria prescribed pursuant to subparagraph (A); and

(ii) a child who has been determined to meet the low-income criteria and who is participating in a Head Start program in a program year shall be considered to continue to meet the low-income criteria through the end of the succeeding program year.

In determining, for purposes of this paragraph, whether a child who has applied for enrollment

in a Head Start program meets the low-income criteria, an entity may consider evidence of family income during the 12 months preceding the month in which the application is submitted, or during the calendar year preceding the calendar year in which the application is submitted, whichever more accurately reflects the needs of the family at the time of application.

(2) Whenever a Head Start program is operated in a community with a population of 1,000 or less individuals and—

(A) there is no other preschool program in the community;

(B) the community is located in a medically underserved area, as designated by the Secretary pursuant to section 254c(b)(3)¹ of this title and is located in a health professional shortage area, as designated by the Secretary pursuant to section 254e(a)(1) of this title;

(C) the community is in a location which, by reason of remoteness, does not permit reasonable access to the types of services described in clauses (A) and (B); and

(D) not less than 50 percent of the families to be served in the community are eligible under the eligibility criteria established by the Secretary under paragraph (1);

the Head Start program in each such locality shall establish the criteria for eligibility, except that no child residing in such community whose family is eligible under such eligibility criteria shall, by virtue of such project's eligibility criteria, be denied an opportunity to participate in such program. During the period beginning on October 30, 1984, and ending on October 1, 1994, and unless specifically authorized in any statute of the United States enacted after October 30, 1984, the Secretary may not make any change in the method, as in effect on April 25, 1984, of calculating income used to prescribe eligibility for the participation of persons in the Head Start programs assisted under this subchapter if such change would result in any reduction in, or exclusion from, participation of persons in any of such programs.

(b) Establishment of fee schedule or charging of fees; payment by families willing and able to pay

The Secretary shall not prescribe any fee schedule or otherwise provide for the charging of any fees for participation in Head Start programs, unless such fees are authorized by legislation hereafter enacted. Nothing in this subsection shall be construed to prevent the families of children who participate in Head Start programs and who are willing and able to pay the full cost of such participation from doing so. A Head Start agency that provides a Head Start program with full-working-day services in collaboration with other agencies or entities may collect a family copayment to support extended day services if a copayment is required in conjunction with the collaborative. The copayment charged to families receiving services through the Head Start program shall not exceed the copayment charged to families with similar incomes and circumstances who are receiving the services through participation in a program carried out by another agency or entity.

¹ See References in Text note below.

(c) Availability of more than one year of services; children eligible

Each Head Start program operated in a community shall be permitted to provide more than 1 year of Head Start services to eligible children (age 3 to compulsory school attendance) in the State. Each Head Start program operated in a community shall be permitted to recruit and accept applications for enrollment of children throughout the year.

(d) Indian tribes

(1) An Indian tribe that—

(A) operates a Head Start program;

(B) enrolls as participants in the program all children in the community served by the tribe (including a community that is an off-reservation area, designated by an appropriate tribal government, in consultation with the Secretary) from families that meet the low-income criteria prescribed under subsection (a)(1)(A) of this section; and

(C) has the resources to enroll additional children in the community who do not meet the low-income criteria;

may enroll such additional children in a Head Start program, in accordance with this subsection, if the program predominantly serves children who meet the low-income criteria.

(2) The Indian tribe shall enroll the children in the Head Start program in accordance with such requirements as the Secretary may specify by regulation promulgated after consultation with Indian tribes.

(3) In providing services through a Head Start program to such children, the Indian tribe may not use funds that the Secretary has determined, in accordance with section 9835(g)(3) of this title, are to be used for expanding Head Start programs under this subchapter.

(Pub. L. 97-35, title VI, §645, Aug. 13, 1981, 95 Stat. 504; Pub. L. 98-558, title I, §105, Oct. 30, 1984, 98 Stat. 2879; Pub. L. 99-425, title I, §104, Sept. 30, 1986, 100 Stat. 966; Pub. L. 101-501, title I, §§113, 114, Nov. 3, 1990, 104 Stat. 1231; Pub. L. 101-597, title IV, §401(e), Nov. 16, 1990, 104 Stat. 3035; Pub. L. 103-252, title I, §111, May 18, 1994, 108 Stat. 637; Pub. L. 105-285, title I, §112, Oct. 27, 1998, 112 Stat. 2718.)

REFERENCES IN TEXT

Section 254c of this title, referred to in subsec. (a)(2)(B), was in the original a reference to section 330 of the Public Health Service Act, act July 1, 1944, which was omitted in the general amendment of subpart I (§254b et seq.) of part D of subchapter II of chapter 6A of this title by Pub. L. 104-299, §2, Oct. 11, 1996, 110 Stat. 3626. Sections 2 and 3(a) of Pub. L. 104-299 enacted new sections 330 and 330A of act July 1, 1944, which are classified, respectively, to sections 254b and 254c of this title.

AMENDMENTS

1998—Subsec. (a)(1). Pub. L. 105-285, §112(a), substituted “criteria may provide—” for “criteria may provide”, realigned margins of subpars. (A) and (B), in subpar. (B) substituted “shall prescribe, that—” for “shall prescribe, that”, inserted “(i)” before “programs assisted under this subchapter may”, and substituted “subparagraph (A); and”, cl. (ii), and concluding provisions for “clause (A).”

Subsec. (b). Pub. L. 105-285, §112(b), inserted at end “A Head Start agency that provides a Head Start pro-

gram with full-working-day services in collaboration with other agencies or entities may collect a family copayment to support extended day services if a copayment is required in conjunction with the collaborative. The copayment charged to families receiving services through the Head Start program shall not exceed the copayment charged to families with similar incomes and circumstances who are receiving the services through participation in a program carried out by another agency or entity.”

Subsec. (c). Pub. L. 105-285, §112(c), inserted at end “Each Head Start program operated in a community shall be permitted to recruit and accept applications for enrollment of children throughout the year.”

Subsec. (d)(1)(B). Pub. L. 105-285, §112(d), substituted “a community that is an off-reservation area, designated by an appropriate tribal government, in consultation with the Secretary” for “a community with a near-reservation designation, as defined by the Bureau of Indian Affairs”.

1994—Subsec. (c). Pub. L. 103-252, §111(1), substituted “shall be permitted to provide more than 1 year of Head Start services to eligible children (age 3 to compulsory school attendance) in the State.” for “may provide more than one year of Head Start services to children from age 3 to the age of compulsory school attendance in the State in which the Head Start program is located. The Secretary may not issue or enforce any rule (as defined in section 551(4) of title 5) or guideline that forbids any Head Start agency to carry out a Head Start program in accordance with the authority described in the preceding sentence.”

Subsec. (d). Pub. L. 103-252, §111(2), added subsec. (d). 1990—Subsec. (a)(2). Pub. L. 101-501, §113, substituted “1994” for “1990” in closing provisions.

Subsec. (a)(2)(B). Pub. L. 101-597 substituted “health professional shortage area” for “health manpower shortage area”.

Subsec. (c). Pub. L. 101-501, §114, inserted at end “The Secretary may not issue or enforce any rule (as defined in section 551(4) of title 5) or guideline that forbids any Head Start agency to carry out a Head Start program in accordance with the authority described in the preceding sentence.”

1986—Subsec. (a)(2). Pub. L. 99-425 substituted “1990” for “1986” in closing provisions.

1984—Subsec. (a)(2). Pub. L. 98-558, §105(a), inserted at end “During the period beginning on October 30, 1984, and ending on October 1, 1986, and unless specifically authorized in any statute of the United States enacted after October 30, 1984, the Secretary may not make any change in the method, as in effect on April 25, 1984, of calculating income used to prescribe eligibility for the participation of persons in the Head Start programs assisted under this subchapter if such change would result in any reduction in, or exclusion from, participation of persons in any of such programs.”

Subsec. (c). Pub. L. 98-558, §105(b), added subsec. (c).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-252 effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103-252, set out as a note under section 9832 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101-501, set out as a note under section 8621 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-425 effective Oct. 1, 1986, see section 1001 of Pub. L. 99-425, set out as a note under section 8621 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1758, 1766, 9835, 9840a of this title.

§ 9840a. Early Head Start programs for families with infants and toddlers

(a) In general

The Secretary shall make grants, in accordance with the provisions of this section for programs providing family-centered services for low-income families with very young children designed to promote the development of the children, and to enable their parents to fulfill their roles as parents and to move toward self-sufficiency.

(b) Scope and design of programs

In carrying out a program described in subsection (a) of this section, an entity receiving assistance under this section shall—

(1) provide, either directly or through referral, early, continuous, intensive, and comprehensive child development and family support services that will enhance the physical, social, emotional, and intellectual development of participating children;

(2) ensure that the level of services provided to families responds to their needs and circumstances;

(3) promote positive parent-child interactions;

(4) provide services to parents to support their role as parents and to help the families move toward self-sufficiency (including educational and employment services as appropriate);

(5) coordinate services with services provided by programs in the State and programs in the community (including programs for infants and toddlers with disabilities) to ensure a comprehensive array of services (such as health and mental health services);

(6) ensure formal linkages with local Head Start programs in order to provide for continuity of services for children and families;

(7) in the case of a Head Start agency that operates a program and that also provides Head Start services through the age of mandatory school attendance, ensure that children and families participating in the program receive such services through such age;

(8) ensure formal linkages with the agencies and entities described in section 644(b) of the Individuals with Disabilities Education Act (20 U.S.C. 1444(b)) and providers of early intervention services for infants and toddlers with disabilities under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.); and

(9) meet such other requirements concerning design and operation of the program described in subsection (a) of this section as the Secretary may establish.

(c) Persons eligible to participate

Persons who may participate in programs described in subsection (a) of this section include—

(1) pregnant women; and

(2) families with children under age 3;

who meet the income criteria specified for families in section 9840(a)(1) of this title.

(d) Eligible service providers

To be eligible to receive assistance under this section, an entity shall submit an application to the Secretary at such time, in such manner, and

containing such information as the Secretary may require. Entities that may apply to carry out activities under this section include—

(1) entities operating Head Start programs under this subchapter; and

(2) other public entities, and nonprofit or for-profit private entities, capable of providing child and family services that meet the standards for participation in programs under this subchapter and meet such other appropriate requirements relating to the activities under this section as the Secretary may establish.

(e) Selection of grant recipients

From the portion specified in section 9835(a)(6) of this title, the Secretary shall award grants under this subsection on a competitive basis to applicants meeting the criteria specified in subsection (d) of this section (giving priority to entities with a record of providing early, continuous, and comprehensive childhood development and family services).

(f) Distribution

In awarding grants to eligible applicants under this section, the Secretary shall—

(1) ensure an equitable national geographic distribution of the grants; and

(2) award grants to applicants proposing to serve communities in rural areas and to applicants proposing to serve communities in urban areas.

(g) Monitoring, training, technical assistance, and evaluation

(1) Requirement

In order to ensure the successful operation of programs assisted under this section, the Secretary shall use funds from the portion specified in section 9835(a)(6) of this title to monitor the operation of such programs, evaluate their effectiveness, and provide training and technical assistance tailored to the particular needs of such programs.

(2) Training and technical assistance account

(A) In general

Of the amount made available to carry out this section for any fiscal year, not less than 5 percent and not more than 10 percent shall be reserved to fund a training and technical assistance account.

(B) Activities

Funds in the account may be used by the Secretary for purposes including—

(i) making grants to, and entering into contracts with, organizations with specialized expertise relating to infants, toddlers, and families and the capacity needed to provide direction and support to a national training and technical assistance system, in order to provide such direction and support;

(ii) providing ongoing training and technical assistance for regional and program staff charged with monitoring and overseeing the administration of the program carried out under this section;

(iii) providing ongoing training and technical assistance for existing recipients (as of the date of such training or assistance)

of grants under subsection (a) of this section and support and program planning and implementation assistance for new recipients of such grants; and

(iv) providing professional development and personnel enhancement activities, including the provision of funds to recipients of grants under subsection (a) of this section for the recruitment and retention of qualified staff with an appropriate level of education and experience.

(Pub. L. 97-35, title VI, § 645A, as added Pub. L. 103-252, title I, § 112(a), May 18, 1994, 108 Stat. 638; amended Pub. L. 105-285, title I, § 113, Oct. 27, 1998, 112 Stat. 2719.)

REFERENCES IN TEXT

The Individuals with Disabilities Education Act, referred to in subsec. (b)(8), is title VI of Pub. L. 91-230, Apr. 13, 1970, 84 Stat. 175, as amended, which is classified generally to chapter 33 (§1400 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

AMENDMENTS

1998—Pub. L. 105-285, §113(1), inserted “Early Head Start” in section catchline.

Subsec. (a). Pub. L. 105-285, §113(2), substituted “provisions of this section for” for “provisions of this section for—”, struck out par. (1) designation before “programs providing”, substituted “self-sufficiency.” for “self-sufficiency; and”, and struck out par. (2) which read as follows: “provision of training and technical assistance to entities carrying out programs, and evaluation of programs, that were supported under the Comprehensive Child Development Act (42 U.S.C. 9881 et seq.), as in effect on the day before May 18, 1994.”

Subsec. (b)(5). Pub. L. 105-285, §113(3)(A), inserted “(including programs for infants and toddlers with disabilities)” after “community”.

Subsec. (b)(7). Pub. L. 105-285, §113(3)(B), struck out “and” at end.

Subsec. (b)(8), (9). Pub. L. 105-285, §113(3)(C), (D), added par. (8) and redesignated former par. (8) as (9).

Subsec. (c). Pub. L. 105-285, §113(4)(A), substituted “subsection (a) of this section” for “subsection (a)(1) of this section” in introductory provisions.

Subsec. (c)(2). Pub. L. 105-285, §113(4)(B), substituted “3;” for “3 (or under age 5, in the case of children served by an entity specified in subsection (e)(3) of this section);”.

Subsec. (d). Pub. L. 105-285, §113(5), inserted “and” at end of par. (1), redesignated par. (3) as (2), inserted “or for-profit” after “nonprofit”, and struck out former par. (2) which read as follows: “entities that, on the day before the date of enactment of this section, were operating—

“(A) Parent-Child Centers receiving financial assistance under section 9835(a)(4) of this title, as in effect on such date; or

“(B) programs receiving financial assistance under the Comprehensive Child Development Act, as in effect on such date; and”.

Subsec. (e). Pub. L. 105-285, §113(8), struck out “other” before “grant recipients” in heading and substituted “From the portion specified in section 9835(a)(6) of this title,” for “From the balance remaining of the portion specified in section 9835(a)(6) of this title, after making grants to the eligible entities specified in subsection (e) of this section,” in text.

Pub. L. 105-285, §113(6), (7), redesignated subsec. (f) as (e) and struck out heading and text of former subsec. (e) which related to time-limited priority for certain entities.

Subsecs. (f), (g). Pub. L. 105-285, §113(7), (10), added subsec. (g) and redesignated former subsec. (g) as (f). Former subsec. (f) redesignated (e).

Subsec. (h). Pub. L. 105-285, §113(9), struck out heading and text of subsec. (h) which related to Secretarial responsibilities.

EFFECTIVE DATE

Section effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103-252, set out as an Effective Date of 1994 Amendment note under section 9832 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9835 of this title.

§ 9841. Appeals, notice, hearing, and mediation; alternative agency for Indian tribe

(a) Notice requirements; suspension or termination of assistance stayed pending hearing; mediation

The Secretary shall prescribe procedures to assure that—

(1) special notice of and an opportunity for a timely and expeditious appeal to the Secretary will be provided for an agency or organization which desires to serve as a delegate agency under this subchapter and whose application to the Head Start agency has been wholly or substantially rejected or has not been acted upon within a period of time deemed reasonable by the Secretary, in accordance with regulations which the Secretary shall prescribe;

(2) financial assistance under this subchapter shall not be suspended, except in emergency situations, unless the recipient agency has been given reasonable notice and opportunity to show cause why such action should not be taken;

(3) financial assistance under this subchapter shall not be terminated or reduced, an application for refunding shall not be denied, and a suspension of financial assistance shall not be continued for longer than 30 days, unless the recipient has been afforded reasonable notice and opportunity for a full and fair hearing; and

(4) the Secretary shall develop and publish procedures (including mediation procedures) to be used in order to—

(A) resolve in a timely manner conflicts potentially leading to adverse action between—

(i) recipients of financial assistance under this subchapter; and

(ii) delegate agencies or Head Start Parent Policy Councils; and

(B) avoid the need for an administrative hearing on an adverse action.

(b) Notification of conflict by Head Start agency to regional office

In prescribing procedures for the mediation described in subsection (a)(4) of this section, the Secretary shall specify—

(1) the date by which a Head Start agency engaged in a conflict described in subsection (a)(4) of this section will notify the appropriate regional office of the Department of the conflict; and

(2) a reasonable period for the mediation.

(c) Timeline for administrative hearing

The Secretary shall also specify—

- (1) a timeline for an administrative hearing, if necessary, on an adverse action; and
- (2) a timeline by which the person conducting the administrative hearing shall issue a decision based on the hearing.

(d) Termination of designation not stayed upon appeal

In any case in which a termination, reduction, or suspension of financial assistance under this subchapter is upheld in an administrative hearing under this section, such termination, reduction, or suspension shall not be stayed pending any judicial appeal of such administrative decision.

(e) Establishment of alternative agency by Indian tribe

(1) The Secretary shall by regulation specify a process by which an Indian tribe may identify and establish an alternative agency, and request that the alternative agency be designated under section 9836 of this title as the Head Start agency providing services to the tribe, if—

- (A) the Secretary terminates financial assistance under this section to the only agency that was receiving financial assistance to provide Head Start services to the Indian tribe; and
- (B) the tribe would otherwise be precluded from providing such services to the members of the tribe.

(2) The regulation required by this subsection shall prohibit such designation of an alternative agency that includes an employee who—

- (A) served on the administrative staff or program staff of the agency described in paragraph (1)(A); and
- (B) was responsible for a deficiency that—
 - (i) relates to the performance standards or financial management standards described in section 9836a(a)(1) of this title; and
 - (ii) was the basis for the termination of financial assistance described in paragraph (1)(A);

as determined by the Secretary after providing the notice and opportunity described in subsection (a)(3) of this section.

(Pub. L. 97-35, title VI, §646, Aug. 13, 1981, 95 Stat. 504; Pub. L. 101-501, title I, §115, Nov. 3, 1990, 104 Stat. 1232; Pub. L. 103-252, title I, §113, May 18, 1994, 108 Stat. 641.)

AMENDMENTS

1994—Subsec. (a)(4). Pub. L. 103-252, §113(a), added par. (4).

Subsecs. (b) to (e). Pub. L. 103-252, §113(b), added subsecs. (b) to (e) and struck out former subsec. (b) which read as follows: “The Secretary may not prescribe any procedure that would modify the operation of section 1303.21 or 1303.33, or any of subdivisions (a) through (f) of section 1303.35, of title 45 of the Code of Federal Regulations as in effect on April 1, 1990.”

1990—Subsec. (a). Pub. L. 101-501, §115(1), (2), designated existing provisions as subsec. (a) and inserted “or reduced” after “terminated” in par. (3).

Subsec. (b). Pub. L. 101-501, §115(3), added subsec. (b).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-252 effective May 18, 1994, but not applicable to Head Start agencies and other re-

cipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103-252, set out as a note under section 9832 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 115(1), (2) of Pub. L. 101-501 effective Oct. 1, 1990, and amendment by section 115(3) of Pub. L. 101-501 effective Apr. 1, 1990, see section 1001(a), (b)(2) of Pub. L. 101-501, set out as a note under section 8621 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9836 of this title.

§ 9842. Records and audits

(a) Each recipient of financial assistance under this subchapter shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such financial assistance, the total cost of the project or undertaking in connection with which such financial assistance is given or used, the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(b) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipients that are pertinent to the financial assistance received under this subchapter.

(Pub. L. 97-35, title VI, §647, Aug. 13, 1981, 95 Stat. 505.)

§ 9843. Technical assistance and training**(a) Technical assistance and personnel training**

The Secretary shall provide, directly or through grants or other arrangements (1) technical assistance to communities in developing, conducting, and administering programs under this subchapter; and (2) training for specialized or other personnel needed in connection with Head Start programs, in accordance with the process, and the provisions for allocating resources, set forth in subsections (b) and (c) of this section.

(b) Consideration of local needs

The process for determining the technical assistance and training activities to be carried out under this section shall—

(1) ensure that the needs of local Head Start agencies and programs relating to improving program quality and to program expansion are addressed to the maximum extent feasible;

(2) incorporate mechanisms to ensure responsiveness to local needs, including an ongoing procedure for obtaining input from the individuals and agencies carrying out Head Start programs; and

(3) ensure the provision of technical assistance to assist Head Start agencies, entities carrying out other child care and early childhood programs, communities, and States in collaborative efforts to provide quality full-working-day, full calendar year services, including technical assistance related to identi-

fyng and assisting in resolving barriers to collaboration.

(c) Prioritization of resource allocation

In allocating resources for technical assistance and training under this section, the Secretary shall—

(1) give priority consideration to—

(A) activities to correct program and management deficiencies identified through reviews carried out pursuant to section 9836a(c) of this title (including the provision of assistance to local programs in the development of quality improvement plans under section 9836a(d)(2) of this title); and

(B) assisting Head Start agencies in—

(i) ensuring the school readiness of children; and

(ii) meeting the educational performance measures described in section 9836a(b)(4) of this title;

(2) supplement amounts provided under section 9835(a)(3)(C)(ii) of this title in order to address the training and career development needs of classroom staff (including instruction for providing services to children with disabilities) and nonclassroom staff, including home visitors and other staff working directly with families, including training relating to increasing parent involvement and services designed to increase family literacy and improve parenting skills;

(3) assist Head Start agencies in the development of collaborative initiatives with States and other entities within the States, to foster effective early childhood professional development systems;

(4) provide technical assistance and training, either directly or through a grant, contract, or cooperative agreement with an entity that has experience in the development and operation of successful family literacy services programs, for the purpose of—

(A) assisting Head Start agencies providing family literacy services, in order to improve the quality of such family literacy services; and

(B) enabling those Head Start agencies that demonstrate effective provision of family literacy services, based on improved outcomes for children and their parents, to provide technical assistance and training to other Head Start agencies and to service providers that work in collaboration with such agencies to provide family literacy services;

(5) assist Head Start agencies and programs in conducting and participating in communitywide strategic planning and needs assessment;

(6) assist Head Start agencies and programs in developing and implementing full-working-day and full-calendar-year programs where community need is clearly identified and making the transition to such programs, with particular attention to involving parents and programming for children throughout the day, and assist the agencies and programs in expediting the sharing of information about innovative models for providing full-working-day, full calendar year services for children;

(7) assist Head Start agencies in better serving the needs of families with very young children;

(8) assist Head Start agencies and programs in the development of sound management practices, including financial management procedures;

(9) assist in efforts to secure and maintain adequate facilities for Head Start programs;

(10) assist Head Start agencies in developing innovative program models, including mobile and home-based programs; and

(11) provide support for Head Start agencies (including policy councils and policy committees, as defined in regulation) that meet the standards described in section 9836a(a) of this title but that have, as documented by the Secretary through reviews conducted pursuant to section 9836a(c) of this title, significant programmatic, quality, and fiscal issues to address.

(d) Training in performing and visual arts and electronic media

The Secretary may provide, either directly or through grants to public or private nonprofit entities, training for Head Start personnel in the use of the performing and visual arts and interactive programs using electronic media to enhance the learning experience of Head Start children. Special consideration shall be given to entities that have demonstrated effectiveness in educational programming for preschool children that includes components for parental involvement, care provider training, and developmentally appropriate related activities.

(e) Child development and assessment program

The Secretary shall provide, either directly or through grants or other arrangements, funds from programs authorized under this subchapter to support an organization to administer a centralized child development and national assessment program leading to recognized credentials for personnel working in early childhood development and child care programs, training for personnel providing services to non-English language background children (including services to promote the acquisition of the English language), training for personnel in helping children cope with community violence, and resource access projects for personnel working with disabled children.

(Pub. L. 97-35, title VI, § 648, Aug. 13, 1981, 95 Stat. 505; Pub. L. 98-558, title I, § 106, Oct. 30, 1984, 98 Stat. 2879; Pub. L. 101-501, title I, § 116(a), Nov. 3, 1990, 104 Stat. 1232; Pub. L. 102-586, § 7(b), Nov. 4, 1992, 106 Stat. 5035; Pub. L. 103-252, title I, § 114, May 18, 1994, 108 Stat. 642; Pub. L. 105-285, title I, § 114, Oct. 27, 1998, 112 Stat. 2721.)

AMENDMENTS

1998—Subsec. (b)(3). Pub. L. 105-285, § 114(a)(1), added par. (3).

Subsec. (c)(1). Pub. L. 105-285, § 114(a)(2)(A), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “give priority consideration to activities to correct program and management deficiencies identified through reviews pursuant to section 9836a(c) of this title (including the provision of assistance to local programs in the development of quality improvement plans under section 9836a(d)(2) of this title);”.

Subsec. (c)(2). Pub. L. 105-285, § 114(a)(2)(B), inserted “supplement amounts provided under section 9835(a)(3)(C)(ii) of this title in order to” after “(2)”.

Subsec. (c)(3). Pub. L. 105-285, § 114(a)(2)(G), added par. (3). Former par. (3) redesignated (5).

Subsec. (c)(4). Pub. L. 105-285, § 114(a)(2)(G), added par. (4). Former par. (4) redesignated (6).

Pub. L. 105-285, § 114(a)(2)(C), inserted “and implementing” after “developing” and substituted “the day, and assist the agencies and programs in expediting the sharing of information about innovative models for providing full-working-day, full calendar year services for children” for “a longer day” before semicolon.

Subsec. (c)(5), (6). Pub. L. 105-285, § 114(a)(2)(F), redesignated pars. (3) and (4) as (5) and (6), respectively. Former pars. (5) and (6) redesignated (7) and (8), respectively.

Subsec. (c)(7). Pub. L. 105-285, § 114(a)(2)(F), redesignated par. (5) as (7). Former par. (7) redesignated (9).

Pub. L. 105-285, § 114(a)(2)(D), struck out “and” at end.

Subsec. (c)(8). Pub. L. 105-285, § 114(a)(2)(F), redesignated par. (6) as (8). Former par. (8) redesignated (10).

Pub. L. 105-285, § 114(a)(2)(E), substituted “; and” for period at end.

Subsec. (c)(9), (10). Pub. L. 105-285, § 114(a)(2)(F), redesignated pars. (7) and (8) as (9) and (10), respectively.

Subsec. (c)(11). Pub. L. 105-285, § 114(a)(2)(H), added par. (11).

Subsec. (e). Pub. L. 105-285, § 114(b), inserted “(including services to promote the acquisition of the English language)” after “non-English language background children”.

1994—Pub. L. 103-252, § 114(1), substituted “Technical assistance and training” for “Technical assistance, training, and staff qualifications” in section catchline.

Subsec. (a). Pub. L. 103-252, § 114(3)(A), redesignated as subsec. (e) the last sentence which read as follows: “The Secretary shall provide, either directly or through grants or other arrangements, funds from programs authorized under this subchapter to support an organization to administer a centralized child development and national assessment program leading to recognized credentials for personnel working in early childhood development and child care programs, training for personnel providing services to non-English language background children, training for personnel in helping children cope with community violence, and resource access projects for personnel working with disabled children.”

Pub. L. 103-252, § 114(2), substituted “(2) training for specialized or other personnel needed in connection with Head Start programs, in accordance with the process, and the provisions for allocating resources, set forth in subsections (b) and (c) of this section. The Secretary shall provide, either directly or through grants or other arrangements,” for “(2) training for specialized or other personnel needed in connection with Head Start programs, including”.

Subsec. (b). Pub. L. 103-252, § 114(4), (5), added subsec. (b) and struck out former subsec. (b) which related to teacher qualifications and waiver of same.

Subsec. (c). Pub. L. 103-252, § 114(4), (5), added subsec. (c) and struck out former subsec. (c) which related to Secretary developing systematic approach to training Head Start personnel and reporting on such approach to Congress.

Subsec. (d). Pub. L. 103-252, § 114(6), inserted at end “Special consideration shall be given to entities that have demonstrated effectiveness in educational programming for preschool children that includes components for parental involvement, care provider training, and developmentally appropriate related activities.”

Subsec. (e). Pub. L. 103-252, § 114(3), redesignated last sentence of subsec. (a) as (e).

1992—Subsec. (a)(2). Pub. L. 102-586, § 7(b)(1), substituted “funds from programs authorized under this subchapter to support an organization to administer a centralized child development and national assessment program leading to recognized credentials for personnel working in early childhood development and child care

programs, training for personnel providing services to non-English language background children, training for personnel in helping children cope with community violence, and resource access projects for personnel working with disabled” for “a centralized child development training and national assessment program which may be administered at the State or local level leading to recognized credentials for such personnel, training for personnel providing services to non-English language background children, and resource access projects for personnel of handicapped”.

Subsecs. (c), (d). Pub. L. 102-586, § 7(b)(2), added subsecs. (c) and (d).

1990—Pub. L. 101-501 substituted “Technical assistance, training, and staff qualifications” for “Technical assistance and training” in section catchline, designated existing provisions as subsec. (a), inserted “training for personnel providing services to non-English language background children,” after “such personnel,” in cl. (2), and added subsec. (b).

1984—Pub. L. 98-558 substituted “shall” for “may” and inserted provision including a centralized child development training and national assessment program.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-252 effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103-252, set out as a note under section 9832 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101-501, set out as a note under section 8621 of this title.

HEAD START TRAINING IMPROVEMENT

Section 7(a) of Pub. L. 102-586 provided that: “It is the purpose of this section—

“(1) to promote continued access for Head Start and other early childhood staff to the Child Development Associate credential;

“(2) to increase the ability of Head Start staff to address the problems facing Head Start families;

“(3) to create a systematic approach to training, thereby improving the quality of Head Start instruction and using training funds more efficiently and effectively; and

“(4) to allow the use of training funds for creative approaches to learning for children.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9835 of this title.

§ 9843a. Staff qualifications and development

(a) Classroom teachers

(1) Professional requirements

The Secretary shall ensure that each Head Start classroom in a center-based program is assigned one teacher who has demonstrated competency to perform functions that include—

(A) planning and implementing learning experiences that advance the intellectual and physical development of children, including improving the readiness of children for school by developing their literacy and phonemic, print, and numeracy awareness, their understanding and use of language, their understanding and use of increasingly complex and varied vocabulary, their appreciation of books, and their problem solving abilities;

(B) establishing and maintaining a safe, healthy learning environment;

(C) supporting the social and emotional development of children; and

(D) encouraging the involvement of the families of the children in a Head Start program and supporting the development of relationships between children and their families.

(2) Degree requirements

(A) In general

The Secretary shall ensure that not later than September 30, 2003, at least 50 percent of all Head Start teachers nationwide in center-based programs have—

(i) an associate, baccalaureate, or advanced degree in early childhood education; or

(ii) an associate, baccalaureate, or advanced degree in a field related to early childhood education, with experience in teaching preschool children.

(B) Progress

The Secretary shall require Head Start agencies to demonstrate continuing progress each year to reach the result described in subparagraph (A).

(3) Alternative credentialing requirements

The Secretary shall ensure that, for center-based programs, each Head Start classroom that does not have a teacher that meets the requirements of clause (i) or (ii) of paragraph (2)(A) is assigned one teacher who has—

(A) a child development associate credential that is appropriate to the age of the children being served in center-based programs;

(B) a State-awarded certificate for preschool teachers that meets or exceeds the requirements for a child development associate credential; or

(C) a degree in a field related to early childhood education with experience in teaching preschool children and a State-awarded certificate to teach in a preschool program.

(4) Waiver

(A) In general

On request, the Secretary shall grant a 180-day waiver of the requirements of paragraph (3), for a Head Start agency that can demonstrate that the agency has unsuccessfully attempted to recruit an individual who has a credential, certificate, or degree described in paragraph (3), with respect to an individual who—

(i) is enrolled in a program that grants any such credential, certificate, or degree; and

(ii) will receive such credential, certificate, or degree under the terms of such program not later than 180 days after beginning employment as a teacher with such agency.

(B) Limitation

The Secretary may not grant more than one such waiver with respect to such individual.

(b) Mentor teachers

(1) “Mentor teacher” defined; function

For purposes of this subsection, the term “mentor teacher” means an individual responsible for observing and assessing the classroom activities of a Head Start program and providing on-the-job guidance and training to the Head Start program staff and volunteers, in order to improve the qualifications and training of classroom staff, to maintain high quality education services, and to promote career development, in Head Start programs.

(2) Requirement

In order to assist Head Start agencies in establishing positions for mentor teachers, the Secretary shall—

(A) provide technical assistance and training to enable Head Start agencies to establish such positions;

(B) give priority consideration, in providing assistance pursuant to subparagraph (A), to Head Start programs that have substantial numbers of new classroom staff or that are experiencing difficulty in meeting applicable education standards;

(C) encourage Head Start programs to give priority consideration for such positions to Head Start teachers at the appropriate level of career advancement in such programs; and

(D) promote the development of model curricula, designed to ensure the attainment of appropriate competencies of mentor teachers in Head Start programs.

(c) Family service workers

In order to improve the quality and effectiveness of staff providing in-home and other services (including needs assessment, development of service plans, family advocacy, and coordination of service delivery) to families of children participating in Head Start programs, the Secretary, in coordination with concerned public and private agencies and organizations examining the issues of standards and training for family service workers, shall—

(1) review and, as necessary, revise or develop new qualification standards for Head Start staff providing such services;

(2) promote the development of model curricula (on subjects including parenting training and family literacy) designed to ensure the attainment of appropriate competencies by individuals working or planning to work in the field of early childhood and family services; and

(3) promote the establishment of a credential that indicates attainment of the competencies and that is accepted nationwide.

(d) Head Start Fellowships

(1) Authority

The Secretary may establish a program of fellowships, to be known as “Head Start Fellowships”, in accordance with this subsection. The Secretary may award the fellowships to individuals, to be known as “Head Start Fellows”, who are staff in local Head Start programs or other individuals working in the field of child development and family services.

(2) Purpose

The fellowship program established under this subsection shall be designed to enhance the ability of Head Start Fellows to make significant contributions to programs authorized under this subchapter, by providing opportunities to expand their knowledge and experience through exposure to activities, issues, resources, and new approaches, in the field of child development and family services.

(3) Assignments of Fellows**(A) Placement sites**

Fellowship positions under the fellowship program may be located (subject to subparagraphs (B) and (C))—

- (i) in agencies of the Department of Health and Human Services administering programs authorized under this subchapter (in national or regional offices of such agencies);
- (ii) in local Head Start agencies and programs;
- (iii) in institutions of higher education;
- (iv) in public or private entities and organizations concerned with services to children and families; and
- (v) in other appropriate settings.

(B) Limitation for Fellows other than Head Start employees

A Head Start Fellow who is not an employee of a local Head Start agency or program may be placed only in a fellowship position located in an agency or program specified in clause (i) or (ii) of subparagraph (A).

(C) No placement in lobbying organizations

Head Start Fellowship positions may not be located in any agency whose primary purpose, or one of whose major purposes, is to influence Federal, State, or local legislation.

(4) Selection of Fellows

Head Start Fellowships shall be awarded on a competitive basis to individuals (other than Federal employees) selected from among applicants who are working, on the date of application, in local Head Start programs or otherwise working in the field of child development and children and family services.

(5) Duration

Head Start Fellowships shall be for terms of 1 year, and may be renewed for a term of 1 additional year.

(6) Authorized expenditures

From amounts appropriated under this subchapter and allotted under section 9835(a)(2)(D) of this title, the Secretary is authorized to make expenditures of not to exceed \$1,000,000 for any fiscal year, for stipends and other reasonable expenses of the fellowship program.

(7) Status of Fellows

Except as otherwise provided in this paragraph, Head Start Fellows shall not be considered to be employees or otherwise in the service or employment of the Federal Government. Head Start Fellows shall be considered to be employees for purposes of compensation for in-

juries under chapter 81 of title 5. Head Start Fellows assigned to positions located in agencies specified in paragraph (3)(A)(i) shall be considered employees in the executive branch of the Federal Government for the purposes of chapter 11 of title 18 and for purposes of any administrative standards of conduct applicable to the employees of the agency to which they are assigned.

(8) Regulations

The Secretary shall promulgate regulations to carry out this subsection.

(e) Model staffing plans

Not later than 1 year after May 18, 1994, the Secretary, in consultation with appropriate public agencies, private agencies, and organizations and with individuals with expertise in the field of children and family services, shall develop model staffing plans to provide guidance to local Head Start agencies and programs on the numbers, types, responsibilities, and qualifications of staff required to operate a Head Start program.

(Pub. L. 97-35, title VI, §648A, as added Pub. L. 103-252, title I, §115, May 18, 1994, 108 Stat. 643; amended Pub. L. 105-285, title I, §115, Oct. 27, 1998, 112 Stat. 2722.)

AMENDMENTS

1998—Subsec. (a). Pub. L. 105-285, §115(1), amended heading and text of subsec. (a) generally. Prior to amendment, subsec. (a) required Secretary to ensure that not later than Sept. 30, 1996, each Head Start classroom in a center-based program was assigned a teacher with certain specified credentials and gave Secretary limited authority to waive that requirement.

Subsec. (b)(2)(B). Pub. L. 105-285, §115(2), substituted “staff or that are” for “staff, that are” and struck out “, or that lack staff of a similar cultural background to that of the participating children and their families” before semicolon.

EFFECTIVE DATE

Section effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103-252, set out as an Effective Date of 1994 Amendment note under section 9832 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9835, 9837 of this title.

§ 9844. Research, demonstrations, and evaluation**(a) In general****(1) Requirement; general purposes**

The Secretary shall carry out a continuing program of research, demonstration, and evaluation activities, in order to—

(A) foster continuous improvement in the quality of the Head Start programs under this subchapter and in their effectiveness in enabling participating children and their families to succeed in school and otherwise; and

(B) use the Head Start programs to develop, test, and disseminate new ideas and approaches for addressing the needs of low-income preschool children (including chil-

dren with disabilities) and their families and communities (including demonstrations of innovative noncenter-based program models such as home-based and mobile programs), and otherwise to further the purposes of this subchapter.

(2) Plan

The Secretary shall develop, and periodically update, a plan governing the research, demonstration, and evaluation activities under this section.

(b) Conduct of research, demonstration, and evaluation activities

The Secretary, in order to conduct research, demonstration, and evaluation activities under this section—

(1) may carry out such activities directly, or through grants to, or contracts or cooperative agreements with, public or private entities;

(2) shall, to the extent appropriate, undertake such activities in collaboration with other Federal agencies, and with non-Federal agencies, conducting similar activities;

(3) shall ensure that evaluation of activities in a specific program or project is conducted by persons not directly involved in the operation of such program or project;

(4) may require Head Start agencies to provide for independent evaluations;

(5) may approve, in appropriate cases, community-based cooperative research and evaluation efforts to enable Head Start programs to collaborate with qualified researchers not directly involved in program administration or operation; and

(6) may collaborate with organizations with expertise in inclusive educational strategies for preschoolers with disabilities.

(c) Consultation and collaboration

In carrying out activities under this section, the Secretary shall—

(1) consult with—

(A) individuals from relevant academic disciplines;

(B) individuals who are involved in the operation of Head Start programs and individuals who are involved in the operation of other child and family service programs; and

(C) individuals from other Federal agencies, and individuals from organizations, involved with children and families, ensuring that the individuals described in this subparagraph reflect the multicultural nature of the children and families served by the Head Start programs and the multidisciplinary nature of the Head Start programs;

(2) whenever feasible and appropriate, obtain the views of persons participating in and served by programs and projects assisted under this subchapter with respect to activities under this section; and

(3) establish, to the extent appropriate, working relationships with the faculties of institutions of higher education, as defined in section 1001 of title 20, located in the area in which any evaluation under this section is being conducted, unless there is no such institution of higher education willing and able to participate in such evaluation.

(d) Specific objectives

The research, demonstration, and evaluation activities under this subchapter shall include components designed to—

(1) permit ongoing assessment of the quality and effectiveness of the programs under this subchapter;

(2) establish evaluation methods that measure the effectiveness and impact of family literacy services program models, including models for the integration of family literacy services with Head Start services;

(3) contribute to developing knowledge concerning factors associated with the quality and effectiveness of Head Start programs and in identifying ways in which services provided under this subchapter may be improved;

(4) assist in developing knowledge concerning the factors that promote or inhibit healthy development and effective functioning of children and their families both during and following participation in a Head Start program;

(5) permit comparisons of children and families participating in Head Start programs with children and families receiving other child care, early childhood education, or child development services and with other appropriate control groups;

(6) contribute to understanding the characteristics and needs of population groups eligible for services provided under this subchapter and the impact of such services on the individuals served and the communities in which such services are provided;

(7) provide for disseminating and promoting the use of the findings from such research, demonstration, and evaluation activities;

(8) promote exploration of areas in which knowledge is insufficient, and that will otherwise contribute to fulfilling the purposes of this subchapter;

(9) study the experiences of small, medium, and large States with Head Start programs in order to permit comparisons of children participating in the programs with eligible children who did not participate in the programs, which study—

(A) may include the use of a data set that existed prior to the initiation of the study; and

(B) shall compare the educational achievement, social adaptation, and health status of the participating children and the eligible nonparticipating children; and

(10) provide for—

(A) using the Survey of Income and Program Participation to conduct an analysis of the different income levels of Head Start participants compared to comparable persons who did not attend Head Start programs;

(B) using the National Longitudinal Survey of Youth, which began gathering data in 1988 on children who attended Head Start programs, to examine the wide range of outcomes measured within the Survey, including outcomes related to cognitive, socio-emotional, behavioral, and academic development;

(C) using the Survey of Program Dynamics, the new longitudinal survey required by section 614 of this title, to begin annual reporting, through the duration of the Survey, on Head Start program attendees' academic readiness performance and improvements;

(D) ensuring that the Survey of Program Dynamics is linked with the National Longitudinal Survey of Youth at least once by the use of a common performance test, to be determined by the expert panel, for the greater national usefulness of the National Longitudinal Survey of Youth database; and

(E) disseminating the results of the analysis, examination, reporting, and linkage described in subparagraphs (A) through (D) to persons conducting other studies under this subchapter.

The Secretary shall ensure that an appropriate entity carries out a study described in paragraph (9), and prepares and submits to the appropriate committees of Congress a report containing the results of the study, not later than September 30, 2002.

(e) Longitudinal studies

In developing priorities for research, demonstration, and evaluation activities under this section, the Secretary shall give special consideration to longitudinal studies that—

(1) examine the developmental progress of children and their families both during and following participation in a Head Start program, including the examination of factors that contribute to or detract from such progress;

(2) examine factors related to improving the quality of the Head Start programs and the preparation the programs provide for children and their families to function effectively in schools and other settings in the years following participation in such a program; and

(3) as appropriate, permit comparison of children and families participating in Head Start programs with children and families receiving other child care, early childhood education, or child development services, and with other appropriate control groups.

(f) Ownership of results

The Secretary shall take necessary steps to ensure that all studies, reports, proposals, and data produced or developed with Federal funds under this subchapter shall become the property of the United States.

(g) National Head Start impact research

(1) Expert panel

(A) In general

The Secretary shall appoint an independent panel consisting of experts in program evaluation and research, education, and early childhood programs—

(i) to review, and make recommendations on, the design and plan for the research (whether conducted as a single assessment or as a series of assessments) described in paragraph (2), within 1 year after October 27, 1998;

(ii) to maintain and advise the Secretary regarding the progress of the research; and

(iii) to comment, if the panel so desires, on the interim and final research reports submitted under paragraph (7).

(B) Travel expenses

The members of the panel shall not receive compensation for the performance of services for the panel, but shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, while away from their homes or regular places of business in the performance of services for the panel. Notwithstanding section 1342 of title 31, the Secretary may accept the voluntary and uncompensated services of members of the panel.

(2) General authority

After reviewing the recommendations of the expert panel, the Secretary shall make a grant to, or enter into a contract or cooperative agreement with, an organization to conduct independent research that provides a national analysis of the impact of Head Start programs. The Secretary shall ensure that the organization shall have expertise in program evaluation, and research, education, and early childhood programs.

(3) Designs and techniques

The Secretary shall ensure that the research uses rigorous methodological designs and techniques (based on the recommendations of the expert panel), including longitudinal designs, control groups, nationally recognized standardized measures, and random selection and assignment, as appropriate. The Secretary may provide that the research shall be conducted as a single comprehensive assessment or as a group of coordinated assessments designed to provide, when taken together, a national analysis of the impact of Head Start programs.

(4) Programs

The Secretary shall ensure that the research focuses primarily on Head Start programs that operate in the 50 States, the Commonwealth of Puerto Rico, or the District of Columbia and that do not specifically target special populations.

(5) Analysis

The Secretary shall ensure that the organization conducting the research—

(A)(i) determines if, overall, the Head Start programs have impacts consistent with their primary goal of increasing the social competence of children, by increasing the everyday effectiveness of the children in dealing with their present environments and future responsibilities, and increasing their school readiness;

(ii) considers whether the Head Start programs—

(I) enhance the growth and development of children in cognitive, emotional, and physical health areas;

(II) strengthen families as the primary nurturers of their children; and

(III) ensure that children attain school readiness; and

(iii) examines—

(I) the impact of the Head Start programs on increasing access of children to such services as educational, health, and nutritional services, and linking children and families to needed community services; and

(II) how receipt of services described in subclause (I) enriches the lives of children and families participating in Head Start programs;

(B) examines the impact of Head Start programs on participants on the date the participants leave Head Start programs, at the end of kindergarten and at the end of first grade (whether in public or private school), by examining a variety of factors, including educational achievement, referrals for special education or remedial course work, and absenteeism;

(C) makes use of random selection from the population of all Head Start programs described in paragraph (4) in selecting programs for inclusion in the research; and

(D) includes comparisons of individuals who participate in Head Start programs with control groups (including comparison groups) composed of—

(i) individuals who participate in other early childhood programs (such as public or private preschool programs and day care); and

(ii) individuals who do not participate in any other early childhood program.

(6) Consideration of sources of variation

In designing the research, the Secretary shall, to the extent practicable, consider addressing possible sources of variation in impact of Head Start programs, including variations in impact related to such factors as—

(A) Head Start program operations;

(B) Head Start program quality;

(C) the length of time a child attends a Head Start program;

(D) the age of the child on entering the Head Start program;

(E) the type of organization (such as a local educational agency or a community action agency) providing services for the Head Start program;

(F) the number of hours and days of program operation of the Head Start program (such as whether the program is a full-working-day, full calendar year program, a part-day program, or a part-year program); and

(G) other characteristics and features of the Head Start program (such as geographic location, location in an urban or a rural service area, or participant characteristics), as appropriate.

(7) Reports

(A) Submission of interim reports

The organization shall prepare and submit to the Secretary two interim reports on the research. The first interim report shall describe the design of the research, and the rationale for the design, including a description of how potential sources of variation in impact of Head Start programs have been

considered in designing the research. The second interim report shall describe the status of the research and preliminary findings of the research, as appropriate.

(B) Submission of final report

The organization shall prepare and submit to the Secretary a final report containing the findings of the research.

(C) Transmittal of reports to Congress

(i) In general

The Secretary shall transmit, to the committees described in clause (ii), the first interim report by September 30, 1999, the second interim report by September 30, 2001, and the final report by September 30, 2003.

(ii) Committees

The committees referred to in clause (i) are the Committee on Education and the Workforce of the House of Representatives and the Committee on Labor and Human Resources of the Senate.

(8) Definition

In this subsection, the term “impact”, used with respect to a Head Start program, means a difference in an outcome for a participant in the program that would not have occurred without the participation in the program.

(h) Quality improvement study

(1) Study

The Secretary shall conduct a study regarding the use and effects of use of the quality improvement funds made available under section 9835(a)(3) of this title since fiscal year 1991.

(2) Report

The Secretary shall prepare and submit to Congress not later than September 2000 a report containing the results of the study, including information on—

(A) the types of activities funded with the quality improvement funds;

(B) the extent to which the use of the quality improvement funds has accomplished the goals of section 9835(a)(3)(B) of this title;

(C) the effect of use of the quality improvement funds on teacher training, salaries, benefits, recruitment, and retention; and

(D) the effect of use of the quality improvement funds on the development of children receiving services under this subchapter.

(Pub. L. 97-35, title VI, § 649, Aug. 13, 1981, 95 Stat. 505; Pub. L. 98-558, title I, § 107, Oct. 30, 1984, 98 Stat. 2880; Pub. L. 101-501, title I, § 117(a), Nov. 3, 1990, 104 Stat. 1233; Pub. L. 103-252, title I, § 116, May 18, 1994, 108 Stat. 646; Pub. L. 105-244, title I, § 102(a)(13)(G), Oct. 7, 1998, 112 Stat. 1621; Pub. L. 105-285, title I, § 116, Oct. 27, 1998, 112 Stat. 2723.)

AMENDMENTS

1998—Subsec. (c)(3). Pub. L. 105-244 substituted “section 1001” for “section 1141(a)”.

Subsec. (d). Pub. L. 105-285, § 116(1)(E), inserted concluding provisions.

Subsec. (d)(2) to (8). Pub. L. 105-285, §116(1)(C), (D), added par. (2) and redesignated former pars. (2) to (7) as (3) to (8), respectively.

Subsec. (d)(9), (10). Pub. L. 105-285, §116(1)(A), (B), (E), added pars. (9) and (10).

Subsecs. (g), (h). Pub. L. 105-285, §116(2), added subsecs. (g) and (h).

1994—Pub. L. 103-252 substituted “Research, demonstrations, and evaluation” for “Research, demonstration, pilot projects, studies, and reports” in section catchline and amended text generally, substituting provisions requiring Secretary to conduct a research, demonstration, and evaluation program to continually improve Head Start programs and develop innovative ways to further purposes of this subchapter, consult with others on the program, consider longitudinal studies in developing priorities for program, and ensure all products of program become United States property and defining objectives of program, for provisions authorizing the Secretary to provide financial assistance through contracts and grants for research, demonstration or pilot projects to develop new approaches to further purposes of this subchapter, directing Secretary to establish plan for approval of such projects, restricting combination of funds appropriated under this subchapter with other appropriations to make a single grant, requiring Secretary to conduct study of approaches to provide early, continuous, and comprehensive intervention to low-income or at-risk children and study of family day care in compliance with performance standards and to report results of studies to Congress.

1990—Pub. L. 101-501, §117(a)(1), substituted “Research, demonstration, pilot projects, studies, and reports” for “Research, demonstration, and pilot projects” in section catchline.

Subsecs. (d) to (f). Pub. L. 101-501, §117(a)(2), added subsecs. (d) to (f).

1984—Subsec. (c). Pub. L. 98-558 added subsec. (c).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see section 3 of Pub. L. 105-244, set out as a note under section 1001 of Title 20, Education.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-252 effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103-252, set out as a note under section 9832 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101-501, set out as a note under section 8621 of this title.

STUDY OF FULL-DAY AND FULL-YEAR HEAD START PROGRAMS

Section 126 of Pub. L. 103-252 directed Secretary of Health and Human Services to conduct a study of extent to which Head Start programs address the need for Head Start services during a full working day or full calendar year among eligible low-income families with preschool children and to submit a report to Congress not later than Jan. 31, 1997.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9834, 9835, 9846 of this title.

§ 9845. Repealed. Pub. L. 103-252, title I, § 117, May 18, 1994, 108 Stat. 648

Section, Pub. L. 97-35, title VI, §650, Aug. 13, 1981, 95 Stat. 505; Pub. L. 101-501, title I, §117(c), Nov. 3, 1990, 104 Stat. 1233, directed Secretary to make public announce-

ment concerning grants or contracts for research, demonstrations, pilot projects, studies, or reports under this subchapter.

EFFECTIVE DATE OF REPEAL

Repeal effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103-252, set out as an Effective Date of 1994 Amendment note under section 9832 of this title.

§ 9846. Reports

(a) Status of children

At least once during every 2-year period, the Secretary shall prepare and submit, to the Committee on Education and the Workforce of the House of Representatives and the Committee on Labor and Human Resources of the Senate, a report concerning the status of children (including disabled and non-English language background children) in Head Start programs, including the number of children and the services being provided to such children. Such report shall include—

(1) a statement for the then most recently concluded fiscal year specifying—

(A) the amount of funds received by Head Start agencies designated under section 9836 of this title to provide Head Start services in a period before such fiscal year; and

(B) the amount of funds received by Head Start agencies newly designated under section 9836 of this title to provide such services in such fiscal year;

(2) a description of the distribution of Head Start services relative to the distribution of children who are eligible to participate in Head Start programs, including geographic distribution within States;

(3) a statement identifying how funds expended under section 9835(a)(2) of this title, and funds allotted under section 9835(a)(3) of this title, were distributed and used at national, regional, and local levels;

(4) a statement specifying the amount of funds provided by the State, and by local sources, to carry out Head Start programs;

(5) cost per child and how such cost varies by region;

(6) a description of the level and nature of participation of parents in Head Start programs as volunteers and in other capacities;

(7) information concerning Head Start staff, including salaries, education, training, experience, and staff turnover;

(8) information concerning children participating in programs that receive Head Start funding, including information on family income, racial and ethnic background, disability, and receipt of benefits under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.];

(9) the use and source of funds to extend Head Start services to operate full-day and year round;

(10) using data from the monitoring conducted under section 9836a(c) of this title—

(A) a description of the extent to which programs funded under this subchapter comply with performance standards and regulations in effect under this subchapter;

(B) a description of the types and condition of facilities in which such programs are located;

(C) the types of organizations that receive Head Start funds under such programs; and

(D) the number of children served under each program option;

(11) the information contained in the documents entitled "Program Information Report" and "Head Start Cost Analyses System" (or any document similar to either), prepared with respect to Head Start programs;

(12) a description of the types of services provided to children and their families, both on-site and through referrals, including health, mental health, dental care, parenting education, physical fitness, and literacy training;

(13) a summary of information concerning the research, demonstration, and evaluation activities conducted under section 9844 of this title, including—

(A) a status report on ongoing activities; and

(B) results, conclusions, and recommendations, not included in any previous report, based on completed activities; and

(14) a study of the delivery of Head Start programs to Indian children living on and near Indian reservations, to children of Alaskan Natives, and to children of migrant and seasonal farmworkers.

Promptly after submitting such report to the Committee on Education and the Workforce of the House of Representatives and the Committee on Labor and Human Resources of the Senate, the Secretary shall publish in the Federal Register a notice indicating that such report is available to the public and specifying how such report may be obtained.

(b) Facilities

At least once during every 5-year period, the Secretary shall prepare and submit, to the Committee on Education and the Workforce of the House of Representatives and the Committee on Labor and Human Resources of the Senate, a report concerning the condition, location, and ownership of facilities used, or available to be used, by Indian Head Start agencies (including Native Alaskan Head Start agencies) and Native Hawaiian Head Start agencies.

(Pub. L. 97-35, title VI, § 650, formerly § 651, Aug. 13, 1981, 95 Stat. 506; Pub. L. 98-558, title I, § 108, Oct. 30, 1984, 98 Stat. 2880; Pub. L. 101-501, title I, §§ 118, 119, Nov. 3, 1990, 104 Stat. 1234; Pub. L. 102-401, § 2(k)(5), Oct. 7, 1992, 106 Stat. 1959; renumbered § 650 and amended Pub. L. 103-252, title I, § 118, May 18, 1994, 108 Stat. 648; Pub. L. 105-285, title I, § 117, Oct. 27, 1998, 112 Stat. 2727.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a)(8), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part A of title IV of the Act is classified generally to part A (§ 601 et seq.) of subchapter IV of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

AMENDMENTS

1998—Pub. L. 105-285 designated existing provisions as subsec. (a), inserted heading, substituted "Education

and the Workforce" for "Education and Labor" in introductory and concluding provisions, and added subsec. (b).

1994—Pub. L. 103-252, § 118(a)(1), substituted "Reports" for "Evaluation" in section catchline.

Subsecs. (a) to (f), Pub. L. 103-252, § 118(a)(1), struck out subsecs. (a) to (f) which related to evaluations of programs under this subchapter to determine impact and effectiveness, adherence to Head Start performance standards, persons or entities assisting in evaluations, Secretary obtaining views of program participants, publication and submission of results to congressional committees, and all studies and evaluation material remaining property of the United States.

Subsec. (g), Pub. L. 103-252, § 118(a)(2)-(4), struck out subsec. (g) designation, substituted "monitoring conducted under section 9836a(c) of this title" for "evaluations conducted under section 9836(c)(2) of this title" in par. (10), and added pars. (13) and (14).

1992—Subsec. (g), Pub. L. 102-401 struck out "(1)" before "At least" at beginning of subsec. and substituted "physical" for "physicial" in par. (12).

1990—Subsec. (c)(2), Pub. L. 101-501, § 118, inserted at end "The Secretary is encouraged to provide funds for community-based cooperative research efforts to enable Head Start directors to conduct evaluations of their programs with the assistance of qualified researchers not directly involved in the administration of the program or project operation."

Subsec. (g), Pub. L. 101-501, § 119, added subsec. (g).
1984—Subsec. (b), Pub. L. 98-558 substituted "not result in the elimination of nor any reduction in the scope or types of health, education, parental involvement, social or other services required to be provided under the standards" for "result in standards which are no less comprehensive than those" in second sentence.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-252 effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103-252, set out as a note under section 9832 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-401 effective Oct. 7, 1992, but not applicable with respect to fiscal years beginning before Oct. 1, 1992, see section 4 of Pub. L. 102-401, set out as a note under section 9835 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101-501, set out as a note under section 8621 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103-7 (in which the 4th item on page 79 identifies a reporting provision which, as subsequently amended, is contained in subsec. (a) of this section), see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

§§ 9846a, 9847. Repealed. Pub. L. 103-252, title I, § 119, May 18, 1994, 108 Stat. 648

Section 9846a, Pub. L. 97-35, title VI, § 651A, as added Pub. L. 101-501, title I, § 120(a), Nov. 3, 1990, 104 Stat. 1235; amended Pub. L. 102-401, § 2(k)(6), Oct. 7, 1992, 106 Stat. 1959, related to longitudinal study of Head Start participants.

Section 9847, Pub. L. 97-35, title VI, § 652, Aug. 13, 1981, 95 Stat. 506; Pub. L. 101-501, title I, § 121(a), (c), Nov. 3, 1990, 104 Stat. 1237, directed Secretary to annually determine poverty line to be used as criterion of eligibility for participation in Head Start programs.

EFFECTIVE DATE OF REPEAL

Repeal effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103-252, set out as an Effective Date of 1994 Amendment note under section 9832 of this title.

§ 9848. Comparability of wages

The Secretary shall take such action as may be necessary to assure that persons employed in carrying out programs financed under this subchapter shall not receive compensation at a rate which is (1) in excess of the average rate of compensation paid in the area where the program is carried out to a substantial number of the persons providing substantially comparable services, or in excess of the average rate of compensation paid to a substantial number of the persons providing substantially comparable services in the area of the person's immediately preceding employment, whichever is higher; or (2) less than the minimum wage rate prescribed in section 206(a)(1) of title 29. The Secretary shall encourage Head Start agencies to provide compensation according to salary scales that are based on training and experience.

(Pub. L. 97-35, title VI, §653, Aug. 13, 1981, 95 Stat. 507; Pub. L. 101-501, title I, §122, Nov. 3, 1990, 104 Stat. 1237.)

AMENDMENTS

1990—Pub. L. 101-501 inserted at end “The Secretary shall encourage Head Start agencies to provide compensation according to salary scales that are based on training and experience.”

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101-501, set out as a note under section 8621 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9835 of this title.

§ 9849. Nondiscrimination provisions**(a) Discrimination based on race, creed, color, etc., as basis for denial of financial assistance**

The Secretary shall not provide financial assistance for any program, project, or activity under this subchapter unless the grant or contract with respect thereto specifically provides that no person with responsibilities in the operation thereof will discriminate with respect to any such program, project, or activity because of race, creed, color, national origin, sex, political affiliation, or beliefs.

(b) Sex discrimination; enforcement provisions applicable

No person in the United States shall on the ground of sex be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment in connection with any program or activity receiving assistance under this subchapter. The Secretary shall enforce the provisions of the preceding sentence in accordance with section 2000d-1 of this title. Section 2000d-2 of this title shall apply with respect to any action taken by the

Secretary to enforce such sentence. This section shall not be construed as affecting any other legal remedy that a person may have if such person is excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with, any program, project, or activity receiving assistance under this subchapter.

(c) Discrimination based on handicapping condition as basis for denial of financial assistance

The Secretary shall not provide financial assistance for any program, project, or activity under this subchapter unless the grant or contract relating to the financial assistance specifically provides that no person with responsibilities in the operation of the program, project, or activity will discriminate against any individual because of a handicapping condition in violation of section 794 of title 29.

(Pub. L. 97-35, title VI, §654, Aug. 13, 1981, 95 Stat. 507.)

§ 9850. Limitation with respect to certain unlawful activities

No individual employed or assigned by any Head Start agency or other agency assisted under this subchapter shall, pursuant to or during the performance of services rendered in connection with any program or activity conducted or assisted under this subchapter by such Head Start agency or such other agency, plan, initiate, participate in, or otherwise aid or assist in the conduct of any unlawful demonstration, rioting, or civil disturbance.

(Pub. L. 97-35, title VI, §655, Aug. 13, 1981, 95 Stat. 507.)

§ 9851. Political activities

(a) For purposes of chapter 15 of title 5, any agency which assumes responsibility for planning, developing, and coordinating Head Start programs and receives assistance under this subchapter shall be deemed to be a State or local agency. For purposes of clauses (1) and (2) of section 1502(a) of such title, any agency receiving assistance under this subchapter shall be deemed to be a State or local agency.

(b) Programs assisted under this subchapter shall not be carried on in a manner involving the use of program funds, the provision of services, or the employment or assignment of personnel in a manner supporting or resulting in the identification of such programs with (1) any partisan or nonpartisan political activity or any other political activity associated with a candidate, or contending faction or group, in an election for public or party office; (2) any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any such election; or (3) any voter registration activity. The Secretary, after consultation with the Office of Personnel Management, shall issue rules and regulations to provide for the enforcement of this section, which shall include provisions for summary suspension of assistance or other action necessary to permit enforcement on an emergency basis.

(Pub. L. 97-35, title VI, §656, Aug. 13, 1981, 95 Stat. 508.)

§ 9852. Advance funding

For the purpose of affording adequate notice of funding available under this subchapter, appropriations for carrying out this subchapter are authorized to be included in an appropriation Act for the fiscal year preceding the fiscal year for which they are available for obligation.

(Pub. L. 97-35, title VI, § 657, Aug. 13, 1981, 95 Stat. 508.)

§ 9852a. Repealed. Pub. L. 105-285, title I, § 118, Oct. 27, 1998, 112 Stat. 2727

Section, Pub. L. 97-35, title VI, § 657A, as added Pub. L. 103-252, title I, § 123, May 18, 1994, 108 Stat. 650, related to consultation with Corporation for National and Community Service.

SUBCHAPTER II-A—HEAD START
TRANSITION PROJECT

§§ 9855 to 9855g. Repealed. Pub. L. 105-285, title I, § 119, Oct. 27, 1998, 112 Stat. 2728

Section 9855, Pub. L. 101-501, title I, § 132, Nov. 3, 1990, 104 Stat. 1238; Pub. L. 103-382, title III, § 391(v)(1), Oct. 20, 1994, 108 Stat. 4025, defined terms used in this subchapter.

Section 9855a, Pub. L. 101-501, title I, § 133, Nov. 3, 1990, 104 Stat. 1238; Pub. L. 103-252, title I, § 125(a), May 18, 1994, 108 Stat. 650, related to Head Start transition grants.

Section 9855b, Pub. L. 101-501, title I, § 134, Nov. 3, 1990, 104 Stat. 1238; Pub. L. 103-382, title III, § 391(v)(2), (3), Oct. 20, 1994, 108 Stat. 4025, related to eligibility for Head Start transition grants.

Section 9855c, Pub. L. 101-501, title I, § 135, Nov. 3, 1990, 104 Stat. 1239; Pub. L. 103-382, title III, § 391(v)(4), Oct. 20, 1994, 108 Stat. 4025, related to requirements for awarding Head Start transition grants.

Section 9855d, Pub. L. 101-501, title I, § 136, Nov. 3, 1990, 104 Stat. 1239; Pub. L. 102-119, § 26(d), Oct. 7, 1991, 105 Stat. 607; Pub. L. 103-382, title III, § 391(v)(5)-(7), Oct. 20, 1994, 108 Stat. 4025, related to applications for Head Start transition grants.

Section 9855e, Pub. L. 101-501, title I, § 137, Nov. 3, 1990, 104 Stat. 1241, related to evaluation of and report on programs assisted under Head Start transition project.

Section 9855f, Pub. L. 101-501, title I, § 138, Nov. 3, 1990, 104 Stat. 1242, related to payments and Federal share of payments under Head Start transition project.

Section 9855g, Pub. L. 101-501, title I, § 139, Nov. 3, 1990, 104 Stat. 1242, related to coordination with programs established under the Follow Through Act.

SUBCHAPTER II-B—CHILD CARE AND
DEVELOPMENT BLOCK GRANT

CODIFICATION

Subchapter is based on subchapter C of chapter 8 of subtitle A of title VI of Pub. L. 97-35, as added by Pub. L. 101-508, title V, § 5082(2), Nov. 5, 1990, 104 Stat. 1388-236, and amended by Pub. L. 102-401, § 3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102-586, § 8(c)(1), Nov. 4, 1992, 106 Stat. 5036.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 604, 618, 1396r-1a, 9835, 9837 of this title; title 15 section 636; title 20 sections 6651, 6775; title 31 section 6703.

§ 9858. Authorization of appropriations

There is authorized to be appropriated to carry out this subchapter \$1,000,000,000 for each of the fiscal years 1996 through 2002.

(Pub. L. 97-35, title VI, § 658B, as added Pub. L. 101-508, title V, § 5082(2), Nov. 5, 1990, 104 Stat. 1388-236; amended Pub. L. 102-401, § 3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102-586, § 8(c)(1), Nov. 4, 1992, 106 Stat. 5036; Pub. L. 104-193, title VI, § 603(a), Aug. 22, 1996, 110 Stat. 2279.)

AMENDMENTS

1996—Pub. L. 104-193 reenacted section catchline without change and amended text generally. Prior to amendment, text read as follows: “There are authorized to be appropriated to carry out this subchapter, \$750,000,000 for fiscal year 1991, \$825,000,000 for fiscal year 1992, \$925,000,000 for fiscal year 1993, and such sums as may be necessary for each of the fiscal years 1994 and 1995.”

1992—Pub. L. 102-401 and Pub. L. 102-586 made identical technical corrections to directory language of Pub. L. 101-508, § 5082(2), which added this section.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 615 of title VI of Pub. L. 104-193 provided that:

“(a) IN GENERAL.—Except as provided in subsection (b), this title [see Short title of 1996 Amendment note set out under section 9801 of this title] and the amendments made by this title shall take effect on October 1, 1996.

“(b) EXCEPTION.—The amendment made by section 603(a) [amending this section] shall take effect on the date of enactment of this Act [Aug. 22, 1996].”

SHORT TITLE

For short title of this subchapter as the Child Care and Development Block Grant Act of 1990, see section 658A(a) of Pub. L. 97-35, as amended, set out as a note under section 9801 of this title.

GOALS OF SUBCHAPTER

Section 658A(b) of subchapter C (§ 658A et seq.) of chapter 8 of subtitle A of title VI of Pub. L. 97-35, as added by Pub. L. 104-193, title VI, § 602(3), Aug. 22, 1996, 110 Stat. 2279, provided that: “The goals of this subchapter are—

“(1) to allow each State maximum flexibility in developing child care programs and policies that best suit the needs of children and parents within such State;

“(2) to promote parental choice to empower working parents to make their own decisions on the child care that best suits their family’s needs;

“(3) to encourage States to provide consumer education information to help parents make informed choices about child care;

“(4) to assist States to provide child care to parents trying to achieve independence from public assistance; and

“(5) to assist States in implementing the health, safety, licensing, and registration standards established in State regulations.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9858m, 9858n of this title.

§ 9858a. Establishment of block grant program

The Secretary is authorized to make grants to States in accordance with the provisions of this subchapter.

(Pub. L. 97-35, title VI, § 658C, as added Pub. L. 101-508, title V, § 5082(2), Nov. 5, 1990, 104 Stat. 1388-236; amended Pub. L. 102-401, § 3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102-586, § 8(c)(1), Nov. 4, 1992, 106 Stat. 5036.)

AMENDMENTS

1992—Pub. L. 102-401 and Pub. L. 102-586 made identical technical corrections to directory language of Pub. L. 101-508, § 5082(2), which added this section.

§ 9858b. Lead agency**(a) Designation**

The chief executive officer of a State desiring to receive a grant under this subchapter shall designate, in an application submitted to the Secretary under section 9858c of this title, an appropriate State agency that complies with the requirements of subsection (b) of this section to act as the lead agency.

(b) Duties**(1) In general**

The lead agency shall—

(A) administer, directly or through other governmental or nongovernmental agencies, the financial assistance received under this subchapter by the State;

(B) develop the State plan to be submitted to the Secretary under section 9858c(a) of this title;

(C) in conjunction with the development of the State plan as required under subparagraph (B), hold at least one hearing in the State with sufficient time and Statewide distribution of the notice of such hearing, to provide to the public an opportunity to comment on the provision of child care services under the State plan; and

(D) coordinate the provision of services under this subchapter with other Federal, State and local child care and early childhood development programs.

(2) Development of plan

In the development of the State plan described in paragraph (1)(B), the lead agency shall consult with appropriate representatives of units of general purpose local government.

(Pub. L. 97-35, title VI, § 658D, as added Pub. L. 101-508, title V, § 5082(2), Nov. 5, 1990, 104 Stat. 1388-236; amended Pub. L. 102-401, § 3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102-586, § 8(c)(1), Nov. 4, 1992, 106 Stat. 5036; Pub. L. 104-193, title VI, § 604, Aug. 22, 1996, 110 Stat. 2281.)

AMENDMENTS

1996—Subsec. (b)(1)(A). Pub. L. 104-193, § 604(1)(A), substituted “governmental or nongovernmental agencies” for “State agencies”.

Subsec. (b)(1)(C). Pub. L. 104-193, § 604(1)(B), inserted “with sufficient time and Statewide distribution of the notice of such hearing,” after “hearing in the State”.

Subsec. (b)(2). Pub. L. 104-193, § 604(2), struck out at end “Such consultations may include consideration of local child care needs and resources, the effectiveness of existing child care and early childhood development services, and the methods by which funds made available under this subchapter can be used to effectively address local shortages.”

1992—Pub. L. 102-401 and Pub. L. 102-586 made identical technical corrections to directory language of Pub. L. 101-508, § 5082(2), which added this section.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-193 effective Oct. 1, 1996, see section 615 of Pub. L. 104-193, set out as a note under section 9858 of this title

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9858a of this title.

§ 9858c. Application and plan**(a) Application**

To be eligible to receive assistance under this subchapter, a State shall prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary shall by rule require, including—

(1) an assurance that the State will comply with the requirements of this subchapter; and

(2) a State plan that meets the requirements of subsection (c) of this section.

(b) Period covered by plan

The State plan contained in the application under subsection (a) of this section shall be designed to be implemented during a 2-year period.

(c) Requirements of a plan**(1) Lead agency**

The State plan shall identify the lead agency designated under section 9858b of this title.

(2) Policies and procedures

The State plan shall:

(A) Parental choice of providers

Provide assurances that—

(i) the parent or parents of each eligible child within the State who receives or is offered child care services for which financial assistance is provided under this subchapter are given the option either—

(I) to enroll such child with a child care provider that has a grant or contract for the provision of such services; or

(II) to receive a child care certificate as defined in section 9858n(2) of this title;

(ii) in cases in which the parent selects the option described in clause (i)(I), the child will be enrolled with the eligible provider selected by the parent to the maximum extent practicable; and

(iii) child care certificates offered to parents selecting the option described in clause (i)(II) shall be of a value commensurate with the subsidy value of child care services provided under the option described in clause (i)(I);

and provide a detailed description of the procedures the State will implement to carry out the requirements of this subparagraph.

(B) Unlimited parental access

Certify that procedures are in effect within the State to ensure that child care providers who provide services for which assistance is made available under this subchapter afford parents unlimited access to their children and to the providers caring for their children, during the normal hours of operation of such providers and whenever such children are in the care of such providers and provide a detailed description of such procedures.

(C) Parental complaints

Certify that the State maintains a record of substantiated parental complaints and makes information regarding such parental

complaints available to the public on request and provide a detailed description of how such record is maintained and is made available.

(D) Consumer education information

Certify that the State will collect and disseminate to parents of eligible children and the general public, consumer education information that will promote informed child care choices.

(E) Compliance with State licensing requirements

(i) In general

Certify that the State has in effect licensing requirements applicable to child care services provided within the State, and provide a detailed description of such requirements and of how such requirements are effectively enforced. Nothing in the preceding sentence shall be construed to require that licensing requirements be applied to specific types of providers of child care services.

(ii) Indian tribes and tribal organizations

In lieu of any licensing and regulatory requirements applicable under State and local law, the Secretary, in consultation with Indian tribes and tribal organizations, shall develop minimum child care standards (that appropriately reflect tribal needs and available resources) that shall be applicable to Indian tribes and tribal organizations receiving assistance under this subchapter.

(F) Establishment of health and safety requirements

Certify that there are in effect within the State, under State or local law, requirements designed to protect the health and safety of children that are applicable to child care providers that provide services for which assistance is made available under this subchapter. Such requirements shall include—

- (i) the prevention and control of infectious diseases (including immunization);
- (ii) building and physical premises safety; and
- (iii) minimum health and safety training appropriate to the provider setting.

Nothing in this subparagraph shall be construed to require the establishment of additional health and safety requirements for child care providers that are subject to health and safety requirements in the categories described in this subparagraph on November 5, 1990, under State or local law.

(G) Compliance with State and local health and safety requirements

Certify that procedures are in effect to ensure that child care providers within the State that provide services for which assistance is provided under this subchapter comply with all applicable State or local health and safety requirements as described in subparagraph (F).

(H) Meeting the needs of certain populations

Demonstrate the manner in which the State will meet the specific child care needs

of families who are receiving assistance under a State program under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.], families who are attempting through work activities to transition off of such assistance program, and families that are at risk of becoming dependent on such assistance program.

(3) Use of block grant funds

(A) General requirement

The State plan shall provide that the State will use the amounts provided to the State for each fiscal year under this subchapter as required under subparagraphs (B) through (D).

(B) Child care services and related activities

The State shall use amounts provided to the State for each fiscal year under this subchapter for child care services on a sliding fee scale basis, activities that improve the quality or availability of such services, and any other activity that the State deems appropriate to realize any of the goals specified in paragraphs (2) through (5) of section 658A(b),¹ with priority being given for services provided to children of families with very low family incomes (taking into consideration family size) and to children with special needs.

(C) Limitation on administrative costs

Not more than 5 percent of the aggregate amount of funds available to the State to carry out this subchapter by a State in each fiscal year may be expended for administrative costs incurred by such State to carry out all of its functions and duties under this subchapter. As used in the preceding sentence, the term “administrative costs” shall not include the costs of providing direct services.

(D) Assistance for certain families

A State shall ensure that a substantial portion of the amounts available (after the State has complied with the requirement of section 418(b)(2) of the Social Security Act [42 U.S.C. 618(b)(2)] with respect to each of the fiscal years 1997 through 2002) to the State to carry out activities under this subchapter in each fiscal year is used to provide assistance to low-income working families other than families described in paragraph (2)(H).

(4) Payment rates

(A) In general

The State plan shall certify that payment rates for the provision of child care services for which assistance is provided under this subchapter are sufficient to ensure equal access for eligible children to comparable child care services in the State or substate area that are provided to children whose parents are not eligible to receive assistance under this subchapter or for child care assistance under any other Federal or State programs and shall provide a summary of the facts re-

¹ See References in Text note below.

lied on by the State to determine that such rates are sufficient to ensure such access.

(B) Construction

Nothing in this paragraph shall be construed to create a private right of action.

(5) Sliding fee scale

The State plan shall provide that the State will establish and periodically revise, by rule, a sliding fee scale that provides for cost sharing by the families that receive child care services for which assistance is provided under this subchapter.

(d) Approval of application

The Secretary shall approve an application that satisfies the requirements of this section.

(Pub. L. 97-35, title VI, § 658E, as added Pub. L. 101-508, title V, § 5082(2), Nov. 5, 1990, 104 Stat. 1388-237; amended Pub. L. 102-401, § 3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102-586, § 8(c)(1), Nov. 4, 1992, 106 Stat. 5036; Pub. L. 104-193, title VI, § 605, Aug. 22, 1996, 110 Stat. 2281; Pub. L. 105-33, title V, § 5602(1), Aug. 5, 1997, 111 Stat. 645.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (c)(2)(H), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part A of title IV of the Act is classified generally to part A (§ 601 et seq.) of subchapter IV of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

Paragraphs (2) through (5) of section 658A(b), referred to in subsec. (c)(3)(B), means pars. (2) through (5) of section 658A(b) of Pub. L. 97-35, which are set out as a note under section 9858 of this title.

AMENDMENTS

1997—Subsec. (c)(2)(E)(ii). Pub. L. 105-33 substituted “tribal organizations receiving” for “tribal organization receiving”.

1996—Subsec. (b). Pub. L. 104-193, § 605(1), substituted “implemented during a 2-year period” for “implemented—

“(1) during a 3-year period for the initial State plan; and

“(2) during a 2-year period for subsequent State plans”.

Subsec. (c)(2)(A). Pub. L. 104-193, § 605(2)(A)(i)(II), in closing provisions, substituted “and provide a detailed description of the procedures the State will implement to carry out the requirements of this subparagraph.” for “except that nothing in this subparagraph shall require a State to have a child care certificate program in operation prior to October 1, 1992.”

Subsec. (c)(2)(A)(i). Pub. L. 104-193, § 605(2)(A)(i)(I), struck out “, other than through assistance provided under paragraph (3)(C),” after “provided under this subchapter” in introductory provisions.

Subsec. (c)(2)(B). Pub. L. 104-193, § 605(2)(A)(ii), substituted “Certify that procedures are in effect” for “Provide assurances that procedures are in effect” and inserted before period at end “and provide a detailed description of such procedures”.

Subsec. (c)(2)(C). Pub. L. 104-193, § 605(2)(A)(iii), substituted “Certify that the State maintains” for “Provide assurances that the State maintains” and inserted before period at end “and provide a detailed description of how such record is maintained and is made available”.

Subsec. (c)(2)(D). Pub. L. 104-193, § 605(2)(A)(iv), amended heading and text of subpar. (D) generally. Prior to amendment, text read as follows: “Provide assurances that consumer education information will be made available to parents and the general public with-

in the State concerning licensing and regulatory requirements, complaint procedures, and policies and practices relative to child care services within the State.”

Subsec. (c)(2)(E). Pub. L. 104-193, § 605(2)(A)(v), amended heading and text of subpar. (E) generally, substituting provisions relating to compliance with State licensing requirements for provisions relating to compliance with State and local regulatory requirements.

Subsec. (c)(2)(F), (G). Pub. L. 104-193, § 605(2)(A)(vi), (vii), substituted “Certify” for “Provide assurances”.

Subsec. (c)(2)(H). Pub. L. 104-193, § 605(2)(A)(viii), added subpar. (H) and struck out heading and text of former subpar. (H). Text read as follows: “Provide assurances that if the State reduces the level of standards applicable to child care services provided in the State on November 5, 1990, the State shall inform the Secretary of the rationale for such reduction in the annual report of the State described in section 9858i of this title.”

Subsec. (c)(2)(I). Pub. L. 104-193, § 605(2)(A)(viii), struck out heading and text of subpar. (I). Text read as follows: “Provide assurances that not later than 18 months after the date of the submission of the application under this section, the State will complete a full review of the law applicable to, and the licensing and regulatory requirements and policies of, each licensing agency that regulates child care services and programs in the State unless the State has reviewed such law, requirements, and policies in the 3-year period ending on November 5, 1990.”

Subsec. (c)(2)(J). Pub. L. 104-193, § 605(2)(A)(viii), struck out heading and text of subpar. (J). Text read as follows: “Provide assurances that funds received under this subchapter by the State will be used only to supplement, not to supplant, the amount of Federal, State, and local funds otherwise expended for the support of child care services and related programs in the State.”

Subsec. (c)(3)(A). Pub. L. 104-193, § 605(2)(B)(i), substituted “subparagraphs (B) through (D)” for “subparagraphs (B) and (C)”.

Subsec. (c)(3)(B). Pub. L. 104-193, § 605(2)(B)(ii), inserted “and related activities” after “services” in heading, substituted “The” for “Subject to the reservation contained in subparagraph (C), the”, substituted “for child care services on a sliding fee scale basis, activities that improve the quality or availability of such services, and any other activity that the State deems appropriate to realize any of the goals specified in paragraphs (2) through (5) of section 658A(b)” for “for—

“(i) child care services, that meet the requirements of this subchapter, that are provided to eligible children in the State on a sliding fee scale basis using funding methods provided for in subsection (c)(2)(A) of this section”, substituted “special needs.” for “special needs; and”, and struck out cl. (ii) which read as follows: “activities designed to improve the availability and quality of child care.”

Subsec. (c)(3)(C). Pub. L. 104-193, § 605(2)(B)(iii), amended heading and text of subpar. (C) generally. Prior to amendment, text read as follows: “The State shall reserve 25 percent of the amounts provided to the State for each fiscal year under this subchapter to carry out activities designed to improve the quality of child care (as described in section 9858e of this title) and to provide before- and after-school and early childhood development services (as described in section 9858f of this title).”

Subsec. (c)(3)(D). Pub. L. 104-193, § 605(2)(B)(iv), added subpar. (D).

Subsec. (c)(4)(A). Pub. L. 104-193, § 605(2)(C), substituted “State plan shall certify” for “State plan shall provide assurances”, inserted “and shall provide a summary of the facts relied on by the State to determine that such rates are sufficient to ensure such access” after “Federal or State programs”, and struck out at end “Such payment rates shall take into account the variations in the costs of providing child care in different settings and to children of different age groups, and the additional costs of providing child care for children with special needs.”

1992—Pub. L. 102-401 and Pub. L. 102-586 made identical technical corrections to directory language of Pub. L. 101-508, §5082(2), which added this section.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-33 effective as if included in the enactment of title VI of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193, see section 5603 of Pub. L. 105-33, set out as a note under section 618 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-193 effective Oct. 1, 1996, see section 615 of Pub. L. 104-193, set out as a note under section 9858 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9858b, 9858d, 9858g, 9858h, 9858i, 9858k, 9858m, 9858n of this title.

§ 9858d. Limitations on State allotments

(a) No entitlement to contract or grant

Nothing in this subchapter shall be construed—

(1) to entitle any child care provider or recipient of a child care certificate to any contract, grant or benefit; or

(2) to limit the right of any State to impose additional limitations or conditions on contracts or grants funded under this subchapter.

(b) Construction of facilities

(1) In general

Except as provided for in section 9858m(c)(6) of this title, no funds made available under this subchapter shall be expended for the purchase or improvement of land, or for the purchase, construction, or permanent improvement (other than minor remodeling) of any building or facility.

(2) Sectarian agency or organization

In the case of a sectarian agency or organization, no funds made available under this subchapter may be used for the purposes described in paragraph (1) except to the extent that renovation or repair is necessary to bring the facility of such agency or organization into compliance with health and safety requirements referred to in section 9858c(c)(2)(F) of this title.

(Pub. L. 97-35, title VI, §658F, as added Pub. L. 101-508, title V, §5082(2), Nov. 5, 1990, 104 Stat. 1388-240; amended Pub. L. 102-401, §3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102-586, §8(c)(1), Nov. 4, 1992, 106 Stat. 5036; Pub. L. 104-193, title VI, §606, Aug. 22, 1996, 110 Stat. 2283.)

AMENDMENTS

1996—Subsec. (b)(1). Pub. L. 104-193 substituted “Except as provided for in section 9858m(c)(6) of this title, no funds” for “No funds”.

1992—Pub. L. 102-401 and Pub. L. 102-586 made identical technical corrections to directory language of Pub. L. 101-508, §5082(2), which added this section.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-193 effective Oct. 1, 1996, see section 615 of Pub. L. 104-193, set out as a note under section 9858 of this title.

§ 9858e. Activities to improve quality of child care

A State that receives funds to carry out this subchapter for a fiscal year, shall use not less

than 4 percent of the amount of such funds for activities that are designed to provide comprehensive consumer education to parents and the public, activities that increase parental choice, and activities designed to improve the quality and availability of child care (such as resource and referral services).

(Pub. L. 97-35, title VI, §658G, as added Pub. L. 101-508, title V, §5082(2), Nov. 5, 1990, 104 Stat. 1388-241; amended Pub. L. 102-401, §3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102-586, §8(c)(1), Nov. 4, 1992, 106 Stat. 5036; Pub. L. 104-193, title VI, §607, Aug. 22, 1996, 110 Stat. 2283.)

AMENDMENTS

1996—Pub. L. 104-193 reenacted section catchline without change and amended text generally, substituting current provisions for provisions requiring State receiving financial assistance under this subchapter to utilize not less than 20 percent of such assistance for one or more of following: resource and referral programs, grants or loans to assist in meeting State and local standards, monitoring of compliance with licensing and regulatory requirements, training, or improving salaries or other compensation to staff.

1992—Pub. L. 102-401 and Pub. L. 102-586 made identical technical corrections to directory language of Pub. L. 101-508, §5082(2), which added this section.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-193 effective Oct. 1, 1996, see section 615 of Pub. L. 104-193, set out as a note under section 9858 of this title.

§ 9858f. Repealed. Pub. L. 104-193, title VI, § 608, Aug. 22, 1996, 110 Stat. 2284

Section, Pub. L. 97-35, title VI, §658H, as added Pub. L. 101-508, title V, §5082(2), Nov. 5, 1990, 104 Stat. 1388-241; amended Pub. L. 102-401, §3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102-586, §8(c)(1), Nov. 4, 1992, 106 Stat. 5036, related to early childhood development and before- and after-school services.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1996, see section 615 of Pub. L. 104-193, set out as an Effective Date of 1996 Amendment note under section 9858 of this title.

§ 9858g. Administration and enforcement

(a) Administration

The Secretary shall—

(1) coordinate all activities of the Department of Health and Human Services relating to child care, and, to the maximum extent practicable, coordinate such activities with similar activities of other Federal entities;

(2) collect, publish and make available to the public a listing of State child care standards at least once every 3 years; and

(3) provide technical assistance to assist States to carry out this subchapter, including assistance on a reimbursable basis.

(b) Enforcement

(1) Review of compliance with State plan

The Secretary shall review and monitor State compliance with this subchapter and the plan approved under section 9858c(c) of this title for the State.

(2) Noncompliance

(A) In general

If the Secretary, after reasonable notice to a State and opportunity for a hearing, finds that—

(i) there has been a failure by the State to comply substantially with any provision or requirement set forth in the plan approved under section 9858c(c) of this title for the State; or

(ii) in the operation of any program for which assistance is provided under this subchapter there is a failure by the State to comply substantially with any provision of this subchapter;

the Secretary shall notify the State of the finding and shall require that the State reimburse the Secretary for any funds that were improperly expended for purposes prohibited or not authorized by this subchapter, that the Secretary deduct from the administrative portion of the State allotment for the following fiscal year an amount that is less than or equal to any improperly expended funds, or a combination of such options.

(B) Additional sanctions

In the case of a finding of noncompliance made pursuant to subparagraph (A), the Secretary may, in addition to imposing the sanctions described in such subparagraph, impose other appropriate sanctions, including recoupment of money improperly expended for purposes prohibited or not authorized by this subchapter, and disqualification from the receipt of financial assistance under this subchapter.

(C) Notice

The notice required under subparagraph (A) shall include a specific identification of any additional sanction being imposed under subparagraph (B).

(3) Issuance of rules

The Secretary shall establish by rule procedures for—

(A) receiving, processing, and determining the validity of complaints concerning any failure of a State to comply with the State plan or any requirement of this subchapter; and

(B) imposing sanctions under this section.

(Pub. L. 97-35, title VI, §658I, as added Pub. L. 101-508, title V, §5082(2), Nov. 5, 1990, 104 Stat. 1388-242; amended Pub. L. 102-401, §3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102-586, §8(c)(1), Nov. 4, 1992, 106 Stat. 5036; Pub. L. 104-193, title VI, §609, Aug. 22, 1996, 110 Stat. 2284.)

AMENDMENTS

1996—Subsec. (b)(1). Pub. L. 104-193, §609(1), struck out “, and shall have the power to terminate payments to the State in accordance with paragraph (2)” before period at end.

Subsec. (b)(2)(A). Pub. L. 104-193, §609(2), in closing provisions, substituted before period at end “finding and shall require that the State reimburse the Secretary for any funds that were improperly expended for purposes prohibited or not authorized by this subchapter, that the Secretary deduct from the administrative portion of the State allotment for the following fiscal year an amount that is less than or equal to any improperly expended funds, or a combination of such options” for “finding and that no further payments may be made to such State under this subchapter (or, in the case of noncompliance in the operation of a pro-

gram or activity, that no further payments to the State will be made with respect to such program or activity) until the Secretary is satisfied that there is no longer any such failure to comply or that the non-compliance will be promptly corrected”.

1992—Pub. L. 102-401 and Pub. L. 102-586 made identical technical corrections to directory language of Pub. L. 101-508, §5082(2), which added this section.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-193 effective Oct. 1, 1996, see section 615 of Pub. L. 104-193, set out as a note under section 9858 of this title.

§ 9858h. Payments

(a) In general

Subject to the availability of appropriations, a State that has an application approved by the Secretary under section 9858c(d) of this title shall be entitled to a payment under this section for each fiscal year in an amount equal to its allotment under section 9858m of this title for such fiscal year.

(b) Method of payment

(1) In general

Subject to paragraph (2), the Secretary may make payments to a State in installments, and in advance or by way of reimbursement, with necessary adjustments on account of overpayments or underpayments, as the Secretary may determine.

(2) Limitation

The Secretary may not make such payments in a manner that prevents the State from complying with the requirement specified in section 9858c(c)(3) of this title.

(c) Spending of funds by State

Payments to a State from the allotment under section 9858m of this title for any fiscal year may be obligated by the State in that fiscal year or in the succeeding fiscal year.

(Pub. L. 97-35, title VI, §658J, as added Pub. L. 101-508, title V, §5082(2), Nov. 5, 1990, 104 Stat. 1388-243; amended Pub. L. 102-27, title III, §310, Apr. 10, 1991, 105 Stat. 153; Pub. L. 102-401, §3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102-586, §8(a), (c)(1), Nov. 4, 1992, 106 Stat. 5035, 5036; Pub. L. 103-171, §8, Dec. 2, 1993, 107 Stat. 1994; Pub. L. 104-193, title VI, §610, Aug. 22, 1996, 110 Stat. 2284.)

AMENDMENTS

1996—Subsec. (c). Pub. L. 104-193 substituted “obligated” for “expended” and “succeeding fiscal year” for “succeeding 3 fiscal years”.

1993—Subsec. (c). Pub. L. 103-171 made technical correction to directory language of Pub. L. 102-586, §8(a). See 1992 Amendment note below.

1992—Pub. L. 102-401 and Pub. L. 102-586, §8(c)(1), made identical technical corrections to directory language of Pub. L. 101-508, §5082(2), which added this section.

Subsec. (c). Pub. L. 102-586, §8(a), as amended by Pub. L. 103-171, substituted “expended” for “obligated” and “succeeding 3 fiscal years” for “succeeding fiscal year”.

1991—Subsec. (c). Pub. L. 102-27 substituted “obligated” for “expended”.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-193 effective Oct. 1, 1996, see section 615 of Pub. L. 104-193, set out as a note under section 9858 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 8(d) of Pub. L. 102-586 provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting section 9858q of this title and amending this section and section 9858n of this title] shall take effect on the date of enactment of this Act [Nov. 4, 1992].

“(2) APPLICATION.—The amendments made by this section shall not apply with respect to fiscal years beginning before October 1, 1992.”

§ 9858i. Reports and audits**(a) Reports****(1) Collection of information by States****(A) In general**

A State that receives funds to carry out this subchapter shall collect the information described in subparagraph (B) on a monthly basis.

(B) Required information

The information required under this subparagraph shall include, with respect to a family unit receiving assistance under this subchapter information concerning—

- (i) family income;
- (ii) county of residence;
- (iii) the gender, race, and age of children receiving such assistance;
- (iv) whether the head of the family unit is a single parent;
- (v) the sources of family income, including—

(I) employment, including self-employment;

(II) cash or other assistance under—

(aa) the temporary assistance for needy families program under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.); and

(bb) a State program for which State spending is counted toward the maintenance of effort requirement under section 409(a)(7) of the Social Security Act (42 U.S.C. 609(a)(7));

(III) housing assistance;

(IV) assistance under the Food Stamp Act of 1977 [7 U.S.C. 2011 et seq.]; and

(V) other assistance programs;

(vi) the number of months the family has received benefits;

(vii) the type of child care in which the child was enrolled (such as family child care, home care, or center-based child care);

(viii) whether the child care provider involved was a relative;

(ix) the cost of child care for such families; and

(x) the average hours per month of such care;

during the period for which such information is required to be submitted.

(C) Submission to Secretary

A State described in subparagraph (A) shall, on a quarterly basis, submit the information required to be collected under subparagraph (B) to the Secretary.

(D) Use of samples**(i) Authority**

A State may comply with the requirement to collect the information described in subparagraph (B) through the use of disaggregated case record information on a sample of families selected through the use of scientifically acceptable sampling methods approved by the Secretary.

(ii) Sampling and other methods

The Secretary shall provide the States with such case sampling plans and data collection procedures as the Secretary deems necessary to produce statistically valid samples of the information described in subparagraph (B). The Secretary may develop and implement procedures for verifying the quality of data submitted by the States.

(2) Annual reports

Not later than December 31, 1997, and every 12 months thereafter, a State described in paragraph (1)(A) shall prepare and submit to the Secretary a report that includes aggregate data concerning—

(A) the number of child care providers that received funding under this subchapter as separately identified based on the types of providers listed in section 9858n(5) of this title;

(B) the monthly cost of child care services, and the portion of such cost that is paid for with assistance provided under this subchapter, listed by the type of child care services provided;

(C) the number of payments made by the State through vouchers, contracts, cash, and disregards under public benefit programs, listed by the type of child care services provided;

(D) the manner in which consumer education information was provided to parents and the number of parents to whom such information was provided; and

(E) the total number (without duplication) of children and families served under this subchapter;

during the period for which such report is required to be submitted.

(b) Audits**(1) Requirement**

A State shall, after the close of each program period covered by an application approved under section 9858c(d) of this title audit its expenditures during such program period from amounts received under this subchapter.

(2) Independent auditor

Audits under this subsection shall be conducted by an entity that is independent of the State that receives assistance under this subchapter and be in accordance with generally accepted auditing principles.

(3) Submission

Not later than 30 days after the completion of an audit under this subsection, the State shall submit a copy of the audit to the legislature of the State and to the Secretary.

(4) Repayment of amounts

Each State shall repay to the United States any amounts determined through an audit under this subsection not to have been expended in accordance with this subchapter, or the Secretary may offset such amounts against any other amount to which the State is or may be entitled under this subchapter.

(Pub. L. 97-35, title VI, § 658K, as added Pub. L. 101-508, title V, § 5082(2), Nov. 5, 1990, 104 Stat. 1388-243; amended Pub. L. 102-401, § 3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102-586, § 8(c)(1), Nov. 4, 1992, 106 Stat. 5036; Pub. L. 104-193, title VI, § 611, Aug. 22, 1996, 110 Stat. 2284; Pub. L. 105-33, title V, § 5602(2), Aug. 5, 1997, 111 Stat. 646.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a)(1)(B)(v)(II)(aa), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part A of title IV of the Act is classified generally to part A (§ 601 et seq.) of subchapter IV of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Food Stamp Act of 1977, referred to in subsec. (a)(1)(B)(v)(IV), is Pub. L. 88-525, Aug. 31, 1964, 78 Stat. 703, as amended, which is classified generally to chapter 51 (§ 2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

AMENDMENTS

1997—Subsec. (a)(1)(B)(iv). Pub. L. 105-33, § 5602(2)(A)(i)(I), added cl. (iv) and struck out former cl. (iv) which read as follows: “whether the family includes only one parent;”.

Subsec. (a)(1)(B)(v). Pub. L. 105-33, § 5602(2)(A)(i)(II)(aa), substituted “including—” for “including the amount obtained from (and separately identified)—” in introductory provisions.

Subsec. (a)(1)(B)(v)(II). Pub. L. 105-33, § 5602(2)(A)(i)(II)(bb), added subcl. (II) and struck out former subcl. (II) which read as follows: “cash or other assistance under part A of title IV of the Social Security Act;”.

Subsec. (a)(1)(B)(x). Pub. L. 105-33, § 5602(2)(A)(i)(III), substituted “month” for “week”.

Subsec. (a)(1)(D). Pub. L. 105-33, § 5602(2)(A)(ii), added subpar. (D) and struck out heading and text of former subpar. (D). Text read as follows: “The Secretary may disapprove the information collected by a State under this paragraph if the State uses sampling methods to collect such information.”

Subsec. (a)(2). Pub. L. 105-33, § 5602(2)(B), substituted “Annual” for “Biannual” in heading and “12” for “6” in introductory provisions of text.

1996—Pub. L. 104-193, § 611(1), substituted “Reports” for “Annual report” in section catchline.

Subsec. (a). Pub. L. 104-193, § 611(2), amended heading and text of subsec. (a) generally. Prior to amendment, text related to requirement of reports by Dec. 31, 1992, and annually thereafter, which include specification of expenditures under section 9858c(c)(3) of this title, data on fulfillment of child care needs, description of improvements in affordability and availability, description of review of State licensing and regulatory requirements and policies and results of review, explanation of any reductions in child care standards, and description of standards and health and safety requirements applicable to providers.

Subsec. (b)(1). Pub. L. 104-193, § 611(2)(3)(A), substituted “an application approved” for “a application approved”.

Subsec. (b)(2). Pub. L. 104-193, § 611(2)(3)(B), substituted “the State that receives” for “any agency administering activities that receive”.

Subsec. (b)(4). Pub. L. 104-193, § 611(2)(3)(C), substituted “entitled under this subchapter” for “entitles under this subchapter”.

1992—Pub. L. 102-401 and Pub. L. 102-586 made identical technical corrections to directory language of Pub. L. 101-508, § 5082(2), which added this section.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-33 effective as if included in the enactment of title VI of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193, see section 5603 of Pub. L. 105-33, set out as a note under section 618 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-193 effective Oct. 1, 1996, see section 615 of Pub. L. 104-193, set out as a note under section 9858 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9858j of this title.

§ 9858j. Report by Secretary

Not later than July 31, 1998, and biennially thereafter, the Secretary shall prepare and submit to the Committee on Economic and Educational Opportunities of the House of Representatives and the Committee on Labor and Human Resources of the Senate a report that contains a summary and analysis of the data and information provided to the Secretary in the State reports submitted under section 9858i of this title. Such report shall include an assessment, and where appropriate, recommendations for the Congress concerning efforts that should be undertaken to improve the access of the public to quality and affordable child care in the United States.

(Pub. L. 97-35, title VI, § 658L, as added Pub. L. 101-508, title V, § 5082(2), Nov. 5, 1990, 104 Stat. 1388-244; amended Pub. L. 102-401, § 3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102-586, § 8(c)(1), Nov. 4, 1992, 106 Stat. 5036; Pub. L. 104-193, title VI, § 612, Aug. 22, 1996, 110 Stat. 2285; Pub. L. 105-33, title V, § 5602(3), Aug. 5, 1997, 111 Stat. 646.)

AMENDMENTS

1997—Pub. L. 105-33 substituted “1998” for “1997”.

1996—Pub. L. 104-193 substituted “July 31, 1997, and biennially thereafter” for “July 31, 1993, and annually thereafter” and “Committee on Economic and Educational Opportunities” for “Committee on Education and Labor”.

1992—Pub. L. 102-401 and Pub. L. 102-586 made identical technical corrections to directory language of Pub. L. 101-508, § 5082(2), which added this section.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-33 effective as if included in the enactment of title VI of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193, see section 5603 of Pub. L. 105-33, set out as a note under section 618 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-193 effective Oct. 1, 1996, see section 615 of Pub. L. 104-193, set out as a note under section 9858 of this title.

§ 9858k. Limitations on use of financial assistance for certain purposes**(a) Sectarian purposes and activities**

No financial assistance provided under this subchapter, pursuant to the choice of a parent

under section 9858c(c)(2)(A)(i)(I) of this title or through any other grant or contract under the State plan, shall be expended for any sectarian purpose or activity, including sectarian worship or instruction.

(b) Tuition

With regard to services provided to students enrolled in grades 1 through 12, no financial assistance provided under this subchapter shall be expended for—

- (1) any services provided to such students during the regular school day;
- (2) any services for which such students receive academic credit toward graduation; or
- (3) any instructional services which supplant or duplicate the academic program of any public or private school.

(Pub. L. 97-35, title VI, §658M, as added Pub. L. 101-508, title V, §5082(2), Nov. 5, 1990, 104 Stat. 1388-244; amended Pub. L. 102-401, §3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102-586, §8(c)(1), Nov. 4, 1992, 106 Stat. 5036.)

AMENDMENTS

1992—Pub. L. 102-401 and Pub. L. 102-586 made identical technical corrections to directory language of Pub. L. 101-508, §5082(2), which added this section.

§ 9858l. Nondiscrimination

(a) Religious nondiscrimination

(1) Construction

(A) In general

Except as provided in subparagraph (B), nothing in this section shall be construed to modify or affect the provisions of any other Federal law or regulation that relates to discrimination in employment on the basis of religion.

(B) Exception

A sectarian organization may require that employees adhere to the religious tenets and teachings of such organization, and such organization may require that employees adhere to rules forbidding the use of drugs or alcohol.

(2) Discrimination against child

(A) In general

A child care provider (other than a family child care provider) that receives assistance under this subchapter shall not discriminate against any child on the basis of religion in providing child care services.

(B) Non-funded child care slots

Nothing in this section shall prohibit a child care provider from selecting children for child care slots that are not funded directly with assistance provided under this subchapter because such children or their family members participate on a regular basis in other activities of the organization that owns or operates such provider.

(3) Employment in general

(A) Prohibition

A child care provider that receives assistance under this subchapter shall not discriminate in employment on the basis of the

religion of the prospective employee if such employee's primary responsibility is or will be working directly with children in the provision of child care services.

(B) Qualified applicants

If two or more prospective employees are qualified for any position with a child care provider receiving assistance under this subchapter, nothing in this section shall prohibit such child care provider from employing a prospective employee who is already participating on a regular basis in other activities of the organization that owns or operates such provider.

(C) Present employees

This paragraph shall not apply to employees of child care providers receiving assistance under this subchapter if such employees are employed with the provider on November 5, 1990.

(4) Employment and admission practices

Notwithstanding paragraphs (1)(B), (2), and (3), if assistance provided under this subchapter, and any other Federal or State program, amounts to 80 percent or more of the operating budget of a child care provider that receives such assistance, the Secretary shall not permit such provider to receive any further assistance under this subchapter unless the grant or contract relating to the financial assistance, or the employment and admissions policies of the provider, specifically provides that no person with responsibilities in the operation of the child care program, project, or activity of the provider will discriminate against any individual in employment, if such employee's primary responsibility is or will be working directly with children in the provision of child care, or admissions because of the religion of such individual.

(b) Effect on State law

Nothing in this subchapter shall be construed to supersede or modify any provision of a State constitution or State law that prohibits the expenditure of public funds in or by sectarian institutions, except that no provision of a State constitution or State law shall be construed to prohibit the expenditure in or by sectarian institutions of any Federal funds provided under this subchapter.

(Pub. L. 97-35, title VI, §658N, as added Pub. L. 101-508, title V, §5082(2), Nov. 5, 1990, 104 Stat. 1388-245; amended Pub. L. 102-401, §3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102-586, §8(c)(1), Nov. 4, 1992, 106 Stat. 5036.)

AMENDMENTS

1992—Pub. L. 102-401 and Pub. L. 102-586 made identical technical corrections to directory language of Pub. L. 101-508, §5082(2), which added this section.

§ 9858m. Amounts reserved; allotments

(a) Amounts reserved

(1) Territories and possessions

The Secretary shall reserve not to exceed one half of 1 percent of the amount appropriated under this subchapter in each fiscal

year for payments to Guam, American Samoa, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands to be allotted in accordance with their respective needs.

(2) Indians¹ tribes

The Secretary shall reserve not less than 1 percent, and not more than 2 percent, of the amount appropriated under section 9858 of this title in each fiscal year for payments to Indian tribes and tribal organizations with applications approved under subsection (c) of this section.

(b) State allotment

(1) General rule

From the amounts appropriated under section 9858 of this title for each fiscal year remaining after reservations under subsection (a) of this section, the Secretary shall allot to each State an amount equal to the sum of—

(A) an amount that bears the same ratio to 50 percent of such remainder as the product of the young child factor of the State and the allotment percentage of the State bears to the sum of the corresponding products for all States; and

(B) an amount that bears the same ratio to 50 percent of such remainder as the product of the school lunch factor of the State and the allotment percentage of the State bears to the sum of the corresponding products for all States.

(2) Young child factor

The term “young child factor” means the ratio of the number of children in the State under 5 years of age to the number of such children in all States as provided by the most recent annual estimates of population in the States by the Census Bureau of the Department of Commerce.

(3) School lunch factor

The term “school lunch factor” means the ratio of the number of children in the State who are receiving free or reduced price lunches under the school lunch program established under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) to the number of such children in all the States as determined annually by the Department of Agriculture.

(4) Allotment percentage

(A) In general

The allotment percentage for a State is determined by dividing the per capita income of all individuals in the United States, by the per capita income of all individuals in the State.

(B) Limitations

If an allotment percentage determined under subparagraph (A)—

(i) exceeds 1.2 percent, then the allotment percentage of that State shall be considered to be 1.2 percent; and

(ii) is less than 0.8 percent, then the allotment percentage of the State shall be considered to be 0.8 percent.

(C) Per capita income

For purposes of subparagraph (A), per capita income shall be—

(i) determined at 2-year intervals;

(ii) applied for the 2-year period beginning on October 1 of the first fiscal year beginning on the date such determination is made; and

(iii) equal to the average of the annual per capita incomes for the most recent period of 3 consecutive years for which satisfactory data are available from the Department of Commerce at the time such determination is made.

(c) Payments for benefit of Indian children

(1) General authority

From amounts reserved under subsection (a)(2) of this section, the Secretary may make grants to or enter into contracts with Indian tribes or tribal organizations that submit applications under this section, for the planning and carrying out of programs or activities consistent with the purposes of this subchapter.

(2) Applications and requirements

An application for a grant or contract under this section shall provide that:

(A) Coordination

The applicant will coordinate, to the maximum extent feasible, with the lead agency in the State or States in which the applicant will carry out programs or activities under this section.

(B) Services on reservations

In the case of an applicant located in a State other than Alaska, California, or Oklahoma, programs and activities under this section will be carried out on the Indian reservation for the benefit of Indian children.

(C) Reports and audits

The applicant will make such reports on, and conduct such audits of, programs and activities under a grant or contract under this section as the Secretary may require.

(3) Consideration of secretarial approval

In determining whether to approve an application for a grant or contract under this section, the Secretary shall take into consideration—

(A) the availability of child care services provided in accordance with this subchapter by the State or States in which the applicant proposes to carry out a program to provide child care services; and

(B) whether the applicant has the ability (including skills, personnel, resources, community support, and other necessary components) to satisfactorily carry out the proposed program or activity.

(4) Three-year limit

Grants or contracts under this section shall be for periods not to exceed 3 years.

(5) Dual eligibility of Indian children

The awarding of a grant or contract under this section for programs or activities to be

¹ So in original. Probably should be “Indian”.

conducted in a State or States shall not affect the eligibility of any Indian child to receive services provided or to participate in programs and activities carried out under a grant to the State or States under this subchapter.

(6) Construction or renovation of facilities

(A) Request for use of funds

An Indian tribe or tribal organization may submit to the Secretary a request to use amounts provided under this subsection for construction or renovation purposes.

(B) Determination

With respect to a request submitted under subparagraph (A), and except as provided in subparagraph (C), upon a determination by the Secretary that adequate facilities are not otherwise available to an Indian tribe or tribal organization to enable such tribe or organization to carry out child care programs in accordance with this subchapter, and that the lack of such facilities will inhibit the operation of such programs in the future, the Secretary may permit the tribe or organization to use assistance provided under this subsection to make payments for the construction or renovation of facilities that will be used to carry out such programs.

(C) Limitation

The Secretary may not permit an Indian tribe or tribal organization to use amounts provided under this subsection for construction or renovation if such use will result in a decrease in the level of child care services provided by the tribe or organization as compared to the level of such services provided by the tribe or organization in the fiscal year preceding the year for which the determination under subparagraph (B) is being made.

(D) Uniform procedures

The Secretary shall develop and implement uniform procedures for the solicitation and consideration of requests under this paragraph.

(d) Data and information

The Secretary shall obtain from each appropriate Federal agency, the most recent data and information necessary to determine the allotments provided for in subsection (b) of this section.

(e) Reallotments

(1) In general

Any portion of the allotment under subsection (b) of this section to a State that the Secretary determines is not required to carry out a State plan approved under section 9858c(d) of this title, in the period for which the allotment is made available, shall be reallotted by the Secretary to other States in proportion to the original allotments to the other States.

(2) Limitations

(A) Reduction

The amount of any reallotment to which a State is entitled to under paragraph (1) shall

be reduced to the extent that it exceeds the amount that the Secretary estimates will be used in the State to carry out a State plan approved under section 9858c(d) of this title.

(B) Reallotments

The amount of such reduction shall be similarly reallotted among States for which no reduction in an allotment or reallotment is required by this subsection.

(3) Amounts reallotted

For purposes of any other section of this subchapter, any amount reallotted to a State under this subsection shall be considered to be part of the allotment made under subsection (b) of this section to the State.

(4) Indian tribes or tribal organizations

Any portion of a grant or contract made to an Indian tribe or tribal organization under subsection (c) of this section that the Secretary determines is not being used in a manner consistent with the provision of this subchapter in the period for which the grant or contract is made available, shall be allotted by the Secretary to other tribes or organizations that have submitted applications under subsection (c) of this section in accordance with their respective needs.

(f) "State" defined

For the purposes of this section, the term "State" includes only the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(Pub. L. 97-35, title VI, §658O, as added Pub. L. 101-508, title V, §5082(2), Nov. 5, 1990, 104 Stat. 1388-246; amended Pub. L. 102-401, §3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102-586, §8(c)(1), Nov. 4, 1992, 106 Stat. 5036; Pub. L. 104-193, title VI, §613, Aug. 22, 1996, 110 Stat. 2286; Pub. L. 105-33, title V, §5602(4), Aug. 5, 1997, 111 Stat. 646; Pub. L. 106-78, title VII, §752(b)(17), Oct. 22, 1999, 113 Stat. 1170.)

REFERENCES IN TEXT

The Richard B. Russell National School Lunch Act, referred to in subsec. (b)(3), is act June 4, 1946, ch. 281, 60 Stat. 230, as amended, which is classified generally to chapter 13 (§1751 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1751 of this title and Tables.

AMENDMENTS

1999—Subsec. (b)(3). Pub. L. 106-78 substituted "Richard B. Russell National School Lunch Act" for "National School Lunch Act".

1997—Subsec. (c)(6)(C). Pub. L. 105-33 substituted "subparagraph (B)" for "subparagraph (A)".

1996—Subsec. (a)(1). Pub. L. 104-193, §613(1)(A), made technical amendment to heading, inserted "and" before "the Commonwealth of the Northern Mariana Islands", and struck out "and the Trust Territory of the Pacific Islands" before "to be allotted in accordance".

Subsec. (a)(2). Pub. L. 104-193, §613(1)(B), substituted "less than 1 percent, and not more than 2 percent," for "more than 3 percent".

Subsec. (c)(5). Pub. L. 104-193, §613(2)(A), substituted "activities carried out" for "activities carried our".

Subsec. (c)(6). Pub. L. 104-193, §613(2)(B), added par. (6).

Subsec. (e)(4). Pub. L. 104-193, §613(3), added par. (4). 1992—Pub. L. 102-401 and Pub. L. 102-586 made identical technical corrections to directory language of Pub. L. 101-508, §5082(2), which added this section.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-33 effective as if included in the enactment of title VI of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193, see section 5603 of Pub. L. 105-33, set out as a note under section 618 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-193 effective Oct. 1, 1996, see section 615 of Pub. L. 104-193, set out as a note under section 9858 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9858d, 9858h of this title.

§ 9858n. Definitions

As used in this subchapter:

(1) Caregiver

The term “caregiver” means an individual who provides a service directly to an eligible child on a person-to-person basis.

(2) Child care certificate

The term “child care certificate” means a certificate (that may be a check or other disbursement) that is issued by a State or local government under this subchapter directly to a parent who may use such certificate only as payment for child care services or as a deposit for child care services if such a deposit is required of other children being cared for by the provider. Nothing in this subchapter shall preclude the use of such certificates for sectarian child care services if freely chosen by the parent. For purposes of this subchapter, child care certificates shall not be considered to be grants or contracts.

(3) Repealed. Pub. L. 104-193, title VI, § 614(2), Aug. 22, 1996, 110 Stat. 2287**(4) Eligible child**

The term “eligible child” means an individual—

- (A) who is less than 13 years of age;
- (B) whose family income does not exceed 85 percent of the State median income for a family of the same size; and
- (C) who—
 - (i) resides with a parent or parents who are working or attending a job training or educational program; or
 - (ii) is receiving, or needs to receive, protective services and resides with a parent or parents not described in clause (i).

(5) Eligible child care provider

The term “eligible child care provider” means—

- (A) a center-based child care provider, a group home child care provider, a family child care provider, or other provider of child care services for compensation that—
 - (i) is licensed, regulated, or registered under State law as described in section 9858c(c)(2)(E) of this title; and
 - (ii) satisfies the State and local requirements, including those referred to in section 9858c(c)(2)(F) of this title;

applicable to the child care services it provides; or

(B) a child care provider that is 18 years of age or older who provides child care services only to eligible children who are, by affinity or consanguinity, or by court decree, the grandchild, great grandchild, sibling (if such provider lives in a separate residence), niece, or nephew of such provider, if such provider complies with any applicable requirements that govern child care provided by the relative involved.

(6) Family child care provider

The term “family child care provider” means one individual who provides child care services for fewer than 24 hours per day, as the sole caregiver, and in a private residence.

(7) Indian tribe

The term “Indian tribe” has the meaning given it in section 450b(e) of title 25.

(8) Lead agency

The term “lead agency” means the agency designated under section 9858(a)¹ of this title.

(9) Parent

The term “parent” includes a legal guardian or other person standing in loco parentis.

(10) Repealed. Pub. L. 104-193, title VI, § 614(5), Aug. 22, 1996, 110 Stat. 2287**(11) Secretary**

The term “Secretary” means the Secretary of Health and Human Services unless the context specifies otherwise.

(12) Sliding fee scale

The term “sliding fee scale” means a system of cost sharing by a family based on income and size of the family.

(13) State

The term “State” means any of the several States, the District of Columbia, the Virgin Islands of the United States, the Commonwealth of Puerto Rico, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(14) Tribal organization**(A) In general**

The term “tribal organization” has the meaning given it in section 450b(l) of title 25.

(B) Other organizations

Such term includes a Native Hawaiian Organization, as defined in section 4909(4)¹ of title 20 and a private nonprofit organization established for the purpose of serving youth who are Indians or Native Hawaiians.

(Pub. L. 97-35, title VI, § 658P, as added Pub. L. 101-508, title V, § 5082(2), Nov. 5, 1990, 104 Stat. 1388-248; amended Pub. L. 102-401, § 3, Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102-586, § 8(c), Nov. 4, 1992, 106 Stat. 5036; Pub. L. 103-171, § 8, Dec. 2, 1993, 107 Stat. 1994; Pub. L. 104-193, title VI, § 614, Aug. 22, 1996, 110 Stat. 2287; Pub. L. 105-33, title V, § 5602(5), Aug. 5, 1997, 111 Stat. 646.)

REFERENCES IN TEXT

Section 9858 of this title, referred to in par. (8), does not contain a subsec. (a) and does not relate to designa-

¹ See References in Text note below.

tion of lead agencies. For provisions relating to designation of a State agency to act as a lead agency, see section 9858b(a) of this title.

Section 4909 of title 20, referred to in par. (14)(B), was repealed by Pub. L. 103-382, title III, §363, Oct. 20, 1994, 108 Stat. 3975.

AMENDMENTS

1997—Par. (13). Pub. L. 105-33 substituted “and” for “or” after “American Samoa.”

1996—Par. (2). Pub. L. 104-193, §614(1), in first sentence, inserted “or as a deposit for child care services if such a deposit is required of other children being cared for by the provider” after “payment for child care services”.

Par. (3). Pub. L. 104-193, §614(2), struck out heading and text of par. (3). Text read as follows: “The term ‘elementary school’ means a day or residential school that provides elementary education, as determined under State law.”

Par. (4)(B). Pub. L. 104-193, §614(3), substituted “85 percent” for “75 percent”.

Par. (5)(B). Pub. L. 104-193, §614(4), inserted “great grandchild, sibling (if such provider lives in a separate residence),” after “grandchild,” struck out “is registered and” after “such provider”, and substituted “any applicable requirements” for “any State requirements”.

Par. (10). Pub. L. 104-193, §614(5), struck out heading and text of par. (10). Text read as follows: “The term ‘secondary school’ means a day or residential school which provides secondary education, as determined under State law.”

Par. (13). Pub. L. 104-193, §614(6), inserted “or” after “Samoa,” and struck out “, and the Trust Territory of the Pacific Islands” after “Northern Mariana Islands”.

Par. (14). Pub. L. 104-193, §614(7), designated existing text as subpar. (A), inserted heading, and added subpar. (B).

1993—Pars. (7), (14). Pub. L. 103-171 made technical correction to directory language of Pub. L. 102-586, §8(c)(2). See 1992 Amendment note below.

1992—Pub. L. 102-401, §3(a), and Pub. L. 102-586, §8(c)(1), made identical technical corrections to directory language of Pub. L. 101-508, §5082(2), which added this section.

Par. (7). Pub. L. 102-586, §8(c)(2)(A), as amended by Pub. L. 103-171, which directed the amendment of par. (7) by substituting “section 450b(e) of title 25” for “section 450b(b) of title 25”, could not be executed because the words “section 450b(b) of title 25” did not appear subsequent to execution of the amendment by Pub. L. 102-401, §3(b)(1). See below.

Pub. L. 102-401, §3(b)(1), substituted “section 450b(e) of title 25” for “section 450b(b) of title 25”.

Par. (14). Pub. L. 102-586, §8(c)(2)(B), as amended by Pub. L. 103-171, which directed the amendment of par. (14) by substituting “section 450b(l) of title 25” for “section 450b(c) of title 25”, could not be executed because the words “section 450b(c) of title 25” did not appear subsequent to execution of the amendment by Pub. L. 102-401, §3(b)(2). See below.

Pub. L. 102-401, §3(b)(2), substituted “section 450b(l) of title 25” for “section 450b(c) of title 25”.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-33 effective as if included in the enactment of title VI of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193, see section 5603 of Pub. L. 105-33, set out as a note under section 618 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-193 effective Oct. 1, 1996, see section 615 of Pub. L. 104-193, set out as a note under section 9858 of this title.

EFFECTIVE DATE OF 1992 AMENDMENTS

Amendment by Pub. L. 102-586 effective Nov. 4, 1992, but not applicable with respect to fiscal years begin-

ning before Oct. 1, 1992, see section 8(d) of Pub. L. 102-586, set out as a note under section 9858h of this title.

Amendment by Pub. L. 102-401 effective Oct. 7, 1992, but not applicable with respect to fiscal years beginning before Oct. 1, 1992, see section 4 of Pub. L. 102-401, set out as a note under section 9835 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9858a, 9858i of this title.

§ 9858o. Parental rights and responsibilities

Nothing in this subchapter shall be construed or applied in any manner to infringe on or usurp the moral and legal rights and responsibilities of parents or legal guardians.

(Pub. L. 97-35, title VI, §658Q, as added Pub. L. 101-508, title V, §5082(2), Nov. 5, 1990, 104 Stat. 1388-249; amended Pub. L. 102-401, §3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102-586, §8(c)(1), Nov. 4, 1992, 106 Stat. 5036.)

AMENDMENTS

1992—Pub. L. 102-401 and Pub. L. 102-586 made identical technical corrections to directory language of Pub. L. 101-508, §5082(2), which added this section.

§ 9858p. Severability

If any provision of this subchapter or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions of applications of this subchapter which can be given effect without regard to the invalid provision or application, and to this end the provisions of this subchapter shall be severable.

(Pub. L. 97-35, title VI, §658R, as added Pub. L. 101-508, title V, §5082(2), Nov. 5, 1990, 104 Stat. 1388-249; amended Pub. L. 102-401, §3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102-586, §8(c)(1), Nov. 4, 1992, 106 Stat. 5036.)

AMENDMENTS

1992—Pub. L. 102-401 and Pub. L. 102-586 made identical technical corrections to directory language of Pub. L. 101-508, §5082(2), which added this section.

§ 9858q. Miscellaneous provisions

Notwithstanding any other law, the value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under this subchapter shall not be treated as income for purposes of any other Federal or Federally-assisted program that bases eligibility, or the amount of benefits, on need.

(Pub. L. 97-35, title VI, §658S, as added Pub. L. 102-586, §8(b), Nov. 4, 1992, 106 Stat. 5035; amended Pub. L. 103-171, §8, Dec. 2, 1993, 107 Stat. 1994.)

AMENDMENTS

1993—Pub. L. 103-171 made technical correction to directory language of Pub. L. 102-586, §8(b), which added this section.

EFFECTIVE DATE

Section effective Nov. 4, 1992, but not applicable with respect to fiscal years beginning before Oct. 1, 1992, see section 8(d) of Pub. L. 102-586, set out as an Effective Date of 1992 Amendment note under section 9858h of this title.

SUBCHAPTER II-C—CHILD CARE SAFETY
AND HEALTH GRANTS

CODIFICATION

This subchapter was enacted as part of title XIV of div. A of the Children's Health Act of 2000, and not as part of chapter 8 of subtitle A of title VI of Pub. L. 97-35 which comprises this chapter.

§ 9859. Definitions

In this subchapter:

(1) Child with a disability; infant or toddler with a disability

The terms "child with a disability" and "infant or toddler with a disability" have the meanings given the terms in sections 1401 and 1431 of title 20.

(2) Eligible child care provider

The term "eligible child care provider" means a provider of child care services for compensation, including a provider of care for a school-age child during non-school hours, that—

(A) is licensed, regulated, registered, or otherwise legally operating, under State and local law; and

(B) satisfies the State and local requirements,

applicable to the child care services the provider provides.

(3) Secretary

The term "Secretary" means the Secretary of Health and Human Services.

(4) State

The term "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(Pub. L. 106-310, div. A, title XIV, §1401, Oct. 17, 2000, 114 Stat. 1143.)

§ 9859a. Authorization of appropriations

There are authorized to be appropriated to carry out this subchapter \$200,000,000 for fiscal year 2001, and such sums as may be necessary for each subsequent fiscal year.

(Pub. L. 106-310, div. A, title XIV, §1402, Oct. 17, 2000, 114 Stat. 1143.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9859c of this title.

§ 9859b. Programs

The Secretary shall make allotments to eligible States under section 9859c of this title. The Secretary shall make the allotments to enable the States to establish programs to improve the health and safety of children receiving child care outside the home, by preventing illnesses and injuries associated with that care and promoting the health and well-being of children receiving that care.

(Pub. L. 106-310, div. A, title XIV, §1403, Oct. 17, 2000, 114 Stat. 1143.)

§ 9859c. Amounts reserved; allotments

(a) Amounts reserved

The Secretary shall reserve not more than one-half of 1 percent of the amount appropriated under section 9859a of this title for each fiscal year to make allotments to Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands to be allotted in accordance with their respective needs.

(b) State allotments

(1) General rule

From the amounts appropriated under section 9859a of this title for each fiscal year and remaining after reservations are made under subsection (a) of this section, the Secretary shall allot to each State an amount equal to the sum of—

(A) an amount that bears the same ratio to 50 percent of such remainder as the product of the young child factor of the State and the allotment percentage of the State bears to the sum of the corresponding products for all States; and

(B) an amount that bears the same ratio to 50 percent of such remainder as the product of the school lunch factor of the State and the allotment percentage of the State bears to the sum of the corresponding products for all States.

(2) Young child factor

In this subsection, the term "young child factor" means the ratio of the number of children under 5 years of age in a State to the number of such children in all States, as provided by the most recent annual estimates of population in the States by the Census Bureau of the Department of Commerce.

(3) School lunch factor

In this subsection, the term "school lunch factor" means the ratio of the number of children who are receiving free or reduced price lunches under the school lunch program established under the National School Lunch Act (42 U.S.C. 1751 et seq.) in the State to the number of such children in all States, as determined annually by the Department of Agriculture.

(4) Allotment percentage

(A) In general

For purposes of this subsection, the allotment percentage for a State shall be determined by dividing the per capita income of all individuals in the United States, by the per capita income of all individuals in the State.

(B) Limitations

If an allotment percentage determined under subparagraph (A) for a State—

(i) is more than 1.2 percent, the allotment percentage of the State shall be considered to be 1.2 percent; and

(ii) is less than 0.8 percent, the allotment percentage of the State shall be considered to be 0.8 percent.

(C) Per capita income

For purposes of subparagraph (A), per capita income shall be—

- (i) determined at 2-year intervals;
- (ii) applied for the 2-year period beginning on October 1 of the first fiscal year beginning after the date such determination is made; and
- (iii) equal to the average of the annual per capita incomes for the most recent period of 3 consecutive years for which satisfactory data are available from the Department of Commerce on the date such determination is made.

(c) Data and information

The Secretary shall obtain from each appropriate Federal agency, the most recent data and information necessary to determine the allotments provided for in subsection (b) of this section.

(d) Definition

In this section, the term "State" includes only the several States of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(Pub. L. 106-310, div. A, title XIV, §1404, Oct. 17, 2000, 114 Stat. 1143.)

REFERENCES IN TEXT

The National School Lunch Act, referred to in subsection (b)(3), probably means the Richard B. Russell National School Lunch Act, act June 4, 1946, ch. 281, 60 Stat. 230, as amended, which is classified generally to chapter 13 (§1751 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1751 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9859b, 9859d, 9859e, 9859f of this title.

§ 9859d. State applications

To be eligible to receive an allotment under section 9859c of this title, a State shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require. The application shall contain information assessing the needs of the State with regard to child care health and safety, the goals to be achieved through the program carried out by the State under this subchapter, and the measures to be used to assess the progress made by the State toward achieving the goals.

(Pub. L. 106-310, div. A, title XIV, §1405, Oct. 17, 2000, 114 Stat. 1145.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9859f of this title.

§ 9859e. Use of funds

(a) In general

A State that receives an allotment under section 9859c of this title shall use the funds made available through the allotment to carry out two or more activities consisting of—

- (1) providing training and education to eligible child care providers on preventing injuries and illnesses in children, and promoting health-related practices;
- (2) strengthening licensing, regulation, or registration standards for eligible child care providers;

(3) assisting eligible child care providers in meeting licensing, regulation, or registration standards, including rehabilitating the facilities of the providers, in order to bring the facilities into compliance with the standards;

(4) enforcing licensing, regulation, or registration standards for eligible child care providers, including holding increased unannounced inspections of the facilities of those providers;

(5) providing health consultants to provide advice to eligible child care providers;

(6) assisting eligible child care providers in enhancing the ability of the providers to serve children with disabilities and infants and toddlers with disabilities;

(7) conducting criminal background checks for eligible child care providers and other individuals who have contact with children in the facilities of the providers;

(8) providing information to parents on what factors to consider in choosing a safe and healthy child care setting; or

(9) assisting in improving the safety of transportation practices for children enrolled in child care programs with eligible child care providers.

(b) Supplement, not supplant

Funds appropriated pursuant to the authority of this subchapter shall be used to supplement and not supplant other Federal, State, and local public funds expended to provide services for eligible individuals.

(Pub. L. 106-310, div. A, title XIV, §1406, Oct. 17, 2000, 114 Stat. 1145.)

§ 9859f. Reports

Each State that receives an allotment under section 9859c of this title shall annually prepare and submit to the Secretary a report that describes—

- (1) the activities carried out with funds made available through the allotment; and
- (2) the progress made by the State toward achieving the goals described in the application submitted by the State under section 9859d of this title.

(Pub. L. 106-310, div. A, title XIV, §1407, Oct. 17, 2000, 114 Stat. 1145.)

SUBCHAPTER III—FOLLOW THROUGH PROGRAMS

PART I—DIRECT SERVICES

§§ 9861, 9862. Repealed. Pub. L. 103-382, title III, § 391(w), Oct. 20, 1994, 108 Stat. 4025

Section 9861, Pub. L. 97-35, title VI, §662, Aug. 13, 1981, 95 Stat. 508; Pub. L. 101-501, title II, §202, Nov. 3, 1990, 104 Stat. 1243, authorized financial assistance for Follow Through programs.

Section 9862, Pub. L. 97-35, title VI, §663, as added Pub. L. 101-501, title II, §203, Nov. 3, 1990, 104 Stat. 1244; amended Pub. L. 102-119, §26(c), Oct. 7, 1991, 105 Stat. 607, related to consideration of applications.

A prior section 9862, Pub. L. 97-35, title VI, §663, Aug. 13, 1981, 95 Stat. 509; Pub. L. 98-558, title III, §301, Oct. 30, 1984, 98 Stat. 2887; Pub. L. 99-425, title II, §201(a), Sept. 30, 1986, 100 Stat. 966, related to funding requirements, prior to repeal by Pub. L. 101-501, title II, §203, Nov. 3, 1990, 104 Stat. 1244.

PART II—PROGRAM IMPROVEMENT

§§ 9863 to 9865. Repealed. Pub. L. 103-382, title III, § 391(w), Oct. 20, 1994, 108 Stat. 4025

Section 9863, Pub. L. 97-35, title VI, § 664, as added Pub. L. 101-501, title II, § 204(a), Nov. 3, 1990, 104 Stat. 1245, authorized financial assistance for research regarding Follow Through programs and approaches.

A prior section 9863, Pub. L. 97-35, title VI, § 664, Aug. 13, 1981, 95 Stat. 509, related to grants or contracts for research, demonstration, and pilot projects, prior to repeal by Pub. L. 101-501, title II, § 204(a), Nov. 3, 1990, 104 Stat. 1245.

Section 9863a, Pub. L. 97-35, title VI, § 664A, as added Pub. L. 101-501, title II, § 204(a), Nov. 3, 1990, 104 Stat. 1245, related to technical assistance and training.

Section 9863b, Pub. L. 97-35, title VI, § 664B, as added Pub. L. 101-501, title II, § 204(a), Nov. 3, 1990, 104 Stat. 1246, authorized grants to entities which operate, or previously operated, effective Follow Through programs.

Section 9863c, Pub. L. 97-35, title VI, § 664C, as added Pub. L. 101-501, title II, § 204(a), Nov. 3, 1990, 104 Stat. 1246, related to grant to establish national clearinghouse on Follow Through programs.

Section 9864, Pub. L. 97-35, title VI, § 665, Aug. 13, 1981, 95 Stat. 510; Pub. L. 101-501, title II, § 205, Nov. 3, 1990, 104 Stat. 1246, related to announcement of research and evaluation contracts.

Section 9865, Pub. L. 97-35, title VI, § 666, Aug. 13, 1981, 95 Stat. 510; Pub. L. 101-501, title II, § 206, Nov. 3, 1990, 104 Stat. 1247, related to continuing evaluation of programs under this subchapter.

PART III—GENERAL AND ADMINISTRATIVE PROVISIONS

§§ 9866 to 9869. Repealed. Pub. L. 103-382, title III, § 391(w), Oct. 20, 1994, 108 Stat. 4025

Section 9866, Pub. L. 97-35, title VI, § 667, as added Pub. L. 101-501, title II, § 207(a), Nov. 3, 1990, 104 Stat. 1247, related to authorization of appropriations to carry out this subchapter.

A prior section 9866, Pub. L. 97-35, title VI, § 667, Aug. 13, 1981, 95 Stat. 511, provided for technical assistance and training, prior to repeal by Pub. L. 101-501, title II, § 204(b), Nov. 3, 1990, 104 Stat. 1246.

Section 9867, Pub. L. 97-35, title VI, § 668, Aug. 13, 1981, 95 Stat. 511; Pub. L. 99-425, title II, § 201(b), Sept. 30, 1986, 100 Stat. 967; Pub. L. 101-501, title II, §§ 201(2), 209, Nov. 3, 1990, 104 Stat. 1243, 1248, related to special conditions on financial assistance.

Section 9868, Pub. L. 97-35, title VI, § 669, Aug. 13, 1981, 95 Stat. 511, related to applicability of other provisions to administration of this subchapter.

Section 9869, Pub. L. 97-35, title VI, § 669A, as added Pub. L. 101-501, title II, § 208, Nov. 3, 1990, 104 Stat. 1248, related to participation of entities that receive funds under this subchapter in other Federal educational activities and programs.

SUBCHAPTER IV—GRANTS TO STATES FOR PLANNING AND DEVELOPMENT OF DEPENDENT CARE PROGRAMS AND FOR OTHER PURPOSES

CODIFICATION

Subchapter is based on subchapter E, formerly D, of chapter 8 of subtitle A of title VI of Pub. L. 97-35, as added by Pub. L. 98-558, title I, § 109, Oct. 30, 1984, 98 Stat. 2880, and amended and redesignated.

§ 9871. Authorization of appropriations

For the purpose of making allotments to States to carry out the activities described in section 9874 of this title, there is authorized to be appropriated \$13,000,000 for fiscal year 1995.

(Pub. L. 97-35, title VI, § 670A, as added Pub. L. 98-558, title I, § 109, Oct. 30, 1984, 98 Stat. 2880; amended Pub. L. 99-425, title III, § 301, Sept. 30, 1986, 100 Stat. 967; Pub. L. 101-501, title III, § 301, Nov. 3, 1990, 104 Stat. 1248; Pub. L. 103-252, title I, § 122, May 18, 1994, 108 Stat. 650.)

AMENDMENTS

1994—Pub. L. 103-252 substituted “is authorized to be appropriated \$13,000,000 for fiscal year 1995” for “are authorized to be appropriated \$20,000,000 for each of the fiscal years 1990 and 1991, and such sums as may be necessary for fiscal years 1992, 1993, and 1994”.

1990—Pub. L. 101-501 substituted “are authorized” for “is authorized”, struck out “1987, 1988, 1989, and” before “1990”, and inserted “and 1991, and such sums as may be necessary for fiscal years 1992, 1993, and 1994” after “1990”.

1986—Pub. L. 99-425 amended section generally. Prior to amendment, section read as follows: “For the purpose of allotments to States to carry out the activities described in section 9874 of this title, there are authorized to be appropriated \$20,000,000 for each of the fiscal years 1985 and 1986.”

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-252 effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103-252, set out as a note under section 9832 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101-501, set out as a note under section 8621 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-425 effective Oct. 1, 1986, see section 1001 of Pub. L. 99-425, set out as a note under section 8621 of this title.

SHORT TITLE

For short title of this subchapter as the “State Dependent Care Development Grants Act”, see section 670H of Pub. L. 97-35, set out as a note under section 9801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9872, 9873 of this title.

§ 9872. Allotments

(a) From the amounts appropriated under section 9871 of this title for each fiscal year, the Secretary shall allot to each State an amount which bears the same ratio to the total amount appropriated under such section for such fiscal year as the population of the State bears to the population of all States, except that no State may receive less than \$50,000 in each fiscal year.

(b) For the purpose of the exception contained in subsection (a) of this section, the term “State” does not include Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

(Pub. L. 97-35, title VI, § 670B, as added Pub. L. 98-558, title I, § 109, Oct. 30, 1984, 98 Stat. 2880.)

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9873, 9874, 9875 of this title.

§ 9873. Payments under allotments to States

The Secretary shall make payments, as provided by section 6503(a) of title 31, to each State from its allotments under section 9872 of this title from amounts appropriated under section 9871 of this title.

(Pub. L. 97-35, title VI, § 670C, as added Pub. L. 98-558, title I, § 109, Oct. 30, 1984, 98 Stat. 2880.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9874, 9875 of this title.

§ 9874. Use of allotments**(a) Referral systems; information; contents**

(1) Subject to the provisions of subsections (c) and (d) of this section, amounts paid to a State under section 9873 of this title from its allotment under section 9872 of this title may be used for the planning, development, establishment, operation, expansion, or improvement by the States, directly or by grant or contract with public or private entities, of State and local resource and referral systems to provide information concerning the availability, types, costs, and locations of dependent care services. The information provided by any such system may include—

(A) the types of dependent care services available, including services provided by individual homes, religious organizations, community organizations, employers, private industry, and public and private institutions;

(B) the costs of available dependent care services;

(C) the locations in which dependent care services are provided;

(D) the forms of transportation available to such locations;

(E) the hours during which such dependent care services are available;

(F) the dependents eligible to enroll for such dependent care services; and

(G) any resource and referral system planned, developed, established, expanded, or improved with amounts paid to a State under this subchapter.

(2) The State, with respect to the uses of funds described in paragraph (1) of this subsection shall—

(A) provide assurances that no information will be included with respect to any dependent care services which are not provided in compliance with the laws of the State and localities in which such services are provided; and

(B) provide assurances that the information provided will be the latest information available and will be kept up to date.

(b) School-age child care services; assurances; estimates

(1) Subject to the provisions of subsections (c) and (d) of this section, amounts paid to a State under section 9873 of this title from its allotment under section 9872 of this title may be used for the planning, development, establishment,

operation, expansion, or improvement by the States, directly, or by grant or contract, with public agencies or private nonprofit organizations of programs to furnish school-age child care services before and after school. Amounts so paid to a State and used for the operation of such child care services shall be designed to enable children, whose families lack adequate financial resources, to participate in before or after school child care programs.

(2) The State, with respect to the uses of funds described in paragraph (1) of this subsection shall—

(A) provide assurances, in the case of an applicant that is not a State or local educational agency, that the applicant has or will enter into an agreement with the State or local educational agency, institution of higher education or community center containing provisions for—

(i) the use of facilities for the provision of before or after school child care services (including such use during holidays and vacation periods),

(ii) the restrictions, if any, on the use of such space, and

(iii) the times when the space will be available for the use of the applicant;

(B) provide an estimate of the costs of the establishment of the child care service program in the facilities;

(C) provide assurances that the parents of school-age children will be involved in the development and implementation of the program for which assistance is sought under this Act;¹

(D) provide assurances that the applicant is able and willing to seek to enroll racially, ethnically, and economically diverse school-age children, as well as handicapped school-age children, in the child care service program for which assistance is sought under this Act;¹

(E) provide assurances that the child care program is in compliance with State and local child care licensing laws and regulations governing day care services for school-age children to the extent that such regulations are appropriate to the age group served; and

(F) provide such other assurances as the chief executive officer of the State may reasonably require to carry out this Act.¹

(c) Percentage of allotment; waiver

(1) Except as provided in paragraph (2), of the allotment to each State in each fiscal year—

(A) 40 percent shall be available for the activities described in subsection (a) of this section;

(B) 60 percent shall be available for the activities described in subsection (b) of this section.

(2) For any fiscal year the Secretary may waive the percentage requirements specified in paragraph (1) on the request of a State if such State demonstrates to the satisfaction of the Secretary—

(A) that the amount of funds available as a result of one of such percentage requirements is not needed in such fiscal year for the activi-

¹ So in original. Probably should be "subchapter".

ties for which such amount is so made available; and

(B) the adequacy of the alternative percentages, relative to need, the State specifies the State will apply with respect to all of the activities referred to in paragraph (1) if such waiver is granted.

(d) Prohibition; use of amounts

A State may not use amounts paid to it under this subchapter to—

- (1) make cash payments to intended recipients of dependent care services including child care services;
- (2) pay for construction or renovation; or
- (3) satisfy any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funds.

(e) Federal share; cost of administration

(1) The Federal share of any project supported under this subchapter shall be not more than 75 percent.

(2) Not more than 10 percent of the allotment of each State under this subchapter may be available for the cost of administration.

(f) Duplication of services

Projects supported under this section to plan, develop, establish, expand, operate, or improve a State or local resource and referral system or before or after school child care program shall not duplicate any services which are provided before October 30, 1984, by the State or locality which will be served by such system.

(g) Technical assistance to States; planning and operational activities

The Secretary may provide technical assistance to States in planning and carrying out activities under this subchapter.

(Pub. L. 97-35, title VI, §670D, as added Pub. L. 98-558, title I, §109, Oct. 30, 1984, 98 Stat. 2880; amended Pub. L. 99-425, title III, §302, Sept. 30, 1986, 100 Stat. 967; Pub. L. 101-501, title III, §§302, 303, 305(a), Nov. 3, 1990, 104 Stat. 1249, 1250.)

REFERENCES IN TEXT

This Act, referred to in subsec. (b)(2)(C), (D), (F), is Pub. L. 97-35, known as the Omnibus Budget Reconciliation Act of 1981, but probably should have been "this subchapter", meaning subchapter E of chapter 8 of subtitle A of title VI of Pub. L. 97-35, known as the State Dependent Care Development Grants Act, which is classified to this subchapter.

AMENDMENTS

1990—Subsec. (a)(1). Pub. L. 101-501, §§303(a)(1), 305(a)(1), inserted "operation," after "establishment," and struck out "for fiscal year 1985 and fiscal year 1986" before "may be used".

Subsec. (b)(1). Pub. L. 101-501, §§303(a)(2), (3), 305(a)(2), struck out "for fiscal year 1985 and fiscal year 1986" before "may be used", inserted "operation," after "establishment," struck out "in public or private school facilities or in community centers in communities" after "before and after school", and inserted at end "Amounts so paid to a State and used for the operation of such child care services shall be designed to enable children, whose families lack adequate financial resources, to participate in before or after school child care programs."

Subsec. (b)(2)(D). Pub. L. 101-501, §305(a)(3)(A), inserted "school-age children," after "diverse" and inserted comma after last reference to "children".

Subsec. (b)(2)(F). Pub. L. 101-501, §305(a)(3)(B), substituted "chief executive officer of the State" for "Governor" and struck out "the provisions of" before "this Act".

Subsec. (c). Pub. L. 101-501, §302, designated existing provision as par. (1), redesignated pars. (1) and (2) as subpars. (A) and (B), respectively, substituted "Except as provided in paragraph (2), of" for "Of", and added par. (2).

Subsec. (d). Pub. L. 101-501, §303(b), redesignated pars. (2), (4), and (5) as (1), (2), and (3), respectively, and struck out former pars. (1) and (3) which read as follows:

"(1) pay the costs of operation of any resource and referral system or before or after school child care program established, expanded, or improved under subsection (a) of this section;

"(3) subsidize the direct provision of dependent care services including child care services;"

Subsec. (d)(1). Pub. L. 101-501, §305(a)(4), which directed the substitution of "subsections (a) and (b) of this section" for "subsection (a) of this section", could not be executed because of the intervening amendment by Pub. L. 101-501, §303(b), see above.

Subsec. (f). Pub. L. 101-501, §§303(a)(4), 305(a)(5), inserted "operate," after "expand," and substituted "which are provided before October 30, 1984," for "which prior to October 30, 1984, are provided".

Subsec. (g). Pub. L. 101-501, §305(a)(6), substituted "carrying out activities" for "operating activities to be carried out".

1986—Subsec. (a). Pub. L. 99-425, §302(a), designated existing provisions as par. (1), substituted "system may include" for "system shall include", redesignated cls. (1) to (7) as (A) to (G), respectively, struck out last sentence which read as follows: "In carrying out clause (7) of the previous sentence, no information shall be included with respect to any dependent care services which are not provided in compliance with the laws of the State and localities in which such services are provided", and added par. (2).

Subsec. (b)(1). Pub. L. 99-425, §302(b)(1), struck out "where school facilities are not available" after "centers in communities".

Subsec. (b)(2)(E). Pub. L. 99-425, §302(b)(2), inserted "child care" before "licensing laws".

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101-501, set out as a note under section 8621 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-425 effective Oct. 1, 1986, see section 1001 of Pub. L. 99-425, set out as a note under section 8621 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9871 of this title.

§ 9875. Application and description of activities; requirements

(a) Applications

(1) In order to receive an allotment under section 9872 of this title, each State shall submit an application to the Secretary. Each such application shall be in such form and submitted by such date as the Secretary shall require.

(2) Each application required under paragraph (1) for an allotment under section 9872 of this title shall contain assurances that the State will meet the requirements of subsection (b) of this section.

(b) Certifications

As part of the annual application required by subsection (a) of this section, the chief executive officer of each State shall—

(1) certify that the State agrees to use the funds allotted to it under section 9872 of this title in accordance with the requirements of this subchapter; and

(2) certify that the State agrees that Federal funds made available under section 9873 of this title for any period will be so used as to supplement and increase the level of State, local, and other non-Federal funds that would in the absence of such Federal funds be made available for the programs and activities for which funds are provided under that section and will in no event supplant such State, local, and other non-Federal funds.

The Secretary may not prescribe for a State the manner of compliance with the requirements of this subsection.

(c) Description; intended use of payments; comments; revision

(1) The chief executive officer of a State shall, as part of the application required by subsection (a) of this section, also prepare and furnish the Secretary (in accordance with such form as the Secretary shall provide) with a description of the intended use of the payments the State will receive under section 9873 of this title, including information on the programs and activities to be supported. The description shall be made public within the State in such manner as to facilitate comment from any person (including any Federal or other public agency) during development of the description and after its transmittal. The description shall be revised (consistent with this section) until September 30, 1991, as may be necessary to reflect substantial changes in the programs and activities assisted by the State under this subchapter, and any revision shall be subject to the requirements of the preceding sentence.

(2) The chief executive officer of each State shall include in such a description of—

(A) the number of children who participated in before and after school child care programs assisted under this subchapter;

(B) the characteristics of the children so served including age levels, handicapped condition, income level of families in such programs;

(C) the salary level and benefits paid to employees in such child care programs; and

(D) the number of clients served in resource and referral systems assisted under this subchapter, and the types of assistance they requested.

(d) Application to Public Health Service Act

Except where inconsistent with the provisions of this subchapter, the provisions of section 1903(b) [42 U.S.C. 300w-2(b)], paragraphs (1) through (5) of section 1906(a)¹ [42 U.S.C. 300w-5(a)], and sections 1906(b), 1907, 1908, and 1909 [42 U.S.C. 300w-5(b), 300w-6, 300w-7, 300w-8] of the Public Health Service Act shall apply to this subchapter in the same manner as such provisions apply to part A of title XIX of such Act [42 U.S.C. 300w et seq.].

(Pub. L. 97-35, title VI, §670E, as added Pub. L. 98-558, title I, §109, Oct. 30, 1984, 98 Stat. 2882;

¹ See References in Text note below.

amended Pub. L. 101-501, title III, §§304, 305(b), Nov. 3, 1990, 104 Stat. 1249, 1250.)

REFERENCES IN TEXT

The Public Health Service Act, referred to in subsec. (d), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended. Part A of title XIX of the Public Health Service Act is classified generally to part A (§300w et seq.) of subchapter XVII of chapter 6A of this title. Section 1906(a) of the Act, which is classified to section 300w-5(a) of this title, was amended generally by Pub. L. 102-531, title I, §104(a), Oct. 27, 1992, 106 Stat. 3473, and, as so amended, consists of pars. (1) to (4) rather than pars. (1) to (5). For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

AMENDMENTS

1990—Subsec. (c). Pub. L. 101-501, §305(b), which directed that “until September 30, 1987,” be struck out, could not be executed, because of the intervening amendment by Pub. L. 101-501, §304, see below.

Pub. L. 101-501, §304, designated existing provisions as par. (1), substituted “September 30, 1991” for “September 30, 1987”, and added par. (2).

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101-501, set out as a note under section 8621 of this title.

§ 9876. Report

Within three years after October 30, 1984, the Secretary shall prepare and transmit to the Senate Committee on Labor and Human Resources and the House Committee on Education and Labor a report concerning the activities conducted by the States with amounts provided under this subchapter.

(Pub. L. 97-35, title VI, §670F, as added Pub. L. 98-558, title I, §109, Oct. 30, 1984, 98 Stat. 2883.)

CHANGE OF NAME

Committee on Education and Labor of House of Representatives treated as referring to Committee on Economic and Educational Opportunities of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Economic and Educational Opportunities of House of Representatives changed to Committee on Education and the Workforce of House of Representatives by House Resolution No. 5, One Hundred Fifth Congress, Jan. 7, 1997.

§ 9877. Definitions

For purposes of this subchapter—

(1) the term “community center” means facilities operated by nonprofit community-based organizations for the provision of recreational, social, or educational services to the general public;

(2) the term “dependent” means—

(A) an individual who has not attained the age of 17 years;

(B) an individual who has attained the age of 55 years; or

(C) an individual with a developmental disability;

(3) the term “developmental disability” has the same meaning as in section 15002 of this title;

(4) the term “equipment” has the same meaning given that term by section 198(a)(8) of

the Elementary and Secondary Education Act of 1965;¹

(5) the term "institution of higher education" has the same meaning given that term under section 1001 of title 20;

(6) the term "local educational agency" has the same meaning given that term under section 7801 of title 20;

(7) the term "school-age children" means children aged five through thirteen, except that in any State in which by State law children at an earlier age are provided free public education, the age provided in State law shall be substituted for age five;

(8) the term "school facilities" means classrooms and related facilities used for the provision of education;

(9) the term "Secretary" means the Secretary of Health and Human Services;

(10) the term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, Palau, and the Commonwealth of the Northern Mariana Islands; and

(11) the term "State educational agency" has the meaning given that term under section 7801 of title 20.

(Pub. L. 97-35, title VI, §670G, as added Pub. L. 98-558, title I, §109, Oct. 30, 1984, 98 Stat. 2883; amended Pub. L. 99-425, title III, §303, Sept. 30, 1986, 100 Stat. 967; Pub. L. 101-501, title III, §305(c), Nov. 3, 1990, 104 Stat. 1250; Pub. L. 103-382, title III, §394(l), Oct. 20, 1994, 108 Stat. 4029; Pub. L. 105-244, title I, §102(a)(13)(H), Oct. 7, 1998, 112 Stat. 1621; Pub. L. 106-402, title IV, §401(b)(12), Oct. 30, 2000, 114 Stat. 1739; Pub. L. 107-110, title X, §1076(dd), Jan. 8, 2002, 115 Stat. 2093.)

REFERENCES IN TEXT

Section 198 of the Elementary and Secondary Education Act of 1965, referred to in par. (4), is section 198 of Pub. L. 89-10, title I, as added Pub. L. 95-561, title I, §101(a), Nov. 1, 1978, 92 Stat. 2198, as amended, which was classified to section 2854 of Title 20, Education, prior to the general revision of Pub. L. 89-10 by Pub. L. 100-297, title I, §1001, Apr. 28, 1988, 102 Stat. 140.

AMENDMENTS

2002—Pars. (6), (11). Pub. L. 107-110 substituted "7801" for "8801".

2000—Par. (3). Pub. L. 106-402 substituted "section 15002 of this title" for "section 6001(7) of this title".

1998—Par. (5). Pub. L. 105-244, which directed amendment of section 670G(5) of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9877(5)) by substituting "section 1001" for "section 1141(a)", was executed to this section, which is section 670G(5) of subchapter E of chapter 8 of subtitle A of title VI of Pub. L. 97-35, known as the State Dependent Care Development Grants Act, to reflect the probable intent of Congress.

1994—Par. (6). Pub. L. 103-382, §394(l)(1), substituted "section 8801 of title 20" for "section 198(a)(10) of the Elementary and Secondary Education Act of 1965".

Par. (11). Pub. L. 103-382, §394(l)(2), substituted "section 8801 of title 20" for "section 198(a)(17) of the Elementary and Secondary Education Act of 1965".

1990—Par. (2)(C). Pub. L. 101-501, §305(c)(1), substituted "an individual" for "a person".

Par. (7). Pub. L. 101-501, §305(c)(2), inserted "in" after first reference to "State".

Par. (10). Pub. L. 101-501, §305(c)(3), substituted "Federated States of Micronesia, the Republic of the Marshall Islands, Palau" for "Trust Territory of the Pacific Islands".

1986—Par. (7). Pub. L. 99-425 inserted " , except that in any State which by State law children at an earlier age are provided free public education, the age provided in State law shall be substituted for age five".

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-110 effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107-110, set out as an Effective Date note under section 6301 of Title 20, Education.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see section 3 of Pub. L. 105-244, set out as a note under section 1001 of Title 20, Education.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101-501, set out as a note under section 8621 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-425 effective Oct. 1, 1986, see section 1001 of Pub. L. 99-425, set out as a note under section 8621 of this title.

SUBCHAPTER V—COMPREHENSIVE CHILD DEVELOPMENT PROGRAM

§§ 9881 to 9887. Repealed. Pub. L. 103-252, title I, § 112(b)(1), (2)(B), May 18, 1994, 108 Stat. 640, 641

Section 9881, Pub. L. 97-35, title VI, §670N, as added Pub. L. 100-297, title II, §2503, Apr. 28, 1988, 102 Stat. 326, authorized Comprehensive Child Development Program for pre-school children. See section 9840a of this title.

Section 9882, Pub. L. 97-35, title VI, §670O, as added Pub. L. 100-297, title II, §2503, Apr. 28, 1988, 102 Stat. 328, proscribed Secretary from taking into consideration, when making a grant under former section 9881, whether the applicant had applied or received funds under subchapter II of this chapter, relating to the Head Start program.

Section 9883, Pub. L. 97-35, title VI, §670P, as added Pub. L. 100-297, title II, §2503, Apr. 28, 1988, 102 Stat. 329, related to applicability to this subchapter of rules and regulations prescribed to carry out subchapter II of this chapter to the extent that the services provided were similar.

Section 9884, Pub. L. 97-35, title VI, §670Q, as added Pub. L. 100-297, title II, §2503, Apr. 28, 1988, 102 Stat. 329, directed Secretary to continually evaluate projects under this subchapter.

Section 9885, Pub. L. 97-35, title VI, §670R, as added Pub. L. 100-297, title II, §2503, Apr. 28, 1988, 102 Stat. 329, directed Secretary to carry out this subchapter through the administrative entity used to carry out subchapter II of this chapter.

Section 9886, Pub. L. 97-35, title VI, §670S, as added Pub. L. 100-297, title II, §2503, Apr. 28, 1988, 102 Stat. 329; amended Pub. L. 102-119, §26(a), Oct. 7, 1991, 105 Stat. 607; Pub. L. 103-382, title III, §391(x), Oct. 20, 1994, 108 Stat. 4025, provided definitions for terms used in this subchapter.

Section 9887, Pub. L. 97-35, title VI, §670T, as added Pub. L. 100-297, title II, §2503, Apr. 28, 1988, 102 Stat. 330; amended Pub. L. 101-501, title VIII, §801, Nov. 3, 1990, 104 Stat. 1261, authorized appropriations to carry out this subchapter.

EFFECTIVE DATE OF REPEAL

Repeal effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial

¹ See References in Text note below.

assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103-252, set out as an Effective Date of 1994 Amendment note under section 9832 of this title.

COMPREHENSIVE CHILD DEVELOPMENT PROGRAM;
CONGRESSIONAL STATEMENT OF PURPOSE

Pub. L. 100-297, title II, part E, §2502, Apr. 28, 1988, 102 Stat. 325, provided that it is the purpose of part E of title II of Pub. L. 100-297 to provide financial assistance to projects that target and support infants and young children from low-income families, enhance their development, and provide support for their parents and other family members, prior to repeal by Pub. L. 103-252, title I, §112(b)(1), (2)(A), May 18, 1994, 108 Stat. 640, 641.

CONSOLIDATION OF CHILD DEVELOPMENT PROGRAMS

Section 112(b)(1) of Pub. L. 103-252 provided that: "In recognition that the Comprehensive Child Development Centers Act [enacting this subchapter, amending section 9833 of this title, and enacting provisions set out as notes under this section and section 9801 of this title] has demonstrated positive results, and that its purposes and functions have been consolidated into section 645A of the Head Start Act [42 U.S.C. 9840a], the Comprehensive Child Development Centers Act of 1988 (42 U.S.C. 9801 note) and the Comprehensive Child Development Act (42 U.S.C. 9881 et seq.) are repealed."

CHAPTER 106—COMMUNITY SERVICES
BLOCK GRANT PROGRAM

- Sec.
- 9901. Purposes and goals.
- 9902. Definitions.
- 9903. Authorization of appropriations.
 - (a) In general.
 - (b) Reservations.
- 9904. Establishment of block grant program.
- 9905. Distribution to territories.
 - (a) Apportionment.
 - (b) Application.
- 9906. Allotments and payments to States.
 - (a) Allotments in general.
 - (b) Allotments in years with greater available funds.
 - (c) Payments.
 - (d) Definition.
- 9907. Uses of funds.
 - (a) Grants to eligible entities and other organizations.
 - (b) Statewide activities.
 - (c) Charity tax credit.
- 9908. Application and plan.
 - (a) Designation of lead agency.
 - (b) State application and plan.
 - (c) Funding termination or reductions.
 - (d) Procedures and information.
 - (e) Revisions and inspection.
 - (f) Transition.
- 9909. Designation and redesignation of eligible entities in unserved areas.
 - (a) Qualified organization in or near area.
 - (b) Special consideration.
 - (c) No qualified organization in or near area.
- 9910. Tripartite boards.
 - (a) Private nonprofit entities.
 - (b) Public organizations.
- 9911. Payments to Indian tribes.
 - (a) Reservation.
 - (b) Determination of reserved amount.
 - (c) Awards.
 - (d) Plan.
 - (e) Definitions.
- 9912. Office of Community Services.
 - (a) Office.

- Sec.
- (b) Grants, contracts, and cooperative agreements.
- 9913. Training, technical assistance, and other activities.
 - (a) Activities.
 - (b) Terms and technical assistance process.
 - (c) Distribution requirement.
- 9914. Monitoring of eligible entities.
 - (a) In general.
 - (b) Requests.
 - (c) Evaluations by the Secretary.
- 9915. Corrective action; termination and reduction of funding.
 - (a) Determination.
 - (b) Review.
 - (c) Direct assistance.
- 9916. Fiscal controls, audits, and withholding.
 - (a) Fiscal controls, procedures, audits, and inspections.
 - (b) Withholding.
- 9917. Accountability and reporting requirements.
 - (a) State accountability and reporting requirements.
 - (b) Secretary's accountability and reporting requirements.
- 9918. Limitations on use of funds.
 - (a) Construction of facilities.
 - (b) Political activities.
 - (c) Nondiscrimination.
- 9919. Drug and child support services and referrals.
 - (a) Drug testing and rehabilitation.
 - (b) Child support services and referrals.
- 9920. Operational rule.
 - (a) Religious organizations included as nongovernmental providers.
 - (b) Religious character and independence.
 - (c) Limitations on use of funds for certain purposes.
 - (d) Fiscal accountability.
 - (e) Treatment of eligible entities and other intermediate organizations.
- 9921. Discretionary authority of Secretary.
 - (a) Grants, contracts, arrangements, loans, and guarantees.
 - (b) Evaluation.
 - (c) Annual report.
- 9922. Community food and nutrition programs.
 - (a) Grants.
 - (b) Allotments and distribution of funds.
 - (c) Report.
 - (d) Authorization of appropriations.
- 9923. National or regional programs designed to provide instructional activities for low-income youth.
 - (a) General authority.
 - (b) Program requirements.
 - (c) Advisory committee; partnerships.
 - (d) Eligible providers.
 - (e) Application process.
 - (f) Promulgation of regulations or program guidelines.
 - (g) Authorization of appropriations.
- 9924. References.
- 9925. Demonstration partnership agreements addressing needs of poor.
 - (a) General authority.
 - (b) Federal share; limitations.
 - (c) Programs directed to special populations.
 - (d) Dissemination of results.
 - (e) Replication of programs.
 - (f) Omitted.
 - (g) Definitions.
 - (h) Authorization of appropriations.
- 9926. Projects to expand the number of job opportunities available to certain low-income individuals.

Sec.

- (a) In general.
- (b) Nature of project.
- (c) Content of applications; selection priority.
- (d) Administration.
- (e) Authorization of appropriations.

CODIFICATION

The Community Services Block Grant Act, comprising this chapter, was originally enacted by subtitle B of Pub. L. 97-35, title VI, Aug. 13, 1981, 95 Stat. 511, and amended by Pub. L. 97-115, Dec. 29, 1981, 95 Stat. 1595; Pub. L. 98-288, May 21, 1984, 98 Stat. 189; Pub. L. 98-558, Oct. 30, 1984, 98 Stat. 2878; Pub. L. 99-425, Sept. 30, 1986, 100 Stat. 966; Pub. L. 101-501, Nov. 3, 1990, 104 Stat. 1222; Pub. L. 101-624, Nov. 28, 1990, 104 Stat. 3359; Pub. L. 103-94, Oct. 6, 1993, 107 Stat. 1001; Pub. L. 103-171, Dec. 2, 1993, 107 Stat. 1988; Pub. L. 103-252, May 18, 1994, 108 Stat. 623. The Community Services Block Grant Act is shown herein, however, as having been added by Pub. L. 105-285, title II, § 201, Oct. 27, 1998, 112 Stat. 2728, without reference to those intervening amendments because of the extensive revision of that Act by Pub. L. 105-285.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 3013, 3020d, 3056a, 4953, 8624, 9812, 9819, 9925, 12638 of this title; title 20 section 9271; title 29 sections 2822, 2841; title 31 section 6501.

§ 9901. Purposes and goals

The purposes of this chapter are—

(1) to provide assistance to States and local communities, working through a network of community action agencies and other neighborhood-based organizations, for the reduction of poverty, the revitalization of low-income communities, and the empowerment of low-income families and individuals in rural and urban areas to become fully self-sufficient (particularly families who are attempting to transition off a State program carried out under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.)); and

(2) to accomplish the goals described in paragraph (1) through—

(A) the strengthening of community capabilities for planning and coordinating the use of a broad range of Federal, State, local, and other assistance (including private resources) related to the elimination of poverty, so that this assistance can be used in a manner responsive to local needs and conditions;

(B) the organization of a range of services related to the needs of low-income families and individuals, so that these services may have a measurable and potentially major impact on the causes of poverty in the community and may help the families and individuals to achieve self-sufficiency;

(C) the greater use of innovative and effective community-based approaches to attacking the causes and effects of poverty and of community breakdown;

(D) the maximum participation of residents of the low-income communities and members of the groups served by programs assisted through the block grants made under this chapter to empower such residents and members to respond to the unique problems and needs within their communities; and

(E) the broadening of the resource base of programs directed to the elimination of poverty so as to secure a more active role in the provision of services for—

(i) private, religious, charitable, and neighborhood-based organizations; and

(ii) individual citizens, and business, labor, and professional groups, who are able to influence the quantity and quality of opportunities and services for the poor.

(Pub. L. 97-35, title VI, § 672, as added Pub. L. 105-285, title II, § 201, Oct. 27, 1998, 112 Stat. 2728.)

REFERENCES IN TEXT

The Social Security Act, referred to in par. (1), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part A of title IV of the Act is classified generally to part A (§ 601 et seq.) of subchapter IV of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

PRIOR PROVISIONS

A prior section 9901, Pub. L. 97-35, title VI, § 672, Aug. 13, 1981, 95 Stat. 511; Pub. L. 98-558, title II, § 201, Oct. 30, 1984, 98 Stat. 2884; Pub. L. 99-425, title IV, § 401, Sept. 30, 1986, 100 Stat. 968; Pub. L. 101-501, title IV, § 401(a), Nov. 3, 1990, 104 Stat. 1251; Pub. L. 103-252, title II, § 202(a), May 18, 1994, 108 Stat. 651, authorized the Secretary to make community service grants, prior to the general amendment of this chapter by Pub. L. 105-285.

SHORT TITLE OF 1994 AMENDMENT

Section 201(a) of title II of Pub. L. 103-252 provided that: "This title [enacting section 9910c of this title, amending this section and sections 9903, 9904, 9910, 9910a, 9910b, 9911, 9912, and 11464 of this title, and enacting provisions set out as a note under this section] may be cited as the 'Community Services Block Grant Amendments of 1994'."

SHORT TITLE

Pub. L. 97-35, title VI, § 671, as added by Pub. L. 105-285, title II, § 201, Oct. 27, 1998, 112 Stat. 2728, provided that: "This subtitle [subtitle B (§§ 671-683) of title VI of Pub. L. 97-35, enacting this chapter] may be cited as the 'Community Services Block Grant Act'."

A prior section 671 of Pub. L. 97-35 provided that subtitle B (§§ 671-683) of title VI of Pub. L. 97-35, which enacted prior chapter and repealed sections 2701, 2706, 2711 to 2716, 2771, 2781, 2790, 2791, 2795 to 2797, 2808 to 2815, 2823 to 2825, 2827, 2828, 2830, 2833 to 2837, 2841, 2851 to 2856, 2881, 2901 to 2906, 2921 to 2923, 2928 to 2928g, 2928h to 2928n, 2929 to 2929c, 2930 to 2930f, 2931 to 2933, 2941 to 2948, 2950, 2951, 2961 to 2970, 2971a to 2971g, 2972 to 2980, 2981 to 2981c, 2982 to 2982c, 2983 to 2983b, 2984, 2984a, 2985 to 2985c, 2985d to 2985g, and 2995 to 2995c of this title and provisions set out as a note under section 2701 of this title, could be cited as the "Community Services Block Grant Act", prior to the general amendment of this chapter by Pub. L. 105-285.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9907 of this title.

§ 9902. Definitions

In this chapter:

(1) Eligible entity; family literacy services**(A) Eligible entity**

The term "eligible entity" means an entity—

(i) that is an eligible entity described in paragraph (1) of this section (as in effect on the day before October 27, 1998) as of the day before October 27, 1998, or is des-

ignated by the process described in section 9909 of this title (including an organization serving migrant or seasonal farmworkers that is so described or designated); and

(ii) that has a tripartite board or other mechanism described in subsection (a) or (b), as appropriate, of section 9910 of this title.

(B) Family literacy services

The term “family literacy services” has the meaning given the term in section 9832 of this title.

(2) Poverty line

The term “poverty line” means the official poverty line defined by the Office of Management and Budget based on the most recent data available from the Bureau of the Census. The Secretary shall revise annually (or at any shorter interval the Secretary determines to be feasible and desirable) the poverty line, which shall be used as a criterion of eligibility in the community services block grant program established under this chapter. The required revision shall be accomplished by multiplying the official poverty line by the percentage change in the Consumer Price Index for All Urban Consumers during the annual or other interval immediately preceding the time at which the revision is made. Whenever a State determines that it serves the objectives of the block grant program established under this chapter, the State may revise the poverty line to not to exceed 125 percent of the official poverty line otherwise applicable under this paragraph.

(3) Private, nonprofit organization

The term “private, nonprofit organization” includes a religious organization, to which the provisions of section 9920 of this title shall apply.

(4) Secretary

The term “Secretary” means the Secretary of Health and Human Services.

(5) State

The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the United States Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(Pub. L. 97-35, title VI, §673, as added Pub. L. 105-285, title II, §201, Oct. 27, 1998, 112 Stat. 2729.)

PRIOR PROVISIONS

A prior section 9902, Pub. L. 97-35, title VI, §673, Aug. 13, 1981, 95 Stat. 511; Pub. L. 97-115, §17(a)(1), Dec. 29, 1981, 95 Stat. 1609; Pub. L. 98-288, §31(a), May 21, 1984, 98 Stat. 197; Pub. L. 98-558, title II, §202, Oct. 30, 1984, 98 Stat. 2884; Pub. L. 99-425, title IV, §402, Sept. 30, 1986, 100 Stat. 968; Pub. L. 101-501, title IV, §§402, 408, Nov. 3, 1990, 104 Stat. 1251, 1255; Pub. L. 103-171, §7(c)(1), Dec. 2, 1993, 107 Stat. 1994, defined terms used in this chapter, prior to the general amendment of this chapter by Pub. L. 105-285.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 247b-5, 247b-14, 247c-1, 254c-12, 290bb-1, 290ff-3, 297q, 300n, 300ff-76, 603, 604, 701, 1395w-114, 1395w-141, 1396a, 1396d, 1396o, 1396r-5,

1396r-6, 1397jj, 3002, 4955, 5011, 5061, 8622, 8626b, 9910, 9924, 9925, 9926, 12618, 13791 of this title; title 7 sections 1927, 2014, 3175, 7501; title 8 sections 1154, 1183a; title 15 section 6901; title 20 sections 1021, 1085, 2351, 7801, 9141, 9402; title 29 section 2801; title 40 section 549.

§ 9903. Authorization of appropriations

(a) In general

There are authorized to be appropriated such sums as may be necessary for each of fiscal years 1999 through 2003 to carry out the provisions of this chapter (other than sections 9922 and 9923 of this title).

(b) Reservations

Of the amounts appropriated under subsection (a) of this section for each fiscal year, the Secretary shall reserve—

(1) ½ of 1 percent for carrying out section 9905 of this title (relating to payments for territories);

(2) 1½ percent for activities authorized in sections 9913 through 9918 of this title, of which—

(A) not less than ½ of the amount reserved by the Secretary under this paragraph shall be distributed directly to eligible entities, organizations, or associations described in section 9913(c)(2) of this title for the purpose of carrying out activities described in section 9913(c) of this title; and

(B) ½ of the remainder of the amount reserved by the Secretary under this paragraph shall be used by the Secretary to carry out evaluation and to assist States in carrying out corrective action activities and monitoring (to correct programmatic deficiencies of eligible entities), as described in sections 9914(c) and 9913 of this title; and

(3) 9 percent for carrying out section 9921 of this title (relating to discretionary activities) and section 9917(b)(2) of this title.

(Pub. L. 97-35, title VI, §674, as added Pub. L. 105-285, title II, §201, Oct. 27, 1998, 112 Stat. 2730.)

PRIOR PROVISIONS

A prior section 9903, Pub. L. 97-35, title VI, §674, Aug. 13, 1981, 95 Stat. 512; Pub. L. 99-425, title IV, §405(c)(1), Sept. 30, 1986, 100 Stat. 970; Pub. L. 101-501, title IV, §403, Nov. 3, 1990, 104 Stat. 1251; Pub. L. 103-171, §7(c)(2), Dec. 2, 1993, 107 Stat. 1994; Pub. L. 103-252, title II, §202(b), May 18, 1994, 108 Stat. 651, related to State allocations for technical assistance and training, prior to the general amendment of this chapter by Pub. L. 105-285.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9905, 9906, 9913, 9917, 9918, 9921 of this title.

§ 9904. Establishment of block grant program

The Secretary is authorized to establish a community services block grant program and make grants through the program to States to ameliorate the causes of poverty in communities within the States.

(Pub. L. 97-35, title VI, §675, as added Pub. L. 105-285, title II, §201, Oct. 27, 1998, 112 Stat. 2730.)

PRIOR PROVISIONS

A prior section 9904, Pub. L. 97-35, title VI, §675, Aug. 13, 1981, 95 Stat. 513; Pub. L. 97-115, §17(a)(2), (b), Dec.

29, 1981, 95 Stat. 1609; Pub. L. 98-558, title II, §203(a)-(c), Oct. 30, 1984, 98 Stat. 2885; Pub. L. 99-425, title IV, §§403(a)(1), (b), 404(b), Sept. 30, 1986, 100 Stat. 968, 969; Pub. L. 101-501, title IV, §404(a), (b), Nov. 3, 1990, 104 Stat. 1252; Pub. L. 101-624, title XVII, §1772(h)(6), Nov. 28, 1990, 104 Stat. 3809; Pub. L. 103-94, §6, Oct. 6, 1993, 107 Stat. 1005; Pub. L. 103-252, title II, §202(c)-(g), May 18, 1994, 108 Stat. 652-654, related to applications and requirements for community block grant program, prior to the general amendment of this chapter by Pub. L. 105-285.

§ 9905. Distribution to territories

(a) Apportionment

The Secretary shall apportion the amount reserved under section 9903(b)(1) of this title for each fiscal year on the basis of need among Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

(b) Application

Each jurisdiction to which subsection (a) of this section applies may receive a grant under this section for the amount apportioned under subsection (a) of this section on submitting to the Secretary, and obtaining approval of, an application, containing provisions that describe the programs for which assistance is sought under this section, that is prepared in accordance with, and contains the information described in, section 9908 of this title.

(Pub. L. 97-35, title VI, §675A, as added Pub. L. 105-285, title II, §201, Oct. 27, 1998, 112 Stat. 2730.)

PRIOR PROVISIONS

Prior sections 9905 and 9905a were omitted in the general amendment of this chapter by Pub. L. 105-285.

Section 9905, Pub. L. 97-35, title VI, §676, Aug. 13, 1981, 95 Stat. 516, related to establishment and functions of the Office of Community Services.

Section 9905a, Pub. L. 97-35, title VI, §676A, as added Pub. L. 98-558, title II, §203(d), Oct. 30, 1984, 98 Stat. 2885; amended Pub. L. 99-425, title IV, §403(a)(2)-(4), Sept. 30, 1986, 100 Stat. 968, 969; Pub. L. 101-501, title IV, §404(c), Nov. 3, 1990, 104 Stat. 1252, related to procedures for review of termination or reduction of funding.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9903, 9907, 9908, 9915, 9916 of this title.

§ 9906. Allotments and payments to States

(a) Allotments in general

The Secretary shall, from the amount appropriated under section 9903(a) of this title for each fiscal year that remains after the Secretary makes the reservations required in section 9903(b) of this title, allot to each State (subject to section 9911 of this title) an amount that bears the same ratio to such remaining amount as the amount received by the State for fiscal year 1981 under section 2808¹ of this title bore to the total amount received by all States for fiscal year 1981 under such section, except—

- (1) that no State shall receive less than $\frac{1}{4}$ of 1 percent of the amount appropriated under section 9903(a) of this title for such fiscal year; and
- (2) as provided in subsection (b) of this section.

¹ See References in Text note below.

(b) Allotments in years with greater available funds

(1) Minimum allotments

Subject to paragraphs (2) and (3), if the amount appropriated under section 9903(a) of this title for a fiscal year that remains after the Secretary makes the reservations required in section 9903(b) of this title exceeds \$345,000,000, the Secretary shall allot to each State not less than $\frac{1}{2}$ of 1 percent of the amount appropriated under section 9903(a) of this title for such fiscal year.

(2) Maintenance of fiscal year 1990 levels

Paragraph (1) shall not apply with respect to a fiscal year if the amount allotted under subsection (a) of this section to any State for that year is less than the amount allotted under section 9903(a)(1) of this title (as in effect on September 30, 1989) to such State for fiscal year 1990.

(3) Maximum allotments

The amount allotted under paragraph (1) to a State for a fiscal year shall be reduced, if necessary, so that the aggregate amount allotted to such State under such paragraph and subsection (a) of this section does not exceed 140 percent of the aggregate amount allotted to such State under the corresponding provisions of this chapter for the preceding fiscal year.

(c) Payments

The Secretary shall make grants to eligible States for the allotments described in subsections (a) and (b) of this section. The Secretary shall make payments for the grants in accordance with section 6503(a) of title 31.

(d) Definition

In this section, the term "State" does not include Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

(Pub. L. 97-35, title VI, §675B, as added Pub. L. 105-285, title II, §201, Oct. 27, 1998, 112 Stat. 2730.)

REFERENCES IN TEXT

Section 2808 of this title, referred to in subsec. (a), was repealed by Pub. L. 97-35, title VI, §683(a), Aug. 13, 1981, 95 Stat. 519.

PRIOR PROVISIONS

A prior section 9906, Pub. L. 97-35, title VI, §677, Aug. 13, 1981, 95 Stat. 516, contained nondiscrimination provisions, prior to the general amendment of this chapter by Pub. L. 105-285.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9907, 9908, 9911, 9915, 9916 of this title.

§ 9907. Uses of funds

(a) Grants to eligible entities and other organizations

(1) In general

Not less than 90 percent of the funds made available to a State under section 9905 or 9906 of this title shall be used by the State to make grants for the purposes described in section 9901 of this title to eligible entities.

(2) Obligational authority

Funds distributed to eligible entities through grants made in accordance with paragraph (1) for a fiscal year shall be available for obligation during that fiscal year and the succeeding fiscal year, subject to paragraph (3).

(3) Recapture and redistribution of unobligated funds**(A) Amount**

Beginning on October 1, 2000, a State may recapture and redistribute funds distributed to an eligible entity through a grant made under paragraph (1) that are unobligated at the end of a fiscal year if such unobligated funds exceed 20 percent of the amount so distributed to such eligible entity for such fiscal year.

(B) Redistribution

In redistributing funds recaptured in accordance with this paragraph, States shall redistribute such funds to an eligible entity, or require the original recipient of the funds to redistribute the funds to a private, non-profit organization, located within the community served by the original recipient of the funds, for activities consistent with the purposes of this chapter.

(b) Statewide activities**(1) Use of remainder**

If a State uses less than 100 percent of the grant or allotment received under section 9905 or 9906 of this title to make grants under subsection (a) of this section, the State shall use the remainder of the grant or allotment under section 9905 or 9906 of this title (subject to paragraph (2)) for activities that may include—

(A) providing training and technical assistance to those entities in need of such training and assistance;

(B) coordinating State-operated programs and services, and at the option of the State, locally-operated programs and services, targeted to low-income children and families with services provided by eligible entities and other organizations funded under this chapter, including detailing appropriate employees of State or local agencies to entities funded under this chapter, to ensure increased access to services provided by such State or local agencies;

(C) supporting statewide coordination and communication among eligible entities;

(D) analyzing the distribution of funds made available under this chapter within the State to determine if such funds have been targeted to the areas of greatest need;

(E) supporting asset-building programs for low-income individuals, such as programs supporting individual development accounts;

(F) supporting innovative programs and activities conducted by community action agencies or other neighborhood-based organizations to eliminate poverty, promote self-sufficiency, and promote community revitalization;

(G) supporting State charity tax credits as described in subsection (c) of this section; and

(H) supporting other activities, consistent with the purposes of this chapter.

(2) Administrative cap

No State may spend more than the greater of \$55,000, or 5 percent, of the grant received under section 9905 of this title or State allotment received under section 9906 of this title for administrative expenses, including monitoring activities. Funds to be spent for such expenses shall be taken from the portion of the grant under section 9905 of this title or State allotment that remains after the State makes grants to eligible entities under subsection (a) of this section. The cost of activities conducted under paragraph (1)(A) shall not be considered to be administrative expenses. The startup cost and cost of administrative activities conducted under subsection (c) of this section shall be considered to be administrative expenses.

(c) Charity tax credit**(1) In general**

Subject to paragraph (2), if there is in effect under State law a charity tax credit, the State may use for any purpose the amount of the allotment that is available for expenditure under subsection (b) of this section.

(2) Limit

The aggregate amount a State may use under paragraph (1) during a fiscal year shall not exceed 100 percent of the revenue loss of the State during the fiscal year that is attributable to the charity tax credit, as determined by the Secretary of the Treasury without regard to any such revenue loss occurring before January 1, 1999.

(3) Definitions and rules

In this subsection:

(A) Charity tax credit

The term “charity tax credit” means a nonrefundable credit against State income tax (or, in the case of a State that does not impose an income tax, a comparable benefit) that is allowable for contributions, in cash or in kind, to qualified charities.

(B) Qualified charity**(i) In general**

The term “qualified charity” means any organization—

(I) that is—

(aa) described in section 501(c)(3) of title 26 and exempt from tax under section 501(a) of such title;

(bb) an eligible entity; or

(cc) a public housing agency as defined in section 1437a(b)(6) of this title;

(II) that is certified by the appropriate State authority as meeting the requirements of clauses (iii) and (iv); and

(III) if such organization is otherwise required to file a return under section 6033 of such title, that elects to treat the information required to be furnished by clause (v) as being specified in section 6033(b) of such title.

(ii) Certain contributions to collection organizations treated as contributions to qualified charity

(I) In general

A contribution to a collection organization shall be treated as a contribution to a qualified charity if the donor designates in writing that the contribution is for the qualified charity.

(II) Collection organization

The term “collection organization” means an organization described in section 501(c)(3) of such title and exempt from tax under section 501(a) of such title—

(aa) that solicits and collects gifts and grants that, by agreement, are distributed to qualified charities;

(bb) that distributes to qualified charities at least 90 percent of the gifts and grants the organization receives that are designated for such qualified charities; and

(cc) that meets the requirements of clause (vi).

(iii) Charity must primarily assist poor individuals

(I) In general

An organization meets the requirements of this clause only if the appropriate State authority reasonably expects that the predominant activity of such organization will be the provision of direct services within the United States to individuals and families whose annual incomes generally do not exceed 185 percent of the poverty line in order to prevent or alleviate poverty among such individuals and families.

(II) No recordkeeping in certain cases

An organization shall not be required to establish or maintain records with respect to the incomes of individuals and families for purposes of subclause (I) if such individuals or families are members of groups that are generally recognized as including substantially only individuals and families described in subclause (I).

(III) Food aid and homeless shelters

Except as otherwise provided by the appropriate State authority, for purposes of subclause (I), services to individuals in the form of—

(aa) donations of food or meals; or

(bb) temporary shelter to homeless individuals;

shall be treated as provided to individuals described in subclause (I) if the location and provision of such services are such that the service provider may reasonably conclude that the beneficiaries of such services are predominantly individuals described in subclause (I).

(iv) Minimum expense requirement

(I) In general

An organization meets the requirements of this clause only if the appro-

priate State authority reasonably expects that the annual poverty program expenses of such organization will not be less than 75 percent of the annual aggregate expenses of such organization.

(II) Poverty program expense

For purposes of subclause (I)—

(aa) In general

The term “poverty program expense” means any expense in providing direct services referred to in clause (iii).

(bb) Exceptions

Such term shall not include any management or general expense, any expense for the purpose of influencing legislation (as defined in section 4911(d) of title 26), any expense for the purpose of fundraising, any expense for a legal service provided on behalf of any individual referred to in clause (iii), any expense for providing tuition assistance relating to compulsory school attendance, and any expense that consists of a payment to an affiliate of the organization.

(v) Reporting requirement

The information required to be furnished under this clause about an organization is—

(I) the percentages determined by dividing the following categories of the organization’s expenses for the year by the total expenses of the organization for the year: expenses for direct services, management expenses, general expenses, fundraising expenses, and payments to affiliates; and

(II) the category or categories (including food, shelter, education, substance abuse prevention or treatment, job training, or other) of services that constitute predominant activities of the organization.

(vi) Additional requirements for collection organizations

The requirements of this clause are met if the organization—

(I) maintains separate accounting for revenues and expenses; and

(II) makes available to the public information on the administrative and fundraising costs of the organization, and information as to the organizations receiving funds from the organization and the amount of such funds.

(vii) Special rule for States requiring tax uniformity

In the case of a State—

(I) that has a constitutional requirement of tax uniformity; and

(II) that, as of December 31, 1997, imposed a tax on personal income with—

(aa) a single flat rate applicable to all earned and unearned income (except insofar as any amount is not taxed pursuant to tax forgiveness provisions); and

(bb) no generally available exemptions or deductions to individuals;

the requirement of paragraph (2) shall be treated as met if the amount of the credit described in paragraph (2) is limited to a uniform percentage (but not greater than 25 percent) of State personal income tax liability (determined without regard to credits).

(4) Limitation on use of funds for startup and administrative activities

Except to the extent provided in subsection (b)(2) of this section, no part of the aggregate amount a State uses under paragraph (1) may be used to pay for the cost of the startup and administrative activities conducted under this subsection.

(5) Prohibition on use of funds for legal services or tuition assistance

No part of the aggregate amount a State uses under paragraph (1) may be used to provide legal services or to provide tuition assistance related to compulsory education requirements (not including tuition assistance for tutoring, camps, skills development, or other supplemental services or training).

(6) Prohibition on supplanting funds

No part of the aggregate amount a State uses under paragraph (1) may be used to supplant non-Federal funds that would be available, in the absence of Federal funds, to offset a revenue loss of the State attributable to a charity tax credit.

(Pub. L. 97-35, title VI, §675C, as added Pub. L. 105-285, title II, §201, Oct. 27, 1998, 112 Stat. 2731.)

PRIOR PROVISIONS

A prior section 9907, Pub. L. 97-35, title VI, §678, Aug. 13, 1981, 95 Stat. 516, related to payments to States, prior to the general amendment of this chapter by Pub. L. 105-285.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9908, 9919 of this title.

§ 9908. Application and plan

(a) Designation of lead agency

(1) Designation

The chief executive officer of a State desiring to receive a grant or allotment under section 9905 or 9906 of this title shall designate, in an application submitted to the Secretary under subsection (b) of this section, an appropriate State agency that complies with the requirements of paragraph (2) to act as a lead agency for purposes of carrying out State activities under this chapter.

(2) Duties

The lead agency shall—

(A) develop the State plan to be submitted to the Secretary under subsection (b) of this section;

(B) in conjunction with the development of the State plan as required under subsection (b) of this section, hold at least one hearing in the State with sufficient time and state-

wide distribution of notice of such hearing, to provide to the public an opportunity to comment on the proposed use and distribution of funds to be provided through the grant or allotment under section 9905 or 9906 of this title for the period covered by the State plan; and

(C) conduct reviews of eligible entities under section 9914 of this title.

(3) Legislative hearing

In order to be eligible to receive a grant or allotment under section 9905 or 9906 of this title, the State shall hold at least one legislative hearing every 3 years in conjunction with the development of the State plan.

(b) State application and plan

Beginning with fiscal year 2000, to be eligible to receive a grant or allotment under section 9905 or 9906 of this title, a State shall prepare and submit to the Secretary an application and State plan covering a period of not less than 1 fiscal year and not more than 2 fiscal years. The plan shall be submitted not later than 30 days prior to the beginning of the first fiscal year covered by the plan, and shall contain such information as the Secretary shall require, including—

(1) an assurance that funds made available through the grant or allotment will be used—

(A) to support activities that are designed to assist low-income families and individuals, including families and individuals receiving assistance under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.), homeless families and individuals, migrant or seasonal farmworkers, and elderly low-income individuals and families, and a description of how such activities will enable the families and individuals—

(i) to remove obstacles and solve problems that block the achievement of self-sufficiency (including self-sufficiency for families and individuals who are attempting to transition off a State program carried out under part A of title IV of the Social Security Act);

(ii) to secure and retain meaningful employment;

(iii) to attain an adequate education, with particular attention toward improving literacy skills of the low-income families in the communities involved, which may include carrying out family literacy initiatives;

(iv) to make better use of available income;

(v) to obtain and maintain adequate housing and a suitable living environment;

(vi) to obtain emergency assistance through loans, grants, or other means to meet immediate and urgent family and individual needs; and

(vii) to achieve greater participation in the affairs of the communities involved, including the development of public and private grassroots partnerships with local law enforcement agencies, local housing authorities, private foundations, and other public and private partners to—

(I) document best practices based on successful grassroots intervention in

urban areas, to develop methodologies for widespread replication; and

(II) strengthen and improve relationships with local law enforcement agencies, which may include participation in activities such as neighborhood or community policing efforts;

(B) to address the needs of youth in low-income communities through youth development programs that support the primary role of the family, give priority to the prevention of youth problems and crime, and promote increased community coordination and collaboration in meeting the needs of youth, and support development and expansion of innovative community-based youth development programs that have demonstrated success in preventing or reducing youth crime, such as—

(i) programs for the establishment of violence-free zones that would involve youth development and intervention models (such as models involving youth mediation, youth mentoring, life skills training, job creation, and entrepreneurship programs); and

(ii) after-school child care programs; and

(C) to make more effective use of, and to coordinate with, other programs related to the purposes of this chapter (including State welfare reform efforts);

(2) a description of how the State intends to use discretionary funds made available from the remainder of the grant or allotment described in section 9907(b) of this title in accordance with this chapter, including a description of how the State will support innovative community and neighborhood-based initiatives related to the purposes of this chapter;

(3) information provided by eligible entities in the State, containing—

(A) a description of the service delivery system, for services provided or coordinated with funds made available through grants made under section 9907(a) of this title, targeted to low-income individuals and families in communities within the State;

(B) a description of how linkages will be developed to fill identified gaps in the services, through the provision of information, referrals, case management, and followup consultations;

(C) a description of how funds made available through grants made under section 9907(a) of this title will be coordinated with other public and private resources; and

(D) a description of how the local entity will use the funds to support innovative community and neighborhood-based initiatives related to the purposes of this chapter, which may include fatherhood initiatives and other initiatives with the goal of strengthening families and encouraging effective parenting;

(4) an assurance that eligible entities in the State will provide, on an emergency basis, for the provision of such supplies and services, nutritious foods, and related services, as may be

necessary to counteract conditions of starvation and malnutrition among low-income individuals;

(5) an assurance that the State and the eligible entities in the State will coordinate, and establish linkages between, governmental and other social services programs to assure the effective delivery of such services to low-income individuals and to avoid duplication of such services, and a description of how the State and the eligible entities will coordinate the provision of employment and training activities, as defined in section 101¹ of such Act [29 U.S.C. 2801], in the State and in communities with entities providing activities through statewide and local workforce investment systems under the Workforce Investment Act of 1998;

(6) an assurance that the State will ensure coordination between antipoverty programs in each community in the State, and ensure, where appropriate, that emergency energy crisis intervention programs under title XXVI [42 U.S.C. 8621 et seq.] (relating to low-income home energy assistance) are conducted in such community;

(7) an assurance that the State will permit and cooperate with Federal investigations undertaken in accordance with section 9916 of this title;

(8) an assurance that any eligible entity in the State that received funding in the previous fiscal year through a community services block grant made under this chapter will not have its funding terminated under this chapter, or reduced below the proportional share of funding the entity received in the previous fiscal year unless, after providing notice and an opportunity for a hearing on the record, the State determines that cause exists for such termination or such reduction, subject to review by the Secretary as provided in section 9915(b) of this title;

(9) an assurance that the State and eligible entities in the State will, to the maximum extent possible, coordinate programs with and form partnerships with other organizations serving low-income residents of the communities and members of the groups served by the State, including religious organizations, charitable groups, and community organizations;

(10) an assurance that the State will require each eligible entity in the State to establish procedures under which a low-income individual, community organization, or religious organization, or representative of low-income individuals that considers its organization, or low-income individuals, to be inadequately represented on the board (or other mechanism) of the eligible entity to petition for adequate representation;

(11) an assurance that the State will secure from each eligible entity in the State, as a condition to receipt of funding by the entity through a community services block grant made under this chapter for a program, a community action plan (which shall be submitted to the Secretary, at the request of the Sec-

¹ See References in Text note below.

retary, with the State plan) that includes a community-needs assessment for the community served, which may be coordinated with community-needs assessments conducted for other programs;

(12) an assurance that the State and all eligible entities in the State will, not later than fiscal year 2001, participate in the Results Oriented Management and Accountability System, another performance measure system for which the Secretary facilitated development pursuant to section 9917(b) of this title, or an alternative system for measuring performance and results that meets the requirements of that section, and a description of outcome measures to be used to measure eligible entity performance in promoting self-sufficiency, family stability, and community revitalization; and

(13) information describing how the State will carry out the assurances described in this subsection.

(c) Funding termination or reductions

For purposes of making a determination in accordance with subsection (b)(8) of this section with respect to—

(1) a funding reduction, the term “cause” includes—

(A) a statewide redistribution of funds provided through a community services block grant under this chapter to respond to—

- (i) the results of the most recently available census or other appropriate data;
- (ii) the designation of a new eligible entity; or
- (iii) severe economic dislocation; or

(B) the failure of an eligible entity to comply with the terms of an agreement or a State plan, or to meet a State requirement, as described in section 9915(a) of this title; and

(2) a termination, the term “cause” includes the failure of an eligible entity to comply with the terms of an agreement or a State plan, or to meet a State requirement, as described in section 9915(a) of this title.

(d) Procedures and information

The Secretary may prescribe procedures for the purpose of assessing the effectiveness of eligible entities in carrying out the purposes of this chapter.

(e) Revisions and inspection

(1) Revisions

The chief executive officer of each State may revise any plan prepared under this section and shall submit the revised plan to the Secretary.

(2) Public inspection

Each plan or revised plan prepared under this section shall be made available for public inspection within the State in such a manner as will facilitate review of, and comment on, the plan.

(f) Transition

For fiscal year 2000, to be eligible to receive a grant or allotment under section 9905 or 9906 of

this title, a State shall prepare and submit to the Secretary an application and State plan in accordance with the provisions of this chapter (as in effect on the day before October 27, 1998), rather than the provisions of subsections (a) through (c) of this section relating to applications and plans.

(Pub. L. 97-35, title VI, §676, as added Pub. L. 105-285, title II, §201, Oct. 27, 1998, 112 Stat. 2735.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b)(1)(A), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part A of title IV of the Act is classified generally to part A (§601 et seq.) of subchapter IV of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

Section 101 of such Act, referred to in subsec. (b)(5), is probably a reference to section 101 of the Workforce Investment Act of 1998, Pub. L. 105-220, which is classified to section 2801 of Title 29, Labor.

The Workforce Investment Act of 1998, referred to in subsec. (b)(5), is Pub. L. 105-220, Aug. 7, 1998, 112 Stat. 936, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

Title XXVI, referred to in subsec. (b)(6), is title XXVI of Pub. L. 97-35, Aug. 13, 1981, 95 Stat. 893, as amended, known as the Low-Income Home Energy Assistance Act of 1981, which is classified generally to subchapter II (§8621 et seq.) of chapter 94 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 8621 of this title and Tables.

PRIOR PROVISIONS

A prior section 9908, Pub. L. 97-35, title VI, §679, Aug. 13, 1981, 95 Stat. 517; Pub. L. 98-558, title II, §205, Oct. 30, 1984, 98 Stat. 2886; Pub. L. 99-425, title IV, §404(a), Sept. 30, 1986, 100 Stat. 969, related to withholding of funds, prior to the general amendment of this chapter by Pub. L. 105-285.

A prior section 676 of Pub. L. 97-35 was classified to section 9905 of this title, prior to the general amendment of this chapter by Pub. L. 105-285.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9905, 9914, 9915, 9916, 9917 of this title.

§ 9909. Designation and redesignation of eligible entities in unserved areas

(a) Qualified organization in or near area

(1) In general

If any geographic area of a State is not, or ceases to be, served by an eligible entity under this chapter, and if the chief executive officer of the State decides to serve such area, the chief executive officer may solicit applications from, and designate as an eligible entity—

(A) a private nonprofit organization (which may include an eligible entity) that is geographically located in the unserved area, that is capable of providing a broad range of services designed to eliminate poverty and foster self-sufficiency, and that meets the requirements of this chapter; and

(B) a private nonprofit eligible entity that is geographically located in an area contiguous to or within reasonable proximity of the unserved area and that is already providing related services in the unserved area.

(2) Requirement

In order to serve as the eligible entity for the area, an entity described in paragraph

(1)(B) shall agree to add additional members to the board of the entity to ensure adequate representation—

(A) in each of the three required categories described in subparagraphs (A), (B), and (C) of section 9910(a)(2) of this title, by members that reside in the community comprised by the unserved area; and

(B) in the category described in section 9910(a)(2)(B) of this title, by members that reside in the neighborhood to be served.

(b) Special consideration

In designating an eligible entity under subsection (a) of this section, the chief executive officer shall grant the designation to an organization of demonstrated effectiveness in meeting the goals and purposes of this chapter and may give priority, in granting the designation, to eligible entities that are providing related services in the unserved area, consistent with the needs identified by a community-needs assessment.

(c) No qualified organization in or near area

If no private, nonprofit organization is identified or determined to be qualified under subsection (a) of this section to serve the unserved area as an eligible entity the chief executive officer may designate an appropriate political subdivision of the State to serve as an eligible entity for the area. In order to serve as the eligible entity for that area, the political subdivision shall have a board or other mechanism as required in section 9910(b) of this title.

(Pub. L. 97-35, title VI, §676A, as added Pub. L. 105-285, title II, §201, Oct. 27, 1998, 112 Stat. 2739.)

PRIOR PROVISIONS

A prior section 9909, Pub. L. 97-35, title VI, §680, Aug. 13, 1981, 95 Stat. 517; Pub. L. 99-425, title IV, §405(c)(2), Sept. 30, 1986, 100 Stat. 970; Pub. L. 103-171, §7(c)(3), Dec. 2, 1993, 107 Stat. 1994, related to limitation on use of grants for construction and waiver of such limitation, prior to the general amendment of this chapter by Pub. L. 105-285.

A prior section 676A of Pub. L. 97-35 was classified to section 9905a of this title, prior to the general amendment of this chapter by Pub. L. 105-285.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9902 of this title.

§ 9910. Tripartite boards

(a) Private nonprofit entities

(1) Board

In order for a private, nonprofit entity to be considered to be an eligible entity for purposes of section 9902(1) of this title, the entity shall administer the community services block grant program through a tripartite board described in paragraph (2) that fully participates in the development, planning, implementation, and evaluation of the program to serve low-income communities.

(2) Selection and composition of board

The members of the board referred to in paragraph (1) shall be selected by the entity and the board shall be composed so as to assure that—

(A) $\frac{1}{3}$ of the members of the board are elected public officials, holding office on the

date of selection, or their representatives, except that if the number of such elected officials reasonably available and willing to serve on the board is less than $\frac{1}{3}$ of the membership of the board, membership on the board of appointive public officials or their representatives may be counted in meeting such $\frac{1}{3}$ requirement;

(B)(i) not fewer than $\frac{1}{3}$ of the members are persons chosen in accordance with democratic selection procedures adequate to assure that these members are representative of low-income individuals and families in the neighborhood served; and

(ii) each representative of low-income individuals and families selected to represent a specific neighborhood within a community under clause (i) resides in the neighborhood represented by the member; and

(C) the remainder of the members are officials or members of business, industry, labor, religious, law enforcement, education, or other major groups and interests in the community served.

(b) Public organizations

In order for a public organization to be considered to be an eligible entity for purposes of section 9902(1) of this title, the entity shall administer the community services block grant program through—

(1) a tripartite board, which shall have members selected by the organization and shall be composed so as to assure that not fewer than $\frac{1}{3}$ of the members are persons chosen in accordance with democratic selection procedures adequate to assure that these members—

(A) are representative of low-income individuals and families in the neighborhood served;

(B) reside in the neighborhood served; and

(C) are able to participate actively in the development, planning, implementation, and evaluation of programs funded under this chapter; or

(2) another mechanism specified by the State to assure decisionmaking and participation by low-income individuals in the development, planning, implementation, and evaluation of programs funded under this chapter.

(Pub. L. 97-35, title VI, §676B, as added Pub. L. 105-285, title II, §201, Oct. 27, 1998, 112 Stat. 2740.)

PRIOR PROVISIONS

Prior sections 9910 and 9910a were omitted in the general amendment of this chapter by Pub. L. 105-285.

Section 9910, Pub. L. 97-35, title VI, §681, Aug. 13, 1981, 95 Stat. 518; Pub. L. 98-558, title II, §204, Oct. 30, 1984, 98 Stat. 2886; Pub. L. 99-425, title IV, §405(a), (b), Sept. 30, 1986, 100 Stat. 969, 970; Pub. L. 101-501, title IV, §§405, 407(b), Nov. 3, 1990, 104 Stat. 1252, 1255; Pub. L. 103-171, §7(a), Dec. 2, 1993, 107 Stat. 1993; Pub. L. 103-252, title II, §203, May 18, 1994, 108 Stat. 654, related to the discretionary authority of the Secretary.

Section 9910a, Pub. L. 97-35, title VI, §681A, as added Pub. L. 98-558, title II, §206, Oct. 30, 1984, 98 Stat. 2886; amended Pub. L. 99-425, title IV, §406, Sept. 30, 1986, 100 Stat. 970; Pub. L. 101-501, title IV, §§401(b), 406, Nov. 3, 1990, 104 Stat. 1251, 1253; Pub. L. 103-171, §7(c)(4), Dec. 2, 1993, 107 Stat. 1994; Pub. L. 103-252, title II, §204, May 18, 1994, 108 Stat. 655, related to community food and nutrition.

A prior section 9910b, Pub. L. 99-425, title IV, § 408, Sept. 30, 1986, 100 Stat. 972, as amended, which related to demonstration partnership agreements addressing needs of poor, was transferred to section 9925 of this title.

A prior section 9910c, Pub. L. 97-35, title VI, § 682, as added Pub. L. 103-252, title II, § 205(2), May 18, 1994, 108 Stat. 655; amended Pub. L. 105-244, title I, § 102(a)(13)(I), Oct. 7, 1998, 112 Stat. 1621, related to national or regional programs designed to provide instructional activities for low-income youth, prior to the general amendment of this chapter by Pub. L. 105-285.

A prior section 9910d, Pub. L. 100-485, title V, § 505, Oct. 13, 1988, 102 Stat. 2404, as amended, which related to demonstration partnership agreements addressing needs of poor, was transferred to section 9926 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3026, 9812a, 9902, 9909, 9920 of this title.

§ 9911. Payments to Indian tribes

(a) Reservation

If, with respect to any State, the Secretary—

(1) receives a request from the governing body of an Indian tribe or tribal organization within the State that assistance under this chapter be made directly to such tribe or organization; and

(2) determines that the members of such tribe or tribal organization would be better served by means of grants made directly to provide benefits under this chapter,

the Secretary shall reserve from amounts that would otherwise be allotted to such State under section 9906 of this title for the fiscal year the amount determined under subsection (b) of this section.

(b) Determination of reserved amount

The Secretary shall reserve for the purpose of subsection (a) of this section from amounts that would otherwise be allotted to such State, not less than 100 percent of an amount that bears the same ratio to the State allotment for the fiscal year involved as the population of all eligible Indians for whom a determination has been made under subsection (a) of this section bears to the population of all individuals eligible for assistance through a community services block grant made under this chapter in such State.

(c) Awards

The sums reserved by the Secretary on the basis of a determination made under subsection (a) of this section shall be made available by grant to the Indian tribe or tribal organization serving the individuals for whom such a determination has been made.

(d) Plan

In order for an Indian tribe or tribal organization to be eligible for a grant award for a fiscal year under this section, the tribe or organization shall submit to the Secretary a plan for such fiscal year that meets such criteria as the Secretary may prescribe by regulation.

(e) Definitions

In this section:

(1) Indian tribe; tribal organization

The terms “Indian tribe” and “tribal organization” mean a tribe, band, or other organized

group recognized in the State in which the tribe, band, or group resides, or considered by the Secretary of the Interior, to be an Indian tribe or an Indian organization for any purpose.

(2) Indian

The term “Indian” means a member of an Indian tribe or of a tribal organization.

(Pub. L. 97-35, title VI, § 677, as added Pub. L. 105-285, title II, § 201, Oct. 27, 1998, 112 Stat. 2741.)

PRIOR PROVISIONS

A prior section 9911, Pub. L. 97-35, title VI, § 683, formerly § 682, as added Pub. L. 101-501, title IV, § 407(a), Nov. 3, 1990, 104 Stat. 1254; amended Pub. L. 103-171, § 7(b), Dec. 2, 1993, 107 Stat. 1993; renumbered § 683, Pub. L. 103-252, title II, § 205(1), May 18, 1994, 108 Stat. 655, related to annual reports by Secretary, prior to the general amendment of this chapter by Pub. L. 105-285.

Another prior section 9911, Pub. L. 97-35, title VI, § 682, Aug. 13, 1981, 95 Stat. 518; Pub. L. 97-115, § 17(c), Dec. 29, 1981, 95 Stat. 1609; Pub. L. 97-274, Sept. 30, 1982, 96 Stat. 1183, related to transition provisions, prior to repeal by Pub. L. 101-501, § 407(a).

A prior section 677 of Pub. L. 97-35 was classified to section 9906 of this title, prior to the general amendment of this chapter by Pub. L. 105-285.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9906, 9922 of this title.

§ 9912. Office of Community Services

(a) Office

The Secretary shall carry out the functions of this chapter through an Office of Community Services, which shall be established in the Department of Health and Human Services. The Office shall be headed by a Director.

(b) Grants, contracts, and cooperative agreements

The Secretary shall carry out functions of this chapter through grants, contracts, or cooperative agreements.

(Pub. L. 97-35, title VI, § 678, as added Pub. L. 105-285, title II, § 201, Oct. 27, 1998, 112 Stat. 2742.)

PRIOR PROVISIONS

A prior section 9912, Pub. L. 97-35, title VI, § 684, formerly § 683, Aug. 13, 1981, 95 Stat. 519; Pub. L. 98-288, § 31(b), May 21, 1984, 98 Stat. 198; renumbered § 684, Pub. L. 103-252, title II, § 205(1), May 18, 1994, 108 Stat. 655, contained provisions repealing certain other statutory provisions, reauthorizing appropriations, and conforming references, prior to general amendment of this chapter by Pub. L. 105-285.

A prior section 678 of Pub. L. 97-35 was classified to section 9907 of this title, prior to the general amendment of this chapter by Pub. L. 105-285.

§ 9913. Training, technical assistance, and other activities

(a) Activities

(1) In general

The Secretary shall use amounts reserved in section 9903(b)(2) of this title—

(A) for training, technical assistance, planning, evaluation, and performance measurement, to assist States in carrying out corrective action activities and monitoring (to

correct programmatic deficiencies of eligible entities), and for reporting and data collection activities, related to programs carried out under this chapter; and

(B) to distribute amounts in accordance with subsection (c) of this section.

(2) Grants, contracts, and cooperative agreements

The activities described in paragraph (1)(A) may be carried out by the Secretary through grants, contracts, or cooperative agreements with appropriate entities.

(b) Terms and technical assistance process

The process for determining the training and technical assistance to be carried out under this section shall—

(1) ensure that the needs of eligible entities and programs relating to improving program quality (including quality of financial management practices) are addressed to the maximum extent feasible; and

(2) incorporate mechanisms to ensure responsiveness to local needs, including an ongoing procedure for obtaining input from the national and State networks of eligible entities.

(c) Distribution requirement

(1) In general

The amounts reserved under section 9903(b)(2)(A) of this title for activities to be carried out under this subsection shall be distributed directly to eligible entities, organizations, or associations described in paragraph (2) for the purpose of improving program quality (including quality of financial management practices), management information and reporting systems, and measurement of program results, and for the purpose of ensuring responsiveness to identified local needs.

(2) Eligible entities, organizations, or associations

Eligible entities, organizations, or associations described in this paragraph shall be eligible entities, or statewide or local organizations or associations, with demonstrated expertise in providing training to individuals and organizations on methods of effectively addressing the needs of low-income families and communities.

(Pub. L. 97-35, title VI, § 678A, as added Pub. L. 105-285, title II, § 201, Oct. 27, 1998, 112 Stat. 2742.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9903 of this title.

§ 9914. Monitoring of eligible entities

(a) In general

In order to determine whether eligible entities meet the performance goals, administrative standards, financial management requirements, and other requirements of a State, the State shall conduct the following reviews of eligible entities:

(1) A full onsite review of each such entity at least once during each 3-year period.

(2) An onsite review of each newly designated entity immediately after the comple-

tion of the first year in which such entity receives funds through the community services block grant program.

(3) Followup reviews including prompt return visits to eligible entities, and their programs, that fail to meet the goals, standards, and requirements established by the State.

(4) Other reviews as appropriate, including reviews of entities with programs that have had other Federal, State, or local grants (other than assistance provided under this chapter) terminated for cause.

(b) Requests

The State may request training and technical assistance from the Secretary as needed to comply with the requirements of this section.

(c) Evaluations by the Secretary

The Secretary shall conduct in several States in each fiscal year evaluations (including investigations) of the use of funds received by the States under this chapter in order to evaluate compliance with the provisions of this chapter, and especially with respect to compliance with section 9908(b) of this title. The Secretary shall submit, to each State evaluated, a report containing the results of such evaluations, and recommendations of improvements designed to enhance the benefit and impact of the activities carried out with such funds for people in need. On receiving the report, the State shall submit to the Secretary a plan of action in response to the recommendations contained in the report. The results of the evaluations shall be submitted annually to the Chairperson of the Committee on Education and the Workforce of the House of Representatives and the Chairperson of the Committee on Labor and Human Resources of the Senate as part of the report submitted by the Secretary in accordance with section 9917(b)(2) of this title.

(Pub. L. 97-35, title VI, § 678B, as added Pub. L. 105-285, title II, § 201, Oct. 27, 1998, 112 Stat. 2743.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9903, 9908, 9915 of this title.

§ 9915. Corrective action; termination and reduction of funding

(a) Determination

If the State determines, on the basis of a final decision in a review pursuant to section 9914 of this title, that an eligible entity fails to comply with the terms of an agreement, or the State plan, to provide services under this chapter or to meet appropriate standards, goals, and other requirements established by the State (including performance objectives), the State shall—

(1) inform the entity of the deficiency to be corrected;

(2) require the entity to correct the deficiency;

(3)(A) offer training and technical assistance, if appropriate, to help correct the deficiency, and prepare and submit to the Secretary a report describing the training and technical assistance offered; or

(B) if the State determines that such training and technical assistance are not appro-

priate, prepare and submit to the Secretary a report stating the reasons for the determination;

(4)(A) at the discretion of the State (taking into account the seriousness of the deficiency and the time reasonably required to correct the deficiency), allow the entity to develop and implement, within 60 days after being informed of the deficiency, a quality improvement plan to correct such deficiency within a reasonable period of time, as determined by the State; and

(B) not later than 30 days after receiving from an eligible entity a proposed quality improvement plan pursuant to subparagraph (A), either approve such proposed plan or specify the reasons why the proposed plan cannot be approved; and

(5) after providing adequate notice and an opportunity for a hearing, initiate proceedings to terminate the designation of or reduce the funding under this chapter of the eligible entity unless the entity corrects the deficiency.

(b) Review

A determination to terminate the designation or reduce the funding of an eligible entity is reviewable by the Secretary. The Secretary shall, upon request, review such a determination. The review shall be completed not later than 90 days after the Secretary receives from the State all necessary documentation relating to the determination to terminate the designation or reduce the funding. If the review is not completed within 90 days, the determination of the State shall become final at the end of the 90th day.

(c) Direct assistance

Whenever a State violates the assurances contained in section 9908(b)(8) of this title and terminates or reduces the funding of an eligible entity prior to the completion of the State hearing described in that section and the Secretary's review as required in subsection (b) of this section, the Secretary is authorized to provide financial assistance under this chapter to the eligible entity affected until the violation is corrected. In such a case, the grant or allotment for the State under section 9905 or 9906 of this title for the earliest appropriate fiscal year shall be reduced by an amount equal to the funds provided under this subsection to such eligible entity.

(Pub. L. 97-35, title VI, § 678C, as added Pub. L. 105-285, title II, § 201, Oct. 27, 1998, 112 Stat. 2743.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9903, 9908, 9917 of this title.

§ 9916. Fiscal controls, audits, and withholding

(a) Fiscal controls, procedures, audits, and inspections

(1) In general

A State that receives funds under this chapter shall—

(A) establish fiscal control and fund accounting procedures necessary to assure the proper disbursal of and accounting for Federal funds paid to the State under this chapter, including procedures for monitoring the funds provided under this chapter;

(B) ensure that cost and accounting standards of the Office of Management and Budget apply to a recipient of the funds under this chapter;

(C) subject to paragraph (2), prepare, at least every year, an audit of the expenditures of the State of amounts received under this chapter and amounts transferred to carry out the purposes of this chapter; and

(D) make appropriate books, documents, papers, and records available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for examination, copying, or mechanical reproduction on or off the premises of the appropriate entity upon a reasonable request for the items.

(2) Audits

(A) In general

Subject to subparagraph (B), each audit required by subsection (a)(1)(C) of this section shall be conducted by an entity independent of any agency administering activities or services carried out under this chapter and shall be conducted in accordance with generally accepted accounting principles.

(B) Single audit requirements

Audits shall be conducted under this paragraph in the manner and to the extent provided in chapter 75 of title 31 (commonly known as the "Single Audit Act Amendments of 1996").

(C) Submission of copies

Within 30 days after the completion of each such audit in a State, the chief executive officer of the State shall submit a copy of such audit to any eligible entity that was the subject of the audit at no charge, to the legislature of the State, and to the Secretary.

(3) Repayments

The State shall repay to the United States amounts found not to have been expended in accordance with this chapter or the Secretary may offset such amounts against any other amount to which the State is or may become entitled under this chapter.

(b) Withholding

(1) In general

The Secretary shall, after providing adequate notice and an opportunity for a hearing conducted within the affected State, withhold funds from any State that does not utilize the grant or allotment under section 9905 or 9906 of this title in accordance with the provisions of this chapter, including the assurances such State provided under section 9908 of this title.

(2) Response to complaints

The Secretary shall respond in an expeditious and speedy manner to complaints of a substantial or serious nature that a State has failed to use funds in accordance with the provisions of this chapter, including the assurances provided by the State under section 9908 of this title. For purposes of this paragraph, a complaint of a failure to meet any one of the

assurances provided under section 9908 of this title that constitutes disregarding that assurance shall be considered to be a complaint of a serious nature.

(3) Investigations

Whenever the Secretary determines that there is a pattern of complaints of failures described in paragraph (2) from any State in any fiscal year, the Secretary shall conduct an investigation of the use of funds received under this chapter by such State in order to ensure compliance with the provisions of this chapter.

(Pub. L. 97-35, title VI, § 678D, as added Pub. L. 105-285, title II, § 201, Oct. 27, 1998, 112 Stat. 2744.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9903, 9908 of this title.

§ 9917. Accountability and reporting requirements

(a) State accountability and reporting requirements

(1) Performance measurement

(A) In general

By October 1, 2001, each State that receives funds under this chapter shall participate, and shall ensure that all eligible entities in the State participate, in a performance measurement system, which may be a performance measurement system for which the Secretary facilitated development pursuant to subsection (b) of this section, or an alternative system that the Secretary is satisfied meets the requirements of subsection (b) of this section.

(B) Local agencies

The State may elect to have local agencies that are subcontractors of the eligible entities under this chapter participate in the performance measurement system. If the State makes that election, references in this section to eligible entities shall be considered to include the local agencies.

(2) Annual report

Each State shall annually prepare and submit to the Secretary a report on the measured performance of the State and the eligible entities in the State. Prior to the participation of the State in the performance measurement system, the State shall include in the report any information collected by the State relating to such performance. Each State shall also include in the report an accounting of the expenditure of funds received by the State through the community services block grant program, including an accounting of funds spent on administrative costs by the State and the eligible entities, and funds spent by eligible entities on the direct delivery of local services, and shall include information on the number of and characteristics of clients served under this chapter in the State, based on data collected from the eligible entities. The State shall also include in the report a summary describing the training and technical assistance

offered by the State under section 9915(a)(3) of this title during the year covered by the report.

(b) Secretary's accountability and reporting requirements

(1) Performance measurement

The Secretary, in collaboration with the States and with eligible entities throughout the Nation, shall facilitate the development of one or more model performance measurement systems, which may be used by the States and by eligible entities to measure their performance in carrying out the requirements of this chapter and in achieving the goals of their community action plans. The Secretary shall provide technical assistance, including support for the enhancement of electronic data systems, to States and to eligible entities to enhance their capability to collect and report data for such a system and to aid in their participation in such a system.

(2) Reporting requirements

At the end of each fiscal year beginning after September 30, 1999, the Secretary shall, directly or by grant or contract, prepare a report containing—

(A) a summary of the planned use of funds by each State, and the eligible entities in the State, under the community services block grant program, as contained in each State plan submitted pursuant to section 9908 of this title;

(B) a description of how funds were actually spent by the State and eligible entities in the State, including a breakdown of funds spent on administrative costs and on the direct delivery of local services by eligible entities;

(C) information on the number of entities eligible for funds under this chapter, the number of low-income persons served under this chapter, and such demographic data on the low-income populations served by eligible entities as is determined by the Secretary to be feasible;

(D) a comparison of the planned uses of funds for each State and the actual uses of the funds;

(E) a summary of each State's performance results, and the results for the eligible entities, as collected and submitted by the States in accordance with subsection (a)(2) of this section; and

(F) any additional information that the Secretary considers to be appropriate to carry out this chapter, if the Secretary informs the States of the need for such additional information and allows a reasonable period of time for the States to collect and provide the information.

(3) Submission

The Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Labor and Human Resources of the Senate the report described in paragraph (2), and any comments the Secretary may have with respect to such report. The report shall include definitions of direct and administrative costs

used by the Department of Health and Human Services for programs funded under this chapter.

(4) Costs

Of the funds reserved under section 9903(b)(3) of this title, not more than \$350,000 shall be available to carry out the reporting requirements contained in paragraph (2).

(Pub. L. 97-35, title VI, §678E, as added Pub. L. 105-285, title II, §201, Oct. 27, 1998, 112 Stat. 2746.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9903, 9908, 9914 of this title.

§ 9918. Limitations on use of funds

(a) Construction of facilities

(1) Limitations

Except as provided in paragraph (2), grants made under this chapter (other than amounts reserved under section 9903(b)(3) of this title) may not be used by the State, or by any other person with which the State makes arrangements to carry out the purposes of this chapter, for the purchase or improvement of land, or the purchase, construction, or permanent improvement (other than low-cost residential weatherization or other energy-related home repairs) of any building or other facility.

(2) Waiver

The Secretary may waive the limitation contained in paragraph (1) upon a State request for such a waiver, if the Secretary finds that the request describes extraordinary circumstances to justify the purchase of land or the construction of facilities (or the making of permanent improvements) and that permitting the waiver will contribute to the ability of the State to carry out the purposes of this chapter.

(b) Political activities

(1) Treatment as a State or local agency

For purposes of chapter 15 of title 5, any entity that assumes responsibility for planning, developing, and coordinating activities under this chapter and receives assistance under this chapter shall be deemed to be a State or local agency. For purposes of paragraphs (1) and (2) of section 1502(a) of such title, any entity receiving assistance under this chapter shall be deemed to be a State or local agency.

(2) Prohibitions

Programs assisted under this chapter shall not be carried on in a manner involving the use of program funds, the provision of services, or the employment or assignment of personnel, in a manner supporting or resulting in the identification of such programs with—

(A) any partisan or nonpartisan political activity or any political activity associated with a candidate, or contending faction or group, in an election for public or party office;

(B) any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any such election; or

(C) any voter registration activity.

(3) Rules and regulations

The Secretary, after consultation with the Office of Personnel Management, shall issue rules and regulations to provide for the enforcement of this subsection, which shall include provisions for summary suspension of assistance or other action necessary to permit enforcement on an emergency basis.

(c) Nondiscrimination

(1) In general

No person shall, on the basis of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with funds made available under this chapter. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.) or with respect to an otherwise qualified individual with a disability as provided in section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), or title II of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131 et seq.) shall also apply to any such program or activity.

(2) Action of Secretary

Whenever the Secretary determines that a State that has received a payment under this chapter has failed to comply with paragraph (1) or an applicable regulation, the Secretary shall notify the chief executive officer of the State and shall request that the officer secure compliance. If within a reasonable period of time, not to exceed 60 days, the chief executive officer fails or refuses to secure compliance, the Secretary is authorized to—

(A) refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted;

(B) exercise the powers and functions provided by title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), or title II of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131 et seq.), as may be applicable; or

(C) take such other action as may be provided by law.

(3) Action of Attorney General

When a matter is referred to the Attorney General pursuant to paragraph (2), or whenever the Attorney General has reason to believe that the State is engaged in a pattern or practice of discrimination in violation of the provisions of this subsection, the Attorney General may bring a civil action in any appropriate United States district court for such relief as may be appropriate, including injunctive relief.

(Pub. L. 97-35, title VI, §678F, as added Pub. L. 105-285, title II, §201, Oct. 27, 1998, 112 Stat. 2747.)

REFERENCES IN TEXT

The Age Discrimination Act of 1975, referred to in subsec. (c)(1), (2)(B), is title III of Pub. L. 94-135, Nov. 28, 1975, 89 Stat. 728, as amended, which is classified

generally to chapter 76 (§6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

The Americans with Disabilities Act of 1990, referred to in subsec. (c)(1), (2)(B), is Pub. L. 101-336, July 26, 1990, 104 Stat. 327, as amended. Title II of the Act is classified generally to subchapter II (§12131 et seq.) of chapter 126 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of this title and Tables.

The Civil Rights Act of 1964, referred to in subsec. (c)(2)(B), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Act is classified generally to subchapter V (§2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9903 of this title.

§ 9919. Drug and child support services and referrals

(a) Drug testing and rehabilitation

(1) In general

Nothing in this chapter shall be construed to prohibit a State from testing participants in programs, activities, or services carried out or provided under this chapter for controlled substances. A State that conducts such testing shall inform the participants who test positive for any of such substances about the availability of treatment or rehabilitation services and refer such participants for appropriate treatment or rehabilitation services.

(2) Administrative expenses

Any funds provided under this chapter expended for such testing shall be considered to be expended for administrative expenses and shall be subject to the limitation specified in section 9907(b)(2) of this title.

(3) Definition

In this subsection, the term “controlled substance” has the meaning given the term in section 802 of title 21.

(b) Child support services and referrals

During each fiscal year for which an eligible entity receives a grant under section 9907 of this title, such entity shall—

(1) inform custodial parents in single-parent families that participate in programs, activities, or services carried out or provided under this chapter about the availability of child support services; and

(2) refer eligible parents to the child support offices of State and local governments.

(Pub. L. 97-35, title VI, §678G, as added Pub. L. 105-285, title II, §201, Oct. 27, 1998, 112 Stat. 2749.)

§ 9920. Operational rule

(a) Religious organizations included as non-governmental providers

For any program carried out by the Federal Government, or by a State or local government under this chapter, the government shall consider, on the same basis as other nongovernmental organizations, religious organizations to provide the assistance under the program, so

long as the program is implemented in a manner consistent with the Establishment Clause of the first amendment to the Constitution. Neither the Federal Government nor a State or local government receiving funds under this chapter shall discriminate against an organization that provides assistance under, or applies to provide assistance under, this chapter, on the basis that the organization has a religious character.

(b) Religious character and independence

(1) In general

A religious organization that provides assistance under a program described in subsection (a) of this section shall retain its religious character and control over the definition, development, practice, and expression of its religious beliefs.

(2) Additional safeguards

Neither the Federal Government nor a State or local government shall require a religious organization—

(A) to alter its form of internal governance, except (for purposes of administration of the community services block grant program) as provided in section 9910 of this title; or

(B) to remove religious art, icons, scripture, or other symbols;

in order to be eligible to provide assistance under a program described in subsection (a) of this section.

(3) Employment practices

A religious organization's exemption provided under section 2000e-1 of this title regarding employment practices shall not be affected by its participation in, or receipt of funds from, programs described in subsection (a) of this section.

(c) Limitations on use of funds for certain purposes

No funds provided directly to a religious organization to provide assistance under any program described in subsection (a) of this section shall be expended for sectarian worship, instruction, or proselytization.

(d) Fiscal accountability

(1) In general

Except as provided in paragraph (2), any religious organization providing assistance under any program described in subsection (a) of this section shall be subject to the same regulations as other nongovernmental organizations to account in accord with generally accepted accounting principles for the use of such funds provided under such program.

(2) Limited audit

Such organization shall segregate government funds provided under such program into a separate account. Only the government funds shall be subject to audit by the government.

(e) Treatment of eligible entities and other intermediate organizations

If an eligible entity or other organization (referred to in this subsection as an “intermediate

organization’’), acting under a contract, or grant or other agreement, with the Federal Government or a State or local government, is given the authority under the contract or agreement to select nongovernmental organizations to provide assistance under the programs described in subsection (a) of this section, the intermediate organization shall have the same duties under this section as the government.

(Pub. L. 97-35, title VI, §679, as added Pub. L. 105-285, title II, §201, Oct. 27, 1998, 112 Stat. 2749.)

PRIOR PROVISIONS

A prior section 679 of Pub. L. 97-35 was classified to section 9908 of this title, prior to the general amendment of this chapter by Pub. L. 105-285.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9902 of this title.

§ 9921. Discretionary authority of Secretary

(a) Grants, contracts, arrangements, loans, and guarantees

(1) In general

The Secretary shall, from funds reserved under section 9903(b)(3) of this title, make grants, loans, or guarantees to States and public agencies and private, nonprofit organizations, or enter into contracts or jointly financed cooperative arrangements with States and public agencies and private, nonprofit organizations (and for-profit organizations, to the extent specified in paragraph (2)(E)) for each of the objectives described in paragraphs (2) through (4).

(2) Community economic development

(A) Economic development activities

The Secretary shall make grants described in paragraph (1) on a competitive basis to private, nonprofit organizations that are community development corporations to provide technical and financial assistance for economic development activities designed to address the economic needs of low-income individuals and families by creating employment and business development opportunities.

(B) Consultation

The Secretary shall exercise the authority provided under subparagraph (A) after consultation with other relevant Federal officials.

(C) Governing boards

For a community development corporation to receive funds to carry out this paragraph, the corporation shall be governed by a board that shall consist of residents of the community and business and civic leaders and shall have as a principal purpose planning, developing, or managing low-income housing or community development projects.

(D) Geographic distribution

In making grants to carry out this paragraph, the Secretary shall take into consideration the geographic distribution of funding among States and the relative proportion of funding among rural and urban areas.

(E) Reservation

Of the amounts made available to carry out this paragraph, the Secretary may reserve not more than 1 percent for each fiscal year to make grants to private, nonprofit organizations or to enter into contracts with private, nonprofit or for-profit organizations to provide technical assistance to aid community development corporations in developing or implementing activities funded to carry out this paragraph and to evaluate activities funded to carry out this paragraph.

(3) Rural community development activities

The Secretary shall provide the assistance described in paragraph (1) for rural community development activities, which shall include providing—

(A) grants to private, nonprofit corporations to enable the corporations to provide assistance concerning home repair to rural low-income families and concerning planning and developing low-income rural rental housing units; and

(B) grants to multistate, regional, private, nonprofit organizations to enable the organizations to provide training and technical assistance to small, rural communities concerning meeting their community facility needs.

(4) Neighborhood innovation projects

The Secretary shall provide the assistance described in paragraph (1) for neighborhood innovation projects, which shall include providing grants to neighborhood-based private, nonprofit organizations to test or assist in the development of new approaches or methods that will aid in overcoming special problems identified by communities or neighborhoods or otherwise assist in furthering the purposes of this chapter, and which may include providing assistance for projects that are designed to serve low-income individuals and families who are not being effectively served by other programs.

(b) Evaluation

The Secretary shall require all activities receiving assistance under this section to be evaluated for their effectiveness. Funding for such evaluations shall be provided as a stated percentage of the assistance or through a separate grant awarded by the Secretary specifically for the purpose of evaluation of a particular activity or group of activities.

(c) Annual report

The Secretary shall compile an annual report containing a summary of the evaluations required in subsection (b) of this section and a listing of all activities assisted under this section. The Secretary shall annually submit the report to the Chairperson of the Committee on Education and the Workforce of the House of Representatives and the Chairperson of the Committee on Labor and Human Resources of the Senate.

(Pub. L. 97-35, title VI, §680, as added Pub. L. 105-285, title II, §201, Oct. 27, 1998, 112 Stat. 2750.)

PRIOR PROVISIONS

A prior section 680 of Pub. L. 97-35 was classified to section 9909 of this title, prior to the general amendment of this chapter by Pub. L. 105-285.

PROCEDURES TO PERMIT GRANT FUNDS OR INTANGIBLE PROPERTY ACQUIRED BY GRANT FUNDS TO BECOME SOLE PROPERTY OF GRANTEEES

Pub. L. 108-7, div. G, title II, Feb. 20, 2003, 117 Stat. 319, provided in part: "That the Secretary shall establish procedures regarding the disposition of intangible property which permits grant funds, or intangible assets acquired with funds authorized under section 680 of the Community Services Block Grant Act, as amended [42 U.S.C. 9921], to become the sole property of such grantees after a period of not more than 12 years after the end of the grant for purposes and uses consistent with the original grant".

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 107-116, title II, Jan. 10, 2002, 115 Stat. 2196.

Pub. L. 106-554, §1(a)(1) [title II], Dec. 21, 2000, 114 Stat. 2763, 2763A-23.

Pub. L. 106-113, div. B, §1000(a)(4) [title II], Nov. 29, 1999, 113 Stat. 1535, 1501A-235.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9903 of this title.

§ 9922. Community food and nutrition programs**(a) Grants**

The Secretary may, through grants to public and private, nonprofit agencies, provide for community-based, local, statewide, and national programs—

(1) to coordinate private and public food assistance resources, wherever the grant recipient involved determines such coordination to be inadequate, to better serve low-income populations;

(2) to assist low-income communities to identify potential sponsors of child nutrition programs and to initiate such programs in underserved or unserved areas; and

(3) to develop innovative approaches at the State and local level to meet the nutrition needs of low-income individuals.

(b) Allotments and distribution of funds**(1) Not to exceed \$6,000,000 in appropriations**

Of the amount appropriated for a fiscal year to carry out this section (but not to exceed \$6,000,000), the Secretary shall distribute funds for grants under subsection (a) of this section as follows:

(A) Allotments

From a portion equal to 60 percent of such amount (but not to exceed \$3,600,000), the Secretary shall allot for grants to eligible agencies for statewide programs in each State the amount that bears the same ratio to such portion as the low-income and unemployed population of such State bears to the low-income and unemployed population of all the States.

(B) Competitive grants

From a portion equal to 40 percent of such amount (but not to exceed \$2,400,000), the Secretary shall make grants on a competitive basis to eligible agencies for local and statewide programs.

(2) Greater available appropriations

Any amounts appropriated for a fiscal year to carry out this section in excess of \$6,000,000 shall be allotted as follows:

(A) Allotments

The Secretary shall use 40 percent of such excess to allot for grants under subsection (a) of this section to eligible agencies for statewide programs in each State an amount that bears the same ratio to 40 percent of such excess as the low-income and unemployed population of such State bears to the low-income and unemployed population of all the States.

(B) Competitive grants for local and statewide programs

The Secretary shall use 40 percent of such excess to make grants under subsection (a) of this section on a competitive basis to eligible agencies for local and statewide programs.

(C) Competitive grants for nationwide programs

The Secretary shall use the remaining 20 percent of such excess to make grants under subsection (a) of this section on a competitive basis to eligible agencies for nationwide programs, including programs benefiting Indians, as defined in section 9911 of this title, and migrant or seasonal farmworkers.

(3) Eligibility for allotments for statewide programs

To be eligible to receive an allotment under paragraph (1)(A) or (2)(A), an eligible agency shall demonstrate that the proposed program is statewide in scope and represents a comprehensive and coordinated effort to alleviate hunger within the State.

(4) Minimum allotments for statewide programs**(A) In general**

From the amounts allotted under paragraphs (1)(A) and (2)(A), the minimum total allotment for each State for each fiscal year shall be—

(i) \$15,000 if the total amount appropriated to carry out this section is not less than \$7,000,000 but less than \$10,000,000;

(ii) \$20,000 if the total amount appropriated to carry out this section is not less than \$10,000,000 but less than \$15,000,000; or

(iii) \$30,000 if the total amount appropriated to carry out this section is not less than \$15,000,000.

(B) Definition

In this paragraph, the term "State" does not include Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

(5) Maximum grants

From funds made available under paragraphs (1)(B) and (2)(B) for any fiscal year, the Secretary may not make grants under subsection (a) of this section to an eligible agency in an aggregate amount exceeding \$50,000. From funds made available under paragraph

(2)(C) for any fiscal year, the Secretary may not make grants under subsection (a) of this section to an eligible agency in an aggregate amount exceeding \$300,000.

(c) Report

For each fiscal year, the Secretary shall prepare and submit, to the Committee on Education and the Workforce of the House of Representatives and the Committee on Labor and Human Resources of the Senate, a report concerning the grants made under this section. Such report shall include—

- (1) a list of grant recipients;
- (2) information on the amount of funding awarded to each grant recipient; and
- (3) a summary of the activities performed by the grant recipients with funding awarded under this section and a description of the manner in which such activities meet the objectives described in subsection (a) of this section.

(d) Authorization of appropriations

There are authorized to be appropriated to carry out this section such sums as may be necessary for each of fiscal years 1999 through 2003.

(Pub. L. 97-35, title VI, §681, as added Pub. L. 105-285, title II, §201, Oct. 27, 1998, 112 Stat. 2752.)

PRIOR PROVISIONS

A prior section 681 of Pub. L. 97-35 was classified to section 9910 of this title, prior to the general amendment of this chapter by Pub. L. 105-285.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9903 of this title.

§ 9923. National or regional programs designed to provide instructional activities for low-income youth

(a) General authority

The Secretary is authorized to make a grant to an eligible service provider to administer national or regional programs to provide instructional activities for low-income youth. In making such a grant, the Secretary shall give priority to eligible service providers that have a demonstrated ability to operate such a program.

(b) Program requirements

Any instructional activity carried out by an eligible service provider receiving a grant under this section shall be carried out on the campus of an institution of higher education (as defined in section 1141(a)¹ of title 20) and shall include—

- (1) access to the facilities and resources of such an institution;
- (2) an initial medical examination and follow-up referral or treatment, without charge, for youth during their participation in such activity;
- (3) at least one nutritious meal daily, without charge, for participating youth during each day of participation;
- (4) high quality instruction in a variety of sports (that shall include swimming and that may include dance and any other high quality recreational activity) provided by coaches and

teachers from institutions of higher education and from elementary and secondary schools (as defined in section 7801 of title 20); and

(5) enrichment instruction and information on matters relating to the well-being of youth, to include educational opportunities and information on study practices, education for the prevention of drug and alcohol abuse, and information on health and nutrition, career opportunities, and family and job responsibilities.

(c) Advisory committee; partnerships

The eligible service provider shall, in each community in which a program is funded under this section—

(1) ensure that—

(A) a community-based advisory committee is established, with representatives from local youth, family, and social service organizations, schools, entities providing park and recreation services, and other community-based organizations serving high-risk youth; or

(B) an existing community-based advisory board, commission, or committee with similar membership is utilized to serve as the committee described in subparagraph (A); and

(2) enter into formal partnerships with youth-serving organizations or other appropriate social service entities in order to link program participants with year-round services in their home communities that support and continue the objectives of this chapter.

(d) Eligible providers

A service provider that is a national private, nonprofit organization, a coalition of such organizations, or a private, nonprofit organization applying jointly with a business concern shall be eligible to apply for a grant under this section if—

(1) the applicant has demonstrated experience in operating a program providing instruction to low-income youth;

(2) the applicant agrees to contribute an amount (in cash or in kind, fairly evaluated) of not less than 25 percent of the amount requested, for the program funded through the grant;

(3) the applicant agrees to use no funds from a grant authorized under this section for administrative expenses; and

(4) the applicant agrees to comply with the regulations or program guidelines promulgated by the Secretary for use of funds made available through the grant.

(e) Application process

To be eligible to receive a grant under this section, a service provider shall submit to the Secretary, for approval, an application at such time, in such manner, and containing such information as the Secretary may require.

(f) Promulgation of regulations or program guidelines

The Secretary shall promulgate regulations or program guidelines to ensure funds made available through a grant made under this section are used in accordance with the objectives of this chapter.

¹ See References in Text note below.

(g) Authorization of appropriations

There are authorized to be appropriated \$15,000,000 for each of fiscal years 1999 through 2003 for grants to carry out this section.

(Pub. L. 97-35, title VI, §682, as added Pub. L. 105-285, title II, §201, Oct. 27, 1998, 112 Stat. 2753; amended Pub. L. 107-110, title X, §1076(ee), Jan. 8, 2002, 115 Stat. 2093.)

REFERENCES IN TEXT

Section 1141(a) of title 20, referred to in subsec. (b), was repealed by Pub. L. 105-244, §3, title I, §101(b), title VII, §702, Oct. 7, 1998, 112 Stat. 1585, 1616, 1803, effective Oct. 1, 1998. However, the term "institution of higher education" is defined in section 1001 of Title 20, Education.

PRIOR PROVISIONS

A prior section 682 of Pub. L. 97-35 was classified to section 9910c of this title, prior to the general amendment of this chapter by Pub. L. 105-285.

Another prior section 682 of Pub. L. 97-35 was renumbered section 683 and was classified to section 9911 of this title, prior to the general amendment of this chapter by Pub. L. 105-285.

Another prior section 682 of Pub. L. 97-35 was classified to section 9911 of this title, prior to repeal by Pub. L. 101-501.

AMENDMENTS

2002—Subsec. (b)(4). Pub. L. 107-110 substituted "7801" for "8801".

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-110 effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107-110, set out as an Effective Date note under section 6301 of Title 20, Education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9903 of this title.

§ 9924. References

Any reference in any provision of law to the poverty line set forth in section 624 or 625 of the Economic Opportunity Act of 1964 shall be construed to be a reference to the poverty line defined in section 9902 of this title. Except as otherwise provided, any reference in any provision of law to any community action agency designated under title II of the Economic Opportunity Act of 1964 shall be construed to be a reference to an entity eligible to receive funds under the community services block grant program.

(Pub. L. 97-35, title VI, §683, as added Pub. L. 105-285, title II, §201, Oct. 27, 1998, 112 Stat. 2755.)

REFERENCES IN TEXT

The Economic Opportunity Act of 1964, referred to in text, is Pub. L. 88-452, Aug. 20, 1964, 78 Stat. 508, as amended. Title II of the Act was classified generally to subchapter II (§2781 et seq.) of chapter 34 of this title prior to repeal by Pub. L. 97-35, title VI, §683(a), Aug. 13, 1981, 95 Stat. 519. Section 625 of the Act, which was subsequently renumbered section 624 of the Act and related to the poverty line, was classified to section 2971d of this title, prior to repeal by section 683(a) of Pub. L. 97-35. For complete classification of this Act to the Code, see Tables.

PRIOR PROVISIONS

A prior section 683 of Pub. L. 97-35 was classified to section 9911 of this title, prior to the general amendment of this chapter by Pub. L. 105-285.

Another prior section 683 of Pub. L. 97-35 was renumbered section 684, and was classified to section 9912 of this title, prior to the general amendment of this chapter by Pub. L. 105-285.

§ 9925. Demonstration partnership agreements addressing needs of poor**(a) General authority**

(1) In order to stimulate the development of new approaches to provide for greater self-sufficiency of the poor, to test and evaluate such new approaches, to disseminate project results and evaluation findings so that such approaches can be replicated, and to strengthen the integration, coordination, and redirection of activities to promote maximum self-sufficiency among the poor, the Secretary may make grants from funds appropriated under subsection (e) of this section to eligible entities for the development and implementation of new and innovative approaches to deal with particularly critical needs or problems of the poor which are common to a number of communities. Grants may be made only with respect to applications which—

(A) involve activities which can be incorporated into or be closely coordinated with eligible entities' ongoing programs;

(B) involve significant new combinations of resources or new and innovative approaches involving partnership agreements;

(C) are structured in a way that will, within the limits of the type of assistance or activities contemplated, most fully and effectively promote the purposes of the Community Services Block Grant Act [42 U.S.C. 9901 et seq.]; and

(D) contain an assurance that the applicant for such grants will obtain an independent, methodologically sound evaluation of the effectiveness of the activities carried out with such grant and will submit such evaluation to the Secretary.

(2) No grant may be made under this section unless an application is submitted to the Secretary at such time, in such manner, and containing or accompanied by such information, as the Secretary may require.

(3) Initial and subsequent grant awards may fully fund projects for periods of up to 3 years.

(b) Federal share; limitations

(1)(A) Subject to subparagraph (B), grants awarded pursuant to this section shall be used for programs and shall not exceed 50 per centum of the cost of such programs.

(B) After the first funding period for which an eligible entity receives a grant under this section to carry out a program, the amount of a subsequent grant made under this section to such entity to carry out such program may not exceed 80 percent of the amount of the grant previously received by such entity under this section to carry out such program.

(2) Non-Federal contributions may be in cash or in kind, fairly evaluated, including but not limited to plant, equipment, or services.

(3) Not more than one grant in each fiscal year may be made to any eligible entity, and no grant may exceed \$350,000. Not more than 2 grants may be made under this section to an eligible entity to carry out a particular program.

(4) No application may be approved for assistance under this section unless the Secretary is satisfied that—

(A) the activities to be carried out under the application will be in addition to, and not in substitution for, activities previously carried on without Federal assistance; and

(B) funds or other resources devoted to programs designed to meet the needs of the poor within the community, area, or State will not be diminished in order to provide the matching contributions required under this section.

(c) Programs directed to special populations

(1) In addition to the grant programs described in subsection (a) of this section, the Secretary may make grants to community action agencies for the purpose of enabling such agencies to demonstrate new approaches to dealing with the problems caused by entrenched, chronic unemployment and lack of economic opportunities for urban youth. Demonstrations shall include such activities as peer counseling, mentoring, development of job skills, assistance with social skills, community services, family literacy, parenting skills, opportunities for employment or entrepreneurship, and other services designed to assist such at-risk youth to continue their education, to secure meaningful employment, to perform community service, or to pursue other productive alternatives within the community.

(2) Such grants may be made only with respect to applications that—

(A) identify and describe the population to be served, the problems to be addressed, the overall approach and methods of outreach and recruitment to be used, and the services to be provided;

(B) describe how the approach to be used differs from other approaches used for the population to be served by the project;

(C) describe the objectives of the project and contain a plan for measuring progress toward meeting those objectives; and

(D) contain assurances that the grantee will report on the progress and results of the demonstration at such times and in such manner as the Secretary shall require.

(3) Notwithstanding subsection (b) of this section, such grants shall not exceed 80 percent of the cost of such programs.

(4) Such grants made under this subsection on a competitive basis shall be based on an annual competition determined by the Secretary. Grants made under this subsection shall not exceed \$500,000.

(d) Dissemination of results

As soon as practicable, but not later than 180 days after the end of the fiscal year in which a recipient of a grant under this section completes the expenditure of such grant, the Secretary shall prepare and make available to each State and each eligible entity a description of the program carried out with such grant, any relevant information developed and results achieved, and a summary of the evaluation of such program received under subsection (a)(1)(D) of this section so as to provide a model of innovative programs for other eligible entities.

(e) Replication of programs

(1) The Secretary shall annually identify programs that receive grants under this section that demonstrate a significant potential for dealing with particularly critical needs or problems of the poor that exist in a number of communities.

(2) Not less than 10 percent, and not more than 25 percent, of the funds appropriated for each fiscal year to carry out this section shall be available to make grants under this section to replicate in additional geographic areas programs identified under paragraph (1).

(f) Omitted

(g) Definitions

As used in this section—

(1) the term “eligible entity” has the same meaning given such term by section 673(1) of the Community Services Block Grant Act (42 U.S.C. 9902(1)), except that such term includes an organization that serves migrant and seasonal farm workers and that receives a grant under the Community Services Block Grant Act (42 U.S.C. 9901 et seq.) in the fiscal year preceding the fiscal year for which such organization requests a grant under this section; and

(2) the term “Secretary” means the Secretary of Health and Human Services.

(h) Authorization of appropriations

(1) There are authorized to be appropriated \$30,000,000 for fiscal year 1995, and such sums as may be necessary for fiscal years 1996, 1997, and 1998, to carry out this section.

(2) Of the amounts appropriated for this section, not less than 30 percent and not more than 40 percent shall be used to carry out the programs authorized under subsection (c) of this section.

(3) In addition to sums which are required to carry out the evaluation, reporting, and dissemination of results under subsections (a), (c), (d), and (f)¹ of this section, the Secretary is authorized to reserve up to 2 percent of the amounts appropriated pursuant to subparagraphs (1) and (2) for administration of the program as well as for planning and technical assistance.

(Pub. L. 99-425, title IV, §408, Sept. 30, 1986, 100 Stat. 972; Pub. L. 101-204, title VII, §705, Dec. 7, 1989, 103 Stat. 1821; Pub. L. 101-501, title VI, §§601, 602, Nov. 3, 1990, 104 Stat. 1257, 1258; Pub. L. 103-252, title II, §207, May 18, 1994, 108 Stat. 656.)

REFERENCES IN TEXT

The Community Services Block Grant Act, referred to in subsecs. (a)(1)(C) and (g)(1), is subtitle B (§671 et seq.) of title VI of Pub. L. 97-35, Aug. 13, 1981, 95 Stat. 511, as amended, which is classified generally to this chapter (§9901 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 9901 of this title and Tables.

Subsection (f) of this section, referred to in subsec. (h)(3), was omitted from the Code.

CODIFICATION

Subsec. (f) of this section, which required the Secretary to submit to the Committee on Education and

¹ See References in Text note below.

Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate an annual report describing programs for which grants were made under this section in the most recently completed fiscal year and the evaluations received under subsec. (a)(1)(D) of this section in such fiscal year, describing the methods used by the Secretary to comply with subsec. (d) of this section, making recommendations regarding the suitability of carrying out such programs with funds made available under other Federal laws, and describing each program identified under subsec. (d)(1) of this section or replicated under subsec. (e)(2) of this section and identifying the geographical location where such program was carried out, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, the 4th item on page 98 of House Document No. 103-7.

Section was formerly classified to section 9910b of this title.

Section was enacted as part of the Human Services Reauthorization Act of 1986, and not as part of the Community Services Block Grant Act which comprises this chapter.

AMENDMENTS

1994—Subsec. (a)(3). Pub. L. 103-252, § 207(1), added par. (3).

Subsec. (b)(1)(B). Pub. L. 103-252, § 207(2), substituted “After the first funding period” for “After the first fiscal year”.

Subsec. (c)(1). Pub. L. 103-252, § 207(3)(A), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “In addition to the grant programs described in subsection (a) of this section, the Secretary shall make grants to eligible entities for the purpose of demonstrating new and innovative approaches to addressing the problems of, and providing opportunities for leadership development, community involvement, and educational success to, disadvantaged persons between the ages of 14 and 25 from populations experiencing conditions such as a high poverty rate, high unemployment, high dropout rate, low labor force participation, low enrollment in college or participation in other post high school training classes, high incidence of involvement in violence, and a high rate of incarceration. Services provided through approaches funded by such grants may include assessment and development of employability plans, remedial education, motivational activities, life skills instruction, community service, mentoring, access to information on available financial aid, campus visits, career education, cultural enrichment, and employment training, placement, and follow-up.”

Subsec. (c)(4). Pub. L. 103-252, § 207(3)(B), amended par. (4) generally. Prior to amendment, par. (4) read as follows: “Such grants shall be made annually on such terms and conditions as the Secretary shall specify to eligible entities that serve the populations described in paragraph (1) and that are located within those areas where such populations are concentrated.”

Subsec. (h). Pub. L. 103-252, § 207(4), amended heading and text of subsec. (h) generally. Prior to amendment, text read as follows:

“(1) There are authorized to be appropriated \$10,000,000 for fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992, 1993, and 1994, to carry out this section (other than subsection (c) of this section).

“(2) There are authorized to be appropriated \$10,000,000 for fiscal year 1991 and such sums as may be necessary in each of the fiscal years 1992 through 1994, to carry out subsection (c) of this section.”

1990—Subsecs. (c) to (e). Pub. L. 101-501, § 601(2), (3), added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively. Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 101-501, § 601(1), (2), redesignated subsec. (e) as (f) and substituted “subsection (d)” for “subsection (c)” in par. (2) and “subsection (e)(2)” for

“subsection (d)(2)” in par. (4). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 101-501, § 601(2), redesignated subsec. (f) as (g). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 101-501, §§ 601(2), 602, redesignated subsec. (g) as (h), designated existing provisions as par. (1), substituted “\$10,000,000 for fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992, 1993, and 1994” for “\$5,000,000 for each of the fiscal years 1987, 1988, and 1989, and \$7,000,000 for fiscal year 1990”, inserted “(other than subsection (c) of this section)” before period at end, and added par. (2).

1989—Subsec. (a)(1). Pub. L. 101-204, § 705(a)(1), substituted “stimulate the development of new approaches to provide for greater self-sufficiency of the poor, to test and evaluate such new approaches, to disseminate project results and evaluation findings so that such approaches can be replicated, and to strengthen the integration, coordination, and redirection of activities to promote maximum self-sufficiency among the poor” for “provide for the self-sufficiency of the Nation’s poor”.

Subsec. (a)(1)(D). Pub. L. 101-204, § 705(a)(2), added subpar. (D).

Subsec. (b)(1). Pub. L. 101-204, § 705(b)(1), designated existing provisions as subpar. (A), substituted “Subject to subparagraph (B), grants” for “Grants”, struck out “new” before “programs” wherever appearing, and added subpar. (B).

Subsec. (b)(3). Pub. L. 101-204, § 705(b)(2), inserted “in each fiscal year” after “than one grant”, substituted “\$350,000” for “\$250,000”, and inserted at end “Not more than 2 grants may be made under this section to an eligible entity to carry out a particular program.”

Subsec. (c). Pub. L. 101-204, § 705(c), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “As soon as practicable, but no later than 90 days after the expiration of the fiscal year for which any grant is awarded under this section, the Secretary shall prepare and make available upon request to each State and eligible entity descriptions of the demonstration programs assisted under this section, and any relevant information developed and results achieved, so as to provide models for innovative programs to other eligible entities.”

Subsecs. (d), (e). Pub. L. 101-204, § 705(f)(2), added subsecs. (d) and (e). Former subsecs. (d) and (e) redesignated (f) and (g), respectively.

Subsec. (f). Pub. L. 101-204, § 705(d), (f)(1), redesignated subsec. (d) as (f) and inserted before semicolon in par. (1) “, except that such term includes an organization that serves migrant and seasonal farm workers and that receives a grant under the Community Services Block Grant Act (42 U.S.C. 9901 et seq.) in the fiscal year preceding the fiscal year for which such organization requests a grant under this section”.

Subsec. (g). Pub. L. 101-204, § 705(e), (f)(1), redesignated subsec. (e) as (g), substituted “are” for “is”, and inserted “and \$7,000,000 for fiscal year 1990,” after “1989,”.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-252 effective Oct. 1, 1994, see section 208 of Pub. L. 103-252, set out as a note under section 9901 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101-501, set out as a note under section 8621 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1986, see section 1001 of Pub. L. 99-425, set out as an Effective Date of 1986 Amendment note under section 8621 of this title.

§ 9926. Projects to expand the number of job opportunities available to certain low-income individuals

(a) In general

The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall enter into agreements with nonprofit organizations (including community development corporations) submitting applications under this section for the purpose of conducting projects in accordance with subsection (b) of this section to create employment opportunities for certain low-income individuals.

(b) Nature of project

(1) Each nonprofit organization conducting a project under this section shall provide technical and financial assistance to private employers in the community to assist them in creating employment and business opportunities for those individuals eligible to participate in the projects as described in this subsection.

(2) For purposes of this section, a nonprofit organization is any organization (including a community development corporation) exempt from taxation under section 501(a) of title 26 by reason of paragraph (3) or (4) of section 501(c) of such title.

(3) A low-income individual eligible to participate in a project conducted under this section is any individual eligible to receive assistance under the program funded part¹ A of title IV of the Social Security Act [42 U.S.C. 601 et seq.] of the State in which the individual resides and any other individual whose income level does not exceed 100 percent of the official poverty line as defined by the Office of Management and Budget and revised in accordance with section 9902(2) of this title.

(c) Content of applications; selection priority

(1) Each nonprofit organization submitting an application under this section shall, as part of such application, describe—

(A) the technical and financial assistance that will be made available under the project conducted under this section;

(B) the geographic area to be served by the project;

(C) the percentage of low-income individuals (as described in subsection (b) of this section) and individuals receiving assistance under a State program funded under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.] in the area to be served by the project; and

(D) unemployment rates in the geographic areas to be served and (to the extent practicable) the jobs available and skills necessary to fill those vacancies in such areas.

(2) In approving applications under this section, the Secretary shall give priority to applications proposing to serve those areas containing the highest percentage of individuals receiving assistance under a State program funded under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.].

(d) Administration

Each nonprofit organization participating in a project conducted under this section shall pro-

vide assurances in its agreement with the Secretary that it has or will have a cooperative relationship with the agency responsible for administering the the² State program funded under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.] in the area served by the project.

(e) Authorization of appropriations

For the purpose of conducting projects under this section, there is authorized to be appropriated an amount not to exceed \$25,000,000 for any fiscal year.

(Pub. L. 100-485, title V, § 505, Oct. 13, 1988, 102 Stat. 2404; Pub. L. 101-508, title V, § 5063, Nov. 5, 1990, 104 Stat. 1388-232; Pub. L. 103-432, title II, § 261(a), Oct. 31, 1994, 108 Stat. 4467; Pub. L. 104-193, title I, § 112, Aug. 22, 1996, 110 Stat. 2176; Pub. L. 105-33, title V, § 5515, Aug. 5, 1997, 111 Stat. 620.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (b)(3), (c)(1)(C), (2), and (d), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part A of title IV of the Act is classified generally to part A (§ 601 et seq.) of subchapter IV of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

CODIFICATION

Section was formerly classified to section 9910d of this title. Prior to such classification, section was set out as a note under section 1315 of this title.

Section was enacted as part of the Family Support Act of 1988, and not as part of the Community Services Block Grant Act which comprises this chapter.

AMENDMENTS

1997—Subsec. (c)(1)(C), (2). Pub. L. 105-33 which directed the amendment of Pub. L. 104-193, § 112(5), was executed to that section as if the amendment were retroactive to the effective date of the amendment by Pub. L. 104-193 to reflect the probable intent of Congress. See 1996 Amendment notes below.

1996—Pub. L. 104-193, § 112(1), struck out "Demonstration" before "projects" in section catchline.

Subsec. (a). Pub. L. 104-193, § 112(2), (3), substituted "shall enter into agreements with" for "in each of the fiscal years 1990, 1991, and 1992, shall enter into agreements with not less than 5 nor more than 10" and "conducting projects" for "conducting demonstration projects".

Subsec. (b)(1). Pub. L. 104-193, § 112(2), struck out "demonstration" after "organization conducting a".

Subsec. (b)(3). Pub. L. 104-193, § 112(4), substituted "assistance under the program funded part A of title IV of the Social Security Act of the State in which the individual resides" for "aid to families with dependent children under part A of title IV of the Social Security Act".

Subsec. (c)(1)(C). Pub. L. 104-193, § 112(5)(A), as amended by Pub. L. 105-33, substituted "assistance under a State program funded under part A of title IV of the Social Security Act" for "aid to families with dependent children under title IV of the Social Security Act".

Subsec. (c)(2). Pub. L. 104-193, § 112(5)(B), as amended by Pub. L. 105-33, substituted "assistance under a State program funded under part A of title IV of the Social Security Act" for "aid to families with dependent children under title IV of such Act".

Subsec. (d). Pub. L. 104-193, § 112(2), (6), struck out "demonstration" after "organization participating in a" and substituted "the State program funded under

¹ So in original. Probably should be "under part".

² So in original.

part A of title IV of the Social Security Act” for “job opportunities and basic skills training program (as provided for under title IV of the Social Security Act)”.

Subsecs. (e) to (g). Pub. L. 104-193, §112(7), added subsec. (e) and struck out former subsec. (e) which related to duration of demonstration projects under this section, subsec. (f) which required evaluation of the success of each demonstration project, and subsec. (g) which authorized appropriations for the conduct of demonstration projects for each of fiscal years 1990 to 1996.

1994—Subsec. (e). Pub. L. 103-432, §261(a)(1), substituted “6-year period” for “3-year period”.

Subsec. (f)(2). Pub. L. 103-432, §261(a)(2), substituted “January 1, 1995” for “January 1, 1993”.

Subsec. (g). Pub. L. 103-432, §261(a)(3), substituted “1991, 1992, 1993, 1994, 1995, and 1996” for “1991, and 1992”.

1990—Subsec. (a). Pub. L. 101-508, §5063(1), inserted “in each of the fiscal years 1990, 1991, and 1992,” before “shall”.

Subsec. (e). Pub. L. 101-508, §5063(2), substituted “September 30 of the fiscal year specified in the agreement described in subsection (a) of this section” for “September 30, 1989”.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104-193, as amended, set out as an Effective Date note under section 601 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 261(b) of Pub. L. 103-432 provided that: “The amendments made by subsection (a) [amending this section] shall take effect on October 1, 1993.”

CHAPTER 107—CONSUMER-PATIENT RADIATION HEALTH AND SAFETY

Sec.	
10001.	Statement of findings.
10002.	Statement of purpose.
10003.	Definitions.
10004.	Promulgation of standards.
10005.	Model statute.
10006.	Compliance.
	(a) Implementation by Secretary.
	(b) Accreditation or certification program.
	(c) Noncompliance; proposed legislative changes.
	(d) Repealed.
	(e) Existing standards and guidelines.
10007.	Federal radiation guidelines.
10008.	Applicability to Federal agencies.

§ 10001. Statement of findings

The Congress finds that—

(1) it is in the interest of public health and safety to minimize unnecessary exposure to potentially hazardous radiation due to medical and dental radiologic procedures;

(2) it is in the interest of public health and safety to have a continuing supply of adequately educated persons and appropriate accreditation and certification programs administered by State governments;

(3) the protection of the public health and safety from unnecessary exposure to potentially hazardous radiation due to medical and

dental radiologic procedures and the assurance of efficacious procedures are the responsibility of State and Federal governments;

(4) persons who administer radiologic procedures, including procedures at Federal facilities, should be required to demonstrate competence by reason of education, training, and experience; and

(5) the administration of radiologic procedures and the effect on individuals of such procedures have a substantial and direct effect upon United States interstate commerce.

(Pub. L. 97-35, title IX, §976, Aug. 13, 1981, 95 Stat. 598.)

SHORT TITLE

Section 975 of Pub. L. 97-35 provided that: “This subtitle [subtitle I (§§975-983) of title IX of Pub. L. 97-35, enacting this chapter] may be cited as the ‘Consumer-Patient Radiation Health and Safety Act of 1981’.”

§ 10002. Statement of purpose

It is the purpose of this chapter to—

(1) provide for the establishment of minimum standards by the Federal Government for the accreditation of education programs for persons who administer radiologic procedures and for the certification of such persons; and

(2) insure that medical and dental radiologic procedures are consistent with rigorous safety precautions and standards.

(Pub. L. 97-35, title IX, §977, Aug. 13, 1981, 95 Stat. 599.)

§ 10003. Definitions

Unless otherwise expressly provided, for purposes of this chapter, the term—

(1) “radiation” means ionizing and nonionizing radiation in amounts beyond normal background levels from sources such as medical and dental radiologic procedures;

(2) “radiologic procedure” means any procedure or article intended for use in—

(A) the diagnosis of disease or other medical or dental conditions in humans (including diagnostic X-rays or nuclear medicine procedures); or

(B) the cure, mitigation, treatment, or prevention of disease in humans;

that achieves its intended purpose through the emission of radiation;

(3) “radiologic equipment” means any radiation electronic product which emits or detects radiation and which is used or intended for use to—

(A) diagnose disease or other medical or dental conditions (including diagnostic X-ray equipment); or

(B) cure, mitigate, treat, or prevent disease in humans;

that achieves its intended purpose through the emission or detection of radiation;

(4) “practitioner” means any licensed doctor of medicine, osteopathy, dentistry, podiatry, or chiropractic, who prescribes radiologic procedures for other persons;

(5) “persons who administer radiologic procedures” means any person, other than a practitioner, who intentionally administers radi-

ation to other persons for medical purposes, and includes medical radiologic technologists (including dental hygienists and assistants), radiation therapy technologists, and nuclear medicine technologists;

(6) "Secretary" means the Secretary of Health and Human Services; and

(7) "State" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

(Pub. L. 97-35, title IX, §978, Aug. 13, 1981, 95 Stat. 599.)

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 10004. Promulgation of standards

(a) Within twelve months after August 13, 1981, the Secretary, in consultation with the Radiation Policy Council, the Secretary of Veterans Affairs, the Administrator of the Environmental Protection Agency, appropriate agencies of the States, and appropriate professional organizations, shall by regulation promulgate minimum standards for the accreditation of educational programs to train individuals to perform radiologic procedures. Such standards shall distinguish between programs for the education of (1) medical radiologic technologists (including radiographers), (2) dental auxiliaries (including dental hygienists and assistants), (3) radiation therapy technologists, (4) nuclear medicine technologists, and (5) such other kinds of health auxiliaries who administer radiologic procedures as the Secretary determines appropriate. Such standards shall not be applicable to educational programs for practitioners.

(b) Within twelve months after August 13, 1981, the Secretary, in consultation with the Radiation Policy Council, the Secretary of Veterans Affairs, the Administrator of the Environmental Protection Agency, interested agencies of the States, and appropriate professional organizations, shall by regulation promulgate minimum standards for the certification of persons who administer radiologic procedures. Such standards shall distinguish between certification of (1) medical radiologic technologists (including radiographers), (2) dental auxiliaries (including dental hygienists and assistants), (3) radiation therapy technologists, (4) nuclear medicine technologists, and (5) such other kinds of health auxiliaries who administer radiologic procedures as the Secretary determines appropriate. Such standards shall include minimum certification criteria for individuals with regard to accredited education, practical experience, successful passage of required examinations, and such other criteria as the Secretary shall deem necessary for the adequate qualification of individuals to administer radiologic procedures. Such standards shall not apply to practitioners.

(Pub. L. 97-35, title IX, §979, Aug. 13, 1981, 95 Stat. 599; Pub. L. 102-54, §13(q)(13)(A), June 13, 1991, 105 Stat. 281.)

AMENDMENTS

1991—Subsecs. (a), (b). Pub. L. 102-54 substituted "Secretary of Veterans Affairs" for "Administrator of Veterans' Affairs".

§ 10005. Model statute

In order to encourage the administration of accreditation and certification programs by the States, the Secretary shall prepare and transmit to the States a model statute for radiologic procedure safety. Such model statute shall provide that—

(1) it shall be unlawful in a State for individuals to perform radiologic procedures unless such individuals are certified by the State to perform such procedures; and

(2) any educational requirements for certification of individuals to perform radiologic procedures shall be limited to educational programs accredited by the State.

(Pub. L. 97-35, title IX, §980, Aug. 13, 1981, 95 Stat. 600.)

§ 10006. Compliance

(a) Implementation by Secretary

The Secretary shall take all actions consistent with law to effectuate the purposes of this chapter.

(b) Accreditation or certification program

A State may utilize an accreditation or certification program administered by a private entity if—

(1) such State delegates the administration of the State accreditation or certification program to such private entity;

(2) such program is approved by the State; and

(3) such program is consistent with the minimum Federal standards promulgated under this chapter for such program.

(c) Noncompliance; proposed legislative changes

Absent compliance by the States with the provisions of this chapter within three years after August 13, 1981, the Secretary shall report to the Congress recommendations for legislative changes considered necessary to assure the States' compliance with this chapter.

(d) Repealed. Pub. L. 104-66, title I, §1061(b), Dec. 21, 1995, 109 Stat. 719

(e) Existing standards and guidelines

Notwithstanding any other provision of this section, in the case of a State which has, prior to the effective date of standards and guidelines promulgated pursuant to this chapter, established standards for the accreditation of educational programs and certification of radiologic technologists, such State shall be deemed to be in compliance with the conditions of this section unless the Secretary determines, after notice and hearing, that such State standards do not meet the minimum standards prescribed by the Secretary or are inconsistent with the purposes of this chapter.

(Pub. L. 97-35, title IX, §981, Aug. 13, 1981, 95 Stat. 600; Pub. L. 104-66, title I, §1061(b), Dec. 21, 1995, 109 Stat. 719.)

AMENDMENTS

1995—Subsec. (d). Pub. L. 104-66 struck out subsec. (d) which read as follows: “The Secretary shall be responsible for continued monitoring of compliance by the States with the applicable provisions of this chapter and shall report to the Senate and the House of Representatives by January 1, 1982, and January 1 of each succeeding year the status of the States’ compliance with the purposes of this chapter.”

§ 10007. Federal radiation guidelines

The Secretary shall, in conjunction with the Radiation Policy Council, the Secretary of Veterans Affairs, the Administrator of the Environmental Protection Agency, appropriate agencies of the States, and appropriate professional organizations, promulgate Federal radiation guidelines with respect to radiologic procedures. Such guidelines shall—

- (1) determine the level of radiation exposure due to radiologic procedures which is unnecessary and specify the techniques, procedures, and methods to minimize such unnecessary exposure;
- (2) provide for the elimination of the need for retakes of diagnostic radiologic procedures;
- (3) provide for the elimination of unproductive screening programs;
- (4) provide for the optimum diagnostic information with minimum radiologic exposure; and
- (5) include the therapeutic application of radiation to individuals in the treatment of disease, including nuclear medicine applications.

(Pub. L. 97-35, title IX, §982, Aug. 13, 1981, 95 Stat. 601; Pub. L. 102-54, §13(q)(13)(B), June 13, 1991, 105 Stat. 281.)

AMENDMENTS

1991—Pub. L. 102-54 substituted “Secretary of Veterans Affairs” for “Administrator of Veterans Affairs” in introductory provisions.

§ 10008. Applicability to Federal agencies

(a) Except as provided in subsection (b) of this section, each department, agency, and instrumentality of the executive branch of the Federal Government shall comply with standards promulgated pursuant to this chapter.

(b) The Secretary of Veterans Affairs, through the Under Secretary for Health of the Department of Veterans Affairs, shall, to the maximum extent feasible consistent with the responsibilities of such Secretary and Under Secretary for Health under title 38, prescribe regulations making the standards promulgated pursuant to this chapter applicable to the provision of radiologic procedures in facilities over which that Secretary has jurisdiction. In prescribing and implementing regulations pursuant to this subsection, the Secretary of Veterans Affairs shall consult with the Secretary in order to achieve the maximum possible coordination of the regulations, standards, and guidelines, and the implementation thereof, which the Secretary and the Secretary of Veterans Affairs prescribe under this chapter.

(Pub. L. 97-35, title IX, §983, Aug. 13, 1981, 95 Stat. 601; Pub. L. 102-54, §13(q)(13)(C), June 13,

1991, 105 Stat. 282; Pub. L. 102-405, title III, §302(e)(1), Oct. 9, 1992, 106 Stat. 1985.)

AMENDMENTS

1992—Subsec. (b). Pub. L. 102-405 substituted “Under Secretary for Health” for “Chief Medical Director” in two places.

1991—Subsec. (b). Pub. L. 102-54 substituted “The Secretary of Veterans Affairs, through the Chief Medical Director of the Department of Veterans Affairs, shall, to the maximum extent feasible consistent with the responsibilities of such Secretary and Chief Medical Director under title 38” for “(1) The Administrator of Veterans Affairs, through the Chief Medical Director of the Veterans Administration, shall, to the maximum extent feasible consistent with the responsibilities of such Administrator and Chief Medical Director under subtitle 38”, “over which that Secretary” for “over which the Administrator”, and “Secretary of Veterans Affairs” for “Administrator” wherever else appearing, and struck out pars. (2) and (3) which read as follows:

“(2) Not later than 180 days after standards are promulgated by the Secretary pursuant to this chapter, the Administrator of Veterans Affairs shall submit to the appropriate committees of Congress a full report with respect to the regulations (including guidelines, policies, and procedures thereunder) prescribed pursuant to paragraph (1) of this subsection. Such report shall include—

“(A) an explanation of any inconsistency between standards made applicable by such regulations and the standards promulgated by the Secretary pursuant to this chapter;

“(B) an account of the extent, substance, and results of consultations with the Secretary respecting the prescription and implementation of regulations by the Administrator; and

“(C) such recommendations for legislation and administrative action as the Administrator determines are necessary and desirable.

“(3) The Administrator of Veterans Affairs shall publish the report required by paragraph (2) in the Federal Register.”

CHAPTER 108—NUCLEAR WASTE POLICY

Sec.

- | | |
|--------|---|
| 10101. | Definitions. |
| 10102. | Separability. |
| 10103. | Territories and possessions. |
| 10104. | Ocean disposal. |
| 10105. | Limitation on spending authority. |
| 10106. | Protection of classified national security information. |
| 10107. | Applicability to atomic energy defense activities. |
| | (a) Atomic energy defense activities. |
| | (b) Evaluation by President. |
| | (c) Applicability to certain repositories. |
| 10108. | Applicability to transportation. |

SUBCHAPTER I—DISPOSAL AND STORAGE OF HIGH-LEVEL RADIOACTIVE WASTE, SPENT NUCLEAR FUEL, AND LOW-LEVEL RADIOACTIVE WASTE

- | | |
|--------|--|
| 10121. | State and affected Indian tribe participation in development of proposed repositories for defense waste. |
| | (a) Notification to States and affected Indian tribes. |
| | (b) Participation of States and affected Indian tribes. |

PART A—REPOSITORIES FOR DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTE AND SPENT NUCLEAR FUEL

- | | |
|--------|--|
| 10131. | Findings and purposes. |
| 10132. | Recommendation of candidate sites for site characterization. |

- Sec.
- (a) Guidelines.
 - (b) Recommendation by Secretary to President.
 - (c) Presidential review of recommended candidate sites.
 - (d) Preliminary activities.
10133. Site characterization.
- (a) In general.
 - (b) Commission and States.
 - (c) Restrictions.
 - (d) Preliminary activities.
10134. Site approval and construction authorization.
- (a) Hearings and Presidential recommendation.
 - (b) Submission of application.
 - (c) Status report on application.
 - (d) Commission action.
 - (e) Project decision schedule.
 - (f) Environmental impact statement.
10135. Review of repository site selection.
- (a) "Resolution of repository siting approval" defined.
 - (b) State or Indian tribe petitions.
 - (c) Congressional review of petitions.
 - (d) Procedures applicable to Senate.
 - (e) Procedures applicable to House of Representatives.
 - (f) Computation of days.
 - (g) Information provided to Congress.
10136. Participation of States.
- (a) Notification of States and affected tribes.
 - (b) State participation in repository siting decisions.
 - (c) Financial assistance.
 - (d) Additional notification and consultation.
10137. Consultation with States and affected Indian tribes.
- (a) Provision of information.
 - (b) Consultation and cooperation.
 - (c) Written agreement.
 - (d) On-site representative.
10138. Participation of Indian tribes.
- (a) Participation of Indian tribes in repository siting decisions.
 - (b) Financial assistance.
10139. Judicial review of agency actions.
- (a) Jurisdiction of United States courts of appeals.
 - (c) Deadline for commencing action.
10140. Expedited authorizations.
- (a) Issuance of authorizations.
 - (b) Terms of authorizations.
10141. Certain standards and criteria.
- (a) Environmental Protection Agency standards.
 - (b) Commission requirements and criteria.
 - (c) Environmental impact statement.
10142. Disposal of spent nuclear fuel.
10143. Title to material.
10144. Consideration of effect of acquisition of water rights.
10145. Termination of certain provisions.
- PART B—INTERIM STORAGE PROGRAM
10151. Findings and purposes.
10152. Available capacity for interim storage of spent nuclear fuel.
10153. Interim at-reactor storage.
10154. Licensing of facility expansions and shipments.
- (a) Oral argument.
 - (b) Adjudicatory hearing.
 - (c) Judicial review.
10155. Storage of spent nuclear fuel.
- (a) Storage capacity.
 - (b) Contracts.

- Sec.
- (c) Environmental review.
 - (d) Review of sites and State participation.
 - (e) Limitations.
 - (f) Report.
 - (g) Criteria for determining adequacy of available storage capacity.
 - (h) Application.
 - (i) Coordination with research and development program.
10156. Interim Storage Fund.
- (a) Contracts.
 - (b) Limitation.
 - (c) Establishment of Interim Storage Fund.
 - (d) Use of Storage Fund.
 - (e) Impact assistance.
 - (f) Administration of Storage Fund.
10157. Transportation.
- PART C—MONITORED RETRIEVABLE STORAGE
10161. Monitored retrievable storage.
- (a) Findings.
 - (b) Submission of proposal by Secretary.
 - (c) Environmental impact statements.
 - (d) Licensing.
 - (e) Clarification.
 - (f) Impact assistance.
 - (g) Limitation.
 - (h) Participation of States and Indian tribes.
10162. Authorization of monitored retrievable storage.
- (a) Nullification of Oak Ridge siting proposal.
 - (b) Authorization.
10163. Monitored Retrievable Storage Commission.
10164. Survey.
10165. Site selection.
- (a) In general.
 - (b) Limitation.
 - (c) Site specific activities.
 - (d) Environmental assessment.
 - (e) Notification before selection.
 - (f) Notification of selection.
 - (g) Limitation.
10166. Notice of disapproval.
- (a) In general.
 - (b) References.
10167. Benefits agreement.
10168. Construction authorization.
- (a) Environmental impact statement.
 - (b) Application for construction license.
 - (c) Licensing.
 - (d) Licensing conditions.
10169. Financial assistance.
- PART D—LOW-LEVEL RADIOACTIVE WASTE
10171. Financial arrangements for low-level radioactive waste site closure.
- (a) Financial arrangements.
 - (b) Title and custody.
 - (c) Special sites.
- PART E—REDIRECTION OF NUCLEAR WASTE PROGRAM
10172. Selection of Yucca Mountain site.
- (a) In general.
 - (b) Eligibility to enter into benefits agreement.
- 10172a. Siting a second repository.
- (a) Congressional action required.
 - (b) Report.
 - (c) Termination of granite research.
 - (d) Additional siting criteria.
- PART F—BENEFITS
10173. Benefits agreements.
- (a) In general.

- | | |
|---|---|
| <p>Sec.</p> <p>(b) Amendment.
(c) Agreement with Nevada.
(d) Monitored retrievable storage.
(e) Limitation.
(f) Judicial review.</p> <p>10173a. Content of agreements.
(a) In general.
(b) Contents.
(c) Payments by Secretary.</p> <p>10173b. Review Panel.
(a) In general.
(b) Terms.
(c) Duties.
(d) Information.
(e) Federal Advisory Committee Act.</p> <p>10173c. Termination.
(a) In general.
(b) Termination by State or Indian tribe.
(c) Decisions of Secretary.</p> <p style="text-align: center;">PART G—OTHER BENEFITS</p> <p>10174. Consideration in siting facilities.
10174a. Report.
(a) In general.
(b) Impacts to be considered.</p> <p style="text-align: center;">PART H—TRANSPORTATION</p> <p>10175. Transportation.
(a) Packaging.
(b) Advance notification.
(c) Training for public safety officials.</p> <p style="text-align: center;">SUBCHAPTER II—RESEARCH, DEVELOPMENT,
AND DEMONSTRATION REGARDING DISPOSAL
OF HIGH-LEVEL RADIOACTIVE WASTE AND
SPENT NUCLEAR FUEL</p> <p>10191. Purpose.
10192. Applicability.
10193. Identification of sites.
(a) Guidelines.
(b) Site identification by Secretary.</p> <p>10194. Siting research and related activities.
(a) In general.
(b) Public meetings and environmental assessment.
(c) Restrictions.
(d) Title to material.</p> <p>10195. Test and evaluation facility siting review and reports.
(a) Consultation and cooperation.
(b) Written agreements.
(c) Limitation.</p> <p>10196. Federal agency actions.
(a) Cooperation and coordination.
(b) Environmental review.</p> <p>10197. Research and development on disposal of high-level radioactive waste.
(a) Purpose.
(b) Design.
(c) Operation.
(d) Use of existing Department facilities.
(e) Engineered barriers.
(f) Role of Commission.
(g) Environmental review.
(h) Limitations.</p> <p>10198. Research and development on spent nuclear fuel.
(a) Demonstration and cooperative programs.
(b) Cooperative agreements.
(c) Dry storage research and development.
(d) Funding.
(e) Relation to spent nuclear fuel storage program.</p> <p>10199. Payments to States and Indian tribes.
(a) Payments.
(b) Limitation.</p> | <p>Sec.</p> <p>10200. Study of research and development needs for monitored retrievable storage proposal.</p> <p>10201. Judicial review.</p> <p>10202. Research on alternatives for permanent disposal of high-level radioactive waste.</p> <p>10203. Technical assistance to non-nuclear weapon states in field of spent fuel storage and disposal.
(a) Statement of policy.
(b) Publication of joint notice; update.
(c) Notification to non-nuclear weapon states; expressions of interest.
(d) Funding requests.
(e) “Non-nuclear weapon state” defined.
(f) Unauthorized actions.</p> <p>10204. Subseabed disposal.
(a) Repealed.
(b) Office of Subseabed Disposal Research.</p> <p style="text-align: center;">SUBCHAPTER III—OTHER PROVISIONS RELATING
TO RADIOACTIVE WASTE</p> <p>10221. Mission plan.
(a) Contents of mission plan.
(b) Submission of mission plan.</p> <p>10222. Nuclear Waste Fund.
(a) Contracts.
(b) Advance contracting requirement.
(c) Establishment of Nuclear Waste Fund.
(d) Use of Waste Fund.
(e) Administration of Waste Fund.</p> <p>10223. Alternative means of financing.</p> <p>10224. Office of Civilian Radioactive Waste Management.
(a) Establishment.
(b) Functions of Director.
(c) Annual report to Congress.
(d) Audit by GAO.</p> <p>10225. Location of test and evaluation facility.
(a) Report to Congress.
(b) Procedures.</p> <p>10226. Nuclear Regulatory Commission training authorization.</p> <p style="text-align: center;">SUBCHAPTER IV—NUCLEAR WASTE NEGOTIATOR</p> <p>10241. “State” defined.</p> <p>10242. Office of Nuclear Waste Negotiator.
(a) Establishment.
(b) Nuclear Waste Negotiator.</p> <p>10243. Duties of Negotiator.
(a) Negotiations with potential hosts.
(b) Consultation with affected States, subdivisions of States, and tribes.
(c) Consultation with other Federal agencies.
(d) Proposed agreement.</p> <p>10244. Environmental assessment of sites.
(a) In general.
(b) Contents.
(c) Judicial review.
(d) Public hearings.
(e) Public availability.
(f) Evaluation of sites.</p> <p>10245. Site characterization; licensing.
(a) Site characterization.
(b) Licensing.</p> <p>10246. Monitored retrievable storage.
(a) Construction and operation.
(b) Financial assistance.</p> <p>10247. Environmental impact statement.
(a) In general.
(b) Preparation.
(c) Adoption.</p> <p>10248. Administrative powers of Negotiator.</p> <p>10249. Cooperation of other departments and agencies.</p> <p>10250. Termination of Office.</p> <p>10251. Authorization of appropriations.</p> |
|---|---|

Sec.

SUBCHAPTER V—NUCLEAR WASTE TECHNICAL REVIEW BOARD

10261. Definitions.
 10262. Nuclear Waste Technical Review Board.
 (a) Establishment.
 (b) Members.
 10263. Functions.
 10264. Investigatory powers.
 (a) Hearings.
 (b) Production of documents.
 10265. Compensation of members.
 (a) In general.
 (b) Travel expenses.
 10266. Staff.
 (a) Clerical staff.
 (b) Professional staff.
 10267. Support services.
 (a) General services.
 (b) Accounting, research, and technology assessment services.
 (c) Additional support.
 (d) Mails.
 (e) Experts and consultants.
 10268. Report.
 10269. Authorization of appropriations.
 10270. Termination of Board.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 2286g of this title.

§ 10101. Definitions

For purposes of this chapter:

(1) The term “Administrator” means the Administrator of the Environmental Protection Agency.

(2) The term “affected Indian tribe” means any Indian tribe—

(A) within whose reservation boundaries a monitored retrievable storage facility, test and evaluation facility, or a repository for high-level radioactive waste or spent fuel is proposed to be located;

(B) whose federally defined possessory or usage rights to other lands outside of the reservation’s boundaries arising out of congressionally ratified treaties may be substantially and adversely affected by the locating of such a facility: *Provided*, That the Secretary of the Interior finds, upon the petition of the appropriate governmental officials of the tribe, that such effects are both substantial and adverse to the tribe;¹

(3) The term “atomic energy defense activity” means any activity of the Secretary performed in whole or in part in carrying out any of the following functions:

- (A) naval reactors development;
 (B) weapons activities including defense inertial confinement fusion;
 (C) verification and control technology;
 (D) defense nuclear materials production;
 (E) defense nuclear waste and materials by-products management;
 (F) defense nuclear materials security and safeguards and security investigations; and
 (G) defense research and development.

(4) The term “candidate site” means an area, within a geologic and hydrologic system, that is recommended by the Secretary under

section 10132 of this title for site characterization, approved by the President under section 10132 of this title for site characterization, or undergoing site characterization under section 10133 of this title.

(5) The term “civilian nuclear activity” means any atomic energy activity other than an atomic energy defense activity.

(6) The term “civilian nuclear power reactor” means a civilian nuclear powerplant required to be licensed under section 2133 or 2134(b) of this title.

(7) The term “Commission” means the Nuclear Regulatory Commission.

(8) The term “Department” means the Department of Energy.

(9) The term “disposal” means the emplacement in a repository of high-level radioactive waste, spent nuclear fuel, or other highly radioactive material with no foreseeable intent of recovery, whether or not such emplacement permits the recovery of such waste.

(10) The terms “disposal package” and “package” mean the primary container that holds, and is in contact with, solidified high-level radioactive waste, spent nuclear fuel, or other radioactive materials, and any overpacks that are emplaced at a repository.

(11) The term “engineered barriers” means manmade components of a disposal system designed to prevent the release of radionuclides into the geologic medium involved. Such term includes the high-level radioactive waste form, high-level radioactive waste canisters, and other materials placed over and around such canisters.

(12) The term “high-level radioactive waste” means—

(A) the highly radioactive material resulting from the reprocessing of spent nuclear fuel, including liquid waste produced directly in reprocessing and any solid material derived from such liquid waste that contains fission products in sufficient concentrations; and

(B) other highly radioactive material that the Commission, consistent with existing law, determines by rule requires permanent isolation.

(13) The term “Federal agency” means any Executive agency, as defined in section 105 of title 5.

(14) The term “Governor” means the chief executive officer of a State.

(15) The term “Indian tribe” means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary of the Interior because of their status as Indians, including any Alaska Native village, as defined in section 3(c) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(c)).

(16) The term “low-level radioactive waste” means radioactive material that—

(A) is not high-level radioactive waste, spent nuclear fuel, transuranic waste, or by-product material as defined in section 2014(e)(2) of this title; and

(B) the Commission, consistent with existing law, classifies as low-level radioactive waste.

¹ So in original. The semicolon probably should be a period.

(17) The term "Office" means the Office of Civilian Radioactive Waste Management established in section 10224² of this title.

(18) The term "repository" means any system licensed by the Commission that is intended to be used for, or may be used for, the permanent deep geologic disposal of high-level radioactive waste and spent nuclear fuel, whether or not such system is designed to permit the recovery, for a limited period during initial operation, of any materials placed in such system. Such term includes both surface and subsurface areas at which high-level radioactive waste and spent nuclear fuel handling activities are conducted.

(19) The term "reservation" means—

(A) any Indian reservation or dependent Indian community referred to in clause (a) or (b) of section 1151 of title 18; or

(B) any land selected by an Alaska Native village or regional corporation under the provisions of the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

(20) The term "Secretary" means the Secretary of Energy.

(21) The term "site characterization" means—

(A) siting research activities with respect to a test and evaluation facility at a candidate site; and

(B) activities, whether in the laboratory or in the field, undertaken to establish the geologic condition and the ranges of the parameters of a candidate site relevant to the location of a repository, including borings, surface excavations, excavations of exploratory shafts, limited subsurface lateral excavations and borings, and in situ testing needed to evaluate the suitability of a candidate site for the location of a repository, but not including preliminary borings and geophysical testing needed to assess whether site characterization should be undertaken.

(22) The term "siting research" means activities, including borings, surface excavations, shaft excavations, subsurface lateral excavations and borings, and in situ testing, to determine the suitability of a site for a test and evaluation facility.

(23) The term "spent nuclear fuel" means fuel that has been withdrawn from a nuclear reactor following irradiation, the constituent elements of which have not been separated by reprocessing.

(24) The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

(25) The term "storage" means retention of high-level radioactive waste, spent nuclear fuel, or transuranic waste with the intent to recover such waste or fuel for subsequent use, processing, or disposal.

(26) The term "Storage Fund" means the Interim Storage Fund established in section 10156(c)³ of this title.

(27) The term "test and evaluation facility" means an at-depth, prototypic, underground cavity with subsurface lateral excavations extending from a central shaft that is used for research and development purposes, including the development of data and experience for the safe handling and disposal of solidified high-level radioactive waste, transuranic waste, or spent nuclear fuel.

(28) The term "unit of general local government" means any borough, city, county, parish, town, township, village, or other general purpose political subdivision of a State.

(29) The term "Waste Fund" means the Nuclear Waste Fund established in section 10222(c) of this title.

(30) The term "Yucca Mountain site" means the candidate site in the State of Nevada recommended by the Secretary to the President under section 10132(b)(1)(B) of this title on May 27, 1986.

(31) The term "affected unit of local government" means the unit of local government with jurisdiction over the site of a repository or a monitored retrievable storage facility. Such term may, at the discretion of the Secretary, include units of local government that are contiguous with such unit.

(32) The term "Negotiator" means the Nuclear Waste Negotiator.

(33) As used in subchapter IV of this chapter, the term "Office" means the Office of the Nuclear Waste Negotiator established under subchapter IV of this chapter.

(34) The term "monitored retrievable storage facility" means the storage facility described in section 10161(b)(1) of this title.

(Pub. L. 97-425, § 2, Jan. 7, 1983, 96 Stat. 2202; Pub. L. 100-202, § 101(d) [title III, § 300], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, § 5002, Dec. 22, 1987, 101 Stat. 1330-227.)

REFERENCES IN TEXT

Section 10224 of this title, referred to in par. (17), was in the original a reference to section 305 of Pub. L. 97-425, which is classified to section 10225 of this title, and was translated as section 10224 of this title as the probable intent of Congress, in view of the Office of Civilian Radioactive Waste Management being established by section 10224 of this title.

The Alaska Native Claims Settlement Act, referred to in par. (19)(B), is Pub. L. 92-203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

Section 10156(c) of this title, referred to in par. (26), was in the original a reference to section 137(c) of Pub. L. 97-425, which is classified to section 10157(c) of this title, and has been translated as section 10156(c) of this title as the probable intent of Congress, in view of the Interim Storage Fund being established by section 10156(c) of this title.

AMENDMENTS

1987—Pars. (30) to (34). Pub. L. 100-202 and Pub. L. 100-203 amended section identically adding pars. (30) to (34).

SHORT TITLE OF 1987 AMENDMENT

Section 101(d) [title III] of Pub. L. 100-202 and section 5001 of title V of Pub. L. 100-203 provided that: "This

² See References in Text note below.

³ See References in Text note below.

subtitle [subtitle A (§§5001-5065) of title V, enacting sections 10162, 10163, 10164, 10165, 10166, 10167, 10168, 10169, 10172, 10172a, 10173, 10173a, 10173b, 10173c, 10174, 10174a, 10175, 10204, 10241, 10242, 10243, 10244, 10245, 10246, 10247, 10248, 10249, 10250, 10251, 10261, 10262, 10263, 10264, 10265, 10266, 10267, 10268, 10269, and 10270 of this title, amending this section and sections 10132, 10133, 10134, 10136, 10137, and 10138 of this title and enacting provisions set out as a note under section 5841 of this title] may be cited as the ‘Nuclear Waste Policy Amendments Act of 1987.’”

SHORT TITLE

Section 1 of Pub. L. 97-425 provided that: “This Act [enacting this chapter] may be cited as the ‘Nuclear Waste Policy Act of 1982.’”

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

NUCLEAR WASTE MANAGEMENT PLAN; REPORT

Pub. L. 102-486, title VIII, §803, Oct. 24, 1992, 106 Stat. 2923, provided that:

“(a) PREPARATION AND SUBMISSION OF REPORT.—The Secretary of Energy, in consultation with the Nuclear Regulatory Commission and the Environmental Protection Agency, shall prepare and submit to the Congress a report on whether current programs and plans for management of nuclear waste as mandated by the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101 et seq.) are adequate for management of any additional volumes or categories of nuclear waste that might be generated by any new nuclear power plants that might be constructed and licensed after the date of the enactment of this Act [Oct. 24, 1992]. The Secretary shall prepare the report for submission to the President and the Congress within 1 year after the date of the enactment of this Act. The report shall examine any new relevant issues related to management of spent nuclear fuel and high-level radioactive waste that might be raised by the addition of new nuclear-generated electric capacity, including anticipated increased volumes of spent nuclear fuel or high-level radioactive waste, any need for additional interim storage capacity prior to final disposal, transportation of additional volumes of waste, and any need for additional repositories for deep geologic disposal.

“(b) OPPORTUNITY FOR PUBLIC COMMENT.—In preparation of the report required under subsection (a), the Secretary of Energy shall offer members of the public an opportunity to provide information and comment and shall solicit the views of the Nuclear Regulatory Commission, the Environmental Protection Agency, and other interested parties.

“(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2014 of this title; title 18 sections 33, 1992; title 49 section 5105.

§ 10102. Separability

If any provision of this chapter, or the application of such provision to any person or circumstance, is held invalid, the remainder of this chapter, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

(Pub. L. 97-425, §3, Jan. 7, 1983, 96 Stat. 2205.)

§ 10103. Territories and possessions

Nothing in this chapter shall be deemed to repeal, modify, or amend the provisions of section 1491 of title 48.

(Pub. L. 97-425, §4, Jan. 7, 1983, 96 Stat. 2205.)

§ 10104. Ocean disposal

Nothing in this chapter shall be deemed to affect the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1401 et seq.).

(Pub. L. 97-425, §5, Jan. 7, 1983, 96 Stat. 2205.)

REFERENCES IN TEXT

The Marine Protection, Research, and Sanctuaries Act of 1972, referred to in text, is Pub. L. 92-532, Oct. 23, 1972, 86 Stat. 1052, as amended, which enacted chapters 32 (§1431 et seq.) and 32A (§1447 et seq.) of Title 16, Conservation, and chapters 27 (§1401 et seq.) and 41 (§2801 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1401 of Title 33 and Tables.

§ 10105. Limitation on spending authority

The authority under this chapter to incur indebtedness, or enter into contracts, obligating amounts to be expended by the Federal Government shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance by appropriation Acts.

(Pub. L. 97-425, §6, Jan. 7, 1983, 96 Stat. 2205.)

§ 10106. Protection of classified national security information

Nothing in this chapter shall require the release or disclosure to any person or to the Commission of any classified national security information.

(Pub. L. 97-425, §7, Jan. 7, 1983, 96 Stat. 2205.)

§ 10107. Applicability to atomic energy defense activities

(a) Atomic energy defense activities

Subject to the provisions of subsection (c) of this section, the provisions of this chapter shall not apply with respect to any atomic energy defense activity or to any facility used in connection with any such activity.

(b) Evaluation by President

(1) Not later than 2 years after January 7, 1983, the President shall evaluate the use of disposal capacity at one or more repositories to be developed under part A of subchapter I of this chapter for the disposal of high-level radioactive waste resulting from atomic energy defense activities. Such evaluation shall take into consideration factors relating to cost efficiency, health and safety, regulation, transportation, public acceptability, and national security.

(2) Unless the President finds, after conducting the evaluation required in paragraph (1), that the development of a repository for the disposal of high-level radioactive waste resulting from atomic energy defense activities only is required, taking into account all of the factors described in such subsection, the Secretary shall proceed promptly with arrangement for the use of one or more of the repositories to be developed under part A of subchapter I of this chapter for the disposal of such waste. Such arrangements shall include the allocation of costs of developing, constructing, and operating this repos-

itory or repositories. The costs resulting from permanent disposal of high-level radioactive waste from atomic energy defense activities shall be paid by the Federal Government, into the special account established under section 10222 of this title.

(3) Any repository for the disposal of high-level radioactive waste resulting from atomic energy defense activities only shall (A) be subject to licensing under section 5842 of this title; and (B) comply with all requirements of the Commission for the siting, development, construction, and operation of a repository.

(c) Applicability to certain repositories

The provisions of this chapter shall apply with respect to any repository not used exclusively for the disposal of high-level radioactive waste or spent nuclear fuel resulting from atomic energy defense activities, research and development activities of the Secretary, or both.

(Pub. L. 97-425, § 8, Jan. 7, 1983, 96 Stat. 2205.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10121, 10155, 10192 of this title.

§ 10108. Applicability to transportation

Nothing in this chapter shall be construed to affect Federal, State, or local laws pertaining to the transportation of spent nuclear fuel or high-level radioactive waste.

(Pub. L. 97-425, § 9, Jan. 7, 1983, 96 Stat. 2206.)

SUBCHAPTER I—DISPOSAL AND STORAGE OF HIGH-LEVEL RADIOACTIVE WASTE, SPENT NUCLEAR FUEL, AND LOW-LEVEL RADIOACTIVE WASTE

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 10222, 10225 of this title.

§ 10121. State and affected Indian tribe participation in development of proposed repositories for defense waste

(a) Notification to States and affected Indian tribes

Notwithstanding the provisions of section 10107 of this title, upon any decision by the Secretary or the President to develop a repository for the disposal of high-level radioactive waste or spent nuclear fuel resulting exclusively from atomic energy defense activities, research and development activities of the Secretary, or both, and before proceeding with any site-specific investigations with respect to such repository, the Secretary shall notify the Governor and legislature of the State in which such repository is proposed to be located, or the governing body of the affected Indian tribe on whose reservation such repository is proposed to be located, as the case may be, of such decision.

(b) Participation of States and affected Indian tribes

Following the receipt of any notification under subsection (a) of this section, the State or Indian tribe involved shall be entitled, with respect to the proposed repository involved, to

rights of participation and consultation identical to those provided in sections 10135 through 10138 of this title, except that any financial assistance authorized to be provided to such State or affected Indian tribe under section 10136(c) or 10138(b) of this title shall be made from amounts appropriated to the Secretary for purposes of carrying out this section.

(Pub. L. 97-425, title I, § 101, Jan. 7, 1983, 96 Stat. 2206.)

PART A—REPOSITORIES FOR DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTE AND SPENT NUCLEAR FUEL

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 10107, 10175 of this title.

§ 10131. Findings and purposes

(a) The Congress finds that—

(1) radioactive waste creates potential risks and requires safe and environmentally acceptable methods of disposal;

(2) a national problem has been created by the accumulation of (A) spent nuclear fuel from nuclear reactors; and (B) radioactive waste from (i) reprocessing of spent nuclear fuel; (ii) activities related to medical research, diagnosis, and treatment; and (iii) other sources;

(3) Federal efforts during the past 30 years to devise a permanent solution to the problems of civilian radioactive waste disposal have not been adequate;

(4) while the Federal Government has the responsibility to provide for the permanent disposal of high-level radioactive waste and such spent nuclear fuel as may be disposed of in order to protect the public health and safety and the environment, the costs of such disposal should be the responsibility of the generators and owners of such waste and spent fuel;

(5) the generators and owners of high-level radioactive waste and spent nuclear fuel have the primary responsibility to provide for, and the responsibility to pay the costs of, the interim storage of such waste and spent fuel until such waste and spent fuel is accepted by the Secretary of Energy in accordance with the provisions of this chapter;

(6) State and public participation in the planning and development of repositories is essential in order to promote public confidence in the safety of disposal of such waste and spent fuel; and

(7) high-level radioactive waste and spent nuclear fuel have become major subjects of public concern, and appropriate precautions must be taken to ensure that such waste and spent fuel do not adversely affect the public health and safety and the environment for this or future generations.

(b) The purposes of this part are—

(1) to establish a schedule for the siting, construction, and operation of repositories that will provide a reasonable assurance that the public and the environment will be adequately protected from the hazards posed by high-level

radioactive waste and such spent nuclear fuel as may be disposed of in a repository;

(2) to establish the Federal responsibility, and a definite Federal policy, for the disposal of such waste and spent fuel;

(3) to define the relationship between the Federal Government and the State governments with respect to the disposal of such waste and spent fuel; and

(4) to establish a Nuclear Waste Fund, composed of payments made by the generators and owners of such waste and spent fuel, that will ensure that the costs of carrying out activities relating to the disposal of such waste and spent fuel will be borne by the persons responsible for generating such waste and spent fuel.

(Pub. L. 97-425, title I, § 111, Jan. 7, 1983, 96 Stat. 2207.)

§ 10132. Recommendation of candidate sites for site characterization

(a) Guidelines

Not later than 180 days after January 7, 1983, the Secretary, following consultation with the Council on Environmental Quality, the Administrator of the Environmental Protection Agency, the Director of the United States Geological Survey, and interested Governors, and the concurrence of the Commission shall issue general guidelines for the recommendation of sites for repositories. Such guidelines shall specify detailed geologic considerations that shall be primary criteria for the selection of sites in various geologic media. Such guidelines shall specify factors that qualify or disqualify any site from development as a repository, including factors pertaining to the location of valuable natural resources, hydrology, geophysics, seismic activity, and atomic energy defense activities, proximity to water supplies, proximity to populations, the effect upon the rights of users of water, and proximity to components of the National Park System, the National Wildlife Refuge System, the National Wild and Scenic Rivers System, the National Wilderness Preservation System, or National Forest Lands. Such guidelines shall take into consideration the proximity to sites where high-level radioactive waste and spent nuclear fuel is generated or temporarily stored and the transportation and safety factors involved in moving such waste to a repository. Such guidelines shall specify population factors that will disqualify any site from development as a repository if any surface facility of such repository would be located (1) in a highly populated area; or (2) adjacent to an area 1 mile by 1 mile having a population of not less than 1,000 individuals. Such guidelines also shall require the Secretary to consider the cost and impact of transporting to the repository site the solidified high-level radioactive waste and spent fuel to be disposed of in the repository and the advantages of regional distribution in the siting of repositories. Such guidelines shall require the Secretary to consider the various geologic media in which sites for repositories may be located and, to the extent practicable, to recommend sites in different geologic media. The Secretary shall use guidelines established under this subsection in considering candidate sites

for recommendation under subsection (b) of this section. The Secretary may revise such guidelines from time to time, consistent with the provisions of this subsection.

(b) Recommendation by Secretary to President

(1)(A) Following the issuance of guidelines under subsection (a) of this section and consultation with the Governors of affected States, the Secretary shall nominate at least 5 sites that he determines suitable for site characterization for selection of the first repository site.

(B) Subsequent to such nomination, the Secretary shall recommend to the President 3 of the nominated sites not later than January 1, 1985 for characterization as candidate sites.

(C) Such recommendations under subparagraph (B) shall be consistent with the provisions of section 10225 of this title.

(D) Each nomination of a site under this subsection shall be accompanied by an environmental assessment, which shall include a detailed statement of the basis for such recommendation and of the probable impacts of the site characterization activities planned for such site, and a discussion of alternative activities relating to site characterization that may be undertaken to avoid such impacts. Such environmental assessment shall include—

(i) an evaluation by the Secretary as to whether such site is suitable for site characterization under the guidelines established under subsection (a) of this section;

(ii) an evaluation by the Secretary as to whether such site is suitable for development as a repository under each such guideline that does not require site characterization as a prerequisite for application of such guideline;

(iii) an evaluation by the Secretary of the effects of the site characterization activities at such site on the public health and safety and the environment;

(iv) a reasonable comparative evaluation by the Secretary of such site with other sites and locations that have been considered;

(v) a description of the decision process by which such site was recommended; and

(vi) an assessment of the regional and local impacts of locating the proposed repository at such site.

(E)(i)¹ The issuance of any environmental assessment under this paragraph shall be considered to be a final agency action subject to judicial review in accordance with the provisions of chapter 7 of title 5 and section 10139 of this title. Such judicial review shall be limited to the sufficiency of such environmental assessment with respect to the items described in clauses (i) through (vi) of subparagraph (E).

(F) Each environmental assessment prepared under this paragraph shall be made available to the public.

(G) Before nominating a site, the Secretary shall notify the Governor and legislature of the State in which such site is located, or the governing body of the affected Indian tribe where such site is located, as the case may be, of such nomination and the basis for such nomination.

(2) Before nominating any site the Secretary shall hold public hearings in the vicinity of such

¹ So in original. There is no cl. (ii).

site to inform the residents of the area in which such site is located of the proposed nomination of such site and to receive their comments. At such hearings, the Secretary shall also solicit and receive any recommendations of such residents with respect to issues that should be addressed in the environmental assessment described in paragraph (1) and the site characterization plan described in section 10133(b)(1) of this title.

(3) In evaluating the sites nominated under this section prior to any decision to recommend a site as a candidate site, the Secretary shall use available geophysical, geologic, geochemical and hydrologic, and other information and shall not conduct any preliminary borings or excavations at a site unless (i) such preliminary boring or excavation activities were in progress on January 7, 1983, or (ii) the Secretary certifies that such available information from other sources, in the absence of preliminary borings or excavations, will not be adequate to satisfy applicable requirements of this chapter or any other law: *Provided*, That preliminary borings or excavations under this section shall not exceed a diameter of 6 inches.

(c) Presidential review of recommended candidate sites

(1) The President shall review each candidate site recommendation made by the Secretary under subsection (b) of this section. Not later than 60 days after the submission by the Secretary of a recommendation of a candidate site, the President, in his discretion, may either approve or disapprove such candidate site, and shall transmit any such decision to the Secretary and to either the Governor and legislature of the State in which such candidate site is located, or the governing body of the affected Indian tribe where such candidate site is located, as the case may be. If, during such 60-day period, the President fails to approve or disapprove such candidate site, or fails to invoke his authority under paragraph (2) to delay his decision, such candidate site shall be considered to be approved, and the Secretary shall notify such Governor and legislature, or governing body of the affected Indian tribe, of the approval of such candidate site by reason of the inaction of the President.

(2) The President may delay for not more than 6 months his decision under paragraph (1) to approve or disapprove a candidate site, upon determining that the information provided with the recommendation of the Secretary is insufficient to permit a decision within the 60-day period referred to in paragraph (1). The President may invoke his authority under this paragraph by submitting written notice to the Congress, within such 60-day period, of his intent to invoke such authority. If the President invokes such authority, but fails to approve or disapprove the candidate site involved by the end of such 6-month period, such candidate site shall be considered to be approved, and the Secretary shall notify such Governor and legislature, or governing body of the affected Indian tribe, of the approval of such candidate site by reason of the inaction of the President.

(d) Preliminary activities

Except as otherwise provided in this section, each activity of the President or the Secretary under this section shall be considered to be a preliminary decisionmaking activity. No such activity shall require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), or to require any environmental review under subparagraph (E) or (F) of section 102(2) of such Act.

(Pub. L. 97-425, title I, §112, Jan. 7, 1983, 96 Stat. 2208; Pub. L. 100-202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5011(b)-(d), Dec. 22, 1987, 101 Stat. 1330-228; Pub. L. 102-154, title I, Nov. 13, 1991, 105 Stat. 1000.)

AMENDMENTS

1987—Subsec. (b)(1)(C) to (H). Pub. L. 100-202 and Pub. L. 100-203, §5011(b), amended par. (1) identically, redesignating subpars. (D) to (H) as (C) to (G), respectively, in subpar. (C) substituting “subparagraph (B)” for “subparagraphs (B) and (C)”, and striking out former subpar. (C) which read as follows: “Not later than July 1, 1989, the Secretary shall nominate 5 sites, which shall include at least 3 additional sites not nominated under subparagraph (A), and recommend by such date to the President from such 5 nominated sites 3 candidate sites the Secretary determines suitable for site characterization for selection of the second repository. The Secretary may not nominate any site previously nominated under subparagraph (A), that was not recommended as a candidate site under subparagraph (B).”

Subsec. (d). Pub. L. 100-202 and Pub. L. 100-203, §5011(c), amended section identically, redesignating subsec. (e) as (d) and striking out former subsec. (d) which read as follows: “After the required recommendation of candidate sites under subsection (b) of this section, the Secretary may continue, as he determines necessary, to identify and study other sites to determine their suitability for recommendation for site characterization, in accordance with the procedures described in this section.”

Subsec. (e). Pub. L. 100-202 and Pub. L. 100-203, §5011(d), which contained identical amendments directing that subsec. (f) be struck out and all subsequent subsections be redesignated accordingly, was executed by striking out subsec. (e) as the probable intent of Congress because of the redesignation of former subsec. (f) as (e) by Pub. L. 100-202 and Pub. L. 100-203, §5011(c), and the absence of any subsections subsequent to former subsec. (f). Subsec. (e) read as follows: “Nothing in this section may be construed as prohibiting the Secretary from continuing ongoing or presently planned site characterization at any site on Department of Energy land for which the location of the principal borehole has been approved by the Secretary by August 1, 1982, except that (1) the environmental assessment described in subsection (b)(1) of this section shall be prepared and made available to the public before proceeding to sink shafts at any such site; and (2) the Secretary shall not continue site characterization at any such site unless such site is among the candidate sites recommended by the Secretary under the first sentence of subsection (b) of this section for site characterization and approved by the President under subsection (c) of this section; and (3) the Secretary shall conduct public hearings under section 10133(b)(2) of this title and comply with requirements under section 10137 of this title within one year of January 7, 1983.”

Pub. L. 100-202 and Pub. L. 100-203, §5011(c), amended section identically, redesignating subsec. (f) as (e). Former subsec. (e) redesignated (d).

Subsec. (f). Pub. L. 100-202 and Pub. L. 100-203, §5011(c), amended section identically, redesignating subsec. (f) as (e).

CHANGE OF NAME

“United States Geological Survey” substituted for “Geological Survey” in subsec. (a) pursuant to provision of title I of Pub. L. 102-154, set out as a note under section 31 of Title 43, Public Lands.

DELEGATION OF NOTIFICATION FUNCTION

Letter of the President of the United States, dated May 28, 1986, 51 F.R. 19531, provided:

Letter to the Honorable John S. Herrington, Secretary of Energy

Dear Mr. Secretary:

You are hereby authorized to perform the notification function vested in the President pursuant to Section 112(c)(1) of the Nuclear Waste Policy Act of 1982, 42 U.S.C. §10132(c)(1).

This document shall be published in the Federal Register.

Sincerely,

RONALD REAGAN.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10101, 10133, 10137, 10138, 10139, 10161, 10172a, 10221 of this title.

§ 10133. Site characterization**(a) In general**

The Secretary shall carry out, in accordance with the provisions of this section, appropriate site characterization activities at the Yucca Mountain site. The Secretary shall consider fully the comments received under subsection (b)(2) of this section and section 10132(b)(2) of this title and shall, to the maximum extent practicable and in consultation with the Governor of the State of Nevada, conduct site characterization activities in a manner that minimizes any significant adverse environmental impacts identified in such comments or in the environmental assessment submitted under subsection (b)(1) of this section.

(b) Commission and States

(1) Before proceeding to sink shafts at the Yucca Mountain site, the Secretary shall submit for such candidate site to the Commission and to the Governor or legislature of the State of Nevada, for their review and comment—

(A) a general plan for site characterization activities to be conducted at such candidate site, which plan shall include—

(i) a description of such candidate site;

(ii) a description of such site characterization activities, including the following: the extent of planned excavations, plans for any onsite testing with radioactive or nonradioactive material, plans for any investigation activities that may affect the capability of such candidate site to isolate high-level radioactive waste and spent nuclear fuel, and plans to control any adverse, safety-related impacts from such site characterization activities;

(iii) plans for the decontamination and decommissioning of such candidate site, and for the mitigation of any significant adverse environmental impacts caused by site characterization activities if it is determined unsuitable for application for a construction authorization for a repository;

(iv) criteria to be used to determine the suitability of such candidate site for the lo-

cation of a repository, developed pursuant to section 10132(a) of this title; and

(v) any other information required by the Commission;

(B) a description of the possible form or packaging for the high-level radioactive waste and spent nuclear fuel to be emplaced in such repository, a description, to the extent practicable, of the relationship between such waste form or packaging and the geologic medium of such site, and a description of the activities being conducted by the Secretary with respect to such possible waste form or packaging or such relationship; and

(C) a conceptual repository design that takes into account likely site-specific requirements.

(2) Before proceeding to sink shafts at the Yucca Mountain site, the Secretary shall (A) make available to the public the site characterization plan described in paragraph (1); and (B) hold public hearings in the vicinity of such candidate site to inform the residents of the area in which such candidate site is located of such plan, and to receive their comments.

(3) During the conduct of site characterization activities at the Yucca Mountain site, the Secretary shall report not less than once every 6 months to the Commission and to the Governor and legislature of the State of Nevada, on the nature and extent of such activities and the information developed from such activities.

(c) Restrictions

(1) The Secretary may conduct at the Yucca Mountain site only such site characterization activities as the Secretary considers necessary to provide the data required for evaluation of the suitability of such site for an application to be submitted to the Commission for a construction authorization for a repository at such site, and for compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(2) In conducting site characterization activities—

(A) the Secretary may not use any radioactive material at a site unless the Commission concurs that such use is necessary to provide data for the preparation of the required environmental reports and an application for a construction authorization for a repository at such site; and

(B) if any radioactive material is used at a site—

(i) the Secretary shall use the minimum quantity necessary to determine the suitability of such site for a repository, but in no event more than the curie equivalent of 10 metric tons of spent nuclear fuel; and

(ii) such radioactive material shall be fully retrievable.

(3) If the Secretary at any time determines the Yucca Mountain site to be unsuitable for development as a repository, the Secretary shall—

(A) terminate all site characterization activities at such site;

(B) notify the Congress, the Governor and legislature of Nevada of such termination and the reasons for such termination;

(C) remove any high-level radioactive waste, spent nuclear fuel, or other radioactive mate-

rials at or in such site as promptly as practicable;

(D) take reasonable and necessary steps to reclaim the site and to mitigate any significant adverse environmental impacts caused by site characterization activities at such site;

(E) suspend all future benefits payments under part F of this subchapter with respect to such site; and

(F) report to Congress not later than 6 months after such determination the Secretary's recommendations for further action to assure the safe, permanent disposal of spent nuclear fuel and high-level radioactive waste, including the need for new legislative authority.

(d) Preliminary activities

Each activity of the Secretary under this section that is in compliance with the provisions of subsection (c) of this section shall be considered a preliminary decisionmaking activity. No such activity shall require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), or to¹ require any environmental review under subparagraph (E) or (F) of section 102(2) of such Act.

(Pub. L. 97-425, title I, § 113, Jan. 7, 1983, 96 Stat. 2211; Pub. L. 100-202, § 101(d) [title III, § 300], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, § 5011(e)-(g), Dec. 22, 1987, 101 Stat. 1330-228.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (c)(1), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

AMENDMENTS

1987—Subsec. (a). Pub. L. 100-202 and Pub. L. 100-203, § 5011(e)(2), which contained identical amendments directing that “at the Yucca Mountain site” be substituted for “beginning” and all that follows through “geological media”, were executed by substituting “at the Yucca Mountain site” for “beginning with the candidate sites that have been approved under section 10132 of this title and are located in various geologic media” as the probable intent of Congress.

Pub. L. 100-202 and Pub. L. 100-203, § 5011(e)(1), amended subsec. (a) identically, substituting “State of Nevada” for “State involved or the governing body of the affected Indian tribe involved”.

Subsec. (b)(1). Pub. L. 100-202 and Pub. L. 100-203, § 5011(f)(1), amended par. (1) identically, substituting “the Yucca Mountain site” for “any candidate site” and “the Governor or legislature of the State of Nevada” for “either the Governor and legislature of the State in which such candidate site is located, or the governing body of the affected Indian tribe on whose reservation such candidate site is located, as the case may be”.

Subsec. (b)(2). Pub. L. 100-202 and Pub. L. 100-203, § 5011(f)(2), amended par. (2) identically, substituting “the Yucca Mountain site” for “any candidate site”.

Subsec. (b)(3). Pub. L. 100-202 and Pub. L. 100-203, § 5011(f)(3), amended par. (3) identically, substituting “the Yucca Mountain site” for “a candidate site”, striking “either” before “the Governor”, and substituting “the State of Nevada” for “the State in which such

candidate site is located, or the governing body of the affected Indian tribe where such candidate site is located, as the case may be”.

Subsec. (c)(1). Pub. L. 100-202 and Pub. L. 100-203, § 5011(g)(1), amended par. (1) identically, substituting “the Yucca Mountain site” for “any candidate site”, “suitability of such site” for “suitability of such candidate site”, and “repository at such site” for “repository at such candidate site”.

Subsec. (c)(2). Pub. L. 100-202 and Pub. L. 100-203, § 5011(g)(2), amended par. (2) identically, striking out “candidate” before “site” in two places in subpar. (A) and in two places in subpar. (B).

Subsec. (c)(3), (4). Pub. L. 100-202 and Pub. L. 100-203, § 5011(g)(3), amended subsec. (c) identically, adding par. (3) and striking out former pars. (3) and (4) which read as follows:

“(3) If site characterization activities are terminated at a candidate site for any reason, the Secretary shall (A) notify the Congress, the Governors and legislatures of all States in which candidate sites are located, and the governing bodies of all affected Indian tribes where candidate sites are located, of such termination and the reasons for such termination; and (B) remove any high-level radioactive waste, spent nuclear fuel, or other radioactive materials at or in such candidate site as promptly as practicable.

“(4) If a site is determined to be unsuitable for application for a construction authorization for a repository, the Secretary shall take reasonable and necessary steps to reclaim the site and to mitigate any significant adverse environmental impacts caused by site characterization activities.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10101, 10132, 10134, 10136, 10244, 10245 of this title.

§ 10134. Site approval and construction authorization

(a) Hearings and Presidential recommendation

(1) The Secretary shall hold public hearings in the vicinity of the Yucca Mountain site, for the purposes of informing the residents of the area of such consideration and receiving their comments regarding the possible recommendation of such site. If, upon completion of such hearings and completion of site characterization activities at the Yucca Mountain site, under section 10133 of this title, the Secretary decides to recommend approval of such site to the President, the Secretary shall notify the Governor and legislature of the State of Nevada, of such decision. No sooner than the expiration of the 30-day period following such notification, the Secretary shall submit to the President a recommendation that the President approve such site for the development of a repository. Any such recommendation by the Secretary shall be based on the record of information developed by the Secretary under section 10133 of this title and this section, including the information described in subparagraph (A) through subparagraph (G). Together with any recommendation of a site under this paragraph, the Secretary shall make available to the public, and submit to the President, a comprehensive statement of the basis of such recommendation, including the following:

(A) a description of the proposed repository, including preliminary engineering specifications for the facility;

(B) a description of the waste form or packaging proposed for use at such repository, and an explanation of the relationship between

¹ So in original. The word “to” probably should not appear.

such waste form or packaging and the geologic medium of such site;

(C) a discussion of data, obtained in site characterization activities, relating to the safety of such site;

(D) a final environmental impact statement prepared for the Yucca Mountain site pursuant to subsection (f) of this section and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), together with comments made concerning such environmental impact statement by the Secretary of the Interior, the Council on Environmental Quality, the Administrator, and the Commission, except that the Secretary shall not be required in any such environmental impact statement to consider the need for a repository, the alternatives to geological disposal, or alternative sites to the Yucca Mountain site;

(E) preliminary comments of the Commission concerning the extent to which the at-depth site characterization analysis and the waste form proposal for such site seem to be sufficient for inclusion in any application to be submitted by the Secretary for licensing of such site as a repository;

(F) the views and comments of the Governor and legislature of any State, or the governing body of any affected Indian tribe, as determined by the Secretary, together with the response of the Secretary to such views;

(G) such other information as the Secretary considers appropriate; and

(H) any impact report submitted under section 10136(c)(2)(B) of this title by the State of Nevada.

(2)(A) If, after recommendation by the Secretary, the President considers the Yucca Mountain site qualified for application for a construction authorization for a repository, the President shall submit a recommendation of such site to Congress.

(B) The President shall submit with such recommendation a copy of the statement for such site prepared by the Secretary under paragraph (1).

(3)(A) The President may not recommend the approval of the Yucca Mountain site unless the Secretary has recommended to the President under paragraph (1) approval of such site and has submitted to the President a statement for such site as required under such paragraph.

(B) No recommendation of a site by the President under this subsection shall require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), or to¹ require any environmental review under subparagraph (E) or (F) of section 102(2) of such Act.

(b) Submission of application

If the President recommends to the Congress the Yucca Mountain site under subsection (a) of this section and the site designation is permitted to take effect under section 10135 of this title, the Secretary shall submit to the Commission an application for a construction authorization for a repository at such site not later than

90 days after the date on which the recommendation of the site designation is effective under such section and shall provide to the Governor and legislature of the State of Nevada a copy of such application.

(c) Status report on application

Not later than 1 year after the date on which an application for a construction authorization is submitted under subsection (b) of this section, and annually thereafter until the date on which such authorization is granted, the Commission shall submit a report to the Congress describing the proceedings undertaken through the date of such report with regard to such application, including a description of—

(1) any major unresolved safety issues, and the explanation of the Secretary with respect to design and operation plans for resolving such issues;

(2) any matters of contention regarding such application; and

(3) any Commission actions regarding the granting or denial of such authorization.

(d) Commission action

The Commission shall consider an application for a construction authorization for all or part of a repository in accordance with the laws applicable to such applications, except that the Commission shall issue a final decision approving or disapproving the issuance of a construction authorization not later than the expiration of 3 years after the date of the submission of such application, except that the Commission may extend such deadline by not more than 12 months if, not less than 30 days before such deadline, the Commission complies with the reporting requirements established in subsection (e)(2) of this section. The Commission decision approving the first such application shall prohibit the emplacement in the first repository of a quantity of spent fuel containing in excess of 70,000 metric tons of heavy metal or a quantity of solidified high-level radioactive waste resulting from the reprocessing of such a quantity of spent fuel until such time as a second repository is in operation. In the event that a monitored retrievable storage facility, approved pursuant to part C of this subchapter, shall be located, or is planned to be located, within 50 miles of the first repository, then the Commission decision approving the first such application shall prohibit the emplacement of a quantity of spent fuel containing in excess of 70,000 metric tons of heavy metal or a quantity of solidified high-level radioactive waste resulting from the reprocessing of spent fuel in both the repository and monitored retrievable storage facility until such time as a second repository is in operation.

(e) Project decision schedule

(1) The Secretary shall prepare and update, as appropriate, in cooperation with all affected Federal agencies, a project decision schedule that portrays the optimum way to attain the operation of the repository, within the time periods specified in this part. Such schedule shall include a description of objectives and a sequence of deadlines for all Federal agencies required to take action, including an identification of the activities in which a delay in the start, or com-

¹ So in original. The word "to" probably should not appear.

pletion, of such activities will cause a delay in beginning repository operation.

(2) Any Federal agency that determines that it cannot comply with any deadline in the project decision schedule, or fails to so comply, shall submit to the Secretary and to the Congress a written report explaining the reason for its failure or expected failure to meet such deadline, the reason why such agency could not reach an agreement with the Secretary, the estimated time for completion of the activity or activities involved, the associated effect on its other deadlines in the project decision schedule, and any recommendations it may have or actions it intends to take regarding any improvements in its operation or organization, or changes to its statutory directives or authority, so that it will be able to mitigate the delay involved. The Secretary, within 30 days after receiving any such report, shall file with the Congress his response to such report, including the reasons why the Secretary could not amend the project decision schedule to accommodate the Federal agency involved.

(f) Environmental impact statement

(1) Any recommendation made by the Secretary under this section shall be considered a major Federal action significantly affecting the quality of the human environment for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). A final environmental impact statement prepared by the Secretary under such Act shall accompany any recommendation to the President to approve a site for a repository.

(2) With respect to the requirements imposed by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), compliance with the procedures and requirements of this chapter shall be deemed adequate consideration of the need for a repository, the time of the initial availability of a repository, and all alternatives to the isolation of high-level radioactive waste and spent nuclear fuel in a repository.

(3) For purposes of complying with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and this section, the Secretary need not consider alternate sites to the Yucca Mountain site for the repository to be developed under this part.

(4) Any environmental impact statement prepared in connection with a repository proposed to be constructed by the Secretary under this part shall, to the extent practicable, be adopted by the Commission in connection with the issuance by the Commission of a construction authorization and license for such repository. To the extent such statement is adopted by the Commission, such adoption shall be deemed to also satisfy the responsibilities of the Commission under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and no further consideration shall be required, except that nothing in this subsection shall affect any independent responsibilities of the Commission to protect the public health and safety under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).

(5) Nothing in this chapter shall be construed to amend or otherwise detract from the licens-

ing requirements of the Nuclear Regulatory Commission established in title II of the Energy Reorganization Act of 1974 (42 U.S.C. 5841 et seq.).

(6) In any such statement prepared with respect to the repository to be constructed under this part, the Nuclear Regulatory Commission need not consider the need for a repository, the time of initial availability of a repository, alternate sites to the Yucca Mountain site, or non-geologic alternatives to such site.

(Pub. L. 97-425, title I, §114, Jan. 7, 1983, 96 Stat. 2213; Pub. L. 100-202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5011(h)-(l), Dec. 22, 1987, 101 Stat. 1330-229, 1330-230.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsecs. (a)(1)(D) and (f), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

The Atomic Energy Act of 1954, referred to in subsec. (f)(4), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

The Energy Reorganization Act of 1974, referred to in subsec. (f)(5), is Pub. L. 93-438, Oct. 11, 1974, 88 Stat. 1233, as amended. Title II of the Energy Reorganization Act of 1974 is classified generally to subchapter II (§5841 et seq.) of chapter 73 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5801 of this title and Tables.

AMENDMENTS

1987—Subsec. (a)(1). Pub. L. 100-202 and Pub. L. 100-203, §5011(h)(1)(A)-(E), amended par. (1) identically, in introductory provisions substituting “vicinity of the Yucca Mountain site” for “vicinity of each site under consideration for recommendation to the President under this paragraph as a site for the development of a repository”, striking out “in which such site is located” after “residents of the area”, substituting “activities at the Yucca Mountain site” for “activities at not less than 3 candidate sites for the first proposed repository, or from all of the characterized sites for the development of subsequent repositories” [sic] and “of Nevada” for “in which such site is located, or the governing body of the affected Indian tribe where such site is located, as the case may be”, and struck out before last sentence “In making site recommendations and approvals subsequent to the first site recommendation, the Secretary and the President, respectively, shall also consider the need for regional distribution of repositories and the need to minimize, to the extent practicable, the impacts and cost of transporting spent fuel and solidified high-level radioactive waste.”

Subsec. (a)(1)(D). Pub. L. 100-202 and Pub. L. 100-203, §5011(h)(1)(F), generally amended subpar. (D) identically. Prior to amendment, subpar. (D) read as follows: “a final environmental impact statement prepared pursuant to subsection (f) of this section and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), including an analysis of the consideration given by the Secretary to not less than 3 candidate sites for the first proposed repository [sic] or to all of the characterized sites for the development of subsequent repositories, with respect to which site characterization is completed under section 10133 of this title, together with comments made concerning such environmental impact statement by the Secretary of the Interior, the

Council on Environmental Quality, the Administrator, and the Commission, except that any such environmental impact statement concerning the first repository to be developed under this chapter shall not be required to consider the need for a repository or the alternatives to geologic disposal.”

Subsec. (a)(1)(H). Pub. L. 100-202 and Pub. L. 100-203, § 5011(h)(1)(G), amended subpar. (H) identically, substituting “the State of Nevada” for “the State in which such site is located, or under section 10138(b)(3)(B) of this title by the affected Indian tribe where such site is located, as the case may be”.

Subsec. (a)(2). Pub. L. 100-202 and Pub. L. 100-203, § 5011(h)(2), amended subsec. (a) identically, adding par. (2) and striking out former par. (2) which required submission of recommendation of one site for repository not later than Mar. 31, 1987, and recommendation of second site not later than Mar. 31, 1990, and permitted subsequent recommendations for other sites and extension of deadlines.

Subsec. (a)(3), (4). Pub. L. 100-202 and Pub. L. 100-203, § 5011(h)(2), (3), amended subsec. (a) identically, redesignating par. (4) as (3), in subpar. (A), substituting “the Yucca Mountain site” for “any site under this subsection” and “statement” for “report”, and striking out former par. (3) which read as follows: “If approval of any such site recommendation does not take effect as a result of a disapproval by the Governor or legislature of a State under section 10136 of this title or the governing body of an affected Indian tribe under section 10138 of this title, the President shall submit to the Congress, not later than 1 year after the disapproval of such recommendation, a recommendation of another site for the first or subsequent repository.”

Subsec. (b). Pub. L. 100-202 and Pub. L. 100-203, § 5011(i), amended subsec. (b) identically, substituting “the Yucca Mountain site” for “a site for a repository” and “State of Nevada” for “State in which such site is located, or the governing body of the affected Indian tribe where such site is located, as the case may be.”

Subsec. (d). Pub. L. 100-202 and Pub. L. 100-203, § 5011(j), amended subsec. (d) identically, substituting “than the expiration” for “than— (1) January 1, 1989, for the first such application, and January 1, 1992 for the second such application; or (2) the expiration” and “subsection (e)(2) of this section” for “subsection (e)(2) of this section; whichever occurs later”.

Subsec. (e)(1). Pub. L. 100-202 and Pub. L. 100-203, § 5011(k), amended par. (1) identically, substituting “operation of the repository” for “operation of the repository involved”.

Subsec. (f). Pub. L. 100-202 and Pub. L. 100-203, § 5011(l), generally amended subsec. (f) identically, substituting provisions consisting of pars. (1) to (6) for former provisions consisting of single unnumbered par.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103-7 (in which a report required under subsec. (c) of this section is listed as the 17th item on page 186), see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

VIABILITY ASSESSMENT OF YUCCA MOUNTAIN SITE

Pub. L. 104-206, title III, Sept. 30, 1996, 110 Stat. 2995, provided in part: “That no later than September 30, 1998, the Secretary shall provide to the President and to the Congress a viability assessment of the Yucca Mountain site. The viability assessment shall include:

“(1) the preliminary design concept for the critical elements for the repository and waste package;

“(2) a total system performance assessment, based upon the design concept and the scientific data and analysis available by September 30, 1998, describing the probable behavior of the repository in the Yucca Mountain geological setting relative to the overall system performance standards;

“(3) a plan and cost estimate for the remaining work required to complete a license application; and

“(4) an estimate of the costs to construct and operate the repository in accordance with the design concept.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10135, 10136, 10138, 10142, 10165 of this title.

§ 10135. Review of repository site selection

(a) “Resolution of repository siting approval” defined

For purposes of this section, the term “resolution of repository siting approval” means a joint resolution of the Congress, the matter after the resolving clause of which is as follows: “That there hereby is approved the site at for a repository, with respect to which a notice of disapproval was submitted by on”. The first blank space in such resolution shall be filled with the name of the geographic location of the proposed site of the repository to which such resolution pertains; the second blank space in such resolution shall be filled with the designation of the State Governor and legislature or Indian tribe governing body submitting the notice of disapproval to which such resolution pertains; and the last blank space in such resolution shall be filled with the date of such submission.

(b) State or Indian tribe petitions

The designation of a site as suitable for application for a construction authorization for a repository shall be effective at the end of the 60-day period beginning on the date that the President recommends such site to the Congress under section 10134 of this title, unless the Governor and legislature of the State in which such site is located, or the governing body of an Indian tribe on whose reservation such site is located, as the case may be, has submitted to the Congress a notice of disapproval under section 10136 or 10138 of this title. If any such notice of disapproval has been submitted, the designation of such site shall not be effective except as provided under subsection (c) of this section.

(c) Congressional review of petitions

If any notice of disapproval of a repository site designation has been submitted to the Congress under section 10136 or 10138 of this title after a recommendation for approval of such site is made by the President under section 10134 of this title, such site shall be disapproved unless, during the first period of 90 calendar days of continuous session of the Congress after the date of the receipt by the Congress of such notice of disapproval, the Congress passes a resolution of repository siting approval in accordance with this subsection approving such site, and such resolution thereafter becomes law.

(d) Procedures applicable to Senate

(1) The provisions of this subsection are enacted by the Congress—

(A) as an exercise of the rulemaking power of the Senate, and as such they are deemed a part of the rules of the Senate, but applicable only with respect to the procedure to be followed in the Senate in the case of resolutions

of repository siting approval, and such provisions supersede other rules of the Senate only to the extent that they are inconsistent with such other rules; and

(B) with full recognition of the constitutional right of the Senate to change the rules (so far as relating to the procedure of the Senate) at any time, in the same manner and to the same extent as in the case of any other rule of the Senate.

(2)(A) Not later than the first day of session following the day on which any notice of disapproval of a repository site selection is submitted to the Congress under section 10136 or 10138 of this title, a resolution of repository siting approval shall be introduced (by request) in the Senate by the chairman of the committee to which such notice of disapproval is referred, or by a Member or Members of the Senate designated by such chairman.

(B) Upon introduction, a resolution of repository siting approval shall be referred to the appropriate committee or committees of the Senate by the President of the Senate, and all such resolutions with respect to the same repository site shall be referred to the same committee or committees. Upon the expiration of 60 calendar days of continuous session after the introduction of the first resolution of repository siting approval with respect to any site, each committee to which such resolution was referred shall make its recommendations to the Senate.

(3) If any committee to which is referred a resolution of siting approval introduced under paragraph (2)(A), or, in the absence of such a resolution, any other resolution of siting approval introduced with respect to the site involved, has not reported such resolution at the end of 60 days of continuous session of Congress after introduction of such resolution, such committee shall be deemed to be discharged from further consideration of such resolution, and such resolution shall be placed on the appropriate calendar of the Senate.

(4)(A) When each committee to which a resolution of siting approval has been referred has reported, or has been deemed to be discharged from further consideration of, a resolution described in paragraph (3), it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) for any Member of the Senate to move to proceed to the consideration of such resolution. Such motion shall be highly privileged and shall not be debatable. Such motion shall not be subject to amendment, to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which such motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of such resolution is agreed to, such resolution shall remain the unfinished business of the Senate until disposed of.

(B) Debate on a resolution of siting approval, and on all debatable motions and appeals in connection with such resolution, shall be limited to not more than 10 hours, which shall be divided equally between Members favoring and Members opposing such resolution. A motion further to limit debate shall be in order and shall not be debatable. Such motion shall not be subject to

amendment, to a motion to postpone, or to a motion to proceed to the consideration of other business, and a motion to recommit such resolution shall not be in order. A motion to reconsider the vote by which such resolution is agreed to or disagreed to shall not be in order.

(C) Immediately following the conclusion of the debate on a resolution of siting approval, and a single quorum call at the conclusion of such debate if requested in accordance with the rules of the Senate, the vote on final approval of such resolution shall occur.

(D) Appeals from the decisions of the Chair relating to the application of the rules of the Senate to the procedure relating to a resolution of siting approval shall be decided without debate.

(5) If the Senate receives from the House a resolution of repository siting approval with respect to any site, then the following procedure shall apply:

(A) The resolution of the House with respect to such site shall not be referred to a committee.

(B) With respect to the resolution of the Senate with respect to such site—

(i) the procedure with respect to that or other resolutions of the Senate with respect to such site shall be the same as if no resolution from the House with respect to such site had been received; but

(ii) on any vote on final passage of a resolution of the Senate with respect to such site, a resolution from the House with respect to such site where the text is identical shall be automatically substituted for the resolution of the Senate.

(e) Procedures applicable to House of Representatives

(1) The provisions of this section are enacted by the Congress—

(A) as an exercise of the rulemaking power of the House of Representatives, and as such they are deemed a part of the rules of the House, but applicable only with respect to the procedure to be followed in the House in the case of resolutions of repository siting approval, and such provisions supersede other rules of the House only to the extent that they are inconsistent with such other rules; and

(B) with full recognition of the constitutional right of the House to change the rules (so far as relating to the procedure of the House) at any time, in the same manner and to the same extent as in the case of any other rule of the House.

(2) Resolutions of repository siting approval shall upon introduction, be immediately referred by the Speaker of the House to the appropriate committee or committees of the House. Any such resolution received from the Senate shall be held at the Speaker's table.

(3) Upon the expiration of 60 days of continuous session after the introduction of the first resolution of repository siting approval with respect to any site, each committee to which such resolution was referred shall be discharged from further consideration of such resolution, and such resolution shall be referred to the appropriate calendar, unless such resolution or an identical resolution was previously reported by each committee to which it was referred.

(4) It shall be in order for the Speaker to recognize a Member favoring a resolution to call up a resolution of repository siting approval after it has been on the appropriate calendar for 5 legislative days. When any such resolution is called up, the House shall proceed to its immediate consideration and the Speaker shall recognize the Member calling up such resolution and a Member opposed to such resolution for 2 hours of debate in the House, to be equally divided and controlled by such Members. When such time has expired, the previous question shall be considered as ordered on the resolution to adoption without intervening motion. No amendment to any such resolution shall be in order, nor shall it be in order to move to reconsider the vote by which such resolution is agreed to or disagreed to.

(5) If the House receives from the Senate a resolution of repository siting approval with respect to any site, then the following procedure shall apply:

(A) The resolution of the Senate with respect to such site shall not be referred to a committee.

(B) With respect to the resolution of the House with respect to such site—

(i) the procedure with respect to that or other resolutions of the House with respect to such site shall be the same as if no resolution from the Senate with respect to such site had been received; but

(ii) on any vote on final passage of a resolution of the House with respect to such site, a resolution from the Senate with respect to such site where the text is identical shall be automatically substituted for the resolution of the House.

(f) Computation of days

For purposes of this section—

(1) continuity of session of Congress is broken only by an adjournment sine die; and

(2) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 90-day period referred to in subsection (c) of this section and the 60-day period referred to in subsections (d) and (e) of this section.

(g) Information provided to Congress

In considering any notice of disapproval submitted to the Congress under section 10136 or 10138 of this title, the Congress may obtain any comments of the Commission with respect to such notice of disapproval. The provision of such comments by the Commission shall not be construed as binding the Commission with respect to any licensing or authorization action concerning the repository involved.

(Pub. L. 97-425, title I, § 115, Jan. 7, 1983, 96 Stat. 2217.)

YUCCA MOUNTAIN, NEVADA REPOSITORY SITE

Pub. L. 107-200, July 23, 2002, 116 Stat. 735, provided: "That there hereby is approved the site at Yucca Mountain, Nevada, for a repository, with respect to which a notice of disapproval was submitted by the Governor of the State of Nevada on April 8, 2002."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10121, 10134, 10136, 10138, 10155, 10161, 10166, 10168, 10225 of this title.

§ 10136. Participation of States

(a) Notification of States and affected tribes

The Secretary shall identify the States with one or more potentially acceptable sites for a repository within 90 days after January 7, 1983. Within 90 days of such identification, the Secretary shall notify the Governor, the State legislature, and the tribal council of any affected Indian tribe in any State of the potentially acceptable sites within such State. For the purposes of this subchapter, the term "potentially acceptable site" means any site at which, after geologic studies and field mapping but before detailed geologic data gathering, the Department undertakes preliminary drilling and geophysical testing for the definition of site location.

(b) State participation in repository siting decisions

(1) Unless otherwise provided by State law, the Governor or legislature of each State shall have authority to submit a notice of disapproval to the Congress under paragraph (2). In any case in which State law provides for submission of any such notice of disapproval by any other person or entity, any reference in this part to the Governor or legislature of such State shall be considered to refer instead to such other person or entity.

(2) Upon the submission by the President to the Congress of a recommendation of a site for a repository, the Governor or legislature of the State in which such site is located may disapprove the site designation and submit to the Congress a notice of disapproval. Such Governor or legislature may submit such a notice of disapproval to the Congress not later than the 60 days after the date that the President recommends such site to the Congress under section 10134 of this title. A notice of disapproval shall be considered to be submitted to the Congress on the date of the transmittal of such notice of disapproval to the Speaker of the House and the President pro tempore of the Senate. Such notice of disapproval shall be accompanied by a statement of reasons explaining why such Governor or legislature disapproved the recommended repository site involved.

(3) The authority of the Governor or legislature of each State under this subsection shall not be applicable with respect to any site located on a reservation.

(c) Financial assistance

(1)(A) The Secretary shall make grants to the State of Nevada and any affected unit of local government for the purpose of participating in activities required by this section and section 10137 of this title or authorized by written agreement entered into pursuant to section 10137(c) of this title. Any salary or travel expense that would ordinarily be incurred by such State or affected unit of local government, may not be considered eligible for funding under this paragraph.

(B) The Secretary shall make grants to the State of Nevada and any affected unit of local government for purposes of enabling such State or affected unit of local government—

(i) to review activities taken under this part with respect to the Yucca Mountain site for

purposes of determining any potential economic, social, public health and safety, and environmental impacts of a repository on such State, or affected unit of local government and its residents;

(ii) to develop a request for impact assistance under paragraph (2);

(iii) to engage in any monitoring, testing, or evaluation activities with respect to site characterization programs with regard to such site;

(iv) to provide information to Nevada residents regarding any activities of such State, the Secretary, or the Commission with respect to such site; and

(v) to request information from, and make comments and recommendations to, the Secretary regarding any activities taken under this part with respect to such site.

(C) Any salary or travel expense that would ordinarily be incurred by the State of Nevada or any affected unit of local government may not be considered eligible for funding under this paragraph.

(2)(A)(i) The Secretary shall provide financial and technical assistance to the State of Nevada, and any affected unit of local government requesting such assistance.

(ii) Such assistance shall be designed to mitigate the impact on such State or affected unit of local government of the development of such repository and the characterization of such site.

(iii) Such assistance to such State or affected unit of local government of such State shall commence upon the initiation of site characterization activities.

(B) The State of Nevada and any affected unit of local government may request assistance under this subsection by preparing and submitting to the Secretary a report on the economic, social, public health and safety, and environmental impacts that are likely to result from site characterization activities at the Yucca Mountain site. Such report shall be submitted to the Secretary after the Secretary has submitted to the State a general plan for site characterization activities under section 10133(b) of this title.

(C) As soon as practicable after the Secretary has submitted such site characterization plan, the Secretary shall seek to enter into a binding agreement with the State of Nevada setting forth—

(i) the amount of assistance to be provided under this subsection to such State or affected unit of local government; and

(ii) the procedures to be followed in providing such assistance.

(3)(A) In addition to financial assistance provided under paragraphs (1) and (2), the Secretary shall grant to the State of Nevada and any affected unit of local government an amount each fiscal year equal to the amount such State or affected unit of local government, respectively, would receive if authorized to tax site characterization activities at such site, and the development and operation of such repository, as such State or affected unit of local government taxes the non-Federal real property and industrial activities occurring within such State or affected unit of local government.

(B) Such grants shall continue until such time as all such activities, development, and operation are terminated at such site.

(4)(A) The State of Nevada or any affected unit of local government may not receive any grant under paragraph (1) after the expiration of the 1-year period following—

(i) the date on which the Secretary notifies the Governor and legislature of the State of Nevada of the termination of site characterization activities at the site in such State;

(ii) the date on which the Yucca Mountain site is disapproved under section 10135 of this title; or

(iii) the date on which the Commission disapproves an application for a construction authorization for a repository at such site;

whichever occurs first.

(B) The State of Nevada or any affected unit of local government may not receive any further assistance under paragraph (2) with respect to a site if repository construction activities or site characterization activities at such site are terminated by the Secretary or if such activities are permanently enjoined by any court.

(C) At the end of the 2-year period beginning on the effective date of any license to receive and possess for a repository in a State, no Federal funds, shall be made available to such State or affected unit of local government under paragraph (1) or (2), except for—

(i) such funds as may be necessary to support activities related to any other repository located in, or proposed to be located in, such State, and for which a license to receive and possess has not been in effect for more than 1 year;

(ii) such funds as may be necessary to support State activities pursuant to agreements or contracts for impact assistance entered into, under paragraph (2), by such State with the Secretary during such 2-year period; and

(iii) such funds as may be provided under an agreement entered into under subchapter IV of this chapter.

(5) Financial assistance authorized in this subsection shall be made out of amounts held in the Waste Fund.

(6) No State, other than the State of Nevada, may receive financial assistance under this subsection after December 22, 1987.

(d) Additional notification and consultation

Whenever the Secretary is required under any provision of this chapter to notify or consult with the governing body of an affected Indian tribe where a site is located, the Secretary shall also notify or consult with, as the case may be, the Governor of the State in which such reservation is located.

(Pub. L. 97-425, title I, §116, Jan. 7, 1983, 96 Stat. 2220; Pub. L. 100-202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5032(a), Dec. 22, 1987, 101 Stat. 1330-241.)

AMENDMENTS

1987—Subsec. (c). Pub. L. 100-202 and Pub. L. 100-203 generally amended subsec. (c) identically, substituting provisions consisting of pars. (1) to (6) for former provisions consisting of pars. (1) to (5).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10121, 10134, 10135, 10137, 10138, 10161, 10166, 10169, 10173a, 10222, 10243 of this title.

§ 10137. Consultation with States and affected Indian tribes

(a) Provision of information

(1) The Secretary, the Commission, and other agencies involved in the construction, operation, or regulation of any aspect of a repository in a State shall provide to the Governor and legislature of such State, and to the governing body of any affected Indian tribe, timely and complete information regarding determinations or plans made with respect to the site characterization siting, development, design, licensing, construction, operation, regulation, or decommissioning of such repository.

(2) Upon written request for such information by the Governor or legislature of such State, or by the governing body of any affected Indian tribe, as the case may be, the Secretary shall provide a written response to such request within 30 days of the receipt of such request. Such response shall provide the information requested or, in the alternative, the reasons why the information cannot be so provided. If the Secretary fails to so respond within such 30 days, the Governor or legislature of such State, or the governing body of any affected Indian tribe, as the case may be, may transmit a formal written objection to such failure to respond to the President. If the President or Secretary fails to respond to such written request within 30 days of the receipt by the President of such formal written objection, the Secretary shall immediately suspend all activities in such State authorized by this part, and shall not renew such activities until the Governor or legislature of such State, or the governing body of any affected Indian tribe, as the case may be, has received the written response to such written request required by this subsection.

(b) Consultation and cooperation

In performing any study of an area within a State for the purpose of determining the suitability of such area for a repository pursuant to section 10132(c) of this title, and in subsequently developing and loading¹ any repository within such State, the Secretary shall consult and cooperate with the Governor and legislature of such State and the governing body of any affected Indian tribe in an effort to resolve the concerns of such State and any affected Indian tribe regarding the public health and safety, environmental, and economic impacts of any such repository. In carrying out his duties under this part, the Secretary shall take such concerns into account to the maximum extent feasible and as specified in written agreements entered into under subsection (c) of this section.

(c) Written agreement

Not later than 60 days after (1) the approval of a site for site characterization for such a repository under section 10132(c) of this title, or (2) the written request of the State or Indian tribe in

any affected State notified under section 10136(a) of this title to the Secretary, whichever² first occurs, the Secretary shall seek to enter into a binding written agreement, and shall begin negotiations, with such State and, where appropriate, to enter into a separate binding agreement with the governing body of any affected Indian tribe, setting forth (but not limited to) the procedures under which the requirements of subsections (a) and (b) of this section, and the provisions of such written agreement, shall be carried out. Any such written agreement shall not affect the authority of the Commission under existing law. Each such written agreement shall, to the maximum extent feasible, be completed not later than 6 months after such notification. Such written agreement shall specify procedures—

(1) by which such State or governing body of an affected Indian tribe, as the case may be, may study, determine, comment on, and make recommendations with regard to the possible public health and safety, environmental, social, and economic impacts of any such repository;

(2) by which the Secretary shall consider and respond to comments and recommendations made by such State or governing body of an affected Indian tribe, including the period in which the Secretary shall so respond;

(3) by which the Secretary and such State or governing body of an affected Indian tribe may review or modify the agreement periodically;

(4) by which such State or governing body of an affected Indian tribe is to submit an impact report and request for impact assistance under section 10136(c) of this title or section 10138(b) of this title, as the case may be;

(5) by which the Secretary shall assist such State, and the units of general local government in the vicinity of the repository site, in resolving the offsite concerns of such State and units of general local government, including, but not limited to, questions of State liability arising from accidents, necessary road upgrading and access to the site, ongoing emergency preparedness and emergency response, monitoring of transportation of high-level radioactive waste and spent nuclear fuel through such State, conduct of baseline health studies of inhabitants in neighboring communities near the repository site and reasonable periodic monitoring thereafter, and monitoring of the repository site upon any decommissioning and decontamination;

(6) by which the Secretary shall consult and cooperate with such State on a regular, ongoing basis and provide for an orderly process and timely schedule for State review and evaluation, including identification in the agreement of key events, milestones, and decision points in the activities of the Secretary at the potential repository site;

(7) by which the Secretary shall notify such State prior to the transportation of any high-level radioactive waste and spent nuclear fuel into such State for disposal at the repository site;

(8) by which such State may conduct reasonable independent monitoring and testing of ac-

¹ So in original. Probably should be "locating".

² So in original. The comma probably should not appear.

tivities on the repository site, except that such monitoring and testing shall not unreasonably interfere with or delay onsite activities;

(9) for sharing, in accordance with applicable law, of all technical and licensing information, the utilization of available expertise, the facilitating of permit procedures, joint project review, and the formulation of joint surveillance and monitoring arrangements to carry out applicable Federal and State laws;

(10) for public notification of the procedures specified under the preceding paragraphs; and

(11) for resolving objections of a State and affected Indian tribes at any stage of the planning, siting, development, construction, operation, or closure of such a facility within such State through negotiation, arbitration, or other appropriate mechanisms.

(d) On-site representative

The Secretary shall offer to any State, Indian tribe or unit of local government within whose jurisdiction a site for a repository or monitored retrievable storage facility is located under this subchapter an opportunity to designate a representative to conduct on-site oversight activities at such site. Reasonable expenses of such representatives shall be paid out of the Waste Fund.

(Pub. L. 97-425, title I, § 117, Jan. 7, 1983, 96 Stat. 2222; Pub. L. 100-202, § 101(d) [title III, § 300], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, § 5011(m), Dec. 22, 1987, 101 Stat. 1330-231; Pub. L. 104-66, title I, § 1051(i), Dec. 21, 1995, 109 Stat. 716.)

AMENDMENTS

1995—Subsec. (c). Pub. L. 104-66 struck out after third sentence “If such written agreement is not completed within such period, the Secretary shall report to the Congress in writing within 30 days on the status of negotiations to develop such agreement and the reasons why such agreement has not been completed. Prior to submission of such report to the Congress, the Secretary shall transmit such report to the Governor of such State or the governing body of such affected Indian tribe, as the case may be, for their review and comments. Such comments shall be included in such report prior to submission to the Congress.”

1987—Subsec. (d). Pub. L. 100-202 and Pub. L. 100-203 amended section identically, adding subsec. (d).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10121, 10136, 10138, 10161, 10243 of this title.

§ 10138. Participation of Indian tribes

(a) Participation of Indian tribes in repository siting decisions

Upon the submission by the President to the Congress of a recommendation of a site for a repository located on the reservation of an affected Indian tribe, the governing body of such Indian tribe may disapprove the site designation and submit to the Congress a notice of disapproval. The governing body of such Indian tribe may submit such a notice of disapproval to the Congress not later than the 60 days after the date that the President recommends such site to the Congress under section 10134 of this title. A notice of disapproval shall be considered to be

submitted to the Congress on the date of the transmittal of such notice of disapproval to the Speaker of the House and the President pro tempore of the Senate. Such notice of disapproval shall be accompanied by a statement of reasons explaining why the governing body of such Indian tribe disapproved the recommended repository site involved.

(b) Financial assistance

(1) The Secretary shall make grants to each affected tribe notified under section 10136(a) of this title for the purpose of participating in activities required by section 10137 of this title or authorized by written agreement entered into pursuant to section 10137(c) of this title. Any salary or travel expense that would ordinarily be incurred by such tribe, may not be considered eligible for funding under this paragraph.

(2)(A) The Secretary shall make grants to each affected Indian tribe where a candidate site for a repository is approved under section 10132(c) of this title. Such grants may be made to each such Indian tribe only for purposes of enabling such Indian tribe—

(i) to review activities taken under this part with respect to such site for purposes of determining any potential economic, social, public health and safety, and environmental impacts of such repository on the reservation and its residents;

(ii) to develop a request for impact assistance under paragraph (2);

(iii) to engage in any monitoring, testing, or evaluation activities with respect to site characterization programs with regard to such site;

(iv) to provide information to the residents of its reservation regarding any activities of such Indian tribe, the Secretary, or the Commission with respect to such site; and

(v) to request information from, and make comments and recommendations to, the Secretary regarding any activities taken under this part with respect to such site.

(B) The amount of funds provided to any affected Indian tribe under this paragraph in any fiscal year may not exceed 100 percent of the costs incurred by such Indian tribe with respect to the activities described in clauses (i) through (v) of subparagraph (A). Any salary or travel expense that would ordinarily be incurred by such Indian tribe may not be considered eligible for funding under this paragraph.

(3)(A) The Secretary shall provide financial and technical assistance to any affected Indian tribe requesting such assistance and where there is a site with respect to which the Commission has authorized construction of a repository. Such assistance shall be designed to mitigate the impact on such Indian tribe of the development of such repository. Such assistance to such Indian tribe shall commence within 6 months following the granting by the Commission of a construction authorization for such repository and following the initiation of construction activities at such site.

(B) Any affected Indian tribe desiring assistance under this paragraph shall prepare and submit to the Secretary a report on any economic, social, public health and safety, and environ-

mental impacts that are likely as a result of the development of a repository at a site on the reservation of such Indian tribe. Such report shall be submitted to the Secretary following the completion of site characterization activities at such site and before the recommendation of such site to the President by the Secretary for application for a construction authorization for a repository. As soon as practicable following the granting of a construction authorization for such repository, the Secretary shall seek to enter into a binding agreement with the Indian tribe involved setting forth the amount of assistance to be provided to such Indian tribe under this paragraph and the procedures to be followed in providing such assistance.

(4) The Secretary shall grant to each affected Indian tribe where a site for a repository is approved under section 10132(c) of this title an amount each fiscal year equal to the amount such Indian tribe would receive were it authorized to tax site characterization activities at such site, and the development and operation of such repository, as such Indian tribe taxes the other commercial activities occurring on such reservation. Such grants shall continue until such time as all such activities, development, and operation are terminated at such site.

(5)¹ An affected Indian tribe may not receive any grant under paragraph (1) after the expiration of the 1-year period following—

- (i) the date on which the Secretary notifies such Indian tribe of the termination of site characterization activities at the candidate site involved on the reservation of such Indian tribe;
- (ii) the date on which such site is disapproved under section 10135 of this title;
- (iii) the date on which the Commission disapproves an application for a construction authorization for a repository at such site;²
- (iv) December 22, 1987;

whichever occurs first, unless there is another candidate site on the reservation of such Indian tribe that is approved under section 10132(c) of this title and with respect to which the actions described in clauses (i), (ii), and (iii) have not been taken.

(B) An affected Indian tribe may not receive any further assistance under paragraph (2) with respect to a site if repository construction activities at such site are terminated by the Secretary or if such activities are permanently enjoined by any court.

(C) At the end of the 2-year period beginning on the effective date of any license to receive and possess for a repository at a site on the reservation of an affected Indian tribe, no Federal funds shall be made available under paragraph (1) or (2) to such Indian tribe, except for—

- (i) such funds as may be necessary to support activities of such Indian tribe related to any other repository where a license to receive and possess has not been in effect for more than 1 year; and
- (ii) such funds as may be necessary to support activities of such Indian tribe pursuant to agreements or contracts for impact assistance

entered into, under paragraph (2), by such Indian tribe with the Secretary during such 2-year period.

(6) Financial assistance authorized in this subsection shall be made out of amounts held in the Nuclear Waste Fund established in section 10222 of this title.

(Pub. L. 97-425, title I, §118, Jan. 7, 1983, 96 Stat. 2225; Pub. L. 100-202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5033, Dec. 22, 1987, 101 Stat. 1330-243.)

AMENDMENTS

1987—Subsec. (b)(5)(iv). Pub. L. 100-202 and Pub. L. 100-203 amended par. (5) identically, adding cl. (iv).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10121, 10135, 10137, 10161, 10166, 10169, 10173a, 10222, 10243 of this title.

§ 10139. Judicial review of agency actions

(a) Jurisdiction of United States courts of appeals

(1) Except for review in the Supreme Court of the United States, the United States courts of appeals shall have original and exclusive jurisdiction over any civil action—

(A) for review of any final decision or action of the Secretary, the President, or the Commission under this part;

(B) alleging the failure of the Secretary, the President, or the Commission to make any decision, or take any action, required under this part;

(C) challenging the constitutionality of any decision made, or action taken, under any provision of this part;

(D) for review of any environmental impact statement prepared pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) with respect to any action under this part, or as required under section 10155(c)(1) of this title, or alleging a failure to prepare such statement with respect to any such action;

(E) for review of any environmental assessment prepared under section 10132(b)(1) or 10155(c)(2) of this title; or

(F) for review of any research and development activity under subchapter II of this chapter.

(2) The venue of any proceeding under this section shall be in the judicial circuit in which the petitioner involved resides or has its principal office, or in the United States Court of Appeals for the District of Columbia.

(c)¹ Deadline for commencing action

A civil action for judicial review described under subsection (a)(1) of this section may be brought not later than the 180th day after the date of the decision or action or failure to act involved, as the case may be, except that if a party shows that he did not know of the decision or action complained of (or of the failure to act), and that a reasonable person acting under the circumstances would not have known, such

¹ So in original. Probably should be designated "(5)(A)".

² So in original. Probably should be followed by "or".

¹ So in original. No subsec. (b) has been enacted.

party may bring a civil action not later than the 180th day after the date such party acquired actual or constructive knowledge of such decision, action, or failure to act.

(Pub. L. 97-425, title I, § 119, Jan. 7, 1983, 96 Stat. 2227.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (a)(1)(D), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10132, 10145, 10155, 10201, 10244 of this title.

§ 10140. Expedited authorizations

(a) Issuance of authorizations

(1) To the extent that the taking of any action related to the site characterization of a site or the construction or initial operation of a repository under this part requires a certificate, right-of-way, permit, lease, or other authorization from a Federal agency or officer, such agency or officer shall issue or grant any such authorization at the earliest practicable date, to the extent permitted by the applicable provisions of law administered by such agency or officer. All actions of a Federal agency or officer with respect to consideration of applications or requests for the issuance or grant of any such authorization shall be expedited, and any such application or request shall take precedence over any similar applications or requests not related to such repositories.

(2) The provisions of paragraph (1) shall not apply to any certificate, right-of-way, permit, lease, or other authorization issued or granted by, or requested from, the Commission.

(b) Terms of authorizations

Any authorization issued or granted pursuant to subsection (a) of this section shall include such terms and conditions as may be required by law, and may include terms and conditions permitted by law.

(Pub. L. 97-425, title I, § 120, Jan. 7, 1983, 96 Stat. 2227.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10145 of this title.

§ 10141. Certain standards and criteria

(a) Environmental Protection Agency standards

Not later than 1 year after January 7, 1983, the Administrator, pursuant to authority under other provisions of law, shall, by rule, promulgate generally applicable standards for protection of the general environment from offsite releases from radioactive material in repositories.

(b) Commission requirements and criteria

(1)(A) Not later than January 1, 1984, the Commission, pursuant to authority under other provisions of law, shall, by rule, promulgate technical requirements and criteria that it will

apply, under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) and the Energy Reorganization Act of 1974 (42 U.S.C. 5801 et seq.), in approving or disapproving—

(i) applications for authorization to construct repositories;

(ii) applications for licenses to receive and possess spent nuclear fuel and high-level radioactive waste in such repositories; and

(iii) applications for authorization for closure and decommissioning of such repositories.

(B) Such criteria shall provide for the use of a system of multiple barriers in the design of the repository and shall include such restrictions on the retrievability of the solidified high-level radioactive waste and spent fuel emplaced in the repository as the Commission deems appropriate.

(C) Such requirements and criteria shall not be inconsistent with any comparable standards promulgated by the Administrator under subsection (a) of this section.

(2) For purposes of this chapter, nothing in this section shall be construed to prohibit the Commission from promulgating requirements and criteria under paragraph (1) before the Administrator promulgates standards under subsection (a) of this section. If the Administrator promulgates standards under subsection (a) of this section after requirements and criteria are promulgated by the Commission under paragraph (1), such requirements and criteria shall be revised by the Commission if necessary to comply with paragraph (1)(C).

(c) Environmental impact statement

The promulgation of standards or criteria in accordance with the provisions of this section shall not require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), or to require any environmental review under subparagraph (E) or (F) of section 102(2) of such Act.

(Pub. L. 97-425, title I, § 121, Jan. 7, 1983, 96 Stat. 2228.)

REFERENCES IN TEXT

The Atomic Energy Act of 1954, referred to in subsec. (b)(1)(A), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§ 2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

The Energy Reorganization Act of 1974, referred to in subsec. (b)(1)(A), is Pub. L. 93-438, Oct. 11, 1974, 88 Stat. 1233, as amended, which is classified principally to chapter 73 (§ 5801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5801 of this title and Tables.

NUCLEAR WASTE STORAGE AND DISPOSAL AT YUCCA MOUNTAIN SITE

Pub. L. 102-486, title VIII, § 801, Oct. 24, 1992, 106 Stat. 2921, provided that:

“(a) ENVIRONMENTAL PROTECTION AGENCY STANDARDS.—

“(1) PROMULGATION.—Notwithstanding the provisions of section 121(a) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10141(a)), section 161 b. of the Atomic Energy Act of 1954 (42 U.S.C. 2201(b)), and any

other authority of the Administrator of the Environmental Protection Agency to set generally applicable standards for the Yucca Mountain site, the Administrator shall, based upon and consistent with the findings and recommendations of the National Academy of Sciences, promulgate, by rule, public health and safety standards for protection of the public from releases from radioactive materials stored or disposed of in the repository at the Yucca Mountain site. Such standards shall prescribe the maximum annual effective dose equivalent to individual members of the public from releases to the accessible environment from radioactive materials stored or disposed of in the repository. The standards shall be promulgated not later than 1 year after the Administrator receives the findings and recommendations of the National Academy of Sciences under paragraph (2) and shall be the only such standards applicable to the Yucca Mountain site.

“(2) STUDY BY NATIONAL ACADEMY OF SCIENCES.— Within 90 days after the date of the enactment of this Act [Oct. 24, 1992], the Administrator shall contract with the National Academy of Sciences to conduct a study to provide, by not later than December 31, 1993, findings and recommendations on reasonable standards for protection of the public health and safety, including—

“(A) whether a health-based standard based upon doses to individual members of the public from releases to the accessible environment (as that term is defined in the regulations contained in subpart B of part 191 of title 40, Code of Federal Regulations, as in effect on November 18, 1985) will provide a reasonable standard for protection of the health and safety of the general public;

“(B) whether it is reasonable to assume that a system for post-closure oversight of the repository can be developed, based upon active institutional controls, that will prevent an unreasonable risk of breaching the repository’s engineered or geologic barriers or increasing the exposure of individual members of the public to radiation beyond allowable limits; and

“(C) whether it is possible to make scientifically supportable predictions of the probability that the repository’s engineered or geologic barriers will be breached as a result of human intrusion over a period of 10,000 years.

“(3) APPLICABILITY.—The provisions of this section shall apply to the Yucca Mountain site, rather than any other authority of the Administrator to set generally applicable standards for radiation protection.

“(b) NUCLEAR REGULATORY COMMISSION REQUIREMENTS AND CRITERIA.—

“(1) MODIFICATIONS.—Not later than 1 year after the Administrator promulgates standards under subsection (a), the Nuclear Regulatory Commission shall, by rule, modify its technical requirements and criteria under section 121(b) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10141(b)), as necessary, to be consistent with the Administrator’s standards promulgated under subsection (a).

“(2) REQUIRED ASSUMPTIONS.—The Commission’s requirements and criteria shall assume, to the extent consistent with the findings and recommendations of the National Academy of Sciences, that, following repository closure, the inclusion of engineered barriers and the Secretary’s post-closure oversight of the Yucca Mountain site, in accordance with subsection (c), shall be sufficient to—

“(A) prevent any activity at the site that poses an unreasonable risk of breaching the repository’s engineered or geologic barriers; and

“(B) prevent any increase in the exposure of individual members of the public to radiation beyond allowable limits.

“(c) POST-CLOSURE OVERSIGHT.—Following repository closure, the Secretary of Energy shall continue to oversee the Yucca Mountain site to prevent any activity at the site that poses an unreasonable risk of—

“(1) breaching the repository’s engineered or geologic barriers; or

“(2) increasing the exposure of individual members of the public to radiation beyond allowable limits.”

§ 10142. Disposal of spent nuclear fuel

Notwithstanding any other provision of this part, any repository constructed on a site approved under this part shall be designed and constructed to permit the retrieval of any spent nuclear fuel placed in such repository, during an appropriate period of operation of the facility, for any reason pertaining to the public health and safety, or the environment, or for the purpose of permitting the recovery of the economically valuable contents of such spent fuel. The Secretary shall specify the appropriate period of retrievability with respect to any repository at the time of design of such repository, and such aspect of such repository shall be subject to approval or disapproval by the Commission as part of the construction authorization process under subsections (b) through (d) of section 10134 of this title.

(Pub. L. 97–425, title I, § 122, Jan. 7, 1983, 96 Stat. 2228.)

§ 10143. Title to material

Delivery, and acceptance by the Secretary, of any high-level radioactive waste or spent nuclear fuel for a repository constructed under this part shall constitute a transfer to the Secretary of title to such waste or spent fuel.

(Pub. L. 97–425, title I, § 123, Jan. 7, 1983, 96 Stat. 2229.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10222 of this title.

§ 10144. Consideration of effect of acquisition of water rights

The Secretary shall give full consideration to whether the development, construction, and operation of a repository may require any purchase or other acquisition of water rights that will have a significant adverse effect on the present or future development of the area in which such repository is located. The Secretary shall mitigate any such adverse effects to the maximum extent practicable.

(Pub. L. 97–425, title I, § 124, Jan. 7, 1983, 96 Stat. 2229.)

§ 10145. Termination of certain provisions

Sections 10139 and 10140 of this title shall cease to have effect at such time as a repository developed under this part is licensed to receive and possess high-level radioactive waste and spent nuclear fuel.

(Pub. L. 97–425, title I, § 125, Jan. 7, 1983, 96 Stat. 2229.)

PART B—INTERIM STORAGE PROGRAM

§ 10151. Findings and purposes

(a) The Congress finds that—

(1) the persons owning and operating civilian nuclear power reactors have the primary re-

sponsibility for providing interim storage of spent nuclear fuel from such reactors, by maximizing, to the extent practical, the effective use of existing storage facilities at the site of each civilian nuclear power reactor, and by adding new onsite storage capacity in a timely manner where practical;

(2) the Federal Government has the responsibility to encourage and expedite the effective use of existing storage facilities and the addition of needed new storage capacity at the site of each civilian nuclear power reactor; and

(3) the Federal Government has the responsibility to provide, in accordance with the provisions of this part, not more than 1,900 metric tons of capacity for interim storage of spent nuclear fuel for civilian nuclear power reactors that cannot reasonably provide adequate storage capacity at the sites of such reactors when needed to assure the continued, orderly operation of such reactors.

(b) The purposes of this part are—

(1) to provide for the utilization of available spent nuclear fuel pools at the site of each civilian nuclear power reactor to the extent practical and the addition of new spent nuclear fuel storage capacity where practical at the site of such reactor; and

(2) to provide, in accordance with the provisions of this part, for the establishment of a federally owned and operated system for the interim storage of spent nuclear fuel at one or more facilities owned by the Federal Government with not more than 1,900 metric tons of capacity to prevent disruptions in the orderly operation of any civilian nuclear power reactor that cannot reasonably provide adequate spent nuclear fuel storage capacity at the site of such reactor when needed.

(Pub. L. 97-425, title I, § 131, Jan. 7, 1983, 96 Stat. 2229.)

§ 10152. Available capacity for interim storage of spent nuclear fuel

The Secretary, the Commission, and other authorized Federal officials shall each take such actions as such official considers necessary to encourage and expedite the effective use of available storage, and necessary additional storage, at the site of each civilian nuclear power reactor consistent with—

- (1) the protection of the public health and safety, and the environment;
- (2) economic considerations;
- (3) continued operation of such reactor;
- (4) any applicable provisions of law; and
- (5) the views of the population surrounding such reactor.

(Pub. L. 97-425, title I, § 132, Jan. 7, 1983, 96 Stat. 2230.)

§ 10153. Interim at-reactor storage

The Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under section 10198(a)¹ of this title for use at the site of any ci-

vilian nuclear power reactor. The establishment of such procedures shall not preclude the licensing, under any applicable procedures or rules of the Commission in effect prior to such establishment, of any technology for the storage of civilian spent nuclear fuel at the site of any civilian nuclear power reactor.

(Pub. L. 97-425, title I, § 133, Jan. 7, 1983, 96 Stat. 2230.)

REFERENCES IN TEXT

Section 10198(a) of this title, referred to in text, was in the original a reference to section 219(a) of Pub. L. 97-425, which is classified to section 10199(a) of this title, and has been translated as section 10198(a) of this title as the probable intent of Congress in view of the subject matter of section 10198(a) which relates to development of technologies for storage of spent nuclear fuel, and the subject matter of section 10199(a) which relates to payments to States and Indian tribes.

§ 10154. Licensing of facility expansions and transshipments

(a) Oral argument

In any Commission hearing under section 189 of the Atomic Energy Act of 1954 (42 U.S.C. 2239) on an application for a license, or for an amendment to an existing license, filed after January 7, 1983, to expand the spent nuclear fuel storage capacity at the site of a civilian nuclear power reactor, through the use of high-density fuel storage racks, fuel rod compaction, the transshipment of spent nuclear fuel to another civilian nuclear power reactor within the same utility system, the construction of additional spent nuclear fuel pool capacity or dry storage capacity, or by other means, the Commission shall, at the request of any party, provide an opportunity for oral argument with respect to any matter which the Commission determines to be in controversy among the parties. The oral argument shall be preceded by such discovery procedures as the rules of the Commission shall provide. The Commission shall require each party, including the Commission staff, to submit in written form, at the time of the oral argument, a summary of the facts, data, and arguments upon which such party proposes to rely that are known at such time to such party. Only facts and data in the form of sworn testimony or written submission may be relied upon by the parties during oral argument. Of the materials that may be submitted by the parties during oral argument, the Commission shall only consider those facts and data that are submitted in the form of sworn testimony or written submission.

(b) Adjudicatory hearing

(1) At the conclusion of any oral argument under subsection (a) of this section, the Commission shall designate any disputed question of fact, together with any remaining questions of law, for resolution in an adjudicatory hearing only if it determines that—

(A) there is a genuine and substantial dispute of fact which can only be resolved with sufficient accuracy by the introduction of evidence in an adjudicatory hearing; and

(B) the decision of the Commission is likely to depend in whole or in part on the resolution of such dispute.

¹ See References in Text note below.

(2) In making a determination under this subsection, the Commission—

(A) shall designate in writing the specific facts that are in genuine and substantial dispute, the reason why the decision of the agency is likely to depend on the resolution of such facts, and the reason why an adjudicatory hearing is likely to resolve the dispute; and

(B) shall not consider—

(i) any issue relating to the design, construction, or operation of any civilian nuclear power reactor already licensed to operate at such site, or any civilian nuclear power reactor for which a construction permit has been granted at such site, unless the Commission determines that any such issue substantially affects the design, construction, or operation of the facility or activity for which such license application, authorization, or amendment is being considered; or

(ii) any siting or design issue fully considered and decided by the Commission in connection with the issuance of a construction permit or operating license for a civilian nuclear power reactor at such site, unless (I) such issue results from any revision of siting or design criteria by the Commission following such decision; and (II) the Commission determines that such issue substantially affects the design, construction, or operation of the facility or activity for which such license application, authorization, or amendment is being considered.

(3) The provisions of paragraph (2)(B) shall apply only with respect to licenses, authorizations, or amendments to licenses or authorizations, applied for under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) before December 31, 2005.

(4) The provisions of this section shall not apply to the first application for a license or license amendment received by the Commission to expand onsite spent fuel storage capacity by the use of a new technology not previously approved for use at any nuclear powerplant by the Commission.

(c) Judicial review

No court shall hold unlawful or set aside a decision of the Commission in any proceeding described in subsection (a) of this section because of a failure by the Commission to use a particular procedure pursuant to this section unless—

(1) an objection to the procedure used was presented to the Commission in a timely fashion or there are extraordinary circumstances that excuse the failure to present a timely objection; and

(2) the court finds that such failure has precluded a fair consideration and informed resolution of a significant issue of the proceeding taken as a whole.

(Pub. L. 97-425, title I, § 134, Jan. 7, 1983, 96 Stat. 2230.)

REFERENCES IN TEXT

The Atomic Energy Act of 1954, referred to in subsection (b)(3), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§2011 et seq.) of this

title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

§ 10155. Storage of spent nuclear fuel

(a) Storage capacity

(1) Subject to section 10107 of this title, the Secretary shall provide, in accordance with paragraph (5), not more than 1,900 metric tons of capacity for the storage of spent nuclear fuel from civilian nuclear power reactors. Such storage capacity shall be provided through any one or more of the following methods, used in any combination determined by the Secretary to be appropriate:

(A) use of available capacity at one or more facilities owned by the Federal Government on January 7, 1983, including the modification and expansion of any such facilities, if the Commission determines that such use will adequately protect the public health and safety, except that such use shall not—

(i) render such facilities subject to licensing under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) or the Energy Reorganization Act of 1974 (42 U.S.C. 5801 et seq.); or

(ii) except as provided in subsection (c) of this section require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), such facility is already being used, or has previously been used, for such storage or for any similar purpose.

(B) acquisition of any modular or mobile spent nuclear fuel storage equipment, including spent nuclear fuel storage casks, and provision of such equipment, to any person generating or holding title to spent nuclear fuel, at the site of any civilian nuclear power reactor operated by such person or at any site owned by the Federal Government on January 7, 1983;

(C) construction of storage capacity at any site of a civilian nuclear power reactor.

(2) Storage capacity authorized by paragraph (1) shall not be provided at any Federal or non-Federal site within which there is a candidate site for a repository. The restriction in the preceding sentence shall only apply until such time as the Secretary decides that such candidate site is no longer a candidate site under consideration for development as a repository.

(3) In selecting methods of providing storage capacity under paragraph (1), the Secretary shall consider the timeliness of the availability of each such method and shall seek to minimize the transportation of spent nuclear fuel, the public health and safety impacts, and the costs of providing such storage capacity.

(4) In providing storage capacity through any method described in paragraph (1), the Secretary shall comply with any applicable requirements for licensing or authorization of such method, except as provided in paragraph (1)(A)(i).

(5) The Secretary shall ensure that storage capacity is made available under paragraph (1) when needed, as determined on the basis of the storage needs specified in contracts entered into under section 10156(a) of this title, and shall accept upon request any spent nuclear fuel as covered under such contracts.

(6) For purposes of paragraph (1)(A), the term “facility” means any building or structure.

(b) Contracts

(1) Subject to the capacity limitation established in subsections (a)(1) and (d) of this section, the Secretary shall offer to enter into, and may enter into, contracts under section 10156(a) of this title with any person generating or owning spent nuclear fuel for purposes of providing storage capacity for such spent fuel under this section only if the Commission determines that—

(A) adequate storage capacity to ensure the continued orderly operation of the civilian nuclear power reactor at which such spent nuclear fuel is generated cannot reasonably be provided by the person owning and operating such reactor at such site, or at the site of any other civilian nuclear power reactor operated by such person, and such capacity cannot be made available in a timely manner through any method described in subparagraph (B); and

(B) such person is diligently pursuing licensed alternatives to the use of Federal storage capacity for the storage of spent nuclear fuel expected to be generated by such person in the future, including—

(i) expansion of storage facilities at the site of any civilian nuclear power reactor operated by such person;

(ii) construction of new or additional storage facilities at the site of any civilian nuclear power reactor operated by such person;

(iii) acquisition of modular or mobile spent nuclear fuel storage equipment, including spent nuclear fuel storage casks, for use at the site of any civilian nuclear power reactor operated by such person; and

(iv) transshipment to another civilian nuclear power reactor owned by such person.

(2) In making the determination described in paragraph (1)(A), the Commission shall ensure maintenance of a full core reserve storage capability at the site of the civilian nuclear power reactor involved unless the Commission determines that maintenance of such capability is not necessary for the continued orderly operation of such reactor.

(3) The Commission shall complete the determinations required in paragraph (1) with respect to any request for storage capacity not later than 6 months after receipt of such request by the Commission.

(c) Environmental review

(1) The provision of 300 or more metric tons of storage capacity at any one Federal site under subsection (a)(1)(A) of this section shall be considered to be a major Federal action requiring preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

(2)(A) The Secretary shall prepare, and make available to the public, an environmental assessment of the probable impacts of any provision of less than 300 metric tons of storage capacity at any one Federal site under subsection (a)(1)(A) of this section that requires the modification or expansion of any facility at the site, and a dis-

ussion of alternative activities that may be undertaken to avoid such impacts. Such environmental assessment shall include—

(i) an estimate of the amount of storage capacity to be made available at such site;

(ii) an evaluation as to whether the facilities to be used at such site are suitable for the provision of such storage capacity;

(iii) a description of activities planned by the Secretary with respect to the modification or expansion of the facilities to be used at such site;

(iv) an evaluation of the effects of the provision of such storage capacity at such site on the public health and safety, and the environment;

(v) a reasonable comparative evaluation of current information with respect to such site and facilities and other sites and facilities available for the provision of such storage capacity;

(vi) a description of any other sites and facilities that have been considered by the Secretary for the provision of such storage capacity; and

(vii) an assessment of the regional and local impacts of providing such storage capacity at such site, including the impacts on transportation.

(B) The issuance of any environmental assessment under this paragraph shall be considered to be a final agency action subject to judicial review in accordance with the provisions of chapter 7 of title 5. Such judicial review shall be limited to the sufficiency of such assessment with respect to the items described in clauses (i) through (vii) of subparagraph (A).

(3) Judicial review of any environmental impact statement or environmental assessment prepared pursuant to this subsection shall be conducted in accordance with the provisions of section 10139 of this title.

(d) Review of sites and State participation

(1) In carrying out the provisions of this part with regard to any interim storage of spent fuel from civilian nuclear power reactors which the Secretary is authorized by this section to provide, the Secretary shall, as soon as practicable, notify, in writing, the Governor and the State legislature of any State and the Tribal Council of any affected Indian tribe in such State in which is located a potentially acceptable site or facility for such interim storage of spent fuel of his intention to investigate that site or facility.

(2) During the course of investigation of such site or facility, the Secretary shall keep the Governor, State legislature, and affected Tribal Council currently informed of the progress of the work, and results of the investigation. At the time of selection by the Secretary of any site or existing facility, but prior to undertaking any site-specific work or alterations, the Secretary shall promptly notify the Governor, the legislature, and any affected Tribal Council in writing of such selection, and subject to the provisions of paragraph (6) of this subsection, shall promptly enter into negotiations with such State and affected Tribal Council to establish a cooperative agreement under which such State and Council shall have the right to par-

ticipate in a process of consultation and cooperation, based on public health and safety and environmental concerns, in all stages of the planning, development, modification, expansion, operation, and closure of storage capacity at a site or facility within such State for the interim storage of spent fuel from civilian nuclear power reactors. Public participation in the negotiation of such an agreement shall be provided for and encouraged by the Secretary, the State, and the affected Tribal Council. The Secretary, in cooperation with the States and Indian tribes, shall develop and publish minimum guidelines for public participation in such negotiations, but the adequacy of such guidelines or any failure to comply with such guidelines shall not be a basis for judicial review.

(3) The cooperative agreement shall include, but need not be limited to, the sharing in accordance with applicable law of all technical and licensing information, the utilization of available expertise, the facilitating of permitting procedures, joint project review, and the formulation of joint surveillance and monitoring arrangements to carry out applicable Federal and State laws. The cooperative agreement also shall include a detailed plan or schedule of milestones, decision points and opportunities for State or eligible Tribal Council review and objection. Such cooperative agreement shall provide procedures for negotiating and resolving objections of the State and affected Tribal Council in any stage of planning, development, modification, expansion, operation, or closure of storage capacity at a site or facility within such State. The terms of any cooperative agreement shall not affect the authority of the Nuclear Regulatory Commission under existing law.

(4) For the purpose of this subsection, "process of consultation and cooperation" means a methodology by which the Secretary (A) keeps the State and eligible Tribal Council fully and currently informed about the aspects of the project related to any potential impact on the public health and safety and environment; (B) solicits, receives, and evaluates concerns and objections of such State and Council with regard to such aspects of the project on an ongoing basis; and (C) works diligently and cooperatively to resolve, through arbitration or other appropriate mechanisms, such concerns and objections. The process of consultation and cooperation shall not include the grant of a right to any State or Tribal Council to exercise an absolute veto of any aspect of the planning, development, modification, expansion, or operation of the project.

(5) The Secretary and the State and affected Tribal Council shall seek to conclude the agreement required by paragraph (2) as soon as practicable, but not later than 180 days following the date of notification of the selection under paragraph (2). The Secretary shall periodically report to the Congress thereafter on the status of the agreements approved under paragraph (3). Any report to the Congress on the status of negotiations of such agreement by the Secretary shall be accompanied by comments solicited by the Secretary from the State and eligible Tribal Council.

(6)(A) Upon deciding to provide an aggregate of 300 or more metric tons of storage capacity

under subsection (a)(1) of this section at any one site, the Secretary shall notify the Governor and legislature of the State where such site is located, or the governing body of the Indian tribe in whose reservation such site is located, as the case may be, of such decision. During the 60-day period following receipt of notification by the Secretary of his decision to provide an aggregate of 300 or more metric tons of storage capacity at any one site, the Governor or legislature of the State in which such site is located, or the governing body of the affected Indian tribe where such site is located, as the case may be, may disapprove the provision of 300 or more metric tons of storage capacity at the site involved and submit to the Congress a notice of such disapproval. A notice of disapproval shall be considered to be submitted to the Congress on the date of the transmittal of such notice of disapproval to the Speaker of the House and the President pro tempore of the Senate. Such notice of disapproval shall be accompanied by a statement of reasons explaining why the provision of such storage capacity at such site was disapproved by such Governor or legislature or the governing body of such Indian tribe.

(B) Unless otherwise provided by State law, the Governor or legislature of each State shall have authority to submit a notice of disapproval to the Congress under subparagraph (A). In any case in which State law provides for submission of any such notice of disapproval by any other person or entity, any reference in this part to the Governor or legislature of such State shall be considered to refer instead to such other person or entity.

(C) The authority of the Governor and legislature of each State under this paragraph shall not be applicable with respect to any site located on a reservation.

(D) If any notice of disapproval is submitted to the Congress under subparagraph (A), the proposed provision of 300 or more metric tons of storage capacity at the site involved shall be disapproved unless, during the first period of 90 calendar days of continuous session of the Congress following the date of the receipt by the Congress of such notice of disapproval, the Congress passes a resolution approving such proposed provision of storage capacity in accordance with the procedures established in this paragraph and subsections (d) through (f) of section 10135 of this title and such resolution thereafter becomes law. For purposes of this paragraph, the term "resolution" means a joint resolution of either House of the Congress, the matter after the resolving clause of which is as follows: "That there hereby is approved the provision of 300 or more metric tons of spent nuclear fuel storage capacity at the site located at _____, with respect to which a notice of disapproval was submitted by _____ on _____." The first blank space in such resolution shall be filled with the geographic location of the site involved; the second blank space in such resolution shall be filled with the designation of the State Governor and legislature or affected Indian tribe governing body submitting the notice of disapproval involved; and the last blank space in such resolution shall be filled with the date of submission of such notice of disapproval.

(E) For purposes of the consideration of any resolution described in subparagraph (D), each reference in subsections (d) and (e) of section 10135 of this title to a resolution of repository siting approval shall be considered to refer to the resolution described in such subparagraph.

(7) As used in this section, the term “affected Tribal Council” means the governing body of any Indian tribe within whose reservation boundaries there is located a potentially acceptable site for interim storage capacity of spent nuclear fuel from civilian nuclear power reactors, or within whose boundaries a site for such capacity is selected by the Secretary, or whose federally defined possessory or usage rights to other lands outside of the reservation’s boundaries arising out of congressionally ratified treaties, as determined by the Secretary of the Interior pursuant to a petition filed with him by the appropriate governmental officials of such tribe, may be substantially and adversely affected by the establishment of any such storage capacity.

(e) Limitations

Any spent nuclear fuel stored under this section shall be removed from the storage site or facility involved as soon as practicable, but in any event not later than 3 years following the date on which a repository or monitored retrievable storage facility developed under this chapter is available for disposal of such spent nuclear fuel.

(f) Report

The Secretary shall annually prepare and submit to the Congress a report on any plans of the Secretary for providing storage capacity under this section. Such report shall include a description of the specific manner of providing such storage selected by the Secretary, if any. The Secretary shall prepare and submit the first such report not later than 1 year after January 7, 1983.

(g) Criteria for determining adequacy of available storage capacity

Not later than 90 days after January 7, 1983, the Commission pursuant to section 553 of the Administrative Procedures Act [5 U.S.C. 553], shall propose, by rule, procedures and criteria for making the determination required by subsection (b) of this section that a person owning and operating a civilian nuclear power reactor cannot reasonably provide adequate spent nuclear fuel storage capacity at the civilian nuclear power reactor site when needed to ensure the continued orderly operation of such reactor. Such criteria shall ensure the maintenance of a full core reserve storage capability at the site of such reactor unless the Commission determines that maintenance of such capability is not necessary for the continued orderly operation of such reactor. Such criteria shall identify the feasibility of reasonably providing such adequate spent nuclear fuel storage capacity, taking into account economic, technical, regulatory, and public health and safety factors, through the use of high-density fuel storage racks, fuel rod compaction, transshipment of spent nuclear fuel to another civilian nuclear power reactor within the same utility system, construction of additional spent nuclear fuel

pool capacity, or such other technologies as may be approved by the Commission.

(h) Application

Notwithstanding any other provision of law, nothing in this chapter shall be construed to encourage, authorize, or require the private or Federal use, purchase, lease, or other acquisition of any storage facility located away from the site of any civilian nuclear power reactor and not owned by the Federal Government on January 7, 1983.

(i) Coordination with research and development program

To the extent available, and consistent with the provisions of this section, the Secretary shall provide spent nuclear fuel for the research and development program authorized in section 10198¹ of this title from spent nuclear fuel received by the Secretary for storage under this section. Such spent nuclear fuel shall not be subject to the provisions of subsection (e) of this section.

(Pub. L. 97-425, title I, § 135, Jan. 7, 1983, 96 Stat. 2232.)

REFERENCES IN TEXT

The Atomic Energy Act of 1954, referred to in subsec. (a)(1)(A)(i), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§ 2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

The Energy Reorganization Act of 1974, referred to in subsec. (a)(1)(A)(i), is Pub. L. 93-438, Oct. 11, 1974, 88 Stat. 1233, as amended, which is classified principally to chapter 73 (§ 5801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5801 of this title and Tables.

Section 10198 of this title, referred to in subsec. (i), was in the original a reference to section 217 of Pub. L. 97-425, which is classified to section 10197 of this title, and has been translated as section 10198 of this title as the probable intent of Congress in view of section 10198(c)(2) which directs the Secretary to provide spent nuclear fuel for the research and development program authorized by section 10198(c) of this title from spent nuclear fuel received by the Secretary for storage under section 10155 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103-7 (in which reports required under subsecs. (d)(5) and (f) of this section are listed as the 12th and 13th items on page 83), see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10139, 10156, 10198 of this title.

§ 10156. Interim Storage Fund

(a) Contracts

(1) During the period following January 7, 1983, but not later than January 1, 1990, the Secretary is authorized to enter into contracts with persons who generate or own spent nuclear fuel re-

¹ See References in Text note below.

sulting from civilian nuclear activities for the storage of such spent nuclear fuel in any storage capacity provided under this part: *Provided, however*, That the Secretary shall not enter into contracts for spent nuclear fuel in amounts in excess of the available storage capacity specified in section 10155(a) of this title. Those contracts shall provide that the Federal Government will (1) take title at the civilian nuclear power reactor site, to such amounts of spent nuclear fuel from the civilian nuclear power reactor as the Commission determines cannot be stored onsite, (2) transport the spent nuclear fuel to a federally owned and operated interim away-from-reactor storage facility, and (3) store such fuel in the facility pending further processing, storage, or disposal. Each such contract shall (A) provide for payment to the Secretary of fees determined in accordance with the provisions of this section; and (B) specify the amount of storage capacity to be provided for the person involved.

(2) The Secretary shall undertake a study and, not later than 180 days after January 7, 1983, submit to the Congress a report, establishing payment charges that shall be calculated on an annual basis, commencing on or before January 1, 1984. Such payment charges and the calculation thereof shall be published in the Federal Register, and shall become effective not less than 30 days after publication. Each payment charge published in the Federal Register under this paragraph shall remain effective for a period of 12 months from the effective date as the charge for the cost of the interim storage of any spent nuclear fuel. The report of the Secretary shall specify the method and manner of collection (including the rates and manner of payment) and any legislative recommendations determined by the Secretary to be appropriate.

(3) Fees for storage under this part shall be established on a nondiscriminatory basis. The fees to be paid by each person entering into a contract with the Secretary under this subsection shall be based upon an estimate of the pro rata costs of storage and related activities under this part with respect to such person, including the acquisition, construction, operation, and maintenance of any facilities under this part.

(4) The Secretary shall establish in writing criteria setting forth the terms and conditions under which such storage services shall be made available.

(5) Except as provided in section 10157 of this title, nothing in this chapter or any other Act requires the Secretary, in carrying out the responsibilities of this section, to obtain a license or permit to possess or own spent nuclear fuel.

(b) Limitation

No spent nuclear fuel generated or owned by any department of the United States referred to in section 101 or 102 of title 5 may be stored by the Secretary in any storage capacity provided under this part unless such department transfers to the Secretary, for deposit in the Interim Storage Fund, amounts equivalent to the fees that would be paid to the Secretary under the contracts referred to in this section if such spent nuclear fuel were generated by any other person.

(c) Establishment of Interim Storage Fund

There hereby is established in the Treasury of the United States a separate fund, to be known as the Interim Storage Fund. The Storage Fund shall consist of—

(1) all receipts, proceeds, and recoveries realized by the Secretary under subsections (a), (b), and (e) of this section, which shall be deposited in the Storage Fund immediately upon their realization;

(2) any appropriations made by the Congress to the Storage Fund; and

(3) any unexpended balances available on January 7, 1983, for functions or activities necessary or incident to the interim storage of civilian spent nuclear fuel, which shall automatically be transferred to the Storage Fund on such date.

(d) Use of Storage Fund

The Secretary may make expenditures from the Storage Fund, subject to subsection (e) of this section, for any purpose necessary or appropriate to the conduct of the functions and activities of the Secretary, or the provision or anticipated provision of services, under this part, including—

(1) the identification, development, licensing, construction, operation, decommissioning, and post-decommissioning maintenance and monitoring of any interim storage facility provided under this part;

(2) the administrative cost of the interim storage program;

(3) the costs associated with acquisition, design, modification, replacement, operation, and construction of facilities at an interim storage site, consistent with the restrictions in section 10155 of this title;

(4) the cost of transportation of spent nuclear fuel; and

(5) impact assistance as described in subsection (e) of this section.

(e) Impact assistance

(1) Beginning the first fiscal year which commences after January 7, 1983, the Secretary shall make annual impact assistance payments to a State or appropriate unit of local government, or both, in order to mitigate social or economic impacts occasioned by the establishment and subsequent operation of any interim storage capacity within the jurisdictional¹ boundaries of such government or governments and authorized under this part: *Provided, however*, That such impact assistance payments shall not exceed (A) ten per centum of the costs incurred in paragraphs (1) and (2), or (B) \$15 per kilogram of spent fuel, whichever is less;

(2) Payments made available to States and units of local government pursuant to this section shall be—

(A) allocated in a fair and equitable manner with a priority to those States or units of local government suffering the most severe impacts; and

(B) utilized by States or units of local governments only for (i) planning, (ii) construction and maintenance of public services, (iii)

¹ So in original. Probably should be "jurisdictional".

provision of public services related to the providing of such interim storage authorized under this subchapter, and (iv) compensation for loss of taxable property equivalent to that if the storage had been provided under private ownership.

(3) Such payments shall be subject to such terms and conditions as the Secretary determines necessary to ensure that the purposes of this subsection shall be achieved. The Secretary shall issue such regulations as may be necessary to carry out the provisions of this subsection.

(4) Payments under this subsection shall be made available solely from the fees determined under subsection (a) of this section.

(5) The Secretary is authorized to consult with States and appropriate units of local government in advance of commencement of establishment of storage capacity authorized under this part in an effort to determine the level of the payment such government would be eligible to receive pursuant to this subsection.

(6) As used in this subsection, the term "unit of local government" means a county, parish, township, municipality, and shall include a borough existing in the State of Alaska on January 7, 1983, and any other unit of government below the State level which is a unit of general government as determined by the Secretary.

(f) Administration of Storage Fund

(1) The Secretary of the Treasury shall hold the Storage Fund and, after consultation with the Secretary, annually report to the Congress on the financial condition and operations of the Storage Fund during the preceding fiscal year.

(2) The Secretary shall submit the budget of the Storage Fund to the Office of Management and Budget triennially along with the budget of the Department of Energy submitted at such time in accordance with chapter 11 of title 31. The budget of the Storage Fund shall consist of estimates made by the Secretary of expenditures from the Storage Fund and other relevant financial matters for the succeeding 3 fiscal years, and shall be included in the Budget of the United States Government. The Secretary may make expenditures from the Storage Fund, subject to appropriations which shall remain available until expended. Appropriations shall be subject to triennial authorization.

(3) If the Secretary determines that the Storage Fund contains at any time amounts in excess of current needs, the Secretary may request the Secretary of the Treasury to invest such amounts, or any portion of such amounts as the Secretary determines to be appropriate, in obligations of the United States—

(A) having maturities determined by the Secretary of the Treasury to be appropriate to the needs of the Storage Fund; and

(B) bearing interest at rates determined to be appropriate by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the maturities of such investments, except that the interest rate on such investments shall not exceed the average interest rate applicable to existing borrowings.

(4) Receipts, proceeds, and recoveries realized by the Secretary under this section, and expenditures of amounts from the Storage Fund, shall be exempt from annual apportionment under the provisions of subchapter II of chapter 15 of title 31.

(5) If at any time the moneys available in the Storage Fund are insufficient to enable the Secretary to discharge his responsibilities under this part, the Secretary shall issue to the Secretary of the Treasury obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be agreed to by the Secretary and the Secretary of the Treasury. The total of such obligations shall not exceed amounts provided in appropriation Acts. Redemption of such obligations shall be made by the Secretary from moneys available in the Storage Fund. Such obligations shall bear interest at a rate determined by the Secretary of the Treasury, which shall be not less than a rate determined by taking into consideration the average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the obligations under this paragraph. The Secretary of the Treasury shall purchase any issued obligations, and for such purpose the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, and the purposes for which securities may be issued under such Act² are extended to include any purchase of such obligations. The Secretary of the Treasury may at any time sell any of the obligations acquired by him under this paragraph. All redemptions, purchases, and sales by the Secretary of the Treasury of obligations under this paragraph shall be treated as public debt transactions of the United States.

(6) Any appropriations made available to the Storage Fund for any purpose described in subsection (d) of this section shall be repaid into the general fund of the Treasury, together with interest from the date of availability of the appropriations until the date of repayment. Such interest shall be paid on the cumulative amount of appropriations available to the Storage Fund, less the average undisbursed cash balance in the Storage Fund account during the fiscal year involved. The rate of such interest shall be determined by the Secretary of the Treasury taking into consideration the average market yield during the month preceding each fiscal year on outstanding marketable obligations of the United States of comparable maturity. Interest payments may be deferred with the approval of the Secretary of the Treasury, but any interest payments so deferred shall themselves bear interest.

(Pub. L. 97-425, title I, § 136, Jan. 7, 1983, 96 Stat. 2237.)

REFERENCES IN TEXT

Such Act, referred to in subsec. (f)(5), probably means chapter 31 of Title 31, Money and Finance.

² See References in Text note below.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (f)(1) of this section relating to annual report to Congress, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 1st item on page 140 of House Document No. 103-7.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10101, 10155, 10157, 10198 of this title.

§ 10157. Transportation

(a)(1)¹ Transportation of spent nuclear fuel under section 10156(a) of this title shall be subject to licensing and regulation by the Commission and by the Secretary of Transportation as provided for transportation of commercial spent nuclear fuel under existing law.

(2) The Secretary, in providing for the transportation of spent nuclear fuel under this chapter, shall utilize by contract private industry to the fullest extent possible in each aspect of such transportation. The Secretary shall use direct Federal services for such transportation only upon a determination of the Secretary of Transportation, in consultation with the Secretary, that private industry is unable or unwilling to provide such transportation services at reasonable cost.

(Pub. L. 97-425, title I, § 137, Jan. 7, 1983, 96 Stat. 2241.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10156 of this title.

PART C—MONITORED RETRIEVABLE STORAGE

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 10134, 10175 of this title.

§ 10161. Monitored retrievable storage**(a) Findings**

The Congress finds that—

(1) long-term storage of high-level radioactive waste or spent nuclear fuel in monitored retrievable storage facilities is an option for providing safe and reliable management of such waste or spent fuel;

(2) the executive branch and the Congress should proceed as expeditiously as possible to consider fully a proposal for construction of one or more monitored retrievable storage facilities to provide such long-term storage;

(3) the Federal Government has the responsibility to ensure that site-specific designs for such facilities are available as provided in this section;

(4) the generators and owners of the high-level radioactive waste and spent nuclear fuel to be stored in such facilities have the responsibility to pay the costs of the long-term storage of such waste and spent fuel; and

(5) disposal of high-level radioactive waste and spent nuclear fuel in a repository developed under this chapter should proceed regardless of any construction of a monitored re-

trievable storage facility pursuant to this section.

(b) Submission of proposal by Secretary

(1) On or before June 1, 1985, the Secretary shall complete a detailed study of the need for and feasibility of, and shall submit to the Congress a proposal for, the construction of one or more monitored retrievable storage facilities for high-level radioactive waste and spent nuclear fuel. Each such facility shall be designed—

(A) to accommodate spent nuclear fuel and high-level radioactive waste resulting from civilian nuclear activities;

(B) to permit continuous monitoring, management, and maintenance of such spent fuel and waste for the foreseeable future;

(C) to provide for the ready retrieval of such spent fuel and waste for further processing or disposal; and

(D) to safely store such spent fuel and waste as long as may be necessary by maintaining such facility through appropriate means, including any required replacement of such facility.

(2) Such proposal shall include—

(A) the establishment of a Federal program for the siting, development, construction, and operation of facilities capable of safely storing high-level radioactive waste and spent nuclear fuel, which facilities are to be licensed by the Commission;

(B) a plan for the funding of the construction and operation of such facilities, which plan shall provide that the costs of such activities shall be borne by the generators and owners of the high-level radioactive waste and spent nuclear fuel to be stored in such facilities;

(C) site-specific designs, specifications, and cost estimates sufficient to (i) solicit bids for the construction of the first such facility; (ii) support congressional authorization of the construction of such facility; and (iii) enable completion and operation of such facility as soon as practicable following congressional authorization of such facility; and

(D) a plan for integrating facilities constructed pursuant to this section with other storage and disposal facilities authorized in this chapter.

(3) In formulating such proposal, the Secretary shall consult with the Commission and the Administrator, and shall submit their comments on such proposal to the Congress at the time such proposal is submitted.

(4) The proposal shall include, for the first such facility, at least 3 alternative sites and at least 5 alternative combinations of such proposed sites and facility designs consistent with the criteria of paragraph (1). The Secretary shall recommend the combination among the alternatives that the Secretary deems preferable. The environmental assessment under subsection (c) of this section shall include a full analysis of the relative advantages and disadvantages of all 5 such alternative combinations of proposed sites and proposed facility designs.

(c) Environmental impact statements

(1) Preparation and submission to the Congress of the proposal required in this section

¹ So in original. No subsec. (b) has been enacted.

shall not require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Secretary shall prepare, in accordance with regulations issued by the Secretary implementing such Act [42 U.S.C. 4321 et seq.], an environmental assessment with respect to such proposal. Such environmental assessment shall be based upon available information regarding alternative technologies for the storage of spent nuclear fuel and high-level radioactive waste. The Secretary shall submit such environmental assessment to the Congress at the time such proposal is submitted.

(2) If the Congress by law, after review of the proposal submitted by the Secretary under subsection (b) of this section, specifically authorizes construction of a monitored retrievable storage facility, the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) shall apply with respect to construction of such facility, except that any environmental impact statement prepared with respect to such facility shall not be required to consider the need for such facility or any alternative to the design criteria for such facility set forth in subsection (b)(1) of this section.

(d) Licensing

Any facility authorized pursuant to this section shall be subject to licensing under section 5842(3) of this title. In reviewing the application filed by the Secretary for licensing of the first such facility, the Commission may not consider the need for such facility or any alternative to the design criteria for such facility set forth in subsection (b)(1) of this section.

(e) Clarification

Nothing in this section limits the consideration of alternative facility designs consistent with the criteria of subsection (b)(1) of this section in any environmental impact statement, or in any licensing procedure of the Commission, with respect to any monitored, retrievable facility authorized pursuant to this section.

(f) Impact assistance

(1) Upon receipt by the Secretary of congressional authorization to construct a facility described in subsection (b) of this section, the Secretary shall commence making annual impact aid payments to appropriate units of general local government in order to mitigate any social or economic impacts resulting from the construction and subsequent operation of any such facility within the jurisdictional boundaries of any such unit.

(2) Payments made available to units of general local government under this subsection shall be—

(A) allocated in a fair and equitable manner, with priority given to units of general local government determined by the Secretary to be most severely affected; and

(B) utilized by units of general local government only for planning, construction, maintenance, and provision of public services related to the siting of such facility.

(3) Such payments shall be subject to such terms and conditions as the Secretary deter-

mines are necessary to ensure achievement of the purposes of this subsection. The Secretary shall issue such regulations as may be necessary to carry out the provisions of this subsection.

(4) Such payments shall be made available entirely from funds held in the Nuclear Waste Fund established in section 10222(c) of this title and shall be available only to the extent provided in advance in appropriation Acts.

(5) The Secretary may consult with appropriate units of general local government in advance of commencement of construction of any such facility in an effort to determine the level of payments each such unit is eligible to receive under this subsection.

(g) Limitation

No monitored retrievable storage facility developed pursuant to this section may be constructed in any State in which there is located any site approved for site characterization under section 10132 of this title. The restriction in the preceding sentence shall only apply until such time as the Secretary decides that such candidate site is no longer a candidate site under consideration for development as a repository. Such restriction shall continue to apply to any site selected for construction as a repository.

(h) Participation of States and Indian tribes

Any facility authorized pursuant to this section shall be subject to the provisions of sections 10135, 10136(a), 10136(b), 10136(d), 10137, and 10138 of this title. For purposes of carrying out the provisions of this subsection, any reference in sections 10135 through 10138 of this title to a repository shall be considered to refer to a monitored retrievable storage facility.

(Pub. L. 97-425, title I, §141, Jan. 7, 1983, 96 Stat. 2241.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (c), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10101, 10168, 10200 of this title.

§ 10162. Authorization of monitored retrievable storage

(a) Nullification of Oak Ridge siting proposal

The proposal of the Secretary (EC-1022, 100th Congress) to locate a monitored retrievable storage facility at a site on the Clinch River in the Roane County portion of Oak Ridge, Tennessee, with alternative sites on the Oak Ridge Reservation of the Department of Energy and on the former site of a proposed nuclear powerplant in Hartsville, Tennessee, is annulled and revoked. In carrying out the provisions of sections 10164 and 10165 of this title, the Secretary shall make no presumption or preference to such sites by reason of their previous selection.

(b) Authorization

The Secretary is authorized to site, construct, and operate one monitored retrievable storage

facility subject to the conditions described in sections 10163 through 10169 of this title.

(Pub. L. 97-425, title I, §142, as added Pub. L. 100-202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, § 5021, Dec. 22, 1987, 101 Stat. 1330-232.)

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10165, 10168 of this title.

§ 10163. Monitored Retrievable Storage Commission

(a)¹ Establishment

(1)(A) There is established a Monitored Retrievable Storage Review Commission (hereinafter in this section referred to as the "MRS Commission"), that shall consist of 3 members who shall be appointed by and serve at the pleasure of the President pro tempore of the Senate and the Speaker of the House of Representatives.

(B) Members of the MRS Commission shall be appointed not later than 30 days after December 22, 1987, from among persons who as a result of training, experience and attainments are exceptionally well qualified to evaluate the need for a monitored retrievable storage facility as a part of the Nation's nuclear waste management system.

(C) The MRS Commission shall prepare a report on the need for a monitored retrievable storage facility as a part of a national nuclear waste management system that achieves the purposes of this chapter. In preparing the report under this subparagraph, the MRS Commission shall—

(i) review the status and adequacy of the Secretary's evaluation of the systems advantages and disadvantages of bringing such a facility into the national nuclear waste disposal system;

(ii) obtain comment and available data on monitored retrievable storage from affected parties, including States containing potentially acceptable sites;

(iii) evaluate the utility of a monitored retrievable storage facility from a technical perspective; and

(iv) make a recommendation to Congress as to whether such a facility should be included in the national nuclear waste management system in order to achieve the purposes of this chapter, including meeting needs for packaging and handling of spent nuclear fuel, improving the flexibility of the repository development schedule, and providing temporary storage of spent nuclear fuel accepted for disposal.

(2) In preparing the report and making its recommendation under paragraph (1) the MRS Commission shall compare such a facility to the alternative of at-reactor storage of spent nuclear fuel prior to disposal of such fuel in a repository under this chapter. Such comparison shall take into consideration the impact on—

(A) repository design and construction;
(B) waste package design, fabrication and standardization;

(C) waste preparation;
(D) waste transportation systems;
(E) the reliability of the national system for the disposal of radioactive waste;

(F) the ability of the Secretary to fulfill contractual commitments of the Department under this chapter to accept spent nuclear fuel for disposal; and

(G) economic factors, including the impact on the costs likely to be imposed on ratepayers of the Nation's electric utilities for temporary at-reactor storage of spent nuclear fuel prior to final disposal in a repository, as well as the costs likely to be imposed on ratepayers of the Nation's electric utilities in building and operating such a facility.

(3) The report under this subsection, together with the recommendation of the MRS Commission, shall be transmitted to Congress on November 1, 1989.

(4)(A)(i) Each member of the MRS Commission shall be paid at the rate provided for level III of the Executive Schedule for each day (including travel time) such member is engaged in the work of the MRS Commission, and shall receive travel expenses, including per diem in lieu of subsistence in the same manner as is permitted under sections 5702 and 5703 of title 5.

(ii) The MRS Commission may appoint and fix compensation, not to exceed the rate of basic pay payable for GS-18 of the General Schedule, for such staff as may be necessary to carry out its functions.

(B)(i) The MRS Commission may hold hearings, sit and act at such times and places, take such testimony and receive such evidence as the MRS Commission considers appropriate. Any member of the MRS Commission may administer oaths or affirmations to witnesses appearing before the MRS Commission.

(ii) The MRS Commission may request any Executive agency, including the Department, to furnish such assistance or information, including records, data, files, or documents, as the Commission considers necessary to carry out its functions. Unless prohibited by law, such agency shall promptly furnish such assistance or information.

(iii) To the extent permitted by law, the Administrator of the General Services Administration shall, upon request of the MRS Commission, provide the MRS Commission with necessary administrative services, facilities, and support on a reimbursable basis.

(iv) The MRS Commission may procure temporary and intermittent services from experts and consultants to the same extent as is authorized by section 3109(b) of title 5 at rates and under such rules as the MRS Commission considers reasonable.

(C) The MRS Commission shall cease to exist 60 days after the submission to Congress of the report required under this subsection.

(Pub. L. 97-425, title I, §143, as added Pub. L. 100-202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, § 5021, Dec. 22, 1987, 101 Stat. 1330-232; amended Pub. L. 100-507, § 2, Oct. 18, 1988, 102 Stat. 2541.)

¹ So in original. No subsec. (b) has been enacted.

REFERENCES IN TEXT

Level III of the Executive Schedule, referred to in subsec. (a)(4)(A)(i), is set out in section 5314 of Title 5, Government Organization and Employees.

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

AMENDMENTS

1988—Subsec. (a)(3). Pub. L. 100-507 amended par. (3) generally. Prior to amendment, par. (3) read as follows: “The report under this subsection, together with the recommendation of the MRS Commission, shall be transmitted to Congress on June 1, 1989.”

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10162, 10164 of this title.

§ 10164. Survey

After the MRS Commission submits its report to the Congress under section 10163 of this title, the Secretary may conduct a survey and evaluation of potentially suitable sites for a monitored retrievable storage facility. In conducting such survey and evaluation, the Secretary shall consider the extent to which siting a monitored retrievable storage facility at each site surveyed would—

- (1) enhance the reliability and flexibility of the system for the disposal of spent nuclear fuel and high-level radioactive waste established under this chapter;
- (2) minimize the impacts of transportation and handling of such fuel and waste;
- (3) provide for public confidence in the ability of such system to safely dispose of the fuel and waste;
- (4) impose minimal adverse effects on the local community and the local environment;
- (5) provide a high probability that the facility will meet applicable environmental, health, and safety requirements in a timely fashion;
- (6) provide such other benefits to the system for the disposal of spent nuclear fuel and high-level radioactive waste as the Secretary deems appropriate; and
- (7) unduly burden a State in which significant volumes of high-level radioactive waste resulting from atomic energy defense activities are stored.

(Pub. L. 97-425, title I, §144, as added Pub. L. 100-202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5021, Dec. 22, 1987, 101 Stat. 1330-234.)

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10162, 10165 of this title.

§ 10165. Site selection**(a) In general**

The Secretary may select the site evaluated under section 10164 of this title that the Secretary determines on the basis of available information to be the most suitable for a monitored retrievable storage facility that is an integral part of the system for the disposal of spent nuclear fuel and high-level radioactive waste established under this chapter.

(b) Limitation

The Secretary may not select a site under subsection (a) of this section until the Secretary recommends to the President the approval of a site for development as a repository under section 10134(a) of this title.

(c) Site specific activities

The Secretary may conduct such site specific activities at each site surveyed under section 10164 of this title as he determines may be necessary to support an application to the Commission for a license to construct a monitored retrievable storage facility at such site.

(d) Environmental assessment

Site specific activities and selection of a site under this section shall not require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Secretary shall prepare an environmental assessment with respect to such selection in accordance with regulations issued by the Secretary implementing such Act [42 U.S.C. 4321 et seq.]. Such environmental assessment shall be based upon available information regarding alternative technologies for the storage of spent nuclear fuel and high-level radioactive waste. The Secretary shall submit such environmental assessment to the Congress at the time such site is selected.

(e) Notification before selection

(1) At least 6 months before selecting a site under subsection (a) of this section, the Secretary shall notify the Governor and legislature of the State in which such site is located, or the governing body of the affected Indian tribe where such site is located, as the case may be, of such potential selection and the basis for such selection.

(2) Before selecting any site under subsection (a) of this section, the Secretary shall hold at least one public hearing in the vicinity of such site to solicit any recommendations of interested parties with respect to issues raised by the selection of such site.

(f) Notification of selection

The Secretary shall promptly notify Congress and the appropriate State or Indian tribe of the selection under subsection (a) of this section.

(g) Limitation

No monitored retrievable storage facility authorized pursuant to section 10162(b) of this title may be constructed in the State of Nevada.

(Pub. L. 97-425, title I, §145, as added Pub. L. 100-202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5021, Dec. 22, 1987, 101 Stat. 1330-234.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (d), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10162, 10166, 10167 of this title.

§ 10166. Notice of disapproval**(a) In general**

The selection of a site under section 10165 of this title shall be effective at the end of the period of 60 calendar days beginning on the date of notification under such subsection, unless the governing body of the Indian tribe on whose reservation such site is located, or, if the site is not on a reservation, the Governor and the legislature of the State in which the site is located, has submitted to Congress a notice of disapproval with respect to such site. If any such notice of disapproval has been submitted under this subsection, the selection of the site under section 10165 of this title shall not be effective except as provided under section 10135(c) of this title.

(b) References

For purposes of carrying out the provisions of this subsection, references in section 10135(c) of this title to a repository shall be considered to refer to a monitored retrievable storage facility and references to a notice of disapproval of a repository site designation under section 10136(b) or 10138(a) of this title shall be considered to refer to a notice of disapproval under this section.

(Pub. L. 97-425, title I, §146, as added Pub. L. 100-202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5021, Dec. 22, 1987, 101 Stat. 1330-235.)

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10162, 10168 of this title.

§ 10167. Benefits agreement

Once selection of a site for a monitored retrievable storage facility is made by the Secretary under section 10165 of this title, the Indian tribe on whose reservation the site is located, or, in the case that the site is not located on a reservation, the State in which the site is located, shall be eligible to enter into a benefits agreement with the Secretary under section 10173 of this title.

(Pub. L. 97-425, title I, §147, as added Pub. L. 100-202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5021, Dec. 22, 1987, 101 Stat. 1330-235.)

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10162 of this title.

§ 10168. Construction authorization**(a) Environmental impact statement**

(1) Once the selection of a site is effective under section 10166 of this title, the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) shall apply with respect to construction of a monitored retrievable storage facility, except that any environmental impact statement prepared with respect to such facility shall not be required to consider the need for such facility or any alternative to the design criteria for such facility set forth in section 10161(b)(1) of this title.

(2) Nothing in this section shall be construed to limit the consideration of alternative facility designs consistent with the criteria described in section 10161(b)(1) of this title in any environmental impact statement, or in any licensing procedure of the Commission, with respect to any monitored retrievable storage facility authorized under section 10162(b) of this title.

(b) Application for construction license

Once the selection of a site for a monitored retrievable storage facility is effective under section 10166 of this title, the Secretary may submit an application to the Commission for a license to construct such a facility as part of an integrated nuclear waste management system and in accordance with the provisions of this section and applicable agreements under this chapter affecting such facility.

(c) Licensing

Any monitored retrievable storage facility authorized pursuant to section 10162(b) of this title shall be subject to licensing under section 5842(3) of this title. In reviewing the application filed by the Secretary for licensing of such facility, the Commission may not consider the need for such facility or any alternative to the design criteria for such facility set forth in section 10161(b)(1) of this title.

(d) Licensing conditions

Any license issued by the Commission for a monitored retrievable storage facility under this section shall provide that—

(1) construction of such facility may not begin until the Commission has issued a license for the construction of a repository under section 10135(d) of this title;

(2) construction of such facility or acceptance of spent nuclear fuel or high-level radioactive waste shall be prohibited during such time as the repository license is revoked by the Commission or construction of the repository ceases;

(3) the quantity of spent nuclear fuel or high-level radioactive waste at the site of such facility at any one time may not exceed 10,000 metric tons of heavy metal until a repository under this chapter first accepts spent nuclear

fuel or solidified high-level radioactive waste; and

(4) the quantity of spent nuclear fuel or high-level radioactive waste at the site of such facility at any one time may not exceed 15,000 metric tons of heavy metal.

(Pub. L. 97-425, title I, §148, as added Pub. L. 100-202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5021, Dec. 22, 1987, 101 Stat. 1330-235.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (a)(1), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10162 of this title.

§ 10169. Financial assistance

The provisions of section 10136(c) or 10138(b) of this title with respect to grants, technical assistance, and other financial assistance shall apply to the State, to affected Indian tribes and to affected units of local government in the case of a monitored retrievable storage facility in the same manner as for a repository.

(Pub. L. 97-425, title I, §149, as added Pub. L. 100-202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5021, Dec. 22, 1987, 101 Stat. 1330-236.)

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10162 of this title.

PART D—LOW-LEVEL RADIOACTIVE WASTE

§ 10171. Financial arrangements for low-level radioactive waste site closure

(a) Financial arrangements

(1) The Commission shall establish by rule, regulation, or order, after public notice, and in accordance with section 2231 of this title, such standards and instructions as the Commission may deem necessary or desirable to ensure in the case of each license for the disposal of low-level radioactive waste that an adequate bond, surety, or other financial arrangement (as determined by the Commission) will be provided by a licensee to permit completion of all requirements established by the Commission for the decontamination, decommissioning, site closure, and reclamation of sites, structures, and equipment used in conjunction with such low-level radioactive waste. Such financial arrangements shall be provided and approved by the Commission, or, in the case of sites within the boundaries of any agreement State under section 2021

of this title, by the appropriate State or State entity, prior to issuance of licenses for low-level radioactive waste disposal or, in the case of licenses in effect on January 7, 1983, prior to termination of such licenses.

(2) If the Commission determines that any long-term maintenance or monitoring, or both, will be necessary at a site described in paragraph (1), the Commission shall ensure before termination of the license involved that the licensee has made available such bonding, surety, or other financial arrangements as may be necessary to ensure that any necessary long-term maintenance or monitoring needed for such site will be carried out by the person having title and custody for such site following license termination.

(b) Title and custody

(1) The Secretary shall have authority to assume title and custody of low-level radioactive waste and the land on which such waste is disposed of, upon request of the owner of such waste and land and following termination of the license issued by the Commission for such disposal, if the Commission determines that—

(A) the requirements of the Commission for site closure, decommissioning, and decontamination have been met by the licensee involved and that such licensee is in compliance with the provisions of subsection (a) of this section;

(B) such title and custody will be transferred to the Secretary without cost to the Federal Government; and

(C) Federal ownership and management of such site is necessary or desirable in order to protect the public health and safety, and the environment.

(2) If the Secretary assumes title and custody of any such waste and land under this subsection, the Secretary shall maintain such waste and land in a manner that will protect the public health and safety, and the environment.

(c) Special sites

If the low-level radioactive waste involved is the result of a licensed activity to recover zirconium, hafnium, and rare earths from source material, the Secretary, upon request of the owner of the site involved, shall assume title and custody of such waste and the land on which it is disposed when such site has been decontaminated and stabilized in accordance with the requirements established by the Commission and when such owner has made adequate financial arrangements approved by the Commission for the long-term maintenance and monitoring of such site.

(Pub. L. 97-425, title I, §151, Jan. 7, 1983, 96 Stat. 2244.)

PART E—REDIRECTION OF NUCLEAR WASTE PROGRAM

§ 10172. Selection of Yucca Mountain site

(a) In general

(1) The Secretary shall provide for an orderly phase-out of site specific activities at all candidate sites other than the Yucca Mountain site.

(2) The Secretary shall terminate all site specific activities (other than reclamation activities) at all candidate sites, other than the Yucca Mountain site, within 90 days after December 22, 1987.

(b) Eligibility to enter into benefits agreement

Effective on December 22, 1987, the State of Nevada shall be eligible to enter into a benefits agreement with the Secretary under section 10173 of this title.

(Pub. L. 97-425, title I, §160, as added Pub. L. 100-202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5011(a), Dec. 22, 1987, 101 Stat. 1330-227.)

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

§ 10172a. Siting a second repository

(a) Congressional action required

The Secretary may not conduct site-specific activities with respect to a second repository unless Congress has specifically authorized and appropriated funds for such activities.

(b) Report

The Secretary shall report to the President and to Congress on or after January 1, 2007, but not later than January 1, 2010, on the need for a second repository.

(c) Termination of granite research

Not later than 6 months after December 22, 1987, the Secretary shall phase out in an orderly manner funding for all research programs in existence on December 22, 1987, designed to evaluate the suitability of crystalline rock as a potential repository host medium.

(d) Additional siting criteria

In the event that the Secretary at any time after December 22, 1987, considers any sites in crystalline rock for characterization or selection as a repository, the Secretary shall consider (as a supplement to the siting guidelines under section 10132 of this title) such potentially disqualifying factors as—

- (1) seasonal increases in population;
- (2) proximity to public drinking water supplies, including those of metropolitan areas; and
- (3) the impact that characterization or siting decisions would have on lands owned or placed in trust by the United States for Indian tribes.

(Pub. L. 97-425, title I, §161, as added Pub. L. 100-202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5012, Dec. 22, 1987, 101 Stat. 1330-231.)

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

PART F—BENEFITS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 10133 of this title.

§ 10173. Benefits agreements

(a) In general

(1) The Secretary may enter into a benefits agreement with the State of Nevada concerning a repository or with a State or an Indian tribe concerning a monitored retrievable storage facility for the acceptance of high-level radioactive waste or spent nuclear fuel in that State or on the reservation of that tribe, as appropriate.

(2) The State or Indian tribe may enter into such an agreement only if the State Attorney General or the appropriate governing authority of the Indian tribe or the Secretary of the Interior, in the absence of an appropriate governing authority, as appropriate, certifies to the satisfaction of the Secretary that the laws of the State or Indian tribe provide adequate authority for that entity to enter into the benefits agreement.

(3) Any benefits agreement with a State under this section shall be negotiated in consultation with affected units of local government in such State.

(4) Benefits and payments under this part may be made available only in accordance with a benefits agreement under this section.

(b) Amendment

A benefits agreement entered into under subsection (a) of this section may be amended only by the mutual consent of the parties to the agreement and terminated only in accordance with section 10173c of this title.

(c) Agreement with Nevada

The Secretary shall offer to enter into a benefits agreement with the Governor of Nevada. Any benefits agreement with a State under this subsection shall be negotiated in consultation with any affected units of local government in such State.

(d) Monitored retrievable storage

The Secretary shall offer to enter into a benefits agreement relating to a monitored retrievable storage facility with the governing body of the Indian tribe on whose reservation the site for such facility is located, or, if the site is not located on a reservation, with the Governor of the State in which the site is located and in consultation with affected units of local government in such State.

(e) Limitation

Only one benefits agreement for a repository and only one benefits agreement for a monitored retrievable storage facility may be in effect at any one time.

(f) Judicial review

Decisions of the Secretary under this section are not subject to judicial review.

(Pub. L. 97-425, title I, §170, as added Pub. L. 100-202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5031, Dec. 22, 1987, 101 Stat. 1330-237.)

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

(4) 1 member to represent other public interests, to be selected by the Secretary.

(b) Terms

(1) The members of the Review Panel shall serve for terms of 4 years each.

(2) Members of the Review Panel who are not full-time employees of the Federal Government, shall receive a per diem compensation for each day spent conducting work of the Review Panel, including their necessary travel or other expenses while engaged in the work of the Review Panel.

(3) Expenses of the Panel shall be paid by the Secretary from the Waste Fund.

(c) Duties

The Review Panel shall—

(1) advise the Secretary on matters relating to the proposed repository or monitored retrievable storage facility, including issues relating to design, construction, operation, and decommissioning of the facility;

(2) evaluate performance of the repository or monitored retrievable storage facility, as it considers appropriate;

(3) recommend corrective actions to the Secretary;

(4) assist in the presentation of State or affected Indian tribe and local perspectives to the Secretary; and

(5) participate in the planning for and the review of preoperational data on environmental, demographic, and socioeconomic conditions of the site and the local community.

(d) Information

The Secretary shall promptly¹ make available promptly¹ any information in the Secretary's possession requested by the Panel or its Chairman.

(e) Federal Advisory Committee Act

The requirements of the Federal Advisory Committee Act shall not apply to a Review Panel established under this subchapter.

(Pub. L. 97-425, title I, §172, as added Pub. L. 100-202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5031, Dec. 22, 1987, 101 Stat. 1330-239.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (e), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10173a of this title.

§ 10173c. Termination

(a) In general

The Secretary may terminate a benefits agreement under this subchapter if—

(1) the site under consideration is disqualified for its failure to comply with guidelines

and technical requirements established by the Secretary in accordance with this chapter; or

(2) the Secretary determines that the Commission cannot license the facility within a reasonable time.

(b) Termination by State or Indian tribe

A State or Indian tribe may terminate a benefits agreement under this subchapter only if the Secretary disqualifies the site under consideration for its failure to comply with technical requirements established by the Secretary in accordance with this chapter or the Secretary determines that the Commission cannot license the facility within a reasonable time.

(c) Decisions of Secretary

Decisions of the Secretary under this section shall be in writing, shall be available to Congress and the public, and are not subject to judicial review.

(Pub. L. 97-425, title I, §173, as added Pub. L. 100-202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5031, Dec. 22, 1987, 101 Stat. 1330-240.)

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10173 of this title.

PART G—OTHER BENEFITS

§ 10174. Consideration in siting facilities

The Secretary, in siting Federal research projects, shall give special consideration to proposals from States where a repository is located.

(Pub. L. 97-425, title I, §174, as added Pub. L. 100-202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5031, Dec. 22, 1987, 101 Stat. 1330-240.)

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

§ 10174a. Report

(a) In general

Within one year of December 22, 1987, the Secretary shall report to Congress on the potential impacts of locating a repository at the Yucca Mountain site, including the recommendations of the Secretary for mitigation of such impacts and a statement of which impacts should be dealt with by the Federal Government, which should be dealt with by the State with State resources, including the benefits payments under section 10173a of this title, and which should be a joint Federal-State responsibility. The report under this subsection shall include the analysis of the Secretary of the authorities available to mitigate these impacts and the appropriate sources of funds for such mitigation.

(b) Impacts to be considered

Potential impacts to be addressed in the report under this¹ subsection (a) of this section shall include impacts on—

¹ So in original.

¹ So in original. The word "this" probably should not appear.

(1) education, including facilities and personnel for elementary and secondary schools, community colleges, vocational and technical schools and universities;

(2) public health, including the facilities and personnel for treatment and distribution of water, the treatment of sewage, the control of pests and the disposal of solid waste;

(3) law enforcement, including facilities and personnel for the courts, police and sheriff's departments, district attorneys and public defenders and prisons;

(4) fire protection, including personnel, the construction of fire stations, and the acquisition of equipment;

(5) medical care, including emergency services and hospitals;

(6) cultural and recreational needs, including facilities and personnel for libraries and museums and the acquisition and expansion of parks;

(7) distribution of public lands to allow for the timely expansion of existing, or creation of new, communities and the construction of necessary residential and commercial facilities;

(8) vocational training and employment services;

(9) social services, including public assistance programs, vocational and physical rehabilitation programs, mental health services, and programs relating to the abuse of alcohol and controlled substances;

(10) transportation, including any roads, terminals, airports, bridges, or railways associated with the facility and the repair and maintenance of roads, terminals, airports, bridges, or railways damaged as a result of the construction, operation, and closure of the facility;

(11) equipment and training for State and local personnel in the management of accidents involving high-level radioactive waste;

(12) availability of energy;

(13) tourism and economic development, including the potential loss of revenue and future economic growth; and

(14) other needs of the State and local governments that would not have arisen but for the characterization of the site and the construction, operation, and eventual closure of the repository facility.

(Pub. L. 97-425, title I, §175, as added Pub. L. 100-202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5031, Dec. 22, 1987, 101 Stat. 1330-240.)

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

PART H—TRANSPORTATION

§ 10175. Transportation

(a) Packaging

No spent nuclear fuel or high-level radioactive waste may be transported by or for the Secretary under part A of this subchapter or under part C of this subchapter except in packages that have been certified for such purpose by the Commission.

(b) Advance notification

The Secretary shall abide by regulations of the Commission regarding advance notification of State and local governments prior to transportation of spent nuclear fuel or high-level radioactive waste under part A of this subchapter or under part C of this subchapter.

(c) Training for public safety officials

The Secretary shall provide technical assistance and funds to States for training for public safety officials of appropriate units of local government and Indian tribes through whose jurisdiction the Secretary plans to transport spent nuclear fuel or high-level radioactive waste under part A of this subchapter or under part C of this subchapter. Training shall cover procedures required for safe routine transportation of these materials, as well as procedures for dealing with emergency response situations. The Waste Fund shall be the source of funds for work carried out under this subsection.

(Pub. L. 97-425, title I, §180, as added Pub. L. 100-202, §101(d) [title III, §300], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5061, Dec. 22, 1987, 101 Stat. 1330-251.)

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

SUBCHAPTER II—RESEARCH, DEVELOPMENT, AND DEMONSTRATION REGARDING DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTE AND SPENT NUCLEAR FUEL

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 10139, 10222 of this title.

§ 10191. Purpose

It is the purpose of this subchapter—

(1) to provide direction to the Secretary with respect to the disposal of high-level radioactive waste and spent nuclear fuel;

(2) to authorize the Secretary, pursuant to this subchapter—

(A) to provide for the construction, operation, and maintenance of a deep geologic test and evaluation facility; and

(B) to provide for a focused and integrated high-level radioactive waste and spent nuclear fuel research and development program, including the development of a test and evaluation facility to carry out research and provide an integrated demonstration of the technology for deep geologic disposal of high-level radioactive waste, and the development of the facilities to demonstrate dry storage of spent nuclear fuel; and

(3) to provide for an improved cooperative role between the Federal Government and States, affected Indian tribes, and units of general local government in the siting of a test and evaluation facility.

(Pub. L. 97-425, title II, §211, Jan. 7, 1983, 96 Stat. 2245.)

§ 10192. Applicability

The provisions of this subchapter are subject to section 10107 of this title and shall not apply

to facilities that are used for the disposal of high-level radioactive waste, low-level radioactive waste, transuranic waste, or spent nuclear fuel resulting from atomic energy defense activities.

(Pub. L. 97-425, title II, §212, Jan. 7, 1983, 96 Stat. 2245.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10197 of this title.

§ 10193. Identification of sites

(a) Guidelines

Not later than 6 months after January 7, 1983, and notwithstanding the failure of other agencies to promulgate standards pursuant to applicable law, the Secretary, in consultation with the Commission, the Director of the United States Geological Survey, the Administrator, the Council on Environmental Quality, and such other Federal agencies as the Secretary considers appropriate, is authorized to issue, pursuant to section 553 of title 5, general guidelines for the selection of a site for a test and evaluation facility. Under such guidelines the Secretary shall specify factors that qualify or disqualify a site for development as a test and evaluation facility, including factors pertaining to the location of valuable natural resources, hydrogeophysics, seismic activity, and atomic energy defense activities, proximity to water supplies, proximity to populations, the effect upon the rights of users of water, and proximity to components of the National Park System, the National Wildlife Refuge System, the National Wild and Scenic Rivers System, the National Wilderness Preservation System, or National Forest Lands. Such guidelines shall require the Secretary to consider the various geologic media in which the site for a test and evaluation facility may be located and, to the extent practicable, to identify sites in different geologic media. The Secretary shall use guidelines established under this subsection in considering and selecting sites under this subchapter.

(b) Site identification by Secretary

(1) Not later than 1 year after January 7, 1983, and following promulgation of guidelines under subsection (a) of this section, the Secretary is authorized to identify 3 or more sites, at least 2 of which shall be in different geologic media in the continental United States, and at least 1 of which shall be in media other than salt. Subject to Commission requirements, the Secretary shall give preference to sites for the test and evaluation facility in media possessing geochemical characteristics that retard aqueous transport of radionuclides. In order to provide a greater possible protection of public health and safety as operating experience is gained at the test and evaluation facility, and with the exception of the primary areas under review by the Secretary on January 7, 1983, for the location of a test and evaluation facility or repository, all sites identified under this subsection shall be more than 15 statute miles from towns having a population of greater than 1,000 persons as determined by the most recent census unless such

sites contain high-level radioactive waste prior to identification under this subchapter. Each identification of a site shall be supported by an environmental assessment, which shall include a detailed statement of the basis for such identification and of the probable impacts of the siting research activities planned for such site, and a discussion of alternative activities relating to siting research that may be undertaken to avoid such impacts. Such environmental assessment shall include—

(A) an evaluation by the Secretary as to whether such site is suitable for siting research under the guidelines established under subsection (a) of this section;

(B) an evaluation by the Secretary of the effects of the siting research activities at such site on the public health and safety and the environment;

(C) a reasonable comparative evaluation by the Secretary of such site with other sites and locations that have been considered;

(D) a description of the decision process by which such site was recommended; and

(E) an assessment of the regional and local impacts of locating the proposed test and evaluation facility at such site.

(2) When the Secretary identifies a site, the Secretary shall as soon as possible notify the Governor of the State in which such site is located, or the governing body of the affected Indian tribe where such site is located, of such identification and the basis of such identification. Additional sites for the location of the test and evaluation facility authorized in section 10222(d) of this title may be identified after such 1 year period, following the same procedure as if such sites had been identified within such period.

(Pub. L. 97-425, title II, §213, Jan. 7, 1983, 96 Stat. 2245; Pub. L. 102-154, title I, Nov. 13, 1991, 105 Stat. 1000.)

CHANGE OF NAME

“United States Geological Survey” substituted for “Geological Survey” in subsec. (a) pursuant to provision of title I of Pub. L. 102-154, set out as a note under section 31 of Title 43, Public Lands.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10194, 10195, 10199 of this title.

§ 10194. Siting research and related activities

(a) In general

Not later than 30 months after the date on which the Secretary completes the identification of sites under section 10193 of this title, the Secretary is authorized to complete sufficient evaluation of 3 sites to select a site for expanded siting research activities and for other activities under section 10198 of this title. The Secretary is authorized to conduct such preconstruction activities relative to such site selection for the test and evaluation facility as he deems appropriate. Additional sites for the location of the test and evaluation facility authorized in section 10222(d) of this title may be evaluated after such 30-month period, following the same procedures as if such sites were to be evaluated within such period.

(b) Public meetings and environmental assessment

Not later than 6 months after the date on which the Secretary completes the identification of sites under section 10193 of this title, and before beginning siting research activities, the Secretary shall hold at least 1 public meeting in the vicinity of each site to inform the residents of the area of the activities to be conducted at such site and to receive their views.

(c) Restrictions

Except as provided in section 10198 of this title with respect to a test and evaluation facility, in conducting siting research activities pursuant to subsection (a) of this section—

(1) the Secretary shall use the minimum quantity of high-level radioactive waste or other radioactive materials, if any, necessary to achieve the test or research objectives;

(2) the Secretary shall ensure that any radioactive material used or placed on a site shall be fully retrievable; and

(3) upon termination of siting research activities at a site for any reason, the Secretary shall remove any radioactive material at or in the site as promptly as practicable.

(d) Title to material

The Secretary may take title, in the name of the Federal Government, to the high-level radioactive waste, spent nuclear fuel, or other radioactive material emplaced in a test and evaluation facility. If the Secretary takes title to any such material, the Secretary shall enter into the appropriate financial arrangements described in subsection (a) or (b) of section 10222 of this title for the disposal of such material.

(Pub. L. 97-425, title II, §214, Jan. 7, 1983, 96 Stat. 2247.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10197, 10198 of this title.

§ 10195. Test and evaluation facility siting review and reports**(a) Consultation and cooperation**

The Governor of a State, or the governing body of an affected Indian tribe, notified of a site identification under section 10193 of this title shall have the right to participate in a process of consultation and cooperation as soon as the site involved has been identified pursuant to such section and throughout the life of the test and evaluation facility. For purposes of this section, the term “process of consultation and cooperation” means a methodology—

(1) by which the Secretary—

(A) keeps the Governor or governing body involved fully and currently informed about any potential economic or public health and safety impacts in all stages of the siting, development, construction, and operation of a test and evaluation facility;

(B) solicits, receives, and evaluates concerns and objections of such Governor or governing body with regard to such test and evaluation facility on an ongoing basis; and

(C) works diligently and cooperatively to resolve such concerns and objections; and

(2) by which the State or affected Indian tribe involved can exercise reasonable independent monitoring and testing of onsite activities related to all stages of the siting, development, construction and operation of the test and evaluation facility, except that any such monitoring and testing shall not unreasonably interfere with onsite activities.

(b) Written agreements

The Secretary shall enter into written agreements with the Governor of the State in which an identified site is located or with the governing body of any affected Indian tribe where an identified site is located in order to expedite the consultation and cooperation process. Any such written agreement shall specify—

(1) procedures by which such Governor or governing body may study, determine, comment on, and make recommendations with regard to the possible health, safety, and economic impacts of the test and evaluation facility;

(2) procedures by which the Secretary shall consider and respond to comments and recommendations made by such Governor or governing body, including the period in which the Secretary shall so respond;

(3) the documents the Department is to submit to such Governor or governing body, the timing for such submissions, the timing for such Governor or governing body to identify public health and safety concerns and the process to be followed to try to eliminate those concerns;

(4) procedures by which the Secretary and either such Governor or governing body may review or modify the agreement periodically; and

(5) procedures for public notification of the procedures specified under subparagraphs (A) through (D).

(c) Limitation

Except as specifically provided in this section, nothing in this subchapter is intended to grant any State or affected Indian tribe any authority with respect to the siting, development, or loading of the test and evaluation facility.

(Pub. L. 97-425, title II, §215, Jan. 7, 1983, 96 Stat. 2247.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10199 of this title.

§ 10196. Federal agency actions**(a) Cooperation and coordination**

Federal agencies shall assist the Secretary by cooperating and coordinating with the Secretary in the preparation of any necessary reports under this subchapter and the mission plan under section 10221 of this title.

(b) Environmental review

(1) No action of the Secretary or any other Federal agency required by this subchapter or section 10221 of this title with respect to a test and evaluation facility to be taken prior to the initiation of onsite construction of a test and evaluation facility shall require the preparation

of an environmental impact statement under section 102(2)(C) of the Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), or to require the preparation of environmental reports, except as otherwise specifically provided for in this subchapter.

(2) The Secretary and the heads of all other Federal agencies shall, to the maximum extent possible, avoid duplication of efforts in the preparation of reports under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). (Pub. L. 97-425, title II, § 216, Jan. 7, 1983, 96 Stat. 2248.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (b)(2), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

§ 10197. Research and development on disposal of high-level radioactive waste

(a) Purpose

Not later than 64 months after January 7, 1983, the Secretary is authorized to, to the extent practicable, begin at a site evaluated under section 10194 of this title, as part of and as an extension of siting research activities of such site under such section, the mining and construction of a test and evaluation facility. Prior to the mining and construction of such facility, the Secretary shall prepare an environmental assessment. The purpose of such facility shall be—

- (1) to supplement and focus the repository site characterization process;
- (2) to provide the conditions under which known technological components can be integrated to demonstrate a functioning repository-like system;
- (3) to provide a means of identifying, evaluating, and resolving potential repository licensing issues that could not be resolved during the siting research program conducted under section 10192 of this title;
- (4) to validate, under actual conditions, the scientific models used in the design of a repository;
- (5) to refine the design and engineering of repository components and systems and to confirm the predicted behavior of such components and systems;
- (6) to supplement the siting data, the generic and specific geological characteristics developed under section 10194 of this title relating to isolating disposal materials in the physical environment of a repository;
- (7) to evaluate the design concepts for packaging, handling, and emplacement of high-level radioactive waste and spent nuclear fuel at the design rate; and
- (8) to establish operating capability without exposing workers to excessive radiation.

(b) Design

The Secretary shall design each test and evaluation facility—

- (1) to be capable of receiving not more than 100 full-sized canisters of solidified high-level radioactive waste (which canisters shall not

exceed an aggregate weight of 100 metric tons), except that spent nuclear fuel may be used instead of such waste if such waste cannot be obtained under reasonable conditions;

(2) to permit full retrieval of solidified high-level radioactive waste, or other radioactive material used by the Secretary for testing, upon completion of the technology demonstration activities; and

(3) based upon the principle that the high-level radioactive waste, spent nuclear fuel, or other radioactive material involved shall be isolated from the biosphere in such a way that the initial isolation is provided by engineered barriers functioning as a system with the geologic environment.

(c) Operation

(1) Not later than 88 months after January 7, 1983, the Secretary shall begin an in situ testing program at the test and evaluation facility in accordance with the mission plan developed under section 10221 of this title, for purposes of—

(A) conducting in situ tests of bore hole sealing, geologic media fracture sealing, and room closure to establish the techniques and performance for isolation of high-level radioactive waste, spent nuclear fuel, or other radioactive materials from the biosphere;

(B) conducting in situ tests with radioactive sources and materials to evaluate and improve reliable models for radionuclide migration, absorption, and containment within the engineered barriers and geologic media involved, if the Secretary finds there is reasonable assurance that such radioactive sources and materials will not threaten the use of such site as a repository;

(C) conducting in situ tests to evaluate and improve models for ground water or brine flow through fractured geologic media;

(D) conducting in situ tests under conditions representing the real time and the accelerated time behavior of the engineered barriers within the geologic environment involved;

(E) conducting in situ tests to evaluate the effects of heat and pressure on the geologic media involved, on the hydrology of the surrounding area, and on the integrity of the disposal packages;

(F) conducting in situ tests under both normal and abnormal repository conditions to establish safe design limits for disposal packages and to determine the effects of the gross release of radionuclides into surroundings, and the effects of various credible failure modes, including—

(i) seismic events leading to the coupling of aquifers through the test and evaluation facility;

(ii) thermal pulses significantly greater than the maximum calculated; and

(iii) human intrusion creating a direct pathway to the biosphere; and

(G) conducting such other research and development activities as the Secretary considers appropriate, including such activities necessary to obtain the use of high-level radioactive waste, spent nuclear fuel, or other radioactive materials (such as any highly radioactive material from the Three Mile Is-

land nuclear powerplant or from the West Valley Demonstration Project) for test and evaluation purposes, if such other activities are reasonably necessary to support the repository program and if there is reasonable assurance that the radioactive sources involved will not threaten the use of such site as a repository.

(2) The in situ testing authorized in this subsection shall be designed to ensure that the suitability of the site involved for licensing by the Commission as a repository will not be adversely affected.

(d) Use of existing Department facilities

During the conducting of siting research activities under section 10194 of this title and for such period thereafter as the Secretary considers appropriate, the Secretary shall use Department facilities owned by the Federal Government on January 7, 1983, for the conducting of generically applicable tests regarding packaging, handling, and emplacement technology for solidified high-level radioactive waste and spent nuclear fuel from civilian nuclear activities.

(e) Engineered barriers

The system of engineered barriers and selected geology used in a test and evaluation facility shall have a design life at least as long as that which the Commission requires by regulations issued under this chapter, or under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.), for repositories.

(f) Role of Commission

(1)(A) Not later than 1 year after January 7, 1983, the Secretary and the Commission shall reach a written understanding establishing the procedures for review, consultation, and coordination in the planning, construction, and operation of the test and evaluation facility under this section. Such understanding shall establish a schedule, consistent with the deadlines set forth in this subchapter,¹ for submission by the Secretary of, and review by the Commission of and necessary action on—

(i) the mission plan prepared under section 10221 of this title; and

(ii) such reports and other information as the Commission may reasonably require to evaluate any health and safety impacts of the test and evaluation facility.

(B) Such understanding shall also establish the conditions under which the Commission may have access to the test and evaluation facility for the purpose of assessing any public health and safety concerns that it may have. No shafts may be excavated for the test and evaluation until the Secretary and the Commission enter into such understanding.

(2) Subject to section 10225 of this title, the test and evaluation facility, and the facilities authorized in this section, shall be constructed and operated as research, development, and demonstration facilities, and shall not be subject to licensing under section 5842 of this title.

(3)(A) The Commission shall carry out a continuing analysis of the activities undertaken under this section to evaluate the adequacy of

the consideration of public health and safety issues.

(B) The Commission shall report to the President, the Secretary, and the Congress as the Commission considers appropriate with respect to the conduct of activities under this section.

(g) Environmental review

The Secretary shall prepare an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) prior to conducting tests with radioactive materials at the test and evaluation facility. Such environmental impact statement shall incorporate, to the extent practicable, the environmental assessment prepared under subsection (a) of this section. Nothing in this subsection may be construed to limit siting research activities conducted under section 10194 of this title. This subsection shall apply only to activities performed exclusively for a test and evaluation facility.

(h) Limitations

(1) If the test and evaluation facility is not located at the site of a repository, the Secretary shall obtain the concurrence of the Commission with respect to the decontamination and decommissioning of such facility.

(2) If the test and evaluation facility is not located at a candidate site or repository site, the Secretary shall conduct only the portion of the in situ testing program required in subsection (c) of this section determined by the Secretary to be useful in carrying out the purposes of this chapter.

(3) The operation of the test and evaluation facility shall terminate not later than—

(A) 5 years after the date on which the initial repository begins operation; or

(B) at such time as the Secretary determines that the continued operation of a test and evaluation facility is not necessary for research, development, and demonstration purposes;

whichever occurs sooner.

(4) Notwithstanding any other provisions of this subsection, as soon as practicable following any determination by the Secretary, with the concurrence of the Commission, that the test and evaluation facility is unsuitable for continued operation, the Secretary shall take such actions as are necessary to remove from such site any radioactive material placed on such site as a result of testing and evaluation activities conducted under this section. Such requirement may be waived if the Secretary, with the concurrence of the Commission, finds that short-term testing and evaluation activities using radioactive material will not endanger the public health and safety.

(Pub. L. 97-425, title II, §217, Jan. 7, 1983, 96 Stat. 2249.)

REFERENCES IN TEXT

The Atomic Energy Act of 1954, referred to in subsec. (e), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

¹ See References in Text note below.

This subchapter, referred to in subsec. (f)(1)(A), was in the original "this subtitle", and was translated as this subchapter to reflect the probable intent of Congress because title II of Pub. L. 97-425, which enacted this subchapter, does not contain subtitles.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10199 of this title.

§ 10198. Research and development on spent nuclear fuel

(a) Demonstration and cooperative programs

The Secretary shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission. Not later than 1 year after January 7, 1983, the Secretary shall select at least 1, but not more than 3, sites evaluated under section 10194 of this title at such power reactors. In selecting such site or sites, the Secretary shall give preference to civilian nuclear power reactors that will soon have a shortage of interim storage capacity for spent nuclear fuel. Subject to reaching agreement as provided in subsection (b) of this section, the Secretary shall undertake activities to assist such power reactors with demonstration projects at such sites, which may use one of the following types of alternate storage technologies: spent nuclear fuel storage casks, caissons, or silos. The Secretary shall also undertake a cooperative program with civilian nuclear power reactors to encourage the development of the technology for spent nuclear fuel rod consolidation in existing power reactor water storage basins.

(b) Cooperative agreements

To carry out the programs described in subsection (a) of this section, the Secretary shall enter into a cooperative agreement with each utility involved that specifies, at a minimum, that—

(1) such utility shall select the alternate storage technique to be used, make the land and spent nuclear fuel available for the dry storage demonstration, submit and provide site-specific documentation for a license application to the Commission, obtain a license relating to the facility involved, construct such facility, operate such facility after licensing, pay the costs required to construct such facility, and pay all costs associated with the operation and maintenance of such facility;

(2) the Secretary shall provide, on a cost-sharing basis, consultative and technical assistance, including design support and generic licensing documentation, to assist such utility in obtaining the construction authorization and appropriate license from the Commission; and

(3) the Secretary shall provide generic research and development of alternative spent nuclear fuel storage techniques to enhance

utility-provided, at-reactor storage capabilities, if authorized in any other provision of this chapter or in any other provision of law.

(c) Dry storage research and development

(1) The consultative and technical assistance referred to in subsection (b)(2) of this section may include, but shall not be limited to, the establishment of a research and development program for the dry storage of not more than 300 metric tons of spent nuclear fuel at facilities owned by the Federal Government on January 7, 1983. The purpose of such program shall be to collect necessary data to assist the utilities involved in the licensing process.

(2) To the extent available, and consistent with the provisions of section 10155 of this title, the Secretary shall provide spent nuclear fuel for the research and development program authorized in this subsection from spent nuclear fuel received by the Secretary for storage under section 10155 of this title. Such spent nuclear fuel shall not be subject to the provisions of section 10155(e) of this title.

(d) Funding

The total contribution from the Secretary from Federal funds and the use of Federal facilities or services shall not exceed 25 percent of the total costs of the demonstration program authorized in subsection (a) of this section, as estimated by the Secretary. All remaining costs of such program shall be paid by the utilities involved or shall be provided by the Secretary from the Interim Storage Fund established in section 10156 of this title.

(e) Relation to spent nuclear fuel storage program

The spent nuclear fuel storage program authorized in section 10155 of this title shall not be construed to authorize the use of research development or demonstration facilities owned by the Department unless—

(1) a period of 30 calendar days (not including any day in which either House of Congress is not in session because of adjournment of more than 3 calendar days to a day certain) has passed after the Secretary has transmitted to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a written report containing a full and complete statement concerning (A) the facility involved; (B) any necessary modifications; (C) the cost thereof; and (D) the impact on the authorized research and development program; or

(2) each such committee, before the expiration of such period, has transmitted to the Secretary a written notice to the effect that such committee has no objection to the proposed use of such facility.

(Pub. L. 97-425, title II, § 218, Jan. 7, 1983, 96 Stat. 2252; Pub. L. 103-437, § 15(c)(10), Nov. 2, 1994, 108 Stat. 4592.)

AMENDMENTS

1994—Subsec. (e)(1). Pub. L. 103-437 substituted "Committee on Science, Space, and Technology" for "Committee on Science and Technology".

CHANGE OF NAME

Committee on Science, Space, and Technology of House of Representatives treated as referring to Committee on Science of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10153, 10155, 10194 of this title.

§ 10199. Payments to States and Indian tribes**(a) Payments**

Subject to subsection (b) of this section, the Secretary shall make payments to each State or affected Indian tribe that has entered into an agreement pursuant to section 10195 of this title. The Secretary shall pay an amount equal to 100 percent of the expenses incurred by such State or Indian tribe in engaging in any monitoring, testing, evaluation, or other consultation and cooperation activity under section 10195 of this title with respect to any site. The amount paid by the Secretary under this paragraph shall not exceed \$3,000,000 per year from the date on which the site involved was identified to the date on which the decontamination and decommission of the facility is complete pursuant to section 10197(h) of this title. Any such payment may only be made to a State in which a potential site for a test and evaluation facility has been identified under section 10193 of this title, or to an affected Indian tribe where the potential site has been identified under such section.

(b) Limitation

The Secretary shall make any payment to a State under subsection (a) of this section only if such State agrees to provide, to each unit of general local government within the jurisdictional boundaries of which the potential site or effectively selected site involved is located, at least one-tenth of the payments made by the Secretary to such State under such subsection. A State or affected Indian tribe receiving any payment under subsection (a) of this section shall otherwise have discretion to use such payment for whatever purpose it deems necessary, including the State or tribal activities pursuant to agreements entered into in accordance with section 10195 of this title. Annual payments shall be prorated on a 365-day basis to the specified dates.

(Pub. L. 97-425, title II, § 219, Jan. 7, 1983, 96 Stat. 2253.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10222 of this title.

§ 10200. Study of research and development needs for monitored retrievable storage proposal

Not later than 6 months after January 7, 1983, the Secretary shall submit to the Congress a report describing the research and development activities the Secretary considers necessary to develop the proposal required in section 10161(b) of this title with respect to a monitored retrievable storage facility.

(Pub. L. 97-425, title II, § 220, Jan. 7, 1983, 96 Stat. 2254.)

§ 10201. Judicial review

Judicial review of research and development activities under this subchapter shall be in accordance with the provisions of section 10139 of this title.

(Pub. L. 97-425, title II, § 221, Jan. 7, 1983, 96 Stat. 2254.)

§ 10202. Research on alternatives for permanent disposal of high-level radioactive waste

The Secretary shall continue and accelerate a program of research, development, and investigation of alternative means and technologies for the permanent disposal of high-level radioactive waste from civilian nuclear activities and Federal research and development activities except that funding shall be made from amounts appropriated to the Secretary for purposes of carrying out this section. Such program shall include examination of various waste disposal options.

(Pub. L. 97-425, title II, § 222, Jan. 7, 1983, 96 Stat. 2254.)

§ 10203. Technical assistance to non-nuclear weapon states in field of spent fuel storage and disposal**(a) Statement of policy**

It shall be the policy of the United States to cooperate with and provide technical assistance to non-nuclear weapon states in the field of spent fuel storage and disposal.

(b) Publication of joint notice; update

(1) Within 90 days of January 7, 1983, the Secretary and the Commission shall publish a joint notice in the Federal Register stating that the United States is prepared to cooperate with and provide technical assistance to non-nuclear weapon states in the fields of at-reactor spent fuel storage; away-from-reactor spent fuel storage; monitored, retrievable spent fuel storage; geologic disposal of spent fuel; and the health, safety, and environmental regulation of such activities. The notice shall summarize the resources that can be made available for international cooperation and assistance in these fields through existing programs of the Department and the Commission, including the availability of: (i) data from past or ongoing research and development projects; (ii) consultations with expert Department or Commission personnel or contractors; and (iii) liaison with private business entities and organizations working in these fields.

(2) The joint notice described in the preceding subparagraph shall be updated and reissued annually for 5 succeeding years.

(c) Notification to non-nuclear weapon states; expressions of interest

Following publication of the annual joint notice referred to in paragraph (2), the Secretary of State shall inform the governments of non-nuclear weapon states and, as feasible, the organizations operating nuclear powerplants in such states, that the United States is prepared to cooperate with and provide technical assistance to non-nuclear weapon states in the fields of spent

fuel storage and disposal, as set forth in the joint notice. The Secretary of State shall also solicit expressions of interest from non-nuclear weapon state governments and non-nuclear weapon state nuclear power reactor operators concerning their participation in expanded United States cooperation and technical assistance programs in these fields. The Secretary of State shall transmit any such expressions of interest to the Department and the Commission.

(d) Funding requests

With his budget presentation materials for the Department and the Commission for fiscal years 1984 through 1989, the President shall include funding requests for an expanded program of cooperation and technical assistance with non-nuclear weapon states in the fields of spent fuel storage and disposal as appropriate in light of expressions of interest in such cooperation and assistance on the part of non-nuclear weapon state governments and non-nuclear weapon state nuclear power reactor operators.

(e) "Non-nuclear weapon state" defined

For the purposes of this subsection,¹ the term "non-nuclear weapon state" shall have the same meaning as that set forth in article IX of the Treaty on the Non-Proliferation of Nuclear Weapons (21 U.S.C.² 438).

(f) Unauthorized actions

Nothing in this subsection¹ shall authorize the Department or the Commission to take any action not authorized under existing law.

(Pub. L. 97-425, title II, § 223, Jan. 7, 1983, 96 Stat. 2254.)

REFERENCES IN TEXT

The Treaty on the Non-Proliferation of Nuclear Weapons, referred to in subsec. (e), is set out in 21 UST 483; TIAS 6839.

§ 10204. Subseabed disposal

(a) Repealed. Pub. L. 104-66, title I, § 1051(d), Dec. 21, 1995, 109 Stat. 716

(b) Office of Subseabed Disposal Research

(1) There is hereby established an Office of Subseabed Disposal Research within the Office of Science of the Department of Energy. The Office shall be headed by the Director, who shall be a member of the Senior Executive Service appointed by the Director of the Office of Science, and compensated at a rate determined by applicable law.

(2) The Director of the Office of Subseabed Disposal Research shall be responsible for carrying out research, development, and demonstration activities on all aspects of subseabed disposal of high-level radioactive waste and spent nuclear fuel, subject to the general supervision of the Secretary. The Director of the Office shall be directly responsible to the Director of the Office of Science, and the first such Director shall be appointed within 30 days of December 22, 1987.

(3) In carrying out his responsibilities under this chapter, the Secretary may make grants to,

or enter into contracts with, the Subseabed Consortium described in subsection (d) of this section, and other persons.

(4)(A) Within 60 days of December 22, 1987, the Secretary shall establish a university-based Subseabed Consortium involving leading oceanographic universities and institutions, national laboratories, and other organizations to investigate the technical and institutional feasibility of subseabed disposal.

(B) The Subseabed Consortium shall develop a research plan and budget to achieve the following objectives by 1995:

(i) demonstrate the capacity to identify and characterize potential subseabed disposal sites;

(ii) develop conceptual designs for a subseabed disposal system, including estimated costs and institutional requirements; and

(iii) identify and assess the potential impacts of subseabed disposal on the human and marine environment.

(C) In 1990, and again in 1995, the Subseabed Consortium shall report to Congress on the progress being made in achieving the objectives of paragraph (2).

(Pub. L. 97-425, title II, § 224, as added Pub. L. 100-202, § 101(d) [title III], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, § 5063, Dec. 22, 1987, 101 Stat. 1330-253; amended Pub. L. 104-66, title I, § 1051(d), Dec. 21, 1995, 109 Stat. 716; Pub. L. 105-245, title III, § 309(b)(2)(E), Oct. 7, 1998, 112 Stat. 1853.)

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

AMENDMENTS

1998—Subsec. (b)(1). Pub. L. 105-245 which directed the substitution of "Science" for "Energy Research", was executed by making the substitution in two places to reflect the probable intent of Congress.

Subsec. (b)(2). Pub. L. 105-245 substituted "Office of Science" for "Office of Energy Research".

1995—Subsec. (a). Pub. L. 104-66 struck out subsec. (a) which required Secretary of Energy to report to Congress on subseabed disposal of spent nuclear fuel and high-level radioactive waste.

Subsec. (b)(5). Pub. L. 104-66 struck out par. (5) which read as follows: "The Director of the Office of Subseabed Disposal Research shall annually prepare and submit a report to the Congress on the activities and expenditures of the Office."

SUBCHAPTER III—OTHER PROVISIONS
RELATING TO RADIOACTIVE WASTE

§ 10221. Mission plan

(a) Contents of mission plan

The Secretary shall prepare a comprehensive report, to be known as the mission plan, which shall provide an informational basis sufficient to permit informed decisions to be made in carrying out the repository program and the research, development, and demonstration programs required under this chapter. The mission plan shall include—

(1) an identification of the primary scientific, engineering, and technical information, including any necessary demonstration of engineering or systems integration, with re-

¹ So in original. Probably should be "section".

² So in original. Probably should be "UST".

spect to the siting and construction of a test and evaluation facility and repositories;

(2) an identification of any information described in paragraph (1) that is not available because of any unresolved scientific, engineering, or technical questions, or undemonstrated engineering or systems integration, a schedule including specific major milestones for the research, development, and technology demonstration program required under this chapter and any additional activities to be undertaken to provide such information, a schedule for the activities necessary to achieve important programmatic milestones, and an estimate of the costs required to carry out such research, development, and demonstration programs;

(3) an evaluation of financial, political, legal, or institutional problems that may impede the implementation of this chapter, the plans of the Secretary to resolve such problems, and recommendations for any necessary legislation to resolve such problems;

(4) any comments of the Secretary with respect to the purpose and program of the test and evaluation facility;

(5) a discussion of the significant results of research and development programs conducted and the implications for each of the different geologic media under consideration for the siting of repositories, and, on the basis of such information, a comparison of the advantages and disadvantages associated with the use of such media for repository sites;

(6) the guidelines issued under section 10132(a) of this title;

(7) a description of known sites at which site characterization activities should be undertaken, a description of such siting characterization activities, including the extent of planned excavations, plans for onsite testing with radioactive or nonradioactive material, plans for any investigations activities which may affect the capability of any such site to isolate high-level radioactive waste or spent nuclear fuel, plans to control any adverse, safety-related impacts from such site characterization activities, and plans for the decontamination and decommissioning of such site if it is determined unsuitable for licensing as a repository;

(8) an identification of the process for solidifying high-level radioactive waste or packaging spent nuclear fuel, including a summary and analysis of the data to support the selection of the solidification process and packaging techniques, an analysis of the requirements for the number of solidification packaging facilities needed, a description of the state of the art for the materials proposed to be used in packaging such waste or spent fuel and the availability of such materials including impacts on strategic supplies and any requirements for new or reactivated facilities to produce any such materials needed, and a description of a plan, and the schedule for implementing such plan, for an aggressive research and development program to provide when needed a high-integrity disposal package at a reasonable price;

(9) an estimate of (A) the total repository capacity required to safely accommodate the

disposal of all high-level radioactive waste and spent nuclear fuel expected to be generated through December 31, 2020, in the event that no commercial reprocessing of spent nuclear fuel occurs, as well as the repository capacity that will be required if such reprocessing does occur; (B) the number and type of repositories required to be constructed to provide such disposal capacity; (C) a schedule for the construction of such repositories; and (D) an estimate of the period during which each repository listed in such schedule will be accepting high-level radioactive waste or spent nuclear fuel for disposal;

(10) an estimate, on an annual basis, of the costs required (A) to construct and operate the repositories anticipated to be needed under paragraph (9) based on each of the assumptions referred to in such paragraph; (B) to construct and operate a test and evaluation facility, or any other facilities, other than repositories described in subparagraph (A), determined to be necessary; and (C) to carry out any other activities under this chapter; and

(11) an identification of the possible adverse economic and other impacts to the State or Indian tribe involved that may arise from the development of a test and evaluation facility or repository at a site.

(b) Submission of mission plan

(1) Not later than 15 months after January 7, 1983, the Secretary shall submit a draft mission plan to the States, the affected Indian tribes, the Commission, and other Government agencies as the Secretary deems appropriate for their comments.

(2) In preparing any comments on the mission plan, such agencies shall specify with precision any objections that they may have. Upon submission of the mission plan to such agencies, the Secretary shall publish a notice in the Federal Register of the submission of the mission plan and of its availability for public inspection, and, upon receipt of any comments of such agencies respecting the mission plan, the Secretary shall publish a notice in the Federal Register of the receipt of comments and of the availability of the comments for public inspection. If the Secretary does not revise the mission plan to meet objections specified in such comments, the Secretary shall publish in the Federal Register a detailed statement for not so revising the mission plan.

(3) The Secretary, after reviewing any other comments made by such agencies and revising the mission plan to the extent that the Secretary may consider to be appropriate, shall submit the mission plan to the appropriate committees of the Congress not later than 17 months after January 7, 1983. The mission plan shall be used by the Secretary at the end of the first period of 30 calendar days (not including any day on which either House of Congress is not in session because of adjournment of more than 3 calendar days to a day certain) following receipt of the mission plan by the Congress.

(Pub. L. 97-425, title III, §301, Jan. 7, 1983, 96 Stat. 2255.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10196, 10197 of this title.

§ 10222. Nuclear Waste Fund**(a) Contracts**

(1) In the performance of his functions under this chapter, the Secretary is authorized to enter into contracts with any person who generates or holds title to high-level radioactive waste, or spent nuclear fuel, of domestic origin for the acceptance of title, subsequent transportation, and disposal of such waste or spent fuel. Such contracts shall provide for payment to the Secretary of fees pursuant to paragraphs (2) and (3) sufficient to offset expenditures described in subsection (d) of this section.

(2) For electricity generated by a civilian nuclear power reactor and sold on or after the date 90 days after January 7, 1983, the fee under paragraph (1) shall be equal to 1.0 mil per kilowatt-hour.

(3) For spent nuclear fuel, or solidified high-level radioactive waste derived from spent nuclear fuel, which fuel was used to generate electricity in a civilian nuclear power reactor prior to the application of the fee under paragraph (2) to such reactor, the Secretary shall, not later than 90 days after January 7, 1983, establish a 1 time fee per kilogram of heavy metal in spent nuclear fuel, or in solidified high-level radioactive waste. Such fee shall be in an amount equivalent to an average charge of 1.0 mil per kilowatt-hour for electricity generated by such spent nuclear fuel, or such solidified high-level waste derived therefrom, to be collected from any person delivering such spent nuclear fuel or high-level waste, pursuant to section 10143 of this title, to the Federal Government. Such fee shall be paid to the Treasury of the United States and shall be deposited in the separate fund established by subsection (c) of this section.¹ In paying such a fee, the person delivering spent fuel, or solidified high-level radioactive wastes derived therefrom, to the Federal Government shall have no further financial obligation to the Federal Government for the long-term storage and permanent disposal of such spent fuel, or the solidified high-level radioactive waste derived therefrom.

(4) Not later than 180 days after January 7, 1983, the Secretary shall establish procedures for the collection and payment of the fees established by paragraph (2) and paragraph (3). The Secretary shall annually review the amount of the fees established by paragraphs (2) and (3) above to evaluate whether collection of the fee will provide sufficient revenues to offset the costs as defined in subsection (d) of this section. In the event the Secretary determines that either insufficient or excess revenues are being collected, in order to recover the costs incurred by the Federal Government that are specified in subsection (d) of this section, the Secretary shall propose an adjustment to the fee to insure full cost recovery. The Secretary shall immediately transmit this proposal for such an adjustment to Congress. The adjusted fee proposed by the Secretary shall be effective after a period of 90 days of continuous session have elapsed following the receipt of such transmittal unless during such 90-day period either House of Con-

gress adopts a resolution disapproving the Secretary's proposed adjustment in accordance with the procedures set forth for congressional review of an energy action under section 6421 of this title.

(5) Contracts entered into under this section shall provide that—

(A) following commencement of operation of a repository, the Secretary shall take title to the high-level radioactive waste or spent nuclear fuel involved as expeditiously as practicable upon the request of the generator or owner of such waste or spent fuel; and

(B) in return for the payment of fees established by this section, the Secretary, beginning not later than January 31, 1998, will dispose of the high-level radioactive waste or spent nuclear fuel involved as provided in this subchapter.¹

(6) The Secretary shall establish in writing criteria setting forth the terms and conditions under which such disposal services shall be made available.

(b) Advance contracting requirement

(1)(A) The Commission shall not issue or renew a license to any person to use a utilization or production facility under the authority of section 2133 or 2134 of this title unless—

(i) such person has entered into a contract with the Secretary under this section; or

(ii) the Secretary affirms in writing that such person is actively and in good faith negotiating with the Secretary for a contract under this section.

(B) The Commission, as it deems necessary or appropriate, may require as a precondition to the issuance or renewal of a license under section 2133 or 2134 of this title that the applicant for such license shall have entered into an agreement with the Secretary for the disposal of high-level radioactive waste and spent nuclear fuel that may result from the use of such license.

(2) Except as provided in paragraph (1), no spent nuclear fuel or high-level radioactive waste generated or owned by any person (other than a department of the United States referred to in section 101 or 102 of title 5) may be disposed of by the Secretary in any repository constructed under this chapter unless the generator or owner of such spent fuel or waste has entered into a contract with the Secretary under this section by not later than—

(A) June 30, 1983; or

(B) the date on which such generator or owner commences generation of, or takes title to, such spent fuel or waste;

whichever occurs later.

(3) The rights and duties of a party to a contract entered into under this section may be assignable with transfer of title to the spent nuclear fuel or high-level radioactive waste involved.

(4) No high-level radioactive waste or spent nuclear fuel generated or owned by any department of the United States referred to in section 101 or 102 of title 5 may be disposed of by the Secretary in any repository constructed under this chapter unless such department transfers to

¹ See References in Text note below.

the Secretary, for deposit in the Nuclear Waste Fund, amounts equivalent to the fees that would be paid to the Secretary under the contracts referred to in this section if such waste or spent fuel were generated by any other person.

(c) Establishment of Nuclear Waste Fund

There hereby is established in the Treasury of the United States a separate fund, to be known as the Nuclear Waste Fund. The Waste Fund shall consist of—

(1) all receipts, proceeds, and recoveries realized by the Secretary under subsections (a), (b), and (e) of this section, which shall be deposited in the Waste Fund immediately upon their realization;

(2) any appropriations made by the Congress to the Waste Fund; and

(3) any unexpended balances available on January 7, 1983, for functions or activities necessary or incident to the disposal of civilian high-level radioactive waste or civilian spent nuclear fuel, which shall automatically be transferred to the Waste Fund on such date.

(d) Use of Waste Fund

The Secretary may make expenditures from the Waste Fund, subject to subsection (e) of this section, only for purposes of radioactive waste disposal activities under subchapters I and II of this chapter, including—

(1) the identification, development, licensing, construction, operation, decommissioning, and post-decommissioning maintenance and monitoring of any repository, monitored,² retrievable storage facility³ or test and evaluation facility constructed under this chapter;

(2) the conducting of nongeneric research, development, and demonstration activities under this chapter;

(3) the administrative cost of the radioactive waste disposal program;

(4) any costs that may be incurred by the Secretary in connection with the transportation, treating, or packaging of spent nuclear fuel or high-level radioactive waste to be disposed of in a repository, to be stored in a monitored,² retrievable storage site³ or to be used in a test and evaluation facility;

(5) the costs associated with acquisition, design, modification, replacement, operation, and construction of facilities at a repository site, a monitored,² retrievable storage site³ or a test and evaluation facility site and necessary or incident to such repository, monitored,² retrievable storage facility³ or test and evaluation facility; and

(6) the provision of assistance to States, units of general local government, and Indian tribes under sections 10136, 10138, and 10199 of this title.

No amount may be expended by the Secretary under this subchapter⁴ for the construction or expansion of any facility unless such construction or expansion is expressly authorized by this or subsequent legislation. The Secretary hereby

is authorized to construct one repository and one test and evaluation facility.

(e) Administration of Waste Fund

(1) The Secretary of the Treasury shall hold the Waste Fund and, after consultation with the Secretary, annually report to the Congress on the financial condition and operations of the Waste Fund during the preceding fiscal year.

(2) The Secretary shall submit the budget of the Waste Fund to the Office of Management and Budget triennially along with the budget of the Department of Energy submitted at such time in accordance with chapter 11 of title 31. The budget of the Waste Fund shall consist of the estimates made by the Secretary of expenditures from the Waste Fund and other relevant financial matters for the succeeding 3 fiscal years, and shall be included in the Budget of the United States Government. The Secretary may make expenditures from the Waste Fund, subject to appropriations which shall remain available until expended. Appropriations shall be subject to triennial authorization.

(3) If the Secretary determines that the Waste Fund contains at any time amounts in excess of current needs, the Secretary may request the Secretary of the Treasury to invest such amounts, or any portion of such amounts as the Secretary determines to be appropriate, in obligations of the United States—

(A) having maturities determined by the Secretary of the Treasury to be appropriate to the needs of the Waste Fund; and

(B) bearing interest at rates determined to be appropriate by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the maturities of such investments, except that the interest rate on such investments shall not exceed the average interest rate applicable to existing borrowings.

(4) Receipts, proceeds, and recoveries realized by the Secretary under this section, and expenditures of amounts from the Waste Fund, shall be exempt from annual apportionment under the provisions of subchapter II of chapter 15 of title 31.

(5) If at any time the moneys available in the Waste Fund are insufficient to enable the Secretary to discharge his responsibilities under this subchapter,⁵ the Secretary shall issue to the Secretary of the Treasury obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be agreed to by the Secretary and the Secretary of the Treasury. The total of such obligations shall not exceed amounts provided in appropriation Acts. Redemption of such obligations shall be made by the Secretary from moneys available in the Waste Fund. Such obligations shall bear interest at a rate determined by the Secretary of the Treasury, which shall be not less than a rate determined by taking into consideration the average market yield on outstanding marketable obligations of the United States of comparable maturities during the

² So in original. The comma probably should not appear.

³ So in original. Probably should be followed by a comma.

⁴ See References in Text note below.

⁵ See References in Text note below.

month preceding the issuance of the obligations under this paragraph. The Secretary of the Treasury shall purchase any issued obligations, and for such purpose the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, and the purposes for which securities may be issued under such Act⁵ are extended to include any purchase of such obligations. The Secretary of the Treasury may at any time sell any of the obligations acquired by him under this paragraph. All redemptions, purchases, and sales by the Secretary of the Treasury of obligations under this paragraph shall be treated as public debt transactions of the United States.

(6) Any appropriations made available to the Waste Fund for any purpose described in subsection (d) of this section shall be repaid into the general fund of the Treasury, together with interest from the date of availability of the appropriations until the date of repayment. Such interest shall be paid on the cumulative amount of appropriations available to the Waste Fund, less the average undisbursed cash balance in the Waste Fund account during the fiscal year involved. The rate of such interest shall be determined by the Secretary of the Treasury taking into consideration the average market yield during the month preceding each fiscal year on outstanding marketable obligations of the United States of comparable maturity. Interest payments may be deferred with the approval of the Secretary of the Treasury, but any interest payments so deferred shall themselves bear interest.

(Pub. L. 97-425, title III, §302, Jan. 7, 1983, 96 Stat. 2257.)

REFERENCES IN TEXT

Subsection (c) of this section, referred to in subsec. (a)(3), was in the original "subsection (c) 126(b)" and was translated as subsection (c) of this section as the probable intent of Congress in view of the establishment of the Nuclear Waste Fund by subsec. (c) of this section and the absence of a section 126 in Pub. L. 97-425.

This subchapter, referred to in subsecs. (a)(5)(B), (d), and (e)(5), was in the original "this subtitle", and was translated as this subchapter to reflect the probable intent of Congress because title III of Pub. L. 97-425, which enacted this subchapter, does not contain subtitles.

Such Act, referred to in subsec. (e)(5), probably means chapter 31 of Title 31, Money and Finance.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (e)(1) of this section relating to annual report to Congress, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 4th item on page 143 of House Document No. 103-7.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2210, 2214, 10101, 10107, 10138, 10161, 10193, 10194, 10251, 10269 of this title.

§ 10223. Alternative means of financing

The Secretary shall undertake a study with respect to alternative approaches to managing the construction and operation of all civilian radioactive waste management facilities, in-

cluding the feasibility of establishing a private corporation for such purposes. In conducting such study, the Secretary shall consult with the Director of the Office of Management and Budget, the Chairman of the Commission, and such other Federal agency representatives as may be appropriate. Such study shall be completed, and a report containing the results of such study shall be submitted to the Congress, within 1 year after January 7, 1983.

(Pub. L. 97-425, title III, §303, Jan. 7, 1983, 96 Stat. 2261.)

§ 10224. Office of Civilian Radioactive Waste Management

(a) Establishment

There hereby is established within the Department of Energy an Office of Civilian Radioactive Waste Management. The Office shall be headed by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at the rate payable for level IV of the Executive Schedule under section 5315 of title 5.

(b) Functions of Director

The Director of the Office shall be responsible for carrying out the functions of the Secretary under this chapter, subject to the general supervision of the Secretary. The Director of the Office shall be directly responsible to the Secretary.

(c) Annual report to Congress

The Director of the Office shall annually prepare and submit to the Congress a comprehensive report on the activities and expenditures of the Office.

(d) Audit by GAO

If requested by either House of the Congress (or any committee thereof) or if considered necessary by the Comptroller General, the General Accounting Office shall conduct an audit of the Office, in accord with such regulations as the Comptroller General may prescribe. The Comptroller General shall have access to such books, records, accounts, and other materials of the Office as the Comptroller General determines to be necessary for the preparation of such audit. The Comptroller General shall submit a report on the results of each audit conducted under this section.

(Pub. L. 97-425, title III, §304, Jan. 7, 1983, 96 Stat. 2261; Pub. L. 104-66, title I, §1052(l), Dec. 21, 1995, 109 Stat. 719.)

AMENDMENTS

1995—Subsec. (d). Pub. L. 104-66 amended heading and text of subsec. (d) generally. Prior to amendment, text read as follows: "The Comptroller General of the United States shall annually make an audit of the Office, in accordance with such regulations as the Comptroller General may prescribe. The Comptroller General shall have access to such books, records, accounts, and other materials of the Office as the Comptroller General determines to be necessary for the preparation of such audit. The Comptroller General shall submit to the Congress a report on the results of each audit conducted under this section."

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (c) of this section relating to annual submit-

tal of report to Congress, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 13th item on page 91 of House Document No. 103-7.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7267, 10101 of this title.

§ 10225. Location of test and evaluation facility

(a) Report to Congress

Not later than 1 year after January 7, 1983, the Secretary shall transmit to the Congress a report setting forth whether the Secretary plans to locate the test and evaluation facility at the site of a repository.

(b) Procedures

(1) If the test and evaluation facility is to be located at any candidate site or repository site (A) site selection and development of such facility shall be conducted in accordance with the procedures and requirements established in subchapter I of this chapter with respect to the site selection and development of repositories; and (B) the Secretary may not commence construction of any surface facility for such test and evaluation facility prior to issuance by the Commission of a construction authorization for a repository at the site involved.

(2) No test and evaluation facility may be converted into a repository unless site selection and development of such facility was conducted in accordance with the procedures and requirements established in subchapter I of this chapter with respect to the site selection and development of repositories.¹

(3) The Secretary may not commence construction of a test and evaluation facility at a candidate site or site recommended as the location for a repository prior to the date on which the designation of such site is effective under section 10135 of this title.

(Pub. L. 97-425, title III, §305, Jan. 7, 1983, 96 Stat. 2262.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10132, 10197 of this title.

§ 10226. Nuclear Regulatory Commission training authorization

The Nuclear Regulatory Commission is authorized and directed to promulgate regulations, or other appropriate Commission regulatory guidance, for the training and qualifications of civilian nuclear powerplant operators, supervisors, technicians and other appropriate operating personnel. Such regulations or guidance shall establish simulator training requirements for applicants for civilian nuclear powerplant operator licenses and for operator re-qualification programs; requirements governing NRC administration of requalification examinations; requirements for operating tests at civilian nuclear powerplant simulators, and instructional requirements for civilian nuclear powerplant licensee personnel training programs. Such regulations or other regulatory guidance

shall be promulgated by the Commission within the 12-month period following January 7, 1983, and the Commission within the 12-month period following January 7, 1983, shall submit a report to Congress setting forth the actions the Commission has taken with respect to fulfilling its obligations under this section.

(Pub. L. 97-425, title III, §306, Jan. 7, 1983, 96 Stat. 2262.)

SUBCHAPTER IV—NUCLEAR WASTE NEGOTIATOR

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 10101, 10136 of this title.

§ 10241. "State" defined

For purposes of this subchapter, the term "State" means each of the several States and the District of Columbia.

(Pub. L. 97-425, title IV, §401, as added Pub. L. 100-202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5041, Dec. 22, 1987, 101 Stat. 1330-243; amended Pub. L. 102-486, title VIII, §802(b), Oct. 24, 1992, 106 Stat. 2923.)

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

AMENDMENTS

1992—Pub. L. 102-486 substituted "several States and the District of Columbia." for "several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, any other territory or possession of the United States, and the Republic of the Marshall Islands."

§ 10242. Office of Nuclear Waste Negotiator

(a) Establishment

There is established the Office of the Nuclear Waste Negotiator that shall be an independent establishment in the executive branch.

(b) Nuclear Waste Negotiator

(1) The Office shall be headed by a Nuclear Waste Negotiator who shall be appointed by the President, by and with the advice and consent of the Senate. The Negotiator shall hold office at the pleasure of the President, and shall be compensated at the rate provided for level III of the Executive Schedule in section 5314 of title 5.

(2) The Negotiator shall attempt to find a State or Indian tribe willing to host a repository or monitored retrievable storage facility at a technically qualified site on reasonable terms and shall negotiate with any State or Indian tribe which expresses an interest in hosting a repository or monitored retrievable storage facility.

(Pub. L. 97-425, title IV, §402, as added Pub. L. 100-202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5041, Dec. 22, 1987, 101 Stat. 1330-243; amended Pub. L. 100-507, §1, Oct. 18, 1988, 102 Stat. 2541.)

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

¹ So in original. Probably should be "repositories."

AMENDMENTS

1988—Subsec. (a). Pub. L. 100-507 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “There is established within the Executive Office of the President the Office of the Nuclear Waste Negotiator.”

§ 10243. Duties of Negotiator**(a) Negotiations with potential hosts**

(1) The Negotiator shall—

(A) seek to enter into negotiations on behalf of the United States, with—

- (i) the Governor of any State in which a potential site is located; and
- (ii) the governing body of any Indian tribe on whose reservation a potential site is located; and

(B) attempt to reach a proposed agreement between the United States and any such State or Indian tribe specifying the terms and conditions under which such State or tribe would agree to host a repository or monitored retrievable storage facility within such State or reservation.

(2) In any case in which State law authorizes any person or entity other than the Governor to negotiate a proposed agreement under this section on behalf of the State, any reference in this subchapter to the Governor shall be considered to refer instead to such other person or entity.

(b) Consultation with affected States, subdivisions of States, and tribes

In addition to entering into negotiations under subsection (a) of this section, the Negotiator shall consult with any State, affected unit of local government, or any Indian tribe that the Negotiator determines may be affected by the siting of a repository or monitored retrievable storage facility and may include in any proposed agreement such terms and conditions relating to the interest of such States, affected units of local government, or Indian tribes as the Negotiator determines to be reasonable and appropriate.

(c) Consultation with other Federal agencies

The Negotiator may solicit and consider the comments of the Secretary, the Nuclear Regulatory Commission, or any other Federal agency on the suitability of any potential site for site characterization. Nothing in this subsection shall be construed to require the Secretary, the Nuclear Regulatory Commission, or any other Federal agency to make a finding that any such site is suitable for site characterization.

(d) Proposed agreement

(1) The Negotiator shall submit to the Congress any proposed agreement between the United States and a State or Indian tribe negotiated under subsection (a) of this section and an environmental assessment prepared under section 10244(a) of this title for the site concerned.

(2) Any such proposed agreement shall contain such terms and conditions (including such financial and institutional arrangements) as the Negotiator and the host State or Indian tribe determine to be reasonable and appropriate and shall contain such provisions as are necessary to

preserve any right to participation or compensation of such State, affected unit of local government, or Indian tribe under sections 10136(c), 10137, and 10138(b) of this title.

(3)(A) No proposed agreement entered into under this section shall have legal effect unless enacted into Federal law.

(B) A State or Indian tribe shall enter into an agreement under this section in accordance with the laws of such State or tribe. Nothing in this section may be construed to prohibit the disapproval of a proposed agreement between a State and the United States under this section by a referendum or an act of the legislature of such State.

(4) Notwithstanding any proposed agreement under this section, the Secretary may construct a repository or monitored retrievable storage facility at a site agreed to under this subchapter only if authorized by the Nuclear Regulatory Commission in accordance with the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.], title II of the Energy Reorganization Act of 1982 (42 U.S.C. 5841 et seq.) and any other law applicable to authorization of such construction.

(Pub. L. 97-425, title IV, § 403, as added Pub. L. 100-202, § 101(d) [title III], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, § 5041, Dec. 22, 1987, 101 Stat. 1330-244.)

REFERENCES IN TEXT

The Atomic Energy Act of 1954, referred to in subsec. (d)(4), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§ 2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

The Energy Reorganization Act of 1982, referred to in subsec. (d)(4), probably means the Energy Reorganization Act of 1974, Pub. L. 93-438, Oct. 11, 1974, 88 Stat. 1233, as amended. Title II of the Energy Reorganization Act of 1974 is classified generally to subchapter II (§ 5841 et seq.) of chapter 73 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5801 of this title and Tables.

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10244, 10245, 10246 of this title.

§ 10244. Environmental assessment of sites**(a) In general**

Upon the request of the Negotiator, the Secretary shall prepare an environmental assessment of any site that is the subject of negotiations under section 10243(a) of this title.

(b) Contents

(1) Each environmental assessment prepared for a repository site shall include a detailed statement of the probable impacts of characterizing such site and the construction and operation of a repository at such site.

(2) Each environmental assessment prepared for a monitored retrievable storage facility site shall include a detailed statement of the probable impacts of construction and operation of such a facility at such site.

(c) Judicial review

The issuance of an environmental assessment under subsection (a) of this section shall be considered to be a final agency action subject to judicial review in accordance with the provisions of chapter 7 of title 5 and section 10139 of this title.

(d) Public hearings

(1) In preparing an environmental assessment for any repository or monitored retrievable storage facility site, the Secretary shall hold public hearings in the vicinity of such site to inform the residents of the area in which such site is located that such site is being considered and to receive their comments.

(2) At such hearings, the Secretary shall solicit and receive any recommendations of such residents with respect to issues that should be addressed in the environmental assessment required under subsection (a) of this section and the site characterization plan described in section 10133(b)(1) of this title.

(e) Public availability

Each environmental assessment prepared under subsection (a) of this section shall be made available to the public.

(f) Evaluation of sites

(1) In preparing an environmental assessment under subsection (a) of this section, the Secretary shall use available geophysical, geologic, geochemical and hydrologic, and other information and shall not conduct any preliminary borings or excavations at any site that is the subject of such assessment unless—

(A) such preliminary boring or excavation activities were in progress on or before December 22, 1987; or

(B) the Secretary certifies that, in the absence of preliminary borings or excavations, adequate information will not be available to satisfy the requirements of this chapter or any other law.

(2) No preliminary boring or excavation conducted under this section shall exceed a diameter of 40 inches.

(Pub. L. 97-425, title IV, §404, as added Pub. L. 100-202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5041, Dec. 22, 1987, 101 Stat. 1330-245.)

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10243 of this title.

§ 10245. Site characterization; licensing**(a) Site characterization**

Upon enactment of legislation to implement an agreement to site a repository negotiated under section 10243(a) of this title, the Secretary shall conduct appropriate site characterization activities for the site that is the subject of such agreement subject to the conditions and terms of such agreement. Any such site characterization activities shall be conducted in accordance

with section 10133 of this title, except that references in such section to the Yucca Mountain site and the State of Nevada shall be deemed to refer to the site that is the subject of the agreement and the State or Indian tribe entering into the agreement.

(b) Licensing

(1) Upon the completion of site characterization activities carried out under subsection (a) of this section, the Secretary shall submit to the Nuclear Regulatory Commission an application for construction authorization for a repository at such site.

(2) The Nuclear Regulatory Commission shall consider an application for a construction authorization for a repository or monitored retrievable storage facility in accordance with the laws applicable to such applications, except that the Nuclear Regulatory Commission shall issue a final decision approving or disapproving the issuance of a construction authorization not later than 3 years after the date of the submission of such application.

(Pub. L. 97-425, title IV, §405, as added Pub. L. 100-202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5041, Dec. 22, 1987, 101 Stat. 1330-246.)

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10247 of this title.

§ 10246. Monitored retrievable storage**(a) Construction and operation**

Upon enactment of legislation to implement an agreement negotiated under section 10243(a) of this title to site a monitored retrievable storage facility, the Secretary shall construct and operate such facility as part of an integrated nuclear waste management system in accordance with the terms and conditions of such agreement.

(b) Financial assistance

The Secretary may make grants to any State, Indian tribe, or affected unit of local government to assess the feasibility of siting a monitored retrievable storage facility under this section at a site under the jurisdiction of such State, tribe, or affected unit of local government.

(Pub. L. 97-425, title IV, §406, as added Pub. L. 100-202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5041, Dec. 22, 1987, 101 Stat. 1330-246.)

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

§ 10247. Environmental impact statement**(a) In general**

Issuance of a construction authorization for a repository or monitored retrievable storage facility under section 10245(b) of this title shall be

considered a major Federal action significantly affecting the quality of the human environment for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(b) Preparation

A final environmental impact statement shall be prepared by the Secretary under such Act and shall accompany any application to the Nuclear Regulatory Commission for a construction authorization.

(c) Adoption

(1) Any such environmental impact statement shall, to the extent practicable, be adopted by the Nuclear Regulatory Commission, in accordance with section 1506.3 of title 40, Code of Federal Regulations, in connection with the issuance by the Nuclear Regulatory Commission of a construction authorization and license for such repository or monitored retrievable storage facility.

(2)(A) In any such statement prepared with respect to a repository to be constructed under this subchapter at the Yucca Mountain site, the Nuclear Regulatory Commission need not consider the need for a repository, the time of initial availability of a repository, alternate sites to the Yucca Mountain site, or nongeologic alternatives to such site.

(B) In any such statement prepared with respect to a repository to be constructed under this subchapter at a site other than the Yucca Mountain site, the Nuclear Regulatory Commission need not consider the need for a repository, the time of initial availability of a repository, or nongeologic alternatives to such site but shall consider the Yucca Mountain site as an alternate to such site in the preparation of such statement.

(Pub. L. 97-425, title IV, §407, as added Pub. L. 100-202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5041, Dec. 22, 1987, 101 Stat. 1330-246.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsecs. (a) and (b), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

§ 10248. Administrative powers of Negotiator

In carrying out his functions under this subchapter, the Negotiator may—

(1) appoint such officers and employees as he determines to be necessary and prescribe their duties;

(2) obtain services as authorized by section 3109 of title 5, at rates not to exceed the rate prescribed for grade GS-18 of the General Schedule by section 5332 of title 5;

(3) promulgate such rules and regulations as may be necessary to carry out such functions;

(4) utilize the services, personnel, and facilities of other Federal agencies (subject to the consent of the head of any such agency);

(5) for purposes of performing administrative functions under this subchapter, and to the extent funds are appropriated, enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary and on such terms as the Negotiator determines to be appropriate, with any agency or instrumentality of the United States, or with any public or private person or entity;

(6) accept voluntary and uncompensated services, notwithstanding the provisions of section 1342 of title 31;

(7) adopt an official seal, which shall be judicially noticed;

(8) use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States;

(9) hold such hearings as are necessary to determine the views of interested parties and the general public; and

(10) appoint advisory committees under the Federal Advisory Committee Act (5 U.S.C. App.).

(Pub. L. 97-425, title IV, §408, as added Pub. L. 100-202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5041, Dec. 22, 1987, 101 Stat. 1330-247.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in par. (10), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of title 5.

§ 10249. Cooperation of other departments and agencies

Each department, agency, and instrumentality of the United States, including any independent agency, may furnish the Negotiator such information as he determines to be necessary to carry out his functions under this subchapter.

(Pub. L. 97-425, title IV, §409, as added Pub. L. 100-202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5041, Dec. 22, 1987, 101 Stat. 1330-247.)

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

§ 10250. Termination of Office

The Office shall cease to exist not later than 30 days after the date 7 years after December 22, 1987.

(Pub. L. 97-425, title IV, §410, as added Pub. L. 100-202, §101(d) [title III], Dec. 22, 1987, 101 Stat.

1329-104, 1329-121; Pub. L. 100-203, title V, §5041, Dec. 22, 1987, 101 Stat. 1330-247; amended Pub. L. 102-486, title VIII, §802(a), Oct. 24, 1992, 106 Stat. 2923.)

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

AMENDMENTS

1992—Pub. L. 102-486 substituted “7 years” for “5 years”.

§ 10251. Authorization of appropriations

Notwithstanding subsection (d) of section 10222 of this title, and subject to subsection (e) of such section, there are authorized to be appropriated for expenditures from amounts in the Waste Fund established in subsection (c) of such section, such sums as may be necessary to carry out the provisions of this subchapter.

(Pub. L. 97-425, title IV, §411, as added Pub. L. 100-202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5041, Dec. 22, 1987, 101 Stat. 1330-248.)

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

SUBCHAPTER V—NUCLEAR WASTE
TECHNICAL REVIEW BOARD

§ 10261. Definitions

As used in this subchapter:

(1) The term “Chairman” means the Chairman of the Nuclear Waste Technical Review Board.

(2) The term “Board” means the Nuclear Waste Technical Review Board established under section 10262 of this title.

(Pub. L. 97-425, title V, §501, as added Pub. L. 100-202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5051, Dec. 22, 1987, 101 Stat. 1330-248.)

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

§ 10262. Nuclear Waste Technical Review Board

(a) Establishment

There is established a Nuclear Waste Technical Review Board that shall be an independent establishment within the executive branch.

(b) Members

(1) The Board shall consist of 11 members who shall be appointed by the President not later than 90 days after December 22, 1987, from among persons nominated by the National Academy of Sciences in accordance with paragraph (3).

(2) The President shall designate a member of the Board to serve as chairman.

(3)(A) The National Academy of Sciences shall, not later than 90 days after December 22, 1987, nominate not less than 22 persons for appointment to the Board from among persons who meet the qualifications described in subparagraph (C).

(B) The National Academy of Sciences shall nominate not less than 2 persons to fill any vacancy on the Board from among persons who meet the qualifications described in subparagraph (C).

(C)(i) Each person nominated for appointment to the Board shall be—

(I) eminent in a field of science or engineering, including environmental sciences; and

(II) selected solely on the basis of established records of distinguished service.

(ii) The membership of the Board shall be representative of the broad range of scientific and engineering disciplines related to activities under this subchapter.

(iii) No person shall be nominated for appointment to the Board who is an employee of—

(I) the Department of Energy;

(II) a national laboratory under contract with the Department of Energy; or

(III) an entity performing high-level radioactive waste or spent nuclear fuel activities under contract with the Department of Energy.

(4) Any vacancy on the Board shall be filled by the nomination and appointment process described in paragraphs (1) and (3).

(5) Members of the Board shall be appointed for terms of 4 years, each such term to commence 120 days after December 22, 1987, except that of the 11 members first appointed to the Board, 5 shall serve for 2 years and 6 shall serve for 4 years, to be designated by the President at the time of appointment.

(Pub. L. 97-425, title V, §502, as added Pub. L. 100-202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5051, Dec. 22, 1987, 101 Stat. 1330-248.)

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

CONTINUED BOARD SERVICE AFTER EXPIRATION OF
TERM

Pub. L. 104-46, title V, §503, Nov. 13, 1995, 109 Stat. 419, provided that: “Without fiscal year limitation and notwithstanding section 502(b)(5) of the Nuclear Waste Policy Act, as amended [42 U.S.C. 10262(b)(5)], or any other provision of law, a member of the Nuclear Waste Technical Review Board whose term has expired may continue to serve as a member of the Board until such member’s successor has taken office.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10261 of this title.

§ 10263. Functions

The Board shall evaluate the technical and scientific validity of activities undertaken by the Secretary after December 22, 1987, including—

(1) site characterization activities; and

(2) activities relating to the packaging or transportation of high-level radioactive waste or spent nuclear fuel.

(Pub. L. 97-425, title V, §503, as added Pub. L. 100-202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5051, Dec. 22, 1987, 101 Stat. 1330-249.)

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

§ 10264. Investigatory powers**(a) Hearings**

Upon request of the Chairman or a majority of the members of the Board, the Board may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Board considers appropriate. Any member of the Board may administer oaths or affirmations to witnesses appearing before the Board.

(b) Production of documents

(1) Upon the request of the Chairman or a majority of the members of the Board, and subject to existing law, the Secretary (or any contractor of the Secretary) shall provide the Board with such records, files, papers, data, or information as may be necessary to respond to any inquiry of the Board under this subchapter.

(2) Subject to existing law, information obtainable under paragraph (1) shall not be limited to final work products of the Secretary, but shall include drafts of such products and documentation of work in progress.

(Pub. L. 97-425, title V, §504, as added Pub. L. 100-202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5051, Dec. 22, 1987, 101 Stat. 1330-249.)

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

§ 10265. Compensation of members**(a) In general**

Each member of the Board shall be paid at the rate of pay payable for level III of the Executive Schedule for each day (including travel time) such member is engaged in the work of the Board.

(b) Travel expenses

Each member of the Board may receive travel expenses, including per diem in lieu of subsistence, in the same manner as is permitted under sections 5702 and 5703 of title 5.

(Pub. L. 97-425, title V, §505, as added Pub. L. 100-202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5051, Dec. 22, 1987, 101 Stat. 1330-249.)

REFERENCES IN TEXT

Level III of the Executive Schedule, referred to in subsec. (a), is set out in section 5314 of Title 5, Government Organization and Employees.

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

§ 10266. Staff**(a) Clerical staff**

(1) Subject to paragraph (2), the Chairman may appoint and fix the compensation of such clerical staff as may be necessary to discharge the responsibilities of the Board.

(2) Clerical staff shall be appointed subject to the provisions of title 5 governing appointments in the competitive service, and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

(b) Professional staff

(1) Subject to paragraphs (2) and (3), the Chairman may appoint and fix the compensation of such professional staff as may be necessary to discharge the responsibilities of the Board.

(2) Not more than 10 professional staff members may be appointed under this subsection.

(3) Professional staff members may be appointed without regard to the provisions of title 5 governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay payable for GS-18 of the General Schedule.

(Pub. L. 97-425, title V, §506, as added Pub. L. 100-202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5051, Dec. 22, 1987, 101 Stat. 1330-249.)

REFERENCES IN TEXT

The provisions of title 5 governing appointments in the competitive service, referred to in subsecs. (a)(2) and (b)(3), are classified generally to section 3301 et seq. of Title 5, Government Organization and Employees.

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

§ 10267. Support services**(a) General services**

To the extent permitted by law and requested by the Chairman, the Administrator of General Services shall provide the Board with necessary administrative services, facilities, and support on a reimbursable basis.

(b) Accounting, research, and technology assessment services

The Comptroller General, the Librarian of Congress, and the Director of the Office of Technology Assessment shall, to the extent permitted by law and subject to the availability of funds, provide the Board with such facilities, support, funds and services, including staff, as may be necessary for the effective performance of the functions of the Board.

(c) Additional support

Upon the request of the Chairman, the Board may secure directly from the head of any de-

partment or agency of the United States information necessary to enable it to carry out this subchapter.

(d) Mails

The Board may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(e) Experts and consultants

Subject to such rules as may be prescribed by the Board, the Chairman may procure temporary and intermittent services under section 3109(b) of title 5, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable for GS-18 of the General Schedule.

(Pub. L. 97-425, title V, §507, as added Pub. L. 100-202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5051, Dec. 22, 1987, 101 Stat. 1330-250.)

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

§ 10268. Report

The Board shall report not less than 2 times per year to Congress and the Secretary its findings, conclusions, and recommendations. The first such report shall be submitted not later than 12 months after December 22, 1987.

(Pub. L. 97-425, title V, §508, as added Pub. L. 100-202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5051, Dec. 22, 1987, 101 Stat. 1330-250.)

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of this section relating to reporting to Congress 2 times per year, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the last item on page 186 of House Document No. 103-7.

§ 10269. Authorization of appropriations

Notwithstanding subsection (d) of section 10222 of this title, and subject to subsection (e) of such section, there are authorized to be appropriated for expenditures from amounts in the Waste Fund established in subsection (c) of such section such sums as may be necessary to carry out the provisions of this subchapter.

(Pub. L. 97-425, title V, §509, as added Pub. L. 100-202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5051, Dec. 22, 1987, 101 Stat. 1330-251.)

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

§ 10270. Termination of Board

The Board shall cease to exist not later than 1 year after the date on which the Secretary begins disposal of high-level radioactive waste or spent nuclear fuel in a repository.

(Pub. L. 97-425, title V, §510, as added Pub. L. 100-202, §101(d) [title III], Dec. 22, 1987, 101 Stat. 1329-104, 1329-121; Pub. L. 100-203, title V, §5051, Dec. 22, 1987, 101 Stat. 1330-251.)

CODIFICATION

Pub. L. 100-202 and Pub. L. 100-203 added identical sections.

CHAPTER 109—WATER RESOURCES RESEARCH

Sec.	
10301.	Congressional findings and declarations.
10302.	Congressional declaration of purpose.
10303.	Water resources research and technology institutes.
	(a) Establishment; designation of site by State legislature or Governor.
	(b) Scope of research; other activities; cooperation and coordination.
	(c) Grants; matching funds.
	(d) Submission and approval of water research program; requisite assurances.
	(e) Evaluation of water resources research program.
	(f) Authorization of appropriations in general.
	(g) Additional appropriations where research focused on water problems of interstate nature.
	(h) Coordination.
10304.	Research concerning water resource-related problems deemed to be in national interest.
	(a) Grants; matching funds.
	(b) Applications for grants.
	(c) Authorization of appropriations.
10305.	Development of water-related technology.
	(a) Grants; matching funds.
	(b) Applications for grants.
	(c) Authorization of appropriations.
10306.	Administrative costs.
10307.	Types of research and development.
10308.	Patent policy.
10309.	New spending authority; amounts provided in advance.

§ 10301. Congressional findings and declarations

The Congress finds and declares that—

(1) the existence of an adequate supply of water of good quality for the production of materials and energy for the Nation's needs and for the efficient use of the Nation's energy and water resources is essential to national economic stability and growth, and to the well-being of the people;

(2) the management of water resources is closely related to maintaining environmental quality, productivity of natural resources and agricultural systems, and social well-being;

(3) there is an increasing threat of impairment to the quantity and quality of surface and groundwater resources;

(4) the Nation's capabilities for technological assessment and planning and for policy

formulation for water resources must be strengthened at the Federal, State, and local governmental levels;

(5) there should be a continuing national investment in water and related research and technology commensurate with growing national needs;

(6) it is necessary to provide for the research and development of technology for the conversion of saline and other impaired waters to a quality suitable for municipal, industrial, agricultural, recreational, and other beneficial uses;

(7) the Nation must provide programs to strengthen research and associated graduate education because the pool of scientists, engineers, and technicians trained in fields related to water resources constitutes an invaluable natural resource which should be increased, fully utilized, and regularly replenished; and¹

(8) long-term planning and policy development are essential to ensure the availability of an abundant supply of high quality water for domestic and other uses; and

(9) the States must have the research and problem-solving capacity necessary to effectively manage their water resources.

(Pub. L. 98-242, title I, §102, Mar. 22, 1984, 98 Stat. 97; Pub. L. 104-147, §1, May 24, 1996, 110 Stat. 1375.)

AMENDMENTS

1996—Par. (2). Pub. L. 104-147, §1(1), inserted “, productivity of natural resources and agricultural systems,” after “environmental quality”.

Pars. (8), (9). Pub. L. 104-147, §1(2)-(4), added pars. (8) and (9).

SHORT TITLE

Section 101 of Pub. L. 98-242 provided that: “This Act [enacting this chapter, repealing sections 7801, 7802, 7811 to 7819, 7831 to 7835, 7851 to 7853, and 7871 to 7883 of this title, and enacting provisions set out as a note under section 7801 of this title] may be cited as the ‘Water Resources Research Act of 1984.’”

SAVINGS PROVISION

Rules and regulations issued prior to Mar. 22, 1984, under Pub. L. 95-467 [chapter 87 of this title] to remain in full force and effect under this chapter until superseded by new rules and regulations promulgated under this chapter, see section 110(b) of Pub. L. 98-242, set out as a note under section 7801 of this title.

DESALINATION RESEARCH, STUDIES, AND DEMONSTRATION PROJECTS

Pub. L. 104-298, Oct. 11, 1996, 110 Stat. 3622, as amended by Pub. L. 108-7, div. D, title II, §210, Feb. 20, 2003, 117 Stat. 146, provided that:

“SECTION 1. SHORT TITLE.

“This Act may be cited as the ‘Water Desalination Act of 1996’.

“SEC. 2. DEFINITIONS.

“As used in this Act:

“(1) DESALINATION OR DESALTING.—The terms ‘desalination’ or ‘desalting’ mean the use of any process or technique for the removal and, when feasible, adaptation to beneficial use, of organic and inorganic elements and compounds from saline or biologically impaired waters, by itself or in conjunction with other processes.

“(2) SALINE WATER.—The term ‘saline water’ means sea water, brackish water, and other mineralized or chemically impaired water.

“(3) UNITED STATES.—The term ‘United States’ means the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

“(4) USABLE WATER.—The term ‘usable water’ means water of a high quality suitable for environmental enhancement, agricultural, industrial, municipal, and other beneficial consumptive or nonconsumptive uses.

“(5) SECRETARY.—The term ‘Secretary’ means the Secretary of the Interior.

“SEC. 3. AUTHORIZATION OF RESEARCH AND STUDIES.

“(a) IN GENERAL.—In order to determine the most cost-effective and technologically efficient means by which usable water can be produced from saline water or water otherwise impaired or contaminated, the Secretary is authorized to award grants and to enter into contracts, to the extent provided in advance in appropriation Acts, to conduct, encourage, and assist in the financing of research to develop processes for converting saline water into water suitable for beneficial uses. Awards of research grants and contracts under this section shall be made on the basis of a competitive, merit-reviewed process. Research and study topics authorized by this section include—

“(1) investigating desalination processes;

“(2) ascertaining the optimum mix of investment and operating costs;

“(3) determining the best designs for different conditions of operation;

“(4) investigating methods of increasing the economic efficiency of desalination processes through dual-purpose co-facilities with other processes involving the use of water;

“(5) conducting or contracting for technical work, including the design, construction, and testing of pilot systems and test beds, to develop desalting processes and concepts;

“(6) studying methods for the recovery of byproducts resulting from desalination to offset the costs of treatment and to reduce environmental impacts from those byproducts; and

“(7) salinity modeling and toxicity analysis of brine discharges, cost reduction strategies for constructing and operating desalination facilities, and the horticultural effects of desalinated water used for irrigation.

“(b) PROJECT RECOMMENDATIONS AND REPORTS TO THE CONGRESS.—As soon as practicable and within three years after the date of enactment of this Act [Oct. 11, 1996], the Secretary shall recommend to Congress desalination demonstration projects or full-scale desalination projects to carry out the purposes of this Act and to further evaluate and implement the results of research and studies conducted under the authority of this section. Recommendations for projects shall be accompanied by reports on the engineering and economic feasibility of proposed projects and their environmental impacts.

“(c) AUTHORITY TO ENGAGE OTHERS.—In carrying out research and studies authorized in this section, the Secretary may engage the necessary personnel, industrial or engineering firms, Federal laboratories, water resources research and technology institutes, other facilities, and educational institutions suitable to conduct investigations and studies authorized under this section.

“(d) ALTERNATIVE TECHNOLOGIES.—In carrying out the purposes of this Act, the Secretary shall ensure that at least three separate technologies are evaluated and demonstrated for the purposes of accomplishing desalination.

“SEC. 4. DESALINATION DEMONSTRATION AND DEVELOPMENT.

“(a) IN GENERAL.—In order to further demonstrate the feasibility of desalination processes investigated ei-

¹ So in original. The word “and” probably should not appear.

ther independently or in research conducted pursuant to section 3, the Secretary shall administer and conduct a demonstration and development program for water desalination and related activities, including the following:

“(1) DESALINATION PLANTS AND MODULES.—Conduct or contract for technical work, including the design, construction, and testing of plants and modules to develop desalination processes and concepts.

“(2) BYPRODUCTS.—Study methods for the marketing of byproducts resulting from the desalting of water to offset the costs of treatment and to reduce environmental impacts of those byproducts.

“(3) ECONOMIC SURVEYS.—Conduct economic studies and surveys to determine present and prospective costs of producing water for beneficial purposes in various locations by desalination processes compared to other methods.

“(b) COOPERATIVE AGREEMENTS.—Federal participation in desalination activities may be conducted through cooperative agreements, including cost-sharing agreements, with non-Federal public utilities and State and local governmental agencies and other entities, in order to develop recommendations for Federal participation in processes and plants utilizing desalting technologies for the production of water.

“SEC. 5. AVAILABILITY OF INFORMATION.

“All information from studies sponsored or funded under authority of this Act shall be considered public information.

“SEC. 6. TECHNICAL AND ADMINISTRATIVE ASSISTANCE.

“The Secretary may—

“(1) accept technical and administrative assistance from States and public or private agencies in connection with studies, surveys, location, construction, operation, and other work relating to the desalting of water, and

“(2) enter into contracts or agreements stating the purposes for which the assistance is contributed and providing for the sharing of costs between the Secretary and any such agency.

“SEC. 7. COST SHARING.

“The Federal share of the cost of a research, study, or demonstration project or a desalination development project or activity carried out under this Act shall not exceed 50 percent of the total cost of the project or research or study activity. A Federal contribution in excess of 25 percent for a project carried out under this Act may not be made unless the Secretary determines that the project is not feasible without such increased Federal contribution. The Secretary shall prescribe appropriate procedures to implement the provisions of this section. Costs of operation, maintenance, repair, and rehabilitation of facilities funded under the authority of this Act shall be non-Federal responsibilities.

“SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

“(a) SECTION 3.—There are authorized to be appropriated to carry out section 3 of this Act \$5,000,000 per year for fiscal years 1997 through 2004. Of these amounts, up to \$1,000,000 in each fiscal year may be awarded to institutions of higher education, including United States-Mexico binational research foundations and interuniversity research programs established by the two countries, for research grants without any cost-sharing requirement.

“(b) SECTION 4.—There are authorized to be appropriated to carry out section 4 of this Act \$25,000,000 for fiscal years 1997 through 2004.

“SEC. 9. CONSULTATION.

“In carrying out the provisions of this Act, the Secretary shall consult with the heads of other Federal agencies, including the Secretary of the Army, which have experience in conducting desalination research or operating desalination facilities. The authorization provided for in this Act shall not prohibit other agen-

cies from carrying out separately authorized programs for desalination research or operations.”

OGALLALA AQUIFER

Pub. L. 99-662, title XI, §1121, Nov. 17, 1986, 100 Stat. 4239, provided that:

“(a) The Congress finds that—

“(1) the Ogallala aquifer lies beneath, and provides needed water supplies to, the 8 States of the High Plains Region: Colorado, Kansas, Nebraska, New Mexico, Oklahoma, South Dakota, Texas, and Wyoming;

“(2) the High Plains region has become an important source of agricultural commodities and livestock for domestic and international markets, providing 15 percent of the Nation’s supply of wheat, corn, feed grains, sorghum, and cotton, plus 38 percent of the value of livestock raised in the United States; and

“(3) annual precipitation in the High Plains region ranges from 15 to 22 inches, providing inadequate supplies of surface water and recharging of the Ogallala aquifer needed to sustain the agricultural productivity and economic vitality of the High Plains region.

“(b) It is, therefore, the purpose of this section to establish a comprehensive research and development program to assist those portions of the High Plains region dependent on water from the Ogallala aquifer to—

“(1) plan for the development of an adequate supply of water in the region;

“(2) develop and provide information and technical assistance concerning water-conservation management practices to agricultural producers in the region;

“(3) examine alternatives for the development of an adequate supply of water for the region; and

“(4) develop water-conservation management practices which are efficient for agricultural producers in the region.

“(c) The Water Resources Research Act [of 1984] (Public Law 98-242) [see Short Title note above] is amended by adding at the end thereof the following new title:

“TITLE III—OGALLALA AQUIFER RESEARCH AND DEVELOPMENT

“SEC. 301. (a) There is hereby established the High Plains Study Council composed of—

“(1) the Governor of each State of the High Plains region (defined for the purposes of this title as the States of Colorado, Kansas, Nebraska, New Mexico, Oklahoma, South Dakota, Texas, and Wyoming and referred to hereinafter in this title as the ‘High Plains region’), or a designee of the Governor;

“(2) a representative of the Department of Agriculture; and

“(3) a representative of the Secretary.

“(b) The Council established pursuant to this section shall—

“(1) review research work being performed by each State committee established under section 302 of this Act; and

“(2) coordinate such research efforts to avoid duplication of research and to assist in the development of research plans within each State of the High Plains region that will benefit the research needs of the entire region.

“SEC. 302. (a) The Secretary shall establish within each State of the High Plains region an Ogallala aquifer technical advisory committee (hereinafter in this title referred to as the ‘State committee’). Each State committee shall be composed of no more than seven members, including—

“(1) a representative of the United States Department of Agriculture;

“(2) a representative of the Secretary; and

“(3) at the appointment of the Governor of the State, five representatives from agencies of that State having jurisdiction over water resources, the agricultural community, the State Water Research Institute (as designated under this Act [see Short

Title note above)], and others with a special interest or expertise in water resources.

“(b) The State committee established pursuant to subsection (a) of this section shall—

“(1) review existing State laws and institutions concerning water management and, where appropriate, recommend changes to improve State or local management capabilities and more efficiently use the waters of such State, if such a review is not already being undertaken by the State;

“(2) establish, in coordination with other State committees, State priorities for research and demonstration projects involving water resources; and

“(3) provide public information, education, extension, and technical assistance on the need for water conservation and information on proven and cost-effective water management.

“(c) Each State committee established pursuant to this section shall elect a chairman, and shall meet at least once every three months at the call of the chairman, unless the chairman determines, after consultation with a majority of the members of the committee, that such a meeting is not necessary to achieve the purposes of this section.

“SEC. 303. The Secretary shall annually allocate among the States of the High Plains region funds authorized to be appropriated for this section for research in—

“(1) water-use efficiency;

“(2) cultural methods;

“(3) irrigation technologies;

“(4) water-efficient crops; and

“(5) water and soil conservation.

Funds distributed under this section shall be allocated to each State committee for use by institutions of higher education within each State. To qualify for funds under this section an institution of higher education shall submit a proposal to the State committee describing the costs, methods, and goals of the proposed research. Proposals shall be selected by the State committee on the basis of merit.

“SEC. 304. The Secretary shall annually divide funds authorized to be appropriated under this section among the States of the High Plains region for research into—

“(1) precipitation management;

“(2) weather modification;

“(3) aquifer recharge opportunities;

“(4) saline water uses;

“(5) desalinization technologies;

“(6) salt tolerant crops; and

“(7) ground water recovery.

Funds distributed under this section shall be allocated by the Secretary to the State committee for distribution to institutions of higher education within such State. To qualify for a grant under this section, an institution of higher education shall submit a research proposal to the State committee describing the costs, methods, and goals of the proposed research. Proposals shall be selected by the State committee on the basis of merit.

“SEC. 305. The Secretary shall annually allocate among the States of the High Plains region funds authorized to be appropriated under this section for grants to farmers for demonstration projects for—

“(1) water-efficient irrigation technologies and practices;

“(2) soil and water conservation management systems; and

“(3) the growing and marketing of more water-efficient crops.

Grants under this section shall be made by each State committee in amounts not to exceed 85 percent of the cost of each demonstration project. To qualify for a grant under this section, a farmer shall submit a proposal to the State committee describing the costs, methods, and goals of the proposed project. Proposals shall be selected by the State committee on the basis of merit. Each State committee shall monitor each demonstration project to assure proper implementation and make the results of the project available to other State committees.

“SEC. 306. The Secretary, acting through the United States Geological Survey and in cooperation with the States of the High Plains region, is authorized and directed to monitor the levels of the Ogallala aquifer, and report biennially to Congress. (As amended Pub. L. 104-66, title I, § 1082(a)(1), Dec. 21, 1995, 109 Stat. 721.)

“SEC. 307. The amount of any allocation of funds to a State under this title shall not exceed 75 percent of the cost of carrying out the purposes for which the grant is made.

“SEC. 308. Not later than one year after the date of enactment of this title [Nov. 17, 1986], and at intervals of 2 years thereafter, the Secretary shall prepare and transmit to the Congress a report on activities undertaken under this title. (As amended Pub. L. 104-66, title I, § 1082(a)(2), Dec. 21, 1995, 109 Stat. 721.)

“SEC. 309. (a) For each of the fiscal years ending September 30, 1987, through September 30, 1995, the following sums are authorized to be appropriated to the Secretary to implement the following sections of this title, and such sums shall remain available until expended:

“(1) \$600,000 for the purposes of section 302;

“(2) \$4,300,000 for the purposes of section 303;

“(3) \$2,200,000 for the purposes of section 304;

“(4) \$5,300,000 for the purposes of section 305; and

“(5) \$600,000 for the purposes of section 306.

“(b) Funds made available under this title for distribution to the States of the High Plains region shall be distributed equally among the States.” (As amended Pub. L. 101-397, § 1(o), Sept. 28, 1990, 104 Stat. 854.)

[For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103-7 (in which the 17th and 18th items on page 72 identify reporting provisions which, as subsequently amended, are contained in sections 306 and 308 of Pub. L. 98-242, set out in the note above), see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.]

DESALTING PLANTS

Pub. L. 95-84, § 2, Aug. 2, 1977, 91 Stat. 400; Pub. L. 95-467, title II, § 205(a), (b), Oct. 17, 1978, 92 Stat. 1311; Pub. L. 96-457, § 3, Oct. 15, 1980, 94 Stat. 2032; Pub. L. 98-242, title I, § 110(a), Mar. 22, 1984, 98 Stat. 101, provided that:

“(a) The Secretary of the Interior is authorized and directed to demonstrate the engineering and economic viability of membrane and phase-change desalting processes. Such demonstrations shall include the study, design, construction, operation, and maintenance of desalting plants at locations in the United States (which may include the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Virgin Islands, the Mariana Islands, and the Trust Territory of the Pacific Islands): *Provided*, That at least two such plants shall demonstrate desalting of brackish ground water: *And provided further*, That the plants constructed pursuant to this section shall be for the purpose of showing that the technology being demonstrated is ready for application; such plants shall be sufficient to demonstrate the specific application of the technology, and shall be significantly different in operation and process so as not to duplicate any other demonstration plant constructed pursuant to this section. The Secretary is further authorized to conduct such demonstrations or any portion thereof by means of cooperative agreements (as defined and authorized by 41 U.S.C. 504 et seq. (the Federal Grant and Cooperative Agreement Act of 1977; Public Law 95-224)) [31 U.S.C. 6301 et seq.] with duly authorized non-Federal public entities. Title to demonstration facilities constructed by the non-Federal public entity under a cooperative agreement shall vest in the non-Federal public entity.

“(b) Funds appropriated pursuant to the authority provided by this section [this note] may not be expended until thirty calendar days (excluding days on which either the House of Representatives or the Senate is not in session because of an adjournment of more than three calendar days to a day certain) have elapsed

following transmittal of a report to the chairman of the Committee on Interior and Insular Affairs [now Committee on Resources] of the House of Representatives and the chairman of the Committee on Environment and Public Works of the United States Senate. Such report shall present information that includes, but is not limited to, how the plant being proposed differs from others, if any, already constructed under this section, the location of the demonstration plant, the characteristics of the water proposed to be desalted, the process to be utilized, the water supply problems confronting the area in which the plant will be located, alternative sources of water and their probable cost, the capacity of the plant, the initial investment cost of the demonstration plant, the annual operating cost of the demonstration plant, the source of energy for the plant and its cost, the means of reject brine disposal and its environmental consequences, and the unit cost of product water, considering the amortization of all components of the demonstration plant and ancillary facilities. Such report shall be accompanied by a proposed contract (or cooperative agreement) between the Secretary and a duly authorized non-Federal entity, in which such entity shall agree to provide not less than 15 per centum and not more than 35 per centum of the total cost of the demonstration; such cost to include, without being limited to, necessary water rights, water supplies, rights-of-way, power source interconnections, brine disposal facilities, land, construction, ancillary facilities, and the operation and maintenance costs for a period of four years following final acceptance of the construction of the plant from the plant contractor. The contributions of the non-Federal entity under such proposed contract may be in-kind. During the participation by the Secretary in the construction and the operation and maintenance of such demonstration, access to the demonstration and its operating data will not be denied to the Secretary or his representatives. The period of participation by the Secretary in the operation and maintenance of any such demonstration shall be four years. The Secretary is authorized to include in the proposed contract a provision for conveying, as appropriate, and in such amounts as are appropriate, rights, title, and interest of the Federal Government in the demonstration project to the non-Federal public entity.

“(c) There is authorized to be appropriated, to remain available until expended, for the fiscal year ending September 30, 1978, and thereafter, the sum of \$50,000,000 to finance the total Federal share of the cost of the demonstration plants authorized by this section; such cost to include, without being limited to, necessary water rights, water supplies, rights-of-way, power source interconnections, brine disposal facilities, land, construction, ancillary facilities, and the operation and maintenance costs for the four-year period of Federal participation in such costs.

“(d) When appropriations have been made for the commencement or continuation of design, construction, or operation and maintenance of any demonstration plant authorized under this Act [this note], the Secretary may, in connection with such design, construction, or operation and maintenance, enter into contracts and cooperative agreements for miscellaneous services, for materials and supplies, as well as for construction, which may cover such periods of time as the Secretary may consider necessary but in which the liability of the United States shall be contingent upon appropriations being made therefor.”

[For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.]

§ 10302. Congressional declaration of purpose

It is the purpose of this chapter to assist the Nation and the States in augmenting their water resources science and technology as a way to—

(1) assure supplies of water sufficient in quantity and quality to meet the Nation's ex-

panding needs for the production of food, materials, and energy;

(2) discover practical solutions to the Nation's water and water resources related problems, particularly those problems related to impaired water quality;

(3) assure the protection and enhancement of environmental and social values in connection with water resources management and utilization;

(4) promote the interest of State and local governments as well as private industry in research and the development of technology that will reclaim waste water and to convert saline and other impaired waters to waters suitable for municipal, industrial, agricultural, recreational, and other beneficial uses;

(5) promote more effective coordination of the Nation's water resources research program;

(6) promote the development of a cadre of trained research scientists, engineers, and technicians for future water resources problems; and

(7) encourage long-term planning and research to meet future water management, quality, and supply challenges.

(Pub. L. 98-242, title I, §103, Mar. 22, 1984, 98 Stat. 97; Pub. L. 101-397, §1(a), Sept. 28, 1990, 104 Stat. 852; Pub. L. 104-147, §2, May 24, 1996, 110 Stat. 1375.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 98-242, Mar. 22, 1984, 98 Stat. 97, known as the Water Resources Research Act of 1984. For complete classification of this Act to the Code, see Short Title note set out under section 10301 of this title and Tables.

AMENDMENTS

1996—Par. (5). Pub. L. 104-147, §2(1), struck out “to” before “promote” and “and” after “program;”.

Par. (6). Pub. L. 104-147, §2(2), substituted “; and” for period at end.

Par. (7). Pub. L. 104-147, §2(3), added par. (7).

1990—Par. (5). Pub. L. 101-397 substituted “to promote more effective coordination of” for “coordinate more effectively”.

§ 10303. Water resources research and technology institutes

(a) Establishment; designation of site by State legislature or Governor

Subject to the approval of the Secretary of the Interior (hereafter in this chapter referred to as the “Secretary”) under this section, one water resources research and technology institute, center, or equivalent agency (hereafter in this chapter referred to as the “institute”) may be established in each State (as used in this chapter, the term “State” includes the Commonwealth of Puerto Rico, the District of Columbia, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Mariana Islands and the Federated States of Micronesia) at a college or university which was established in accordance with the Act approved July 2, 1862 (12 Stat. 503) [7 U.S.C. 301 et seq.], or at some other institution designated by act of the legislature of the State concerned. If there is more than one such

college or university in a State established in accordance with such Act of July 2, 1862, the institute in such State shall, in the absence of a designation to the contrary by act of the legislature of the State, be established at the one such college or university designated by the Governor of the State. Two or more States may cooperate in the establishment of a single institute or regional institute, in which event the sums otherwise allocated to institutes in each of the cooperating States shall be paid to such single or regional institute.

(b) Scope of research; other activities; cooperation and coordination

Each institute shall—

(1) plan, conduct, or otherwise arrange for competent research that fosters (A) the entry of new research scientists into the water resources fields, (B) the training and education of future water scientists, engineers, and technicians, (C) the preliminary exploration of new ideas that address water problems or expand understanding of water and water-related phenomena, and (D) the dissemination of research results to water managers and the public, and

(2) cooperate closely with other colleges and universities in the State that have demonstrated capabilities for research, information dissemination, and graduate training in order to develop a statewide program designed to resolve State and regional water and related land problems.

Each institute shall also cooperate closely with other institutes and other organizations in the region to increase the effectiveness of the institutes and for the purpose of promoting regional coordination.

(c) Grants; matching funds

From the sums appropriated pursuant to subsection (f) of this section, the Secretary shall make grants to each institute to be matched on a basis of no less than 2 non-Federal dollars for every 1 Federal dollar, such sums to be used only for the reimbursement of the direct cost expenditures incurred for the conduct of the water resources research program.

(d) Submission and approval of water research program; requisite assurances

Prior to and as a condition of the receipt each fiscal year of funds appropriated under subsection (f) of this section, each institute shall submit to the Secretary for his approval a water research program that includes assurances, satisfactory to the Secretary, that such program was developed in close consultation and collaboration with the director of that State's department of water resources or similar agency, other leading water resources officials within the State, and interested members of the public. The program described in the preceding sentence shall include plans to promote research, training, information dissemination, and other activities meeting the needs of the State and Nation, and shall encourage regional cooperation among institutes in research into areas of water management, development, and conservation that have a regional or national character.

(e) Evaluation of water resources research program

The Secretary shall conduct a careful and detailed evaluation of each institute at least once every 5 years to determine that the quality and relevance of its water resources research and its effectiveness as an institution for planning, conducting, and arranging for research warrants its continued support under this section. If, as a result of any such evaluation, the Secretary determines that an institute does not qualify for further support under this section, then no further grants to the institute may be made until the institute's qualifications are reestablished to the satisfaction of the Secretary.

(f) Authorization of appropriations in general

(1) For the purpose of carrying out this section, there is authorized to be appropriated to the Secretary the sum of \$9,000,000 for fiscal year 2001, \$10,000,000 for each of fiscal years 2002 and 2003, and \$12,000,000 for each of fiscal years 2004 and 2005, such sums to remain available until expended.

(2) Any sums appropriated under this subsection but which fail to be obligated by the close of the fiscal year for which they were appropriated shall be transferred by the Secretary and available for obligation during the succeeding fiscal year under the terms of subsection (g) of this section.

(g) Additional appropriations where research focused on water problems of interstate nature

(1) There is further authorized to be appropriated to the Secretary of the Interior the sum of \$3,000,000 for fiscal year 2001, \$4,000,000 for each of fiscal years 2002 and 2003, and \$6,000,000 for each of fiscal years 2004 and 2005 only for reimbursement of the direct cost expenses of additional research or synthesis of the results of research by institutes which focuses on water problems and issues of a regional or interstate nature beyond those of concern only to a single State and which relate to specific program priorities identified jointly by the Secretary and the institutes. Such funds when appropriated shall be matched on a not less than dollar-for-dollar basis by funds made available to institutes or groups of institutes, by States or other non-Federal sources. Funds made available under this subsection shall remain available until expended.

(2) Research funds made available under this subsection shall be made on a competitive basis subject to the merit of the proposal, the need for the information to be produced, and the opportunity such funds will provide for training of water resources scientists or professionals.

(h) Coordination

(1) In general

To carry out this chapter, the Secretary—

(A) shall encourage other Federal departments, agencies (including agencies within the Department of the Interior), and instrumentalities to use and take advantage of the expertise and capabilities that are available through the institutes established by this section, on a cooperative or other basis;

(B) shall encourage cooperation and coordination with other Federal programs con-

cerned with water resources problems and issues;

(C) may enter into contracts, cooperative agreements, and other transactions without regard to section 5 of title 41;

(D) may accept funds from other Federal departments, agencies (including agencies within the Department of the Interior), and instrumentalities to pay for and add to grants made, and contracts entered into, by the Secretary;

(E) may promulgate such regulations as the Secretary considers appropriate; and

(F) may support a program of internships for qualified individuals at the undergraduate and graduate levels to carry out the educational and training objectives of this chapter.

(2) Report

The Secretary shall report to Congress annually on coordination efforts with other Federal departments, agencies, and instrumentalities under paragraph (1).

(3) Relationship to State rights

Nothing in this chapter shall preempt the rights and authorities of any State with respect to its water resources or management of those resources.

(Pub. L. 98-242, title I, §104, Mar. 22, 1984, 98 Stat. 98; Pub. L. 101-397, §1(b)-(h), (m), Sept. 28, 1990, 104 Stat. 852, 853; Pub. L. 104-147, §§3-6, May 24, 1996, 110 Stat. 1376; Pub. L. 106-374, Oct. 27, 2000, 114 Stat. 1434.)

REFERENCES IN TEXT

Act approved July 2, 1862, referred to in subsec. (a), is act July 2, 1862, ch. 130, 12 Stat. 503, as amended, popularly known as the "Morrill Act" and also as the "First Morrill Act", which is classified generally to subchapter I (§301 et seq.) of chapter 13 of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 301 of Title 7 and Tables.

AMENDMENTS

2000—Subsec. (f)(1). Pub. L. 106-374, §1, substituted "\$9,000,000 for fiscal year 2001, \$10,000,000 for each of fiscal years 2002 and 2003, and \$12,000,000 for each of fiscal years 2004 and 2005" for "\$5,000,000 for fiscal year 1996, \$7,000,000 for each of fiscal years 1997 and 1998, and \$9,000,000 for each of fiscal years 1999 and 2000".

Subsec. (g)(1). Pub. L. 106-374, §2, in first sentence, substituted "\$3,000,000 for fiscal year 2001, \$4,000,000 for each of fiscal years 2002 and 2003, and \$6,000,000 for each of fiscal years 2004 and 2005" for "\$3,000,000 for each of fiscal years 1996 through 2000".

1996—Subsec. (c). Pub. L. 104-147, §3, substituted "2 non-Federal dollars for every 1 Federal dollar" for "one non-Federal dollar for every Federal dollar during the fiscal years ending September 30, 1985, and September 30, 1986, one and one-half non-Federal dollars for each Federal dollar during the fiscal years ending September 30, 1987, and September 30, 1988, and two non-Federal dollars for each Federal dollar during the fiscal year ending September 30, 1989 and thereafter".

Subsec. (f)(1). Pub. L. 104-147, §4, substituted "of \$5,000,000 for fiscal year 1996, \$7,000,000 for each of fiscal years 1997 and 1998, and \$9,000,000 for each of fiscal years 1999 and 2000" for "of \$10,000,000 for each of the fiscal years ending September 30, 1989, through September 30, 1995".

Subsec. (g)(1). Pub. L. 104-147, §5, substituted "of \$3,000,000 for each of fiscal years 1996 through 2000" for

"of \$5,000,000 for each of the fiscal years 1991, 1992, 1993, 1994, and 1995".

Subsec. (h). Pub. L. 104-147, §6, added subsec. (h).

1990—Subsec. (a). Pub. L. 101-397, §1(b), substituted "Federated States of Micronesia" for "Trust Territory of the Pacific Islands".

Subsec. (b). Pub. L. 101-397, §1(c), inserted "promoting" after "for the purpose of" in last sentence.

Subsec. (b)(1). Pub. L. 101-397, §1(d), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "plan, conduct, or otherwise arrange for competent research with respect to water resources, including investigations and experiments of either a basic or practical nature, or both; promote the dissemination and application of the results of these efforts; and provide for the training of scientists and engineers through such research, investigations, and experiments, and".

Subsec. (c). Pub. L. 101-397, §1(e), substituted for period at end "and thereafter, such sums to be used only for the reimbursement of the direct cost expenditures incurred for the conduct of the water resources research program."

Subsec. (e). Pub. L. 101-397, §1(f), amended subsec. (e) generally, substituting provisions directing that evaluation be conducted at least once every 5 years for provisions directing evaluation within two years after establishment of institute and at least once every four years thereafter and striking out provisions relating to composition and function of evaluation team and setting forth criteria for determination.

Subsec. (f)(1). Pub. L. 101-397, §1(g), substituted "September 30, 1989, through September 30, 1995," for "September 30, 1985, through September 30, 1989".

Subsec. (f)(2). Pub. L. 101-397, §1(h), substituted reference to subsec. (g) of this section for reference to section 10305 of this title.

Subsec. (g). Pub. L. 101-397, §1(m), added subsec. (g).

CONTRACTS OR COOPERATIVE AGREEMENTS WITH NATIONAL LABORATORIES

Section 2 of Pub. L. 101-397 provided that:

"(a) The Secretary of the Interior, in consultation with the Secretary of Agriculture and the Administrator of the Environmental Protection Agency, is authorized to enter into contracts or cooperative agreements, as the Secretary deems appropriate, with national laboratories (including Los Alamos National Laboratory) to carry out water resources research, development, and demonstration projects within the authorities of Public Law 98-242 [42 U.S.C. 10301 et seq.] (including the effects of potential climate changes on surface and ground water quality and quantity and the elimination of contamination of ground water aquifers).

"(b) The water resources research authorized in this section shall be undertaken under such rules and regulations as the Secretary deems appropriate and shall be carried out in close consultation and collaboration with the institutes established pursuant to Public Law 98-242 [42 U.S.C. 10301 et seq.], to the extent such research work affects the State in which the institute exists, and to the extent such institute agrees to consult and collaborate.

"(c) For the purposes of carrying out this section, there is authorized to be appropriated to the Secretary of the Interior the sum of \$10,000,000 for each of the fiscal years 1991 through 1995."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10304, 10305, 10307 of this title.

§ 10304. Research concerning water resource-related problems deemed to be in national interest

(a) Grants; matching funds

(1) In addition to the grants authorized by section 10303 of this title, the Secretary is author-

ized to make grants, on a dollar-for-dollar matching basis, to the institutes established under such section, as well as other qualified educational institutions, private foundations, private firms, individuals, and agencies of local or State government for research concerning any aspect of a water resource-related problem which the Secretary may deem to be in the national interest. Such grants shall be made with such advice and review by peer or other expert groups of appropriate interdisciplinary composition as the Secretary deems appropriate on the basis of the merits of the project and the need for the knowledge such project is expected to produce upon completion.

(2) Research funded under this section should to the extent possible utilize the best qualified graduate students so the Nation profits from the education and training benefits resulting from the use of the latest in technological developments in solving water problems.

(b) Applications for grants

Each application for a grant under this section shall state the nature of the project to be undertaken, the period during which it will be pursued, the qualifications of the personnel who will direct and conduct it, the importance of the project to the Nation as well as to the region and State concerned, its relation to other research projects previously or currently being pursued, and the extent to which it will provide an opportunity for the training of water resources scientists.

(c) Authorization of appropriations

There is authorized to be appropriated to the Secretary the sum of \$10,000,000 for the purpose of carrying out this section for each of the fiscal years ending September 30, 1985, through September 30, 1995, such sums to remain available until expended.

(Pub. L. 98-242, title I, §105, Mar. 22, 1984, 98 Stat. 100; Pub. L. 101-397, §1(i), (j), Sept. 28, 1990, 104 Stat. 853.)

AMENDMENTS

1990—Subsec. (a)(3). Pub. L. 101-397, §1(i), struck out par. (3) which read as follows: "In cases where the Secretary determines, in accordance with criteria established by him, that research under this section is of a basic nature which would not otherwise be undertaken, the Secretary may approve grants under this section with a matching requirement other than that specified in paragraph (1) of this subsection."

Subsec. (c). Pub. L. 101-397, §1(j), substituted "\$10,000,000" for "\$20,000,000" and "1995" for "1989".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10305, 10307 of this title.

§ 10305. Development of water-related technology

(a) Grants; matching funds

(1) The Secretary shall make grants in addition to those authorized under sections 10303 and 10304 of this title for technology development concerning any aspect of water resources including water-related technology which the Secretary may deem to be of State, regional, or national importance. Activities funded under this section may be carried out by educational insti-

tutions, private firms, foundations, individuals, or agencies of State or local government. Care shall be taken to protect proprietary information of private individuals or firms associated with the technology.

(2) The Secretary may establish any condition for the matching of funds by the recipient of any grant or contract under this section which the Secretary considers to be in the best interest of the Nation considering the information transfer and technology needs of the Nation. However, in the case of institutes established by section 10303 of this title no match greater than that required under section 10303 of this title may be required.

(b) Applications for grants

Each application for a grant under this section shall state the nature of the project to be undertaken, the qualifications of the personnel who will direct and conduct it, facilities of the organization performing any technology development, the importance of the project to the Nation, region, and State concerned, and the potential benefit to be accrued.

(c) Authorization of appropriations

There is authorized to be appropriated to the Secretary the sum of \$6,000,000 for the purpose of carrying out this section for each of the fiscal years ending September 30, 1990, through September 30, 1995; such sums to remain available until expended.

(Pub. L. 98-242, title I, §106, Mar. 22, 1984, 98 Stat. 100; Pub. L. 101-397, §1(n), Sept. 28, 1990, 104 Stat. 853.)

AMENDMENTS

1990—Pub. L. 101-397, in amending section generally, in subsec. (a)(1) struck out provision directing that grant be made on basis of merit and feasibility of project, in subsec. (a)(2) inserted provisions relating to match in the case of institutes established by section 10303 of this title, and in subsec. (c) substituted provisions authorizing \$6,000,000 appropriation for fiscal years 1990 through 1995, for provisions authorizing the same sum for fiscal years 1985 through 1989, and struck out provisions authorizing obligation of funds under this section and par. (1) and (2) designations.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10307 of this title.

§ 10306. Administrative costs

From the sums appropriated pursuant to this chapter, not more than 15 per centum shall be utilized for administrative costs.

(Pub. L. 98-242, title I, §107, Mar. 22, 1984, 98 Stat. 101.)

§ 10307. Types of research and development

The type of research and development to be undertaken under the authority of sections 10304 and 10305 of this title and to be encouraged by the institutes established under section 10303 of this title shall include the following:

- (1) Aspects of the hydrologic cycle;
- (2) Supply and demand for water;
- (3) Demineralization of saline and other impaired waters;
- (4) Conservation and best use of available supplies of water and methods of increasing such supplies;

- (5) Water reuse;
- (6) Depletion, contamination, and degradation of groundwater supplies;
- (7) Improvements in the productivity of water when used for agricultural, municipal, and commercial purposes;
- (8) The economic, legal, engineering, social, recreational, biological, geographic, ecological, and other aspects of water quality and quantity problems;
- (9) Scientific information dissemination activities, including identifying, assembling, and interpreting the results of scientific and engineering research on water resources problems; and
- (10) Providing means for improved communication of research results, having due regard for the varying conditions and needs for the respective States and regions.

(Pub. L. 98-242, title I, §108, Mar. 22, 1984, 98 Stat. 101; Pub. L. 101-397, §1(k), (l), Sept. 28, 1990, 104 Stat. 853.)

AMENDMENTS

1990—Par. (6). Pub. L. 101-397, §1(k), which directed that “, contamination,” be inserted after “depletion”, was executed by making the insertion after “Depletion” to reflect the probable intent of Congress.

Par. (8). Pub. L. 101-397, §1(l), inserted “quality and quantity” after “water”.

§ 10308. Patent policy

Notwithstanding any other provision of law, the Secretary shall be governed by the provisions of sections 5908 (except subsections (l) and (n)) and 5909 of this title with respect to patent policy and to the definition of title to and licensing of inventions made or conceived in the course of work performed, or under any contract or grant made, pursuant to this chapter. Subject to such patent policy, all research or development contracted for, sponsored, cosponsored, or authorized under authority of this chapter shall be provided in such manner that all information, data, and know-how, regardless of their nature or mediums, resulting from such research and development shall (with such exceptions and limitations, if any, as the Secretary may find to be necessary in the interest of national defense) be usefully available for practice by the general public.

(Pub. L. 98-242, title I, §109, Mar. 22, 1984, 98 Stat. 101.)

§ 10309. New spending authority; amounts provided in advance

Any new spending authority described in subsection (c)(2)(A) or (B) of section 651¹ of title 2 which is provided under this chapter shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance in appropriations Acts.

(Pub. L. 98-242, title I, §111, Mar. 22, 1984, 98 Stat. 101.)

REFERENCES IN TEXT

Section 651 of title 2, referred to in text, was amended by Pub. L. 105-33, title X, §10116(a)(3), (5), Aug. 5, 1997,

¹ See References in Text note below.

111 Stat. 691, by striking out subsec. (c) and redesignating former subsec. (d) as (c).

CHAPTER 109A—MEMBRANE PROCESSES RESEARCH

Sec.	
10341.	Findings.
10342.	Research program.
10343.	Goals of research program.
10344.	Coordination with other research.
10345.	Authorization of appropriations.

§ 10341. Findings

The Congress finds that—

(1) there is an increasing threat of impairment to the quantity and quality of the Nation's water resources due to, among other things, growing national needs, recurring drought in the Western States, point and nonpoint source pollution, and saltwater intrusion into existing groundwater supplies;

(2) many communities in the United States have water supplies containing high salinity levels or contaminants which pose health risks;

(3) the Nation needs to develop economical processes to treat existing water supplies that are contaminated;

(4) it is necessary to provide for research into new techniques to reclaim waste water and to convert saline and other contaminated waters to a quality suitable for municipal, industrial, agricultural, recreational, and other beneficial uses;

(5) there is very little Federal funding being applied to basic research in the field of treatment of contaminated water through membrane processes; and

(6) the treatment of contaminated water through membrane processes will solve a wide variety of water treatment problems, including compliance with the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.] and the Safe Drinking Water Act [42 U.S.C. 300f et seq.].

(Pub. L. 102-490, §2, Oct. 24, 1992, 106 Stat. 3142.)

REFERENCES IN TEXT

The Federal Water Pollution Control Act, referred to in par. (6), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92-500, §2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Safe Drinking Water Act, referred to in par. (6), is title XIV of act July 1, 1944, as added Dec. 16, 1974, Pub. L. 93-523, §2(a), 88 Stat. 1660, as amended, which is classified generally to subchapter XII (§300f et seq.) of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

SHORT TITLE

Section 1 of Pub. L. 102-490 provided that: “This Act [enacting this chapter] may be cited as the ‘Membrane Processes Research Act of 1992’.”

§ 10342. Research program

The Director of the National Science Foundation shall establish a basic research program on

membranes and membrane processes. Such program may be carried out through awarding grants, entering into contracts or cooperative agreements, or direct research.

(Pub. L. 102-490, §3, Oct. 24, 1992, 106 Stat. 3142.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10343, 10344 of this title.

§ 10343. Goals of research program

The goals of the research program established under section 10342 of this title shall be—

- (1) the development of membranes resistant to degradation, bacterial or otherwise, thereby extending the life of such membranes;
- (2) the development of membranes useful for the efficient and cost effective treatment of contaminated water; and
- (3) the development of innovative technologies for membrane processes.

(Pub. L. 102-490, §4, Oct. 24, 1992, 106 Stat. 3142.)

§ 10344. Coordination with other research

The research program established under section 10342 of this title shall be carried out in coordination with any other related Federal research efforts.

(Pub. L. 102-490, §5, Oct. 24, 1992, 106 Stat. 3143.)

§ 10345. Authorization of appropriations

There are authorized to be appropriated to the Director of the National Science Foundation, from sums otherwise authorized to be appropriated, \$2,500,000 for fiscal year 1993, for carrying out this chapter.

(Pub. L. 102-490, §6, Oct. 24, 1992, 106 Stat. 3143.)

CHAPTER 110—FAMILY VIOLENCE PREVENTION AND SERVICES

- Sec.
- 10401. Declaration of purpose.
- 10402. State grants authorized.
 - (a) Authority of Secretary; application; requirements; approval.
 - (b) Indian tribes and tribal organizations; application.
 - (c) Programs for children who witness domestic violence.
 - (d) Direct payments to victims or dependents.
 - (e) Income eligibility standards.
 - (f) Grants to entities other than States; local share.
 - (g) Shelter and related assistance.
- 10403. Allotment of funds.
 - (a) Proportionality of allotment; minimum allotment.
 - (b) Determination of population of States.
 - (c) Ratable reduction of amounts; increase on availability of additional funds.
 - (d) Reallotment; continued availability of funds.
 - (e) Exclusion from definition of "State".
- 10404. Secretarial responsibilities.
- 10405. Evaluation.
- 10406. Discrimination prohibited.
 - (a) Recipients of Federal financial assistance; types of discrimination prohibited.

- Sec.
- (b) Notification and request to secure compliance; referral to Attorney General or other action by Secretary.
- (c) Civil action by Attorney General.
- 10407. Information and technical assistance centers.
 - (a) Purpose and grants.
 - (b) National resource center.
 - (c) Special issue resource centers.
 - (d) Eligibility.
 - (e) Reporting.
 - (f) "Indian tribal agency" defined.
- 10408. Transferred.
- 10409. Authorization of appropriations.
 - (a) In general.
 - (b) Section 10402(a) and (b).
 - (c) Section 10407.
 - (d) Grants for State coalitions.
 - (e) Non-supplanting requirement.
- 10410. Grants for State domestic violence coalitions.
 - (a) In general.
 - (b) Eligibility.
 - (c) Allotment of funds.
 - (d) Prohibition on lobbying.
 - (e) Reporting.
 - (f) Definition.
 - (g) Funding.
- 10411. Repealed.
- 10412. Authority of Secretary.
 - (a) In general.
 - (b) Construction with State and local law.
 - (c) Funding for evaluation, monitoring, and other administrative costs.
- 10413. Repealed.
- 10414. Grants for public information campaigns.
 - (a) In general.
 - (b) Application.
 - (c) Requirements.
 - (d) Use.
 - (e) Criteria.
 - (f) Inclusion of representatives of Indians.
- 10415. Repealed.
- 10416. National domestic violence hotline and Internet grant.
 - (a) In general.
 - (b) Duration.
 - (c) Annual approval.
 - (d) Hotline activities.
 - (e) Secure website activities.
 - (f) Application.
 - (g) Authorization of appropriations.
- 10417. Repealed.
- 10418. Demonstration grants for community initiatives.
 - (a) In general.
 - (b) Eligibility.
 - (c) Applications.
 - (d) Term.
 - (e) Conditions on payment.
 - (f) Geographical dispersion.
 - (g) Use of grant monies.
 - (h) Authorization of appropriations.
- 10419. Transitional housing assistance.
 - (a) In general.
 - (b) Assistance described.
 - (c) Term of assistance.
 - (d) Reports.
 - (e) Evaluation, monitoring, and administration.
 - (f) Authorization of appropriations.
- 10420. Safe havens for children pilot program.
 - (a) In general.
 - (b) Considerations.
 - (c) Applicant requirements.
 - (d) Reporting.
 - (e) Authorization of appropriations.
 - (f) Allotment for Indian tribes.
- 10421. Definitions.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 3796gg of this title; title 31 section 6703.

§ 10401. Declaration of purpose

It is the purpose of this chapter to—

(1) assist States in efforts to increase public awareness about and prevent family violence and to provide immediate shelter and related assistance for victims of family violence and their dependents; and

(2) provide for technical assistance and training relating to family violence programs to States, local public agencies (including law enforcement agencies, courts, legal, social service, and health care professionals), nonprofit private organizations, and other persons seeking such assistance.

(Pub. L. 98-457, title III, §302, Oct. 9, 1984, 98 Stat. 1757; Pub. L. 102-295, title III, §302, May 28, 1992, 106 Stat. 201; Pub. L. 108-36, title IV, §415(1), June 25, 2003, 117 Stat. 830.)

AMENDMENTS

2003—Par. (1). Pub. L. 108-36 substituted “assist” for “demonstrate the effectiveness of assisting”.

1992—Par. (1). Pub. L. 102-295, §302(1)(A), which directed the substitution of “assist” for “demonstration the effectiveness of assisting”, could not be executed because those words did not appear in text. See 2003 Amendment note above.

Pub. L. 102-295, §302(1)(B), substituted “to increase public awareness about and prevent” for “to prevent”.

Par. (2). Pub. L. 102-295, §302(2), inserted “, courts, legal, social service, and health care professionals” after “enforcement agencies”.

SHORT TITLE

Section 301 of title III of Pub. L. 98-457 provided that: “This title [enacting this chapter] may be cited as the ‘Family Violence Prevention and Services Act’.”

STUDY OF TRAINING NEEDS OF HEALTH PROFESSIONALS

Pub. L. 105-392, title IV, §407(b), Nov. 13, 1998, 112 Stat. 3589, provided that: “The Secretary of Health and Human Services shall request that the Institute of Medicine conduct a study concerning the training needs of health professionals with respect to the detection and referral of victims of family or acquaintance violence. Not later than 2 years after the date of enactment of this Act [Nov. 13, 1998], the Institute of Medicine shall prepare and submit to Congress a report concerning the study conducted under this subsection.”

§ 10402. State grants authorized**(a) Authority of Secretary; application; requirements; approval**

(1) In order to assist in supporting the establishment, maintenance, and expansion of programs and projects to prevent incidents of family violence and to provide immediate shelter and related assistance for victims of family violence and their dependents, the Secretary is authorized, in accordance with the provisions of this chapter, to make grants to States.

(2) No grant may be made under this subsection unless the chief executive officer of the State seeking such grant submits an application to the Secretary at such time and in such manner as the Secretary may reasonably require. Each such application shall—

(A) provide that funds provided under this subsection will be distributed in grants to

local public agencies and nonprofit private organizations (including religious and charitable organizations, and voluntary associations) for programs and projects within such State to prevent incidents of family violence and to provide immediate shelter and related assistance for victims of family violence and their dependents in order to prevent future violent incidents;

(B) provide, with respect to funds provided to a State under this subsection for any fiscal year, that—

(i) not more than 5 percent of such funds will be used for State administrative costs; and

(ii) in the distribution of funds by the State under this subsection, the State will give special emphasis to the support of community-based projects of demonstrated effectiveness carried out by nonprofit private organizations, the primary purpose of which is to operate shelters for victims of family violence and their dependents, and those which provide counseling, advocacy, and self-help services to victims and their children.¹

(C) set forth procedures designed to involve State domestic violence coalitions, knowledgeable individuals, and interested organizations and assure an equitable distribution of grants and grant funds within the State and between urban and rural areas within such State and a plan to address the needs of underserved populations, as defined in section 3796gg-2 of this title;²

(D) specify the State agency to be designated as responsible for the administration of programs and activities relating to family violence which are carried out by the State under this chapter and for coordination of related programs within the State;

(E) provide documentation that procedures have been developed, and implemented including copies of the policies and procedure, to assure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services by any program assisted under this chapter and provide assurances that the address or location of any shelter-facility assisted under this chapter will, except with written authorization of the person or persons responsible for the operation of such shelter, not be made public;

(F) provide documentation to the Secretary that the State has a law or procedure that has been implemented for the eviction of an abusing spouse from a share household; and

(G) meet such requirements as the Secretary reasonably determines are necessary to carry out the purposes and provisions of this chapter.

(3) The Secretary shall approve any application that meets the requirements of this subsection, and the Secretary shall not disapprove any such application except after reasonable notice of the Secretary’s intention to disapprove and after a 6-month period providing an oppor-

¹ So in original. The period probably should be a semicolon.

² See References in Text note below.

tunity for correction of any deficiencies. The Secretary shall provide such notice within 45 days of the date of the application if any of the provisions of paragraph (2) have not been satisfied in such application. If the State has not corrected the deficiencies in such application within the 6-month period following the receipt of the Secretary's notice of intention to disapprove, the Secretary shall withhold payment of any grant funds to such State until the date that is 30 days prior to the end of the fiscal year for which such grant funds are appropriated or until such time as the State provides documentation that the deficiencies have been corrected, whichever occurs first. State Domestic Violence Coalitions shall be permitted to participate in determining whether a grantee is in compliance with paragraph (2), except that no funds made available to State Domestic Violence Coalitions under section 10410 of this title shall be used to challenge a determination as to whether a grantee is in compliance with, or to seek the enforcement of, the eligibility requirements of such paragraph.

(4) Upon completion of the activities funded by a grant under this subpart,² the State grantee shall file a performance report with the Director explaining the activities carried out together with an assessment of the effectiveness of those activities in achieving the purposes of this subpart.² A section of this performance report shall be completed by each grantee or subgrantee that performed the direct services contemplated in the application certifying performance of direct services under the grant. The Director shall suspend funding for an approved application if an applicant fails to submit an annual performance report or if the funds are expended for purposes other than those set forth under this subpart,² after following the procedures set forth in paragraph (3). Federal funds may be used only to supplement, not supplant, State funds.

(5) Upon completion of the activities funded by a grant under this chapter, the State shall submit to the Secretary a report that contains a description of the activities carried out under paragraph (2)(B)(i).

(b) Indian tribes and tribal organizations; application

(1) The Secretary, from amounts appropriated to carry out this section, shall make available not less than 10 percent of such amounts to make grants to Indian tribes, tribal organizations³ and nonprofit private organizations approved by an Indian Tribe⁴ for the operation of a family violence shelter on a Reservation⁴ for projects designed to prevent family violence and to provide immediate shelter and related assistance for victims of family violence and their dependents.

(2) No grant may be made under this subsection unless an application is made to the Secretary at such time, in such manner, and containing or accompanied by such information as the Secretary deems essential to carry out the purposes and provisions of this chapter. Such application shall comply, as applicable, with the

provisions of clauses (C) (with respect only to involving knowledgeable individuals and organizations), (D), (E) and (F) of subsection (a)(2) of this section. No entity eligible to submit an application under paragraph (1) shall be prohibited from making an application during any fiscal year for which funds are available because such entity has not previously applied or received funding under this section.

(3) In the case of a project for which the initial application for a demonstration grant under this subsection is made on or after May 28, 1992, the terms "Indian tribe" and "tribal organization", for purposes of this subsection, have the meaning given such terms in section 450b of title 25.

(c) Programs for children who witness domestic violence

The Secretary shall use funds provided under section 10409(a)(2) of this title, for a fiscal year described in section 10409(a)(2) of this title, to award grants for demonstration programs that provide—

(1) multisystem interventions and services (either directly or by referral) for children who witness domestic violence; and

(2) training (either directly or by referral) for agencies, providers, and other entities who work with such children.

(d) Direct payments to victims or dependents

No funds provided through demonstration grants made under this section may be used as direct payment to any victim of family violence or to any dependent of such victim.

(e) Income eligibility standards

No income eligibility standard may be imposed upon individuals with respect to eligibility for assistance or services supported with funds appropriated to carry out this chapter.

(f) Grants to entities other than States; local share

No grant may be made under this section to any entity other than a State or an Indian Tribe⁴ unless the entity provides for the following non-Federal matching local share as a proportion of the total amount of funds provided under this chapter to the project involved: with respect to an entity operating an existing program under this chapter, not less than 20 percent, and with respect to an entity intending to operate a new program under this chapter, not less than 35 percent. The local share required under this subsection may be in cash or in-kind. The local share may not include any Federal funds provided under any authority other than this chapter.

(g) Shelter and related assistance

The Secretary shall assure that not less than 70 percent of the funds distributed under subsection (a) or (b) of this section shall be distributed to entities for the purpose of providing immediate shelter and related assistance to victims of family violence and their dependents as defined in section 10421 of this title. Not less than 25 percent of the funds distributed under subsection (a) or (b) of this section shall be distributed for the purpose of providing related assistance as defined under section 10421(5)(A) of this title.

³ So in original. Probably should be followed by a comma.

⁴ So in original. Probably should not be capitalized.

(Pub. L. 98-457, title III, §303, Oct. 9, 1984, 98 Stat. 1757; Pub. L. 100-294, title III, §302, Apr. 25, 1988, 102 Stat. 124; Pub. L. 102-295, title III, §§303-309(a), 310, 311(a), May 28, 1992, 106 Stat. 201-203; Pub. L. 103-322, title IV, §40271, Sept. 13, 1994, 108 Stat. 1937; Pub. L. 104-235, title II, §201, Oct. 3, 1996, 110 Stat. 3089; Pub. L. 108-36, title IV, §§401, 415(2), (3), June 25, 2003, 117 Stat. 825, 830.)

REFERENCES IN TEXT

Section 3796gg-2 of this title, referred to in subsec. (a)(2)(C), was in the original "section 2007 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796gg-2)", meaning section 2007 of Pub. L. 90-351, and was translated as reading section 2008 of Pub. L. 90-351, which defines "underserved populations", to reflect the probable intent of Congress.

This subpart, referred to in subsec. (a)(4), is unidentifiable in the original because title III of Pub. L. 98-457 does not contain subparts.

CODIFICATION

May 28, 1992, referred to in subsec. (b)(3), was in the original "the date of the enactment of the Child Abuse Programs, Adoption Opportunities, and Family Violence Prevention Amendments Act of 1992", which was translated as meaning the date of enactment of Pub. L. 102-295, known as the Child Abuse, Domestic Violence, Adoption and Family Services Act of 1992, which enacted subsec. (b)(3), to reflect the probable intent of Congress.

AMENDMENTS

2003—Subsec. (a)(2)(C). Pub. L. 108-36, §415(2)(A)(i), substituted "State domestic violence coalitions, knowledgeable individuals, and interested organizations" for "State domestic violence coalitions knowledgeable individuals and interested organizations".

Pub. L. 108-36, §401(a), substituted "underserved populations, as defined in section 3796gg-2 of this title;" for "underserved populations, including populations underserved because of ethnic, racial, cultural, language diversity or geographic isolation;".

Subsec. (a)(2)(F). Pub. L. 108-36, §415(2)(A)(ii), inserted "and" at end.

Subsec. (a)(4). Pub. L. 108-36, §415(2)(B), realigned margins.

Subsec. (a)(5). Pub. L. 108-36, §401(b), added par. (5).

Subsecs. (c) to (f). Pub. L. 108-36, §401(c), added subsec. (c) and redesignated former subsecs. (c) to (e) as (d) to (f), respectively. Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 108-36, §415(3), substituted "section 10421" for "section 10408(4)" in first sentence and "section 10421(5)(A)" for "section 10408(5)(A)" in second sentence.

Pub. L. 108-36, §401(c)(1), redesignated subsec. (f) as (g).

1996—Subsec. (e). Pub. L. 104-235 substituted "following non-Federal matching local share" for "following local share" and "with respect to an entity operating an existing program under this chapter, not less than 20 percent, and with respect to an entity intending to operate a new program under this chapter, not less than 35 percent" for "20 percent in the first year such project receives a grant under this chapter, 35 percent in the second such year, and 50 percent in the third such year and in any such year thereafter. Except in the case of a public entity, not less than 25 percent of the local share of such agency or organization shall be raised from private sources".

1994—Subsec. (a)(2)(C). Pub. L. 103-322, §40271(a), inserted "and a plan to address the needs of underserved populations, including populations underserved because of ethnic, racial, cultural, language diversity or geographic isolation" after "such State".

Subsec. (a)(4). Pub. L. 103-322, §40271(b), added par. (4).

1992—Subsec. (a)(1). Pub. L. 102-295, §303(1), substituted "grants" for "demonstration grants".

Subsec. (a)(2). Pub. L. 102-295, §303(2)(A), in introductory provisions substituted "grant" for "demonstration grant" after "No".

Subsec. (a)(2)(A). Pub. L. 102-295, §303(2)(B), which directed the substitution of "grant" for "demonstration grant" was executed by substituting "grants" for "demonstration grants", to reflect the probable intent of Congress.

Subsec. (a)(2)(B)(ii). Pub. L. 102-295, §303(2)(C), substituted "the primary purpose of which is to operate shelters for victims of family violence and their dependents, and those which provide counseling, advocacy, and self-help services to victims and their children." for "particularly those projects the primary purpose of which is to operate shelters for victims of family violence and their dependents, and those which provide counseling, alcohol and drug abuse treatment, and self-help services to abusers and victims;".

Subsec. (a)(2)(C). Pub. L. 102-295, §304, inserted "State domestic violence coalitions" after "involve".

Subsec. (a)(2)(E). Pub. L. 102-295, §305, substituted "documentation that procedures have been developed, and implemented including copies of the policies and procedure," for "assurances that procedures will be developed".

Subsec. (a)(2)(F). Pub. L. 102-295, §306, amended subpar. (F) generally. Prior to amendment, subpar. (F) read as follows: "provide assurances that, within one year after receipt of funds under this subsection, the State will, provide assurances to the Secretary that the State has or has under consideration a procedure for the eviction of an abusing spouse from a shared residence; and".

Subsec. (a)(3). Pub. L. 102-295, §307, inserted "a 6-month period providing an" before "opportunity" and inserted at end "The Secretary shall provide such notice within 45 days of the date of the application if any of the provisions of paragraph (2) have not been satisfied in such application. If the State has not corrected the deficiencies in such application within the 6-month period following the receipt of the Secretary's notice of intention to disapprove, the Secretary shall withhold payment of any grant funds to such State until the date that is 30 days prior to the end of the fiscal year for which such grant funds are appropriated or until such time as the State provides documentation that the deficiencies have been corrected, whichever occurs first. State Domestic Violence Coalitions shall be permitted to participate in determining whether a grantee is in compliance with paragraph (2), except that no funds made available to State Domestic Violence Coalitions under section 10410 of this title shall be used to challenge a determination as to whether a grantee is in compliance with, or to seek the enforcement of, the eligibility requirements of such paragraph."

Subsec. (b)(1). Pub. L. 102-295, §308(1), substituted "The Secretary, from amounts appropriated to carry out this section, shall make available not less than 10 percent of such amounts to make grants to Indian tribes, tribal organizations and nonprofit private organizations approved by an Indian Tribe for the operation of a family violence shelter on a Reservation" for "The Secretary is authorized to make demonstration grants to Indian tribes and tribal organizations".

Subsec. (b)(2). Pub. L. 102-295, §308(2), substituted "grant" for "demonstration grant" and "(E) and (F)" for "and (E)" and inserted at end "No entity eligible to submit an application under paragraph (1) shall be prohibited from making an application during any fiscal year for which funds are available because such entity has not previously applied or received funding under this section."

Subsec. (b)(3). Pub. L. 102-295, §308(3), added par. (3).

Subsec. (c). Pub. L. 102-295, §309(a), redesignated subsec. (d) as (c) and struck out former subsec. (c) which read as follows: "No demonstration grant may be made under this section in any fiscal year to any single entity (other than to a State) for an amount in excess of \$50,000, and the total amount of such grants to any such single entity may not exceed \$150,000."

Subsec. (d). Pub. L. 102-295, §309(a)(2), redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 102-295, §§309(a)(2), 310, redesignated subsec. (f) as (e) and substituted "No grant" for "No demonstration grant", "State or an Indian Tribe" for "State", "20 percent" for "35 percent", "35 percent" for "55 percent", "and 50 percent in the third such year and in any such year thereafter" for "and 65 percent in the third such year", and "25 percent" for "50 percent". Former subsec. (e) redesignated (d).

Subsecs. (f), (g). Pub. L. 102-295, §§309(a)(2), 311(a), redesignated subsec. (g) as (f), substituted "70 percent" for "60 percent", and inserted before period "as defined in section 10408(4) of this title. Not less than 25 percent of the funds distributed under subsection (a) or (b) of this section shall be distributed for the purpose of providing related assistance as defined under section 10408(5)(A) of this title". Former subsec. (f) redesignated (e).

1988—Subsec. (c). Pub. L. 100-294 struck out provision that a single entity not be awarded demonstration grants under this section for a total period in excess of three fiscal years.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 309(b) of Pub. L. 102-295 provided that: "The amendments made by subsection (a) [amending this section] are effective in the case of amounts appropriated for fiscal year 1992 and subsequent fiscal years."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10403, 10405, 10409, 10410, 10412 of this title.

§ 10403. Allotment of funds

(a) Proportionality of allotment; minimum allotment

From the sums appropriated under section 10409 of this title and available for grants to States under this subsection for any fiscal year—

(1) Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands shall each be allotted not less than $\frac{1}{8}$ of 1 percent of the amounts available for grants under section 10402(a) of this title for the fiscal year for which the allotment is made; and

(2) each State shall be allotted for payment in a grant authorized under section 10402(a) of this title, \$600,000, with the remaining funds to be allotted to each State in an amount that bears the same ratio to such remaining funds as the population of such State bears to the population of all States.

(b) Determination of population of States

For the purpose of this section, the population of each State, and the total population of all the States, shall be determined by the Secretary on the basis of the most recent census data available to the Secretary, and the Secretary shall use for such purpose, if available, the annual interim current census data produced by the Secretary of Commerce pursuant to section 181 of title 13.

(c) Ratable reduction of amounts; increase on availability of additional funds

If the sums appropriated under section 10409 of this title for any fiscal year and available for grants to States authorized under section 10402(a) of this title are not sufficient to pay in

full the total amounts which all States are entitled to receive under such section for such fiscal year, then the maximum amounts which all States are entitled to receive under such section for such fiscal year shall be ratably reduced. In the event that additional funds become available for making such grants for any fiscal year during which the preceding sentence is applicable, such reduced amounts shall be increased on the same basis as they were reduced.

(d) Reallocation; continued availability of funds

(1) If, at the end of the sixth month of any fiscal year for which sums are appropriated under section 10409 of this title, the amount allotted to a State has not been made available to such State in grants under section 10402(a) of this title because of the failure of such State to meet the requirements for a grant, then the Secretary shall reallocate such amount to States which meet such requirements.

(2) Funds made available by the Secretary through reallocation under paragraph (1) shall remain available for expenditure until the end of the fiscal year following the fiscal year in which such funds become available for reallocation.

(e) Exclusion from definition of "State"

In subsection (a)(2) of this section, the term "State" does not include any jurisdiction specified in subsection (a)(1) of this section.

(Pub. L. 98-457, title III, §304, Oct. 9, 1984, 98 Stat. 1759; Pub. L. 102-295, title III, §312, May 28, 1992, 106 Stat. 204; Pub. L. 104-208, div. A, title I, §101(e) [title II, §213], Sept. 30, 1996, 110 Stat. 3009-233, 3009-254; Pub. L. 104-235, title II, §202, Oct. 3, 1996, 110 Stat. 3089; Pub. L. 106-386, div. B, title II, §1202(b), Oct. 28, 2000, 114 Stat. 1505.)

AMENDMENTS

2000—Subsec. (a). Pub. L. 106-386, §1202(b)(1), substituted "and available for grants to States under this subsection for any fiscal year—" and pars. (1) and (2) for "for grants to States for any fiscal year, each State shall be allotted for payment in a grant authorized under section 10402(a) of this title an amount which bears the same ratio to such sums as the population of such State bears to the population of all States, except that—

"(1) each State shall be allotted not less than 1 percent of the amounts available for grants under section 10402(a) of this title for the fiscal year for which the allotment is made, or \$400,000, whichever is the lesser amount; and

"(2) Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands shall each be allotted not less than one-eighth of 1 percent of the amounts available for grants under section 10402(a) of this title for the fiscal year for which the allotment is made. For the purpose of the exception contained in clause (1) of the preceding sentence only, the term 'State' does not include Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands."

Subsec. (c). Pub. L. 106-386, §1202(b)(2), in first sentence, inserted "and available" before "for grants".

Subsec. (e). Pub. L. 106-386, §1202(b)(3), added subsec. (e).

1996—Subsec. (a)(1). Pub. L. 104-208 and Pub. L. 104-235 amended par. (1) identically, substituting "\$400,000" for "\$200,000".

1992—Subsec. (a)(1). Pub. L. 102-295 struck out "whichever is the greater of the following amounts: one-half of" before "1 percent" and substituted "\$200,000, whichever is the lesser amount" for "\$50,000".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10409 of this title.

§ 10404. Secretarial responsibilities

(a) The Secretary shall appoint 1 or more employees of the Department of Health and Human Services to carry out the provisions of this chapter, including carrying out evaluation and monitoring under this chapter. Any individual appointed under this subsection shall, prior to such appointment, have had expertise in the field of family violence prevention and services.

(b) The Secretary shall—

(1) coordinate all programs within the Department of Health and Human Services, and seek to coordinate all other Federal programs, which involve the prevention of incidents of family violence and the provision of assistance for victims and potential victims of family violence and their dependents, and ensure that such activities as they relate to elderly persons are coordinated with the Administration on Aging and the National Institute on Aging within the Department of Health and Human Services;

(2)(A) provide for research into the most effective prevention, identification, and treatment thereof (such as research into (i) the effectiveness of reducing repeated incidents of family violence through a variety of sentencing alternatives, such as incarceration, fines, and counseling programs, individually or in combination, and through the use of civil protection orders removing the abuser from the family household, (ii) the necessity and impact of a mandatory reporting requirement relating to incidents of family violence, particularly abuse of elderly persons)¹, (iii) the effectiveness of providing safety and support to maternal and child victims of family violence as a way to eliminate the abuse experienced by children in such situations, (iv) identification of intervention approaches to child abuse prevention services which appear to be successful in preventing child abuse where both mother and child are abused, (v) effective and appropriate treatment services for children where both mother and child are abused, and (vi) the individual and situational factors leading to the end of violent and abusive behavior by persons who commit acts of family violence, including such factors as history of previous violence and the legal and service interventions received, and (B) make a complete study and investigation (in consultation with the National Institute on Aging) of the national incidence of abuse, neglect, and exploitation of elderly persons, including a determination of the extent to which incidents of such abuse, neglect, and exploitation are increasing in number or severity; and

(3) provide for the training of personnel and provide technical assistance in the conduct of programs for the prevention and treatment of family violence.

(Pub. L. 98-457, title III, §305, Oct. 9, 1984, 98 Stat. 1760; Pub. L. 102-295, title III, §313, May 28,

¹ So in original. The closing parenthesis probably should follow “interventions received”.

1992, 106 Stat. 204; Pub. L. 108-36, title IV, §§402, 415(4), June 25, 2003, 117 Stat. 825, 830.)

AMENDMENTS

2003—Subsec. (a). Pub. L. 108-36, §402, substituted “1 or more employees” for “an employee”, “of this chapter, including carrying out evaluation and monitoring under this chapter” for “of this chapter”, and “Any individual” for “The individual”.

Subsec. (b)(2)(A). Pub. L. 108-36, §415(4), substituted “provide for research into” for “provide for research, and into”.

1992—Subsec. (b)(2)(A). Pub. L. 102-295 struck out “into the causes of family violence” after “provide for research”, inserted “most effective” before “prevention”, and added cls. (iii) to (vi).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10409 of this title.

§ 10405. Evaluation

Every 2 years, the Secretary shall review, evaluate, and report to the appropriate Committees of the Congress, as to the effectiveness of the programs administered and operated pursuant to this chapter, particularly in relation to repeated incidents of family violence. Such report shall also include a summary of the documentation provided to the Secretary under section 10402(a)(2)(B) through 10402(a)(2)(F) of this title.

(Pub. L. 98-457, title III, §306, Oct. 9, 1984, 98 Stat. 1760; Pub. L. 102-295, title III, §314, May 28, 1992, 106 Stat. 204; Pub. L. 108-36, title IV, §403, June 25, 2003, 117 Stat. 825.)

AMENDMENTS

2003—Pub. L. 108-36 substituted “Every 2 years,” for “Not later than two years after the date on which funds are obligated under section 10402(a) of this title for the first time after October 9, 1984, and every two years thereafter,”.

1992—Pub. L. 102-295 inserted “and every two years thereafter,” and substituted “documentation” for “assurances” and “10402(a)(2)(B) through 10402(a)(2)(F)” for “10402(a)(2)(F)”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10409 of this title.

§ 10406. Discrimination prohibited**(a) Recipients of Federal financial assistance; types of discrimination prohibited**

(1) For the purpose of applying the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], on the basis of handicap under section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], on the basis of sex under title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.], or on the basis of race, color, or national origin under title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], programs and activities funded in whole or in part with funds made available under this part¹ are considered to be programs and activities receiving Federal financial assistance.

(2) No person shall on the ground of sex or religion be excluded from participation in, be de-

¹ See References in Text note below.

nied the benefits of, or be subject to discrimination under, any program or activity funded in whole or in part with funds made available under this chapter. Nothing in this chapter shall require any such program or activity to include any individual in any program or activity without taking into consideration that individual's sex in those certain instances where sex is a bona fide occupational qualification or programmatic factor reasonably necessary to the normal operation of that particular program or activity. The Secretary shall enforce the provisions of the preceding sentence in accordance with section 602 of the Civil Rights Act of 1964 [42 U.S.C. 2000d-1]. Section 603 of such Act [42 U.S.C. 2000d-2] shall apply with respect to any action taken by the Secretary to enforce such sentence. This paragraph shall not be construed as affecting any other legal remedy.

(b) Notification and request to secure compliance; referral to Attorney General or other action by Secretary

Whenever the Secretary finds that a State or other entity that has received financial assistance under this chapter has failed to comply with a provision of law referred to in subsection (a)(1) of this section, with subsection (a)(2) of this section, or with an applicable regulation (including one prescribed to carry out subsection (a)(2) of this section), the Secretary shall notify the chief executive officer of the State and shall request such officer to secure compliance. If, within a reasonable period of time, not to exceed sixty days, the chief executive officer fails or refuses to secure compliance, the Secretary may—

(1) refer the matter to the Attorney General of the United States with a recommendation that an appropriate civil action be instituted,

(2) exercise the powers and functions provided by title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], sections 504 and 505 of the Rehabilitation Act of 1973 [29 U.S.C. 794, 794a], or title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.], as may be applicable, or

(3) take such other action as may be provided by law.

(c) Civil action by Attorney General

When a matter is referred to the Attorney General pursuant to subsection (b)(1) of this section, or whenever the Attorney General has reason to believe that a State or an entity is engaged in a pattern or practice in violation of a provision of law referred to in subsection (a)(1) of this section or in violation of subsection (a)(2) of this section, the Attorney General may bring a civil action in any appropriate district court of the United States for such relief as may be appropriate, including injunctive relief.

(Pub. L. 98-457, title III, §307, Oct. 9, 1984, 98 Stat. 1761.)

REFERENCES IN TEXT

The Age Discrimination Act of 1975, referred to in subsecs. (a)(1), (b)(2), is title III of Pub. L. 94-135, Nov. 28, 1975, 89 Stat. 728, as amended, which is classified generally to chapter 76 (§6101 et seq.) of this title. For complete classification of this Act to the Code, see

Short Title note set out under section 6101 of this title and Tables.

The Education Amendments of 1972, referred to in subsecs. (a)(1) and (b)(2), is Pub. L. 92-318, June 23, 1972, 86 Stat. 235, as amended. Title IX of the Act, known as the Patsy Takemoto Mink Equal Opportunity in Education Act, is classified principally to chapter 38 (§1681 et seq.) of Title 20, Education. For complete classification of title IX to the Code, see Short Title note set out under section 1681 of Title 20 and Tables.

The Civil Rights Act of 1964, referred to in subsecs. (a)(1), (b)(2), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Civil Rights Act of 1964 is classified generally to subchapter V (§2000d et seq.) of this title. For complete classification of this Act to the Code, see note set out under section 2000a of this title and Tables.

This part, referred to in subsec. (a)(1), probably was intended to be a reference to this title, meaning title III of Pub. L. 98-457 which enacted this chapter, because title III was not divided into parts and because similar references to programs or activities funded in whole or in part with funds made available, referred to "this title".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10409 of this title.

§ 10407. Information and technical assistance centers

(a) Purpose and grants

(1) Purpose

It is the purpose of this section to provide resource information, training, and technical assistance to Federal, State, and Indian tribal agencies, as well as to local domestic violence programs and to other professionals who provide services to victims of domestic violence.

(2) Grants

From the amounts appropriated under this chapter, the Secretary shall award grants to private nonprofit organizations for the establishment and maintenance of one national resource center (as provided for in subsection (b) of this section) and not to exceed seven special issue resource centers (as provided for in subsection (c) of this section) focusing on one or more issues of concern to domestic violence victims.

(b) National resource center

The national resource center established under subsection (a)(2) of this section—

(1) shall offer resource, policy, collaboration, and training assistance to Federal, State, and local government agencies, to domestic violence service providers, and to other professionals and interested parties on issues pertaining to domestic violence, including issues relating to children who witness domestic violence; and

(2) shall maintain a central resource library in order to collect, prepare, analyze, and disseminate information and statistics, and analyses of the information and statistics, relating to the incidence and prevention of family violence (particularly the prevention of repeated incidents of violence) and the provision of immediate shelter and related assistance.

(c) Special issue resource centers

The special issue resource centers established under subsection (a)(2) of this section shall pro-

vide information, training and technical assistance to State and local domestic violence service providers, and shall specialize in at least one of the following areas of domestic violence service, prevention, or law:

- (1) Criminal justice response to domestic violence, including court-mandated abuser treatment.
- (2) Improving the response of Child Protective Service agencies to battered mothers of abused children.
- (3) Child custody issues in domestic violence cases.
- (4) The use of the self-defense plea by domestic violence victims.
- (5) Improving interdisciplinary health care responses and access to health care resources for victims of domestic violence.
- (6) Improving access to and the quality of legal representation for victims of domestic violence in civil litigation, including the issuance and enforcement of protection orders.
- (7) Providing technical assistance and training to State domestic violence coalitions.

(d) Eligibility

To be eligible to receive a grant under this section an entity shall be a private nonprofit organization that—

- (1) focuses primarily on domestic violence;
- (2) provides documentation to the Secretary demonstrating experience working directly on issues of domestic violence, particularly in the specific subject area for which it is applying;
- (3) include on its advisory boards representatives from domestic violence programs in the region who are geographically and culturally diverse; and
- (4) demonstrate the strong support of domestic violence advocates from across the country and the region for their designation as the national or a special issue resource center.

(e) Reporting

Not later than 6 months after receiving a grant under this section, a grantee shall prepare and submit a report to the Secretary that evaluates the effectiveness of the use of amounts received under such grant by such grantee and containing such additional information as the Secretary may prescribe.

(f) “Indian tribal agency” defined

For purposes of this section, the term “Indian tribal agency” means an Indian tribe or tribal organization, as defined in section 450b of title 25.

(Pub. L. 98-457, title III, § 308, Oct. 9, 1984, 98 Stat. 1761; Pub. L. 102-295, title III, § 315, May 28, 1992, 106 Stat. 204; Pub. L. 103-322, title IV, § 40272(b), Sept. 13, 1994, 108 Stat. 1937; Pub. L. 108-36, title IV, § 404, June 25, 2003, 117 Stat. 826.)

AMENDMENTS

2003—Subsec. (b). Pub. L. 108-36, § 404(1), added subsec. (b) and struck out heading and text of former subsec. (b). Text read as follows: “The national resource center established under subsection (a)(2) of this section shall offer resource, policy and training assistance to Federal, State, and local government agencies, to domestic violence service providers, and to other professionals and interested parties on issues pertaining to domestic

violence, and shall maintain a central resource library in order to collect, prepare, analyze, and disseminate information and statistics and analyses thereof relating to the incidence and prevention of family violence (particularly the prevention of repeated incidents of violence) and the provision of immediate shelter and related assistance.”

Subsec. (g). Pub. L. 108-36, § 404(2), struck out heading and text of subsec. (g). Text read as follows: “Not later than 90 days after May 28, 1992, the Secretary shall publish proposed regulations implementing this section. Not later than 120 days after May 28, 1992, the Secretary shall publish final regulations.”

1994—Subsec. (a)(2). Pub. L. 103-322, § 40272(b)(1), substituted “seven” for “six” before “special issue resource centers”.

Subsec. (c)(6). Pub. L. 103-322, § 40272(b)(2)(A), inserted before period at end “, including the issuance and enforcement of protection orders”.

Subsec. (c)(7). Pub. L. 103-322, § 40272(b)(2)(B), added par. (7).

1992—Pub. L. 102-295 amended section generally, substituting provisions relating to information and technical assistance centers for provisions relating to operation of national information and research clearinghouse on prevention of family violence.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10409, 10412 of this title.

§ 10408. Transferred

CODIFICATION

Section, Pub. L. 98-457, title III, § 309, Oct. 9, 1984, 98 Stat. 1762; Pub. L. 102-295, title III, § 311(b), May 28, 1992, 106 Stat. 203; Pub. L. 103-322, title IV, § 40272(a), Sept. 13, 1994, 108 Stat. 1937; Pub. L. 108-36, title IV, § 405, June 25, 2003, 117 Stat. 826, which related to definitions, was renumbered section 320 of Pub. L. 98-457 by Pub. L. 108-36, title IV, § 415(5), June 25, 2003, 117 Stat. 830, and transferred to section 10421 of this title.

§ 10409. Authorization of appropriations

(a) In general

(1) Authorization

There are authorized to be appropriated to carry out sections 10402 through 10410 of this title, \$175,000,000 for each of fiscal years 2004 through 2008.

(2) Projects to address needs of children who witness domestic violence

For a fiscal year in which the amounts appropriated under paragraph (1) exceed \$130,000,000, the Secretary shall reserve and make available a portion of the excess to carry out section 10402(c) of this title.

(b) Section 10402(a) and (b)

Of the amounts appropriated under subsection (a) of this section for each fiscal year (and not reserved under subsection (a)(2) of this section), not less than 70 percent shall be used for making grants under subsection 10402(a) of this title, and not less than 10 percent shall be used for the purpose of carrying out section 10402(b) of this title.

(c) Section 10407

Of the amounts appropriated under subsection (a) of this section for each fiscal year (and not reserved under subsection (a)(2) of this section), 5 percent shall be used by the Secretary for making grants under section 10407 of this title.

(d) Grants for State coalitions

Of the amounts appropriated under subsection (a) of this section for each fiscal year (and not reserved under subsection (a)(2) of this section), not less than 10 percent of such amounts shall be used by the Secretary for making grants under section 10410 of this title.

(e) Non-supplanting requirement

Federal funds made available to a State under this chapter shall be used to supplement and not supplant other Federal, State, and local public funds expended to provide services and activities that promote the purposes of this chapter.

(Pub. L. 98-457, title III, §310, Oct. 9, 1984, 98 Stat. 1763; Pub. L. 100-294, title III, §301, Apr. 25, 1988, 102 Stat. 124; Pub. L. 102-295, title III, §316, May 28, 1992, 106 Stat. 206; Pub. L. 103-322, title IV, §40241, Sept. 13, 1994, 108 Stat. 1934; Pub. L. 104-235, title II, §203, Oct. 3, 1996, 110 Stat. 3089; Pub. L. 106-386, div. B, title II, §1202(a), Oct. 28, 2000, 114 Stat. 1505; Pub. L. 108-36, title IV, §406(a), (b), June 25, 2003, 117 Stat. 827.)

AMENDMENTS

2003—Subsec. (a). Pub. L. 108-36, §406(a), reenacted heading without change and amended text of subsec. (a) generally. Prior to amendment, text read as follows: “There are authorized to be appropriated to carry out this chapter \$175,000,000 for each of fiscal years 2001 through 2005.”

Subsecs. (b) to (d). Pub. L. 108-36, §406(b), inserted “(and not reserved under subsection (a)(2) of this section)” after “each fiscal year”.

2000—Subsec. (a). Pub. L. 106-386 reenacted heading without change and amended text of subsec. (a) generally. Prior to amendment, text read as follows: “There are authorized to be appropriated to carry out this chapter—

- “(1) \$50,000,000 for fiscal year 1996;
- “(2) \$60,000,000 for fiscal year 1997;
- “(3) \$70,000,000 for fiscal year 1998;
- “(4) \$72,500,000 for fiscal year 1999; and
- “(5) \$72,500,000 for fiscal year 2000.”

1996—Subsec. (b). Pub. L. 104-235, §203(1), substituted “70 percent” for “80 percent”.

Subsecs. (d), (e). Pub. L. 104-235, §203(2), added subsecs. (d) and (e).

1994—Subsec. (a). Pub. L. 103-322 amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: “There are authorized to be appropriated to carry out the provisions of sections 10402 through 10408 of this title and section 10413 of this title, \$60,000,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993 through 1995.”

1992—Pub. L. 102-295 amended section generally. Prior to amendment, section read as follows:

“(a) There are authorized to be appropriated to carry out the provisions of this chapter \$11,000,000 for fiscal year 1985, \$26,000,000 for each of the fiscal years 1986 and 1987, \$26,000,000 for fiscal year 1988, and such sums as may be necessary for each of the fiscal years 1989, 1990, and 1991.

“(b) Of the sums appropriated under subsection (a) of this section for any fiscal year, not less than 85 percent shall be used by the Secretary for making grants under section 10402 of this title.

“(c) The Secretary shall ensure that funds appropriated pursuant to authorizations in this chapter shall remain available until expended for the purposes for which they were appropriated.”

1988—Subsec. (a). Pub. L. 100-294, §301(a), substituted “1985,” for “1985 and” and inserted “, \$26,000,000 for fiscal year 1988, and such sums as may be necessary for each of the fiscal years 1989, 1990, and 1991” after “1987” before period at end.

Subsec. (c). Pub. L. 100-294, §301(b), added subsec. (c).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10402, 10403, 10410, 10412 of this title.

§ 10410. Grants for State domestic violence coalitions**(a) In general**

The Secretary shall award grants for the funding of State domestic violence coalitions. Such coalitions shall further the purposes of domestic violence intervention and prevention through activities, including—

(1) working with local domestic violence programs and providers of direct services to encourage appropriate responses to domestic violence within the State, including—

(A) training and technical assistance for local programs and professionals working with victims of domestic violence;

(B) planning and conducting State needs assessments and planning for comprehensive services;

(C) serving as an information clearinghouse and resource center for the State; and

(D) collaborating with other governmental systems which affect battered women;

(2) working with judicial and law enforcement agencies to encourage appropriate responses to domestic violence cases and examine issues including—

(A) the inappropriateness of mutual protection orders;

(B) the prohibition of mediation when domestic violence is involved;

(C) the use of mandatory arrests of accused offenders;

(D) the discouragement of dual arrests;

(E) the adoption of aggressive and vertical prosecution policies and procedures;

(F) the use of mandatory requirements for presentence investigations;

(G) the length of time taken to prosecute cases or reach plea agreements;

(H) the use of plea agreements;

(I) the consistency of sentencing, including comparisons of domestic violence crimes with other violent crimes;

(J) the restitution of victims;

(K) the use of training and technical assistance to law enforcement, judges, court officers and other criminal justice professionals;

(L) the reporting practices of, and significance to be accorded to, prior convictions (both felony and misdemeanor) and protection orders;

(M) the use of interstate extradition in cases of domestic violence crimes;

(N) the use of statewide and regional planning; and

(O) any other matters as the Secretary and the State domestic violence coalitions believe merit investigations;

(3) work with family law judges, criminal court judges, Child Protective Services agencies, and children’s advocates to develop appropriate responses to child custody and visitation issues in domestic violence cases as

well as cases where domestic violence and child abuse are both present, including—

(A) the inappropriateness of mutual protection orders;

(B) the prohibition of mediation where domestic violence is involved;

(C) the inappropriate use of marital or conjoint counseling in domestic violence cases;

(D) the use of training and technical assistance for family law judges, criminal court judges, and court personnel;

(E) the presumption of custody to domestic violence victims;

(F) the use of comprehensive protection orders to grant fullest protections possible to victims of domestic violence, including temporary custody support and maintenance;

(G) the development by Child Protective Service of supportive responses that enable victims to protect their children;

(H) the implementation of supervised visitations or denial of visitation to protect against danger to victims or their children; and

(I) the possibility of permitting domestic violence victims to remove children from the State when the safety of the children or the victim is at risk;

(4) conduct public education campaigns regarding domestic violence through the use of public service announcements and informative materials that are designed for print media, billboards, public transit advertising, electronic broadcast media, and other vehicles for information that shall inform the public concerning domestic violence, including information aimed at underserved racial, ethnic or language-minority populations; and

(5) participate in planning and monitoring of the distribution of grants and grant funds to their State under section 10402(a) of this title.

(b) Eligibility

To be eligible for a grant under this section, an entity shall be a statewide nonprofit State domestic violence coalition meeting the following conditions:

(1) The membership of the coalition includes representatives from a majority of the programs for victims of domestic violence in the State.

(2) The board membership of the coalition is representative of such programs.

(3) The purpose of the coalition is to provide services, community education, and technical assistance to such programs to establish and maintain shelter and related services for victims of domestic violence and their children.

(4) In the application submitted by the coalition for the grant, the coalition provides assurances satisfactory to the Secretary that the coalition—

(A) has actively sought and encouraged the participation of law enforcement agencies and other legal or judicial entities in the preparation of the application; and

(B) will actively seek and encourage the participation of such entities in the activities carried out with the grant.

(c) Allotment of funds

From amounts appropriated under this section for each fiscal year, the Secretary shall allot to each State, the District of Columbia, the Commonwealth of Puerto Rico, and the combined U.S. Territories an amount equal to $\frac{1}{53}$ of the amount appropriated for such fiscal year. For purposes of this section, the term “combined U.S. Territories” means Guam, American Samoa, the U.S. Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands and shall not receive less than 1.5 percent of the funds appropriated for each fiscal year.

(d) Prohibition on lobbying

No funds made available to entities under this section shall be used, directly or indirectly, to influence the issuance, amendment, or revocation of any executive order or similar promulgation by any Federal, State or local agency, or to undertake to influence the passage or defeat of any legislation by Congress, or by any State or local legislative body, or State proposals by initiative petition, except that the representatives of the entity may testify or make other appropriate communication—

(1) when formally requested to do so by a legislative body, a committee, or a member thereof; or

(2) in connection with legislation or appropriations directly affecting the activities of the entity.

(e) Reporting

Each State domestic violence coalition receiving amounts under this section shall submit a report to the Secretary describing the coordination, training and technical assistance and public education services performed with such amounts and evaluating the effectiveness of those services.

(f) Definition

For purposes of this section, a State domestic violence coalition may include representatives of Indian tribes and tribal organizations, as defined in section 450b of title 25.

(g) Funding

Of the amount appropriated under section 10409(a) of this title for a fiscal year (and not reserved under section 10409(a)(2) of this title), not less than 10 percent of such amount shall be made available to award grants under this section.

(Pub. L. 98-457, title III, §311, Oct. 9, 1984, 98 Stat. 1763; Pub. L. 100-294, title III, §303(b), Apr. 25, 1988, 102 Stat. 125; Pub. L. 102-295, title III, §317, May 28, 1992, 106 Stat. 206; Pub. L. 103-322, title IV, §40272(c), Sept. 13, 1994, 108 Stat. 1938; Pub. L. 108-36, title IV, §§406(c), 407, 415(6), June 25, 2003, 117 Stat. 827, 830.)

AMENDMENTS

2003—Subsec. (a)(2)(K). Pub. L. 108-36, §415(6)(A), substituted “other criminal justice professionals;” for “other criminal justice professionals;”.

Subsec. (a)(3). Pub. L. 108-36, §415(6)(B)(i), substituted “family law judges;” for “family law judges;” in introductory provisions.

Subsec. (a)(3)(D). Pub. L. 108-36, §415(6)(B)(ii), inserted “, criminal court judges;” after “family law judges”.

Subsec. (a)(3)(H). Pub. L. 108-36, §415(6)(B)(iii), substituted “supervised visitations or denial of visitation to protect against danger to victims or their children” for “supervised visitations that do not endanger victims and their children”.

Subsec. (g). Pub. L. 108-36, §406(c), substituted “Funding” for “Authorization of appropriations” in heading and amended text generally. Prior to amendment, text read as follows: “There are authorized to be appropriated to be used to award grants under this section \$8,000,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993 through 1995.”

Subsec. (h). Pub. L. 108-36, §407, struck out heading and text. Text read as follows: “Not later than 90 days after May 28, 1992, the Secretary shall publish proposed regulations implementing this section. Not later than 120 days after May 28, 1992, the Secretary shall publish final regulations implementing this section.”

1994—Subsec. (a)(1). Pub. L. 103-322, §40272(c)(2), added par. (1). Former par. (1) redesignated (2).

Subsec. (a)(2). Pub. L. 103-322, §40272(c)(1), redesignated par. (1) as (2). Former par. (2) redesignated (3).

Subsec. (a)(2)(K). Pub. L. 103-322, §40272(c)(3), substituted “, judges, court officers and other criminal justice professionals,” for “and court officials and other professionals”.

Subsec. (a)(3). Pub. L. 103-322, §40272(c)(1), (4)(A), redesignated par. (2) as (3) and inserted “, criminal court judges,” after “family law judges,” in introductory provisions. Former par. (3) redesignated (4).

Subsec. (a)(3)(F). Pub. L. 103-322, §40272(c)(4)(B), substituted “temporary custody support” for “temporary support”.

Subsec. (a)(3)(H). Pub. L. 103-322, §40272(c)(4)(C), which directed the substitution of “supervised visitations or denial of visitation to protect against danger to victims or their children” for “supervised visitations that do not endanger victims and their children,” could not be executed because those words did not appear in text. See 2003 Amendment note above.

Subsec. (a)(4). Pub. L. 103-322, §40272(c)(1), (5), redesignated par. (3) as (4) and inserted before semicolon “, including information aimed at underserved racial, ethnic or language-minority populations”. Former par. (4) redesignated (5).

Subsec. (a)(5). Pub. L. 103-322, §40272(c)(1), redesignated par. (4) as (5).

1992—Pub. L. 102-295 amended section generally, substituting provisions relating to grants for State domestic violence coalitions for provisions relating to law enforcement training and technical assistance grants and contracts.

1988—Subsec. (b)(2). Pub. L. 100-294 added par. (2).

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10402, 10409, 13951 of this title.

§ 10411. Repealed. Pub. L. 100-294, title III, § 303(a), Apr. 25, 1988, 102 Stat. 124

Section, Pub. L. 98-457, title III, §312, Oct. 9, 1984, 98 Stat. 1763, related to authority of Secretary to carry out provisions of this chapter, competitive awarding of grants and contracts, and delegation of authority and transfer of funds to Attorney General. See sections 10412(a) and 10410(b), (c) of this title.

§ 10412. Authority of Secretary

(a) In general

In order to carry out the provisions of this chapter, the Secretary is authorized to—

(1) appoint and fix the compensation of such personnel as are necessary;

(2) procure, to the extent authorized by section 3109 of title 5, such temporary and intermittent services of experts and consultants as are necessary;

(3) make grants to public and nonprofit private entities or enter into contracts with public or private entities; and

(4) prescribe such regulations as are reasonably necessary in order to carry out the purposes and provisions of this chapter.

Not later than 90 days after May 28, 1992, the Secretary shall publish proposed regulations implementing sections 10402, 10407, and 10414 of this title. Not later than 120 days after May 28, 1992, the Secretary shall publish final regulations implementing such sections.

(b) Construction with State and local law

Nothing in this chapter shall be construed to supersede the application of State or local requirements for the reporting of incidents of suspected child abuse to the appropriate State authorities.

(c) Funding for evaluation, monitoring, and other administrative costs

Of the amount appropriated under section 10409(a) of this title for each fiscal year (and not reserved under section 10409(a)(2) of this title), not more than 2.5 percent shall be used by the Secretary for evaluation, monitoring, and other administrative costs under this chapter.

(Pub. L. 98-457, title III, §312, Oct. 9, 1984, 98 Stat. 1764; Pub. L. 102-295, title III, §318, May 28, 1992, 106 Stat. 208; Pub. L. 108-36, title IV, §408, June 25, 2003, 117 Stat. 827.)

CODIFICATION

Another section 312 of Pub. L. 98-457, which was classified to section 10411 of this title, was repealed by section 303(a) of Pub. L. 100-294.

AMENDMENTS

2003—Subsec. (c). Pub. L. 108-36 added subsec. (c).

1992—Subsec. (a). Pub. L. 102-295 inserted at end “Not later than 90 days after May 28, 1992, the Secretary shall publish proposed regulations implementing sections 10402, 10407, and 10414 of this title. Not later than 120 days after May 28, 1992, the Secretary shall publish final regulations implementing such sections.”

§ 10413. Repealed. Pub. L. 108-36, title IV, § 409, June 25, 2003, 117 Stat. 827

Section, Pub. L. 98-457, title III, §313, as added Pub. L. 100-294, title III, §303(c), Apr. 25, 1988, 102 Stat. 125; amended Pub. L. 102-295, title III, §319, May 28, 1992, 106 Stat. 209, related to family member abuse information and documentation project.

§ 10414. Grants for public information campaigns

(a) In general

The Secretary may make grants to public or private nonprofit entities to provide public information campaigns regarding domestic violence through the use of public service announcements and informative materials that are designed for print media, billboards, public transit advertising, electronic broadcast media, and other vehicles for information that shall inform the public concerning domestic violence.

(b) Application

No grant, contract, or cooperative agreement shall be made or entered into under this section unless an application that meets the requirements of subsection (c) of this section has been approved by the Secretary.

(c) Requirements

An application submitted under subsection (b) of this section shall—

- (1) provide such agreements, assurances, and information, be in such form and be submitted in such manner as the Secretary shall prescribe through notice in the Federal Register, including a description of how the proposed public information campaign will target the population at risk, including pregnant women;
- (2) include a complete description of the plan of the application for the development of a public information campaign;
- (3) identify the specific audiences that will be educated, including communities and groups with the highest prevalence of domestic violence;
- (4) identify the media to be used in the campaign and the geographic distribution of the campaign;
- (5) describe plans to test market a development plan with a relevant population group and in a relevant geographic area and give assurance that effectiveness criteria will be implemented prior to the completion of the final plan that will include an evaluation component to measure the overall effectiveness of the campaign;
- (6) describe the kind, amount, distribution, and timing of informational messages and such other information as the Secretary may require, with assurances that media organizations and other groups with which such messages are placed will not lower the current frequency of public service announcements; and
- (7) contain such other information as the Secretary may require.

(d) Use

A grant, contract, or agreement made or entered into under this section shall be used for the development of a public information campaign that may include public service announcements, paid educational messages for print media, public transit advertising, electronic broadcast media, and any other mode of conveying information that the Secretary determines to be appropriate.

(e) Criteria

The criteria for awarding grants shall ensure that an applicant—

- (1) will conduct activities that educate communities and groups at greatest risk;
- (2) has a record of high quality campaigns of a comparable type; and
- (3) has a record of high quality campaigns that educate the population groups identified as most at risk.

(f) Inclusion of representatives of Indians

For purposes of this section, the term “public or private nonprofit entity” includes an “Indian tribe” or “tribal organization”, as defined in section 450b of title 25.

(Pub. L. 98-457, title III, §314, as added Pub. L. 102-295, title III, §320, May 28, 1992, 106 Stat. 209.)

FEDERAL EMPLOYEE DOMESTIC VIOLENCE AWARENESS
CAMPAIGN

Memorandum of President of the United States, Oct. 2, 1995, 60 F.R. 52821, provided:

Memorandum for Heads of Executive Departments and Agencies

Domestic violence is not a private, family dispute that affects only the people involved. Domestic violence is violent criminal activity that affects us all, regardless of race, income, or age, in every community in this country. It means higher health care costs, increased absenteeism, and declining productivity. It destroys families, relationships, and lives. More importantly, it tears at the moral fabric of who we are and undermines the very institution that has been the cornerstone of our country: the family.

In passing the Violence Against Women Act [probably means the Violence Against Women Act of 1994, title IV of Pub. L. 103-322, see Tables for classification] as part of the Violent Crime Control Act (“VCCA”) [probably means the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103-322, see Tables for classification] last year, the Congress recognized the seriousness of the problem of domestic violence. This new law combines tough new penalties with programs to prosecute offenders and help women victims. In the last year, every State has received a down payment of \$426,000 in grants to help train prosecutors, police, and service providers in combatting the problem of domestic violence. Moreover, because of the VCCA, every State will now ensure that women who have been assaulted will not have to pay for their medical examinations resulting from rape and other acts of violence.

Throughout October, National Domestic Violence Awareness Month, business, labor, law enforcement, public health, and civic organizations will be working to increase our understanding of this problem and create solutions that can save lives. I believe the Federal Government has a responsibility to be a leader in this effort.

Today, I am directing that executive departments and agencies institute employee awareness campaigns on domestic violence. Within the next 6 months, you should implement a program to promote Federal employee awareness of the problem of domestic violence and the programs and resources that are available for victims. I support and encourage the initial plans made by the Justice Department, which include the production of a resource manual and a poster, and the scheduling of a Violence Against Women Information Fair on October 30, 1995. This fair will include speakers, artwork, and exhibits.

We have a responsibility to assist all victims of domestic violence and their families trapped in a cycle of violence with no sense of where to turn. Often, victims will not report their circumstances to the public, but they may turn to coworkers for help. Thus, by providing information to all Federal workers on the programs available, we can make a contribution to the effort to protect women from abuse and reduce the level of violence in America.

The Director of the Office Management and Budget is authorized and directed to publish this memorandum in the Federal Register.

WILLIAM J. CLINTON.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10412 of this title.

§ 10415. Repealed. Pub. L. 108-36, title IV, § 410, June 25, 2003, 117 Stat. 827

Section, Pub. L. 98-457, title III, §315, as added Pub. L. 102-295, title III, §321, May 28, 1992, 106 Stat. 210, related to model State leadership grants for domestic violence intervention.

§ 10416. National domestic violence hotline and Internet grant

(a) In general

The Secretary may award 1 or more grants to private, nonprofit entities—

(1) to provide for the establishment and operation of a national, toll-free telephone hotline to provide information and assistance to victims of domestic violence; or

(2) to provide for the establishment and operation of a highly secure Internet website to provide that information and assistance to those victims.

(b) Duration

A grant under this section may extend over a period of not more than 5 years.

(c) Annual approval

The provision of payments under a grant awarded under this section shall be subject to annual approval by the Secretary and subject to the availability of appropriations for each fiscal year to make the payments.

(d) Hotline activities

An entity that receives a grant under this section for activities described, in whole or in part, in subsection (a)(1) of this section shall use funds made available through the grant to establish and operate a national, toll-free telephone hotline to provide information and assistance to victims of domestic violence. In establishing and operating the hotline, the entity shall—

(1) contract with a carrier for the use of a toll-free telephone line;

(2) employ, train, and supervise personnel to answer incoming calls and provide counseling and referral services to callers on a 24-hour-a-day basis;

(3) assemble and maintain a current database of information relating to services for victims of domestic violence to which callers may be referred throughout the United States, including information on the availability of shelters that serve battered women; and

(4) publicize the hotline to potential users throughout the United States.

(e) Secure website activities

(1) In general

An entity that receives a grant under this section for activities described, in whole or in part, in subsection (a)(2) of this section shall use funds made available through the grant to provide grants for startup and operational costs associated with establishing and operating a highly secure Internet website.

(2) Availability

The website shall be available to the entity operating the hotline and domestic violence shelters.

(3) Information

The website shall provide accurate information that describes—

(A) the services available to victims of domestic violence, including health care and mental health services, social services, transportation, services for children (includ-

ing children who witness domestic violence), and other relevant services; and

(B) the domestic violence shelters available, and services provided by the shelters.

(4) Rule of construction

Nothing in this chapter shall be construed to require any shelter or service provider, whether public or private, to be linked to the website or to provide information to the recipient of the grant described in paragraph (1) or to the website.

(f) Application

The Secretary may not award a grant under this section unless the Secretary approves an application for such grant. To be approved by the Secretary under this subsection an application shall—

(1) contain such agreements, assurances, and information, be in such form, and be submitted in such manner, as the Secretary shall prescribe through notice in the Federal Register;

(2) in the case of an application for a grant to carry out activities described in subsection (a)(1) of this section, include a complete description of the applicant's plan for the operation of a national domestic violence hotline, including descriptions of—

(A) the training program for hotline personnel;

(B) the hiring criteria for hotline personnel;

(C) the methods for the creation, maintenance, and updating of a resource database;

(D) a plan for publicizing the availability of the hotline;

(E) a plan for providing service to non-English speaking callers, including service through hotline personnel who speak Spanish; and

(F) a plan for facilitating access to the hotline by persons with hearing impairments;

(3) in the case of an application for a grant to carry out activities described in subsection (a)(2) of this section—

(A) include a complete description of the applicant's plan for the development, operation, maintenance, and updating of information and resources of the website;

(B) include a certification that the applicant will implement a high level security system to ensure the confidentiality of the website, taking into consideration the safety of domestic violence victims; and

(C) include an assurance that, after the third year of the website project, the recipient of the grant will develop a plan to secure other public or private funding resources to ensure the continued operation and maintenance of the website;

(4) demonstrate that the applicant has recognized expertise in the area of domestic violence and a record of high quality service to victims of domestic violence, including a demonstration of support from advocacy groups;

(5) demonstrate that the applicant has a commitment to diversity, and to the provision of services to ethnic, racial, and non-English speaking minorities, in addition to older individuals and individuals with disabilities; and

(6) contain such other information as the Secretary may require.

(g) Authorization of appropriations

(1) In general

There is authorized to be appropriated to carry out this section \$3,500,000 for each of fiscal years 2004 through 2008.

(2) Conditions on appropriations

Notwithstanding paragraph (1), the Secretary shall make available a portion of the amounts appropriated under paragraph (1) to award grants under subsection (a)(2) of this section only for any fiscal year for which the amounts appropriated under paragraph (1) exceed \$3,000,000.

(3) Availability

Funds authorized to be appropriated under paragraph (1) shall remain available until expended.

(Pub. L. 98-457, title III, §316, as added Pub. L. 103-322, title IV, §40211, Sept. 13, 1994, 108 Stat. 1925; amended Pub. L. 106-386, div. B, title II, §1204, Oct. 28, 2000, 114 Stat. 1507; Pub. L. 108-36, title IV, §411, June 25, 2003, 117 Stat. 827.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (e)(4), was in the original "this Act" and was translated as reading "this title", meaning title III of Pub. L. 98-457, to reflect the probable intent of Congress.

AMENDMENTS

2003—Pub. L. 108-36 amended section generally, substituting provisions relating to a national toll-free telephone hotline and a highly secure Internet website to provide information and assistance to victims of domestic violence for provisions relating to a national domestic violence hotline.

2000—Subsec. (f)(1). Pub. L. 106-386 added par. (1) and struck out heading and text of former par. (1). Text read as follows: "There are authorized to be appropriated to carry out this section—

- “(A) \$1,000,000 for fiscal year 1995;
- “(B) \$400,000 for fiscal year 1996;
- “(C) \$400,000 for fiscal year 1997;
- “(D) \$400,000 for fiscal year 1998;
- “(E) \$400,000 for fiscal year 1999; and
- “(F) \$400,000 for fiscal year 2000.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 10417. Repealed. Pub. L. 108-36, title IV, § 412, June 25, 2003, 117 Stat. 829

Section, Pub. L. 98-457, title III, §317, as added Pub. L. 103-322, title IV, §40251, Sept. 13, 1994, 108 Stat. 1935, related to programs for education of young people about domestic violence and violence among intimate partners.

§ 10418. Demonstration grants for community initiatives

(a) In general

The Secretary shall provide grants to nonprofit private organizations to establish projects in local communities involving many sectors of each community to coordinate intervention and prevention of domestic violence.

(b) Eligibility

To be eligible for a grant under this section, an entity—

(1) shall be a nonprofit organization organized for the purpose of coordinating community projects for the intervention in and prevention of domestic violence; and

(2) shall include representatives of pertinent sectors of the local community, which may include—

- (A) health care providers;
- (B) the education community;
- (C) the religious community;
- (D) the justice system;
- (E) domestic violence program advocates;
- (F) human service entities such as State child services divisions;
- (G) business and civic leaders; and
- (H) other pertinent sectors.

(c) Applications

An organization that desires to receive a grant under this section shall submit to the Secretary an application, in such form and in such manner as the Secretary shall prescribe through notice in the Federal Register, that—

(1) demonstrates that the applicant will serve a community leadership function, bringing together opinion leaders from each sector of the community to develop a coordinated community consensus opposing domestic violence;

(2) demonstrates a community action component to improve and expand current intervention and prevention strategies through increased communication and coordination among all affected sectors;

(3) includes a complete description of the applicant's plan for the establishment and operation of the community project, including a description of—

(A) the method for identification and selection of an administrative committee made up of persons knowledgeable in domestic violence to oversee the project, hire staff, assure compliance with the project outline, and secure annual evaluation of the project;

(B) the method for identification and selection of project staff and a project evaluator;

(C) the method for identification and selection of a project council consisting of representatives of the community sectors listed in subsection (b)(2) of this section;

(D) the method for identification and selection of a steering committee consisting of representatives of the various community sectors who will chair subcommittees of the project council focusing on each of the sectors; and

(E) a plan for developing outreach and public education campaigns regarding domestic violence; and

(4) contains such other information, agreements, and assurances as the Secretary may require.

(d) Term

A grant provided under this section may extend over a period of not more than 3 fiscal years.

(e) Conditions on payment

Payments under a grant under this section shall be subject to—

- (1) annual approval by the Secretary; and
- (2) availability of appropriations.

(f) Geographical dispersion

The Secretary shall award grants under this section to organizations in communities geographically dispersed throughout the country.

(g) Use of grant monies

(1) In general

A grant made under subsection (a) of this section shall be used to establish and operate a community project to coordinate intervention and prevention of domestic violence.

(2) Requirements

In establishing and operating a project, a nonprofit private organization shall—

(A) establish protocols to improve and expand domestic violence intervention and prevention strategies among all affected sectors;

(B) develop action plans to direct responses within each community sector that are in conjunction with development in all other sectors; and

(C) provide for periodic evaluation of the project with a written report and analysis to assist application of this concept in other communities.

(h) Authorization of appropriations

There is authorized to be appropriated to carry out this section \$6,000,000 for each of fiscal years 2004 through 2008.

(Pub. L. 98-457, title III, §318, as added Pub. L. 103-322, title IV, §40261, Sept. 13, 1994, 108 Stat. 1935; amended Pub. L. 105-392, title IV, §407(a), Nov. 13, 1998, 112 Stat. 3589; Pub. L. 106-386, div. B, title IV, §1403, Oct. 28, 2000, 114 Stat. 1514; Pub. L. 108-36, title IV, §413, June 25, 2003, 117 Stat. 830.)

AMENDMENTS

2003—Subsec. (h). Pub. L. 108-36, §413(a), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “There are authorized to be appropriated to carry out this section \$6,000,000 for each of fiscal years 2001 through 2005.”

Subsec. (i). Pub. L. 108-36, §413(b), struck out heading and text. Text read as follows: “Not later than 60 days after September 13, 1994, the Secretary shall publish proposed regulations implementing this section. Not later than 120 days after September 13, 1994, the Secretary shall publish final regulations implementing this section.”

2000—Subsec. (h). Pub. L. 106-386 added subsec. (h) and struck out heading and text of former subsec. (h). Text read as follows: “There are authorized to be appropriated to carry out this section—

“(1) \$4,000,000 for fiscal year 1996; and

“(2) \$6,000,000 for for each of the fiscal years 1997 through 2002.”

1998—Subsec. (h)(2). Pub. L. 105-392 substituted “for each of the fiscal years 1997 through 2002” for “fiscal year 1997”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 10419. Transitional housing assistance

(a) In general

The Secretary shall award grants under this section to carry out programs to provide assistance to individuals, and their dependents—

(1) who are homeless or in need of transitional housing or other housing assistance, as a result of fleeing a situation of domestic violence; and

(2) for whom emergency shelter services are unavailable or insufficient.

(b) Assistance described

Assistance provided under this section may include—

(1) short-term housing assistance, including rental or utilities payments assistance and assistance with related expenses, such as payment of security deposits and other costs incidental to relocation to transitional housing, in cases in which assistance described in this paragraph is necessary to prevent homelessness because an individual or dependent is fleeing a situation of domestic violence; and

(2) support services designed to enable an individual or dependent who is fleeing a situation of domestic violence to locate and secure permanent housing, and to integrate the individual or dependent into a community, such as transportation, counseling, child care services, case management, employment counseling, and other assistance.

(c) Term of assistance

(1) In general

Subject to paragraph (2), an individual or dependent assisted under this section may not receive assistance under this section for a total of more than 12 months.

(2) Waiver

The recipient of a grant under this section may waive the restrictions of paragraph (1) for up to an additional 6-month period with respect to any individual (and dependents of the individual) who has made a good-faith effort to acquire permanent housing and has been unable to acquire the housing.

(d) Reports

(1) Report to Secretary

(A) In general

An entity that receives a grant under this section shall annually prepare and submit to the Secretary a report describing the number of individuals and dependents assisted, and the types of housing assistance and support services provided, under this section.

(B) Contents

Each report shall include information on—

(i) the purpose and amount of housing assistance provided to each individual or dependent assisted under this section;

(ii) the number of months each individual or dependent received the assistance;

(iii) the number of individuals and dependents who were eligible to receive the assistance, and to whom the entity could not provide the assistance solely due to a lack of available housing; and

(iv) the type of support services provided to each individual or dependent assisted under this section.

(2) Report to Congress

The Secretary shall annually prepare and submit to the Committee on the Judiciary of

the House of Representatives and the Committee on the Judiciary of the Senate a report that contains a compilation of the information contained in reports submitted under paragraph (1).

(e) Evaluation, monitoring, and administration

Of the amount appropriated under subsection (f) of this section for each fiscal year, not more than 1 percent shall be used by the Secretary for evaluation, monitoring, and administrative costs under this section.

(f) Authorization of appropriations

There are authorized to be appropriated to carry out this section \$25,000,000 for each of fiscal years 2003 through 2008.

(Pub. L. 98-457, title III, §319, as added Pub. L. 106-386, div. B, title II, §1203, Oct. 28, 2000, 114 Stat. 1506; amended Pub. L. 108-36, title IV, §414, June 25, 2003, 117 Stat. 830.)

AMENDMENTS

2003—Subsec. (f). Pub. L. 108-36 substituted “each of fiscal years 2003 through 2008” for “fiscal year 2001”.

§ 10420. Safe havens for children pilot program

(a) In general

The Attorney General may award grants to States, units of local government, and Indian tribal governments that propose to enter into or expand the scope of existing contracts and cooperative agreements with public or private non-profit entities to provide supervised visitation and safe visitation exchange of children by and between parents in situations involving domestic violence, child abuse, sexual assault, or stalking.

(b) Considerations

In awarding grants under subsection (a) of this section, the Attorney General shall take into account—

- (1) the number of families to be served by the proposed visitation programs and services;
- (2) the extent to which the proposed supervised visitation programs and services serve underserved populations (as defined in section 3796gg-2 of this title);
- (3) with respect to an applicant for a contract or cooperative agreement, the extent to which the applicant demonstrates cooperation and collaboration with nonprofit, nongovernmental entities in the local community served, including the State or tribal domestic violence coalition, State or tribal sexual assault coalition, local shelters, and programs for domestic violence and sexual assault victims; and
- (4) the extent to which the applicant demonstrates coordination and collaboration with State and local court systems, including mechanisms for communication and referral.

(c) Applicant requirements

The Attorney General shall award grants for contracts and cooperative agreements to applicants that—

- (1) demonstrate expertise in the area of family violence, including the areas of domestic violence or sexual assault, as appropriate;

(2) ensure that any fees charged to individuals for use of programs and services are based on the income of those individuals, unless otherwise provided by court order;

(3) demonstrate that adequate security measures, including adequate facilities, procedures, and personnel capable of preventing violence, are in place for the operation of supervised visitation programs and services or safe visitation exchange; and

(4) prescribe standards by which the supervised visitation or safe visitation exchange will occur.

(d) Reporting

(1) In general

Not later than 1 year after the last day of the first fiscal year commencing on or after October 28, 2000, and not later than 180 days after the last day of each fiscal year thereafter, the Attorney General shall submit to Congress a report that includes information concerning—

(A) the number of—

(i) individuals served and the number of individuals turned away from visitation programs and services and safe visitation exchange (categorized by State);

(ii) the number of individuals from underserved populations served and turned away from services; and

(iii) the type of problems that underlie the need for supervised visitation or safe visitation exchange, such as domestic violence, child abuse, sexual assault, other physical abuse, or a combination of such factors;

(B) the numbers of supervised visitations or safe visitation exchanges ordered under this section during custody determinations under a separation or divorce decree or protection order, through child protection services or other social services agencies, or by any other order of a civil, criminal, juvenile, or family court;

(C) the process by which children or abused partners are protected during visitations, temporary custody transfers, and other activities for which supervised visitation is established under this section;

(D) safety and security problems occurring during the reporting period during supervised visitation under this section, including the number of parental abduction cases; and

(E) the number of parental abduction cases in a judicial district using supervised visitation programs and services under this section, both as identified in criminal prosecution and custody violations.

(2) Guidelines

The Attorney General shall establish guidelines for the collection and reporting of data under this subsection.

(e) Authorization of appropriations

There is authorized to be appropriated to carry out this section \$15,000,000 for each of fiscal years 2001 and 2002.

(f) Allotment for Indian tribes

Not less than 5 percent of the total amount made available for each fiscal year to carry out

this section shall be available for grants to Indian tribal governments.

(Pub. L. 106-386, div. B, title III, §1301, Oct. 28, 2000, 114 Stat. 1509.)

CODIFICATION

Section was enacted as part of the Violence Against Women Act of 2000 and also as part of the Victims of Trafficking and Violence Protection Act of 2000, and not as part of the Family Violence Prevention and Services Act which comprises this chapter.

DEFINITIONS

For definitions of “domestic violence” and “sexual assault” used in this section, see section 1002 of Pub. L. 106-386, set out as a note under section 3796gg-2 of this title.

§ 10421. Definitions

As used in this chapter:

(1) The term “family violence” means any act or threatened act of violence, including any forceful detention of an individual, which—

(A) results or threatens to result in physical injury; and

(B) is committed by a person against another individual (including an elderly person) to whom such person is or was related by blood or marriage or otherwise legally related or with whom such person is or was lawfully residing.

(2) The terms “Indian tribe” and “tribal organization” have the same meanings given such terms in subsections (b) and (c), respectively, of section 450b¹ of title 25.

(3) The terms² “Secretary” means the Secretary of Health and Human Services.

(4) The terms² “shelter” means the provision of temporary refuge and related assistance in compliance with applicable State law and regulation governing the provision, on a regular basis, of shelter, safe homes, meals, and related assistance to victims of family violence and their dependents.

(5) The term “related assistance” means the provision of direct assistance to victims of family violence and their dependents for the purpose of preventing further violence, helping such victims to gain access to civil and criminal courts and other community services, facilitating the efforts of such victims to make decisions concerning their lives in the interest of safety, and assisting such victims in healing from the effects of the violence. The term “related assistance” shall include—

(A) prevention services such as outreach and prevention services for victims and their children, assistance to children who witness domestic violence, employment training, parenting and other educational services for victims and their children, preventive health services within domestic violence programs (including services promoting nutrition, disease prevention, exercise, and prevention of substance abuse), domestic violence prevention programs for school-age children, family violence public awareness campaigns,

and violence prevention counseling services to abusers;

(B) counseling with respect to family violence, counseling or other supportive services provided by peers individually or in groups, and referral to community social services;

(C) transportation, technical assistance with respect to obtaining financial assistance under Federal and State programs, and referrals for appropriate health care services (including alcohol and drug abuse treatment), but shall not include reimbursement for any health care services;

(D) legal advocacy to provide victims with information and assistance through the civil and criminal courts, and legal assistance; or

(E) children’s counseling and support services, and child care services for children who are victims of family violence or the dependents of such victims, and children who witness domestic violence.

(6) The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, and, except as otherwise provided, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(Pub. L. 98-457, title III, §320, formerly §309, Oct. 9, 1984, 98 Stat. 1762; Pub. L. 102-295, title III, §311(b), May 28, 1992, 106 Stat. 203; Pub. L. 103-322, title IV, §40272(a), Sept. 13, 1994, 108 Stat. 1937; renumbered §320 and amended Pub. L. 108-36, title IV, §§405, 415(5), June 25, 2003, 117 Stat. 826, 830.)

REFERENCES IN TEXT

Section 450b of title 25, referred to in par. (2), has been amended, and subssecs. (b) and (c) of section 450b no longer define the terms “Indian tribe” and “tribal organization”. However, such terms are defined elsewhere in that section.

CODIFICATION

Section was classified to section 10408 of this title prior to renumbering by Pub. L. 108-36.

AMENDMENTS

2003—Par. (5). Pub. L. 108-36, §405, inserted second sentence and struck out former second sentence which read as follows: “Related assistance shall include—

“(A) prevention services such as outreach and prevention services for victims and their children, employment training, parenting and other educational services for victims and their children, preventive health services within domestic violence programs (including nutrition, disease prevention, exercise, and prevention of substance abuse), domestic violence prevention programs for school age children, family violence public awareness campaigns, and violence prevention counseling services to abusers;

“(B) counseling with respect to family violence, counseling or other supportive services by peers individually or in groups, and referral to community social services;

“(C) transportation, technical assistance with respect to obtaining financial assistance under Federal and State programs, and referrals for appropriate health-care services (including alcohol and drug abuse treatment), but shall not include reimbursement for any health-care services;

“(D) legal advocacy to provide victims with information and assistance through the civil and criminal courts, and legal assistance; or

¹ See References in Text note below.

² So in original. Probably should be “term”.

“(E) children’s counseling and support services, and child care services for children who are victims of family violence or the dependents of such victims.” 1994—Par. (5)(B). Pub. L. 103–322 inserted “or other supportive services” before “by peers”.

1992—Par. (5). Pub. L. 102–295 amended par. (5) generally. Prior to amendment, par. (5) read as follows: “The term ‘related assistance’—

“(A) includes counseling and self-help services to abusers, victims, and dependents in family violence situations (which shall include counseling of all family members to the extent feasible) and referrals for appropriate health-care services (including alcohol and drug abuse treatment), and

“(B) may include food, clothing, child care, transportation, and emergency services (but not reimbursement for any health-care services) for victims of family violence and their dependents.”

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10402 of this title.

CHAPTER 111—EMERGENCY FEDERAL LAW ENFORCEMENT ASSISTANCE

- | | |
|----------------|---|
| Sec.
10501. | Application for assistance.
(a) State as applicant.
(b) Execution of application; period for action of Attorney General on application.
(c) Criteria. |
| 10502. | Definitions. |
| 10503. | Limitation on authority.
(a) Federal investigations.
(b) Federal supervision.
(c) Racial balance in criminal justice agencies.
(d) Federal supplantation of State funds.
(e) Other authorities unaffected. |
| 10504. | Prohibition of discrimination.
(a) Federally assisted emergency assistance activities.
(b) Provisions of section 3789d(c)(3) and (4) of this title applicable to violations. |
| 10505. | Confidentiality of information. |
| 10506. | Prohibition of land acquisition. |
| 10507. | Repayment.
(a) Violation of conditions; amount.
(b) Civil action. |
| 10508. | Recordkeeping requirement. |
| 10509. | Repealed. |
| 10510. | Bureau of Justice Assistance. |
| 10511. | Limitation on civil justice matters. |
| 10512. | Issuance of rules. |
| 10513. | Authorization of appropriations.
(a) Assistance in form of funds.
(b) Assistance other than funds. |

§ 10501. Application for assistance

(a) State as applicant

In the event that a law enforcement emergency exists throughout a State or a part of a State, a State (on behalf of itself or another appropriate unit of government) may submit an application under this section for Federal law enforcement assistance.

(b) Execution of application; period for action of Attorney General on application

An application for assistance under this section shall be submitted in writing by the chief

executive officer of a State to the Attorney General, in a form prescribed by rules issued by the Attorney General. The Attorney General shall, after consultation with the Director of the Office of Justice Assistance and appropriate members of the Federal law enforcement community, approve or disapprove such application not later than 10 days after receiving such application.

(c) Criteria

Federal law enforcement assistance may be provided if such assistance is necessary to provide an adequate response to a law enforcement emergency. In determining whether to approve or disapprove an application for assistance under this section, the Attorney General shall consider—

(1) the nature and extent of such emergency throughout a State or in any part of a State,

(2) the situation or extraordinary circumstances which produced such emergency,

(3) the availability of State and local criminal justice resources to resolve the problem,

(4) the cost associated with the increased Federal presence,

(5) the need to avoid unnecessary Federal involvement and intervention in matters primarily of State and local concern, and

(6) any assistance which the State or other appropriate unit of government has received, or could receive, under any provision of title I of the Omnibus Crime Control and Safe Streets Act of 1968 [42 U.S.C. 3701 et seq.].

(Pub. L. 98–473, title II, § 609M, Oct. 12, 1984, 98 Stat. 2103.)

REFERENCES IN TEXT

The Omnibus Crime Control and Safe Streets Act of 1968, referred to in subsec. (c)(6), is Pub. L. 90–351, June 19, 1968, 82 Stat. 197, as amended, title I of which is classified principally to chapter 46 (§3701 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3701 of this title and Tables.

EFFECTIVE DATE

Chapter effective Oct. 12, 1984, see section 609AA(a) of Pub. L. 98–473, set out as a note under section 3711 of this title.

§ 10502. Definitions

For purposes of this chapter—

(1) the term “Federal law enforcement assistance” means funds, equipment, training, intelligence information, and personnel,

(2) the term “Federal law enforcement community” means the heads of the following departments or agencies:

- (A) the Federal Bureau of Investigation,
- (B) the Drug Enforcement Administration,
- (C) the Criminal Division of the Department of Justice,
- (D) the Internal Revenue Service,
- (E) the Customs Service,
- (F) the Immigration and Naturalization Service,
- (G) the United States Marshals Service,
- (H) the National Park Service,
- (I) the United States Postal Service,
- (J) the Secret Service,
- (K) the Coast Guard,
- (L) the Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice, and

(M) other Federal agencies with specific statutory authority to investigate violations of Federal criminal laws,

(3) the term “law enforcement emergency” means an uncommon situation which requires law enforcement, which is or threatens to become of serious or epidemic proportions, and with respect to which State and local resources are inadequate to protect the lives and property of citizens or to enforce the criminal law, except that such term does not include—

(A) the perceived need for planning or other activities related to crowd control for general public safety projects, or

(B) a situation requiring the enforcement of laws associated with scheduled public events, including political conventions and sports events, and

(4) the term “State” means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Commonwealth of the Northern Mariana Islands.

(Pub. L. 98-473, title II, §609N, Oct. 12, 1984, 98 Stat. 2104; Pub. L. 107-296, title XI, §1112(o), Nov. 25, 2002, 116 Stat. 2278.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this subdivision” probably meaning subtitle B (that probably should have been designated “subdivision” B) of division I of chapter VI of title II of Pub. L. 98-473, which enacted this chapter.

AMENDMENTS

2002—Par. (2)(L). Pub. L. 107-296 substituted “Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice” for “Bureau of Alcohol, Tobacco, and Firearms”.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107-296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

For transfer of the functions, personnel, assets, and obligations of the United States Secret Service, including the functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 381, 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reor-

ganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of Title 8, Aliens and Nationality.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 10503. Limitation on authority

(a) Federal investigations

Nothing in this chapter authorizes the use of Federal law enforcement personnel to investigate violations of criminal law other than violations with respect to which investigation is authorized by other provisions of law.

(b) Federal supervision

Nothing in this chapter shall be construed to authorize the Attorney General or the Federal law enforcement community to exercise any direction, supervision, or control over any police force or other criminal justice agency of an applicant for Federal law enforcement assistance.

(c) Racial balance in criminal justice agencies

Nothing in this chapter shall be construed to authorize the Attorney General or the Federal law enforcement community—

(1) to condition the availability or amount of Federal law enforcement assistance upon the adoption by an applicant for such assistance of, or

(2) to deny or discontinue such assistance upon the failure of such applicant to adopt,

a percentage ratio, quota system, or other program to achieve racial balance in any criminal justice agency of such applicant.

(d) Federal supplantation of State funds

No funds provided under this chapter may be used to supplant State or local funds that would otherwise be made available for such purposes.

(e) Other authorities unaffected

Nothing in this chapter shall be construed to limit any authority to provide emergency assistance otherwise provided by law.

(Pub. L. 98-473, title II, §609O, Oct. 12, 1984, 98 Stat. 2105.)

§ 10504. Prohibition of discrimination

(a) Federally assisted emergency assistance activities

No person in any State shall, on the ground of race, color, religion, national origin, or sex, be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment in connection with any activity for which Federal law enforcement assistance is provided under this chapter.

(b) Provisions of section 3789d(c)(3) and (4) of this title applicable to violations

Paragraph (3) and paragraph (4) of section 3789d(c) of this title shall apply with respect to

a violation of subsection (a) of this section, except that the terms “this section” and “paragraph (1)”, as such terms appear in such paragraphs, shall be deemed to be references to subsection (a) of this section, and a reference to the Office of Justice Programs in such paragraphs shall be deemed to be a reference to the Attorney General.

(Pub. L. 98-473, title II, § 609P, Oct. 12, 1984, 98 Stat. 2105.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10507 of this title.

§ 10505. Confidentiality of information

Section 3789g of this title shall apply with respect to—

- (1) information furnished under this chapter,
- (2) criminal history information collected, stored, or disseminated with the support of Federal law enforcement assistance provided under this chapter, and
- (3) criminal intelligence systems operating with the support of Federal law enforcement assistance provided under this chapter,

except that the terms “this chapter” and “this section”, as such terms appear in such section 3789g of this title, shall be deemed to be references to this chapter and this section, respectively, and a reference to the Office of Justice Programs in such section 3789g shall be deemed to be a reference to the Attorney General.

(Pub. L. 98-473, title II, § 609Q, Oct. 12, 1984, 98 Stat. 2105.)

§ 10506. Prohibition of land acquisition

No funds provided under this chapter shall be used for land acquisition.

(Pub. L. 98-473, title II, § 609R, Oct. 12, 1984, 98 Stat. 2106.)

§ 10507. Repayment

(a) Violation of conditions; amount

If Federal law enforcement assistance provided under this chapter is used by the recipient of such assistance in violation of section 10504¹ of this title or for any purpose other than the purpose for which it is provided, then such recipient shall promptly repay to the Attorney General an amount equal to the value of such assistance.

(b) Civil action

The Attorney General may bring a civil action in an appropriate United States district court to recover any amount required to be repaid under subsection (a) of this section.

(Pub. L. 98-473, title II, § 609S, Oct. 12, 1984, 98 Stat. 2106.)

REFERENCES IN TEXT

Section 10504 of this title, referred to in subsec. (a), was in the original a reference to “section 554”, and was translated as if it had been a reference to section 609P of Pub. L. 98-473, which is classified to section

¹ See References in Text note below.

10504 of this title to reflect the probable intent of Congress as manifested in earlier versions of Emergency Federal Law Enforcement Assistance provisions introduced in the Congress. Pub. L. 98-473 does not contain a section 554.

§ 10508. Recordkeeping requirement

(a) Each recipient of Federal law enforcement assistance provided under this chapter shall keep such records as the Attorney General may prescribe to facilitate an effective audit.

(b) The Attorney General and the Comptroller General of the United States shall have access, for the purpose of audit and examination, to any books, documents, and records of recipients of Federal law enforcement assistance provided under this chapter which, in the opinion of the Attorney General or the Comptroller General, are related to the receipt or use of such assistance.

(Pub. L. 98-473, title II, § 609T, Oct. 12, 1984, 98 Stat. 2106.)

§ 10509. Repealed. Pub. L. 105-362, title X, § 1001(a), Nov. 10, 1998, 112 Stat. 3291

Section, Pub. L. 98-473, title II, § 609U, Oct. 12, 1984, 98 Stat. 2106, related to Attorney General’s annual report to Congress and the President on emergency Federal law enforcement assistance.

§ 10510. Bureau of Justice Assistance

The Director of the Bureau of Justice Assistance may assist the Attorney General in providing Federal law enforcement assistance under this chapter and in coordinating the activities authorized under this chapter.

(Pub. L. 98-473, title II, § 609V, Oct. 12, 1984, 98 Stat. 2106.)

TRANSFER OF FUNCTIONS

Effective Aug. 1, 2000, all functions of Director of Bureau of Justice Assistance, other than those enumerated in section 3742(3) to (6) of this title, transferred to Assistant Attorney General for Office of Justice Programs, see section 1000(a)(1) [title I, § 108(b)] of Pub. L. 106-113, set out as a note under section 3741 of this title.

§ 10511. Limitation on civil justice matters

Federal law enforcement assistance provided under this chapter may not be used with respect to civil justice matters except to the extent that such civil justice matters bear directly and substantially upon criminal justice matters or are inextricably intertwined with criminal justice matters.

(Pub. L. 98-473, title II, § 609W, Oct. 12, 1984, 98 Stat. 2106.)

§ 10512. Issuance of rules

The Attorney General, after consultation with appropriate members of the law enforcement community and with State and local officials, shall issue rules to carry out this chapter.

(Pub. L. 98-473, title II, § 609X, Oct. 12, 1984, 98 Stat. 2107.)

§ 10513. Authorization of appropriations

(a) Assistance in form of funds

There is authorized to be appropriated \$20,000,000 for each fiscal year ending after Sep-

tember 30, 1984, to provide under this chapter Federal law enforcement assistance in the form of funds.

(b) Assistance other than funds

There are authorized to be appropriated for each fiscal year ending after September 30, 1984, such sums as may be necessary to provide under this chapter Federal law enforcement assistance other than funds.

(Pub. L. 98-473, title II, §609Y, Oct. 12, 1984, 98 Stat. 2107.)

CHAPTER 112—VICTIM COMPENSATION AND ASSISTANCE

- Sec. 10601. Crime Victims Fund.
 - (a) Establishment.
 - (b) Fines deposited in Fund; penalties; forfeited appearance bonds.
 - (c) Retention of sums in Fund; availability for expenditure without fiscal year limitation.
 - (d) Availability for judicial branch administrative costs; grant program percentages.
 - (e) Amounts awarded and unspent.
 - (f) "Offenses against the United States" as excluding.
 - (g) Grants for Indian tribes; child abuse cases.
- 10602. Crime victim compensation.
 - (a) Authority of Director; grants.
 - (b) Eligible crime victim compensation programs.
 - (c) Exclusion from income, resources, and assets for purposes of means tests.
 - (d) Definitions.
 - (e) Relationship to certain Federal programs.
- 10603. Crime victim assistance.
 - (a) Grant authority of Director; chief executive of States; amount; insufficient funds.
 - (b) Eligibility of program; factors; limitation on expending of sums.
 - (c) Grants: purposes; distribution; duties of Director; reimbursement by Director.
 - (d) Definitions.
- 10603a. Child abuse prevention and treatment grants.
- 10603b. Compensation and assistance to victims of terrorism or mass violence.
 - (a) Victims of acts of terrorism outside the United States.
 - (b) Victims of terrorism within the United States.
- 10603c. Compensation to victims of international terrorism.
 - (a) Definitions.
 - (b) Award of compensation.
 - (c) Annual report.
- 10604. Administrative provisions.
 - (a) Authority of Director to establish rules and regulations.
 - (b) Recordkeeping.
 - (c) Access of Director to books and records for purpose of audit and examination.
 - (d) Revealing research or statistical information; prohibition; immunity from legal proceedings; permission; admission of information as evidence.
 - (e) Discrimination prohibited.
 - (f) Failure to comply with provisions; notice and hearing; power of Director.

- Sec.
 - (g) Report.
 - (h) Maintenance of effort.
- 10605. Establishment of Office for Victims of Crime.
 - (a) Office established within Department of Justice.
 - (b) Appointment of Director; authority; restrictions.
 - (c) Duties of Director.
- 10606. Victims' rights.
 - (a) Best efforts to accord rights.
 - (b) Rights of crime victims.
 - (c) No cause of action or defense.
- 10607. Services to victims.
 - (a) Designation of responsible officials.
 - (b) Identification of victims.
 - (c) Description of services.
 - (d) No cause of action or defense.
 - (e) Definitions.
- 10608. Closed circuit televised court proceedings for victims of crime.
 - (a) In general.
 - (b) Limited access.
 - (c) Restrictions.
 - (d) Donations.
 - (e) Construction.
 - (f) "State" defined.
 - (g) Rules.
 - (h) Effective date.

§ 10601. Crime Victims Fund

(a) Establishment

There is created in the Treasury a separate account to be known as the Crime Victims Fund (hereinafter in this chapter referred to as the "Fund").

(b) Fines deposited in Fund; penalties; forfeited appearance bonds

Except as limited by subsection (c) of this section, there shall be deposited in the Fund—

(1) all fines that are collected from persons convicted of offenses against the United States except—

(A) fines available for use by the Secretary of the Treasury pursuant to—

- (i) section 11(d) of the Endangered Species Act (16 U.S.C. 1540(d)); and
- (ii) section 6(d) of the Lacey Act Amendments of 1981 (16 U.S.C. 3375(d)); and

(B) fines to be paid into—

(i) the railroad unemployment insurance account pursuant to the Railroad Unemployment Insurance Act (45 U.S.C. 351 et seq.);

(ii) the Postal Service Fund pursuant to sections 2601(a)(2) and 2003 of title 39 and for the purposes set forth in section 404(a)(8) of title 39;

(iii) the navigable waters revolving fund pursuant to section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321); and

(iv) county public school funds pursuant to section 3613 of title 18;

(2) penalty assessments collected under section 3013 of title 18;¹

(3) the proceeds of forfeited appearance bonds, bail bonds, and collateral collected under section 3146 of title 18;

(4) any money ordered to be paid into the Fund under section 3671(c)(2) of title 18; and

¹ See References in Text note below.

(5) any gifts, bequests, or donations to the Fund from private entities or individuals.

(c) Retention of sums in Fund; availability for expenditure without fiscal year limitation

Sums deposited in the Fund shall remain in the Fund and be available for expenditure under this chapter for grants under this chapter without fiscal year limitation. Notwithstanding subsection (d)(5) of this section, all sums deposited in the Fund in any fiscal year that are not made available for obligation by Congress in the subsequent fiscal year shall remain in the Fund for obligation in future fiscal years, without fiscal year limitation.

(d) Availability for judicial branch administrative costs; grant program percentages

The Fund shall be available as follows:

(1) Repealed. Pub. L. 105-119, title I, §109(a)(1), Nov. 26, 1997, 111 Stat. 2457.

(2)(A) Except as provided in subparagraph (B), the first \$10,000,000 deposited in the Fund shall be available for grants under section 10603a of this title.

(B)(i) For any fiscal year for which the amount deposited in the Fund is greater than the amount deposited in the Fund for fiscal year 1998, the \$10,000,000 referred to in subparagraph (A) plus an amount equal to 50 percent of the increase in the amount from fiscal year 1998 shall be available for grants under section 10603a of this title.

(ii) Amounts available under this subparagraph for any fiscal year shall not exceed \$20,000,000.

(3) Of the sums remaining in the Fund in any particular fiscal year after compliance with paragraph (2), such sums as may be necessary shall be available for the United States Attorneys Offices and the Federal Bureau of Investigation to improve services for the benefit of crime victims in the Federal criminal justice system, and for a Victim Notification System.

(4) Of the remaining amount to be distributed from the Fund in a particular fiscal year—

(A) 47.5 percent shall be available for grants under section 10602 of this title;

(B) 47.5 percent shall be available for grants under section 10603(a) of this title; and

(C) 5 percent shall be available for grants under section 10603(c) of this title.

(5)(A) In addition to the amounts distributed under paragraphs (2), (3), and (4), the Director may set aside up to \$50,000,000 from the amounts transferred to the Fund in response to the airplane hijackings and terrorist acts that occurred on September 11, 2001, as an antiterrorism emergency reserve. The Director may replenish any amounts expended from such reserve in subsequent fiscal years by setting aside up to 5 percent of the amounts remaining in the Fund in any fiscal year after distributing amounts under paragraphs (2), (3) and (4). Such reserve shall not exceed \$50,000,000.

(B) The antiterrorism emergency reserve referred to in subparagraph (A) may be used for supplemental grants under section 10603b of

this title and to provide compensation to victims of international terrorism under section 10603c of this title.

(C) Amounts in the antiterrorism emergency reserve established pursuant to subparagraph (A) may be carried over from fiscal year to fiscal year. Notwithstanding subsection (c) of this section and section 619 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2001 (and any similar limitation on Fund obligations in any future Act, unless the same should expressly refer to this section), any such amounts carried over shall not be subject to any limitation on obligations from amounts deposited to or available in the Fund.

(e) Amounts awarded and unspent

Any amount awarded as part of a grant under this chapter that remains unspent at the end of a fiscal year in which the grant is made may be expended for the purpose for which the grant is made at any time during the 3 succeeding fiscal years, at the end of which period, any remaining unobligated sums shall be available for deposit into the emergency reserve fund referred to in subsection (d)(5) of this section at the discretion of the Director. Any remaining unobligated sums shall be returned to the Fund.

(f) “Offenses against the United States” as excluding

As used in this section, the term “offenses against the United States” does not include—

(1) a criminal violation of the Uniform Code of Military Justice (10 U.S.C. 801 et seq.);

(2) an offense against the laws of the District of Columbia; and

(3) an offense triable by an Indian tribal court or Court of Indian Offenses.

(g) Grants for Indian tribes; child abuse cases

(1) The Attorney General, acting through the Director, shall use 15 percent of the funds available under subsection (d)(2) of this section to make grants for the purpose of assisting Native American Indian tribes in developing, establishing, and operating programs designed to improve—

(A) the handling of child abuse cases, particularly cases of child sexual abuse, in a manner which limits additional trauma to the child victim; and

(B) the investigation and prosecution of cases of child abuse, particularly child sexual abuse.

(2) As used in this subsection, the term “tribe”² has the meaning given that term in section 450b(b)³ of title 25.

(Pub. L. 98-473, title II, §1402, Oct. 12, 1984, 98 Stat. 2170; Pub. L. 99-401, title I, §102(b)(1), (2), Aug. 27, 1986, 100 Stat. 904; Pub. L. 99-646, §82, Nov. 10, 1986, 100 Stat. 3619; Pub. L. 100-690, title VII, §§7121, 7124, Nov. 18, 1988, 102 Stat. 4419, 4422; Pub. L. 101-647, title V, §504, Nov. 29, 1990, 104 Stat. 4822; Pub. L. 102-572, title X, §1001, Oct. 29, 1992, 106 Stat. 4520; Pub. L. 103-121, title I, §110(a), Oct. 27, 1993, 107 Stat. 1164; Pub. L.

² So in original. Probably should be “‘Indian tribe’”.

³ See References in Text note below.

103-322, title XXIII, §230201, title XXXIII, §330025(a), Sept. 13, 1994, 108 Stat. 2079, 2151; Pub. L. 104-132, title II, §§232(b), (c)(1), 236, Apr. 24, 1996, 110 Stat. 1243, 1244, 1247; Pub. L. 104-208, div. A, title I, §101(a) [title I, §112], Sept. 30, 1996, 110 Stat. 3009, 3009-21; Pub. L. 105-119, title I, §109(a), Nov. 26, 1997, 111 Stat. 2457; Pub. L. 106-113, div. B, §1000(a)(1) [title I, §119], Nov. 29, 1999, 113 Stat. 1535, 1501A-22; Pub. L. 106-177, title I, §104(a), Mar. 10, 2000, 114 Stat. 36; Pub. L. 106-386, div. C, §2003(b), (c)(2), (d), Oct. 28, 2000, 114 Stat. 1544, 1546; Pub. L. 106-553, §1(a)(2) [title I, §113, formerly §114], Dec. 21, 2000, 114 Stat. 2762, 2762A-68, renumbered Pub. L. 106-554, §1(a)(4) [div. A, §213(a)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A-179; amended Pub. L. 107-56, title VI, §621(a)-(d), Oct. 26, 2001, 115 Stat. 370, 371; Pub. L. 107-77, title I, §111, Nov. 28, 2001, 115 Stat. 765.)

REFERENCES IN TEXT

The Railroad Unemployment Insurance Act, referred to in subsec. (b)(1)(B)(i), is act June 25, 1938, ch. 680, 52 Stat. 1094, as amended, which is classified principally to chapter 11 (§351 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code, see section 367 of Title 45 and Tables.

Section 3613 of title 18, referred to in subsec. (b)(1)(B)(iv), was repealed effective on the first day of the first calendar month beginning 36 months after Oct. 12, 1984 (Nov. 1, 1987), by Pub. L. 98-473, title II, §212(a)(2), 235(a)(1), Oct. 12, 1984, 98 Stat. 1987, 2031, as amended.

Section 3671(c)(2) of title 18, referred to in subsec. (b)(4), was renumbered section 3681(c)(2) by Pub. L. 99-646, §41(a), Nov. 10, 1986, 100 Stat. 3600.

Section 619 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2001, referred to in subsec. (d)(5)(C), is section 1(a)(2) [title VI, §619] of Pub. L. 106-553, which was formerly set out as a note below.

The Uniform Code of Military Justice, referred to in subsec. (f)(1), is classified generally to chapter 47 (§801 et seq.) of Title 10, Armed Forces.

Section 450b of title 25, referred to in subsec. (g)(2), has been amended, and subsec. (b) of section 450b no longer defines the term "Indian tribe". However, such term is defined elsewhere in that section.

AMENDMENTS

2001—Subsec. (b)(5). Pub. L. 107-56, §621(a), added par. (5).

Subsec. (c). Pub. L. 107-77, §111(b), amended heading and text of subsec. (c) to read as it did the day before enactment of amendment by Pub. L. 107-56. Text, as amended generally by Pub. L. 107-56, read as follows:

"(1) Subject to the availability of money in the Fund, in each fiscal year, beginning with fiscal year 2003, the Director shall distribute not less than 90 percent nor more than 110 percent of the amount distributed from the Fund in the previous fiscal year, except the Director may distribute up to 120 percent of the amount distributed in the previous fiscal year in any fiscal year that the total amount available in the Fund is more than 2 times the amount distributed in the previous fiscal year.

"(2) In each fiscal year, the Director shall distribute amounts from the Fund in accordance with subsection (d) of this section. All sums not distributed during a fiscal year shall remain in reserve in the Fund to be distributed during a subsequent fiscal year. Notwithstanding any other provision of law, all sums deposited in the Fund that are not distributed shall remain in reserve in the Fund for obligation in future fiscal years, without fiscal year limitation."

Pub. L. 107-56, §621(b), amended heading and text of subsec. (c) generally.

Subsec. (d)(3). Pub. L. 107-77, §111(a), inserted before period at end ", and for a Victim Notification System".

Subsec. (d)(4). Pub. L. 107-56, §621(c), substituted "to be distributed from" for "deposited in" in introductory provisions, "47.5 percent" for "48.5 percent" in subpars. (A) and (B), and "5 percent" for "3 percent" in subpar. (C).

Subsec. (d)(5). Pub. L. 107-56, §621(d), amended par. (5) generally. Prior to amendment, par. (5) read as follows:

"(5)(A) If the sums available in the Fund are sufficient to fully provide grants to the States pursuant to section 10602(a)(1) of this title, the Director may retain any portion of the Fund that was deposited during a fiscal year that was in excess of 110 percent of the total amount deposited in the Fund during the preceding fiscal year as an emergency reserve. Such reserve shall not exceed \$100,000,000.

"(B) The emergency reserve referred to in subparagraph (A) may be used for supplemental grants under section 10603b of this title, to provide compensation to victims of international terrorism under the program under section 10603c of this title, and to supplement the funds available to provide grants to States for compensation and assistance in accordance with sections 10602 and 10603 of this title in years in which supplemental grants are needed."

2000—Subsec. (c). Pub. L. 106-386, §2003(d), which directed insertion of "Notwithstanding subsection (d)(5) of this section, all sums deposited in the Fund in any fiscal year that are not made available for obligation by Congress in the subsequent fiscal year shall remain in the Fund for obligation in future fiscal years, without fiscal year limitation." at the end of section 1402(c) of the Victims of Crime Act 1984, was executed by making the insertion at the end of subsec. (c) of this section, which is section 1402 of the Victims of Crime Act of 1984, to reflect the probable intent of Congress.

Subsec. (d)(2). Pub. L. 106-177 designated existing provisions as subpar. (A), substituted "Except as provided in subparagraph (B), the first \$10,000,000" for "The first \$10,000,000", and added subpar. (B).

Subsec. (d)(3). Pub. L. 106-553, as renumbered by Pub. L. 106-554, inserted "and the Federal Bureau of Investigation" after "United States Attorneys Offices".

Subsec. (d)(5)(A). Pub. L. 106-386, §2003(b)(1), substituted "\$100,000,000" for "\$50,000,000".

Subsec. (d)(5)(B). Pub. L. 106-386, §2003(c)(2), inserted ", to provide compensation to victims of international terrorism under the program under section 10603c of this title," after "section 10603b of this title".

Subsec. (e). Pub. L. 106-386, §2003(b)(2), substituted "shall be available for deposit into the emergency reserve fund referred to in subsection (d)(5) of this section at the discretion of the Director. Any remaining unobligated sums" for "in excess of \$500,000 shall be returned to the Treasury. Any remaining unobligated sums in an amount less than \$500,000".

1999—Subsec. (d)(3) to (5). Pub. L. 106-113 added par. (3), redesignated former pars. (3) and (4) as (4) and (5), respectively, and struck out former par. (5) which read as follows: "The Director may set aside up to \$500,000 of the reserve fund described in paragraph (4) to make supplemental grants to United States Attorneys Offices to provide necessary assistance to victims of the bombing of the Alfred P. Murrah Federal Building in Oklahoma City, to facilitate observation of and/or participation by such victims in trial proceedings arising therefrom, including, without limitation, provision of lodging and travel assistance, and to pay such other, related expenses determined to be necessary by the Director."

1997—Subsec. (d)(1). Pub. L. 105-119, §109(a)(1), struck out par. (1) which read as follows: "The first \$6,200,000 deposited in the Fund in each of the fiscal years 1992 through 1995 and the first \$3,000,000 in each fiscal year thereafter shall be available to the judicial branch for administrative costs to carry out the functions of the judicial branch under sections 3611 and 3612 of title 18."

Subsec. (d)(2). Pub. L. 105-119, §109(a)(2), substituted "The first" for "the next".

1996—Subsec. (c). Pub. L. 104-132, §232(c)(1)(A), substituted "under this chapter" for "under this subsection".

Subsec. (d)(3)(B). Pub. L. 104-132, §236, substituted "section 10603(a) of this title" for "section 10603a of this title".

Subsec. (d)(4). Pub. L. 104-132, §232(b), amended par. (4) generally. Prior to amendment, par. (4) read as follows: "The Director may retain any portion of the Fund that was deposited during a fiscal year that is in excess of 110 percent of the total amount deposited in the Fund during the preceding fiscal year as a reserve for use in a year in which the Fund falls below the amount available in the previous year. Such reserve may not exceed \$20,000,000."

Subsec. (d)(5). Pub. L. 104-208 added par. (5).

Subsec. (e). Pub. L. 104-208 substituted "3 succeeding fiscal years" for "2 succeeding fiscal years".

Pub. L. 104-132, §232(c)(1)(B), reenacted heading without change and amended text generally. Prior to amendment, text read as follows:

"(1) Except as provided in paragraph (2), any sums awarded as part of a grant under this chapter that remain unspent at the end of a fiscal year in which such grant is made may be expended for the purpose for which such grant is made at any time during the next succeeding fiscal year, at the end of which year any remaining unobligated sums shall be returned to the general fund of the Treasury.

"(2) For the purposes of the application of paragraph (1) to any grant under this chapter with respect to fiscal year 1985, there shall be substituted in such paragraph 'two succeeding fiscal years' for 'succeeding fiscal year' and 'which period' for 'which year'."

1994—Subsec. (d)(2). Pub. L. 103-322, §230201(a)(1), added par. (2) and struck out former par. (2) which read as follows: "Of the next \$100,000,000 deposited in the Fund in a particular fiscal year—

"(A) 49.5 percent shall be available for grants under section 10602 of this title;

"(B) 45 percent shall be available for grants under section 10603(a) of this title;

"(C) 1 percent shall be available for grants under section 10603(c) of this title; and

"(D) 4.5 percent shall be available for grants as provided in section 10603a of this title."

Subsec. (d)(3). Pub. L. 103-322, §330025(a), which directed amendment of par. (3) by substituting "section 10603a" for "section 10603(a)" was executed to subpar. (B).

Pub. L. 103-322, §230201(a)(2), added par. (3) and struck out former par. (3) which read as follows: "The next \$5,500,000 deposited in the Fund in a particular fiscal year shall be available for grants under section 10603a of this title."

Subsec. (d)(4). Pub. L. 103-322, §230201(a)(3), added par. (4) and struck out former par. (4) which read as follows: "The next \$4,500,000 deposited in the Fund in a particular fiscal year shall be available for grants under section 10603(a) of this title."

Subsec. (d)(5). Pub. L. 103-322, §230201(a)(4), struck out par. (5) which read as follows: "Any deposits in the Fund in a particular fiscal year that remain after the funds are distributed under paragraphs (1) through (4) shall be available as follows:

"(A) 47.5 percent shall be available for grants under section 10602 of this title.

"(B) 47.5 percent shall be available for grants under section 10603(a) of this title.

"(C) 5 percent shall be available for grants under section 10603(c) of this title."

Subsec. (g)(1). Pub. L. 103-322, §230201(b), substituted "subsection (d)(2)" for "subsection (d)(2)(D)".

1993—Subsec. (d)(2)(C), (D). Pub. L. 103-121, §110(a)(1), added subpars. (C) and (D).

Subsec. (d)(3). Pub. L. 103-121, §110(a)(2), substituted "section 10603a of this title" for "section 10603(a) of this title".

Subsec. (g)(1). Pub. L. 103-121, §110(a)(3), substituted "subsection (d)(2)(D)" for "subsection (d)(2)(A)(iv)".

1992—Subsec. (c). Pub. L. 102-572, §1001(1), added subsec. (c) and struck out former subsec. (c) which read as follows:

"(1)(A) If the total deposited in the Fund during a particular fiscal year reaches the ceiling sum described in subparagraph (B), the excess over the ceiling sum shall not be part of the Fund. The first \$2,200,000 of such excess shall be available to the judicial branch for administrative costs to carry out the functions of the judicial branch under sections 3611 and 3612 of title 18 and the remaining excess shall be deposited in the general fund of the Treasury.

"(B) The ceiling sum referred to in subparagraph (A) is—

"(i) \$125,000,000 through fiscal year 1990; and

"(ii) \$150,000,000 thereafter through fiscal year 1994.

"(2) No deposits shall be made in the Fund after September 30, 1994."

Subsec. (d). Pub. L. 102-572, §1001(2), added subsec. (d) and struck out former subsec. (d) which read as follows:

"(1) Sums deposited in the Fund shall remain in the Fund and be available for expenditure under this subsection for grants under this chapter without fiscal year limitation.

"(2) The Fund shall be available as follows:

"(A) Of the first \$100,000,000 deposited in the Fund in a particular fiscal year—

"(i) 49.5 percent shall be available for grants under section 10602 of this title;

"(ii) 45 percent shall be available for grants under section 10603(a) of this title;

"(iii) 1 percent shall be available for grants under section 10603(c) of this title; and

"(iv) 4.5 percent shall be available for grants as provided in section 10603a of this title.

"(B) The next \$5,500,000 deposited in the Fund in a particular fiscal year shall be available for grants as provided in section 10603a of this title.

"(C) Any deposits in the Fund in a particular fiscal year in excess of \$105,500,000, but not in excess of \$110,000,000, shall be available for grants under section 10603(a) of this title.

"(D) Any deposits in the Fund in a particular fiscal year in excess of \$110,000,000 shall be available as follows:

"(i) 47.5 percent shall be available for grants under section 10602 of this title;

"(ii) 47.5 percent shall be available for grants under section 10603(a) of this title; and

"(iii) 5 percent shall be available for grants under section 10603(c)(1)(B) of this title."

1990—Subsec. (c)(1)(B)(i). Pub. L. 101-647 substituted "1990" for "1991".

1988—Subsec. (c). Pub. L. 100-690, §7121(a), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows:

"(1) If the total deposited in the Fund during a particular fiscal year reaches the sum of \$110 million, the excess over that sum shall be deposited in the general fund of the Treasury and shall not be a part of the Fund.

"(2) No deposits shall be made in the Fund after September 30, 1988."

Subsec. (d)(2)(C). Pub. L. 100-690, §7121(b)(2), inserted "but not in excess of \$110,000,000" after "\$105,500,000".

Subsec. (d)(2)(D). Pub. L. 100-690, §7121(b)(1), added subpar. (D).

Subsec. (g). Pub. L. 100-690, §7124, added subsec. (g).

1986—Subsec. (c)(1). Pub. L. 99-401, §102(b)(1), substituted "\$110 million" for "\$100 million".

Subsec. (d)(2). Pub. L. 99-401, §102(b)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "Fifty percent of the total deposited in the Fund during a particular fiscal year shall be available for grants under section 10602 of this title and fifty percent shall be available for grants under section 10603 of this title."

Subsec. (e). Pub. L. 99-646 designated existing provision as par. (1), substituted "Except as provided in paragraph (2), any" for "Any", and added par. (2).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-572 effective Jan. 1, 1993, see section 1101 of Pub. L. 102-572, set out as a note under section 905 of Title 2, The Congress.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 7129 of Pub. L. 100-690, as amended by Pub. L. 101-647, title V, § 505, Nov. 29, 1990, 104 Stat. 4822, provided that: "The amendments made by this chapter [probably means this subtitle, subtitle D (§§ 7121-7130) of title VII of Pub. L. 100-690, enacting section 10605 of this title, amending this section and sections 10602 to 10604 of this title, and enacting provisions set out as a note under this section] shall not apply with respect to a State compensation program that was an eligible State crime victim compensation program on the date of the enactment of this Act [Nov. 18, 1988] until October 1, 1991."

EFFECTIVE DATE

Section 1409 of chapter XIV of title II of Pub. L. 98-473 provided that:

"(a) Except as provided in subsection (b), this chapter [see Short Title note below] and the amendments made by this chapter shall take effect thirty days after the date of enactment of this joint resolution [Oct. 12, 1984].

"(b) Sections 1402, 1403, 1404, and 1407 of this chapter [enacting this chapter] shall take effect on October 1, 1984."

SHORT TITLE OF 1996 AMENDMENT

Section 231 of title II of Pub. L. 104-132 provided that: "This subtitle [subtitle C (§§ 231-236) of title II of Pub. L. 104-132, enacting sections 10603b and 10608 of this title, amending this section and sections 10602 and 10603 of this title, and enacting provisions set out as notes under section 10602 of this title] may be cited as the 'Justice for Victims of Terrorism Act of 1996'."

SHORT TITLE OF 1990 AMENDMENT

Section 501 of title V of Pub. L. 101-647 provided that: "This title [enacting sections 10606 and 10607 of this title, amending this section, enacting provisions set out as a note under section 10606 of this title, and amending provisions set out as a note under this section] may be cited as the 'Victims' Rights and Restitution Act of 1990'."

SHORT TITLE

Section 1401 of chapter XIV (§§ 1401-1411) of title II of Pub. L. 98-473 provided that: "This chapter [enacting this chapter and sections 3013, 3671 and 3672 of Title 18, Crimes and Criminal Procedure, and amending sections 3150a, 4207, and 4215 of Title 18 and provisions set out as a note under section 1512 of Title 18] may be cited as the 'Victims of Crime Act of 1984'."

VICTIMS OF SEPTEMBER 11, 2001

Pub. L. 107-56, title VI, § 621(e), Oct. 26, 2001, 115 Stat. 371, provided that: "Amounts transferred to the Crime Victims Fund for use in responding to the airplane hijackings and terrorist acts (including any related search, rescue, relief, assistance, or other similar activities) that occurred on September 11, 2001, shall not be subject to any limitation on obligations from amounts deposited to or available in the Fund, notwithstanding—

"(1) section 619 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2001 [section 1(a)(2) [title VI, § 619] of Pub. L. 106-553, formerly set out as a note below], and any similar limitation on Fund obligations in such Act for Fiscal Year 2002 [see Pub. L. 107-77, title VI, § 619, Nov. 28, 2001, 115 Stat. 802, set out as a note below]; and

"(2) subsections (c) and (d) of section 1402 of the Victims of Crime Act of 1984 (42 U.S.C. 10601)."

LIMITATION ON AMOUNTS AVAILABLE FOR OBLIGATION

Pub. L. 108-7, div. B, title VI, § 617, Feb. 20, 2003, 117 Stat. 102, provided that: "Notwithstanding any other provision of law, amounts deposited or available in the

Fund established under 42 U.S.C. 10601 in any fiscal year in excess of \$600,000,000 shall not be available for obligation until the following fiscal year, with the exception of emergency appropriations made available by Public Law 107-38 [115 Stat. 220] and transferred to the Fund."

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 107-77, title VI, § 619, Nov. 28, 2001, 115 Stat. 802.

Pub. L. 106-553, § 1(a)(2) [title VI, § 619], Dec. 21, 2000, 114 Stat. 2762, 2762A-107.

Pub. L. 106-113, div. B, § 1000(a)(1) [title VI, § 620], Nov. 29, 1999, 113 Stat. 1535, 1501A-55.

INTERACTION WITH ANY CAP

Pub. L. 106-177, title I, § 104(b), Mar. 10, 2000, 114 Stat. 36, provided that: "Subsection (a) [amending this section] shall be implemented so that any increase in funding provided thereby shall operate notwithstanding any dollar limitation on the availability of the Crime Victims Fund established under the Victims of Crime Act of 1984 [42 U.S.C. 10601 et seq.]."

TRANSFER OF CERTAIN UNOBLIGATED FUNDS

Section 109(b) of Pub. L. 105-119 provided that: "Any unobligated sums hitherto available to the judicial branch pursuant to the paragraph repealed by subsection (a) [former 42 U.S.C. 10601(d)(1)] shall be deemed to be deposits into the Crime Victims Fund as of the effective date hereof [Nov. 26, 1997] and may be used by the Director of the Office for Victims of Crime to improve services for the benefit of crime victims, including the processing and tracking of criminal monetary penalties and related litigation activities, in the Federal criminal justice system."

RETROACTIVE TRANSFER TO FUND

Section 7130 of Pub. L. 100-690 provided that: "An amount equivalent to those sums which would have been placed in the Fund under section 1402(b) of the Victims of Crime Act [subsec. (b) of this section], but for the effect of section 1402(c)(2) of such Act, is hereby transferred to the Fund from any sums not appropriated from the general treasury."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10603, 10603a, 10603b, 10603c, 10604, 10605 of this title; title 18 sections 798, 4048; title 50 section 783.

§ 10602. Crime victim compensation**(a) Authority of Director; grants**

(1) Except as provided in paragraph (2), the Director shall make an annual grant from the Fund to an eligible crime victim compensation program of 40 percent in fiscal year 2002 and of 60 percent in subsequent fiscal years of the amounts awarded during the preceding fiscal year, other than amounts awarded for property damage. Except as provided in paragraph (3), a grant under this section shall be used by such program only for awards of compensation.

(2) If the sums available in the Fund for grants under this section are insufficient to provide grants of 40 percent in fiscal year 2002 and of 60 percent in subsequent fiscal years as provided in paragraph (1), the Director shall make, from the sums available, a grant to each eligible crime victim compensation program so that all such programs receive the same percentage of the amounts awarded by such program during the preceding fiscal year, other than amounts awarded for property damage.

(3) Not more than 5 percent of a grant made under this section may be used for the adminis-

tration of the State crime victim compensation program receiving the grant.

(b) Eligible crime victim compensation programs

A crime victim compensation program is an eligible crime victim compensation program for the purposes of this section if—

(1) such program is operated by a State and offers compensation to victims and survivors of victims of criminal violence, including drunk driving and domestic violence for—

(A) medical expenses attributable to a physical injury resulting from compensable crime, including expenses for mental health counseling and care;

(B) loss of wages attributable to a physical injury resulting from a compensable crime; and

(C) funeral expenses attributable to a death resulting from a compensable crime;

(2) such program promotes victim cooperation with the reasonable requests of law enforcement authorities;

(3) such State certifies that grants received under this section will not be used to supplant State funds otherwise available to provide crime victim compensation;

(4) such program, as to compensable crimes occurring within the State, makes compensation awards to victims who are nonresidents of the State on the basis of the same criteria used to make awards to victims who are residents of such State;

(5) such program provides compensation to victims of Federal crimes occurring within the State on the same basis that such program provides compensation to victims of State crimes;

(6) such program provides compensation to residents of the State who are victims of crimes occurring outside the State if—

(A) the crimes would be compensable crimes had they occurred inside that State; and

(B) the places the crimes occurred in are States not having eligible crime victim compensation programs;

(7) such program does not, except pursuant to rules issued by the program to prevent unjust enrichment of the offender, deny compensation to any victim because of that victim's familial relationship to the offender, or because of the sharing of a residence by the victim and the offender;

(8) such program does not provide compensation to any person who has been convicted of an offense under Federal law with respect to any time period during which the person is delinquent in paying a fine, other monetary penalty, or restitution imposed for the offense; and

(9) such program provides such other information and assurances related to the purposes of this section as the Director may reasonably require.

(c) Exclusion from income, resources, and assets for purposes of means tests

Notwithstanding any other law (other than title IV of Public Law 107-42), for the purpose of any maximum allowed income, resource, or

asset eligibility requirement in any Federal, State, or local government program using Federal funds that provides medical or other assistance (or payment or reimbursement of the cost of such assistance), any amount of crime victim compensation that the applicant receives through a crime victim compensation program under this section shall not be included in the income, resources, or assets of the applicant, nor shall that amount reduce the amount of the assistance available to the applicant from Federal, State, or local government programs using Federal funds, unless the total amount of assistance that the applicant receives from all such programs is sufficient to fully compensate the applicant for losses suffered as a result of the crime.

(d) Definitions

As used in this section—

(1) the term “property damage” does not include damage to prosthetic devices, eyeglasses or other corrective lenses, or dental devices;

(2) the term “medical expenses” includes, to the extent provided under the eligible crime victim compensation program, expenses for eyeglasses or other corrective lenses, for dental services and devices and prosthetic devices, and for services rendered in accordance with a method of healing recognized by the law of the State;

(3) the term “compensable crime” means a crime the victims of which are eligible for compensation under the eligible crime victim compensation program, and includes crimes, whose victims suffer death or personal injury, that are described in section 247 of title 18, driving while intoxicated, and domestic violence; and

(4) the term “State” includes the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, and any other possession or territory of the United States.

(e) Relationship to certain Federal programs

Notwithstanding any other law, if the compensation paid by an eligible crime victim compensation program would cover costs that a Federal program, including the program established under title IV of Public Law 107-42, or a federally financed State or local program, would otherwise pay,—¹

(1) such crime victim compensation program shall not pay that compensation; and

(2) the other program shall make its payments without regard to the existence of the crime victim compensation program.

(Pub. L. 98-473, title II, §1403, Oct. 12, 1984, 98 Stat. 2171; Pub. L. 100-690, title VII, §§7123(b)(1)-(3), 7125, 7126, Nov. 18, 1988, 102 Stat. 4421-4423; Pub. L. 103-322, title XXIII, §§230202, 230203, title XXXIII, §330025(b), Sept. 13, 1994, 108 Stat. 2079, 2151; Pub. L. 104-132, title II, §§233(a), (b), 234(a)(1), (b), Apr. 24, 1996, 110 Stat. 1244, 1245; Pub. L. 104-155, §5, July 3, 1996, 110 Stat. 1394; Pub. L. 107-56, title VI, §622(a)-(e)(1), Oct. 26, 2001, 115 Stat. 371, 372.)

¹ So in original. The comma probably should not appear.

REFERENCES IN TEXT

Title IV of Public Law 107-42, referred to in subssecs. (c) and (e), is set out as a note under section 40101 of Title 49, Transportation.

AMENDMENTS

2001—Subsec. (a)(1), (2), Pub. L. 107-56, § 622(a), inserted “in fiscal year 2002 and of 60 percent in subsequent fiscal years” after “40 percent”.

Subsec. (b)(6)(B), Pub. L. 107-56, § 622(b), which directed striking out “are outside the United States (if the compensable crime is terrorism, as defined in section 2331 of title 18), or”, was executed by striking out “are outside of the United States (if the compensable crime is terrorism, as defined in section 2331 of title 18), or” after “the places the crimes occurred in” to reflect the probable intent of Congress.

Subsec. (c), Pub. L. 107-56, § 622(c), added subsec. (c) and struck out heading and text of former subsec. (c). Text read as follows: “Notwithstanding any other law, for the purpose of any maximum allowed income eligibility requirement in any Federal, State, or local government program using Federal funds that provides medical or other assistance (or payment or reimbursement of the cost of such assistance) that becomes necessary to an applicant for such assistance in full or in part because of the commission of a crime against the applicant, as determined by the Director, any amount of crime victim compensation that the applicant receives through a crime victim compensation program under this section shall not be included in the income of the applicant until the total amount of assistance that the applicant receives from all such programs is sufficient to fully compensate the applicant for losses suffered as a result of the crime.”

Subsec. (d)(3), Pub. L. 107-56, § 622(d)(1), struck out “crimes involving terrorism,” after “section 247 of title 18.”

Subsec. (d)(4), Pub. L. 107-56, § 622(d)(2), inserted “the United States Virgin Islands,” after “the Commonwealth of Puerto Rico.”

Subsec. (e), Pub. L. 107-56, § 622(e)(1), inserted “including the program established under title IV of Public Law 107-42,” after “Federal program,” in introductory provisions.

1996—Subsec. (b)(6)(B), Pub. L. 104-132, § 233(b), inserted “are outside of the United States (if the compensable crime is terrorism, as defined in section 2331 of title 18), or” before “are States not having”.

Subsec. (b)(8), (9), Pub. L. 104-132, § 234(a)(1), added par. (8) and redesignated former par. (8) as (9).

Subsec. (c), Pub. L. 104-132, § 234(b), added subsec. (c). Subsec. (d)(3), Pub. L. 104-155 inserted “crimes, whose victims suffer death or personal injury, that are described in section 247 of title 18,” after “includes”.

Pub. L. 104-132, § 233(a), substituted “crimes involving terrorism, driving while intoxicated,” for “driving while intoxicated”.

1994—Subsec. (a)(1), Pub. L. 103-322, § 230203(a), substituted “Except as provided in paragraph (3), a grant” for “A grant” in last sentence.

Subsec. (a)(3), Pub. L. 103-322, § 230203(b), added par. (3).

Subsec. (b)(1), Pub. L. 103-322, § 330025(b), inserted before semicolon at end “for—” and subpars. (A) to (C).

Subsec. (e), Pub. L. 103-322, § 230202, added subsec. (e). 1988—Subsec. (a), Pub. L. 100-690, §§ 7123(b)(1), (2), 7125(b), substituted “Director” for “Attorney General” and “40 percent” for “35 percent” in pars. (1) and (2).

Subsec. (b)(1), Pub. L. 100-690, § 7125(c)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “such program is operated by a State and offers compensation to victims of crime and survivors of victims of crime for—

“(A) medical expenses attributable to a physical injury resulting from compensable crime, including expenses for mental health counseling and care;

“(B) loss of wages attributable to a physical injury resulting from a compensable crime; and

“(C) funeral expenses attributable to a death resulting from a compensable crime;”.

Subsec. (b)(5), Pub. L. 100-690, § 7125(d), amended par. (5) generally. Prior to amendment, par. (5) read as follows: “such program provides compensation to victims of crimes occurring within such State that would be compensable crimes, but for the fact that such crimes are subject to Federal jurisdiction, on the same basis that such program provides compensation to victims of compensable crimes; and”.

Subsec. (b)(6), (7), Pub. L. 100-690, § 7125(a)(1), added pars. (6) and (7). Former par. (6) redesignated (8).

Subsec. (b)(8), Pub. L. 100-690, §§ 7123(b)(3), 7125(a)(2), redesignated par. (6) as (8) and substituted “Director” for “Attorney General”.

Subsec. (c), Pub. L. 100-690, § 7125(e), struck out subsec. (c) which read as follows: “A State crime victim compensation program in effect on the date grants may first be made under this section shall be deemed an eligible crime victim compensation program for the purposes of this section until the day after the close of the first regular session of the legislature of that State that begins after such date.”

Subsec. (d)(1), Pub. L. 100-690, § 7126(a), inserted reference to eyeglasses or other corrective lenses.

Subsec. (d)(2), Pub. L. 100-690, § 7126(b), inserted reference to eyeglasses or other corrective lenses and inserted comma after “prosthetic devices”.

Subsec. (d)(3), Pub. L. 100-690, § 7125(c)(2), inserted reference to driving while intoxicated and domestic violence.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 233(d) of Pub. L. 104-132, as amended by Pub. L. 105-119, title I, § 120, Nov. 26, 1997, 111 Stat. 2468, provided that: “This section [amending this section] and the amendments made by this section shall take effect October 1, 1999.”

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-690 not applicable with respect to a State compensation program that was an eligible State crime victim compensation program on Nov. 18, 1988, until Oct. 1, 1991, see section 7129 of Pub. L. 100-690, as amended, set out as a note under section 10601 of this title.

APPLICATION OF AMENDMENT BY SECTION 234(a)(1) OF PUB. L. 104-132

Section 234(a)(2) of Pub. L. 104-132 provided that: “Section 1403(b)(8) of the Victims of Crime Act of 1984 [42 U.S.C. 10602(b)(8)], as added by paragraph (1) of this section, shall not be applied to deny victims compensation to any person until the date on which the Attorney General, in consultation with the Director of the Administrative Office of the United States Courts, issues a written determination that a cost-effective, readily available criminal debt payment tracking system operated by the agency responsible for the collection of criminal debt has established cost-effective, readily available communications links with entities that administer Federal victim compensation programs that are sufficient to ensure that victim compensation is not denied to any person except as authorized by law.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10601, 10603, 10605 of this title.

§ 10603. Crime victim assistance**(a) Grant authority of Director; chief executive of States; amount; insufficient funds**

(1) Subject to the availability of money in the Fund, the Director shall make an annual grant from any portion of the Fund made available by section 10601(d)(2)¹ of this title for the purpose

¹ See References in Text note below.

of grants under this subsection, or for the purpose of grants under section 10602 of this title but not used for that purpose, to the chief executive of each State for the financial support of eligible crime victim assistance programs.

(2) Such chief executive shall—

(A) certify that priority shall be given to eligible crime victim assistance programs providing assistance to victims of sexual assault, spousal abuse, or child abuse;

(B) certify that funds shall be made available for grants to programs which serve previously underserved populations of victims of violent crime. The Director, after consultation with State and local officials and representatives from private organizations, shall issue guidelines to implement this section that provide flexibility to the States in determining the populations of victims of violent crimes that may be underserved in their respective States;

(C) certify that funds awarded to eligible crime victim assistance programs will not be used to supplant State and local funds otherwise available for crime victim assistance; and

(D) provide such other information and assurances related to the purposes of this section as the Director may reasonably require.

(3) The amounts of grants under paragraph (1) shall be—

(A) the base amount to each State; and

(B) that portion of the then remaining available money to each State that results from a distribution among the States on the basis of each State's population in relation to the population of all States.

(4) If the amount available for grants under paragraph (1) is insufficient to provide the base amount to each State, the funds available shall be distributed equally among the States.

(5) As used in this subsection, the term "base amount" means—

(A) except as provided in subparagraph (B), \$500,000; and

(B) for the territories of the Northern Mariana Islands, Guam, American Samoa, and the Republic of Palau, \$200,000, with the Republic of Palau's share governed by the Compact of Free Association between the United States and the Republic of Palau.

(6) An agency of the Federal Government performing local law enforcement functions in and on behalf of the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, or any other territory or possession of the United States may qualify as an eligible crime victim assistance program for the purpose of grants under this subsection, or for the purpose of grants under subsection (c)(1) of this section.

(b) Eligibility of program; factors; limitation on expending of sums

(1) A victim assistance program is an eligible crime victim assistance program for the purposes of this section if such program—

(A) is operated by a public agency or a nonprofit organization, or a combination of such agencies or organizations or of both such agencies and organizations, and provides services to victims of crime;

(B) demonstrates—

(i) a record of providing effective services to victims of crime and financial support from sources other than the Fund; or

(ii) substantial financial support from sources other than the Fund;

(C) utilizes volunteers in providing such services, unless and to the extent the chief executive determines that compelling reasons exist to waive this requirement;

(D) promotes within the community served coordinated public and private efforts to aid crime victims;

(E) assists potential recipients in seeking crime victim compensation benefits; and

(F) does not discriminate against victims because they disagree with the way the State is prosecuting the criminal case.

(2) Except as provided in paragraph (3), an eligible crime victim assistance program shall expend sums received under subsection (a) of this section only for providing services to victims of crime.

(3) Not more than 5 percent of sums received under subsection (a) of this section may be used for the administration of the State crime victim assistance program receiving such sums.

(c) Grants; purposes; distribution; duties of Director; reimbursement by Director

(1) The Director,² shall make grants—

(A) for demonstration projects, program evaluation, compliance efforts, and training and technical assistance services to eligible crime victim assistance programs; and

(B) for the financial support of services to victims of Federal crime by eligible crime victim assistance programs.

(2) Of the amount available for grants under this subsection—

(A) not less than 50 percent shall be used for grants under paragraph (1)(A); and

(B) not more than 50 percent shall be used for grants under paragraph (1)(B).

(3) The Director shall—

(A) be responsible for monitoring compliance with guidelines for fair treatment of crime victims and witnesses issued under section 6 of the Victim and Witness Protection Act of 1982 (Public Law 97-291) [18 U.S.C. 1512 note];

(B) consult with the heads of Federal law enforcement agencies that have responsibilities affecting victims of Federal crimes;

(C) coordinate victim services provided by the Federal Government with victim services offered by other public agencies and nonprofit organizations;

(D) perform such other functions related to the purposes of this title³ as the Director deems appropriate; and

(E) use funds made available to the Director under this subsection—

(i) for fellowships and clinical internships; and

(ii) to carry out programs of training and special workshops for the presentation and dissemination of information resulting from

² So in original. The comma probably should not appear.

³ See References in Text note below.

demonstrations, surveys, and special projects.

(4) The Director may reimburse other instrumentalities of the Federal Government and contract for the performance of functions authorized under this subsection.

(d) Definitions

As used in this section—

(1) the term “State” includes the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, and any other territory or possession of the United States; and

(2) the term “services to victims of crime” includes—

(A) crises intervention services;

(B) providing, in an emergency, transportation to court, short-term child care services, and temporary housing and security measures;

(C) assistance in participating in criminal justice proceedings; and

(D) payment of all reasonable costs for a forensic medical examination of a crime victim, to the extent that such costs are otherwise not reimbursed or paid;

(3) the term “services to victims of Federal crime” means services to victims of crime with respect to Federal crime, and includes—

(A) training of law enforcement personnel in the delivery of services to victims of Federal crime;

(B) preparation, publication, and distribution of informational materials—

(i) setting forth services offered to victims of crime; and

(ii) concerning services to victims of Federal crime for use by Federal law enforcement personnel; and

(C) salaries of personnel who provide services to victims of crime, to the extent that such personnel provide such services;

(4) the term “crises intervention services” means counseling to provide emotional support in crises arising from the occurrence of crime; and

(5) the term “chief executive” includes a person designated by a chief executive to perform the functions of the chief executive under this section.

(Pub. L. 98-473, title II, §1404, Oct. 12, 1984, 98 Stat. 2172; Pub. L. 99-401, title I, §102(b)(4), (5), Aug. 27, 1986, 100 Stat. 905; Pub. L. 99-646, §71, Nov. 10, 1986, 100 Stat. 3617; Pub. L. 100-690, title VII, §§7122, 7123(b)(4)-(9), 7127, 7128, title IX, §9306(a), Nov. 18, 1988, 102 Stat. 4420, 4421, 4423, 4537; Pub. L. 103-317, title I, §112, Aug. 26, 1994, 108 Stat. 1736; Pub. L. 103-322, title XXIII, §§230204, 230205, 230208, Sept. 13, 1994, 108 Stat. 2080; Pub. L. 104-132, title II, §232(c)(2), Apr. 24, 1996, 110 Stat. 1244; Pub. L. 107-56, title VI, §623, Oct. 26, 2001, 115 Stat. 372.)

REFERENCES IN TEXT

Section 10601(d)(2) of this title, referred to in subsec. (a)(1), was repealed and a new section 10601(d)(2) was added by Pub. L. 103-322, title XXIII, §230201(a)(1), Sept. 13, 1994, 108 Stat. 2079. The new section 10601(d)(2) does not contain provisions relating to availability of Fund

money for grants under this section or section 10602 of this title. See section 10601(d)(4) of this title.

This title, referred to in subsec. (c)(3)(D), means title II of Pub. L. 98-473, Oct. 12, 1984, 98 Stat. 1976, known as the Comprehensive Crime Control Act of 1984. For complete classification of title II to the Code, see Short Title of 1984 Amendment note set out under section 1 of Title 18, Crimes and Criminal Procedure, and Tables.

AMENDMENTS

2001—Subsec. (a)(6). Pub. L. 107-56, §623(a), added par. (6).

Subsec. (b)(1)(F). Pub. L. 107-56, §623(b), added subpar. (F).

Subsec. (c)(1)(A). Pub. L. 107-56, §623(c), inserted “, program evaluation, compliance efforts,” after “demonstration projects”.

Subsec. (c)(2)(A). Pub. L. 107-56, §623(d)(1), substituted “not less than 50 percent” for “not more than 50 percent”.

Subsec. (c)(2)(B). Pub. L. 107-56, §623(d)(2), substituted “not more than 50 percent” for “not less than 50 percent”.

Subsec. (c)(3)(E). Pub. L. 107-56, §623(e), added subpar. (E).

1996—Subsec. (a)(5). Pub. L. 104-132 amended par. (5) generally. Prior to amendment, par. (5) read as follows: “As used in this subsection, the term ‘base amount’ means—

“(A) \$150,000 for fiscal years 1989 through 1991; and
“(B) \$200,000 thereafter.”

1994—Subsec. (a)(5)(B). Pub. L. 103-322, §230208, amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “\$200,000 thereafter through fiscal year 1995.”

Pub. L. 103-317 substituted “1995” for “1994”.

Subsec. (b)(2). Pub. L. 103-322, §230205(a), substituted “Except as provided in paragraph (3), an eligible” for “An eligible”.

Subsec. (b)(3). Pub. L. 103-322, §230205(b), added par. (3).

Subsec. (c)(1)(A). Pub. L. 103-322, §230204, inserted “demonstration projects and” before “training”.

1988—Subsec. (a)(1). Pub. L. 100-690, §7123(b)(4), substituted “Director” for “Attorney General”.

Subsec. (a)(2)(B). Pub. L. 100-690, §7122(1), added subpar. (B). Former subpar. (B) redesignated (C).

Subsec. (a)(2)(C). Pub. L. 100-690, §7122(2), redesignated subpar. (B) as (C). Former subpar. (C) redesignated (D).

Subsec. (a)(2)(D). Pub. L. 100-690, §7123(b)(5), which directed substitution of “Director” for “Attorney General” in subpar. (C), was executed by making substitution in subpar. (D) to reflect the probable intent of Congress and the intervening redesignation of subpar. (C) as (D), see below.

Pub. L. 100-690, §7122(2), redesignated subpar. (C) as (D).

Subsec. (a)(3) to (5). Pub. L. 100-690, §7128, substituted “the base amount” for “\$100,000” in pars. (3)(A) and (4) and added par. (5).

Subsec. (c)(1). Pub. L. 100-690, §7123(b)(6), substituted “Director” for “Attorney General, acting through the Assistant Attorney General for the Office of Justice Programs”.

Subsec. (c)(3). Pub. L. 100-690, §7123(b)(7), (8), substituted “Director” for “Assistant Attorney General for the Office of Justice Programs” in introductory provisions and “Director deems appropriate” for “Attorney General may assign” in subpar. (D).

Subsec. (c)(4). Pub. L. 100-690, §7123(b)(9), substituted “Director” for “Attorney General”.

Subsec. (d)(1). Pub. L. 100-690, §9306(a), struck out “, except for the purposes of paragraphs (3)(A) and (4) of subsection (a) of this section,” before “any other territory”.

Pub. L. 100-690, §7127, inserted reference to the United States Virgin Islands.

1986—Subsec. (a)(1). Pub. L. 99-401, §102(b)(5), substituted “made available by section 10601(d)(2) of this

title for the purpose of grants under this subsection, or for the purpose of grants under section 10602 of this title but not used for that purpose” for “not used for grants under section 10602 of this title with respect to a particular fiscal year, and after any deduction under subsection (c) of this section”.

Subsec. (c)(1), (2). Pub. L. 99-401, §102(b)(4), added pars. (1) and (2) and struck out former pars. (1) and (2) which read as follows:

“(1) The Attorney General may in any fiscal year deduct from amounts available under this section an amount not to exceed 5 percent of the amount in the Fund, and may expend the amount so deducted to provide services to victims of Federal crimes by the Department of Justice, or reimburse other instrumentalities of the Federal Government otherwise authorized to provide such services.

“(2) The Attorney General shall appoint or designate an official of the Department of Justice to be the Federal Crime Victim Assistance Administrator (hereinafter in this chapter referred to as the ‘Federal Administrator’) to exercise the responsibilities of the Attorney General under this subsection.”

Subsec. (c)(2)(A). Pub. L. 99-646, §71(1), substituted “not more than” for “not less than”.

Subsec. (c)(2)(B). Pub. L. 99-646, §71(2), substituted “not less than” for “not more than”.

Subsec. (c)(3). Pub. L. 99-401, §102(b)(4), substituted “The Assistant Attorney General for the Office of Justice Programs shall” for “The Federal Administrator shall”.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by sections 7122, 7123(b)(4)–(9), 7127, and 7128 of Pub. L. 100-690 not applicable with respect to a State compensation program that was an eligible State crime victim compensation program on Nov. 18, 1988, until Oct. 1, 1991, see section 7129 of Pub. L. 100-690, as amended, set out as a note under section 10601 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10601, 10603a, 10603b, 10605 of this title.

§ 10603a. Child abuse prevention and treatment grants

Amounts made available by section 10601(d)(2) of this title for the purposes of this section shall be obligated and expended by the Secretary of Health and Human Services for grants under section 5106c¹ of this title. Any portion of an amount which is not obligated by the Secretary by the end of the fiscal year in which funds are made available for allocation, shall be reallocated for award under section 10603(a) of this title, except that with respect to funds deposited during fiscal year 1986 and made available for obligation during fiscal year 1987, any unobligated portion of such amount shall remain available for obligation until September 30, 1988.

(Pub. L. 98-473, title II, §1404A, as added Pub. L. 99-401, title I, §102(b)(3), Aug. 27, 1986, 100 Stat. 905; amended Pub. L. 103-121, title I, §110(b), Oct. 27, 1993, 107 Stat. 1164; Pub. L. 104-235, title I, §113(b), Oct. 3, 1996, 110 Stat. 3079.)

REFERENCES IN TEXT

Section 5106c of this title, referred to in text, was in the original “section 109 of the Child Abuse Prevention and Treatment Act”, meaning section 109 of Pub. L. 93-247, and was translated as reading section 107 of that act to reflect the probable intent of Congress and the

renumbering of section 109 as section 107 by section 113(a)(1)(B) of Pub. L. 104-235, title I, Oct. 3, 1996, 110 Stat. 3079.

AMENDMENTS

1996—Pub. L. 104-235 substituted “section 10601(d)(2) of this title” for “section 10601(d)(2)(D) and (d)(3) of this title.” and “section 5106c” for “section 5103(d)”.

1993—Pub. L. 103-121 substituted “section 10601(d)(2)(D) and (d)(3) of this title.” for “section 10601(d)(2) of this title”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5106c, 5106f, 10601 of this title.

§ 10603b. Compensation and assistance to victims of terrorism or mass violence

(a) Victims of acts of terrorism outside the United States

(1) In general

The Director may make supplemental grants as provided in 10601(d)(5)¹ of this title to States, victim service organizations, and public agencies (including Federal, State, or local governments) and nongovernmental organizations that provide assistance to victims of crime, which shall be used to provide emergency relief, including crisis response efforts, assistance, training, and technical assistance, and ongoing assistance, including during any investigation or prosecution, to victims of terrorist acts or mass violence occurring outside the United States.

(2) Victim defined

In this subsection, the term “victim”—

(A) means a person who is a national of the United States or an officer or employee of the United States Government who is injured or killed as a result of a terrorist act or mass violence occurring outside the United States; and

(B) in the case of a person described in subparagraph (A) who is less than 18 years of age, incompetent, incapacitated, or deceased, includes a family member or legal guardian of that person.

(3) Rule of construction

Nothing in this subsection shall be construed to allow the Director to make grants to any foreign power (as defined by section 1801(a) of title 50) or to any domestic or foreign organization operated for the purpose of engaging in any significant political or lobbying activities.

(b) Victims of terrorism within the United States

The Director may make supplemental grants as provided in section 10601(d)(5) of this title to States for eligible crime victim compensation and assistance programs, and to victim service organizations, public agencies (including Federal, State, or local governments) and nongovernmental organizations that provide assistance to victims of crime, which shall be used to provide emergency relief, including crisis response efforts, assistance, compensation, training and technical assistance, and ongoing assist-

¹ See References in Text note below.

¹ So in original. Probably should be preceded by “section”.

ance, including during any investigation or prosecution, to victims of terrorist acts or mass violence occurring within the United States.

(Pub. L. 98-473, title II, §1404B, as added Pub. L. 104-132, title II, §232(a), Apr. 24, 1996, 110 Stat. 1243; amended Pub. L. 106-386, div. C, §2003(a)(1), (4), Oct. 28, 2000, 114 Stat. 1543, 1544; Pub. L. 107-56, title VI, §624(a), (b), Oct. 26, 2001, 115 Stat. 373.)

AMENDMENTS

2001—Subsec. (a)(1). Pub. L. 107-56, §624(b), struck out “who are not persons eligible for compensation under title VIII of the Omnibus Diplomatic Security and Antiterrorism Act of 1986” before period at end.

Subsec. (b). Pub. L. 107-56, §624(a), amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: “The Director may make supplemental grants as provided in section 10601(d)(5) of this title to States for eligible crime victim compensation and assistance programs to provide emergency relief, including crisis response efforts, assistance, training, and technical assistance, for the benefit of victims of terrorist acts or mass violence occurring within the United States and may provide funding to United States Attorney’s Offices for use in coordination with State victim compensation and assistance efforts in providing emergency relief.”

2000—Subsec. (a). Pub. L. 106-386, §2003(a)(1), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: “The Director may make supplemental grants as provided in section 10603(a) of this title to States to provide compensation and assistance to the residents of such States who, while outside of the territorial boundaries of the United States, are victims of a terrorist act or mass violence and are not persons eligible for compensation under title VIII of the Omnibus Diplomatic Security and Antiterrorism Act of 1986.”

Subsec. (b). Pub. L. 106-386, §2003(a)(4), substituted “10601(d)(5) of this title” for “10603(d)(4)(B) of this title”.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-386, div. C, §2003(a)(2), Oct. 28, 2000, 114 Stat. 1544, provided that: “The amendment made by this subsection [amending this section] shall apply to any terrorist act or mass violence occurring on or after December 21, 1988, with respect to which an investigation or prosecution was ongoing after April 24, 1996.”

ADMINISTRATIVE GUIDELINES

Pub. L. 106-386, div. C, §2003(a)(3), Oct. 28, 2000, 114 Stat. 1544, provided that: “Not later than 90 days after the date of the enactment of this Act [Oct. 28, 2000], the Director shall establish guidelines under section 1407(a) of the Victims of Crime Act of 1984 (42 U.S.C. 10604(a)) to specify the categories of organizations and agencies to which the Director may make grants under this subsection [amending this section and enacting provisions set out as a note under this section].”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10601 of this title.

§ 10603c. Compensation to victims of international terrorism

(a) Definitions

In this section:

(1) International terrorism

The term “international terrorism” has the meaning given the term in section 2331 of title 18.

(2) National of the United States

The term “national of the United States” has the meaning given the term in section 1101(a) of title 8.

(3) Victim

(A) In general

The term “victim” means a person who—

- (i) suffered direct physical or emotional injury or death as a result of international terrorism occurring on or after December 21, 1988 with respect to which an investigation or prosecution was ongoing after April 24, 1996; and
- (ii) as of the date on which the international terrorism occurred, was a national of the United States or an officer or employee of the United States Government.

(B) Incompetent, incapacitated, or deceased victims

In the case of a victim who is less than 18 years of age, incompetent, incapacitated, or deceased, a family member or legal guardian of the victim may receive the compensation under this section on behalf of the victim.

(C) Exception

Notwithstanding any other provision of this section, in no event shall an individual who is criminally culpable for the terrorist act or mass violence receive any compensation under this section, either directly or on behalf of a victim.

(b) Award of compensation

The Director may use the emergency reserve referred to in section 10601(d)(5)(A) of this title to carry out a program to compensate victims of acts of international terrorism that occur outside the United States for expenses associated with that victimization. The amount of compensation awarded to a victim under this subsection shall be reduced by any amount that the victim received in connection with the same act of international terrorism under title VIII of the Omnibus Diplomatic Security and Antiterrorism Act of 1986.

(c) Annual report

The Director shall annually submit to Congress a report on the status and activities of the program under this section, which report shall include—

- (1) an explanation of the procedures for filing and processing of applications for compensation;
- (2) a description of the procedures and policies instituted to promote public awareness about the program;
- (3) a complete statistical analysis of the victims assisted under the program, including—
 - (A) the number of applications for compensation submitted;
 - (B) the number of applications approved and the amount of each award;
 - (C) the number of applications denied and the reasons for the denial;
 - (D) the average length of time to process an application for compensation; and
 - (E) the number of applications for compensation pending and the estimated future liability of the program; and

(4) an analysis of future program needs and suggested program improvements.

(Pub. L. 98-473, title II, §1404C, as added Pub. L. 106-386, div. C, §2003(c)(1), Oct. 28, 2000, 114 Stat. 1544; amended Pub. L. 107-56, title VI, §624(c), Oct. 26, 2001, 115 Stat. 373.)

REFERENCES IN TEXT

The Omnibus Diplomatic Security and Antiterrorism Act of 1986, referred to in subsec. (b), is Pub. L. 99-399, Aug. 27, 1986, 100 Stat. 853, as amended. Title VIII of the Act, known as the "Victims of Terrorism Compensation Act", enacted sections 5569 and 5570 of Title 5, Government Organization and Employees, sections 1051, 1095, and 2181 to 2185 of Title 10, Armed Forces, and sections 559 and 1013 of Title 37, Pay and Allowances of the Uniformed Services, amended section 6325 of Title 5, and enacted provisions set out as notes under section 5569 of Title 5, sections 1051, 1095, and 2181 of Title 10, and section 559 of Title 37. For complete classification of title VIII to the Code, see Short Title of 1986 Amendment note set out under section 5569 of Title 5 and Tables.

AMENDMENTS

2001—Subsec. (b). Pub. L. 107-56 inserted at end "The amount of compensation awarded to a victim under this subsection shall be reduced by any amount that the victim received in connection with the same act of international terrorism under title VIII of the Omnibus Diplomatic Security and Antiterrorism Act of 1986."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10601 of this title.

§ 10604. Administrative provisions

(a) Authority of Director to establish rules and regulations

The Director may establish such rules, regulations, guidelines, and procedures as are necessary to carry out any function of the Director under this chapter.

(b) Recordkeeping

Each recipient of sums under this chapter shall keep such records as the Director shall prescribe, including records that fully disclose the amount and disposition by such recipient of such sums, the total cost of the undertaking for which such sums are used, and that portion of the cost of the undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(c) Access of Director to books and records for purpose of audit and examination

The Director shall have access, for purpose of audit and examination, to any books, documents, papers, and records of the recipient of sums under this chapter that, in the opinion of the Director, may be related to the expenditure of funds received under this chapter.

(d) Revealing research or statistical information; prohibition; immunity from legal proceedings; permission; admission of information as evidence

Except as otherwise provided by Federal law, no officer or employee of the Federal Government, and no recipient of sums under this chapter, shall use or reveal any research or statistical information furnished under this chapter

by any person and identifiable to any specific private person for any purpose other than the purpose for which such information was obtained in accordance with this chapter. Such information, and any copy of such information, shall be immune from legal process and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceeding.

(e) Discrimination prohibited

No person shall on the ground of race, color, religion, national origin, handicap, or sex be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with, any undertaking funded in whole or in part with sums made available under this chapter.

(f) Failure to comply with provisions; notice and hearing; power of Director

If, after reasonable notice and opportunity for a hearing on the record, the Director finds that a State has failed to comply substantially with any provision of this chapter or a rule, regulation, guideline, or procedure issued under this chapter, or an application submitted in accordance with this chapter or the provisions of any other applicable law, the Director shall—

(1) terminate payments to such State;

(2) suspend payments to such State until the Director is satisfied that such noncompliance has ended; or

(3) take such other action as the Director deems appropriate.

(g) Report

The Director shall, on December 31, 1990, and on June 30 every two years thereafter, report to the President and to the Congress on the revenue derived from each source described in section 10601 of this title and on the effectiveness of the activities supported under this chapter. The Director may include in such report recommendations for legislation to improve this chapter.

(h) Maintenance of effort

Each entity receiving sums made available under this chapter for administrative purposes shall certify that such sums will not be used to supplant State or local funds, but will be used to increase the amount of such funds that would, in the absence of Federal funds, be made available for these purposes.

(Pub. L. 98-473, title II, §1407, Oct. 12, 1984, 98 Stat. 2176; Pub. L. 99-646, §48, Nov. 10, 1986, 100 Stat. 3605; Pub. L. 100-690, title VII, §7123(b)(10)-(14), Nov. 18, 1988, 102 Stat. 4421, 4422; Pub. L. 103-322, title XXIII, §§230206, 230207, Sept. 13, 1994, 108 Stat. 2080; Pub. L. 104-294, title VI, §604(b)(9), Oct. 11, 1996, 110 Stat. 3507.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (h), was in the original "this Act", and was translated as reading "this chapter", meaning chapter XIV of title II of Pub. L. 98-473, to reflect the probable intent of Congress.

AMENDMENTS

1996—Subsec. (g). Pub. L. 104-294 amended directory language of Pub. L. 103-322, §230207. See 1994 Amendment note below.

1994—Subsec. (g). Pub. L. 103-322, § 230207, as amended by Pub. L. 104-294, substituted “and on June 30 every two years thereafter” for “and on December 31 every 2 years thereafter”.

Subsec. (h). Pub. L. 103-322, § 230206, added subsec. (h).

1988—Subsec. (a). Pub. L. 100-690, § 7123(b)(10), substituted “Director” for “Attorney General” in two places and “under this chapter” for “under this chapter and may delegate to any officer or employee of the Department of Justice any such function as the Attorney General deems appropriate”.

Subsec. (b). Pub. L. 100-690, § 7123(b)(11), substituted “Director” for “Attorney General”.

Subsec. (c). Pub. L. 100-690, § 7123(b)(12), which directed substitution of “Director” for “Attorney General or any duly authorized representative of the Attorney General”, was executed by making substitution in two places.

Subsec. (f). Pub. L. 100-690, § 7123(b)(13), substituted “Director” for “Attorney General” two places in introductory provisions and in pars. (2) and (3).

Subsec. (g). Pub. L. 100-690, § 7123(b)(14), substituted “Director” for “Attorney General” in two places and “on December 31, 1990, and on December 31 every 2 years thereafter” for “no later than December 31, 1987”.

1986—Subsecs. (g), (h). Pub. L. 99-646 redesignated subsec. (h) as (g) and substituted “1402”, which was translated as “section 10601 of this title” for “1302”, which had been editorially translated as “section 10601 of this title”, thereby requiring no change in text.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-294 effective Sept. 13, 1994, see section 604(d) of Pub. L. 104-294, set out as a note under section 13 of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-690 not applicable with respect to a State compensation program that was an eligible State crime victim compensation program on Nov. 18, 1988, until Oct. 1, 1991, see section 7129 of Pub. L. 100-690, as amended, set out as a note under section 10601 of this title.

REPORTS ON AMOUNTS RECEIVED AND DISTRIBUTED FROM FINES FOR VIOLATIONS OF TRADE SECRETS PROVISIONS

Section 101(c) of Pub. L. 104-294 provided that: “Not later than 2 years and 4 years after the date of the enactment of this Act [Oct. 11, 1996], the Attorney General shall report to Congress on the amounts received and distributed from fines for offenses under this chapter [probably means chapter 90 of title 18, added by section 101(a) of Pub. L. 104-294] deposited in the Crime Victims Fund established by section 1402 of the Victims of Crime Act of 1984 (42 U.S.C. 10601).”

§ 10605. Establishment of Office for Victims of Crime

(a) Office established within Department of Justice

There is established within the Department of Justice an Office for Victims of Crime (hereinafter in this chapter referred to as the “Office”).

(b) Appointment of Director; authority; restrictions

The Office shall be headed by a Director (referred to in this chapter as the “Director”), who shall be appointed by the President, by and with the advice and consent of the Senate. The Director shall report to the Attorney General through the Assistant Attorney General for the Office of Justice Programs and shall have final authority for all grants, cooperative agreements, and con-

tracts awarded by the Office. The Director shall not engage in any employment other than that of serving as the Director, nor shall the Director hold any office in, or act in any capacity for, any organization, agency, or institution with which the Office makes any contract or other agreement under this chapter.¹

(c) Duties of Director

The Director shall have the following duties:

(1) Administering funds made available by section 10601 of this title.

(2) Providing funds to eligible States pursuant to sections 10602 and 10603 of this title.

(3) Establishing programs in accordance with section 10603(c) of this title on terms and conditions determined by the Director to be consistent with that subsection.

(4) Cooperating with and providing technical assistance to States, units of local government, and other public and private organizations or international agencies involved in activities related to crime victims.

(5) Such other functions as the Attorney General may delegate.

(Pub. L. 98-473, title II, § 1411, as added Pub. L. 100-690, title VII, § 7123(a), Nov. 18, 1988, 102 Stat. 4420.)

REFERENCES IN TEXT

This chapter, the last place it appears in subsec. (b), was in the original “this part”, which has been translated as reading in the original “this chapter” meaning chapter XIV of title II of Pub. L. 98-473 to reflect the probable intent of Congress because chapter XIV of title II of Pub. L. 98-473 which comprises this chapter, does not contain parts.

EFFECTIVE DATE

Section not applicable with respect to a State compensation program that was an eligible State crime victim compensation program on Nov. 18, 1988, until Oct. 1, 1991, see section 7129 of Pub. L. 100-690, as amended, set out as an Effective Date of 1988 Amendment note under section 10601 of this title.

§ 10606. Victims' rights

(a) Best efforts to accord rights

Officers and employees of the Department of Justice and other departments and agencies of the United States engaged in the detection, investigation, or prosecution of crime shall make their best efforts to see that victims of crime are accorded the rights described in subsection (b) of this section.

(b) Rights of crime victims

A crime victim has the following rights:

(1) The right to be treated with fairness and with respect for the victim's dignity and privacy.

(2) The right to be reasonably protected from the accused offender.

(3) The right to be notified of court proceedings.

(4) The right to be present at all public court proceedings related to the offense, unless the court determines that testimony by the victim would be materially affected if the victim heard other testimony at trial.

¹ See References in Text note below.

(5) The right to confer with¹ attorney for the Government in the case.

(6) The right to restitution.

(7) The right to information about the conviction, sentencing, imprisonment, and release of the offender.

(c) No cause of action or defense

This section does not create a cause of action or defense in favor of any person arising out of the failure to accord to a victim the rights enumerated in subsection (b) of this section.

(Pub. L. 101-647, title V, §502, Nov. 29, 1990, 104 Stat. 4820.)

CODIFICATION

Section enacted as part of the Victims' Rights and Restitution Act of 1990 and also as part of the Crime Control Act of 1990, and not as part of the Victims of Crime Act of 1984 which comprises this chapter.

SENSE OF CONGRESS WITH RESPECT TO VICTIMS OF CRIME

Section 506 of Pub. L. 101-647 provided that: "It is the sense of Congress that the States should make every effort to adopt the following goals of the Victims of Crime Bill of Rights:

"(1) Victims of crime should be treated with compassion, respect and dignity throughout the criminal justice process.

"(2) Victims of crime should be reasonably protected from the accused throughout the criminal justice process.

"(3) Victims of crime should have a statutorily designated advisory role in decisions involving prosecutorial discretion, such as the decision to plea-bargain.

"(4) Victims of crime should have the right to a reasonable assurance that the accused will be tried in an expeditious manner.

"(5) A victim of crime should have the right to be present at all proceedings related to the offense against him, unless the victim is to testify and the court determines that the victim's testimony would be materially prejudiced by hearing other testimony at the trial.

"(6) Victims of crime should have the right to information about the conviction, sentencing and imprisonment of the person who committed the crime against them.

"(7) Victims of crime should be compensated for the damage resulting from the crime to the fullest extent possible by the person convicted of the crime.

"(8) Victims of crime should have a statutorily designated advisory role in deciding the early release status of the person convicted of the crime against them.

"(9) A victim of crime should never be forced to endure again the emotional and physical consequences of the original crime."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10607 of this title.

§ 10607. Services to victims

(a) Designation of responsible officials

The head of each department and agency of the United States engaged in the detection, investigation, or prosecution of crime shall designate by names and office titles the persons who will be responsible for identifying the victims of crime and performing the services described in subsection (c) of this section at each stage of a criminal case.

(b) Identification of victims

At the earliest opportunity after the detection of a crime at which it may be done without interfering with an investigation, a responsible official shall—

(1) identify the victim or victims of a crime;

(2) inform the victims of their right to receive, on request, the services described in subsection (c) of this section; and

(3) inform each victim of the name, title, and business address and telephone number of the responsible official to whom the victim should address a request for each of the services described in subsection (c) of this section.

(c) Description of services

(1) A responsible official shall—

(A) inform a victim of the place where the victim may receive emergency medical and social services;

(B) inform a victim of any restitution or other relief to which the victim may be entitled under this or any other law and¹ manner in which such relief may be obtained;

(C) inform a victim of public and private programs that are available to provide counseling, treatment, and other support to the victim; and

(D) assist a victim in contacting the persons who are responsible for providing the services and relief described in subparagraphs (A), (B), and (C).

(2) A responsible official shall arrange for a victim to receive reasonable protection from a suspected offender and persons acting in concert with or at the behest of the suspected offender.

(3) During the investigation and prosecution of a crime, a responsible official shall provide a victim the earliest possible notice of—

(A) the status of the investigation of the crime, to the extent it is appropriate to inform the victim and to the extent that it will not interfere with the investigation;

(B) the arrest of a suspected offender;

(C) the filing of charges against a suspected offender;

(D) the scheduling of each court proceeding that the witness is either required to attend or, under section 10606(b)(4)² of this title, is entitled to attend;

(E) the release or detention status of an offender or suspected offender;

(F) the acceptance of a plea of guilty or nolo contendere or the rendering of a verdict after trial; and

(G) the sentence imposed on an offender, including the date on which the offender will be eligible for parole.

(4) During court proceedings, a responsible official shall ensure that a victim is provided a waiting area removed from and out of the sight and hearing of the defendant and defense witnesses.

(5) After trial, a responsible official shall provide a victim the earliest possible notice of—

(A) the scheduling of a parole hearing for the offender;

¹ So in original. Probably should be followed by "the".

¹ So in original. Probably should be followed by "the".

² See References in Text note below.

(B) the escape, work release, furlough, or any other form of release from custody of the offender; and

(C) the death of the offender, if the offender dies while in custody.

(6) At all times, a responsible official shall ensure that any property of a victim that is being held for evidentiary purposes be maintained in good condition and returned to the victim as soon as it is no longer needed for evidentiary purposes.

(7) The Attorney General or the head of another department or agency that conducts an investigation of a sexual assault shall pay, either directly or by reimbursement of payment by the victim, the cost of a physical examination of the victim which an investigating officer determines was necessary or useful for evidentiary purposes. The Attorney General shall provide for the payment of the cost of up to 2 anonymous and confidential tests of the victim for sexually transmitted diseases, including HIV, gonorrhea, herpes, chlamydia, and syphilis, during the 12 months following sexual assaults that pose a risk of transmission, and the cost of a counseling session by a medically trained professional on the accuracy of such tests and the risk of transmission of sexually transmitted diseases to the victim as the result of the assault. A victim may waive anonymity and confidentiality of any tests paid for under this section.

(8) A responsible official shall provide the victim with general information regarding the corrections process, including information about work release, furlough, probation, and eligibility for each.

(d) No cause of action or defense

This section does not create a cause of action or defense in favor of any person arising out of the failure of a responsible person to provide information as required by subsection (b) or (c) of this section.

(e) Definitions

For the purposes of this section—

(1) the term “responsible official” means a person designated pursuant to subsection (a) of this section to perform the functions of a responsible official under that section; and

(2) the term “victim” means a person that has suffered direct physical, emotional, or pecuniary harm as a result of the commission of a crime, including—

(A) in the case of a victim that is an institutional entity, an authorized representative of the entity; and

(B) in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, one of the following (in order of preference):

- (i) a spouse;
- (ii) a legal guardian;
- (iii) a parent;
- (iv) a child;
- (v) a sibling;
- (vi) another family member; or
- (vii) another person designated by the court.

(Pub. L. 101-647, title V, §503, Nov. 29, 1990, 104 Stat. 4820; Pub. L. 103-322, title IV, §40503(a), Sept. 13, 1994, 108 Stat. 1946.)

REFERENCES IN TEXT

Section 10606(b)(4) of this title, referred to in subsec. (c)(3)(D), was in the original “section 1102(b)(4)”, meaning section 1102(b)(4) of Pub. L. 101-647, which has been translated as reading section 502(b)(4) of Pub. L. 101-647 to reflect the probable intent of Congress because Pub. L. 101-647 does not contain a section 1102 and section 502(b)(4) relates to the right of crime victims to be present at public court proceedings.

CODIFICATION

Section enacted as part of the Victims’ Rights and Restitution Act of 1990 and also as part of the Crime Control Act of 1990, and not as part of the Victims of Crime Act of 1984 which comprises this chapter.

AMENDMENTS

1994—Subsec. (c)(7). Pub. L. 103-322 inserted at end “The Attorney General shall provide for the payment of the cost of up to 2 anonymous and confidential tests of the victim for sexually transmitted diseases, including HIV, gonorrhea, herpes, chlamydia, and syphilis, during the 12 months following sexual assaults that pose a risk of transmission, and the cost of a counseling session by a medically trained professional on the accuracy of such tests and the risk of transmission of sexually transmitted diseases to the victim as the result of the assault. A victim may waive anonymity and confidentiality of any tests paid for under this section.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 18 section 3510.

§ 10608. Closed circuit televised court proceedings for victims of crime

(a) In general

Notwithstanding any provision of the Federal Rules of Criminal Procedure to the contrary, in order to permit victims of crime to watch criminal trial proceedings in cases where the venue of the trial is changed—

- (1) out of the State in which the case was initially brought; and
- (2) more than 350 miles from the location in which those proceedings originally would have taken place;

the trial court shall order closed circuit televising of the proceedings to that location, for viewing by such persons the court determines have a compelling interest in doing so and are otherwise unable to do so by reason of the inconvenience and expense caused by the change of venue.

(b) Limited access

(1) Generally

No other person, other than official court and security personnel, or other persons specifically designated by the court, shall be permitted to view the closed circuit televising of the proceedings.

(2) Exception

The court shall not designate a person under paragraph (1) if the presiding judge at the trial determines that testimony by that person would be materially affected if that person heard other testimony at the trial.

(c) Restrictions

(1) The signal transmitted pursuant to subsection (a) of this section shall be under the con-

trol of the court at all times and shall only be transmitted subject to the terms and conditions imposed by the court.

(2) No public broadcast or dissemination shall be made of the signal transmitted pursuant to subsection (a) of this section. In the event any tapes are produced in carrying out subsection (a) of this section, such tapes shall be the property of the court and kept under seal.

(3) Any violations of this subsection, or any rule or order made pursuant to this section, shall be punishable as contempt of court as described in section 402 of title 18.

(d) Donations

The Administrative Office of the United States Courts may accept donations to enable the courts to carry out subsection (a) of this section.

(e) Construction

(1)¹ Nothing in this section shall be construed—

(i) to create in favor of any person a cause of action against the United States or any officer or employees thereof, or

(ii) to provide any person with a defense in any action in which application of this section is made.

(f) “State” defined

As used in this section, the term “State” means any State, the District of Columbia, or any possession or territory of the United States.

(g) Rules

The Judicial Conference of the United States, pursuant to its rule making authority under section 331 of title 28, may promulgate and issue rules, or amend existing rules, to effectuate the policy addressed by this section. Upon the implementation of such rules, this section shall cease to be effective.

(h) Effective date

This section shall only apply to cases filed after January 1, 1995.

(Pub. L. 104-132, title II, §235, Apr. 24, 1996, 110 Stat. 1246.)

REFERENCES IN TEXT

The Federal Rules of Criminal Procedure, referred to in subsec. (a), are set out in the Appendix to Title 18, Crimes and Criminal Procedure.

CODIFICATION

This section was enacted as part of the Justice for Victims of Terrorism Act of 1996, and also as part of the Antiterrorism and Effective Death Penalty Act of 1996, and not as part of the Victims of Crime Act of 1984 which comprises this chapter.

CHAPTER 113—STATE JUSTICE INSTITUTE

Sec.

10701. Definitions.
 10702. Establishment of Institute; duties.
 (a) Establishment; purpose; incorporation; powers.
 (b) Duties.
 (c) Duplication of functions; responsibility of State agencies.

Sec.

- (d) Maintenance of offices in State of incorporation; agent for receipt of service of process.
 (e) Tax status of Institute and programs assisted thereby.
 (f) Rules, regulations, etc.; notice and comment.
10703. Board of Directors.
 (a) Appointment and membership.
 (b) Term of office.
 (c) Reappointment.
 (d) Compensation; reimbursement for expenses.
 (e) Status of members of Board as officers and employees of United States.
 (f) Voting rights of Board members; quorum; action of Board on concurrence of majority.
 (g) Chairman; initial selection and term of office; subsequent annual election.
 (h) Grounds for removal of members.
 (i) Quarterly meetings of Board; special meetings.
 (j) Open meetings.
 (k) Duties and functions of Board.
10704. Officers and employees.
 (a) Duties of Director; appointment and removal of employees; political tests or qualifications prohibited.
 (b) Compensation.
 (c) Status of Institute as department, agency, or instrumentality of Federal Government; authority of Office of Management and Budget.
 (d) Status of officers and employees of Institute as officers and employees of United States.
 (e) Freedom of information requirements.
10705. Grants and contracts.
 (a) Authority of Institute; purposes of grants.
 (b) Priority in making awards; alternative recipients; approval of applications; receipt and administration of funds; accountability.
 (c) Permissible uses of funds.
 (d) Matching fund requirements.
 (e) Compliance monitoring and evaluation by Institute.
 (f) Independent study of financial and technical assistance programs.
10706. Limitations on grants and contracts.
 (a) Duties of Institute.
 (b) Use of funds for training programs for advocacy of nonjudicial public policies or encouraging nonjudicial political activities.
 (c) Authority coextensive with appropriation Acts.
 (d) Prohibited uses of funds.
10707. Restrictions on activities of Institute.
 (a) Litigation; interference with independence of State judiciary; funding of State judicial system activities other than pursuant to this chapter; legislative lobbying.
 (b) Issuance of shares of stock; declaration of dividends; compensation for services; reimbursement for expenses; political activities.
 (c) Identification of Institute with political activities.
10708. Administrative provisions.
 10709. Presidential coordination.
 10710. Records and reports.
 (a) Reports.

¹ So in original. No par. (2) has been enacted.

Sec.

- (b) Records.
- (c) Submission of copies of reports to recipients; maintenance in principal office of Institute; availability for public inspection; furnishing of copies to interested parties.
- (d) Funds accounted for and reported as receipts and disbursements separate and distinct from Federal funds.

10711. Audits.

- (a) Time and place of audits; standards; availability of books, accounts, facilities, etc., to auditors; filing of report and availability for public inspection.
- (b) Additional audits; requirements; reports and recommendations to Congress and Attorney General.
- (c) Annual audits by Institute or recipients; reports; submission of copies to Comptroller General; inspection of books, accounts, etc.; availability of audit reports for public inspection.

10712. Report by Attorney General.

10713. Authorization of appropriations.

§ 10701. Definitions

As used in this chapter, the term—

(1) “Board” means the Board of Directors of the Institute;

(2) “Director” means the Executive Director of the Institute;

(3) “Governor” means the Chief Executive Officer of a State;

(4) “Institute” means the State Justice Institute;

(5) “recipient” means any grantee, contractor, or recipient of financial assistance under this chapter;

(6) “State” means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States;

(7) “Supreme Court” means the highest appellate court within a State unless, for the purposes of this chapter, a constitutionally or legislatively established judicial council acts in place of that court; and

(8) “domestic violence” means—

(A) any action that constitutes—

(i) attempting to cause or intentionally, knowingly, or recklessly causing bodily injury or physical illness;

(ii) rape, sexual assault, or causing involuntary deviate sexual intercourse;

(iii) placing by physical menace another in fear of imminent serious bodily injury; or

(iv) the infliction of false imprisonment;

if such action is taken by one of 2 spouses, former spouses, or sexual or intimate partners against the other spouse, former spouse, or partner and the 2 of whom share biological parenthood of, have adopted, are legal custodians of, or are stepparents of a minor child; or

(B) physically or sexually abusing such minor child if such abuse is inflicted by ei-

ther of such spouses, former spouses, or partners.

(Pub. L. 98-620, title II, § 202, Nov. 8, 1984, 98 Stat. 3336; Pub. L. 102-528, § 1, Oct. 27, 1992, 106 Stat. 3461.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this title” meaning title II of Pub. L. 98-620, Nov. 8, 1984, 98 Stat. 3336, which is classified principally to this chapter. For complete classification of title II to the Code, see Short Title note below and Tables.

AMENDMENTS

1992—Par. (8). Pub. L. 102-528 added par. (8).

EFFECTIVE DATE

Section 216 of title II of Pub. L. 98-620 provided that: “The provisions of this title [enacting this chapter and amending section 620 of Title 28, Judiciary and Judicial Procedure] shall take effect on October 1, 1985.”

SHORT TITLE

Section 201 of title II of Pub. L. 98-620 provided that: “This title [enacting this chapter and amending section 620 of Title 28, Judiciary and Judicial Procedure] may be cited as the ‘State Justice Institute Act of 1984.’”

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13991, 14036 of this title.

§ 10702. Establishment of Institute; duties

(a) Establishment; purpose; incorporation; powers

There is established a private nonprofit corporation which shall be known as the State Justice Institute. The purpose of the Institute shall be to further the development and adoption of improved judicial administration in State courts in the United States. The Institute may be incorporated in any State pursuant to section 10703(a)(6) of this title. To the extent consistent with the provisions of this chapter, the Institute may exercise the powers conferred upon a nonprofit corporation by the laws of the State in which it is incorporated.

(b) Duties

The Institute shall—

(1) direct a national program of assistance designed to assure each person ready access to a fair and effective system of justice by providing funds to—

(A) State courts;

(B) national organizations which support and are supported by State courts; and

(C) any other nonprofit organization that will support and achieve the purposes of this chapter;

(2) foster coordination and cooperation with the Federal judiciary in areas of mutual concern;

(3) promote recognition of the importance of the separation of powers doctrine to an independent judiciary; and

(4) encourage education for judges and support personnel of State court systems through national and State organizations, including universities.

(c) Duplication of functions; responsibility of State agencies

The Institute shall not duplicate functions adequately performed by existing nonprofit organizations and shall promote, on the part of agencies of State judicial administration, responsibility for the success and effectiveness of State court improvement programs supported by Federal funding.

(d) Maintenance of offices in State of incorporation; agent for receipt of service of process

The Institute shall maintain its principal offices in the State in which it is incorporated and shall maintain therein a designated agent to accept service of process for the Institute. Notice to or service upon the agent shall be deemed notice to or service upon the Institute.

(e) Tax status of Institute and programs assisted thereby

The Institute, and any program assisted by the Institute, shall be eligible to be treated as an organization described in section 170(c)(2)(B) of title 26 and as an organization described in section 501(c)(3) of title 26 which is exempt from taxation under section 501(a) of title 26. If such treatments are conferred in accordance with the provisions of title 26, the Institute, and programs assisted by the Institute, shall be subject to all provisions of title 26 relevant to the conduct of organizations exempt from taxation.

(f) Rules, regulations, etc.; notice and comment

The Institute shall afford notice and reasonable opportunity for comment to interested parties prior to issuing rules, regulations, guidelines, and instructions under this chapter, and it shall publish in the Federal Register all rules, regulations, guidelines, and instructions.

(Pub. L. 98-620, title II, §203, Nov. 8, 1984, 98 Stat. 3336; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100-690, title VII, §7321(b)(1), Nov. 18, 1988, 102 Stat. 4466; Pub. L. 100-702, title VI, §601, Nov. 19, 1988, 102 Stat. 4652; Pub. L. 102-528, §3(1), Oct. 27, 1992, 106 Stat. 3462.)

AMENDMENTS

1992—Subsec. (f). Pub. L. 102-528 struck out at end “The publication of a substantive rule shall not be made less than thirty days before the effective date of such rule, except as otherwise provided by the Institute for good cause found and published with the rule.”

1988—Subsec. (f). Pub. L. 100-690 and Pub. L. 100-702 made substantially identical amendments, striking out “, at least thirty days prior to their effective date,” after “Federal Register” and inserting sentence at end relating to publication of a substantive rule.

1986—Subsec. (e). Pub. L. 99-514 substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954” wherever appearing, which for purposes of codification was translated as “title 26” thus requiring no change in text.

BATTERED WOMEN’S TESTIMONY

Pub. L. 102-527, Oct. 27, 1992, 106 Stat. 3459, provided that:

“SECTION 1. SHORT TITLE.

“This Act may be cited as the ‘Battered Women’s Testimony Act of 1992’.

“SEC. 2. AUTHORITY OF STATE JUSTICE INSTITUTE.

“The State Justice Institute shall—

“(1) collect nationwide and analyze information regarding—

“(A) the admissibility and quality of expert testimony on the experiences of battered women offered as part of the defense in criminal cases under State law, and

“(B) sources of, and methods to obtain, funds to pay costs incurred to provide such testimony, particularly in cases involving indigent women defendants,

“(2) develop training materials to assist—

“(A) battered women, operators of domestic violence shelters, battered women’s advocates, and attorneys to use such expert testimony in appropriate cases, particularly appropriate cases involving indigent women defendants, and

“(B) individuals with expertise in the experiences of battered women to develop skills appropriate to providing such expert testimony, and

“(3) disseminate such information and such training materials, and provide related technical assistance, to battered women, such operators, such advocates, such attorneys, and such individuals.

“SEC. 3. ADMINISTRATIVE PROVISIONS.

“For purposes of this Act—

“(1) subsections (d) and (e) of section 206 of the State Justice Institute Act of 1984 [42 U.S.C. 10705(d), (e)], and

“(2) subsections (a) and (b) of section 207 of such Act [42 U.S.C. 10706(a), (b)], shall apply in the same manner as such subsections apply with respect to grants and contracts made under such Act [42 U.S.C. 10701 et seq.].

“SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

“There is authorized to be appropriated \$600,000 to carry out this Act.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10712 of this title.

§ 10703. Board of Directors

(a) Appointment and membership

(1) The Institute shall be supervised by a Board of Directors, consisting of eleven voting members to be appointed by the President, by and with the advice and consent of the Senate. The Board shall have both judicial and nonjudicial members, and shall, to the extent practicable, have a membership representing a variety of backgrounds and reflecting participation and interest in the administration of justice.

(2) The Board shall consist of—

(A) six judges, to be appointed in the manner provided in paragraph (3);

(B) one State court administrator, to be appointed in the manner provided in paragraph (3); and

(C) four members from the public sector, no more than two of whom shall be of the same political party, to be appointed in the manner provided in paragraph (4).

(3) The President shall appoint six judges and one State court administrator from a list of candidates submitted to the President by the Conference of Chief Justices. The Conference of Chief Justices shall submit a list of at least fourteen individuals, including judges and State court administrators, whom the Conference considers best qualified to serve on the Board.

Whenever the term of any of the members of the Board described in subparagraphs (A) and (B) terminates and that member is not to be reappointed to a new term, and whenever a vacancy otherwise occurs among those members, the President shall appoint a new member from a list of three qualified individuals submitted to the President by the Conference of Chief Justices. The President may reject any list of individuals submitted by the Conference under this paragraph and, if such a list is so rejected, the President shall request the Conference to submit to him another list of qualified individuals. Prior to consulting with or submitting a list to the President, the Conference of Chief Justices shall obtain and consider the recommendations of all interested organizations and individuals concerned with the administration of justice and the objectives of this chapter.

(4) In addition to those members appointed under paragraph (3), the President shall appoint four members from the public sector to serve on the Board.

(5) The President shall make the initial appointments of members of the Board under this subsection within ninety days after October 1, 1985. In the case of any other appointment of a member, the President shall make the appointment not later than ninety days after the previous term expires or the vacancy occurs, as the case may be. The Conference of Chief Justices shall submit lists of candidates under paragraph (3) in a timely manner so that the appointments can be made within the time periods specified in this paragraph.

(6) The initial members of the Board of Directors shall be the incorporators of the Institute and shall determine the State in which the Institute is to be incorporated.

(b) Term of office

(1) Except as provided in paragraph (2), the term of each voting member of the Board shall be three years. Each member of the Board shall continue to serve until the successor to such member has been appointed and qualified.

(2) Five of the members first appointed by the President shall serve for a term of two years. Any member appointed to serve an unexpired term which has arisen by virtue of the death, disability, retirement, or resignation of a member shall be appointed only for such unexpired term, but shall be eligible for reappointment.

(3) The term of initial members shall commence from the date of the first meeting of the Board, and the term of each member other than an initial member shall commence from the date of termination of the preceding term.

(c) Reappointment

No member shall be reappointed to more than two consecutive terms immediately following such member's initial term.

(d) Compensation; reimbursement for expenses

Members of the Board shall serve without compensation, but shall be reimbursed for actual and necessary expenses incurred in the performance of their official duties.

(e) Status of members of Board as officers and employees of United States

The members of the Board shall not, by reason of such membership, be considered officers or employees of the United States.

(f) Voting rights of Board members; quorum; action of Board on concurrence of majority

Each member of the Board shall be entitled to one vote. A simple majority of the membership shall constitute a quorum for the conduct of business. The Board shall act upon the concurrence of a simple majority of the membership present and voting.

(g) Chairman; initial selection and term of office; subsequent annual election

The Board shall select from among the voting members of the Board a chairman, the first of whom shall serve for a term of three years. Thereafter, the Board shall annually elect a chairman from among its voting members.

(h) Grounds for removal of members

A member of the Board may be removed by a vote of seven members for malfeasance in office, persistent neglect of, or inability to discharge duties, or for any offense involving moral turpitude, but for no other cause.

(i) Quarterly meetings of Board; special meetings

Regular meetings of the Board shall be held quarterly. Special meetings shall be held from time to time upon the call of the chairman, acting at his own discretion or pursuant to the petition of any seven members.

(j) Open meetings

All meetings of the Board, any executive committee of the Board, and any council established in connection with this chapter, shall be open and subject to the requirements and provisions of section 552b of title 5 relating to open meetings.

(k) Duties and functions of Board

In its direction and supervision of the activities of the Institute, the Board shall—

(1) establish policies and develop such programs for the Institute that will further the achievement of its purpose and performance of its functions;

(2) establish policy and funding priorities and issue rules, regulations, guidelines, and instructions pursuant to such priorities;

(3) appoint and fix the duties of the Executive Director of the Institute, who shall serve at the pleasure of the Board and shall be a nonvoting ex officio member of the Board;

(4) present to other Government departments, agencies, and instrumentalities whose programs or activities relate to the administration of justice in the State judiciaries of the United States, the recommendations of the Institute for the improvement of such programs or activities;

(5) consider and recommend to both public and private agencies aspects of the operation of the State courts of the United States considered worthy of special study; and

(6) award grants and enter into cooperative agreements or contracts pursuant to section 10705(a) of this title.

(Pub. L. 98-620, title II, §204, Nov. 8, 1984, 98 Stat. 3337; Pub. L. 102-572, title VIII, §803(a), Oct. 29, 1992, 106 Stat. 4516.)

AMENDMENTS

1992—Subsec. (a)(3). Pub. L. 102-572 substituted “Conference” for “conference” after “whom the” in second sentence.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 804 of title VIII of Pub. L. 102-572 provided that: “The provisions of this title [amending this section and sections 10705 and 10713 of this title] shall take effect on the date of the enactment of this Act [Oct. 29, 1992].”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10702 of this title.

§ 10704. Officers and employees

(a) Duties of Director; appointment and removal of employees; political tests or qualifications prohibited

(1) The Director, subject to general policies established by the Board, shall supervise the activities of persons employed by the Institute and may appoint and remove such employees as he determines necessary to carry out the purposes of the Institute. The Director shall be responsible for the executive and administrative operations of the Institute, and shall perform such duties as are delegated to such Director by the Board and the Institute.

(2) No political test or political qualification shall be used in selecting, appointing, promoting, or taking any other personnel action with respect to any officer, agent, or employee of the Institute, or in selecting or monitoring any grantee, contractor, person, or entity receiving financial assistance under this chapter.

(b) Compensation

Officers and employees of the Institute shall be compensated at rates determined by the Board, but not in excess of the rate of level V of the Executive Schedule specified in section 5316 of title 5.

(c) Status of Institute as department, agency, or instrumentality of Federal Government; authority of Office of Management and Budget

(1) Except as otherwise specifically provided in this chapter, the Institute shall not be considered a department, agency, or instrumentality of the Federal Government.

(2) This chapter does not limit the authority of the Office of Management and Budget to review and submit comments upon the Institute’s annual budget request at the time it is transmitted to the Congress.

(d) Status of officers and employees of Institute as officers and employees of United States

(1) Except as provided in paragraph (2), officers and employees of the Institute shall not be considered officers or employees of the United States.

(2) Officers and employees of the Institute shall be considered officers and employees of the United States solely for the purposes of the following provisions of title 5: Subchapter I of

chapter 81 (relating to compensation for work injuries); chapters 83 and 84 (relating to civil service retirement); chapter 87 (relating to life insurance); and chapter 89 (relating to health insurance). The Institute shall make contributions under the provisions referred to in this subsection at the same rates applicable to agencies of the Federal Government.

(e) Freedom of information requirements

The Institute and its officers and employees shall be subject to the provisions of section 552 of title 5 relating to freedom of information.

(Pub. L. 98-620, title II, §205, Nov. 8, 1984, 98 Stat. 3339; Pub. L. 100-690, title VII, §7321(b)(2), Nov. 18, 1988, 102 Stat. 4466; Pub. L. 100-702, title VI, §602, Nov. 19, 1988, 102 Stat. 4653.)

AMENDMENTS

1988—Subsec. (d)(2). Pub. L. 100-690 and Pub. L. 100-702 amended par. (2) identically, substituting “chapters 83 and 84” for “chapter 83”.

§ 10705. Grants and contracts

(a) Authority of Institute; purposes of grants

The Institute is authorized to award grants and enter into cooperative agreements or contracts, in a manner consistent with subsection (b) of this section, in order to—

(1) conduct research, demonstrations, or special projects pertaining to the purposes described in this chapter, and provide technical assistance and training in support of tests, demonstrations, and special projects;

(2) serve as a clearinghouse and information center, where not otherwise adequately provided, for the preparation, publication, and dissemination of information regarding State judicial systems;

(3) participate in joint projects with other agencies, including the Federal Judicial Center, with respect to the purposes of this chapter;

(4) evaluate, when appropriate, the programs and projects carried out under this chapter to determine their impact upon the quality of criminal, civil, and juvenile justice and the extent to which they have met or failed to meet the purposes and policies of this chapter;

(5) encourage and assist in the furtherance of judicial education;

(6) encourage, assist, and serve in a consulting capacity to State and local justice system agencies in the development, maintenance, and coordination of criminal, civil, and juvenile justice programs and services; and

(7) be responsible for the certification of national programs that are intended to aid and improve State judicial systems.

(b) Priority in making awards; alternative recipients; approval of applications; receipt and administration of funds; accountability

The Institute is empowered to award grants and enter into cooperative agreements or contracts as follows:

(1) The Institute may award grants to or enter into cooperative agreements or contracts with—

(A) State and local courts and their agencies;

(B) national nonprofit organizations controlled by, operating in conjunction with, and serving the judicial branches of State governments; and

(C) national nonprofit organizations for the education and training of judges and support personnel of the judicial branch of State governments.

(2) The Institute may, if the objective can better be served thereby, award grants to or enter into cooperative agreements or contracts with—

(A) other nonprofit organizations with expertise in judicial administration;

(B) institutions of higher education;

(C) individuals, partnerships, firms, or corporations; and

(D) private agencies with expertise in judicial administration.

(3) Upon application by an appropriate State or local agency or institution and if the arrangements to be made by such agency or institution will provide services which could not be provided adequately through nongovernmental arrangements, the Institute may award a grant or enter into a cooperative agreement or contract with a unit of State or local government other than a court.

(4) The Institute may enter into contracts with Federal agencies to carry out the purposes of this chapter.

(5) Each application for funding by a State or local court shall be approved, consistent with State law, by the State's supreme court, or its designated agency or council, which shall receive, administer, and be accountable for all funds awarded by the Institute to such courts.

(c) Permissible uses of funds

Funds available pursuant to grants, cooperative agreements, or contracts awarded under this section may be used—

(1) to assist State and local court systems in establishing appropriate procedures for the selection and removal of judges and other court personnel and in determining appropriate levels of compensation;

(2) to support education and training programs for judges and other court personnel, for the performance of their general duties and for specialized functions, and to support national and regional conferences and seminars for the dissemination of information on new developments and innovative techniques;

(3) to conduct research on alternative means for using judicial and nonjudicial personnel in court decisionmaking activities, to implement demonstration programs to test innovative approaches, and to conduct evaluations of their effectiveness;

(4) to support studies of the appropriateness of¹ efficacy of court organization and financing structures in particular States, and to enable States to implement plans for improved court organization and finance;

(5) to support State court planning and budgeting staffs and to provide technical as-

sistance in resource allocation and service forecasting techniques;

(6) to support studies of the adequacy of court management systems in State and local courts and to implement and evaluate innovative responses to problems of record management, data processing, court personnel management, reporting and transcription of court proceedings, and juror utilization and management;

(7) to collect and compile statistical data and other information on the work of the courts and on the work of other agencies which relate to and affect the work of courts;

(8) to conduct studies of the causes of trial and appellate court delay in resolving cases, and to establish and evaluate experimental programs for reducing case processing time;

(9) to develop and test methods for measuring the performance of judges and courts and to conduct experiments in the use of such measures to improve the functioning of such judges and courts;

(10) to support studies of court rules and procedures, discovery devices, and evidentiary standards, to identify problems with the operation of such rules, procedures, devices, and standards, to devise alternative approaches to better reconcile the requirements of due process with the need for swift and certain justice, and to test the utility of those alternative approaches;

(11) to support studies of the outcomes of cases in selected subject matter areas to identify instances in which the substance of justice meted out by the courts diverges from public expectations of fairness, consistency, or equity, to propose alternative approaches to the resolving of cases in problem areas, and to test and evaluate those alternatives;

(12) to support programs to increase court responsiveness to the needs of citizens through citizen education, improvement of court treatment of witnesses, victims, and jurors, and development of procedures for obtaining and using measures of public satisfaction with court processes to improve court performance;

(13) to test and evaluate experimental approaches to providing increased citizen access to justice, including processes which reduce the cost of litigating common grievances and alternative techniques and mechanisms for resolving disputes between citizens;

(14) conduct² not more than 5 projects at an aggregate cost of not to exceed \$600,000—

(A) to investigate, and carry out research regarding State judicial decisions relating to child custody litigation involving domestic violence;

(B) to develop training curricula to assist State courts to develop an understanding of, and appropriate responses to, child custody litigation involving domestic violence; and

(C) to disseminate the results of the investigation and research carried out under subparagraph (A), and the curricula developed under subparagraph (B), to State courts; and

(15) to carry out such other programs, consistent with the purposes of this chapter, as may be deemed appropriate by the Institute.

¹ So in original. Probably should be "and".

² So in original. Probably should be "to conduct".

(d) Matching fund requirements

The Institute shall incorporate in any grant, cooperative agreement, or contract awarded under this section in which a State or local court (or other unit of State or local government) is the recipient, the requirement that the recipient provide a match, from private or public sources, not less than 50 per centum of the total cost of such grant, cooperative agreement, or contract, except that such requirement may be waived in exceptionally rare circumstances upon the approval of the chief justice of the highest court of the State and a majority of the Board of Directors.

(e) Compliance monitoring and evaluation by Institute

The Institute shall monitor and evaluate, or provide for independent evaluations of, programs supported in whole or in part under this chapter to ensure that the provisions of this chapter, the bylaws of the Institute, and the applicable rules, regulations, and guidelines promulgated pursuant to this chapter, are carried out.

(f) Independent study of financial and technical assistance programs

The Institute shall provide for an independent study of the financial and technical assistance programs under this chapter.

(Pub. L. 98-620, title II, §206, Nov. 8, 1984, 98 Stat. 3340; Pub. L. 100-690, title VII, §7321(b)(3), (4), Nov. 18, 1988, 102 Stat. 4466, 4467; Pub. L. 100-702, title VI, §§603, 604, Nov. 19, 1988, 102 Stat. 4653; Pub. L. 102-528, §§2, 3(2), Oct. 27, 1992, 106 Stat. 3461, 3462; Pub. L. 102-572, title VIII, §§802, 803(b), Oct. 29, 1992, 106 Stat. 4515, 4516.)

AMENDMENTS

1992—Subsec. (b)(1). Pub. L. 102-572, §802(1), substituted “may award grants to or enter into cooperative agreements or contracts” for “shall give priority to grants, cooperative agreements, or contracts” in introductory provisions and substituted semicolon for comma in subpar. (A).

Subsec. (b)(2). Pub. L. 102-572, §802(2), inserted “to” after “award grants”.

Subsec. (b)(3). Pub. L. 102-572, §802(3), added par. (3) and struck out former par. (3) which read as follows: “Upon application by an appropriate Federal, State, or local agency or institution and if the arrangements to be made by such agency or institution will provide services which could not be provided adequately through nongovernmental arrangements, the Institute may award a grant or enter into a cooperative agreement or contract with a unit of Federal, State, or local government other than a court.”

Subsec. (b)(4), (5). Pub. L. 102-572, §802(4), (5), added par. (4) and redesignated former par. (4) as (5).

Subsec. (c)(3). Pub. L. 102-528, §3(2), struck out “judicial and” before “nonjudicial” the second place appearing.

Subsec. (c)(4) to (6). Pub. L. 102-528, §3(2)(B), (C), added par. (4) and redesignated former pars. (4) and (5) as (5) and (6), respectively. Former par. (6) redesignated (7).

Subsec. (c)(7). Pub. L. 102-572, §803(b), substituted “effect” for “effect”.

Pub. L. 102-528, §3(2)(B), redesignated par. (6) as (7). Former par. (7) redesignated (8).

Subsec. (c)(8) to (12). Pub. L. 102-528, §3(2)(B), redesignated pars. (7) to (11) as (8) to (12), respectively. Former par. (12) redesignated (13).

Subsec. (c)(13). Pub. L. 102-528, §3(2)(B), redesignated par. (12) as (13). Former par. (13) redesignated (14).

Pub. L. 102-528, §2, added par. (13) and redesignated former par. (13) as (14).

Subsec. (c)(14). Pub. L. 102-528, §3(2)(B), redesignated par. (13) as (14). Former par. (14) redesignated (15).

Pub. L. 102-528, §2, redesignated par. (13) as (14).

Subsec. (c)(15). Pub. L. 102-528, §3(2)(B), redesignated par. (14) as (15).

1988—Subsec. (c)(3). Pub. L. 100-702, §603(1), inserted “judicial and” before “nonjudicial”.

Pub. L. 100-690, §7321(b)(3)(A), inserted “judicial and” before “nonjudicial”.

Subsec. (c)(4) to (15). Pub. L. 100-702, §603(2), (3), which directed the striking out of par. (4) and redesignation of pars. (5) to (15) as (4) to (14), respectively, was executed by striking out par. (4) and redesignating pars. (5) to (14) as (4) to (13), respectively, in view of the intervening redesignation of pars. (5) to (15) as (4) to (14), respectively, by Pub. L. 100-690, §7321(b)(3)(C). See below. Prior to amendment, par. (4) read as follows: “to support studies of the appropriateness and efficacy of court organizations and financing structures in particular States, and to enable States to implement plans for improved court organization and finance;”.

Pub. L. 100-690, §7321(b)(3)(B), (C), redesignated pars. (5) to (15) as (4) to (14), respectively, and struck out former par. (4) which read as follows: “to assist State and local courts in meeting requirements of Federal law applicable to recipients of Federal funds;”.

Subsec. (d). Pub. L. 100-702, §604, which directed the substitution of “court (or other unit of State or local government)” for “judicial system”, could not be executed due to prior amendment by Pub. L. 100-690, §7321(b)(4). See below.

Pub. L. 100-690, §7321(b)(4), substituted “court (or other unit of State or local government)” for “judicial system”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10703 of this title.

§ 10706. Limitations on grants and contracts**(a) Duties of Institute**

With respect to grants made and contracts or cooperative agreements entered into under this chapter, the Institute shall—

(1) ensure that no funds made available to recipients by the Institute shall be used at any time, directly or indirectly, to influence the issuance, amendment, or revocation of any Executive order or similar promulgation by any Federal, State, or local agency, or to undertake to influence the passage or defeat of any legislation or constitutional amendment by the Congress of the United States, or by any State or local legislative body, or any State proposal by initiative petition, or of any referendum, unless a governmental agency, legislative body, a committee, or a member thereof—

(A) requests personnel of the recipients to testify, draft, or review measures or to make representations to such agency, body, committee, or member; or

(B) is considering a measure directly affecting the activities under this chapter of the recipient or the Institute; and

(2) ensure all personnel engaged in grant, cooperative agreement or contract assistance activities supported in whole or part by the Institute refrain, while so engaged, from any partisan political activity.

(b) Use of funds for training programs for advocacy of nonjudicial public policies or encouraging nonjudicial political activities

No funds made available by the Institute under this chapter, either by grant, cooperative agreement, or contract, may be used to support or conduct training programs for the purpose of advocating particular nonjudicial public policies or encouraging nonjudicial political activities.

(c) Authority coextensive with appropriation Acts

The authorization to enter into cooperative agreements, contracts or any other obligation under this chapter shall be effective only to the extent, and in such amounts, as are provided in advance in appropriation Acts.

(d) Prohibited uses of funds

To ensure that funds made available under this chapter are used to supplement and improve the operation of State courts, rather than to support basic court services, funds shall not be used—

- (1) to supplant State or local funds currently supporting a program or activity; or
- (2) to construct court facilities or structures, except to remodel existing facilities to demonstrate new architectural or technological techniques, or to provide temporary facilities for new personnel or for personnel involved in a demonstration or experimental program.

(Pub. L. 98-620, title II, §207, Nov. 8, 1984, 98 Stat. 3342; Pub. L. 100-702, title VI, §605, Nov. 19, 1988, 102 Stat. 4653.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this title", except in subsec. (d) where it was in the original "this Act", meaning title II of Pub. L. 98-620, Nov. 8, 1984, 98 Stat. 336, known as the State Justice Institute Act of 1984, which enacted this chapter and amended section 620 of Title 28, Judiciary and Judicial Procedure. For complete classification of title II to the Code, see Short Title note set out under section 17101 of this title and Tables.

AMENDMENTS

1988—Subsec. (a)(3). Pub. L. 100-702 struck out par. (3) which read as follows: "ensure that each recipient that files with the Institute a timely application for refunding is provided interim funding necessary to maintain its current level of activities until—

“(A) the application for refunding has been approved and funds pursuant thereto received; or

“(B) the application for refunding has been finally denied in accordance with section 10708 of this title.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10712 of this title.

§ 10707. Restrictions on activities of the Institute

(a) Litigation; interference with independence of State judiciary; funding of State judicial system activities other than pursuant to this chapter; legislative lobbying

The Institute shall not—

- (1) participate in litigation unless the Institute or a recipient of the Institute is a party, and shall not participate on behalf of any client other than itself;

- (2) interfere with the independent nature of any State judicial system or allow financial assistance to be used for the funding of regular judicial and administrative activities of any State judicial system other than pursuant to the terms of any grant, cooperative agreement, or contract with the Institute, consistent with the requirements of this chapter; or

- (3) undertake to influence the passage or defeat of any legislation by the Congress of the United States or by any State or local legislative body, except that personnel of the Institute may testify or make other appropriate communication—

- (A) when formally requested to do so by a legislative body, committee, or a member thereof;

- (B) in connection with legislation or appropriations directly affecting the activities of the Institute; or

- (C) in connection with legislation or appropriations dealing with improvements in the State judiciary, consistent with the provisions of this chapter.

(b) Issuance of shares of stock; declaration of dividends; compensation for services; reimbursement for expenses; political activities

- (1) The Institute shall have no power to issue any shares of stock, or to declare or pay any dividends.

- (2) No part of the income or assets of the Institute shall enure to the benefit of any director, officer, or employee, except as reasonable compensation for services or reimbursement for expenses.

- (3) Neither the Institute nor any recipient shall contribute or make available Institute funds or program personnel or equipment to any political party or association, or the campaign of any candidate for public or party office.

- (4) The Institute shall not contribute or make available Institute funds or program personnel or equipment for use in advocating or opposing any ballot measure, initiative, or referendum.

(c) Identification of Institute with political activities

Officers and employees of the Institute or of recipients shall not at any time intentionally identify the Institute or the recipient with any partisan or nonpartisan political activity associated with a political party or association, or the campaign of any candidate for public or party office.

(Pub. L. 98-620, title II, §208, Nov. 8, 1984, 98 Stat. 3343.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10712 of this title.

§ 10708. Administrative provisions

- (a) The Institute shall prescribe procedures to ensure that financial assistance under this chapter shall not be suspended unless the grantee, contractor, person, or entity receiving financial assistance under this chapter has been given reasonable notice and opportunity to show cause why such actions should not be taken.

- (b) Except as provided by Federal law other than this chapter, no officer or employee of the

Institute, and no recipient of assistance under this chapter, may use or reveal any research or statistical information furnished under this chapter by any person and identifiable to any specific private person for any purpose other than the purpose for which the information was obtained in accordance with this chapter. Such information and copies thereof shall be immune from legal process, and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceedings.

(Pub. L. 98-620, title II, §209, Nov. 8, 1984, 98 Stat. 3344; Pub. L. 100-702, title VI, §606, Nov. 19, 1988, 102 Stat. 4653.)

AMENDMENTS

1988—Pub. L. 100-702 substituted “Administrative provisions” for “Special procedures” in section catchline, and amended text generally, changing structure of section from a single unlettered paragraph to one consisting of subsecs. (a) and (b).

§ 10709. Presidential coordination

The President may, to the extent not inconsistent with any other applicable law, direct that appropriate support functions of the Federal Government may be made available to the Institute in carrying out its functions under this chapter.

(Pub. L. 98-620, title II, §210, Nov. 8, 1984, 98 Stat. 3344.)

§ 10710. Records and reports

(a) Reports

The Institute is authorized to require such reports as it deems necessary from any recipient with respect to activities carried out pursuant to this chapter.

(b) Records

The Institute is authorized to prescribe the keeping of records with respect to funds provided by any grant, cooperative agreement, or contract under this chapter and shall have access to such records at all reasonable times for the purpose of ensuring compliance with such grant, cooperative agreement, or contract or the terms and conditions upon which financial assistance was provided.

(c) Submission of copies of reports to recipients; maintenance in principal office of Institute; availability for public inspection; furnishing of copies to interested parties

Copies of all reports pertinent to the evaluation, inspection, or monitoring of any recipient shall be submitted on a timely basis to such recipient, and shall be maintained in the principal office of the Institute for a period of at least five years after such evaluation, inspection, or monitoring. Such reports shall be available for public inspection during regular business hours, and copies shall be furnished, upon request, to interested parties upon payment of such reasonable fees as the Institute may establish.

(d) Funds accounted for and reported as receipts and disbursements separate and distinct from Federal funds

Non-Federal funds received by the Institute, and funds received for projects funded in part by

the Institute or by any recipient from a source other than the Institute, shall be accounted for and reported as receipts and disbursements separate and distinct from Federal funds.

(Pub. L. 98-620, title II, §211, Nov. 8, 1984, 98 Stat. 3344.)

§ 10711. Audits

(a) Time and place of audits; standards; availability of books, accounts, facilities, etc., to auditors; filing of report and availability for public inspection

(1) The accounts of the Institute shall be audited annually. Such audits shall be conducted in accordance with generally accepted auditing standards by independent certified public accountants who are certified by a regulatory authority of the jurisdiction in which the audit is undertaken.

(2) The audits shall be conducted at the place or places where the accounts of the Institute are normally kept. All books, accounts, financial records, reports, files, and other papers or property belonging to or in use by the Institute and necessary to facilitate the audits shall be made available to the person or persons conducting the audits. The full facilities for verifying transactions with the balances and securities held by depositories, fiscal agents, and custodians shall be afforded to any such person.

(3) The report of the annual audit shall be filed with the General Accounting Office and shall be available for public inspection during business hours at the principal office of the Institute.

(b) Additional audits; requirements; reports and recommendations to Congress and Attorney General

(1) In addition to the annual audit, the financial transactions of the Institute for any fiscal year during which Federal funds are available to finance any portion of its operations may be audited by the General Accounting Office in accordance with such rules and regulations as may be prescribed by the Comptroller General of the United States.

(2) Any such audit shall be conducted at the place or places where accounts of the Institute are normally kept. The representatives of the General Accounting Office shall have access to all books, accounts, financial records, reports, files, and other papers or property belonging to or in use by the Institute and necessary to facilitate the audit. The full facilities for verifying transactions with the balances and securities held by depositories, fiscal agents, and custodians shall be afforded to such representatives. All such books, accounts, financial records, reports, files, and other papers or property of the Institute shall remain in the possession and custody of the Institute throughout the period beginning on the date such possession or custody commences and ending three years after such date, but the General Accounting Office may require the retention of such books, accounts, financial records, reports, files, and other papers or property for a longer period under section 3523(c) of title 31.

(3) A report of such audit shall be made by the Comptroller General to the Congress and to the

Attorney General, together with such recommendations with respect thereto as the Comptroller General deems advisable.

(c) Annual audits by Institute or recipients; reports; submission of copies to Comptroller General; inspection of books, accounts, etc.; availability of audit reports for public inspection

(1) The Institute shall conduct, or require each recipient to provide for, an annual fiscal audit. The report of each such audit shall be maintained for a period of at least five years at the principal office of the Institute.

(2) The Institute shall submit to the Comptroller General of the United States copies of such reports, and the Comptroller General may, in addition, inspect the books, accounts, financial records, files, and other papers or property belonging to or in use by such grantee, contractor, person, or entity, which relate to the disposition or use of funds received from the Institute. Such audit reports shall be available for public inspection during regular business hours, at the principal office of the Institute.

(Pub. L. 98-620, title II, §212, Nov. 8, 1984, 98 Stat. 3345.)

§ 10712. Report by Attorney General

Not later than October 1, 2002, the Attorney General, in consultation with the Federal Judicial Center, shall transmit to the Committees on the Judiciary of the Senate and the House of Representatives a report on the effectiveness of the Institute in carrying out the duties specified in section 10702(b) of this title. Such report shall include an assessment of the cost effectiveness of the program as a whole and, to the extent practicable, of individual grants, an assessment of whether the restrictions and limitations specified in sections 10706 and 10707 of this title have been respected, and such recommendations as the Attorney General, in consultation with the Federal Judicial Center, deems appropriate.

(Pub. L. 98-620, title II, §213, Nov. 8, 1984, 98 Stat. 3346; Pub. L. 107-179, §1, May 20, 2002, 116 Stat. 580.)

AMENDMENTS

2002—Pub. L. 107-179 substituted “Not later than October 1, 2002” for “On October 1, 1987”.

§ 10713. Authorization of appropriations

There are authorized to be appropriated to carry out the purposes of this chapter \$20,000,000 for fiscal year 1993, \$20,000,000 for fiscal year 1994, \$25,000,000 for fiscal year 1995, and \$25,000,000 for fiscal year 1996. Amounts appropriated for each such year are to remain available until expended.

(Pub. L. 98-620, title II, §215, Nov. 8, 1984, 98 Stat. 3346; Pub. L. 100-690, title VII, §7321(a), Nov. 18, 1988, 102 Stat. 4466; Pub. L. 100-702, title VI, §607, Nov. 19, 1988, 102 Stat. 4654; Pub. L. 101-162, title V, Nov. 21, 1989, 103 Stat. 1028; Pub. L. 102-572, title VIII, §801, Oct. 29, 1992, 106 Stat. 4515.)

AMENDMENTS

1992—Pub. L. 102-572 amended section generally. Prior to amendment, section authorized appropriations of

\$15,000,000 for each of fiscal years 1989, 1990, 1991, and 1992.

1989—Pub. L. 101-162 repealed Pub. L. 100-702, §607, and provided that Pub. L. 100-690, §7321(a), is revived, see 1988 Amendment notes below.

1988—Pub. L. 100-702 amended section generally, substituting appropriations authorization of \$15,000,000 for fiscal years 1989 and 1990, such amounts to remain available until expended for authorization of \$15,000,000 for fiscal years 1989, 1990, 1991, and 1992.

Pub. L. 100-690 amended section generally, substituting appropriations authorization of \$15,000,000 for fiscal years 1989 through 1992 for authorization of \$13,000,000 for fiscal year 1986 and \$15,000,000 for fiscal years 1987 and 1988.

CHAPTER 114—PROTECTION AND ADVOCACY FOR MENTALLY ILL INDIVIDUALS

SUBCHAPTER I—PROTECTION AND ADVOCACY SYSTEMS

PART A—ESTABLISHMENT OF SYSTEMS

- Sec. 10801. Congressional findings and statement of purpose.
- 10802. Definitions.
- 10803. Allotments.
- 10804. Use of allotments.
 - (a) Contracts.
 - (b) Obligation of allotments; technical assistance and training.
 - (c) Representation of individuals with mental illness.
 - (d) Definition for purposes of representation of individuals with mental illness; priority.
- 10805. System requirements.
 - (a) Authority; independent status; access to facilities and records; advisory council; annual report; grievance procedure.
 - (b) Annual survey report; plan of corrections.
 - (c) Governing authority.
- 10806. Access to records.
- 10807. Legal actions.

PART B—ADMINISTRATIVE PROVISIONS

- 10821. Applications.
 - (a) Submission for allotment; contents.
 - (b) Satisfaction of requirements regarding trained staff.
 - (c) Duration of applications and assurances.
- 10822. Allotment formula and reallootments.
- 10823. Payments under allotments.
- 10824. Reports by Secretary.
- 10825. Technical assistance.
- 10826. Administration.
 - (a) In general.
 - (b) Regulations.
- 10827. Authorization of appropriations.

SUBCHAPTER II—RESTATEMENT OF BILL OF RIGHTS FOR MENTAL HEALTH PATIENTS

- 10841. Restatement of bill of rights.

SUBCHAPTER III—CONSTRUCTION

- 10851. Construction of subchapters I and II; “individual with mental illness” defined.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 290bb-31, 290ii-1, 290ii-2, 1396r, 3032i, 3058g, 14404, 15043 of this title; title 29 sections 794e, 3002.

SUBCHAPTER I—PROTECTION AND ADVOCACY SYSTEMS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 10841, 10851 of this title.

PART A—ESTABLISHMENT OF SYSTEMS

§ 10801. Congressional findings and statement of purpose

(a) The Congress finds that—

(1) individuals with mental illness are vulnerable to abuse and serious injury;

(2) family members of individuals with mental illness play a crucial role in being advocates for the rights of individuals with mental illness where the individuals are minors, the individuals are legally competent and choose to involve the family members, and the individuals are legally incompetent and the legal guardians, conservators, or other legal representatives are members of the family;

(3) individuals with mental illness are subject to neglect, including lack of treatment, adequate nutrition, clothing, health care, and adequate discharge planning; and

(4) State systems for monitoring compliance with respect to the rights of individuals with mental illness vary widely and are frequently inadequate.

(b) The purposes of this chapter are—

(1) to ensure that the rights of individuals with mental illness are protected; and

(2) to assist States to establish and operate a protection and advocacy system for individuals with mental illness which will—

(A) protect and advocate the rights of such individuals through activities to ensure the enforcement of the Constitution and Federal and State statutes; and

(B) investigate incidents of abuse and neglect of individuals with mental illness if the incidents are reported to the system or if there is probable cause to believe that the incidents occurred.

(Pub. L. 99-319, title I, §101, May 23, 1986, 100 Stat. 478; Pub. L. 102-173, §§3, 10(2), Nov. 27, 1991, 105 Stat. 1217, 1219.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original “this Act”, meaning Pub. L. 99-319, May 23, 1986, 100 Stat. 478, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note below and Tables.

AMENDMENTS

1991—Subsec. (a). Pub. L. 102-173, §10(2), substituted “individuals with mental illness” for “mentally ill individuals” in three places.

Subsec. (a)(2) to (4). Pub. L. 102-173, §3, added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

Subsec. (b). Pub. L. 102-173, §10(2), substituted “individuals with mental illness” for “mentally ill individuals” in three places.

SHORT TITLE OF 1991 AMENDMENT

Section 1 of Pub. L. 102-173 provided that: “This Act [amending this section and sections 10802 to 10807, 10821, 10824, 10826, 10827, 10841, and 10851 of this title] may be cited as the ‘Protection and Advocacy for Mentally Ill Individuals Amendments Act of 1991’.”

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100-509, §1, Oct. 20, 1988, 102 Stat. 2543, provided that: “This Act [amending sections 10802, 10804 to 10806, 10821, 10822, 10825, and 10827 of this title and en-

acting a provision set out as a note under section 10827 of this title] may be cited as the ‘Protection and Advocacy for Mentally Ill Individuals Amendments Act of 1988’.”

SHORT TITLE

Pub. L. 99-319, §1, May 23, 1986, 100 Stat. 478, as amended by Pub. L. 106-310, div. B, title XXXII, §3206(a), Oct. 17, 2000, 114 Stat. 1193, provided that: “This Act [enacting this chapter and section 247a of this title and enacting provisions set out as a note below] may be cited as the ‘Protection and Advocacy for Individuals with Mental Illness Act’.”

SUPERSEDITION OF BALANCED BUDGET PROVISIONS

Section 402 of Pub. L. 99-319 provided that: “This Act [see Short Title note above] shall not be construed as superseding any of the balanced budget provisions set forth in section 3(7) of the Congressional Budget and Impoundment Control Act of 1974 [2 U.S.C. 622(7)].”

§ 10802. Definitions

For purposes of this subchapter:

(1) The term “abuse” means any act or failure to act by an employee of a facility rendering care or treatment which was performed, or which was failed to be performed, knowingly, recklessly, or intentionally, and which caused, or may have caused, injury or death to a¹ individual with mental illness, and includes acts such as—

(A) the rape or sexual assault of a¹ individual with mental illness;

(B) the striking of a¹ individual with mental illness;

(C) the use of excessive force when placing a¹ individual with mental illness in bodily restraints; and

(D) the use of bodily or chemical restraints on a¹ individual with mental illness which is not in compliance with Federal and State laws and regulations.

(2) The term “eligible system” means the system established in a State to protect and advocate the rights of persons with developmental disabilities under subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 [42 U.S.C. 15041 et seq.].

(3) The term “facilities” may include, but need not be limited to, hospitals, nursing homes, community facilities for individuals with mental illness, board and care homes, homeless shelters, and jails and prisons.

(4) The term “individual with mental illness” means, except as provided in section 10804(d) of this title, an individual—

(A) who has a significant mental illness or emotional impairment, as determined by a mental health professional qualified under the laws and regulations of the State; and

(B)(i)(I) who is an inpatient or resident in a facility rendering care or treatment, even if the whereabouts of such inpatient or resident are unknown;

(II) who is in the process of being admitted to a facility rendering care or treatment, including persons being transported to such a facility; or²

(III) who is involuntarily confined in a municipal detention facility for reasons other

¹ So in original. Probably should be “an”.

² So in original.

than serving a sentence resulting from conviction for a criminal offense; or

(ii) who satisfies the requirements of subparagraph (A) and lives in a community setting, including their own home.

(5) The term “neglect” means a negligent act or omission by any individual responsible for providing services in a facility rendering care or treatment which caused or may have caused injury or death to a¹ individual with mental illness or which placed a¹ individual with mental illness at risk of injury or death, and includes an act or omission such as the failure to establish or carry out an appropriate individual program plan or treatment plan for a¹ individual with mental illness, the failure to provide adequate nutrition, clothing, or health care to a¹ individual with mental illness, or the failure to provide a safe environment for a¹ individual with mental illness, including the failure to maintain adequate numbers of appropriately trained staff.

(6) The term “Secretary” means the Secretary of Health and Human Services.

(7) The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(8) The term “American Indian consortium” means a consortium established under part C of the Developmental Disabilities Assistance and Bill of Rights Act³ (42 U.S.C. 6042 et seq.).

(Pub. L. 99-319, title I, §102, May 23, 1986, 100 Stat. 478; Pub. L. 100-509, §3, Oct. 20, 1988, 102 Stat. 2543; Pub. L. 102-173, §§4, 10(1), Nov. 27, 1991, 105 Stat. 1217, 1219; Pub. L. 106-310, div. B, title XXXII, §3206(b), Oct. 17, 2000, 114 Stat. 1194; Pub. L. 106-402, title IV, §401(b)(13)(A), Oct. 30, 2000, 114 Stat. 1739.)

REFERENCES IN TEXT

The Developmental Disabilities Assistance and Bill of Rights Act of 2000, referred to in par. (2), is Pub. L. 106-402, Oct. 30, 2000, 114 Stat. 1677. Subtitle C of the Act probably means subtitle C of title I of the Act, which is classified generally to part C (§15041 et seq.) of subchapter I of chapter 144 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 15001 of this title and Tables.

The Developmental Disabilities Assistance and Bill of Rights Act, referred to in par. (8), is title I of Pub. L. 88-164, as added by Pub. L. 98-527, §2, Oct. 19, 1984, 98 Stat. 2662, as amended, which was repealed by Pub. L. 106-402, title IV, §401(a), Oct. 30, 2000, 114 Stat. 1737. Part C of the Act was classified generally to subchapter III (§6041 et seq.) of chapter 75 of this title. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2000—Par. (2). Pub. L. 106-402 substituted “subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000” for “part C of the Developmental Disabilities Assistance and Bill of Rights Act”.

Par. (4). Pub. L. 106-310, §3206(b)(1)(A), inserted “, except as provided in section 10804(d) of this title,” after “means” in introductory provisions.

Par. (4)(B). Pub. L. 106-310, §3206(b)(1)(B), designated existing provisions as cl. (i), redesignated former cls. (i) to (iii) as subcls. (I) to (III), respectively, of cl. (i), and added cl. (ii).

³ See References in Text note below.

Par. (8). Pub. L. 106-310, §3206(b)(2), added par. (8).

1991—Par. (1). Pub. L. 102-173, §10(1), substituted “individual with mental illness” for “mentally ill individual” wherever appearing.

Pars. (3) to (7). Pub. L. 102-173 added par. (3), redesignated former pars. (3) to (6) as (4) to (7), respectively, and substituted “individual with mental illness” for “mentally ill individual” wherever appearing in pars. (4) and (5).

1988—Par. (1). Pub. L. 100-509, §3(1), inserted “or death” after “caused, injury”.

Par. (3)(B). Pub. L. 100-509, §3(2), designated existing provisions as cl. (i), substituted “, even if the whereabouts of such inpatient or resident are unknown;” for period at end, and added cls. (ii) and (iii).

Par. (4). Pub. L. 100-509, §3(3), inserted “or death” after “injury” in two places and inserted before period at end “, including the failure to maintain adequate numbers of appropriately trained staff”.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 290ii-1, 10804, 10851 of this title; title 29 section 794e.

§ 10803. Allotments

The Secretary shall make allotments under this subchapter to eligible systems to establish and administer systems—

(1) which meet the requirements of section 10805 of this title; and

(2) which are designed to—

(A) protect and advocate the rights of individuals with mental illness; and

(B) investigate incidents of abuse and neglect of individuals with mental illness if the incidents are reported to the system or if there is probable cause to believe that the incidents occurred.

(Pub. L. 99-319, title I, §103, May 23, 1986, 100 Stat. 479; Pub. L. 102-173, §10(2), Nov. 27, 1991, 105 Stat. 1219.)

AMENDMENTS

1991—Par. (2). Pub. L. 102-173 substituted “individuals with mental illness” for “mentally ill individuals” in two places.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10805, 10822 of this title.

§ 10804. Use of allotments

(a) Contracts

(1) An eligible system may use its allotment under this subchapter to enter into contracts with State agencies and nonprofit organizations which operate throughout the State. In order to be eligible for a contract under this paragraph—

(A) such an agency shall be independent of any agency which provides treatment or services (other than advocacy services) to individuals with mental illness; and

(B) such an agency or organization shall have the capacity to protect and advocate the rights of individuals with mental illness.

(2) In carrying out paragraph (1), an eligible system should consider entering into contracts

with organizations including, in particular, groups run by individuals who have received or are receiving mental health services, or the family members of such individuals, which,¹ provide protection or advocacy services to individuals with mental illness.

(b) Obligation of allotments; technical assistance and training

(1) If an eligible system is a public entity, the government of the State in which the system is located may not require the system to obligate more than 5 percent of its allotment under this subchapter in any fiscal year for administrative expenses.

(2) An eligible system may not use more than 10 percent of any allotment under this subchapter for any fiscal year for the costs of providing technical assistance and training to carry out this subchapter.

(c) Representation of individuals with mental illness

An eligible system may use its allotment under this subchapter to provide representation to individuals with mental illness in Federal facilities who request representation by the eligible system. Representatives of such individuals from such system shall be accorded all the rights and authority accorded to other representatives of residents of such facilities pursuant to State law and other Federal laws.

(d) Definition for purposes of representation of individuals with mental illness; priority

The definition of "individual with a mental illness" contained in section 10802(4)(B)(iii) of this title shall apply, and thus an eligible system may use its allotment under this subchapter to provide representation to such individuals, only if the total allotment under this subchapter for any fiscal year is \$30,000,000 or more, and in such case, an eligible system must give priority to representing persons with mental illness as defined in subparagraphs (A) and (B)(i) of section 10802(4) of this title.

(Pub. L. 99-319, title I, §104, May 23, 1986, 100 Stat. 479; Pub. L. 100-509, §7(a), (b)(1), Oct. 20, 1988, 102 Stat. 2544; Pub. L. 102-173, §§5, 10(2), Nov. 27, 1991, 105 Stat. 1217, 1219; Pub. L. 106-310, div. B, title XXXII, §3206(c), Oct. 17, 2000, 114 Stat. 1194.)

AMENDMENTS

2000—Subsec. (d). Pub. L. 106-310 added subsec. (d).

1991—Subsec. (a). Pub. L. 102-173, §10(2), substituted "individuals with mental illness" for "mentally ill individuals" in three places.

Subsec. (c). Pub. L. 102-173, §5, added subsec. (c).

1988—Subsec. (a)(2). Pub. L. 100-509, §7(a), substituted "including, in particular, groups run by individuals who have received or are receiving mental health services, or the family members of such individuals, which" for "which, on May 23, 1986".

Subsec. (b)(2). Pub. L. 100-509, §7(b)(1), substituted "10" for "5".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10802, 10807, 10821 of this title.

§ 10805. System requirements

(a) Authority; independent status; access to facilities and records; advisory council; annual report; grievance procedure

A system established in a State under section 10803 of this title to protect and advocate the rights of individuals with mental illness shall—

(1) have the authority to—

(A) investigate incidents of abuse and neglect of individuals with mental illness if the incidents are reported to the system or if there is probable cause to believe that the incidents occurred;

(B) pursue administrative, legal, and other appropriate remedies to ensure the protection of individuals with mental illness who are receiving care or treatment in the State; and

(C) pursue administrative, legal, and other remedies on behalf of an individual who—

(i) was a¹ individual with mental illness;

and

(ii) is a resident of the State,

but only with respect to matters which occur within 90 days after the date of the discharge of such individual from a facility providing care or treatment;

(2) be independent of any agency in the State which provides treatment or services (other than advocacy services) to individuals with mental illness;

(3) have access to facilities in the State providing care or treatment;

(4) in accordance with section 10806 of this title, have access to all records of—

(A) any individual who is a client of the system if such individual, or the legal guardian, conservator, or other legal representative of such individual, has authorized the system to have such access;

(B) any individual (including an individual who has died or whose whereabouts are unknown)—

(i) who by reason of the mental or physical condition of such individual is unable to authorize the system to have such access;

(ii) who does not have a legal guardian, conservator, or other legal representative, or for whom the legal guardian is the State; and

(iii) with respect to whom a complaint has been received by the system or with respect to whom as a result of monitoring or other activities (either of which result from a complaint or other evidence) there is probable cause to believe that such individual has been subject to abuse or neglect; and

(C) any individual with a mental illness, who has a legal guardian, conservator, or other legal representative, with respect to whom a complaint has been received by the system or with respect to whom there is probable cause to believe the health or safety of the individual is in serious and immediate jeopardy, whenever—

¹ So in original. The comma probably should not appear.

¹ So in original. Probably should be "an".

(i) such representative has been contacted by such system upon receipt of the name and address of such representative;

(ii) such system has offered assistance to such representative to resolve the situation; and

(iii) such representative has failed or refused to act on behalf of the individual;

(5) have an arrangement with the Secretary and the agency of the State which administers the State plan under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] for the furnishing of the information required by subsection (b) of this section;

(6) establish an advisory council—

(A) which will advise the system on policies and priorities to be carried out in protecting and advocating the rights of individuals with mental illness;

(B) which shall include attorneys, mental health professionals, individuals from the public who are knowledgeable about mental illness, a provider of mental health services, individuals who have received or are receiving mental health services, and family members of such individuals, and at least 60 percent the membership of which shall be comprised of individuals who have received or are receiving mental health services or who are family members of such individuals; and

(C) which shall be chaired by an individual who has received or is receiving mental health services or who is a family member of such an individual;

(7) on January 1, 1987, and January 1 of each succeeding year, prepare and transmit to the Secretary and the head of the State mental health agency of the State in which the system is located a report describing the activities, accomplishments, and expenditures of the system during the most recently completed fiscal year, including a section prepared by the advisory council that describes the activities of the council and its assessment of the operations of the system;

(8) on an annual basis, provide the public with an opportunity to comment on the priorities established by, and the activities of, the system;

(9) establish a grievance procedure for clients or prospective clients of the system to assure that individuals with mental illness have full access to the services of the system and for individuals who have received or are receiving mental health services, family members of such individuals with mental illness, or representatives of such individuals or family members to assure that the eligible system is operating in compliance with the provisions of this subchapter and subchapter III of this chapter; and

(10) not use allotments provided to a system in a manner inconsistent with section 14404 of this title.

(b) Annual survey report; plan of corrections

The Secretary and the agency of a State which administers its State plan under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] shall provide the eligible system of the State with a

copy of each annual survey report and plan of corrections for cited deficiencies made pursuant to titles XVIII and XIX of the Social Security Act [42 U.S.C. 1395 et seq., 1396 et seq.] with respect to any facility rendering care or treatment to individuals with mental illness in the State in which such system is located. A report or plan shall be made available within 30 days after the completion of the report or plan.

(c) Governing authority

(1)(A) Each system established in a State, through allotments received under section 10803 of this title, to protect and advocate the rights of individuals with mental illness shall have a governing authority.

(B) In States in which the governing authority is organized as a private non-profit entity with a multi-member governing board, or a public system with a multi-member governing board, such governing board shall be selected according to the policies and procedures of the system. The governing board shall be composed of—

(i) members (to be selected no later than October 1, 1990) who broadly represent or are knowledgeable about the needs of the clients served by the system; and

(ii) in the case of a governing authority organized as a private non-profit entity, members who broadly represent or are knowledgeable about the needs of the clients served by the system including the chairperson of the advisory council of such system.

As used in this subparagraph, the term “members who broadly represent or are knowledgeable about the needs of the clients served by the system” shall be construed to include individuals who have received or are receiving mental health services and family members of such individuals.

(2) The governing authority established under paragraph (1) shall—

(A) be responsible for the planning, design, implementation, and functioning of the system; and

(B) consistent with subparagraph (A), jointly develop the annual priorities of the system with the advisory council.

(Pub. L. 99-319, title I, §105, May 23, 1986, 100 Stat. 480; Pub. L. 100-509, §§4-6(a), 7(c), Oct. 20, 1988, 102 Stat. 2543-2545; Pub. L. 102-173, §§6, 10, Nov. 27, 1991, 105 Stat. 1218, 1219; Pub. L. 105-12, §9(m), Apr. 30, 1997, 111 Stat. 28.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (a)(5) and (b), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XVIII and XIX of the Social Security Act are classified generally to subchapters XVIII (§1395 et seq.) and XIX (§1396 et seq.) of chapter 7 of this title, respectively. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

AMENDMENTS

1997—Subsec. (a)(10). Pub. L. 105-12 added par. (10).

1991—Subsec. (a). Pub. L. 102-173, §10, substituted “individual with mental illness” for “mentally ill individual” and “individuals with mental illness” for “mentally ill individuals” wherever appearing.

Subsec. (a)(4). Pub. L. 102-173, §6(a), inserted “as a result of monitoring or other activities (either of which result from a complaint or other evidence)” before “there is” in subpar. (B)(iii) and added subpar. (C).

Subsec. (a)(6). Pub. L. 102-173, §6(b), substituted "60 percent" for "one-half" in subpar. (B) and added subpar. (C).

Subsec. (a)(9). Pub. L. 102-173, §6(c), inserted before period at end "and for individuals who have received or are receiving mental health services, family members of such individuals with mental illness, or representatives of such individuals or family members to assure that the eligible system is operating in compliance with the provisions of this subchapter and subchapter III of this chapter".

Subsec. (b). Pub. L. 102-173, §10(2), substituted "individuals with mental illness" for "mentally ill individuals".

Subsec. (c)(1). Pub. L. 102-173, §§6(d), 10(2), substituted "individuals with mental illness" for "mentally ill individuals" in subpar. (A) and inserted at end of subpar. (B) "As used in this subparagraph, the term 'members who broadly represent or are knowledgeable about the needs of the clients served by the system' shall be construed to include individuals who have received or are receiving mental health services and family members of such individuals."

1988—Subsec. (a)(4)(B). Pub. L. 100-509, §6(a), inserted "(including an individual who has died or whose whereabouts are unknown)" after "any individual".

Subsec. (a)(6). Pub. L. 100-509, §4(1), substituted "an advisory council" for "a board".

Subsec. (a)(7). Pub. L. 100-509, §5, substituted ", including a section prepared by the advisory council that describes the activities of the council and its assessment of the operations of the system;" for period at end.

Subsec. (a)(8), (9). Pub. L. 100-509, §7(c), added pars. (8) and (9).

Subsec. (c). Pub. L. 100-509, §4(2), added subsec. (c).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-12 effective Apr. 30, 1997, and applicable to Federal payments made pursuant to obligations incurred after Apr. 30, 1997, for items and services provided on or after such date, subject to also being applicable with respect to contracts entered into, renewed, or extended after Apr. 30, 1997, as well as contracts entered into before Apr. 30, 1997, to the extent permitted under such contracts, see section 11 of Pub. L. 105-12, set out as an Effective Date note under section 14401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10803, 10806, 10824 of this title.

§ 10806. Access to records

(a) An eligible system which, pursuant to section 10805(a)(4) of this title, has access to records which, under Federal or State law, are required to be maintained in a confidential manner by a provider of mental health services, shall, except as provided in subsection (b) of this section, maintain the confidentiality of such records to the same extent as is required of the provider of such services.

(b)(1) Except as provided in paragraph (2), an eligible system which has access to records pursuant to section 10805(a)(4) of this title may not disclose information from such records to the individual who is the subject of the information if the mental health professional responsible for supervising the provision of mental health services to such individual has provided the system with a written determination that disclosure of such information to such individual would be detrimental to such individual's health.

(2)(A) If disclosure of information has been denied under paragraph (1) to an individual—

- (i) such individual;
- (ii) the legal guardian, conservator, or other legal representative of such individual; or
- (iii) an eligible system, acting on behalf of an individual described in subparagraph (B),

may select another mental health professional to review such information and to determine if disclosure of such information would be detrimental to such individual's health. If such mental health professional determines, based on professional judgment, that disclosure of such information would not be detrimental to the health of such individual, the system may disclose such information to such individual.

(B) An eligible system may select a mental health professional under subparagraph (A)(iii) on behalf of—

- (i) an individual whose legal guardian is the State; or

(ii) an individual who has a legal guardian, conservator, or other legal representative other than the State if such guardian, conservator, or representative does not, within a reasonable time after such individual is denied access to information under paragraph (1), select a mental health professional under subparagraph (A) to review such information.

(C) If the laws of a State prohibit an eligible system from obtaining access to the records of individuals with mental illness in accordance with section 10805(a)(4) of this title and this section, section 10805(a)(4) of this title and this section shall not apply to such system before—

- (i) the date such system is no longer subject to such a prohibition; or

(ii) the expiration of the 2-year period beginning on May 23, 1986,

whichever occurs first.

(3)(A) As used in this section, the term "records" includes reports prepared by any staff of a facility rendering care and treatment or reports prepared by an agency charged with investigating reports of incidents of abuse, neglect, and injury occurring at such facility that describe incidents of abuse, neglect, and injury occurring at such facility and the steps taken to investigate such incidents, and discharge planning records.

(B) An eligible system shall have access to the type of records described in subparagraph (A) in accordance with the provisions of subsection (a) of this section and paragraphs (1) and (2) of subsection (b) of this section.

(Pub. L. 99-319, title I, §106, May 23, 1986, 100 Stat. 481; Pub. L. 100-509, §6(b), Oct. 20, 1988, 102 Stat. 2544; Pub. L. 102-173, §10(2), Nov. 27, 1991, 105 Stat. 1219.)

AMENDMENTS

1991—Subsec. (b)(2)(C). Pub. L. 102-173 substituted "individuals with mental illness" for "mentally ill individuals".

1988—Subsec. (b)(3). Pub. L. 100-509 added par. (3).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10805 of this title.

§ 10807. Legal actions

(a) Prior to instituting any legal action in a Federal or State court on behalf of a¹ individual with mental illness, an eligible system, or a State agency or nonprofit organization which entered into a contract with an eligible system under section 10804(a) of this title, shall exhaust in a timely manner all administrative remedies where appropriate. If, in pursuing administrative remedies, the system, agency, or organization determines that any matter with respect to such individual will not be resolved within a reasonable time, the system, agency, or organization may pursue alternative remedies, including the initiation of a legal action.

(b) Subsection (a) of this section does not apply to any legal action instituted to prevent or eliminate imminent serious harm to a¹ individual with mental illness.

(Pub. L. 99-319, title I, §107, May 23, 1986, 100 Stat. 482; Pub. L. 102-173, §10(1), Nov. 27, 1991, 105 Stat. 1219.)

AMENDMENTS

1991—Pub. L. 102-173 substituted “individual with mental illness” for “mentally ill individual” in subsecs. (a) and (b).

PART B—ADMINISTRATIVE PROVISIONS

§ 10821. Applications**(a) Submission for allotment; contents**

No allotment may be made under this subchapter to an eligible system unless an application therefor is submitted to the Secretary. Each such application shall contain—

(1) assurances that amounts paid to such system from an allotment under this subchapter will be used to supplement and not to supplant the level of non-Federal funds available in the State in which such system is established to protect and advocate the rights of individuals with mental illness;

(2) assurances that such system will have a staff which is trained or being trained to provide advocacy services to individuals with mental illness and to work with family members of clients served by the system where the individuals with mental illness are minors, legally competent and do not object, and legally incompetent and the legal guardians, conservators, or other legal representatives are family members;

(3) assurances that such system, and any State agency or nonprofit organization with which such system may enter into a contract under section 10804(a) of this title, will not, in the case of any individual who has a legal guardian, conservator, or representative other than the State, take actions which are duplicative of actions taken on behalf of such individual by such guardian, conservator, or representative unless such guardian, conservator, or representative requests the assistance of such system; and

(4) such other information as the Secretary may by regulation prescribe.

¹ So in original. Probably should be “an”.

(b) Satisfaction of requirements regarding trained staff

The assurance required under subsection (a)(2) of this section regarding trained staff may be satisfied through the provision of training by individuals who have received or are receiving mental health services and family members of such individuals.

(c) Duration of applications and assurances

Applications submitted under this section shall remain in effect for a 4-year period, and the assurances required under this section shall be for the same 4-year period.

(Pub. L. 99-319, title I, §111, May 23, 1986, 100 Stat. 482; Pub. L. 100-509, §7(d), Oct. 20, 1988, 102 Stat. 2545; Pub. L. 102-173, §§7, 10(2), Nov. 27, 1991, 105 Stat. 1218, 1219; Pub. L. 102-321, title I, §163(c)(3)(A), July 10, 1992, 106 Stat. 377.)

AMENDMENTS

1992—Subsec. (c). Pub. L. 102-321 substituted “4-year” for “3-year” in two places.

1991—Subsec. (a)(1). Pub. L. 102-173, §10(2), substituted “individuals with mental illness” for “mentally ill individuals”.

Subsec. (a)(2). Pub. L. 102-173, §7(1), 10(2), substituted “individuals with mental illness” for “mentally ill individuals” and inserted before semicolon at end “and to work with family members of clients served by the system where the individuals with mental illness are minors, legally competent and do not object, and legally incompetent and the legal guardians, conservators, or other legal representatives are family members”.

Subsecs. (b), (c). Pub. L. 102-173, §7(2), (3) added subsec. (b) and redesignated former subsec. (b) as (c).

1988—Pub. L. 100-509 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102-321, set out as a note under section 236 of this title.

§ 10822. Allotment formula and reallocations

(a)(1)(A) Except as provided in paragraph (2) and subject to the availability of appropriations under section 10827 of this title, the Secretary shall make allotments under section 10803 of this title from amounts appropriated under section 10827 of this title for a fiscal year to eligible systems on the basis of a formula prescribed by the Secretary which is based equally—

(i) on the population of each State in which there is an eligible system; and

(ii) on the population of each such State weighted by its relative per capita income.

(B) For purposes of subparagraph (A)(ii), the term “relative per capita income” means the quotient of the per capita income of the United States and the per capita income of the State, except that if the State is Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Marshall Islands, the Federated States of Micronesia, the Republic of Palau, or the Virgin Islands, the quotient shall be considered to be one.

(2)(A) The minimum amount of the allotment of an eligible system shall be the product (rounded to the nearest \$100) of the appropriate base amount determined under subparagraph (B) and the factor specified in subparagraph (C).

(B) For purposes of subparagraph (A), the appropriate base amount—

(i) for American Samoa, Guam, the Marshall Islands, the Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, and the Virgin Islands, is \$139,300; and

(ii) for any other State, is \$260,000.

(C) The factor specified in this subparagraph is the ratio of the amount appropriated under section 10827 of this title for the fiscal year for which the allotment is being made to the amount appropriated under such section for fiscal year 1995.

(D) If the total amount appropriated for a fiscal year is at least \$25,000,000, the Secretary shall make an allotment in accordance with subparagraph (A) to the eligible system serving the American Indian consortium.

(b)(1) To the extent that all the amounts appropriated under section 10827 of this title for a fiscal year are not allotted to eligible systems because—

(A) one or more eligible systems have not submitted an application for an allotment for such fiscal year; or

(B) one or more eligible systems have notified the Secretary that they do not intend to use the full amount of their allotment,

the amount which is not so allotted shall be reallocated among the remaining eligible systems.

(2) The amount of an allotment to an eligible system for a fiscal year which the Secretary determines will not be required by the system during the period for which it is available shall be available for reallocation by the Secretary to other eligible systems with respect to which such a determination has not been made.

(3) The Secretary shall make reallocations under paragraphs (1) and (2) on such date or dates as the Secretary may fix (but not earlier than 30 days after the Secretary has published notice of the intention of the Secretary to make such reallocation in the Federal Register). A reallocation to an eligible system shall be made in proportion to the original allotment of such system for such fiscal year, but with such proportionate amount for such system being reduced to the extent it exceeds the sum the Secretary estimates such system needs and will be able to use during such period. The total of such reductions shall be similarly reallocated among eligible systems whose proportionate amounts were not so reduced. Any amount so reallocated to an eligible system for a fiscal year shall be deemed to be a part of its allotment under subsection (a) of this section for such fiscal year.

(Pub. L. 99-319, title I, §112, May 23, 1986, 100 Stat. 483; Pub. L. 100-509, §7(e), Oct. 20, 1988, 102 Stat. 2545; Pub. L. 106-310, div. B, title XXXII, §3206(d), (e), Oct. 17, 2000, 114 Stat. 1194, 1195.)

AMENDMENTS

2000—Subsec. (a)(1)(B). Pub. L. 106-310, §3206(e)(1), substituted “Marshall Islands, the Federated States of Micronesia, the Republic of Palau” for “Trust Territory of the Pacific Islands”.

Subsec. (a)(2). Pub. L. 106-310, §3206(d), amended par. (2) generally. Prior to amendment, par. (2) specified minimum amounts of allotments to eligible systems of

each State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Virgin Islands based on whether the total amount appropriated in a fiscal year was at least \$13,000,000 or less than \$13,000,000.

Subsec. (a)(3). Pub. L. 106-310, §3206(e)(2), struck out par. (3) which read as follows: “In any case in which the total amount appropriated under section 10827 of this title for a fiscal year exceeds the total amount appropriated under such section, as in effect on October 19, 1988, for the preceding fiscal year by a percentage greater than the most recent percentage change in the Consumer Price Index published by the Secretary of Labor under section 720(c)(1) of title 29, the Secretary shall increase each of the allotments under clauses (i)(I) and (ii)(I) of subparagraph (A) and clauses (i) and (ii) of subparagraph (B) of paragraph (2) by an amount which bears the same ratio to the amount of such minimum allotment (including any increases in such minimum allotment under this paragraph for prior fiscal years) as the amount which is equal to the difference between—

“(A) the total amount appropriated under section 10827 of this title for the fiscal year for which the increase in minimum allotment is made, minus;

“(B) the total amount appropriated under section 10827 of this title for the immediately preceding fiscal year.

bears to the total amount appropriated under section 10827 of this title for such preceding fiscal year.”

1988—Subsec. (a)(2). Pub. L. 100-509, §7(e)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “Notwithstanding paragraph (1) and subject to the availability of appropriations under section 10827 of this title—

“(A) the amount of the allotment of the eligible system of each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico shall not be less than \$125,000; and

“(B) the amount of the allotment of the eligible system of Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Virgin Islands shall not be less than \$67,000.”

Subsec. (a)(3). Pub. L. 100-509, §7(e)(2), added par. (3).

§ 10823. Payments under allotments

For each fiscal year, the Secretary shall make payments to each eligible system from its allotment under this subchapter. Any amount paid to an eligible system for a fiscal year and remaining unobligated at the end of such year shall remain available to such system for the next fiscal year for the purposes for which it was made.

(Pub. L. 99-319, title I, §113, May 23, 1986, 100 Stat. 484.)

§ 10824. Reports by Secretary

(a) The Secretary shall include in each report required under section 15005 of this title a separate statement which contains—

(1) a description of the activities, accomplishments, and expenditures of systems to protect and advocate the rights of individuals with mental illness supported with payments from allotments under this subchapter, including—

(A) a specification of the total number of individuals with mental illness served by such systems;

(B) a description of the types of activities undertaken by such systems;

(C) a description of the types of facilities providing care or treatment with respect to which such activities are undertaken;

(D) a description of the manner in which such activities are initiated; and

(E) a description of the accomplishments resulting from such activities;

(2) a description of—

(A) systems to protect and advocate the rights of individuals with mental illness supported with payments from allotments under this subchapter;

(B) activities conducted by States to protect and advocate such rights;

(C) mechanisms established by residential facilities for individuals with mental illness to protect and advocate such rights; and

(D) the coordination among such systems, activities, and mechanisms;

(3) a specification of the number of systems established with allotments under this subchapter and of whether each such system was established by a public or nonprofit private entity; and

(4) recommendations for activities and services to improve the protection and advocacy of the rights of individuals with mental illness and a description of needs for such activities and services which have not been met by systems established under this subchapter.

(b) In preparing each statement required by subsection (a) of this section, the Secretary shall use and include information submitted to the Secretary in the reports required under section 10805(a)(7) of this title.

(Pub. L. 99-319, title I, §114, May 23, 1986, 100 Stat. 484; Pub. L. 102-173, §10(2), Nov. 27, 1991, 105 Stat. 1219; Pub. L. 106-402, title IV, §401(b)(13)(B), Oct. 30, 2000, 114 Stat. 1739.)

AMENDMENTS

2000—Subsec. (a). Pub. L. 106-402 substituted “section 15005 of this title” for “section 6006(c) of this title” in introductory provisions.

1991—Subsec. (a). Pub. L. 102-173 substituted “individuals with mental illness” for “mentally ill individuals” wherever appearing.

§ 10825. Technical assistance

The Secretary shall use not more than 2 percent of the amounts appropriated under section 10827 of this title to provide technical assistance to eligible systems with respect to activities carried out under this subchapter, consistent with requests by such systems for such assistance.

(Pub. L. 99-319, title I, §115, May 23, 1986, 100 Stat. 484; Pub. L. 100-509, §7(b)(2), Oct. 20, 1988, 102 Stat. 2545.)

AMENDMENTS

1988—Pub. L. 100-509 amended section generally. Prior to amendment, section read as follows: “The Secretary shall provide technical assistance to eligible systems with respect to activities carried out under this subchapter.”

§ 10826. Administration

(a) In general

The Secretary shall carry out this subchapter through the Administrator of the Substance Abuse and Mental Health Services Administration.

(b) Regulations

Not later than 6 months after November 27, 1991, the Secretary shall promulgate final regulations to carry out this subchapter and subchapter III of this chapter.

(Pub. L. 99-319, title I, §116, May 23, 1986, 100 Stat. 485; Pub. L. 102-173, §9, Nov. 27, 1991, 105 Stat. 1219; Pub. L. 102-321, title I, §163(c)(3)(B), July 10, 1992, 106 Stat. 377.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102-321 substituted “the Substance Abuse and Mental Health Services Administration” for “the Alcohol, Drug Abuse, and Mental Health Administration”.

1991—Pub. L. 102-173 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-321 effective Oct. 1, 1992, see section 801(c) of Pub. L. 102-321, set out as a note under section 236 of this title.

§ 10827. Authorization of appropriations

There are authorized to be appropriated for allotments under this subchapter, \$19,500,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993 through 2003.

(Pub. L. 99-319, title I, §117, May 23, 1986, 100 Stat. 485; Pub. L. 100-509, §7(f), Oct. 20, 1988, 102 Stat. 2546; Pub. L. 102-173, §8, Nov. 27, 1991, 105 Stat. 1219; Pub. L. 106-310, div. B, title XXXII, §3206(f), Oct. 17, 2000, 114 Stat. 1195.)

AMENDMENTS

2000—Pub. L. 106-310 substituted “2003” for “1995”.

1991—Pub. L. 102-173 amended section generally. Prior to amendment, section read as follows: “For allotments under this subchapter, there are authorized to be appropriated \$14,300,000 for fiscal year 1989, and such sums as may be necessary for fiscal year 1990 and fiscal year 1991.”

1988—Pub. L. 100-509 amended section generally. Prior to amendment, section read as follows: “For allotments under this subchapter, there are authorized to be appropriated \$10,000,000 for fiscal year 1986, \$10,500,000 for fiscal year 1987, and \$11,025,000 for fiscal year 1988.”

EFFECTIVE DATE OF 1988 AMENDMENT

Section 8 of Pub. L. 100-509 provided that:

“(a) IN GENERAL.—The amendments made by this Act [amending sections 10802, 10804 to 10806, 10821, 10822, and 10825 of this title], other than the amendment made by section 7(f) [amending this section], shall become effective on the date of the enactment of this Act [Oct. 20, 1988].

“(b) AUTHORIZATION OF APPROPRIATIONS.—The amendment made by section 7(f) [amending this section] shall become effective on October 1, 1988.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10822, 10825 of this title.

SUBCHAPTER II—RESTATEMENT OF BILL OF RIGHTS FOR MENTAL HEALTH PATIENTS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 10851 of this title.

§ 10841. Restatement of bill of rights

It is the sense of the Congress that, as previously stated in title V of the Mental Health

Systems Act [42 U.S.C. 9501 et seq.], each State should review and revise, if necessary, its laws to ensure that mental health patients receive the protection and services they require, and that in making such review and revision, States should take into account the recommendations of the President's Commission on Mental Health and the following:

(1) A person admitted to a program or facility for the purpose of receiving mental health services should be accorded the following:

(A) The right to appropriate treatment and related services in a setting and under conditions that—

(i) are the most supportive of such person's personal liberty; and

(ii) restrict such liberty only to the extent necessary consistent with such person's treatment needs, applicable requirements of law, and applicable judicial orders.

(B) The right to an individualized, written, treatment or service plan (such plan to be developed promptly after admission of such person), the right to treatment based on such plan, the right to periodic review and reassessment of treatment and related service needs, and the right to appropriate revision of such plan, including any revision necessary to provide a description of mental health services that may be needed after such person is discharged from such program or facility.

(C) The right to ongoing participation, in a manner appropriate to such person's capabilities, in the planning of mental health services to be provided such person (including the right to participate in the development and periodic revision of the plan described in subparagraph (B)), and, in connection with such participation, the right to be provided with a reasonable explanation, in terms and language appropriate to such person's condition and ability to understand, of—

(i) such person's general mental condition and, if such program or facility has provided a physical examination, such person's general physical condition;

(ii) the objectives of treatment;

(iii) the nature and significant possible adverse effects of recommended treatments;

(iv) the reasons why a particular treatment is considered appropriate;

(v) the reasons why access to certain visitors may not be appropriate; and

(vi) any appropriate and available alternative treatments, services, and types of providers of mental health services.

(D) The right not to receive a mode or course of treatment, established pursuant to the treatment plan, in the absence of such person's informed, voluntary, written consent to such mode or course of treatment, except treatment—

(i) during an emergency situation if such treatment is pursuant to or documented contemporaneously by the written order of a responsible mental health professional; or

(ii) as permitted under applicable law in the case of a person committed by a court to a treatment program or facility.

(E) The right not to participate in experimentation in the absence of such person's informed, voluntary, written consent, the right to appropriate protections in connection with such participation, including the right to a reasonable explanation of the procedure to be followed, the benefits to be expected, the relative advantages of alternative treatments, and the potential discomforts and risks, and the right and opportunity to revoke such consent.

(F) The right to freedom from restraint or seclusion, other than as a mode or course of treatment or restraint or seclusion during an emergency situation if such restraint or seclusion is pursuant to or documented contemporaneously by the written order of a responsible mental health professional.

(G) The right to a humane treatment environment that affords reasonable protection from harm and appropriate privacy to such person with regard to personal needs.

(H) The right to confidentiality of such person's records.

(I) The right to access, upon request, to such person's mental health care records, except such person may be refused access to—

(i) information in such records provided by a third party under assurance that such information shall remain confidential; and

(ii) specific material in such records if the health professional responsible for the mental health services concerned has made a determination in writing that such access would be detrimental to such person's health, except that such material may be made available to a similarly licensed health professional selected by such person and such health professional may, in the exercise of professional judgment, provide such person with access to any or all parts of such material or otherwise disclose the information contained in such material to such person.

(J) The right, in the case of a person admitted on a residential or inpatient care basis, to converse with others privately, to have convenient and reasonable access to the telephone and mails, and to see visitors during regularly scheduled hours, except that, if a mental health professional treating such person determines that denial of access to a particular visitor is necessary for treatment purposes, such mental health professional may, for a specific, limited, and reasonable period of time, deny such access if such mental health professional has ordered such denial in writing and such order has been incorporated in the treatment plan for such person. An order denying such access should include the reasons for such denial.

(K) The right to be informed promptly at the time of admission and periodically thereafter, in language and terms appropriate to such person's condition and ability to understand, of the rights described in this section.

(L) The right to assert grievances with respect to infringement of the rights described in this section, including the right to have such grievances considered in a fair, timely, and impartial grievance procedure provided for or by the program or facility.

(M) Notwithstanding subparagraph (J), the right of access to (including the opportunities and facilities for private communication with) any available—

- (i) rights protection service within the program or facility;
- (ii) rights protection service within the State mental health system designed to be available to such person;
- (iii) system established under subchapter I of this chapter to protect and advocate the rights of individuals with mental illness; and
- (iv) qualified advocate;

for the purpose of receiving assistance to understand, exercise, and protect the rights described in this section and in other provisions of law.

(N) The right to exercise the rights described in this section without reprisal, including reprisal in the form of denial of any appropriate, available treatment.

(O) The right to referral as appropriate to other providers of mental health services upon discharge.

(2)(A) The rights described in this section should be in addition to and not in derogation of any other statutory or constitutional rights.

(B) The rights to confidentiality of and access to records as provided in subparagraphs (H) and (I) of paragraph (1) should remain applicable to records pertaining to a person after such person's discharge from a program or facility.

(3)(A) No otherwise eligible person should be denied admission to a program or facility for mental health services as a reprisal for the exercise of the rights described in this section.

(B) Nothing in this section should—

(i) obligate an individual mental health or health professional to administer treatment contrary to such professional's clinical judgment;

(ii) prevent any program or facility from discharging any person for whom the provision of appropriate treatment, consistent with the clinical judgment of the mental health professional primarily responsible for such person's treatment, is or has become impossible as a result of such person's refusal to consent to such treatment;

(iii) require a program or facility to admit any person who, while admitted on prior occasions to such program or facility, has repeatedly frustrated the purposes of such admissions by withholding consent to proposed treatment; or

(iv) obligate a program or facility to provide treatment services to any person who is admitted to such program or facility solely for diagnostic or evaluative purposes.

(C) In order to assist a person admitted to a program or facility in the exercise or protec-

tion of such person's rights, such person's attorney or legal representatives should have reasonable access to—

- (i) such person;
- (ii) the areas of the program or facility where such person has received treatment, resided, or had access; and
- (iii) pursuant to the written authorization of such person, the records and information pertaining to such person's diagnosis, treatment, and related services described in paragraph (1)(I).

(D) Each program and facility should post a notice listing and describing, in language and terms appropriate to the ability of the persons to whom such notice is addressed to understand, the rights described in this section of all persons admitted to such program or facility. Each such notice should conform to the format and content for such notices, and should be posted in all appropriate locations.

(4)(A) In the case of a person adjudicated by a court of competent jurisdiction as being incompetent to exercise the right to consent to treatment or experimentation described in subparagraph (D) or (E) of paragraph (1), or the right to confidentiality of or access to records described in subparagraph (H) or (I) of such paragraph, or to provide authorization as described in paragraph (3)(C)(iii), such right may be exercised or such authorization may be provided by the individual appointed by such court as such person's guardian or representative for the purpose of exercising such right or such authorization.

(B) In the case of a person who lacks capacity to exercise the right to consent to treatment or experimentation under subparagraph (D) or (E) of paragraph (1), or the right to confidentiality of or access to records described in subparagraph (H) or (I) of such paragraph, or to provide authorization as described in paragraph (3)(C)(iii), because such person has not attained an age considered sufficiently advanced under State law to permit the exercise of such right or such authorization to be legally binding, such right may be exercised or such authorization may be provided on behalf of such person by a parent or legal guardian of such person.

(C) Notwithstanding subparagraphs (A) and (B), in the case of a person admitted to a program or facility for the purpose of receiving mental health services, no individual employed by or receiving any remuneration from such program or facility should act as such person's guardian or representative.

(Pub. L. 99-319, title II, §201, May 23, 1986, 100 Stat. 485; Pub. L. 102-173, §10(2), Nov. 27, 1991, 105 Stat. 1219.)

REFERENCES IN TEXT

The Mental Health Systems Act, referred to in introductory text, is Pub. L. 96-398, Oct. 7, 1980, 94 Stat. 1564, as amended. Title V of the Mental Health Systems Act is classified generally to subchapter IV (§9501 et seq.) of chapter 102 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9401 of this title and Tables.

AMENDMENTS

1991—Par. (1)(M)(iii). Pub. L. 102-173 substituted “individuals with mental illness” for “mentally ill individuals”.

SUBCHAPTER III—CONSTRUCTION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 10805, 10826 of this title.

§ 10851. Construction of subchapters I and II; “individual with mental illness” defined

(a) Subchapters I and II of this chapter shall not be construed as establishing any new rights for individuals with mental illness.

(b) For purposes of this section, the term “individual with mental illness” has the same meaning as in section 10802(3)¹ of this title.

(Pub. L. 99-319, title III, §301, May 23, 1986, 100 Stat. 489; Pub. L. 102-173, §10, Nov. 27, 1991, 105 Stat. 1219.)

REFERENCES IN TEXT

Section 10802(3) of this title, referred to in subsec. (b), was redesignated section 10802(4) of this title by Pub. L. 102-173, §4(1), Nov. 27, 1991, 105 Stat. 1217.

AMENDMENTS

1991—Pub. L. 102-173, substituted “individuals with mental illness” for “mentally ill individuals” in subsec. (a) and “individual with mental illness” for “mentally ill individual” in subsec. (b).

CHAPTER 115—CHILD DEVELOPMENT ASSOCIATE SCHOLARSHIP ASSISTANCE PROGRAM

Sec.

10901. Authority of Secretary to make grants.
 10902. Application for grants.
 (a) Application required.
 (b) Contents of Applications.
 (c) Equitable distribution.
 10903. Definitions.
 10904. Annual report by States; contents; manner of payments pursuant to grants.
 (a) Reporting.
 (b) Payments.
 10905. Authorization of appropriations.

§ 10901. Authority of Secretary to make grants

The Secretary is authorized to make a grant for any fiscal year to any State receiving a grant under title XX of the Social Security Act [42 U.S.C. 1397 et seq.] for such fiscal year to enable such State to award scholarships to eligible individuals within the State who are candidates for the Child Development Associate credential.

(Pub. L. 99-425, title VI, §602, Sept. 30, 1986, 100 Stat. 976.)

REFERENCES IN TEXT

The Social Security Act, referred to in text, is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XX of the Social Security Act is classified principally to subchapter XX (§1397 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

EFFECTIVE DATE

Chapter effective Oct. 1, 1986, see section 1001 of Pub. L. 99-425, set out as an Effective Date of 1986 Amendment note under section 8621 of this title.

¹ See References in Text note below.

SHORT TITLE

Section 601 of title VI of Pub. L. 99-425 provided that: “This title [enacting this chapter] may be cited as the ‘Child Development Associate Scholarship Assistance Act of 1985’.”

§ 10902. Application for grants**(a) Application required**

A State desiring to participate in the grant program established by this chapter shall submit an application to the Secretary in such form as the Secretary may require.

(b) Contents of applications

A State’s application shall contain appropriate assurances that—

(1) scholarship assistance made available with funds provided under this chapter will be awarded—

(A) only to eligible individuals;

(B) on the basis of the financial need of such individuals; and

(C) in amounts sufficient to cover the cost of application, assessment, and credentialing (including, at the option of the State, any training necessary for credentialing) for the Child Development Associate credential for such individuals;

(2) not more than 35 percent of the funds received under this chapter by a State may be used to provide scholarship assistance under paragraph (1) to cover the cost of training described in paragraph (1)(C); and

(3) not more than 10 percent of the funds received by the State under this chapter will be used for the costs of administering the program established in such State to award such assistance.

(c) Equitable distribution

In making grants under this chapter, the Secretary shall—

(1) distribute such grants equitably among States; and

(2) ensure that the needs of rural and urban areas are appropriately addressed.

(Pub. L. 99-425, title VI, §603, Sept. 30, 1986, 100 Stat. 976; Pub. L. 101-501, title V, §501, Nov. 3, 1990, 104 Stat. 1256.)

AMENDMENTS

1990—Subsec. (b)(1)(C). Pub. L. 101-501, §501(a), (b)(1), inserted “(including, at the option of the State, any training necessary for credentialing)” after “credentialing” and struck out “and” at end.

Subsec. (b)(2), (3). Pub. L. 101-501, §501(b)(2), (3), added par. (2) and redesignated former par. (2) as (3).

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101-501, set out as a note under section 8621 of this title.

§ 10903. Definitions

For purposes of this chapter—

(1) the term “eligible individual” means a candidate for the Child Development Associate credential whose income does not exceed the¹ 130 percent of the lower living standard income level,² by more than 50 percent;

¹ So in original. The word “the” probably should not appear.

² So in original. The comma probably should not appear.

(2) the term “lower living standard income level” means that income level (adjusted for regional, metropolitan, urban, and rural differences and family size) determined annually by the Secretary of Labor and based on the most recent lower living family budget issued by the Secretary of Labor;

(3) the term “Secretary” means the Secretary of Health and Human Services; and

(4) the term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Marshall Islands, the Federated States of Micronesia, and Palau.

(Pub. L. 99-425, title VI, § 604, Sept. 30, 1986, 100 Stat. 976; Pub. L. 101-501, title V, § 502, Nov. 3, 1990, 104 Stat. 1256.)

AMENDMENTS

1990—Par. (1). Pub. L. 101-501, § 502(1), substituted “130 percent of the lower living standard income level” for “poverty line, as defined in section 9902(2) of this title”.

Pars. (2) to (4). Pub. L. 101-501, § 502(2), (3), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101-501, set out as a note under section 8621 of this title.

§ 10904. Annual report by States; contents; manner of payments pursuant to grants

(a) Reporting

Each State receiving grants under this chapter shall annually submit to the Secretary information on the number of eligible individuals assisted under the grant program, and their positions and salaries before and after receiving the Child Development Associate credential.

(b) Payments

Payments pursuant to grants made under this chapter may be made in installments, and in advance or by way of reimbursement, with necessary adjustments on account of overpayments or underpayments, as the Secretary may determine.

(Pub. L. 99-425, title VI, § 605, Sept. 30, 1986, 100 Stat. 977.)

§ 10905. Authorization of appropriations

There are authorized to be appropriated to carry out this chapter such sums as may be necessary for fiscal year 1995.

(Pub. L. 99-425, title VI, § 606, Sept. 30, 1986, 100 Stat. 977; Pub. L. 101-501, title V, § 503, Nov. 3, 1990, 104 Stat. 1256; Pub. L. 103-252, title I, § 124, May 18, 1994, 108 Stat. 650.)

AMENDMENTS

1994—Pub. L. 103-252 substituted “to carry out this chapter such sums as may be necessary for fiscal year 1995” for “\$1,500,000 for fiscal year 1990, \$3,000,000 for fiscal year 1991, and such sums as may be necessary for fiscal years 1992, 1993, and 1994 for carrying out this chapter”.

1990—Pub. L. 101-501 substituted “are authorized” for “is authorized”, inserted “, \$3,000,000 for fiscal year

1991, and such sums as may be necessary for fiscal years 1992, 1993, and 1994” after “1990”, and directed the substitution of “fiscal year” for “each of the fiscal years 1987, 1988, and 1989, and”, which was executed by making the substitution for “each of the fiscal years 1987, 1988, 1989, and” to reflect the probable intent of Congress.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-252 effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103-252, set out as a note under section 9832 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101-501, set out as a note under section 8621 of this title.

CHAPTER 116—EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW

SUBCHAPTER I—EMERGENCY PLANNING AND NOTIFICATION

Sec.

- 11001. Establishment of State commissions, planning districts, and local committees.
 - (a) Establishment of State emergency response commissions.
 - (b) Establishment of emergency planning districts.
 - (c) Establishment of local emergency planning committees.
 - (d) Revisions.
 - 11002. Substances and facilities covered and notification.
 - (a) Substances covered.
 - (b) Facilities covered.
 - (c) Emergency planning notification.
 - (d) Notification of Administrator.
 - 11003. Comprehensive emergency response plans.
 - (a) Plan required.
 - (b) Resources.
 - (c) Plan provisions.
 - (d) Providing of information.
 - (e) Review by State emergency response commission.
 - (f) Guidance documents.
 - (g) Review of plans by regional response teams.
 - 11004. Emergency notification.
 - (a) Types of releases.
 - (b) Notification.
 - (c) Followup emergency notice.
 - (d) Transportation exemption not applicable.
 - 11005. Emergency training and review of emergency systems.
 - (a) Emergency training.
 - (b) Review of emergency systems.
- SUBCHAPTER II—REPORTING REQUIREMENTS
- 11021. Material safety data sheets.
 - (a) Basic requirement.
 - (b) Thresholds.
 - (c) Availability of MSDS on request.
 - (d) Initial submission and updating.
 - (e) “Hazardous chemical” defined.
 - 11022. Emergency and hazardous chemical inventory forms.
 - (a) Basic requirement.
 - (b) Thresholds.
 - (c) Hazardous chemicals covered.
 - (d) Contents of form.
 - (e) Availability of tier II information.
 - (f) Fire department access.
 - (g) Format of forms.

- Sec.
11023. Toxic chemical release forms.
- (a) Basic requirement.
 - (b) Covered owners and operators of facilities.
 - (c) Toxic chemicals covered.
 - (d) Revisions by Administrator.
 - (e) Petitions.
 - (f) Threshold for reporting.
 - (g) Form.
 - (h) Use of release form.
 - (i) Modifications in reporting frequency.
 - (j) EPA management of data.
 - (k) Report.
 - (l) Mass balance study.

SUBCHAPTER III—GENERAL PROVISIONS

11041. Relationship to other law.
- (a) In general.
 - (b) Effect on MSDS requirements.
11042. Trade secrets.
- (a) Authority to withhold information.
 - (b) Trade secret factors.
 - (c) Trade secret regulations.
 - (d) Petition for review.
 - (e) Exception for information provided to health professionals.
 - (f) Providing information to Administrator; availability to public.
 - (g) Information provided to State.
 - (h) Information on adverse effects.
 - (i) Information provided to Congress.
11043. Provision of information to health professionals, doctors, and nurses.
- (a) Diagnosis or treatment by health professional.
 - (b) Medical emergency.
 - (c) Preventive measures by local health professionals.
 - (d) Confidentiality agreement.
 - (e) Regulations.
11044. Public availability of plans, data sheets, forms, and followup notices.
- (a) Availability to public.
 - (b) Notice of public availability.
11045. Enforcement.
- (a) Civil penalties for emergency planning.
 - (b) Civil, administrative, and criminal penalties for emergency notification.
 - (c) Civil and administrative penalties for reporting requirements.
 - (d) Civil, administrative, and criminal penalties with respect to trade secrets.
 - (e) Special enforcement provisions for section 11043.
 - (f) Procedures for administrative penalties.
11046. Civil actions.
- (a) Authority to bring civil actions.
 - (b) Venue.
 - (c) Relief.
 - (d) Notice.
 - (e) Limitation.
 - (f) Costs.
 - (g) Other rights.
 - (h) Intervention.
11047. Exemption.
11048. Regulations.
11049. Definitions.
11050. Authorization of appropriations.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 3001-2, 7412, 9604, 9620, 13108 of this title; title 49 section 5116.

SUBCHAPTER I—EMERGENCY PLANNING AND NOTIFICATION

§ 11001. Establishment of State commissions, planning districts, and local committees

(a) Establishment of State emergency response commissions

Not later than six months after October 17, 1986, the Governor of each State shall appoint a State emergency response commission. The Governor may designate as the State emergency response commission one or more existing emergency response organizations that are State-sponsored or appointed. The Governor shall, to the extent practicable, appoint persons to the State emergency response commission who have technical expertise in the emergency response field. The State emergency response commission shall appoint local emergency planning committees under subsection (c) of this section and shall supervise and coordinate the activities of such committees. The State emergency response commission shall establish procedures for receiving and processing requests from the public for information under section 11044 of this title, including tier II information under section 11022 of this title. Such procedures shall include the designation of an official to serve as coordinator for information. If the Governor of any State does not designate a State emergency response commission within such period, the Governor shall operate as the State emergency response commission until the Governor makes such designation.

(b) Establishment of emergency planning districts

Not later than nine months after October 17, 1986, the State emergency response commission shall designate emergency planning districts in order to facilitate preparation and implementation of emergency plans. Where appropriate, the State emergency response commission may designate existing political subdivisions or multi-jurisdictional planning organizations as such districts. In emergency planning areas that involve more than one State, the State emergency response commissions of all potentially affected States may designate emergency planning districts and local emergency planning committees by agreement. In making such designation, the State emergency response commission shall indicate which facilities subject to the requirements of this subchapter are within such emergency planning district.

(c) Establishment of local emergency planning committees

Not later than 30 days after designation of emergency planning districts or 10 months after October 17, 1986, whichever is earlier, the State emergency response commission shall appoint members of a local emergency planning committee for each emergency planning district. Each committee shall include, at a minimum, representatives from each of the following groups or organizations: elected State and local officials; law enforcement, civil defense, firefighting, first aid, health, local environmental, hospital, and transportation personnel; broadcast and print media; community groups; and owners

and operators of facilities subject to the requirements of this subchapter. Such committee shall appoint a chairperson and shall establish rules by which the committee shall function. Such rules shall include provisions for public notification of committee activities, public meetings to discuss the emergency plan, public comments, response to such comments by the committee, and distribution of the emergency plan. The local emergency planning committee shall establish procedures for receiving and processing requests from the public for information under section 11044 of this title, including tier II information under section 11022 of this title. Such procedures shall include the designation of an official to serve as coordinator for information.

(d) Revisions

A State emergency response commission may revise its designations and appointments under subsections (b) and (c) of this section as it deems appropriate. Interested persons may petition the State emergency response commission to modify the membership of a local emergency planning committee.

(Pub. L. 99-499, title III, §301, Oct. 17, 1986, 100 Stat. 1729.)

EFFECTIVE DATE

Chapter effective Oct. 17, 1986, see section 4 of Pub. L. 99-499, set out as an Effective Date of 1986 Amendment note under section 9601 of this title.

SHORT TITLE

Section 300(a) of title III of Pub. L. 99-499 provided that: "This title [enacting this chapter] may be cited as the 'Emergency Planning and Community Right-To-Know Act of 1986'."

EXECUTIVE ORDER NO. 12856

Ex. Ord. No. 12856, Aug. 3, 1993, 58 F.R. 41981, which provided for Federal compliance with right-to-know laws and pollution prevention requirements, was revoked by Ex. Ord. No. 13148, §901, Apr. 21, 2000, 65 F.R. 24604, set out as a note under section 4321 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11004, 11042 of this title; title 49 sections 5115, 5116.

§ 11002. Substances and facilities covered and notification

(a) Substances covered

(1) In general

A substance is subject to the requirements of this subchapter if the substance is on the list published under paragraph (2).

(2) List of extremely hazardous substances

Within 30 days after October 17, 1986, the Administrator shall publish a list of extremely hazardous substances. The list shall be the same as the list of substances published in November 1985 by the Administrator in Appendix A of the "Chemical Emergency Preparedness Program Interim Guidance".

(3) Thresholds

(A) At the time the list referred to in paragraph (2) is published the Administrator shall—

(i) publish an interim final regulation establishing a threshold planning quantity for

each substance on the list, taking into account the criteria described in paragraph (4), and

(ii) initiate a rulemaking in order to publish final regulations establishing a threshold planning quantity for each substance on the list.

(B) The threshold planning quantities may, at the Administrator's discretion, be based on classes of chemicals or categories of facilities.

(C) If the Administrator fails to publish an interim final regulation establishing a threshold planning quantity for a substance within 30 days after October 17, 1986, the threshold planning quantity for the substance shall be 2 pounds until such time as the Administrator publishes regulations establishing a threshold for the substance.

(4) Revisions

The Administrator may revise the list and thresholds under paragraphs (2) and (3) from time to time. Any revisions to the list shall take into account the toxicity, reactivity, volatility, dispersability, combustability, or flammability of a substance. For purposes of the preceding sentence, the term "toxicity" shall include any short- or long-term health effect which may result from a short-term exposure to the substance.

(b) Facilities covered

(1) Except as provided in section 11004 of this title, a facility is subject to the requirements of this subchapter if a substance on the list referred to in subsection (a) of this section is present at the facility in an amount in excess of the threshold planning quantity established for such substance.

(2) For purposes of emergency planning, a Governor or a State emergency response commission may designate additional facilities which shall be subject to the requirements of this subchapter, if such designation is made after public notice and opportunity for comment. The Governor or State emergency response commission shall notify the facility concerned of any facility designation under this paragraph.

(c) Emergency planning notification

Not later than seven months after October 17, 1986, the owner or operator of each facility subject to the requirements of this subchapter by reason of subsection (b)(1) of this section shall notify the State emergency response commission for the State in which such facility is located that such facility is subject to the requirements of this subchapter. Thereafter, if a substance on the list of extremely hazardous substances referred to in subsection (a) of this section first becomes present at such facility in excess of the threshold planning quantity established for such substance, or if there is a revision of such list and the facility has present a substance on the revised list in excess of the threshold planning quantity established for such substance, the owner or operator of the facility shall notify the State emergency response commission and the local emergency planning committee within 60 days after such acquisition or revision that such facility is subject to the requirements of this subchapter.

(d) Notification of Administrator

The State emergency response commission shall notify the Administrator of facilities subject to the requirements of this subchapter by notifying the Administrator of—

- (1) each notification received from a facility under subsection (c) of this section, and
- (2) each facility designated by the Governor or State emergency response commission under subsection (b)(2) of this section.

(Pub. L. 99-499, title III, §302, Oct. 17, 1986, 100 Stat. 1730.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7413, 11003, 11004, 11005, 11045, 11046, 11049 of this title.

§ 11003. Comprehensive emergency response plans**(a) Plan required**

Each local emergency planning committee shall complete preparation of an emergency plan in accordance with this section not later than two years after October 17, 1986. The committee shall review such plan once a year, or more frequently as changed circumstances in the community or at any facility may require.

(b) Resources

Each local emergency planning committee shall evaluate the need for resources necessary to develop, implement, and exercise the emergency plan, and shall make recommendations with respect to additional resources that may be required and the means for providing such additional resources.

(c) Plan provisions

Each emergency plan shall include (but is not limited to) each of the following:

- (1) Identification of facilities subject to the requirements of this subchapter that are within the emergency planning district, identification of routes likely to be used for the transportation of substances on the list of extremely hazardous substances referred to in section 11002(a) of this title, and identification of additional facilities contributing or subjected to additional risk due to their proximity to facilities subject to the requirements of this subchapter, such as hospitals or natural gas facilities.
- (2) Methods and procedures to be followed by facility owners and operators and local emergency and medical personnel to respond to any release of such substances.
- (3) Designation of a community emergency coordinator and facility emergency coordinators, who shall make determinations necessary to implement the plan.
- (4) Procedures providing reliable, effective, and timely notification by the facility emergency coordinators and the community emergency coordinator to persons designated in the emergency plan, and to the public, that a release has occurred (consistent with the emergency notification requirements of section 11004 of this title).
- (5) Methods for determining the occurrence of a release, and the area or population likely to be affected by such release.

(6) A description of emergency equipment and facilities in the community and at each facility in the community subject to the requirements of this subchapter, and an identification of the persons responsible for such equipment and facilities.

(7) Evacuation plans, including provisions for a precautionary evacuation and alternative traffic routes.

(8) Training programs, including schedules for training of local emergency response and medical personnel.

(9) Methods and schedules for exercising the emergency plan.

(d) Providing of information

For each facility subject to the requirements of this subchapter:

(1) Within 30 days after establishment of a local emergency planning committee for the emergency planning district in which such facility is located, or within 11 months after October 17, 1986, whichever is earlier, the owner or operator of the facility shall notify the emergency planning committee (or the Governor if there is no committee) of a facility representative who will participate in the emergency planning process as a facility emergency coordinator.

(2) The owner or operator of the facility shall promptly inform the emergency planning committee of any relevant changes occurring at such facility as such changes occur or are expected to occur.

(3) Upon request from the emergency planning committee, the owner or operator of the facility shall promptly provide information to such committee necessary for developing and implementing the emergency plan.

(e) Review by State emergency response commission

After completion of an emergency plan under subsection (a) of this section for an emergency planning district, the local emergency planning committee shall submit a copy of the plan to the State emergency response commission of each State in which such district is located. The commission shall review the plan and make recommendations to the committee on revisions of the plan that may be necessary to ensure coordination of such plan with emergency response plans of other emergency planning districts. To the maximum extent practicable, such review shall not delay implementation of such plan.

(f) Guidance documents

The national response team, as established pursuant to the National Contingency Plan as established under section 9605 of this title, shall publish guidance documents for preparation and implementation of emergency plans. Such documents shall be published not later than five months after October 17, 1986.

(g) Review of plans by regional response teams

The regional response teams, as established pursuant to the National Contingency Plan as established under section 9605 of this title, may review and comment upon an emergency plan or other issues related to preparation, implementation, or exercise of such a plan upon request of

a local emergency planning committee. Such review shall not delay implementation of the plan. (Pub. L. 99-499, title III, §303, Oct. 17, 1986, 100 Stat. 1731.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11042, 11045, 11046 of this title; title 49 section 5116.

§ 11004. Emergency notification

(a) Types of releases

(1) 11002(a) substance which requires CERCLA notice

If a release of an extremely hazardous substance referred to in section 11002(a) of this title occurs from a facility at which a hazardous chemical is produced, used, or stored, and such release requires a notification under section 103(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [42 U.S.C. 9603(a)] (hereafter in this section referred to as "CERCLA") (42 U.S.C. 9601 et seq.), the owner or operator of the facility shall immediately provide notice as described in subsection (b) of this section.

(2) Other 11002(a) substance

If a release of an extremely hazardous substance referred to in section 11002(a) of this title occurs from a facility at which a hazardous chemical is produced, used, or stored, and such release is not subject to the notification requirements under section 103(a) of CERCLA [42 U.S.C. 9603(a)], the owner or operator of the facility shall immediately provide notice as described in subsection (b) of this section, but only if the release—

(A) is not a federally permitted release as defined in section 101(10) of CERCLA [42 U.S.C. 9601(10)],

(B) is in an amount in excess of a quantity which the Administrator has determined (by regulation) requires notice, and

(C) occurs in a manner which would require notification under section 103(a) of CERCLA [42 U.S.C. 9603(a)].

Unless and until superseded by regulations establishing a quantity for an extremely hazardous substance described in this paragraph, a quantity of 1 pound shall be deemed that quantity the release of which requires notice as described in subsection (b) of this section.

(3) Non-11002(a) substance which requires CERCLA notice

If a release of a substance which is not on the list referred to in section 11002(a) of this title occurs at a facility at which a hazardous chemical is produced, used, or stored, and such release requires notification under section 103(a) of CERCLA [42 U.S.C. 9603(a)], the owner or operator shall provide notice as follows:

(A) If the substance is one for which a reportable quantity has been established under section 102(a) of CERCLA [42 U.S.C. 9602(a)], the owner or operator shall provide notice as described in subsection (b) of this section.

(B) If the substance is one for which a reportable quantity has not been established under section 102(a) of CERCLA [42 U.S.C. 9602(a)]—

(i) Until April 30, 1988, the owner or operator shall provide, for releases of one pound or more of the substance, the same notice to the community emergency coordinator for the local emergency planning committee, at the same time and in the same form, as notice is provided to the National Response Center under section 103(a) of CERCLA [42 U.S.C. 9603(a)].

(ii) On and after April 30, 1988, the owner or operator shall provide, for releases of one pound or more of the substance, the notice as described in subsection (b) of this section.

(4) Exempted releases

This section does not apply to any release which results in exposure to persons solely within the site or sites on which a facility is located.

(b) Notification

(1) Recipients of notice

Notice required under subsection (a) of this section shall be given immediately after the release by the owner or operator of a facility (by such means as telephone, radio, or in person) to the community emergency coordinator for the local emergency planning committees, if established pursuant to section 11001(c) of this title, for any area likely to be affected by the release and to the State emergency planning commission of any State likely to be affected by the release. With respect to transportation of a substance subject to the requirements of this section, or storage incident to such transportation, the notice requirements of this section with respect to a release shall be satisfied by dialing 911 or, in the absence of a 911 emergency telephone number, calling the operator.

(2) Contents

Notice required under subsection (a) of this section shall include each of the following (to the extent known at the time of the notice and so long as no delay in responding to the emergency results):

(A) The chemical name or identity of any substance involved in the release.

(B) An indication of whether the substance is on the list referred to in section 11002(a) of this title.

(C) An estimate of the quantity of any such substance that was released into the environment.

(D) The time and duration of the release.

(E) The medium or media into which the release occurred.

(F) Any known or anticipated acute or chronic health risks associated with the emergency and, where appropriate, advice regarding medical attention necessary for exposed individuals.

(G) Proper precautions to take as a result of the release, including evacuation (unless such information is readily available to the community emergency coordinator pursuant to the emergency plan).

(H) The name and telephone number of the person or persons to be contacted for further information.

(c) Followup emergency notice

As soon as practicable after a release which requires notice under subsection (a) of this section, such owner or operator shall provide a written followup emergency notice (or notices, as more information becomes available) setting forth and updating the information required under subsection (b) of this section, and including additional information with respect to—

- (1) actions taken to respond to and contain the release,
- (2) any known or anticipated acute or chronic health risks associated with the release, and
- (3) where appropriate, advice regarding medical attention necessary for exposed individuals.

(d) Transportation exemption not applicable

The exemption provided in section 11047 of this title (relating to transportation) does not apply to this section.

(Pub. L. 99-499, title III, §304, Oct. 17, 1986, 100 Stat. 1733.)

REFERENCES IN TEXT

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and CERCLA, referred to in subsec. (a)(1), (3), is Pub. L. 96-510, Dec. 11, 1980, 94 Stat. 2767, as amended, which is classified principally to chapter 103 (§9601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11002, 11003, 11045, 11046, 11047, 11049 of this title.

§ 11005. Emergency training and review of emergency systems**(a) Emergency training****(1) Programs**

Officials of the United States Government carrying out existing Federal programs for emergency training are authorized to specifically provide training and education programs for Federal, State, and local personnel in hazard mitigation, emergency preparedness, fire prevention and control, disaster response, long-term disaster recovery, national security, technological and natural hazards, and emergency processes. Such programs shall provide special emphasis for such training and education with respect to hazardous chemicals.

(2) State and local program support

There is authorized to be appropriated to the Federal Emergency Management Agency for each of the fiscal years 1987, 1988, 1989, and 1990, \$5,000,000 for making grants to support programs of State and local governments, and to support university-sponsored programs, which are designed to improve emergency planning, preparedness, mitigation, response, and recovery capabilities. Such programs shall provide special emphasis with respect to emergencies associated with hazardous chemicals. Such grants may not exceed 80 percent of the cost of any such program. The remaining 20 percent of such costs shall be funded from non-Federal sources.

(3) Other programs

Nothing in this section shall affect the availability of appropriations to the Federal Emergency Management Agency for any programs carried out by such agency other than the programs referred to in paragraph (2).

(b) Review of emergency systems**(1) Review**

The Administrator shall initiate, not later than 30 days after October 17, 1986, a review of emergency systems for monitoring, detecting, and preventing releases of extremely hazardous substances at representative domestic facilities that produce, use, or store extremely hazardous substances. The Administrator may select representative extremely hazardous substances from the substances on the list referred to in section 11002(a) of this title for the purposes of this review. The Administrator shall report interim findings to the Congress not later than seven months after October 17, 1986, and issue a final report of findings and recommendations to the Congress not later than 18 months after October 17, 1986. Such report shall be prepared in consultation with the States and appropriate Federal agencies.

(2) Report

The report required by this subsection shall include the Administrator's findings regarding each of the following:

(A) The status of current technological capabilities to (i) monitor, detect, and prevent, in a timely manner, significant releases of extremely hazardous substances, (ii) determine the magnitude and direction of the hazard posed by each release, (iii) identify specific substances, (iv) provide data on the specific chemical composition of such releases, and (v) determine the relative concentrations of the constituent substances.

(B) The status of public emergency alert devices or systems for providing timely and effective public warning of an accidental release of extremely hazardous substances into the environment, including releases into the atmosphere, surface water, or groundwater from facilities that produce, store, or use significant quantities of such extremely hazardous substances.

(C) The technical and economic feasibility of establishing, maintaining, and operating perimeter alert systems for detecting releases of such extremely hazardous substances into the atmosphere, surface water, or groundwater, at facilities that manufacture, use, or store significant quantities of such substances.

(3) Recommendations

The report required by this subsection shall also include the Administrator's recommendations for—

(A) initiatives to support the development of new or improved technologies or systems that would facilitate the timely monitoring, detection, and prevention of releases of extremely hazardous substances, and

(B) improving devices or systems for effectively alerting the public in a timely man-

ner, in the event of an accidental release of such extremely hazardous substances.

(Pub. L. 99-499, title III, §305, Oct. 17, 1986, 100 Stat. 1735.)

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 313(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

SUBCHAPTER II—REPORTING REQUIREMENTS

§ 11021. Material safety data sheets

(a) Basic requirement

(1) Submission of MSDS or list

The owner or operator of any facility which is required to prepare or have available a material safety data sheet for a hazardous chemical under the Occupational Safety and Health Act of 1970 [29 U.S.C. 651 et seq.] and regulations promulgated under that Act shall submit a material safety data sheet for each such chemical, or a list of such chemicals as described in paragraph (2), to each of the following:

- (A) The appropriate local emergency planning committee.
- (B) The State emergency response commission.
- (C) The fire department with jurisdiction over the facility.

(2) Contents of list

(A) The list of chemicals referred to in paragraph (1) shall include each of the following:

- (i) A list of the hazardous chemicals for which a material safety data sheet is required under the Occupational Safety and Health Act of 1970 [29 U.S.C. 651 et seq.] and regulations promulgated under that Act, grouped in categories of health and physical hazards as set forth under such Act and regulations promulgated under such Act, or in such other categories as the Administrator may prescribe under subparagraph (B).
- (ii) The chemical name or the common name of each such chemical as provided on the material safety data sheet.
- (iii) Any hazardous component of each such chemical as provided on the material safety data sheet.

(B) For purposes of the list under this paragraph, the Administrator may modify the categories of health and physical hazards as set forth under the Occupational Safety and Health Act of 1970 [29 U.S.C. 651 et seq.] and regulations promulgated under that Act by requiring information to be reported in terms of groups of hazardous chemicals which present similar hazards in an emergency.

(3) Treatment of mixtures

An owner or operator may meet the requirements of this section with respect to a hazard-

ous chemical which is a mixture by doing one of the following:

(A) Submitting a material safety data sheet for, or identifying on a list, each element or compound in the mixture which is a hazardous chemical. If more than one mixture has the same element or compound, only one material safety data sheet, or one listing, of the element or compound is necessary.

(B) Submitting a material safety data sheet for, or identifying on a list, the mixture itself.

(b) Thresholds

The Administrator may establish threshold quantities for hazardous chemicals below which no facility shall be subject to the provisions of this section. The threshold quantities may, in the Administrator's discretion, be based on classes of chemicals or categories of facilities.

(c) Availability of MSDS on request

(1) To local emergency planning committee

If an owner or operator of a facility submits a list of chemicals under subsection (a)(1) of this section, the owner or operator, upon request by the local emergency planning committee, shall submit the material safety data sheet for any chemical on the list to such committee.

(2) To public

A local emergency planning committee, upon request by any person, shall make available a material safety data sheet to the person in accordance with section 11044 of this title. If the local emergency planning committee does not have the requested material safety data sheet, the committee shall request the sheet from the facility owner or operator and then make the sheet available to the person in accordance with section 11044 of this title.

(d) Initial submission and updating

(1) The initial material safety data sheet or list required under this section with respect to a hazardous chemical shall be provided before the later of—

- (A) 12 months after October 17, 1986, or
- (B) 3 months after the owner or operator of a facility is required to prepare or have available a material safety data sheet for the chemical under the Occupational Safety and Health Act of 1970 [29 U.S.C. 651 et seq.] and regulations promulgated under that Act.

(2) Within 3 months following discovery by an owner or operator of significant new information concerning an aspect of a hazardous chemical for which a material safety data sheet was previously submitted to the local emergency planning committee under subsection (a) of this section, a revised sheet shall be provided to such person.

(e) "Hazardous chemical" defined

For purposes of this section, the term "hazardous chemical" has the meaning given such term by section 1910.1200(c) of title 29 of the Code of Federal Regulations, except that such term does not include the following:

- (1) Any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug Administration.

(2) Any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use.

(3) Any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public.

(4) Any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual.

(5) Any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate customer.

(Pub. L. 99-499, title III, §311, Oct. 17, 1986, 100 Stat. 1736.)

REFERENCES IN TEXT

The Occupational Safety and Health Act of 1970, referred to in subsecs. (a)(1), (2)(A)(i), (B) and (d)(1)(B), is Pub. L. 91-596, Dec. 29, 1970, 84 Stat. 1590, as amended, which is classified principally to chapter 15 (§651 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 651 of Title 29 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11022, 11041, 11042, 11043, 11044, 11045, 11046, 11049 of this title.

§ 11022. Emergency and hazardous chemical inventory forms

(a) Basic requirement

(1) The owner or operator of any facility which is required to prepare or have available a material safety data sheet for a hazardous chemical under the Occupational Safety and Health Act of 1970 [29 U.S.C. 651 et seq.] and regulations promulgated under that Act shall prepare and submit an emergency and hazardous chemical inventory form (hereafter in this chapter referred to as an "inventory form") to each of the following:

- (A) The appropriate local emergency planning committee.
- (B) The State emergency response commission.
- (C) The fire department with jurisdiction over the facility.

(2) The inventory form containing tier I information (as described in subsection (d)(1) of this section) shall be submitted on or before March 1, 1988, and annually thereafter on March 1, and shall contain data with respect to the preceding calendar year. The preceding sentence does not apply if an owner or operator provides, by the same deadline and with respect to the same calendar year, tier II information (as described in subsection (d)(2) of this section) to the recipients described in paragraph (1).

(3) An owner or operator may meet the requirements of this section with respect to a hazardous chemical which is a mixture by doing one of the following:

- (A) Providing information on the inventory form on each element or compound in the mixture which is a hazardous chemical. If more

than one mixture has the same element or compound, only one listing on the inventory form for the element or compound at the facility is necessary.

(B) Providing information on the inventory form on the mixture itself.

(b) Thresholds

The Administrator may establish threshold quantities for hazardous chemicals covered by this section below which no facility shall be subject to the provisions of this section. The threshold quantities may, in the Administrator's discretion, be based on classes of chemicals or categories of facilities.

(c) Hazardous chemicals covered

A hazardous chemical subject to the requirements of this section is any hazardous chemical for which a material safety data sheet or a listing is required under section 11021 of this title.

(d) Contents of form

(1) Tier I information

(A) Aggregate information by category

An inventory form shall provide the information described in subparagraph (B) in aggregate terms for hazardous chemicals in categories of health and physical hazards as set forth under the Occupational Safety and Health Act of 1970 [29 U.S.C. 651 et seq.] and regulations promulgated under that Act.

(B) Required information

The information referred to in subparagraph (A) is the following:

- (i) An estimate (in ranges) of the maximum amount of hazardous chemicals in each category present at the facility at any time during the preceding calendar year.
- (ii) An estimate (in ranges) of the average daily amount of hazardous chemicals in each category present at the facility during the preceding calendar year.
- (iii) The general location of hazardous chemicals in each category.

(C) Modifications

For purposes of reporting information under this paragraph, the Administrator may—

- (i) modify the categories of health and physical hazards as set forth under the Occupational Safety and Health Act of 1970 [29 U.S.C. 651 et seq.] and regulations promulgated under that Act by requiring information to be reported in terms of groups of hazardous chemicals which present similar hazards in an emergency, or
- (ii) require reporting on individual hazardous chemicals of special concern to emergency response personnel.

(2) Tier II information

An inventory form shall provide the following additional information for each hazardous chemical present at the facility, but only upon request and in accordance with subsection (e) of this section:

- (A) The chemical name or the common name of the chemical as provided on the material safety data sheet.

(B) An estimate (in ranges) of the maximum amount of the hazardous chemical present at the facility at any time during the preceding calendar year.

(C) An estimate (in ranges) of the average daily amount of the hazardous chemical present at the facility during the preceding calendar year.

(D) A brief description of the manner of storage of the hazardous chemical.

(E) The location at the facility of the hazardous chemical.

(F) An indication of whether the owner elects to withhold location information of a specific hazardous chemical from disclosure to the public under section 11044 of this title.

(e) Availability of tier II information

(1) Availability to State commissions, local committees, and fire departments

Upon request by a State emergency planning commission, a local emergency planning committee, or a fire department with jurisdiction over the facility, the owner or operator of a facility shall provide tier II information, as described in subsection (d) of this section, to the person making the request. Any such request shall be with respect to a specific facility.

(2) Availability to other State and local officials

A State or local official acting in his or her official capacity may have access to tier II information by submitting a request to the State emergency response commission or the local emergency planning committee. Upon receipt of a request for tier II information, the State commission or local committee shall, pursuant to paragraph (1), request the facility owner or operator for the tier II information and make available such information to the official.

(3) Availability to public

(A) In general

Any person may request a State emergency response commission or local emergency planning committee for tier II information relating to the preceding calendar year with respect to a facility. Any such request shall be in writing and shall be with respect to a specific facility.

(B) Automatic provision of information to public

Any tier II information which a State emergency response commission or local emergency planning committee has in its possession shall be made available to a person making a request under this paragraph in accordance with section 11044 of this title. If the State emergency response commission or local emergency planning committee does not have the tier II information in its possession, upon a request for tier II information the State emergency response commission or local emergency planning committee shall, pursuant to paragraph (1), request the facility owner or operator for tier II information with respect to a hazardous chemical which a facility has stored in an amount in excess of 10,000 pounds present at the facility

at any time during the preceding calendar year and make such information available in accordance with section 11044 of this title to the person making the request.

(C) Discretionary provision of information to public

In the case of tier II information which is not in the possession of a State emergency response commission or local emergency planning committee and which is with respect to a hazardous chemical which a facility has stored in an amount less than 10,000 pounds present at the facility at any time during the preceding calendar year, a request from a person must include the general need for the information. The State emergency response commission or local emergency planning committee may, pursuant to paragraph (1), request the facility owner or operator for the tier II information on behalf of the person making the request. Upon receipt of any information requested on behalf of such person, the State emergency response commission or local emergency planning committee shall make the information available in accordance with section 11044 of this title to the person.

(D) Response in 45 days

A State emergency response commission or local emergency planning committee shall respond to a request for tier II information under this paragraph no later than 45 days after the date of receipt of the request.

(f) Fire department access

Upon request to an owner or operator of a facility which files an inventory form under this section by the fire department with jurisdiction over the facility, the owner or operator of the facility shall allow the fire department to conduct an on-site inspection of the facility and shall provide to the fire department specific location information on hazardous chemicals at the facility.

(g) Format of forms

The Administrator shall publish a uniform format for inventory forms within three months after October 17, 1986. If the Administrator does not publish such forms, owners and operators of facilities subject to the requirements of this section shall provide the information required under this section by letter.

(Pub. L. 99-499, title III, §312, Oct. 17, 1986, 100 Stat. 1738.)

REFERENCES IN TEXT

The Occupational Safety and Health Act of 1970, referred to in subsecs. (a)(1) and (d)(1)(A), (C)(i), is Pub. L. 91-596, Dec. 29, 1970, 84 Stat. 1590, as amended, which is classified principally to chapter 15 (§651 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 651 of Title 29 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11001, 11042, 11043, 11044, 11045, 11046 of this title.

§ 11023. Toxic chemical release forms

(a) Basic requirement

The owner or operator of a facility subject to the requirements of this section shall complete

a toxic chemical release form as published under subsection (g) of this section for each toxic chemical listed under subsection (c) of this section that was manufactured, processed, or otherwise used in quantities exceeding the toxic chemical threshold quantity established by subsection (f) of this section during the preceding calendar year at such facility. Such form shall be submitted to the Administrator and to an official or officials of the State designated by the Governor on or before July 1, 1988, and annually thereafter on July 1 and shall contain data reflecting releases during the preceding calendar year.

(b) Covered owners and operators of facilities

(1) In general

(A) The requirements of this section shall apply to owners and operators of facilities that have 10 or more full-time employees and that are in Standard Industrial Classification Codes 20 through 39 (as in effect on July 1, 1985) and that manufactured, processed, or otherwise used a toxic chemical listed under subsection (c) of this section in excess of the quantity of that toxic chemical established under subsection (f) of this section during the calendar year for which a release form is required under this section.

(B) The Administrator may add or delete Standard Industrial Classification Codes for purposes of subparagraph (A), but only to the extent necessary to provide that each Standard Industrial Code to which this section applies is relevant to the purposes of this section.

(C) For purposes of this section—

(i) The term “manufacture” means to produce, prepare, import, or compound a toxic chemical.

(ii) The term “process” means the preparation of a toxic chemical, after its manufacture, for distribution in commerce—

(I) in the same form or physical state as, or in a different form or physical state from, that in which it was received by the person so preparing such chemical, or

(II) as part of an article containing the toxic chemical.

(2) Discretionary application to additional facilities

The Administrator, on his own motion or at the request of a Governor of a State (with regard to facilities located in that State), may apply the requirements of this section to the owners and operators of any particular facility that manufactures, processes, or otherwise uses a toxic chemical listed under subsection (c) of this section if the Administrator determines that such action is warranted on the basis of toxicity of the toxic chemical, proximity to other facilities that release the toxic chemical or to population centers, the history of releases of such chemical at such facility, or such other factors as the Administrator deems appropriate.

(c) Toxic chemicals covered

The toxic chemicals subject to the requirements of this section are those chemicals on the list in Committee Print Number 99-169 of the

Senate Committee on Environment and Public Works, titled “Toxic Chemicals Subject to Section 313 of the Emergency Planning and Community Right-To-Know Act of 1986” [42 U.S.C. 11023] (including any revised version of the list as may be made pursuant to subsection (d) or (e) of this section).

(d) Revisions by Administrator

(1) In general

The Administrator may by rule add or delete a chemical from the list described in subsection (c) of this section at any time.

(2) Additions

A chemical may be added if the Administrator determines, in his judgment, that there is sufficient evidence to establish any one of the following:

(A) The chemical is known to cause or can reasonably be anticipated to cause significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring, releases.

(B) The chemical is known to cause or can reasonably be anticipated to cause in humans—

(i) cancer or teratogenic effects, or

(ii) serious or irreversible—

(I) reproductive dysfunctions,

(II) neurological disorders,

(III) heritable genetic mutations, or

(IV) other chronic health effects.

(C) The chemical is known to cause or can reasonably be anticipated to cause, because of—

(i) its toxicity,

(ii) its toxicity and persistence in the environment, or

(iii) its toxicity and tendency to bioaccumulate in the environment,

a significant adverse effect on the environment of sufficient seriousness, in the judgment of the Administrator, to warrant reporting under this section. The number of chemicals included on the list described in subsection (c) of this section on the basis of the preceding sentence may constitute in the aggregate no more than 25 percent of the total number of chemicals on the list.

A determination under this paragraph shall be based on generally accepted scientific principles or laboratory tests, or appropriately designed and conducted epidemiological or other population studies, available to the Administrator.

(3) Deletions

A chemical may be deleted if the Administrator determines there is not sufficient evidence to establish any of the criteria described in paragraph (2).

(4) Effective date

Any revision made on or after January 1 and before December 1 of any calendar year shall take effect beginning with the next calendar year. Any revision made on or after December 1 of any calendar year and before January 1 of

the next calendar year shall take effect beginning with the calendar year following such next calendar year.

(e) Petitions

(1) In general

Any person may petition the Administrator to add or delete a chemical from the list described in subsection (c) of this section on the basis of the criteria in subparagraph (A) or (B) of subsection (d)(2) of this section. Within 180 days after receipt of a petition, the Administrator shall take one of the following actions:

(A) Initiate a rulemaking to add or delete the chemical to the list, in accordance with subsection (d)(2) or (d)(3) of this section.

(B) Publish an explanation of why the petition is denied.

(2) Governor petitions

A State Governor may petition the Administrator to add or delete a chemical from the list described in subsection (c) of this section on the basis of the criteria in subparagraph (A), (B), or (C) of subsection (d)(2) of this section. In the case of such a petition from a State Governor to delete a chemical, the petition shall be treated in the same manner as a petition received under paragraph (1) to delete a chemical. In the case of such a petition from a State Governor to add a chemical, the chemical will be added to the list within 180 days after receipt of the petition, unless the Administrator—

(A) initiates a rulemaking to add the chemical to the list, in accordance with subsection (d)(2) of this section, or

(B) publishes an explanation of why the Administrator believes the petition does not meet the requirements of subsection (d)(2) of this section for adding a chemical to the list.

(f) Threshold for reporting

(1) Toxic chemical threshold amount

The threshold amounts for purposes of reporting toxic chemicals under this section are as follows:

(A) With respect to a toxic chemical used at a facility, 10,000 pounds of the toxic chemical per year.

(B) With respect to a toxic chemical manufactured or processed at a facility—

(i) For the toxic chemical release form required to be submitted under this section on or before July 1, 1988, 75,000 pounds of the toxic chemical per year.

(ii) For the form required to be submitted on or before July 1, 1989, 50,000 pounds of the toxic chemical per year.

(iii) For the form required to be submitted on or before July 1, 1990, and for each form thereafter, 25,000 pounds of the toxic chemical per year.

(2) Revisions

The Administrator may establish a threshold amount for a toxic chemical different from the amount established by paragraph (1). Such revised threshold shall obtain reporting on a substantial majority of total releases of the chemical at all facilities subject to the re-

quirements of this section. The amounts established under this paragraph may, at the Administrator's discretion, be based on classes of chemicals or categories of facilities.

(g) Form

(1) Information required

Not later than June 1, 1987, the Administrator shall publish a uniform toxic chemical release form for facilities covered by this section. If the Administrator does not publish such a form, owners and operators of facilities subject to the requirements of this section shall provide the information required under this subsection by letter postmarked on or before the date on which the form is due. Such form shall—

(A) provide for the name and location of, and principal business activities at, the facility;

(B) include an appropriate certification, signed by a senior official with management responsibility for the person or persons completing the report, regarding the accuracy and completeness of the report; and

(C) provide for submission of each of the following items of information for each listed toxic chemical known to be present at the facility:

(i) Whether the toxic chemical at the facility is manufactured, processed, or otherwise used, and the general category or categories of use of the chemical.

(ii) An estimate of the maximum amounts (in ranges) of the toxic chemical present at the facility at any time during the preceding calendar year.

(iii) For each wastestream, the waste treatment or disposal methods employed, and an estimate of the treatment efficiency typically achieved by such methods for that wastestream.

(iv) The annual quantity of the toxic chemical entering each environmental medium.

(2) Use of available data

In order to provide the information required under this section, the owner or operator of a facility may use readily available data (including monitoring data) collected pursuant to other provisions of law, or, where such data are not readily available, reasonable estimates of the amounts involved. Nothing in this section requires the monitoring or measurement of the quantities, concentration, or frequency of any toxic chemical released into the environment beyond that monitoring and measurement required under other provisions of law or regulation. In order to assure consistency, the Administrator shall require that data be expressed in common units.

(h) Use of release form

The release forms required under this section are intended to provide information to the Federal, State, and local governments and the public, including citizens of communities surrounding covered facilities. The release form shall be available, consistent with section 11044(a) of this title, to inform persons about releases of toxic chemicals to the environment; to assist govern-

mental agencies, researchers, and other persons in the conduct of research and data gathering; to aid in the development of appropriate regulations, guidelines, and standards; and for other similar purposes.

(i) Modifications in reporting frequency

(1) In general

The Administrator may modify the frequency of submitting a report under this section, but the Administrator may not modify the frequency to be any more often than annually. A modification may apply, either nationally or in a specific geographic area, to the following:

- (A) All toxic chemical release forms required under this section.
- (B) A class of toxic chemicals or a category of facilities.
- (C) A specific toxic chemical.
- (D) A specific facility.

(2) Requirements

A modification may be made under paragraph (1) only if the Administrator—

- (A) makes a finding that the modification is consistent with the provisions of subsection (h) of this section, based on—
 - (i) experience from previously submitted toxic chemical release forms, and
 - (ii) determinations made under paragraph (3), and
- (B) the finding is made by a rulemaking in accordance with section 553 of title 5.

(3) Determinations

The Administrator shall make the following determinations with respect to a proposed modification before making a modification under paragraph (1):

- (A) The extent to which information relating to the proposed modification provided on the toxic chemical release forms has been used by the Administrator or other agencies of the Federal Government, States, local governments, health professionals, and the public.
- (B) The extent to which the information is (i) readily available to potential users from other sources, such as State reporting programs, and (ii) provided to the Administrator under another Federal law or through a State program.
- (C) The extent to which the modification would impose additional and unreasonable burdens on facilities subject to the reporting requirements under this section.

(4) 5-year review

Any modification made under this subsection shall be reviewed at least once every 5 years. Such review shall examine the modification and ensure that the requirements of paragraphs (2) and (3) still justify continuation of the modification. Any change to a modification reviewed under this paragraph shall be made in accordance with this subsection.

(5) Notification to Congress

The Administrator shall notify Congress of an intention to initiate a rulemaking for a

modification under this subsection. After such notification, the Administrator shall delay initiation of the rulemaking for at least 12 months, but no more than 24 months, after the date of such notification.

(6) Judicial review

In any judicial review of a rulemaking which establishes a modification under this subsection, a court may hold unlawful and set aside agency action, findings, and conclusions found to be unsupported by substantial evidence.

(7) Applicability

A modification under this subsection may apply to a calendar year or other reporting period beginning no earlier than January 1, 1993.

(8) Effective date

Any modification made on or after January 1 and before December 1 of any calendar year shall take effect beginning with the next calendar year. Any modification made on or after December 1 of any calendar year and before January 1 of the next calendar year shall take effect beginning with the calendar year following such next calendar year.

(j) EPA management of data

The Administrator shall establish and maintain in a computer data base a national toxic chemical inventory based on data submitted to the Administrator under this section. The Administrator shall make these data accessible by computer telecommunication and other means to any person on a cost reimbursable basis.

(k) Report

Not later than June 30, 1991, the Comptroller General, in consultation with the Administrator and appropriate officials in the States, shall submit to the Congress a report including each of the following:

- (1) A description of the steps taken by the Administrator and the States to implement the requirements of this section, including steps taken to make information collected under this section available to and accessible by the public.
- (2) A description of the extent to which the information collected under this section has been used by the Environmental Protection Agency, other Federal agencies, the States, and the public, and the purposes for which the information has been used.
- (3) An identification and evaluation of options for modifications to the requirements of this section for the purpose of making information collected under this section more useful.

(l) Mass balance study

(1) In general

The Administrator shall arrange for a mass balance study to be carried out by the National Academy of Sciences using mass balance information collected by the Administrator under paragraph (3). The Administrator shall submit to Congress a report on such study no later than 5 years after October 17, 1986.

(2) Purposes

The purposes of the study are as follows:

(A) To assess the value of mass balance analysis in determining the accuracy of information on toxic chemical releases.

(B) To assess the value of obtaining mass balance information, or portions thereof, to determine the waste reduction efficiency of different facilities, or categories of facilities, including the effectiveness of toxic chemical regulations promulgated under laws other than this chapter.

(C) To assess the utility of such information for evaluating toxic chemical management practices at facilities, or categories of facilities, covered by this section.

(D) To determine the implications of mass balance information collection on a national scale similar to the mass balance information collection carried out by the Administrator under paragraph (3), including implications of the use of such collection as part of a national annual quantity toxic chemical release program.

(3) Information collection

(A) The Administrator shall acquire available mass balance information from States which currently conduct (or during the 5 years after October 17, 1986 initiate) a mass balance-oriented annual quantity toxic chemical release program. If information from such States provides an inadequate representation of industry classes and categories to carry out the purposes of the study, the Administrator also may acquire mass balance information necessary for the study from a representative number of facilities in other States.

(B) Any information acquired under this section shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that the information (or a particular part thereof) to which the Administrator or any officer, employee, or representative has access under this section if made public would divulge information entitled to protection under section 1905 of title 18, such information or part shall be considered confidential in accordance with the purposes of that section, except that such information or part may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this section.

(C) The Administrator may promulgate regulations prescribing procedures for collecting mass balance information under this paragraph.

(D) For purposes of collecting mass balance information under subparagraph (A), the Administrator may require the submission of information by a State or facility.

(4) Mass balance definition

For purposes of this subsection, the term "mass balance" means an accumulation of the annual quantities of chemicals transported to a facility, produced at a facility, consumed at a facility, used at a facility, accumulated at a facility, released from a facility, and transported from a facility as a waste or as a commercial product or byproduct or component of a commercial product or byproduct.

(Pub. L. 99-499, title III, §313, Oct. 17, 1986, 100 Stat. 1741.)

EXPEDITING COMMUNITY RIGHT-TO-KNOW INITIATIVES

Memorandum of President of the United States, Aug. 8, 1995, 60 F.R. 41791, provided:

Memorandum for the Administrator of the Environmental Protection Agency and the Heads of Executive Departments and Agencies

The Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11001-11050) ("EPCRA") and the Pollution Prevention Act of 1990 (42 U.S.C. 13101-13109) provide an innovative approach to protecting public health and the environment by ensuring that communities are informed about the toxic chemicals being released into the air, land, and water by manufacturing facilities. I am committed to the effective implementation of this law, because Community Right-to-Know protections provide a basic informational tool to encourage informed community-based environmental decision making and provide a strong incentive for businesses to find their own ways of preventing pollution.

The laws provide the Environmental Protection Agency with substantial authority to add to the Toxics Release Inventory under EPCRA: (1) new chemicals; (2) new classes of industrial facilities; and (3) additional types of information concerning toxic chemical use at facilities. Community Right-to-Know should be enhanced wherever possible as appropriate. EPA currently is engaged in an on-going process to address potential facility expansion and the collection of use information. I am committed to a full and open process on the policy issues posed by EPA's exercise of these authorities.

So that consideration of these issues can be fully accomplished during this Administration, I am directing the Administrator of the Environmental Protection Agency, in consultation with the Office of Management and Budget and appropriate Federal agencies with applicable technical and functional expertise, as necessary, to take the following actions:

(a) Continuation on an expedited basis of the public notice and comment rulemaking proceedings to consider whether, as appropriate and consistent with section 313(b) of EPCRA, 42 U.S.C. 11023(b), to add to the list of Standard Industrial Classification ("SIC") Code designations of 20 through 39 (as in effect on July 1, 1985). For SIC Code designations, see "Standard Industrial Classification Manual" published by the Office of Management and Budget. EPA shall complete the rulemaking process on an accelerated schedule.

(b) Development and implementation of an expedited, open, and transparent process for consideration of reporting under EPCRA on information on the use of toxic chemicals at facilities, including information on mass balance, materials accounting, or other chemical use data [data], pursuant to section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A). EPA shall report on the progress of this effort by October 1, 1995, with a goal of obtaining sufficient information to be able to make informed judgments concerning implementation of any appropriate program.

These actions should continue unless specifically prohibited by law. The head of each executive department or agency shall assist the Environmental Protection Agency in implementing this directive as quickly as possible.

This directive is for the internal management of the executive branch and does not create any right or benefit, substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any person.

The Director of the Office of Management and Budget is authorized and directed to publish this Memorandum in the Federal Register.

WILLIAM J. CLINTON.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11042, 11043, 11045, 11046, 11049, 13102, 13106 of this title.

SUBCHAPTER III—GENERAL PROVISIONS

§ 11041. Relationship to other law**(a) In general**

Nothing in this chapter shall—

- (1) preempt any State or local law,
- (2) except as provided in subsection (b) of this section, otherwise affect any State or local law or the authority of any State or local government to adopt or enforce any State or local law, or
- (3) affect or modify in any way the obligations or liabilities of any person under other Federal law.

(b) Effect on MSDS requirements

Any State or local law enacted after August 1, 1985, which requires the submission of a material safety data sheet from facility owners or operators shall require that the data sheet be identical in content and format to the data sheet required under subsection (a) of section 11021 of this title. In addition, a State or locality may require the submission of information which is supplemental to the information required on the data sheet (including information on the location and quantity of hazardous chemicals present at the facility), through additional sheets attached to the data sheet or such other means as the State or locality considers appropriate.

(Pub. L. 99-499, title III, §321, Oct. 17, 1986, 100 Stat. 1747.)

§ 11042. Trade secrets**(a) Authority to withhold information****(1) General authority**

(A) With regard to a hazardous chemical, an extremely hazardous substance, or a toxic chemical, any person required under section 11003(d)(2), 11003(d)(3), 11021, 11022, or 11023 of this title to submit information to any other person may withhold from such submittal the specific chemical identity (including the chemical name and other specific identification), as defined in regulations prescribed by the Administrator under subsection (c) of this section, if the person complies with paragraph (2).

(B) Any person withholding the specific chemical identity shall, in the place on the submittal where the chemical identity would normally be included, include the generic class or category of the hazardous chemical, extremely hazardous substance, or toxic chemical (as the case may be).

(2) Requirements

(A) A person is entitled to withhold information under paragraph (1) if such person—

- (i) claims that such information is a trade secret, on the basis of the factors enumerated in subsection (b) of this section,
- (ii) includes in the submittal referred to in paragraph (1) an explanation of the reasons why such information is claimed to be a trade secret, based on the factors enumerated in subsection (b) of this section, including a specific description of why such factors apply, and

(iii) submits to the Administrator a copy of such submittal, and the information withheld from such submittal.

(B) In submitting to the Administrator the information required by subparagraph (A)(iii), a person withholding information under this subsection may—

- (i) designate, in writing and in such manner as the Administrator may prescribe by regulation, the information which such person believes is entitled to be withheld under paragraph (1), and
- (ii) submit such designated information separately from other information submitted under this subsection.

(3) Limitation

The authority under this subsection to withhold information shall not apply to information which the Administrator has determined, in accordance with subsection (c) of this section, is not a trade secret.

(b) Trade secret factors

No person required to provide information under this chapter may claim that the information is entitled to protection as a trade secret under subsection (a) of this section unless such person shows each of the following:

(1) Such person has not disclosed the information to any other person, other than a member of a local emergency planning committee, an officer or employee of the United States or a State or local government, an employee of such person, or a person who is bound by a confidentiality agreement, and such person has taken reasonable measures to protect the confidentiality of such information and intends to continue to take such measures.

(2) The information is not required to be disclosed, or otherwise made available, to the public under any other Federal or State law.

(3) Disclosure of the information is likely to cause substantial harm to the competitive position of such person.

(4) The chemical identity is not readily discoverable through reverse engineering.

(c) Trade secret regulations

As soon as practicable after October 17, 1986, the Administrator shall prescribe regulations to implement this section. With respect to subsection (b)(4) of this section, such regulations shall be equivalent to comparable provisions in the Occupational Safety and Health Administration Hazard Communication Standard (29 C.F.R. 1910.1200) and any revisions of such standard prescribed by the Secretary of Labor in accordance with the final ruling of the courts of the United States in *United Steelworkers of America, AFL-CIO-CLC v. Thorne G. Auchter*.

(d) Petition for review**(1) In general**

Any person may petition the Administrator for the disclosure of the specific chemical identity of a hazardous chemical, an extremely hazardous substance, or a toxic chemical which is claimed as a trade secret under this section. The Administrator may, in the absence of a petition under this paragraph,

initiate a determination, to be carried out in accordance with this subsection, as to whether information withheld constitutes a trade secret.

(2) Initial review

Within 30 days after the date of receipt of a petition under paragraph (1) (or upon the Administrator's initiative), the Administrator shall review the explanation filed by a trade secret claimant under subsection (a)(2) of this section and determine whether the explanation presents assertions which, if true, are sufficient to support a finding that the specific chemical identity is a trade secret.

(3) Finding of sufficient assertions

(A) If the Administrator determines pursuant to paragraph (2) that the explanation presents sufficient assertions to support a finding that the specific chemical identity is a trade secret, the Administrator shall notify the trade secret claimant that he has 30 days to supplement the explanation with detailed information to support the assertions.

(B) If the Administrator determines, after receipt of any supplemental supporting detailed information under subparagraph (A), that the assertions in the explanation are true and that the specific chemical identity is a trade secret, the Administrator shall so notify the petitioner and the petitioner may seek judicial review of the determination.

(C) If the Administrator determines, after receipt of any supplemental supporting detailed information under subparagraph (A), that the assertions in the explanation are not true and that the specific chemical identity is not a trade secret, the Administrator shall notify the trade secret claimant that the Administrator intends to release the specific chemical identity. The trade secret claimant has 30 days in which he may appeal the Administrator's determination under this subparagraph to the Administrator. If the Administrator does not reverse his determination under this subparagraph in such an appeal by the trade secret claimant, the trade secret claimant¹ may seek judicial review of the determination.

(4) Finding of insufficient assertions

(A) If the Administrator determines pursuant to paragraph (2) that the explanation presents insufficient assertions to support a finding that the specific chemical identity is a trade secret, the Administrator shall notify the trade secret claimant that he has 30 days to appeal the determination to the Administrator, or, upon a showing of good cause, amend the original explanation by providing supplementary assertions to support the trade secret claim.

(B) If the Administrator does not reverse his determination under subparagraph (A) after an appeal or an examination of any supplementary assertions under subparagraph (A), the Administrator shall so notify the trade secret claimant and the trade secret claimant may seek judicial review of the determination.

(C) If the Administrator reverses his determination under subparagraph (A) after an ap-

peal or an examination of any supplementary assertions under subparagraph (A), the procedures under paragraph (3) of this subsection apply.

(e) Exception for information provided to health professionals

Nothing in this section, or regulations adopted pursuant to this section, shall authorize any person to withhold information which is required to be provided to a health professional, a doctor, or a nurse in accordance with section 11043 of this title.

(f) Providing information to Administrator; availability to public

Any information submitted to the Administrator under subsection (a)(2) of this section or subsection (d)(3) of this section (except a specific chemical identity) shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that the information (or a particular part thereof) to which the Administrator has access under this section if made public would divulge information entitled to protection under section 1905 of title 18, such information or part shall be considered confidential in accordance with the purposes of that section, except that such information or part may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter.

(g) Information provided to State

Upon request by a State, acting through the Governor of the State, the Administrator shall provide to the State any information obtained under subsection (a)(2) of this section and subsection (d)(3) of this section.

(h) Information on adverse effects

(1) In any case in which the identity of a hazardous chemical or an extremely hazardous substance is claimed as a trade secret, the Governor or State emergency response commission established under section 11001 of this title shall identify the adverse health effects associated with the hazardous chemical or extremely hazardous substance and shall assure that such information is provided to any person requesting information about such hazardous chemical or extremely hazardous substance.

(2) In any case in which the identity of a toxic chemical is claimed as a trade secret, the Administrator shall identify the adverse health and environmental effects associated with the toxic chemical and shall assure that such information is included in the computer database required by section 11023(j) of this title and is provided to any person requesting information about such toxic chemical.

(i) Information provided to Congress

Notwithstanding any limitation² contained in this section or any other provision of law, all information reported to or otherwise obtained by the Administrator (or any representative of the Administrator) under this chapter shall be made available to a duly authorized committee of the

¹ So in original. Probably should be "claimant".

² So in original. Probably should be "limitation".

Congress upon written request by such a committee.

(Pub. L. 99-499, title III, §322, Oct. 17, 1986, 100 Stat. 1747.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11043, 11044, 11045, 11046, 13106 of this title.

§ 11043. Provision of information to health professionals, doctors, and nurses

(a) Diagnosis or treatment by health professional

An owner or operator of a facility which is subject to the requirements of section 11021, 11022, or 11023 of this title shall provide the specific chemical identity, if known, of a hazardous chemical, extremely hazardous substance, or a toxic chemical to any health professional who requests such information in writing if the health professional provides a written statement of need under this subsection and a written confidentiality agreement under subsection (d) of this section. The written statement of need shall be a statement that the health professional has a reasonable basis to suspect that—

- (1) the information is needed for purposes of diagnosis or treatment of an individual,
- (2) the individual or individuals being diagnosed or treated have been exposed to the chemical concerned, and
- (3) knowledge of the specific chemical identity of such chemical will assist in diagnosis or treatment.

Following such a written request, the owner or operator to whom such request is made shall promptly provide the requested information to the health professional. The authority to withhold the specific chemical identity of a chemical under section 11042 of this title when such information is a trade secret shall not apply to information required to be provided under this subsection, subject to the provisions of subsection (d) of this section.

(b) Medical emergency

An owner or operator of a facility which is subject to the requirements of section 11021, 11022, or 11023 of this title shall provide a copy of a material safety data sheet, an inventory form, or a toxic chemical release form, including the specific chemical identity, if known, of a hazardous chemical, extremely hazardous substance, or a toxic chemical, to any treating physician or nurse who requests such information if such physician or nurse determines that—

- (1) a medical emergency exists,
- (2) the specific chemical identity of the chemical concerned is necessary for or will assist in emergency or first-aid diagnosis or treatment, and
- (3) the individual or individuals being diagnosed or treated have been exposed to the chemical concerned.

Immediately following such a request, the owner or operator to whom such request is made shall provide the requested information to the physician or nurse. The authority to withhold the specific chemical identity of a chemical from a material safety data sheet, an inventory form, or a toxic chemical release form under section

11042 of this title when such information is a trade secret shall not apply to information required to be provided to a treating physician or nurse under this subsection. No written confidentiality agreement or statement of need shall be required as a precondition of such disclosure, but the owner or operator disclosing such information may require a written confidentiality agreement in accordance with subsection (d) of this section and a statement setting forth the items listed in paragraphs (1) through (3) as soon as circumstances permit.

(c) Preventive measures by local health professionals

(1) Provision of information

An owner or operator of a facility subject to the requirements of section 11021, 11022, or 11023 of this title shall provide the specific chemical identity, if known, of a hazardous chemical, an extremely hazardous substance, or a toxic chemical to any health professional (such as a physician, toxicologist, or epidemiologist)—

- (A) who is a local government employee or a person under contract with the local government, and
- (B) who requests such information in writing and provides a written statement of need under paragraph (2) and a written confidentiality agreement under subsection (d) of this section.

Following such a written request, the owner or operator to whom such request is made shall promptly provide the requested information to the local health professional. The authority to withhold the specific chemical identity of a chemical under section 11042 of this title when such information is a trade secret shall not apply to information required to be provided under this subsection, subject to the provisions of subsection (d) of this section.

(2) Written statement of need

The written statement of need shall be a statement that describes with reasonable detail one or more of the following health needs for the information:

- (A) To assess exposure of persons living in a local community to the hazards of the chemical concerned.
- (B) To conduct or assess sampling to determine exposure levels of various population groups.
- (C) To conduct periodic medical surveillance of exposed population groups.
- (D) To provide medical treatment to exposed individuals or population groups.
- (E) To conduct studies to determine the health effects of exposure.
- (F) To conduct studies to aid in the identification of a chemical that may reasonably be anticipated to cause an observed health effect.

(d) Confidentiality agreement

Any person obtaining information under subsection (a) or (c) of this section shall, in accordance with such subsection (a) or (c) of this section, be required to agree in a written confidentiality agreement that he will not use the infor-

mation for any purpose other than the health needs asserted in the statement of need, except as may otherwise be authorized by the terms of the agreement or by the person providing such information. Nothing in this subsection shall preclude the parties to a confidentiality agreement from pursuing any remedies to the extent permitted by law.

(e) Regulations

As soon as practicable after October 17, 1986, the Administrator shall promulgate regulations describing criteria and parameters for the statement of need under subsection¹ (a) and (c) of this section and the confidentiality agreement under subsection (d) of this section.

(Pub. L. 99-499, title III, §323, Oct. 17, 1986, 100 Stat. 1750.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11042, 11045 of this title.

§ 11044. Public availability of plans, data sheets, forms, and followup notices

(a) Availability to public

Each emergency response plan, material safety data sheet, list described in section 11021(a)(2) of this title, inventory form, toxic chemical release form, and followup emergency notice shall be made available to the general public, consistent with section 11042 of this title, during normal working hours at the location or locations designated by the Administrator, Governor, State emergency response commission, or local emergency planning committee, as appropriate. Upon request by an owner or operator of a facility subject to the requirements of section 11022 of this title, the State emergency response commission and the appropriate local emergency planning committee shall withhold from disclosure under this section the location of any specific chemical required by section 11022(d)(2) of this title to be contained in an inventory form as tier II information.

(b) Notice of public availability

Each local emergency planning committee shall annually publish a notice in local newspapers that the emergency response plan, material safety data sheets, and inventory forms have been submitted under this section. The notice shall state that followup emergency notices may subsequently be issued. Such notice shall announce that members of the public who wish to review any such plan, sheet, form, or followup notice may do so at the location designated under subsection (a) of this section.

(Pub. L. 99-499, title III, §324, Oct. 17, 1986, 100 Stat. 1752.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11001, 11021, 11022, 11023, 11046 of this title.

§ 11045. Enforcement

(a) Civil penalties for emergency planning

The Administrator may order a facility owner or operator (except an owner or operator of a fa-

cility designated under section 11002(b)(2) of this title) to comply with section 11002(c) of this title and section 11003(d) of this title. The United States district court for the district in which the facility is located shall have jurisdiction to enforce the order, and any person who violates or fails to obey such an order shall be liable to the United States for a civil penalty of not more than \$25,000 for each day in which such violation occurs or such failure to comply continues.

(b) Civil, administrative, and criminal penalties for emergency notification

(1) Class I administrative penalty

(A) A civil penalty of not more than \$25,000 per violation may be assessed by the Administrator in the case of a violation of the requirements of section 11004 of this title.

(B) No civil penalty may be assessed under this subsection unless the person accused of the violation is given notice and opportunity for a hearing with respect to the violation.

(C) In determining the amount of any penalty assessed pursuant to this subsection, the Administrator shall take into account the nature, circumstances, extent and gravity of the violation or violations and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require.

(2) Class II administrative penalty

A civil penalty of not more than \$25,000 per day for each day during which the violation continues may be assessed by the Administrator in the case of a violation of the requirements of section 11004 of this title. In the case of a second or subsequent violation the amount of such penalty may be not more than \$75,000 for each day during which the violation continues. Any civil penalty under this subsection shall be assessed and collected in the same manner, and subject to the same provisions, as in the case of civil penalties assessed and collected under section 2615 of title 15. In any proceeding for the assessment of a civil penalty under this subsection the Administrator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents and may promulgate rules for discovery procedures.

(3) Judicial assessment

The Administrator may bring an action in the United States District¹ court for the appropriate district to assess and collect a penalty of not more than \$25,000 per day for each day during which the violation continues in the case of a violation of the requirements of section 11004 of this title. In the case of a second or subsequent violation, the amount of such penalty may be not more than \$75,000 for each day during which the violation continues.

(4) Criminal penalties

Any person who knowingly and willfully fails to provide notice in accordance with sec-

¹ So in original. Probably should be "subsections".

¹ So in original. Probably should not be capitalized.

tion 11004 of this title shall, upon conviction, be fined not more than \$25,000 or imprisoned for not more than two years, or both (or in the case of a second or subsequent conviction, shall be fined not more than \$50,000 or imprisoned for not more than five years, or both).

(c) Civil and administrative penalties for reporting requirements

(1) Any person (other than a governmental entity) who violates any requirement of section 11022 or 11023 of this title shall be liable to the United States for a civil penalty in an amount not to exceed \$25,000 for each such violation.

(2) Any person (other than a governmental entity) who violates any requirement of section 11021 or 11043(b) of this title, and any person who fails to furnish to the Administrator information required under section 11042(a)(2) of this title shall be liable to the United States for a civil penalty in an amount not to exceed \$10,000 for each such violation.

(3) Each day a violation described in paragraph (1) or (2) continues shall, for purposes of this subsection, constitute a separate violation.

(4) The Administrator may assess any civil penalty for which a person is liable under this subsection by administrative order or may bring an action to assess and collect the penalty in the United States district court for the district in which the person from whom the penalty is sought resides or in which such person's principal place of business is located.

(d) Civil, administrative, and criminal penalties with respect to trade secrets

(1) Civil and administrative penalty for frivolous claims

If the Administrator determines—

(A)(i) under section 11042(d)(4) of this title that an explanation submitted by a trade secret claimant presents insufficient assertions to support a finding that a specific chemical identity is a trade secret, or (ii) after receiving supplemental supporting detailed information under section 11042(d)(3)(A) of this title, that the specific chemical identity is not a trade secret; and

(B) that the trade secret claim is frivolous,

the trade secret claimant is liable for a penalty of \$25,000 per claim. The Administrator may assess the penalty by administrative order or may bring an action in the appropriate district court of the United States to assess and collect the penalty.

(2) Criminal penalty for disclosure of trade secret information

Any person who knowingly and willfully divulges or discloses any information entitled to protection under section 11042 of this title shall, upon conviction, be subject to a fine of not more than \$20,000 or to imprisonment not to exceed one year, or both.

(e) Special enforcement provisions for section 11043

Whenever any facility owner or operator required to provide information under section 11043 of this title to a health professional who has requested such information fails or refuses to provide such information in accordance with

such section, such health professional may bring an action in the appropriate United States district court to require such facility owner or operator to provide the information. Such court shall have jurisdiction to issue such orders and take such other action as may be necessary to enforce the requirements of section 11043 of this title.

(f) Procedures for administrative penalties

(1) Any person against whom a civil penalty is assessed under this section may obtain review thereof in the appropriate district court of the United States by filing a notice of appeal in such court within 30 days after the date of such order and by simultaneously sending a copy of such notice by certified mail to the Administrator. The Administrator shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed. If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order or after the appropriate court has entered final judgment in favor of the United States, the Administrator may request the Attorney General of the United States to institute a civil action in an appropriate district court of the United States to collect the penalty, and such court shall have jurisdiction to hear and decide any such action. In hearing such action, the court shall have authority to review the violation and the assessment of the civil penalty on the record.

(2) The Administrator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, or documents in connection with hearings under this section. In case of contumacy or refusal to obey a subpoena issued pursuant to this paragraph and served upon any person, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the administrative law judge or to appear and produce documents before the administrative law judge, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(Pub. L. 99-499, title III, §325, Oct. 17, 1986, 100 Stat. 1753.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13106 of this title.

§ 11046. Civil actions

(a) Authority to bring civil actions

(1) Citizen suits

Except as provided in subsection (e) of this section, any person may commence a civil action on his own behalf against the following:

(A) An owner or operator of a facility for failure to do any of the following:

(i) Submit a followup emergency notice under section 11004(c) of this title.

(ii) Submit a material safety data sheet or a list under section 11021(a) of this title.

(iii) Complete and submit an inventory form under section 11022(a) of this title containing tier I information as described in section 11022(d)(1) of this title unless such requirement does not apply by reason of the second sentence of section 11022(a)(2) of this title.

(iv) Complete and submit a toxic chemical release form under section 11023(a) of this title.

(B) The Administrator for failure to do any of the following:

(i) Publish inventory forms under section 11022(g) of this title.

(ii) Respond to a petition to add or delete a chemical under section 11023(e)(1) of this title within 180 days after receipt of the petition.

(iii) Publish a toxic chemical release form under 11023(g)¹ of this title.

(iv) Establish a computer database in accordance with section 11023(j) of this title.

(v) Promulgate trade secret regulations under section 11042(c) of this title.

(vi) Render a decision in response to a petition under section 11042(d) of this title within 9 months after receipt of the petition.

(C) The Administrator, a State Governor, or a State emergency response commission, for failure to provide a mechanism for public availability of information in accordance with section 11044(a) of this title.

(D) A State Governor or a State emergency response commission for failure to respond to a request for tier II information under section 11022(e)(3) of this title within 120 days after the date of receipt of the request.

(2) State or local suits

(A) Any State or local government may commence a civil action against an owner or operator of a facility for failure to do any of the following:

(i) Provide notification to the emergency response commission in the State under section 11002(c) of this title.

(ii) Submit a material safety data sheet or a list under section 11021(a) of this title.

(iii) Make available information requested under section 11021(c) of this title.

(iv) Complete and submit an inventory form under section 11022(a) of this title containing tier I information unless such requirement does not apply by reason of the second sentence of section 11022(a)(2) of this title.

(B) Any State emergency response commission or local emergency planning committee may commence a civil action against an owner or operator of a facility for failure to provide information under section 11003(d) of this title or for failure to submit tier II information under section 11022(e)(1) of this title.

(C) Any State may commence a civil action against the Administrator for failure to provide information to the State under section 11042(g) of this title.

(b) Venue

(1) Any action under subsection (a) of this section against an owner or operator of a facility shall be brought in the district court for the district in which the alleged violation occurred.

(2) Any action under subsection (a) of this section against the Administrator may be brought in the United States District Court for the District of Columbia.

(c) Relief

The district court shall have jurisdiction in actions brought under subsection (a) of this section against an owner or operator of a facility to enforce the requirement concerned and to impose any civil penalty provided for violation of that requirement. The district court shall have jurisdiction in actions brought under subsection (a) of this section against the Administrator to order the Administrator to perform the act or duty concerned.

(d) Notice

(1) No action may be commenced under subsection (a)(1)(A) of this section prior to 60 days after the plaintiff has given notice of the alleged violation to the Administrator, the State in which the alleged violation occurs, and the alleged violator. Notice under this paragraph shall be given in such manner as the Administrator shall prescribe by regulation.

(2) No action may be commenced under subsection (a)(1)(B) or (a)(1)(C) of this section prior to 60 days after the date on which the plaintiff gives notice to the Administrator, State Governor, or State emergency response commission (as the case may be) that the plaintiff will commence the action. Notice under this paragraph shall be given in such manner as the Administrator shall prescribe by regulation.

(e) Limitation

No action may be commenced under subsection (a) of this section against an owner or operator of a facility if the Administrator has commenced and is diligently pursuing an administrative order or civil action to enforce the requirement concerned or to impose a civil penalty under this Act with respect to the violation of the requirement.

(f) Costs

The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to the prevailing or the substantially prevailing party whenever the court determines such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(g) Other rights

Nothing in this section shall restrict or expand any right which any person (or class of persons) may have under any Federal or State statute or common law to seek enforcement of any requirement or to seek any other relief (including relief against the Administrator or a State agency).

¹ So in original. Probably should be preceded by "section".

(h) Intervention**(1) By the United States**

In any action under this section the United States or the State, or both, if not a party, may intervene as a matter of right.

(2) By persons

In any action under this section, any person may intervene as a matter of right when such person has a direct interest which is or may be adversely affected by the action and the disposition of the action may, as a practical matter, impair or impede the person's ability to protect that interest unless the Administrator or the State shows that the person's interest is adequately represented by existing parties in the action.

(Pub. L. 99-499, title III, §326, Oct. 17, 1986, 100 Stat. 1755.)

REFERENCES IN TEXT

This Act, referred to in subsec. (e), is Pub. L. 99-499, Oct. 17, 1986, 100 Stat. 1613, as amended, known as the Superfund Amendments and Reauthorization Act of 1986. For complete classification of this Act to the Code, see Short Title of 1986 Amendment note set out under section 9601 of this title and Tables.

The Federal Rules of Civil Procedure, referred to in subsec. (f), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13106 of this title.

§ 11047. Exemption

Except as provided in section 11004 of this title, this chapter does not apply to the transportation, including the storage incident to such transportation, of any substance or chemical subject to the requirements of this chapter, including the transportation and distribution of natural gas.

(Pub. L. 99-499, title III, §327, Oct. 17, 1986, 100 Stat. 1757.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11004 of this title.

§ 11048. Regulations

The Administrator may prescribe such regulations as may be necessary to carry out this chapter.

(Pub. L. 99-499, title III, §328, Oct. 17, 1986, 100 Stat. 1757.)

§ 11049. Definitions

For purposes of this chapter—

(1) Administrator

The term "Administrator" means the Administrator of the Environmental Protection Agency.

(2) Environment

The term "environment" includes water, air, and land and the interrelationship which exists among and between water, air, and land and all living things.

(3) Extremely hazardous substance

The term "extremely hazardous substance" means a substance on the list described in section 11002(a)(2) of this title.

(4) Facility

The term "facility" means all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with, such person). For purposes of section 11004 of this title, the term includes motor vehicles, rolling stock, and aircraft.

(5) Hazardous chemical

The term "hazardous chemical" has the meaning given such term by section 11021(e) of this title.

(6) Material safety data sheet

The term "material safety data sheet" means the sheet required to be developed under section 1910.1200(g) of title 29 of the Code of Federal Regulations, as that section may be amended from time to time.

(7) Person

The term "person" means any individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or interstate body.

(8) Release

The term "release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles) of any hazardous chemical, extremely hazardous substance, or toxic chemical.

(9) State

The term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, and any other territory or possession over which the United States has jurisdiction.

(10) Toxic chemical

The term "toxic chemical" means a substance on the list described in section 11023(c) of this title.

(Pub. L. 99-499, title III, §329, Oct. 17, 1986, 100 Stat. 1757.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13102 of this title.

§ 11050. Authorization of appropriations

There are authorized to be appropriated for fiscal years beginning after September 30, 1986, such sums as may be necessary to carry out this chapter.

(Pub. L. 99-499, title III, §330, Oct. 17, 1986, 100 Stat. 1758.)

CHAPTER 117—ENCOURAGING GOOD FAITH PROFESSIONAL REVIEW ACTIVITIES

Sec.

11101. Findings.

SUBCHAPTER I—PROMOTION OF PROFESSIONAL REVIEW ACTIVITIES

11111. Professional review.
 (a) In general.
 (b) Exception.
 (c) Treatment under State laws.
11112. Standards for professional review actions.
 (a) In general.
 (b) Adequate notice and hearing.
 (c) Adequate procedures in investigations or health emergencies.
11113. Payment of reasonable attorneys' fees and costs in defense of suit.
11114. Guidelines of Secretary.
11115. Construction.
 (a) In general.
 (b) Scope of clinical privileges.
 (c) Treatment of nurses and other practitioners.
 (d) Treatment of patient malpractice claims.

SUBCHAPTER II—REPORTING OF INFORMATION

11131. Requiring reports on medical malpractice payments.
 (a) In general.
 (b) Information to be reported.
 (c) Sanctions for failure to report.
 (d) Report on treatment of small payments.
11132. Reporting of sanctions taken by Boards of Medical Examiners.
 (a) In general.
 (b) Failure to report.
11133. Reporting of certain professional review actions taken by health care entities.
 (a) Reporting by health care entities.
 (b) Reporting by Board of Medical Examiners.
 (c) Sanctions.
 (d) References to Board of Medical Examiners.
11134. Form of reporting.
 (a) Timing and form.
 (b) To whom reported.
 (c) Reporting to State licensing boards.
11135. Duty of hospitals to obtain information.
 (a) In general.
 (b) Failure to obtain information.
 (c) Reliance on information provided.
11136. Disclosure and correction of information.
11137. Miscellaneous provisions.
 (a) Providing licensing boards and other health care entities with access to information.
 (b) Confidentiality of information.
 (c) Relief from liability for reporting.
 (d) Interpretation of information.

SUBCHAPTER III—DEFINITIONS AND REPORTS

11151. Definitions.
11152. Reports and memoranda of understanding.
 (a) Annual reports to Congress.
 (b) Memoranda of understanding.
 (c) Memorandum of understanding with Drug Enforcement Administration.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1320a-7e, 1396r-2 of this title.

§ 11101. Findings

The Congress finds the following:

(1) The increasing occurrence of medical malpractice and the need to improve the quality of medical care have become nationwide problems that warrant greater efforts than those that can be undertaken by any individual State.

(2) There is a national need to restrict the ability of incompetent physicians to move from State to State without disclosure or discovery of the physician's previous damaging or incompetent performance.

(3) This nationwide problem can be remedied through effective professional peer review.

(4) The threat of private money damage liability under Federal laws, including treble damage liability under Federal antitrust law, unreasonably discourages physicians from participating in effective professional peer review.

(5) There is an overriding national need to provide incentive and protection for physicians engaging in effective professional peer review.

(Pub. L. 99-660, title IV, §402, Nov. 14, 1986, 100 Stat. 3784.)

REFERENCES IN TEXT

The Federal antitrust laws, referred to in par. (4), are classified generally to chapter 1 (§1 et seq.) of Title 15, Commerce and Trade.

SHORT TITLE

Section 401 of title IV of Pub. L. 99-660 provided that: "This title [enacting this chapter and provisions set out as a note under section 11111 of this title] may be cited as the 'Health Care Quality Improvement Act of 1986'."

SUBCHAPTER I—PROMOTION OF PROFESSIONAL REVIEW ACTIVITIES

§ 11111. Professional review

(a) In general

(1) Limitation on damages for professional review actions

If a professional review action (as defined in section 11151(9) of this title) of a professional review body meets all the standards specified in section 11112(a) of this title, except as provided in subsection (b) of this section—

- (A) the professional review body,
 (B) any person acting as a member or staff to the body,
 (C) any person under a contract or other formal agreement with the body, and
 (D) any person who participates with or assists the body with respect to the action,

shall not be liable in damages under any law of the United States or of any State (or political subdivision thereof) with respect to the action. The preceding sentence shall not apply to damages under any law of the United States or any State relating to the civil rights of any person or persons, including the Civil Rights Act of 1964, 42 U.S.C. 2000e, et seq. and the Civil Rights Acts, 42 U.S.C. 1981, et seq. Nothing in this paragraph shall prevent the United States or any Attorney General of a State

from bringing an action, including an action under section 15c of title 15, where such an action is otherwise authorized.

(2) Protection for those providing information to professional review bodies

Notwithstanding any other provision of law, no person (whether as a witness or otherwise) providing information to a professional review body regarding the competence or professional conduct of a physician shall be held, by reason of having provided such information, to be liable in damages under any law of the United States or of any State (or political subdivision thereof) unless such information is false and the person providing it knew that such information was false.

(b) Exception

If the Secretary has reason to believe that a health care entity has failed to report information in accordance with section 11133(a) of this title, the Secretary shall conduct an investigation. If, after providing notice of noncompliance, an opportunity to correct the noncompliance, and an opportunity for a hearing, the Secretary determines that a health care entity has failed substantially to report information in accordance with section 11133(a) of this title, the Secretary shall publish the name of the entity in the Federal Register. The protections of subsection (a)(1) of this section shall not apply to an entity the name of which is published in the Federal Register under the previous sentence with respect to professional review actions of the entity commenced during the 3-year period beginning 30 days after the date of publication of the name.

(c) Treatment under State laws

(1) Professional review actions taken on or after October 14, 1989

Except as provided in paragraph (2), subsection (a) of this section shall apply to State laws in a State only for professional review actions commenced on or after October 14, 1989.

(2) Exceptions

(A) State early opt-in

Subsection (a) of this section shall apply to State laws in a State for actions commenced before October 14, 1989, if the State by legislation elects such treatment.

(B) Effective date of election

An election under State law is not effective, for purposes of,¹ for actions commenced before the effective date of the State law, which may not be earlier than the date of the enactment of that law.

(Pub. L. 99-660, title IV, §411, Nov. 14, 1986, 100 Stat. 3784; Pub. L. 100-177, title IV, §402(c), as added Pub. L. 101-239, title VI, §6103(e)(6)(A), Dec. 19, 1989, 103 Stat. 2208.)

REFERENCES IN TEXT

The Civil Rights Act of 1964, referred to in subsec. (a)(1), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended, which is classified principally to subchapters

¹ So in original. Probably should be "for purposes of subparagraph (A)."

II to IX (§2000a et seq.) of chapter 21 of this title. Title VII of this Act relates to equal employment opportunities, and is classified generally to subchapter VI (§2000e et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

The Civil Rights Acts, referred to in subsec. (a)(1), are classified generally to chapter 21 (§1981 et seq.) of this title.

AMENDMENTS

1989—Subsec. (c)(2)(B), (C). Pub. L. 101-239 added Pub. L. 100-177, §402(c), see 1987 Amendment note below.

1987—Subsec. (c)(2)(B), (C). Pub. L. 100-177, §402(c), as added by Pub. L. 101-239, redesignated subpar. (C) as (B), struck out "subparagraphs (A) and (B)" after "for purposes of", and struck out former subpar. (B) which read as follows: "Subsection (a) of this section shall not apply to State laws in a State for actions commenced on or after October 14, 1989, if the State by legislation elects such treatment."

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-177 effective Nov. 14, 1986, see section 402(d) of Pub. L. 100-177, as renumbered and amended, set out as a note under section 11137 of this title.

EFFECTIVE DATE

Section 416 of Pub. L. 99-660 provided that: "This part [part A (§§411-416) of title IV of Pub. L. 99-660, enacting this subchapter] shall apply to professional review actions commenced on or after the date of the enactment of this Act [Nov. 14, 1986]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11112, 11133 of this title.

§ 11112. Standards for professional review actions

(a) In general

For purposes of the protection set forth in section 11111(a) of this title, a professional review action must be taken—

- (1) in the reasonable belief that the action was in the furtherance of quality health care,
- (2) after a reasonable effort to obtain the facts of the matter,
- (3) after adequate notice and hearing procedures are afforded to the physician involved or after such other procedures as are fair to the physician under the circumstances, and
- (4) in the reasonable belief that the action was warranted by the facts known after such reasonable effort to obtain facts and after meeting the requirement of paragraph (3).

A professional review action shall be presumed to have met the preceding standards necessary for the protection set out in section 11111(a) of this title unless the presumption is rebutted by a preponderance of the evidence.

(b) Adequate notice and hearing

A health care entity is deemed to have met the adequate notice and hearing requirement of subsection (a)(3) of this section with respect to a physician if the following conditions are met (or are waived voluntarily by the physician):

(1) Notice of proposed action

The physician has been given notice stating—

- (A)(i) that a professional review action has been proposed to be taken against the physician,

- (ii) reasons for the proposed action,
- (B)(i) that the physician has the right to request a hearing on the proposed action,
- (ii) any time limit (of not less than 30 days) within which to request such a hearing, and
- (C) a summary of the rights in the hearing under paragraph (3).

(2) Notice of hearing

If a hearing is requested on a timely basis under paragraph (1)(B), the physician involved must be given notice stating—

- (A) the place, time, and date, of the hearing, which date shall not be less than 30 days after the date of the notice, and
- (B) a list of the witnesses (if any) expected to testify at the hearing on behalf of the professional review body.

(3) Conduct of hearing and notice

If a hearing is requested on a timely basis under paragraph (1)(B)—

- (A) subject to subparagraph (B), the hearing shall be held (as determined by the health care entity)—
 - (i) before an arbitrator mutually acceptable to the physician and the health care entity,
 - (ii) before a hearing officer who is appointed by the entity and who is not in direct economic competition with the physician involved, or
 - (iii) before a panel of individuals who are appointed by the entity and are not in direct economic competition with the physician involved;

(B) the right to the hearing may be forfeited if the physician fails, without good cause, to appear;

(C) in the hearing the physician involved has the right—

- (i) to representation by an attorney or other person of the physician's choice,
- (ii) to have a record made of the proceedings, copies of which may be obtained by the physician upon payment of any reasonable charges associated with the preparation thereof,
- (iii) to call, examine, and cross-examine witnesses,
- (iv) to present evidence determined to be relevant by the hearing officer, regardless of its admissibility in a court of law, and
- (v) to submit a written statement at the close of the hearing; and

(D) upon completion of the hearing, the physician involved has the right—

- (i) to receive the written recommendation of the arbitrator, officer, or panel, including a statement of the basis for the recommendations, and
- (ii) to receive a written decision of the health care entity, including a statement of the basis for the decision.

A professional review body's failure to meet the conditions described in this subsection shall not, in itself, constitute failure to meet the standards of subsection (a)(3) of this section.

(c) Adequate procedures in investigations or health emergencies

For purposes of section 11111(a) of this title, nothing in this section shall be construed as—

- (1) requiring the procedures referred to in subsection (a)(3) of this section—
 - (A) where there is no adverse professional review action taken, or
 - (B) in the case of a suspension or restriction of clinical privileges, for a period of not longer than 14 days, during which an investigation is being conducted to determine the need for a professional review action; or

(2) precluding an immediate suspension or restriction of clinical privileges, subject to subsequent notice and hearing or other adequate procedures, where the failure to take such an action may result in an imminent danger to the health of any individual.

(Pub. L. 99-660, title IV, §412, Nov. 14, 1986, 100 Stat. 3785.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11111, 11113, 11114 of this title.

§ 11113. Payment of reasonable attorneys' fees and costs in defense of suit

In any suit brought against a defendant, to the extent that a defendant has met the standards set forth under section 11112(a) of this title and the defendant substantially prevails, the court shall, at the conclusion of the action, award to a substantially prevailing party defending against any such claim the cost of the suit attributable to such claim, including a reasonable attorney's fee, if the claim, or the claimant's conduct during the litigation of the claim, was frivolous, unreasonable, without foundation, or in bad faith. For the purposes of this section, a defendant shall not be considered to have substantially prevailed when the plaintiff obtains an award for damages or permanent injunctive or declaratory relief.

(Pub. L. 99-660, title IV, §413, Nov. 14, 1986, 100 Stat. 3787.)

§ 11114. Guidelines of Secretary

The Secretary may establish, after notice and opportunity for comment, such voluntary guidelines as may assist the professional review bodies in meeting the standards described in section 11112(a) of this title.

(Pub. L. 99-660, title IV, §414, Nov. 14, 1986, 100 Stat. 3787.)

§ 11115. Construction

(a) In general

Except as specifically provided in this subchapter, nothing in this subchapter shall be construed as changing the liabilities or immunities under law or as preempting or overriding any State law which provides incentives, immunities, or protection for those engaged in a professional review action that is in addition to or greater than that provided by this subchapter.

(b) Scope of clinical privileges

Nothing in this subchapter shall be construed as requiring health care entities to provide clin-

ical privileges to any or all classes or types of physicians or other licensed health care practitioners.

(c) Treatment of nurses and other practitioners

Nothing in this subchapter shall be construed as affecting, or modifying any provision of Federal or State law, with respect to activities of professional review bodies regarding nurses, other licensed health care practitioners, or other health professionals who are not physicians.

(d) Treatment of patient malpractice claims

Nothing in this chapter shall be construed as affecting in any manner the rights and remedies afforded patients under any provision of Federal or State law to seek redress for any harm or injury suffered as a result of negligent treatment or care by any physician, health care practitioner, or health care entity, or as limiting any defenses or immunities available to any physician, health care practitioner, or health care entity.

(Pub. L. 99-660, title IV, § 415, Nov. 14, 1986, 100 Stat. 3787; Pub. L. 100-177, title IV, § 402(c), as added Pub. L. 101-239, title VI, § 6103(e)(6)(A), Dec. 19, 1989, 103 Stat. 2208.)

AMENDMENTS

1989—Subsec. (a). Pub. L. 101-239 added Pub. L. 100-177, § 402(c), see 1987 Amendment note below.

1987—Subsec. (a). Pub. L. 100-177, § 402(c), as added by Pub. L. 101-239, inserted before period at end “or as preempting or overriding any State law which provides incentives, immunities, or protection for those engaged in a professional review action that is in addition to or greater than that provided by this subchapter”.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-177 effective Nov. 14, 1986, see section 402(d) of Pub. L. 100-177, as renumbered and amended, set out as a note under section 11137 of this title.

SUBCHAPTER II—REPORTING OF INFORMATION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 11152 of this title.

§ 11131. Requiring reports on medical malpractice payments

(a) In general

Each entity (including an insurance company) which makes payment under a policy of insurance, self-insurance, or otherwise in settlement (or partial settlement) of, or in satisfaction of a judgment in, a medical malpractice action or claim shall report, in accordance with section 11134 of this title, information respecting the payment and circumstances thereof.

(b) Information to be reported

The information to be reported under subsection (a) of this section includes—

- (1) the name of any physician or licensed health care practitioner for whose benefit the payment is made,
- (2) the amount of the payment,
- (3) the name (if known) of any hospital with which the physician or practitioner is affiliated or associated,

(4) a description of the acts or omissions and injuries or illnesses upon which the action or claim was based, and

(5) such other information as the Secretary determines is required for appropriate interpretation of information reported under this section.

(c) Sanctions for failure to report

Any entity that fails to report information on a payment required to be reported under this section shall be subject to a civil money penalty of not more than \$10,000 for each such payment involved. Such penalty shall be imposed and collected in the same manner as civil money penalties under subsection (a) of section 1320a-7a of this title are imposed and collected under that section.

(d) Report on treatment of small payments

The Secretary shall study and report to Congress, not later than two years after November 14, 1986, on whether information respecting small payments should continue to be required to be reported under subsection (a) of this section and whether information respecting all claims made concerning a medical malpractice action should be required to be reported under such subsection.

(Pub. L. 99-660, title IV, § 421, Nov. 14, 1986, 100 Stat. 3788.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11134 of this title.

§ 11132. Reporting of sanctions taken by Boards of Medical Examiners

(a) In general

(1) Actions subject to reporting

Each Board of Medical Examiners—

(A) which revokes or suspends (or otherwise restricts) a physician's license or censures, reprimands, or places on probation a physician, for reasons relating to the physician's professional competence or professional conduct, or

(B) to which a physician's license is surrendered,

shall report, in accordance with section 11134 of this title, the information described in paragraph (2).

(2) Information to be reported

The information to be reported under paragraph (1) is—

(A) the name of the physician involved,

(B) a description of the acts or omissions or other reasons (if known) for the revocation, suspension, or surrender of license, and

(C) such other information respecting the circumstances of the action or surrender as the Secretary deems appropriate.

(b) Failure to report

If, after notice of noncompliance and providing opportunity to correct noncompliance, the Secretary determines that a Board of Medical Examiners has failed to report information in accordance with subsection (a) of this section, the Secretary shall designate another qualified

entity for the reporting of information under section 11133 of this title.

(Pub. L. 99-660, title IV, § 422, Nov. 14, 1986, 100 Stat. 3789.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1396r-2, 11133, 11134 of this title.

§ 11133. Reporting of certain professional review actions taken by health care entities

(a) Reporting by health care entities

(1) On physicians

Each health care entity which—

(A) takes a professional review action that adversely affects the clinical privileges of a physician for a period longer than 30 days;

(B) accepts the surrender of clinical privileges of a physician—

(i) while the physician is under an investigation by the entity relating to possible incompetence or improper professional conduct, or

(ii) in return for not conducting such an investigation or proceeding; or

(C) in the case of such an entity which is a professional society, takes a professional review action which adversely affects the membership of a physician in the society,

shall report to the Board of Medical Examiners, in accordance with section 11134(a) of this title, the information described in paragraph (3).

(2) Permissive reporting on other licensed health care practitioners

A health care entity may report to the Board of Medical Examiners, in accordance with section 11134(a) of this title, the information described in paragraph (3) in the case of a licensed health care practitioner who is not a physician, if the entity would be required to report such information under paragraph (1) with respect to the practitioner if the practitioner were a physician.

(3) Information to be reported

The information to be reported under this subsection is—

(A) the name of the physician or practitioner involved,

(B) a description of the acts or omissions or other reasons for the action or, if known, for the surrender, and

(C) such other information respecting the circumstances of the action or surrender as the Secretary deems appropriate.

(b) Reporting by Board of Medical Examiners

Each Board of Medical Examiners shall report, in accordance with section 11134 of this title, the information reported to it under subsection (a) of this section and known instances of a health care entity's failure to report information under subsection (a)(1) of this section.

(c) Sanctions

(1) Health care entities

A health care entity that fails substantially to meet the requirement of subsection (a)(1) of

this section shall lose the protections of section 11111(a)(1) of this title if the Secretary publishes the name of the entity under section 11111(b) of this title.

(2) Board of Medical Examiners

If, after notice of noncompliance and providing an opportunity to correct noncompliance, the Secretary determines that a Board of Medical Examiners has failed to report information in accordance with subsection (b) of this section, the Secretary shall designate another qualified entity for the reporting of information under subsection (b) of this section.

(d) References to Board of Medical Examiners

Any reference in this subchapter to a Board of Medical Examiners includes, in the case of a Board in a State that fails to meet the reporting requirements of section 11132(a) of this title or subsection (b) of this section, a reference to such other qualified entity as the Secretary designates.

(Pub. L. 99-660, title IV, § 423, Nov. 14, 1986, 100 Stat. 3789.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11111, 11132, 11134 of this title.

§ 11134. Form of reporting

(a) Timing and form

The information required to be reported under sections 11131, 11132(a), and 11133 of this title shall be reported regularly (but not less often than monthly) and in such form and manner as the Secretary prescribes. Such information shall first be required to be reported on a date (not later than one year after November 14, 1986) specified by the Secretary.

(b) To whom reported

The information required to be reported under sections 11131, 11132(a), and 11133(b) of this title shall be reported to the Secretary, or, in the Secretary's discretion, to an appropriate private or public agency which has made suitable arrangements with the Secretary with respect to receipt, storage, protection of confidentiality, and dissemination of the information under this subchapter.

(c) Reporting to State licensing boards

(1) Malpractice payments

Information required to be reported under section 11131 of this title shall also be reported to the appropriate State licensing board (or boards) in the State in which the medical malpractice claim arose.

(2) Reporting to other licensing boards

Information required to be reported under section 11133(b) of this title shall also be reported to the appropriate State licensing board in the State in which the health care entity is located if it is not otherwise reported to such board under subsection (b) of this section.

(Pub. L. 99-660, title IV, § 424, Nov. 14, 1986, 100 Stat. 3790.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11131, 11132, 11133, 11135, 11136, 11137 of this title.

§ 11135. Duty of hospitals to obtain information

(a) In general

It is the duty of each hospital to request from the Secretary (or the agency designated under section 11134(b) of this title), on and after the date information is first required to be reported under section 11134(a) of this title—¹

(1) at the time a physician or licensed health care practitioner applies to be on the medical staff (courtesy or otherwise) of, or for clinical privileges at, the hospital, information reported under this subchapter concerning the physician or practitioner, and

(2) once every 2 years information reported under this subchapter concerning any physician or such practitioner who is on the medical staff (courtesy or otherwise) of, or has been granted clinical privileges at, the hospital.

A hospital may request such information at other times.

(b) Failure to obtain information

With respect to a medical malpractice action, a hospital which does not request information respecting a physician or practitioner as required under subsection (a) of this section is presumed to have knowledge of any information reported under this subchapter to the Secretary with respect to the physician or practitioner.

(c) Reliance on information provided

Each hospital may rely upon information provided to the hospital under this chapter and shall not be held liable for such reliance in the absence of the hospital's knowledge that the information provided was false.

(Pub. L. 99-660, title IV, § 425, Nov. 14, 1986, 100 Stat. 3790.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11137 of this title.

§ 11136. Disclosure and correction of information

With respect to the information reported to the Secretary (or the agency designated under section 11134(b) of this title) under this subchapter respecting a physician or other licensed health care practitioner, the Secretary shall, by regulation, provide for—

(1) disclosure of the information, upon request, to the physician or practitioner, and

(2) procedures in the case of disputed accuracy of the information.

(Pub. L. 99-660, title IV, § 426, Nov. 14, 1986, 100 Stat. 3791.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11137 of this title.

§ 11137. Miscellaneous provisions

(a) Providing licensing boards and other health care entities with access to information

The Secretary (or the agency designated under section 11134(b) of this title) shall, upon request,

provide information reported under this subchapter with respect to a physician or other licensed health care practitioner to State licensing boards, to hospitals, and to other health care entities (including health maintenance organizations) that have entered (or may be entering) into an employment or affiliation relationship with the physician or practitioner or to which the physician or practitioner has applied for clinical privileges or appointment to the medical staff.

(b) Confidentiality of information

(1) In general

Information reported under this subchapter is considered confidential and shall not be disclosed (other than to the physician or practitioner involved) except with respect to professional review activity, as necessary to carry out subsections (b) and (c) of section 11135 of this title (as specified in regulations by the Secretary), or in accordance with regulations of the Secretary promulgated pursuant to subsection (a) of this section. Nothing in this subsection shall prevent the disclosure of such information by a party which is otherwise authorized, under applicable State law, to make such disclosure. Information reported under this subchapter that is in a form that does not permit the identification of any particular health care entity, physician, other health care practitioner, or patient shall not be considered confidential. The Secretary (or the agency designated under section 11134(b) of this title), on application by any person, shall prepare such information in such form and shall disclose such information in such form.

(2) Penalty for violations

Any person who violates paragraph (1) shall be subject to a civil money penalty of not more than \$10,000 for each such violation involved. Such penalty shall be imposed and collected in the same manner as civil money penalties under subsection (a) of section 1320a-7a of this title are imposed and collected under that section.

(3) Use of information

Subject to paragraph (1), information provided under section 11135 of this title and subsection (a) of this section is intended to be used solely with respect to activities in the furtherance of the quality of health care.

(4) Fees

The Secretary may establish or approve reasonable fees for the disclosure of information under this section or section 11136 of this title. The amount of such a fee may not exceed the costs of processing the requests for disclosure and of providing such information. Such fees shall be available to the Secretary (or, in the Secretary's discretion, to the agency designated under section 11134(b) of this title) to cover such costs.

(c) Relief from liability for reporting

No person or entity (including the agency designated under section 11134(b) of this title) shall be held liable in any civil action with respect to any report made under this subchapter (includ-

¹ So in original. The closing parenthesis probably should not appear.

ing information provided under subsection (a) of this section¹ without knowledge of the falsity of the information contained in the report.

(d) Interpretation of information

In interpreting information reported under this subchapter, a payment in settlement of a medical malpractice action or claim shall not be construed as creating a presumption that medical malpractice has occurred.

(Pub. L. 99-660, title IV, § 427, Nov. 14, 1986, 100 Stat. 3791; Pub. L. 100-177, title IV, § 402(a), (b), Dec. 1, 1987, 101 Stat. 1007.)

AMENDMENTS

1987—Subsec. (b)(1). Pub. L. 100-177, § 402(a)(1), substituted “as necessary to carry out subsections (b) and (c) of section 11135 of this title (as specified in regulations by the Secretary)” for “with respect to medical malpractice actions” and inserted at end “Information reported under this subchapter that is in a form that does not permit the identification of any particular health care entity, physician, other health care practitioner, or patient shall not be considered confidential. The Secretary (or the agency designated under section 11134(b) of this title), on application by any person, shall prepare such information in such form and shall disclose such information in such form.”

Subsec. (b)(4). Pub. L. 100-177, § 402(b), added par. (4).
Subsec. (c). Pub. L. 100-177, § 402(a)(2), inserted “(including the agency designated under section 11134(b) of this title)” after “entity” and “(including information provided under subsection (a) of this section” after “subchapter”.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 402(d), formerly section 402(c), of Pub. L. 100-177, as renumbered and amended by Pub. L. 101-239, title VI, § 6103(e)(6), Dec. 19, 1989, 103 Stat. 2208, provided that:

“(1) IN GENERAL.—The amendments made by subsections (a) and (c) [amending this section and sections 1111 and 1115 of this title] shall become effective on November 14, 1986.

“(2) FEES.—The amendment made by subsection (b) [amending this section] shall become effective on the date of enactment of this Act [Dec. 1, 1987].”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1396r-2 of this title.

SUBCHAPTER III—DEFINITIONS AND REPORTS

§ 11151. Definitions

In this chapter:

(1) The term “adversely affecting” includes reducing, restricting, suspending, revoking, denying, or failing to renew clinical privileges or membership in a health care entity.

(2) The term “Board of Medical Examiners” includes a body comparable to such a Board (as determined by the State) with responsibility for the licensing of physicians and also includes a subdivision of such a Board or body.

(3) The term “clinical privileges” includes privileges, membership on the medical staff, and the other circumstances pertaining to the furnishing of medical care under which a physician or other licensed health care practi-

tioner is permitted to furnish such care by a health care entity.

(4)(A) The term “health care entity” means—

(i) a hospital that is licensed to provide health care services by the State in which it is located,

(ii) an entity (including a health maintenance organization or group medical practice) that provides health care services and that follows a formal peer review process for the purpose of furthering quality health care (as determined under regulations of the Secretary), and

(iii) subject to subparagraph (B), a professional society (or committee thereof) of physicians or other licensed health care practitioners that follows a formal peer review process for the purpose of furthering quality health care (as determined under regulations of the Secretary).

(B) The term “health care entity” does not include a professional society (or committee thereof) if, within the previous 5 years, the society has been found by the Federal Trade Commission or any court to have engaged in any anti-competitive practice which had the effect of restricting the practice of licensed health care practitioners.

(5) The term “hospital” means an entity described in paragraphs (1) and (7) of section 1395x(e) of this title.

(6) The terms “licensed health care practitioner” and “practitioner” mean, with respect to a State, an individual (other than a physician) who is licensed or otherwise authorized by the State to provide health care services.

(7) The term “medical malpractice action or claim” means a written claim or demand for payment based on a health care provider’s furnishing (or failure to furnish) health care services, and includes the filing of a cause of action, based on the law of tort, brought in any court of any State or the United States seeking monetary damages.

(8) The term “physician” means a doctor of medicine or osteopathy or a doctor of dental surgery or medical dentistry legally authorized to practice medicine and surgery or dentistry by a State (or any individual who, without authority holds himself or herself out to be so authorized).

(9) The term “professional review action” means an action or recommendation of a professional review body which is taken or made in the conduct of professional review activity, which is based on the competence or professional conduct of an individual physician (which conduct affects or could affect adversely the health or welfare of a patient or patients), and which affects (or may affect) adversely the clinical privileges, or membership in a professional society, of the physician. Such term includes a formal decision of a professional review body not to take an action or make a recommendation described in the previous sentence and also includes professional review activities relating to a professional review action. In this chapter, an action is not considered to be based on the competence or professional conduct of a physician if the action is primarily based on—

¹So in original. Probably should be followed by a closing parenthesis.

(A) the physician's association, or lack of association, with a professional society or association,

(B) the physician's fees or the physician's advertising or engaging in other competitive acts intended to solicit or retain business,

(C) the physician's participation in prepaid group health plans, salaried employment, or any other manner of delivering health services whether on a fee-for-service or other basis,

(D) a physician's association with, supervision of, delegation of authority to, support for, training of, or participation in a private group practice with, a member or members of a particular class of health care practitioner or professional, or

(E) any other matter that does not relate to the competence or professional conduct of a physician.

(10) The term "professional review activity" means an activity of a health care entity with respect to an individual physician—

(A) to determine whether the physician may have clinical privileges with respect to, or membership in, the entity,

(B) to determine the scope or conditions of such privileges or membership, or

(C) to change or modify such privileges or membership.

(11) The term "professional review body" means a health care entity and the governing body or any committee of a health care entity which conducts professional review activity, and includes any committee of the medical staff of such an entity when assisting the governing body in a professional review activity.

(12) The term "Secretary" means the Secretary of Health and Human Services.

(13) The term "State" means the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

(14) The term "State licensing board" means, with respect to a physician or health care provider in a State, the agency of the State which is primarily responsible for the licensing of the physician or provider to furnish health care services.

(Pub. L. 99-660, title IV, § 431, Nov. 14, 1986, 100 Stat. 3792.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1396r-2, 11111 of this title.

§ 11152. Reports and memoranda of understanding

(a) Annual reports to Congress

The Secretary shall report to Congress, annually during the three years after November 14, 1986, on the implementation of this chapter.

(b) Memoranda of understanding

The Secretary of Health and Human Services shall seek to enter into memoranda of understanding with the Secretary of Defense and the Administrator of Veterans' Affairs to apply the provisions of subchapter II of this chapter to hospitals and other facilities and health care

providers under the jurisdiction of the Secretary or Administrator, respectively. The Secretary shall report to Congress, not later than two years after November 14, 1986, on any such memoranda and on the cooperation among such officials in establishing such memoranda.

(c) Memorandum of understanding with Drug Enforcement Administration

The Secretary of Health and Human Services shall seek to enter into a memorandum of understanding with the Administrator of Drug Enforcement relating to providing for the reporting by the Administrator to the Secretary of information respecting physicians and other practitioners whose registration to dispense controlled substances has been suspended or revoked under section 824 of title 21. The Secretary shall report to Congress, not later than two years after November 14, 1986, on any such memorandum and on the cooperation between the Secretary and the Administrator in establishing such a memorandum.

(Pub. L. 99-660, title IV, § 432, Nov. 14, 1986, 100 Stat. 3794.)

CHANGE OF NAME

Reference to Administrator of Veterans' Affairs deemed to refer to Secretary of Veterans Affairs pursuant to section 10 of Pub. L. 100-527, set out as a Department of Veterans Affairs Act note under section 301 of Title 38, Veterans' Benefits.

CHAPTER 118—ALZHEIMER'S DISEASE AND RELATED DEMENTIAS RESEARCH

SUBCHAPTER I—GENERAL PROVISIONS

Sec.

11201. Findings.

SUBCHAPTER II—COUNCIL ON ALZHEIMER'S DISEASE

11211, 11212. Repealed.

SUBCHAPTER III—ADVISORY PANEL ON ALZHEIMER'S DISEASE

11221. Establishment of Panel.

(a) Composition; nonvoting ex officio members.

(b) Appointment of members.

(c) Chairman.

(d) Term of office; vacancy.

(e) Quorum; establishment of subcommittees.

(f) Meetings.

(g) Executive Secretary; administrative staff and support.

(h) Compensation; travel expenses.

(i) Abolishment of Panel; termination.

11222. Functions of Panel.

11223. Authorization of appropriations.

SUBCHAPTER IV—RESEARCH RELATING TO SERVICES FOR INDIVIDUALS WITH ALZHEIMER'S DISEASE AND RELATED DEMENTIAS AND THEIR FAMILIES

11231, 11232. Repealed or Transferred.

11241 to 11243. Repealed or Transferred.

PART 1—RESPONSIBILITIES OF NATIONAL INSTITUTE OF MENTAL HEALTH

11251. Research program and plan.

(a) Grants for research.

(b) Preparation of plan; contents; revision.

11252. Dissemination.

- Sec.
11253. Authorization of appropriations.
- PART 2—RESPONSIBILITIES OF AGENCY FOR HEALTHCARE RESEARCH AND QUALITY
11261. Research program.
(a) Grants for research.
(b) Research subjects.
11262. Dissemination.
11263. Authorization of appropriations.
- PART 3—RESPONSIBILITIES OF THE CENTERS FOR MEDICARE & MEDICAID SERVICES
11271. Research program and plan.
(a) Grants for research.
(b) Preparation of plan; contents; revision.
(c) Consultation for preparation and revision of plan.
11272. Dissemination.
11273. Authorization of appropriations.
- 11281 to 11283. Repealed or Transferred.
- SUBCHAPTER V—EDUCATIONAL ACTIVITIES
11291. Providing information for personnel of Social Security Administration.
11292. Education of public, individuals with Alzheimer's disease and their families, and health and long-term care providers.
(a) Training models grants.
(b) Educational grants.
(c) Award of grants.
(d) Application.
(e) Coordination.
11293. Education programs for safety and transportation personnel.
11294. Authorization of appropriations.

SUBCHAPTER I—GENERAL PROVISIONS

§ 11201. Findings

The Congress finds that—

- (1) best estimates indicate that between 2,000,000 and 3,000,000 Americans presently have Alzheimer's disease or related dementias;
- (2) estimates of the number of individuals afflicted with Alzheimer's disease and related dementias are unreliable because current diagnostic procedures lack accuracy and sensitivity and because there is a need for epidemiological data on incidence and prevalence of such disease and dementias;
- (3) studies estimate that between one-half and two-thirds of patients in nursing homes meet the clinical and mental status criteria for dementia;
- (4) the cost of caring for individuals with Alzheimer's disease and related dementias is great, and conservative estimates range between \$38,000,000,000 and \$42,000,000,000 per year solely for direct costs;
- (5) progress in the neurosciences and behavioral sciences has demonstrated the interdependence and mutual reinforcement of basic science, clinical research, and services research for Alzheimer's disease and related dementias;
- (6) programs initiated as part of the Decade of the Brain are likely to provide significant progress in understanding the fundamental mechanisms underlying the causes of, and treatments for, Alzheimer's disease and related dementias;
- (7) although substantial progress has been made in recent years in identifying possible

leads to the causes of Alzheimer's disease and related dementias, and more progress can be expected in the near future, there is little likelihood of a breakthrough in the immediate future that would eliminate or substantially reduce—

- (A) the number of individuals with the disease and dementias; or
- (B) the difficulties of caring for the individuals;
- (8) the responsibility for care of individuals with Alzheimer's disease and related dementias falls primarily on their families, and the care is financially and emotionally devastating;
- (9) attempts to reduce the emotional and financial burden of caring for dementia patients is impeded by a lack of knowledge about such patients, how to care for such patients, the costs associated with such care, the effectiveness of various modes of care, the quality and type of care necessary at various stages of the disease, and other appropriate services that are needed to provide quality care;
- (10) the results of the little research that has been undertaken concerning dementia has been inadequate or the results have not been widely disseminated;
- (11) more knowledge is needed concerning—
 - (A) the epidemiology of, and the identification of risk factors for, Alzheimer's disease and related dementias;
 - (B) the development of methods for early diagnosis, functional assessment, and psychological evaluation of individuals with Alzheimer's disease for the purpose of monitoring the course of the disease and developing strategies for improving the quality of life for such individuals;
 - (C) the understanding of the optimal range and cost-effectiveness of community and institutional services for individuals with Alzheimer's disease and related dementias and their families, particularly with respect to the design, delivery, staffing, and mix of such services and the coordination of such services with other services, and with respect to the relationship of formal to informal support services;
 - (D) the understanding of optimal methods to combine formal support services provided by health care professionals with informal support services provided by family, friends, and neighbors of individuals with Alzheimer's disease, and the identification of ways family caregivers can be sustained through interventions to reduce psychological and social problems and physical problems induced by stress;
 - (E) existing data that are relevant to Alzheimer's disease and related dementias; and
 - (F) the costs incurred in caring for individuals with Alzheimer's disease and related dementias;
- (12) it is imperative to provide appropriate coordination of the efforts of the Federal Government in the provision of services for individuals with Alzheimer's disease and related dementias;
- (13) it is important to increase the understanding of Alzheimer's disease and related de-

mentias by the diverse range of personnel involved in the care of individuals with such disease and dementias; and

(14) it is imperative that the Social Security Administration be provided information pertaining to Alzheimer's disease and related dementias, particularly for personnel in such Administration involved in the establishment and updating of criteria for determining whether an individual is under a disability for purposes of titles II and XVI of the Social Security Act [42 U.S.C. 401 et seq., 1381 et seq.].

(Pub. L. 99-660, title IX, §902, Nov. 14, 1986, 100 Stat. 3802; Pub. L. 102-507, §4, Oct. 24, 1992, 106 Stat. 3281.)

REFERENCES IN TEXT

The Social Security Act, referred to in par. (14), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles II and XVI of the Act are classified generally to subchapters II (§401 et seq.) and XVI (§1381 et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

AMENDMENTS

1992—Pars. (4) to (14). Pub. L. 102-507 added pars. (4) to (8), redesignated former pars. (7) to (12) as (9) to (14), respectively, and struck out former pars. (4) to (6) which read as follows:

“(4) the care for individuals with Alzheimer's disease and related dementias falls primarily on their families, and such care is very often financially and emotionally devastating;

“(5) the cost of caring for individuals with Alzheimer's disease and related dementias is great, and conservative estimates range between \$38,000,000,000 and \$42,000,000,000 per year solely for direct costs;

“(6) although substantial progress has been made in recent years in identifying possible leads to the causes of Alzheimer's disease and related dementias and more progress can be expected in the near future, there is little likelihood of a breakthrough in the foreseeable future which would eliminate or substantially reduce the number of individuals with such disease and dementias or the difficulties of caring for such individuals;”.

SHORT TITLE OF 1992 AMENDMENT

Section 1 of Pub. L. 102-507 provided that: “This Act [enacting section 11261 of this title, amending this section and sections 285e-5, 11211, 11212, 11221, 11223, 11251, 11253, 11263, 11292, and 11294 of this title, repealing section 11261 of this title, and amending provisions set out as a note under this section] may be cited as the ‘Alzheimer's Disease Research, Training, and Education Amendments of 1992.’”

SHORT TITLE

Section 901 of title IX of Pub. L. 99-660, as amended by Pub. L. 102-507, §2(a), Oct. 24, 1992, 106 Stat. 3281, provided that: “This title [enacting this chapter] may be cited as the ‘Alzheimer's Disease and Related Dementias Research Act of 1992.’”

SUBCHAPTER II—COUNCIL ON ALZHEIMER'S DISEASE

§§ 11211, 11212. Repealed. Pub. L. 105-362, title VI, § 601(a)(2)(E), Nov. 10, 1998, 112 Stat. 3286

Section 11211. Pub. L. 99-660, title IX, §911, Nov. 14, 1986, 100 Stat. 3804; Pub. L. 102-54, §13(q)(14)(A), June 13, 1991, 105 Stat. 282; Pub. L. 102-507, §5(2)(a)], Oct. 24, 1992, 106 Stat. 3282; Pub. L. 103-171, §3(b)(3), Dec. 2, 1993, 107 Stat. 1991, related to establishment of Council on Alzheimer's Disease in the Department of Health and Human Services.

Section 11212. Pub. L. 99-660, title IX, §912, Nov. 14, 1986, 100 Stat. 3804; Pub. L. 100-607, title I, §142(c)(1)(E), Nov. 4, 1988, 102 Stat. 3057; Pub. L. 102-507, §5(b), Oct. 24, 1992, 106 Stat. 3282, related to functions of Council on Alzheimer's Disease.

SUBCHAPTER III—ADVISORY PANEL ON ALZHEIMER'S DISEASE

§ 11221. Establishment of Panel

(a) Composition; nonvoting ex officio members

There is established in the Department the Advisory Panel on Alzheimer's Disease (hereinafter referred to as the “Panel”). The Panel shall be composed of—

(1) 15 voting members appointed by the Director of the Office of Technology Assessment, of which—

(A) 3 shall be individuals who are biomedical research scientists with demonstrated achievements in biomedical research relating to Alzheimer's disease, including at least one individual who is a researcher at a center supported under section 285e-2 of this title;

(B) 3 shall be individuals with demonstrated achievements in research relevant to services for the care of individuals with Alzheimer's disease and related dementias;

(C) 3 shall be individuals who are providers of services, or administrators of organizations which provide services, for individuals with Alzheimer's disease and related dementias and their families;

(D) 3 shall be individuals who are experts in the financing of health care services and long-term care services, including one individual who is a representative of private health care services insurers; and

(E) 3 shall be representatives of national voluntary organizations which are concerned with the problems of individuals with Alzheimer's disease and related dementias and their families; and

(2) the Chairman of the Council, the Director of the National Institute on Aging, the Director of the National Institute of Mental Health, the Assistant Administrator of the Agency for Healthcare Research and Quality, and the Assistant Secretary for Aging, who shall be nonvoting ex officio members.

(b) Appointment of members

The Director of the Office of Technology Assessment shall appoint members to the Panel under subsection (a)(1) of this section within 90 days after November 14, 1986.

(c) Chairman

The Secretary shall appoint a Chairman of the Panel from among the members appointed under subsection (a)(1) of this section.

(d) Term of office; vacancy

(1)(A) Except as provided in subparagraph (B), members of the Panel appointed under subsection (a)(1) of this section shall each serve for a term of 3 years.

(B) Of the members appointed under subsection (a)(1) of this section that are serving on the Panel on the day before October 24, 1992—

(i) five shall serve for a term that expires on October 24, 1992;

(ii) five shall serve for a term that expires 1 year after October 24, 1992; and

(iii) five shall serve for a term that expires 2 years after October 24, 1992.

(2) A vacancy on the Panel shall be filled in the same manner as the original appointment was made, and not later than 90 days after the date on which the vacancy first arises. A vacancy on the Panel shall not affect the powers of the Panel.

(e) Quorum; establishment of subcommittees

A majority of the members of the Panel appointed under subsection (a)(1) of this section shall constitute a quorum, but a lesser number may hold hearings. The Panel may establish such subcommittees as the Panel considers appropriate.

(f) Meetings

The Panel shall meet at the call of the Chairman, but not less than once per year.

(g) Executive Secretary; administrative staff and support

The Executive Secretary of the Council shall serve as Executive Secretary of the Panel. The Secretary shall provide the Panel with such additional administrative staff and support as may be necessary to enable the Panel to carry out its functions.

(h) Compensation; travel expenses

Each member of the Panel appointed under subsection (a)(1) of this section shall receive compensation at a rate at the daily equivalent of the maximum rate specified for GS-15 of the General Schedule under section 5332 of title 5 for each day, including travel time, that such member is engaged in duties as a member of the Panel. While away from their homes or regular places of business in the performance of duties as a member of the Panel, members of the Panel appointed under subsection (a)(1) of this section shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under section 5702 of title 5.

(i) Abolishment of Panel; termination

Notwithstanding section 14 of the Federal Advisory Committee Act (5 U.S.C. App.) on September 30, 1996, the Panel shall be abolished and all programs established under this subchapter shall terminate.

(Pub. L. 99-660, title IX, §921, Nov. 14, 1986, 100 Stat. 3806; Pub. L. 102-507, §6(a), Oct. 24, 1992, 106 Stat. 3283; Pub. L. 103-171, §3(b)(3), Dec. 2, 1993, 107 Stat. 1991; Pub. L. 106-129, §2(b)(2), Dec. 6, 1999, 113 Stat. 1670.)

REFERENCES IN TEXT

Section 14 of the Federal Advisory Committee Act, referred to in subsec. (i), is section 14 of Pub. L. 92-463, which is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

October 24, 1992, referred to in subsec. (d)(1)(B), was in the original “the date of the enactment of this subsection” and “such date”, which were translated as meaning the date of enactment of Pub. L. 102-507, which amended subsec. (d) generally, to reflect the probable intent of Congress.

AMENDMENTS

1999—Subsec. (a)(2). Pub. L. 106-129 substituted “Agency for Healthcare Research and Quality” for “Agency for Health Care Policy and Research”.

1993—Subsec. (a)(2). Pub. L. 103-171, which directed the substitution of “Assistant Secretary for Aging” for “Commissioner on Aging” in section 921(a)(2) of the Alzheimer’s Disease and Related Dementias Services Research Act of 1986, was executed to this section, which is section 921 of the Alzheimer’s Disease and Related Dementias Research Act of 1992, to reflect the probable intent of Congress, and the change in the Short Title of that Act. See section 901 of Pub. L. 99-660, as amended, set out as a Short Title note under section 11201 of this title.

1992—Subsec. (a)(2). Pub. L. 102-507, §6(a)(1), substituted “the Administrator of the Agency for Health Care Policy and Research” for “the Director of the National Center for Health Services Research and Health Care Technology Assessment”.

Subsec. (d). Pub. L. 102-507, §6(a)(2), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: “Members of the Panel shall serve for the life of the Panel. A vacancy on the Panel shall be filled in the same manner as the original appointment was made. A vacancy on the Panel shall not affect its powers.”

Subsec. (f). Pub. L. 102-507, §6(a)(3), substituted “once” for “twice”.

Subsec. (h). Pub. L. 102-507, §6(a)(4), substituted “at the daily equivalent of the maximum rate specified for GS-15 of the General Schedule under section 5332 of title 5” for “of \$100 per day”.

Subsec. (i). Pub. L. 102-507, §6(a)(5), added subsec. (i).

§ 11222. Functions of Panel

(a) The Panel shall assist the Secretary and the Council in the identification of priorities and emerging issues with respect to Alzheimer’s disease and related dementias and the care of individuals with such disease and dementias. The Panel shall advise the Secretary and the Council with respect to the identification of—

(1) emerging issues in, and promising areas of, biomedical research relating to Alzheimer’s disease and related dementias;

(2) emerging issues in, and promising areas of, research relating to services for individuals with Alzheimer’s disease and related dementias and their families;

(3) emerging issues and promising initiatives in home and community based services, and systems of such services, for individuals with Alzheimer’s disease and related dementias and their families; and

(4) emerging issues in, and innovative financing mechanisms for, payment for health care services and social services for individuals with Alzheimer’s disease and related dementias and their families, particularly financing mechanisms in the private sector.

(b) The Panel shall prepare and transmit to the Congress, the Secretary, and the Council, and make available to the public, an annual report. Such report shall contain such recommendations as the Panel considers appropriate for administrative and legislative actions to improve services for individuals with Alzheimer’s disease and related dementias and their families and to provide for promising biomedical research relating to Alzheimer’s disease and related dementias.

(Pub. L. 99-660, title IX, §922, Nov. 14, 1986, 100 Stat. 3807.)

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (b) of this section relating to the transmittal to Congress of an annual report, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the last item on page 99 of House Document No. 103-7.

§ 11223. Authorization of appropriations

There are authorized to be appropriated to carry out this subchapter such sums as may be necessary for each of the fiscal years 1992 through 1996.

(Pub. L. 99-660, title IX, §923, Nov. 14, 1986, 100 Stat. 3807; Pub. L. 102-507, §6(b), Oct. 24, 1992, 106 Stat. 3283.)

AMENDMENTS

1992—Pub. L. 102-507 amended section generally. Prior to amendment, section read as follows: “To carry out this subchapter, there are authorized to be appropriated \$100,000 for each of the fiscal years 1988 through 1991.”

SUBCHAPTER IV—RESEARCH RELATING TO SERVICES FOR INDIVIDUALS WITH ALZHEIMER'S DISEASE AND RELATED DEMENTIAS AND THEIR FAMILIES

AMENDMENTS

1988—Pub. L. 100-607, title I, §142(c)(1)(B), (D), (2)(C), Nov. 4, 1988, 102 Stat. 3057, redesignated former subchapter V as IV and struck out heading for subchapter IV “AWARDS FOR LEADERSHIP AND EXCELLENCE IN ALZHEIMER'S DISEASE AND RELATED DEMENTIAS”, consisting of sections 11231 and 11232, and struck out heading for part 1 “RESPONSIBILITIES OF NATIONAL INSTITUTE ON AGING”, consisting of sections 11241 to 11243.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 285e-7 of this title.

§ 11231. Transferred

Section, Pub. L. 99-660, title IX, §931, Nov. 14, 1986, 100 Stat. 3807, which provided for awards for biomedical research on Alzheimer's disease and related dementias, was redesignated section 445B of the Public Health Service Act by Pub. L. 100-607, title I, §142(a), Nov. 4, 1988, 102 Stat. 3057, and is classified to section 285e-4 of this title.

§ 11232. Repealed. Pub. L. 100-607, title I, § 142(c)(1)(A), Nov. 4, 1988, 102 Stat. 3057

Section, Pub. L. 99-660, title IX, §932, Nov. 14, 1986, 100 Stat. 3808, authorized appropriations for fiscal years 1988 through 1991 to carry out program of awards for research on Alzheimer's disease and related dementias.

§§ 11241, 11242. Transferred

Section 11241, Pub. L. 99-660, title IX, §941, Nov. 14, 1986, 100 Stat. 3808, which provided for Director of National Institute on Aging to conduct, or make grants for conduct of, research on services for individuals with Alzheimer's disease and related dementias and their families, was redesignated section 445C of the Public Health Service Act by Pub. L. 100-607, title I, §142(a), Nov. 4, 1988, 102 Stat. 3057, and is classified to section 285e-5 of this title.

Section 11242, Pub. L. 99-660, title IX, §942, Nov. 14, 1986, 100 Stat. 3809, which provided for Director to disseminate results of such research to professional entities and the public, was redesignated section 445D of

the Public Health Service Act by Pub. L. 100-607, title I, §142(a), Nov. 4, 1988, 102 Stat. 3057, and is classified to section 285e-6 of this title.

§ 11243. Repealed. Pub. L. 100-607, title I, § 142(c)(2)(A), Nov. 4, 1988, 102 Stat. 3057

Section, Pub. L. 99-660, title IX, §943, Nov. 14, 1986, 100 Stat. 3809, authorized appropriations for fiscal years 1988 through 1991 to carry out programs of National Institute on Aging in research on services for individuals with Alzheimer's disease and related dementias and their families.

PART 1—RESPONSIBILITIES OF NATIONAL INSTITUTE OF MENTAL HEALTH

AMENDMENTS

1988—Pub. L. 100-607, title I, §142(c)(2)(C), (D), Nov. 4, 1988, 102 Stat. 3057, redesignated part 2 as 1 and struck out former part 1 heading “RESPONSIBILITIES OF NATIONAL INSTITUTE ON AGING”.

§ 11251. Research program and plan**(a) Grants for research**

The Director of the National Institute of Mental Health shall conduct, or make grants for the conduct of, research relevant to appropriate services and specialized care for individuals with Alzheimer's disease and related dementias and their families.

(b) Preparation of plan; contents; revision

The Director of the National Institute of Mental Health shall—

(1) ensure that the research conducted under subsection (a) of this section includes research concerning—

(A) mental health services and treatment modalities relevant to the mental, behavioral, and psychological problems associated with Alzheimer's disease and related dementias;

(B) the most effective methods for providing comprehensive multidimensional assessments to obtain information about the current functioning of, and needs for the care of, individuals with Alzheimer's disease and related dementias;

(C) the optimal range, types, and cost-effectiveness of services and specialized care for individuals with Alzheimer's disease and related dementias and for their families, in community and residential settings (including home care, day care, and respite care), and in institutional settings, particularly with respect to—

(i) the design of the services and care;

(ii) appropriate staffing for the provision of the services and care;

(iii) the timing of the services and care during the progression of the disease or dementias; and

(iv) the appropriate mix and coordination of the services and specialized care;

(D) the efficacy of various special care units in the United States for individuals with Alzheimer's disease, including an assessment of the costs incurred in operating such units, the evaluation of best practices for the development of appropriate standards to be used by such units, and the measurement of patient outcomes in such units;

(E) methods to combine formal support services provided by health care professionals for individuals with Alzheimer's disease and related dementias with informal support services provided for such individuals by their families, friends, and neighbors, including services such as day care services, respite care services, home care services, nursing home services, and other residential services and care, and an evaluation of the services actually used for such individuals and the sources of payment for such services;

(F) methods to sustain family members who provide care for individuals with Alzheimer's disease and related dementias through interventions to reduce psychological and social problems and physical problems induced by stress; and

(G) improved methods to deliver services for individuals with Alzheimer's disease and related dementias and their families, including services such as outreach services, comprehensive assessment and care management services, outpatient treatment services, home care services, respite care services, adult day care services, partial hospitalization services, nursing home services, and other residential services and care; and

(2) ensure that the research is coordinated with, and uses, to the maximum extent feasible, resources of, other Federal programs relating to Alzheimer's disease and dementia, including centers supported under section 285e-2 of this title, centers supported by the National Institute of Mental Health on the psychopathology of the elderly, relevant activities of the Administration on Aging, other programs and centers involved in research on Alzheimer's disease and related dementias supported by the Department, and other programs relating to Alzheimer's disease and related dementias which are planned or conducted by Federal agencies other than the Department, State or local agencies, community organizations, or private foundations.

(Pub. L. 99-660, title IX, § 931, formerly § 944, Nov. 14, 1986, 100 Stat. 3809; renumbered § 931, Pub. L. 100-607, title I, § 142(c)(2)(B), Nov. 4, 1988, 102 Stat. 3057; Pub. L. 102-507, § 7(a)(1), (2), Oct. 24, 1992, 106 Stat. 3284.)

PRIOR PROVISIONS

A prior section 931 of Pub. L. 99-660, which was classified to section 11231 of this title, was redesignated section 445B of the Public Health Service Act by section 142(a) of Pub. L. 100-607, and is classified to section 285e-4 of this title.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102-507, § 7(a)(1)(B), inserted “and specialized care” after “services”.

Subsec. (b). Pub. L. 102-507, § 7(a)(2), designated par. (1) as entire subsec. and redesignated former par. (1)(A) as par. (1), former par. (1)(A)(i) to (vii) as par. (1)(A) to (G), respectively, former par. (1)(A)(iii)(I) to (IV) as par. (1)(C)(i) to (iv), respectively, and former par. (1)(B) as par. (2).

Subsec. (b)(1). Pub. L. 102-507, § 7(a)(1)(C)(i), substituted “The Director of the National Institute of Mental Health shall” for “Within 6 months after November 14, 1986, the Director of the National Institute

of Mental Health shall prepare and transmit to the Chairman of the Council a plan for the research to be conducted under subsection (a) of this section. The plan shall” in introductory provisions.

Subsec. (b)(1)(A). Pub. L. 102-507, § 7(a)(1)(C)(ii)(I), substituted “ensure that the research conducted under subsection (a) of this section includes” for “provide for” in introductory provisions.

Subsec. (b)(1)(A)(iii). Pub. L. 102-507, § 7(a)(1)(C)(ii)(II), added cl. (iii) and struck out former cl. (iii) which read as follows: “the optimal range and cost-effectiveness of community and institutional services for individuals with Alzheimer's disease and related dementias and their families, particularly with respect to the design of such services, appropriate staffing for the provision of such services, the timing of such services during the progression of such disease or dementias, and the appropriate mix and coordination of such services;”.

Subsec. (b)(1)(A)(iv). Pub. L. 102-507, § 7(a)(1)(C)(ii)(III), inserted “the evaluation of best practices for the development of” before “appropriate”.

Subsec. (b)(1)(A)(v), (vii). Pub. L. 102-507, § 7(a)(1)(C)(ii)(IV), substituted “nursing home services, and other residential services and care” for “and nursing home services”.

Subsec. (b)(1)(B). Pub. L. 102-507, § 7(a)(1)(C)(iii), substituted “the research” for “research carried out under the plan”.

Subsec. (b)(2). Pub. L. 102-507, § 7(a)(1)(A), struck out par. (2) which read as follows: “Within one year after transmitting the plan required under paragraph (1), and annually thereafter, the Director of the National Institute of Mental Health shall prepare and transmit to the Chairman of the Council such revisions of such plan as the Director considers appropriate.”

Subsec. (c). Pub. L. 102-507, § 7(a)(1)(A), struck out subsec. (c) which read as follows: “In preparing and revising the plan required by subsection (b) of this section, the Director of the National Institute of Mental Health shall consult with the Chairman of the Council and the heads of agencies within the Department.”

§ 11252. Dissemination

The Director of the National Institute of Mental Health shall disseminate the results of research conducted under this part to appropriate professional entities and to the public.

(Pub. L. 99-660, title IX, § 932, formerly § 945, Nov. 14, 1986, 100 Stat. 3810; renumbered § 932, Pub. L. 100-607, title I, § 142(c)(2)(B), Nov. 4, 1988, 102 Stat. 3057.)

PRIOR PROVISIONS

A prior section 932 of Pub. L. 99-660 was classified to section 11232 of this title prior to repeal by section 142(c)(1)(A) of Pub. L. 100-607.

§ 11253. Authorization of appropriations

There are authorized to be appropriated to carry out this part such sums as may be necessary for each of the fiscal years 1992 through 1996.

(Pub. L. 99-660, title IX, § 933, formerly § 946, Nov. 14, 1986, 100 Stat. 3810; renumbered § 933, Pub. L. 100-607, title I, § 142(c)(2)(B), Nov. 4, 1988, 102 Stat. 3057; Pub. L. 102-507, § 7(a)(3), Oct. 24, 1992, 106 Stat. 3284.)

AMENDMENTS

1992—Pub. L. 102-507 amended section generally. Prior to amendment, section read as follows: “To carry out this part, there are authorized to be appropriated \$2,000,000 for each of fiscal years 1988 through 1991.”

PART 2—RESPONSIBILITIES OF AGENCY FOR
HEALTHCARE RESEARCH AND QUALITY

AMENDMENTS

1999—Pub. L. 106-129, §2(b)(2), Dec. 6, 1999, 113 Stat. 1670 substituted “Agency for Healthcare Research and Quality” for “Agency for Health Care Policy and Research” in part heading.

1992—Pub. L. 102-507, §7(b)(1)(A), Oct. 24, 1992, 106 Stat. 3285, substituted “AGENCY FOR HEALTH CARE POLICY AND RESEARCH” for “NATIONAL CENTER FOR HEALTH SERVICES RESEARCH AND HEALTH CARE TECHNOLOGY ASSESSMENT” in part heading.

1988—Pub. L. 100-607, title I, §142(c)(2)(D), Nov. 4, 1988, 102 Stat. 3057, redesignated part 3 as 2. Former part 2 redesignated 1.

§ 11261. Research program

(a) Grants for research

The Director of the Agency for Healthcare Research and Quality shall conduct, or make grants for the conduct of, research relevant to appropriate services for individuals with Alzheimer’s disease and related dementias and for their families.

(b) Research subjects

The Director of the Agency for Healthcare Research and Quality shall ensure that research conducted under subsection (a) of this section shall include research—

(1) concerning improving the organization, delivery, and financing of services for individuals with Alzheimer’s disease and related dementias and for their families, including research on—

(A) the design, staffing, and operation of special care units for the individuals in institutional settings, as well as individuals in institutional settings,¹ as well as individuals in home care, day care, and respite care; and

(B) the exploration and enhancement of services such as home care, day care, and respite care, that provide alternatives to institutional care;

(2) concerning the costs incurred by individuals with Alzheimer’s disease and related dementias and by their families in obtaining services, particularly services that are essential to the individuals and that are not generally required by other patients under long-term care programs;

(3) concerning the costs, cost-effectiveness, and effectiveness of various interventions to provide services for individuals with Alzheimer’s disease and related dementias and for their families;

(4) conducted in consultation with the Director of the National Institute on Aging and the Commissioner of the Administration on Aging, concerning the role of physicians in caring for persons with Alzheimer’s disease and related dementias and for their families, including the role of a physician in connecting such persons with appropriate health care and supportive services, including those supported through State and area agencies on aging designated under section 3025(a)(1) and (2)(A) of this title; and

(5) conducted in consultation with the Director of the National Institute on Aging and the Commissioner of the Administration on Aging, concerning legal and ethical issues, including issues associated with special care units, facing individuals with Alzheimer’s disease and related dementias and facing their families.

(Pub. L. 99-660, title IX, §934, as added Pub. L. 102-507, §7(b)(1)(B), Oct. 24, 1992, 106 Stat. 3285; amended Pub. L. 106-129, §2(b)(2), Dec. 6, 1999, 113 Stat. 1670.)

PRIOR PROVISIONS

A prior section 11261, Pub. L. 99-660, title IX, §934, formerly §947, Nov. 14, 1986, 100 Stat. 3811; renumbered §934, Pub. L. 100-607, title I, §142(c)(2)(B), Nov. 4, 1988, 102 Stat. 3057; Pub. L. 102-54, §13(q)(14)(B), June 13, 1991, 105 Stat. 282, related to research relevant to appropriate services for individuals with Alzheimer’s disease and related dementias, prior to repeal by Pub. L. 102-507, §7(b)(1)(B).

AMENDMENTS

1999—Subsecs. (a), (b). Pub. L. 106-129 substituted “Director of the Agency for Healthcare Research and Quality” for “Administrator of the Agency for Health Care Policy and Research”.

§ 11262. Dissemination

The Director of the National Center for Health Services Research and Health Care Technology Assessment shall disseminate the results of research conducted under this part to appropriate professional entities and to the public.

(Pub. L. 99-660, title IX, §935, formerly §948, Nov. 14, 1986, 100 Stat. 3812; renumbered §935, Pub. L. 100-607, title I, §142(c)(2)(B), Nov. 4, 1988, 102 Stat. 3057.)

§ 11263. Authorization of appropriations

There are authorized to be appropriated to carry out this part such sums as may be necessary for each of the fiscal years 1992 through 1996.

(Pub. L. 99-660, title IX, §936, formerly §949, Nov. 14, 1986, 100 Stat. 3812; renumbered §936, Pub. L. 100-607, title I, §142(c)(2)(B), Nov. 4, 1988, 102 Stat. 3057; Pub. L. 102-507, §7(b)(2), Oct. 24, 1992, 106 Stat. 3286.)

AMENDMENTS

1992—Pub. L. 102-507 amended section generally. Prior to amendment, section read as follows: “To carry out this part, there are authorized to be appropriated \$2,000,000 for each of fiscal years 1988 through 1991.”

PART 3—RESPONSIBILITIES OF THE CENTERS FOR
MEDICARE & MEDICAID SERVICES

AMENDMENTS

2003—Pub. L. 108-173, title IX, §900(e)(5)(A), Dec. 8, 2003, 117 Stat. 2373, amended heading generally. Prior to amendment, heading read as follows: “Responsibilities of Health Care Financing Administration”.

1988—Pub. L. 100-607, title I, §142(c)(2)(D), Nov. 4, 1988, 102 Stat. 3057, redesignated part 4 as 3. Former part 3 redesignated 2.

§ 11271. Research program and plan

(a) Grants for research

The Administrator of the Centers for Medicare & Medicaid Services shall conduct, or make

¹ So in original. The words “as well as individuals in institutional settings,” probably should not appear.

grants for the conduct of, research relevant to appropriate services for individuals with Alzheimer's disease and related dementias and their families.

(b) Preparation of plan; contents; revision

(1) Within 6 months after November 14, 1986, the Administrator of the Centers for Medicare & Medicaid Services shall prepare and transmit to the Chairman of the Council a plan for research to be conducted under (a)¹ of this section. The plan shall—

(A) provide for a determination of the types of services required by individuals with Alzheimer's disease and related dementias and their families to allow such individuals to remain living at home or in a community-based setting;

(B) provide for a determination of the costs of providing needed services to individuals with Alzheimer's disease and related dementias and their families, including the expenditures for institutional, home, and community-based services and the source of payment for such expenditures;

(C) provide for an assessment of the adequacy of benefits provided through the Medicare and Medicaid programs and through private health insurance for needed services for individuals with Alzheimer's disease and related dementias and their families; and

(D) provide for a determination of the costs to the Medicare and Medicaid programs and to private health insurers (if available) of providing covered benefits to individuals with Alzheimer's disease and related dementias and their families.

(2) Within one year after transmitting the plan required under paragraph (1), and annually thereafter, the Administrator of the Centers for Medicare & Medicaid Services shall prepare and transmit to the Chairman of the Council such revisions of such plan as the Administrator considers appropriate.

(c) Consultation for preparation and revision of plan

In preparing and revising the plan required by subsection (b) of this section, the Administrator of the Centers for Medicare & Medicaid Services shall consult with the Chairman of the Council and the heads of agencies within the Department.

(Pub. L. 99-660, title IX, §937, formerly §949A, Nov. 14, 1986, 100 Stat. 3812; renumbered §937, Pub. L. 100-607, title I, §142(c)(2)(B), Nov. 4, 1988, 102 Stat. 3057; amended Pub. L. 108-173, title IX, §900(e)(5)(B), Dec. 8, 2003, 117 Stat. 2373.)

AMENDMENTS

2003—Subsec. (a). Pub. L. 108-173, §900(e)(5)(B)(i), substituted "Centers for Medicare & Medicaid Services" for "National Health Care Financing Administration".

Subsec. (b)(1). Pub. L. 108-173, §900(e)(5)(B)(ii), substituted "Centers for Medicare & Medicaid Services" for "Health Care Financing Administration" in introductory provisions.

Subsecs. (b)(2), (c). Pub. L. 108-173, §900(e)(5)(B)(iii), (iv), substituted "Centers for Medicare & Medicaid Services" for "Health Care Financing Administration".

¹ So in original. Probably should be preceded by "subsection".

§ 11272. Dissemination

The Administrator of the Centers for Medicare & Medicaid Services shall disseminate the results of research conducted under this part to appropriate professional entities and to the public.

(Pub. L. 99-660, title IX, §938, formerly §949B, Nov. 14, 1986, 100 Stat. 3812; renumbered §938, Pub. L. 100-607, title I, §142(c)(2)(B), Nov. 4, 1988, 102 Stat. 3057; amended Pub. L. 108-173, title IX, §900(e)(5)(C), Dec. 8, 2003, 117 Stat. 2373.)

AMENDMENTS

2003—Pub. L. 108-173 substituted "Centers for Medicare & Medicaid Services" for "Health Care Financing Administration".

§ 11273. Authorization of appropriations

To carry out this part, there are authorized to be appropriated \$2,000,000 for each of fiscal years 1988 through 1991.

(Pub. L. 99-660, title IX, §939, formerly §949C, Nov. 14, 1986, 100 Stat. 3813; renumbered §939, Pub. L. 100-607, title I, §142(c)(2)(B), Nov. 4, 1988, 102 Stat. 3057.)

§§ 11281, 11282. Transferred

Section 11281, Pub. L. 99-660, title IX, §951, Nov. 14, 1986, 100 Stat. 3813, which provided for establishment of Clearinghouse on Alzheimer's Disease, was renumbered section 445E of the Public Health Service Act by Pub. L. 100-607, title I, §142(a), Nov. 4, 1988, 102 Stat. 3057, and is classified to section 285e-7 of this title.

Section 11282, Pub. L. 99-660, title IX, §952, Nov. 14, 1986, 100 Stat. 3813, which provided for dissemination project to be conducted by national organization representing individuals with Alzheimer's disease and related dementias, was renumbered section 445F of the Public Health Service Act by Pub. L. 100-607, title I, §142(a), Nov. 4, 1988, 102 Stat. 3057, and is classified to section 285e-8 of this title.

§ 11283. Repealed. Pub. L. 100-607, title I, § 142(c)(1)(A), Nov. 4, 1988, 102 Stat. 3057

Section, Pub. L. 99-660, title IX, §953, Nov. 14, 1986, 100 Stat. 3814, authorized appropriations for fiscal years 1988 through 1991 to carry out program of dissemination of information on Alzheimer's disease.

SUBCHAPTER V—EDUCATIONAL
ACTIVITIES

AMENDMENTS

1988—Pub. L. 100-607, title I, §142(c)(1)(C), (D), Nov. 4, 1988, 102 Stat. 3057, redesignated subchapter VII as V, struck out heading for subchapter VI "DISSEMINATION", consisting of sections 11281 to 11283 of this title, and redesignated former subchapter V as IV.

§ 11291. Providing information for personnel of Social Security Administration

(a) The Secretary shall develop a mechanism to ensure the prompt provision of the most current information concerning Alzheimer's disease and related dementias to the Commissioner of Social Security, particularly information which will increase the understanding of personnel of the Social Security Administration concerning such disease and dementias.

(b) The Commissioner of Social Security shall ensure that information received under sub-

section (a) of this section is provided to personnel of the Social Security Administration, particularly personnel involved in the process of determining, for purposes of titles II and XVI of the Social Security Act [42 U.S.C. 401 et seq., 1381 et seq.], whether an individual is under a disability.

(Pub. L. 99-660, title IX, §961, Nov. 14, 1986, 100 Stat. 3814.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles II and XVI of the Social Security Act are classified generally to subchapters II (§401 et seq.) and XVI (§1381 et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11294 of this title.

§ 11292. Education of public, individuals with Alzheimer's disease and their families, and health and long-term care providers

(a) Training models grants

(1) Grants

The Director of the National Institute on Aging may award grants to eligible entities to assist the entities in developing and evaluating model training programs—

(A) for—

(i) health care professionals, including mental health professionals;

(ii) health care paraprofessionals;

(iii) personnel, including information and referral, case management, and in-home services personnel (including personnel receiving support under the Older Americans Act of 1965 (42 U.S.C. 3001 et seq.)), providing supportive services to the elderly and the families of the elderly;

(iv) family caregivers providing care and treatment for individuals with Alzheimer's disease and related disorders; and

(v) personnel of local organizations (including community groups, business and labor groups, and religious, educational, and charitable organizations) that have traditionally not been involved in planning and developing long-term care services; and

(B) with attention to such variables as—

(i) curricula development for training and continuing education programs;

(ii) care setting; and

(iii) intervention technique.

(2) Eligible entity

To be eligible to receive grants under this subsection, an entity shall be—

(A) an educational institution providing training and education in medicine, psychology, nursing, social work, gerontology, or health care administration;

(B) an educational institution providing preparatory training and education of personnel for nursing homes, hospitals, and home or community settings; or

(C) an Alzheimer's Disease Research Center described in section 285e-2(a) of this title.

(b) Educational grants

The Director of the National Institute on Aging is authorized to make grants to public and nonprofit private entities to assist such entities in establishing programs, for educating health care providers and the families of individuals with Alzheimer's disease or related disorders, regarding—

(1) caring for individuals with such diseases or disorders; and

(2) the availability in the community of public and private sources of assistance, including financial assistance, for caring for such individuals.

(c) Award of grants

In awarding grants under this section, the Director of the National Institute on Aging shall—

(1) award the grants on the basis of merit;

(2) award the grants in a manner that will ensure access to the programs described in subsections (a) and (b) of this section by rural, minority, and underserved populations throughout the country; and

(3) ensure that the grants are distributed among the principal geographic regions of the United States.

(d) Application

To be eligible to receive a grant under this section, an entity shall submit an application to the Director of the National Institute on Aging at such time, in such manner, and containing or accompanied by such information, as the Director may reasonably require, including, at a minimum, an assurance that the entity will coordinate programs provided under this section with the State agency designated under section 305(a)(1) of the Older Americans Act of 1965 [42 U.S.C. 3025(a)(1)], in the State in which the entity will provide such programs.

(e) Coordination

The Director of the National Institute on Aging shall coordinate the award of grants under this section with the heads of other appropriate agencies, including the Commissioner of the Administration on Aging.

(Pub. L. 99-660, title IX, §962, Nov. 14, 1986, 100 Stat. 3814; Pub. L. 102-507, §8(a), Oct. 24, 1992, 106 Stat. 3286.)

REFERENCES IN TEXT

The Older Americans Act of 1965, referred to in subsec. (a)(1)(A)(iii), is Pub. L. 89-73, July 14, 1965, 79 Stat. 218, as amended, which is classified generally to chapter 35 (§3001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

AMENDMENTS

1992—Pub. L. 102-507 amended section generally. Prior to amendment, section read as follows: "The Director of the National Institute on Aging, through centers supported under section 285e-2 of this title, professional associations, and continuing education programs, shall conduct education and information dissemination activities concerning the special problems of individuals with Alzheimer's disease and their families. Such ac-

tivities shall be designed to enhance the understanding of such problems by individuals who provide care for individuals with Alzheimer's disease and related dementias, including physicians, nurses, psychologists, social workers, occupational therapists, nursing home administrators, nurses, and health care aides."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11294 of this title.

§ 11293. Education programs for safety and transportation personnel

The Director of the National Institute on Aging, through centers supported under section 285e-2 of this title, training academies, and continuing education programs, shall conduct education and information dissemination activities concerning Alzheimer's disease and related dementias for personnel involved in ensuring the public safety and providing public transportation. Such activities shall be designed to enhance the ability of such personnel to respond appropriately to individuals with Alzheimer's disease and related dementias whom such personnel may encounter in the course of their employment.

(Pub. L. 99-660, title IX, §963, Nov. 14, 1986, 100 Stat. 3815.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11294 of this title.

§ 11294. Authorization of appropriations

(a) To carry out sections 11291 and 11293 of this title, there are authorized to be appropriated \$1,000,000 for each of the fiscal years 1988 through 1991.

(b) There are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1992 through 1996, to carry out section 11292 of this title.

(Pub. L. 99-660, title IX, §964, Nov. 14, 1986, 100 Stat. 3815; Pub. L. 102-507, §8(b), Oct. 24, 1992, 106 Stat. 3287.)

AMENDMENTS

1992—Pub. L. 102-507 designated existing provisions as subsec. (a), substituted "sections 11291 and 11293 of this title" for "this subchapter", and added subsec. (b).

CHAPTER 119—HOMELESS ASSISTANCE

SUBCHAPTER I—GENERAL PROVISIONS

- Sec. 11301. Findings and purpose.
 - (a) Findings.
 - (b) Purpose.
- 11302. General definition of homeless individual.
 - (a) In general.
 - (b) Income eligibility.
 - (c) Exclusion.
- 11303. Funding availability and limitations.
 - (a) Calculation.
 - (b) Availability until expended.
 - (c) Limitation.
- 11304. Evaluation by Comptroller General.

SUBCHAPTER II—INTERAGENCY COUNCIL ON THE HOMELESS

- 11311. Establishment.

- Sec. 11312. Membership.
 - (a) Members.
 - (b) Chairperson.
 - (c) Meetings.
 - (d) Prohibition of additional pay.
- 11313. Functions.
 - (a) Duties.
 - (b) Authority.
 - (c) Reports.
 - (d) Notification of other Federal agencies.
 - (e) Program timetables.
- 11314. Director and staff.
 - (a) Director.
 - (b) Additional personnel.
 - (c) Details from other agencies.
 - (d) Administrative support.
 - (e) Experts and consultants.
- 11315. Powers.
 - (a) Meetings.
 - (b) Delegation.
 - (c) Information.
 - (d) Donations.
 - (e) Mails.
- 11316. Transfer of functions.
 - (a) Transfers from HHS Task Force.
 - (b) Termination of HHS Task Force.
- 11317. Definitions.
- 11318. Authorization of appropriations.
- 11319. Termination.
- 11320. Encouragement of State involvement.
 - (a) State contact persons.
 - (b) State interagency councils and lead agencies.

SUBCHAPTER III—FEDERAL EMERGENCY MANAGEMENT FOOD AND SHELTER PROGRAM

PART A—ADMINISTRATIVE PROVISIONS

- 11331. Emergency Food and Shelter Program National Board.
 - (a) Establishment.
 - (b) Members.
 - (c) Chairperson.
 - (d) Other activities.
 - (e) Transfers from previous national board.
- 11332. Local boards.
 - (a) Establishment.
 - (b) Responsibilities.
- 11333. Role of Federal Emergency Management Agency.
 - (a) In general.
 - (b) Specific support activities.
- 11334. Records and audit of National Board and recipients of assistance.
 - (a) Annual independent audit of National Board.
 - (b) Access to records of recipients of assistance.
 - (c) Authority of Comptroller General.
- 11335. Annual report.

PART B—EMERGENCY FOOD AND SHELTER GRANTS

- 11341. Grants by Director.
- 11342. Retention of interest earned.
- 11343. Purposes of grants.
 - (a) Eligible activities.
 - (b) Limitations on activities.
- 11344. Limitation on certain costs.
- 11345. Disbursement of funds.

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| <p>Sec.
11346. Program guidelines.
 (a) Guidelines.
 (b) Publication.</p> <p style="text-align: center;">PART C—GENERAL PROVISIONS</p> <p>11351. Definitions.
11352. Authorization of appropriations.</p> <p style="text-align: center;">SUBCHAPTER IV—HOUSING ASSISTANCE</p> <p style="text-align: center;">PART A—COMPREHENSIVE HOMELESS ASSISTANCE PLAN</p> <p>11361. Housing affordability strategy.
11362. Discharge coordination policy.</p> <p style="text-align: center;">PART B—EMERGENCY SHELTER GRANTS PROGRAM</p> <p>11371. Definitions.
11372. Grant assistance.
11373. Allocation and distribution of assistance.
 (a) In general.
 (b) Minimum allocation requirement.
 (c) Distributions to nonprofit organizations.
 (d) Reallocation of funds.
 (e) Allocations to territories.</p> <p>11374. Eligible activities.
 (a) In general.
 (b) Waiver authority.</p> <p>11375. Responsibilities of recipients.
 (a) Matching amounts.
 (b) Administration of assistance.
 (c) Certifications on use of assistance.
 (d) Participation of homeless individuals.
 (e) Termination of assistance.</p> <p>11376. Administrative provisions.
 (a) Regulations.
 (b) Initial allocation of assistance.
 (c) Minimum standards of habitability.</p> <p>11377. Authorization of appropriations.
11378. Administrative costs.</p> <p style="text-align: center;">PART C—SUPPORTIVE HOUSING PROGRAM</p> <p>11381. Purpose.
11382. Definitions.
11383. Eligible activities.
 (a) In general.
 (b) Use restrictions.
 (c) Repayment of assistance and prevention of undue benefits.</p> <p>11384. Supportive housing.
 (a) In general.
 (b) Transitional housing.
 (c) Permanent housing for homeless persons with disabilities.
 (d) Single room occupancy dwellings.</p> <p>11385. Supportive services.
 (a) In general.
 (b) Requirements.
 (c) Services.
 (d) Provision of services.
 (e) Coordination with Secretary of Health and Human Services.</p> <p>11386. Program requirements.
 (a) Applications.
 (b) Selection criteria.
 (c) Required agreements.
 (d) Occupancy charge.
 (e) Matching funding.
 (f) Flood protection standards.</p> | <p>Sec.</p> <p>(g) Participation of homeless individuals.
(h) Limitation on use of funds.
(i) Limitation on administrative expenses.
(j) Termination of assistance.</p> <p>11387. Regulations.
11388. Reports to Congress.
11389. Authorization of appropriations.
 (a) Authorization of appropriations.
 (b) Set-asides.
 (c) Reallocations.</p> <p style="text-align: center;">PART D—SAFE HAVENS FOR HOMELESS INDIVIDUALS DEMONSTRATION PROGRAM</p> <p>11391. Establishment of demonstration.
 (a) In general.
 (b) Purposes.</p> <p>11392. Definitions.
11393. Program assistance.
 (a) In general.
 (b) Matching funding.</p> <p>11394. Program requirements.
 (a) Applications.
 (b) Site control.
 (c) Selection criteria.
 (d) Required agreements.</p> <p>11395. Occupancy charge.
11396. Termination of assistance.
11397. Evaluation and report.
11398. Regulations.
 (a) In general.
 (b) Consultation.
 (c) Eligibility for SSI and Medicaid.</p> <p>11399. Authorization of appropriations.</p> <p style="text-align: center;">PART E—MISCELLANEOUS PROVISIONS</p> <p>11401. Section 1437f assistance for single room occupancy dwellings.
 (a) Increase in budget authority.
 (b) Use of funds.
 (c) Allocation.
 (d) Fire and safety improvements.
 (e) Cost limitation.
 (f) Contract requirements.
 (g) Repealed.
 (h) Participation of homeless individuals.
 (i) Termination of assistance.
 (j) Definitions.</p> <p>11402. Environmental review.</p> <p style="text-align: center;">PART F—SHELTER PLUS CARE PROGRAM</p> <p style="text-align: center;">SUBPART I—GENERAL REQUIREMENTS</p> <p>11403. Purpose.
11403a. Rental housing assistance.
 (a) In general.
 (b) Funding limitations.</p> <p>11403b. Supportive services requirements.
 (a) Matching funding.
 (b) Recapture.</p> <p>11403c. Applications.
 (a) In general.
 (b) Minimum contents.</p> <p>11403d. Selection criteria.
 (a) In general.
 (b) Funding limitation.
 (c) Participation of homeless individuals.</p> <p>11403e. Required agreements.
11403e-1. Housing standards and rent reasonableness.</p> |
|---|--|

- Sec.
- (a) Standards required.
 - (b) Prohibition.
 - 11403e-2. Tenant rent.
 - 11403e-3. Administrative fees.
 - 11403e-4. Occupancy.
 - (a) Occupancy agreement.
 - (b) Vacancy payments.
 - 11403f. Termination of assistance.
 - (a) Authority.
 - (b) Procedure.
 - 11403g. Definitions.
 - 11403h. Authorization of appropriations.
 - (a) In general.
 - (b) Availability.
- SUBPART II—TENANT-BASED RENTAL ASSISTANCE
- 11404. Authority.
 - 11404a. Housing assistance.
 - 11404b. Amount of assistance.
 - 11404c to 11404e. Transferred.
- SUBPART III—PROJECT-BASED RENTAL ASSISTANCE
- 11405. Authority.
 - 11405a. Housing assistance.
 - 11405b. Term of contract and amount of assistance.
 - (a) Term of contract.
 - (b) Amount of assistance.
- SUBPART IV—SPONSOR-BASED RENTAL ASSISTANCE
- 11406. Authority.
 - 11406a. Housing assistance.
 - 11406b. Term of contract and amount of assistance.
 - (a) Term of contract.
 - (b) Amount of assistance.
- SUBPART V—SECTION 1437F MODERATE REHABILITATION ASSISTANCE FOR SINGLE-ROOM OCCUPANCY DWELLINGS
- 11407. Authority.
 - 11407a. Fire and safety improvements.
 - 11407b. Contract requirements.
- PART G—RURAL HOMELESS HOUSING ASSISTANCE
- 11408. Rural homelessness grant program.
 - (a) Establishment.
 - (b) Use of funds.
 - (c) Award of grants.
 - (d) Application.
 - (e) Eligible organizations.
 - (f) Federal share.
 - (g) Participation of homeless individuals.
 - (h) Evaluation.
 - (i) Technical assistance.
 - (j) Termination of assistance.
 - (k) Definitions.
 - (l) Authorization of appropriations.
 - 11408a. Use of FMHA inventory for transitional housing for homeless persons and for turnkey housing.
 - (a) In general.
 - (b) Priority.
 - (c) Transitional housing.
 - (d) Lease procedures.
 - (e) Purchase procedures.
 - (f) Employment of homeless individuals.
 - (g) Participation of homeless individuals.
 - (h) Budget compliance.
- SUBCHAPTER V—IDENTIFICATION AND USE OF SURPLUS FEDERAL PROPERTY
- 11411. Use of unutilized and underutilized public buildings and real property to assist the homeless.

- Sec.
- (a) Identification of suitable property.
 - (b) Availability of property.
 - (c) Publication of properties.
 - (d) Holding period.
 - (e) Application for property.
 - (f) Making property available to representatives of homeless.
 - (g) Records.
 - (h) Applicability to property under base closure process.
 - (i) Definitions.
 - 11412. Making surplus personal property available to nonprofit agencies.
 - (a) Omitted.
 - (b) Requirement for notification.
 - (c) Costs.
- SUBCHAPTER VI—EDUCATION AND TRAINING
- PART A—ADULT EDUCATION FOR HOMELESS
- 11421. Repealed.
- PART B—EDUCATION FOR HOMELESS CHILDREN AND YOUTHS
- 11431. Statement of policy.
 - 11432. Grants for State and local activities for the education of homeless children and youths.
 - (a) General authority.
 - (b) Application.
 - (c) Allocation and reservations.
 - (d) Activities.
 - (e) State and local subgrants.
 - (f) Functions of the Office of Coordinator.
 - (g) State plan.
 - 11433. Local educational agency subgrants for the education of homeless children and youths.
 - (a) General authority.
 - (b) Application.
 - (c) Awards.
 - (d) Authorized activities.
 - 11434. Secretarial responsibilities.
 - (a) Review of State plans.
 - (b) Technical assistance.
 - (c) Notice.
 - (d) Evaluation and dissemination.
 - (e) Submission and distribution.
 - (f) Determination by Secretary.
 - (g) Guidelines.
 - (h) Information.
 - (i) Report.
 - 11434a. Definitions.
 - 11435. Authorization of appropriations.
- PART C—JOB TRAINING FOR HOMELESS
- 11441 to 11450. Repealed.
- PART D—EMERGENCY COMMUNITY SERVICES HOMELESS GRANT PROGRAM
- 11461 to 11466. Repealed.
- PART E—MISCELLANEOUS PROVISIONS
- 11471, 11472. Repealed.
- PART F—FAMILY SUPPORT CENTERS
- 11481 to 11489. Repealed.
- CHAPTER REFERRED TO IN OTHER SECTIONS
- This chapter is referred to in sections 1437bbb-5, 12705, 12706 of this title; title 14 section 685; title 16 section 470w-7; title 20 sections 6311, 6312; title 26 section 42; title 35 section 2.

SUBCHAPTER I—GENERAL PROVISIONS

§ 11301. Findings and purpose

(a) Findings

The Congress finds that—

(1) the Nation faces an immediate and unprecedented crisis due to the lack of shelter for a growing number of individuals and families, including elderly persons, handicapped persons, families with children, Native Americans, and veterans;

(2) the problem of homelessness has become more severe and, in the absence of more effective efforts, is expected to become dramatically worse, endangering the lives and safety of the homeless;

(3) the causes of homelessness are many and complex, and homeless individuals have diverse needs;

(4) there is no single, simple solution to the problem of homelessness because of the different subpopulations of the homeless, the different causes of and reasons for homelessness, and the different needs of homeless individuals;

(5) due to the record increase in homelessness, States, units of local government, and private voluntary organizations have been unable to meet the basic human needs of all the homeless and, in the absence of greater Federal assistance, will be unable to protect the lives and safety of all the homeless in need of assistance; and

(6) the Federal Government has a clear responsibility and an existing capacity to fulfill a more effective and responsible role to meet the basic human needs and to engender respect for the human dignity of the homeless.

(b) Purpose

It is the purpose of this chapter—

(1) to establish an Interagency Council on the Homeless;

(2) to use public resources and programs in a more coordinated manner to meet the critically urgent needs of the homeless of the Nation; and

(3) to provide funds for programs to assist the homeless, with special emphasis on elderly persons, handicapped persons, families with children, Native Americans, and veterans.

(Pub. L. 100-77, title I, §102, July 22, 1987, 101 Stat. 484.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original “this Act”, meaning Pub. L. 100-77, July 22, 1987, 101 Stat. 482, as amended, known as the McKinney-Vento Homeless Assistance Act. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

SHORT TITLE OF 2002 AMENDMENT

Pub. L. 107-110, title X, §1031, Jan. 8, 2002, 115 Stat. 1989, provided that: “This part [part C (§§1031-1034) of title X of Pub. L. 107-110, enacting sections 11431 to 11435 of this title and provisions set out as a note below and amending provisions set out as a note below] may be cited as the ‘McKinney-Vento Homeless Education Assistance Improvements Act of 2001.’”

SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103-421, §1, Oct. 25, 1994, 108 Stat. 4346, provided that: “This Act [amending section 11411 of this

title and enacting and amending provisions set out as notes under section 2687 of Title 10, Armed Forces] may be cited as the ‘Base Closure Community Redevelopment and Homeless Assistance Act of 1994.’”

SHORT TITLE OF 1993 AMENDMENT

Pub. L. 103-120, §1, Oct. 27, 1993, 107 Stat. 1144, provided that: “This Act [amending sections 1490o and 12724 of this title and sections 1701z-11, 1721, and 1735f-9 of Title 12, Banks and Banking, enacting provisions set out as notes under this section and sections 1437f, 1490o, and 9816 of this title, and amending a provision set out as a note under section 1437f of this title] may be cited as the ‘HUD Demonstration Act of 1993.’”

SHORT TITLE OF 1992 AMENDMENT

Pub. L. 102-550, title XIV, §1401, Oct. 28, 1992, 106 Stat. 4012, provided that: “This title [enacting sections 11381 to 11389, 11391 to 11399, 11403e-4, 11404, 11405 to 11405b, 11406 to 11406b, 11407 to 11407b, 11408, and 11408a of this title, transferring sections 11404c to 11404e of this title to sections 11403e-1 to 11403e-3 of this title, respectively, amending sections 11318, 11319, 11346, 11352, 11374, 11375, 11377, 11401, 11403a, 11403c to 11403e, 11403g, 11403h, 11404a, and 11404b of this title, repealing sections 11381 to 11388, 11391 to 11394, 11404, 11405 to 11405c, and 11406 to 11406c of this title, enacting provisions set out as notes preceding section 11361 and under sections 11361, 11381, and 11411 of this title, amending provisions set out as a note under this section, and repealing provisions set out as notes under sections 11361, 11391, and 11399 of this title] may be cited as the ‘Stewart B. McKinney Homeless Housing Assistance Amendments Act of 1992.’”

SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101-645, §1(a), Nov. 29, 1990, 104 Stat. 4673, provided that: “This Act [enacting sections 5118 to 5118e, 11434a, 11465, 11466, and 11481 to 11489 of this title and section 1703a of Title 29, Labor, amending sections 256, 290bb-2, 290cc-21 to 290cc-35, 11302, 11312, 11318, 11319, 11332, 11352, 11411, 11421, 11431 to 11435, 11443, 11449, 11450, 11463, and 11464 of this title, enacting provisions set out as notes under this section, sections 5118, 11332, 11411, and 11463 of this title, and section 141 of Title 13, Census, and amending provisions set out as a note under section 290aa-3 of this title] may be cited as the ‘Stewart B. McKinney Homeless Assistance Amendments Act of 1990.’”

Pub. L. 101-645, title VI, §601, Nov. 29, 1990, 104 Stat. 4734, provided that: “This title [enacting sections 5118 to 5118e, 11434a, 11465, 11466, and 11481 to 11489 of this title and section 1703a of Title 29, Labor, amending sections 11302, 11421, 11431 to 11435, 11443, 11449, 11450, 11463, and 11464 of this title, and enacting provisions set out as notes under sections 5118 and 11463 of this title] may be cited as the ‘Stewart B. McKinney Homeless Assistance Amendments Act of 1990.’”

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100-628, §1(a), Nov. 7, 1988, 102 Stat. 3224, provided that: “This Act [enacting sections 3544, 11320, and 11402 of this title and sections 1583, 1791 to 1791j of Title 29, Labor, amending sections 254e, 256, 290bb-2, 290cc-21, 290cc-28, 290cc-29, 290cc-35, 290cc-36, 290dd, 290ee, 290ee-1, 503, 504, 602, 1437d, 1437f, 1437n, 1437o, 1437r, 1472, 1480, 1484 to 1486, 1490o, 3002, 3015, 3021, 3025 to 3027, 3031, 3035a, 3056e, 4013, 4121, 4822, 5302, 5304, 5306, 5318, 8103, 11304, 11313, 11318, 11319, 11352, 11361, 11373 to 11375, 11377, 11382 to 11385, 11387, 11388, 11392, 11394, 11401, 11411, 11421, 11432, 11433, 11435, 11447, 11449, 11462 to 11464, and 11501 of this title, sections 1454, 1701x, 1701z-11, 1709, 1710, 1715z-1a, 1715z-12, 1715z-20, 1717, 2805, and 2806 of Title 12, Banks and Banking, sections 1701 and 1719 of Title 15, Commerce and Trade, and sections 49, 49a, 49b, 49d to 49j, 49l, 49l-1, 1502, 1504, 1505, 1514, 1516, 1531, and 1602 of Title 29, enacting provisions set out as notes under this section and sections 256, 1437d, 1437f, 1472, 11303, 11374, 11381, 11383, 11384, 11392, 11401, and 11501 of this title, sections 1710 and 1715z-1a of Title 12, section 2661

of Title 15, and section 1501 of Title 29, and amending provisions set out as notes under sections 290aa-3, 1472, 1490m, and 4822 of this title, sections 1701z-6, 1709, 1715f, and 2802 of Title 12, and section 49 of Title 29] may be cited as the 'Stewart B. McKinney Homeless Assistance Amendments Act of 1988'."

SHORT TITLE

Section 101(a) of Pub. L. 100-77, as amended by Pub. L. 106-400, §1, Oct. 30, 2000, 114 Stat. 1675; Pub. L. 107-110, title X, §1034(a), Jan. 8, 2002, 115 Stat. 2006; Pub. L. 107-116, title VI, §634(a), Jan. 10, 2002, 115 Stat. 2228, provided that: "This Act [enacting this chapter and sections 256 and 290cc-21 to 290cc-36 of this title, amending sections 254e, 290bb-1a, 290bb-2, and 5302 of this title, sections 2012, 2014, 2020, and 2025 of Title 7, Agriculture, sections 1205 and 1207a of Title 20, Education, sections 1503 and 1551 of Title 29, Labor, and section 484 of former Title 40, Public Buildings, Property, and Works, repealing section 256a of this title, enacting provisions set out as notes under this section and section 290aa-3 of this title and sections 2012, 2014, and 2020 of Title 7, and amending provisions set out as notes under section 612c of Title 7 and section 1721 of Title 29] may be cited as the 'McKinney-Vento Homeless Assistance Act'."

[Pub. L. 107-110, title X, §1034(b), Jan. 8, 2002, 115 Stat. 2007, provided that: "The amendment made by subsection (a) [amending section 1 of Pub. L. 106-400, which amended section 101(a) of Pub. L. 100-77 set out above] shall be deemed to be effective on the date of enactment of Public Law 106-400."]

[Pub. L. 107-116, title VI, §634(b), Jan. 10, 2002, 115 Stat. 2228, provided that: "The amendment made by subsection (a) of this section [which directed the amendment of section 101(a) of Pub. L. 100-77, set out above] is deemed to have taken effect immediately after the enactment of Public Law 106-400 [which was approved Oct. 30, 2000] (114 Stat. 1675)."]

REGULATIONS

Pub. L. 100-628, title IV, §485, Nov. 7, 1988, 102 Stat. 3239, provided that: "Not later than 60 days after the date of the enactment of this Act [Nov. 7, 1988], the Secretary of Housing and Urban Development or other Federal entity involved shall by notice establish such requirements as may be necessary to carry out the amendments made by titles I through IV [see Tables for classification] and by section 501(2)(B) [amending section 11411 of this title]. The Secretary or other Federal entity involved shall issue regulations based on the notice not later than 12 months after the date of the enactment of this Act."

REFERENCES TO STEWART B. MCKINNEY HOMELESS ASSISTANCE ACT

Pub. L. 106-400, §2, Oct. 30, 2000, 114 Stat. 1675, provided that: "Any reference in any law, regulation, document, paper, or other record of the United States to the Stewart B. McKinney Homeless Assistance Act shall be deemed to be a reference to the 'McKinney-Vento Homeless Assistance Act'."

INNOVATIVE HOMELESS INITIATIVES DEMONSTRATION PROGRAM

Pub. L. 103-120, §2, Oct. 27, 1993, 107 Stat. 1144, as amended by Pub. L. 104-330, title V, §506(b), Oct. 26, 1996, 110 Stat. 4045, directed Secretary of Housing and Urban Development, through cooperative efforts in partnership with other levels of government and the private sector, including nonprofit organizations, foundations, and communities, to demonstrate methods of undertaking comprehensive strategies for assisting homeless individuals and families (including homeless individuals who have AIDS or who are infected with HIV), through a variety of activities, including the coordination of efforts and the filling of gaps in available services and resources, directed Secretary to provide comprehensive homeless demonstration grants and in-

novative project funding, and provided for submission of reports and authorization of appropriations, prior to repeal by Pub. L. 103-120, §2(g), Oct. 27, 1993, 107 Stat. 1148.

STRATEGY TO ELIMINATE UNFIT TRANSIENT FACILITIES

Pub. L. 101-625, title VIII, §825, Nov. 28, 1990, 104 Stat. 4356, as amended by Pub. L. 102-550, title XIV, §1412, Oct. 28, 1992, 106 Stat. 4039, directed Secretary of Housing and Urban Development, not more than 9 months after Oct. 28, 1992, to identify the States and units of general local government using unfit transient facilities as housing for homeless families with children and develop and publish in the Federal Register a strategy to eliminate such use by July 1, 1994, and in developing such strategy, to consult with the Secretary of the Department of Health and Human Services, the Administrator of the Federal Emergency Management Agency, other appropriate Federal officials, appropriate States and units of general local government, major organizations representing homeless persons and other experts.

REPORT ON EFFECT OF RENT CONTROL ON HOMELESSNESS

Pub. L. 100-628, title IV, §483, Nov. 7, 1988, 102 Stat. 3238, directed Secretary of Housing and Urban Development, within 12 months after Nov. 7, 1988, to submit to Congress a report evaluating the impact of local housing rent controls and regulations on rate of homelessness, and on the development, supply, availability, and affordability of housing, in major cities in the United States, with report to include additional specified information.

REQUIREMENT OF CERTAIN STUDY WITH RESPECT TO HOMELESSNESS

Section 603 of Pub. L. 100-77 directed Secretary of Health and Human Services, not later than 18 months after July 22, 1987, to complete a study with respect to determining extent to which mental health deinstitutionalization policies of States are contributing to problem of homelessness, and submit to Congress the findings made as a result of such study, including any recommendations with respect to administrative and legislative initiatives that could reduce the number of chronically mentally ill individuals who are homeless.

§ 11302. General definition of homeless individual

(a) In general

For purposes of this chapter, the term "homeless" or "homeless individual or homeless person"¹ includes—

- (1) an individual who lacks a fixed, regular, and adequate nighttime residence; and
- (2) an individual who has a primary nighttime residence that is—

(A) a supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(B) an institution that provides a temporary residence for individuals intended to be institutionalized; or

(C) a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(b) Income eligibility

(1) In general

A homeless individual shall be eligible for assistance under any program provided by this

¹ So in original. Probably should be "'homeless individual' or 'homeless person'".

chapter, only if the individual complies with the income eligibility requirements otherwise applicable to such program.

(2) Exception

Notwithstanding paragraph (1), a homeless individual shall be eligible for assistance under title I of the Workforce Investment Act of 1998 [29 U.S.C. 2801 et seq.].

(c) Exclusion

For purposes of this chapter, the term “homeless” or “homeless individual” does not include any individual imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

(Pub. L. 100-77, title I, §103, July 22, 1987, 101 Stat. 485; Pub. L. 101-625, title VIII, §822, Nov. 28, 1990, 104 Stat. 4355; Pub. L. 101-645, title VI, §602, Nov. 29, 1990, 104 Stat. 4734; Pub. L. 105-277, div. A, §101(f) [title VIII, §405(d)(41), (f)(32)], Oct. 21, 1998, 112 Stat. 2681-337, 2681-427, 2681-434.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 100-77, July 22, 1987, 101 Stat. 482, as amended, known as the McKinney-Vento Homeless Assistance Act. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of this title and Tables.

The Workforce Investment Act of 1998, referred to in subsec. (b)(2), is Pub. L. 105-220, Aug. 7, 1998, 112 Stat. 936, as amended. Title I of the Act is classified principally to chapter 30 (§2801 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

AMENDMENTS

1998—Subsec. (b)(2). Pub. L. 105-277, §101(f) [title VIII, §405(f)(32)], struck out “the Job Training Partnership Act or” after “assistance under”.

Pub. L. 105-277, §101(f) [title VIII, §405(d)(41)], substituted “the Job Training Partnership Act or title I of the Workforce Investment Act of 1998” for “the Job Training Partnership Act”.

1990—Subsec. (a). Pub. L. 101-625 inserted “or homeless person” after “homeless individual” in introductory provisions.

Subsec. (b). Pub. L. 101-645 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “A homeless individual shall be eligible for assistance under any program provided by this chapter, or by the amendments made by this Act, only if the individual complies with the income eligibility requirements otherwise applicable to such program.”

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 101(f) [title VIII, §405(d)(41)] of Pub. L. 105-277 effective Oct. 21, 1998, and amendment by section 101(f) [title VIII, §405(f)(32)] of Pub. L. 105-277 effective July 1, 2000, see section 101(f) [title VIII, §405(g)(1), (2)(B)] of Pub. L. 105-277, set out as a note under section 3502 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1486, 11362, 11403c, 11434a, 12899f of this title; title 12 sections 1441a, 1821; title 26 section 42; title 29 section 2801; title 38 section 2002.

§ 11303. Funding availability and limitations

(a) Calculation

The amounts authorized in this chapter shall be in addition to any amount appropriated for the programs involved before July 22, 1987.

(b) Availability until expended

Any amount appropriated under an authorization in this chapter shall remain available until expended.

(c) Limitation

Appropriations pursuant to the authorizations in this chapter shall be made in accordance with the provisions of the Congressional Budget and Impoundment Control Act of 1974, which prohibits the consideration of any bill that would cause the deficit to exceed the levels established by the Balanced Budget and Emergency Deficit Control Act of 1985, such that it shall not increase the deficit of the Federal Government for fiscal year 1987.

(Pub. L. 100-77, title I, §104, July 22, 1987, 101 Stat. 485.)

REFERENCES IN TEXT

The Congressional Budget and Impoundment Control Act of 1974, referred to in subsec. (c), is Pub. L. 93-344, July 12, 1974, 88 Stat. 297, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 621 of Title 2, The Congress, and Tables.

The Balanced Budget and Emergency Deficit Control Act of 1985, referred to in subsec. (c), is title II of Pub. L. 99-177, Dec. 12, 1985, 99 Stat. 1038, as amended, which enacted chapter 20 (§900 et seq.) and sections 654 to 656 of Title 2, amended section 911 of this title, sections 602, 622, 631 to 642, and 651 to 653 of Title 2, and sections 1104 to 1106, and 1109 of Title 31, Money and Finance, repealed section 661 of Title 2, enacted provisions set out as notes under section 911 of this title and section 900 of Title 2, and amended provisions set out as a note under section 621 of Title 2. For complete classification of this Act to the Code, see Short Title note set out under section 900 of Title 2 and Tables.

BUDGET COMPLIANCE

Pub. L. 100-628, title I, §101, Nov. 7, 1988, 102 Stat. 3227, provided that:

“(a) IN GENERAL.—This Act and the amendments made by this Act [see Short Title of 1988 Amendment note set out under section 11301 of this title] may not be construed to provide for new budget authority, budget outlays, or new entitlement authority, for fiscal year 1989 or 1990 in excess of the appropriate aggregate levels established by the concurrent resolution on the budget for such fiscal year for the programs authorized by this Act and the amendments made by this Act.

“(b) DEFINITIONS.—For purposes of this section, the terms ‘budget authority’, ‘budget outlays’, ‘concurrent resolution on the budget’, and ‘entitlement authority’ have the meanings given such terms in section 3 of the Congressional Budget Act of 1974 (2 U.S.C. 622).”

§ 11304. Evaluation by Comptroller General

The Comptroller General of the United States may evaluate the disbursement and use of the amounts made available by appropriation Acts under the authorizations in subchapters III and IV of this chapter.

(Pub. L. 100-77, title I, §105, July 22, 1987, 101 Stat. 486; Pub. L. 100-628, title I, §102(a), (b)(1), Nov. 7, 1988, 102 Stat. 3227; Pub. L. 104-316, title I, §122(t), Oct. 19, 1996, 110 Stat. 3838.)

AMENDMENTS

1996—Pub. L. 104-316 substituted “may” for “shall annually” and struck out “, and submit to the Congress an annual summary of the status of each program authorized under this chapter” before period at end.

1988—Pub. L. 100-628 substituted “Annual program summary” for “Audits” in section catchline and, in text, substituted “shall annually evaluate” for “shall evaluate” and “submit to the Congress an annual summary of the status of each program authorized under this chapter” for “submit a report to the Congress setting forth the findings of such evaluation, upon the expiration of the 4-month and 12-month periods beginning on July 22, 1987”.

SUBCHAPTER II—INTERAGENCY COUNCIL ON THE HOMELESS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 38 section 2066.

§ 11311. Establishment

There is established in the executive branch an independent establishment to be known as the Interagency Council on the Homeless.

(Pub. L. 100-77, title II, § 201, July 22, 1987, 101 Stat. 486.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 290aa-5, 11317 of this title.

§ 11312. Membership

(a) Members

The Council shall be composed of the following members:

- (1) The Secretary of Agriculture, or the designee of the Secretary.
- (2) The Secretary of Commerce, or the designee of the Secretary.
- (3) The Secretary of Defense, or the designee of the Secretary.
- (4) The Secretary of Education, or the designee of the Secretary.
- (5) The Secretary of Energy, or the designee of the Secretary.
- (6) The Secretary of Health and Human Services, or the designee of the Secretary.
- (7) The Secretary of Housing and Urban Development, or the designee of the Secretary.
- (8) The Secretary of the Interior, or the designee of the Secretary.
- (9) The Secretary of Labor, or the designee of the Secretary.
- (10) The Secretary of Transportation, or the designee of the Secretary.
- (11) The Secretary of Veterans Affairs, or the designee of the Secretary.
- (12) The Chief Executive Officer of the Corporation for National and Community Service, or the designee of the Chief Executive Officer.
- (13) The Director of the Federal Emergency Management Agency, or the designee of the Director.
- (14) The Administrator of General Services, or the designee of the Administrator.

(15) The Postmaster General of the United States, or the designee of the Postmaster General.

(16) The heads of such other Federal agencies as the Council considers appropriate, or their designees.

(b) Chairperson

The Council shall elect a Chairperson and a Vice Chairperson from among its members. The

positions of Chairperson and Vice Chairperson shall rotate among its members on an annual basis.

(c) Meetings

The Council shall meet at the call of its Chairperson or a majority of its members, but not less often than annually.

(d) Prohibition of additional pay

Members of the Council shall receive no additional pay, allowances, or benefits by reason of their service on the Council.

(Pub. L. 100-77, title II, § 202, July 22, 1987, 101 Stat. 486; Pub. L. 101-645, title I, § 101, Nov. 29, 1990, 104 Stat. 4674; Pub. L. 103-82, title IV, § 405(m), Sept. 21, 1993, 107 Stat. 922; Pub. L. 106-377, § 1(a)(1) [title II, § 231(1)], Oct. 27, 2000, 114 Stat. 1441, 1441A-31; Pub. L. 107-95, § 11, Dec. 21, 2001, 115 Stat. 920.)

AMENDMENTS

2001—Subsec. (c). Pub. L. 107-95 amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows: “The Council shall meet at the call of its Chairperson or a majority of its members. The first meeting of the Council shall be held not later than 30 days after July 22, 1987.”

2000—Subsec. (b). Pub. L. 106-377 inserted at end “The positions of Chairperson and Vice Chairperson shall rotate among its members on an annual basis.”

1993—Subsec. (a)(12). Pub. L. 103-82 added par. (12) and struck out former par. (12) which read as follows: “The Director of the ACTION Agency, or the designee of the Director.”

1990—Subsec. (a)(11) to (15). Pub. L. 101-645 added par. (11), redesignated former pars. (11) to (14) as (12) to (15), respectively, and struck out former par. (15) which read as follows: “The Administrator of Veterans’ Affairs, or the designee of the Administrator.”

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Apr. 4, 1994, see section 406(b) of Pub. L. 103-82, set out as a note under section 8332 of Title 5, Government Organization and Employees.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 313(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11314 of this title.

§ 11313. Functions

(a) Duties

The Council shall—

(1) review all Federal activities and programs to assist homeless individuals;

(2) take such actions as may be necessary to reduce duplication among programs and activities by Federal agencies to assist homeless individuals;

(3) monitor, evaluate, and recommend improvements in programs and activities to as-

sist homeless individuals conducted by Federal agencies, State and local governments, and private voluntary organizations;

(4) provide professional and technical assistance (by at least 2, but in no case more than 5, regional coordinators employed by the Council, each having responsibility for interaction and coordination of the activities of the Council within the 10 standard Federal regions) to States, local governments, and other public and private nonprofit organizations, in order to enable such governments and organizations to—

(A) interpret regulations and assist in the application process for Federal assistance, including grants;

(B) provide assistance on the ways in which Federal programs, other than those authorized under this chapter, may best be coordinated to complement the objectives of this chapter;

(C) develop recommendations and program ideas based on regional specific issues in serving the homeless population; and

(D) establish a schedule for biennial regional workshops to be held by the Council in each of the 10 standard Federal regions to further carry out and provide the assistance described in subparagraphs (A), (B), and (C) and other appropriate assistance as necessary, of which—

(i) not less than 5 such workshops shall be held by September 30, 1989; and

(ii) at least 1 such workshop shall be held in each of the 10 Federal regions every 2 years, beginning on September 30, 1988;

(5) collect and disseminate information relating to homeless individuals;

(6) prepare the annual reports required in subsection (c)(2) of this section; and

(7) prepare and distribute to States (including State contact persons), local governments, and other public and private nonprofit organizations, a bimonthly bulletin that describes the Federal resources available to them to assist the homeless, including current information regarding application deadlines and appropriate persons to contact in each Federal agency providing the resources.

(b) Authority

In carrying out subsection (a) of this section, the Council may—

(1) arrange Federal, regional, State, and local conferences for the purpose of developing and coordinating effective programs and activities to assist homeless individuals; and

(2) publish a newsletter concerning Federal, State, and local programs that are effectively meeting the needs of homeless individuals.

(c) Reports

(1) Within 90 days after July 22, 1987, and annually thereafter, the head of each Federal agency that is a member of the Council shall prepare and transmit to the Congress and the Council a report that describes—

(A) each program to assist homeless individuals administered by such agency and the number of homeless individuals served by such program;

(B) impediments, including any statutory and regulatory restrictions, to the use by homeless individuals of each such program and to obtaining services or benefits under each such program; and

(C) efforts made by such agency to increase the opportunities for homeless individuals to obtain shelter, food, and supportive services.

(2) The Council shall prepare and transmit to the President and the Congress an annual report that—

(A) assesses the nature and extent of the problems relating to homelessness and the needs of homeless individuals;

(B) provides a comprehensive and detailed description of the activities and accomplishments of the Federal Government in resolving the problems and meeting the needs assessed pursuant to subparagraph (A);

(C) describes the accomplishments and activities of the Council, in working with Federal, State, and local agencies and public and private organizations in order to provide assistance to homeless individuals;

(D) assesses the level of Federal assistance necessary to adequately resolve the problems and meet the needs assessed pursuant to subparagraph (A); and

(E) specifies any recommendations of the Council for appropriate and necessary legislative and administrative actions to resolve such problems and meet such needs.

(d) Notification of other Federal agencies

If, in monitoring and evaluating programs and activities to assist homeless individuals conducted by other Federal agencies, the Council determines that any significant problem, abuse, or deficiency exists in the administration of the program or activity of any Federal agency, the Council shall submit a notice of the determination of the Council to the Inspector General of the Federal agency (or the head of the Federal agency, in the case of a Federal agency that has no Inspector General).

(e) Program timetables

Not later than 90 days after November 7, 1988, the head of each Federal agency that is a member of the Council and responsible for administering a program under this chapter shall provide to the Council a timetable regarding program funding availability and application deadlines. The Council shall furnish such information to each State (including the State contact person).

(Pub. L. 100-77, title II, §203, July 22, 1987, 101 Stat. 487; Pub. L. 100-628, title II, §§201-203, Nov. 7, 1988, 102 Stat. 3227, 3228.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(4)(B) and (e), was in the original "this Act", meaning Pub. L. 100-77, July 22, 1987, 101 Stat. 482, known as the Stewart B. McKinney Homeless Assistance Act. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of this title and Tables.

AMENDMENTS

1988—Subsec. (a)(4). Pub. L. 100-628, §202(1), substituted "(by at least 2, but in no case more than 5, regional coordinators employed by the Council, each hav-

ing responsibility for interaction and coordination of the activities of the Council within the 10 standard Federal regions)" for ", through personnel employed by the Council in each of the 10 standard Federal regions," in introductory provisions.

Subsec. (a)(4)(A) to (D). Pub. L. 100-628, §202(2), added subpars. (A) to (D) and struck out former subpars. (A) and (B) which read as follows:

"(A) effectively coordinate and maximize resources of existing programs and activities to assist homeless individuals; and

"(B) develop new and innovative programs and activities to assist homeless individuals;"

Subsec. (a)(7). Pub. L. 100-628, §201, added par. (7).

Subsec. (e). Pub. L. 100-628, §203, added subsec. (e).

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (c)(2) of this section relating to transmittal to Congress of annual report, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 5th item on page 175 of House Document No. 103-7.

PERSONNEL FROM FEDERAL DEPARTMENTS AND AGENCIES

Pub. L. 102-389, title III, Oct. 6, 1992, 106 Stat. 1608, provided in part: "That the Council shall carry out its duties in the 10 standard Federal regions under section 203(a)(4) of such Act [42 U.S.C. 11313(a)(4)] only through detail, on a non-reimbursable basis, of employees of the departments and agencies represented on the Council pursuant to section 202(a) of such Act [42 U.S.C. 11312(a)]." Similar provisions were contained in the following prior appropriations acts:

Pub. L. 102-139, title III, Oct. 28, 1991, 105 Stat. 769.

Pub. L. 101-507, title III, Nov. 5, 1990, 104 Stat. 1377.

Pub. L. 101-144, title III, Nov. 9, 1989, 103 Stat. 861.

Pub. L. 100-404, title I, Aug. 19, 1988, 102 Stat. 1017.

NONIMPLEMENTATION OF SUBSECTION (a)(4)

Pub. L. 100-202, §101(f) [title I], Dec. 22, 1987, 101 Stat. 1329-187, 1329-191, provided: "That the provision in section 203(a)(4) of such Act [Pub. L. 100-77, 42 U.S.C. 11313(a)(4)] that relates to employment of personnel in the regions shall not be implemented."

EX. ORD. NO. 12848. FEDERAL PLAN TO BREAK CYCLE OF HOMELESSNESS

Ex. Ord. No. 12848, May 19, 1993, 58 F.R. 29517, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including title II of the Stewart B. McKinney Homeless Assistance Act, as amended (42 U.S.C. 11311-11320), and section 301 of title 3, United States Code, and in order to provide for the streamlining and strengthening of the Nation's efforts to break the cycle of homelessness, it is hereby ordered as follows:

SECTION 1. Federal member agencies acting through the Interagency Council on the Homeless, established under title II of the Stewart B. McKinney Homeless Assistance Act [42 U.S.C. 11311 et seq.], shall develop a single coordinated Federal plan for breaking the cycle of existing homelessness and for preventing future homelessness.

SEC. 2. The plan shall recommend Federal administrative and legislative initiatives necessary to carry out the plan and shall include a proposed schedule for implementing administrative initiatives and transmitting any necessary legislative proposals to the Congress. These initiatives and legislative proposals shall identify ways to streamline and consolidate, when appropriate, existing programs designed to assist homeless individuals and families.

SEC. 3. The plan shall make recommendations on how current funding programs can be redirected, if necessary, to provide links between housing, support, and education services and to promote coordination and co-

operation among grantees, local housing and support service providers, school districts, and advocates for homeless individuals and families. The plan shall also provide recommendations on ways to encourage and support creative approaches and cost-effective, local efforts to break the cycle of existing homelessness and prevent future homelessness, including tying current homeless assistance programs to permanent housing assistance, local housing affordability strategies, or employment opportunities.

SEC. 4. To the extent practicable, the Council shall consult with representatives of State and local governments (including education agencies), nonprofit providers of services and housing for homeless individuals and families, advocates for homeless individuals and families, currently and formerly homeless individuals and families, and other interested parties.

SEC. 5. The Council shall submit the plan to the President no later than 9 months after the date of this order.

WILLIAM J. CLINTON.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11320 of this title.

§ 11314. Director and staff

(a) Director

The Council shall appoint an Executive Director, who shall be compensated at a rate not to exceed the rate of basic pay payable for level V of the Executive Schedule under section 5316 of title 5. The Council shall appoint an Executive Director at the first meeting of the Council held under section 11312(c) of this title.

(b) Additional personnel

With the approval of the Council, the Executive Director of the Council may appoint and fix the compensation of such additional personnel as the Executive Director considers necessary to carry out the duties of the Council.

(c) Details from other agencies

Upon request of the Council, the head of any Federal agency may detail, on a reimbursable basis, any of the personnel of such agency to the Council to assist the Council in carrying out its duties under this subchapter. Upon request of the Council, the Secretary of Health and Human Services shall detail, on a reimbursable basis, any of the personnel of the Department of Health and Human Services who have served the Federal Task Force on the Homeless of the Department to assist the Council in carrying out its duties under this subchapter.

(d) Administrative support

The Secretary of Housing and Urban Development shall provide the Council with such administrative and support services as are necessary to ensure that the Council carries out its functions under this subchapter in an efficient and expeditious manner.

(e) Experts and consultants

With the approval of the Council, the Executive Director of the Council may procure temporary and intermittent services under section 3109(b) of title 5.

(Pub. L. 100-77, title II, §204, July 22, 1987, 101 Stat. 488.)

§ 11315. Powers**(a) Meetings**

For the purpose of carrying out this subchapter, the Council may hold such meetings, and sit and act at such times and places, as the Council considers appropriate.

(b) Delegation

Any member or employee of the Council may, if authorized by the Council, take any action that the Council is authorized to take in this subchapter.

(c) Information

The Council may secure directly from any Federal agency such information as may be necessary to enable the Council to carry out this subchapter. Upon request of the Chairperson of the Council, the head of such agency shall furnish such information to the Council.

(d) Donations

The Council may accept, use, and dispose of gifts or donations of services or property.

(e) Mails

The Council may use the United States mails in the same manner and under the same conditions as other Federal agencies.

(Pub. L. 100-77, title II, § 205, July 22, 1987, 101 Stat. 488.)

§ 11316. Transfer of functions**(a) Transfers from HHS Task Force**

The Council shall be the successor to the Federal Task Force on the Homeless of the Department of Health and Human Services. The property, records, and undistributed program funds of the Task Force shall be transferred to the Council.

(b) Termination of HHS Task Force

The Secretary of Health and Human Services shall terminate the Federal Task Force on the Homeless of the Department of Health and Human Services as soon as practicable following the first meeting of the Council.

(Pub. L. 100-77, title II, § 206, July 22, 1987, 101 Stat. 489.)

§ 11317. Definitions

For purposes of this subchapter:

(1) The term "Council" means the Interagency Council on the Homeless established in section 11311 of this title.

(2) The term "Federal agency" has the meaning given the term "agency" in section 551(1) of title 5.

(Pub. L. 100-77, title II, § 207, July 22, 1987, 101 Stat. 489.)

§ 11318. Authorization of appropriations

There are authorized to be appropriated to carry out this subchapter \$1,500,000 for fiscal year 1993 and \$1,563,000 for fiscal year 1994.

(Pub. L. 100-77, title II, § 208, July 22, 1987, 101 Stat. 489; Pub. L. 100-628, title II, § 204, Nov. 7, 1988, 102 Stat. 3228; Pub. L. 101-645, title I, § 102, Nov. 29, 1990, 104 Stat. 4674; Pub. L. 102-550, title XIV, § 1421, Oct. 28, 1992, 106 Stat. 4043.)

AMENDMENTS

1992—Pub. L. 102-550 amended section generally. Prior to amendment, section read as follows: "There are authorized to be appropriated to carry out this subchapter \$1,200,000 for fiscal year 1991 and \$1,300,000 for fiscal year 1992."

1990—Pub. L. 101-645 amended section generally. Prior to amendment, section read as follows: "There are authorized to be appropriated to carry out this subchapter \$1,100,000 for fiscal year 1989 and \$1,200,000 for fiscal year 1990."

1988—Pub. L. 100-628 amended section generally, substituting "\$1,100,000 for fiscal year 1989 and \$1,200,000 for fiscal year 1990" for "\$200,000 for fiscal year 1987 and \$2,500,000 for fiscal year 1988".

§ 11319. Termination

The Council shall cease to exist, and the requirements of this subchapter shall terminate, on October 1, 2005.

(Pub. L. 100-77, title II, § 209, July 22, 1987, 101 Stat. 489; Pub. L. 100-628, title II, § 205, Nov. 7, 1988, 102 Stat. 3228; Pub. L. 101-402, § 2, Oct. 1, 1990, 104 Stat. 866; Pub. L. 101-645, title I, § 103, Nov. 29, 1990, 104 Stat. 4675; Pub. L. 102-550, title XIV, § 1422, Oct. 28, 1992, 106 Stat. 4043; Pub. L. 106-377, § 1(a)(1) [title II, § 231(2)], Oct. 27, 2000, 114 Stat. 1441, 1441A-31.)

AMENDMENTS

2000—Pub. L. 106-377 substituted "2005" for "1994".

1992—Pub. L. 102-550 substituted "October 1, 1994" for "October 1, 1992".

1990—Pub. L. 101-645 substituted "October 1, 1992" for "October 31, 1990".

Pub. L. 101-402 substituted "October 31, 1990" for "October 1, 1990".

1988—Pub. L. 100-628 substituted "on October 1, 1990" for "upon the expiration of the 3-year period beginning on July 22, 1987".

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-402 deemed to have taken effect as if enacted Sept. 29, 1990, see section 1(a) of Pub. L. 101-494, set out as an Effective Date of Temporary Extension of Emergency Low Income Housing Preservation Act of 1987 and Correction of Any Repeal note under section 1715f of Title 12, Banks and Banking.

TEMPORARY EXTENSION OF COUNCIL

Pub. L. 101-494, § 3, Oct. 31, 1990, 104 Stat. 1185, as amended by Pub. L. 106-400, § 2, Oct. 30, 2000, 114 Stat. 1675, provided that:

"(a) EXTENSION.—If upon enactment of this Act [Oct. 31, 1990], section 209 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11319) provides for the termination of the Interagency Council on the Homeless on October 31, 1990, then notwithstanding such section, the Interagency Council on the Homeless shall cease to exist, and the requirements of title II of the McKinney-Vento Homeless Assistance Act [42 U.S.C. 11311 et seq.] shall terminate, on November 30, 1990.

"(b) LIMITATIONS.—If upon enactment of this Act [Oct. 31, 1990] such section 209 provides for termination of the Council (referred to in subsection (a)) on a date other than October 31, 1990, this section shall not apply. This section shall not apply with respect to any amendment to section 209 of the McKinney-Vento Homeless Assistance Act made after the date of the enactment of this Act."

§ 11320. Encouragement of State involvement**(a) State contact persons**

Each State shall designate an individual to serve as a State contact person for the purpose

of receiving and disseminating information and communications received from the Council, including the bimonthly bulletin described in section 11313(a)(7) of this title.

(b) State interagency councils and lead agencies

Each State is encouraged to establish a State interagency council on the homeless or designate a lead agency for the State for the purpose of assuming primary responsibility for coordinating and interacting with the Council and State and local agencies as necessary.

(Pub. L. 100-77, title II, §210, as added Pub. L. 100-628, title II, §206(a), Nov. 7, 1988, 102 Stat. 3229.)

SUBCHAPTER III—FEDERAL EMERGENCY MANAGEMENT FOOD AND SHELTER PROGRAM

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 11304 of this title.

PART A—ADMINISTRATIVE PROVISIONS

§ 11331. Emergency Food and Shelter Program National Board

(a) Establishment

There is established to carry out the provisions of this subchapter the Emergency Food and Shelter Program National Board. The Director of the Federal Emergency Management Agency shall constitute the National Board in accordance with subsection (b) of this section in administering the program under this subchapter.

(b) Members

The National Board shall consist of the Director and 6 members appointed by the Director. The initial members of the National Board shall be appointed by the Director not later than 30 days after July 22, 1987. Each such member shall be appointed from among individuals nominated by 1 of the following organizations:

- (1) The United Way of America.
- (2) The Salvation Army.
- (3) The National Council of Churches of Christ in the U.S.A.
- (4) Catholic Charities U.S.A.
- (5) The Council of Jewish Federations, Inc.
- (6) The American Red Cross.

(c) Chairperson

The Director shall be the Chairperson of the National Board.

(d) Other activities

Except as otherwise specifically provided in this subchapter, the National Board shall establish its own procedures and policies for the conduct of its affairs.

(e) Transfers from previous national board

Upon the appointment of members to the National Board under subsection (b) of this section—

- (1) the national board constituted under the emergency food and shelter program established pursuant to section 101(g) of Public Law 99-500 or Public Law 99-591 shall cease to exist; and

(2) the personnel, property, records, and undistributed program funds of such national board shall be transferred to the National Board.

(Pub. L. 100-77, title III, §301, July 22, 1987, 101 Stat. 489.)

REFERENCES IN TEXT

The emergency food and shelter program established pursuant to section 101(g) of Public Law 99-500 or Public Law 99-591, referred to in subsec. (e)(1), means the emergency food and shelter program authorized by title II of H.R. 5313 [Department of Housing and Urban Development—Independent Agencies Appropriations Act, 1987], as incorporated by reference by section 101(g) of Pub. L. 99-500, Oct. 18, 1986, 100 Stat. 1783-242, and Pub. L. 99-591, Oct. 30, 1986, 100 Stat. 3341-242, which is not classified to the Code.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 313(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 11332. Local boards

(a) Establishment

Each locality designated by the National Board shall constitute a local board for the purpose of determining how program funds allotted to the locality will be distributed. The local board shall consist, to the extent practicable, of representatives of the same organizations as the National Board, except that the mayor or other appropriate heads of government will replace the Federal members, and except that each local board administering program funds for a locality within which is located a reservation (as such term is defined in section 1452(d) of title 25,¹ or a portion thereof, shall include a board member who is a member of an Indian tribe (as such term is defined in section 5302(a)(17) of this title.¹ The chairperson of the local board shall be elected by a majority of the members of the local board. Local boards are encouraged to expand participation of other private nonprofit organizations on the local board.

(b) Responsibilities

Each local board shall—

- (1) determine which private nonprofit organizations or public organizations of the local government in the individual locality shall receive grants to act as service providers;
- (2) monitor recipient service providers for program compliance;
- (3) reallocate funds among service providers;
- (4) ensure proper reporting; and
- (5) coordinate with other Federal, State, and local government assistance programs available in the locality.

(Pub. L. 100-77, title III, §302, July 22, 1987, 101 Stat. 490; Pub. L. 101-645, title II, §202(a), Nov. 29, 1990, 104 Stat. 4675.)

¹ So in original. A closing parenthesis probably should precede the punctuation.

AMENDMENTS

1990—Subsec. (a). Pub. L. 101-645 inserted before period at end of second sentence “, and except that each local board administering program funds for a locality within which is located a reservation (as such term is defined in section 1452(d) of title 25, or a portion thereof, shall include a board member who is a member of an Indian tribe (as such term is defined in section 5302(a)(17) of this title”.

IMPLEMENTATION OF 1990 AMENDMENT

Section 202(b) of Pub. L. 101-645 provided that: “Each local board under the Emergency Food and Shelter Program whose membership shall include a member of an Indian tribe by reason of the amendment made by subsection (a) [amending this section] shall comply with the requirement made by such amendment not later than the expiration of the 30-day period beginning on the date of the enactment of this Act [Nov. 29, 1990].”

§ 11333. Role of Federal Emergency Management Agency

(a) In general

The Director shall provide the National Board with administrative support and act as Federal liaison to the National Board.

(b) Specific support activities

The Director shall—

(1) make available to the National Board, upon request, the services of the legal counsel and Inspector General of the Federal Emergency Management Agency;

(2) assign clerical personnel to the National Board on a temporary basis; and

(3) conduct audits of the National Board annually and at such other times as may be appropriate.

(Pub. L. 100-77, title III, § 303, July 22, 1987, 101 Stat. 490.)

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 313(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 11334. Records and audit of National Board and recipients of assistance

(a) Annual independent audit of National Board

(1) The accounts of the National Board shall be audited annually in accordance with generally accepted auditing standards by independent certified public accountants or independent licensed public accountants certified or licensed by a regulatory authority of a State or other political subdivision of the United States. The audits shall be conducted at the place or places where the accounts of the National Board are normally kept. All books, accounts, financial records, reports, files, and all other papers, things, or property belonging to or in use by the National Board and necessary to facilitate the audits shall be made available to the person or persons conducting the audits, and full facilities for verifying transactions with any assets held

by depositories, fiscal agents, and custodians shall be afforded to such person or persons.

(2) The report of each such independent audit shall be included in the annual report required in section 11335 of this title. Such report shall set forth the scope of the audit and include such statements as are necessary to present fairly the assets and liabilities of the National Board, surplus or deficit, with an analysis of the changes during the year, supplemented in reasonable detail by a statement of the income and expenses of the National Board during the year, and a statement of the application of funds, together with the opinion of the independent auditor of such statements.

(b) Access to records of recipients of assistance

(1) Each recipient of assistance under this subchapter shall keep such records as may be reasonably necessary to fully disclose the amount and the disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount and nature of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(2) The National Board, or any of its duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient that are pertinent to assistance received under this subchapter.

(c) Authority of Comptroller General

The Comptroller General of the United States, or any of the duly authorized representatives of the Comptroller General, shall also have access to any books, documents, papers, and records of the National Board and recipients for such purpose.

(Pub. L. 100-77, title III, § 304, July 22, 1987, 101 Stat. 491.)

§ 11335. Annual report

The National Board shall transmit to the Congress an annual report covering each year in which it conducts activities with funds made available under this subchapter.

(Pub. L. 100-77, title III, § 305, July 22, 1987, 101 Stat. 491.)

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103-7 (in which a report required under this section is listed in the 4th item on page 169), see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11334 of this title.

PART B—EMERGENCY FOOD AND SHELTER GRANTS

§ 11341. Grants by Director

Not later than 30 days following the date on which appropriations become available to carry

out this part, the Director shall award a grant for the full amount that the Congress appropriates for the program under this part to the National Board for the purpose of providing emergency food and shelter to needy individuals through private nonprofit organizations and local governments in accordance with section 11343 of this title.

(Pub. L. 100-77, title III, §311, July 22, 1987, 101 Stat. 492.)

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 313(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 11342. Retention of interest earned

Interest accrued on the balance of any grant to the National Board shall be available to the National Board for reallocation, and total administrative costs shall be determined based on total amount of funds available, including interest and any private contributions that are made to the National Board.

(Pub. L. 100-77, title III, §312, July 22, 1987, 101 Stat. 492.)

§ 11343. Purposes of grants

(a) Eligible activities

Grants to the National Board may be used—

(1) to supplement and expand ongoing efforts to provide shelter, food, and supportive services for homeless individuals with sensitivity to the transition from temporary shelter to permanent homes, and attention to the special needs of homeless individuals with mental and physical disabilities and illnesses, and to facilitate access for homeless individuals to other sources of services and benefits;

(2) to strengthen efforts to create more effective and innovative local programs by providing funding for them; and

(3) to conduct minimum rehabilitation of existing mass shelter or mass feeding facilities, but only to the extent necessary to make facilities safe, sanitary, and bring them into compliance with local building codes.

(b) Limitations on activities

(1) The National Board may only provide funding provided under this part for—

(A) programs undertaken by private nonprofit organizations and local governments; and

(B) programs that are consistent with the purposes of this subchapter.

(2) The National Board may not carry out programs directly.

(Pub. L. 100-77, title III, §313, July 22, 1987, 101 Stat. 492.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11341 of this title.

§ 11344. Limitation on certain costs

Not more than 5 percent of the total amount appropriated for the emergency food and shelter program for each fiscal year may be expended for the costs of administration.

(Pub. L. 100-77, title III, §314, July 22, 1987, 101 Stat. 492.)

§ 11345. Disbursement of funds

Any amount made available by appropriation Acts under this subchapter shall be disbursed by the National Board before the expiration of the 3-month period beginning on the date on which such amount becomes available.

(Pub. L. 100-77, title III, §315, July 22, 1987, 101 Stat. 492.)

§ 11346. Program guidelines

(a) Guidelines

The National Board shall establish written guidelines for carrying out the program under this part, including—

(1) methods for identifying localities with the highest need for emergency food and shelter assistance;

(2) methods for determining the amount and distribution to such localities;

(3) eligible program costs, including maximum flexibility in meeting currently existing needs;

(4) guidelines specifying the responsibilities and reporting requirements of the National Board, its recipients, and service providers;

(5) guidelines requiring each private nonprofit organization and local government carrying out a local emergency food and shelter program with amounts provided under this part, to the maximum extent practicable, to involve homeless individuals and families, through employment, volunteer services, or otherwise, in providing emergency food and shelter and in otherwise carrying out the local program; and

(6) guidelines requiring each private nonprofit organization and local government carrying out a local emergency food and shelter program with amounts provided under this part to provide for the participation of not less than 1 homeless individual or former homeless individual on the board of directors or other equivalent policy making entity of the organization or governmental agency to the extent that such entity considers and makes policies and decisions regarding the local program of the organization or locality; except that such guidelines may grant waivers to applicants unable to meet such requirement if the organization or government agrees to otherwise consult with homeless or formerly homeless individuals in considering and making such policies and decisions.

(b) Publication

Guidelines established under subsection (a) of this section shall be published annually, and whenever modified, in the Federal Register. The National Board shall not be subject to the procedural rulemaking requirements of subchapter II of chapter 5 of title 5.

(Pub. L. 100-77, title III, §316, July 22, 1987, 101 Stat. 493; Pub. L. 102-550, title XIV, §1432, Oct. 28, 1992, 106 Stat. 4043.)

AMENDMENTS

1992—Subsec. (a)(5), (6). Pub. L. 102-550 added pars. (5) and (6).

PART C—GENERAL PROVISIONS

§ 11351. Definitions

For purposes of this subchapter:

(1) The term “Director” means the Director of the Federal Emergency Management Agency.

(2) The term “emergency shelter” means a facility all or a part of which is used or designed to be used to provide temporary housing.

(3) The term “local government” means a unit of general purpose local government.

(4) The term “locality” means the geographical area within the jurisdiction of a local government.

(5) The term “National Board” means the Emergency Food and Shelter Program National Board.

(6) The term “private nonprofit organization” means an organization—

(A) no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual;

(B) that has a voluntary board;

(C) that has an accounting system, or has designated a fiscal agent in accordance with requirements established by the Director; and

(D) that practices nondiscrimination in the provision of assistance.

(7) The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

(Pub. L. 100-77, title III, §321, July 22, 1987, 101 Stat. 493.)

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 313(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1766 of this title.

§ 11352. Authorization of appropriations

There are authorized to be appropriated to carry out this subchapter \$180,000,000 for fiscal year 1993 and \$187,560,000 for fiscal year 1994.

(Pub. L. 100-77, title III, §322, July 22, 1987, 101 Stat. 493; Pub. L. 100-628, title III, §302, Nov. 7, 1988, 102 Stat. 3229; Pub. L. 101-645, title II, §201, Nov. 29, 1990, 104 Stat. 4675; Pub. L. 102-550, title XIV, §1431, Oct. 28, 1992, 106 Stat. 4043.)

AMENDMENTS

1992—Pub. L. 102-550 amended section generally. Prior to amendment, section read as follows: “There are authorized to be appropriated to carry out this subchapter \$150,000,000 for each of fiscal years 1991 and 1992.”

1990—Pub. L. 101-645 amended section generally. Prior to amendment, section read as follows: “There are authorized to be appropriated to carry out this subchapter \$129,000,000 for fiscal year 1989 and \$134,000,000 for fiscal year 1990.”

1988—Pub. L. 100-628 amended section generally, substituting “\$129,000,000 for fiscal year 1989 and \$134,000,000 for fiscal year 1990” for “\$15,000,000 for fiscal year 1987 and \$124,000,000 for fiscal year 1988”.

SUBCHAPTER IV—HOUSING ASSISTANCE

CODIFICATION

Pub. L. 101-625, title VIII, §§821, 823, Nov. 28, 1990, 104 Stat. 4331, 4355, which provided for the amendment of this subchapter generally and provided for implementation, transition, and a prospective effective date for the amendment, was repealed by Pub. L. 102-550, title XIV, §1410, Oct. 28, 1992, 106 Stat. 4038, which provided that: “The Cranston-Gonzalez National Affordable Housing Act is amended by striking sections 821 and 823 (42 U.S.C. 11361 note). The amendment made by such section 821 of such Act shall not take effect.”

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 3535, 11304, 12839, 12899d of this title; title 12 sections 1441a, 1831q; title 25 section 4183.

PART A—COMPREHENSIVE HOMELESS ASSISTANCE PLAN

§ 11361. Housing affordability strategy

Assistance may be made under this subchapter only if the grantee certifies that it is following—

(1) a current housing affordability strategy which has been approved by the Secretary in accordance with section 12705 of this title, or

(2) a comprehensive homeless assistance plan which was approved by the Secretary during the 180-day period beginning on November 28, 1990, or during such longer period as may be prescribed by the Secretary in any case for good cause.

(Pub. L. 100-77, title IV, §401, July 22, 1987, 101 Stat. 494; Pub. L. 100-628, title IV, §§401-404, Nov. 7, 1988, 102 Stat. 3230, 3231; Pub. L. 101-625, title VIII, §§831, 832(e)(3), 836(a), Nov. 28, 1990, 104 Stat. 4357, 4360, 4366.)

AMENDMENTS

1990—Pub. L. 101-625, §836(a), amended section generally, substituting present provisions for provisions requiring the annual submission of a comprehensive homeless assistance plan with requirements for contents of the plan, review of the plan, performance reviews under the plan, publication by notice, applications for assistance, coordination with State agencies, and consultation with other private and public groups and entities regarding the plan.

Subsec. (a). Pub. L. 101-625, §831(b)(1), inserted at end “Assistance authorized by this subchapter may be pro-

vided to any Indian tribe that is eligible to receive a grant under the emergency shelter grants program in any fiscal year, but only if the tribe submits biennially to the Secretary of Housing and Urban Development a comprehensive homeless assistance plan under this section.”

Subsec. (a)(1). Pub. L. 101-625, § 831(c)(2)(A), substituted “biennially” for “annually”.

Subsec. (b)(2). Pub. L. 101-625, § 831(c)(2)(B), substituted “, services, and programs” for “and services”.

Subsec. (b)(3). Pub. L. 101-625, § 831(c)(2)(C), substituted “, services, and programs” for “and services” in cl. (A), struck out “and” before “(B)”, and added cls. (C) to (F).

Subsec. (b)(5). Pub. L. 101-625, § 831(b)(2), inserted “Indian tribe,” after “State.”

Subsec. (b)(7), (8). Pub. L. 101-625, § 831(a), added pars. (7) and (8).

Subsec. (b)(9). Pub. L. 101-625, § 832(e)(3), added par. (9).

Subsecs. (c)(1), (d). Pub. L. 101-625, § 831(b)(3), (4), inserted “Indian tribe,” after “State,” wherever appearing.

Subsec. (g). Pub. L. 101-625, § 831(b)(5), inserted “(or tribal agency or contact)” after “State contact person”, “(or tribe)” before comma, and “(or tribal agency or contact person)” after “or contact person”.

Subsec. (h). Pub. L. 101-625, § 831(c)(1), added subsec. (h).

1988—Subsec. (a)(1). Pub. L. 100-628, § 401(a), inserted “annually” after “submits”.

Subsec. (a)(2), (3). Pub. L. 100-628, § 401(b), added par. (2) and redesignated former par. (2) as (3).

Subsec. (b)(3). Pub. L. 100-628, § 402(1), inserted “facilities and” before “services” and struck out “and” at end.

Subsec. (b)(4). Pub. L. 100-628, § 402(2), inserted “facilities and” before “services” and substituted a semicolon for period at end.

Subsec. (b)(5), (6). Pub. L. 100-628, § 402(3), added pars. (5) and (6).

Subsec. (d)(3). Pub. L. 100-628, § 403, inserted before period at end “or to respond to recommendations made in accordance with paragraph (2) that are received at least 60 days prior to the beginning of the fiscal year”.

Subsec. (g). Pub. L. 100-628, § 404, added subsec. (g).

EFFECTIVE DATE OF 1990 AMENDMENT

Section 836(b) of Pub. L. 101-625 provided that: “The amendment made by subsection (a) [amending this section] shall take effect on October 1, 1991.”

EVALUATION OF PROGRAMS

Pub. L. 102-550, title XIV, § 1409, Oct. 28, 1992, 106 Stat. 4038, as amended by Pub. L. 105-362, title VII, § 701(c), Nov. 10, 1998, 112 Stat. 3287; Pub. L. 106-400, § 2, Oct. 30, 2000, 114 Stat. 1675, provided that: “The Secretary of Housing and Urban Development shall conduct a comprehensive review and evaluation of the effectiveness of each program under title IV of the McKinney-Vento Homeless Assistance Act [42 U.S.C. 11361 et seq.]. In conducting the review, the Secretary shall examine procedures of the Department in carrying out such programs, the procedures of recipients of assistance under such programs in carrying out such programs, and the effects and benefits of such programs; shall survey homeless individuals and families assisted under each program in various jurisdictions receiving assistance under each program; shall determine whether such programs are fulfilling the purposes for which they were established; and shall evaluate the usefulness and effectiveness of such programs.”

HOMELESS HOUSING ACT OF 1986

Pub. L. 99-500, § 101(g) [H.R. 5313, title V], Oct. 18, 1986, 100 Stat. 1783-242, and Pub. L. 99-591, § 101(g) [H.R. 5313, title V], Oct. 30, 1986, 100 Stat. 3341-242; Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100-202, § 106, Dec. 22, 1987, 101 Stat. 1329-433, provided that title V of H.R.

5315 be cited as the “Homeless Housing Act of 1986”, established a transitional housing demonstration program and directed Secretary of Housing and Urban Development to submit to Congress, not later than 3 months after the end of fiscal year 1987, an interim report summarizing activities under this program during such fiscal year and, not later than 6 months after the end of fiscal year 1988, a final report summarizing such activities, established an emergency shelter grants program to make grants to States, units of local government, and private nonprofit organizations providing assistance to the homeless, and appropriated \$15,000,000 for fiscal year 1987, to remain available until expended, to carry out both programs.

§ 11362. Discharge coordination policy

The Secretary may not provide a grant under this subchapter for any governmental entity serving as an applicant unless the applicant agrees to develop and implement, to the maximum extent practicable and where appropriate, policies and protocols for the discharge of persons from publicly funded institutions or systems of care (such as health care facilities, foster care or other youth facilities, or correction programs and institutions) in order to prevent such discharge from immediately resulting in homelessness for such persons.

(Pub. L. 100-77, title IV, § 402, as added Pub. L. 106-377, § 1(a)(1) [title II, § 229(a)], Oct. 27, 2000, 114 Stat. 1441, 1441A-30.)

PART B—EMERGENCY SHELTER GRANTS PROGRAM

§ 11371. Definitions

For purposes of this part:

(1) The term “local government” means a unit of general purpose local government.

(2) The term “locality” means the geographical area within the jurisdiction of a local government.

(3) The term “metropolitan city” has the meaning given such term in section 5302 of this title.

(4) The term “operating costs” means expenses incurred by a recipient operating a facility assisted under this part with respect to—

(A) the administration, maintenance, repair, and security of such housing; and

(B) utilities, fuels, furnishings, and equipment for such housing.

(5) The term “private nonprofit organization” means a secular or religious organization described in section 501(c) of title 26 that is exempt from taxation under subtitle A of title 26, has an accounting system and a voluntary board, and practices nondiscrimination in the provision of assistance.

(6) The term “recipient” means any governmental or private nonprofit entity that is approved by the Secretary as to financial responsibility.

(7) The term “Secretary” means the Secretary of Housing and Urban Development.

(8) The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the

Pacific Islands, and any other territory or possession of the United States.

(9) The term “urban county” has the meaning given such term in section 5302 of this title.

(Pub. L. 100-77, title IV, § 411, July 22, 1987, 101 Stat. 495; Pub. L. 101-625, title VIII, § 832(f)(1), Nov. 28, 1990, 104 Stat. 4361; Pub. L. 104-330, title V, § 506(a)(1), Oct. 26, 1996, 110 Stat. 4044.)

AMENDMENTS

1996—Par. (10). Pub. L. 104-330 struck out par. (10) which read as follows: “The term ‘Indian tribe’ has the meaning given such term in section 5302(a)(17) of this title.”

1990—Par. (10). Pub. L. 101-625 added par. (10).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as an Effective Date note under section 4101 of Title 25, Indians.

Section 506(c) of Pub. L. 104-330, as amended by Pub. L. 106-400, § 2, Oct. 30, 2000, 114 Stat. 1675, provided that: “The amendments under subsections (a) [amending this section and sections 11372 to 11376, 11382, 11401, 11403g, and 11408 of this title] and (b) [amending provisions formerly set out as a note under section 11301 of this title] shall apply with respect to amounts made available for assistance under title IV of the McKinney-Vento Homeless Assistance Act [42 U.S.C. 11361 et seq.] and section 2 of the HUD Demonstration Act of 1993 [Pub. L. 103-120, former 42 U.S.C. 11301 note], respectively, for fiscal year 1998 and fiscal years thereafter.”

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 11372. Grant assistance

The Secretary of Housing and Urban Development shall, to the extent of amounts approved in appropriation Acts under section 11377 of this title, make grants to States and local governments (and to private nonprofit organizations providing assistance to homeless individuals, in the case of grants made with reallocated amounts) in order to carry out activities described in section 11374 of this title.

(Pub. L. 100-77, title IV, § 412, July 22, 1987, 101 Stat. 496; Pub. L. 101-625, title VIII, § 832(f)(2), Nov. 28, 1990, 104 Stat. 4361; Pub. L. 104-330, title V, § 506(a)(2), Oct. 26, 1996, 110 Stat. 4044.)

AMENDMENTS

1996—Pub. L. 104-330 struck out “, and for Indian tribes,” after “local governments”.

1990—Pub. L. 101-625 substituted “States and local governments, and for Indian tribes,” for “States and local governments”.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as an Effective Date note under section 4101 of Title 25, Indians.

Amendment by Pub. L. 104-330 applicable with respect to amounts made available for assistance under this subchapter for fiscal year 1998 and fiscal years thereafter, see section 506(c) of Pub. L. 104-330, set out as a note under section 11371 of this title.

§ 11373. Allocation and distribution of assistance

(a) In general

The Secretary shall allocate assistance under this part to metropolitan cities, urban counties, and States (for distribution to local governments and private nonprofit organizations in the States) in a manner that ensures that the percentage of the total amount available under this part for any fiscal year that is allocated to any State, metropolitan city, or urban county is equal to the percentage of the total amount available for section 5306 of this title for such prior fiscal year that is allocated to such State, metropolitan city, or urban county.

(b) Minimum allocation requirement

If, under the allocation provisions applicable under this part, any metropolitan city or urban county would receive a grant of less than 0.05 percent of the amounts appropriated to carry out this part for any fiscal year, such amount shall instead be reallocated to the State, except that any city that is located in a State that does not have counties as local governments, that has a population greater than 40,000 but less than 50,000 as used in determining the fiscal year 1987 community development block grant program allocation, and that was allocated in excess of \$1,000,000 in community development block grant funds in fiscal year 1987, shall receive directly the amount allocated to such city under subsection (a) of this section.

(c) Distributions to nonprofit organizations

Any local government receiving assistance under this part may distribute all or a portion of such assistance to private nonprofit organizations providing assistance to homeless individuals. Any State receiving assistance under this part may distribute all or a portion of such assistance to private nonprofit organizations providing assistance to homeless individuals, if the local government for the locality in which the project is located certifies that it approves of the project.

(d) Reallocation of funds

(1) The Secretary shall, not less than twice during each fiscal year, reallocate any assistance provided under this part that is unused or returned or that becomes available under subsection (b) of this section.

(2) If a city or county eligible for a grant under subsection (a) of this section fails to obtain approval of its comprehensive plan during the 90-day period following the date funds authorized by this part first become available for allocation during any fiscal year, the amount that the city or county would have received shall be available to the State in which the city or county is located if the State has obtained approval of its comprehensive plan. Any amounts that cannot be allocated to a State under the preceding sentence shall be reallocated to other States, counties, and cities that demonstrate extraordinary need or large numbers of homeless individuals, as determined by the Secretary.

(3) If a State fails to obtain approval of its comprehensive plan during the 90-day period following the date funds authorized by this part

first become available for allocation during any fiscal year, the amount that the State would have received shall be reallocated to other States and to cities and counties as applicable, that demonstrate extraordinary need or large numbers of homeless individuals, as determined by the Secretary.

(e) Allocations to territories

In addition to the other allocations required in this section, the Secretary shall (for amounts appropriated after July 22, 1987) allocate assistance under this part to the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States, in accordance with an allocation formula established by the Secretary.

(Pub. L. 100-77, title IV, §413, July 22, 1987, 101 Stat. 496; Pub. L. 100-628, title IV, §421, Nov. 7, 1988, 102 Stat. 3231; Pub. L. 101-625, title VIII, §832(f)(3)-(5), Nov. 28, 1990, 104 Stat. 4361; Pub. L. 104-330, title V, §506(a)(3), Oct. 26, 1996, 110 Stat. 4044.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104-330, §506(a)(3)(A), struck out “, and to Indian tribes,” after “in the States)” and “, or for Indian tribes” after “or urban county” in two places.

Subsec. (c). Pub. L. 104-330, §506(a)(3)(B), struck out “or Indian tribe” after “Any local government”.

Subsec. (d)(3). Pub. L. 104-330, §506(a)(3)(C)(ii), struck out “, or other Indian tribes,” after “cities and counties”.

Pub. L. 104-330, §506(a)(3)(C)(i), which directed amendment of par. (3) by striking “, or Indian tribe” each place it appeared, was executed by striking “or Indian tribe” after “State” in two places to reflect the probable intent of Congress.

1990—Subsec. (a). Pub. L. 101-625, §832(f)(3), inserted “, and to Indian tribes,” after “States)” and “, or for Indian tribes” after “urban county” in two places.

Subsec. (c). Pub. L. 101-625, §832(f)(4), inserted “or Indian tribe” after “local government”.

Subsec. (d)(3). Pub. L. 101-625, §832(f)(5), inserted “or Indian tribe” after “State” in two places and “, or other Indian tribes, as applicable,” after “counties”.

1988—Subsec. (a). Pub. L. 100-628, §421(a), inserted “and private nonprofit organizations” after “local governments”.

Subsec. (c). Pub. L. 100-628, §421(b), inserted at end “Any State receiving assistance under this part may distribute all or a portion of such assistance to private nonprofit organizations providing assistance to homeless individuals, if the local government for the locality in which the project is located certifies that it approves of the project.”

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as an Effective Date note under section 4101 of Title 25, Indians.

Amendment by Pub. L. 104-330 applicable with respect to amounts made available for assistance under this subchapter for fiscal year 1998 and fiscal years thereafter, see section 506(c) of Pub. L. 104-330, set out as a note under section 11371 of this title.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 11374. Eligible activities

(a) In general

Assistance provided under this part may be used for the following activities relating to emergency shelter for homeless individuals:

(1) The renovation, major rehabilitation, or conversion of buildings to be used as emergency shelters.

(2) The provision of essential services, including services concerned with employment, health, drug abuse, or education, if—

(A) such services have not been provided by the local government during any part of the immediately preceding 12-month period, or the use of assistance under this part would complement those services; and

(B) not more than 30 percent of the aggregate amount of all assistance to a State or local government under this part is used for activities under this paragraph.

(3) Maintenance, operation, insurance, utilities, and furnishings, except that not more than 10 percent of the amount of any grant received under this part may be used for costs of staff.

(4) Efforts to prevent homelessness, such as financial assistance to families who have received eviction notices or notices of termination of utility services if—

(A) the inability of the family to make the required payments is due to a sudden reduction in income;

(B) the assistance is necessary to avoid the eviction or termination of services;

(C) there is a reasonable prospect that the family will be able to resume payments within a reasonable period of time; and

(D) the assistance will not supplant funding for preexisting homelessness prevention activities from other sources.

Activities that are eligible for assistance under this paragraph shall include assistance to very low-income families who are discharged from publicly funded institutions or systems of care (such as health care facilities, foster care or other youth facilities, or correction programs and institutions). Not more than 30 percent of the aggregate amount of all assistance to a State or local government under this part may be used for activities under this paragraph.

(b) Waiver authority

The Secretary may waive the 20 percent limitation on the use of assistance for essential services contained in subsection (a)(2)(B) of this section, if the local government receiving the assistance demonstrates that the other eligible activities under the program are already being carried out in the locality with other resources.

(Pub. L. 100-77, title IV, §414, July 22, 1987, 101 Stat. 497; Pub. L. 100-628, title IV, §§422, 423(a), Nov. 7, 1988, 102 Stat. 3231; Pub. L. 101-625, title VIII, §832(c), (d), (f)(6), Nov. 28, 1990, 104 Stat. 4360, 4361; Pub. L. 102-550, title XIV, §1402(e), Oct. 28, 1992, 106 Stat. 4013; Pub. L. 104-330, title V, §506(a)(4), Oct. 26, 1996, 110 Stat. 4044; Pub. L. 106-377, §1(a)(1) [title II, §229(b)], Oct. 27, 2000, 114 Stat. 1441, 1441A-31.)

AMENDMENTS

2000—Subsec. (a)(4). Pub. L. 106-377 inserted comma after “homelessness” in introductory provisions and substituted “Activities that are eligible for assistance under this paragraph shall include assistance to very low-income families who are discharged from publicly funded institutions or systems of care (such as health care facilities, foster care or other youth facilities, or correction programs and institutions). Not” for “Not” in concluding provisions.

1996—Subsec. (a)(2). Pub. L. 104-330 struck out “or Indian tribe” after “local government” in subpar. (A) and substituted “or local government” for “, local government, or Indian tribe” in subpar. (B).

Subsec. (a)(4). Pub. L. 104-330 substituted “or local government” for “, local government, or Indian tribe” in concluding provisions.

1992—Subsec. (a)(3). Pub. L. 102-550 struck out “(other than staff)” after “operation” and inserted before period at end “, except that not more than 10 percent of the amount of any grant received under this part may be used for costs of staff”.

1990—Subsec. (a)(2)(A). Pub. L. 101-625, § 832(f)(6)(A), inserted “or Indian tribe” after “local government”.

Subsec. (a)(2)(B). Pub. L. 101-625, § 832(c), (f)(6)(B), substituted “30 percent” for “20 percent” and “, local government, or Indian tribe” for “or local government”.

Subsec. (a)(4). Pub. L. 101-625, § 832(d), substituted sentence at end for “Activities under this paragraph shall be treated as ‘essential services’ for the purpose of paragraph (2)(B).”

1988—Subsec. (a)(2)(A). Pub. L. 100-628, § 422(b), inserted before semicolon “, or the use of assistance under this part would complement those services”.

Subsec. (a)(2)(B). Pub. L. 100-628, § 422(a), substituted “20” for “15” and “the aggregate amount of all assistance to a State or” for “the amount of any assistance to a”.

Subsec. (a)(4). Pub. L. 100-628, § 423(a), added par. (4).

Subsec. (b). Pub. L. 100-628, § 422(a)(1), substituted “20” for “15”.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as an Effective Date note under section 4101 of Title 25, Indians.

Amendment by Pub. L. 104-330 applicable with respect to amounts made available for assistance under this subchapter for fiscal year 1998 and fiscal years thereafter, see section 506(c) of Pub. L. 104-330, set out as a note under section 11371 of this title.

REPORT BY COMPTROLLER GENERAL

Section 423(b) of Pub. L. 100-628 provided that: “The Comptroller General of the United States shall conduct a study and report to the Congress not later than 1 year after the date of the enactment of this Act [Nov. 7, 1988] on various programs to prevent homelessness implemented by grantees, with particular focus on the different methods employed by grantees to determine eligibility for homelessness prevention assistance and restrictions or limitations, if any, imposed under such programs. Such report shall include—

“(1) an examination of other homelessness prevention programs, including other Federal programs and State and local programs; and

“(2) recommendations for such legislation as the Comptroller General determines appropriate, including recommendations on how to prevent homelessness as a result of mortgage foreclosures.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11372, 11375 of this title.

§ 11375. Responsibilities of recipients

(a) Matching amounts

(1) Except as provided in paragraph (2), each recipient under this part shall be required to

supplement the assistance provided under this part with an equal amount of funds from sources other than this part. Each recipient shall certify to the Secretary its compliance with this paragraph, and shall include with such certification a description of the sources and amounts of such supplemental funds.

(2) Each recipient under this part that is a State shall be required to supplement the assistance provided under this part with an amount of funds from sources other than this part equal to the difference between the amount received under this part and \$100,000. If the amount received by the State is \$100,000 or less, the State may not be required to supplement the assistance provided under this part.

(3) In calculating the amount of supplemental funds provided by a recipient under this part, a recipient may include the value of any donated material or building, the value of any lease on a building, any salary paid to staff to carry out the program of the recipient, and the value of the time and services contributed by volunteers to carry out the program of the recipient at a rate determined by the Secretary.

(b) Administration of assistance

Each recipient shall act as the fiscal agent of the Secretary with respect to assistance provided to such recipient.

(c) Certifications on use of assistance

Each recipient shall certify to the Secretary that—

(1) it will—

(A) in the case of assistance involving major rehabilitation or conversion, maintain any building for which assistance is used under this part as a shelter for homeless individuals and families for not less than a 10-year period;

(B) in the case of assistance involving rehabilitation (other than major rehabilitation or conversion), maintain any building for which assistance is used under this part as a shelter for homeless individuals and families for not less than a 3-year period; or

(C) in the case of assistance involving solely activities described in paragraphs (2) and (3) of section 11374(a) of this title, provide services or shelter to homeless individuals and families for the period during which such assistance is provided, without regard to a particular site or structure as long as the same general population is served;

(2) any renovation carried out with assistance under this part shall be sufficient to ensure that the building involved is safe and sanitary;

(3) it will assist homeless individuals in obtaining—

(A) appropriate supportive services, including permanent housing, medical and mental health treatment, counseling, supervision, and other services essential for achieving independent living; and

(B) other Federal, State, local, and private assistance available for such individuals;

(4) in the case of a recipient that is a State, it will obtain any matching amounts required under subsection (a) of this section in a man-

ner so that local governments, agencies, and local nonprofit organizations receiving assistance from the grant that are least capable of providing the recipient State with such matching amounts receive the benefit of the \$100,000 subtrahend under subsection (a)(2) of this section;

(5) it will develop and implement procedures to ensure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services under any project assisted under this part and that the address or location of any family violence shelter project assisted under this part will, except with written authorization of the person or persons responsible for the operation of such shelter, not be made public;

(6) activities undertaken by the recipient with assistance under this part are consistent with any housing strategy submitted by the grantee in accordance with section 12705 of this title; and

(7) to the maximum extent practicable, it will involve, through employment, volunteer services, or otherwise, homeless individuals and families in constructing, renovating, maintaining, and operating facilities assisted under this part, in providing services assisted under this part, and in providing services for occupants of facilities assisted under this part.

(d) Participation of homeless individuals

The Secretary shall, by regulation, require each recipient that is not a State to provide for the participation of not less than 1 homeless individual or former homeless individual on the board of directors or other equivalent policy-making entity of such recipient, to the extent that such entity considers and makes policies and decisions regarding any facility, services, or other assistance of the recipient assisted under this part. The Secretary may grant waivers to recipients unable to meet the requirement under the preceding sentence if the recipient agrees to otherwise consult with homeless or formerly homeless individuals in considering and making such policies and decisions.

(e) Termination of assistance

If an individual or family who receives assistance under this part from a recipient violates program requirements, the recipient may terminate assistance in accordance with a formal process established by the recipient that recognizes the rights of individuals affected, which may include a hearing.

(Pub. L. 100-77, title IV, § 415, July 22, 1987, 101 Stat. 497; Pub. L. 100-628, title IV, § 424, Nov. 7, 1988, 102 Stat. 3232; Pub. L. 101-625, title VIII, § 832(e)(1), (2), (h), Nov. 28, 1990, 104 Stat. 4360, 4362; Pub. L. 102-550, title XIV, § 1402(b)-(d), Oct. 28, 1992, 106 Stat. 4012, 4013; Pub. L. 104-330, title V, § 506(a)(5), Oct. 26, 1996, 110 Stat. 4044.)

AMENDMENTS

1996—Subsec. (c)(4). Pub. L. 104-330 struck out “Indian tribes,” after “local governments,”.

1992—Subsec. (c). Pub. L. 102-550, § 1402(b), in par. (1), substituted a semicolon for period at end, in par. (3), struck out “and” at end, in par. (4), inserted “it will” after “State,” and struck out “and” at end, in par. (5), inserted “it will” before “develop” and substituted a

semicolon for period at end, redesignated par. (4), relating to consistency of activities undertaken with assistance under this part, as (6) and substituted “; and” for period at end, and added par. (7).

Subsec. (d). Pub. L. 102-550, § 1402(c), added subsec. (d).

Subsec. (e). Pub. L. 102-550, § 1402(d), added subsec. (e).

1990—Subsec. (a)(1). Pub. L. 101-625, § 832(e)(1)(A), substituted “Except as provided in paragraph (2), each” for “Each”.

Subsec. (a)(2), (3). Pub. L. 101-625, § 832(e)(1)(B), (C), added par. (2) and redesignated former par. (2) as (3).

Subsec. (c)(2), (3). Pub. L. 101-625, § 832(e)(2)(A), (B), (h)(1), (2), amended subsec. (c) identically, striking “and” at end of par. (2) and substituting “; and” for period at end of par. (3).

Subsec. (c)(4). Pub. L. 101-625, § 832(h)(3), added (after par. (5)) par. (4) relating to consistency of activities undertaken with assistance under this part.

Pub. L. 101-625, § 832(e)(2)(C), added par. (4) relating to matching funds obtained by State recipients of assistance under this part.

Subsec. (c)(5). Pub. L. 101-625, § 832(e)(2)(C), added par. (5).

1988—Subsec. (c)(1). Pub. L. 100-628 amended par. (1) generally. Prior to amendment, par. (1) read as follows: “it will maintain any building for which assistance is used under this part as a shelter for homeless individuals for not less than a 3-year period or for not less than a 10-year period if such assistance is used for the major rehabilitation or conversion of such building;”.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as an Effective Date note under section 4101 of Title 25, Indians.

Amendment by Pub. L. 104-330 applicable with respect to amounts made available for assistance under this subchapter for fiscal year 1998 and fiscal years thereafter, see section 506(c) of Pub. L. 104-330, set out as a note under section 11371 of this title.

§ 11376. Administrative provisions

(a) Regulations

Not later than 60 days after July 22, 1987, the Secretary shall by notice establish such requirements as may be necessary to carry out the provisions of this part. Such requirements shall be subject to section 553 of title 5. The Secretary shall issue requirements based on the initial notice before the expiration of the 12-month period following July 22, 1987. Prior to the issuance of such requirements in final form, the requirements established by the Secretary implementing the provisions of the emergency shelter grants program under the provisions made effective by section 101(g) of Public Law 99-500 or Public Law 99-591 shall govern the emergency shelter grants program under this part.

(b) Initial allocation of assistance

Not later than the expiration of the 60-day period following the date of enactment of a law providing appropriations to carry out this part, the Secretary shall notify each State, metropolitan city, and urban county that is to receive a direct grant of its allocation of assistance under this part. Such assistance shall be allocated and may be used notwithstanding any failure of the Secretary to issue requirements under subsection (a) of this section.

(c) Minimum standards of habitability

The Secretary shall prescribe such minimum standards of habitability as the Secretary deter-

mines to be appropriate to ensure that emergency shelters assisted under this section are environments that provide appropriate privacy, safety, and sanitary and other health-related conditions for homeless persons and families. Grantees are authorized to establish standards of habitability in addition to those prescribed by the Secretary.

(Pub. L. 100-77, title IV, §416, July 22, 1987, 101 Stat. 498; Pub. L. 101-625, title VIII, §832(f)(7), (g), Nov. 28, 1990, 104 Stat. 4361; Pub. L. 104-330, title V, §506(a)(6), Oct. 26, 1996, 110 Stat. 4044.)

REFERENCES IN TEXT

The emergency shelter grants program under the provisions made effective by section 101(g) of Public Law 99-500 or Public Law 99-591, referred to in subsec. (a), means the emergency shelter grants program authorized by title V of H.R. 5313 [Department of Housing and Urban Development—Independent Agencies Appropriations Act, 1987], as incorporated by reference by section 101(g) of Pub. L. 99-500 and 99-591, and enacted into law by section 106 of Pub. L. 100-202, which is set out as a note under section 11361 of this title.

AMENDMENTS

1996—Subsec. (b). Pub. L. 104-330 struck out “Indian tribe,” after “State.”

1990—Subsec. (b). Pub. L. 101-625, §832(f)(7), inserted “Indian tribe,” after “State.”

Subsec. (c). Pub. L. 101-625, §832(g), added subsec. (c).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as an Effective Date note under section 4101 of Title 25, Indians.

Amendment by Pub. L. 104-330 applicable with respect to amounts made available for assistance under this subchapter for fiscal year 1998 and fiscal years thereafter, see section 506(c) of Pub. L. 104-330, set out as a note under section 11371 of this title.

§ 11377. Authorization of appropriations

There are authorized to be appropriated to carry out this part \$138,000,000 for fiscal year 1993 and \$143,796,000 for fiscal year 1994.

(Pub. L. 100-77, title IV, §417, July 22, 1987, 101 Stat. 498; Pub. L. 100-628, title IV, §425, Nov. 7, 1988, 102 Stat. 3232; Pub. L. 101-625, title VIII, §832(a), Nov. 28, 1990, 104 Stat. 4359; Pub. L. 102-550, title XIV, §1402(a), Oct. 28, 1992, 106 Stat. 4012.)

AMENDMENTS

1992—Pub. L. 102-550 amended section generally. Prior to amendment, section read as follows: “There are authorized to be appropriated to carry out this part \$125,000,000 for fiscal year 1991 and \$138,000,000 for fiscal year 1992.”

1990—Pub. L. 101-625, which directed the general amendment of the “first sentence” of this section, was executed by making the substitution for the only sentence of this section which read: “There are authorized to be appropriated to carry out this part \$120,000,000 for fiscal year 1989 and \$125,000,000 for fiscal year 1990.”

1988—Pub. L. 100-628 amended section generally. Prior to amendment, section read as follows: “In addition to other amounts authorized by law, there are authorized to be appropriated for the emergency shelter grants program \$100,000,000 for fiscal year 1987 and \$120,000,000 for fiscal year 1988.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11372 of this title.

§ 11378. Administrative costs

A recipient may use up to 5 percent of any annual grant received under this part for administrative purposes. A recipient State shall share the amount available for administrative purposes pursuant to the preceding sentence with local governments funded by the State.

(Pub. L. 100-77, title IV, §418, as added Pub. L. 101-625, title VIII, §832(b)(1), Nov. 28, 1990, 104 Stat. 4359.)

PART C—SUPPORTIVE HOUSING PROGRAM

§ 11381. Purpose

The purpose of the program under this part is to promote the development of supportive housing and supportive services, including innovative approaches to assist homeless persons in the transition from homelessness, and to promote the provision of supportive housing to homeless persons to enable them to live as independently as possible.

(Pub. L. 100-77, title IV, §421, as added Pub. L. 102-550, title XIV, §1403(a), Oct. 28, 1992, 106 Stat. 4013.)

PRIOR PROVISIONS

A prior section 11381, Pub. L. 100-77, title IV, §421, July 22, 1987, 101 Stat. 498, related to establishment of a supportive housing demonstration program, prior to repeal by Pub. L. 102-550, title XIV, §1403(a), Oct. 28, 1992, 106 Stat. 4013.

TRANSITIONAL PROVISION

Section 1403(b) of Pub. L. 102-550, as amended by Pub. L. 106-400, §2, Oct. 30, 2000, 114 Stat. 1675, provided that: “Notwithstanding the amendment made by subsection (a) [adding part C and repealing former parts C and D of this subchapter], before the date of the effectiveness of the regulations issued under section 427 of the McKinney-Vento Homeless Assistance Act [42 U.S.C. 11387] (as amended by subsection (a) of this section) the Secretary may make grants under the provisions of subtitles C and D of [title IV of] the McKinney-Vento Homeless Assistance Act [former parts C and D of this subchapter], as in effect immediately before the enactment of this Act [Oct. 28, 1992]. Any grants made before such effective date shall be subject to the provisions of such subtitles.”

DEMONSTRATION PROJECTS TO REDUCE NUMBER OF HOMELESS FAMILIES IN WELFARE HOTELS

Pub. L. 100-628, title IX, §903, Nov. 7, 1988, 102 Stat. 3258, as amended by Pub. L. 104-193, title I, §110(g), Aug. 22, 1996, 110 Stat. 2171, authorized Secretary of Health and Human Services to carry out 2 or 3 demonstration projects to provide housing in transitional facilities for homeless families who are recipients of assistance under a State program funded by part A of subchapter IV of chapter 7 of this title and who reside in commercial or similar transient facilities and authorized appropriations of not more than \$20,000,000 for the grants for fiscal year 1990.

§ 11382. Definitions

For purposes of this part:

(1) The term “applicant” means a State, metropolitan city, urban county, governmental entity, private nonprofit organization, or community mental health association that is a public nonprofit organization, that is eligible to receive assistance under this part and submits an application under section 11386(a) of this title.

(2) The term “disability” means—

(A) a disability as defined in section 423 of this title,

(B) to be determined to have, pursuant to regulations issued by the Secretary, a physical, mental, or emotional impairment which (i) is expected to be of long-continued and indefinite duration, (ii) substantially impedes an individual’s ability to live independently, and (iii) of such a nature that such ability could be improved by more suitable housing conditions,

(C) a developmental disability as defined in section 15002 of this title, or

(D) the disease of acquired immunodeficiency syndrome or any conditions arising from the etiologic agency for acquired immunodeficiency syndrome.

Subparagraph (D) shall not be construed to limit eligibility under subparagraphs (A) through (C) or the provisions referred to in subparagraphs (A) through (C).

(3) Repealed. Pub. L. 104-330, title V, § 506(a)(7)(B), Oct. 26, 1996, 110 Stat. 4044.

(4) The term “metropolitan city” has the meaning given the term in section 5302 of this title.

(5) The term “operating costs” means expenses incurred by a recipient operating supportive housing under this part with respect to—

(A) the administration, maintenance, repair, and security of such housing;

(B) utilities, fuel, furnishings, and equipment for such housing; and

(C) the conducting of the assessment under section 11386(c)(2) of this title.

(6) The term “outpatient health services” means outpatient health care, outpatient mental health services, outpatient substance abuse services, and case management.

(7) The term “private nonprofit organization” means an organization—

(A) no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual;

(B) that has a voluntary board;

(C) that has an accounting system, or has designated a fiscal agent in accordance with requirements established by the Secretary; and

(D) that practices nondiscrimination in the provision of assistance.

(8) The term “project” means a structure or structures (or a portion of such structure or structures) that is acquired, rehabilitated, constructed, or leased with assistance provided under this part or with respect to which the Secretary provides technical assistance or annual payments for operating costs under this part, or supportive services.

(9) The term “recipient” means any governmental or nonprofit entity that receives assistance under this part.

(10) The term “Secretary” means the Secretary of Housing and Urban Development.

(11) The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and Palau.

(12) The term “supportive housing” means a project that meets the requirements of section 11384 of this title.

(13) The term “supportive services” means services under section 11385 of this title.

(14) The term “urban county” has the meaning given the term in section 5302 of this title.

(Pub. L. 100-77, title IV, § 422, as added Pub. L. 102-550, title XIV, § 1403(a), Oct. 28, 1992, 106 Stat. 4014; amended Pub. L. 104-330, title V, § 506(a)(7), Oct. 26, 1996, 110 Stat. 4044; Pub. L. 106-402, title IV, § 401(b)(14), Oct. 30, 2000, 114 Stat. 1740.)

PRIOR PROVISIONS

A prior section 11382, Pub. L. 100-77, title IV, § 422, July 22, 1987, 101 Stat. 499; Pub. L. 100-242, title V, § 570(i)(1), Feb. 5, 1988, 101 Stat. 1950; Pub. L. 100-628, title IV, §§ 441(a), 442(a), (b)(1), 443, 444, Nov. 7, 1988, 102 Stat. 3232, 3233; Pub. L. 101-625, title VIII, § 833(b), (k)(1), Nov. 28, 1990, 104 Stat. 4362, 4364, defined terms for purposes of the supportive housing demonstration program, prior to repeal by Pub. L. 102-550, § 1403(a).

AMENDMENTS

2000—Par. (2)(C). Pub. L. 106-402, which directed amendment of section 422(2)(C) of the Stewart B. McKinney Homeless Assistance Act by substituting “as defined in section 15002 of this title, or” for “as defined in section 6001 of this title, or”, was executed to par. (2)(C) of this section, which is section 422 of the McKinney-Vento Homeless Assistance Act, to reflect the probable intent of Congress.

1996—Par. (1). Pub. L. 104-330, § 506(a)(7)(A), struck out “Indian tribe,” after “a State”.

Par. (3). Pub. L. 104-330, § 506(a)(7)(B), struck out par. (3) which read as follows: “The term ‘Indian tribe’ has the meaning given the term in section 5302(a) of this title.”

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as an Effective Date note under section 4101 of Title 25, Indians.

Amendment by Pub. L. 104-330 applicable with respect to amounts made available for assistance under this subchapter for fiscal year 1998 and fiscal years thereafter, see section 506(c) of Pub. L. 104-330, set out as a note under section 11371 of this title.

§ 11383. Eligible activities

(a) In general

The Secretary may provide any project with one or more of the following types of assistance under this part:

(1) Acquisition and rehabilitation

A grant, in an amount not to exceed \$200,000, for the acquisition, rehabilitation, or acquisition and rehabilitation, of an existing structure (including a small commercial property or office space) to provide supportive housing other than emergency shelter or to provide supportive services; except that the Secretary may increase the dollar limitation under this sentence to not more than \$400,000 for areas that the Secretary finds have high acquisition and rehabilitation costs. The repayment of any outstanding debt owed on a loan made to purchase an existing structure shall be considered to be a cost of acquisition eligible for a grant under this paragraph if the structure was not used as supportive housing, or to provide supportive services, before the receipt of assistance.

(2) New construction

A grant, in an amount not to exceed \$400,000, for new construction of a structure to provide supportive housing.

(3) Leasing

A grant for leasing of an existing structure or structures, or portions thereof, to provide supportive housing or supportive services during the period covered by the application. Grant recipients may reapply for such assistance as needed to continue the use of such structure for purposes of this part.

(4) Operating costs

Annual payments for operating costs of housing assisted under this part, not to exceed 75 percent of the annual operating costs of such housing. Grant recipients may reapply for such assistance as needed to continue the use of the housing for purposes of this part.

(5) Supportive services

A grant for costs of supportive services provided to homeless individuals. Any recipient, including program recipients under this subchapter before October 28, 1992, may reapply for such assistance or for the renewal of such assistance to continue services funded under prior grants or to provide other services.

(6) Technical assistance

Technical assistance in carrying out the purposes of this part.

(7) Management information system

A grant for the costs of implementing and operating management information systems for purposes of collecting unduplicated counts of homeless people and analyzing patterns of use of assistance funded under this chapter.

(b) Use restrictions**(1) Acquisition, rehabilitation, and new construction**

Projects assisted under subsection (a)(1) or (2) of this section shall be operated for not less than 20 years for the purpose specified in the application.

(2) Other assistance

Projects assisted under subsection (a)(3), (4), (5), or (6) of this section (but not under subsection (a)(1) or (2) of this section) shall be operated for the purposes specified in the application for the duration of the period covered by the grant.

(3) Conversion

If the Secretary determines that a project is no longer needed for use as supportive housing and approves the use of the project for the direct benefit of low-income persons pursuant to a request for such use by the recipient operating the project, the Secretary may authorize the recipient to convert the project to such use.

(c) Repayment of assistance and prevention of undue benefits**(1) Repayment**

The Secretary shall require recipients to repay 100 percent of any assistance received

under subsection (a)(1) or (2) of this section if the project ceases to be used as supportive housing within 10 years after the project is placed in service. If such project is used as supportive housing for more than 10 years, the Secretary shall reduce the percentage of the amount required to be repaid by 10 percentage points for each year in excess of 10 that the project is used as supportive housing.

(2) Prevention of undue benefits

Except as provided in paragraph (3), upon any sale or other disposition of a project assisted under subsection (a)(1) or (2) of this section occurring before the expiration of the 20-year period beginning on the date that the project is placed in service, the recipient shall comply with such terms and conditions as the Secretary may prescribe to prevent the recipient from unduly benefiting from such sale or disposition.

(3) Exception

A recipient shall not be required to comply with the terms and conditions prescribed under paragraphs (1) and (2) if the sale or disposition of the project results in the use of the project for the direct benefit of very low-income persons or if all of the proceeds are used to provide supportive housing meeting the requirements of this part.

(Pub. L. 100-77, title IV, § 423, as added Pub. L. 102-550, title XIV, § 1403(a), Oct. 28, 1992, 106 Stat. 4015; amended Pub. L. 106-377, § 1(a)(1) [title II, § 226], Oct. 27, 2000, 114 Stat. 1441, 1441A-30.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(7), was in the original "this Act", meaning Pub. L. 100-77, July 22, 1987, 101 Stat. 482, as amended, known as the McKinney-Vento Homeless Assistance Act. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of this title and Tables.

PRIOR PROVISIONS

A prior section 11383, Pub. L. 100-77, title IV, § 423, July 22, 1987, 101 Stat. 501; Pub. L. 100-628, title IV, §§ 441(b), (c), 445(a), 446-448(a), 449, Nov. 7, 1988, 102 Stat. 3233, 3234; Pub. L. 101-625, title VIII, § 833(c)-(e), (g), Nov. 28, 1990, 104 Stat. 4362, 4363, outlined types of assistance provided under the supportive housing demonstration program, prior to repeal by Pub. L. 102-550, § 1403(a).

AMENDMENTS

2000—Subsec. (a)(7). Pub. L. 106-377 added par. (7).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11386, 11389 of this title.

§ 11384. Supportive housing**(a) In general**

Housing providing supportive services for homeless individuals shall be considered supportive housing for purposes of this part if—

- (1) the housing is safe and sanitary and meets any applicable State and local housing codes and licensing requirements in the jurisdiction in which the housing is located; and
- (2) the housing—

- (A) is transitional housing;

(B) is permanent housing for homeless persons with disabilities; or

(C) is, or is part of, a particularly innovative project for, or alternative methods of, meeting the immediate and long-term needs of homeless individuals and families.

(b) Transitional housing

For purposes of this section, the term “transitional housing” means housing, the purpose of which is to facilitate the movement of homeless individuals and families to permanent housing within 24 months or such longer period as the Secretary determines necessary. The Secretary may deny assistance for housing based on a violation of this subsection only if the Secretary determines that a substantial number of homeless individuals or families have remained in the housing longer than such period.

(c) Permanent housing for homeless persons with disabilities

For purposes of this section, the term “permanent housing for homeless persons with disabilities” means community-based housing for homeless persons with disabilities that provides long-term housing and supportive services for not more than—

(1) 8 such persons in a single structure or contiguous structures;

(2) 16 such persons, but only if not more than 20 percent of the units in a structure are designated for such persons; or

(3) more than 16 persons if the applicant demonstrates that local market conditions dictate the development of a large project and such development will achieve the neighborhood integration objectives of the program within the context of the affected community.

(d) Single room occupancy dwellings

A project may provide supportive housing or supportive services in dwelling units that do not contain bathrooms or kitchen facilities and are appropriate for use as supportive housing or in projects containing some or all such dwelling units.

(Pub. L. 100-77, title IV, §424, as added Pub. L. 102-550, title XIV, §1403(a), Oct. 28, 1992, 106 Stat. 4016.)

PRIOR PROVISIONS

A prior section 11384, Pub. L. 100-77, title IV, §424, July 22, 1987, 101 Stat. 501; Pub. L. 100-628, title IV, §§442(b)(2), 448(b), 450(a)(1), (b), 451, Nov. 7, 1988, 102 Stat. 3233-3235; Pub. L. 101-625, title VIII, §833(f), (h)-(j), (k)(2), Nov. 28, 1990, 104 Stat. 4363-4365, provided for applications, selection criteria, and other program requirements for assistance under the supportive housing demonstration program, prior to repeal by Pub. L. 102-550, §1403(a).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11382 of this title.

§ 11385. Supportive services

(a) In general

To the extent practicable, each project shall provide supportive services for residents of the project and homeless persons using the project, which may be designed by the recipient or participants.

(b) Requirements

Supportive services provided in connection with a project shall address the special needs of individuals (such as homeless persons with disabilities and homeless families with children) intended to be served by a project.

(c) Services

Supportive services may include such activities as (A) establishing and operating a child care services program for homeless families, (B) establishing and operating an employment assistance program, (C) providing outpatient health services, food, and case management, (D) providing assistance in obtaining permanent housing, employment counseling, and nutritional counseling, (E) providing security arrangements necessary for the protection of residents of supportive housing and for homeless persons using the housing or project, (F) providing assistance in obtaining other Federal, State, and local assistance available for such residents (including mental health benefits, employment counseling, and medical assistance, but not including major medical equipment), and (G) providing other appropriate services.

(d) Provision of services

Services provided pursuant to this section may be provided directly by the recipient or by contract with other public or private service providers. Such services may be provided to homeless individuals who do not reside in supportive housing.

(e) Coordination with Secretary of Health and Human Services

(1) Approval

Promptly upon receipt of any application for assistance under this part that includes the provision of outpatient health services, the Secretary of Housing and Urban Development shall consult with the Secretary of Health and Human Services with respect to the proposed outpatient health services. If, within 45 days of such consultation, the Secretary of Health and Human Services determines that the proposal for delivery of the outpatient health services does not meet guidelines for determining the appropriateness of such proposed services, the Secretary of Housing and Urban Development may require resubmission of the application, and the Secretary of Housing and Urban Development may not approve such portion of the application unless and until such portion has been resubmitted in a form that the Secretary of Health and Human Services determines meets such guidelines.

(2) Guidelines

The Secretary of Housing and Urban Development and the Secretary of Health and Human Services shall jointly establish guidelines for determining the appropriateness of proposed outpatient health services under this section. Such guidelines shall include any provisions necessary to enable the Secretary of Housing and Urban Development to meet the time limits under this part for the final selection of applications for assistance.

(Pub. L. 100-77, title IV, §425, as added Pub. L. 102-550, title XIV, §1403(a), Oct. 28, 1992, 106 Stat. 4017.)

PRIOR PROVISIONS

A prior section 11385, Pub. L. 100-77, title IV, § 425, July 22, 1987, 101 Stat. 503; Pub. L. 100-628, title IV, § 452, Nov. 7, 1988, 102 Stat. 3235; Pub. L. 101-625, title VIII, § 833(k)(3), Nov. 28, 1990, 104 Stat. 4365, required recipients of assistance under supportive housing demonstration program to obtain an equal amount of funding from non-Federal sources, prior to repeal by Pub. L. 102-550, § 1403(a).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11382, 11389 of this title.

§ 11386. Program requirements**(a) Applications****(1) Form and procedure**

Applications for assistance under this part shall be submitted by applicants in the form and in accordance with the procedures established by the Secretary. The Secretary may not give preference or priority to any application on the basis that the application was submitted by any particular type of applicant entity.

(2) Contents

The Secretary shall require that applications contain at a minimum—

(A) a description of the proposed project, including the activities to be undertaken;

(B) a description of the size and characteristics of the population that would occupy the supportive housing assisted under this part;

(C) a description of the public and private resources that are expected to be made available for the project;

(D) in the case of projects assisted under section 11383(a)(1) or (2) of this title, assurances satisfactory to the Secretary that the project will be operated for not less than 20 years for the purpose specified in the application;

(E) in the case of projects assisted under this subchapter that do not receive assistance under such sections, annual assurances during the period specified in the application that the project will be operated for the purpose specified in the application for such period;

(F) a certification from the public official responsible for submitting the comprehensive housing affordability strategy under section 12705 of this title for the State or unit of general local government within which the project is located that the proposed project is consistent with the approved housing strategy of such State or unit of general local government; and

(G) a certification that the applicant will comply with the requirements of the Fair Housing Act [42 U.S.C. 3601 et seq.], title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], and the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], and will affirmatively further fair housing.

(3) Site control

The Secretary shall require that each application include reasonable assurances that the

applicant will own or have control of a site for the proposed project not later than the expiration of the 12-month period beginning upon notification of an award for grant assistance, unless the application proposes providing supportive housing assisted under section 11383(a)(3) of this title or housing that will eventually be owned or controlled by the families and individuals served. An applicant may obtain ownership or control of a suitable site different from the site specified in the application. If any recipient fails to obtain ownership or control of the site within 12 months after notification of an award for grant assistance, the grant shall be recaptured and reallocated under this part.

(b) Selection criteria

The Secretary shall select applicants approved by the Secretary as to financial responsibility to receive assistance under this part by a national competition based on criteria established by the Secretary, which shall include—

(1) the ability of the applicant to develop and operate a project;

(2) the innovative quality of the proposal in providing a project;

(3) the need for the type of project proposed by the applicant in the area to be served;

(4) the extent to which the amount of assistance to be provided under this part will be supplemented with resources from other public and private sources;

(5) the cost-effectiveness of the proposed project;

(6) the extent to which the applicant has demonstrated coordination with other Federal, State, local, private and other entities serving homeless persons in the planning and operation of the project, to the extent practicable; and

(7) such other factors as the Secretary determines to be appropriate to carry out this part in an effective and efficient manner.

(c) Required agreements

The Secretary may not provide assistance for any project under this part unless the applicant agrees—

(1) to operate the proposed project in accordance with the provisions of this part;

(2) to conduct an ongoing assessment of the supportive services required by homeless individuals served by the project and the availability of such services to such individuals;

(3) to provide such residential supervision as the Secretary determines is necessary to facilitate the adequate provision of supportive services to the residents and users of the project;

(4) to monitor and report to the Secretary on the progress of the project;

(5) to develop and implement procedures to ensure (A) the confidentiality of records pertaining to any individual provided family violence prevention or treatment services through any project assisted under this part, and (B) that the address or location of any family violence shelter project assisted under this part will not be made public, except with written authorization of the person or persons responsible for the operation of such project;

(6) to the maximum extent practicable, to involve homeless individuals and families, through employment, volunteer services, or otherwise, in constructing, rehabilitating, maintaining, and operating the project assisted under this part and in providing supportive services for the project; and

(7) to comply with such other terms and conditions as the Secretary may establish to carry out this part in an effective and efficient manner.

(d) Occupancy charge

Each homeless individual or family residing in a project providing supportive housing may be required to pay an occupancy charge in an amount determined by the recipient providing the project, which may not exceed the amount determined under section 1437a(a) of this title. Occupancy charges paid may be reserved, in whole or in part, to assist residents in moving to permanent housing.

(e) Matching funding

Each recipient shall be required to supplement the amount of assistance provided under paragraphs (1) and (2) of section 11383(a) of this title with an equal amount of funds from sources other than this part.

(f) Flood protection standards

Flood protection standards applicable to housing acquired, rehabilitated, constructed, or assisted under this part shall be no more restrictive than the standards applicable under Executive Order No. 11988 (May 24, 1977) to the other programs under this subchapter.

(g) Participation of homeless individuals

The Secretary shall, by regulation, require each recipient to provide for the participation of not less than 1 homeless individual or former homeless individual on the board of directors or other equivalent policymaking entity of the recipient, to the extent that such entity considers and makes policies and decisions regarding any project, supportive services, or assistance provided under this part. The Secretary may grant waivers to applicants unable to meet the requirement under the preceding sentence if the applicant agrees to otherwise consult with homeless or formerly homeless individuals in considering and making such policies and decisions.

(h) Limitation on use of funds

No assistance received under this part (or any State or local government funds used to supplement such assistance) may be used to replace other State or local funds previously used, or designated for use, to assist homeless persons.

(i) Limitation on administrative expenses

No recipient may use more than 5 percent of a grant received under this part for administrative purposes.

(j) Termination of assistance

If an individual or family who receives assistance under this part (not including residents of an emergency shelter) from a recipient violates program requirements, the recipient may terminate assistance in accordance with a formal

process established by the recipient that recognizes the rights of individuals receiving such assistance to due process of law, which may include a hearing.

(Pub. L. 100-77, title IV, §426, as added Pub. L. 102-550, title XIV, §1403(a), Oct. 28, 1992, 106 Stat. 4018.)

REFERENCES IN TEXT

The Fair Housing Act, referred to in subsec. (a)(2)(G), is title VIII of Pub. L. 90-284, Apr. 11, 1968, 82 Stat. 81, as amended, which is classified principally to subchapter I (§3601 et seq.) of chapter 45 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

The Civil Rights Act of 1964, referred to in subsec. (a)(2)(G), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Act is classified generally to subchapter V (§2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

The Age Discrimination Act of 1975, referred to in subsec. (a)(2)(G), is title III of Pub. L. 94-135, Nov. 28, 1975, 89 Stat. 728, as amended, which is classified generally to chapter 76 (§6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

Executive Order No. 11988, referred to in subsec. (f), is set out as a note under section 4321 of this title.

PRIOR PROVISIONS

A prior section 11386, Pub. L. 100-77, title IV, §426, July 22, 1987, 101 Stat. 503, related to establishment of guidelines for purposes of a supportive housing demonstration program, prior to repeal by Pub. L. 102-550, §1403(a).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11382 of this title.

§ 11387. Regulations

Not later than the expiration of the 90-day period beginning on October 28, 1992, the Secretary shall issue interim regulations to carry out this part, which shall take effect upon issuance. The Secretary shall issue final regulations to carry out this part after notice and opportunity for public comment regarding the interim regulations, pursuant to the provisions of section 553 of title 5 (notwithstanding subsections (a)(2), (b)(B), and (d)(3) of such section). The duration of the period for public comment shall not be less than 60 days, and the final regulations shall be issued not later than the expiration of the 60-day period beginning upon the conclusion of the comment period and shall take effect upon issuance.

(Pub. L. 100-77, title IV, §427, as added Pub. L. 102-550, title XIV, §1403(a), Oct. 28, 1992, 106 Stat. 4021.)

PRIOR PROVISIONS

A prior section 11387, Pub. L. 100-77, title IV, §427, July 22, 1987, 101 Stat. 504; Pub. L. 100-628, title IV, §453, Nov. 7, 1988, 102 Stat. 3236, provided for reports to Congress summarizing the activities carried out under the supportive housing demonstration program, prior to repeal by Pub. L. 102-550, §1403(a).

§ 11388. Reports to Congress

The Secretary shall submit a report to the Congress annually, summarizing the activities

carried out under this part and setting forth the findings, conclusions, and recommendations of the Secretary as a result of the activities. The report shall be submitted not later than 4 months after the end of each fiscal year (except that, in the case of fiscal year 1993, the report shall be submitted not later than 6 months after the end of the fiscal year).

(Pub. L. 100-77, title IV, § 428, as added Pub. L. 102-550, title XIV, § 1403(a), Oct. 28, 1992, 106 Stat. 4021.)

PRIOR PROVISIONS

A prior section 11388, Pub. L. 100-77, title IV, § 428, July 22, 1987, 101 Stat. 504; Pub. L. 100-628, title IV, §§ 454, 455, Nov. 7, 1988, 102 Stat. 3236; Pub. L. 101-625, title VIII, § 833(a), Nov. 28, 1990, 104 Stat. 4362, authorized appropriations for the supportive housing demonstration program, prior to repeal by Pub. L. 102-550, § 1403(a).

§ 11389. Authorization of appropriations

(a) Authorization of appropriations

There are authorized to be appropriated to carry out this part \$204,000,000 for fiscal year 1993 and \$212,568,000 for fiscal year 1994.

(b) Set-asides

Of any amounts appropriated to carry out this part—

(1) not less than 25 percent shall be allocated to projects designed primarily to serve homeless families with children;

(2) not less than 25 percent shall be allocated to projects designed primarily to serve homeless persons with disabilities; and

(3) not less than 10 percent shall be allocated for use only for providing supportive services under sections 11383(a)(5) and 11385 of this title, not provided in conjunction with supportive housing.

(c) Reallocations

If, following the receipt of applications for the final funding round under this part for any fiscal year, any amount set aside for assistance pursuant to subsection (b) of this section will not be required to fund the approvable applications submitted for such assistance, the Secretary shall reallocate such amount for other assistance pursuant to this part.

(Pub. L. 100-77, title IV, § 429, as added Pub. L. 102-550, title XIV, § 1403(a), Oct. 28, 1992, 106 Stat. 4021.)

PART D—SAFE HAVENS FOR HOMELESS INDIVIDUALS DEMONSTRATION PROGRAM

§ 11391. Establishment of demonstration

(a) In general

The Secretary may make grants to applicants to demonstrate the desirability and feasibility of providing very low-cost housing, to be known as safe havens, to homeless persons who, at the time, are unwilling or unable to participate in mental health treatment programs or to receive other supportive services.

(b) Purposes

The demonstration program carried out under this part shall demonstrate—

(1) whether and on what basis eligible persons choose to reside in safe havens;

(2) the extent to which, after a period of residence in a safe haven, residents are willing to participate in mental health treatment programs, substance abuse treatment, or other treatment programs and to move toward a more traditional form of permanent housing and the availability in the community of such permanent housing and treatment programs;

(3) whether safe havens are cost-effective in comparison with other alternatives for eligible persons; and

(4) the various ways in which safe havens may be used to provide accommodations and low-demand services and referrals for eligible persons.

(Pub. L. 100-77, title IV, § 431, as added Pub. L. 102-550, title XIV, § 1404, Oct. 28, 1992, 106 Stat. 4022.)

PRIOR PROVISIONS

A prior section 11391, Pub. L. 100-77, title IV, § 431, July 22, 1987, 101 Stat. 504; Pub. L. 100-242, title V, § 570(i)(2), Feb. 5, 1988, 101 Stat. 1950, provided definitions for a program of supplemental assistance for facilities to assist the homeless, prior to repeal by Pub. L. 102-550, § 1403(a).

§ 11392. Definitions

For purposes of this part:

(1) Applicant

The term “applicant” means a nonprofit corporation, public nonprofit organization, State, or unit of general local government.

(2) Eligible person

The term “eligible person” means an individual who—

(A) is seriously mentally ill and resides primarily in a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings, which may include occasional residence in an emergency shelter; and

(B) is currently unwilling or unable to participate in mental health or substance abuse treatment programs or to receive other supportive services.

Such term does not include a person whose sole impairment is substance abuse.

(3) Facility

The term “facility” means a structure or a clearly identifiable portion of a structure that is assisted under this part.

(4) Low-demand services and referrals

The term “low-demand services and referrals” means the provision of health care, mental health, substance abuse, and other supportive services and referrals for services in a non-coercive manner, which may include medication management, education, counseling, job training, and assistance in obtaining entitlement benefits and in obtaining other supportive services including mental health treatment and substance abuse treatment.

(5) Nonprofit organization

The term “nonprofit organization” means an organization—

(A) no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual;

(B) that has a voluntary board;

(C) that has an accounting system, or has designated a fiscal agent in accordance with requirements established by the Secretary; and

(D) that practices nondiscrimination in the provision of assistance.

(6) Operating costs

The term “operating costs” means expenses incurred by a recipient operating a safe haven under this part with respect to—

(A) the operation of the facility, including the cost of 24-hour management, and maintenance, repair, and security;

(B) utilities, fuel, furnishings, and equipment for such housing; and

(C) other reasonable costs necessary to the operation of the facility, which may include appropriate outreach and drop-in services.

(7) Recipient

The term “recipient” means an applicant that receives assistance under this part.

(8) Safe haven

The term “safe haven” means a facility—

(A) that provides 24-hour residence for eligible persons who may reside for an unspecified duration;

(B) that provides private or semiprivate accommodations;

(C) that may provide for the common use of kitchen facilities, dining rooms, and bathrooms;

(D) that may provide supportive services to eligible persons who are not residents on a drop-in basis; and

(E) in which overnight occupancy is limited to no more than 25 persons.

(9) Secretary

The term “Secretary” means the Secretary of Housing and Urban Development.

(10) Seriously mentally ill

The term “seriously mentally ill” means having a severe and persistent mental or emotional impairment that seriously limits a person’s ability to live independently.

(11) State

The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and Palau.

(12) Unit of general local government

The term “unit of general local government” has the meaning given the term in section 5302(a) of this title.

(Pub. L. 100–77, title IV, § 432, as added Pub. L. 102–550, title XIV, § 1404, Oct. 28, 1992, 106 Stat. 4022.)

PRIOR PROVISIONS

A prior section 11392, Pub. L. 100–77, title IV, § 432, July 22, 1987, 101 Stat. 505; Pub. L. 100–628, title IV, §§ 461–463(a), Nov. 7, 1988, 102 Stat. 3236, 3237; Pub. L.

101–625, title VIII, § 834(b)–(d), Nov. 28, 1990, 104 Stat. 4365, 4366, provided for supplemental assistance for facilities to assist the homeless, prior to repeal by Pub. L. 102–550, § 1403(a).

§ 11393. Program assistance

(a) In general

(1) Eligible activities

The Secretary may provide assistance with respect to a program under this part for the following activities:

(A) The construction of a structure for use in providing a safe haven or the acquisition, rehabilitation, or acquisition and rehabilitation of an existing structure for use in providing a safe haven.

(B) The leasing of an existing structure for use in providing a safe haven.

(C) To cover the operating costs of a safe haven.

(D) To cover the costs of administering a safe haven program, not to exceed 10 percent of the amounts made available for activities under subparagraphs (A) through (C).

(E) Outreach activities designed to inform eligible persons about and attract them to a safe haven program.

(F) The provision of low-demand services and referrals for residents of a safe haven, except that grants under this part may not be used to cover more than 50 percent of the cost of such services and referrals.

(G) Other activities that further the purposes of this part, including the modification of an existing facility to use a portion of the facility to provide with a safe haven.

(2) Period of assistance

Assistance may be provided to any safe haven program for activities under subparagraphs (B) through (F) of paragraph (1) for a period of not more than 5 years, except that the Secretary may, upon application by the recipient, provide assistance for an additional period of time, not to exceed 5 years, subject to—

(A) the determination of the Secretary that the performance of the recipient under this part is satisfactory; and

(B) the availability of appropriations for such purpose.

(3) Limit on amount

The total amount of assistance provided to any recipient under this subsection may not exceed \$400,000 in any 5-year period.

(b) Matching funding

(1) In general

Each recipient shall supplement a grant provided under this part with an equal amount of funds from sources other than this part. Each recipient shall certify to the Secretary that it has complied with this paragraph, and shall include with the certification a description of the sources and amounts of such supplemental funds.

(2) Calculation of amounts

In calculating the amount of supplemental funds required under paragraph (1), a recipient

may include any funds derived from another source, the value of any lease on a building, any salary paid to staff to carry out the program of the recipient, and the value of the time and services contributed by volunteers, at a rate determined by the Secretary, to carry out the program of the recipient.

(Pub. L. 100-77, title IV, § 433, as added Pub. L. 102-550, title XIV, § 1404, Oct. 28, 1992, 106 Stat. 4024.)

PRIOR PROVISIONS

A prior section 11393, Pub. L. 100-77, title IV, § 433, July 22, 1987, 101 Stat. 507, related to establishment of regulations for program to provide supplemental assistance for facilities to assist the homeless, prior to repeal by Pub. L. 102-550, § 1403(a).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11394 of this title.

§ 11394. Program requirements

(a) Applications

Applications for assistance under this part shall be submitted by an applicant in such form and in accordance with such procedures as the Secretary shall establish, and such applications shall contain at a minimum—

- (1) a description of the proposed facility;
- (2) a description of the number and characteristics of the eligible persons expected to occupy the safe haven;
- (3) a plan for identifying and selecting eligible persons to participate;
- (4) a program plan, containing a description of the method—
 - (A) of operation of the facility, including staffing plans and facility rules;
 - (B) by which the applicant will secure supportive services for residents of the safe haven;
 - (C) by which the applicant will monitor the willingness of residents to engage in treatment programs and other supportive services;
 - (D) by which access to supportive services will be secured for residents willing to use them;
 - (E) by which access to permanent housing with appropriate services, such as the Shelter Plus Care program under part F of this subchapter, will be sought after residents are stabilized; and
 - (F) by which the applicant will conduct outreach activities to facilitate the entrance of eligible persons into the safe haven;
- (5) a plan to ensure that adequate security precautions are taken to make the facility safe for the residents;
- (6) an estimate of program costs;
- (7) a description of the resources that are expected to be made available in accordance with section 11393(b) of this title;
- (8) assurances satisfactory to the Secretary that the facility will have 24-hour, on-site management, if practicable;
- (9) assurances satisfactory to the Secretary that the facility will be operated for the purpose specified in the application for each year

in which assistance is provided under this part;

(10) a certification by the public official responsible for submitting the comprehensive housing affordability strategy under section 12705 of this title for the State or unit of general local government within which the facility is located that the proposed activities are consistent with the approved housing strategy for such jurisdiction;

(11) a certification that the applicant will comply with the requirements of the Fair Housing Act [42 U.S.C. 3601 et seq.], title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], and the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], and will affirmatively further fair housing;

(12) a plan for program evaluation based on information that is collected on a periodic basis regarding the characteristics of the residents, including their movement in and out of the safe haven, their willingness to use low-demand services and referrals, the availability and quality of services used, and the movement of residents toward a more traditional form of permanent housing after a period of residency in the safe haven; and

(13) such other information as the Secretary may require.

(b) Site control

The Secretary shall require that an applicant furnish reasonable assurances that the applicant will have control of a site for the proposed facility not later than 1 year after notification of an award of assistance under this part. If an applicant fails to obtain control of the site within this period, the grant shall be recaptured by the Secretary and reallocated for use under this part.

(c) Selection criteria

The Secretary shall establish selection criteria for selecting applicants to receive assistance under this part pursuant to a national competition, which shall include—

- (1) the extent to which the applicant demonstrates the ability to develop and operate a safe haven;
- (2) the extent to which there is a need for a safe haven in the jurisdiction in which the facility will be located;
- (3) the extent to which the program would link eligible persons to permanent housing and supportive services after stabilization in a safe haven;
- (4) the cost-effectiveness of the proposed program;
- (5) providing for geographical diversity among applicants selected to receive assistance;
- (6) the extent to which the safe haven would meet the need of the eligible persons proposed to be served by the safe haven; and
- (7) such other factors as the Secretary determines to be appropriate for purposes of carrying out the program established under this part in an effective and efficient manner.

(d) Required agreements

The Secretary may not provide assistance under this part for any safe haven program unless the applicant agrees—

(1) to develop and operate the proposed facility as a safe haven in accordance with the provisions of this part;

(2) to ensure that the facility meets any standards of habitability established by the Secretary;

(3) to provide low-demand services and referrals for the residents of the safe haven;

(4) to prohibit the use of illegal drugs and alcohol in the facility;

(5) to ensure that adequate security precautions are taken to make the facility safe for the residents;

(6) not to establish limitations on the duration of residency;

(7) not to require participation in low-demand services and referrals as a condition of occupancy;

(8) to monitor and report to the Secretary on progress in carrying out the safe haven program;

(9) to the maximum extent practicable, to involve eligible persons, through employment, volunteer services, or otherwise, in renovating, maintaining, and operating facilities assisted under this part and in providing services assisted under this part;

(10) to provide for the participation of not less than 1 homeless individual or former homeless individual on the board of directors or other equivalent policymaking entity of such recipient (in accordance with regulations that the Secretary shall issue), to the extent that such entity considers and makes policies and decisions regarding any facility or services assisted under this part, or to otherwise provide for the consultation and participation of such an individual in considering and making such policies and decisions; and

(11) to comply with such other terms and conditions as the Secretary may establish for purposes of carrying out the program established under this part in an effective and efficient manner.

The Secretary may waive the applicability of the requirement under paragraph (10) for an applicant that is unable to meet such requirement, if the applicant agrees to otherwise consult with homeless or formerly homeless individuals in considering and making such policies and decisions.

(Pub. L. 100-77, title IV, §434, as added Pub. L. 102-550, title XIV, §1404, Oct. 28, 1992, 106 Stat. 4025.)

REFERENCES IN TEXT

The Fair Housing Act, referred to in subsec. (a)(11), is title VIII of Pub. L. 90-284, Apr. 11, 1968, 82 Stat. 81, as amended, which is classified principally to subchapter I (§3601 et seq.) of chapter 45 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

The Civil Rights Act of 1964, referred to in subsec. (a)(11), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Act is classified generally to subchapter V (§2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

The Age Discrimination Act of 1975, referred to in subsec. (a)(11), is title III of Pub. L. 94-135, Nov. 28, 1975, 89 Stat. 728, as amended, which is classified generally

to chapter 76 (§6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

PRIOR PROVISIONS

A prior section 11394, Pub. L. 100-77, title IV, §434, July 22, 1987, 101 Stat. 508; Pub. L. 100-628, title IV, §464, Nov. 7, 1988, 102 Stat. 3237; Pub. L. 101-625, title VIII, §834(a), Nov. 28, 1990, 104 Stat. 4365, authorized appropriations for supplemental assistance for facilities to assist the homeless, prior to repeal by Pub. L. 102-550, §1403(a).

§ 11395. Occupancy charge

Each eligible person who resides in a facility assisted under this part shall pay an occupancy charge in an amount determined by the recipient, but not to exceed the amount determined under section 1437a(a) of this title. The occupancy charge may be phased in or reduced based on the type of living accommodations provided. The recipient may waive occupancy charges for limited periods of time for residents unwilling or unable to pay them. Occupancy charges paid may be reserved to assist residents in moving to a more traditional form of permanent housing.

(Pub. L. 100-77, title IV, §435, as added Pub. L. 102-550, title XIV, §1404, Oct. 28, 1992, 106 Stat. 4027.)

§ 11396. Termination of assistance

If an eligible person who resides in a safe haven or who receives low-demand services or referrals endangers the safety, welfare, or health of other residents, or repeatedly violates a condition of occupancy contained in the rules for the safe haven (as set forth in the application submitted under this part), the recipient may terminate such residency or assistance in accordance with a formal process established by the rules for the safe haven, which may include a hearing.

(Pub. L. 100-77, title IV, §436, as added Pub. L. 102-550, title XIV, §1404, Oct. 28, 1992, 106 Stat. 4027.)

§ 11397. Evaluation and report

The Secretary shall conduct an evaluation of the safe haven demonstration program under this part and shall submit a report to the Congress, not later than December 31, 1994, which shall set forth the findings of the Secretary as a result of the evaluation.

(Pub. L. 100-77, title IV, §437, as added Pub. L. 102-550, title XIV, §1404, Oct. 28, 1992, 106 Stat. 4027.)

§ 11398. Regulations

(a) In general

The Secretary shall, by notice published in the Federal Register, establish such requirements as may be necessary to carry out the amendments made by this part.

(b) Consultation

In establishing requirements to carry out the provisions of this part, and in considering applications under this part, the Secretary shall consult with officials of the appropriate agencies of

the Department of Health and Human Services and with representative provider and public interest groups.

(c) Eligibility for SSI and medicaid

(1) Supplemental security income

All provisions of the Supplemental Security Income program under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.] and of State programs in supplementation thereof shall apply to participants in the safe havens demonstration program under this part, except that no individual living in a safe haven shall—

(A) be considered an inmate of a public institution (as provided in section 1611(e)(1)(A) of such Act [42 U.S.C. 1382(e)(1)(A)]); or

(B) have benefits under such title XVI [42 U.S.C. 1381 et seq.] reduced or terminated because of the receipt of support and maintenance (as provided in section 1612(a)(2)(A) of such Act [42 U.S.C. 1382a(a)(2)(A)]), to the extent such support and maintenance is received as a result of participation in the safe havens demonstration program.

(2) Medicaid

A safe haven shall not be considered a hospital, nursing facility, institution for mental disease as defined under section 1905(i) of the Social Security Act [42 U.S.C. 1396d(i)], or any other inpatient facility, for purposes of the program under title XIX of such Act [42 U.S.C. 1396 et seq.], and individuals shall not be denied eligibility for medicaid because of residency in such residence.

(Pub. L. 100-77, title IV, § 438, as added Pub. L. 102-550, title XIV, § 1404, Oct. 28, 1992, 106 Stat. 4027.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (c), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XVI and XIX of the Act are classified generally to subchapters XVI (§1381 et seq.) and XIX (§1396 et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

§ 11399. Authorization of appropriations

There are authorized to be appropriated to carry out this part \$62,000,000 for fiscal year 1993 and \$64,604,000 for fiscal year 1994.

(Pub. L. 100-77, title IV, § 439, as added Pub. L. 102-550, title XIV, § 1404, Oct. 28, 1992, 106 Stat. 4028.)

PART E—MISCELLANEOUS PROVISIONS

§ 11401. Section 1437f assistance for single room occupancy dwellings

(a) Increase in budget authority

The budget authority available under section 1437c(c) of this title for assistance under section 1437f(e)(2)¹ of this title is authorized to be increased by \$105,000,000 on or after October 1, 1992, and by \$109,410,000 on or after October 1, 1993.

(b) Use of funds

The amounts made available under this section shall be used only in connection with the

moderate rehabilitation of housing described in section 1437f(n)¹ of this title for occupancy by homeless individuals, except that amounts made available under this section may be used in connection with the moderate rehabilitation of efficiency units if the building owner agrees to pay the additional cost of rehabilitating and operating such units,² and except that the Secretary may provide amounts available under this section to private nonprofit organizations that submit applications for such assistance that are approved by the Secretary.

(c) Allocation

The amounts made available under this section shall be allocated by the Secretary of Housing and Urban Development on the basis of a national competition to the applicants that best demonstrate a need for the assistance under this section and the ability to undertake and carry out a program to be assisted under this section. To be considered for assistance under this section, an applicant shall submit to the Secretary of Housing and Urban Development a written proposal containing—

(1) a description of the size and characteristics of the population within the applicant's jurisdiction that would occupy single room occupancy dwellings;

(2) a listing of additional commitments from public and private sources that the applicant might be able to provide in connection with the program;

(3) an inventory of suitable housing stock to be rehabilitated with such assistance;

(4) a description of the interest that has been expressed by builders, developers, and others (including profit and nonprofit organizations) in participating in the program; and

(5) assurances satisfactory to the Secretary that the applicant, to the maximum extent practicable, will involve homeless individuals and families, through employment, volunteer services, or otherwise, in rehabilitating and operating facilities assisted under this section and in providing services for occupants of such facilities.

No single city or urban county shall be eligible to receive more than 10 percent of the assistance made available under this section.

(d) Fire and safety improvements

Each contract for housing assistance payments entered into with the authority provided under this section shall require the installation of a sprinkler system that protects all major spaces, hard wired smoke detectors, and such other fire and safety improvements as may be required by State or local law. For purposes of this subsection, the term "major spaces" means hallways, large common areas, and other areas specified in local fire, building, or safety codes.

(e) Cost limitation

(1) The total cost of rehabilitation that may be compensated for in a contract for housing assistance payments entered into with the authority provided under this section shall not exceed \$14,000 per unit, plus the expenditures required by subsection (d) of this section.

¹ See References in Text note below.

² So in original. The period before the comma probably should not appear.

(2) The Secretary of Housing and Urban Development shall increase the limitation contained in paragraph (1) by an amount the Secretary determines is reasonable and necessary to accommodate special local conditions, including—

- (A) high construction costs; or
- (B) stringent fire or building codes.

(3) The Secretary of Housing and Urban Development shall increase the limitation in paragraph (1) on October 1 of each year by an amount necessary to take into account increases in construction costs during the previous 12-month period.

(f) Contract requirements

Each contract for annual contributions entered into with a³ approved applicant to obligate the authority made available under this section shall—

- (1) commit the Secretary of Housing and Urban Development to make such authority available to the approved applicant for an aggregate period of 10 years, and require that any amendments increasing such authority shall be available for the remainder of such 10-year period;
- (2) provide the Secretary of Housing and Urban Development with the option to renew the contract for an additional period of 10 years, subject to the availability of appropriations; and
- (3) provide that, notwithstanding any other provision of law, first priority for occupancy of housing rehabilitated under this section shall be given to homeless individuals.

(g) Repealed. Pub. L. 104-330, title V, § 506(a)(8)(A), Oct. 26, 1996, 110 Stat. 4044

(h) Participation of homeless individuals

The Secretary shall, by regulation, require each approved applicant receiving assistance under this section that is not a public housing agency to provide for the participation of not less than one homeless individual or former homeless individual on the board of directors or other equivalent policymaking entity of such applicant, to the extent that such entity considers and makes policies and decisions regarding the rehabilitation of any housing with assistance under this section. The Secretary may grant waivers to approved applicants unable to meet the requirements under the preceding sentence if the applicant agrees to otherwise consult with homeless or formerly homeless individuals in considering and making such policies and decisions.

(i) Termination of assistance

If an individual or family who receives assistance under this section violates program requirements, the recipient of amounts made available under this section may terminate assistance in accordance with a formal process established by the recipient that recognizes the rights of individuals receiving such assistance to due process of law.

(j) Definitions

For purposes of this section—

(1) the term “applicant” means a public housing agency, or private nonprofit organization that applies for assistance under this section; and

(2) the term “private nonprofit organization” means an organization—

- (A) no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual;
- (B) that has a voluntary board;
- (C) that has an accounting system, or has designated a fiscal agent in accordance with requirements established by the Secretary; and
- (D) that practices nondiscrimination in the provision of assistance.

(Pub. L. 100-77, title IV, § 441, July 22, 1987, 101 Stat. 508; Pub. L. 100-628, title IV, § 481(a)-(d)(1), Nov. 7, 1988, 102 Stat. 3237, 3238; Pub. L. 101-625, title VIII, § 835, Nov. 28, 1990, 104 Stat. 4366; Pub. L. 102-550, title XIV, § 1405(a)-(d), Oct. 28, 1992, 106 Stat. 4028, 4029; Pub. L. 104-330, title V, § 506(a)(8), Oct. 26, 1996, 110 Stat. 4044.)

REFERENCES IN TEXT

Section 1437f(e)(2) of this title, referred to in subsec. (a), was repealed effective Oct. 1, 1991, but to remain in effect with respect to single room occupancy dwellings as authorized by this subchapter, see section 12839(b) of this title.

Section 1437f(n) of this title, referred to in subsec. (b), was repealed by Pub. L. 105-276, title V, § 550(a)(7), Oct. 21, 1998, 112 Stat. 2609.

AMENDMENTS

1996—Subsec. (g). Pub. L. 104-330, § 506(a)(8)(A), struck out heading and text of subsec. (g). Text read as follows: “Amounts made available for assistance under this section shall be available through contracts between the Secretary and Indian housing authorities, and the provisions of this section regarding public housing authorities shall include and apply to Indian housing authorities.”

Subsec. (h). Pub. L. 104-330, § 506(a)(8)(B), struck out “or Indian housing authority” after “public housing agency”.

Subsec. (j)(1). Pub. L. 104-330, § 506(a)(8)(C), struck out “, Indian housing authority” after “public housing agency”.

1992—Subsec. (a). Pub. L. 102-550, § 1405(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “The budget authority available under section 1437c(c) of this title for assistance under section 1437f(e)(2) of this title is authorized to be increased by \$79,000,000 on or after October 1, 1990, and by \$82,400,000 on or after October 1, 1991.”

Subsec. (b). Pub. L. 102-550, § 1405(b)(1), inserted before period at end “, and except that the Secretary may provide amounts available under this section to private nonprofit organizations that submit applications for such assistance that are approved by the Secretary”.

Subsec. (c)(5). Pub. L. 102-550, § 1405(c), added par. (5).

Subsec. (f). Pub. L. 102-550, § 1405(b)(2), substituted “approved applicant” for “public housing agency” in introductory provisions and par. (1).

Subsecs. (h), (i). Pub. L. 102-550, § 1405(d), added subsecs. (h) and (i).

Subsec. (j). Pub. L. 102-550, § 1405(b)(3), added subsec. (j).

1990—Subsec. (a). Pub. L. 101-625, § 835(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “The budget authority available under section 1437c(c) of this title for assistance under section 1437f(e)(2) of this title is authorized to be increased by \$50,000,000 on or after October 1, 1988, and by \$50,000,000 on or after October 1, 1989.”

³ So in original. Probably should be “an”.

Subsec. (g). Pub. L. 101-625, § 835(b), added subsec. (g). 1988—Subsec. (a). Pub. L. 100-628, § 481(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “The budget authority available under section 1437(c) of this title for assistance under section 1437(e)(2) of this title is authorized to be increased by \$35,000,000 on or after October 1, 1986, and by \$35,000,000 on or after October 1, 1987.”

Subsec. (b). Pub. L. 100-628, § 481(b), inserted before period at end “; except that amounts made available under this section may be used in connection with the moderate rehabilitation of efficiency units if the building owner agrees to pay the additional cost of rehabilitating and operating such units.”

Subsec. (d). Pub. L. 100-628, § 481(c), inserted sentence defining “major spaces”.

Subsec. (e)(3). Pub. L. 100-628, § 481(d)(1), added par. (3).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as an Effective Date note under section 4101 of Title 25, Indians.

Amendment by Pub. L. 104-330 applicable with respect to amounts made available for assistance under this subchapter for fiscal year 1998 and fiscal years thereafter, see section 506(c) of Pub. L. 104-330, set out as a note under section 11371 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 481(d)(2) of Pub. L. 100-628 provided that: “The first increase under the amendment made by paragraph (1) [amending this section] shall be effective with respect to assistance provided on or after October 1, 1988.”

§ 11402. Environmental review

For purposes of environmental review, assistance and projects under this subchapter shall be treated as assistance for special projects that are subject to section 3547 of this title, and shall be subject to the regulations issued by the Secretary to implement such section.

(Pub. L. 100-77, title IV, § 443, as added Pub. L. 100-628, title IV, § 482(a), Nov. 7, 1988, 102 Stat. 3238; amended Pub. L. 106-377, § 1(a)(1) [title II, § 208], Oct. 27, 2000, 114 Stat. 1441, 1441A-25.)

AMENDMENTS

2000—Pub. L. 106-377 amended section catchline and text generally. Prior to amendment, text read as follows: “The provisions of, and regulations and procedures applicable under, section 5304(g) of this title shall apply to assistance and projects under this subchapter.”

PART F—SHELTER PLUS CARE PROGRAM

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 11394 of this title.

SUBPART I—GENERAL REQUIREMENTS

§ 11403. Purpose

The purpose of the program authorized under this part is to provide rental housing assistance, in connection with supportive services funded from sources other than this part, to homeless persons with disabilities (primarily persons who are seriously mentally ill, have chronic problems with alcohol, drugs, or both, or have acquired immunodeficiency syndrome and related diseases) and the families of such persons.

(Pub. L. 100-77, title IV, § 451, as added Pub. L. 101-625, title VIII, § 837(a), Nov. 28, 1990, 104 Stat. 4367.)

ESTABLISHMENT OF REQUIREMENTS BY NOTICE; ISSUANCE OF REGULATIONS

Section 837(b) of Pub. L. 101-625, as amended by Pub. L. 106-400, § 2, Oct. 30, 2000, 114 Stat. 1675, provided that: “Not later than 180 days after the date funds authorized under section 459 of the McKinney-Vento Homeless Assistance Act [section 11403h of this title], as amended by this section, first become available for obligation, the Secretary shall by notice establish such requirements as may be necessary to carry out the provisions of subtitle F of that Act [this part]. Such requirements shall be subject to section 553 of title 5, United States Code. The Secretary shall issue regulations based on the initial notice before the expiration of the eight-month period following the date of the notice. The Secretary shall issue regulations based on the initial notice before the expiration of the 8-month period following the date of the notice. In developing program guidelines and regulations to implement such subtitle, the Secretary of Housing and Urban Development may consult with the Secretary of Health and Human Services with respect to supportive services aspects of this subtitle [subtitle C (§§ 821-841) of title VIII of Pub. L. 101-625, see Tables for classification].”

§ 11403a. Rental housing assistance

(a) In general

The Secretary is authorized, in accordance with the provisions of this subpart, to provide rental housing assistance under subparts II, III, IV, and V of this part.

(b) Funding limitations

To the maximum extent practicable, the Secretary shall reserve not less than 50 percent of all funds provided under this part for homeless individuals who are seriously mentally ill or have chronic problems with alcohol, drugs, or both.

(Pub. L. 100-77, title IV, § 452, as added Pub. L. 101-625, title VIII, § 837(a), Nov. 28, 1990, 104 Stat. 4367; amended Pub. L. 102-550, title XIV, § 1406(g)(2), Oct. 28, 1992, 106 Stat. 4034.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102-550 substituted “IV, and V” for “and IV”.

§ 11403b. Supportive services requirements

(a) Matching funding

(1) In general

Each recipient shall be required to supplement the assistance provided under this part with an equal amount of funds for supportive services from sources other than this part. Each recipient shall certify to the Secretary its compliance with this paragraph, and shall include with the certification a description of the sources and amounts of such supplemental funds.

(2) Determination of matching amounts

In calculating the amount of supplemental funds provided under this part, a recipient may include the value of any lease on a building, any salary paid to staff to carry out the program of the recipient, and the value of the time and services contributed by volunteers to carry out the program of the recipient at a rate determined by the Secretary.

(b) Recapture

If the supportive services and funding for the supportive services required by this section are

not provided, the Secretary may recapture any unexpended housing assistance.

(Pub. L. 100-77, title IV, § 453, as added Pub. L. 101-625, title VIII, § 837(a), Nov. 28, 1990, 104 Stat. 4367.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11403c of this title.

§ 11403c. Applications

(a) In general

An application for rental housing assistance under this part shall be submitted by an applicant in such forms and in accordance with such procedures as the Secretary shall establish.

(b) Minimum contents

The Secretary shall require that an application identify the need for the assistance in the community to be served and shall contain at a minimum—

(1) a request for housing assistance under subpart II, III, IV, or V of this part, or a combination, specifying the number of units requested and the amount of necessary budget authority;

(2) a description of the size and characteristics of the population of eligible persons;

(3) an identification of the need for the program in the community to be served;

(4) the identity of the proposed service provider or providers (which may be, or include, the applicant) and a statement of the qualifications of the provider or providers;

(5) a description of the supportive services that the applicant proposes to assure will be available for eligible persons;

(6) a description of the resources that are expected to be made available to provide the supportive services required by section 11403b of this title;

(7) a description of the mechanisms for developing a housing and supportive services plan for each person and for monitoring each person's progress in meeting that plan;

(8) reasonable assurances satisfactory to the Secretary that the supportive services will be provided for the full term of the housing assistance under subpart II, III, IV, or V of this part, or a combination; and a certification from the applicant that it will fund the supportive services itself if the planned resources do not become available for any reason;

(9) a certification by the public official responsible for submitting the comprehensive housing affordability strategy under section 12705 of this title that the proposed activities are consistent with the approved housing strategy of the unit of general local government within which housing assistance under this part will be provided;

(10) a plan for—

(A) in the case of rental housing assistance under subpart II,¹ or III of this part, providing housing assistance;

(B) identifying and selecting eligible persons to participate, including a proposed def-

inition of the term “chronic problems with alcohol, other drugs, or both”;

(C) coordinating the provision of housing assistance and supportive services;

(D) ensuring that the service providers are providing supportive services adequate to meet the needs of the persons served;

(E) obtaining participation of eligible persons who have previously not been assisted under programs designed to assist the homeless or have been considered not capable of participation in these programs; this plan shall specifically address how homeless persons, as defined in section 11302(a)(2)(C) of this title, (and the families of such persons) will be brought into the program;

(11) in the case of housing assistance under subpart V of this part, identification of the specific structures that the recipient is proposing for assistance; and

(12) in the case of housing assistance under subpart IV of this part, identification of the nonprofit entity that will be the owner or lessor of the property, and identification of the specific structures in which the nonprofit entity proposes to house eligible persons.

(Pub. L. 100-77, title IV, § 454, as added Pub. L. 101-625, title VIII, § 837(a), Nov. 28, 1990, 104 Stat. 4367; amended Pub. L. 102-550, title XIV, § 1406(g)(3), Oct. 28, 1992, 106 Stat. 4034.)

AMENDMENTS

1992—Subsec. (b)(1), (8). Pub. L. 102-550, § 1406(g)(3)(A), (B), substituted “IV, or V” for “or IV”.

Subsec. (b)(10)(A). Pub. L. 102-550, § 1406(g)(3)(C), inserted “, or III” after “subpart II”.

Subsec. (b)(11). Pub. L. 102-550, § 1406(g)(3)(D), substituted “subpart V of this part” for “subpart III of this part” and “proposing for assistance” for “proposing for rehabilitation and assistance”.

§ 11403d. Selection criteria

(a) In general

The Secretary shall establish selection criteria for a national competition for assistance under this part, which shall include—

(1) the ability of the applicant to develop and operate the proposed assisted housing and supportive services program, taking into account the quality of any ongoing program of the applicant;

(2) geographic diversity among the projects to be assisted;

(3) the need for a program providing housing assistance and supportive services for eligible persons in the area to be served;

(4) the quality of the proposed program for providing supportive services and housing assistance;

(5) the extent to which the proposed funding for the supportive services is or will be available;

(6) the extent to which the project would meet the needs of the homeless persons proposed to be served by the program;

(7) the extent to which the program integrates program recipients into the community served by the program;

(8) the cost-effectiveness of the proposed program; and

¹ So in original. The comma probably should not appear.

(9) such other factors as the Secretary specifies in regulations to be appropriate for purposes of carrying out the program established by this part in an effective and efficient manner.

(b) Funding limitation

No more than 10 percent of the assistance made available under this part for any fiscal year may be used for programs located within any one unit of general local government.

(c) Participation of homeless individuals

The Secretary shall, by regulation, require each recipient to provide for the consultation and participation of not less than one homeless individual or former homeless individual on the board of directors or other equivalent policy-making entity of the recipient, to the extent that such entity considers and makes policies and decisions regarding any housing assisted under this part or services for such housing. The Secretary may grant waivers to recipients unable to meet the requirement under the preceding sentence if the recipient agrees to otherwise consult with homeless or formerly homeless individuals in considering and making such policies and decisions.

(Pub. L. 100-77, title IV, § 455, as added Pub. L. 101-625, title VIII, § 837(a), Nov. 28, 1990, 104 Stat. 4369; amended Pub. L. 102-550, title XIV, § 1406(b), Oct. 28, 1992, 106 Stat. 4030.)

AMENDMENTS

1992—Subsec. (c). Pub. L. 102-550 added subsec. (c).

§ 11403e. Required agreements

The Secretary may not approve assistance under this part unless the applicant agrees—

- (1) to operate the proposed program in accordance with the provisions of this part;
- (2) to conduct an ongoing assessment of the housing assistance and supportive services required by the participants in the program;
- (3) to assure the adequate provision of supportive services to the participants in the program;
- (4) to comply with such other terms and conditions as the Secretary may establish for purposes of carrying out the program in an effective and efficient manner; and
- (5) to the maximum extent practicable, to involve homeless individuals and families, through employment volunteer services, or otherwise, in constructing or rehabilitating housing assisted under this part and in providing services required under this part.

(Pub. L. 100-77, title IV, § 456, as added Pub. L. 101-625, title VIII, § 837(a), Nov. 28, 1990, 104 Stat. 4369; amended Pub. L. 102-550, title XIV, § 1406(c), Oct. 28, 1992, 106 Stat. 4030.)

AMENDMENTS

1992—Par. (5). Pub. L. 102-550 added par. (5).

§ 11403e-1. Housing standards and rent reasonableness

(a) Standards required

The Secretary shall require that—

- (1) before any assistance may be provided to or on behalf of the person, each unit shall be

inspected by the applicant directly or by another entity, including the local public housing agency, to determine that the unit meets the housing quality standards under section 1437f of this title and that the occupancy charge for the dwelling unit is reasonable; and

- (2) the recipient shall make at least annual inspections of each unit during the contract term.

(b) Prohibition

No assistance may be provided for a dwelling unit (1) for which the occupancy charge is not reasonable, or (2) which fails to meet the housing standards, unless the owner promptly corrects the deficiency and the recipient verifies the correction.

(Pub. L. 100-77, title IV, § 457, formerly § 464, as added Pub. L. 101-625, title VIII, § 837(a), Nov. 28, 1990, 104 Stat. 4371; renumbered § 457 and amended Pub. L. 102-550, title XIV, § 1406(e)(4), Oct. 28, 1992, 106 Stat. 4031.)

CODIFICATION

Section was formerly classified to section 11404c of this title prior to renumbering by Pub. L. 102-550.

AMENDMENTS

1992—Subsec. (a)(1). Pub. L. 102-550 struck out “(or if no such agency exists in the applicable area, an entity selected by the Secretary)” after “public housing agency”.

§ 11403e-2. Tenant rent

Each tenant shall pay as rent an amount determined in accordance with the provisions of section 1437a(a)(1) of this title.

(Pub. L. 100-77, title IV, § 458, formerly § 465, as added Pub. L. 101-625, title VIII, § 837(a), Nov. 28, 1990, 104 Stat. 4372; renumbered § 458, Pub. L. 102-550, title XIV, § 1406(e)(5), Oct. 28, 1992, 106 Stat. 4031.)

CODIFICATION

Section was formerly classified to section 11404d of this title prior to renumbering by Pub. L. 102-550.

§ 11403e-3. Administrative fees

From amounts made available under appropriations Acts, the Secretary shall make amounts available to pay the entity administering the housing assistance an administrative fee in an amount determined appropriate by the Secretary for the costs of administering the housing assistance.

(Pub. L. 100-77, title IV, § 459, formerly § 466, as added Pub. L. 101-625, title VIII, § 837(a), Nov. 28, 1990, 104 Stat. 4372; renumbered § 459, Pub. L. 102-550, title XIV, § 1406(e)(5), Oct. 28, 1992, 106 Stat. 4031.)

CODIFICATION

Section was formerly classified to section 11404e of this title prior to renumbering by Pub. L. 102-550.

§ 11403e-4. Occupancy

(a) Occupancy agreement

The occupancy agreement between a tenant and an owner of a dwelling unit assisted under this part shall be for at least one month.

(b) Vacancy payments

If an eligible person vacates a dwelling unit assisted under this part before the expiration of the occupancy agreement, no assistance payment may be made with respect to the unit after the month that follows the month during which the unit was vacated, unless it is occupied by another eligible person.

(Pub. L. 100-77, title IV, § 460, as added Pub. L. 102-550, title XIV, § 1406(e)(6), Oct. 28, 1992, 106 Stat. 4031.)

§ 11403f. Termination of assistance**(a) Authority**

If an eligible individual who receives assistance under this part violates program requirements, the recipient may terminate assistance in accordance with the process established pursuant to subsection (b) of this section.

(b) Procedure

In terminating assistance under this section, the recipient shall provide a formal process that recognizes the rights of individuals receiving such assistance to due process of law.

(Pub. L. 100-77, title IV, § 461, formerly § 457, as added Pub. L. 101-625, title VIII, § 837(a), Nov. 28, 1990, 104 Stat. 4369; renumbered § 461, Pub. L. 102-550, title XIV, § 1406(e)(1), Oct. 28, 1992, 106 Stat. 4031.)

PRIOR PROVISIONS

A prior section 461 of Pub. L. 100-77 was classified to section 11404 of this title prior to repeal by Pub. L. 102-550.

§ 11403g. Definitions

For purposes of this part:

(1) The term “acquired immunodeficiency syndrome and related diseases” has the meaning given such term in section 12902 of this title.

(2) The term “applicant” means a State, unit of general local government or public housing agency.

(3) The term “eligible person” means a homeless person with disabilities (primarily persons who are seriously mentally ill, have chronic problems with alcohol, drugs, or both, or have acquired immunodeficiency syndrome and related diseases) and the family of such a person.

(4) Repealed. Pub. L. 104-330, title V, § 506(a)(9)(B), Oct. 26, 1996, 110 Stat. 4045.

(5) The term “nonprofit organization” has the meaning given such term by section 12704 of this title, and includes community mental health centers established as public nonprofit organizations.

(6) The term “person with disabilities” has the same meaning given the term in section 8013 of this title.

(7) The term “public housing agency” has the meaning given such term in section 1437a(b)(6) of this title.

(8) The term “recipient” means an applicant approved for participation in the program authorized under this part.

(9) The term “Secretary” means the Secretary of Housing and Urban Development.

(10) The term “seriously mentally ill” means having a severe and persistent mental or emotional impairment that seriously limits a person’s ability to live independently.

(11) The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

(12) The term “supportive services” means assistance that the Secretary determines (A) addresses the special needs of eligible persons; and (B) provides appropriate services or assists such persons in obtaining appropriate services, including health care, mental health services, substance and alcohol abuse services, child care services, case management services, counseling, supervision, education, job training, and other services essential for achieving and maintaining independent living. Inpatient acute hospital care shall not qualify as a supportive service.

(13) The term “unit of general local government” has the meaning given such term in section 5302 of this title.

(Pub. L. 100-77, title IV, § 462, formerly § 458, as added Pub. L. 101-625, title VIII, § 837(a), Nov. 28, 1990, 104 Stat. 4369; renumbered § 462 and amended Pub. L. 102-550, title XIV, § 1406(e)(2), Oct. 28, 1992, 106 Stat. 4031; Pub. L. 104-330, title V, § 506(a)(9), Oct. 26, 1996, 110 Stat. 4045.)

PRIOR PROVISIONS

A prior section 462 of Pub. L. 100-77 was renumbered section 472 and is classified to section 11404a of this title.

AMENDMENTS

1996—Par. (2). Pub. L. 104-330, § 506(a)(9)(A), struck out “, Indian tribe,” after “local government”.

Par. (4). Pub. L. 104-330, § 506(a)(9)(B), struck out par. (4) which read as follows: “The term ‘Indian tribe’ has the meaning given such term in section 5302 of this title.”

1992—Par. (2). Pub. L. 102-550, § 1406(e)(2)(A), added par. (2) and struck out former par. (2) which read as follows: “The term ‘applicant’ means—

“(A) in the case of rental housing assistance under subparts II and IV of this part, a State, unit of general local government, or Indian tribe; and

“(B) in the case of single room occupancy housing under the section 8 moderate rehabilitation program under subpart III of this part (i) a State, unit of general local government, or Indian tribe (that shall be responsible for assuring the provision of supportive services and the overall administration of the program), and (ii) a public housing agency (that shall be primarily responsible for administering the housing assistance under subpart III of this part).”

Par. (5). Pub. L. 102-550, § 1406(e)(2)(B), inserted before period at end “, and includes community mental health centers established as public nonprofit organizations”.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as an Effective Date note under section 4101 of Title 25, Indians.

Amendment by Pub. L. 104-330 applicable with respect to amounts made available for assistance under this subchapter for fiscal year 1998 and fiscal years thereafter, see section 506(c) of Pub. L. 104-330, set out as a note under section 11371 of this title.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 11403h. Authorization of appropriations

(a) In general

For purposes of the housing programs under this part, there are authorized to be appropriated \$266,550,000 for fiscal year 1993 and \$277,745,100 for fiscal year 1994. Of any amount appropriated in any fiscal year to carry out this part—

- (1) not less than 10 percent shall be available only for carrying out subpart II of this part;
- (2) not less than 10 percent shall be available only for carrying out subpart III of this part;
- (3) not less than 10 percent shall be available only for carrying out subpart IV of this part; and
- (4) not less than 10 percent shall be available only for carrying out subpart V of this part.

(b) Availability

Sums appropriated under this section shall remain available until expended.

(Pub. L. 100-77, title IV, §463, formerly §459, as added Pub. L. 101-625, title VIII, §837(a), Nov. 28, 1990, 104 Stat. 4370; renumbered §463 and amended Pub. L. 102-550, title XIV, §1406(a), (e)(3), Oct. 28, 1992, 106 Stat. 4029, 4031.)

PRIOR PROVISIONS

A prior section 463 of Pub. L. 100-77 was renumbered section 473 and is classified to section 11404b of this title.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102-550, §1406(a)(1), added subsec. (a) and struck out former subsec. (a) which authorized appropriations for subpart II of this part for fiscal years 1991 and 1992.

Subsecs. (b) to (d). Pub. L. 102-550, §1406(a)(2), (3), redesignated subsec. (d) as (b) and struck out former subsec. (b) which increased budget authority for the program under subpart III of this part for fiscal years 1991 and 1992 and former subsec. (c) which authorized appropriations for subpart IV of this part for fiscal years 1991 and 1992.

TRANSITIONAL PROVISIONS; AVAILABILITY OF APPROPRIATIONS

Section 837(c) of Pub. L. 101-625, as amended by Pub. L. 102-27, title II, Apr. 10, 1991, 105 Stat. 151, provided that amounts appropriated for use under part D of this subchapter as it existed before Nov. 28, 1990, were to be available for use under this part.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11404, 11405, 11406, 11407, 11407b of this title.

SUBPART II—TENANT-BASED RENTAL ASSISTANCE

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in sections 11403a, 11403c, 11403h of this title.

§ 11404. Authority

The Secretary may use amounts made available under section 11403h of this title to provide tenant-based rental housing assistance for eligible persons in accordance with this subpart.

(Pub. L. 100-77, title IV, §471, as added Pub. L. 102-550, title XIV, §1406(d)(3), Oct. 28, 1992, 106 Stat. 4030.)

PRIOR PROVISIONS

A prior section 11404, Pub. L. 100-77, title IV, §461, as added Pub. L. 101-625, title VIII, §837(a), Nov. 28, 1990, 104 Stat. 4371, authorized use of appropriations for provision of rental housing assistance to homeless in accordance with shelter plus care program, prior to repeal by Pub. L. 102-550, title XIV, §1406(d)(3), Oct. 28, 1992, 106 Stat. 4030.

A prior section 471 of Pub. L. 100-77 was classified to section 11405 of this title prior to repeal by Pub. L. 102-550.

§ 11404a. Housing assistance

An eligible person on behalf of whom assistance is provided under this subpart shall select the unit in which such person will live using rental assistance under this subpart; except that where necessary to assure that the provision of supportive services to persons is feasible, a recipient may require that a person participating in the program live (1) in a particular structure or unit for up to the first year of participation, and (2) within a particular geographic area for the full period of participation or the period remaining after the period referred to in paragraph¹ (1).

(Pub. L. 100-77, title IV, §472, formerly §462, as added Pub. L. 101-625, title VIII, §837(a), Nov. 28, 1990, 104 Stat. 4371; renumbered §472 and amended Pub. L. 102-550, title XIV, §1406(d)(4), Oct. 28, 1992, 106 Stat. 4031.)

PRIOR PROVISIONS

A prior section 472 of Pub. L. 100-77 was classified to section 11405a of this title prior to repeal by Pub. L. 102-550.

AMENDMENTS

1992—Pub. L. 102-550 substituted “An eligible person on behalf of whom assistance is provided under this subpart shall select the unit in which such person will live using rental assistance under this subpart; except that where” for “Where”.

§ 11404b. Amount of assistance

The contract with a recipient for assistance under this subpart shall be for a term of 5 years. Each contract shall provide that the recipient shall receive aggregate amounts not to exceed the appropriate existing housing fair market rent limitation under section 1437f(c) of this title in effect at the time the application is approved. At the option of the recipient and subject to the availability of such amounts, the recipient may receive in any year (1) up to 25 percent of such amounts or (2) such higher percentage as the Secretary may approve upon a demonstration satisfactory to the Secretary that the recipient has entered into firm financial commitments to ensure that the housing assistance described in the application will be provided for the full term of the contract. Any amounts not needed for a year may be used to increase the amount available in subsequent years.

(Pub. L. 100-77, title IV, §473, formerly §463, as added Pub. L. 101-625, title VIII, §837(a), Nov. 28,

¹ So in original. Probably should be “clause”.

1990, 104 Stat. 4371; renumbered § 473 and amended Pub. L. 102-550, title XIV, § 1406(d)(5), Oct. 28, 1992, 106 Stat. 4031.)

PRIOR PROVISIONS

A prior section 473 of Pub. L. 100-77 was classified to section 11405b of this title prior to repeal by Pub. L. 102-550.

AMENDMENTS

1992—Pub. L. 102-550 struck out at end “Each recipient shall ensure that the assistance provided by the Secretary, and any amounts provided from other sources, are managed so that the housing assistance described in the application is provided for the full term of the assistance.”

§§ 11404c to 11404e. Transferred

CODIFICATION

Section 11404c, Pub. L. 100-77, title IV, § 464, as added Pub. L. 101-625, title VIII, § 837(a), Nov. 28, 1990, 104 Stat. 4371, which provided for housing standards and rent reasonableness, was renumbered section 457 of Pub. L. 100-77 and amended by Pub. L. 102-550, title XIV, § 1406(e)(4), Oct. 28, 1992, 106 Stat. 4031, and transferred to section 11403e-1 of this title.

Section 11404d, Pub. L. 100-77, title IV, § 465, as added Pub. L. 101-625, title VIII, § 837(a), Nov. 28, 1990, 104 Stat. 4372, which provided for payment of rent by tenants, was renumbered section 458 of Pub. L. 100-77 by Pub. L. 102-550, title XIV, § 1406(e)(5), Oct. 28, 1992, 106 Stat. 4031, and transferred to section 11403e-2 of this title.

Section 11404e, Pub. L. 100-77, title IV, § 466, as added Pub. L. 101-625, title VIII, § 837(a), Nov. 28, 1990, 104 Stat. 4372, which provided for payment of administrative fees, was renumbered section 459 of Pub. L. 100-77 by Pub. L. 102-550, title XIV, § 1406(e)(5), Oct. 28, 1992, 106 Stat. 4031, and transferred to section 11403e-3 of this title.

SUBPART III—PROJECT-BASED RENTAL ASSISTANCE

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in sections 11403a, 11403c, 11403h of this title.

§ 11405. Authority

The Secretary may use amounts made available under section 11403h of this title to provide project-based rental housing assistance for eligible persons in accordance with this subpart.

(Pub. L. 100-77, title IV, § 476, as added Pub. L. 102-550, title XIV, § 1406(f), Oct. 28, 1992, 106 Stat. 4032.)

PRIOR PROVISIONS

A prior section 11405, Pub. L. 100-77, title IV, § 471, as added Pub. L. 101-625, title VIII, § 837(a), Nov. 28, 1990, 104 Stat. 4372, authorized use of appropriations in connection with moderate rehabilitation of single room occupancy housing, prior to repeal by Pub. L. 102-550, § 1406(d)(2).

§ 11405a. Housing assistance

Assistance under this subpart shall be provided pursuant to a contract between the recipient and an owner of an existing structure. The contract shall provide that rental assistance payments shall be made to the owner and that the units in the structure shall be occupied by eligible persons for not less than the term of the contract.

(Pub. L. 100-77, title IV, § 477, as added Pub. L. 102-550, title XIV, § 1406(f), Oct. 28, 1992, 106 Stat. 4032.)

PRIOR PROVISIONS

A prior section 11405a, Pub. L. 100-77, title IV, § 472, as added Pub. L. 101-625, title VIII, § 837(a), Nov. 28, 1990, 104 Stat. 4372, related to fire and safety improvements in connection with contracts for housing assistance payments, prior to repeal by Pub. L. 102-550, § 1406(d)(2).

§ 11405b. Term of contract and amount of assistance

(a) Term of contract

Each contract with a recipient for assistance under this subpart shall be for a term of 5 years, and the owner shall have an option to renew the assistance for an additional 5-year term, subject to the availability of amounts provided in appropriation Acts; except that if an expenditure of at least \$3,000 for each unit (including its prorated share of work on common areas or systems) is required to make the structure decent, safe, and sanitary, and the owner agrees to carry out the rehabilitation with resources other than assistance under this part within 12 months of notification of grant approval, the contract shall be for a term of 10 years.

(b) Amount of assistance

Each contract shall provide that the recipient shall receive aggregate amounts not to exceed the appropriate existing housing fair market rental under section 1437f(c)(1) of this title in effect at the time the application is approved. Any amounts not needed for a year may be used to increase the amount available in subsequent years.

(Pub. L. 100-77, title IV, § 478, as added Pub. L. 102-550, title XIV, § 1406(f), Oct. 28, 1992, 106 Stat. 4032.)

PRIOR PROVISIONS

Prior sections 11405b and 11405c were repealed by Pub. L. 102-550, title XIV, § 1406(d)(2), Oct. 28, 1992, 106 Stat. 4030.

Section 11405b, Pub. L. 100-77, title IV, § 473, as added Pub. L. 101-625, title VIII, § 837(a), Nov. 28, 1990, 104 Stat. 4372, listed provisions to be contained in contracts entered into by Secretary with public housing agencies under shelter plus care program.

Section 11405c, Pub. L. 100-77, title IV, § 474, as added Pub. L. 101-625, title VIII, § 837(a), Nov. 28, 1990, 104 Stat. 4373, related to term of occupancy agreements and issuance of vacancy payments under shelter plus care program.

SUBPART IV—SPONSOR-BASED RENTAL ASSISTANCE

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in sections 11403a, 11403c, 11403h of this title.

§ 11406. Authority

The Secretary may use amounts made available under section 11403h of this title to provide sponsor-based rental assistance for eligible persons in accordance with this subpart.

(Pub. L. 100-77, title IV, § 481, as added Pub. L. 102-550, title XIV, § 1406(f), Oct. 28, 1992, 106 Stat. 4032.)

PRIOR PROVISIONS

A prior section 11406, Pub. L. 100-77, title IV, § 481, as added Pub. L. 101-625, title VIII, § 837(a), Nov. 28, 1990, 104 Stat. 4373, authorized use of appropriations in con-

nection with provision of rental housing assistance under section 1701q of Title 12, Banks and Banking, prior to repeal by Pub. L. 102-550, §1406(d)(2).

§ 11406a. Housing assistance

Assistance under this subpart shall be provided pursuant to a contract between the recipient and a private nonprofit sponsor that owns or leases dwelling units. The contract shall provide that rental assistance payments shall be made to the sponsor and that such assisted units shall be occupied by eligible persons.

(Pub. L. 100-77, title IV, §482, as added Pub. L. 102-550, title XIV, §1406(f), Oct. 28, 1992, 106 Stat. 4032.)

PRIOR PROVISIONS

A prior section 11406a, Pub. L. 100-77, title IV, §482, as added Pub. L. 101-625, title VIII, §837(a), Nov. 28, 1990, 104 Stat. 4373, related to amount of rental housing assistance to be provided under shelter plus care program in connection with section 1701q of Title 12, Banks and Banking, prior to repeal by Pub. L. 102-550, §1406(d)(2).

§ 11406b. Term of contract and amount of assistance

(a) Term of contract

The contract with a recipient of assistance under this subpart shall be for a term of 5 years.

(b) Amount of assistance

Each contract shall provide that the recipient shall receive aggregate amounts not to exceed the appropriate existing housing fair market rental under section 1437f(c)(1) of this title in effect at the time the application is approved. Any amounts not needed for a year may be used to increase the amount available in subsequent years.

(Pub. L. 100-77, title IV, §483, as added Pub. L. 102-550, title XIV, §1406(f), Oct. 28, 1992, 106 Stat. 4033.)

PRIOR PROVISIONS

Prior sections 11406b and 11406c were repealed by Pub. L. 102-550, title XIV, §1406(d)(2), Oct. 28, 1992, 106 Stat. 4030.

Section 11406b, Pub. L. 100-77, title IV, §483, as added Pub. L. 101-625, title VIII, §837(a), Nov. 28, 1990, 104 Stat. 4373, required that certain housing standards be maintained and reasonable rent be charged prior to provision of rental housing assistance under shelter plus care program.

Section 11406c, Pub. L. 100-77, title IV, §484, as added Pub. L. 101-625, title VIII, §837(a), Nov. 28, 1990, 104 Stat. 4373, related to payment of administrative fees to nonprofit entities for costs of administering rental housing assistance under shelter plus care program.

SUBPART V—SECTION 1437f MODERATE REHABILITATION ASSISTANCE FOR SINGLE-ROOM OCCUPANCY DWELLINGS

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in sections 11403a, 11403c, 11403h of this title.

§ 11407. Authority

The Secretary may use amounts made available under section 11403h of this title in connection with the moderate rehabilitation of single room occupancy housing described in section

1437f(n)¹ of this title for occupancy by eligible persons in accordance with this subpart. Amounts available under section 11403h of this title may be used in connection with the moderate rehabilitation of efficiency units if the building owner agrees to pay the additional cost of rehabilitating and operating the efficiency units.

(Pub. L. 100-77, title IV, §486, as added Pub. L. 102-550, title XIV, §1406(f), Oct. 28, 1992, 106 Stat. 4033.)

REFERENCES IN TEXT

Section 1437f(n) of this title, referred to in text, was repealed by Pub. L. 105-276, title V, §550(a)(7), Oct. 21, 1998, 112 Stat. 2609.

§ 11407a. Fire and safety improvements

Each contract for housing assistance payments entered into under this subpart shall require the installation of a sprinkler system that protects all major spaces, hard-wired smoke detectors, and any other fire safety improvements as may be required by State or local law. For purposes of this section, the term “major spaces” means hallways, large common areas, and other areas specified in local fire, building, or safety codes.

(Pub. L. 100-77, title IV, §487, as added Pub. L. 102-550, title XIV, §1406(f), Oct. 28, 1992, 106 Stat. 4033.)

§ 11407b. Contract requirements

Each contract for annual contributions entered into by the Secretary with a public housing agency to obligate the authority made available under section 11403h of this title for use under this subpart shall—

(1) commit the Secretary to make the authority available to the public housing agency for an aggregate period of 10 years, and require that any amendments increasing the authority shall be available for the remainder of such 10-year period;

(2) provide the Secretary with the option to renew the contract for an additional period of 10 years, subject to the availability of authority; and

(3) provide that, notwithstanding any other provision of law, first priority for occupancy of housing rehabilitated under this subpart shall be given to homeless persons.

(Pub. L. 100-77, title IV, §488, as added Pub. L. 102-550, title XIV, §1406(f), Oct. 28, 1992, 106 Stat. 4033.)

PART G—RURAL HOMELESS HOUSING ASSISTANCE

§ 11408. Rural homelessness grant program

(a) Establishment

The Secretary of Housing and Urban Development shall establish and carry out a rural homelessness grant program. In carrying out the program, the Secretary may award grants to eligible organizations in order to pay for the Federal share of the cost of—

(1) assisting programs providing direct emergency assistance to homeless individuals and families;

¹ See References in Text note below.

(2) providing homelessness prevention assistance to individuals and families at risk of becoming homeless; and

(3) assisting individuals and families in obtaining access to permanent housing and supportive services.

(b) Use of funds

(1) In general

An eligible organization may use a grant awarded under subsection (a) of this section to provide, in rural areas—

(A) rent, mortgage, or utility assistance after 2 months of nonpayment in order to prevent eviction, foreclosure, or loss of utility service;

(B) security deposits, rent for the first month of residence at a new location, and relocation assistance;

(C) short-term emergency lodging in motels or shelters, either directly or through vouchers;

(D) transitional housing;

(E) rehabilitation and repairs such as insulation, window repair, door repair, roof repair, and repairs that are necessary to make premises habitable;

(F) development of comprehensive and coordinated support services that use and supplement, as needed, community networks of services, including—

(i) outreach services to reach eligible recipients;

(ii) case management;

(iii) housing counseling;

(iv) budgeting;

(v) job training and placement;

(vi) primary health care;

(vii) mental health services;

(viii) substance abuse treatment;

(ix) child care;

(x) transportation;

(xi) emergency food and clothing;

(xii) family violence services;

(xiii) education services;

(xiv) moving services;

(xv) entitlement assistance; and

(xvi) referrals to veterans services and legal services; and

(G) costs associated with making use of Federal inventory property programs to house homeless families, including the program established under subchapter V of this chapter and the Single Family Property Disposition Program established pursuant to section 1710(g) of title 12.

(2) Capacity building activities

Not more than 20 percent of the funds appropriated under subsection (l)(1) of this section for a fiscal year may be used by eligible organizations for capacity building activities, including payment of operating costs and staff retention.

(c) Award of grants

(1) Communities with populations of less than 10,000

(A) Set aside

In awarding grants under subsection (a) of this section for a fiscal year, the Secretary

shall make available not less than 50 percent of the funds appropriated under subsection (l)(1) of this section for the fiscal year for grants to eligible organizations serving communities that have populations of less than 10,000.

(B) Priority within set aside

In awarding grants in accordance with subparagraph (A), the Secretary shall give priority to eligible organizations serving communities with populations of less than 5,000.

(2) Communities without significant Federal assistance

In awarding grants under subsection (a) of this section, including grants awarded in accordance with paragraph (1), the Secretary shall give priority to eligible organizations serving communities not currently receiving significant Federal assistance under this chapter.

(3) State limit

In awarding grants under subsection (a) of this section for a fiscal year, the Secretary shall not award to eligible organizations within a State an aggregate sum of more than 10 percent of the funds appropriated under subsection (l)(1) of this section, for the fiscal year.

(d) Application

In order to be eligible to receive a grant under subsection (a) of this section, an organization shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require. The application shall include, at a minimum—

(1) a description of the target population and geographic area to be served;

(2) a description of the types of assistance to be provided;

(3) an assurance that the assistance to be provided is closely related to the identified needs of the target population;

(4) a description of the existing assistance available to the target population, including Federal, State, and local programs, and a description of the manner in which the organization will coordinate with and expand existing assistance or provide assistance not available in the immediate area;

(5) an agreement by the organization that the organization will collect data on the projects conducted by the organization, including assistance provided, number and characteristics of persons served, and causes of homelessness for persons served; and

(6) an agreement by the organization that, to the maximum extent practicable, the organization will involve homeless individuals and families through employment, volunteer services, and otherwise, in providing, operating, and rehabilitating housing assisted under this section and in providing services assisted under this section and services for occupants of housing assisted under this section.

(e) Eligible organizations

Organizations eligible to receive a grant under subsection (a) of this section shall include private nonprofit entities and county and local governments.

(f) Federal share**(1) In general**

The Federal share of the costs of providing assistance under this section shall be 75 percent.

(2) Non-Federal share

The non-Federal share of the cost of providing the assistance shall be in cash or in kind, fairly evaluated, including plant, equipment, staff services, or services delivered by volunteers.

(g) Participation of homeless individuals

The Secretary shall, by regulation, require each eligible organization receiving a grant under this section to provide for the participation of not less than 1 homeless individual or former homeless individual on the board of directors or other equivalent policy making entity of the recipient, to the extent that such entity considers and makes policies and decisions regarding any housing, services, or other assistance of the eligible organization receiving the grant under this section. The Secretary may grant waivers to recipients unable to meet the requirement under the preceding sentence if the recipient agrees to otherwise consult with homeless or formerly homeless individuals in considering and making such policies and decisions.

(h) Evaluation**(1) In general**

The Secretary shall conduct an evaluation of the program to—

- (A) determine the effectiveness of the program in providing housing and other assistance to homeless persons in the area served; and
- (B) determine the types of assistance needed to address homelessness in rural areas.

(2) Report

The Secretary shall submit to Congress, not later than 18 months after the date on which the Secretary first makes grants under the program, the evaluation of the program conducted under paragraph (1), including recommendations for any Federal administrative or legislative changes that may be necessary to improve the ability of rural communities to prevent and respond to homelessness.

(i) Technical assistance

The Secretary shall provide technical assistance to eligible organizations in developing programs in accordance with this section, and in gaining access to other Federal resources that may be used to assist homeless persons in rural areas. Such assistance may be provided through regional workshops, and may be provided directly or through grants to, or contracts with, nongovernmental entities.

(j) Termination of assistance

If an individual or family who receives assistance under this section violates requirements of the assistance program provided by the organization receiving a grant under this section, the organization may terminate assistance in accordance with a formal process established by

the organization that recognizes the rights of individuals receiving such assistance to due process of law, which may include a hearing.

(k) Definitions

For purposes of this section:

(1) Program

The term “program” means the rural homelessness grant program established under this section.

(2) Rural area; rural community

The terms “rural area” and “rural community” mean—

- (A) any area or community, respectively, no part of which is within an area designated as a standard metropolitan statistical area by the Office of Management and Budget; or
- (B) any area or community, respectively, that is—
 - (i) within an area designated as a metropolitan statistical area or considered as part of a metropolitan statistical area; and
 - (ii) located in a rural census tract.

(3) Secretary

The term “Secretary” means the Secretary of Housing and Urban Development.

(l) Authorization of appropriations**(1) In general**

There are authorized to be appropriated to carry out this section \$30,000,000 for fiscal year 1993 and \$31,260,000 for fiscal year 1994.

(2) Availability

Any amount paid to a grant recipient for a fiscal year that remains unobligated at the end of the year shall remain available to the recipient for the purposes for which the payment was made for the next fiscal year. The Secretary shall take such action as may be necessary to recover any amount not obligated by the recipient at the end of the second fiscal year, and shall redistribute the amount to another eligible organization.

(Pub. L. 100-77, title IV, § 491, as added Pub. L. 102-550, title XIV, § 1408, Oct. 28, 1992, 106 Stat. 4035; amended Pub. L. 104-330, title V, § 506(a)(10), Oct. 26, 1996, 110 Stat. 4045.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (c)(2), was in the original “this Act”, meaning Pub. L. 100-77, July 22, 1987, 101 Stat. 482, as amended, known as the McKinney-Vento Homeless Assistance Act. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of this title and Tables.

AMENDMENTS

1996—Subsec. (e). Pub. L. 104-330 struck out “, Indian tribes (as such term is defined in section 5302(a) of this title),” after “nonprofit entities”.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as an Effective Date note under section 4101 of Title 25, Indians.

Amendment by Pub. L. 104-330 applicable with respect to amounts made available for assistance under this subchapter for fiscal year 1998 and fiscal years thereafter, see section 506(c) of Pub. L. 104-330, set out as a note under section 11371 of this title.

§ 11408a. Use of FMHA inventory for transitional housing for homeless persons and for turnkey housing

(a) In general

The Secretary of Agriculture (in this section referred to as the “Secretary”) shall, on a priority basis, lease or sell program and nonprogram inventory properties held by the Secretary under title V of the Housing Act of 1949 [42 U.S.C. 1471 et seq.]—

- (1) to provide transitional housing; and
- (2) to provide turnkey housing for tenants of such transitional housing and for eligible families.

(b) Priority

The priority uses of inventory property under this section shall not have a higher priority than—

- (1) the disposition of such property by sale to eligible families; or
- (2) the disposition of such property by transfer for use as rental housing by eligible families.

(c) Transitional housing

(1) Leases authorized

The Secretary shall lease inventory properties to public agencies and nonprofit organizations to provide transitional housing for homeless families and individuals and to provide such agencies the option to provide turnkey housing opportunities for homeless persons and other inadequately housed families.

(2) Rental to eligible families

A public agency or nonprofit organization may rent housing leased to it under paragraph (1) to a family for up to 10 years and may, during that period, assist the tenant in obtaining a loan and credit assistance under title V of the Housing Act of 1949 [42 U.S.C. 1471 et seq.] to purchase the housing from the Secretary.

(d) Lease procedures

(1) Identification of property

Upon receipt by the Secretary of written notification from a public agency or nonprofit organization that it proposes to lease a property for the purpose of providing transitional housing or for the purpose of providing transitional housing and turnkey housing opportunities, the Secretary shall—

- (A) withdraw the property from the market for not more than 30 days for the purpose of negotiations under subparagraph (B);
- (B) negotiate a lease agreement with the organization or agency; and
- (C) if a lease is agreed to, commence the repairs necessary to make the property meet standards for decent, safe, and sanitary housing.

(2) Lease terms

A lease of inventory property under this section shall—

- (A) be for a period of not more than 10 years;
- (B) provide for the payment of \$1 for the 10-year lease; and
- (C) provide the nonprofit organization or public agency—

(i) the right to use the property for transitional housing; and

(ii) the option to arrange for the sale of the property to an eligible purchaser.

(e) Purchase procedures

(1) Identification of property

Upon receipt by the Secretary of written notification from a public agency or nonprofit organization that it proposes to purchase a property for the purpose of providing transitional housing or for the purpose of providing transitional housing and turnkey housing opportunities, the Secretary shall—

- (A) withdraw the property from the market for not more than 30 days for the purpose of negotiations under subparagraph (B);
- (B) negotiate a purchase agreement with the organization or agency; and
- (C) if a purchase agreement is agreed to, commence the repairs necessary to make the property meet standards for decent, safe, and sanitary housing.

(2) Purchase terms

A purchase of inventory property under this section shall provide for a purchase price equal to not more than the fair market value of the property minus 10 percent.

(f) Employment of homeless individuals

A public agency or nonprofit organization may lease or purchase property under this section only if the agency or organization, to the maximum extent practicable, involves homeless individuals and families, through employment, volunteer services, or otherwise, in maintaining, operating, and renovating any properties leased or acquired under this section and in providing any services for occupants of properties assisted under this section.

(g) Participation of homeless individuals

(1) In general

The Secretary shall, by regulation, require each public agency and nonprofit organization leasing or purchasing property under this section to provide for the participation of not less than 1 homeless individual or former homeless individual on the board of directors or other equivalent policy making entity of such agency or organization, to the extent that such organization or applicant considers and makes policies and decisions regarding any property acquired under this section.

(2) Waiver

The Secretary may grant a waiver to a public agency or nonprofit organization that is unable to meet the requirement of paragraph (1), if the agency or organization agrees to otherwise consult with homeless or formerly homeless individuals in considering and making such policies and decisions.

(h) Budget compliance

The authority provided to the Secretary under this section shall be effective only to the extent approved in advance in appropriations Acts.

(Pub. L. 100–77, title IV, §592[492], as added Pub. L. 102–550, title XIV, §1414, Oct. 28, 1992, 106 Stat. 4041.)

REFERENCES IN TEXT

The Housing Act of 1949, referred to in subsecs. (a) and (c)(2), is act July 15, 1949, ch. 338, 63 Stat. 413, as amended. Title V of the Act is classified generally to subchapter III (§1471 et seq.) of chapter 8A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1441 of this title and Tables.

SUBCHAPTER V—IDENTIFICATION AND USE OF SURPLUS FEDERAL PROPERTY

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 11408 of this title; title 10 sections 2814, 2854a.

§ 11411. Use of unutilized and underutilized public buildings and real property to assist the homeless

(a) Identification of suitable property

The Secretary of Housing and Urban Development shall, on a quarterly basis, request information from each landholding agency regarding Federal public buildings and other Federal real properties (including fixtures) that are excess property or surplus property or that are described as unutilized or underutilized in surveys by the heads of landholding agencies under section 524(a)(2) and (3) of title 40. No later than 25 days after receiving a request from the Secretary, the head of each landholding agency shall transmit such information to the Secretary. No later than 30 days after receiving such information, the Secretary shall identify which of those buildings and other properties are suitable for use to assist the homeless.

(b) Availability of property

(1) The Secretary shall promptly notify each Federal agency with respect to any property of that agency that the Secretary has identified under subsection (a) of this section. No later than 45 days after receipt of such a notice, the head of the appropriate landholding agency shall transmit to the Secretary the agency's response to property identifications contained in such notification, which shall include—

(A) in the case of unutilized or underutilized property—

(i) a statement of intention to determine the property excess to the agency's needs;

(ii) a statement of intention to make the property available for use to assist the homeless; or

(iii) a statement of the reasons (including a full explanation of the need) the property cannot be determined excess to the agency's needs or made available for use to assist the homeless; and

(B) in the case of excess property—

(i) a statement that there is no other compelling Federal need for the property and, therefore, the property will be determined surplus; or

(ii) a statement that there is further and compelling Federal need for the property (including a full explanation of such need) and that, therefore, the property is not presently available for use to assist the homeless.

(2)(A) All properties identified by the Secretary under subsection (a) of this section shall be available for application—

(i) in the case of property other than surplus property, for use to assist the homeless in accordance with the provisions of this section; and

(ii) in the case of surplus property, for use to assist the homeless either in accordance with this section or as a public health use in accordance with section 550(a)–(d) of title 40.

(3) The Secretary shall maintain a written public record of—

(A) the identification of buildings and other properties by the Secretary under this subsection and the reasons for such identifications; and

(B) the responses of landholding agencies to such identifications.

(c) Publication of properties

(1)(A) No later than 15 days after the last day of the 45-day period provided for under subsection (b)(1) of this section, the Secretary shall publish in the Federal Register—

(i) a list of all properties reviewed by the Secretary under subsection (a) of this section; and

(ii) a list of all properties that are available under subsection (b)(2) of this section for application for use to assist the homeless.

(B) Each publication of properties shall include a description and the location of each property (including the address and zip code) and the current classification of each property as unutilized, underutilized, excess property, or surplus property.

(C) The Secretary shall make available to the public upon request all information in the possession of the Department of Housing and Urban Development (other than valuation information), regardless of format, about all properties reviewed and not identified as being suitable for use to assist the homeless, including the reasons such properties were not so identified.

(D) The Secretary shall publish separately, on an annual basis, all properties identified as being suitable for use to assist the homeless, but reported to be unavailable, and the reasons such properties were unavailable.

(2)(A) No later than 15 days after the last day of the 45-day period provided for under subsection (b)(1) of this section, the Secretary shall transmit a copy of the list of available properties published under paragraph (1)(A)(ii) to the Interagency Council on the Homeless. The Council shall immediately distribute to all State and regional homeless coordinators area-relevant portions of the list.

(B) The Secretary, the Administrator, and the Secretary of Health and Human Services shall make such efforts as are necessary to ensure the widest possible dissemination of the information on such list.

(C) The Secretary shall establish a toll-free number to provide the public with specific information about properties on such list.

(3) The Secretary shall make available to the public upon request all information (other than valuation information) regardless of format in the possession of the Department of Housing and Urban Development about the properties published under paragraph (1)(A), including environ-

mental assessment data. The Secretary shall maintain a current list of agency contacts for making referrals of inquiries for information about specific properties.

(4)(A) On December 31 of each year, the head of each landholding agency shall report to the Secretary the current availability status and the current classification of each property controlled by the agency, that—

(i) was included in a list published in that year by the Secretary under paragraph (1)(A)(ii); and

(ii) remains available for application for use to assist the homeless or has become available for application during that year.

(B) No later than February 15 each year, the Secretary shall publish in the Federal Register a list of all properties reported under subparagraph (A) for the preceding year and the current classification of the properties.

(C) For purposes of subparagraph (A), property shall not be considered to remain available for application for use to assist the homeless after the 60-day holding period provided under subsection (d) of this section if—

(i) an application for or written expression of interest in the property is made under any law for use of the property for any purpose; or

(ii) the Administrator receives a bona fide offer to purchase the property or advertises for the sale of the property by public auction.

(d) Holding period

(1) Properties published under subsection (c)(1)(A)(ii) of this section as available for application for use to assist the homeless shall not be available for any other purpose for a period of 60 days beginning on the date of such publication.

(2) If written notice of intent to apply for such a property for use to assist the homeless is received by the Secretary of Health and Human Services within the 60-day period described under paragraph (1), such property may not be made available for any other purpose until the date the Secretary of Health and Human Services or other appropriate landholding agency has completed action on the application submitted under subsection (e) of this section with respect to that written notice of intent.

(3) Property that is reviewed by the Secretary under subsection (a) of this section and that is not identified by the Secretary as being suitable for use to assist the homeless may not be made available for any other purpose for 20 days after the determination of unsuitability to allow for review of the determination at the request of the representative of the homeless. The Secretary shall disseminate immediately this information to the regional offices of the Department of Housing and Urban Development and to the Interagency Council on the Homeless.

(4)(A) Written notice of intent to apply for a property published under subsection (c)(1)(A)(ii) of this section may be filed at any time after the 60-day period described in paragraph (1) has expired. In such case, an application submitted pursuant to the notice may be approved for disposal for use to assist the homeless only if the property remains available for application for use to assist the homeless. If the property remains available, the use to assist the homeless

shall be given priority of consideration over other competing disposal opportunities under sections 541–555 of title 40, except as provided in subsection (f)(3)(A) of this section.

(B) Surplus property for which an application has been approved shall be assigned promptly to the Secretary of Health and Human Services for disposition in accordance with and subject to subsection (f) of this section.

(e) Application for property

(1) A representative of the homeless may submit an application to the Secretary of Health and Human Services for any property that is published under subsection (c)(1)(A)(ii) of this section as available for application for use to assist the homeless.

(2) No later than 90 days after the submission of written notice of intent to apply for a property, an applicant shall submit a complete application to the Secretary of Health and Human Services. The Secretary of Health and Human Services shall, with the concurrence of the appropriate landholding agency, grant reasonable extensions.

(3) No later than 25 days after receipt of a completed application, the Secretary of Health and Human Services shall review, make all determinations, and complete all actions on the application. The Secretary of Health and Human Services shall maintain a written public record of all actions taken in response to an application.

(f) Making property available to representatives of homeless

(1) Subject to the provisions of this subsection, property for which the Secretary of Health and Human Services has approved an application under subsection (e) of this section shall be made promptly available by permit or lease, or by deed as a public health use under section 550(a)–(d) of title 40, to the representative of the homeless that submitted the application.

(2) Unutilized or underutilized property that is the subject of an agency's statement of intention under subsection (b)(1)(A)(ii) of this section shall be made promptly available by the appropriate landholding agency to the approved applicant by lease or permit for a term of not less than 1 year, unless the applicant requests a shorter term.

(3)(A) In disposing of surplus property by deed or lease under sections 541–555 of title 40, the Administrator and the Secretary of Health and Human Services shall give priority of consideration to uses to assist the homeless, unless the Administrator or the Secretary of Health and Human Services determines that a competing request for the property under section 550 of title 40 is so meritorious and compelling as to outweigh the needs of the homeless.

(B) Whenever the Administrator or the Secretary of Health and Human Services makes a determination under subparagraph (A), the Administrator or the Secretary of Health and Human Services shall transmit to the appropriate committees of the Congress an explanatory statement detailing the need satisfied by conveyance of the surplus property and the reasons for determining that such need was so mer-

itorious and compelling as to outweigh the needs of the homeless.

(4) For any property made available by lease to a representative of the homeless before November 29, 1990, the Secretary of Health and Human Services may, upon written request by the representative, convey such property by deed to the representative in accordance with, and subject to the requirements of, section 550 of title 40. The lease term shall not be affected if a deed is not granted.

(g) Records

The Secretary shall maintain a written public record of—

(1) the reasons for determinations of the Secretary under this section that property is suitable or unsuitable for use to assist the homeless; and

(2) the responses of landholding agencies under subsection (b)(1) of this section.

(h) Applicability to property under base closure process

(1) The provisions of this section shall not apply to buildings and property at military installations that are approved for closure under the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note) after October 25, 1994.

(2) For provisions relating to the use to assist the homeless of buildings and property located at certain military installations approved for closure under such Act, or under title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526; 10 U.S.C. 2687 note), before October 25, 1994, see section 2(e) of Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

(i) Definitions

For purposes of this section—

(1) the term “Administrator” means the Administrator of General Services;

(2) each of the terms “excess property” and “surplus property” has the meaning given that term under section 102 of title 40;

(3) the term “landholding agency” means a Federal department or agency with statutory authority to control real property;

(4) the term “representative of the homeless” means a State or local government agency, or private nonprofit organization, which provides services to the homeless; and

(5) the term “Secretary” means the Secretary of Housing and Urban Development, except as otherwise provided.

(Pub. L. 100-77, title V, § 501, July 22, 1987, 101 Stat. 509; Pub. L. 100-628, title V, § 501, Nov. 7, 1988, 102 Stat. 3240; Pub. L. 101-645, title IV, § 401(a), Nov. 29, 1990, 104 Stat. 4719; Pub. L. 102-484, div. B, title XXVIII, § 2824, Oct. 23, 1992, 106 Stat. 2608; Pub. L. 103-421, § 2(d), Oct. 25, 1994, 108 Stat. 4352.)

REFERENCES IN TEXT

The Defense Base Closure and Realignment Act of 1990, referred to in subsec. (h), is part A of title XXIX of div. B of Pub. L. 101-510, Nov. 5, 1990, 104 Stat. 1808, as amended, which is set out as a note under section 2687 of Title 10, Armed Forces. For complete classification of this Act to the Code, see Tables.

Title II of the Defense Authorization Amendments and Base Closure and Realignment Act, referred to in subsec. (h)(2), is title II of Pub. L. 100-526, Oct. 24, 1988, 102 Stat. 2627, as amended, which is set out as a note under section 2687 of Title 10. For complete classification of this Act to the Code, see Short Title of 1988 Amendment note set out under section 2687 of Title 10 and Tables.

Section 2(e) of Base Closure Community Redevelopment and Homeless Assistance Act of 1994, referred to in subsec. (h)(2), is section 2(e) of Pub. L. 103-421, which is set out as a note under section 2687 of Title 10.

CODIFICATION

In subsec. (a), “section 524(a)(2) and (3) of title 40” substituted for “section 202(b)(2) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483(b)(2))”, in subsecs.(b)(2)(A)(ii) and (f)(1), “section 550(a)-(d) of title 40” substituted for “paragraphs (1) and (4) of section 203(k) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(k)(1) and (4))”, in subsecs. (d)(4)(A) and (f)(3)(A), “sections 541-555 of title 40” substituted for “section 203 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484)”, in subsec. (f)(3)(A), “section 550 of title 40” substituted for “section 203(k) of such Act”, meaning the Federal Property and Administrative Services Act of 1949, in subsec. (f)(4), “section 550 of title 40” substituted for “section 203(k) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(k))”, and, in subsec. (i)(2), “section 102 of title 40” substituted for “section 3 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 472)”, on authority of Pub. L. 107-217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

AMENDMENTS

1994—Subsecs. (h), (i). Pub. L. 103-421 added subsec. (h) and redesignated former subsec. (h) as (i).

1992—Subsec. (c)(4)(C). Pub. L. 102-484, § 2824(a), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: “For purposes of subparagraph (A), property shall be considered to remain available for application for use to assist the homeless if, subsequent to the 60-day holding period provided under subsection (d) of this section—

“(i) no application or written expression of interest has been made under any law for use of the property for any purpose; and

“(ii) the Administrator has not received a bona fide offer to purchase the property or advertised for the sale of the property by public auction.”

Subsec. (f)(2). Pub. L. 102-484, § 2824(b), inserted “or” after “Unutilized”.

1990—Pub. L. 101-645 amended section generally, substituting present provisions consisting of subsecs. (a) to (h) for former provisions consisting of subsecs. (a) to (e).

1988—Pub. L. 100-628, § 501(1), substituted “unutilized and underutilized” for “underutilized” in section catchline.

Subsec. (a). Pub. L. 100-628, § 501(2), substituted “unutilized or underutilized” for “underutilized” in heading and text and inserted “, within 2 months after collecting such information,” before “shall identify” in text.

Subsec. (b)(1). Pub. L. 100-628, § 501(3)(A), inserted “or to make the property available, on an interim basis, for use as facilities to assist the homeless” after “agency’s need”.

Subsec. (b)(2). Pub. L. 100-628, § 501(3)(B), inserted before period at end “or made available on an interim basis for use as facilities to assist the homeless”.

Subsec. (d). Pub. L. 100-628, § 501(4)(A), struck out “by lease” after “property” in heading.

Subsec. (d)(1). Pub. L. 100-628, § 501(4)(B), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “Federal buildings or property may be made

available under this section only through the use of leases for at least 1 year. Ownership of the buildings and property shall not be transferred from the Federal Government.”

Subsec. (d)(2). Pub. L. 100-628, §501(4)(C), substituted “With respect to property identified under subsection (a) which has been designated as surplus property,” for “To permit leases of surplus Federal buildings and other real property under this section.”

EFFECTIVE DATE OF 1990 AMENDMENT

Section 401(b) of Pub. L. 101-645 provided that: “The amendment made by subsection (a) [amending this section] shall be effective 90 days after the date of the enactment of this Act [Nov. 29, 1990].”

REGULATIONS

Section 401(d) of Pub. L. 101-645 provided that: “No later than 90 days after the date of the enactment of this Act [Nov. 29, 1990], the Administrator of General Services, the Secretary of Health and Human Services, and the Secretary of Housing and Urban Development shall promulgate regulations implementing this section and the amendment made by this section [amending this section and enacting provisions set out as notes under this section].”

CONSULTATION AND REPORT REGARDING USE OF NATIONAL GUARD FACILITIES AS OVERNIGHT SHELTERS FOR HOMELESS INDIVIDUALS

Pub. L. 102-550, title XIV, §1411, Oct. 28, 1992, 106 Stat. 4039, provided that:

“(a) USE OF AVAILABLE SPACE AT NATIONAL GUARD FACILITIES.—The Secretary of Housing and Urban Development shall consult with the chief executive officers of the States and the Secretary of Defense to determine the availability of space at National Guard facilities for use by homeless organizations in providing overnight shelter for homeless persons and families. The Secretary of Housing and Urban Development shall determine the availability of only such space that can be used for shelter purposes during periods it is not actively being used for National Guard purposes. The Secretary of Housing and Urban Development shall also determine the availability of incidental services at such facilities, including utilities, bedding, security, transportation, renovation of facilities, minor repairs undertaken specifically to make available space in a facility suitable for use as an overnight shelter for homeless individuals, and property liability insurance.

“(b) LIMITATIONS.—In consultations under this section, the Secretary of Housing and Urban Development shall determine—

“(1) the number and capacity of such facilities that may be made available for shelters for homeless persons and families without adversely affecting the military or emergency service preparedness of the State or the United States; and

“(2) whether any available space is suitable for use as an overnight shelter for homeless individuals or can, with minor repairs, be made suitable for that use.

“(c) REPORT.—The Secretary of Housing and Urban Development shall submit to the Congress, not later than the expiration of the 1-year period beginning on the date of the enactment of this Act [Oct. 28, 1992], a report regarding the consultations and determinations made by the Secretary under this section. The report shall include any recommendations of the Secretary regarding the need for, and feasibility of, using National Guard facilities for homeless shelters and any recommendations of the Secretary for administrative or legislative action to provide for such use.”

UNUSED AND UNDERUTILIZED PROPERTY FOR PURPOSES OF 1990 AMENDMENT

Section 401(c) of Pub. L. 101-645, as amended by Pub. L. 106-400, §2, Oct. 30, 2000, 114 Stat. 1675, provided that: “For purposes of section 501 of the McKinney-Vento

Homeless Assistance Act (42 U.S.C. 11411) (as amended by this Act) the terms ‘unused’ and ‘underutilized’ when used to describe property have the same meaning such terms had before the date of the enactment of this Act [Nov. 29, 1990] under such section 501.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 10 section 2878; title 20 section 7713; title 38 section 8162.

§ 11412. Making surplus personal property available to nonprofit agencies

(a) Omitted

(b) Requirement for notification

Within 90 days after July 22, 1987, the Administrator of General Services shall require each State agency administering a State plan under section 549(a)–(e) of title 40 to make generally available information about surplus personal property which may be used in the provision of food, shelter, or other services to homeless individuals.

(c) Costs

Surplus personal property identified pursuant to this section shall be made available to providers of assistance to homeless individuals by a State agency distributing such property at (1) a nominal cost to such organization or (2) at no cost when the Administrator agrees to reimburse the State agency for the costs of care and handling of such property.

(Pub. L. 100-77, title V, §502, July 22, 1987, 101 Stat. 510.)

CODIFICATION

Section is comprised of section 502 of Pub. L. 100-77. Subsec. (a) of section 502 amended section 203(j)(3)(B) of the Federal Property and Administrative Services Act of 1949, which was classified to section 484(j)(3)(B) of former Title 40, Public Buildings, Property, and Works, and was repealed and reenacted as section 549(c)(3)(B) of Title 40, Public Buildings, Property, and Works, by Pub. L. 107-217, §§1, 6(b), Aug. 21, 2002, 116 Stat. 1062, 1304.

In subsec (b), “section 549(a)–(e) of title 40” substituted for “203(j) of the Federal Property and Administrative Services Act of 1949” on authority of Pub. L. 107-217, §5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

SUBCHAPTER VI—EDUCATION AND TRAINING

PART A—ADULT EDUCATION FOR HOMELESS

§ 11421. Repealed. Pub. L. 105-220, title I, § 199(b)(1), Aug. 7, 1998, 112 Stat. 1059

Section, Pub. L. 100-77, title VII, §701, as added Pub. L. 103-382, title III, §322, Oct. 20, 1994, 108 Stat. 3956, related to State literacy initiatives.

A prior section 11421, Pub. L. 100-77, title VII, §702, July 22, 1987, 101 Stat. 525; Pub. L. 100-297, title VI, §6001, Apr. 28, 1988, 102 Stat. 423; Pub. L. 100-628, title VII, §701, Nov. 7, 1988, 102 Stat. 3244; Pub. L. 101-645, title VI, §611, Nov. 29, 1990, 104 Stat. 4734, related to State literacy initiatives, prior to the general amendment of this part by Pub. L. 103-382.

EFFECTIVE DATE OF REPEAL

Pub. L. 105-220, title I, §199(c)(2)(A), Aug. 7, 1998, 112 Stat. 1059, provided that: “The repeal made by sub-

section (b)(1) [repealing sections 11421, 11461 to 11466, 11471, and 11472 of this title] shall take effect on July 1, 1999.”

**PART B—EDUCATION FOR HOMELESS CHILDREN
AND YOUTHS**

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 5712, 5714-2 of this title; title 20 section 7824.

§ 11431. Statement of policy

The following is the policy of the Congress:

(1) Each State educational agency shall ensure that each child of a homeless individual and each homeless youth has equal access to the same free, appropriate public education, including a public preschool education, as provided to other children and youths.

(2) In any State that has a compulsory residency requirement as a component of the State’s compulsory school attendance laws or other laws, regulations, practices, or policies that may act as a barrier to the enrollment, attendance, or success in school of homeless children and youths, the State will review and undertake steps to revise such laws, regulations, practices, or policies to ensure that homeless children and youths are afforded the same free, appropriate public education as provided to other children and youths.

(3) Homelessness alone is not sufficient reason to separate students from the mainstream school environment.

(4) Homeless children and youths should have access to the education and other services that such children and youths need to ensure that such children and youths have an opportunity to meet the same challenging State student academic achievement standards to which all students are held.

(Pub. L. 100-77, title VII, §721, as added Pub. L. 107-110, title X, §1032, Jan. 8, 2002, 115 Stat. 1989.)

PRIOR PROVISIONS

A prior section 11431, Pub. L. 100-77, title VII, §721, as added Pub. L. 103-382, title III, §323, Oct. 20, 1994, 108 Stat. 3957, stated policy of Congress, prior to the general amendment of this part by Pub. L. 107-110.

Another prior section 11431, Pub. L. 100-77, title VII, §721, July 22, 1987, 101 Stat. 525; Pub. L. 101-645, title VI, §612(a), Nov. 29, 1990, 104 Stat. 4735, stated policy of Congress, prior to the general amendment of this part by Pub. L. 103-382.

EFFECTIVE DATE

Part effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107-110, set out as a note under section 6301 of Title 20, Education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11432, 11434 of this title.

§ 11432. Grants for State and local activities for the education of homeless children and youths

(a) General authority

The Secretary is authorized to make grants to States in accordance with the provisions of this section to enable such States to carry out the

activities described in subsections (d) through (g) of this section.

(b) Application

No State may receive a grant under this section unless the State educational agency submits an application to the Secretary at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require.

(c) Allocation and reservations

(1) Allocation

(A) Subject to subparagraph (B), the Secretary is authorized to allot to each State an amount that bears the same ratio to the amount appropriated for such year under section 11435 of this title that remains after the Secretary reserves funds under paragraph (2) and uses funds to carry out section 11434(d) and (h) of this title, as the amount allocated under section 1122 of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6332] to the State for that year bears to the total amount allocated under section 1122 of such Act to all States for that year, except that no State shall receive less than the greater of—

(i) \$150,000;

(ii) one-fourth of 1 percent of the amount appropriated under section 11435 of this title for that year; or

(iii) the amount such State received under this section for fiscal year 2001.

(B) If there are insufficient funds in a fiscal year to allot to each State the minimum amount under subparagraph (A), the Secretary shall ratably reduce the allotments to all States based on the proportionate share that each State received under this subsection for the preceding fiscal year.

(2) Reservations

(A) The Secretary is authorized to reserve 0.1 percent of the amount appropriated for each fiscal year under section 11435 of this title to be allocated by the Secretary among the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, according to their respective need for assistance under this part, as determined by the Secretary.

(B)(i) The Secretary shall transfer 1 percent of the amount appropriated for each fiscal year under section 11435 of this title to the Department of the Interior for programs for Indian students served by schools funded by the Secretary of the Interior, as determined under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), that are consistent with the purposes of the programs described in this part.

(ii) The Secretary and the Secretary of the Interior shall enter into an agreement, consistent with the requirements of this part, for the distribution and use of the funds described in clause (i) under terms that the Secretary determines best meet the purposes of the programs described in this part. Such agreement shall set forth the plans of the Secretary of the Interior for the use of the amounts transferred, including appropriate goals, objectives, and milestones.

(3) State defined

For purposes of this subsection, the term "State" does not include the United States Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands.

(d) Activities

Grants under this section shall be used for the following:

(1) To carry out the policies set forth in section 11431 of this title in the State.

(2) To provide activities for, and services to, homeless children, including preschool-aged homeless children, and youths that enable such children and youths to enroll in, attend, and succeed in school, or, if appropriate, in preschool programs.

(3) To establish or designate an Office of Coordinator for Education of Homeless Children and Youths in the State educational agency in accordance with subsection (f) of this section.

(4) To prepare and carry out the State plan described in subsection (g) of this section.

(5) To develop and implement professional development programs for school personnel to heighten their awareness of, and capacity to respond to, specific problems in the education of homeless children and youths.

(e) State and local subgrants**(1) Minimum disbursements by States**

From the sums made available each year to carry out this part, the State educational agency shall distribute not less than 75 percent in subgrants to local educational agencies for the purposes of carrying out section 11433 of this title, except that States funded at the minimum level set forth in subsection (c)(1) of this section shall distribute not less than 50 percent in subgrants to local educational agencies for the purposes of carrying out section 11433 of this title.

(2) Use by State educational agency

A State educational agency may use funds made available for State use under this part to conduct activities under subsection (f) of this section directly or through grants or contracts.

(3) Prohibition on segregating homeless students**(A) In general**

Except as provided in subparagraph (B) and section 11433(a)(2)(B)(ii) of this title, in providing a free public education to a homeless child or youth, no State receiving funds under this part shall segregate such child or youth in a separate school, or in a separate program within a school, based on such child's or youth's status as homeless.

(B) Exception

Notwithstanding subparagraph (A), paragraphs (1)(J)(i) and (3) of subsection (g) of this section, section 11433(a)(2) of this title, and any other provision of this part relating to the placement of homeless children or youths in schools, a State that has a separate school for homeless children or youths that was operated in fiscal year 2000 in a

covered county shall be eligible to receive funds under this part for programs carried out in such school if—

(i) the school meets the requirements of subparagraph (C);

(ii) any local educational agency serving a school that the homeless children and youths enrolled in the separate school are eligible to attend meets the requirements of subparagraph (E); and

(iii) the State is otherwise eligible to receive funds under this part.

(C) School requirements

For the State to be eligible under subparagraph (B) to receive funds under this part, the school described in such subparagraph shall—

(i) provide written notice, at the time any child or youth seeks enrollment in such school, and at least twice annually while the child or youth is enrolled in such school, to the parent or guardian of the child or youth (or, in the case of an unaccompanied youth, the youth) that—

(I) shall be signed by the parent or guardian (or, in the case of an unaccompanied youth, the youth);

(II) sets forth the general rights provided under this part;

(III) specifically states—

(aa) the choice of schools homeless children and youths are eligible to attend, as provided in subsection (g)(3)(A) of this section;

(bb) that no homeless child or youth is required to attend a separate school for homeless children or youths;

(cc) that homeless children and youths shall be provided comparable services described in subsection (g)(4) of this section, including transportation services, educational services, and meals through school meals programs; and

(dd) that homeless children and youths should not be stigmatized by school personnel; and

(IV) provides contact information for the local liaison for homeless children and youths and the State Coordinator for Education of Homeless Children and Youths;

(ii)(I) provide assistance to the parent or guardian of each homeless child or youth (or, in the case of an unaccompanied youth, the youth) to exercise the right to attend the parent's or guardian's (or youth's) choice of schools, as provided in subsection (g)(3)(A) of this section; and

(II) coordinate with the local educational agency with jurisdiction for the school selected by the parent or guardian (or youth), to provide transportation and other necessary services;

(iii) ensure that the parent or guardian (or, in the case of an unaccompanied youth, the youth) shall receive the information required by this subparagraph in a manner and form understandable to such

parent or guardian (or youth), including, if necessary and to the extent feasible, in the native language of such parent or guardian (or youth); and

(iv) demonstrate in the school's application for funds under this part that such school—

(I) is complying with clauses (i) and (ii); and

(II) is meeting (as of the date of submission of the application) the same Federal and State standards, regulations, and mandates as other public schools in the State (such as complying with sections 1111 and 1116 of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6311, 6316] and providing a full range of education and related services, including services applicable to students with disabilities).

(D) School ineligibility

A separate school described in subparagraph (B) that fails to meet the standards, regulations, and mandates described in subparagraph (C)(iv)(II) shall not be eligible to receive funds under this part for programs carried out in such school after the first date of such failure.

(E) Local educational agency requirements

For the State to be eligible to receive the funds described in subparagraph (B), the local educational agency described in subparagraph (B)(ii) shall—

(i) implement a coordinated system for ensuring that homeless children and youths—

(I) are advised of the choice of schools provided in subsection (g)(3)(A) of this section;

(II) are immediately enrolled, in accordance with subsection (g)(3)(C) of this section, in the school selected under subsection (g)(3)(A) of this section; and

(III) are promptly provided necessary services described in subsection (g)(4) of this section, including transportation, to allow homeless children and youths to exercise their choices of schools under subsection (g)(3)(A) of this section;

(ii) document that written notice has been provided—

(I) in accordance with subparagraph (C)(i) for each child or youth enrolled in a separate school under subparagraph (B); and

(II) in accordance with subsection (g)(6)(A)(v) of this section;

(iii) prohibit schools within the agency's jurisdiction from referring homeless children or youths to, or requiring homeless children and youths to enroll in or attend, a separate school described in subparagraph (B);

(iv) identify and remove any barriers that exist in schools within the agency's jurisdiction that may have contributed to the creation or existence of separate schools described in subparagraph (B); and

(v) not use funds received under this part to establish—

(I) new or additional separate schools for homeless children or youths; or

(II) new or additional sites for separate schools for homeless children or youths, other than the sites occupied by the schools described in subparagraph (B) in fiscal year 2000.

(F) Report

(i) Preparation

The Secretary shall prepare a report on the separate schools and local educational agencies described in subparagraph (B) that receive funds under this part in accordance with this paragraph. The report shall contain, at a minimum, information on—

(I) compliance with all requirements of this paragraph;

(II) barriers to school access in the school districts served by the local educational agencies; and

(III) the progress the separate schools are making in integrating homeless children and youths into the mainstream school environment, including the average length of student enrollment in such schools.

(ii) Compliance with information requests

For purposes of enabling the Secretary to prepare the report, the separate schools and local educational agencies shall cooperate with the Secretary and the State Coordinator for Education of Homeless Children and Youths established in the State under subsection (d)(3) of this section, and shall comply with any requests for information by the Secretary and State Coordinator for such State.

(iii) Submission

Not later than 2 years after January 8, 2002, the Secretary shall submit the report described in clause (i) to—

(I) the President;

(II) the Committee on Education and the Workforce of the House of Representatives; and

(III) the Committee on Health, Education, Labor, and Pensions of the Senate.

(G) Definition

For purposes of this paragraph, the term "covered county" means—

(i) San Joaquin County, California;

(ii) Orange County, California;

(iii) San Diego County, California; and

(iv) Maricopa County, Arizona.

(f) Functions of the Office of Coordinator

The Coordinator for Education of Homeless Children and Youths established in each State shall—

(1) gather reliable, valid, and comprehensive information on the nature and extent of the problems homeless children and youths have in gaining access to public preschool programs and to public elementary schools and secondary schools, the difficulties in identifying the special needs of such children and youths, any

progress made by the State educational agency and local educational agencies in the State in addressing such problems and difficulties, and the success of the programs under this part in allowing homeless children and youths to enroll in, attend, and succeed in, school;

(2) develop and carry out the State plan described in subsection (g) of this section;

(3) collect and transmit to the Secretary, at such time and in such manner as the Secretary may require, a report containing such information as the Secretary determines is necessary to assess the educational needs of homeless children and youths within the State;

(4) facilitate coordination between the State educational agency, the State social services agency, and other agencies (including agencies providing mental health services) to provide services to homeless children, including preschool-aged homeless children, and youths, and to families of such children and youths;

(5) in order to improve the provision of comprehensive education and related services to homeless children and youths and their families, coordinate and collaborate with—

(A) educators, including child development and preschool program personnel;

(B) providers of services to homeless and runaway children and youths and homeless families (including domestic violence agencies, shelter operators, transitional housing facilities, runaway and homeless youth centers, and transitional living programs for homeless youths);

(C) local educational agency liaisons designated under subsection (g)(1)(J)(ii) of this section for homeless children and youths; and

(D) community organizations and groups representing homeless children and youths and their families; and

(6) provide technical assistance to local educational agencies in coordination with local educational agency liaisons designated under subsection (g)(1)(J)(ii) of this section, to ensure that local educational agencies comply with the requirements of subsection (e)(3) of this section and paragraphs (3) through (7) of subsection (g) of this section.

(g) State plan

(1) In general

Each State shall submit to the Secretary a plan to provide for the education of homeless children and youths within the State. Such plan shall include the following:

(A) A description of how such children and youths are (or will be) given the opportunity to meet the same challenging State academic achievement standards all students are expected to meet.

(B) A description of the procedures the State educational agency will use to identify such children and youths in the State and to assess their special needs.

(C) A description of procedures for the prompt resolution of disputes regarding the educational placement of homeless children and youths.

(D) A description of programs for school personnel (including principals, attendance

officers, teachers, enrollment personnel, and pupil services personnel) to heighten the awareness of such personnel of the specific needs of runaway and homeless youths.

(E) A description of procedures that ensure that homeless children and youths who meet the relevant eligibility criteria are able to participate in Federal, State, or local food programs.

(F) A description of procedures that ensure that—

(i) homeless children have equal access to the same public preschool programs, administered by the State agency, as provided to other children in the State;

(ii) homeless youths and youths separated from the public schools are identified and accorded equal access to appropriate secondary education and support services; and

(iii) homeless children and youths who meet the relevant eligibility criteria are able to participate in Federal, State, or local before- and after-school care programs.

(G) Strategies to address problems identified in the report provided to the Secretary under subsection (f)(3) of this section.

(H) Strategies to address other problems with respect to the education of homeless children and youths, including problems resulting from enrollment delays that are caused by—

(i) immunization and medical records requirements;

(ii) residency requirements;

(iii) lack of birth certificates, school records, or other documentation;

(iv) guardianship issues; or

(v) uniform or dress code requirements.

(I) A demonstration that the State educational agency and local educational agencies in the State have developed, and shall review and revise, policies to remove barriers to the enrollment and retention of homeless children and youths in schools in the State.

(J) Assurances that—

(i) the State educational agency and local educational agencies in the State will adopt policies and practices to ensure that homeless children and youths are not stigmatized or segregated on the basis of their status as homeless;

(ii) local educational agencies will designate an appropriate staff person, who may also be a coordinator for other Federal programs, as a local educational agency liaison for homeless children and youths, to carry out the duties described in paragraph (6)(A); and

(iii) the State and its local educational agencies will adopt policies and practices to ensure that transportation is provided, at the request of the parent or guardian (or in the case of an unaccompanied youth, the liaison), to and from the school of origin, as determined in paragraph (3)(A), in accordance with the following, as applicable:

(I) If the homeless child or youth continues to live in the area served by the local educational agency in which the school of origin is located, the child's or youth's transportation to and from the school of origin shall be provided or arranged by the local educational agency in which the school of origin is located.

(II) If the homeless child's or youth's living arrangements in the area served by the local educational agency of origin terminate and the child or youth, though continuing his or her education in the school of origin, begins living in an area served by another local educational agency, the local educational agency of origin and the local educational agency in which the homeless child or youth is living shall agree upon a method to apportion the responsibility and costs for providing the child with transportation to and from the school of origin. If the local educational agencies are unable to agree upon such method, the responsibility and costs for transportation shall be shared equally.

(2) Compliance

(A) In general

Each plan adopted under this subsection shall also describe how the State will ensure that local educational agencies in the State will comply with the requirements of paragraphs (3) through (7).

(B) Coordination

Such plan shall indicate what technical assistance the State will furnish to local educational agencies and how compliance efforts will be coordinated with the local educational agency liaisons designated under paragraph (1)(J)(ii).

(3) Local educational agency requirements

(A) In general

The local educational agency serving each child or youth to be assisted under this part shall, according to the child's or youth's best interest—

(i) continue the child's or youth's education in the school of origin for the duration of homelessness—

(I) in any case in which a family becomes homeless between academic years or during an academic year; or

(II) for the remainder of the academic year, if the child or youth becomes permanently housed during an academic year; or

(ii) enroll the child or youth in any public school that nonhomeless students who live in the attendance area in which the child or youth is actually living are eligible to attend.

(B) Best interest

In determining the best interest of the child or youth under subparagraph (A), the local educational agency shall—

(i) to the extent feasible, keep a homeless child or youth in the school of origin,

except when doing so is contrary to the wishes of the child's or youth's parent or guardian;

(ii) provide a written explanation, including a statement regarding the right to appeal under subparagraph (E), to the homeless child's or youth's parent or guardian, if the local educational agency sends such child or youth to a school other than the school of origin or a school requested by the parent or guardian; and

(iii) in the case of an unaccompanied youth, ensure that the homeless liaison designated under paragraph (1)(J)(ii) assists in placement or enrollment decisions under this subparagraph, considers the views of such unaccompanied youth, and provides notice to such youth of the right to appeal under subparagraph (E).

(C) Enrollment

(i) The school selected in accordance with this paragraph shall immediately enroll the homeless child or youth, even if the child or youth is unable to produce records normally required for enrollment, such as previous academic records, medical records, proof of residency, or other documentation.

(ii) The enrolling school shall immediately contact the school last attended by the child or youth to obtain relevant academic and other records.

(iii) If the child or youth needs to obtain immunizations, or immunization or medical records, the enrolling school shall immediately refer the parent or guardian of the child or youth to the local educational agency liaison designated under paragraph (1)(J)(ii), who shall assist in obtaining necessary immunizations, or immunization or medical records, in accordance with subparagraph (D).

(D) Records

Any record ordinarily kept by the school, including immunization or medical records, academic records, birth certificates, guardianship records, and evaluations for special services or programs, regarding each homeless child or youth shall be maintained—

(i) so that the records are available, in a timely fashion, when a child or youth enters a new school or school district; and

(ii) in a manner consistent with section 1232g of title 20.

(E) Enrollment disputes

If a dispute arises over school selection or enrollment in a school—

(i) the child or youth shall be immediately admitted to the school in which enrollment is sought, pending resolution of the dispute;

(ii) the parent or guardian of the child or youth shall be provided with a written explanation of the school's decision regarding school selection or enrollment, including the rights of the parent, guardian, or youth to appeal the decision;

(iii) the child, youth, parent, or guardian shall be referred to the local educational agency liaison designated under paragraph

(1)(J)(ii), who shall carry out the dispute resolution process as described in paragraph (1)(C) as expeditiously as possible after receiving notice of the dispute; and

(iv) in the case of an unaccompanied youth, the homeless liaison shall ensure that the youth is immediately enrolled in school pending resolution of the dispute.

(F) Placement choice

The choice regarding placement shall be made regardless of whether the child or youth lives with the homeless parents or has been temporarily placed elsewhere.

(G) School of origin defined

In this paragraph, the term “school of origin” means the school that the child or youth attended when permanently housed or the school in which the child or youth was last enrolled.

(H) Contact information

Nothing in this part shall prohibit a local educational agency from requiring a parent or guardian of a homeless child to submit contact information.

(4) Comparable services

Each homeless child or youth to be assisted under this part shall be provided services comparable to services offered to other students in the school selected under paragraph (3), including the following:

(A) Transportation services.

(B) Educational services for which the child or youth meets the eligibility criteria, such as services provided under title I of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6301 et seq.] or similar State or local programs, educational programs for children with disabilities, and educational programs for students with limited English proficiency.

(C) Programs in vocational and technical education.

(D) Programs for gifted and talented students.

(E) School nutrition programs.

(5) Coordination

(A) In general

Each local educational agency serving homeless children and youths that receives assistance under this part shall coordinate—

(i) the provision of services under this part with local social services agencies and other agencies or programs providing services to homeless children and youths and their families, including services and programs funded under the Runaway and Homeless Youth Act (42 U.S.C. 5701 et seq.); and

(ii) with other local educational agencies on interdistrict issues, such as transportation or transfer of school records.

(B) Housing assistance

If applicable, each State educational agency and local educational agency that receives assistance under this part shall coordinate with State and local housing agencies responsible for developing the comprehen-

sive housing affordability strategy described in section 12705 of this title to minimize educational disruption for children and youths who become homeless.

(C) Coordination purpose

The coordination required under subparagraphs (A) and (B) shall be designed to—

(i) ensure that homeless children and youths have access and reasonable proximity to available education and related support services; and

(ii) raise the awareness of school personnel and service providers of the effects of short-term stays in a shelter and other challenges associated with homelessness.

(6) Local educational agency liaison

(A) Duties

Each local educational agency liaison for homeless children and youths, designated under paragraph (1)(J)(ii), shall ensure that—

(i) homeless children and youths are identified by school personnel and through coordination activities with other entities and agencies;

(ii) homeless children and youths enroll in, and have a full and equal opportunity to succeed in, schools of that local educational agency;

(iii) homeless families, children, and youths receive educational services for which such families, children, and youths are eligible, including Head Start and Even Start programs and preschool programs administered by the local educational agency, and referrals to health care services, dental services, mental health services, and other appropriate services;

(iv) the parents or guardians of homeless children and youths are informed of the educational and related opportunities available to their children and are provided with meaningful opportunities to participate in the education of their children;

(v) public notice of the educational rights of homeless children and youths is disseminated where such children and youths receive services under this chapter, such as schools, family shelters, and soup kitchens;

(vi) enrollment disputes are mediated in accordance with paragraph (3)(E); and

(vii) the parent or guardian of a homeless child or youth, and any unaccompanied youth, is fully informed of all transportation services, including transportation to the school of origin, as described in paragraph (1)(J)(iii), and is assisted in accessing transportation to the school that is selected under paragraph (3)(A).

(B) Notice

State coordinators established under subsection (d)(3) of this section and local educational agencies shall inform school personnel, service providers, and advocates working with homeless families of the duties of the local educational agency liaisons.

(C) Local and State coordination

Local educational agency liaisons for homeless children and youths shall, as a part of their duties, coordinate and collaborate with State coordinators and community and school personnel responsible for the provision of education and related services to homeless children and youths.

(7) Review and revisions**(A) In general**

Each State educational agency and local educational agency that receives assistance under this part shall review and revise any policies that may act as barriers to the enrollment of homeless children and youths in schools that are selected under paragraph (3).

(B) Consideration

In reviewing and revising such policies, consideration shall be given to issues concerning transportation, immunization, residency, birth certificates, school records and other documentation, and guardianship.

(C) Special attention

Special attention shall be given to ensuring the enrollment and attendance of homeless children and youths who are not currently attending school.

(Pub. L. 100-77, title VII, §722, as added Pub. L. 107-110, title X, §1032, Jan. 8, 2002, 115 Stat. 1990.)

REFERENCES IN TEXT

The Indian Self-Determination and Education Assistance Act, referred to in subsec. (c)(2)(B)(i), is Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, as amended, which is classified principally to subchapter II (§450 et seq.) of chapter 14 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 450 of Title 25 and Tables.

The Elementary and Secondary Education Act of 1965, referred to in subsec. (g)(4)(B), is Pub. L. 89-10, Apr. 11, 1965, 79 Stat. 27, as amended. Title I of the Act is classified generally to subchapter I (§6301 et seq.) of chapter 70 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20 and Tables.

The Runaway and Homeless Youth Act, referred to in subsec. (g)(5)(A)(i), is title III of Pub. L. 93-415, Sept. 7, 1974, 88 Stat. 1129, which is classified generally to subchapter III (§5701 et seq.) of chapter 72 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5601 of this title and Tables.

This chapter, referred to in subsec. (g)(6)(A)(v), was in the original "this Act", meaning Pub. L. 100-77, July 22, 1987, 101 Stat. 482, as amended, known as the McKinney-Vento Homeless Assistance Act. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of this title and Tables.

PRIOR PROVISIONS

A prior section 11432, Pub. L. 100-77, title VII, §722, as added Pub. L. 103-382, title III, §323, Oct. 20, 1994, 108 Stat. 3957, related to grants for State and local activities for education of homeless children and youth, prior to the general amendment of this part by Pub. L. 107-110.

Another prior section 11432, Pub. L. 100-77, title VII, §722, July 22, 1987, 101 Stat. 525; Pub. L. 100-628, title VII, §702(a), Nov. 7, 1988, 102 Stat. 3245; Pub. L. 101-645, title VI, §612(b), Nov. 29, 1990, 104 Stat. 4735, related to grants for State and local activities for education of

homeless children and youth, prior to the general amendment of this part by Pub. L. 103-382.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5712, 5714-2, 11433, 11434 of this title.

§ 11433. Local educational agency subgrants for the education of homeless children and youths**(a) General authority****(1) In general**

The State educational agency shall, in accordance with section 11432(e) of this title, and from amounts made available to such agency under section 11435 of this title, make subgrants to local educational agencies for the purpose of facilitating the enrollment, attendance, and success in school of homeless children and youths.

(2) Services**(A) In general**

Services under paragraph (1)—

(i) may be provided through programs on school grounds or at other facilities;

(ii) shall, to the maximum extent practicable, be provided through existing programs and mechanisms that integrate homeless children and youths with non-homeless children and youths; and

(iii) shall be designed to expand or improve services provided as part of a school's regular academic program, but not to replace such services provided under such program.

(B) Services on school grounds

If services under paragraph (1) are provided on school grounds, schools—

(i) may use funds under this part to provide the same services to other children and youths who are determined by the local educational agency to be at risk of failing in, or dropping out of, school, subject to the requirements of clause (ii); and

(ii) except as otherwise provided in section 11432(e)(3)(B) of this title, shall not provide services in settings within a school that segregate homeless children and youths from other children and youths, except as necessary for short periods of time—

(I) for health and safety emergencies; or

(II) to provide temporary, special, and supplementary services to meet the unique needs of homeless children and youths.

(3) Requirement

Services provided under this section shall not replace the regular academic program and shall be designed to expand upon or improve services provided as part of the school's regular academic program.

(b) Application

A local educational agency that desires to receive a subgrant under this section shall submit an application to the State educational agency

at such time, in such manner, and containing or accompanied by such information as the State educational agency may reasonably require. Such application shall include the following:

(1) An assessment of the educational and related needs of homeless children and youths in the area served by such agency (which may be undertaken as part of needs assessments for other disadvantaged groups).

(2) A description of the services and programs for which assistance is sought to address the needs identified in paragraph (1).

(3) An assurance that the local educational agency's combined fiscal effort per student, or the aggregate expenditures of that agency and the State with respect to the provision of free public education by such agency for the fiscal year preceding the fiscal year for which the determination is made, was not less than 90 percent of such combined fiscal effort or aggregate expenditures for the second fiscal year preceding the fiscal year for which the determination is made.

(4) An assurance that the applicant complies with, or will use requested funds to comply with, paragraphs (3) through (7) of section 11432(g) of this title.

(5) A description of policies and procedures, consistent with section 11432(e)(3) of this title, that the agency will implement to ensure that activities carried out by the agency will not isolate or stigmatize homeless children and youths.

(c) Awards

(1) In general

The State educational agency shall, in accordance with the requirements of this part and from amounts made available to it under section 11435 of this title, make competitive subgrants to local educational agencies that submit applications under subsection (b) of this section. Such subgrants shall be awarded on the basis of the need of such agencies for assistance under this part and the quality of the applications submitted.

(2) Need

In determining need under paragraph (1), the State educational agency may consider the number of homeless children and youths enrolled in preschool, elementary, and secondary schools within the area served by the local educational agency, and shall consider the needs of such children and youths and the ability of the local educational agency to meet such needs. The State educational agency may also consider the following:

(A) The extent to which the proposed use of funds will facilitate the enrollment, retention, and educational success of homeless children and youths.

(B) The extent to which the application—
(i) reflects coordination with other local and State agencies that serve homeless children and youths; and

(ii) describes how the applicant will meet the requirements of section 11432(g)(3) of this title.

(C) The extent to which the applicant exhibits in the application and in current prac-

tice a commitment to education for all homeless children and youths.

(D) Such other criteria as the State agency determines appropriate.

(3) Quality

In determining the quality of applications under paragraph (1), the State educational agency shall consider the following:

(A) The applicant's needs assessment under subsection (b)(1) of this section and the likelihood that the program presented in the application will meet such needs.

(B) The types, intensity, and coordination of the services to be provided under the program.

(C) The involvement of parents or guardians of homeless children or youths in the education of their children.

(D) The extent to which homeless children and youths will be integrated within the regular education program.

(E) The quality of the applicant's evaluation plan for the program.

(F) The extent to which services provided under this part will be coordinated with other services available to homeless children and youths and their families.

(G) Such other measures as the State educational agency considers indicative of a high-quality program, such as the extent to which the local educational agency will provide case management or related services to unaccompanied youths.

(4) Duration of grants

Grants awarded under this section shall be for terms not to exceed 3 years.

(d) Authorized activities

A local educational agency may use funds awarded under this section for activities that carry out the purpose of this part, including the following:

(1) The provision of tutoring, supplemental instruction, and enriched educational services that are linked to the achievement of the same challenging State academic content standards and challenging State student academic achievement standards the State establishes for other children and youths.

(2) The provision of expedited evaluations of the strengths and needs of homeless children and youths, including needs and eligibility for programs and services (such as educational programs for gifted and talented students, children with disabilities, and students with limited English proficiency, services provided under title I of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6301 et seq.] or similar State or local programs, programs in vocational and technical education, and school nutrition programs).

(3) Professional development and other activities for educators and pupil services personnel that are designed to heighten the understanding and sensitivity of such personnel to the needs of homeless children and youths, the rights of such children and youths under this part, and the specific educational needs of runaway and homeless youths.

(4) The provision of referral services to homeless children and youths for medical, dental, mental, and other health services.

(5) The provision of assistance to defray the excess cost of transportation for students under section 11432(g)(4)(A) of this title, not otherwise provided through Federal, State, or local funding, where necessary to enable students to attend the school selected under section 11432(g)(3) of this title.

(6) The provision of developmentally appropriate early childhood education programs, not otherwise provided through Federal, State, or local funding, for preschool-aged homeless children.

(7) The provision of services and assistance to attract, engage, and retain homeless children and youths, and unaccompanied youths, in public school programs and services provided to nonhomeless children and youths.

(8) The provision for homeless children and youths of before- and after-school, mentoring, and summer programs in which a teacher or other qualified individual provides tutoring, homework assistance, and supervision of educational activities.

(9) If necessary, the payment of fees and other costs associated with tracking, obtaining, and transferring records necessary to enroll homeless children and youths in school, including birth certificates, immunization or medical records, academic records, guardianship records, and evaluations for special programs or services.

(10) The provision of education and training to the parents of homeless children and youths about the rights of, and resources available to, such children and youths.

(11) The development of coordination between schools and agencies providing services to homeless children and youths, as described in section 11432(g)(5) of this title.

(12) The provision of pupil services (including violence prevention counseling) and referrals for such services.

(13) Activities to address the particular needs of homeless children and youths that may arise from domestic violence.

(14) The adaptation of space and purchase of supplies for any nonschool facilities made available under subsection (a)(2) of this section to provide services under this subsection.

(15) The provision of school supplies, including those supplies to be distributed at shelters or temporary housing facilities, or other appropriate locations.

(16) The provision of other extraordinary or emergency assistance needed to enable homeless children and youths to attend school.

(Pub. L. 100-77, title VII, §723, as added Pub. L. 107-110, title X, §1032, Jan. 8, 2002, 115 Stat. 2001.)

REFERENCES IN TEXT

The Elementary and Secondary Education Act of 1965, referred to in subsec. (d)(2), is Pub. L. 89-10, Apr. 11, 1965, 79 Stat. 27, as amended generally. Title I of the Act is classified generally to subchapter I (§6301 et seq.) of chapter 70 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20 and Tables.

PRIOR PROVISIONS

A prior section 11433, Pub. L. 100-77, title VII, §723, as added Pub. L. 103-382, title III, §323, Oct. 20, 1994, 108 Stat. 3962, related to local educational agency grants

for education of homeless children and youth, prior to the general amendment of this part by Pub. L. 107-110.

Another prior section 11433, Pub. L. 100-77, title VII, §723, July 22, 1987, 101 Stat. 527; Pub. L. 100-628, title VII, §702(b), Nov. 7, 1988, 102 Stat. 3245; Pub. L. 101-645, title VI, §612(c), Nov. 29, 1990, 104 Stat. 4739, related to local educational agency grants for education of homeless children and youth, prior to the general amendment of this part by Pub. L. 103-382.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11432 of this title.

§ 11434. Secretarial responsibilities

(a) Review of State plans

In reviewing the State plan submitted by a State educational agency under section 11432(g) of this title, the Secretary shall use a peer review process and shall evaluate whether State laws, policies, and practices described in such plan adequately address the problems of homeless children and youths relating to access to education and placement as described in such plan.

(b) Technical assistance

The Secretary shall provide support and technical assistance to a State educational agency to assist such agency in carrying out its responsibilities under this part, if requested by the State educational agency.

(c) Notice

The Secretary shall, before the next school year that begins after January 8, 2002, create and disseminate nationwide a public notice of the educational rights of homeless children and youths and disseminate such notice to other Federal agencies, programs, and grantees, including Head Start grantees, Health Care for the Homeless grantees, Emergency Food and Shelter grantees, and homeless assistance programs administered by the Department of Housing and Urban Development.

(d) Evaluation and dissemination

The Secretary shall conduct evaluation and dissemination activities of programs designed to meet the educational needs of homeless elementary and secondary school students, and may use funds appropriated under section 11435 of this title to conduct such activities.

(e) Submission and distribution

The Secretary shall require applications for grants under this part to be submitted to the Secretary not later than the expiration of the 60-day period beginning on the date that funds are available for purposes of making such grants and shall make such grants not later than the expiration of the 120-day period beginning on such date.

(f) Determination by Secretary

The Secretary, based on the information received from the States and information gathered by the Secretary under subsection (h) of this section, shall determine the extent to which State educational agencies are ensuring that each homeless child and homeless youth has access to a free appropriate public education, as described in section 11431(1) of this title.

(g) Guidelines

The Secretary shall develop, issue, and publish in the Federal Register, not later than 60 days after January 8, 2002, school enrollment guidelines for States with respect to homeless children and youths. The guidelines shall describe—

(1) successful ways in which a State may assist local educational agencies to immediately enroll homeless children and youths in school; and

(2) how a State can review the State's requirements regarding immunization and medical or school records and make such revisions to the requirements as are appropriate and necessary in order to enroll homeless children and youths in school immediately.

(h) Information**(1) In general**

From funds appropriated under section 11435 of this title, the Secretary shall, directly or through grants, contracts, or cooperative agreements, periodically collect and disseminate data and information regarding—

(A) the number and location of homeless children and youths;

(B) the education and related services such children and youths receive;

(C) the extent to which the needs of homeless children and youths are being met; and

(D) such other data and information as the Secretary determines to be necessary and relevant to carry out this part.

(2) Coordination

The Secretary shall coordinate such collection and dissemination with other agencies and entities that receive assistance and administer programs under this part.

(i) Report

Not later than 4 years after January 8, 2002, the Secretary shall prepare and submit to the President and the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate a report on the status of education of homeless children and youths, which shall include information on—

(1) the education of homeless children and youths; and

(2) the actions of the Secretary and the effectiveness of the programs supported under this part.

(Pub. L. 100-77, title VII, §724, as added Pub. L. 107-110, title X, §1032, Jan. 8, 2002, 115 Stat. 2004.)

PRIOR PROVISIONS

A prior section 11434, Pub. L. 100-77, title VII, §724, as added Pub. L. 103-382, title III, §323, Oct. 20, 1994, 108 Stat. 3964, related to Secretarial responsibilities, prior to the general amendment of this part by Pub. L. 107-110.

Another prior section 11434, Pub. L. 100-77, title VII, §724, July 22, 1987, 101 Stat. 528; Pub. L. 101-645, title VI, §612(d), Nov. 29, 1990, 104 Stat. 4742, related to national responsibilities, prior to the general amendment of this part by Pub. L. 103-382.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11432 of this title.

§ 11434a. Definitions

For purposes of this part:

(1) The terms “enroll” and “enrollment” include attending classes and participating fully in school activities.

(2) The term “homeless children and youths”—

(A) means individuals who lack a fixed, regular, and adequate nighttime residence (within the meaning of section 11302(a)(1) of this title); and

(B) includes—

(i) children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;

(ii) children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings (within the meaning of section 11302(a)(2)(C) of this title);

(iii) children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and

(iv) migratory children (as such term is defined in section 6399 of title 20) who qualify as homeless for the purposes of this part because the children are living in circumstances described in clauses (i) through (iii).

(3) The terms “local educational agency” and “State educational agency” have the meanings given such terms in section 7801 of title 20.

(4) The term “Secretary” means the Secretary of Education.

(5) The term “State” means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(6) The term “unaccompanied youth” includes a youth not in the physical custody of a parent or guardian.

(Pub. L. 100-77, title VII, §725, as added Pub. L. 107-110, title X, §1032, Jan. 8, 2002, 115 Stat. 2005.)

PRIOR PROVISIONS

A prior section 11434a, Pub. L. 100-77, title VII, §725, as added Pub. L. 103-382, title III, §323, Oct. 20, 1994, 108 Stat. 3965, defined terms, prior to the general amendment of this part by Pub. L. 107-110.

Another prior section 11434a, Pub. L. 100-77, title VII, §725, as added Pub. L. 101-645, title VI, §613(2), Nov. 29, 1990, 104 Stat. 4743, related to reports by Comptroller General, prior to the general amendment of this part by Pub. L. 103-382.

A prior section 725 of Pub. L. 100-77 was renumbered section 726 and was classified to section 11435 of this title, prior to the general amendment of this part by Pub. L. 103-382.

§ 11435. Authorization of appropriations

For the purpose of carrying out this part, there are authorized to be appropriated \$70,000,000 for fiscal year 2002 and such sums as

may be necessary for each of fiscal years 2003 through 2007.

(Pub. L. 100-77, title VII, §726, as added Pub. L. 107-110, title X, §1032, Jan. 8, 2002, 115 Stat. 2006.)

PRIOR PROVISIONS

A prior section 11435, Pub. L. 100-77, title VII, §726, as added Pub. L. 103-382, title III, §323, Oct. 20, 1994, 108 Stat. 3965, authorized appropriations, prior to the general amendment of this part by Pub. L. 107-110.

Another prior section 11435, Pub. L. 100-77, title VII, §726, formerly §725, July 22, 1987, 101 Stat. 528; Pub. L. 100-628, title VII, §702(c), Nov. 7, 1988, 102 Stat. 3245; re-numbered §726, Pub. L. 101-645, title VI, §613(1), Nov. 29, 1990, 104 Stat. 4743, defined terms used in this part, prior to the general amendment of this part by Pub. L. 103-382.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11432, 11433, 11434 of this title.

PART C—JOB TRAINING FOR HOMELESS

§§ 11441 to 11447. Repealed. Pub. L. 105-220, title I, § 199(a)(5), Aug. 7, 1998, 112 Stat. 1059

Section 11441, Pub. L. 100-77, title VII, §731, July 22, 1987, 101 Stat. 528, authorized demonstration program for homeless individuals.

Section 11442, Pub. L. 100-77, title VII, §732, July 22, 1987, 101 Stat. 528, related to State coordination with demonstration grant recipients.

Section 11443, Pub. L. 100-77, title VII, §733, July 22, 1987, 101 Stat. 529; Pub. L. 101-645, title VI, §621(a), Nov. 29, 1990, 104 Stat. 4743, related to application for grants.

Section 11444, Pub. L. 100-77, title VII, §734, July 22, 1987, 101 Stat. 529, related to authorized activities.

Section 11445, Pub. L. 100-77, title VII, §735, July 22, 1987, 101 Stat. 529, related to payments, Federal share, and limitations.

Section 11446, Pub. L. 100-77, title VII, §736, July 22, 1987, 101 Stat. 530, related to evaluation of projects.

Section 11447, Pub. L. 100-77, title VII, §737, July 22, 1987, 101 Stat. 530; Pub. L. 100-628, title VII, §703(a), Nov. 7, 1988, 102 Stat. 3246, defined terms.

§ 11448. Repealed. Pub. L. 107-95, § 5(e)(4), Dec. 21, 2001, 115 Stat. 918

Section, Pub. L. 100-77, title VII, §738, July 22, 1987, 101 Stat. 530; Pub. L. 102-590, §11(a), Nov. 10, 1992, 106 Stat. 5141; Pub. L. 104-110, title I, §102(d)(1), Feb. 13, 1996, 110 Stat. 769; Pub. L. 104-275, title VI, §601(b), Oct. 9, 1996, 110 Stat. 3344; Pub. L. 105-114, title II, §203(c)(1), Nov. 21, 1997, 111 Stat. 2288, related to programs to expedite the reintegration of homeless veterans into the labor force.

§§ 11449, 11450. Repealed. Pub. L. 105-220, title I, § 199(a)(5), Aug. 7, 1998, 112 Stat. 1059

Section 11449, Pub. L. 100-77, title VII, §739, July 22, 1987, 101 Stat. 531; Pub. L. 100-628, title VII, §703(b), (c), Nov. 7, 1988, 102 Stat. 3246; Pub. L. 101-165, title IX, §9119(a), Nov. 21, 1989, 103 Stat. 1157; Pub. L. 101-645, title VI, §621(b), Nov. 29, 1990, 104 Stat. 4744; Pub. L. 102-590, §11(b)(1), Nov. 10, 1992, 106 Stat. 5141; Pub. L. 103-239, title VII, §701(a), May 4, 1994, 108 Stat. 605, authorized appropriations.

Section 11450, Pub. L. 100-77, title VII, §741, July 22, 1987, 101 Stat. 532; Pub. L. 101-645, title VI, §621(c), Nov. 29, 1990, 104 Stat. 4744; Pub. L. 102-590, §11(b)(2), Nov. 10, 1992, 106 Stat. 5141; Pub. L. 103-239, title VII, §701(b), May 4, 1994, 108 Stat. 606; Pub. L. 104-110, title I, §102(d)(2), Feb. 13, 1996, 110 Stat. 769; Pub. L. 105-114, title II, §203(c)(2), Nov. 21, 1997, 111 Stat. 2288, provided for termination of this part on Dec. 31, 1999.

PART D—EMERGENCY COMMUNITY SERVICES HOMELESS GRANT PROGRAM

§§ 11461 to 11466. Repealed. Pub. L. 105-220, title I, § 199(b)(1), Aug. 7, 1998, 112 Stat. 1059

Section 11461, Pub. L. 100-77, title VII, §751, July 22, 1987, 101 Stat. 532, established emergency community services homeless grant program.

Section 11462, Pub. L. 100-77, title VII, §752, July 22, 1987, 101 Stat. 532; Pub. L. 100-628, title VII, §704(a), Nov. 7, 1988, 102 Stat. 3246, related to allocation of grants.

Section 11463, Pub. L. 100-77, title VII, §753, July 22, 1987, 101 Stat. 532; Pub. L. 100-628, title VII, §704(b), (c), Nov. 7, 1988, 102 Stat. 3246; Pub. L. 101-645, title VI, §631(a), (b), Nov. 29, 1990, 104 Stat. 4746, related to program requirements.

Section 11464, Pub. L. 100-77, title VII, §754, July 22, 1987, 101 Stat. 533; Pub. L. 100-628, title VII, §704(d), Nov. 7, 1988, 102 Stat. 3247; Pub. L. 101-645, title VI, §631(c), Nov. 29, 1990, 104 Stat. 4746; Pub. L. 103-252, title II, §206, May 18, 1994, 108 Stat. 656, authorized appropriations.

Section 11465, Pub. L. 100-77, title VII, §755, as added Pub. L. 101-645, title VI, §641, Nov. 29, 1990, 104 Stat. 4746, related to evaluation of services provided to homeless individuals.

Section 11466, Pub. L. 100-77, title VII, §756, as added Pub. L. 101-645, title VI, §641, Nov. 29, 1990, 104 Stat. 4747, required report by General Accounting Office.

EFFECTIVE DATE OF REPEAL

Repeal effective July 1, 1999, see section 199(c)(2)(A) of Pub. L. 105-220, set out as a note under section 11421 of this title.

PART E—MISCELLANEOUS PROVISIONS

§§ 11471, 11472. Repealed. Pub. L. 105-220, title I, § 199(b)(1), Aug. 7, 1998, 112 Stat. 1059

Section 11471, Pub. L. 100-77, title VII, §761, July 22, 1987, 101 Stat. 533, authorized grant for study of causes of youth homelessness.

Section 11472, Pub. L. 100-77, title VII, §762, July 22, 1987, 101 Stat. 533, related to set-asides for Native Americans.

EFFECTIVE DATE OF REPEAL

Repeal effective July 1, 1999, see section 199(c)(2)(A) of Pub. L. 105-220, set out as a note under section 11421 of this title.

PART F—FAMILY SUPPORT CENTERS

§§ 11481 to 11489. Repealed. Pub. L. 104-235, title I, § 142(b), Oct. 3, 1996, 110 Stat. 3089

Section 11481, Pub. L. 100-77, title VII, §771, as added Pub. L. 101-645, title VI, §651, Nov. 29, 1990, 104 Stat. 4747, related to definitions for this part.

Section 11482, Pub. L. 100-77, title VII, §772, as added Pub. L. 101-645, title VI, §651, Nov. 29, 1990, 104 Stat. 4749; amended Pub. L. 103-382, title III, §370(a), Oct. 20, 1994, 108 Stat. 3976, related to general grants for demonstration programs to encourage provision of supportive services to low-income individuals and families.

Section 11483, Pub. L. 100-77, title VII, §773, as added Pub. L. 101-645, title VI, §651, Nov. 29, 1990, 104 Stat. 4752, related to requirement that family support grant recipients were to use not more than 7 percent of such grant to improve the retention and effectiveness of staff and volunteers.

Section 11484, Pub. L. 100-77, title VII, §774, as added Pub. L. 101-645, title VI, §651, Nov. 29, 1990, 104 Stat. 4752; amended Pub. L. 103-382, title III, §370(d), Oct. 20, 1994, 108 Stat. 3977, related to family case managers.

Section 11485, Pub. L. 100-77, title VII, §775, as added Pub. L. 101-645, title VI, §651, Nov. 29, 1990, 104 Stat. 4752, related to Gateway programs.

Section 11486, Pub. L. 100-77, title VII, §776, as added Pub. L. 101-645, title VI, §651, Nov. 29, 1990, 104 Stat. 4754, related to evaluation of programs and entities that received assistance under this subchapter.

Section 11487, Pub. L. 100-77, title VII, §777, as added Pub. L. 101-645, title VI, §651, Nov. 29, 1990, 104 Stat. 4754; amended Pub. L. 103-382, title III, §370(b), Oct. 20, 1994, 108 Stat. 3977, related to submission of reports to Congress by the Secretary.

Section 11488, Pub. L. 100-77, title VII, §778, as added Pub. L. 101-645, title VI, §651, Nov. 29, 1990, 104 Stat. 4755, provided that nothing in this part was to be construed to modify Federal selection preferences described in section 1437d of this title or authorized policies and procedures of governmental housing authorities operating under annual assistance contracts pursuant to section 1437 et seq. of this title with respect to admissions, tenant selection and evictions.

Section 11489, Pub. L. 100-77, title VII, §779, as added Pub. L. 101-645, title VI, §651, Nov. 29, 1990, 104 Stat. 4755; amended Pub. L. 103-382, title III, §370(c), Oct. 20, 1994, 108 Stat. 3977, authorized appropriations to carry out this part.

CHAPTER 120—ENTERPRISE ZONE DEVELOPMENT

- Sec. 11501. Designation of enterprise zones.
 - (a) Designation of zones.
 - (b) Period for which designation is in effect.
 - (c) Area and eligibility requirements.
 - (d) Required State and local commitments.
 - (e) Definitions.
- 11502. Evaluation and reporting requirements.
- 11503. Interaction with other Federal programs.
 - (a) Coordination with relocation assistance.
 - (b) Enterprise zones treated as labor surplus areas.
- 11504. Waiver or modification of housing and community development rules in enterprise zones.
 - (a) In general.
 - (b) Limitation.
 - (c) Submission of requests.
 - (d) Consideration of requests.
 - (e) Notice of disapproval.
 - (f) Period for determination.
 - (g) Applicable procedures.
 - (h) Effect of subsequent amendment of rules.
 - (i) Expiration of waivers and modifications.
 - (j) Definitions.
- 11505. Coordination with CDBG and UDAG programs.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 25 section 941m.

§ 11501. Designation of enterprise zones

(a) Designation of zones

(1) "Enterprise zone" defined

For purposes of this section, the term "enterprise zone" means any area that—

(A) is nominated by one or more local governments and the State or States in which it is located for designation as an enterprise zone (in this section referred to as a "nominated area"); and

(B) the Secretary of Housing and Urban Development designates as an enterprise zone, after consultation with—

(i) the Secretaries of Agriculture, Commerce, Labor, and the Treasury, the Direc-

tor of the Office of Management and Budget, and the Administrator of the Small Business Administration; and

(ii) in the case of an area on an Indian reservation, the Secretary of the Interior.

(2) Number of designations

(A) In general

The Secretary of Housing and Urban Development may designate not more than 100 nominated areas as enterprise zones.

(B) Minimum designation in rural areas

Of the areas designated under subparagraph (A), not less than 1/3 shall be areas that—

(i) are within a local government jurisdiction or jurisdictions with a population of less than 50,000 (as determined under the most recent census data available);

(ii) are outside of a metropolitan statistical area (as designated by the Director of the Office of Management and Budget); or

(iii) that are determined by the Secretary, after consultation with the Secretary of Commerce, to be rural areas.

(3) Areas designated based solely on degree of poverty

(A) In general

Except as provided in subparagraph (B), the Secretary shall designate (i) the nominated areas with the highest average ranking with respect to the criteria set forth in subparagraphs (C) and (D) of subsection (c)(3) of this section, and the 1 criterion set forth in subparagraph (E)(i) or (E)(ii) of subsection (c)(3) of this section that gives an area a higher ranking; and (ii) for areas described in paragraph (2)(B), the nominated areas with the highest ranking with respect to the 1 criterion set forth in subparagraph (C), (D), (E)(i), or (E)(ii) of subsection (c)(3) of this section that gives an area a higher ranking. For purposes of the preceding sentence, an area shall be ranked within each such criterion on the basis of the amount by which the area exceeds such criterion, with the area that exceeds such criterion by the greatest amount given the highest ranking.

(B) Exception where inadequate course of action, etc.

An area shall not be designated under subparagraph (A) if the Secretary determines that the course of action with respect to such area is inadequate.

(C) Separate application to rural and other areas

Subparagraph (A) shall be applied separately with respect to areas described in paragraph (2)(B) and to other areas.

(4) Limitation on designations

(A) Publication of regulations

Before designating any area as an enterprise zone, the Secretary shall prescribe by regulation not later than 4 months following February 5, 1988, after consultation with the officials described in paragraph (1)(B)—

(i) the procedures for nominating an area under paragraph (1)(A);

(ii) the parameters relating to the size and population characteristics of an enterprise zone; and

(iii) the manner in which nominated areas will be evaluated based on the criteria specified in subsection (d) of this section.

(B) Time limitations

The Secretary shall designate nominated areas as enterprise zones only during the 24-month period beginning on the 1st day of the 1st month following the month in which the date of the enactment of the Housing and Community Development Act of 1992 occurs.

(C) Procedural rules

The Secretary shall not make any designation under paragraph (1) unless—

(i) the local governments and the State in which the nominated area is located have the authority—

(I) to nominate such area for designation as an enterprise zone;

(II) to make the State and local commitments under subsection (d) of this section; and

(III) to provide assurances satisfactory to the Secretary that such commitments will be fulfilled;

(ii) a nomination therefor is submitted in such a manner and in such form, and contains such information, as the Secretary shall by regulation prescribe;

(iii) the Secretary determines that any information furnished is reasonably accurate; and

(iv) the State and local governments certify that no portion of the area nominated is already included in an enterprise zone or in an area otherwise nominated to be an enterprise zone.

(5) Nomination process for Indian reservations

In the case of a nominated area on an Indian reservation, the reservation governing body (as determined by the Secretary of the Interior) shall be deemed to be both the State and local governments with respect to such area.

(b) Period for which designation is in effect

(1) In general

Any designation of an area as an enterprise zone shall remain in effect during the period beginning on the date of the designation and ending on the earliest of—

(A) December 31 of the 24th calendar year following the calendar year in which such date occurs;

(B) the termination date designated by the State and local governments as provided for in their nomination pursuant to subsection (a)(4)(C)(ii) of this section; or

(C) the date the Secretary revokes such designation under paragraph (2).

(2) Revocation of designation

The Secretary, after consultation with the officials described in subsection (a)(1)(B) of this section and a hearing on the record involving officials of the State or local government involved, may revoke the designation of

an area if the Secretary determines that the local government or the State in which it is located is not complying substantially with the State and local commitments pursuant to subsection (d) of this section.

(c) Area and eligibility requirements

(1) In general

The Secretary may make a designation of any nominated area under subsection (a)(1) of this section only if it meets the requirements of paragraphs (2) and (3).

(2) Area requirements

A nominated area meets the requirements of this paragraph if—

(A) the area is within the jurisdiction of the local government;

(B) the boundary of the area is continuous; and

(C) the area—

(i) has a population, as determined by the most recent census data available, of not less than—

(I) 4,000 if any portion of such area (other than a rural area described in subsection (a)(2)(B)(i) of this section) is located within a metropolitan statistical area (as designated by the Director of the Office of Management and Budget) with a population of 50,000 or more; or

(II) 1,000 in any other case; or

(ii) is entirely within an Indian reservation (as determined by the Secretary of the Interior).

(3) Eligibility requirements

For purposes of paragraph (1), a nominated area meets the requirements of this paragraph if the State and local governments in which it is located certify and the Secretary, after such review of supporting data as he deems appropriate, accepts such certification, that—

(A) the area is one of pervasive poverty, unemployment, and general distress;

(B) the area is located wholly within the jurisdiction of a local government that is eligible for Federal assistance under section 5318 of this title, as in effect on October 28, 1992;

(C) the unemployment rate, as determined by the appropriate available data, was not less than 1.5 times the national unemployment rate for that period;

(D) the poverty rate (as determined by the most recent census data available) for each populous census tract (or where not tracted, the equivalent county division as defined by the Bureau of the Census for the purpose of defining poverty areas) within the area was not less than 20 percent for the period to which such data relate; and

(E) the area meets at least one of the following criteria:

(i) Not less than 70 percent of the households living in the area have incomes below 80 percent of the median income of households of the local government (determined in the same manner as under section 5318 of this title).

(ii) The population of the area decreased by 20 percent or more between 1970 and

1980 (as determined from the most recent census available).

(4) Eligibility requirements for rural areas

For purposes of paragraph (1), a nominated area that is a rural area described in subsection (a)(2)(B) of this section meets the requirements of paragraph (3) if the State and local governments in which it is located certify and the Secretary, after such review of supporting data as he deems appropriate, accepts such certification, that the area meets—

(A) the criteria set forth in subparagraphs (A) and (B) of paragraph (3); and

(B) not less than one of the criteria set forth in the other subparagraphs of paragraph (3).

(d) Required State and local commitments

(1) In general

No nominated area shall be designated as an enterprise zone unless the local government and the State in which it is located agree in writing that, during any period during which the area is an enterprise zone, such governments will follow a specified course of action designated to reduce the various burdens borne by employers or employees in such area. A course of action shall not be treated as meeting the requirements of this paragraph unless the course of action include provisions described in not less than 4 of the subparagraphs of paragraph (2).

(2) Course of action

The course of action under paragraph (1) may be implemented by both such governments and private nongovernmental entities, may be funded from proceeds of any program administered by the Secretary of Housing and Urban Development or of any program administered by the Secretary of Agriculture under title V of the Housing Act of 1949 [42 U.S.C. 1471 et seq.], and may include, but is not limited to—

(A) a reduction of tax rates or fees applying within the enterprise zone;

(B) an increase in the level of public services, or in the efficiency of the delivery of public services, within the enterprise zone;

(C) actions to reduce, remove, simplify, or streamline paperwork requirements within the enterprise zone;

(D) involvement in the program by public authorities or private entities, organizations, neighborhood associations, and community groups, particularly those within the nominated area, including a written commitment to provide jobs and job training for, and technical, financial, or other assistance to, employers, employees, and residents of the nominated area;

(E) the giving of special preference to contractors owned and operated by members of any minority; and

(F) the gift (or sale at below fair market value) of surplus land in the enterprise zone to neighborhood organizations agreeing to operate a business on the land.

(3) Recognition of past efforts

In evaluating courses of action agreed to by any State or local government, the Secretary

shall take into account the past efforts of such State or local government in reducing the various burdens borne by employers and employees in the area involved.

(4) Prohibition of assistance for business relocations

(A) In general

The course of action implemented under paragraph (1) may not include any action to assist—

(i) any establishment relocating from one area to another area; or

(ii) any subcontractor whose purpose is to divest, or whose economic success is dependent upon divesting, any other contractor or subcontractor of any contract customarily performed by such other contractor or subcontractor.

(B) Exception

The limitations established in subparagraph (A) shall not be construed to prohibit assistance for the expansion of an existing business entity through the establishment of a new branch, affiliate, or subsidiary if the Secretary—

(i) finds that the establishment of the new branch, affiliate, or subsidiary will not result in an increase in unemployment in the area of original location or in any other area where the existing business entity conducts business operations; and

(ii) has no reason to believe that the new branch, affiliate, or subsidiary is being established with the intention of closing down the operations of the existing business entity in the area of its original location or in any other area where the existing business entity conducts business operations.

(e) Definitions

For purposes of this section:

(1) Government

If more than one government seeks to nominate an area as an enterprise zone, any reference to, or requirement of, this section shall apply to all such governments.

(2) Local government

The term “local government” means—

(A) any county, city, town, township, parish, village, or other general purpose political subdivision of a State;

(B) any combination of political subdivisions described in subparagraph (A) recognized by the Secretary; and

(C) the District of Columbia.

(3) Secretary

The term “Secretary” means the Secretary of Housing and Urban Development.

(4) State

The term “State” includes Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and any other possession of the United States.

(Pub. L. 100-242, title VII, §701, Feb. 5, 1988, 101 Stat. 1957; Pub. L. 100-628, title X, §1090(a), (b), Nov. 7, 1988, 102 Stat. 3283; Pub. L. 102-550, title VIII, §834(a), Oct. 28, 1992, 106 Stat. 3855.)

REFERENCES IN TEXT

The date of the enactment of the Housing and Community Development Act of 1992, referred to in subsec. (a)(4)(B), is the date of enactment of Pub. L. 102-550, which was approved Oct. 28, 1992.

The Housing Act of 1949, referred to in subsec. (d)(2), is act July 15, 1949, ch. 338, 63 Stat. 413, as amended. Title V of the Housing Act of 1949 is classified generally to subchapter III (§1471 et seq.) of chapter 8A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1441 of this title and Tables.

AMENDMENTS

1992—Subsec. (a)(4)(B). Pub. L. 102-550, §834(a)(1), substituted “the date of the enactment of the Housing and Community Development Act of 1992 occurs” for “the effective date of the regulations described in subparagraph (A) occurs”.

Subsec. (c)(3)(B). Pub. L. 102-550, §834(a)(2), substituted “October 28, 1992” for “February 5, 1988”.

1988—Subsec. (a)(2)(B). Pub. L. 100-628, §1090(b), substituted “under subparagraph (A)” for “under clause (i)” in introductory provisions.

Subsec. (a)(3)(A). Pub. L. 100-628, §1090(a), amended first sentence generally. Prior to amendment, first sentence read as follows: “Except as provided in subparagraph (B), the Secretary shall designate the nominated areas with the highest average ranking with respect to the criteria set forth in subparagraphs (C), (D), and (E) of subsection (c)(3) of this section.”

REGULATIONS

Section 1090(c) of Pub. L. 100-628 provided that: “Not later than 30 days after the date of the enactment of this Act [Nov. 7, 1988], the Secretary of Housing and Urban Development shall revise the regulations issued by the Secretary to carry out title VII of the Housing and Community Development Act of 1987 (42 U.S.C. 11501 et seq.) by issuing a final regulation, effective upon the date of publication, that carries out the amendments made by this section [amending this section].”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3532, 11503, 11504 of this title.

§ 11502. Evaluation and reporting requirements

Not later than the close of the 4th calendar year after the year in which the Secretary of Housing and Urban Development first designates areas as enterprise zones pursuant to the amendments made by section 834 of the Housing and Community Development Act of 1992, and at the close of each 4th calendar year thereafter, the Secretary shall prepare and submit to the Congress a report on the effects of such designation in accomplishing the purposes of this chapter.

(Pub. L. 100-242, title VII, §702, Feb. 5, 1988, 101 Stat. 1961; Pub. L. 102-550, title VIII, §834(b), Oct. 28, 1992, 106 Stat. 3855.)

REFERENCES IN TEXT

Section 834 of the Housing and Community Development Act of 1992, referred to in text, is section 834 of Pub. L. 102-550, which amended this section and section 11501 of this title.

AMENDMENTS

1992—Pub. L. 102-550 inserted “pursuant to the amendments made by section 834 of the Housing and Community Development Act of 1992” after “zones”.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of this section relating to quadriennial submittal of re-

port to Congress, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 10th item on page 106 of House Document No. 103-7.

§ 11503. Interaction with other Federal programs**(a) Coordination with relocation assistance**

The designation of an enterprise zone under section 11501 of this title shall not—

(1) constitute approval of a Federal or federally assisted program or project (within the meaning of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.)); or

(2) entitle any person displaced from real property located in such zone to any rights or any benefits under such Act.

(b) Enterprise zones treated as labor surplus areas

Any area that is designated as an enterprise zone under section 11501 of this title shall be treated for all purposes under Federal law as a labor surplus area.

(Pub. L. 100-242, title VII, §703, Feb. 5, 1988, 101 Stat. 1961.)

REFERENCES IN TEXT

The Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, referred to in subsec. (a), probably means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646, Jan. 2, 1971, 84 Stat. 1894, as amended, which is classified principally to chapter 61 (§4601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4601 of this title and Tables.

§ 11504. Waiver or modification of housing and community development rules in enterprise zones**(a) In general**

Upon the written request of the governments that designated and approved an area that has been designated as an enterprise zone under section 11501 of this title, the Secretary of Housing and Urban Development (or, with respect to any rule issued under title V of the Housing Act of 1949 [42 U.S.C. 1471 et seq.], the Secretary of Agriculture) may, in order to further the job creation, community development, or economic revitalization objectives of the zone, waive or modify all or part of any rule that the Secretary has authority to promulgate, as such rule pertains to the carrying out of projects, activities, or undertakings within the zone.

(b) Limitation

No provision of this section may be construed to authorize the Secretary to waive or modify any rule adopted to carry out a statute or Executive order that prohibits, or the purpose of which is to protect persons against, discrimination on the basis of race, color, religion, sex, marital status, national origin, age, or handicap.

(c) Submission of requests

A request under subsection (a) of this section shall specify the rule or rules to be waived or modified and the change proposed, and shall briefly describe why the change would promote

the achievement of the job creation, community development, or economic revitalization objectives of the enterprise zone. If a request is made to the Secretary of Agriculture, the requesting governments shall send a copy of the request to the Secretary of Housing and Urban Development at the time the request is made.

(d) Consideration of requests

In considering a request, the Secretary shall weigh the extent to which the proposed change is likely to further job creation, community development, or economic revitalization within the enterprise zone against the effect the change is likely to have on the underlying purposes of applicable statutes in the geographic area that would be affected by the change. The Secretary shall approve the request whenever the Secretary finds, in the discretion of the Secretary, that the public interest that the proposed change would serve in furthering such job creation, community development or economic revitalization outweighs the public interest that continuation of the rule unchanged would serve in furthering such underlying purposes. The Secretary shall not approve any request to waive or modify a rule if that waiver or modification would—

- (1) directly violate a statutory requirement;
- or
- (2) be likely to present a significant risk to the public health, including environmental health or safety.

(e) Notice of disapproval

If a request is disapproved, the Secretary shall inform the requesting governments in writing of the reasons therefor and shall, to the maximum extent possible, work with such governments to develop an alternative, consistent with the standards contained in subsection (d) of this section.

(f) Period for determination

The Secretary shall discharge the responsibilities of the Secretary under this section in an expeditious manner, and shall make a determination on requests not later than 90 days after their receipt.

(g) Applicable procedures

A waiver or modification of a rule under subsection (a) of this section shall not be considered to be a rule, rulemaking, or regulation under chapter 5 of title 5. To facilitate reaching a decision on any requested waiver or modification, the Secretary may seek the views of interested parties and, if the views are to be sought, determine how they should be obtained and to what extent, if any, they should be taken into account in considering the request. The Secretary shall publish a notice in the Federal Register stating any waiver or modification of a rule under this section.

(h) Effect of subsequent amendment of rules

In the event that the Secretary proposes to amend a rule for which a waiver or modification under this section is in effect, the Secretary shall not change the waiver or modification to impose additional requirements unless the Secretary determines, consistent with standards contained in subsection (d) of this section, that such action is necessary.

(i) Expiration of waivers and modifications

No waiver or modification of a rule under this section shall remain in effect for a longer period than the period for which the enterprise zone designation remains in effect for the area in which the waiver or modification applies.

(j) Definitions

For purposes of this section:

(1) Rule

The term “rule” means—

- (A) any rule as defined in section 551(4) of title 5; or
- (B) any rulemaking conducted on the record after opportunity for an agency hearing pursuant to sections 556 and 557 of title 5.

(2) Secretary

The term “Secretary” means the Secretary of Housing and Urban Development or, with respect to any rule issued under title V of the Housing Act of 1949 [42 U.S.C. 1471 et seq.], the Secretary of Agriculture.

(Pub. L. 100-242, title VII, §704, Feb. 5, 1988, 101 Stat. 1962.)

REFERENCES IN TEXT

The Housing Act of 1949, referred to in subsecs. (a) and (j)(2), is act July 15, 1949, ch. 338, 63 Stat. 413, as amended. Title V of the Housing Act of 1949 is classified generally to subchapter III (§1471 et seq.) of chapter 8A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1441 of this title and Tables.

§ 11505. Coordination with CDBG and UDAG programs

It is the policy of the Congress that amounts provided under the community development block grant and urban development action grant programs under title I of the Housing and Community Development Act of 1974 [42 U.S.C. 5301 et seq.] shall not be reduced in any fiscal year in which the provisions of this chapter are in effect.

(Pub. L. 100-242, title VII, §706, Feb. 5, 1988, 101 Stat. 1964.)

REFERENCES IN TEXT

The Housing and Community Development Act of 1974, referred to in text, is Pub. L. 93-383, Aug. 22, 1974, 88 Stat. 633, as amended. Title I of the Housing and Community Development Act of 1974 is classified principally to chapter 69 (§5301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

CHAPTER 121—INTERNATIONAL CHILD ABDUCTION REMEDIES

Sec.	
11601.	Findings and declarations. <ul style="list-style-type: none"> (a) Findings. (b) Declarations.
11602.	Definitions.
11603.	Judicial remedies. <ul style="list-style-type: none"> (a) Jurisdiction of courts. (b) Petitions. (c) Notice. (d) Determination of case. (e) Burdens of proof.

- Sec.
- (f) Application of Convention.
 - (g) Full faith and credit.
 - (h) Remedies under Convention not exclusive.
11604. Provisional remedies.
- (a) Authority of courts.
 - (b) Limitation on authority.
11605. Admissibility of documents.
11606. United States Central Authority.
- (a) Designation.
 - (b) Functions.
 - (c) Regulatory authority.
 - (d) Obtaining information from Parent Locator Service.
 - (e) Grant authority.
11607. Costs and fees.
- (a) Administrative costs.
 - (b) Costs incurred in civil actions.
11608. Collection, maintenance, and dissemination of information.
- (a) In general.
 - (b) Requests for information.
 - (c) Responsibility of government entities.
 - (d) Information available from Parent Locator Service.
 - (e) Recordkeeping.
- 11608a. Office of Children's Issues.
- (a) Director requirements.
 - (b) Case officer staffing.
 - (c) Embassy contact.
 - (d) Reports to parents.
11609. Interagency coordinating group.
11610. Authorization of appropriations.
11611. Report on compliance with the Hague Convention on International Child Abduction.
- (a) In general.
 - (b) Definition.

§ 11601. Findings and declarations

(a) Findings

The Congress makes the following findings:

- (1) The international abduction or wrongful retention of children is harmful to their well-being.
- (2) Persons should not be permitted to obtain custody of children by virtue of their wrongful removal or retention.
- (3) International abductions and retentions of children are increasing, and only concerted cooperation pursuant to an international agreement can effectively combat this problem.
- (4) The Convention on the Civil Aspects of International Child Abduction, done at The Hague on October 25, 1980, establishes legal rights and procedures for the prompt return of children who have been wrongfully removed or retained, as well as for securing the exercise of visitation rights. Children who are wrongfully removed or retained within the meaning of the Convention are to be promptly returned unless one of the narrow exceptions set forth in the Convention applies. The Convention provides a sound treaty framework to help resolve the problem of international abduction and retention of children and will deter such wrongful removals and retentions.

(b) Declarations

The Congress makes the following declarations:

- (1) It is the purpose of this chapter to establish procedures for the implementation of the Convention in the United States.

(2) The provisions of this chapter are in addition to and not in lieu of the provisions of the Convention.

(3) In enacting this chapter the Congress recognizes—

- (A) the international character of the Convention; and
- (B) the need for uniform international interpretation of the Convention.

(4) The Convention and this chapter empower courts in the United States to determine only rights under the Convention and not the merits of any underlying child custody claims.

(Pub. L. 100-300, §2, Apr. 29, 1988, 102 Stat. 437.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original "this Act" meaning Pub. L. 100-300, Apr. 29, 1988, 102 Stat. 437, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note below and Tables.

SHORT TITLE

Section 1 of Pub. L. 100-300 provided that: "This Act [enacting this chapter and amending section 663 of this title] may be cited as the 'International Child Abduction Remedies Act'."

§ 11602. Definitions

For the purposes of this chapter—

(1) the term "applicant" means any person who, pursuant to the Convention, files an application with the United States Central Authority or a Central Authority of any other party to the Convention for the return of a child alleged to have been wrongfully removed or retained or for arrangements for organizing or securing the effective exercise of rights of access pursuant to the Convention;

(2) the term "Convention" means the Convention on the Civil Aspects of International Child Abduction, done at The Hague on October 25, 1980;

(3) the term "Parent Locator Service" means the service established by the Secretary of Health and Human Services under section 653 of this title;

(4) the term "petitioner" means any person who, in accordance with this chapter, files a petition in court seeking relief under the Convention;

(5) the term "person" includes any individual, institution, or other legal entity or body;

(6) the term "respondent" means any person against whose interests a petition is filed in court, in accordance with this chapter, which seeks relief under the Convention;

(7) the term "rights of access" means visitation rights;

(8) the term "State" means any of the several States, the District of Columbia, and any commonwealth, territory, or possession of the United States; and

(9) the term "United States Central Authority" means the agency of the Federal Government designated by the President under section 11606(a) of this title.

(Pub. L. 100-300, §3, Apr. 29, 1988, 102 Stat. 437.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 663 of this title.

§ 11603. Judicial remedies**(a) Jurisdiction of courts**

The courts of the States and the United States district courts shall have concurrent original jurisdiction of actions arising under the Convention.

(b) Petitions

Any person seeking to initiate judicial proceedings under the Convention for the return of a child or for arrangements for organizing or securing the effective exercise of rights of access to a child may do so by commencing a civil action by filing a petition for the relief sought in any court which has jurisdiction of such action and which is authorized to exercise its jurisdiction in the place where the child is located at the time the petition is filed.

(c) Notice

Notice of an action brought under subsection (b) of this section shall be given in accordance with the applicable law governing notice in interstate child custody proceedings.

(d) Determination of case

The court in which an action is brought under subsection (b) of this section shall decide the case in accordance with the Convention.

(e) Burdens of proof

(1) A petitioner in an action brought under subsection (b) of this section shall establish by a preponderance of the evidence—

(A) in the case of an action for the return of a child, that the child has been wrongfully removed or retained within the meaning of the Convention; and

(B) in the case of an action for arrangements for organizing or securing the effective exercise of rights of access, that the petitioner has such rights.

(2) In the case of an action for the return of a child, a respondent who opposes the return of the child has the burden of establishing—

(A) by clear and convincing evidence that one of the exceptions set forth in article 13b or 20 of the Convention applies; and

(B) by a preponderance of the evidence that any other exception set forth in article 12 or 13 of the Convention applies.

(f) Application of Convention

For purposes of any action brought under this chapter—

(1) the term “authorities”, as used in article 15 of the Convention to refer to the authorities of the state of the habitual residence of a child, includes courts and appropriate government agencies;

(2) the terms “wrongful removal or retention” and “wrongfully removed or retained”, as used in the Convention, include a removal or retention of a child before the entry of a custody order regarding that child; and

(3) the term “commencement of proceedings”, as used in article 12 of the Convention, means, with respect to the return of a child located in the United States, the filing of a petition in accordance with subsection (b) of this section.

(g) Full faith and credit

Full faith and credit shall be accorded by the courts of the States and the courts of the United States to the judgment of any other such court ordering or denying the return of a child, pursuant to the Convention, in an action brought under this chapter.

(h) Remedies under Convention not exclusive

The remedies established by the Convention and this chapter shall be in addition to remedies available under other laws or international agreements.

(Pub. L. 100-300, §4, Apr. 29, 1988, 102 Stat. 438.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11604, 11605, 11607 of this title.

§ 11604. Provisional remedies**(a) Authority of courts**

In furtherance of the objectives of article 7(b) and other provisions of the Convention, and subject to the provisions of subsection (b) of this section, any court exercising jurisdiction of an action brought under section 11603(b) of this title may take or cause to be taken measures under Federal or State law, as appropriate, to protect the well-being of the child involved or to prevent the child’s further removal or concealment before the final disposition of the petition.

(b) Limitation on authority

No court exercising jurisdiction of an action brought under section 11603(b) of this title may, under subsection (a) of this section, order a child removed from a person having physical control of the child unless the applicable requirements of State law are satisfied.

(Pub. L. 100-300, §5, Apr. 29, 1988, 102 Stat. 439.)

§ 11605. Admissibility of documents

With respect to any application to the United States Central Authority, or any petition to a court under section 11603 of this title, which seeks relief under the Convention, or any other documents or information included with such application or petition or provided after such submission which relates to the application or petition, as the case may be, no authentication of such application, petition, document, or information shall be required in order for the application, petition, document, or information to be admissible in court.

(Pub. L. 100-300, §6, Apr. 29, 1988, 102 Stat. 439.)

§ 11606. United States Central Authority**(a) Designation**

The President shall designate a Federal agency to serve as the Central Authority for the United States under the Convention.

(b) Functions

The functions of the United States Central Authority are those ascribed to the Central Authority by the Convention and this chapter.

(c) Regulatory authority

The United States Central Authority is authorized to issue such regulations as may be

necessary to carry out its functions under the Convention and this chapter.

(d) Obtaining information from Parent Locator Service

The United States Central Authority may, to the extent authorized by the Social Security Act [42 U.S.C. 301 et seq.], obtain information from the Parent Locator Service.

(e) Grant authority

The United States Central Authority is authorized to make grants to, or enter into contracts or agreements with, any individual, corporation, other Federal, State, or local agency, or private entity or organization in the United States for purposes of accomplishing its responsibilities under the Convention and this chapter.

(Pub. L. 100-300, §7, Apr. 29, 1988, 102 Stat. 439; Pub. L. 105-277, div. G, title XXII, §2213, Oct. 21, 1998, 112 Stat. 2681-812.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (d), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§301 et seq.) of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

AMENDMENTS

1998—Subsec. (e). Pub. L. 105-277 added subsec. (e).

EX. ORD. NO. 12648. IMPLEMENTATION OF CONVENTION ON CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

Ex. Ord. No. 12648, Aug. 11, 1988, 53 F.R. 30637, provided:

The United States of America deposited its instrument of ratification of the Hague Convention on the Civil Aspects of International Child Abduction (“Convention”) on April 29, 1988. The Convention entered into force for the United States on July 1, 1988. Article 6 of the Convention imposes upon Contracting States an obligation to designate a “Central Authority” for the purpose of discharging certain specified functions.

In order that the Government of the United States of America may give full and complete effect to the Convention, and pursuant to section 7 of the International Child Abduction Remedies Act, Public Law No. 100-300 (1988) [42 U.S.C. 11606], it is expedient and necessary that I designate a Central Authority within the Executive branch of said Government:

NOW, THEREFORE, by virtue of the authority vested in me as President by the Constitution and the laws of the United States, including section 301 of Title 3 of the United States Code and section 7 of the International Child Abduction Remedies Act, it is ordered as follows:

SECTION 1. *Designation of Central Authority.* The Department of State is hereby designated as the Central Authority of the United States for purposes of the Hague Convention on the Civil Aspects of International Child Abduction. The Secretary of State is hereby authorized and empowered, in accordance with such regulations as he may prescribe, to perform all lawful acts that may be necessary and proper in order to execute the functions of the Central Authority in a timely and efficient manner.

RONALD REAGAN.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 663, 11602 of this title.

§ 11607. Costs and fees

(a) Administrative costs

No department, agency, or instrumentality of the Federal Government or of any State or local

government may impose on an applicant any fee in relation to the administrative processing of applications submitted under the Convention.

(b) Costs incurred in civil actions

(1) Petitioners may be required to bear the costs of legal counsel or advisors, court costs incurred in connection with their petitions, and travel costs for the return of the child involved and any accompanying persons, except as provided in paragraphs (2) and (3).

(2) Subject to paragraph (3), legal fees or court costs incurred in connection with an action brought under section 11603 of this title shall be borne by the petitioner unless they are covered by payments from Federal, State, or local legal assistance or other programs.

(3) Any court ordering the return of a child pursuant to an action brought under section 11603 of this title shall order the respondent to pay necessary expenses incurred by or on behalf of the petitioner, including court costs, legal fees, foster home or other care during the course of proceedings in the action, and transportation costs related to the return of the child, unless the respondent establishes that such order would be clearly inappropriate.

(Pub. L. 100-300, §8, Apr. 29, 1988, 102 Stat. 440.)

§ 11608. Collection, maintenance, and dissemination of information

(a) In general

In performing its functions under the Convention, the United States Central Authority may, under such conditions as the Central Authority prescribes by regulation, but subject to subsection (c) of this section, receive from or transmit to any department, agency, or instrumentality of the Federal Government or of any State or foreign government, and receive from or transmit to any applicant, petitioner, or respondent, information necessary to locate a child or for the purpose of otherwise implementing the Convention with respect to a child, except that the United States Central Authority—

(1) may receive such information from a Federal or State department, agency, or instrumentality only pursuant to applicable Federal and State statutes; and

(2) may transmit any information received under this subsection notwithstanding any provision of law other than this chapter.

(b) Requests for information

Requests for information under this section shall be submitted in such manner and form as the United States Central Authority may prescribe by regulation and shall be accompanied or supported by such documents as the United States Central Authority may require.

(c) Responsibility of government entities

Whenever any department, agency, or instrumentality of the United States or of any State receives a request from the United States Central Authority for information authorized to be provided to such Central Authority under subsection (a) of this section, the head of such department, agency, or instrumentality shall promptly cause a search to be made of the files and records maintained by such department,

agency, or instrumentality in order to determine whether the information requested is contained in any such files or records. If such search discloses the information requested, the head of such department, agency, or instrumentality shall immediately transmit such information to the United States Central Authority, except that any such information the disclosure of which—

(1) would adversely affect the national security interests of the United States or the law enforcement interests of the United States or of any State; or

(2) would be prohibited by section 9 of title 13;

shall not be transmitted to the Central Authority. The head of such department, agency, or instrumentality shall, immediately upon completion of the requested search, notify the Central Authority of the results of the search, and whether an exception set forth in paragraph (1) or (2) applies. In the event that the United States Central Authority receives information and the appropriate Federal or State department, agency, or instrumentality thereafter notifies the Central Authority that an exception set forth in paragraph (1) or (2) applies to that information, the Central Authority may not disclose that information under subsection (a) of this section.

(d) Information available from Parent Locator Service

To the extent that information which the United States Central Authority is authorized to obtain under the provisions of subsection (c) of this section can be obtained through the Parent Locator Service, the United States Central Authority shall first seek to obtain such information from the Parent Locator Service, before requesting such information directly under the provisions of subsection (c) of this section.

(e) Recordkeeping

The United States Central Authority shall maintain appropriate records concerning its activities and the disposition of cases brought to its attention.

(Pub. L. 100-300, §9, Apr. 29, 1988, 102 Stat. 440.)

§ 11608a. Office of Children's Issues

(a) Director requirements

The Secretary of State shall fill the position of Director of the Office of Children's Issues of the Department of State (in this section referred to as the "Office") with an individual of senior rank who can ensure long-term continuity in the management and policy matters of the Office and has a strong background in consular affairs.

(b) Case officer staffing

Effective April 1, 2000, there shall be assigned to the Office of Children's Issues of the Department of State a sufficient number of case officers to ensure that the average caseload for each officer does not exceed 75.

(c) Embassy contact

The Secretary of State shall designate in each United States diplomatic mission an employee

who shall serve as the point of contact for matters relating to international abductions of children by parents. The Director of the Office shall regularly inform the designated employee of children of United States citizens abducted by parents to that country.

(d) Reports to parents

(1) In general

Except as provided in paragraph (2), beginning 6 months after November 29, 1999, and at least once every 6 months thereafter, the Secretary of State shall report to each parent who has requested assistance regarding an abducted child overseas. Each such report shall include information on the current status of the abducted child's case and the efforts by the Department of State to resolve the case.

(2) Exception

The requirement in paragraph (1) shall not apply in a case of an abducted child if—

(A) the case has been closed and the Secretary of State has reported the reason the case was closed to the parent who requested assistance; or

(B) the parent seeking assistance requests that such reports not be provided.

(Pub. L. 106-113, div. B, §1000(a)(7) [div. A, title II, §201], Nov. 29, 1999, 113 Stat. 1536, 1501A-419.)

CODIFICATION

Section was enacted as part of the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001, and not as part of the International Child Abduction Remedies Act which comprises this chapter.

§ 11609. Interagency coordinating group

The Secretary of State, the Secretary of Health and Human Services, and the Attorney General shall designate Federal employees and may, from time to time, designate private citizens to serve on an interagency coordinating group to monitor the operation of the Convention and to provide advice on its implementation to the United States Central Authority and other Federal agencies. This group shall meet from time to time at the request of the United States Central Authority. The agency in which the United States Central Authority is located is authorized to reimburse such private citizens for travel and other expenses incurred in participating at meetings of the interagency coordinating group at rates not to exceed those authorized under subchapter I of chapter 57 of title 5 for employees of agencies.

(Pub. L. 100-300, §10, Apr. 29, 1988, 102 Stat. 441.)

§ 11610. Authorization of appropriations

There are authorized to be appropriated for each fiscal year such sums as may be necessary to carry out the purposes of the Convention and this chapter.

(Pub. L. 100-300, §12, Apr. 29, 1988, 102 Stat. 442.)

§ 11611. Report on compliance with the Hague Convention on International Child Abduction

(a) In general

Beginning 6 months after October 21, 1998, and every 12 months thereafter, the Secretary of

State shall submit a report to the appropriate congressional committees on the compliance with the provisions of the Convention on the Civil Aspects of International Child Abduction, done at The Hague on October 25, 1980, by the signatory countries of the Convention. Each such report shall include the following information:

(1) The number of applications for the return of children submitted by applicants in the United States to the Central Authority for the United States that remain unresolved more than 18 months after the date of filing.

(2) A list of the countries to which children in unresolved applications described in paragraph (1) are alleged to have been abducted, are being wrongfully retained in violation of United States court orders, or which have failed to comply with any of their obligations under such convention with respect to applications for the return of children, access to children, or both, submitted by applicants in the United States.

(3) A list of the countries that have demonstrated a pattern of noncompliance with the obligations of the Convention with respect to applications for the return of children, access to children, or both, submitted by applicants in the United States to the Central Authority for the United States.

(4) Detailed information on each unresolved case described in paragraph (1) and on actions taken by the Department of State to resolve each such case, including the specific actions taken by the United States chief of mission in the country to which the child is alleged to have been abducted.

(5) Information on efforts by the Department of State to encourage other countries to become signatories of the Convention.

(6) A list of the countries that are parties to the Convention in which, during the reporting period, parents who have been left-behind in the United States have not been able to secure prompt enforcement of a final return or access order under a Hague proceeding, of a United States custody, access, or visitation order, or of an access or visitation order by authorities in the country concerned, due to the absence of a prompt and effective method for enforcement of civil court orders, the absence of a doctrine of comity, or other factors.

(7) A description of the efforts of the Secretary of State to encourage the parties to the Convention to facilitate the work of non-governmental organizations within their countries that assist parents seeking the return of children under the Convention.

(b) Definition

In this section, the term “Central Authority for the United States” has the meaning given the term in Article 6 of the Convention on the Civil Aspects of International Child Abduction, done at The Hague on October 25, 1980.

(Pub. L. 105–277, div. G, title XXVIII, § 2803, Oct. 21, 1998, 112 Stat. 2681–846; Pub. L. 106–113, div. B, § 1000(a)(7) [div. A, title II, § 202], Nov. 29, 1999, 113 Stat. 1536, 1501A–420; Pub. L. 107–228, div. A, title II, § 212, Sept. 30, 2002, 116 Stat. 1365.)

CODIFICATION

Section was enacted as part of the the Foreign Relations Authorization Act, Fiscal Years 1998 and 1999, and also as part of the Foreign Affairs Reform and Restructuring Act of 1998 and the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, and not as part of the International Child Abduction Remedies Act which comprises this chapter.

Section was formerly set out as a note under section 11601 of this title.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–228 struck out “during the period ending September 30, 2001” after “every 12 months thereafter” in introductory provisions.

1999—Subsec. (a). Pub. L. 106–113, § 1000(a)(7) [div. A, title II, § 202(1)], substituted “2001,” for “1999,” in first sentence of introductory provisions.

Subsec. (a)(1). Pub. L. 106–113, § 1000(a)(7) [div. A, title II, § 202(2)], substituted “applicants in the United States” for “United States citizens”.

Subsec. (a)(2). Pub. L. 106–113, § 1000(a)(7) [div. A, title II, § 202(3)], substituted “abducted, are being wrongfully retained in violation of United States court orders, or which have failed to comply with any of their obligations under such convention with respect to applications for the return of children, access to children, or both, submitted by applicants in the United States” for “abducted”.

Subsec. (a)(3). Pub. L. 106–113, § 1000(a)(7) [div. A, title II, § 202(4)], substituted “children, access to children, or both,” for “children” and “applicants in the United States” for “United States citizens”.

Subsec. (a)(4). Pub. L. 106–113, § 1000(a)(7) [div. A, title II, § 202(5)], inserted “, including the specific actions taken by the United States chief of mission in the country to which the child is alleged to have been abducted” before period at end.

Subsec. (a)(6), (7). Pub. L. 106–113, § 1000(a)(7) [div. A, title II, § 202(6)], added pars. (6) and (7).

CHAPTER 122—NATIVE HAWAIIAN HEALTH CARE

Sec.	
11701.	Findings.
11702.	Declaration of policy. <ul style="list-style-type: none"> (a) Congress. (b) Intent of Congress. (c) Report.
11703.	Comprehensive health care master plan for Native Hawaiians. <ul style="list-style-type: none"> (a) Development. (b) Authorization of appropriations.
11704.	Functions of Papa Ola Lokahi. <ul style="list-style-type: none"> (a) Responsibility. (b) Special project funds. (c) Clearinghouse. (d) Coordination of programs and services. (e) Technical support. (f) Relationships with other agencies.
11705.	Native Hawaiian health care systems. <ul style="list-style-type: none"> (a) Comprehensive health promotion, disease prevention, and primary health services. (b) Qualified entity. (c) Services to be provided. (d) Limitation of number of entities. (e) Matching funds. (f) Restriction on use of grant and contract funds. (g) Limitation on charges for services. (h) Authorization of appropriations.
11706.	Administrative grant for Papa Ola Lokahi. <ul style="list-style-type: none"> (a) In general. (b) Authorization of appropriations.
11707.	Administration of grants and contracts. <ul style="list-style-type: none"> (a) Terms and conditions.

- Sec.
- (b) Periodic review.
 - (c) Administrative requirements.
 - (d) Contract evaluation.
 - (e) Limitation on use of funds for administrative expenses.
 - (f) Report.
 - (g) Annual private audit.
11708. Assignment of personnel.
- (a) In general.
 - (b) Applicable Federal personnel provisions.
11709. Native Hawaiian health scholarships.
- (a) Eligibility.
 - (b) Terms and conditions.
 - (c) Authorization of appropriations.
11710. Report.
11711. Definitions.
11712. Rule of construction.
11713. Compliance with Budget Act.
11714. Severability.

§ 11701. Findings

The Congress finds that:

(1) Native Hawaiians comprise a distinct and unique indigenous people with a historical continuity to the original inhabitants of the Hawaiian archipelago whose society was organized as a Nation prior to the arrival of the first nonindigenous people in 1778.

(2) The Native Hawaiian people are determined to preserve, develop and transmit to future generations their ancestral territory, and their cultural identity in accordance with their own spiritual and traditional beliefs, customs, practices, language, and social institutions.

(3) The constitution and statutes of the State of Hawaii:

(A) acknowledge the distinct land rights of Native Hawaiian people as beneficiaries of the public lands trust; and

(B) reaffirm and protect the unique right of the Native Hawaiian people to practice and perpetuate their cultural and religious customs, beliefs, practices, and language.

(4) At the time of the arrival of the first nonindigenous people in Hawaii in 1778, the Native Hawaiian people lived in a highly organized, self-sufficient, subsistence social system based on communal land tenure with a sophisticated language, culture, and religion.

(5) A unified monarchical government of the Hawaiian Islands was established in 1810 under Kamehameha I, the first King of Hawaii.

(6) Throughout the 19th century and until 1893, the United States: (A) recognized the independence of the Hawaiian Nation; (B) extended full and complete diplomatic recognition to the Hawaiian Government; and (C) entered into treaties and conventions with the Hawaiian monarchs to govern commerce and navigation in 1826, 1842, 1849, 1875 and 1887.

(7) In the year 1893, the United States Minister assigned to the sovereign and independent Kingdom of Hawaii, John L. Stevens, conspired with a small group of non-Hawaiian residents of the Kingdom, including citizens of the United States, to overthrow the indigenous and lawful Government of Hawaii.

(8) In pursuance of that conspiracy, the United States Minister and the naval representative of the United States caused armed

naval forces of the United States to invade the sovereign Hawaiian Nation in support of the overthrow of the indigenous and lawful Government of Hawaii and the United States Minister thereupon extended diplomatic recognition of a provisional government formed by the conspirators without the consent of the native people of Hawaii or the lawful Government of Hawaii in violation of treaties between the two nations and of international law.

(9) In a message to Congress on December 18, 1893, then President Grover Cleveland reported fully and accurately on these illegal actions, and acknowledged that by these acts, described by the President as acts of war, the government of a peaceful and friendly people was overthrown, and the President concluded that a "substantial wrong has thus been done which a due regard for our national character as well as the rights of the injured people required that we should endeavor to repair".

(10) Queen Lili'uokalani, the lawful monarch of Hawaii, and the Hawaiian Patriotic League, representing the aboriginal citizens of Hawaii, promptly petitioned the United States for redress of these wrongs and for restoration of the indigenous government of the Hawaiian nation, but this petition was not acted upon.

(11) In 1898, the United States annexed Hawaii through the Newlands Resolution without the consent of or compensation to the indigenous people of Hawaii or their sovereign government who were thereby denied the mechanism for expression of their inherent sovereignty through self-government and self-determination, their lands and ocean resources.

(12) Through the Newlands Resolution and the 1900 Organic Act, the United States Congress received 1.75 million acres of lands formerly owned by the Crown and Government of the Hawaiian Kingdom and exempted the lands from then existing public land laws of the United States by mandating that the revenue and proceeds from these lands be "used solely for the benefit of the inhabitants of the Hawaiian Islands for education and other public purposes", thereby establishing a special trust relationship between the United States and the inhabitants of Hawaii.

(13) In 1921, Congress enacted the Hawaiian Homes Commission Act, 1920 which designated 200,000 acres of the ceded public lands for exclusive homesteading by Native Hawaiians, thereby affirming the trust relationship between the United States and the Native Hawaiians, as expressed by then Secretary of the Interior Franklin K. Lane who was cited in the Committee Report of the United States House of Representatives Committee on Territories as stating, "One thing that impressed me . . . was the fact that the natives of the islands who are our wards, I should say, and for whom in a sense we are trustees, are falling off rapidly in numbers and many of them are in poverty."

(14) In 1938, the United States Congress again acknowledged the unique status of the Hawaiian people by including in the Act of June 20, 1938 (52 Stat. 781 et seq.), a provision to lease lands within the extension to Native Hawai-

ians and to permit fishing in the area “only by native Hawaiian residents of said area or of adjacent villages and by visitors under their guidance”.

(15) Under the Act entitled “An Act to provide for the admission of the State of Hawaii into the Union”, approved March 18, 1959 (73 Stat. 4), the United States transferred responsibility for the administration of the Hawaiian Home Lands to the State of Hawaii but reaffirmed the trust relationship which existed between the United States and the Hawaiian people by retaining the exclusive power to enforce the trust, including the power to approve land exchanges, and legislative amendments affecting the rights of beneficiaries under such Act.

(16) Under the Act entitled “An Act to provide for the admission of the State of Hawaii into the Union”, approved March 18, 1959 (73 Stat. 4), the United States transferred responsibility for administration over portions of the ceded public lands trust not retained by the United States to the State of Hawaii but reaffirmed the trust relationship which existed between the United States and the Hawaiian people by retaining the legal responsibility of the State for the betterment of the conditions of Native Hawaiians under section 5(f) of the Act entitled “An Act to provide for the admission of the State of Hawaii into the Union”, approved March 18, 1959 (73 Stat. 4, 6).

(17) The authority of the Congress under the United States Constitution to legislate in matters affecting the aboriginal or indigenous peoples of the United States includes the authority to legislate in matters affecting the native peoples of Alaska and Hawaii.

(18) In furtherance of the trust responsibility for the betterment of the conditions of Native Hawaiians, the United States has established a program for the provision of comprehensive health promotion and disease prevention services to maintain and improve the health status of the Hawaiian people.

(19) This historical and unique legal relationship has been consistently recognized and affirmed by the Congress through the enactment of Federal laws which extend to the Hawaiian people the same rights and privileges accorded to American Indian, Alaska Native, Eskimo, and Aleut communities, including the Native American Programs Act of 1974 [42 U.S.C. 2991 et seq.]; the American Indian Religious Freedom Act [42 U.S.C. 1996, 1996a]; the National Museum of the American Indian Act [20 U.S.C. 80q et seq.]; and the Native American Graves Protection and Repatriation Act [25 U.S.C. 3001 et seq.].

(20) The United States has also recognized and reaffirmed the trust relationship to the Hawaiian people through legislation which authorizes the provision of services to Native Hawaiians, specifically, the Older Americans Act of 1965 [42 U.S.C. 3001 et seq.], the Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1987, the Veterans' Benefits and Services Act of 1988, the Rehabilitation Act of 1973 [29 U.S.C. 701 et seq.], the Native Hawaiian Health Care Act of 1988, the Health Professions Reauthorization Act of

1988, the Nursing Shortage Reduction and Education Extension Act of 1988, the Handicapped Programs Technical Amendments Act of 1988, the Indian Health Care Amendments of 1988, and the Disadvantaged Minority Health Improvement Act of 1990.

(21) The United States has also affirmed the historical and unique legal relationship to the Hawaiian people by authorizing the provision of services to Native Hawaiians to address problems of alcohol and drug abuse under the Anti-Drug Abuse Act of 1986.

(22) Despite such services, the unmet health needs of the Native Hawaiian people are severe and the health status of Native Hawaiians continues to be far below that of the general population of the United States.

(Pub. L. 100-579, §2, Oct. 31, 1988, 102 Stat. 2916; Pub. L. 100-690, title II, §2302, Nov. 18, 1988, 102 Stat. 4223; Pub. L. 102-396, title IX, §9168, Oct. 6, 1992, 106 Stat. 1948.)

REFERENCES IN TEXT

The Newlands Resolution, referred to in pars. (11) and (12), is act July 7, 1898, No. 55, 30 Stat. 750. For complete classification of this act to the Code, see Tables.

The 1900 Organic Act, referred to in par. (12), probably means the Hawaiian Organic Act, act Apr. 30, 1900, ch. 339, 31 Stat. 141, as amended, which was classified principally to chapter 3 (§491 et seq.) of Title 48, Territories and Insular Possessions, and was omitted from the Code. For complete classification of this Act to the Code, see Tables.

The Hawaiian Homes Commission Act, 1920, referred to in par. (13), is act July 9, 1921, ch. 42, 42 Stat. 108, as amended, which was classified generally to sections 691 to 718 of Title 48 and was omitted from the Code.

Act of June 20, 1938, referred to in par. (14), is act June 20, 1938, ch. 530, 52 Stat. 781, which is classified to sections 391b, 391b-1, 392b, 392c, 396, and 396a of Title 16, Conservation. For complete classification of this Act to the Code, see Tables.

An Act to provide for the admission of the State of Hawaii into the Union, referred to in pars. (15) and (16), is Pub. L. 86-3, Mar. 18, 1959, 73 Stat. 4, as amended, popularly known as the Hawaii Statehood Admissions Act, which is set out as a note preceding former section 491 of Title 48, Territories and Insular Possessions. For complete classification of this Act to the Code, see Tables.

The Native American Programs Act of 1974, referred to in par. (19), is title VIII of Pub. L. 88-452, as added by Pub. L. 93-644, §11, Jan. 4, 1975, 88 Stat. 2324, which is classified generally to subchapter VIII (§2991 et seq.) of chapter 34 of this title. For complete classification of this Act to the Code, see section 2991 of this title and Tables.

The American Indian Religious Freedom Act, referred to in par. (19), is Pub. L. 95-341, Aug. 11, 1978, 92 Stat. 469, as amended, which is classified to sections 1996 and 1996a of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1996 of this title and Tables.

The National Museum of the American Indian Act, referred to in par. (19), is Pub. L. 101-185, Nov. 28, 1989, 103 Stat. 1336, which is classified generally to subchapter XIII (§80q et seq.) of chapter 3 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 80q of Title 20 and Tables.

The Native American Graves Protection and Repatriation Act, referred to in par. (19), is Pub. L. 101-601, Nov. 16, 1990, 104 Stat. 3048, which is classified principally to chapter 32 (§3001 et seq.) of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of Title 25 and Tables.

The Older Americans Act of 1965, referred to in par. (20), is Pub. L. 89-73, July 14, 1965, 79 Stat. 218, as amended, which is classified generally to chapter 35 (§3001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

The Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1987, referred to in par. (20), is Pub. L. 100-146, Oct. 29, 1987, 101 Stat. 840, as amended. For complete classification of this Act to the Code, see Short Title of 1987 Amendment note set out under section 6000 of this title and Tables.

The Veterans' Benefits and Services Act of 1988, referred to in par. (20), is Pub. L. 100-322, May 20, 1988, 102 Stat. 487, as amended. For complete classification of this Act to the Code, see Short Title of 1988 Amendments note set out under section 101 of Title 38, Veterans' Benefits, and Tables.

The Rehabilitation Act of 1973, referred to in par. (20), is Pub. L. 93-112, Sept. 26, 1973, 87 Stat. 355, as amended, which is classified generally to chapter 16 (§701 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

The Native Hawaiian Health Care Act of 1988, referred to in par. (20), was Pub. L. 100-579, Oct. 31, 1988, 102 Stat. 2916, and subtitle D of title II of Pub. L. 100-690, Nov. 18, 1988, 102 Stat. 4222, which were classified generally to this chapter prior to being amended generally and renamed the Native Hawaiian Health Care Improvement Act by Pub. L. 102-396. For complete classification of this Act to the Code, see Tables.

The Health Professions Reauthorization Act of 1988, referred to in par. (20), is title VI of Pub. L. 100-607, Nov. 4, 1988, 102 Stat. 3122, as amended. For complete classification of this Act to the Code, see Short Title of 1988 Amendments note set out under section 201 of this title and Tables.

The Nursing Shortage Reduction and Education Extension Act of 1988, referred to in par. (20), is title VII of Pub. L. 100-607, Nov. 4, 1988, 102 Stat. 3153. For complete classification of this Act to the Code, see Short Title of 1988 Amendments note set out under section 201 of this title and Tables.

The Handicapped Programs Technical Amendments Act of 1988, referred to in par. (20), is Pub. L. 100-630, Nov. 7, 1988, 102 Stat. 3289. For complete classification of this Act to the Code, see Short Title of 1988 Amendment note set out under section 1400 of Title 20, Education, and Tables.

The Indian Health Care Amendments of 1988, referred to in par. (20), is Pub. L. 100-713, Nov. 23, 1988, 102 Stat. 4784. For complete classification of this Act to the Code, see Short Title of 1988 Amendment note set out under section 1601 of Title 25, Indians, and Tables.

The Disadvantaged Minority Health Improvement Act of 1990, referred to in par. (20), is Pub. L. 101-527, Nov. 6, 1990, 104 Stat. 2311. For complete classification of this Act to the Code, see Short Title of 1990 Amendments note set out under section 201 of this title and Tables.

The Anti-Drug Abuse Act of 1986, referred to in par. (21), is Pub. L. 99-570, Oct. 27, 1986, 100 Stat. 3207, as amended. For complete classification of this Act to the Code, see Short Title of 1986 Amendment note set out under section 801 of Title 21, Food and Drugs, and Tables.

CODIFICATION

The 1992 amendment is based on section 1 of S. 2681, One Hundred Second Congress, as passed by the Senate on Aug. 7, 1992, and enacted into law by section 9168 of Pub. L. 102-396. Section 9168, which referred to S. 2681, as passed by the Senate on "September 12, 1992", has been treated as referring to S. 2681, as passed by the Senate on Aug. 7, 1992, to reflect the probable intent of Congress.

Pub. L. 100-579 and Pub. L. 100-690 enacted identical sections.

AMENDMENTS

1992—Pub. L. 102-396 amended section generally substituting pars. (1) to (22) for former pars. (1) to (3) which set forth findings of Congress.

SHORT TITLE

Section 1 of Pub. L. 100-579, and section 2301 of subtitle D of title II of Pub. L. 100-690, as amended by Pub. L. 102-396, title IX, §9168, Oct. 6, 1992, 106 Stat. 1948, provided that: "This Act [enacting this chapter and repealing section 1621d of Title 25, Indians] may be cited as the 'Native Hawaiian Health Care Improvement Act'."

§ 11702. Declaration of policy

(a) Congress

The Congress hereby declares that it is the policy of the United States in fulfillment of its special responsibilities and legal obligations to the indigenous people of Hawaii resulting from the unique and historical relationship between the United States and the Government of the indigenous people of Hawaii—

(1) to raise the health status of Native Hawaiians to the highest possible health level; and

(2) to provide existing Native Hawaiian health care programs with all resources necessary to effectuate this policy.

(b) Intent of Congress

It is the intent of the Congress that the Nation meet the following health objectives with respect to Native Hawaiians by the year 2000:

(1) Reduce coronary heart disease deaths to no more than 100 per 100,000.

(2) Reduce stroke deaths to no more than 20 per 100,000.

(3) Increase control of high blood pressure to at least 50 percent of people with high blood pressure.

(4) Reduce blood cholesterol to an average of no more than 200 mg/dl.

(5) Slow the rise in lung cancer deaths to achieve a rate of no more than 42 per 100,000.

(6) Reduce breast cancer deaths to no more than 20.6 per 100,000 women.

(7) Increase Pap tests every 1 to 3 years to at least 85 percent of women age 18 and older.

(8) Increase fecal occult blood testing every 1 to 2 years to at least 50 percent of people age 50 and older.

(9) Reduce diabetes-related deaths to no more than 34 per 100,000.

(10) Reduce the most severe complications of diabetes as follows:

(A) end-stage renal disease to no more than 1.4 in 1,000;

(B) blindness to no more than 1.4 in 1,000;

(C) lower extremity amputation to no more than 4.9 in 1,000;

(D) perinatal mortality to no more than 2 percent; and

(E) major congenital malformations to no more than 4 percent.

(11) Reduce infant mortality to no more than 7 deaths per 1,000 live births.

(12) Reduce low birth weight to no more than 5 percent of live births.

(13) Increase first trimester prenatal care to at least 90 percent of live births.

(14) Reduce teenage pregnancies to no more than 50 per 1,000 girls age 17 and younger.

(15) Reduce unintended pregnancies to no more than 30 percent of pregnancies.

(16) Increase to at least 60 percent the proportion of primary care providers who provide age-appropriate preconception care and counseling.

(17) Increase years of healthy life to at least 65 years.

(18) Eliminate financial barriers to clinical preventive services.

(19) Increase childhood immunization levels to at least 90 percent of 2-year-olds.

(20) Reduce the prevalence of dental caries to no more than 35 percent of children by age 8.

(21) Reduce untreated dental caries so that the proportion of children with untreated caries (in permanent or primary teeth) is no more than 20 percent among children age 6 through 8 and no more than 15 percent among adolescents age 15.

(22) Reduce edentulism to no more than 20 percent in people age 65 and older.

(23) Increase moderate daily physical activity to at least 30 percent of the population.

(24) Reduce sedentary lifestyles to no more than 15 percent of the population.

(25) Reduce overweight to a prevalence of no more than 20 percent of the population.

(26) Reduce dietary fat intake to an average of 30 percent of calories or less.

(27) Increase to at least 75 percent the proportion of primary care providers who provide nutrition assessment and counseling or referral to qualified nutritionists or dietitians.

(28) Reduce cigarette smoking prevalence to no more than 15 percent of adults.

(29) Reduce initiation of smoking to no more than 15 percent by age 20.

(30) Reduce alcohol-related motor vehicle crash deaths to no more than 8.5 per 100,000 adjusted for age.

(31) Reduce alcohol use by school children age 12 to 17 to less than 13 percent.

(32) Reduce marijuana use by youth age 18 to 25 to less than 8 percent.

(33) Reduce cocaine use by youth aged¹ 18 to 25 to less than 3 percent.

(34) Confine HIV infection to no more than 800 per 100,000.

(35) Reduce gonorrhea infections to no more than 225 per 100,000.

(36) Reduce syphilis infections to no more than 10 per 100,000.

(37) Reduce significant hearing impairment to a prevalence² of no more than 82 per 1,000.

(38) Reduce acute middle ear infections among children age 4 and younger, as measured by days of restricted activity or school absenteeism, to no more than 105 days per 100 children.

(39) Reduce indigenous cases of vaccine-preventable diseases as follows:

(A) Diphtheria among individuals age 25 and younger to 0;

(B) Tetanus among individuals age 25 and younger to 0;

(C) Polio (wild-type virus) to 0;

(D) Measles to 0;

(E) Rubella to 0;

(F) Congenital Rubella Syndrome to 0;

(G) Mumps to 500; and

(H) Pertussis to 1,000; and³

(40) Reduce significant visual impairment to a prevalence of no more than 30 per 1,000.

(c) Report

The Secretary shall submit to the President, for inclusion in each report required to be transmitted to the Congress under section 11710 of this title, a report on the progress made in each area toward meeting each of the objectives described in subsection (b) of this section.

(Pub. L. 100-579, §3, Oct. 31, 1988, 102 Stat. 2916; Pub. L. 100-690, title II, §2303, Nov. 18, 1988, 102 Stat. 4223; Pub. L. 102-396, title IX, §9168, Oct. 6, 1992, 106 Stat. 1948.)

CODIFICATION

The 1992 amendment is based on section 1 of S. 2681, One Hundred Second Congress, as passed by the Senate on Aug. 7, 1992, and enacted into law by section 9168 of Pub. L. 102-396. Section 9168, which referred to S. 2681, as passed by the Senate on "September 12, 1992", has been treated as referring to S. 2681, as passed by the Senate on Aug. 7, 1992, to reflect the probable intent of Congress.

Pub. L. 100-579 and Pub. L. 100-690 enacted identical sections.

AMENDMENTS

1992—Pub. L. 102-396 amended section generally. Prior to amendment, section related to comprehensive health care master plan for Native Hawaiians.

§ 11703. Comprehensive health care master plan for Native Hawaiians

(a) Development

The Secretary may make a grant to, or enter into a contract with, Papa Ola Lokahi for the purpose of coordinating, implementing and updating a Native Hawaiian comprehensive health care master plan designed to promote comprehensive health promotion and disease prevention services and to maintain and improve the health status of Native Hawaiians. The master plan shall be based upon an assessment of the health care status and health care needs of Native Hawaiians. To the extent practicable, assessments made as of the date of such grant or contract shall be used by Papa Ola Lokahi, except that any such assessment shall be updated as appropriate.

(b) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out subsection (a) of this section.

(Pub. L. 100-579, §4, Oct. 31, 1988, 102 Stat. 2916; Pub. L. 100-690, title II, §2304, Nov. 18, 1988, 102 Stat. 4223; Pub. L. 102-396, title IX, §9168, Oct. 6, 1992, 106 Stat. 1948.)

CODIFICATION

The 1992 amendment is based on section 1 of S. 2681, One Hundred Second Congress, as passed by the Senate on Aug. 7, 1992, and enacted into law by section 9168 of

¹ So in original. Probably should be "age".

² So in original. Probably should be "prevalence".

³ So in original. The ";" and "and" probably should be a period.

Pub. L. 102-396, Section 9168, which referred to S. 2681, as passed by the Senate on "September 12, 1992", has been treated as referring to S. 2681, as passed by the Senate on Aug. 7, 1992, to reflect the probable intent of Congress.

Pub. L. 100-579 and Pub. L. 100-690 enacted identical sections.

AMENDMENTS

1992—Pub. L. 102-396 amended section generally. Prior to amendment, section related to Native Hawaiian health centers.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11704, 11706, 11709 of this title.

§ 11704. Functions of Papa Ola Lokahi

(a) Responsibility

Papa Ola Lokahi shall be responsible for the—

(1) coordination, implementation, and updating, as appropriate, of the comprehensive health care master plan developed pursuant to section 11703 of this title;

(2) training for the persons described in section 11705(c)(1)(B) of this title;

(3) identification of and research into the diseases that are most prevalent among Native Hawaiians, including behavioral, biomedical, epidemiological, and health services; and

(4) the development of an action plan outlining the contributions that each member organization of Papa Ola Lokahi will make in carrying out the policy of this chapter.

(b) Special project funds

Papa Ola Lokahi is authorized to receive special project funds that may be appropriated for the purpose of research on the health status of Native Hawaiians or for the purpose of addressing the health care needs of Native Hawaiians.

(c) Clearinghouse

Papa Ola Lokahi shall serve as a clearinghouse for:

(1) the collection and maintenance of data associated with the health status of Native Hawaiians;

(2) the identification and research into diseases affecting Native Hawaiians;

(3) the availability of Native Hawaiian project funds, research projects and publications;

(4) the collaboration of research in the area of Native Hawaiian health; and

(5) the timely dissemination of information pertinent to the Native Hawaiian health care systems.

(d) Coordination of programs and services

Papa Ola Lokahi shall, to the maximum extent possible, coordinate and assist the health care programs and services provided to Native Hawaiians.

(e) Technical support

Papa Ola Lokahi shall act as a statewide infrastructure to provide technical support and coordination of training and technical assistance to the Native Hawaiian health care systems.

(f) Relationships with other agencies

Papa Ola Lokahi is authorized to enter into agreements or memoranda of understanding

with relevant agencies or organizations that are capable of providing resources or services to the Native Hawaiian health care systems.

(Pub. L. 100-579, §5, Oct. 31, 1988, 102 Stat. 2919; Pub. L. 100-690, title II, §2305, Nov. 18, 1988, 102 Stat. 4225; Pub. L. 102-396, title IX, §9168, Oct. 6, 1992, 106 Stat. 1948.)

CODIFICATION

The 1992 amendment is based on section 1 of S. 2681, One Hundred Second Congress, as passed by the Senate on Aug. 7, 1992, and enacted into law by section 9168 of Pub. L. 102-396. Section 9168, which referred to S. 2681, as passed by the Senate on "September 12, 1992", has been treated as referring to S. 2681, as passed by the Senate on Aug. 7, 1992, to reflect the probable intent of Congress.

Pub. L. 100-579 and Pub. L. 100-690 enacted identical sections.

AMENDMENTS

1992—Pub. L. 102-396 amended section generally. Prior to amendment, section related to administrative grant for Papa Ola Lokahi.

§ 11705. Native Hawaiian health care systems

(a) Comprehensive health promotion, disease prevention, and primary health services

(1)(A) The Secretary, in consultation with Papa Ola Lokahi, may make grants to, or enter into contracts with, any qualified entity for the purpose of providing comprehensive health promotion and disease prevention services as well as primary health services to Native Hawaiians.

(B) In making grants and entering into contracts under this paragraph, the Secretary shall give preference to Native Hawaiian health care systems and Native Hawaiian organizations and, to the extent feasible, health promotion and disease prevention services shall be performed through Native Hawaiian health care systems.

(2) In addition to paragraph (1), the Secretary may make a grant to, or enter into a contract with, Papa Ola Lokahi for the purpose of planning Native Hawaiian health care systems to serve the health needs of Native Hawaiian communities on each of the islands of O'ahu, Molo-ka'i, Maui, Hawai'i, Lana'i, Kaua'i, and Ni'ihau in the State of Hawaii.

(b) Qualified entity

An entity is a qualified entity for purposes of subsection (a)(1) of this section if the entity is a Native Hawaiian health care system.

(c) Services to be provided

(1) Each recipient of funds under subsection (a)(1) of this section shall provide the following services:

(A) outreach services to inform Native Hawaiians of the availability of health services;

(B) education in health promotion and disease prevention of the Native Hawaiian population by, wherever possible, Native Hawaiian health care practitioners, community outreach workers, counselors, and cultural educators;

(C) services of physicians, physicians' assistants, nurse practitioners or other health professionals;

(D) immunizations;

(E) prevention and control of diabetes, high blood pressure, and otitis media;

- (F) pregnancy and infant care; and
- (G) improvement of nutrition.

(2) In addition to the mandatory services under paragraph (1), the following services may be provided pursuant to subsection (a)(1) of this section:

(A) identification, treatment, control, and reduction of the incidence of preventable illnesses and conditions endemic to Native Hawaiians;

(B) collection of data related to the prevention of diseases and illnesses among Native Hawaiians; and

(C) services within the meaning of the terms “health promotion”, “disease prevention”, and “primary health services”, as such terms are defined in section 11711 of this title, which are not specifically referred to in paragraph (1) of this subsection.

(3) The health care services referred to in paragraphs (1) and (2) which are provided under grants or contracts under subsection (a)(1) of this section may be provided by traditional Native Hawaiian healers.

(d) Limitation of number of entities

During a fiscal year, the Secretary under this chapter may make a grant to, or hold a contract with, not more than 5 Native Hawaiian health care systems.

(e) Matching funds

(1) The Secretary may not make a grant or provide funds pursuant to a contract under subsection (a)(1) of this section to a Native Hawaiian health care system—

(A) in an amount exceeding 83.3 percent of the costs of providing health services under the grant or contract; and

(B) unless the Native Hawaiian health care system agrees that the Native Hawaiian health care system or the State of Hawaii will make available, directly or through donations to the Native Hawaiian health care system, non-Federal contributions toward such costs in an amount equal to not less than \$1 (in cash or in kind under paragraph (2)) for each \$5 of Federal funds provided in such grant or contract.

(2) Non-Federal contributions required in paragraph (1) may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government or services assisted or subsidized to any significant extent by the Federal Government may not be included in determining the amount of such non-Federal contributions.

(3) The Secretary may waive the requirement established in paragraph (1) if—

(A) the Native Hawaiian health care system involved is a nonprofit private entity described in subsection (b) of this section; and

(B) the Secretary, in consultation with Papa Ola Lokahi, determines that it is not feasible for the Native Hawaiian health care system to comply with such requirement.

(f) Restriction on use of grant and contract funds

The Secretary may not make a grant to, or enter into a contract with, any entity under subsection (a)(1) of this section unless the entity

agrees that, amounts received pursuant to such subsection will not, directly or through contract, be expended—

(1) for any purpose other than the purposes described in subsection (c) of this section;

(2) to provide inpatient services;

(3) to make cash payments to intended recipients of health services; or

(4) to purchase or improve real property (other than minor remodeling of existing improvements to real property) or to purchase major medical equipment.

(g) Limitation on charges for services

The Secretary may not make a grant, or enter into a contract with, any entity under subsection (a)(1) of this section unless the entity agrees that, whether health services are provided directly or through contract—

(1) health services under the grant or contract will be provided without regard to ability to pay for the health services; and

(2) the entity will impose a charge for the delivery of health services, and such charge—

(A) will be made according to a schedule of charges that is made available to the public, and

(B) will be adjusted to reflect the income of the individual involved.

(h) Authorization of appropriations

(1) There are authorized to be appropriated such sums as may be necessary for fiscal years 1993 through 2001 to carry out subsection (a)(1) of this section.

(2) There are authorized to be appropriated such sums as may be necessary to carry out subsection (a)(2) of this section.

(Pub. L. 100-579, §6, Oct. 31, 1988, 102 Stat. 2919; Pub. L. 100-690, title II, §2306, Nov. 18, 1988, 102 Stat. 4226; Pub. L. 102-396, title IX, §9168, Oct. 6, 1992, 106 Stat. 1948.)

CODIFICATION

The 1992 amendment is based on section 1 of S. 2681, One Hundred Second Congress, as passed by the Senate on Aug. 7, 1992, and enacted into law by section 9168 of Pub. L. 102-396. Section 9168, which referred to S. 2681, as passed by the Senate on “September 12, 1992”, has been treated as referring to S. 2681, as passed by the Senate on Aug. 7, 1992, to reflect the probable intent of Congress.

Pub. L. 100-579 and Pub. L. 100-690 enacted identical sections.

AMENDMENTS

1992—Pub. L. 102-396 amended section generally. Prior to amendment, section related to administration of grants and contracts.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11704, 11706, 11707 of this title.

§ 11706. Administrative grant for Papa Ola Lokahi

(a) In general

In addition to any other grant or contract under this chapter, the Secretary may make grants to, or enter into contracts with, Papa Ola Lokahi for—

(1) coordination, implementation, and updating (as appropriate) of the comprehensive

health care master plan developed pursuant to section 11703 of this title;

(2) training for the persons described in section 11705(c)(1)(B) of this title;

(3) identification of and research into the diseases that are most prevalent among Native Hawaiians, including behavioral, biomedical, epidemiological, and health services;

(4) the development of an action plan outlining the contributions that each member organization of Papa Ola Lokahi will make in carrying out the policy of this chapter;

(5) a clearinghouse function for—

(A) the collection and maintenance of data associated with the health status of Native Hawaiians;

(B) the identification and research into diseases affecting Native Hawaiians; and

(C) the availability of Native Hawaiian project funds, research projects and publications;

(6) the coordination of the health care programs and services provided to Native Hawaiians; and

(7) the administration of special project funds.

(b) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary for fiscal years 1993 through 2001 to carry out subsection (a) of this section.

(Pub. L. 100-579, §7, Oct. 31, 1988, 102 Stat. 2921; Pub. L. 100-690, title II, §2307, Nov. 18, 1988, 102 Stat. 4227; Pub. L. 102-396, title IX, §9168, Oct. 6, 1992, 106 Stat. 1948.)

CODIFICATION

The 1992 amendment is based on section 1 of S. 2681, One Hundred Second Congress, as passed by the Senate on Aug. 7, 1992, and enacted into law by section 9168 of Pub. L. 102-396. Section 9168, which referred to S. 2681, as passed by the Senate on "September 12, 1992", has been treated as referring to S. 2681, as passed by the Senate on Aug. 7, 1992, to reflect the probable intent of Congress.

Pub. L. 100-579 and Pub. L. 100-690 enacted identical sections.

AMENDMENTS

1992—Pub. L. 102-396 amended section generally. Prior to amendment, section related to assignment of personnel.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11707 of this title.

§ 11707. Administration of grants and contracts

(a) Terms and conditions

The Secretary shall include in any grant made or contract entered into under this chapter such terms and conditions as the Secretary considers necessary or appropriate to ensure that the objectives of such grant or contract are achieved.

(b) Periodic review

The Secretary shall periodically evaluate the performance of, and compliance with, grants and contracts under this chapter.

(c) Administrative requirements

The Secretary may not make a grant or enter into a contract under this chapter with an entity unless the entity—

(1) agrees to establish such procedures for fiscal control and fund accounting as may be necessary to ensure proper disbursement and accounting with respect to the grant or contract;

(2) agrees to ensure the confidentiality of records maintained on individuals receiving health services under the grant or contract;

(3) with respect to providing health services to any population of Native Hawaiians, a substantial portion of which has a limited ability to speak the English language—

(A) has developed and has the ability to carry out a reasonable plan to provide health services under the grant or contract through individuals who are able to communicate with the population involved in the language and cultural context that is most appropriate; and

(B) has designated at least one individual, fluent in both English and the appropriate language, to assist in carrying out the plan;

(4) with respect to health services that are covered in the plan of the State of Hawaii approved under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.]—

(A) if the entity will provide under the grant or contract any such health services directly—

(i) the entity has entered into a participation agreement under such plans; and

(ii) the entity is qualified to receive payments under such plan; and

(B) if the entity will provide under the grant or contract any such health services through a contract with an organization—

(i) the organization has entered into a participation agreement under such plan; and

(ii) the organization is qualified to receive payments under such plan; and

(5) agrees to submit to the Secretary and to Papa Ola Lokahi an annual report that describes the utilization and costs of health services provided under the grant or contract (including the average cost of health services per user) and that provides such other information as the Secretary determines to be appropriate.

(d) Contract evaluation

(1) If, as a result of evaluations conducted by the Secretary, the Secretary determines that an entity has not complied with or satisfactorily performed a contract entered into under section 11705 of this title, the Secretary shall, prior to renewing such contract, attempt to resolve the areas of noncompliance or unsatisfactory performance and modify such contract to prevent future occurrences of such noncompliance or unsatisfactory performance. If the Secretary determines that such noncompliance or unsatisfactory performance cannot be resolved and prevented in the future, the Secretary shall not renew such contract with such entity and is authorized to enter into a contract under section 11705 of this title with another entity referred to in section 11705(b) of this title that provides services to the same population of Native Hawaiians which is served by the entity whose con-

tract is not renewed by reason of this subsection.

(2) In determining whether to renew a contract entered into with an entity under this chapter, the Secretary shall consider the results of the evaluation under this section.

(3) All contracts entered into by the Secretary under this chapter shall be in accordance with all Federal contracting laws and regulations except that, in the discretion of the Secretary, such contracts may be negotiated without advertising and may be exempted from the provisions of sections 3131 and 3133 of title 40.

(4) Payments made under any contract entered into under this chapter may be made in advance, by means of reimbursement, or in installments and shall be made on such conditions as the Secretary deems necessary to carry out the purposes of this chapter.

(e) Limitation on use of funds for administrative expenses

Except for grants and contracts under section 11706 of this title, the Secretary may not grant to, or enter into a contract with, an entity under this chapter unless the entity agrees that the entity will not expend more than 10 percent of amounts received pursuant to this chapter for the purpose of administering the grant or contract.

(f) Report

(1) For each fiscal year during which an entity receives or expends funds pursuant to a grant or contract under this chapter, such entity shall submit to the Secretary and to Papa Ola Lokahi a quarterly report on—

(A) activities conducted by the entity under the grant or contract;

(B) the amounts and purposes for which Federal funds were expended; and

(C) such other information as the Secretary may request.

(2) The reports and records of any entity which concern any grant or contract under this chapter shall be subject to audit by the Secretary, the Inspector General of the Department of Health and Human Services, and the Comptroller General of the United States.

(g) Annual private audit

The Secretary shall allow as a cost of any grant made or contract entered into under this chapter the cost of an annual private audit conducted by a certified public accountant.

(Pub. L. 100-579, § 8, Oct. 31, 1988, 102 Stat. 2921; Pub. L. 100-690, title II, § 2308, Nov. 18, 1988, 102 Stat. 4228; Pub. L. 102-396, title IX, § 9168, Oct. 6, 1992, 106 Stat. 1948.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (c)(4), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XIX of the Act is classified generally to subchapter XIX (§ 1396 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

CODIFICATION

In subsec. (d)(3), “sections 3131 and 3133 of title 40” substituted for “the Act of August 24, 1935 (40 U.S.C. 270a et seq.)” on authority of Pub. L. 107-217, § 5(c), Aug.

21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

The 1992 amendment is based on section 1 of S. 2681, One Hundred Second Congress, as passed by the Senate on Aug. 7, 1992, and enacted into law by section 9168 of Pub. L. 102-396. Section 9168, which referred to S. 2681, as passed by the Senate on “September 12, 1992”, has been treated as referring to S. 2681, as passed by the Senate on Aug. 7, 1992, to reflect the probable intent of Congress.

Pub. L. 100-579 and Pub. L. 100-690 enacted identical sections.

AMENDMENTS

1992—Pub. L. 102-396 amended section generally. Prior to amendment, section defined terms for purposes of this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300x-63 of this title.

§ 11708. Assignment of personnel

(a) In general

The Secretary is authorized to enter into an agreement with any entity under which the Secretary is authorized to assign personnel of the Department of Health and Human Services with expertise identified by such entity to such entity on detail for the purposes of providing comprehensive health promotion and disease prevention services to Native Hawaiians.

(b) Applicable Federal personnel provisions

Any assignment of personnel made by the Secretary under any agreement entered into under the authority of subsection (a) of this section shall be treated as an assignment of Federal personnel to a local government that is made in accordance with subchapter VI of chapter 33 of title 5.

(Pub. L. 100-579, § 9, Oct. 31, 1988, 102 Stat. 2923; Pub. L. 100-690, title II, § 2309, Nov. 18, 1988, 102 Stat. 4229; Pub. L. 102-396, title IX, § 9168, Oct. 6, 1992, 106 Stat. 1948.)

CODIFICATION

The 1992 amendment is based on section 1 of S. 2681, One Hundred Second Congress, as passed by the Senate on Aug. 7, 1992, and enacted into law by section 9168 of Pub. L. 102-396. Section 9168, which referred to S. 2681, as passed by the Senate on “September 12, 1992”, has been treated as referring to S. 2681, as passed by the Senate on Aug. 7, 1992, to reflect the probable intent of Congress.

Pub. L. 100-579 and Pub. L. 100-690 enacted identical sections.

AMENDMENTS

1992—Pub. L. 102-396 amended section generally. Prior to amendment, section related to rule of construction.

§ 11709. Native Hawaiian health scholarships

(a) Eligibility

Subject to the availability of funds appropriated under the authority of subsection (c) of this section, the Secretary shall provide funds through a direct grant or a cooperative agreement to Papa Ola Lokahi for the purpose of providing scholarship assistance to students who—

- (1) meet the requirements of paragraphs (1), (3), and (4) of section 2541(b) of this title, and
- (2) are Native Hawaiians.

(b) Terms and conditions

(1) The scholarship assistance provided under subsection (a) of this section shall be provided under the same terms and subject to the same conditions, regulations, and rules that apply to scholarship assistance provided under section 254l of this title, provided that—

(A) the provision of scholarships in each type of health care profession training shall correspond to the need for each type of health care professional identified in the Native Hawaiian comprehensive health care master plan implemented under section 11703 of this title to serve the Native Hawaiian health care systems, as identified by Papa Ola Lokahi;

(B) the primary health services covered under the scholarship assistance program under this section shall be the services included under the definition of that term under section 11711(8) of this title;

(C) to the maximum extent practicable, the Secretary shall select scholarship recipients from a list of eligible applicants submitted by the Papa Ola Lokahi;

(D) the obligated service requirement for each scholarship recipient shall be fulfilled through the full-time clinical or nonclinical practice of the health profession of the scholarship recipient, in an order of priority that would provide for practice—

(i) first, in any one of the five Native Hawaiian health care systems; and

(ii) second, in—

(I) a health professional shortage area or medically underserved area located in the State of Hawaii; or

(II) a geographic area or facility that is—

(aa) located in the State of Hawaii; and

(bb) has a designation that is similar to a designation described in subclause (I) made by the Secretary, acting through the Public Health Service;

(E) the provision of counseling, retention and other support services shall not be limited to scholarship recipients, but shall also include recipients of other scholarship and financial aid programs enrolled in appropriate health professions training programs.¹

(F) the obligated service of a scholarship recipient shall not be performed by the recipient through membership in the National Health Service Corps; and

(G) the requirements of sections 254d through 254k of this title, section 254m of this title, other than subsection (b)(5) of that section, and section 254n of this title applicable to scholarship assistance provided under section 254l of this title shall not apply to the scholarship assistance provided under subsection (a) of this section.

(2) The Native Hawaiian Health Scholarship program shall not be administered by or through the Indian Health Service.

(c) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary for fiscal years 1993

through 2001 for the purpose of funding the scholarship assistance provided under subsection (a) of this section.

(Pub. L. 100-579, §10, as added Pub. L. 102-396, title IX, §9168, Oct. 6, 1992, 106 Stat. 1948; amended Pub. L. 105-256, §12, Oct. 14, 1998, 112 Stat. 1899; Pub. L. 107-116, title V, §514(a), Jan. 10, 2002, 115 Stat. 2219.)

CODIFICATION

Section enacted by section 1 of S. 2681, One Hundred Second Congress, as passed by the Senate on Aug. 7, 1992, which was enacted into law by section 9168 of Pub. L. 102-396. Section 9168, which referred to S. 2681, as passed by the Senate on "September 12, 1992", has been treated as referring to S. 2681, as passed by the Senate on Aug. 7, 1992, to reflect the probable intent of Congress.

PRIOR PROVISIONS

A prior section 11709, Pub. L. 100-579, §11, Oct. 31, 1988, 102 Stat. 2923; Pub. L. 100-690, title II, §2311, Nov. 18, 1988, 102 Stat. 4229, which related to compliance with Budget Act, was amended generally by Pub. L. 102-396, title IX, §9168, Oct. 6, 1992, 106 Stat. 1948, and transferred to section 11710 of this title.

A prior section 10 of Pub. L. 100-579 repealed section 1621d of Title 25, Indians.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107-116, §514(a)(1), substituted "Papa Ola Lokahi" for "Kamehameha School/Bishop Estate" in introductory provisions.

Subsec. (b)(1)(C). Pub. L. 107-116, §514(a)(2), which directed the substitution of "Papa Ola Lokahi" for "Kamehameha School/Bishop Estate", was executed by making the substitution for "Kamehameha Schools/Bishop Estate" to reflect the probable intent of Congress.

1998—Subsec. (a)(1). Pub. L. 105-256, §12(a), which directed amendment of subsec. (a)(1) by substituting "meet the requirements of paragraphs (1), (3), and (4) of section 254(b) of this title" for "meet the requirements of section 254l of this title", was executed by making the substitution for "meet the requirements of section 254b of this title", to reflect the probable intent of Congress.

Subsec. (b)(1)(A). Pub. L. 105-256, §12(b)(1), inserted "identified in the Native Hawaiian comprehensive health care master plan implemented under section 11703 of this title" after "health care professional".

Subsec. (b)(1)(B). Pub. L. 105-256, §12(b)(2), (3), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (b)(1)(C). Pub. L. 105-256, §12(b)(2), redesignated subpar. (B) as (C). Former subpar. (C) redesignated (D).

Subsec. (b)(1)(D). Pub. L. 105-256, §12(b)(4), added subpar. (D) and struck out former subpar. (D) which read as follows: "the obligated service requirement for each scholarship recipient shall be fulfilled through service, in order of priority, in (i) any one of the five Native Hawaiian health care systems, or (ii) health professions shortage areas, medically underserved areas, or geographic areas or facilities similarly designated by the United States Public Health Service in the State of Hawaii; and".

Pub. L. 105-256, §12(b)(2), redesignated subpar. (C) as (D). Former subpar. (D) redesignated (E).

Subsec. (b)(1)(E). Pub. L. 105-256, §12(b)(2), redesignated subpar. (D) as (E).

Subsec. (b)(1)(F), (G). Pub. L. 105-256, §12(b)(5), (6), added subpars. (F) and (G).

§ 11710. Report

The President shall, at the time the budget is submitted under section 1105 of title 31, for each fiscal year transmit to the Congress a report on

¹ So in original. The comma probably should be a semicolon.

the progress made in meeting the objectives of this chapter, including a review of programs established or assisted pursuant to this chapter and an assessment and recommendations of additional programs or additional assistance necessary to, at a minimum, provide health services to Native Hawaiians, and ensure a health status for Native Hawaiians, which are at a parity with the health services available to, and the health status of, the general population.

(Pub. L. 100-579, § 11, Oct. 31, 1988, 102 Stat. 2923; Pub. L. 100-690, title II, § 2311, Nov. 18, 1988, 102 Stat. 4229; Pub. L. 102-396, title IX, § 9168, Oct. 6, 1992, 106 Stat. 1948.)

CODIFICATION

The 1992 amendment is based on section 1 of S. 2681, One Hundred Second Congress, as passed by the Senate on Aug. 7, 1992, and enacted into law by section 9168 of Pub. L. 102-396. Section 9168, which referred to S. 2681, as passed by the Senate on "September 12, 1992", has been treated as referring to S. 2681, as passed by the Senate on Aug. 7, 1992, to reflect the probable intent of Congress.

Section was formerly classified to section 11709 of this title prior to the general amendment of this chapter by Pub. L. 102-396.

Pub. L. 100-579 and Pub. L. 100-690 enacted identical sections.

PRIOR PROVISIONS

A prior section 11710, Pub. L. 100-579, § 12, Oct. 31, 1988, 102 Stat. 2923; Pub. L. 100-690, title II, § 2312, Nov. 18, 1988, 102 Stat. 4230, which related to severability, was amended generally by Pub. L. 102-396, title IX, § 9168, Oct. 6, 1992, 106 Stat. 1948, and transferred to section 11711 of this title.

AMENDMENTS

1992—Pub. L. 102-396 amended section generally. Prior to amendment, section related to compliance with Budget Act.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11702 of this title.

§ 11711. Definitions

For purposes of this chapter:

(1) Disease prevention

The term "disease prevention" includes—

- (A) immunizations,
- (B) control of high blood pressure,
- (C) control of sexually transmittable diseases,
- (D) prevention and control of diabetes,
- (E) control of toxic agents,
- (F) occupational safety and health,
- (G) accident prevention,
- (H) fluoridation of water,
- (I) control of infectious agents, and
- (J) provision of mental health care.

(2) Health promotion

The term "health promotion" includes—

- (A) pregnancy and infant care, including prevention of fetal alcohol syndrome,
- (B) cessation of tobacco smoking,
- (C) reduction in the misuse of alcohol and drugs,
- (D) improvement of nutrition,
- (E) improvement in physical fitness,
- (F) family planning, and

(G) control of stress.

(3) Native Hawaiian

The term "Native Hawaiian" means any individual who is—

- (A) a citizen of the United States, and
- (B) a descendant of the aboriginal people, who prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii, as evidenced by—
 - (i) genealogical records,
 - (ii) Kupuna (elders) or Kama'aina (long-term community residents) verification, or
 - (iii) birth records of the State of Hawaii.

(4) Native Hawaiian health center

The term "Native Hawaiian health center" means an entity—

- (A) which is organized under the laws of the State of Hawaii,
- (B) which provides or arranges for health care services through practitioners licensed by the State of Hawaii, where licensure requirements are applicable,
- (C) which is a public or nonprofit private entity, and
- (D) in which Native Hawaiian health practitioners significantly participate in the planning, management, monitoring, and evaluation of health services.

(5) Native Hawaiian organization

The term "Native Hawaiian organization" means any organization—

- (A) which serves the interests of Native Hawaiians,
- (B) which is—
 - (i) recognized by Papa Ola Lokahi for the purpose of planning, conducting, or administering programs (or portions of programs) authorized under this chapter for the benefit of Native Hawaiians, and
 - (ii) certified by Papa Ola Lokahi as having the qualifications and capacity to provide the services, and meet the requirements, under the contract the organization enters into with, or grant the organization receives from, the Secretary under this chapter,
- (C) in which Native Hawaiian health practitioners significantly participate in the planning, management, monitoring, and evaluation of health services, and
- (D) which is a public or nonprofit private entity.

(6) Native Hawaiian health care system

The term "Native Hawaiian health care system" means an entity—

- (A) which is organized under the laws of the State of Hawaii,
- (B) which provides or arranges for health care services through practitioners licensed by the State of Hawaii, where licensure requirements are applicable,
- (C) which is a public or nonprofit private entity,
- (D) in which Native Hawaiian health practitioners significantly participate in the planning, management, monitoring, and evaluation of health care services,
- (E) which may be composed of as many Native Hawaiian health centers as necessary to

meet the health care needs of each island's Native Hawaiians, and

(F) which is—

(i) recognized by Papa Ola Lokahi for the purpose of planning, conducting, or administering programs, or portions of programs, authorized by this chapter for the benefit of Native Hawaiians, and

(ii) certified by Papa Ola Lokahi as having the qualifications and the capacity to provide the services and meet the requirements under the contract the Native Hawaiian health care system enters into with the Secretary or the grant the Native Hawaiian health care system receives from the Secretary pursuant to this chapter.

(7) Papa Ola Lokahi

(A) The term “Papa Ola Lokahi” means an organization composed of—

(i) E Ola Mau;

(ii) the Office of Hawaiian Affairs of the State of Hawaii;

(iii) Alu Like Inc.;

(iv) the University of Hawaii;

(v) the Office of Hawaiian Health of the Hawaii State Department of Health;

(vi) Ho'ola Lahui Hawaii, or a health care system serving the islands of Kaua'i and Ni'ihau, and which may be composed of as many health care centers as are necessary to meet the health care needs of the Native Hawaiians of those islands;

(vii) Ke Ola Mamo, or a health care system serving the island of O'ahu, and which may be composed of as many health care centers as are necessary to meet the health care needs of the Native Hawaiians of that island;

(viii) Na Pu'uwai or a health care system serving the islands of Moloka'i and Lana'i, and which may be composed of as many health care centers as are necessary to meet the health care needs of the Native Hawaiians of those islands;

(ix) Hui No Ke Ola Pono, or a health care system serving the island of Maui, and which may be composed of as many health care centers as are necessary to meet the health care needs of the Native Hawaiians of that island;

(x) Hui Malama Ola Ha'Oiwi or a health care system serving the island of Hawaii, and which may be composed of as many health care centers as are necessary to meet the health care needs of the Native Hawaiians of that island; and

(xi) such other member organizations as the Board of Papa Ola Lokahi may admit from time to time, based upon satisfactory demonstration of a record of contribution to the health and well-being of Native Hawaiians, and upon satisfactory development of a mission statement in relation to this chapter, including clearly defined goals and objectives, a 5-year action plan outlining the contributions that each organization will make in carrying out the policy of this chapter, and an estimated budget.

(B) Such term does not include any such organization identified in subparagraph (A) if the Secretary determines that such organiza-

tion has not developed a mission statement with clearly defined goals and objectives for the contributions the organization will make to the Native Hawaiian health care systems, and an action plan for carrying out those goals and objectives.

(8) Primary health services

The term “primary health services” means—

(A) services of physicians, physicians' assistants, nurse practitioners, and other health professionals;

(B) diagnostic laboratory and radiologic services;

(C) preventive health services (including children's eye and ear examinations to determine the need for vision and hearing correction, perinatal services, well child services, and family planning services);

(D) emergency medical services;

(E) transportation services as required for adequate patient care;

(F) preventive dental services; and

(G) pharmaceutical services, as may be appropriate for particular health centers.

(9) Secretary

The term “Secretary” means the Secretary of Health and Human Services.

(10) Traditional Native Hawaiian healer

The term “traditional Native Hawaiian healer” means a practitioner—

(A) who—

(i) is of Hawaiian ancestry, and

(ii) has the knowledge, skills, and experience in direct personal health care of individuals, and

(B) whose knowledge, skills, and experience are based on demonstrated learning of Native Hawaiian healing practices acquired by—

(i) direct practical association with Native Hawaiian elders, and

(ii) oral traditions transmitted from generation to generation.

(Pub. L. 100-579, §12, Oct. 31, 1988, 102 Stat. 2923; Pub. L. 100-690, title II, §2312, Nov. 18, 1988, 102 Stat. 4230; Pub. L. 102-396, title IX, §9168, Oct. 6, 1992, 106 Stat. 1948.)

CODIFICATION

The 1992 amendment is based on section 1 of S. 2681, One Hundred Second Congress, as passed by the Senate on Aug. 7, 1992, and enacted into law by section 9168 of Pub. L. 102-396. Section 9168, which referred to S. 2681, as passed by the Senate on “September 12, 1992”, has been treated as referring to S. 2681, as passed by the Senate on Aug. 7, 1992, to reflect the probable intent of Congress.

Section was formerly classified to section 11710 of this title prior to the general amendment of this chapter by Pub. L. 102-396.

Pub. L. 100-579 and Pub. L. 100-690 enacted identical sections.

AMENDMENTS

1992—Pub. L. 102-396 amended section generally. Prior to amendment, section related to severability.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11705, 11709 of this title.

§ 11712. Rule of construction

Nothing in this chapter shall be construed to restrict the authority of the State of Hawaii to license health practitioners.

(Pub. L. 100-579, §13, as added Pub. L. 102-396, title IX, §9168, Oct. 6, 1992, 106 Stat. 1948.)

CODIFICATION

Section enacted by section 1 of S. 2681, One Hundred Second Congress, as passed by the Senate on Aug. 7, 1992, which was enacted into law by section 9168 of Pub. L. 102-396. Section 9168, which referred to S. 2681, as passed by the Senate on "September 12, 1992", has been treated as referring to S. 2681, as passed by the Senate on Aug. 7, 1992, to reflect the probable intent of Congress.

§ 11713. Compliance with Budget Act

Any new spending authority (described in subsection (c)(2)(A) or (B) of section 651¹ of title 2) which is provided under this chapter shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.

(Pub. L. 100-579, §15, as added Pub. L. 102-396, title IX, §9168, Oct. 6, 1992, 106 Stat. 1948.)

REFERENCES IN TEXT

Section 651 of title 2, referred to in text, was amended by Pub. L. 105-33, title X, §10116(a)(3), Aug. 5, 1997, 111 Stat. 691, by striking out subsec. (c) and redesignating former subsec. (d) as (c).

CODIFICATION

Section enacted by section 1 of S. 2681, One Hundred Second Congress, as passed by the Senate on Aug. 7, 1992, which was enacted into law by section 9168 of Pub. L. 102-396. Section 9168, which referred to S. 2681, as passed by the Senate on "September 12, 1992", has been treated as referring to S. 2681, as passed by the Senate on Aug. 7, 1992, to reflect the probable intent of Congress.

§ 11714. Severability

If any provision of this chapter, or the application of any such provision to any person or circumstances is held to be invalid, the remainder of this chapter, and the application of such provision or amendment to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

(Pub. L. 100-579, §16, as added Pub. L. 102-396, title IX, §9168, Oct. 6, 1992, 106 Stat. 1948.)

CODIFICATION

Section enacted by section 1 of S. 2681, One Hundred Second Congress, as passed by the Senate on Aug. 7, 1992, which was enacted into law by section 9168 of Pub. L. 102-396. Section 9168, which referred to S. 2681, as passed by the Senate on "September 12, 1992", has been treated as referring to S. 2681, as passed by the Senate on Aug. 7, 1992, to reflect the probable intent of Congress.

CHAPTER 123—DRUG ABUSE EDUCATION AND PREVENTION**SUBCHAPTER I—DRUG EDUCATION AND PREVENTION RELATING TO YOUTH GANGS**

Sec.
11801. Establishment of drug abuse education and prevention program relating to youth gangs.

¹ See References in Text note below.

Sec.
11802. Application for grants and contracts.
(a) Submission of applications.
(b) Contents of application.
11803. Approval of applications.
11804. Coordination with juvenile justice programs.
11805. Authorization of appropriations.
11806. Annual report.

SUBCHAPTER II—PROGRAM FOR RUNAWAY AND HOMELESS YOUTH

11821. Establishment of program.
(a) Program aims.
(b) Priority.
(c) Limitation.
11822. Annual report.
11823. Authorization of appropriations.
(a) Authorization.
(b) Limitation.
11824. Applications.
(a) Submission of application.
(b) Contents of application.
11825. Review of applications.
(a) Consideration of factors.
(b) Competitive process.
(c) Expedited review.

SUBCHAPTER III—COMMUNITY PROGRAM

11841. Community youth activity program.
(a) Block grant program.
(b) Application.
(c) Amount of grant.
(d) Priority.
(e) Activities and projects.
(f) Project evaluations.
(g) Authorization of appropriations.
11842. Evaluation of drug abuse education and prevention efforts.
(a) Method.
(b) Grants.
(c) Time of reports.
(d) Authorization of appropriations.

SUBCHAPTER IV—MISCELLANEOUS

11851. Definitions.

SUBCHAPTER I—DRUG EDUCATION AND PREVENTION RELATING TO YOUTH GANGS**§ 11801. Establishment of drug abuse education and prevention program relating to youth gangs**

The Secretary of Health and Human Services, through the Administration on Children, Youth, and Families, shall make grants to, and enter into contracts with, public and nonprofit private agencies (including agencies described in paragraph (7)(A) acting jointly), organizations (including community based organizations with demonstrated experience in this field), institutions, and individuals, to carry out projects and activities—

(1) to prevent and to reduce the participation of youth in the activities of gangs that engage in illicit drug-related activities,

(2) to promote the involvement of youth in lawful activities in communities in which such gangs commit drug-related crimes,

(3) to prevent the abuse of drugs by youth, to educate youth about such abuse, and to refer for treatment and rehabilitation members of such gangs who abuse drugs,

(4) to support activities of local police departments and other local law enforcement agencies to conduct educational outreach activities in communities in which gangs commit drug-related crimes,

(5) to inform gang members and their families of the availability of treatment and rehabilitation services for drug abuse,

(6) to facilitate Federal and State cooperation with local school officials to assist youth who are likely to participate in gangs that commit drug-related crimes,

(7) to facilitate coordination and cooperation among—

(A) local education, juvenile justice, employment and social service agencies, and

(B) drug abuse referral, treatment, and rehabilitation programs,

for the purpose of preventing or reducing the participation of youth in activities of gangs that commit drug-related crimes, and

(8) to provide technical assistance to eligible organizations in planning and implementing drug abuse education, prevention, rehabilitation, and referral programs for youth who are members of gangs that commit drug-related crimes.

(Pub. L. 100-690, title III, §3501, Nov. 18, 1988, 102 Stat. 4254; Pub. L. 102-132, §1(a), Oct. 18, 1991, 105 Stat. 630.)

AMENDMENTS

1991—Pub. L. 102-132 inserted “(including agencies described in paragraph (7)(A) acting jointly)” after “agencies” in introductory provisions.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 3 of Pub. L. 102-132 provided that: “This Act [enacting section 11806 of this title and amending this section and sections 11805 and 11823 of this title] shall take effect on October 1, 1991.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11802, 11803, 11804 of this title.

§ 11802. Application for grants and contracts

(a) Submission of applications

Any agency, organization, institution, or individual desiring to receive a grant, or to enter into a contract, under section 11801 of this title shall submit to the Secretary an application at such time, in such manner, and containing or accompanied by such information as the Secretary may require by rule.

(b) Contents of application

Each application for assistance under this subchapter shall—

(1) set forth a project or activity for carrying out one or more of the purposes specified in section 11801 of this title and specifically identify each such purpose such project or activity is designed to carry out,

(2) provide that such project or activity shall be administered by or under the supervision of the applicant,

(3) provide for the proper and efficient administration of such project or activity,

(4) provide for regular evaluation of the operation of such project or activity,

(5) provide that regular reports on such project or activity shall be submitted to the Secretary, and

(6) provide such fiscal control and fund accounting procedures as may be necessary to

ensure prudent use, proper disbursement, and accurate accounting of funds received under this subchapter.

(Pub. L. 100-690, title III, §3502, Nov. 18, 1988, 102 Stat. 4254.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11803 of this title.

§ 11803. Approval of applications

In selecting among applications submitted under section 11802(a) of this title, the Secretary shall give priority to applicants who propose to carry out projects and activities—

(1) for the purposes specified in section 11801 of this title in geographical areas in which frequent and severe drug-related crimes are committed by gangs whose membership is composed primarily of youth, and

(2) that the applicant demonstrates have the broad support of community based organizations in such geographical areas.

(Pub. L. 100-690, title III, §3503, Nov. 18, 1988, 102 Stat. 4255; Pub. L. 101-204, title X, §1001(a), Dec. 7, 1989, 103 Stat. 1826.)

AMENDMENTS

1989—Par. (2). Pub. L. 101-204 substituted “have” for “that it has”.

§ 11804. Coordination with juvenile justice programs

The Secretary shall coordinate the program established by section 11801 of this title with the programs and activities carried out under the Juvenile Justice and Delinquency Prevention Act of 1974 [42 U.S.C. 5601 et seq.] and with the programs and activities of the Attorney General, to ensure that all such programs and activities are complementary and not duplicative.

(Pub. L. 100-690, title III, §3504, Nov. 18, 1988, 102 Stat. 4255.)

REFERENCES IN TEXT

The Juvenile Justice and Delinquency Prevention Act of 1974, referred to in text, is Pub. L. 93-415, Sept. 7, 1974, 88 Stat. 1109, as amended, which is classified principally to chapter 72 (§5601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5601 of this title and Tables.

§ 11805. Authorization of appropriations

To carry out this subchapter, there are authorized to be appropriated \$16,000,000 for fiscal year 1992 and such sums as may be necessary for fiscal years 1993 and 1994.

(Pub. L. 100-690, title III, §3505, Nov. 18, 1988, 102 Stat. 4255; Pub. L. 102-132, §1(b), Oct. 18, 1991, 105 Stat. 630.)

AMENDMENTS

1991—Pub. L. 102-132 substituted “\$16,000,000 for fiscal year 1992 and such sums as may be necessary for fiscal years 1993 and 1994” for “\$15,000,000 for the fiscal year 1989 and such sums as may be necessary for each of the fiscal years 1990 and 1991”.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-132 effective Oct. 1, 1991, see section 3 of Pub. L. 102-132, set out as a note under section 11801 of this title.

§ 11806. Annual report

Not later than 180 days after the end of each fiscal year, the Secretary shall submit, to the Speaker of the House of Representatives and the President pro tempore of the Senate, a report describing—

- (1) the types of projects and activities for which grants and contracts were made under this subchapter for such fiscal year,
- (2) the number and characteristics of the youth and families served by such projects and activities, and
- (3) each of such projects and activities the Secretary considers to be exemplary.

(Pub. L. 100-690, title III, § 3506, as added Pub. L. 102-132, § 1(c), Oct. 18, 1991, 105 Stat. 630.)

EFFECTIVE DATE

Section effective Oct. 1, 1991, see section 3 of Pub. L. 102-132, set out as an Effective Date of 1991 Amendment note under section 11801 of this title.

SUBCHAPTER II—PROGRAM FOR RUNAWAY AND HOMELESS YOUTH

§ 11821. Establishment of program**(a) Program aims**

The Secretary shall make grants to public and private nonprofit agencies, organizations, and institutions to carry out research, demonstration, and services projects designed—

- (1) to provide individual, family, and group counseling to runaway youth and their families and to homeless youth for the purpose of preventing or reducing the illicit use of drugs by such youth,
- (2) to develop and support peer counseling programs for runaway and homeless youth related to the illicit use of drugs,
- (3) to develop and support community education activities related to illicit use of drugs by runaway and homeless youth, including outreach to youth individually,
- (4) to provide to runaway and homeless youth in rural areas assistance (including the development of community support groups) related to the illicit use of drugs,
- (5) to provide to individuals involved in providing services to runaway and homeless youth, information and training regarding issues related to the illicit use of drugs by runaway and homeless youth,
- (6) to support research on the illicit drug use by runaway and homeless youth, and the effects on such youth of drug abuse by family members, and any correlation between such use and attempts at suicide, and
- (7) to improve the availability and coordination of local services related to drug abuse, for runaway and homeless youth.

(b) Priority

In selecting among applicants for grants under subsection (a) of this section, the Secretary shall give priority to agencies and organizations that have experience in providing services to runaway and homeless youth.

(c) Limitation

Grants under this section may be made for a period not to exceed 3 years.

(Pub. L. 100-690, title III, § 3511, Nov. 18, 1988, 102 Stat. 4255.)

§ 11822. Annual report

Not later than 180 days after the end of a fiscal year for which funds are appropriated to carry out this subchapter, the Secretary shall submit to the President, the Speaker of the House of Representatives, and the President pro tempore of the Senate a report that contains—

- (1) a description of the types of projects and activities for which grants were made under this subchapter for such fiscal year,
- (2) a description of the number and characteristics of the youth and families served by such projects and activities, and
- (3) a description of exemplary projects and activities for which grants were made under this subchapter for such fiscal year.

(Pub. L. 100-690, title III, § 3512, Nov. 18, 1988, 102 Stat. 4256.)

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103-7 (in which a report required under this section is listed as the 12th item on page 92), see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

§ 11823. Authorization of appropriations

To carry out this subchapter, there are authorized to be appropriated \$16,000,000 for fiscal year 1992 and such sums as may be necessary for fiscal years 1993 and 1994.

(Pub. L. 100-690, title III, § 3513, Nov. 18, 1988, 102 Stat. 4256; Pub. L. 102-132, § 2, Oct. 18, 1991, 105 Stat. 630.)

AMENDMENTS

1991—Pub. L. 102-132 amended section generally. Prior to amendment, section read as follows:

“(a) AUTHORIZATION.—Subject to subsection (b) of this section, to carry out this subchapter, there are authorized to be appropriated \$15,000,000 for fiscal year 1989 and such sums as may be necessary for each of the fiscal years 1990 and 1991.

“(b) LIMITATION.—No funds are authorized to be appropriated for a fiscal year to carry out this subchapter unless the aggregate amount appropriated to carry out title III of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5701-5751) for such fiscal year is not less than the aggregate amount appropriated to carry out such title for the preceding fiscal year.”

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-132 effective Oct. 1, 1991, see section 3 of Pub. L. 102-132, set out as a note under section 11801 of this title.

§ 11824. Applications**(a) Submission of application**

Any State, unit of local government (or combination of units of local government), agency, organization, institution, or individual desiring to receive a grant, or enter into a contract, under this subchapter shall submit an application at such time, in such manner, and containing or accompanied by such information as may

be prescribed by the Federal officer who is authorized to make such grant or enter into such contract (hereinafter in this subchapter referred to as the "appropriate Federal officer").

(b) Contents of application

In accordance with guidelines established by the appropriate Federal officer, each application for assistance under this subchapter shall—

(1) set forth a project or activity for carrying out one or more of the purposes for which such grant or contract is authorized to be made and expressly identify each such purpose such project or activity is designed to carry out,

(2) provide that such project or activity shall be administered by or under the supervision of the applicant,

(3) provide for the proper and efficient administration of such project or activity,

(4) provide for regular evaluation of such project or activity,

(5) provide that regular reports on such project or activity shall be sent to the appropriate Federal officer, and

(6) provide for such fiscal control and fund accounting procedures as may be necessary to ensure prudent use, proper disbursement, and accurate accounting of funds received under this subchapter.

(Pub. L. 100-690, title III, §3514, Nov. 18, 1988, 102 Stat. 4256.)

§ 11825. Review of applications

(a) Consideration of factors

In reviewing applications submitted under this subchapter, the appropriate Federal officer shall consider—

(1) the relative cost and effectiveness of the proposed project or activity in carrying out purposes for which the requested grant or contract is authorized to be made,

(2) the extent to which such project or activity will incorporate new or innovative techniques,

(3) the increase in capacity of the State or the public or nonprofit private agency, organization, institution, or individual involved to provide services to address the illicit use of drugs by runaway and homeless youth,

(4) the extent to which such project or activity serves communities which have high rates of illicit drug use by juveniles (including runaway and homeless youth),

(5) the extent to which such project or activity will provide services in geographical areas where similar services are unavailable or in short supply, and

(6) the extent to which such project or activity will increase the level of services, or coordinate other services, in the community available to eligible youth.

(b) Competitive process

(1) Applications submitted under this subchapter shall be selected for approval through a competitive process to be established by rule by the appropriate Federal officer. As part of such a process, such officer shall publish a notice in the Federal Register—

(A) announcing the availability of funds to carry out this subchapter,

(B) stating the general criteria applicable to the selection of applicants to receive such funds, and

(C) describing the procedures applicable to submitting and reviewing applications for such funds.

(2) As part of such process, each application referred to in subsection (a) of this section shall be subject to peer review by individuals (excluding officers and employees of the Department of Justice and the Department of Health and Human Services) who have expertise in the subject matter related to the project or activity proposed in such application.

(c) Expedited review

The appropriate Federal officer shall expedite the consideration of an application referred to in subsection (a) of this section if the applicant demonstrates, to the satisfaction of the¹ such officer, that the failure to expedite such consideration would prevent the effective implementation of the project or activity set forth in such application.

(Pub. L. 100-690, title III, §3515, Nov. 18, 1988, 102 Stat. 4257; Pub. L. 101-204, title X, §1001(b), Dec. 7, 1989, 103 Stat. 1826.)

REFERENCES IN TEXT

This subchapter, referred to in subsec. (b)(1)(A), was in the original "this part" and was translated as reading "this chapter" to reflect the probable intent of Congress because subtitle B of title III of Pub. L. 100-690, which comprises subchapters I to III of this chapter, does not contain parts.

AMENDMENTS

1989—Subsec. (b)(1)(B). Pub. L. 101-204, §1001(b)(1)(A), inserted "stating" before "the general criteria".

Subsec. (b)(1)(C). Pub. L. 101-204, §1001(b)(1)(B), substituted "describing" for "a description of".

Subsec. (c). Pub. L. 101-204, §1001(b)(2), substituted "such officer" for "Administrator".

SUBCHAPTER III—COMMUNITY PROGRAM

§ 11841. Community youth activity program

(a) Block grant program

The Secretary of Health and Human Services shall make grants to eligible States to enable such States to carry out the activities described in subsection (e) of this section.

(b) Application

(1) In general

To be eligible to receive a grant under this section, a State, acting on its own behalf or on behalf of a person, shall submit to the Secretary an application that contains such information and is in such form as may be required by the Secretary.

(2) Demonstration of need

In the application submitted under paragraph (1), the State shall demonstrate a need for the activities described in subsection (e) of this section and provide a description of those activities and projects that will receive financial assistance from a grant made under this section to the State.

¹ So in original. The word "the" probably should not appear.

(c) Amount of grant**(1) Minimum amount**

Each State that submits for a fiscal year an application under subsection (b) of this section that meets the requirements of the Secretary shall, subject to the availability of appropriations, receive a grant in an amount determined in accordance with paragraph (3).

(2) Programs of national significance

Of amounts appropriated or otherwise available to carry out this section for any fiscal year, the Secretary shall reserve 5 percent to be provided for activities and projects of national significance or projects expected to have a significant impact in preventing the abuse of drugs by youth.

(3) Specified appropriations**(A) In general**

Of the aggregate amount appropriated under subsection (g) of this section for any fiscal year and after reserving the amount required by paragraph (2), the Secretary shall—

(i) allot—

(I) 25 percent equally among the eligible States if such amount is less than \$40,000,000; or

(II) \$250,000 to each eligible State if such amount equals or exceeds \$40,000,000;

(ii) allot one-half of 1 percent of such amount on the basis of need among Guam, American Samoa, the Virgin Islands of the United States, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands; and

(iii) set aside the remainder to be disbursed as described in subparagraph (B).

For purposes of this subparagraph, the term “State” does not include Guam, American Samoa, the Virgin Islands of the United States, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(B) Remainder

Amounts referred to in subparagraph (A)(iii) shall be used by the Secretary to make grants, on a competitive basis and taking into consideration with respect to the States—

(i) the highest proportions of school-aged youth are¹ at risk of drug abuse;

(ii) if a tangible need has been identified by the State involved; and

(iii) if the State involved has proposed the funding of additional projects targeted at the areas of highest need;

to carry out the activities and projects that are consistent with the activities described in subsection (e)(1) of this section. The activities and projects for which such grants are made shall be selected by the Secretary from among proposed activities and projects submitted to the Secretary by the States. Such grants shall be made to the States for

redistribution to the persons on whose behalf the State submitted an application under subsection (b) of this section.

(d) Priority

In making grants under this section, the Secretary shall give priority to—

(1) projects aimed at youth who are not in school or who are at risk of dropping out of school;

(2) projects that seek to reinvolve dropouts in educational programs, involve youth community-based activities, develop training or employment opportunities for dropouts, or provide youth with alternatives to drug abuse;

(3) projects to provide after-school, vacation, and weekend activities designed to give youth opportunities to actively participate in a variety of activities, including youth sports programs;

(4) activities and projects that are consistent with activities and projects described in subsection (e)(1) of this section and that include participation by the business community;

(5) projects that provide outreach to individuals of all ages who are at high risk of involvement with drug abuse;

(6) projects targeted to communities with the most serious drug abuse problems to enable such communities to develop programs that coordinate Federal, State, and local efforts to develop comprehensive, long-term, community-wide prevention and education strategies;

(7) projects that seek to involve youth who are members of gangs or who may join a gang, in—

(A) educational programs;

(B) community-based activities;

(C) training or employment opportunities;

or

(D) other alternatives to gang involvement;

(8) programs for unsupervised children before and after school, including—

(A) education and instruction consistent with title IV of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 7101 et seq.];

(B) athletic activities;

(C) creative activities; and

(D) other programs designed to reduce the risk of drug abuse; and

(9) projects that seek to inform youth regarding the existence and operation of the projects referred to in paragraph (7).

(e) Activities and projects

Financial assistance may be provided with a grant received under subsection (a)² under this section by a State as follows:

(1) Community services and partnerships

Such assistance may be provided for community services and partnerships designed to develop community activities targeted at drug abuse prevention through education, training,

¹ So in original. Probably should be “who are”.

² So in original. Words “under subsection (a)” probably should not appear.

and recreation projects. Such services may be provided by, and such partnerships may be entered into with—

- (A) local educational agencies;
- (B) law enforcement agencies;
- (C) community-based organizations;
- (D) community action agencies;
- (E) local or State recreational departments; or
- (F) business organizations; and

in consultation with local and State health departments and with community health or mental health centers when appropriate. Such assistance may be provided to any entity described in subparagraphs (A) through (F), either individually or in partnerships. Applications for such assistance shall include a description of the method to be used to evaluate the impact the particular service or partnership is designed to have on the drug abuse problem within the community.

(2) Other activities and projects

Such assistance may be provided to carry out projects or activities that are consistent with the activities and projects described in paragraph (1).

(f) Project evaluations

The Secretary shall provide for the evaluation of activities and projects conducted with financial assistance received under this section. Applications for grants under this section shall include a description of the method to be used in evaluating the impact such activities and programs have on the drug abuse problem within the communities in which such activities and projects are carried out.

(g) Authorization of appropriations

To carry out this section, there are authorized to be appropriated \$40,000,000 for fiscal year 1989, \$55,000,000 for fiscal year 1990, \$60,000,000 for fiscal year 1991, \$66,550,000 for fiscal year 1992, and \$73,205,000 for fiscal year 1993.

(Pub. L. 100-690, title III, § 3521, Nov. 18, 1988, 102 Stat. 4258; Pub. L. 101-93, § 4(1), Aug. 16, 1989, 103 Stat. 611; Pub. L. 101-226, § 23, Dec. 12, 1989, 103 Stat. 1941; Pub. L. 103-382, title III, § 394(b), Oct. 20, 1994, 108 Stat. 4027; Pub. L. 105-285, title II, § 202(d), Oct. 27, 1998, 112 Stat. 2755.)

REFERENCES IN TEXT

The Elementary and Secondary Education Act of 1965, referred to in subsec. (d)(8)(A), is Pub. L. 89-10, Apr. 11, 1965, 79 Stat. 27, as amended generally. Title IV of the Act is classified generally to subchapter IV (§ 7101 et seq.) of chapter 70 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20 and Tables.

AMENDMENTS

1998—Subsec. (c)(2). Pub. L. 105-285 struck out “, such as activities authorized by section 9910(a)(2)(F) of this title,” after “national significance”.

1994—Subsec. (d)(8)(A). Pub. L. 103-382 substituted “title IV of the Elementary and Secondary Education Act of 1965” for “the Drug-Free Schools and Communities Act of 1986”.

1989—Subsec. (b)(2). Pub. L. 101-93, § 4(1)(A), substituted “subsection (e)” for “subsections (c)(3)(B) and (e)”.

Subsec. (c)(3)(A). Pub. L. 101-93, § 4(1)(B), substituted “subsection (g)” for “subsection (h)”.

Subsec. (d). Pub. L. 101-226, which directed amendment of section 3521(d) of the National Narcotics Leadership Act of 1988 by adding par. (8) and redesignating former par. (8) as (9), was executed to section 3521(d) of Pub. L. 100-690, the Anti-Drug Abuse Act of 1988, as the probable intent of Congress. Subtitle A (§§ 1001-1012) of title I of Pub. L. 100-690 is the National Narcotics Leadership Act of 1988.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 11842. Evaluation of drug abuse education and prevention efforts

(a) Method

The Secretary of Health and Human Services shall develop and conduct a structured evaluation of the different approaches utilized across the Nation to reduce drug abuse.

(b) Grants

The Secretary of Health and Human Services may make grants to or enter into contracts with appropriate entities for the purpose of conducting the evaluations required by subsection (a) of this section.

(c) Time of reports

The Secretary shall submit a report based on the evaluations prepared under subsection (a) of this section not later than 1 year after November 18, 1988, and another report based on such evaluations not later than 3 years after November 18, 1988. A third report based on such evaluations shall be submitted by the Secretary not later than January 1, 1994.

(d) Authorization of appropriations

To carry out this section, there are authorized to be appropriated \$12,000,000 in fiscal year 1989, and \$15,000,000 for each of the fiscal years 1990 through 1993.

(Pub. L. 100-690, title III, § 3522, Nov. 18, 1988, 102 Stat. 4260; Pub. L. 101-93, § 4(2), Aug. 16, 1989, 103 Stat. 611; Pub. L. 101-204, title X, § 1001(c)(1), Dec. 7, 1989, 103 Stat. 1826.)

AMENDMENTS

1989—Subsec. (a). Pub. L. 101-93 and Pub. L. 101-204, § 1001(c)(1)(A)(ii), made identical amendments, striking out “(as defined in section 11851(6) of this title)” after “drug abuse”.

Pub. L. 101-204, § 1001(c)(1)(A)(i), struck out “, acting through the Administrator,” before “shall develop”.

Subsec. (b). Pub. L. 101-204, § 1001(c)(1)(B), substituted “Secretary of Health and Human Services” for “Administrator”.

SUBCHAPTER IV—MISCELLANEOUS

§ 11851. Definitions

Unless otherwise defined by an Act amended by this title,¹ for purposes of this title¹ and the amendments made by this title—¹

(1) the term “community based” has the meaning given it in section 5603(1) of this title,

¹ See References in Text note below.

(2) the term “controlled substance” has the meaning given it in section 802(6) of title 21,

(3) the term “controlled substance analogue” has the meaning given it in section 802(32) of title 21,

(4) the term “drug” means—

- (A) a beverage containing alcohol,
- (B) a controlled substance, or
- (C) a controlled substance analogue,

(5) the term “Director” means the Chief Executive Officer of the Corporation for National and Community Service,

(6) the term “illicit” means unlawful or injurious,

(7) the term “institution of higher education” has the meaning given it in section 1001 of title 20,

(8) the term “public agency” has the meaning given it in section 5603(11) of this title,

(9) the term “Secretary” means—

- (A) the Secretary of Education for purposes of subtitle A (other than section 3201),
- (B) the Secretary of Agriculture for purposes of the amendments made by section 3201, and
- (C) the Secretary of Health and Human Services for purposes of subtitle B,

(10) the term “State” has the meaning given it in section 5603(7) of this title,

(11) the term “treatment” has the meaning given it in section 5603(15) of this title, and

(12) the term “unit of general local government” has the meaning given it in section 5603(8)¹ of this title.

(Pub. L. 100-690, title III, §3601, Nov. 18, 1988, 102 Stat. 4260; Pub. L. 101-204, title X, §1001(c)(2), Dec. 7, 1989, 103 Stat. 1827; Pub. L. 103-82, title IV, §405(n), Sept. 21, 1993, 107 Stat. 922; Pub. L. 105-244, title I, §102(a)(13)(J), Oct. 7, 1998, 112 Stat. 1621.)

REFERENCES IN TEXT

This title, referred to in introductory provisions, means title III of Pub. L. 100-690, Nov. 18, 1988, 102 Stat. 4244, which enacted this chapter and sections 3156-1, 3201, and 3227 of Title 20, Education, and amended sections 1786, 4994, and 5081 of this title and sections 3156a, 3181, 3191 to 3195, 3197, 3212, and 3222 of Title 20. For complete classification of title III to the Code, see Tables.

Subtitle A (other than section 3201), referred to in par. (9)(A), is subtitle A (§§3101-3402) of title III of Pub. L. 100-690, Nov. 18, 1988, 102 Stat. 4245, which enacted former sections 3156-1, 3201, and 3227 of Title 20, and amended sections 4994 and 5081 of this title and former sections 3156a, 3181, 3191 to 3195, 3197, 3212, and 3222 of Title 20. For complete classification of subtitle A to the Code, see Tables.

Section 3201, referred to in par. (9)(A), (B), is section 3201 of Pub. L. 100-690, title III, Nov. 18, 1988, 102 Stat. 4246, which amended section 1786 of this title.

Subtitle B, referred to in par. (9)(C), is subtitle B (§§3501-3522) of title III of Pub. L. 100-690, Nov. 18, 1988, 102 Stat. 4254, which enacted subchapters I to III of this chapter. For complete classification of subtitle B to the Code, see Tables.

Section 5603(8) of this title, referred to in par. (12), was subsequently amended, and no longer defines “unit of general local government”. However, it now defines “unit of local government”.

AMENDMENTS

1998—Par. (7). Pub. L. 105-244 substituted “section 1001” for “section 1141(a)”.

1993—Par. (5). Pub. L. 103-82 added par. (5) and struck out former par. (5) which read as follows: “the term ‘Director’ means the Director of the ACTION Agency.”.

1989—Pub. L. 101-204 redesignated pars. (2) to (13) as (1) to (12), respectively, and struck out former par. (1) which read as follows: “the term ‘Administrator’ means the Administrator of the Office of Juvenile Justice and Delinquency Prevention.”.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see section 3 of Pub. L. 105-244, set out as a note under section 1001 of Title 20, Education.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Apr. 4, 1994, see section 406(b) of Pub. L. 103-82, set out as a note under section 8332 of Title 5, Government Organization and Employees.

CHAPTER 124—PUBLIC HOUSING DRUG ELIMINATION

SUBCHAPTER I—PUBLIC AND ASSISTED HOUSING DRUG ELIMINATION

Sec.	
11901.	Congressional findings.
11902.	Authority to make grants. <ul style="list-style-type: none"> (a) In general. (b) Consortia.
11903.	Eligible activities. <ul style="list-style-type: none"> (a) Public and assisted housing. (b) Other PHA-owned housing.
11903a.	Repealed.
11904.	Applications. <ul style="list-style-type: none"> (a) In general. (b) One-year renewable grants. (c) Criteria. (d) Federally assisted low-income housing. (e) High intensity drug trafficking areas.
11905.	Definitions.
11906.	Reports. <ul style="list-style-type: none"> (a) Grantee reports. (b) HUD reports. (c) Notice of funding awards.
11907.	Monitoring. <ul style="list-style-type: none"> (a) In general. (b) Prohibition of funding baseline services. (c) Enforcement.
11908.	Authorization of appropriations. <ul style="list-style-type: none"> (a) In general. (b) Set-aside for federally assisted low-income housing. (c) Set-aside for technical assistance and program oversight.
11909.	Repealed.

SUBCHAPTER II—DRUG-FREE PUBLIC HOUSING

11921.	Statement of purpose.
11922.	Clearinghouse on drug abuse in public housing. <ul style="list-style-type: none"> (a) Establishment. (b) Functions.
11923.	Regional training program on drug abuse in public housing. <ul style="list-style-type: none"> (a) Establishment. (b) Operation.
11924.	Definitions.
11925.	Regulations.

SUBCHAPTER I—PUBLIC AND ASSISTED HOUSING DRUG ELIMINATION

§ 11901. Congressional findings

The Congress finds that—

(1) the Federal Government has a duty to provide public and other federally assisted low-income housing that is decent, safe, and free from illegal drugs;

(2) public and other federally assisted low-income housing in many areas suffers from rampant drug-related or violent crime;

(3) drug dealers are increasingly imposing a reign of terror on public and other federally assisted low-income housing tenants;

(4) the increase in drug-related and violent crime not only leads to murders, muggings, and other forms of violence against tenants, but also to a deterioration of the physical environment that requires substantial government expenditures;

(5) local law enforcement authorities often lack the resources to deal with the drug problem in public and other federally assisted low-income housing, particularly in light of the recent reductions in Federal aid to cities;

(6) the Federal Government should provide support for effective safety and security measures to combat drug-related and violent crime, primarily in and around public housing projects with severe crime problems;

(7) closer cooperation should be encouraged between public and assisted housing managers, local law enforcement agencies, and residents in developing and implementing anti-crime programs; and

(8) anti-crime strategies should be improved through the expansion of community-oriented policing initiatives.

(Pub. L. 100-690, title V, § 5122, Nov. 18, 1988, 102 Stat. 4301; Pub. L. 101-625, title V, § 581(a), Nov. 28, 1990, 104 Stat. 4245; Pub. L. 105-276, title V, § 586(b), Oct. 21, 1998, 112 Stat. 2646.)

AMENDMENTS

1998—Par. (2). Pub. L. 105-276, § 586(b)(1), inserted “or violent” after “drug-related”.

Par. (4). Pub. L. 105-276, § 586(b)(2)(A), inserted “and violent” after “drug-related”.

Pars. (6) to (8). Pub. L. 105-276, § 586(b)(2)(B), (3), (4), added pars. (6) to (8).

1990—Pub. L. 101-625 amended section generally. Prior to amendment, section read as follows: “The Congress finds that—

“(1) the Federal Government has a duty to provide public housing that is decent, safe, and free from illegal drugs;

“(2) public housing projects in many areas suffer from rampant drug-related crime;

“(3) drug dealers are increasingly imposing a reign of terror on public housing tenants;

“(4) the increase in drug-related crime not only leads to murders, muggings, and other forms of violence against tenants, but also to a deterioration of the physical environment that requires substantial government expenditures; and

“(5) local law enforcement authorities often lack the resources to deal with the drug problem in public housing, particularly in light of the recent reductions in Federal aid to cities.”

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by title V of Pub. L. 105-276 effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement amendment before such date, except to extent that such amendment provides otherwise, and with savings provision, see section 503 of Pub. L. 105-276, set out as a note under section 1437 of this title.

SHORT TITLE OF 1998 AMENDMENT

Pub. L. 105-276, title V, § 586(a), Oct. 21, 1998, 112 Stat. 2646, provided that: “This section [enacting sections 11906 to 11908 of this title, amending this section and sections 11902, 11903, 11904, and 11905 of this title, and repealing sections 11906 to 11909 of this title] may be cited as the ‘Public and Assisted Housing Drug Elimination Program Amendments of 1998’.”

SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103-227, title X, § 1051, Mar. 31, 1994, 108 Stat. 274, provided that: “This part [part D (§§ 1051-1053) of title X of Pub. L. 103-227, amending section 11903a of this title] may be cited as the ‘Midnight Basketball League Training and Partnership Act’.”

SHORT TITLE

Section 5121 of Pub. L. 100-690, as amended by Pub. L. 101-625, title V, § 581(a), Nov. 28, 1990, 104 Stat. 4245, provided that: “This chapter [chapter 2 (§§ 5121-5130) of subtitle C of title V of Pub. L. 100-690, enacting this subchapter] may be cited as the ‘Public and Assisted Housing Drug Elimination Act of 1990’.”

Section 5141 of Pub. L. 100-690 provided that: “This chapter [chapter 3 (§§ 5141-5146) of subtitle C of title V of Pub. L. 100-690, enacting subchapter II of this chapter] may be cited as the ‘Drug-Free Public Housing Act of 1988’.”

§ 11902. Authority to make grants

(a) In general

The Secretary of Housing and Urban Development, in accordance with the provisions of this subchapter, may make grants to public housing agencies, public housing resident management corporations that are principally managing, as determined by the Secretary, public housing projects owned by public housing agencies, recipients of assistance under the Native American Housing Assistance and Self-Determination Act of 1996 [25 U.S.C. 4101 et seq.], Indian tribes¹ and private, for-profit and nonprofit owners of federally assisted low-income housing for use in eliminating drug-related and violent crime.

(b) Consortia

Subject to terms and conditions established by the Secretary, public housing agencies may form consortia for purposes of applying for grants under this subchapter.

(Pub. L. 100-690, title V, § 5123, Nov. 18, 1988, 102 Stat. 4301; Pub. L. 101-625, title V, § 581(a), Nov. 28, 1990, 104 Stat. 4246; Pub. L. 102-550, title I, § 161(d)(1), Oct. 28, 1992, 106 Stat. 3719; Pub. L. 104-330, title VII, § 704(1), Oct. 26, 1996, 110 Stat. 4051; Pub. L. 105-276, title II, § 220(1), title V, § 586(c), Oct. 21, 1998, 112 Stat. 2488, 2647.)

REFERENCES IN TEXT

The Native American Housing Assistance and Self-Determination Act of 1996, referred to in subsec. (a), is Pub. L. 104-330, Oct. 26, 1996, 110 Stat. 4016, as amended, which is classified principally to chapter 43 (§ 4101 et seq.) of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of Title 25 and Tables.

AMENDMENTS

1998—Pub. L. 105-276, § 586(c), designated existing provisions as subsec. (a), inserted heading, substituted “recipients of assistance under the Native American Hous-

¹ So in original. Probably should be followed by a comma.

ing Assistance and Self-Determination Act of 1996" for "tribally designated housing entities", inserted "and violent" after "drug-related", and added subsec. (b).

Pub. L. 105-276, §220(1), inserted "Indian tribes" before "and private".

1996—Pub. L. 104-330 struck out "(including Indian Housing Authorities)" after "grants to public housing agencies" and inserted "tribally designated housing entities," before "and private".

1992—Pub. L. 102-550 inserted ", public housing resident management corporations that are principally managing, as determined by the Secretary, public housing projects owned by public housing agencies," after "Authorities)".

1990—Pub. L. 101-625 amended section generally. Prior to amendment, section read as follows: "The Secretary of Housing and Urban Development, in accordance with the provisions of this subchapter, may make grants to public housing agencies (including Indian housing authorities) for use in eliminating drug-related crime in public housing projects."

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by title V of Pub. L. 105-276 effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement amendment before such date, except to extent that such amendment provides otherwise, and with savings provision, see section 503 of Pub. L. 105-276, set out as a note under section 1437 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as an Effective Date note under section 4101 of Title 25, Indians.

§ 11903. Eligible activities

(a) Public and assisted housing

Grants under this subchapter may be used in public housing or other federally assisted low-income housing projects for—

- (1) the employment of security personnel;
- (2) reimbursement of local law enforcement agencies for additional security and protective services;
- (3) physical improvements which are specifically designed to enhance security;
- (4) the employment of one or more individuals—
 - (A) to investigate drug-related or violent crime in and around the real property comprising any public or other federally assisted low-income housing project; and
 - (B) to provide evidence relating to such crime in any administrative or judicial proceeding;
- (5) the provision of training, communications equipment, and other related equipment for use by voluntary tenant patrols acting in cooperation with local law enforcement officials;
- (6) programs designed to reduce use of drugs in and around public or other federally assisted low-income housing projects, including drug-abuse prevention, intervention, referral, and treatment programs;
- (7) where a public housing agency, an Indian tribe, or recipient of assistance under the Native American Housing Assistance and Self-Determination Act of 1996 [25 U.S.C. 4101 et seq.] receives a grant, providing funding to nonprofit resident management corporations

and resident councils to develop security and drug abuse prevention programs involving site residents; and

(8) sports programs and sports activities that serve primarily youths from public or other federally assisted low-income housing projects and are operated in conjunction with, or in furtherance of, an organized program or plan designed to reduce or eliminate drugs and drug-related problems in and around such projects.

(b) Other PHA-owned housing

Notwithstanding any other provision of this subchapter, grants under this subchapter may be used to eliminate drug-related crime in and around housing owned by public housing agencies that is not public housing assisted under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] and is not otherwise federally assisted, for the activities described in paragraphs (1) through (7) of subsection (a) of this section, but only if—

- (1) the housing is located in a high intensity drug trafficking area designated pursuant to section 1504¹ of title 21; and
- (2) the public housing agency owning the housing demonstrates, to the satisfaction of the Secretary, that drug-related or violent activity in or around the housing has a detrimental effect on or about the real property comprising any public or other federally assisted low-income housing.

(Pub. L. 100-690, title V, §5124, Nov. 18, 1988, 102 Stat. 4301; Pub. L. 101-625, title V, §581(a), Nov. 28, 1990, 104 Stat. 4246; Pub. L. 102-550, title I, §161(c), (d)(2), Oct. 28, 1992, 106 Stat. 3718, 3719; Pub. L. 104-330, title VII, §704(2), Oct. 26, 1996, 110 Stat. 4051; Pub. L. 105-276, title II, §220(2), title V, §586(d), Oct. 21, 1998, 112 Stat. 2488, 2647.)

REFERENCES IN TEXT

The Native American Housing Assistance and Self-Determination Act of 1996, referred to in subsec. (a)(7), is Pub. L. 104-330, Oct. 26, 1996, 110 Stat. 4016, as amended, which is classified principally to chapter 43 (§4101 et seq.) of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of Title 25 and Tables.

The United States Housing Act of 1937, referred to in subsec. (b), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93-383, title II, §201(a), Aug. 22, 1974, 88 Stat. 653, and amended, which is classified generally to chapter 8 (§1437 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of this title and Tables.

Section 1504 of title 21, referred to in subsec. (b)(1), was repealed by Pub. L. 100-690, title I, §1009, Nov. 18, 1988, 102 Stat. 4188, as amended.

AMENDMENTS

1998—Subsec. (a)(4)(A). Pub. L. 105-276, §586(d)(1)(A), substituted "drug-related or violent crime in and around" for "drug-related crime on or about".

Subsec. (a)(7). Pub. L. 105-276, §586(d)(1)(C)(i), substituted "recipient of assistance under the Native American Housing Assistance and Self-Determination Act of 1996" for "tribally designated housing entity".

Pub. L. 105-276, §220(2), inserted ", an Indian tribe," after "public housing agency".

Subsec. (a)(8). Pub. L. 105-276, §586(d)(1)(B), (C)(ii), (8)[(D)], added par. (8).

¹ See References in Text note below.

Subsec. (b). Pub. L. 105-276, § 586(d)(2)(A), substituted “drug-related crime in and around” for “drug-related crime in” in introductory provisions.

Subsec. (b)(2). Pub. L. 105-276, § 586(d)(2)(B), substituted “drug-related or violent activity in or around” for “drug-related activity at”.

1996—Subsec. (a)(7). Pub. L. 104-330 inserted “or tribally designated housing entity” after “public housing agency” and struck out “public housing” after “non-profit”.

1992—Pub. L. 102-550 designated existing provisions as subsec. (a), inserted heading, inserted “where a public housing agency receives a grant,” in par. (7), and added subsec. (b).

1990—Pub. L. 101-625 amended section generally. Prior to amendment, section read as follows: “A public housing agency may use a grant under this subchapter for—

“(1) the employment of security personnel in public housing projects;

“(2) reimbursement of local law enforcement agencies for additional security and protective services for public housing projects;

“(3) physical improvements in public housing projects which are specifically designed to enhance security;

“(4) the employment of 1 or more individuals—
“(A) to investigate drug-related crime on or about the real property comprising any public housing project; and

“(B) to provide evidence relating to any such crime in any administrative or judicial proceeding;

“(5) the provision of training, communications equipment, and other related equipment for use by voluntary public housing tenant patrols acting in cooperation with local law enforcement officials;

“(6) innovative programs designed to reduce use of drugs in and around public housing projects; and

“(7) providing funding to nonprofit public housing resident management corporation and tenant councils to develop security and drug abuse prevention programs involving site residents.”

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by title V of Pub. L. 105-276 effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement amendment before such date, except to extent that such amendment provides otherwise, and with savings provision, see section 503 of Pub. L. 105-276, set out as a note under section 1437 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as an Effective Date note under section 4101 of Title 25, Indians.

§ 11903a. Repealed. Pub. L. 105-276, title V, § 582(a)(13), Oct. 21, 1998, 112 Stat. 2644

Section, Pub. L. 101-625, title V, § 520, Nov. 28, 1990, 104 Stat. 4202; Pub. L. 102-389, title II, Oct. 6, 1992, 106 Stat. 1587; Pub. L. 102-550, title I, § 126(b), Oct. 28, 1992, 106 Stat. 3710; Pub. L. 103-227, title X, §§ 1052, 1053, Mar. 31, 1994, 108 Stat. 274, 280; Pub. L. 104-330, title V, § 501(d)(2), Oct. 26, 1996, 110 Stat. 4043, authorized grants for public and assisted housing youth sports programs.

EFFECTIVE DATE OF REPEAL

Repeal effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement repeal before such date, and with savings provision, see section 503 of Pub. L. 105-276, set out as an Effective Date of 1998 Amendment note under section 1437 of this title.

§ 11904. Applications

(a) In general

To receive a grant under this subchapter, a public housing agency, a public housing resident

management corporation, an Indian tribe¹ a recipient of assistance under the Native American Housing Assistance and Self-Determination Act of 1996 [25 U.S.C. 4101 et seq.], or an owner of federally assisted low-income housing shall submit an application to the Secretary, at such time, in such manner, and accompanied by such additional information as the Secretary may reasonably require. Such application shall include a plan for addressing the problem of drug-related or violent crime in and around of² the housing administered or owned by the applicant for which the application is being submitted, which plan shall be coordinated with and may be included in the public housing agency plan submitted to the Secretary pursuant to section 1437c-1 of this title.

(b) One-year renewable grants

(1) In general

An eligible applicant that is a public housing agency may apply for a 1-year grant under this subchapter that, subject to the availability of appropriated amounts, shall be renewed annually for a period of not more than 4 additional years, except that such renewal shall be contingent upon the Secretary finding, upon an annual or more frequent review, that the grantee agency is performing under the terms of the grant and applicable laws in a satisfactory manner and meets such other requirements as the Secretary may prescribe. The Secretary may adjust the amount of any grant received or renewed under this paragraph to take into account increases or decreases in amounts appropriated for these purposes or such other factors as the Secretary determines to be appropriate.

(2) Eligibility and preference

The Secretary may not provide assistance under this subchapter to an applicant that is a public housing agency unless—

(A) the agency will use the grants to continue or expand activities eligible for assistance under this subchapter, as in effect immediately before the effective date under section 503(a) of the Quality Housing and Work Responsibility Act of 1998, in which case the Secretary shall provide preference to such applicant; except that preference under this subparagraph shall not preclude selection by the Secretary of other meritorious applications that address urgent or serious crime problems nor be construed to require continuation of activities determined by the Secretary to be unworthy of continuation; or

(B) the agency is in the class established under paragraph (3).

(3) PHAs having urgent or serious crime problems

The Secretary shall, by regulations issued after notice and opportunity for public comment, set forth criteria for establishing a class of public housing agencies that have urgent or serious crime problems. The Secretary may reserve a portion of the amount appropriated to

¹ So in original. Probably should be followed by a comma.

² So in original.

carry out this subchapter in each fiscal year only for grants for public housing agencies in such class, except that any amounts from such portion reserved that are not obligated to agencies in the class shall be made available only for agencies that are subject to a preference under paragraph (2)(A).

(4) Inapplicability to federally assisted low-income housing

The provisions of this subsection shall not apply to federally assisted low-income housing.

(c) Criteria

The Secretary shall approve applications under subsection (b) of this section that are not subject to a preference under subsection (b)(2)(A) of this section on the basis of thresholds or criteria such as—

(1) the extent of the drug-related or violent crime problem in and around the public or federally assisted low-income housing project or projects proposed for assistance;

(2) the quality of the plan to address the crime problem in the public or federally assisted low-income housing project or projects proposed for assistance, including the extent to which the plan includes initiatives that can be sustained over a period of several years;

(3) the capability of the applicant to carry out the plan; and

(4) the extent to which tenants, the local government and the local community support and participate in the design and implementation of the activities proposed to be funded under the application.

(d) Federally assisted low-income housing

In addition to the selection criteria specified in subsection (c) of this section, the Secretary may establish other criteria for the evaluation of applications submitted by owners of federally assisted low-income housing, except that such additional criteria shall be designed only to reflect—

(1) relevant differences between the financial resources and other characteristics of public housing authorities and owners of federally assisted low-income housing, or

(2) relevant differences between the problem of drug-related or violent crime in public housing and the problem of drug-related or violent crime in federally assisted low-income housing.

(e) High intensity drug trafficking areas

In evaluating the extent of the drug-related crime problem pursuant to subsection (c) of this section, the Secretary may consider whether housing projects proposed for assistance are located in a high intensity drug trafficking area designated pursuant to section 1504³ of title 21.

(Pub. L. 100-690, title V, §5125, Nov. 18, 1988, 102 Stat. 4302; Pub. L. 101-625, title V, §581(a), Nov. 28, 1990, 104 Stat. 4246; Pub. L. 102-550, title I, §161(d)(3), Oct. 28, 1992, 106 Stat. 3719; Pub. L. 104-330, title VII, §704(3), Oct. 26, 1996, 110 Stat. 4051; Pub. L. 105-276, title II, §220(3), title V, §586(e), Oct. 21, 1998, 112 Stat. 2488, 2647.)

³ See References in Text note below.

REFERENCES IN TEXT

The Native American Housing Assistance and Self-Determination Act of 1996, referred to in subsec. (a), is Pub. L. 104-330, Oct. 26, 1996, 110 Stat. 4016, as amended, which is classified principally to chapter 43 (§4101 et seq.) of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of Title 25 and Tables.

Section 503(a) of the Quality Housing and Work Responsibility Act of 1998, referred to in subsec. (b)(2)(A), is section 503(a) of Pub. L. 105-276, which is set out as an Effective Date of 1998 Amendment note under section 1437 of this title.

Section 1504 of title 21, referred to in subsec. (e), was repealed by Pub. L. 100-690, title I, §1009, Nov. 18, 1988, 102 Stat. 4188, as amended.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105-276, §586(e)(1), substituted “recipient of assistance under the Native American Housing Assistance and Self-Determination Act of 1996” for “tribally designated housing entity” in first sentence and “or violent crime in and around” for “crime on the premises” in second sentence, and inserted before period at end “, which plan shall be coordinated with and may be included in the public housing agency plan submitted to the Secretary pursuant to section 1437c-1 of this title”.

Pub. L. 105-276, §220(3), inserted “an Indian tribe” after “resident management corporation.”

Subsec. (b). Pub. L. 105-276, §586(e)(5), (6), added subsec. (b) and redesignated former subsec. (b) as (c).

Pub. L. 105-276, §586(e)(2)(A), inserted introductory provisions and struck out former introductory provisions which read as follows: “Except as provided by subsections (c) and (d) of this section the Secretary shall approve applications under this subchapter based exclusively on—”.

Subsec. (b)(1). Pub. L. 105-276, §586(e)(2)(B), substituted “or violent crime problem in and around” for “crime problem in”.

Subsec. (c). Pub. L. 105-276, §586(e)(5), redesignated subsec. (b) as (c). Former subsec. (c) redesignated (d).

Pub. L. 105-276, §586(e)(3)(A), substituted “subsection (c)” for “subsection (b)” in introductory provisions.

Subsec. (c)(2). Pub. L. 105-276, §586(e)(3)(B), inserted “or violent” after “drug-related” in two places.

Subsec. (d). Pub. L. 105-276, §586(e)(5), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Pub. L. 105-276, §586(e)(4), substituted “subsection (c)” for “subsection (b)”.

Subsec. (e). Pub. L. 105-276, §586(e)(5), redesignated subsec. (d) as (e).

1996—Subsec. (a). Pub. L. 104-330 inserted “a tribally designated housing entity,” after “resident management corporation.”

1992—Subsec. (a). Pub. L. 102-550 inserted “, a public housing resident management corporation,” after “public housing agency” in first sentence.

1990—Pub. L. 101-625 amended section generally, substituting present provisions for provisions relating generally to applications for grants under this subchapter and to criteria for approval of such applications.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by title V of Pub. L. 105-276 effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement amendment before such date, except to extent that such amendment provides otherwise, and with savings provision, see section 503 of Pub. L. 105-276, set out as a note under section 1437 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as an Effective Date note under section 4101 of Title 25, Indians.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11906, 11907 of this title.

§ 11905. Definitions

For the purposes of this subchapter:

(1) Controlled substance

The term “controlled substance” has the meaning given such term in section 802 of title 21.

(2) Drug-related crime

The term “drug-related crime” means the illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute, or use a controlled substance.

(3) Secretary

The term “Secretary” means the Secretary of Housing and Urban Development.

(4) Federally assisted low-income housing

The term “federally assisted low-income housing” means housing assisted under—

- (A) section 1715(d)(3), section 1715(d)(4), or 1715z-1 of title 12;
- (B) section 1701s of title 12; or
- (C) section 1437f of this title.

(5) Recipient

The term “recipient”, when used in reference to the Native American Housing Assistance and Self-Determination Act of 1996 [25 U.S.C. 4101 et seq.], has the meaning given such term in section 4 of such Act [25 U.S.C. 4103].

(6) Indian tribe

The term “Indian tribe” has the meaning given the term in section 4(12) of the Native American Housing Assistance and Self-Determination Act of 1996, 25 U.S.C. 4103(12).

(Pub. L. 100-690, title V, §5126, Nov. 18, 1988, 102 Stat. 4302; Pub. L. 101-625, title V, §581(a), Nov. 28, 1990, 104 Stat. 4247; Pub. L. 104-330, title VII, §704(4), Oct. 26, 1996, 110 Stat. 4051; Pub. L. 105-276, title II, §220(4), title V, §586(f), Oct. 21, 1998, 112 Stat. 2488, 2649; Pub. L. 106-74, title II, §227(a), as added Pub. L. 106-113, div. A, title I, §175(d), Nov. 29, 1999, 113 Stat. 1534.)

REFERENCES IN TEXT

The Native American Housing Assistance and Self-Determination Act of 1996, referred to in par. (5), is Pub. L. 104-330, Oct. 26, 1996, 110 Stat. 4016, as amended, which is classified principally to chapter 43 (§4101 et seq.) of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of Title 25 and Tables.

AMENDMENTS

1999—Par. (4)(D). Pub. L. 106-74, §227(a), as added by Pub. L. 106-113, struck out subpar. (D) which read as follows: “the Native American Housing Assistance and Self-Determination Act.”

1998—Par. (5). Pub. L. 105-276, §586(f), added par. (5) and struck out heading and text of former par. (5). Text read as follows: “The term ‘tribally designated housing entity’ has the meaning given such term in section 4 of the Native American Housing Assistance and Self-Determination Act of 1996.”

Par. (6). Pub. L. 105-276, §220(4), added par. (6).

1996—Par. (4)(D). Pub. L. 104-330, §704(4)(A), added subpar. (D).

Par. (5). Pub. L. 104-330, §704(4)(B), added par. (5).

1990—Pub. L. 101-625 amended section generally, adding provisions defining “Federally assisted low-income housing”.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106-74, title II, §227(b), as added by Pub. L. 106-113, div. A, title I, §175(d), Nov. 29, 1999, 113 Stat. 1534, provided that: “The amendments made by subsection (a) [amending this section] shall be construed to have taken effect on October 21, 1998.”

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by title V of Pub. L. 105-276 effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement amendment before such date, except to extent that such amendment provides otherwise, and with savings provision, see section 503 of Pub. L. 105-276, set out as a note under section 1437 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as an Effective Date note under section 4101 of Title 25, Indians.

§ 11906. Reports**(a) Grantee reports**

The Secretary shall require grantees under this subchapter to provide periodic reports that include the obligation and expenditure of grant funds, the progress made by the grantee in implementing the plan described in section 11904(a) of this title, and any change in the incidence of drug-related crime in projects assisted under this subchapter.

(b) HUD reports

The Secretary shall submit a report to the Congress not later than 18 months after October 21, 1998, describing the system used to distribute funding to grantees under this section, which shall include descriptions of—

- (1) the methodology used to distribute amounts made available under this subchapter among public housing agencies, including provisions used to provide for renewals of ongoing programs funded under this subchapter; and
- (2) actions taken by the Secretary to ensure that amounts made available under this subchapter are not used to fund baseline local government services, as described in section 11907(b) of this title.

(c) Notice of funding awards

The Secretary shall cause to be published in the Federal Register notice of all grant awards made pursuant to this subchapter, which shall identify the grantees and the amount of the grants. Such notice shall be published not less frequently than annually.

(Pub. L. 100-690, title V, §5127, as added Pub. L. 105-276, title V, §586(g), Oct. 21, 1998, 112 Stat. 2649.)

PRIOR PROVISIONS

A prior section 11906, Pub. L. 100-690, title V, §5127, Nov. 18, 1988, 102 Stat. 4303; Pub. L. 101-625, title V, §581(a), Nov. 28, 1990, 104 Stat. 4248, related to implementation of this subchapter, prior to repeal by Pub. L. 105-276, title V, §§503, 586(g), Oct. 21, 1998, 112 Stat. 2521, 2649, effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement the repeal before such date, except to extent otherwise provided, and with savings provision.

EFFECTIVE DATE

Section effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision

that Secretary may implement section before such date, except to extent otherwise provided, see section 503 of Pub. L. 105-276, set out as an Effective Date of 1998 Amendment note under section 1437 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11907 of this title.

§ 11907. Monitoring

(a) In general

The Secretary shall audit and monitor the programs funded under this subchapter to ensure that assistance provided under this subchapter is administered in accordance with the provisions of this subchapter.

(b) Prohibition of funding baseline services

(1) In general

Amounts provided under this subchapter may not be used to reimburse or support any local law enforcement agency or unit of general local government for the provision of services that are included in the baseline of services required to be provided by any such entity pursuant to a local cooperation agreement under section 1437c(e)(2) of this title or any provision of an annual contributions contract for payments in lieu of taxation pursuant to section 1437d(d) of this title.

(2) Description

Each public housing agency that receives grant amounts under this subchapter shall describe, in the report under section 11906(a) of this title, such baseline of services for the unit of general local government in which the jurisdiction of the agency is located.

(c) Enforcement

The Secretary shall provide for the effective enforcement of this section, which may include the use of on-site monitoring, independent public audit requirements, certification by local law enforcement or local government officials regarding the performance of baseline services referred to in subsection (b) of this section, and entering into agreements with the Attorney General to achieve compliance, and verification of compliance, with the provisions of this subchapter.

(Pub. L. 100-690, title V, § 5128, as added Pub. L. 105-276, title V, § 586(g), Oct. 21, 1998, 112 Stat. 2649.)

PRIOR PROVISIONS

A prior section 11907, Pub. L. 100-690, title V, § 5128, Nov. 18, 1988, 102 Stat. 4303; Pub. L. 101-625, title V, § 581(a), Nov. 28, 1990, 104 Stat. 4248, related to provision of periodic reports by grantees, prior to repeal by Pub. L. 105-276, title V, §§ 503, 586(g), Oct. 21, 1998, 112 Stat. 2521, 2649, effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement the repeal before such date, except to extent otherwise provided, and with savings provision.

EFFECTIVE DATE

Section effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement section before such date, except to extent otherwise provided, see section 503 of Pub. L. 105-276, set out as an Effective Date of 1998 Amendment note under section 1437 of this title.

REVIEW OF DRUG ELIMINATION PROGRAM CONTRACTS

Pub. L. 105-276, title V, § 587, Oct. 21, 1998, 112 Stat. 2650, provided that:

“(a) REQUIREMENT.—The Secretary of Housing and Urban Development shall investigate all security contracts awarded by grantees under the Public and Assisted Housing Drug Elimination Act of 1990 (42 U.S.C. 11901 et seq.) that are public housing agencies that own or operate more than 4,500 public housing dwelling units—

“(1) to determine whether the contractors under such contracts have complied with all laws and regulations regarding prohibition of discrimination in hiring practices;

“(2) to determine whether such contracts were awarded in accordance with the applicable laws and regulations regarding the award of such contracts;

“(3) to determine how many such contracts were awarded under emergency contracting procedures; and

“(4) to evaluate the effectiveness of the contracts.

“(b) REPORT.—Not later than 180 days after the date of the enactment of this Act [Oct. 21, 1998], the Secretary shall complete the investigation required under subsection (a) and submit a report to the Congress regarding the findings under the investigation. With respect to each such contract, the report shall (1) state whether the contract was made and is operating, or was not made or is not operating, in full compliance with applicable laws and regulations, and (2) for each contract that the Secretary determines is in such compliance issue a certification of such compliance by the Secretary of Housing and Urban Development.

“(c) ACTIONS.—For each contract that is described in the report under subsection (b) as not made or not operating in full compliance with applicable laws and regulations, the Secretary of Housing and Urban Development shall promptly take any actions available under law or regulation that are necessary—

“(1) to bring such contract into compliance; or

“(2) to terminate the contract.

“(d) EFFECTIVE DATE.—This section shall take effect on the date of the enactment of this Act [Oct. 21, 1998].”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11906 of this title.

§ 11908. Authorization of appropriations

(a) In general

There are authorized to be appropriated to carry out this subchapter \$310,000,000 for fiscal year 1999, and such sums as may be necessary for fiscal years 2000, 2001, 2002, and 2003.

(b) Set-aside for federally assisted low-income housing

Of any amounts made available in any fiscal year to carry out this subchapter not more than 6.25 percent shall be available for grants for federally assisted low-income housing.

(c) Set-aside for technical assistance and program oversight

Of any amounts appropriated in any fiscal year to carry out this subchapter, amounts shall be available to the extent provided in appropriations Acts to provide training, technical assistance, contract expertise, program oversight, program assessment, execution, and other assistance for or on behalf of public housing agencies, recipients of assistance under the Native American Housing Assistance and Self-Determination Act of 1996 [25 U.S.C. 4101 et seq.], resident organizations, and officials and employees of the Department (including training and the

cost of necessary travel for participants in such training, by or to officials and employees of the Department and of public housing agencies, and to residents and to other eligible grantees). Assistance and other activities carried out using amounts made available under this subsection may be provided directly or indirectly by grants, contracts, or cooperative agreements.

(Pub. L. 100-690, title V, § 5129, as added Pub. L. 105-276, title V, § 586(g), Oct. 21, 1998, 112 Stat. 2650.)

REFERENCES IN TEXT

The Native American Housing Assistance and Self-Determination Act of 1996, referred to in subsec. (c), is Pub. L. 104-330, Oct. 26, 1996, 110 Stat. 4016, as amended, which is classified principally to chapter 43 (§ 4101 et seq.) of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of Title 25 and Tables.

PRIOR PROVISIONS

A prior section 11908, Pub. L. 100-690, title V, § 5129, Nov. 18, 1988, 102 Stat. 4303; Pub. L. 101-625, title V, §§ 520(k), 581(a), Nov. 28, 1990, 104 Stat. 4205, 4248, related to auditing and monitoring of programs funded under this subchapter, prior to repeal by Pub. L. 105-276, title V, §§ 503, 586(g), Oct. 21, 1998, 112 Stat. 2521, 2649, effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement the repeal before such date, except to extent otherwise provided, and with savings provision.

EFFECTIVE DATE

Section effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement section before such date, except to extent otherwise provided, see section 503 of Pub. L. 105-276, set out as an Effective Date of 1998 Amendment note under section 1437 of this title.

§ 11909. Repealed. Pub. L. 105-276, title V, § 586(g), Oct. 21, 1998, 112 Stat. 2649

A prior section 11909, Pub. L. 100-690, title V, § 5130, as added Pub. L. 101-625, title V, § 581(a), Nov. 28, 1990, 104 Stat. 4248; amended Pub. L. 102-550, title I, §§ 126(a), 161(a), (b), Oct. 28, 1992, 106 Stat. 3710, 3718, authorized appropriations to carry out this subchapter.

EFFECTIVE DATE OF REPEAL

Repeal effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement the repeal before such date, and with savings provision, see section 503 of Pub. L. 105-276, set out as an Effective Date of 1998 Amendment note under section 1437 of this title.

SUBCHAPTER II—DRUG-FREE PUBLIC HOUSING

§ 11921. Statement of purpose

The purpose of this subchapter is to reaffirm the principle that decent affordable shelter is a basic necessity, and the general welfare of the Nation and the health and living standards of its people require better coordination and training in drug prevention programs among the public officials and agencies responsible for administering the public housing programs of the Nation.

(Pub. L. 100-690, title V, § 5142, Nov. 18, 1988, 102 Stat. 4303.)

§ 11922. Clearinghouse on drug abuse in public housing

(a) Establishment

The Secretary of Housing and Urban Development shall establish, in the Office of Public Housing in the Department of Housing and Urban Development, a clearinghouse to receive, collect, process, and assemble information regarding the abuse of controlled substances in public housing projects.

(b) Functions

The clearinghouse established under subsection (a) of this section shall—

(1) respond to inquiries by members of the public requesting assistance in investigating, studying, and working on the problem of the abuse of controlled substances; and

(2) receive, collect, process, assemble, and provide information on programs, authorities, institutions, and agencies, that may further assist members of the public requesting information from the clearinghouse.

(Pub. L. 100-690, title V, § 5143, Nov. 18, 1988, 102 Stat. 4303.)

§ 11923. Regional training program on drug abuse in public housing

(a) Establishment

The Secretary shall establish a regional training program for the training of public housing officials, to better prepare and educate the officials to confront the widespread abuse of controlled substances in the communities in which the officials work.

(b) Operation

The regional training program established under subsection (a) of this section shall be conducted within 12 months after November 18, 1988, by a national training unit established by the Secretary.

(Pub. L. 100-690, title V, § 5144, Nov. 18, 1988, 102 Stat. 4303.)

§ 11924. Definitions

For purposes of this subchapter:

(1) Controlled substance

The term “controlled substance” has the meaning given such term in section 802 of title 21.

(2) Secretary

The term “Secretary” means the Secretary of Housing and Urban Development.

(Pub. L. 100-690, title V, § 5145, Nov. 18, 1988, 102 Stat. 4304.)

§ 11925. Regulations

Not later than 6 months after November 18, 1988, the Secretary shall issue any regulations necessary to carry out this subchapter.

(Pub. L. 100-690, title V, § 5146, Nov. 18, 1988, 102 Stat. 4304.)

CHAPTER 125—RENEWABLE ENERGY AND ENERGY EFFICIENCY TECHNOLOGY COMPETITIVENESS

Sec.
12001. Finding, purpose, and general authority.

- Sec.
- (a) Finding.
 - (b) Purpose.
 - (c) General authority.
12002. Definitions.
12003. National goals and multi-year funding for Federal wind, photovoltaics, and solar thermal programs.
- (a) National goals.
 - (b) Amended goals.
 - (c) Authorizations.
12004. Energy efficiency authorizations.
12005. Demonstration and commercial application projects.
- (a) Purpose.
 - (b) Demonstration and commercial application projects.
 - (c) Selection of projects.
 - (d) Authorization of appropriations.
12006. Reports.
- (a) Report by Secretary.
 - (b) National renewable energy and energy efficiency management plan.
 - (c) Report on options.
12007. No antitrust immunity or defenses.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 5905 of this title.

§ 12001. Finding, purpose, and general authority

(a) Finding

The Congress finds that it is in the national security and economic interest of the United States to foster greater efficiency in the use of available energy supplies and greater use of renewable energy technologies.

(b) Purpose

It is the purpose of this chapter to authorize the Secretary of Energy, acting in accordance with section 13541 of this title, to pursue an aggressive national program of research, development, demonstration, and commercial application of renewable energy and energy efficiency technologies in order to ensure a stable and secure future energy supply by—

- (1) achieving as soon as practicable cost competitive use of those technologies without need of Federal financial incentives;
- (2) establishing long-term Federal research goals and multiyear funding levels;
- (3) directing the Secretary to undertake initiatives to improve the ability of the private sector to commercialize in the near term renewable energy and energy efficiency technologies; and
- (4) fostering collaborative efforts involving the private sector through government support of a program of demonstration and commercial application projects.

(c) General authority

The Secretary, acting in accordance with section 13541 of this title, is authorized and directed to—

- (1) pursue a program of research, development, demonstration, and commercial application with the private sector, to achieve the purpose of this chapter, including the goals established under section 12003 of this title; and
- (2) undertake demonstration and commercial application projects as provided in section 12005 of this title.

(Pub. L. 101-218, § 2, Dec. 11, 1989, 103 Stat. 1859; Pub. L. 102-486, title XII, § 1202(d)(1)-(3), Oct. 24, 1992, 106 Stat. 2959, 2960.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (b) and (c)(1), was in the original “this Act”, meaning Pub. L. 101-218, Dec. 11, 1989, 103 Stat. 1859, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note below and Tables.

AMENDMENTS

1992—Subsec. (b). Pub. L. 102-486, § 1202(d)(1), substituted “section 13541 of this title” for “authority contained in the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5901-5920) and other law applicable to the Secretary” and “demonstration, and commercial application” for “and demonstration”.

Subsec. (b)(4). Pub. L. 102-486, § 1202(d)(2), substituted “efforts” for “research and development efforts” and “demonstration and commercial application projects” for “joint ventures”.

Subsec. (c). Pub. L. 102-486, § 1202(d)(3), substituted “section 13541 of this title, is authorized and directed to—” and pars. (1) and (2) for “the authority contained in the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5901-5920) and other law applicable to the Secretary—

“(1) is authorized and directed to—

“(A) pursue a program of research, development, and demonstration, including the use of joint ventures with the private sector, to achieve the purpose of this chapter, including the goals established under section 12003 of this title; and

“(B) undertake joint ventures as provided in section 12005 of this title; and

“(2) is authorized to undertake, from time to time, joint ventures in technology areas other than those set forth in section 12005(c) of this title, subject to the conditions set forth in section 12005(b) of this title.”

SHORT TITLE

Section 1 of Pub. L. 101-218 provided: “That this Act [enacting this chapter and amending sections 6276 and 8243 of this title, section 2857 of Title 10, Armed Forces, and section 2194 of Title 22, Foreign Relations and Intercourse] may be referred to as the ‘Renewable Energy and Energy Efficiency Technology Competitiveness Act of 1989.’”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12003 of this title.

§ 12002. Definitions

As used in this chapter—

(1) the term “invention” means an invention or discovery that is patented or for which a patent may be obtained under title 35, or any novel variety of plant that is protected or for which plant variety protection may be obtained under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.) and that is conceived or reduced to practice as a result of work under an agreement entered into under this chapter;

(2) the term “non-Federal person” means an entity located in the United States, the controlling interest (as defined by the Secretary) of which is held by persons of the United States, including—

(A) a for-profit business;

(B) a private foundation;

(C) a nonprofit organization such as a university;

(D) a trade or professional society; and

(E) a unit of State or local government;

(3) the term “Secretary” means the Secretary of Energy;

(4) the term “small business”, with respect to a participant in any demonstration and commercial application project under this chapter, means a private firm that does not exceed the numerical size standard promulgated by the Small Business Administration under section 632(a) of title 15 for the Standard Industrial Classification (SIC) code designated by the Secretary of Energy as the primary business activity to be undertaken in the demonstration and commercial application project;

(5) the term “source reduction” means any practice which—

(A) reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment, including fugitive emissions, prior to recycling, treatment, or disposal; and

(B) reduces the hazards to the public health and the environment associated with the release of such substances, pollutants, or contaminants,

including equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, and inventory control, but not including any practice which alters the physical, chemical, or biological characteristics or the volume of a hazardous substance, pollutant, or contaminant through a process or activity which itself is not integral to and necessary for the production of a product or the providing of a service;¹

(6) the term “United States” means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other Commonwealth, territory, or possession of the United States.

(Pub. L. 101-218, § 3, Dec. 11, 1989, 103 Stat. 1859; Pub. L. 102-486, title XII, § 1202(d)(4), Oct. 24, 1992, 106 Stat. 2960.)

REFERENCES IN TEXT

The Plant Variety Protection Act, referred to in par. (1), is Pub. L. 91-577, Dec. 24, 1970, 84 Stat. 1542, as amended, which is classified principally to chapter 57 (§ 2321 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2321 of Title 7 and Tables.

AMENDMENTS

1992—Pars. (2) to (5). Pub. L. 102-486 redesignated pars. (3) to (5) as (2) to (4), respectively, in par. (4) substituted “any demonstration and commercial application project” for “any joint venture” and “in the demonstration and commercial application project;” for “in the venture; and”, added par. (5), and struck out former par. (2) which read as follows: “‘joint venture’ means any agreement entered into under this chapter by the Secretary with more than one or a consortium of non-Federal persons (including a joint venture under the National Cooperative Research Act of 1984 (15 U.S.C. 4301 et seq.)) for cost-shared research, develop-

ment, or demonstration of technologies, but does not include procurement contracts, grant agreements, or cooperative agreements as those terms are used in sections 6303, 6304, and 6305 of title 31;”.

§ 12003. National goals and multi-year funding for Federal wind, photovoltaics, and solar thermal programs

(a) National goals

The following are declared to be the national goals for the wind, photovoltaics, and solar thermal energy programs being carried out by the Secretary:

(1) Wind

(A) In general, the goals for the Wind Energy Research Program include improving design methodologies and developing more reliable and efficient wind turbines to increase the cost competitiveness of wind energy. Research efforts shall emphasize—

(i) activities that address near-term technical problems and assist private sector exploitation of market opportunities of the wind energy industry;

(ii) developing technologies such as advanced airfoils and variable speed generators to increase wind turbine output and reduce maintenance costs by decreasing structural stress and fatigue;

(iii) increasing the basic knowledge of aerodynamics, structural dynamics, fatigue, and electrical systems interactions as applied to wind energy technology; and

(iv) improving the compatibility of electricity produced from wind farms with conventional utility needs.

(B) Specific goals for the Wind Energy Research Program shall be to—

(i) reduce average wind energy costs to 3 to 5 cents per kilowatt hour by 1995;

(ii) reduce capital costs of new wind energy systems to \$500 to \$750 per kilowatt of installed capacity by 1995;

(iii) reduce operation and maintenance costs for wind energy systems to less than one cent per kilowatt hour by 1995; and

(iv) increase capacity factors for new wind energy systems to 25 to 35 percent by 1995.

(2) Photovoltaics

(A) In general, the goals of the Photovoltaic Energy Systems Program shall include improving the reliability and conversion efficiencies of and lowering the costs of photovoltaic conversion. Research efforts shall emphasize advancements in the performance, stability, and durability of photovoltaic materials.

(B) Specific goals of the Photovoltaic Energy Systems Program shall be to—

(i) improve operational reliability of photovoltaic modules to 30 years by 1995;

(ii) increase photovoltaic conversion efficiencies by 20 percent by 1995;

(iii) decrease new photovoltaic module direct manufacturing costs to \$800 per kilowatt by 1995; and

(iv) increase cost efficiency of photovoltaic power production to 10 cents per kilowatt hour by 1995.

¹ So in original. Probably should be “; and”.

(3) Solar thermal

(A) In general, the goal of the Solar Thermal Energy Systems Program shall be to advance research and development to a point where solar thermal technology is cost-competitive with conventional energy sources, and to promote the integration of this technology into the production of industrial process heat and the conventional utility network. Research and development shall emphasize development of a thermal storage technology to provide capacity for shifting power to periods of demand when full insolation is not available; improvement in receivers, energy conversion devices, and innovative concentrators using stretch membranes, lenses, and other materials; and exploration of advanced manufacturing techniques.

(B) Specific goals of the Solar Thermal Energy Systems Program shall be to—

(i) reduce solar thermal costs for industrial process heat to \$9.00 per million Btu by 1995; and

(ii) reduce average solar thermal costs for electricity to 4 to 5 cents per kilowatt hour by 1995.

(4) Alcohol from biomass

(A) In general, the goal of the Alcohol From Biomass Program shall be to advance research and development to a point where alcohol from biomass technology is cost-competitive with conventional hydrocarbon transportation fuels, and to promote the integration of this technology into the transportation fuel sector of the economy.

(B)(i) Specific goals for producing ethanol from biomass shall be to—

(I) reduce the cost of alcohol to 70 cents per gallon;

(II) improve the overall biomass carbohydrate conversion efficiency to 91 percent;

(III) reduce the capital cost component of the cost of alcohol to 23 cents per gallon; and

(IV) reduce the operating and maintenance component of the cost of alcohol to 47 cents per gallon.

(ii) Specific goals for producing methanol from biomass shall be to—

(I) reduce the cost of alcohol to 47 cents per gallon; and

(II) reduce the capital component of the cost of alcohol to 16 cents per gallon.

(5) Other technologies

The Secretary shall submit to the Congress, as part of the first report submitted under section 12006 of this title, recommendations for specific cost goals and other pertinent goals for 1995 for Department of Energy research, development, and demonstration programs in Biofuels Energy Systems, Biodiesel Energy Systems, Hydrogen Energy Systems, Solar Buildings Energy Systems, Ocean Energy Systems, Geothermal Energy Systems, Low-Head Hydro, and Energy Storage Systems.

(b) Amended goals

Whenever the Secretary determines that any of the goals established under this section is no longer appropriate, the Secretary shall notify

Congress, as part of a report submitted under section 12006 of this title, of the reason for the determination and provide an amended goal that is consistent with the purpose stated in section 12001(b) of this title.

(c) Authorizations

There are authorized to be appropriated to the Secretary for the following renewable energy research, development, and demonstration programs: the Wind Energy Research Program, the Photovoltaic Energy Systems Program, the Solar Thermal Energy Systems Program, the Biofuels Energy Systems Program, the Hydrogen Energy Systems Program, the Solar Buildings Energy Systems Program, the Ocean Energy Systems Program, and the Geothermal Energy Systems Program—

(1) not to exceed \$113,000,000 for fiscal year 1991, of which—

(A) not to exceed \$39,000,000 shall be available for the Photovoltaic Energy Systems Program;

(B) not to exceed \$19,000,000 shall be available for the Geothermal Energy Systems Program; and

(C) not to exceed \$4,000,000 shall be available for the Hydrogen Energy Systems Program; and

(2) not to exceed \$121,000,000 for fiscal year 1992, of which—

(A) not to exceed \$40,000,000 shall be available for the Photovoltaic Energy Systems Program;

(B) not to exceed \$20,500,000 shall be available for the Geothermal Energy Systems Program; and

(C) not to exceed \$5,000,000 shall be available for the Hydrogen Energy Systems Program.

Each of the President's annual budget requests submitted to Congress after December 11, 1989, shall include as separate line items each of the categories of renewable energy programs described in this subsection.

(Pub. L. 101-218, § 4, Dec. 11, 1989, 103 Stat. 1860; Pub. L. 102-486, title XII, § 1202(b), title XXI, § 2125(1)-(3), Oct. 24, 1992, 106 Stat. 2958, 3085.)

AMENDMENTS

1992—Subsec. (a)(4), (5). Pub. L. 102-486, § 1202(b)(1), added par. (4), redesignated former par. (4) as (5), and inserted "Biodiesel Energy Systems," after "Biofuels Energy Systems."

Subsec. (c)(3). Pub. L. 102-486, § 2125(1)-(3), struck out par. (3) which read as follows: "not to exceed \$124,000,000 for fiscal year 1993, of which—

"(A) not to exceed \$40,000,000 shall be available for the Photovoltaic Energy Systems Program;

"(B) not to exceed \$23,000,000 shall be available for the Geothermal Energy Systems Program; and

"(C) not to exceed \$6,000,000 shall be available for the Hydrogen Energy Systems Program."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12001 of this title.

§ 12004. Energy efficiency authorizations

There are authorized to be appropriated to the Secretary for the following energy efficiency re-

search, development, and demonstration programs: transportation, industrial, buildings and community systems, multi-sector, and policy and management—

(1) not to exceed \$201,100,000 for fiscal year 1991, of which—

(A) not to exceed \$68,300,000 shall be available for the transportation program; and

(B) not to exceed \$53,500,000 shall be available for the industrial program; and

(2) not to exceed \$210,600,000 for fiscal year 1992, of which—

(A) not to exceed \$71,000,000 shall be available for the transportation program; and

(B) not to exceed \$54,700,000 shall be available for the industrial program.

(Pub. L. 101-218, § 5, Dec. 11, 1989, 103 Stat. 1862; Pub. L. 102-486, title XXI, § 2125(4)-(6), Oct. 24, 1992, 106 Stat. 3085.)

AMENDMENTS

1992—Par. (3). Pub. L. 102-486 struck out par. (3) which read as follows: “not to exceed \$225,000,000 for fiscal year 1993, of which—

“(A) not to exceed \$73,900,000 shall be available for the transportation program; and

“(B) not to exceed \$56,900,000 shall be available for the industrial program.”

§ 12005. Demonstration and commercial application projects

(a) Purpose

The purpose of this section is to direct the Secretary to further the commercialization of renewable energy and energy efficiency technologies through a five-year program.

(b) Demonstration and commercial application projects

(1) Establishment

(A) The Secretary shall solicit proposals for demonstration and commercial application projects for renewable energy and energy efficiency technologies pursuant to subsection (c) of this section. Such projects may include projects for—

(i) the production and sale of electricity, thermal energy, or other forms of energy using a renewable energy technology;

(ii) increasing the efficiency of energy use; and

(iii) improvements in, or expansion of, facilities for the manufacture of renewable energy or energy efficiency technologies.

(B) REQUIREMENTS.—Each project selected under this section shall include at least one for-profit business. Activities supported under this section shall be performed in the United States. Each project under this section shall require the manufacture and reproduction substantially within the United States for commercial sale of any invention or product that may result from the project.

(2) Forms of financial assistance

(A) In supporting projects selected under subsection (c) of this section, the Secretary may choose from among the forms of agreements described in section 13541 of this title.

(B) In supporting projects selected under subsection (c) of this section, the Secretary

may also enter into agreements with private lenders to pay a portion of the interest on loans made for such projects.

(3) Cost sharing

Cost sharing for projects under this section shall be conducted according to the procedures described in section 13542(b) and (c) of this title.

(4) Advisory Committee

(A) The Secretary shall establish an Advisory Committee on Demonstration and Commercial Application of Renewable Energy and Energy Efficiency Technologies (in this chapter referred to as the “Advisory Committee”) to advise the Secretary on the development of the solicitation and evaluation criteria for projects under this section, and on otherwise carrying out his responsibilities under this section. The Secretary shall appoint members to the Advisory Committee, including at least one member representing—

(i) the Secretary of Commerce;

(ii) the National Laboratories of the Department of Energy;

(iii) the Solar Energy Research Institute;

(iv) the Electric Power Research Institute;

(v) the Gas Research Institute;

(vi) the National Institute of Building Sciences;

(vii) the National Institute of Standards and Technology;

(viii) associations of firms in the major renewable energy manufacturing industries; and

(ix) associations of firms in the major energy efficiency manufacturing industries.

Nothing in this subparagraph shall be construed to require the Secretary to reestablish the Advisory Committee in place under this subsection as of October 24, 1992, or to perform again any duties performed by such advisory committee before October 24, 1992.

(B) Not later than 18 months after October 24, 1992, the Advisory Committee shall provide the Secretary with a report assessing the implementation of the program under this section, including specific recommendations for improvements or changes to the program and solicitation process. The Secretary shall transmit such report and, if any, the Secretary’s recommendations to the Congress.

(c) Selection of projects

(1) Solicitation

(A) Not later than 9 months after October 24, 1992, the Secretary shall solicit proposals for projects under this section. The Secretary may make additional solicitations for proposals if the Secretary determines that such solicitations are necessary to carry out this section.

(B) A solicitation for proposals under this paragraph shall establish a closing date for receipt of proposals. The Secretary may, if necessary, extend the closing date for receipt of proposals for a period not to exceed 90 days.

(C) Each solicitation under this paragraph shall include a description of the criteria, developed by the Secretary, according to which

proposals will be evaluated. In developing such criteria, the Secretary shall consider—

- (i) the need for Federal involvement to commercialize the technology or speed commercialization of the technology;
- (ii) the potential for the technology to have significant market penetration;
- (iii) the potential energy efficiency gains or energy supply contributions of the technology;
- (iv) potential environmental improvements associated with the technology;
- (v) the export potential of the technology;
- (vi) the likelihood that the proposal is technically sufficient to achieve the objective of the solicitation;
- (vii) the degree to which non-Federal financial participation is involved in the proposal;
- (viii) the business and financial history of the proposer or proposers; and
- (ix) any other factor the Secretary considers appropriate.

(2) Project technologies

Projects under this section may include the following technologies:

- (A) Conversion of cellulosic biomass to liquid fuels.
- (B) Ethanol and ethanol byproduct processes.
- (C) Direct combustion or gasification of biomass.
- (D) Biofuels energy systems.
- (E) Photovoltaics, including utility scale and remote applications.
- (F) Solar thermal, including solar water heating.
- (G) Wind energy.
- (H) High temperature and low temperature geothermal energy.
- (I) Fuel cells, including transportation and stationary applications.
- (J) Nondefense high-temperature superconducting electricity technology.
- (K) Source reduction technology.
- (L) Factory-made housing.
- (M) Advanced district cooling.

(3) Project selection

The Secretary shall, within 120 days after the closing date established under paragraph (1)(B), select proposals to receive financial assistance under this section. In selecting proposals under this paragraph, the Secretary shall—

- (A) consider each proposal's ability to meet the criteria developed pursuant to paragraph (1)(C); and
- (B) attempt to achieve technological and geographic diversity.

(d) Authorization of appropriations

There are authorized to be appropriated to the Secretary for carrying out this section \$50,000,000 for fiscal year 1994.

(Pub. L. 101-218, § 6, Dec. 11, 1989, 103 Stat. 1863; Pub. L. 102-486, title XII, § 1202(a), Oct. 24, 1992, 106 Stat. 2956.)

AMENDMENTS

1992—Pub. L. 102-486 amended section generally, substituting provisions relating to demonstration and

commercial application projects for renewable energy and energy efficiency technologies for provisions relating to use of joint ventures to further commercialization of renewable energy and energy efficiency technologies.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12001, 12006, 13313 of this title.

§ 12006. Reports

(a) Report by Secretary

One year after December 11, 1989, and annually thereafter, the Secretary shall report to Congress on the programs and projects supported under this chapter and the progress being made toward accomplishing the goals and purposes set forth in this chapter.

(b) National renewable energy and energy efficiency management plan

(1) The Secretary, in consultation with the Advisory Committee, shall prepare a three-year management plan to be administered and carried out by the Secretary in the conduct of activities under this chapter.

(2) After opportunity for public comment and consideration, as appropriate, of such comment, the Secretary shall publish the plan.

(3) In addition to describing the Secretary's intentions for administering this chapter, the plan shall include a comprehensive strategy for assisting the private sector—

(A) in commercializing the renewable energy and energy efficiency technologies developed under this chapter; and

(B) in meeting competition from foreign suppliers of products derived from renewable energy and energy efficiency technologies.

(4) The plan shall address the role of federally-assisted research, development, and demonstration in the achievement of applicable national policy goals of the National Energy Policy Plan required under section 7321 of this title and the plan developed under section 5905 of this title.

(5) In addition, the Plan¹ shall—

(A) contain a detailed assessment of program needs, objectives, and priorities for each of the programs authorized under section 12005 of this title;

(B) use a uniform prioritization methodology to facilitate cost-benefit analyses of proposals in various program areas;

(C) establish milestones for setting forth specific technology transfer activities under each program area;

¹ So in original. Probably should not be capitalized.

(D) include annual and five-year cost estimates for individual programs under this chapter; and

(E) identify program areas for which funding levels have been changed from the previous year's Plan.¹

(6) Within one year after October 24, 1992, the Secretary shall submit a revised management plan under this section to Congress. Thereafter, the Secretary shall submit a management plan every three years at the time of submittal of the President's annual budget submission to the Congress.

(c) Report on options

As part of the first report submitted under subsection (a) of this section, the Secretary shall submit to Congress a report analyzing options available to the Secretary under existing law to assist the private sector with the timely commercialization of wind, photovoltaic, solar thermal, biofuels, hydrogen, solar buildings, ocean, geothermal, low-head hydro, and energy storage renewable energy technologies and energy efficiency technologies through emphasis on development and demonstration assistance to specific technologies in the research, development, and demonstration programs of the Department of Energy that are near commercial application.

(Pub. L. 101-218, §9, Dec. 11, 1989, 103 Stat. 1868; Pub. L. 102-486, title XII, §1202(c), (d)(5), title XXIII, §2303(b), Oct. 24, 1992, 106 Stat. 2959, 2960, 3093.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102-486, §1202(d)(5), substituted “and projects” for “, projects, and joint ventures”.

Subsec. (b)(1). Pub. L. 102-486, §1202(c)(1), inserted “three-year” before “management plan”.

Subsec. (b)(4). Pub. L. 102-486, §2303(b), inserted before period at end “and the plan developed under section 5905 of this title”.

Subsec. (b)(5), (6). Pub. L. 102-486, §1202(c)(2), added pars. (5) and (6) and struck out former par. (5) which read as follows: “The plan shall accompany the President's annual budget submission to the Congress.”

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103-7 (in which reports required under subsecs. (a) and (b) of this section are listed as the 20th item on page 84 and the 19th item on page 86), see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12003 of this title.

§ 12007. No antitrust immunity or defenses

Nothing in this chapter shall be deemed to convey to any person, partnership, corporation, or other entity immunity from civil or criminal liability under any antitrust law or to create defenses to actions under any antitrust law. As used in this section, “antitrust laws” means those Acts set forth in section 12 of title 15.

(Pub. L. 101-218, §10, Dec. 11, 1989, 103 Stat. 1869.)

CHAPTER 126—EQUAL OPPORTUNITY FOR INDIVIDUALS WITH DISABILITIES

- Sec. 12101. Findings and purpose.
 - (a) Findings.
 - (b) Purpose.
- 12102. Definitions.
 - SUBCHAPTER I—EMPLOYMENT
- 12111. Definitions.
- 12112. Discrimination.
 - (a) General rule.
 - (b) Construction.
 - (c) Covered entities in foreign countries.
 - (d) Medical examinations and inquiries.
- 12113. Defenses.
 - (a) In general.
 - (b) Qualification standards.
 - (c) Religious entities.
 - (d) List of infectious and communicable diseases.
- 12114. Illegal use of drugs and alcohol.
 - (a) Qualified individual with a disability.
 - (b) Rules of construction.
 - (c) Authority of covered entity.
 - (d) Drug testing.
 - (e) Transportation employees.
- 12115. Posting notices.
- 12116. Regulations.
- 12117. Enforcement.
 - (a) Powers, remedies, and procedures.
 - (b) Coordination.

SUBCHAPTER II—PUBLIC SERVICES

PART A—PROHIBITION AGAINST DISCRIMINATION AND OTHER GENERALLY APPLICABLE PROVISIONS

- 12131. Definitions.
- 12132. Discrimination.
- 12133. Enforcement.
- 12134. Regulations.
 - (a) In general.
 - (b) Relationship to other regulations.
 - (c) Standards.

PART B—ACTIONS APPLICABLE TO PUBLIC TRANSPORTATION PROVIDED BY PUBLIC ENTITIES CONSIDERED DISCRIMINATORY

SUBPART I—PUBLIC TRANSPORTATION OTHER THAN BY AIRCRAFT OR CERTAIN RAIL OPERATIONS

- 12141. Definitions.
- 12142. Public entities operating fixed route systems.
 - (a) Purchase and lease of new vehicles.
 - (b) Purchase and lease of used vehicles.
 - (c) Remanufactured vehicles.
- 12143. Paratransit as a complement to fixed route service.
 - (a) General rule.
 - (b) Issuance of regulations.
 - (c) Required contents of regulations.
 - (d) Review of plan.
 - (e) “Discrimination” defined.
 - (f) Statutory construction.
- 12144. Public entity operating a demand responsive system.
- 12145. Temporary relief where lifts are unavailable.
 - (a) Granting.
 - (b) Duration and notice to Congress.
 - (c) Fraudulent application.
- 12146. New facilities.
- 12147. Alterations of existing facilities.
 - (a) General rule.
 - (b) Special rule for stations.
- 12148. Public transportation programs and activities in existing facilities and one car per train rule.
 - (a) Public transportation programs and activities in existing facilities.

- Sec.
- (b) One car per train rule.
12149. Regulations.
- (a) In general.
- (b) Standards.
12150. Interim accessibility requirements.
- SUBPART II—PUBLIC TRANSPORTATION BY INTERCITY AND COMMUTER RAIL
12161. Definitions.
12162. Intercity and commuter rail actions considered discriminatory.
- (a) Intercity rail transportation.
- (b) Commuter rail transportation.
- (c) Used rail cars.
- (d) Remanufactured rail cars.
- (e) Stations.
12163. Conformance of accessibility standards.
12164. Regulations.
12165. Interim accessibility requirements.
- (a) Stations.
- (b) Rail passenger cars.
- SUBCHAPTER III—PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES
12181. Definitions.
12182. Prohibition of discrimination by public accommodations.
- (a) General rule.
- (b) Construction.
12183. New construction and alterations in public accommodations and commercial facilities.
- (a) Application of term.
- (b) Elevator.
12184. Prohibition of discrimination in specified public transportation services provided by private entities.
- (a) General rule.
- (b) Construction.
- (c) Historical or antiquated cars.
12185. Study.
- (a) Purposes.
- (b) Contents.
- (c) Advisory committee.
- (d) Deadline.
- (e) Review.
12186. Regulations.
- (a) Transportation provisions.
- (b) Other provisions.
- (c) Consistency with ATBCB guidelines.
- (d) Interim accessibility standards.
12187. Exemptions for private clubs and religious organizations.
12188. Enforcement.
- (a) In general.
- (b) Enforcement by Attorney General.
12189. Examinations and courses.
- SUBCHAPTER IV—MISCELLANEOUS PROVISIONS
12201. Construction.
- (a) In general.
- (b) Relationship to other laws.
- (c) Insurance.
- (d) Accommodations and services.
12202. State immunity.
12203. Prohibition against retaliation and coercion.
- (a) Retaliation.
- (b) Interference, coercion, or intimidation.
- (c) Remedies and procedures.
12204. Regulations by Architectural and Transportation Barriers Compliance Board.
- (a) Issuance of guidelines.
- (b) Contents of guidelines.
- (c) Qualified historic properties.
12205. Attorney's fees.
12206. Technical assistance.
- (a) Plan for assistance.
- (b) Agency and public assistance.

- Sec.
- (c) Implementation.
- (d) Grants and contracts.
- (e) Failure to receive assistance.
12207. Federal wilderness areas.
- (a) Study.
- (b) Submission of report.
- (c) Specific wilderness access.
12208. Transvestites.
12209. Instrumentalities of Congress.
12210. Illegal use of drugs.
- (a) In general.
- (b) Rules of construction.
- (c) Health and other services.
- (d) "Illegal use of drugs" defined.
12211. Definitions.
- (a) Homosexuality and bisexuality.
- (b) Certain conditions.
12212. Alternative means of dispute resolution.
12213. Severability.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 290bb-34, 608, 1760, 1786, 3796gg-7, 15007, 15024, 15545 of this title; title 2 sections 1302, 1331, 1371, 1434; title 3 sections 402, 421; title 16 sections 410aaa-41, 410aaa-52; title 20 sections 1011, 1140c, 1415; title 23 section 133; title 25 section 2005; title 26 section 44; title 29 sections 720, 721, 762, 764, 781, 793, 795, 3011; title 49 sections 5302, 5307, 5314, 5323, 5335, 47102.

§ 12101. Findings and purpose

(a) Findings

The Congress finds that—

(1) some 43,000,000 Americans have one or more physical or mental disabilities, and this number is increasing as the population as a whole is growing older;

(2) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;

(3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;

(4) unlike individuals who have experienced discrimination on the basis of race, color, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination;

(5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, over-protective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;

(6) census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;

(7) individuals with disabilities are a discrete and insular minority who have been

faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society;

(8) the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals; and

(9) the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and non-productivity.

(b) Purpose

It is the purpose of this chapter—

(1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;

(2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;

(3) to ensure that the Federal Government plays a central role in enforcing the standards established in this chapter on behalf of individuals with disabilities; and

(4) to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

(Pub. L. 101-336, §2, July 26, 1990, 104 Stat. 328.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original "this Act", meaning Pub. L. 101-336, July 26, 1990, 104 Stat. 327, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

SHORT TITLE

Section 1(a) of Pub. L. 101-336 provided that: "This Act [enacting this chapter and section 225 of Title 47, Telegraphs, Telephones, and Radiotelegraphs, amending section 706 of Title 29, Labor, and sections 152, 221, and 611 of Title 47, and enacting provisions set out as notes under sections 12111, 12131, 12141, 12161, and 12181 of this title] may be cited as the 'Americans with Disabilities Act of 1990'."

STUDY BY GENERAL ACCOUNTING OFFICE OF EXISTING DISABILITY-RELATED EMPLOYMENT INCENTIVES

Pub. L. 106-170, title III, §303(a), Dec. 17, 1999, 113 Stat. 1903, provided that:

"(1) STUDY.—As soon as practicable after the date of the enactment of this Act [Dec. 17, 1999], the Comptroller General of the United States shall undertake a study to assess existing tax credits and other disability-related employment incentives under the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) and other Federal laws. In such study, the Com-

troller General shall specifically address the extent to which such credits and other incentives would encourage employers to hire and retain individuals with disabilities.

"(2) REPORT.—Not later than 3 years after the date of the enactment of this Act, the Comptroller General shall transmit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a written report presenting the results of the Comptroller General's study conducted pursuant to this subsection, together with such recommendations for legislative or administrative changes as the Comptroller General determines are appropriate."

§ 12102. Definitions

As used in this chapter:

(1) Auxiliary aids and services

The term "auxiliary aids and services" includes—

(A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(C) acquisition or modification of equipment or devices; and

(D) other similar services and actions.

(2) Disability

The term "disability" means, with respect to an individual—

(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(B) a record of such an impairment; or

(C) being regarded as having such an impairment.

(3) State

The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

(Pub. L. 101-336, §3, July 26, 1990, 104 Stat. 329.)

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 280b-1c, 3796gg-7, 3796hh, 12211, 12581, 12594 of this title; title 20 sections 1003, 1228c, 2302, 9202; title 29 section 2801; title 40 section 550; title 47 section 255.

SUBCHAPTER I—EMPLOYMENT

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1981a, 12201, 12203, 12206 of this title; title 2 section 1311; title 3 section 411; title 29 sections 723, 728a, 732, 772, 791, 793, 794.

§ 12111. Definitions

As used in this subchapter:

(1) Commission

The term "Commission" means the Equal Employment Opportunity Commission established by section 2000e-4 of this title.

(2) Covered entity

The term “covered entity” means an employer, employment agency, labor organization, or joint labor-management committee.

(3) Direct threat

The term “direct threat” means a significant risk to the health or safety of others that cannot be eliminated by reasonable accommodation.

(4) Employee

The term “employee” means an individual employed by an employer. With respect to employment in a foreign country, such term includes an individual who is a citizen of the United States.

(5) Employer**(A) In general**

The term “employer” means a person engaged in an industry affecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such person, except that, for two years following the effective date of this subchapter, an employer means a person engaged in an industry affecting commerce who has 25 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding year, and any agent of such person.

(B) Exceptions

The term “employer” does not include—

- (i) the United States, a corporation wholly owned by the government of the United States, or an Indian tribe; or
- (ii) a bona fide private membership club (other than a labor organization) that is exempt from taxation under section 501(c) of title 26.

(6) Illegal use of drugs**(A) In general**

The term “illegal use of drugs” means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act [21 U.S.C. 801 et seq.]. Such term does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

(B) Drugs

The term “drug” means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act [21 U.S.C. 812].

(7) Person, etc.

The terms “person”, “labor organization”, “employment agency”, “commerce”, and “industry affecting commerce”, shall have the same meaning given such terms in section 2000e of this title.

(8) Qualified individual with a disability

The term “qualified individual with a disability” means an individual with a disability who, with or without reasonable accommoda-

tion, can perform the essential functions of the employment position that such individual holds or desires. For the purposes of this subchapter, consideration shall be given to the employer’s judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.

(9) Reasonable accommodation

The term “reasonable accommodation” may include—

- (A) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and
- (B) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

(10) Undue hardship**(A) In general**

The term “undue hardship” means an action requiring significant difficulty or expense, when considered in light of the factors set forth in subparagraph (B).

(B) Factors to be considered

In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include—

- (i) the nature and cost of the accommodation needed under this chapter;
- (ii) the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;
- (iii) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and
- (iv) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.

(Pub. L. 101-336, title I, §101, July 26, 1990, 104 Stat. 330; Pub. L. 102-166, title I, §109(a), Nov. 21, 1991, 105 Stat. 1077.)

REFERENCES IN TEXT

The effective date of this subchapter, referred to in par. (5)(A), is 24 months after July 26, 1990, see section 108 of Pub. L. 101-336, set out as an Effective Date note below.

The Controlled Substances Act, referred to in par. (6)(A), is title II of Pub. L. 91-513, Oct. 27, 1970, 84 Stat. 1242, as amended, which is classified principally to sub-

chapter I (§801 et seq.) of chapter 13 of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 21 and Tables.

This chapter, referred to in par. (10)(B)(i), was in the original "this Act", meaning Pub. L. 101-336, July 26, 1990, 104 Stat. 327, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of this title and Tables.

AMENDMENTS

1991—Par. (4). Pub. L. 102-166 inserted at end "With respect to employment in a foreign country, such term includes an individual who is a citizen of the United States."

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-166 inapplicable to conduct occurring before Nov. 21, 1991, see section 109(c) of Pub. L. 102-166, set out as a note under section 2000e of this title.

EFFECTIVE DATE

Section 108 of title I of Pub. L. 101-336 provided that: "This title [enacting this subchapter] shall become effective 24 months after the date of enactment [July 26, 1990]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5057, 12581, 12594, 12635 of this title.

§ 12112. Discrimination

(a) General rule

No covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

(b) Construction

As used in subsection (a) of this section, the term "discriminate" includes—

(1) limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of the disability of such applicant or employee;

(2) participating in a contractual or other arrangement or relationship that has the effect of subjecting a covered entity's qualified applicant or employee with a disability to the discrimination prohibited by this subchapter (such relationship includes a relationship with an employment or referral agency, labor union, an organization providing fringe benefits to an employee of the covered entity, or an organization providing training and apprenticeship programs);

(3) utilizing standards, criteria, or methods of administration—

(A) that have the effect of discrimination on the basis of disability; or

(B) that perpetuate the discrimination of others who are subject to common administrative control;

(4) excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association;

(5)(A) not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity; or

(B) denying employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, if such denial is based on the need of such covered entity to make reasonable accommodation to the physical or mental impairments of the employee or applicant;

(6) using qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity; and

(7) failing to select and administer tests concerning employment in the most effective manner to ensure that, when such test is administered to a job applicant or employee who has a disability that impairs sensory, manual, or speaking skills, such test results accurately reflect the skills, aptitude, or whatever other factor of such applicant or employee that such test purports to measure, rather than reflecting the impaired sensory, manual, or speaking skills of such employee or applicant (except where such skills are the factors that the test purports to measure).

(c) Covered entities in foreign countries

(1) In general

It shall not be unlawful under this section for a covered entity to take any action that constitutes discrimination under this section with respect to an employee in a workplace in a foreign country if compliance with this section would cause such covered entity to violate the law of the foreign country in which such workplace is located.

(2) Control of corporation

(A) Presumption

If an employer controls a corporation whose place of incorporation is a foreign country, any practice that constitutes discrimination under this section and is engaged in by such corporation shall be presumed to be engaged in by such employer.

(B) Exception

This section shall not apply with respect to the foreign operations of an employer that is a foreign person not controlled by an American employer.

(C) Determination

For purposes of this paragraph, the determination of whether an employer controls a corporation shall be based on—

- (i) the interrelation of operations;
- (ii) the common management;
- (iii) the centralized control of labor relations; and

(iv) the common ownership or financial control,

of the employer and the corporation.

(d) Medical examinations and inquiries

(1) In general

The prohibition against discrimination as referred to in subsection (a) of this section shall include medical examinations and inquiries.

(2) Preemployment

(A) Prohibited examination or inquiry

Except as provided in paragraph (3), a covered entity shall not conduct a medical examination or make inquiries of a job applicant as to whether such applicant is an individual with a disability or as to the nature or severity of such disability.

(B) Acceptable inquiry

A covered entity may make preemployment inquiries into the ability of an applicant to perform job-related functions.

(3) Employment entrance examination

A covered entity may require a medical examination after an offer of employment has been made to a job applicant and prior to the commencement of the employment duties of such applicant, and may condition an offer of employment on the results of such examination, if—

(A) all entering employees are subjected to such an examination regardless of disability;

(B) information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record, except that—

(i) supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;

(ii) first aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and

(iii) government officials investigating compliance with this chapter shall be provided relevant information on request; and

(C) the results of such examination are used only in accordance with this subchapter.

(4) Examination and inquiry

(A) Prohibited examinations and inquiries

A covered entity shall not require a medical examination and shall not make inquiries of an employee as to whether such employee is an individual with a disability or as to the nature or severity of the disability, unless such examination or inquiry is shown to be job-related and consistent with business necessity.

(B) Acceptable examinations and inquiries

A covered entity may conduct voluntary medical examinations, including voluntary medical histories, which are part of an em-

ployee health program available to employees at that work site. A covered entity may make inquiries into the ability of an employee to perform job-related functions.

(C) Requirement

Information obtained under subparagraph (B) regarding the medical condition or history of any employee are subject to the requirements of subparagraphs (B) and (C) of paragraph (3).

(Pub. L. 101-336, title I, §102, July 26, 1990, 104 Stat. 331; Pub. L. 102-166, title I, §109(b)(2), Nov. 21, 1991, 105 Stat. 1077.)

AMENDMENTS

1991—Subsecs. (c), (d). Pub. L. 102-166 added subsec. (c) and redesignated former subsec. (c) as (d).

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-166 inapplicable to conduct occurring before Nov. 21, 1991, see section 109(c) of Pub. L. 102-166, set out as a note under section 2000e of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1981a, 2000e-16b, 12209 of this title; title 2 section 1311; title 3 section 411.

§ 12113. Defenses

(a) In general

It may be a defense to a charge of discrimination under this chapter that an alleged application of qualification standards, tests, or selection criteria that screen out or tend to screen out or otherwise deny a job or benefit to an individual with a disability has been shown to be job-related and consistent with business necessity, and such performance cannot be accomplished by reasonable accommodation, as required under this subchapter.

(b) Qualification standards

The term “qualification standards” may include a requirement that an individual shall not pose a direct threat to the health or safety of other individuals in the workplace.

(c) Religious entities

(1) In general

This subchapter shall not prohibit a religious corporation, association, educational institution, or society from giving preference in employment to individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

(2) Religious tenets requirement

Under this subchapter, a religious organization may require that all applicants and employees conform to the religious tenets of such organization.

(d) List of infectious and communicable diseases

(1) In general

The Secretary of Health and Human Services, not later than 6 months after July 26, 1990, shall—

(A) review all infectious and communicable diseases which may be transmitted through handling the food supply;

(B) publish a list of infectious and communicable diseases which are transmitted through handling the food supply;

(C) publish the methods by which such diseases are transmitted; and

(D) widely disseminate such information regarding the list of diseases and their modes of transmissibility¹ to the general public.

Such list shall be updated annually.

(2) Applications

In any case in which an individual has an infectious or communicable disease that is transmitted to others through the handling of food, that is included on the list developed by the Secretary of Health and Human Services under paragraph (1), and which cannot be eliminated by reasonable accommodation, a covered entity may refuse to assign or continue to assign such individual to a job involving food handling.

(3) Construction

Nothing in this chapter shall be construed to preempt, modify, or amend any State, county, or local law, ordinance, or regulation applicable to food handling which is designed to protect the public health from individuals who pose a significant risk to the health or safety of others, which cannot be eliminated by reasonable accommodation, pursuant to the list of infectious or communicable diseases and the modes of transmissibility¹ published by the Secretary of Health and Human Services.

(Pub. L. 101-336, title I, §103, July 26, 1990, 104 Stat. 333.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2000e-16b, 12209 of this title; title 2 section 1311; title 3 section 411.

§ 12114. Illegal use of drugs and alcohol

(a) Qualified individual with a disability

For purposes of this subchapter, the term “qualified individual with a disability” shall not include any employee or applicant who is currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use.

(b) Rules of construction

Nothing in subsection (a) of this section shall be construed to exclude as a qualified individual with a disability an individual who—

(1) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

(2) is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(3) is erroneously regarded as engaging in such use, but is not engaging in such use;

except that it shall not be a violation of this chapter for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to

ensure that an individual described in paragraph (1) or (2) is no longer engaging in the illegal use of drugs.

(c) Authority of covered entity

A covered entity—

(1) may prohibit the illegal use of drugs and the use of alcohol at the workplace by all employees;

(2) may require that employees shall not be under the influence of alcohol or be engaging in the illegal use of drugs at the workplace;

(3) may require that employees behave in conformance with the requirements established under the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq.);

(4) may hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment or job performance and behavior that such entity holds other employees, even if any unsatisfactory performance or behavior is related to the drug use or alcoholism of such employee; and

(5) may, with respect to Federal regulations regarding alcohol and the illegal use of drugs, require that—

(A) employees comply with the standards established in such regulations of the Department of Defense, if the employees of the covered entity are employed in an industry subject to such regulations, including complying with regulations (if any) that apply to employment in sensitive positions in such an industry, in the case of employees of the covered entity who are employed in such positions (as defined in the regulations of the Department of Defense);

(B) employees comply with the standards established in such regulations of the Nuclear Regulatory Commission, if the employees of the covered entity are employed in an industry subject to such regulations, including complying with regulations (if any) that apply to employment in sensitive positions in such an industry, in the case of employees of the covered entity who are employed in such positions (as defined in the regulations of the Nuclear Regulatory Commission); and

(C) employees comply with the standards established in such regulations of the Department of Transportation, if the employees of the covered entity are employed in a transportation industry subject to such regulations, including complying with such regulations (if any) that apply to employment in sensitive positions in such an industry, in the case of employees of the covered entity who are employed in such positions (as defined in the regulations of the Department of Transportation).

(d) Drug testing

(1) In general

For purposes of this subchapter, a test to determine the illegal use of drugs shall not be considered a medical examination.

(2) Construction

Nothing in this subchapter shall be construed to encourage, prohibit, or authorize the conducting of drug testing for the illegal use

¹ So in original. Probably should be “transmissibility”.

of drugs by job applicants or employees or making employment decisions based on such test results.

(e) Transportation employees

Nothing in this subchapter shall be construed to encourage, prohibit, restrict, or authorize the otherwise lawful exercise by entities subject to the jurisdiction of the Department of Transportation of authority to—

(1) test employees of such entities in, and applicants for, positions involving safety-sensitive duties for the illegal use of drugs and for on-duty impairment by alcohol; and

(2) remove such persons who test positive for illegal use of drugs and on-duty impairment by alcohol pursuant to paragraph (1) from safety-sensitive duties in implementing subsection (c) of this section.

(Pub. L. 101-336, title I, §104, July 26, 1990, 104 Stat. 334.)

REFERENCES IN TEXT

The Drug-Free Workplace Act of 1988, referred to in subsec. (c)(3), is subtitle D (§§5151-5160) of title V of Pub. L. 100-690, Nov. 18, 1988, 102 Stat. 4304, which is classified generally to chapter 10 (§701 et seq.) of Title 41, Public Contracts. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 41 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2000e-16b, 12209 of this title; title 2 section 1311; title 3 section 411.

§ 12115. Posting notices

Every employer, employment agency, labor organization, or joint labor-management committee covered under this subchapter shall post notices in an accessible format to applicants, employees, and members describing the applicable provisions of this chapter, in the manner prescribed by section 2000e-10 of this title.

(Pub. L. 101-336, title I, §105, July 26, 1990, 104 Stat. 336.)

§ 12116. Regulations

Not later than 1 year after July 26, 1990, the Commission shall issue regulations in an accessible format to carry out this subchapter in accordance with subchapter II of chapter 5 of title 5.

(Pub. L. 101-336, title I, §106, July 26, 1990, 104 Stat. 336.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12117 of this title.

§ 12117. Enforcement

(a) Powers, remedies, and procedures

The powers, remedies, and procedures set forth in sections 2000e-4, 2000e-5, 2000e-6, 2000e-8, and 2000e-9 of this title shall be the powers, remedies, and procedures this subchapter provides to the Commission, to the Attorney General, or to any person alleging discrimination on the basis of disability in violation of any provision of this chapter, or regulations promulgated under section 12116 of this title, concerning employment.

(b) Coordination

The agencies with enforcement authority for actions which allege employment discrimination under this subchapter and under the Rehabilitation Act of 1973 [29 U.S.C. 701 et seq.] shall develop procedures to ensure that administrative complaints filed under this subchapter and under the Rehabilitation Act of 1973 are dealt with in a manner that avoids duplication of effort and prevents imposition of inconsistent or conflicting standards for the same requirements under this subchapter and the Rehabilitation Act of 1973. The Commission, the Attorney General, and the Office of Federal Contract Compliance Programs shall establish such coordinating mechanisms (similar to provisions contained in the joint regulations promulgated by the Commission and the Attorney General at part 42 of title 28 and part 1691 of title 29, Code of Federal Regulations, and the Memorandum of Understanding between the Commission and the Office of Federal Contract Compliance Programs dated January 16, 1981 (46 Fed. Reg. 7435, January 23, 1981)) in regulations implementing this subchapter and Rehabilitation Act of 1973 not later than 18 months after July 26, 1990.

(Pub. L. 101-336, title I, §107, July 26, 1990, 104 Stat. 336.)

REFERENCES IN TEXT

The Rehabilitation Act of 1973, referred to in subsec. (b), is Pub. L. 93-112, Sept. 26, 1973, 87 Stat. 355, as amended, which is classified generally to chapter 16 (§701 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1981a, 12203 of this title; title 2 section 1311; title 3 section 411.

SUBCHAPTER II—PUBLIC SERVICES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 300d-52, 1437c-1, 9918, 12201, 12203, 12204, 12206 of this title; title 2 section 1331; title 29 section 792.

PART A—PROHIBITION AGAINST DISCRIMINATION AND OTHER GENERALLY APPLICABLE PROVISIONS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 12206 of this title.

§ 12131. Definitions

As used in this subchapter:

(1) Public entity

The term “public entity” means—

(A) any State or local government;

(B) any department, agency, special purpose district, or other instrumentality of a State or States or local government; and

(C) the National Railroad Passenger Corporation, and any commuter authority (as defined in section 24102(4)¹ of title 49).

(2) Qualified individual with a disability

The term “qualified individual with a disability” means an individual with a disability

¹ See References in Text note below.

who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

(Pub. L. 101-336, title II, §201, July 26, 1990, 104 Stat. 337.)

REFERENCES IN TEXT

Section 24102 of title 49, referred to in par. (1)(C), was subsequently amended, and section 24102(4) no longer defines “commuter authority”. However, such term is defined elsewhere in that section.

CODIFICATION

In par. (1)(C), “section 24102(4) of title 49” substituted for “section 103(8) of the Rail Passenger Service Act” on authority of Pub. L. 103-272, §6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

EFFECTIVE DATE

Section 205 of Pub. L. 101-336 provided that:

“(a) GENERAL RULE.—Except as provided in subsection (b), this subtitle [subtitle A (§§201-205) of title II of Pub. L. 101-336, enacting this part] shall become effective 18 months after the date of enactment of this Act [July 26, 1990].

“(b) EXCEPTION.—Section 204 [section 12134 of this title] shall become effective on the date of enactment of this Act.”

EX. ORD. NO. 13217. COMMUNITY-BASED ALTERNATIVES FOR INDIVIDUALS WITH DISABILITIES

Ex. Ord. No. 13217, June 18, 2001, 66 F.R. 33155, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to place qualified individuals with disabilities in community settings whenever appropriate, it is hereby ordered as follows:

SECTION 1. *Policy.* This order is issued consistent with the following findings and principles:

(a) The United States is committed to community-based alternatives for individuals with disabilities and recognizes that such services advance the best interests of Americans.

(b) The United States seeks to ensure that America’s community-based programs effectively foster independence and participation in the community for Americans with disabilities.

(c) Unjustified isolation or segregation of qualified individuals with disabilities through institutionalization is a form of disability-based discrimination prohibited by Title II of the Americans With Disabilities Act of 1990 (ADA), 42 U.S.C. 12101 [12131] *et seq.* States must avoid disability-based discrimination unless doing so would fundamentally alter the nature of the service, program, or activity provided by the State.

(d) In *Olmstead v. L.C.*, 527 U.S. 581 (1999) (the “*Olmstead* decision”), the Supreme Court construed Title II of the ADA [42 U.S.C. 12131 *et seq.*] to require States to place qualified individuals with mental disabilities in community settings, rather than in institutions, whenever treatment professionals determine that such placement is appropriate, the affected persons do not oppose such placement, and the State can reasonably accommodate the placement, taking into account the resources available to the State and the needs of others with disabilities.

(e) The Federal Government must assist States and localities to implement swiftly the *Olmstead* decision, so as to help ensure that all Americans have the opportunity to live close to their families and friends, to live

more independently, to engage in productive employment, and to participate in community life.

SEC. 2. *Swift Implementation of the Olmstead Decision: Agency Responsibilities.* (a) The Attorney General, the Secretaries of Health and Human Services, Education, Labor, and Housing and Urban Development, and the Commissioner of the Social Security Administration shall work cooperatively to ensure that the *Olmstead* decision is implemented in a timely manner. Specifically, the designated agencies should work with States to help them assess their compliance with the *Olmstead* decision and the ADA [42 U.S.C. 12101 *et seq.*] in providing services to qualified individuals with disabilities in community-based settings, as long as such services are appropriate to the needs of those individuals. These agencies should provide technical guidance and work cooperatively with States to achieve the goals of Title II of the ADA [42 U.S.C. 12131 *et seq.*], particularly where States have chosen to develop comprehensive, effectively working plans to provide services to qualified individuals with disabilities in the most integrated settings. These agencies should also ensure that existing Federal resources are used in the most effective manner to support the goals of the ADA. The Secretary of Health and Human Services shall take the lead in coordinating these efforts.

(b) The Attorney General, the Secretaries of Health and Human Services, Education, Labor, and Housing and Urban Development, and the Commissioner of the Social Security Administration shall evaluate the policies, programs, statutes, and regulations of their respective agencies to determine whether any should be revised or modified to improve the availability of community-based services for qualified individuals with disabilities. The review shall focus on identifying affected populations, improving the flow of information about supports in the community, and removing barriers that impede opportunities for community placement. The review should ensure the involvement of consumers, advocacy organizations, providers, and relevant agency representatives. Each agency head should report to the President, through the Secretary of Health and Human Services, with the results of their evaluation within 120 days.

(c) The Attorney General and the Secretary of Health and Human Services shall fully enforce Title II of the ADA, including investigating and resolving complaints filed on behalf of individuals who allege that they have been the victims of unjustified institutionalization. Whenever possible, the Department of Justice and the Department of Health and Human Services should work cooperatively with States to resolve these complaints, and should use alternative dispute resolution to bring these complaints to a quick and constructive resolution.

(d) The agency actions directed by this order shall be done consistent with this Administration’s budget.

SEC. 3. *Judicial Review.* Nothing in this order shall affect any otherwise available judicial review of agency action. This order is intended only to improve the internal management of the Federal Government and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

GEORGE W. BUSH.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12181, 12209 of this title; title 2 section 1331; title 3 section 421.

§ 12132. Discrimination

Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

(Pub. L. 101-336, title II, §202, July 26, 1990, 104 Stat. 337.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12133, 12142, 12143, 12144, 12146, 12147, 12148, 12162, 12209 of this title; title 2 section 1331; title 3 section 421.

§ 12133. Enforcement

The remedies, procedures, and rights set forth in section 794a of title 29 shall be the remedies, procedures, and rights this subchapter provides to any person alleging discrimination on the basis of disability in violation of section 12132 of this title.

(Pub. L. 101-336, title II, §203, July 26, 1990, 104 Stat. 337.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12203, 12209 of this title; title 2 section 1331; title 3 section 421.

§ 12134. Regulations

(a) In general

Not later than 1 year after July 26, 1990, the Attorney General shall promulgate regulations in an accessible format that implement this part. Such regulations shall not include any matter within the scope of the authority of the Secretary of Transportation under section 12143, 12149, or 12164 of this title.

(b) Relationship to other regulations

Except for “program accessibility, existing facilities”, and “communications”, regulations under subsection (a) of this section shall be consistent with this chapter and with the coordination regulations under part 41 of title 28, Code of Federal Regulations (as promulgated by the Department of Health, Education, and Welfare on January 13, 1978), applicable to recipients of Federal financial assistance under section 794 of title 29. With respect to “program accessibility, existing facilities”, and “communications”, such regulations shall be consistent with regulations and analysis as in part 39 of title 28 of the Code of Federal Regulations, applicable to federally conducted activities under section 794 of title 29.

(c) Standards

Regulations under subsection (a) of this section shall include standards applicable to facilities and vehicles covered by this part, other than facilities, stations, rail passenger cars, and vehicles covered by part B of this subchapter. Such standards shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 12204(a) of this title.

(Pub. L. 101-336, title II, §204, July 26, 1990, 104 Stat. 337.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original “this Act”, meaning Pub. L. 101-336, July 26, 1990, 104 Stat. 327, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of this title and Tables.

EFFECTIVE DATE

Section effective July 26, 1990, see section 205(b) of Pub. L. 101-336, set out as a note under section 12131 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12209 of this title; title 2 section 1331; title 3 section 421.

PART B—ACTIONS APPLICABLE TO PUBLIC TRANSPORTATION PROVIDED BY PUBLIC ENTITIES CONSIDERED DISCRIMINATORY

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 12134, 12206 of this title.

SUBPART I—PUBLIC TRANSPORTATION OTHER THAN BY AIRCRAFT OR CERTAIN RAIL OPERATIONS

§ 12141. Definitions

As used in this subpart:

(1) Demand responsive system

The term “demand responsive system” means any system of providing designated public transportation which is not a fixed route system.

(2) Designated public transportation

The term “designated public transportation” means transportation (other than public school transportation) by bus, rail, or any other conveyance (other than transportation by aircraft or intercity or commuter rail transportation (as defined in section 12161 of this title)) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

(3) Fixed route system

The term “fixed route system” means a system of providing designated public transportation on which a vehicle is operated along a prescribed route according to a fixed schedule.

(4) Operates

The term “operates”, as used with respect to a fixed route system or demand responsive system, includes operation of such system by a person under a contractual or other arrangement or relationship with a public entity.

(5) Public school transportation

The term “public school transportation” means transportation by schoolbus vehicles of schoolchildren, personnel, and equipment to and from a public elementary or secondary school and school-related activities.

(6) Secretary

The term “Secretary” means the Secretary of Transportation.

(Pub. L. 101-336, title II, §221, July 26, 1990, 104 Stat. 338.)

EFFECTIVE DATE

Section 231 of Pub. L. 101-336 provided that:

“(a) GENERAL RULE.—Except as provided in subsection (b), this part [part I (§§ 221-231) of subtitle B of title II of Pub. L. 101-336, enacting this subpart] shall become effective 18 months after the date of enactment of this Act [July 26, 1990].

“(b) EXCEPTION.—Sections 222, 223 (other than subsection (a)), 224, 225, 227(b), 228(b), and 229 [sections

12142, 12143(b) to (f), 12144, 12145, 12147(b), 12148(b), and 12149 of this title] shall become effective on the date of enactment of this Act.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12209 of this title; title 2 section 1331.

§ 12142. Public entities operating fixed route systems

(a) Purchase and lease of new vehicles

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a public entity which operates a fixed route system to purchase or lease a new bus, a new rapid rail vehicle, a new light rail vehicle, or any other new vehicle to be used on such system, if the solicitation for such purchase or lease is made after the 30th day following July 26, 1990, and if such bus, rail vehicle, or other vehicle is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(b) Purchase and lease of used vehicles

Subject to subsection (c)(1) of this section, it shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a public entity which operates a fixed route system to purchase or lease, after the 30th day following July 26, 1990, a used vehicle for use on such system unless such entity makes demonstrated good faith efforts to purchase or lease a used vehicle for use on such system that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(c) Remanufactured vehicles

(1) General rule

Except as provided in paragraph (2), it shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a public entity which operates a fixed route system—

(A) to remanufacture a vehicle for use on such system so as to extend its usable life for 5 years or more, which remanufacture begins (or for which the solicitation is made) after the 30th day following July 26, 1990; or

(B) to purchase or lease for use on such system a remanufactured vehicle which has been remanufactured so as to extend its usable life for 5 years or more, which purchase or lease occurs after such 30th day and during the period in which the usable life is extended;

unless, after remanufacture, the vehicle is, to the maximum extent feasible, readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(2) Exception for historic vehicles

(A) General rule

If a public entity operates a fixed route system any segment of which is included on the National Register of Historic Places and if making a vehicle of historic character to be used solely on such segment readily accessible to and usable by individuals with

disabilities would significantly alter the historic character of such vehicle, the public entity only has to make (or to purchase or lease a remanufactured vehicle with) those modifications which are necessary to meet the requirements of paragraph (1) and which do not significantly alter the historic character of such vehicle.

(B) Vehicles of historic character defined by regulations

For purposes of this paragraph and section 12148(b) of this title, a vehicle of historic character shall be defined by the regulations issued by the Secretary to carry out this subsection.

(Pub. L. 101-336, title II, §222, July 26, 1990, 104 Stat. 339.)

EFFECTIVE DATE

Section effective July 26, 1990, see section 231(b) of Pub. L. 101-336, set out as a note under section 12141 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12145, 12148, 12209 of this title; title 2 section 1331.

§ 12143. Paratransit as a complement to fixed route service

(a) General rule

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a public entity which operates a fixed route system (other than a system which provides solely commuter bus service) to fail to provide with respect to the operations of its fixed route system, in accordance with this section, paratransit and other special transportation services to individuals with disabilities, including individuals who use wheelchairs, that are sufficient to provide to such individuals a level of service (1) which is comparable to the level of designated public transportation services provided to individuals without disabilities using such system; or (2) in the case of response time, which is comparable, to the extent practicable, to the level of designated public transportation services provided to individuals without disabilities using such system.

(b) Issuance of regulations

Not later than 1 year after July 26, 1990, the Secretary shall issue final regulations to carry out this section.

(c) Required contents of regulations

(1) Eligible recipients of service

The regulations issued under this section shall require each public entity which operates a fixed route system to provide the paratransit and other special transportation services required under this section—

(A)(i) to any individual with a disability who is unable, as a result of a physical or mental impairment (including a vision impairment) and without the assistance of another individual (except an operator of a wheelchair lift or other boarding assistance device), to board, ride, or disembark from any vehicle on the system which is readily

accessible to and usable by individuals with disabilities;

(ii) to any individual with a disability who needs the assistance of a wheelchair lift or other boarding assistance device (and is able with such assistance) to board, ride, and disembark from any vehicle which is readily accessible to and usable by individuals with disabilities if the individual wants to travel on a route on the system during the hours of operation of the system at a time (or within a reasonable period of such time) when such a vehicle is not being used to provide designated public transportation on the route; and

(iii) to any individual with a disability who has a specific impairment-related condition which prevents such individual from traveling to a boarding location or from a disembarking location on such system;

(B) to one other individual accompanying the individual with the disability; and

(C) to other individuals, in addition to the one individual described in subparagraph (B), accompanying the individual with a disability provided that space for these additional individuals is available on the paratransit vehicle carrying the individual with a disability and that the transportation of such additional individuals will not result in a denial of service to individuals with disabilities.

For purposes of clauses (i) and (ii) of subparagraph (A), boarding or disembarking from a vehicle does not include travel to the boarding location or from the disembarking location.

(2) Service area

The regulations issued under this section shall require the provision of paratransit and special transportation services required under this section in the service area of each public entity which operates a fixed route system, other than any portion of the service area in which the public entity solely provides commuter bus service.

(3) Service criteria

Subject to paragraphs (1) and (2), the regulations issued under this section shall establish minimum service criteria for determining the level of services to be required under this section.

(4) Undue financial burden limitation

The regulations issued under this section shall provide that, if the public entity is able to demonstrate to the satisfaction of the Secretary that the provision of paratransit and other special transportation services otherwise required under this section would impose an undue financial burden on the public entity, the public entity, notwithstanding any other provision of this section (other than paragraph (5)), shall only be required to provide such services to the extent that providing such services would not impose such a burden.

(5) Additional services

The regulations issued under this section shall establish circumstances under which the Secretary may require a public entity to pro-

vide, notwithstanding paragraph (4), paratransit and other special transportation services under this section beyond the level of paratransit and other special transportation services which would otherwise be required under paragraph (4).

(6) Public participation

The regulations issued under this section shall require that each public entity which operates a fixed route system hold a public hearing, provide an opportunity for public comment, and consult with individuals with disabilities in preparing its plan under paragraph (7).

(7) Plans

The regulations issued under this section shall require that each public entity which operates a fixed route system—

(A) within 18 months after July 26, 1990, submit to the Secretary, and commence implementation of, a plan for providing paratransit and other special transportation services which meets the requirements of this section; and

(B) on an annual basis thereafter, submit to the Secretary, and commence implementation of, a plan for providing such services.

(8) Provision of services by others

The regulations issued under this section shall—

(A) require that a public entity submitting a plan to the Secretary under this section identify in the plan any person or other public entity which is providing a paratransit or other special transportation service for individuals with disabilities in the service area to which the plan applies; and

(B) provide that the public entity submitting the plan does not have to provide under the plan such service for individuals with disabilities.

(9) Other provisions

The regulations issued under this section shall include such other provisions and requirements as the Secretary determines are necessary to carry out the objectives of this section.

(d) Review of plan

(1) General rule

The Secretary shall review a plan submitted under this section for the purpose of determining whether or not such plan meets the requirements of this section, including the regulations issued under this section.

(2) Disapproval

If the Secretary determines that a plan reviewed under this subsection fails to meet the requirements of this section, the Secretary shall disapprove the plan and notify the public entity which submitted the plan of such disapproval and the reasons therefor.

(3) Modification of disapproved plan

Not later than 90 days after the date of disapproval of a plan under this subsection, the public entity which submitted the plan shall modify the plan to meet the requirements of

this section and shall submit to the Secretary, and commence implementation of, such modified plan.

(e) "Discrimination" defined

As used in subsection (a) of this section, the term "discrimination" includes—

- (1) a failure of a public entity to which the regulations issued under this section apply to submit, or commence implementation of, a plan in accordance with subsections (c)(6) and (c)(7) of this section;
- (2) a failure of such entity to submit, or commence implementation of, a modified plan in accordance with subsection (d)(3) of this section;
- (3) submission to the Secretary of a modified plan under subsection (d)(3) of this section which does not meet the requirements of this section; or
- (4) a failure of such entity to provide paratransit or other special transportation services in accordance with the plan or modified plan the public entity submitted to the Secretary under this section.

(f) Statutory construction

Nothing in this section shall be construed as preventing a public entity—

- (1) from providing paratransit or other special transportation services at a level which is greater than the level of such services which are required by this section,
- (2) from providing paratransit or other special transportation services in addition to those paratransit and special transportation services required by this section, or
- (3) from providing such services to individuals in addition to those individuals to whom such services are required to be provided by this section.

(Pub. L. 101-336, title II, §223, July 26, 1990, 104 Stat. 340.)

EFFECTIVE DATE

Subsec. (a) of this section effective 18 months after July 26, 1990, and subsecs. (b) to (f) of this section effective July 26, 1990, see section 231 of Pub. L. 101-336, set out as a note under section 12141 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12134, 12149, 12209 of this title; title 2 section 1331; title 49 section 5302.

§ 12144. Public entity operating a demand responsive system

If a public entity operates a demand responsive system, it shall be considered discrimination, for purposes of section 12132 of this title and section 794 of title 29, for such entity to purchase or lease a new vehicle for use on such system, for which a solicitation is made after the 30th day following July 26, 1990, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless such system, when viewed in its entirety, provides a level of service to such individuals equivalent to the level of service such system provides to individuals without disabilities.

(Pub. L. 101-336, title II, §224, July 26, 1990, 104 Stat. 342.)

EFFECTIVE DATE

Section effective July 26, 1990, see section 231(b) of Pub. L. 101-336, set out as a note under section 12141 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12145, 12209 of this title; title 2 section 1331.

§ 12145. Temporary relief where lifts are unavailable

(a) Granting

With respect to the purchase of new buses, a public entity may apply for, and the Secretary may temporarily relieve such public entity from the obligation under section 12142(a) or 12144 of this title to purchase new buses that are readily accessible to and usable by individuals with disabilities if such public entity demonstrates to the satisfaction of the Secretary—

- (1) that the initial solicitation for new buses made by the public entity specified that all new buses were to be lift-equipped and were to be otherwise accessible to and usable by individuals with disabilities;
- (2) the unavailability from any qualified manufacturer of hydraulic, electromechanical, or other lifts for such new buses;
- (3) that the public entity seeking temporary relief has made good faith efforts to locate a qualified manufacturer to supply the lifts to the manufacturer of such buses in sufficient time to comply with such solicitation; and
- (4) that any further delay in purchasing new buses necessary to obtain such lifts would significantly impair transportation services in the community served by the public entity.

(b) Duration and notice to Congress

Any relief granted under subsection (a) of this section shall be limited in duration by a specified date, and the appropriate committees of Congress shall be notified of any such relief granted.

(c) Fraudulent application

If, at any time, the Secretary has reasonable cause to believe that any relief granted under subsection (a) of this section was fraudulently applied for, the Secretary shall—

- (1) cancel such relief if such relief is still in effect; and
- (2) take such other action as the Secretary considers appropriate.

(Pub. L. 101-336, title II, §225, July 26, 1990, 104 Stat. 343.)

EFFECTIVE DATE

Section effective July 26, 1990, see section 231(b) of Pub. L. 101-336, set out as a note under section 12141 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12209 of this title; title 2 section 1331.

§ 12146. New facilities

For purposes of section 12132 of this title and section 794 of title 29, it shall be considered discrimination for a public entity to construct a new facility to be used in the provision of des-

ignated public transportation services unless such facility is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(Pub. L. 101-336, title II, §226, July 26, 1990, 104 Stat. 343.)

EFFECTIVE DATE

Section effective 18 months after July 26, 1990, see section 231(a) of Pub. L. 101-336, set out as a note under section 12141 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12150, 12209 of this title; title 2 section 1331.

§ 12147. Alterations of existing facilities

(a) General rule

With respect to alterations of an existing facility or part thereof used in the provision of designated public transportation services that affect or could affect the usability of the facility or part thereof, it shall be considered discrimination, for purposes of section 12132 of this title and section 794 of title 29, for a public entity to fail to make such alterations (or to ensure that the alterations are made) in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon the completion of such alterations. Where the public entity is undertaking an alteration that affects or could affect usability of or access to an area of the facility containing a primary function, the entity shall also make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon completion of such alterations, where such alterations to the path of travel or the bathrooms, telephones, and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope (as determined under criteria established by the Attorney General).

(b) Special rule for stations

(1) General rule

For purposes of section 12132 of this title and section 794 of title 29, it shall be considered discrimination for a public entity that provides designated public transportation to fail, in accordance with the provisions of this subsection, to make key stations (as determined under criteria established by the Secretary by regulation) in rapid rail and light rail systems readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(2) Rapid rail and light rail key stations

(A) Accessibility

Except as otherwise provided in this paragraph, all key stations (as determined under criteria established by the Secretary by regulation) in rapid rail and light rail systems

shall be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no event later than the last day of the 3-year period beginning on July 26, 1990.

(B) Extension for extraordinarily expensive structural changes

The Secretary may extend the 3-year period under subparagraph (A) up to a 30-year period for key stations in a rapid rail or light rail system which stations need extraordinarily expensive structural changes to, or replacement of, existing facilities; except that by the last day of the 20th year following July 26, 1990, at least $\frac{2}{3}$ of such key stations must be readily accessible to and usable by individuals with disabilities.

(3) Plans and milestones

The Secretary shall require the appropriate public entity to develop and submit to the Secretary a plan for compliance with this subsection—

(A) that reflects consultation with individuals with disabilities affected by such plan and the results of a public hearing and public comments on such plan, and

(B) that establishes milestones for achievement of the requirements of this subsection.

(Pub. L. 101-336, title II, §227, July 26, 1990, 104 Stat. 343.)

EFFECTIVE DATE

Subsec. (a) of this section effective 18 months after July 26, 1990, and subsec. (b) of this section effective July 26, 1990, see section 231 of Pub. L. 101-336, set out as a note under section 12141 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12148, 12150, 12209 of this title; title 2 section 1331.

§ 12148. Public transportation programs and activities in existing facilities and one car per train rule

(a) Public transportation programs and activities in existing facilities

(1) In general

With respect to existing facilities used in the provision of designated public transportation services, it shall be considered discrimination, for purposes of section 12132 of this title and section 794 of title 29, for a public entity to fail to operate a designated public transportation program or activity conducted in such facilities so that, when viewed in the entirety, the program or activity is readily accessible to and usable by individuals with disabilities.

(2) Exception

Paragraph (1) shall not require a public entity to make structural changes to existing facilities in order to make such facilities accessible to individuals who use wheelchairs, unless and to the extent required by section 12147(a) of this title (relating to alterations) or section 12147(b) of this title (relating to key stations).

(3) Utilization

Paragraph (1) shall not require a public entity to which paragraph (2) applies, to provide to individuals who use wheelchairs services made available to the general public at such facilities when such individuals could not utilize or benefit from such services provided at such facilities.

(b) One car per train rule**(1) General rule**

Subject to paragraph (2), with respect to 2 or more vehicles operated as a train by a light or rapid rail system, for purposes of section 12132 of this title and section 794 of title 29, it shall be considered discrimination for a public entity to fail to have at least 1 vehicle per train that is accessible to individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no event later than the last day of the 5-year period beginning on the effective date of this section.

(2) Historic trains

In order to comply with paragraph (1) with respect to the remanufacture of a vehicle of historic character which is to be used on a segment of a light or rapid rail system which is included on the National Register of Historic Places, if making such vehicle readily accessible to and usable by individuals with disabilities would significantly alter the historic character of such vehicle, the public entity which operates such system only has to make (or to purchase or lease a remanufactured vehicle with) those modifications which are necessary to meet the requirements of section 12142(c)(1) of this title and which do not significantly alter the historic character of such vehicle.

(Pub. L. 101-336, title II, §228, July 26, 1990, 104 Stat. 344.)

REFERENCES IN TEXT

The effective date of this section, referred to in subsec. (b)(1), probably means the effective date of subsec. (b), which is effective on date of enactment of Pub. L. 101-336, which was approved July 26, 1990. The effective date of subsec. (a) is 18 months after July 26, 1990. See section 231 of Pub. L. 101-336, set out as an Effective Date note under section 12141 of this title.

EFFECTIVE DATE

Subsec. (a) of this section effective 18 months after July 26, 1990, and subsec. (b) of this section effective July 26, 1990, see section 231 of Pub. L. 101-336, set out as a note under section 12141 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12142, 12209 of this title; title 2 section 1331.

§ 12149. Regulations**(a) In general**

Not later than 1 year after July 26, 1990, the Secretary of Transportation shall issue regulations, in an accessible format, necessary for carrying out this subpart (other than section 12143 of this title).

(b) Standards

The regulations issued under this section and section 12143 of this title shall include standards

applicable to facilities and vehicles covered by this part. The standards shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 12204 of this title.

(Pub. L. 101-336, title II, §229, July 26, 1990, 104 Stat. 345.)

EFFECTIVE DATE

Section effective July 26, 1990, see section 231(b) of Pub. L. 101-336, set out as a note under section 12141 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12134, 12150, 12209 of this title; title 2 section 1331.

§ 12150. Interim accessibility requirements

If final regulations have not been issued pursuant to section 12149 of this title, for new construction or alterations for which a valid and appropriate State or local building permit is obtained prior to the issuance of final regulations under such section, and for which the construction or alteration authorized by such permit begins within one year of the receipt of such permit and is completed under the terms of such permit, compliance with the Uniform Federal Accessibility Standards in effect at the time the building permit is issued shall suffice to satisfy the requirement that facilities be readily accessible to and usable by persons with disabilities as required under sections 12146 and 12147 of this title, except that, if such final regulations have not been issued one year after the Architectural and Transportation Barriers Compliance Board has issued the supplemental minimum guidelines required under section 12204(a) of this title, compliance with such supplemental minimum guidelines shall be necessary to satisfy the requirement that facilities be readily accessible to and usable by persons with disabilities prior to issuance of the final regulations.

(Pub. L. 101-336, title II, §230, July 26, 1990, 104 Stat. 345.)

EFFECTIVE DATE

Section effective 18 months after July 26, 1990, see section 231(a) of Pub. L. 101-336, set out as a note under section 12141 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12209 of this title; title 2 section 1331.

SUBPART II—PUBLIC TRANSPORTATION BY INTERCITY AND COMMUTER RAIL

§ 12161. Definitions

As used in this subpart:

(1) Commuter authority

The term “commuter authority” has the meaning given such term in section 24102(4)¹ of title 49.

(2) Commuter rail transportation

The term “commuter rail transportation” has the meaning given the term “commuter

¹ See References in Text note below.

rail passenger transportation” in section 24102(5)¹ of title 49.

(3) Intercity rail transportation

The term “intercity rail transportation” means transportation provided by the National Railroad Passenger Corporation.

(4) Rail passenger car

The term “rail passenger car” means, with respect to intercity rail transportation, single-level and bi-level coach cars, single-level and bi-level dining cars, single-level and bi-level sleeping cars, single-level and bi-level lounge cars, and food service cars.

(5) Responsible person

The term “responsible person” means—

(A) in the case of a station more than 50 percent of which is owned by a public entity, such public entity;

(B) in the case of a station more than 50 percent of which is owned by a private party, the persons providing intercity or commuter rail transportation to such station, as allocated on an equitable basis by regulation by the Secretary of Transportation; and

(C) in a case where no party owns more than 50 percent of a station, the persons providing intercity or commuter rail transportation to such station and the owners of the station, other than private party owners, as allocated on an equitable basis by regulation by the Secretary of Transportation.

(6) Station

The term “station” means the portion of a property located appurtenant to a right-of-way on which intercity or commuter rail transportation is operated, where such portion is used by the general public and is related to the provision of such transportation, including passenger platforms, designated waiting areas, ticketing areas, restrooms, and, where a public entity providing rail transportation owns the property, concession areas, to the extent that such public entity exercises control over the selection, design, construction, or alteration of the property, but such term does not include flag stops.

(Pub. L. 101-336, title II, §241, July 26, 1990, 104 Stat. 346; Pub. L. 104-287, §6(k), Oct. 11, 1996, 110 Stat. 3400.)

REFERENCES IN TEXT

Section 24102 of title 49, referred to in pars. (1) and (2), was subsequently amended, and pars. (4) and (5) of section 24102 no longer define “commuter authority” and “commuter rail passenger transportation”, respectively. However, such terms are defined elsewhere in that section.

CODIFICATION

In pars. (1) and (2), “section 24102(4) of title 49” substituted for “section 103(8) of the Rail Passenger Service Act (45 U.S.C. 502(8))” and “section 24102(5) of title 49” substituted for “section 103(9) of the Rail Passenger Service Act (45 U.S.C. 502(9))” on authority of Pub. L. 103-272, §6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

AMENDMENTS

1996—Par. (2). Pub. L. 104-287 substituted “commuter rail passenger transportation” for “commuter service”.

EFFECTIVE DATE

Section 246 of Pub. L. 101-336 provided that:

“(a) GENERAL RULE.—Except as provided in subsection (b), this part [part II (§§241-246) of subtitle B of title II of Pub. L. 101-336, enacting this subpart] shall become effective 18 months after the date of enactment of this Act [July 26, 1990].

“(b) EXCEPTION.—Sections 242 and 244 [sections 12162 and 12164 of this title] shall become effective on the date of enactment of this Act.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12141 of this title.

§ 12162. Intercity and commuter rail actions considered discriminatory

(a) Intercity rail transportation

(1) One car per train rule

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a person who provides intercity rail transportation to fail to have at least one passenger car per train that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, in accordance with regulations issued under section 12164 of this title, as soon as practicable, but in no event later than 5 years after July 26, 1990.

(2) New intercity cars

(A) General rule

Except as otherwise provided in this subsection with respect to individuals who use wheelchairs, it shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a person to purchase or lease any new rail passenger cars for use in intercity rail transportation, and for which a solicitation is made later than 30 days after July 26, 1990, unless all such rail cars are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 12164 of this title.

(B) Special rule for single-level passenger coaches for individuals who use wheelchairs

Single-level passenger coaches shall be required to—

(i) be able to be entered by an individual who uses a wheelchair;

(ii) have space to park and secure a wheelchair;

(iii) have a seat to which a passenger in a wheelchair can transfer, and a space to fold and store such passenger’s wheelchair; and

(iv) have a restroom usable by an individual who uses a wheelchair,

only to the extent provided in paragraph (3).

(C) Special rule for single-level dining cars for individuals who use wheelchairs

Single-level dining cars shall not be required to—

(i) be able to be entered from the station platform by an individual who uses a wheelchair; or

(ii) have a restroom usable by an individual who uses a wheelchair if no restroom is provided in such car for any passenger.

(D) Special rule for bi-level dining cars for individuals who use wheelchairs

Bi-level dining cars shall not be required to—

- (i) be able to be entered by an individual who uses a wheelchair;
- (ii) have space to park and secure a wheelchair;
- (iii) have a seat to which a passenger in a wheelchair can transfer, or a space to fold and store such passenger's wheelchair; or
- (iv) have a restroom usable by an individual who uses a wheelchair.

(3) Accessibility of single-level coaches

(A) General rule

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a person who provides intercity rail transportation to fail to have on each train which includes one or more single-level rail passenger coaches—

- (i) a number of spaces—
 - (I) to park and secure wheelchairs (to accommodate individuals who wish to remain in their wheelchairs) equal to not less than one-half of the number of single-level rail passenger coaches in such train; and
 - (II) to fold and store wheelchairs (to accommodate individuals who wish to transfer to coach seats) equal to not less than one-half of the number of single-level rail passenger coaches in such train,

as soon as practicable, but in no event later than 5 years after July 26, 1990; and

- (ii) a number of spaces—
 - (I) to park and secure wheelchairs (to accommodate individuals who wish to remain in their wheelchairs) equal to not less than the total number of single-level rail passenger coaches in such train; and
 - (II) to fold and store wheelchairs (to accommodate individuals who wish to transfer to coach seats) equal to not less than the total number of single-level rail passenger coaches in such train,

as soon as practicable, but in no event later than 10 years after July 26, 1990.

(B) Location

Spaces required by subparagraph (A) shall be located in single-level rail passenger coaches or food service cars.

(C) Limitation

Of the number of spaces required on a train by subparagraph (A), not more than two spaces to park and secure wheelchairs nor more than two spaces to fold and store wheelchairs shall be located in any one coach or food service car.

(D) Other accessibility features

Single-level rail passenger coaches and food service cars on which the spaces re-

quired by subparagraph (A) are located shall have a restroom usable by an individual who uses a wheelchair and shall be able to be entered from the station platform by an individual who uses a wheelchair.

(4) Food service

(A) Single-level dining cars

On any train in which a single-level dining car is used to provide food service—

- (i) if such single-level dining car was purchased after July 26, 1990, table service in such car shall be provided to a passenger who uses a wheelchair if—

(I) the car adjacent to the end of the dining car through which a wheelchair may enter is itself accessible to a wheelchair;

(II) such passenger can exit to the platform from the car such passenger occupies, move down the platform, and enter the adjacent accessible car described in subclause (I) without the necessity of the train being moved within the station; and

(III) space to park and secure a wheelchair is available in the dining car at the time such passenger wishes to eat (if such passenger wishes to remain in a wheelchair), or space to store and fold a wheelchair is available in the dining car at the time such passenger wishes to eat (if such passenger wishes to transfer to a dining car seat); and

- (ii) appropriate auxiliary aids and services, including a hard surface on which to eat, shall be provided to ensure that other equivalent food service is available to individuals with disabilities, including individuals who use wheelchairs, and to passengers traveling with such individuals.

Unless not practicable, a person providing intercity rail transportation shall place an accessible car adjacent to the end of a dining car described in clause (i) through which an individual who uses a wheelchair may enter.

(B) Bi-level dining cars

On any train in which a bi-level dining car is used to provide food service—

- (i) if such train includes a bi-level lounge car purchased after July 26, 1990, table service in such lounge car shall be provided to individuals who use wheelchairs and to other passengers; and

(ii) appropriate auxiliary aids and services, including a hard surface on which to eat, shall be provided to ensure that other equivalent food service is available to individuals with disabilities, including individuals who use wheelchairs, and to passengers traveling with such individuals.

(b) Commuter rail transportation

(1) One car per train rule

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a person who provides commuter rail transportation to fail to have at least one passenger car per train that is read-

ily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, in accordance with regulations issued under section 12164 of this title, as soon as practicable, but in no event later than 5 years after July 26, 1990.

(2) New commuter rail cars

(A) General rule

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a person to purchase or lease any new rail passenger cars for use in commuter rail transportation, and for which a solicitation is made later than 30 days after July 26, 1990, unless all such rail cars are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 12164 of this title.

(B) Accessibility

For purposes of section 12132 of this title and section 794 of title 29, a requirement that a rail passenger car used in commuter rail transportation be accessible to and readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, shall not be construed to require—

- (i) a restroom usable by an individual who uses a wheelchair if no restroom is provided in such car for any passenger;
- (ii) space to fold and store a wheelchair; or
- (iii) a seat to which a passenger who uses a wheelchair can transfer.

(c) Used rail cars

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a person to purchase or lease a used rail passenger car for use in intercity or commuter rail transportation, unless such person makes demonstrated good faith efforts to purchase or lease a used rail car that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 12164 of this title.

(d) Remanufactured rail cars

(1) Remanufacturing

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a person to remanufacture a rail passenger car for use in intercity or commuter rail transportation so as to extend its usable life for 10 years or more, unless the rail car, to the maximum extent feasible, is made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 12164 of this title.

(2) Purchase or lease

It shall be considered discrimination for purposes of section 12132 of this title and section

794 of title 29 for a person to purchase or lease a remanufactured rail passenger car for use in intercity or commuter rail transportation unless such car was remanufactured in accordance with paragraph (1).

(e) Stations

(1) New stations

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a person to build a new station for use in intercity or commuter rail transportation that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 12164 of this title.

(2) Existing stations

(A) Failure to make readily accessible

(i) General rule

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a responsible person to fail to make existing stations in the intercity rail transportation system, and existing key stations in commuter rail transportation systems, readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 12164 of this title.

(ii) Period for compliance

(I) Intercity rail

All stations in the intercity rail transportation system shall be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable, but in no event later than 20 years after July 26, 1990.

(II) Commuter rail

Key stations in commuter rail transportation systems shall be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no event later than 3 years after July 26, 1990, except that the time limit may be extended by the Secretary of Transportation up to 20 years after July 26, 1990, in a case where the raising of the entire passenger platform is the only means available of attaining accessibility or where other extraordinarily expensive structural changes are necessary to attain accessibility.

(iii) Designation of key stations

Each commuter authority shall designate the key stations in its commuter rail transportation system, in consultation with individuals with disabilities and organizations representing such individuals, taking into consideration such factors as high ridership and whether such station serves as a transfer or feeder station. Be-

fore the final designation of key stations under this clause, a commuter authority shall hold a public hearing.

(iv) Plans and milestones

The Secretary of Transportation shall require the appropriate person to develop a plan for carrying out this subparagraph that reflects consultation with individuals with disabilities affected by such plan and that establishes milestones for achievement of the requirements of this subparagraph.

(B) Requirement when making alterations

(i) General rule

It shall be considered discrimination, for purposes of section 12132 of this title and section 794 of title 29, with respect to alterations of an existing station or part thereof in the intercity or commuter rail transportation systems that affect or could affect the usability of the station or part thereof, for the responsible person, owner, or person in control of the station to fail to make the alterations in such a manner that, to the maximum extent feasible, the altered portions of the station are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon completion of such alterations.

(ii) Alterations to a primary function area

It shall be considered discrimination, for purposes of section 12132 of this title and section 794 of title 29, with respect to alterations that affect or could affect the usability of or access to an area of the station containing a primary function, for the responsible person, owner, or person in control of the station to fail to make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area, and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon completion of such alterations, where such alterations to the path of travel or the bathrooms, telephones, and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope (as determined under criteria established by the Attorney General).

(C) Required cooperation

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for an owner, or person in control, of a station governed by subparagraph (A) or (B) to fail to provide reasonable cooperation to a responsible person with respect to such station in that responsible person's efforts to comply with such subparagraph. An owner, or person in control, of a station shall be liable to a responsible person for any failure to provide reasonable cooperation as required by this subparagraph. Failure to receive reasonable cooperation re-

quired by this subparagraph shall not be a defense to a claim of discrimination under this chapter.

(Pub. L. 101-336, title II, §242, July 26, 1990, 104 Stat. 347.)

EFFECTIVE DATE

Section effective July 26, 1990, see section 246(b) of Pub. L. 101-336, set out as a note under section 12161 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12165, 12181 of this title.

§ 12163. Conformance of accessibility standards

Accessibility standards included in regulations issued under this subpart shall be consistent with the minimum guidelines issued by the Architectural and Transportation Barriers Compliance Board under section 12204(a) of this title.

(Pub. L. 101-336, title II, §243, July 26, 1990, 104 Stat. 352.)

EFFECTIVE DATE

Section effective 18 months after July 26, 1990, see section 246(a) of Pub. L. 101-336, set out as a note under section 12161 of this title.

§ 12164. Regulations

Not later than 1 year after July 26, 1990, the Secretary of Transportation shall issue regulations, in an accessible format, necessary for carrying out this subpart.

(Pub. L. 101-336, title II, §244, July 26, 1990, 104 Stat. 352.)

EFFECTIVE DATE

Section effective July 26, 1990, see section 246(b) of Pub. L. 101-336, set out as a note under section 12161 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12134, 12162, 12165 of this title.

§ 12165. Interim accessibility requirements

(a) Stations

If final regulations have not been issued pursuant to section 12164 of this title, for new construction or alterations for which a valid and appropriate State or local building permit is obtained prior to the issuance of final regulations under such section, and for which the construction or alteration authorized by such permit begins within one year of the receipt of such permit and is completed under the terms of such permit, compliance with the Uniform Federal Accessibility Standards in effect at the time the building permit is issued shall suffice to satisfy the requirement that stations be readily accessible to and usable by persons with disabilities as required under section 12162(e) of this title, except that, if such final regulations have not been issued one year after the Architectural and Transportation Barriers Compliance Board has issued the supplemental minimum guidelines required under section 12204(a) of this title, compliance with such supplemental minimum guidelines shall be necessary to satisfy the require-

ment that stations be readily accessible to and usable by persons with disabilities prior to issuance of the final regulations.

(b) Rail passenger cars

If final regulations have not been issued pursuant to section 12164 of this title, a person shall be considered to have complied with the requirements of section 12162(a) through (d) of this title that a rail passenger car be readily accessible to and usable by individuals with disabilities, if the design for such car complies with the laws and regulations (including the Minimum Guidelines and Requirements for Accessible Design and such supplemental minimum guidelines as are issued under section 12204(a) of this title) governing accessibility of such cars, to the extent that such laws and regulations are not inconsistent with this subpart and are in effect at the time such design is substantially completed.

(Pub. L. 101-336, title II, §245, July 26, 1990, 104 Stat. 352.)

EFFECTIVE DATE

Section effective 18 months after July 26, 1990, see section 246(a) of Pub. L. 101-336, set out as a note under section 12161 of this title.

SUBCHAPTER III—PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 12201, 12203, 12204, 12206 of this title; title 29 section 792.

§ 12181. Definitions

As used in this subchapter:

(1) Commerce

The term “commerce” means travel, trade, traffic, commerce, transportation, or communication—

- (A) among the several States;
- (B) between any foreign country or any territory or possession and any State; or
- (C) between points in the same State but through another State or foreign country.

(2) Commercial facilities

The term “commercial facilities” means facilities—

- (A) that are intended for nonresidential use; and
- (B) whose operations will affect commerce.

Such term shall not include railroad locomotives, railroad freight cars, railroad cabooses, railroad cars described in section 12162 of this title or covered under this subchapter, railroad rights-of-way, or facilities that are covered or expressly exempted from coverage under the Fair Housing Act of 1968¹ (42 U.S.C. 3601 et seq.).

(3) Demand responsive system

The term “demand responsive system” means any system of providing transportation of individuals by a vehicle, other than a system which is a fixed route system.

(4) Fixed route system

The term “fixed route system” means a system of providing transportation of individuals

(other than by aircraft) on which a vehicle is operated along a prescribed route according to a fixed schedule.

(5) Over-the-road bus

The term “over-the-road bus” means a bus characterized by an elevated passenger deck located over a baggage compartment.

(6) Private entity

The term “private entity” means any entity other than a public entity (as defined in section 12131(1) of this title).

(7) Public accommodation

The following private entities are considered public accommodations for purposes of this subchapter, if the operations of such entities affect commerce—

(A) an inn, hotel, motel, or other place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor;

(B) a restaurant, bar, or other establishment serving food or drink;

(C) a motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;

(D) an auditorium, convention center, lecture hall, or other place of public gathering;

(E) a bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment;

(F) a laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other service establishment;

(G) a terminal, depot, or other station used for specified public transportation;

(H) a museum, library, gallery, or other place of public display or collection;

(I) a park, zoo, amusement park, or other place of recreation;

(J) a nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education;

(K) a day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social service center establishment; and

(L) a gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation.

(8) Rail and railroad

The terms “rail” and “railroad” have the meaning given the term “railroad” in section 20102(1) of title 49.

(9) Readily achievable

The term “readily achievable” means easily accomplishable and able to be carried out without much difficulty or expense. In determining whether an action is readily achievable, factors to be considered include—

(A) the nature and cost of the action needed under this chapter;

¹ See References in Text note below.

(B) the overall financial resources of the facility or facilities involved in the action; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such action upon the operation of the facility;

(C) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and

(D) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative or fiscal relationship of the facility or facilities in question to the covered entity.

(10) Specified public transportation

The term “specified public transportation” means transportation by bus, rail, or any other conveyance (other than by aircraft) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

(11) Vehicle

The term “vehicle” does not include a rail passenger car, railroad locomotive, railroad freight car, railroad caboose, or a railroad car described in section 12162 of this title or covered under this subchapter.

(Pub. L. 101-336, title III, §301, July 26, 1990, 104 Stat. 353.)

REFERENCES IN TEXT

The Fair Housing Act of 1968, referred to in par. (2), probably means the Fair Housing Act, title VIII of Pub. L. 90-284, Apr. 11, 1968, 82 Stat. 81, as amended, which is classified principally to subchapter I of chapter 45 (§3601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

This chapter, referred to in par. (9)(A), was in the original “this Act”, meaning Pub. L. 101-336, July 26, 1990, 104 Stat. 327, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of this title and Tables.

CODIFICATION

In par. (8), “section 20102(1) of title 49” substituted for “section 202(e) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 431(e))” on authority of Pub. L. 103-272, §6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

EFFECTIVE DATE

Section 310 of title III of Pub. L. 101-336 provided that:

“(a) GENERAL RULE.—Except as provided in subsections (b) and (c), this title [enacting this subchapter] shall become effective 18 months after the date of the enactment of this Act [July 26, 1990].

“(b) CIVIL ACTIONS.—Except for any civil action brought for a violation of section 303 [section 12183 of this title], no civil action shall be brought for any act or omission described in section 302 [section 12182 of this title] which occurs—

“(1) during the first 6 months after the effective date, against businesses that employ 25 or fewer employees and have gross receipts of \$1,000,000 or less; and

“(2) during the first year after the effective date, against businesses that employ 10 or fewer employees and have gross receipts of \$500,000 or less.

“(c) EXCEPTION.—Sections 302(a) [section 12182(a) of this title] for purposes of section 302(b)(2)(B) and (C) only, 304(a) [section 12184(a) of this title] for purposes of section 304(b)(3) only, 304(b)(3), 305 [section 12185 of this title], and 306 [section 12186 of this title] shall take effect on the date of the enactment of this Act [July 26, 1990].”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 47 section 255.

§ 12182. Prohibition of discrimination by public accommodations

(a) General rule

No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.

(b) Construction

(1) General prohibition

(A) Activities

(i) Denial of participation

It shall be discriminatory to subject an individual or class of individuals on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements, to a denial of the opportunity of the individual or class to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of an entity.

(ii) Participation in unequal benefit

It shall be discriminatory to afford an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements with the opportunity to participate in or benefit from a good, service, facility, privilege, advantage, or accommodation that is not equal to that afforded to other individuals.

(iii) Separate benefit

It shall be discriminatory to provide an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements with a good, service, facility, privilege, advantage, or accommodation that is different or separate from that provided to other individuals, unless such action is necessary to provide the individual or class of individuals with a good, service, facility, privilege, advantage, or accommodation that is as effective as that provided to others.

(iv) Individual or class of individuals

For purposes of clauses (i) through (iii) of this subparagraph, the term “individual or class of individuals” refers to the cli-

ents or customers of the covered public accommodation that enters into the contractual, licensing or other arrangement.

(B) Integrated settings

Goods, services, facilities, privileges, advantages, and accommodations shall be afforded to an individual with a disability in the most integrated setting appropriate to the needs of the individual.

(C) Opportunity to participate

Notwithstanding the existence of separate or different programs or activities provided in accordance with this section, an individual with a disability shall not be denied the opportunity to participate in such programs or activities that are not separate or different.

(D) Administrative methods

An individual or entity shall not, directly or through contractual or other arrangements, utilize standards or criteria or methods of administration—

(i) that have the effect of discriminating on the basis of disability; or

(ii) that perpetuate the discrimination of others who are subject to common administrative control.

(E) Association

It shall be discriminatory to exclude or otherwise deny equal goods, services, facilities, privileges, advantages, accommodations, or other opportunities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.

(2) Specific prohibitions

(A) Discrimination

For purposes of subsection (a) of this section, discrimination includes—

(i) the imposition or application of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered;

(ii) a failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations;

(iii) a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of

the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in an undue burden;

(iv) a failure to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities, and transportation barriers in existing vehicles and rail passenger cars used by an establishment for transporting individuals (not including barriers that can only be removed through the retrofitting of vehicles or rail passenger cars by the installation of a hydraulic or other lift), where such removal is readily achievable; and

(v) where an entity can demonstrate that the removal of a barrier under clause (iv) is not readily achievable, a failure to make such goods, services, facilities, privileges, advantages, or accommodations available through alternative methods if such methods are readily achievable.

(B) Fixed route system

(i) Accessibility

It shall be considered discrimination for a private entity which operates a fixed route system and which is not subject to section 12184 of this title to purchase or lease a vehicle with a seating capacity in excess of 16 passengers (including the driver) for use on such system, for which a solicitation is made after the 30th day following the effective date of this subparagraph, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(ii) Equivalent service

If a private entity which operates a fixed route system and which is not subject to section 12184 of this title purchases or leases a vehicle with a seating capacity of 16 passengers or less (including the driver) for use on such system after the effective date of this subparagraph that is not readily accessible to or usable by individuals with disabilities, it shall be considered discrimination for such entity to fail to operate such system so that, when viewed in its entirety, such system ensures a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service provided to individuals without disabilities.

(C) Demand responsive system

For purposes of subsection (a) of this section, discrimination includes—

(i) a failure of a private entity which operates a demand responsive system and which is not subject to section 12184 of this title to operate such system so that, when viewed in its entirety, such system ensures a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service provided to individuals without disabilities; and

(ii) the purchase or lease by such entity for use on such system of a vehicle with a seating capacity in excess of 16 passengers (including the driver), for which solicitations are made after the 30th day following the effective date of this subparagraph, that is not readily accessible to and usable by individuals with disabilities (including individuals who use wheelchairs) unless such entity can demonstrate that such system, when viewed in its entirety, provides a level of service to individuals with disabilities equivalent to that provided to individuals without disabilities.

(D) Over-the-road buses

(i) Limitation on applicability

Subparagraphs (B) and (C) do not apply to over-the-road buses.

(ii) Accessibility requirements

For purposes of subsection (a) of this section, discrimination includes (I) the purchase or lease of an over-the-road bus which does not comply with the regulations issued under section 12186(a)(2) of this title by a private entity which provides transportation of individuals and which is not primarily engaged in the business of transporting people, and (II) any other failure of such entity to comply with such regulations.

(3) Specific construction

Nothing in this subchapter shall require an entity to permit an individual to participate in or benefit from the goods, services, facilities, privileges, advantages and accommodations of such entity where such individual poses a direct threat to the health or safety of others. The term "direct threat" means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures or by the provision of auxiliary aids or services.

(Pub. L. 101-336, title III, §302, July 26, 1990, 104 Stat. 355.)

REFERENCES IN TEXT

For the effective date of this subparagraph, referred to in subsec. (b)(2)(B), (C)(ii), see section 310 of Pub. L. 101-336, set out as an Effective Date note under section 12181 of this title.

EFFECTIVE DATE

Section effective 18 months after July 26, 1990, but with subsec. (a) of this section (for purposes of subsec. (b)(2)(B), (C) only) effective July 26, 1990, and with certain qualifications with respect to bringing of civil actions, see section 310 of Pub. L. 101-336, set out as a note under section 12181 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12183, 12184, 12186, 12188, 12209 of this title; title 2 section 1331; title 3 section 421.

§ 12183. New construction and alterations in public accommodations and commercial facilities

(a) Application of term

Except as provided in subsection (b) of this section, as applied to public accommodations

and commercial facilities, discrimination for purposes of section 12182(a) of this title includes—

(1) a failure to design and construct facilities for first occupancy later than 30 months after July 26, 1990, that are readily accessible to and usable by individuals with disabilities, except where an entity can demonstrate that it is structurally impracticable to meet the requirements of such subsection in accordance with standards set forth or incorporated by reference in regulations issued under this subchapter; and

(2) with respect to a facility or part thereof that is altered by, on behalf of, or for the use of an establishment in a manner that affects or could affect the usability of the facility or part thereof, a failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. Where the entity is undertaking an alteration that affects or could affect usability of or access to an area of the facility containing a primary function, the entity shall also make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities where such alterations to the path of travel or the bathrooms, telephones, and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope (as determined under criteria established by the Attorney General).

(b) Elevator

Subsection (a) of this section shall not be construed to require the installation of an elevator for facilities that are less than three stories or have less than 3,000 square feet per story unless the building is a shopping center, a shopping mall, or the professional office of a health care provider or unless the Attorney General determines that a particular category of such facilities requires the installation of elevators based on the usage of such facilities.

(Pub. L. 101-336, title III, §303, July 26, 1990, 104 Stat. 358.)

EFFECTIVE DATE

Section effective 18 months after July 26, 1990, see section 310(a), (b) of Pub. L. 101-336, set out as a note under section 12181 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12184, 12186, 12188, 12209 of this title; title 2 section 1331; title 3 section 421.

§ 12184. Prohibition of discrimination in specified public transportation services provided by private entities

(a) General rule

No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of specified public transportation

services provided by a private entity that is primarily engaged in the business of transporting people and whose operations affect commerce.

(b) Construction

For purposes of subsection (a) of this section, discrimination includes—

(1) the imposition or application by a¹ entity described in subsection (a) of this section of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully enjoying the specified public transportation services provided by the entity, unless such criteria can be shown to be necessary for the provision of the services being offered;

(2) the failure of such entity to—

(A) make reasonable modifications consistent with those required under section 12182(b)(2)(A)(ii) of this title;

(B) provide auxiliary aids and services consistent with the requirements of section 12182(b)(2)(A)(iii) of this title; and

(C) remove barriers consistent with the requirements of section 12182(b)(2)(A) of this title and with the requirements of section 12183(a)(2) of this title;

(3) the purchase or lease by such entity of a new vehicle (other than an automobile, a van with a seating capacity of less than 8 passengers, including the driver, or an over-the-road bus) which is to be used to provide specified public transportation and for which a solicitation is made after the 30th day following the effective date of this section, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs; except that the new vehicle need not be readily accessible to and usable by such individuals if the new vehicle is to be used solely in a demand responsive system and if the entity can demonstrate that such system, when viewed in its entirety, provides a level of service to such individuals equivalent to the level of service provided to the general public;

(4)(A) the purchase or lease by such entity of an over-the-road bus which does not comply with the regulations issued under section 12186(a)(2) of this title; and

(B) any other failure of such entity to comply with such regulations; and

(5) the purchase or lease by such entity of a new van with a seating capacity of less than 8 passengers, including the driver, which is to be used to provide specified public transportation and for which a solicitation is made after the 30th day following the effective date of this section that is not readily accessible to or usable by individuals with disabilities, including individuals who use wheelchairs; except that the new van need not be readily accessible to and usable by such individuals if the entity can demonstrate that the system for which the van is being purchased or leased, when viewed in its entirety, provides a level of service to such individuals equivalent to the level of service provided to the general public;

(6) the purchase or lease by such entity of a new rail passenger car that is to be used to

provide specified public transportation, and for which a solicitation is made later than 30 days after the effective date of this paragraph, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs; and

(7) the remanufacture by such entity of a rail passenger car that is to be used to provide specified public transportation so as to extend its usable life for 10 years or more, or the purchase or lease by such entity of such a rail car, unless the rail car, to the maximum extent feasible, is made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(c) Historical or antiquated cars

(1) Exception

To the extent that compliance with subsection (b)(2)(C) or (b)(7) of this section would significantly alter the historic or antiquated character of a historical or antiquated rail passenger car, or a rail station served exclusively by such cars, or would result in violation of any rule, regulation, standard, or order issued by the Secretary of Transportation under the Federal Railroad Safety Act of 1970, such compliance shall not be required.

(2) Definition

As used in this subsection, the term “historical or antiquated rail passenger car” means a rail passenger car—

(A) which is not less than 30 years old at the time of its use for transporting individuals;

(B) the manufacturer of which is no longer in the business of manufacturing rail passenger cars; and

(C) which—

(i) has a consequential association with events or persons significant to the past; or

(ii) embodies, or is being restored to embody, the distinctive characteristics of a type of rail passenger car used in the past, or to represent a time period which has passed.

(Pub. L. 101-336, title III, § 304, July 26, 1990, 104 Stat. 359.)

REFERENCES IN TEXT

For the effective date of this section, referred to in subsec. (b)(3), (5), see section 310 of Pub. L. 101-336, set out as an Effective Date note under section 12181 of this title.

The effective date of this paragraph, referred to in subsec. (b)(6), is 18 months after July 26, 1990, see section 310(a) of Pub. L. 101-336, set out as an Effective Date note under section 12181 of this title.

The Federal Railroad Safety Act of 1970, referred to in subsec. (c)(1), is title II of Pub. L. 91-458, Oct. 16, 1970, 84 Stat. 971, as amended, which was classified generally to subchapter II (§ 431 et seq.) of chapter 13 of Title 45, Railroads, and was repealed and reenacted in section 5109(c) of Title 5, Government Organization and Employees, section 54a of Title 45, Railroads, chapter 201 and sections 21301, 21302, 21304, 21311, 24902, and 24905 of Title 49, Transportation, and provisions set out as a note under section 20103 of Title 49 by Pub. L. 103-272, §§ 1(e), 4(b)(1), (i), (t), 7(b), July 5, 1994, 108 Stat. 862, 891, 893, 930, 935, 1361, 1365, 1372, 1379, the first section of which enacted subtitles II, III, and V to X of Title 49.

¹ So in original. Probably should be “an”.

EFFECTIVE DATE

Section effective 18 months after July 26, 1990, but with subsec. (a) of this section (for purposes of subsec. (b)(3) only) and subsec. (b)(3) of this section effective July 26, 1990, see section 310(a), (c) of Pub. L. 101-336, set out as a note under section 12181 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12182, 12185, 12186, 12206 of this title.

§ 12185. Study**(a) Purposes**

The Office of Technology Assessment shall undertake a study to determine—

(1) the access needs of individuals with disabilities to over-the-road buses and over-the-road bus service; and

(2) the most cost-effective methods for providing access to over-the-road buses and over-the-road bus service to individuals with disabilities, particularly individuals who use wheelchairs, through all forms of boarding options.

(b) Contents

The study shall include, at a minimum, an analysis of the following:

(1) The anticipated demand by individuals with disabilities for accessible over-the-road buses and over-the-road bus service.

(2) The degree to which such buses and service, including any service required under sections 12184(b)(4) and 12186(a)(2) of this title, are readily accessible to and usable by individuals with disabilities.

(3) The effectiveness of various methods of providing accessibility to such buses and service to individuals with disabilities.

(4) The cost of providing accessible over-the-road buses and bus service to individuals with disabilities, including consideration of recent technological and cost saving developments in equipment and devices.

(5) Possible design changes in over-the-road buses that could enhance accessibility, including the installation of accessible restrooms which do not result in a loss of seating capacity.

(6) The impact of accessibility requirements on the continuation of over-the-road bus service, with particular consideration of the impact of such requirements on such service to rural communities.

(c) Advisory committee

In conducting the study required by subsection (a) of this section, the Office of Technology Assessment shall establish an advisory committee, which shall consist of—

(1) members selected from among private operators and manufacturers of over-the-road buses;

(2) members selected from among individuals with disabilities, particularly individuals who use wheelchairs, who are potential riders of such buses; and

(3) members selected for their technical expertise on issues included in the study, including manufacturers of boarding assistance equipment and devices.

The number of members selected under each of paragraphs (1) and (2) shall be equal, and the total number of members selected under paragraphs (1) and (2) shall exceed the number of members selected under paragraph (3).

(d) Deadline

The study required by subsection (a) of this section, along with recommendations by the Office of Technology Assessment, including any policy options for legislative action, shall be submitted to the President and Congress within 36 months after July 26, 1990. If the President determines that compliance with the regulations issued pursuant to section 12186(a)(2)(B) of this title on or before the applicable deadlines specified in section 12186(a)(2)(B) of this title will result in a significant reduction in intercity over-the-road bus service, the President shall extend each such deadline by 1 year.

(e) Review

In developing the study required by subsection (a) of this section, the Office of Technology Assessment shall provide a preliminary draft of such study to the Architectural and Transportation Barriers Compliance Board established under section 792 of title 29. The Board shall have an opportunity to comment on such draft study, and any such comments by the Board made in writing within 120 days after the Board's receipt of the draft study shall be incorporated as part of the final study required to be submitted under subsection (d) of this section.

(Pub. L. 101-336, title III, § 305, July 26, 1990, 104 Stat. 360.)

EFFECTIVE DATE

Section effective July 26, 1990, see section 310(c) of Pub. L. 101-336, set out as a note under section 12181 of this title.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by Congress, its duration is otherwise provided for by law. See section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12186 of this title.

§ 12186. Regulations**(a) Transportation provisions****(1) General rule**

Not later than 1 year after July 26, 1990, the Secretary of Transportation shall issue regulations in an accessible format to carry out sections¹ 12182(b)(2)(B) and (C) of this title and to carry out section 12184 of this title (other than subsection (b)(4)).

¹ So in original. Probably should be "section".

(2) Special rules for providing access to over-the-road buses

(A) Interim requirements

(i) Issuance

Not later than 1 year after July 26, 1990, the Secretary of Transportation shall issue regulations in an accessible format to carry out sections 12184(b)(4) and 12182(b)(2)(D)(ii) of this title that require each private entity which uses an over-the-road bus to provide transportation of individuals to provide accessibility to such bus; except that such regulations shall not require any structural changes in over-the-road buses in order to provide access to individuals who use wheelchairs during the effective period of such regulations and shall not require the purchase of boarding assistance devices to provide access to such individuals.

(ii) Effective period

The regulations issued pursuant to this subparagraph shall be effective until the effective date of the regulations issued under subparagraph (B).

(B) Final requirement

(i) Review of study and interim requirements

The Secretary shall review the study submitted under section 12185 of this title and the regulations issued pursuant to subparagraph (A).

(ii) Issuance

Not later than 1 year after the date of the submission of the study under section 12185 of this title, the Secretary shall issue in an accessible format new regulations to carry out sections 12184(b)(4) and 12182(b)(2)(D)(ii) of this title that require, taking into account the purposes of the study under section 12185 of this title and any recommendations resulting from such study, each private entity which uses an over-the-road bus to provide transportation to individuals to provide accessibility to such bus to individuals with disabilities, including individuals who use wheelchairs.

(iii) Effective period

Subject to section 12185(d) of this title, the regulations issued pursuant to this subparagraph shall take effect—

(I) with respect to small providers of transportation (as defined by the Secretary), 3 years after the date of issuance of final regulations under clause (ii); and

(II) with respect to other providers of transportation, 2 years after the date of issuance of such final regulations.

(C) Limitation on requiring installation of accessible restrooms

The regulations issued pursuant to this paragraph shall not require the installation of accessible restrooms in over-the-road buses if such installation would result in a loss of seating capacity.

(3) Standards

The regulations issued pursuant to this subsection shall include standards applicable to facilities and vehicles covered by sections 12182(b)(2) and 12184 of this title.

(b) Other provisions

Not later than 1 year after July 26, 1990, the Attorney General shall issue regulations in an accessible format to carry out the provisions of this subchapter not referred to in subsection (a) of this section that include standards applicable to facilities and vehicles covered under section 12182 of this title.

(c) Consistency with ATBCB guidelines

Standards included in regulations issued under subsections (a) and (b) of this section shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 12204 of this title.

(d) Interim accessibility standards

(1) Facilities

If final regulations have not been issued pursuant to this section, for new construction or alterations for which a valid and appropriate State or local building permit is obtained prior to the issuance of final regulations under this section, and for which the construction or alteration authorized by such permit begins within one year of the receipt of such permit and is completed under the terms of such permit, compliance with the Uniform Federal Accessibility Standards in effect at the time the building permit is issued shall suffice to satisfy the requirement that facilities be readily accessible to and usable by persons with disabilities as required under section 12183 of this title, except that, if such final regulations have not been issued one year after the Architectural and Transportation Barriers Compliance Board has issued the supplemental minimum guidelines required under section 12204(a) of this title, compliance with such supplemental minimum guidelines shall be necessary to satisfy the requirement that facilities be readily accessible to and usable by persons with disabilities prior to issuance of the final regulations.

(2) Vehicles and rail passenger cars

If final regulations have not been issued pursuant to this section, a private entity shall be considered to have complied with the requirements of this subchapter, if any, that a vehicle or rail passenger car be readily accessible to and usable by individuals with disabilities, if the design for such vehicle or car complies with the laws and regulations (including the Minimum Guidelines and Requirements for Accessible Design and such supplemental minimum guidelines as are issued under section 12204(a) of this title) governing accessibility of such vehicles or cars, to the extent that such laws and regulations are not inconsistent with this subchapter and are in effect at the time such design is substantially completed.

(Pub. L. 101-336, title III, § 306, July 26, 1990, 104 Stat. 361; Pub. L. 104-59, title III, § 341, Nov. 28, 1995, 109 Stat. 608.)

AMENDMENTS

1995—Subsec. (a)(2)(B)(iii). Pub. L. 104-59 substituted “3 years after the date of issuance of final regulations under clause (ii)” for “7 years after July 26, 1990” in subcl. (I) and “2 years after the date of issuance of such final regulations” for “6 years after July 26, 1990” in subcl. (II).

EFFECTIVE DATE

Section effective July 26, 1990, see section 310(c) of Pub. L. 101-336, set out as a note under section 12181 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12182, 12184, 12185 of this title.

§ 12187. Exemptions for private clubs and religious organizations

The provisions of this subchapter shall not apply to private clubs or establishments exempted from coverage under title II of the Civil Rights Act of 1964 (42 U.S.C. 2000a-3(e)) [42 U.S.C. 2000a et seq.] or to religious organizations or entities controlled by religious organizations, including places of worship.

(Pub. L. 101-336, title III, §307, July 26, 1990, 104 Stat. 363.)

REFERENCES IN TEXT

The Civil Rights Act of 1964, referred to in text, is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended. Title II of the Act is classified generally to subchapter II (§2000a et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

EFFECTIVE DATE

Section effective 18 months after July 26, 1990, see section 310(a) of Pub. L. 101-336, set out as a note under section 12181 of this title.

§ 12188. Enforcement

(a) In general

(1) Availability of remedies and procedures

The remedies and procedures set forth in section 2000a-3(a) of this title are the remedies and procedures this subchapter provides to any person who is being subjected to discrimination on the basis of disability in violation of this subchapter or who has reasonable grounds for believing that such person is about to be subjected to discrimination in violation of section 12183 of this title. Nothing in this section shall require a person with a disability to engage in a futile gesture if such person has actual notice that a person or organization covered by this subchapter does not intend to comply with its provisions.

(2) Injunctive relief

In the case of violations of sections 12182(b)(2)(A)(iv) and section¹ 12183(a) of this title, injunctive relief shall include an order to alter facilities to make such facilities readily accessible to and usable by individuals with disabilities to the extent required by this subchapter. Where appropriate, injunctive relief

¹ So in original. The word “section” probably should not appear.

shall also include requiring the provision of an auxiliary aid or service, modification of a policy, or provision of alternative methods, to the extent required by this subchapter.

(b) Enforcement by Attorney General

(1) Denial of rights

(A) Duty to investigate

(i) In general

The Attorney General shall investigate alleged violations of this subchapter, and shall undertake periodic reviews of compliance of covered entities under this subchapter.

(ii) Attorney General certification

On the application of a State or local government, the Attorney General may, in consultation with the Architectural and Transportation Barriers Compliance Board, and after prior notice and a public hearing at which persons, including individuals with disabilities, are provided an opportunity to testify against such certification, certify that a State law or local building code or similar ordinance that establishes accessibility requirements meets or exceeds the minimum requirements of this chapter for the accessibility and usability of covered facilities under this subchapter. At any enforcement proceeding under this section, such certification by the Attorney General shall be rebuttable evidence that such State law or local ordinance does meet or exceed the minimum requirements of this chapter.

(B) Potential violation

If the Attorney General has reasonable cause to believe that—

- (i) any person or group of persons is engaged in a pattern or practice of discrimination under this subchapter; or
- (ii) any person or group of persons has been discriminated against under this subchapter and such discrimination raises an issue of general public importance,

the Attorney General may commence a civil action in any appropriate United States district court.

(2) Authority of court

In a civil action under paragraph (1)(B), the court—

- (A) may grant any equitable relief that such court considers to be appropriate, including, to the extent required by this subchapter—
 - (i) granting temporary, preliminary, or permanent relief;
 - (ii) providing an auxiliary aid or service, modification of policy, practice, or procedure, or alternative method; and
 - (iii) making facilities readily accessible to and usable by individuals with disabilities;

(B) may award such other relief as the court considers to be appropriate, including monetary damages to persons aggrieved when requested by the Attorney General; and

(C) may, to vindicate the public interest, assess a civil penalty against the entity in an amount—

- (i) not exceeding \$50,000 for a first violation; and
- (ii) not exceeding \$100,000 for any subsequent violation.

(3) Single violation

For purposes of paragraph (2)(C), in determining whether a first or subsequent violation has occurred, a determination in a single action, by judgment or settlement, that the covered entity has engaged in more than one discriminatory act shall be counted as a single violation.

(4) Punitive damages

For purposes of subsection (b)(2)(B) of this section, the term “monetary damages” and “such other relief” does not include punitive damages.

(5) Judicial consideration

In a civil action under paragraph (1)(B), the court, when considering what amount of civil penalty, if any, is appropriate, shall give consideration to any good faith effort or attempt to comply with this chapter by the entity. In evaluating good faith, the court shall consider, among other factors it deems relevant, whether the entity could have reasonably anticipated the need for an appropriate type of auxiliary aid needed to accommodate the unique needs of a particular individual with a disability.

(Pub. L. 101-336, title III, §308, July 26, 1990, 104 Stat. 363.)

EFFECTIVE DATE

Section effective 18 months after July 26, 1990, see section 310(a) of Pub. L. 101-336, set out as a note under section 12181 of this title.

CIVIL ACTIONS FOR VIOLATIONS BY PUBLIC ACCOMMODATIONS

For provisions directing that, except for any civil action brought for a violation of section 12183 of this title, no civil action shall be brought for any act or omission described in section 12182 of this title which occurs (1) during the first six months after the effective date of this subchapter, against businesses that employ 25 or fewer employees and have gross receipts of \$1,000,000 or less, and (2) during the first year after the effective date, against businesses that employ 10 or fewer employees and have gross receipts of \$500,000 or less, see section 310(b) of Pub. L. 101-336, set out as an Effective Date note under section 12181 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12203 of this title; title 2 section 1331; title 3 section 421.

§ 12189. Examinations and courses

Any person that offers examinations or courses related to applications, licensing, certification, or credentialing for secondary or postsecondary education, professional, or trade purposes shall offer such examinations or courses in a place and manner accessible to persons with disabilities or offer alternative accessible arrangements for such individuals.

(Pub. L. 101-336, title III, §309, July 26, 1990, 104 Stat. 365.)

EFFECTIVE DATE

Section effective 18 months after July 26, 1990, see section 310(a) of Pub. L. 101-336, set out as a note under section 12181 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 2 section 1331; title 3 section 421.

SUBCHAPTER IV—MISCELLANEOUS PROVISIONS

§ 12201. Construction

(a) In general

Except as otherwise provided in this chapter, nothing in this chapter shall be construed to apply a lesser standard than the standards applied under title V of the Rehabilitation Act of 1973 (29 U.S.C. 790 et seq.) or the regulations issued by Federal agencies pursuant to such title.

(b) Relationship to other laws

Nothing in this chapter shall be construed to invalidate or limit the remedies, rights, and procedures of any Federal law or law of any State or political subdivision of any State or jurisdiction that provides greater or equal protection for the rights of individuals with disabilities than are afforded by this chapter. Nothing in this chapter shall be construed to preclude the prohibition of, or the imposition of restrictions on, smoking in places of employment covered by subchapter I of this chapter, in transportation covered by subchapter II or III of this chapter, or in places of public accommodation covered by subchapter III of this chapter.

(c) Insurance

Subchapters I through III of this chapter and title IV of this Act shall not be construed to prohibit or restrict—

(1) an insurer, hospital or medical service company, health maintenance organization, or any agent, or entity that administers benefit plans, or similar organizations from underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law; or

(2) a person or organization covered by this chapter from establishing, sponsoring, observing or administering the terms of a bona fide benefit plan that are based on underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law; or

(3) a person or organization covered by this chapter from establishing, sponsoring, observing or administering the terms of a bona fide benefit plan that is not subject to State laws that regulate insurance.

Paragraphs (1), (2), and (3) shall not be used as a subterfuge to evade the purposes of subchapter¹ I and III of this chapter.

(d) Accommodations and services

Nothing in this chapter shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit which such individual chooses not to accept.

¹ So in original. Probably should be “subchapters”.

(Pub. L. 101-336, title V, §501, July 26, 1990, 104 Stat. 369.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 101-336, July 26, 1990, 104 Stat. 327, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of this title and Tables.

The Rehabilitation Act of 1973, referred to in subsec. (a), is Pub. L. 93-112, Sept. 26, 1973, 87 Stat. 355, as amended. Title V of the Rehabilitation Act of 1973 is classified generally to subchapter V (§790 et seq.) of chapter 16 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

Title IV of this Act, referred to in subsec. (c), means title IV of Pub. L. 101-336, July 26, 1990, 104 Stat. 366, which enacted section 225 of Title 47, Telegraphs, Telephones, and Radiotelegraphs, and amended sections 152, 221, and 611 of Title 47.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 29 sections 791, 793, 794.

§ 12202. State immunity

A State shall not be immune under the eleventh amendment to the Constitution of the United States from an action in¹ Federal or State court of competent jurisdiction for a violation of this chapter. In any action against a State for a violation of the requirements of this chapter, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State.

(Pub. L. 101-336, title V, §502, July 26, 1990, 104 Stat. 370.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 29 sections 791, 793, 794.

§ 12203. Prohibition against retaliation and coercion

(a) Retaliation

No person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by this chapter or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this chapter.

(b) Interference, coercion, or intimidation

It shall be unlawful to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this chapter.

(c) Remedies and procedures

The remedies and procedures available under sections 12117, 12133, and 12188 of this title shall be available to aggrieved persons for violations

¹ So in original. Probably should be “in a”.

of subsections (a) and (b) of this section, with respect to subchapter I, subchapter II and subchapter III of this chapter, respectively.

(Pub. L. 101-336, title V, §503, July 26, 1990, 104 Stat. 370.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 29 sections 791, 793, 794.

§ 12204. Regulations by Architectural and Transportation Barriers Compliance Board

(a) Issuance of guidelines

Not later than 9 months after July 26, 1990, the Architectural and Transportation Barriers Compliance Board shall issue minimum guidelines that shall supplement the existing Minimum Guidelines and Requirements for Accessible Design for purposes of subchapters II and III of this chapter.

(b) Contents of guidelines

The supplemental guidelines issued under subsection (a) of this section shall establish additional requirements, consistent with this chapter, to ensure that buildings, facilities, rail passenger cars, and vehicles are accessible, in terms of architecture and design, transportation, and communication, to individuals with disabilities.

(c) Qualified historic properties

(1) In general

The supplemental guidelines issued under subsection (a) of this section shall include procedures and requirements for alterations that will threaten or destroy the historic significance of qualified historic buildings and facilities as defined in 4.1.7(1)(a) of the Uniform Federal Accessibility Standards.

(2) Sites eligible for listing in National Register

With respect to alterations of buildings or facilities that are eligible for listing in the National Register of Historic Places under the National Historic Preservation Act (16 U.S.C. 470 et seq.), the guidelines described in paragraph (1) shall, at a minimum, maintain the procedures and requirements established in 4.1.7(1) and (2) of the Uniform Federal Accessibility Standards.

(3) Other sites

With respect to alterations of buildings or facilities designated as historic under State or local law, the guidelines described in paragraph (1) shall establish procedures equivalent to those established by 4.1.7(1)(b) and (c) of the Uniform Federal Accessibility Standards, and shall require, at a minimum, compliance with the requirements established in 4.1.7(2) of such standards.

(Pub. L. 101-336, title V, §504, July 26, 1990, 104 Stat. 370.)

REFERENCES IN TEXT

The National Historic Preservation Act, referred to in subsec. (c)(2), is Pub. L. 89-665, Oct. 15, 1966, 80 Stat. 915, as amended, which is classified generally to subchapter II (§470 et seq.) of chapter 1A of Title 16, Conservation. For complete classification of this Act to the Code, see section 470(a) of Title 16 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12134, 12149, 12150, 12163, 12165, 12186 of this title; title 29 sections 791, 793, 794.

§ 12205. Attorney's fees

In any action or administrative proceeding commenced pursuant to this chapter, the court or agency, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee, including litigation expenses, and costs, and the United States shall be liable for the foregoing the same as a private individual.

(Pub. L. 101-336, title V, § 505, July 26, 1990, 104 Stat. 371.)

§ 12206. Technical assistance**(a) Plan for assistance****(1) In general**

Not later than 180 days after July 26, 1990, the Attorney General, in consultation with the Chair of the Equal Employment Opportunity Commission, the Secretary of Transportation, the Chair of the Architectural and Transportation Barriers Compliance Board, and the Chairman of the Federal Communications Commission, shall develop a plan to assist entities covered under this chapter, and other Federal agencies, in understanding the responsibility of such entities and agencies under this chapter.

(2) Publication of plan

The Attorney General shall publish the plan referred to in paragraph (1) for public comment in accordance with subchapter II of chapter 5 of title 5 (commonly known as the Administrative Procedure Act).

(b) Agency and public assistance

The Attorney General may obtain the assistance of other Federal agencies in carrying out subsection (a) of this section, including the National Council on Disability, the President's Committee on Employment of People with Disabilities, the Small Business Administration, and the Department of Commerce.

(c) Implementation**(1) Rendering assistance**

Each Federal agency that has responsibility under paragraph (2) for implementing this chapter may render technical assistance to individuals and institutions that have rights or duties under the respective subchapter or subchapters of this chapter for which such agency has responsibility.

(2) Implementation of subchapters**(A) Subchapter I**

The Equal Employment Opportunity Commission and the Attorney General shall implement the plan for assistance developed under subsection (a) of this section, for subchapter I of this chapter.

(B) Subchapter II**(i) Part A**

The Attorney General shall implement such plan for assistance for part A of subchapter II of this chapter.

(ii) Part B

The Secretary of Transportation shall implement such plan for assistance for part B of subchapter II of this chapter.

(C) Subchapter III

The Attorney General, in coordination with the Secretary of Transportation and the Chair of the Architectural Transportation Barriers Compliance Board, shall implement such plan for assistance for subchapter III of this chapter, except for section 12184 of this title, the plan for assistance for which shall be implemented by the Secretary of Transportation.

(D) Title IV

The Chairman of the Federal Communications Commission, in coordination with the Attorney General, shall implement such plan for assistance for title IV.

(3) Technical assistance manuals

Each Federal agency that has responsibility under paragraph (2) for implementing this chapter shall, as part of its implementation responsibilities, ensure the availability and provision of appropriate technical assistance manuals to individuals or entities with rights or duties under this chapter no later than six months after applicable final regulations are published under subchapters I, II, and III of this chapter and title IV.

(d) Grants and contracts**(1) In general**

Each Federal agency that has responsibility under subsection (c)(2) of this section for implementing this chapter may make grants or award contracts to effectuate the purposes of this section, subject to the availability of appropriations. Such grants and contracts may be awarded to individuals, institutions not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual (including educational institutions), and associations representing individuals who have rights or duties under this chapter. Contracts may be awarded to entities organized for profit, but such entities may not be the recipients or¹ grants described in this paragraph.

(2) Dissemination of information

Such grants and contracts, among other uses, may be designed to ensure wide dissemination of information about the rights and duties established by this chapter and to provide information and technical assistance about techniques for effective compliance with this chapter.

(e) Failure to receive assistance

An employer, public accommodation, or other entity covered under this chapter shall not be excused from compliance with the requirements of this chapter because of any failure to receive technical assistance under this section, including any failure in the development or dissemination of any technical assistance manual authorized by this section.

¹ So in original. Probably should be "of".

(Pub. L. 101-336, title V, §506, July 26, 1990, 104 Stat. 371.)

REFERENCES IN TEXT

Title IV, referred to in subsec. (c)(2)(D), (3), means title IV of Pub. L. 101-336, July 26, 1990, 104 Stat. 366, which enacted section 225 of Title 47, Telegraphs, Telephones, and Radiotelegraphs, and amended sections 152, 221, and 611 of Title 47.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 29 section 762.

§ 12207. Federal wilderness areas

(a) Study

The National Council on Disability shall conduct a study and report on the effect that wilderness designations and wilderness land management practices have on the ability of individuals with disabilities to use and enjoy the National Wilderness Preservation System as established under the Wilderness Act (16 U.S.C. 1131 et seq.).

(b) Submission of report

Not later than 1 year after July 26, 1990, the National Council on Disability shall submit the report required under subsection (a) of this section to Congress.

(c) Specific wilderness access

(1) In general

Congress reaffirms that nothing in the Wilderness Act [16 U.S.C. 1131 et seq.] is to be construed as prohibiting the use of a wheelchair in a wilderness area by an individual whose disability requires use of a wheelchair, and consistent with the Wilderness Act no agency is required to provide any form of special treatment or accommodation, or to construct any facilities or modify any conditions of lands within a wilderness area in order to facilitate such use.

(2) "Wheelchair" defined

For purposes of paragraph (1), the term "wheelchair" means a device designed solely for use by a mobility-impaired person for locomotion, that is suitable for use in an indoor pedestrian area.

(Pub. L. 101-336, title V, §507, July 26, 1990, 104 Stat. 372.)

REFERENCES IN TEXT

The Wilderness Act, referred to in subsecs. (a) and (c)(1), is Pub. L. 88-577, Sept. 3, 1964, 78 Stat. 890, as amended, which is classified generally to chapter 23 (§1131 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1131 of Title 16 and Tables.

§ 12208. Transvestites

For the purposes of this chapter, the term "disabled" or "disability" shall not apply to an individual solely because that individual is a transvestite.

(Pub. L. 101-336, title V, §508, July 26, 1990, 104 Stat. 373.)

§ 12209. Instrumentalities of Congress

The General Accounting Office, the Government Printing Office, and the Library of Congress shall be covered as follows:

(1) In general

The rights and protections under this chapter shall, subject to paragraph (2), apply with respect to the conduct of each instrumentality of the Congress.

(2) Establishment of remedies and procedures by instrumentalities

The chief official of each instrumentality of the Congress shall establish remedies and procedures to be utilized with respect to the rights and protections provided pursuant to paragraph (1).

(3) Report to Congress

The chief official of each instrumentality of the Congress shall, after establishing remedies and procedures for purposes of paragraph (2), submit to the Congress a report describing the remedies and procedures.

(4) Definition of instrumentalities

For purposes of this section, the term "instrumentality of the Congress" means the following:¹ the General Accounting Office, the Government Printing Office, and the Library of Congress.¹

(5) Enforcement of employment rights

The remedies and procedures set forth in section 2000e-16 of this title shall be available to any employee of an instrumentality of the Congress who alleges a violation of the rights and protections under sections 12112 through 12114 of this title that are made applicable by this section, except that the authorities of the Equal Employment Opportunity Commission shall be exercised by the chief official of the instrumentality of the Congress.

(6) Enforcement of rights to public services and accommodations

The remedies and procedures set forth in section 2000e-16 of this title shall be available to any qualified person with a disability who is a visitor, guest, or patron of an instrumentality of Congress and who alleges a violation of the rights and protections under sections 12131 through 12150 of this title or section 12182 or 12183 of this title that are made applicable by this section, except that the authorities of the Equal Employment Opportunity Commission shall be exercised by the chief official of the instrumentality of the Congress.

(7) Construction

Nothing in this section shall alter the enforcement procedures for individuals with disabilities provided in the General Accounting Office Personnel Act of 1980 and regulations promulgated pursuant to that Act.

(Pub. L. 101-336, title V, §509, July 26, 1990, 104 Stat. 373; Pub. L. 102-166, title III, §315, Nov. 21, 1991, 105 Stat. 1095; Pub. L. 104-1, title II, §§201(c)(3), 210(g), Jan. 23, 1995, 109 Stat. 8, 16.)

REFERENCES IN TEXT

The General Accounting Office Personnel Act of 1980, referred to in par. (7), is Pub. L. 96-191, Feb. 15, 1980, 94 Stat. 27, which was classified principally to section 52-1

¹ So in original. The comma probably should not appear.

et seq. of former Title 31, and which was substantially repealed by Pub. L. 97-258, §5(b), Sept. 13, 1982, 96 Stat. 1068, and reenacted by the first section thereof principally in subchapters III (§731 et seq.) and IV (§751 et seq.) of chapter 7 of Title 31, Money and Finance.

AMENDMENTS

1995—Pub. L. 104-1, §201(c)(3)(F), amended section catchline generally.

Pub. L. 104-1, §201(c)(3)(A), struck out subsecs. (a) and (b) which related to coverage of Senate and House of Representatives with respect to bans on employment discrimination and other discriminatory practices against individuals with disabilities.

Pub. L. 104-1, §201(c)(3)(B), substituted “The General Accounting Office, the Government Printing Office, and the Library of Congress shall be covered as follows:” for subsec. (c) heading and designated subsec. (c) as entire section.

Par. (2). Pub. L. 104-1, §201(c)(3)(C), struck out at end “Such remedies and procedures shall apply exclusively, except for the employees who are defined as Senate employees, in section 1201(c)(1) of title 2.”

Par. (4). Pub. L. 104-1, §201(c)(3)(D), struck out “the Architect of the Capitol, the Congressional Budget Office” after “the following:”, inserted “and” before “the Library of Congress”, and struck out “the Office of Technology Assessment, and the United States Botanic Garden” before period at end.

Pub. L. 104-1, §201(c)(3)(D), which in part directed the substitution of “the term ‘instrumentality of the Congress’ means” for “the instrumentalities of the Congress include”, was executed by making the substitution for “instrumentalities of the Congress include” to reflect the probable intent of Congress.

Par. (5). Pub. L. 104-1, §201(c)(3)(E), added par. (5). Former par. (5) redesignated (7).

Par. (6). Pub. L. 104-1, §210(g), which directed amendment of this section by adding par. (6), was executed by adding par. (6) after par. (5) to reflect the probable intent of Congress.

Par. (7). Pub. L. 104-1, §201(c)(3)(E), redesignated par. (5) as (7).

1991—Subsec. (a)(2). Pub. L. 102-166, §315(1), redesignated par. (6) as (2) and struck out former par. (2) which read as follows: “APPLICATION TO SENATE EMPLOYMENT.—The rights and protections provided pursuant to this chapter, the Civil Rights Act of 1990 (S. 2104, 101st Congress), the Civil Rights Act of 1964 [42 U.S.C. 2000a et seq.], the Age Discrimination in Employment Act of 1967 [29 U.S.C. 621 et seq.], and the Rehabilitation Act of 1973 [29 U.S.C. 701 et seq.] shall apply with respect to employment by the United States Senate.”

Subsec. (a)(3). Pub. L. 102-166, §315(1), redesignated par. (7) as (3), substituted “(2)(A)” for “(2) and (6)(A)” and “(2)” for “(3), (4), (5), (6)(B), and (6)(C)”, and struck out former par. (3) which read as follows: “INVESTIGATION AND ADJUDICATION OF CLAIMS.—All claims raised by any individual with respect to Senate employment, pursuant to the Acts referred to in paragraph (2), shall be investigated and adjudicated by the Select Committee on Ethics, pursuant to S. Res. 338, 88th Congress, as amended, or such other entity as the Senate may designate.”

Subsec. (a)(4), (5). Pub. L. 102-166, §315(1), struck out pars. (4) and (5) which read as follows:

“(4) RIGHTS OF EMPLOYEES.—The Committee on Rules and Administration shall ensure that Senate employees are informed of their rights under the Acts referred to in paragraph (2).

“(5) APPLICABLE REMEDIES.—When assigning remedies to individuals found to have a valid claim under the Acts referred to in paragraph (2), the Select Committee on Ethics, or such other entity as the Senate may designate, should to the extent practicable apply the same remedies applicable to all other employees covered by the Acts referred to in paragraph (2). Such remedies shall apply exclusively.”

Subsec. (a)(6), (7). Pub. L. 102-166, §315(1), redesignated pars. (6) and (7) as (2) and (3), respectively.

Subsec. (c)(2). Pub. L. 102-166, §315(2), inserted “, except for the employees who are defined as Senate employees, in section 1201(c)(1) of title 2” after “shall apply exclusively”.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by section 201(c)(3) of Pub. L. 104-1 effective 1 year after Jan. 23, 1995, see section 1311(d) of Title 2, The Congress.

Amendment by section 210(g) of Pub. L. 104-1 effective 1 year after transmission to Congress of study under section 1371 of Title 2, see section 1331(h)(2) of Title 2.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-166 effective Nov. 21, 1991, except as otherwise provided, see section 402 of Pub. L. 102-166, set out as a note under section 1981 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 2 section 1435.

§ 12210. Illegal use of drugs

(a) In general

For purposes of this chapter, the term “individual with a disability” does not include an individual who is currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use.

(b) Rules of construction

Nothing in subsection (a) of this section shall be construed to exclude as an individual with a disability an individual who—

- (1) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;
- (2) is participating in a supervised rehabilitation program and is no longer engaging in such use; or
- (3) is erroneously regarded as engaging in such use, but is not engaging in such use;

except that it shall not be a violation of this chapter for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in paragraph (1) or (2) is no longer engaging in the illegal use of drugs; however, nothing in this section shall be construed to encourage, prohibit, restrict, or authorize the conducting of testing for the illegal use of drugs.

(c) Health and other services

Notwithstanding subsection (a) of this section and section 12211(b)(3) of this title, an individual shall not be denied health services, or services provided in connection with drug rehabilitation, on the basis of the current illegal use of drugs if the individual is otherwise entitled to such services.

(d) “Illegal use of drugs” defined

(1) In general

The term “illegal use of drugs” means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act [21 U.S.C. 801 et seq.]. Such term does not include the use of a drug taken under supervision by a licensed health care profes-

sional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

(2) Drugs

The term “drug” means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act [21 U.S.C. 812].

(Pub. L. 101-336, title V, §510, July 26, 1990, 104 Stat. 375.)

REFERENCES IN TEXT

The Controlled Substances Act, referred to in subsec. (d)(1), is title II of Pub. L. 91-513, Oct. 27, 1970, 84 Stat. 1242, as amended, which is classified principally to subchapter I (§801 et seq.) of chapter 13 of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 21 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 29 sections 791, 793, 794.

§ 12211. Definitions

(a) Homosexuality and bisexuality

For purposes of the definition of “disability” in section 12102(2) of this title, homosexuality and bisexuality are not impairments and as such are not disabilities under this chapter.

(b) Certain conditions

Under this chapter, the term “disability” shall not include—

- (1) transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;
- (2) compulsive gambling, kleptomania, or pyromania; or
- (3) psychoactive substance use disorders resulting from current illegal use of drugs.

(Pub. L. 101-336, title V, §511, July 26, 1990, 104 Stat. 376.)

§ 12212. Alternative means of dispute resolution

Where appropriate and to the extent authorized by law, the use of alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, fact-finding, minitrials, and arbitration, is encouraged to resolve disputes arising under this chapter.

(Pub. L. 101-336, title V, §513, July 26, 1990, 104 Stat. 377.)

§ 12213. Severability

Should any provision in this chapter be found to be unconstitutional by a court of law, such provision shall be severed from the remainder of the chapter, and such action shall not affect the enforceability of the remaining provisions of the chapter.

(Pub. L. 101-336, title V, §514, July 26, 1990, 104 Stat. 378.)

CHAPTER 127—COORDINATED SERVICES FOR CHILDREN, YOUTH, AND FAMILIES

Sec.
12301. Findings.

Sec.
12302. Definitions.
SUBCHAPTER I—ESTABLISHMENT OF ADMINISTRATION AND AWARDING OF GRANTS FOR PROGRAMS

PART A—ADMINISTRATION ON CHILDREN, YOUTH, AND FAMILIES

- 12311. Establishment of Administration on Children, Youth, and Families.
 - (a) In general.
 - (b) Commissioner.
- 12312. Functions of Commissioner.
 - (a) In general.
 - (b) Encouragement of volunteerism.
- 12313. Federal agency consultations.
 - (a) In general.
 - (b) Interagency agreements.
- 12314. Federal Council on Children, Youth, and Families.
 - (a) Establishment.
 - (b) Number of members.
 - (c) Term of membership.
 - (d) Appointment of members.
 - (e) Vacancy.
 - (f) Reappointment.
 - (g) Expiration of term.
 - (h) Travel expenses.
 - (i) Chairperson.
 - (j) Meetings.
 - (k) Duties of Council.
 - (l) Staff.
 - (m) Information and assistance.
 - (n) Reports.
 - (o) Authorization of appropriation.
 - (p) Termination.
- 12315. Administration.
 - (a) Duties of Commissioner.
 - (b) Utilization of services and facilities.
 - (c) Reservation of funds.

PART B—GRANTS FOR STATE AND COMMUNITY PROGRAMS FOR CHILDREN, YOUTH, AND FAMILIES.

- 12331. Purpose.
- 12332. Definitions.
- 12333. Establishment of programs.
- 12334. Administration.
 - (a) In general.
 - (b) Technical assistance.
- 12335. State plan.
 - (a) Submission of plan.
 - (b) Revisions of plan.
 - (c) Content of plan.
 - (d) Type of application.
 - (e) Approval of plan.
- 12336. Independent State body.
 - (a) Designation.
 - (b) Existing entity.
- 12337. State coordination of services.
 - (a) Authority.
 - (b) Application.
 - (c) Use of grants to States.
 - (e) Supplement not supplant.
 - (f) Relationship to family resource and support program grants.
- 12338. Supportive services.
 - (a) Authority.
 - (b) Eligible services.
- 12339. Repealed.
- 12340. Authorization of appropriation and allotment.
 - (a) Administration on children, youth, and families; State coordination; supportive services.
 - (b) Determination of age.
 - (c) Transfer of allotted funds.
 - (d) Repealed.
 - (e) Limitation.
 - (f) Grants for Indians.

- Sec.
- (g) Limitation.
- PART C—NATIONAL CLEARINGHOUSE
12351. Findings and purpose.
- (a) Findings.
- (b) Purpose.
12352. “Family resource and support programs” defined.
12353. Establishment of National Center on Family Resource and Support Programs.
- (a) Establishment.
- (b) Functions.
12354. Evaluation.
12355. Authorization of appropriations.
- (a) Establishment of Center.
- (b) Evaluation
- SUBCHAPTER II—WHITE HOUSE CONFERENCE ON CHILDREN, YOUTH, AND FAMILIES
12371. Findings.
- (a) Findings.
- (b) Statement of policy.
12372. Authority of President and Secretary; final report.
- (a) Calling of Conference.
- (b) Purposes of Conference.
- (c) Conference participants and delegates.
12373. Conference administration.
- (a) Administration.
- (b) Duties.
12374. Conference committees.
- (a) Advisory committee.
- (b) Other committees.
- (c) Composition of committees.
- (d) Compensation.
12375. Report of Conference.
- (a) Proposed report.
- (b) Response to proposed report.
- (c) Final report.
12376. Definitions.
12377. Authorization of appropriations.
- (a) Authorization.
- (b) Return of unexpended funds.

§ 12301. Findings

Congress finds that—

(1) children and youth are inherently the most valuable resource of the United States;

(2) the welfare, protection, healthy development, and positive role of children and youth in society are essential to the United States;

(3) children and youth deserve love, respect, and guidance, as well as good health, shelter, food, education, productive employment opportunities, and preparation for responsible participation in community life;

(4) children and youth have increasing opportunities to participate in the decisions that affect their lives;

(5) the family is the primary caregiver and source of social learning and must be supported and strengthened;

(6) when a family is unable to ensure the satisfaction of basic needs of children and youth it is the responsibility of society to assist such family; and

(7) it is the joint and several responsibility of the Federal Government, each State, and the political subdivisions of each State to assist children and youth to secure, to the maximum extent practicable, equal opportunity to full and free access to—

(A) the best possible physical and mental health;

(B) adequate and safe physical shelter;

(C) a high level of educational opportunity;

(D) effective training, apprenticeships, opportunities for community service, and productive employment and participation in decisions affecting their lives;

(E) a wide range of civic, cultural, and recreational activities that recognize young Americans as resources and promote self-esteem and a stake in the communities of such Americans; and

(F) comprehensive community services that are efficient, coordinated, readily available, and involve families of young individuals.

(Pub. L. 101-501, title IX, §902, Nov. 3, 1990, 104 Stat. 1262.)

EFFECTIVE DATE

Chapter effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101-501, set out as an Effective Date of 1990 Amendment note under section 8621 of this title.

SHORT TITLE

Section 901 of title IX of Pub. L. 101-501 provided that: “This title [enacting this chapter] may be cited as the ‘Claude Pepper Young Americans Act of 1990’.”

Section 955 of Pub. L. 101-501 provided that: “This chapter [chapter 3 (§§955-960) of subtitle A of title IX of Pub. L. 101-501, enacting part C of subchapter I of this chapter] may be cited as the ‘Family Resource Act’.”

Section 981 of Pub. L. 101-501 provided that: “This subtitle [subtitle B (§§981-988) of title IX of Pub. L. 101-501, enacting subchapter II of this chapter] may be cited as the ‘1993 White House Conference on Children, Youth, and Families’.”

COMMISSION ON CHILD AND FAMILY WELFARE

Pub. L. 102-521, §5, Oct. 25, 1992, 106 Stat. 3406, provided for establishment, membership, etc., of a Commission on Child and Family Welfare, specified that among other duties the Commission compile information and data on the issues that affect the best interests of children, including domestic issues such as abuse, family relations, services and agencies for children and families, family courts, and juvenile courts, directed Commission to submit to President and Congress an interim report no later than Jan. 1, 1994, and a final report no later than Jan. 1, 1995, containing a detailed statement of the findings and conclusions of the Commission, together with recommendations for such legislation and administrative actions as considered appropriate, and directed that the Commission terminate 90 days after the date it submitted its final report.

§ 12302. Definitions

As used in this chapter:

(1) Commissioner

The term “Commissioner” means the Commissioner of the Administration on Children, Youth, and Families, as established under section 12311 of this title.

(2) Council

The term “Council” means the Federal Council on Children, Youth, and Families, as established under section 12314(a) of this title.

(3) Nonprofit

The term “nonprofit”, as applied to any agency, institution, or organization, means an agency, institution, or organization that is, or

is owned and operated by, one or more corporations or associations, no part of the net earnings of which may lawfully inure to the benefit of any private shareholder or individual.

(4) Secretary

The term “Secretary” means the Secretary of Health and Human Services.

(5) State

The term “State” includes the District of Columbia, the Virgin Islands, Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(6) Young individual

The term “young individual” means any child or youth from birth to 21 years of age.

(Pub. L. 101-501, title IX, §903, Nov. 3, 1990, 104 Stat. 1262.)

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

SUBCHAPTER I—ESTABLISHMENT OF ADMINISTRATION AND AWARDED OF GRANTS FOR PROGRAMS

PART A—ADMINISTRATION ON CHILDREN, YOUTH, AND FAMILIES

§ 12311. Establishment of Administration on Children, Youth, and Families

(a) In general

There is established within the Department of Health and Human Services an Administration on Children, Youth, and Families.

(b) Commissioner

(1) Establishment

(A) In general

The Administration on Children, Youth, and Families, as established under subsection (a) of this section, shall be headed by a Commissioner on Children, Youth, and Families.

(B) Omitted

(2) Appointment

The President, by and with the advice and consent of the Senate, shall appoint the Commissioner.

(Pub. L. 101-501, title IX, §915, Nov. 3, 1990, 104 Stat. 1263.)

CODIFICATION

Section is comprised of section 915 of Pub. L. 101-501. Subsec. (b)(1)(B) of section 915 of Pub. L. 101-501 amended section 5316 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12302 of this title.

§ 12312. Functions of Commissioner

(a) In general

The Commissioner shall—

(1) serve as the effective and visible advocate for children, youth, and families within the Department of Health and Human Services and with other departments, agencies, and instrumentalities of the Federal Government by maintaining active review and commenting responsibilities, as appropriate, concerning Federal policies affecting young individuals, and the families of young individuals;

(2) collect and disseminate information related to the problems of young individuals and the families of such individuals;

(3) assist the Secretary in appropriate matters pertaining to young individuals, and the families of such individuals;

(4) administer the grants authorized under this subchapter;

(5) develop plans and conduct research in the field of young individuals, and the families of such individuals;

(6) assist, to the maximum extent practicable, in the establishment and implementation of programs designed to meet the needs of young individuals for supportive services including—

(A) health and mental health services;

(B) housing and shelter assistance;

(C) education and training services;

(D) protective services;

(E) foster care;

(F) teen parenting support;

(G) child care;

(H) family support and preservation;

(I) teen pregnancy prevention and counseling;

(J) counseling on the effects of violence in the communities of such individuals and their families;

(K) recreational and volunteer opportunities; and

(L) comprehensive early childhood development;

(7) provide technical assistance and consultation to States and the political subdivisions of such States with respect to programs for young individuals;

(8) prepare, publish, and disseminate educational materials concerning the welfare of young individuals;

(9) gather statistics concerning young individuals, and the families of such individuals, that other Federal agencies are not collecting;

(10) to the maximum extent practicable coordinate activities carried out or assisted by all departments, agencies, and instrumentalities of the Federal Government with respect to the collection, preparation, and dissemination of information relevant to young individuals and the families of such individuals;

(11) stimulate more effective uses of existing resources and available services for young individuals and the families of such individuals;

(12) develop basic policies and set priorities with respect to the development and operation of programs and activities conducted under this chapter;

(13) convene conferences of authorities and officials of organizations, including Federal, State, and local agencies, and nonprofit private organizations, of programs for children, youth and their families for the development

and implementation of policies related to the priorities and purposes of this chapter, including topics such as the establishment of a nationwide network of comprehensive, coordinated services and opportunities for such individuals;

(14) conduct periodic evaluations of the programs and activities related to the purposes of this chapter; and

(15) develop, in coordination with other agencies, methods to ensure adequate training for personnel concerning children, youth and families and to ensure the adequate dissemination of such information to appropriate State and community agencies.

(b) Encouragement of volunteerism

In executing the duties and functions of the Administration under this subchapter and in carrying out the programs and activities authorized under this chapter, the Commissioner, in consultation with the Chief Executive Officer of the Corporation for National and Community Service, shall take necessary steps to coordinate with and seek the advice of voluntary agencies and organizations that provide services related to the purposes of this chapter.

(Pub. L. 101-501, title IX, §916, Nov. 3, 1990, 104 Stat. 1263; Pub. L. 103-82, title IV, §405(o), Sept. 21, 1993, 107 Stat. 922.)

AMENDMENTS

1993—Subsec. (b). Pub. L. 103-82 substituted “the Chief Executive Officer of the Corporation for National and Community Service” for “the Director of the ACTION Agency”.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Apr. 4, 1994, see section 406(b) of Pub. L. 103-82, set out as a note under section 8332 of Title 5, Government Organization and Employees.

§ 12313. Federal agency consultations

(a) In general

The Commissioner shall consult and cooperate with the heads of all appropriate Federal agencies or departments administering programs or services that are substantially related to the purposes of this chapter.

(b) Interagency agreements

To the extent practicable, the Commissioner shall facilitate cooperation through the entering into of interagency agreements.

(Pub. L. 101-501, title IX, §917, Nov. 3, 1990, 104 Stat. 1265.)

§ 12314. Federal Council on Children, Youth, and Families

(a) Establishment

There is established a Federal Council on Children, Youth, and Families.

(b) Number of members

The Council shall be composed of 18 members to be appointed in accordance with subsection (d) of this section.

(c) Term of membership

Each member of the Council shall serve for a 3-year term without regard to title 5.

(d) Appointment of members

(1) In general

The Council shall be composed of—

(A) six members who possess¹ such skills and qualifications so as to be representative of—

(i) rural and urban populations; and

(ii) national organizations with an interest in young individuals, families, early childhood development, elementary and secondary education, business, labor, minorities, and the general public;

(B) six members who are representatives of public, State or local agencies that serve children, youth and their families and include representatives of child welfare and child mental health agencies; and

(C) six members who are cabinet-level representatives of Federal agencies that have responsibility for programs relating to children, youth and families.

(2) Age of members

At least one of the individuals appointed to the Council under paragraph (1)(A) shall be under the age of 21 at the time of such appointment.

(3) Appointing authority

Of the members of the Council who are appointed under paragraph (1)—

(A) six of the members described under subparagraphs (A) and (B) shall be appointed by the President pro tempore of the Senate on the recommendation of the Majority and Minority Leaders of the Senate;

(B) six of the members described under subparagraphs (A) and (B) shall be appointed by the Speaker of the House of Representatives on the recommendation of the Majority and Minority Leaders of the House of Representatives; and

(C) the members described under subparagraph (C) shall be appointed by the President.

(e) Vacancy

(1) Filling vacancy

A vacancy on the Council shall be filled in the same manner in which the original appointment was made.

(2) Powers of board²

A vacancy on the Council shall not affect the powers of the Council.

(3) Term of appointment

A member of the Council who is appointed to fill a vacancy occurring prior to the expiration of the term for which the predecessor of such member was appointed shall be appointed only for the remainder of such term.

(f) Reappointment

Each member of the Council shall be eligible for reappointment to the Council.

(g) Expiration of term

Each member of the Council may serve after the expiration of the term of membership until the successor of such member has taken office.

¹ So in original. Probably should be “possess”.

² So in original. Probably should be “Council”.

(h) Travel expenses

Each member of the Council, while serving on business of the Council away from the home or regular place of business of such member, may be allowed subsistence in the same manner as the expenses authorized by section 5703 of title 5 for individuals in the Government service employed intermittently.

(i) Chairperson

The President shall designate the Secretary of Health and Human Services to serve as the Chairperson of the Council. In the event that the Secretary chooses to designate the functions of Chairperson under this subsection, such designation may only be made to the Commissioner.

(j) Meetings

Not less than once during each 6-month period, the Chairperson of the Council shall call a meeting of the Council.

(k) Duties of Council

The Council shall—

(1) advise and assist the President on matters relating to the special needs of young individuals;

(2) review, evaluate, and inventory on a continuing basis Federal policies, programs and other activities affecting young individuals that are conducted or assisted by all Federal departments and agencies for the purpose of appraising the value and the impact of such policies, programs, and activities on the lives of young individuals, and of identifying duplication of services for young individuals and the families of such individuals;

(3) make recommendations to the President, the Secretary, the Commissioner, the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate concerning changes in such policies and programs that can streamline services, reduce duplication of services and encourage the coordination of services provided to young individuals and the families of such individuals at the State and local level;

(4) provide public forums, including public hearings, conferences, workshops, and other meetings, for discussing and publicizing the problems and needs of young individuals and obtaining information relating to such individuals;

(6)³ identify program regulations, practices, and eligibility requirements that impede coordination and collaboration and make recommendations for their modifications or elimination; and

(7) develop recommendations for creating jointly funded programs, unified assessments, eligibility, and application procedures, and confidentiality protections that facilitate information sharing.

(l) Staff

The Chairperson shall appoint staff personnel to assist the Chairperson in carrying out the duties required under subsection (k) of this section.

³So in original. No par. (5) has been enacted.

(m) Information and assistance

The head of each Federal department and agency shall make available to the Chairperson such information and other assistance as the Chairperson may require to carry out the duties required under subsection (k) of this section.

(n) Reports**(1) Submission to the President**

In fiscal year 1992 and each fiscal year thereafter, the Chairperson shall prepare and submit—

(A) interim reports as the Chairperson considers to be appropriate; and

(B) an annual report of the findings and recommendations of the Council concerning the matters described in paragraphs (2) and (3) of subsection (k) of this section;

to the President not later than March 31 of each year.

(2) Review and submission to Congress**(A) Comments and recommendations**

The President may make comments and recommendations concerning reports submitted under paragraph (1).

(B) Submission to Congress

The President shall submit such comments, recommendations, and reports to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate.

(o) Authorization of appropriation

There are authorized to be appropriated to carry out this section \$200,000 for each of the fiscal years 1995 through 1998.

(p) Termination

The Council shall terminate on September 30, 1998.

(Pub. L. 101-501, title IX, §918, Nov. 3, 1990, 104 Stat. 1265; Pub. L. 103-252, title IV, §402(a), May 18, 1994, 108 Stat. 672.)

AMENDMENTS

1994—Subsec. (k)(6), (7). Pub. L. 103-252, §402(a)(1), added pars. (6) and (7).

Subsec. (o). Pub. L. 103-252, §402(a)(2), substituted “1995 through 1998” for “1991 through 1994”.

Subsec. (p). Pub. L. 103-252, §402(a)(3), substituted “1998” for “1995”.

CHANGE OF NAME

Committee on Education and Labor of House of Representatives treated as referring to Committee on Economic and Educational Opportunities of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Economic and Educational Opportunities of House of Representatives changed to Committee on Education and the Workforce of House of Representatives by House Resolution No. 5, One Hundred Fifth Congress, Jan. 7, 1997.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103-7 (in which a report required under subsec. (n)(2)(B) of this section is listed as the

last item on page 18), see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12302 of this title.

§ 12315. Administration

(a) Duties of Commissioner

In carrying out this subchapter, the Commissioner is authorized to—

- (1) provide consultative services, technical assistance, and short-term training to the independent State bodies;
- (2) conduct research and demonstrations;
- (3) collect, prepare, publish, and disseminate special educational or informational materials, including reports of the projects for which funds are provided under this subchapter;
- (4) provide staff and other technical assistance to the Council;
- (5) evaluate the effectiveness of programs authorized under this subchapter and periodically publish analyses of the results of such evaluations; and
- (6) not later than 180 days after the end of each fiscal year, prepare and submit, to the President and the chairman of the Committee on Education and Labor of the House of Representatives and the chairman of the Committee on Labor and Human Resources of the Senate, a report concerning the activities carried out under this subchapter and concerning such other activities as the Secretary determines appropriate.

(b) Utilization of services and facilities

(1) In general

Subject to agreements made between the Commissioner and the head of such agency or organization, in carrying out the duties referred to in subsection (a) of this section the Commissioner may utilize the services and facilities of any agency of the Federal Government and of any other public or nonprofit agency or organizations.¹

(2) Payment

The Commissioner may pay for such services and facilities, in advance or by way of reimbursement, as may be provided in such agreement.

(c) Reservation of funds

Of the aggregate amount appropriated to carry out this chapter in any fiscal year, the Secretary may reserve not more than 10 percent for salaries and expenses of the Administration on Children, Youth, and Families related to the administration of this chapter.

(Pub. L. 101-501, title IX, §919, Nov. 3, 1990, 104 Stat. 1267.)

CHANGE OF NAME

Committee on Education and Labor of House of Representatives treated as referring to Committee on Economic and Educational Opportunities of House of Rep-

¹ So in original. Probably should be "organization."

representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Economic and Educational Opportunities of House of Representatives changed to Committee on Education and the Workforce of House of Representatives by House Resolution No. 5, One Hundred Fifth Congress, Jan. 7, 1997.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12340 of this title.

PART B—GRANTS FOR STATE AND COMMUNITY PROGRAMS FOR CHILDREN, YOUTH, AND FAMILIES

§ 12331. Purpose

It is the purpose of this part to encourage and assist State and local agencies to coordinate resources, reduce barriers to services, and develop new capacities to ensure that State and community services designed to serve children, youth, and families are more effective and comprehensive.

(Pub. L. 101-501, title IX, §925, Nov. 3, 1990, 104 Stat. 1268.)

§ 12332. Definitions

As used in this part:

(1) Community referral services

The term "community referral services" means services to assist families in obtaining community resources, including health care, mental health care, employability development and job training, and other social services.

(2) Core services

The term "core services" means—

- (A) educational and support services provided to assist parents in acquiring parenting skills, learning about child development, and responding appropriately to the behavior of their children; and
- (B) the early developmental screening of children to assess any needs of such children and to identify specific types of support that may be provided;
- (C) outreach services;
- (D) community referral services; and
- (E) follow up services.

(3) Follow up services

The term "follow up services" means services provided to ensure that necessary services are received by families and are effective in meeting their needs.

(4) Independent State body

The term "independent State body" means the entity established under section 12336 of this title.

(5) Lead agency

The term "lead agency" means an existing State agency, or other public or nonprofit private entity designated by the chief executive officer of the State as the agency responsible for the development and implementation of local family resource and support programs. Such agency shall have demonstrated ability to work with other State and community based agencies, to provide training and tech-

nical assistance, and shall also have a commitment to parental participation in the design and administration of family resource and support programs.

(6) Other services

The term “other services” and “other support services” includes—

- (A) child care, early childhood development and intervention programs;
- (B) employability development services (including skill training);
- (C) educational services, such as scholastic tutoring, literacy training, and General Educational Degree (GED) services;
- (D) nutritional education;
- (E) life management skills training;
- (F) peer counseling and crisis intervention, family violence counseling and referrals for such services;
- (G) referral for substance abuse counseling and treatment referral; and
- (H) referral for primary health and mental health services.

(7) Outreach services

The term “outreach services” means services provided to ensure (through home visits or other methods) that parents are aware of and able to participate in family resource and support program activities.

(Pub. L. 101-501, title IX, §926, Nov. 3, 1990, 104 Stat. 1268.)

§ 12333. Establishment of programs

The Commissioner shall make grants—

(1) in each State under section 12337 of this title to improve State planning and coordination of services, and under section 12338 of this title to expand supportive services, in order to promote the availability of developmental, preventive, and remedial services to children, youth and their families that are designed to ensure—

- (A) adequate and safe physical shelter whether in their own homes or, if necessary, in out-of-home programs;
- (B) high quality physical and mental health care;
- (C) the enhancement of the development of children to ensure that children enter school prepared and ready to learn;
- (D) highest quality educational opportunity;
- (E) effective training and apprenticeships to increase the likelihood of employment;
- (F) opportunities for community service and productive employment, and for participation by children and youth in decisions affecting the lives of such children and youth; and
- (G) a wide range of civic, cultural, and recreational activities that recognize young individuals as resources and promote self-esteem and a sense of community; and

(2) to States on a competitive basis under section 12339¹ of this title to establish family resource programs (including family support

centers) in order to enhance the ability of families to remain together and to thrive through the provision of community based services that—

- (A) promote and build family and parenting skills;
- (B) promote and assist families in the use of formal and informal family support services;
- (C) create a support network to strengthen and reinforce good parenting; and
- (D) are closely linked with, but not duplicative of, other community resources.

(Pub. L. 101-501, title IX, §927, Nov. 3, 1990, 104 Stat. 1269.)

REFERENCES IN TEXT

Section 12339 of this title, referred to in par. (2), was repealed by Pub. L. 103-252, title IV, §401(b)(1), May 18, 1994, 108 Stat. 672.

§ 12334. Administration

(a) In general

The Commissioner shall administer programs under this part through the Administration on Children, Youth, and Families.

(b) Technical assistance

In carrying out this part, the Commissioner may request the technical assistance and cooperation of the Secretary of Education, the Secretary of Labor, the Attorney General, the Secretary of Housing and Urban Development, the Secretary of Transportation, the Director of the Office of Community Services, and such other agencies and departments of the Federal Government as may be appropriate.

(Pub. L. 101-501, title IX, §928, Nov. 3, 1990, 104 Stat. 1269.)

§ 12335. State plan

(a) Submission of plan

The chief executive officer of a State, in order to be eligible for grants from an allotment under section 12337, 12338, or 12339¹ of this title for any fiscal year, shall prepare and submit to the Commissioner a State plan for a 3-year period.

(b) Revisions of plan

Each chief executive officer of a State may make annual revisions of the State plan referred to in subsection (a) of this section.

(c) Content of plan

The chief executive officer of a State shall include within the State plan of that State assurances as required under sections² 12337, 12338, or 12339¹ of this title, and a description of the proposed multi-year plans of the State for program development and implementation.

(d) Type of application

A State may apply for funds under one or more of the following categories:

- (1) section 12337 of this title;
- (2) sections 12337 and 12338 of this title jointly; or

¹ See References in Text note below.

² So in original. Probably should be “section”.

¹ See References in Text note below.

(3) section 12339¹ of this title.

In the case of each category, the State application and plan shall comply only with the requirements of the appropriate section.

(e) Approval of plan

(1) In general

The Commissioner shall approve any State plan under sections 12337 and 12338 of this title that the Commissioner determines meets the requirements of such sections.

(2) Notice and opportunity to correct deficiencies

The Commissioner shall not make a final determination disapproving any State plan, modifying such plan, or declaring a State to be ineligible to receive funds under sections 12337 and 12338 of this title without previously affording such State reasonable notice and opportunity to correct deficiencies in its application.

(Pub. L. 101-501, title IX, §929, Nov. 3, 1990, 104 Stat. 1270.)

REFERENCES IN TEXT

Section 12339 of this title, referred to in subsecs. (a), (c), and (d)(3), was repealed by Pub. L. 103-252, title IV, §401(b)(1), May 18, 1994, 108 Stat. 672.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12340 of this title.

§ 12336. Independent State body

(a) Designation

A State shall not be eligible to receive a grant from an allotment under section 12337 or 12338 of this title unless—

(1) the chief executive officer of such State designates an independent State body that is composed of—

(A) cabinet level representatives from each agency of such State that has responsibilities for programs affecting young individuals who shall comprise a majority of the independent State body; and

(B) individuals appointed from among—

(i) private nonprofit providers of services to young individuals;

(ii) advocacy and citizens groups concerned with young individuals;

(iii) committees of the legislature of such State that have responsibility for young individuals;

(iv) leaders who are young individuals, including such leaders who are recipients of services provided under this subchapter;

(v) representatives of the business community;

(vi) representatives of employees of providers of services to young individuals;

(vii) representatives of general purpose local government; and

(viii) such staff as shall be necessary to—

(I) develop a State plan to be submitted to the Commissioner for approval under section 12337 of this title;

(II) administer and monitor the State plan within such State;

(III) assist in the coordination of all State activities related to the purpose of the chapter;

(IV) serve as an effective and visible advocate for young individuals by reviewing and commenting on all State plans, budgets, and policies that affect such individuals and the families of such individuals by providing technical assistance to any agency, organization, association, or individual representing the needs of young individuals; and

(2) the independent State body designated under paragraph (1)—

(A) develops a system for the distribution within the State of funds received under sections 12337 and 12338 of this title by the chief executive officer;

(B) submits a description of such system to the Commissioner for review and comment; and

(C) ensures that preference will be given in such distribution of funds to developing or supporting local service delivery systems that—

(i) provide a range of services organized to tailor responses to needs rather than a predetermined array of services;

(ii) are rooted in and part of the communities that such systems are designed to serve as measured by the degree to which public and private community leaders and young individuals participate in the planning of such systems; and

(iii) demonstrate an ability to develop systematic collaboration among service providers on behalf of children, youth and families, including joint planning, joint financing, joint service delivery, common intake and assessment, and other arrangements that promote more effective service systems for such individuals.

(b) Existing entity

The Commissioner may approve a State plan in which the chief executive officer of the State designates as the independent State body an existing State entity that is comprised of the parties described in subsection (a) of this section and that is authorized to conduct the same range of interagency planning and coordination activities.

(Pub. L. 101-501, title IX, §930, Nov. 3, 1990, 104 Stat. 1270.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12332, 12338 of this title.

§ 12337. State coordination of services

(a) Authority

The Commissioner shall make grants under this section to States on a formula basis for the purpose of improving the coordination of services provided to children, youth, and families.

(b) Application

To be eligible to receive a grant under this section, the chief executive officer of a State shall prepare and submit to the Commissioner

an application containing a plan providing assurances that—

(1) the independent State body is committed to interagency planning that results in state-wide policies promoting systematic collaboration among agencies on behalf of young individuals as demonstrated by joint planning, joint financing, joint service delivery, common intake and assessment, and other arrangements that reduce barriers to services and promote more effective local service delivery systems for young individuals;

(2) such plan will be based on needs as identified through an analysis of updated reports (such as “State of the Child” reports) prepared by the State, including detailed information gathered by the State, to the extent practicable, on young individuals and the families of such individuals concerning—

(A) age, sex, race, and ethnicity;

(B) the residences of such individuals;

(C) the incidence of homelessness among such individuals;

(D) the composition of families of such individuals;

(E) the economic situations of such individuals;

(F) the incidence of poverty among such individuals;

(G) experiences in the care of such individuals away from home;

(H) the health of such individuals;

(I) violence in the homes or communities of such individuals;

(J) the nature of the attachment of such individuals to school and work;

(K) dropout rates of such individuals from school; and

(L) the character of the communities in which such individuals reside;

(3) the system to be used for the distribution of funds within the State will require that—

(A) each area have an equal opportunity to apply for or receive funds under this part; and

(B) the public be given an opportunity to express views concerning the development and administration of such plan;

(4) the independent State body will provide an inventory of existing public and private services for children, youth and their families and will evaluate the need for supportive services within the State to address the purposes of this chapter and determine the extent to which existing public and private programs meet such need;

(5) the independent State body will make such reports, in such form, and containing such information, as the Commissioner may require;

(6) such fiscal control and fund accounting procedures will be adopted as may be necessary to ensure proper disbursement of, and accounting for, Federal funds paid under this part to the chief executive officer of the State, including any such funds paid to the recipients of a grant or contract;

(7) the independent State body will conduct periodic evaluations of activities and projects carried out pursuant to this section and sec-

tion 12338 of this title and will report the results and recommendations to the chief executive officer of the State and the State legislature;

(8) the chief executive officer of the State will provide technical assistance or in-service training opportunities for personnel responsible for carrying out the purposes of this section and section 12338 of this title; and

(9) the chief executive officer of each State will provide for the implementation of the requirements of section 12338 of this title, relating to supportive services.

(c) Use of grants to States

Notwithstanding section 12340(g) of this title, the amounts made available to each State under section 12340(a) of this title may be used to make grants to a State to enable such State to pay such percentages as the independent State body of such State determines to be appropriate, of the cost of administering the State plan of such State including—

(1) the costs of the preparation of such plan and the provision of technical assistance to local areas;

(2) the costs of the evaluation of activities carried out under such plan;

(3) the costs of the collection of data and the carrying out of analyses related to the need for supportive services within the State;

(4) the costs of the dissemination of information obtained under paragraph (3); and

(5) the costs of the provision of short-term training to personnel of public or nonprofit private agencies and organizations engaged in the operation of programs authorized by this part.

(e)¹ Supplement not supplant

Amounts received by a State under this section and section 12338 of this title shall be used only to supplement, not to supplant, the amount of Federal, State, and local funds expended for the purposes for which grants are made under this section and section 12338 of this title. In no event shall such expenditures be used to satisfy the matching requirements of any other Federal program.

(f) Relationship to family resource and support program grants

If a State intends to apply for a grant under section 12339² of this title to be used for the same calendar year as the grant under this section, such State shall include in the application for a grant under this section a description of plans for family resource and support programs and for the coordination of the use of all funds received under this part.

(Pub. L. 101-501, title IX, §931, Nov. 3, 1990, 104 Stat. 1271.)

REFERENCES IN TEXT

Section 12339 of this title, referred to in subsec. (f), was repealed by Pub. L. 103-252, title IV, §401(b)(1), May 18, 1994, 108 Stat. 672.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12333, 12335, 12336, 12338, 12340 of this title.

¹ So in original. No subsec. (d) has been enacted.

² See References in Text note below.

§ 12338. Supportive services**(a) Authority**

The Commissioner shall carry out a program for making grants to a State, that has designated an independent State body under section 12336 of this title and provided for coordinated services under section 12337 of this title, for distribution by the chief executive officer under a State plan approved under section 12337 of this title to demonstrate successful program approaches to fill service gaps identified through State planning and advocacy efforts for any of the areas specified in paragraph (2).

(b) Eligible services

The services eligible to be provided under subsection (a) of this section are services—

(1) that are designed to facilitate the provision of comprehensive community based services that are efficient, coordinated, and readily available through such activities as case planning, case management, intake and assessment, and information and referral; and

(2) that serve any of the following purposes—

(A) provide adequate and safe physical shelter to young individuals and the families of such individuals, especially in emergency circumstances;

(B) provide transitional living services to young individuals who are homeless;

(C) enable young individuals to attain and maintain physical and mental well-being;

(D) provide health screening to detect or prevent illnesses, or both, that occur most frequently in young individuals as well as better treatment and counseling;

(E) enhance the development of children to ensure that such children enter school prepared and ready to learn;

(F) promote the highest quality of educational opportunity, especially through drop-out prevention programs, remediation for young individuals who have dropped out of school, and vocational education;

(G) provide effective training apprenticeships and employment opportunities;

(H) promote participation in community service and civic, cultural, and recreational activities that value young individuals as resources and promote self-esteem and a stake in the community;

(I) promote the participation of young individuals in decisions concerning planning and managing the lives of such individuals;

(J) encourage young individuals and the families of such individuals to use any community facilities and services that are available to such individuals;

(K) ensure that young individuals who are unable to live with the biological families of such individuals have a safe place to live until such individuals can return home or move into independent adult life; and

(L) prevent the abuse, neglect, or exploitation of young individuals.

(Pub. L. 101-501, title IX, §932, Nov. 3, 1990, 104 Stat. 1273.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12333, 12335, 12336, 12337, 12340 of this title.

§ 12339. Repealed. Pub. L. 103-252, title IV, § 401(b)(1), May 18, 1994, 108 Stat. 672

Section, Pub. L. 101-501, title IX, §933, Nov. 3, 1990, 104 Stat. 1274, related to grants to States for purpose of implementing family resource and support programs.

§ 12340. Authorization of appropriation and allotment**(a) Administration on Children, Youth, and Families; State coordination; supportive services****(1) Authorization of appropriations**

There are authorized to be appropriated to carry out sections 12337 and 12338 of this title such sums as may be necessary for each of the fiscal years 1995 through 1998.

(2) Availability of appropriation

Of the amount appropriated under paragraph (1) for any fiscal year—

(A) not more than 10 percent shall be available to carry out section 12315 of this title; and

(B) not less than 90 percent shall be available to carry out sections 12337 and 12338 of this title.

(3) Allotment formula

Except as provided in paragraph (4), from the amount available under paragraph (2)(B) for each fiscal year, a State shall be allotted an amount that bears the same ratio to the amount appropriated for such fiscal year as the population of the State that is under the age of 21 bears to the population of all States that is under the age of 21.

(4) Exceptions**(A) In general**

Except as provided in subparagraph (B) and subject to the availability of appropriations under paragraph (1), no State shall be allotted less than \$300,000 under the formula established under paragraph (3).

(B) Limitation on allotment

Notwithstanding subparagraph (A), Guam, the Virgin Islands, the Trust Territory of the Pacific Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands shall each be allotted not less than \$75,000 under the formula established under paragraph (2).

(b) Determination of age

The number of individuals under the age of 21 in each State shall be determined by the Commissioner on the basis of the most recent data available to the Commissioner.

(c) Transfer of allotted funds

Whenever the Commissioner determines that—

(1) any amount allotted to a State for a fiscal year under section 12337 or 12338 of this title will not be used by such State for carrying out the purpose for which such allotment was made; or

(2) a State has failed to qualify under the State plan required under section 12335 of this title;

the Commissioner shall make such allotment available for carrying out such purposes to

other participating States in a proportional manner based on the relative population of the State of individuals under the age of 21.

(d) Repealed. Pub. L. 103-252, title IV, § 402(b)(2), May 18, 1994, 108 Stat. 673

(e) Limitation

A State shall not use in excess of 10 percent of a grant awarded under section 12338 or 12339¹ of this title for administrative activities at the State level.

(f) Grants for Indians

The Commissioner shall use 1 percent of the amount appropriated under this section for each fiscal year to make allotments to Indian tribes and tribal organizations (such terms having the same meaning given to such terms in section 450b(b) and (c)¹ of title 25) that submit to the Commissioner a plan that meets criteria consistent with the provisions of this part and that comply with other requirements established by the Commissioner.

(g) Limitation

Grants made under this subchapter may be used to pay not more than 80 percent of the cost of—

- (1) the preparation, administration, and evaluation of State plans under section 12337 of this title;
- (2) the development of comprehensive, efficient, coordinated supportive services under section 12338 of this title; and
- (3) the development, expansion, and operation of local family support and resource programs under section 12339¹ of this title.

The remaining 20 percent of such cost shall be paid by the State with funds from non-Federal sources.

(Pub. L. 101-501, title IX, §934, Nov. 3, 1990, 104 Stat. 1277; Pub. L. 103-252, title IV, §402(b), May 18, 1994, 108 Stat. 673.)

REFERENCES IN TEXT

Section 12339 of this title, referred to in subssecs. (e) and (g)(3), was repealed by Pub. L. 103-252, title IV, §401(b)(1), May 18, 1994, 108 Stat. 672.

Section 450b of title 25, referred to in subsec. (f), has been amended, and subssecs. (b) and (c) of section 450b no longer define the terms “Indian tribe” and “tribal organization”. However, such terms are defined elsewhere in that section.

AMENDMENTS

1994—Subsec. (a)(1). Pub. L. 103-252, §402(b)(1), amended par. (1) generally. Prior to amendment, text read as follows: “There are authorized to be appropriated to carry out sections 12315, 12337, and 12338 of this title, \$30,000,000 for fiscal year 1991 and such sums as may be necessary for fiscal years 1992, 1993, and 1994. Funds appropriated under this paragraph shall remain available for expenditure in the fiscal year succeeding the fiscal year for which such funds are appropriated.”

Subsec. (d). Pub. L. 103-252, §402(b)(2), struck out heading and text of subsec. (d). Text read as follows: “There are authorized to be appropriated to carry out section 12339 of this title, \$30,000,000 for fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992 through 1994.”

¹ See References in Text note below.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12337 of this title.

PART C—NATIONAL CLEARINGHOUSE

§ 12351. Findings and purpose

(a) Findings

Congress finds that—

(1) fundamental changes in the demographics and economics of family life in the United States over the past 20 years have had a profound effect on children and their parents;

(2) since 1966, the number of women working outside the home has increased by 92 percent and the number of two earner families has increased by over 50 percent;

(3) 61 percent of the children born today will live in a single-parent family before reaching the age of 20, with one out of every three single female heads of households living on income below the Federal poverty level;

(4) one out of every four children under the age of 6 in the United States currently lives below the Federal poverty level;

(5) over the past 10 years, parents have increasingly come together with other parents to organize family resource and support programs that promote healthy child development and increase parental competency, particularly families at risk; and

(6) Federal investment in promoting the development of family resource and support programs will reap long-term benefits for individual families and the nation as a whole.

(b) Purpose

It is the purpose of this part¹ to—

(1) stimulate the development and expansion of family resource and support programs that are prevention oriented;

(2) encourage early intervention of such programs with families to ameliorate problem situations before such situations become crises; and

(3) assist parents in enhancing their children’s development to ensure that their children enter school prepared and ready to learn.

(Pub. L. 101-501, title IX, §956, Nov. 3, 1990, 104 Stat. 1278.)

REFERENCES IN TEXT

This part, referred to in subsec. (b), was in the original “this Act”, and was translated as reading “this chapter”, meaning chapter 3 (§§955-960) of subtitle A of title IX of Pub. L. 101-501, known as the Family Resources Act, to reflect the probable intent of Congress.

§ 12352. “Family resource and support programs” defined

As used in this part, the term “family resource and support programs” means commu-

¹ See References in Text note below.

nity-based services that offer sustained assistance to families at various stages in their development. Such services shall promote parental competencies and behaviors that will lead to the healthy and positive personal development of parents and children through—

(1) the provision of assistance to build family skills and assist parents in improving their capacities to be supportive and nurturing parents;

(2) the provision of assistance to families to enable such families to use other formal and informal resources and opportunities for assistance that are available within the communities of such families; and

(3) the creation of supportive networks to enhance the childrearing capacity of parents and assist in compensating for the increased social isolation and vulnerability of families.

(Pub. L. 101-501, title IX, §957, Nov. 3, 1990, 104 Stat. 1278.)

§ 12353. Establishment of National Center on Family Resource and Support Programs

(a) Establishment

The Commissioner shall establish, through grant or contract, a national center for the collection and provision of programmatic information and technical assistance that relates to all types of family resource and support programs, to be known as the "National Center on Family Resource and Support Programs".

(b) Functions

The national center established under subsection (a) of this section shall serve as a national information and data clearinghouse, training, technical assistance, and material development source for family resource and support programs. Such center shall—

(1) develop and maintain a system for disseminating information on all types of family resource and support programs and on the state of family resource and support program development, including information concerning the most effective model programs;

(2) develop and sponsor a variety of training institutes and curricula for family resource and support program staff;

(3) identify several programs representing the various types of family resource and support programs to develop technical assistance materials and activities to assist other agencies in establishing family resource and support programs; and

(4) develop State-wide networks of family resource and support programs for the purpose of sharing and disseminating information.

(Pub. L. 101-501, title IX, §958, Nov. 3, 1990, 104 Stat. 1279; Pub. L. 103-252, title IV, §403(a), May 18, 1994, 108 Stat. 673.)

AMENDMENTS

1994—Subsec. (b)(3). Pub. L. 103-252 substituted "several programs" for "several model programs".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12355 of this title.

§ 12354. Evaluation

The Commissioner shall, through grants or contracts awarded or entered into with independent auditors, conduct evaluations and related activities, of family resource and support programs, including—

(1) evaluations of on-going programs;

(2) process evaluations focusing on implementation strategies; and

(3) the development of simple evaluation models for use by local family resource and support programs.

(Pub. L. 101-501, title IX, §959, Nov. 3, 1990, 104 Stat. 1279.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12355 of this title.

§ 12355. Authorization of appropriations

(a) Establishment of Center

To carry out section 12353 of this title, there are authorized to be appropriated \$2,000,000 for each of the fiscal years 1995 through 1998.

(b) Evaluation

To carry out section 12354 of this title, there are authorized to be appropriated \$1,000,000 for fiscal year 1995, and such sums as may be necessary for each of the fiscal years 1996 through 1998.

(Pub. L. 101-501, title IX, §960, Nov. 3, 1990, 104 Stat. 1279; Pub. L. 103-252, title IV, §403(b), May 18, 1994, 108 Stat. 673.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103-252, §403(b)(1), substituted "\$2,000,000 for each of the fiscal years 1995 through 1998" for "\$2,300,000 for fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992 through 1994".

Subsec. (b). Pub. L. 103-252, §403(b)(2), substituted "\$1,000,000 for fiscal year 1995, and such sums as may be necessary for each of the fiscal years 1996 through 1998" for "\$700,000 for fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992 through 1994".

SUBCHAPTER II—WHITE HOUSE CONFERENCE ON CHILDREN, YOUTH, AND FAMILIES

§ 12371. Findings

(a) Findings

The Congress finds that—

(1) children and youth are inherently our most valuable resource and their welfare, protection, healthy development, and positive role in society are essential to the Nation;

(2) children and youth deserve love, respect, and guidance, as well as good health, shelter, food, education, productive work, and preparation for responsible participation in community life;

(3) an increasing opportunity for children and youth to participate in the decisions that affect their lives is essential;

(4) the family is the primary caregiver and the source of social learning which must be supported and strengthened, but when families

are unable to ensure the satisfaction of the needs of children and youth, it is society's responsibility to assist them;

(5) at a minimum, all children and youth need and deserve access to—

(A) the best possible physical and mental health;

(B) adequate and safe physical shelter;

(C) the highest quality of educational opportunity;

(D) effective training, apprenticeships, opportunities for community service, and productive employment;

(E) the widest range of civic, cultural, and recreational activities which recognize young Americans as resources and promote self-esteem and a stake in their communities;

(F) comprehensive community services which are efficient, coordinated, and readily available; and

(G) genuine participation in decisions concerning the planning and managing of their lives; and

(6) there is a great need for a comprehensive national policy with respect to young individuals, designed to engage Federal, State, and local government agencies, youth organizations, and other voluntary organizations.

(b) Statement of policy

It is the policy of the Congress that the Federal Government should work jointly with the States and their citizens to develop recommendations and plans for action to meet the challenge and needs of young individuals.

(Pub. L. 101-501, title IX, §982, Nov. 3, 1990, 104 Stat. 1280.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12372 of this title.

§ 12372. Authority of President and Secretary; final report

(a) Calling of Conference

The President shall call a White House Conference on Children, Youth, and Families in 1993 in order to develop recommendations for further action in the field of children, youth, and families which will further the policy set forth in section 12371(b) of this title. The Conference shall be planned and conducted under the direction of the Secretary in cooperation with the Commissioner and with the heads of such other Federal departments and agencies as are appropriate. Such assistance may include the assignment of personnel.

(b) Purposes of Conference

The purposes of the Conference shall be—

(1) to increase the public awareness of the value and needs of young individuals;

(2) to examine the well-being of young individuals as well as the problems which they face;

(3) to describe the extent to which young individuals with identified needs do not receive services to meet such needs;

(4) to determine the reasons why young individuals are not receiving needed services; and

(5) to develop such specific and comprehensive recommendations for executive and legislative action as may be appropriate to improve the well-being of youth and their families.

(c) Conference participants and delegates

(1) Participants

In order to carry out the purposes of the Conference, the Conference shall bring together—

(A) representatives of Federal, State, and local governments, including representatives of the General Accounting Office;

(B) professionals who are working in the field of children, youth, and families; and

(C) representatives of the general public, particularly young individuals.

(2) Selection of delegates

The delegates to attend the Conference shall be selected without regard to political affiliation or past partisan activity and shall, to the best of the appointing authority's ability, be representative of the spectrum of thought in the field of children, youth, and families.

(Pub. L. 101-501, title IX, §983, Nov. 3, 1990, 104 Stat. 1280.)

§ 12373. Conference administration

(a) Administration

For purposes of carrying out this subchapter, the Secretary shall—

(1) request the cooperation and assistance of the heads of such other Federal departments and agencies as may be appropriate;

(2) furnish all reasonable assistance to State agencies administering programs related to children, youth and families, and to other appropriate organizations, to enable them to organize and conduct conferences in conjunction with the Conference;

(3) prepare and make available for public comment a proposed agenda for the Conference which reflects, to the greatest extent possible, the major issues facing children, youth, and families consistent with subsection (a) of this section;

(4) prepare and make available background materials which the Secretary deems necessary for the use of delegates to the Conference; and

(5) engage such additional personnel as may be necessary to carry out this section without regard to provisions of title 5 governing appointments in the competitive service, and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

(b) Duties

The Secretary shall, in carrying out the Secretary's responsibilities and functions under this section, ensure that—

(1) the conferences under subsection (a)(2) of this section will be conducted so as to ensure broad participation of young individuals;

(2) the proposed agenda for the Conference under subsection (a)(3) of this section is published in the Federal Register not less than 180 days before the beginning of the Conference

and the proposed agenda is open for public comment for a period of not less than 60 days;

(3) the final agenda for the Conference, taking into consideration the comments received under paragraph (2), is published in the Federal Register and transmitted to the chief executive officers of the States not later than 30 days after the close of the public comment period provided for under paragraph (2);

(4) the personnel engaged under subsection (a)(5) of this section shall be fairly balanced in terms of points of views represented and shall be appointed without regard to political affiliation or previous partisan activities;

(5) the recommendations of the Conference are not inappropriately influenced by any appointing authority or by any special interest, but will instead be the result of the independent judgment of the Conference; and

(6) to the extent practicable, current and adequate statistical data (including decennial census data) and other information on the well-being of young individuals in the United States are readily available, in advance of the Conference, to the delegates of the Conference, together with such information as may be necessary to evaluate Federal programs and policies relating to children and youth. In carrying out this subparagraph, the Secretary may make grants to, and enter into contracts with, public agencies and nonprofit private organizations.

(Pub. L. 101-501, title IX, §984, Nov. 3, 1990, 104 Stat. 1281.)

REFERENCES IN TEXT

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (a)(5), are classified generally to section 3301 et seq. of Title 5, Government Organization and Employees.

§ 12374. Conference committees

(a) Advisory committee

The Secretary shall establish an advisory committee to the Conference which shall include representatives from the Federal Council on Children, Youth, and Families, public agencies and nonprofit private organizations as appropriate.

(b) Other committees

The Secretary may establish such other committees, including technical committees, as may be necessary to assist in the planning, conducting, and reviewing of the Conference.

(c) Composition of committees

Each committee established under this section shall be composed of professionals and public members, and shall include individuals from low-income families and from minority groups.

(d) Compensation

Members of any committee established under this section (other than any officers or employees of the Federal Government), while attending conferences or meetings of the committee or otherwise serving at the request of the Secretary, shall be entitled to receive compensation at a rate to be fixed by the Secretary, but not to exceed the daily rate payable for GS-18 of the

General Schedule under section 5332 of title 5 (including travel time). While away from their homes or regular places of business, such members may be allowed travel expenses, including per diem in lieu of subsistence, as authorized under section 5703 of such title for persons employed intermittently in Federal Government service.

(Pub. L. 101-501, title IX, §985, Nov. 3, 1990, 104 Stat. 1282.)

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

§ 12375. Report of Conference

(a) Proposed report

A proposed report of the Conference which shall include a statement of comprehensive coherent national policy on children, youth, and families together with recommendations for the implementation of such policy, shall be published and submitted to the chief executive officers of the States not later than 180 days following the date on which the Conference is adjourned. The findings and recommendations included in the published proposed report shall be available immediately to the public.

(b) Response to proposed report

The chief executive officers of the States, after reviewing and soliciting recommendations and comments on the proposed report of the Conference, shall submit to the Secretary, not later than 180 days after receiving such report, their views and findings on the recommendations of the Conference.

(c) Final report

Not later than 180 days after submission of the views and comments of the chief executive officers of the States, the Secretary shall—

(1) prepare a final report on the conference, which shall include—

(A) a statement of the policy and recommendations of the Conference;

(B) the views and comments of the chief executive officers of the States; and

(C) the recommendations of the Secretary, after taking into consideration the views and comments of such officers, for administrative and legislative action necessary to implement the recommendations of the Conference; and

(2) publish and transmit such report to the President and the chairman of the Committee on Education and Labor of the House of Representatives and chairman of the Committee on Labor and Human Resources of the Senate.

(Pub. L. 101-501, title IX, §986, Nov. 3, 1990, 104 Stat. 1282.)

CHANGE OF NAME

Committee on Education and Labor of House of Representatives treated as referring to Committee on Economic and Educational Opportunities of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Economic and Educational Opportunities of House of Representatives changed to Committee on Education and the Workforce of House of Representatives by House Resolution No. 5, One Hundred Fifth Congress, Jan. 7, 1997.

§ 12376. Definitions

For purposes of this subchapter—

(1) the term “Conference” means the 1993 White House Conference on Children, Youth, and Families; and

(2) the terms “child”, “youth”, and “young individual” means¹ an individual who is less than 21 years of age.

(Pub. L. 101-501, title IX, §987, Nov. 3, 1990, 104 Stat. 1283.)

§ 12377. Authorization of appropriations

(a) Authorization

There are authorized to be appropriated such sums as may be necessary, for each of the fiscal years 1993 and 1994, to carry out this subchapter. Sums appropriated under this subsection shall remain available until the expiration of the 1-year period beginning on the date the Conference is adjourned. New spending authority or authority to enter into contracts as provided in this subchapter shall be effective only to the extent and in such amounts as are provided in advance in appropriations Acts.

(b) Return of unexpended funds

Any funds remaining upon the expiration of the 1-year period referred to in subsection (a) of this section shall be returned to the Treasury of the United States and credited as miscellaneous receipts.

(Pub. L. 101-501, title IX, §988, Nov. 3, 1990, 104 Stat. 1283.)

CHAPTER 128—HYDROGEN RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROGRAM

Sec.

- 12401. Finding, purposes, and definitions.
 - (a) Finding.
 - (b) Purposes.
 - (c) Definitions.
- 12402. Report to Congress.
- 12403. Hydrogen research and development.
 - (a) Program.
 - (b) Research.
 - (c) Innovative energy technologies.
 - (d) Renewable energy systems; hybrid systems.

¹ So in original. Probably should be “mean”.

Sec.

- (e) Information.
- (f) Federal funding.
- (g) Non-Federal funding.
- (h) Prohibition on duplicative efforts.
- (i) Federal funding consistent with the Agreement on Subsidies and Countervailing Measures.
- 12404. Demonstrations.
 - (a) Requirement.
 - (b) Small-scale demonstrations.
 - (c) Non-Federal funding.
- 12405. Technology transfer program.
 - (a) Program.
 - (b) Information.
- 12406. Coordination and consultation.
 - (a) Secretary’s responsibility.
 - (b) Assistance.
 - (c) Consultation.
- 12407. Technical panel.
 - (a) Establishment.
 - (b) Membership.
 - (c) Cooperation.
 - (d) Review.
 - (e) Support.
- 12408. Authorization of appropriations.

§ 12401. Finding, purposes, and definitions

(a) Finding

Congress finds that it is in the national interest to accelerate efforts to develop a domestic capability to economically produce hydrogen in quantities that will make a significant contribution toward reducing the Nation’s dependence on conventional fuels.

(b) Purposes

The purposes of this chapter are—

(1) to direct the Secretary of Energy to conduct a research, development, and demonstration program leading to the production, storage, transport, and use of hydrogen for industrial, residential, transportation, and utility applications;

(2) to direct the Secretary to develop a technology assessment and information transfer program among the Federal agencies and aerospace, transportation, energy, and other entities; and

(3) to develop renewable energy resources as a primary source of energy for the production of hydrogen.

(c) Definitions

As used in this chapter, the term:

(1) “critical technology” (or “critical technical issue”) means a technology (or issue) that, in the opinion of the Secretary, requires understanding and development in order to take the next needed step in the development of hydrogen as an economic fuel or storage medium;

(2) “Department” means the Department of Energy; and

(3) “Secretary” means the Secretary of Energy.

(Pub. L. 101-566, §102, Nov. 15, 1990, 104 Stat. 2797; Pub. L. 104-271, title I, §101, Oct. 9, 1996, 110 Stat. 3304.)

AMENDMENTS

1996—Subsec. (b)(1). Pub. L. 104-271, §101(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “to direct the Secretary to prepare a compre-

hensive 5-year comprehensive program management plan that will identify and resolve critical technical issues necessary for the realization of a domestic capability to produce, distribute, and use hydrogen economically within the shortest time practicable.”

Subsec. (c). Pub. L. 104-271, §101(b), added par. (2) and redesignated former par. (2) as (3).

SHORT TITLE OF 1996 AMENDMENT

Section 1 of Pub. L. 104-271 provided that: “This Act [enacting section 7238 of this title, amending this section and sections 12402 to 12405, 12407, 12408, and 13436 of this title, and enacting provisions set out as notes under sections 7238, 12403, and 13436 of this title] may be cited as the ‘Hydrogen Future Act of 1996’.”

SHORT TITLE

Section 101 of Pub. L. 101-566 provided that: “This Act [enacting this chapter] may be referred to as the ‘Spark M. Matsunaga Hydrogen Research, Development, and Demonstration Act of 1990’.”

§ 12402. Report to Congress

(a) Not later than January 1, 1999, the Secretary shall transmit to Congress a detailed report on the status and progress of the programs authorized under this chapter.

(b) A report under subsection (a) of this section shall include, in addition to any views and recommendations of the Secretary—

(1) an analysis of the effectiveness of the programs authorized under this chapter, to be prepared and submitted to the Secretary by the Hydrogen Technical Advisory Panel established under section 12407 of this title; and

(2) recommendations of the Hydrogen Technical Advisory Panel for any improvements in the program that are needed, including recommendations for additional legislation.

(Pub. L. 101-566, §103, Nov. 15, 1990, 104 Stat. 2797; Pub. L. 104-271, title I, §102(a), Oct. 9, 1996, 110 Stat. 3304.)

AMENDMENTS

1996—Pub. L. 104-271 amended section generally, substituting provisions requiring report to Congress on chapter programs by Jan. 1, 1999, for provisions regarding preparation and contents of comprehensive 5-year program management plan for research and development activities and comprehensive large-scale hydrogen demonstration plan with respect to section 12404 demonstrations.

§ 12403. Hydrogen research and development

(a) Program

The Secretary shall conduct a hydrogen research and development program relating to production, storage, transportation, and use of hydrogen, with the goal of enabling the private sector to demonstrate the technical feasibility of using hydrogen for industrial, residential, transportation, and utility applications.

(b) Research

In conducting the program authorized by this section, the Secretary shall—

(1) give particular attention to developing an understanding and resolution of critical technical issues preventing the introduction of hydrogen into the marketplace;

(2) initiate or accelerate existing research in critical technical issues that will contribute to the development of more economic hydro-

gen production and use, including, but not limited to, critical technical issues with respect to production (giving priority to those production techniques that use renewable energy resources as their primary source of energy for hydrogen production), liquefaction, transmission, distribution, storage, and use (including use of hydrogen in surface transportation); and

(3) survey private sector hydrogen activities and take steps to ensure that research and development activities under this section do not displace or compete with the privately funded hydrogen research and development activities of United States industry.

(c) Innovative energy technologies

The Secretary is authorized to evaluate any reasonable new or improved technology, including basic research on highly innovative energy technologies, that could lead or contribute to the development of economic hydrogen production, storage, and utilization.

(d) Renewable energy systems; hybrid systems

The Secretary is authorized to evaluate any reasonable new or improved technology that could lead or contribute to, or demonstrate the use of, advanced renewable energy systems or hybrid systems for use in isolated communities that currently import diesel fuel as the primary fuel for electric power production.

(e) Information

The Secretary is authorized to arrange for tests and demonstrations and to disseminate to researchers and developers information, data, and other materials necessary to support the research and development activities authorized under this section and other efforts authorized under this chapter, consistent with section 12405 of this title.

(f) Federal funding

The Secretary shall carry out the research and development activities authorized under this section only through the funding of research and development proposals submitted by interested persons according to such procedures as the Secretary may require and evaluate on a competitive basis using peer review. Such funding shall be in the form of a grant agreement, procurement contract, or cooperative agreement (as those terms are used in chapter 63 of title 31).

(g) Non-Federal funding

The Secretary shall not consider a proposal submitted by a person from industry unless the proposal contains a certification that reasonable efforts to obtain non-Federal funding for the entire cost of the project have been made, and that such non-Federal funding could not be reasonably obtained. As appropriate, the Secretary shall require a commitment from non-Federal sources of at least 50 percent of the cost of the development portion of such a proposal.

(h) Prohibition on duplicative efforts

The Secretary shall not carry out any activities under this section that unnecessarily duplicate activities carried out elsewhere by the Federal Government or industry.

(i) Federal funding consistent with the Agreement on Subsidies and Countervailing Measures

The Secretary shall establish, after consultation with other Federal agencies, terms and conditions under which Federal funding will be provided under this chapter that are consistent with the Agreement on Subsidies and Countervailing Measures referred to in section 3511(d)(12) of title 19.

(Pub. L. 101-566, §104, Nov. 15, 1990, 104 Stat. 2798; Pub. L. 104-271, title I, §103(a), Oct. 9, 1996, 110 Stat. 3305.)

AMENDMENTS

1996—Pub. L. 104-271 amended section generally, substituting present provisions for provisions which stated in subsec. (a) the Secretary was to conduct a research and development program for development of a domestic hydrogen fuel production capability; subsec. (b) attention was to be given to research of critical technical issues; subsec. (c) renewable energy priority; subsec. (d) new technologies; and subsec. (e) gathering and dissemination of information to support research and development efforts.

FUEL CELLS

Title II of Pub. L. 104-271 provided that:

“SEC. 201. INTEGRATION OF FUEL CELLS WITH HYDROGEN PRODUCTION SYSTEMS.

“(a) Not later than 180 days after the date of enactment of this section [Oct. 9, 1996], and subject to the availability of appropriations made specifically for this section, the Secretary of Energy shall solicit proposals for projects to prove the feasibility of integrating fuel cells with—

“(1) photovoltaic systems for hydrogen production; or

“(2) systems for hydrogen production from solid waste via gasification or steam reforming.

“(b) Each proposal submitted in response to the solicitation under this section shall be evaluated on a competitive basis [sic] using peer review. The Secretary is not required to make an award under this section in the absence of a meritorious proposal. [sic]

“(c) The Secretary shall give preference, in making an award under this section, to proposals that—

“(1) are submitted jointly from consortia including academic institutions, industry, State or local governments, and Federal laboratories; and

“(2) reflect proven experience and capability with technologies relevant to the systems described in subsections (a)(1) and (a)(2).

“(d) In the case of a proposal involving development or demonstration, the Secretary shall require a commitment from non-Federal sources of at least 50 percent of the cost of the development or demonstration portion of the proposal.

“(e) The Secretary shall establish, after consultation with other Federal agencies, terms and conditions under which Federal funding will be provided under this title that are consistent with the Agreement on Subsidies and Countervailing Measures referred to in section 101(d)(12) of the Uruguay Round Agreement Act (19 U.S.C. 3511(d)(12)).

“SEC. 202. AUTHORIZATION OF APPROPRIATIONS.

“There are authorized to be appropriated, for activities under this section [title], a total of \$50,000,000 for fiscal years 1997 and 1998, to remain available until September 30, 1999.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12404 of this title.

§ 12404. Demonstrations

(a) Requirement

The Secretary shall conduct demonstrations of critical technologies, preferably in self-contained locations, so that technical and non-technical parameters can be evaluated to best determine commercial applicability of the technology.

(b) Small-scale demonstrations

Concurrently with activities conducted pursuant to section 12403 of this title, the Secretary shall conduct small-scale demonstrations of hydrogen technology at self-contained sites.

(c) Non-Federal funding

The Secretary shall require a commitment from non-Federal sources of at least 50 percent of the cost of any demonstration conducted under this section.

(Pub. L. 101-566, §105, Nov. 15, 1990, 104 Stat. 2799; Pub. L. 104-271, title I, §104, Oct. 9, 1996, 110 Stat. 3306.)

AMENDMENTS

1996—Subsec. (c). Pub. L. 104-271 added subsec. (c).

§ 12405. Technology transfer program

(a) Program

The Secretary shall conduct a program designed to accelerate wider application of hydrogen production, storage, utilization, and other technologies available in near term as a result of aerospace experience as well as other research progress by transferring critical technologies to the private sector. The Secretary shall direct the program with the advice and assistance of the Hydrogen Technical Advisory Panel established under section 12407 of this title. The objective in seeking this advice is to increase participation of private industry in the demonstration of near commercial applications through cooperative research and development arrangements, joint ventures or other appropriate arrangements involving the private sector.

(b) Information

The Secretary, in carrying out the program authorized by subsection (a) of this section, shall—

(1) undertake an inventory and assessment of hydrogen technologies and their commercial capability to economically produce, store, or utilize hydrogen in aerospace, transportation, electric utilities, petrochemical, chemical, merchant hydrogen, and other industrial sectors; and

(2) develop a National Aeronautics Space Administration, Department of Energy, and industry information exchange program to improve technology transfer for—

(A) application of aerospace experience by industry;

(B) application of research progress by industry and aerospace;

(C) application of commercial capability of industry by aerospace; and

(D) expression of industrial needs to research organizations.

The information exchange program may consist of workshops, publications, conferences, and a

data base for the use by the public and private sectors. The Secretary shall also foster the exchange of generic, nonproprietary information and technology, developed pursuant to this chapter, among industry, academia, and the Federal Government, to help the United States economy attain the economic benefits of this information and technology.

(Pub. L. 101-566, §106, Nov. 15, 1990, 104 Stat. 2799; Pub. L. 104-271, title I, §105, Oct. 9, 1996, 110 Stat. 3306.)

AMENDMENTS

1996—Subsec. (b). Pub. L. 104-271 inserted at end “The Secretary shall also foster the exchange of generic, nonproprietary information and technology, developed pursuant to this chapter, among industry, academia, and the Federal Government, to help the United States economy attain the economic benefits of this information and technology.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12403 of this title.

§ 12406. Coordination and consultation

(a) Secretary's responsibility

The Secretary shall have overall management responsibility for carrying out programs under this chapter. In carrying out such programs, the Secretary, consistent with such overall management responsibility—

(1) shall use the expertise of the National Aeronautics and Space Administration and the Department of Transportation; and

(2) may use the expertise of any other Federal agency in accordance with subsection (b) of this section in carrying out any activities under this chapter,¹ to the extent that the Secretary determines that any such agency has capabilities which would allow such agency to contribute to the purpose of this chapter.

(b) Assistance

The Secretary may, in accordance with subsection (a) of this section, obtain the assistance of any department, agency, or instrumentality of the Executive branch of the Federal Government upon written request, on a reimbursable basis or otherwise and with the consent of such department, agency, or instrumentality. Each such request shall identify the assistance the Secretary deems necessary to carry out any duty under this chapter.

(c) Consultation

The Secretary shall consult with the Administrator of the National Aeronautics and Space Administration, the Administrator of the Environmental Protection Agency, the Secretary of Transportation, and the Hydrogen Technical Advisory Panel established under section 12407 of this title in carrying out his authorities pursuant to this chapter.

(Pub. L. 101-566, §107, Nov. 15, 1990, 104 Stat. 2800.)

REFERENCES IN TEXT

This chapter, the first time appearing in subsec. (a)(2), was in the original “this title”, and was trans-

¹ See References in Text note below.

lated as reading “this Act” meaning Pub. L. 101-566, to reflect the probable intent of Congress, because Pub. L. 101-566 is not divided into titles.

§ 12407. Technical panel

(a) Establishment

There is hereby established the Hydrogen Technical Advisory Panel (the “technical panel”), to advise the Secretary on the programs under this chapter.

(b) Membership

The technical panel shall be appointed by the Secretary and shall be comprised of such representatives from domestic industry, universities, professional societies, Government laboratories, financial, environmental, and other organizations as the Secretary deems appropriate based on his assessment of the technical and other qualifications of such representatives. Appointments to the technical panel shall be made within 90 days after November 15, 1990. The technical panel shall have a chairman, who shall be elected by the members from among their number.

(c) Cooperation

The heads of the departments, agencies, and instrumentalities of the Executive branch of the Federal Government shall cooperate with the technical panel in carrying out the requirements of this section and shall furnish to the technical panel such information as the technical panel deems necessary to carry out this section.

(d) Review

The technical panel shall review and make any necessary recommendations to the Secretary on the following items—

(1) the implementation and conduct of programs under this chapter; and

(2) the economic, technological, and environmental consequences of the deployment of hydrogen production and use systems.

(e) Support

The Secretary shall provide such staff, funds and other support as may be necessary to enable the technical panel to carry out the functions described in this section.

(Pub. L. 101-566, §108, Nov. 15, 1990, 104 Stat. 2800; Pub. L. 104-271, title I, §102(b), Oct. 9, 1996, 110 Stat. 3305.)

AMENDMENTS

1996—Subsec. (d)(3). Pub. L. 104-271 struck out par. (3) which read as follows: “comments on and recommendations for improvements in the comprehensive 5-year program management plan required under section 12402 of this title.”

TERMINATION OF ADVISORY PANELS

Advisory panels established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a panel established by the President or an officer of the Federal Government, such panel is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a panel established by Congress, its duration is otherwise provided for by law. See sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12402, 12405, 12406 of this title.

§ 12408. Authorization of appropriations

There is hereby authorized to be appropriated to carry out the purposes of this chapter (in addition to any amounts made available for such purposes under other Acts)—

- (1) \$3,000,000 for the fiscal year 1992;
- (2) \$7,000,000 for the fiscal year 1993;
- (3) \$10,000,000 for the fiscal year 1994;
- (4) \$14,500,000 for fiscal year 1996;
- (5) \$20,000,000 for fiscal year 1997;
- (6) \$25,000,000 for fiscal year 1998;
- (7) \$30,000,000 for fiscal year 1999;
- (8) \$35,000,000 for fiscal year 2000; and
- (9) \$40,000,000 for fiscal year 2001.

(Pub. L. 101-566, §109, Nov. 15, 1990, 104 Stat. 2801; Pub. L. 104-271, title I, §106, Oct. 9, 1996, 110 Stat. 3306.)

AMENDMENTS

1996—Pub. L. 104-271 substituted “under other Acts” for “to other Acts” in introductory provisions and added pars. (4) to (9).

CHAPTER 129—NATIONAL AND COMMUNITY SERVICE

Sec.

- 12501. Findings and purpose.
 - (a) Findings.
 - (b) Purpose.

SUBCHAPTER I—NATIONAL AND COMMUNITY SERVICE STATE GRANT PROGRAM

Division A—General Provisions

- 12511. Definitions.
- 12512. Repealed.

Division B—School-Based and Community-Based Service-Learning Programs

PART I—SERVE-AMERICA PROGRAMS

SUBPART A—SCHOOL-BASED PROGRAMS FOR STUDENTS

- 12521. Authority to assist States and Indian tribes.
 - (a) Use of funds.
 - (b) Duties of service-learning coordinator.
 - (c) Related expenses.
- 12522. Authority to assist local applicants in nonparticipating States.
- 12523. Authority to assist public or private nonprofit organizations.
 - (a) In general.
 - (b) Use of funds.
- 12524. Grants and allotments.
 - (a) Indian tribes and territories.
 - (b) Grants and allotments through States.
 - (c) Reallotment.
 - (d) Exception.
- 12525. State or tribal applications.
 - (a) Submission.
 - (b) Contents.
- 12526. Local applications.
 - (a) Application to Corporation to make grants for school-based service-learning programs.
 - (b) Direct application to Corporation to carry out school-based service-learning programs in nonparticipating States.
 - (c) Application to State or Indian tribe to receive assistance to carry out school-based service-learning programs.

Sec.

- (d) Regulations.
 - (e) Limitation on same project in multiple applications.
 - 12527. Consideration of applications.
 - (a) Criteria for applications.
 - (b) Priority for local applications.
 - (c) Rejection of applications.
 - 12528. Participation of students and teachers from private schools.
 - (a) In general.
 - (b) Waiver.
 - 12529. Federal, State, and local contributions.
 - (a) Share.
 - (b) Waiver.
 - 12530. Limitations on uses of funds.
 - (a) Administrative costs.
 - (b) Capacity-building activities.
 - (c) Local uses of funds.
 - 12531. Definitions.
- SUBPART B—COMMUNITY-BASED SERVICE PROGRAMS FOR SCHOOL-AGE YOUTH
- 12541. Definitions.
 - 12542. General authority.
 - (a) Grants.
 - (b) Use of funds.
 - 12543. State applications.
 - (a) In general.
 - (b) Submission.
 - (c) Contents.
 - 12544. Local applications.
 - (a) Application to Corporation to make grants for community-based service programs.
 - (b) Direct application to Corporation to carry out community-based service programs.
 - (c) Application to State Commission or grantmaking entity to receive grants to carry out community-based service programs.
 - (d) Regulations.
 - (e) Limitation on same project in multiple applications.
 - 12545. Consideration of applications.
 - (a) Application of criteria.
 - (b) Assistance criteria.
 - (c) Application to subgrants.
 - 12546. Federal, State, and local contributions.
 - (a) Federal share.
 - (b) Waiver.
 - 12547. Limitations on uses of funds.
 - (a) Administrative costs.
 - (b) Rules on use.
- SUBPART C—CLEARINGHOUSE
- 12551. Service-learning clearinghouse.
 - (a) In general.
 - (b) Public or private nonprofit organizations.
 - (c) Function of clearinghouse.
- PART II—HIGHER EDUCATION INNOVATIVE PROGRAMS FOR COMMUNITY SERVICE
- 12561. Higher education innovative programs for community service.
 - (a) Purpose.
 - (b) General authority.
 - (c) Federal share.
 - (d) Application for grant.
 - (e) Priority.
 - (f) National service educational award.
 - (g) “Student” defined.
- Division C—National Service Trust Program
- PART I—INVESTMENT IN NATIONAL SERVICE
- 12571. Authority to provide assistance and approved national service positions.

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|--------|--|--|--|
| Sec. | <ul style="list-style-type: none"> (a) Provision of assistance. (b) Agreements with Federal agencies. (c) Provision of approved national service positions. (d) Five percent limitation on administrative costs. (e) Matching funds requirements. | Sec. | <ul style="list-style-type: none"> (e) Emphasis on areas most in need. (f) Rejection of State applications. |
| 12572. | Types of national service programs eligible for program assistance. <ul style="list-style-type: none"> (a) Eligible national service programs. (b) Qualification criteria to determine eligibility. (c) National service priorities. | PART III—NATIONAL SERVICE PARTICIPANTS | |
| 12573. | Types of national service positions eligible for approval for national service educational awards. | 12591. | Description of participants. <ul style="list-style-type: none"> (a) In general. (b) Special rules for certain youth programs. (c) Waiver. |
| 12574. | Types of program assistance. <ul style="list-style-type: none"> (a) Planning assistance. (b) Operational assistance. (c) Replication assistance. (d) Application to subgrants. | 12592. | Selection of national service participants. <ul style="list-style-type: none"> (a) Selection process. (b) Nondiscrimination and nonpolitical selection of participants. (c) Second term. (d) Recruitment and placement. (e) National leadership pool. (f) Evaluation of service. |
| 12575. | Training and technical assistance. <ul style="list-style-type: none"> (a) Training programs. (b) Technical assistance. | 12593. | Terms of service. <ul style="list-style-type: none"> (a) In general. (b) Term of service. (c) Release from completing term of service. |
| 12576. | Other special assistance. <ul style="list-style-type: none"> (a) Support for State Commissions. (b) Disaster service. (c) Challenge grants for national service programs. | 12594. | Living allowances for national service participants. <ul style="list-style-type: none"> (a) Provision of living allowance. (b) Coverage of certain employment-related taxes. (c) Exception from maximum living allowance for certain assistance. (d) Health insurance. (e) Child care. (f) Individualized support services. (g) Waiver of limitation on Federal share. (h) Limitation on number of terms of service for federally subsidized living allowance. |
| | PART II—APPLICATION AND APPROVAL PROCESS | | |
| 12581. | Provision of assistance and approved national service positions by competitive and other means. <ul style="list-style-type: none"> (a) Allotments of assistance and approved positions to States and Indian tribes. (b) Reservation of approved positions. (c) Reservation for special assistance. (d) Competitive distribution of remaining funds. (e) Application required. (f) Approval of positions subject to available funds. (g) Sponsorship of approved national service positions. | 12595. | National service educational awards. <ul style="list-style-type: none"> (a) Eligibility generally. (b) Special rule for VISTA volunteers. |
| 12582. | Application for assistance and approved national service positions. <ul style="list-style-type: none"> (a) Time, manner, and content of application. (b) Types of permissible application information. (c) Required application information. (d) Application to receive only approved national service positions. (e) Special rule for State applicants. (f) Special rule for certain applicants. (g) Limitation on same project in multiple applications. | | Division D—National Service Trust and Provision of National Service Educational Awards |
| 12583. | National service program assistance requirements. <ul style="list-style-type: none"> (a) Impact on communities. (b) Impact on participants. (c) Consultation. (d) Evaluation and performance goals. (e) Living allowances and other inservice benefits. (f) Selection of participants from individuals recruited by Corporation or State Commissions. | 12601. | Establishment of the National Service Trust. <ul style="list-style-type: none"> (a) Establishment. (b) Investment of Trust. (c) Expenditures from Trust. (d) Reports to Congress on receipts and expenditures. |
| 12584. | Ineligible service categories. <ul style="list-style-type: none"> (a) In general. (b) Regional Corporation. | 12602. | Individuals eligible to receive a national service educational award from the Trust. <ul style="list-style-type: none"> (a) Eligible individuals. (b) Term of service. (c) Limitation on number of terms of service for awards. (d) Time for use of educational award. (e) Suspension of eligibility for drug-related offenses. (f) Authority to establish demonstration programs. |
| 12585. | Consideration of applications. <ul style="list-style-type: none"> (a) Corporation consideration of certain criteria. (b) Application to subgrants. (c) Assistance criteria. (d) Other considerations. | 12603. | Determination of amount of national service educational award. <ul style="list-style-type: none"> (a) Amount for full-time national service. (b) Amount for part-time national service. (c) Award for partial completion of service. |
| | | 12604. | Disbursement of national service educational awards. <ul style="list-style-type: none"> (a) In general. (b) Use of educational award to repay outstanding student loans. (c) Use of educational awards to pay current educational expenses. (d) Use of educational award to participate in approved school-to-work programs. (e) Interest payments during forbearance on loan repayment. |

<p>Sec.</p> <p>(f) Exception.</p> <p>(g) "Institution of higher education" defined.</p> <p>12605. Process of approval of national service positions.</p> <p>(a) Definitions.</p> <p>(b) Timing and recording requirements.</p> <p>(c) Reserve account.</p> <p>(d) Audits.</p> <p>(e) Availability of amounts.</p> <p>Division E—Civilian Community Corps</p> <p>12611. Purpose.</p> <p>12612. Establishment of Civilian Community Corps Demonstration Program.</p> <p>(a) In general.</p> <p>(b) Program components.</p> <p>(c) Residential programs.</p> <p>12613. National service program.</p> <p>(a) In general.</p> <p>(b) Eligible participants.</p> <p>(c) Diverse backgrounds of participants.</p> <p>(d) Necessary participants.</p> <p>(e) Period of participation.</p> <p>12614. Summer national service program.</p> <p>(a) In general.</p> <p>(b) Necessary participants.</p> <p>(c) Seasonal program.</p> <p>12615. Civilian Community Corps.</p> <p>(a) Director.</p> <p>(b) Membership in Civilian Community Corps.</p> <p>(c) Organization of Corps into units.</p> <p>(d) Camps.</p> <p>(e) Distribution of units and camps.</p> <p>(f) Standards of conduct.</p> <p>12616. Training.</p> <p>(a) Common curriculum.</p> <p>(b) Advanced service training.</p> <p>(c) Training personnel.</p> <p>(d) Facilities.</p> <p>12617. Service projects.</p> <p>(a) Project requirements.</p> <p>(b) Project proposals.</p> <p>(c) Project selection, organization, and performance.</p> <p>12618. Authorized benefits for Corps members.</p> <p>(a) In general.</p> <p>(b) Living allowance.</p> <p>(c) Other authorized benefits.</p> <p>(d) Supportive services.</p> <p>(e) Post-service benefits.</p> <p>(f) National service educational awards.</p> <p>(g) Alternative benefit.</p> <p>12619. Administrative provisions.</p> <p>(a) Supervision.</p> <p>(b) Monitoring and coordination.</p> <p>(c) Staff.</p> <p>12620. Status of Corps members and Corps personnel under Federal law.</p> <p>(a) In general.</p> <p>(b) Work-related injuries.</p> <p>(c) Tort claims procedure.</p> <p>12621. Contract and grant authority.</p> <p>(a) Programs.</p> <p>(b) Equipment and facilities.</p> <p>12622. Responsibilities of other departments.</p> <p>(a) Secretary of Defense.</p> <p>(b) Secretary of Labor.</p> <p>12623. Advisory Board.</p> <p>(a) Establishment and purpose.</p> <p>(b) Membership.</p> <p>(c) Inapplicability of termination requirement.</p> <p>12624. Annual evaluation.</p> <p>12625. Funding limitation.</p> <p>12626. Definitions.</p> <p>Division F—Administrative Provisions</p> <p>12631. Family and medical leave.</p>	<p>Sec.</p> <p>(a) Participants in private, State, and local projects.</p> <p>(b) Participants in Federal projects.</p> <p>(c) Treatment of absence.</p> <p>12632. Reports.</p> <p>(a) State reports.</p> <p>(b) Report to Congress by Corporation.</p> <p>(c) Report to Congress by Secretary of Defense.</p> <p>12633. Supplementation.</p> <p>(a) In general.</p> <p>(b) Aggregate expenditure.</p> <p>12634. Prohibition on use of funds.</p> <p>(a) Prohibited uses.</p> <p>(b) Political activity.</p> <p>(c) Contracts or collective bargaining agreements.</p> <p>12635. Nondiscrimination.</p> <p>(a) In general.</p> <p>(b) Federal financial assistance.</p> <p>(c) Religious discrimination.</p> <p>(d) Rules and regulations.</p> <p>12636. Notice, hearing, and grievance procedures.</p> <p>(a) In general.</p> <p>(b) Hearings.</p> <p>(c) Transcript or recording.</p> <p>(d) State legislation.</p> <p>(e) Construction.</p> <p>(f) Grievance procedure.</p> <p>12637. Nonduplication and nondisplacement.</p> <p>(a) Nonduplication.</p> <p>(b) Nondisplacement.</p> <p>(c) Labor market information.</p> <p>(d) Treatment of benefits.</p> <p>(e) Standards of conduct.</p> <p>12638. State Commissions on National and Community Service.</p> <p>(a) Existence required.</p> <p>(b) Appointment and size.</p> <p>(c) Composition and membership.</p> <p>(d) Miscellaneous matters.</p> <p>(e) Duties of a State Commission.</p> <p>(f) Activity ineligible for assistance.</p> <p>(g) Delegation.</p> <p>(h) Approval of State Commission or alternative.</p> <p>(i) Coordination.</p> <p>(j) Liability.</p> <p>12639. Evaluation.</p> <p>(a) In general.</p> <p>(b) Comparisons.</p> <p>(c) Conducting evaluations.</p> <p>(d) Standards.</p> <p>(e) Community participation.</p> <p>(f) Comparison of program models.</p> <p>(g) Program objectives.</p> <p>(h) Obtaining information.</p> <p>(i) Independent evaluation and report of demographics of national service participants and communities.</p> <p>12640. Engagement of participants.</p> <p>12641. Contingent extension.</p> <p>12642. Partnerships with schools.</p> <p>(a) Design of programs.</p> <p>(b) Report.</p> <p>12643. Rights of access, examination, and copying.</p> <p>(a) Comptroller General.</p> <p>(b) Chief Financial Officer.</p> <p>12644. Drug-free workplace requirements.</p> <p>12645. Repealed.</p> <p>Division G—Corporation for National and Community Service</p> <p>12651. Corporation for National and Community Service.</p> <p>12651a. Board of Directors.</p> <p>(a) Composition.</p> <p>(b) Officers.</p> <p>(c) Terms.</p>
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|---|--|
| <p>Sec.</p> <p>(d) Vacancies.</p> <p>12651b. Authorities and duties of the Board of Directors.</p> <p>(a) Meetings.</p> <p>(b) Quorum.</p> <p>(c) Authorities of officers.</p> <p>(d) Expenses.</p> <p>(e) Special Government employees.</p> <p>(f) Status of members.</p> <p>(g) Duties.</p> <p>(h) Administration.</p> <p>(i) Limitation on participation.</p> <p>(j) Coordination with other Federal activities.</p> <p>12651c. Chief Executive Officer.</p> <p>(a) Appointment.</p> <p>(b) Compensation.</p> <p>(c) Regulations.</p> <p>12651d. Authorities and duties of the Chief Executive Officer.</p> <p>(a) General powers and duties.</p> <p>(b) Duties.</p> <p>(c) Powers.</p> <p>(d) Delegation.</p> <p>(e) Actions.</p> <p>(f) Evaluations.</p> <p>(g) Recruitment and public awareness functions.</p> <p>12651e. Officers.</p> <p>(a) Managing Directors.</p> <p>(b) Inspector General.</p> <p>(c) Chief Financial Officer.</p> <p>(d) Assistant Directors for VISTA and National Senior Volunteer Corps.</p> <p>12651f. Employees, consultants, and other personnel.</p> <p>(a) Employees.</p> <p>(b) Alternative personnel system.</p> <p>(c) Corporation representative in each State.</p> <p>(d) Consultants.</p> <p>(e) Details of personnel.</p> <p>(f) Advisory committees.</p> <p>12651g. Administration.</p> <p>(a) Donations.</p> <p>(b) Contracts.</p> <p>(c) Office of Management and Budget.</p> <p>12651h. Corporation State offices.</p> <p>(a) In general.</p> <p>(b) Duties.</p> <p>Division H—Investment for Quality and Innovation</p> <p>12653. Additional Corporation activities to support national service.</p> <p>(a) Methods of conducting activities.</p> <p>(b) Innovation and quality improvement.</p> <p>(c) Summer programs.</p> <p>(d) Community-based agencies.</p> <p>(e) Improve ability to apply for assistance.</p> <p>(f) National service fellowships.</p> <p>(g) Conferences and materials.</p> <p>(h) Peace Corps and VISTA training.</p> <p>(i) Promotion and recruitment.</p> <p>(j) Training.</p> <p>(k) Research.</p> <p>(l) Intergenerational support.</p> <p>(m) Planning coordination.</p> <p>(n) Youth leadership.</p> <p>(o) National program identity.</p> <p>(p) Service-learning.</p> <p>(q) National Youth Service Day.</p> <p>(r) Assistance for Head Start.</p> <p>(s) Martin Luther King, Jr., Service Day.</p> <p>12653a. Clearinghouses.</p> <p>(a) Assistance.</p> <p>(b) Application.</p> <p>(c) Function of clearinghouses.</p> <p>12653b. Presidential awards for service.</p> <p>(a) Presidential awards.</p> | <p>Sec.</p> <p>(b) Information.</p> <p>12653c. Military installation conversion demonstration programs.</p> <p>(a) Purposes.</p> <p>(b) Definitions.</p> <p>(c) Demonstration programs.</p> <p>(d) Use of funds.</p> <p>(e) Participants.</p> <p>(f) Application.</p> <p>(g) Limitation on grant.</p> <p>12653d. Special demonstration project.</p> <p>(a) Special demonstration project for the Yukon-Kuskokwim delta of Alaska.</p> <p>(b) Application.</p> <p>Division I—American Conservation and Youth Service Corps</p> <p>12655. General authority.</p> <p>12655a. Limitation on purchase of capital equipment.</p> <p>12655b. State application.</p> <p>(a) Submission.</p> <p>(b) General content.</p> <p>12655c. Focus of programs.</p> <p>(a) In general.</p> <p>(b) Limitation on service.</p> <p>12655d. Related programs.</p> <p>12655e. Public lands or Indian lands.</p> <p>(a) Limitation.</p> <p>(b) Review of applications.</p> <p>(c) Consistency.</p> <p>(d) Participation by other conservation programs.</p> <p>12655f. Training and education services.</p> <p>(a) Assessment of skills.</p> <p>(b) Enhancement of skills.</p> <p>(c) Provision of pre-service and in-service training and education.</p> <p>(d) Standards and procedures.</p> <p>12655g. Repealed.</p> <p>12655h. Preference for certain projects.</p> <p>(a) In general.</p> <p>(b) Special rule.</p> <p>12655i. Age and citizenship criteria for enrollment.</p> <p>(a) Age and citizenship.</p> <p>(b) Participation of disadvantaged youth.</p> <p>(c) Special corps members.</p> <p>(d) Joint projects with senior citizens organizations.</p> <p>(e) Construction.</p> <p>12655j. Use of volunteers.</p> <p>12655k. Repealed.</p> <p>12655l. Living allowance.</p> <p>(a) Full-time service.</p> <p>(b) Reduction in existing program benefits.</p> <p>(c) Health insurance.</p> <p>(d) Facilities, services, and supplies.</p> <p>12655m. Joint programs.</p> <p>(a) Development.</p> <p>(b) Standards.</p> <p>(c) Operation of management agreements.</p> <p>(d) Coordination.</p> <p>12655n. Federal and State employee status.</p> <p>(a) In general.</p> <p>(b) Non-Federal employees.</p> <p>(c) Availability of appropriation.</p> <p>Division J—Miscellaneous</p> <p>12656. Urban Youth Corps.</p> <p>(a) Findings.</p> <p>(b) Purpose.</p> <p>(c) Definitions.</p> <p>(d) Establishment of Urban Youth Corps.</p> <p>(e) Living allowances.</p> <p>(f) Terms of service.</p> <p>(g) Educational awards.</p> <p>(h) Nondisplacement.</p> <p>(i) Cost sharing.</p> |
|---|--|

- Sec.
SUBCHAPTER II—POINTS OF LIGHT FOUNDATION
- 12661. Findings and purpose.
 - (a) Findings.
 - (b) Purpose.
 - 12662. Authority.
 - (a) In general.
 - (b) Construction.
 - 12663. Grants to Foundation.
 - (a) In general.
 - (b) Interest earned on accounts.
 - 12664. Eligibility of Foundation for grants.
 - (a) Compliance.
 - (b) Activities.
 - (c) Limitation.
 - (d) Compensation.
 - (e) Conflicts of interest.
 - (f) Political activity.
 - (g) Private sector contributions.
 - (h) Audit of accounts.
 - (i) Audits by agencies.
 - (j) Congressional oversight.
 - (k) Duties.
 - (l) Annual reports.

SUBCHAPTER III—PROJECTS HONORING VICTIMS OF TERRORIST ATTACKS

- 12671. Projects.
 - (a) Definition.
 - (b) Identification of projects.
 - (c) Eligible entities.
 - (d) Projects.
 - (e) Website and database.

SUBCHAPTER IV—AUTHORIZATION OF APPROPRIATIONS

- 12681. Authorization of appropriations.
 - (a) Subchapter I.
 - (b) Subchapter II.
 - (c) Availability of appropriations.
 - (d) Specification of budget function.
- 12682. Actions under national service laws to be subject to availability of appropriations.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 2756a, 3056a of this title; title 20 sections 1087vv, 6143; title 29 sections 2822, 2841; title 40 section 550.

§ 12501. Findings and purpose

(a) Findings

The Congress finds the following:

- (1) Throughout the United States, there are pressing unmet human, educational, environmental, and public safety needs.
- (2) Americans desire to affirm common responsibilities and shared values, and join together in positive experiences, that transcend race, religion, gender, age, disability, region, income, and education.
- (3) The rising costs of postsecondary education are putting higher education out of reach for an increasing number of citizens.
- (4) Americans of all ages can improve their communities and become better citizens through service to the United States.
- (5) Nonprofit organizations, local governments, States, and the Federal Government are already supporting a wide variety of national service programs that deliver needed services in a cost-effective manner.
- (6) Residents of low-income communities, especially youth and young adults, can be empowered through their service, and can help provide future community leadership.

(b) Purpose

It is the purpose of this chapter to—

- (1) meet the unmet human, educational, environmental, and public safety needs of the United States, without displacing existing workers;
- (2) renew the ethic of civic responsibility and the spirit of community throughout the United States;
- (3) expand educational opportunity by rewarding individuals who participate in national service with an increased ability to pursue higher education or job training;
- (4) encourage citizens of the United States, regardless of age, income, or disability, to engage in full-time or part-time national service;
- (5) reinvent government to eliminate duplication, support locally established initiatives, require measurable goals for performance, and offer flexibility in meeting those goals;
- (6) expand and strengthen existing service programs with demonstrated experience in providing structured service opportunities with visible benefits to the participants and community;
- (7) build on the existing organizational service infrastructure of Federal, State, and local programs and agencies to expand full-time and part-time service opportunities for all citizens; and
- (8) provide tangible benefits to the communities in which national service is performed.

(Pub. L. 101-610, §2, Nov. 16, 1990, 104 Stat. 3129; Pub. L. 103-82, §2(a), Sept. 21, 1993, 107 Stat. 787.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original “this Act”, meaning Pub. L. 101-610, Nov. 16, 1990, 104 Stat. 3127, as amended, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

AMENDMENTS

1993—Pub. L. 103-82 amended section generally, substituting provisions relating to findings and purposes for former provisions setting forth the purposes of this chapter.

SHORT TITLE OF 2002 AMENDMENT

Pub. L. 107-117, div. B, §1301(a), Jan. 10, 2002, 115 Stat. 2339, provided that: “This section [enacting subchapter III of this chapter] may be cited as the ‘Unity in the Spirit of America Act’ or the ‘USA Act’.”

SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103-304, §1, Aug. 23, 1994, 108 Stat. 1565, provided that: “This Act [amending sections 4953, 5024, 12591, 12602, 12615, 12619, 12622, 12651d, 12653, and 12655n of this title and enacting provisions set out as a note under section 4953 of this title] may be cited as the ‘King Holiday and Service Act of 1994’.”

SHORT TITLE OF 1993 AMENDMENT

Section 1(a) of Pub. L. 103-82 provided that: “This Act [see Tables for classification] may be cited as the ‘National and Community Service Trust Act of 1993’.”

SHORT TITLE OF 1992 AMENDMENT

Pub. L. 102-384, §1, Oct. 5, 1992, 106 Stat. 1455, provided that: “This Act [amending sections 12511, 12522, 12523, 12525, 12526, 12541, 12550, 12612, 12614, 12615, 12622, 12639,

12651, and 12681 of this title] may be cited as the ‘National and Community Service Technical Amendment Act of 1992’.”

SHORT TITLE OF 1991 AMENDMENT

Pub. L. 102–10, §1, Mar. 12, 1991, 105 Stat. 29, provided that: “This Act [enacting section 12645 of this title, amending sections 5091m, 12511, 12521, 12522, 12524, 12527, 12531, 12542 to 12544, 12548, 12553, 12575, 12576, 12602, 12638, and 12651 of this title, and repealing section 12556 of this title] may be cited as the ‘National and Community Service Technical Amendments Act of 1991’.”

SHORT TITLE

Section 1(a) of Pub. L. 101–610 provided that: “This Act [enacting this chapter, sections 5091 to 5091n of this title, and section 2452a of Title 22, Foreign Relations and Intercourse, amending sections 1018c, 1018e, 1070a–6, 1087vv, 1092, and 1092b of Title 20, Education, and former section 546 of Title 45, Railroads, and enacting provisions set out as notes under this section and section 24301 of Title 49, Transportation] may be cited as the ‘National and Community Service Act of 1990’.”

Section 110 of subtitle B (§§110–118) of title I of Pub. L. 101–610, which provided that such subtitle (enacting former part B (§§12521–12531) of subchapter I of this chapter) be cited as the “Serve-America: The Community Service, Schools and Service-Learning Act of 1990”, was repealed by Pub. L. 103–82, title I, §103(a)(2), Sept. 21, 1993, 107 Stat. 825.

Pub. L. 108–45, §1, July 3, 2003, 117 Stat. 844, provided that: “This Act [enacting section 12605 of this title] may be cited as the ‘Strengthen AmeriCorps Program Act’.”

Section 199 [formerly 120] of subtitle I (§§199–199O) [formerly subtitle C (§§120–136)] of title I of Pub. L. 101–610, as renumbered by Pub. L. 103–82, title I, §101(a), Sept. 21, 1993, 107 Stat. 788, provided that: “This subtitle [enacting division I (formerly part C) of subchapter I of this chapter] may be cited as the ‘American Conservation and Youth Service Corps Act of 1990’.”

Section 140 of subtitle D (§§140–150) of title I of Pub. L. 101–610, which provided that such subtitle (enacting former part D (§§12571–12580) of subchapter I of this chapter) be cited as the “National and Community Service Act”, was omitted in the general amendment of part D (now division D) by Pub. L. 103–82, title I, §102(a), Sept. 21, 1993, 107 Stat. 816.

Section 301 of title III of Pub. L. 101–610 provided that: “This title [enacting subchapter II of this chapter] may be cited as ‘The Points of Light Foundation Act’.”

COMPLIANCE WITH BUY AMERICAN ACT

Section 501 of Pub. L. 103–82 provided that: “No funds appropriated pursuant to this Act [see Tables for classification] (including the amendments made by this Act) may be expended by an entity unless the entity agrees that in expending the assistance the entity will comply with sections 2 through 4 of the Act of March 3, 1933 (41 U.S.C. 10a–10c [41 U.S.C. 10a, 10b, former 10b–1], popularly known as the ‘Buy American Act’).”

SENSE OF CONGRESS; REQUIREMENT REGARDING NOTICE

Section 502 of Pub. L. 103–82 provided that:
“(a) PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS.—In the case of any equipment or product that may be authorized to be purchased with financial assistance provided under this Act [see Tables for classification] (including the amendments made by this Act), it is the sense of the Congress that entities receiving such assistance should, in expending the assistance, purchase only American-made equipment and products.

“(b) NOTICE TO RECIPIENTS OF ASSISTANCE.—In providing financial assistance under this Act (including the amendments made by this Act), the Secretary of Education shall provide to each recipient of the assistance

a notice describing the statement made in subsection (a) by the Congress.”

PROHIBITION OF CONTRACTS WITH PERSONS FALSELY LABELING PRODUCTS AS MADE IN AMERICA

Section 503 of Pub. L. 103–82 provided that: “If it has been finally determined by a court or Federal agency that any person intentionally affixed a label bearing a ‘Made in America’ inscription, or any inscription with the same meaning, to any product sold in or shipped to the United States that is not made in the United States, the person shall be ineligible to receive any contract or subcontract made with funds appropriated to carry out this Act, pursuant to the debarment, suspension, and ineligibility procedures described in sections 9.400 through 9.409 of title 48, Code of Federal Regulations.”

EX. ORD. NO. 13254. ESTABLISHING THE USA FREEDOM CORPS

Ex. Ord. No. 13254, Jan. 29, 2002, 67 F.R. 4869, as amended by Ex. Ord. No. 13286, §6, Feb. 28, 2003, 68 F.R. 10620, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

SECTION 1. *Policy.* Building on our Nation’s rich tradition of citizen service, this Administration’s policy is to foster a culture of responsibility, service, and citizenship by promoting, expanding, and enhancing public service opportunities for all Americans and by making these opportunities readily available to citizens from all geographic areas, professions, and walks of life. More specifically, this Administration encourages all Americans to serve their country for the equivalent of at least 2 years (4,000 hours) over their lifetimes. Toward those ends, the executive departments, agencies, and offices constituting the USA Freedom Corps shall coordinate and strengthen Federal and other service opportunities, including opportunities for participation in homeland security preparedness and response, other areas of public and social service, and international service. The executive branch departments, agencies, and offices also will work with State and local governments and private entities to foster and encourage participation in public and social service programs, as appropriate.

SEC. 2. *USA Freedom Corps.* The USA Freedom Corps shall be an interagency initiative, bringing together executive branch departments, agencies, and offices with public service programs and components, including but not limited to programs and components with the following functions:

- (i) recruiting, mobilizing, and encouraging all Americans to engage in public service;
- (ii) providing concrete opportunities to engage in public service;
- (iii) providing the public with access to information about public service opportunities through Federal programs and elsewhere; and
- (iv) providing recognition and awards to volunteers and other participants in public service programs.

SEC. 3. *USA Freedom Corps Council.* (a) *Establishment and Mission.* There shall be a USA Freedom Corps Council (Council) chaired by the President and composed of heads of executive branch departments, agencies, and offices, which shall have the following functions:

- (i) serving as a forum for Federal officials responsible for public service programs to coordinate and improve public service programs and activities administered by the executive branch;
- (ii) working to encourage all Americans to engage in public service, whether through Federal programs or otherwise;
- (iii) advising the President and heads of executive branch departments, agencies, and offices concerning the optimization of current Federal programs to enhance public service opportunities;
- (iv) coordinating public outreach and publicity of citizen service opportunities provided by Federal programs;

(v) encouraging schools, universities, private public service organizations, and other non-Federal entities to foster and reward public service;

(vi) studying the availability of public service opportunities provided by the Federal Government and elsewhere; and

(vii) tracking progress in participation in public service programs.

(b) *Membership.* In addition to the Chair, the members of the Council shall be the heads of the executive branch departments, agencies, and offices listed below, or their designees, and such other officers of the executive branch as the President may from time to time designate. Every member of the Council or designee shall be a full-time or permanent part-time officer or employee of the Federal Government. Members shall not be compensated for their service on the Council in addition to the salaries they receive as employees or officers of the Federal Government.

- (i) Vice President;
- (ii) Attorney General;
- (iii) Secretary of State;
- (iv) Secretary of Health and Human Services;
- (v) Secretary of Commerce;
- (vi) Secretary of Education;
- (vii) Secretary of Veterans Affairs;
- (viii) Secretary of Homeland Security;
- (ix) Chief Executive Officer of the Corporation for National and Community Service;
- (x) Director of the Peace Corps;
- (xi) Administrator of the United States Agency for International Development;
- (xii) Director of the USA Freedom Corps Office; and
- (xiii) Director of the Office of Faith-Based and Community Initiatives.

(c) *Chair.* The President shall be the Chair of the USA Freedom Corps Council, and in his absence, the Vice President shall serve as Chair. The Director of the USA Freedom Corps Office may, at the President's direction, preside over meetings of the Council in the President's and Vice President's absence.

(d) *Honorary Co-Chair.* The President may, from time to time, designate an Honorary Co-Chair or Co-Chairs, who shall serve in an advisory role to the Council and to the President on matters considered by the Council. Any Honorary Co-Chair shall be a full-time or permanent part-time employee or officer of the Federal Government.

(e) *Meetings.* The Council shall meet at the President's direction. The Director of the USA Freedom Corps Office shall be responsible, at the President's direction, for determining the agenda, ensuring that necessary papers are prepared, and recording Council actions and Presidential decisions.

(f) *Responsibilities of Executive Branch Departments, Agencies, and Offices.*

(i) Members of the Council shall remain responsible for overseeing the programs administered by their respective departments, agencies, and offices. Each such department, agency, and office will retain its authority and responsibility to administer those programs according to law;

(ii) Each executive branch department, agency, or office with responsibility for programs relating to the functions and missions of the USA Freedom Corps as described in section 2 of this order shall be responsible for identifying those public service opportunities and coordinating with the USA Freedom Corps Council to ensure that such programs are, if appropriate, publicized and encouraged by the Council; and

(iii) Upon the request of the Chair, and to the extent permitted by law, the heads of executive branch departments and agencies shall provide the Council with relevant information.

SEC. 4. *USA Freedom Corps Office.* (a) *General.* The USA Freedom Corps also shall be supported by a USA Freedom Corps Office (Office), which shall be a component of the White House Office. The USA Freedom Corps Office shall have a Director who shall be appointed by the President. The Director shall be assisted by an appropriate staff within the White House Office.

(b) *Presidential Recognition to Participants in USA Freedom Corps Programs.* In addition to supporting and facilitating the functions of the Council listed in section 3 of this order, the Office shall support the President in providing recognition to volunteers and other participants in programs and activities relating to the functions and missions of the USA Freedom Corps as described in section 2 of this order.

SEC. 5. *General Provisions.* (a) The White House Office shall provide the Council and Office with such funding and administrative support, to the extent permitted by law and subject to the availability of appropriations, as directed by the Chief of Staff to the President to carry out the provisions of this order.

(b) This order does not alter the existing authorities or roles of executive branch departments, agencies, or offices. Nothing in this order shall supersede any requirement made by or under law.

(c) This order does not create any right or benefit, substantive or procedural, enforceable at law or equity, against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.

GEORGE W. BUSH.

EX. ORD. NO. 13317. VOLUNTEERS FOR PROSPERITY

Ex. Ord. No. 13317, Sept. 25, 2003, 68 F.R. 56515, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to encourage volunteer service by highly skilled Americans to support major initiatives by the United States for promoting health and prosperity around the world, it is hereby ordered as follows:

SECTION 1. (a) *Policy.* A part of USA Freedom Corps, "Volunteers for Prosperity" is a call to service to support major U.S. initiatives that promote health and prosperity around the world. Deploying highly skilled volunteers abroad is an efficient way to use our resources consistent with the objectives of the United States Government's global prosperity agenda. United States volunteers will help to achieve the objectives of the global prosperity agenda, including providing clean water to the poor, promoting democratic governance, developing economic freedom, promoting free and open markets, and stemming the spread of HIV/AIDS.

The investment of Federal resources to enable U.S. volunteers to work with nongovernmental and voluntary service organizations overseas is a preferred use of our resources and also will help leverage private sector resources. United States citizens who are skilled professionals and who volunteer, when matched with organizations working on specific U.S. prosperity initiatives overseas, can provide invaluable support for these initiatives and will supplement and complement the traditions and accomplishments of the Peace Corps.

United States prosperity initiatives that can benefit from volunteer service include, but are not limited to, the Emergency Plan for AIDS Relief, the Digital Freedom Initiative, the Water for the Poor Initiative, the Trade for African Development and Enterprise Initiative, and the Middle East Partnership Initiative.

Volunteer service in support of other initiatives, consistent with U.S. foreign policy, shall be considered as well.

(b) *Applicability.* The following agencies are subject to the requirements of this order: the United States Agency for International Development (USAID), the Department of State, the Department of Commerce, the Department of Health and Human Services, and such other Federal agencies as the President may designate in the future.

SEC. 2. *Establishment.* (a) Agencies subject to this order shall each establish within their respective organizations an Office for Volunteers for Prosperity (Office) or, as appropriate, an operating unit within an office.

(b) Each agency subject to this order shall provide its Office or unit with appropriate staff, administrative

support, and resources to meet its responsibilities under this order.

(c) Each of these Offices or units shall begin operations no later than 30 days from the date of this order.

(d) Agencies subject to this order shall consider, in evaluating grant applications for assistance activities to be implemented abroad, the applicant's use of highly skilled U.S. volunteers to support U.S. prosperity objectives and initiatives.

SEC. 3. *Purpose.* To the extent permitted by law, the purpose of the Offices will be to promote, expand, and enhance well-defined volunteer service opportunities for highly skilled U.S. professionals who wish to work with nongovernmental and voluntary service organizations around the world in support of major U.S. prosperity initiatives as identified in section 1 of this order. Such promotion, expansion, and enhancement would include actively participating in the design and selection processes for grants within their agencies, tracking the use of U.S. private volunteer organizations by their agencies, and coordinating with White House Offices including the USA Freedom Corps, the Office of National AIDS Policy, and the Office of Faith-Based and Community Initiatives, as appropriate.

SEC. 4. *Funding.* Agencies subject to this order are hereby directed to use their best efforts to use funds available for the U.S. prosperity initiatives listed in section 1 of this order to provide appropriate support to organizations that use highly skilled U.S. volunteers to accomplish the objectives identified in those initiatives.

SEC. 5. *Coordination.* The USAID shall serve as the inter-agency coordinator for the Volunteers for Prosperity initiative. In that capacity, the USAID shall coordinate the activities that fall within the scope of the initiative and report on the progress of the initiative to the USA Freedom Corps Office, within the White House Office. The reports shall be submitted within 180 days after the date of this order and annually thereafter. The USA Freedom Corps Council shall encourage consistency in policies and practices within the agencies subject to this order, as appropriate, for purposes related to the Volunteers for Prosperity initiative.

SEC. 6. *Administration.* The actions directed by this order shall be carried out subject to the availability of appropriations, to the extent permitted by law, and consistent with the agencies' missions.

SEC. 7. *Judicial Review.* This order is intended only to improve the internal management of the executive branch of the Federal Government, and it is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.

GEORGE W. BUSH.

EX. ORD. NO. 13331. NATIONAL AND COMMUNITY SERVICE PROGRAMS

Ex. Ord. No. 13331, Feb. 27, 2004, 69 F.R. 9911, provided: By the authority vested in me as President by the Constitution and the laws of the United States of America, and to strengthen the ability of programs authorized under the national service laws to build and reinforce a culture of service, citizenship, and responsibility throughout our Nation, and to institute reforms to improve accountability and efficiency in the administration of those programs, it is hereby ordered as follows:

SECTION 1. *Definitions.* For purposes of this order:

(a) "National service laws" means the National and Community Service Act of 1990 (42 U.S.C. 12501 *et seq.*) and the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4950 *et seq.*);

(b) "National and community service programs" means those programs authorized under the national service laws;

(c) "Policies governing programs authorized under the national service laws" refers to all policies, pro-

grams, guidelines, and regulations, including official guidance and internal agency procedures and practices, that are issued by the Corporation for National and Community Service (Corporation) and have significant effects on national and community service programs; and

(d) "Professional corps programs" means those programs described in section 122(a)(8) of the National and Community Service Act of 1990 (42 U.S.C. 12572(a)(8)).

SEC. 2. *Fundamental Principles and Policymaking Criteria.* In formulating and implementing policies governing programs authorized under the national service laws, the Corporation shall, to the extent permitted by law, adhere to the following fundamental principles:

(a) National and community service programs should support and encourage greater engagement of Americans in volunteering;

(b) National and community service programs should be more responsive to State and local needs;

(c) National and community service programs should make Federal support more accountable and more effective; and

(d) National and community service programs should expand opportunities for involvement of faith-based and other community organizations.

SEC. 3. *Agency Implementation.* (a) The Chief Executive Officer of the Corporation for National and Community Service (Chief Executive Officer) shall, in coordination with the USA Freedom Corps Council, review and evaluate existing policies governing national and community service programs in order to assess the consistency of such policies with the fundamental principles and policymaking criteria described in section 2 of this order.

(b) The Chief Executive Officer shall ensure that all policies governing national and community service programs issued by the Corporation are consistent with the fundamental principles and policymaking criteria described in section 2 of this order. To that end, the Chief Executive Officer shall, to the extent permitted by law,

(i) amend all such existing policies to ensure that they are consistent with the fundamental principles and policymaking criteria articulated in section 2 of this order; and

(ii) where appropriate, implement new policies that are consistent with and necessary to further the fundamental principles and policymaking criteria set forth in section 2 of this order.

(c) In developing implementation steps, the Chief Executive Officer should address, at a minimum, the following objectives:

(i) National and community service programs should leverage Federal resources to maximize support from the private sector and from State and local governments, with an emphasis on reforms that enhance programmatic flexibility, reduce administrative burdens, and calibrate Federal assistance to the respective needs of recipient organizations;

(ii) National and community service programs should leverage Federal resources to enable the recruitment and effective management of a larger number of volunteers than is currently possible;

(iii) National and community service programs should increase efforts to expand opportunities for, and strengthen the capacity of, faith-based and other community organizations in building and strengthening an infrastructure to support volunteers that meet community needs;

(iv) National and community service programs should adopt performance measures to identify those practices that merit replication and further investment, as well as to ensure accountability;

(v) National and community service programs should, consistent with the principles of Federalism and the constitutional role of the States and Indian tribes, promote innovation, flexibility, and results at all levels of government;

(vi) National and community service programs based in schools should employ tutors who meet re-

quired paraprofessional qualifications, and use such practices and methodologies as are required for supplemental educational services;

(vii) National and community service programs should foster a lifetime of citizenship and civic engagement among those who serve;

(viii) National and community service programs should avoid or eliminate practices that displace volunteers who are not supported under the national service laws; and

(ix) Guidelines for the selection of national and community service programs should recognize the importance of professional corps programs in light of the fundamental principles and policymaking criteria set forth in this order.

SEC. 4. *Management Reforms.* (a) The Corporation should implement internal management reforms to strengthen its oversight of national and community service programs through enforcement of performance and compliance standards and other management tools.

(b) Management reforms should include, but should not be limited to, the following:

(i) Institutionalized changes to the budgetary and grant-making processes to ensure that financial commitments remain within available resources;

(ii) Enhanced accounting and management systems that would ensure compliance with fiscal restrictions and provide timely, accurate, and readily available information about enrollment in AmeriCorps and about funding and obligations incurred for all national and community service programs;

(iii) Assurance by the Chief Executive Officer and the Chief Financial Officer in the Corporation's Management Representation Letter that its financial statements, including the Statement of Budgetary Resources, are accurate and reliable; and

(iv) Management reforms that tie employee performance to fiscal responsibility, attainment of management goals, and professional conduct.

SEC. 5. *Report.* Within 180 days after the date of this order, the Chief Executive Officer shall report to the President, through the Assistant to the President and Director of the USA Freedom Corps Office, the actions the Corporation proposes to undertake to accomplish the objectives set forth in this order.

SEC. 6. *Judicial Review.* This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.

GEORGE W. BUSH.

SUBCHAPTER I—NATIONAL AND COMMUNITY SERVICE STATE GRANT PROGRAM

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 12681 of this title; title 20 sections 1078, 1087vv.

Division A—General Provisions

§ 12511. Definitions

For purposes of this subchapter:

(1) Adult volunteer

The term “adult volunteer” means an individual, such as an older adult, an individual with a disability, a parent, or an employee of a business or public or private nonprofit organization, who—

(A) works without financial remuneration in an educational institution to assist students or out-of-school youth; and

(B) is beyond the age of compulsory school attendance in the State in which the educational institution is located.

(2) Approved national service position

The term “approved national service position” means a national service position for which the Corporation has approved the provision of a national service educational award described in section 12603 of this title as one of the benefits to be provided for successful service in the position.

(3) Carry out

The term “carry out”, when used in connection with a national service program described in section 12572 of this title, means the planning, establishment, operation, expansion, or replication of the program.

(4) Chief Executive Officer

The term “Chief Executive Officer”, except when used to refer to the chief executive officer of a State, means the Chief Executive Officer of the Corporation appointed under section 12651c of this title.

(5) Community-based agency

The term “community-based agency” means a private nonprofit organization (including a church or other religious entity) that—

(A) is representative of a community or a significant segment of a community; and

(B) is engaged in meeting human, educational, environmental, or public safety community needs.

(6) Corporation

The term “Corporation” means the Corporation for National and Community Service established under section 12651 of this title.

(7) Economically disadvantaged

The term “economically disadvantaged” means, with respect to an individual, an individual who is determined by the Chief Executive Officer to be low-income according to the latest available data from the Department of Commerce.

(8) Elementary school

The term “elementary school” has the same meaning given such term in section 7801 of title 20.

(9) Indian

The term “Indian” means a person who is a member of an Indian tribe, or is a “Native”, as defined in section 1602(b) of title 43.

(10) Indian lands

The term “Indian lands” means any real property owned by an Indian tribe, any real property held in trust by the United States for an Indian or Indian tribe, and any real property held by an Indian or Indian tribe that is subject to restrictions on alienation imposed by the United States.

(11) Indian tribe

The term “Indian tribe” means—

(A) an Indian tribe, band, nation, or other organized group or community, including—

(i) any Native village, as defined in section 1602(c) of title 43, whether organized traditionally or pursuant to the Act of June 18, 1934 (commonly known as the “Indian Reorganization Act”; 48 Stat. 984, chapter 576; 25 U.S.C 461 et seq.); and

(ii) any Regional Corporation or Village Corporation, as defined in subsection (g) or (j), respectively, of section 1602 of title 43,

that is recognized as eligible for the special programs and services provided by the United States under Federal law to Indians because of their status as Indians; and

(B) any tribal organization controlled, sanctioned, or chartered by an entity described in subparagraph (A).

(12) Individual with a disability

Except as provided in section 12635(a) of this title, the term “individual with a disability” has the meaning given the term in section 705(20)(B) of title 29.

(13) Institution of higher education

The term “institution of higher education” has the same meaning given such term in section 1001 of title 20.

(14) Local educational agency

The term “local educational agency” has the same meaning given such term in section 7801 of title 20.

(15) National service laws

The term “national service laws” means this chapter and the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4950 et seq.).

(16) Out-of-school youth

The term “out-of-school youth” means an individual who—

- (A) has not attained the age of 27;
- (B) has not completed college or the equivalent thereof; and
- (C) is not enrolled in an elementary or secondary school or institution of higher education.

(17) Participant

(A) In general

The term “participant” means—

- (i) for purposes of division C of this subchapter, an individual in an approved national service position; and
- (ii) for purposes of any other provision of this chapter, an individual enrolled in a program that receives assistance under this subchapter.

(B) Rule

A participant shall not be considered to be an employee of the program in which the participant is enrolled.

(18) Partnership program

The term “partnership program” means a program through which an adult volunteer, a public or private nonprofit organization, an institution of higher education, or a business assists a local educational agency.

(19) Program

The term “program”, unless the context otherwise requires, and except when used as part of the term “academic program”, means a program described in section 12521(a) of this title (other than a program referred to in paragraph (3)(B) of such section), 12542(a), 12561(b)(1), or 12572(a) of this title, or in para-

graph (1) or (2) of section 12612(b) of this title, or an activity that could be funded under section 12653, 12653c, or 12653d of this title.

(20) Project

The term “project” means an activity, carried out through a program that receives assistance under this subchapter, that results in a specific identifiable service or improvement that otherwise would not be done with existing funds, and that does not duplicate the routine services or functions of the employer to whom participants are assigned.

(21) School-age youth

The term “school-age youth” means—

- (A) individuals between the ages of 5 and 17, inclusive; and
- (B) children with disabilities, as defined in section 602(a)(1)¹ of the Individuals with Disabilities Education Act (20 U.S.C. 1401(a)(1)), who receive services under part B of such Act [20 U.S.C. 1411 et seq.].

(22) Secondary school

The term “secondary school” has the same meaning given such term in section 7801 of title 20.

(23) Service-learning

The term “service-learning” means a method—

- (A) under which students or participants learn and develop through active participation in thoughtfully organized service that—
 - (i) is conducted in and meets the needs of a community;
 - (ii) is coordinated with an elementary school, secondary school, institution of higher education, or community service program, and with the community; and
 - (iii) helps foster civic responsibility; and
- (B) that—

- (i) is integrated into and enhances the academic curriculum of the students, or the educational components of the community service program in which the participants are enrolled; and
- (ii) provides structured time for the students or participants to reflect on the service experience.

(24) Service-learning coordinator

The term “service-learning coordinator” means an individual who provides services as described in subsection (a)(3) or (b) of section 12521 of this title.

(25) Service sponsor

The term “service sponsor” means an organization, or other entity, that has been selected to provide a placement for a participant.

(26) State

The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. The term also includes Palau, until

¹ See References in Text note below.

such time as the Compact of Free Association is ratified.

(27) State Commission

The term “State Commission” means a State Commission on National and Community Service maintained by a State pursuant to section 12638 of this title. Except when used in section 12638 of this title, the term includes an alternative administrative entity for a State approved by the Corporation under such section to act in lieu of a State Commission.

(28) State educational agency

The term “State educational agency” has the same meaning given such term in section 7801 of title 20.

(29) Student

The term “student” means an individual who is enrolled in an elementary or secondary school or institution of higher education on a full- or part-time basis.

(Pub. L. 101-610, title I, §101, Nov. 16, 1990, 104 Stat. 3129; Pub. L. 102-10, §3, Mar. 12, 1991, 105 Stat. 29; Pub. L. 102-384, §3, Oct. 5, 1992, 106 Stat. 1455; Pub. L. 103-82, title I, §111(a), Sept. 21, 1993, 107 Stat. 857; Pub. L. 103-382, title III, §394(h)(1), Oct. 20, 1994, 108 Stat. 4028; Pub. L. 105-220, title IV, §414(g), Aug. 7, 1998, 112 Stat. 1242; Pub. L. 105-244, title I, §102(a)(13)(K), Oct. 7, 1998, 112 Stat. 1621; Pub. L. 107-110, title X, §1076(ff), Jan. 8, 2002, 115 Stat. 2093.)

REFERENCES IN TEXT

Act of June 18, 1934, referred to in par. (11)(A)(i), is act June 18, 1934, ch. 576, 48 Stat. 984, as amended, popularly known as the Indian Reorganization Act, which is classified generally to subchapter V (§461 et seq.) of chapter 14 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 461 of Title 25 and Tables.

This chapter, referred to in pars. (15) and (17)(A)(ii), was in the original “this Act”, meaning Pub. L. 101-610, Nov. 16, 1990, 104 Stat. 3127, as amended, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 12501 of this title and Tables.

The Domestic Volunteer Service Act of 1973, referred to in par. (15), is Pub. L. 93-113, Oct. 1, 1973, 87 Stat. 394, as amended, which is classified principally to chapter 66 (§4950 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4950 of this title and Tables.

The Individuals with Disabilities Education Act, referred to in par. (21)(B), is title VI of Pub. L. 91-230, Apr. 13, 1970, 84 Stat. 175, as amended. Part B of the Act is classified generally to subchapter II (§1411 et seq.) of chapter 33 of Title 20, Education. Section 602 of the Act, which was classified to section 1401 of Title 20, was omitted in the general amendment of subchapter I of chapter 33 of Title 20 by Pub. L. 105-17, title I, §101, June 4, 1997, 111 Stat. 37. Pub. L. 105-17 enacted a new section 602, which is classified to section 1401 of Title 20, and contains provisions defining “child with a disability”. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

For ratification of Compact of Free Association with Palau, referred to in par. (26), see Proc. No. 6726, Sept. 27, 1994, 59 F.R. 49777, set out as a note under section 1931 of Title 48, Territories and Insular Possessions.

AMENDMENTS

2002—Pars. (8), (14), (22), (28). Pub. L. 107-110 substituted “section 7801 of title 20” for “section 8801 of title 20”.

1998—Par. (12). Pub. L. 105-220 substituted “section 705(20)(B) of title 29” for “section 706(8)(B) of title 29”.

Par. (13). Pub. L. 105-244 substituted “section 1001” for “section 1141(a)”.

1994—Par. (8). Pub. L. 103-382, §394(h)(1)(A), substituted “section 8801 of title 20” for “section 2891(8) of title 20”.

Par. (14). Pub. L. 103-382, §394(h)(1)(B), substituted “section 8801 of title 20” for “section 2891(12) of title 20”.

Par. (22). Pub. L. 103-382, §394(h)(1)(C), substituted “section 8801 of title 20” for “section 2891(21) of title 20”.

Par. (28). Pub. L. 103-382, §394(h)(1)(D), substituted “section 8801 of title 20” for “section 2891(23) of title 20”.

1993—Pub. L. 103-82 amended section generally, substituting provisions consisting of 29 definitions of terms used in this subchapter for former provisions consisting of 30 definitions.

1992—Par. (29). Pub. L. 102-384, §3(1), added par. (29) and struck out former par. (29) which read as follows: “The term ‘summer program’ means a youth corps program authorized under this subchapter that is limited to the months of June, July, and August.”

Par. (30). Pub. L. 102-384, §3(2), substituted “living allowances” for “stipends”.

1991—Par. (7). Pub. L. 102-10, §3(1), added par. (7). Former par. (7) redesignated (8).

Par. (8). Pub. L. 102-10, §3(2), (3), redesignated par. (7) as (8) and inserted “an Indian or” before “Indian tribes” in two places. Former par. (8) redesignated (9).

Pars. (9) to (13). Pub. L. 102-10, §3(2), redesignated pars. (8) to (12) as (9) to (13), respectively. Former par. (13) redesignated (14).

Par. (14). Pub. L. 102-10, §3(2), (4), redesignated par. (13) as (14) and inserted at end “Participants shall not be considered employees of the program.” Former par. (14) redesignated (15).

Pars. (15) to (22). Pub. L. 102-10, §3(2), redesignated pars. (14) to (21) as (15) to (22), respectively. Former par. (22) redesignated (23).

Par. (23). Pub. L. 102-10, §3(5), which directed the substitution of “participants” for “students or out of school youth”, was executed by making the substitution for “students or out-of-school youth” to reflect the probable intent of Congress.

Pub. L. 102-10, §3(2), redesignated par. (22) as (23). Former par. (23) redesignated (24).

Par. (24). Pub. L. 102-10, §3(2), (6), redesignated par. (23) as (24) and in heading and text substituted “participant” for “member”. Former par. (24) redesignated (25).

Pars. (25) to (29). Pub. L. 102-10, §3(2), redesignated pars. (24) to (28) as (25) to (29), respectively. Former par. (29) redesignated (30).

Par. (30). Pub. L. 102-10, §3(2), (7), redesignated par. (29) as (30) and inserted “corps” after “youth service”.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-110 effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107-110, set out as an Effective Date note under section 6301 of Title 20, Education.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see section 3 of Pub. L. 105-244, set out as a note under section 1001 of Title 20, Education.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Oct. 1, 1993, see section 123 of Pub. L. 103-82, set out as a note under section 1701 of Title 16, Conservation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2751, 12524, 12531, 12561, 12604, 12605, 12653b, 12682 of this title; title 20 section 1003.

§ 12512. Repealed. Pub. L. 103-82, title I, § 112, Sept. 21, 1993, 107 Stat. 861

Section, Pub. L. 101-610, title I, § 102, Nov. 16, 1990, 104 Stat. 3132, authorized Commission to make grants to carry out programs under parts B, C, D, and E of this subchapter.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1993, see section 123 of Pub. L. 103-82, set out as an Effective Date of 1993 Amendment note under section 1701 of Title 16, Conservation.

Division B—School-Based and Community-Based Service-Learning Programs

PRIOR PROVISIONS

This division is comprised of subtitle B, §§ 111-119, of title I of Pub. L. 101-610. A prior part B (§ 12521 et seq.), comprised of subtitle B, §§ 111-118, of title I of Pub. L. 101-610, related to programs for students and out-of-school youth, prior to repeal by Pub. L. 103-82, title I, § 103(a)(2), (b), Sept. 21, 1993, 107 Stat. 825, 837.

DIVISION REFERRED TO IN OTHER SECTIONS

This division is referred to in sections 12638, 12653, 12681 of this title.

PART I—SERVE-AMERICA PROGRAMS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 12572, 12573 of this title.

SUBPART A—SCHOOL-BASED PROGRAMS FOR STUDENTS

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in section 12681 of this title.

§ 12521. Authority to assist States and Indian tribes

(a) Use of funds

The Corporation, in consultation with the Secretary of Education, may make grants under section 12524(b)(1) of this title, and allotments under subsections (a) and (b)(2) of section 12524 of this title, to States (through State educational agencies), and to Indian tribes, to pay for the Federal share of—

(1) planning and building the capacity of the States or Indian tribes (which may be accomplished through grants or contracts with qualified organizations) to implement school-based service-learning programs, including—

(A) providing training for teachers, supervisors, personnel from community-based agencies (particularly with regard to the utilization of participants), and trainers, to be conducted by qualified individuals or organizations that have experience with service-learning;

(B) developing service-learning curricula to be integrated into academic programs, including the age-appropriate learning component described in section 12526(d)(2) of this title;

(C) forming local partnerships described in paragraph (2) or (4) to develop school-based service-learning programs in accordance with this subpart;

(D) devising appropriate methods for research and evaluation of the educational

value of service-learning and the effect of service-learning activities on communities; and

(E) establishing effective outreach and dissemination of information to ensure the broadest possible involvement of community-based agencies with demonstrated effectiveness in working with school-age youth in their communities;

(2) implementing, operating, or expanding school-based service-learning programs, which may include paying for the cost of the recruitment, training, supervision, placement, salaries, and benefits of service-learning coordinators, through State distribution of Federal funds made available under this subpart to projects operated by local partnerships among—

(A) local educational agencies; and

(B) one or more community partners that—

(i) shall include a public or private non-profit organization that—

(I) has a demonstrated expertise in the provision of services to meet unmet human, educational, environmental, or public safety needs;

(II) was in existence at least 1 year before the date on which the organization submitted an application under section 12526 of this title; and

(III) will make projects available for participants, who shall be students; and

(ii) may include a private for-profit business or private elementary or secondary school;

(3) planning of school-based service-learning programs, through State distribution of Federal funds made available under this subpart to local educational agencies, which planning may include paying for the cost of—

(A) the salaries and benefits of service-learning coordinators; or

(B) the recruitment, training, supervision, and placement of service-learning coordinators who are participants in a program under division C of this subchapter or receive a national service educational award under division D of this subchapter,

who will identify the community partners described in paragraph (2)(B) and assist in the design and implementation of a program described in paragraph (2); and

(4) implementing, operating, or expanding school-based service-learning programs involving adult volunteers to utilize service-learning to improve the education of students, through State distribution of Federal funds made available under this part to local partnerships among—

(A) local educational agencies; and

(B) one or more—

(i) public or private nonprofit organizations;

(ii) other educational agencies; or

(iii) private for-profit businesses,

that coordinate and operate projects for participants, who shall be students.

(b) Duties of service-learning coordinator

A service-learning coordinator referred to in paragraph (2) or (3) of subsection (a) of this section shall provide services to a local educational agency by—

- (1) providing technical assistance and information to, and facilitating the training of, teachers who want to use service-learning in their classrooms;
- (2) assisting local partnerships described in subsection (a) of this section in the planning, development, and execution of service-learning projects; and
- (3) carrying out such other duties as the local educational agency may determine to be appropriate.

(c) Related expenses

A partnership, local educational agency, or other qualified organization that receives financial assistance under this subpart may, in carrying out the activities described in subsection (a) of this section, use such assistance to pay for the Federal share of reasonable costs related to the supervision of participants, program administration, transportation, insurance, and evaluations, and for other reasonable expenses related to the activities.

(Pub. L. 101-610, title I, §111, as added Pub. L. 103-82, title I, §103(a)(2), Sept. 21, 1993, 107 Stat. 825.)

PRIOR PROVISIONS

A prior section 12521, Pub. L. 101-610, title I, §111, Nov. 16, 1990, 104 Stat. 3132; Pub. L. 102-10, §4(2), Mar. 12, 1991, 105 Stat. 30; prescribed general authority of Commission on National and Community Service to make grants for service-learning programs, prior to repeal by Pub. L. 103-82, title I, §103(a)(2), Sept. 21, 1993, 107 Stat. 825.

EFFECTIVE DATE

Division effective Oct. 1, 1993, see section 123 of Pub. L. 103-82, set out as an Effective Date of 1993 Amendment note under section 1701 of Title 16, Conservation.

PURPOSE OF AMENDMENTS TO SERVE-AMERICA PROGRAMS

Section 103(a)(1) of Pub. L. 103-82 provided that: “The purpose of this subsection [enacting this part] is to improve the Serve-America programs established under part I of subtitle B [of title I] of the National and Community Service Act of 1990 [probably refers to former subpart I (§12521 et seq.) of part B of this subchapter], and to enable the Corporation for National and Community Service, and the entities receiving financial assistance under such part, to—

- “(A) work with teachers in elementary schools and secondary schools within a community, and with community-based agencies, to create and offer service-learning opportunities for all school-age youth;
- “(B) educate teachers, and faculty providing teacher training and retraining, about service-learning, and incorporate service-learning opportunities into classroom teaching to strengthen academic learning;
- “(C) coordinate the work of adult volunteers who work with elementary and secondary schools as part of their community service activities; and
- “(D) work with employers in the communities to ensure that projects introduce the students to various careers and expose the students to needed further education and training.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12511, 12522, 12523, 12524, 12525, 12526, 12527, 12530 of this title.

§ 12522. Authority to assist local applicants in nonparticipating States

In any fiscal year in which a State does not submit an application under section 12525 of this title, for an allotment under subsection (a) or (b)(2) of section 12524 of this title, that meets the requirements of section 12525 of this title and such other requirements as the Chief Executive Officer may determine to be appropriate, the Corporation may use the allotment of that State to make direct grants to pay for the Federal share of the cost of—

- (1) carrying out the activities described in paragraph (2) or (4) of section 12521(a) of this title, to a local partnership described in such paragraph; or
- (2) carrying out the activities described in paragraph (3) of such section, to an agency described in such paragraph,

that is located in the State.

(Pub. L. 101-610, title I, §111A, as added Pub. L. 103-82, title I, §103(a)(2), Sept. 21, 1993, 107 Stat. 827.)

PRIOR PROVISIONS

A prior section 12522, Pub. L. 101-610, title I, §112, Nov. 16, 1990, 104 Stat. 3133; Pub. L. 102-10, §4(3), Mar. 12, 1991, 105 Stat. 30; Pub. L. 102-384, §4, Oct. 5, 1992, 106 Stat. 1455, related to allotments, prior to repeal by Pub. L. 103-82, §103(a)(2).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12524, 12526, 12527 of this title.

§ 12523. Authority to assist public or private nonprofit organizations**(a) In general**

The Corporation may make grants under section 12524(b)(1) of this title to public or private nonprofit organizations that—

- (1) have experience with service-learning;
- (2) were in existence at least 1 year before the date on which the organization submitted an application under section 12526(a) of this title; and
- (3) meet such other criteria as the Chief Executive Officer may establish.

(b) Use of funds

Such organizations may use grants made under subsection (a) of this section to make grants to partnerships described in paragraph (2) or (4) of section 12521(a) of this title to implement, operate, or expand school-based service-learning programs as described in such section and provide technical assistance and training to appropriate persons.

(Pub. L. 101-610, title I, §111B, as added Pub. L. 103-82, title I, §103(a)(2), Sept. 21, 1993, 107 Stat. 827.)

PRIOR PROVISIONS

A prior section 12523, Pub. L. 101-610, title I, §113, Nov. 16, 1990, 104 Stat. 3134; Pub. L. 102-384, §4, Oct. 5, 1992, 106 Stat. 1455, related to State grant applications, prior to repeal by Pub. L. 103-82, §103(a)(2).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12524, 12526, 12527, 12531 of this title.

§ 12524. Grants and allotments

(a) Indian tribes and territories

Of the amounts appropriated to carry out this subpart for any fiscal year, the Corporation shall reserve an amount of not more than 3 percent for payments to Indian tribes, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, to be allotted in accordance with their respective needs. The Corporation may also make payments from such amount to Palau, in accordance with its needs, until such time as the Compact of Free Association with Palau is ratified.

(b) Grants and allotments through States

The Corporation shall use the remainder of the funds appropriated to carry out this subpart for any fiscal year as follows:

(1) Grants

Except as provided in paragraph (3), from 25 percent of such remainder, the Corporation may make grants, on a competitive basis, to—

(A) States and Indian tribes; or

(B) as described in section 12523 of this title, to grantmaking entities.

(2) Allotments

(A) School-age youth

Except as provided in paragraph (3), from 37.5 percent of such remainder, the Corporation shall allot to each State an amount that bears the same ratio to 37.5 percent of such remainder as the number of school-age youth in the State bears to the total number of school-age youth of all States.

(B) Allocation under Elementary and Secondary Education Act of 1965

Except as provided in paragraph (3), from 37.5 percent of such remainder, the Corporation shall allot to each State an amount that bears the same ratio to 37.5 percent of such remainder as the allocation to the State for the previous fiscal year under title I of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6301 et seq.] or its successor authority bears to such allocations to all States.

(3) Minimum amount

No State shall receive, under paragraph (2), an allotment that is less than the allotment such State received for fiscal year 1993 under section 12522(b) of this title, as in effect on the day before September 21, 1993. If the amount of funds made available in a fiscal year to carry out paragraph (2) is insufficient to make such allotments, the Corporation shall make available sums from the 25 percent described in paragraph (1) for such fiscal year to make such allotments.

(4) "State" defined

Notwithstanding section 12511(26) of this title, for purposes of this subsection, the term "State" means each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico.

(c) Reallotment

If the Corporation determines that the allotment of a State or Indian tribe under this sec-

tion will not be required for a fiscal year because the State or Indian tribe does not submit an application for the allotment under section 12525 of this title that meets the requirements of such section and such other requirements as the Chief Executive Officer may determine to be appropriate, the Corporation shall, after making any grants under section 12522 of this title to a partnership or agency described in such section, make any remainder of such allotment available for reallotment to such other States, and Indian tribes, with approved applications submitted under section 12525 of this title, as the Corporation may determine to be appropriate.

(d) Exception

Notwithstanding subsections (a) and (b) of this section, if less than \$20,000,000 is appropriated for any fiscal year to carry out this subpart, the Corporation shall award grants to States and Indian tribes, from the amount so appropriated, on a competitive basis to pay for the Federal share of the activities described in section 12521 of this title.

(Pub. L. 101-610, title I, §112, as added Pub. L. 103-82, title I, §103(a)(2), Sept. 21, 1993, 107 Stat. 827; amended Pub. L. 103-382, title III, §§391(y), 394(h)(2), Oct. 20, 1994, 108 Stat. 4026, 4028.)

REFERENCES IN TEXT

For ratification of Compact of Free Association with Palau, referred to in subsec. (a), see Proc. No. 6726, Sept. 27, 1994, 59 F.R. 49777, set out as a note under section 1931 of Title 48, Territories and Insular Possessions.

The Elementary and Secondary Education Act of 1965, referred to in subsec. (b)(2)(B), is Pub. L. 89-10, Apr. 11, 1965, 79 Stat. 27, as amended. Title I of the Act is classified generally to subchapter I (§6301 et seq.) of chapter 70 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20 and Tables.

Section 12522(b) of this title, as in effect on the day before September 21, 1993, referred to in subsec. (b)(3), means former section 12522(b) which was repealed by Pub. L. 103-82, title I, §103(a)(2), Sept. 21, 1993, 107 Stat. 825.

PRIOR PROVISIONS

A prior section 12524, Pub. L. 101-610, title I, §114, Nov. 16, 1990, 104 Stat. 3135; Pub. L. 102-10, §4(4), Mar. 12, 1991, 105 Stat. 30, related to local applications for assistance, prior to repeal by Pub. L. 103-82, §103(a)(2).

A prior section 112 of Pub. L. 101-610 was classified to section 12522 of this title prior to repeal by Pub. L. 103-82.

AMENDMENTS

1994—Subsec. (b)(2)(B). Pub. L. 103-382, §394(h)(2), inserted "or its successor authority" before "bears to such".

Pub. L. 103-382, §391(y), substituted "title I of" for "chapter 1 of title I of".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12521, 12522, 12523, 12525, 12527, 12530 of this title.

§ 12525. State or tribal applications

(a) Submission

To be eligible to receive a grant under section 12524(b)(1) of this title, an allotment under subsection (a) or (b)(2) of section 12524 of this title, a reallotment under section 12524(c) of this title,

or a grant under section 12524(d) of this title, a State, acting through the State educational agency, or an Indian tribe, shall prepare, submit to the Corporation, and obtain approval of, an application at such time and in such manner as the Chief Executive Officer may reasonably require.

(b) Contents

An application that is submitted under subsection (a) of this section with respect to service-learning programs described in section 12521 of this title shall include—

(1) a 3-year strategic plan, or a revision of a previously approved 3-year strategic plan, for promoting service-learning through the programs, which plan shall contain such information as the Chief Executive Officer may reasonably require, including information demonstrating that the programs will be carried out in a manner consistent with the approved strategic plan;

(2) assurances that—

(A) the applicant will keep such records and provide such information to the Corporation with respect to the programs as may be required for fiscal audits and program evaluation; and

(B) the applicant will comply with the nonduplication and nondisplacement requirements of section 12637 of this title and the grievance procedure requirements of section 12636(f) of this title; and

(3) such additional information as the Chief Executive Officer may reasonably require.

(Pub. L. 101-610, title I, §113, as added Pub. L. 103-82, title I, §103(a)(2), Sept. 21, 1993, 107 Stat. 829.)

PRIOR PROVISIONS

A prior section 12525, Pub. L. 101-610, title I, §115, Nov. 16, 1990, 104 Stat. 3137; Pub. L. 102-384, §4, Oct. 5, 1992, 106 Stat. 1455, related to priority applications and private school participation, prior to repeal by Pub. L. 103-82, §103(a)(2).

A prior section 113 of Pub. L. 101-610 was classified to section 12523 of this title prior to repeal by Pub. L. 103-82.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12522, 12524, 12526, 12527, 12638 of this title.

§ 12526. Local applications

(a) Application to Corporation to make grants for school-based service-learning programs

(1) In general

To be eligible to receive a grant in accordance with section 12523(a) of this title to make grants relating to school-based service-learning programs described in section 12521(a) of this title, a grantmaking entity shall prepare, submit to the Corporation, and obtain approval of, an application.

(2) Submission

Such application shall be submitted at such time and in such manner, and shall contain such information, as the Chief Executive Officer may reasonably require. Such application shall include a proposal to assist such programs in more than 1 State.

(b) Direct application to Corporation to carry out school-based service-learning programs in nonparticipating States

To be eligible to receive a grant from the Corporation in the circumstances described in section 12522 of this title to carry out an activity as described in such section, a partnership or agency described in such section shall prepare, submit to the Corporation, and obtain approval of, an application. Such application shall be submitted at such time and in such manner, and shall contain such information, as the Chief Executive Officer may reasonably require.

(c) Application to State or Indian tribe to receive assistance to carry out school-based service-learning programs

(1) In general

Any—

(A) qualified organization that desires to receive financial assistance under this subpart from a State or Indian tribe for an activity described in section 12521(a)(1) of this title;

(B) partnership described in section 12521(a)(2) of this title that desires to receive such assistance from a State, Indian tribe, or grantmaking entity for an activity described in section 12521(a)(2) of this title;

(C) agency described in section 12521(a)(3) of this title that desires to receive such assistance from a State or Indian tribe for an activity described in such section; or

(D) partnership described in section 12521(a)(4) of this title that desires to receive such assistance from a State or Indian tribe for an activity described in such section,

to be carried out through a service-learning program described in section 12521 of this title, shall prepare, submit to the State educational agency, Indian tribe, or grantmaking entity, and obtain approval of, an application for the program.

(2) Submission

Such application shall be submitted at such time and in such manner, and shall contain such information, as the agency, tribe, or entity may reasonably require.

(d) Regulations

The Corporation shall by regulation establish standards for the information and assurances required to be contained in an application submitted under subsection (a) or (b) of this section with respect to a service-learning program described in section 12521 of this title, including, at a minimum, assurances that—

(1) prior to the placement of a participant, the entity carrying out the program will consult with the appropriate local labor organization, if any, representing employees in the area who are engaged in the same or similar work as that proposed to be carried out by such program, to prevent the displacement and protect the rights of such employees;

(2) the entity carrying out the program will develop an age-appropriate learning component for participants in the program that shall include a chance for participants to analyze and apply their service experiences; and

(3) the entity carrying out the program will comply with the nonduplication and non-displacement requirements of section 12637 of this title and the grievance procedure requirements of section 12636(f) of this title.

(e) Limitation on same project in multiple applications

No applicant shall submit an application under section 12525 of this title or this section, and the Corporation shall reject an application that is submitted under section 12525 of this title or this section, if the application describes a project proposed to be conducted using assistance requested by the applicant and the project is already described in another application pending before the Corporation.

(Pub. L. 101-610, title I, §114, as added Pub. L. 103-82, title I, §103(a)(2), Sept. 21, 1993, 107 Stat. 829.)

PRIOR PROVISIONS

A prior section 12526, Pub. L. 101-610, title I, §116, Nov. 16, 1990, 104 Stat. 3138; Pub. L. 102-384, §4, Oct. 5, 1992, 106 Stat. 1455, prescribed Federal and local project contributions, prior to repeal by Pub. L. 103-82, §103(a)(2).

A prior section 114 of Pub. L. 101-610 was classified to section 12524 of this title prior to repeal by Pub. L. 103-82.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12521, 12523, 12527 of this title.

§ 12527. Consideration of applications

(a) Criteria for applications

In approving applications for financial assistance under subsection (a), (b), (c), or (d) of section 12524 of this title, the Corporation shall consider such criteria with respect to sustainability, replicability, innovation, and quality of programs under this subpart as the Chief Executive Officer may by regulation specify. In providing assistance under this subpart, a State educational agency, Indian tribe, or grant-making entity shall consider such criteria.

(b) Priority for local applications

In providing assistance under this subpart, a State educational agency or Indian tribe, or the Corporation if section 12522 or 12523 of this title applies, shall give priority to entities that submit applications under section 12526 of this title with respect to service-learning programs described in section 12521 of this title that—

- (1) involve participants in the design and operation of the program;
- (2) are in the greatest need of assistance, such as programs targeting low-income areas;
- (3) involve—
 - (A) students from public elementary or secondary schools, and students from private elementary or secondary schools, serving together; or
 - (B) students of different ages, races, sexes, ethnic groups, disabilities, or economic backgrounds, serving together; or
- (4) are integrated into the academic program of the participants.

(c) Rejection of applications

If the Corporation rejects an application submitted by a State under section 12525 of this

title for an allotment under section 12524(b)(2) of this title, the Corporation shall promptly notify the State of the reasons for the rejection of the application. The Corporation shall provide the State with a reasonable opportunity to revise and resubmit the application and shall provide technical assistance, if needed, to the State as part of the resubmission process. The Corporation shall promptly reconsider such resubmitted application.

(Pub. L. 101-610, title I, §115, as added Pub. L. 103-82, title I, §103(a)(2), Sept. 21, 1993, 107 Stat. 830.)

PRIOR PROVISIONS

A prior section 12527, Pub. L. 101-610, title I, §117, Nov. 16, 1990, 104 Stat. 3138; Pub. L. 102-10, §4(5), Mar. 12, 1991, 105 Stat. 30, prescribed authorized uses of funds, prior to repeal by Pub. L. 103-82, §103(a)(2).

A prior section 115 of Pub. L. 101-610 was classified to section 12525 of this title prior to repeal by Pub. L. 103-82.

§ 12528. Participation of students and teachers from private schools

(a) In general

To the extent consistent with the number of students in the State or Indian tribe or in the school district of the local educational agency involved who are enrolled in private nonprofit elementary and secondary schools, such State, Indian tribe, or agency shall (after consultation with appropriate private school representatives) make provision—

- (1) for the inclusion of services and arrangements for the benefit of such students so as to allow for the equitable participation of such students in the programs implemented to carry out the objectives and provide the benefits described in this subpart; and
- (2) for the training of the teachers of such students so as to allow for the equitable participation of such teachers in the programs implemented to carry out the objectives and provide the benefits described in this subpart.

(b) Waiver

If a State, Indian tribe, or local educational agency is prohibited by law from providing for the participation of students or teachers from private nonprofit schools as required by subsection (a) of this section, or if the Corporation determines that a State, Indian tribe, or local educational agency substantially fails or is unwilling to provide for such participation on an equitable basis, the Chief Executive Officer shall waive such requirements and shall arrange for the provision of services to such students and teachers. Such waivers shall be subject to consultation, withholding, notice, and judicial review requirements in accordance with paragraphs (3) and (4) of section 2727(b) of title 20, as in effect on the day preceding October 20, 1994.

(Pub. L. 101-610, title I, §115A, as added Pub. L. 103-82, title I, §103(a)(2), Sept. 21, 1993, 107 Stat. 831; amended Pub. L. 103-382, title III, §394(h)(3), Oct. 20, 1994, 108 Stat. 4028.)

REFERENCES IN TEXT

Section 2727(b) of title 20, referred to in subsec. (b), was in the original "section 1017(b) of the Elementary

and Secondary Education Act of 1965 (20 U.S.C. 2727(b))”, Pub. L. 89-10, and was omitted in the general amendment of that Act by Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3519. See section 6311 et seq. of Title 20, Education.

AMENDMENTS

1994—Subsec. (b). Pub. L. 103-382 inserted before period at end “, as in effect on the day preceding October 20, 1994”.

§ 12529. Federal, State, and local contributions

(a) Share

(1) In general

The Federal share attributable to this subpart of the cost of carrying out a program for which a grant or allotment is made under this subpart may not exceed—

(A) 90 percent of the total cost of the program for the first year for which the program receives assistance under this subpart;

(B) 80 percent of the total cost of the program for the second year for which the program receives assistance under this subpart;

(C) 70 percent of the total cost of the program for the third year for which the program receives assistance under this subpart; and

(D) 50 percent of the total cost of the program for the fourth year, and for any subsequent year, for which the program receives assistance under this subpart.

(2) Calculation

In providing for the remaining share of the cost of carrying out such a program, each recipient of assistance under this subpart—

(A) shall provide for such share through a payment in cash or in kind, fairly evaluated, including facilities, equipment, or services; and

(B) may provide for such share through State sources, local sources, or Federal sources (other than funds made available under the national service laws).

(b) Waiver

The Chief Executive Officer may waive the requirements of subsection (a) of this section in whole or in part with respect to any such program in any fiscal year if the Corporation determines that such a waiver would be equitable due to a lack of available financial resources at the local level.

(Pub. L. 101-610, title I, §116, as added Pub. L. 103-82, title I, §103(a)(2), Sept. 21, 1993, 107 Stat. 832.)

PRIOR PROVISIONS

A prior section 116 of Pub. L. 101-610 was classified to section 12526 of this title prior to repeal by Pub. L. 103-82.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12546, 12561 of this title.

§ 12530. Limitations on uses of funds

(a) Administrative costs

(1) Limitation

Not more than 5 percent of the amount of assistance provided to a State educational agen-

cy, Indian tribe, or grantmaking entity that is the original recipient of a grant or allotment under subsection (a), (b), (c), or (d) of section 12524 of this title for a fiscal year may be used to pay for administrative costs incurred by—

(A) the original recipient; or

(B) the entity carrying out the service-learning programs supported with the assistance.

(2) Rules on use

The Chief Executive Officer may by rule prescribe the manner and extent to which—

(A) such assistance may be used to cover administrative costs; and

(B) that portion of the assistance available to cover administrative costs should be distributed between—

(i) the original recipient; and

(ii) the entity carrying out the service-learning programs supported with the assistance.

(b) Capacity-building activities

(1) In general

Except as provided in paragraph (2), not less than 10 percent and not more than 15 percent of the amount of assistance provided to a State educational agency or Indian tribe that is the original recipient of a grant or allotment under subsection (a), (b), (c), or (d) of section 12524 of this title for a fiscal year may be used to build capacity through training, technical assistance, curriculum development, and coordination activities, described in section 12521(a)(1) of this title.

(2) Waiver

The Chief Executive Officer may waive the requirements of paragraph (1) in order to permit an agency or a tribe to use not less than 10 percent and not more than 20 percent of such amount to build capacity as provided in paragraph (1). To be eligible to receive such a waiver such an agency or tribe shall submit an application to the Chief Executive Officer at such time, in such manner, and containing such information as the Chief Executive Officer may require.

(c) Local uses of funds

Funds made available under this subpart may not be used to pay any stipend, allowance, or other financial support to any student who is a participant under this division, except reimbursement for transportation, meals, and other reasonable out-of-pocket expenses directly related to participation in a program assisted under this subpart.

(Pub. L. 101-610, title I, §116A, as added Pub. L. 103-82, title I, §103(a)(2), Sept. 21, 1993, 107 Stat. 832.)

§ 12531. Definitions

As used in this subpart:

(1) Grantmaking entity

The term “grantmaking entity” means an organization described in section 12523(a) of this title.

(2) School-based

The term “school-based” means based in an elementary school or a secondary school.

(3) Student

Notwithstanding section 12511(29) of this title, the term “student” means an individual who is enrolled in an elementary or secondary school on a full- or part-time basis.

(Pub. L. 101-610, title I, §116B, as added Pub. L. 103-82, title I, §103(a)(2), Sept. 21, 1993, 107 Stat. 833.)

PRIOR PROVISIONS

A prior section 12531, Pub. L. 101-610, title I, §118, Nov. 16, 1990, 104 Stat. 3139; Pub. L. 102-10, §4(6), Mar. 12, 1991, 105 Stat. 30, related to higher education innovative projects for community service, prior to repeal by Pub. L. 103-82, §103(b).

SUBPART B—COMMUNITY-BASED SERVICE PROGRAMS FOR SCHOOL-AGE YOUTH

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in section 12681 of this title.

§ 12541. Definitions

As used in this subpart:

(1) Community-based service program

The term “community-based service program” means a program described in section 12542(b)(1)(A) of this title.

(2) Grantmaking entity

The term “grantmaking entity” means a qualified organization that—

(A) submits an application under section 12544(a) of this title to make grants to qualified organizations;

(B) was in existence at least 1 year before the date on which the organization submitted the application; and

(C) meets such other criteria as the Chief Executive Officer shall establish.

(3) Qualified organization

The term “qualified organization” means a public or private nonprofit organization with experience working with school-age youth that meets such criteria as the Chief Executive Officer may establish.

(Pub. L. 101-610, title I, §117, as added Pub. L. 103-82, title I, §103(a)(2), Sept. 21, 1993, 107 Stat. 833.)

PRIOR PROVISIONS

A prior section 12541, Pub. L. 101-610, title I, §121, Nov. 16, 1990, 104 Stat. 3140, as amended, which prescribed general authority of Commission to make grants and transfer funds for youth corps programs, was renumbered section 199A of Pub. L. 101-610 by Pub. L. 103-82, §101(a), and transferred to section 12655 of this title.

A prior section 117 of Pub. L. 101-610 was classified to section 12527 of this title prior to repeal by Pub. L. 103-82.

§ 12542. General authority**(a) Grants**

From the funds appropriated to carry out this subpart for a fiscal year, the Corporation may make grants to State Commissions, grantmaking entities, and qualified organizations to pay for the Federal share of the implementa-

tion, operation, expansion, or replication of community-based service programs.

(b) Use of funds**(1) State Commissions and grantmaking entities**

A State Commission or grantmaking entity may use a grant made under subsection (a) of this section—

(A) to make a grant to a qualified organization to implement, operate, expand, or replicate a community-based service program that provides for meaningful human, educational, environmental, or public safety service by participants, who shall be school-age youth; or

(B) to provide training and technical assistance to such an organization.

(2) Qualified organizations

A qualified organization, other than a grantmaking entity, may use a grant made under subsection (a) of this section to implement, operate, expand, or replicate a program described in paragraph (1)(A).

(Pub. L. 101-610, title I, §117A, as added Pub. L. 103-82, title I, §103(a)(2), Sept. 21, 1993, 107 Stat. 833.)

PRIOR PROVISIONS

A prior section 12542, Pub. L. 101-610, title I, §122, Nov. 16, 1990, 104 Stat. 3140, as amended, which related to allocation of funds by Commission for conservation and youth corps programs, was renumbered section 199B of Pub. L. 101-610 by Pub. L. 103-82, §101(a), and transferred to section 12655a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12511, 12541, 12543, 12544, 12545, 12547 of this title.

§ 12543. State applications**(a) In general**

To be eligible to receive a grant under section 12542(a) of this title, a State Commission shall prepare, submit to the Corporation, and obtain approval of, an application.

(b) Submission

Such application shall be submitted to the Corporation at such time and in such manner, and shall contain such information, as the Chief Executive Officer may reasonably require.

(c) Contents

Such an application shall include, at a minimum, a State plan that contains the information and assurances described in section 12544(d) of this title with respect to each community-based service program proposed to be carried out through funding distributed by the State Commission under this subpart.

(Pub. L. 101-610, title I, §117B, as added Pub. L. 103-82, title I, §103(a)(2), Sept. 21, 1993, 107 Stat. 834.)

PRIOR PROVISIONS

A prior section 12543, Pub. L. 101-610, title I, §123, Nov. 16, 1990, 104 Stat. 3141, as amended, which related to applications for assistance by States, Indian tribes and other local applicants, was renumbered section 199C of Pub. L. 101-610 by Pub. L. 103-82, §101(a), and transferred to section 12655b of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12544, 12545, 12638 of this title.

§ 12544. Local applications**(a) Application to Corporation to make grants for community-based service programs**

To be eligible to receive a grant from the Corporation under section 12542(a) of this title to make grants under section 12542(b)(1) of this title, a grantmaking entity shall prepare, submit to the Corporation, and obtain approval of, an application that proposes a community-based service program to be carried out through grants made to qualified organizations. Such application shall be submitted at such time and in such manner, and shall contain such information, as the Chief Executive Officer may reasonably require.

(b) Direct application to Corporation to carry out community-based service programs

To be eligible to receive a grant from the Corporation under section 12542(a) of this title to implement, operate, expand, or replicate a community service program, a qualified organization shall prepare, submit to the Corporation, and obtain approval of, an application that proposes a community-based service program to be carried out at multiple sites, or that proposes an innovative community-based service program. Such application shall be submitted at such time and in such manner, and shall contain such information, as the Chief Executive Officer may reasonably require.

(c) Application to State Commission or grantmaking entity to receive grants to carry out community-based service programs

To be eligible to receive a grant from a State Commission or grantmaking entity under section 12542(b)(1) of this title, a qualified organization shall prepare, submit to the Commission or entity, and obtain approval of, an application. Such application shall be submitted at such time and in such manner, and shall contain such information, as the Commission or entity may reasonably require.

(d) Regulations

The Corporation shall by regulation establish standards for the information and assurances required to be contained in an application submitted under subsection (a) or (b) of this section with respect to a community-based service program, including, at a minimum—

(1) an assurance that the entity carrying out the program proposed by the applicant will comply with the nonduplication and non-displacement provisions of section 12637 of this title and the grievance procedure requirements of section 12636(f) of this title;

(2) an assurance that the entity carrying out the program will, prior to placing a participant in the program, consult with the appropriate local labor organization, if any, representing employees in the area in which the program will be carried out that are engaged in the same or similar work as the work proposed to be carried out by the program, to prevent the displacement of such employees; and

(3) in the case of an application submitted by a grantmaking entity, information demonstrating that the entity will make grants for a program to—

(A) carry out activities described in section 12542(b)(1) of this title in two or more States, under circumstances in which the activities carried out under such program can be carried out more efficiently through one program than through two or more programs; and

(B) carry out the same activities, such as training activities or activities related to exchanging information on service experiences, through each of the projects assisted through the program.

(e) Limitation on same project in multiple applications

No applicant shall submit an application under section 12543 of this title or this section, and the Corporation shall reject an application that is submitted under section 12543 of this title or this section, if the application describes a project proposed to be conducted using assistance requested by the applicant and the project is already described in another application pending before the Corporation.

(Pub. L. 101-610, title I, §117C, as added Pub. L. 103-82, title I, §103(a)(2), Sept. 21, 1993, 107 Stat. 834.)

PRIOR PROVISIONS

A prior section 12544, Pub. L. 101-610, title I, §124, Nov. 16, 1990, 104 Stat. 3143, as amended, which prescribed appropriate focus for conservation and youth service corps programs, was renumbered section 199D of Pub. L. 101-610 by Pub. L. 103-82, §101(a), and transferred to section 12655c of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12541, 12543, 12545 of this title.

§ 12545. Consideration of applications**(a) Application of criteria**

The Corporation shall apply the criteria described in subsection (b) of this section in determining whether to approve an application submitted under section 12543 of this title or under subsection (a) or (b) of section 12544 of this title and to provide assistance under section 12542 of this title to the applicant on the basis of the application.

(b) Assistance criteria

In evaluating such an application with respect to a program under this subpart, the Corporation shall consider the criteria established for national service programs under section 12585(c) of this title.

(c) Application to subgrants

A State Commission or grantmaking entity shall apply the criteria described in subsection (b) of this section in determining whether to approve an application under section 12544(c) of this title and to make a grant under section 12542(b)(1) of this title to the applicant on the basis of the application.

(Pub. L. 101-610, title I, §117D, as added Pub. L. 103-82, title I, §103(a)(2), Sept. 21, 1993, 107 Stat. 835.)

PRIOR PROVISIONS

A prior section 12545, Pub. L. 101-610, title I, §125, Nov. 16, 1990, 104 Stat. 3144, which related to administration of related programs, was renumbered section 199E of Pub. L. 101-610 by Pub. L. 103-82, §101(a), and transferred to section 12655d of this title.

§ 12546. Federal, State, and local contributions**(a) Federal share****(1) In general**

The Federal share attributable to this subpart of the cost of carrying out a program for which a grant is made under this subpart may not exceed the percentage specified in subparagraph (A), (B), (C), or (D) of section 12529(a)(1) of this title, as appropriate.

(2) Calculation

Each recipient of assistance under this subpart shall comply with section 12529(a)(2) of this title.

(b) Waiver

The Chief Executive Officer may waive the requirements of subsection (a) of this section, in whole or in part, as provided in section 12529(b) of this title.

(Pub. L. 101-610, title I, §117E, as added Pub. L. 103-82, title I, §103(a)(2), Sept. 21, 1993, 107 Stat. 836.)

PRIOR PROVISIONS

A prior section 12546, Pub. L. 101-610, title I, §126, Nov. 16, 1990, 104 Stat. 3144, which related to program activities on public or Indian lands, was renumbered section 199F of Pub. L. 101-610 by Pub. L. 103-82, §101(a), and transferred to section 12655e of this title.

§ 12547. Limitations on uses of funds**(a) Administrative costs**

Not more than 5 percent of the amount of assistance provided to a State Commission, grant-making entity, or qualified organization that is the original recipient of a grant under section 12542(a) of this title for a fiscal year may be used to pay for administrative costs incurred by—

- (1) the original recipient; or
- (2) the entity carrying out the community-based service programs supported with the assistance.

(b) Rules on use

The Chief Executive Officer may by rule prescribe the manner and extent to which—

- (1) such assistance may be used to cover administrative costs; and
- (2) that portion of the assistance available to cover administrative costs should be distributed between—
 - (A) the original recipient; and
 - (B) the entity carrying out the community-based service programs supported with the assistance.

(Pub. L. 101-610, title I, §117F, as added Pub. L. 103-82, title I, §103(a)(2), Sept. 21, 1993, 107 Stat. 836.)

PRIOR PROVISIONS

A prior section 12547, Pub. L. 101-610, title I, §127, Nov. 16, 1990, 104 Stat. 3145, which related to training

and education services, was renumbered section 199G of Pub. L. 101-610 by Pub. L. 103-82, §101(a), and transferred to section 12655f of this title.

A prior section 12548, Pub. L. 101-610, title I, §128, Nov. 16, 1990, 104 Stat. 3146, as amended, which related to amount of award and matching requirement, was renumbered section 199H of Pub. L. 101-610 by Pub. L. 103-82, title I, §101(a), Sept. 21, 1993, 107 Stat. 788, and transferred to section 12655g of this title, prior to repeal by Pub. L. 103-82, §101(e)(8)(A).

A prior section 12549, Pub. L. 101-610, title I, §129, Nov. 16, 1990, 104 Stat. 3146, which related to preference for certain projects, was successively renumbered section 199I, then 199H, of Pub. L. 101-610 by Pub. L. 103-82, §101(a), (e)(8)(B), and transferred to section 12655h of this title.

A prior section 12550, Pub. L. 101-610, title I, §130, Nov. 16, 1990, 104 Stat. 3146, as amended, which related to age and citizenship criteria for enrollment, was successively renumbered section 199J, then 199I, of Pub. L. 101-610 by Pub. L. 103-82, §101(a), (e)(8)(B), and transferred to section 12655i of this title.

SUBPART C—CLEARINGHOUSE

§ 12551. Service-learning clearinghouse**(a) In general**

The Corporation shall provide financial assistance, from funds appropriated to carry out division H of this subchapter, to organizations described in subsection (b) of this section to establish a clearinghouse, which shall carry out activities, either directly or by arrangement with another such organization, with respect to information about service-learning.

(b) Public or private nonprofit organizations

Public or private nonprofit organizations that have extensive experience with service-learning, including use of adult volunteers to foster service-learning, shall be eligible to receive assistance under subsection (a) of this section.

(c) Function of clearinghouse

An organization that receives assistance under subsection (a) of this section may—

- (1) assist entities carrying out State or local service-learning programs with needs assessments and planning;
- (2) conduct research and evaluations concerning service-learning;
- (3)(A) provide leadership development and training to State and local service-learning program administrators, supervisors, service sponsors, and participants; and
- (B) provide training to persons who can provide the leadership development and training described in subparagraph (A);
- (4) facilitate communication among entities carrying out service-learning programs and participants in such programs;
- (5) provide information, curriculum materials, and technical assistance relating to planning and operation of service-learning programs, to States and local entities eligible to receive financial assistance under this subchapter;
- (6) provide information regarding methods to make service-learning programs accessible to individuals with disabilities;
- (7)(A) gather and disseminate information on successful service-learning programs, components of such successful programs, innovative youth skills curricula related to service-learning, and service-learning projects; and

(B) coordinate the activities of the Clearing-house¹ with appropriate entities to avoid duplication of effort;

(8) make recommendations to State and local entities on quality controls to improve the quality of service-learning programs;

(9) assist organizations in recruiting, screening, and placing service-learning coordinators; and

(10) carry out such other activities as the Chief Executive Officer determines to be appropriate.

(Pub. L. 101-610, title I, §118, as added Pub. L. 103-82, title I, §103(a)(2), Sept. 21, 1993, 107 Stat. 836.)

PRIOR PROVISIONS

A prior section 12551, Pub. L. 101-610, title I, §131, Nov. 16, 1990, 104 Stat. 3147, which related to use of volunteers in assisting program projects, was successively renumbered section 199K, then 199J, of Pub. L. 101-610 by Pub. L. 103-82, §101(a), (e)(8)(B), and transferred to section 12655j of this title.

A prior section 118 of Pub. L. 101-610 was classified to section 12531 of this title prior to repeal by Pub. L. 103-82.

A prior section 12552, Pub. L. 101-610, title I, §132, Nov. 16, 1990, 104 Stat. 3147, which related to post-service benefits, was renumbered section 199L of Pub. L. 101-610 by Pub. L. 103-82, §101(a), and transferred to section 12655k of this title, prior to repeal by Pub. L. 103-82, §101(e)(8)(A).

A prior section 12553, Pub. L. 101-610, title I, §133, Nov. 16, 1990, 104 Stat. 3147, as amended, which related to living allowance, was successively renumbered section 199M, then 199K, of Pub. L. 101-610 by Pub. L. 103-82, §101(a), (e)(8)(B), and transferred to section 12655l of this title.

A prior section 12554, Pub. L. 101-610, title I, §134, Nov. 16, 1990, 104 Stat. 3148, which related to joint programs, was successively renumbered section 199N, then 199L, of Pub. L. 101-610 by Pub. L. 103-82, §101(a), (e)(8)(B), and transferred to section 12655m of this title.

A prior section 12555, Pub. L. 101-610, title I, §135, Nov. 16, 1990, 104 Stat. 3149, which related to Federal and State employee status, was successively renumbered section 199O, then 199M, of Pub. L. 101-610 by Pub. L. 103-82, §101(a), (e)(8)(B), and transferred to section 12655n of this title.

A prior section 12556, Pub. L. 101-610, title I, §136, Nov. 16, 1990, 104 Stat. 3150, directed Commission on National and Community Service to promulgate regulations implementing American Conservation Youth Corps program and established procedures for promulgation, prior to repeal by Pub. L. 102-10, §5(7), Mar. 12, 1991, 105 Stat. 31.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12653a of this title.

PART II—HIGHER EDUCATION INNOVATIVE PROGRAMS FOR COMMUNITY SERVICE

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 12681 of this title.

§ 12561. Higher education innovative programs for community service

(a) Purpose

It is the purpose of this part to expand participation in community service by supporting innovative community service programs carried

out through institutions of higher education, acting as civic institutions to meet the human, educational, environmental, or public safety needs of neighboring communities.

(b) General authority

The Corporation, in consultation with the Secretary of Education, is authorized to make grants to, and enter into contracts with, institutions of higher education (including a combination of such institutions), and partnerships comprised of such institutions and of other public or private nonprofit organizations, to pay for the Federal share of the cost of—

(1) enabling such an institution or partnership to create or expand an organized community service program that—

(A) engenders a sense of social responsibility and commitment to the community in which the institution is located; and

(B) provides projects for participants, who shall be students, faculty, administration, or staff of the institution, or residents of the community;

(2) supporting student-initiated and student-designed community service projects through the program;

(3) strengthening the leadership and instructional capacity of teachers at the elementary, secondary, and postsecondary levels, with respect to service-learning, by—

(A) including service-learning as a key component of the preservice teacher education of the institution; and

(B) encouraging the faculty of the institution to use service-learning methods throughout their curriculum;

(4) facilitating the integration of community service carried out under the program into academic curricula, including integration of clinical programs into the curriculum for students in professional schools, so that students can obtain credit for their community service projects;

(5) supplementing the funds available to carry out work-study programs under part C of title IV of the Higher Education Act of 1965 (42 U.S.C. 2751 et seq.) to support service-learning and community service through the community service program;

(6) strengthening the service infrastructure within institutions of higher education in the United States through the program; and

(7) providing for the training of teachers, prospective teachers, related education personnel, and community leaders in the skills necessary to develop, supervise, and organize service-learning.

(c) Federal share

(1) Share

(A) In general

The Federal share of the cost of carrying out a community service project for which a grant or contract is awarded under this part may not exceed 50 percent.

(B) Calculation

Each recipient of assistance under this part shall comply with section 12529(a)(2) of this title.

¹ So in original. Probably should not be capitalized.

(2) Waiver

The Chief Executive Officer may waive the requirements of paragraph (1), in whole or in part, as provided in section 12529(b) of this title.

(d) Application for grant**(1) Submission**

To receive a grant or enter into a contract under this part, an institution or partnership described in subsection (b) of this section shall prepare, submit to the Corporation, and obtain approval of, an application at such time, in such manner, and containing such information and assurances as the Corporation may reasonably require. In requesting applications for assistance under this part, the Corporation shall specify such required information and assurances.

(2) Contents

An application submitted under paragraph (1) shall contain, at a minimum—

(A) assurances that—

(i) prior to the placement of a participant, the applicant will consult with the appropriate local labor organization, if any, representing employees in the area who are engaged in the same or similar work as that proposed to be carried out by such program, to prevent the displacement and protect the rights of such employees; and

(ii) the applicant will comply with the nonduplication and nondisplacement provisions of section 12637 of this title and grievance procedure requirements of section 12636(f) of this title; and

(B) such other assurances as the Chief Executive Officer may reasonably require.

(e) Priority**(1) In general**

In making grants and entering into contracts under subsection (b) of this section, the Corporation shall give priority to applicants that submit applications containing proposals that—

(A) demonstrate the commitment of the institution of higher education, other than by demonstrating the commitment of the students, to supporting the community service projects carried out under the program;

(B) specify the manner in which the institution will promote faculty, administration, and staff participation in the community service projects;

(C) specify the manner in which the institution will provide service to the community through organized programs, including, where appropriate, clinical programs for students in professional schools;

(D) describe any partnership that will participate in the community service projects, such as a partnership comprised of—

- (i) the institution;
 - (ii)(I) a community-based agency;
 - (II) a local government agency; or
 - (III) a nonprofit entity that serves or involves school-age youth or older adults;
- and

(iii) a student organization;

(E) demonstrate community involvement in the development of the proposal;

(F) specify that the institution will use such assistance to strengthen the service infrastructure in institutions of higher education; or

(G) with respect to projects involving delivery of service, specify projects that involve leadership development of school-age youth.

(2) Determination

In giving priority to applicants under paragraph (1), the Corporation shall give increased priority to such an applicant for each characteristic described in subparagraphs (A) through (G) of paragraph (1) that is reflected in the application submitted by the applicant.

(f) National service educational award

A participant in a program funded under this part shall be eligible for the national service educational award described in division D of this subchapter, if the participant served in an approved national service position.

(g) "Student" defined

Notwithstanding section 12511(29) of this title, as used in this part, the term "student" means an individual who is enrolled in an institution of higher education on a full- or part-time basis.

(Pub. L. 101-610, title I, § 119, as added Pub. L. 103-82, title I, § 103(b), Sept. 21, 1993, 107 Stat. 837.)

REFERENCES IN TEXT

The Higher Education Act of 1965, referred to in subsec. (b)(5), is Pub. L. 89-329, Nov. 8, 1965, 79 Stat. 1219, as amended. Part C of title IV of the Act is classified generally to part C (§ 2751 et seq.) of subchapter I of chapter 34 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20, Education, and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12511 of this title.

Division C—National Service Trust Program

PRIOR PROVISIONS

This division is comprised of subtitle C, §§ 121-141, of title I of Pub. L. 101-610. A prior part C (§ 12541 et seq.), comprised of subtitle C, §§ 120-135, of title I of Pub. L. 101-610 was renumbered subtitle I, §§ 199A-199O, of title I of Pub. L. 101-610 by Pub. L. 103-82, title I, § 101(a), Sept. 21, 1993, 107 Stat. 788, and transferred to division I of this subchapter.

DIVISION REFERRED TO IN OTHER SECTIONS

This division is referred to in sections 12511, 12521, 12601, 12604, 12605, 12638, 12639, 12651d, 12653, 12655, 12656, 12681 of this title; title 10 section 510; title 16 sections 1726, 1727; title 20 section 7263; title 31 section 6703.

PART I—INVESTMENT IN NATIONAL SERVICE

§ 12571. Authority to provide assistance and approved national service positions**(a) Provision of assistance**

Subject to the availability of appropriations for this purpose, the Corporation for National

and Community Service may make grants to States, subdivisions of States, Indian tribes, public or private nonprofit organizations, and institutions of higher education for the purpose of assisting the recipients of the grants—

(1) to carry out full- or part-time national service programs, including summer programs, described in section 12572(a) of this title; and

(2) to make grants in support of other national service programs described in section 12572(a) of this title that are carried out by other entities.

(b) Agreements with Federal agencies

(1) Agreements authorized

The Corporation may enter into a contract or cooperative agreement with another Federal agency to support a national service program carried out by the agency. The support provided by the Corporation pursuant to the contract or cooperative agreement may include the transfer to the Federal agency of funds available to the Corporation under this division.

(2) Matching funds requirements

A Federal agency receiving assistance under this subsection shall not be required to satisfy the matching funds requirements specified in subsection (e) of this section. However, the supplementation requirements specified in section 12633 of this title shall apply with respect to the Federal national service programs supported with such assistance.

(3) Consultation with State Commissions

A Federal agency receiving assistance under this subsection shall consult with the State Commissions for those States in which projects will be conducted using such assistance in order to ensure that the projects do not duplicate projects conducted by State or local national service programs.

(4) Support for other national service programs

A Federal agency that enters into a contract or cooperative agreement under paragraph (1) shall, in an appropriate case, enter into a contract or cooperative agreement with an entity that is carrying out a national service program in a State that is in existence in the State as of the date of the contract or cooperative agreement and is of high quality, in order to support the national service program.

(c) Provision of approved national service positions

As part of the provision of assistance under subsections (a) and (b) of this section, the Corporation shall—

(1) approve the provision of national service educational awards described in division D of this subchapter for the participants who serve in national service programs carried out using such assistance; and

(2) deposit in the National Service Trust established in section 12601(a) of this title an amount equal to the product of—

(A) the value of a national service educational award under section 12603 of this title; and

(B) the total number of approved national service positions to be provided.

(d) Five percent limitation on administrative costs

(1) Limitation

Not more than 5 percent of the amount of assistance provided to the original recipient of a grant or transfer of assistance under subsection (a) or (b) of this section for a fiscal year may be used to pay for administrative costs incurred by—

(A) the recipient of the assistance; and

(B) national service programs carried out or supported with the assistance.

(2) Rules on use

The Corporation may by rule prescribe the manner and extent to which—

(A) assistance provided under subsection (a) or (b) of this section may be used to cover administrative costs; and

(B) that portion of the assistance available to cover administrative costs should be distributed between—

(i) the original recipient of the grant or transfer of assistance under such subsection; and

(ii) national service programs carried out or supported with the assistance.

(e) Matching funds requirements

(1) Requirements

Except as provided in section 12594 of this title, the Federal share of the cost of carrying out a national service program that receives the assistance under subsection (a) of this section, whether the assistance is provided directly or as a subgrant from the original recipient of the assistance, may not exceed 75 percent of such cost.

(2) Calculation

In providing for the remaining share of the cost of carrying out a national service program, the program—

(A) shall provide for such share through a payment in cash or in kind, fairly evaluated, including facilities, equipment, or services; and

(B) may provide for such share through State sources, local sources, or other Federal sources (other than the use of funds made available under the national service laws).

(3) Cost of health care

In providing a payment in cash under paragraph (2)(A) as part of providing for the remaining share of the cost of carrying out a national service program, the program may count not more than 85 percent of the cost of providing a health care policy described in section 12594(d)(2) of this title toward such share.

(4) Waiver

The Corporation may waive in whole or in part the requirements of paragraph (1) with respect to a national service program in any fiscal year if the Corporation determines that such a waiver would be equitable due to a lack of available financial resources at the local level.

(Pub. L. 101-610, title I, §121, as added Pub. L. 103-82, title I, §101(b), Sept. 21, 1993, 107 Stat. 788.)

PRIOR PROVISIONS

A prior section 12571, Pub. L. 101-610, title I, §141, Nov. 16, 1990, 104 Stat. 3150, related to general authority to make grants for national and community service programs, prior to the general amendment of subtitle D of title I of Pub. L. 101-610 [formerly part D of this subchapter] by Pub. L. 103-82, §102(a).

A prior section 121 of Pub. L. 101-610 was renumbered section 199A, and is classified to section 12655 of this title.

EFFECTIVE DATE

Division effective Oct. 1, 1993, see section 123 of Pub. L. 103-82, set out as an Effective Date of 1993 Amendment note under section 1701 of Title 16, Conservation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12572, 12573, 12574, 12575, 12576, 12581, 12582, 12583, 12584, 12585, 12591, 12592, 12593, 12594, 12595, 12604, 12638, 12639, 12651d, 12651f, 12655f, 12656 of this title; title 16 section 1729.

§ 12572. Types of national service programs eligible for program assistance

(a) Eligible national service programs

The recipient of a grant under section 12571(a) of this title and each Federal agency receiving assistance under section 12571(b) of this title shall use the assistance, directly or through subgrants to other entities, to carry out full- or part-time national service programs, including summer programs, that address unmet human, educational, environmental, or public safety needs. Subject to subsection (b)(1) of this section, these national service programs may include the following types of national service programs:

(1) A community corps program that meets unmet human, educational, environmental, or public safety needs and promotes greater community unity through the use of organized teams of participants of varied social and economic backgrounds, skill levels, physical and developmental capabilities, ages, ethnic backgrounds, or genders.

(2) A full-time, year-round youth corps program or full-time summer youth corps program, such as a conservation corps or youth service corps (including youth corps programs under division I of this subchapter, the Public Lands Corps established under the Public Lands Corps Act of 1993 [16 U.S.C. 1721 et seq.], the Urban Youth Corps established under section 12656 of this title, and other conservation corps or youth service corps that performs service on Federal or other public lands or on Indian lands or Hawaiian home lands), that—

(A) undertakes meaningful service projects with visible public benefits, including natural resource, urban renovation, or human services projects;

(B) includes as participants youths and young adults between the ages of 16 and 25, inclusive, including out-of-school youths and other disadvantaged youths (such as youths with limited basic skills, youths in foster care who are becoming too old for foster care, youths of limited-English proficiency,

homeless youths, and youths who are individuals with disabilities) who are between those ages; and

(C) provides those participants who are youths and young adults with—

(i) crew-based, highly structured, and adult-supervised work experience, life skills, education, career guidance and counseling, employment training, and support services; and

(ii) the opportunity to develop citizenship values and skills through service to their community and the United States.

(3) A program that provides specialized training to individuals in service-learning and places the individuals after such training in positions, including positions as service-learning coordinators, to facilitate service-learning in programs eligible for funding under part I of division B of this subchapter.

(4) A service program that is targeted at specific unmet human, educational, environmental, or public safety needs and that—

(A) recruits individuals with special skills or provides specialized preservice training to enable participants to be placed individually or in teams in positions in which the participants can meet such unmet needs; and

(B) if consistent with the purposes of the program, brings participants together for additional training and other activities designed to foster civic responsibility, increase the skills of participants, and improve the quality of the service provided.

(5) An individualized placement program that includes regular group activities, such as leadership training and special service projects.

(6) A campus-based program that is designed to provide substantial service in a community during the school term and during summer or other vacation periods through the use of—

(A) students who are attending an institution of higher education, including students participating in a work-study program assisted under part C of title IV of the Higher Education Act of 1965 (42 U.S.C. 2751 et seq.);

(B) teams composed of such students; or

(C) teams composed of a combination of such students and community residents.

(7) A preprofessional training program in which students enrolled in an institution of higher education—

(A) receive training in specified fields, which may include classes containing service-learning;

(B) perform service related to such training outside the classroom during the school term and during summer or other vacation periods; and

(C) agree to provide service upon graduation to meet unmet human, educational, environmental, or public safety needs related to such training.

(8) A professional corps program that recruits and places qualified participants in positions—

(A) as teachers, nurses and other health care providers, police officers, early child-

hood development staff, engineers, or other professionals providing service to meet educational, human, environmental, or public safety needs in communities with an inadequate number of such professionals;

(B) that may include a salary in excess of the maximum living allowance authorized in subsection (a)(3) of section 12594 of this title, as provided in subsection (c) of such section; and

(C) that are sponsored by public or private nonprofit employers who agree to pay 100 percent of the salaries and benefits (other than any national service educational award under division D of this subchapter) of the participants.

(9) A program in which economically disadvantaged individuals who are between the ages of 16 and 24 years of age, inclusive, are provided with opportunities to perform service that, while enabling such individuals to obtain the education and employment skills necessary to achieve economic self-sufficiency, will help their communities meet—

(A) the housing needs of low-income families and the homeless; and

(B) the need for community facilities in low-income areas.

(10) A national service entrepreneur program that identifies, recruits, and trains gifted young adults of all backgrounds and assists them in designing solutions to community problems.

(11) An intergenerational program that combines students, out-of-school youths, and older adults as participants to provide needed community services, including an intergenerational component for other national service programs described in this subsection.

(12) A program that is administered by a combination of nonprofit organizations located in a low-income area, provides a broad range of services to residents of such area, is governed by a board composed in significant part of low-income individuals, and is intended to provide opportunities for individuals or teams of individuals to engage in community projects in such area that meet unaddressed community and individual needs, including projects that would—

(A) meet the needs of low-income children and youth aged 18 and younger, such as providing after-school “safe-places”, including schools, with opportunities for learning and recreation; or

(B) be directed to other important unaddressed needs in such area.

(13) A community service program designed to meet the needs of rural communities, using teams or individual placements to address the development needs of rural communities and to combat rural poverty, including health care, education, and job training.

(14) A program that seeks to eliminate hunger in communities and rural areas through service in projects—

(A) involving food banks, food pantries, and nonprofit organizations that provide food during emergencies;

(B) involving the gleaning of prepared and unprepared food that would otherwise be dis-

carded as unusable so that the usable portion of such food may be donated to food banks, food pantries, and other nonprofit organizations;

(C) seeking to address the long-term causes of hunger through education and the delivery of appropriate services; or

(D) providing training in basic health, nutrition, and life skills necessary to alleviate hunger in communities and rural areas.

(15) Such other national service programs addressing unmet human, educational, environmental, or public safety needs as the Corporation may designate.

(b) Qualification criteria to determine eligibility
(1) Establishment by Corporation

The Corporation shall establish qualification criteria for different types of national service programs for the purpose of determining whether a particular national service program should be considered to be a national service program eligible to receive assistance or approved national service positions under this division.

(2) Consultation

In establishing qualification criteria under paragraph (1), the Corporation shall consult with organizations and individuals with extensive experience in developing and administering effective national service programs or regarding the delivery of human, educational, environmental, or public safety services to communities or persons.

(3) Application to subgrants

The qualification criteria established by the Corporation under paragraph (1) shall also be used by each recipient of assistance under section 12571(a) of this title that uses any portion of the assistance to conduct a grant program to support other national service programs.

(4) Encouragement of intergenerational components of programs

The Corporation shall encourage national service programs eligible to receive assistance or approved national service positions under this division to establish, if consistent with the purposes of the program, an intergenerational component of the program that combines students, out-of-school youths, and older adults as participants to provide services to address unmet human, educational, environmental, or public safety needs.

(c) National service priorities

(1) Establishment

(A) By Corporation

In order to concentrate national efforts on meeting certain unmet human, educational, environmental, or public safety needs and to achieve the other purposes of this chapter, the Corporation shall establish, and after reviewing the strategic plan approved under section 12651b(g)(1) of this title, periodically alter priorities as appropriate regarding the types of national service programs to be assisted under subsection (b) or (d) of section 12581 of this title and the purposes for which such assistance may be used.

(B) By States

Consistent with paragraph (4), States shall establish, and through the national service plan process described in section 12638(e)(1) of this title, periodically alter priorities as appropriate regarding the national service programs to be assisted under section 12581(a)(1) of this title. The State priorities shall be subject to Corporation review as part of the application process under section 12582 of this title.

(2) Notice to applicants

The Corporation shall provide advance notice to potential applicants of any national service priorities to be in effect under this subsection for a fiscal year. The notice shall specifically include—

(A) a description of any alteration made in the priorities since the previous notice; and

(B) a description of the national service programs that are designated by the Corporation under section 12585(d)(2) of this title as eligible for priority consideration in the next competitive distribution of assistance under section 12571(a) of this title.

(3) Regulations

The Corporation shall by regulation establish procedures to ensure the equitable treatment of national service programs that—

(A) receive funding under this division for multiple years; and

(B) would be adversely affected by annual revisions in such national service priorities.

(4) Application to subgrants

Any national service priorities established by the Corporation under this subsection shall also be used by each recipient of funds under section 12571(a) of this title that uses any portion of the assistance to conduct a grant program to support other national service programs.

(Pub. L. 101-610, title I, §122, as added Pub. L. 103-82, title I, §101(b), Sept. 21, 1993, 107 Stat. 790.)

REFERENCES IN TEXT

The Public Lands Corps Act of 1993, referred to in subsec. (a)(2), is title II of Pub. L. 91-378, as added Pub. L. 103-82, title I, §105(6), Sept. 21, 1993, 107 Stat. 848, which is classified generally to subchapter II (§1721 et seq.) of chapter 37 of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of Title 16 and Tables.

The Higher Education Act of 1965, referred to in subsec. (a)(6)(A), is Pub. L. 89-329, Nov. 8, 1965, 79 Stat. 1219, as amended. Part C of title IV of the Act is classified generally to part C (§2751 et seq.) of subchapter I of chapter 34 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20, Education, and Tables.

This chapter, referred to in subsec. (c)(1), was in the original "this Act", meaning Pub. L. 101-610, Nov. 16, 1990, 104 Stat. 3127, as amended, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 12501 of this title and Tables.

PRIOR PROVISIONS

A prior section 12572, Pub. L. 101-610, title I, §142, Nov. 16, 1990, 104 Stat. 3150, related to criteria and re-

quirements for awarding grants for national and community service programs, prior to the general amendment of subtitle D of title I of Pub. L. 101-610 [former part D of this subchapter] by Pub. L. 103-82, §102(a).

A prior section 122 of Pub. L. 101-610 was renumbered section 199B, and is classified to section 12655a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12511, 12571, 12573, 12576, 12582, 12585, 12591, 12594, 12602, 12638, 12651d of this title.

§ 12573. Types of national service positions eligible for approval for national service educational awards

The Corporation may approve of any of the following service positions as an approved national service position that includes the national service educational award described in division D of this subchapter as one of the benefits to be provided for successful service in the position:

(1) A position for a participant in a national service program described in section 12572(a) of this title that receives assistance under subsection (a) or (b) of section 12571 of this title.

(2) A position for a participant in a program that—

(A) is carried out by a State, a subdivision of a State, an Indian tribe, a public or private nonprofit organization, an institution of higher education, or a Federal agency; and

(B) would be eligible to receive assistance under section 12571(a) of this title, based on criteria established by the Corporation, but has not applied for such assistance.

(3) A position involving service as a VISTA volunteer under title I of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4951 et seq.).

(4) A position facilitating service-learning in a program described in section 12572(a)(3) of this title that is eligible for assistance under part I of division B of this subchapter.

(5) A position for a participant in the Civilian Community Corps under division E of this subchapter.

(6) A position involving service as a crew leader in a youth corps program or a similar position supporting a national service program that receives an approved national service position.

(7) Such other national service positions as the Corporation considers to be appropriate.

(Pub. L. 101-610, title I, §123, as added Pub. L. 103-82, title I, §101(b), Sept. 21, 1993, 107 Stat. 794.)

REFERENCES IN TEXT

The Domestic Volunteer Service Act of 1973, referred to in par. (3), is Pub. L. 93-113, Oct. 1, 1973, 87 Stat. 394, as amended. Title I of the Act is classified generally to subchapter I (§4951 et seq.) of chapter 66 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4950 of this title and Tables.

PRIOR PROVISIONS

A prior section 12573, Pub. L. 101-610, title I, §143, Nov. 16, 1990, 104 Stat. 3152, related to types of national service, prior to the general amendment of subtitle D of

title I of Pub. L. 101-610 [former part D of this subchapter] by Pub. L. 103-82, §102(a).

A prior section 123 of Pub. L. 101-610 was renumbered section 199C, and is classified to section 12655b of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12582, 12585, 12605 of this title.

§ 12574. Types of program assistance

(a) Planning assistance

The Corporation may provide assistance under section 12571 of this title to a qualified applicant that submits an application under section 12582 of this title for the planning of a national service program. Assistance provided in accordance with this subsection may cover a period of not more than 1 year.

(b) Operational assistance

The Corporation may provide assistance under section 12571 of this title to a qualified applicant that submits an application under section 12582 of this title for the establishment, operation, or expansion of a national service program. Assistance provided in accordance with this subsection may cover a period of not more than 3 years, but may be renewed by the Corporation upon consideration of a new application under section 12582 of this title.

(c) Replication assistance

The Corporation may provide assistance under section 12571 of this title to a qualified applicant that submits an application under section 12582 of this title for the expansion of a proven national service program to another geographical location. Assistance provided in accordance with this subsection may cover a period of not more than 3 years, but may be renewed by the Corporation upon consideration of a new application under section 12582 of this title.

(d) Application to subgrants

The requirements of this section shall apply to any State or other applicant receiving assistance under section 12571 of this title that proposes to conduct a grant program using the assistance to support other national service programs.

(Pub. L. 101-610, title I, §124, as added Pub. L. 103-82, title I, §101(b), Sept. 21, 1993, 107 Stat. 794.)

PRIOR PROVISIONS

A prior section 12574, Pub. L. 101-610, title I, §144, Nov. 16, 1990, 104 Stat. 3152, related to terms of service for national and community service, prior to the general amendment of subtitle D of title I of Pub. L. 101-610 [former part D of this subchapter] by Pub. L. 103-82, §102(a).

A prior section 124 of Pub. L. 101-610 was renumbered section 199D, and is classified to section 12655c of this title.

§ 12575. Training and technical assistance

(a) Training programs

The Corporation may conduct, directly or by grant or contract, appropriate training programs regarding national service in order to—

- (1) improve the ability of national service programs assisted under section 12571 of this

title to meet human, educational, environmental, or public safety needs in communities—

(A) where services are needed most; and

(B) where programs do not exist, or are too limited to meet community needs, as of the date on which the Corporation makes the grant or enters into the contract;

(2) promote leadership development in such programs;

(3) improve the instructional and programmatic quality of such programs to build an ethic of civic responsibility;

(4) develop the management and budgetary skills of program operators;

(5) provide for or improve the training provided to the participants in such programs; and

(6) encourage national service programs to adhere to risk management procedures, including the training of participants in appropriate risk management practices.

(b) Technical assistance

To the extent appropriate and necessary, the Corporation shall make technical assistance available to States, Indian tribes, labor organizations, organizations operated by young adults, organizations serving economically disadvantaged individuals, and other entities described in section 12571 of this title that desire—

(1) to develop national service programs; or

(2) to apply for assistance under such section or under a grant program conducted using assistance provided under such section.

(Pub. L. 101-610, title I, §125, as added Pub. L. 103-82, title I, §101(b), Sept. 21, 1993, 107 Stat. 795.)

PRIOR PROVISIONS

A prior section 12575, Pub. L. 101-610, title I, §145, Nov. 16, 1990, 104 Stat. 3153; Pub. L. 102-10, §6(a), Mar. 12, 1991, 105 Stat. 31, related to eligibility for part-time, full-time, and special senior service in national and community service program, prior to the general amendment of subtitle D of title I of Pub. L. 101-610 [former part D of this subchapter] by Pub. L. 103-82, §102(a).

A prior section 125 of Pub. L. 101-610 was renumbered section 199E, and is classified to section 12655d of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12581, 12681 of this title.

§ 12576. Other special assistance

(a) Support for State Commissions

(1) Grants authorized

From amounts appropriated for a fiscal year pursuant to the authorization of appropriation in section 12681(a)(4) of this title, the Corporation may make a grant in an amount between \$125,000 and \$750,000 to a State to assist the State to establish or operate the State Commission on National and Community Service required to be established by the State under section 12638 of this title.

(2) Limitation on amount of grants

Notwithstanding the amounts specified in paragraph (1), the amount of a grant that may

be provided to a State Commission under this subsection, together with other Federal funds available to establish or operate the State Commission, may not exceed—

(A) 85 percent of the total cost to establish or operate the State Commission for the first year for which the State Commission receives assistance under this subsection; and

(B) such smaller percentage of such cost as the Corporation may establish for the second, third, and fourth years of such assistance in order to ensure that the Federal share does not exceed 50 percent of such costs for the fifth year, and any subsequent year, for which the State Commission receives assistance under this subsection.

(b) Disaster service

The Corporation may undertake activities, including activities carried out through part A of title I of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4951 et seq.), to involve in disaster relief efforts youth corps programs described in section 12572(a)(2) of this title and other programs that receive assistance under the national service laws.

(c) Challenge grants for national service programs

(1) Assistance authorized

The Corporation may make challenge grants under this subsection to national service programs that receive assistance under section 12571 of this title.

(2) Selection criteria

The Corporation shall develop criteria for the selection of recipients of challenge grants under this subsection, so as to make the grants widely available to a variety of programs that—

(A) are high-quality national service programs; and

(B) are carried out by entities with demonstrated experience in establishing and implementing projects that provide benefits to participants and communities.

(3) Amount of assistance

A challenge grant under this subsection may provide not more than \$1 of assistance under this subsection for each \$1 in cash raised by the national service program from private sources in excess of amounts required to be provided by the program to satisfy matching funds requirements under section 12571(e) of this title. The Corporation shall establish a ceiling on the amount of assistance that may be provided to a national service program under this subsection.

(Pub. L. 101-610, title I, §126, as added Pub. L. 103-82, title I, §101(b), Sept. 21, 1993, 107 Stat. 795.)

REFERENCES IN TEXT

The Domestic Volunteer Service Act of 1973, referred to in subsec. (b), is Pub. L. 93-113, Oct. 1, 1973, 87 Stat. 394, as amended. Part A of title I of the Act is classified generally to part A (§4951 et seq.) of subchapter I of chapter 66 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4950 of this title and Tables.

PRIOR PROVISIONS

Prior sections 12576 to 12580, which related to national and community service, were omitted in the general amendment of subtitle D of title I of Pub. L. 101-610 [former part D of this subchapter] by Pub. L. 103-82, §102(a).

Section 12576, Pub. L. 101-610, title I, §146, Nov. 16, 1990, 104 Stat. 3153; Pub. L. 102-10, §6(b), Mar. 12, 1991, 105 Stat. 31; Pub. L. 102-325, title XV, §1557, July 23, 1992, 106 Stat. 841, related to post-service benefits.

A prior section 126 of Pub. L. 101-610 was renumbered section 199F and is classified to section 12655e of this title.

Section 12577, Pub. L. 101-610, title I, §147, Nov. 16, 1990, 104 Stat. 3154, related to living allowances for participants.

Section 12578, Pub. L. 101-610, title I, §148, Nov. 16, 1990, 104 Stat. 3155, related to training of participants.

Section 12579, Pub. L. 101-610, title I, §149, Nov. 16, 1990, 104 Stat. 3156, related to cooperation between public and private entities.

Section 12580, Pub. L. 101-610, title I, §150, Nov. 16, 1990, 104 Stat. 3156, related to in-service education benefits.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12581, 12681 of this title.

PART II—APPLICATION AND APPROVAL PROCESS

§ 12581. Provision of assistance and approved national service positions by competitive and other means

(a) Allotments of assistance and approved positions to States and Indian tribes

(1) 33½ percent allotment of assistance to certain States

Of the funds allocated by the Corporation for provision of assistance under subsections (a) and (b) of section 12571 of this title for a fiscal year, the Corporation shall make a grant under section 12571(a) of this title (and a corresponding allotment of approved national service positions) to each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico that has an application approved by the Corporation under section 12585 of this title. The amount allotted as a grant to each such State under this paragraph for a fiscal year shall be equal to the amount that bears the same ratio to 33½ percent of the allocated funds for that fiscal year as the population of the State bears to the total population of the several States, the District of Columbia, and the Commonwealth of Puerto Rico.

(2) One percent allotment for certain territories and possessions

Of the funds allocated by the Corporation for provision of assistance under subsections (a) and (b) of section 12571 of this title for a fiscal year, the Corporation shall reserve 1 percent of the allocated funds for grants under section 12571(a) of this title to the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands upon approval of an application by the Corporation under section 12585 of this title. Palau shall also be eligible for a grant under this paragraph from the allotment until such time as the Compact of Free Association with

Palau is ratified. The amount allotted as a grant to each such territory or possession under this paragraph for a fiscal year shall be equal to the amount that bears the same ratio to 1 percent of the allocated funds for that fiscal year as the population of the territory or possession bears to the total population of such territories and possessions.

(3) One percent allotment for Indian tribes

Of the funds allocated by the Corporation for provision of assistance under subsections (a) and (b) of section 12571 of this title for a fiscal year, the Corporation shall reserve 1 percent of the allocated funds for grants under section 12571(a) of this title to Indian tribes, to be allotted by the Corporation on a competitive basis in accordance with their respective needs.

(4) Effect of failure to apply

If a State or Indian tribe fails to apply for, or fails to give notice to the Corporation of its intent to apply for, an allotment under this subsection, the Corporation shall use the amount that would have been allotted under this subsection to the State or Indian tribe—

(A) to make grants (and provide approved national service positions in connection with such grants) to other eligible entities under section 12571 of this title that propose to carry out national service programs in the State or on behalf of the Indian tribe; and

(B) after making grants under subparagraph (A), to make a reallocation to other States and Indian tribes with approved applications under section 12582 of this title.

(b) Reservation of approved positions

The Corporation shall ensure that each individual selected during a fiscal year for assignment as a VISTA volunteer under title I of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4951 et seq.) or as a participant in the Civilian Community Corps Demonstration Program under division E of this subchapter shall receive the national service educational award described in division D of this subchapter if the individual satisfies the eligibility requirements for the award. Funds for approved national service positions required by this paragraph for a fiscal year shall be deducted from the total funding for approved national service positions to be available for distribution under subsections (a) and (d) of this section for that fiscal year.

(c) Reservation for special assistance

From amounts appropriated for a fiscal year pursuant to the authorization of appropriation in section 12681(a)(2) of this title, and subject to the limitation in such section, the Corporation may reserve such amount as the Corporation considers to be appropriate for the purpose of making assistance available under sections 12575 and 12576 of this title. The Corporation may not reserve more than \$10,000,000 for a fiscal year for disaster service under subsection (b) of section 12576 of this title or challenge grants under subsection (c) of such section.

(d) Competitive distribution of remaining funds

(1) State competition

Of the funds allocated by the Corporation for provision of assistance under subsections (a) and (b) of section 12571 of this title for a fiscal year, the Corporation shall use not less than 33 $\frac{1}{3}$ percent of the allocated funds to make grants to States on a competitive basis under section 12571(a) of this title.

(2) Federal agencies and other applicants

The Corporation shall distribute on a competitive basis to subdivisions of States, Indian tribes, public or private nonprofit organizations (including labor organizations), institutions of higher education, and Federal agencies the remainder of the funds allocated by the Corporation for provision of assistance under section 12571 of this title for a fiscal year, after operation of paragraph (1) and subsections (a) and (c) of this section.

(3) Limitation on distribution to Federal agencies

The Corporation may not provide more than $\frac{1}{3}$ of the funds available for competitive distribution under paragraph (2) for a fiscal year to Federal agencies under section 12571(b) of this title.

(4) Priority limitations

The Corporation may limit the categories of eligible applicants for assistance under paragraph (2) consistent with the priorities established by the Corporation under section 12585(d)(2) of this title.

(5) Reservation of funds for supplemental and outreach grants

(A) Reservation

From amounts appropriated for a fiscal year pursuant to the authorization of appropriation in section 12681(a)(2) of this title, and subject to the limitation in such section, the Chief Executive Officer shall reserve an amount that is not less than 1 percent of such amounts (except that the amount reserved may not exceed \$5,000,000), in order to make supplemental grants as provided in subparagraph (B) and outreach grants as provided in subparagraph (C). The amount reserved pursuant to this paragraph shall be available until expended.

(B) Grants to assist entities in placing applicants who are individuals with a disability

(i) In general

The Chief Executive Officer shall make grants from a portion of the funds reserved under subparagraph (A) to entities that—

(I) receive a grant to carry out a national service program under paragraph (1) or (2);

(II) demonstrate that the entity has received a substantial number of applications for placement in the national service program of persons who are individuals with a disability and who require a reasonable accommodation (as defined in section 12111(9) of this title), or auxiliary

aids and services (as defined in section 12102(1) of this title), in order to perform national service; and

(III) demonstrate that additional funding would assist the national service program in placing a substantial number of such individuals with a disability as participants in projects carried out through the program.

(ii) Requirements

Funds made available through such a supplemental grant under clause (i) shall be made available for the same purposes, and subject to the same requirements, as funds made available through a grant made under paragraph (1) or (2).

(C) Grants for outreach to individuals with a disability

(i) In general

From the portion of the funds reserved under subparagraph (A) that is not used to make grants under subparagraph (B), the Chief Executive Officer shall make grants to public or private nonprofit organizations to pay for the Federal share described in section 12571(e) of this title of—

(I) providing information about the programs specified in section 12651d(d)(10)¹ of this title to such individuals with a disability who desire to perform national service; and

(II) enabling the individuals to participate in activities carried out through such programs, which may include assisting the placement of the individuals in approved national service positions.

(ii) Application

To be eligible to receive a grant under this subparagraph, an organization described in clause (i) shall submit an application to the Chief Executive Officer at such time, in such manner, and containing such information as the Chief Executive Officer may require.

(e) Application required

The allotment of assistance and approved national service positions to a State or Indian tribe under subsection (a) of this section, and the competitive distribution of assistance under subsection (d) of this section, shall be made by the Corporation only pursuant to an application submitted by a State or other applicant under section 12582 of this title and approved by the Corporation under section 12585 of this title.

(f) Approval of positions subject to available funds

The Corporation may not approve positions as approved national service positions under this division for a fiscal year in excess of the number of such positions for which the Corporation has sufficient available funds in the National Service Trust for that fiscal year, taking into consideration funding needs for national service educational awards under division D of this sub-

chapter based on completed service. If appropriations are insufficient to provide the maximum allowable national service educational awards under division D of this subchapter for all eligible participants, the Corporation is authorized to make necessary and reasonable adjustments to program rules.

(g) Sponsorship of approved national service positions

(1) Sponsorship authorized

The Corporation may enter into agreements with persons or entities who offer to sponsor national service positions for which the person or entity will be responsible for supplying the funds necessary to provide a national service educational award. The distribution of these approved national service positions shall be made pursuant to the agreement, and the creation of these positions shall not be taken into consideration in determining the number of approved national service positions to be available for distribution under this section.

(2) Deposit of contribution

Funds provided pursuant to an agreement under paragraph (1) and any other funds contributed to the Corporation to support the activities of the Corporation under the national service laws shall be deposited in the National Service Trust established in section 12601 of this title until such time as the funds are needed.

(Pub. L. 101-610, title I, §129, as added Pub. L. 103-82, title I, §101(b), Sept. 21, 1993, 107 Stat. 796.)

REFERENCES IN TEXT

For ratification of Compact of Free Association with Palau, referred to in subsec. (a)(2), see Proc. No. 6726, Sept. 27, 1994, 59 F.R. 49777, set out as a note under section 1931 of Title 48, Territories and Insular Possessions.

The Domestic Volunteer Service Act of 1973, referred to in subsec. (b), is Pub. L. 93-113, Oct. 1, 1973, 87 Stat. 394, as amended. Title I of the Act is classified generally to subchapter I (§4951 et seq.) of chapter 66 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4950 of this title and Tables.

PRIOR PROVISIONS

A prior section 129 of Pub. L. 101-610 was renumbered section 199H and is classified to section 12655h of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12572, 12585 of this title.

§ 12582. Application for assistance and approved national service positions

(a) Time, manner, and content of application

To be eligible to receive assistance under section 12571 of this title or approved national service positions for participants who serve in the national service programs to be carried out using the assistance, a State, subdivision of a State, Indian tribe, public or private nonprofit organization, institution of higher education, or Federal agency shall prepare and submit to the Corporation an application at such time, in such

¹ So in original. Section 12651d(d) of this title does not contain a par. (10).

manner, and containing such information as the Corporation may reasonably require.

(b) Types of permissible application information

In order to have adequate information upon which to consider an application under section 12585 of this title, the Corporation may require the following information to be provided in an application submitted under subsection (a) of this section:

(1) A description of the national service programs proposed to be carried out directly by the applicant using assistance provided under section 12571 of this title.

(2) A description of the national service programs that are selected by the applicant to receive a grant using assistance requested under section 12571 of this title and a description of the process and criteria by which the programs were selected.

(3) A description of other funding sources to be used, or sought to be used, for the national service programs referred to in paragraphs (1) and (2), and, if the application is submitted for the purpose of seeking a renewal of assistance, a description of the success of the programs in reducing their reliance on Federal funds.

(4) A description of the extent to which the projects to be conducted using the assistance will address unmet human, educational, environmental, or public safety needs and produce a direct benefit for the community in which the projects are performed.

(5) A description of the plan to be used to recruit participants, including youth who are individuals with disabilities and economically disadvantaged young men and women, for the national service programs referred to in paragraphs (1) and (2).

(6) A description of the manner in which the national service programs referred to in paragraphs (1) and (2) build on existing programs, including Federal programs.

(7) A description of the manner in which the national service programs referred to in paragraphs (1) and (2) will involve participants—

(A) in projects that build an ethic of civic responsibility and produce a positive change in the lives of participants through training and participation in meaningful service experiences and opportunities for reflection on such experiences; and

(B) in leadership positions in implementing and evaluating the program.

(8) Measurable goals for the national service programs referred to in paragraphs (1) and (2), and a strategy to achieve such goals, in terms of—

(A) the impact to be made in meeting unmet human, educational, environmental, or public safety needs; and

(B) the service experience to be provided to participants in the programs.

(9) A description of the manner and extent to which the national service programs referred to in paragraphs (1) and (2) conform to the national service priorities established by the Corporation under section 12572(c) of this title.

(10) A description of the past experience of the applicant in operating a comparable pro-

gram or in conducting a grant program in support of other comparable service programs.

(11) A description of the type and number of proposed service positions in which participants will receive the national service educational award described in division D of this subchapter and a description of the manner in which approved national service positions will be apportioned by the applicant.

(12) A description of the manner and extent to which participants, representatives of the community served, community-based agencies with a demonstrated record of experience in providing services, and labor organizations contributed to the development of the national service programs referred to in paragraphs (1) and (2), including the identity of the individual representing each appropriate labor organization (if any) who was consulted and the nature of the consultation.

(13) Such other information as the Corporation may reasonably require.

(c) Required application information

An application submitted under subsection (a) of this section shall contain the following information:

(1) A description of the jobs or positions into which participants will be placed using the assistance provided under section 12571 of this title, including descriptions of specific tasks to be performed by such participants.

(2) A description of the minimum qualifications that individuals shall meet to become participants in such programs.

(d) Application to receive only approved national service positions

(1) Applicability of subsection

This subsection shall apply in the case of an application in which—

(A) the applicant is not seeking assistance under subsection (a) or (b) of section 12571 of this title, but requests national service educational awards for individuals serving in service positions described in section 12573 of this title; or

(B) the applicant requests national service educational awards for service positions described in section 12573 of this title, but the positions are not positions in a national service program described in section 12572(a) of this title for which assistance may be provided under subsection (a) or (b) of section 12571 of this title.

(2) Special application requirements

For the applications described in paragraph (1), the Corporation shall establish special application requirements in order to determine—

(A) whether the service positions meet unmet human, educational, environmental, or public safety needs and meet the criteria for assistance under this division; and

(B) whether the Corporation should approve the positions as approved national service positions.

(e) Special rule for State applicants

(1) Submission by State Commission

The application of a State for approved national service positions or for a grant under

section 12571(a) of this title shall be submitted by the State Commission.

(2) Competitive selection

The application of a State shall contain an assurance that all assistance provided under section 12571(a) of this title to the State will be used to support national service programs that were selected by the State on a competitive basis. In making such competitive selections, the State shall seek to ensure the equitable allocation within the State of assistance and approved national service positions provided under this division to the State taking into consideration such factors as the location of the programs applying to the State, population density, and economic distress.

(3) Assistance to non-State entities

The application of a State shall also contain an assurance that not less than 60 percent of the assistance will be used to make grants in support of national service programs other than national service programs carried out by a State agency. The Corporation may permit a State to deviate from the percentage specified by this subsection if the State has not received a sufficient number of acceptable applications to comply with the percentage.

(f) Special rule for certain applicants

(1) Written concurrence

In the case of a program applicant that proposes to also serve as the service sponsor, the application shall include the written concurrence of any local labor organization representing employees of the service sponsor who are engaged in the same or substantially similar work as that proposed to be carried out.

(2) "Program applicant" defined

For purposes of this subsection, the term "program applicant" means—

(A) a State, subdivision of a State, Indian tribe, public or private nonprofit organization, institution of higher education, or Federal agency submitting an application under this section; or

(B) an entity applying for assistance or approved national service positions through a grant program conducted using assistance provided to a State, subdivision of a State, Indian tribe, public or private nonprofit organization, institution of higher education, or Federal agency under section 12571 of this title.

(g) Limitation on same project in multiple applications

The Corporation shall reject an application submitted under this section if a project proposed to be conducted using assistance requested by the applicant is already described in another application pending before the Corporation.

(Pub. L. 101-610, title I, §130, as added Pub. L. 103-82, title I, §101(b), Sept. 21, 1993, 107 Stat. 800.)

PRIOR PROVISIONS

A prior section 130 of Pub. L. 101-610 was renumbered section 199I and is classified to section 12655I of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12572, 12574, 12581, 12583, 12584, 12585, 12638 of this title.

§ 12583. National service program assistance requirements

(a) Impact on communities

An application submitted under section 12582 of this title shall include an assurance by the applicant that any national service program carried out by the applicant using assistance provided under section 12571 of this title and any national service program supported by a grant made by the applicant using such assistance will—

(1) address unmet human, educational, environmental, or public safety needs through services that provide a direct benefit to the community in which the service is performed; and

(2) comply with the nonduplication and non-displacement requirements of section 12637 of this title and the grievance procedure requirements of section 12636(f) of this title.

(b) Impact on participants

An application submitted under section 12582 of this title shall also include an assurance by the applicant that any national service program carried out by the applicant using assistance provided under section 12571 of this title and any national service program supported by a grant made by the applicant using such assistance will—

(1) provide participants in the national service program with the training, skills, and knowledge necessary for the projects that participants are called upon to perform;

(2) provide support services to participants, such as the provision of appropriate information and support—

(A) to those participants who are completing a term of service and making the transition to other educational and career opportunities; and

(B) to those participants who are school dropouts in order to assist those participants in earning the equivalent of a high school diploma; and

(3) provide, if appropriate, structured opportunities for participants to reflect on their service experiences.

(c) Consultation

An application submitted under section 12582 of this title shall also include an assurance by the applicant that any national service program carried out by the applicant using assistance provided under section 12571 of this title and any national service program supported by a grant made by the applicant using such assistance will—

(1) provide in the design, recruitment, and operation of the program for broad-based input from—

(A) the community served and potential participants in the program; and

(B) community-based agencies with a demonstrated record of experience in providing services and local labor organizations rep-

representing employees of service sponsors, if these entities exist in the area to be served by the program;

(2) prior to the placement of participants, consult with the appropriate local labor organization, if any, representing employees in the area who are engaged in the same or similar work as that proposed to be carried out by such program to ensure compliance with the nondisplacement requirements specified in section 12637 of this title; and

(3) in the case of a program that is not funded through a State, consult with and coordinate activities with the State Commission for the State in which the program operates.

(d) Evaluation and performance goals

(1) In general

An application submitted under section 12582 of this title shall also include an assurance by the applicant that the applicant will—

(A) arrange for an independent evaluation of any national service program carried out using assistance provided to the applicant under section 12571 of this title or, with the approval of the Corporation, conduct an internal evaluation of the program;

(B) apply measurable performance goals and evaluation methods (such as the use of surveys of participants and persons served), which are to be used as part of such evaluation to determine the impact of the program—

(i) on communities and persons served by the projects performed by the program;

(ii) on participants who take part in the projects; and

(iii) in such other areas as the Corporation may require; and

(C) cooperate with any evaluation activities undertaken by the Corporation.

(2) Evaluation

Subject to paragraph (3), the Corporation shall develop evaluation criteria and performance goals applicable to all national service programs carried out with assistance provided under section 12571 of this title.

(3) Alternative evaluation requirements

The Corporation may establish alternative evaluation requirements for national service programs based upon the amount of assistance received under section 12571 of this title or received by a grant made by a recipient of assistance under such section. The determination of whether a national service program is covered by this paragraph shall be made in such manner as the Corporation may prescribe.

(e) Living allowances and other inservice benefits

Except as provided in section 12594(c) of this title, an application submitted under section 12582 of this title shall also include an assurance by the applicant that the applicant will—

(1) ensure the provision of a living allowance and other benefits specified in section 12594 of this title to participants in any national service program carried out by the applicant using

assistance provided under section 12571 of this title; and

(2) require that each national service program that receives a grant from the applicant using such assistance will also provide a living allowance and other benefits specified in section 12594 of this title to participants in the program.

(f) Selection of participants from individuals recruited by Corporation or State Commissions

The Corporation may also require an assurance by the applicant that any national service program carried out by the applicant using assistance provided under section 12571 of this title and any national service program supported by a grant made by the applicant using such assistance will select a portion of the participants for the program from among prospective participants recruited by the Corporation or State Commissions under section 12592(d) of this title. The Corporation may specify a minimum percentage of participants to be selected from the national leadership pool established under section 12592(e) of this title and may vary the percentage for different types of national service programs.

(Pub. L. 101-610, title I, §131, as added Pub. L. 103-82, title I, §101(b), Sept. 21, 1993, 107 Stat. 803.)

PRIOR PROVISIONS

A prior section 131 of Pub. L. 101-610 was renumbered section 199J and is classified to section 12655j of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12592 of this title.

§ 12584. Ineligible service categories

(a) In general

Except as provided in subsection (b) of this section, an application submitted to the Corporation under section 12582 of this title shall include an assurance by the applicant that any national service program carried out using assistance provided under section 12571 of this title and any approved national service position provided to an applicant will not be used to perform service that provides a direct benefit to any—

(1) business organized for profit;

(2) labor union;

(3) partisan political organization;

(4) organization engaged in religious activities, unless such service does not involve the use of assistance provided under section 12571 of this title or participants—

(A) to give religious instruction;

(B) to conduct worship services;

(C) to provide instruction as part of a program that includes mandatory religious education or worship;

(D) to construct or operate facilities devoted to religious instruction or worship or to maintain facilities primarily or inherently devoted to religious instruction or worship; or

(E) to engage in any form of proselytization; or

(5) nonprofit organization that fails to comply with the restrictions contained in section 501(c) of title 26, except that nothing in this section shall be construed to prevent participants from engaging in advocacy activities undertaken at their own initiative.

(b) Regional Corporation

The requirement of subsection (a) of this section relating to an assurance regarding direct benefits to businesses organized for profit shall not apply with respect to a Regional Corporation, as defined in section 3(g) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(g)), that is established in accordance with such Act [43 U.S.C. 1601 et seq.] as a for-profit corporation but that is engaging in nonprofit activities.

(Pub. L. 101-610, title I, §132, as added Pub. L. 103-82, title I, §101(b), Sept. 21, 1993, 107 Stat. 805.)

REFERENCES IN TEXT

The Alaska Native Claims Settlement Act, referred to in subsec. (b), is Pub. L. 92-203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

PRIOR PROVISIONS

A prior section 132 of Pub. L. 101-610 was renumbered section 199L and classified to section 12655k of this title, prior to repeal by Pub. L. 103-82, §101(e)(8)(A).

§ 12585. Consideration of applications

(a) Corporation consideration of certain criteria

The Corporation shall apply the criteria described in subsections (c) and (d) of this section in determining whether—

(1) to approve an application submitted under section 12582 of this title and provide assistance under section 12571 of this title to the applicant; and

(2) to approve service positions described in the application as national service positions that include the national service educational award described in division D of this subchapter and provide such approved national service positions to the applicant.

(b) Application to subgrants

(1) In general

A State or other entity that uses assistance provided under section 12571(a) of this title to support national service programs selected on a competitive basis to receive a share of the assistance shall use the criteria described in subsections (c) and (d) of this section when considering an application submitted by a national service program to receive a portion of such assistance or an approved national service position.

(2) Contents

The application of the State or other entity under section 12582 of this title shall contain—

(A) a certification that the State or other entity used these criteria in the selection of national service programs to receive assistance;

(B) a description of the jobs or positions into which participants will be placed using

such assistance, including descriptions of specific tasks to be performed by such participants; and

(C) a description of the minimum qualifications that individuals shall meet to become participants in such programs.

(c) Assistance criteria

The criteria required to be applied in evaluating applications submitted under section 12582 of this title are as follows:

(1) The quality of the national service program proposed to be carried out directly by the applicant or supported by a grant from the applicant.

(2) The innovative aspects of the national service program, and the feasibility of replicating the program.

(3) The sustainability of the national service program, based on evidence such as the existence—

(A) of strong and broad-based community support for the program; and

(B) of multiple funding sources or private funding for the program.

(4) The quality of the leadership of the national service program, the past performance of the program, and the extent to which the program builds on existing programs.

(5) The extent to which participants of the national service program are recruited from among residents of the communities in which projects are to be conducted, and the extent to which participants and community residents are involved in the design, leadership, and operation of the program.

(6) The extent to which projects would be conducted in the following areas where they are needed most:

(A) Communities designated as empowerment zones or redevelopment areas, targeted for special economic incentives, or otherwise identifiable as having high concentrations of low-income people.

(B) Areas that are environmentally distressed.

(C) Areas adversely affected by Federal actions related to the management of Federal lands that result in significant regional job losses and economic dislocation.

(D) Areas adversely affected by reductions in defense spending or the closure or realignment of military installations.

(E) Areas that have an unemployment rate greater than the national average unemployment for the most recent 12 months for which satisfactory data are available.

(7) In the case of applicants other than States, the extent to which the application is consistent with the application under section 12582 of this title of the State in which the projects would be conducted.

(8) Such other criteria as the Corporation considers to be appropriate.

(d) Other considerations

(1) Geographic diversity

The Corporation shall ensure that recipients of assistance provided under section 12571 of this title are geographically diverse and in-

clude projects to be conducted in those urban and rural areas in a State with the highest rates of poverty.

(2) Priorities

The Corporation may designate, under such criteria as may be established by the Corporation, certain national service programs or types of national service programs described in section 12572(a) of this title for priority consideration in the competitive distribution of funds under section 12581(d)(2) of this title. In designating national service programs to receive priority, the Corporation may include—

(A) national service programs carried out by another Federal agency;

(B) national service programs that conform to the national service priorities in effect under section 12572(c) of this title;

(C) innovative national service programs;

(D) national service programs that are well established in one or more States at the time of the application and are proposed to be expanded to additional States using assistance provided under section 12571 of this title;

(E) grant programs in support of other national service programs if the grant programs are to be conducted by nonprofit organizations with a demonstrated and extensive expertise in the provision of services to meet human, educational, environmental, or public safety needs;

(F) professional corps programs described in section 12572(a)(8) of this title; and

(G) programs that—

(i) received funding under part D of this subchapter, as in effect on the day before September 21, 1993;

(ii) the Corporation determines to meet the requirements of sections 12572 (other than subsection (g)), 12573, and 12578 through 12580 of this title, as in effect on such day, in addition to the requirements of this division; and

(iii) include an evaluation component.

(3) Additional priority

In making a competitive distribution of funds under section 12581(d)(2) of this title, the Corporation may give priority consideration to a national service program that is—

(A) proposed in an application submitted by a State Commission; and

(B) not one of the types of programs described in paragraph (2),

if the State Commission provides an adequate explanation of the reasons why it should not be a priority of such State to carry out any of such types of programs in the State.

(4) Review panel

The Corporation shall—

(A) establish panels of experts for the purpose of securing recommendations on applications submitted under section 12582 of this title for more than \$250,000 in assistance, or for national service positions that would require more than \$250,000 in national service educational awards; and

(B) consider the opinions of such panels prior to making such determinations.

(e) Emphasis on areas most in need

In making assistance available under section 12571 of this title and in providing approved national service positions under section 12573 of this title, the Corporation shall ensure that not less than 50 percent of the total amount of assistance to be distributed to States under subsections (a) and (d)(1) of section 12581 of this title for a fiscal year is provided to carry out or support national service programs and projects that—

(1) are conducted in any of the areas described in subsection (c)(6) of this section or on Federal or other public lands, to address unmet human, educational, environmental, or public safety needs in such areas or on such lands; and

(2) place a priority on the recruitment of participants who are residents of any of such areas or Federal or other public lands.

(f) Rejection of State applications

(1) Notification of State applicants

If the Corporation rejects an application submitted by a State Commission under section 12582 of this title for funds described in section 12581(a)(1) of this title, the Corporation shall promptly notify the State Commission of the reasons for the rejection of the application.

(2) Resubmission and reconsideration

The Corporation shall provide a State Commission notified under paragraph (1) with a reasonable opportunity to revise and resubmit the application. At the request of the State Commission, the Corporation shall provide technical assistance to the State Commission as part of the resubmission process. The Corporation shall promptly reconsider an application resubmitted under this paragraph.

(3) Reallocation

The amount of any State's allotment under section 12581(a) of this title for a fiscal year that the Corporation determines will not be provided for that fiscal year shall be available for distribution by the Corporation as provided in paragraph (3) of such subsection.

(Pub. L. 101-610, title I, §133, as added Pub. L. 103-82, title I, §101(b), Sept. 21, 1993, 107 Stat. 805.)

REFERENCES IN TEXT

Part D of this subchapter and sections 12572, 12573, and 12578 through 12580 of this title, as in effect on the day before September 21, 1993, referred to in subsec. (d)(2)(G), mean former part D of this subchapter and former sections 12572, 12573, and 12578 to 12580 of this title prior to the general amendment of subtitle D of title I of Pub. L. 101-610 [former part D of this subchapter] by Pub. L. 103-82, title I, §102(a), Sept. 21, 1993, 107 Stat. 816.

PRIOR PROVISIONS

A prior section 133 of Pub. L. 101-610 was renumbered section 199K and is classified to section 12655^l of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12545, 12572, 12581, 12582, 12639, 12651d of this title.

PART III—NATIONAL SERVICE PARTICIPANTS

SECTION REFERRED TO IN OTHER SECTIONS

§ 12591. Description of participants**(a) In general**

For purposes of this division, an individual shall be considered to be a participant in a national service program carried out using assistance provided under section 12571 of this title if the individual—

- (1) meets such eligibility requirements, directly related to the tasks to be accomplished, as may be established by the program;
- (2) is selected by the program to serve in a position with the program;
- (3) will serve in the program for a term of service specified in section 12593 of this title to be performed before, during, or after attendance at an institution of higher education;
- (4) is 17 years of age or older at the time the individual begins the term of service;
- (5) has received a high school diploma or its equivalent, agrees to obtain a high school diploma or its equivalent (unless this requirement is waived based on an individual education assessment conducted by the program) and the individual did not drop out of an elementary or secondary school to enroll in the program, or is enrolled in an institution of higher education on an ability to benefit basis and is considered eligible for funds under section 1091 of title 20; and
- (6) is a citizen or national of the United States or lawful permanent resident alien of the United States.

(b) Special rules for certain youth programs

An individual shall be considered to be a participant in a youth corps program described in section 12572(a)(2) of this title or a program described in section 12572(a)(9) of this title that is carried out with assistance provided under section 12571(a) of this title if the individual—

- (1) satisfies the requirements specified in subsection (a) of this section, except paragraph (4) of such subsection; and
- (2) is between the ages of 16 and 25, inclusive, at the time the individual begins the term of service.

(c) Waiver

The Corporation may waive the requirements of subsection (a)(5) of this section with respect to an individual if the program in which the individual seeks to become a participant conducts an independent evaluation demonstrating that the individual is incapable of obtaining a high school diploma or its equivalent.

(Pub. L. 101-610, title I, §137, as added Pub. L. 103-82, title I, §101(b), Sept. 21, 1993, 107 Stat. 808; amended Pub. L. 103-304, §3(b)(3), Aug. 23, 1994, 108 Stat. 1567.)

PRIOR PROVISIONS

A prior section 12591, Pub. L. 101-610, title I, §155, Nov. 16, 1990, 104 Stat. 3156, related to limitation on grants for innovative and demonstration programs and projects, prior to repeal by Pub. L. 103-82, §104(a).

AMENDMENTS

1994—Subsec. (c). Pub. L. 103-304 substituted “subsection (a)(5)” for “subsection (a)(5)(A)”.

This section is referred to in section 12602 of this title; title 16 section 1723.

§ 12592. Selection of national service participants**(a) Selection process**

Subject to subsections (b) and (c) of this section and section 12583(f) of this title, the actual recruitment and selection of an individual to serve in a national service program receiving assistance under section 12571 of this title or to fill an approved national service position shall be conducted by the State, subdivision of a State, Indian tribe, public or private nonprofit organization, institution of higher education, Federal agency, or other entity to which the assistance and approved national service positions are provided.

(b) Nondiscrimination and nonpolitical selection of participants

The recruitment and selection of individuals to serve in national service programs receiving assistance under section 12571 of this title or to fill approved national service positions shall be consistent with the requirements of section 12635 of this title.

(c) Second term

Acceptance into a national service program to serve a second term of service under section 12593 of this title shall only be available to individuals who perform satisfactorily in their first term of service.

(d) Recruitment and placement

The Corporation and each State Commission shall establish a system to recruit individuals who desire to perform national service and to assist the placement of these individuals in approved national service positions, which may include positions available under titles I and II of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4951 et seq. [and 5000 et seq.]). The Corporation and State Commissions shall disseminate information regarding available approved national service positions through cooperation with secondary schools, institutions of higher education, employment service offices, State vocational rehabilitation agencies within the meaning of the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.) and other State agencies that primarily serve individuals with disabilities, and other appropriate entities, particularly those organizations that provide outreach to disadvantaged youths and youths who are individuals with disabilities.

(e) National leadership pool**(1) Selection and training**

From among individuals recruited under subsection (d) of this section, the Corporation may select individuals with significant leadership potential, as determined by the Corporation, to receive special training to enhance their leadership ability. The leadership training shall be provided by the Corporation directly or through a grant or contract.

(2) Emphasis on certain individuals

In selecting individuals to receive leadership training under this subsection, the Corpora-

tion shall make special efforts to select individuals who have served—

(A) in the Peace Corps;

(B) as VISTA volunteers;

(C) as participants in national service programs receiving assistance under section 12571 of this title;

(D) as participants in programs receiving assistance under part D of this subchapter, as in effect on the day before September 21, 1993; or

(E) as members of the Armed Forces of the United States and who were honorably discharged from such service.

(3) Assignment

At the request of a program that receives assistance under the national service laws, the Corporation may assign an individual who receives leadership training under paragraph (1) to work with the program in a leadership position and carry out assignments not otherwise performed by regular participants. An individual assigned to a program shall be considered to be a participant of the program.

(f) Evaluation of service

The Corporation shall issue regulations regarding the manner and criteria by which the service of a participant shall be evaluated to determine whether the service is satisfactory and successful for purposes of eligibility for a second term of service or a national service educational award.

(Pub. L. 101-610, title I, §138, as added Pub. L. 103-82, title I, §101(b), Sept. 21, 1993, 107 Stat. 809.)

REFERENCES IN TEXT

The Domestic Volunteer Service Act of 1973, referred to in subsec. (d), is Pub. L. 93-113, Oct. 1, 1973, 87 Stat. 394, as amended. Titles I and II of the Act are classified generally to subchapters I (§4951 et seq.) and II (§5000 et seq.), respectively, of chapter 66 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4950 of this title and Tables.

The Rehabilitation Act of 1973, referred to in subsec. (d), is Pub. L. 93-112, Sept. 26, 1973, 87 Stat. 355, as amended, which is classified generally to chapter 16 (§701 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

Part D of this subchapter, as in effect on the day before September 21, 1993, referred to in subsec. (e)(2)(D), means former part D of this subchapter prior to the general amendment of subtitle D of title I of Pub. L. 101-610 [former part D of this subchapter] by Pub. L. 103-82, title I, §102(a), Sept. 21, 1993, 107 Stat. 816.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12583 of this title.

§ 12593. Terms of service

(a) In general

As a condition of receiving a national service education award under division D of this subchapter, a participant in an approved national service position shall be required to perform full- or part-time national service for at least one term of service specified in subsection (b) of this section.

(b) Term of service

(1) Full-time service

An individual performing full-time national service in an approved national service position shall agree to participate in the program sponsoring the position for not less than 1,700 hours during a period of not less than 9 months and not more than 1 year.

(2) Part-time service

Except as provided in paragraph (3), an individual performing part-time national service in an approved national service position shall agree to participate in the program sponsoring the position for not less than 900 hours during a period of—

(A) not more than 2 years; or

(B) not more than 3 years if the individual is enrolled in an institute¹ of higher education while performing² all or a portion of the service.

(3) Reduction in hours of part-time service

The Corporation may reduce the number of hours required to be served to successfully complete part-time national service to a level determined by the Corporation, except that any reduction in the required term of service shall include a corresponding reduction in the amount of any national service educational award that may be available under division D of this subchapter with regard to that service.

(c) Release from completing term of service

(1) Release authorized

A recipient of assistance under section 12571 of this title or a program sponsoring an approved national service position may release a participant from completing a term of service in the position—

(A) for compelling personal circumstances as demonstrated by the participant; or

(B) for cause.

(2) Effect of release for compelling circumstances

If a participant eligible for release under paragraph (1)(A) is serving in an approved national service position, the recipient of assistance under section 12571 of this title or a program sponsoring an approved national service position may elect—

(A) to grant such release and provide to the participant that portion of the national service educational award corresponding to the portion of the term of service actually completed, as provided in section 12603(c) of this title; or

(B) to permit the participant to temporarily suspend performance of the term of service for a period of up to 2 years (and such additional period as the Corporation may allow for extenuating circumstances) and, upon completion of such period, to allow return to the program with which the individual was serving in order to complete the remainder of the term of service and obtain the entire national service educational award.

¹ So in original. Probably should be "institution".

² So in original. Probably should be "performing".

(3) Effect of release for cause

A participant released for cause may not receive any portion of the national service educational award.

(Pub. L. 101-610, title I, §139, as added Pub. L. 103-82, title I, §101(b), Sept. 21, 1993, 107 Stat. 810.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12591, 12592, 12594, 12602, 12603, 12631, 12656 of this title.

§ 12594. Living allowances for national service participants**(a) Provision of living allowance****(1) Living allowance required**

Subject to paragraph (3), a national service program carried out using assistance provided under section 12571 of this title shall provide to each participant who participates on a full-time basis in the program a living allowance in an amount equal to or greater than the average annual subsistence allowance provided to VISTA volunteers under section 4955 of this title.

(2) Limitation on Federal share

The amount of the annual living allowance provided under paragraph (1) that may be paid using assistance provided under section 12571 of this title and using any other Federal funds shall not exceed 85 percent of the total average annual¹ provided to VISTA volunteers under section 4955 of this title.

(3) Maximum living allowance

Except as provided in subsection (c) of this section, the total amount of an annual living allowance that may be provided to a participant in a national service program shall not exceed 200 percent of the average annual subsistence allowance provided to VISTA volunteers under section 4955 of this title.

(4) Proration of living allowance

The amount provided as a living allowance under this subsection shall be prorated in the case of a participant who is authorized to serve a reduced term of service under section 12593(b)(3) of this title.

(5) Waiver or reduction of living allowance

The Corporation may waive or reduce the requirement of paragraph (1) with respect to such national service program if such program demonstrates that—

(A) such requirement is inconsistent with the objectives of the program; and

(B) the amount of the living allowance that will be provided to each full-time participant is sufficient to meet the necessary costs of living (including food, housing, and transportation) in the area in which the program is located.

(6) Exemption

The requirement of paragraph (1) shall not apply to any program that was in existence on September 21, 1993.

¹ So in original. Probably should be followed by "subsistence allowance".

(b) Coverage of certain employment-related taxes

To the extent a national service program that receives assistance under section 12571 of this title is subject, with respect to the participants in the program, to the taxes imposed on an employer under sections 3111 and 3301 of title 26 and taxes imposed on an employer under a workmen's compensation act, the assistance provided to the program under section 12571 of this title shall include an amount sufficient to cover 85 percent of such taxes based upon the lesser of—

(1) the total average annual subsistence allowance provided to VISTA volunteers under section 4955 of this title; and

(2) the annual living allowance established by the program.

(c) Exception from maximum living allowance for certain assistance

A professional corps program described in section 12572(a)(8) of this title that desires to provide a living allowance in excess of the maximum allowance authorized in subsection (a)(3) of this section may still apply for such assistance, except that—

(1) any assistance provided to the applicant under section 12571 of this title may not be used to pay for any portion of the allowance;

(2) the applicant shall apply for such assistance only by submitting an application to the Corporation for assistance on a competitive basis; and

(3) the national service program shall be operated directly by the applicant and shall meet urgent, unmet human, educational, environmental, or public safety needs, as determined by the Corporation.

(d) Health insurance**(1) In general**

A State or other recipient of assistance under section 12571 of this title shall provide a basic health care policy for each full-time participant in a national service program carried out or supported using the assistance, if the participant is not otherwise covered by a health care policy. Not more than 85 percent of the cost of a premium shall be provided by the Corporation, with the remaining cost paid by the entity receiving assistance under section 12571 of this title. The Corporation shall establish minimum standards that all plans must meet in order to qualify for payment under this part, any circumstances in which an alternative health care policy may be substituted for the basic health care policy, and mechanisms to prohibit participants from dropping existing coverage.

(2) Option

A State or other recipient of assistance under section 12571 of this title may elect to provide from its own funds a health care policy for participants that does not meet all of the standards established by the Corporation if the fair market value of such policy is equal to or greater than the fair market value of a plan that meets the minimum standards established by the Corporation, and is consistent with other applicable laws.

(e) Child care**(1) Availability**

A State or other recipient of assistance under section 12571 of this title shall—

(A) make child care available for children of each full-time participant who needs child care in order to participate in a national service program carried out or supported by the recipient using the assistance; or

(B) provide a child care allowance to each full-time participant in a national service program who needs such assistance in order to participate in the program.

(2) Guidelines

The Corporation shall establish guidelines regarding the circumstances under which child care shall be made available under this subsection and the value of any allowance to be provided.

(f) Individualized support services

A State or other recipient of assistance under section 12571 of this title shall provide reasonable accommodation, including auxiliary aids and services (as defined in section 12102(1) of this title), based on the individualized need of a participant who is a qualified individual with a disability (as defined in section 12111(8) of this title).

(g) Waiver of limitation on Federal share

The Corporation may waive in whole or in part the limitation on the Federal share specified in this section with respect to a particular national service program in any fiscal year if the Corporation determines that such a waiver would be equitable due to a lack of available financial resources at the local level.

(h) Limitation on number of terms of service for federally subsidized living allowance

No national service program may use assistance provided under section 12571 of this title, or any other Federal funds, to provide a living allowance under subsection (a) of this section, a health care policy under subsection (d) of this section, or child care or a child care allowance under subsection (e) of this section, to an individual for a third, or subsequent, term of service described in section 12593(b) of this title by the individual in a national service program carried out under this division.

(Pub. L. 101-610, title I, §140, as added Pub. L. 103-82, title I, §101(b), Sept. 21, 1993, 107 Stat. 811.)

PRIOR PROVISIONS

A prior section 140 of Pub. L. 101-610 was set out as a note under section 12501 of this title, prior to the general amendment of subtitle D of title I of Pub. L. 101-610 [former part D of this subchapter] by Pub. L. 103-82, §102(a).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12571, 12572, 12583, 12638, 12656 of this title; title 16 section 1726.

§ 12595. National service educational awards**(a) Eligibility generally**

A participant in a national service program carried out using assistance provided to an ap-

plicant under section 12571 of this title shall be eligible for the national service educational award described in division D of this subchapter if the participant—

(1) serves in an approved national service position; and

(2) satisfies the eligibility requirements specified in section 12602 of this title with respect to service in that approved national service position.

(b) Special rule for VISTA volunteers

A VISTA volunteer who serves in an approved national service position shall be ineligible for a national service educational award if the VISTA volunteer accepts the stipend authorized under section 4955(a)(1) of this title.

(Pub. L. 101-610, title I, §141, as added Pub. L. 103-82, title I, §101(b), Sept. 21, 1993, 107 Stat. 814.)

PRIOR PROVISIONS

A prior section 141 of Pub. L. 101-610 was classified to section 12571 of this title prior to the general amendment of subtitle D of title I of Pub. L. 101-610 [former part D of this subchapter] by Pub. L. 103-82, §102(a).

Division D—National Service Trust and Provision of National Service Educational Awards

CODIFICATION

Subtitle D of title I of Pub. L. 101-610, comprising this division, was formerly classified to part D (§12571 et seq.) of this subchapter prior to the general amendment by Pub. L. 103-82, §102(a).

DIVISION REFERRED TO IN OTHER SECTIONS

This division is referred to in sections 4955, 12521, 12561, 12571, 12572, 12573, 12581, 12582, 12585, 12593, 12595, 12605, 12618, 12638, 12656, 12681 of this title; title 16 section 1727; title 20 sections 1078-10, 1078-11, 1087j, 1087ee.

§ 12601. Establishment of the National Service Trust**(a) Establishment**

There is established in the Treasury of the United States an account to be known as the National Service Trust. The Trust shall consist of—

(1) from the amounts appropriated to the Corporation and made available to carry out this division pursuant to section 12681(a)(2) of this title, such amounts as the Corporation may designate to be available for the payment of—

(A) national service educational awards; and

(B) interest expenses pursuant to section 12604(e) of this title;

(2) any amounts received by the Corporation as gifts, bequests, devises, or otherwise pursuant to section 12651g(a)(2) of this title; and

(3) the interest on, and proceeds from the sale or redemption of, any obligations held by the Trust.

(b) Investment of Trust

It shall be the duty of the Secretary of the Treasury to invest in full the amounts appropriated to the Trust. Except as otherwise expressly provided in instruments concerning a gift, bequest, devise, or other donation and

agreed to by the Corporation, such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose, such obligations may be acquired on original issue at the issue price or by purchase of outstanding obligations at the market price. Any obligation acquired by the Trust may be sold by the Secretary at the market price.

(c) Expenditures from Trust

Amounts in the Trust shall be available, to the extent provided for in advance by appropriation, for payments of national service educational awards in accordance with section 12604 of this title.

(d) Reports to Congress on receipts and expenditures

Not later than March 1 of each year, the Corporation shall submit a report to the Congress on the financial status of the Trust during the preceding fiscal year. Such report shall—

(1) specify the amount deposited to the Trust from the most recent appropriation to the Corporation, the amount received by the Corporation as gifts, bequests, devises, or otherwise pursuant to section 12651g(a)(2) of this title during the period covered by the report, and any amounts obtained by the Trust pursuant to subsection (a)(3) of this section;

(2) identify the number of individuals who are currently performing service to qualify, or have qualified, for national service educational awards;

(3) identify the number of individuals whose expectation to receive national service educational awards during the period covered by the report—

(A) has been reduced pursuant to section 12603(c) of this title; or

(B) has lapsed pursuant to section 12602(d) of this title; and

(4) estimate the number of additional approved national service positions that the Corporation will be able to make available under division C of this subchapter on the basis of any accumulated surplus in the Trust above the amount required to provide national service educational awards to individuals identified under paragraph (2), including any amounts available as a result of the circumstances referred to in paragraph (3).

(Pub. L. 101-610, title I, §145, as added Pub. L. 103-82, title I, §102(a), Sept. 21, 1993, 107 Stat. 816.)

PRIOR PROVISIONS

A prior section 12601, Pub. L. 101-610, title I, §156, Nov. 16, 1990, 104 Stat. 3156, related to authority of Commission on National and Community Service to make grants to States or Indian tribes for creation of innovative volunteer and community service programs, prior to repeal by Pub. L. 103-82, §104(a).

A prior section 145 of Pub. L. 101-610 was classified to section 12575 of this title prior to the general amendment of subtitle D of title I of Pub. L. 101-610 [former part D of this subchapter] by Pub. L. 103-82, §102(a).

EFFECTIVE DATE

Division effective Oct. 1, 1993, see section 123 of Pub. L. 103-82, set out as an Effective Date of 1993 Amendment note under section 1701 of Title 16, Conservation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12571, 12581, 12605 of this title.

§ 12602. Individuals eligible to receive a national service educational award from the Trust

(a) Eligible individuals

An individual shall receive a national service educational award from the National Service Trust if the individual—

(1) successfully completes the required term of service described in subsection (b) of this section in an approved national service position;

(2) was 17 years of age or older at the time the individual began serving in the approved national service position or was an out-of-school youth serving in an approved national service position with a youth corps program described in section 12572(a)(2) of this title or a program described in section 12572(a)(9) of this title;

(3) at the time the individual uses the national service educational award—

(A) has received a high school diploma, or the equivalent of such diploma;

(B) is enrolled at an institution of higher education on the basis of meeting the standard described in paragraph (1) or (2) of subsection (a) of section 1091 of title 20 and meets the requirements of subsection (a) of such section; or

(C) has received a waiver described in section 12591(c) of this title; and

(4) is a citizen or national of the United States or lawful permanent resident alien of the United States.

(b) Term of service

The term of service for an approved national service position shall not be less than the full- or part-time term of service specified in section 12593(b) of this title.

(c) Limitation on number of terms of service for awards

Although an individual may serve more than 2 terms of service described in subsection (b) of this section in an approved national service position, the individual shall receive a national service educational award from the National Service Trust only on the basis of the first and second of such terms of service.

(d) Time for use of educational award

(1) Seven-year requirement

An individual eligible to receive a national service educational award under this section may not use such award after the end of the 7-year period beginning on the date the individual completes the term of service in an approved national service position that is the basis of the award.

(2) Exception

The Corporation may extend the period within which an individual may use a national service educational award if the Corporation determines that the individual—

(A) was unavoidably prevented from using the national service educational award during the original 7-year period; or

(B) performed another term of service in an approved national service position during that period.

(e) Suspension of eligibility for drug-related offenses

(1) In general

An individual who, after qualifying under this section as an eligible individual, has been convicted under any Federal or State law of the possession or sale of a controlled substance shall not be eligible to receive a national service educational award during the period beginning on the date of such conviction and ending after the interval specified in the following table:

If convicted of:	
The possession of a controlled substance:	Ineligibility period is:
1st conviction	1 year
2nd conviction	2 years
3rd conviction	indefinite
The sale of a controlled substance:	
1st conviction	2 years
2nd conviction	indefinite

(2) Rehabilitation

An individual whose eligibility has been suspended under paragraph (1) shall resume eligibility before the end of the period determined under such paragraph if the individual satisfactorily completes a drug rehabilitation program that complies with such criteria as the Corporation shall prescribe for purposes of this paragraph.

(3) First convictions

An individual whose eligibility has been suspended under paragraph (1) and is convicted of a first offense may resume eligibility before the end of the period determined under such paragraph if the individual demonstrates that he or she has enrolled or been accepted for enrollment in a drug rehabilitation program described in paragraph (2).

(4) "Controlled substance" defined

As used in this subsection, the term "controlled substance" has the meaning given in section 802(6) of title 21.

(5) Effective date

This subsection shall be effective upon publication by the Corporation in the Federal Register of criteria prescribed under paragraph (2).

(f) Authority to establish demonstration programs

The Corporation may establish by regulation demonstration programs for the creation and evaluation of innovative volunteer and community service programs.

(Pub. L. 101-610, title I, §146, as added Pub. L. 103-82, title I, §102(a), Sept. 21, 1993, 107 Stat. 818; amended Pub. L. 103-304, §3(b)(4), Aug. 23, 1994, 108 Stat. 1567.)

PRIOR PROVISIONS

A prior section 12602, Pub. L. 101-610, title I, §157, Nov. 16, 1990, 104 Stat. 3156; Pub. L. 102-10, §7, Mar. 12,

1991, 105 Stat. 31, related to grant applications, awards, and uses, prior to repeal by Pub. L. 103-82, §104(a).

A prior section 146 of Pub. L. 101-610 was classified to section 12576 of this title prior to the general amendment of subtitle D of title I of Pub. L. 101-610 [former part D of this subchapter] by Pub. L. 103-82, §102(a).

AMENDMENTS

1994—Subsec. (a)(3). Pub. L. 103-304 struck out second par. (3) which read as follows: "has received a high school diploma, or the equivalent of such diploma, at the time the individual uses the national service educational award, unless this requirement has been waived based on an individual education assessment conducted by the program; and".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12595, 12601, 12603, 12604, 12618 of this title.

§ 12603. Determination of amount of national service educational award

(a) Amount for full-time national service

Except as provided in subsection (c) of this section, an individual described in section 12602(a) of this title who successfully completes a required term of full-time national service in an approved national service position shall receive a national service educational award having a value, for each of not more than 2 of such terms of service, equal to 90 percent of—

(1) one-half of an amount equal to the aggregate basic educational assistance allowance provided in section 3015(b)(1) of title 38 (as in effect on July 28, 1993), for the period referred to in section 3013(a)(1) of such title (as in effect on July 28, 1993), for a member of the Armed Forces who is entitled to such an allowance under section 3011 of such title and whose initial obligated period of active duty is 2 years; less

(2) one-half of the aggregate basic contribution required to be made by the member in section 3011(b) of such title (as in effect on July 28, 1993).

(b) Amount for part-time national service

Except as provided in subsection (c) of this section, an individual described in section 12602(a) of this title who successfully completes a required term of part-time national service in an approved national service position shall receive a national service educational award having a value, for each of not more than 2 of such terms of service, equal to 50 percent of value of the national service educational award determined under subsection (a) of this section.

(c) Award for partial completion of service

If an individual serving in an approved national service position is released in accordance with section 12593(c)(1)(A) of this title from completing the full-time or part-time term of service agreed to by the individual, the Corporation may provide the individual with that portion of the national service educational award approved for the individual that corresponds to the quantity of the term of service actually completed by the individual.

(Pub. L. 101-610, title I, §147, as added Pub. L. 103-82, title I, §102(a), Sept. 21, 1993, 107 Stat. 819.)

PRIOR PROVISIONS

A prior section 147 of Pub. L. 101-610 was classified to section 12577 of this title prior to the general amendment of subtitle D of title I of Pub. L. 101-610 [former part D of this subchapter] by Pub. L. 103-82, §102(a).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12511, 12571, 12593, 12601 of this title.

§ 12604. Disbursement of national service educational awards

(a) In general

Amounts in the Trust shall be available—

(1) to repay student loans in accordance with subsection (b) of this section;

(2) to pay all or part of the cost of attendance at an institution of higher education in accordance with subsection (c) of this section;

(3) to pay expenses incurred in participating in an approved school-to-work program in accordance with subsection (d) of this section; and

(4) to pay interest expenses in accordance with regulations prescribed pursuant to subsection (e) of this section.

(b) Use of educational award to repay outstanding student loans

(1) Application by eligible individuals

An eligible individual under section 12602 of this title who desires to apply the national service educational award of the individual to the repayment of qualified student loans shall submit, in a manner prescribed by the Corporation, an application to the Corporation that—

(A) identifies, or permits the Corporation to identify readily, the holder or holders of such loans;

(B) indicates, or permits the Corporation to determine readily, the amounts of principal and interest outstanding on the loans;

(C) specifies, if the outstanding balance is greater than the amount disbursed under paragraph (2), which of the loans the individual prefers to be paid by the Corporation; and

(D) contains or is accompanied by such other information as the Corporation may require.

(2) Disbursement of repayments

Upon receipt of an application from an eligible individual of an application that complies with paragraph (1), the Corporation shall, as promptly as practicable consistent with paragraph (5), disburse the amount of the national service educational award that the eligible individual has earned. Such disbursement shall be made by check or other means that is payable to the holder of the loan and requires the endorsement or other certification by the eligible individual.

(3) Application of disbursed amounts

If the amount disbursed under paragraph (2) is less than the principal and accrued interest on any qualified student loan, such amount shall be applied according to the specified priorities of the individual.

(4) Reports by holders

Any holder receiving a loan payment pursuant to this subsection shall submit to the Corporation such information as the Corporation may require to verify that such payment was applied in accordance with this subsection and any regulations prescribed to carry out this subsection.

(5) Notification of individual

The Corporation upon disbursing the national service educational award, shall notify the individual of the amount paid for each outstanding loan and the date of payment.

(6) Authority to aggregate payments

The Corporation may, by regulation, provide for the aggregation of payments to holders under this subsection.

(7) “Qualified student loans” defined

As used in this subsection, the term “qualified student loans” means—

(A) any loan made, insured, or guaranteed pursuant to title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq. [and 42 U.S.C. 2751 et seq.]), other than a loan to a parent of a student pursuant to section 428B of such Act (20 U.S.C. 1078-2); and

(B) any loan made pursuant to title VII or VIII of the Public Health Service Act [42 U.S.C. 292 et seq., 296 et seq.].

(8) “Holder” defined

As used in this subsection, the term “holder” with respect to any eligible loan means the original lender or, if the loan is subsequently sold, transferred, or assigned to some other person, and such other person acquires a legally enforceable right to receive payments from the borrower, such other person.

(c) Use of educational awards to pay current educational expenses

(1) Application by eligible individual

An eligible individual under section 12602 of this title who desires to apply the individual’s national service educational award to the payment of current full-time or part-time educational expenses shall, on a form prescribed by the Corporation, submit an application to the institution of higher education in which the student will be enrolled that contains such information as the Corporation may require to verify the individual’s eligibility.

(2) Submission of requests for payment by institutions

An institution of higher education that receives one or more applications that comply with paragraph (1) shall submit to the Corporation a statement, in a manner prescribed by the Corporation, that—

(A) identifies each eligible individual filing an application under paragraph (1) for a disbursement of the individual’s national service educational award under this subsection;

(B) specifies the amounts for which such eligible individuals are, consistent with paragraph (6), qualified for disbursement under this subsection;

(C) certifies that—

(i) the institution of higher education has in effect a program participation agreement under section 487 of the Higher Education Act of 1965 (20 U.S.C. 1094);

(ii) the institution's eligibility to participate in any of the programs under title IV of such Act (20 U.S.C. 1070 et seq. [and 42 U.S.C. 2751 et seq.]) has not been limited, suspended, or terminated; and

(iii) individuals using national service educational awards received under this division to pay for educational costs do not comprise more than 15 percent of the total student population of the institution; and

(D) contains such provisions concerning financial compliance as the Corporation may require.

(3) Disbursement of payments

Upon receipt of a statement from an institution of higher education that complies with paragraph (2), the Corporation shall, subject to paragraph (4), disburse the total amount of the national service educational awards for which eligible individuals who have submitted applications to that institution under paragraph (1) are scheduled to receive. Such disbursement shall be made by check or other means that is payable to the institution and requires the endorsement or other certification by the eligible individual.

(4) Multiple disbursements required

The total amount required to be disbursed to an institution of higher education under paragraph (3) for any period of enrollment shall be disbursed by the Corporation in 2 or more installments, none of which exceeds $\frac{1}{2}$ of such total amount. The interval between the first and second such installment shall not be less than $\frac{1}{2}$ of such period of enrollment, except as necessary to permit the second installment to be paid at the beginning of the second semester, quarter, or similar division of such period of enrollment.

(5) Refund rules

The Corporation shall, by regulation, provide for the refund to the Corporation (and the crediting to the national service educational award of an eligible individual) of amounts disbursed to institutions for the benefit of eligible individuals who withdraw or otherwise fail to complete the period of enrollment for which the assistance was provided. Such regulations shall be consistent with the fair and equitable refund policies required of institutions pursuant to section 484B of the Higher Education Act of 1965 (20 U.S.C. 1091b). Amounts refunded to the Trust pursuant to this paragraph may be used by the Corporation to fund additional approved national service positions under division C of this subchapter.

(6) Maximum award

The portion of an eligible individual's total available national service educational award that may be disbursed under this subsection for any period of enrollment shall not exceed the difference between—

(A) the eligible individual's cost of attendance for such period of enrollment, deter-

mined in accordance with section 472 of the Higher Education Act of 1965 (20 U.S.C. 1087ll); and

(B) the sum of—

(i) the student's estimated financial assistance for such period under part A of title IV of such Act (20 U.S.C. 1070 et seq.); and

(ii) the student's veterans' education benefits, determined in accordance with section 480(c) of such Act (20 U.S.C. 1087vv(c)).

(d) Use of educational award to participate in approved school-to-work programs

The Corporation shall by regulation provide for the payment of national service educational awards to permit eligible individuals to participate in school-to-work programs approved by the Secretaries of Labor and Education.

(e) Interest payments during forbearance on loan repayment

The Corporation shall provide by regulation for the payment on behalf of an eligible individual of interest that accrues during a period for which such individual has obtained forbearance in the repayment of a qualified student loan (as defined in subsection (b)(6)¹ of this section), if the eligible individual successfully completes the individual's required term of service (as determined under section 12602(b) of this title). Such regulations shall be prescribed after consultation with the Secretary of Education.

(f) Exception

With the approval of the Director, an approved national service program funded under section 12571 of this title, may offer participants the option of waiving their right to receive a national service educational award in order to receive an alternative post-service benefit funded by the program entirely with non-Federal funds.

(g) "Institution of higher education" defined

Notwithstanding section 12511 of this title, for purposes of this section the term "institution of higher education" has the meaning provided by section 102 of the Higher Education Act of 1965 [20 U.S.C. 1002].

(Pub. L. 101-610, title I, §148, as added Pub. L. 103-82, title I, §102(a), Sept. 21, 1993, 107 Stat. 820; amended Pub. L. 105-244, title I, §102(c)(2), Oct. 7, 1998, 112 Stat. 1622.)

REFERENCES IN TEXT

The Higher Education Act of 1965, referred to in subsecs. (b)(7)(A) and (c)(2)(C)(ii), (6)(B)(i), is Pub. L. 89-329, Nov. 8, 1965, 79 Stat. 1219, as amended. Title IV of the Act is classified generally to subchapter IV (§1070 et seq.) of chapter 28 of Title 20, Education, and part C (§2751 et seq.) of subchapter I of chapter 34 of this title. Part A of title IV of the Act is classified generally to part A (§1070 et seq.) of subchapter IV of chapter 28 of Title 20. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

The Public Health Service Act, referred to in subsec. (b)(7)(B), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended. Titles VII and VIII of the Act are classified generally to subchapters V (§292 et seq.) and VI (§296 et

¹ So in original. Probably should be subsection "(b)(7)".

seq.), respectively, of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

PRIOR PROVISIONS

A prior section 148 of Pub. L. 101-610 was classified to section 12578 of this title prior to the general amendment of subtitle D of title I of Pub. L. 101-610 [former part D of this subchapter] by Pub. L. 103-82, §102(a).

AMENDMENTS

1998—Subsec. (g). Pub. L. 105-244 substituted “section 102 of the Higher Education Act of 1965” for “section 481(a) of the Higher Education Act of 1965 (20 U.S.C. 1088(a))”.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see section 3 of Pub. L. 105-244, set out as a note under section 1001 of Title 20, Education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12601, 12605 of this title.

§ 12605. Process of approval of national service positions

(a) Definitions

In this section, the terms “approved national service position” and “Corporation” have the meanings given the terms in section 101 of the National and Community Service Act of 1990 (42 U.S.C. 12511).

(b) Timing and recording requirements

(1) In general

Notwithstanding subtitles C and D of title I of the National and Community Service Act of 1990 (42 U.S.C. 12571 et seq., 12601 et seq.), and any other provision of law, in approving a position as an approved national service position, the Corporation—

(A) shall approve the position at the time the Corporation—

(i) enters into an enforceable agreement with an individual participant to serve in a program carried out under subtitle E of title I of that Act (42 U.S.C. 12611 et seq.) or title I of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4951 et seq.); or

(ii) except as provided in clause (i), awards a grant to (or enters into a contract or cooperative agreement with) an entity to carry out a program for which such a position may be approved under section 123 of the National and Community Service Act of 1990 (42 U.S.C. 12573); and

(B) shall record as an obligation an estimate of the net present value of the national service educational award associated with the position, based on a formula that takes into consideration historical rates of enrollment in such a program, and of earning and using national service educational awards for such a program.

(2) Formula

In determining the formula described in paragraph (1)(B), the Corporation shall consult with the Director of the Congressional Budget Office.

(3) Certification report

The Chief Executive Officer of the Corporation shall annually prepare and submit to Congress a report that contains a certification that the Corporation is in compliance with the requirements of paragraph (1).

(4) Approval

The requirements of this subsection shall apply to each approved national service position that the Corporation approves—

(A) during fiscal year 2003 (before or after July 3, 2003); and

(B) during any subsequent fiscal year.

(c) Reserve account

(1) Establishment and contents

(A) Establishment

Notwithstanding subtitles C and D of title I of the National and Community Service Act of 1990 (42 U.S.C. 12571 et seq., 12601 et seq.), and any other provision of law, within the National Service Trust established under section 145 of the National and Community Service Act of 1990 (42 U.S.C. 12601), the Corporation shall establish a reserve account.

(B) Contents

To ensure the availability of adequate funds to support the awards of approved national service positions for each fiscal year, the Corporation shall place in the account—

(i) during fiscal year 2003, a portion of the funds that were appropriated for fiscal year 2003 or a previous fiscal year under section 501(a)(2) (42 U.S.C. 12681(a)(2)), were made available to carry out subtitle C or D of title I of that Act, and remain available; and

(ii) during fiscal year 2004 or a subsequent fiscal year, a portion of the funds that were appropriated for that fiscal year under section 501(a)(2) and were made available to carry out subtitle C or D of title I of that Act.

(2) Obligation

The Corporation shall not obligate the funds in the reserve account until the Corporation—

(A) determines that the funds will not be needed for the payment of national service educational awards associated with previously approved national service positions; or

(B) obligates the funds for the payment of such awards for such previously approved national service positions.

(d) Audits

The accounts of the Corporation relating to the appropriated funds for approved national service positions, and the records demonstrating the manner in which the Corporation has recorded estimates described in subsection (b)(1)(B) of this section as obligations, shall be audited annually by independent certified public accountants or independent licensed public accountants certified or licensed by a regulatory authority of a State or other political subdivision of the United States in accordance with generally accepted auditing standards. A report containing the results of each such independent

audit shall be included in the annual report required by subsection (b)(3) of this section.

(e) Availability of amounts

Except as provided in subsection (c) of this section, all amounts included in the National Service Trust under paragraphs (1), (2), and (3) of section 145(a) of the National and Community Service Act of 1990 (42 U.S.C. 12601(a)) shall be available for payments of national service educational awards under section 148 of that Act (42 U.S.C. 12604).

(Pub. L. 108–45, §2, July 3, 2003, 117 Stat. 844.)

REFERENCES IN TEXT

The National and Community Service Act of 1990, referred to in subsecs. (b)(1) and (c)(1), is Pub. L. 101–610, Nov. 16, 1990, 104 Stat. 3127, as amended. Subtitles C, D, and E of title I of the Act are classified generally to divisions C (§12571 et seq.), D (§12601 et seq.), and E (§12611 et seq.), respectively, of this subchapter. For complete classification of this Act to the Code, see Short Title note set out under section 12501 of this title and Tables.

The Domestic Volunteer Service Act of 1973, referred to in subsec. (b)(1)(A)(i), is Pub. L. 93–113, Oct. 1, 1973, 87 Stat. 394, as amended. Title I of the Act is classified generally to subchapter I (§4951 et seq.) of chapter 66 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4950 of this title and Tables.

CODIFICATION

Section was enacted as part of the Strengthen AmeriCorps Program Act, and not as part of the National and Community Service Act of 1990 which comprises this chapter.

SHORT TITLE

For short title of Pub. L. 108–45 which enacted this section, as the Strengthen AmeriCorps Program Act, see section 1 of Pub. L. 108–45, set out as a note under section 12501 of this title.

Division E—Civilian Community Corps

CODIFICATION

Subtitle E of title I of Pub. L. 101–610, comprising this division, was formerly classified to part H (§12653 et seq.) of this subchapter prior to amendment by Pub. L. 103–82, §104(b).

PRIOR PROVISIONS

This division is comprised of subtitle E, §§151–166, of title I of Pub. L. 101–610. A prior part E (§12591 et seq.), comprised of subtitle E, §§155–167, of title I of Pub. L. 101–610, related to innovative and demonstration programs and projects, prior to repeal by Pub. L. 103–82, §104(a).

DIVISION REFERRED TO IN OTHER SECTIONS

This division is referred to in sections 12573, 12581, 12605, 12681 of this title; title 32 section 509.

§ 12611. Purpose

It is the purpose of this division to authorize the establishment of a Civilian Community Corps to provide a basis for determining—

(1) whether residential service programs administered by the Federal Government can significantly increase the support for national service and community service by the people of the United States;

(2) whether such programs can expand the opportunities for willing young men and

women to perform meaningful, direct, and consequential acts of community service in a manner that will enhance their own skills while contributing to their understanding of civic responsibility in the United States;

(3) whether retired members and former members of the Armed Forces of the United States, members and former members of the Armed Forces discharged or released from active duty in connection with reduced Department of Defense spending, members and former members of the Armed Forces discharged or transferred from the Selected Reserve of the Ready Reserve in connection with reduced Department of Defense spending, and other members of the Armed Forces not on active duty and not actively participating in a reserve component of the Armed Forces can provide guidance and training under such programs that contribute meaningfully to the encouragement of national and community service; and

(4) whether domestic national service programs can serve as a substitute for the traditional option of military service in the Armed Forces of the United States which, in times of reductions in the size of the Armed Forces, is a diminishing national service opportunity for young Americans.

(Pub. L. 101–610, title I, §151, formerly §195, as added Pub. L. 102–484, div. A, title X, §1092(a)(1), Oct. 23, 1992, 106 Stat. 2522; renumbered §151, Pub. L. 103–82, title I, §104(b), Sept. 21, 1993, 107 Stat. 840.)

CODIFICATION

Section was formerly classified to section 12653 of this title prior to renumbering by Pub. L. 103–82, §104(b).

PRIOR PROVISIONS

A prior section 12611, Pub. L. 101–610, title I, §160, Nov. 16, 1990, 104 Stat. 3157, authorized Commission to make grants to Directors of Peace Corps and ACTION to carry out training and educational benefits demonstration programs, prior to repeal by Pub. L. 103–82, §104(a).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12619, 12622 of this title.

§ 12612. Establishment of Civilian Community Corps Demonstration Program

(a) In general

The Corporation may establish the Civilian Community Corps Demonstration Program to carry out the purpose of this division.

(b) Program components

Under the Civilian Community Corps Demonstration Program authorized by subsection (a) of this section, the members of a Civilian Community Corps shall receive training and perform service in at least one of the following two program components:

(1) A national service program.

(2) A summer national service program.

(c) Residential programs

Both program components are residential programs. The members of the Corps in each pro-

gram shall reside with other members of the Corps in Corps housing during the periods of the members' agreed service.

(Pub. L. 101-610, title I, § 152, formerly § 195A, as added Pub. L. 102-484, div. A, title X, § 1092(a)(1), Oct. 23, 1992, 106 Stat. 2523; renumbered § 152 and amended Pub. L. 103-82, title I, § 104(b), title IV, § 402(b)(2), Sept. 21, 1993, 107 Stat. 840, 919.)

CODIFICATION

Section was formerly classified to section 12653a of this title prior to renumbering by Pub. L. 103-82, § 104(b).

PRIOR PROVISIONS

A prior section 12612, Pub. L. 101-610, title I, § 161, Nov. 16, 1990, 104 Stat. 3157; Pub. L. 102-384, § 7(a), Oct. 5, 1992, 106 Stat. 1456, related to eligibility and selection procedures, prior to repeal by Pub. L. 103-82, § 104(a).

AMENDMENTS

1993—Subsec. (a). Pub. L. 103-82, § 402(b)(2), substituted "Corporation" for "Commission on National and Community Service".

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 402(b)(2) of Pub. L. 103-82 effective Oct. 1, 1993, see section 406(a) of Pub. L. 103-82, set out as a note under section 5061 of this title.

REPORT AND STUDY REQUIREMENTS

Section 1092(b) of Pub. L. 102-484, as amended by Pub. L. 103-82, title I, § 104(e)(1)(B), (C), title IV, § 402(a)(1), Sept. 21, 1993, 107 Stat. 846, 918, provided that:

"(1) Not later than 180 days after the date on which the Corporation for National and Community Service establishes the Civilian Community Corps Demonstration Program authorized by section 152 of the National and Community Service Act of 1990 [42 U.S.C. 12612] (as added by subsection (a)), the Board of Directors of the Corporation shall prepare and submit to the appropriate committees of Congress a progress report on the implementation of the provisions of subtitle E of title I of such Act [42 U.S.C. 12611 et seq.]. The progress report shall include an assessment of the activities undertaken in establishing and administering Civilian Community Corps camps and an analysis of the level of coordination of Corps activities with activities of other departments or agencies of the Federal Government.

"(2) Not later than 90 days after the end of the one-year period beginning on the first day of the Civilian Community Corps Demonstration Program established pursuant to section 152 of the National and Community Service Act of 1990 (as added by subsection (a)), the Board of Directors of the Corporation for National and Community Service and the Director of the Civilian Community Corps shall prepare and submit to the appropriate committees of Congress a report concerning the desirability and feasibility of establishing the Civilian Community Corps as an independent agency of the Federal Government."

COORDINATION OF PROGRAMS

Section 1093 of Pub. L. 102-484, as amended by Pub. L. 103-82, title I, § 104(e)(1)(B), title IV, § 402(a)(2), Sept. 21, 1993, 107 Stat. 846, 918, provided that:

"(a) COORDINATED ADMINISTRATION.—To the maximum extent practicable, the Chief of the National Guard Bureau, the Board of Directors and Chief Executive Officer of the Corporation for National and Community Service, and the Director of the Civilian Community Corps shall coordinate the National Guard Youth Opportunities Program established pursuant to section 1091 [of Pub. L. 102-484, 32 U.S.C. 501 note] and the Civilian Community Corps Demonstration Program established pursuant to the authorization contained in section 152 of the National and Community Service Act of 1990 [42 U.S.C. 12612] (as added by section 1092(a)).

"(b) OBJECTIVES.—The officials referred to in subsection (a) shall ensure that—

"(1) the programs referred to in subsection (a) are conducted in such a manner in relationship to each other that the public benefit of those programs is maximized;

"(2) to the maximum extent appropriate to meet the needs of program participants, persons who complete participation in the National Guard Youth Opportunities Program and are eligible and apply to participate in the Civilian Community Corps under the Civilian Community Corps Demonstration Program are accepted for participation in that Program; and

"(3) the programs referred to in subsection (a) are conducted simultaneously in competition with each other in the same immediate area of the United States only when the population of eligible participants in that area is sufficient to justify the simultaneous conduct of such programs in that area."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12511, 12613, 12614, 12619, 12626 of this title.

§ 12613. National service program

(a) In general

Under the national service program component of the Civilian Community Corps Demonstration Program authorized by section 12612(a) of this title, eligible young people shall work in teams on Civilian Community Corps projects.

(b) Eligible participants

A person shall be eligible for selection for the national service program if the person—

(1) is at least 16 and not more than 24 years of age; and

(2) is a high school graduate or has not received a high school diploma or its equivalent.

(c) Diverse backgrounds of participants

In selecting persons for the national service program, the Director shall endeavor to ensure that participants are from economically, geographically, and ethnically diverse backgrounds.

(d) Necessary participants

To the extent practicable, at least 50 percent of the participants in the national service program shall be economically disadvantaged youths.

(e) Period of participation

Persons desiring to participate in the national service program shall enter into an agreement with the Director to participate in the Corps for a period of not less than nine months and not more than one year, as specified by the Director, and may renew the agreement for not more than one additional such period.

(Pub. L. 101-610, title I, § 153, formerly § 195B, as added Pub. L. 102-484, div. A, title X, § 1092(a)(1), Oct. 23, 1992, 106 Stat. 2523; renumbered § 153 and amended Pub. L. 103-82, title I, § 104(b), (e)(2)(A), Sept. 21, 1993, 107 Stat. 840, 846.)

CODIFICATION

Section was formerly classified to section 12653b of this title prior to renumbering by Pub. L. 103-82, § 104(b).

PRIOR PROVISIONS

A prior section 12613, Pub. L. 101-610, title I, § 162, Nov. 16, 1990, 104 Stat. 3158, related to training program

in skills to be employed in Peace Corps or VISTA, prior to repeal by Pub. L. 103-82, §104(a).

AMENDMENTS

1993—Subsec. (a). Pub. L. 103-82, §104(e)(2)(A), substituted “section 12612(a)” for “section 12653a(a)”.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Oct. 1, 1993, see section 123 of Pub. L. 103-82, set out as a note under section 1701 of Title 16, Conservation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12653c of this title.

§ 12614. Summer national service program

(a) In general

Under the summer national service program of the Civilian Community Corps Demonstration Program authorized by section 12612(a) of this title, a diverse group of youth aged 14 through 18 years who are from urban or rural areas shall work in teams on Civilian Community Corps projects.

(b) Necessary participants

To the extent practicable, at least 50 percent of the participants in the summer national service program shall be economically disadvantaged youths.

(c) Seasonal program

The training and service of Corps members under the summer national service program in each year shall be conducted after April 30 and before October 1 of that year.

(Pub. L. 101-610, title I, §154, formerly §195C, as added Pub. L. 102-484, div. A, title X, §1092(a)(1), Oct. 23, 1992, 106 Stat. 2524; renumbered §154 and amended Pub. L. 103-82, title I, §104(b), (e)(2)(B), Sept. 21, 1993, 107 Stat. 840, 847.)

CODIFICATION

Section was formerly classified to section 12653c of this title prior to renumbering by Pub. L. 103-82, §104(b).

PRIOR PROVISIONS

A prior section 12614, Pub. L. 101-610, title I, §163, Nov. 16, 1990, 104 Stat. 3158; Pub. L. 102-384, §7(b), Oct. 5, 1992, 106 Stat. 1456, related to higher education benefits for those selected for Peace Corps or VISTA demonstration programs, prior to repeal by Pub. L. 103-82, §104(a).

AMENDMENTS

1993—Subsec. (a). Pub. L. 103-82, §104(e)(2)(B), substituted “section 12612(a)” for “section 12653a(a)”.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Oct. 1, 1993, see section 123 of Pub. L. 103-82, set out as a note under section 1701 of Title 16, Conservation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12653c of this title.

§ 12615. Civilian Community Corps

(a) Director

Upon the establishment of the Civilian Community Corps Demonstration Program, the Ci-

vilian Community Corps shall be under the direction of the Director appointed pursuant to section 12619(c)(1) of this title.

(b) Membership in Civilian Community Corps

(1) Participants to be members

Persons selected to participate in the national service program or the summer national service program components of the Program shall become members of the Civilian Community Corps.

(2) Selection of members

The Director or the Director's designee shall select individuals for membership in the Corps.

(3) Application for membership

To be selected to become a Corps member an individual shall submit an application to the Director or to any other office as the Director may designate, at such time, in such manner, and containing such information as the Director shall require. At a minimum, the application shall contain information about the work experience of the applicant and sufficient information to enable the Director, or the superintendent of the appropriate camp, to determine whether selection of the applicant for membership in the Corps is appropriate.

(c) Organization of Corps into units

(1) Units

The Corps shall be divided into permanent units. Each Corps member shall be assigned to a unit.

(2) Unit leaders

The leader of each unit shall be selected from among persons in the permanent cadre established pursuant to section 12619(c)(2) of this title. The designated leader shall accompany the unit throughout the period of agreed service of the members of the unit.

(d) Camps

(1) Units to be assigned to camps

The units of the Corps shall be grouped together as appropriate in camps for operational, support, and boarding purposes. The Corps camp for a unit shall be in a facility or central location established as the operational headquarters and boarding place for the unit. Corps members may be housed in the camps.

(2) Camp superintendent

There shall be a superintendent for each camp. The superintendent is the head of the camp.

(3) Eligible site for camp

A camp may be located in a facility referred to in section 12622(a)(3) of this title.

(e) Distribution of units and camps

The Director shall ensure that the Corps units and camps are distributed in urban areas and rural areas in various regions throughout the United States.

(f) Standards of conduct

(1) In general

The superintendent of each camp shall establish and enforce standards of conduct to

promote proper moral and disciplinary conditions in the camp.

(2) Sanctions

Under procedures prescribed by the Director, the superintendent of a camp may—

(A) transfer a member of the Corps in that camp to another unit or camp if the superintendent determines that the retention of the member in the member's unit or in the superintendent's camp will jeopardize the enforcement of the standards or diminish the opportunities of other Corps members in that unit or camp, as the case may be; or

(B) dismiss a member of the Corps from the Corps if the superintendent determines that retention of the member in the Corps will jeopardize the enforcement of the standards or diminish the opportunities of other Corps members.

(3) Appeals

Under procedures prescribed by the Director, a member of the Corps may appeal to the Director a determination of a camp superintendent to transfer or dismiss the member. The Director shall provide for expeditious disposition of appeals under this paragraph.

(Pub. L. 101-610, title I, §155, formerly §195D, as added Pub. L. 102-484, div. A, title X, §1092(a)(1), Oct. 23, 1992, 106 Stat. 2524; renumbered §155 and amended Pub. L. 103-82, title I, §104(b), (e)(2)(C), title IV, §403(b), Sept. 21, 1993, 107 Stat. 840, 847, 920; Pub. L. 103-304, §3(b)(5)(A), Aug. 23, 1994, 108 Stat. 1567.)

CODIFICATION

Section was formerly classified to section 12653d of this title prior to renumbering by Pub. L. 103-82, §104(b).

PRIOR PROVISIONS

A prior section 12615, Pub. L. 101-610, title I, §164, Nov. 16, 1990, 104 Stat. 3159; Pub. L. 102-384, §4, Oct. 5, 1992, 106 Stat. 1455, related to evaluation reports on Peace Corps and VISTA demonstration programs, prior to repeal by Pub. L. 103-82, §104(a).

A prior section 155 of Pub. L. 101-610 was classified to section 12591 of this title prior to repeal by Pub. L. 103-82.

AMENDMENTS

1994—Subsec. (e). Pub. L. 103-304 substituted “camps” for “Corps” in heading.

1993—Subsec. (a). Pub. L. 103-82, §403(b), substituted “Director” for “Director of the Civilian Community Corps”.

Pub. L. 103-82, §104(e)(2)(C)(i), substituted “section 12619(c)(1)” for “section 12653h(c)(1)”.

Subsec. (c)(2). Pub. L. 103-82, §104(e)(2)(C)(ii), substituted “section 12619(c)(2)” for “section 12653h(c)(2)”.

Subsec. (d)(3). Pub. L. 103-82, §104(e)(2)(C)(iii), substituted “section 12622(a)(3)” for “section 12653k(a)(3)”.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 104(b), (e)(2)(C) of Pub. L. 103-82 effective Oct. 1, 1993, see section 123 of Pub. L. 103-82, set out as a note under section 1701 of Title 16, Conservation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12626 of this title.

§ 12616. Training

(a) Common curriculum

Each member of the Civilian Community Corps shall be provided with between three and six weeks of training that includes a comprehensive service-learning curriculum designed to promote team building, discipline, leadership, work, training, citizenship, and physical conditioning.

(b) Advanced service training

(1) National service program

Members of the Corps participating in the national service program shall receive advanced training in basic, project-specific skills that the members will use in performing their community service projects.

(2) Summer national service program

Members of the Corps participating in the summer national service program shall not receive advanced training referred to in paragraph (1) but, to the extent practicable, may receive other training.

(c) Training personnel

(1) In general

Members of the cadre appointed under section 12619(c)(2) of this title shall provide the training for the members of the Corps, including, as appropriate, advanced service training and ongoing training throughout the members' periods of agreed service.

(2) Coordination with other entities

Members of the cadre may provide the advanced service training referred to in subsection (b)(1) of this section in coordination with vocational or technical schools, other employment and training providers, existing youth service programs, or other qualified individuals.

(d) Facilities

The training may be provided at installations and other facilities of the Department of Defense, and at National Guard facilities, identified under section 12622(a)(3) of this title.

(Pub. L. 101-610, title I, §156, formerly §195E, as added Pub. L. 102-484, div. A, title X, §1092(a)(1), Oct. 23, 1992, 106 Stat. 2525; renumbered §156 and amended Pub. L. 103-82, title I, §104(b), (e)(2)(D), Sept. 21, 1993, 107 Stat. 840, 847.)

CODIFICATION

Section was formerly classified to section 12653e of this title prior to renumbering by Pub. L. 103-82, §104(b).

PRIOR PROVISIONS

A prior section 156 of Pub. L. 101-610 was classified to section 12601 of this title prior to repeal by Pub. L. 103-82, §104(a).

AMENDMENTS

1993—Subsec. (c)(1). Pub. L. 103-82, §104(e)(2)(D)(i), substituted “section 12619(c)(2)” for “section 12653h(c)(2)”.

Subsec. (d). Pub. L. 103-82, §104(e)(2)(D)(ii), substituted “section 12622(a)(3)” for “section 12653k(a)(3)”.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Oct. 1, 1993, see section 123 of Pub. L. 103-82, set out as a note under section 1701 of Title 16, Conservation.

§ 12617. Service projects**(a) Project requirements**

The service projects carried out by the Civilian Community Corps shall—

- (1) meet an identifiable public need;
- (2) emphasize the performance of community service activities that provide meaningful community benefits and opportunities for service learning and skills development;
- (3) to the maximum extent practicable, encourage work to be accomplished in teams of diverse individuals working together; and
- (4) include continued education and training in various technical fields.

(b) Project proposals**(1) Development of proposals****(A) Specific executive departments**

Upon the establishment of the Program, the Secretary of Agriculture, the Secretary of the Interior, and the Secretary of Housing and Urban Development shall develop proposals for Corps projects pursuant to guidance which the Director shall prescribe.

(B) Other sources

Other public and private organizations and agencies, including representatives of local communities in the vicinity of a Corps camp, may develop proposals for projects for a Corps camp. Corps members shall also be encouraged to identify projects for the Corps.

(2) Consultation requirements

The process for developing project proposals under paragraph (1) shall include consultation with the Corporation, representatives of local communities, and persons involved in other youth service programs.

(c) Project selection, organization, and performance**(1) Selection**

The superintendent of a Corps camp shall select the projects to be performed by the members of the Corps assigned to the units in that camp. The superintendent shall select projects from among the projects proposed or identified pursuant to subsection (b) of this section.

(2) Innovative local arrangements for project performance

The Director shall encourage camp superintendents to negotiate with representatives of local communities, to the extent practicable, innovative arrangements for the performance of projects. The arrangements may provide for cost-sharing and the provision by the communities of in-kind support and other support.

(Pub. L. 101-610, title I, §157, formerly §195F, as added Pub. L. 102-484, div. A, title X, §1092(a)(1), Oct. 23, 1992, 106 Stat. 2526; renumbered §157 and amended Pub. L. 103-82, title I, §104(b), title IV, §§402(b)(2), 403(b), Sept. 21, 1993, 107 Stat. 840, 919, 920.)

CODIFICATION

Section was formerly classified to section 12653f of this title prior to renumbering by Pub. L. 103-82, §104(b).

PRIOR PROVISIONS

A prior section 157 of Pub. L. 101-610 was classified to section 12602 of this title prior to repeal by Pub. L. 103-82, §104(a).

AMENDMENTS

1993—Subsec. (b)(1)(A). Pub. L. 103-82, §403(b), substituted “Director” for “Director of the Civilian Community Corps”.

Subsec. (b)(2). Pub. L. 103-82, §402(b)(2), substituted “Corporation” for “Commission on National and Community Service”.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 402(b)(2) of Pub. L. 103-82 effective Oct. 1, 1993, see section 406(a) of Pub. L. 103-82, set out as a note under section 5061 of this title.

§ 12618. Authorized benefits for Corps members**(a) In general**

The Director shall provide for members of the Civilian Community Corps to receive benefits authorized by this section.

(b) Living allowance

The Director shall provide a living allowance to members of the Corps for the period during which such members are engaged in training or any activity on a Corps project. The Director shall establish the amount of the allowance at any amount not in excess of the amount equal to 100 percent of the poverty line that is applicable to a family of two (as defined by the Office of Management and Budget and revised annually in accordance with section 9902(2) of this title.¹

(c) Other authorized benefits

While receiving training or engaging in service projects as members of the Civilian Community Corps, members may be provided the following benefits:

- (1) Allowances for travel expenses, personal expenses, and other expenses.
- (2) Quarters.
- (3) Subsistence.
- (4) Transportation.
- (5) Equipment.
- (6) Clothing.
- (7) Recreational services and supplies.
- (8) Other services determined by the Director to be consistent with the purposes of the Program.

(d) Supportive services

As the Director determines appropriate, the Director may provide each member of the Corps with health care services, child care services, counseling services, and other supportive services.

(e) Post-service benefits

Upon completion of the agreed period of service with the Corps, a member shall elect to receive the educational assistance under subsection (f) of this section or the cash benefit under subsection (g) of this section.

(f) National service educational awards

A Corps member who successfully completes a period of agreed service in the Corps may re-

¹ So in original. A closing parenthesis probably should precede the period.

ceive the national service educational award described in division D of this subchapter if the Corps member—

- (1) serves in an approved national service position; and
- (2) satisfies the eligibility requirements specified in section 12602 of this title with respect to service in that approved national service position.

(g) Alternative benefit

If a Corps member who successfully completes a period of agreed service in the Corps is ineligible for the national service educational award described in division D of this subchapter, the Director may provide for the provision of a suitable alternative benefit for the Corps member.

(Pub. L. 101-610, title I, § 158, formerly § 195G, as added Pub. L. 102-484, div. A, title X, § 1092(a)(1), Oct. 23, 1992, 106 Stat. 2526; renumbered § 158 and amended Pub. L. 103-82, title I, § 104(b), (g), title IV, § 403(b), Sept. 21, 1993, 107 Stat. 840, 847, 920.)

CODIFICATION

Section was formerly classified to section 12653g of this title prior to renumbering by Pub. L. 103-82, § 104(b).

AMENDMENTS

1993—Subsec. (a). Pub. L. 103-82, § 403(b), substituted “Director” for “Director of the Civilian Community Corps”.

Subsecs. (f) to (h). Pub. L. 103-82, § 104(g), added subsecs. (f) and (g) and struck out former subsecs. (f) to (h) which related to monetary educational assistance, cash benefit election for Corps members, and other post-service benefits, respectively.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 104(b), (g) of Pub. L. 103-82 effective Oct. 1, 1993, see section 123 of Pub. L. 103-82, set out as a note under section 1701 of Title 16, Conservation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 32 section 509.

§ 12619. Administrative provisions

(a) Supervision

The Chief Executive Officer shall monitor and supervise the administration of the Civilian Community Corps Demonstration Program authorized to be established under section 12612 of this title. In carrying out this section, the Chief Executive Officer shall—

- (1) approve such guidelines, recommended by the Board, for the design, selection of members, and operation of the Civilian Community Corps as the Chief Executive Officer considers appropriate;
- (2) evaluate the progress of the Corps in providing a basis for determining the matters set forth in section 12611 of this title; and
- (3) carry out any other activities determined appropriate by the Board.

(b) Monitoring and coordination

The Chief Executive Officer shall—

- (1) monitor the overall operation of the Civilian Community Corps;
- (2) coordinate the activities of the Corps with other youth service programs administered by the Corporation; and

- (3) carry out any other activities determined appropriate by the Board.

(c) Staff

(1) Director

(A) Appointment

Upon the establishment of the Program, the Chief Executive Officer shall appoint a Director. The Director may be selected from among retired commissioned officers of the Armed Forces of the United States.

(B) Duties

The Director shall—

- (i) design, develop, and administer the Civilian Community Corps programs;
- (ii) be responsible for managing the daily operations of the Corps; and
- (iii) report to the Chief Executive Officer.

(C) Authority to employ staff

The Director may employ such staff as is necessary to carry out this division. The Director shall, to the maximum extent practicable, utilize in staff positions personnel who are detailed from departments and agencies of the Federal Government and, to the extent the Director considers appropriate, shall request and accept detail of personnel from such departments and agencies in order to do so.

(2) Permanent cadre

(A) Establishment

The Director shall establish a permanent cadre of supervisors and training instructors for Civilian Community Corps programs.

(B) Appointment

The Director shall appoint the members of the permanent cadre.

(C) Employment considerations

In appointing individuals to cadre positions, the Director shall—

- (i) give consideration to retired, discharged, and other inactive members and former members of the Armed Forces recommended under section 12622(a)(2) of this title;
- (ii) give consideration to former VISTA, Peace Corps, and youth service program personnel;
- (iii) ensure that the cadre is comprised of males and females of diverse ethnic, economic, professional, and geographic backgrounds; and
- (iv) consider applicants' experience in other youth service programs.

(D) Community service credit

Service as a member of the cadre shall be considered as a community service opportunity for purposes of section 4403 of the National Defense Authorization Act for Fiscal Year 1993 and as employment with a public service or community service organization for purposes of section 4464 of that Act.

(E) Training

The Director shall provide to members of the permanent cadre appropriate training in

youth development techniques and the principles of service learning. All members of the permanent cadre shall be required to participate in the training.

(3) Inapplicability of certain civil service laws

The Director, the members of the permanent cadre, and the other staff personnel shall be appointed without regard to the provisions of title 5 governing appointments in the competitive service. The rates of pay of such persons may be established without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title. In the case of a member of the permanent cadre who was recommended for appointment in accordance with section 12622(a)(2)(A) of this title and is entitled to retired or retainer pay, section 5532¹ of title 5 shall not apply to reduce the member's retired or retainer pay by reason of the member being paid as a member of the cadre.

(4) Voluntary services

Notwithstanding any other provision of law, the Director may accept the voluntary services of individuals. While away from their homes or regular places of business on the business of the Corps, such individuals may be allowed travel expenses, including per diem in lieu of subsistence, in the same amounts and to the same extent, as authorized under section 5703 of title 5 for persons employed intermittently in Federal Government service.

(Pub. L. 101-610, title I, § 159, formerly § 195H, as added Pub. L. 102-484, div. A, title X, § 1092(a)(1), Oct. 23, 1992, 106 Stat. 2528; renumbered § 159 and amended Pub. L. 103-82, title I, § 104(b), (e)(2)(E), title IV, §§ 402(b)(1), 403(a)(1)-(3), (b), Sept. 21, 1993, 107 Stat. 840, 847, 918-920; Pub. L. 103-304, § 3(b)(5)(B), Aug. 23, 1994, 108 Stat. 1567; Pub. L. 103-337, div. A, title VI, § 640, Oct. 5, 1994, 108 Stat. 2791.)

REFERENCES IN TEXT

Section 4403 of the National Defense Authorization Act for Fiscal Year 1993, referred to in subsec. (c)(2)(D), is section 4403 of Pub. L. 102-484 which is set out as a note under section 1293 of Title 10, Armed Forces.

Section 4464 of that Act, referred to in subsec. (c)(2)(D), is section 4464 of Pub. L. 102-484 which is set out as a note under section 1143a of Title 10.

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (c)(3), are classified generally to section 3301 et seq. of Title 5, Government Organization and Employees.

Section 5532 of title 5, referred to in subsec. (c)(3), was repealed by Pub. L. 106-65, div. A, title VI, § 651(a)(1), Oct. 5, 1999, 113 Stat. 664.

CODIFICATION

Section was formerly classified to section 12653h of this title prior to renumbering by Pub. L. 103-82, § 104(b).

AMENDMENTS

1994—Subsec. (c)(2)(C)(i). Pub. L. 103-304 substituted “section 12622(a)(2)” for “section section 12622(a)(2)”.

Subsec. (c)(3). Pub. L. 103-337 inserted at end “In the case of a member of the permanent cadre who was recommended for appointment in accordance with section 12622(a)(2)(A) of this title and is entitled to retired or

retainer pay, section 5532 of title 5 shall not apply to reduce the member's retired or retainer pay by reason of the member being paid as a member of the cadre.”

1993—Subsec. (a). Pub. L. 103-82, § 403(a)(1)(A), (B), substituted “Supervision” for “Board” in heading and “The Chief Executive Officer shall monitor” for “The Board shall monitor” and “the Chief Executive Officer shall—” for “the Board shall—” in introductory provisions.

Pub. L. 103-82, § 104(e)(2)(E)(i)(I), substituted “section 12612” for “section 12653a” in introductory provisions.

Subsec. (a)(1). Pub. L. 103-82, § 403(a)(1)(B), (C), substituted “by the Board” for “by the Director” and “as the Chief Executive Officer” for “as the Board”.

Subsec. (a)(2). Pub. L. 103-82, § 104(e)(2)(E)(i)(II), substituted “section 12611” for “section 12653”.

Subsec. (b). Pub. L. 103-82, § 403(a)(2), substituted “Monitoring and coordination” for “Executive Director” in heading and “The Chief Executive Officer shall” for “The Executive Director of the Commission on National and Community Service shall” in introductory provisions.

Subsec. (b)(2). Pub. L. 103-82, § 402(b)(1), substituted “by the Corporation” for “by the Commission”.

Subsec. (c)(1)(A). Pub. L. 103-82, § 403(a)(3)(A), (b), substituted “the Chief Executive Officer shall appoint a Director” for “the Board, in consultation with the Executive Director, shall appoint a Director of the Civilian Community Corps”.

Subsec. (c)(1)(B)(iii). Pub. L. 103-82, § 403(a)(3)(B), substituted “the Chief Executive Officer” for “the Board through the Executive Director”.

Subsec. (c)(2)(C)(i). Pub. L. 103-82, § 104(e)(2)(E)(ii), substituted “section 12622(a)(2)” for “12653k(a)(2)”.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 104(b), (e)(2)(E) of Pub. L. 103-82 effective Oct. 1, 1993, see section 123 of Pub. L. 103-82, set out as a note under section 1701 of Title 16, Conservation.

Amendment by section 402(b)(1) of Pub. L. 103-82 effective Oct. 1, 1993, see section 406(a) of Pub. L. 103-82, set out as a note under section 5061 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12615, 12616 of this title.

§ 12620. Status of Corps members and Corps personnel under Federal law

(a) In general

Except as otherwise provided in this section, members of the Civilian Community Corps shall not, by reason of their status as such members, be considered Federal employees or be subject to the provisions of law relating to Federal employment.

(b) Work-related injuries

(1) In general

For purposes of subchapter I of chapter 81 of title 5 relating to the compensation of Federal employees for work injuries, members of the Corps shall be considered as employees of the United States within the meaning of the term “employee”, as defined in section 8101 of such title.

(2) Special rule

In the application of the provisions of subchapter I of chapter 81 of title 5 to a person referred to in paragraph (1), the person shall not be considered to be in the performance of duty while absent from the person's assigned post of duty unless the absence is authorized in ac-

¹ See References in Text note below.

cordance with procedures prescribed by the Director.

(c) Tort claims procedure

A member of the Corps shall be considered an employee of the United States for purposes of chapter 171 of title 28 relating to tort claims liability and procedure.

(Pub. L. 101-610, title I, §160, formerly §195I, as added Pub. L. 102-484, div. A, title X, §1092(a)(1), Oct. 23, 1992, 106 Stat. 2530; renumbered §160, Pub. L. 103-82, title I, §104(b), Sept. 21, 1993, 107 Stat. 840.)

CODIFICATION

Section was formerly classified to section 12653i of this title prior to renumbering by Pub. L. 103-82, §104(b).

PRIOR PROVISIONS

A prior section 160 of Pub. L. 101-610 was classified to section 12611 of this title prior to repeal by Pub. L. 103-82, §104(a).

§ 12621. Contract and grant authority

(a) Programs

The Director may, by contract or grant, provide for any public or private organization to perform any program function under this division.

(b) Equipment and facilities

(1) Federal and National Guard property

The Director shall enter into agreements, as necessary, with the Secretary of Defense, the Governor of a State, territory or commonwealth, or the commanding general of the District of Columbia National Guard, as the case may be, to utilize—

(A) equipment of the Department of Defense and equipment of the National Guard; and

(B) Department of Defense facilities and National Guard facilities identified pursuant to section 12622(a)(3) of this title.

(2) Other property

The Director may enter into contracts or agreements for the use of other equipment or facilities to the extent practicable to train and house members of the Civilian Community Corps and leaders of Corps units.

(Pub. L. 101-610, title I, §161, formerly §195J, as added Pub. L. 102-484, div. A, title X, §1092(a)(1), Oct. 23, 1992, 106 Stat. 2530; renumbered §161 and amended Pub. L. 103-82, title I, §104(b), (e)(2)(F), Sept. 21, 1993, 107 Stat. 840, 847.)

CODIFICATION

Section was formerly classified to section 12653j of this title prior to renumbering by Pub. L. 103-82, §104(b).

PRIOR PROVISIONS

A prior section 12621, Pub. L. 101-610, title I, §165, Nov. 16, 1990, 104 Stat. 3159, related to rural youth service demonstration project, prior to repeal by Pub. L. 103-82, §104(a).

A prior section 161 of Pub. L. 101-610 was classified to section 12612 of this title prior to repeal by Pub. L. 103-82.

AMENDMENTS

1993—Subsec. (b)(1)(B). Pub. L. 103-82, §104(e)(2)(F), substituted “section 12622(a)(3)” for “section 12653k(a)(3)”.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Oct. 1, 1993, see section 123 of Pub. L. 103-82, set out as a note under section 1701 of Title 16, Conservation.

§ 12622. Responsibilities of other departments

(a) Secretary of Defense

(1) Liaison office

(A) Establishment

Upon the establishment of the Program, the Secretary of Defense shall establish an office to provide for liaison between the Secretary and the Civilian Community Corps.

(B) Duties

The office shall—

(i) in order to assist in the recruitment of personnel for appointment in the permanent cadre, make available to the Director information in the registry established by section 1143a of title 10; and

(ii) provide other assistance in the coordination of Department of Defense activities with the Corps.

(2) Corps cadre

(A) List of recommended personnel

Upon the establishment of the Program, the Secretary of Defense, in consultation with the liaison office established under paragraph (1) shall develop a list of individuals to be recommended for appointment in the permanent cadre of Corps personnel. Such personnel shall be selected from among members and former members of the Armed Forces referred to in section 12611(3) of this title who are commissioned officers, non-commissioned officers, former commissioned officers, or former noncommissioned officers.

(B) Recommendations regarding grade and pay

The Secretary of Defense shall recommend to the Director an appropriate rate of pay for each person recommended for the cadre pursuant to this paragraph.

(C) Contribution for retired member's pay

If a listed individual receiving retired or retainer pay is appointed to a position in the cadre and the rate of pay for that individual is established at the amount equal to the difference between the active duty pay and allowances which that individual would receive if ordered to active duty and the amount of the individual's retired or retainer pay, the Secretary of Defense shall pay, by transfer to the Corporation from amounts available for pay of active duty members of the Armed Forces, the amount equal to 50 percent of that individual's rate of pay for service in the cadre.

(3) Facilities

Upon the establishment of the Program, the Secretary of Defense shall identify military

installations and other facilities of the Department of Defense and, in consultation with the adjutant generals of the State National Guards, National Guard facilities that may be used, in whole or in part, by the Civilian Community Corps for training or housing Corps members. The Secretary of Defense shall carry out this paragraph in consultation with the liaison office established under paragraph (1).

(4) Information regarding Corps

The Secretary of Defense may permit Armed Forces recruiters to inform potential applicants for the Corps regarding service in the Corps as an alternative to service in the Armed Forces.

(b) Secretary of Labor

Upon the establishment of the Program, the Secretary of Labor shall identify and assist in establishing a system for the recruitment of persons to serve as members of the Civilian Community Corps. In carrying out this subsection, the Secretary of Labor may utilize the Employment Service Agency or the Office of Job Training.

(Pub. L. 101-610, title I, § 162, formerly § 195K, as added Pub. L. 102-484, div. A, title X, § 1092(a)(1), Oct. 23, 1992, 106 Stat. 2531; renumbered § 162 and amended Pub. L. 103-82, title I, § 104(b), (e)(2)(G), title IV, § 402(b)(2), Sept. 21, 1993, 107 Stat. 840, 847, 919; Pub. L. 103-304, § 3(b)(5)(C), Aug. 23, 1994, 108 Stat. 1567.)

CODIFICATION

Section was formerly classified to section 12653k of this title prior to renumbering by Pub. L. 103-82, § 104(b).

PRIOR PROVISIONS

A prior section 12622, Pub. L. 101-610, title I, § 166, Nov. 16, 1990, 104 Stat. 3159; Pub. L. 102-384, § 8, Oct. 5, 1992, 106 Stat. 1456, related to assistance for Head Start programs, prior to repeal by Pub. L. 103-82, § 104(a).

A prior section 162 of Pub. L. 101-610 was classified to section 12613 of this title prior to repeal by Pub. L. 103-82.

AMENDMENTS

1994—Subsec. (a)(1)(B)(i). Pub. L. 103-304, which directed the substitution of “section 1143a of title 10” for “section 4462 of the National Defense Authorization Act for Fiscal Year 1993” in subsec. (a)(1)(B)(ii) of this section, was executed by making the substitution in subsec. (a)(1)(B)(i) of this section to reflect the probable intent of Congress.

1993—Subsec. (a)(2)(A). Pub. L. 103-82, § 104(e)(2)(G), substituted “section 12611(3)” for “section 12653(3)”.

Subsec. (a)(2)(C). Pub. L. 103-82, § 402(b)(2), substituted “Corporation” for “Commission on National and Community Service”.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 104(b), (e)(2)(G) of Pub. L. 103-82 effective Oct. 1, 1993, see section 123 of Pub. L. 103-82, set out as a note under section 1701 of Title 16, Conservation.

Amendment by section 402(b)(2) of Pub. L. 103-82 effective Oct. 1, 1993, see section 406(a) of Pub. L. 103-82, set out as a note under section 5061 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12615, 12616, 12619, 12621 of this title.

§ 12623. Advisory Board

(a) Establishment and purpose

Upon the establishment of the Program, there shall also be established a Civilian Community Corps Advisory Board to advise the Director concerning the administration of this division and to assist in the development and administration of the Corps.

(b) Membership

The Advisory Board shall be composed of the following members:

- (1) The Secretary of Labor.
- (2) The Secretary of Defense.
- (3) The Secretary of the Interior.
- (4) The Secretary of Agriculture.
- (5) The Secretary of Education.
- (6) The Secretary of Housing and Urban Development.
- (7) The Chief of the National Guard Bureau.
- (8) Individuals appointed by the Director from among persons who are broadly representative of educational institutions, voluntary organizations, industry, youth, and labor unions.
- (9) The Chief Executive Officer.

(c) Inapplicability of termination requirement

Section 14 of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Advisory Board.

(Pub. L. 101-610, title I, § 163, formerly § 195L, as added Pub. L. 102-484, div. A, title X, § 1092(a)(1), Oct. 23, 1992, 106 Stat. 2532; renumbered § 163 and amended Pub. L. 103-82, title I, § 104(b), title IV, §§ 402(b)(3), 403(b), Sept. 21, 1993, 107 Stat. 840, 919, 920.)

REFERENCES IN TEXT

Section 14 of the Federal Advisory Committee Act, referred to in subsec. (c), is section 14 of Pub. L. 92-463, which is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

Section was formerly classified to section 12653l of this title prior to renumbering by Pub. L. 103-82.

PRIOR PROVISIONS

A prior section 12623, Pub. L. 101-610, title I, § 167, Nov. 16, 1990, 104 Stat. 3159, related to employer-based retiree volunteer programs, prior to repeal by Pub. L. 103-82, title I, § 104(a), Sept. 21, 1993, 107 Stat. 840.

A prior section 163 of Pub. L. 101-610 was classified to section 12614 of this title prior to repeal by Pub. L. 103-82.

AMENDMENTS

1993—Subsec. (a). Pub. L. 103-82, § 403(b), substituted “Director” for “Director of the Civilian Community Corps”.

Subsec. (b)(9). Pub. L. 103-82, § 402(b)(3), substituted “Chief Executive Officer” for “Chair of the Commission on National and Community Service”.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 402(b)(3) of Pub. L. 103-82 effective Oct. 1, 1993, see section 406(a) of Pub. L. 103-82, set out as a note under section 5061 of this title.

§ 12624. Annual evaluation

Pursuant to the provisions for evaluations conducted under section 12639 of this title, and

in particular subsection (g) of such section, the Corporation shall conduct an annual evaluation of the Civilian Community Corps programs authorized under this division.

(Pub. L. 101-610, title I, §164, formerly §195M, as added Pub. L. 102-484, div. A, title X, §1092(a)(1), Oct. 23, 1992, 106 Stat. 2532; renumbered §164 and amended Pub. L. 103-82, title I, §104(b), title IV, §402(b)(2), Sept. 21, 1993, 107 Stat. 840, 919.)

CODIFICATION

Section was formerly classified to section 12653m of this title prior to renumbering by Pub. L. 103-82, §104(b).

PRIOR PROVISIONS

A prior section 164 of Pub. L. 101-610 was classified to section 12615 of this title prior to repeal by Pub. L. 103-82, §104(a).

AMENDMENTS

1993—Pub. L. 103-82, §402(b)(2), substituted “Corporation” for “Commission on National and Community Service”.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 402(b)(2) of Pub. L. 103-82 effective Oct. 1, 1993, see section 406(a) of Pub. L. 103-82, set out as a note under section 5061 of this title.

§ 12625. Funding limitation

The Corporation, in consultation with the Director, shall ensure that no amounts appropriated under section 12681 of this title are utilized to carry out this division.

(Pub. L. 101-610, title I, §165, formerly §195N, as added Pub. L. 102-484, div. A, title X, §1092(a)(1), Oct. 23, 1992, 106 Stat. 2532; renumbered §165 and amended Pub. L. 103-82, title I, §104(b), title IV, §402(b)(1), Sept. 21, 1993, 107 Stat. 840, 918.)

CODIFICATION

Section was formerly classified to section 12653n of this title prior to renumbering by Pub. L. 103-82, §104(b).

PRIOR PROVISIONS

A prior section 165 of Pub. L. 101-610 was classified to section 12621 of this title prior to repeal by Pub. L. 103-82, §104(a).

AMENDMENTS

1993—Pub. L. 103-82, §402(b)(1), substituted “Corporation” for “Commission”.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 402(b)(1) of Pub. L. 103-82 effective Oct. 1, 1993, see section 406(a) of Pub. L. 103-82, set out as a note under section 5061 of this title.

§ 12626. Definitions

In this division:

(1) Board

The term “Board” means the Board of Directors of the Corporation.

(2) Corps

The terms “Civilian Community Corps” and “Corps” mean the Civilian Community Corps required under section 12615 of this title as part of the Civilian Community Corps Demonstration Program.

(3) Corps camp

The term “Corps camp” means the facility or central location established as the operational headquarters and boarding place for particular Corps units.

(4) Corps members

The term “Corps members” means persons receiving training and participating in projects under the Civilian Community Corps Demonstration Program.

(5) Director

The term “Director” means the Director of the Civilian Community Corps.

(6) Institution of higher education

The term “institution of higher education” has the meaning given that term in section 1001 of title 20.

(7) Program

The terms “Civilian Community Corps Demonstration Program” and “Program” mean the Civilian Community Corps Demonstration Program established pursuant to section 12612 of this title.

(8) Service learning

The term “service learning”, with respect to Corps members, means a method—

(A) under which Corps members learn and develop through active participation in thoughtfully organized service experiences that meet actual community needs;

(B) that provides structured time for a Corps member to think, talk, or write about what the Corps member did and saw during an actual service activity;

(C) that provides Corps members with opportunities to use newly acquired skills and knowledge in real life situations in their own communities; and

(D) that helps to foster the development of a sense of caring for others, good citizenship, and civic responsibility.

(9) Superintendent

The term “superintendent”, with respect to a Corps camp, means the head of the camp under section 12615(d) of this title.

(10) Unit

The term “unit” means a unit of the Corps referred to in section 12615(c) of this title.

(Pub. L. 101-610, title I, §166, formerly §195O, as added Pub. L. 102-484, div. A, title X, §1092(a)(1), Oct. 23, 1992, 106 Stat. 2532; renumbered §166 and amended Pub. L. 103-82, title I, §104(b), (e)(2)(H), title IV, §§402(b)(2), 403(a)(4), Sept. 21, 1993, 107 Stat. 840, 847, 919; Pub. L. 105-244, title I, §102(a)(13)(L), Oct. 7, 1998, 112 Stat. 1621.)

CODIFICATION

Section was formerly classified to section 12653o of this title prior to renumbering by Pub. L. 103-82, §104(b).

PRIOR PROVISIONS

A prior section 166 of Pub. L. 101-610 was classified to section 12622 of this title prior to repeal by Pub. L. 103-82, §104(a).

AMENDMENTS

1998—Par. (6). Pub. L. 105-244 substituted “section 1001” for “section 1141(a)”.

1993—Par. (1). Pub. L. 103-82, §402(b)(2), substituted “Corporation” for “Commission on National and Community Service”.

Par. (2). Pub. L. 103-82, §104(e)(2)(H)(i), substituted “section 12615” for “section 12653d”.

Par. (6). Pub. L. 103-82, §403(a)(4), which directed amendment of par. (6) of this section by striking par. (6) and redesignating par. (7) of this section as (6) and striking out former par. (6) which defined “Executive Director” as Executive Director of Commission on National and Community Service, to reflect the probable intent of Congress.

Par. (7). Pub. L. 103-82, §403(a)(4)(B), which directed amendment of par. (6) of this section by redesignating par. (8) as (7) was executed by redesignating par. (8) of this section as (7), to reflect the probable intent of Congress. Former par. (7) redesignated (6).

Par. (8). Pub. L. 103-82, §403(a)(4)(B), which directed amendment of par. (6) of this section by redesignating par. (9) as (8) was executed by redesignating par. (9) of this section as (8), to reflect the probable intent of Congress. Former par. (8) redesignated (7).

Pub. L. 103-82, §104(e)(2)(H)(ii), substituted “section 12612” for “section 12653a”.

Par. (9). Pub. L. 103-82, §403(a)(4)(B), which directed amendment of par. (6) of this section by redesignating par. (10) as (9) was executed by redesignating par. (10) of this section as (9), to reflect the probable intent of Congress. Former par. (9) redesignated (8).

Par. (10). Pub. L. 103-82, §403(a)(4)(B), which directed amendment of par. (6) of this section by redesignating par. (11) as (10) was executed by redesignating par. (11) of this section as (10), to reflect the probable intent of Congress. Former par. (10) redesignated (9).

Pub. L. 103-82, §104(e)(2)(H)(iii), substituted “section 12615(d)” for “section 12653d(d)”.

Par. (11). Pub. L. 103-82, §403(a)(4)(B), which directed amendment of par. (6) of this section by redesignating par. (11) as (10) was executed by redesignating par. (11) of this section as (10), to reflect the probable intent of Congress.

Pub. L. 103-82, §104(e)(2)(H)(iv), substituted “section 12615(c)” for “section 12653d(c)”.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see section 3 of Pub. L. 105-244, set out as a note under section 1001 of Title 20, Education.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 104(b), (e)(2)(H) of Pub. L. 103-82 effective Oct. 1, 1993, see section 123 of Pub. L. 103-82, set out as a note under section 1701 of Title 16, Conservation.

Amendment by section 402(b)(2) of Pub. L. 103-82 effective Oct. 1, 1993, see section 406(a) of Pub. L. 103-82, set out as a note under section 5061 of this title.

Division F—Administrative Provisions

§ 12631. Family and medical leave

(a) Participants in private, State, and local projects

For purposes of title I of the Family and Medical Leave Act of 1993 [29 U.S.C. 2611 et seq.], if—

(1) a participant has provided service for the period required by section 101(2)(A)(i) (29 U.S.C. 2611(2)(A)(i)), and has met the hours of service requirement of section 101(2)(A)(ii), of such Act with respect to a project; and

(2) the service sponsor of the project is an employer described in section 101(4) of such Act (other than an employing agency within the meaning of subchapter V of chapter 63 of title 5),

the participant shall be considered to be an eligible employee of the service sponsor.

(b) Participants in Federal projects

For purposes of subchapter V of chapter 63 of title 5, if—

(1) a participant has provided service for the period required by section 6381(1)(B) of such title with respect to a project; and

(2) the service sponsor of the project is an employing agency within the meaning of such subchapter,

the participant shall be considered to be an employee of the service sponsor.

(c) Treatment of absence

The period of any absence of a participant from a service position pursuant to title I of the Family and Medical Leave Act of 1993 [29 U.S.C. 2611 et seq.] or subchapter V of chapter 63 of title 5 shall not be counted toward the completion of the term of service of the participant under section 12593 of this title.

(Pub. L. 101-610, title I, §171, Nov. 16, 1990, 104 Stat. 3159; Pub. L. 103-82, title I, §113(a), Sept. 21, 1993, 107 Stat. 861.)

REFERENCES IN TEXT

The Family and Medical Leave Act of 1993, referred to in subsecs. (a) and (c), is Pub. L. 103-3, Feb. 5, 1993, 107 Stat. 6. Title I of the Act is classified generally to subchapter I (§2611 et seq.) of chapter 28 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 29 and Tables.

AMENDMENTS

1993—Pub. L. 103-82 amended section generally, substituting provisions relating to family and medical leave for provisions relating to limitation on number of grants under this subchapter.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Oct. 1, 1993, see section 123 of Pub. L. 103-82, set out as a note under section 1701 of Title 16, Conservation.

§ 12632. Reports

(a) State reports

(1) In general

Each State receiving assistance under this subchapter shall prepare and submit, to the Corporation, an annual report concerning the use of assistance provided under this subchapter and the status of the national and community service programs that receive assistance under such subchapter in such State.

(2) Local grantees

Each State may require local grantees that receive assistance under this subchapter to supply such information to the State as is necessary to enable the State to complete the report required under paragraph (1), including a comparison of actual accomplishments with the goals established for the program, the number of participants in the program, the number of service hours generated, and the existence of any problems, delays or adverse conditions that have affected or will affect the attainment of program goals.

(3) Report demonstrating compliance**(A) In general**

Each State receiving assistance under this subchapter shall include information in the report required under paragraph (1) that demonstrates the compliance of the State with the provisions of this chapter, including section 12637 of this title.

(B) Local grantees

Each State may require local grantees to supply such information to the State as is necessary to enable the State to comply with the requirement of paragraph (1).

(4) Availability of report

Reports submitted under paragraph (1) shall be made available to the public on request.

(b) Report to Congress by Corporation**(1) In general**

Not later than 120 days after the end of each fiscal year, the Corporation shall prepare and submit, to the appropriate authorizing and appropriation Committees of Congress, a report concerning the programs that receive assistance under the national service laws.

(2) Content

Reports submitted under paragraph (1) shall contain a summary of the information contained in the State reports submitted under subsection (a) of this section, and shall reflect the findings and actions taken as a result of any evaluation conducted by the Corporation.

(c) Report to Congress by Secretary of Defense**(1) Study**

The Secretary of Defense shall annually conduct a study of the effect of the programs carried out under this subchapter on recruitment for the Armed Forces.

(2) Report

The Secretary of Defense shall annually submit a report to the appropriate committees of Congress containing the findings of the study described in paragraph (1) and such recommendations for legislative and administrative reform as the Secretary may determine to be appropriate.

(Pub. L. 101-610, title I, §172, Nov. 16, 1990, 104 Stat. 3159; Pub. L. 103-82, title I, §114, title IV, §402(b)(1), Sept. 21, 1993, 107 Stat. 861, 918.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(3)(A), was in the original "this Act", meaning Pub. L. 101-610, Nov. 16, 1990, 104 Stat. 3127, as amended, known as the National and Community Service Act of 1990, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 12501 of this title and Tables.

AMENDMENTS

1993—Subsec. (a)(1). Pub. L. 103-82, §402(b)(1), substituted "Corporation" for "Commission".

Subsec. (a)(3)(A). Pub. L. 103-82, §114(1), substituted "section 12637" for "sections 12637 and 12523(9)".

Subsec. (b). Pub. L. 103-82, §114(2)(A), substituted "Report to Congress by Corporation" for "Report to Congress" in heading.

Subsec. (b)(1). Pub. L. 103-82, §402(b)(1), substituted "Corporation" for "Commission".

Pub. L. 103-82, §114(2)(B), substituted "the national service laws" for "this subchapter".

Subsec. (b)(2). Pub. L. 103-82, §402(b)(1), substituted "Corporation" for "Commission".

Subsec. (c). Pub. L. 103-82, §114(3), added subsec. (c).

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 114 of Pub. L. 103-82 effective Oct. 1, 1993, see section 123 of Pub. L. 103-82, set out as a note under section 1701 of Title 16, Conservation.

Amendment by section 402(b)(1) of Pub. L. 103-82 effective Oct. 1, 1993, see section 406(a) of Pub. L. 103-82, set out as a note under section 5061 of this title.

§ 12633. Supplementation**(a) In general**

Assistance provided under this subchapter shall be used to supplement the level of State and local public funds expended for services of the type assisted under this subchapter in the previous fiscal year.

(b) Aggregate expenditure

Subsection (a) of this section shall be satisfied, with respect to a particular program, if the aggregate expenditure for such program for the fiscal year in which services are to be provided will not be less than the aggregate expenditure for such program in the previous fiscal year, excluding the amount of Federal assistance provided and any other amounts used to pay the remainder of the costs of programs assisted under this subchapter.

(Pub. L. 101-610, title I, §173, Nov. 16, 1990, 104 Stat. 3160.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12571 of this title.

§ 12634. Prohibition on use of funds**(a) Prohibited uses**

No assistance made available under a grant under this subchapter shall be used to provide religious instruction, conduct worship services, or engage in any form of proselytization.

(b) Political activity

Assistance provided under this subchapter shall not be used by program participants and program staff to—

(1) assist, promote, or deter union organizing; or

(2) finance, directly or indirectly, any activity designed to influence the outcome of an election to Federal office or the outcome of an election to a State or local public office.

(c) Contracts or collective bargaining agreements

A program that receives assistance under this subchapter shall not impair existing contracts for services or collective bargaining agreements.

(Pub. L. 101-610, title I, §174, Nov. 16, 1990, 104 Stat. 3160.)

§ 12635. Nondiscrimination**(a) In general****(1) Basis**

An individual with responsibility for the operation of a project that receives assistance

under this subchapter shall not discriminate against a participant in, or member of the staff of, such project on the basis of race, color, national origin, sex, age, or political affiliation of such participant or member, or on the basis of disability, if the participant or member is a qualified individual with a disability.

(2) "Qualified individual with a disability" defined

As used in paragraph (1), the term "qualified individual with a disability" has the meaning given the term in section 12111(8) of this title.

(b) Federal financial assistance

Any assistance provided under this subchapter shall constitute Federal financial assistance for purposes of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), and shall constitute Federal financial assistance to an education program or activity for purposes of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.).

(c) Religious discrimination

(1) In general

Except as provided in paragraph (2), an individual with responsibility for the operation of a project that receives assistance under this subchapter shall not discriminate on the basis of religion against a participant in such project or a member of the staff of such project who is paid with funds received under this subchapter.

(2) Exception

Paragraph (1) shall not apply to the employment, with assistance provided under this subchapter, of any member of the staff, of a project that receives assistance under this subchapter, who was employed with the organization operating the project on the date the grant under this subchapter was awarded.

(d) Rules and regulations

The Chief Executive Officer shall promulgate rules and regulations to provide for the enforcement of this section that shall include provisions for summary suspension of assistance for not more than 30 days, on an emergency basis, until notice and an opportunity to be heard can be provided.

(Pub. L. 101-610, title I, §175, Nov. 16, 1990, 104 Stat. 3161; Pub. L. 103-82, title I, §115, Sept. 21, 1993, 107 Stat. 862.)

REFERENCES IN TEXT

The Civil Rights Act of 1964, referred to in subsec. (b), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Act is classified generally to subchapter V (§2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

The Education Amendments of 1972, referred to in subsec. (b), is Pub. L. 92-318, June 23, 1972, 86 Stat. 235, as amended. Title IX of the Act, known as the Patsy Takemoto Mink Equal Opportunity in Education Act,

is classified principally to chapter 38 (§1681 et seq.) of Title 20, Education. For complete classification of title IX to the Code, see Short Title note set out under section 1681 of Title 20 and Tables.

The Age Discrimination Act of 1975, referred to in subsec. (b), is title III of Pub. L. 94-135, Nov. 28, 1975, 89 Stat. 728, as amended, which is classified generally to chapter 76 (§6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

AMENDMENTS

1993—Pub. L. 103-82 amended section generally, making revisions relating to discrimination based on disability, the laws for which assistance under this subchapter constitutes Federal financial assistance, and the responsibility for promulgating regulations.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Oct. 1, 1993, see section 123 of Pub. L. 103-82, set out as a note under section 1701 of Title 16, Conservation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12511, 12592 of this title.

§ 12636. Notice, hearing, and grievance procedures

(a) In general

(1) Suspension of payments

The Corporation may in accordance with the provisions of this subchapter, suspend or terminate payments under a contract or grant providing assistance under this subchapter, or revoke the designation of positions, related to the grant or contract, as approved national service positions, whenever the Corporation determines there is a material failure to comply with this subchapter or the applicable terms and conditions of any such grant or contract issued pursuant to this subchapter.

(2) Procedures to ensure assistance

The Corporation shall prescribe procedures to ensure that—

(A) assistance provided under this subchapter shall not be suspended for failure to comply with the applicable terms and conditions of this subchapter except, in emergency situations, a suspension may be granted for 30 days; and

(B) assistance provided under this subchapter shall not be terminated or revoked for failure to comply with applicable terms and conditions of this subchapter unless the recipient of such assistance has been afforded reasonable notice and opportunity for a full and fair hearing.

(b) Hearings

Hearings or other meetings that may be necessary to fulfill the requirements of this section shall be held at locations convenient to the recipient of assistance under this subchapter.

(c) Transcript or recording

A transcript or recording shall be made of a hearing conducted under this section and shall be available for inspection by any individual.

(d) State legislation

Nothing in this subchapter shall be construed to preclude the enactment of State legislation

providing for the implementation, consistent with this subchapter, of the programs administered under this subchapter.

(e) Construction

Nothing in this subchapter shall be construed to link performance of service with receipt of Federal student financial assistance, other than assistance provided pursuant to this chapter.

(f) Grievance procedure

(1) In general

A State or local applicant that receives assistance under this subchapter shall establish and maintain a procedure for the filing and adjudication of grievances from participants, labor organizations, and other interested individuals concerning projects that receive assistance under this subchapter, including grievances regarding proposed placements of such participants in such projects.

(2) Deadline for grievances

Except for a grievance that alleges fraud or criminal activity, a grievance shall be made not later than 1 year after the date of the alleged occurrence of the event that is the subject of the grievance.

(3) Deadline for hearing and decision

(A) Hearing

A hearing on any grievance conducted under this subsection shall be conducted not later than 30 days after the filing of such grievance.

(B) Decision

A decision on any such grievance shall be made not later than 60 days after the filing of such grievance.

(4) Arbitration

(A) In general

(i) Jointly selected arbitrator

In the event of a decision on a grievance that is adverse to the party who filed such grievance, or 60 days after the filing of such grievance if no decision has been reached, such party shall be permitted to submit such grievance to binding arbitration before a qualified arbitrator who is jointly selected and independent of the interested parties.

(ii) Appointed arbitrator

If the parties cannot agree on an arbitrator, the Chief Executive Officer shall appoint an arbitrator from a list of qualified arbitrators within 15 days after receiving a request for such appointment from one of the parties to the grievance.

(B) Deadline for proceeding

An arbitration proceeding shall be held not later than 45 days after the request for such arbitration proceeding, or, if the arbitrator is appointed by the Chief Executive Officer in accordance with subparagraph (A)(ii), not later than 30 days after the appointment of such arbitrator.

(C) Deadline for decision

A decision concerning a grievance shall be made not later than 30 days after the date such arbitration proceeding begins.

(D) Cost

(i) In general

Except as provided in clause (ii), the cost of an arbitration proceeding shall be divided evenly between the parties to the arbitration.

(ii) Exception

If a participant, labor organization, or other interested individual described in paragraph (1) prevails under a binding arbitration proceeding, the State or local applicant described in paragraph (1) that is a party to such grievance shall pay the total cost of such proceeding and the attorneys' fees of such participant, labor organization, or individual, as the case may be.

(5) Proposed placement

If a grievance is filed regarding a proposed placement of a participant in a project that receives assistance under this subchapter, such placement shall not be made unless the placement is consistent with the resolution of the grievance pursuant to this subsection.

(6) Remedies

Remedies for a grievance filed under this subsection include—

(A) suspension of payments for assistance under this subchapter;

(B) termination of such payments;

(C) prohibition of the placement described in paragraph (5); and

(D) in a case in which the grievance involves a violation of subsection (a) or (b) of section 12637 of this title and the employer of the displaced employee is the recipient of assistance under this subchapter—

(i) reinstatement of the displaced employee to the position held by such employee prior to displacement;

(ii) payment of lost wages and benefits of the displaced employee;

(iii) reestablishment of other relevant terms, conditions, and privileges of employment of the displaced employee; and

(iv) such equitable relief as is necessary to correct any violation of subsection (a) or (b) of section 12637 of this title or to make the displaced employee whole.

(7) Enforcement

Suits to enforce arbitration awards under this section may be brought in any district court of the United States having jurisdiction of the parties, without regard to the amount in controversy and without regard to the citizenship of the parties.

(Pub. L. 101-610, title I, §176, Nov. 16, 1990, 104 Stat. 3161; Pub. L. 103-82, title I, §116, title IV, §402(b)(1), Sept. 21, 1993, 107 Stat. 863, 918.)

AMENDMENTS

1993—Subsec. (a)(1). Pub. L. 103-82, §402(b)(1), substituted "Corporation" for "Commission" in two places.

Pub. L. 103-82, §116(a)(1), inserted " , or revoke the designation of positions, related to the grant or contract, as approved national service positions," after "assistance under this subchapter".

Subsec. (a)(2). Pub. L. 103-82, §402(b)(1), substituted "Corporation" for "Commission" in introductory provisions.

Subsec. (a)(2)(B). Pub. L. 103-82, §116(a)(2), inserted "or revoked" after "terminated".

Subsec. (e). Pub. L. 103-82, §116(b), inserted before period at end " , other than assistance provided pursuant to this chapter".

Subsec. (f). Pub. L. 103-82, §116(c), amended subsec. (f) generally, substituting pars. (1) to (6) for former pars. (1) to (6) relating to same subjects and adding par. (7).

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 116 of Pub. L. 103-82 effective Oct. 1, 1993, see section 123 of Pub. L. 103-82, set out as a note under section 1701 of Title 16, Conservation.

Amendment by section 402(b)(1) of Pub. L. 103-82 effective Oct. 1, 1993, see section 406(a) of Pub. L. 103-82, set out as a note under section 5061 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12525, 12526, 12544, 12561, 12583, 12651d, 12653c of this title.

§ 12637. Nonduplication and nondisplacement

(a) Nonduplication

(1) In general

Assistance provided under this subchapter shall be used only for a program that does not duplicate, and is in addition to, an activity otherwise available in the locality of such program.

(2) Private nonprofit entity

Assistance made available under this subchapter shall not be provided to a private nonprofit entity to conduct activities that are the same or substantially equivalent to activities provided by a State or local government agency that such entity resides in, unless the requirements of subsection (b) of this section are met.

(b) Nondisplacement

(1) In general

An employer shall not displace an employee or position, including partial displacement such as reduction in hours, wages, or employment benefits, as a result of the use by such employer of a participant in a program receiving assistance under this subchapter.

(2) Service opportunities

A service opportunity shall not be created under this subchapter that will infringe in any manner on the promotional opportunity of an employed individual.

(3) Limitation on services

(A) Duplication of services

A participant in a program receiving assistance under this subchapter shall not perform any services or duties or engage in activities that would otherwise be performed by an employee as part of the assigned duties of such employee.

(B) Supplantation of hiring

A participant in any program receiving assistance under this subchapter shall not perform any services or duties, or engage in activities, that—

- (i) will supplant the hiring of employed workers; or
- (ii) are services, duties, or activities with respect to which an individual has re-

call rights pursuant to a collective bargaining agreement or applicable personnel procedures.

(C) Duties formerly performed by another employee

A participant in any program receiving assistance under this subchapter shall not perform services or duties that have been performed by or were assigned to any—

- (i) presently employed worker;
- (ii) employee who recently resigned or was discharged;
- (iii) employee who—
 - (I) is subject to a reduction in force; or
 - (II) has recall rights pursuant to a collective bargaining agreement or applicable personnel procedures;
- (iv) employee who is on leave (terminal, temporary, vacation, emergency, or sick); or
- (v) employee who is on strike or who is being locked out.

(c) Labor market information

The Secretary of Labor shall make available to the Corporation and to any program agency under this subchapter such labor market information as is appropriate for use in carrying out the purposes of this subchapter.

(d) Treatment of benefits

Allowances, earnings, and payments to individuals participating in programs that receive assistance under this subchapter shall not be considered to be income for the purposes of determining eligibility for and the amount of income transfer and in-kind aid furnished under any Federal or federally assisted program based on need, other than as provided under the Social Security Act (42 U.S.C. 301 et seq.).

(e) Standards of conduct

Programs that receive assistance under this subchapter shall establish and stringently enforce standards of conduct at the program site to promote proper moral and disciplinary conditions.

(Pub. L. 101-610, title I, §177, Nov. 16, 1990, 104 Stat. 3163; Pub. L. 103-82, title I, §117, title IV, §402(b)(1), Sept. 21, 1993, 107 Stat. 864, 918; Pub. L. 105-277, div. A, §101(f) [title VIII, §405(d)(42)(A)], Oct. 21, 1998, 112 Stat. 2681-337, 2681-427.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (d), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§301 et seq.) of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

AMENDMENTS

1998—Subsec. (d). Pub. L. 105-277 amended heading and text of subsec. (d) generally. Prior to amendment, text read as follows: "Section 142(b) of the Job Training Partnership Act shall apply to the projects conducted under this subchapter as such projects were conducted under the Job Training Partnership Act."

1993—Subsec. (b)(3)(B). Pub. L. 103-82, §117(1), amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: "A participant in any program receiving assistance under this subchapter shall not perform any services or duties or engage in

activities that will supplant the hiring of employed workers.”

Subsec. (b)(3)(C)(iii). Pub. L. 103-82, §117(2), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: “employee who is subject to a reduction in force;”.

Subsec. (c). Pub. L. 103-82, §402(b)(1), substituted “Corporation” for “Commission”.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 117 of Pub. L. 103-82 effective Oct. 1, 1993, see section 123 of Pub. L. 103-82, set out as a note under section 1701 of Title 16, Conservation.

Amendment by section 402(b)(1) of Pub. L. 103-82 effective Oct. 1, 1993, see section 406(a) of Pub. L. 103-82, set out as a note under section 5061 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12525, 12526, 12544, 12561, 12583, 12632, 12636, 12653c, 12656 of this title; title 16 section 1728.

§ 12638. State Commissions on National and Community Service

(a) Existence required

(1) State Commission

Except as provided in paragraph (2), to be eligible to receive a grant or allotment under division B or C of this subchapter or to receive a distribution of approved national service positions under division C of this subchapter, a State shall maintain a State Commission on National and Community Service that satisfies the requirements of this section.

(2) Alternative administrative entity

The chief executive officer of a State may apply to the Corporation for approval to use an alternative administrative entity to carry out the duties otherwise entrusted to a State Commission under this chapter. The chief executive officer shall ensure that any alternative administrative entity used in lieu of a State Commission provides for the individuals described in paragraph (1), and some of the individuals described in paragraph (2), of subsection (c) of this section to play a significant policymaking role in carrying out the duties otherwise entrusted to a State Commission, including the submission of applications on behalf of the State under sections 12543 and 12582 of this title.

(b) Appointment and size

Except as provided in subsection (c)(3) of this section, the members of a State Commission for a State shall be appointed by the chief executive officer of the State. A State Commission shall consist of not fewer than 15, and not more than 25, voting members, and any ex officio nonvoting members, as described in paragraph (3) or (4) of subsection (c) of this section.

(c) Composition and membership

(1) Required members

The State Commission for a State shall include as voting members at least one of each of the following individuals:

(A) An individual with expertise in the educational, training, and development needs of youth, particularly disadvantaged youth.

(B) An individual with experience in promoting the involvement of older adults in service and voluntarism.

(C) A representative of community-based agencies or community-based organizations within the State.

(D) The head of the State educational agency.

(E) A representative of local governments in the State.

(F) A representative of local labor organizations in the State.

(G) A representative of business.

(H) An individual between the ages of 16 and 25 who is a participant or supervisor in a program.

(I) A representative of a national service program described in section 12572(a) of this title, such as a youth corps program described in section 12572(a)(2) of this title.

(2) Sources of other members

The State Commission for a State may include as voting members the following individuals:

(A) Members selected from among local educators.

(B) Members selected from among experts in the delivery of human, educational, environmental, or public safety services to communities and persons.

(C) Representatives of Indian tribes.

(D) Members selected from among out-of-school youth or other at-risk youth.

(E) Representatives of entities that receive assistance under the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4950 et seq.).

(3) Corporation representative

The representative of the Corporation designated under section 12651f(c) of this title for a State shall be an ex officio nonvoting member of the State Commission or alternative administrative entity for that State, unless the State permits the representative to serve as a voting member of the State Commission or alternative administrative entity.

(4) Ex officio State representatives

The chief executive officer of a State may appoint, as ex officio nonvoting members of the State Commission for the State, representatives selected from among officers and employees of State agencies operating community service, youth service, education, social service, senior service, and job training programs.

(5) Limitation on number of State employees as members

The number of voting members of a State Commission selected under paragraph (1) or (2) who are officers or employees of the State may not exceed 25 percent (reduced to the nearest whole number) of the total membership of the State Commission.

(d) Miscellaneous matters

(1) Membership balance

The chief executive officer of a State shall ensure, to the maximum extent practicable, that the membership of the State Commission for the State is diverse with respect to race, ethnicity, age, gender, and disability characteristics. Not more than 50 percent of the vot-

ing members of a State Commission, plus one additional member, may be from the same political party.

(2) Terms

Each member of the State Commission for a State shall serve for a term of 3 years, except that the chief executive officer of a State shall initially appoint a portion of the members to terms of 1 year and 2 years.

(3) Vacancies

If a vacancy occurs on a State Commission, a new member shall be appointed by the chief executive officer of the State and serve for the remainder of the term for which the predecessor of such member was appointed. The vacancy shall not affect the power of the remaining members to execute the duties of the State Commission.

(4) Compensation

A member of a State Commission or alternative administrative entity shall not receive any additional compensation by reason of service on the State Commission or alternative administrative entity, except that the State may authorize the reimbursement of travel expenses, including a per diem in lieu of subsistence, in the same manner as other employees serving intermittently in the service of the State.

(5) Chairperson

The voting members of a State Commission shall elect one of the voting members to serve as chairperson of the State Commission.

(6) Limitation on member participation

(A) General limitation

Except as provided in subparagraph (B), a voting member of the State Commission (or of an alternative administrative entity) shall not participate in the administration of the grant program (including any discussion or decision regarding the provision of assistance or approved national service positions, or the continuation, suspension, or termination of such assistance or such positions, to any program or entity) described in subsection (e)(9) of this section if—

(i) a grant application relating to such program is pending before the Commission (or such entity); and

(ii) the application was submitted by a program or entity of which such member is, or in the 1-year period before the submission of such application was, an officer, director, trustee, full-time volunteer, or employee.

(B) Exception

If, as a result of the operation of subparagraph (A), the number of voting members of the Commission (or of such entity) is insufficient to establish a quorum for the purpose of administering such program, then voting members excluded from participation by subparagraph (A) may participate in the administration of such program, notwithstanding the limitation in subparagraph (A), to the extent permitted by regulations issued under section 12651d(b)(11) of this title by the Corporation.

(C) Rule of construction

Subparagraph (A) shall not be construed to limit the authority of any voting member of the Commission (or of such entity) to participate in—

(i) discussion of, and hearing and forums on—

(I) the general duties, policies, and operations of the Commission (or of such entity); or

(II) the general administration of such program; or

(ii) similar general matters relating to the Commission (or such entity).

(e) Duties of a State Commission

The State Commission or alternative administrative entity for a State shall be responsible for the following duties:

(1) Preparation of a national service plan for the State that—

(A) is developed through an open and public process (such as through regional forums, hearings, and other means) that provides for maximum participation and input from national service programs within the State and other interested members of the public;

(B) covers a 3-year period;

(C) is updated annually;

(D) ensures outreach to diverse community-based agencies that serve underrepresented populations, by—

(i) using established networks, and registries, at the State level; or

(ii) establishing such networks and registries; and

(E) contains such information as the State Commission considers to be appropriate or as the Corporation may require.

(2) Preparation of the applications of the State under sections 12543 and 12582 of this title for financial assistance.

(3) Assistance in the preparation of the application of the State educational agency for assistance under section 12525 of this title.

(4) Preparation of the application of the State under section 12582 of this title for the approval of service positions that include the national service educational award described in division D of this subchapter.

(5) Make recommendations to the Corporation with respect to priorities for programs receiving assistance under the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4950 et seq.).

(6) Make technical assistance available to enable applicants for assistance under section 12571 of this title—

(A) to plan and implement service programs; and

(B) to apply for assistance under the national service laws using, if appropriate, information and materials available through a clearinghouse established under section 12653a of this title.

(7) Assistance in the provision of health care and child care benefits under section 12594 of this title to participants in national service programs that receive assistance under section 12571 of this title.

(8) Development of a State system for the recruitment and placement of participants in programs that receive assistance under the national service laws and dissemination of information concerning national service programs that receive such assistance or approved national service positions.

(9) Administration of the grant program in support of national service programs that is conducted by the State using assistance provided to the State under section 12571 of this title, including selection, oversight, and evaluation of grant recipients.

(10) Development of projects, training methods, curriculum materials, and other materials and activities related to national service programs that receive assistance directly from the Corporation (to be made available in a case in which such a program requests such a project, method, material, or activity) or from the State using assistance provided under section 12571 of this title, for use by programs that request such projects, methods, materials, and activities.

(f) Activity ineligible for assistance

A State Commission or alternative administrative entity may not directly carry out any national service program that receives assistance under section 12571 of this title.

(g) Delegation

Subject to such requirements as the Corporation may prescribe, a State Commission may delegate nonpolicymaking duties to a State agency or public or private nonprofit organization.

(h) Approval of State Commission or alternative

(1) Submission to Corporation

The chief executive officer for a State shall notify the Corporation of the establishment or designation of the State Commission or use of an alternative administrative entity for the State. The notification shall include a description of—

(A) the composition and membership of the State Commission or alternative administrative entity; and

(B) the authority of the State Commission or alternative administrative entity regarding national service activities carried out by the State.

(2) Approval of alternative administrative entity

Any designation of a State Commission or use of an alternative administrative entity to carry out the duties of a State Commission shall be subject to the approval of the Corporation, which shall not be unreasonably withheld. The Corporation shall approve an alternative administrative entity if such entity provides for individuals described in paragraph (1), and some of the individuals described in paragraph (2), of subsection (c) of this section to play a significant policymaking role in carrying out the duties otherwise entrusted to a State Commission, including the duties described in paragraphs (1) through (4) of subsection (e) of this section.

(3) Rejection

The Corporation may reject a State Commission if the Corporation determines that the composition, membership, or duties of the State Commission do not comply with the requirements of this section. The Corporation may reject a request to use an alternative administrative entity in lieu of a State Commission if the Corporation determines that the entity does not provide for the individuals described in paragraph (1), and some of the individuals described in paragraph (2), of subsection (c) of this section to play a significant policymaking role as described in paragraph (2). If the Corporation rejects a State Commission or alternative administrative entity under this paragraph, the Corporation shall promptly notify the State of the reasons for the rejection.

(4) Resubmission and reconsideration

The Corporation shall provide a State notified under paragraph (3) with a reasonable opportunity to revise the rejected State Commission or alternative administrative entity. At the request of the State, the Corporation shall provide technical assistance to the State as part of the revision process. The Corporation shall promptly reconsider any resubmission of a notification under paragraph (1) or application to use an alternative administrative entity under paragraph (2).

(5) Subsequent changes

This subsection shall also apply to any change in the composition or duties of a State Commission or an alternative administrative entity made after approval of the State Commission or the alternative administrative entity.

(6) Rights

An alternative administrative entity approved by the Corporation under this subsection shall have the same rights as a State Commission.

(i) Coordination

(1) Coordination with other State agencies

The State Commission or alternative administrative entity for a State shall coordinate the activities of the Commission or entity under this chapter with the activities of other State agencies that administer Federal financial assistance programs under the Community Services Block Grant Act (42 U.S.C. 9901 et seq.) or other appropriate Federal financial assistance programs.

(2) Coordination with volunteer service programs

(A) In general

The State Commission or alternative administrative entity for a State shall coordinate functions of the Commission or entity (including recruitment, public awareness, and training activities) with such functions of any division of the Corporation that carries out volunteer service programs in the State.

(B) Agreement

In coordinating functions under this paragraph, such Commission or entity, and such division, may enter into an agreement to—

- (i) carry out such a function jointly;
- (ii) to¹ assign responsibility for such a function to the Commission or entity; or
- (iii) to¹ assign responsibility for such a function to the division.

(C) Information

The State Commission or alternative entity for a State, and the head of any such division, shall exchange information about—

- (i) the programs carried out in the State by the Commission, entity, or division, as appropriate; and
- (ii) opportunities to coordinate activities.

(j) Liability**(1) Liability of State**

Except as provided in paragraph (2)(B), a State shall agree to assume liability with respect to any claim arising out of or resulting from any act or omission by a member of the State Commission or alternative administrative entity of the State, within the scope of the service of the member on the State Commission or alternative administrative entity.

(2) Other claims**(A) In general**

A member of the State Commission or alternative administrative entity shall have no personal liability with respect to any claim arising out of or resulting from any act or omission by such person, within the scope of the service of the member on the State Commission or alternative administrative entity.

(B) Limitation

This paragraph shall not be construed to limit personal liability for criminal acts or omissions, willful or malicious misconduct, acts or omissions for private gain, or any other act or omission outside the scope of the service of such member on the State Commission or alternative administrative entity.

(3) Effect on other law

This subsection shall not be construed—

(A) to affect any other immunities and protections that may be available to such member under applicable law with respect to such service;

(B) to affect any other right or remedy against the State under applicable law, or against any person other than a member of the State Commission or alternative administrative entity; or

(C) to limit or alter in any way the immunities that are available under applicable law for State officials and employees not described in this subsection.

(Pub. L. 101-610, title I, §178, as added and amended Pub. L. 103-82, title II, §201(a), title IV, §405(p)(1), Sept. 21, 1993, 107 Stat. 867, 922.)

¹ So in original. The word “to” probably should not appear.

REFERENCES IN TEXT

The Domestic Volunteer Service Act of 1973, referred to in subsecs. (c)(2)(E) and (e)(5), is Pub. L. 93-113, Oct. 1, 1973, 87 Stat. 394, as amended, which is classified principally to chapter 66 (§4950 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4950 of this title and Tables.

The Community Services Block Grant Act, referred to in subsec. (i)(1), is subtitle B (§671 et seq.) of title VI of Pub. L. 97-35, Aug. 13, 1981, 95 Stat. 511, as amended, which is classified generally to chapter 106 (§9901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9901 of this title and Tables.

PRIOR PROVISIONS

A prior section 12638, Pub. L. 101-610, title I, §178, Nov. 16, 1990, 104 Stat. 3164; Pub. L. 102-10, §8(1), Mar. 12, 1991, 105 Stat. 31, provided that States applying for assistance under this subchapter be encouraged to establish a State Advisory Board for National and Community Service and set out additional provisions for membership and duties of such boards, prior to repeal by Pub. L. 103-82, §201(a).

AMENDMENTS

1993—Subsec. (i)(2)(A). Pub. L. 103-82, §405(p)(1), substituted “the Corporation” for “ACTION, or of the Corporation,” before “that carries out”.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 405(p)(1) of Pub. L. 103-82 effective Apr. 4, 1994, see section 406(b) of Pub. L. 103-82, set out as a note under section 8332 of Title 5, Government Organization and Employees.

EFFECTIVE DATE

Section 201(c) of Pub. L. 103-82 provided that: “The amendments made by this section [enacting this section and repealing former section 12638 of this title] shall take effect on October 1, 1993.”

TRANSITIONAL PROVISIONS

Section 201(d) of Pub. L. 103-82 provided that:

“(1) USE OF ALTERNATIVES TO STATE COMMISSION.—If a State does not have a State Commission on National and Community Service that satisfies the requirements specified in section 178 of the National and Community Service Act of 1990 [42 U.S.C. 12638], as amended by subsection (a), the Corporation for National and Community Service may authorize the chief executive officer of the State to use an existing agency of the State to perform the duties otherwise reserved to a State Commission under subsection (e) of such section.

“(2) APPLICATION OF SUBSECTION.—This subsection shall apply only during the 27-month period beginning on the date of the enactment of this Act [Sept. 21, 1993].”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5011, 12511, 12572, 12576, 12651d, 12651f, 12651h of this title.

§ 12639. Evaluation**(a) In general**

The Corporation shall provide, through grants or contracts, for the continuing evaluation of programs that receive assistance under the national service laws, including evaluations that measure the impact of such programs, to determine—

(1) the effectiveness of various program models in achieving stated goals and the costs associated with such;

(2) with respect to the programs authorized under division C of this subchapter, the im-

part of such programs, in each State in which a program is conducted, on the ability of—

(A) the VISTA and National Senior Volunteer Corps programs (established under the Domestic Volunteer Services¹ Act of 1973 (42 U.S.C. 4950 et seq.));

(B) each regular component of the Armed Forces (as defined in section 101(a)(4) of title 10);

(C) each of the reserve components of the Armed Forces (as described in section 10101 of title 10); and

(D) the Peace Corps (as established by the Peace Corps Act (22 U.S.C. 2501 et seq.));

to recruit individuals residing in such State to serve in such program; and

(3) the structure and mechanisms for delivery of services for such programs.

(b) Comparisons

The Corporation shall provide for inclusion in the evaluations required under subsection (a) of this section, where appropriate, comparisons of participants in such programs with individuals who have not participated in such programs.

(c) Conducting evaluations

Evaluations of programs under subsection (a) of this section shall be conducted by individuals who are not directly involved in the administration of such program.

(d) Standards

The Corporation shall develop and publish general standards for the evaluation of program effectiveness in achieving the objectives of the national service laws.

(e) Community participation

In evaluating a program receiving assistance under the national service laws, the Corporation shall consider the opinions of participants and members of the communities where services are delivered concerning the strengths and weaknesses of such program.

(f) Comparison of program models

The Corporation shall evaluate and compare the effectiveness of different program models in meeting the program objectives described in subsection (g) of this section including full- and part-time programs, programs involving different types of national service, programs using different recruitment methods, programs offering alternative voucher or post-service benefit options, and programs utilizing individual placements and teams.

(g) Program objectives

The Corporation shall ensure that programs that receive assistance under division C of this subchapter are evaluated to determine their effectiveness in—

(1) recruiting and enrolling diverse participants in such programs, consistent with the requirements of section 12575² of this title, based on economic background, race, ethnicity, age, marital status, education levels, and disability;

(2) promoting the educational achievement of each participant in such programs, based on

earning a high school diploma or the equivalent of such diploma and the future enrollment and completion of increasingly higher levels of education;

(3) encouraging each participant to engage in public and community service after completion of the program based on career choices and service in other service programs such as the Volunteers in Service to America Program and National Senior Volunteer Corps programs established under the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4950 et seq.), the Peace Corps (as established by the Peace Corps Act (22 U.S.C. 2501 et seq.)), the military, and part-time volunteer service;

(4) promoting of positive attitudes among each participant regarding the role of such participant in solving community problems based on the view of such participant regarding the personal capacity of such participant to improve the lives of others, the responsibilities of such participant as a citizen and community member, and other factors;

(5) enabling each participant to finance a lesser portion of the higher education of such participant through student loans;

(6) providing services and projects that benefit the community;

(7) supplying additional volunteer assistance to community agencies without overloading such agencies with more volunteers than can effectively be utilized;

(8) providing services and activities that could not otherwise be performed by employed workers and that will not supplant the hiring of, or result in the displacement of, employed workers or impair the existing contracts of such workers; and

(9) attracting a greater number of citizens to public service, including service in the active and reserve components of the Armed Forces, the National Guard, the Peace Corps (as established by the Peace Corps Act (22 U.S.C. 2501 et seq.)), and the VISTA and National Senior Volunteer Corps programs established under the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4950 et seq.).

(h) Obtaining information

(1) In general

In conducting the evaluations required under this section, the Corporation may require each program participant and State or local applicant to provide such information as may be necessary to carry out the requirements of this section.

(2) Confidentiality

(A) In general

The Corporation shall maintain the confidentiality of information acquired under this subsection regarding individual participants.

(B) Disclosure

(i) Consent

The content of any information described in subparagraph (A) may be disclosed with the prior written consent of the individual participant with respect to whom the information is maintained.

¹ So in original. Probably should be "Service".

² See References in Text note below.

(ii) Aggregate information

The Corporation may disclose information about the aggregate characteristics of such participants.

(i) Independent evaluation and report of demographics of national service participants and communities**(1) Independent evaluation****(A) In general**

The Corporation shall, on an annual basis, arrange for an independent evaluation of the programs assisted under division C of this subchapter.

(B) Participants**(i) In general**

The entity conducting such evaluation shall determine the demographic characteristics of the participants in such programs.

(ii) Characteristics

The entity shall determine, for the year covered by the evaluation, the total number of participants in the programs, and the number of participants within the programs in each State, by sex, age, economic background, education level, ethnic group, disability classification, and geographic region.

(iii) Categories

The Corporation shall determine appropriate categories for analysis of each of the characteristics referred to in clause (ii) for purposes of such an evaluation.

(C) Communities

In conducting the evaluation, the entity shall determine the amount of assistance provided under section 12571 of this title during the year that has been expended for projects conducted under the programs in areas described in section 12585(c)(6) of this title.

(2) Report

The entity conducting the evaluation shall submit a report to the President, Congress, the Corporation, and each State Commission containing the results of the evaluation—

(A) with respect to the evaluation covering the year beginning on September 21, 1993, not later than 18 months after September 21, 1993; and

(B) with respect to the evaluation covering each subsequent year, not later than 18 months after the first day of each such year.

(Pub. L. 101-610, title I, §179, Nov. 16, 1990, 104 Stat. 3164; Pub. L. 102-384, §§4, 9, Oct. 5, 1992, 106 Stat. 1455, 1456; Pub. L. 103-82, title I, §118, title II, §203(a)(1)(A), title IV, §402(b)(1), Sept. 21, 1993, 107 Stat. 865, 891, 918; Pub. L. 103-160, div. A, title XI, §1182(d)(4), Nov. 30, 1993, 107 Stat. 1773; Pub. L. 104-106, div. A, title XV, §1501(e)(5), Feb. 10, 1996, 110 Stat. 501.)

REFERENCES IN TEXT

The Peace Corps Act, referred to in subsecs. (a)(2)(D) and (g)(3), (9), is Pub. L. 87-293, Sept. 22, 1961, 75 Stat.

612, as amended, which is classified principally to chapter 34 (§2501 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of that Act to the Code, see Short Title note set out under section 2501 of Title 22 and Tables.

Section 12575 of this title, referred to in subsec. (g)(1), was in the original a reference to section 145 of Pub. L. 101-610. Section 145 of Pub. L. 101-610 was omitted in the general amendment of subtitle D of title I of Pub. L. 101-610 [former part D of this subchapter] by Pub. L. 103-82, title I, §102(a), Sept. 21, 1993, 107 Stat. 816. Pub. L. 103-82 enacted a new section 125 of Pub. L. 101-610, relating to training and technical assistance, and a new section 145, relating to establishment of the National Service Trust, which are classified to sections 12575 and sections 12601, respectively, of this title. Provisions relating to the eligibility of individuals for participation in national service programs are now contained in section 12591 et seq. of this title.

The Domestic Volunteer Service Act of 1973, referred to in subsec. (g)(3), (9), is Pub. L. 93-113, Oct. 1, 1973, 87 Stat. 394, as amended, which is classified principally to chapter 66 (§4950 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4950 of this title and Tables.

AMENDMENTS

1996—Subsec. (a)(2)(C). Pub. L. 104-106 substituted “section 10101 of title 10” for “section 216(a) of title 5”.

1993—Subsec. (a). Pub. L. 103-82, §402(b)(1), substituted “Corporation” for “Commission” in introductory provisions.

Pub. L. 103-82, §203(a)(1)(A), substituted “the national service laws” for “this subchapter” in introductory provisions.

Subsec. (a)(2). Pub. L. 103-82, §118(1)(A), substituted “with respect to the programs authorized under division C of this subchapter” for “for purposes of the reports required by subsection (j) of this section” in introductory provisions.

Subsec. (a)(2)(A). Pub. L. 103-82, §118(1)(B), substituted “National Senior Volunteer Corps programs” for “older American volunteer programs”.

Subsec. (a)(2)(B). Pub. L. 103-160 substituted “section 101(a)(4) of title 10” for “section 101(4) of title 10”.

Subsec. (b). Pub. L. 103-82, §402(b)(1), substituted “Corporation” for “Commission”.

Subsec. (d). Pub. L. 103-82, §402(b)(1), substituted “Corporation” for “Commission”.

Pub. L. 103-82, §203(a)(1)(A), substituted “the national service laws” for “this subchapter”.

Subsec. (e). Pub. L. 103-82, §402(b)(1), substituted “Corporation” for “Commission”.

Pub. L. 103-82, §203(a)(1)(A), substituted “the national service laws” for “this subchapter”.

Subsec. (f). Pub. L. 103-82, §402(b)(1), substituted “Corporation” for “Commission”.

Subsec. (g). Pub. L. 103-82, §402(b)(1), substituted “Corporation” for “Commission” in introductory provisions.

Pub. L. 103-82, §118(2)(A), substituted “division C of this subchapter” for “part D of this subchapter” in introductory provisions.

Subsec. (g)(3), (9). Pub. L. 103-82, §118(2)(B), substituted “National Senior Volunteer Corps programs” for “older American volunteer programs”.

Subsec. (h)(1), (2)(A), (B)(ii). Pub. L. 103-82, §402(b)(1), substituted “Corporation” for “Commission”.

Subsecs. (i), (j). Pub. L. 103-82, §118(3), (4), added subsec. (i) and struck out former subsecs. (i) and (j) which related to deadline and report, respectively.

1992—Subsec. (a)(2). Pub. L. 102-384, §9(1), substituted “subsection (j)” for “subsection (h)”.

Subsec. (d). Pub. L. 102-384, §4, substituted “Commission” for “Secretary”.

Subsec. (f). Pub. L. 102-384, §9(2), inserted “or post-service benefit” after “voucher”.

Subsec. (h)(1). Pub. L. 102-384, §9(3)(A), substituted “this section” for “subsection (g) of this section”.

Subsec. (h)(2). Pub. L. 102-384, §9(3)(B), added par. (2) and struck out former par. (2) which read as follows:

“The Commission shall keep information acquired under this section confidential.”

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-106 effective as if included in the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103-337, as enacted on Oct. 5, 1994, see section 1501(f)(3) of Pub. L. 104-106, set out as a note under section 113 of Title 10, Armed Forces.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 118 of Pub. L. 103-82 effective Oct. 1, 1993, see section 123 of Pub. L. 103-82, set out as a note under section 1701 of Title 16, Conservation.

Amendment by section 203(a)(1)(A) of Pub. L. 103-82 effective Apr. 4, 1994, see section 203(d) of Pub. L. 103-82, set out as a note under section 12651 of this title.

Amendment by section 402(b)(1) of Pub. L. 103-82 effective Oct. 1, 1993, see section 406(a) of Pub. L. 103-82, set out as a note under section 5061 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12624, 12651d of this title.

§ 12640. Engagement of participants

A State shall not engage a participant to serve in any program that receives assistance under this subchapter unless and until amounts have been appropriated under section 12681 of this title for the provision of national service educational awards and for the payment of other necessary expenses and costs associated with such participant.

(Pub. L. 101-610, title I, §180, Nov. 16, 1990, 104 Stat. 3166; Pub. L. 103-82, title I, §119, Sept. 21, 1993, 107 Stat. 866.)

AMENDMENTS

1993—Pub. L. 103-82 substituted “national service educational awards” for “post-service benefits”.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Oct. 1, 1993, see section 123 of Pub. L. 103-82, set out as a note under section 1701 of Title 16, Conservation.

§ 12641. Contingent extension

Section 1226a¹ of title 20 shall apply to this chapter.

(Pub. L. 101-610, title I, §181, Nov. 16, 1990, 104 Stat. 3166; Pub. L. 103-82, title I, §120(a), Sept. 21, 1993, 107 Stat. 866.)

REFERENCES IN TEXT

Section 1226a of title 20, referred to in text, was in the original a reference to section 414 of the General Education Provisions Act. Section 414 of that Act was renumbered as section 422 by Pub. L. 103-382, title II, §212(b)(1), Oct. 20, 1994, 108 Stat. 3913, and is classified to section 1226a of Title 20, Education.

AMENDMENTS

1993—Pub. L. 103-82 amended section generally, re-enacting subsec. (c) as entire section and striking out former subsecs. (a) and (b) which related to treatment of education and housing benefits and treatment of stipend for living expenses, respectively.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Oct. 1, 1993, see section 123 of Pub. L. 103-82, set out as a note under section 1701 of Title 16, Conservation.

¹ See References in Text note below.

§ 12642. Partnerships with schools

(a) Design of programs

The head of each Federal agency and department shall design and implement a comprehensive strategy to involve employees of such agencies and departments in partnership programs with elementary schools and secondary schools. Such strategy shall include—

(1) a review of existing programs to identify and expand the opportunities for such employees to be adult volunteers in schools and for students and out-of-school youth;

(2) the designation of a senior official in each such agency and department who will be responsible for establishing partnership and youth service programs in each such agency and department and for developing partnership and youth service programs;

(3) the encouragement of employees of such agencies and departments to participate in partnership programs and other service projects;

(4) the annual recognition of outstanding service programs operated by Federal agencies; and

(5) the encouragement of businesses and professional firms to include community service among the factors considered in making hiring, compensation, and promotion decisions.

(b) Report

Not later than 180 days after November 16, 1990, and on a regular basis thereafter, the head of each Federal agency and department shall prepare and submit, to the appropriate Committees of Congress, a report concerning the implementation of this section.

(Pub. L. 101-610, title I, §182, Nov. 16, 1990, 104 Stat. 3167; Pub. L. 103-82, title I, §111(b)(1), (2), Sept. 21, 1993, 107 Stat. 860.)

AMENDMENTS

1993—Subsec. (a)(2), (3). Pub. L. 103-82 substituted “partnership” for “adult volunteer and partnership” wherever appearing.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Oct. 1, 1993, see section 123 of Pub. L. 103-82, set out as a note under section 1701 of Title 16, Conservation.

§ 12643. Rights of access, examination, and copying

(a) Comptroller General

The Comptroller General, or any of the duly authorized representatives of the Comptroller General, shall have access to, and the right to examine and copy, any books, documents, papers, records, and other recorded information in any form—

(1) within the possession or control of the Corporation or any State or local government, Indian tribe, or public or private nonprofit organization receiving assistance directly or indirectly under this chapter; and

(2) that the Comptroller General, or his representative, considers necessary to the performance of an evaluation, audit, or review.

(b) Chief Financial Officer

The Chief Financial Officer of the Corporation shall have access to, and the right to examine

and copy, any books, documents, papers, records, and other recorded information in any form—

(1) within the possession or control of the Corporation or any State or local government, Indian tribe, or public or private nonprofit organization receiving assistance directly or indirectly under this chapter; and

(2) that relates to the duties of the Chief Financial Officer.

(Pub. L. 101-610, title I, §183, Nov. 16, 1990, 104 Stat. 3167; Pub. L. 103-82, title I, §121(a), Sept. 21, 1993, 107 Stat. 866.)

AMENDMENTS

1993—Pub. L. 103-82 amended section generally, substituting provision relating to rights of access, examination, and copying for provision relating to service as tutors.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Oct. 1, 1993, see section 123 of Pub. L. 103-82, set out as a note under section 1701 of Title 16, Conservation.

§ 12644. Drug-free workplace requirements

All programs receiving grants under this subchapter shall be subject to the Drug-Free Workplace Requirements for Federal Grant Recipients under sections 702 through 707 of title 41.

(Pub. L. 101-610, title I, §184, Nov. 16, 1990, 104 Stat. 3167.)

§ 12645. Repealed. Pub. L. 103-82, title I, § 122(a), Sept. 21, 1993, 107 Stat. 867

Section, Pub. L. 101-610, title I, §186, as added Pub. L. 102-10, §8(2), Mar. 12, 1991, 105 Stat. 31, directed Commission to issue final rules or regulations necessary to implement this subchapter.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1993, see section 123 of Pub. L. 103-82, set out as an Effective Date of 1993 Amendment note under section 1701 of Title 16, Conservation.

Division G—Corporation for National and Community Service

§ 12651. Corporation for National and Community Service

There is established a Corporation for National and Community Service that shall administer the programs established under the national service laws. The Corporation shall be a Government corporation, as defined in section 103 of title 5.

(Pub. L. 101-610, title I, §191, as added and amended Pub. L. 103-82, title II, §§202(a), 203(a)(1)(B), Sept. 21, 1993, 107 Stat. 873, 891.)

PRIOR PROVISIONS

A prior section 12651, Pub. L. 101-610, title I, §190, Nov. 16, 1990, 104 Stat. 3168; Pub. L. 102-10, §9, Mar. 12, 1991, 105 Stat. 31; Pub. L. 102-384, §§4, 10, Oct. 5, 1992, 106 Stat. 1455, 1456, provided for establishment of Commission on National and Community Service, prior to the general amendment of subtitle G of title I of Pub. L. 101-610 [former part G of this subchapter] by Pub. L. 103-82, §202(a).

AMENDMENTS

1993—Pub. L. 103-82, §203(a)(1)(B), which directed amendment of section 191 of subtitle I of the National

and Community Service Act of 1990 by substituting “the national service laws” for “this chapter”, was executed to this section, which is section 191 of subtitle G of title I of the National Community Service Act of 1990, to reflect the probable intent of Congress.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 203(d) of Pub. L. 103-82 provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), this section [amending this section and sections 12639, 12651b to 12651d, 12651f, and 12651g of this title, repealing sections 5041 and 5042 of this title, and enacting provisions set out below], and the amendments made by this section, shall take effect—

“(A) 18 months after the date of enactment of this Act [Sept. 21, 1993]; or

“(B) on such earlier date as the President shall determine to be appropriate and announce by proclamation published in the Federal Register.

“(2) TRANSITION.—Subsection (c)(10) [set out below] shall take effect on the date of enactment of this Act [Sept. 21, 1993].”

[Section 203, and the amendments made by section 203, of Pub. L. 103-82 became effective Apr. 4, 1994, pursuant to Proc. No. 6662, Apr. 4, 1994, 59 F.R. 16507, set out below.]

EFFECTIVE DATE

Section 202(i) of Pub. L. 103-82 provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), or paragraph (2) or (3) of subsection (g) [amending sections 8F and 9 of the Inspector General Act of 1978, Pub. L. 95-452, set out in the Appendix to Title 5, Government Organization and Employees, and enacting provisions set out as notes under sections 8F and 9 of such act], the amendments made by this section [enacting this division and section 8E of the Inspector General Act of 1978, Pub. L. 95-452, set out in the Appendix to Title 5, amending section 5041 of this title, sections 4, 8F, 8G, 9, and 11 of the Inspector General Act of 1978, Pub. L. 95-452, set out in the Appendix to Title 5, sections 9101 and 9105 of Title 31, Money and Finance, section 410 of Title 39, Postal Service, and section 484 of former Title 40, Public Buildings, Property, and Works] shall take effect on October 1, 1993.

“(2) ESTABLISHMENT AND APPOINTMENT AUTHORITIES.—Sections 191, 192, and 193 of the National and Community Service Act of 1990 [42 U.S.C. 12651, 12651a, 12651c], as added by subsection (a), shall take effect on the date of enactment of this Act [Sept. 21, 1993].”

TRANSFER OF FUNCTIONS OF COMMISSION ON NATIONAL AND COMMUNITY SERVICE

Section 202(c) of Pub. L. 103-82 provided that:

“(1) DEFINITIONS.—For purposes of this subsection, unless otherwise provided or indicated by the context, each term specified in section 203(c)(1) [set out below] shall have the meaning given the term in such section.

“(2) TRANSFER OF FUNCTIONS.—There are transferred to the Corporation the functions that the Board of Directors or Executive Director of the Commission on National and Community Service exercised before the effective date of this subsection (including all related functions of any officer or employee of the Commission).

“(3) APPLICATION.—The provisions of paragraphs (3) through (10) of section 203(c) [set out below] shall apply with respect to the transfer described in paragraph (2), except that—

“(A) for purposes of such application, references to the term ‘ACTION Agency’ shall be deemed to be references to the Commission on National and Community Service; and

“(B) paragraph (10) of such section shall not preclude the transfer of the members of the Board of Directors of the Commission to the Corporation if, on the effective date of this subsection, the Board of Directors of the Corporation has not been confirmed.”

TRANSFER OF FUNCTIONS FROM ACTION AGENCY

Section 203(c) of Pub. L. 103-82 provided that:

“(1) DEFINITIONS.—For purposes of this subsection, unless otherwise provided or indicated by the context—

“(A) the term ‘Chief Executive Officer’ means the Chief Executive Officer of the Corporation;

“(B) the term ‘Corporation’ means the Corporation for National and Community Service, established under section 191 of the National and Community Service Act of 1990 [42 U.S.C. 12651];

“(C) the term ‘Federal agency’ has the meaning given to the term ‘agency’ by section 551(1) of title 5, United States Code;

“(D) the term ‘function’ means any duty, obligation, power, authority, responsibility, right, privilege, activity, or program; and

“(E) the term ‘office’ includes any office, administration, agency, institute, unit, organizational entity, or component thereof.

“(2) TRANSFER OF FUNCTIONS.—There are transferred to the Corporation the functions that the Director of the ACTION Agency exercised before the effective date of this subsection [see Effective Date of 1993 Amendment note above] (including all related functions of any officer or employee of the ACTION Agency).

“(3) DETERMINATIONS OF CERTAIN FUNCTIONS BY THE OFFICE OF MANAGEMENT AND BUDGET.—If necessary, the Office of Management and Budget shall make any determination of the functions that are transferred under paragraph (2).

“(4) REORGANIZATION.—The Chief Executive Officer is authorized to allocate or reallocate any function transferred under paragraph (2) among the officers of the Corporation.

“(5) TRANSFER AND ALLOCATIONS OF APPROPRIATIONS AND PERSONNEL.—Except as otherwise provided in this subsection, the personnel employed in connection with, and the assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, used, held, arising from, available to, or to be made available in connection with the functions transferred by this subsection, subject to section 1531 of title 31, United States Code, shall be transferred to the Corporation. Unexpended funds transferred pursuant to this paragraph shall be used only for the purposes for which the funds were originally authorized and appropriated.

“(6) INCIDENTAL TRANSFER.—The Director of the Office of Management and Budget, at such time or times as the Director shall provide, is authorized to make such determinations as may be necessary with regard to the functions transferred by this subsection, and to make such additional incidental dispositions of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with such functions, as may be necessary to carry out the provisions of this subsection. The Director of the Office of Management and Budget shall provide for the termination of the affairs of all entities terminated by this subsection and for such further measures and dispositions as may be necessary to effectuate the purposes of this subsection.

“(7) EFFECT ON PERSONNEL.—

“(A) IN GENERAL.—Except as otherwise provided by this subsection, the transfer pursuant to this subsection of full-time personnel (except special Government employees) and part-time personnel holding permanent positions shall be to positions in the Corporation subject to section 195(a) of the National and Community Service Act of 1990 [42 U.S.C. 12651f(a)], as added by section 202(a) of this Act, and shall not cause any such employee to be separated or reduced in grade or compensation, or to have the benefits of the employee reduced, for 1 year after the date of transfer of such employee under this subsection, and such transfer shall be deemed to be a transfer of functions for purposes of section 3503 of title 5, United States Code.

“(B) EXECUTIVE SCHEDULE POSITIONS.—Except as otherwise provided in this subsection, any person

who, on the day preceding the effective date of this subsection [see Effective Date of 1993 Amendment note above], held a position compensated in accordance with the Executive Schedule prescribed in chapter 53 of title 5, United States Code, and who, without a break in service, is appointed in the Corporation to a position having duties comparable to the duties performed immediately preceding such appointment shall continue to be compensated in such new position at not less than the rate provided for such previous position, for the duration of the service of such person in such new position.

“(C) TERMINATION OF CERTAIN POSITIONS.—Positions whose incumbents are appointed by the President, by and with the advice and consent of the Senate, the functions of which are transferred by this subsection, shall terminate on the effective date of this subsection.

“(8) SAVINGS PROVISIONS.—

“(A) CONTINUING EFFECT OF LEGAL DOCUMENTS.—All orders, determinations, rules, regulations, permits, agreements, grants, contracts, certificates, licenses, registrations, privileges, and other administrative actions—

“(i) that have been issued, made, granted, or allowed to become effective by the President, any Federal agency or official thereof, or by a court of competent jurisdiction, in the performance of functions that are transferred under this subsection; and

“(ii) that are in effect at the time this subsection takes effect [see Effective Date of 1993 Amendment note above], or were final before the effective date of this subsection and are to become effective on or after the effective date of this subsection, shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, the Chief Executive Officer, or other authorized official, a court of competent jurisdiction, or by operation of law.

“(B) PROCEEDINGS NOT AFFECTED.—The provisions of this subsection shall not affect any proceedings, including notices of proposed rulemaking, or any application for any license, permit, certificate, or financial assistance pending before the ACTION Agency at the time this subsection takes effect, with respect to functions transferred by this subsection. Such proceedings and applications shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this subsection had not been enacted, and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this subparagraph shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this subsection had not been enacted.

“(C) SUITS NOT AFFECTED.—The provisions of this subsection shall not affect suits commenced before the effective date of this subsection, and in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this subsection had not been enacted.

“(D) NONABATEMENT OF ACTIONS.—No suit, action, or other proceeding commenced by or against the ACTION Agency, or by or against any individual in the official capacity of such individual as an officer of the ACTION Agency, shall abate by reason of the enactment of this subsection.

“(E) ADMINISTRATIVE ACTIONS RELATING TO PROMULGATION OF REGULATIONS.—Any administrative action relating to the preparation or promulgation of a regulation by the ACTION Agency relating to a function transferred under this subsection may be continued

by the Corporation with the same effect as if this subsection had not been enacted.

“(9) SEVERABILITY.—If a provision of this subsection or its application to any person or circumstance is held invalid, neither the remainder of this subsection nor the application of the provision to other persons or circumstances shall be affected.

“(10) TRANSITION.—Prior to, or after, any transfer of a function under this subsection, the Chief Executive Officer is authorized to utilize—

“(A) the services of such officers, employees, and other personnel of the ACTION Agency with respect to functions that will be or have been transferred to the Corporation by this subsection; and

“(B) funds appropriated to such functions for such period of time as may reasonably be needed to facilitate the orderly implementation of this subsection.”

CONTINUING PERFORMANCE OF CERTAIN FUNCTIONS BY COMMISSION ON NATIONAL AND COMMUNITY SERVICE

Section 202(d) of Pub. L. 103-82 provided that: “The individuals who, on the day before the date of enactment of this Act [Sept. 21, 1993], are performing any of the functions required by section 190 of the National and Community Service Act of 1990 (42 U.S.C. 12651), as in effect on such date, to be performed by the members of the Board of Directors of the Commission on National and Community Service may, subject to section 193A of the National and Community Service Act of 1990 [42 U.S.C. 12651d], as added by subsection (a) of this section, continue to perform such functions until the date on which the Board of Directors of the Corporation for National and Community Service conducts the first meeting of the Board. The service of such individuals as members of the Board of Directors of such Commission, and the employment of such individuals as special Government employees, shall terminate on such date.”

BUSINESS PLAN FOR CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Section 204 of Pub. L. 103-82 provided that:

“(a) BUSINESS PLAN REQUIRED.—

“(1) IN GENERAL.—The Corporation for National and Community Service (referred to in this section as the ‘Corporation’) shall prepare and submit to Congress a business plan. The Corporation may not provide assistance under section 121 of the National and Community Service Act of 1990 [42 U.S.C. 12571] before the twentieth day of continuous session of Congress after the date on which the Corporation submits the business plan to Congress.

“(2) COMPUTATION.—For purposes of the computation of the 20-day period referred to in paragraph (1), continuity of a session of the Congress shall be considered to be broken only by—

“(A) an adjournment of the Congress sine die; and

“(B) the days on which either House is not in session because of an adjournment of more than 3 days to a date certain.

“(b) REQUIRED ELEMENTS OF BUSINESS PLAN.—

“(1) ALLOCATION OF FUNDS.—The business plan shall contain—

“(A) a description of the manner in which the Corporation will allocate funds for programs carried out by the Corporation after October 1, 1993;

“(B) information on the principal offices and officers of the Corporation that will allocate such funds; and

“(C) information that indicates how accountability for such funds can be determined, in terms of the office or officer responsible for such funds.

“(2) INVESTIGATIVE AND AUDIT FUNCTIONS.—The business plan shall include a description of the plans of the Corporation—

“(A) to ensure continuity, during the transition period, and after the transition period, in the investigative and audit functions carried out by the Inspector General of ACTION prior to such period,

consistent with the Inspector General Act of 1978 (5 U.S.C. App.); and

“(B) to carry out investigative and audit functions and implement financial management controls regarding programs carried out by the Corporation after October 1, 1993, consistent with the Inspector General Act of 1978, including a specific description of—

“(i) the manner in which the Office of Inspector General shall be established in the Corporation, in accordance with section 194(b) of the National Community Service Act of 1990 [42 U.S.C. 12651e(b)], as added by section 202 of this Act; and

“(ii) the manner in which grants made by the Corporation shall be audited by such Office and the financial management controls that shall apply with regard to such grants and programs.

“(3) ACCOUNTABILITY MEASURES.—The business plan shall include a detailed description of the accountability measures to be established by the Corporation to ensure effective control of all funds for programs carried out by the Corporation after October 1, 1993.

“(4) INFORMATION RESOURCES.—The business plan shall include a description of an information resource management program that will support the program and financial management needs of the Corporation.

“(5) CORPORATION STAFFING AND INTEGRATION OF ACTION.—

“(A) TRANSFERS.—The business plan shall include a report on the progress and plans of the President for transferring the functions, programs, and related personnel of ACTION to the Corporation, and shall include a timetable for the transfer.

“(B) DETAILS AND ASSIGNMENTS.—The report shall specify the number of ACTION employees detailed or assigned to the Corporation, and describe the hiring activity of the Corporation, during the transition period.

“(C) STRUCTURE.—The business plan shall include a description of the organizational structure of the Corporation during the transition period.

“(D) STAFFING.—The business plan shall include a description of—

“(i) measures to ensure adequate staffing during the transition period with respect to programs carried out by the Corporation after October 1, 1993; and

“(ii) the responsibilities and authorities of the Managing Directors and other key personnel of the Corporation.

“(E) SENIOR EXECUTIVE SERVICE.—The business plan shall include—

“(i) an explanation of the number of the employees of the Corporation who will be paid at or above the rate of pay for level 1 of the Senior Executive Service Schedule under section 5382 of title 5, United States Code; and

“(ii) information justifying such pay for such employees.

“(6) DUPLICATION OF FUNCTIONS.—The business plan shall include a description of the measures that the Corporation is taking or will take to minimize duplication of functions in the Corporation caused by the transfer of the functions of the Commission on National and Community Service, and the transfer of the functions of ACTION, to the Corporation. This description shall address functions at both the national and State levels.

“(c) DEFINITION.—The term ‘transition period’ means the period beginning on October 1, 1993 and ending on the day before the effective date of section 203(c)(2) [see Effective Date of 1993 Amendment note above].”

PROC. NO. 6662. TRANSFER OF FUNCTIONS OF ACTION AGENCY TO CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proc. No. 6662, Apr. 4, 1994, 59 F.R. 16507, provided:

On September 21, 1993, I had the honor of signing into law the National and Community Service Trust Act of 1993 [Pub. L. 103-82, see Tables for classification], which

created the Corporation for National and Community Service. The Corporation was designed to involve Americans of all ages and backgrounds in community projects to address many of our Nation's most important needs—from educating our children to ensuring public safety to protecting our environment. It was chartered to foster civic responsibility, strengthening the ties that bind us together as a people, while providing educational opportunity for those who make the commitment to serve.

In the few short months since the Corporation's establishment, enormous progress has been made toward the achievement of these invaluable goals. Final regulations have been published governing the Corporation's new grant programs, grant application packages have been developed, and a national recruitment effort has begun. As a result of intensive outreach efforts, most states have already established State Commissions on National and Community Service, and many local programs, national nonprofit organizations, institutions of higher education, and Federal agencies are eager to participate. Grant competitions have begun for a summer program that will focus on our Nation's public safety concerns, and all community service grant competitions will be completed by this summer. Finally, the Corporation has established the National Civilian Community Corps, which will take advantage of closed and down-sized military bases to launch environmental clean-up and preservation efforts.

The ACTION Agency, provided for by the Domestic Volunteer Service Act of 1973 [42 U.S.C. 4950 et seq.], has worked closely with the Corporation, sharing its many years of experience in engaging Americans in service to their communities. Because the Corporation's initiatives and those programs operated by the ACTION Agency involve similar goals, the National and Community Service Trust Act calls for the merger of ACTION with the Corporation no later than March 22, 1995. To build upon the tremendous accomplishments already achieved by the Corporation, and to facilitate the further development of community service programs across the country, I am pleased to order that the functions of the Director of the ACTION Agency be transferred to the Corporation for National and Community Service.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to sections 203(c)(2) and (d)(1)(B) of the National and Community Service Trust Act of 1993 [set out above], proclaim that all functions of the Director of the ACTION Agency are hereby transferred to the Corporation for National and Community Service, effective April 4, 1994.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of April, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and eighteenth.

WILLIAM J. CLINTON.

EX. ORD. No. 12819. ESTABLISHING PRESIDENTIAL YOUTH AWARD FOR COMMUNITY SERVICE

Ex. Ord. No. 12819, Oct. 28, 1992, 57 F.R. 49369, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 12651 of title 42 of the United States Code [see 42 U.S.C. 12653b], it is hereby ordered as follows:

SECTION 1. A youth award for community service is hereby established. The award shall recognize outstanding voluntary community service contributions made by individuals between the ages of 5 and 22.

SEC. 2. The Director of the White House Office of National Service shall establish the criteria for the award. The criteria shall be based upon participation in voluntary community service activity. The award may

be bestowed upon any eligible individual who meets the established criteria.

SEC. 3. The selection process for the award shall be administered by the Commission on National and Community Service and the White House Office of National Service. Such other individuals and entities as the Director of the White House Office of National Service deems appropriate may participate in the selection process.

SEC. 4. The award shall be presented by the President, his designee or designees, or individuals designated by the Director of the White House Office of National Service.

SEC. 5. The name and design of the award shall be approved by the President upon the recommendation of the Director of the White House Office of National Service.

GEORGE BUSH.

EX. ORD. No. 13285. PRESIDENT'S COUNCIL ON SERVICE AND CIVIC PARTICIPATION

Ex. Ord. No. 13285, Jan. 29, 2003, 68 F.R. 5203, provided: By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to encourage the recognition of volunteer service and civic participation by all Americans, and especially America's youth, it is hereby ordered as follows:

SECTION 1. *The President's Council on Service and Civic Participation.* (a) There is hereby established within the Corporation for National and Community Services [Service] (CNCS) the President's Council on Service and Civic Participation (Council).

(b) The Council shall be composed of up to 25 members, including representatives of America's youth, appointed by the President. Each member shall serve for a term of 2 years and may continue to serve after the expiration of their term until a successor is appointed. The President shall designate one member to serve as Chair and one member to serve as Vice Chair. Subject to the direction of the Chief Executive Officer of the CNCS, the Chair, and in the Chair's absence the Vice Chair, shall convene and preside at the meetings of the Council, determine its agenda, and direct its work.

SEC. 2. *Mission and Functions of the Council.*

(a) The mission of the Council shall be to:

(i) encourage the recognition of outstanding volunteer service and civic participation by individuals, schools, and organizations and thereby encourage more such activity, especially on the part of America's youth; and

(ii) facilitate awareness of the ways in which Americans throughout our history have helped to meet the vital needs of their communities and Nation through volunteer service and civic participation.

(b) In carrying out its mission, the Council shall:

(i) design and recommend programs to recognize individuals, schools, and organizations that excel in their efforts to support volunteer service and civic participation, especially with respect to students in primary schools, secondary schools, and institutions of higher learning;

(ii) exchange information and ideas with interested individuals and organizations on ways to expand and improve programs developed pursuant to subsection 2(b)(i) of this order;

(iii) advise the Chief Executive Officer of the CNCS on broad dissemination, especially among schools and youth organizations, of information regarding recommended practices for the promotion of volunteer service and civic participation, and other relevant educational and promotional materials;

(iv) monitor and advise the Chief Executive Officer of the CNCS on the need for the enhancement of materials disseminated pursuant to subsection 2(b)(iii) of this order; and

(v) make recommendations from time to time to the President, through the Director of the USA Freedom Corps, on ways to promote and recognize out-

standing volunteer service and civic participation by individuals, schools, and organizations and to promote awareness of the ways in which Americans throughout our history have helped to meet the vital needs of their communities and Nation through volunteer service and civic participation.

SEC. 3. *Administration.* (a) Each Federal agency, to the extent permitted by law and subject to the availability of appropriations, shall furnish such information and assistance to the Council as the Council may, with the approval of the Director of the USA Freedom Corps, request.

(b) The members of the Council shall serve without compensation for their work on the Council. Members of the Council who are not officers or employees of the United States may receive travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the Government (5 U.S.C. 5701-5707).

(c) To the extent permitted by law, the Chief Executive Officer of the CNCS shall furnish the Council with necessary staff, supplies, facilities, and other administrative services and shall pay the expenses of the Council.

(d) The Chief Executive Officer of the CNCS shall appoint an Executive Director to head the staff of the Council.

(e) The Council, with the approval of the Chief Executive Officer of the CNCS, may establish subcommittees of the Council, consisting exclusively of members of the Council, as appropriate to aid the Council in carrying out its mission under this order.

SEC. 4. *General Provisions.* (a) Insofar as the Federal Advisory Committee Act, as amended (5 U.S.C. App.) (Act), may apply to the administration of any portion of this order, any functions of the President under the Act, except that of reporting to the Congress, shall be performed by the Chief Executive Officer of CNCS in accordance with the guidelines and procedures issued by the Administrator of General Services.

(b) Unless extended by the President, this order shall expire 2 years from the date of this order.

GEORGE W. BUSH.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5061, 12511 of this title.

§ 12651a. Board of Directors

(a) Composition

(1) In general

There shall be in the Corporation a Board of Directors (referred to in this division as the "Board") that shall be composed of—

(A) 15 members, including an individual between the ages of 16 and 25 who—

- (i) has served in a school-based or community-based service-learning program; or
- (ii) is or was a participant or a supervisor in a program;

to be appointed by the President, by and with the advice and consent of the Senate; and

(B) the ex officio nonvoting members described in paragraph (3).

(2) Qualifications

To the maximum extent practicable, the President shall appoint members—

(A) who have extensive experience in volunteer or service activities, which may include programs funded under one of the national service laws, and in State government;

(B) who represent a broad range of viewpoints;

(C) who are experts in the delivery of human, educational, environmental, or public safety services;

(D) so that the Board shall be diverse according to race, ethnicity, age, gender, and disability characteristics; and

(E) so that no more than 50 percent of the appointed members of the Board, plus 1 additional appointed member, are from a single political party.

(3) Ex officio members

The Secretary of Education, the Secretary of Health and Human Services, the Secretary of Labor, the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Housing and Urban Development, the Secretary of Defense, the Attorney General, the Director of the Peace Corps, the Administrator of the Environmental Protection Agency, and the Chief Executive Officer shall serve as ex officio nonvoting members of the Board.

(b) Officers

(1) Chairperson

The President shall appoint a member of the Board to serve as the initial Chairperson of the Board. Each subsequent Chairperson shall be elected by the Board from among its members.

(2) Vice Chairperson

The Board shall elect a Vice Chairperson from among its membership.

(3) Other officers

The Board may elect from among its membership such additional officers of the Board as the Board determines to be appropriate.

(c) Terms

Each appointed member of the Board shall serve for a term of 5 years, except that, as designated by the President—

(1) 3 of the members first appointed to the Board shall serve for a term of 1 year;

(2) 3 of the members first appointed to the Board shall serve for a term of 2 years;

(3) 3 of the members first appointed to the Board shall serve for a term of 3 years;

(4) 3 of the members first appointed to the Board shall serve for a term of 4 years; and

(5) 3 of the members first appointed to the Board shall serve for a term of 5 years.

(d) Vacancies

If a vacancy occurs on the Board, a new member shall be appointed by the President, by and with the advice and consent of the Senate, and serve for the remainder of the term for which the predecessor of such member was appointed. The vacancy shall not affect the power of the remaining members to execute the duties of the Board.

(Pub. L. 101-610, title I, §192, as added Pub. L. 103-82, title II, §202(a), Sept. 21, 1993, 107 Stat. 873.)

EFFECTIVE DATE

Section effective Sept. 21, 1993, see section 202(i)(2) of Pub. L. 103-82, set out as a note under section 12651 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12651b of this title.

§ 12651b. Authorities and duties of the Board of Directors

(a) Meetings

The Board shall meet not less often than 3 times each year. The Board shall hold additional meetings at the call of the Chairperson of the Board, or if 6 members of the Board request such meetings in writing.

(b) Quorum

A majority of the appointed members of the Board shall constitute a quorum.

(c) Authorities of officers

(1) Chairperson

The Chairperson of the Board may call and conduct meetings of the Board.

(2) Vice Chairperson

The Vice Chairperson of the Board may conduct meetings of the Board in the absence of the Chairperson.

(d) Expenses

While away from their homes or regular places of business on the business of the Board, members of such Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5 for persons employed intermittently in the Government service.

(e) Special Government employees

For purposes of the provisions of chapter 11 of part I of title 18, and any other provision of Federal law, a member of the Board (to whom such provisions would not otherwise apply except for this subsection) shall be a special Government employee.

(f) Status of members

(1) Tort claims

For the purposes of the tort claims provisions of chapter 171 of title 28, a member of the Board shall be considered to be a Federal employee.

(2) Other claims

A member of the Board shall have no personal liability under Federal law with respect to any claim arising out of or resulting from any act or omission by such person, within the scope of the service of the member on the Board, in connection with any transaction involving the provision of financial assistance by the Corporation. This paragraph shall not be construed to limit personal liability for criminal acts or omissions, willful or malicious misconduct, acts or omissions for private gain, or any other act or omission outside the scope of the service of such member on the Board.

(3) Effect on other law

This subsection shall not be construed—

(A) to affect any other immunities and protections that may be available to such member under applicable law with respect to such transactions;

(B) to affect any other right or remedy against the Corporation, against the United

States under applicable law, or against any person other than a member of the Board participating in such transactions; or

(C) to limit or alter in any way the immunities that are available under applicable law for Federal officials and employees not described in this subsection.

(g) Duties

The Board shall—

(1) review and approve the strategic plan described in section 12651d(b)(1) of this title, and annual updates of the plan;

(2) review and approve the proposal described in section 12651d(b)(2)(A) of this title, with respect to the grants, allotments, contracts, financial assistance, payment, and positions referred to in such section;

(3) review and approve the proposal described in section 12651d(b)(3)(A) of this title, regarding the regulations, standards, policies, procedures, programs, and initiatives referred to in such section;

(4) review and approve the evaluation plan described in section 12651d(b)(4)(A) of this title;

(5)(A) review, and advise the Chief Executive Officer regarding, the actions of the Chief Executive Officer with respect to the personnel of the Corporation, and with respect to such standards, policies, procedures, programs, and initiatives as are necessary or appropriate to carry out the national service laws; and

(B) inform the Chief Executive Officer of any aspects of the actions of the Chief Executive Officer that are not in compliance with the annual strategic plan referred to in paragraph (1), the proposals referred to in paragraphs (2) and (3), or the plan referred to in paragraph (4), or are not consistent with the objectives of the national service laws;

(6) receive any report as provided under subsection (b), (c), or (d) of section 8E¹ of the Inspector General Act of 1978;

(7) make recommendations relating to a program of research for the Corporation with respect to national and community service programs, including service-learning programs;

(8) advise the President and the Congress concerning developments in national and community service that merit the attention of the President and the Congress;

(9) ensure effective dissemination of information regarding the programs and initiatives of the Corporation;

(10) notwithstanding any other provision of law, make grants to or contracts with Federal or other public departments or agencies and private nonprofit organizations for the assignment or referral of volunteers under the provisions of the Domestic Volunteer Service Act of 1973 [42 U.S.C. 4950 et seq.] (except as provided in section 108 of the Domestic Volunteer Service Act of 1973 [42 U.S.C. 4958]), which may provide that the agency or organization shall pay all or a part of the costs of the program; and

(11) prepare and make recommendations to the Congress and the President for changes in the national service laws resulting from the

¹ See References in Text note below.

studies and demonstrations the Chief Executive Officer is required to carry out under section 12651d(b)(10) of this title, which recommendations shall be submitted to the Congress and President not later than September 30, 1995.

(h) Administration

The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply with respect to the Board.

(i) Limitation on participation

All employees and officers of the Corporation shall recuse themselves from decisions that would constitute conflicts of interest.

(j) Coordination with other Federal activities

As part of the agenda of meetings of the Board under subsection (a) of this section, the Board shall review projects and programs conducted or funded by the Corporation under the national service laws to improve the coordination between such projects and programs, and the activities of other Federal agencies that deal with the individuals and communities participating in or benefiting from such projects and programs. The ex officio members of the Board specified in section 12651a(a)(3) of this title shall jointly plan, implement, and fund activities in connection with projects and programs conducted under the national service laws to ensure that Federal efforts attempt to address the total needs of participants in such programs and projects, their communities, and the persons and communities the participants serve.

(Pub. L. 101-610, title I, §192A, as added and amended Pub. L. 103-82, title II, §§202(a), 203(a)(1)(B), (2), Sept. 21, 1993, 107 Stat. 875, 891.)

REFERENCES IN TEXT

Section 8E of the Inspector General Act of 1978, referred to in subsec. (g)(6), is section 8E of Pub. L. 95-452, as added by Pub. L. 103-82, title II, §202(g)(1), Sept. 21, 1993, 107 Stat. 889, which was renumbered section 8F of the Act by Pub. L. 103-204, §23(a)(3), Dec. 17, 1993, 107 Stat. 2408, and is set out in the Appendix to Title 5, Government Organization and Employees.

The Domestic Volunteer Service Act of 1973, referred to in subsec. (g)(10), is Pub. L. 93-113, Oct. 1, 1973, 87 Stat. 394, as amended, which is classified principally to chapter 66 (§4950 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4950 of this title and Tables.

The Federal Advisory Committee Act, referred to in subsec. (h), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5.

AMENDMENTS

1993—Subsec. (g)(5)(A), (B). Pub. L. 103-82, §203(a)(1)(B), which directed amendment of section 192A(g)(5) of subtitle I of the National and Community Service Act of 1990 by substituting “the national service laws” for “this chapter”, was executed to subsec. (g)(5) of this section, which is section 192A of subtitle G of title I of the National Community Service Act of 1990, to reflect the probable intent of Congress.

Subsec. (g)(9). Pub. L. 103-82, §203(a)(2)(A), struck out “and” at end.

Subsec. (g)(10). Pub. L. 103-82, §203(a)(2)(C), added par. (10). Former par. (10) redesignated (11).

Pub. L. 103-82, §203(a)(1)(B), which directed amendment of section 192A(g)(10) of subtitle I of the National and Community Service Act of 1990 by substituting “the national service laws” for “this chapter”, was executed to subsec. (g)(10) of this section, which is section

192A of subtitle G of title I of the National Community Service Act of 1990, to reflect the probable intent of Congress.

Subsec. (g)(11). Pub. L. 103-82, §203(a)(2)(B), redesignated par. (10) as (11).

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 203(a)(1)(B), (2) of Pub. L. 103-82 effective Apr. 4, 1994, see section 203(d) of Pub. L. 103-82, set out as a note under section 12651 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1993, see section 202(i) of Pub. L. 103-82, set out as a note under section 12651 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12572, 12651d, 12651f, 12651g of this title.

§ 12651c. Chief Executive Officer

(a) Appointment

The Corporation shall be headed by an individual who shall serve as Chief Executive Officer of the Corporation, and who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) Compensation

The Chief Executive Officer shall be compensated at the rate provided for level III of the Executive Schedule under section 5314 of title 5.

(c) Regulations

The Chief Executive Officer shall prescribe such rules and regulations as are necessary or appropriate to carry out the national service laws.

(Pub. L. 101-610, title I, §193, as added and amended Pub. L. 103-82, title II, §§202(a), 203(a)(1)(B), Sept. 21, 1993, 107 Stat. 877, 891.)

AMENDMENTS

1993—Subsec. (c). Pub. L. 103-82, §203(a)(1)(B), which directed amendment of section 193(c) of subtitle I of the National and Community Service Act of 1990 by substituting “the national service laws” for “this chapter”, was executed to subsec. (c) of this section, which is section 193 of subtitle G of title I of the National Community Service Act of 1990, to reflect the probable intent of Congress.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 203(a)(1)(B) of Pub. L. 103-82 effective Apr. 4, 1994, see section 203(d) of Pub. L. 103-82, set out as a note under section 12651 of this title.

EFFECTIVE DATE

Section effective Sept. 21, 1993, see section 202(i)(2) of Pub. L. 103-82, set out as a note under section 12651 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5061, 12511 of this title.

§ 12651d. Authorities and duties of the Chief Executive Officer

(a) General powers and duties

The Chief Executive Officer shall be responsible for the exercise of the powers and the discharge of the duties of the Corporation that are not reserved to the Board, and shall have au-

thority and control over all personnel of the Corporation, except as provided in section 8E¹ of the Inspector General Act of 1978.

(b) Duties

In addition to the duties conferred on the Chief Executive Officer under any other provision of the national service laws, the Chief Executive Officer shall—

(1) prepare and submit to the Board a strategic plan every 3 years, and annual updates of the plan, for the Corporation with respect to the major functions and operations of the Corporation;

(2)(A) prepare and submit to the Board a proposal with respect to such grants and allotments, contracts, other financial assistance, and designation of positions as approved national service positions, as are necessary or appropriate to carry out the national service laws; and

(B) after receiving and reviewing an approved proposal under section 12651b(g)(2) of this title, make such grants and allotments, enter into such contracts, award such other financial assistance, make such payments (in lump sum or installments, and in advance or by way of reimbursement, and in the case of financial assistance otherwise authorized under the national service laws, with necessary adjustments on account of overpayments and underpayments), and designate such positions as approved national service positions as are necessary or appropriate to carry out the national service laws;

(3)(A) prepare and submit to the Board a proposal regarding, the regulations established under section 12651f(b)(3)(A) of this title, and such other standards, policies, procedures, programs, and initiatives as are necessary or appropriate to carry out the national service laws; and

(B) after receiving and reviewing an approved proposal under section 12651b(g)(3) of this title—

(i) establish such standards, policies, and procedures as are necessary or appropriate to carry out the national service laws; and

(ii) establish and administer such programs and initiatives as are necessary or appropriate to carry out the national service laws;

(4)(A) prepare and submit to the Board a plan for the evaluation of programs established under the national service laws, in accordance with section 12639 of this title; and

(B) after receiving an approved proposal under section 12651b(g)(4) of this title—

(i) establish measurable performance goals and objectives for such programs, in accordance with section 12639 of this title; and

(ii) provide for periodic evaluation of such programs to assess the manner and extent to which the programs achieve the goals and objectives, in accordance with such section;

(5) consult with appropriate Federal agencies in administering the programs and initiatives;

(6) suspend or terminate payments and positions described in paragraph (2)(B), in accordance with section 12636 of this title;

(7) prepare and submit to the Board an annual report, and such interim reports as may be necessary, describing the major actions of the Chief Executive Officer with respect to the personnel of the Corporation, and with respect to such standards, policies, procedures, programs, and initiatives;

(8) inform the Board of, and provide an explanation to the Board regarding, any substantial differences regarding the implementation of the national service laws between—

(A) the actions of the Chief Executive Officer; and

(B)(i) the strategic plan approved by the Board under section 12651b(g)(1) of this title;

(ii) the proposals approved by the Board under paragraph (2) or (3) of section 12651b(g) of this title; or

(iii) the evaluation plan approved by the Board under section 12651b(g)(4) of this title;

(9) prepare and submit to the appropriate committees of Congress an annual report, and such interim reports as may be necessary, describing—

(A) the services referred to in paragraph (1), and the money and property referred to in paragraph (2), of section 12651g(a) of this title that have been accepted by the Corporation;

(B) the manner in which the Corporation used or disposed of such services, money, and property; and

(C) information on the results achieved by the programs funded under the national service laws during the year preceding the year in which the report is prepared;

(10) provide for studies (including the evaluations described in subsection (f) of this section) and demonstrations that evaluate, and prepare and submit to the Board by June 30, 1995, a report containing recommendations regarding, issues related to—

(A) the administration and organization of programs authorized under the national service laws or under Public Law 91-378 [16 U.S.C. 1701 et seq.] (referred to in this subparagraph as “service programs”), including—

(i) whether the State and national priorities designed to meet the unmet human, education, environmental, or public safety needs described in section 12572(c)(1) of this title are being addressed by this chapter;

(ii) the manner in which—

(I) educational and other outcomes of both stipended and nonstipended service and service-learning are defined and measured in such service programs; and

(II) such outcomes should be defined and measured in such service programs;

(iii) whether stipended service programs, and service programs providing educational benefits in return for service, should focus on economically disadvantaged individuals or at-risk youth or whether such programs should include a

¹ See References in Text note below.

mix of individuals, including individuals from middle- and upper-income families;

(iv) the role and importance of stipends and educational benefits in achieving desired outcomes in the service programs;

(v) the potential for cost savings and coordination of support and oversight services from combining functions performed by ACTION State offices and State Commissions;

(vi) the implications of the results from such studies and demonstrations for authorized funding levels for the service programs; and

(vii) other issues that the Director determines to be relevant to the administration and organization of the service programs; and

(B) the number, potential consolidation, and future organization of national service or domestic volunteer service programs that are authorized under Federal law, including VISTA, service corps assisted under division C of this subchapter and other programs authorized by this chapter, programs administered by the Public Health Service, the Department of Defense, or other Federal agencies, programs regarding teacher corps, and programs regarding work-study and higher education loan forgiveness or forbearance programs authorized by the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.) related to community service; and

(11) for purposes of section 12638(d)(6)(B) of this title, issue regulations to waive the disqualification of members of the Board and members of the State Commissions selectively in a random, nondiscretionary manner and only to the extent necessary to establish the quorum involved, including rules that forbid each member of the Board and each voting member of a State Commission to participate in any discussion or decision regarding the provision of assistance or approved national service positions, or the continuation, suspension, or termination of such assistance or such positions, to any program or entity of which such member of the Board or such member of the State Commission is, or in the 1-year period before the submission of the application referred to in such section was, an officer, director, trustee, full-time volunteer, or employee.

(c) Powers

In addition to the authority conferred on the Chief Executive Officer under any other provision of the national service laws, the Chief Executive Officer may—

(1) establish, alter, consolidate, or discontinue such organizational units or components within the Corporation as the Chief Executive Officer considers necessary or appropriate, consistent with Federal law, and shall, to the maximum extent practicable, consolidate such units or components of the divisions of the Corporation described in section 12651e(a)(3) of this title as may be appropriate to enable the two divisions to coordinate common support functions;

(2) with the approval of the President, arrange with and reimburse the heads of other Federal agencies for the performance of any of the provisions of the national service laws;

(3) with their consent, utilize the services and facilities of Federal agencies with or without reimbursement, and, with the consent of any State, or political subdivision of a State, accept and utilize the services and facilities of the agencies of such State or subdivisions without reimbursement;

(4) allocate and expend funds made available under the national service laws;

(5) disseminate, without regard to the provisions of section 3204 of title 39, data and information, in such form as the Chief Executive Officer shall determine to be appropriate to public agencies, private organizations, and the general public;

(6) collect or compromise all obligations to or held by the Chief Executive Officer and all legal or equitable rights accruing to the Chief Executive Officer in connection with the payment of obligations in accordance with chapter 37 of title 31 (commonly known as the “Federal Claims Collection Act of 1966”);

(7) file a civil action in any court of record of a State having general jurisdiction or in any district court of the United States, with respect to a claim arising under this chapter;

(8) exercise the authorities of the Corporation under section 12651g of this title;

(9) consolidate the reports to Congress required under the national service laws, and the report required under section 9106 of title 31, into a single report, and submit the report to Congress on an annual basis; and

(10) generally perform such functions and take such steps consistent with the objectives and provisions of the national service laws, as the Chief Executive Officer determines to be necessary or appropriate to carry out such provisions.

(d) Delegation

(1) “Function” defined

As used in this subsection, the term “function” means any duty, obligation, power, authority, responsibility, right, privilege, activity, or program.

(2) In general

Except as otherwise prohibited by law or provided in the national service laws, the Chief Executive Officer may delegate any function under the national service laws, and authorize such successive redelegations of such function as may be necessary or appropriate. No delegation of a function by the Chief Executive Officer under this subsection or under any other provision of the national service laws shall relieve such Chief Executive Officer of responsibility for the administration of such function.

(3) Function of Board

The Chief Executive Officer may not delegate a function of the Board without the permission of the Board.

(e) Actions

In an action described in subsection (c)(7) of this section—

(1) a district court referred to in such subsection shall have jurisdiction of such a civil action without regard to the amount in controversy;

(2) such an action brought by the Chief Executive Officer shall survive notwithstanding any change in the person occupying the office of Chief Executive Officer or any vacancy in that office;

(3) no attachment, injunction, garnishment, or other similar process, mesne or final, shall be issued against the Chief Executive Officer or the Board or property under the control of the Chief Executive Officer or the Board; and

(4) nothing in this section shall be construed to except litigation arising out of activities under this chapter from the application of sections 509, 517, 547, and 2679 of title 28.

(f) Evaluations

(1) Evaluation of living allowance

The Corporation shall arrange for an independent evaluation to determine the levels of living allowances paid in all programs under divisions C and I of this subchapter, individually, by State, and by region. Such evaluation shall determine the effects that such living allowances have had on the ability of individuals to participate in such programs.

(2) Evaluation of success of investment in national service

(A) Evaluation required

The Corporation shall arrange for the independent evaluation of the operation of division C of this subchapter to determine the levels of participation of economically disadvantaged individuals in national service programs carried out or supported using assistance provided under section 12571 of this title.

(B) Period covered by evaluation

The evaluation required by this paragraph shall cover the period beginning on the date the Corporation first makes a grant under section 12571 of this title, and ending on a date that is as close as is practicable to the date specified in subsection (b)(10) of this section.

(C) Income levels of participants

The evaluating entity shall determine the total income of each participant who serves, during the period covered by the evaluation, in a national service program carried out or supported using assistance provided under section 12571 of this title or in an approved national service position. The total income of the participant shall be determined as of the date the participant was first selected to participate in such a program and shall include family total income unless the evaluating entity determines that the participant was independent at the time of selection.

(D) Assistance for distressed areas

The evaluating entity shall also determine the amount of assistance provided under section 12571 of this title during the period covered by the report that has been expended for projects conducted in areas of economic

distress described in section 12585(c)(6) of this title.

(E) Definitions

As used in this paragraph:

(i) Independent

The term "independent" has the meaning given the term in section 480(d) of the Higher Education Act of 1965 (20 U.S.C. 1087vv(d)).

(ii) Total income

The term "total income" has the meaning given the term in section 480(a) of the Higher Education Act of 1965 (20 U.S.C. 1087vv(a)).

(g) Recruitment and public awareness functions

(1) Effort

The Chief Executive Officer shall ensure that the Corporation, in carrying out the recruiting and public awareness functions of the Corporation, shall expend at least the level of effort on recruitment and public awareness activities related to the programs carried out under the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4950 et seq.) as ACTION expended on recruitment and public awareness activities related to programs under the Domestic Volunteer Service Act of 1973 during fiscal year 1993.

(2) Personnel

The Chief Executive Officer shall assign or hire, as necessary, such additional national, regional, and State personnel to carry out such recruiting and public awareness functions as may be necessary to ensure that such functions are carried out in a timely and effective manner. The Chief Executive Officer shall give priority in the hiring of such additional personnel to individuals who have formerly served as volunteers in the programs carried out under the Domestic Volunteer Service Act of 1973 [42 U.S.C. 4950 et seq.] or similar programs, and to individuals who have specialized experience in the recruitment of volunteers.

(3) Funds

For the first fiscal year after the effective date of this subsection, and for each fiscal year thereafter, for the purpose of carrying out such recruiting and public awareness functions, the Chief Executive Officer shall obligate not less than 1.5 percent of the amounts appropriated for the fiscal year under section 501(a) of the Domestic Volunteer Service Act of 1973 [42 U.S.C. 5081(a)].

(Pub. L. 101-610, title I, §193A, as added and amended Pub. L. 103-82, title II, §§202(a), 203(a)(1)(B), (3), Sept. 21, 1993, 107 Stat. 877, 891; Pub. L. 103-304, §3(b)(2), Aug. 23, 1994, 108 Stat. 1567.)

REFERENCES IN TEXT

Section 8E of the Inspector General Act of 1978, referred to in subsec. (a), is section 8E of Pub. L. 95-452, as added by Pub. L. 103-82, title II, §202(g)(1), Sept. 21, 1993, 107 Stat. 889, which was renumbered section 8F of the Act by Pub. L. 103-204, §23(a)(3), Dec. 17, 1993, 107 Stat. 2408, and is set out in the Appendix to Title 5, Government Organization and Employees.

Public Law 91-378, referred to in subsec. (b)(10)(A), is Pub. L. 91-378, Aug. 13, 1970, 84 Stat. 794, as amended, popularly known as the Youth Conservation Corps Act of 1970, which is classified generally to chapter 37 (§ 1701 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of Title 16 and Tables.

This chapter, referred to in subsecs. (b)(10)(A)(i), (B), (c)(7), and (e)(4), was in the original "this Act", meaning Pub. L. 101-610, Nov. 16, 1990, 104 Stat. 3127, as amended, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 12501 of this title and Tables.

The Higher Education Act of 1965, referred to in subsec. (b)(10)(B), is Pub. L. 89-329, Nov. 8, 1965, 79 Stat. 1219, as amended, which is classified principally to chapter 28 (§ 1001 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

The Domestic Volunteer Service Act of 1973, referred to in subsec. (g), is Pub. L. 93-113, Oct. 1, 1973, 87 Stat. 394, as amended, which is classified principally to chapter 66 (§ 4950 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4950 of this title and Tables.

For the effective date of this subsection, referred to in subsec. (g)(3), see Effective Date of 1993 Amendment note below.

AMENDMENTS

1994—Subsec. (g). Pub. L. 103-304 made technical amendment to directory language of Pub. L. 103-82, § 203(a)(3). See 1993 Amendment note below.

1993—Subsecs. (b) to (d). Pub. L. 103-82, § 203(a)(1)(B), which directed amendment of section 193A of subtitle I of the National and Community Service Act of 1990 by substituting "the national service laws" for "this chapter" was executed wherever appearing in the following provisions of this section, which is section 193A of subtitle G of title I of the National Community Service Act of 1990, to reflect the probable intent of Congress: introductory provisions and pars. (2) to (4)(A), (8), and (9)(C) of subsec. (b), introductory provisions and pars. (2), (4), (9), and (10) of subsec. (c), and subsec. (d)(2).

Subsec. (g). Pub. L. 103-82, § 203(a)(3), as amended by Pub. L. 103-304, added subsec. (g).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-304 effective as of Oct. 1, 1993, see section 3(b)(10)(B) of Pub. L. 103-304, set out as a note under section 4953 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 203(a)(1)(B), (3) of Pub. L. 103-82 effective Apr. 4, 1994, see section 203(d) of Pub. L. 103-82, set out as a note under section 12651 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1993, see section 202(i) of Pub. L. 103-82, set out as a note under section 12651 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12581, 12638, 12651b of this title.

§ 12651e. Officers

(a) Managing Directors

(1) In general

There shall be in the Corporation 2 Managing Directors, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall report to the Chief Executive Officer.

(2) Compensation

The Managing Directors shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5.

(3) Duties

The Corporation shall determine the programs for which the Managing Directors shall have primary responsibility and shall establish the divisions of the Corporation to be headed by the Managing Directors.

(b) Inspector General

(1) Office

There shall be in the Corporation an Office of the Inspector General.

(2) Appointment

The Office shall be headed by an Inspector General, appointed in accordance with the Inspector General Act of 1978 [5 App. U.S.C.].

(3) Compensation

The Inspector General shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5.

(c) Chief Financial Officer

(1) Office

There shall be in the Corporation a Chief Financial Officer, who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) Compensation

The Chief Financial Officer shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5.

(3) Duties

The Chief Financial Officer shall—

(A) report directly to the Chief Executive Officer regarding financial management matters;

(B) oversee all financial management activities relating to the programs and operations of the Corporation;

(C) develop and maintain an integrated accounting and financial management system for the Corporation, including financial reporting and internal controls;

(D) develop and maintain any joint financial management systems with the Department of Education necessary to carry out the programs of the Corporation; and

(E) direct, manage, and provide policy guidance and oversight of the financial management personnel, activities, and operations of the Corporation.

(d) Assistant Directors for VISTA and National Senior Volunteer Corps

(1) Appointment

One of the Managing Directors appointed under subsection (a) of this section shall, in accordance with applicable provisions of title 5, appoint 4 Assistant Directors who shall report directly to such Managing Director, of which—

(A) 1 Assistant Director shall be responsible for programs carried out under parts A

and B of title I of the Domestic Volunteer Service Act of 1973 [42 U.S.C. 4951 et seq., 4971 et seq.] (the Volunteers in Service to America (VISTA) program) and other anti-poverty programs under title I of that Act [42 U.S.C. 4951 et seq.];

(B) 1 Assistant Director shall be responsible for programs carried out under part A of title II of that Act [42 U.S.C. 5001 et seq.] (relating to the Retired Senior Volunteer Program);

(C) 1 Assistant Director shall be responsible for programs carried out under part B of title II of that Act [42 U.S.C. 5011 et seq.] (relating to the Foster Grandparent Program); and

(D) 1 Assistant Director shall be responsible for programs carried out under part C of title II of that Act [42 U.S.C. 5013] (relating to the Senior Companion Program).

(2) Effective date for exercise of authority

Each Assistant Director appointed pursuant to paragraph (1) may exercise the authority assigned to each such Director only after the effective date of section 203(c)(2) of the National and Community Service Trust Act of 1993.

(Pub. L. 101-610, title I, §194, as added Pub. L. 103-82, title II, §202(a), Sept. 21, 1993, 107 Stat. 882.)

REFERENCES IN TEXT

The Inspector General Act of 1978, referred to in subsec. (b)(2), is Pub. L. 95-452, Oct. 12, 1978, 92 Stat. 1101, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

The Domestic Volunteer Service Act of 1973, referred to in subsec. (d)(1), is Pub. L. 93-113, Oct. 1, 1973, 87 Stat. 394, as amended. Title I of the Act is classified generally to subchapter I (§4951 et seq.) of chapter 66 of this title. Parts A and B of title I of the Act are classified generally to parts A (§4951 et seq.) and B (§4971 et seq.), respectively, of subchapter I of chapter 66 of this title. Parts A, B, and C of title II of the Act are classified generally to parts A (§5001 et seq.), B (§5011 et seq.), and C (§5013 et seq.), respectively, of subchapter II of chapter 66 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4950 of this title and Tables.

Section 203(c)(2) of the National and Community Service Trust Act of 1993, referred to in subsec. (d)(2), is section 203(c)(2) of Pub. L. 103-82, which is set out as a note under section 12651 of this title. For the effective date of section 203(c)(2) of this Act, see section 203(d) of Pub. L. 103-82, set out as an Effective Date of 1993 Amendment note under section 12651 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1993, see section 202(i) of Pub. L. 103-82, set out as a note under section 12651 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4952, 12651d, 12651f of this title.

§ 12651f. Employees, consultants, and other personnel

(a) Employees

Except as provided in subsection (b) of this section, section 12651e(d) of this title, and section 8E¹ of the Inspector General Act of 1978, the

Chief Executive Officer shall, in accordance with applicable provisions of title 5, appoint and determine the compensation of such employees as the Chief Executive Officer determines to be necessary to carry out the duties of the Corporation.

(b) Alternative personnel system

(1) Authority

The Chief Executive Officer may designate positions in the Corporation as positions to which the Chief Executive Officer may make appointments, and for which the Chief Executive Officer may determine compensation, without regard to the provisions of title 5 governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, to the extent the Chief Executive Officer determines that such a designation is appropriate and desirable to further the effective operation of the Corporation. The Chief Executive Officer may provide for appointments to such positions to be made on a limited term basis.

(2) Appointment in the competitive service after employment under alternative personnel system

The Director of the Office of Personnel Management may grant competitive status for appointment to the competitive service, under such conditions as the Director may prescribe, to an employee who is appointed under this subsection and who is separated from the Corporation (other than by removal for cause).

(3) Selection and compensation system

(A) Establishment of system

The Chief Executive Officer, after obtaining the approval of the Director of the Office of Personnel Management, shall issue regulations establishing a selection and compensation system for employees of the Corporation appointed under paragraph (1). In issuing such regulations, the Chief Executive Officer shall take into consideration the need for flexibility in such a system.

(B) Application

The Chief Executive Officer shall appoint and determine the compensation of employees in accordance with the selection and compensation system established under subparagraph (A).

(C) Selection

The system established under subparagraph (A) shall provide for the selection of employees—

- (i) through a competitive process; and
- (ii) on the basis of the qualifications of applicants and the requirements of the positions.

(D) Compensation

The system established under subparagraph (A) shall include a scheme for the classification of positions in the Corporation. The system shall require that the compensation of an employee be determined in

¹ See References in Text note below.

part on the basis of the job performance of the employee, and in a manner consistent with the principles described in section 5301 of title 5. The rate of compensation for each employee compensated under the system shall not exceed the annual rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5.

(c) Corporation representative in each State

(1) Designation of representative

The Corporation shall designate 1 employee of the Corporation for each State or group of States to serve as the representative of the Corporation in the State or States and to assist the Corporation in carrying out the activities described in the national service laws in the State or States.

(2) Duties

The representative designated under this subsection for a State or group of States shall serve as the liaison between—

(A) the Corporation and the State Commission that is established in the State or States;

(B) the Corporation and any subdivision of a State, Indian tribe, public or private nonprofit organization, or institution of higher education, in the State or States, that is awarded a grant under section 12571 of this title directly from the Corporation; and

(C) after the effective date of section 203(c)(2) of the National and Community Service Trust Act of 1993, the State Commission and the Corporation employee responsible for programs under the Domestic Volunteer Service Act of 1973 [42 U.S.C. 4950 et seq.] in the State, if the employee is not the representative described in paragraph (1) for the State.

(3) Member of State Commission

The representative designated under this subsection for a State or group of States shall also serve as a member of the State Commission established in the State or States, as described in section 12638(c)(3) of this title.

(4) Compensation

If the employee designated under paragraph (1) is an employee whose appointment was made pursuant to subsection (b) of this section, the rate of compensation for such employee may not exceed the maximum rate of basic pay payable for GS-13 of the General Schedule under section 5332 of title 5.

(d) Consultants

The Chief Executive Officer may procure the temporary and intermittent services of experts and consultants and compensate the experts and consultants in accordance with section 3109(b) of title 5.

(e) Details of personnel

The head of any Federal department or agency may detail on a reimbursable basis, or on a non-reimbursable basis for not to exceed 180 calendar days during any fiscal year, as agreed upon by the Chief Executive Officer and the head of the Federal agency, any of the personnel of that department or agency to the Corporation to assist

the Corporation in carrying out the duties of the Corporation under the national service laws. Any detail shall not interrupt or otherwise affect the civil service status or privileges of the Federal employee.

(f) Advisory committees

(1) Establishment

The Chief Executive Officer, acting upon the recommendation of the Board, may establish advisory committees in the Corporation to advise the Board with respect to national service issues, such as the type of programs to be established or assisted under the national service laws, priorities and criteria for such programs, and methods of conducting outreach for, and evaluation of, such programs.

(2) Composition

Such an advisory committee shall be composed of members appointed by the Chief Executive Officer, with such qualifications as the Chief Executive Officer may specify.

(3) Expenses

Members of such an advisory committee may be allowed travel expenses as described in section 12651b(d) of this title.

(4) Staff

(A) In general

Except as provided in subparagraph (B), the Chief Executive Officer is authorized to appoint and fix the compensation of such staff as the Chief Executive Officer determines to be necessary to carry out the functions of the advisory committee, without regard to—

(i) the provisions of title 5 governing appointments in the competitive service; and

(ii) the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

(B) Compensation

If a member of the staff appointed under subparagraph (A) was appointed without regard to the provisions described in clauses (i) and (ii) of subparagraph (A), the rate of compensation for such member may not exceed the maximum rate of basic pay payable for GS-13 of the General Schedule under section 5332 of title 5.

(Pub. L. 101-610, title I, §195, as added and amended Pub. L. 103-82, title II, §§202(a), 203(a)(1)(B), Sept. 21, 1993, 107 Stat. 883, 891.)

REFERENCES IN TEXT

Section 8E of the Inspector General Act of 1978, referred to in subsec. (a), is section 8E of Pub. L. 95-452, as added by Pub. L. 103-82, title II, §202(g)(1), Sept. 21, 1993, 107 Stat. 889, which was renumbered section 8F of the Act by Pub. L. 103-204, §23(a)(3), Dec. 17, 1993, 107 Stat. 2408, and is set out in the Appendix to Title 5, Government Organization and Employees.

The provisions of title 5 governing appointments in the competitive service, referred to in subsecs. (b)(1) and (f)(4)(A)(i), are classified generally to section 3301 et seq. of Title 5.

Section 203(c)(2) of the National and Community Service Trust Act of 1993, referred to in subsec. (c)(2)(C), is section 203(c)(2) of Pub. L. 103-82, which is

set out as a note under section 12651 of this title. For the effective date of section 203(c)(2) of this Act, see section 203(d) of Pub. L. 103-82, set out as an Effective Date of 1993 Amendment note under section 12651 of this title.

The Domestic Volunteer Service Act of 1973, referred to in subsec. (c)(2)(C), is Pub. L. 93-113, Oct. 1, 1973, 87 Stat. 394, as amended, which is classified generally to chapter 66 (§4950 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4950 of this title and Tables.

PRIOR PROVISIONS

A prior section 195 of Pub. L. 101-610 was renumbered section 151 by Pub. L. 103-82 and is classified to section 12611 of this title.

AMENDMENTS

1993—Subsecs. (c)(1), (e), Pub. L. 103-82, §203(a)(1)(B), which directed amendment of section 195(c) and (e) of subtitle I of the National and Community Service Act of 1990 by substituting “the national service laws” for “this chapter”, was executed to subsecs. (c)(1) and (e) of this section, which is section 195 of subtitle G of title I of the National Community Service Act of 1990, to reflect the probable intent of Congress.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 203(a)(1)(B) of Pub. L. 103-82 effective Apr. 4, 1994, see section 203(d) of Pub. L. 103-82, set out as a note under section 12651 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1993, see section 202(i) of Pub. L. 103-82, set out as a note under section 12651 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5011, 12638, 12651d, 12651h of this title.

§ 12651g. Administration

(a) Donations

(1) Services

(A) Volunteers

Notwithstanding section 1342 of title 31, the Corporation may solicit and accept the voluntary services of individuals to assist the Corporation in carrying out the duties of the Corporation under the national service laws, and may provide to such individuals the travel expenses described in section 12651b(d) of this title.

(B) Limitation

Such a volunteer shall not be considered to be a Federal employee and shall not be subject to the provisions of law relating to Federal employment, including those relating to hours of work, rates of compensation, leave, unemployment compensation, and Federal employee benefits, except that—

(i) for the purposes of the tort claims provisions of chapter 171 of title 28, a volunteer under this division shall be considered to be a Federal employee;

(ii) for the purposes of subchapter I of chapter 81 of title 5 relating to compensation to Federal employees for work injuries, volunteers under this division shall be considered to be employees, as defined in section 8101(1)(B) of title 5 and the provisions of such subchapter shall apply; and

(iii) for purposes of the provisions of chapter 11 of part I of title 18, such a volunteer (to whom such provisions would not otherwise apply except for this subsection) shall be a special Government employee.

(C) Inherently governmental function

(i) In general

Such a volunteer shall not carry out an inherently governmental function.

(ii) Regulations

The Chief Executive Officer shall promulgate regulations to carry out this subparagraph.

(iii) “Inherently governmental function” defined

As used in this subparagraph, the term “inherently governmental function” means any activity that is so intimately related to the public interest as to mandate performance by an officer or employee of the Federal Government, including an activity that requires either the exercise of discretion in applying the authority of the Government or the use of value judgment in making a decision for the Government.

(2) Property

(A) In general

The Corporation may solicit, accept, hold, administer, use, and dispose of, in furtherance of the purposes of the national service laws, donations of any money or property, real, personal, or mixed, tangible or intangible, received by gift, devise, bequest, or otherwise. Donations accepted under this subparagraph shall be used as nearly as possible in accordance with the terms, if any, of such donation.

(B) Status of contribution

Any donation accepted under subparagraph (A) shall be considered to be a gift, devise, or bequest to, or for the use of, the United States.

(C) Rules

The Chief Executive Officer shall establish written rules to ensure that the solicitation, acceptance, holding, administration, and use of property described in subparagraph (A)—

(i) will not reflect unfavorably upon the ability of the Corporation, or of any officer or employee of the Corporation, to carry out the responsibilities or official duties of the Corporation in a fair and objective manner; and

(ii) will not compromise the integrity of the programs of the Corporation or any official or employee of the Corporation involved in such programs.

(D) Disposition

Upon completion of the use by the Corporation of any property accepted pursuant to subparagraph (A) (other than money or monetary proceeds from sales of property so accepted), such completion shall be reported to the General Services Administration and such property shall be disposed of in accord-

ance with title II of the Federal Property and Administrative Services Act of 1949.¹

(3) Volunteer

As used in this subsection, the term “volunteer” does not include a participant.

(b) Contracts

Subject to the Federal Property and Administrative Services Act of 1949,¹ the Corporation may enter into contracts, and cooperative and interagency agreements, with Federal and State agencies, private firms, institutions, and individuals to conduct activities necessary to assist the Corporation in carrying out the duties of the Corporation under the national service laws.

(c) Office of Management and Budget

Appropriate circulars of the Office of Management and Budget shall apply to the Corporation.

(Pub. L. 101-610, title I, §196, as added Pub. L. 103-82, title II, §§202(a), 203(a)(1)(B), Sept. 21, 1993, 107 Stat. 885, 891.)

REFERENCES IN TEXT

The Federal Property and Administrative Services Act of 1949, referred to in subsecs. (a)(2)(D) and (b), is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Except for title III of the Act, which is classified generally to subchapter IV (§251 et seq.) of chapter 4 of Title 41, Public Contracts, the Act was repealed and reenacted by Pub. L. 107-217, §§1, 6(b), Aug. 21, 2002, 116 Stat. 1062, 1304, as chapters 1 to 11 of Title 40, Public Buildings, Property, and Works. Title II of the Act, which was classified principally to subchapter II (§§481, 483, 484, 485, 486, 487 to 490, 491, 492) of chapter 10 and section 758 of former Title 40, was repealed by Pub. L. 107-217, §6(b), Aug. 21, 2002, 116 Stat. 1304, the first section of which enacted Title 40. For disposition of sections of former Title 40 to revised Title 40, see Table preceding section 101 of Title 40. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1993—Subsecs. (a)(1)(A), (2)(A), (b). Pub. L. 103-82, §203(a)(1)(B), which directed amendment of section 196(a) and (b) of subtitle I of the National and Community Service Act of 1990 by substituting “the national service laws” for “this chapter”, was executed to subsecs. (a)(1)(A), (2)(A) and (b) of this section, which is section 196 of subtitle G of title I of the National Community Service Act of 1990, to reflect the probable intent of Congress.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 203(a)(1)(B) of Pub. L. 103-82 effective Apr. 4, 1994, see section 203(d) of Pub. L. 103-82, set out as a note under section 12651 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1993, see section 202(i) of Pub. L. 103-82, set out as a note under section 12651 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12601, 12651d of this title.

§ 12651h. Corporation State offices

(a) In general

The Chief Executive Officer shall establish and maintain a decentralized field structure that provides for an office of the Corporation for each

State. The office for a State shall be located in, or in reasonable proximity to, such State. Only one such office may carry out the duties described in subsection (b) of this section with respect to a State at any particular time. Such State office may be directed by the representative designated under section 12651f(c) of this title.

(b) Duties

Each State office established pursuant to subsection (a) of this section shall—

(1) provide to the State Commissions established under section 12638 of this title technical and other assistance for the development and implementation of national service plans under section 12638(e)(1) of this title;

(2) provide to community-based agencies and other entities within the State technical assistance for the preparation of applications for assistance under the national service laws, utilizing, as appropriate, information and materials provided by the clearinghouses established pursuant to section 12653a of this title;

(3) provide to the State Commission and other entities within the State support and technical assistance necessary to assure the existence of an effective system of recruitment, placement, and training of volunteers within the State;

(4) monitor and evaluate the performance of all programs and projects within the State that receive assistance under the national service laws; and

(5) perform such other duties and functions as may be assigned or delegated by the Chief Executive Officer.

(Pub. L. 101-610, title I, §196A, as added Pub. L. 103-82, title II, §202(a), Sept. 21, 1993, 107 Stat. 887.)

EFFECTIVE DATE

Section effective Oct. 1, 1993, see section 202(i) of Pub. L. 103-82, set out as a note under section 12651 of this title.

Division H—Investment for Quality and Innovation

PRIOR PROVISIONS

This division is comprised of subtitle H, §§198-198D, of title I of Pub. L. 101-610. A prior part H (§12653 et seq.), comprised of subtitle H, §§195-195O, of title I of Pub. L. 101-610, was renumbered subtitle E, §§151-166, of title I of Pub. L. 101-610 by Pub. L. 103-82, §104(b), and transferred to division E (§12611 et seq.) of this subchapter.

DIVISION REFERRED TO IN OTHER SECTIONS

This division is referred to in sections 12551, 12681 of this title.

§ 12653. Additional Corporation activities to support national service

(a) Methods of conducting activities

The Corporation may carry out this section directly (except as provided in subsection (r) of this section) or through grants, contracts, and cooperative agreements with other entities.

(b) Innovation and quality improvement

The Corporation may undertake activities to improve the quality of national service pro-

¹ See References in Text note below.

grams, including service-learning programs, and to support innovative and model programs, including—

- (1) programs, including programs for rural youth, under division B or C of this subchapter;
- (2) employer-based retiree programs;
- (3) intergenerational programs;
- (4) programs involving individuals with disabilities as participants providing service; and
- (5) programs sponsored by Governors.

(c) Summer programs

The Corporation may support service programs intended to be carried out between May 1 and October 1, except that such a program may also include a year-round component.

(d) Community-based agencies

The Corporation may provide training and technical assistance and other assistance to service sponsors and other community-based agencies that provide volunteer placements in order to improve the ability of such agencies to use participants and other volunteers in a manner that results in high-quality service and a positive service experience for the participants and volunteers.

(e) Improve ability to apply for assistance

The Corporation shall provide training and technical assistance, where necessary, to individuals, programs, local labor organizations, State educational agencies, State Commissions, local educational agencies, local governments, community-based agencies, and other entities to enable them to apply for funding under one of the national service laws, to conduct high-quality programs, to evaluate such programs, and for other purposes.

(f) National service fellowships

The Corporation may award national service fellowships.

(g) Conferences and materials

The Corporation may organize and hold conferences, and prepare and publish materials, to disseminate information and promote the sharing of information among programs for the purpose of improving the quality of programs and projects.

(h) Peace Corps and VISTA training

The Corporation may provide training assistance to selected individuals who volunteer to serve in the Peace Corps or a program authorized under title I of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4951 et seq.). The training shall be provided as part of the course of study of the individual at an institution of higher education, shall involve service-learning, and shall cover appropriate skills that the individual will use in the Peace Corps or VISTA.

(i) Promotion and recruitment

The Corporation may conduct a campaign to solicit funds for the National Service Trust and other programs and activities authorized under the national service laws and to promote and recruit participants for programs that receive assistance under the national service laws.

(j) Training

The Corporation may support national and regional participant and supervisor training, in-

cluding leadership training and training in specific types of service and in building the ethic of civic responsibility.

(k) Research

The Corporation may support research on national service, including service-learning.

(l) Intergenerational support

The Corporation may assist programs in developing a service component that combines students, out-of-school youths, and older adults as participants to provide needed community services.

(m) Planning coordination

The Corporation may coordinate community-wide planning among programs and projects.

(n) Youth leadership

The Corporation may support activities to enhance the ability of youth and young adults to play leadership roles in national service.

(o) National program identity

The Corporation may support the development and dissemination of materials, including training materials, and arrange for uniforms and insignia, designed to promote unity and shared features among programs that receive assistance under the national service laws.

(p) Service-learning

The Corporation shall support innovative programs and activities that promote service-learning.

(q) National Youth Service Day

(1) Designation

April 19, 1994, and April 18, 1995, are each designated as “National Youth Service Day”. The President is authorized and directed to issue a proclamation calling on the people of the United States to observe the day with appropriate ceremonies and activities.

(2) Federal activities

In order to observe National Youth Service Day at the Federal level, the Corporation may organize and carry out appropriate ceremonies and activities.

(3) Activities

The Corporation may make grants to public or private nonprofit organizations with demonstrated ability to carry out appropriate activities, in order to support such activities on National Youth Service Day.

(r) Assistance for Head Start

The Corporation may make grants to, and enter into contracts and cooperative agreements with, public or nonprofit private agencies and organizations that receive grants or contracts under the Foster Grandparent Program (part B of title II of the Domestic Volunteer Service Act of 1973 [42 U.S.C. 5011 et seq.]), for projects of the type described in section 211(a) of such Act [42 U.S.C. 5011] operating under memoranda of agreement with the Corporation, for the purpose of increasing the number of low-income individuals who provide services under such program to children who participate in Head Start programs under the Head Start Act (42 U.S.C 9831 et seq).

(s) Martin Luther King, Jr., Service Day**(1) Assistance**

The Corporation may make grants to eligible entities described in paragraph (2) to pay for the Federal share of the cost of planning and carrying out service opportunities in conjunction with the Federal legal holiday honoring the birthday of Martin Luther King, Jr. Such service opportunities shall consist of activities reflecting the life and teachings of Martin Luther King, Jr., such as cooperation and understanding among racial and ethnic groups, nonviolent conflict resolution, equal economic and educational opportunities, and social justice.

(2) Eligible entities

Any entity otherwise eligible for assistance under the national services laws shall be eligible to receive a grant under this subsection.

(3) Repealed. Pub. L. 105-354, §2(b), Nov. 3, 1998, 112 Stat. 3244**(4) Federal share**

Grants provided under this subsection to an eligible entity to support the planning and carrying out of a service opportunity in conjunction with the Federal legal holiday honoring the birthday of Martin Luther King, Jr., together with all other Federal funds used to plan or carry out the service opportunity, may not exceed 30 percent of the cost of planning and carrying out the service opportunity.

(5) Calculation of entity contributions

In determining the non-Federal share of the costs of planning and carrying out a service opportunity supported by a grant under this subsection, the Corporation shall consider in-kind contributions (including facilities, equipment, and services) made to plan or carry out the service opportunity.

(Pub. L. 101-610, title I, §198, as added and amended Pub. L. 103-82, title I, §104(c), title IV, §405(p)(2), Sept. 21, 1993, 107 Stat. 840, 922; Pub. L. 103-304, §3(a), (b)(6), Aug. 23, 1994, 108 Stat. 1566, 1568; Pub. L. 105-354, §2(b), Nov. 3, 1998, 112 Stat. 3244.)

REFERENCES IN TEXT

The Domestic Volunteer Service Act of 1973, referred to in subsecs. (h) and (r), is Pub. L. 93-113, Oct. 1, 1973, 87 Stat. 394, as amended. Title I and part B of title II of the Act are classified generally to subchapter I (§4951 et seq.) and part B (§5011 et seq.) of subchapter II, respectively, of chapter 66 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4950 of this title and Tables.

The Head Start Act, referred to in subsec. (r), is subchapter B (§§635-657) of chapter 8 of subtitle A of title VI of Pub. L. 97-35, Aug. 13, 1981, 95 Stat. 499, as amended, which is classified generally to subchapter II (§9831 et seq.) of chapter 105 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9801 of this title and Tables.

PRIOR PROVISIONS

A prior section 12653, Pub. L. 101-610, title I, §195, as added Pub. L. 102-484, div. A, title X, §1092(a)(1), Oct. 23, 1992, 106 Stat. 2522, which stated purpose of Civilian Community Corps, was renumbered section 151 of Pub. L. 101-610 by Pub. L. 103-82, §104(b), and transferred to section 12611 of this title.

AMENDMENTS

1998—Subsec. (s)(3). Pub. L. 105-354 struck out heading and text of par. (3). Text read as follows: "In making grants under this subsection, the Corporation shall consult with the Martin Luther King, Jr. Federal Holiday Commission established under section 169j-1 of title 36."

1994—Subsec. (q)(1). Pub. L. 103-304, §3(b)(6), substituted "1995," for "1995".

Subsec. (s). Pub. L. 103-304, §3(a), added subsec. (s).

1993—Subsec. (r). Pub. L. 103-82, §405(p)(2), substituted "Corporation" for "ACTION Agency".

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 405(p)(2) of Pub. L. 103-82 effective Apr. 4, 1994, see section 406(b) of Pub. L. 103-82, set out as a note under section 8332 of Title 5, Government Organization and Employees.

EFFECTIVE DATE

Division effective Oct. 1, 1993, see section 123 of Pub. L. 103-82, set out as an Effective Date of 1993 Amendment note under section 1701 of Title 16, Conservation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12511 of this title.

§ 12653a. Clearinghouses**(a) Assistance**

The Corporation shall provide assistance to appropriate entities to establish one or more clearinghouses, including the clearinghouse described in section 12551 of this title.

(b) Application

To be eligible to receive assistance under subsection (a) of this section, an entity shall submit an application to the Corporation at such time, in such manner, and containing such information as the Corporation may require.

(c) Function of clearinghouses

An entity that receives assistance under subsection (a) of this section may—

(1) assist entities carrying out State or local community service programs with needs assessments and planning;

(2) conduct research and evaluations concerning community service;

(3)(A) provide leadership development and training to State and local community service program administrators, supervisors, and participants; and

(B) provide training to persons who can provide the leadership development and training described in subparagraph (A);

(4) facilitate communication among entities carrying out community service programs and participants;

(5) provide information, curriculum materials, and technical assistance relating to planning and operation of community service programs, to States and local entities eligible to receive funds under this subchapter;

(6)(A) gather and disseminate information on successful community service programs, components of such successful programs, innovative youth skills curriculum, and community service projects; and

(B) coordinate the activities of the clearinghouse with appropriate entities to avoid duplication of effort;

(7) make recommendations to State and local entities on quality controls to improve the delivery of community service programs and on changes in the programs under this subchapter; and

(8) carry out such other activities as the Chief Executive Officer determines to be appropriate.

(Pub. L. 101-610, title I, §198A, as added Pub. L. 103-82, title I, §104(c), Sept. 21, 1993, 107 Stat. 842.)

PRIOR PROVISIONS

A prior section 12653a, Pub. L. 101-610, title I, §195A, as added Pub. L. 102-484, div. A, title X, §1092(a)(1), Oct. 23, 1992, 106 Stat. 2523, which provided for establishment of Civilian Community Corps Demonstration Program, was renumbered section 152 of Pub. L. 101-610 by Pub. L. 103-82, §104(b), and transferred to section 12612 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12638, 12651h of this title.

§ 12653b. Presidential awards for service

(a) Presidential awards

(1) In general

The President, acting through the Corporation, may make Presidential awards for service to individuals providing significant service, and to outstanding service programs.

(2) Individuals and programs

Notwithstanding section 12511(19) of this title—

(A) an individual receiving an award under this subsection need not be a participant in a program authorized under this chapter; and

(B) a program receiving an award under this subsection need not be a program authorized under this chapter.

(3) Nature of award

In making an award under this section to an individual or program, the President, acting through the Corporation—

(A) is authorized to incur necessary expenses for the honorary recognition of the individual or program; and

(B) is not authorized to make a cash award to such individual or program.

(b) Information

The President, acting through the Corporation, shall ensure that information concerning individuals and programs receiving awards under this section is widely disseminated.

(Pub. L. 101-610, title I, §198B, as added Pub. L. 103-82, title I, §104(c), Sept. 21, 1993, 107 Stat. 843.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(2), was in the original “this Act”, meaning Pub. L. 101-610, Nov. 16, 1990, 104 Stat. 3127, as amended, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 12501 of this title and Tables.

PRIOR PROVISIONS

A prior section 12653b, Pub. L. 101-610, title I, §195B, as added Pub. L. 102-484, div. A, title X, §1092(a)(1), Oct.

23, 1992, 106 Stat. 2523, which related to national service program component of Civilian Community Corps Demonstration Program, was renumbered section 153 of Pub. L. 101-610 by Pub. L. 103-82, title I, §104(b), Sept. 21, 1993, 107 Stat. 840, and transferred to section 12613 of this title.

§ 12653c. Military installation conversion demonstration programs

(a) Purposes

The purposes of this section are to—

(1) provide meaningful service opportunities for economically disadvantaged youth;

(2) fully utilize military installations affected by closures or realignments;

(3) encourage communities affected by such closures or realignments to convert the installations to community use; and

(4) foster a sense of community pride in the youth in the community.

(b) Definitions

As used in this section:

(1) Affected military installation

The term “affected military installation” means a military installation being closed or realigned under—

(A) the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of division B of Public Law 101-510; 10 U.S.C. 2687 note); and

(B) title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526; 10 U.S.C. 2687 note).

(2) Community

The term “community” includes a county.

(3) Convert to community use

The term “convert to community use”, used with respect to an affected military installation, includes—

(A) conversion of the installation or a part of the installation to—

(i) a park;

(ii) a community center;

(iii) a recreational facility; or

(iv) a facility for a Head Start program under the Head Start Act (42 U.S.C. 9831 et seq.); and

(B) carrying out, at the installation, a construction or economic development project that is of substantial benefit, as determined by the Chief Executive Officer, to—

(i) the community in which the installation is located; or

(ii) a community located within such distance of the installation as the Chief Executive Officer may determine by regulation to be appropriate.

(4) Demonstration program

The term “demonstration program” means a program described in subsection (c) of this section.

(c) Demonstration programs

(1) Grants

The Corporation may make grants to communities and community-based agencies to

pay for the Federal share of establishing and carrying out military installation conversion demonstration programs, to assist in converting to community use affected military installations located—

- (A) within the community; or
- (B) within such distance from the community as the Chief Executive Officer may by regulation determine to be appropriate.

(2) Duration

In carrying out such a demonstration program, the community or community-based agency may carry out—

- (A) a program of not less than 6 months in duration; or
- (B) a full-time summer program.

(d) Use of funds

(1) Stipend

A community or community-based agency that receives a grant under subsection (c) of this section to establish and carry out a project through a demonstration program may use the funds made available through such grant to pay for a portion of a stipend for the participants in the project.

(2) Limitation on amount of stipend

The amount of the stipend provided to a participant under paragraph (1) that may be paid using assistance provided under this section and using any other Federal funds shall not exceed the lesser of—

- (A) 85 percent of the total average annual subsistence allowance provided to VISTA volunteers under section 4955 of this title; and
- (B) 85 percent of the stipend established by the demonstration program involved.

(e) Participants

(1) Eligibility

A person shall be eligible to be selected as a participant in a project carried out through a demonstration program if the person is—

- (A) an economically disadvantaged individual; and
- (B)(i) a person described in section 12613(b) of this title;
- (ii) a youth described in section 12614(a) of this title; or
- (iii) an individual described in section 2884 of title 29.

(2) Participation

Persons desiring to participate in such a project shall enter into an agreement with the service sponsor of the project to participate—

- (A) on a full-time or a part-time basis; and
- (B) for the duration referred to in subsection (f)(2)(C) of this section.

(f) Application

(1) In general

To be eligible to receive a grant under subsection (c) of this section, a community or community-based agency shall submit an application to the Chief Executive Officer at such time, in such manner, and containing such information as the Chief Executive Officer may require.

(2) Contents

At a minimum, such application shall contain—

- (A) a description of the demonstration program proposed to be conducted by the applicant;
- (B) a proposal for carrying out the program that describes the manner in which the applicant will—
 - (i) provide preservice and inservice training, for supervisors and participants, that will be conducted by qualified individuals or qualified organizations;
 - (ii) conduct an appropriate evaluation of the program; and
 - (iii) provide for appropriate community involvement in the program;
- (C) information indicating the duration of the program; and
- (D) an assurance that the applicant will comply with the nonduplication and non-displacement provisions of section 12637 of this title and the grievance procedure requirements of section 12636(f) of this title.

(g) Limitation on grant

In making a grant under subsection (c) of this section with respect to a demonstration program to assist in converting an affected military installation, the Corporation shall not make a grant for more than 25 percent of the total cost of the conversion.

(Pub. L. 101-610, title I, §198C, as added Pub. L. 103-82, title I, §104(c), Sept. 21, 1993, 107 Stat. 843; amended Pub. L. 105-277, div. A, §101(f) [title VIII, §405(d)(42)(B), (f)(33)(A)], Oct. 21, 1998, 112 Stat. 2681-337, 2681-428, 2681-434.)

REFERENCES IN TEXT

The Defense Base Closure and Realignment Act of 1990, referred to in subsec. (b)(1)(A), is part A of title XXIX of div. B of Pub. L. 101-510, Nov. 5, 1990, 104 Stat. 1808, which is set out as a note under section 2687 of Title 10, Armed Forces. For complete classification of this Act to the Code, see Tables.

The Defense Authorization Amendments and Base Closure and Realignment Act, referred to in subsec. (b)(1)(B), is Pub. L. 100-526, Oct. 24, 1988, 102 Stat. 2623, as amended. Title II of the Act is set out as a note under section 2687 of Title 10, Armed Forces. For complete classification of this Act to the Code, see Short Title of 1988 Amendment note set out under section 2687 of Title 10 and Tables.

The Head Start Act, referred to in subsec. (b)(3)(A)(iv), is subchapter B (§§635-657) of chapter 8 of subtitle A of title VI of Pub. L. 97-35, Aug. 13, 1981, 95 Stat. 499, as amended, which is classified generally to subchapter II (§9831 et seq.) of chapter 105 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9801 of this title and Tables.

PRIOR PROVISIONS

A prior section 12653c, Pub. L. 101-610, title I, §195C, as added Pub. L. 102-484, div. A, title X, §1092(a)(1), Oct. 23, 1992, 106 Stat. 2524, which related to summer national service program of Civilian Community Corps Demonstration Program, was renumbered section 154 of Pub. L. 101-610 by Pub. L. 103-82, §104(b), and transferred to section 12614 of this title.

AMENDMENTS

1998—Subsec. (b)(1). Pub. L. 105-277, §101(f) [title VIII, §405(d)(42)(B)(i)], substituted “a military installation

being closed or realigned under—” and subpars. (A) and (B) for “a military installation described in section 1662d(e)(1) of title 29”.

Subsec. (e)(1)(B)(iii). Pub. L. 105-277, §101(f) [title VIII, §405(f)(33)(A)], added cl. (iii) and struck out former cl. (ii) which read as follows: “an eligible youth described in section 1693 of title 29 or an individual described in section 2884 of title 29.”

Pub. L. 105-277, §101(f) [title VIII, §405(d)(42)(B)(ii)], added cl. (iii) and struck out former cl. (iii) which read as follows: “an eligible youth described in section 1693 of title 29.”

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 101(f) [title VIII, §405(d)(42)(B)] of Pub. L. 105-277 effective Oct. 21, 1998, and amendment by section 101(f) [title VIII, §405(f)(33)(A)] of Pub. L. 105-277 effective July 1, 2000, see section 101(f) [title VIII, §405(g)(1), (2)(B)] of Pub. L. 105-277, set out as a note under section 3502 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12511 of this title.

§ 12653d. Special demonstration project

(a) Special demonstration project for the Yukon-Kuskokwim delta of Alaska

The President may award grants to, and enter into contracts with, organizations to carry out programs that address significant human needs in the Yukon-Kuskokwim delta region of Alaska.

(b) Application

(1) General requirements

To be eligible to receive a grant or enter into a contract under subsection (a) of this section with respect to a program, an organization shall submit an application to the President at such time, in such manner, and containing such information as the President may require.

(2) Contents

The application submitted by the organization shall, at a minimum—

(A) include information describing the manner in which the program will utilize VISTA volunteers, individuals who have served in the Peace Corps, and other qualified persons, in partnership with the local nonprofit organizations known as the Yukon-Kuskokwim Health Corporation and the Alaska Village Council Presidents;

(B) take into consideration—

(i) the primarily noncash economy of the region; and

(ii) the needs and desires of residents of the local communities in the region; and

(C) include specific strategies, developed in cooperation with the Yupi’k speaking population that resides in such communities, for comprehensive and intensive community development for communities in the Yukon-Kuskokwim delta region.

(Pub. L. 101-610, title I, §198D, as added Pub. L. 103-82, title I, §104(c), Sept. 21, 1993, 107 Stat. 845.)

PRIOR PROVISIONS

Prior sections 12653d to 12653o relating to Civilian Community Corps were renumbered by Pub. L. 103-82, §104(b), and transferred as follows:

Section 12653d, Pub. L. 101-610, title I, §195D, as added Pub. L. 102-484, div. A, title X, §1092(a)(1), Oct. 23, 1992, 106 Stat. 2524, which related to organization and membership of the Corps, was renumbered section 155 of Pub. L. 101-610 and transferred to section 12615 of this title.

Section 12653e, Pub. L. 101-610, title I, §195E, as added Pub. L. 102-484, div. A, title X, §1092(a)(1), Oct. 23, 1992, 106 Stat. 2525, which provided for training of Corps members, was renumbered section 156 of Pub. L. 101-610 and transferred to section 12616 of this title.

Section 12653f, Pub. L. 101-610, title I, §195F, as added Pub. L. 102-484, div. A, title X, §1092(a)(1), Oct. 23, 1992, 106 Stat. 2526, which related to service projects carried out by the Corps, was renumbered section 157 of Pub. L. 101-610 and transferred to section 12617 of this title.

Section 12653g, Pub. L. 101-610, title I, §195G, as added Pub. L. 102-484, div. A, title X, §1092(a)(1), Oct. 23, 1992, 106 Stat. 2526, which related to authorized benefits for Corps members, was renumbered section 158 of Pub. L. 101-610 and transferred to section 12618 of this title.

Section 12653h, Pub. L. 101-610, title I, §195H, as added Pub. L. 102-484, div. A, title X, §1092(a)(1), Oct. 23, 1992, 106 Stat. 2528, which related to administration of the Corps, was renumbered section 159 of Pub. L. 101-610 and transferred to section 12619 of this title.

Section 12653i, Pub. L. 101-610, title I, §195I, as added Pub. L. 102-484, div. A, title X, §1092(a)(1), Oct. 23, 1992, 106 Stat. 2530, which related to status of Corps members and Corps personnel under Federal law, was renumbered section 160 of Pub. L. 101-610 and transferred to section 12620 of this title.

Section 12653j, Pub. L. 101-610, title I, §195J, as added Pub. L. 102-484, div. A, title X, §1092(a)(1), Oct. 23, 1992, 106 Stat. 2530, which provided for contract and grant authority of Corps Director, was renumbered section 161 of Pub. L. 101-610 and transferred to section 12621 of this title.

Section 12653k, Pub. L. 101-610, title I, §195K, as added Pub. L. 102-484, div. A, title X, §1092(a)(1), Oct. 23, 1992, 106 Stat. 2531, which set out other departments’ responsibilities to the Corps, was renumbered section 162 of Pub. L. 101-610 and transferred to section 12622 of this title.

Section 12653l, Pub. L. 101-610, title I, §195L, as added Pub. L. 102-484, div. A, title X, §1092(a)(1), Oct. 23, 1992, 106 Stat. 2532, which related to Advisory Board for the Corps, was renumbered section 163 of Pub. L. 101-610 and transferred to section 12623 of this title.

Section 12653m, Pub. L. 101-610, title I, §195M, as added Pub. L. 102-484, div. A, title X, §1092(a)(1), Oct. 23, 1992, 106 Stat. 2532, which provided for annual evaluations of Corps programs, was renumbered section 164 of Pub. L. 101-610 and transferred to section 12624 of this title.

Section 12653n, Pub. L. 101-610, title I, §195N, as added Pub. L. 102-484, div. A, title X, §1092(a)(1), Oct. 23, 1992, 106 Stat. 2532, which limited funding for Corps programs, was renumbered section 165 of Pub. L. 101-610 and transferred to section 12625 of this title.

Section 12653o, Pub. L. 101-610, title I, §195O, as added Pub. L. 102-484, div. A, title X, §1092(a)(1), Oct. 23, 1992, 106 Stat. 2532, which defined terms used in former part H of this subchapter, was renumbered section 166 of Pub. L. 101-610 and transferred to section 12626 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12511 of this title.

Division I—American Conservation and Youth Service Corps

CODIFICATION

Subtitle I of title I of Pub. L. 101-610, comprising this division, was formerly classified to part C (§12541 et seq.) of this subchapter prior to the general amendment by Pub. L. 103-82, §101(a).

DIVISION REFERRED TO IN OTHER SECTIONS

This division is referred to in sections 12572, 12651d of this title.

§ 12655. General authority

The Corporation may make grants to States or local applicants and may transfer funds to the Secretary of Agriculture or to the Secretary of the Interior for the creation or expansion of full-time, part-time, year-round, or summer, youth corps programs¹ To the extent practicable, the Corporation shall apply the provisions of division C of this subchapter in making grants under this section.

(Pub. L. 101-610, title I, §199A, formerly §121, Nov. 16, 1990, 104 Stat. 3140; Pub. L. 102-384, §5, Oct. 5, 1992, 106 Stat. 1455; renumbered §199A and amended Pub. L. 103-82, title I, §101(a), (e)(1), (2), Sept. 21, 1993, 107 Stat. 788, 815.)

CODIFICATION

Section was formerly classified to section 12541 of this title prior to renumbering by Pub. L. 103-82, §101(a).

AMENDMENTS

1993—Pub. L. 103-82, §101(e)(1), (2), substituted “Corporation” for “Commission”, substituted “or to the Secretary of the Interior” for “, to the Secretary of the Interior, or to the Director of ACTION”, struck out “under section 12512 of this title” after “may make grants”, and inserted at end “To the extent practicable, the Corporation shall apply the provisions of division C of this subchapter in making grants under this section.”

1992—Pub. L. 102-384 amended section generally. Prior to amendment, section read as follows: “The Commission may make grants under section 12512 of this title to States or local applicants, to the Secretary of Agriculture, to the Secretary of the Interior, or to the Director of ACTION for the creation or expansion of full-time or summer youth corps programs.”

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Oct. 1, 1993, see section 123 of Pub. L. 103-82, set out as a note under section 1701 of Title 16, Conservation.

SHORT TITLE

For short title of subtitle I of title I of Pub. L. 101-610 which enacted this division, as the American Conservation and Youth Service Corps Act of 1990, see section 199 of Pub. L. 101-610, set out as a note under section 12501 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12655b of this title.

§ 12655a. Limitation on purchase of capital equipment

Not to exceed 10 percent of the amount of assistance made available to a program agency under this division shall be used for the purchase of major capital equipment.

(Pub. L. 101-610, title I, §199B, formerly §122, Nov. 16, 1990, 104 Stat. 3140; Pub. L. 102-10, §5(2), Mar. 12, 1991, 105 Stat. 30; renumbered §199B and amended Pub. L. 103-82, title I, §101(a), (e)(3), Sept. 21, 1993, 107 Stat. 788, 815.)

¹ So in original. Probably should be followed by a period.

CODIFICATION

Section was formerly classified to section 12542 of this title prior to renumbering by Pub. L. 103-82, §101(a).

AMENDMENTS

1993—Pub. L. 103-82, §101(e)(3), amended section generally, substituting provisions relating to limitation on purchase of capital equipment for provisions relating to allocation of funds.

1991—Subsec. (e). Pub. L. 102-10 inserted “service” after “youth”.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Oct. 1, 1993, see section 123 of Pub. L. 103-82, set out as a note under section 1701 of Title 16, Conservation.

§ 12655b. State application**(a) Submission**

To be eligible to receive a grant under this division, a State or Indian tribe (or a local applicant if section 12655 of this title applies) shall prepare and submit to the Corporation, an application at such time, in such manner, and containing such information as the Corporation may reasonably require.

(b) General content

An application submitted under subsection (a) of this section shall describe—

(1) any youth corps program proposed to be conducted directly by such applicant with assistance provided under this division; and

(2) any grant program proposed to be conducted by such State with assistance provided under this division for the benefit of entities within such State.

(Pub. L. 101-610, title I, §199C, formerly §123, Nov. 16, 1990, 104 Stat. 3141; Pub. L. 102-10, §5(3), Mar. 12, 1991, 105 Stat. 30; renumbered §199C and amended Pub. L. 103-82, title I, §101(a), (e)(1), (4), Sept. 21, 1993, 107 Stat. 788, 815.)

CODIFICATION

Section was formerly classified to section 12543 of this title prior to renumbering by Pub. L. 103-82, §101(a).

AMENDMENTS

1993—Subsec. (a). Pub. L. 103-82, §101(e)(1), (4)(A), substituted “Corporation” for “Commission” in two places and “section 12655 of this title” for “section 12542(b) of this title” and struck out before period at end “, including the information required under subsection (b) of this section”.

Subsecs. (c), (d). Pub. L. 103-82, §101(e)(4)(B), struck out subsec. (c) which specified required contents of State applications and subsec. (d) which required State applicants to establish and implement programs to make grants to applicants within the State.

1991—Subsec. (c)(14), (15). Pub. L. 102-10 added par. (14) and redesignated former par. (14) as (15).

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Oct. 1, 1993, see section 123 of Pub. L. 103-82, set out as a note under section 1701 of Title 16, Conservation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12655e, 12655h of this title.

§ 12655c. Focus of programs**(a) In general**

Programs that receive assistance under this division may carry out activities that—

(1) in the case of conservation corps programs, focus on—

(A) conservation, rehabilitation, and the improvement of wildlife habitat, rangelands, parks, and recreational areas;

(B) urban and rural revitalization, historical and cultural site preservation, and reforestation of both urban and rural areas;

(C) fish culture, wildlife habitat maintenance and improvement, and other fishery assistance;

(D) road and trail maintenance and improvement;

(E) erosion, flood, drought, and storm damage assistance and controls;

(F) stream, lake, waterfront harbor, and port improvement;

(G) wetlands protection and pollution control;

(H) insect, disease, rodent, and fire prevention and control;

(I) the improvement of abandoned railroad beds and rights-of-way;

(J) energy conservation projects, renewable resource enhancement, and recovery of biomass;

(K) reclamation and improvement of strip-mined land;

(L) forestry, nursery, and cultural operations; and

(M) making public facilities accessible to individuals with disabilities.

(2) in the case of youth service corps programs, include participant service in—

(A) State, local, and regional governmental agencies;

(B) nursing homes, hospices, senior centers, hospitals, local libraries, parks, recreational facilities, child and adult day care centers, programs serving individuals with disabilities, and schools;

(C) law enforcement agencies,¹ and penal and probation systems;

(D) private nonprofit organizations that primarily focus on social service such as community action agencies;

(E) activities that focus on the rehabilitation or improvement of public facilities, neighborhood improvements, literacy training that benefits educationally disadvantaged individuals, weatherization of and basic repairs to low-income housing including housing occupied by older adults, energy conservation (including solar energy techniques), removal of architectural barriers to access by individuals with disabilities to public facilities, activities that focus on drug and alcohol abuse education, prevention and treatment, and conservation, maintenance, or restoration of natural resources on publicly held lands; and

(F) any other nonpartisan civic activities and services that the Corporation determines to be of a substantial social benefit in

meeting unmet human, educational, or environmental needs (particularly needs related to poverty) or in the community where volunteer service is to be performed; or

(3) encompass the focuses and services described in both paragraphs (1) and (2).

(b) Limitation on service

No participant shall perform any specific activity for more than a 6-month period. No participant shall remain enrolled in programs assisted under this division for more than 24 months.

(Pub. L. 101-610, title I, §199D, formerly §124, Nov. 16, 1990, 104 Stat. 3143; Pub. L. 102-10, §5(4), Mar. 12, 1991, 105 Stat. 30; renumbered §199D and amended Pub. L. 103-82, title I, §101(a), (e)(1), (5), Sept. 21, 1993, 107 Stat. 788, 815, 816.)

CODIFICATION

Section was formerly classified to section 12544 of this title prior to renumbering by Pub. L. 103-82, §101(a).

AMENDMENTS

1993—Subsec. (a)(2)(F). Pub. L. 103-82, §101(e)(1), substituted “Corporation” for “Commission”.

Subsecs. (b), (c). Pub. L. 103-82, §101(e)(5), redesignated subsec. (c) as (b) and struck out former subsec. (b) which related to ineligible service categories.

1991—Subsec. (a)(2). Pub. L. 102-10, §5(4)(A), substituted “youth service” for “human services” in introductory provisions.

Subsec. (c). Pub. L. 102-10, §5(4)(B), substituted “any specific activity for more than a 6-month period. No participant shall remain enrolled in programs” for “services in any project for more than a 6-month period. No participant shall remain enrolled in projects”.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Oct. 1, 1993, see section 123 of Pub. L. 103-82, set out as a note under section 1701 of Title 16, Conservation.

§ 12655d. Related programs

An activity administered under the authority of the Secretary of Health and Human Services, that is operated for the same purpose as a program eligible to be carried out under this division, is encouraged to use services available under this division.

(Pub. L. 101-610, title I, §199E, formerly §125, Nov. 16, 1990, 104 Stat. 3144; renumbered §199E, Pub. L. 103-82, title I, §101(a), Sept. 21, 1993, 107 Stat. 788.)

CODIFICATION

Section was formerly classified to section 12545 of this title prior to renumbering by Pub. L. 103-82, §101(a).

§ 12655e. Public lands or Indian lands**(a) Limitation**

To be eligible to receive assistance through a grant provided under this division, a program shall carry out activities on public lands or Indian lands, or result in a public benefit.

(b) Review of applications

In reviewing applications submitted under section 12655b of this title that propose programs or projects to be carried out on public lands or In-

¹ So in original. The comma probably should not appear.

dian lands, the Corporation shall consult with the Secretary of the Interior.

(c) Consistency

A program carried out with assistance provided under this division for conservation, rehabilitation, or improvement of any public lands or Indian lands shall be consistent with—

(1) the provisions of law and policies relating to the management and administration of such lands, and all other applicable provisions of law; and

(2) all management, operational, and other plans and documents that govern the administration of such lands.

(d) Participation by other conservation programs

Any land or water conservation program (or any related program) administered in any State under the authority of any Federal program is encouraged to use services available under this part¹ to carry out its program.

(Pub. L. 101-610, title I, §199F, formerly §126, Nov. 16, 1990, 104 Stat. 3144; renumbered §199F and amended Pub. L. 103-82, title I, §101(a), (e)(1), (6), Sept. 21, 1993, 107 Stat. 788, 815, 816.)

REFERENCES IN TEXT

This part, referred to in subsec. (d), is unidentifiable in the original because subtitle I (§§199 to 199O) of title I of Pub. L. 101-610 does not contain parts.

CODIFICATION

Section was formerly classified to section 12546 of this title prior to renumbering by Pub. L. 103-82, §101(a).

AMENDMENTS

1993—Subsec. (b). Pub. L. 103-82, §101(e)(1), (6), substituted “Corporation” for “Commission” and “section 12655b of this title” for “section 12543 of this title”.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Oct. 1, 1993, see section 123 of Pub. L. 103-82, set out as a note under section 1701 of Title 16, Conservation.

§ 12655f. Training and education services

(a) Assessment of skills

Each program agency shall assess the educational level of participants at the time of their entrance into the program, using any available records or simplified assessment means or methodology and shall, where appropriate, refer such participants for testing for specific learning disabilities.

(b) Enhancement of skills

Each program agency shall, through the programs and activities administered under this division, enhance the educational skills of participants.

(c) Provision of pre-service and in-service training and education

(1) Requirement

Each program agency shall use not less than 10 percent of the assistance made available to such agency under this division in each fiscal

year to provide pre-service and in-service training and educational materials and services for participants in such a program. Program participants shall be provided with information concerning the benefits to the community that result from the activities undertaken by such participants.

(2) Agreements for academic study

A program agency may enter into arrangements with academic institutions or education providers, including—

(A) local education agencies;

(B) community colleges;

(C) 4-year colleges;

(D) area vocational-technical schools; and

(E) community based organizations;

to evaluate the basic skills of participants and to make academic study available to participants to enable such participants to upgrade literacy skills, to obtain high school diplomas or the equivalent of such diplomas, to obtain college degrees, or to enhance employable skills.

(3) Counseling

Career and educational guidance and counseling shall be provided to a participant during a period of in-service training as described in this subsection. Each graduating participant shall be provided with counseling with respect to additional study, job skills training or employment and shall be provided job placement assistance where appropriate.

(4) Priority for participants without high school diplomas

A program agency shall give priority to participants who have not obtained a high school diploma or the equivalent of such diploma, in providing services under this subsection.

(d) Standards and procedures

(1) Consistency with State and local requirements

Appropriate State and local officials shall certify that standards and procedures with respect to the awarding of academic credit and the certification of educational attainment in programs conducted under subsection (c) of this section are consistent with the requirements of applicable State and local law and regulations.

(2) Academic standards

The standards and procedures described in paragraph (1) shall provide that an individual serving in a program that receives assistance under this division—

(A) who is not a high school graduate, participate in an educational curriculum so that such individual can earn a high school diploma or the equivalent of such diploma; and

(B) may arrange to receive academic credit in recognition of the education and skills obtained from service satisfactorily completed.

(Pub. L. 101-610, title I, §199G, formerly §127, Nov. 16, 1990, 104 Stat. 3145; renumbered §199G, Pub. L. 103-82, title I, §101(a), Sept. 21, 1993, 107 Stat. 788.)

¹ See References in Text note below.

CODIFICATION

Section was formerly classified to section 12547 of this title prior to renumbering by Pub. L. 103-82, §101(a).

§ 12655g. Repealed. Pub. L. 103-82, title I, § 101(e)(8)(A), Sept. 21, 1993, 107 Stat. 816

Section, Pub. L. 101-610, title I, §199H, formerly §128, Nov. 16, 1990, 104 Stat. 3146; Pub. L. 102-10, §5(5), Mar. 12, 1991, 105 Stat. 30; renumbered §199H, Pub. L. 103-82, title I, §101(a), Sept. 21, 1993, 107 Stat. 788, related to amount of award and matching requirement.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1993, see section 123 of Pub. L. 103-82, set out as an Effective Date of 1993 Amendment note under section 1701 of Title 16, Conservation.

§ 12655h. Preference for certain projects

(a) In general

In the consideration of applications submitted under section 12655b of this title, the Corporation shall give preference to programs that—

- (1) will provide long-term benefits to the public;
- (2) will instill a work ethic and a sense of public service in the participants;
- (3) will be labor intensive, and involve youth operating in crews;
- (4) can be planned and initiated promptly; and
- (5) will enhance skills development and educational level and opportunities for the participants.

(b) Special rule

In the consideration of applications under this division the Corporation shall ensure the equitable treatment of both urban and rural areas.

(Pub. L. 101-610, title I, §199H, formerly §129, Nov. 16, 1990, 104 Stat. 3146; renumbered §199I, renumbered §199H, and amended Pub. L. 103-82, title I, §101(a), (e)(1), (7), (8)(B), Sept. 21, 1993, 107 Stat. 788, 815, 816.)

CODIFICATION

Section was formerly classified to section 12549 of this title prior to renumbering by Pub. L. 103-82, §101(a).

PRIOR PROVISIONS

A prior section 199H of Pub. L. 101-610 was classified to section 12655g of this title prior to repeal by Pub. L. 103-82, §101(e)(8)(A).

AMENDMENTS

1993—Subsec. (a). Pub. L. 103-82, §101(e)(1), (7), in introductory provisions, substituted “Corporation” for “Commission” and “section 12655b” for “section 12543”.

Subsec. (b). Pub. L. 103-82, §101(e)(1), substituted “Corporation” for “Commission”.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Oct. 1, 1993, see section 123 of Pub. L. 103-82, set out as a note under section 1701 of Title 16, Conservation.

§ 12655i. Age and citizenship criteria for enrollment

(a) Age and citizenship

Enrollment in programs that receive assistance under this division shall be limited to individuals who, at the time of enrollment, are—

(1) not less than 16 years nor more than 25 years of age, except that summer programs may include individuals not less than 14 years nor more than 21 years of age at the time of the enrollment of such individuals; and

(2) citizens or nationals of the United States or lawful permanent resident aliens of the United States.

(b) Participation of disadvantaged youth

Programs that receive assistance under this division shall ensure that educationally and economically disadvantaged youth, including youth in foster care who are becoming too old for foster care, youth with disabilities, youth with limited English proficiency, youth with limited basic skills or learning disabilities and homeless youth, are offered opportunities to enroll.

(c) Special corps members

Notwithstanding subsection (a)(1) of this section, program agencies may enroll a limited number of special corps members over age 25 so that the corps may draw on their special skills to fulfill the purposes of this chapter. Programs are encouraged to consider senior citizens as special corps members.

(d) Joint projects with senior citizens organizations

Program agencies shall use not more than 2 percent of amounts received under this division to conduct joint projects with senior citizens organizations to enable senior citizens to serve as mentors for youth participants.

(e) Construction

Nothing in subsection (a) of this section shall be construed to prohibit any program agency from limiting enrollment to any age subgroup within the range specified in subsection (a)(1) of this section.

(Pub. L. 101-610, title I, §199I, formerly §130, Nov. 16, 1990, 104 Stat. 3146; Pub. L. 102-384, §6, Oct. 5, 1992, 106 Stat. 1456; renumbered §199J, renumbered §199I, Pub. L. 103-82, title I, §101(a), (e)(8)(B), Sept. 21, 1993, 107 Stat. 788, 816.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (c), was in the original “this Act”, meaning Pub. L. 101-610, Nov. 16, 1990, 104 Stat. 3127, as amended, known as the National and Community Service Act of 1990, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 12501 of this title and Tables.

CODIFICATION

Section was formerly classified to section 12550 of this title prior to renumbering by Pub. L. 103-82, §101(a).

AMENDMENTS

1992—Subsec. (a)(1). Pub. L. 102-384 substituted “14” for “15”.

§ 12655j. Use of volunteers

Program agencies may use volunteer services for purposes of assisting projects carried out under this division and may expend funds made available for those purposes to the agency, including funds made available under this division, to provide for services or costs incidental

to the utilization of such volunteers, including transportation, supplies, lodging, recruiting, training, and supervision. The use of volunteer services under this section shall be subject to the condition that such use does not result in the displacement of any participant.

(Pub. L. 101-610, title I, §199J, formerly §131, Nov. 16, 1990, 104 Stat. 3147; renumbered §199K, renumbered §199J, Pub. L. 103-82, title I, §101(a), (e)(8)(B), Sept. 21, 1993, 107 Stat. 788, 816.)

CODIFICATION

Section was formerly classified to section 12551 of this title prior to renumbering by Pub. L. 103-82, §101(a).

§ 12655k. Repealed. Pub. L. 103-82, title I, § 101(e)(8)(A), Sept. 21, 1993, 107 Stat. 816

Section, Pub. L. 101-610, title I, §199L, formerly §132, Nov. 16, 1990, 104 Stat. 3147; renumbered §199L, Pub. L. 103-82, title I, §101(a), Sept. 21, 1993, 107 Stat. 788, related to post-service benefits.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1993, see section 123 of Pub. L. 103-82, set out as an Effective Date of 1993 Amendment note under section 1701 of Title 16, Conservation.

§ 12655l. Living allowance

(a) Full-time service

(1) Living allowance required

Subject to paragraph (3), each participant in a full-time youth corps program that receives assistance under this division shall receive a living allowance in an amount equal to or greater than the average annual subsistence allowance provided to VISTA volunteers under section 4955 of this title.

(2) Limitation on Federal share

The amount of the annual living allowance provided under paragraph (1) that may be paid using assistance provided under this division, section 12571 of this title, and any other Federal funds shall not exceed 85 percent of the total average annual subsistence allowance provided to VISTA volunteers under section 4955 of this title.

(3) Maximum living allowance

The total amount of an annual living allowance that may be provided to a participant in a full-time youth corps program that receives assistance under this division shall not exceed 200 percent of the average annual subsistence allowance provided to VISTA volunteers under section 4955 of this title.

(4) Waiver or reduction of living allowance

The Corporation may waive or reduce the requirement of paragraph (1) with respect to such national service program if such program demonstrates that—

(A) such requirement is inconsistent with the objectives of the program; and

(B) the amount of the living allowance that will be provided to each full-time participant is sufficient to meet the necessary costs of living (including food, housing, and transportation) in the area in which the program is located.

(5) Exemption

The requirement of paragraph (1) shall not apply to any program that was in existence on September 21, 1993.

(b) Reduction in existing program benefits

(1) In general

Nothing in this section shall be construed to require a program in existence on November 16, 1990, to decrease any stipends, salaries, or living allowances provided to participants under such program so long as the amount of any such stipends, salaries, or living allowances that is in excess of the levels provided for in this section are paid from non-Federal sources.

(2) Fair Labor Standards Act of 1938

For purposes of the Fair Labor Standards Act of 1938 [29 U.S.C. 201 et seq.], residential youth corps programs under this division will be considered an organized camp.

(c) Health insurance

In addition to the living allowance provided under subsection (a) of this section, program agencies are encouraged to provide health insurance to each participant in a full-time youth corps program who does not otherwise have access to health insurance.

(d) Facilities, services, and supplies

(1) In general

The program agency may deduct, from amounts provided under subsection (a) of this section to a participant, a reasonable portion of the costs of the rates for any room and board that is provided for such participant at a residential facility. Such deducted funds shall be deposited into rollover accounts that shall be used solely to defray the costs of room and board for participants.

(2) Evaluation

The program agency shall establish the amount of the deductions and rates under paragraph (1) after evaluating the costs of providing such room and board to the participant.

(3) Duties of program agency

A program agency may provide facilities, quarters, and board and shall provide limited and emergency medical care, transportation from administrative facilities to work sites, accommodations for individuals with disabilities, and other appropriate services, supplies, and equipment to each participant.

(4) Other Federal agencies

(A) In general

The Corporation may provide services, facilities, supplies, and equipment, including any surplus food and equipment available from other Federal programs, to any program agency carrying out projects under this division.

(B) Secretary of Defense

Whenever possible, the Corporation shall make arrangements with the Secretary of Defense to have logistical support provided by a military installation near the work

site, including the provision of temporary tent centers where needed, and other supplies and equipment.

(5) Health and safety standards

The Corporation and program agencies shall establish standards and enforcement procedures concerning the health and safety of participants for all projects, consistent with Federal, State, and local health and safety standards.

(Pub. L. 101-610, title I, §199K, formerly §133, Nov. 16, 1990, 104 Stat. 3147; Pub. L. 102-10, §5(6), Mar. 12, 1991, 105 Stat. 30; renumbered §199M, renumbered §199K, and amended Pub. L. 103-82, title I, §101(a), (d), (e)(1), (8)(B), Sept. 21, 1993, 107 Stat. 788, 814-816.)

REFERENCES IN TEXT

The Fair Labor Standards Act of 1938, referred to in subsec. (b)(2), is act June 25, 1938, ch. 676, 52 Stat. 1060, as amended, which is classified principally to chapter 8 (§201 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see section 201 of Title 29 and Tables.

CODIFICATION

Section was formerly classified to section 12553 of this title prior to renumbering by Pub. L. 103-82, §101(a).

AMENDMENTS

1993—Subsec. (a). Pub. L. 103-82, §101(d), added pars. (1) to (5) and struck out former pars. (1) and (2) which read as follows:

“(1) IN GENERAL.—From assistance provided under this part, each participant in a full-time youth corps program that receives assistance under this part shall receive a living allowance of not more than an amount equal to 100 percent of the poverty line for a family of two (as defined in section 9902(2) of this title).

“(2) NON-FEDERAL SOURCES.—Notwithstanding paragraph (1), a program agency may provide participants with additional amounts that are made available from non-Federal sources.”

Subsec. (d)(4)(A), (B), (5). Pub. L. 103-82, §101(e)(1), substituted “Corporation” for “Commission”.

1991—Subsec. (d)(1). Pub. L. 102-10 substituted “subsection (a)” for “subsections (a) and (c)”.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Oct. 1, 1993, see section 123 of Pub. L. 103-82, set out as a note under section 1701 of Title 16, Conservation.

§ 12655m. Joint programs

(a) Development

The Corporation may develop, in cooperation with the heads of other Federal agencies, regulations designed to permit, where appropriate, joint programs in which activities supported with assistance made available under this division are coordinated with activities supported with assistance made available under programs administered by the heads of such agencies (including title I of the Workforce Investment Act of 1998 [29 U.S.C. 2801 et seq.]).

(b) Standards

Regulations promulgated under subsection (a) of this section shall establish standards for the approval of joint programs that meet both the purposes of this subchapter and the purposes of such statutes under which assistance is made available to support such projects.

(c) Operation of management agreements

Program agencies may enter into contracts and other appropriate arrangements with local government agencies and nonprofit organizations for the operation or management of any projects or facilities under the program.

(d) Coordination

The Corporation and program agencies carrying out programs under this division shall coordinate the programs with related Federal, State, local, and private activities.

(Pub. L. 101-610, title I, §199L, formerly §134, Nov. 16, 1990, 104 Stat. 3148; renumbered §199N, renumbered §199L, and amended Pub. L. 103-82, title I, §101(a), (e)(1), (8)(B), Sept. 21, 1993, 107 Stat. 788, 815, 816; Pub. L. 105-277, div. A, §101(f) [title VIII, §405(d)(42)(C), (f)(33)(B)], Oct. 21, 1998, 112 Stat. 2681-337, 2681-428, 2681-434.)

REFERENCES IN TEXT

The Workforce Investment Act of 1998, referred to in subsec. (a), is Pub. L. 105-220, Aug. 7, 1998, 112 Stat. 936, as amended. Title I of the Act is classified principally to chapter 30 (§2801 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

CODIFICATION

Section was formerly classified to section 12554 of this title prior to renumbering by Pub. L. 103-82, §101(a).

PRIOR PROVISIONS

A prior section 199L of Pub. L. 101-610 was classified to section 12655k of this title prior to repeal by Pub. L. 103-82, §101(e)(8)(A).

AMENDMENTS

1998—Subsec. (a). Pub. L. 105-277, §101(f) [title VIII, §405(f)(33)(B)], struck out “the Job Training Partnership Act and” after “(including”.

Pub. L. 105-277, §101(f) [title VIII, §405(d)(42)(C)], substituted “the Job Training Partnership Act and title I of the Workforce Investment Act of 1998” for “the Job Training Partnership Act (29 U.S.C. 1501 et seq.)”.

1993—Subsecs. (a), (d). Pub. L. 103-82, §101(e)(1), substituted “Corporation” for “Commission”.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 101(f) [title VIII, §405(d)(42)(C)] of Pub. L. 105-277 effective Oct. 21, 1998, and amendment by section 101(f) [title VIII, §405(f)(33)(B)] of Pub. L. 105-277 effective July 1, 2000, see section 101(f) [title VIII, §405(g)(1), (2)(B)] of Pub. L. 105-277, set out as a note under section 3502 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Oct. 1, 1993, see section 123 of Pub. L. 103-82, set out as a note under section 1701 of Title 16, Conservation.

§ 12655n. Federal and State employee status

(a) In general

Participants and crew leaders shall be responsible to, or be the responsibility of, the program agency administering the program on which such participants, crew leaders, and volunteers work.

(b) Non-Federal employees

(1) In general

Except as otherwise provided in this subsection, a participant or crew leader in a pro-

gram that receives assistance under this division shall not be considered a Federal employee and shall not be subject to the provisions of law relating to Federal employment.

(2) Work-related injury

For purposes of subchapter I of chapter 81 of title 5, relating to the compensation of Federal employees for work injuries, a participant or crew leader serving in a program that receives assistance under this division shall be considered an employee of the United States within the meaning of the term "employee" as defined in section 8101 of title 5 and the provision¹ of that subchapter shall apply, except—

(A) the term "performance of duty", as used in such subchapter, shall not include an act of a participant or crew leader while absent from the assigned post of duty of such participant or crew leader, except while participating in an activity authorized by or under the direction and supervision of a program agency (including an activity while on pass or during travel to or from such post of duty); and

(B) compensation for disability shall not begin to accrue until the day following the date that the employment of the injured participant or crew leader is terminated.

(3) Tort claims procedure

For purposes of chapter 171 of title 28, relating to tort claims procedure, a participant or crew leaders assigned to a youth corps program for which a grant has been made to the Secretary of Agriculture, Secretary of the Interior, or the Director of ACTION, shall be considered an employee of the United States within the meaning of the term "employee of the government" as defined in section 2671 of such title.

(4) Allowance for quarters

For purposes of section 5911 of title 5, relating to allowances for quarters, a participant or crew leader shall be considered an employee of the United States within the meaning of the term "employee" as defined in paragraph (3) of subsection (a) of such section.

(c) Availability of appropriation

Contract authority under this division shall be subject to the availability of appropriations. Assistance made available under this division shall only be used for activities that are in addition to those which would otherwise be carried out in the area in the absence of such funds.

(Pub. L. 101-610, title I, §199M, formerly §135, Nov. 16, 1990, 104 Stat. 3149; renumbered §199O, renumbered §199M, Pub. L. 103-82, title I, §101(a), (e)(8)(B), Sept. 21, 1993, 107 Stat. 788, 816, as amended Pub. L. 103-304, §3(b)(1), Aug. 23, 1994, 108 Stat. 1567.)

CODIFICATION

Section was formerly classified to section 12555 of this title prior to renumbering by Pub. L. 103-82, §101(a).

AMENDMENTS

1994—Pub. L. 103-304 amended directory language of Pub. L. 103-82, §101(a)(3), which renumbered section 135 of Pub. L. 101-610 as section 199O.

¹ So in original. Probably should be "provisions".

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-304 effective as of Oct. 1, 1993, see section 3(b)(10)(B) of Pub. L. 103-304, set out as a note under section 4953 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Director of ACTION Agency (including all related functions of any officer or employee of ACTION Agency) to Corporation for National and Community Service, and effective date of such transfer, see section 203(c), (d) of Pub. L. 103-82, set out as a note under section 12651 of this title.

Division J—Miscellaneous

§ 12656. Urban Youth Corps

(a) Findings

The Congress finds the following:

(1) The rehabilitation, reclamation, and beautification of urban public housing, recreational sites, youth and senior centers, and public roads and public works facilities through the efforts of young people in the United States in an Urban Youth Corps can benefit these youths, while also benefiting their communities, by—

(A) providing them with education and work opportunities;

(B) furthering their understanding and appreciation of the challenges faced by individuals residing in urban communities; and

(C) providing them with a means to pay for higher education or to repay indebtedness they have incurred to obtain higher education.

(2) A significant number of housing units for low-income individuals in urban areas has become substandard and unsafe and the deterioration of urban roadways, mass transit systems, and transportation facilities in the United States have contributed to the blight encountered in many cities in the United States.

(3) As a result, urban housing, public works, and transportation resources are in need of labor intensive rehabilitation, reclamation, and beautification work that has been neglected in the past and cannot be adequately carried out by Federal, State, and local government at existing personnel levels.

(4) Urban youth corps have established a good record of rehabilitating, reclaiming, and beautifying these kinds of resources in a cost-efficient manner, especially when they have worked in partnership with government housing, public works, and transportation authorities and agencies.

(b) Purpose

It is the purpose of this section—

(1) to perform, in a cost-effective manner, appropriate service projects to rehabilitate, reclaim, beautify, and improve public housing and public works and transportation facilities and resources in urban areas suffering from high rates of poverty where work will not be performed by existing employees;

(2) to assist government housing, public works, and transportation authorities and agencies;

(3) to expose young people in the United States to public service while furthering their

understanding and appreciation of their community;

(4) to expand educational opportunity for individuals who participate in the Urban Youth Corps established by this section by providing them with an increased ability to pursue post-secondary education or job training; and

(5) to stimulate interest among young people in the United States in lifelong service to their communities and the United States.

(c) Definitions

For purposes of this section:

(1) Appropriate service project

The term “appropriate service project” means any project for the rehabilitation, reclamation, or beautification of urban public housing and public works and transportation resources or facilities.

(2) Corps and Urban Youth Corps

The term “Corps” and “Urban Youth Corps” mean the Urban Youth Corps established under subsection (d)(1) of this section.

(3) Qualified urban youth corps

The term “qualified urban youth corps” means any program established by a State or local government or by a nonprofit organization that—

(A) is capable of offering meaningful, full-time, productive work for individuals between the ages of 16 and 25, inclusive, in an urban or public works or transportation setting;

(B) gives participants a mix of work experience, basic and life skills, education, training, and support services; and

(C) provides participants with the opportunity to develop citizenship values and skills through service to their communities and the United States.

(4) Secretary

The term “Secretary” means the Secretary of Housing and Urban Development or the Secretary of Transportation.

(5) State

The term “State” means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(d) Establishment of Urban Youth Corps

(1) Establishment

There is hereby established in the Department of Housing and Urban Development and the Department of Transportation an Urban Youth Corps. The Corps shall consist of individuals between the ages of 16 and 25, inclusive, who are enrolled as participants in the Corps by the Secretary of Housing and Urban Development and the Secretary of Transportation. To be eligible for enrollment in the Corps, an individual shall satisfy the criteria specified in section 139(b) of the National and Community Service Act of 1990 [42 U.S.C. 12593(b)]. The Secretaries may enroll such individuals in the Corps without regard to the

civil service and classification laws, rules, or regulations of the United States. The Secretaries may establish a preference for the enrollment in the Corps of individuals who are economically, physically, or educationally disadvantaged.

(2) Use of qualified urban youth corps

The Secretaries are authorized to enter into contracts and cooperative agreements with any qualified urban youth corps to perform appropriate service projects described in paragraph (3). As part of the Urban Youth Corps established in the Department of Transportation, the Secretary of Transportation may make grants to States (and through States to local governments) for the purpose of establishing, operating, or supporting qualified urban youth corps that will perform appropriate service projects relating to transportation resources or facilities.

(3) Service projects

The Secretaries may each utilize the Corps or any qualified urban youth corps to carry out appropriate service projects that the Secretary involved is authorized to carry out under other authority of law involving public housing projects or public works resources or facilities.

(4) Preference for certain projects

In selecting an appropriate service project to be carried out under this section, the Secretaries shall give a preference to those projects which—

(A) will provide long-term benefits to the public;

(B) will instill in the participant a work ethic and a sense of public service;

(C) will be labor intensive;

(D) can be planned and initiated promptly; and

(E) will provide academic, experiential, or community education opportunities.

(5) Consistency

Each appropriate service project carried out under this section in any public housing project or public works resource or facility shall be consistent with the provisions of law and policies relating to the management and administration of such projects, facilities, or resources, with all other applicable provisions of law, and with all management, operational, and other plans and documents which govern the administration of such projects, facilities, or resources.

(e) Living allowances

The Secretaries shall provide each participant in the Urban Youth Corps with a living allowance in an amount not to exceed the maximum living allowance authorized by section 140(a)(3) of the National and Community Service Act of 1990 [42 U.S.C. 12594(a)(3)] for participants in a national service program assisted under subtitle C of title I of such Act [42 U.S.C. 12571 et seq.].

(f) Terms of service

Each participant in the Urban Youth Corps shall agree to participate in the Corps for a term of service established by the Secretary involved,

consistent with the terms of service required under section 139(b) of the National and Community Service Act of 1990 [42 U.S.C. 12593(b)] for participants in a national service program assisted under subtitle C of title I of such Act [42 U.S.C. 12571 et seq.].

(g) Educational awards

(1) Eligibility

Each participant in the Urban Youth Corps shall be eligible for a national service educational award in the manner prescribed in subtitle D of title I of the National and Community Service Act of 1990 [42 U.S.C. 12601 et seq.] if such participant complies with such requirements as may be established under this subtitle by the Secretary involved respecting eligibility for the award. The period during which the award may be used, the purposes for which the award may be used, and the amount of the award shall be determined as provided under such subtitle.

(2) Forbearance in the collection of Stafford loans

For purposes of section 1078 of title 20, in the case of borrowers who are participants in the Urban Youth Corps, upon written request, a lender shall grant a borrower forbearance on such terms as are otherwise consistent with the regulations of the Secretary of Education, during periods in which the borrower is serving as such a participant and eligible for a national service educational award under paragraph (1).

(h) Nondisplacement

The nondisplacement requirements of section 177 of the National and Community Service Act of 1990 [42 U.S.C. 12637] shall be applicable to all activities carried out by the Urban Youth Corps and to all activities carried out under this section by a qualified urban youth corps.

(i) Cost sharing

(1) Projects by qualified urban youth corps

The Secretaries are each authorized to pay not more than 75 percent of the costs of any appropriate service project carried out pursuant to this section by a qualified urban youth corps. The remaining 25 percent of the costs of such a project may be provided from non-federal sources in the form of funds, services, facilities, materials, equipment, or any combination of the foregoing.

(2) Donations

The Secretaries are each authorized to accept donations of funds, services, facilities, materials, or equipment for the purposes of operating the Urban Youth Corps and carrying out appropriate service projects by the Corps. However, nothing in this section shall be construed to require any cost sharing for any project carried out directly by the Corps.

(3) Funds available under National and Community Service Act

In order to carry out the Urban Youth Corps or to support qualified urban youth corps under this section, the Secretaries shall be eligible to apply for and receive assistance under

section 121(b) of the National and Community Service Act of 1990 [42 U.S.C. 12571(b)].

(Pub. L. 103-82, title I, §106, Sept. 21, 1993, 107 Stat. 854.)

REFERENCES IN TEXT

The civil service laws, referred to in subsec. (d)(1), are set forth in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

The classification laws, referred to in subsec. (d)(1), are classified to chapter 51 (§5101 et seq.) and subchapter III (§5331 et seq.) of chapter 53 of Title 5.

The National and Community Service Act of 1990, referred to in subsecs. (e), (f), and (g)(1), is Pub. L. 101-610, Nov. 16, 1990, 104 Stat. 3127, as amended. Subtitles C and D of title I of the Act are classified generally to divisions C (§12571 et seq.) and D (§12601 et seq.), respectively, of this subchapter. For complete classification of this Act to the Code, see Short Title note set out under section 12501 of this title and Tables.

CODIFICATION

Section was enacted as part of the National and Community Service Trust Act of 1993, and not as part of the National and Community Service Act of 1990 which comprises this chapter.

EFFECTIVE DATE

Section effective Oct. 1, 1993, see section 123 of Pub. L. 103-82, set out as an Effective Date of 1993 Amendment note under section 1701 of Title 16, Conservation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12572 of this title.

SUBCHAPTER II—POINTS OF LIGHT
FOUNDATION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 12681 of this title.

§ 12661. Findings and purpose

(a) Findings

Congress finds that—

(1) community service and service to others is an integral part of American tradition;

(2) existing volunteers and volunteer programs should be praised for their efforts in helping and serving others;

(3) the definition of a successful life includes service to others;

(4) individuals should be encouraged to volunteer their time and energies in community service efforts;

(5) if asked to volunteer or participate in community service, most Americans will do so;

(6) institutions should be encouraged to volunteer their resources and energies and should encourage volunteer and community service among their members, employees, affiliates; and

(7) volunteer and community service programs are intended to complement and not replace governmental responsibilities.

(b) Purpose

It is the purpose of this subchapter—

(1) to encourage every American and every American institution to help solve our most

critical social problems by volunteering their time, energies and services through community service projects and initiatives;

(2) to identify successful and promising community service projects and initiatives, and to disseminate information concerning such projects and initiatives to other communities in order to promote their adoption nationwide; and

(3) to discover and encourage new leaders and develop individuals and institutions that serve as strong examples of a commitment to serving others and to convince all Americans that a successful life includes serving others.

(Pub. L. 101-610, title III, §302, Nov. 16, 1990, 104 Stat. 3180.)

SHORT TITLE

For short title of title III of Pub. L. 101-610 which enacted this subchapter, as “The Points of Light Foundation Act”, see section 301 of Pub. L. 101-610, set out as a note under section 12501 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12662, 12663, 12664 of this title.

§ 12662. Authority

(a) In general

The President, acting through the Corporation, is authorized to designate a private, non-profit organization (hereinafter referred to in this subchapter as the Foundation) to receive funds pursuant to section 12681(b) of this title in furtherance of activities under section 12661 of this title, upon the determination of the Corporation that such organization is capable of carrying out the undertakings described in section 12661 of this title. Any such designation by the Corporation shall be revocable.

(b) Construction

Nothing in this chapter shall be construed either—

(1) to cause the Foundation to be deemed an agency, establishment, or instrumentality of the United States Government; or

(2) to cause the directors, officers or employees of the Foundation to be deemed officers or employees of the United States.

(Pub. L. 101-610, title III, §303, Nov. 16, 1990, 104 Stat. 3181; Pub. L. 103-82, title IV, §402(b)(4), Sept. 21, 1993, 107 Stat. 919.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original “this Act”, meaning Pub. L. 101-610, Nov. 16, 1990, 104 Stat. 3127, as amended, known as the National and Community Service Act of 1990, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 12501 of this title and Tables.

AMENDMENTS

1993—Subsec. (a). Pub. L. 103-82 substituted “The President, acting through the Corporation,” for “The President”, inserted “in furtherance of activities under section 12661 of this title” after “section 12681(b) of this title”, and substituted “Corporation” for “President” in two places.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-82 effective Oct. 1, 1993, see section 406(a) of Pub. L. 103-82, set out as a note under section 5061 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12663 of this title.

§ 12663. Grants to Foundation

(a) In general

Funds made available pursuant to sections 12662 and 12681(b) of this title shall be granted to the Foundation by a department or agency in the executive branch of the United States Government designated by the President—

(1) to assist the Foundation in carrying out the undertakings described in section 12661 of this title; and

(2) for the administrative expenses of the Foundation.

(b) Interest earned on accounts

Notwithstanding any other provision of law, the Foundation may hold funds granted to it pursuant to this subchapter in interest-bearing accounts, prior to the disbursement of such funds for purposes specified in subsection (a) of this section, and may retain for such purposes any interest earned on such deposits without returning such interest to the Treasury of the United States and without further appropriation by the Congress.

(Pub. L. 101-610, title III, §304, Nov. 16, 1990, 104 Stat. 3181.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12664 of this title.

§ 12664. Eligibility of Foundation for grants

(a) Compliance

Grants may be made to the Foundation pursuant to this subchapter only if the Foundation agrees to comply with the requirements of this subchapter. If the Foundation fails to comply with the requirements of this subchapter, additional funds shall not be released until the Foundation brings itself into compliance with such requirements.

(b) Activities

The Foundation may use funds provided under this subchapter only for activities and programs consistent with the purposes described in sections 12661 and 12663 of this title.

(c) Limitation

The Foundation shall not issue any shares of stock or declare or pay any dividends.

(d) Compensation

No part of the funds available to the Foundation shall inure to the benefit of any board member, officer, or employee of the Foundation, except as salary or reasonable compensation for services or expenses. Compensation for board members shall be limited to reimbursement for reasonable costs of travel and expenses.

(e) Conflicts of interest

No director, officer, or employee of the Foundation shall participate, directly or indirectly, in the consideration or determination of any question before the Foundation that affects his or her financial interests or the financial inter-

ests of any corporation, partnership, entity, or organization in which he or she has a direct or indirect financial interest.

(f) Political activity

The Foundation shall not engage in lobbying or propaganda for the purpose of influencing legislation, and shall not participate or intervene in any political campaign on behalf of any candidate for public office.

(g) Private sector contributions

During the second and third fiscal years in which funds are provided to the Foundation under this subchapter, the Foundation shall raise from private sector donations an amount equal to not less than 25 percent of any funds provided to the Foundation under this subchapter in such fiscal year. Funds shall be released to the Foundation during such fiscal year only to the extent that the matching requirement of the subsection has been met.

(h) Audit of accounts

The accounts of the Foundation shall be audited annually by independent certified public accountants or independent licensed public accountants certified or licensed by a regulatory authority of a State or other political subdivision of the United States in accordance with generally accepted auditing standards. The reports,¹ of each such independent audit shall be included in the annual report required by subsection (l) of this section.

(i) Audits by agencies

In fiscal years in which the Foundation is receiving grants under this subchapter, the accounts of the Foundation may be audited at any time by any agency designated by the President. The Foundation shall keep such records as will facilitate effective audits.

(j) Congressional oversight

In fiscal years in which the Foundation is receiving grants under this subchapter, the Foundation shall be subject to appropriate oversight procedures of Congress.

(k) Duties

The Foundation shall ensure—

(1) that recipients of financial assistance provided by the Foundation under this subchapter, shall keep separate accounts with respect to such assistance and such records as may be reasonably necessary to disclose fully—

(A) the amount and the disposition by such recipient of the assistance received from the Foundation;

(B) the total cost of the project or undertaking in connection with which such assistance is given or used;

(C) the amount and nature of that portion of the cost of the project or undertaking supplied by other sources; and

(D) such other records as will facilitate effective audits; and

(2) that the Foundation, or any of its duly authorized representatives including any

agency designated by the President pursuant to subsection (i) of this section shall have access, for the purpose of audit and examination, to any books, documents, papers, and records of the recipient that are pertinent to assistance provided from funds granted pursuant to this subchapter.

(l) Annual reports

The Foundation shall prepare and submit to the President and to the appropriate Committees of Congress an annual report, that shall include a comprehensive and detailed description of the Foundation's operations, activities, financial condition, and accomplishments for the fiscal year preceding the year in which the report is submitted. Such report shall be submitted not later than 3 months after the conclusion of any fiscal year in which the Foundation receives grants under this subchapter.

(Pub. L. 101-610, title III, §305, Nov. 16, 1990, 104 Stat. 3181.)

SUBCHAPTER III—PROJECTS HONORING VICTIMS OF TERRORIST ATTACKS

§ 12671. Projects

(a) Definition

In this section, the term “Foundation” means the Points of Light Foundation funded under section 301,¹ or another nonprofit private organization, that enters into an agreement with the Corporation to carry out this section.

(b) Identification of projects

(1) Estimated number

Not later than March 1, 2002, the Foundation, after obtaining the guidance of the heads of appropriate Federal agencies, such as the Director of the Office of Homeland Security and the Attorney General, shall—

(A) make an estimate of the number of victims killed as a result of the terrorist attacks on September 11, 2001 (referred to in this section as the “estimated number”); and

(B) compile a list that specifies, for each individual that the Foundation determines to be such a victim, the name of the victim and the State in which the victim resided.

(2) Identified projects

The Foundation may identify approximately the estimated number of community-based national and community service projects that meet the requirements of subsection (d) of this section. The Foundation may name projects in honor of victims described in subsection (b)(1)(A) of this section, after obtaining the permission of an appropriate member of the victim's family and the entity carrying out the project.

(c) Eligible entities

To be eligible to have a project named under this section, the entity carrying out the project shall be a political subdivision of a State, a business, a nonprofit organization (which may be a religious organization), an Indian tribe, or an institution of higher education.

¹ So in original. The comma probably should not appear.

¹ See References in Text note below.

(d) Projects

The Foundation shall name, under this section, projects—

- (1) that advance the goals of unity, and improving the quality of life in communities; and
- (2) that will be planned, or for which implementation will begin, within a reasonable period after January 10, 2002, as determined by the Foundation.

(e) Website and database

The Foundation shall create and maintain websites and databases, to describe projects named under this section and serve as appropriate vehicles for recognizing the projects.

(Pub. L. 101-610, title IV, §401, as added Pub. L. 107-117, div. B, §1301(b), Jan. 10, 2002, 115 Stat. 2339.)

REFERENCES IN TEXT

Section 301, referred to in subsec. (a), is section 301 of Pub. L. 101-610, title III, Nov. 16, 1990, 104 Stat. 3180, which is set out as a note under section 12501 of this title and provides the short title for title III of Pub. L. 101-610, which enacted subchapter II (§12661 et seq.) of this chapter, relating to the Points of Light Foundation and its funding.

PRIOR PROVISIONS

A prior section 12671, Pub. L. 101-610, title IV, §401, Nov. 16, 1990, 104 Stat. 3183, stated sense of Congress concerning State enactment of model Good Samaritan Food Donation Act, prior to repeal by Pub. L. 104-210, §1(a)(1), Oct. 1, 1996, 110 Stat. 3011.

A prior section 12672, Pub. L. 101-610, title IV, §402, Nov. 16, 1990, 104 Stat. 3183, which set forth the model Good Samaritan Food Donation Act, was renumbered section 22 of the Child Nutrition Act of 1966 by Pub. L. 104-210, §1(b), Oct. 1, 1996, 110 Stat. 3012, and is classified to section 1791 of this title.

A prior section 12673, Pub. L. 101-610, title IV, §403, Nov. 16, 1990, 104 Stat. 3185, provided that model Good Samaritan Food Donation Act was intended only to serve as model law for enactment by States, District of Columbia, Commonwealth of Puerto Rico, and territories and possessions of United States, and that enactment of section 12672 of this title was to have no force or effect in law, prior to repeal by Pub. L. 104-210, §1(a)(1), Oct. 1, 1996, 110 Stat. 3011.

SUBCHAPTER IV—AUTHORIZATION OF APPROPRIATIONS

§ 12681. Authorization of appropriations**(a) Subchapter I****(1) Division B****(A) In general**

There are authorized to be appropriated to provide financial assistance under division B of subchapter I of this chapter, \$45,000,000 for fiscal year 1994 and such sums as may be necessary for each of the fiscal years 1995 through 1996.

(B) Programs

Of the amount appropriated under subparagraph (A) for a fiscal year—

- (i) not more than 63.75 percent shall be available to provide financial assistance under subpart A of part I of division B of subchapter I of this chapter;
- (ii) not more than 11.25 percent shall be available to provide financial assistance

under subpart B of part I of such division; and

- (iii) not more than 25 percent shall be available to provide financial assistance under part II of such division.

(2) Divisions C, D, and H**(A) In general**

There are authorized to be appropriated to provide financial assistance under divisions C and H of subchapter I of this chapter, to provide national service educational awards under division D of subchapter I of this chapter, and to carry out such audits and evaluations as the Chief Executive Officer or the Inspector General of the Corporation may determine to be necessary, \$300,000,000 for fiscal year 1994, \$500,000,000 for fiscal year 1995, and \$700,000,000 for fiscal year 1996.

(B) Programs

Of the amount appropriated under subparagraph (A) for a fiscal year, up to 15 percent shall be made available to provide financial assistance under section 12575 of this title, under subsections (b) and (c) of section 12576 of this title, and under division H of subchapter I of this chapter.

(3) Division E

There are authorized to be appropriated to provide financial assistance under division E of subchapter I of this chapter, such sums as may be necessary for each of the fiscal years 1995 through 1996.

(4) Administration**(A) In general**

There are authorized to be appropriated for the administration of this chapter \$40,000,000 for fiscal year 1994, \$60,000,000 for fiscal year 1995, and \$70,000,000 for fiscal year 1996.

(B) Corporation

Of the amounts appropriated under subparagraph (A) for a fiscal year—

- (i) up to 60 percent shall be made available to the Corporation for the administration of this chapter; and
- (ii) the remainder shall be available to provide financial assistance under section 12576(a) of this title.

(b) Subchapter II

There are authorized to be appropriated to carry out subchapter II of this chapter \$5,000,000 for each of the fiscal years 1994 through 1996.

(c) Availability of appropriations

Funds appropriated under this section shall remain available until expended.

(d) Specification of budget function

The authorizations of appropriations contained in this section shall be considered to be a component of budget function 500 as used by the Office of Management and Budget to cover education, training, employment, and social services, and, as such, shall be considered to be related to the programs of the Departments of Labor, Health and Human Services, and Education for budgetary purposes.

(Pub. L. 101-610, title V, §501, Nov. 16, 1990, 104 Stat. 3185; Pub. L. 102-384, §11, Oct. 5, 1992, 106 Stat. 1459; Pub. L. 103-82, title III, §301(a), Sept. 21, 1993, 107 Stat. 897.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(4), was in the original "this Act", meaning Pub. L. 101-610, Nov. 16, 1990, 104 Stat. 3127, as amended, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 12501 of this title and Tables.

AMENDMENTS

1993—Pub. L. 103-82 amended section generally, substituting subsecs. (a) to (d) for former subsecs. (a) and (b) which authorized appropriations to carry out subchapter I for fiscal year 1993 and subchapter II for fiscal years 1991 to 1993.

1992—Subsec. (a)(1). Pub. L. 102-384, §11(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "There are authorized to be appropriated to carry out subchapter I of this chapter, \$56,000,000 for fiscal year 1991, \$95,500,000 for fiscal year 1992, and \$105,000,000 for fiscal year 1993."

Subsec. (a)(2). Pub. L. 102-384, §11(b), substituted "paragraph (1)(A)" for "paragraph (1)" in introductory provisions, redesignated subpars. (B) to (D) as (A) to (C), respectively, added subpar. (D), and struck out former subpar. (A) which read as follows: "\$2,000,000 shall be made available to carry out part G of subchapter I of this chapter in each such fiscal year;"

EFFECTIVE DATE OF 1993 AMENDMENT

Section 301(b) of Pub. L. 103-82 provided that: "The amendment made by subsection (a) [amending this section] shall take effect on October 1, 1993."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12576, 12581, 12601, 12605, 12625, 12640, 12662, 12663 of this title.

§ 12682. Actions under national service laws to be subject to availability of appropriations

No action involving the obligation or expenditure of funds may be taken under one of the national service laws (as defined in section 12511(15) of this title) unless and until the Corporation for National and Community Service has sufficient appropriations available at the time such action is taken to satisfy the obligation to be incurred or make the expenditure to be made.

(Pub. L. 103-82, title II, §205, Sept. 21, 1993, 107 Stat. 897.)

CODIFICATION

Section enacted as part of the National and Community Service Trust Act of 1993, and not as part of the National and Community Service Act of 1990 which comprises this chapter.

CHAPTER 130—NATIONAL AFFORDABLE HOUSING

SUBCHAPTER I—GENERAL PROVISIONS AND POLICIES

- Sec.
- 12701. National housing goal.
- 12702. Objective of national housing policy.
- 12703. Purposes of Cranston-Gonzalez National Affordable Housing Act.
- 12704. Definitions.
- 12705. State and local housing strategies.
 - (a) In general.

- Sec.
- (b) Contents.
- (c) Approval.
- (d) Coordination of State and local housing strategies.
- (e) Consultation with social service agencies.
- (f) Barrier removal.
- (g) Treatment of troubled public housing agencies.

- 12705a. Purposes of Removal of Regulatory Barriers to Affordable Housing Act.
- 12705b. Definition of regulatory barriers to affordable housing.
- 12705c. Grants for regulatory barrier removal strategies and implementation.
 - (a) Funding.
 - (b) Grant authority.
 - (c) Repealed.
 - (d) Definitions.
 - (e) Application and selection.
 - (f) Selection of grantees.
 - (g) Coordination with clearinghouse.
 - (h) Reports to Secretary.
- 12705d. Regulatory barriers clearinghouse.
 - (a) Establishment.
 - (b) Functions.
 - (c) Organization.
 - (d) Timing.
- 12706. Certification.
- 12707. Citizen participation.
 - (a) In general.
 - (b) Notice and comment.
 - (c) Consideration of comments.
 - (d) Regulations.
- 12708. Compliance.
 - (a) Performance reports.
 - (b) Performance review by Secretary.
 - (c) Review by courts.
- 12709. Energy efficiency standards.
 - (a) Establishment.
 - (b) Model Energy Code.
 - (c) Revisions of Model Energy Code.
- 12710. Capacity study.
 - (a) In general.
 - (b) Report.
- 12711. Protection of State and local authority.
- 12712. 5-year energy efficiency plan.
 - (a) Establishment.
 - (b) Initial plan.
 - (c) Updates.
 - (d) Submission to Congress.
- 12713. Eligibility under first-time homebuyer programs.
 - (a) Eligibility of displaced homemakers and single parents for Federal assistance for first-time homebuyers.
 - (b) Definitions.
 - (c) Applicability.
- 12714. Repealed.

SUBCHAPTER II—INVESTMENT IN AFFORDABLE HOUSING

- 12721. Findings.
- 12722. Purposes.
- 12723. Coordinated Federal support for housing strategies.
- 12724. Authorization.
- 12725. Notice.

PART A—HOME INVESTMENT PARTNERSHIPS

- 12741. Authority.
- 12742. Eligible uses of investment.
 - (a) Housing uses.
 - (b) Investments.
 - (c) Administrative costs.
 - (d) Prohibited uses.
 - (e) Cost limits.
 - (f) Certification of compliance.
 - (g) Limitation on operating assistance.

- | | |
|--|---|
| <p>Sec.
12743. Development of model programs.
 (a) In general.
 (b) Adoption of programs.
 (c) Part D programs.</p> <p>12744. Income targeting.</p> <p>12745. Qualification as affordable housing.
 (a) Rental housing.
 (b) Homeownership.</p> <p>12746. Participation by States and local governments.</p> <p>12747. Allocation of resources.
 (a) In general.
 (b) Formula allocation.
 (c) Criteria for direct reallocation.
 (d) Reallocations.</p> <p>12748. HOME Investment Trust Funds.
 (a) Establishment.
 (b) Line of credit.
 (c) Reductions.
 (d) Certification.
 (e) Investment within 15 days.
 (f) No interest or fees.
 (g) Expiration of right to draw funds.
 (h) Administrative provision.</p> <p>12749. Repayment of investment.
 (a) In general.
 (b) Assurance of repayment.
 (c) Availability.</p> <p>12750. Matching requirements.
 (a) Contribution.
 (b) Recognition.
 (c) Form.
 (d) Reduction of requirement.</p> <p>12751. Private-public partnership.</p> <p>12752. Distribution of assistance.
 (a) Local.
 (b) State.</p> <p>12753. Penalties for misuse of funds.</p> <p>12754. Limitation on jurisdictions under court order.
 (a) In general.
 (b) Remedial use of funds permitted.</p> <p>12755. Tenant and participant protections.
 (a) Lease.
 (b) Termination of tenancy.
 (c) Maintenance and replacement.
 (d) Tenant selection.</p> <p>12756. Monitoring of compliance.
 (a) Enforceable agreements.
 (b) Periodic monitoring.
 (c) Special procedures for certain projects.</p> <p style="text-align: center;">PART B—COMMUNITY HOUSING PARTNERSHIP</p> <p>12771. Set-aside for community housing development organizations.
 (a) In general.
 (b) Recapture and reuse.
 (c) Direct reallocation criteria.</p> <p>12772. Project-specific assistance to community housing development organizations.
 (a) In general.
 (b) Project-specific technical assistance and site control loans.
 (c) Project-specific seed money loans.</p> <p>12773. Housing education and organizational support.
 (a) In general.
 (b) Eligible activities.
 (c) Delivery of assistance.
 (d) Limitations.
 (e) Single-State contractors.
 (f) “Community land trust” defined.</p> <p>12774. Other requirements.
 (a) Tenant participation plan.
 (b) Limitation on assistance.
 (c) Adjustments of other assistance.</p> <p style="text-align: center;">PART C—OTHER SUPPORT FOR STATE AND LOCAL HOUSING STRATEGIES</p> <p>12781. Authority.</p> | <p>Sec.
12782. Priorities for capacity development.</p> <p>12783. Conditions of contracts.
 (a) Eligible organizations.
 (b) Contract terms.</p> <p>12784. Research in housing affordability.</p> <p>12785. REACH: asset recycling information dissemination.
 (a) In general.
 (b) Eligible properties.</p> <p style="text-align: center;">PART D—SPECIFIED MODEL PROGRAMS</p> <p>12801. General authority.</p> <p>12802. Rental housing production.
 (a) Repayable advances.
 (b) Selection guidelines.
 (c) Guidelines.</p> <p>12803. Rental rehabilitation.
 (a) In general.
 (b) Amount of subsidy.
 (c) Additional restrictions.</p> <p>12804. Rehabilitation loans.
 (a) In general.
 (b) Condition of loans.
 (c) Additional restrictions.</p> <p>12805. Sweat equity model program.
 (a) In general.
 (b) Rehabilitation of properties.
 (c) Homeownership opportunities through sweat equity.
 (d) Rental opportunities through sweat equity.
 (e) “Self-help housing” defined.
 (f) Additional restrictions.</p> <p>12806. Home repair services grants for older and disabled homeowners.
 (a) In general.
 (b) Eligible recipients.
 (c) Permitted restrictions.</p> <p>12807. Low-income housing conservation and efficiency grant programs.
 (a) In general.
 (b) Activities.</p> <p>12808. Second mortgage assistance for first-time homebuyers.
 (a) In general.
 (b) Homeownership counseling.
 (c) Eligibility requirements.
 (d) Payment terms.
 (e) Security.</p> <p>12809. Rehabilitation of State and local government in rem properties.
 (a) In general.
 (b) Target.</p> <p>12810. Cost-saving building technologies and construction techniques.
 (a) In general.
 (b) Selection criteria.
 (c) Guidelines.
 (d) Report.</p> <p style="text-align: center;">PART E—OTHER ASSISTANCE</p> <p>12821. Downpayment assistance initiative.
 (a) Definitions.
 (b) Grant authority.
 (c) Eligible activities.
 (d) Formula allocation.
 (e) Reallocation.
 (f) Applicability of other provisions.
 (g) Housing strategy.
 (h) Report.
 (i) Sunset.
 (j) Relocation assistance and downpayment assistance.
 (k) Authorization of appropriations.</p> <p style="text-align: center;">PART F—GENERAL PROVISIONS</p> <p>12831. Equal opportunity.
 (a) Solicitation of contracts.</p> |
|--|---|

- Sec. (b) Report to Congress.
- 12832. Nondiscrimination.
- 12833. Audits by Comptroller General.
 - (a) Audits of HOME Investment Partnerships program.
 - (b) Audits of recipients.
- 12834. Uniform recordkeeping and reports to Congress.
 - (a) Uniform requirements.
 - (b) Omitted.
- 12835. Citizen participation.
- 12836. Labor.
 - (a) In general.
 - (b) Waiver.
- 12837. Interstate agreements.
- 12838. Environmental review.
 - (a) In general.
 - (b) Procedure.
 - (c) Certification.
 - (d) Assistance to units of general local government from a State.
- 12839. Termination of existing housing programs.
 - (a) In general.
 - (b) Repeals.
 - (c) Disposition of repayments.
- 12840. Suspension of requirements for disaster areas.

SUBCHAPTER III—NATIONAL HOMEOWNERSHIP TRUST DEMONSTRATION

- 12851. National Homeownership Trust.
 - (a) Establishment.
 - (b) Board of Directors.
 - (c) Powers of Trust.
 - (d) Travel and per diem.
 - (e) Director and staff.
- 12852. Assistance for first-time homebuyers.
 - (a) In general.
 - (b) Eligibility requirements.
 - (c) Terms of assistance.
 - (d) Allocation formula.
 - (e) Assistance in connection with housing financed with mortgage revenue bonds.
- 12853. National Homeownership Trust Fund.
 - (a) Establishment.
 - (b) Assets.
 - (c) Use of amounts.
 - (d) Investment of excess amounts.
 - (e) Demonstration programs.
- 12854. Definitions.
- 12855. Regulations.
- 12856. Report.
- 12857. Authorization of appropriations.
- 12858. Transition.
 - (a) Authority of Secretary.
 - (b) Applicability of Trust provisions.
 - (c) Certification of Fund to Treasury.
- 12859. Termination.

SUBCHAPTER IV—HOPE FOR HOMEOWNERSHIP OF MULTIFAMILY AND SINGLE FAMILY HOMES

- 12870. Authorization of appropriations.
 - (a) Fiscal year 1993.
 - (b) Fiscal year 1994.
 - (c) Technical assistance.

PART A—HOPE FOR HOMEOWNERSHIP OF MULTIFAMILY UNITS

- 12871. Program authority.
 - (a) In general.
 - (b) Authority to reserve housing assistance.
- 12872. Planning grants.
 - (a) Grants.
 - (b) Eligible activities.
 - (c) Application.
 - (d) Selection criteria.
- 12873. Implementation grants.

- Sec. (a) Grants.
- (b) Eligible activities.
- (c) Matching funding.
- (d) Application.
- (e) Selection criteria.
- (f) Approval.
- 12874. Homeownership program requirements.
 - (a) In general.
 - (b) Affordability.
 - (c) Plan.
 - (d) Acquisition and rehabilitation limitation.
 - (e) Financing.
 - (f) Housing quality standards.
 - (g) Protection of nonpurchasing families.
- 12875. Other program requirements.
 - (a) Preferences.
 - (b) Cost limitations.
 - (c) Use of proceeds from sales to eligible families.
 - (d) Restrictions on resale by homeowners.
 - (e) Third party rights.
 - (f) Dollar limitation on economic development activities.
 - (g) Timely homeownership.
 - (h) Records and audit of recipients of assistance.
 - (i) Certain entities not eligible.
- 12876. Definitions.
- 12877. Exemption.
- 12878. Limitation on selection criteria.
- 12879. Implementation.
- 12880. Report.

PART B—HOPE FOR HOMEOWNERSHIP OF SINGLE FAMILY HOMES

- 12891. Program authority.
- 12892. Planning grants.
 - (a) Grants.
 - (b) Eligible activities.
 - (c) Application.
 - (d) Selection criteria.
- 12893. Implementation grants.
 - (a) Grants.
 - (b) Eligible activities.
 - (c) Matching funding.
 - (d) Application.
 - (e) Selection criteria.
 - (f) Approval.
- 12894. Homeownership program requirements.
 - (a) In general.
 - (b) Affordability.
 - (c) Eligible property.
 - (d) Plan.
 - (e) Housing quality standards.
 - (f) Preference for acquisition of vacant units.
- 12895. Other program requirements.
 - (a) Cost limitations.
 - (b) Use of proceeds from sales to eligible families.
 - (c) Restrictions on resale by homeowners.
 - (d) Third party rights.
 - (e) Protection of nonpurchasing families.
 - (h) Records and audit of recipients of assistance.
- 12896. Definitions.
- 12897. Limitation on selection criteria.
- 12898. Implementation.
- 12898a. Enterprise zone homeownership opportunity grants.
 - (a) Statement of purpose.
 - (b) Definitions.
 - (c) Assistance to nonprofit organizations.
 - (d) Eligible uses of assistance.
 - (e) Program requirements.
 - (f) Terms and conditions of assistance.

Sec.

- (g) Program selection criteria.
- (h) Regulations.
- (i) Funding.

PART C—HOPE FOR YOUTH: YOUTHBUILD

- 12899. Statement of purpose.
- 12899a. Program authority.
- 12899b. Planning grants.
 - (a) Grants.
 - (b) Eligible activities.
 - (c) Application.
 - (d) Selection criteria.
- 12899c. Implementation grants.
 - (a) Grants.
 - (b) Eligible activities.
 - (c) Application.
 - (d) Selection criteria.
 - (e) Priority for applicants who obtain housing money from other sources.
 - (f) Approval.
 - (g) Combined planning and implementation grant application procedure.
- 12899d. Youthbuild program requirements.
 - (a) Residential rental housing.
 - (b) Transitional housing.
 - (c) Limitations on profits for rental and transitional housing.
 - (d) Homeownership.
 - (e) Restrictions on conveyance.
 - (f) Conversion of transitional housing.
 - (g) Period of restrictions.
- 12899e. Additional program requirements.
 - (a) Eligible participants.
 - (b) Minimum time devoted to educational services and activities.
 - (c) Authority restriction.
 - (d) State and local standards.
 - (e) Wages, labor standards, and non-discrimination.
- 12899f. Definitions.
- 12899g. Management and technical assistance.
 - (a) Secretary assistance.
 - (b) Sponsor assistance.
 - (c) Application preparation.
 - (d) Reservation of funds.
- 12899h. Contracts.
- 12899h-1. Ineligibility of Indian tribes.
- 12899i. Regulations.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 12 section 1831q.

SUBCHAPTER I—GENERAL PROVISIONS AND POLICIES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1437c-1, 1437u, 12821 of this title.

§ 12701. National housing goal

The Congress affirms the national goal that every American family be able to afford a decent home in a suitable environment.

(Pub. L. 101-625, title I, §101, Nov. 28, 1990, 104 Stat. 4085.)

SHORT TITLE OF 2003 AMENDMENT

Pub. L. 108-186, title I, §101, Dec. 16, 2003, 117 Stat. 2685, provided that: “This title [amending part E of subchapter II of this chapter] may be cited as the ‘American Dream Downpayment Act’.”

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106-569, title I, §101, Dec. 27, 2000, 114 Stat. 2946, provided that: “This title [amending sections 5307, 12705c, and 12705d of this title] may be cited as the ‘Housing Affordability Barrier Removal Act of 2000’.”

SHORT TITLE

Section 1(a) of Pub. L. 101-625 provided that: “This Act [see Tables for classification] may be cited as the ‘Cranston-Gonzalez National Affordable Housing Act’.”

Section 201 of title II of Pub. L. 101-625 provided that: “This title [enacting subchapter II of this chapter, amending section 1437f of this title, and repealing sections 1437o and 1452b of this title, section 1706e of Title 12, Banks and Banking, and provisions set out as a note under section 1715f of Title 12] may be cited as the ‘HOME Investment Partnerships Act’.”

Section 301 of Pub. L. 101-625 provided that: “This subtitle [subtitle A (§§301-310) of title III of Pub. L. 101-625, enacting subchapter III of this chapter] may be cited as the ‘National Homeownership Trust Act’.”

MILLENNIAL HOUSING COMMISSION

Pub. L. 107-73, title II, Nov. 26, 2001, 115 Stat. 671, provided in part: “That \$1,500,000 shall be for necessary expenses of the Millennial Housing Commission, as authorized by section 206 of Public Law 106-74 [set out below], with the final report due no later than May 30, 2002 and a termination date of August 30, 2002, notwithstanding section 206(f) and (g) of Public Law 106-74”.

Pub. L. 106-74, title II, §206, Oct. 20, 1999, 113 Stat. 1070, as amended by Pub. L. 106-554, §1(a)(4) [div. B, title X, §1001], Dec. 21, 2000, 114 Stat. 2763, 2763A-310, provided that:

“(a) ESTABLISHMENT.—There is hereby established a commission to be known as the Millennial Housing Commission (in this section referred to as the ‘Commission’).

“(b) STUDY.—The duty of the Commission shall be to conduct a study that examines, analyzes, and explores—

“(1) the importance of housing, particularly affordable housing which includes housing for the elderly, to the infrastructure of the United States;

“(2) the various possible methods for increasing the role of the private sector in providing affordable housing in the United States, including the effectiveness and efficiency of such methods; and

“(3) whether the existing programs of the Department of Housing and Urban Development work in conjunction with one another to provide better housing opportunities for families, neighborhoods, and communities, and how such programs can be improved with respect to such purpose.

“(c) MEMBERSHIP.—

“(1) NUMBER AND APPOINTMENT.—The Commission shall be composed of 22 members, appointed not later than January 1, 2000, as follows:

“(A) Two co-chairpersons appointed by—

“(i) one co-chairperson appointed by a committee consisting of the chairmen of the Subcommittees on the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies of the Committees on Appropriations of the House of Representatives and the Senate, and the chairman of the Subcommittee on Housing and Community Opportunities of the House of Representatives and the chairman of the Subcommittee on Housing and Transportation of the Senate; and

“(ii) one co-chairperson appointed by a committee consisting of the ranking minority members of the Subcommittees on the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies of the Committees on Appropriations of the House of Representatives and the Senate, and the ranking minority member of the Subcommittee on Housing and Community Opportunities of the House of Representatives and the ranking minority member of the Subcommittee on Housing and Transportation of the Senate.

“(B) Ten members appointed by the Chairman and Ranking Minority Member of the Committee on Appropriations of the House of Representatives

and the Chairman and Ranking Minority Member of the Committee on Banking and Financial Services [now Committee on Financial Services] of the House of Representatives.

“(C) Ten members appointed by the Chairman and Ranking Minority Member of the Committee on Appropriations of the Senate and the Chairman and Ranking Minority Member of the Committee on Banking, Housing, and Urban Affairs of the Senate.

“(2) QUALIFICATIONS.—Appointees should have proven expertise in directing, assembling, or applying capital resources from a variety of sources to the successful development of affordable housing or the revitalization of communities, including economic and job development.

“(3) VACANCIES.—Any vacancy on the Commission shall not affect its powers and shall be filled in the manner in which the original appointment was made.

“(4) CHAIRPERSONS.—The members appointed pursuant to paragraph (1)(A) shall serve as co-chairpersons of the Commission.

“(5) PROHIBITION OF PAY.—Members of the Commission shall serve without pay.

“(6) TRAVEL EXPENSES.—Each member of the Commission shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

“(7) QUORUM.—A majority of the members of the Commission shall constitute a quorum but a lesser number may hold hearings.

“(8) MEETINGS.—The Commission shall meet at the call of the Chairpersons.

“(d) DIRECTOR AND STAFF.—

“(1) DIRECTOR.—The Commission shall have a Director who shall be appointed by the Chairperson. The Director shall be paid at a rate not to exceed the rate of basic pay payable for level III of the Executive Schedule.

“(2) STAFF.—The Commission may appoint personnel as appropriate. The staff of the Commission shall be appointed subject to the provisions of title 5, United States Code, governing appointments in the competitive service, and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates.

“(3) EXPERTS AND CONSULTANTS.—The Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable for the General Schedule.

“(4) STAFF OF FEDERAL AGENCIES.—Upon request of the Commission, the head of any Federal department or agency may detail, on a non-reimbursable basis, any of the personnel of that department or agency to the Commission to assist it in carrying out its duties under this Act.

“(e) POWERS.—

“(1) HEARINGS AND SESSIONS.—The Commission may, for the purpose of carrying out this section, hold hearings, sit and act at times and places, take testimony, and receive evidence as the Commission considers appropriate.

“(2) POWERS OF MEMBERS AND AGENTS.—Any member or agent of the Commission may, if authorized by the Commission, take any action which the Commission is authorized to take by this section.

“(3) OBTAINING OFFICIAL DATA.—The Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out this Act. Upon request of the Chairpersons of the Commission, the head of that department or agency shall furnish that information to the Commission.

“(4) GIFTS, BEQUESTS, AND DEVISES.—The Commission may accept, use, and dispose of gifts, bequests, or devises of services or property, both real and personal, for the purpose of aiding or facilitating the work of the Commission. Gifts, bequests, or devises of

money and proceeds from sales of other property received as gifts, bequests, or devises shall be deposited in the Treasury and shall be available for disbursement upon order of the Commission.

“(5) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

“(6) ADMINISTRATIVE SUPPORT SERVICES.—Upon the request of the Commission, the Administrator of General Services shall provide to the Commission, on a reimbursable basis, the administrative support services necessary for the Commission to carry out its responsibilities under this section.

“(7) CONTRACT AUTHORITY.—The Commission may contract with and compensate Government and private agencies or persons for services, without regard to section 3709 of the Revised Statutes (41 U.S.C. 5).

“(f) REPORT.—The Commission shall submit to the Committees on Appropriations and Banking and Financial Services [now Committee on Financial Services] of the House of Representatives and the Committees on Appropriations and Banking, Housing, and Urban Affairs of the Senate a final report not later than March 1, 2002. The report shall contain a detailed statement of the findings and conclusions of the Commission with respect to the study conducted under subsection (b), together with its recommendations for legislation, administrative actions, and any other actions the Commission considers appropriate.

“(g) TERMINATION.—The Commission shall terminate on June 30, 2002. Section 14(a)(2)(B) of the Federal Advisory Committee Act (5 U.S.C. App.; relating to the termination of advisory committees) shall not apply to the Commission.”

COMMISSION ON AFFORDABLE HOUSING AND HEALTH FACILITY NEEDS FOR SENIORS IN THE 21ST CENTURY

Pub. L. 107-73, title II, Nov. 26, 2001, 115 Stat. 671, provided in part: “That \$1,000,000 shall be for necessary expenses of the commission established under section 525 of the Preserving Affordable Housing for Senior Citizens and Families in the 21st Century Act [Pub. L. 106-74, set out below], with the final report due no later than June 30, 2002 and a termination date of September 30, 2002, notwithstanding section 525(f) and (g) of Public Law 106-74”.

Pub. L. 106-74, title V, § 525, Oct. 20, 1999, 113 Stat. 1106, as amended by Pub. L. 106-377, § 1(a)(1) [title II, § 230], Oct. 27, 2000, 114 Stat. 1441, 1441A-31, provided that:

“(a) ESTABLISHMENT.—There is hereby established a commission to be known as the Commission on Affordable Housing and Health Facility Needs for Seniors in the 21st Century (in this section referred to as the ‘Commission’).

“(b) STUDY.—The duty of the Commission shall be to conduct a study that—

“(1) compiles and interprets information regarding the expected increase in the population of persons 62 years of age or older, particularly information regarding distribution of income levels, homeownership and home equity rates, and degree or extent of health and independence of living;

“(2) provides an estimate of the future needs of seniors for affordable housing and assisted living and health care facilities;

“(3) provides a comparison of estimate of such future needs with an estimate of the housing and facilities expected to be provided under existing public programs, and identifies possible actions or initiatives that may assist in providing affordable housing and assisted living and health care facilities to meet such expected needs;

“(4) identifies and analyzes methods of encouraging increased private sector participation, investment, and capital formation in affordable housing and assisted living and health care facilities for seniors through partnerships between public and private entities and other creative strategies;

“(5) analyzes the costs and benefits of comprehensive aging-in-place strategies, taking into consideration physical and mental well-being and the importance of coordination between shelter and supportive services;

“(6) identifies and analyzes methods of promoting a more comprehensive approach to dealing with housing and supportive service issues involved in aging and the multiple governmental agencies involved in such issues, including the Department of Housing and Urban Development and the Department of Health and Human Services; and

“(7) examines how to establish intergenerational learning and care centers and living arrangements, in particular to facilitate appropriate environments for families consisting only of children and a grandparent or grandparents who are the head of the household.

“(c) MEMBERSHIP.—

“(1) NUMBER AND APPOINTMENT.—The Commission shall be composed of 14 members, appointed not later than January 1, 2000, as follows:

“(A) Two co-chairpersons, of whom—

“(i) one co-chairperson shall be appointed by a committee consisting of the chairman of the Subcommittee on Housing and Community Opportunities of the House of Representatives and the chairman of the Subcommittee on Housing and Transportation of the Senate, and the chairmen of the Subcommittees on the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies of the Committees on Appropriations of the House of Representatives and the Senate; and

“(ii) one co-chairperson shall be appointed by a committee consisting of the ranking minority member of the Subcommittee on Housing and Community Opportunities of the House of Representatives and the ranking minority member of the Subcommittee on Housing and Transportation of the Senate, and the ranking minority members of the Subcommittees on the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies of the Committees on Appropriations of the House of Representatives and the Senate.

“(B) Six members appointed by the Chairman and Ranking Minority Member of the Committee on Banking and Financial Services [now Committee on Financial Services] of the House of Representatives and the Chairman and Ranking Minority Member of the Committee on Appropriations of the House of Representatives.

“(C) Six members appointed by the Chairman and Ranking Minority Member of the Committee on Banking, Housing, and Urban Affairs of the Senate and the Chairman and Ranking Minority Member of the Committee on Appropriations of the Senate.

“(2) QUALIFICATIONS.—Appointees should have proven expertise in directing, assembling, or applying capital resources from a variety of sources to the successful development of affordable housing, assisted living facilities, or health care facilities.

“(3) VACANCIES.—Any vacancy on the Commission shall not affect its powers and shall be filled in the manner in which the original appointment was made.

“(4) CHAIRPERSONS.—The members appointed pursuant to paragraph (1)(A) shall serve as co-chairpersons of the Commission.

“(5) PROHIBITION OF PAY.—Members of the Commission shall serve without pay.

“(6) TRAVEL EXPENSES.—Each member of the Commission shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

“(7) QUORUM.—A majority of the members of the Commission shall constitute a quorum but a lesser number may hold hearings.

“(8) MEETINGS.—The Commission shall meet at the call of the Chairpersons.

“(d) DIRECTOR AND STAFF.—

“(1) DIRECTOR.—The Commission shall have a Director who shall be appointed by the Chairperson. The Director shall be paid at a rate not to exceed the rate of basic pay payable for level V of the Executive Schedule.

“(2) STAFF.—The Commission may appoint personnel as appropriate. The staff of the Commission shall be appointed subject to the provisions of title 5, United States Code, governing appointments in the competitive service, and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates.

“(3) EXPERTS AND CONSULTANTS.—The Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable for the General Schedule.

“(4) STAFF OF FEDERAL AGENCIES.—Upon request of the Commission, the head of any Federal department or agency may detail, on a reimbursable basis, any of the personnel of that department or agency to the Commission to assist it in carrying out its duties under this Act.

“(e) POWERS.—

“(1) HEARINGS AND SESSIONS.—The Commission may, for the purpose of carrying out this section, hold hearings, sit and act at times and places, take testimony, and receive evidence as the Commission considers appropriate.

“(2) POWERS OF MEMBERS AND AGENTS.—Any member or agent of the Commission may, if authorized by the Commission, take any action which the Commission is authorized to take by this section.

“(3) OBTAINING OFFICIAL DATA.—The Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out this Act. Upon request of the Chairpersons of the Commission, the head of that department or agency shall furnish that information to the Commission.

“(4) GIFTS, BEQUESTS, AND DEVICES.—The Commission may accept, use, and dispose of gifts, bequests, or devises of services or property, both real and personal, for the purpose of aiding or facilitating the work of the Commission. Gifts, bequests, or devises of money and proceeds from sales of other property received as gifts, bequests, or devises shall be deposited in the Treasury and shall be available for disbursement upon order of the Commission.

“(5) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

“(6) ADMINISTRATIVE SUPPORT SERVICES.—Upon the request of the Commission, the Administrator of General Services shall provide to the Commission, on a reimbursable basis, the administrative support services necessary for the Commission to carry out its responsibilities under this section.

“(7) CONTRACT AUTHORITY.—The Commission may contract with and compensate Government and private agencies or persons for services, without regard to section 3709 of the Revised Statutes (41 U.S.C. 5).

“(f) REPORT.—The Commission shall submit to the Committees on Banking and Financial Services [now Committee on Financial Services] and Appropriations of the House of Representatives and the Committees on Banking, Housing, and Urban Affairs and Appropriations of the Senate, a final report not later than December 31, 2001. The report shall contain a detailed statement of the findings and conclusions of the Commission with respect to the study conducted under subsection (b), together with its recommendations for legislation, administrative actions, and any other actions the Commission considers appropriate.

“(g) TERMINATION.—The Commission shall terminate on June 30, 2002. Section 14(a)(2)(B) of the Federal Advi-

sory Committee Act (5 U.S.C. App.; relating to the termination of advisory committees) shall not apply to the Commission.”

§ 12702. Objective of national housing policy

The objective of national housing policy shall be to reaffirm the long-established national commitment to decent, safe, and sanitary housing for every American by strengthening a nationwide partnership of public and private institutions able—

- (1) to ensure that every resident of the United States has access to decent shelter or assistance in avoiding homelessness;
- (2) to increase the Nation’s supply of decent housing that is affordable to low-income and moderate-income families and accessible to job opportunities;
- (3) to improve housing opportunities for all residents of the United States, particularly members of disadvantaged minorities, on a nondiscriminatory basis;
- (4) to help make neighborhoods safe and livable;
- (5) to expand opportunities for homeownership;
- (6) to provide every American community with a reliable, readily available supply of mortgage finance at the lowest possible interest rates; and
- (7) to encourage tenant empowerment and reduce generational poverty in federally assisted and public housing by improving the means by which self-sufficiency may be achieved.

(Pub. L. 101-625, title I, §102, Nov. 28, 1990, 104 Stat. 4085.)

§ 12703. Purposes of Cranston-Gonzalez National Affordable Housing Act

The purposes of this Act are—

- (1) to help families not owning a home to save for a down payment for the purchase of a home;
- (2) to retain wherever feasible as housing affordable to low-income families those dwelling units produced for such purpose with Federal assistance;
- (3) to extend and strengthen partnerships among all levels of government and the private sector, including for-profit and nonprofit organizations, in the production and operation of housing affordable to low-income and moderate-income families;
- (4) to expand and improve Federal rental assistance for very low-income families; and
- (5) to increase the supply of supportive housing, which combines structural features and services needed to enable persons with special needs to live with dignity and independence.

(Pub. L. 101-625, title I, §103, Nov. 28, 1990, 104 Stat. 4085.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 101-625, Nov. 28, 1990, 104 Stat. 4079, known as the Cranston-Gonzalez National Affordable Housing Act. For complete classification of this Act to the Code, see Short Title note set out under section 12701 of this title and Tables.

§ 12704. Definitions

As used in this subchapter and in subchapter II of this chapter:

(1) The term “unit of general local government” means a city, town, township, county, parish, village, or other general purpose political subdivision of a State; the Federated States of Micronesia and Palau, the Marshall Islands, or a general purpose political subdivision thereof; a consortium of such political subdivisions recognized by the Secretary in accordance with section 12746(2) of this title; and any agency or instrumentality thereof that is established pursuant to legislation and designated by the chief executive to act on behalf of the jurisdiction with regard to provisions of this Act.

(2) The term “State” means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any agency or instrumentality thereof that is established pursuant to legislation and designated by the chief executive officer to act on behalf of the State with regard to the provisions of this Act.

(3) The term “jurisdiction” means a State or unit of general local government.

(4) The term “participating jurisdiction” means any State or unit of general local government that has been so designated in accordance with section 12746 of this title.

(5) The term “nonprofit organization” means any private, nonprofit organization (including a State or locally chartered, nonprofit organization) that—

- (A) is organized under State or local laws,
- (B) has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual,
- (C) complies with standards of financial accountability acceptable to the Secretary, and
- (D) has among its purposes significant activities related to the provision of decent housing that is affordable to low-income and moderate-income persons.

(6) The term “community housing development organization” means a nonprofit organization as defined in paragraph (5), that—

- (A) has among its purposes the provision of decent housing that is affordable to low-income and moderate-income persons;
- (B) maintains, through significant representation on the organization’s governing board and otherwise, accountability to low-income community residents and, to the extent practicable, low-income beneficiaries with regard to decisions on the design, siting, development, and management of affordable housing;
- (C) has a demonstrated capacity for carrying out activities assisted under this Act; and
- (D) has a history of serving the local community or communities within which housing to be assisted under this Act is to be located.

In the case of an organization serving more than one county, the Secretary may not require that such organization, to be considered

a community housing development organization for purposes of this Act, include as members on the organization's governing board low-income persons residing in each county served.

(7) The term "government-sponsored mortgage finance corporations" means the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Federal Agricultural Mortgage Corporation.

(8) The term "housing" includes manufactured housing and manufactured housing lots and elder cottage housing opportunity units that are small, free-standing, barrier-free, energy-efficient, removable, and designed to be installed adjacent to existing 1- to 4-family dwellings.

(9) The term "very low-income families" means low-income families whose incomes do not exceed 50 percent of the median family income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 50 percent of the median for the area on the basis of the Secretary's findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes.

(10) The term "low-income families" means families whose incomes do not exceed 80 percent of the median income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 80 percent of the median for the area on the basis of the Secretary's findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes.

(11) The term "families" has the same meaning given that term by section 1437a of this title.

(12) The term "security" has the same meaning as in section 77b of title 15.

(13) The term "displaced homemaker" means an individual who—

(A) is an adult;

(B) has not worked full-time full-year in the labor force for a number of years but has, during such years, worked primarily without remuneration to care for the home and family; and

(C) is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

(14) The term "first-time homebuyer" means an individual and his or her spouse who have not owned a home during the 3-year period prior to purchase of a home with assistance under subchapter II of this chapter, except that—

(A) any individual who is a displaced homemaker may not be excluded from consideration as a first-time homebuyer under this paragraph on the basis that the individual, while a homemaker, owned a home with his or her spouse or resided in a home owned by the spouse;

(B) any individual who is a single parent may not be excluded from consideration as a

first-time homebuyer under this paragraph on the basis that the individual, while married, owned a home with his or her spouse or resided in a home owned by the spouse; and (C) an individual shall not be excluded from consideration as a first-time homebuyer under this paragraph on the basis that the individual owns or owned, as a principal residence during such 3-year period, a dwelling unit whose structure is—

(i) not permanently affixed to a permanent foundation in accordance with local or other applicable regulations, or

(ii) not in compliance with State, local, or model building codes, or other applicable codes, and cannot be brought into compliance with such codes for less than the cost of constructing a permanent structure.

(15) The term "single parent" means an individual who—

(A) is unmarried or legally separated from a spouse; and

(B)(i) has 1 or more minor children for whom the individual has custody or joint custody; or

(ii) is pregnant.

(16) The term "Secretary" means the Secretary of Housing and Urban Development, unless otherwise specified in this Act.

(17) The term "substantial rehabilitation" means the rehabilitation of residential property at an average cost in excess of \$25,000 per dwelling unit.

(18) The term "public housing agency" has the meaning given the term in section 1437a(b) of this title.

(19) The term "metropolitan city" has the meaning given the term in section 5302(a)(4) of this title.

(20) The term "urban county" has the meaning given the term in section 5302(a)(6) of this title.

(21) The term "certification" means a written assertion, based on supporting evidence, which shall be kept available for inspection by the Secretary, the Inspector General and the public, which assertion shall be deemed to be accurate for purposes of this Act, unless the Secretary determines otherwise after inspecting the evidence and providing due notice and opportunity for comment.

(23)¹ The term "to demonstrate to the Secretary" means to submit to the Secretary a written assertion together with supporting evidence that, in the determination of the Secretary, supports the accuracy of the assertion.

(24)² The term "insular area" means any of the following: Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa.

(24)² The term "energy efficient mortgage" means a mortgage that provides financing incentives for the purchase of energy efficient homes, or that provides financing incentives to make energy efficiency improvements in existing homes by incorporating the cost of such improvements in the mortgage.

¹ So in original. Probably should be "(22)".

² So in original. Two pars. (24) have been enacted.

(25) The term “energy efficient mortgage” means a mortgage that provides financing incentives for the purchase of energy efficient homes, or that provides financing incentives to make energy efficiency improvements in existing homes by incorporating the cost of such improvements in the mortgage.

(Pub. L. 101-625, title I, §104, Nov. 28, 1990, 104 Stat. 4085; Pub. L. 102-229, title I, Dec. 12, 1991, 105 Stat. 1709; Pub. L. 101-230, §2, Dec. 12, 1991, 105 Stat. 1720; Pub. L. 102-486, title I, §105(a), Oct. 24, 1992, 106 Stat. 2792; Pub. L. 102-550, title II, §§211(a)(1), 217(a), 218, 219, title IX, §914(a), Oct. 28, 1992, 106 Stat. 3756, 3760, 3761, 3877; Pub. L. 103-233, title II, §201, Apr. 11, 1994, 108 Stat. 363.)

REFERENCES IN TEXT

This Act, referred to in pars. (1), (2), (6), (16), and (21), is Pub. L. 101-625, Nov. 28, 1990, 104 Stat. 4079, as amended, known as the Cranston-Gonzalez National Affordable Housing Act. For complete classification of this Act to the Code, see Short Title note set out under section 12701 of this title and Tables.

AMENDMENTS

1994—Par. (2). Pub. L. 103-233 struck out “and” after “Columbia,” and inserted before period at end “, or any agency or instrumentality thereof that is established pursuant to legislation and designated by the chief executive officer to act on behalf of the State with regard to the provisions of this Act”.

1992—Par. (1). Pub. L. 102-550, §211(a)(1), amended this section to read as if amendment made by Pub. L. 102-230, §2(1), had not been enacted. See 1991 Amendment note below.

Par. (6). Pub. L. 102-550, §217(a), inserted concluding provisions.

Par. (8). Pub. L. 102-550, §218, inserted before period at end “and elder cottage housing opportunity units that are small, free-standing, barrier-free, energy-efficient, removable, and designed to be installed adjacent to existing 1- to 4-family dwellings”.

Par. (14)(C). Pub. L. 102-550, §219, added subpar. (C).

Par. (24). Pub. L. 102-550, §211(a)(1), amended this section to read as if amendment made by Pub. L. 102-230, §2(2), had not been enacted. See 1991 Amendment note below.

Pub. L. 102-486 added par. (24) defining “energy efficient mortgage”.

Par. (25). Pub. L. 102-550, §914(a), added par. (25).

1991—Par. (1). Pub. L. 102-230, §2(1), directed the substitution of “the insular areas” for “Guam, the Northern Mariana Islands, the Virgin Islands, American Samoa, the Federated States of Micronesia and Palau, the Marshall Islands”. See 1992 Amendment note above.

Pub. L. 102-229 struck out “Guam, the Northern Mariana Islands, the Virgin Islands, American Samoa,” after “of a State;”.

Par. (24). Pub. L. 102-230, §2(2), directed the addition of a par. (24) to read as follows: “(24) The term ‘insular areas’ means Guam, the Northern Mariana Islands, the United States Virgin Islands, and American Samoa.” See 1992 Amendment note above.

Pub. L. 102-229 added par. (24) defining “insular area”.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-233 applicable with respect to any amounts made available to carry out subchapter II (§12721 et seq.) of this chapter after Apr. 11, 1994, and any amounts made available to carry out that subchapter before that date that remain uncommitted on that date, with Secretary to issue any regulations necessary to carry out such amendment not later than end of 45-day period beginning on that date, see section 209 of Pub. L. 103-233, set out as a note under section 5301 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 211(b) of Pub. L. 102-550 provided that: “The amendments made by subsection (a) [amending this section and section 12747 of this title] shall apply with respect to fiscal year 1993 and thereafter.”

Section 223 of title II of Pub. L. 102-550 provided that: “The amendments made by this title [enacting section 12810 of this title and amending this section and sections 12705, 12724, 12742, 12745 to 12748, 12750, 12771, 12773, 12774, 12782, and 12784 of this title] shall apply to unexpended funds allocated under title II of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12721 et seq.] in fiscal year 1992, except as otherwise specifically provided.”

REGULATIONS

Section 222 of title II of Pub. L. 102-550 provided that: “The Secretary of Housing and Urban Development shall issue any final regulations necessary to implement the provisions of this title [enacting section 12810 of this title, amending this section and sections 12705, 12724, 12742, 12745 to 12748, 12750, 12771, 12773, 12774, 12782, and 12784 of this title, and enacting provisions set out as notes under this section and sections 12746, 12747, and 12750 of this title] and the amendments made by this title not later than the expiration of the 180-day period beginning on the date of the enactment of this Act [Oct. 28, 1992], except as expressly provided otherwise in this title and the amendments made by this title. Such regulations shall be issued after notice and opportunity for public comment pursuant to the provisions of section 553 of title 5, United States Code (notwithstanding subsections (a)(2), (b)(B), and (d)(3) of such section).”

TRANSITION RULE

Section 217(b) of Pub. L. 102-550 provided that: “For the purposes of determining compliance with the requirements of section 104(6) of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12704(6)], the Secretary of Housing and Urban Development may provide an exception for organizations that meet the definition of community housing development organization, except for significant representation of low-income community residents on the board, if such organization fulfills such requirement within 6 months of receiving funds under title II of such Act [42 U.S.C. 12721 et seq.] or September 30, 1993, whichever is sooner.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1437bbb-8, 1472, 11403g, 12773, 12896, 12902 of this title; title 12 section 4116.

§ 12705. State and local housing strategies

(a) In general

The Secretary shall provide assistance directly to a jurisdiction only if—

(1) the jurisdiction submits to the Secretary a comprehensive housing affordability strategy (hereafter in this section referred to as the “housing strategy”);

(2) the jurisdiction submits annual updates of the housing strategy; and

(3) the housing strategy, and any annual update of such strategy, is approved by the Secretary.

The Secretary shall establish such dates and manner for the submission and approval of housing strategies under this section that the Secretary determines will facilitate orderly program management by jurisdictions and provide for timely investment or other use of funds made available under subchapter II of this chapter and other programs requiring submission of a housing strategy. If the Secretary finds there

is good cause, the Secretary may provide reasonable extensions of any deadlines for submission of a jurisdiction's housing strategy.

(b) Contents

A housing strategy submitted under this section shall be in a form that the Secretary determines to be appropriate for the assistance the jurisdiction may be provided and shall—

(1) describe the jurisdiction's estimated housing needs projected for the ensuing 5-year period, and the jurisdiction's need for assistance for very low-income, low-income, and moderate-income families, specifying such needs for different types of tenure and for different categories of residents, such as very low-income, low-income, and moderate-income families, the elderly, persons with disabilities, single persons, large families, residents of non-metropolitan areas, families who are participating in an organized program to achieve economic independence and self-sufficiency, persons with acquired immunodeficiency syndrome, and other categories of persons residing in or expected to reside in the jurisdiction that the Secretary determines to be appropriate;

(2) describe the nature and extent of homelessness, including rural homelessness, within the jurisdiction, providing an estimate of the special needs of various categories of persons who are homeless or threatened with homelessness, including tabular representation of such information, and a description of the jurisdiction's strategy for (A) helping low-income families avoid becoming homeless; (B) addressing the emergency shelter and transitional housing needs of homeless persons (including a brief inventory of facilities and services that meet such needs within that jurisdiction); and (C) helping homeless persons make the transition to permanent housing and independent living;

(3) describe the significant characteristics of the jurisdiction's housing market, indicating how those characteristics will influence the use of funds made available for rental assistance, production of new units, rehabilitation of old units, or acquisition of existing units;

(4) explain whether the cost of housing or the incentives to develop, maintain, or improve affordable housing in the jurisdiction are affected by public policies, particularly by policies of the jurisdiction, including tax policies affecting land and other property, land use controls, zoning ordinances, building codes, fees and charges, growth limits, and policies that affect the return on residential investment, and describe the jurisdiction's strategy to remove or ameliorate negative effects, if any, of such policies, except that, if a State requires a unit of general local government to submit a regulatory barrier assessment that is substantially equivalent to the information required under this paragraph, as determined by the Secretary, the unit of general local government may submit its assessment submitted to the State to the Secretary and shall be considered to have complied with this paragraph;

(5) explain the institutional structure, including private industry, nonprofit organiza-

tions, and public institutions, through which the jurisdiction will carry out its housing strategy, assessing the strengths and gaps in that delivery system and describing what the jurisdiction will do to overcome those gaps;

(6) indicate resources from private and non-Federal public sources that are reasonably expected to be made available to carry out the purposes of this Act, explaining how funds made available will leverage those additional resources and identifying, where the jurisdiction deems it appropriate, publicly owned land or property located within the jurisdiction that may be utilized to carry out the purposes of this Act;

(7) set forth the jurisdiction's plan for investment or other use of housing funds made available under subchapter II of this chapter, the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.], the Housing and Community Development Act of 1974, and the McKinney-Vento Homeless Assistance Act [42 U.S.C. 11301 et seq.], during the ensuing year or such longer period as the Secretary determines to be appropriate, indicating the general priorities for allocating investment geographically within the jurisdiction and among different activities and housing needs;

(8) describe how the jurisdiction's plan will address the housing needs identified pursuant to subparagraphs¹ (1) and (2), describe the reasons for allocation priorities, and identify any obstacles to addressing underserved needs;

(9) describe the means of cooperation and coordination among the State and any units of general local government in the development, submission, and implementation of their housing strategies;

(10) in the case of a unit of local government, describe the number of public housing units in the jurisdiction, the physical condition of such units, the restoration and revitalization needs of public housing projects within the jurisdiction, the public housing agency's strategy for improving the management and operation of such public housing, and the public housing agency's strategy for improving the living environment of low- and very-low-income families residing in public housing;

(11) describe the manner in which the plan of the jurisdiction will help address the needs of public housing;

(12) in the case of a State, describe the strategy to coordinate the Low-Income Tax Credit with development of housing, including public housing, that is affordable to very low-income and low-income families;

(13) describe the jurisdiction's activities to encourage public housing residents to become more involved in management and participate in homeownership;

(14) describe the standards and procedures according to which the jurisdiction will monitor activities authorized under this Act and ensure long-term compliance with the provisions of this Act;

(15) include a certification that the jurisdiction will affirmatively further fair housing;

(16) include a certification that the jurisdiction has in effect and is following a residential

¹ So in original. Probably should be "paragraphs".

antidisplacement and relocation assistance plan that, in any case of any such displacement in connection with any activity assisted with amounts provided under subchapter II of this chapter, requires the same actions and provides the same rights as required and provided under a residential antidisplacement and relocation assistance plan under section 104(d) of the Housing and Community Development Act of 1974 [42 U.S.C. 5304(d)] in the event of displacement in connection with a development project assisted under section 106 or 119 of such Act [42 U.S.C. 5306, 5318];

(17) estimate the number of housing units within the jurisdiction that are occupied by low-income families or very low-income families and that contain lead-based paint hazards, as defined in section 4851b of this title, outline the actions proposed or being taken to evaluate and reduce lead-based paint hazards, and describe how lead-based paint hazard reduction will be integrated into housing policies and programs;

(18) include the number of families to whom the jurisdiction will provide affordable housing as defined in section 12745 of this title using funds made available;

(19) for any housing strategy submitted for fiscal year 1994 or any fiscal year thereafter and taking into consideration factors over which the jurisdiction has control, describe the jurisdiction's goals, programs, and policies for reducing the number of households with incomes below the poverty line (as defined by the Office of Management and Budget and revised annually), and, in consultation with other appropriate public and private agencies, state how the jurisdiction's goals, programs, and policies for producing and preserving affordable housing set forth in the housing strategy will be coordinated with other programs and services for which the jurisdiction is responsible and the extent to which they will reduce (or assist in reducing) the number of households with incomes below the poverty line; and

(20) describe the jurisdictions activities to enhance coordination between public and assisted housing providers and private and governmental health, mental health, and service agencies.

The Secretary may provide for the submission of abbreviated housing strategies by jurisdictions that are not otherwise expected to be participating jurisdictions under subchapter II of this chapter. Such an abbreviated housing strategy shall be appropriate to the types and amounts of assistance the jurisdiction is to receive as determined by the Secretary.

(c) Approval

(1) In general

The Secretary shall review the housing strategy upon receipt. Not later than 60 days after receipt by the Secretary, the housing strategy shall be approved unless the Secretary determines before that date that (A) the housing strategy is inconsistent with the purposes of this Act, or (B) the information described in subsection (b) of this section has not been provided in a substantially complete

manner. For the purpose of the preceding sentence, the adoption or continuation of a public policy identified pursuant to subsection (b)(4) of this section shall not be a basis for the Secretary's disapproval of a housing strategy. During the 18-month period following November 28, 1990, the Secretary may extend the review period to not longer than 90 days.

(2) Actions in case of disapproval

If the Secretary disapproves the housing strategy, the Secretary shall immediately notify the jurisdiction of such disapproval. Not later than 15 days after the Secretary's disapproval, the Secretary shall inform the jurisdiction in writing of (A) the reasons for disapproval, and (B) actions that the jurisdiction could take to meet the criteria for approval. If the Secretary fails to inform the jurisdiction of the reasons for disapproval within such 15-day period, the housing strategy shall be deemed to have been approved.

(3) Amendments and resubmission

The Secretary shall, for a period of not less than 45 days following the date of first disapproval, permit amendments to, or the resubmission of, any housing strategy that is disapproved. The Secretary shall approve or disapprove a housing strategy not less than 30 days after receipt of such amendments or resubmission.

(d) Coordination of State and local housing strategies

The Secretary may establish such requirements as the Secretary deems appropriate to encourage coordination between and among the housing strategies of a State and any participating jurisdictions within the State, except that a unit of general local government shall not be required to have elements of its housing strategy approved by the State.

(e) Consultation with social service agencies

(1) In general

When preparing a housing strategy for submission under this section, a jurisdiction shall make reasonable efforts to confer with appropriate social service agencies regarding the housing needs of children, elderly persons, persons with disabilities, homeless persons, and other persons served by such agencies.

(2) Lead-based paint hazards

When preparing that portion of a housing strategy required by subsection (b)(16) of this section, a jurisdiction shall consult with State or local health and child welfare agencies and examine existing data related to lead-based paint hazards and poisonings, including health department data on the addresses of housing units in which children have been identified as lead poisoned.

(f) Barrier removal

Not later than 4 months after completion of the final report of the Secretary's Advisory Commission on Regulatory Barriers to Affordable Housing, the Secretary shall submit to the Congress a written report outlining the Secretary's recommendations for legislative and administrative actions to facilitate the removal or

modification of excessive, duplicative, or unnecessary regulations or other requirements of Federal, State, or local governments that (1) inflate the costs of or otherwise inhibit the construction, rehabilitation, or management of housing, particularly housing that otherwise could be affordable to low-income and moderate-income families, or (2) contribute to economic or racial discrimination.

(g) Treatment of troubled public housing agencies

(1) Effect of troubled status on CHAS

The comprehensive housing affordability strategy (or any consolidated plan incorporating such strategy) for the State or unit of general local government in which any troubled public housing agency is located shall not be considered to comply with the requirements under this section unless such plan includes a description of the manner in which the State or unit will provide financial or other assistance to such troubled agency in improving its operations to remove such designation.

(2) Definition

For purposes of this subsection, the term “troubled public housing agency” means a public housing agency that, upon the effective date of the Quality Housing and Work Responsibility Act of 1998, is designated under section 6(j)(2) of the United States Housing Act of 1937 [42 U.S.C. 1437d(j)(2)] as a troubled public housing agency.

(Pub. L. 101-625, title I, §105, Nov. 28, 1990, 104 Stat. 4088; Pub. L. 102-550, title II, §220, title VI, §681, title X, §1014, title XII, §1206, Oct. 28, 1992, 106 Stat. 3761, 3830, 3908, 3940; Pub. L. 105-276, title V, §§568, 583, Oct. 21, 1998, 112 Stat. 2634, 2644; Pub. L. 106-400, §2, Oct. 30, 2000, 114 Stat. 1675.)

REFERENCES IN TEXT

This Act, referred to in subsecs. (b)(6), (14) and (c)(1), is Pub. L. 101-625, Nov. 28, 1990, 104 Stat. 4079, known as the Cranston-Gonzalez National Affordable Housing Act. For complete classification of this Act to the Code, see Short Title note set out under section 12701 of this title and Tables.

The United States Housing Act of 1937, referred to in subsec. (b)(7), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93-383, title II, §201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§1437 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of this title and Tables.

The Housing and Community Development Act of 1974, referred to in subsec. (b)(7), is Pub. L. 93-383, Aug. 22, 1974, 88 Stat. 633, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

The McKinney-Vento Homeless Assistance Act, referred to in subsec. (b)(7), is Pub. L. 100-77, July 22, 1987, 101 Stat. 482, as amended, which is classified principally to chapter 119 (§11301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of this title and Tables.

The effective date of the Quality Housing and Work Responsibility Act of 1998, referred to in subsec. (g)(2), probably means the general effective date for title V of Pub. L. 105-276, included in section 503 of Pub. L. 105-276 which is set out as an Effective Date of 1998 Amendment note under section 1437 of this title.

AMENDMENTS

2000—Subsec. (b)(7). Pub. L. 106-400 substituted “McKinney-Vento Homeless Assistance Act” for “Stewart B. McKinney Homeless Assistance Act”.

1998—Subsec. (b). Pub. L. 105-276, §583(1), transferred flush provisions relating to abbreviated housing strategies to end of subsection to follow last numbered paragraph.

Subsec. (b)(11) to (15). Pub. L. 105-276, §583(6), (7), added par. (11) and redesignated former pars. (11) to (14) as (12) to (15), respectively. Former par. (15) redesignated (16).

Subsec. (b)(16). Pub. L. 105-276, §583(6), redesignated par. (15) as (16). Former par. (16), relating to housing units that contain lead-based paint hazards, redesignated (17), and former par. (16), relating to number of families to whom jurisdiction will provide affordable housing, redesignated (18).

Pub. L. 105-576, §583(5)(A), substituted “programs;” for “programs.” in par. (16) relating to housing units that contain lead-based paint hazards.

Pub. L. 105-576, §583(4)(A), struck out “and” at end of par. (16) relating to number of families to whom jurisdiction will provide affordable housing.

Subsec. (b)(17). Pub. L. 105-276, §583(5)(B), redesignated par. (16), relating to housing units that contain lead-based paint hazards, as (17). Former par. (17), relating to reducing the number of households within a jurisdiction with incomes below the poverty line, redesignated (19), and former par. (17), relating to activities to enhance coordination, redesignated (20).

Subsec. (b)(18). Pub. L. 105-276, §583(4)(B), redesignated par. (16), relating to number of families to whom jurisdiction will provide affordable housing, as (18).

Subsec. (b)(19). Pub. L. 105-276, §583(3), redesignated par. (17), relating to reducing the number of households within a jurisdiction with incomes below the poverty line, as (19).

Subsec. (b)(20). Pub. L. 105-276, §583(2), redesignated par. (17), relating to activities to enhance coordination, as (20).

Subsec. (g). Pub. L. 105-276, §568, added subsec. (g). 1992—Subsec. (b)(1). Pub. L. 102-550, §681(1), inserted “persons with disabilities,” after “the elderly.”

Subsec. (b)(2). Pub. L. 102-550, §220(a), inserted “, including rural homelessness,” after “extent of homelessness” and “including tabular representation of such information,” after “with homelessness.”

Subsec. (b)(4). Pub. L. 102-550, §1206, inserted before semicolon at end “, except that, if a State requires a unit of general local government to submit a regulatory barrier assessment that is substantially equivalent to the information required under this paragraph, as determined by the Secretary, the unit of general local government may submit its assessment submitted to the State to the Secretary and shall be considered to have complied with this paragraph”.

Subsec. (b)(8). Pub. L. 102-550, §220(c)(2), added par. (8). Former par. (8) redesignated (9).

Subsec. (b)(9) to (13). Pub. L. 102-550, §220(c)(1), redesignated pars. (8) to (12) as (9) to (13), respectively. Former par. (13) redesignated (14).

Subsec. (b)(14). Pub. L. 102-550, §220(c)(1), redesignated par. (13) as (14). Former par. (14) redesignated (15).

Pub. L. 102-550, §220(b)(1), added par. (14) and struck out former par. (14) which read as follows: “include a certification that the jurisdiction is in compliance with a residential antidisplacement and relocation assistance plan under section 104(d) of the Housing and Community Development Act of 1974 (to the extent that such a plan applies to the jurisdiction); and”.

Subsec. (b)(15). Pub. L. 102-550, §220(c)(1), redesignated par. (14) as (15). Former par. (15) redesignated (16).

Subsec. (b)(16). Pub. L. 102-550, §1014(3), added par. (16) relating to housing units that contain lead-based paint hazards.

Pub. L. 102-550, §220(c)(1), redesignated par. (15) as (16). Former par. (16) redesignated (17).

Pub. L. 102-550, §220(b)(3), added at end par. (16) relating to reducing the number of households within a jurisdiction with incomes below the poverty line.

Subsec. (b)(17). Pub. L. 102-550, §681(2), which directed amendment of subsec. (b) by adding “after paragraph (16), as added by the preceding provisions of this Act”, a new par. (17) relating to activities to enhance coordination, was executed by adding that par. (17) after par. (17) (formerly par. (16), relating to reducing the number of households within a jurisdiction with incomes below the poverty line, to reflect the probable intent of Congress.

Pub. L. 102-550, §220(c)(1), redesignated par. (16), relating to reducing the number of households within a jurisdiction with incomes below the poverty line, as (17).

Subsec. (e). Pub. L. 102-550, §1014(4), designated existing provisions as par. (1), inserted heading, and added par. (2).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by title V of Pub. L. 105-276 effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement amendment before such date, except to extent that such amendment provides otherwise, and with savings provision, see section 503 of Pub. L. 105-276, set out as a note under section 1437 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 220 of Pub. L. 102-550 applicable to unexpended funds allocated under subchapter II of this chapter in fiscal year 1992, except as otherwise specifically provided, see section 223 of Pub. L. 102-550, set out as a note under section 12704 of this title.

Amendment by subtitles B through F of title VI [§§ 621-685] of Pub. L. 102-550 applicable upon expiration of 6-month period beginning Oct. 28, 1992, except as otherwise provided, see section 13642 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1437e, 1437f, 1437aaa-1, 1437aaa-2, 1439, 1485, 1490f, 4852, 5304, 5318a, 8013, 11361, 11375, 11386, 11394, 11403c, 11432, 12705b, 12705c, 12708, 12746, 12747, 12752, 12821, 12872, 12873, 12892, 12893, 12899b, 12899c, 12903 of this title; title 12 sections 1456, 1701q, 1723a, 4117.

§ 12705a. Purposes of Removal of Regulatory Barriers to Affordable Housing Act

The purposes of sections 12705a to 12705d of this title are—

(1) to encourage State and local governments to further identify and remove regulatory barriers to affordable housing (including barriers that are excessive, unnecessary, duplicative, or exclusionary) that significantly increase housing costs and limit the supply of affordable housing; and

(2) to strengthen the connection between Federal housing assistance and State and local efforts to identify and eliminate regulatory barriers.

(Pub. L. 102-550, title XII, §1202, Oct. 28, 1992, 106 Stat. 3938.)

REFERENCES IN TEXT

Sections 12705a to 12705d of this title, referred to in text, were in the original “this title”, meaning title XII of Pub. L. 102-550, Oct. 28, 1992, 106 Stat. 3938, known as the Removal of Regulatory Barriers to Affordable Housing Act of 1992, which enacted sections 12705a to 12705d of this title, amended sections 5306 and 12705 of this title, and enacted provisions set out as a note below.

CODIFICATION

Section was enacted as part of the Removal of Regulatory Barriers to Affordable Housing Act of 1992, and also as part of the Housing and Community Development Act of 1992, and not as part of the Cranston-Gonzalez National Affordable Housing Act which comprises this chapter.

SHORT TITLE

Section 1201 of title XII of Pub. L. 102-550 provided that: “This title [enacting this section and sections 12705b to 12705d of this title, amending sections 5306 and 12705 of this title, and enacting provisions set out as a note below] may be cited as the ‘Removal of Regulatory Barriers to Affordable Housing Act of 1992.’”

REPORT BY SECRETARY

Pub. L. 102-550, title XII, §1207, Oct. 28, 1992, 106 Stat. 3941, provided that not later than 2 years after Oct. 28, 1992, the Secretary of Housing and Urban Development submit a report to Congress describing any successful State and local strategies for removal of barriers to affordable housing, assessing impact of identified regulatory barriers on housing patterns of minorities, and describing any strategies developed or implemented by Department of Housing and Urban Development for reducing barriers to affordable housing imposed by Federal Government, prior to repeal by Pub. L. 105-362, title VII, §701(b), Nov. 10, 1998, 112 Stat. 3287.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12705b of this title.

§ 12705b. Definition of regulatory barriers to affordable housing

For purposes of sections 12705a to 12705d of this title, the terms “regulatory barriers to affordable housing” and “regulatory barriers” mean any public policies (including policies embodied in statutes, ordinances, regulations, or administrative procedures or processes) required to be identified by a jurisdiction in connection with its comprehensive housing affordability strategy under section 12705(b)(4) of this title. Such terms do not include policies relating to rents imposed on a structure by a jurisdiction or policies that have served to create or preserve, or can be shown to create or preserve, housing for low- and very low-income families, including displacement protections, demolition controls, replacement housing requirements, relocation benefits, housing trust funds, dedicated funding sources, waiver of local property taxes and builder fees, inclusionary zoning, rental zoning overlays, long-term use restrictions, and rights of first refusal.

(Pub. L. 102-550, title XII, §1203, Oct. 28, 1992, 106 Stat. 3938.)

REFERENCES IN TEXT

Sections 12705a to 12705d of this title, referred to in text, were in the original “this title”, meaning title XII of Pub. L. 102-550, Oct. 28, 1992, 106 Stat. 3938, known as the Removal of Regulatory Barriers to Affordable Housing Act of 1992, which enacted sections 12705a to 12705d of this title, amended sections 5306 and 12705 of this title, and enacted provisions set out as notes under section 12705a of this title.

CODIFICATION

Section was enacted as part of the Removal of Regulatory Barriers to Affordable Housing Act of 1992, and also as part of the Housing and Community Develop-

ment Act of 1992, and not as part of the Cranston-Gonzalez National Affordable Housing Act which comprises this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12705a, 12705c of this title.

§ 12705c. Grants for regulatory barrier removal strategies and implementation

(a) Funding

There is authorized to be appropriated for grants under subsections (b) and (c)¹ of this section such sums as may be necessary for each of fiscal years 2001, 2002, 2003, 2004, and 2005.

(b) Grant authority

The Secretary may make grants to States and units of general local government (including consortia of such governments) for the costs of developing and implementing strategies to remove regulatory barriers to affordable housing, including the costs of—

- (1) identifying, assessing, and monitoring State and local regulatory barriers;
- (2) identifying State and local policies (including laws and regulations) that permit or encourage regulatory barriers;
- (3) developing legislation to provide State, local, or regional programs to reduce regulatory barriers and developing a strategy for adoption of such legislation;
- (4) developing model State or local standards and ordinances to reduce regulatory barriers and assisting in the adoption and use of the standards and ordinances;
- (5) carrying out the simplification and consolidation of administrative procedures and processes constituting regulatory barriers to affordable housing, including the issuance of permits; and
- (6) providing technical assistance and information to units of general local government for implementation of legislative and administrative reform programs to remove regulatory barriers to affordable housing.

(c) Repealed. Pub. L. 106-569, title I, § 102(c), Dec. 27, 2000, 114 Stat. 2947

(d) Definitions

For purposes of this section, the terms “regulatory barriers to affordable housing” and “regulatory barriers” have the meaning given such terms in section 12705b of this title.

(e) Application and selection

The Secretary shall provide for the form and manner of applications for grants under this section, which shall describe how grant amounts will assist the State or unit of general local government in developing and implementing strategies to remove regulatory barriers to affordable housing. The Secretary shall establish criteria for approval of applications under this subsection and such criteria shall require that grant amounts be used in a manner consistent with the strategy contained in the comprehensive housing affordability strategy for the jurisdiction pursuant to section 12705(b)(4) of this title.

¹ See References in Text note below.

(f) Selection of grantees

To the extent amounts are made available to carry out this section, the Secretary shall provide grants on a competitive basis to eligible grantees based on the proposed uses of such amounts, as provided in applications under subsection (e) of this section.

(g) Coordination with clearinghouse

Each State and unit of general local government receiving a grant under this section, shall consult, coordinate, and exchange information with the clearinghouse established under section 12705d of this title.

(h) Reports to Secretary

Each State and unit of general local government receiving a grant under this section shall submit a report to the Secretary, not less than 12 months after receiving the grant, describing any activities carried out with the grant amounts. The report shall contain an assessment of the impact of any regulatory barriers identified by the grantee on the housing patterns of minorities.

(Pub. L. 102-550, title XII, § 1204, Oct. 28, 1992, 106 Stat. 3938; Pub. L. 106-569, title I, § 102(a)-(e), Dec. 27, 2000, 114 Stat. 2946, 2947.)

REFERENCES IN TEXT

Subsection (c) of this section, referred to in subsec. (a), was repealed by Pub. L. 106-569, title I, § 102(c), Dec. 27, 2000, 114 Stat. 2947.

CODIFICATION

Section was enacted as part of the Removal of Regulatory Barriers to Affordable Housing Act of 1992, and also as part of the Housing and Community Development Act of 1992, and not as part of the Cranston-Gonzalez National Affordable Housing Act which comprises this chapter.

Section is comprised of section 1204 of Pub. L. 102-550. Subsection (i) of section 1204 of Pub. L. 102-550 amended section 5306 of this title.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106-569, § 102(a), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: “The amounts set aside under section 5307 of this title for the purpose of this subsection shall be available for grants under subsection (b) and (c) of this section.”

Subsec. (b). Pub. L. 106-569, § 102(b)(1), (2), substituted “Grant authority” for “State grants” in heading and inserted “and units of general local government (including consortia of such governments)” after “States” in introductory provisions.

Subsec. (b)(3). Pub. L. 106-569, § 102(b)(3), substituted “State, local, or regional programs to reduce” for “a State program to reduce State and local”.

Subsec. (b)(4). Pub. L. 106-569, § 102(b)(4), inserted “or local” after “State”.

Subsec. (b)(5). Pub. L. 106-569, § 102(b)(5), struck out “State” before “administrative procedures”.

Subsec. (c). Pub. L. 106-569, § 102(c), struck out heading and text of subsec. (c) which related to local grants.

Subsec. (e). Pub. L. 106-569, § 102(d), substituted “and such criteria shall require that grant amounts be used in a manner consistent with the strategy contained in the comprehensive housing affordability strategy for the jurisdiction pursuant to section 12705(b)(4) of this title” for “and for the selection of units of general local government to receive grants under subsection (f)(2) of this section” before period at end.

Subsec. (f). Pub. L. 106-569, § 102(e), amended heading and text of subsec. (f) generally, substituting provisions

relating to selection of grantees for provisions relating to allocation of amounts.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12705a, 12705b of this title.

§ 12705d. Regulatory barriers clearinghouse

(a) Establishment

The Secretary of Housing and Urban Development shall establish a clearinghouse to serve as a national repository to receive, collect, process, assemble, and disseminate information regarding—

(1) State and local laws, regulations, and policies affecting the development, maintenance, improvement, availability, or cost of affordable housing (including tax policies affecting land and other property, land use controls, zoning ordinances, building codes, fees and charges, growth limits, and policies that affect the return on investment in residential property), and the prevalence and effects on affordable housing of such laws, regulations, and policies;

(2) State and local activities, strategies, and plans to remove or ameliorate the negative effects, if any, of such laws, regulations, and policies, including particularly innovative or successful activities, strategies, and plans; and

(3) State and local strategies, activities and plans that promote affordable housing and housing desegregation, including particularly innovative or successful strategies, activities, and plans.

(b) Functions

The clearinghouse established under subsection (a) of this section shall—

(1) respond to inquiries from State and local governments, other organizations, and individuals requesting information regarding State and local laws, regulations, policies, activities, strategies, and plans described in subsection (a) of this section;

(2) provide assistance in identifying, examining, and understanding such laws, regulations, policies, activities, strategies, and plans; and

(3) by making available through a World Wide Web site of the Department, by electronic mail, or otherwise, provide to each housing agency of a unit of general local government that serves an area having a population greater than 100,000, an index of all State and local strategies and plans submitted under subsection (a) of this section to the clearinghouse, which—

(A) shall describe the types of barriers to affordable housing that the strategy or plan was designed to ameliorate or remove; and

(B) shall, not later than 30 days after submission to the clearinghouse of any new strategy or plan, be updated to include the new strategy or plan submitted.

(c) Organization

The clearinghouse under this section shall be established within the Office of Policy Development of the Department of Housing and Urban Development and shall be under the direction of the Assistant Secretary for Policy Development and Research.

(d) Timing

The clearinghouse under this section (as amended by section 103 of the Housing Affordability Barrier Removal Act of 2000) shall be established and commence carrying out the functions of the clearinghouse under this section not later than 1 year after December 27, 2000. The Secretary of Housing and Urban Development may comply with the requirements under this section by reestablishing the clearinghouse that was originally established to comply with this section and updating and improving such clearinghouse to the extent necessary to comply with the requirements of this section as in effect pursuant to the enactment of such Act.

(Pub. L. 102-550, title XII, §1205, Oct. 28, 1992, 106 Stat. 3940; Pub. L. 106-569, title I, §103, Dec. 27, 2000, 114 Stat. 2947.)

REFERENCES IN TEXT

The Housing Affordability Barrier Removal Act of 2000, referred to in subsec. (d), is title I of Pub. L. 106-569, Dec. 27, 2000, 114 Stat. 2946. Section 103 of the Act amended this section. For complete classification of this Act to the Code, see Short Title of 2000 Amendment note set out under section 12701 of this title and Tables.

CODIFICATION

Section was enacted as part of the Removal of Regulatory Barriers to Affordable Housing Act of 1992, and also as part of the Housing and Community Development Act of 1992, and not as part of the Cranston-Gonzalez National Affordable Housing Act which comprises this chapter.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106-569, §103(1)(A), substituted “serve as a national repository to receive, collect, process, assemble, and disseminate” for “receive, collect, process, and assemble” in introductory provisions.

Subsec. (a)(1). Pub. L. 106-569, §103(1)(B), substituted “(including” for “, including” and inserted “), and the prevalence and effects on affordable housing of such laws, regulations, and policies” before semicolon at end.

Subsec. (a)(2). Pub. L. 106-569, §103(1)(C), inserted before semicolon “, including particularly innovative or successful activities, strategies, and plans”.

Subsec. (a)(3). Pub. L. 106-569, §103(1)(D), inserted before period at end “, including particularly innovative or successful strategies, activities, and plans”.

Subsec. (b)(3). Pub. L. 106-569, §103(2), added par. (3).

Subsecs. (c), (d). Pub. L. 106-569, §103(3), added subsecs. (c) and (d).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12705a, 12705b, 12705c of this title.

§ 12706. Certification

The Secretary shall, by regulation or otherwise, as deemed by the Secretary to be appropriate, require any application for housing assistance under subchapter II of this chapter, assistance under the Housing and Community Development Act of 1974, or assistance under the McKinney-Vento Homeless Assistance Act [42 U.S.C. 11301 et seq.], to contain or be accompanied by a certification by an appropriate State or local public official that the proposed housing activities are consistent with the housing strategy of the jurisdiction to be served.

(Pub. L. 101-625, title I, §106, Nov. 28, 1990, 104 Stat. 4091; Pub. L. 106-400, §2, Oct. 30, 2000, 114 Stat. 1675.)

REFERENCES IN TEXT

The Housing and Community Development Act of 1974, referred to in text, is Pub. L. 93-383, Aug. 22, 1974, 88 Stat. 633, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

The McKinney-Vento Homeless Assistance Act, referred to in text, is Pub. L. 100-77, July 22, 1987, 101 Stat. 482, as amended, which is classified principally to chapter 119 (§11301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of this title and Tables.

AMENDMENTS

2000—Pub. L. 106-400 substituted “McKinney-Vento Homeless Assistance Act” for “Stewart B. McKinney Homeless Assistance Act”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12708 of this title.

§ 12707. Citizen participation

(a) In general

Before submitting a housing strategy under this section,¹ a jurisdiction shall—

(1) make available to its citizens, public agencies, and other interested parties information concerning the amount of assistance the jurisdiction expects to receive and the range of investment or other uses of such assistance that the jurisdiction may undertake;

(2) publish a proposed housing strategy in a manner that, in the determination of the Secretary, affords affected citizens, public agencies, and other interested parties a reasonable opportunity to examine its content and to submit comments on the proposed housing strategy;

(3) hold one or more public hearings to obtain the views of citizens, public agencies, and other interested parties on the housing needs of the jurisdiction; and

(4) provide citizens, public agencies, and other interested parties with reasonable access to records regarding any uses of any assistance the jurisdiction may have received during the preceding 5 years.

(b) Notice and comment

Before submitting any performance report or substantial amendment to a housing strategy under this section,¹ a participating jurisdiction shall provide citizens with reasonable notice of, and opportunity to comment on, such performance report or substantial amendment prior to its submission.

(c) Consideration of comments

A participating jurisdiction shall consider any comments or views of citizens in preparing a final housing strategy, amendment to a housing strategy or performance report for submission. A summary of such comments or views shall be attached when a housing strategy, amendment to a housing strategy or performance report is

¹ So in original. The words “this section” probably should be “section 12705 of this title”.

submitted. The submitted housing strategy, amendment, or report shall be made available to the public.

(d) Regulations

The Secretary shall by regulation establish procedures appropriate and practicable for providing a fair hearing and timely resolution of citizen complaints related to housing strategies or performance reports.

(Pub. L. 101-625, title I, §107, Nov. 28, 1990, 104 Stat. 4091.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12835 of this title.

§ 12708. Compliance

(a) Performance reports

(1) In general

Each participating jurisdiction shall annually review and report, in a form acceptable to the Secretary, on the progress it has made in carrying out its housing strategy, which report shall include an evaluation of the jurisdiction's progress in meeting its goal established in section 12705(b)(15)¹ of this title, and information on the number and types of households served, including the number of very low-income, low-income, and moderate-income persons served and the racial and ethnic status of persons served that will be assisted with funds made available.

(2) Submission

The Secretary shall (A) establish dates for submission of reports under this subsection, and (B) review such reports and make such recommendations as the Secretary deems appropriate to carry out the purposes of this Act.

(3) Failure to report

If a jurisdiction fails to submit a report satisfactory to the Secretary in a timely manner, assistance to the jurisdiction under subchapter II of this chapter or the other programs referred to in section 12706 of this title may be—

(A) suspended until a report satisfactory to the Secretary is submitted; or

(B) withdrawn and reallocated if the Secretary finds, after notice and opportunity for a hearing, that the jurisdiction will not submit a satisfactory report.

(b) Performance review by Secretary

(1) In general

The Secretary shall ensure that activities of each jurisdiction required to submit a housing strategy under section 12705 of this title are reviewed not less frequently than annually. Such review shall include, insofar as practicable, on-site visits by employees of the Department of Housing and Urban Development and shall include an assessment of the jurisdiction's—

(A) management of funds made available under programs administered by the Secretary;

¹ See References in Text note below.

(B) compliance with its housing strategy;
 (C) accuracy in the preparation of performance reports under subsection (a) of this section; and

(D) efforts to ensure that housing assisted under programs administered by the Secretary are in compliance with contractual agreements and the requirements of law.

(2) Report by Secretary

The Secretary shall report on the performance review in writing. The Secretary shall give the jurisdiction not less than 30 days to review and comment on the report. After taking into consideration the comments of the jurisdiction, the Secretary may revise the report and shall make the jurisdiction's comments and the report, with any revisions, readily available to the public within 30 days after receipt of the jurisdiction's comments.

(c) Review by courts

The adequacy of information submitted under section 12705(b)(4) of this title shall not be reviewable by any Federal, State, or other court. Review of a housing strategy by any Federal, State, or other court shall be limited to determining whether the process of development and the content of the strategy are in substantial compliance with the requirements of this Act. During the pendency of any action challenging the adequacy of a housing strategy or the action of the Secretary in approving a strategy, the court shall not have the authority to enjoin activities taken by the jurisdiction to implement an approved housing strategy. Any housing assisted during the pendency of such action shall not be subject to any order of the court resulting from such action.

(Pub. L. 101-625, title I, §108, Nov. 28, 1990, 104 Stat. 4092.)

REFERENCES IN TEXT

Section 12705(b)(15) of this title, referred to in subsec. (a)(1), was redesignated section 12705(b)(16) of this title by Pub. L. 102-550, title II, §220(c)(1), Oct. 28, 1992, 106 Stat. 3762, and was subsequently redesignated section 12705(b)(18) of this title by Pub. L. 105-276, title V, §583(4)(A), Oct. 21, 1998, 112 Stat. 2644.

This Act, referred to in subsecs. (a)(2) and (c), is Pub. L. 101-625, Nov. 28, 1990, 104 Stat. 4079, known as the Cranston-Gonzalez National Affordable Housing Act. For complete classification of this Act to the Code, see Short Title note set out under section 12701 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12756 of this title.

§ 12709. Energy efficiency standards

(a) Establishment

(1) In general

The Secretary of Housing and Urban Development and the Secretary of Agriculture shall, not later than 1 year after October 24, 1992, jointly establish, by rule, energy efficiency standards for—

(A) new construction of public and assisted housing and single family and multifamily residential housing (other than manufactured homes) subject to mortgages insured

under the National Housing Act [12 U.S.C. 1701 et seq.]; and

(B) new construction of single family housing (other than manufactured homes) subject to mortgages insured, guaranteed, or made by the Secretary of Agriculture under title V of the Housing Act of 1949 [42 U.S.C. 1471 et seq.].

(2) Contents

Such standards shall meet or exceed the requirements of the Council of American Building Officials Model Energy Code, 1992 (hereafter in this section referred to as "CABO Model Energy Code, 1992"), or, in the case of multifamily high rises, the requirements of the American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 90.1-1989 (hereafter in this section referred to as "ASHRAE Standard 90.1-1989"), and shall be cost-effective with respect to construction and operating costs on a life-cycle cost basis. In developing such standards, the Secretaries shall consult with an advisory task force composed of homebuilders, national, State, and local housing agencies (including public housing agencies), energy agencies, building code organizations and agencies, energy efficiency organizations, utility organizations, low-income housing organizations, and other parties designated by the Secretaries.

(b) Model Energy Code

If the Secretaries have not, within 1 year after October 24, 1992, established energy efficiency standards under subsection (a) of this section, all new construction of housing specified in such subsection shall meet the requirements of CABO Model Energy Code, 1992, or, in the case of multifamily high rises, the requirements of ASHRAE Standard 90.1-1989.

(c) Revisions of Model Energy Code

If the requirements of CABO Model Energy Code, 1992, or, in the case of multifamily high rises, ASHRAE Standard 90.1-1989, are revised at any time, the Secretaries shall, not later than 1 year after such revision, amend the standards established under subsection (a) of this section to meet or exceed the requirements of such revised code or standard unless the Secretaries determine that compliance with such revised code or standard would not result in a significant increase in energy efficiency or would not be technologically feasible or economically justified.

(Pub. L. 101-625, title I, §109, Nov. 28, 1990, 104 Stat. 4093; Pub. L. 102-486, title I, §101(c)(1), Oct. 24, 1992, 106 Stat. 2786.)

REFERENCES IN TEXT

The National Housing Act, referred to in subsec. (a)(1)(A), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended, which is classified principally to chapter 13 (§1701 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1701 of Title 12 and Tables.

The Housing Act of 1949, referred to in subsec. (a)(1)(B), is act July 15, 1949, ch. 338, 63 Stat. 413, as amended. Title V of the Act is classified generally to subchapter III (§1471 et seq.) of chapter 8A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1441 of this title and Tables.

AMENDMENTS

1992—Pub. L. 102-486 amended section generally. Prior to amendment, section read as follows: “The Secretary of Housing and Urban Development shall, not later than one year after November 28, 1990, promulgate energy efficiency standards for new construction of public and assisted housing and single-family and multifamily residential housing (other than manufactured homes) subject to mortgages under the National Housing Act. Such standards shall meet or exceed the provisions of the most recent edition of the Model Energy Code of the Council of American Building Officials and shall be cost-effective with respect to construction and operating costs. In developing such standards the Secretary shall consult with an advisory task force composed of homebuilders, national, State, and local housing agencies (including public housing agencies), energy agencies and building code organizations and agencies, energy efficiency organizations, utility organizations, low-income housing organizations, and other parties designated by the Secretary.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8013, 12745 of this title; title 12 section 1701q; title 38 section 3704.

§ 12710. Capacity study**(a) In general**

The Secretary shall ensure that the Department of Housing and Urban Development has adequate capacity and resources, including staff and training programs, to carry out its mission and responsibilities to implement the provisions of this Act, including the ability of the Department to carry out the multifamily mortgage insurance program, and the ability to respond to areas identified as “material weaknesses” by the Office of the Inspector General in financial audits or other reports.

(b) Report

Not later than 60 days after November 28, 1990, and annually thereafter, the Secretary shall prepare and submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives a study detailing the Department’s plan to maintain such capacity, together with any recommendations for legislative and administrative action as the Secretary determines to be appropriate.

(Pub. L. 101-625, title I, § 110, Nov. 28, 1990, 104 Stat. 4093; Pub. L. 102-550, title IV, § 407, Oct. 28, 1992, 106 Stat. 3778.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a), is Pub. L. 101-625, Nov. 28, 1990, 104 Stat. 4079, known as the Cranston-Gonzalez National Affordable Housing Act. For complete classification of this Act to the Code, see Short Title note set out under section 12701 of this title and Tables.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102-550 struck out “, and,” after “responsibilities” and substituted for period at end “and the ability to respond to areas identified as ‘material weaknesses’ by the Office of the Inspector General in financial audits or other reports.”

CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104-14, set

out as a note preceding section 21 of Title 2, The Congress. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 12711. Protection of State and local authority

Notwithstanding any other provision of this subchapter or subchapter II of this chapter, the Secretary shall not establish any criteria for allocating or denying funds made available under programs administered by the Secretary based on the adoption, continuation, or discontinuation by a jurisdiction of any public policy, regulation, or law that is (1) adopted, continued, or discontinued in accordance with the jurisdiction’s duly established authority, and (2) not in violation of any Federal law.

(Pub. L. 101-625, title I, § 111, Nov. 28, 1990, 104 Stat. 4093.)

§ 12712. 5-year energy efficiency plan**(a) Establishment**

The Secretary of Housing and Urban Development shall establish a plan for activities to be undertaken and policies to be adopted by the Secretary within the 5-year period beginning upon the submission of the plan to the Congress under subsection (d) of this section to provide for, encourage, and improve energy efficiency in newly constructed, rehabilitated, and existing housing. In developing the plan, the Secretary shall consider, as appropriate, any energy assessments under section 944.

(b) Initial plan

The Secretary of Housing and Urban Development shall establish the first plan under this section not later than the expiration of the 1-year period beginning on November 28, 1990.

(c) Updates

The Secretary of Housing and Urban Development shall revise and update the plan under this section not less than once for each 2-year period, the first such 2-year period beginning on the date of the submission of the initial plan under subsection (b) of this section to the Congress (as provided in subsection (d) of this section). Each such update shall revise the plan for the 5-year period beginning upon the submission of the updated plan to the Congress.

(d) Submission to Congress

The Secretary of Housing and Urban Development shall submit the initial plan established under subsection (b) of this section and any updated plans under subsection (c) of this section to the Congress not later than the date by which such plans are to be established or updated under such paragraphs.

(Pub. L. 101-625, title IX, § 945, Nov. 28, 1990, 104 Stat. 4416.)

REFERENCES IN TEXT

Section 944, referred to in subsec. (a), is section 944 of Pub. L. 101-625, which is set out below.

CODIFICATION

Section was enacted as part of title IX of the Cranston-Gonzalez National Affordable Housing Act, and not as part of title I of such Act which comprises this subchapter.

ENERGY EFFICIENT MORTGAGES PILOT PROGRAM

Pub. L. 102-550, title V, §513, Oct. 28, 1992, 106 Stat. 3786, provided that:

“(a) ESTABLISHMENT OF PILOT PROGRAM.—

“(1) IN GENERAL.—Not later than 6 months after the date of enactment of this Act [Oct. 28, 1992], the Secretary of Housing and Urban Development (hereafter referred to as the ‘Secretary’) shall establish an energy efficient mortgage pilot program in 5 States, to promote the purchase of existing energy efficient residential buildings and the installation of cost-effective improvements in existing residential buildings.

“(2) PILOT PROGRAM.—The pilot program established under this subsection shall include the following criteria, where applicable:

“(A) ORIGINATION.—The lender shall originate a housing loan that is insured under title II of the National Housing Act [12 U.S.C. 1707 et seq.] in accordance with the applicable requirements.

“(B) APPROVAL.—The mortgagor’s base loan application shall be approved if the mortgagor’s income and credit record is found to be satisfactory.

“(C) COST OF IMPROVEMENTS.—The cost of cost-effective energy efficiency improvements shall not exceed the greater of—

“(i) 5 percent of the property value (not to exceed \$8,000); or

“(ii) \$4,000.

“(3) AUTHORITY FOR MORTGAGEES.—In granting mortgages under the pilot program established pursuant to this subsection, the Secretary shall grant mortgagees the authority—

“(A) to permit the final loan amount to exceed the loan limits established under title II of the National Housing Act [12 U.S.C. 1707 et seq.] by an amount not to exceed 100 percent of the cost of the cost-effective energy efficiency improvements, if the mortgagor’s request to add the cost of such improvements is received by the mortgagee prior to funding of the base loan;

“(B) to hold in escrow all funds provided to the mortgagor to undertake the energy efficiency improvements until the efficiency improvements are actually installed; and

“(C) to transfer or sell the energy efficient mortgage to the appropriate secondary market agency, after the mortgage is issued, but before the energy efficiency improvements are actually installed.

“(4) PROMOTION OF PILOT PROGRAM.—The Secretary shall encourage participation in the energy efficient mortgage pilot program by—

“(A) making available information to lending agencies and other appropriate authorities regarding the availability and benefits of energy efficient mortgages;

“(B) requiring mortgagees and designated lending authorities to provide written notice of the availability and benefits of the pilot program to mortgagors applying for financing in those States designated by the Secretary as participating under the pilot program; and

“(C) requiring each applicant for a mortgage insured under title II of the National Housing Act [12 U.S.C. 1707 et seq.] in those States participating under the pilot program to sign a statement that such applicant has been informed of the program requirements and understands the benefits of energy efficient mortgages.

“(5) TRAINING PROGRAM.—Not later than 9 months after the date of enactment of this Act [Oct. 28, 1992], the Secretary, in consultation with the Secretary of Energy, shall establish and implement a program for training personnel at relevant lending agencies, real

estate companies, and other appropriate organizations regarding the benefits of energy efficient mortgages and the operation of the pilot program under this subsection.

“(6) REPORT.—Not later than 18 months after the date of enactment of this Act, the Secretary shall prepare and submit a report to the Congress describing the effectiveness and implementation of the energy efficient mortgage pilot program as described under this subsection, and assessing the potential for expanding the pilot program nationwide.

“(b) EXPANSION OF PROGRAM.—Not later than the expiration of the 2-year period beginning on the date of the implementation of the energy efficient mortgage pilot program under this section, the Secretary of Housing and Urban Development shall expand the pilot program on a nationwide basis and shall expand the program to include new residential housing, unless the Secretary determines that either such expansion would not be practicable in which case the Secretary shall submit to the Congress, before the expiration of such period, a report explaining why either expansion would not be practicable.

“(c) DEFINITIONS.—For purposes of this section:

“(1) The term ‘base loan’ means any mortgage loan for a residential building eligible for insurance under title II of the National Housing Act [12 U.S.C. 1707 et seq.] or title 38, United States Code, that does not include the cost of cost-effective energy improvements.

“(2) The term ‘cost-effective’ means, with respect to energy efficiency improvements to a residential building, improvements that result in the total present value cost of the improvements (including any maintenance and repair expenses) being less than the total present value of the energy saved over the useful life of the improvement, when 100 percent of the cost of improvements is added to the base loan. For purposes of this paragraph, savings and cost-effectiveness shall be determined pursuant to a home energy rating report sufficient for purposes of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, or by other technically accurate methods.

“(3) The term ‘energy efficient mortgage’ means a mortgage on a residential building that recognizes the energy savings of a home that has cost-effective energy saving construction or improvements (including solar water heaters, solar-assisted air conditioners and ventilators, super-insulation, and insulating glass and film) and that has the effect of not disqualifying a borrower who, but for the expenditures on energy saving construction or improvements, would otherwise have qualified for a base loan.

“(4) The term ‘residential building’ means any attached or unattached single family residence.

“(d) RULE OF CONSTRUCTION.—This section may not be construed to affect any other programs of the Secretary of Housing and Urban Development for energy-efficient mortgages. The pilot program carried out under this section shall not replace or result in the termination of such other programs.

“(e) REGULATIONS.—The Secretary shall issue any regulations necessary to carry out this section not later than the expiration of the 180-day period beginning on the date of the enactment of this Act [Oct. 28, 1992]. The regulations shall be issued after notice and opportunity for public comment pursuant to the provisions of section 553 of title 5, United States Code (notwithstanding subsections (a)(2), (b)(B), and (d)(3) of such section).

“(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.”

Similar provisions were contained in Pub. L. 102-486, title I, §106, Oct. 24, 1992, 106 Stat. 2792.

ENERGY ASSESSMENT REPORT

Section 944 of Pub. L. 101-625 directed Secretary of Housing and Urban Development to submit a report to Congress, not later than one year after Nov. 28, 1990, as-

sessing any activity undertaken by the Secretary to increase energy efficiency in housing, such report to include an analysis of the Aug. 15, 1990, DOE-HUD program to expand energy efficiency and increase affordability of federally-assisted housing, and provided that in such report Secretary of Housing and Urban Development (in consultation with Secretary of Energy) was to establish, and include a description of, a standard measure by which changes over time in residential energy efficiency could be compared.

UNIFORM MORTGAGE FINANCING PLAN FOR ENERGY
EFFICIENCY

Section 946 of Pub. L. 101-625, as amended by Pub. L. 102-486, title I, §105(b), Oct. 24, 1992, 106 Stat. 2792; Pub. L. 102-550, title IX, §914(b), Oct. 28, 1992, 106 Stat. 3877, provided that:

“(a) UNIFORM PLAN.—The Secretary of Housing and Urban Development, in consultation with the Secretary of Energy, shall promulgate a uniform plan to make housing more affordable through energy efficient mortgages (as such term is defined in section 104 of this Act [42 U.S.C. 12704]). The plan shall be promulgated not later than 2 years after the date of the enactment of the Cranston-Gonzalez National Affordable Housing Act [Nov. 28, 1990].

“(b) TASK FORCE.—To develop the plan, the Secretary shall form a task force to make recommendation[s] on financing energy efficiency in private mortgages, through the policies of Federal agencies and federally chartered financial institutions, mortgage bankers, homebuilders, real estate brokers, private mortgage insurers, energy suppliers, and nonprofit housing and energy organizations. The task force shall include, but not be limited to, individuals representing the Federal Housing Administration mortgage programs of the Department of Housing and Urban Development, the Farmers Home Administration mortgage loan and insurance programs of Department of Agriculture, the Federal Home Loan Mortgage Corporation, and the Federal National Mortgage Association. The Task Force shall determine whether notifying potential home purchasers of the availability of energy efficient mortgages would promote energy efficiency in residential buildings, and if so, the Task Force shall recommend appropriate notification guidelines, and agencies and organizations referred to in the preceding sentence are authorized to implement such guidelines.”

ENERGY EFFICIENCY DEMONSTRATION

Section 961 of Pub. L. 101-625 directed Secretary of Housing and Urban Development to establish a program to demonstrate various methods of improving the energy efficiency of existing housing, provided for funding, provided that the demonstration determine appropriate design, improvement, and rehabilitation methods and practices for increasing residential energy efficiency in housing already constructed, and directed Secretary, as soon as practicable after Sept. 30, 1991, to submit to Congress a report setting forth the findings and recommendations of the Secretary as a result of the demonstration.

§ 12713. Eligibility under first-time homebuyer programs

(a) Eligibility of displaced homemakers and single parents for Federal assistance for first-time homebuyers

(1) Displaced homemakers

No individual who is a displaced homemaker may be denied eligibility under any Federal program to assist first-time homebuyers on the basis that the individual, while a homemaker, owned a home with his or her spouse or resided in a home owned by the spouse.

(2) Single parents

No individual who is a single parent may be denied eligibility under any Federal program

to assist first-time homebuyers on the basis that the individual, while married, owned a home with his or her spouse or resided in a home owned by the spouse.

(b) Definitions

For purposes of this section:

(1) Displaced homemaker

The term “displaced homemaker” means an individual who—

(A) is an adult;

(B) has not worked full-time, full-year in the labor force for a number of years but has, during such years, worked primarily without remuneration to care for the home and family; and

(C) is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

(2) First-time homebuyer

The term “first-time homebuyer” means an individual who has never, or has not during a specified period of time, had any present ownership interest in a principal residence.

(3) Single parent

The term “single parent” means an individual who—

(A) is unmarried or legally separated from a spouse; and

(B)(i) has 1 or more minor children for whom the individual has custody or joint custody; or

(ii) is pregnant.

(c) Applicability

This section shall apply to any Federal program to assist first-time homebuyers, unless the program is exempted from this section by a statute that amends this subsection or explicitly refers to this subsection.

(Pub. L. 101-625, title IX, §956, Nov. 28, 1990, 104 Stat. 4421.)

CODIFICATION

Section was enacted as part of title IX of the Cranston-Gonzalez National Affordable Housing Act, and not as part of title I of such Act which comprises this subchapter.

§ 12714. Repealed. Pub. L. 104-99, title IV, § 404(a), Jan. 26, 1996, 110 Stat. 44

Section, Pub. L. 101-625, title IX, §957, Nov. 28, 1990, 104 Stat. 4422, related to maximum annual limitation on rent increases resulting from employment.

EFFECTIVE DATE OF REPEAL

Section 404(a) of Pub. L. 104-99 provided in part that this section is repealed retroactive to Nov. 28, 1990, and shall be of no effect.

ECONOMIC INDEPENDENCE

Pub. L. 102-550, title IX, §923, Oct. 28, 1992, 106 Stat. 3884, which provided that Secretary of Housing and Urban Development was to immediately implement section 12714 of this title and that other Federal agencies authorized to assist low-income families were to take similar steps to encourage economic independence and the accumulation of assets, was repealed retroactive to Oct. 28, 1992, by Pub. L. 104-99, title IV, §404(b), Jan. 26, 1996, 110 Stat. 44, which further provided that section 923 of Pub. L. 102-550 was to be of no effect.

SUBCHAPTER II—INVESTMENT IN
AFFORDABLE HOUSING

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1437d, 1437f, 1439, 3535, 4852, 5305, 12704, 12705, 12706, 12708, 12711 of this title; title 12 sections 1441a, 1831q, 1834a; title 25 section 4183; title 26 section 42.

§ 12721. Findings

The Congress finds that—

(1) the Nation has not made adequate progress toward the goal of national housing policy, as set out in the Housing Act of 1949 [42 U.S.C. 1441 et seq.] and reaffirmed in the Housing and Urban Development Act of 1968, which would provide decent, safe, sanitary, and affordable living environments for all Americans;

(2) the supply of affordable rental housing is diminishing;

(3) the Tax Reform Act of 1986 removed major tax incentives for the production of affordable rental housing;

(4) the living environments of an increasing number of Americans have deteriorated over the past several years as a result of reductions in Federal assistance to low-income and moderate-income families;

(5) many Americans face the possibility of homelessness unless Federal, State, and local governments work together with the private sector to develop and rehabilitate the housing stock of the Nation to provide decent, safe, sanitary, and affordable housing for very low-income and low-income families;

(6) reliable Federal leadership is needed to achieve an adequate supply of affordable housing for all Americans;

(7) to achieve the goal of national housing policy, there is a need to strengthen nationwide a cost-effective community-based housing partnership designed to—

(A) expand the supply of rental housing that is affordable to very low-income and low-income families,

(B) improve homeownership opportunities for low-income families,

(C) carry out comprehensive housing strategies tailored to local housing market conditions, and

(D) protect the Federal, State, and local investment in low-income housing to ensure affordability of the housing for the remaining useful life of the property;

(8) direct assistance to expand the supply of affordable rental housing should be provided in a way that is more cost-effective and targeted than tax incentives;

(9) much of the Nation's housing system works very well and provides a strong base on which national housing policy should build;

(10) an increasing number of States and local governments have been successful in producing cost-effective low-income and moderate-income housing by working in partnership with the private sector, including nonprofit community development corporations, community action agencies, neighborhood housing services corporations, trade unions, groups sponsored by religious organizations, limited

equity cooperatives, and other tenant organizations;

(11) during the 1980's, nonprofit community housing development organizations, despite severe obstacles caused by inadequate funding, have played an increasingly important role in the production and rehabilitation of affordable housing in communities across the Nation;

(12) additional financial resources and technical skills must be made available in local communities if the Nation is to mobilize the capacity of the private sector, including nonprofit community housing development organizations, to provide a more adequate supply of decent, safe, and sanitary housing that is affordable to very low-income, low-income, and moderate-income families and meets the need for large family units and other additional units that are available to very low-income families receiving rental assistance payments from Federal, State, and local governments; and

(13) the long-term success of efforts to provide more affordable housing depends upon tenants and homeowners being fiscally responsible and able managers.

(Pub. L. 101-625, title II, §202, Nov. 28, 1990, 104 Stat. 4094.)

REFERENCES IN TEXT

The Housing Act of 1949, referred to in par. (1), is act July 15, 1949, ch. 338, 63 Stat. 413, as amended, which is classified principally to chapter 8A (§1441 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1441 of this title and Tables.

The Housing and Urban Development Act of 1968, referred to in par. (1), is Pub. L. 90-448, Aug. 1, 1968, 82 Stat. 476, as amended. For complete classification of this Act to the Code, see Short Title of 1968 Amendments note set out under section 1701 of Title 12, Banks and Banking, and Tables.

The Tax Reform Act of 1986, referred to in par. (3), is Pub. L. 99-514, Oct. 22, 1986, 100 Stat. 2085, as amended. For complete classification of this Act to the Code, see Short Title of 1986 Amendments note set out under section 1 of Title 26, Internal Revenue Code, and Tables.

SHORT TITLE

For short title of this subchapter as the "HOME Investment Partnerships Act", see Short Title note set out under section 12701 of this title.

§ 12722. Purposes

The purposes of this subchapter are—

(1) to expand the supply of decent, safe, sanitary, and affordable housing, with primary attention to rental housing, for very low-income and low-income Americans;

(2) to mobilize and strengthen the abilities of States and units of general local government throughout the United States to design and implement strategies for achieving an adequate supply of decent, safe, sanitary, and affordable housing;

(3) to provide participating jurisdictions, on a coordinated basis, with the various forms of Federal housing assistance, including capital investment, mortgage insurance, rental assistance, and other Federal assistance, needed—

(A) to expand the supply of decent, safe, sanitary, and affordable housing;

(B) to make new construction, rehabilitation, substantial rehabilitation, and acquisition of such housing feasible; and

(C) to promote the development of partnerships among the Federal Government, States and units of general local government, private industry, and nonprofit organizations able to utilize effectively all available resources to provide more of such housing;

(4) to make housing more affordable for very low-income and low-income families through the use of tenant-based rental assistance;

(5) to develop and refine, on an ongoing basis, a selection of model programs incorporating the most effective methods for providing decent, safe, sanitary, and affordable housing, and accelerate the application of such methods where appropriate throughout the United States to achieve the prudent and efficient use of funds made available under this subchapter;

(6) to expand the capacity of nonprofit community housing development organizations to develop and manage decent, safe, sanitary, and affordable housing;

(7) to ensure that Federal investment produces housing stock that is available and affordable to low-income families for the property's remaining useful life, is appropriate to the neighborhood surroundings, and, wherever appropriate, is mixed income housing;

(8) to increase the investment of private capital and the use of private sector resources in the provision of decent, safe, sanitary, and affordable housing;

(9) to allocate Federal funds for investment in affordable housing among participating jurisdictions by formula allocation;

(10) to leverage those funds insofar as practicable with State and local matching contributions and private investment;

(11) to establish for each participating jurisdiction a HOME Investment Trust Fund with a line of credit for investment in affordable housing, with repayments back to its HOME Investment Trust Fund being made available for reinvestment by the jurisdiction;

(12) to provide credit enhancement for affordable housing by utilizing the capacities of existing agencies and mortgage finance institutions when most efficient and supplementing their activities when appropriate; and

(13) to assist very low-income and low-income families to obtain the skills and knowledge necessary to become responsible homeowners and tenants.

(Pub. L. 101-625, title II, §203, Nov. 28, 1990, 104 Stat. 4095.)

§ 12723. Coordinated Federal support for housing strategies

The Secretary shall make assistance under this subchapter available to participating jurisdictions, through the Office of the Assistant Secretary for Housing-FHA Commissioner of the Department of Housing and Urban Development, to the maximum extent practicable, in coordination with mortgage insurance, rental assistance, and other housing assistance appropriate to the

efficient and timely completion of activities under this subchapter.

(Pub. L. 101-625, title II, §204, Nov. 28, 1990, 104 Stat. 4096.)

§ 12724. Authorization

There are authorized to be appropriated to carry out this subchapter \$2,086,000,000 for fiscal year 1993, and \$2,173,612,000 for fiscal year 1994, of which—

(1) not more than \$14,000,000 for fiscal year 1993, and \$25,000,000 for fiscal year 1994, shall be for community housing partnership activities authorized under section 12773 of this title; and

(2) not more than \$11,000,000 for fiscal year 1993, and \$22,000,000 for fiscal year 1994, shall be for activities in support of State and local housing strategies authorized under part C of this subchapter.

(Pub. L. 101-625, title II, §205, Nov. 28, 1990, 104 Stat. 4096; Pub. L. 102-550, title II, §201, Oct. 28, 1992, 106 Stat. 3751; Pub. L. 103-120, §5, Oct. 27, 1993, 107 Stat. 1148.)

AMENDMENTS

1993—Pub. L. 103-120 substituted “\$25,000,000 for fiscal year 1994” for “\$14,000,000 for fiscal year 1994” in par. (1) and “\$22,000,000 for fiscal year 1994” for “\$11,000,000 for fiscal year 1994” in par. (2).

1992—Pub. L. 102-550 amended section generally. Prior to amendment, section read as follows: “There are authorized to be appropriated to carry out this subchapter \$1,000,000,000 for fiscal year 1991, and \$2,086,000,000 for fiscal year 1992, of which—

“(1) not more than \$14,000,000 for fiscal year 1991, and \$14,000,000 for fiscal year 1992, shall be for community housing partnership activities authorized under section 12773 of this title; and

“(2) not more than \$11,000,000 for fiscal year 1991, and \$11,000,000 for fiscal year 1992, shall be for activities in support of State and local housing strategies authorized under part C of this subchapter.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12746, 12747 of this title.

§ 12725. Notice

The Secretary shall issue regulations to implement the provisions of this subchapter after notice and an opportunity for comment pursuant to section 553 of title 5. Such regulations shall become effective not later than 180 days after November 28, 1990.

(Pub. L. 101-625, title II, §206, Nov. 28, 1990, 104 Stat. 4096.)

PART A—HOME INVESTMENT PARTNERSHIPS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 12771, 12821 of this title.

§ 12741. Authority

The Secretary is authorized to make funds available to participating jurisdictions for investment to increase the number of families served with decent, safe, sanitary, and affordable housing and expand the long-term supply of affordable housing in accordance with provisions of this part.

(Pub. L. 101-625, title II, §211, Nov. 28, 1990, 104 Stat. 4096.)

§ 12742. Eligible uses of investment

(a) Housing uses

(1) In general

Funds made available under this part may be used by participating jurisdictions to provide incentives to develop and support affordable rental housing and homeownership affordability through the acquisition, new construction, reconstruction, or moderate or substantial rehabilitation of affordable housing, including real property acquisition, site improvement, conversion, demolition, and other expenses, including financing costs, relocation expenses of any displaced persons, families, businesses, or organizations, to provide for the payment of reasonable administrative and planning costs, to provide for the payment of operating expenses of community housing development organizations, and to provide tenant-based rental assistance. For the purpose of this part, the term “affordable housing” includes permanent housing for disabled homeless persons, transitional housing, and single room occupancy housing.

(2) Preference to rehabilitation

A participating jurisdiction shall give preference to rehabilitation of substandard housing unless the jurisdiction determines that—

(A) such rehabilitation is not the most cost effective way to meet the jurisdiction’s need to expand the supply of affordable housing; and

(B) the jurisdiction’s housing needs cannot be met through rehabilitation of the available stock.

The Secretary shall not restrict a participating jurisdiction’s choice of rehabilitation, substantial rehabilitation, new construction, reconstruction, acquisition, or other eligible housing use unless such restriction is explicitly authorized under section 12753(2) of this title.

(3) Tenant-based rental assistance

(A) In general

A participating jurisdiction may use funds provided under this part for tenant-based rental assistance only if—

(i) the jurisdiction certifies that the use of funds under this part for tenant-based rental assistance is an essential element of the jurisdiction’s annual housing strategy for expanding the supply, affordability, and availability of decent, safe, sanitary, and affordable housing, and specifies the local market conditions that lead to the choice of this option; and

(ii) the tenant-based rental assistance is provided in accordance with written tenant selection policies and criteria that are consistent with the purposes of providing housing to very low- and low-income families and are reasonably related to preference rules established under section 1437d(c)(4)(A)¹ of this title.

¹ See References in Text note below.

(B) Fair share not affected

A jurisdiction’s section 8 [42 U.S.C. 1437f] fair share allocation shall be unaffected by the use of assistance under this subchapter.

(C) 24-month contracts

Rental assistance contracts made available with assistance under this subchapter shall be for not more than 24 months, except that assistance to a family may be renewed.

(D) Use of section 1437f assistance

In any case where assistance under section 1437f of this title becomes available to a participating jurisdiction, recipients of rental assistance under this subchapter shall qualify for tenant selection preferences to the same extent as when they received the rental assistance under this subchapter. A rental assistance program under this subchapter shall meet minimum criteria prescribed by the Secretary, such as housing quality standards and standards regarding the reasonableness of the rent.

(E) Security deposit assistance

A jurisdiction using funds provided under this part for tenant-based rental assistance may use such funds to provide loans or grants to very low- and low-income families for security deposits for rental of dwelling units. Assistance under this subparagraph does not preclude assistance under any other provision of this paragraph.

(4) Redesignated (3)

(5) Lead-based paint hazards

A participating jurisdiction may use funds provided under this part for the evaluation and reduction of lead-based paint hazards, as defined in section 4851b of this title.

(b) Investments

Participating jurisdictions shall have discretion to invest funds made available under this part as equity investments, interest-bearing loans or advances, noninterest-bearing loans or advances, interest subsidies or other forms of assistance that the Secretary has determined to be consistent with the purposes of this subchapter. Each participating jurisdiction shall have the right to establish the terms of assistance.

(c) Administrative costs

In each fiscal year, each participating jurisdiction may use not more than 10 percent of the funds made available under this part to the jurisdiction for such year for any administrative and planning costs of the jurisdiction in carrying out this part, including the costs of the salaries of persons engaged in administering and managing activities assisted with funds made available under this part.

(d) Prohibited uses

Funds made available under this part may not be used to—

(1) defray any administrative cost of a participating jurisdiction that exceed the amount specified under subsection (c) of this section,

(2) provide tenant-based rental assistance for the special purposes of the existing section 8

[42 U.S.C. 1437f] program, including replacing public housing that is demolished or disposed of, preserving federally assisted housing, assisting in the disposition of housing owned or held by the Secretary, preventing displacement from rental rehabilitation projects, or extending or renewing tenant-based assistance under section 1437f of this title.

(3) provide non-Federal matching contributions required under any other Federal program,

(4) provide assistance authorized under section 1437g of this title,

(5) carry out activities authorized under section 1437g(d)(1)¹ of this title, or

(6) provide assistance to eligible low-income housing under the Emergency Low Income Housing Preservation Act of 1987 or the Low-Income Housing Preservation and Resident Homeownership Act of 1990 [12 U.S.C. 4101 et seq.].

(e) Cost limits

(1) In general

The Secretary shall establish limits on the amount of funds under this part that may be invested on a per unit basis. For multifamily housing, such limits shall not be less than the per unit dollar amount limitations set forth in section 1715l(d)(3)(ii) of title 12, as such limitations may be adjusted in accordance therewith, except that for purposes of this subsection the Secretary shall, by regulation, increase the per unit dollar amount limitations in any geographical area by an amount, not to exceed 140 percent, that equals the amount by which the costs of multifamily housing construction in the area exceed the national average of such costs. The limits shall be established on a market-by-market basis, with adjustments made for number of bedrooms, and shall reflect the actual cost of new construction, reconstruction, or rehabilitation of housing that meets applicable State and local housing and building codes and the cost of land, including necessary site improvements. Adjustments shall be made annually to reflect inflation. Separate limits may be set for different eligible activities.

(2) Criteria

In calculating per unit limits, the Secretary shall take into account that assistance under this subchapter is intended to—

(A) provide nonluxury housing with suitable amenities;

(B) operate effectively in all jurisdictions;

(C) facilitate mixed-income housing; and

(D) reflect the costs associated with meeting the special needs of tenants or homeowners that the housing is designed to serve.

(3) Consultation

In calculating cost limits, the Secretary shall consult with organizations that have expertise in the development of affordable housing, including national nonprofit organizations and national organizations representing private development firms and State and local governments.

(f) Certification of compliance

The requirements of section 3545(d) of this title shall be satisfied by a certification by a

participating jurisdiction to the Secretary that the combination of Federal assistance provided to any housing project shall not be any more than is necessary to provide affordable housing.

(g) Limitation on operating assistance

A participating jurisdiction may not use more than 5 percent of its allocation under this part for the payment of operating expenses for community housing development organizations.

(Pub. L. 101-625, title II, §212, Nov. 28, 1990, 104 Stat. 4097; Pub. L. 102-550, title II, §§203(a), 204-207(b), (d), title X, §1012(e), Oct. 28, 1992, 106 Stat. 3752-3754, 3905; Pub. L. 105-276, title V, §522(b)(5), Oct. 21, 1998, 112 Stat. 2565.)

REFERENCES IN TEXT

Section 1437d(c)(4)(A) of this title, referred to in subsec. (a)(3)(A)(ii), was in the original “section 6(c)(4)(A) of the Housing Act of 1937”, and was translated as reading “section 6(c)(4)(A) of the United States Housing Act of 1937”, act Sept. 1, 1937, ch. 896, to reflect the probable intent of Congress.

Section 1437g(d)(1) of this title, referred to in subsec. (d)(5), was in the original “section 9(d)(1) of the Housing Act of 1937”, and was translated as reading “section 9(d)(1) of the United States Housing Act of 1937”, act Sept. 1, 1937, ch. 896, to reflect the probable intent of Congress.

The Emergency Low Income Housing Preservation Act of 1987, referred to in subsec. (d)(6), is title II of Pub. L. 100-242, Feb. 5, 1988, 102 Stat. 1877, as amended, which was classified principally as a note under section 1715l of Title 12, Banks and Banking. Title II of Pub. L. 100-242, was amended generally by Pub. L. 101-625, title VI, §601(a), Nov. 28, 1990, 104 Stat. 4249, and is now known as the Low-Income Housing Preservation and Resident Homeownership Act of 1990, which is classified principally to chapter 42 (§4101 et seq.) of Title 12. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of Title 12 and Tables.

AMENDMENTS

1998—Subsec. (d)(5). Pub. L. 105-276 substituted “section 1437g(d)(1)” for “section 1437f”.

1992—Subsec. (a)(1). Pub. L. 102-550, §207(a), inserted “to provide for the payment of reasonable administrative and planning costs, to provide for the payment of operating expenses of community housing development organizations,” after “or organizations,”.

Pub. L. 102-550, §205, inserted at end “For the purpose of this part, the term ‘affordable housing’ includes permanent housing for disabled homeless persons, transitional housing, and single room occupancy housing.”

Subsec. (a)(2). Pub. L. 102-550, §203(a)(1), struck out “under paragraph (3) of this subsection or” after “authorized” in concluding provisions.

Subsec. (a)(3). Pub. L. 102-550, §204(b), added cl. (ii) of par. (3)(A) and struck out former cl. (ii) which read as follows: “the tenant-based rental assistance is provided to persons from the waiting lists eligible for section 8 assistance in accordance with the applicable preferences.”

Pub. L. 102-550, §204(a), added subpar. (E).

Pub. L. 102-550, §203(a)(2), (3), redesignated par. (4) as (3) and struck out former par. (3) which provided for conditions for new construction of housing.

Subsec. (a)(4). Pub. L. 102-550, §203(a)(3), redesignated par. (4) as (3).

Subsec. (a)(5). Pub. L. 102-550, §1012(e), added par. (5).

Subsec. (c). Pub. L. 102-550, §207(b)(3), added subsec. (c). Former subsec. (c) redesignated (d).

Pub. L. 102-550, §207(b)(1), inserted before comma at end of par. (1) “that exceed the amount specified under subsection (c) of this section”.

Subsec. (d). Pub. L. 102-550, §207(b)(2), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Pub. L. 102-550, §206, inserted after first sentence of par. (1) "For multifamily housing, such limits shall not be less than the per unit dollar amount limitations set forth in section 1715(d)(3)(ii) of title 12, as such limitations may be adjusted in accordance therewith, except that for purposes of this subsection the Secretary shall, by regulation, increase the per unit dollar amount limitations in any geographical area by an amount, not to exceed 140 percent, that equals the amount by which the costs of multifamily housing construction in the area exceed the national average of such costs."

Subsecs. (e), (f). Pub. L. 102-550, §207(b)(2), redesignated subsecs. (d) and (e) as (e) and (f), respectively.

Subsec. (g). Pub. L. 102-550, §207(d), added subsec. (g).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by title V of Pub. L. 105-276 effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement amendment before such date, except to extent that such amendment provides otherwise, and with savings provision, see section 503 of Pub. L. 105-276, set out as a note under section 1437 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by sections 203-207 of Pub. L. 102-550 applicable to unexpended funds allocated under subchapter II of this chapter in fiscal year 1992, except as otherwise specifically provided, see section 223 of Pub. L. 102-550, set out as a note under section 12704 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12747, 12772 of this title; title 12 section 4116.

§ 12743. Development of model programs

(a) In general

The Secretary shall—

(1) in cooperation with participating jurisdictions, government-sponsored mortgage finance corporations, nonprofit organizations, the private sector, and other appropriate parties, develop, test, evaluate, refine, and, as necessary, replace a selection of model programs designed to carry out the purposes of this subchapter;

(2) make available to participating jurisdictions alternative model programs, which shall include suggested guidelines, procedures, forms, legal documents and such other elements as the Secretary determines to be appropriate;

(3) assure, insofar as is feasible, the availability of an appropriate variety of model programs designed for local market conditions, housing problems, project characteristics, and managerial capacities as they differ among participating jurisdictions;

(4) negotiate and enter into agreements with agencies of the Federal Government, participating jurisdictions, private financial institutions, government-sponsored mortgage finance corporations, nonprofit organizations, and other entities to provide such services, products, or financing as may be required for the implementation of a model program;

(5) provide detailed information on model programs as requested by participating jurisdictions, private financial institutions, developers, nonprofit organizations, and other interested parties; and

(6) encourage the use of such model programs to achieve efficiency, economies of

scale, and effectiveness in the investment of funds made available under this part through third-party training, printed materials, and such other means of support as the Secretary determines will achieve the purpose of this subchapter.

(b) Adoption of programs

Except as provided in section 12753(2) of this title, each participating jurisdiction shall have the discretion to adopt one or more model programs, adapt one or more model programs to its own requirements, design additional forms of assistance by itself or in cooperation with other participating jurisdictions, and suggest additional model programs for adoption by the Secretary as the participating jurisdiction may deem appropriate, and the Secretary may assist a participating jurisdiction in adopting, adapting, or designing one or more model programs.

(c) Part D programs

The selection of model programs to be made available for adoption or adaptation shall include programs meeting the criteria set forth in part D of this subchapter.

(Pub. L. 101-625, title II, §213, Nov. 28, 1990, 104 Stat. 4100.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12753, 12801 of this title.

§ 12744. Income targeting

Each participating jurisdiction shall invest funds made available under this part within each fiscal year so that—

(1) with respect to rental assistance and rental units—

(A) not less than 90 percent of (i) the families receiving such rental assistance are families whose incomes do not exceed 60 percent of the median family income for the area, as determined by the Secretary with adjustments for smaller and larger families, (except that the Secretary may establish income ceilings higher or lower than 60 percent of the median for the area on the basis of the Secretary's findings that such variations are necessary because of prevailing levels of construction cost or fair market rent, or unusually high or low family income) at the time of occupancy or at the time funds are invested, whichever is later, or (ii) the dwelling units assisted with such funds are occupied by families having such incomes; and

(B) the remainder of (i) the families receiving such rental assistance are households that qualify as low-income families (other than families described in subparagraph (A)) at the time of occupancy or at the time funds are invested, whichever is later, or (ii) the dwelling units assisted with such funds are occupied by such households;

(2) with respect to homeownership assistance, 100 percent of such funds are invested with respect to dwelling units that are occupied by households that qualify as low-income families; and

(3) all such funds are invested with respect to housing that qualifies as affordable housing under section 12745 of this title.

(Pub. L. 101-625, title II, §214, Nov. 28, 1990, 104 Stat. 4101; Pub. L. 103-233, title II, §202, Apr. 11, 1994, 108 Stat. 364; Pub. L. 105-276, title V, §599B(a), Oct. 21, 1998, 112 Stat. 2660.)

AMENDMENTS

1998—Par. (2). Pub. L. 105-276 struck out “at the time of occupancy or at the time funds are invested, whichever is later” before “; and”.

1994—Par. (1)(A). Pub. L. 103-233, §202(1), substituted “(i) the families receiving such rental assistance are” for “such funds are invested with respect to dwelling units that are occupied by”, “, or” for “, and” before cl. (ii), and added cl. (ii).

Par. (1)(B). Pub. L. 103-233, §202(2), substituted “(i) the families receiving such rental assistance are” for “such funds are invested with respect to dwelling units that are occupied by” and added cl. (ii).

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-276, title V, §599B(c), Oct. 21, 1998, 112 Stat. 2660, provided that: “The amendments made by this section [amending this section and section 12745 of this title] are made on, and shall apply beginning upon, the date of the enactment of this Act [Oct. 21, 1998].”

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-233 applicable with respect to any amounts made available to carry out this subchapter after Apr. 11, 1994, and any amounts made available to carry out this subchapter before that date that remain uncommitted on that date, with Secretary to issue any regulations necessary to carry out such amendment not later than end of 45-day period beginning on that date, see section 209 of Pub. L. 103-233, set out as a note under section 5301 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12747, 12802 of this title.

§ 12745. Qualification as affordable housing

(a) Rental housing

(1) Qualification

Housing that is for rental shall qualify as affordable housing under this subchapter only if the housing—

(A) bears rents not greater than the lesser of (i) the existing fair market rent for comparable units in the area as established by the Secretary under section 1437f of this title, or (ii) a rent that does not exceed 30 percent of the adjusted income of a family whose income equals 65 percent of the median income for the area, as determined by the Secretary, with adjustment for number of bedrooms in the unit, except that the Secretary may establish income ceilings higher or lower than 65 percent of the median for the area on the basis of the Secretary’s findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes;

(B) has not less than 20 percent of the units (i) occupied by very low-income families who pay as a contribution toward rent (excluding any Federal or State rental subsidy provided on behalf of the family) not more than 30 percent of the family’s monthly adjusted income as determined by the Secretary, or (ii) occupied by very low-income families and bearing rents not greater

than the gross rent for rent-restricted residential units as determined under section 42(g)(2) of title 26;

(C) is occupied only by households that qualify as low-income families;

(D) is not refused for leasing to a holder of a voucher or certificate of eligibility under section 1437f of this title because of the status of the prospective tenant as a holder of such voucher or certificate of eligibility;

(E) will remain affordable, according to binding commitments satisfactory to the Secretary, for the remaining useful life of the property, as determined by the Secretary, without regard to the term of the mortgage or to transfer of ownership, or for such other period that the Secretary determines is the longest feasible period of time consistent with sound economics and the purposes of this Act, except upon a foreclosure by a lender (or upon other transfer in lieu of foreclosure) if such action (i) recognizes any contractual or legal rights of public agencies, nonprofit sponsors, or others to take actions that would avoid termination of low-income affordability in the case of foreclosure or transfer in lieu of foreclosure, and (ii) is not for the purpose of avoiding low income affordability restrictions, as determined by the Secretary; and

(F) if newly constructed, meets the energy efficiency standards promulgated by the Secretary in accordance with section 12709 of this title.

(2) Adjustment of qualifying rent

The Secretary may adjust the qualifying rent established for a project under subparagraph (A) of paragraph (1), only if the Secretary finds that such adjustment is necessary to support the continued financial viability of the project and only by such amount as the Secretary determines is necessary to maintain continued financial viability of the project.

(3) Increases in tenant income

Housing shall qualify as affordable housing despite a temporary noncompliance with subparagraph (B) or (C) of paragraph (1) if such noncompliance is caused by increases in the incomes of existing tenants and if actions satisfactory to the Secretary are being taken to ensure that all vacancies are filled in accordance with paragraph (1) until such noncompliance is corrected. Tenants who no longer qualify as low-income families shall pay as rent the lesser of the amount payable by the tenant under State or local law or 30 percent of the family’s adjusted monthly income, as recertified annually. The preceding sentence shall not apply with respect to funds made available under this Act for units that have been allocated a low-income housing tax credit by a housing credit agency pursuant to section 42 of title 26.

(4) Mixed-income project

Housing that accounts for less than 100 percent of the dwelling units in a project shall qualify as affordable housing if such housing meets the criteria of this section.

(5) Mixed-use project

Housing in a project that is designed in part for uses other than residential use shall qualify as affordable housing if such housing meets the criteria of this section.

(6) Waiver of qualifying rent**(A) In general**

For the purpose of providing affordable housing appropriate for families described in subparagraph (B), the Secretary may, upon the application of the project owner, waive the applicability of subparagraph (A) of paragraph (1) with respect to a dwelling unit if—

- (i) the unit is occupied by such a family, on whose behalf tenant-based assistance is provided under section 1437f of this title;
- (ii) the rent for the unit is not greater than the existing fair market rent for comparable units in the area, as established by the Secretary under section 1437f of this title; and
- (iii) the Secretary determines that the waiver, together with waivers under this paragraph for other dwelling units in the project, will result in the use of amounts described in clause (iii)¹ in an effective manner that will improve the provision of affordable housing for such families.

(B) Eligible families

A family described in this subparagraph is a family that consists of at least one elderly person (who is the head of household) and one or more of such person's grand² children, great grandchildren, great nieces, great nephews, or great great grandchildren (as defined by the Secretary), but does not include any parent of such grandchildren, great grandchildren, great nieces, great nephews, or great great grandchildren. Such term includes any such grandchildren, great grandchildren, great nieces, great nephews, or great great grandchildren who have been legally adopted by such elderly person.

(b) Homeownership

Housing that is for homeownership shall qualify as affordable housing under this subchapter only if the housing—

- (1) has an initial purchase price that does not exceed 95 percent of the median purchase price for the area, as determined by the Secretary with such adjustments for differences in structure, including whether the housing is single-family or multifamily, and for new and old housing as the Secretary determines to be appropriate;
- (2) is the principal residence of an owner whose family qualifies as a low-income family—
 - (A) in the case of a contract to purchase existing housing, at the time of purchase;
 - (B) in the case of a lease-purchase agreement for existing housing or for housing to be constructed, at the time the agreement is signed; or

(C) in the case of a contract to purchase housing to be constructed, at the time the contract is signed;

(3) is subject to resale restrictions that are established by the participating jurisdiction and determined by the Secretary to be appropriate to—

(A) allow for subsequent purchase of the property only by persons who meet the qualifications specified under paragraph (2), at a price which will—

- (i) provide the owner with a fair return on investment, including any improvements, and
- (ii) ensure that the housing will remain affordable to a reasonable range of low-income homebuyers; or

(B) recapture the investment provided under this subchapter in order to assist other persons in accordance with the requirements of this subchapter, except where there are no net proceeds or where the net proceeds are insufficient to repay the full amount of the assistance; and

(4) if newly constructed, meets the energy efficiency standards promulgated by the Secretary in accordance with section 12709 of this title.

(Pub. L. 101-625, title II, §215, Nov. 28, 1990, 104 Stat. 4101; Pub. L. 102-550, title II, §§208, 209, Oct. 28, 1992, 106 Stat. 3754; Pub. L. 103-233, title II, §203, Apr. 11, 1994, 108 Stat. 364; Pub. L. 105-276, title V, §599B(b), Oct. 21, 1998, 112 Stat. 2660; Pub. L. 106-569, title IX, §904, Dec. 27, 2000, 114 Stat. 3027.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a)(1)(E), (3), is Pub. L. 101-625, Nov. 28, 1990, 104 Stat. 4079, known as the Cranston-Gonzalez National Affordable Housing Act. For complete classification of this Act to the Code, see Short Title note set out under section 12701 of this title and Tables.

AMENDMENTS

2000—Subsec. (a)(6). Pub. L. 106-569 added par. (6).

1998—Subsec. (b)(2). Pub. L. 105-276 amended par. (2) generally. Prior to amendment, par. (2) read as follows: "is the principal residence of an owner whose family qualifies as a low-income family at the time of purchase;"

1994—Subsec. (b)(3). Pub. L. 103-233, §203(a), redesignated par. (4) as (3) and struck out former par. (3) which read as follows: "is made available for initial purchase only to first-time homebuyers;"

Subsec. (b)(3)(B). Pub. L. 103-233, §203(b), substituted "subchapter" for "subsection" after "requirements of this".

Subsec. (b)(4), (5). Pub. L. 103-233, §203(a)(2), redesignated pars. (4) and (5) as (3) and (4), respectively.

1992—Subsec. (a)(1)(A). Pub. L. 102-550, §208(a)(1), substituted "number of bedrooms in the unit" for "smaller and larger families".

Subsec. (a)(1)(E). Pub. L. 102-550, §208(b), inserted before semicolon " , except upon a foreclosure by a lender (or upon other transfer in lieu of foreclosure) if such action (i) recognizes any contractual or legal rights of public agencies, nonprofit sponsors, or others to take actions that would avoid termination of low-income affordability in the case of foreclosure or transfer in lieu of foreclosure, and (ii) is not for the purpose of avoiding low income affordability restrictions, as determined by the Secretary".

¹ So in original.

² So in original. Probably should be "grandchildren".

Subsec. (a)(3). Pub. L. 102-550, §208(a)(2), (3), substituted “the lesser of the amount payable by the tenant under State or local law or” for “not less than” in second sentence and inserted at end “The preceding sentence shall not apply with respect to funds made available under this Act for units that have been allocated a low-income housing tax credit by a housing credit agency pursuant to section 42 of title 26.”

Subsec. (b)(4). Pub. L. 102-550, §209, added par. (4) and struck out former par. (4) which read as follows: “is made available for subsequent purchase only—

“(A) to persons who meet the qualifications specified under paragraph (2), and

“(B) at a price consistent with guidelines that are established by the participating jurisdiction and determined by the Secretary to be appropriate—

“(i) to provide the owner with a fair return on investment, including any improvements, and

“(ii) to ensure that the housing will remain affordable to a reasonable range of low income homebuyers; and”.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-276 made on, and applicable beginning upon, Oct. 21, 1998, see section 599B(c) of Pub. L. 105-276, set out as a note under section 12744 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-233 applicable with respect to any amounts made available to carry out this subchapter after Apr. 11, 1994, and any amounts made available to carry out this subchapter before that date that remain uncommitted on that date, with Secretary to issue any regulations necessary to carry out such amendment not later than end of 45-day period beginning on that date, see section 209 of Pub. L. 103-233, set out as a note under section 5301 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-550 applicable to unexpended funds allocated under subchapter II of this chapter in fiscal year 1992, except as otherwise specifically provided, see section 223 of Pub. L. 102-550, set out as a note under section 12704 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4851b, 12705, 12750, 12821 of this title.

§ 12746. Participation by States and local governments

The Secretary shall designate a State or unit of general local government to be a participating jurisdiction when it complies with procedures that the Secretary shall establish by regulation, which procedures shall only provide for the following:

(1) Allocation

Not later than 20 days after funds to carry out this part become available (or, during the first year after November 28, 1990, not later than 20 days after (A) funds to carry out this part are provided in an appropriations Act, or (B) regulations to implement this part are promulgated, whichever is later), the Secretary shall allocate funds in accordance with section 12747 of this title and promptly notify each jurisdiction receiving a formula allocation of its allocation amount. If a jurisdiction is not already a participating jurisdiction, the Secretary shall inform the jurisdiction in writing how the jurisdiction may become a participating jurisdiction.

(2) Consortia

A consortium of geographically contiguous units of general local government shall be deemed to be a unit of general local government for purposes of this subchapter if the Secretary determines that the consortium—

(A) has sufficient authority and administrative capability to carry out the purposes of this subchapter on behalf of its member jurisdictions, and

(B) will, according to a written certification by the State (or States, if the consortium includes jurisdictions in more than one State), direct its activities to alleviation of housing problems within the State or States.

(3) Eligibility

(A) Except as provided in paragraph (10), a jurisdiction receiving a formula allocation under section 12747 of this title shall be eligible to become a participating jurisdiction if its formula allocation is \$750,000 or greater, or if the Secretary finds that—

(i) the jurisdiction has a local housing authority and has demonstrated a capacity to carry out provisions of this part, and

(ii) the State has authorized the Secretary to transfer to the jurisdiction a portion of the State's allocation that is equal to or greater than the difference between the jurisdiction's formula allocation and \$750,000, or the State or jurisdiction has made available from the State's or jurisdiction's own sources an equal amount for use by the jurisdiction in conformance with the provisions of this part.

(B) If a jurisdiction has met the requirements of subparagraph (A), the jurisdiction's formula allocation for a fiscal year shall subsequently be deemed to equal the sum of the jurisdiction's allocation under section 12747(a)(1) of this title and the amount made available to the jurisdiction under subparagraph (A)(ii).

(4) Notification

If an eligible jurisdiction notifies the Secretary in writing, not later than 30 days after receiving notification under paragraph (1), of its intention to become a participating jurisdiction, the Secretary shall reserve an amount equal to the jurisdiction's allocation (plus any reallocations for which the jurisdiction is eligible under section 12747(d)(1) of this title) pending the jurisdiction's designation as a participating jurisdiction. The Secretary shall reallocate, in accordance with paragraph (6) of this section, any funds reserved under the previous sentence if the Secretary determines that the jurisdiction will not meet the requirements for designation as a participating jurisdiction within a reasonable period of time.

(5) Submission of strategy

Not later than 90 days after providing notification under paragraph (4), an eligible jurisdiction shall submit to the Secretary a comprehensive housing affordability strategy in accordance with section 12705 of this title.

(6) Reallocation

If the Secretary determines that a jurisdiction has failed to meet the requirements of the previous 3 paragraphs or if the Secretary, after providing for amendments and resubmissions in accordance with section 12705(c)(3) of this title, disapproves the jurisdiction's comprehensive housing affordability strategy, the Secretary shall reallocate any funds reserved for the jurisdiction as follows:

(A) State

If a State has failed to meet the requirements, the Secretary shall—

(i) make any funds reserved for the State available by direct reallocation among applications submitted by units of general local government within the State or consortia that include units of general local government within the State, insofar as approvable applications meeting the selection criteria under section 12747(c) of this title are received within 12 months after the funds become available for the direct reallocation, and

(ii) reallocate the remainder by formula in accordance with section 12747(b) of this title.

(B) Local

If a unit of general local government has failed to meet the requirements and is located in a State that is a participating jurisdiction, the Secretary shall reallocate to the State any funds reserved for the locality, with preference going to the provision of affordable housing within the locality.

(C) Direct reallocation

If a unit of general local government has failed to meet the requirements and is located in a State that is not a participating jurisdiction, the Secretary shall—

(i) make any funds reserved for the locality available for use within the State by direct reallocation among units of general local government and community housing development organizations, insofar as approvable applications meeting the selection criteria under section 12747(c) of this title are received within 12 months after the funds become available for the direct reallocation with priority going to applications for affordable housing within the locality, and

(ii) reallocate the remainder in accordance with section 12747(b) of this title.

(D) Certain jurisdictions deemed to be participating jurisdictions

If a State or unit of general local government is meeting the requirements of paragraphs (3), (4), and (5), it shall be deemed to be a participating jurisdiction for purposes of reallocation under this paragraph.

(7) Designation

The Secretary shall designate an eligible jurisdiction to be a participating jurisdiction as soon as its comprehensive housing affordability strategy is approved in accordance with section 12705 of this title.

(8) Continuous designation

Once a State or unit of general local government is designated a participating jurisdiction, it shall remain a participating jurisdiction for subsequent fiscal years, except as provided in paragraph (9). The provisions of paragraphs (3) through (6) shall not apply to participating jurisdictions.

(9) Revocation

The Secretary may revoke a jurisdiction's designation as a participating jurisdiction if—

(A) the Secretary finds, after reasonable notice and opportunity for hearing, that the jurisdiction is unwilling or unable to carry out the provisions of this subchapter, or

(B) the jurisdiction's allocation falls below \$750,000 for 3 consecutive years, below \$625,000 for 2 consecutive years, or the jurisdiction does not receive a formula allocation of \$500,000 or more in any 1 year, except as provided in paragraph (10).

If a jurisdiction's designation as a participating jurisdiction is revoked, any remaining line of credit in the jurisdiction's HOME Investment Trust Fund established under section 12748 of this title shall be reallocated in accordance with paragraph (6) of this section.

(10) Threshold reduction

If the amount appropriated pursuant to section 12724 of this title for any fiscal year is less than \$1,500,000,000, then this section shall be applied during that year—

(A) by substituting "\$500,000" for "\$750,000" both places it appears in paragraph (3); and

(B) by substituting "\$500,000", "\$410,000", and "\$335,000" for "\$750,000", "\$625,000", and "\$500,000", respectively, where they appear in paragraph (9).

(Pub. L. 101-625, title II, §216, Nov. 28, 1990, 104 Stat. 4103; Pub. L. 102-550, title II, §202(a), Oct. 28, 1992, 106 Stat. 3751.)

AMENDMENTS

1992—Par. (3)(A). Pub. L. 102-550, §202(a)(1), substituted "Except as provided in paragraph (10), a jurisdiction" for "A jurisdiction".

Par. (9)(B). Pub. L. 102-550, §202(a)(2), inserted ", except as provided in paragraph (10)" after "in any 1 year".

Par. (10). Pub. L. 102-550, §202(a)(3), added par. (10).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-550 applicable to unexpended funds allocated under subchapter II of this chapter in fiscal year 1992, except as otherwise specifically provided, see section 223 of Pub. L. 102-550, set out as a note under section 12704 of this title.

APPLICABILITY OF GRANT THRESHOLDS

Section 202(c) of Pub. L. 102-550 provided that: "Notwithstanding any other provision of law, the grant thresholds provided for in section 216 [42 U.S.C. 12746], as amended by this section, and the grant thresholds provided for in section 217(b) of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12747(b)], as amended by this section, shall apply."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12704, 12747, 12750, 12821 of this title.

§ 12747. Allocation of resources

(a) In general

(1) States and units of general local government

After reserving amounts under paragraph (3) for the insular areas, the Secretary shall allocate funds approved in an appropriation Act to carry out this subchapter by formula as provided in subsection (b) of this section. Of the funds made available under the preceding sentence, the Secretary shall initially allocate 60 percent among units of general local government and 40 percent among States.

(2) Repealed. Pub. L. 104-330, title V, § 505(a)(1)(B), Oct. 26, 1996, 110 Stat. 4044

(3)¹ Insular areas

For each fiscal year, of any amounts approved in appropriation Acts to carry out this subchapter, the Secretary shall reserve for grants to the insular areas the greater of (A) \$750,000, or (B) 0.2 percent of the amounts appropriated under such Acts. The Secretary shall provide for the distribution of amounts reserved under this paragraph among the insular areas pursuant to specific criteria for such distribution, which shall be contained in a regulation issued by the Secretary.

(b) Formula allocation

(1) In general

(A) Basic formula

The Secretary shall establish in² regulation an allocation formula that reflects each jurisdiction's share of total need among eligible jurisdiction³ for an increased supply of affordable housing for very low-income and low-income families of different size, as identified by objective measures of inadequate housing supply, substandard housing, the number of low-income families in housing likely to be in need of rehabilitation, the costs of producing housing, poverty, and the relative fiscal incapacity of the jurisdiction to carry out housing activities eligible under section 12742 of this title without Federal assistance. Allocation among units of general local government shall take into account the housing needs of metropolitan cities, urban counties, and approved consortia of units of general local government.

(B) Source of data

The data to be used for formula allocation of funds within a fiscal year shall be data obtained from a standard source that are available to the Secretary 90 days prior to the beginning of that fiscal year.

(C) Use of basic formula

The basic formula established under subparagraph (A) shall be used for all formula allocations and reallocations provided for in this part.

(D) Weights

When allocation is made among States, the Secretary shall apply the formula in

subparagraph (A) giving 20 percent weight to measures of need for the whole State and 80 percent weight to measures of need among units of general local government that are not receiving an allocation under section 12746(1) of this title.

(E) Adjustments

In developing the basic formula in subparagraph (A), the Secretary shall (i) avoid the allocation of an excessively large share of amounts made available under this part to any one State or unit of general local government, and (ii) take into account the need for a geographic distribution of amounts made available under this part that appropriately reflects the housing need in each region of the Nation.

(F) Consultation

The Secretary shall develop the formula in subparagraph (A) in ongoing consultation with (i) the Subcommittee on Housing and Urban Affairs of the Committee on Banking, Housing, and Urban Affairs of the Senate, (ii) the Subcommittee on Housing and Community Development of the Committee on Banking, Finance and Urban Affairs of the House of Representatives, and (iii) organizations representing States and units of general local government. Not less than 60 days prior to publishing a formula for comment, the Secretary shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives a copy of the formula the Secretary intends to propose.

(2) Minimum State allocation

(A) In general

If the formula, when applied to funds approved under this section in appropriations Acts for a fiscal year, would allocate less than \$3,000,000 to any State, the allocation for such State shall be \$3,000,000, and the increase shall be deducted pro rata from the allocations of other States.

(B) Increased minimum allocation

If no unit of general local government within a State receives an allocation under paragraph (3), the State's allocation shall be increased by \$500,000. Priority for use of such increased allocation shall go to the provision of affordable housing within the boundaries of metropolitan cities, urban counties, and approved consortia within the State, based on the need for such funds. The increased allocation to a State under the preceding sentence shall be derived by a pro rata deduction from the allocations to units of general local government in all States, except that such pro rata deduction shall not reduce the allocation of any unit of general local government below \$500,000.

(3) Minimum local allocation

The Secretary shall allocate funds available for formula allocation to units of general local government that, as of the end of the previous fiscal year, qualified as metropolitan cities,

¹ See 1992 Amendment note below.

² So in original. Probably should be "by".

³ So in original. Probably should be "jurisdictions".

urban counties, and consortia approved by the Secretary in accordance with section 12746(2) of this title so that, when all such funds are initially allocated by formula, jurisdictions that are allocated an amount of \$500,000 or more, and participating jurisdictions (other than consortia that fail to renew the membership of all of their member jurisdictions) that are allocated an amount less than \$500,000, shall receive an allocation. Prior to announcing initial allocations, the Secretary shall successively recalculate the allocations to jurisdictions under this subsection so that the maximum number of such jurisdictions can receive initial allocations, except as provided in paragraph (4).

(4) Threshold reduction

If the amount appropriated pursuant to section 12724 of this title for any fiscal year is less than \$1,500,000,000, then this section shall be applied during that year by substituting “\$335,000” for “\$500,000” where it appears in paragraph (3).

(c) Criteria for direct reallocation

The Secretary shall establish objective criteria for making direct reallocations to any participating jurisdiction and other eligible entities. A jurisdiction shall be eligible for a direct reallocation under this subsection only if the jurisdiction, in a form acceptable to the Secretary, submits an application that demonstrates to the satisfaction of the Secretary that the jurisdiction is engaged, or has made good faith efforts to engage, in cooperative efforts between the State and appropriate participating jurisdictions within the State to develop, coordinate, and implement housing strategies under this subchapter. The Secretary shall by regulation establish objective selection criteria for such direct reallocations, which criteria shall take into account—

(1) the applicant’s demonstrated commitment to expand the supply of affordable rental housing, including units developed by public housing agencies, as indicated by the additional number of units of affordable housing made available through production or rehabilitation within the previous 2 years, making adjustment for regional variations in construction and rehabilitation costs and giving special consideration to the number of additional units made available under this subchapter through production or rehabilitation, including units developed by public housing agencies, in relation to the amounts made available under this program;

(2) the applicant’s actions that—

(A) direct funds made available under this part to benefit very low-income families, with a range of incomes, in amounts that exceed the income targeting requirements of section 12744 of this title, with extra consideration given for activities that expand the supply of affordable housing for very low-income families whose incomes do not exceed 30 percent of the median family income for the area, as determined by the Secretary;

(B) apply the tenant selection preference categories applicable under section 1437f of this title to the selection of tenants for housing assisted under this part;

(C) provide matching resources in excess of funds required under section 12750 of this title; and

(D) stimulate a high degree of investment and participation in development by the private sector, including nonprofit organizations; and

(3) the degree to which the applicant is pursuing policies that—

(A) make existing housing more affordable;

(B) remove or ameliorate any negative effects that public policies identified by the applicant pursuant to section 12705(b)(4) of this title may have on the cost of housing or the incentives to develop, maintain, or improve affordable housing in the jurisdiction;

(C) preserve the affordability of privately-owned housing that is vulnerable to conversion, demolition, disinvestment, or abandonment;

(D) increase the supply of housing that is affordable to very low-income and low-income persons, particularly in areas that are accessible to expanding job opportunities; and

(E) remedy the effects of discrimination and improve housing opportunities for disadvantaged minorities.

(d) Reallocations

(1) In general

The Secretary shall make any reallocations periodically throughout each fiscal year so as to ensure that all funds to be reallocated are made available to eligible jurisdictions as soon as possible, consistent with orderly program administration. Jurisdictions eligible for such reallocations shall include participating jurisdictions and jurisdictions meeting the requirements of paragraphs (3), (4), and (5) of section 12746 of this title.

(2) Commitments

The Secretary shall establish procedures according to which participating jurisdictions may make commitments to invest funds made available under this section. Such procedures shall provide for appropriate stages of commitment of funds to a project from initial reservation through binding commitment. Notwithstanding any other provision of this subchapter, funds that the Secretary determines are needed to fulfill binding commitments shall not be available for reallocation.

(3) Limitation

Unless otherwise specified in this part, any reallocation of funds from a State shall be made only among all participating States, and any reallocation of funds from units of general local government shall be made only among all participating units of general local government.

(Pub. L. 101-625, title II, §217, Nov. 28, 1990, 104 Stat. 4105; Pub. L. 102-229, title I, Dec. 12, 1991, 105 Stat. 1709; Pub. L. 102-230, §1, Dec. 12, 1991, 105 Stat. 1720; Pub. L. 102-273, §1, Apr. 21, 1992, 106 Stat. 113; Pub. L. 102-389, title II, Oct. 6, 1992, 106 Stat. 1581; Pub. L. 102-550, title II, §§202(b), 203(b), 211(a)(2), Oct. 28, 1992, 106 Stat. 3751, 3752,

3756; Pub. L. 104-330, title V, §505(a)(1), Oct. 26, 1996, 110 Stat. 4044; Pub. L. 105-65, title II, §214, Oct. 27, 1997, 111 Stat. 1366.)

AMENDMENTS

1997—Subsec. (b)(3). Pub. L. 105-65, in first sentence, substituted “jurisdictions that are allocated an amount of \$500,000 or more, and participating jurisdictions (other than consortia that fail to renew the membership of all of their member jurisdictions) that are allocated an amount less than \$500,000, shall receive an allocation” for “only those jurisdictions that are allocated an amount of \$500,000 or greater shall receive an allocation”.

1996—Subsec. (a)(1). Pub. L. 104-330, §505(a)(1)(A), struck out “reserving amounts under paragraph (2) for Indian tribes and after” after “After”.

Subsec. (a)(2). Pub. L. 104-330, §505(a)(1)(B), struck out heading and text of par. (2). Text read as follows: “For each fiscal year, of the amount approved in an appropriations Act to carry out this subchapter, the Secretary shall reserve for grants to Indian tribes 1 percent of the amount appropriated under such section. The Secretary shall provide for distribution of amounts under this paragraph to Indian tribes on the basis of a competition conducted pursuant to specific criteria for the selection of Indian tribes to receive such amounts. The criteria shall be contained in a regulation promulgated by the Secretary after notice and public comment.”

1992—Subsec. (a)(1). Pub. L. 102-550, §211(a)(2)(A), added first sentence and struck out former first sentence which read as follows: “After reserving amounts for Indian tribes as required by paragraph (2) of this subsection and after reserving amounts for the insular areas under paragraph (3), the Secretary shall allocate funds approved in an appropriations Act to carry out this subchapter by formula as provided in subsection (b) of this section.”

Pub. L. 102-389 made identical amendment to those made by Pub. L. 102-229 and Pub. L. 102-230, §1(1). See 1991 Amendment note below.

Subsec. (a)(3). Pub. L. 102-550, §211(a)(2)(D), and Pub. L. 102-389 both added new pars. (3) related to insular areas. The text reflects the par. (3) added by Pub. L. 102-550. The par. (3) added by Pub. L. 102-389 read as follows: “For each fiscal year, of any amounts approved in appropriations Acts to carry out this subchapter, the Secretary shall reserve for grants to the insular areas the greater of (A) \$750,000, or (B) 0.2 percent of the amounts appropriated under such Acts. The Secretary shall provide for the distribution of amounts reserved under this paragraph among the insular areas pursuant to specific criteria for such distribution. The criteria shall be contained in a regulation promulgated by the Secretary after notice and public comment.”

Pub. L. 102-550, §211(a)(2)(C), struck out par. (3), as added by Pub. L. 102-230, §1(2), which read as follows:

“(A) IN GENERAL.—For each fiscal year, of any amount approved in an appropriations Act to carry out this subchapter, the Secretary shall reserve for grants to the insular areas an amount that reflects—

“(i) their share of the total population of eligible jurisdictions; and

“(ii) any adjustments that the Secretary determines are reasonable in light of available data that are related to factors set forth in subsection (b)(1)(B) of this section.

“(B) SPECIFIC CRITERIA.—The Secretary shall provide for the distribution of amounts reserved under this paragraph among the insular areas in accordance with specific criteria to be set forth in a regulation promulgated by the Secretary after notice and public comment.

“(C) TRANSITIONAL PROVISIONS.—For fiscal year 1992, the reservation for insular areas specified in subparagraph (A) shall be made from any funds which become available for reallocation in accordance with the provisions of section 12746(6)(A) of this title.”

Pub. L. 102-550, §211(a)(2)(B), struck out par. (3), as added by Pub. L. 102-229, which read as follows: “For each fiscal year, of any amounts approved in appropriations Acts to carry out this subchapter, the Secretary shall reserve for grants to the insular areas the greater of (A) \$750,000, or (B) 0.5 percent of the amounts appropriated under such Acts. The Secretary shall provide for the distribution of amounts reserved under this paragraph among the insular areas pursuant to specific criteria for such distribution. The criteria shall be contained in a regulation promulgated by the Secretary after notice and public comment.”

Subsec. (b)(1)(A). Pub. L. 102-550, §203(b)(1), (6), redesignated subpar. (B) as (A) and struck out former subpar. (A) which provided for a formula for allocation of funds for production of affordable rental housing through new construction or substantial rehabilitation.

Pub. L. 102-273 added cl. (iii) reading as follows: “Notwithstanding clauses (i) and (ii), any jurisdiction receiving amounts made available under such clause may, at the discretion of the jurisdiction, use such amounts for other eligible uses in accordance with section 12742 of this title if the jurisdiction determines that such use will better meet the housing needs within the jurisdiction. This clause shall be effective only with respect to funds provided under the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1992 (Public Law 102-139; 105 Stat. 744), which suspends the requirement of contributions by participating jurisdictions, and shall become ineffective if such requirement is reimposed.”

Subsec. (b)(1)(B), (C). Pub. L. 102-550, §203(b)(6), redesignated subpars. (C) and (D) as (B) and (C), respectively. Former subpar. (B) redesignated (A).

Subsec. (b)(1)(D). Pub. L. 102-550, §203(b)(6), redesignated subpar. (E) as (D). Former subpar. (D) redesignated (C).

Pub. L. 102-550, §203(b)(2), substituted “The basic formula established under subparagraph (A)” for “Except as provided in subparagraph (A), the basic formula established under subparagraph (B)”.

Subsec. (b)(1)(E). Pub. L. 102-550, §203(b)(6), redesignated subpar. (F) as (E). Former subpar. (E) redesignated (D).

Pub. L. 102-550, §203(b)(3), substituted “formula in subparagraph (A)” for “formulas in subparagraph (B)”.

Subsec. (b)(1)(F). Pub. L. 102-550, §203(b)(6), redesignated subpar. (G) as (F). Former subpar. (F) redesignated (E).

Pub. L. 102-550, §203(b)(4), substituted “basic formula in subparagraph (A)” for “basic formula in subparagraph (B)” and struck out at end “If a jurisdiction receives an allocation under subparagraph (A), the Secretary shall make such adjustments in the jurisdiction’s allocation under the formula in subparagraph (B) as may be necessary to ensure that the combined effect of the formulas in subparagraphs (A) and (B) does not reduce the allocation of any jurisdiction below the allocation it would receive if allocations were made according to the formula under subparagraph (B) alone.”

Subsec. (b)(1)(G). Pub. L. 102-550, §203(b)(6), redesignated subpar. (G) as (F).

Pub. L. 102-550, §203(b)(5), substituted “formula in subparagraph (A)” for “formulas in subparagraphs (A) and (B)”.

Subsec. (b)(3). Pub. L. 102-550, §202(b)(1), inserted before period at end “, except as provided in paragraph (4)”.

Subsec. (b)(4). Pub. L. 102-550, §202(b)(2), added par. (4).

1991—Subsec. (a)(1). Pub. L. 102-229 and Pub. L. 102-230, §1(1), amended par. (1) identically, inserting before first comma “and after reserving amounts for the insular areas under paragraph (3)”.

Subsec. (a)(3). Pub. L. 102-229 and Pub. L. 102-230, §1(2), which were enacted on the same day, both added new pars. (3) relating to insular areas.

CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Com-

mittee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress, Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as an Effective Date note under section 4101 of Title 25, Indians.

Section 505(b) of Pub. L. 104-330 provided that: "The amendments under subsection (a) [amending this section and section 12838 of this title] shall apply with respect to amounts made available for assistance under title II of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12721 et seq.] for fiscal year 1998 and fiscal years thereafter."

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 211(a)(2) of Pub. L. 102-550 applicable with respect to fiscal year 1993 and thereafter, see section 211(b) of Pub. L. 102-550, set out as a note under section 12704 of this title.

Amendment by sections 202(b) and 203(b) of Pub. L. 102-550 applicable to unexpended funds allocated under subchapter II of this chapter in fiscal year 1992, except as otherwise specifically provided, see section 223 of Pub. L. 102-550, set out as a note under section 12704 of this title.

APPLICABILITY OF GRANT THRESHOLDS

Grant thresholds provided for in subsec. (b) of this section as amended by Pub. L. 102-550 to apply notwithstanding any other provision of law, see section 202(c) of Pub. L. 102-550, set out as a note under section 12746 of this title.

EXPEDITED ISSUANCE OF REGULATION

Section 211(a)(3) of Pub. L. 102-550 provided that: "The regulation referred to in the amendment made by paragraph (2)(D) [amending this section] shall take effect not later than the expiration of the 90-day period beginning on the date of the enactment of this Act [Oct. 28, 1992]. The regulation shall not be subject to the requirements of subsections (b) and (c) of section 553 of title 5, United States Code, or section 7(o) of the Department of Housing and Urban Development Act [42 U.S.C. 3535(o)]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12746, 12748, 12749, 12771, 12821, 12831 of this title.

§ 12748. HOME Investment Trust Funds

(a) Establishment

The Secretary shall establish for each participating jurisdiction a HOME Investment Trust Fund, which shall be an account (or accounts as provided in section 12749(c) of this title) for use solely to invest in affordable housing within the participating jurisdiction's boundaries or within the boundaries of contiguous jurisdictions in joint projects which serve residents from both jurisdictions in accordance with the provisions of this part.

(b) Line of credit

The Secretary shall establish a line of credit in the HOME Investment Trust Fund of each

participating jurisdiction, which line of credit shall include—

(1) funds allocated or reallocated to the participating jurisdiction under section 12747 of this title, and

(2) any payment or repayment made pursuant to section 12749 of this title.

(c) Reductions

A participating jurisdiction's line of credit shall be reduced by—

(1) funds drawn from the HOME Investment Trust Fund by the participating jurisdiction,

(2) funds expiring under subsection (g) of this section, and

(3) any penalties assessed by the Secretary under section 12754¹ of this title.

(d) Certification

A participating jurisdiction may draw funds from its HOME Investment Trust Fund, but not to exceed the remaining line of credit, only after providing certification that the funds shall be used pursuant to the participating jurisdiction's approved housing strategy and in compliance with all requirements of this subchapter. When such certification is received, the Secretary shall immediately disburse such funds in accordance with the form of the assistance determined by the participating jurisdiction.

(e) Investment within 15 days

The participating jurisdiction shall, not later than 15 days after funds are drawn from the jurisdiction's HOME Investment Trust Fund, invest such funds, together with any interest earned thereon, in the affordable housing for which the funds were withdrawn.

(f) No interest or fees

The Secretary shall not charge any interest or levy any other fee with regard to funds in a HOME Investment Trust Fund.

(g) Expiration of right to draw funds

If any funds becoming available to a participating jurisdiction under this subchapter are not placed under binding commitment to affordable housing within 24 months after the last day of the month in which such funds are deposited in the jurisdiction's HOME Investment Trust Fund, the jurisdiction's right to draw such funds from the HOME Investment Trust Fund shall expire. The Secretary shall reduce the line of credit in the participating jurisdiction's HOME Investment Trust Fund by the expiring amount and shall reallocate the funds by formula in accordance with section 12747(d) of this title.

(h) Administrative provision

The Secretary shall keep each participating jurisdiction informed of the status of its HOME Investment Trust Fund, including the status of amounts under various stages of commitment.

(Pub. L. 101-625, title II, § 218, Nov. 28, 1990, 104 Stat. 4109; Pub. L. 102-550, title II, §§ 203(c), 221, Oct. 28, 1992, 106 Stat. 3752, 3762.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102-550, § 221, inserted "or within the boundaries of contiguous jurisdictions in

¹ So in original. Probably should be section "12753".

joint projects which serve residents from both jurisdictions" after "boundaries".

Subsec. (g). Pub. L. 102-550, § 203(c), substituted "If" for "Except as provided in section 12747(b)(1)(A)(ii) of this title, if".

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-550 applicable to unexpended funds allocated under subchapter II of this chapter in fiscal year 1992, except as otherwise specifically provided, see section 223 of Pub. L. 102-550, set out as a note under section 12704 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12746, 12821 of this title.

§ 12749. Repayment of investment

(a) In general

Any repayment of funds drawn from a jurisdiction's HOME Investment Trust Fund, and any payment of interest or other return on the investment of such funds, shall be deposited in such jurisdiction's HOME Investment Trust Fund, except that, if the jurisdiction is not a participating jurisdiction when such payment or repayment is made, the amount of such payment or repayment shall be reallocated in accordance with section 12747(d) of this title.

(b) Assurance of repayment

Each participating jurisdiction shall enter into an agreement with the Secretary ensuring that funds invested in affordable housing under this part are repayable when the housing no longer qualifies as affordable housing. Any repayment under the previous sentence shall be for deposit in the HOME Investment Trust Fund of the jurisdiction making the investment; except that if such jurisdiction is not a participating jurisdiction when such repayment is made, the amount of such repayment shall be reallocated in accordance with section 12747(d) of this title.

(c) Availability

The Secretary shall take such actions as are necessary to ensure that any repayments deposited in a HOME Investment Trust Fund in accordance with this section shall be immediately available to the participating jurisdiction for investment subject to the provisions of this part that apply to funds that are allocated under section 12747 of this title. Actions authorized under the preceding sentence may include authorizing the establishment for a participating jurisdiction of a HOME Investment Trust Fund account outside of the Federal Government that, under arrangements satisfactory to the Secretary, shall be used solely to invest in affordable housing within the participating jurisdiction's boundaries in accordance with the provisions of this subchapter. Such accounts shall be established in such a manner that repayments are not receipts or collections of the Federal Government.

(Pub. L. 101-625, title II, § 219, Nov. 28, 1990, 104 Stat. 4110.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12748, 12802, 12821 of this title.

§ 12750. Matching requirements

(a) Contribution

Each participating jurisdiction shall make contributions to housing that qualifies as affordable housing under this subchapter that total, throughout a fiscal year, not less than 25 percent of the funds drawn from the jurisdiction's HOME Investment Trust Fund in such fiscal year. Such contributions shall be in addition to any amounts made available under section 12746(3)(A)(ii) of this title.

(b) Recognition

(1) In general

A contribution shall be recognized for purposes of subsection (a) of this section only if it—

(A) is made with respect to housing that qualifies as affordable housing under section 12745 of this title; or

(B) is made with respect to any portion of a project not less than 50 percent of the units of which qualify as affordable housing under section 12745 of this title.

(2) Administrative expenses

Contributions for administrative expenses may not be recognized for purposes of subsection (a) of this section.

(c) Form

Such contributions may be in the form of—

(1) cash contributions from non-Federal resources, which may not include funds from a grant made under section 5306(b) or section 5306(d) of this title;

(2) the value of taxes, fees, or other charges that are normally and customarily imposed but are waived, foregone, or deferred in a manner that achieves affordability of housing assisted under this subchapter;

(3) the value of land or other real property as appraised according to procedures acceptable to the Secretary;

(4) the value of investment in on-site and off-site infrastructure directly required for affordable housing assisted under this subchapter;

(5) Redesignated (4)

(6) up to—

(A) 50 percent of proceeds from bond financing validly issued by a State or local government, agency or instrumentality thereof, or political subdivision thereof, and repayable with revenues derived from a multifamily affordable housing project financed, and

(B) 25 percent of proceeds from bond financing validly issued by a State or local government, agency or instrumentality thereof, or political subdivision thereof, and repayable with revenues derived from a single-family project financed,

but not more than 25 percent of the contribution required under subsection (a) of this section may be derived from these sources;

(7) the reasonable value of any site-preparation and construction materials and any donated or voluntary labor in connection with the site-preparation for, or construction or rehabilitation of, affordable housing; and

(8) such other contributions to affordable housing as the Secretary considers appropriate.

(d) Reduction of requirement

(1) In general

The Secretary shall reduce the matching requirement under subsection (a) of this section with respect to any funds drawn from a jurisdiction's HOME Investment Trust Fund Account during a fiscal year by—

(A) 50 percent for a jurisdiction that certifies that it is in fiscal distress; and

(B) 100 percent for a jurisdiction that certifies that it is in severe fiscal distress.

(2) Definitions

For purposes of this section—

(A) "fiscal distress" means a jurisdiction other than a State that satisfies 1 of the distress criteria set forth in paragraph (3); and

(B) "severe fiscal distress" means a jurisdiction other than a State that satisfies both of the distress criteria set forth in paragraph (3).

(3) Distress criteria

For purposes of a jurisdiction other than a State certifying that it is distressed, the following criteria shall apply:

(A) Poverty rate

The average poverty rate in the jurisdiction for the calendar year immediately preceding the year in which its fiscal year begins was equal to or greater than 125 percent of the average national poverty rate during such calendar year (as determined according to information of the Bureau of the Census).

(B) Per capita income

The average per capita income in the jurisdiction for the calendar year immediately preceding the year in which its fiscal year begins was less than 75 percent of the average national per capita income during such calendar year (as determined according to information of the Bureau of the Census).

(4) States

In determining the degree to which a jurisdiction that is a State is distressed, the Secretary shall take into consideration the State's fiscal capacity and expenditure needs as determined by a national organization which compiles the relevant data.

(5) Waiver in disaster areas

If a participating jurisdiction is located in an area in which a declaration of a disaster pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act [42 U.S.C. 5121 et seq.] is in effect for any part of a fiscal year, the Secretary may reduce the matching requirement for that fiscal year under subsection (a) of this section with respect to any funds drawn from a jurisdiction's HOME Investment Trust Fund Account during that fiscal year by up to 100 percent.

(Pub. L. 101-625, title II, § 220, Nov. 28, 1990, 104 Stat. 4111; Pub. L. 102-550, title II, §§ 207(c), 210(a)-(c), Oct. 28, 1992, 106 Stat. 3753, 3755; Pub. L. 103-233, title II, § 204, Apr. 11, 1994, 108 Stat. 364.)

REFERENCES IN TEXT

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in subsec. (d)(5), is Pub. L. 93-288, May 22, 1974, 88 Stat. 143, as amended, which is classified principally to chapter 68 (§5121 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103-233 amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: "Each participating jurisdiction shall make contributions to housing that qualifies as affordable housing under this subchapter that total, throughout a fiscal year, not less than—

"(1) 25 percent of the total funds drawn from the jurisdiction's HOME Investment Trust Fund in that fiscal year with respect to rental assistance, housing rehabilitation and substantial rehabilitation; and

"(2) 30 percent of the total funds drawn from the jurisdiction's HOME Investment Trust Fund in that fiscal year with respect to new construction.

Such contributions shall be in addition to any amounts made available under section 12746(3)(A)(ii) of this title."

1992—Subsec. (a). Pub. L. 102-550, § 210(a)(4), substituted "housing that qualifies as affordable housing under this subchapter" for "affordable housing assisted under this subchapter" in introductory provisions.

Subsec. (a)(1). Pub. L. 102-550, § 210(a)(1), substituted "housing rehabilitation and substantial rehabilitation; and" for "and housing rehabilitation;"

Subsec. (a)(2). Pub. L. 102-550, § 210(a)(2), substituted "30" for "33" and "new construction." for "substantial rehabilitation; and"

Subsec. (a)(3). Pub. L. 102-550, § 210(a)(3), struck out par. (3) which read as follows: "50 percent of the total funds drawn from the jurisdiction's HOME Investment Trust Fund in that fiscal year with respect to new construction."

Subsec. (b)(2). Pub. L. 102-550, § 207(c)(1), substituted "may not be recognized for purposes of subsection (a) of this section" for "shall be recognized only up to an amount equal to 7 percent of funds provided for investment under this subchapter"

Subsec. (c)(2). Pub. L. 102-550, § 207(c)(2), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: "payment of administrative expenses, as defined by the Secretary, from non-Federal resources, which may include funds from a grant made under section 5306(b) or section 5306(d) of this title;"

Subsec. (c)(3). Pub. L. 102-550, § 210(b)(1), which directed the striking of "and" at end of par. (4), was executed by striking "and" at end of par. (3) to reflect the probable intent of Congress and the redesignation of par. (4) as (3). See below.

Pub. L. 102-550, § 207(c)(2)(B), redesignated par. (4) as (3). Former par. (3) redesignated (2).

Subsec. (c)(4). Pub. L. 102-550, § 210(b)(2), which directed the substitution of a semicolon for the period at end of par. (5), was executed by making the substitution at end of par. (4) to reflect the probable intent of Congress and the redesignation of par. (5) as (4). See below.

Pub. L. 102-550, § 207(c)(2)(B), redesignated par. (5) as (4). Former par. (4) redesignated (3).

Subsec. (c)(5). Pub. L. 102-550, § 207(c)(2)(B), redesignated par. (5) as (4).

Subsec. (c)(6) to (8). Pub. L. 102-550, § 210(b)(3), added pars. (6) to (8).

Subsec. (d). Pub. L. 102-550, § 210(c), added subsec. (d) and struck out former subsec. (d) which read as follows: "If a jurisdiction demonstrates to the satisfaction of the Secretary that a reduction of the matching requirement specified in subsection (a) of this section is necessary to permit the jurisdiction to carry out the purposes of this subchapter, the Secretary may reduce the matching requirement during a period not to exceed 3

years after the jurisdiction is first designated as a participating jurisdiction. Such reduction shall be not more than 75 percent in the first year, not more than 50 percent in the second year, and not more than 25 percent in the third year.”

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-233 applicable with respect to any amounts made available to carry out this subchapter after Apr. 11, 1994, and any amounts made available to carry out this subchapter before that date that remain uncommitted on that date, with Secretary to issue any regulations necessary to carry out such amendment not later than end of 45-day period beginning on that date, see section 209 of Pub. L. 103-233, set out as a note under section 5301 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 210(d) of Pub. L. 102-550 provided that: “The amendments made by this section [amending this section] shall apply with respect to fiscal year 1993 and each fiscal year thereafter.”

Amendment by section 207(c) of Pub. L. 102-550 applicable to unexpended funds allocated under subchapter II of this chapter in fiscal year 1992, except as otherwise specifically provided, see section 223 of Pub. L. 102-550, set out as a note under section 12704 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1437aaa-2, 12747 of this title.

§ 12751. Private-public partnership

Each participating jurisdiction shall make all reasonable efforts, consistent with the purposes of this subchapter, to maximize participation by the private sector, including nonprofit organizations and for-profit entities, in the implementation of the jurisdiction’s housing strategy, including participation in the financing, development, rehabilitation and management of affordable housing. Nothing in the previous sentence shall preclude public housing authorities from fully participating in the implementation of a jurisdiction’s housing strategy.

(Pub. L. 101-625, title II, §221, Nov. 28, 1990, 104 Stat. 4112.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12821 of this title.

§ 12752. Distribution of assistance

(a) Local

Each participating jurisdiction shall, insofar as is feasible, distribute assistance under this part geographically within its boundaries and among different categories of housing need, according to the priorities of housing need identified in the jurisdiction’s approved housing strategy.

(b) State

Participating States shall be responsible for distributing assistance throughout the State according to the State’s assessment of the geographical distribution of the housing need within the State, as identified in the State’s approved housing strategy. Participating States shall distribute assistance to rural areas in amounts that take into account the nonmetropolitan share of the State’s total population and objective measures of rural housing need, such

as poverty and substandard housing, as set forth in the State’s housing strategy approved under section 12705 of this title. To the extent the need is within the boundaries of a participating unit of general local government, the State and the unit of general local government shall coordinate activities to address that need.

(Pub. L. 101-625, title II, §222, Nov. 28, 1990, 104 Stat. 4112.)

§ 12753. Penalties for misuse of funds

If the Secretary finds after reasonable notice and opportunity for hearing that a participating jurisdiction has failed to comply substantially with any provision of this part and until the Secretary is satisfied that there is no longer any such failure to comply, the Secretary shall reduce the line of credit in the participating jurisdiction’s HOME Investment Trust Fund by the amount of any expenditures that were not in accordance with the requirements of this subchapter, and the Secretary may—

(1) prevent withdrawals from the participating jurisdiction’s HOME Investment Trust Fund for activities affected by such failure to comply;

(2) restrict the participating jurisdiction’s activities under this subchapter to activities that conform to one or more model programs made available under section 12743 of this title; or

(3) remove the participating jurisdiction from participation in allocations or reallocations of funds made available under this part.

(Pub. L. 101-625, title II, §223, Nov. 28, 1990, 104 Stat. 4112.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12742, 12743, 12748, 12821 of this title.

§ 12754. Limitation on jurisdictions under court order

(a) In general

Notwithstanding any other provision of this Act, the Secretary shall ensure that funds provided under this part are not employed to carry out housing remedies or to pay fines, penalties, or costs associated with an action in which—

(1) a participating jurisdiction has been adjudicated, by a Federal, State, or local court, to be in violation of title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], the Fair Housing Act [42 U.S.C. 3601 et seq.], or any other Federal, State, or local law promoting fair housing or prohibiting discrimination, or

(2) a settlement has been entered into in any case where claims of such violations have been asserted against a participating jurisdiction, except to the extent permitted by subsection (b) of this section.

(b) Remedial use of funds permitted

In the case of settlement described in subsection (a)(2) of this section, a jurisdiction may use funds provided under this Act to carry out housing remedies with eligible activities.

(Pub. L. 101-625, title II, §224, Nov. 28, 1990, 104 Stat. 4113.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 101-625, Nov. 28, 1990, 104 Stat. 4079, known as the Cranston-Gonzalez National Affordable Housing Act. For complete classification of this Act to the Code, see Short Title note set out under section 12701 of this title and Tables.

The Civil Rights Act of 1964, referred to in subsec. (a)(1), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Act is classified generally to subchapter V (§2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

The Fair Housing Act, referred to in subsec. (a)(1), is title VIII of Pub. L. 90-284, Apr. 11, 1968, 82 Stat. 81, as amended, which is classified principally to subchapter I (§3601 et seq.) of chapter 45 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12748, 12821 of this title.

§ 12755. Tenant and participant protections**(a) Lease**

The lease between a tenant and an owner of affordable housing assisted under this subchapter for rental shall be for not less than one year, unless by mutual agreement between the tenant and the owner, and shall contain such terms and conditions as the Secretary shall determine to be appropriate.

(b) Termination of tenancy

An owner shall not terminate the tenancy or refuse to renew the lease of a tenant of rental housing assisted under this subchapter except for serious or repeated violation of the terms and conditions of the lease, for violation of applicable Federal, State, or local law, or for other good cause. Any termination or refusal to renew must be preceded by not less than 30 days by the owner's service upon the tenant of a written notice specifying the grounds for the action.

(c) Maintenance and replacement

The owner of rental housing assisted under this subchapter shall maintain the premises in compliance with all applicable housing quality standards and local code requirements.

(d) Tenant selection

The owner of rental housing assisted under this subchapter shall adopt written tenant selection policies and criteria that—

(1) are consistent with the purpose of providing housing for very low-income and low-income families,

(2) are reasonably related to program eligibility and the applicant's ability to perform the obligations of the lease,

(3) give reasonable consideration to the housing needs of families that would have a preference under section 1437d(c)(4)(A) of this title, and

(4) provide for (A) the selection of tenants from a written waiting list in the chronological order of their application, insofar as is practicable, and (B) for¹ the prompt notifica-

tion in writing of any rejected applicant of the grounds for any rejection.

(Pub. L. 101-625, title II, §225, Nov. 28, 1990, 104 Stat. 4113.)

§ 12756. Monitoring of compliance**(a) Enforceable agreements**

Each participating jurisdiction, through binding contractual agreements with owners and otherwise, shall ensure long-term compliance with the provisions of this subchapter. Such measures shall provide for (1) enforcement of the provisions of this subchapter by the jurisdiction or by the intended beneficiaries, and (2) remedies for the breach of such provisions.

(b) Periodic monitoring

Each participating jurisdiction, not less frequently than annually, shall review the activities of owners of affordable housing assisted under this subchapter for rental to assess compliance with the requirements of this subchapter. Such review shall include on-site inspection to determine compliance with housing codes and other applicable regulations. The results of each review shall be included in the jurisdiction's performance report submitted to the Secretary under section 12708(a) of this title and made available to the public.

(c) Special procedures for certain projects

In the case of small-scale or scattered site housing, the Secretary may provide for such streamlined procedures for achieving the purposes of this section as the Secretary determines to be appropriate.

(Pub. L. 101-625, title II, §226, Nov. 28, 1990, 104 Stat. 4114.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12821 of this title.

PART B—COMMUNITY HOUSING PARTNERSHIP

§ 12771. Set-aside for community housing development organizations**(a) In general**

For a period of 24 months after funds under part A of this subchapter are made available to a jurisdiction, the jurisdiction shall reserve not less than 15 percent of such funds for investment only in housing to be developed, sponsored, or owned by community housing development organizations. Each participating jurisdiction shall make reasonable efforts to identify community housing development organizations that are capable or can reasonably be expected to become capable of carrying out elements of the jurisdiction's housing strategy and to encourage such community housing development organizations to do so. If during the first 24 months of its participation under this subchapter, a participating jurisdiction is unable to identify a sufficient number of capable community housing development organizations, then up to 20 percent of the funds allocated to that jurisdiction under this section, but not to exceed \$150,000, may be made available to carry out activities that develop the capacity of community housing devel-

¹ So in original. The word "for" probably should not appear.

opment organizations in that jurisdiction. A participating jurisdiction is authorized to enter into contracts with community housing development organizations to carry out this section.

(b) Recapture and reuse

If any funds reserved under subsection (a) of this section remain uninvested for a period of 24 months, then the Secretary shall deduct such funds from the line of credit in the participating jurisdiction's HOME Investment Trust Fund and make such funds available by direct reallocation (1) to other participating jurisdictions for affordable housing developed, sponsored or owned by community housing development organizations, or (2) to nonprofit intermediary organizations to carry out activities that develop the capacity of community housing development organizations consistent with section 12773 of this title, with preference to community housing development organizations serving the jurisdiction from which the funds were recaptured.

(c) Direct reallocation criteria

Insofar as practicable, direct reallocations under this section shall be made according to the selection criteria established under section 12747(c) of this title.

(Pub. L. 101-625, title II, §231, Nov. 28, 1990, 104 Stat. 4114; Pub. L. 102-550, title II, §212(a), (b), Oct. 28, 1992, 106 Stat. 3757.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102-550 substituted “24” for “18” in first sentence and inserted after second sentence “If during the first 24 months of its participation under this subchapter, a participating jurisdiction is unable to identify a sufficient number of capable community housing development organizations, then up to 20 percent of the funds allocated to that jurisdiction under this section, but not to exceed \$150,000, may be made available to carry out activities that develop the capacity of community housing development organizations in that jurisdiction.”

Subsec. (b). Pub. L. 102-550, §212(a), substituted “24” for “18”.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-550 applicable to unexpended funds allocated under subchapter II of this chapter in fiscal year 1992, except as otherwise specifically provided, see section 223 of Pub. L. 102-550, set out as a note under section 12704 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12772 of this title.

§ 12772. Project-specific assistance to community housing development organizations

(a) In general

Amounts reserved under section 12771 of this title may be used for activities eligible under section 12742 of this title and, in amounts not to exceed 10 percent of the amounts so reserved, for other activities specified under this section.

(b) Project-specific technical assistance and site control loans

(1) In general

Amounts reserved under section 12771 of this title may be used to provide technical assistance and site control loans to community

housing development organizations in the early stages of site development for an eligible project. Such loans shall not exceed amounts that the jurisdiction determines to be customary and reasonable project preparation costs allowable under paragraph (2).

(2) Allowable expenses

A loan under this subsection may be provided to cover project expenses necessary to determine project feasibility (including costs of an initial feasibility study), consulting fees, costs of preliminary financial applications, legal fees, architectural fees, engineering fees, engagement of a development team, site control and title clearance.

(3) Repayment

A community housing development organization that receives a loan under this subsection shall repay the loan to the participating jurisdiction's HOME Investment Trust Fund from construction loan proceeds or other project income. The participating jurisdiction may waive repayment of the loan, in part or in whole, if there are impediments to project development that the participating jurisdiction determines are reasonably beyond the control of the borrower.

(c) Project-specific seed money loans

(1) In general

Amounts reserved under section 12771 of this title may be used to provide loans to community housing development organizations to cover preconstruction project costs that the jurisdiction determines to be customary and reasonable, including, but not limited to the costs of obtaining firm construction loan commitments, architectural plans and specifications, zoning approvals, engineering studies and legal fees.

(2) Eligible sponsors

A loan under this subsection may be provided only to a community housing development organization that has, with respect to the project concerned, site control, a preliminary financial commitment, and a capable development team.

(3) Repayment

A community housing development organization that receives a loan under this subsection shall repay the loan to the jurisdiction's HOME Investment Trust Fund from construction loan proceeds or other project income. The participating jurisdiction may waive repayment of the loan, in whole or in part, if there are impediments to project development that the participating jurisdiction determines are reasonably beyond the control of the borrower.

(Pub. L. 101-625, title II, §232, Nov. 28, 1990, 104 Stat. 4115.)

§ 12773. Housing education and organizational support

(a) In general

The Secretary is authorized to provide education and organizational support assistance, in

conjunction with other assistance made available under this part—

(1) to facilitate the education of low-income homeowners and tenants;

(2) to promote the ability of community housing development organizations, including community land trusts, to maintain, rehabilitate and construct housing for low-income and moderate-income families in conformance with the requirements of this subchapter; and

(3) to achieve the purposes under paragraphs (1) and (2) by helping women who reside in low- and moderate-income neighborhoods rehabilitate and construct housing in the neighborhoods.

(b) Eligible activities

Assistance under this section may be used only for the following eligible activities:

(1) Organizational support

Organizational support assistance may be made available to community housing development organizations to cover operational expenses and to cover expenses for training and technical, legal, engineering and other assistance to the board of directors, staff, and members of the community housing development organization.

(2) Housing education

Housing education assistance may be made available to community housing development organizations to cover expenses for providing or administering programs for educating, counseling, or organizing homeowners and tenants who are eligible to receive assistance under other provisions of this subchapter.

(3) Program-wide support of nonprofit development and management

Technical assistance, training, and continuing support may be made available to eligible community housing development organizations for managing and conserving properties developed under this subchapter.

(4) Benevolent loan funds

Technical assistance may be made available to increase the investment of private capital in housing for very low-income families, particularly by encouraging the establishment of benevolent loan funds through which private financial institutions will accept deposits at below-market interest rates and make those funds available at favorable rates to developers of low-income housing and to low-income homebuyers.

(5) Community development banks and credit unions

Technical assistance may be made available to establish privately owned, local community development banks and credit unions to finance affordable housing.

(6) Community land trusts

Organizational support, technical assistance, education, training, and continuing support under this subsection may be made available to community land trusts (as such term is defined in subsection (f) of this section) and to community groups for the establishment of community land trusts.

(7) Facilitating women in homebuilding professions

Technical assistance may be made available to businesses, unions, and organizations involved in construction and rehabilitation of housing in low- and moderate-income areas to assist women residing in the area to obtain jobs involving such activities, which may include facilitating access by such women to, and providing, apprenticeship and other training programs regarding nontraditional skills, recruiting women to participate in such programs, providing continuing support for women at job sites, counseling and educating businesses regarding suitable work environments for women, providing information to such women regarding opportunities for establishing small housing construction and rehabilitation businesses, and providing materials and tools for training such women (in an amount not exceeding 10 percent of any assistance provided under this paragraph). The Secretary shall give priority under this paragraph to providing technical assistance for organizations rehabilitating single family or multifamily housing owned or controlled by the Secretary pursuant to title II of the National Housing Act [12 U.S.C. 1707 et seq.] and which have women members in occupations in which women constitute 25 percent or less of the total number of workers in the occupation (in this section referred to as “nontraditional occupations”).

(c) Delivery of assistance

The Secretary shall provide this assistance only through contract—

(1) with a nonprofit intermediary organization that, in the determination of the Secretary—

(A) customarily provides, in more than one community, services related to the provision of decent housing that is affordable to low-income and moderate-income persons or the revitalization of deteriorating neighborhoods;

(B) has demonstrated experience in providing a range of assistance (such as financing, technical assistance, construction and property management assistance, capacity building and training) to community housing development organizations or similar organizations that engage in community revitalization;

(C) has demonstrated the ability to provide technical assistance and training for community-based developers of affordable housing;

(D) has described the uses to which such assistance will be put and the intended beneficiaries of the assistance; and

(E) in the case of activities under subsection (b)(7) of this section, is a community-based organization (as such term is defined in section 4 of the Job Training Partnership Act) or public housing agency, which has demonstrated experience in preparing women for apprenticeship training in construction or administering programs for training women for construction or other nontraditional occupations (and such orga-

nizations may use assistance for activities under such subsection to employ women in housing construction and rehabilitation activities to the extent that the organization has the capacity to conduct such activities); or

(2) with another organization, if a participating jurisdiction demonstrates that the organization is qualified to carry out eligible activities and that the jurisdiction would not be served in a timely manner by intermediaries specified under paragraph (1).

Contracts under paragraph (2) shall be for activities specified in an application from the participating jurisdiction, which application shall include a certification that the activities are necessary to the effective implementation of the participating jurisdiction's housing strategy.

(d) Limitations

Contracts under this section with any one contractor for a fiscal year may not—

- (1) exceed 20 percent of the amount appropriated for this section for such fiscal year; or
- (2) provide more than 20 percent of the operating budget (which shall not include funds that are passed through to community housing development organizations) of the contracting organization for any one year.

(e) Single-State contractors

Not less than 40 percent of the funds made available for this section in an appropriations Act in any fiscal year shall be made available for eligible contractors that have worked primarily in one State. The Secretary shall provide assistance under this section, to the extent applications are submitted and approved, to contractors in each of the geographic regions having a regional office of the Department of Housing and Urban Development.

(f) "Community land trust" defined

For purposes of this section, the term "community land trust" means a community housing development organization (except that the requirements under subparagraphs (C) and (D) of section 12704(6) of this title shall not apply for purposes of this subsection)—

- (1) that is not sponsored by a for-profit organization;
- (2) that is established to carry out the activities under paragraph (3);
- (3) that—
 - (A) acquires parcels of land, held in perpetuity, primarily for conveyance under long-term ground leases;
 - (B) transfers ownership of any structural improvements located on such leased parcels to the lessees; and
 - (C) retains a preemptive option to purchase any such structural improvement at a price determined by formula that is designed to ensure that the improvement remains affordable to low- and moderate-income families in perpetuity;

(4) whose corporate membership that is open to any adult resident of a particular geographic area specified in the bylaws of the organization; and

(5) whose board of directors—

(A) includes a majority of members who are elected by the corporate membership; and

(B) is composed of equal numbers of (i) lessees pursuant to paragraph (3)(B), (ii) corporate members who are not lessees, and (iii) any other category of persons described in the bylaws of the organization.

(Pub. L. 101-625, title II, §233, Nov. 28, 1990, 104 Stat. 4116; Pub. L. 102-550, title II, §213, Oct. 28, 1992, 106 Stat. 3757.)

REFERENCES IN TEXT

The National Housing Act, referred to in subsec. (b)(7), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended. Title II of the Act is classified principally to subchapter II (§1707 et seq.) of chapter 13 of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1701 of Title 12 and Tables.

Section 4 of the Job Training Partnership Act, referred to in subsec. (c)(1)(E), which was classified to section 1503 of Title 29, Labor, was repealed by Pub. L. 105-220, title I, §199(b)(2), (c)(2)(B), Aug. 7, 1998, 112 Stat. 1059, effective July 1, 2000. Pursuant to section 2940(b) of Title 29, references to a provision of the Job Training Partnership Act, effective Aug. 7, 1998, are deemed to refer to that provision or the corresponding provision of the Workforce Investment Act of 1998, Pub. L. 105-220, Aug. 7, 1998, 112 Stat. 936, and effective July 1, 2000, are deemed to refer to the corresponding provision of the Workforce Investment Act of 1998. For complete classification of the Workforce Investment Act of 1998 to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

AMENDMENTS

1992—Subsec. (a)(2). Pub. L. 102-550, §213(a)(1), inserted "including community land trusts," after "organizations".

Subsec. (a)(3). Pub. L. 102-550, §213(b)(1), added par. (3).

Subsec. (b)(6). Pub. L. 102-550, §213(a)(2), added par. (6).

Subsec. (b)(7). Pub. L. 102-550, §213(b)(2), added par. (7).

Subsec. (c)(1)(E). Pub. L. 102-550, §213(b)(3), added subpar. (E).

Subsec. (e). Pub. L. 102-550, §213(b)(4), inserted at end "The Secretary shall provide assistance under this section, to the extent applications are submitted and approved, to contractors in each of the geographic regions having a regional office of the Department of Housing and Urban Development."

Subsec. (f). Pub. L. 102-550, §213(a)(3), added subsec. (f).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-550 applicable to unexpended funds allocated under subchapter II of this chapter in fiscal year 1992, except as otherwise specifically provided, see section 223 of Pub. L. 102-550, set out as a note under section 12704 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12724, 12771 of this title.

§ 12774. Other requirements

(a) Tenant participation plan

A community housing development organization that receives assistance under this part shall provide a plan for and follow a program of tenant participation in management decisions and shall adhere to a fair lease and grievance

procedure approved by the participating jurisdiction.

(b) Limitation on assistance

A community housing development organization may not receive assistance under this subchapter for any fiscal year in an amount that provides more than 50 percent of the organization's total operating budget in the fiscal year or \$50,000 annually, whichever is greater.

(c) Adjustments of other assistance

The Secretary shall take account of assistance provided to a project under this part when adjusting other assistance to be provided to the project as required by section 3545(d) of this title.

(Pub. L. 101-625, title II, §234, Nov. 28, 1990, 104 Stat. 4117; Pub. L. 102-550, title II, §212(c), Oct. 28, 1992, 106 Stat. 3757.)

AMENDMENTS

1992—Subsec. (b). Pub. L. 102-550 struck out “, together with other Federal assistance,” after “in an amount that” and inserted before period “or \$50,000 annually, whichever is greater”.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-550 applicable to unexpended funds allocated under subchapter II of this chapter in fiscal year 1992, except as otherwise specifically provided, see section 223 of Pub. L. 102-550, set out as a note under section 12704 of this title.

PART C—OTHER SUPPORT FOR STATE AND LOCAL HOUSING STRATEGIES

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 12724 of this title.

§ 12781. Authority

The Secretary shall, insofar as is feasible through contract with eligible organizations, develop the capacity of participating jurisdictions, State and local housing finance agencies, nonprofit organizations and for-profit corporations, working in partnership, to identify and meet needs for an increased supply of decent, affordable housing.

(Pub. L. 101-625, title II, §241, Nov. 28, 1990, 104 Stat. 4117.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12782 of this title.

§ 12782. Priorities for capacity development

To carry out section 12781 of this title, the Secretary shall provide assistance under this part to—

(1) facilitate the exchange of information that would help participating jurisdictions carry out the purposes of this subchapter, including information on program design, housing finance, land use controls, and building construction techniques;

(2) improve the ability of States and units of general local government to design and implement comprehensive housing affordability strategies, particularly those States and units of general local government that are relatively inexperienced in the development of affordable housing;

(3) encourage private lenders and for-profit developers of low-income housing to participate in public-private partnerships to achieve the purposes of this subchapter;

(4) improve the ability of States and units of general local government, community housing development organizations, private lenders, and for-profit developers of low-income housing to incorporate energy efficiency into the planning, design, financing, construction, and operation of affordable housing;

(5) facilitate the establishment and efficient operation of employer-assisted housing programs through research, technical assistance and demonstration projects; and

(6) facilitate the establishment and efficient operation of land bank programs, under which title to vacant and abandoned parcels of real estate located in or causing blighted neighborhoods is cleared for use consistent with the purposes of this subchapter.

(Pub. L. 101-625, title II, §242, Nov. 28, 1990, 104 Stat. 4118; Pub. L. 102-550, title II, §214(a), Oct. 28, 1992, 106 Stat. 3759.)

AMENDMENTS

1992—Par. (6). Pub. L. 102-550 added par. (6).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-550 applicable to unexpended funds allocated under subchapter II of this chapter in fiscal year 1992, except as otherwise specifically provided, see section 223 of Pub. L. 102-550, set out as a note under section 12704 of this title.

§ 12783. Conditions of contracts

(a) Eligible organizations

The Secretary shall carry out this part insofar as is practicable through contract with—

(1) a participating jurisdiction or agency thereof;

(2) a public purpose organization established pursuant to State or local legislation and responsible to the chief elected official of a participating jurisdiction;

(3) an agency or authority established by two or more participating jurisdictions to carry out activities consistent with the purposes of this subchapter;

(4) a national or regional nonprofit organization that has a membership comprised predominantly of entities or officials of entities that qualify under paragraph (1), (2), or (3); or

(5) a professional and technical services company or firm that has demonstrated capacity to provide services under this part.

(b) Contract terms

Contracts under this part shall be for not more than 3 years and shall provide not more than 20 percent of the operating budget of the contracting organization in any one year. Within any fiscal year, contracts with any one organization may not be entered into for a total of more than 20 percent of the funds appropriated under this part in that fiscal year.

(Pub. L. 101-625, title II, §243, Nov. 28, 1990, 104 Stat. 4118.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12784 of this title.

§ 12784. Research in housing affordability

The Secretary is authorized to support, through contracts with eligible organizations and otherwise, such research and to publish such reports as will assist in the achievement of the purposes of this subchapter. Activities authorized by the previous sentence may include an ongoing analysis of the impact of public policies at the Federal, State, and local levels, both individually and in the aggregate, on the incentives to expand and maintain the supply of energy-efficient affordable housing in the United States, particularly in areas with severe problems of housing affordability, through the use of cost-saving innovative building technology and construction techniques. For purposes of this section, agencies of the United States, government-sponsored mortgage finance corporations, and qualified research organizations shall be included as eligible organizations in addition to eligible organizations specified under section 12783 of this title.

(Pub. L. 101-625, title II, §244, Nov. 28, 1990, 104 Stat. 4118; Pub. L. 102-550, title II, §215, Oct. 28, 1992, 106 Stat. 3759.)

AMENDMENTS

1992—Pub. L. 102-550 inserted before period at end of second sentence “; through the use of cost-saving innovative building technology and construction techniques”.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-550 applicable to unexpended funds allocated under subchapter II of this chapter in fiscal year 1992, except as otherwise specifically provided, see section 223 of Pub. L. 102-550, set out as a note under section 12704 of this title.

§ 12785. REACH: asset recycling information dissemination

(a) In general

The Secretary shall make available upon request by any participating jurisdiction a list of eligible properties that are located within the jurisdiction and that are owned or controlled by the Department of Housing and Urban Development to facilitate the purchase, development, or rehabilitation of such properties with assistance made available under this subchapter.

(b) Eligible properties

An eligible property under this section shall—

(1) be an unoccupied single-family or multi-family dwelling, such that acquisition and rehabilitation of the dwelling would not result in the displacement of any residents of the dwelling; and

(2) have an appraised value that does not exceed (A) in the case of a 1- to 4-family dwelling, 95 percent of the median purchase price for the area for such dwellings, as determined by the Secretary, or (B) in the case of a dwelling with more than 4 units, the applicable maximum dollar amount limitation under section 1715(d)(3)(ii) of title 12 for elevator-type structures.

(Pub. L. 101-625, title II, §245, Nov. 28, 1990, 104 Stat. 4119.)

PART D—SPECIFIED MODEL PROGRAMS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 12743 of this title.

§ 12801. General authority

Among the alternative model programs that the Secretary shall make available for use by participating jurisdictions under the provisions of section 12743 of this title shall be model programs specified in this part. The Secretary shall keep these specified model programs under review and submit to Congress such recommendations for change as the Secretary determines to be appropriate.

(Pub. L. 101-625, title II, §251, Nov. 28, 1990, 104 Stat. 4119.)

§ 12802. Rental housing production

(a) Repayable advances

(1) In general

The Secretary shall make available a model program under which repayable advances may be made to public and private project sponsors in constructing, acquiring, or substantially rehabilitating projects to be used as affordable rental housing, including limited equity cooperatives and mutual housing.

(2) Maximum amount of advance

An advance under this model program shall not exceed 50 percent of the total costs associated with the construction, acquisition, or substantial rehabilitation of the project, as determined by the participating jurisdiction.

(3) Terms of repayment

(A) Interest payments

(i) In general

Under the model program, advances shall be repaid with interest calculated at a rate of not more than 3 percent per year, as determined by the participating jurisdiction to be appropriate. Interest shall begin to accrue 1 year after the completion of the construction, acquisition, or substantial rehabilitation of the project and shall be payable in annual installments.

(ii) Exception

Interest and any accrued interest shall be payable only from the surplus cash flow of the project, after a minimum return on equity determined by the participating jurisdiction to be appropriate. As used in the previous sentence, the term “surplus cash flow” means the cash flow of the project after the payment of all amounts due under the first mortgage, operating expenses, and required replacement reserves, as determined by the participating jurisdiction.

(B) Additional interest payments

Under the model program, for any year in which the sum of the surplus cash flow of a project and the return on equity exceeds all interest payments due under subparagraph (A), 50 percent of the excess surplus cash flow shall be paid to the participating juris-

diction's HOME Investment Trust Fund as additional interest.

(C) Principal and unpaid interest

The principal amount of an advance under the model program, and any interest remaining unpaid pursuant to subparagraph (A)(ii) shall be repayable when the housing no longer qualifies as affordable housing in accordance with section 12749(b) of this title.

(b) Selection guidelines

(1) In general

The Secretary shall establish guidelines for the selection of projects by participating jurisdictions for assistance under the model program. Such guidelines shall be designed to select projects in areas and for markets demonstrating the greatest need for the production of affordable rental housing.

(2) Specific requirements

The selection guidelines may include—

(A) the extent of the shortage of rental housing in the area that is available to low-income families;

(B) the extent large families with children will be served by the project;

(C) the extent to which the project provides congregate facilities and has available supportive services that will permit elderly or handicapped residents who become frail and are in need of assistance in living to continue to reside in the project;

(D) the extent of very low-income and low-income occupancy in excess of the income targeting requirements in section 12744 of this title;

(E) the extent of the project sponsor's commitment of equity to the project (except that this criterion shall not apply to or affect the selection of applications submitted by public housing agencies and nonprofit entities);

(F) the extent of the project sponsor's commitment of equity to the project in comparison to the value of all public assistance for the project, including assistance under this subchapter, other Federal assistance and financing, and State and local government contributions (except that this criterion shall not apply to or affect the selection of applications submitted by public housing agencies and nonprofit entities);

(G) the extent of non-Federal public or private assistance to the project;

(H) the extent to which the project provides supportive services for persons with disabilities; and

(I) any other factor determined by the Secretary to be appropriate.

(c) Guidelines

The Secretary shall publish guidelines for the model program under this section not later than 180 days after November 28, 1990.

(Pub. L. 101-625, title II, §252, Nov. 28, 1990, 104 Stat. 4119.)

§ 12803. Rental rehabilitation

(a) In general

The Secretary shall make available a model program to support the rehabilitation of pri-

vately owned rental housing located in neighborhoods where the median income does not exceed 80 percent of the area median as determined by the Secretary and where rents can reasonably be expected not to change materially over an extended period of time.

(b) Amount of subsidy

The amount of the rehabilitation subsidy shall be moderate and shall generally not exceed 50 percent of the total costs associated with the rehabilitation of the housing.

(c) Additional restrictions

The guidelines of the model program shall generally comport with the additional protections and restrictions specified under section 1437o(c)¹ of this title.

(Pub. L. 101-625, title II, §253, Nov. 28, 1990, 104 Stat. 4121.)

REFERENCES IN TEXT

Section 1437o of this title, referred to in subsec. (c), was repealed by Pub. L. 101-625, title II, §289(b), Nov. 28, 1990, 104 Stat. 4128.

§ 12804. Rehabilitation loans

(a) In general

The Secretary shall make available a model program to provide direct loans to finance the rehabilitation of low and moderate income single family and multifamily residential properties.

(b) Condition of loans

The Secretary shall establish terms and conditions to ensure that such loans are acceptable risks, taking into consideration the need for rehabilitation, the security for the loan and the ability of the borrower to repay the loan. The Secretary may establish the interest rate for loans under the model program, which shall include special interest rates for loans to borrowers with incomes below 80 percent of the area median income.

(c) Additional restrictions

Guidelines for the model program may require that the property—

(1) be located in an area that contains a substantial number of dwellings in need of rehabilitation;

(2) the property¹ is residential and owner-occupied; and

(3) the property¹ is in need of rehabilitation or concentrated code enforcement within a reasonable time, and the rehabilitation of such property is consistent with a local plan for rehabilitation or code enforcement.

Additional guidelines for the model program shall generally comport with the additional protections and restrictions specified under section 1452b² of this title.

(Pub. L. 101-625, title II, §254, Nov. 28, 1990, 104 Stat. 4121.)

REFERENCES IN TEXT

Section 1452b of this title, referred to in subsec. (c), was repealed by Pub. L. 101-625, title II, §289(b)(1), Nov.

¹ See References in Text note below.

¹ So in original. The words "the property" probably should not appear.

² See References in Text note below.

28, 1990, 104 Stat. 4128, which is classified to section 12839(b)(1) of this title.

§ 12805. Sweat equity model program

(a) In general

The Secretary shall make available a model program to provide grants to public and private nonprofit organizations and community housing development organizations to provide technical and supervisory assistance to low-income and very low-income families, including the homeless, in acquiring, rehabilitating, and constructing housing by the self-help housing method.

(b) Rehabilitation of properties

The program shall target for rehabilitation properties which have been acquired by the Federal, State, or local governments.

(c) Homeownership opportunities through sweat equity

(1) The program shall utilize the skilled or unskilled labor of eligible families in exchange for acquisition of the property.

(2) Training shall be provided to eligible families in building and home maintenance skills.

(d) Rental opportunities through sweat equity

(1) The program shall include rental opportunities for eligible families which will help expand the stock of affordable housing which is most appropriate for the target group.

(2) The use of the tenant's skilled or unskilled labor shall be encouraged in lieu of or as a supplement to rent payments by the tenant.

(e) "Self-help housing" defined

The term "self-help housing" means the same as in section 1490c of this title.

(f) Additional restrictions

The guidelines for the model program shall generally comport with the additional protections and restrictions specified under section 1490c of this title.

(Pub. L. 101-625, title II, §255, Nov. 28, 1990, 104 Stat. 4121.)

ASSISTANCE FOR SELF-HELP HOUSING PROVIDERS

Pub. L. 104-120, §11, Mar. 28, 1996, 110 Stat. 841, as amended by Pub. L. 105-276, title V, §599E(a), Oct. 21, 1998, 112 Stat. 2663; Pub. L. 106-569, title II, §202, Dec. 27, 2000, 114 Stat. 2951, provided that:

"(a) GRANT AUTHORITY.—The Secretary of Housing and Urban Development may, to the extent amounts are available to carry out this section and the requirements of this section are met, make grants for use in accordance with this section to national and regional organizations and consortia that have experience in providing or facilitating self-help housing homeownership opportunities.

"(b) GOALS AND ACCOUNTABILITY.—In making grants under this section, the Secretary shall take such actions as may be necessary to ensure that—

"(1) assistance provided under this section is used to facilitate and encourage innovative homeownership opportunities through the provision of self-help housing, under which the homeowner contributes a significant amount of sweat equity toward the construction of the new dwelling;

"(2) assistance provided under this section for land acquisition and infrastructure development results in the development of not less than 4,000 new dwellings;

"(3) the dwellings constructed in connection with assistance provided under this section are quality

dwellings that comply with local building and safety codes and standards and are available at prices below the prevailing market prices;

"(4) the provision of assistance under this section establishes and fosters a partnership between the Federal Government and organizations and consortia, resulting in efficient development of affordable housing with minimal governmental intervention, limited governmental regulation, and significant involvement by private entities;

"(5) activities to develop housing assisted pursuant to this section involve community participation in which volunteers assist in the construction of dwellings; and

"(6) dwellings are developed in connection with assistance under this section on a geographically diverse basis, which includes areas having high housing costs, rural areas, and areas underserved by other homeownership opportunities that are populated by low-income families unable to otherwise afford housing.

If, at any time, the Secretary determines that the goals under this subsection cannot be met by providing assistance in accordance with the terms of this section, the Secretary shall immediately notify the applicable Committees in writing of such determination and any proposed changes for such goals or this section.

"(c) NATIONAL COMPETITION.—The Secretary shall select organizations and consortia referred to in subsection (a) to receive grants through a national competitive process, which the Secretary shall establish.

"(d) USE.—

"(1) PURPOSE.—Amounts from grants made under this section, including any recaptured amounts, shall be used only for eligible expenses in connection with developing new decent, safe, and sanitary nonluxury dwellings in the United States for families and persons who otherwise would be unable to afford to purchase a dwelling.

"(2) ELIGIBLE EXPENSES.—For purposes of paragraph (1), the term 'eligible expenses' means costs only for the following activities:

"(A) LAND ACQUISITION.—Acquiring land (including financing and closing costs), which may include reimbursing an organization, consortium, or affiliate, upon approval of any required environmental review, for nongrant amounts of the organization, consortium, or affiliate advanced before such review to acquire land.

"(B) INFRASTRUCTURE IMPROVEMENT.—Installing, extending, constructing, rehabilitating, or otherwise improving utilities and other infrastructure. Such term does not include any costs for the rehabilitation, improvement, or construction of dwellings.

"(e) ESTABLISHMENT OF GRANT FUND.—

"(1) IN GENERAL.—Any amounts from any grant made under this section shall be deposited by the grantee organization or consortium in a fund that is established by such organization or consortium for such amounts, administered by such organization or consortium, and available for use only for the purposes under subsection (d). Any interest, fees, or other earnings of the fund shall be deposited in the fund and shall be considered grant amounts for purposes of this section.

"(2) ASSISTANCE TO AFFILIATES.—Any organization or consortia that receives a grant under this section may use amounts in the fund established for such organization or consortia pursuant to paragraph (1) for the purposes under subsection (d) by providing assistance from the fund to local affiliates of such organization or consortia.

"(f) REQUIREMENTS FOR ASSISTANCE.—The Secretary may make a grant to an organization or consortium under subsection (a) only pursuant to—

"(1) an expression of interest by such organization or consortia to the Secretary for a grant for such purposes;

"(2) a determination by the Secretary that the organization or consortia has the capability and has ob-

tained financial commitments (or has the capacity to obtain financial commitments) necessary to—

“(A) develop not less than 30 dwellings in connection with the grant amounts; and

“(B) otherwise comply with a grant agreement under subsection (i); and

“(3) a grant agreement entered into under subsection (i).

“(g) Repealed. Pub. L. 105-276, title V, §599E(a)(6), Oct. 21, 1998, 112 Stat. 2664.]

“(h) GEOGRAPHICAL DIVERSITY.—In making grants under subsection (a), the Secretary shall ensure that grants are provided and grant amounts are used in a manner that results in national geographic diversity among housing developed using grant amounts under this section.

“(i) GRANT AGREEMENT.—A grant under this section shall be made only pursuant to a grant agreement entered into by the Secretary and the organization or consortia receiving the grant, which shall—

“(1) require such organization or consortia to use grant amounts only as provided in this section;

“(2) provide for the organization or consortia to develop a specific and reasonable number of dwellings using the grant amounts, which number shall be established taking into consideration costs and economic conditions in the areas in which the dwellings will be developed, but in no case shall be less than 30;

“(3) require the organization or consortia to use the grant amounts in a manner that leverages other sources of funding (other than grants under this section), including private or public funds, in developing the dwellings;

“(4) require the organization or consortia to comply with the other provisions of this section;

“(5) provide that the Secretary shall recapture any grant amounts provided to the organization or consortia that are not used within 24 months after such amounts are first disbursed to the organization or consortia, except that such period shall be 36 months in the case of grant amounts from amounts made available for fiscal year 1996 to carry out this section, and in the case of a [sic] grant amounts provided to a local affiliate of the organization or consortia that is developing five or more dwellings in connection with such grant amounts; and

“(6) contain such other terms as the Secretary may require to provide for compliance with subsection (b) and the requirements of this section.

“(j) FULFILLMENT OF GRANT AGREEMENT.—If the Secretary determines that an organization or consortia awarded a grant under this section has not, within 24 months after grant amounts are first made available to the organization or consortia (or, in the case of grant amounts from amounts made available for fiscal year 1996 to carry out this section and grant amounts provided to a local affiliate of the organization or consortia that is developing five or more dwellings in connection with such grant amounts, within 36 months), substantially fulfilled the obligations under the grant agreement, including development of the appropriate number of dwellings under the agreement, the Secretary shall use any such undisbursed amounts remaining from such grant for other grants in accordance with this section.

“(k) RECORDS AND AUDITS.—During the period beginning upon the making of a grant under this section and ending upon close-out of the grant under subsection (l)—

“(1) the organization awarded the grant shall keep such records and adopt such administrative practices as the Secretary may require to ensure compliance with the provisions of this section and the grant agreement; and

“(2) the Secretary and the Comptroller General of the United States, and any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the grantee organization or consortia and its affiliates that are pertinent to the grant made under this section.

“(l) CLOSE-OUT.—The Secretary shall close out a grant made under this section upon determining that the aggregate amount of any assistance provided from the fund established under subsection (e)(1) by the grantee organization or consortium exceeds the amount of the grant. For purposes of this paragraph, any interest, fees, and other earnings of the fund shall be excluded from the amount of the grant.

“(m) ENVIRONMENTAL REVIEW.—A grant under this section shall be considered to be funds for a special project for purposes of section 305(c) of the Multifamily Housing Property Disposition Reform Act of 1994 [42 U.S.C. 3547].

“(n) REPORT TO CONGRESS.—Not later than 90 days after close-out of all grants under this section is completed, the Secretary shall submit a report to the applicable Committees describing the grants made under this section, the grantees, the housing developed in connection with the grant amounts, and the purposes for which the grant amounts were used.

“(o) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

“(1) APPLICABLE COMMITTEES.—The term ‘applicable Committees’ means the Committee on Banking and Financial Services [now Committee on Financial Services] of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

“(2) SECRETARY.—The term ‘Secretary’ means the Secretary of Housing and Urban Development.

“(3) UNITED STATES.—The term ‘United States’ includes the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, and any other territory or possession of the United States.

“(p) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for fiscal year 2001.

“(q) REGULATIONS.—The Secretary shall issue any final regulations necessary to carry out this section not later than 30 days after the date of the enactment of this Act [Mar. 28, 1996]. The regulations shall take effect upon issuance and may not exceed, in length, 5 full pages in the Federal Register.”

[Pub. L. 105-276, title V, §599E(b), Oct. 21, 1998, 112 Stat. 2664, provided that: “Notwithstanding the amendments made by subsection (a) [amending section 11 of Pub. L. 104-120, set out above], any grant under section 11 of the Housing Opportunity Program Extension Act of 1996 [Pub. L. 104-120] (42 U.S.C. 12805 note) from amounts appropriated in fiscal year 1998 or any prior fiscal year shall be governed by the provisions of such section 11 as in effect immediately before the enactment of this Act [Oct. 21, 1998], except that the amendments made by paragraphs (8) and (9) of subsection (a) of this section shall apply to such grants.”]

[Pub. L. 105-276, title V, §599E(c), Oct. 21, 1998, 112 Stat. 2664, provided that: “This section [amending section 11 of Pub. L. 104-120, set out above, and enacting provisions set out as a note above] shall take effect, and the amendments made by this section are made on, and shall apply beginning upon, the date of the enactment of this Act [Oct. 21, 1998].”]

FUNDING FOR SELF-HELP HOUSING ASSISTANCE, NATIONAL CITIES IN SCHOOLS COMMUNITY DEVELOPMENT PROGRAM, AND CAPACITY BUILDING THROUGH NATIONAL COMMUNITY DEVELOPMENT INITIATIVE

Pub. L. 104-120, §12, Mar. 28, 1996, 110 Stat. 845, provided that:

“(a) AUTHORITY TO USE ASSISTED HOUSING AMOUNTS.—To the extent and for the purposes specified in subsection (b), the Secretary of Housing and Urban Development may use amounts in the account of the Department of Housing and Urban Development known as the Annual Contributions for Assisted Housing account, but only such amounts which—

“(1) have been appropriated for a fiscal year that occurs before the fiscal year for which the Secretary uses the amounts; and

“(2) have been obligated before becoming available for use under this section.

“(b) FISCAL YEAR 1996.—Of the amounts described in subsection (a), \$60,000,000 shall be available to the Secretary of Housing and Urban Development for fiscal year 1996 in the following amounts for the following purposes:

“(1) SELF-HELP HOUSING ASSISTANCE.—\$40,000,000 for carrying out section 11 of this Act [set out above].

“(2) NATIONAL CITIES IN SCHOOLS COMMUNITY DEVELOPMENT PROGRAM.—\$10,000,000 for carrying out section 930 of the Housing and Community Development Act of 1992 (Public Law 102-550; 106 Stat. 3887).

“(3) CAPACITY BUILDING THROUGH NATIONAL COMMUNITY DEVELOPMENT INITIATIVE.—\$10,000,000 for carrying out section 4 of the HUD Demonstration Act of 1993 (42 U.S.C. 9816 note).”

§ 12806. Home repair services grants for older and disabled homeowners

(a) In general

The Secretary shall make available a model program to provide home repair services for older homeowners and disabled homeowners, including such services as the examination of homes, repair services, and follow-up to ensure the continued effectiveness of the repairs provided.

(b) Eligible recipients

Home repair services shall be provided to homeowners who—

- (1) own and reside in the dwellings for which services are provided;
- (2) are older or disabled; and
- (3) are members of low-income families.

(c) Permitted restrictions

Guidelines for the model program shall require that—

- (1) assisted dwelling units be the primary residence of the homeowner for whom services are provided;
- (2) preferences be provided for (A) very low-income families, and (B) individuals with intense need characterized by noneconomic factors such as physical and mental disabilities, language barriers, and cultural, social, or geographical isolation caused by racial or ethnic status that restricts the ability of an individual to perform normal daily tasks or that threatens the capacity of the individual to live independently;
- (3) any fees charged be based on the income of the individual receiving the home repair services.

(Pub. L. 101-625, title II, §256, Nov. 28, 1990, 104 Stat. 4122.)

§ 12807. Low-income housing conservation and efficiency grant programs

(a) In general

The Secretary shall make available a model program to provide safe, energy-efficient affordable housing for low-income persons.

(b) Activities

The model program shall provide for—

- (1) identification of housing that is—
 - (A) owned and occupied by low-income families who have received, are currently receiving, or are scheduled to receive assist-

ance under the weatherization assistance for low-income persons program under part A of title IV of the Energy Conservation and Production Act [42 U.S.C. 6861 et seq.] (or a comparable Federal or State program);

(B) in danger of becoming uninhabitable within a 5-year period because of structural weaknesses or problems; and

(C) not sufficiently sound to permit energy conservation improvements without other repair or rehabilitation measures to protect such energy investments;

(2) repairs that will significantly prolong the habitability of units identified under paragraph (1), including roofing, electrical, plumbing, furnace, and foundation repairs or replacement that will prolong the use of the unit as a safe and energy-efficient residence for low-income persons; and

(3) reasonable steps to ensure that any units so repaired will remain occupied by persons or families eligible for assistance under this subchapter.

(Pub. L. 101-625, title II, §257, Nov. 28, 1990, 104 Stat. 4122.)

REFERENCES IN TEXT

The Energy Conservation and Production Act, referred to in subsec. (b)(1)(A), is Pub. L. 94-385, Aug. 14, 1976, 90 Stat. 1142, as amended. Part A of title IV of the Act is classified generally to part A (§6861 et seq.) of subchapter III of chapter 81 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6801 of this title and Tables.

§ 12808. Second mortgage assistance for first-time homebuyers

(a) In general

The Secretary shall make available a model program under which units of general local government provide loans (secured by second mortgages) with deferred payment of interest and principal to first-time homebuyers.

(b) Homeownership counseling

The program under this section shall provide for homeownership counseling to first-time homebuyers assisted, which shall include—

- (1) counseling before and after purchase of the property;
- (2) assisting first-time homebuyers in identifying the most suitable and affordable properties;
- (3) providing homebuyers with financial management assistance;
- (4) assisting homebuyers in understanding mortgage transactions and home sales contracts; and
- (5) assisting homebuyers with eliminating any credit problems that may prevent the homebuyers from purchasing the property.

(c) Eligibility requirements

Deferred payment loans secured by second mortgages may be provided under the model program under this section if—

- (1) the homebuyer assisted is a first-time homebuyer;
- (2) the property secured by the second mortgage is a single-family residence and is the principal residence of the homebuyer; and

(3) the principal obligation of the deferred payment loan secured by a second mortgage does not exceed 30 percent of the acquisition price of the residence to the homebuyer.

(d) Payment terms

(1) Period of deferral

The payment of any principal and interest on a loan under this section shall be deferred for not less than the 5-year period beginning on the date of the acquisition of the residence by the homebuyer.

(2) Interest rate

The interest rate on the unpaid balance of a loan under this section shall be at least 4 percent.

(3) Repayment period

A deferred payment loan secured by a second mortgage shall be repayable over the 15-year period beginning at the end of the deferral period.

(e) Security

A deferred payment loan assisted with amount¹ provided under a grant under this section shall be secured by a lien on the property involved, which lien shall be subordinate to the first mortgage on the property.

(Pub. L. 101-625, title II, §258, Nov. 28, 1990, 104 Stat. 4123.)

§ 12809. Rehabilitation of State and local government in rem properties

(a) In general

The Secretary shall make available a model program under which States and units of general local government may convert in rem properties to provide affordable permanent housing for the homeless by leasing such properties to nonprofit organizations and permitting such organizations to rehabilitate the properties.

(b) Target

The program shall target vacant properties for rehabilitation by nonprofit organizations.

(Pub. L. 101-625, title II, §259, Nov. 28, 1990, 104 Stat. 4124.)

§ 12810. Cost-saving building technologies and construction techniques

(a) In general

The Secretary shall make available a model program to utilize cost-saving building technologies and construction techniques for purposes of providing homeownership and rental opportunities under this subchapter.

(b) Selection criteria

The Secretary shall establish criteria for participating jurisdictions to select projects for assistance under the model program which may include—

(1) the extent to which innovative, cost-saving building and construction technologies are utilized;

(2) the extent to which innovative, cost-saving construction techniques are utilized;

(3) the extent to which units will be made available to low-income families and individuals;

(4) the extent to which non-Federal public or private assistance is utilized; and

(5) any other factor, determined by the Secretary to be appropriate.

(c) Guidelines

The Secretary shall publish guidelines for the model program under this section not later than 180 days after October 28, 1992.

(d) Report

The Secretary shall submit a biennial report to the Congress on the utilization of the model program under this section.

(Pub. L. 101-625, title II, §260, as added Pub. L. 102-550, title II, §216, Oct. 28, 1992, 106 Stat. 3760.)

EFFECTIVE DATE

Section applicable to unexpended funds allocated under subchapter II of this chapter in fiscal year 1992, except as otherwise specifically provided, see section 223 of Pub. L. 102-550, set out as an Effective Date of 1992 Amendment note under section 12704 of this title.

PART E—OTHER ASSISTANCE

AMENDMENTS

2003—Pub. L. 108-186, title I, §102, Dec. 16, 2003, 117 Stat. 2686, amended heading generally. Prior to amendment, heading read “Mortgage Credit Enhancement”.

§ 12821. Downpayment assistance initiative

(a) Definitions

In this section:

(1) Downpayment assistance

The term “downpayment assistance” means assistance to help a family acquire a principal residence.

(2) Home repairs

The term “home repairs” means capital improvements or repairs that—

(A) are identified in an appraisal or home inspection completed in conjunction with a home purchase; or

(B) are completed within 1 year of the purchase of a home, and are necessary to bring the housing into compliance with health and safety housing codes of the unit of general local government in which the housing is located, including the remediation of lead paint or other home health hazards.

(3) Participating jurisdiction

The term “participating jurisdiction” means a State or unit of general local government designated under section 12746 of this title.

(4) State

The term “State” means any State of the United States and the District of Columbia.

(b) Grant authority

The Secretary may award grants to participating jurisdictions to assist low-income families to achieve homeownership, in accordance with this section.

(c) Eligible activities

(1) In general

(A) Downpayment assistance

Subject to subparagraph (B), grants awarded under this section may be used only for

¹ So in original. Probably should be “amounts”.

downpayment assistance toward the purchase of single family housing (including 1 to 4 unit family dwelling units, condominium units, cooperative units, and manufactured housing units which are located on land which is owned by the manufactured housing unit owner, owned as a cooperative, or is subject to a leasehold interest with a term equal to at least the term of the mortgage financing on the unit, and manufactured housing lots) by low-income families who are first-time home-buyers.

(B) Home repairs

Not more than 20 percent of the grant funds provided under subsection (d) of this section to a participating jurisdiction may be used to provide assistance to low-income, first-time home-buyers for home repairs.

(2) Limitations

(A) Amount of assistance

The amount of assistance provided to any low-income families under paragraph (1) shall not exceed the greater of—

- (i) 6 percent of the purchase price of a single family housing unit; or
- (ii) \$10,000.

(B) Participation

A participating jurisdiction may not use any amount of a grant awarded under this section to provide funding to an entity or organization that provides downpayment assistance if the activities of that entity or organization are financed in whole or in part, directly or indirectly, by contributions, service fees, or other payments from the sellers of housing.

(d) Formula allocation

(1) In general

For each fiscal year, the Secretary shall allocate any amounts made available for assistance under this section to each State that is a participating jurisdiction in an amount equal to a percentage of the total allocation that is equal to the percentage of the national total of low-income households residing in rental housing in the State, as determined on the basis of the most recent census data compiled by the Bureau of the Census.

(2) Participating jurisdictions other than States

(A) In general

Subject to subparagraph (B), for each fiscal year, of the amount allocated to each State under paragraph (1), the Secretary shall further allocate from such amount to each participating jurisdiction located within such State an amount equal to the percentage of the allocation made to the State under paragraph (1) that is equal to the percentage of the State-wide total of low-income households residing in rental housing in such participating jurisdiction, as determined on the basis of the most recent census data compiled by the Bureau of the Census.

(B) Limitation

(i) In general

Direct allocations made under subparagraph (A) shall be made to a local participating jurisdiction only if—

(I) the participating jurisdiction has a total population of 150,000 individuals or more, as determined on the basis of the most recent census data compiled by the Bureau of the Census; or

(II) the participating jurisdiction would receive an allocation of \$50,000 or more.

(ii) Reversion

Any allocation that would have otherwise been made to a participating jurisdiction that does not meet the requirements of clause (i) shall revert back to the State in which the participating jurisdiction is located.

(e) Reallocation

If any amounts allocated to a participating jurisdiction under this section become available for reallocation, the amounts shall be reallocated to other participating jurisdictions in accordance with subsection (d) of this section.

(f) Applicability of other provisions

(1) In general

Except as otherwise provided in this section, grants made under this section shall not be subject to the provisions of this subchapter.

(2) Applicable provisions

In addition to the requirements of this section, grants made under this section shall be subject to the provisions of subchapter I of this chapter, sections 12745(b), 12748, 12749, 12751, 12753, 12754, and 12756(a) of part A of this subchapter, and part F of this subchapter.

(3) References

In applying the requirements of part A of this subchapter referred to in paragraph (2)—

(A) any references to funds under part A of this subchapter shall be considered to refer to amounts made available for assistance under this section; and

(B) any references to funds allocated or reallocated under section 12747 or 12747(d) of this title shall be considered to refer to amounts allocated or reallocated under subsection (d) or (e) of this section, respectively.

(g) Housing strategy

To be eligible to receive a grant under this section in any fiscal year, a participating jurisdiction shall include in its comprehensive housing affordability strategy developed under section 12705 of this title for such fiscal year—

(1) a description of the anticipated use of any grant received under this section;

(2) a plan for conducting targeted outreach to residents and tenants of public housing, trailer parks, and manufactured housing, and to other families assisted by public housing agencies, for the purpose of ensuring that grant amounts provided under this section to a participating jurisdiction are used for down-

payment assistance for such residents, tenants, and families; and

(3) a description of the actions to be taken to ensure the suitability of families receiving downpayment assistance under this section to undertake and maintain homeownership.

(h) Report

Not later than June 30, 2006, the Comptroller General of the United States shall submit a report containing a State-by-State analysis of the impact of grants awarded under this section to—

- (1) the Committee on Banking, Housing, and Urban Affairs of the Senate; and
- (2) the Committee on Financial Services of the House of Representatives.

(i) Sunset

The Secretary shall have no authority to make grants under this Act after December 31, 2007.

(j) Relocation assistance and downpayment assistance

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1894) [42 U.S.C. 4601 et seq.] shall not apply to downpayment assistance under this section.

(k) Authorization of appropriations

There is authorized to be appropriated to carry out this section \$200,000,000 for each of fiscal years 2004 through 2007.

(Pub. L. 101-625, title II, §271, Nov. 28, 1990, 104 Stat. 4124; Pub. L. 108-186, title I, §102, Dec. 16, 2003, 117 Stat. 2686.)

REFERENCES IN TEXT

This Act, referred to in subsec. (i), is Pub. L. 101-625, Nov. 28, 1990, 104 Stat. 4079, as amended, known as the Cranston-Gonzalez National Affordable Housing Act. For complete classification of this Act to the Code, see Short Title note set out under section 12701 of this title and Tables.

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, referred to in subsec. (j), is Pub. L. 91-646, Jan. 2, 1971, 84 Stat. 1894, as amended, which is classified principally to chapter 61 (§4601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4601 of this title and Tables.

AMENDMENTS

2003—Pub. L. 108-186 amended section generally. Prior to amendment, section required the Comptroller General to carry out a study of ways in which financing for affordable housing may be made available to assist in the most efficient implementation of comprehensive housing affordability strategies of participating jurisdictions and to submit to Congress and the Secretary, not later than one year after Nov. 28, 1990, a report containing any recommendations for legislative or administrative actions needed to improve the availability of mortgage finance for affordable housing.

PART F—GENERAL PROVISIONS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 12821 of this title.

§ 12831. Equal opportunity

(a) Solicitation of contracts

Each participating jurisdiction shall prescribe procedures acceptable to the Secretary to estab-

lish and oversee a minority outreach program within each such jurisdiction to ensure the inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, including, without limitation, real estate firms, construction firms, appraisal firms, management firms, financial institutions, investment banking firms, underwriters, accountants, and providers of legal services, in all contracts, entered into by the participating jurisdiction with such persons or entities, public and private, in order to facilitate the activities of the participating jurisdiction to provide affordable housing authorized under this Act or any other Federal housing law applicable to such jurisdiction.

(b) Report to Congress

Before the end of the 180-day period beginning on the date the first allocation of funds is made under section 12747 of this title, the Secretary shall submit to the Congress a report containing a description of the actions taken by each participating jurisdiction pursuant to subsection (a) of this section and such recommendations for administrative and legislative action as the Secretary may determine to be appropriate to carry out the purposes of such subsection.

(Pub. L. 101-625, title II, §281, Nov. 28, 1990, 104 Stat. 4125.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a), is Pub. L. 101-625, Nov. 28, 1990, 104 Stat. 4079, known as the Cranston-Gonzalez National Affordable Housing Act. For complete classification of this Act to the Code, see Short Title note set out under section 12701 of this title and Tables.

§ 12832. Nondiscrimination

No person in the United States shall on the grounds of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this subchapter. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.] or with respect to an otherwise qualified handicapped individual as provided in section 794 of title 29 shall also apply to any such program or activity. The Secretary may waive this section in connection with the use of funds made available under this subchapter on lands set aside under the Hawaiian Homes Commission Act, 1920 (42 Stat. 108).

(Pub. L. 101-625, title II, §282, Nov. 28, 1990, 104 Stat. 4125; Pub. L. 104-204, title II, §213, Sept. 26, 1996, 110 Stat. 2904.)

REFERENCES IN TEXT

The Age Discrimination Act of 1975, referred to in text, is title III of Pub. L. 94-135, Nov. 28, 1975, 89 Stat. 728, as amended, which is classified generally to chapter 76 (§6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

The Hawaiian Homes Commission Act, 1920, referred to in text, is act July 9, 1921, ch. 42, 42 Stat. 108, as amended, which was classified generally to sections 691 to 718 of Title 48, Territories and Insular Possessions, and was omitted from the Code.

AMENDMENTS

1996—Pub. L. 104-204 inserted at end “The Secretary may waive this section in connection with the use of funds made available under this subchapter on lands set aside under the Hawaiian Homes Commission Act, 1920 (42 Stat. 108).”

§ 12833. Audits by Comptroller General**(a) Audits of HOME Investment Partnerships program**

The Comptroller General, when the Comptroller General deems it to be appropriate or when requested by the Committee on Banking, Housing, and Urban Affairs of the Senate or the Committee on Banking, Finance and Urban Affairs of the House of Representatives, shall conduct a full financial audit of the records of the HOME Investment Partnerships program for any fiscal year. The report of the Comptroller General shall be submitted promptly to the Secretary and the Congress and shall be published.

(b) Audits of recipients

The financial transactions of participating jurisdictions and of other recipients of funds provided under this subchapter may, insofar as they relate to funds provided under this subchapter, be audited by the General Accounting Office under such rules and regulations as may be prescribed by the Comptroller General of the United States. The representatives of the General Accounting Office shall have access to all books, accounts, records, reports, files, and other papers, things, or property belonging to or in use by such recipients pertaining to such financial transactions and necessary to facilitate the audit.

(Pub. L. 101-625, title II, §283, Nov. 28, 1990, 104 Stat. 4125; Pub. L. 103-233, title II, §205, Apr. 11, 1994, 108 Stat. 364.)

AMENDMENTS

1994—Pub. L. 103-233, §205(1), substituted “Audits by Comptroller General” for “Annual audits and accountability” in section catchline.

Subsec. (a). Pub. L. 103-233, §205(4), struck out after first sentence “The initiation of an audit for a fiscal year under the previous sentence shall obviate the requirement for an audit by an independent accounting firm under paragraph (a) for that fiscal year.”

Pub. L. 103-233, §205(3)(B), (C), redesignated subsec. (b)(1) as (a) and realigned margins.

Pub. L. 103-233, §205(2), struck out heading and text of subsec. (a). Text read as follows: “The Secretary, except as provided in paragraph (b)(1), shall contract annually with an independent accounting firm to provide for a full financial audit of the records of the HOME Investment Partnerships program for each fiscal year. Funds available for departmental administration may be used to provide for such audits. Each audit shall be performed as soon as practicable after the close of the fiscal year and in accordance with generally accepted Government auditing standards approved by the Comptroller General of the United States (hereinafter referred to as the ‘Comptroller General’), and shall be consistent with the requirements of sections 9105 and 9106 of title 31. The Secretary shall promptly submit the report of the independent accounting firm to the Congress, consistent with the requirements of section 9106 of title 31, and such report shall be published. The requirement for an audit under this section shall be in lieu of the requirement for an audit by the Comptroller General under section 9105(a) of title 31.”

Subsec. (b). Pub. L. 103-233, §205(3), struck out heading “AUDITS BY THE COMPTROLLER GENERAL.—”, redesignated subsec. (b)(2) as (b), and realigned margins.

CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-233 applicable with respect to any amounts made available to carry out this subchapter after Apr. 11, 1994, and any amounts made available to carry out this subchapter before that date that remain uncommitted on that date, with Secretary to issue any regulations necessary to carry out such amendment not later than end of 45-day period beginning on that date, see section 209 of Pub. L. 103-233, set out as a note under section 5301 of this title.

§ 12834. Uniform recordkeeping and reports to Congress**(a) Uniform requirements**

The Secretary shall develop and establish uniform recordkeeping, performance reporting, and auditing requirements for use by participating jurisdictions.

(b) Omitted

(Pub. L. 101-625, title II, §284, Nov. 28, 1990, 104 Stat. 4126.)

CODIFICATION

Subsec. (b) of this section, which required the Secretary to make an annual report to Congress that summarizes and assesses the results of reports provided under this section, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, the 3rd item on page 102 of House Document No. 103-7.

§ 12835. Citizen participation

The Secretary shall ensure that each participating jurisdiction, and each jurisdiction seeking to become a participating jurisdiction, complies with the requirements of section 12707 of this title.

(Pub. L. 101-625, title II, §285, Nov. 28, 1990, 104 Stat. 4126.)

§ 12836. Labor**(a) In general**

Any contract for the construction of affordable housing with 12 or more units assisted with funds made available under this part shall contain a provision requiring that not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to sections 3141-3144, 3146, and 3147 of title 40, shall be paid to all laborers and mechanics employed in the development of affordable housing involved, and participating jurisdictions shall require certification as to compliance with the provisions of this section prior to making any payment under such contract.

(b) Waiver

Subsection (a) of this section shall not apply if the individual receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered and such persons are not otherwise employed at any time in the construction work.

(Pub. L. 101-625, title II, §286, Nov. 28, 1990, 104 Stat. 4126.)

CODIFICATION

In subsec. (a), “sections 3141-3144, 3146, and 3147 of title 40” substituted for “the Davis-Bacon Act (40 U.S.C. 276a-276a-5)” on authority of Pub. L. 107-217, §5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

§ 12837. Interstate agreements

The consent of the Congress is hereby given to any two or more States to enter into agreements or compacts, not in conflict with any law of the United States, for cooperative efforts and mutual assistance in support of activities authorized under this subchapter as they pertain to interstate areas and to localities within such States, and to establish such agencies, joint or otherwise, as they may deem desirable for making such agreements and compacts effective.

(Pub. L. 101-625, title II, §287, Nov. 28, 1990, 104 Stat. 4127.)

§ 12838. Environmental review**(a) In general**

In order to assure that the policies of the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] and other provisions of law which further the purposes of such Act (as specified in regulations issued by the Secretary) are most effectively implemented in connection with the expenditure of funds under this subchapter, and to assure to the public undiminished protection of the environment, the Secretary, in lieu of the environmental protection procedures otherwise applicable, may under regulations provide for the release of funds for particular projects to jurisdictions or insular areas under this subchapter who assume all of the responsibilities for environmental review, decisionmaking, and action pursuant to such Act, and such other provisions of law as the regulations of the Secretary specify, that would apply to the Secretary were he to undertake such projects as Federal projects. The Secretary shall issue regulations to carry out this section only after consultation with the Council on Environmental Quality. The regulations shall provide—

- (1) for the monitoring of the environmental reviews performed under this section;
- (2) in the discretion of the Secretary, to facilitate training for the performance of such reviews; and
- (3) for the suspension or termination of the assumption under this section.

The Secretary's duty under the preceding sentence shall not be construed to limit or reduce any responsibility assumed by a State or unit of general local government with respect to any particular release of funds.

(b) Procedure

The Secretary shall approve the release of funds subject to the procedures authorized by this section only if, at least 15 days prior to such approval and prior to any commitment of funds to such projects¹ the jurisdiction or insular area has submitted to the Secretary a request for such release accompanied by a certification which meets the requirements of subsection (c) of this section. The Secretary's approval of any such certification shall be deemed to satisfy his responsibilities under the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] and such other provisions of law as the regulations of the Secretary specify insofar as those responsibilities relate to the releases of funds for projects to be carried out pursuant thereto which are covered by such certification.

(c) Certification

A certification under the procedures authorized by this section shall—

- (1) be in a form acceptable to the Secretary,
- (2) be executed by the chief executive officer or other officer of the recipient of assistance under this subchapter qualified under regulations of the Secretary,
- (3) specify that the recipient of assistance under this subchapter has fully carried out its responsibilities as described under subsection (a) of this section, and
- (4) specify that the certifying officer (A) consents to assume the status of a responsible Federal official under the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] and each provision of law specified in regulations issued by the Secretary insofar as the provisions of such Act or other such provision of law apply pursuant to subsection (a) of this section, and (B) is authorized and consents on behalf of the jurisdiction or insular area and himself to accept the jurisdiction of the Federal courts for the purpose of enforcement of his responsibilities as such an official.

(4) specify that the certifying officer (A) consents to assume the status of a responsible Federal official under the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] and each provision of law specified in regulations issued by the Secretary insofar as the provisions of such Act or other such provision of law apply pursuant to subsection (a) of this section, and (B) is authorized and consents on behalf of the jurisdiction or insular area and himself to accept the jurisdiction of the Federal courts for the purpose of enforcement of his responsibilities as such an official.

(d) Assistance to units of general local government from a State

In the case of assistance to units of general local government from a State, the State shall perform those actions of the Secretary described in subsection (b) of this section and the performance of such actions shall be deemed to satisfy the Secretary's responsibilities referred to in the second sentence of such subsection.

(Pub. L. 101-625, title II, §288, Nov. 28, 1990, 104 Stat. 4127; Pub. L. 103-233, title II, §206, Apr. 11, 1994, 108 Stat. 365; Pub. L. 104-330, title V, §505(a)(2), Oct. 26, 1996, 110 Stat. 4044.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsecs. (a), (b), and (c)(4), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104-330, §505(a)(2)(A), struck out “, Indian tribes,” after “projects to jurisdictions” in introductory provisions.

¹ So in original. Probably should be followed by a comma.

Subsecs. (b), (c)(4). Pub. L. 104-330, §505(a)(2)(B), (C), struck out “, Indian tribe,” after “the jurisdiction”.

1994—Subsec. (a). Pub. L. 103-233, §206(1), substituted “jurisdictions, Indian tribes, or insular areas” for “participating jurisdictions” and inserted before period at end “The regulations shall provide—

“(1) for the monitoring of the environmental reviews performed under this section;

“(2) in the discretion of the Secretary, to facilitate training for the performance of such reviews; and

“(3) for the suspension or termination of the assumption under this section.

The Secretary’s duty under the preceding sentence shall not be construed to limit or reduce any responsibility assumed by a State or unit of general local government with respect to any particular release of funds.”

Subsec. (b). Pub. L. 103-233, §206(2), substituted “jurisdiction, Indian tribe, or insular area” for “participating jurisdiction”.

Subsec. (c)(4)(B). Pub. L. 103-233, §206(3), substituted “jurisdiction, Indian tribe, or insular area” for “participating jurisdiction”.

Subsec. (d). Pub. L. 103-233, §206(4), substituted “Assistance to units of general local government from a State” for “Assistance to a State” in heading and “In the case of assistance to units of general local government from a State” for “In the case of assistance to States” in text.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as an Effective Date note under section 4101 of Title 25, Indians.

Amendment by Pub. L. 104-330 applicable with respect to amounts made available for assistance under this subchapter for fiscal year 1998 and fiscal years thereafter, see section 505(b) of Pub. L. 104-330, set out as a note under section 12747 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-233 applicable with respect to any amounts made available to carry out this subchapter after Apr. 11, 1994, and any amounts made available to carry out this subchapter before that date that remain uncommitted on that date, with Secretary to issue any regulations necessary to carry out such amendment not later than end of 45-day period beginning on that date, see section 209 of Pub. L. 103-233, set out as a note under section 5301 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4852 of this title.

§ 12839. Termination of existing housing programs

(a) In general

Except with respect to projects and programs for which binding commitments have been entered into prior to October 1, 1991, no new grants or loans shall be made after October 1, 1991, under—

(1) section 17 of the United States Housing Act of 1937 [42 U.S.C. 1437o];

(2) section 312 of the Housing Act of 1964 [42 U.S.C. 1452b];

(3) title VI of the Housing and Community Development Act of 1987;

(4) section 8(e)(2) of the United States Housing Act of 1937 [42 U.S.C. 1437f(e)(2)], except for funds allocated under such section for single room occupancy dwellings as authorized by title IV of the McKinney-Vento Homeless Assistance Act [42 U.S.C. 11361 et seq.]; and

(5) section 810 of the Housing and Community Development Act of 1974 [12 U.S.C. 1706e].

(b) Repeals

(1) In general

Except as provided in paragraph (2), effective on October 1, 1991, the provisions of law referred to in subsection (a) of this section are repealed.

(2) No effect on SRO program

The provision of law referred to in subsection (a)(4) of this section shall remain in effect with respect to single room occupancy dwellings as authorized by title IV of the McKinney-Vento Homeless Assistance Act [42 U.S.C. 11361 et seq.].

(c) Disposition of repayments

Any amounts received on or after October 1, 1991, as repayments or recaptures in connection with the programs referred to in subsection (a) of this section and any other amounts for such programs that remain or become unobligated on or after such date, shall be paid into the general fund of the Treasury.

(Pub. L. 101-625, title II, §289, Nov. 28, 1990, 104 Stat. 4128; Pub. L. 106-400, §2, Oct. 30, 2000, 114 Stat. 1675.)

REFERENCES IN TEXT

Title VI of the Housing and Community Development Act of 1987 [Pub. L. 100-242], referred to in subsec. (a)(3), is set out as a note under section 17157 of Title 12, Banks and Banking.

The McKinney-Vento Homeless Assistance Act, referred to in subsecs. (a)(4), (b)(2), is Pub. L. 100-77, July 22, 1987, 101 Stat. 482, as amended. Title IV of the Act is classified principally to subchapter IV (§11361 et seq.) of chapter 119 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of this title and Tables.

AMENDMENTS

2000—Subsecs. (a)(4), (b)(2). Pub. L. 106-400 substituted “McKinney-Vento Homeless Assistance Act” for “Stewart B. McKinney Homeless Assistance Act”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 12 section 3752.

§ 12840. Suspension of requirements for disaster areas

For funds designated under this subchapter by a recipient to address the damage in an area for which the President has declared a disaster under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act [42 U.S.C. 5170 et seq.], the Secretary may suspend all statutory requirements for purposes of assistance under this subchapter for that area, except for those related to public notice of funding availability, nondiscrimination, fair housing, labor standards, environmental standards, and low-income housing affordability.

(Pub. L. 101-625, title II, §290, as added Pub. L. 103-233, title II, §208, Apr. 11, 1994, 108 Stat. 366.)

REFERENCES IN TEXT

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in text, is Pub. L. 93-288, May 22, 1974, 88 Stat. 143, as amended. Title IV of the Act is classified generally to subchapter IV (§5170 et seq.) of chapter 68 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables.

EFFECTIVE DATE

Section applicable with respect to any amounts made available to carry out this subchapter after Apr. 11, 1994, and any amounts made available to carry out this subchapter before that date that remain uncommitted on that date, with Secretary to issue any regulations necessary to carry out this section not later than end of 45-day period beginning on that date, see section 209 of Pub. L. 103-233, set out as an Effective Date of 1994 Amendment note under section 5301 of this title.

**SUBCHAPTER III—NATIONAL
HOMEOWNERSHIP TRUST DEMONSTRATION**

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1436a, 3535 of this title.

§ 12851. National Homeownership Trust

(a) Establishment

There is established the National Homeownership Trust, which shall be in the Department of Housing and Urban Development and shall provide assistance to first-time homebuyers in accordance with this subchapter.

(b) Board of Directors

The Trust shall be governed by a Board of Directors, which shall be composed of—

- (1) the Secretary of Housing and Urban Development, who shall be the chairperson of the Board;
- (2) the Secretary of the Treasury;
- (3) the chairperson of the Board of Directors of the Federal Deposit Insurance Corporation;
- (4) the chairperson of the Federal Housing Finance Board;
- (5) the chairperson of the Board of Directors of the Federal National Mortgage Association;
- (6) the chairperson of the Board of Directors of the Federal Home Loan Mortgage Corporation; and
- (7) 1 individual representing consumer interests, who shall be appointed by the President of the United States, by and with the advice and consent of the Senate.

(c) Powers of Trust

The Trust shall have the same powers as the powers given the Government National Mortgage Association in section 1723a(a) of title 12.

(d) Travel and per diem

Members of the Board of Directors shall receive no additional compensation by reason of service on the Board, but shall be allowed travel expenses, including per diem in lieu of subsistence, as provided for employees of the Federal Government or in the same manner as persons employed intermittently in the Government service are allowed under section 5703 of title 5, as appropriate.

(e) Director and staff

(1) Director

The Board of Directors may appoint an executive director of the Trust and fix the compensation of the executive director, which shall be paid from amounts in the National Homeownership Trust Fund.

(2) Staff

Subject to such rules as the Board of Directors may prescribe, the Trust may appoint and

hire such staff and provide for offices as may be necessary to carry out its duties. The Trust may fix the compensation of the staff, which shall be paid from amounts in the National Homeownership Trust Fund.

(Pub. L. 101-625, title III, § 302, Nov. 28, 1990, 104 Stat. 4129.)

SHORT TITLE

For short title of this subchapter as the “National Homeownership Trust Act”, see Short Title note set out under section 12701 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12854 of this title.

§ 12852. Assistance for first-time homebuyers

(a) In general

The Trust shall provide assistance payments for first-time homebuyers (including homebuyers buying shares in limited equity cooperatives) in the following manners:

(1) Interest rate buydowns

Assistance payments so that the rate of interest payable on the mortgages by the homebuyers does not exceed 6 percent.

(2) Downpayment assistance

Assistance payments to provide amounts for downpayments (including closing costs and other costs payable at the time of closing) on mortgages for such homebuyers.

(3) Assistance in connection with mortgage revenue bonds financing

Interest rate buydowns and downpayment assistance in the manner provided in subsection (e) of this section.

(4) Second mortgage assistance

Assistance payments to provide loans (secured by second mortgages) with deferred payment of interest and principal; and¹

(5) Capitalization of revolving loan funds

Grants to public organizations or agencies to establish revolving loan funds to provide homeownership assistance to eligible first-time homebuyers consistent with the requirements of this subchapter. Such grants shall be matched by an equal amount of local investment in such revolving loan funds. Any proceeds or repayments from loans made under this paragraph shall be returned to the revolving loan fund established under this paragraph to be used for purposes related to this section.

(b) Eligibility requirements

Assistance payments under this subchapter may be made only to homebuyers and for mortgages meeting the following requirements:

(1) First-time homebuyer

The homebuyer is an individual who—

- (A) (and whose spouse) has had no ownership in a principal residence during the 3-year period ending on the date of purchase of the property with respect to which assistance payments are made under this subchapter;

¹ So in original. The “; and” probably should be a period.

(B) is a displaced homemaker who, except for owning a home with his or her spouse or residing in a home owned by the spouse, meets the requirements of subparagraph (A);

(C) is a single parent who, except for owning a home with his or her spouse or residing in a home owned by the spouse while married, meets the requirements of subparagraph (A); or

(D) meets the requirements of subparagraph (A), (B), or (C), except for owning, as a principal residence, a dwelling unit whose structure is—

(i) not permanently affixed to a permanent foundation in accordance with local or other applicable regulations; or

(ii) not in compliance with State, local, or model building codes, or other applicable codes, and cannot be brought into compliance with such codes for less than the cost of constructing a permanent structure.

(2) Maximum income of homebuyer

The aggregate annual income of the homebuyer and the members of the family of the homebuyer residing with the homebuyer, for the 12-month period preceding the date of the application of the homebuyer for assistance under this subchapter, does not exceed—

(A) 95 percent of the median income for a family of 4 persons (adjusted by family size) in the applicable metropolitan statistical area (or such other area that the Board of Directors determines for areas outside of metropolitan statistical areas); or

(B) 115 percent of such median income (adjusted by family size) in the case of an area that is subject to a high cost area mortgage limit under title II of the National Housing Act [12 U.S.C. 1707 et seq.].

The Board of Directors shall provide for certification of such income for purposes of initial eligibility for assistance payments under this subchapter and shall provide for recertification of homebuyers (and families of homebuyers) so assisted not less than every 2 years thereafter.

(3) Certification

The homebuyer (and spouse, where applicable) shall certify that the homebuyer has made a good faith effort to obtain a market rate mortgage and has been denied because the annual income of the homebuyer and the members of the family of the homebuyer residing with the homebuyer is insufficient.

(4) Principal residence

The property securing the mortgage is a single-family residence or unit in a cooperative and is the principal residence of the homebuyer.

(5) Maximum mortgage amount

The principal obligation of the mortgage does not exceed the principal amount that could be insured with respect to the property under the National Housing Act [12 U.S.C. 1701 et seq.].

(6) Maximum interest rate

The interest payable on the mortgage is established at a fixed rate that does not exceed

a maximum rate of interest established by the Trust taking into consideration prevailing interest rates on similar mortgages.

(7) Responsible mortgagee

The mortgage has been made to, and is held by, a mortgagee that is federally insured or that is otherwise approved by the Trust as responsible and able to service the mortgage properly.

(8) Minimum downpayment

For a first-time homebuyer to receive downpayment assistance under subsection (a)(2) of this section, the homebuyer shall have paid not less than 1 percent of the cost of acquisition of the property (excluding any mortgage insurance premium paid at the time the mortgage is insured), as such cost is estimated by the Board of Directors.

(c) Terms of assistance

(1) Security

Assistance payments under this subchapter shall be secured by a lien on the property involved. The lien shall be subordinate to all mortgages existing on the property on the date on which the first assistance payment is made.

(2) Repayment upon sale

Assistance payments under this subchapter shall be repayable from the net proceeds of the sale, without interest, upon the sale of the property for which the assistance payments are made. If the sale results in no net proceeds or the net proceeds are insufficient to repay the amount of the assistance payments in full, the Board of Directors shall release the lien to the extent that the debt secured by the lien remains unpaid.

(3) Repayment upon increased income

If the aggregate annual income of the homebuyer (and family of the homebuyer) assisted under this subchapter exceeds the applicable maximum income allowable under subsection (b)(2) of this section for any 2-year period after such assistance is provided, the Board of Directors may provide for the repayment, on a monthly basis, of all or a portion of such assistance payments, based on the amount of assistance provided and the income of the homebuyer (and family of the homebuyer).

(4) Repayment if property ceases to be principal residence

If the property for which assistance payments are made ceases to be the principal residence of the first-time homebuyer (or the family of the homebuyer), the Board of Directors may provide for the repayment of all or a portion of the assistance payments.

(5) Available assistance

The Trust may make assistance payments under paragraphs (1) and (2) of subsection (a) of this section with respect to a single mortgage of an eligible homebuyer.

(d) Allocation formula

Amounts available in any fiscal year for assistance under this subchapter shall be allocated

for homebuyers in each State on the basis of the need of eligible first-time homebuyers in each State for such assistance in comparison with the need of eligible first-time homebuyers for such assistance among all States.

(e) Assistance in connection with housing financed with mortgage revenue bonds

(1) Authority

The Trust shall provide assistance for first-time homebuyers in the form of interest rate buydowns and downpayment assistance under this subsection. Such assistance shall be available only with respect to mortgages for the purchase of residences (A) financed with the proceeds of a qualified mortgage bond (as such term is defined in section 143 of title 26), or (B) for which a credit is allowable under section 25 of title 26.

(2) Eligibility

To be eligible for assistance under this subsection, homebuyers and mortgages shall also meet the requirements under subsection (b) of this section, except that—

(A) the certification under subsection (b)(3) of this section shall not be required for assistance under this subsection;

(B) the provisions of subsection (b)(2) of this section shall not apply to assistance under this section; and

(C) the aggregate income of the homebuyer and the members of the family of the homebuyer residing with the homebuyer, for the 12-month period preceding the date of the application of the homebuyer for assistance under this subsection, shall not exceed 80 percent of the median income for a family of 4 persons (as adjusted for family size) in the applicable metropolitan statistical area.

(3) Limitation of assistance

Notwithstanding subsection (a) of this section, assistance payments for first-time homebuyers under this subsection shall be provided in the following manners:

(A) Interest rate buydowns

Assistance payments to decrease the rate of interest payable on the mortgages by the homebuyers, in an amount not exceeding—

(i) in the first year of the mortgage, 2.0 percent of the total principal obligation of the mortgage;

(ii) in the second year of the mortgage, 1.5 percent of the total principal obligation of the mortgage;

(iii) in the third year of the mortgage, 1.0 percent of the total principal obligation of the mortgage; and

(iv) in the fourth year of the mortgage, 0.5 percent of the total principal obligation of the mortgage.

(B) Downpayment assistance

Assistance payments to provide amounts for downpayments on mortgages by the homebuyers, in an amount not exceeding 2.5 percent of the principal obligation of the mortgage.

(3)² Availability

The Trust may make assistance payments under subparagraphs (A) and (B) of paragraph (3) with respect to a single mortgage of a homebuyer.

(Pub. L. 101-625, title III, § 303, Nov. 28, 1990, 104 Stat. 4130; Pub. L. 102-550, title I, § 182(c)-(e), Oct. 28, 1992, 106 Stat. 3737, 3738.)

REFERENCES IN TEXT

The National Housing Act, referred to in subsec. (b)(2)(B), (5), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended, which is classified principally to chapter 13 (§1701 et seq.) of Title 12, Banks and Banking. Title II of the Act is classified principally to subchapter II (§1707 et seq.) of chapter 13 of Title 12. For complete classification of this Act to the Code, see section 1701 of Title 12 and Tables.

AMENDMENTS

1992—Subsec. (a)(3). Pub. L. 102-550, §182(c)(2), added par. (3).

Subsec. (a)(4), (5). Pub. L. 102-550, §182(e), added pars. (4) and (5).

Subsec. (b)(1)(D). Pub. L. 102-550, §182(d), added subpar. (D).

Subsec. (e). Pub. L. 102-550, §182(c)(1), added subsec. (e).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12857 of this title; title 12 section 1701x.

§ 12853. National Homeownership Trust Fund

(a) Establishment

There is established in the Treasury of the United States a revolving fund, to be known as the National Homeownership Trust Fund.

(b) Assets

The Fund shall consist of—

(1) any amount approved in appropriation Acts under section 12857 of this title for purposes of carrying out this subchapter;

(2) any amount received by the Trust as repayment for payments made under this subchapter; and

(3) any amount received by the Trust under subsection (d) of this section.

(c) Use of amounts

The Fund shall, to the extent approved in appropriations Acts, be available to the Trust for purposes of carrying out this subchapter.

(d) Investment of excess amounts

Any amounts in the Fund determined by the Trust to be in excess of the amounts currently required to carry out the provisions of this subchapter shall be invested by the Trust in obligations of, or obligations guaranteed as to both principal and interest by, the United States or any agency of the United States.

(e) Demonstration programs

Using not more than \$20,000,000 of any amounts appropriated for the Fund under section 12857 of this title in fiscal year 1991, the Secretary shall carry out demonstration programs for combining housing activities and economic development activities, as follows:

² So in original. Probably should be "(4)".

(1) In Milwaukee, Wisconsin, in an amount not to exceed \$4,200,000, for development, rehabilitation, and revitalization of 2 vacant structures in a blighted minority neighborhood.

(2) In Washington, District of Columbia, in an amount not to exceed \$10,000,000, for non-profit neighborhood-based groups to acquire and rehabilitate vacant public and private housing for resale or rent to low- and moderate-income families and to the extent of and subject to engage in neighborhood-based economic development activities.

(3) In Philadelphia, Pennsylvania, in an amount not to exceed \$1,000,000, for technical assistance and organizational support for a community development corporation that is a city-wide public/private partnership engaged in the provision of technical assistance to neighborhood community development corporations.

(4) In other areas, as the Secretary may determine.

(Pub. L. 101-625, title III, § 304, Nov. 28, 1990, 104 Stat. 4132.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12854 of this title.

§ 12854. Definitions

For purposes of this subchapter:

(1) Board of Directors

The term “Board of Directors” or “Board” means the Board of Directors of the National Homeownership Trust under section 12851(b) of this title.

(2) Displaced homemaker

The term “displaced homemaker” means an individual who—

(A) is an adult;

(B) has not worked full-time full-year in the labor force for a number of years, but has during such years, worked primarily without remuneration to care for the home and family; and

(C) is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

(3) Fund

The term “Fund” means the National Homeownership Trust Fund established in section 12853 of this title.

(4) Single parent

The term “single parent” means an individual who—

(A) is unmarried or legally separated from a spouse; and

(B)(i) has 1 or more minor children for whom the individual has custody or joint custody; or

(ii) is pregnant.

(5) State

The term “State” means the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa,

the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

(6) Trust

The term “Trust” means the National Homeownership Trust established in section 12851 of this title.

(Pub. L. 101-625, title III, § 305, Nov. 28, 1990, 104 Stat. 4132.)

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 12855. Regulations

The Board of Directors shall issue any regulations necessary to carry out this subchapter.

(Pub. L. 101-625, title III, § 306, Nov. 28, 1990, 104 Stat. 4133.)

§ 12856. Report

The Board of Directors shall submit to the Congress, not later than the expiration of the 90-day period beginning on the date of the termination of the Trust under section 12859 of this title, a report containing a description of the activities of the Trust and an analysis of the effectiveness of the Trust in assisting first-time homebuyers.

(Pub. L. 101-625, title III, § 307, Nov. 28, 1990, 104 Stat. 4133.)

§ 12857. Authorization of appropriations

There are authorized to be appropriated for assistance payments under this subchapter \$520,665,600 for fiscal year 1993 and \$542,533,555 for fiscal year 1994, of which such sums as may be necessary shall be available in each such fiscal year for use under section 12852(e) of this title. Any amount appropriated under this section shall be deposited in the Fund and shall remain available until expended, subject to the provisions of section 12858¹ of this title.

(Pub. L. 101-625, title III, § 308, Nov. 28, 1990, 104 Stat. 4133; Pub. L. 102-550, title I, § 182(b), Oct. 28, 1992, 106 Stat. 3736.)

REFERENCES IN TEXT

Section 12858 of this title, referred to in text, was in the original “section 311”, and was translated as reading “section 309”, meaning section 309 of Pub. L. 101-625, to reflect the probable intent of Congress, because Pub. L. 101-625 does not contain a section 311.

AMENDMENTS

1992—Pub. L. 102-550 amended section generally. Prior to amendment, section read as follows: “There are authorized to be appropriated to carry out this subchapter \$250,000,000 for fiscal year 1991 and \$521,500,000 for fiscal year 1992. Any amount appropriated under this section shall be deposited in the Fund and remain available until expended, subject to the provisions of section 12858 of this title.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12853 of this title.

¹ See References in Text note below.

§ 12858. Transition**(a) Authority of Secretary**

Upon the termination of the Trust as provided in section 12859 of this title, the Secretary of Housing and Urban Development shall exercise any authority of the Board of Directors and the Trust in accordance with the provisions of this subchapter as may be necessary to provide for the conclusion of the outstanding affairs of the Trust.

(b) Applicability of Trust provisions

Any assistance under this subchapter shall, after termination of the Trust, be subject to the provisions of this subchapter that would have applied to such assistance if the termination had not occurred.

(c) Certification of Fund to Treasury

Upon a determination by the Secretary of Housing and Urban Development that the National Homeownership Trust Fund is no longer necessary, the Secretary shall certify any amounts remaining in the Fund to the Secretary of the Treasury and the Secretary of the Treasury shall deposit into the general fund of the Treasury as miscellaneous receipts any amounts remaining in the Fund.

(Pub. L. 101-625, title III, §309, Nov. 28, 1990, 104 Stat. 4133.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12857 of this title.

§ 12859. Termination

The Trust shall terminate September 30, 1994. (Pub. L. 101-625, title III, §310, Nov. 28, 1990, 104 Stat. 4133; Pub. L. 102-550, title I, §182(a), Oct. 28, 1992, 106 Stat. 3736.)

AMENDMENTS

1992—Pub. L. 102-550 substituted “September 30, 1994” for “on September 30, 1993”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12856, 12858 of this title.

SUBCHAPTER IV—HOPE FOR HOMEOWNER-SHIP OF MULTIFAMILY AND SINGLE FAMILY HOMES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1437f, 3535 of this title; title 12 sections 1831q, 1834a.

§ 12870. Authorization of appropriations**(a) Fiscal year 1993**

There are authorized to be appropriated for grants under this title¹ \$855,000,000 for fiscal year 1993, of which—

- (1) \$285,000,000 shall be available for activities authorized under title III of the United States Housing Act of 1937 [42 U.S.C. 1437aaa et seq.], of which up to \$4,500,000 of any amounts appropriated may be made available for technical assistance to potential applicants, appli-

cants and recipients of assistance under this² title;

- (2) \$285,000,000 shall be available for activities authorized under part A of this subchapter, of which up to \$3,250,000 of any amounts appropriated may be made available for technical assistance to potential applicants, applicants and recipients of assistance under this² part; and

- (3) \$285,000,000 shall be available for activities under part B of this subchapter, of which up to \$2,250,000 of any amounts appropriated may be made available for technical assistance to potential applicants, applicants and recipients of assistance under this² part.

Of the amounts appropriated pursuant to this subsection, up to \$40,000,000, but not less than 5 percent, shall be available for activities authorized under part C of this subchapter. Any amount appropriated pursuant to this subsection shall remain available until expended.

(b) Fiscal year 1994

There are authorized to be appropriated for grants under this title¹ \$883,641,000 for fiscal year 1994, of which—

- (1) \$294,547,000 shall be available for activities authorized under title III of the United States Housing Act of 1937 [42 U.S.C. 1437aaa et seq.], up to \$4,500,000 of which may be made available for technical assistance to potential applicants, applicants and recipients of assistance under this² title;

- (2) \$294,547,000 shall be available for activities authorized under part A of this subchapter, up to \$3,250,000 of which may be made available for technical assistance to potential applicants, applicants and recipients of assistance under this² part; and

- (3) \$294,547,000 shall be available for activities under part B of this subchapter, up to \$2,250,000 of which may be made available for technical assistance to potential applicants, applicants and recipients of assistance under this² part.

Of the amounts appropriated pursuant to this subsection, up to \$41,680,000, but not less than 5 percent, shall be available for activities authorized under part C of this subchapter. Any amount appropriated pursuant to this subsection shall remain available until expended.

(c) Technical assistance

Technical assistance made available under title III of the United States Housing Act of 1937 [42 U.S.C. 1437aaa et seq.] or part A of this subchapter or part B of this subchapter may include, but shall not be limited to, training, clearinghouse services, the collection, processing and dissemination of program information useful for local and national program management, and provision of seed money. Such technical assistance may be made available directly, or indirectly under contracts and grants, as appropriate. In any fiscal year, no single applicant, potential applicant, or recipient under title III of the United States Housing Act of 1937, or part A of this subchapter or part B of this subchapter may receive technical assist-

¹ See References in Text note below.

² So in original. Probably should be “such”.

ance in an amount exceeding 20 percent of the total amount made available for technical assistance under such title or part for the fiscal year.

(Pub. L. 101-625, title IV, §402, as added Pub. L. 102-550, title I, §181(a)(1), Oct. 28, 1992, 106 Stat. 3734.)

REFERENCES IN TEXT

This title, referred to in introductory provisions of subsecs. (a) and (b), is title IV of Pub. L. 101-625, Nov. 28, 1990, 104 Stat. 4148, known as the Homeownership and Opportunity Through HOPE Act, which enacted this subchapter and subchapter II-A (§1437aaa et seq.) of chapter 8 of this title, amended sections 1437c, 1437f, 1437i, 1437p, 1437r, and 1437s of this title and section 1709 of Title 12, Banks and Banking, and enacted provisions set out as notes under sections 1437c, 1437aa, and 1437aaa of this title. For complete classification of title IV to the Code, see Short Title note set out under section 1437aaa of this title and Tables.

The United States Housing Act of 1937, referred to in subsecs. (a)(1), (b)(1), and (c), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93-383, title II, §201(a), Aug. 22, 1974, 88 Stat. 653. Title III of the Act is classified generally to subchapter II-A (§1437aaa et seq.) of chapter 8 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of this title and Tables.

GAO AUDIT OF TECHNICAL ASSISTANCE CONTRACTS

Section 181(a)(3) of Pub. L. 102-550 provided that: "The Comptroller General of the United States shall conduct an audit of all of the technical assistance contracts awarded for fiscal years 1993 and 1994 pursuant to section 402 of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12870]. The Comptroller General shall submit a report to the Congress describing the results of such audit not later than September 30, 1994."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12899g of this title.

PART A—HOPE FOR HOMEOWNERSHIP OF MULTIFAMILY UNITS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 12870, 12899c, 12899d of this title; title 12 sections 1701z-11, 1709.

§ 12871. Program authority

(a) In general

The Secretary is authorized to make—

- (1) planning grants to enable applicants to develop homeownership programs; and
- (2) implementation grants to enable applicants to carry out homeownership programs.

(b) Authority to reserve housing assistance

In connection with a grant under this part, the Secretary may reserve authority to provide assistance under section 1437f of this title to the extent necessary to provide rental assistance for a nonpurchasing tenant who resides in the project on the date the Secretary approves the application for an implementation grant, for use by the tenant in another project.

(Pub. L. 101-625, title IV, §421, Nov. 28, 1990, 104 Stat. 4162; Pub. L. 102-550, title I, §181(a)(2)(B)(i), Oct. 28, 1992, 106 Stat. 3735.)

REFERENCES IN TEXT

This part, referred to in subsec. (b), was in the original "this subtitle", meaning subtitle B (§§421-431) of

title IV of Pub. L. 101-625, Nov. 28, 1990, 104 Stat. 4162, which enacted this part and amended section 1709 of Title 12, Banks and Banking.

AMENDMENTS

1992—Subsec. (c). Pub. L. 102-550 struck out subsec. (c) which read as follows: "AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for grants under this part \$51,000,000 for fiscal year 1991 and \$280,000,000 for fiscal year 1992. Any amounts appropriated pursuant to this subsection shall remain available until expended."

§ 12872. Planning grants

(a) Grants

The Secretary is authorized to make planning grants to applicants for the purpose of developing homeownership programs under this part. The amount of a planning grant under this section may not exceed \$200,000, except that the Secretary may for good cause approve a grant in a higher amount.

(b) Eligible activities

Planning grants may be used for activities to develop homeownership programs (which may include programs for cooperative ownership), including—

- (1) development of resident management corporations and resident councils;
- (2) training and technical assistance of applicants related to the development of a specific homeownership program;
- (3) studies of the feasibility of a homeownership program;
- (4) inspection for lead-based paint hazards, as required by section 4822(a) of this title;
- (5) preliminary architectural and engineering work;
- (6) tenant and homebuyer counseling and training;
- (7) planning for economic development, job training, and self-sufficiency activities that promote economic self-sufficiency for homebuyers and homeowners under the homeownership program;
- (8) development of security plans; and
- (9) preparation of an application for an implementation grant under this part.

(c) Application

(1) Form and procedures

An application for a planning grant shall be submitted by an applicant in such form and in accordance with such procedures as the Secretary shall establish.

(2) Minimum requirements

The Secretary shall require that an application contain at a minimum—

- (A) a request for a planning grant, specifying the activities proposed to be carried out, the schedule for completing the activities, the personnel necessary to complete the activities, and the amount of the grant requested;
- (B) a description of the applicant and a statement of its qualifications;
- (C) identification and description of the eligible property involved, and a description of the composition of the tenants, including family size and income;

(D) a certification by the public official responsible for submitting the comprehensive housing affordability strategy under section 12705 of this title that the proposed activities are consistent with the approved housing strategy of the State or unit of general local government within which the project is located (or, during the first 12 months after November 28, 1990, that the application is consistent with such other existing State or local housing plan or strategy that the Secretary shall determine to be appropriate); and

(E) a certification that the applicant will comply with the requirements of the Fair Housing Act [42 U.S.C. 3601 et seq.], title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], and the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], and will affirmatively further fair housing.

(d) Selection criteria

The Secretary shall, by regulation, establish selection criteria for a national competition for assistance under this section, which shall include—

- (1) the qualifications or potential capabilities of the applicant;
- (2) the extent of tenant interest in the development of a homeownership program for the property;
- (3) the potential of the applicant for developing a successful and affordable homeownership program and the suitability of the property for homeownership;
- (4) national geographic diversity among housing for which applicants are selected to receive assistance; and
- (5) such other factors that the Secretary shall require that (in the determination of the Secretary) are appropriate for purposes of carrying out the program established by this part in an effective and efficient manner.

(Pub. L. 101-625, title IV, §422, Nov. 28, 1990, 104 Stat. 4162; Pub. L. 102-550, title X, §1012(i)(1), Oct. 28, 1992, 106 Stat. 3906.)

REFERENCES IN TEXT

The Fair Housing Act, referred to in subsec. (c)(2)(E), is title VIII of Pub. L. 90-284, Apr. 11, 1968, 82 Stat. 81, as amended, which is classified principally to subchapter I (§3601 et seq.) of chapter 45 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

The Civil Rights Act of 1964, referred to in subsec. (c)(2)(E), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Act is classified generally to subchapter V (§2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

The Age Discrimination Act of 1975, referred to in subsec. (c)(2)(E), is title III of Pub. L. 94-135, Nov. 28, 1975, 89 Stat. 728, as amended, which is classified generally to chapter 76 (§6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

AMENDMENTS

1992—Subsec. (b)(4) to (9). Pub. L. 102-550 added par. (4) and redesignated former pars. (4) to (8) as (5) to (9), respectively.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12873, 12875 of this title.

§ 12873. Implementation grants

(a) Grants

The Secretary is authorized to make implementation grants to applicants for the purpose of carrying out homeownership programs approved under this part.

(b) Eligible activities

Implementation grants may be used for activities to carry out homeownership programs (including programs for cooperative ownership), including the following activities:

- (1) Architectural and engineering work.
- (2) Acquisition of the eligible property for the purpose of transferring ownership to eligible families in accordance with a homeownership program that meets the requirements under this part.
- (3) Rehabilitation of any property covered by the homeownership program, in accordance with standards established by the Secretary.
- (4) Abatement of lead-based paint hazards, as required by section 4822(a) of this title.
- (5) Administrative costs of the applicant, which may not exceed 15 percent of the amount of the assistance provided under this section.
- (6) Development of resident management corporations and resident management councils, but only if the applicant has not received assistance under section 12872¹ of this title for such activities.
- (7) Counseling and training of homebuyers and homeowners under the homeownership program.
- (8) Relocation of tenants who elect to move.
- (9) Any necessary temporary relocation of tenants during rehabilitation.
- (10) Planning for establishment of for- or not-for-profit small businesses by or on behalf of residents, job training, and other activities that promote economic self-sufficiency of homebuyers and homeowners of the property covered by the homeownership program and economic development of the neighborhood.
- (11) Funding of operating expenses and replacement reserves of the property covered by the homeownership program.
- (12) Legal fees.
- (13) Defraying costs for the ongoing training needs of the recipient that are related to developing and carrying out the homeownership program.
- (14) Economic development activities that promote economic self-sufficiency of homebuyers, residents, and homeowners under the homeownership program.

(Pub. L. 101-625, title IV, §422, Nov. 28, 1990, 104 Stat. 4162; Pub. L. 102-550, title X, §1012(i)(1), Oct. 28, 1992, 106 Stat. 3906.)

(c) Matching funding

- (1) In general
- Each recipient shall assure that contributions equal to not less than 33 percent of the

¹ See References in Text note below.

grant amounts made available under this section, excluding any amounts provided for post-sale operating expense, shall be provided from non-Federal sources to carry out the homeownership program.

(2) Form

Such contributions may be in the form of—

(A) cash contributions from non-Federal resources, which may not include funds from a grant made under section 5306(b) or section 5306(d) of this title;

(B) payment of administrative expenses, as defined by the Secretary, from non-Federal resources, including funds from a grant made under section 5306(b) or section 5306(d) of this title;

(C) the value of taxes, fees, or other charges that are normally and customarily imposed but are waived, foregone, or deferred in a manner that facilitates the implementation of a homeownership program assisted under this part;

(D) the value of land or other real property as appraised according to procedures acceptable to the Secretary;

(E) the value of investment in on-site and off-site infrastructure required for a homeownership program assisted under this part; or

(F) such other in-kind contributions as the Secretary may approve.

Contributions for administrative expenses shall be recognized only up to an amount equal to 7 percent of the total amount of grants made available under this section.

(d)² Application

(1) Form and procedure

An application for an implementation grant shall be submitted by an applicant in such form and in accordance with such procedures as the Secretary shall establish.

(2) Minimum requirements

The Secretary shall require that an application contain at a minimum—

(A) a request for an implementation grant, specifying the amount of the grant requested and its proposed uses;

(B) if applicable, an application for assistance under section 1437f of this title, specifying the proposed uses of such assistance and the period during which the assistance will be needed;

(C) a description of the qualifications and experience of the applicant in providing low-income housing;

(D) a description of the proposed homeownership program, consistent with section 12874³ of this title and the other requirements of this part, specifying the activities proposed to be carried out and their estimated costs, identifying reasonable schedules for carrying it out, and demonstrating the program will comply with the affordability requirements under section 12874(b)³ of this title;

(E) identification and description of the property involved, and a description of the

composition of the tenants, including family size and income;

(F) a description of and commitment for the resources that are expected to be made available to provide the matching funding required under subsection (c) of this section and of other resources that are expected to be made available in support of the homeownership program;

(G) identification and description of the financing proposed for any (i) rehabilitation and (ii) acquisition (I) of the property, by an entity for transfer to eligible families, and (II) by eligible families of ownership interests in, or shares representing, units in the project;

(H) the proposed sales price, the basis for such price determination, and terms to an entity, if any, that will purchase the property for resale to eligible families;

(I) the proposed sales prices, if any, and terms to eligible families;

(J) any proposed restrictions on the resale of units under a homeownership program;

(K) identification and description of the entity that will operate and manage the property;

(L) a certification by the public official responsible for submitting the comprehensive housing affordability strategy under section 12705 of this title that the proposed activities are consistent with the approved housing strategy of the State or unit of general local government within which the project is located (or, during the first 12 months after November 28, 1990, that the application is consistent with such other existing State or local housing plan or strategy that the Secretary shall determine to be appropriate); and

(M) a certification that the applicant will comply with the requirements of the Fair Housing Act [42 U.S.C. 3601 et seq.], title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], and the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], and will affirmatively further fair housing.

(d)⁴ Selection criteria

The Secretary shall establish selection criteria for assistance under this section, which shall include—

(1) the qualifications or potential capabilities of the applicant;

(2) the feasibility of the homeownership program;

(3) the extent of tenant interest in the development of a homeownership program for the property;

(4) the potential for developing an affordable homeownership program and the suitability of the property for homeownership;

(5) national geographic diversity among housing for which applicants are selected to receive assistance;

(6) the extent to which a sufficient supply of affordable rental housing of the type assisted

² So in original. Two subsecs. (d) have been enacted.

³ See References in Text note below.

⁴ So in original. Two subsecs. (d) have been enacted.

under this title⁵ exists in the locality, so that the implementation of the homeownership program will not appreciably reduce the number of such rental units available to residents currently residing in such units or eligible for residency in such units; and

(7) such other factors as the Secretary determines to be appropriate for purposes of carrying out the program established by the⁶ part in an effective and efficient manner.

(e) Approval

The Secretary shall notify each applicant, not later than 6 months after the date of the submission of the application, whether the application is approved or not approved. The Secretary may approve the application for an implementation grant with a statement that the application for the section 8 [42 U.S.C. 1437f] assistance for residents of the project not purchasing units is conditionally approved, subject to the availability of appropriations in subsequent fiscal years.

(Pub. L. 101-625, title IV, §423, Nov. 28, 1990, 104 Stat. 4163; Pub. L. 102-550, title X, §1012(i)(2), Oct. 28, 1992, 106 Stat. 3906.)

REFERENCES IN TEXT

Section 12872 of this title, referred to in subsec. (b)(6), was in the original "section 322" and was translated as reading "section 422", meaning section 422 of Pub. L. 101-625, to reflect the probable intent of Congress. Section 322 of Pub. L. 101-625 amended section 1708 of Title 12, Banks and Banking.

Section 12874 of this title and section 12874(b) of this title, referred to in subsec. (d)(2)(D), were in the original "section 324" and "section 324(b)", respectively, and were translated as reading "section 424" and "section 424(b)", respectively, meaning section 424 of Pub. L. 101-625, to reflect the probable intent of Congress. Section 324 of Pub. L. 101-625, which proposed an amendment to section 1709 of Title 12, never took effect pursuant to section 351 of Pub. L. 101-625. Such section 324 did not contain a subsec. (b).

The Fair Housing Act, referred to in subsec. (d)(2)(M), is title VIII of Pub. L. 90-284, Apr. 11, 1968, 82 Stat. 81, as amended, which is classified principally to subchapter I (§3601 et seq.) of chapter 45 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

The Civil Rights Act of 1964, referred to in subsec. (d)(2)(M), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Act is classified generally to subchapter V (§2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

The Age Discrimination Act of 1975, referred to in subsec. (d)(2)(M), is title III of Pub. L. 94-135, Nov. 28, 1975, 89 Stat. 728, as amended, which is classified generally to chapter 76 (§6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

This title, referred to in subsec. (d)(6), means title IV of Pub. L. 101-625, known as the Homeownership and Opportunity Through HOPE Act, and probably should have been "this subtitle", meaning subtitle B (§§421-431) of title IV of Pub. L. 101-625, which is classified principally to this part. For complete classification of title IV of Pub. L. 101-625 to the Code, see Short Title note set out under section 1437aaa of this title and Tables.

⁵ See References in Text note below.

⁶ So in original. Probably should be "this".

AMENDMENTS

1992—Subsec. (b)(4) to (14). Pub. L. 102-550 added par. (4) and redesignated former pars. (4) to (13) as (5) to (14), respectively.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12875 of this title.

§ 12874. Homeownership program requirements

(a) In general

A homeownership program under this part shall provide for acquisition by eligible families of ownership interest in, or shares representing, the units in an eligible property under any arrangement determined by the Secretary to be appropriate, such as cooperative ownership (including limited equity cooperative ownership) and fee simple ownership (including condominium ownership), for occupancy by the eligible families.

(b) Affordability

A homeownership program under this part shall provide for the establishment of sales prices (including principal, insurance, taxes, and interest and closing costs) for initial acquisition of the property, and for sales to eligible families, such that the eligible family shall not be required to expend more than 30 percent of the adjusted income of the family per month to complete a sale under the homeownership program.

(c) Plan

A homeownership program under this part shall provide, and include a plan, for—

- (1) identifying and selecting eligible families to participate in the homeownership program;
- (2) providing relocation assistance to families who elect to move;
- (3) ensuring continued affordability by tenants, homebuyers, and homeowners in the property; and
- (4) providing ongoing training and counseling for homebuyers and homeowners.

(d) Acquisition and rehabilitation limitation

Acquisition or rehabilitation of a property under a homeownership program under this part may not consist of acquisition or rehabilitation of less than all of the units in the property. The provisions of this subsection may be waived upon a finding by the Secretary that the sale of less than all the buildings in a project is feasible and will not result in a hardship to any tenants of the project who are not included in the homeownership program.

(e) Financing

(1) In general

The application shall identify and describe the proposed financing for (A) any rehabilitation, and (B) acquisition (i) of the project, where applicable, by an entity for transfer to eligible families, and (ii) by eligible families of ownership interests in, or shares representing, units in the project. Financing may include use of the implementation grant, sale for cash, or other sources of financing (subject to applicable requirements), including conventional mortgage loans and mortgage loans insured

under title II of the National Housing Act [12 U.S.C. 1707 et seq.].

(2) Prohibition against pledges

Property transferred under this part shall not be pledged as collateral for debt or otherwise encumbered except when the Secretary determines that—

(A) such encumbrance will not threaten the long-term availability of the property for occupancy by low-income families;

(B) neither the Federal Government nor the public housing agency will be exposed to undue risks related to action that may have to be taken pursuant to paragraph (3);

(C) any debt obligation can be serviced from project income, including operating assistance; and

(D) the proceeds of such encumbrance will be used only to meet housing standards in accordance with subsection (f) of this section or to make such additional capital improvements as the Secretary determines to be consistent with the purposes of this part.

(3) Opportunity to cure

Any lender that provides financing in connection with a homeownership program under this part shall give the public housing agency, resident management corporation, individual owner, or other appropriate entity a reasonable opportunity to cure a financial default before foreclosing on the property, or taking other action as a result of the default.

(f) Housing quality standards

The application shall include a plan ensuring that the unit—

(1) will be free from any defects that pose a danger to health or safety before transfer of an ownership interest in, or shares representing, a unit to an eligible family; and

(2) will, not later than 2 years after the transfer to an eligible family, meet minimum housing standards established by the Secretary for the purpose of this title.¹

(g) Protection of nonpurchasing families

(1) In general

No tenant residing in a dwelling unit in a property on the date the Secretary approves an application for an implementation grant may be evicted by reason of a homeownership program approved under this part.

(2) Rental assistance

If a tenant decides not to purchase a unit, or is not qualified to do so, the Secretary shall, subject to the availability of appropriations, ensure that rental assistance under section 1437f of this title is available for use by each otherwise qualified tenant in that or another property.

(3) Relocation assistance

The recipient shall also inform each such tenant that if the tenant chooses to move, the recipient will pay relocation assistance in accordance with the approved homeownership program.

(Pub. L. 101-625, title IV, §424, Nov. 28, 1990, 104 Stat. 4166.)

REFERENCES IN TEXT

The National Housing Act, referred to in subsec. (e)(1), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended. Title II of the Act is classified principally to subchapter II (§1707 et seq.) of chapter 13 of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1701 of Title 12 and Tables.

This title, referred to in subsec. (f)(2), is title IV of Pub. L. 101-625, Nov. 28, 1990, 104 Stat. 4148, known as the Homeownership and Opportunity Through HOPE Act, which enacted this subchapter and subchapter II-A (§1437aaa et seq.) of chapter 8 of this title, amended sections 1437c, 1437f, 1437l, 1437p, 1437r, and 1437s of this title and section 1709 of Title 12, and enacted provisions set out as notes under sections 1437c, 1437aa, and 1437aaa of this title. For complete classification of title IV to the Code, see Short Title note set out under section 1437aaa of this title and Tables.

Section 1437f of this title, referred to in subsec. (g)(2), was in the original "section 8", and was translated as reading "section 8 of the United States Housing Act of 1937" to reflect the probable intent of Congress.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12873 of this title.

§ 12875. Other program requirements

(a) Preferences

In selecting eligible families for homeownership, the recipient shall give a first preference to otherwise qualified current tenants and a second preference to otherwise qualified eligible families who have completed participation in an economic self-sufficiency program specified by the Secretary.

(b) Cost limitations

The Secretary may establish cost limitations on eligible activities under this part, subject to the provisions of this part.

(c) Use of proceeds from sales to eligible families

The entity that transfers ownership interests in, or shares representing, units to eligible families, or another entity specified in the approved application, shall use the proceeds, if any, from the initial sale for costs of the homeownership program, including operating expenses, improvements to the project, business opportunities for low-income families, supportive services related to the homeownership program, additional homeownership opportunities, and other activities approved by the Secretary.

(d) Restrictions on resale by homeowners

(1) In general

(A) Transfer permitted

A homeowner under a homeownership program may transfer the homeowner's ownership interest in, or shares representing, the unit, except that a homeownership program may establish restrictions on the resale of units under the program.

(B) Right to purchase

Where a resident management corporation, resident council, or cooperative has jurisdiction over the unit, the corporation, council, or cooperative shall have the right to purchase the ownership interest in, or shares representing, the unit from the homeowner for the amount specified in a firm

¹ See References in Text note below.

contract between the homeowner and a prospective buyer. If such an entity does not have jurisdiction over the unit or elects not to purchase and if the prospective buyer is not a low-income family, the public housing agency or the implementation grant recipient shall have the right to purchase the ownership interest in, or shares representing, the unit for the same amount.

(C) Promissory note required

The homeowner shall execute a promissory note equal to the difference between the market value and the purchase price, payable to the public housing agency or other entity designated in the homeownership plan, together with a mortgage securing the obligation of the note.

(2) 6 years or less

In the case of a transfer within 6 years of the acquisition under the program, the homeownership program shall provide for appropriate restrictions to assure that an eligible family may not receive any undue profit. The plan shall provide for limiting the family's consideration for its interest in the property to the total of—

(A) the contribution to equity paid by the family;

(B) the value, as determined by such means as the Secretary shall determine through regulation, of any improvements installed at the expense of the family during the family's tenure as owner; and

(C) the appreciated value determined by an inflation allowance at a rate which may be based on a cost-of-living index, an income index, or market index as determined by the Secretary through regulation and agreed to by the purchaser and the entity that transfers ownership interests in, or shares representing, units to eligible families (or another entity specified in the approved application), at the time of initial sale, and applied against the contribution to equity.

Such an entity may, at the time of initial sale, enter into an agreement with the family to set a maximum amount which this appreciation may not exceed.

(3) 6–20 years

In the case of a transfer during the period beginning 6 years after the acquisition and ending 20 years after the acquisition, the homeownership program shall provide for the recapture by the Secretary or the program of an amount equal to the amount of the declining balance on the note described in paragraph (1)(C).

(4) Use of recaptured funds

Fifty percent of any portion of the net sales proceeds that may not be retained by the homeowner under the plan approved pursuant to this subsection shall be paid to the entity that transferred ownership interests in, or shares representing, units to eligible families, or another entity specified in the approved application, for use for improvements to the project, business opportunities for low-income families, supportive services related to the

homeownership program, additional homeownership opportunities, and other activities approved by the Secretary. The remaining 50 percent shall be returned to the Secretary for use under this part, subject to limitations contained in appropriations Acts. Such entity shall keep and make available to the Secretary all records necessary to calculate accurately payments due the Secretary under this subsection.

(e) Third party rights

The requirements under this part regarding quality standards, resale, or transfer of the ownership interest of a homeowner shall be judicially enforceable against the grant recipient with respect to actions involving rehabilitation, and against purchasers of property under this subsection or their successors in interest with respect to other actions by affected low-income families, resident management corporations, resident councils, public housing agencies, and any agency, corporation, or authority of the United States Government. The parties specified in the preceding sentence shall be entitled to reasonable attorney fees upon prevailing in any such judicial action.

(f) Dollar limitation on economic development activities

Not more than an aggregate of \$250,000 from amounts made available under sections 12872 and 12873 of this title may be used for economic development activities under sections 12872(b)(6) and 12873(b)(9)¹ of this title for any project.

(g) Timely homeownership

Recipients shall transfer ownership of the property to tenants within a specified period of time that the Secretary determines to be reasonable. During the interim period when the property continues to be operated and managed as rental housing, the recipient shall utilize written tenant selection policies and criteria that are approved by the Secretary as consistent with the purpose of improving housing opportunities for low-income families. The recipient shall promptly notify in writing any rejected applicant of the grounds for any rejection.

(h) Records and audit of recipients of assistance

(1) In general

Each recipient shall keep such records as may be reasonably necessary to fully disclose the amount and the disposition by such recipient of the proceeds of assistance received under this part (and any proceeds from financing obtained or sales under subsections (c) and (d) of this section), the total cost of the homeownership program in connection with which such assistance is given or used, and the amount and nature of that portion of the program supplied by other sources, and such other sources as will facilitate an effective audit.

(2) Access by Secretary

The Secretary shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipi-

¹ See References in Text note below.

ent that are pertinent to assistance received under this part.

(3) Access by Comptroller General

The Comptroller General of the United States, or any of the duly authorized representatives of the Comptroller General, shall also have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient that are pertinent to assistance received under this part.

(i) Certain entities not eligible

Any entity that assumes, as determined by the Secretary, a mortgage covering eligible property in connection with the acquisition of the property from an owner under this section must comply with any low-income affordability restrictions for the remaining term of the mortgage. This requirement shall only apply to an entity, such as a cooperative association, that, as determined by the Secretary, intends to own the housing on a permanent basis.

(Pub. L. 101-625, title IV, §425, Nov. 28, 1990, 104 Stat. 4168.)

REFERENCES IN TEXT

Sections 12872(b)(6) and 12873(b)(9) of this title, referred to in subsec. (f), were redesignated sections 12872(b)(7) and 12873(b)(10) of this title, respectively, by Pub. L. 102-550, title X, §1012(i), Oct. 28, 1992, 106 Stat. 3906.

§ 12876. Definitions

For purposes of this part:

(1) The term “applicant” means the following entities that may represent the tenants of the housing:

(A) A resident management corporation established in accordance with the requirements of the Secretary under section 1437r of this title.

(B) A resident council.

(C) A cooperative association.

(D) A public or private nonprofit organization.

(E) A public body (including an agency or instrumentality thereof).

(F) A public housing agency (including an Indian housing authority).

(G) A mutual housing association.

(2) The term “eligible family” means a family or individual—

(A) who is a tenant of the eligible property on the date the Secretary approves an implementation grant; or

(B) whose income does not exceed 80 percent of the median income for the area, as determined by the Secretary with adjustments for smaller and larger families.

(3) The term “eligible property” means a multifamily rental property, containing 5 or more units, that is—

(A) owned or held by the Secretary;

(B) financed by a loan or mortgage held by the Secretary or insured by the Secretary;

(C) determined by the Secretary to have serious physical or financial problems under the terms of an insurance or loan program administered by the Secretary; or

(D) owned or held by the Secretary of Agriculture, the Resolution Trust Corporation,

the Federal Deposit Insurance Corporation, the Secretary of Defense, the Secretary of Transportation, the General Services Administration, any other Federal agency, or a State or local government or an agency or instrumentality thereof.

(4) The term “homeownership program” means a program for homeownership under this part.

(5) The term “Indian housing authority” has the meaning given such term in section 1437a(b)(11)¹ of this title.

(6) The term “low-income family” has the meaning given such term in section 1437a(b)(2) of this title.

(7) The term “public housing agency” has the meaning given such term in section 1437a(b)(6) of this title.

(8) The term “recipient” means an applicant approved to receive a grant under this title¹ or such other entity specified in the approved application that will assume the obligations of the recipient under this part.

(9) The term “resident council” means any incorporated nonprofit organization or association that—

(A) is representative of the tenants of the housing;

(B) adopts written procedures providing for the election of officers on a regular basis; and

(C) has a democratically elected governing board, elected by the tenants of the housing.

(10) The term “Secretary” means the Secretary of Housing and Urban Development.

(Pub. L. 101-625, title IV, §426, Nov. 28, 1990, 104 Stat. 4170; Pub. L. 102-550, title I, §181(d), (e), (h), Oct. 28, 1992, 106 Stat. 3735, 3736.)

REFERENCES IN TEXT

Section 1437a(b)(11) of this title, referred to in par. (5), was repealed by Pub. L. 104-330, title V, §501(b)(1)(D), Oct. 26, 1996, 110 Stat. 4041, and a new section 1437a(b)(11), defining “public housing agency plan”, was enacted by Pub. L. 105-276, title V, §506(4), Oct. 21, 1998, 112 Stat. 2524.

This title, referred to in par. (8), means title IV of Pub. L. 101-625, known as the Homeownership and Opportunity Through HOPE Act, and probably should have been “this subtitle”, meaning subtitle B (§§421-431) of title IV of Pub. L. 101-625, which is classified principally to this part. For complete classification of title IV of Pub. L. 101-625 to the Code, see Short Title note set out under section 1437aaa of this title and Tables.

AMENDMENTS

1992—Par. (1)(G). Pub. L. 102-550, §181(d), added subpar. (G).

Par. (3)(D). Pub. L. 102-550, §181(e), (h), inserted “the Federal Deposit Insurance Corporation, the Secretary of Defense, the Secretary of Transportation, the General Services Administration, any other Federal agency,” after “Corporation,” and “or an agency or instrumentality thereof” before period at end.

§ 12877. Exemption

Eligible property covered by a homeownership program approved under this part shall not be subject to—

¹ See References in Text note below.

(1) the Low-Income Housing Preservation and Resident Homeownership Act of 1990 [12 U.S.C. 4101 et seq.], or

(2) the requirements of section 1701z-11 of title 12 applicable to the sale of projects either at foreclosure or after acquisition by the Secretary.

(Pub. L. 101-625, title IV, §427, Nov. 28, 1990, 104 Stat. 4171.)

REFERENCES IN TEXT

The Low-Income Housing Preservation and Resident Homeownership Act of 1990, referred to in par. (1), is title II of Pub. L. 100-242, as amended by Pub. L. 101-625, title VI, §601(a), Nov. 28, 1990, 104 Stat. 4249, which is classified principally to chapter 42 (§4101 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of Title 12 and Tables.

§ 12878. Limitation on selection criteria

In establishing criteria for selecting applicants to receive assistance under this part, the Secretary may not establish any selection criterion or criteria that grant or deny such assistance to an applicant (or have the effect of granting or denying assistance) based on the implementation, continuation, or discontinuation of any public policy, regulation, or law of any jurisdiction in which the applicant or project is located.

(Pub. L. 101-625, title IV, §428, Nov. 28, 1990, 104 Stat. 4171.)

§ 12879. Implementation

Not later than the expiration of the 180-day period beginning on the date that funds authorized under this part first become available for obligation, the Secretary shall by notice establish such requirements as may be necessary to carry out the provisions of this part. Such requirements shall be subject to section 553 of title 5. The Secretary shall issue regulations based on the initial notice before the expiration of the 8-month period beginning on the date of the notice.

(Pub. L. 101-625, title IV, §430, Nov. 28, 1990, 104 Stat. 4172.)

§ 12880. Report

The Secretary shall no later than December 31, 1995, submit to the Congress a report setting forth—

(1) the number, type and cost of eligible properties transferred pursuant to this part;

(2) the income, race, gender, children and other characteristics of families participating (or not participating) in homeownership programs funded under this part;

(3) the amount and type of financial assistance provided under and in conjunction with this part;

(4) the amount of financial assistance provided under this part that was needed to ensure continued affordability and meet future maintenance and repair costs; and

(5) the recommendations of the Secretary for statutory and regulatory improvements to the program.

(Pub. L. 101-625, title IV, §431, Nov. 28, 1990, 104 Stat. 4172; Pub. L. 104-66, title I, §1072(a), Dec. 21, 1995, 109 Stat. 721.)

AMENDMENTS

1995—Pub. L. 104-66 in section catchline substituted “Report” for “Annual report”, and in introductory provisions substituted “The Secretary shall no later than December 31, 1995,” for “The Secretary shall annually”.

PART B—HOPE FOR HOMEOWNERSHIP OF SINGLE FAMILY HOMES

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 12870, 12899c, 12899d of this title; title 12 sections 1709, 1834a.

§ 12891. Program authority

The Secretary is authorized to make—

(1) planning grants to help applicants develop homeownership programs in accordance with this part; and

(2) implementation grants to enable applicants to carry out homeownership programs in accordance with this part.

(Pub. L. 101-625, title IV, §441, Nov. 28, 1990, 104 Stat. 4172; Pub. L. 102-550, title I, §181(a)(2)(B)(ii), Oct. 28, 1992, 106 Stat. 3735.)

AMENDMENTS

1992—Pub. L. 102-550 struck out “(a) IN GENERAL” before “The Secretary is authorized” and subsec. (b) which read as follows: “AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for grants under this part \$36,000,000 for fiscal year 1991, and \$195,000,000 for fiscal year 1992. Any amounts appropriated pursuant to this subsection shall remain available until expended.”

§ 12892. Planning grants

(a) Grants

The Secretary is authorized to make planning grants to applicants for the purpose of developing homeownership programs under this part. The amount of a planning grant under this section may not exceed \$200,000, except that the Secretary may for good cause approve a grant in a higher amount.

(b) Eligible activities

Planning grants may be used for activities to develop homeownership programs (which may include programs for cooperative ownership), including—

(1) identifying eligible properties;

(2) training and technical assistance of applicants related to the development of a specific homeownership program;

(3) studies of the feasibility of specific homeownership programs;

(4) inspection for lead-based paint hazards, as required by section 4822(a) of this title;

(5) preliminary architectural and engineering work;

(6) homebuyer counseling and training;

(7) planning for economic development, job training, and self-sufficiency activities that promote economic self-sufficiency for homebuyers and homeowners under the homeownership program;

(8) development of security plans; and

(9) preparation of an application for an implementation grant under this part.

(c) Application**(1) Form and procedures**

An application for a planning grant shall be submitted by an applicant in such form and in accordance with such procedures as the Secretary shall establish.

(2) Minimum requirements

The Secretary shall require that an application contain at a minimum—

(A) a request for a planning grant, specifying the activities proposed to be carried out, the schedule for completing the activities, the personnel necessary to complete the activities, and the amount of the grant requested;

(B) a description of the applicant and a statement of its qualifications;

(C) identification and description of the eligible properties likely to be involved, and a description of the composition of the potential homebuyers and residents of the areas in which such eligible properties are located, including family size and income;

(D) a certification by the public official responsible for submitting the comprehensive housing affordability strategy under section 12705 of this title that the proposed activities are consistent with the approved housing strategy of the State or unit of general local government within which the project is located (or, during the first 12 months after November 28, 1990, that the application is consistent with such other existing State or local housing plan or strategy that the Secretary shall determine to be appropriate); and

(E) a certification that the applicant will comply with the requirements of the Fair Housing Act [42 U.S.C. 3601 et seq.], title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], and the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], and will affirmatively further fair housing.

(d) Selection criteria

The Secretary shall, by regulation, establish selection criteria for a national competition for assistance under this section, which shall include—

(1) the qualifications or potential capabilities of the applicant;

(2) the extent of interest in the development of a homeownership program;

(3) the potential of the applicant for developing a successful and affordable homeownership program and the availability and suitability of eligible properties in the applicable geographic area with respect to the application;

(4) national geographic diversity among housing for which applicants are selected to receive assistance; and

(5) such other factors that the Secretary shall require that (in the determination of the Secretary) are appropriate for purposes of carrying out the program established by this part in an effective and efficient manner.

(Pub. L. 101-625, title IV, §442, Nov. 28, 1990, 104 Stat. 4172; Pub. L. 102-550, title X, §1012(j)(1), Oct. 28, 1992, 106 Stat. 3906.)

REFERENCES IN TEXT

The Fair Housing Act, referred to in subsec. (c)(2)(E), is title VIII of Pub. L. 90-284, Apr. 11, 1968, 82 Stat. 81, as amended, which is classified principally to subchapter I (§3601 et seq.) of chapter 45 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

The Civil Rights Act of 1964, referred to in subsec. (c)(2)(E), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Act is classified generally to subchapter V (§2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

The Age Discrimination Act of 1975, referred to in subsec. (c)(2)(E), is title III of Pub. L. 94-135, Nov. 28, 1975, 89 Stat. 728, as amended, which is classified generally to chapter 76 (§6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

AMENDMENTS

1992—Subsec. (b)(4) to (9). Pub. L. 102-550 added par. (4) and redesignated former pars. (4) to (8) as (5) to (9), respectively.

§ 12893. Implementation grants**(a) Grants**

The Secretary is authorized to make implementation grants to applicants for the purpose of carrying out homeownership programs approved under this part.

(b) Eligible activities

Implementation grants may be used for activities to carry out homeownership programs (which may include programs for cooperative ownership), including the following activities:

(1) Architectural and engineering work.

(2) Acquisition of the property for the purpose of transferring ownership to eligible families in accordance with a homeownership program meeting the requirements of this part.

(3) Rehabilitation of the property covered by the homeownership program, in accordance with standards established by the Secretary.

(4) Abatement of lead-based paint hazards, as required by section 4822(a) of this title.

(5) Administrative costs of the applicant, which may not exceed 15 percent of the amount of assistance provided under this section.

(6) Counseling and training of homebuyers and homeowners under the homeownership program.

(7) Relocation of eligible families who elect to move.

(8) Any necessary temporary relocation of homebuyers during rehabilitation.

(9) Legal fees.

(10) Defraying costs for the ongoing training needs of the recipient that are related to developing and carrying out the homeownership program.

(11) Economic development activities that promote economic self-sufficiency of homebuyers and homeowners under the homeownership program.

(c) Matching funding**(1) In general**

Each recipient shall assure that contributions equal to not less than 25 percent of the

grant amounts under this section are provided from non-Federal sources to carry out the homeownership program.

(2) Form

Such contributions may be in the form of—

(A) cash contributions from non-Federal resources which may not include funds from a grant made under section 5306(b) or section 5306(d) of this title;

(B) payment of administrative expenses, as defined by the Secretary, from non-Federal resources, including funds from a grant made under section 5306(b) or section 5306(d) of this title;

(C) the value of taxes, fees, or other charges that are normally and customarily imposed but are waived, foregone, or deferred in a manner that facilitates the implementation of a homeownership program assisted under this part;

(D) the value of investment in on-site and off-site infrastructure required for a homeownership program assisted under this part; or

(E) such other in-kind contributions as the Secretary may approve.

Contributions for administrative expenses shall be recognized only up to an amount equal to 7 percent of the total amount of grants made available under this section.

(d) Application

(1) Form and procedure

An application for an implementation grant shall be submitted by an applicant in such form and in accordance with such procedures as the Secretary shall establish.

(2) Minimum requirements

The Secretary shall require that an application contain at a minimum—

(A) a request for an implementation grant, specifying the amount of the grant requested and its proposed uses;

(B) a description of the qualifications and experience of the applicant in providing low-income housing;

(C) a description of the proposed homeownership program, consistent with section 12894 of this title and the other requirements of this part specifying the activities proposed to be carried out and their estimated costs, identifying reasonable schedules for carrying it out, and demonstrating that the program will comply with the affordability requirements under section 12894(b) of this title;

(D) an identification and description of the properties to be acquired under the homeownership program and a description of the composition of potential eligible families, including family size and income;

(E) a description of and commitment for the resources that are expected to be made available to provide the matching funding required under subsection (c) of this section and of other resources that are expected to be made available in support of the homeownership program;

(F) identification and description of the financing proposed for any (i) rehabilitation

and (ii) acquisition (I) of the project, where applicable, by an entity for transfer to eligible families, and (II) by eligible families of ownership interests in, or shares representing, units in the project;

(G) the proposed sales prices for the properties, the basis for such price determinations, and terms to an entity, if any, that will purchase that property for resale to eligible families;

(H) the proposed sales prices, if any, and terms to eligible families;

(I) identification and description of the entity that will operate and manage the property;

(J) a certification by the public official responsible for submitting the comprehensive housing affordability strategy under section 12705 of this title that the proposed activities are consistent with the approved housing strategy of the State or unit of general local government within which the project is located (or, during the first 12 months after November 28, 1990, that the application is consistent with such other existing State or local housing plan or strategy that the Secretary shall determine to be appropriate); and

(K) a certification that the applicant will comply with the requirements of the Fair Housing Act [42 U.S.C. 3601 et seq.], title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], and the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], and will affirmatively further fair housing.

(e) Selection criteria

The Secretary shall establish selection criteria for assistance under this part, which shall include—

(1) the ability of the applicant to develop and carry out the proposed homeownership program, taking into account the qualifications and experience of the applicant and the quality of any related ongoing program of the applicant;

(2) the feasibility of the homeownership program;

(3) the quality and viability of the proposed homeownership program;

(4) the extent to which suitable eligible property is available for use under the program in the area to be served, and the extent to which the types of property expected to be covered by the proposed homeownership program are federally owned;

(5) whether the approved comprehensive housing affordability strategy for the jurisdiction within which the eligible property is located includes the proposed homeownership program as one of the general priorities identified pursuant to section 12705(b)(7) of this title;

(6) national geographic diversity among housing for which applicants are selected to receive assistance; and

(7) the extent to which a sufficient supply of affordable rental housing of the type assisted under this part exists in the locality, so that

the implementation of the homeownership program will not appreciably reduce the number of such rental units available to residents currently residing in such units or eligible for residency in such units.

(f) Approval

The Secretary shall notify each applicant, not later than 6 months after the date of the submission of the application, whether the application is approved or not approved.

(Pub. L. 101-625, title IV, §443, Nov. 28, 1990, 104 Stat. 4174; Pub. L. 102-550, title X, §1012(j)(2), Oct. 28, 1992, 106 Stat. 3906; Pub. L. 103-233, title II, §221, Apr. 11, 1994, 108 Stat. 366.)

REFERENCES IN TEXT

The Fair Housing Act, referred to in subsec. (d)(2)(K), is title VIII of Pub. L. 90-284, Apr. 11, 1968, 82 Stat. 81, as amended, which is classified principally to subchapter I (§3601 et seq.) of chapter 45 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

The Civil Rights Act of 1964, referred to in subsec. (d)(2)(K), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Act is classified generally to subchapter V (§2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

The Age Discrimination Act of 1975, referred to in subsec. (d)(2)(K), is title III of Pub. L. 94-135, Nov. 28, 1975, 89 Stat. 728, as amended, which is classified generally to chapter 76 (§6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

AMENDMENTS

1994—Subsec. (c)(1). Pub. L. 103-233 substituted “25 percent” for “33 percent”.

1992—Subsec. (b)(4) to (11). Pub. L. 102-550 added par. (4) and redesignated former pars. (4) to (10) as (5) to (11), respectively.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-233 applicable with respect to any amounts made available to carry out subchapter II (§12721 et seq.) of this chapter after Apr. 11, 1994, and any amounts made available to carry out that subchapter before that date that remain uncommitted on that date, with Secretary to issue any regulations necessary to carry out such amendment not later than end of 45-day period beginning on that date, see section 209 of Pub. L. 103-233, set out as a note under section 5301 of this title.

§ 12894. Homeownership program requirements

(a) In general

A homeownership program under this part shall provide for acquisition by eligible families of ownership interests in, or shares representing, units in an eligible property under any arrangement determined by the Secretary to be appropriate, such as cooperative ownership (including limited equity cooperative ownership) and fee simple ownership (including condominium ownership), for occupancy by the eligible families.

(b) Affordability

A homeownership program under this part shall provide for the establishment of sales prices (including principal, insurance, taxes, and interest and closing costs) for initial acquisition

of the property, and for sales to eligible families, such that the eligible family shall not be required to expend more than 30 percent of the adjusted income of the family per month to complete a sale under the homeownership program.

(c) Eligible property

A property may not participate in a homeownership program under this part unless all tenants or occupants of the property (at the time of¹ the application for the implementation grant covering the property is filed with the Secretary) participate in the homeownership program.

(d) Plan

A homeownership program under this part shall provide, and include a plan, for—

- (1) identifying and selecting eligible families to participate in the homeownership program;
- (2) providing relocation assistance to families who elect to move; and
- (3) ensuring continued affordability of the property to homebuyers and homeowners.

(e) Housing quality standards

The application shall include a plan ensuring that the unit—

- (1) will be free from any defects that pose a danger to health or safety before transfer of an ownership interest in, or shares representing, a unit to an eligible family; and
- (2) will, not later than 2 years after the transfer to an eligible family, meet minimum housing standards established by the Secretary for the purpose of this title.²

(f) Preference for acquisition of vacant units

Each homeownership program under this part shall provide that, in making vacant units in eligible properties available for acquisition by eligible families, preference shall be given to eligible families who reside in public or Indian housing.

(Pub. L. 101-625, title IV, §444, Nov. 28, 1990, 104 Stat. 4176; Pub. L. 102-550, title I, §181(f), Oct. 28, 1992, 106 Stat. 3736.)

REFERENCES IN TEXT

This title, referred to in subsec. (e)(2), is title IV of Pub. L. 101-625, Nov. 28, 1990, 104 Stat. 4148, known as the Homeownership and Opportunity Through HOPE Act, which enacted this subchapter and subchapter II-A (§1437aaa et seq.) of chapter 8 of this title, amended sections 1437c, 1437f, 1437i, 1437p, 1437r, and 1437s of this title and section 1709 of Title 12, Banks and Banking, and enacted provisions set out as notes under sections 1437c, 1437aa, and 1437aaa of this title. For complete classification of title IV to the Code, see Short Title note set out under section 1437aaa of this title and Tables.

AMENDMENTS

1992—Subsec. (f). Pub. L. 102-550 added subsec. (f).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12893 of this title.

¹ So in original. The word “of” probably should not appear.

² So in original. See References in Text note below.

§ 12895. Other program requirements**(a) Cost limitations**

The Secretary may establish cost limitations on eligible activities under this part, subject to the provisions of this part.

(b) Use of proceeds from sales to eligible families

Any entity that transfers ownership interests in, or shares representing, units to eligible families, or another entity specified in the approved application, may use the proceeds, if any, from the initial sale for costs of the homeownership program, including operating expenses, improvements to the project, business opportunities for low-income families, supportive services related to the homeownership program, additional homeownership opportunities, and other activities approved by the Secretary.

(c) Restrictions on resale by homeowners**(1) In general****(A) Transfer permitted**

A homeowner under a homeownership program may transfer the homeowner's ownership interest in, or shares representing, the unit, except that a homeownership program may establish restrictions on the resale of units under the program.

(B) Right to purchase

Where a resident management corporation, resident council, or cooperative has jurisdiction over the unit, the corporation, council, or cooperative shall have the right to purchase the ownership interest in, or shares representing, the unit from the homeowner for the amount specified in a firm contract between the homeowner and a prospective buyer. If such an entity does not have jurisdiction over the unit or elects not to purchase and if the prospective buyer is not a low-income family, the public housing agency or the implementation grant recipient shall have the right to purchase the ownership interest in, or shares representing, the unit for the same amount.

(C) Promissory note required

The homeowner shall execute a promissory note equal to the difference between the market value and the purchase price, payable to the public housing agency or other entity designated in the homeownership plan, together with a mortgage securing the obligation of the note.

(2) 6 years or less

In the case of a transfer within 6 years of the acquisition under the program, the homeownership program shall provide for appropriate restrictions to assure that an eligible family may not receive any undue profit. The plan shall provide for limiting the family's consideration for its interest in the property to the total of—

(A) the contribution to equity paid by the family;

(B) the value, as determined by such means as the Secretary shall determine through regulation, of any improvements installed at the expense of the family during the family's tenure as owner; and

(C) the appreciated value determined by an inflation allowance at a rate which may be based on a cost-of-living index, an income index, or market index as determined by the Secretary through regulation and agreed to by the purchaser and the entity that transfers ownership interests in, or shares representing, units to eligible families (or another entity specified in the approved application), at the time of initial sale, and applied against the contribution to equity.

Such an entity may, at the time of initial sale, enter into an agreement with the family to set a maximum amount which this appreciation may not exceed.

(3) 6–20 years

In the case of a transfer during the period beginning 6 years after the acquisition and ending 20 years after the acquisition, the homeownership program shall provide for the recapture by the Secretary or the program of an amount equal to the amount of the declining balance on the note described in paragraph (1)(C).

(4) Use of recaptured funds

Fifty percent of any portion of the net sales proceeds that may not be retained by the homeowner under the plan approved pursuant to this subsection shall be paid to the entity that transferred ownership interests in, or shares representing, units to eligible families, or another entity specified in the approved application, for use for improvements to the project, business opportunities for low-income families, supportive services related to the homeownership program, additional homeownership opportunities, and other activities approved by the Secretary. The remaining 50 percent shall be returned to the Secretary for use under this part, subject to limitations contained in appropriations Acts. Such entity shall keep and make available to the Secretary all records necessary to calculate accurately payments due the Secretary under this subsection.

(d) Third party rights

The requirements under this part regarding quality standards, resale, or transfer of the ownership interest of a homeowner shall be judicially enforceable against the grant recipient with respect to actions involving rehabilitation, and against purchasers of property under this subsection or their successors in interest with respect to other actions by affected low-income families, resident management corporations, resident councils, public housing agencies, and any agency, corporation, or authority of the United States Government. The parties specified in the preceding sentence shall be entitled to reasonable attorney fees upon prevailing in any such judicial action.

(e) Protection of nonpurchasing families

No tenant residing in a dwelling unit in a property on the date the Secretary approves an application for an implementation grant may be evicted by reason of a homeownership program approved under this part.

(h)¹ Records and audit of recipients of assistance**(1) In general**

Each recipient shall keep such records as may be reasonably necessary to fully disclose the amount and the disposition by such recipient of the proceeds of assistance received under this part (and any proceeds from financing obtained or sales under subsections (b) and (c) of this section), the total cost of the homeownership program in connection with which such assistance is given or used, and the amount and nature of that portion of the program supplied by other sources, and such other sources as will facilitate an effective audit.

(2) Access by Secretary

The Secretary shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient that are pertinent to assistance received under this part.

(3) Access by Comptroller General

The Comptroller General of the United States, or any of the duly authorized representatives of the Comptroller General, shall also have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient that are pertinent to assistance received under this part.

(Pub. L. 101-625, title IV, § 445, Nov. 28, 1990, 104 Stat. 4177.)

§ 12896. Definitions

For purposes of this part:

(1) The term “applicant” means a private nonprofit organization, cooperative association, or a public agency (including an agency or instrumentality thereof) in cooperation with a private nonprofit organization.

(2) The term “displaced homemaker” has the same meaning as in section 12704 of this title.

(3) The term “eligible family” means a family or individual who—

(A) has an income that does not exceed 80 percent of the median income for the area, as determined by the Secretary with adjustments for smaller and larger families; and

(B) is a first-time homebuyer.

(4) The term “eligible property” means a single family property, containing no more than four units, that is owned or held by the Secretary, the Secretary of Veterans Affairs, the Secretary of Agriculture, the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, the Secretary of Defense, the Secretary of Transportation, the General Services Administration, any other Federal agency, a State or local government (including any in rem property), or a public housing agency or an Indian housing authority (excluding public or Indian housing under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] and including properties held by institutions within the jurisdiction of the Resolution Trust Corporation).

(5) The term “first-time homebuyer” has the same meaning as in section 12704 of this title.

(6) The term “homeownership program” means a program for homeownership under this part.

(7) The term “Indian housing authority” has the meaning given such term in section 3(b)(11)¹ of the United States Housing Act of 1937.

(8) The term “low-income family” has the meaning given such term in section 3(b)(2) of the United States Housing Act of 1937 [42 U.S.C. 1437a(b)(2)].

(9) The term “public housing agency” has the meaning given such term in section 3(b)(6) of the United States Housing Act of 1937 [42 U.S.C. 1437a(b)(6)].

(10) The term “recipient” means an applicant approved to receive a grant under this part or such other entity specified in the approved application that will assume the obligations of the recipient under this part.

(11) The term “Secretary” means the Secretary of Housing and Urban Development.

(12) The term “single parent” means an individual who—

(A) is unmarried or legally separated from a spouse; and

(B)(i) has 1 or more minor children for whom the individual has custody or joint custody; or

(ii) is pregnant.

(Pub. L. 101-625, title IV, § 446, Nov. 28, 1990, 104 Stat. 4179; Pub. L. 102-550, title I, § 181(g)(2), (h), Oct. 28, 1992, 106 Stat. 3736.)

REFERENCES IN TEXT

The United States Housing Act of 1937, referred to in par. (4), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93-383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653, and amended, which is classified generally to chapter 8 (§ 1437 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of this title and Tables.

Section 3(b)(11) of the United States Housing Act of 1937, referred to in par. (7), was classified to section 1437a(b)(11) of this title prior to repeal by Pub. L. 104-330, title V, § 501(b)(1)(D), Oct. 26, 1996, 110 Stat. 4041, and a new section 1437a(b)(11), defining “public housing agency plan”, was enacted by Pub. L. 105-276, title V, § 506(4), Oct. 21, 1998, 112 Stat. 2524.

AMENDMENTS

1992—Par. (4). Pub. L. 102-550 inserted “the Federal Deposit Insurance Corporation, the Secretary of Defense, the Secretary of Transportation, the General Services Administration, any other Federal agency,” after “Corporation,” and substituted “(excluding public or Indian housing under the United States Housing Act of 1937 and including” for “(including scattered site single family properties, and”.

§ 12897. Limitation on selection criteria

In establishing criteria for selecting applicants to receive assistance under this part, the Secretary may not establish any selection criterion or criteria that grant or deny such assistance to an applicant (or have the effect of granting or denying assistance) based on the implementation, continuation, or discontinuation of any public policy, regulation, or law of any ju-

¹ So in original. Probably should be “(f)”.

¹ See References in Text note below.

isdiction in which the applicant or project is located.

(Pub. L. 101-625, title IV, § 447, Nov. 28, 1990, 104 Stat. 4180.)

§ 12898. Implementation

Not later than the expiration of the 180-day period beginning on the date funds authorized under this part first become available for obligation, the Secretary shall by notice establish such requirements as may be necessary to carry out the provisions of this part. Such requirements shall be subject to section 553 of title 5. The Secretary shall issue regulations based on the initial notice before the expiration of the 8-month period beginning on the date of the notice.

(Pub. L. 101-625, title IV, § 448, Nov. 28, 1990, 104 Stat. 4180.)

§ 12898a. Enterprise zone homeownership opportunity grants

(a) Statement of purpose

It is the purpose of this section—

(1) to encourage homeownership by families in the United States who are not otherwise able to afford homeownership;

(2) to encourage the redevelopment of economically depressed areas; and

(3) to provide better housing opportunities in federally approved and equivalent State-approved enterprise zones.

(b) Definitions

For purposes of this section the following definitions shall apply:

(1) Home

The term “home” means any 1- to 4-family dwelling. Such term includes any dwelling unit in a condominium project or cooperative project consisting of not more than 4 dwelling units, any town house, and any manufactured home.

(2) Metropolitan statistical area

The term “metropolitan statistical area” means a metropolitan statistical area as established by the Office of Management and Budget.

(3) Nonprofit organization

The term “nonprofit organization” means a private nonprofit corporation, or other private nonprofit legal entity, that is approved by the Secretary as to financial responsibility.

(4) Secretary

The term “Secretary” means the Secretary of Housing and Urban Development.

(5) State

The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

(6) Unit of general local government

The term “unit of general local government” means any borough, city, county, par-

ish, town, township, village, or other general purpose political subdivision of a State.

(c) Assistance to nonprofit organizations

(1) In general

The Secretary may provide assistance to nonprofit organizations to carry out enterprise zone homeownership opportunity programs to promote homeownership in federally approved and equivalent State-approved enterprise zones in accordance with the provisions of this section. Such assistance shall be made in the form of grants.

(2) Applications

Applications for assistance under this section shall be made in such form, and in accordance with such procedures, as the Secretary may prescribe.

(d) Eligible uses of assistance

(1) In general

Any nonprofit organization receiving assistance under this section shall use such assistance to provide loans to families purchasing homes constructed or rehabilitated in accordance with an enterprise zone homeownership opportunity program approved under this section.

(2) Specific requirements

Each loan made to a family under this subsection shall—

(A) be secured by a second mortgage held by the Secretary on the property involved;

(B) be in an amount not exceeding \$15,000;

(C) bear no interest; and

(D) be repayable to the Secretary upon the sales, lease, or other transfer of such property.

(e) Program requirements

(1) In general

Assistance provided under this section may be used only in connection with an enterprise zone homeownership opportunity program of construction or rehabilitation of homes.

(2) Family need

Each family purchasing a home under this section shall—

(A) have a family income on the date of such purchase that is not more than the median income for a family of 4 persons (adjusted for family size) in the metropolitan statistical area in which a federally approved or equivalent State-approved enterprise zone is located; and

(B) not have owned a home during the 3-year period preceding such purchase.

(3) Downpayment

Each family purchasing a home under this section shall make a downpayment of not less than 5 percent of the sale price of such home.

(4) Leasing prohibition

No family purchasing a home under this section may lease such home.

(f) Terms and conditions of assistance

(1) Local consultation

No proposed enterprise zone homeownership opportunity program may be approved by the

Secretary under this section unless the applicant involved demonstrates to the satisfaction of the Secretary that—

(A) it has consulted with and received the support of residents of the neighborhood in which such program is to be located; and

(B) it has the approval of each unit of general local government in which such program is to be located.

(2) Program schedule

Each applicant for assistance under this section shall submit to the Secretary an estimated schedule for completion of its proposed enterprise zone homeownership opportunity program, which schedule shall have been agreed to by each unit of general local government in which such program is to be located.

(3) Location

All homes constructed or rehabilitated under such program will be located in federally approved or equivalent State-approved enterprise zones.

(4) Sales contracts

Sales contracts entered into under such program will contain provisions requiring repayment of any loan made under this section upon the sale or other transfer of the home involved, unless the Secretary approves a transfer of such home without repayment (in which case the second mortgage held by the Secretary on such home shall remain in force until such loan is fully repaid).

(g) Program selection criteria

(1) In general

In selecting enterprise zone homeownership opportunity programs for assistance under this section from among eligible programs, the Secretary shall make such selection on the basis of the extent to which—

(A) non-Federal public or private entities will contribute land necessary to make each program feasible;

(B) non-Federal public and private financial or other contributions (including tax abatements, waivers of fees related to development, waivers of construction, development, or zoning requirements, and direct financial contributions) will reduce the cost of home¹ constructed or rehabilitated under each program;

(C) each program will produce the greatest number of units for the least amount of assistance provided under this section, taking into consideration the cost differences among different market areas; and

(D) each program provides for the involvement of local residents in the planning, and construction or rehabilitation, of homes.

(2) Exception

To the extent that non-Federal public entities are prohibited by the law of any State from making any form of contribution described in subparagraph (A) or (B) of paragraph (1), the Secretary shall not consider such form of contribution in evaluating such program.

¹ So in original. Probably should be "homes".

(h) Regulations

Not later than 180 days after October 28, 1992, the Secretary shall issue final regulations to carry out the provisions of this title.² Any such regulations shall be issued in accordance with section 553 of title 5, notwithstanding the provisions of subsection (a)(2) of such section.

(i) Funding

There are authorized to be appropriated to carry out this section \$30,000,000 in each of fiscal years 1993 and 1994.

(Pub. L. 102-550, title I, §186, Oct. 28, 1992, 106 Stat. 3748.)

CODIFICATION

Section was enacted as part of the Housing and Community Development Act of 1992, and not as part of subtitle C (§§441-448) of title IV of Pub. L. 101-625 which comprises this part.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

PART C—HOPE FOR YOUTH: YOUTHBUILD

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 12870 of this title; title 12 section 1701u; title 25 section 4183.

§ 12899. Statement of purpose

It is the purpose of this part—

(1) to expand the supply of permanent affordable housing for homeless individuals and members of low- and very low-income families by utilizing the energies and talents of economically disadvantaged young adults;

(2) to provide economically disadvantaged young adults with opportunities for meaningful work and service to their communities in helping to meet the housing needs of homeless individuals and members of low- and very low-income families;

(3) to enable economically disadvantaged young adults to obtain the education and employment skills necessary to achieve economic self-sufficiency; and

(4) to foster the development of leadership skills and commitment to community development among young adults in low-income communities.

(Pub. L. 101-625, title IV, §451, as added Pub. L. 102-550, title I, §164, Oct. 28, 1992, 106 Stat. 3723.)

§ 12899a. Program authority

The Secretary may make—

(1) planning grants to enable applicants to develop Youthbuild programs; and

(2) implementation grants to enable applicants to carry out Youthbuild programs.

(Pub. L. 101-625, title IV, §452, as added Pub. L. 102-550, title I, §164, Oct. 28, 1992, 106 Stat. 3723.)

§ 12899b. Planning grants

(a) Grants

The Secretary is authorized to make planning grants to applicants for the purpose of develop-

² So in original. Probably should be "this section."

ing Youthbuild programs under this part. The amount of a planning grant under this section may not exceed \$150,000, except that the Secretary may for good cause approve a grant in a higher amount.

(b) Eligible activities

Planning grants may be used for activities to develop Youthbuild programs including—

- (1) studies of the feasibility of a Youthbuild program;
- (2) establishment of consortia between youth training and education programs and housing owners or developers, including any organizations specified in section 12899(2) of this title, which will participate in the Youthbuild program;
- (3) identification and selection of a site for the Youthbuild program;
- (4) preliminary architectural and engineering work for the Youthbuild program;
- (5) identification and training of staff for the Youthbuild program;
- (6) planning for education, job training, and other services that will be provided as part of the Youthbuild program;
- (7) other planning, training, or technical assistance necessary in advance of commencing the Youthbuild program; and
- (8) preparation of an application for an implementation grant under this part.

(c) Application

(1) Form and procedures

An application for a planning grant shall be submitted by an applicant in such form and in accordance with such procedures as the Secretary shall establish.

(2) Minimum requirements

The Secretary shall require that an application contain at a minimum—

- (A) a request for a planning grant, specifying the activities proposed to be carried out, the schedule for completing the activities, the personnel necessary to complete the activities, and the amount of the grant requested;
- (B) a description of the applicant and a statement of its qualifications, including a description of the applicant's past experience with housing rehabilitation or construction and with youth and youth education and employment training programs, and its relationship with local unions and apprenticeship programs, and other community groups;
- (C) identification and description of potential sites for the program and the construction or rehabilitation activities that would be undertaken at such sites; potential methods for identifying and recruiting youth participants; potential educational and job training activities, work opportunities and other services for participants; and potential coordination with other Federal, State, and local housing and youth education and employment training activities including activities conducted by Indian tribes;
- (D) a certification by the public official responsible for submitting the comprehensive housing affordability strategy under section

12705 of this title that the proposed activities are consistent with the approved housing strategy of the State or unit of general local government within which the project is located; and

(E) a certification that the applicant will comply with the requirements of the Fair Housing Act [42 U.S.C. 3601 et seq.], title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], and the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], and will affirmatively further fair housing.

(d) Selection criteria

The Secretary shall, by regulation, establish selection criteria for a national competition for assistance under this section, which shall include—

- (1) the qualifications or potential capabilities of the applicant;
- (2) the potential of the applicant for developing a successful and affordable Youthbuild program;
- (3) the need for the prospective program, as determined by the degree of economic distress—

(A) of the community from which participants would be recruited (such as poverty, youth unemployment, and number of individuals who have dropped out of high school); and

(B) of the community in which the housing proposed to be constructed or rehabilitated would be located (such as incidence of homelessness, shortage of affordable housing, and poverty); and

- (4) such other factors that the Secretary shall require that (in the determination of the Secretary) are appropriate for purposes of carrying out the program established by this part in an effective and efficient manner.

(Pub. L. 101-625, title IV, § 453, as added Pub. L. 102-550, title I, § 164, Oct. 28, 1992, 106 Stat. 3723.)

REFERENCES IN TEXT

The Fair Housing Act, referred to in subsec. (c)(2)(E), is title VIII of Pub. L. 90-284, Apr. 11, 1968, 82 Stat. 81, as amended, which is classified principally to subchapter I (§3601 et seq.) of chapter 45 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

The Civil Rights Act of 1964, referred to in subsec. (c)(2)(E), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Act is classified generally to subchapter V (§2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

The Age Discrimination Act of 1975, referred to in subsec. (c)(2)(E), is title III of Pub. L. 94-135, Nov. 28, 1975, 89 Stat. 728, as amended, which is classified generally to chapter 76 (§6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

§ 12899c. Implementation grants

(a) Grants

The Secretary is authorized to make implementation grants to applicants for the purpose

of carrying out Youthbuild programs approved under this part.

(b) Eligible activities

Implementation grants may be used to carry out Youthbuild programs, including the following activities:

(1) Architectural and engineering work.

(2) Acquisition, rehabilitation, acquisition and rehabilitation, or construction of housing and related facilities to be used for the purposes of providing homeownership under part A and part B of this subchapter, residential housing for homeless individuals, and low- and very low-income families, or transitional housing for persons who are homeless, have disabilities, are ill, are deinstitutionalized, or have other special needs.

(3) Administrative costs of the applicant, which may not exceed 15 percent of the amount of assistance provided under this section, or such higher percentage as the Secretary determines is necessary to support capacity development by a private nonprofit organization.

(4) Education and job training services and activities including—

(A) work experience and skills training, coordinated, to the maximum extent feasible, with preapprenticeship and apprenticeship programs, in the construction and rehabilitation activities described in subsection (b)(2) of this section;

(B) services and activities designed to meet the educational needs of participants, including—

(i) basic skills instruction and remedial education;

(ii) bilingual education for individuals with limited-English proficiency;

(iii) secondary education services and activities designed to lead to the attainment of a high school diploma or its equivalent; and

(iv) counseling and assistance in attaining post-secondary education and required financial aid;

(C) counseling services and related activities;

(D) activities designed to develop employment and leadership skills, including support for youth councils; and

(E) support services and need-based stipends necessary to enable individuals to participate in the program and, for a period not to exceed 12 months after completion of training, to assist participants through support services in retaining employment.

(5) Wage stipends and benefits provided to participants.

(6) Funding of operating expenses and replacement reserves of the property covered by the Youthbuild program.

(7) Legal fees.

(8) Defraying costs for the ongoing training and technical assistance needs of the recipient that are related to developing and carrying out the Youthbuild program.

(c) Application

(1) Form and procedure

An application for an implementation grant shall be submitted by an applicant in such

form and in accordance with such procedures as the Secretary shall establish.

(2) Minimum requirements

The Secretary shall require that an application contain at a minimum—

(A) a request for an implementation grant, specifying the amount of the grant requested and its proposed uses;

(B) a description of the applicant and a statement of its qualifications, including a description of the applicant's past experience with housing rehabilitation or construction and with youth and youth education and employment training programs, and its relationship with local unions and apprenticeship programs, and other community groups;

(C) a description of the proposed site for the program;

(D) a description of the educational and job training activities, work opportunities, and other services that will be provided to participants;

(E) a description of the proposed construction or rehabilitation activities to be undertaken and the anticipated schedule for carrying out such activities;

(F) a description of the manner in which eligible youths will be recruited and selected, including a description of arrangements which will be made with community-based organizations, State and local educational agencies, including agencies of Indian tribes, public assistance agencies, the courts of jurisdiction for status and youth offenders, shelters for homeless individuals and other agencies that serve homeless youth, foster care agencies, and other appropriate public and private agencies;

(G) a description of the special outreach efforts that will be undertaken to recruit eligible young women (including young women with dependent children);

(H) a description of how the proposed program will be coordinated with other Federal, State, and local activities and activities conducted by Indian tribes, including vocational, adult and bilingual education programs, job training provided with funds available under title I of the Workforce Investment Act of 1998 [29 U.S.C. 2801 et seq.] and the Family Support Act of 1988, and housing and community development programs, including programs that receive assistance under section 5306 of this title;

(I) assurances that there will be a sufficient number of adequately trained supervisory personnel in the program who have attained the level of journeyman or its equivalent;

(J) a description of the applicant's relationship with local building trade unions regarding their involvement in training, and the relationship of the Youthbuild program with established apprenticeship programs;

(K) a description of activities that will be undertaken to develop the leadership skills of participants;

(L) a detailed budget and a description of the system of fiscal controls and auditing

and accountability procedures that will be used to ensure fiscal soundness;

(M) a description of the commitments for any additional resources to be made available to the program from the applicant, from recipients of other Federal, State or local housing and community development assistance who will sponsor any part of the construction, rehabilitation, operation and maintenance, or other housing and community development activities undertaken as part of the program, or from other Federal, State or local activities and activities conducted by Indian tribes, including, but not limited to, vocational, adult and bilingual education programs, and job training provided with funds available under title I of the Workforce Investment Act of 1998 [29 U.S.C. 2801 et seq.] and the Family Support Act of 1988;

(N) identification and description of the financing proposed for any—

- (i) rehabilitation;
- (ii) acquisition of the property; or
- (iii) construction;

(O) identification and description of the entity that will operate and manage the property;

(P) a certification by the public official responsible for submitting the comprehensive housing affordability strategy under section 12705 of this title that the proposed activities are consistent with the approved housing strategy of the State or unit of general local government within which the project is located; and

(Q) a certification that the applicant will comply with the requirements of the Fair Housing Act [42 U.S.C. 3601 et seq.], title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], and the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], and will affirmatively further fair housing.

(d) Selection criteria

The Secretary shall establish selection criteria for assistance under this section, which shall include—

- (1) the qualifications or potential capabilities of the applicant;
- (2) the feasibility of the Youthbuild program;
- (3) the potential for developing a successful Youthbuild program;
- (4) the need for the prospective project, as determined by the degree of economic distress of the community from which participants would be recruited (such as poverty, youth unemployment, number of individuals who have dropped out of high school) and of the community in which the housing proposed to be constructed or rehabilitated would be located (such as incidence of homelessness, shortage of affordable housing, poverty);
- (5) the apparent commitment of the applicant to leadership development, education, and training of participants;
- (6) the inclusion of previously homeless tenants in the housing provided;

(7) the commitment of other resources to the program by the applicant and by recipients of other Federal, State or local housing and community development assistance who will sponsor any part of the construction, rehabilitation, operation and maintenance, or other housing and community development activities undertaken as part of the program, or by other Federal, State or local activities and activities conducted by Indian tribes, including, but not limited to, vocational, adult and bilingual education programs, and job training provided with funds available under title I of the Workforce Investment Act of 1998 [29 U.S.C. 2801 et seq.] and the Family Support Act of 1988; and

(8) such other factors as the Secretary determines to be appropriate for purposes of carrying out the program established by this part in an effective and efficient manner.

(e) Priority for applicants who obtain housing money from other sources

The Secretary shall give priority in the award of grants under this section to applicants to the extent that they propose to finance activities described in paragraphs (1), (2), and (6) of subsection (b) of this section from funds provided from Federal, State, local, or private sources other than assistance under this part.

(f) Approval

The Secretary shall notify each applicant, not later than 4 months after the date of the submission of the application, whether the application is approved or not approved.

(g) Combined planning and implementation grant application procedure

The Secretary shall develop a procedure under which an applicant may apply at the same time and in a single application for a planning grant and an implementation grant, with receipt of the implementation grant conditioned on successful completion of the activities funded by the planning grant.

(Pub. L. 101-625, title IV, § 454, as added Pub. L. 102-550, title I, § 164, Oct. 28, 1992, 106 Stat. 3725; amended Pub. L. 105-277, div. A, § 101(f) [title VIII, § 405(d)(43)(A), (f)(34)], Oct. 21, 1998, 112 Stat. 2681-337, 2681-428, 2681-434.)

REFERENCES IN TEXT

The Workforce Investment Act of 1998, referred to in subsecs. (c)(2)(H), (M) and (d)(7), is Pub. L. 105-220, Aug. 7, 1998, 112 Stat. 936, as amended. Title I of the Act is classified principally to chapter 30 (§ 2801 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

The Family Support Act of 1988, referred to in subsecs. (c)(2)(H), (M) and (d)(7), is Pub. L. 100-485, Oct. 13, 1988, 102 Stat. 2343, as amended. For complete classification of this Act to the Code, see Short Title of 1988 Amendment note under section 1305 of this title and Tables.

The Fair Housing Act, referred to in subsec. (c)(2)(Q), is title VIII of Pub. L. 90-284, Apr. 11, 1968, 82 Stat. 81, as amended, which is classified principally to subchapter I (§ 3601 et seq.) of chapter 45 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

The Civil Rights Act of 1964, referred to in subsec. (c)(2)(Q), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as

amended. Title VI of the Act is classified generally to subchapter V (§2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

The Age Discrimination Act of 1975, referred to in subsec. (c)(2)(Q), is title III of Pub. L. 94-135, Nov. 28, 1975, 89 Stat. 728, as amended, which is classified generally to chapter 76 (§6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

AMENDMENTS

1998—Subsecs. (c)(2)(H), (M), (d)(7). Pub. L. 105-277, §101(f) [title VIII, §405(f)(34)], struck out “the Job Training Partnership Act and” before “title I of the Workforce”.

Pub. L. 105-277, §101(f) [title VIII, §405(d)(43)(A)], substituted “the Job Training Partnership Act and title I of the Workforce Investment Act of 1998” for “the Job Training Partnership Act”.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 101(f) [title VIII, §405(d)(43)(A)] of Pub. L. 105-277 effective Oct. 21, 1998, and amendment by section 101(f) [title VIII, §405(f)(34)] of Pub. L. 105-277 effective July 1, 2000, see section 101(f) [title VIII, §405(g)(1), (2)(B)] of Pub. L. 105-277, set out as a note under section 3502 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12899e of this title.

§ 12899d. Youthbuild program requirements

(a) Residential rental housing

Each residential rental housing project receiving assistance under this part shall meet the following requirements:

(1) Occupancy by low- and very low-income families

In the project—

(A) at least 90 percent of the units shall be occupied, or available for occupancy, by individuals and families with incomes less than 60 percent of the area median income, adjusted for family size; and

(B) the remaining units shall be occupied, or available for occupancy, by low-income families.

(2) Tenant protections

(A) Lease

The lease between a tenant and an owner of residential rental housing assisted under this part shall be for not less than 1 year, unless otherwise mutually agreed to by the tenant and the owner, and shall contain such terms and conditions as the Secretary shall determine to be appropriate.

(B) Termination of tenancy

An owner shall not terminate the tenancy or refuse to renew the lease of a tenant of residential rental housing assisted under this title¹ except for serious or repeated violation of the terms and conditions of the lease, for violation of applicable Federal, State, or local law, or for other good cause.

Any termination or refusal to renew must be preceded by not less than 30 days by the owner’s service upon the tenant of a written notice specifying the grounds for the action.

(C) Maintenance and replacement

The owner of residential rental housing assisted under this part shall maintain the premises in compliance with all applicable housing quality standards and local code requirements.

(D) Tenant selection

The owner of residential rental housing assisted under this part shall adopt written tenant selection policies and criteria that—

(i) are consistent with the purpose of providing housing for very low-income and low-income families and individuals;

(ii) are reasonably related to program eligibility and the applicant’s ability to perform the obligations of the lease;

(iii) give reasonable consideration to the housing needs of families that would qualify for a preference under any system of preferences established under section 1437d(c)(1) of this title; and

(iv) provide for (I) the selection of tenants from a written waiting list in the chronological order of their application, to the extent practicable, and (II) for the prompt notification in writing of any rejected applicant of the grounds for any rejection.

(3) Limitation on rental payments

Tenants in each project shall not be required to pay rent in excess of the amount provided under section 1437a(a) of this title.

(4) Tenant participation plan

For each project owned by a nonprofit organization, the organization shall provide a plan for and follow a program of tenant participation in management decisions.

(5) Prohibition against discrimination

A unit in a project assisted under this part may not be refused for leasing to a family holding tenant-based assistance under section 1437f of this title because of the status of the prospective tenant as a holder of such assistance.

(b) Transitional housing

Each transitional housing project receiving assistance under this part shall adhere to the requirements regarding service delivery, housing standards, and rent limitations applicable to comparable housing receiving assistance under title IV of the McKinney-Vento Homeless Assistance Act [42 U.S.C. 11361 et seq.].

(c) Limitations on profits for rental and transitional housing

(1) Monthly rental limitation

The aggregate monthly rental for each eligible project may not exceed the operating costs of the project (including debt service, management, adequate reserves, and other operating costs) plus a 6 percent return on any equity investment of the project owner.

(2) Profit limitations on partners

A nonprofit organization that receives assistance under this part for a project shall

¹ See References in Text note below.

agree to use any profit received from the operation, sale, or other disposition of the project for the purpose of providing housing for low- and moderate-income families. Profit-motivated partners in a nonprofit partnership may receive—

(A) not more than a 6 percent return on their equity investment from project operations; and

(B) upon disposition of the project, not more than an amount equal to their initial equity investment plus a return on that investment equal to the increase in the Consumer Price Index for the geographic location of the project since the time of the initial investment of such partner in the project.

(d) Homeownership

Each homeownership project that receives assistance under this part shall comply with the requirements of part A or part B of this subchapter.

(e) Restrictions on conveyance

The ownership interest in a project that receives assistance under this part may not be conveyed unless the instrument of conveyance requires a subsequent owner to comply with the same restrictions imposed upon the original owner.

(f) Conversion of transitional housing

The Secretary may waive the requirements of subsection (b) of this section to permit the conversion of a transitional housing project to a permanent housing project only if such housing would meet the requirements for residential rental housing specified in this section.

(g) Period of restrictions

A project that receives assistance under this part shall comply with the requirements of this section for the remaining useful life of the property.

(Pub. L. 101-625, title IV, §455, as added Pub. L. 102-550, title I, §164, Oct. 28, 1992, 106 Stat. 3728; amended Pub. L. 105-276, title V, §514(a)(2)(B), Oct. 21, 1998, 112 Stat. 2547; Pub. L. 106-400, §2, Oct. 30, 2000, 114 Stat. 1675.)

REFERENCES IN TEXT

This title, referred to in subsec. (a)(2)(B), means title IV of Pub. L. 101-625, known as the Homeownership and Opportunity Through HOPE Act, and probably should have been “this subtitle”, meaning subtitle D of title IV of Pub. L. 101-625, as added by Pub. L. 102-550, which is classified generally to this part. For complete classification of title IV of Pub. L. 101-625 to the Code, see Short Title note set out under section 1437aaa of this title and Tables.

The McKinney-Vento Homeless Assistance Act, referred to in subsec. (b), is Pub. L. 100-77, July 22, 1987, 101 Stat. 482, as amended. Title IV of the Act is classified principally to subchapter IV (§11361 et seq.) of chapter 119 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of this title and Tables.

AMENDMENTS

2000—Subsec. (b). Pub. L. 106-400 substituted “McKinney-Vento Homeless Assistance Act” for “Stewart B. McKinney Homeless Assistance Act”.

1998—Subsec. (a)(2)(D)(iii). Pub. L. 105-276 substituted “any system of preferences established under section

1437d(c)(1) of this title” for “section 1437d(c)(4)(A) of this title”.

§ 12899e. Additional program requirements

(a) Eligible participants

(1) In general

Except as provided in paragraph (2), an individual may participate in a Youthbuild program receiving assistance under this part only if such individual is—

(A) 16 to 24 years of age, inclusive;

(B) a very low-income individual or a member of a very low-income family; and

(C) an individual who has dropped out of high school.

(2) Exception for individuals not meeting income or educational need requirements

Not more than 25 percent of the participants in such program may be individuals who do not meet the requirements of either paragraphs¹ (1)(B) or (C), but who have educational needs despite attainment of a high school diploma or its equivalent.

(3) Participation limitation

Any eligible individual selected for full-time participation in a Youthbuild program may be offered full-time participation for a period of not less than 6 months and not more than 24 months.

(b) Minimum time devoted to educational services and activities

A Youthbuild program receiving assistance under this part shall be structured so that 50 percent of the time spent by participants in the program is devoted to educational services and activities, such as those specified in subparagraphs (B) through (F)² of section 12899c(b)(4) of this title.

(c) Authority restriction

No provision of this part may be construed to authorize any agency, officer, or employee of the United States to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution, school, or school system, or over the selection of library resources, textbooks, or other printed or published instructional materials by any educational institution or school system.

(d) State and local standards

All educational programs and activities supported with funds provided under this part shall be consistent with applicable State and local educational standards. Standards and procedures with respect to the awarding of academic credit and certifying educational attainment in such programs shall be consistent with applicable State and local educational standards.

(e) Wages, labor standards, and nondiscrimination

To the extent consistent with the provisions of this part, sections 142, 143 and 167 of the Job

¹ So in original. Probably should be “paragraph”.

² So in original. Section 12899c(b)(4) of this title does not contain a subpar. (F).

Training Partnership Act (as in effect on the day before August 7, 1998), relating to wages and benefits, labor standards, and nondiscrimination, shall apply to the programs conducted under this part as if such programs were conducted under the Job Training Partnership Act (as in effect on the day before August 7, 1998). This section may not be construed to prevent a recipient of a grant under this part from using funds from non-Federal sources to increase wages and benefits under such programs, if appropriate.

(Pub. L. 101-625, title IV, §456, as added Pub. L. 102-550, title I, §164, Oct. 28, 1992, 106 Stat. 3730; amended Pub. L. 105-277, div. A, §101(f) [title VIII, §405(d)(43)(B)], Oct. 21, 1998, 112 Stat. 2681-337, 2681-428.)

REFERENCES IN TEXT

The Job Training Partnership Act, referred to in subsec. (e), is Pub. L. 97-300, Oct. 13, 1982, 96 Stat. 1322, as amended, which was classified generally to chapter 19 (§1501 et seq.) of Title 29, Labor, prior to repeal by Pub. L. 105-220, title I, §199(b)(2), (c)(2)(B), Aug. 7, 1998, 112 Stat. 1059, effective July 1, 2000. Sections 142, 143, and 167 of the Act were classified to sections 1552, 1553, and 1577, respectively, of Title 29 prior to repeal. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1998—Subsec. (e). Pub. L. 105-277 inserted “(as in effect on the day before August 7, 1998)” after “the Job Training Partnership Act” in two places.

§ 12899f. Definitions

For purposes of this part:

(1) Adjusted income

The term “adjusted income” has the meaning given the term in section 1437a(b) of this title.

(2) Applicant

The term “applicant” means a public or private nonprofit agency, including—

- (A) a community-based organization;
- (B) an administrative entity designated under section 103(b)(1)(B) of the Job Training Partnership Act;
- (C) a community action agency;
- (D) a State and local housing development agency;
- (E) a community development corporation;
- (F) a State and local youth service and conservation corps; and
- (G) any other entity eligible to provide education and employment training under other Federal employment training programs.

(3) Community-based organization

The term “community-based organization” means a private nonprofit organization that—

- (A) maintains, through significant representation on the organization’s governing board or otherwise, accountability to low-income community residents and, to the extent practicable, low-income beneficiaries of programs receiving assistance under this part; and
- (B) has a history of serving the local community or communities where a program receiving assistance under this part is located.

(4) Homeless individual

The term “homeless individual” has the meaning given the term in section 11302 of this title.

(5) Housing development agency

The term “housing development agency” means any agency of a State or local government, or any private nonprofit organization that is engaged in providing housing for homeless or low-income families.

(6) Income

The term “income” has the meaning given the term in section 1437a(b) of this title.

(7) Indian tribe

The term “Indian tribe” has the same meaning given such term in section 5302(a)(17) of this title.

(8) Individual who has dropped out of high school

The term “individual who has dropped out of high school” means an individual who is neither attending any school nor subject to a compulsory attendance law and who has not received a secondary school diploma or a certificate of equivalency for such diploma.

(9) Institution of higher education

The term “institution of higher education” has the meaning given the term in section 1001 of title 20.

(10) Limited-English proficiency

The term “limited-English proficiency” has the meaning given the term in section 7601(8)¹ of title 20.

(11) Low-income family

The term “low-income family” has the meaning given the term in section 1437a(b) of this title.

(12) Offender

The term “offender” means any adult or juvenile with a record of arrest or conviction for a criminal offense.

(13) Qualified nonprofit agency

The term “qualified public or private nonprofit agency” means any nonprofit agency that has significant prior experience in the operation of projects similar to the Youthbuild program authorized under this part and that has the capacity to provide effective technical assistance.

(14) Related facilities

The term “related facilities” includes cafeterias or dining halls, community rooms or buildings, appropriate recreation facilities, and other essential service facilities.

(15) Secretary

The term “Secretary” means the Secretary of Housing and Urban Development.

(16) State

The term “State” means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of

¹ See References in Text note below.

the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Trust Territories of the Pacific Islands, or any other territory or possession of the United States.

(17) Transitional housing

The term “transitional housing” means a project that has as its purpose facilitating the movement of homeless individuals and families to independent living within a reasonable amount of time. Transitional housing includes housing primarily designed to serve deinstitutionalized homeless individuals and other homeless individuals with mental or physical disabilities and homeless families with children.

(18) Very low-income family

The term “very low-income family” has the meaning given the term in section 1437a(b) of this title.

(19) Youthbuild program

The term “Youthbuild program” means any program that receives assistance under this part and provides disadvantaged youth with opportunities for employment, education, leadership development, and training in the construction or rehabilitation of housing for homeless individuals and members of low- and very low-income families.

(Pub. L. 101-625, title IV, §457, as added Pub. L. 102-550, title I, §164, Oct. 28, 1992, 106 Stat. 3731; amended Pub. L. 103-382, title III, §394(d), Oct. 20, 1994, 108 Stat. 4027; Pub. L. 105-244, title I, §102(a)(13)(M), Oct. 7, 1998, 112 Stat. 1621; Pub. L. 106-400, §2, Oct. 30, 2000, 114 Stat. 1675.)

REFERENCES IN TEXT

Section 103(b)(1)(B) of the Job Training Partnership Act, referred to in par. (2)(B), which was classified to section 1513(b)(1)(B) of Title 29, Labor, was repealed by Pub. L. 105-220, title I, §199(b)(2), (c)(2)(B), Aug. 7, 1998, 112 Stat. 1059, effective July 1, 2000. Pursuant to section 2940(b) of Title 29, references to a provision of the Job Training Partnership Act, effective Aug. 7, 1998, are deemed to refer to that provision or the corresponding provision of the Workforce Investment Act of 1998, Pub. L. 105-220, Aug. 7, 1998, 112 Stat. 936, and effective July 1, 2000, are deemed to refer to the corresponding provision of the Workforce Investment Act of 1998. For complete classification of the Workforce Investment Act of 1998 to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

Section 7601(8) of title 20, referred to in par. (10), was in the original section 7004(a) of the Elementary and Secondary Education Act of 1965, and was translated as if it read section 7501(8) of that Act to reflect the probable intent of Congress, because the Elementary and Secondary Education Act of 1965 did not contain a section 7004, but did contain a section 7501(8) which defined limited English proficiency. The section was omitted in the general amendment of title VII of the Elementary and Secondary Education Act of 1965 by Pub. L. 107-110, title VII, §701, Jan. 8, 2002, 115 Stat. 1907.

AMENDMENTS

2000—Par. (4). Pub. L. 106-400 made technical amendment to reference in original act which appears in text as reference to section 11302 of this title.

1998—Par. (9). Pub. L. 105-244 substituted “section 1001” for “section 1141(a)”.

1994—Par. (10). Pub. L. 103-382 substituted “section 7601(8) of title 20” for “section 3283 of title 20”.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see sec-

tion 3 of Pub. L. 105-244, set out as a note under section 1001 of Title 20, Education.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12899b of this title.

§ 12899g. Management and technical assistance

(a) Secretary assistance

The Secretary may enter into contracts with a qualified public or private nonprofit agency to provide assistance to the Secretary in the management, supervision, and coordination of Youthbuild programs receiving assistance under this part.

(b) Sponsor assistance

The Secretary shall enter into contracts with a qualified public or private nonprofit agency to provide appropriate training, information, and technical assistance to sponsors of programs assisted under this part.

(c) Application preparation

Technical assistance may also be provided in the development of program proposals and the preparation of applications for assistance under this part to eligible entities which intend or desire to submit such applications. Community-based organizations shall be given first priority in the provision of such assistance.

(d) Reservation of funds

In each fiscal year, the Secretary shall reserve 5 percent of the amounts available for activities under this part pursuant to section 12870 of this title to carry out subsections (b) and (c) of this section.

(Pub. L. 101-625, title IV, §458, as added Pub. L. 102-550, title I, §164, Oct. 28, 1992, 106 Stat. 3733.)

§ 12899h. Contracts

Each Youthbuild program shall carry out the services and activities under this part directly or through arrangements or under contracts with administrative entities designated under section 103(b)(1)(B) of the Job Training Partnership Act, with State and local educational agencies, institutions of higher education, State and local housing development agencies, or with other public agencies, including agencies of Indian tribes, and private organizations.

(Pub. L. 101-625, title IV, §459, as added Pub. L. 102-550, title I, §164, Oct. 28, 1992, 106 Stat. 3733.)

REFERENCES IN TEXT

Section 103(b)(1)(B) of the Job Training Partnership Act, referred to in text, which was classified to section 1513(b)(1)(B) of Title 29, Labor, was repealed by Pub. L. 105-220, title I, §199(b)(2), (c)(2)(B), Aug. 7, 1998, 112 Stat. 1059, effective July 1, 2000. Pursuant to section 2940(b) of Title 29, references to a provision of the Job Training Partnership Act, effective Aug. 7, 1998, are deemed to refer to that provision or the corresponding provision of the Workforce Investment Act of 1998, Pub. L. 105-220, Aug. 7, 1998, 112 Stat. 936, and effective July 1,

2000, are deemed to refer to the corresponding provision of the Workforce Investment Act of 1998. For complete classification of the Workforce Investment Act of 1998 to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

§ 12899h-1. Ineligibility of Indian tribes

Indian tribes, Indian housing authorities, and other agencies primarily serving Indians or Indian areas shall not be eligible applicants for amounts made available for assistance under this part for fiscal year 1998 and fiscal years thereafter.

(Pub. L. 101-625, title IV, § 460, as added Pub. L. 104-330, title V, § 504(a)(2), Oct. 26, 1996, 110 Stat. 4044; amended Pub. L. 105-276, title V, § 595(e)(15), Oct. 21, 1998, 112 Stat. 2659.)

PRIOR PROVISIONS

A prior section 460 of Pub. L. 101-625 was renumbered section 461, and is classified to section 12899i of this title.

AMENDMENTS

1998—Pub. L. 105-276 substituted “1998” for “1997”.

EFFECTIVE DATE

Section effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104-330, set out as a note under section 4101 of Title 25, Indians.

Section 504(b) of Pub. L. 104-330 provided that: “The amendments under subsection (a) [enacting this section] shall apply with respect to amounts made available for assistance under subtitle D of title II of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12899 et seq.] for fiscal year 1998 and fiscal years thereafter.”

§ 12899i. Regulations

The Secretary shall issue any regulations necessary to carry out this part.

(Pub. L. 101-625, title IV, § 461, formerly § 460, as added Pub. L. 102-550, title I, § 164, Oct. 28, 1992, 106 Stat. 3733; renumbered § 461, Pub. L. 104-330, title V, § 504(a)(1), Oct. 26, 1996, 110 Stat. 4043.)

CHAPTER 131—HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS

Sec.	Purpose.
12901.	Purpose.
12902.	Definitions.
12903.	General authority. <ul style="list-style-type: none"> (a) Grants authorized. (b) Implementation of eligible activities. (c) Allocation of resources. (d) Applications. (e) Additional requirement for metropolitan areas. (f) Additional requirement for city formula grantees.
12904.	Eligible activities.
12905.	Responsibilities of grantees. <ul style="list-style-type: none"> (a) Prohibition of substitution of funds. (b) Capability. (c) Cooperation. (d) Prohibition of fees. (e) Confidentiality. (f) Financial records. (g) Administrative expenses. (h) Environmental review.
12906.	Grants for AIDS housing information and coordination services.
12907.	AIDS short-term supported housing and services.

Sec.	(a) Use of grants.
	(b) Program requirements.
12908.	Rental assistance. <ul style="list-style-type: none"> (a) Use of funds. (b) Limitations. (c) Administrative costs.
12909.	Single room occupancy dwellings. <ul style="list-style-type: none"> (a) Use of grants. (b) Limitation.
12910.	Grants for community residences and services. <ul style="list-style-type: none"> (a) Grant authority. (b) Community residences and services. (c) Use of grants. (d) Limitations on use of grants.
12911.	Report.
12912.	Authorization of appropriations.

§ 12901. Purpose

The purpose of this chapter¹ is to provide States and localities with the resources and incentives to devise long-term comprehensive strategies for meeting the housing needs of persons with acquired immunodeficiency syndrome and families of such persons.

(Pub. L. 101-625, title VIII, § 852, Nov. 28, 1990, 104 Stat. 4375; Pub. L. 102-550, title VI, § 606(j)(1), Oct. 28, 1992, 106 Stat. 3810.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this title”, and was translated as reading “this subtitle”, meaning subtitle D (§§ 851-863) of title VIII of Pub. L. 101-625, to reflect the probable intent of Congress.

AMENDMENTS

1992—Pub. L. 102-550 inserted before period at end “and families of such persons”.

SHORT TITLE

Section 851 of Pub. L. 101-625 provided that: “This subtitle [subtitle D (§§ 851-863) of title VIII of Pub. L. 101-625, enacting this chapter] may be cited as the ‘AIDS Housing Opportunity Act’.”

REGULATIONS

Section 606(k) of Pub. L. 102-550 provided that: “(1) INTERIM REGULATIONS.—Not later than the expiration of the 30-day period beginning on the date of the enactment of this Act [Oct. 28, 1992], the Secretary of Housing and Urban Development shall submit to the Congress a copy of proposed interim regulations implementing subtitle D of title VIII of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12901 et seq.] (as amended by this section). Not later than the expiration of the 45-day period beginning on the date of the enactment of this Act, but not before the expiration of the 15-day period beginning upon the submission of the proposed interim regulations to the Congress, the Secretary shall publish interim regulations implementing such subtitle (as amended), which shall take effect upon publication.

“(2) FINAL REGULATIONS.—Not later than the expiration of the 90-day period beginning upon the publication of interim regulations under paragraph (1), the Secretary shall issue final regulations implementing subtitle D of title VIII of the Cranston-Gonzalez National Affordable Housing Act (as amended by this section) after notice and opportunity for public comment regarding the interim regulations, pursuant to the provisions of section 553 of title 5, United States Code (notwithstanding subsections (a)(2), (b)(B), and (d)(3) of

¹ See References in Text note below.

such section). The duration of the period for public comment under such section 553 shall be not less than 60 days, and the final regulations shall take effect upon issuance.”

§ 12902. Definitions

For purposes of this chapter:

(1) The term “acquired immunodeficiency syndrome and related diseases” means the disease of acquired immunodeficiency syndrome or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome.

(2) The term “applicant” means a State, a unit of general local government, or a nonprofit organization eligible to receive assistance under this chapter.

(3) The term “low-income individual” means any individual or family whose incomes do not exceed 80 percent of the median income for the area, as determined by the Secretary of Housing and Urban Development, with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 80 percent of the median income for the area if the Secretary finds that such variations are necessary because of prevailing levels of construction costs or unusually high or low family incomes.

(4) The term “grantee” means a State or unit of general local government receiving grants from the Secretary under this chapter.

(5) The term “metropolitan statistical area” means a metropolitan statistical area as established by the Office of Management and Budget. Such term includes the District of Columbia.

(6) The term “locality” means the geographical area within the jurisdiction of a local government.

(7) The term “recipient” means a grantee or other applicant receiving funds under this chapter.¹

(8) The term “Secretary” means the Secretary of Housing and Urban Development.

(9) The term “State” means a State of the United States, the District of Columbia, and the Commonwealth of Puerto Rico, or any agency or instrumentality thereof that is established pursuant to legislation and designated by the chief executive to act on behalf of the jurisdiction with regard to provisions of this chapter.

(10) The term “unit of general local government” has the same meaning as in section 12704 of this title.

(11) The term “city” has the meaning given the term in section 5302(a) of this title.

(12) The term “eligible person” means a person with acquired immunodeficiency syndrome or a related disease and the family of such person.

(13) The term “nonprofit organization” means any nonprofit organization (including a State or locally chartered, nonprofit organization) that—

(A) is organized under State or local laws;

(B) has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual;

(C) complies with standards of financial accountability acceptable to the Secretary; and

(D) has among its purposes significant activities related to providing services or housing to persons with acquired immunodeficiency syndrome or related diseases.

(14) The term “project sponsor” means a nonprofit organization or a housing agency of a State or unit of general local government that contracts with a grantee to receive assistance under this chapter.

(Pub. L. 101-625, title VIII, §853, Nov. 28, 1990, 104 Stat. 4375; Pub. L. 102-550, title VI, §606(c), Oct. 28, 1992, 106 Stat. 3807.)

REFERENCES IN TEXT

This chapter, referred to in par. (7), was in the original “this title”, and was translated as reading “this subtitle”, meaning subtitle D (§§851-863) of title VIII of Pub. L. 101-625, to reflect the probable intent of Congress.

AMENDMENTS

1992—Par. (2). Pub. L. 102-550, §606(c)(1), substituted “organization eligible to receive assistance under this chapter” for “sponsor receiving assistance from a grantee”.

Par. (5). Pub. L. 102-550, §606(c)(2), substituted “term ‘metropolitan statistical area’ means” for “term ‘metropolitan area’ means”.

Pars. (11) to (14). Pub. L. 102-550, §606(c)(3), added pars. (11) to (14).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11403g of this title.

§ 12903. General authority

(a) Grants authorized

The Secretary shall, to the extent of amounts approved in appropriations Acts under section 12912 of this title, make grants to States, units of general local government, and nonprofit organizations.

(b) Implementation of eligible activities

A grantee shall carry out eligible activities under section 12904 of this title through project sponsors. Any grantee that is a State that enters into a contract with a nonprofit organization to carry out eligible activities in a locality shall obtain the approval of the unit of general local government for the locality before entering into the contract.

(c) Allocation of resources

(1) Formula allocation

The Secretary shall allocate 90 percent of the amounts approved in appropriation Acts under section 12912 of this title among States and cities whose most recent comprehensive housing affordability strategy (or abbreviated strategy) has been approved by the Secretary under section 12705 of this title. Such amounts shall be allocated as follows:

(A) 75 percent among—

(i) cities that are the most populous unit of general local government in a metropolitan statistical area having a population greater than 500,000 and more than 1,500 cases of acquired immunodeficiency syndrome; and

¹ See References in Text note below.

(ii) States with more than 1,500 cases of acquired immunodeficiency syndrome outside of metropolitan statistical areas described in clause (i); and

(B) 25 percent among cities that (i) are the most populous unit of general local government in a metropolitan statistical area having a population greater than 500,000 and more than 1,500 cases of acquired immunodeficiency syndrome, and (ii) have a higher than average per capita incidence of acquired immunodeficiency syndrome.

A single city may receive assistance allocated under subparagraph (A) and subparagraph (B). For purposes of allocating amounts under this paragraph for any fiscal year, the number of cases of acquired immunodeficiency syndrome shall be the number of such cases reported to and confirmed by the Director of the Centers for Disease Control of the Public Health Service as of March 31 of the fiscal year immediately preceding the fiscal year for which the amounts are appropriated and to be allocated.

(2) Minimum grant

Subject only to the availability of amounts pursuant to appropriations Acts under section 12912 of this title, for each fiscal year each eligible grantee under paragraph (1) shall receive funding according to its proportionate share of the total, except that each entity shall receive a minimum allocation of \$200,000 from subparagraphs (A) and (B) of paragraph (1) combined, and any increase this entails from the formula amount will be deducted from all other allocations exceeding \$200,000 on a pro rata basis. If allocation under subparagraph (A) of paragraph (1) would allocate less than \$200,000 for any State, the allocation for such State shall be \$200,000 and the amount of the increase under this sentence shall be deducted on a pro rata basis from the allocations of the other States, except that a reduction under this subparagraph may not reduce the amount allocated to any eligible entity to less than \$200,000.

(3) Nonformula allocation

(A) In general

The Secretary shall allocate 10 percent of the amounts appropriated under section 12912 of this title among—

(i) States and units of general local government that do not qualify for allocation of amounts under paragraph (1); and

(ii) States, units of general local government, and nonprofit organizations, to fund special projects of national significance.

(B) Selection

In selecting projects under this paragraph, the Secretary shall consider (i) relative numbers of acquired immunodeficiency syndrome cases and per capita acquired immunodeficiency syndrome incidence; (ii) housing needs of eligible persons in the community; (iii) extent of local planning and coordination of housing programs for eligible persons; and (iv) the likelihood of the continuation of State and local efforts.

(C) National significance projects

For the purpose of subparagraph (A)(ii), in selecting projects of national significance the Secretary shall consider (i) the need to assess the effectiveness of a particular model for providing supportive housing for eligible persons; (ii) the innovative nature of the proposed activity; and (iii) the potential replicability of the proposed activity in other similar localities or nationally.

(d) Applications

Funds made available under this section shall be allocated among applications submitted by applicants and approved by the Secretary. Applications for assistance under this section shall be submitted by an applicant in such form and in accordance with such procedures as the Secretary shall establish. Such applications shall contain—

(1) a description of the proposed activities;

(2) a description of the size and characteristics of the population that would be served by the proposed activities;

(3) a description of the public and private resources that are expected to be made available in connection with the proposed activities;

(4) assurances satisfactory to the Secretary that any property purchased, leased, rehabilitated, renovated, or converted with assistance under this section shall be operated for not less than 10 years for the purpose specified in the application, except as otherwise specified in this chapter;

(5) evidence in a form acceptable to the Secretary that the proposed activities will meet urgent needs that are not being met by available public and private sources; and

(6) such other information or certifications that the Secretary determines to be necessary to achieve the purposes of this section.

(e) Additional requirement for metropolitan areas

In addition to the other requirements of this section, to be eligible for a grant to a metropolitan area under this section, the major city, urban county, and any city with a population of 50,000 or more in that metropolitan area shall establish or designate a governmental agency or organization for receipt and use of amounts received from a grant under this section and shall submit to the Secretary, together with the application under subsection (d) of this section a proposal for the operation of such agency or organization.

(f) Additional requirement for city formula grantees

In addition to the other requirements of this section, to be eligible for a grant pursuant to subsection (c)(1) of this section, a city shall provide such assurances as the Secretary may require that any grant amounts received will be allocated among eligible activities in a manner that addresses the needs within the metropolitan statistical area in which the city is located, including areas not within the jurisdiction of the city. Any such city shall coordinate with other units of general local government located within the metropolitan statistical area to provide such assurances and comply with the assurances.

(Pub. L. 101-625, title VIII, § 854, Nov. 28, 1990, 104 Stat. 4376; Pub. L. 102-550, title VI, § 606(d), (j)(2), Oct. 28, 1992, 106 Stat. 3807, 3810.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102-550, § 606(d)(1), substituted “, units of general local government, and non-profit organizations” for “and units of general local government”.

Subsec. (b). Pub. L. 102-550, § 606(d)(2), added subsec. (b) and struck out former subsec. (b) which read as follows: “ELIGIBILITY.—A jurisdiction shall be eligible to receive a grant only if it has obtained an approved housing strategy (or an approved abbreviated housing strategy) in accordance with section 12705 of this title. A grantee shall carry out activities authorized under this chapter through contracts with project sponsors, except that a grantee that is a State shall obtain the approval of the unit of general local government for the locality in which a project is to be located prior to entering into such contracts.”

Subsec. (c)(1). Pub. L. 102-550, § 606(d)(3), added par. (1) and struck out former par. (1) which read as follows: “IN GENERAL.—90 percent of the amounts approved in appropriations Acts under section 12912 of this title shall be allocated among eligible grantees on the basis of the incidence of acquired immunodeficiency syndrome. Of the amounts made available under the previous sentence, the Secretary shall allocate—

“(A) 75 percent among units of general local government located in metropolitan statistical areas with populations in excess of 500,000 and more than 1,500 cases of acquired immunodeficiency syndrome and States with more than 1,500 cases of acquired immunodeficiency syndrome outside of metropolitan statistical areas described in subparagraph (A), and

“(B) 25 percent among units of general local government in metropolitan statistical areas with populations in excess of 500,000 and more than 1,500 cases of acquired immunodeficiency syndrome, that have a higher than average per capita incidence of acquired immunodeficiency syndrome.”

Subsec. (c)(3). Pub. L. 102-550, § 606(d)(4)(A), substituted “Nonformula allocation” for “Noneligible grantees” in heading.

Subsec. (c)(3)(A). Pub. L. 102-550, § 606(d)(4)(B), added subpar. (A) and struck out former subpar. (A) which read as follows: “IN GENERAL.—10 percent of the amounts appropriated under section 12912 of this title shall be distributed to grantees and recipients by the Secretary—

“(i) to meet housing needs in States and localities that do not qualify under paragraph (1), or that do qualify under paragraph (1) but do not have an approved housing strategy under section 12705 of this title, and

“(ii) to fund special projects of national significance.”

Subsec. (c)(3)(B), (C). Pub. L. 102-550, § 606(j)(2), substituted “eligible persons” for “persons with acquired immunodeficiency syndrome” wherever appearing.

Subsec. (d). Pub. L. 102-550, § 606(d)(5), substituted “applications submitted by applicants and approved by the Secretary” for “approvable applications submitted by eligible applicants” in first sentence.

Subsec. (e). Pub. L. 102-550, § 606(d)(6), substituted “other requirements of this section” for “requirements of subsection (b) of this section”.

Subsec. (f). Pub. L. 102-550, § 606(d)(7), added subsec. (f).

CHANGE OF NAME

Centers for Disease Control changed to Centers for Disease Control and Prevention by Pub. L. 102-531, title III, § 312, Oct. 27, 1992, 106 Stat. 3504.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12904 of this title.

§ 12904. Eligible activities

Grants allocated under this chapter shall be available only for approved activities to carry out strategies designed to prevent homelessness among eligible persons. Approved activities shall include activities that—

(1) enable public and nonprofit organizations or agencies to provide housing information to such persons and coordinate efforts to expand housing assistance resources for such persons under section 12906 of this title;

(2) facilitate the development and operation of shelter and services for such persons under section 12907 of this title;

(3) provide rental assistance to such persons under section 12908 of this title;

(4) facilitate (through project-based rental assistance or other means) the moderate rehabilitation of single room occupancy dwellings (SROs) that would be made available only to such persons under section 12909 of this title;

(5) facilitate the development of community residences for eligible persons under section 12910 of this title;

(6) carry out other activities that the Secretary develops in cooperation with eligible States and localities, except that activities developed under this paragraph may be assisted only with amounts provided under section 12903(c)(3) of this title.

The Secretary shall establish standards and guidelines for approved activities. The Secretary shall permit grantees to refine and adapt such standards and guidelines for individual projects, where such refinements and adaptations are made necessary by local circumstances.

(Pub. L. 101-625, title VIII, § 855, Nov. 28, 1990, 104 Stat. 4378; Pub. L. 102-550, title VI, § 606(e), (h)(2), (j)(3), Oct. 28, 1992, 106 Stat. 3808, 3810.)

AMENDMENTS

1992—Pub. L. 102-550, § 606(j)(3)(A), in introductory provisions, substituted “eligible persons” for “such persons with acquired immunodeficiency syndrome”.

Par. (3). Pub. L. 102-550, § 606(h)(2), struck out “short-term” after “provide”.

Par. (5). Pub. L. 102-550, § 606(j)(3)(B), struck out “with acquired immunodeficiency syndrome” after “persons”.

Par. (6). Pub. L. 102-550, § 606(e), inserted before period at end “, except that activities developed under this paragraph may be assisted only with amounts provided under section 12903(c)(3) of this title”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12903, 12905 of this title.

§ 12905. Responsibilities of grantees

(a) Prohibition of substitution of funds

Amounts received from grants under this chapter may not be used to replace other amounts made available or designated by State or local governments for use for the purposes under this chapter.

(b) Capability

The recipient shall have, in the determination of the grantee or the Secretary, the capacity and capability to effectively administer a grant under this chapter.

(c) Cooperation

The recipient shall agree to cooperate and coordinate in providing assistance under this chapter with the agencies of the relevant State and local governments responsible for services in the area served by the applicant for eligible persons and other public and private organizations and agencies providing services for such eligible persons.

(d) Prohibition of fees

The recipient shall agree that no fee will be charged to any eligible person for any housing or services provided with amounts from a grant under this chapter.

(e) Confidentiality

The recipient shall agree to ensure the confidentiality of the name of any individual assisted with amounts from a grant under this chapter and any other information regarding individuals receiving such assistance.

(f) Financial records

The recipient shall agree to maintain and provide the grantee or the Secretary with financial records sufficient, in the determination of the Secretary, to ensure proper accounting and disbursing of amounts received from a grant under this chapter.

(g) Administrative expenses**(1) Grantees**

Notwithstanding any other provision of this chapter, each grantee may use not more than 3 percent of the grant amount for administrative costs relating to administering grant amounts and allocating such amounts to project sponsors.

(2) Project sponsors

Notwithstanding any other provision of this chapter, each project sponsor receiving amounts from grants made under this chapter¹ may use not more than 7 percent of the amounts received for administrative costs relating to carrying out eligible activities under section 12904 of this title, including the costs of staff necessary to carry out eligible activities.

(h) Environmental review

For purposes of environmental review, a grant under this chapter shall be treated as assistance for a special project that is subject to section 3547 of this title, and shall be subject to the regulations issued by the Secretary to implement such section.

(Pub. L. 101-625, title VIII, § 856, Nov. 28, 1990, 104 Stat. 4378; Pub. L. 102-550, title VI, § 606(f), (j)(4), (11)(A), Oct. 28, 1992, 106 Stat. 3809-3811; Pub. L. 106-377, § 1(a)(1) [title II, § 203(c)], Oct. 27, 2000, 114 Stat. 1441, 1441A-24.)

REFERENCES IN TEXT

Under this chapter, referred to in subsec. (g)(2), was in the original "under this title", and was translated as reading "under this subtitle", meaning under subtitle D (§§ 851-863) of title VIII of Pub. L. 101-625, to reflect the probable intent of Congress.

¹ See References in Text note below.

AMENDMENTS

2000—Subsec. (h). Pub. L. 106-377 added subsec. (h).

1992—Subsec. (c). Pub. L. 102-550, § 606(j)(4), (11)(A), substituted "eligible persons" for "individuals with acquired immunodeficiency syndrome or related diseases" and "services for such eligible persons" for "services for such individuals".

Subsec. (d). Pub. L. 102-550, § 606(f)(1), added subsec. (d) and struck out former subsec. (d) which read as follows: "No FEE.—The recipient shall agree that no fee will be charged of any low-income individual for any services provided with amounts from a grant under this chapter and that if fees are charged of any other individuals, the fees will be based on the income and resources of the individual."

Subsec. (g). Pub. L. 102-550, § 606(f)(2), added subsec. (g).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12907, 12908, 12910 of this title.

§ 12906. Grants for AIDS housing information and coordination services

Grants under this section may only be used for the following activities:

(1) Housing information services

To provide (or contract to provide) counseling, information, and referral services to assist eligible persons to locate, acquire, finance, and maintain housing and meet their housing needs.

(2) Resource identification

To identify, coordinate, and develop housing assistance resources (including conducting preliminary research and making expenditures necessary to determine the feasibility of specific housing-related initiatives) for eligible persons.

(Pub. L. 101-625, title VIII, § 857, Nov. 28, 1990, 104 Stat. 4379; Pub. L. 102-550, title VI, § 606(j)(11)(B), Oct. 28, 1992, 106 Stat. 3811.)

AMENDMENTS

1992—Pars. (1), (2). Pub. L. 102-550 substituted "eligible persons" for "individuals with acquired immunodeficiency syndrome or related diseases".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12904 of this title.

§ 12907. AIDS short-term supported housing and services**(a) Use of grants**

Any amounts received from grants under this section may only be used to carry out a program to provide (or contract to provide) assistance to eligible persons who are homeless or in need of housing assistance to prevent homelessness, which may include the following activities:

(1) Short-term supported housing

Purchasing, leasing, renovating, repairing, and converting facilities to provide short-term shelter and services.

(2) Short-term housing payments assistance

Providing rent assistance payments for short-term supported housing and rent, mortgage, and utilities payments to prevent home-

lessness of the tenant or mortgagor of a dwelling.

(3) Supportive services

Providing supportive services, to eligible persons assisted under paragraphs (1) and (2), including health, mental health, assessment, permanent housing placement, drug and alcohol abuse treatment and counseling, day care, and nutritional services (except that health services under this paragraph may only be provided to individuals with acquired immunodeficiency syndrome or related diseases), and providing technical assistance to eligible persons to provide assistance in gaining access to benefits and services for homeless individuals provided by the Federal Government and State and local governments.

(4) Operation

Providing for the operation of short-term supported housing provided under this section, including the costs of security, operation insurance, utilities, furnishings, equipment, supplies, and other incidental costs.

(5) Administration

Providing staff to carry out the program under this section (subject to the provisions of section 12905(g) of this title).

(b) Program requirements

(1) Minimum use period for structures

(A) In general

Any building or structure assisted with amounts from a grant under this section shall be maintained as a facility to provide short-term supported housing or assistance for eligible persons—

(i) in the case of assistance involving substantial rehabilitation or acquisition of the building, for a period of not less than 10 years; and

(ii) in the case of assistance under paragraph (1), (3), or (4) of subsection (a) of this section, for a period of not less than 3 years.

(B) Waiver

The Secretary may waive the requirement under subparagraph (A) with respect to any building or structure if the organization or agency that received the grant under which the building was assisted demonstrates, to the satisfaction of the Secretary, that—

(i) the structure is no longer needed to provide short-term supported housing or assistance or the continued operation of the structure for such purposes is no longer feasible; and

(ii) the structure will be used to benefit individuals or families whose incomes do not exceed 80 percent of the median income for the area, as determined by the Secretary, with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 80 percent of the median income for the area if the Secretary finds that such variations are necessary because of prevailing levels of construction costs or unusually high or low family incomes.

(2) Residency and location limitations on short-term supported housing

(A) Residency

A short-term supported housing facility assisted with amounts from a grant under this section may not provide shelter or housing at any single time for more than 50 families or individuals.

(B) Waiver

The Secretary may, as the Secretary determines appropriate, waive the limitation under subparagraph (A) for any program or short-term supported housing facility.

(3) Term of assistance

(A) Supported housing assistance

A program assisted under this section may not provide residence in a short-term housing facility assisted under this section to any individual for a sum of more than 60 days during any 6-month period.

(B) Housing payments assistance

A program assisted under this section may not provide assistance for rent, mortgage, or utilities payments to any individual for rent, mortgage, or utilities costs accruing over a period of more than 21 weeks of any 52-week period.

(C) Waiver

Notwithstanding subparagraphs (A) and (B), the Secretary may waive the applicability of the requirements under such subparagraphs with respect to any individual for which the project sponsor has made a good faith effort to acquire permanent housing (in accordance with paragraph (4)) and has been unable to do so.

(4) Placement

A program assisted under this section shall provide for any individual who has remained in short-term supported housing assisted under the demonstration program, to the maximum extent practicable, the opportunity for placement in permanent housing or an environment appropriate to the health and social needs of the individual.

(5) Presumption for independent living

In providing assistance under this section in any case in which the residence of an individual is appropriate to the needs of the individual, a program assisted under this section shall, when reasonable, provide for assistance in a manner appropriate to maintain the individual in such residence.

(6) Case management services

A program assisted under this section shall provide each individual assisted under the program with an opportunity, if eligible, to receive case management services available from the appropriate social service agencies.

(Pub. L. 101-625, title VIII, § 858, Nov. 28, 1990, 104 Stat. 4379; Pub. L. 102-550, title VI, § 606(g), (j)(5), (11)(C), Oct. 28, 1992, 106 Stat. 3809-3811.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102-550, § 606(j)(11)(C)(i), substituted “eligible persons” for “individuals with ac-

quired immunodeficiency syndrome or related diseases” in introductory provisions.

Subsec. (a)(3). Pub. L. 102-550, § 606(g)(1)(A), (j)(5), substituted “to eligible persons assisted under” for “to individuals assisted under” and inserted before period at end “(except that health services under this paragraph may only be provided to individuals with acquired immunodeficiency syndrome or related diseases), and providing technical assistance to eligible persons to provide assistance in gaining access to benefits and services for homeless individuals provided by the Federal Government and State and local governments”.

Subsec. (a)(4), (5). Pub. L. 102-550, § 606(g)(1)(B), (C), added pars. (4) and (5) and struck out former pars. (4) and (5) which read as follows:

“(4) MAINTENANCE AND ADMINISTRATION.—Providing for maintenance, administration, security, operation, insurance, utilities, furnishings, equipment, supplies, and other incidental costs relating to any short-term supported housing provided under the demonstration program under this section.

“(5) TECHNICAL ASSISTANCE.—Providing technical assistance to such individuals to provide assistance in gaining access to benefits and services for homeless individuals provided by the Federal Government and State and local governments.”

Subsec. (b)(1)(A). Pub. L. 102-550, § 606(j)(11)(C)(ii), substituted “eligible persons” for “individuals with acquired immunodeficiency syndrome or related diseases” in introductory provisions.

Subsec. (b)(2)(B). Pub. L. 102-550, § 606(g)(2)(A)(i), (iii), redesignated subpar. (C) as (B) and struck out former subpar. (B) which read as follows: “LOCATION.—A facility for short-term supported housing assisted with amounts from a grant under this section may not be located in or contiguous to any other facility for emergency or short-term housing that is not limited to use by individuals with acquired immunodeficiency syndrome or related diseases.”

Subsec. (b)(2)(C). Pub. L. 102-550, § 606(g)(2)(A)(ii), (iii), substituted “limitation under subparagraph (A)” for “limitations under subparagraphs (A) and (B)” and redesignated subpar. (C) as (B).

Subsec. (b)(3)(C). Pub. L. 102-550, § 606(g)(2)(B), added subpar. (C).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12904 of this title.

§ 12908. Rental assistance

(a) Use of funds

(1) In general

Grants under this section may be used only for assistance to provide rental assistance for low-income eligible persons. Such assistance may be project based or tenant based and shall be provided to the extent practicable in the manner provided for under section 1437f of this title. Grantees shall ensure that the housing provided is decent, safe, and sanitary.

(2) Shared housing arrangements

Grants under this section may be used to assist individuals who elect to reside in shared housing arrangements in the manner provided under section 1437f(p) of this title, except that, notwithstanding such section, assistance under this section may be made available to nonelderly individuals. The Secretary shall issue any standards for shared housing under this paragraph that vary from standards issued under section 1437f(p) of this title only to the extent necessary to provide for circumstances of shared housing arrangements under this paragraph that differ from circumstances

of shared housing arrangements for elderly families under section 1437f(p) of this title.

(b) Limitations

A recipient under this section shall comply with the following requirements:

(1) Services

The recipient shall provide for qualified service providers in the area to provide appropriate services to the eligible persons assisted under this section.

(2) Intensive assistance

For any individual with acquired immunodeficiency syndrome or related diseases who requires more care than can be provided in housing assisted under this section, the recipient shall provide for the locating of a care provider who can appropriately care for the individual and referral of the individual to the care provider.

(c) Administrative costs

A project sponsor providing rental assistance under this section may use amounts from any grant received under this section for administrative expenses involved in providing such assistance, subject to the provisions of 12905(g)(2)¹ of this title.

(Pub. L. 101-625, title VIII, § 859, Nov. 28, 1990, 104 Stat. 4381; Pub. L. 102-550, title VI, § 606(h)(1), (j)(6), (7), (11)(D), Oct. 28, 1992, 106 Stat. 3810, 3811.)

AMENDMENTS

1992—Pub. L. 102-550, § 606(h)(1)(A), substituted “Rental assistance” for “Short-term rental assistance” in section catchline.

Subsec. (a)(1). Pub. L. 102-550, § 606(h)(1)(B), (j)(11)(D), struck out “short-term” before “rental assistance” and substituted “eligible persons” for “individuals with acquired immunodeficiency syndrome or related diseases”.

Subsec. (b)(1). Pub. L. 102-550, § 606(j)(6), substituted “eligible persons” for “individuals”.

Subsec. (b)(2). Pub. L. 102-550, § 606(j)(7), inserted “with acquired immunodeficiency syndrome or related diseases” after “any individual”.

Subsec. (c). Pub. L. 102-550, § 606(h)(1)(C), added subsec. (c).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12904 of this title.

§ 12909. Single room occupancy dwellings

(a) Use of grants

Grants under this section may be used to provide project-based rental assistance or grants to facilitate the development of single room occupancy dwellings. To the extent practicable, a program under this section shall be carried out in the manner provided for under section 1437f(n)¹ of this title.

(b) Limitation

Recipients under this section shall require the provision to individuals assisted under this section of the following assistance:

¹ So in original. Probably should be preceded by “section”.

¹ See References in Text note below.

(1) Services

Appropriate services provided by qualified service providers in the area.

(2) Intensive assistance

For any individual with acquired immunodeficiency syndrome or related diseases who requires more care than can be provided in housing assisted under this section, locating a care provider who can appropriately care for the individual and referral of the individual to the care provider.

(Pub. L. 101-625, title VIII, § 860, Nov. 28, 1990, 104 Stat. 4381; Pub. L. 102-550, title VI, § 606(j)(7), Oct. 28, 1992, 106 Stat. 3810.)

REFERENCES IN TEXT

Section 1437f(n) of this title, referred to in subsec. (a), was repealed by Pub. L. 105-276, title V, § 550(a)(7), Oct. 21, 1998, 112 Stat. 2609.

AMENDMENTS

1992—Subsec. (b)(2). Pub. L. 102-550 inserted “with acquired immunodeficiency syndrome or related diseases” after “any individual”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12904 of this title.

§ 12910. Grants for community residences and services**(a) Grant authority**

The Secretary of Housing and Urban Development may make grants to States and metropolitan areas to develop and operate community residences and provide services for eligible persons.

(b) Community residences and services**(1) Community residences****(A) In general**

A community residence under this section shall be a multiunit residence designed for eligible persons for the following purposes:

(i) To provide a lower cost residential alternative to institutional care and to prevent or delay the need for institutional care.

(ii) To provide a permanent or transitional residential setting with appropriate services that enhances the quality of life for individuals who are unable to live independently.

(iii) To prevent homelessness among eligible persons by increasing available suitable housing resources.

(iv) To integrate eligible persons into local communities and provide services to maintain the abilities of such eligible persons to participate as fully as possible in community life.

(B) Rent

Except to the extent that the costs of providing residence are reimbursed or provided by any other assistance from Federal or non-Federal public sources, each resident in a community residence shall pay as rent for a dwelling unit an amount equal to the following:

(i) For low-income individuals, the amount of rent paid under section 3(a) of the United States Housing Act of 1937 (42 U.S.C. 1437a(a)) by a low-income family (as the term is defined in section 3(b)(2) of such Act (42 U.S.C. 1437a(b)(2))) for a dwelling unit assisted under such Act [42 U.S.C. 1437 et seq.].

(ii) For any resident that is not a low-income resident, an amount based on a formula, which shall be determined by the Secretary, under which rent is determined by the income and resources of the resident.

(C) Fees

Fees may be charged for any services provided under subsection (c)(2) of this section to residents of a community residence, except that any fees charged shall be based on the income and resources of the resident and the provision of services to any resident of a community residence may not be withheld because of an inability of the resident to pay such fee.

(D) Section 1437f assistance

Assistance made available under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) may be used in conjunction with a community residence under this subsection for tenant-based assistance.

(2) Services

Services provided with a grant under this section shall consist of services appropriate in assisting eligible persons to enhance their quality of life, enable such individuals to more fully participate in community life, and delay or prevent the placement of such individuals in hospitals or other institutions.

(c) Use of grants

Any amounts received from a grant under this section may be used only as follows:

(1) Community residences

For providing assistance in connection with community residences under subsection (b)(1) of this section for the following activities:

(A) Physical improvements

Construction, acquisition, rehabilitation, conversion, retrofitting, and other physical improvements necessary to make a structure suitable for use as a community residence.

(B) Operating costs

Operating costs for a community residence.

(C) Technical assistance

Technical assistance in establishing and operating a community residence, which may include planning and other predevelopment or preconstruction expenses, and expenses relating to community outreach and educational activities regarding acquired immunodeficiency syndrome and related diseases provided for individuals residing in proximity of eligible persons assisted under this chapter.

(D) In-house services

Services appropriate for individuals residing in a community residence, which may include staff training and recruitment.

(2) Services

For providing services under subsection (b)(2) of this section to any individuals assisted under this chapter.

(3) Administrative expenses

For administrative expenses related to the planning and carrying out activities under this section (subject to the provisions of section 12905(g) of this title).

(d) Limitations on use of grants**(1) Community residences**

Any jurisdiction that receives a grant under this section may not use any amounts received under the grant for the purposes under subsection (c)(1) of this section, except for planning and other expenses preliminary to construction or other physical improvement under subsection (c)(1)(A) of this section, unless the jurisdiction certifies to the Secretary, as the Secretary shall require, the following:

(A) Service agreement

That the jurisdiction has entered into a written agreement with service providers qualified to deliver any services included in the proposal under subsection (c) of this section to provide such services to eligible persons assisted by the community residence.

(B) Funding and capability

That the jurisdiction will have sufficient funding for such services and the service providers are qualified to assist eligible persons.

(C) Zoning and building codes

That any construction or physical improvements carried out with amounts received from the grant will comply with any applicable State and local housing codes and licensing requirements in the jurisdiction in which the building or structure is located.

(D) Intensive assistance

That, for any individual with acquired immunodeficiency syndrome or related diseases who resides in a community residence assisted under the grant and who requires more intensive care than can be provided by the community residence, the jurisdiction will locate for and refer the individual to a service provider who can appropriately care for the individual.

(2) Services

Any jurisdiction that receives a grant under this section may use any amounts received under the grant for the purposes under subsection (c)(2) of this section only for the provision of services by service providers qualified to provide such services to eligible persons.

(Pub. L. 101-625, title VIII, § 861, Nov. 28, 1990, 104 Stat. 4382; Pub. L. 102-550, title VI, § 606(i), (j)(8)-(10), (11)(E), Oct. 28, 1992, 106 Stat. 3810, 3811; Pub. L. 105-276, title V, § 550(b), Oct. 21, 1998, 112 Stat. 2609.)

REFERENCES IN TEXT

The United States Housing Act of 1937, referred to in subsec. (b)(1)(B)(i), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93-383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653, and amended, which is classified generally to chapter 8 (§1437 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of this title and Tables.

AMENDMENTS

1998—Subsec. (b)(1)(D). Pub. L. 105-276 substituted “assistance” for “certificates or vouchers”.

1992—Subsec. (a). Pub. L. 102-550, § 606(j)(8), substituted “eligible persons” for “persons with acquired immunodeficiency syndrome or related diseases”.

Subsec. (b)(1)(A). Pub. L. 102-550, § 606(j)(11)(E)(i), substituted “eligible persons” for “individuals with acquired immunodeficiency syndrome or related diseases” in introductory provisions and cl. (iii).

Subsec. (b)(1)(A)(iv). Pub. L. 102-550, § 606(j)(9), (11)(E)(i), substituted “eligible persons” for “individuals with acquired immunodeficiency syndrome or related diseases” and “such eligible persons” for “such individuals”.

Subsec. (b)(2). Pub. L. 102-550, § 606(j)(11)(E)(i), which directed the substitution of “eligible persons” for “individuals with acquired immunodeficiency syndrome or related diseases” wherever appearing in subsec. (b), was executed by making the substitution for “individuals with acquired immunodeficiency syndrome and related diseases” in par. (2) to reflect the probable intent of Congress.

Subsec. (c)(1)(C). Pub. L. 102-550, § 606(i)(1), inserted before period at end “, and expenses relating to community outreach and educational activities regarding acquired immunodeficiency syndrome and related diseases provided for individuals residing in proximity of eligible persons assisted under this chapter”.

Subsec. (c)(3). Pub. L. 102-550, § 606(i)(2), added par. (3) and struck out former par. (3) which read as follows: “For administrative expenses related to the planning and execution of activities under this section, except that a jurisdiction that receives a grant under this section may expend not more than 10 percent of the amount received under the grant for such administrative expenses. Administrative expenses under this paragraph may include expenses relating to community outreach and educational activities regarding acquired immunodeficiency syndrome and related diseases, for staff carrying out activities assisted with a grant under this section and for individuals who reside in proximity of individuals assisted under this chapter.”

Subsec. (d). Pub. L. 102-550, § 606(j)(11)(E)(ii), which directed the substitution of “eligible persons” for “individuals with acquired immunodeficiency syndrome or related diseases” wherever appearing in subsec. (d), was executed by making the substitution for “individuals with acquired immunodeficiency syndrome and related diseases” in pars. (1)(B) and (2) to reflect the probable intent of Congress.

Subsec. (d)(1)(A). Pub. L. 102-550, § 606(j)(10)(A), substituted “eligible persons” for “individuals”.

Subsec. (d)(1)(D). Pub. L. 102-550, § 606(j)(10)(B), inserted “with acquired immunodeficiency syndrome or related diseases” after “any individual”.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by title V of Pub. L. 105-276 effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement amendment before such date, except to extent that such amendment provides otherwise, and with savings provision, see section 503 of Pub. L. 105-276, set out as a note under section 1437 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12904 of this title.

§ 12911. Report

Any organization or agency that receives a grant under this chapter shall submit to the Secretary, for any fiscal year in which the organization or agency receives a grant under this chapter, a report describing the use of the amounts received, which shall include the number of individuals assisted, the types of assistance provided, and any other information that the Secretary determines to be appropriate.

(Pub. L. 101-625, title VIII, § 862, Nov. 28, 1990, 104 Stat. 4384.)

§ 12912. Authorization of appropriations

There are authorized to be appropriated to carry out this chapter \$150,000,000 for fiscal year 1993 and \$156,300,000 for fiscal year 1994.

(Pub. L. 101-625, title VIII, § 863, Nov. 28, 1990, 104 Stat. 4384; Pub. L. 102-550, title VI, § 606(b), Oct. 28, 1992, 106 Stat. 3806.)

AMENDMENTS

1992—Pub. L. 102-550 amended section generally. Prior to amendment, section read as follows: “There are authorized to be appropriated to carry out this chapter \$75,000,000 for fiscal year 1991, and \$156,500,000 for fiscal year 1992.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12903 of this title.

CHAPTER 132—VICTIMS OF CHILD ABUSE

SUBCHAPTER I—IMPROVING INVESTIGATION AND PROSECUTION OF CHILD ABUSE CASES

Sec.

- 13001. Findings.
- 13001a. Definitions.
- 13001b. Regional children’s advocacy centers.
 - (a) Establishment of regional children’s advocacy program.
 - (b) Activities of regional children’s advocacy program.
 - (c) Operation of regional children’s advocacy program.
 - (d) Review.
 - (e) Children’s advocacy advisory board.
 - (f) Reporting.
- 13002. Local children’s advocacy centers.
 - (a) In general.
 - (b) Grant criteria.
 - (c) Distribution of grants.
 - (d) Consultation with regional children’s advocacy centers.
- 13003. Grants for specialized technical assistance and training programs.
 - (a) In general.
 - (b) Grantee organizations.
 - (c) Grant criteria.
- 13004. Authorization of appropriations.
 - (a) Sections 13001b and 13002.
 - (b) Section 13003.

SUBCHAPTER II—COURT-APPOINTED SPECIAL ADVOCATE PROGRAM

- 13011. Findings.
- 13012. Purpose.
- 13013. Strengthening of court-appointed special advocate program.
 - (a) In general.
 - (b) Grantee organizations.
 - (c) Grant criteria.
- 13014. Authorization of appropriations.
 - (a) Authorization.

Sec.

- (b) Limitation.

SUBCHAPTER III—CHILD ABUSE TRAINING PROGRAMS FOR JUDICIAL PERSONNEL AND PRACTITIONERS

- 13021. Findings and purpose.
 - (a) Findings.
 - (b) Purpose.
- 13022. Grants for juvenile and family court personnel.
- 13023. Specialized technical assistance and training programs.
 - (a) Grants to develop model programs.
 - (b) Grants to juvenile and family courts.
 - (c) Grant criteria.
- 13024. Authorization of appropriations.
 - (a) Authorization.
 - (b) Use of funds.
 - (c) Limitation.

SUBCHAPTER IV—REPORTING REQUIREMENTS

- 13031. Child abuse reporting.
 - (a) In general.
 - (b) Covered professionals.
 - (c) Definitions.
 - (d) Agency designated to receive report and action to be taken.
 - (e) Reporting form.
 - (f) Immunity for good faith reporting and associated actions.
 - (g) Omitted.
 - (h) Training of prospective reporters.
- 13032. Reporting of child pornography by electronic communication service providers.
 - (a) Definitions.
 - (b) Requirements.
 - (c) Civil liability.
 - (d) Limitation of information or material required in report.
 - (e) Monitoring not required.
 - (f) Conditions of disclosure of information contained within report.

SUBCHAPTER V—CHILD CARE WORKER EMPLOYEE BACKGROUND CHECKS

- 13041. Requirement for background checks.
 - (a) In general.
 - (b) Criminal history check.
 - (c) Applicable criminal histories.
 - (d) Employment applications.
 - (e) Encouragement of voluntary criminal history checks for others who may have contact with children.

SUBCHAPTER VI—TREATMENT FOR JUVENILE OFFENDERS WHO ARE VICTIMS OF CHILD ABUSE OR NEGLECT

13051 to 13055. Repealed.

SUBCHAPTER I—IMPROVING INVESTIGATION AND PROSECUTION OF CHILD ABUSE CASES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 13023 of this title.

§ 13001. Findings

The Congress finds that—

(1) over 2,000,000 reports of suspected child abuse and neglect are made each year, and drug abuse is associated with a significant portion of these;

(2) the investigation and prosecution of child abuse cases is extremely complex, involving numerous agencies and dozens of personnel;

(3) traditionally, community agencies and professionals have different roles in the pre-

vention, investigation, and intervention process;

(4) in such cases, too often the system does not pay sufficient attention to the needs and welfare of the child victim, aggravating the trauma that the child victim has already experienced;

(5) there is a national need to enhance coordination among community agencies and professionals involved in the intervention system;

(6) multidisciplinary child abuse investigation and prosecution programs have been developed that increase the reporting of child abuse cases, reduce the trauma to the child victim, and increase the successful prosecution of child abuse offenders; and

(7) such programs have proven effective, and with targeted Federal assistance, could be duplicated in many jurisdictions throughout the country.

(Pub. L. 101-647, title II, §211, Nov. 29, 1990, 104 Stat. 4792; Pub. L. 102-586, §6(a), Nov. 4, 1992, 106 Stat. 5029.)

AMENDMENTS

1992—Pars. (3) to (7). Pub. L. 102-586 added pars. (3) and (5) and redesignated former pars. (3), (4), and (5) as (4), (6), and (7), respectively.

SHORT TITLE

Section 201 of title II of Pub. L. 101-647 provided that: "This title [enacting this chapter, sections 3796aa to 3796aa-8 of this title, and sections 403, 2258, and 3509 of Title 18, Crimes and Criminal Procedure, and amending sections 3742, 3782, 3783, 3789, 3793, and 3797 of this title] may be cited as the 'Victims of Child Abuse Act of 1990'."

§ 13001a. Definitions

For purposes of this subchapter—

(1) the term "Administrator" means the agency head designated under section 5611(b) of this title;

(2) the term "applicant" means a child protective service, law enforcement, legal, medical and mental health agency or other agency that responds to child abuse cases;

(3) the term "board" means the Children's Advocacy Advisory Board established under section 13001b(e) of this title;

(4) the term "census region" means 1 of the 4 census regions (northeast, south, midwest, and west) that are designated as census regions by the Bureau of the Census as of November 4, 1992;

(5) the term "child abuse" means physical or sexual abuse or neglect of a child;

(6) the term "Director" means the Director of the National Center on Child Abuse and Neglect;

(7) the term "multidisciplinary response to child abuse" means a response to child abuse that is based on mutually agreed upon procedures among the community agencies and professionals involved in the intervention, prevention, prosecution, and investigation systems that best meets the needs of child victims and their nonoffending family members;

(8) the term "nonoffending family member" means a member of the family of a victim of

child abuse other than a member who has been convicted or accused of committing an act of child abuse; and

(9) the term "regional children's advocacy program" means the children's advocacy program established under section 13001b(a) of this title.

(Pub. L. 101-647, title II, §212, as added Pub. L. 102-586, §6(b)(2), Nov. 4, 1992, 106 Stat. 5029.)

PRIOR PROVISIONS

A prior section 212 of Pub. L. 101-647 was renumbered section 214 and is classified to section 13002 of this title.

§ 13001b. Regional children's advocacy centers

(a) Establishment of regional children's advocacy program

The Administrator, in coordination with the Director and with the Director of the Office of Victims of Crime, shall establish a children's advocacy program to—

(1) focus attention on child victims by assisting communities in developing child-focused, community-oriented, facility-based programs designed to improve the resources available to children and families;

(2) provide support for nonoffending family members;

(3) enhance coordination among community agencies and professionals involved in the intervention, prevention, prosecution, and investigation systems that respond to child abuse cases; and

(4) train physicians and other health care and mental health care professionals in the multidisciplinary approach to child abuse so that trained medical personnel will be available to provide medical support to community agencies and professionals involved in the intervention, prevention, prosecution, and investigation systems that respond to child abuse cases.

(b) Activities of regional children's advocacy program

(1) Administrator

The Administrator, in coordination with the Director, shall—

(A) establish regional children's advocacy program centers;

(B) fund existing regional centers with expertise in the prevention, judicial handling, and treatment of child abuse and neglect; and

(C) fund the establishment of freestanding facilities in multidisciplinary programs within communities that have yet to establish such facilities,

for the purpose of enabling grant recipients to provide information, services, and technical assistance to aid communities in establishing multidisciplinary programs that respond to child abuse.

(2) Grant recipients

A grant recipient under this section shall—

(A) assist communities—

(i) in developing a comprehensive, multidisciplinary response to child abuse that is designed to meet the needs of child victims and their families;

(ii) in establishing a freestanding facility where interviews of and services for abused children can be provided;

(iii) in preventing or reducing trauma to children caused by multiple contacts with community professionals;

(iv) in providing families with needed services and assisting them in regaining maximum functioning;

(v) in maintaining open communication and case coordination among community professionals and agencies involved in child protection efforts;

(vi) in coordinating and tracking investigative, preventive, prosecutorial, and treatment efforts;

(vii) in obtaining information useful for criminal and civil proceedings;

(viii) in holding offenders accountable through improved prosecution of child abuse cases;

(ix) in enhancing professional skills necessary to effectively respond to cases of child abuse through training; and

(x) in enhancing community understanding of child abuse; and

(B) provide training and technical assistance to local children's advocacy centers in its census region that are grant recipients under section 13002 of this title.

(c) Operation of regional children's advocacy program

(1) Solicitation of proposals

Not later than 1 year after November 4, 1992, the Administrator shall solicit proposals for assistance under this section.

(2) Minimum qualifications

In order for a proposal to be selected, the Administrator may require an applicant to have in existence, at the time the proposal is submitted, 1 or more of the following:

(A) A proven record in conducting activities of the kinds described in subsection (c) of this section.

(B) A facility where children who are victims of sexual or physical abuse and their nonoffending family members can go for the purpose of evaluation, intervention, evidence gathering, and counseling.

(C) Multidisciplinary staff experienced in providing remedial counseling to children and families.

(D) Experience in serving as a center for training and education and as a resource facility.

(E) National expertise in providing technical assistance to communities with respect to the judicial handling of child abuse and neglect.

(3) Proposal requirements

(A) In general

A proposal submitted in response to the solicitation under paragraph (1) shall—

(i) include a single or multiyear management plan that outlines how the applicant will provide information, services, and technical assistance to communities so that communities can establish multi-

disciplinary programs that respond to child abuse;

(ii) demonstrate the ability of the applicant to operate successfully a multidisciplinary child abuse program or provide training to allow others to do so; and

(iii) state the annual cost of the proposal and a breakdown of those costs.

(B) Content of management plan

A management plan described in paragraph (3)(A) shall—

(i) outline the basic activities expected to be performed;

(ii) describe the entities that will conduct the basic activities;

(iii) establish the period of time over which the basic activities will take place; and

(iv) define the overall program management and direction by—

(I) identifying managerial, organizational, and administrative procedures and responsibilities;

(II) demonstrating how implementation and monitoring of the progress of the children's advocacy program after receipt of funding will be achieved; and

(III) providing sufficient rationale to support the costs of the plan.

(4) Selection of proposals

(A) Competitive basis

Proposals shall be selected under this section on a competitive basis.

(B) Criteria

The Administrator, in coordination with the Director, shall select proposals for funding that—

(i) best result in developing and establishing multidisciplinary programs that respond to child abuse by assisting, training, and teaching community agencies and professionals called upon to respond to child abuse cases;

(ii) assist in resolving problems that may occur during the development, operation, and implementation of a multidisciplinary program that responds to child abuse;

(iii) carry out the objectives developed by the board under subsection (e)(2)(A) of this section;

(iv) to the greatest extent possible and subject to available appropriations, ensure that at least 1 applicant is selected from each of the 4 census regions of the country; and

(v) otherwise best carry out the purposes of this section.

(5) Funding of program

From amounts made available in separate appropriation Acts, the Administrator shall provide to each grant recipient the financial and technical assistance and other incentives that are necessary and appropriate to carry out this section.

(6) Coordination of effort

In order to carry out activities that are in the best interests of abused and neglected chil-

dren, a grant recipient shall consult with other grant recipients on a regular basis to exchange ideas, share information, and review children's advocacy program activities.

(d) Review

(1) Evaluation of regional children's advocacy program activities

The Administrator, in coordination with the Director, shall regularly monitor and evaluate the activities of grant recipients and shall determine whether each grant recipient has complied with the original proposal and any modifications.

(2) Annual report

A grant recipient shall provide an annual report to the Administrator and the Director that—

(A) describes the progress made in satisfying the purpose of the children's advocacy program; and

(B) states whether changes are needed and are being made to carry out the purpose of the children's advocacy program.

(3) Discontinuation of funding

(A) Failure to implement program activities

If a grant recipient under this section substantially fails in the implementation of the program activities, the Administrator shall not discontinue funding until reasonable notice and an opportunity for reconsideration is given.

(B) Solicitation of new proposals

Upon discontinuation of funding of a grant recipient under this section, the Administrator shall solicit new proposals in accordance with subsection (c) of this section.

(e) Children's advocacy advisory board

(1) Establishment of board

(A) In general

Not later than 120 days after November 4, 1992, the Administrator and the Director, after consulting with representatives of community agencies that respond to child abuse cases, shall establish a children's advocacy advisory board to provide guidance and oversight in implementing the selection criteria and operation of the regional children's advocacy program.

(B) Membership

(i) The board—

(I) shall be composed of 12 members who are selected by the Administrator, in coordination with the Director, a majority of whom shall be individuals experienced in the child abuse investigation, prosecution, prevention, and intervention systems;

(II) shall include at least 1 member from each of the 4 census regions; and

(III) shall have members appointed for a term not to exceed 3 years.

(ii) Members of the board may be reappointed for successive terms.

(2) Review and recommendations

(A) Objectives

Not later than 180 days after November 4, 1992, and annually thereafter, the board shall

develop and submit to the Administrator and the Director objectives for the implementation of the children's advocacy program activities described in subsection (b) of this section.

(B) Review

The board shall annually—

(i) review the solicitation and selection of children's advocacy program proposals and make recommendations concerning how each such activity can be altered so as to better achieve the purposes of this section; and

(ii) review the program activities and management plan of each grant recipient and report its findings and recommendations to the Administrator and the Director.

(3) Rules and regulations

The board shall promulgate such rules and regulations as it deems necessary to carry out its duties under this section.

(f) Reporting

The Attorney General and the Secretary of Health and Human Services shall submit to Congress, by March 1 of each year, a detailed review of the progress of the regional children's advocacy program activities.

(Pub. L. 101-647, title II, §213, as added Pub. L. 102-586, §6(b)(2), Nov. 4, 1992, 106 Stat. 5030; amended Pub. L. 108-21, title III, §381(a), Apr. 30, 2003, 117 Stat. 667.)

PRIOR PROVISIONS

A prior section 213 of Pub. L. 101-647 was renumbered section 214A and is classified to section 13003 of this title.

AMENDMENTS

2003—Subsec. (c)(4). Pub. L. 108-21, §381(a)(1), struck out "and" at end of cl. (ii) of subpar. (B), substituted "board" for "Board" in cl. (iii) of subpar. (B), and redesignated subpars. (C) and (D) as cls. (iv) and (v), respectively, of subpar. (B).

Subsec. (e)(1)(B)(ii), (2)(A), (3). Pub. L. 108-21, §381(a)(2), substituted "board" for "Board".

TERMINATION OF ADVISORY BOARDS

Advisory boards established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a board established by Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13001a, 13002, 13004 of this title.

§ 13002. Local children's advocacy centers

(a) In general

The Administrator, in coordination with the Director and with the Director of the Office of Victims of Crime, shall make grants to develop and implement multidisciplinary child abuse investigation and prosecution programs.

(b) Grant criteria

(1) The Director shall establish the criteria to be used in evaluating applications for grants under this section consistent with sections 5673 and 5676 of this title.

(2) In general, the grant criteria established pursuant to paragraph (1) may require that a program include any of the following elements:

(A) A written agreement between local law enforcement, social service, health, and other related agencies to coordinate child abuse investigation, prosecution, treatment, and counseling services.

(B) An appropriate site for referring, interviewing, treating, and counseling child victims of sexual and serious physical abuse and neglect and nonoffending family members (referred to as the "counseling center").

(C) Referral of all sexual and serious physical abuse and neglect cases to the counseling center not later than 24 hours after notification of an incident of abuse.

(D) Joint initial investigative interviews of child victims by personnel from law enforcement, health, and social service agencies.

(E) A requirement that, to the extent practicable, the same agency representative who conducts an initial interview conduct all subsequent interviews.

(F) A requirement that, to the extent practicable, all interviews and meetings with a child victim occur at the counseling center.

(G) Coordination of each step of the investigation process to minimize the number of interviews that a child victim must attend.

(H) Designation of a director for the multidisciplinary program.

(I) Assignment of a volunteer or staff advocate to each child in order to assist the child and, when appropriate, the child's family, throughout each step of judicial proceedings.

(J) Such other criteria as the Director shall establish by regulation.

(c) Distribution of grants

In awarding grants under this section, the Director shall ensure that grants are distributed to both large and small States and to rural, suburban, and urban jurisdictions.

(d) Consultation with regional children's advocacy centers

A grant recipient under this section shall consult from time to time with regional children's advocacy centers in its census region that are grant recipients under section 13001b of this title.

(Pub. L. 101-647, title II, §214, formerly §212, Nov. 29, 1990, 104 Stat. 4793; renumbered §214 and amended Pub. L. 102-586, §6(b)(1), (c), Nov. 4, 1992, 106 Stat. 5029, 5034; Pub. L. 107-273, div. C, title II, §12221(b)(1)(A), Nov. 2, 2002, 116 Stat. 1894.)

PRIOR PROVISIONS

A prior section 214 of Pub. L. 101-647 was renumbered section 214B and is classified to section 13004 of this title.

AMENDMENTS

2002—Subsec. (b)(1). Pub. L. 107-273 substituted "sections 5673 and 5676 of this title" for "sections 5665a, 5673, and 5676 of this title".

1992—Pub. L. 102-586, §6(c)(1), substituted "Local children's advocacy centers" for "Authority of Director to make grants" in section catchline.

Subsec. (a). Pub. L. 102-586, §6(c)(2), substituted "The Administrator, in coordination with the Director and with the Director of the Office of Victims of Crime," for "The Director of the Office of Victims of Crime (hereinafter in this subchapter referred to as the 'Director'), in consultation with officials of the Department of Health and Human Services,".

Subsec. (b)(2)(B). Pub. L. 102-586, §6(c)(3), inserted "and nonoffending family members" after "neglect".

Subsec. (d). Pub. L. 102-586, §6(c)(4), added subsec. (d).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-273 effective on the first day of the first fiscal year that begins after Nov. 2, 2002, and applicable only with respect to fiscal years beginning on or after the first day of the first fiscal year that begins after Nov. 2, 2002, see section 12223 of Pub. L. 107-273, as amended, set out as a note under section 5601 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13001b, 13004 of this title.

§ 13003. Grants for specialized technical assistance and training programs**(a) In general**

The Administrator shall make grants to national organizations to provide technical assistance and training to attorneys and others instrumental to the criminal prosecution of child abuse cases in State or Federal courts, for the purpose of improving the quality of criminal prosecution of such cases.

(b) Grantee organizations

An organization to which a grant is made pursuant to subsection (a) of this section shall be one that has, or is affiliated with one that has, broad membership among attorneys who prosecute criminal cases in State courts and has demonstrated experience in providing training and technical assistance for prosecutors.

(c) Grant criteria

(1) The Administrator shall establish the criteria to be used for evaluating applications for grants under this section, consistent with sections 5673 and 5676 of this title.

(2) The grant criteria established pursuant to paragraph (1) shall require that a program provide training and technical assistance that includes information regarding improved child interview techniques, thorough investigative methods, interagency coordination and effective presentation of evidence in court, including the use of alternative courtroom procedures described in this title.¹

(Pub. L. 101-647, title II, §214A, formerly §213, Nov. 29, 1990, 104 Stat. 4793; renumbered §214A and amended Pub. L. 102-586, §6(b)(1), (d), Nov. 4, 1992, 106 Stat. 5029, 5034; Pub. L. 107-273, div. C, title II, §12221(b)(1)(B), Nov. 2, 2002, 116 Stat. 1894.)

REFERENCES IN TEXT

This title, referred to in subsec. (c)(2), means title II of Pub. L. 101-647, known as the Victims of Child Abuse

¹ See References in Text note below.

Act of 1990, which is classified principally to this chapter. For complete classification of title II to the Code, see Short Title note set out under section 13001 of this title and Tables.

AMENDMENTS

2002—Subsec. (c)(1). Pub. L. 107-273 substituted “sections 5673 and 5676 of this title” for “sections 5665a, 5673, and 5676 of this title”.

1992—Subsecs. (a), (c)(1). Pub. L. 102-586, §6(d), substituted “Administrator” for “Director”.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-273 effective on the first day of the first fiscal year that begins after Nov. 2, 2002, and applicable only with respect to fiscal years beginning on or after the first day of the first fiscal year that begins after Nov. 2, 2002, see section 12223 of Pub. L. 107-273, as amended, set out as a note under section 5601 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13004 of this title.

§ 13004. Authorization of appropriations

(a) Sections 13001b and 13002

There are authorized to be appropriated to carry out sections 13001b and 13002 of this title, \$15,000,000 for each of fiscal years 2004 and 2005.

(b) Section 13003

There are authorized to be appropriated to carry out section 13003 of this title, \$5,000,000 for each of fiscal years 2004 and 2005.

(Pub. L. 101-647, title II, §214B, formerly §214, Nov. 29, 1990, 104 Stat. 4794; renumbered §214B and amended Pub. L. 102-586, §6(b)(1), (e), Nov. 4, 1992, 106 Stat. 5029, 5034; Pub. L. 104-235, title II, §232, Oct. 3, 1996, 110 Stat. 3092; Pub. L. 108-21, title III, §381(b), Apr. 30, 2003, 117 Stat. 667.)

AMENDMENTS

2003—Pub. L. 108-21 amended section generally. Prior to amendment, section authorized appropriations to carry out sections 13001b and 13002 of \$15,000,000 for fiscal year 1993 and such sums as necessary in fiscal years 1994 through 2000 and appropriations to carry out section 13003 of \$5,000,000 for fiscal year 1993 and such sums as necessary in fiscal years 1994 through 2000.

1996—Subsecs. (a)(2), (b)(2). Pub. L. 104-235 substituted “1996, and each of the fiscal years 1997 through 2000” for “and 1996”.

1992—Pub. L. 102-586, §6(e), amended section generally. Prior to amendment, section authorized appropriations to carry out this subchapter of \$20,000,000 in fiscal year 1991 and such sums as may be necessary in fiscal years 1992 and 1993 and provided that not less than 90 percent was to be used for grants under section 13002 of this title.

SUBCHAPTER II—COURT-APPOINTED SPECIAL ADVOCATE PROGRAM

§ 13011. Findings

The Congress finds that—

(1) the National Court-Appointed Special Advocate provides training and technical assistance to a network of 13,000 volunteers in 377 programs operating in 47 States; and

(2) in 1988, these volunteers represented 40,000 children, representing approximately 15 percent of the estimated 270,000 cases of child abuse and neglect in juvenile and family courts.

(Pub. L. 101-647, title II, §215, Nov. 29, 1990, 104 Stat. 4794.)

§ 13012. Purpose

The purpose of this subchapter is to ensure that by January 1, 1995, a court-appointed special advocate shall be available to every victim of child abuse or neglect in the United States that needs such an advocate.

(Pub. L. 101-647, title II, §216, Nov. 29, 1990, 104 Stat. 4794; Pub. L. 103-322, title IV, §40156(a)(2), Sept. 13, 1994, 108 Stat. 1923.)

AMENDMENTS

1994—Pub. L. 103-322 made technical amendment to reference to this subchapter to correct reference to corresponding provision of original act.

§ 13013. Strengthening of court-appointed special advocate program

(a) In general

The Administrator of the Office of Juvenile Justice and Delinquency Prevention shall make grants to expand the court-appointed special advocate program.

(b) Grantee organizations

(1) An organization to which a grant is made pursuant to subsection (a) of this section shall be a national organization that has broad membership among court-appointed special advocates and has demonstrated experience in grant administration of court-appointed special advocate programs and in providing training and technical assistance to court-appointed special advocate program; or (2) may be a local public or not-for-profit agency that has demonstrated the willingness to initiate or expand a court-appointed special advocate program.

(2) An organization described in paragraph (1)(a) that receives a grant may be authorized to make subgrants and enter into contracts with public and not-for-profit agencies to initiate and to expand the court-appointed special advocate program. Should a grant be made to a national organization for this purpose, the Administrator shall specify an amount not exceeding 5 percent that can be used for administrative purposes by the national organization.

(c) Grant criteria

(1) The Administrator shall establish criteria to be used in evaluating applications for grants under this section, consistent with sections 5673 and 5676 of this title.

(2) In general, the grant criteria established pursuant to paragraph (1) shall require that a court-appointed special advocate program provide screening, training, and supervision of court-appointed special advocates in accordance with standards developed by the National Court-Appointed Special Advocate Association. Such criteria may include the requirements that—

(A) a court-appointed special advocate association program have a mission and purpose in keeping with the mission and purpose of the National Court-Appointed Special Advocate Association and that it abide by the National Court-Appointed Special Advocate Association Code of Ethics;

(B) a court-appointed special advocate association program operate with access to legal counsel;

(C) the management and operation of a court-appointed special advocate program assure adequate supervision of court-appointed special advocate volunteers;

(D) a court-appointed special advocate program keep written records on the operation of the program in general and on each applicant, volunteer, and case;

(E) a court-appointed special advocate program have written management and personnel policies and procedures, screening requirements, and training curriculum;

(F) a court-appointed special advocate program not accept volunteers who have been convicted of, have charges pending for, or have in the past been charged with, a felony or misdemeanor involving a sex offense, violent act, child abuse or neglect, or related acts that would pose risks to children or to the court-appointed special advocate program's credibility;

(G) a court-appointed special advocate program have an established procedure to allow the immediate reporting to a court or appropriate agency of a situation in which a court-appointed special advocate volunteer has reason to believe that a child is in imminent danger;

(H) a court-appointed special advocate volunteer be an individual who has been screened and trained by a recognized court-appointed special advocate program and appointed by the court to advocate for children who come into the court system primarily as a result of abuse or neglect; and

(I) a court-appointed special advocate volunteer serve the function of reviewing records, facilitating prompt, thorough review of cases, and interviewing appropriate parties in order to make recommendations on what would be in the best interests of the child.

(3) In awarding grants under this section, the Administrator shall ensure that grants are distributed to localities that have no existing court-appointed special advocate program and to programs in need of expansion.

(Pub. L. 101-647, title II, §217, Nov. 29, 1990, 104 Stat. 4794; Pub. L. 107-273, div. C, title II, §12221(b)(1)(C), Nov. 2, 2002, 116 Stat. 1894.)

AMENDMENTS

2002—Subsec. (c)(1). Pub. L. 107-273 substituted “sections 5673 and 5676 of this title” for “sections 5665a, 5673, and 5676 of this title”.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-273 effective on the first day of the first fiscal year that begins after Nov. 2, 2002, and applicable only with respect to fiscal years beginning on or after the first day of the first fiscal year that begins after Nov. 2, 2002, see section 12223 of Pub. L. 107-273, as amended, set out as a note under section 5601 of this title.

§ 13014. Authorization of appropriations

(a) Authorization

There is authorized to be appropriated to carry out this subchapter \$12,000,000 for each of fiscal years 2001 through 2005.

(b) Limitation

No funds are authorized to be appropriated for a fiscal year to carry out this subchapter unless

the aggregate amount appropriated to carry out title II of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5611 et seq.) for such fiscal year is not less than the aggregate amount appropriated to carry out such title for the preceding fiscal year.

(Pub. L. 101-647, title II, §218, Nov. 29, 1990, 104 Stat. 4796; Pub. L. 103-322, title IV, §40156(a)(1), Sept. 13, 1994, 108 Stat. 1922; Pub. L. 106-386, div. B, title III, §1302(a), Oct. 28, 2000, 114 Stat. 1511.)

REFERENCES IN TEXT

The Juvenile Justice and Delinquency Prevention Act of 1974, referred to in subsec. (b), is Pub. L. 93-415, Sept. 7, 1974, 88 Stat. 1109, as amended. Title II of the Act is classified principally to subchapter II (§5611 et seq.) of chapter 72 of this title. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106-386 added subsec. (a) and struck out heading and text of former subsec. (a). Text read as follows: “There are authorized to be appropriated to carry out this subchapter—

- “(1) \$6,000,000 for fiscal year 1996;
- “(2) \$6,000,000 for fiscal year 1997;
- “(3) \$7,000,000 for fiscal year 1998;
- “(4) \$9,000,000 for fiscal year 1999; and
- “(5) \$10,000,000 for fiscal year 2000.”

1994—Subsec. (a). Pub. L. 103-322 amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: “There are authorized to be appropriated to carry out this chapter—

- “(1) \$5,000,000 in fiscal year 1991; and
- “(2) such sums as may be necessary to carry out this subchapter in each of fiscal years 1992, 1993, and 1994.”

SUBCHAPTER III—CHILD ABUSE TRAINING PROGRAMS FOR JUDICIAL PERSONNEL AND PRACTITIONERS

§ 13021. Findings and purpose

(a) Findings

The Congress finds that—

(1) a large number of juvenile and family courts are inundated with increasing numbers of cases due to increased reports of abuse and neglect, increasing drug-related maltreatment, and insufficient court resources;

(2) the amendments made to the Social Security Act [42 U.S.C. 301 et seq.] by the Adoption Assistance and Child Welfare Act of 1980 make substantial demands on the courts handling abuse and neglect cases, but provide no assistance to the courts to meet those demands;

(3) the Adoption¹ and Child Welfare Act of 1980 requires courts to—

(A) determine whether the agency made reasonable efforts to prevent foster care placement;

(B) approve voluntary nonjudicial placement; and

(C) provide procedural safeguards for parents when their parent-child relationship is affected;

(4) social welfare agencies press the courts to meet such requirements, yet scarce resources often dictate that courts comply pro

¹ So in original. Probably should be “Adoption Assistance”.

forma without undertaking the meaningful judicial inquiry contemplated by Congress in the Adoption¹ and Child Welfare Act of 1980;

(5) compliance with the Adoption¹ and Child Welfare Act of 1980 and overall improvements in the judicial response to abuse and neglect cases can best come about through action by top level court administrators and judges with administrative functions who understand the unique aspects of decisions required in child abuse and neglect cases; and

(6) the Adoption¹ and Child Welfare Act of 1980 provides financial incentives to train welfare agency staff to meet the requirements, but provides no resources to train judges.

(b) Purpose

The purpose of this subchapter is to provide expanded technical assistance and training to judicial personnel and attorneys, particularly personnel and practitioners in juvenile and family courts, to improve the judicial system's handling of child abuse and neglect cases with specific emphasis on the role of the courts in addressing reasonable efforts that can safely avoid unnecessary and unnecessarily prolonged foster care placement.

(Pub. L. 101-647, title II, §221, Nov. 29, 1990, 104 Stat. 4796; Pub. L. 103-322, title IV, §40156(b)(2), Sept. 13, 1994, 108 Stat. 1923.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a)(2), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§301 et seq.) of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Adoption Assistance and Child Welfare Act of 1980, referred to in subsec. (a), is Pub. L. 96-272, June 17, 1980, 94 Stat. 500, as amended. For complete classification of this Act to the Code, see Short Title of 1980 Amendments note set out under section 1305 of this title and Tables.

AMENDMENTS

1994—Subsec. (b). Pub. L. 103-322 made technical amendment to reference to this subchapter to correct reference to corresponding provision of original act.

§ 13022. Grants for juvenile and family court personnel

In order to improve the judicial system's handling of child abuse and neglect cases, the Administrator of the Office of Juvenile Justice and Delinquency Prevention shall make grants for the purpose of providing—

(1) technical assistance and training to judicial personnel and attorneys, particularly personnel and practitioners in juvenile and family courts; and

(2) administrative reform in juvenile and family courts.

(Pub. L. 101-647, title II, §222, Nov. 29, 1990, 104 Stat. 4797.)

§ 13023. Specialized technical assistance and training programs

(a) Grants to develop model programs

(1) The Administrator shall make grants to national organizations to develop 1 or more model technical assistance and training pro-

grams to improve the judicial system's handling of child abuse and neglect cases.

(2) An organization to which a grant is made pursuant to paragraph (1) shall be one that has broad membership among juvenile and family court judges and has demonstrated experience in providing training and technical assistance for judges, attorneys, child welfare personnel, and lay child advocates.

(b) Grants to juvenile and family courts

(1) In order to improve the judicial system's handling of child abuse and neglect cases, the Administrator shall make grants to State courts or judicial administrators for programs that provide or contract for, the implementation of—

(A) training and technical assistance to judicial personnel and attorneys in juvenile and family courts; and

(B) administrative reform in juvenile and family courts.

(2) The criteria established for the making of grants pursuant to paragraph (1) shall give priority to programs that improve—

(A) procedures for determining whether child service agencies have made reasonable efforts to prevent placement of children in foster care;

(B) procedures for determining whether child service agencies have, after placement of children in foster care, made reasonable efforts to reunite the family; and

(C) procedures for coordinating information and services among health professionals, social workers, law enforcement professionals, prosecutors, defense attorneys, and juvenile and family court personnel, consistent with subchapter I of this chapter.

(c) Grant criteria

The Administrator shall make grants under subsections (a) and (b) of this section consistent with sections 5666, 5673, and 5676 of this title.

(Pub. L. 101-647, title II, §223, Nov. 29, 1990, 104 Stat. 4797; Pub. L. 107-273, div. C, title II, §12221(b)(1)(D), Nov. 2, 2002, 116 Stat. 1894.)

AMENDMENTS

2002—Subsec. (c). Pub. L. 107-273 substituted "sections 5666, 5673, and 5676 of this title" for "section 5665a, 5673, and 5676 of this title".

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-273 effective on the first day of the first fiscal year that begins after Nov. 2, 2002, and applicable only with respect to fiscal years beginning on or after the first day of the first fiscal year that begins after Nov. 2, 2002, see section 12223 of Pub. L. 107-273, as amended, set out as a note under section 5601 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13024 of this title.

§ 13024. Authorization of appropriations

(a) Authorization

There is authorized to be appropriated to carry out this subchapter \$2,300,000 for each of fiscal years 2001 through 2005.

(b) Use of funds

Of the amounts appropriated in subsection (a) of this section, not less than 80 percent shall be

used for grants under section 13023(b) of this title.

(c) Limitation

No funds are authorized to be appropriated for a fiscal year to carry out this subchapter unless the aggregate amount appropriated to carry out title II of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5611 et seq.) for such fiscal year is not less than the aggregate amount appropriated to carry out such title for the preceding fiscal year.

(Pub. L. 101-647, title II, §224, Nov. 29, 1990, 104 Stat. 4798; Pub. L. 103-322, title IV, §40156(b)(1), Sept. 13, 1994, 108 Stat. 1923; Pub. L. 106-386, div. B, title III, §1302(b), Oct. 28, 2000, 114 Stat. 1511.)

REFERENCES IN TEXT

The Juvenile Justice and Delinquency Prevention Act of 1974, referred to in subsec. (c), is Pub. L. 93-415, Sept. 7, 1974, 88 Stat. 1109, as amended. Title II of the Act is classified principally to subchapter II (§5611 et seq.) of chapter 72 of this title. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106-386 added subsec. (a) and struck out heading and text of former subsec. (a). Text read as follows: “There are authorized to be appropriated to carry out this subchapter—

“(1) \$750,000 for fiscal year 1996;

“(2) \$1,000,000 for fiscal year 1997;

“(3) \$2,000,000 for fiscal year 1998;

“(4) \$2,000,000 for fiscal year 1999; and

“(5) \$2,300,000 for fiscal year 2000.”

1994—Subsec. (a). Pub. L. 103-322 amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: “There are authorized to be appropriated to carry out this chapter—

“(1) \$10,000,000 in fiscal year 1991; and

“(2) such sums as may be necessary to carry out this chapter in each of fiscal years 1992, 1993, and 1994.”

SUBCHAPTER IV—REPORTING
REQUIREMENTS

§ 13031. Child abuse reporting

(a) In general

A person who, while engaged in a professional capacity or activity described in subsection (b) of this section on Federal land or in a federally operated (or contracted) facility, learns of facts that give reason to suspect that a child has suffered an incident of child abuse, shall as soon as possible make a report of the suspected abuse to the agency designated under subsection (d) of this section.

(b) Covered professionals

Persons engaged in the following professions and activities are subject to the requirements of subsection (a) of this section:

(1) Physicians, dentists, medical residents or interns, hospital personnel and administrators, nurses, health care practitioners, chiropractors, osteopaths, pharmacists, optometrists, podiatrists, emergency medical technicians, ambulance drivers, undertakers, coroners, medical examiners, alcohol or drug treatment personnel, and persons performing a healing role or practicing the healing arts.

(2) Psychologists, psychiatrists, and mental health professionals.

(3) Social workers, licensed or unlicensed marriage, family, and individual counselors.

(4) Teachers, teacher’s aides or assistants, school counselors and guidance personnel, school officials, and school administrators.

(5) Child care workers and administrators.

(6) Law enforcement personnel, probation officers, criminal prosecutors, and juvenile rehabilitation or detention facility employees.

(7) Foster parents.

(8) Commercial film and photo processors.

(c) Definitions

For the purposes of this section—

(1) the term “child abuse” means the physical or mental injury, sexual abuse or exploitation, or negligent treatment of a child;

(2) the term “physical injury” includes but is not limited to lacerations, fractured bones, burns, internal injuries, severe bruising or serious bodily harm;

(3) the term “mental injury” means harm to a child’s psychological or intellectual functioning which may be exhibited by severe anxiety, depression, withdrawal or outward aggressive behavior, or a combination of those behaviors, which may be demonstrated by a change in behavior, emotional response or cognition;

(4) the term “sexual abuse” includes the employment, use, persuasion, inducement, enticement, or coercion of a child to engage in, or assist another person to engage in, sexually explicit conduct or the rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with children;

(5) the term “sexually explicit conduct” means actual or simulated—

(A) sexual intercourse, including sexual contact in the manner of genital-genital, oral-genital, anal-genital, or oral-anal contact, whether between persons of the same or of opposite sex; sexual contact means the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify sexual desire of any person;

(B) bestiality;

(C) masturbation;

(D) lascivious exhibition of the genitals or pubic area of a person or animal; or

(E) sadistic or masochistic abuse;

(6) the term “exploitation” means child pornography or child prostitution;

(7) the term “negligent treatment” means the failure to provide, for reasons other than poverty, adequate food, clothing, shelter, or medical care so as to seriously endanger the physical health of the child; and

(8) the term “child abuse” shall not include discipline administered by a parent or legal guardian to his or her child provided it is reasonable in manner and moderate in degree and otherwise does not constitute cruelty.

(d) Agency designated to receive report and action to be taken

For all Federal lands and all federally operated (or contracted) facilities in which children

are cared for or reside, the Attorney General shall designate an agency to receive and investigate the reports described in subsection (a) of this section. By formal written agreement, the designated agency may be a non-Federal agency. When such reports are received by social services or health care agencies, and involve allegations of sexual abuse, serious physical injury, or life-threatening neglect of a child, there shall be an immediate referral of the report to a law enforcement agency with authority to take emergency action to protect the child. All reports received shall be promptly investigated, and whenever appropriate, investigations shall be conducted jointly by social services and law enforcement personnel, with a view toward avoiding unnecessary multiple interviews with the child.

(e) Reporting form

In every federally operated (or contracted) facility, and on all Federal lands, a standard written reporting form, with instructions, shall be disseminated to all mandated reporter groups. Use of the form shall be encouraged, but its use shall not take the place of the immediate making of oral reports, telephonically or otherwise, when circumstances dictate.

(f) Immunity for good faith reporting and associated actions

All persons who, acting in good faith, make a report by subsection (a) of this section, or otherwise provide information or assistance in connection with a report, investigation, or legal intervention pursuant to a report, shall be immune from civil and criminal liability arising out of such actions. There shall be a presumption that any such persons acted in good faith. If a person is sued because of the person's performance of one of the above functions, and the defendant prevails in the litigation, the court may order that the plaintiff pay the defendant's legal expenses. Immunity shall not be accorded to persons acting in bad faith.

(g) Omitted

(h) Training of prospective reporters

All individuals in the occupations listed in subsection (b)(1) of this section who work on Federal lands, or are employed in federally operated (or contracted) facilities, shall receive periodic training in the obligation to report, as well as in the identification of abused and neglected children.

(Pub. L. 101-647, title II, § 226, Nov. 29, 1990, 104 Stat. 4806.)

CODIFICATION

Section is comprised of section 226 of Pub. L. 101-647. Subsec. (g) of section 226 of Pub. L. 101-647 enacted section 2258 of Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 18 section 2258.

§ 13032. Reporting of child pornography by electronic communication service providers

(a) Definitions

In this section—

(1) the term “electronic communication service” has the meaning given the term in section 2510 of title 18; and

(2) the term “remote computing service” has the meaning given the term in section 2711 of title 18.

(b) Requirements

(1) DUTY TO REPORT.—Whoever, while engaged in providing an electronic communication service or a remote computing service to the public, through a facility or means of interstate or foreign commerce, obtains knowledge of facts or circumstances from which a violation of section 2251, 2251A, 2252, 2252A, 2252B, or 2260 of title 18, involving child pornography (as defined in section 2256 of that title), or a violation of section 1466A of that title, is apparent, shall, as soon as reasonably possible, make a report of such facts or circumstances to the Cyber Tip Line at the National Center for Missing and Exploited Children, which shall forward that report to a law enforcement agency or agencies designated by the Attorney General.

(2) DESIGNATION OF AGENCIES.—Not later than 180 days after October 30, 1998, the Attorney General shall designate the law enforcement agency or agencies to which a report shall be forwarded under paragraph (1).

(3) In addition to forwarding such reports to those agencies designated in subsection (b)(2) of this section, the National Center for Missing and Exploited Children is authorized to forward any such report to an appropriate official of a state or subdivision of a state for the purpose of enforcing state criminal law.

(4) FAILURE TO REPORT.—A provider of electronic communication services or remote computing services described in paragraph (1) who knowingly and willfully fails to make a report under that paragraph shall be fined—

(A) in the case of an initial failure to make a report, not more than \$50,000; and

(B) in the case of any second or subsequent failure to make a report, not more than \$100,000.

(c) Civil liability

No provider or user of an electronic communication service or a remote computing service to the public shall be held liable on account of any action taken in good faith to comply with or pursuant to this section.

(d) Limitation of information or material required in report

A report under subsection (b)(1) of this section may include additional information or material developed by an electronic communication service or remote computing service, except that the Federal Government may not require the production of such information or material in that report.

(e) Monitoring not required

Nothing in this section may be construed to require a provider of electronic communication services or remote computing services to engage in the monitoring of any user, subscriber, or customer of that provider, or the content of any communication of any such person.

(f) Conditions of disclosure of information contained within report

(1) In general

No law enforcement agency that receives a report under subsection (b)(1) of this section

shall disclose any information contained in that report, except that disclosure of such information may be made—

(A) to an attorney for the government for use in the performance of the official duties of the attorney;

(B) to such officers and employees of the law enforcement agency, as may be necessary in the performance of their investigative and recordkeeping functions;

(C) to such other government personnel (including personnel of a State or subdivision of a State) as are determined to be necessary by an attorney for the government to assist the attorney in the performance of the official duties of the attorney in enforcing Federal criminal law; or

(D) where the report discloses a violation of State criminal law, to an appropriate official of a State or subdivision of a State for the purpose of enforcing such State law.

(2) Definitions

In this subsection, the terms “attorney for the government” and “State” have the meanings given those terms in Rule 54 of the Federal Rules of Criminal Procedure.

(Pub. L. 101-647, title II, § 227, as added Pub. L. 105-314, title VI, § 604(a), Oct. 30, 1998, 112 Stat. 2983; amended Pub. L. 106-113, div. B, § 1000(a)(1) [title I, § 121], Nov. 29, 1999, 113 Stat. 1535, 1501A-23; Pub. L. 108-21, title V, § 508(a), Apr. 30, 2003, 117 Stat. 683.)

REFERENCES IN TEXT

Rule 54 of the Federal Rules of Criminal Procedure, referred to in subsec. (f)(2), is set out in the Appendix to Title 18, Crimes and Criminal Procedure.

AMENDMENTS

2003—Subsec. (b)(1). Pub. L. 108-21, § 508(a)(1), inserted “2252B,” after “2252A,” and “or a violation of section 1466A of that title,” after “of that title.”

Subsec. (b)(3), (4). Pub. L. 108-21, § 508(a)(4), (5), added par. (3) and redesignated former par. (3) as (4).

Subsec. (c). Pub. L. 108-21, § 508(a)(2), inserted “or pursuant to” after “to comply with”.

Subsec. (f)(1)(D). Pub. L. 108-21, § 508(a)(3), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: “as permitted by a court at the request of an attorney for the government, upon a showing that such information may disclose a violation of State criminal law, to an appropriate official of a State or subdivision of a State for the purpose of enforcing such State law.”

1999—Subsec. (b)(1). Pub. L. 106-113, § 1000(a)(1) [title I, § 121(a)], inserted “to the Cyber Tip Line at the National Center for Missing and Exploited Children, which shall forward that report” after “such facts or circumstances”.

Subsec. (b)(2). Pub. L. 106-113, § 1000(a)(1) [title I, § 121(b)], substituted “forwarded” for “made”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 18 section 2702.

SUBCHAPTER V—CHILD CARE WORKER EMPLOYEE BACKGROUND CHECKS

§ 13041. Requirement for background checks

(a) In general

(1) Each agency of the Federal Government, and every facility operated by the Federal Gov-

ernment (or operated under contract with the Federal Government), that hires (or contracts for hire) individuals involved with the provision to children under the age of 18 of child care services shall assure that all existing and newly-hired employees undergo a criminal history background check. All existing staff shall receive such checks not later than May 29, 1991. Except as provided in subsection (b)(3) of this section, no additional staff shall be hired without a check having been completed.

(2) For the purposes of this section, the term “child care services” means child protective services (including the investigation of child abuse and neglect reports), social services, health and mental health care, child (day) care, education (whether or not directly involved in teaching), foster care, residential care, recreational or rehabilitative programs, and detention, correctional, or treatment services.

(b) Criminal history check

(1) A background check required by subsection (a) of this section shall be—

(A) based on a set of the employee’s fingerprints obtained by a law enforcement officer and on other identifying information;

(B) conducted through the Identification Division of the Federal Bureau of Investigation and through the State criminal history repositories of all States that an employee or prospective employee lists as current and former residences in an employment application; and

(C) initiated through the personnel programs of the applicable Federal agencies.

(2) The results of the background check shall be communicated to the employing agency.

(3) An agency or facility described in subsection (a)(1) of this section may hire a staff person provisionally prior to the completion of a background check if, at all times prior to receipt of the background check during which children are in the care of the person, the person is within the sight and under the supervision of a staff person with respect to whom a background check has been completed.

(c) Applicable criminal histories

Any conviction for a sex crime, an offense involving a child victim, or a drug felony, may be ground for denying employment or for dismissal of an employee in any of the positions listed in subsection (a)(2) of this section. In the case of an incident in which an individual has been charged with one of those offenses, when the charge has not yet been disposed of, an employer may suspend an employee from having any contact with children while on the job until the case is resolved. Conviction of a crime other than a sex crime may be considered if it bears on an individual’s fitness to have responsibility for the safety and well-being of children.

(d) Employment applications

(1) Employment applications for individuals who are seeking work for an agency of the Federal Government, or for a facility or program operated by (or through contract with) the Federal Government, in any of the positions listed in subsection (a)(1) of this section, shall contain a question asking whether the individual has ever been arrested for or charged with a crime

involving a child, and if so requiring a description of the disposition of the arrest or charge. An application shall state that it is being signed under penalty of perjury, with the applicable Federal punishment for perjury stated on the application.

(2) A Federal agency seeking a criminal history record check shall first obtain the signature of the employee or prospective employee indicating that the employee or prospective employee has been notified of the employer's obligation to require a record check as a condition of employment and the employee's right to obtain a copy of the criminal history report made available to the employing Federal agency and the right to challenge the accuracy and completeness of any information contained in the report.

(e) Encouragement of voluntary criminal history checks for others who may have contact with children

Federal agencies and facilities are encouraged to submit identifying information for criminal history checks on volunteers working in any of the positions listed in subsection (a) of this section and on adult household members in places where child care or foster care services are being provided in a home.

(Pub. L. 101-647, title II, §231, Nov. 29, 1990, 104 Stat. 4808; Pub. L. 102-190, div. A, title X, §1094(a), Dec. 5, 1991, 105 Stat. 1488.)

AMENDMENTS

1991—Subsec. (a)(1). Pub. L. 102-190, §1094(a)(1), substituted "May 29, 1991. Except as provided in subsection (b)(3) of this section, no additional staff" for "6 months after November 29, 1990, and no additional staff".

Subsec. (b)(3). Pub. L. 102-190, §1094(a)(2), added par. (3).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 40 section 590.

SUBCHAPTER VI—TREATMENT FOR JUVENILE OFFENDERS WHO ARE VICTIMS OF CHILD ABUSE OR NEGLECT

§§ 13051 to 13055. Repealed. Pub. L. 102-586, §2(i)(2), Nov. 4, 1992, 106 Stat. 5015

Section 13051, Pub. L. 101-647, title II, §251, Nov. 29, 1990, 104 Stat. 4814, authorized Administrator to make grants to public and nonprofit private organizations to develop, establish, and support projects for juvenile offenders who are victims of child abuse or neglect.

Section 13052, Pub. L. 101-647, title II, §252, Nov. 29, 1990, 104 Stat. 4815, related to administrative requirements.

Section 13053, Pub. L. 101-647, title II, §253, Nov. 29, 1990, 104 Stat. 4815, provided that Administrator in making grants give priority to applicants with experience and not disapprove an application solely because applicant proposes treating or serving juveniles whose offenses were not serious crimes.

Section 13054, Pub. L. 101-647, title II, §254, Nov. 29, 1990, 104 Stat. 4815, authorized appropriations to carry out this subchapter.

Section 13055, Pub. L. 101-647, title II, §255, Nov. 29, 1990, 104 Stat. 4815, defined "Administrator" and "juvenile" for purposes of this subchapter.

EFFECTIVE DATE OF REPEAL

Section 2(i)(2) of Pub. L. 102-586 provided that the repeal by that section is effective Sept. 30, 1993.

CHAPTER 133—POLLUTION PREVENTION

Sec.	
13101.	Findings and policy. (a) Findings. (b) Policy.
13102.	Definitions.
13103.	EPA activities. (a) Authorities. (b) Functions.
13104.	Grants to States for State technical assistance programs. (a) General authority. (b) Criteria. (c) Matching funds. (d) Effectiveness. (e) Information.
13105.	Source Reduction Clearinghouse. (a) Authority. (b) Public availability.
13106.	Source reduction and recycling data collection. (a) Reporting requirements. (b) Items included in report. (c) SARA provisions. (d) Additional optional information. (e) Availability of data.
13107.	EPA report. (a) Biennial reports. (b) Subsequent reports.
13108.	Savings provisions.
13109.	Authorization of appropriations.

§ 13101. Findings and policy

(a) Findings

The Congress finds that:

(1) The United States of America annually produces millions of tons of pollution and spends tens of billions of dollars per year controlling this pollution.

(2) There are significant opportunities for industry to reduce or prevent pollution at the source through cost-effective changes in production, operation, and raw materials use. Such changes offer industry substantial savings in reduced raw material, pollution control, and liability costs as well as help protect the environment and reduce risks to worker health and safety.

(3) The opportunities for source reduction are often not realized because existing regulations, and the industrial resources they require for compliance, focus upon treatment and disposal, rather than source reduction; existing regulations do not emphasize multimedia management of pollution; and businesses need information and technical assistance to overcome institutional barriers to the adoption of source reduction practices.

(4) Source reduction is fundamentally different and more desirable than waste management and pollution control. The Environmental Protection Agency needs to address the historical lack of attention to source reduction.

(5) As a first step in preventing pollution through source reduction, the Environmental Protection Agency must establish a source reduction program which collects and disseminates information, provides financial assistance to States, and implements the other activities provided for in this chapter.

(b) Policy

The Congress hereby declares it to be the national policy of the United States that pollution

should be prevented or reduced at the source whenever feasible; pollution that cannot be prevented should be recycled in an environmentally safe manner, whenever feasible; pollution that cannot be prevented or recycled should be treated in an environmentally safe manner whenever feasible; and disposal or other release into the environment should be employed only as a last resort and should be conducted in an environmentally safe manner.

(Pub. L. 101-508, title VI, § 6602, Nov. 5, 1990, 104 Stat. 1388-321.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(5), was in the original "this subtitle", meaning subtitle F (§§ 6501, 6601-6610) of title VI, Pub. L. 101-508, which is classified generally to this chapter. For complete classification of subtitle F to the Code, see Short Title note below and Tables.

SHORT TITLE

Section 6601 of Pub. L. 101-508 provided that: "This subtitle [subtitle F (§§ 6501, 6601-6610) of title VI of Pub. L. 101-508, enacting this chapter and section 4370c of this title] may be cited as the 'Pollution Prevention Act of 1990'."

§ 13102. Definitions

For purposes of this chapter—

(1) The term "Administrator" means the Administrator of the Environmental Protection Agency.

(2) The term "Agency" means the Environmental Protection Agency.

(3) The term "toxic chemical" means any substance on the list described in section 11023(c) of this title.

(4) The term "release" has the same meaning as provided by section 11049(8) of this title.

(5)(A) The term "source reduction" means any practice which—

(i) reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal; and

(ii) reduces the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants.

The term includes equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, or inventory control.

(B) The term "source reduction" does not include any practice which alters the physical, chemical, or biological characteristics or the volume of a hazardous substance, pollutant, or contaminant through a process or activity which itself is not integral to and necessary for the production of a product or the providing of a service.

(6) The term "multi-media" means water, air, and land.

(7) The term "SIC codes" refers to the 2-digit code numbers used for classification of economic activity in the Standard Industrial Classification Manual.

(Pub. L. 101-508, title VI, § 6603, Nov. 5, 1990, 104 Stat. 1388-321.)

§ 13103. EPA activities

(a) Authorities

The Administrator shall establish in the Agency an office to carry out the functions of the Administrator under this chapter. The office shall be independent of the Agency's single-medium program offices but shall have the authority to review and advise such offices on their activities to promote a multi-media approach to source reduction. The office shall be under the direction of such officer of the Agency as the Administrator shall designate.

(b) Functions

The Administrator shall develop and implement a strategy to promote source reduction. As part of the strategy, the Administrator shall—

(1) establish standard methods of measurement of source reduction;

(2) ensure that the Agency considers the effect of its existing and proposed programs on source reduction efforts and shall review regulations of the Agency prior and subsequent to their proposal to determine their effect on source reduction;

(3) coordinate source reduction activities in each Agency Office¹ and coordinate with appropriate offices to promote source reduction practices in other Federal agencies, and generic research and development on techniques and processes which have broad applicability;

(4) develop improved methods of coordinating, streamlining and assuring public access to data collected under Federal environmental statutes;

(5) facilitate the adoption of source reduction techniques by businesses. This strategy shall include the use of the Source Reduction Clearinghouse and State matching grants provided in this chapter to foster the exchange of information regarding source reduction techniques, the dissemination of such information to businesses, and the provision of technical assistance to businesses. The strategy shall also consider the capabilities of various businesses to make use of source reduction techniques;

(6) identify, where appropriate, measurable goals which reflect the policy of this chapter, the tasks necessary to achieve the goals, dates at which the principal tasks are to be accomplished, required resources, organizational responsibilities, and the means by which progress in meeting the goals will be measured;

(8)² establish an advisory panel of technical experts comprised of representatives from industry, the States, and public interest groups, to advise the Administrator on ways to improve collection and dissemination of data;

(9) establish a training program on source reduction opportunities, including workshops and guidance documents, for State and Federal permit issuance, enforcement, and inspection officials working within all agency program offices.³

¹ So in original. Probably should not be capitalized.

² So in original. Subsec. (b) enacted without a par. (7).

³ So in original. The period probably should be a semicolon.

(10) identify and make recommendations to Congress to eliminate barriers to source reduction including the use of incentives and disincentives;

(11) identify opportunities to use Federal procurement to encourage source reduction;

(12) develop, test and disseminate model source reduction auditing procedures designed to highlight source reduction opportunities; and

(13) establish an annual award program to recognize a company or companies which operate outstanding or innovative source reduction programs.

(Pub. L. 101-508, title VI, §6604, Nov. 5, 1990, 104 Stat. 1388-322.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13107 of this title.

§ 13104. Grants to States for State technical assistance programs

(a) General authority

The Administrator shall make matching grants to States for programs to promote the use of source reduction techniques by businesses.

(b) Criteria

When evaluating the requests for grants under this section, the Administrator shall consider, among other things, whether the proposed State program would accomplish the following:

(1) Make specific technical assistance available to businesses seeking information about source reduction opportunities, including funding for experts to provide onsite technical advice to business¹ seeking assistance and to assist in the development of source reduction plans.

(2) Target assistance to businesses for whom lack of information is an impediment to source reduction.

(3) Provide training in source reduction techniques. Such training may be provided through local engineering schools or any other appropriate means.

(c) Matching funds

Federal funds used in any State program under this section shall provide no more than 50 per centum of the funds made available to a State in each year of that State's participation in the program.

(d) Effectiveness

The Administrator shall establish appropriate means for measuring the effectiveness of the State grants made under this section in promoting the use of source reduction techniques by businesses.

(e) Information

States receiving grants under this section shall make information generated under the grants available to the Administrator.

(Pub. L. 101-508, title VI, §6605, Nov. 5, 1990, 104 Stat. 1388-323.)

¹ So in original. Probably should be "businesses".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13105, 13109 of this title.

§ 13105. Source Reduction Clearinghouse

(a) Authority

The Administrator shall establish a Source Reduction Clearinghouse to compile information including a computer data base which contains information on management, technical, and operational approaches to source reduction. The Administrator shall use the clearinghouse to—

(1) serve as a center for source reduction technology transfer;

(2) mount active outreach and education programs by the States to further the adoption of source reduction technologies; and

(3) collect and compile information reported by States receiving grants under section 13104 of this title on the operation and success of State source reduction programs.

(b) Public availability

The Administrator shall make available to the public such information on source reduction as is gathered pursuant to this chapter and such other pertinent information and analysis regarding source reduction as may be available to the Administrator. The data base shall permit entry and retrieval of information to any person.

(Pub. L. 101-508, title VI, §6606, Nov. 5, 1990, 104 Stat. 1388-324.)

§ 13106. Source reduction and recycling data collection

(a) Reporting requirements

Each owner or operator of a facility required to file an annual toxic chemical release form under section 11023 of this title for any toxic chemical shall include with each such annual filing a toxic chemical source reduction and recycling report for the preceeding¹ calendar year. The toxic chemical source reduction and recycling report shall cover each toxic chemical required to be reported in the annual toxic chemical release form filed by the owner or operator under section 11023(c) of this title. This section shall take effect with the annual report filed under section 11023 of this title for the first full calendar year beginning after November 5, 1990.

(b) Items included in report

The toxic chemical source reduction and recycling report required under subsection (a) of this section shall set forth each of the following on a facility-by-facility basis for each toxic chemical:

(1) The quantity of the chemical entering any waste stream (or otherwise released into the environment) prior to recycling, treatment, or disposal during the calendar year for which the report is filed and the percentage change from the previous year. The quantity reported shall not include any amount reported under paragraph (7). When actual measurements of the quantity of a toxic chemical

¹ So in original. Probably should be "preceding".

entering the waste streams are not readily available, reasonable estimates should be made based on best engineering judgment.

(2) The amount of the chemical from the facility which is recycled (at the facility or elsewhere) during such calendar year, the percentage change from the previous year, and the process of recycling used.

(3) The source reduction practices used with respect to that chemical during such year at the facility. Such practices shall be reported in accordance with the following categories unless the Administrator finds other categories to be more appropriate.

(A) Equipment, technology, process, or procedure modifications.

(B) Reformulation or redesign of products.

(C) Substitution of raw materials.

(D) Improvement in management, training, inventory control, materials handling, or other general operational phases of industrial facilities.

(4) The amount expected to be reported under paragraph² (1) and (2) for the two calendar years immediately following the calendar year for which the report is filed. Such amount shall be expressed as a percentage change from the amount reported in paragraphs (1) and (2).

(5) A ratio of production in the reporting year to production in the previous year. The ratio should be calculated to most closely reflect all activities involving the toxic chemical. In specific industrial classifications subject to this section, where a feedstock or some variable other than production is the primary influence on waste characteristics or volumes, the report may provide an index based on that primary variable for each toxic chemical. The Administrator is encouraged to develop production indexes to accommodate individual industries for use on a voluntary basis.

(6) The techniques which were used to identify source reduction opportunities. Techniques listed should include, but are not limited to, employee recommendations, external and internal audits, participative team management, and material balance audits. Each type of source reduction listed under paragraph (3) should be associated with the techniques or multiples of techniques used to identify the source reduction technique.

(7) The amount of any toxic chemical released into the environment which resulted from a catastrophic event, remedial action, or other one-time event, and is not associated with production processes during the reporting year.

(8) The amount of the chemical from the facility which is treated (at the facility or elsewhere) during such calendar year and the percentage change from the previous year. For the first year of reporting under this subsection, comparison with the previous year is required only to the extent such information is available.

(c) SARA provisions

The provisions of sections 11042, 11045(c), and 11046 of this title shall apply to the reporting re-

quirements of this section in the same manner as to the reports required under section 11023 of this title. The Administrator may modify the form required for purposes of reporting information under section 11023 of this title to the extent he deems necessary to include the additional information required under this section.

(d) Additional optional information

Any person filing a report under this section for any year may include with the report additional information regarding source reduction, recycling, and other pollution control techniques in earlier years.

(e) Availability of data

Subject to section 11042 of this title, the Administrator shall make data collected under this section publicly available in the same manner as the data collected under section 11023 of this title.

(Pub. L. 101-508, title VI, §6607, Nov. 5, 1990, 104 Stat. 1388-324.)

REFERENCES IN TEXT

SARA, referred to in the heading of subsec. (c), means the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499, Oct. 17, 1986, 100 Stat. 1613, as amended. For complete classification of this Act to the Code, see Short Title of 1986 Amendment note set out under section 9601 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13107 of this title.

§ 13107. EPA report

(a) Biennial reports

The Administrator shall provide Congress with a report within eighteen months after November 5, 1990, and biennially thereafter, containing a detailed description of the actions taken to implement the strategy to promote source reduction developed under section 13103(b)¹ of this title and of the results of such actions. The report shall include an assessment of the effectiveness of the clearinghouse and grant program established under this chapter in promoting the goals of the strategy, and shall evaluate data gaps and data duplication with respect to data collected under Federal environmental statutes.

(b) Subsequent reports

Each biennial report submitted under subsection (a) of this section after the first report shall contain each of the following:

(1) An analysis of the data collected under section 13106 of this title on an industry-by-industry basis for not less than five SIC codes or other categories as the Administrator deems appropriate. The analysis shall begin with those SIC codes or other categories of facilities which generate the largest quantities of toxic chemical waste. The analysis shall include an evaluation of trends in source reduction by industry, firm size, production, or other useful means. Each such subsequent report shall cover five SIC codes or other categories which were not covered in a prior re-

² So in original. Probably should be "paragraphs".

¹ See References in Text note below.

port until all SIC codes or other categories have been covered.

(2) An analysis of the usefulness and validity of the data collected under section 13106 of this title for measuring trends in source reduction and the adoption of source reduction by business.

(3) Identification of regulatory and non-regulatory barriers to source reduction, and of opportunities for using existing regulatory programs, and incentives and disincentives to promote and assist source reduction.

(4) Identification of industries and pollutants that require priority assistance in multimedia source reduction²

(5) Recommendations as to incentives needed to encourage investment and research and development in source reduction.

(6) Identification of opportunities and development of priorities for research and development in source reduction methods and techniques.

(7) An evaluation of the cost and technical feasibility, by industry and processes, of source reduction opportunities and current activities and an identification of any industries for which there are significant barriers to source reduction with an analysis of the basis of this identification.

(8) An evaluation of methods of coordinating, streamlining, and improving public access to data collected under Federal environmental statutes.

(9) An evaluation of data gaps and data duplication with respect to data collected under Federal environmental statutes.

In the report following the first biennial report provided for under this subsection, paragraphs (3) through (9) may be included at the discretion of the Administrator.

(Pub. L. 101-508, title VI, § 6608, Nov. 5, 1990, 104 Stat. 1388-326.)

REFERENCES IN TEXT

Section 13103(b) of this title, referred to in subsec. (a), was in the original "section 4(b)" and was translated as reading "section 6604(b)", meaning section 6604(b) of Pub. L. 101-508, because Pub. L. 101-508 has no section 4 but section 6604(b) of Pub. L. 101-508 relates to development of a strategy to promote source reduction.

§ 13108. Savings provisions

(a) Nothing in this chapter shall be construed to modify or interfere with the implementation of title III of the Superfund Amendments and Reauthorization Act of 1986 [42 U.S.C. 11001 et seq.].

(b) Nothing contained in this chapter shall be construed, interpreted or applied to supplant, displace, preempt or otherwise diminish the responsibilities and liabilities under other State or Federal law, whether statutory or common.

(Pub. L. 101-508, title VI, § 6609, Nov. 5, 1990, 104 Stat. 1388-327.)

REFERENCES IN TEXT

Title III of the Superfund Amendments and Reauthorization Act of 1986, referred to in subsec. (a), is

title III of Pub. L. 99-499, Oct. 17, 1986, 100 Stat. 1728, known as the Emergency Planning and Community Right-To-Know Act of 1986, which is classified generally to chapter 116 (§11001 et seq.) of this title. For complete classification of title III to the Code, see Short Title note set out under section 11001 of this title and Tables.

§ 13109. Authorization of appropriations

There is authorized to be appropriated to the Administrator \$8,000,000 for each of the fiscal years 1991, 1992, and 1993 for functions carried out under this chapter (other than State Grants),¹ and \$8,000,000 for each of the fiscal years 1991, 1992, and 1993, for grant programs to States issued pursuant to section 13104 of this title.

(Pub. L. 101-508, title VI, § 6610, Nov. 5, 1990, 104 Stat. 1388-327.)

CHAPTER 134—ENERGY POLICY

Sec.

13201. "Secretary" defined.

SUBCHAPTER I—ALTERNATIVE FUELS—GENERAL

13211. Definitions.

13212. Minimum Federal fleet requirement.

- (a) General requirements.
- (b) Percentage requirements.
- (c) Allocation of incremental costs.
- (d) Application of requirements.
- (e) Resale.
- (f) Authorization of appropriations.

13213. Refueling.

- (a) In general.
- (b) Authorization of appropriations.

13214. Federal agency promotion, education, and coordination.

- (a) Promotion and education.
- (b) Assistance in procurement and placement.

13215. Agency incentives program.

- (a) Reduction in rates.
- (b) Sunset provision.

13216. Recognition and incentive awards program.

- (a) Awards program.
- (b) Criteria.
- (c) Authorization of appropriations.

13217. Measurement of alternative fuel use.

13218. Reports.

- (a) Omitted.
- (b) Compliance report.

13219. United States Postal Service.

- (a) Omitted.
- (b) Coordination.
- (c) Program criteria.

13220. Biodiesel fuel use credits.

- (a) Allocation of credits.
- (b) Use of credits.
- (c) Credit not a section 13258 credit.
- (d) Issuance of rule.
- (e) Collection of data.
- (f) Definitions.

SUBCHAPTER II—ALTERNATIVE FUELS—NON-FEDERAL PROGRAMS

13231. Public information program.

13232. Labeling requirements.

- (a) Establishment of requirements.
- (b) Technical assistance and coordination.

13233. Data acquisition program.

13234. Federal Energy Regulatory Commission authority to approve recovery of certain expenses in advance.

² So in original. Probably should be followed by a period.

¹ So in original. Probably should not be capitalized.

- Sec.
- (a) Natural gas motor vehicles.
 - (b) Electric motor vehicles.
 - 13235. State and local incentives programs.
 - (a) Establishment of program.
 - (b) Federal assistance to States.
 - (c) General provisions.
 - (d) Definitions.
 - (e) Authorization of appropriations.
 - 13236. Alternative fuel bus program.
 - (a) Cooperative agreements and joint ventures.
 - (b) Limitations.
 - (c) School buses.
 - (d) Authorization of appropriations.
 - 13237. Certification of training programs.
 - 13238. Alternative fuel use in nonroad vehicles and engines.
 - (a) Nonroad vehicles and engines.
 - (b) Definition of nonroad vehicles and engines.
 - (c) Designation.
 - 13239. Low interest loan program.
 - (a) Establishment.
 - (b) Loan terms.
 - (c) Criteria.
 - (d) Priorities.
 - (e) Authorization of appropriations.
- SUBCHAPTER III—AVAILABILITY AND USE OF REPLACEMENT FUELS, ALTERNATIVE FUELS, AND ALTERNATIVE FUELED PRIVATE VEHICLES
- 13251. Mandate for alternative fuel providers.
 - (a) In general.
 - (b) Revisions and extensions.
 - (c) Option for electric utilities.
 - (d) Report to Congress.
 - 13252. Replacement fuel supply and demand program.
 - (a) Establishment of program.
 - (b) Development plan and production goals.
 - 13253. Replacement fuel demand estimates and supply information.
 - (a) Estimates.
 - (b) Information.
 - (c) Protection of information.
 - 13254. Modification of goals; additional rulemaking authority.
 - (a) Examination of goals.
 - (b) Modification of goals.
 - (c) Additional rulemaking authority.
 - 13255. Voluntary supply commitments.
 - 13256. Technical and policy analysis.
 - (a) Requirement.
 - (b) Purposes.
 - (c) Publication.
 - 13257. Fleet requirement program.
 - (a) Fleet program purchase goals.
 - (b) Early rulemaking.
 - (c) Advance notice of proposed rulemaking.
 - (d) Proposed rule.
 - (e) Determination.
 - (f) Explanation of determination that fleet requirement program is not necessary.
 - (g) Fleet requirement program.
 - (h) Extension of deadlines.
 - (i) Exemptions.
 - (j) Conversions.
 - (k) Inclusion of law enforcement vehicles and urban buses.
 - (l) Consideration of factors.
 - (m) Consultation and participation of other Federal agencies.
 - (n) Petitions.
 - (o) Mandatory State fleet programs.
 - 13258. Credits.

- Sec.
- (a) In general.
 - (b) Allocation.
 - (c) Use of credits.
 - (d) Transferability.
 - 13259. Secretary's recommendations to Congress.
 - (a) Recommendations to require availability or acquisition.
 - (b) Fair and equitable application.
 - 13260. Effect on other laws.
 - (a) In general.
 - (b) Compliance by alternative fueled vehicles.
 - 13261. Prohibited acts.
 - 13262. Enforcement.
 - (a) Violation.
 - (b) Willful violation.
 - (c) Knowing and willful violation following prior violation and penalty.
 - 13263. Powers of Secretary.
 - 13264. Authorization of appropriations.
- SUBCHAPTER IV—ELECTRIC MOTOR VEHICLES
- 13271. Definitions.
- PART A—ELECTRIC MOTOR VEHICLE COMMERCIAL DEMONSTRATION PROGRAM
- 13281. Program and solicitation.
 - (a) Program.
 - (b) Solicitation.
 - 13282. Selection of proposals.
 - (a) Selection.
 - (b) Criteria.
 - (c) Conditions.
 - 13283. Discount payments.
 - (a) Certification.
 - (b) Payment.
 - (c) Calculations of discount payments.
 - 13284. Cost-sharing.
 - (a) Requirement.
 - (b) Reduction.
 - 13285. Reports to Congress.
 - (a) Progress reports.
 - (b) Report on encouraging purchase and use of electric motor vehicles.
 - 13286. Authorization of appropriations.
- PART B—ELECTRIC MOTOR VEHICLE INFRASTRUCTURE AND SUPPORT SYSTEMS DEVELOPMENT PROGRAM
- 13291. General authority.
 - (a) Program.
 - (b) Eligibility.
 - (c) Coordination.
 - 13292. Proposals.
 - (a) Solicitation.
 - (b) Criteria.
 - (c) Projects.
 - 13293. Protection of proprietary information.
 - (a) In general.
 - (b) "Domestic companies" defined.
 - 13294. Compliance with existing law.
 - 13295. Repealed.
 - 13296. Authorization of appropriations.
- SUBCHAPTER V—RENEWABLE ENERGY
- 13311. Purposes.
 - 13312. Renewable energy export technology training.
 - (a) Establishment of program.
 - (b) Purpose.
 - (c) Authorization of appropriations.
 - 13313. Renewable Energy Advancement Awards.
 - (a) Authority.
 - (b) Selection criteria.
 - (c) Selection.
 - (d) Eligibility.
 - (e) Authorization of appropriations.
 - (f) Awards made in absence of appropriations.

- | | |
|---|---|
| <p>Sec.
13314. Study of tax and rate treatment of renewable energy projects.</p> <p>13315. Data system and energy technology evaluation.</p> <p>13316. Innovative renewable energy technology transfer program.
(a) Establishment of program.
(b) Purposes of program.
(c) Identification.
(d) Financial mechanisms.
(e) Solicitations for project proposals.
(f) Assistance to United States firms.
(g) Other program requirements.
(h) Selection of projects.
(i) United States-Asia Environmental Partnership.
(j) Buy America.
(k) Reports to Congress.
(l) Definitions.
(m) Authorization of appropriations.</p> <p>13317. Renewable energy production incentive.
(a) Incentive payments.
(b) Qualified renewable energy facility.
(c) Eligibility window.
(d) Payment period.
(e) Amount of payment.
(f) Sunset.
(g) Authorization of appropriations.</p> <p style="text-align: center;">SUBCHAPTER VI—COAL</p> <p style="text-align: center;">PART A—RESEARCH, DEVELOPMENT, DEMONSTRATION, AND COMMERCIAL APPLICATION</p> <p>13331. Coal research, development, demonstration, and commercial application programs.
(a) Establishment.
(b) Demonstration and commercial application programs.
(c) Report.
(d) Status reports.
(e) Consultation.</p> <p>13332. Coal-fired diesel engines.</p> <p>13333. Clean coal, waste-to-energy.</p> <p>13334. Nonfuel use of coal.
(a) Program.
(b) Plan contents.</p> <p>13335. Coal refinery program.
(a) Program.
(b) Objectives.</p> <p>13336. Coalbed methane recovery.
(a) Study of barriers and environmental and safety aspects.
(b) Information dissemination.
(c) Demonstration and commercial application program.</p> <p>13337. Metallurgical coal development.</p> <p>13338. Utilization of coal wastes.
(a) Coal waste utilization program.
(b) Use as boiler fuel.</p> <p>13339. Underground coal gasification.
(a) Program.
(b) Demonstration projects.</p> <p>13340. Low-rank coal research and development.</p> <p>13341. Magnetohydrodynamics.
(a) Program.
(b) Solicitation of proposals.</p> <p>13342. Oil substitution through coal liquefaction.
(a) Program direction.
(b) Program goals.
(c) Proposals.</p> <p>13343. Authorization of appropriations.</p> <p style="text-align: center;">PART B—CLEAN COAL TECHNOLOGY PROGRAM</p> <p>13351. Additional clean coal technology solicitations.
(a) Program design.
(b) Additional solicitations.</p> <p style="text-align: center;">PART C—OTHER COAL PROVISIONS</p> <p>13361. Clean coal technology export promotion and interagency coordination.</p> | <p>Sec.</p> <p>(a) Establishment.
(b) Membership.
(c) Consultation.
(d) Duties.
(e) Data and information.
(f) Report.</p> <p>13362. Innovative clean coal technology transfer program.
(a) Establishment of program.
(b) Purposes of program.
(c) Identification.
(d) Financial mechanisms.
(e) Solicitations for project proposals.
(f) Assistance to United States firms.
(g) Other program requirements.
(h) Selection of projects.
(i) United States-Asia Environmental Partnership.
(j) Buy America.
(k) Reports to Congress.
(l) “Host country” defined.
(m) Authorization of appropriations.</p> <p>13363. Conventional coal technology transfer.</p> <p>13364. Study of utilization of coal combustion byproducts.
(a) “Coal combustion byproducts” defined.
(b) Study and report to Congress.</p> <p>13365. Coal fuel mixtures.</p> <p>13366. National clearinghouse.
(a) Feasibility.
(b) Authority to establish clearinghouse.</p> <p>13367. Coal exports.
(a) Plan.
(b) Plan contents.</p> <p>13368. Ownership of coalbed methane.
(a) Federal lands and mineral rights.
(b) Affected States.
(c) Failure to adopt statutory or regulatory procedure.
(d) Implementation by Secretary of the Interior.
(e) Spacing.
(f) Spacing units.
(g) Development under pooling arrangement.
(h) Escrow account.
(i) Approval of Secretary of the Interior.
(j) Authorization to stimulate coal seam.
(k) Notice and objection.
(l) Plugging.
(m) Notice and objection by other parties.
(n) Venting for safety.
(o) Other laws.
(p) Definitions.</p> <p>13369. Establishment of data base and study of transportation rates.
(a) Data base.
(b) Study.
(c) Reports to Congress.
(d) Consultation with other agencies.</p> <p>13370. Authorization of appropriations.</p> <p style="text-align: center;">SUBCHAPTER VII—GLOBAL CLIMATE CHANGE</p> <p>13381. Report.</p> <p>13382. Least-cost energy strategy.
(a) Strategy.
(b) Additional contents.
(c) Secretarial consideration.
(d) Priorities.
(e) Assumptions.
(f) Preference.
(g) Public review and comment.</p> <p>13383. Director of Climate Protection.</p> <p>13384. Assessment of alternative policy mechanisms for addressing greenhouse gas emissions.</p> <p>13385. National inventory and voluntary reporting of greenhouse gases.
(a) National inventory.</p> |
|---|---|

- Sec.
- (b) Voluntary reporting.
 - (c) Consultation.
 - 13386. Export of domestic energy resource technologies to developing countries.
 - 13387. Innovative environmental technology transfer program.
 - (a) Establishment of program.
 - (b) Purposes of program.
 - (c) Identification.
 - (d) Financial mechanisms.
 - (e) Solicitations for project proposals.
 - (f) Assistance to United States firms.
 - (g) Other program requirements.
 - (h) Eligible technologies.
 - (i) Selection of projects.
 - (j) United States-Asia Environmental Partnership.
 - (k) Buy America.
 - (l) Report to Congress.
 - (m) Definitions.
 - (n) Authorization of appropriations.
 - 13388. Global Climate Change Response Fund.
 - (a) Establishment of Fund.
 - (b) Restrictions on deposits.
 - (c) Use of Fund.
 - (d) Authorization of appropriations.
- SUBCHAPTER VIII—REDUCTION OF OIL VULNERABILITY
- 13401. Goals.
- PART A—OIL AND GAS SUPPLY ENHANCEMENT
- 13411. Enhanced oil recovery.
 - (a) Program direction.
 - (b) Program goals.
 - (c) Accelerated program plan.
 - (d) Proposals.
 - (e) Consultation.
 - (f) Authorization of appropriations.
 - 13412. Oil shale.
 - (a) Program direction.
 - (b) Program goals.
 - (c) Eastern oil shale program.
 - (d) Western oil shale program.
 - (e) Authorization of appropriations.
 - 13413. Natural gas supply.
 - (a) Program direction.
 - (b) Proposals.
 - (c) Cofiring of natural gas and coal.
 - (d) Authorization of appropriations.
 - 13414. Natural gas end-use technologies.
 - 13415. Midcontinent Energy Research Center.
 - (a) Finding.
 - (b) Purposes.
 - (c) Establishment.
 - (d) Research.
- PART B—OIL AND GAS DEMAND REDUCTION AND SUBSTITUTION
- 13431. General transportation.
 - (a) Program direction.
 - (b) Program plan.
 - (c) Proposals.
 - (d) "Alternative fuels" defined.
 - (e) Authorization of appropriations.
 - 13432. Advanced automotive fuel economy.
 - (a) Program direction.
 - (b) Program goal.
 - (c) Proposals.
 - 13433. Alternative fuel vehicle program.
 - (a) Program direction.
 - (b) Cooperative agreements and assistance.
 - (c) Definitions.
 - 13434. Biofuels user facility.
 - 13435. Electric motor vehicles and associated equipment research and development.
 - (a) General.

- Sec.
- (b) Comprehensive plan.
 - (c) Cooperative agreements.
 - (d) Solicitation of proposals.
 - (e) Cost-sharing.
 - (f) Deployment.
 - (g) Domestic parts manufacturers.
 - (h) Hold harmless.
 - (i) Consultation.
 - (j) Fuel cells for transportation.
 - (k) Definitions.
 - 13436. Repealed.
 - 13437. Advanced diesel emissions program.
 - (a) Program direction.
 - (b) Program goal.
 - (c) Program plan.
 - (d) Solicitation of proposals.
 - 13438. Telecommuting study.
 - (a) Study.
 - (b) Report to Congress.
- SUBCHAPTER IX—ENERGY AND ENVIRONMENT
- PART A—IMPROVED ENERGY EFFICIENCY
- 13451. General improved energy efficiency.
 - (a) Program direction.
 - (b) Program goals.
 - (c) Program plan.
 - (d) Proposals.
 - (e) Authorization of appropriations.
 - 13452. Natural gas and electric heating and cooling technologies.
 - (a) Program direction.
 - (b) Proposals.
 - 13453. Pulp and paper.
 - (a) Program direction.
 - (b) Proposals.
 - 13454. Advanced buildings for 2005.
 - (a) Program direction.
 - (b) Proposals.
 - 13455. Electric drives.
 - (a) Program.
 - (b) Proposals.
 - 13456. Improving efficiency in energy-intensive industries.
 - (a) Secretarial action.
 - (b) Joint ventures.
 - 13457. Energy efficient environment program.
 - (a) Program direction.
 - (b) Identification of opportunities.
 - (c) Report.
 - (d) Proposals.
 - 13458. Energy efficient lighting and building centers.
 - (a) Purpose.
 - (b) Grants for establishment.
 - (c) Permitted activities.
 - (d) Application.
 - (e) Selection criteria.
 - (f) Requirement of matching funds.
 - (g) Task force.
 - (h) Membership terms and administration of task force.
 - (i) Omitted.
 - (j) Authorization of appropriations.
- PART B—ELECTRICITY GENERATION AND USE
- 13471. Renewable energy.
 - (a) Program direction.
 - (b) Program plan.
 - (c) Authorization of appropriations.
 - 13472. High efficiency heat engines.
 - (a) Program direction.
 - (b) Program goal.
 - (c) Program plan.
 - (d) Proposals.
 - (e) Authorization of appropriations.
 - 13473. Civilian nuclear waste.
 - (a) Study.
 - (b) Program.

- Sec. (c) Authorization of appropriations.
13474. Fusion energy.
 (a) Program.
 (b) Program goals.
 (c) Management plan.
 (d) Authorization of appropriations.
13475. Fuel cells.
 (a) Program direction.
 (b) Program goal.
 (c) Authorization of appropriations.
13476. Environmental restoration and waste management program.
 (a) Authorization of appropriations.
 (b) Long-term missions.
13477. High-temperature superconductivity program.
 (a) Program.
 (b) Authorization of appropriations.
13478. Electric and magnetic fields research and public information dissemination program.
 (a) Program.
 (b) Contents.
 (c) Role of Director.
 (d) Interagency Committee.
 (e) Advisory Committee.
 (f) Financial assistance.
 (g) Reports.
 (h) Conflicts of interest.
 (i) Definitions.
 (j) Authorization of appropriations.
 (k) Sense of Congress.
 (l) Sunset provision.
13479. Spark M. Matsunaga Renewable Energy and Ocean Technology Center.
 (a) Findings.
 (b) Purpose.
 (c) Establishment.
 (d) Administration.
 (e) Activities.
 (f) Matching funds.
 (g) Authorization of appropriations.
- PART C—ADVANCED NUCLEAR REACTORS
13491. Purposes and definitions.
 (a) Purposes.
 (b) Definitions.
13492. Program, goals, and plan.
 (a) Program direction.
 (b) Program goals.
 (c) Program plan.
13493. Commercialization of advanced light water reactor technology.
 (a) Certification of designs.
 (b) First-of-a-kind engineering.
13494. Prototype demonstration of advanced nuclear reactor technology.
 (a) Solicitation of proposals.
 (b) Recommendation to Congress.
 (c) Selection of technology.
13495. Authorization of appropriations.
- SUBCHAPTER X—ENERGY AND ECONOMIC GROWTH
13501. National Advanced Materials Program.
 (a) Program direction.
 (b) Program plan.
 (c) Proposals.
 (d) General Services Administration demonstration program.
 (e) Authorization of appropriations.
13502. National Advanced Manufacturing Technologies Program.
 (a) Program direction.
 (b) Program plan.
 (c) Proposals.
 (d) Authorization of appropriations.
13503. Supporting research and technical analysis.
 (a) Basic energy sciences.
 (b) University and science education.
- Sec. (c) Technology transfer.
 (d) Facilities support for multiprogram energy laboratories.
 (e) Authorization of appropriations.
13504. Math and science education program.
 (a) Program.
 (b) Purpose.
 (c) Support.
 (d) Cooperation with qualified entities.
 (e) Report.
 (f) Effect on existing programs.
 (g) “Qualified entity” defined.
 (h) Authorization of appropriations.
13505. Integration of research and development.
13506. Definitions.
- SUBCHAPTER XI—POLICY AND ADMINISTRATIVE PROVISIONS
13521. Policy on major construction projects.
 (a) Report and management plan.
 (b) Congressional review.
13522. Energy Research, Development, Demonstration, and Commercial Application Advisory Board.
 (a) Establishment.
 (b) Responsibilities.
 (c) Use of existing advisory board.
13523. Management plan.
 (a) Plan preparation.
 (b) Contents of plan.
 (c) Energy technology inventory and status report.
 (d) Public comment.
 (e) Plan submission.
13524. Costs related to decommissioning and storage and disposal of nuclear waste.
 (a) Award of contracts.
 (b) Issuance of regulations.
 (c) Definitions.
13525. Limits on participation by companies.
13526. Uncosted obligations.
 (a) Report.
 (b) Definitions.
- SUBCHAPTER XII—MISCELLANEOUS
- PART A—GENERAL PROVISIONS
13541. Research, development, demonstration, and commercial application activities.
 (a) Research, development, and demonstration.
 (b) Commercial application.
 (c) “Joint venture” defined.
 (d) Protection of information.
 (e) Guidelines and procedures.
 (f) Application of section.
13542. Cost sharing.
 (a) Research and development.
 (b) Demonstration and commercial application.
 (c) Calculation of amount.
 (d) Tennessee Valley Authority.
- PART B—OTHER MISCELLANEOUS PROVISIONS
13551. Repealed.
13552. Use of energy futures for fuel purchases.
 (a) Fuel study.
 (b) Pilot program.
 (c) Authorization of appropriations.
13553. Energy subsidy study.
 (a) In general.
 (b) Report to Congress.
 (c) Contents.
 (d) Authorization of appropriations.
13554. Tar sands.
 (a) Policy.
 (b) “Tar sands” defined.
 (c) Study.
 (d) Authorization of appropriations.

- Sec.
13555. Consultative Commission on Western Hemisphere Energy and Environment.
 (a) Findings.
 (b) "Commission" defined.
 (c) Negotiations.
 (d) The Commission.
 (e) Report.
13556. Disadvantaged business enterprises.
 (a) General rule.
 (b) Definitions.

§ 13201. "Secretary" defined

For purposes of this Act, the term "Secretary" means the Secretary of Energy.

(Pub. L. 102-486, § 2, Oct. 24, 1992, 106 Stat. 2782.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 102-486, Oct. 24, 1992, 106 Stat. 2776, known as the Energy Policy Act of 1992. For complete classification of this Act to the Code, see Short Title note below and Tables.

SHORT TITLE

Section 1(a) of Pub. L. 102-486 provided that: "This Act [see Tables for classification] may be cited as the 'Energy Policy Act of 1992'."

EX. ORD. NO. 13211. ACTIONS CONCERNING REGULATIONS THAT SIGNIFICANTLY AFFECT ENERGY SUPPLY, DISTRIBUTION, OR USE

Ex. Ord. No. 13211, May 18, 2001, 66 F.R. 28355, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to appropriately weigh and consider the effects of the Federal Government's regulations on the supply, distribution, and use of energy, it is hereby ordered as follows:

SECTION 1. Policy. The Federal Government can significantly affect the supply, distribution, and use of energy. Yet there is often too little information regarding the effects that governmental regulatory action can have on energy. In order to provide more useful energy-related information and hence improve the quality of agency decisionmaking, I am requiring that agencies shall prepare a Statement of Energy Effects when undertaking certain agency actions. As described more fully below, such Statements of Energy Effects shall describe the effects of certain regulatory actions on energy supply, distribution, or use.

SEC. 2. Preparation of a Statement of Energy Effects. (a) To the extent permitted by law, agencies shall prepare and submit a Statement of Energy Effects to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, for those matters identified as significant energy actions.

(b) A Statement of Energy Effects shall consist of a detailed statement by the agency responsible for the significant energy action relating to:

(i) any adverse effects on energy supply, distribution, or use (including a shortfall in supply, price increases, and increased use of foreign supplies) should the proposal be implemented, and

(ii) reasonable alternatives to the action with adverse energy effects and the expected effects of such alternatives on energy supply, distribution, and use.

(c) The Administrator of the Office of Information and Regulatory Affairs shall provide guidance to the agencies on the implementation of this order and shall consult with other agencies as appropriate in the implementation of this order.

SEC. 3. Submission and Publication of Statements. (a) Agencies shall submit their Statements of Energy Effects to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, whenever they present the related submission under Executive Order 12866 of September 30, 1993 [5 U.S.C. 601 note], or any successor order.

(b) Agencies shall publish their Statements of Energy Effects, or a summary thereof, in each related Notice of Proposed Rulemaking and in any resulting Final Rule.

SEC. 4. Definitions. For purposes of this order:

(a) "Regulation" and "rule" have the same meaning as they do in Executive Order 12866 [5 U.S.C. 601 note] or any successor order.

(b) "Significant energy action" means any action by an agency (normally published in the Federal Register) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking:

(1)(i) that is a significant regulatory action under Executive Order 12866 or any successor order, and

(ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or

(2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

(c) "Agency" means any authority of the United States that is an "agency" under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).

SEC. 5. Judicial Review. Nothing in this order shall affect any otherwise available judicial review of agency action. This order is intended only to improve the internal management of the Federal Government and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

GEORGE W. BUSH.

EX. ORD. NO. 13212. ACTIONS TO EXPEDITE ENERGY-RELATED PROJECTS

Ex. Ord. No. 13212, May 18, 2001, 66 F.R. 28357, as amended by Ex. Ord. No. 13286, § 10, Feb. 28, 2003, 68 F.R. 10622; Ex. Ord. No. 13302, § 1, May 15, 2003, 68 F.R. 27429, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to take additional steps to expedite the increased supply and availability of energy to our Nation, it is hereby ordered as follows:

SECTION 1. Policy. The increased production and transmission of energy in a safe and environmentally sound manner is essential to the well-being of the American people. In general, it is the policy of this Administration that executive departments and agencies (agencies) shall take appropriate actions, to the extent consistent with applicable law, to expedite projects that will increase the production, transmission, or conservation of energy and projects that will strengthen pipeline safety.

SEC. 2. Actions to Expedite Energy-Related Projects. For energy-related projects (including pipeline safety projects), agencies shall expedite their review of permits or take other actions as necessary to accelerate the completion of such projects, while maintaining safety, public health, and environmental protections. The agencies shall take such actions to the extent permitted by law and regulation, and where appropriate.

SEC. 3. Interagency Task Force. (a) There is established, within the Department of Energy for administrative purposes, an interagency task force (Task Force) to perform the following functions:

(i) monitor and assist the agencies in their efforts to expedite their reviews of permits or similar actions, as necessary, to accelerate the completion of energy-related projects (including pipeline safety projects), increase energy production and conservation, and improve the transmission of energy;

(ii) monitor and assist agencies in setting up appropriate mechanisms to coordinate Federal, State, tribal, and local permitting in geographic areas where increased permitting activity is expected; and

(iii) perform the functions of the interagency committee for which section 60133 of title 49, United States Code, provides.

(b)(i) The Task Force shall consist exclusively of the following members:

(A) in the performance of all Task Force functions set out in sections 3(a)(i) and (ii) of this order, the Secretaries of State, the Treasury, Defense, Agriculture, Housing and Urban Development, Commerce, Transportation, the Interior, Labor, Education, Health and Human Services, Energy, and Veterans Affairs, the Attorney General, the Administrator of the Environmental Protection Agency, the Director of Central Intelligence, the Administrator of General Services, the Director of the Office of Management and Budget, the Chairman of the Council of Economic Advisers, the Assistant to the President for Domestic Policy, the Assistant to the President for Economic Policy, and such other heads of agencies as the Chairman of the Council on Environmental Quality may designate; and

(B) in the performance of the functions to which section 3(a)(iii) of this order refers, the officers listed in section 60133(a)(2)(A)-(H) of title 49, United States Code, and such other representatives of Federal agencies with responsibilities relating to pipeline repair projects as the Chairman of the Council on Environmental Quality may designate.

(ii) A member of the Task Force may designate, to perform the Task Force functions of the member, a full-time officer or employee of that member's agency or office.

(c) The Chairman of the Council on Environmental Quality shall chair the Task Force.

(d) Consultation in the implementation of this order with State and local officials and other persons who are not full-time or permanent part-time employees of the Federal Government shall be conducted in a manner that elicits fully the individual views of each official or other person consulted, without deliberations or efforts to achieve consensus on advice or recommendations.

(e) This order shall be implemented in a manner consistent with the President's constitutional authority to supervise the unitary executive branch.

SEC. 4. *Judicial Review.* Nothing in this order shall affect any otherwise available judicial review of agency action. This order is intended only to improve the internal management of the Federal Government and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

GEORGE W. BUSH.

SUBCHAPTER I—ALTERNATIVE FUELS— GENERAL

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 13263 of this title.

§ 13211. Definitions

For purposes of this subchapter, subchapter II of this chapter, and subchapter III of this chapter (unless otherwise specified)—

(1) the term "Administrator" means the Administrator of the Environmental Protection Agency;

(2) the term "alternative fuel" means methanol, denatured ethanol, and other alcohols; mixtures containing 85 percent or more (or such other percentage, but not less than 70 percent, as determined by the Secretary, by rule, to provide for requirements relating to cold start, safety, or vehicle functions) by volume of methanol, denatured ethanol, and other alcohols with gasoline or other fuels; natural gas, including liquid fuels domestically produced from natural gas; liquefied petroleum gas; hydrogen; coal-derived liquid

fuels; fuels (other than alcohol) derived from biological materials; electricity (including electricity from solar energy); and any other fuel the Secretary determines, by rule, is substantially not petroleum and would yield substantial energy security benefits and substantial environmental benefits;

(3) the term "alternative fueled vehicle" means a dedicated vehicle or a dual fueled vehicle;

(4) the term "comparable conventionally fueled motor vehicle" means a motor vehicle which is, as determined by the Secretary—

(A) commercially available at the time the comparability of the vehicle is being assessed;

(B) powered by an internal combustion engine that utilizes gasoline or diesel fuel as its fuel source; and

(C) provides passenger capacity or payload capacity the same or similar to the alternative fueled vehicle to which it is being compared;

(5) "covered person" means a person that owns, operates, leases, or otherwise controls—

(A) a fleet that contains at least 20 motor vehicles that are centrally fueled or capable of being centrally fueled, and are used primarily within a metropolitan statistical area or a consolidated metropolitan statistical area, as established by the Bureau of the Census, with a 1980 population of 250,000 or more; and

(B) at least 50 motor vehicles within the United States;

(6) the term "dedicated vehicle" means—

(A) a dedicated automobile, as such term is defined in section 32901(a)(7) of title 49; or

(B) a motor vehicle, other than an automobile, that operates solely on alternative fuel;

(7) the term "domestic" means derived from resources within the several States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or any other Commonwealth, territory, or possession of the United States, including the outer Continental Shelf, as such term is defined in the Outer Continental Shelf Lands Act [43 U.S.C. 1331 et seq.], or from resources within a Nation with which there is in effect a free trade agreement requiring national treatment for trade;

(8) the term "dual fueled vehicle" means—

(A) dual fueled automobile, as such term is defined in section 32901(a)(8) of title 49; or

(B) a motor vehicle, other than an automobile, that is capable of operating on alternative fuel and is capable of operating on gasoline or diesel fuel;

(9) the term "fleet" means a group of 20 or more light duty motor vehicles, used primarily in a metropolitan statistical area or consolidated metropolitan statistical area, as established by the Bureau of the Census, with a 1980 population of more than 250,000, that are centrally fueled or capable of being centrally fueled and are owned, operated, leased, or

otherwise controlled by a governmental entity or other person who owns, operates, leases, or otherwise controls 50 or more such vehicles, by any person who controls such person, by any person controlled by such person, and by any person under common control with such person, except that such term does not include—

(A) motor vehicles held for lease or rental to the general public;

(B) motor vehicles held for sale by motor vehicle dealers, including demonstration motor vehicles;

(C) motor vehicles used for motor vehicle manufacturer product evaluations or tests;

(D) law enforcement motor vehicles;

(E) emergency motor vehicles;

(F) motor vehicles acquired and used for military purposes that the Secretary of Defense has certified to the Secretary must be exempt for national security reasons;

(G) nonroad vehicles, including farm and construction motor vehicles; or

(H) motor vehicles which under normal operations are garaged at personal residences at night;

(10) the term “fuel supplier” means—

(A) any person engaged in the importing, refining, or processing of crude oil to produce motor fuel;

(B) any person engaged in the importation, production, storage, transportation, distribution, or sale of motor fuel; and

(C) any person engaged in generating, transmitting, importing, or selling at wholesale or retail electricity;

(11) the term “light duty motor vehicle” means a light duty truck or light duty vehicle, as such terms are defined under section 7550(7) of this title, of less than or equal to 8,500 pounds gross vehicle weight rating;

(12) the term “motor fuel” means any substance suitable as a fuel for a motor vehicle;

(13) the term “motor vehicle” has the meaning given such term under section 7550(2) of this title; and

(14) the term “replacement fuel” means the portion of any motor fuel that is methanol, ethanol, or other alcohols, natural gas, liquefied petroleum gas, hydrogen, coal derived liquid fuels, fuels (other than alcohol) derived from biological materials, electricity (including electricity from solar energy), ethers, or any other fuel the Secretary determines, by rule, is substantially not petroleum and would yield substantial energy security benefits and substantial environmental benefits.

(Pub. L. 102-486, title III, §301, Oct. 24, 1992, 106 Stat. 2866; Pub. L. 106-554, §1(a)(4) [div. B, title I, §122], Dec. 21, 2000, 114 Stat. 2763, 2763A-229.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original “this title” meaning title III of Pub. L. 102-486, Oct. 24, 1992, 106 Stat. 2866, which enacted this subchapter, amended section 6374 of this title, and repealed provisions set out as a note under section 6374 of this title.

Subchapter II of this chapter, referred to in text, was in the original “title IV” meaning title IV of Pub. L. 102-486, Oct. 24, 1992, 106 Stat. 2875, which enacted subchapter II of this chapter, amended sections 6374a to 6374c of this title and sections 717, 717a, 2001, 2002, 2006,

and 2013 of Title 15, Commerce and Trade, enacted provisions set out as notes under sections 79b and 717 of Title 15, and repealed provisions set out as a note under section 717c of Title 15.

The Outer Continental Shelf Lands Act, referred to in par. (7), is act Aug. 7, 1953, ch. 345, 67 Stat. 462, as amended, which is classified generally to subchapter III (§1331 et seq.) of chapter 29 of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1331 of Title 43 and Tables.

CODIFICATION

In pars. (6)(A) and (8)(A), “section 32901(a)(7) of title 49” substituted for “section 513(h)(1)(C) of the Motor Vehicle Information and Cost Savings Act” and “section 32901(a)(8) of title 49” substituted for “section 513(h)(1)(D) of the Motor Vehicle Information and Cost Savings Act” on authority of Pub. L. 103-272, §6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

AMENDMENTS

2000—Par. (2). Pub. L. 106-554 inserted “, including liquid fuels domestically produced from natural gas” after “natural gas”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6374 of this title.

§ 13212. Minimum Federal fleet requirement

(a) General requirements

(1) The Federal Government shall acquire at least—

(A) 5,000 light duty alternative fueled vehicles in fiscal year 1993;

(B) 7,500 light duty alternative fueled vehicles in fiscal year 1994; and

(C) 10,000 light duty alternative fueled vehicles in fiscal year 1995.

(2) The Secretary shall allocate the acquisitions necessary to meet the requirements under paragraph (1).

(b) Percentage requirements

(1) Of the total number of vehicles acquired by a Federal fleet, at least—

(A) 25 percent in fiscal year 1996;

(B) 33 percent in fiscal year 1997;

(C) 50 percent in fiscal year 1998; and

(D) 75 percent in fiscal year 1999 and thereafter,

shall be alternative fueled vehicles.

(2) The Secretary, in consultation with the Administrator of General Services where appropriate, may permit a Federal fleet to acquire a smaller percentage than is required in paragraph (1), so long as the aggregate percentage acquired by all Federal fleets is at least equal to the required percentage.

(3) For purposes of this subsection, the term “Federal fleet” means 20 or more light duty motor vehicles, located in a metropolitan statistical area or consolidated metropolitan statistical area, as established by the Bureau of the Census, with a 1980 population of more than 250,000, that are centrally fueled or capable of being centrally fueled and are owned, operated, leased, or otherwise controlled by or assigned to any Federal executive department, military department, Government corporation, independent

establishment, or executive agency, the United States Postal Service, the Congress, the courts of the United States, or the Executive Office of the President. Such term does not include—

- (A) motor vehicles held for lease or rental to the general public;
- (B) motor vehicles used for motor vehicle manufacturer product evaluations or tests;
- (C) law enforcement vehicles;
- (D) emergency vehicles;
- (E) motor vehicles acquired and used for military purposes that the Secretary of Defense has certified to the Secretary must be exempt for national security reasons; or
- (F) nonroad vehicles, including farm and construction vehicles.

(c) Allocation of incremental costs

The General Services Administration and any other Federal agency that procures motor vehicles for distribution to other Federal agencies may allocate the incremental cost of alternative fueled vehicles over the cost of comparable gasoline vehicles across the entire fleet of motor vehicles distributed by such agency.

(d) Application of requirements

The provisions of section 6374 of this title relating to the Federal acquisition of alternative fueled vehicles shall apply to the acquisition of vehicles pursuant to this section.

(e) Resale

The Administrator of General Services shall take all feasible steps to ensure that all alternative fueled vehicles sold by the Federal Government shall remain alternative fueled vehicles at time of sale.

(f) Authorization of appropriations

There are authorized to be appropriated for carrying out this section, such sums as may be necessary for fiscal years 1993 through 1998, to remain available until expended.

(Pub. L. 102-486, title III, §303, Oct. 24, 1992, 106 Stat. 2871.)

EXECUTIVE ORDER No. 12844

Ex. Ord. No. 12844, Apr. 21, 1993, 58 F.R. 21885, as amended by Ex. Ord. No. 12974, §3(b), Sept. 29, 1995, 60 F.R. 51876, which required the Federal Government to institute a Federal fleet vehicle acquisition program and established the Federal Fleet Conversion Task Force to advise on implementation of the program, was revoked by Ex. Ord. No. 13031, §9, Dec. 13, 1996, 61 F.R. 66531, formerly set out below.

EXECUTIVE ORDER No. 13031

Ex. Ord. No. 13031, Dec. 13, 1996, 61 F.R. 66529, which provided that the Federal Government exercise leadership in the use of alternative fueled vehicles, was revoked by Ex. Ord. 13149, §501, Apr. 21, 2000, 65 F.R. 24610, set out below.

EX. ORD. NO. 13149. GREENING THE GOVERNMENT THROUGH FEDERAL FLEET AND TRANSPORTATION EFFICIENCY

Ex. Ord. No. 13149, Apr. 21, 2000, 65 F.R. 24607, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Energy Policy and Conservation Act, as amended (42 U.S.C. 6201 *et seq.*), the Energy Policy Act of 1992 (Public Law 102-486) [see Tables for

classification], section 301 of title 3, United States Code, and the Energy Conservation Reauthorization Act of 1998 (Public Law 105-388) [see Short Title of 1998 Amendment note set out under 42 U.S.C. 6201], it is hereby ordered as follows:

PART 1 PREAMBLE

SECTION 101. *Federal Leadership.* The purpose of this order is to ensure that the Federal Government exercises leadership in the reduction of petroleum consumption through improvements in fleet fuel efficiency and the use of alternative fuel vehicles (AFVs) and alternative fuels. Reduced petroleum use and the displacement of petroleum by alternative fuels will help promote markets for more alternative fuel and fuel efficient vehicles, encourage new technologies, enhance the United States' energy self-sufficiency and security, and ensure a healthier environment through the reduction of greenhouse gases and other pollutants in the atmosphere.

PART 2 GOALS

SEC. 201. *Reduced Petroleum Fuel Consumption.* Each agency operating 20 or more motor vehicles within the United States shall reduce its entire vehicle fleet's annual petroleum consumption by at least 20 percent by the end of FY 2005, compared with FY 1999 petroleum consumption levels.

SEC. 202. *Performance Strategies.* Agencies have numerous options for developing a strategy to meet the petroleum reduction levels established in section 201 of this order. Measures include: the use of alternative fuels in light, medium, and heavy-duty vehicles; the acquisition of vehicles with higher fuel economy, including hybrid vehicles; the substitution of cars for light trucks; an increase in vehicle load factors; a decrease in vehicle miles traveled; and a decrease in fleet size. Each agency will need a strategy that includes most, if not all, of these measures, but can develop a strategy that fits its unique fleet configuration and mission requirements. As part of the strategy, each agency should attempt to accelerate the introduction of vehicles meeting Tier 2 standards. Where feasible, agencies should also consider procurement of innovative vehicles, such as hybrid electric vehicles, capable of large improvements in fuel economy. The strategy should also attempt to minimize costs in achieving the objectives of this order. In developing its strategy, each agency shall include the following:

(a) *AFV Acquisition and Use of Alternative Fuels.* Each agency shall fulfill the acquisition requirements for AFVs established by section 303 of the Energy Policy Act of 1992 [42 U.S.C. 13212]. Agencies shall use alternative fuels to meet a majority of the fuel requirements of those motor vehicles by the end of FY 2005. Section 402 of this order addresses related issues of alternative fuel infrastructure availability and the ability to track alternative fuel usage data; and

(b) *Acquisition of Higher Fuel Economy Vehicles.* Agencies shall increase the average EPA fuel economy rating of passenger cars and light trucks acquired by at least 1 mile per gallon (mpg) by the end of FY 2002 and at least 3 mpg by the end of FY 2005 compared to FY 1999 acquisitions.

PART 3 ORGANIZATION AND ACCOUNTABILITY

SEC. 301. *Leadership Responsibilities.* The Office of Management and Budget (OMB), the Department of Energy (DOE), the Environmental Protection Agency (EPA), and the General Services Administration (GSA) shall be responsible for providing leadership to the other Federal agencies in implementing programs to meet the goals of this order. Therefore, they shall perform the following activities:

(a) OMB shall:

(1) designate a senior official to assume the responsibility for coordinating the collection of agency budget and data submissions pursuant to this order;

(2) amend and issue budget guidance to the agencies that requires each agency to identify in its annual

budget submission the funding necessary to meet the requirements of this order;

(3) review annual agency budget submissions to determine adequacy in meeting the goal of this order and to balance requests for increased funding to support achievement of the goals against other mission priorities for the agency; and

(4) review agency submissions for the annual report to the Congress, after budget decisions are made.

(b) DOE shall:

(1) issue guidance to agencies, within 90 days of the issuance of this order, on preparation and submission of agency strategies for complying with this order and the collection and annual reporting of data to demonstrate compliance with this order;

(2) review and evaluate agency strategies prior to their submission to OMB;

(3) provide OMB with copies of the agency strategy evaluations;

(4) provide whatever other support OMB requires to facilitate performance of OMB's role;

(5) establish the data collection and reporting system outlined in the DOE guidance for collecting annual agency performance data on meeting the goals of this order and other applicable statutes and policies;

(6) educate personnel from other agencies on the requirements of this order, the data collection and reporting system, best practices for improving fleet fuel efficiency, and methods for successfully acquiring and using AFVs;

(7) review agencies' annual data submissions for accuracy and produce a scorecard of agency and overall Federal compliance with this order and other applicable statutes and policies; and

(8) report to the President annually on compliance with the order, including the scorecard and level of performance in meeting the goals of the agencies' strategies.

(c) EPA shall support DOE and GSA in their efforts to assist the agencies in the accelerated purchase of Tier 2 vehicles.

(d) GSA shall develop and implement strategies that will ease agencies' financial and administrative burdens associated with the acquisition of AFVs, including:

(1) Agencies shall be allowed to replace their conventionally-fueled vehicles with AFVs by making an initial lump-sum payment for the additional acquisition cost of the AFV and shall be allowed to contribute to the higher replacement costs of the AFV incrementally over the term of the lease, and have the option of averaging AFV incremental costs across the agency fleet as provided by the Energy Policy Act of 1992.

(2) Within 120 days of this order, the Administrator of GSA, in consultation with other agencies, shall:

(A) provide a summary of agency AFV acquisition plans to potential AFV manufacturers to assist in their production planning. At least 4 months in advance of agency vehicle ordering cycles, GSA must provide to agencies the best available information on the production plans of AFV manufacturers;

(B) develop, in coordination with DOE and EPA, methods that will help Federal fleet managers to select vehicles to improve fleet fuel efficiency and to meet Tier 2 vehicle standards; and

(C) collaborate with its customer agencies and their procurement staff and officials to discuss and plan efforts to ensure that the GSA-leased fleet is making progress toward the goals of this order.

SEC. 302. *Designation of Senior Agency Official.* Within 90 days of the date of this order, the head of each agency shall designate a senior official to assume responsibility for the agency's AFV and fleet fuel efficiency programs, and for meeting the requirements of this order. Each senior agency official designated by an agency shall be responsible for:

(a) preparing an agency strategy for meeting the goals of this order, in accordance with guidance issued by DOE;

(b) submitting the agency strategy to DOE within 180 days of the issuance of this order for evaluation and submission to OMB;

(c) implementing the data collection and reporting system outlined in the DOE guidance for collecting annual agency performance data on meeting the goals of this order and reporting the data to DOE;

(d) ensuring the agency's strategy for meeting the goals of this order is incorporated in the annual budget submission to OMB; and

(e) assembling the appropriate team and resources in the agency necessary to attain the goals of this order.

SEC. 303. *Management and Government Performance.* Agencies may use the following management strategies to assist them in meeting the goals of this order:

(a) *Awards.* Agencies may use employee incentive programs to reward exceptional performance in implementing this order.

(b) *Performance Evaluations.* Agencies shall, where appropriate, include successful implementation of the provisions of this order in the position descriptions and performance evaluations of agency heads, the senior official, fleet managers, their superiors, and other relevant employees.

SEC. 304. *Applicability.* This order applies to each agency operating 20 or more motor vehicles within the United States. Agency means an executive agency as defined in 5 U.S.C. 105. For the purpose of this order, military departments, as defined in 5 U.S.C. 102, are covered under the auspices of the Department of Defense.

PART 4 IMPLEMENTATION

SEC. 401. *Vehicle Reporting Credits.* When preparing the annual report to DOE and OMB, each agency acquisition of an alternative fuel light-duty vehicle, regardless of geographic placement, shall count as one credit towards fulfilling the AFV acquisition requirements of the Energy Policy Act of 1992. Agencies shall receive one additional credit for each light-duty AFV that exclusively uses an alternative fuel and for each Zero Emission Vehicle of any size. Agencies shall receive three credits for dedicated medium-duty AFVs and four credits for dedicated heavy-duty AFVs. Agencies can also receive one credit for every 450 gallons of pure biodiesel used in diesel vehicles.

SEC. 402. *Infrastructure.* To support the use of alternative fuel in AFVs, agencies should arrange for fueling at commercial facilities that offer alternative fuels for sale to the public.

(a) Agencies should team with State, local, and private entities to support the expansion and use of public access alternative fuel refueling stations;

(b) Agencies should use the authority granted to them in section 304 of the Energy Policy Act of 1992 [42 U.S.C. 13213] to establish nonpublic access alternative fuel infrastructure for fueling Federal AFVs where public fueling is unavailable.

(c) Agencies are encouraged to work with DOE and GSA to resolve alternative fuel usage tracking issues with alternative and petroleum fuel providers.

SEC. 403. *Procurement of Environmentally Preferable Motor Vehicle Products.*

(a) Consistent with Executive Order 13101 [42 U.S.C. 6961 note] and section 6002 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6962, effective 6 months after the date of this order, no Federal agency shall purchase, sell, or arrange for the purchase of virgin petroleum motor vehicle lubricating oils when refined motor vehicle lubricating oils are reasonably available and meet the vehicle manufacturer's recommended performance standards.

(b) Consistent with Executive Order 13101 and RCRA section 6962, in acquiring and maintaining motor vehicles, agencies shall acquire and use United States EPA-designated Comprehensive Procurement Guideline items, including but not limited to retread tires, when such products are reasonably available and meet applicable performance standards. In addition, Federal agencies should consider acquiring other recycled content

products, such as tires containing a minimum of 5–10 percent post-consumer recovered rubber.

(c) Consistent with Executive Order 13101, Federal agencies are encouraged to use biobased motor vehicle products when such products are reasonably available and meet applicable performance standards.

PART 5 GENERAL PROVISIONS

SEC. 501. *Revocation.* Executive Order 13031 of December 13, 1996, is revoked.

SEC. 502. *Statutory Authority.* Agencies must carry out the provisions of this order to the extent consistent with their statutory authority.

SEC. 503. *Limitations.* This order is intended only to improve the internal management of the executive branch and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any other person.

SEC. 504. *Independent Agencies.* Independent agencies and agencies excepted from coverage by section 304 are encouraged to comply with the provisions of this order.

SEC. 505. *Government-Owned Contractor-Operated Vehicles.* Agencies must ensure that all Government-owned contractor-operated vehicles comply with all applicable goals and other requirements of this order and that these goals and requirements are incorporated into each contractor's management contract.

SEC. 506. *Exemptions for Military Tactical, Law Enforcement, and Emergency Vehicles.* Department of Defense military tactical vehicles are exempt from this order. Law enforcement, emergency, and any other vehicle class or type determined by OMB, in consultation with DOE, are exempted from this order's requirements for Federal fleet fuel efficiency and alternative fuel vehicle acquisition. Agencies claiming vehicle exemptions must provide information on the number of each class or type of vehicle claimed as exempt as well as an estimate of total fuel consumption of exempt vehicles on an annual basis. Agencies should examine options for increasing fuel efficiency in these exempt vehicles and should report actions taken to increase fuel efficiency in these vehicles or fleets. All information required by this section must be submitted annually under Part 3 of this order.

SEC. 507. *Compliance.* (a) If an agency fails to meet requirements of the Energy Policy Act of 1992 or this order, its report to the DOE and OMB under section 302(c) must include an explanation for such failure and an updated strategy for achieving compliance using the agency's current and requested budgets.

(b) OMB, in consultation with DOE, may modify the compliance requirements for an agency under Part 2 of this order, if the agency is unable to comply with the requirements of that part. An agency requesting modification must show that it has made substantial good faith efforts to comply with that part. The availability and costs of alternative fuels and AFVs can be a factor in OMB's decision to modify the agency's compliance with Part 2 of this order.

SEC. 508. *Definitions.* Terms used in this order shall have the same definitions as those in the Energy Policy Act of 1992 [see 42 U.S.C. 13211] and Executive Order 13101 [42 U.S.C. 6961 note], unless specifically changed in guidance to be issued by DOE under section 301(b) of this order.

WILLIAM J. CLINTON.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6374, 13213, 13214 of this title.

§ 13213. Refueling

(a) In general

Federal agencies shall, to the maximum extent practicable, arrange for the fueling of alternative fueled vehicles acquired under section 13212 of this title at commercial fueling facili-

ties that offer alternative fuels for sale to the public. If publicly available fueling facilities are not convenient or accessible to the location of Federal alternative fueled vehicles purchased under section 13212 of this title, Federal agencies are authorized to enter into commercial arrangements for the purposes of fueling Federal alternative fueled vehicles, including, as appropriate, purchase, lease, contract, construction, or other arrangements in which the Federal Government is a participant.

(b) Authorization of appropriations

There are authorized to be appropriated to the Secretary for carrying out this section such sums as may be necessary for fiscal years 1993 through 1998, to remain available until expended.

(Pub. L. 102–486, title III, § 304, Oct. 24, 1992, 106 Stat. 2872.)

§ 13214. Federal agency promotion, education, and coordination

(a) Promotion and education

The Secretary, in cooperation with the Administrator of General Services, shall promote programs and educate officials and employees of Federal agencies on the merits of alternative fueled vehicles. The Secretary, in cooperation with the Administrator of General Services, shall provide and disseminate information to Federal agencies on—

- (1) the location of refueling and maintenance facilities available to alternative fueled vehicles in the Federal fleet;
- (2) the range and performance capabilities of alternative fueled vehicles;
- (3) State and local government and commercial alternative fueled vehicle programs;
- (4) Federal alternative fueled vehicle purchases and placements;
- (5) the operation and maintenance of alternative fueled vehicles in accordance with the manufacturer's standards and recommendations; and
- (6) incentive programs established pursuant to sections 13215 and 13216 of this title.

(b) Assistance in procurement and placement

The Secretary, in cooperation with the Administrator of General Services, shall provide guidance, coordination and technical assistance to Federal agencies in the procurement and geographic location of alternative fueled vehicles purchased through the Administrator of General Services. The procurement and geographic location of such vehicles shall comply with the purchase requirements under section 13212 of this title.

(Pub. L. 102–486, title III, § 305, Oct. 24, 1992, 106 Stat. 2872.)

§ 13215. Agency incentives program

(a) Reduction in rates

To encourage and promote use of alternative fueled vehicles in Federal agencies, the Administrator of General Services may offer a reduction in fees charged to agencies for the lease of alternative fueled vehicles below those fees

charged for the lease of comparable conventionally fueled motor vehicles.

(b) Sunset provision

This section shall cease to be effective 3 years after October 24, 1992.

(Pub. L. 102-486, title III, §306, Oct. 24, 1992, 106 Stat. 2873.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13214 of this title.

§ 13216. Recognition and incentive awards program

(a) Awards program

The Administrator of General Services shall establish annual awards program to recognize those Federal employees who demonstrate the strongest commitment to the use of alternative fuels and fuel conservation in Federal motor vehicles.

(b) Criteria

The Administrator of General Services shall provide annual awards to Federal employees who best demonstrate a commitment—

(1) to the success of the Federal alternative fueled vehicle program through—

(A) exemplary promotion of alternative fueled vehicle use within Federal agencies;

(B) proper alternative fueled vehicle care and maintenance;

(C) coordination with Federal, State, and local efforts;

(D) innovative alternative fueled vehicle procurement, refueling, and maintenance arrangements with commercial entities;

(E) making regular requests for alternative fueled vehicles for agency use; and

(F) maintaining a high number of alternative fueled vehicles used relative to comparable conventionally fueled motor vehicles used; and

(2) to fuel efficiency in Federal motor vehicle use through the promotion of such measures as increased use of fuel-efficient vehicles, carpooling, ride-sharing, regular maintenance, and other conservation and awareness measures.

(c) Authorization of appropriations

There are authorized to be appropriated for the purpose of carrying out this section not more than \$35,000 for fiscal year 1994 and such sums as may be necessary for each of the fiscal years 1995 and 1996.

(Pub. L. 102-486, title III, §307, Oct. 24, 1992, 106 Stat. 2873.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13214 of this title.

§ 13217. Measurement of alternative fuel use

The Administrator of General Services shall use such means as may be necessary to measure the percentage of alternative fuel use in dual-fueled vehicles procured by the Administrator of General Services. Not later than one year after

October 24, 1992, the Secretary, in consultation with the Administrator of General Services, shall issue guidelines to Federal agencies for use in measuring the aggregate percentage of alternative fuel use in dual-fueled vehicles in their fleets.

(Pub. L. 102-486, title III, §308, Oct. 24, 1992, 106 Stat. 2874.)

§ 13218. Reports

(a) Omitted

(b) Compliance report

(1) In general

Not later than 1 year after November 13, 1998, and annually thereafter for the next 14 years, the head of each Federal agency which is subject to this Act and Executive Order No. 13031 shall prepare, and submit to Congress, a report that—

(A) summarizes the compliance by such Federal agency with the alternative fuel purchasing requirements for Federal fleets under this Act and Executive Order No. 13031; and

(B) includes a plan of compliance that contains specific dates for achieving compliance using reasonable means.

(2) Contents

(A) In general

Each report submitted under paragraph (1) shall include—

(i) any information on any failure to meet statutory requirements or requirements under Executive Order No. 13031;

(ii)(I) any plan of compliance that the agency head is required to submit under Executive Order No. 13031; or

(II) if a plan of compliance referred to in subclause (I) does not contain specific dates by which the Federal agency is to achieve compliance, a revised plan of compliance that contains specific dates for achieving compliance; and

(iii) any related information the agency head is required to submit to the Director of the Office of Management and Budget under Executive Order No. 13031.

(B) Penultimate report

The penultimate report submitted under paragraph (1) shall include an announcement that the report for the next year shall be the final report submitted under paragraph (1).

(3) Public dissemination of report

Each report submitted under paragraph (1) shall be made public, including—

(A) placing such report on a publicly available website on the Internet; and

(B) publishing the availability of the report, including such website address, in the Federal Register.

(Pub. L. 102-486, title III, §310, Oct. 24, 1992, 106 Stat. 2874; Pub. L. 105-388, §8(a), Nov. 13, 1998, 112 Stat. 3481.)

REFERENCES IN TEXT

This Act, referred to in subsec. (b)(1), is Pub. L. 102-486, Oct. 24, 1992, 102 Stat. 2776, known as the En-

ergy Policy Act of 1992. For complete classification of this Act to the Code, see Short Title note set out under section 13201 of this title and Tables.

Executive Order No. 13031, referred to in subsec. (b)(1), (2)(A), was Ex. Ord. No. 13031, Dec. 13, 1996, 61 F.R. 66529, which was set out as a note under section 13212 of this title prior to revocation by Ex. Ord. No. 13149, § 501, Apr. 21, 2000, 65 F.R. 24610, set out as a note under section 13212 of this title.

CODIFICATION

Subsec. (a) of this section, which required the Administrator of General Services to report biennially to Congress on the General Services Administration's alternative fueled vehicle program under the Energy Policy Act of 1992, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, the 4th item on page 173 of House Document No. 103-7.

AMENDMENTS

1998—Pub. L. 105-388 substituted “Reports” for “General Services Administration report” in section catchline, designated existing provisions as subsec. (a) and inserted heading, and added subsec. (b).

§ 13219. United States Postal Service

(a) Omitted

(b) Coordination

To the maximum extent practicable, the Postmaster General shall coordinate the Postal Service's alternative fueled vehicle procurement, placement, refueling, and maintenance programs with those at the Federal, State, and local level. The Postmaster General shall communicate, share, and disseminate, on a regular basis, information on such programs with the Secretary, the Administrator of General Services, and heads of appropriate Federal agencies.

(c) Program criteria

The Postmaster General shall consider the following criteria in the procurement and placement of alternative fueled vehicles:

- (1) The procurement plans of State and local governments and other public and private institutions.
- (2) The current and future availability of refueling and repair facilities.
- (3) The reduction in emissions of the Postal fleet.
- (4) Whether the vehicle is to be used in a nonattainment area as specified in the Clean Air Act Amendments of 1990.
- (5) The operational requirements of the Postal fleet.
- (6) The contribution to the reduction in the consumption of oil in the transportation sector.

(Pub. L. 102-486, title III, § 311, Oct. 24, 1992, 106 Stat. 2874.)

REFERENCES IN TEXT

The Clean Air Act Amendments of 1990, referred to in subsec. (c)(4), probably means Pub. L. 101-549, Nov. 15, 1990, 104 Stat. 2399. For complete classification of this Act to the Code, see Short Title of 1990 Amendment note set out under section 7401 of this title and Tables.

CODIFICATION

Subsec. (a) of this section, which required the Postmaster General to biennially submit to Congress a re-

port on the Postal Service's alternative fueled vehicle program, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, the 15th item on page 194 of House Document No. 103-7.

§ 13220. Biodiesel fuel use credits

(a) Allocation of credits

(1) In general

The Secretary shall allocate one credit under this section to a fleet or covered person for each qualifying volume of the biodiesel component of fuel containing at least 20 percent biodiesel by volume purchased after the date of the enactment of this section, for use by the fleet or covered person in vehicles owned or operated by the fleet or covered person that weigh more than 8,500 pounds gross vehicle weight rating.

(2) Exceptions

No credits shall be allocated under paragraph (1) for a purchase of biodiesel—

- (A) for use in alternative fueled vehicles;
- or
- (B) that is required by Federal or State law.

(3) Authority to modify percentage

The Secretary may, by rule, lower the 20 percent biodiesel volume requirement in paragraph (1) for reasons related to cold start, safety, or vehicle function considerations.

(4) Documentation

A fleet or covered person seeking a credit under this section shall provide written documentation to the Secretary supporting the allocation of a credit to such fleet or covered person under paragraph (1).

(b) Use of credits

(1) In general

At the request of a fleet or covered person allocated a credit under subsection (a) of this section, the Secretary shall, for the year in which the purchase of a qualifying volume is made, treat that purchase as the acquisition of one alternative fueled vehicle the fleet or covered person is required to acquire under this subchapter, subchapter II of this chapter, or subchapter III of this chapter.

(2) Limitation

Credits allocated under subsection (a) of this section may not be used to satisfy more than 50 percent of the alternative fueled vehicle requirements of a fleet or covered person under this subchapter, subchapter II of this chapter, and subchapter III of this chapter. This paragraph shall not apply to a fleet or covered person that is a biodiesel alternative fuel provider described in section 13251(a)(2)(A) of this title.

(c) Credit not a section 13258 credit

A credit under this section shall not be considered a credit under section 13258 of this title.

(d) Issuance of rule

The Secretary shall, before January 1, 1999, issue a rule establishing procedures for the implementation of this section.

(e) Collection of data

The Secretary shall collect such data as are required to make a determination described in subsection (f)(2)(B) of this section.

(f) Definitions

For purposes of this section—

(1) the term “biodiesel” means a diesel fuel substitute produced from nonpetroleum renewable resources that meets the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 7545 of this title; and

(2) the term “qualifying volume” means—

(A) 450 gallons; or

(B) if the Secretary determines by rule that the average annual alternative fuel use in light duty vehicles by fleets and covered persons exceeds 450 gallons or gallon equivalents, the amount of such average annual alternative fuel use.

(Pub. L. 102-486, title III, §312, as added Pub. L. 105-277, div. A, §101(a) [title XII, §1201(a)], Oct. 21, 1998, 112 Stat. 2681, 2681-48; Pub. L. 105-388, §7(a), Nov. 13, 1998, 112 Stat. 3480.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (a)(1), probably means October 21, 1998, the date of the enactment of this section by Pub. L. 105-277, rather than Nov. 13, 1998, the date of the enactment of this section by Pub. L. 105-388.

CODIFICATION

Pub. L. 105-277 and Pub. L. 105-388 enacted identical sections.

SUBCHAPTER II—ALTERNATIVE FUELS—
NON-FEDERAL PROGRAMS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 13211, 13220, 13263 of this title.

§ 13231. Public information program

The Secretary, in consultation with appropriate Federal agencies and individuals and organizations with practical experience in the production and use of alternative fuels and alternative fueled vehicles, shall, for the purposes of promoting the use of alternative fuels and alternative fueled vehicles, establish a public information program on the benefits and costs of the use of alternative fuels in motor vehicles. Within 18 months after October 24, 1992, the Secretary shall produce and make available an information package for consumers to assist them in choosing among alternative fuels and alternative fueled vehicles. Such information package shall provide relevant and objective information on motor vehicle characteristics and fuel characteristics as compared to gasoline, on a life cycle basis, including environmental performance, energy efficiency, domestic content, cost, maintenance requirements, reliability, and safety. Such information package shall also include information with respect to the conversion of conventional motor vehicles to alternative fueled vehicles. The Secretary shall include such other information as the Secretary determines is reasonable and necessary to help

promote the use of alternative fuels in motor vehicles. Such information package shall be updated annually to reflect the most recent available information.

(Pub. L. 102-486, title IV, §405, Oct. 24, 1992, 106 Stat. 2880.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13232 of this title.

§ 13232. Labeling requirements**(a) Establishment of requirements**

The Federal Trade Commission, in consultation with the Secretary, the Administrator of the Environmental Protection Agency, and the Secretary of Transportation, shall, within 18 months after October 24, 1992, issue a notice of proposed rulemaking for a rule to establish uniform labeling requirements, to the greatest extent practicable, for alternative fuels and alternative fueled vehicles, including requirements for appropriate information with respect to costs and benefits, so as to reasonably enable the consumer to make choices and comparisons. Required labeling under the rule shall be simple and, where appropriate, consolidated with other labels providing information to the consumer. In formulating the rule, the Federal Trade Commission shall give consideration to the problems associated with developing and publishing useful and timely cost and benefit information, taking into account lead time, costs, the frequency of changes in costs and benefits that may occur, and other relevant factors. The Commission shall obtain the views of affected industries, consumer organizations, Federal and State agencies, and others in formulating the rule. A final rule shall be issued within 1 year after the notice of proposed rulemaking is issued. Such rule shall be updated periodically to reflect the most recent available information.

(b) Technical assistance and coordination

The Secretary shall provide technical assistance to the Federal Trade Commission in developing labeling requirements under subsection (a) of this section. The Secretary shall coordinate activities under this section with activities under section 13231 of this title.

(Pub. L. 102-486, title IV, §406, Oct. 24, 1992, 106 Stat. 2880.)

§ 13233. Data acquisition program

(a) Not later than one year after October 24, 1992, the Secretary, through the Energy Information Administration, and in cooperation with appropriate State, regional, and local authorities, shall establish a data collection program to be conducted in at least 5 geographically and climatically diverse regions of the United States for the purpose of collecting data which would be useful to persons seeking to manufacture, convert, sell, own, or operate alternative fueled vehicles or alternative fueling facilities. Such data shall include—

(1) identification of the number and types of motor vehicle trips made daily and miles driven per trip, including commuting, business, and recreational trips;

(2) the projections of the Secretary as to the most likely combination of alternative fueled vehicle use and other forms of transit, including rail and other forms of mass transit;

(3) cost, performance, environmental, energy, and safety data on alternative fuels and alternative fueled vehicles; and

(4) other appropriate demographic information and consumer preferences.

(b) The Secretary shall consult with interested parties, including other appropriate Federal agencies, manufacturers, public utilities, owners and operators of fleets of light duty motor vehicles, and State or local governmental entities, to determine the types of data to be collected and analyzed under subsection (a) of this section.

(Pub. L. 102-486, title IV, §407, Oct. 24, 1992, 106 Stat. 2881.)

§ 13234. Federal Energy Regulatory Commission authority to approve recovery of certain expenses in advance

(a) Natural gas motor vehicles

The Federal Energy Regulatory Commission may, under section 717c of title 15, allow recovery of expenses in advance by natural-gas companies for research, development, and demonstration activities by the Gas Research Institute for projects on the use of natural gas, including fuels derived from natural gas, for transportation, and projects on the use of natural gas to control pollutants and to control emissions from the combustion of other fuels, if the Commission finds that the benefits, including environmental benefits, to existing and future ratepayers resulting from such activities exceed all direct costs to existing and future ratepayers. To the maximum extent practicable, through the establishment of cofunding requirements applicable to such projects, the Commission shall ensure that the costs of such activities shall be provided in part, through contributions of cash, personnel, services, equipment, and other resources, by sources other than the recovery of expenses pursuant to this section.

(b) Electric motor vehicles

The Federal Energy Regulatory Commission may, under section 824d of title 16, allow recovery of expenses in advance by electric utilities for research, development, and demonstration activities by the Electric Power Research Institute for projects on electric motor vehicles, if the Commission finds that the benefits, including environmental benefits, to existing and future ratepayers resulting from such activities exceed all direct costs to existing and future ratepayers. To the maximum extent practicable, through the establishment of cofunding requirements applicable to each project, the costs of such activities shall be provided, in part, through contributions of cash, personnel, services, equipment, and other resources, by sources other than the recovery of expenses pursuant to this section.

(Pub. L. 102-486, title IV, §408, Oct. 24, 1992, 106 Stat. 2881.)

CODIFICATION

Section is comprised of section 408 of Pub. L. 102-486. Subsec. (c) of section 408 of Pub. L. 102-486 repealed provisions of title III of Pub. L. 102-104, formerly set out as a note under section 717c of Title 15, Commerce and Trade.

§ 13235. State and local incentives programs

(a) Establishment of program

(1) The Secretary shall, within one year after October 24, 1992, issue regulations establishing guidelines for comprehensive State alternative fuels and alternative fueled vehicle incentives and program plans designed to accelerate the introduction and use of such fuels and vehicles. Such guideline¹ shall address the development, modification, and implementation of such State plans and shall describe those program elements, as described in paragraph (3), to be addressed in such plans.

(2) The Secretary, after consultation with the Secretary of Transportation and the Administrator of the Environmental Protection Agency, shall invite the Governor of each State to submit to the Secretary a State plan within one year after the effective date of the regulations issued under paragraph (1). Such plan shall include—

(A) provisions designed to result in scheduled progress toward, and achievement of, the goal of introducing substantial numbers of alternative fueled vehicles in such State by the year 2000; and

(B) a detailed description of the requirements, including the estimated cost of implementation, of such plan.

(3) Each proposed State plan, in order to be eligible for Federal assistance under this section, shall describe the manner in which coordination shall be achieved with Federal and local governmental entities in implementing such plan, and shall include an examination of—

(A) exemption from State sales tax or other State or local taxes or surcharges (other than such taxes or surcharges which are dedicated for transportation purposes) with respect to alternative fueled vehicles, alternative fuels, or alternative fueling facilities;

(B) the introduction of alternative fueled vehicles into State-owned or operated motor vehicle fleets;

(C) special parking at public buildings and airport and transportation facilities;

(D) programs of public education to promote the use of alternative fueled vehicles;

(E) the treatment of sales of alternative fuels for use in alternative fueled vehicles;

(F) methods by which State and local governments might facilitate—

(i) the availability of alternative fuels; and

(ii) the ability to recharge electric motor vehicles at public locations;

(G) allowing public utilities to include in rates the incremental cost of—

(i) new alternative fueled vehicles;

(ii) converting conventional vehicles to operate on alternative fuels; and

(iii) installing alternative fuel fueling facilities,

¹ So in original. Probably should be "guidelines".

but only to the extent that the inclusion of such costs in rates would not create competitive disadvantages for other market participants, and taking into consideration the effect inclusion of such costs would have on rates, service, and reliability to other utility customers;

(H) such other programs and incentives as the State may describe;

(I) whether accomplishing any of the goals in this subsection would require amendment to State law or regulation, including traffic safety prohibitions;

(J) services provided by municipal, county, and regional transit authorities; and

(K) effects of such plan on programs authorized by the Intermodal Surface Transportation Efficiency Act of 1991 and amendments made by that Act.

(b) Federal assistance to States

(1) Upon request of the Governor of any State with a plan approved under this section, the Secretary may provide to such State—

(A) information and technical assistance, including model State laws and proposed regulations relating to alternative fueled vehicles;

(B) grants of Federal financial assistance for the purpose of assisting such State in the implementation of such plan or any part thereof; and

(C) grants of Federal financial assistance for the acquisition of alternative fueled vehicles.

(2) In determining whether to approve a State plan submitted under subsection (a) of this section, and in determining the amount of Federal financial assistance, if any, to be provided to any State under this subsection, the Secretary shall take into account—

(A) the energy-related and environmental-related impacts, on a life cycle basis, of the introduction and use of alternative fueled vehicles included in the plan compared to conventional motor vehicles;

(B) the number of alternative fueled vehicles likely to be introduced by the year 2000, as a result of successful implementation of the plan; and

(C) such other factors as the Secretary considers appropriate.

(3) The Secretary, in consultation with the Administrator of General Services, shall provide assistance to States in procuring alternative fueled vehicles, including coordination with Federal procurements of such vehicles.

(4) The Secretary may not approve a State plan submitted under subsection (a) of this section unless the State agrees to provide at least 20 percent of the cost of activities for which assistance is provided under paragraph (1).

(c) General provisions

(1) In carrying out this section, the Secretary shall consult with the Secretary of Transportation on matters relating to transportation and with other appropriate Federal and State departments and agencies.

(2) The Secretary shall report annually to the President and the Congress, and shall furnish copies of such report to the Governor of each State participating in the program, on the oper-

ation of the program under this section. Such report shall include—

(A) an estimate of the number of alternative fueled vehicles in use in each State;

(B) the degree of each State's participation in the program;

(C) a description of Federal, State, and local programs undertaken in the various States, whether pursuant to a State plan under this section or not, to provide incentives for introduction of alternative fueled vehicles;

(D) an estimate of the energy and environmental benefits of the program; and

(E) the recommendations of the Secretary, if any, for additional action by the Federal Government.

(d) Definitions

For the purposes of this section, the following definitions apply:

(1) Governor

The term "Governor" means the chief executive of a State.

(2) State

The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other Commonwealth, territory, or possession of the United States.

(e) Authorization of appropriations

There are authorized to be appropriated for carrying out this section, \$10,000,000 for each of the 5 fiscal years beginning after October 24, 1992.

(Pub. L. 102-486, title IV, § 409, Oct. 24, 1992, 106 Stat. 2882.)

REFERENCES IN TEXT

The Intermodal Surface Transportation Efficiency Act of 1991, referred to in subsec. (a)(3)(K), is Pub. L. 102-240, Dec. 18, 1991, 105 Stat. 1914. For complete classification of this Act to the Code, see Short Title of 1991 Amendment note set out under section 101 of Title 49, Transportation, and Tables.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (c)(2) of this section relating to annual reports to Congress, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 8th item on page 86 of House Document No. 103-7.

§ 13236. Alternative fuel bus program

(a) Cooperative agreements and joint ventures

(1) The Secretary of Transportation, in consultation with the Secretary, may enter into cooperative agreements and joint ventures proposed by any municipal, county, or regional transit authority in an urban area with a population over 100,000 (according to latest available census information) to demonstrate the feasibility of commercial application, including safety of specific vehicle design, of using alternative fuels for urban buses and other motor vehicles used for mass transit.

(2) The cooperative agreements and joint ventures under paragraph (1) may include inter-

ested or affected private firms willing to provide assistance in cash, or in kind, for any such demonstration.

(3) Federal assistance provided under cooperative agreements and joint ventures entered into under paragraph (1) to demonstrate the feasibility of commercial application of using alternative fuels for urban buses shall be in addition to Federal assistance provided under any other law for such purpose.

(b) Limitations

(1) The Secretary of Transportation may not enter into cooperative agreement or joint venture under subsection (a) of this section with any municipal, county, or regional transit authority, unless such government body agrees to provide 20 percent of the costs of such demonstration.

(2) The Secretary of Transportation may grant such priority under this section to any entity that demonstrates that the use of alternative fuels for transportation would have a significant beneficial effect on the environment.

(c) School buses

The Secretary of Transportation may also provide, in accordance with such rules as he may prescribe, financial assistance to any agency, municipality, or political subdivision in an urban area referred to in subsection (a) of this section, of any State or the District of Columbia for the purpose of meeting the incremental costs of school buses that are dedicated vehicles and used regularly for such transportation during the school term. Such costs may include the purchase and installation of alternative fuel refueling facilities to be used for school bus refueling, and the conversion of school buses to dedicated vehicles. The Secretary of Transportation may provide such assistance directly to a person who is a contractor of such agency, municipality, or political subdivision, upon the request of the agency, municipality, or political subdivision, and who, under such contract, provides for such transportation. Any conversion under this subsection shall comply with the warranty and safety requirements for alternative fuel conversions contained in section 7587¹ of this title.

(d) Authorization of appropriations

There are authorized to be appropriated not more than \$30,000,000 for each of the fiscal years 1993, 1994, and 1995 for purposes of this section.

(Pub. L. 102-486, title IV, §410, Oct. 24, 1992, 106 Stat. 2884.)

REFERENCES IN TEXT

Section 7587 of this title, referred to in subsec. (c), was in the original "section 247 of the Clean Air Act Amendments of 1990", Pub. L. 101-549, and was translated as reading "section 247 of the Clean Air Act", meaning section 247 of act July 14, 1955, ch. 360, title II, as added Nov. 15, 1990, Pub. L. 101-549, title II, §229(a), 104 Stat. 2523, to reflect the probable intent of Congress, because the Clean Air Act Amendments of 1990 does not contain a section 247, and section 247 of the Clean Air Act relates to alternate fuel conversions for vehicles.

¹ See References in Text note below.

§ 13237. Certification of training programs

The Secretary shall ensure that the Federal Government establishes and carries out a program for the certification of training programs for technicians who are responsible for motor vehicle installation of equipment that converts gasoline or diesel-fueled motor vehicles into dedicated vehicles or dual fueled vehicles, and for the maintenance of such converted motor vehicles. A training program shall not be certified under the program established under this section unless it provides technicians with instruction on the proper and safe installation procedures and techniques, adherence to specifications (including original equipment manufacturer specifications), motor vehicle operating procedures, emissions testing, and other appropriate mechanical concerns applicable to these motor vehicle conversions. The Secretary shall ensure that, in the development of the program required under this section, original equipment manufacturers, fuel suppliers, companies that convert conventional vehicles to use alternative fuels, and other affected persons are consulted.

(Pub. L. 102-486, title IV, §411, Oct. 24, 1992, 106 Stat. 2885.)

§ 13238. Alternative fuel use in nonroad vehicles and engines

(a) Nonroad vehicles and engines

(1) The Secretary shall conduct a study to determine whether the use of alternative fuels in nonroad vehicles and engines would contribute substantially to reduced reliance on imported energy sources. Such study shall be completed, and the results thereof reported to Congress, within 2 years after October 24, 1992.

(2) The study shall assess the potential of nonroad vehicles and engines to run on alternative fuels. Taking into account the nonroad vehicles and engines for which running on alternative fuels is feasible, the study shall assess the potential reduction in reliance on foreign energy sources that could be achieved if such vehicles were to run on alternative fuels.

(3) The report required under paragraph (1) may include the Secretary's recommendations for encouraging or requiring nonroad vehicles and engines which can feasibly be run on alternative fuels, to utilize such alternative fuels.

(b) Definition of nonroad vehicles and engines

Nonroad vehicles and engines, for purposes of this section, shall include nonroad vehicles and engines used for surface transportation or principally for industrial or commercial purposes, vehicles used for rail transportation, vehicles used at airports, vehicles or engines used for marine purposes, and other vehicles or engines at the discretion of the Secretary.

(c) Designation

Upon completion of the study required pursuant to subsection (a) of this section, the Secretary may designate such vehicles and engines as qualifying for loans pursuant to section 13239 of this title.

(Pub. L. 102-486, title IV, §412, Oct. 24, 1992, 106 Stat. 2886.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13239 of this title.

§ 13239. Low interest loan program**(a) Establishment**

Within 1 year after October 24, 1992, the Secretary shall establish a program for making low interest loans, giving preference to small businesses that own or operate fleets, for—

- (1) the conversion of motor vehicles to operation on alternative fuels;
- (2) covering the incremental costs of the purchase of motor vehicles which operate on alternative fuels, when compared with purchase costs of comparable conventionally fueled motor vehicles; or
- (3) covering the incremental costs of purchase of non-road vehicles and engines designated by the Secretary pursuant to section 13238(c) of this title.

(b) Loan terms

The Secretary, to the extent practicable, shall establish reasonable terms for loans made under this subsection, with preference given to repayment schedules that enable such loans to be repaid by the borrower from the cost differential between gasoline and the alternative fuel on which the motor vehicle operates.

(c) Criteria

In deciding to whom loans shall be made under this subsection, the Secretary shall consider—

- (1) the financial need of the applicant;
- (2) the goal of assisting the greatest number of applicants; and
- (3) the ability of an applicant to repay the loan, taking into account the fuel cost savings likely to accrue to the applicant.

(d) Priorities

Priority shall be given under this section to fleets where the use of alternative fuels would have a significant beneficial effect on energy security and the environment.

(e) Authorization of appropriations

There are authorized to be appropriated to the Secretary for carrying out this section, \$25,000,000 for each of the fiscal years 1993, 1994, and 1995.

(Pub. L. 102-486, title IV, §414, Oct. 24, 1992, 106 Stat. 2886.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13238 of this title.

SUBCHAPTER III—AVAILABILITY AND USE OF REPLACEMENT FUELS, ALTERNATIVE FUELS, AND ALTERNATIVE FUELED PRIVATE VEHICLES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 13211, 13220 of this title.

§ 13251. Mandate for alternative fuel providers**(a) In general**

(1) The Secretary shall, before January 1, 1994, issue regulations requiring that of the new light

duty motor vehicles acquired by a covered person described in paragraph (2), the following percentages shall be alternative fueled vehicles for the following model years:

- (A) 30 percent for model year 1996.
- (B) 50 percent for model year 1997.
- (C) 70 percent for model year 1998.
- (D) 90 percent for model year 1999 and thereafter.

(2) For purposes of this section, a person referred to in paragraph (1) is—

- (A) a covered person whose principal business is producing, storing, refining, processing, transporting, distributing, importing, or selling at wholesale or retail any alternative fuel other than electricity;
- (B) a non-Federal covered person whose principal business is generating, transmitting, importing, or selling at wholesale or retail electricity; or
- (C) a covered person—
 - (i) who produces, imports, or produces and imports in combination, an average of 50,000 barrels per day or more of petroleum; and
 - (ii) a substantial portion of whose business is producing alternative fuels.

(3)(A) In the case of a covered person described in paragraph (2) with more than one affiliate, division, or other business unit, only an affiliate, division, or business unit which is substantially engaged in the alternative fuels business (as determined by the Secretary by rule) shall be subject to this subsection.

(B) No covered person or affiliate, division, or other business unit of such person whose principal business is—

- (i) transforming alternative fuels into a product that is not an alternative fuel; or
- (ii) consuming alternative fuels as a feedstock or fuel in the manufacture of a product that is not an alternative fuel,

shall be subject to this subsection.

(4) The vehicles purchased pursuant to this section shall be operated solely on alternative fuels except when operating in an area where the appropriate alternative fuel is unavailable.

(5) Regulations issued under paragraph (1) shall provide for the prompt exemption by the Secretary, through a simple and reasonable process, from the requirements of paragraph (1) of any covered person, in whole or in part, if such person demonstrates to the satisfaction of the Secretary that—

- (A) alternative fueled vehicles that meet the normal requirements and practices of the principal business of that person are not reasonably available for acquisition; or
- (B) alternative fuels that meet the normal requirements and practices of the principal business of that person are not available in the area in which the vehicles are to be operated.

(b) Revisions and extensions

With respect to model years 1997 and thereafter, the Secretary may—

- (1) revise the percentage requirements under subsection (a)(1) of this section downward, except that under no circumstances shall the percentage requirement for a model year be less than 20 percent; and

(2) extend the time under subsection (a)(1) of this section for up to 2 model years.

(c) Option for electric utilities

The Secretary shall, within 1 year after October 24, 1992, issue regulations requiring that, in the case of a covered person whose principal business is generating, transmitting, importing, or selling at wholesale or retail electricity, the requirements of subsection (a)(1) of this section shall not apply until after December 31, 1997, with respect to electric motor vehicles. Any covered person described in this subsection which plans to acquire electric motor vehicles to comply with the requirements of this section shall so notify the Secretary before January 1, 1996.

(d) Report to Congress

The Secretary shall, before January 1, 1998, submit a report to the Congress providing detailed information on actions taken to carry out this section, and the progress made and problems encountered thereunder.

(Pub. L. 102-486, title V, §501, Oct. 24, 1992, 106 Stat. 2887.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13220, 13257, 13258, 13261 of this title.

§ 13252. Replacement fuel supply and demand program

(a) Establishment of program

The Secretary shall establish a program to promote the development and use in light duty motor vehicles of domestic replacement fuels. Such program shall promote the replacement of petroleum motor fuels with replacement fuels to the maximum extent practicable. Such program shall, to the extent practicable, ensure the availability of those replacement fuels that will have the greatest impact in reducing oil imports, improving the health of our Nation's economy and reducing greenhouse gas emissions.

(b) Development plan and production goals

Under the program established under subsection (a) of this section, the Secretary, before October 1, 1993, in consultation with the Administrator, the Secretary of Transportation, the Secretary of Agriculture, the Secretary of Commerce, and the heads of other appropriate agencies, shall review appropriate information and—

(1) estimate the domestic and nondomestic production capacity for replacement fuels and alternative fueled vehicles needed to implement this section;

(2) determine the technical and economic feasibility of achieving the goals of producing sufficient replacement fuels to replace, on an energy equivalent basis—

- (A) at least 10 percent by the year 2000; and
- (B) at least 30 percent by the year 2010,

of the projected consumption of motor fuel in the United States for each such year, with at least one half of such replacement fuels being domestic fuels;

(3) determine the most suitable means and methods of developing and encouraging the production, distribution, and use of replace-

ment fuels and alternative fueled vehicles in a manner that would meet the program goals described in subsection (a) of this section;

(4) identify ways to encourage the development of reliable replacement fuels and alternative fueled vehicle industries in the United States, and the technical, economic, and institutional barriers to such development; and

(5) determine the greenhouse gas emission implications of increasing the use of replacement fuels, including an estimate of the maximum feasible reduction in such emissions from the use of replacement fuels.

The Secretary shall publish in the Federal Register the results of actions taken under this subsection, and provide for an opportunity for public comment.

(Pub. L. 102-486, title V, §502, Oct. 24, 1992, 106 Stat. 2888.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13254, 13255, 13256, 13257 of this title.

§ 13253. Replacement fuel demand estimates and supply information

(a) Estimates

Not later than October 1, 1993, and annually thereafter, the Secretary, in consultation with the Administrator, the Secretary of Transportation, and other appropriate State and Federal officials, shall estimate for the following calendar year—

(1) the number of each type of alternative fueled vehicle likely to be in use in the United States;

(2) the probable geographic distribution of such vehicles;

(3) the amount and distribution of each type of replacement fuel; and

(4) the greenhouse gas emissions likely to result from replacement fuel use.

(b) Information

Beginning on October 1, 1994, the Secretary shall annually require—

(1) fuel suppliers to report to the Secretary on the amount of each type of replacement fuel that such supplier—

(A) has supplied in the previous calendar year; and

(B) plans to supply for the following calendar year;

(2) suppliers of alternative fueled vehicles to report to the Secretary on the number of each type of alternative fueled vehicle that such supplier—

(A) has made available in the previous calendar year; and

(B) plans to make available for the following calendar year; and

(3) such fuel suppliers to provide the Secretary information necessary to determine the greenhouse gas emissions from the replacement fuels used, taking into account the entire fuel cycle.

(c) Protection of information

Information provided to the Secretary under subsection (b) of this section shall be subject to

applicable provisions of law protecting the confidentiality of trade secrets and business and financial information, including section 1905 of title 18.

(Pub. L. 102-486, title V, §503, Oct. 24, 1992, 106 Stat. 2889.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13256, 13261 of this title.

§ 13254. Modification of goals; additional rule-making authority

(a) Examination of goals

Within 3 years after October 24, 1992, and periodically thereafter, the Secretary shall examine the goals established under section 13252(b)(2) of this title, in the context of the program goals stated under section 13252(a) of this title, to determine if the goals under section 13252(b)(2) of this title, including the applicable percentage requirements and dates, should be modified under this section. The Secretary shall publish in the Federal Register the results of each examination under this subsection and provide an opportunity for public comment.

(b) Modification of goals

If, after analysis of information obtained in connection with carrying out subsection (a) of this section or section 13252 of this title, or other information, and taking into account the determination of technical and economic feasibility made under section 13252(b)(2) of this title, the Secretary determines that goals described in section 13252(b)(2) of this title, including the percentage requirements or dates, are not achievable, the Secretary, in consultation with appropriate Federal agencies, shall, by rule, establish goals that are achievable, for purposes of this subchapter. The modification of goals under this section may include changing the target dates specified in section 13252(b)(2) of this title.

(c) Additional rulemaking authority

If the Secretary determines that the achievement of goals described in section 13252(b)(2) of this title would result in a significant and correctable failure to meet the program goals described in section 13252(a) of this title, the Secretary shall issue such additional regulations as are necessary to remedy such failure. The Secretary shall have no authority under this Act to mandate the production of alternative fueled vehicles or to specify, as applicable, the models, lines, or types of, or marketing or pricing practices, policies, or strategies for, vehicles subject to this Act. Nothing in this Act shall be construed to give the Secretary authority to mandate marketing or pricing practices, policies, or strategies for alternative fuels or to mandate the production or delivery of such fuels.

(Pub. L. 102-486, title V, §504, Oct. 24, 1992, 106 Stat. 2890.)

REFERENCES IN TEXT

This Act, referred to in subsec. (c), is Pub. L. 102-486, Oct. 24, 1992, 106 Stat. 2776, known as the Energy Policy Act of 1992. For complete classification of this Act to the Code, see Short Title note set out under section 13201 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13255, 13256, 13257 of this title.

§ 13255. Voluntary supply commitments

The Secretary shall, by January 1, 1994, and thereafter, undertake to obtain voluntary commitments in geographically diverse regions of the United States—

(1) from fuel suppliers to make available to the public replacement fuels, including providing for the construction or availability of related fuel delivery systems;

(2) from owners of 10 or more motor vehicles to acquire and use alternative fueled vehicles and alternative fuels; and

(3) from suppliers of alternative fueled vehicles to make available to the public alternative fueled vehicles and to ensure the availability of necessary related services,

in sufficient volume to achieve the goals described in section 13252(b)(2) of this title or as modified under section 13254 of this title, and in order to meet any fleet requirement program established by rule under this subchapter. The Secretary shall periodically report to the Congress on the results of efforts under this section. All voluntary commitments obtained pursuant to this section shall be available to the public, except to the extent provided in applicable provisions of law protecting the confidentiality of trade secrets and business and financial information, including section 1905 of title 18.

(Pub. L. 102-486, title V, §505, Oct. 24, 1992, 106 Stat. 2890.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13257 of this title.

§ 13256. Technical and policy analysis

(a) Requirement

Not later than March 1, 1995, and March 1, 1997, the Secretary shall prepare and transmit to the President and the Congress a technical and policy analysis under this section. The Secretary shall utilize the analytical capability and authorities of the Energy Information Administration and such other offices of the Department of Energy as the Secretary considers appropriate.

(b) Purposes

The technical and policy analysis prepared under this section shall be based on the best available data and information obtainable by the Secretary under section 13253 of this title, or otherwise, and on experience under this subchapter and other provisions of law in the development and use of replacement fuels and alternative fueled vehicles, and shall evaluate—

(1) progress made in achieving the goals described in section 13252(b)(2) of this title, as modified under section 13254 of this title;

(2) the actual and potential role of replacement fuels and alternative fueled vehicles in significantly reducing United States reliance on imported oil to the extent of the goals referred to in paragraph (1); and

(3) the actual and potential availability of various domestic replacement fuels and dedicated vehicles and dual fueled vehicles.

(c) Publication

The Secretary shall publish a proposed version of each analysis under this section in the Federal Register for public comment before transmittal to the President and the Congress. Public comment received in response to such publication shall be preserved for use in rulemaking proceedings under section 13257 of this title.

(Pub. L. 102-486, title V, §506, Oct. 24, 1992, 106 Stat. 2891.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13257 of this title.

§ 13257. Fleet requirement program**(a) Fleet program purchase goals**

(1) Except as provided in paragraph (2), the following percentages of new light duty motor vehicles acquired in each model year for a fleet, other than a Federal fleet, State fleet, or fleet owned, operated, leased, or otherwise controlled by a covered person subject to section 13251 of this title, shall be alternative fueled vehicles:

(A) 20 percent of the motor vehicles acquired in model years 1999, 2000, and 2001;

(B) 30 percent of the motor vehicles acquired in model year 2002;

(C) 40 percent of the motor vehicles acquired in model year 2003;

(D) 50 percent of the motor vehicles acquired in model year 2004;

(E) 60 percent of the motor vehicles acquired in model year 2005; and

(F) 70 percent of the motor vehicles acquired in model year 2006 and thereafter.

(2) The Secretary may not establish percentage requirements higher than those described in paragraph (1). The Secretary may, if appropriate, and pursuant to a rule under subsection (b) of this section, establish a lesser percentage requirement for any model year. The Secretary may, by rule, establish a date later than 1998 (or model year 1999) for initiating the fleet requirements under paragraph (1).

(3) The Secretary shall publish an advance notice of proposed rulemaking for the purpose of—

(A) evaluating the progress toward achieving the goals of replacement fuel use described in section 13252(b)(2) of this title, as modified under section 13254 of this title;

(B) identifying the problems associated with achieving those goals;

(C) assessing the adequacy and practicability of those goals; and

(D) considering all actions needed to achieve those goals.

The Secretary shall provide for at least 3 regional hearings on the advance notice of proposed rulemaking, with respect to which official transcripts shall be maintained. The comment period in connection with such advance notice of proposed rulemaking shall be completed within 7 months after publication of the advance notice.

(4) After the completion of such advance notice of proposed rulemaking, the Secretary shall publish in the Federal Register a proposed rule for the rule required under subsection (b) of this

section, and shall provide for a public comment period, with hearings, of not less than 90 days.

(b) Early rulemaking

(1) Not earlier than 1 year after October 24, 1992, and after carrying out the requirements of subsection (a) of this section, the Secretary shall initiate a rulemaking to determine whether a fleet requirement program to begin in calendar year 1998 (when model year 1999 begins), or such other later date as he may select pursuant to subsection (a) of this section, is necessary under this section. Such rule, consistent with subsection (a)(1) of this section, shall establish the annual applicable model year percentage. No rule under this subsection may be promulgated after December 15, 1996, and be enforceable. A fleet requirement program shall be considered necessary and a rule therefor shall be promulgated if the Secretary finds that—

(A) the goal of replacement fuel use described in section 13252(b)(2)(B) of this title, as modified under section 13254 of this title, is not expected to be actually achieved by 2010, or such other date as is established under section 13254 of this title, by voluntary means or pursuant to this subchapter or any other law without such a fleet requirement program, taking into consideration the status of the achievement of the interim goal described in section 13252(b)(2)(A) of this title, as modified under section 13254 of this title;

(B) such goal is practicable and actually achievable within periods specified in section 13252(b)(2) of this title, as modified under section 13254 of this title, through implementation of such a fleet requirement program in combination with voluntary means and the application of other programs relevant to achieving such goals; and

(C) by 1998 (when model year 1999 begins) or the date specified by the Secretary in such rule for initiating a fleet requirement program—

(i) there exists sufficient evidence to ensure that the fuel and the needed infrastructure, including the supply and deliverability systems, will be installed and located at convenient places in the fleet areas subject to the rule and will be fully operational when the rule is effective to offer a reliable and timely supply of the applicable alternative fuel at reasonable costs (as compared to conventional fuels) to meet the fleet requirement program, as demonstrated through use of the provisions of section 13255(1) of this title regarding voluntary commitments or other adequate, reliable, and convincing forms of agreements, arrangements, or representations that such fuels and infrastructure are in existence or will exist when the rule is effective and will be expanded as the percentages increase annually;

(ii) there will be a sufficient number of new alternative fueled vehicles from original equipment manufacturers that comply with all applicable requirements of the Clean Air Act [42 U.S.C. 7401 et seq.] and chapter 301 of title 49;

(iii) such new vehicles will meet the applicable non-Federal and non-State fleet per-

formance requirements of such fleets (including range, passenger or cargo-carrying capacity, reliability, refueling capability, vehicle mix, and economical operation and maintenance); and

(iv) establishment of a fleet requirement program by rule under this subsection will not result in unfair competitive advantages or disadvantages, or result in undue economic hardship, to the affected fleets.

(2) The Secretary shall not promulgate a rule under this subsection if he is unable to make affirmative findings in the case of each of the subparagraphs under paragraph (1), and each of the clauses under subparagraph (C) of paragraph (1).

(3) If the Secretary does not determine that such program is necessary under this subsection, the provisions of subsection (e) of this section shall apply to the consideration in the future of any fleet requirement program. The record of this rulemaking, including the Secretary's findings, shall be incorporated into a rulemaking under that subsection. If the Secretary determines under this subsection that such program is necessary, the Secretary shall not initiate the later rulemaking under subsection (e) of this section.

(c) Advance notice of proposed rulemaking

Not later than April 1, 1998, the Secretary shall publish an advance notice of proposed rulemaking for the purpose of—

(1) evaluating the progress toward achieving the goals of replacement fuel use described in section 13252(b)(2) of this title, as modified under section 13254 of this title;

(2) identifying the problems associated with achieving those goals;

(3) assessing the adequacy and practicability of those goals; and

(4) considering all actions needed to achieve those goals.

The Secretary shall provide for at least 3 regional hearings on the advance notice of proposed rulemaking, with respect to which official transcripts shall be maintained. The comment period in connection with such advance notice of proposed rulemaking shall be completed within 7 months after publication of the advance notice.

(d) Proposed rule

Before May 1, 1999, the Secretary shall publish in the Federal Register a proposed rule for the rule required under subsection (g) of this section, and shall provide for a public comment period, with hearings, of not less than 90 days.

(e) Determination

(1) Not later than January 1, 2000, the Secretary shall, through the rule required under subsection (g) of this section, determine whether a fleet requirement program is necessary under this section. Such a program shall be considered necessary and a rule therefor shall be promulgated if the Secretary finds that—

(A) the goal of replacement fuel use described in section 13252(b)(2)(B) of this title, as modified under section 13254 of this title, is not expected to be actually achieved by 2010,

or such other date as is established under section 13254 of this title, by voluntary means or pursuant to this subchapter or any other law without such a fleet requirement program, taking into consideration the status of the achievement of the interim goal described in section 13252(b)(2)(A) of this title, as modified under section 13254 of this title; and

(B) such goal is practicable and actually achievable within periods specified in section 13252(b)(2) of this title, as modified under section 13254 of this title, through implementation of such a fleet requirement program in combination with voluntary means and the application of other programs relevant to achieving such goals.

(2) The rule under subsection (b) or (g) of this section shall also modify the goal described in section 13252(b)(2)(B) of this title and establish a revised goal pursuant to section 13254 of this title if the Secretary determines, based on the proceeding required under subsection (a) or (c) of this section, that the goal in effect at the time of that proceeding is inadequate or impracticable, and not expected to be achievable. Such goal as modified and established shall be applicable in making the findings described in paragraph (1). If the Secretary modifies the goal under this paragraph, he may also modify the percentages stated in subsection (a)(1) or (g)(1) of this section and the minimum percentage stated in subsection (a)(2) or (g)(2) of this section shall be not less than 10 percent.

(f) Explanation of determination that fleet requirement program is not necessary

If the Secretary determines, based on findings under subsection (b) or (e) of this section, that a fleet requirement program under this section is not necessary, the Secretary shall—

(1) by December 15, 1996, with respect to a rulemaking under subsection (b) of this section; and

(2) by January 1, 2000, with respect to a rulemaking under subsection (e) of this section,

publish such determination in the Federal Register as a final agency action, including an explanation of the findings on which such determination is made and the basis for the determination.

(g) Fleet requirement program

(1) If the Secretary determines under subsection (e) of this section that a fleet requirement program is necessary, the Secretary shall, by January 1, 2000, by rule require that, except as provided in paragraph (2), of the total number of new light duty motor vehicles acquired for a fleet, other than a Federal fleet, State fleet, or fleet owned, operated, leased, or otherwise controlled by a covered person under section 13251 of this title—

(A) 20 percent of the motor vehicles acquired in model year 2002;

(B) 40 percent of the motor vehicles acquired in model year 2003;

(C) 60 percent of the motor vehicles acquired in model year 2004; and

(D) 70 percent of the motor vehicles acquired in model year 2005 and thereafter,

shall be alternative fueled vehicles.

(2) The Secretary may not establish percentage requirements higher than those described in paragraph (1). The Secretary may, if appropriate, and pursuant to a rule under subsection (g) of this section, establish a lesser percentage requirement for any model year. The Secretary may, by rule, establish a date later than 2002 (when model year 2003 begins) for initiating the fleet requirements under paragraph (1).

(3) Nothing in this subchapter shall be construed as requiring any fleet to acquire alternative fueled vehicles or alternative fuels that do not meet the normal business requirements and practices and needs of that fleet.

(4) A vehicle operating only on gasoline that complies with applicable requirements of the Clean Air Act [42 U.S.C. 7401 et seq.] shall not be considered an alternative fueled vehicle under subsection (b) of this section or this subsection, except that the Secretary, as part of the rule under subsection (b) of this section or this subsection, may determine that such vehicle should be treated as an alternative fueled vehicle for purposes of this section, for fleets subject to part C of title II of the Clean Air Act [42 U.S.C. 7581 et seq.], taking into consideration the impact on energy security and the goals stated in section 13252(a) of this title.

(h) Extension of deadlines

The Secretary may, by notice published in the Federal Register, extend the deadlines established under subsections (e), (f)(2), and (g) of this section for an additional 90 days if the Secretary is unable to meet such deadlines. Such extension shall not be reviewable.

(i) Exemptions

(1) A rule issued under subsection (b), (g), or (o) of this section shall provide for the prompt exemption by the Secretary, through a simple and reasonable process, of any fleet from the requirements of subsection (b), (g), or (o) of this section, in whole or in part, if it is demonstrated to the satisfaction of the Secretary that—

(A) alternative fueled vehicles that meet the normal requirements and practices of the principal business of the fleet owner are not reasonably available for acquisition;

(B) alternative fuels that meet the normal requirements and practices of the principal business of the fleet owner are not available in the area in which the vehicles are to be operated; or

(C) in the case of State and local government entities, the application of such requirements would pose an unreasonable financial hardship.

(2) In the case of private fleets, if the motor vehicles, when under normal operations, are garaged at personal residences at night, such motor vehicles shall be exempt from the requirements of subsections (b) and (g).

(j) Conversions

Nothing in this subchapter or the amendments made by this subchapter shall require a fleet owner to acquire conversion vehicles.

(k) Inclusion of law enforcement vehicles and urban buses

(1) If the Secretary determines, by rule, that the inclusion of fleets of law enforcement motor

vehicles in the fleet requirement program established under subsection (g) of this section would contribute to achieving the goal described in section 13252(b)(2)(B) of this title, as modified under section 13254 of this title, and the Secretary finds that such inclusion would not hinder the use of the motor vehicles for law enforcement purposes, the Secretary may include such fleets in such program. The Secretary may only initiate one rulemaking under this paragraph.

(2) If the Secretary determines, by rule, that the inclusion of new urban buses, as defined by the Administrator under title II of the Clean Air Act [42 U.S.C. 7521 et seq.], in a fleet requirement program established under subsection (g) of this section would contribute to achieving the goal described in section 13252(b)(2)(B) of this title, as modified under section 13254 of this title, the Secretary may include such urban buses in such program, if the Secretary finds that such application will be consistent with energy security goals and the needs and objectives of encouraging and facilitating the greater use of such urban buses by the public, taking into consideration the impact of such application on public transit entities. The Secretary may only initiate one rulemaking under this paragraph.

(3) Rulemakings under paragraph (1) or (2) shall be separate from a rulemaking under subsection (g) of this section, but may not occur unless a rulemaking is carried out under subsection (g) of this section.

(l) Consideration of factors

In carrying out this section, the Secretary shall take into consideration energy security, costs, safety, lead time requirements, vehicle miles traveled annually, effect on greenhouse gases, technological feasibility, energy requirements, economic impacts, including impacts on workers and the impact on consumers (including users of the alternative fuel for purposes such as for residences, agriculture, process use, and non-fuel purposes) and fleets, the availability of alternative fuels and alternative fueled vehicles, and other relevant factors.

(m) Consultation and participation of other Federal agencies

In carrying out this section and section 13256 of this title, the Secretary shall consult with the Secretary of Transportation, the Administrator, and other appropriate Federal agencies. The Secretary shall provide for the participation of the Secretary of Transportation and the Administrator in the development and issuance of the rule under this section, including the public process concerning such rule.

(n) Petitions

As part of the rule promulgated either pursuant to subsection (b) or (g) of this section, the Secretary shall establish procedures for any fleet owner or operator or motor vehicle manufacturer to request that the Secretary modify or suspend a fleet requirement program established under either subsection nationally, by region, or in an applicable fleet area because, as demonstrated by the petitioner, the infrastructure or fuel supply or distribution system for an applicable alternative fuel is inadequate to meet

the needs of a fleet. In the event that the Secretary determines that a modification or suspension of the fleet requirement program on a regional basis would detract from the nationwide character of any fleet requirement program established by rule or would sufficiently diminish the economies of scale for the production of alternative fueled vehicles or alternative fuels and thereafter the practicability and effectiveness of such program, the Secretary may only modify or suspend the program nationally. The procedures shall include provisions for notice and public hearings. The Secretary shall deny or grant the petition within 180 days after filing.

(o) Mandatory State fleet programs

(1) Pursuant to a rule promulgated by the Secretary, beginning in calendar year 1995 (when model year 1996 begins), the following percentages of new light duty motor vehicles acquired annually for State government fleets, including agencies thereof, but not municipal fleets, shall be alternative fueled vehicles:

- (A) 10 percent of the motor vehicles acquired in model year 1996;
- (B) 15 percent of the motor vehicles acquired in model year 1997;
- (C) 25 percent of the motor vehicles acquired in model year 1998;
- (D) 50 percent of the motor vehicles acquired in model year 1999;
- (E) 75 percent of the motor vehicles acquired in model year 2000 and thereafter.

(2)(A) The Secretary shall within 18 months after October 24, 1992, promulgate a rule providing that a State may submit a plan within 12 months after such promulgation containing a light duty alternative fueled vehicle plan for State fleets to meet the annual percentages established under paragraph (1) for the acquisition of light duty motor vehicles. The plan shall provide for the voluntary conversion or acquisition or combination thereof, beyond any acquisition required by this subchapter, of such motor vehicles by State, local, or private fleets, in numbers greater than or equal to the number of State alternative fueled vehicles required pursuant to paragraph (1).

(B) The plan, if approved by the Secretary, would be in lieu of the State meeting such annual percentages solely through purchases of new State-owned vehicles. All conversions or acquisitions or combinations thereof of any alternative fueled vehicles under the plan must be voluntary and must conform with the requirements of section 247 of the Clean Air Act [42 U.S.C. 7587] and must comply with applicable safety requirements. The Secretary of Transportation shall within 3 years after enactment promulgate rules setting forth safety standards in accordance with chapter 301 of title 49 applicable to all conversions.

(Pub. L. 102-486, title V, §507, Oct. 24, 1992, 106 Stat. 2891.)

REFERENCES IN TEXT

The Clean Air Act, referred to in subsecs. (b)(1)(C)(ii), (g)(4), and (k)(2), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§7401 et seq.) of this title. Title II of the Act, known as the National Emission Standards Act, is classified

generally to subchapter II (§7521 et seq.) of chapter 85 of this title. Part C of title II of the Act is classified generally to part C (§7581 et seq.) of chapter 85 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

This subchapter, referred to in subsecs. (b)(1)(A), (e)(1)(A), (g)(3), (j), and (o)(2)(A), was in the original "this title" meaning title V of Pub. L. 102-486, Oct. 24, 1992, 102 Stat. 2887, which is classified generally to this subchapter.

CODIFICATION

In subsecs. (b)(1)(C)(ii) and (o)(2)(B), "chapter 301 of title 49" substituted for "the National Traffic and Motor Vehicle Safety Act of 1966 [15 U.S.C. 1381 et seq.]" on authority of Pub. L. 103-272, §6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13256, 13259, 13261 of this title.

§ 13258. Credits

(a) In general

The Secretary shall allocate a credit to a fleet or covered person that is required to acquire an alternative fueled vehicle under this subchapter, if that fleet or person acquires an alternative fueled vehicle in excess of the number that fleet or person is required to acquire under this subchapter or acquires an alternative fueled vehicle before the date that fleet or person is required to acquire an alternative fueled vehicle under such subchapter.

(b) Allocation

In allocating credits under subsection (a) of this section, the Secretary shall allocate one credit for each alternative fueled vehicle the fleet or covered person acquires that exceeds the number of alternative fueled vehicles that fleet or person is required to acquire under this subchapter or that is acquired before the date that fleet or person is required to acquire an alternative fueled vehicle under such subchapter. In the event that a vehicle is acquired before the date otherwise required, the Secretary shall allocate one credit per vehicle for each year the vehicle is acquired before the required date. The credit shall be allocated for the same type vehicle as the excess vehicle or earlier acquired vehicle.

(c) Use of credits

At the request of a fleet or covered person allocated a credit under this section, the Secretary shall treat the credit as the acquisition of one alternative fueled vehicle of the type for which the credit is allocated in the year designated by that fleet or person when determining whether that fleet or person has complied with this subchapter in the year designated. A credit may be counted toward compliance for only one year.

(d) Transferability

A fleet or covered person allocated a credit under this section or to whom a credit is transferred under this section, may transfer freely the credit to another fleet or person who is required to comply with this subchapter. At the

request of the fleet or person to whom a credit is transferred, the Secretary shall treat the transferred credit as the acquisition of one alternative fueled vehicle of the type for which the credit is allocated in the year designated by the fleet or person to whom the credit is transferred when determining whether that fleet or person has complied with this subchapter in the year designated. A transferred credit may be counted toward compliance for only one year. In the case of the alternative fuel provider program under section 13251 of this title, a transferred credit may be counted toward compliance only if the requirement of section 13251(a)(4) of this title is met.

(Pub. L. 102-486, title V, §508, Oct. 24, 1992, 106 Stat. 2897.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13220 of this title.

§ 13259. Secretary's recommendations to Congress

(a) Recommendations to require availability or acquisition

If the Secretary determines, under section 13257(f) of this title, that a fleet requirement program under section 13257 of this title is not necessary, the Secretary shall so notify the Congress. If the Secretary so notifies the Congress, the Secretary shall, within 2 years after such notification and by rule, prepare and submit to the Congress recommendations for requirements or incentives for—

(1) fuel suppliers to make available to the public replacement fuels, including providing for the construction or availability of related fuel delivery systems;

(2) suppliers of alternative fueled vehicles to make available to the public alternative fueled vehicles and to ensure the availability of necessary related services; and

(3) motor vehicle drivers to use replacement fuels,

to the extent necessary to achieve such goals of replacement fuel use and to ensure that the availability of alternative fuels and of alternative fueled vehicles are consistent with each other.

(b) Fair and equitable application

In carrying out this section, the Secretary shall recommend the imposition of requirements proportionately on all appropriate fuel suppliers and purchasers of motor fuels and suppliers and purchasers of motor vehicles in a fair and equitable manner.

(Pub. L. 102-486, title V, §509, Oct. 24, 1992, 106 Stat. 2898.)

§ 13260. Effect on other laws

(a) In general

Nothing in this Act or the amendments made by this Act shall be construed to alter, affect, or modify the provisions of the Clean Air Act [42 U.S.C. 7401 et seq.], or regulations issued thereunder.

(b) Compliance by alternative fueled vehicles

Alternative fueled vehicles, whether dedicated vehicles or dual fueled vehicles, and the alter-

native fuels for operating such vehicles, shall comply with requirements of the Clean Air Act [42 U.S.C. 7401 et seq.] applicable to such vehicles and fuels.

(Pub. L. 102-486, title V, §510, Oct. 24, 1992, 106 Stat. 2898.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 102-486, Oct. 24, 1992, 106 Stat. 2776, known as the Energy Policy Act of 1992. For complete classification of this Act to the Code, see Short Title note set out under section 13201 of this title and Tables.

The Clean Air Act, referred to in text, is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§7401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

§ 13261. Prohibited acts

It shall be unlawful for any person to violate any provision of section 13251, 13253(b), or 13257 of this title, or any regulation issued under such sections.

(Pub. L. 102-486, title V, §511, Oct. 24, 1992, 106 Stat. 2899.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13262 of this title.

§ 13262. Enforcement

(a) Violation

Whoever violates section 13261 of this title shall be subject to a civil penalty of not more than \$5,000 for each violation.

(b) Willful violation

Whoever willfully violates section 13261 of this title shall be fined not more than \$10,000 for each violation.

(c) Knowing and willful violation following prior violation and penalty

Any person who knowingly and willfully violates section 13261 of this title after having been subjected to a civil penalty for a prior violation of section 13261 of this title shall be fined not more than \$50,000.

(Pub. L. 102-486, title V, §512, Oct. 24, 1992, 106 Stat. 2899.)

§ 13263. Powers of Secretary

For the purpose of carrying out subchapter I of this chapter, subchapter II of this chapter, this subchapter, and subchapter IV of this chapter, the Secretary, or the duly designated agent of the Secretary, may hold such hearings, take such testimony, sit and act at such times and places, administer such oaths, and require, by subpoena, the attendance and testimony of such witnesses and the production of such books, papers, correspondence, memorandums, contracts, agreements, or other records as the Secretary of Transportation is authorized to do under section 32910(a)(1) of title 49.

(Pub. L. 102-486, title V, §513, Oct. 24, 1992, 106 Stat. 2899.)

REFERENCES IN TEXT

Subchapter I of this chapter, referred to in text, was in the original "title III" meaning title III of Pub. L.

102-486, Oct. 24, 1992, 106 Stat. 2866, which enacted subchapter I of this chapter, amended section 6374 of this title, and repealed provisions set out as a note under section 6374 of this title.

Subchapter II of this chapter, referred to in text, was in the original “title IV” meaning title IV of Pub. L. 102-486, Oct. 24, 1992, 106 Stat. 2875, which enacted subchapter II of this chapter, amended sections 6374a to 6374c of this title and sections 717, 717a, 2001, 2002, 2006, and 2013 of Title 15, Commerce and Trade, enacted provisions set out as notes under sections 79b and 717 of Title 15, and repealed provisions set out as a note under section 717c of Title 15.

CODIFICATION

In text, “section 32910(a)(1) of title 49” substituted for “section 505(b)(1) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2005(b)(1))” on authority of Pub. L. 103-272, §6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

§ 13264. Authorization of appropriations

There are authorized to be appropriated to the Secretary for carrying out this subchapter \$10,000,000 for each of the fiscal years 1993 through 1997, and such sums as may be necessary for fiscal years 1998 through 2000.

(Pub. L. 102-486, title V, §514, Oct. 24, 1992, 106 Stat. 2899.)

SUBCHAPTER IV—ELECTRIC MOTOR VEHICLES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 13263 of this title.

§ 13271. Definitions

For the purposes of this subchapter—

(1) the term “antitrust laws” means the Acts set forth in section 12 of title 15;

(2) the term “associated equipment” means equipment necessary for the regeneration, refueling, or recharging of batteries or other forms of electric energy used to power an electric motor vehicle and, in the case of electric-hybrid vehicles, such term includes nonpetroleum-related equipment necessary for, and solely related to, the demonstration of such vehicles;

(3) the term “discount payment” means the amount determined pursuant to section 13283 of this title;

(4) the term “electric motor vehicle” means a motor vehicle primarily powered by an electric motor that draws current from rechargeable storage batteries, fuel cells, photovoltaic arrays, or other sources of electric current and may include an electric-hybrid vehicle;

(5) the term “electric-hybrid vehicle” means a vehicle primarily powered by an electric motor that draws current from rechargeable storage batteries, fuel cells, or other source of electric current and also relies on a non-electric source of power;

(6) the term “eligible metropolitan area” means any Metropolitan Area (as such term is defined by the Office of Management and Budget pursuant to section 3504 of title 44) with a 1980 population of 250,000 or more that has been designated by a proposer and the Sec-

retary for a demonstration project under this subchapter, except that the Secretary may designate an area with a 1990 population of 50,000 or more as an eligible metropolitan area;

(7) the term “infrastructure and support systems” includes support and maintenance services and facilities, electricity delivery mechanisms and methods, regulatory treatment of investment in electric motor vehicles and associated equipment, consumer education programs, safety and health procedures, and battery availability, replacement, recycling, and disposal, that may be required to enable electric utilities, manufacturers, and others to support the operation and maintenance of electric motor vehicles and associated equipment;

(8) the term “motor vehicle” has the meaning given such term under section 7550(2) of this title;

(9) the term “non-Federal person” means an entity not part of the Federal Government that is either—

(A) organized under the laws of the United States or the laws of a State of the United States; or

(B) a unit of State or local government;

(10) the term “proposer” means a non-Federal person that submits a proposal to conduct a demonstration project under this subchapter;

(11) the term “price differential” means—

(A) in the case of a purchased electric motor vehicle, the difference between the manufacturer’s suggested retail price of such electric motor vehicle and the manufacturer’s suggested retail price of a comparable conventionally fueled motor vehicle; and

(B) in the case of a leased electric motor vehicle, the difference between the monthly lease payment of such electric motor vehicle over the life of the lease and the monthly lease payment of a comparable conventionally fueled motor vehicle over the life of the lease; and

(12) the term “user” means a person or entity that purchases or leases an electric motor vehicle.

(Pub. L. 102-486, title VI, §601, Oct. 24, 1992, 106 Stat. 2899.)

PART A—ELECTRIC MOTOR VEHICLE COMMERCIAL DEMONSTRATION PROGRAM

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 13291 of this title.

§ 13281. Program and solicitation

(a) Program

The Secretary shall conduct a program to demonstrate electric motor vehicles and the associated equipment of such vehicles, in consultation with the Electric and Hybrid Vehicle Program Site Operators, manufacturers, the electric utility industry, and such other persons as the Secretary considers appropriate. Such program shall be—

(1) designed to accelerate the development and use of electric motor vehicles; and

(2) structured to evaluate the performance of such electric motor vehicles in field operation, including fleet operation, and evaluate the necessary supporting infrastructure.

(b) Solicitation

(1) Not later than 18 months after October 24, 1992, the Secretary shall solicit proposals to demonstrate electric motor vehicles and associated equipment in one or more eligible metropolitan areas. The Secretary may make additional solicitations for proposals if the Secretary determines that such solicitations are necessary to carry out this part.

(2)(A) Solicitations for proposals under this subsection shall require the proposer to include a description, including the manufacturer or manufacturers of the electric motor vehicles; the proposed users of the electric motor vehicles; the eligible metropolitan area or areas involved; the number of electric motor vehicles to be demonstrated and their type, characteristics, and life-cycle costs; the price differential; the proposed discount payment; the contributions of State or local governments and other persons to the demonstration project; the type of associated equipment to be demonstrated; the domestic content of the electric motor vehicles and associated equipment; and any other information the Secretary considers appropriate.

(B) If the proposal includes a lease arrangement, the proposal shall indicate the terms of such lease arrangement for the electric motor vehicles or associated equipment.

(3) The solicitation for proposals under this subsection shall establish a closing date for receipt of proposals. The Secretary may, if necessary, extend the closing date for receipt of proposals for a period not to exceed 90 days.

(Pub. L. 102-486, title VI, §611, Oct. 24, 1992, 106 Stat. 2900.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13282 of this title.

§ 13282. Selection of proposals

(a) Selection

(1) The Secretary, in consultation with the Secretary of Transportation, the Secretary of Commerce, and the Administrator of the Environmental Protection Agency, shall, not later than 120 days after the closing date, as established by the Secretary, for receipt of proposals under section 13281 of this title, select at least one, but not more than 10, proposals to receive financial assistance under section 13283 of this title.

(2) The Secretary may select more than 10 proposals under this section, if the Secretary determines that the total amount of available funds is not likely to be otherwise utilized.

(3) Any proposal selected under paragraph (1) must satisfy the limitations set forth in section 13283(c) of this title.

(4) No one project selected under this section shall receive more than 25 percent of the funds authorized under section 13286 of this title.

(5) A demonstration project may not include electric motor vehicles in more than one eligible metropolitan area, unless the total number of electric motor vehicles in that project is equal to, or greater than, 100.

(b) Criteria

In selecting a proposal and in negotiating financial assistance under this section, the Secretary shall consider—

(1) the ability of the manufacturer, directly, indirectly, or in combination with the proposer, to develop, assist in the demonstration of, manufacture, distribute, sell, provide warranties for, service, and ensure the continued availability of parts for, electric motor vehicles in the demonstration project;

(2) the geographic and climatic diversity of the eligible metropolitan area or areas in which the demonstration project is to be undertaken, when considered in combination with other proposals and other selected demonstration projects;

(3) the long-term technical and competitive viability of the electric motor vehicles;

(4) the suitability of the electric motor vehicles for their intended uses;

(5) the environmental effects of the use of the proposed electric motor vehicles;

(6) the price differential and the proposed discount payment;

(7) the extent of involvement of State or local government and other persons in the demonstration project, and whether such involvement will—

(A) permit a reduction of the Federal cost share per vehicle; or

(B) otherwise be used to allow the Federal contribution to be provided for a greater number of electric motor vehicles;

(8) the proportion of domestic content of the electric motor vehicles and associated equipment;

(9) the safety of the electric motor vehicles; and

(10) such other criteria as the Secretary considers appropriate.

(c) Conditions

The Secretary shall require that—

(1) as a part of a demonstration project, the user or users of the electric motor vehicles will provide to the proposer and the manufacturer information regarding the operation, maintenance, performance, and use of the electric motor vehicles for 5 years after the beginning of the demonstration project;

(2) the proposer shall provide to the Secretary such information regarding the operation, maintenance, performance, and use of the electric motor vehicles as the Secretary may request during the period of the demonstration project;

(3) in the case of a demonstration project including automobiles or light duty trucks, the number of electric motor vehicles to be included in the demonstration project shall be no less than 50, except that the Secretary may select a demonstration project with fewer than 50 electric motor vehicles if the Secretary determines that selection of such a pro-

posal will ensure that there is geographic or climatic diversity among the proposals selected and that an adequate demonstration to accelerate the development and use of electric motor vehicles can be undertaken with fewer than 50 electric motor vehicles; and

(4) the procurement practices of the manufacturer do not discriminate against United States producers of vehicle parts.

(Pub. L. 102-486, title VI, §612, Oct. 24, 1992, 106 Stat. 2901.)

§ 13283. Discount payments

(a) Certification

The Secretary shall provide a discount payment to a proposer of a proposal selected under this part for purposes of reimbursing the proposer for a discount provided to the users if the proposer certifies to the Secretary that—

(1) the electric motor vehicles have been purchased or leased by a user or users in accordance with the requirements of this part; and

(2) the proposer has provided to the user or users a discount payment in accordance with the requirements of this part.

(b) Payment

Not later than 30 days after receipt from the proposer of certification that the Secretary determines satisfies the requirements of subsection (a) of this section, the Secretary shall pay to the proposer the full amount of the discount payment, to the extent provided in advance in appropriations Acts.

(c) Calculations of discount payments

(1) The discount payment shall be no greater than—

(A) the price differential; or

(B) the price of the comparable conventionally fueled motor vehicle.

(2) The purchase price of the electric motor vehicle, less the discount payment and less any additional reduction in the purchase price of the electric motor vehicle that may result from contributions provided by other parties, may not be less than the manufacturer's suggested retail price of a comparable conventionally fueled motor vehicle.

(3) The maximum discount payment shall be no greater than \$10,000 per electric motor vehicle.

(Pub. L. 102-486, title VI, §613, Oct. 24, 1992, 106 Stat. 2902.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13271, 13282 of this title.

§ 13284. Cost-sharing

(a) Requirement

The Secretary shall require at least 50 percent of the costs directly and specifically related to any project under this part to be from non-Federal sources. Such share may be in the form of cash, personnel, services, equipment, and other resources.

(b) Reduction

The Secretary may reduce the amount of costs required to be provided by non-Federal sources

under subsection (a) of this section if the Secretary determines that the reduction is necessary and appropriate—

(1) considering the technological risks involved in the project; and

(2) in order to meet the objectives of this part.

(Pub. L. 102-486, title VI, §614, Oct. 24, 1992, 106 Stat. 2903.)

§ 13285. Reports to Congress

(a) Progress reports

The Secretary shall report annually to Congress on the progress being made, through demonstration projects supported under this part, to accelerate the development and use of electric motor vehicles.

(b) Report on encouraging purchase and use of electric motor vehicles

Within 18 months after October 24, 1992, the Secretary shall submit to the Congress a report on methods for encouraging the purchase and use of electric motor vehicles. Such report shall—

(1) address the potential cost of purchasing and maintaining electric motor vehicles, including the initial cost of the batteries and the cost of replacement batteries;

(2) identify methods for reducing, subsidizing, or sharing such costs; and

(3) include recommendations for legislative and administrative measures to encourage the purchase and use of electric motor vehicles.

(Pub. L. 102-486, title VI, §615, Oct. 24, 1992, 106 Stat. 2903.)

§ 13286. Authorization of appropriations

There are authorized to be appropriated to the Secretary for purposes of this part \$50,000,000 for the 10-year period beginning with the first full fiscal year after October 24, 1992, to remain available until expended.

(Pub. L. 102-486, title VI, §616, Oct. 24, 1992, 106 Stat. 2903.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13282 of this title.

PART B—ELECTRIC MOTOR VEHICLE INFRASTRUCTURE AND SUPPORT SYSTEMS DEVELOPMENT PROGRAM

§ 13291. General authority

(a) Program

The Secretary shall undertake a program with one or more non-Federal persons, including fleet operators, for cost-shared research, development, demonstration, or commercial application of an infrastructure and support systems program.

(b) Eligibility

A non-Federal person shall be eligible to receive financial assistance under this part only if such person demonstrates, to the satisfaction of the Secretary, that the person will conduct a substantial portion of activities under the

project in the United States using domestic labor and materials.

(c) Coordination

Activities under this part shall be coordinated with activities under part A of this subchapter. (Pub. L. 102-486, title VI, §621, Oct. 24, 1992, 106 Stat. 2904.)

§ 13292. Proposals

(a) Solicitation

Not later than one year after October 24, 1992, the Secretary shall solicit proposals from non-Federal persons, including fleet operators, for projects under this part. Within 240 days after proposals have been solicited, the Secretary shall select proposals.

(b) Criteria

(1) The Secretary shall provide financial assistance to no more than 10 projects under this part, unless the Secretary determines that the total amount of available funds is not likely to be otherwise used.

(2) The proposals selected by the Secretary shall, to the extent practicable, represent geographically and climatically diverse regions of the United States.

(3) The aggregate Federal financial assistance for each project under this part may not exceed \$4,000,000.

(c) Projects

The infrastructure and support systems programs for which projects are selected under this part may address—

(1) the ability to service electric motor vehicles and to provide or service associated equipment;

(2) the installation of charging facilities;

(3) rates and cost recovery for electric utilities who invest in infrastructure capital-related expenditures;

(4) the development of safety and health procedures and guidelines related to battery charging, watering, and emissions;

(5) the conduct of information dissemination programs; and

(6) such other subjects as the Secretary considers necessary in order to address the infrastructure and support systems needed to support the development and use of energy storage technologies, including advanced batteries, and the demonstration of electric motor vehicles.

(Pub. L. 102-486, title VI, §622, Oct. 24, 1992, 106 Stat. 2904.)

§ 13293. Protection of proprietary information

(a) In general

In the case of activities, including joint venture activities, under this subchapter, and in the case of any existing or future activities, including joint venture activities, related primarily to battery technology for electric motor vehicles under other provisions of law, where the knowledge resulting from research and development activities conducted pursuant to such activities, including joint venture activities, is for the benefit of the participants (particularly domestic

companies) that provide financial resources to a project under this subchapter, the Secretary, for a period of up to 5 years after the development of information that—

(1) results from research and development activities conducted under this subchapter; and

(2) would be a trade secret or commercial or financial information that is privileged or confidential if the information had been obtained from a participant,

shall, notwithstanding any other provision of law, provide appropriate protections against the dissemination of such information to the public, and the provisions of section 1905 of title 18 shall apply to such information. Nothing in this subsection provides protections against the dissemination of such information to Congress.

(b) “Domestic companies” defined

For purposes of subsection (a) of this section, the term “domestic companies” means entities which are substantially involved in the United States in the domestic production of motor vehicles for sale in the United States and have a substantial percentage of their production facilities in the United States.

(Pub. L. 102-486, title VI, §623, Oct. 24, 1992, 106 Stat. 2904.)

§ 13294. Compliance with existing law

Nothing in this subchapter shall be deemed to convey to any person, partnership, corporation, or other entity, immunity from civil or criminal liability under any antitrust law or to create defenses to actions under any antitrust law.

(Pub. L. 102-486, title VI, §624, Oct. 24, 1992, 106 Stat. 2905.)

§ 13295. Repealed. Pub. L. 105-362, title IV, § 401(b), Nov. 10, 1998, 112 Stat. 3282

Section, Pub. L. 102-486, title VI, §625, Oct. 24, 1992, 106 Stat. 2905, related to electric utility participation study.

§ 13296. Authorization of appropriations

There are authorized to be appropriated to the Secretary for purposes of this part \$40,000,000 for the 5-year period beginning with the first full fiscal year after October 24, 1992, to remain available until expended.

(Pub. L. 102-486, title VI, §626, Oct. 24, 1992, 106 Stat. 2905.)

SUBCHAPTER V—RENEWABLE ENERGY

§ 13311. Purposes

The purposes of this subchapter are to promote—

(1) increases in the production and utilization of energy from renewable energy resources;

(2) further advances of renewable energy technologies; and

(3) exports of United States renewable energy technologies and services.

(Pub. L. 102-486, title XII, §1201, Oct. 24, 1992, 106 Stat. 2956.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original "this title" meaning title XII of Pub. L. 102-486, Oct. 24, 1992, 106 Stat. 2956, which enacted this subchapter and amended sections 6276, 12001 to 12003, 12005, and 12006 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13316 of this title.

§ 13312. Renewable energy export technology training

(a) Establishment of program

The Secretary, through the Agency for International Development, shall establish a program for the training of individuals from developing countries in the operation and maintenance of renewable energy and energy efficiency technologies in accordance with this section. The Secretary and the Administrator of the Agency for International Development shall, within one year after October 24, 1992, enter into a written agreement to carry out this program.

(b) Purpose

The purpose of the program established under this section shall be to train appropriate persons in the system design, operation, and maintenance of renewable energy and energy efficiency equipment manufactured in the United States, including equipment for water pumping, heating and purification, and the production of electric power in remote areas.

(c) Authorization of appropriations

There are authorized to be appropriated to the Secretary \$6,000,000 for each of the fiscal years 1994, 1995, and 1996, to carry out this section.

(Pub. L. 102-486, title XII, §1203, Oct. 24, 1992, 106 Stat. 2961.)

§ 13313. Renewable Energy Advancement Awards

(a) Authority

The Secretary shall make Renewable Energy Advancement Awards in recognition of developments that advance the practical application of biomass, geothermal, hydroelectric, photovoltaic, solar thermal, ocean thermal, and wind technologies to consumer, utility, or industrial uses, in accordance with this section. Except as provided in subsection (f) of this section, Renewable Energy Advancement Awards shall include a cash award.

(b) Selection criteria

The Secretary, in consultation with the Advisory Committee on Demonstration and Commercial Application of Renewable Energy and Energy Efficiency Technologies (in this section referred to as the "Advisory Committee"), under section 12005 of this title, shall develop criteria to be applied in the selection of award recipients under this section. Such criteria shall include the following:

- (1) The degree to which the technological development increases the utilization of renewable energy.
- (2) The degree to which the development will have a significant impact, by benefitting a large number of people, by reducing the costs

of an important industrial process or commercial product or service, or otherwise.

(3) The ingenuity of the development.

(4) Whether the application has significant export potential.

(5) The environmental soundness of the development.

(c) Selection

Beginning in fiscal year 1994, and annually thereafter for a period of 10 years, the Secretary, in consultation with the Advisory Committee, shall select developments described in subsection (a) of this section that are worthy of receiving an award under this section, and shall make such awards.

(d) Eligibility

Awards may be made under this section only to individuals who are United States nationals or permanent resident aliens, or to non-Federal organizations that are organized under the laws of the United States or the laws of a State of the United States.

(e) Authorization of appropriations

There are authorized to be appropriated to the Secretary \$50,000 for each of the fiscal years 1994, 1995, and 1996 for carrying out this section.

(f) Awards made in absence of appropriations

The Secretary shall make honorary awards under this section if sufficient funds are not available for financial awards in any fiscal year.

(Pub. L. 102-486, title XII, §1204, Oct. 24, 1992, 106 Stat. 2961.)

§ 13314. Study of tax and rate treatment of renewable energy projects

(a) The Secretary, in conjunction with State regulatory commissions, shall undertake a study to determine if conventional taxation and ratemaking procedures result in economic barriers to or incentives for renewable energy power plants compared to conventional power plants.

(b) Within 1 year after October 24, 1992, the Secretary shall submit a report to the Congress on the results of the study undertaken under subsection (a) of this section.

(Pub. L. 102-486, title XII, §1205, Oct. 24, 1992, 106 Stat. 2962.)

§ 13315. Data system and energy technology evaluation

The Secretary of Commerce, in his or her role as a member of the interagency working group established under section 6276 of this title, shall—

- (1) develop a comprehensive data base and information dissemination system, using the National Trade Data Bank and the Commercial Information Management System of the Department of Commerce, that will provide information on the specific energy technology needs of foreign countries, and the technical and economic competitiveness of various renewable energy and energy efficiency products and technologies;
- (2) make such information available to industry, Federal and multilateral lending agen-

cies, nongovernmental organizations, host-country and donor-agency officials, and such others as the Secretary of Commerce considers necessary; and

(3) prepare and transmit to the Congress not later than June 1, 1993, and biennially thereafter, a comprehensive report evaluating the full range of energy and environmental technologies necessary to meet the energy needs of foreign countries, including—

(A) information on the specific energy needs of foreign countries;

(B) an inventory of United States technologies and services to meet those needs;

(C) an update on the status of ongoing bilateral and multilateral programs which promote United States exports of renewable energy and energy efficiency products and technologies; and

(D) an evaluation of current programs (and recommendations for future programs) that develop and promote energy efficiency and sustainable use of indigenous renewable energy resources in foreign countries to reduce the generation of greenhouse gases.

(Pub. L. 102-486, title XII, §1209, Oct. 24, 1992, 106 Stat. 2964.)

§ 13316. Innovative renewable energy technology transfer program

(a) Establishment of program

The Secretary, through the Agency for International Development, and in consultation with the other members of the interagency working group established under section 6276(d) of this title (in this section referred to as the “inter-agency working group”), shall establish a renewable energy technology transfer program to carry out the purposes described in subsection (b) of this section. Within 150 days after October 24, 1992, the Secretary and the Administrator of the Agency for International Development shall enter into a written agreement to carry out this section. The agreement shall establish a procedure for resolving any disputes between the Secretary and the Administrator regarding the implementation of specific projects. With respect to countries not assisted by the Agency for International Development, the Secretary may enter into agreements with other appropriate Federal agencies. If the Secretary and the Administrator, or the Secretary and an agency described in the previous sentence, are unable to reach an agreement, each shall send a memorandum to the President outlining an appropriate agreement. Within 90 days after receipt of either memorandum, the President shall determine which version of the agreement shall be in effect. Any agreement entered into under this subsection shall be provided to the appropriate committees of the Congress and made available to the public.

(b) Purposes of program

The purposes of the technology transfer program under this section are to—

(1) reduce the United States balance of trade deficit through the export of United States renewable energy technologies and technological expertise;

(2) retain and create manufacturing and related service jobs in the United States;

(3) encourage the export of United States renewable energy technologies, including services related thereto, to those countries that have a need for developmentally sound facilities to provide energy derived from renewable resources;

(4) develop markets for United States renewable energy technologies to be utilized in meeting the energy and environmental requirements of foreign countries;

(5) better ensure that United States participation in energy-related projects in foreign countries includes participation by United States firms as well as utilization of United States technologies that have been developed or demonstrated in the United States through publicly or privately funded demonstration programs;

(6) ensure the introduction of United States firms and expertise in foreign countries;

(7) provide financial assistance by the Federal Government to foster greater participation by United States firms in the financing, ownership, design, construction, or operation of renewable energy technology projects in foreign countries;

(8) assist foreign countries in meeting their energy needs through the use of renewable energy in an environmentally acceptable manner, consistent with sustainable development policies; and

(9) assist United States firms, especially firms that are in competition with firms in foreign countries, to obtain opportunities to transfer technologies to, or undertake projects in, foreign countries.

(c) Identification

Pursuant to the agreements required by subsection (a) of this section, the Secretary, through the Agency for International Development, and after consultation with the inter-agency working group, United States firms, and representatives from foreign countries, shall develop mechanisms to identify potential energy projects in host countries, and shall identify a list of such projects within 240 days after October 24, 1992, and periodically thereafter.

(d) Financial mechanisms

(1) Pursuant to the agreements under subsection (a) of this section, the Secretary, through the Agency for International Development, shall—

(A) establish appropriate financial mechanisms to increase the participation of United States firms in energy projects utilizing United States renewable energy technologies, and services related thereto, in developing countries;

(B) utilize available financial assistance authorized by this section to counterbalance assistance provided by foreign governments to non-United States firms; and

(C) provide financial assistance to support projects.

(2) The financial assistance authorized by this section may be—

(A) provided in combination with other forms of financial assistance, including non-

United States funding that is available to the project; and

(B) utilized to assist United States firms in the development of innovative financing packages for renewable energy technology projects that utilize other financial assistance programs available through the Federal Government.

(3) United States obligations under the Arrangement on Guidelines for Officially Supported Export Credits established through the Organization for Economic Cooperation and Development shall be applicable to this section.

(e) Solicitations for project proposals

(1) Pursuant to the agreements under subsection (a) of this section, the Secretary, through the Agency for International Development, within one year after October 24, 1992, and subsequently as appropriate thereafter, shall solicit proposals from United States firms for the design, construction, testing, and operation of the project or projects identified under subsection (c) of this section which propose to utilize a United States renewable energy technology. Each solicitation under this section shall establish a closing date for receipt of proposals.

(2) The solicitation under this subsection shall, to the extent appropriate, be modeled after the RFP No. DE-PS01-90FE62271 Clean Coal Technology IV, as administered by the Department of Energy.

(3) Any solicitation made under this subsection shall include the following requirements:

(A) The United States firm that submits a proposal in response to the solicitation shall have an equity interest in the proposed project.

(B) The project shall utilize a United States renewable energy technology, including services related thereto, in meeting the applicable energy and environmental requirements of the host country.

(C) Proposals for projects shall be submitted by and undertaken with a United States firm, although a joint venture or other teaming arrangement with a non-United States manufacturer or other non-United States entity is permissible.

(f) Assistance to United States firms

Pursuant to the agreements under subsection (a) of this section, the Secretary, through the Agency for International Development, and in consultation with the interagency working group, shall establish a procedure to provide financial assistance to United States firms under this section for a project identified under subsection (c) of this section where solicitations for the project are being conducted by the host country or by a multilateral lending institution.

(g) Other program requirements

Pursuant to the agreements under subsection (a) of this section, the Secretary, through the Agency for International Development, and in consultation with the working group, shall—

(1) establish eligibility criteria for host countries;

(2) periodically review the energy needs of such countries and export opportunities for

United States firms for the development of projects in such countries;

(3) consult with government officials in host countries and, as appropriate, with representatives of utilities or other entities in host countries, to determine interest in and support for potential projects; and

(4) determine whether each project selected under this section is developmentally sound, as determined under the criteria developed by the Development Assistance Committee of the Organization for Economic Cooperation and Development.

(h) Selection of projects

(1) Pursuant to the agreements under subsection (a) of this section, the Secretary, through the Agency for International Development, shall, not later than 120 days after receipt of proposals in response to a solicitation under subsection (e) of this section, select one or more proposals under this section.

(2) In selecting a proposal under this section, the Secretary, through the Agency for International Development, shall consider—

(A) the ability of the United States firm, in cooperation with the host country, to undertake and complete the project;

(B) the degree to which the equipment to be included in the project is designed and manufactured in the United States;

(C) the long-term technical and competitive viability of the United States technology, and services related thereto, and the ability of the United States firm to compete in the development of additional energy projects using such technology in the host country and in other foreign countries;

(D) the extent of technical and financial involvement of the host country in the project;

(E) the extent to which the proposed project meets the purposes stated in section 13311(b)¹ of this title;

(F) the extent of technical, financial, management, and marketing capabilities of the participants in the project, and the commitment of the participants to completion of a successful project in a manner that will facilitate acceptance of the United States technology for future application; and

(G) such other criteria as may be appropriate.

(3) In selecting among proposed projects, the Secretary shall seek to ensure that, relative to otherwise comparable projects in the host country, a selected project will meet 1 or more of the following criteria:

(A) It will reduce environmental emissions to an extent greater than required by applicable provisions of law.

(B) It will make greater use of indigenous renewable energy resources.

(C) It will be a more cost-effective technological alternative, based on life cycle capital and operating costs per unit of energy produced and, where applicable, costs per unit of product produced.

Priority in selection shall be given to those projects which, in the judgment of the Secretary, best meet one or more of these criteria.

¹ So in original. Probably should be section "13316(b)".

(i) United States-Asia Environmental Partnership

Activities carried out under this section shall be coordinated with the United States-Asia Environmental Partnership.

(j) Buy America

In carrying out this section, the Secretary, through the Agency for International Development, and pursuant to the agreements under subsection (a) of this section, shall ensure—

(1) the maximum percentage, but in no case less than 50 percent, of the cost of any equipment furnished in connection with a project authorized under this section shall be attributable to the manufactured United States components of such equipment; and

(2) the maximum participation of United States firms.

In determining whether the cost of United States components equals or exceeds 50 percent, the cost of assembly of such United States components in the host country shall not be considered a part of the cost of such United States component.

(k) Reports to Congress

The Secretary and the Administrator of the Agency for International Development shall report annually to the Committee on Energy and Natural Resources of the Senate and the appropriate committees of the House of Representatives on the progress being made to introduce renewable energy technologies into foreign countries.

(l) Definitions

For purposes of this section—

(1) the term “host country” means a foreign country which is—

(A) the participant in or the site of the proposed renewable energy technology project; and

(B) either—

(i) classified as a country eligible to participate in development assistance programs of the Agency for International Development pursuant to applicable law or regulation; or

(ii) a developing country.

(2) the term “developing country” includes, but is not limited to, countries in Central and Eastern Europe or in the independent states of the former Soviet Union.

(m) Authorization of appropriations

There are authorized to be appropriated to the Secretary to carry out the program required by this section, \$100,000,000 for each of the fiscal years 1993, 1994, 1995, 1996, 1997, and 1998.

(Pub. L. 102-486, title XII, §1211, Oct. 24, 1992, 106 Stat. 2965.)

§ 13317. Renewable energy production incentive**(a) Incentive payments**

For electric energy generated and sold by a qualified renewable energy facility during the incentive period, the Secretary shall make, subject to the availability of appropriations, incentive payments to the owner or operator of such

facility. The amount of such payment made to any such owner or operator shall be as determined under subsection (e) of this section. Payments under this section may only be made upon receipt by the Secretary of an incentive payment application which establishes that the applicant is eligible to receive such payment and which satisfies such other requirements as the Secretary deems necessary. Such application shall be in such form, and shall be submitted at such time, as the Secretary shall establish.

(b) Qualified renewable energy facility

For purposes of this section, a qualified renewable energy facility is a facility which is owned by a State or any political subdivision of a State (or an agency, authority, or instrumentality of a State or a political subdivision), by any corporation or association which is wholly owned, directly or indirectly, by one or more of the foregoing, or by a nonprofit electrical cooperative and which generates electric energy for sale in, or affecting, interstate commerce using solar, wind, biomass, or geothermal energy, except that—

(1) the burning of municipal solid waste shall not be treated as using biomass energy; and

(2) geothermal energy shall not include energy produced from a dry steam geothermal reservoir which has—

(A) no mobile liquid in its natural state;

(B) steam quality of 95 percent water; and

(C) an enthalpy for the total produced fluid greater than or equal to 1200 Btu/lb (British thermal units per pound).

(c) Eligibility window

Payments may be made under this section only for electricity generated from a qualified renewable energy facility first used during the 10-fiscal year period beginning with the first full fiscal year occurring after October 24, 1992.

(d) Payment period

A qualified renewable energy facility may receive payments under this section for a 10-fiscal year period. Such period shall begin with the fiscal year in which electricity generated from the facility is first eligible for such payments.

(e) Amount of payment**(1) In general**

Incentive payments made by the Secretary under this section to the owner or operator of any qualified renewable energy facility shall be based on the number of kilowatt hours of electricity generated by the facility through the use of solar, wind, biomass, or geothermal energy during the payment period referred to in subsection (d) of this section. For any facility, the amount of such payment shall be 1.5 cents per kilowatt hour, adjusted as provided in paragraph (2).

(2) Adjustments

The amount of the payment made to any person under this subsection as provided in paragraph (1) shall be adjusted for inflation for each fiscal year beginning after calendar year 1993 in the same manner as provided in the

provisions of section 29(d)(2)(B) of title 26, except that in applying such provisions the calendar year 1993 shall be substituted for calendar year 1979.

(f) Sunset

No payment may be made under this section to any facility after the expiration of the 20-fiscal year period beginning with the first full fiscal year occurring after October 24, 1992, and no payment may be made under this section to any facility after a payment has been made with respect to such facility for a 10-fiscal year period.

(g) Authorization of appropriations

There are authorized to be appropriated to the Secretary for fiscal years 1993, 1994, and 1995 such sums as may be necessary to carry out the purposes of this section.

(Pub. L. 102-486, title XII, §1212, Oct. 24, 1992, 106 Stat. 2969.)

SUBCHAPTER VI—COAL

PART A—RESEARCH, DEVELOPMENT,
DEMONSTRATION, AND COMMERCIAL APPLICATION

§ 13331. Coal research, development, demonstration, and commercial application programs

(a) Establishment

The Secretary shall, in accordance with section¹ 13541 and 13542 of this title, conduct programs for research, development, demonstration, and commercial application on coal-based technologies. Such research, development, demonstration, and commercial application programs shall include the programs established under this part, and shall have the goals and objectives of—

- (1) ensuring a reliable electricity supply;
- (2) complying with applicable environmental requirements;
- (3) achieving the control of sulfur oxides, oxides of nitrogen, air toxics, solid and liquid wastes, greenhouse gases, or other emissions resulting from coal use or conversion at levels of proficiency greater than or equal to applicable currently available commercial technology;
- (4) achieving the cost competitive conversion of coal into energy forms usable in the transportation sector;
- (5) demonstrating the conversion of coal to synthetic gaseous, liquid, and solid fuels;
- (6) demonstrating, in cooperation with other Federal and State agencies, the use of coal-derived fuels in mobile equipment, with opportunities for industrial cost sharing participation;
- (7) ensuring the timely commercial application of cost-effective technologies or energy production processes or systems utilizing coal which achieve—

(A) greater efficiency in the conversion of coal to useful energy when compared to currently available commercial technology for the use of coal; and

(B) the control of emissions from the utilization of coal; and

(8) ensuring the availability for commercial use of such technologies by the year 2010.

(b) Demonstration and commercial application programs

(1) In selecting either a demonstration project or a commercial application project for financial assistance under this part, the Secretary shall seek to ensure that, relative to otherwise comparable commercially available technologies or products, the selected project will meet one or more of the following criteria:

(A) It will reduce environmental emissions to an extent greater than required by applicable provisions of law.

(B) It will increase the overall efficiency of the utilization of coal, including energy conversion efficiency and, where applicable, production of products derived from coal.

(C) It will be a more cost-effective technological alternative, based on life cycle capital and operating costs per unit of energy produced and, where applicable, costs per unit of product produced.

Priority in selection shall be given to those projects which, in the judgment of the Secretary, best meet one or more of these criteria.

(2) In administering demonstration and commercial application programs authorized by this part, the Secretary shall establish accounting and project management controls that will be adequate to control costs.

(3)(A) Not later than 180 days after October 24, 1992, the Secretary shall establish procedures and criteria for the recoupment of the Federal share of each cost shared demonstration and commercial application project authorized pursuant to this part. Such recoupment shall occur within a reasonable period of time following the date of completion of such project, but not later than 20 years following such date, taking into account the effect of recoupment on—

- (i) the commercial competitiveness of the entity carrying out the project;
- (ii) the profitability of the project; and
- (iii) the commercial viability of the coal-based technology utilized.

(B) The Secretary may at any time waive or defer all or some portion of the recoupment requirement as necessary for the commercial viability of the project.

(4) Projects selected by the Secretary under this part for demonstration or commercial application of a technology shall, in the judgment of the Secretary, be capable of enhancing the state of the art for such technology.

(c) Report

Within 240 days after October 24, 1992, the Secretary shall transmit to the Committee on Energy and Commerce and the Committee on Science, Space, and Technology of the House of Representatives and to the Committee on Energy and Natural Resources of the Senate a report which shall include each of the following:

- (1) A detailed description of ongoing research, development, demonstration, and commercial application activities regarding coal-based technologies undertaken by the Department of Energy, other Federal or State government departments or agencies and, to the

¹ So in original. Probably should be "sections".

extent such information is publicly available, other public or private organizations in the United States and other countries.

(2) A listing and analysis of current Federal and State government regulatory and financial incentives that could further the goals of the programs established under this part.

(3) Recommendations regarding the manner in which any ongoing coal-based demonstration and commercial application program might be modified and extended in order to ensure the timely demonstrations of advanced coal-based technologies so as to ensure that the goals established under this section are achieved and that such demonstrated technologies are available for commercial use by the year 2010.

(4) Recommendations, if any, regarding the manner in which the cost sharing demonstrations conducted pursuant to the Clean Coal Program established by Public Law 98-473 might be modified and extended in order to ensure the timely demonstration of advanced coal-based technologies.

(5) A detailed plan for conducting the research, development, demonstration, and commercial application programs to achieve the goals and objectives of subsection (a) of this section, which plan shall include a description of—

(A) the program elements and management structure to be utilized;

(B) the technical milestones to be achieved with respect to each of the advanced coal-based technologies included in the plan; and

(C) the dates at which further deadlines for additional cost sharing demonstrations shall be established.

(d) Status reports

Within one year after transmittal of the report described in subsection (c) of this section, and every 2 years thereafter for a period of 6 years, the Secretary shall transmit to the Congress a report that provides a detailed description of the status of development of the advanced coal-based technologies and the research, development, demonstration, and commercial application activities undertaken to carry out the programs required by this part.

(e) Consultation

In carrying out research, development, demonstration, and commercial application activities under this part, the Secretary shall consult with the National Coal Council and other representatives of the public and private sectors as the Secretary considers appropriate.

(Pub. L. 102-486, title XIII, § 1301, Oct. 24, 1992, 106 Stat. 2970.)

REFERENCES IN TEXT

Public Law 98-473, referred to in subsec. (c)(4), is Pub. L. 98-473, Oct. 12, 1984, 98 Stat. 1837, as amended. For complete classification of this Act to the Code, see Tables.

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives and Committee on Science, Space, and Technology of House of Rep-

resentatives treated as referring to Committee on Science of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13361, 13362 of this title.

§ 13332. Coal-fired diesel engines

The Secretary shall conduct a program of research, development, demonstration, and commercial application for utilizing coal-derived liquid or gaseous fuels, including ultra-clean coal-water slurries, in diesel engines. The program shall address—

(1) required engine retrofit technology;

(2) coal-fuel production technology;

(3) emission control requirements;

(4) the testing of low-Btu highly reactive fuels;

(5) fuel delivery and storage systems requirements; and

(6) other infrastructure required to support commercial deployment.

(Pub. L. 102-486, title XIII, § 1302, Oct. 24, 1992, 106 Stat. 2972.)

§ 13333. Clean coal, waste-to-energy

The Secretary shall establish a program of research, development, demonstration, and commercial application with respect to the use of solid waste combined with coal as a fuel source for clean coal combustion technologies. The program shall address—

(1) the feasibility of cofiring coal and used vehicle tires in fluidized bed combustion units;

(2) the combined gasification of coal and municipal sludge using integrated gasification combined cycle technology;

(3) the creation of fuel pellets combining coal and material reclaimed from solid waste;

(4) the feasibility of cofiring, in fluidized bed combustion units, waste methane from coal mines, including ventilation air, together with coal or coal wastes; and

(5) other sources of waste and coal mixtures in other applications that the Secretary considers appropriate.

(Pub. L. 102-486, title XIII, § 1303, Oct. 24, 1992, 106 Stat. 2972.)

§ 13334. Nonfuel use of coal

(a) Program

The Secretary shall prepare a plan for and carry out a program of research, development, demonstration, and commercial application with respect to technologies for the nonfuel use of coal, including—

(1) production of coke and other carbon products derived from coal;

(2) production of coal-derived, carbon-based chemical intermediates that are precursors of value-added chemicals and polymers;

(3) production of chemicals from coal-derived synthesis gas;

(4) coal treatment processes, including methodologies such as solvent-extraction techniques that produce low ash, low sulfur, coal-based chemical feedstocks; and

(5) waste utilization, including recovery, processing, and marketing of products derived from sulfur, carbon dioxide, nitrogen, and ash from coal.

(b) Plan contents

The plan described in subsection (a) of this section shall address and evaluate—

(1) the known and potential processes for using coal in the creation of products in the chemical, utility, fuel, and carbon-based materials industries;

(2) the costs, benefits, and economic feasibility of using coal products in the chemical and materials industries, including value-added chemicals, carbon-based products, coke, and waste derived from coal;

(3) the economics of coproduction of products from coal in conjunction with the production of electric power, thermal energy, and fuel;

(4) the economics of the refining of coal and coal byproducts to produce nonfuel products;

(5) the economics of coal utilization in comparison with other feedstocks that might be used for the same purposes;

(6) the steps that can be taken by the public and private sectors to bring about commercialization of technologies developed under the program recommended; and

(7) the past development, current status, and future potential of coal products and processes associated with nonfuel uses of coal.

(Pub. L. 102-486, title XIII, § 1304, Oct. 24, 1992, 106 Stat. 2973.)

§ 13335. Coal refinery program

(a) Program

The Secretary shall conduct a program of research, development, demonstration, and commercial application for coal refining technologies.

(b) Objectives

The program shall include technologies for refining high sulfur coals, low sulfur coals, sub-bituminous coals, and lignites to produce clean-burning transportation fuels, compliance boiler fuels, fuel additives, lubricants, chemical feedstocks, and carbon-based manufactured products, either alone or in conjunction with the generation of electricity or process heat, or the manufacture of a variety of products from coal. The objectives of such program shall be to achieve—

(1) the timely commercial application of technologies, including mild gasification, hydrocracking and other hydrolysis processes, and other energy production processes or systems to produce coal-derived fuels and coproducts, which achieve greater efficiency and economy in the conversion of coal to electrical energy and coproducts than currently available technology;

(2) the production of energy, fuels, and products which, on a complete energy system

basis, will result in environmental emissions no greater than those produced by existing comparable energy systems utilized for the same purpose;

(3) the capability to produce a range of coal-derived transportation fuels, including oxygenated hydrocarbons, boiler fuels, turbine fuels, and coproducts, which can reduce dependence on imported oil by displacing conventional petroleum in the transportation sector and other sectors of the economy;

(4) reduction in the cost of producing such coal-derived fuels and coproducts;

(5) the control of emissions from the combustion of coal-derived fuels; and

(6) the availability for commercial use of such technologies by the year 2000.

(Pub. L. 102-486, title XIII, § 1305, Oct. 24, 1992, 106 Stat. 2973.)

§ 13336. Coalbed methane recovery

(a) Study of barriers and environmental and safety aspects

The Secretary, in consultation with the Administrator of the Environmental Protection Agency and the Secretary of the Interior, shall conduct a study of—

(1) technical, economic, financial, legal, regulatory, institutional, or other barriers to coalbed methane recovery, and of policy options for eliminating such barriers; and

(2) the environmental and safety aspects of flaring coalbed methane liberated from coal mines.

Within two years after October 24, 1992, the Secretary shall submit a report to the Congress detailing the results of such study.

(b) Information dissemination

Beginning one year after October 24, 1992, the Secretary, in consultation with the Administrator of the Environmental Protection Agency and the Secretary of the Interior, shall disseminate to the public information on state-of-the-art coalbed methane recovery techniques, including information on costs and benefits.

(c) Demonstration and commercial application program

The Secretary, in consultation with the Administrator of the Environmental Protection Agency and the Secretary of the Interior, shall establish a coalbed methane recovery demonstration and commercial application program, which shall emphasize gas enrichment technology. Such program shall address—

(1) gas enrichment technologies for enriching medium-quality methane recovered from coal mines to pipeline quality;

(2) technologies to use mine ventilation air in nearby power generation facilities, including gas turbines, internal combustion engines, or other coal fired powerplants;

(3) technologies for cofiring methane recovered from mines, including methane from ventilation systems and degasification systems, together with coal in conventional or clean coal technology boilers; and

(4) other technologies for producing and using methane from coal mines that the Secretary considers appropriate.

(Pub. L. 102-486, title XIII, § 1306, Oct. 24, 1992, 106 Stat. 2974.)

§ 13337. Metallurgical coal development

(a) The Secretary shall establish a research, development, demonstration, and commercial application program on metallurgical coal utilization for the purpose of developing techniques that will lead to the greater and more efficient utilization of the Nation's metallurgical coal resources.

(b) The program referred to in subsection (a) of this section shall include the use of metallurgical coal—

(1) as a boiler fuel for the purpose of generating steam to produce electricity, including blending metallurgical coal with other coals in order to enhance its efficient application as a boiler fuel;

(2) as an ingredient in the manufacturing of steel; and

(3) as a source of pipeline quality coalbed methane.

(Pub. L. 102-486, title XIII, § 1307, Oct. 24, 1992, 106 Stat. 2975.)

§ 13338. Utilization of coal wastes

(a) Coal waste utilization program

The Secretary, in consultation with the Secretary of the Interior, shall establish a research, development, demonstration, and commercial application program on coal waste utilization for the purpose of developing techniques that will lead to the greater and more efficient utilization of coal wastes from mining and processing, other than coal ash.

(b) Use as boiler fuel

The program referred to in subsection (a) of this section shall include projects to facilitate the use of coal wastes from mining and processing as a boiler fuel for the purpose of generating steam to produce electricity.

(Pub. L. 102-486, title XIII, § 1308, Oct. 24, 1992, 106 Stat. 2975.)

§ 13339. Underground coal gasification

(a) Program

The Secretary shall conduct a research, development, demonstration, and commercial application program for underground coal gasification technology for in-situ conversion of coal to a cleaner burning, easily transportable gaseous fuel. The goal and objective of this program shall be to accelerate the development and commercialization of underground coal gasification. In carrying out this program, the Secretary shall give equal consideration to all ranks of coal.

(b) Demonstration projects

As part of the program authorized in subsection (a) of this section, the Secretary may solicit proposals for underground coal gasification technology projects to fulfill the goal and objective of subsection (a) of this section.

(Pub. L. 102-486, title XIII, § 1309, Oct. 24, 1992, 106 Stat. 2975.)

§ 13340. Low-rank coal research and development

The Secretary shall pursue a program of research and development with respect to the technologies needed to expand the use of low-rank coals which take into account the unique properties of lignites and sub-bituminous coals, including, but not limited to, the following areas—

(1) high value-added carbon products;

(2) fuel cell applications;

(3) emissions control and combustion efficiencies;

(4) coal water fuels and underground coal gasification;

(5) distillates; and

(6) any other technologies which will assist in the development of niche markets for lignites and sub-bituminous coals.

(Pub. L. 102-486, title XIII, § 1310, Oct. 24, 1992, 106 Stat. 2975.)

§ 13341. Magnetohydrodynamics

(a) Program

The Secretary shall carry out a research, development, demonstration, and commercial application program in magnetohydrodynamics. The purpose of this program shall be to determine the adequacy of the engineering and design information completed to date under Department of Energy contracts related to magnetohydrodynamics retrofit systems and to determine whether any further Federal investment in this technology is warranted.

(b) Solicitation of proposals

In order to carry out the program authorized in subsection (a) of this section, the Secretary may solicit proposals from the private sector and seek to enter into an agreement with appropriate parties.

(Pub. L. 102-486, title XIII, § 1311, Oct. 24, 1992, 106 Stat. 2976.)

§ 13342. Oil substitution through coal liquefaction

(a) Program direction

The Secretary shall conduct a program of research, development, demonstration, and commercial application for the purpose of developing economically and environmentally acceptable advanced technologies for oil substitution through coal liquefaction.

(b) Program goals

The goals of the program established under subsection (a) of this section shall include—

(1) improved resource selection and product quality;

(2) the development of technologies to increase net yield of liquid fuel product per ton of coal;

(3) an increase in overall thermal efficiency; and

(4) a reduction in capital and operating costs through technology improvements.

(c) Proposals

Within 180 days after October 24, 1992, the Secretary shall solicit proposals for conducting activities under this section.

(Pub. L. 102-486, title XIII, § 1312, Oct. 24, 1992, 106 Stat. 2976.)

§ 13343. Authorization of appropriations

There are authorized to be appropriated to the Secretary for carrying out this part \$278,139,000 for fiscal year 1993 and such sums as may be necessary for fiscal years 1994 through 1997.

(Pub. L. 102-486, title XIII, § 1313, Oct. 24, 1992, 106 Stat. 2976.)

PART B—CLEAN COAL TECHNOLOGY PROGRAM

§ 13351. Additional clean coal technology solicitations

(a) Program design

Additional clean coal technology solicitations described in subsection (b) of this section shall be designed to ensure the timely development of cost-effective technologies or energy production processes or systems utilizing coal that achieve greater efficiency in the conversion of coal to useful energy when compared to currently commercially available technology for the use of coal and the control of emissions from the combustion of coal. Such program shall be designed to ensure, to the greatest extent possible, the availability for commercial use of such technologies by the year 2010.

(b) Additional solicitations

In conducting the Clean Coal Program established by Public Law 98-473, the Secretary shall consider the potential benefits of conducting additional solicitations pursuant to such program and, based on the results of that consideration, may carry out such additional solicitations, which shall be similar in scope and percentage of Federal cost sharing as that provided by Public Law 101-121.

(Pub. L. 102-486, title XIII, § 1321, Oct. 24, 1992, 106 Stat. 2976.)

REFERENCES IN TEXT

Public Law 98-473, referred to in subsec. (b), is Pub. L. 98-473, Oct. 12, 1984, 98 Stat. 1837, as amended. For complete classification of this Act to the Code, see Tables.

Public Law 101-121, referred to in subsec. (b), is Pub. L. 101-121, Oct. 23, 1989, 103 Stat. 701, as amended. For complete classification of this Act to the Code, see Tables.

PART C—OTHER COAL PROVISIONS

§ 13361. Clean coal technology export promotion and interagency coordination

(a) Establishment

There shall be established within the Trade Promotion Coordinating Committee (established by the President on May 23, 1990) a Clean Coal Technology Subgroup (in this part referred to as the "CCT Subgroup") to focus interagency efforts on clean coal technologies. The CCT Subgroup shall seek to expand the export and use of clean coal technologies, particularly in those countries which can benefit from gains in the efficiency of, and the control of environmental emissions from, coal utilization.

(b) Membership

The CCT Subgroup shall include 1 member from each agency represented on the Energy,

Environment, and Infrastructure Working Group of the Trade Promotion Coordinating Committee as of October 24, 1992. The Secretary shall serve as chair of the CCT Subgroup and shall be responsible for ensuring that the functions of the CCT Subgroup are carried out through its member agencies.

(c) Consultation

(1) In carrying out this section, the CCT Subgroup shall consult with representatives from the United States coal industry, representatives of railroads and other transportation industries, organizations representing workers, the electric utility industry, manufacturers of equipment utilizing clean coal technology, members of organizations formed to further the goals of environmental protection or to promote the development and use of clean coal technologies that are developed, manufactured, or controlled by United States firms, and other appropriate interested members of the public.

(2) The CCT Subgroup shall maintain ongoing liaison with other elements of the Trade Promotion Coordinating Committee relating to clean coal technologies or regions where these technologies could be important, including Eastern Europe, Asia, and the Pacific.

(d) Duties

The Secretary, acting through the CCT Subgroup, shall—

(1) facilitate the establishment of technical training for the consideration, planning, construction, and operation of clean coal technologies by end users and international development personnel;

(2) facilitate the establishment of and, where practicable, cause to be established, consistent with the goals and objectives stated in section 13331(a) of this title, within existing departments and agencies—

(A) financial assistance programs (including grants, loan guarantees, and no interest and low interest loans) to support prefeasibility and feasibility studies for projects that will utilize clean coal technologies; and

(B) loan guarantee programs, grants, and no interest and low interest loans designed to facilitate access to capital and credit in order to finance such clean coal technology projects;

(3) develop and ensure the execution of programs, including the establishment of financial incentives, to encourage and support private sector efforts in exports of clean coal technologies that are developed, manufactured, or controlled by United States firms;

(4) encourage the training in, and understanding of, clean coal technologies by representatives of foreign companies or countries intending to use coal or clean coal technologies by providing technical or financial support for training programs, workshops, and other educational programs sponsored by United States firms;

(5) educate loan officers and other officers of international lending institutions, commercial and energy attachés of the United States, and such other personnel as the CCT Subgroup

considers appropriate, for the purposes of providing information about clean coal technologies to foreign governments or potential project sponsors of clean coal technology projects;

(6) develop policies and practices to be conducted by commercial and energy attachés of the United States, and such other personnel as the CCT Subgroup considers appropriate, in order to promote the exports of clean coal technologies to those countries interested in or intending to utilize coal resources;

(7) augment budgets for trade and development programs supported by Federal agencies for the purpose of financially supporting prefeasibility or feasibility studies for projects in foreign countries that will utilize clean coal technologies;

(8) review ongoing clean coal technology projects and review and advise Federal agencies on the approval of planned clean coal technology projects which are sponsored abroad by any Federal agency to determine whether such projects are consistent with the overall goals and objectives of this section;

(9) coordinate the activities of the appropriate Federal agencies in order to ensure that Federal clean coal technology export promotion policies are implemented in a timely fashion;

(10) work with CCT Subgroup member agencies to develop an overall strategy for promoting clean coal technology exports, including setting goals and allocating specific responsibilities among member agencies, consistent with applicable statutes; and

(11) coordinate with multilateral institutions to ensure that United States technologies are properly represented in their projects.

(e) Data and information

(1) The CCT Subgroup, consistent with other applicable provisions of law, shall ensure the development of a comprehensive data base and information dissemination system, using the National Trade Data Bank and the Commercial Information Management System of the Department of Commerce, relating to the availability of clean coal technologies and the potential need for such technologies, particularly in developing countries and countries making the transition from nonmarket to market economies.

(2) The Secretary, acting through the CCT Subgroup, shall assess and prioritize foreign markets that have the most potential for the export of clean coal technologies that are developed, manufactured, or controlled by United States firms. Such assessment shall include—

(A) an analysis of the financing requirements for clean coal technology projects in foreign countries and whether such projects are dependent upon financial assistance from foreign countries or multilateral institutions;

(B) the availability of other fuel or energy resources that may be available to meet the energy requirements intended to be met by the clean coal technology projects;

(C) the priority of environmental considerations in the selection of such projects;

(D) the technical competence of those entities likely to be involved in the planning and operation of such projects;

(E) an objective comparison of the environmental, energy, and economic performance of each clean coal technology relative to conventional technologies;

(F) a list of United States vendors of clean coal technologies; and

(G) answers to commonly asked questions about clean coal technologies.¹

The Secretary, acting through the CCT Subgroup, shall make such information available to the House of Representatives and the Senate, and to the appropriate committees of each House of Congress, industry, Federal and international financing organizations, nongovernmental organizations, potential customers abroad, governments of countries where such clean coal technologies might be used, and such others as the CCT Subgroup considers appropriate.

(f) Report

Within 180 days after the Secretary submits the report to the Congress as required by section 409 of Public Law 101-549, the Secretary, acting through the CCT Subgroup, shall provide to the appropriate committees of the House of Representatives and the Committee on Energy and Natural Resources of the Senate, a plan which details actions to be taken in order to address those recommendations and findings made in the report submitted pursuant to section 409 of Public Law 101-549. As a part of the plan required by this subsection, the Secretary, acting through the CCT Subgroup, shall specifically address the adequacy of financial assistance available from Federal departments and agencies and international financing organizations to aid in the financing of prefeasibility and feasibility studies and projects that would use a clean coal technology in developing countries and countries making the transition from nonmarket to market economies.

(Pub. L. 102-486, title XIII, § 1331, Oct. 24, 1992, 106 Stat. 2977.)

REFERENCES IN TEXT

This part, referred to in subsec. (a), was in the original "this subtitle" meaning subtitle C of title XIII of Pub. L. 102-486, which enacted this part and provisions set out as a note under section 824a-3 of Title 16, Conservation.

Section 409 of Public Law 101-549, referred to in subsec. (f), is section 409 of Pub. L. 101-549, title IV, Nov. 15, 1990, 104 Stat. 2634, which directed the Secretary of Energy, in consultation with the Secretary of Commerce, to submit a report to Congress within one year of November 15, 1990, respecting clean coal technology programs, and which is not classified to the Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13363 of this title.

§ 13362. Innovative clean coal technology transfer program

(a) Establishment of program

The Secretary, through the Agency for International Development, and in consultation with the other members of the CCT Subgroup, shall

¹ So in original. The comma probably should be a period.

establish a clean coal technology transfer program to carry out the purposes described in subsection (b) of this section. Within 150 days after October 24, 1992, the Secretary and the Administrator of the Agency for International Development shall enter into a written agreement to carry out this section. The agreement shall establish a procedure for resolving any disputes between the Secretary and the Administrator regarding the implementation of specific projects. With respect to countries not assisted by the Agency for International Development, the Secretary may enter into agreements with other appropriate United States agencies. If the Secretary and the Administrator, or the Secretary and an agency described in the previous sentence, are unable to reach an agreement, each shall send a memorandum to the President outlining an appropriate agreement. Within 90 days after receipt of either memorandum, the President shall determine which version of the agreement shall be in effect. Any agreement entered into under this subsection shall be provided to the appropriate committees of the Congress and made available to the public.

(b) Purposes of program

The purposes of the technology transfer program under this section are to—

- (1) reduce the United States balance of trade deficit through the export of United States energy technologies and technological expertise;
- (2) retain and create manufacturing and related service jobs in the United States;
- (3) encourage the export of United States technologies, including services related thereto, to those countries that have a need for developmentally sound facilities to provide energy derived from coal resources;
- (4) develop markets for United States technologies and, where appropriate, United States coal resources to be utilized in meeting the energy and environmental requirements of foreign countries;
- (5) better ensure that United States participation in energy-related projects in foreign countries includes participation by United States firms as well as utilization of United States technologies that have been developed or demonstrated in the United States through publicly or privately funded demonstration programs;
- (6) provide for the accelerated deployment of United States technologies that will serve to introduce into foreign countries United States technologies intended to use coal resources in a more efficient, cost-effective, and environmentally acceptable manner;
- (7) serve to ensure the introduction of United States firms and expertise in foreign countries;
- (8) provide financial assistance by the Federal Government to foster greater participation by United States firms in the financing, ownership, design, construction, or operation of clean coal technology projects in foreign countries;
- (9) assist foreign countries in meeting their energy needs through the use of coal in an environmentally acceptable manner, consistent with sustainable development policies; and

(10) assist United States firms, especially firms that are in competition with firms in foreign countries, to obtain opportunities to transfer technologies to, or undertake projects in, foreign countries.

(c) Identification

Pursuant to the agreements required by subsection (a) of this section, the Secretary, through the Agency for International Development, and after consultation with the CCT Subgroup, United States firms, and representatives from foreign countries, shall develop mechanisms to identify potential energy projects in host countries, and shall identify a list of such projects within 240 days after October 24, 1992, and periodically thereafter.

(d) Financial mechanisms

(1) Pursuant to the agreements under subsection (a) of this section, the Secretary, through the Agency for International Development, shall—

(A) establish appropriate financial mechanisms to increase the participation of United States firms in energy projects utilizing United States clean coal technologies, and services related thereto, in developing countries and countries making the transition from nonmarket to market economies;

(B) utilize available financial assistance authorized by this section to counterbalance assistance provided by foreign governments to non-United States firms; and

(C) provide financial assistance to support projects, including—

(i) financing the incremental costs of a clean coal technology project attributable only to expenditures to prevent or abate emissions;

(ii) providing the difference between the costs of a conventional energy project in the host country and a comparable project that would utilize a clean coal technology capable of achieving greater efficiency of energy products and improved environmental emissions compared to such conventional project; and

(iii) such other forms of financial assistance as the Secretary, through the Agency for International Development, considers appropriate.

(2) The financial assistance authorized by this section may be—

(A) provided in combination with other forms of financial assistance, including non-United States funding that is available to the project; and

(B) utilized to assist United States firms to develop innovative financing packages for clean coal technology projects that seek to utilize other financial assistance programs available through other Federal agencies.

(3) United States obligations under the Arrangement on Guidelines for Officially Supported Export Credits established through the Organization for Economic Cooperation and Development shall be applicable to this section.

(e) Solicitations for project proposals

(1) Pursuant to the agreements under subsection (a) of this section, the Secretary,

through the Agency for International Development, within one year after October 24, 1992, and subsequently as appropriate thereafter, shall solicit proposals from United States firms for the design, construction, testing, and operation of the project or projects identified under subsection (c) of this section which propose to utilize a United States technology. Each solicitation under this section shall establish a closing date for receipt of proposals.

(2) The solicitation under this subsection shall, to the extent appropriate, be modeled after the RFP No. DE-PS01-90FE62271 Clean Coal Technology IV as administered by the Department of Energy.

(3) Any solicitation made under this subsection shall include the following requirements:

(A) The United States firm that submits a proposal in response to the solicitation shall have an equity interest in the proposed project.

(B) The project shall utilize a United States clean coal technology, including services related thereto, and, where appropriate, United States coal resources, in meeting the applicable energy and environmental requirements of the host country.

(C) Proposals for projects shall be submitted by and undertaken with a United States firm, although a joint venture or other teaming arrangement with a non-United States manufacturer or other non-United States entity is permissible.

(f) Assistance to United States firms

Pursuant to the agreements under subsection (a) of this section, the Secretary, through the Agency for International Development, and in consultation with the CCT Subgroup, shall establish a procedure to provide financial assistance to United States firms under this section for a project identified under subsection (c) of this section where solicitations for the project are being conducted by the host country or by a multilateral lending institution.

(g) Other program requirements

Pursuant to the agreements under subsection (a) of this section, the Secretary, through the Agency for International Development, and in consultation with the CCT Subgroup, shall—

(1) establish eligibility criteria for countries that will host projects;

(2) periodically review the energy needs of such countries and export opportunities for United States firms for the development of projects in such countries;

(3) consult with government officials in host countries and, as appropriate, with representatives of utilities or other entities in host countries, to determine interest in and support for potential projects; and

(4) determine whether each project selected under this section is developmentally sound, as determined under the criteria developed by the Development Assistance Committee of the Organization for Economic Cooperation and Development.

(h) Selection of projects

(1) Pursuant to the agreements under subsection (a) of this section, the Secretary,

through the Agency for International Development, shall, not later than 120 days after receipt of proposals in response to a solicitation under subsection (e) of this section, select one or more proposals under this section.

(2) In selecting a proposal under this section, the Secretary, through the Agency for International Development, shall consider—

(A) the ability of the United States firm, in cooperation with the host country, to undertake and complete the project;

(B) the degree to which the equipment to be included in the project is designed and manufactured in the United States;

(C) the long-term technical and competitive viability of the United States technology, and services related thereto, and the ability of the United States firm to compete in the development of additional energy projects using such technology in the host country and in other foreign countries;

(D) the extent of technical and financial involvement of the host country in the project;

(E) the extent to which the proposed project meets the goals and objectives stated in section 13331(a) of this title;

(F) the extent of technical, financial, management, and marketing capabilities of the participants in the project, and the commitment of the participants to completion of a successful project in a manner that will facilitate acceptance of the United States technology for future application; and

(G) such other criteria as may be appropriate.

(3) In selecting among proposed projects, the Secretary shall seek to ensure that, relative to otherwise comparable projects in the host country, a selected project will meet 1 or more of the following criteria:

(A) It will reduce environmental emissions to an extent greater than required by applicable provisions of law.

(B) It will increase the overall efficiency of the utilization of coal, including energy conversion efficiency and, where applicable, production of products derived from coal.

(C) It will be a more cost-effective technological alternative, based on life cycle capital and operating costs per unit of energy produced and, where applicable, costs per unit of product produced.

Priority in selection shall be given to those projects which, in the judgment of the Secretary, best meet one or more of these criteria.

(i) United States-Asia Environmental Partnership

Activities carried out under this section shall be coordinated with the United States-Asia Environmental Partnership.

(j) Buy America

In carrying out this section, the Secretary, through the Agency for International Development, and pursuant to the agreements under subsection (a) of this section, shall ensure—

(1) the maximum percentage, but in no case less than 50 percent, of the cost of any equipment furnished in connection with a project authorized under this section shall be attrib-

utable to the manufactured United States components of such equipment; and

(2) the maximum participation of United States firms.

In determining whether the cost of United States components equals or exceeds 50 percent, the cost of assembly of such United States components in the host country shall not be considered a part of the cost of such United States component.

(k) Reports to Congress

The Secretary and the Administrator of the Agency for International Development shall report annually to the Committee on Energy and Natural Resources of the Senate and the appropriate committees of the House of Representatives on the progress being made to introduce clean coal technologies into foreign countries.

(l) "Host country" defined

For purposes of this section, the term "host country" means a foreign country which is—

(1) the participant in or the site of the proposed clean coal technology project; and

(2) either—

(A) classified as a country eligible to participate in development assistance programs of the Agency for International Development pursuant to applicable law or regulation; or

(B) a developing country or country with an economy in transition from a nonmarket to a market economy.

(m) Authorization of appropriations

There are authorized to be appropriated to the Secretary to carry out the program required by this section, \$100,000,000 for each of the fiscal years 1993, 1994, 1995, 1996, 1997, and 1998.

(Pub. L. 102-486, title XIII, § 1332, Oct. 24, 1992, 106 Stat. 2979.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13363, 13370 of this title.

§ 13363. Conventional coal technology transfer

If the Secretary determines that the utilization of a clean coal technology is not practicable for a proposed project and that a United States conventional coal technology would constitute a substantial improvement in efficiency, costs, and environmental performance relative to the technology being used in a developing country or country making the transition from nonmarket to market economies, with significant indigenous coal resources, such technology shall, for purposes of sections 13361 and 13362¹ of this title, be considered a clean coal technology. In the case of combustion technologies, only the retrofit, repowering, or replacement of a conventional technology shall constitute a substantial improvement for purposes of this section. In carrying out this section, the Secretary shall give highest priority to promoting the most environmentally sound and energy efficient technologies.

(Pub. L. 102-486, title XIII, § 1333, Oct. 24, 1992, 106 Stat. 2984.)

¹ See References in Text note below.

REFERENCES IN TEXT

Sections 13361 and 13362 of this title, referred to in text, was in the original "sections 1321 and 1322" and was translated as reading "sections 1331 and 1332" meaning sections 1331 and 1332 of Pub. L. 102-486, to reflect the probable intent of Congress, because Pub. L. 102-486 does not contain a section 1322 and sections 1331 and 1332 of Pub. L. 102-486 relate to export of clean coal technology.

§ 13364. Study of utilization of coal combustion byproducts

(a) "Coal combustion byproducts" defined

As used in this section, the term "coal combustion byproducts" means the residues from the combustion of coal including ash, slag, and flue gas desulfurization materials.

(b) Study and report to Congress

(1) The Secretary shall conduct a detailed and comprehensive study on the institutional, legal, and regulatory barriers to increased utilization of coal combustion byproducts by potential governmental and commercial users. Such study shall identify and investigate barriers found to exist at the Federal, State, or local level, which may have limited or may have the foreseeable effect of limiting the quantities of coal combustion byproducts that are utilized. In conducting this study, the Secretary shall consult with other departments and agencies of the Federal Government, appropriate State and local governments, and the private sector.

(2) Not later than one year after October 24, 1992, the Secretary shall submit a report to the Congress containing the results of the study required by paragraph (1) and the Secretary's recommendations for action to be taken to increase the utilization of coal combustion byproducts. At a minimum, such report shall identify actions that would increase the utilization of coal combustion byproducts in—

(A) bridge and highway construction;

(B) stabilizing wastes;

(C) procurement by departments and agencies of the Federal Government and State and local governments; and

(D) federally funded or federally subsidized procurement by the private sector.

(Pub. L. 102-486, title XIII, § 1334, Oct. 24, 1992, 106 Stat. 2984.)

§ 13365. Coal fuel mixtures

Within one year following October 24, 1992, the Secretary shall submit a report to the Committee on Energy and Commerce and the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Energy and Natural Resources of the Senate on the status of technologies for combining coal with other materials, such as oil or water fuel mixtures. The report shall include—

(1) a technical and economic feasibility assessment of such technologies;

(2) projected developments in such technologies;

(3) an assessment of the market potential of such technologies, including the potential to displace imported crude oil and refined petroleum products;

(4) identification of barriers to commercialization of such technologies; and

(5) recommendations for addressing barriers to commercialization.

(Pub. L. 102-486, title XIII, § 1336, Oct. 24, 1992, 106 Stat. 2985.)

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives and Committee on Science, Space, and Technology of House of Representatives treated as referring to Committee on Science of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 13366. National clearinghouse

(a) Feasibility

(1) The Secretary shall assess the feasibility of establishing a national clearinghouse for the exchange and dissemination of technical information on technology relating to coal and coal-derived fuels.

(2) In assessing the feasibility, the Secretary shall consider whether such a clearinghouse would be appropriate for purposes of—

(A) collecting information and data on technology relating to coal, and coal-derived fuels, which can be utilized to improve environmental quality and increase energy independence;

(B) disseminating to appropriate individuals, governmental departments, agencies, and instrumentalities, institutions of higher education, and other entities, information and data collected pursuant to this section;

(C) maintaining a library of technology publications and treatises relating to technology information and data collected pursuant to this section;

(D) organizing and conducting seminars for government officials, utilities, coal companies, and other entities or institutions relating to technology using coal and coal-derived fuels that will improve environmental quality and increase energy independence;

(E) gathering information on research grants made for the purpose of improving or enhancing technology relating to the use of coal, and coal-derived fuels, which will improve environmental quality and increase energy independence;

(F) translating into English foreign research papers, articles, seminar proceedings, test results that affect, or could affect, clean coal use technology, and other documents;

(G) encouraging, during the testing of technologies, the use of coal from a variety of domestic sources, and collecting or developing, or both, complete listings of test results using coals from all sources;

(H) establishing and maintaining an index or compilation of research projects relating to clean coal technology carried out throughout the world; and

(I) conducting economic modeling for feasibility of projects.

(b) Authority to establish clearinghouse

Based upon the assessment under subsection (a) of this section, the Secretary may establish a clearinghouse.

(Pub. L. 102-486, title XIII, § 1337, Oct. 24, 1992, 106 Stat. 2985.)

§ 13367. Coal exports

(a) Plan

Within 180 days after October 24, 1992, the Secretary of Commerce, in cooperation with the Secretary and other appropriate Federal agencies, shall submit to the appropriate committees of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a plan for expanding exports of coal mined in the United States.

(b) Plan contents

The plan submitted under subsection (a) of this section shall include—

(1) a description of the location, size, and projected growth in potential export markets for coal mined in the United States;

(2) the identification by country of the foreign trade barriers to the export of coal mined in the United States, including foreign coal production and utilization subsidies, tax treatment, labor practices, tariffs, quotas, and other nontariff barriers;

(3) recommendations and a plan for addressing any such trade barriers;

(4) an evaluation of existing infrastructure in the United States and any new infrastructure requirements in the United States to support an expansion of exports of coal mined in the United States, including ports, vessels, rail lines, and any other supporting infrastructure; and

(5) an assessment of environmental implications of coal exports and the identification of export opportunities for blending coal mined in the United States with coal indigenous to other countries to enhance energy efficiency and environmental performance.

(Pub. L. 102-486, title XIII, § 1338, Oct. 24, 1992, 106 Stat. 2986.)

§ 13368. Ownership of coalbed methane

(a) Federal lands and mineral rights

In the case of any deposit of coalbed methane where the United States is the owner of the surface estate or where the United States has transferred the surface estate but reserved the subsurface mineral estate, the Secretary of the Interior shall administer this section. This section and the definitions contained herein shall be applicable only on lands within Affected States.

(b) Affected States

Not later than 180 days after October 24, 1992, the Secretary of the Interior, with the participation of the Secretary of Energy, shall publish in the Federal Register a list of Affected States which shall be comprised of States—

(1) in which the Secretary of the Interior, with the participation of the Secretary of En-

ergy, determines that disputes, uncertainty, or litigation exist, regarding the ownership of coalbed methane gas;

(2) in which the Secretary of the Interior, with the participation of the Secretary of Energy, determines that development of significant deposits of coalbed methane gas is being impeded by such existing disputes, uncertainty, or litigation regarding ownership of such coalbed methane;

(3) which do not have in effect a statutory or regulatory procedure or existing case law permitting and encouraging the development of coalbed methane gas within that State; and

(4) which do not have extensive development of coalbed methane gas.

The Secretary of the Interior, with the participation of the Secretary of Energy, shall revise such list of Affected States from time to time. Any Affected State shall be deleted from the list of Affected States upon the receipt by the Secretary of the Interior of a Governor's petition requesting such deletion, a State law requesting such deletion, or a resolution requesting such deletion enacted by the legislative body of the State. A Governor intending to petition the Secretary of the Interior to delete a State from the list of Affected States shall provide the State's legislative body with 6 months notice of such petition during a legislative session. At the end of such 6-month period, the Governor may petition the Secretary of the Interior to delete a State from the list of Affected States, unless during such 6-month period, the State's legislative body has enacted a law or resolution disapproving the Governor's petition. Until the Secretary of the Interior, with the participation of the Secretary of Energy, publishes a different list, the States of West Virginia, Pennsylvania, Kentucky, Ohio, Tennessee, Indiana, and Illinois shall be the Affected States, effective on October 24, 1992. The States of Colorado, Montana, New Mexico, Wyoming, Utah, Virginia, Washington, Mississippi, Louisiana, and Alabama shall not be included on the Secretary of the Interior's list of Affected States or any extension or revision thereof.

(c) Failure to adopt statutory or regulatory procedure

If an Affected State has not placed in effect, by statute or by regulation, a substantial program promoting the permitting, drilling and production of coalbed methane wells (including pooling arrangements) within that State within 3 years after becoming an Affected State, the Secretary of the Interior, with the participation of the Secretary of Energy, shall administer this section and shall promulgate such regulations as are necessary to carry out this section in that State.

(d) Implementation by Secretary of the Interior

In implementing this section, the Secretary of the Interior, with the participation of the Secretary of Energy, shall—

(A) consider existing and future coal mining plans,

(B) preserve the mineability of coal seams, and

(C) provide for the prevention of waste and maximization of recovery of coal and coalbed

methane gas in a manner which will protect the rights of all entities owning an interest in such coalbed methane resource.

(e) Spacing

Except where State law in an Affected State contains existing spacing requirements regarding the minimum distance between coalbed methane wells and the minimum distance of a coalbed methane well from a property line, the Secretary of the Interior shall establish such requirements within 90 days after the assertion of jurisdiction pursuant to subsection (c) of this section.

(f) Spacing units

Applications to establish spacing units for the drilling and operation of coalbed methane gas wells may be filed by any entity claiming a coalbed methane ownership interest within a proposed spacing unit. Upon receipt and approval of an application, the Secretary of the Interior shall issue an order establishing the boundaries of the coalbed methane spacing unit. Spacing units shall generally be uniform in size.

(g) Development under pooling arrangement

Following issuance of an order establishing a spacing unit under subsection (f) of this section, and pursuant to an application for pooling filed by the entity claiming a coalbed methane ownership interest and proposing to drill a coalbed methane gas well, the Secretary of the Interior shall hold a hearing to consider the application for pooling and shall, if the criteria of this section are met, issue an order allowing the proposed pooling of acreage within the designated spacing unit for purposes of drilling and production of coalbed methane from the spacing unit. The pooling order shall not be issued before notice or a reasonable and diligent effort to provide notice has been made to each entity which may claim an ownership interest in the coalbed methane gas within such spacing unit and each such entity has been offered an opportunity to appear before the Secretary of the Interior at the hearing. Upon issuance of a pooling order, each owner or claimant of an ownership interest shall be allowed to make one of the following elections:

(1) An election to sell or lease its coalbed methane ownership interest to the unit operator at a rate determined by the Secretary of the Interior as set forth in the pooling order.

(2) An election to become a participating working interest owner by bearing a share of the risks and costs of drilling, completing, equipping, gathering, operating (including all disposal costs), plugging and abandoning the well, and receiving a share of production from the well.

(3) An election to share in the operation of the well as a nonparticipating working interest owner by relinquishing its working interest to participating working interest owners until the proceeds allocable to its share equal 300 percent of the share of such costs allocable to its interest. Thereafter, the nonparticipating working interest owner shall become a participating working interest owner.

The pooling order shall designate a unit operator who shall be authorized to drill and operate

the spacing unit. The pooling order shall provide that any entity claiming an ownership interest in the coalbed methane within such spacing unit which does not make an election under the pooling order shall be deemed to have leased its coalbed methane interest to the unit operator under such terms and conditions as the pooling order may provide. No pooling order may be issued under this paragraph for any spacing unit if all entities claiming an ownership interest in the coalbed methane in the spacing unit have entered into a voluntary agreement providing for the drilling and operation of the coalbed methane gas well for the spacing unit.

(h) Escrow account

(1) Each pooling order issued under subsection (g) of this section shall provide for the establishment of an escrow account into which the payment of costs and proceeds attributable to the conflicting interests shall be deposited and held for the interest of the claimants as follows:

(A) Each participating working interest owner, except for the unit operator, shall deposit in the escrow account its proportionate share of the costs allocable to the ownership interest claimed by each such participating working interest owner as set forth in the pooling order issued by the Secretary of the Interior.

(B) The unit operator shall deposit in the escrow account all proceeds attributable to the conflicting interests of lessees, plus all proceeds in excess of ongoing operational expenses (including reasonable overhead costs) attributable to conflicting working interests.

(2) The Secretary of the Interior shall order payment of principal and accrued interest from the escrow account to all legally entitled entities within 30 days of receipt by the Secretary of the Interior of notification of the final legal determination of entitlement or upon agreement of all entities claiming an ownership interest in the coalbed methane gas. Upon such final determination—

(A) each legally entitled participating working interest owner shall receive a proportionate share of the proceeds attributable to the conflicting ownership interest;

(B) each legally entitled nonparticipating working interest owner shall receive a proportionate share of the proceeds attributable to the conflicting ownership interest, less the cost of being carried as a nonparticipating working interest owner (as determined by the election of the entity under the applicable pooling order);

(C) each entity leasing (or deemed to have leased) its coalbed methane ownership interest to the unit operator shall receive a share of the royalty proceeds (as set out in the applicable pooling order) attributable to the conflicting interests of lessees; and

(D) the unit operator shall receive the costs contributed to the escrow account by each legally entitled participating working interest owner.

The Secretary of the Interior shall enact rules and regulations for the administration and protection of funds delivered to the escrow accounts.

(i) Approval of Secretary of the Interior

No entity may drill any well for the production of coalbed methane gas from a coal seam, subject to the provisions of subsection (g) of this section, in an Affected State unless the drilling of such well has been approved by the Secretary of the Interior.

(j) Authorization to stimulate coal seam

(1) No operator of a coalbed methane well may stimulate a coal seam without the written consent of each entity which, at the time that the coalbed methane operator applies for a drilling permit, is operating a coal mine, or has by virtue of his property rights in the coal the ability to operate a coal mine, located within a horizontal or vertical distance from the point of stimulation as established by the Secretary of the Interior pursuant to paragraph (3) of this subsection. In seeking the coal operator's consent, a coalbed methane well operator shall provide the coal operator with necessary information about such stimulation, including relevant information to ensure compliance with coal mine safety laws and rules.

(2) In the absence of a written consent pursuant to paragraph (1) and at the request of a coalbed methane operator, the Secretary of the Interior shall make a determination regarding stimulation of a coal seam. Such request shall include an affidavit which shall—

(A) state that an entity from which consent is required pursuant to paragraph (1) has refused to provide written consent;

(B) set forth in detail the efforts undertaken by the applicant to obtain such written consent;

(C) state the known reasons for the consent not being provided;

(D) set forth the conditions and compensation, if any, offered by the applicant as part of the efforts to obtain consent; and

(E) provide prima facie evidence that the method of stimulation proposed by the coalbed methane operator will not (i) cause unreasonable loss or damage to the coal seam considering all factors, including the prospect, taking into consideration the economics of the coal industry, that coal seams for which no actual or proposed mining plans exist will be mined at some future date, or (ii) violate mine safety requirements. If a denial of consent by a coal operator is based on reasons related to safety, the Secretary of the Interior shall seek the views and recommendations of the appropriate State or Federal coal mine safety agency. Any determination by the Secretary of the Interior shall be in accordance with all applicable Federal and State coal mine safety laws and such views and recommendations. A determination by the Secretary of the Interior approving a method of stimulation may include reasonable conditions including, but not limited to, conditions to mitigate, to the extent practicable, economic damage to the coal seam. Any determination approving or denying a method of stimulation by the Secretary of the Interior shall be subject to appeal. Interested entities shall be allowed to participate in and comment on proceedings under this paragraph.

(3) The Secretary of the Interior shall by rule establish, for an Affected State, a region there-

of, or a multi-State region comprised of Affected States, the boundaries within which a coalbed methane operator shall be required to obtain written consent from a coal operator pursuant to paragraph (1). Such boundaries shall be stated in terms of a horizontal and a vertical distance from the point of stimulation and shall be determined based on an evaluation of the maximum length, height and depth of fracture producible in a coal seam in such Affected State, region thereof, or multi-State region comprised of Affected States.

(4) The consent required under this subsection shall in no way be deemed to impair, abridge, or affect any contractual rights or objections arising out of a coalbed methane gas contract or coalbed methane gas lease in existence as of October 24, 1992,¹ between the coalbed methane operator and the coal operator, and the existence of such lease or contractual agreement and any extensions or renewals of such lease shall be deemed to fully meet the requirements of this section.

(5) Nothing in this subsection precludes either a coal operator or a coalbed methane operator from seeking in the appropriate State forum compensation for the consequences of a determination by the Secretary of the Interior pursuant to paragraph (2).

(k) Notice and objection

(1) The Secretary of the Interior shall not approve the drilling of any coalbed methane well unless the unit operator has notified each entity which is operating, or has the ability, by virtue of his property rights in the coal, to operate, a coal mine in any portion of the coalbed that would be affected by such well within the distances established pursuant to the rules promulgated under subsection (j)(3) of this section. Any notified entity may object to the drilling of such well within 30 days after receipt of a notice. Upon receipt of a timely objection to the drilling of any coalbed methane gas well submitted by a notified entity, the Secretary of the Interior may refuse to approve the drilling of the well based on any of the following:

(A) The proposed activity, due to its proximity to any coal mine opening, shaft, underground workings, or to any proposed extension of the coal mine, would adversely affect any operating, inactive or abandoned coal mine, including any coal mine already surveyed and platted but not yet being operated.

(B) The proposed activity would not conform with a coal operator's development plan for an existing or proposed operation.

(C) There would be an unreasonable interference from the proposed activity with present or future coal mining operations, including the ability to comply with other applicable laws and regulations.

(D) The presence of evidence indicating that the proposed drilling activities would be unsafe, taking into consideration the dangers from creeps, squeezes or other disturbances due to the extraction of coal.

(E) The proposed activity would unreasonably interfere with the safe recovery of coal, oil and gas.

(2) In the event the Secretary of the Interior does not approve the drilling of a coalbed methane well pursuant to paragraph (1), the Secretary of the Interior shall consider whether such drilling could be approved if the unit operator modifies the proposed activities to take into account any of the following:

(A) The proposed activity could instead be reasonably done through an existing or planned pillar of coal, or in close proximity to an existing well or such pillar of coal, taking into consideration surface topography.

(B) The proposed activity could instead be moved to a mined-out area, below the coal outcrop or to some other feasible area.

(C) The unit operator agrees to a drilling moratorium of not more than two years in order to permit completion of coal mining operations.

(D) The practicality of locating the proposed spacing unit or well on a uniform pattern with other spacing units or wells.

(l) Plugging

All coalbed methane wells drilled after October 24, 1992, that penetrate coal seams with remaining reserves shall provide for subsequent safe mining through the well in accordance with standards prescribed by the Secretary of the Interior, in consultation with any Federal and State agencies having authority over coal mine safety. Well plugging costs should be allocated in accordance with State law or private contractual arrangement, as the case may be.

(m) Notice and objection by other parties

The Secretary of the Interior shall not approve the drilling of any coalbed methane well unless such well complies with the spacing and other requirements established by the Secretary of the Interior and each of the following:

(1) The unit operator of such well has notified, or has made a reasonable and diligent effort to notify, all entities claiming ownership of coalbed methane to be drained by such well and provided an opportunity to object in accordance with requirements established by the Secretary of the Interior.

(2) Where conflicting interests exist, an order under subsection (g) of this section establishing pooling requirements has been issued.

The notification requirements of this subsection shall be additional to the notification referred to in subsection (k) of this section. The Secretary of the Interior shall establish the conditions under which entities claiming ownership of coalbed methane may object to the drilling of a coalbed methane well.

(n) Venting for safety

Nothing in this section shall be construed to prevent or inhibit the entity which has the right to develop and mine coal in any mine from venting coalbed methane gas to ensure safe mine operations.

(o) Other laws

The Secretary of the Interior shall comply with all applicable Federal and State coal mine safety laws and regulations.

(p) Definitions

As used in this section—

¹ See Codification note below.

(1) The term “Affected State” means a State listed by the Secretary of the Interior, with the participation of the Secretary of Energy, under subsection (b) of this section.

(2) The term “coalbed methane gas” means occluded natural gas produced (or which may be produced) from coalbeds and rock strata associated therewith.

(3) The term “unit operator” means the entity designated in a pooling order to develop a spacing unit by the drilling of one or more wells on the unit.

(4) The term “nonparticipating working interest owner” means a gas or oil owner of a tract included in a spacing unit which elects to share in the operation of the well on a carried basis by agreeing to have its proportionate share of the costs allocable to its interest charged against its share of production of the well in accordance with subsection (f)(3) of this section.

(5) The term “participating working interest owner” means a gas or oil owner which elects to bear a share of the risks and costs of drilling, completing, equipping, gathering, operating (including any and all disposal costs)² plugging, and abandoning a well on a spacing unit and to receive a share of production from the well equal to the proportion which the acreage in the spacing unit it owns or holds under lease bears to the total acreage of the spacing unit.

(6) The term “coal seam” means any stratum of coal 20 inches or more in thickness, unless a stratum of less thickness is being commercially worked, or can in the judgment of the Secretary of the Interior foreseeably³ be commercially worked and will require protection if wells are being drilled through it.

(Pub. L. 102-486, title XIII, § 1339, Oct. 24, 1992, 106 Stat. 2986.)

CODIFICATION

October 24, 1992, referred to in subsec. (j)(4), was in the original “the effective date of this section”, which was translated as meaning the date of enactment of Pub. L. 102-486, which enacted this section.

§ 13369. Establishment of data base and study of transportation rates

(a) Data base

The Secretary shall review the information currently collected by the Federal Government and shall determine whether information on transportation rates for rail and pipeline transport of domestic coal, oil, and gas during the period of January 1, 1988, through December 31, 1997, is reasonably available. If he determines that such information is not reasonably available, the Secretary shall establish a data base containing, to the maximum extent practicable, information on all such rates. The confidentiality of contract rates shall be preserved. To obtain data pertaining to rail contract rates, the Secretary shall acquire such data in aggregate form only from the Surface Transportation Board, under terms and conditions that maintain the confidentiality of such rates.

² So in original. Probably should be followed by a comma.

³ So in original. Probably should be “foreseeably”.

(b) Study

The Energy Information Administration shall determine the extent to which any agency of the Federal Government is studying the rates and distribution patterns of domestic coal, oil, and gas to determine the impact of the Clean Air Act [42 U.S.C. 7401 et seq.] as amended by the Act entitled “An Act to amend the Clean Air Act to provide for attainment and maintenance of health protective national ambient air quality standards, and for other purposes.”, enacted November 15, 1990 (Public Law 101-549), and other Federal policies on such rates and distribution patterns. If the Energy Information Administration finds that no such study is underway, or that reports of the results of such study will not be available to the Congress providing the information specified in this subsection and subsection (a) of this section by the dates established in subsection (c) of this section, the Energy Information Administration shall initiate such a study.

(c) Reports to Congress

Within one year after October 24, 1992, the Secretary shall report to the Congress on the determination the Energy Information Administration is required to make under subsection (b) of this section. Within three years after October 24, 1992, the Secretary shall submit reports on any data base or study developed under this section. Any such reports shall be updated and resubmitted to the Congress within eight years after October 24, 1992. If the Energy Information Administration has determined pursuant to subsection (b) of this section that another study or studies will provide all or part of the information called for in this section, the Secretary shall transmit the results of that study by the dates established in this subsection, together with his comments.

(d) Consultation with other agencies

The Secretary and the Energy Information Administration shall consult with the Chairmen of the Federal Energy Regulatory Commission and the Surface Transportation Board in implementing this section.

(Pub. L. 102-486, title XIII, § 1340, Oct. 24, 1992, 106 Stat. 2992; Pub. L. 104-88, title III, § 320, Dec. 29, 1995, 109 Stat. 949.)

REFERENCES IN TEXT

The Clean Air Act, referred to in subsec. (b), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§ 7401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

An Act to amend the Clean Air Act to provide for attainment and maintenance of health protective national ambient air quality standards, and for other purposes, referred to in subsec. (b), is Pub. L. 101-549, Nov. 15, 1990, 104 Stat. 2399, popularly known as the Clean Air Act Amendments of 1990. For complete classification of this Act to the Code, see Short Title of 1990 Amendment note set out under section 7401 of this title and Tables.

AMENDMENTS

1995—Subsecs. (a), (d). Pub. L. 104-88 substituted “Surface Transportation Board” for “Interstate Commerce Commission”.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104-88 effective Jan. 1, 1996, see section 2 of Pub. L. 104-88, set out as an Effective Date note under section 701 of Title 49, Transportation.

§ 13370. Authorization of appropriations

There are authorized to be appropriated to the Secretary for carrying out this part, other than section 13362¹ of this title, such sums as may be necessary for fiscal years 1993 through 1998.

(Pub. L. 102-486, title XIII, § 1341, Oct. 24, 1992, 106 Stat. 2993.)

REFERENCES IN TEXT

Section 13362 of this title, referred to in text, was in the original “section 1322” and was translated as reading “section 1332” meaning section 1332 of Pub. L. 102-486, to reflect the probable intent of Congress, because Pub. L. 102-486 does not contain a section 1322.

SUBCHAPTER VII—GLOBAL CLIMATE CHANGE

§ 13381. Report

Not later than 2 years after October 24, 1992, the Secretary shall submit a report to the Congress that includes an assessment of—

(1) the feasibility and economic, energy, social, environmental, and competitive implications, including implications for jobs, of stabilizing the generation of greenhouse gases in the United States by the year 2005;

(2) the recommendations made in chapter 9 of the 1991 National Academy of Sciences report entitled “Policy Implications of Greenhouse Warming”, including an analysis of the benefits and costs of each recommendation;

(3) the extent to which the United States is responding, compared with other countries, to the recommendations made in chapter 9 of the 1991 National Academy of Sciences report;

(4) the feasibility of reducing the generation of greenhouse gases;

(5) the feasibility and economic, energy, social, environmental, and competitive implications, including implications for jobs, of achieving a 20 percent reduction from 1988 levels in the generation of carbon dioxide by the year 2005 as recommended by the 1988 Toronto Scientific World Conference on the Changing Atmosphere;

(6) the potential economic, energy, social, environmental, and competitive implications, including implications for jobs, of implementing the policies necessary to enable the United States to comply with any obligations under the United Nations Framework Convention on Climate Change or subsequent international agreements.

(Pub. L. 102-486, title XVI, § 1601, Oct. 24, 1992, 106 Stat. 2999.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13382 of this title.

§ 13382. Least-cost energy strategy**(a) Strategy**

The first National Energy Policy Plan (in this subchapter referred to as the “Plan”) under sec-

tion 7321 of this title prepared and required to be submitted by the President to Congress after February 1, 1993, and each subsequent such Plan, shall include a least-cost energy strategy prepared by the Secretary. In developing the least-cost energy strategy, the Secretary shall take into consideration the economic, energy, social, environmental, and competitive costs and benefits, including costs and benefits for jobs, of his choices. Such strategy shall also take into account the report required under section 13381 of this title and relevant Federal, State, and local requirements. Such strategy shall be designed to achieve to the maximum extent practicable and at least-cost to the Nation—

(1) the energy production, utilization, and energy conservation priorities of subsection (d) of this section;

(2) the stabilization and eventual reduction in the generation of greenhouse gases;

(3) an increase in the efficiency of the Nation’s total energy use by 30 percent over 1988 levels by the year 2010;

(4) an increase in the percentage of energy derived from renewable resources by 75 percent over 1988 levels by the year 2005; and

(5) a reduction in the Nation’s oil consumption from the 1990 level of approximately 40 percent of total energy use to 35 percent by the year 2005.

(b) Additional contents

The least-cost energy strategy shall also include—

(1) a comprehensive inventory of available energy and energy efficiency resources and their projected costs, taking into account all costs of production, transportation, distribution, and utilization of such resources, including—

(A) coal, clean coal technologies, coal seam methane, and underground coal gasification;

(B) energy efficiency, including existing technologies for increased efficiency in production, transportation, distribution, and utilization of energy, and other technologies that are anticipated to be available through further research and development; and

(C) other energy resources, such as renewable energy, solar energy, nuclear fission, fusion, geothermal, biomass, fuel cells, hydro-power, and natural gas;

(2) a proposed two-year program for ensuring adequate supplies of the energy and energy efficiency resources and technologies described in paragraph (1), and an identification of administrative actions that can be undertaken within existing Federal authority to ensure their adequate supply;

(3) estimates of life-cycle costs for existing energy production facilities;

(4) basecase forecasts of short-term and long-term national energy needs under low and high case assumptions of economic growth; and

(5) an identification of all applicable Federal authorities needed to achieve the purposes of this section, and of any inadequacies in those authorities.

¹ See References in Text note below.

(c) Secretarial consideration

In developing the least-cost energy strategy, the Secretary shall give full consideration to—

- (1) the relative costs of each energy and energy efficiency resource based upon a comparison of all direct and quantifiable net costs for the resource over its available life, including the cost of production, transportation, distribution, utilization, waste management, environmental compliance, and, in the case of imported energy resources, maintaining access to foreign sources of supply; and
- (2) the economic, energy, social, environmental, and competitive consequences resulting from the establishment of any particular order of Federal priority as determined under subsection (d) of this section.

(d) Priorities

The least-cost energy strategy shall identify Federal priorities, including policies that—

- (1) implement standards for more efficient use of fossil fuels;
- (2) increase the energy efficiency of existing technologies;
- (3) encourage technologies, including clean coal technologies, that generate lower levels of greenhouse gases;
- (4) promote the use of renewable energy resources, including solar, geothermal, sustainable biomass, hydropower, and wind power;
- (5) affect the development and consumption of energy and energy efficiency resources and electricity through tax policy;
- (6) encourage investment in energy efficient equipment and technologies; and
- (7) encourage the development of energy technologies, such as advanced nuclear fission and nuclear fusion, that produce energy without greenhouse gases as a byproduct, and encourage the deployment of nuclear electric generating capacity.

(e) Assumptions

The Secretary shall include in the least-cost energy strategy an identification of all of the assumptions used in developing the strategy and priorities thereunder, and the reasons for such assumptions.

(f) Preference

When comparing an energy efficiency resource to an energy resource, a higher priority shall be assigned to the energy efficiency resource whenever all direct and quantifiable net costs for the resource over its available life are equal to the estimated cost of the energy resource.

(g) Public review and comment

The Secretary shall provide for a period of public review and comment of the least-cost energy strategy, for a period of at least 30 days, to be completed at least 60 days before the issuance of such strategy. The Secretary shall also provide for public review and comment before the issuance of any update to the least-cost energy strategy required under this section.

(Pub. L. 102-486, title XVI, § 1602, Oct. 24, 1992, 106 Stat. 2999.)

REFERENCES IN TEXT

This subchapter, referred to in subsec. (a), was in the original “this title” meaning title XVI of Pub. L.

102-486, Oct. 24, 1992, 106 Stat. 2999, which enacted this subchapter and repealed sections 7361 to 7364 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13471 of this title.

§ 13383. Director of Climate Protection

Within 6 months after October 24, 1992, the Secretary shall establish, within the Department of Energy, a Director of Climate Protection (in this section referred to as the “Director”). The Director shall—

- (1) in the absence of the Secretary, serve as the Secretary’s representative for interagency and multilateral policy discussions of global climate change, including the activities of the Committee on Earth and Environmental Sciences as established by the Global Change Research Act of 1990 (Public Law 101-606) [15 U.S.C. 2921 et seq.] and the Policy Coordinating Committee Working Group on Climate Change;
- (2) monitor, in cooperation with other Federal agencies, domestic and international policies for their effects on the generation of greenhouse gases; and
- (3) have the authority to participate in the planning activities of relevant Department of Energy programs.

(Pub. L. 102-486, title XVI, § 1603, Oct. 24, 1992, 106 Stat. 3001.)

REFERENCES IN TEXT

The Global Change Research Act of 1990, referred to in par. (1), is Pub. L. 101-606, Nov. 16, 1990, 104 Stat. 3096, which is classified generally to chapter 56A (§ 2921 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 2921 of Title 15 and Tables.

§ 13384. Assessment of alternative policy mechanisms for addressing greenhouse gas emissions

Not later than 18 months after October 24, 1992, the Secretary shall transmit a report to Congress containing a comparative assessment of alternative policy mechanisms for reducing the generation of greenhouse gases. Such assessment shall include a short-run and long-run analysis of the social, economic, energy, environmental, competitive, and agricultural costs and benefits, including costs and benefits for jobs and competition, and the practicality of each of the following policy mechanisms:

- (1) Various systems for controlling the generation of greenhouse gases, including caps for the generation of greenhouse gases from major sources and emissions trading programs.
- (2) Federal standards for energy efficiency for major sources of greenhouse gases, including efficiency standards for power plants, industrial processes, automobile fuel economy, appliances, and buildings, and for emissions of methane.
- (3) Various Federal and voluntary incentives programs.

(Pub. L. 102-486, title XVI, § 1604, Oct. 24, 1992, 106 Stat. 3002.)

§ 13385. National inventory and voluntary reporting of greenhouse gases

(a) National inventory

Not later than one year after October 24, 1992, the Secretary, through the Energy Information Administration, shall develop, based on data available to, and obtained by, the Energy Information Administration, an inventory of the national aggregate emissions of each greenhouse gas for each calendar year of the baseline period of 1987 through 1990. The Administrator of the Energy Information Administration shall annually update and analyze such inventory using available data. This subsection does not provide any new data collection authority.

(b) Voluntary reporting

(1) Issuance of guidelines

Not later than 18 months after October 24, 1992, the Secretary shall, after opportunity for public comment, issue guidelines for the voluntary collection and reporting of information on sources of greenhouse gases. Such guidelines shall establish procedures for the accurate voluntary reporting of information on—

(A) greenhouse gas emissions—

(i) for the baseline period of 1987 through 1990; and

(ii) for subsequent calendar years on an annual basis;

(B) annual reductions of greenhouse gas emissions and carbon fixation achieved through any measures, including fuel switching, forest management practices, tree planting, use of renewable energy, manufacture or use of vehicles with reduced greenhouse gas emissions, appliance efficiency, energy efficiency, methane recovery, cogeneration, chlorofluorocarbon capture and replacement, and power plant heat rate improvement;

(C) reductions in greenhouse gas emissions achieved as a result of—

(i) voluntary reductions;

(ii) plant or facility closings; and

(iii) State or Federal requirements; and

(D) an aggregate calculation of greenhouse gas emissions by each reporting entity.

Such guidelines shall also establish procedures for taking into account the differential radiative activity and atmospheric lifetimes of each greenhouse gas.

(2) Reporting procedures

The Administrator of the Energy Information Administration shall develop forms for voluntary reporting under the guidelines established under paragraph (1), and shall make such forms available to entities wishing to report such information. Persons reporting under this subsection shall certify the accuracy of the information reported.

(3) Confidentiality

Trade secret and commercial or financial information that is privileged or confidential shall be protected as provided in section 552(b)(4) of title 5.

(4) Establishment of data base

Not later than 18 months after October 24, 1992, the Secretary, through the Administrator

of the Energy Information Administration, shall establish a data base comprised of information voluntarily reported under this subsection. Such information may be used by the reporting entity to demonstrate achieved reductions of greenhouse gases.

(c) Consultation

In carrying out this section, the Secretary shall consult, as appropriate, with the Administrator of the Environmental Protection Agency.

(Pub. L. 102-486, title XVI, §1605, Oct. 24, 1992, 106 Stat. 3002.)

§ 13386. Export of domestic energy resource technologies to developing countries

The Secretary, through the Trade Promotion Coordinating Council, shall develop policies and programs to encourage the export and promotion of domestic energy resource technologies, including renewable energy, energy efficiency, and clean coal technologies, to developing countries.

(Pub. L. 102-486, title XVI, §1607, Oct. 24, 1992, 106 Stat. 3003.)

§ 13387. Innovative environmental technology transfer program

(a) Establishment of program

The Secretary, through the Agency for International Development, and in consultation with the interagency working group established under section 6276(d) of this title (in this section referred to as the “interagency working group”,¹ shall establish a technology transfer program to carry out the purposes described in subsection (b) of this section. Within 150 days after October 24, 1992, the Secretary and the Administrator of the Agency for International Development shall enter into a written agreement to carry out this section. The agreement shall establish a procedure for resolving any disputes between the Secretary and the Administrator regarding the implementation of specific projects. With respect to countries not assisted by the Agency for International Development, the Secretary may enter into agreements with other appropriate Federal agencies. If the Secretary and the Administrator, or the Secretary and an agency described in the previous sentence, are unable to reach an agreement, each shall send a memorandum to the President outlining an appropriate agreement. Within 90 days after receipt of either memorandum, the President shall determine which version of the agreement shall be in effect. Any agreement entered into under this subsection shall be provided to the appropriate committees of the Congress and made available to the public.

(b) Purposes of program

The purposes of the technology transfer program under this section are to—

(1) reduce the United States balance of trade deficit through the export of United States energy technologies and technological expertise;

(2) retain and create manufacturing and related service jobs in the United States;

¹So in original. Probably should be preceded by a closing parenthesis.

(3) encourage the export of United States technologies, including services related thereto, to those countries that have a need for developmentally sound facilities to provide energy derived from technologies that substantially reduce environmental pollutants, including greenhouse gases;

(4) develop markets for United States technologies, including services related thereto, that substantially reduce environmental pollutants, including greenhouse gases, that meet the energy and environmental requirements of foreign countries;

(5) better ensure that United States participation in energy-related projects in foreign countries includes participation by United States firms as well as utilization of United States technologies;

(6) ensure the introduction of United States firms and expertise in foreign countries;

(7) provide financial assistance by the Federal Government to foster greater participation by United States firms in the financing, ownership, design, construction, or operation of technologies or services that substantially reduce environmental pollutants, including greenhouse gases; and

(8) assist United States firms, especially firms that are in competition with firms in foreign countries, to obtain opportunities to transfer technologies to, or undertake projects in, foreign countries.

(c) Identification

Pursuant to the agreements required by subsection (a) of this section, the Secretary, through the Agency for International Development, and after consultation with the interagency working group, United States firms, and representatives from foreign countries, shall develop mechanisms to identify potential energy projects in host countries that substantially reduce environmental pollutants, including greenhouse gases, and shall identify a list of such projects within 240 days after October 24, 1992, and periodically thereafter.

(d) Financial mechanisms

(1) Pursuant to the agreements under subsection (a) of this section, the Secretary, through the Agency for International Development, shall—

(A) establish appropriate financial mechanisms to increase the participation of United States firms in energy projects, and services related thereto, that substantially reduce environmental pollutants, including greenhouse gases in foreign countries;

(B) utilize available financial assistance authorized by this section to counterbalance assistance provided by foreign governments to non-United States firms; and

(C) provide financial assistance to support projects.

(2) The financial assistance authorized by this section may be—

(A) provided in combination with other forms of financial assistance, including non-Federal funding that may be available for the project; and

(B) utilized in conjunction with financial assistance programs available through other Federal agencies.

(3) United States obligations under the Arrangement on Guidelines for Officially Supported Export Credits established through the Organization for Economic Cooperation and Development shall be applicable to this section.

(e) Solicitations for project proposals

(1) Pursuant to the agreements under subsection (a) of this section, the Secretary, through the Agency for International Development, within one year after October 24, 1992, and subsequently as appropriate thereafter, shall solicit proposals from United States firms for the design, construction, testing, and operation of the project or projects identified under subsection (c) of this section which propose to utilize a United States technology or service. Each solicitation under this section shall establish a closing date for receipt of proposals.

(2) The solicitation under this subsection shall, to the extent appropriate, be modeled after the RFP No. DE-PS01-90FE62271 Clean Coal Technology IV, as administered by the Department of Energy.

(3) Any solicitation made under this subsection shall include the following requirements:

(A) The United States firm that submits a proposal in response to the solicitation shall have an equity interest in the proposed project.

(B) The project shall utilize a United States technology, including services related thereto, that substantially reduce environmental pollutants, including greenhouse gases, in meeting the applicable energy and environmental requirements of the host country.

(C) Proposals for projects shall be submitted by and undertaken with a United States firm, although a joint venture or other teaming arrangement with a non-United States manufacturer or other non-United States entity is permissible.

(f) Assistance to United States firms

Pursuant to the agreements under subsection (a) of this section, the Secretary, through the Agency for International Development, and in consultation with the interagency working group, shall establish a procedure to provide financial assistance to United States firms under this section for a project identified under subsection (c) of this section where solicitations for the project are being conducted by the host country or by a multilateral lending institution.

(g) Other program requirements

Pursuant to the agreements under subsection (a) of this section, the Secretary, through the Agency for International Development, and in consultation with the interagency working group, shall—

(1) establish eligibility criteria for countries that will host projects;

(2) periodically review the energy needs of such countries and export opportunities for United States firms for the development of projects in such countries;

(3) consult with government officials in host countries and, as appropriate, with representatives of utilities or other entities in host countries, to determine interest in and support for potential projects; and

(4) determine whether each project selected under this section is developmentally sound, as determined under the criteria developed by the Development Assistance Committee of the Organization for Economic Cooperation and Development.

(h) Eligible technologies

Not later than 6 months after October 24, 1992, the Secretary shall prepare a list of eligible technologies and services under this section. In preparing such a list, the Secretary shall consider fuel cell powerplants, aeroderivative gas turbines and catalytic combustion technologies for aeroderivative gas turbines, ocean thermal energy conversion technology, anaerobic digester and storage tanks, and other renewable energy and energy efficiency technologies.

(i) Selection of projects

(1) Pursuant to the agreements under subsection (a) of this section, the Secretary, through the Agency for International Development, shall, not later than 120 days after receipt of proposals in response to a solicitation under subsection (e) of this section, select one or more proposals under this section.

(2) In selecting a proposal under this section, the Secretary, through the Agency for International Development, shall consider—

(A) the ability of the United States firm, in cooperation with the host country, to undertake and complete the project;

(B) the degree to which the equipment to be included in the project is designed and manufactured in the United States;

(C) the long-term technical and competitive viability of the United States technology, and services related thereto, and the ability of the United States firm to compete in the development of additional energy projects using such technology in the host country and in other foreign countries;

(D) the extent of technical and financial involvement of the host country in the project;

(E) the extent to which the proposed project meets the purposes of this section;

(F) the extent of technical, financial, management, and marketing capabilities of the participants in the project, and the commitment of the participants to completion of a successful project in a manner that will facilitate acceptance of the United States technology or service for future application; and

(G) such other criteria as may be appropriate.

(3) In selecting among proposed projects, the Secretary shall seek to ensure that, relative to otherwise comparable projects in the host country, a selected project will meet the following criteria:

(A) It will reduce environmental emissions, including greenhouse gases, to an extent greater than required by applicable provisions of law.

(B) It will be a more cost-effective technological alternative, based on life cycle capital and operating costs per unit of energy produced and, where applicable, costs per unit of product produced.

(C) It will increase the overall efficiency of energy use.

Priority in selection shall be given to those projects which, in the judgment of the Secretary, best meet these criteria.

(j) United States-Asia Environmental Partnership

Activities carried out under this section shall be coordinated with the United States-Asia Environmental Partnership.

(k) Buy America

In carrying out this section, the Secretary, through the Agency for International Development, and pursuant to the agreements under subsection (a) of this section, shall ensure—

(1) the maximum percentage, but in no case less than 50 percent, of the cost of any equipment furnished in connection with a project authorized under this section shall be attributable to the manufactured United States components of such equipment; and

(2) the maximum participation of United States firms.

In determining whether the cost of United States components equals or exceeds 50 percent, the cost of assembly of such United States components in the host country shall not be considered a part of the cost of such United States component.

(l) Report to Congress

The Secretary and the Administrator of the Agency for International Development shall report annually to the Committee on Energy and Natural Resources of the Senate and the appropriate committees of the House of Representatives on the progress being made to introduce innovative energy technologies, and services related thereto, that substantially reduce environmental pollutants, including greenhouse gases, into foreign countries.

(m) Definitions

For purposes of this section—

(1) the term “host country” means a foreign country which is—

(A) the participant in or the site of the proposed innovative energy technology project; and

(B) either—

(i) classified as a country eligible to participate in development assistance programs of the Agency for International Development pursuant to applicable law or regulation; or

(ii) a developing country; and

(2) the term “developing country” includes, but is not limited to, countries in Central and Eastern Europe or in the independent states of the former Soviet Union.

(n) Authorization of appropriations

There are authorized to be appropriated to the Secretary to carry out the program required by this section, \$100,000,000 for each of the fiscal years 1993, 1994, 1995, 1996, 1997, and 1998.

(Pub. L. 102-486, title XVI, §1608, Oct. 24, 1992, 106 Stat. 3003.)

§ 13388. Global Climate Change Response Fund

(a) Establishment of Fund

The Secretary of the Treasury, in consultation with the Secretary of State, shall establish a

Global Climate Change Response Fund to act as a mechanism for United States contributions to assist global efforts in mitigating and adapting to global climate change.

(b) Restrictions on deposits

No deposits shall be made to the Global Climate Change Response Fund until the United States has ratified the United Nations Framework Convention on Climate Change.

(c) Use of Fund

Moneys deposited into the Fund shall be used by the President, to the extent authorized and appropriated under section 2222 of title 22, solely for contributions to a financial mechanism negotiated pursuant to the United Nations Framework Convention on Climate Change, including all protocols or agreements related thereto.

(d) Authorization of appropriations

There are authorized to be appropriated for deposit in the Fund to carry out the purposes of this section, \$50,000,000 for fiscal year 1994 and such sums as may be necessary for fiscal years 1995 and 1996.

(Pub. L. 102-486, title XVI, § 1609, Oct. 24, 1992, 106 Stat. 3007.)

SUBCHAPTER VIII—REDUCTION OF OIL VULNERABILITY

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 5905, 13522, 13525 of this title.

§ 13401. Goals

It is the goal of the United States in carrying out energy supply and energy conservation research and development—

- (1) to strengthen national energy security by reducing dependence on imported oil;
- (2) to increase the efficiency of the economy by meeting future needs for energy services at the lowest total cost to the Nation, including environmental costs, giving comparable consideration to technologies that enhance energy supply and technologies that improve the efficiency of energy end uses;
- (3) to reduce the air, water, and other environmental impacts (including emissions of greenhouse gases) of energy production, distribution, transportation, and utilization, through the development of an environmentally sustainable energy system;
- (4) to maintain the technological competitiveness of the United States and stimulate economic growth through the development of advanced materials and technologies;
- (5) to foster international cooperation by developing international markets for domestically produced sustainable energy technologies, and by transferring environmentally sound, advanced energy systems and technologies to developing countries to promote sustainable development;
- (6) to consider the comparative environmental and public health impacts of the energy to be produced or saved by the specific activities;
- (7) to consider the obstacles inherent in private industry's development of new energy

technologies and steps necessary for establishing or maintaining technological leadership in the area of energy and energy efficiency resource technologies; and

- (8) to consider the contribution of a given activity to fundamental scientific knowledge.
- (Pub. L. 102-486, title XX, § 2001, Oct. 24, 1992, 106 Stat. 3057.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13431, 13451, 13471, 13522, 13523 of this title.

PART A—OIL AND GAS SUPPLY ENHANCEMENT

§ 13411. Enhanced oil recovery

(a) Program direction

The Secretary shall conduct a 5-year program, in accordance with sections 13541 and 13542 of this title, on technologies to increase the recoverability of domestic oil resources to—

- (1) improve reservoir characterization;
- (2) improve analysis and field verification;
- (3) field test and demonstrate enhanced oil recovery processes, including advanced processes, in reservoirs the Secretary considers to be of high priority, ranked primarily on the basis of oil recovery potential and risk of abandonment;
- (4) transfer proven recovery technologies to producers and operators of wells, including stripper wells, that would otherwise be likely to be abandoned in the near term due to declining production;
- (5) improve enhanced oil recovery process technology for more economic and efficient oil production;
- (6) identify and develop new recovery technologies;
- (7) study reservoir properties and how they affect oil recovery from porous media;
- (8) improve techniques for meeting environmental requirements;
- (9) improve data bases of reservoir and environmental conditions; and
- (10) lower lifting costs on stripper wells by utilizing advanced renewable energy technologies such as small wind turbines and others.

(b) Program goals

(1) Near-term priorities

The near-term priorities of the program include preserving access to high potential reservoirs, identifying available technologies that can extend the lifetime of wells and of stripper well property, and developing environmental field operations for waste disposal and injection practices.

(2) Mid-term priorities

The mid-term priorities of the program include developing and testing identified but unproven technologies, and transferring those technologies for widespread use.

(3) Long-term priorities

The long-term priorities of the program include developing advanced techniques to recover oil not recoverable by other techniques.

(c) Accelerated program plan

Within 180 days after October 24, 1992, the Secretary shall prepare and submit to the Congress

a plan for carrying out under this section the accelerated field testing of technologies to achieve the priorities stated in subsection (b) of this section. In preparing the plan, the Secretary shall consult with appropriate representatives of industry, institutions of higher education, Federal agencies, including national laboratories, and professional and technical societies, and with the Advisory Board established under section 13522 of this title.

(d) Proposals

Within 1 year after October 24, 1992, the Secretary shall solicit proposals for conducting activities under this section.

(e) Consultation

In carrying out the provisions of this section, the Secretary shall consult representatives of the oil and gas industry with respect to innovative research and development proposals to improve oil and gas recovery and shall consider relevant technical data from industry and other research and information centers and institutes.

(f) Authorization of appropriations

There are authorized to be appropriated to the Secretary for carrying out this section, including advanced extraction and process technology, \$57,250,000 for fiscal year 1993 and \$70,000,000 for fiscal year 1994.

(Pub. L. 102-486, title XX, §2011, Oct. 24, 1992, 106 Stat. 3057.)

§ 13412. Oil shale

(a) Program direction

The Secretary shall conduct a 5-year program, in accordance with sections 13541 and 13542 of this title, on oil shale extraction and conversion, including research and development on both eastern and western shales, as provided in this section.

(b) Program goals

The goals of the program established under this section include—

- (1) supporting the development of economically competitive and environmentally acceptable technologies to produce domestic supplies of liquid fuels from oil shale;
- (2) increasing knowledge of environmentally acceptable oil shale waste disposal technologies and practices;
- (3) increasing knowledge of the chemistry and kinetics of oil shale retorting;
- (4) increasing understanding of engineering issues concerning the design and scale-up of oil shale extraction and conversion technologies;
- (5) improving techniques for oil shale mining systems; and
- (6) providing for cooperation with universities and other private sector entities.

(c) Eastern oil shale program

(1) As part of the program authorized by this section, the Secretary shall carry out a program on oil shale that includes applied research, in cooperation with universities and the private sector, on eastern oil shale that may have the potential to decrease United States dependence on energy imports.

(2) As part of the program authorized by this subsection, the Secretary shall consider the potential benefits of including in that program applied research carried out in cooperation with universities and other private sector entities that are, as of October 24, 1992, engaged in research on eastern oil shale retorting and associated processes.

(3) The program carried out under this subsection shall be cost-shared with universities and the private sector to the maximum extent possible.

(d) Western oil shale program

As part of the program authorized by this section, the Secretary shall carry out a program on extracting oil from western oil shales that includes, if appropriate, establishment and utilization of at least one field testing center for the purpose of testing, evaluating, and developing improvements in oil shale technology at the field test level. In establishing such a center, the Secretary shall consider sites with existing oil shale mining and processing infrastructure and facilities. Sixty days prior to establishing any such field testing center, the Secretary shall submit a report to Congress on the center to be established.

(e) Authorization of appropriations

There are authorized to be appropriated to the Secretary for carrying out this section \$5,250,000 for fiscal year 1993 and \$6,000,000 for fiscal year 1994.

(Pub. L. 102-486, title XX, §2012, Oct. 24, 1992, 106 Stat. 3058.)

§ 13413. Natural gas supply

(a) Program direction

The Secretary shall conduct a 5-year program, in accordance with sections 13541 and 13542 of this title, to increase the recoverable natural gas resource base including, but not limited to—

- (1) more intensive recovery of natural gas from discovered conventional resources;
- (2) the extraction of natural gas from tight gas sands and Devonian shales or other unconventional sources;
- (3) surface gasification of coal; and
- (4) recovery of methane from biofuels including municipal solid waste.

(b) Proposals

Within 1 year after October 24, 1992, the Secretary shall solicit proposals for conducting activities under this section.

(c) Cofiring of natural gas and coal

(1) Program

The Secretary shall establish and carry out a 5-year program, in accordance with sections 13541 and 13542 of this title, on cofiring natural gas with coal in utility and large industrial boilers in order to determine optimal natural gas injection levels for both environmental and operational benefits.

(2) Financial assistance

The Secretary shall enter into agreements with, and provide financial assistance to, appropriate parties for application of cofiring

technologies to boilers to demonstrate this technology.

(3) Report to Congress

The Secretary shall, before December 31, 1995, submit to the Congress a report on the progress made in carrying out this subsection.

(d) Authorization of appropriations

There are authorized to be appropriated to the Secretary for carrying out this section and sections 13414 and 13415 of this title, \$29,745,000 for fiscal year 1993 and \$45,000,000 for fiscal year 1994.

(Pub. L. 102-486, title XX, §2013, Oct. 24, 1992, 106 Stat. 3059.)

§ 13414. Natural gas end-use technologies

The Secretary shall carry out a 5-year program, in accordance with sections 13541 and 13542 of this title, on new and advanced natural gas utilization technologies including, but not limited to—

(1) stationary source emissions control and efficiency improvements including combustion systems, industrial processes, cogeneration, and waste fuels; and

(2) natural gas storage including increased deliverability from existing gas storage facilities and new capabilities for storage near demand centers, and on-site storage at major energy consuming facilities.

(Pub. L. 102-486, title XX, §2014, Oct. 24, 1992, 106 Stat. 3060.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13413 of this title.

§ 13415. Midcontinent Energy Research Center

(a) Finding

Congress finds that petroleum resources in the midcontinent region of the United States are very large but are being prematurely abandoned.

(b) Purposes

The purposes of this section are to—

(1) improve the efficiency of petroleum recovery;

(2) increase ultimate petroleum recovery; and

(3) delay the abandonment of resources.

(c) Establishment

The Secretary may establish the Midcontinent Energy Research Center (referred to in this section as the “Center”) to—

(1) conduct research in petroleum geology and engineering focused on improving the recovery of petroleum from existing fields and established plays in the upper midcontinent region of the United States; and

(2) ensure that the results of the research described in paragraph (1) are transferred to users.

(d) Research

(1) In general

In conducting research under this section, the Center shall, to the extent practicable, cooperate with agencies of the Federal Govern-

ment, the States in the midcontinent region of the United States, and the affected industry.

(2) Programs

Research programs conducted by the Center may include—

(A) data base development and transfer of technology;

(B) reservoir management;

(C) reservoir characterization;

(D) advanced recovery methods; and

(E) development of new technology.

(Pub. L. 102-486, title XX, §2015, Oct. 24, 1992, 106 Stat. 3060.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13413 of this title.

PART B—OIL AND GAS DEMAND REDUCTION AND SUBSTITUTION

§ 13431. General transportation

(a) Program direction

The Secretary shall conduct a 5-year program, in accordance with sections 13541 and 13542 of this title, on cost effective technologies to reduce the demand for oil in the transportation sector for all motor vehicles, including existing vehicles, through increased energy efficiency and the use of alternative fuels. Such program shall include a broad range of technological approaches, and shall include field demonstrations of sufficient scale and number in operating environments to prove technical and economic viability to meet the goals stated in section 13401 of this title. Such program shall include the activities required under sections 13432 through 13437 of this title, and ongoing activities of a similar nature at the Department of Energy.

(b) Program plan

Within 180 days after October 24, 1992, the Secretary shall prepare and submit to the Congress a 5-year program plan to guide activities under this part. In preparing the program plan, the Secretary shall consult with appropriate representatives of industry, utilities, institutions of higher education, Federal agencies, including national laboratories, and professional and technical societies.

(c) Proposals

Within 1 year after October 24, 1992, the Secretary shall solicit proposals for conducting activities under this section.

(d) “Alternative fuels” defined

For purposes of this part, the term “alternative fuels” includes natural gas, liquefied petroleum gas, hydrogen, fuels other than alcohol that are derived from biological materials, and any fuel the content of which is at least 85 percent by volume methanol, ethanol, or other alcohol.

(e) Authorization of appropriations

(1) There are authorized to be appropriated to the Secretary for carrying out this part, including all transportation sector energy conservation research and development (other than activities under section 13435 of this title) and all

transportation sector biofuels energy systems under solar energy, \$119,144,000 for fiscal year 1993 and \$160,000,000 for fiscal year 1994.

(2) There are authorized to be appropriated to the Secretary for carrying out section 13435 of this title—

- (A) \$60,300,000 for fiscal year 1993;
- (B) \$75,000,000 for fiscal year 1994;
- (C) \$80,000,000 for fiscal year 1995;
- (D) \$80,000,000 for fiscal year 1996;
- (E) \$90,000,000 for fiscal year 1997; and
- (F) \$100,000,000 for fiscal year 1998.

(Pub. L. 102-486, title XX, §2021, Oct. 24, 1992, 106 Stat. 3061.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13437, 13471 of this title.

§ 13432. Advanced automotive fuel economy

(a) Program direction

The Secretary shall conduct a program, in accordance with sections 13541 and 13542 of this title, to supplement ongoing research activities of a similar nature at the Department of Energy, to accelerate the near-term and mid-term development of advanced technologies to improve the fuel economy of light-duty passenger vehicles powered by a piston engine, and hybrid vehicles powered by a combination of piston engine and electric motor.

(b) Program goal

The goal of the program established under subsection (a) of this section shall be to stimulate the development of emerging technologies with the potential to achieve significant improvements in fuel economy while reducing emissions of air pollutants.

(c) Proposals

Within 1 year after October 24, 1992, the Secretary shall solicit proposals for conducting activities under this section, making a special effort to involve small businesses in the program.

(Pub. L. 102-486, title XX, §2022, Oct. 24, 1992, 106 Stat. 3061.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13431 of this title.

§ 13433. Alternative fuel vehicle program

(a) Program direction

The Secretary shall carry out a program, in accordance with sections 13541 and 13542 of this title, on techniques related to improving natural gas and other alternative fuel vehicle technology, including—

- (1) fuel injection;
- (2) carburetion;
- (3) manifolding;
- (4) combustion;
- (5) power optimization;
- (6) efficiency;
- (7) lubricants and detergents;
- (8) engine durability;
- (9) ignition, including fuel additives to assist ignition;
- (10) multifuel engines;

- (11) emissions control, including catalysts;
- (12) novel gas compression concepts;
- (13) advanced storage systems;
- (14) advanced gaseous fueling technologies; and
- (15) the incorporation of advanced materials in these areas.

(b) Cooperative agreements and assistance

The Secretary may enter into cooperative agreements with, and provide financial assistance to, public or private entities willing to provide 50 percent of the costs of a program to perform activities under subsection (a) of this section.

(c) Definitions

For purposes of this section—

- (1) the term “alternative fuel vehicle” means a motor vehicle that operates on alternative fuels; and
- (2) the term “motor vehicle” includes any automobile, truck, bus, van, or other on-road or off-road motor vehicle, including a boat.

(Pub. L. 102-486, title XX, §2023, Oct. 24, 1992, 106 Stat. 3062.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13431 of this title.

§ 13434. Biofuels user facility

(a) The Secretary shall establish a biofuels user facility to expedite industry adoption of biofuels technologies, including production of alcohol fuels from biomass.

(b) The Secretary, through such universities and colleges as the Secretary determines are qualified, shall establish a program, in accordance with sections 13541 and 13542 of this title, with respect to the production and use of diesel fuels from vegetable oils or animal fats. The program shall investigate—

- (1) the economic feasibility of production of oilseed crops for biofuels purposes; and
- (2) the establishment of a mobile small-scale oilseed pressing and esterification unit and a stationary small-scale commercial oilseed pressing and esterification unit.

(Pub. L. 102-486, title XX, §2024, Oct. 24, 1992, 106 Stat. 3062.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13431 of this title.

§ 13435. Electric motor vehicles and associated equipment research and development

(a) General

The Secretary shall conduct, pursuant to the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5901-5920), a research and development program on electric motor vehicles and associated equipment. Such program shall be conducted in cooperation with the electric utility industry, and automobile industry, battery manufacturers, and such other persons as the Secretary considers appropriate.

(b) Comprehensive plan

(1) The Secretary shall prepare a comprehensive 5-year program plan for carrying out the

purposes of this section. Such comprehensive plan shall be updated biennially for a period of not less than 10 years after October 24, 1992.

(2) The comprehensive plan under paragraph (1) shall be prepared in consultation with the Administrator of the Environmental Protection Agency, the Secretary of Transportation, the Secretary of Commerce, the heads of other appropriate Federal agencies, representatives of the electric utility industry, electric motor vehicle manufacturers, the United States automobile industry, and such other persons as the Secretary considers appropriate.

(3) The comprehensive plan shall include—

(A) a prioritization of research areas critical to the commercialization of electric motor vehicles, including advanced battery technology;

(B) the program elements, management structure, and activities, including program responsibilities, of Federal agencies;

(C) the program strategies, including technical milestones to be achieved toward specific goals during each fiscal year of the comprehensive plan for all major activities and projects;

(D) the estimated costs of individual program elements, including estimated costs for each of the fiscal years of the comprehensive plan for each of the participating Federal agencies;

(E) a description of the methods of technology transfer;

(F) a proposal for participation by non-Federal entities in the implementation of the comprehensive plan; and

(G) such other information as the Secretary considers appropriate.

(4) Not later than 180 days after October 24, 1992, the Secretary shall transmit the comprehensive plan to the Congress. Biennial updates shall be submitted to the Congress.

(c) Cooperative agreements

The Secretary, consistent with the comprehensive plan under subsection (b) of this section, may enter into cooperative agreements to conduct research and development projects with industry in such areas of technology development as—

(1) high efficiency electric power trains, including advanced motors, motor controllers, and hybrid power trains for electric motor vehicle range improvement;

(2) light-weight structures for electric motor vehicle weight reduction;

(3) advanced batteries with high energy density and power density, and improved range or recharging cycles for a given unit weight, for electric motor vehicle application;

(4) hybrid power trains incorporating an electric motor and recyclable battery charged by an onboard liquid fuel engine, designed to significantly improve fuel economies while maintaining acceleration characteristics comparable to a conventionally fueled vehicle;

(5) batteries and fuel cells for electric-hybrid vehicle application;

(6) fuel cells and fuel cell systems for primary electric motor vehicle power sources; and

(7) photovoltaics for use with electric motor vehicles.

(d) Solicitation of proposals

(1) Within one year after October 24, 1992, the Secretary shall solicit proposals for cooperative agreements for research and development under subsection (c) of this section.

(2) Thereafter, the Secretary may solicit additional proposals for cooperative agreements under subsection (c) of this section if, in the judgment of the Secretary, such cooperative agreements could contribute to the development of electric motor vehicles and associated equipment.

(e) Cost-sharing

(1) The Secretary shall require at least 50 percent of the costs directly and specifically related to any cooperative agreement under this section, other than a cooperative agreement under subsection (j) of this section, to be from non-Federal sources. Such share may be in the form of cash, personnel, services, equipment, and other resources.

(2) The Secretary may reduce the amount of costs required to be provided by non-Federal sources under paragraph (1), if the Secretary determines that the reduction is necessary and appropriate—

(A) considering the technological risks involved in the project; and

(B) in order to meet the objectives of this section.

(f) Deployment

(1) The Secretary shall conduct a program designed to accelerate deployment of advanced battery technologies for use with electric motor vehicles.

(2) In carrying out the program authorized by this subsection, the Secretary shall—

(A) undertake an inventory and assessment of advanced battery technologies and electric motor vehicle technologies and the commercial capability of such technologies; and

(B) develop a Federal industry information exchange program to improve the deployment or use of such technologies, which may consist of workshops, publications, conferences, and a data base for use by the public and private sectors.

(g) Domestic parts manufacturers

In carrying out this section, the Secretary, in consultation with the Secretary of Commerce, shall issue regulations to ensure that the procurement practices of participating electric motor vehicle and associated equipment manufacturers do not discriminate against the United States manufacturers of vehicle parts.

(h) Hold harmless

Nothing in this section shall be construed to alter, affect, modify, or change any activities or agreements initiated prior to October 24, 1992, with domestic motor vehicle manufacturers through joint venture or consortium agreements regarding batteries for electric motor vehicles.

(i) Consultation

The Secretary shall consult with the Administrator of the Environmental Protection Agency and the Secretary of Transportation in carrying out this section.

(j) Fuel cells for transportation

(1) The Secretary shall develop and implement a comprehensive program of research, development, and demonstration of fuel cells and related systems for transportation applications through the establishment of one or more cooperative programs among industry, government, and research institutions to develop and demonstrate the use of fuel cells as the primary power source for private and mass transit vehicles and other mobile applications.

(2) Research, development, and demonstration activities under this subsection shall be designed to incorporate one or more of the following priorities:

(A) The potential for near-term to mid-term commercialization.

(B) The ability of the systems to use a variety of renewable and nonfossil fuels.

(C) Emission reduction and energy conservation potential.

(D) The potential to utilize fuel cells and fuel cell systems developed under Department of Defense and National Aeronautics and Space Administration programs.

(E) The potential to take maximum practical advantage of advances made in electric motor vehicle research, stationary source fuel cell research, and other research activities authorized by this subchapter.

(3)(A) Research, development, and demonstration projects selected by the Secretary under this subsection shall apply to—

- (i) passenger vehicles;
- (ii) vans and utility vehicles;
- (iii) light rail systems and locomotives;
- (iv) trucks, including long-haul trucks, dump trucks, and garbage trucks;
- (v) passenger buses;
- (vi) non-chlorofluorocarbon mobile refrigeration systems;
- (vii) marine vessels, including recreational marine engines; or
- (viii) mobile engines and power generation, including recreational generators, and industrial and construction equipment.

(B) The Secretary shall establish programs to undertake research, development, and demonstration activities for the applications listed in clauses (i) through (viii) of subparagraph (A) in each of fiscal years 1993, 1994, 1995, and 1996, based on the priorities established in paragraph (2), so that by the end of the period, research, development, and demonstration activities are under way for the applications under each such clause. The initiatives authorized and implemented pursuant to this subsection shall be in addition to any other fuel cell programs authorized in existing law.

(k) Definitions

For purposes of this section—

(1) the term “advanced battery technology” means electrochemical storage devices and systems, including fuel cells, and associated technology necessary to charge, discharge, recharge, or regenerate such devices, for use as a source of power for an electric motor vehicle and any other associated equipment;

(2) the term “associated equipment” means equipment necessary for the regeneration, re-

fueling, or recharging of batteries or other forms of electric energy used to power an electric motor vehicle and, in the case of electric-hybrid vehicles, such term includes nonpetroleum-related equipment necessary for, and solely related to, the demonstration of such vehicles;

(3) the term “electric motor vehicle” means a motor vehicle primarily powered by an electric motor that draws current from rechargeable storage batteries, fuel cells, photovoltaic arrays, or other sources of electric current and may include an electric-hybrid vehicle; and

(4) the term “electric-hybrid vehicle” means vehicle primarily powered by an electric motor that draws current from rechargeable storage batteries, fuel cells, or other sources of electric current and also relies on a non-electric source of power that also operates on or is capable of operating on a nonelectrical source of power.

(Pub. L. 102-486, title XX, § 2025, Oct. 24, 1992, 106 Stat. 3063; Pub. L. 105-362, title IV, § 402(a), Nov. 10, 1998, 112 Stat. 3283.)

REFERENCES IN TEXT

The Federal Nonnuclear Energy Research and Development Act of 1974, referred to in subsec. (a), is Pub. L. 93-577, Dec. 31, 1974, 88 Stat. 1878, as amended, which is classified generally to chapter 74 (§ 5901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5901 of this title and Tables.

AMENDMENTS

1998—Subsec. (b)(1). Pub. L. 105-362, § 402(a)(1), substituted “biennially” for “annually” in second sentence.

Subsec. (b)(4). Pub. L. 105-362, § 402(a)(2), substituted “Biennial updates” for “Annual updates” in second sentence.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13431 of this title.

§ 13436. Repealed. Pub. L. 104-271, title I, § 103(b)(2), Oct. 9, 1996, 110 Stat. 3306

Section, Pub. L. 102-486, title XX, § 2026, Oct. 24, 1992, 106 Stat. 3066; Pub. L. 104-271, title I, § 103(b)(1), Oct. 9, 1996, 110 Stat. 3306, related to a 5-year program on renewable hydrogen energy systems.

EFFECTIVE DATE OF REPEAL

Pub. L. 104-271, title I, § 103(b)(2), Oct. 9, 1996, 110 Stat. 3306, provided that the repeal made by section 103(b)(2) is effective Oct. 1, 1998.

§ 13437. Advanced diesel emissions program**(a) Program direction**

The Secretary shall initiate a 5-year program, in accordance with sections 13541 and 13542 of this title, on diesel engine combustion and engine systems, related advanced materials, and fuels and lubricants to reduce emissions oxides of nitrogen and particulates. Activities conducted under this program shall supplement activities of a similar nature at the Department of Energy. Such program shall include field demonstrations of sufficient scale and number in operating environments to prove technical and economic viability to meet the goal stated in subsection (b) of this section.

(b) Program goal

The goal of the program established under subsection (a) of this section shall be to accelerate the ability of United States diesel manufacturers to meet current and future oxides of nitrogen and particulate emissions requirements.

(c) Program plan

Within 180 days after October 24, 1992, the Secretary, in consultation with appropriate representatives of industry, institutions of higher education, Federal agencies, including national laboratories, and professional and technical societies, shall prepare and submit to the Congress a 5-year program plan to guide the activities under this section. Such plan shall be included as part of the plan required by section 13431(b) of this title.

(d) Solicitation of proposals

Within 1 year after October 24, 1992, the Secretary shall solicit proposals for conducting activities consistent with the 5-year program plan. (Pub. L. 102-486, title XX, §2027, Oct. 24, 1992, 106 Stat. 3066.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13431 of this title.

§ 13438. Telecommuting study**(a) Study**

The Secretary, in consultation with the Secretary of Transportation, shall conduct a study of the potential costs and benefits to the energy and transportation sectors of telecommuting. The study shall include—

- (1) an estimation of the amount and type of reduction of commuting by form of transportation type and numbers of commuters;
- (2) an estimation of the potential number of lives saved;
- (3) an estimation of the reduction in environmental pollution, in consultation with the Environmental Protection Agency;
- (4) an estimation of the amount and type of reduction of energy use and savings by form of transportation type; and
- (5) an estimation of the social impact of widespread use of telecommuting.

(b) Report to Congress

This study shall be completed no more than one hundred and eighty days after October 24, 1992. A report, summarizing the results of the study, shall be transmitted to the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate no more than sixty days after completion of this study.

(Pub. L. 102-486, title XX, §2028, Oct. 24, 1992, 106 Stat. 3067.)

SUBCHAPTER IX—ENERGY AND ENVIRONMENT

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 5905, 13522, 13525 of this title.

PART A—IMPROVED ENERGY EFFICIENCY

§ 13451. General improved energy efficiency**(a) Program direction**

The Secretary shall conduct a 5-year program, in accordance with sections 13541 and 13542 of this title, on cost effective technologies to improve energy efficiency and increase the use of renewable energy in the buildings, industrial, and utility sectors. Such program shall include a broad range of technological approaches, and shall include field demonstrations of sufficient scale and number to prove technical and economic viability to meet the goals stated in section 13401 of this title. Such program shall include the activities required under sections 13452, 13453, 13454, 13455, 13456, and 13457 of this title and section 2106¹ and ongoing activities of a similar nature at the Department of Energy. Such program shall also include the activities conducted pursuant to the Steel and Aluminum Energy Conservation and Technology Competitiveness Act of 1988 (Public Law 100-680) [15 U.S.C. 5101 et seq.] and the Department of Energy Metal Casting Competitiveness Research Act of 1990 (Public Law 101-425) [15 U.S.C. 5301 et seq.].

(b) Program goals

The goals of the program established under subsection (a) of this section shall include—

- (1) in the buildings sector—
 - (A) to accelerate the development of technologies that will increase energy efficiency;
 - (B) to increase the use of renewable energy; and
 - (C) to reduce environmental impacts;
- (2) in the industrial sector—
 - (A) to accelerate the development of technologies that will increase energy efficiency in order to improve productivity;
 - (B) to increase the use of renewable energy; and
 - (C) to reduce environmental impacts; and
- (3) in the utility sector—
 - (A) to accelerate the development of technologies that will increase energy efficiency; and
 - (B) to increase the use of integrated resource planning.

(c) Program plan

Within 180 days after October 24, 1992, the Secretary shall prepare and submit to the Congress a 5-year program plan to guide activities under this part. In preparing the program plan, the Secretary shall consult with appropriate representatives of industry, utilities, institutions of higher education, Federal agencies, including national laboratories, and professional and technical societies.

(d) Proposals

Within 1 year after October 24, 1992, the Secretary shall solicit proposals for conducting activities under this section.

(e) Authorization of appropriations

There are authorized to be appropriated to the Secretary for carrying out this part, including

¹ See References in Text note below.

all building, industry, and utility sectors energy conservation research and development, and inventions and innovation under energy conservation technical and financial assistance, \$178,250,000 for fiscal year 1993 and \$275,000,000 for fiscal year 1994.

(Pub. L. 102-486, title XXI, § 2101, Oct. 24, 1992, 106 Stat. 3067.)

REFERENCES IN TEXT

Section 2106, referred to in subsec. (a), means section 2106 of Pub. L. 102-486, which amended sections 5103, 5107, 5108, 5110, and 5307 of Title 15, Commerce and Trade.

The Steel and Aluminum Energy Conservation and Technology Competitiveness Act of 1988, referred to in subsec. (a), is Pub. L. 100-680, Nov. 17, 1988, 102 Stat. 4073, as amended, which is classified generally to chapter 77 (§ 5101 et seq.) of Title 15. For complete classification of this Act to the Code, see Short Title note set out under section 5101 of Title 15 and Tables.

The Department of Energy Metal Casting Competitiveness Research Act of 1990, referred to in subsec. (a), is Pub. L. 101-425, Oct. 15, 1990, 104 Stat. 915, as amended, which is classified generally to chapter 79 (§ 5301 et seq.) of Title 15. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of Title 15 and Tables.

This part, referred to in subsections (c) and (e), was in the original "this subtitle" meaning subtitle A of title XXI of Pub. L. 102-486, Oct. 24, 1992, 106 Stat. 3067, which enacted this part and amended sections 5103, 5107, 5108, 5110, and 5307 of Title 15.

DISTRICT HEATING AND COOLING PROGRAMS

Section 172 of Pub. L. 102-486 provided that:

"(a) IN GENERAL.—The Secretary, in consultation with appropriate industry organizations, shall conduct a study to—

"(1) assess existing district heating and cooling technologies to determine cost-effectiveness, technical performance, energy efficiency, and environmental impacts as compared to alternative methods for heating and cooling buildings;

"(2) estimate the economic value of benefits that may result from implementation of district heating and cooling systems but that are not currently recognized, such as reduced emissions of air pollutants, local economic development, and energy security;

"(3) evaluate the cost-effectiveness, including the economic value referred to in paragraph (2), of cogenerated district heating and cooling technologies compared to other alternatives for generating or conserving electricity; and

"(4) assess and make recommendations for reducing institutional and other constraints on the implementation of district heating and cooling systems.

"(b) REPORT.—Not later than 2 years after the date of the enactment of this Act [Oct. 24, 1992], the Secretary shall transmit to the Congress a report containing the findings, conclusions and recommendations, if any, of the Secretary for carrying out Federal, State, and local programs as a result of the study conducted under subsection (a)."

STUDY AND REPORT ON VIBRATION REDUCTION TECHNOLOGIES

Pub. L. 102-486, title I, § 173, Oct. 24, 1992, 106 Stat. 2865, as amended by Pub. L. 105-362, title IV, § 401(c), Nov. 10, 1998, 112 Stat. 3282, provided that:

"(a) IN GENERAL.—The Secretary shall, in consultation with the appropriate industry representatives, conduct a study to assess the cost-effectiveness, technical performance, energy efficiency, and environmental impacts of active noise and vibration cancellation technologies that use fast adapting algorithms.

"(b) PROCEDURE.—In carrying out such study, the Secretary shall—

"(1) estimate the potential for conserving energy and the economic and environmental benefits that may result from implementing active noise and vibration abatement technologies in demand side management; and

"(2) evaluate the cost-effectiveness of active noise and vibration cancellation technologies as compared to other alternatives for reducing noise and vibration.

"(c) DEMONSTRATION.—The Secretary may, based on the findings and conclusions of the study carried out under this section, conduct at least one project designed to demonstrate the commercial application of active noise and vibration cancellation technologies using fast adapting algorithms in products or equipment with a significant potential for increased energy efficiency."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13472, 13501, 13502 of this title; title 15 sections 5108, 5307.

§ 13452. Natural gas and electric heating and cooling technologies

(a) Program direction

(1) The Secretary shall conduct a 5-year program, in accordance with sections 13541 and 13542 of this title, on energy efficient natural gas and electric heating and cooling technologies for residential and commercial buildings.

(2) The natural gas heating and cooling program shall include activities on—

(A) thermally activated heat pumps, including absorption heat pumps and engine-driven heat pumps; and

(B) other advanced natural gas technologies, including fuel cells for residential and commercial applications.

(3) The electric heating and cooling program shall focus on—

(A) advanced heat pumps;

(B) thermal storage; and

(C) advanced electric HVAC (heating, ventilating, and air conditioning) and refrigeration systems that utilize replacements for chlorofluorocarbons.

(b) Proposals

Within 180 days after October 24, 1992, the Secretary shall solicit proposals for conducting activities under this section.

(Pub. L. 102-486, title XXI, § 2102, Oct. 24, 1992, 106 Stat. 3068.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13451 of this title.

§ 13453. Pulp and paper

(a) Program direction

The Secretary shall conduct a 5-year program, in accordance with sections 13541 and 13542 of this title, on advanced pulp and paper technologies. Such program shall include activities on energy generation technologies, boilers, combustion processes, pulping processes (excluding de-inking), chemical recovery, causticizing, source reduction processes, and other related technologies that can improve the energy efficiency of, and reduce the adverse environmental

impacts of, pulp and papermaking operations. This section does not authorize projects involving the combustion of waste paper, other than gasification.

(b) Proposals

Within 180 days after October 24, 1992, the Secretary shall solicit proposals for conducting activities under this section.

(Pub. L. 102-486, title XXI, §2103, Oct. 24, 1992, 106 Stat. 3069.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13451 of this title.

§ 13454. Advanced buildings for 2005

(a) Program direction

The Secretary shall initiate a 5-year program, in accordance with sections 13541 and 13542 of this title, to increase building energy efficiency, while maintaining affordability, by the year 2005. Such program shall include activities on—

- (1) building design, design methods, and construction techniques;
- (2) building materials, including recycled materials, and components;
- (3) on-site energy supply conversion systems such as photovoltaics;
- (4) automated energy management systems;
- (5) methods of evaluating performance; and
- (6) insulation products manufactured with nonozone depleting materials.

(b) Proposals

(1) Solicitation

Within 1 year after October 24, 1992, the Secretary shall solicit proposals for conducting activities under this section.

(2) Contents of proposals

Proposals submitted under this subsection shall include and be judged upon—

- (A) evidence of knowledge of current building practices in the United States and in other countries;
- (B) an explanation of how the proposal will encourage the commercialization of the technologies resulting from activities in subsection (a) of this section;
- (C) evidence of consideration of collaboration with Department of Energy national laboratories;
- (D) evidence of collaboration with relevant industry or other groups or organizations; and
- (E) a demonstration of the ability of the proposers to undertake and complete the project proposed.

(Pub. L. 102-486, title XXI, §2104, Oct. 24, 1992, 106 Stat. 3069.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13451 of this title.

§ 13455. Electric drives

(a) Program

The Secretary shall conduct a 5-year program, in accordance with sections 13541 and 13542 of

this title, to increase the efficiency of electric drive technologies, including adjustable speed drives, high speed motors, and high efficiency motors.

(b) Proposals

Within 1 year after October 24, 1992, the Secretary shall solicit proposals for projects under this section.

(Pub. L. 102-486, title XXI, §2105, Oct. 24, 1992, 106 Stat. 3070.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13451 of this title.

§ 13456. Improving efficiency in energy-intensive industries

(a) Secretarial action

The Secretary, in accordance with sections 13541 and 13542 of this title, shall—

- (1) pursue a research, development, demonstration and commercial application program intended to improve energy efficiency and productivity in energy-intensive industries and industrial processes; and
- (2) undertake joint ventures to encourage the commercialization of technologies developed under paragraph (1).

(b) Joint ventures

(1) The Secretary shall—

- (A) conduct a competitive solicitation for proposals from private firms and investors for such joint ventures under subsection (a)(2) of this section; and
- (B) provide financial assistance to at least five such joint ventures.

(2) The purpose of the joint ventures shall be to design, test, and demonstrate changes to industrial processes that will result in improved energy efficiency and productivity. The joint ventures may also demonstrate other improvements of benefit to such industries so long as demonstration of energy efficiency improvements is the principal objective of the joint venture.

(3) In evaluating proposals for financial assistance and joint ventures under this section, the Secretary shall consider—

- (A) whether the activities conducted under this section improve the quality and energy efficiency of industries or industrial processes;
- (B) the regional distribution of the energy-intensive industries and industrial processes; and
- (C) whether the proposed joint venture project would be located in the region which has the energy-intensive industry and industrial processes that would benefit from the project.

(Pub. L. 102-486, title XXI, §2107, Oct. 24, 1992, 106 Stat. 3070.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13451 of this title.

§ 13457. Energy efficient environmental program

(a) Program direction

The Secretary, in consultation with the Administrator of the Environmental Protection

Agency, is authorized to continue to carry out a 5-year program to improve the energy efficiency and cost effectiveness of pollution prevention technologies and processes, including source reduction and waste minimization technologies and processes. The purposes of this section shall be to—

- (1) apply a systems approach to minimizing adverse environmental effects of industrial production in the most cost effective and energy efficient manner; and
- (2) incorporate consideration of the entire materials and energy cycle with the goal of minimizing adverse environmental impacts.

(b) Identification of opportunities

Within 9 months after October 24, 1992, the Secretary, in consultation with the Administrator of the Environmental Protection Agency, shall identify opportunities for the demonstration of energy efficient pollution prevention technologies and processes.

(c) Report

Within 1 year after October 24, 1992, the Secretary shall submit a report to Congress evaluating the opportunities identified under subsection (b) of this section. Such report shall include—

- (1) an assessment of the technologies available to increase productivity and simultaneously reduce the consumption of energy and material resources and the production of wastes;
- (2) an assessment of the current use of such technologies by industry in the United States;
- (3) the status of any such technologies currently being developed, together with projected schedules of their commercial availability;
- (4) the energy savings resulting from the use of such technologies;
- (5) the environmental benefits of such technologies;
- (6) the costs of such technologies;
- (7) an evaluation of any existing Federal or State regulatory disincentives for the employment of such technologies; and
- (8) an evaluation of any other barriers to the use of such technologies.

In preparing the report required by this subsection, the Secretary shall consult with the Administrator of the Environmental Protection Agency, any other Federal, State, or local official the Secretary considers necessary, representatives of appropriate industries, members of organizations formed to further the goals of environmental protection or energy efficiency, and other appropriate interested members of the public, as determined by the Secretary.

(d) Proposals

Within 1 year after October 24, 1992, the Secretary, in consultation with the Administrator of the Environmental Protection Agency, shall solicit proposals for activities under this section. Proposals selected under this subsection shall demonstrate—

- (1) technical viability and cost effectiveness; and
- (2) procedures for technology transfer and information outreach during and after completion of the project.

(Pub. L. 102-486, title XXI, § 2108, Oct. 24, 1992, 106 Stat. 3071.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13451 of this title.

§ 13458. Energy efficient lighting and building centers

(a) Purpose

The purpose of this section is to encourage energy efficiency in buildings through the establishment of regional centers to promote energy efficient lighting, heating and cooling, and building design.

(b) Grants for establishment

Not later than 18 months after October 24, 1992, the Secretary shall make grants to nonprofit institutions, or to consortiums that may include nonprofit institutions, State and local governments, universities, and utilities, to establish or enhance one regional building energy efficiency center (hereafter in this section referred to as a "regional center") in each of the 10 regions served by a Department of Energy regional support office.

(c) Permitted activities

Each regional center established under this section may—

- (1) provide information, training, and technical assistance to building professionals such as architects, designers, engineers, contractors, and building code officials, on building energy efficiency methods and technologies, including lighting, heating and cooling, and passive solar;
- (2) operate an outreach program to inform such building professionals of the benefits and opportunities of energy efficiency, and of the services of the center;
- (3) provide displays demonstrating building energy efficiency methods and technologies, such as lighting, windows, and heating and cooling equipment;
- (4) coordinate its activities and programs with other institutions within the region, such as State and local governments, utilities, and educational institutions, in order to support their efforts to promote building energy efficiency;
- (5) serve as a clearinghouse to ensure that information about new building energy efficiency technologies, including case studies of successful applications, is disseminated to end-users in the region;
- (6) study the building energy needs of the region and make available region-specific energy efficiency information to facilitate the adoption of cost-effective energy efficiency improvements;
- (7) assist educational institutions in establishing building energy efficiency engineering and technical programs and curricula; and
- (8) evaluate the performance of the center in promoting building energy efficiency.

(d) Application

Any nonprofit institution or consortium interested in receiving a grant under this section shall submit to the Secretary an application in

such form and containing such information as the Secretary may require. A lighting or building energy center in existence on October 24, 1992, which is owned and operated by a nonprofit institution or a consortium as described in subsection (b) of this section shall be eligible for a grant under this section.

(e) Selection criteria

The Secretary shall select recipients of grants under this section on the basis of the following criteria:

(1) The capability of the grant recipient to establish a board of directors for the regional center composed of representatives from utilities, State and local governments, building trade and professional organizations, manufacturers, and nonprofit energy and environmental organizations.

(2) The demonstrated or potential resources available to the grant recipient for carrying out this subsection.

(3) The demonstrated or potential ability of the grant recipient to promote building energy efficiency by carrying out the activities specified in subsection (c) of this section.

(4) The activities which the grant recipient proposes to carry out under the grant.

(f) Requirement of matching funds

(1) Federal share

The Federal share of a grant under this section shall be no more than 50 percent of the costs of establishing, and no more than 25 percent of the cost of operating the regional center.

(2) Non-Federal contributions

No grant may be made under this section in any fiscal year unless the recipient of such grant enters into such agreements with the Secretary as the Secretary may require to ensure that such recipient will provide the necessary non-Federal contributions. Such non-Federal contributions may be provided by utilities, State and local governments, nonprofit institutions, foundations, corporations, and other non-Federal entities.

(g) Task force

The Secretary shall establish a task force to—

(1) advise the Secretary on activities to be carried out by grant recipients;

(2) review and evaluate programs carried out by grant recipients; and

(3) make recommendations regarding the building energy efficiency center grant program.

(h) Membership terms and administration of task force

(1) In general

The task force shall be composed of approximately 20 members, appointed by the Secretary, with expertise in the area of building energy efficiency, including representatives from—

(A) State or local energy offices;

(B) utilities;

(C) building construction trade or professional associations;

(D) architecture, engineering or professional associations;

(E) building component or equipment manufacturers;

(F) from¹ national laboratories;

(G) building code officials or professional associations; and

(H) nonprofit energy or environmental organizations.

(2) Geographic representation

The Secretary shall ensure that there is broad geographical representation among task force members.

(3) Terms

Members shall be appointed for a term of 3 years. A vacancy in the task force shall be filled in the manner in which the original appointment was made.

(4) Pay

Members shall serve without pay. Each member shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5.

(5) Chairperson

The Chairperson and Vice Chairperson of the task force shall be elected by the members.

(6) Meetings

The task force shall meet biannually and at the call of the Chairperson.

(7) Inapplicability of termination date

Section 14 of the Federal Advisory Committee Act shall not apply to the task force.

(i) Omitted

(j) Authorization of appropriations

There is authorized to be appropriated for purposes of carrying out this section, to remain available until expended, not more than \$10,000,000 for each of fiscal years 1994, 1995, and 1996.

(Pub. L. 102-486, title I, §103, Oct. 24, 1992, 106 Stat. 2789.)

REFERENCES IN TEXT

Section 14 of the Federal Advisory Committee Act, referred to in subsec. (h)(7), is section 14 of Pub. L. 92-463, which is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

Subsec. (i) of this section, which required the Secretary to transmit annually to Congress a report on the activities of regional centers established under this section, including the degree to which matching funds are being leveraged from private sources to establish and operate such centers, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, the 6th item on page 88 of House Document No. 103-7.

Section was enacted as part of title I of the Energy Policy Act, and not as part of title XXI of that Act which comprises this subchapter.

PART B—ELECTRICITY GENERATION AND USE

§ 13471. Renewable energy

(a) Program direction

The Secretary shall conduct a comprehensive 5-year program, in accordance with sections

¹ So in original. The word "from" probably should not appear.

13541 and 13542 of this title, to provide cost-effective options for the generation of electricity from renewable energy sources for grid and non-grid application, including field demonstrations of sufficient scale and number in operating environments to prove technical and economic feasibility for providing cost effective generation and for meeting the goal stated in section 13401(3) of this title and section 13382(a)(4) of this title.

(b) Program plan

Within 180 days after October 24, 1992, the Secretary shall prepare and submit to the Congress a 5-year program plan to guide the activities under this section. In preparing the program plan, the Secretary shall consult with appropriate representatives of industry, institutions of higher education, Federal agencies, including national laboratories, and professional and technical societies.

(c) Authorization of appropriations

There are authorized to be appropriated to the Secretary for carrying out this section, including all solar energy programs (other than activities under section 13431 of this title), geothermal systems, electric energy systems, and energy storage systems, \$208,975,000 for fiscal year 1993 and \$275,000,000 for fiscal year 1994.

(Pub. L. 102-486, title XXI, §2111, Oct. 24, 1992, 106 Stat. 3072.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13477, 13479, 13501 of this title.

§ 13472. High efficiency heat engines

(a) Program direction

The Secretary shall conduct a 5-year program, in accordance with sections 13541 and 13542 of this title, to improve the efficiency of heat engines. Such program shall—

- (1) include field demonstrations of sufficient scale and number so as to demonstrate technical and economic feasibility;
- (2) incorporate materials that increase engine efficiency; and
- (3) cover advanced engine designs for electric and industrial power generation for a range of small-, mid-, and large-scale applications, including—
 - (A) mechanically recuperated gas turbines;
 - (B) intercooled gas turbines with steam injection or recuperation;
 - (C) gas turbines utilizing reformed fuels or hydrogen; and
 - (D) high efficiency, simple cycle gas turbines.

(b) Program goal

The goal of the program established under subsection (a) of this section shall be to develop heat engines that can achieve over 50 percent efficiency in the mid-term.

(c) Program plan

Within 180 days after October 24, 1992, the Secretary shall prepare and submit to the Congress a 5-year program plan, to be included in the plan required under section 13451(c) of this title, to

guide the activities under this section. In preparing the program plan, the Secretary shall consult with appropriate representatives of industry, institutions of higher education, Federal agencies, including the Environmental Protection Agency and national laboratories, and professional and technical societies.

(d) Proposals

Within 1 year after October 24, 1992, the Secretary shall solicit proposals for conducting activities under this section.

(e) Authorization of appropriations

There are authorized to be appropriated to the Secretary for carrying out this section such sums as may be necessary to be derived from sums authorized under section 13451(e) of this title.

(Pub. L. 102-486, title XXI, §2112, Oct. 24, 1992, 106 Stat. 3072.)

§ 13473. Civilian nuclear waste

(a) Study

The Secretary shall conduct a study of the potential for minimizing the volume and toxic lifetime of nuclear waste, including an analysis of the viability of existing technologies and an assessment of the extent of research and development required for new technologies.

(b) Program

Based on the results of the study required under subsection (a) of this section, the Secretary shall prepare and submit to Congress a 5-year program plan for carrying out a program of research and development on new technologies for minimizing the volume and toxic lifetime of, and thereby mitigating hazards associated with, nuclear waste.

(c) Authorization of appropriations

There are authorized to be appropriated to the Secretary for carrying out this section \$4,700,000 for fiscal year 1993 and such sums as may be necessary for fiscal year 1994.

(Pub. L. 102-486, title XXI, §2113, Oct. 24, 1992, 106 Stat. 3073.)

§ 13474. Fusion energy

(a) Program

The Secretary shall conduct a fusion energy 5-year program, in accordance with sections 13541 and 13542 of this title, that by the year 2010 will result in a technology demonstration which verifies the practicability of commercial electric power production.

(b) Program goals

The goals of the program established under subsection (a) of this section shall include—

- (1) a broad based fusion energy program;
- (2) United States participation in the Engineering Design Activity of the International Thermonuclear Experimental Reactor (ITER) program and in the related research and technology development efforts;
- (3) the development of technology for fusion power and industrial participation in the development of such technology;

(4) the design and construction of a major new machine for fusion research and technology development consistent with paragraphs (2) and (3); and

(5) research and development for Inertial Confinement Fusion Energy and development of a Heavy Ion Inertial Confinement Fusion experiment.

(c) Management plan

(1) Within 180 days after October 24, 1992, the Secretary shall prepare a comprehensive management plan for the fusion energy program. The plan shall include specific program objectives, milestones and schedules for technology development, and cost estimates and program management resource requirements.

(2) The plan shall also include a description of—

(A) United States participation in the Engineering Design Activity of ITER, including industrial participation;

(B) potential United States participation in the construction and operation of an ITER facility; and

(C) the requirements needed to build and test an inertial fusion energy reactor for the purpose of power production.

(3) As part of the plan required under paragraph (1), the Secretary shall evaluate the status of international fusion programs and evaluate whether the Federal Government should initiate efforts to strengthen existing international cooperative agreements in fusion energy or enter into new cooperative agreements to accomplish the purposes of this section.

(4) The plan shall also evaluate the extent to which university or private sector participation is appropriate or necessary in order to carry out the purposes of this section.

(5) The President shall include in the budget submitted to the Congress each year under section 1105 of title 31 a report prepared by the Secretary describing the progress made in meeting the program objectives, milestones, and schedules established in the management plan. Each such report shall also describe the organization of the program, the personnel assigned and funds committed to the program, and expenditures made in carrying out the program objectives. The report shall be submitted with the plan required under section 13523 of this title.

(d) Authorization of appropriations

There are authorized to be appropriated to the Secretary for carrying out this section \$339,710,000 for fiscal year 1993 and \$380,000,000 for fiscal year 1994.

(Pub. L. 102-486, title XXI, §2114, Oct. 24, 1992, 106 Stat. 3073; Pub. L. 104-66, title I, §1052(i), Dec. 21, 1995, 109 Stat. 719.)

AMENDMENTS

1995—Subsec. (c)(5). Pub. L. 104-66 inserted first sentence and struck out former first sentence which read as follows: “Within 1 year after October 24, 1992, and every 2 years thereafter, the Secretary shall issue a report describing the progress made in meeting the program objectives, milestones, and schedules established in the management plan.”

§ 13475. Fuel cells

(a) Program direction

The Secretary shall conduct a 5-year program, in accordance with sections 13541 and 13542 of this title, on efficient and environmentally benign power generation using fuel cells. The program may include activities on molten carbonate, solid oxide, including tubular, monolithic, and planar technologies, and advanced concepts.

(b) Program goal

The goal of the program established under subsection (a) of this section is the development of cost-effective, efficient, and environmentally benign fuel cell systems which will operate on fossil fuels in multiple end use sectors.

(c) Authorization of appropriations

There are authorized to be appropriated to the Secretary for carrying out this section \$51,555,000 for fiscal year 1993 and \$56,000,000 for fiscal year 1994.

(Pub. L. 102-486, title XXI, §2115, Oct. 24, 1992, 106 Stat. 3074.)

§ 13476. Environmental restoration and waste management program

(a) Authorization of appropriations

There are authorized to be appropriated to the Secretary for fiscal year 1993 \$70,000,000 for the Fast Flux Test Facility to maintain the operational status of the reactor, such sums to be derived from amounts appropriated to the Secretary for the environmental restoration and waste management program.

(b) Long-term missions

The Secretary shall aggressively pursue the development and implementation of long-term missions for the Fast Flux Test Facility. Within 6 months after October 24, 1992, the Secretary shall submit to the Congress a report on the progress made in carrying out this subsection.

(Pub. L. 102-486, title XXI, §2116, Oct. 24, 1992, 106 Stat. 3075.)

§ 13477. High-temperature superconductivity program

(a) Program

The Secretary shall carry out a 5-year program, in accordance with sections 13541 and 13542 of this title, on high-temperature superconducting electric power equipment technologies. Elements of the program shall include, but are not limited to—

(1) activities that address the development of high-temperature superconducting materials that have increased electrical current capacity, which shall be the emphasis of the program for the near-term;

(2) the development of prototypes, where appropriate, of the major elements of a superconducting electric power system such as motors, generators, transmission lines, transformers, and magnetic energy storage systems;

(3) activities that will improve the efficiency of materials performance of higher temperatures and at all magnetic field orientations;

(4) development of prototypes based on high-temperature superconducting wire, that operate at the highest temperature possible, and refrigeration systems using cryogenics such as nitrogen;

(5) activities that will assist the private sector with designs for more efficient electric power generation and delivery systems which are cost competitive with conventional energy systems; and

(6) development of prototypes that have application in both the commercial and defense sectors.

The Secretary is also encouraged to expedite government, laboratory, industry, and university collaborative agreements under existing mechanisms at the Department of Energy in coordination with other Federal agencies.

(b) Authorization of appropriations

There are authorized to be appropriated to the Secretary for carrying out this section \$21,900,000 for fiscal year 1993 and such sums as may be necessary for subsequent fiscal years, to be derived from sums authorized under section 13471(c) of this title.

(Pub. L. 102-486, title XXI, §2117, Oct. 24, 1992, 106 Stat. 3075.)

§ 13478. Electric and magnetic fields research and public information dissemination program

(a) Program

The Secretary shall, in accordance with this section (including the agenda developed under subsection (d)(1)(A) of this section) and within 2 months after October 24, 1992, establish a comprehensive program to—

(1) determine whether or not exposure to electric and magnetic fields produced by the generation, transmission, and use of electric energy affects human health;

(2) carry out research, development, and demonstration with respect to technologies to mitigate any adverse human health effects; and

(3) provide for dissemination of information described in subsection (b)(1) of this section to the public.

(b) Contents

The program shall provide for—

(1) collection, compilation, publication, and dissemination of scientifically valid information on—

(A) possible human health effects of electric and magnetic fields;

(B) the types and extent of human exposure to electric and magnetic fields in various occupational and residential settings;

(C) technologies to measure and characterize electric and magnetic fields; and

(D) methods to assess and manage exposure to electric and magnetic fields;

(2)(A) research on mechanisms by which electric and magnetic fields interact with biological systems; and

(B) epidemiological research on the possible human health effects of electric and magnetic fields; and

(3) research, development, and demonstration with respect to—

(A) technologies to improve the measurement and characterization of electric and magnetic fields; and

(B) techniques to assess and manage exposure to electric and magnetic fields.

(c) Role of Director

(1) Role of Director

The Secretary of Health and Human Services, acting through the Director, shall have sole responsibility under the program for research on possible human health effects of electric and magnetic fields. The Director may delegate this responsibility to the extent the Director determines appropriate.

(2) Agreement

Within 6 months after October 24, 1992, the Secretary shall enter into an agreement with the Secretary of Health and Human Services to carry out, through the Director, the information activities under subsection (b)(1)(A) of this section and the research under subsection (b)(2) of this section.

(3) Actions of Director

The actions of the Director in carrying out research and information responsibilities under this section shall not be subject to approval by the Secretary.

(4) Transfer of funds

The Secretary is authorized, subject to appropriations Acts, to transfer funds to the Director to carry out the Director's responsibilities under paragraph (2).

(5) Report

The Director shall report, by June 1, 1995, and by March 31, 1998, and as appropriate, to the Interagency Committee established under subsection (d) of this section and to Congress the findings and conclusions of the Director on the extent to which exposure to electric and magnetic fields produced by the generation, transmission, or use of electric energy affects human health.

(d) Interagency Committee

(1) The President shall, within 2 months after October 24, 1992, establish the Electric and Magnetic Fields Interagency Committee to—

(A) develop within 8 months after October 24, 1992, a comprehensive agenda for conducting research, development, and demonstration under the program, with particular emphasis on electric and magnetic fields of the 60 hertz frequency;

(B) develop recommendations, within 8 months after October 24, 1992, for guidelines for the coordination of activities of Federal agencies engaged in research on human health effects of electric and magnetic fields that ensure that such research advances the agenda under subparagraph (A) and is not unnecessarily duplicative of other research activities;

(C) develop recommendations, within 8 months after October 24, 1992, for mechanisms for communication of the results of the program to the public, including recommendations on the scope and nature of the information to be disseminated; and

(D) monitor, review and periodically evaluate the program.

(2)(A) The Interagency Committee shall be composed of 9 members with 1 member to be appointed from each of the following:

- (i) The Department of Energy.
- (ii) The National Institute of Environmental Health Sciences.
- (iii) The Environmental Protection Agency.
- (iv) The Department of Defense.
- (v) The Occupational Safety and Health Administration.
- (vi) The National Institute of Standards and Technology.
- (vii) The Department of Transportation.
- (viii) The Rural Electrification Administration.
- (ix) The Federal Energy Regulatory Commission.

(B) The Interagency Committee shall elect a chairperson from among its members who shall be responsible for ensuring that the duties of the Interagency Committee are carried out.

(C) Agencies that have members on the Interagency Committee shall provide appropriate staff to carry out the duties of the Interagency Committee.

(e) Advisory Committee

(1) Not later than 2 months after October 24, 1992, the Secretary of Health and Human Services and the Secretary shall establish the National Electric and Magnetic Fields Advisory Committee in accordance with the Federal Advisory Committee Act [5 App. U.S.C.] and this section.

(2) The Advisory Committee shall make recommendations to the Interagency Committee with respect to the duties of the Interagency Committee under subsection (d)(1) of this section and advise the Secretary and the Director with respect to the design and implementation of the program, including preparation of solicitations for proposals to conduct research under the program.

(3) The Advisory Committee shall be composed of 10 members, chosen from among experts in possible human health effects of electric and magnetic fields, experts in the measurement and characterization of electric and magnetic fields, experts in the assessment and management of electric and magnetic fields, State regulatory agencies, State health agencies, electric utilities, electric equipment manufacturers, labor unions and the public. Five members shall be chosen by the Secretary of Health and Human Services in consultation with the Director, and 5 members shall be chosen by the Secretary.

(4) The Advisory Committee shall elect a chairperson from among its members who shall be responsible for ensuring that the duties of the Advisory Committee are carried out.

(5) The Advisory Committee shall terminate not later than December 31, 1998.

(f) Financial assistance

(1) The Secretary and the Director may provide financial assistance and enter into contracts to conduct activities under the program.

(2) The Secretary shall solicit contributions from non-Federal sources to offset at least 50

percent of the total funding for all activities under the program. The Secretary shall adopt procedures, including a mechanism for collecting contributions, that ensures that no contributor of non-Federal funds may influence the program.

(3) The Secretary may not obligate funds under this section in any fiscal year unless funds received from non-Federal sources under paragraph (2) are available to offset at least 50 percent of the appropriations made under subsection (j) of this section for such fiscal year.

(4) SOLICITATION AND SELECTION OF PROPOSALS

(A) IN GENERAL.—Within 15 months after October 24, 1992, and as often thereafter as appropriate, the Secretary and the Director shall, in consultation with the Interagency Committee, solicit and select proposals to conduct activities under the program.

(B) CONSULTATION WITH ADVISORY COMMITTEE.—In preparing solicitations for proposals to conduct activities, the Secretary and the Director shall consult with the Advisory Committee.

(C) PEER REVIEW PANELS.—Before a proposal to conduct activities under the program may be selected by the Secretary or the Director, such proposal must be submitted to, and evaluated by, at least one scientific and technical peer review panel.

(g) Reports

(1) Report upon completion of activity

Any person who conducts activities under the program shall, upon completion of the activity, submit to the National Academy of Sciences, the Interagency Committee, and the Advisory Committee a report summarizing the activities and results thereof.

(2) Report to Interagency Committee and Advisory Committee

The Secretary shall enter into appropriate arrangements with the National Academy of Sciences under which the Academy shall periodically submit to the Interagency Committee and the Advisory Committee a report that evaluates the research activities under the program. The report shall include recommendations to promote the effective transfer of information derived from such research projects, including the transfer to representatives of State regulatory agencies, State health agencies, electric utilities, electrical equipment manufacturers, labor unions, and the public. The Secretary shall be responsible for expenses incurred by the Academy in connection with the preparation of such reports.

(3) Report to Congress

The Interagency Committee, in consultation with the Advisory Committee, shall submit to the Secretary and the Congress—

(A) not later than December 31, 1995, a report summarizing the progress of the research program established under this subsection; and

(B) not later than September 30, 1998, a final report stating the Committee's findings and conclusions on the effects, if any, of electric and magnetic fields on human health and remedial actions, if any, that

may be needed to minimize any such health effects.

(h) Conflicts of interest

The Secretary and the Director shall include conflict of interest provisions in any grant or other funding provided, or contract entered into, under the research program established under this section including provisions—

(1) that require any person conducting a project under such program to disclose any other source of funding received by the person to conduct other related projects, including funding received from consulting on issues relating to electric and magnetic fields; and

(2) that prohibit a person who has been awarded a grant or contract under this program from receiving compensation beyond expenses for testifying in a court of law as an expert on the specific research the person is conducting under such grant or contract.

(i) Definitions

For purposes of this section:

(1) The term “Advisory Committee” means the National Electric and Magnetic Fields Advisory Committee established under subsection (e) of this section.

(2) The term “Interagency Committee” means the Electric and Magnetic Fields Interagency Committee established under subsection (d) of this section.

(3) The term “Director” means the Director of the National Institute of Environmental Health Sciences.

(4) The term “program” means the electric and magnetic fields research and public information dissemination program established in subsection (a) of this section.

(5) The term “State” means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and any other commonwealth, territory, or possession of the United States.

(j) Authorization of appropriations

(1) General authorization

There are authorized to be appropriated to the Secretary a total of \$46,000,000 for the period encompassing fiscal years 1993 through 1998 to carry out the provisions of this section, except that not more than \$1,000,000 may be expended in any such fiscal year for activities under subsection (b)(1) of this section. Any amounts appropriated pursuant to this paragraph shall remain available until expended.

(2) Restrictions on use of funds

(A) Administrative expenses of certain funding recipients

Of the total funds provided to any institution under this section, the amount of such funds that may be used for the administrative indirect costs of the institution may not exceed 26 percent of the modified direct costs of the project.

(B) Administrative expenses of the Secretary and the Director

Of the total amount of funds made available under this section for any fiscal year,

not more than 10 percent of such funds may be used for authorized administrative expenses of the Secretary and the Director in carrying out this section.

(C) Construction and rehabilitation of facilities and equipment

Funds made available under this section may not be used for the construction or rehabilitation of facilities or fixed equipment.

(k) Sense of Congress

It is the sense of the Congress that remedial action taken by the Government on electric and magnetic fields, if and as necessary, should be based on, and consistent with, scientifically valid research such as the results and findings of the research authorized by this Act.

(l) Sunset provision

All authority under this section shall expire on December 31, 1998.

(Pub. L. 102-486, title XXI, §2118, Oct. 24, 1992, 106 Stat. 3075; Pub. L. 105-23, §1, July 3, 1997, 111 Stat. 237.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (e)(1), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

This Act, referred to in subsec. (k), is Pub. L. 102-486, Oct. 24, 1992, 106 Stat. 2776, known as the Energy Policy Act of 1992. For complete classification of this Act to the Code, see Short Title note set out under section 13201 of this title and Tables.

AMENDMENTS

1997—Subsecs. (c)(5), (e)(5), (g)(3)(B). Pub. L. 105-23, §1(1), substituted “1998” for “1997”.

Subsec. (j)(1). Pub. L. 105-23 substituted “\$46,000,000” for “\$65,000,000” and “1998” for “1997”.

Subsec. (l). Pub. L. 105-23, §1(1), substituted “1998” for “1997”.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 13479. Spark M. Matsunaga Renewable Energy and Ocean Technology Center

(a) Findings

The Congress finds that—

(1) the late Spark M. Matsunaga, United States Senator from Hawaii, was a longstanding champion of research and development of renewable energy, particularly wind and ocean energy, photovoltaics, and hydrogen fuels;

(2) it was Senator Matsunaga’s vision that renewable energy could provide a sustained source of non-polluting energy and that such forms of alternative energy might ultimately be employed in the production of liquid hydrogen as a transportation fuel and energy storage medium available as an energy export;

(3) Senator Matsunaga also believed that research on other aspects of renewable energy and ocean resources, such as advanced materials, could be crucial to full development of energy storage and conversion systems; and

(4) Keahole Point, Hawaii is particularly well-suited as a site to conduct renewable energy and associated marine research.

(b) Purpose

It is the purpose of this section to establish the facilities and equipment located at Keahole Point, Hawaii as a cooperative research and development facility, to be known as the Spark M. Matsunaga Renewable Energy and Ocean Technology Center.

(c) Establishment

The facilities and equipment located at Keahole Point, Hawaii are established as the Spark M. Matsunaga Renewable Energy and Ocean Technology Center (in this section referred to as the "Center").

(d) Administration

(1) Not later than 180 days after October 24, 1992, the Secretary may authorize a cooperative agreement with a qualified research institution to administer the Center.

(2) For the purpose of paragraph (1), a qualified research institution is a research institution located in the State of Hawaii that has demonstrated competence and will be the lead organization in the State in renewable energy and ocean technologies.

(e) Activities

The Center may carry out research, development, educational, and technology transfer activities on—

- (1) renewable energy;
- (2) energy storage, including the production of hydrogen from renewable energy;
- (3) materials applications related to energy and marine environments;
- (4) other environmental and ocean research concepts, including sea ranching and global climate change; and
- (5) such other matters as the Secretary may direct.

(f) Matching funds

To be eligible for Federal funds under this section, the Center must provide funding in cash or in kind from non-Federal sources for each amount provided by the Secretary.

(g) Authorization of appropriations

There is authorized to be appropriated to the Secretary for carrying out this section such sums as may be necessary, to be derived from sums authorized under section 13471(c) of this title.

(Pub. L. 102-486, title XXI, §2119, Oct. 24, 1992, 106 Stat. 3080.)

PART C—ADVANCED NUCLEAR REACTORS

§ 13491. Purposes and definitions**(a) Purposes**

The purposes of this part are—

- (1) to require the Secretary to carry out civilian nuclear programs in a way that will lead toward the commercial availability of advanced nuclear reactor technologies; and
- (2) to authorize such activities to further the timely availability of advanced nuclear reactor technologies, including technologies that utilize standardized designs or exhibit passive safety features.

(b) Definitions

For purposes of this part—

(1) the term "advanced nuclear reactor technologies" means—

(A) advanced light water reactors that may be commercially available in the near-term, including but not limited to mid-sized reactors with passive safety features for the generation of commercial electric power from nuclear fission; and

(B) other advanced nuclear reactor technologies that may require prototype demonstration prior to commercial availability in the mid- or long-term, including but not limited to high-temperature, gas-cooled reactors and liquid metal reactors, for the generation of commercial electric power from nuclear fission;

(2) the term "Commission" means the Nuclear Regulatory Commission;

(3) the term "standardized design" means a design for a nuclear power plant that may be utilized for a multiple number of units or a multiple number of sites; and

(4) the term "certification" means approval by the Commission of a standardized design.

(Pub. L. 102-486, title XXI, §2121, Oct. 24, 1992, 106 Stat. 3081.)

REFERENCES IN TEXT

This part, referred to in text, was in the original "this subtitle" meaning subtitle C of title XXI of Pub. L. 102-486, Oct. 24, 1992, 106 Stat. 3081, which enacted this part and amended sections 12003 and 12004 of this title.

§ 13492. Program, goals, and plan**(a) Program direction**

The Secretary shall conduct a program to encourage the deployment of advanced nuclear reactor technologies that to the maximum extent practicable—

(1) are cost effective in comparison to alternative sources of commercial electric power of comparable availability and reliability, taking into consideration life cycle environmental costs;

(2) facilitate the design, licensing, construction, and operation of a nuclear powerplant using a standardized design;

(3) exhibit enhanced safety features; and

(4) incorporate features that advance the objectives of the Nuclear Non-Proliferation Act of 1978 [22 U.S.C. 3201 et seq.].

(b) Program goals

The goals of the program established under subsection (a) of this section shall include—

(1) for the near-term—

(A) to facilitate the completion, by September 30, 1996, for certification by the Commission, of standardized advanced light water reactor technology designs that the Secretary determines have the characteristics described in subsection (a)(1) through (4) of this section;

(B) to facilitate the completion of submissions, by September 30, 1996, for preliminary design approvals by the Commission of standardized designs for the modular high-

temperature gas-cooled reactor technology and the liquid metal reactor technology; and

(C) to evaluate by September 30, 1996, actinide burn technology to determine if it can reduce the volume of long-lived fission by-products;

(2) for the mid-term—

(A) to facilitate increased efficiency of enhanced safety, advanced light water reactors to produce electric power at the lowest cost to the customer;

(B) to develop advanced reactor concepts that are passively safe and environmentally acceptable; and

(C) to complete necessary research and development on high-temperature gas-cooled reactor technology and liquid metal reactor technology to support the selection, by September 30, 1998, of one or both of those technologies as appropriate for prototype demonstration; and

(3) for the long-term, to complete research and development and demonstration to support the design of advanced reactor technologies capable of providing electric power to a utility grid as soon as practicable but no later than the year 2010.

(c) Program plan

Within 180 days after October 24, 1992, the Secretary shall prepare and submit to the Congress a 5-year program plan to guide the activities under this section. The program plan shall include schedule milestones, Federal funding requirements, and non-Federal cost sharing requirements. In preparing the program plan, the Secretary shall take into consideration—

(1) the need for, and the potential for future adoption by electric utilities or other entities of, advanced nuclear reactor technologies that are available, under development, or have the potential for being developed, for the generation of energy from nuclear fission;

(2) how the Federal Government, acting through the Secretary, can be effective in ensuring the availability of such technologies when they are needed;

(3) how the Federal Government can most effectively cooperate with the private sector in the accomplishment of the goals set forth in subsection (b) of this section; and

(4) potential alternative funding sources for carrying out this section.

In preparing the program plan, the Secretary shall consult with appropriate representatives of industry, institutions of higher education, Federal agencies, including national laboratories, and professional and technical societies. The Secretary shall update the program plan annually and submit such update to Congress. Each such update shall describe any activities that are behind schedule, any funding shortfalls, and any other circumstances that might affect the ability of the Secretary to meet the goals set forth in subsection (b) of this section.

(Pub. L. 102-486, title XXI, §2122, Oct. 24, 1992, 106 Stat. 3082.)

REFERENCES IN TEXT

The Nuclear Non-Proliferation Act of 1978, referred to in subsec. (a)(4), is Pub. L. 95-242, Mar. 10, 1978, 92 Stat.

120, as amended, which is classified principally to chapter 47 (§3201 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 3201 of Title 22 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13493 of this title.

§ 13493. Commercialization of advanced light water reactor technology

(a) Certification of designs

In order to achieve the goal of certification of completed standardized designs by the Commission by 1996 as set forth in section 13492(b) of this title, the Secretary shall conduct a 5-year program of technical and financial assistance to encourage the development and submission for certification of advanced light water reactor designs which, in the judgment of the Secretary, can be certified by the Commission by no later than the end of fiscal year 1996.

(b) First-of-a-kind engineering

(1) Establishment of program

The Secretary shall conduct a program of Federal financial and technical assistance for the first-of-a-kind engineering design of standardized commercial nuclear powerplants which are included, as of October 24, 1992, in the Department of Energy's program for certification of advanced light water reactor designs.

(2) Selection criteria

In order to be eligible for assistance under this subsection, an entity shall certify to the satisfaction of the Secretary that—

(A) the entity, or its members, are bona fide entities engaged in the design, engineering, manufacture, construction, or operation of nuclear reactors;

(B) the entity, or its members, have the financial resources necessary for, and fully intend to pursue the design, engineering, manufacture, construction, and operation in the United States of nuclear power plants¹ through completion of construction and into operation;

(C) the design proposed is scheduled for certification by the Commission under the Department of Energy's program for certification of light water reactor designs; and

(D) at least 50 percent of the funding for the project shall be obtained from non-Federal sources, and a substantial portion of that non-Federal funding shall be obtained from utilities or entities whose primary purpose is the production of electrical power for public consumption.

(3) Program documents

The Secretary shall prepare and submit to the Congress a program document for each design selected under this subsection, specifying goals and objectives, major milestones for achieving those goals and objectives, and the work products to be provided to the Secretary or made available for inspection.

¹ So in original. Probably should be "powerplants".

(4) Funding limitations

(A) Before entering into an agreement with an entity under this subsection, the Secretary shall establish a cost ceiling for the contribution of the Federal Government for the project, and shall report such cost ceiling to the Congress.

(B) No entity shall receive assistance under this subsection for a period greater than 4 years.

(C) The aggregate funding provided by the Secretary for projects under this subsection shall not exceed \$100,000,000 for the period encompassing fiscal years 1993 through 1997.

(Pub. L. 102-486, title XXI, § 2123, Oct. 24, 1992, 106 Stat. 3083.)

CODIFICATION

Subsec. (b)(5) of this section, which required the Secretary to submit annually to Congress a status report on each project receiving assistance under subsec. (b), terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, the last item on page 85 of House Document No. 103-7.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13494 of this title.

§ 13494. Prototype demonstration of advanced nuclear reactor technology**(a) Solicitation of proposals**

Within 3 years after October 24, 1992, the Secretary shall solicit proposals for carrying out the preliminary engineering design of not more than 2 prototype advanced nuclear reactor technologies developed by the Department of Energy, other than advanced light water reactor technologies, necessary to support a decision on whether to recommend construction of a prototype demonstration reactor with the characteristics described in section 13493(a) of this title. Proposals submitted under this subsection shall be for modular design concepts of sufficient size to address requirements related to the certification of a standardized design.

(b) Recommendation to Congress

(1) Not later than September 30, 1998, the Secretary shall submit to Congress recommendations on whether to build one or more prototype demonstration reactors under this section. Such recommendations shall—

(A) specify a preferred technology or technologies;

(B) include detailed information on milestones for construction and operation;

(C) include an estimate of the funding requirements; and

(D) specify the extent and type of non-Federal financial support anticipated.

In developing the recommendations under this paragraph, the Secretary shall provide for public notice and an opportunity for comment, and shall solicit the views of the Commission and other parties with technical expertise the Secretary considers useful in the development of such recommendations.

(2) The prototype demonstration program under this section shall be carried out to the

maximum extent practicable with private sector funding. At least 50 percent of the funding for such program shall be non-Federal funding. The extent of non-Federal cost sharing proposed for any demonstration project shall be a criterion for the selection of the project.

(c) Selection of technology

Any technology selected by the Secretary for recommendation for prototype demonstration under this section shall to the maximum extent possible exhibit the characteristics set forth in section 13493(a) of this title.

(Pub. L. 102-486, title XXI, § 2124, Oct. 24, 1992, 106 Stat. 3084.)

§ 13495. Authorization of appropriations

There are authorized to be appropriated to the Secretary for carrying out this part \$212,804,000 for fiscal year 1993 and such sums as may be necessary for fiscal year 1994. Amounts authorized or otherwise made available for program direction, space reactor power systems, advanced radioisotope power systems, and the space exploration initiative under nuclear energy research and development shall be in addition to the amounts authorized in the preceding sentence.

(Pub. L. 102-486, title XXI, § 2126, Oct. 24, 1992, 106 Stat. 3085.)

SUBCHAPTER X—ENERGY AND ECONOMIC GROWTH

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 5905, 13522, 13525 of this title.

§ 13501. National Advanced Materials Program**(a) Program direction**

The Secretary shall establish a 5-year National Advanced Materials Program, in accordance with sections 13541 and 13542 of this title. Such program shall foster the commercialization of techniques for processing, synthesizing, fabricating, and manufacturing advanced materials and associated components. At a minimum, the Program shall expedite the private sector deployment of advanced materials for use in high performance energy efficient and renewable energy technologies in the industrial, transportation, and buildings sectors that can foster economic growth and competitiveness. The Program shall include field demonstrations of sufficient scale and number to prove technical and economic feasibility.

(b) Program plan

Within 180 days after October 24, 1992, the Secretary, in consultation with appropriate representatives of industry, institutions of higher education, Department of Energy national laboratories, and professional and technical societies, shall prepare and submit to the Congress a 5-year program plan to guide activities under this section. The Secretary shall biennially update and resubmit the program plan to Congress.

(c) Proposals**(1) Solicitation**

Within 1 year after October 24, 1992, the Secretary shall solicit proposals for conducting

activities consistent with the 5-year program plan. Such proposals may be submitted by one or more parties.

(2) Contents of proposals

Proposals submitted under this subsection shall include—

(A) an explanation of how the proposal will expedite the commercialization of advanced materials in energy efficiency or renewable energy in the near-term to mid-term;

(B) evidence of consideration of whether the unique capabilities of Department of Energy national laboratories warrants collaboration with such laboratories, and the extent of such collaboration proposed;

(C) a description of the extent to which the proposal includes collaboration with relevant industry or other groups or organizations; and

(D) evidence of the ability of the proposers to undertake and complete the proposed project.

(d) General Services Administration demonstration program

The Secretary, in consultation with the Administrator of General Services, shall establish a program to expedite the use, in goods and services acquired by the General Services Administration, of advanced materials technologies. Such program shall include a demonstration of the use of advanced materials technologies as may be necessary to establish technical and economic feasibility. The Secretary shall transfer funds to the General Services Administration for carrying out this subsection.

(e) Authorization of appropriations

There are authorized to be appropriated to the Secretary for carrying out this section such sums as may be necessary, to be derived for energy efficient applications from section 13451(e) of this title and for renewable applications from section 13471(c) of this title, including Department of Energy national laboratory participation in proposals submitted under subsection (c) of this section, and including transferring funds to the General Services Administration.

(Pub. L. 102-486, title XXII, §2201, Oct. 24, 1992, 106 Stat. 3085.)

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (b) of this section relating to the biennial re-submittal of the program plan to Congress, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 1st item on page 86 of House Document No. 103-7.

§ 13502. National Advanced Manufacturing Technologies Program

(a) Program direction

The Secretary shall establish a 5-year National Advanced Manufacturing Technologies Program, in accordance with sections 13541 and 13542 of this title. Such program shall foster the commercialization of advanced manufacturing technologies to improve energy efficiency and productivity in manufacturing. At a minimum, the Program shall expedite the private sector

deployment of advanced manufacturing technologies to improve productivity, quality, and control in manufacturing processes that can foster economic growth, energy efficiency, and competitiveness. The program¹ shall include field demonstrations of sufficient scale and number to prove technical and economic feasibility.

(b) Program plan

Within 180 days after October 24, 1992, the Secretary, in consultation with appropriate representatives of industry, institutions of higher education, Department of Energy national laboratories, and professional and technical societies, shall prepare and submit to the Congress a 5-year program plan to guide activities under this section. The Secretary shall biennially update and resubmit the program plan to Congress.

(c) Proposals

(1) Solicitation

Within 1 year after October 24, 1992, the Secretary shall solicit proposals for conducting activities consistent with the 5-year program plan. Such proposals may be submitted by one or more parties.

(2) Contents of proposals

Proposals submitted under this subsection shall include—

(A) an explanation of how the proposal will expedite the commercialization of advanced manufacturing technologies to improve energy efficiency in the building, industry, and transportation sectors;

(B) evidence of consideration of whether the unique capabilities of Department of Energy national laboratories warrants collaboration with such laboratories, and the extent of such collaboration proposed;

(C) a description of the extent to which the proposal includes collaboration with relevant industry or other groups or organizations; and

(D) evidence of the ability of the proposers to undertake and complete the proposed project.

(d) Authorization of appropriations

There are authorized to be appropriated to the Secretary for carrying out this section such sums as may be necessary, to be derived from sums authorized under section 13451(e) of this title, including Department of Energy national laboratory participation in proposals submitted under subsection (c) of this section.

(Pub. L. 102-486, title XXII, §2202, Oct. 24, 1992, 106 Stat. 3086.)

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (b) of this section relating to the biennial re-submittal of the program plan to Congress, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 2nd item on page 86 of House Document No. 103-7.

¹ So in original. Probably should be capitalized.

§ 13503. Supporting research and technical analysis

(a) Basic energy sciences

(1) Program direction

The Secretary shall continue to support a vigorous program of basic energy sciences to provide basic research support for the development of energy technologies. Such program shall focus on the efficient production and use of energy, and the expansion of our knowledge of materials, chemistry, geology, and other related areas of advancing technology development.

(2) User facilities

(A) As part of the program referred to in paragraph (1), the Secretary shall carry out planning, construction, and operation of user facilities to provide special scientific and research capabilities, including technical expertise and support as appropriate, to serve the research needs of our Nation's universities, industry, private laboratories, Federal laboratories, and others. Research institutions or individuals from other nations shall be accommodated at such user facilities in cases where reciprocal accommodations are provided to United States research institutions and individuals or where the Secretary considers such accommodation to be in the national interest.

(B) The construction of the Advanced Photon Source at the Argonne National Laboratory is hereby authorized.

(C) The Secretary shall not change the user fee practice in effect as of October 1, 1991, with respect to user facilities unless the Secretary notifies Congress 90 days before the effective date of any change.

(D) The Secretary shall expedite the design for construction of the Advanced Neutron Source at the Oak Ridge National Laboratory, in order to provide critical research capabilities in support of our national research initiatives for advanced materials and biotechnology, as well as a broad range of research. Such action shall be consistent with the Basic Energy Sciences Advisory Committee's Technical Evaluation of accelerator and reactor neutron source technologies. Within 90 days after October 24, 1992, the Secretary shall submit to the Congress a plan for such design, including a schedule for construction.

(3) Cost sharing

The Secretary shall not require cost sharing for research and development pursuant to this subsection, except—

(A) as otherwise provided for in cooperative research and development agreements or other agreements entered into under existing law;

(B) for fees for user facilities, as determined by the Secretary; or

(C) in the case of specific projects, where the Secretary determines that the benefits of such research and development accrue to a specific industry or group of industries, in which case cost sharing under section 13542 of this title shall apply.

(b) University and science education

(1) The Secretary shall support programs for improvements and upgrading of university re-

search reactors and associated instrumentation and equipment. Within 1 year after October 24, 1992, the Secretary shall submit to the Congress a report on the condition and status of university research reactors, which includes a 5-year plan for upgrading and improving such facilities, instrumentation capabilities, and related equipment.

(2) The Secretary shall develop a method to evaluate the effectiveness of science and mathematics education programs provided by the Department of Energy and its laboratories, including specific evaluation criteria.

(3)(A)(i) The Director of the Office of Science shall operate an Experimental Program to Stimulate Competitive Research (in this paragraph referred to as "EPSCoR") as part of the Department of Energy's University and Science Education Programs.

(ii) The objectives of EPSCoR shall be—

(I) to enhance the competitiveness of the peer-review process within academic institutions in eligible States; and

(II) to increase the probability of long-term growth of competitive funding to investigators at institutions from eligible States.

(iii) In order to carry out the objectives stated in clause (ii), EPSCoR shall provide for activities which may include (but not be limited to) competitive research awards and graduate traineeships.

(iv) EPSCoR shall assist those States that—

(I) historically have received relatively little Federal research and development funding; and

(II) have demonstrated a commitment to develop their research bases and improve science and engineering research and education programs at their universities and colleges.

(B) For purposes of this paragraph, the term "eligible States" means States that received a Department-EPSCoR planning or traineeship grant in fiscal year 1991 or fiscal year 1992.

(C) No more than \$5,000,000 of the funds appropriated to EPSCoR in any fiscal year, through fiscal year 1997, are authorized to be appropriated for graduate traineeships.

(c) Technology transfer

The Secretary shall support technology transfer activities conducted by the National Laboratories. Within 1 year after October 24, 1992, the Secretary shall submit to the Congress a report on the adequacy of funding for such activities, along with a proposal recommending ways to reduce the length of time required to consummate cooperative research and development agreements.

(d) Facilities support for multiprogram energy laboratories

(1) Facility policy

The Secretary shall develop and implement a least cost strategy for correcting facility problems, closing unneeded facilities, making facility modifications, and building new facilities at multiprogram energy laboratories.

(2) Facility plan

Within 1 year after October 24, 1992, the Secretary shall prepare and submit to the Con-

gress a comprehensive plan for conducting future facility maintenance, making repairs, modifications, and new additions, and constructing new facilities at multiprogram energy laboratories. Such plan shall provide for facilities work in accordance with the following priorities, listed in descending order of priority:

(A) Providing for the safety and health of employees, visitors, and the general public with regard to correcting existing structural, mechanical, electrical, and environmental deficiencies.

(B) Providing for the repair and rehabilitation of existing facilities to keep them in use and prevent deterioration.

(C) Providing engineering design and construction services for those facilities which require modification or additions in order to meet the needs of new or expanded programs.

Such plan shall include plans for new facilities and facility modifications which will be required to meet the Department of Energy's changing missions of the twenty-first century, including schedules and estimates for implementation, and including a section outlining long-term funding requirements consistent with anticipated budgets and annual authorization of appropriations. Such plan shall address the coordination of modernization and consolidation of facilities in order to meet changing mission requirements, and shall provide for annual reports to Congress on accomplishments, conformance to schedules, commitments, and expenditures.

(e) Authorization of appropriations

There are authorized to be appropriated to the Secretary for Supporting Research and Technical Analysis, including Basic Energy Sciences, Energy Research Analysis, University and Science Education, Technology Transfer, Advisory and Oversight Program Direction, and Facilities Support for Multiprogram Energy Laboratories, \$966,804,000 for fiscal year 1993 and such sums as may be necessary for fiscal year 1994.

(Pub. L. 102-486, title XXII, §2203, Oct. 24, 1992, 106 Stat. 3087; Pub. L. 105-245, title III, §309(b)(2)(F), Oct. 7, 1998, 112 Stat. 1853.)

AMENDMENTS

1998—Subsec. (b)(3)(A)(i). Pub. L. 105-245 substituted "Office of Science" for "Office of Energy Research".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13504 of this title.

§ 13504. Math and science education program

(a) Program

The Secretary shall enter into contracts with existing qualified entities to conduct science and mathematics education programs that supplement the Special Programs for Students from Disadvantaged Backgrounds carried out by the Secretary of Education under sections 1070d through 1070d-1d of title 20.¹

¹ See References in Text note below.

(b) Purpose

(1) The purpose of the programs shall be to provide support to Federal, State, and private programs designed to promote the participation of low-income and first generation college students as defined in section 1070d of title 20¹ in post-secondary science and mathematics education.

(2) Support activities may include—

(A) the development of educational materials;

(B) the training of teachers and counselors;

(C) the establishment of student internships;

(D) the development of seminars on mathematics and science;

(E) tutoring in mathematics and science;

(F) academic counseling;

(G) the development of opportunities for research; and

(H) such other activities that may promote the participation of low-income and first generation college students in post-secondary science and mathematics education.

(c) Support

(1) In carrying out the purpose of this section, the entities may provide support under subsection (b)(2) of this section to—

(A) low-income and first generation college students; and

(B) institutions of higher education, public and private agencies and organizations, and secondary and middle schools that principally benefit low-income students.

(2) The qualified entities shall, to the extent practicable, coordinate support activities under this section with the Secretary of Education and the Secretary.

(d) Cooperation with qualified entities

The Secretary shall cooperate with qualified entities and, to the extent practicable, make available to the entities such personnel, facilities, and other resources of the Department of Energy as may be necessary to carry out the duties of the entities.

(e) Report

Not later than October 1 of each year, the entities shall report to the Secretary, the Secretary of Education, and the Congress on—

(1) progress made to promote the participation of low-income and first generation college students in post-secondary science and mathematics education by—

(A) the qualified entities;

(B) other mathematics and science education programs of the Department of Energy; and

(C) the Special Programs for Students from Disadvantaged Backgrounds of the Department of Education; and

(2) recommendations for such additional actions as may be needed to promote the participation of low-income students in post-secondary science and mathematics education.

(f) Effect on existing programs

The programs in this section shall supplement and be developed in cooperation with the current mathematics and science education pro-

grams of the Department of Energy and the Department of Education but shall not supplant them.

(g) “Qualified entity” defined

For purposes of this section, the term “qualified entity” means a nonprofit corporation, association, or institution that has demonstrated special knowledge of, and experience with, the education of low-income and first generation college students and whose primary mission is the operation of national programs that focus on low-income students and provide training and other services to educators.

(h) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary, to be derived from section 13503(e) of this title and the Environmental Restoration and Waste Management program, to carry out the purposes of this section.

(Pub. L. 102-486, title XXII, §2204, Oct. 24, 1992, 106 Stat. 3089.)

REFERENCES IN TEXT

Sections 1070d through 1070d-1d of title 20, referred to in subsec. (a), and section 1070d of title 20, referred to in subsec. (b)(1), were repealed by Pub. L. 102-325, title IV, §402(a)(1), July 23, 1992, 106 Stat. 482.

§ 13505. Integration of research and development

Within 180 days after October 24, 1992, the Secretary, in consultation with appropriate representatives of industry, institutions of higher education, Department of Energy national laboratories, and professional and technical societies, shall prepare and submit to Congress a 5-year program plan for improving the integration of basic energy research programs with other energy programs within the Department of Energy. Such program plan shall include—

- (1) an evaluation of current procedures and mechanisms used to achieve such integration;
- (2) an assessment of the role that the Department of Energy national laboratories play in such integration;
- (3) an identification and evaluation of models that could enhance such integration;
- (4) an identification and evaluation of new programs, mechanisms, and related policy options that could improve the integrating process, including—
 - (A) set aside funding for matching or leveraging basic and applied programs;
 - (B) more formal linkages; and
 - (C) program coordination;
- (5) recommendations for expanded research and development and new technology areas; and
- (6) budget estimates for activities under this section.

(Pub. L. 102-486, title XXII, §2205, Oct. 24, 1992, 106 Stat. 3091.)

§ 13506. Definitions

For purposes of this subchapter—

- (1) the term “advanced manufacturing technology” means processes, equipment, techniques, practices, and capabilities that are applied for the purpose of—

- (A) improving the productivity, quality, or energy efficiency of the design, development, testing, or manufacture of a product; or

- (B) expanding the technical capability to design, develop, test, or manufacture a product that is fundamentally different in character from existing products and that will result in improved energy efficiency;

- (2) the term “advanced materials” means materials that are processed, synthesized, fabricated, and manufactured to develop high performance properties that exceed the corresponding properties of conventional materials for structural, electronic, magnetic, or photonic applications, or for joining, welding, bonding, or packaging components into complex assemblies, including—

- (A) advanced monolithic materials such as metals, ceramics, and polymers;

- (B) advanced composite materials such as metal matrix (including intermetallics), polymer matrix, ceramic matrix, continuous fiber ceramic composite, and carbon matrix composites; and

- (C) advanced electronic, magnetic, and photonic materials, including superconducting, semiconductor, electrooptic, magneto-optic, thin-film, and special purpose coating materials used in technologies for energy efficiency, renewable energy, or electric power applications; and

- (3) the term “United States” means the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Northern Mariana Islands, and any other territory or possession of the United States.

(Pub. L. 102-486, title XXII, §2206, Oct. 24, 1992, 106 Stat. 3091.)

SUBCHAPTER XI—POLICY AND ADMINISTRATIVE PROVISIONS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 5905 of this title.

§ 13521. Policy on major construction projects

(a) Report and management plan

The Secretary shall submit to the Congress a report and management plan for any major construction project involving \$100,000,000 or more, prior to the expenditure of those funds.

(b) Congressional review

Expenditure of funds for a project described in subsection (a) of this section may be made after a period of 30 calendar days (not including any day on which either House of Congress is not in session because of adjournment of more than 3 calendar days prior to a day certain) has passed after receipt of the report and management plan by Congress.

(Pub. L. 102-486, title XXIII, §2301, Oct. 24, 1992, 106 Stat. 3092.)

§ 13522. Energy Research, Development, Demonstration, and Commercial Application Advisory Board

(a) Establishment

The Secretary shall establish an Energy Research, Development, Demonstration, and Commercial Application Advisory Board (hereafter in this section referred to as the “Advisory Board”).

(b) Responsibilities

The Advisory Board shall provide impartial technical advice to the Secretary to assist in the development of energy research, development, demonstration, and commercial application plans and reports under sections 5905 and 5914¹ of this title, under section 7321 of this title, and as otherwise provided in subchapters VIII through XI of this chapter. The Advisory Board shall also periodically review such plans and reports and their implementation in relation to the goals stated in section 13401 of this title, and report the results of such review to the Secretary and the Congress. Such report shall be included as part of the report required under section 5914¹ of this title.

(c) Use of existing advisory board

The Secretary may use an existing advisory board to carry out the responsibilities described in subsection (b) of this section.

(Pub. L. 102-486, title XXIII, §2302, Oct. 24, 1992, 106 Stat. 3092.)

REFERENCES IN TEXT

Subchapters VIII through XI of this chapter, referred to in subsec. (b), was in the original “titles XX through XXIII of this Act”, meaning titles XX through XXIII of Pub. L. 102-486, Oct. 24, 1992, 106 Stat. 3057-3092, which enacted subchapters VIII through XI of this chapter and amended sections 5103, 5107, 5108, 5110, 5307, 5905, 12003, 12004, and 12006 of this title.

Section 5914 of this title, referred to in subsec. (b), was omitted from the Code.

TERMINATION OF ADVISORY BOARDS

Advisory boards established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a board established by Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5905, 13411, 13523 of this title.

§ 13523. Management plan

(a) Plan preparation

The Secretary, in consultation with the Advisory Board established under section 13522 of this title, shall prepare a management plan for the conduct of research, development, demonstration, and commercial application of energy technologies that is consistent with the goals stated in section 13401 of this title.

¹ See References in Text note below.

(b) Contents of plan

The management plan under subsection (a) of this section shall provide for—

- (1) investigation of promising energy and energy efficiency resource technologies that have been identified as potentially significant future contributors to national energy security;
- (2) development of energy and energy efficiency resource technologies that have the potential to reduce energy supply vulnerability, and to minimize adverse impacts on the environment, the global climate, and the economy; and
- (3) creation of opportunities for export of energy and energy efficiency resource technologies from the United States that can enhance the Nation’s competitiveness.

(c) Energy technology inventory and status report

As part of the management plan, the Secretary, with the advice of the Advisory Board established under section 13522 of this title, shall develop an inventory and status report of technologies to enhance energy supply and to improve the efficiency of energy end uses. The inventory and status report shall include fossil, renewable, nuclear, and energy conservation technologies which have not yet achieved the status of fully reliable and cost-competitive commercial availability, but which the Secretary projects may become available with additional research, development, and demonstration. The inventory and status report shall provide, for each technology—

- (1) an assessment of its—
 - (A) degree of technological maturity; and
 - (B) principal research, development, and demonstration issues, including—
 - (i) the barriers posed by capital, operating, and maintenance costs;
 - (ii) technical performance; and
 - (iii) potential environmental impacts;
- (2) the projected time frame for commercial availability, specifying at a minimum whether the technology will be commercially available in the near-term, mid-term, or long-term, whether there are too many uncertainties to project availability, or whether it is unlikely that the technology will ever be commercial; and
- (3) a projection of the future cost-competitiveness of the technology in comparison with alternative technologies to provide the same energy service.

(d) Public comment

The Secretary shall publish the proposed management plan for a written public comment period of at least 90 days. The Secretary shall consider such comments and include a summary thereof in the management plan.

(e) Plan submission

Within one year after October 24, 1992, the Secretary shall submit the first management plan under this section to Congress. Thereafter, the Secretary shall submit a revised management plan biennially, at the time of submittal of the President’s annual budget submission to the Congress.

(Pub. L. 102-486, title XXIII, §2304, Oct. 24, 1992, 106 Stat. 3093.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13474 of this title.

§ 13524. Costs related to decommissioning and storage and disposal of nuclear waste

(a) Award of contracts

(1) Prime contractors

In awarding contracts to perform nuclear hot cell services, the Secretary, in evaluating bids for such contracts, shall exclude from consideration costs related to the decommissioning of nuclear facilities or the storage and disposal of nuclear waste, if—

(A) one or more of the parties bidding to perform such services is a United States company that is subject to such costs; and

(B) one or more of the parties bidding to perform such services is a foreign company that is not subject to comparable costs.

(2) Subcontractors

Any person awarded a contract subject to the restrictions described in paragraph (1) who subcontracts with a person to perform the services described in such paragraph shall be subject to the same restrictions in evaluating bids among potential subcontractors, as the Secretary was subject to in evaluating bids among prime contractors.

(b) Issuance of regulations

The Secretary shall issue regulations not later than 90 days after October 24, 1992, to carry out the requirements of subsection (a) of this section.

(c) Definitions

As used in this section—

(1) the term “costs related to decommissioning of nuclear facilities” means any cost associated with the compliance with regulatory requirements governing the decommissioning of nuclear facilities licensed by the Nuclear Regulatory Commission;

(2) the term “costs related to storage and disposal of nuclear waste” means any costs, whether required by regulation or incurred as a matter of prudent business practice, associated with the storage or disposal of nuclear waste;

(3) the term “nuclear hot cell services” means services related to the examination of, or performance of various operations on, nuclear fuel rods, control assemblies, or other components that are emitting large quantities of ionizing radiation; and

(4) the term “nuclear waste” means any radioactive waste material subject to regulation by the Nuclear Regulatory Commission or the Department of Energy.

(Pub. L. 102-486, title XXIII, §2305, Oct. 24, 1992, 106 Stat. 3094.)

§ 13525. Limits on participation by companies

A company shall be eligible to receive financial assistance under subchapters VIII through XI of this chapter only if—

(1) the Secretary finds that the company’s participation in any program under such subchapters would be in the economic interest of the United States, as evidenced by investments in the United States in research, development, and manufacturing (including, for example, the manufacture of major components or subassemblies in the United States); significant contributions to employment in the United States; an agreement with respect to any technology arising from assistance provided under this section to promote the manufacture within the United States of products resulting from that technology (taking into account the goals of promoting the competitiveness of United States industry), and to procure parts and materials from competitive suppliers; and

(2) either—

(A) the company is a United States-owned company; or

(B) the Secretary finds that the company is incorporated in the United States and has a parent company which is incorporated in a country which affords to United States-owned companies opportunities, comparable to those afforded to any other company, to participate in any joint venture similar to those authorized under this Act; affords to United States-owned companies local investment opportunities comparable to those afforded to any other company; and affords adequate and effective protection for the intellectual property rights of United States-owned companies.

(Pub. L. 102-486, title XXIII, §2306, Oct. 24, 1992, 106 Stat. 3095.)

REFERENCES IN TEXT

Subchapters VIII through XI of this chapter, referred to in text, was in the original “titles XX through XXIII of this Act”, meaning titles XX through XXIII of Pub. L. 102-486, Oct. 24, 1992, 106 Stat. 3057-3092, which enacted subchapters VIII through XI of this chapter and amended sections 5103, 5107, 5108, 5110, 5307, 5905, 12003, 12004, and 12006 of this title.

This Act, referred to in par. (2)(B), is Pub. L. 102-486, Oct. 24, 1992, 106 Stat. 2776, known as the Energy Policy Act of 1992. For complete classification of this Act to the Code, see Short Title note set out under section 13201 of this title and Tables.

§ 13526. Uncosted obligations

(a) Report

Along with the submission of each of the President’s annual budget requests to Congress, the Secretary shall submit to Congress a report which—

(1) identifies the amount of Department of Energy funds that were, as of the end of the previous fiscal year—

(A) committed uncosted obligations; and

(B) uncommitted uncosted obligations;

(2) specifically describes the purposes for which all such funds are intended; and

(3) explains the effect that information contained in the report has had on the annual budget request for the Department of Energy being simultaneously submitted.

(b) Definitions

Within 90 days after October 24, 1992, the Secretary shall submit a report to the Congress

containing definitions of the terms “uncosted obligation”, “committed uncosted obligation”, and “uncommitted uncosted obligation” for purposes of reports to be submitted under subsection (a) of this section.

(Pub. L. 102-486, title XXIII, §2307, Oct. 24, 1992, 106 Stat. 3096.)

SUBCHAPTER XII—MISCELLANEOUS

PART A—GENERAL PROVISIONS

§ 13541. Research, development, demonstration, and commercial application activities

(a) Research, development, and demonstration

(1) Except as otherwise provided in this Act, research, development, and demonstration activities under this Act may be carried out under the procedures of the Federal Nonnuclear Research and Development Act of 1974 (42 U.S.C. 5901-5920), the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.), or any other Act under which the Secretary is authorized to carry out such activities, but only to the extent the Secretary is authorized to carry out such activities under each such Act. An objective of any demonstration program under this Act shall be to determine the technical and commercial feasibility of energy technologies.

(2) Except as otherwise provided in this Act, in carrying out research, development, and demonstration programs and activities under this Act, the Secretary may use, to the extent authorized under applicable provisions of law, contracts, cooperative agreements, cooperative research and development agreements under the Stevenson-Wylder Technology Innovation Act of 1980 [15 U.S.C. 3701 et seq.], grants, joint ventures, and any other form of agreement available to the Secretary.

(b) Commercial application

Except as otherwise provided in this Act, in carrying out commercial application programs and commercial application activities under this Act, the Secretary may use, to the extent authorized under applicable provisions of law, contracts, cooperative agreements, cooperative research and development agreements under the Stevenson-Wylder Technology Innovation Act of 1980 [15 U.S.C. 3701 et seq.], grants, joint ventures, and any other form of agreement available to the Secretary. An objective of any commercial application program under this Act shall be to accelerate the transition of technologies from the research and development stage.

(c) “Joint venture” defined

For purposes of this section, the term “joint venture” has the meaning given the term “joint research and development venture” under section 4301(a)(6) and (b) of title 15, except that such term may apply under this section to research, development, demonstration, and commercial application joint ventures.

(d) Protection of information

Section 12(c)(7) of the Stevenson-Wylder Technology Innovation Act of 1980 [15 U.S.C. 3710a(c)(7)], relating to the protection of infor-

mation, shall apply to research, development, demonstration, and commercial application programs and activities under this Act.

(e) Guidelines and procedures

The Secretary shall provide guidelines and procedures for the transition, where appropriate, of energy technologies from research through development and demonstration under subsection (a) of this section to commercial application under subsection (b) of this section. Nothing in this section shall preclude the Secretary from—

(1) entering into a contract, cooperative agreement, cooperative research and development agreement under the Stevenson-Wylder Technology Innovation Act of 1980 [15 U.S.C. 3701 et seq.], grant, joint venture, or any other form of agreement available to the Secretary under this section that relates to research, development, demonstration, and commercial application; or

(2) extending a contract, cooperative agreement, cooperative research and development agreement under the Stevenson-Wylder Technology Innovation Act of 1980, grant, joint venture, or any other form of agreement available to the Secretary that relates to research, development, and demonstration to cover commercial application.

(f) Application of section

This section shall not apply to any contract, cooperative agreement, cooperative research and development agreement under the Stevenson-Wylder Technology Innovation Act of 1980 [15 U.S.C. 3701 et seq.], grant, joint venture, or any other form of agreement available to the Secretary that is in effect as of October 24, 1992.

(Pub. L. 102-486, title XXX, §3001, Oct. 24, 1992, 106 Stat. 3126.)

REFERENCES IN TEXT

This Act, referred to in subsecs. (a), (b), and (d), is Pub. L. 102-486, Oct. 24, 1992, 106 Stat. 2776, known as the Energy Policy Act of 1992. For complete classification of this Act to the Code, see Short Title note set out under section 13201 of this title and Tables.

The Federal Nonnuclear Research and Development Act of 1974, referred to in subsec. (a)(1), probably means the Federal Nonnuclear Energy Research and Development Act of 1974, Pub. L. 93-577, Dec. 31, 1974, 88 Stat. 1878, as amended, which is classified generally to chapter 74 (§5901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5901 of this title and Tables.

The Atomic Energy Act of 1954, referred to in subsec. (a)(1), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

The Stevenson-Wylder Technology Innovation Act of 1980, referred to in subsecs. (a)(2), (b), (e)(1), (2), and (f), is Pub. L. 96-480, Oct. 21, 1980, 94 Stat. 2311, as amended, which is classified generally to chapter 63 (§3701 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 3701 of Title 15 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12001, 12005, 13331, 13411, 13412, 13413, 13414, 13431, 13432, 13433, 13434,

13437, 13451, 13452, 13453, 13454, 13455, 13456, 13471, 13472, 13474, 13475, 13477, 13501, 13502 of this title.

§ 13542. Cost sharing

(a) Research and development

Except as otherwise provided in this Act, for research and development programs carried out under this Act, the Secretary shall require a commitment from non-Federal sources of at least 20 percent of the cost of the project. The Secretary may reduce or eliminate the non-Federal requirement under this subsection if the Secretary determines that the research and development is of a basic or fundamental nature.

(b) Demonstration and commercial application

Except as otherwise provided in this Act, the Secretary shall require at least 50 percent of the costs directly and specifically related to any demonstration or commercial application project under this Act to be provided from non-Federal sources. The Secretary may reduce the non-Federal requirement under this subsection if the Secretary determines that the reduction is necessary and appropriate considering the technological risks involved in the project and is necessary to meet the objectives of this Act.

(c) Calculation of amount

In calculating the amount of the non-Federal commitment under paragraph (1) or (2), the Secretary shall include cash, personnel, services, equipment, and other resources.

(d) Tennessee Valley Authority

Funds derived by the Tennessee Valley Authority from its power program may be used for all or part of any cost sharing requirements under this section, except to the extent that such funds are provided by annual appropriation Acts.

(Pub. L. 102-486, title XXX, §3002, Oct. 24, 1992, 106 Stat. 3127.)

REFERENCES IN TEXT

This Act, referred to in subsecs. (a) and (b), is Pub. L. 102-486, Oct. 24, 1992, 106 Stat. 2776, known as the Energy Policy Act of 1992. For complete classification of this Act to the Code, see Short Title note set out under section 13201 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12005, 13331, 13411, 13412, 13413, 13414, 13431, 13432, 13433, 13434, 13437, 13451, 13452, 13453, 13454, 13455, 13456, 13471, 13472, 13474, 13475, 13477, 13501, 13502, 13503 of this title.

PART B—OTHER MISCELLANEOUS PROVISIONS

§ 13551. Repealed. Pub. L. 104-182, title III, § 301, Aug. 6, 1996, 110 Stat. 1683

Section, Pub. L. 102-486, title XXX, §3013, Oct. 24, 1992, 106 Stat. 3128, related to geothermal heat pumps.

§ 13552. Use of energy futures for fuel purchases

(a) Fuel study

The Secretary shall conduct a study—

(1) to ascertain if the use of energy futures and options contracts could provide cost-effective protection for Government entities (including Government purchases for military

purposes and for the Strategic Petroleum Reserve) and consumer cooperatives (or any organization whose purpose is to purchase fuel in bulk) from unanticipated surges in the price of fuel; and

(2) to ascertain how such Government entities or consumer cooperatives may be educated in the prudent use of energy futures and options contracts to maximize their purchasing effectiveness, protect themselves against unanticipated surges in the price of fuel, and minimize fuel costs.

(b) Pilot program

The Secretary shall conduct a pilot program, commencing not later than 30 days after the transmission of the study required in subsection (b)¹ of this section, to educate such governmental entities, consumer cooperatives, or other organizations on the prudent and cost-effective use of energy futures and options contracts to increase their protection against unanticipated surges in the price of fuel and thereby increase the efficiency of their fuel purchase or assistance programs.

(c) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out this section.

(Pub. L. 102-486, title XXX, §3014, Oct. 24, 1992, 106 Stat. 3128; Pub. L. 105-362, title IV, §401(f), Nov. 10, 1998, 112 Stat. 3282.)

REFERENCES IN TEXT

Subsection (b) of this section, referred to in subsec. (b), was repealed and subsec. (c) of this section was redesignated (b) by Pub. L. 105-362, title IV, §401(f), Nov. 10, 1998, 112 Stat. 3282. See 1998 Amendment note below.

AMENDMENTS

1998—Subsecs. (b) to (d). Pub. L. 105-362 redesignated subsecs. (c) and (d) as (b) and (c), respectively, and struck out heading and text of former subsec. (b). Text read as follows: “The Secretary, no later than 12 months after October 24, 1992, shall transmit the study required in this section to the Committee on Energy and Commerce of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.”

§ 13553. Energy subsidy study

(a) In general

The Secretary shall contract with the National Academy of Sciences to conduct a study of energy subsidies that—

- (1) are in effect on October 24, 1992; or
- (2) have been in effect prior to October 24, 1992.

(b) Report to Congress

Not later than 18 months after October 24, 1992, the Secretary shall transmit to the Congress,¹ the results of such study to be accompanied by recommendations for legislation, if any.

(c) Contents

(1) In general

The study shall identify and quantify the direct and indirect subsidies and other legal and

¹ See References in Text note below.

¹ So in original. The comma probably should not appear.

institutional factors that influence decisions in the marketplace concerning fuels and energy technologies.

(2) Topics for examination

The study shall examine—

- (A) fuel and technology choices that are—
 - (i) available on October 24, 1992; or
 - (ii) reasonably foreseeable on October 24, 1992;
- (B) production subsidies for the extraction of raw materials;
- (C) subsidies encouraging investment in large capital projects;
- (D) indemnification;
- (E) fuel cycle subsidies, including waste disposal;
- (F) government research and development support; and
- (G) other relevant incentives and disincentives.

(d) Authorization of appropriations

There are authorized to be appropriated to carry out this section \$500,000 for each of the fiscal years 1993 and 1994.

(Pub. L. 102-486, title XXX, §3015, Oct. 24, 1992, 106 Stat. 3129.)

§ 13554. Tar sands

(a) Policy

It is the policy of the United States to promote the development and production, by all means consistent with sound engineering, economic, and environmental practices, of deposits of tar sands.

(b) “Tar sands” defined

(1) For purposes of this section, the term “tar sands” means any consolidated or unconsolidated rock (other than coal, oil shale, or gilsonite) that either—

- (A) contains a hydrocarbonaceous material with a gas-free viscosity, at original reservoir temperature, greater than 10,000 centipoise; or
- (B) contains a hydrocarbonaceous material and is produced by mining or quarrying.

(2) Nothing in this section is intended or shall be construed to affect in any way the definition of the term tar sands under any other provision of Federal law.

(c) Study

The Secretary, in consultation with the Secretary of the Interior, shall submit a study to the House of Representatives and the Committee on Energy and Natural Resources of the Senate within one year after October 24, 1992. Such study shall identify and evaluate the development potential of sources of tar sands in the United States. The study shall also identify and evaluate processes for extracting oil from the identified tar sand sources, including existing tar sands waste tailings, and evaluate the environmental benefits of, and the potential for co-production of minerals and metals from, such processes.

(d) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1993 and 1994 to carry out this section.

(Pub. L. 102-486, title XXX, §3016, Oct. 24, 1992, 106 Stat. 3129.)

§ 13555. Consultative Commission on Western Hemisphere Energy and Environment

(a) Findings

The Congress finds that—

- (1) there is growing mutual economic interdependence among the countries of the Western Hemisphere;
- (2) energy and environmental issues are intrinsically linked and must be considered together when formulating policy on the broader issue of sustainable economic development for the Western Hemisphere as a whole;
- (3) when developing their respective energy infrastructures, countries in the Western Hemisphere must consider existing and emerging environmental constraints, and do so in a way that results in sustainable long-term economic growth;
- (4) the coordination of respective national energy and environmental policies of the governments of the Western Hemisphere could be substantially improved through regular consultation among these countries;
- (5) the development, production and consumption of energy can affect environmental quality, and the environmental consequences of energy-related activities are not confined within national boundaries, but are regional and global in scope;
- (6) although the Western Hemisphere is richly endowed with indigenous energy resources, an insufficient energy supply would severely constrain future opportunities for sustainable economic development and growth in each of these member countries; and
- (7) the energy markets of the United States are linked with those in other countries of the Western Hemisphere and the world.

(4) the coordination of respective national energy and environmental policies of the governments of the Western Hemisphere could be substantially improved through regular consultation among these countries;

(5) the development, production and consumption of energy can affect environmental quality, and the environmental consequences of energy-related activities are not confined within national boundaries, but are regional and global in scope;

(6) although the Western Hemisphere is richly endowed with indigenous energy resources, an insufficient energy supply would severely constrain future opportunities for sustainable economic development and growth in each of these member countries; and

(7) the energy markets of the United States are linked with those in other countries of the Western Hemisphere and the world.

(b) “Commission” defined

For purposes of this section, the term “Commission” means the Consultative Commission on Western Hemisphere Energy and Environment.

(c) Negotiations

The President is authorized to direct the United States representative to the Organization of American States to initiate negotiations with the Organization of American States for the establishment of a Consultative Commission on Western Hemisphere Energy and Environment under the auspices of the Organization of American States.

(d) The Commission

In the course of the negotiations, the following shall be pursued:

(1) Objectives

The objectives of the Commission shall be—

- (A) to evaluate from the viewpoint of the Western Hemisphere as a whole the energy and environmental situations, trends, and policies of the countries of the participating governments necessary to support sustainable economic development;
- (B) to recommend to the participating governments actions, policies, and institutional

arrangements that will enhance cooperation and policy coordination among their respective countries in the future development and use of indigenous energy resources and technologies, and in the future development and implementation of measures to protect the environment of the Western Hemisphere; and

(C) to recommend to the participating governments actions and policies that will enhance energy and environmental cooperation and coordination among the countries of the Western Hemisphere and the world.

(2) Composition of Commission

The Commission shall include representatives of—

(A) the respective foreign energy and environmental ministries or departments of the participating governments;

(B) the parliamentary or legislative bodies with legislative responsibilities for energy and environmental matters; and

(C) other governmental and non-governmental observers appointed by the heads of each participating government on the basis of their experience and expertise.

(3) Secretariat

A small secretariat shall be chosen by the participating governments for their expertise in the areas of energy and the environment.

(4) Sunset provision

The Commission's authority—

(A) shall terminate five years from the date of the agreement under which it was created; and

(B) may be extended for a five-year term at the expiration of the previous term by agreement of the participating governments.

(e) Report

The President shall, within one year after October 24, 1992, report to the Committee on Energy and Commerce and the Committee on Foreign Affairs of the House of Representatives, and to the Committee on Energy and Natural Resources and the Committee on Foreign Relations of the Senate, on the progress toward the establishment of the Commission and achievement of the purposes of this section.

(Pub. L. 102-486, title XXX, §3020, Oct. 24, 1992, 106 Stat. 3131.)

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives and Committee on Foreign Affairs of House of Representatives treated as referring to Committee on International Relations of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 13556. Disadvantaged business enterprises

(a) General rule

To the extent practicable, the head of each agency shall provide that the obligation of not less than 10 percent of the total combined amounts obligated for contracts and subcontracts by each agency under this Act and amendments made by this Act pursuant to competitive procedures within the meaning of either the Federal Property and Administrative Services Act of 1949¹ (41 U.S.C. 251 et seq.), or chapter 137 of title 10, shall be expended either with—

(1) small business concerns controlled by socially and economically disadvantaged individuals or women;

(2) historically Black colleges and universities;

(3) colleges and universities having a student body in which more than 20 percent of the students are Hispanic Americans or Native Americans; or

(4) qualified HUBZone small business concerns.

(b) Definitions

For purposes of this section, the following definitions shall apply:

(1) The term "small business concern" has the meaning such term has under section 632 of title 15. However, for purposes of contracts and subcontracts requiring engineering services the applicable size standard shall be that established for military and aerospace equipment and military weapons.

(2) The term "socially and economically disadvantaged individuals" has the meaning such term has under section 637(d) of title 15 and relevant subcontracting regulations promulgated pursuant thereto.

(3) The term "qualified HUBZone small business concern" has the meaning given that term in section 632(p) of title 15.

(Pub. L. 102-486, title XXX, §3021, Oct. 24, 1992, 106 Stat. 3133; Pub. L. 105-135, title VI, §604(g), Dec. 2, 1997, 111 Stat. 2634.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a), is Pub. L. 102-486, Oct. 24, 1992, 106 Stat. 2776, known as the Energy Policy Act of 1992. For complete classification of this Act to the Code, see Short Title note set out under section 13201 of this title and Tables.

The Federal Property and Administrative Services Act of 1949, referred to in subsec. (a), is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Except for title III of the Act, which is classified generally to subchapter IV (§251 et seq.) of chapter 4 of Title 41, Public Contracts, the Act was repealed and reenacted by Pub. L. 107-217, §§1, 6(b), Aug. 21, 2002, 116 Stat. 1062, 1304, as chapters 1 to 11 of Title 40, Public Buildings, Property, and Works.

AMENDMENTS

1997—Subsec. (a)(4). Pub. L. 105-135, §604(g)(1), added par. (4).

Subsec. (b)(3). Pub. L. 105-135, §604(g)(2), added par. (3).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-135 effective Oct. 1, 1997, see section 3 of Pub. L. 105-135, set out as a note under section 631 of Title 15, Commerce and Trade.

¹ See References in Text note below.

CHAPTER 135—RESIDENCY AND SERVICE REQUIREMENTS IN FEDERALLY ASSISTED HOUSING

SUBCHAPTER I—STANDARDS AND OBLIGATIONS OF RESIDENCY IN FEDERALLY ASSISTED HOUSING

- Sec.
13601. Compliance by owners as condition of Federal assistance.
13602. Compliance with criteria for occupancy as requirement for tenancy.
13603. Establishment of criteria for occupancy.
- (a) Task force.
- (b) Rulemaking.
13604. Assisted applications.
- (a) Authority.
- (b) Maintenance of information.
- (c) Limitations.

SUBCHAPTER II—AUTHORITY TO PROVIDE PREFERENCES FOR ELDERLY RESIDENTS AND UNITS FOR DISABLED RESIDENTS IN CERTAIN SECTION 8 ASSISTED HOUSING

13611. Authority.
13612. Reservation of units for disabled families.
- (a) Requirement.
- (b) Number of units.
13613. Secondary preferences.
- (a) Insufficient elderly families.
- (b) Insufficient non-elderly disabled families.
13614. General availability of units.
13615. Preference within groups.
13616. Prohibition of evictions.
13617. Treatment of covered section 8 housing not subject to elderly preference.
13618. Treatment of other federally assisted housing.
- (a) Restricted occupancy.
- (b) Prohibition of evictions.
13619. "Covered section 8 housing" defined.
13620. Study.

SUBCHAPTER III—SERVICE COORDINATORS FOR ELDERLY AND DISABLED RESIDENTS OF FEDERALLY ASSISTED HOUSING

13631. Requirement to provide service coordinators.
- (a) In general.
- (b) Responsibilities.
- (c) Included services.
- (d) Covered federally assisted housing.
- (e) Services for low-income elderly or disabled families residing in vicinity of certain projects.
- (f) Protection against telemarketing fraud.
13632. Grants for costs of providing service coordinators in certain federally assisted housing.
- (a) Authority.
- (b) Application and selection.
- (c) Eligible project expense.

SUBCHAPTER IV—GENERAL PROVISIONS

13641. Definitions.
13642. Applicability.
13643. Regulations.

SUBCHAPTER V—SAFETY AND SECURITY IN PUBLIC AND ASSISTED HOUSING

13661. Screening of applicants for federally assisted housing.
- (a) Ineligibility because of eviction for drug crimes.
- (b) Ineligibility of illegal drug users and alcohol abusers.
- (c) Authority to deny admission to criminal offenders.
13662. Termination of tenancy and assistance for illegal drug users and alcohol abusers in federally assisted housing.

- Sec.
- (a) In general.
- (b) Consideration of rehabilitation.
13663. Ineligibility of dangerous sex offenders for admission to public housing.
- (a) In general.
- (b) Obtaining information.
- (c) Requests by owners for PHAs to obtain information.
- (d) Opportunity to dispute.
- (e) Fee.
- (f) Records management.
13664. Definitions.

SUBCHAPTER I—STANDARDS AND OBLIGATIONS OF RESIDENCY IN FEDERALLY ASSISTED HOUSING

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1437d, 1437f of this title; title 12 section 1701q.

§ 13601. Compliance by owners as condition of Federal assistance

The Secretary of Housing and Urban Development shall require owners of federally assisted housing (as such term is defined in section 13641(2) of this title), as a condition of receiving housing assistance for such housing, to comply with the procedures and requirements established under this subchapter.

(Pub. L. 102-550, title VI, §641, Oct. 28, 1992, 106 Stat. 3820.)

EFFECTIVE DATE

Chapter applicable upon expiration of 6-month period beginning Oct. 28, 1992, except as otherwise provided, see section 13642 of this title.

§ 13602. Compliance with criteria for occupancy as requirement for tenancy

In selecting tenants for occupancy of units in federally assisted housing, an owner of such housing shall utilize the criteria for occupancy in federally assisted housing established by the Secretary, by regulation, under section 13603 of this title. If an owner determines that an applicant for occupancy in the housing does not meet such criteria, the owner may deny such applicant occupancy.

(Pub. L. 102-550, title VI, §642, Oct. 28, 1992, 106 Stat. 3821.)

§ 13603. Establishment of criteria for occupancy

(a) Task force

(1) Establishment

To assist the Secretary in establishing reasonable criteria for occupancy in federally assisted housing, the Secretary shall establish a task force to review all rules, policy statements, handbooks, technical assistance memoranda, and other relevant documents issued by the Department of Housing and Urban Development on the standards and obligations governing residency in federally assisted housing and make recommendations to the Secretary for the establishment of such criteria for occupancy.

(2) Members

The Secretary shall appoint members to the task force, which shall include individuals rep-

representing the interests of owners, managers, and tenants of federally assisted housing, public housing agencies, owner and tenant advocacy organizations, persons with disabilities and disabled families, organizations assisting homeless individuals, and social service, mental health, and other nonprofit servicer providers who serve federally assisted housing.

(3) Compensation

Members of the task force shall not receive compensation for serving on the task force.

(4) Duties

The task force shall—

(A) review all existing standards, regulations, and guidelines governing occupancy and tenant selection policies in federally assisted housing;

(B) review all existing standards, regulations, and guidelines governing lease provisions and other rules of occupancy for federally assisted housing;

(C) determine whether the standards, regulations, and guidelines reviewed under subparagraphs (A) and (B) provide sufficient guidance to owners and managers of federally assisted housing to—

(i) develop procedures for preselection inquiries sufficient to determine the capacity of applicants to comply with reasonable lease terms and conditions of occupancy;

(ii) utilize leases that prohibit behavior which endangers the health or safety of other tenants or violates the rights of other tenants to peaceful enjoyment of the premises;

(iii) assess the need to provide, and appropriate measures for providing, reasonable accommodations required under the Fair Housing Act [42 U.S.C. 3601 et seq.] and section 794 of title 29 for persons with various types of disabilities; and

(iv) comply with civil rights laws and regulations;

(D) propose criteria for occupancy in federally assisted housing, standards for the reasonable performance and behavior of tenants of federally assisted housing, compliance standards consistent with the reasonable accommodation of the requirements of the Fair Housing Act [42 U.S.C. 3601 et seq.] and section 794 of title 29, standards for compliance with other civil rights laws, and procedures for the eviction of tenants not complying with such standards consistent with sections 1437d and 1437f of this title; and

(E) report to the Congress and the Secretary of Housing and Urban Development pursuant to paragraph (7).

(5) Procedure

In carrying out its duties, the task force shall hold public hearings and receive written comments for a period of not less than 60 days.

(6) Support

The Secretary of Housing and Urban Development shall cooperate fully with the task force and shall provide support staff and office space to assist the task force in carrying out its duties.

(7) Reports

Not later than 3 months after October 28, 1992, the task force shall submit to the Secretary and the Congress a preliminary report describing its initial actions. Not later than 6 months after October 28, 1992, the task force shall submit a report to the Secretary and the Congress, which shall include—

(A) a description of its findings; and

(B) recommendations to revise such standards, regulations, and guidelines to provide accurate and complete guidance to owners and managers of federally assisted housing as determined necessary under paragraph (4).

(b) Rulemaking

(1) Authority

The Secretary shall, by regulation, establish criteria for selection of tenants for occupancy in federally assisted housing and lease provisions for such housing.

(2) Standards

The criteria shall provide sufficient guidance to owners and managers of federally assisted housing to enable them to (A) select tenants capable of complying with reasonable lease terms, (B) utilize leases prohibiting behavior which endangers the health or safety of others or violates the right of other tenants to peaceful enjoyment of the premises, (C) comply with legal requirements to make reasonable accommodations for persons with disabilities, and (D) comply with civil rights laws. The criteria shall be consistent with the requirements under subsections (k) and (l) of section 1437d of this title and section 1437f(d)(1) of this title and any similar contract and lease requirements for federally assisted housing. In establishing the criteria, the Secretary shall take into consideration the report of the task force under subsection (a)(7) of this section.

(3) Procedure

Not later than 90 days after the submission of the final report under subsection (a)(7) of this section, the Secretary shall issue a notice of proposed rulemaking of the regulations under this subsection providing for notice and opportunity for public comment regarding the regulations, pursuant to the provisions of section 553 of title 5 (notwithstanding subsections (a)(2), (b)(B), and (d)(3) of such section). The duration of the period for public comment under such section 553 shall not be less than 60 days. The Secretary shall issue final regulations under this subsection not later than the expiration of the 60-day period beginning upon the conclusion of the comment period, which shall take effect upon issuance.

(Pub. L. 102-550, title VI, § 643, Oct. 28, 1992, 106 Stat. 3821.)

REFERENCES IN TEXT

The Fair Housing Act, referred to in subsec. (a)(4)(C)(iii), (D), is title VIII of Pub. L. 90-284, Apr. 11, 1968, 82 Stat. 81, as amended, which is classified principally to subchapter I (§3601 et seq.) of chapter 45 of this title. For complete classification of this Act to the

Code, see Short Title note set out under section 3601 of this title and Tables.

The civil rights laws, referred to in subsecs. (a)(4)(C)(iv), (D) and (b)(2)(D), are classified generally to chapter 21 (§1981 et seq.) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13602 of this title.

§ 13604. Assisted applications

(a) Authority

The Secretary shall provide that any individual or family applying for occupancy in federally assisted housing may include in the application for the housing the name, address, phone number, and other relevant information of a family member, friend, or social, health, advocacy, or other organization, and that the owner shall treat such information as confidential.

(b) Maintenance of information

The Secretary shall require the owner of any federally assisted housing receiving an application including such information to maintain such information for any applicants who become tenants of the housing, for the purposes of facilitating contact by the owner with such person or organization to assist in providing any services or special care for the tenant and assist in resolving any relevant tenancy issues arising during the tenancy of such tenant.

(c) Limitations

An owner of federally assisted housing may not require any individual or family applying for occupancy in the housing to provide the information described in subsection (a) of this section.

(Pub. L. 102-550, title VI, §644, Oct. 28, 1992, 106 Stat. 3823.)

SUBCHAPTER II—AUTHORITY TO PROVIDE PREFERENCES FOR ELDERLY RESIDENTS AND UNITS FOR DISABLED RESIDENTS IN CERTAIN SECTION 8 ASSISTED HOUSING

SECTION REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 1437f of this title.

§ 13611. Authority

Notwithstanding any other provision of law, an owner of a covered section 8 housing project (as such term is defined in section 13619 of this title) designed primarily for occupancy by elderly families may, in selecting tenants for units in the project that become available for occupancy, give preference to elderly families who have applied for occupancy in the housing, subject to the requirements of this subchapter.

(Pub. L. 102-550, title VI, §651, Oct. 28, 1992, 106 Stat. 3823.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original “this subtitle”, meaning subtitle D of title VI of Pub. L. 102-550, Oct. 28, 1992, 106 Stat. 3823, which enacted this subchapter and amended section 1437f of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13612, 13613, 13615 of this title.

§ 13612. Reservation of units for disabled families

(a) Requirement

Notwithstanding any other provision of law, for any project for which an owner gives preference in occupancy to elderly families pursuant to section 13611 of this title, such owner shall (subject to sections 13613, 13614, and 13615 of this title) reserve units in the project for occupancy only by disabled families who are not elderly or near-elderly families (and who have applied for occupancy in the housing) in the number determined under subsection (b) of this section.

(b) Number of units

Each owner required to reserve units in a project for occupancy under subsection (a) of this section shall reserve a number of units in the project that is not less than the lesser of—

(1) the number of units equivalent to the higher of—

(A) the percentage of units in the project that were occupied by such disabled families upon October 28, 1992; or

(B) the percentage of units in the project that were occupied by such families upon January 1, 1992; or

(2) 10 percent of the number of units in the project.

(Pub. L. 102-550, title VI, §652, Oct. 28, 1992, 106 Stat. 3823.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13613, 13615, 13616 of this title.

§ 13613. Secondary preferences

(a) Insufficient elderly families

If an owner of a covered section 8 housing project in which elderly families are given a preference for occupancy pursuant to section 13611 of this title determines (in accordance with regulations established by the Secretary) that there are insufficient numbers of elderly families who have applied for occupancy in the housing to fill all the units in the project not reserved under section 13612 of this title, the owner may give preference for occupancy of such units to disabled families who are near-elderly families and have applied for occupancy in the housing.

(b) Insufficient non-elderly disabled families

If an owner of a covered section 8 housing project in which elderly families are given a preference for occupancy pursuant to section 13611 of this title determines (in accordance with regulations established by the Secretary) that there are insufficient numbers of disabled families who are not elderly or near-elderly families and have applied for occupancy in the housing to fill all the units in the project reserved under section 13612 of this title, the owner may give preference for occupancy of units so reserved to disabled families who are near-elderly families and have applied for occupancy in the housing.

(Pub. L. 102-550, title VI, §653, Oct. 28, 1992, 106 Stat. 3824.)

REFERENCES IN TEXT

Covered section 8 housing, referred to in text, is defined in section 13619 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13612, 13614, 13615 of this title.

§ 13614. General availability of units

If an owner of a covered section 8 housing project in which disabled families who are near-elderly families are given a preference for occupancy pursuant to subsection (a) or (b) of section 13613 of this title determines (in accordance with regulations established by the Secretary) that there are an insufficient number of such families to fill all the units in the project for which the preference is applicable, the owner shall make such units generally available for occupancy by families who have applied, and are eligible, for occupancy in the housing, without regard to the preferences established pursuant to this subchapter.

(Pub. L. 102-550, title VI, §654, Oct. 28, 1992, 106 Stat. 3824.)

REFERENCES IN TEXT

Covered section 8 housing, referred to in text, is defined in section 13619 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13612 of this title.

§ 13615. Preference within groups

Among disabled families qualifying for occupancy in units reserved under section 13612 of this title, and among elderly families and near-elderly families qualifying for preference for occupancy pursuant to section 13611 or 13613 of this title, preference for occupancy in units that are assisted under section 1437f of this title shall be given to disabled families according to any preferences established under any system established under section 1437f(d)(1)(A) of this title by the public housing agency.

(Pub. L. 102-550, title VI, §655, Oct. 28, 1992, 106 Stat. 3824; Pub. L. 104-99, title IV, §402(d)(6)(C), Jan. 26, 1996, 110 Stat. 43; Pub. L. 105-276, title V, §514(b)(2)(B), Oct. 21, 1998, 112 Stat. 2548.)

AMENDMENTS

1998—Pub. L. 105-276 substituted “shall be given to disabled families according to any preferences established under any system established under section 1437f(d)(1)(A) of this title by the public housing agency.” for “shall be given to disabled families according to the preferences for occupancy referred to in section 1437f(d)(1)(A)(i) of this title and the first sentence of section 1437f(o)(3)(B) of this title, to elderly families according to such preferences, and to near-elderly families according to such preferences, respectively.”

1996—Pub. L. 104-99, §402(d)(6)(C), (f), temporarily substituted “any preferences” for “the preferences for occupancy referred to in section 1437f(d)(1)(A)(i) of this title and the first sentence of section 1437f(o)(3)(B) of this title, to elderly families according to such preferences, and to near-elderly families according to such preferences, respectively”. See Effective and Termination Dates of 1996 Amendment note below.

EFFECTIVE AND TERMINATION DATES OF 1996
AMENDMENT

Amendment by Pub. L. 104-99 effective Jan. 26, 1996, only for fiscal years 1996, 1997, and 1998, and to cease to be effective Oct. 21, 1998, see section 402(f) of Pub. L.

104-99, as amended, and section 514(f) of Pub. L. 105-276, set out as notes under section 1437a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13612 of this title.

§ 13616. Prohibition of evictions

Any tenant who, except for reservation of a percentage of the units of a project pursuant to section 13612 of this title or any preference for occupancy established pursuant to this subchapter, is lawfully residing in a dwelling unit in a covered section 8 housing project, may not be evicted or otherwise required to vacate such unit because of the reservation or preferences or because of any action taken by the Secretary of Housing and Urban Development or the owner of the project pursuant to this subchapter.

(Pub. L. 102-550, title VI, §656, Oct. 28, 1992, 106 Stat. 3824.)

REFERENCES IN TEXT

Covered section 8 housing, referred to in text, is defined in section 13619 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1437f, 13611 of this title.

§ 13617. Treatment of covered section 8 housing not subject to elderly preference

If an owner of any covered section 8 housing project designed primarily for occupancy by elderly families does not give preference in occupancy to elderly families as authorized in this subchapter, then elderly families (as such term was defined in section 1437a of this title before October 28, 1992) shall be eligible for occupancy in such housing to the same extent that such families were eligible before October 28, 1992.

(Pub. L. 102-550, title VI, §657, Oct. 28, 1992, 106 Stat. 3825.)

REFERENCES IN TEXT

Covered section 8 housing, referred to in text, is defined in section 13619 of this title.

§ 13618. Treatment of other federally assisted housing**(a) Restricted occupancy**

An owner of any federally assisted project (or portion of a project) as described in subparagraphs (D), (E), and (F) of section 13641(2) of this title that was designed for occupancy by elderly families may continue to restrict occupancy in such project (or portion) to elderly families in accordance with the rules, standards, and agreements governing occupancy in such housing in effect at the time of the development of the housing.

(b) Prohibition of evictions

Any tenant who is lawfully residing in a dwelling unit in a housing project described in subsection (a) of this section may not be evicted or otherwise required to vacate such unit because of any reservation or preferences under this subchapter or because of any action taken by the Secretary of Housing and Urban Development or

the owner of the project pursuant to this subchapter.

(Pub. L. 102-550, title VI, § 658, Oct. 28, 1992, 106 Stat. 3825.)

§ 13619. “Covered section 8 housing” defined

For purposes of this subchapter, the term “covered section 8 housing” means housing described in section 13641(2)(G) of this title that was originally designed for occupancy by elderly families.

(Pub. L. 102-550, title VI, § 659, Oct. 28, 1992, 106 Stat. 3825.)

§ 13620. Study

The Secretary of Housing and Urban Development shall conduct a study to determine the extent to which Federal housing programs serve elderly families, disabled families, and families with children, in relation to the need of such families who are eligible for assistance under such programs. The Secretary shall submit a report to the Congress describing the study and the findings of the study not later than the expiration of the 1-year period beginning on October 28, 1992.

(Pub. L. 102-550, title VI, § 661, Oct. 28, 1992, 106 Stat. 3825.)

SUBCHAPTER III—SERVICE COORDINATORS FOR ELDERLY AND DISABLED RESIDENTS OF FEDERALLY ASSISTED HOUSING

§ 13631. Requirement to provide service coordinators

(a) In general

To the extent that amounts are made available for providing service coordinators under this section, the Secretary shall require owners of covered federally assisted housing projects (as such term is defined in subsection (d) of this section) receiving such amounts to provide for employing or otherwise retaining the services of one or more individuals to coordinate the provision of supportive services for elderly and disabled families residing in the projects (in this section referred to as a “service coordinator”). No such elderly or disabled family may be required to accept services.

(b) Responsibilities

Each service coordinator of a covered federally assisted housing project provided pursuant to this subtitle¹ or the amendments made by this subtitle—¹

(1) shall consult with the owner of the housing, tenants, any tenant organizations, any resident management organizations, service providers, and any other appropriate persons, to identify the particular needs and characteristics of elderly and disabled families who reside in the project and any supportive services related to such needs and characteristics;

(2) shall manage and coordinate the provision of such services for residents of the project;

(3) may provide training to tenants of the project in the obligations of tenancy or coordinate such training;

(4) shall meet the minimum qualifications and standards required under section 8011(d)(4) of this title; and

(5) may carry out other appropriate activities for residents of the project.

(c) Included services

Supportive services referred to under subsection (b)(1) of this section may include health-related services, mental health services, services for nonmedical counseling, meals, transportation, personal care, bathing, toileting, housekeeping, chore assistance, safety, group and socialization activities, assistance with medications (in accordance with any applicable State laws), case management, personal emergency response, education and outreach regarding telemarketing fraud in accordance with the standards issued under subsection (f) of this section, and other appropriate services. The services may be provided through any agency of the Federal Government or any other public or private department, agency, or organization.

(d) Covered federally assisted housing

For purposes of this subtitle,¹ the term “covered federally assisted housing” means housing that is federally assisted housing (as such term is defined in section 13641(2) of this title), except that such term does not include housing described in subparagraphs (C) and (D) of such section.

(e) Services for low-income elderly or disabled families residing in vicinity of certain projects

To the extent only that this section applies to service coordinators for covered federally assisted housing described in subparagraphs (B), (C), (D), (E), (F), and (G) of section 13641(2) of this title, any reference in this section to elderly or disabled residents of a project shall be construed to include low-income elderly or disabled families living in the vicinity of such project.

(f) Protection against telemarketing fraud

(1) In general

The Secretary, in coordination with the Secretary of Health and Human Services, shall establish standards for service coordinators in federally assisted housing who are providing education and outreach to elderly persons residing in such housing regarding telemarketing fraud. The standards shall be designed to ensure that such education and outreach informs such elderly persons of the dangers of telemarketing fraud and facilitates the investigation and prosecution of telemarketers engaging in fraud against such residents.

(2) Contents

The standards established under this subsection shall require that any such education and outreach be provided in a manner that—

(A) informs such residents of—

(i) the prevalence of telemarketing fraud targeted against elderly persons;

(ii) how telemarketing fraud works;

¹ See References in Text note below.

(iii) how to identify telemarketing fraud;
 (iv) how to protect themselves against telemarketing fraud, including an explanation of the dangers of providing bank account, credit card, or other financial or personal information over the telephone to unsolicited callers;

(v) how to report suspected attempts at telemarketing fraud; and

(vi) their consumer protection rights under Federal law;

(B) provides such other information as the Secretary considers necessary to protect such residents against fraudulent telemarketing; and

(C) disseminates the information provided by appropriate means, and in determining such appropriate means, the Secretary shall consider on-site presentations at federally assisted housing, public service announcements, a printed manual or pamphlet, an Internet website, and telephone outreach to residents whose names appear on “mooch lists” confiscated from fraudulent telemarketers.

(Pub. L. 102-550, title VI, §671, Oct. 28, 1992, 106 Stat. 3826; Pub. L. 106-569, title VIII, §851(b), (c)(2), Dec. 27, 2000, 114 Stat. 3024.)

REFERENCES IN TEXT

This subtitle, referred to in subsecs. (b) and (d), means subtitle E of title VI of Pub. L. 102-550, Oct. 28, 1992, 106 Stat. 3826, which enacted this subchapter, amended sections 1437f, 1437g, and 8011 of this title and section 1701q of Title 12, Banks and Banking, and enacted provisions set out as a note under section 1701q of Title 12.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106-569, §851(b)(1), in first sentence, substituted “for providing service coordinators under this section,” for “to carry out this subtitle pursuant to the amendments made by this subtitle.”

Subsec. (c). Pub. L. 106-569, §851(c)(2)(A), in first sentence, inserted “education and outreach regarding telemarketing fraud in accordance with the standards issued under subsection (f) of this section,” after “response.”

Subsec. (d). Pub. L. 106-569, §851(b)(2), inserted closing parenthesis after “section 13641(2) of this title”.

Subsec. (e). Pub. L. 106-569, §851(b)(3), added subsec. (e).

Subsec. (f). Pub. L. 106-569, §851(c)(2)(B), added subsec. (f).

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by title VIII of Pub. L. 106-569 effective Dec. 27, 2000, unless effectiveness or applicability upon another date certain is specifically provided for, with provisions relating to effect of regulatory authority, see section 803 of Pub. L. 106-569, set out as a note under section 1701q of Title 12, Banks and Banking.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1437f, 13632 of this title; title 12 section 1701q.

§ 13632. Grants for costs of providing service coordinators in certain federally assisted housing

(a) Authority

The Secretary may make grants under this section to owners of federally assisted housing

projects described in subparagraphs (B), (C), (D), (E), (F), and (G) of section 13641(2) of this title. Any grant amounts shall be used for the costs of employing or otherwise retaining the services of one or more service coordinators under section 13631 of this title to coordinate the provision of any services within the project for residents of the project who are elderly families and disabled families (as such terms are defined in section 13641 of this title). A service coordinator funded with a grant under this section for a project may provide services to low-income elderly or disabled families living in the vicinity of such project.

(b) Application and selection

The Secretary shall provide for the form and manner of applications for grants under this section and for selection of applicants to receive such grants.

(c) Eligible project expense

For any federally assisted housing project described in subparagraph (B), (C), (D), (E), (F), or (G) of section 13641(2) of this title that does not receive a grant under this section, the cost of employing or otherwise retaining the services of one or more service coordinators under section 13631 of this title and not more than 15 percent of the cost of providing services to the residents of the project shall be considered an eligible project expense, but only to the extent that amounts are available from project rent and other income for such costs.

(Pub. L. 102-550, title VI, §676, Oct. 28, 1992, 106 Stat. 3828; Pub. L. 106-569, title VIII, §851(a), Dec. 27, 2000, 114 Stat. 3023.)

AMENDMENTS

2000—Pub. L. 106-569, §851(a)(1), substituted “certain federally assisted housing” for “multifamily housing assisted under National Housing Act” in section catchline.

Subsec. (a). Pub. L. 106-569, §851(a)(2), substituted “subparagraphs (B), (C), (D), (E), (F), and (G) of section 13641(2) of this title” for “subparagraphs (E) and (F) of section 13641(2) of this title”, made technical amendment to reference in original act which appears in text as reference to section 13631 of this title, and inserted at end “A service coordinator funded with a grant under this section for a project may provide services to low-income elderly or disabled families living in the vicinity of such project.”

Subsec. (c). Pub. L. 106-569, §851(a)(4), redesignated subsec. (d) as (c) and struck out heading and text of former subsec. (c). Text read as follows: “There are authorized to be appropriated for fiscal years 1993 and 1994 such sums as may be necessary for grants under this section.”

Subsec. (d). Pub. L. 106-569, §851(a)(4), redesignated subsec. (d) as (c).

Pub. L. 106-569, §851(a)(3), substituted “subparagraph (B), (C), (D), (E), (F), or (G) of section 13641(2) of this title” for “subparagraph (E) or (F) of section 13641(2) of this title” and made technical amendment to reference in original act which appears in text as reference to section 13631 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by title VIII of Pub. L. 106-569 effective Dec. 27, 2000, unless effectiveness or applicability upon another date certain is specifically provided for, with provisions relating to effect of regulatory authority, see section 803 of Pub. L. 106-569, set out as a note under section 1701q of Title 12, Banks and Banking.

SUBCHAPTER IV—GENERAL PROVISIONS

§ 13641. Definitions

For purposes of this title:¹

(1) Elderly, disabled, and near-elderly families

The terms “elderly family”, “disabled family”, and “near-elderly family” have the meanings given the terms under section 3(b)(3) of the United States Housing Act of 1937 [42 U.S.C. 1437a(b)(3)].

(2) Federally assisted housing

The terms “federally assisted housing” and “project” mean—

(A) a public housing project (as such term is defined in section 3(b) of the United States Housing Act of 1937 [42 U.S.C. 1437a(b)]);

(B) housing for which project-based assistance is provided under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f];

(C) housing that is assisted under section 1701q of title 12;

(D) housing that is assisted under section 1701q of title 12, as such section existed before November 28, 1990;

(E) housing financed by a loan or mortgage insured under section 1715(d)(3) of title 12 that bears interest at a rate determined under the proviso of section 1715(d)(5) of title 12;

(F) housing insured, assisted, or held by the Secretary or a State or State agency under section 1715z-1 of title 12; and

(G) housing constructed or substantially rehabilitated pursuant to assistance provided under section 8(b)(2) of the United States Housing Act of 1937 [42 U.S.C. 1437f(b)(2)], as in effect before October 1, 1983, that is assisted under a contract for assistance under such section.

(3) Housing assistance

The term “housing assistance” means, with respect to federally assisted housing, the grant, contribution, capital advance, loan, mortgage insurance, or other assistance provided for the housing under the provisions of law referred to in paragraph (2). The term also includes any related assistance provided for the housing by the Secretary, including any rental assistance for low-income occupants.

(4) Owner

The term “owner” means, with respect to federally assisted housing, the entity or private person, including a cooperative or public housing agency, that has the legal right to lease or sublease dwelling units in such housing.

(5) Secretary

The term “Secretary” means the Secretary of Housing and Urban Development.

(Pub. L. 102-550, title VI, §683, Oct. 28, 1992, 106 Stat. 3831.)

REFERENCES IN TEXT

This title, referred to in text, is title VI of Pub. L. 102-550, Oct. 28, 1992, 106 Stat. 3802, which enacted this

¹ See References in Text note below.

chapter, amended sections 1437a, 1437c to 1437g, 1437i, 1437o, 1438, 8011 to 8013, 12705, 12901 to 12910, and 12912 of this title and section 1701q of Title 12, Banks and Banking, enacted provisions set out as notes under sections 1437a, 8011, and 12901 of this title and section 1701q of Title 12, and amended provisions set out as a note under section 1701q of Title 12. For complete classification of this title to the Code, see Short Title of 1992 Amendment note set out under section 5301 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13601, 13618, 13619, 13631, 13632 of this title; title 12 section 1701q-2.

§ 13642. Applicability

Except as otherwise provided in subtitles B through F of this title and the amendments made by such subtitles, such subtitles and the amendments made by such subtitles shall apply upon the expiration of the 6-month period beginning on October 28, 1992.

(Pub. L. 102-550, title VI, §684, Oct. 28, 1992, 106 Stat. 3832.)

REFERENCES IN TEXT

Subtitles B through F of this title, referred to in text, mean subtitles B to F of title VI of Pub. L. 102-550, Oct. 28, 1992, 106 Stat. 3812-3830, which enacted this chapter, amended sections 1437a, 1437c to 1437g, 1437i, 1437o, 1438, 8011, 8013, and 12705 of this title and section 1701q of Title 12, Banks and Banking, and enacted provisions set out as notes under section 1437a of this title and section 1701q of Title 12.

§ 13643. Regulations

The Secretary shall issue regulations necessary to carry out subtitles B through F of this title and the amendments made by such subtitles not later than the expiration of the 6-month period beginning on October 28, 1992. The regulations shall be issued after notice and opportunity for public comment pursuant to the provisions of section 553 of title 5 (notwithstanding subsections (a)(2), (b)(B), and (d)(3) of such section).

(Pub. L. 102-550, title VI, §685, Oct. 28, 1992, 106 Stat. 3832.)

REFERENCES IN TEXT

Subtitles B through F of this title, referred to in text, mean subtitles B to F of title VI of Pub. L. 102-550, Oct. 28, 1992, 106 Stat. 3812-3830, which enacted this chapter, amended sections 1437a, 1437c to 1437g, 1437i, 1437o, 1438, 8011, 8013, and 12705 of this title and section 1701q of Title 12, Banks and Banking, and enacted provisions set out as notes under section 1437a of this title and section 1701q of Title 12.

SUBCHAPTER V—SAFETY AND SECURITY
IN PUBLIC AND ASSISTED HOUSING

§ 13661. Screening of applicants for federally assisted housing

(a) Ineligibility because of eviction for drug crimes

Any tenant evicted from federally assisted housing by reason of drug-related criminal activity (as such term is defined in section 1437a(b) of this title) shall not be eligible for federally assisted housing during the 3-year period beginning on the date of such eviction, unless the

evicted tenant successfully completes a rehabilitation program approved by the public housing agency (which shall include a waiver of this subsection if the circumstances leading to eviction no longer exist).

(b) Ineligibility of illegal drug users and alcohol abusers

(1) In general

Notwithstanding any other provision of law, a public housing agency or an owner of federally assisted housing, as determined by the Secretary, shall establish standards that prohibit admission to the program or admission to federally assisted housing for any household with a member—

(A) who the public housing agency or owner determines is illegally using a controlled substance; or

(B) with respect to whom the public housing agency or owner determines that it has reasonable cause to believe that such household member's illegal use (or pattern of illegal use) of a controlled substance, or abuse (or pattern of abuse) of alcohol, may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents.

(2) Consideration of rehabilitation

In determining whether, pursuant to paragraph (1)(B), to deny admission to the program or federally assisted housing to any household based on a pattern of illegal use of a controlled substance or a pattern of abuse of alcohol by a household member, a public housing agency or an owner may consider whether such household member—

(A) has successfully completed a supervised drug or alcohol rehabilitation program (as applicable) and is no longer engaging in the illegal use of a controlled substance or abuse of alcohol (as applicable);

(B) has otherwise been rehabilitated successfully and is no longer engaging in the illegal use of a controlled substance or abuse of alcohol (as applicable); or

(C) is participating in a supervised drug or alcohol rehabilitation program (as applicable) and is no longer engaging in the illegal use of a controlled substance or abuse of alcohol (as applicable).

(c) Authority to deny admission to criminal offenders

Except as provided in subsections (a) and (b) of this section and in addition to any other authority to screen applicants, in selecting among applicants for admission to the program or to federally assisted housing, if the public housing agency or owner of such housing (as applicable) determines that an applicant or any member of the applicant's household is or was, during a reasonable time preceding the date when the applicant household would otherwise be selected for admission, engaged in any drug-related or violent criminal activity or other criminal activity which would adversely affect the health, safety, or right to peaceful enjoyment of the premises by other residents, the owner, or public housing agency employees, the public housing agency or owner may—

(1) deny such applicant admission to the program or to federally assisted housing; and

(2) after the expiration of the reasonable period beginning upon such activity, require the applicant, as a condition of admission to the program or to federally assisted housing, to submit to the public housing agency or owner evidence sufficient (as the Secretary shall by regulation provide) to ensure that the individual or individuals in the applicant's household who engaged in criminal activity for which denial was made under paragraph (1) have not engaged in any criminal activity during such reasonable period.

(Pub. L. 105-276, title V, §576, Oct. 21, 1998, 112 Stat. 2639.)

CODIFICATION

Section was enacted as part of the Quality Housing and Work Responsibility Act of 1998, and not as part of subtitles C to F of title VI of Pub. L. 102-550 which comprise this chapter.

Section is comprised of section 576 of Pub. L. 105-276. Subsec. (d) of section 576 of Pub. L. 105-276 amended sections 1437d and 1437n of this title.

EFFECTIVE DATE

Subchapter effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement any provision of subchapter before such date, except to extent otherwise provided, see section 503 of Pub. L. 105-276, set out as an Effective Date of 1998 Amendment note under section 1437 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1437d of this title.

§ 13662. Termination of tenancy and assistance for illegal drug users and alcohol abusers in federally assisted housing

(a) In general

Notwithstanding any other provision of law, a public housing agency or an owner of federally assisted housing (as applicable), shall establish standards or lease provisions for continued assistance or occupancy in federally assisted housing that allow the agency or owner (as applicable) to terminate the tenancy or assistance for any household with a member—

(1) who the public housing agency or owner determines is illegally using a controlled substance; or

(2) whose illegal use (or pattern of illegal use) of a controlled substance, or whose abuse (or pattern of abuse) of alcohol, is determined by the public housing agency or owner to interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents.

(b) Consideration of rehabilitation

In determining whether, pursuant to subsection (a)(2) of this section, to terminate tenancy or assistance to any household based on a pattern of illegal use of a controlled substance or a pattern of abuse of alcohol by a household member, a public housing agency or an owner may consider whether such household member—

(1) has successfully completed a supervised drug or alcohol rehabilitation program (as ap-

plicable) and is no longer engaging in the illegal use of a controlled substance or abuse of alcohol (as applicable);

(2) has otherwise been rehabilitated successfully and is no longer engaging in the illegal use of a controlled substance or abuse of alcohol (as applicable); or

(3) is participating in a supervised drug or alcohol rehabilitation program (as applicable) and is no longer engaging in the illegal use of a controlled substance or abuse of alcohol (as applicable).

(Pub. L. 105-276, title V, § 577, Oct. 21, 1998, 112 Stat. 2640.)

CODIFICATION

Section was enacted as part of the Quality Housing and Work Responsibility Act of 1998, and not as part of subtitles C to F of title VI of Pub. L. 102-550 which comprise this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1437d of this title.

§ 13663. Ineligibility of dangerous sex offenders for admission to public housing

(a) In general

Notwithstanding any other provision of law, an owner of federally assisted housing shall prohibit admission to such housing for any household that includes any individual who is subject to a lifetime registration requirement under a State sex offender registration program.

(b) Obtaining information

As provided in regulations issued by the Secretary to carry out this section—

(1) a public housing agency shall carry out criminal history background checks on applicants for federally assisted housing and make further inquiry with State and local agencies as necessary to determine whether an applicant for federally assisted housing is subject to a lifetime registration requirement under a State sex offender registration program; and

(2) State and local agencies responsible for the collection or maintenance of criminal history record information or information on persons required to register as sex offenders shall comply with requests of public housing agencies for information pursuant to this section.

(c) Requests by owners for PHAs to obtain information

A public housing agency may take any action under subsection (b) of this section regarding applicants for, or tenants of, federally assisted housing other than federally assisted housing described in subparagraph (A) or (B) of section 13664(a)(2) of this title, but only if the housing is located within the jurisdiction of the agency and the owner of such housing has requested that the agency take such action on behalf of the owner. Upon such a request by the owner, the agency shall take the action requested under subsection (b) of this section. The agency may not make any information obtained pursuant to the action under subsection (b) of this section available to the owner but shall perform determinations for the owner regarding screen-

ing, lease enforcement, and eviction based on criteria supplied by the owner.

(d) Opportunity to dispute

Before an adverse action is taken with respect to an applicant for federally assisted housing on the basis that an individual is subject to a lifetime registration requirement under a State sex offender registration program, the public housing agency obtaining the record shall provide the tenant or applicant with a copy of the registration information and an opportunity to dispute the accuracy and relevance of that information.

(e) Fee

A public housing agency may be charged a reasonable fee for taking actions under subsection (b) of this section. In the case of a public housing agency taking actions on behalf of another owner of federally assisted housing pursuant to subsection (c) of this section, the agency may pass such fee on to the owner making the request and may charge an additional reasonable fee for making the request on behalf of the owner.

(f) Records management

Each public housing agency shall establish and implement a system of records management that ensures that any criminal record or information regarding a lifetime registration requirement under a State sex offender registration program that is obtained under this section by the public housing agency is—

(1) maintained confidentially;

(2) not misused or improperly disseminated; and

(3) destroyed, once the purpose for which the record was requested has been accomplished.

(Pub. L. 105-276, title V, § 578, Oct. 21, 1998, 112 Stat. 2641.)

CODIFICATION

Section was enacted as part of the Quality Housing and Work Responsibility Act of 1998, and not as part of subtitles C to F of title VI of Pub. L. 102-550 which comprise this chapter.

§ 13664. Definitions

(a)¹ Definitions

For purposes of this subchapter, the following definitions shall apply:

(1) Drug-related criminal activity

The term “drug-related criminal activity” has the meaning given the term in section 1437a(b) of this title.

(2) Federally assisted housing

The term “federally assisted housing” means a dwelling unit—

(A) in public housing (as such term is defined in section 1437a(b) of this title);

(B) assisted with tenant-based assistance under section 1437f of this title;

(C) in housing that is provided project-based assistance under section 1437f of this title, including new construction and substantial rehabilitation projects;

¹ So in original. No subsec. (b) has been enacted.

(D) in housing that is assisted under section 1701q of title 12 (as amended by section 801 of the Cranston-Gonzalez National Affordable Housing Act);

(E) in housing that is assisted under section 1701q of title 12, as such section existed before the enactment of the Cranston-Gonzalez National Affordable Housing Act [November 28, 1990];

(F) in housing that is assisted under section 8013 of this title;

(G) in housing financed by a loan or mortgage insured under section 1715(d)(3) of title 12 that bears interest at a rate determined under the proviso of section 1715(d)(5) of title 12;

(H) in housing insured, assisted, or held by the Secretary or a State or State agency under section 1715z-1 of title 12; or

(I) in housing assisted under section 1484 or 1485 of this title.

(3) Owner

The term "owner" means, with respect to federally assisted housing, the entity or private person (including a cooperative or public housing agency) that has the legal right to lease or sublease dwelling units in such housing.

(Pub. L. 105-276, title V, §579, Oct. 21, 1998, 112 Stat. 2642.)

REFERENCES IN TEXT

Section 801 of the Cranston-Gonzalez National Affordable Housing Act, referred to in subsec. (a)(2)(D), is section 801 of Pub. L. 101-625.

CODIFICATION

Section was enacted as part of the Quality Housing and Work Responsibility Act of 1998, and not as part of subtitles C to F of title VI of Pub. L. 102-550 which comprise this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13663 of this title.

CHAPTER 136—VIOLENT CRIME CONTROL AND LAW ENFORCEMENT

SUBCHAPTER I—PRISONS

PART A—VIOLENT OFFENDER INCARCERATION AND TRUTH-IN-SENTENCING INCENTIVE GRANTS

Sec.	
13701.	Definitions.
13702.	Authorization of grants. <ul style="list-style-type: none"> (a) In general. (b) Regional compacts. (c) Applicability.
13703.	Violent offender incarceration grants. <ul style="list-style-type: none"> (a) Eligibility for minimum grant. (b) Additional amount for increased percentage of persons sentenced and time served. (c) Additional amount for increased rate of incarceration and percentage of sentence served.
13704.	Truth-in-sentencing incentive grants. <ul style="list-style-type: none"> (a) Eligibility. (b) Exception.
13705.	Special rules. <ul style="list-style-type: none"> (a) Sharing of funds with counties and other units of local government. (b) Use of truth-in-sentencing and violent offender incarceration grants.

Sec.	
	<ul style="list-style-type: none"> (c) Funds for juvenile offenders. (d) Private facilities. (e) "Part 1 violent crime" defined.
13706.	Formula for grants. <ul style="list-style-type: none"> (a) Allocation of violent offender incarceration grants under section 13703. (b) Allocation of truth-in-sentencing grants under section 13704. (c) Unavailable data. (d) Regional compacts.
13707.	Accountability. <ul style="list-style-type: none"> (a) Fiscal requirements. (b) Administrative provisions.
13708.	Authorization of appropriations. <ul style="list-style-type: none"> (a) In general. (b) Limitations on funds.
13709.	Payments for incarceration on tribal lands. <ul style="list-style-type: none"> (a) Reservation of funds. (b) Grants to Indian tribes. (c) Applications.
13710.	Payments to eligible States for incarceration of criminal aliens. <ul style="list-style-type: none"> (a) In general. (b) Authorization of appropriations. (c) Administration. (d) Report to Congress.
13711.	Support of Federal prisoners in non-Federal institutions. <ul style="list-style-type: none"> (a) In general. (b) Authorization of appropriations.
13712.	Report by Attorney General.
13713.	Aimee's Law. <ul style="list-style-type: none"> (a) Short title. (b) Definitions. (c) Penalty. (d) State applications. (e) Source of funds. (f) Construction. (g) Exception. (h) Report. (i) Collection of recidivism data. (j) Effective date.

PART B—MISCELLANEOUS PROVISIONS

13721.	Task force on prison construction standardization and techniques. <ul style="list-style-type: none"> (a) Task force. (b) Cooperation. (c) Performance requirements. (d) Dissemination. (e) Promotion and evaluation.
13722.	Efficiency in law enforcement and corrections. <ul style="list-style-type: none"> (a) In general. (b) Assessment of construction components and designs.
13723.	Congressional approval of any expansion at Lorton and congressional hearings on future needs. <ul style="list-style-type: none"> (a) Congressional approval. (b) Senate hearings. (c) "Expanded" and "expansion" defined.
13724.	Conversion of closed military installations into Federal prison facilities. <ul style="list-style-type: none"> (a) Study of suitable bases. (b) Suitability for conversion. (c) Time for study. (d) Construction of Federal prisons. (e) "Base closure law" defined.
13725.	Correctional job training and placement. <ul style="list-style-type: none"> (a) Purpose. (b) Definitions. (c) Establishment of Office. (d) Functions of Office.
13726.	Findings.
13726a.	Definitions.
13726b.	Federal regulation of prisoner transport companies. <ul style="list-style-type: none"> (a) In general.

- Sec. (b) Standards and requirements.
(c) Federal standards.
- 13726c. Enforcement.
- SUBCHAPTER II—CRIME PREVENTION
- PART A—OUNCE OF PREVENTION COUNCIL
13741. Ounce of Prevention Council.
(a) Establishment.
(b) Program coordination.
(c) Administrative responsibilities and powers.
13742. Ounce of prevention grant program.
(a) In general.
(b) Applicants.
(c) Priority.
(d) Federal share.
13743. “Indian tribe” defined.
13744. Authorization of appropriations.
- PART B—LOCAL CRIME PREVENTION BLOCK GRANT PROGRAM
13751. Payments to local governments.
(a) Payment and use.
(b) Timing of payments.
(c) Adjustments.
(d) Reservation for adjustments.
(e) Repayment of unexpended amounts.
(f) Nonsupplanting requirement.
13752. Authorization of appropriations.
(a) Authorization of appropriations.
(b) Administrative costs.
13753. Qualification for payment.
(a) In general.
(b) General requirements for qualification.
(c) Review by Governors.
(d) Sanctions for noncompliance.
13754. Allocation and distribution of funds.
(a) State distribution.
(b) Local distribution.
(c) Unavailability of information.
13755. Utilization of private sector.
13756. Public participation.
13757. Administrative provisions.
13758. Definitions.
- PART C—MODEL INTENSIVE GRANT PROGRAMS
13771. Grant authorization.
(a) Establishment.
(b) Priority.
13772. Uses of funds.
(a) In general.
(b) Guidelines.
(c) Equitable distribution of funds.
13773. Program requirements.
(a) Description.
(b) Comprehensive plan.
(c) Evaluation.
13774. Applications.
13775. Reports.
13776. Definitions.
13777. Authorization of appropriations.
- PART D—FAMILY AND COMMUNITY ENDEAVOR SCHOOLS GRANT PROGRAM
13791. Community schools youth services and supervision grant program.
(a) Short title.
(b) Definitions.
(c) Program authority.
(d) Program requirements.
(e) Eligible community identification.
(f) Applications.
(g) Eligibility of participants.
(h) Peer review panel.
(i) Investigations and inspections.
(j) Payments; Federal share; non-Federal share.

- Sec. (k) Evaluation.
13792. Repealed.
13793. Authorization of appropriations.
(a) In general.
(b) Programs.
- PART E—ASSISTANCE FOR DELINQUENT AND AT-RISK YOUTH
13801. Grant authority.
(a) Grants.
(b) Applications.
(c) Consideration of applications.
(d) Reports.
(e) Definitions.
13802. Authorization of appropriations.
- PART F—POLICE RECRUITMENT
13811. Grant authority.
(a) Grants.
(b) Qualified community organizations.
(c) Qualified programs.
(d) Applications.
(e) Action by Attorney General.
(f) Grant disbursement.
(g) Grant period.
(h) Grantee reporting.
(i) Guidelines.
13812. Authorization of appropriations.
- PART G—NATIONAL COMMUNITY ECONOMIC PARTNERSHIP
- SUBPART 1—COMMUNITY ECONOMIC PARTNERSHIP INVESTMENT FUNDS
13821. Purpose.
13822. Provision of assistance.
(a) Authority.
(b) Revolving loan funds.
13823. Approval of applications.
(a) In general.
(b) Priority.
13824. Availability of lines of credit and use.
(a) Approval of application.
(b) Limitations on availability of amounts.
(c) Amounts drawn from line of credit.
(d) Use of revolving loan funds.
13825. Limitations on use of funds.
(a) Matching requirement.
(b) Technical assistance and administration.
(c) Local and private sector contributions.
(d) Use of proceeds from investments.
13826. Program priority for special emphasis programs.
(a) In general.
(b) Reservation of funds.
- SUBPART 2—EMERGING COMMUNITY DEVELOPMENT CORPORATIONS
13841. Community development corporation improvement grants.
(a) Purpose.
(b) Skill enhancement grants.
(c) Operating grants.
(d) Applications.
(e) Amount available for community development corporation.
13842. Emerging community development corporation revolving loan funds.
(a) Authority.
(b) Eligibility.
(c) Use of revolving loan fund.
(d) Use of proceeds from investments.
(e) Amounts available.
- SUBPART 3—MISCELLANEOUS PROVISIONS
13851. Definitions.

- Sec.
13852. Authorization of appropriations.
 (a) In general.
 (b) Earmarks.
 (c) Amounts.
13853. Prohibition.
- PART H—COMMUNITY-BASED JUSTICE GRANTS FOR PROSECUTORS
13861. Grant authorization.
 (a) In general.
 (b) Consultation.
13862. Use of funds.
13863. Applications.
 (a) Eligibility.
 (b) Requirements.
 (c) Comprehensive plan.
13864. Allocation of funds; limitations on grants.
 (a) Administrative cost limitation.
 (b) Renewal of grants.
13865. Award of grants.
13866. Reports.
 (a) Report to Attorney General.
 (b) Report to Congress.
13867. Authorization of appropriations.
13868. Definitions.
- PART I—FAMILY UNITY DEMONSTRATION PROJECT
13881. Purpose.
13882. Definitions.
13883. Authorization of appropriations.
 (a) Authorization.
 (b) Availability of appropriations.
- SUBPART 1—GRANTS TO STATES
13891. Authority to make grants.
 (a) General authority.
 (b) Preferences.
 (c) Selection of grantees.
13892. Eligibility to receive grants.
13893. Report.
 (a) In general.
 (b) Contents.
- SUBPART 2—FAMILY UNITY DEMONSTRATION PROJECT FOR FEDERAL PRISONERS
13901. Authority of Attorney General.
 (a) In general.
 (b) General contracting authority.
 (c) Use of State facilities.
13902. Requirements.
- PART J—PREVENTION, DIAGNOSIS, AND TREATMENT OF TUBERCULOSIS IN CORRECTIONAL INSTITUTIONS
13911. Prevention, diagnosis, and treatment of tuberculosis in correctional institutions.
 (a) Guidelines.
 (b) Compliance.
 (c) Grants.
 (d) Definitions.
- PART K—GANG RESISTANCE EDUCATION AND TRAINING
13921. Gang Resistance Education and Training projects.
 (a) Establishment of projects.
 (b) Authorization of appropriations.
- SUBCHAPTER III—VIOLENCE AGAINST WOMEN
- PART A—SAFE STREETS FOR WOMEN
- SUBPART 1—SAFETY FOR WOMEN IN PUBLIC TRANSIT
13931. Grants for capital improvements to prevent crime in public transportation.
 (a) General purpose.
 (b) Grants for lighting, camera surveillance, and security phones.
 (c) Reporting.
 (d) Increased Federal share.
- Sec.
 (e) Special grants for projects to study increasing security for women.
 (f) General requirements.
- SUBPART 2—ASSISTANCE TO VICTIMS OF SEXUAL ASSAULT
13941. Training programs.
 (a) In general.
 (b) Training programs.
 (c) Authorization of appropriations.
13942. Confidentiality of communications between sexual assault or domestic violence victims and their counselors.
 (a) Study and development of model legislation.
 (b) Report and recommendations.
 (c) Review of Federal evidentiary rules.
13943. Information programs.
- PART B—SAFE HOMES FOR WOMEN
- SUBPART 1—CONFIDENTIALITY FOR ABUSED PERSONS
13951. Confidentiality of abused person's address.
 (a) Regulations.
 (b) Requirements.
 (c) Disclosure for certain purposes.
 (d) Existing complications.
- SUBPART 2—DATA AND RESEARCH
13961. Research agenda.
 (a) Request for contract.
 (b) Declination of request.
 (c) Report.
13962. State databases.
 (a) In general.
 (b) Consultation.
 (c) Report.
 (d) Authorization of appropriations.
13963. Number and cost of injuries.
 (a) Study.
 (b) Authorization of appropriations.
- SUBPART 3—RURAL DOMESTIC VIOLENCE AND CHILD ABUSE ENFORCEMENT
13971. Rural domestic violence and child abuse enforcement assistance.
 (a) Grants.
 (b) Definitions.
 (c) Authorization of appropriations.
- SUBPART 4—TRANSITIONAL HOUSING ASSISTANCE GRANTS FOR CHILD VICTIMS OF DOMESTIC VIOLENCE, STALKING, OR SEXUAL ASSAULT
13975. Transitional housing assistance grants for child victims of domestic violence, stalking, or sexual assault.
 (a) In general.
 (b) Grants.
 (c) Duration.
 (d) Application.
 (e) Report to the Attorney General.
 (f) Report to Congress.
 (g) Authorization of appropriations.
- PART C—CIVIL RIGHTS FOR WOMEN
13981. Civil rights.
 (a) Purpose.
 (b) Right to be free from crimes of violence.
 (c) Cause of action.
 (d) Definitions.
 (e) Limitation and procedures.
- PART D—EQUAL JUSTICE FOR WOMEN IN COURTS
- SUBPART 1—EDUCATION AND TRAINING FOR JUDGES AND COURT PERSONNEL IN STATE COURTS
13991. Grants authorized.
13992. Training provided by grants.

- Sec.
13993. Cooperation in developing programs in making grants under this part.
13994. Authorization of appropriations.
 (a) In general.
 (b) Model programs.
 (c) State Justice Institute.

SUBPART 2—EDUCATION AND TRAINING FOR JUDGES AND COURT PERSONNEL IN FEDERAL COURTS

14001. Authorization of circuit studies; education and training grants.
 (a) Studies.
 (b) Matters for examination.
 (c) Clearinghouse.
 (d) Continuing education and training programs.
14002. Authorization of appropriations.

PART E—VIOLENCE AGAINST WOMEN ACT IMPROVEMENTS

14011. Payment of cost of testing for sexually transmitted diseases.
 (a) Omitted.
 (b) Limited testing of defendants.
 (c) Penalties for intentional transmission of HIV.
14012. National baseline study on campus sexual assault.
 (a) Study.
 (b) Report.
 (c) Submission of report.
 (d) “Campus sexual assaults” defined.
 (e) Authorization of appropriations.
14013. Report on battered women’s syndrome.
 (a) Report.
 (b) Components.
14014. Report on confidentiality of addresses for victims of domestic violence.
 (a) Report.
 (b) Use of components.
14015. Report on recordkeeping relating to domestic violence.
14016. Enforcement of statutory rape laws.
 (a) Sense of Senate.
 (b) Justice Department program on statutory rape.
 (c) Violence against women initiative.

PART F—NATIONAL STALKER AND DOMESTIC VIOLENCE REDUCTION

14031. Grant program.
 (a) In general.
 (b) Eligibility.
14032. Authorization of appropriations.
14033. Application requirements.
14034. Disbursement.
14035. Technical assistance, training, and evaluations.
14036. Training programs for judges.
14037. Recommendations on intrastate communication.
14038. Inclusion in National Incident-Based Reporting System.
14039. Report to Congress.
14040. Definitions.

PART G—ELDER ABUSE, NEGLECT, AND EXPLOITATION, INCLUDING DOMESTIC VIOLENCE AND SEXUAL ASSAULT AGAINST OLDER OR DISABLED INDIVIDUALS

14041. Definitions.
14041a. Training programs for law enforcement officers.
14041b. Authorization of appropriations.

PART H—DOMESTIC VIOLENCE TASK FORCE

14042. Task force.
 (a) Establish.
 (b) Uses of funds.

- Sec.
 (c) Report.
 (d) Definition.
 (e) Authorization of appropriations.

SUBCHAPTER IV—DRUG CONTROL

14051. Increased penalties for drug-dealing in “drug-free” zones.
14052. Enhanced penalties for illegal drug use in Federal prisons and for smuggling drugs into Federal prisons.
 (a) Declaration of policy.
 (b) Sentencing guidelines.
 (c) No probation.
14053. Violent crime and drug emergency areas.
 (a) Definitions.
 (b) Declaration of violent crime and drug emergency areas.
 (c) Procedure.
 (d) Irrelevancy of population density.
 (e) Requirements.
 (f) Review period.
 (g) Federal assistance.
 (h) Duration of Federal assistance.
 (i) Regulations.
 (j) No effect on existing authority.

SUBCHAPTER V—CRIMINAL STREET GANGS

14061. Juvenile anti-drug and anti-gang grants in federally assisted low-income housing.
14062. Gang investigation coordination and information collection.
 (a) Coordination.
 (b) Data collection.
 (c) Report.
 (d) Authorization of appropriations.

SUBCHAPTER VI—CRIMES AGAINST CHILDREN

14071. Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program.
 (a) In general.
 (b) Registration requirement upon release, parole, supervised release, or probation.
 (c) Registration of offender crossing State border.
 (d) Penalty.
 (e) Release of information.
 (f) Immunity for good faith conduct.
 (g) Compliance.
 (h) Fingerprints.
 (i) Grants to States for costs of compliance.
 (j) Notice of enrollment at or employment by institutions of higher education.
14072. FBI database.
 (a) Definitions.
 (b) Establishment.
 (c) Registration requirement.
 (d) Length of registration.
 (e) Verification.
 (f) Community notification.
 (g) Notification of FBI of changes in residence.
 (h) Fingerprints.
 (i) Penalty.
 (j) Release of information.
 (k) Notification upon release.
14073. Immunity for good faith conduct.

SUBCHAPTER VII—RURAL CRIME

14081. Rural Crime and Drug Enforcement Task Forces.
 (a) Establishment.
 (b) Task force membership.
14082. Rural drug enforcement training.
 (a) Specialized training for rural officers.
 (b) Authorization of appropriations.

Sec.
14083. More agents for Drug Enforcement Administration.

SUBCHAPTER VIII—POLICE CORPS AND LAW ENFORCEMENT OFFICERS TRAINING AND EDUCATION

PART A—POLICE CORPS

14091. Purposes.
14092. Definitions.
14093. Establishment of Office of the Police Corps and Law Enforcement Education.
14094. Designation of lead agency and submission of State plan.
(a) Lead agency.
(b) State plans.
14095. Scholarship assistance.
(a) Scholarships authorized.
(b) Reimbursement authorized.
(c) Use of scholarship.
(d) Agreement.
(e) Dependent child.
(f) Application.
14096. Selection of participants.
(a) In general.
(b) Selection criteria and qualifications.
(c) Recruitment of minorities.
(d) Enrollment of applicant.
(e) Leave of absence.
(f) Admission of applicants.
14097. Police Corps training.
(a) In general.
(b) Training sessions.
(c) Further training.
(d) Course of training.
(e) Evaluation of participants.
(f) Stipend.
14098. Service obligation.
(a) Swearing in.
(b) Rights and responsibilities.
(c) Discipline.
(d) Layoffs.
14099. State plan requirements.
14100. Repealed.
14101. Authorization of appropriations.
14102. Reports to Congress.
(a) In general.
(b) Contents.

PART B—LAW ENFORCEMENT SCHOLARSHIP PROGRAM

14111. Definitions.
14112. Allotment.
14113. Establishment of program.
(a) Use of allotment.
(b) Payments; Federal share; non-Federal share.
(c) Responsibilities of Director.
(d) Administrative expenses.
(e) Special rule.
(f) Supplementation of funding.
14114. Scholarships.
(a) Period of award.
(b) Use of scholarships.
14115. Eligibility.
(a) Scholarships.
(b) Ineligibility for student employment.
14116. State application.
(a) In general.
(b) Contents.
14117. Local application.
(a) In general.
(b) Contents.
(c) Priority.
14118. Scholarship agreement.
(a) In general.
(b) Contents.
(c) Service obligation.
14119. Authorization of appropriations.
(a) General authorization of appropriations.

Sec.
(b) Uses of funds.

SUBCHAPTER IX—STATE AND LOCAL LAW ENFORCEMENT

PART A—DNA IDENTIFICATION

14131. Quality assurance and proficiency testing standards.
(a) Publication of quality assurance and proficiency testing standards.
(b) Administration of advisory board.
(c) Proficiency testing program.
14132. Index to facilitate law enforcement exchange of DNA identification information.
(a) Establishment of index.
(b) Information.
(c) Failure to comply.
(d) Expungement of records.
14133. Federal Bureau of Investigation.
(a) Proficiency testing requirements.
(b) Privacy protection standards.
(c) Criminal penalty.
14134. Authorization of appropriations.
14135. Authorization of grants.
(a) Authorization of grants.
(b) Eligibility.
(c) Crimes without suspects.
(d) Analysis of samples.
(e) Restrictions on use of funds.
(f) Reports to the Attorney General.
(g) Reports to Congress.
(h) Expenditure records.
(i) Definition.
(j) Authorization of appropriations.
14135a. Collection and use of DNA identification information from certain Federal offenders.
(a) Collection of DNA samples.
(b) Analysis and use of samples.
(c) Definitions.
(d) Qualifying Federal offenses.
(e) Regulations.
(f) Commencement of collection.
14135b. Collection and use of DNA identification information from certain District of Columbia offenders.
(a) Collection of DNA samples.
(b) Analysis and use of samples.
(c) Definitions.
(d) Qualifying District of Columbia offenses.
(e) Commencement of collection.
(f) Authorization of appropriations.
14135c. Conditions of release generally.
14135d. Authorization of appropriations.
14135e. Privacy protection standards.
(a) In general.
(b) Permissive uses.
(c) Criminal penalty.

PART B—POLICE PATTERN OR PRACTICE

14141. Cause of action.
(a) Unlawful conduct.
(b) Civil action by Attorney General.
14142. Data on use of excessive force.
(a) Attorney General to collect.
(b) Limitation on use of data.
(c) Annual summary.

PART C—IMPROVED TRAINING AND TECHNICAL AUTOMATION

14151. Improved training and technical automation.
(a) Grants.
(b) Training and investigative assistance.
(c) Authorization of appropriations.
(d) Definitions.

PART D—OTHER STATE AND LOCAL AID

14161. Federal assistance to ease increased burdens on State court systems.

- Sec.
- (a) In general.
 - (b) Applications.
 - (c) Records.
 - (d) Authorization of appropriations.
- SUBCHAPTER X—MOTOR VEHICLE THEFT PROTECTION
14171. Motor vehicle theft prevention program.
- (a) In general.
 - (b) Uniform decal or device designs.
 - (c) Voluntary consent form.
 - (d) Specified conditions under which stops may be authorized.
 - (e) Motor vehicles for hire.
 - (f) Notification of police.
 - (g) Regulations.
 - (h) Authorization of appropriations.
- SUBCHAPTER XI—PROTECTIONS FOR THE ELDERLY
14181. Missing Alzheimer's Disease Patient Alert Program.
- (a) Grant.
 - (b) Application.
 - (c) Eligible organization.
 - (d) Authorization of appropriations.
- SUBCHAPTER XII—PRESIDENTIAL SUMMIT ON VIOLENCE AND NATIONAL COMMISSION ON CRIME PREVENTION AND CONTROL
14191. Presidential summit.
14192. Establishment; committees and task forces; representation.
- (a) Establishment and appointment of members.
 - (b) Committees and task forces.
 - (c) Representation.
14193. Purposes.
14194. Responsibilities of Commission.
- (a) In general.
 - (b) Crime and violence generally.
 - (c) Causes of demand for drugs.
 - (d) Violence in schools.
 - (e) Violence against women.
14195. Administrative matters.
- (a) Chair.
 - (b) No additional pay or benefits; per diem.
 - (c) Vacancies.
 - (d) Meetings open to public.
14196. Staff and support services.
- (a) Director.
 - (b) Staff.
 - (c) Civil service laws.
 - (d) Consultants.
 - (e) Staff of Federal agencies.
 - (f) Physical facilities.
14197. Powers.
- (a) Hearings.
 - (b) Delegation.
 - (c) Access to information.
 - (d) Mail.
14198. Report; termination.
14199. Authorization of appropriations.
- SUBCHAPTER XIII—VIOLENT CRIME REDUCTION TRUST FUND
14211. Creation of Violent Crime Reduction Trust Fund.
- (a) Violent Crime Reduction Trust Fund.
 - (b) Transfers into Fund.
 - (c) Appropriations from Fund.
14212. Repealed.
14213. Extension of authorizations of appropriations for fiscal years for which full amount authorized is not appropriated.
14214. Flexibility in making of appropriations.
- (a) Federal law enforcement.
 - (b) State and local law enforcement.

- Sec.
- (c) Prevention.
 - (d) Definitions.
- SUBCHAPTER XIV—MISCELLANEOUS
14221. Task force relating to introduction of non-indigenous species.
14222. Coordination of substance abuse treatment and prevention programs.
14223. Edward Byrne Memorial Formula Grant Program.

SUBCHAPTER I—PRISONS

PART A—VIOLENT OFFENDER INCARCERATION AND TRUTH-IN-SENTENCING INCENTIVE GRANTS

§ 13701. Definitions

Unless otherwise provided, for purposes of this part—

(1) the term “indeterminate sentencing” means a system by which—

(A) the court may impose a sentence of a range defined by statute; and

(B) an administrative agency, generally the parole board, or the court, controls release within the statutory range;

(2) the term “part 1 violent crime” means murder and nonnegligent manslaughter, forcible rape, robbery, and aggravated assault as reported to the Federal Bureau of Investigation for purposes of the Uniform Crime Reports; and

(3) the term “State” means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

(Pub. L. 103-322, title II, § 20101, as added Pub. L. 104-134, title I, § 101[(a)] [title I, § 114(a)], Apr. 26, 1996, 110 Stat. 1321, 1321-15; renumbered title I, Pub. L. 104-140, § 1(a), May 2, 1996, 110 Stat. 1327.)

PRIOR PROVISIONS

A prior section 13701, Pub. L. 103-322, title II, § 20101, Sept. 13, 1994, 108 Stat. 1815, related to grants for correctional facilities prior to the general amendment of this part by Pub. L. 104-134.

SHORT TITLE OF 2000 AMENDMENTS

Pub. L. 106-560, § 1, Dec. 21, 2000, 114 Stat. 2784, provided that: “This Act [enacting sections 13726 to 13726c of this title] may be cited as the ‘Interstate Transportation of Dangerous Criminals Act of 2000’ or ‘Jeanna’s Act.’”

Pub. L. 106-546, § 1, Dec. 19, 2000, 114 Stat. 2726, provided that: “This Act [enacting sections 14135 to 14135e of this title and section 1565 of Title 10, Armed Forces, amending sections 3753, 3796kk-2, 14132, and 14133 of this title and sections 3563, 3583, and 4209 of Title 18, Crimes and Criminal Procedure, enacting provisions set out as notes under section 14135 of this title and section 1565 of Title 10, and amending provisions set out as a note under section 531 of Title 28, Judiciary and Judicial Procedure] may be cited as the ‘DNA Analysis Backlog Elimination Act of 2000.’”

Pub. L. 106-386, div. B, § 1001, Oct. 28, 2000, 114 Stat. 1491, provided that: “This division [see Tables for classification] may be cited as the ‘Violence Against Women Act of 2000.’”

Pub. L. 106-297, § 1, Oct. 13, 2000, 114 Stat. 1045, provided that: “This Act [amending section 13704 of this title] may be cited as the ‘Death in Custody Reporting Act of 2000.’”

SHORT TITLE OF 1996 AMENDMENTS

Pub. L. 104-236, § 1, Oct. 3, 1996, 110 Stat. 3093, provided that: “This Act [enacting sections 14072 and 14073 of

this title, amending section 14071 of this title, and enacting provisions set out as notes under section 14071 of this title] may be cited as the ‘Pam Lychner Sexual Offender Tracking and Identification Act of 1996.’”

Pub. L. 104-145, § 1, May 17, 1996, 110 Stat. 1345, provided that: “This Act [amending section 14071 of this title] may be cited as ‘Megan’s Law.’”

SHORT TITLE

Section 1 of Pub. L. 103-322 provided that: “This Act [see Tables for classification] may be cited as the ‘Violent Crime Control and Law Enforcement Act of 1994.’”

Section 31101 of title III of Pub. L. 103-322 provided that: “This subtitle [subtitle K (§§31101-31133) of title III of Pub. L. 103-322, enacting part G (§13821 et seq.) of subchapter II of this chapter] may be cited as the ‘National Community Economic Partnership Act of 1994.’”

Section 31901 of title III of Pub. L. 103-322 provided that: “This subtitle [subtitle S (§§31901-31922) of title III of Pub. L. 103-322, enacting part I (§13881 et seq.) of subchapter II of this chapter] may be cited as the ‘Family Unity Demonstration Project Act.’”

Section 40001 of title IV of Pub. L. 103-322 provided that: “This title [see Tables for classification] may be cited as the ‘Violence Against Women Act of 1994.’”

Section 40101 of title IV of Pub. L. 103-322 provided that: “This subtitle [subtitle A (§§40101-40156) of title IV of Pub. L. 103-322, enacting part A (§13931 et seq.) of subchapter III of this chapter, sections 300w-10, 3796gg to 3796gg-5, and 5712d of this title, section 1a-7a of Title 16, Conservation, and sections 2247, 2248, and 2259 of Title 18, Crimes and Criminal Procedure, amending sections 3793, 3796aa-1 to 3796aa-3, 3796aa-5, 3796aa-6, 3797, 13012, 13014, 13021, and 13024 of this title, section 4607-8 of Title 16, and Rule 412 of the Federal Rules of Evidence, repealing sections 3796aa-4 and 3796aa-7 of this title, and enacting provisions set out as notes under sections 994 and 2074 of Title 28, Judiciary and Judicial Procedure] may be cited as the ‘Safe Streets for Women Act of 1994.’”

Section 40201 of title IV of Pub. L. 103-322 provided that: “This title [probably should be “subtitle”, meaning subtitle B (§§40201-40295) of title IV of Pub. L. 103-322, enacting part B (§13951 et seq.) of subchapter III of this chapter, sections 3796hh to 3796hh-4 and 10416 to 10418 of this title, and sections 2261 to 2266 of Title 18, Crimes and Criminal Procedure, and amending sections 3782, 3783, 3793, 3797, 10402, and 10407 of this title] may be cited as the ‘Safe Homes for Women Act of 1994.’”

Section 40301 of title IV of Pub. L. 103-322 provided that: “This subtitle [subtitle C (§§40301-40304) of title IV of Pub. L. 103-322, enacting part C (§13981) of subchapter III of this chapter and amending section 1988 of this title and section 1445 of Title 28, Judiciary and Judicial Procedure] may be cited as the ‘Civil Rights Remedies for Gender-Motivated Violence Act.’”

Section 40401 of title IV of Pub. L. 103-322 provided that: “This subtitle [subtitle D (§§40401-40422) of title IV of Pub. L. 103-322, enacting part D (§13991 et seq.) of subchapter III of this chapter] may be cited as the ‘Equal Justice for Women in the Courts Act of 1994.’”

Section 200101 of title XX of Pub. L. 103-322 provided that: “This subtitle [subtitle A (§§200101-200113) of title XX of Pub. L. 103-322, enacting part A (§14091 et seq.) of subchapter VIII of this chapter] may be cited as the ‘Police Corps Act.’”

Section 200201 of title XX of Pub. L. 103-322 provided that: “This subtitle [subtitle B (§§200201-200210) of title XX of Pub. L. 103-322, enacting part B (§14111 et seq.) of subchapter VIII of this chapter] may be cited as the ‘Law Enforcement Scholarships and Recruitment Act.’”

Section 210301 of title XXI of Pub. L. 103-322 provided that: “This subtitle [subtitle C (§§210301-210306) of title XXI of Pub. L. 103-322, enacting part A (§14131 et seq.) of subchapter IX of this chapter and sections 3796kk to 3796kk-6 of this title, amending sections 3751, 3753, 3793, and 3797 of this title, and enacting provisions set out as a note under section 3751 of this title] may be cited as the ‘DNA Identification Act of 1994.’”

Section 220001 of title XXII of Pub. L. 103-322 provided that: “This title [enacting subchapter X (§14171) of this chapter and section 511A of Title 18, Crimes and Criminal Procedure, and amending section 511 of Title 18] may be cited as the ‘Motor Vehicle Theft Prevention Act.’”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13705, 14214 of this title.

§ 13702. Authorization of grants

(a) In general

The Attorney General shall provide Violent Offender Incarceration grants under section 13703 of this title and Truth-in-Sentencing Incentive grants under section 13704 of this title to eligible States—

(1) to build or expand correctional facilities to increase the bed capacity for the confinement of persons convicted of a part 1 violent crime or adjudicated delinquent for an act which if committed by an adult, would be a part 1 violent crime;

(2) to build or expand temporary or permanent correctional facilities, including facilities on military bases, prison barges, and boot camps, for the confinement of convicted non-violent offenders and criminal aliens, for the purpose of freeing suitable existing prison space for the confinement of persons convicted of a part 1 violent crime; and

(3) to build or expand jails.

(b) Regional compacts

(1) In general

Subject to paragraph (2), States may enter into regional compacts to carry out this part. Such compacts shall be treated as States under this part.

(2) Requirement

To be recognized as a regional compact for eligibility for a grant under section 13703 or 13704 of this title, each member State must be eligible individually.

(3) Limitation on receipt of funds

No State may receive a grant under this part both individually and as part of a compact.

(c) Applicability

Notwithstanding the eligibility requirements of section 13704 of this title, a State that certifies to the Attorney General that, as of April 26, 1996, such State has enacted legislation in reliance on this part, as enacted on September 13, 1994, and would in fact qualify under those provisions, shall be eligible to receive a grant for fiscal year 1996 as though such State qualifies under section 13704 of this title.

(Pub. L. 103-322, title II, §20102, as added Pub. L. 104-134, title I, §101[(a)] [title I, §114(a)], Apr. 26, 1996, 110 Stat. 1321, 1321-15; renumbered title I, Pub. L. 104-140, §1(a), May 2, 1996, 110 Stat. 1327.)

PRIOR PROVISIONS

A prior section 13702, Pub. L. 103-322, title II, §20102, Sept. 13, 1994, 108 Stat. 1816, related to Truth in Sentencing Incentive Grants prior to the general amendment of this part by Pub. L. 104-134.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13705, 13706, 13707, 13708, 14214 of this title.

§ 13703. Violent offender incarceration grants**(a) Eligibility for minimum grant**

To be eligible to receive a minimum grant under this section, a State shall submit an application to the Attorney General that provides assurances that the State has implemented, or will implement, correctional policies and programs, including truth-in-sentencing laws that ensure that violent offenders serve a substantial portion of the sentences imposed, that are designed to provide sufficiently severe punishment for violent offenders, including violent juvenile offenders, and that the prison time served is appropriately related to the determination that the inmate is a violent offender and for a period of time deemed necessary to protect the public.

(b) Additional amount for increased percentage of persons sentenced and time served

A State that received a grant under subsection (a) of this section is eligible to receive additional grant amounts if such State demonstrates that the State has, since 1993—

- (1) increased the percentage of persons arrested for a part 1 violent crime sentenced to prison; or
- (2) increased the average prison time actually served or the average percent of sentence served by persons convicted of a part 1 violent crime.

Receipt of grant amounts under this subsection does not preclude eligibility for a grant under subsection (c) of this section.

(c) Additional amount for increased rate of incarceration and percentage of sentence served

A State that received a grant under subsection (a) of this section is eligible to receive additional grant amounts if such State demonstrates that the State has—

- (1) since 1993, increased the percentage of persons arrested for a part 1 violent crime sentenced to prison, and has increased the average percent of sentence served by persons convicted of a part 1 violent crime; or
- (2) has increased by 10 percent or more over the most recent 3-year period the number of new court commitments to prison of persons convicted of part 1 violent crimes.

Receipt of grant amounts under this subsection does not preclude eligibility for a grant under subsection (b) of this section.

(Pub. L. 103-322, title II, §20103, as added Pub. L. 104-134, title I, §101[(a)] [title I, §114(a)], Apr. 26, 1996, 110 Stat. 1321, 1321-16; renumbered title I, Pub. L. 104-140, §1(a), May 2, 1996, 110 Stat. 1327.)

PRIOR PROVISIONS

A prior section 13703, Pub. L. 103-322, title II, §20103, Sept. 13, 1994, 108 Stat. 1817, related to Violent Offender Incarceration Grants prior to the general amendment of this part by Pub. L. 104-134.

**CONTROLLED SUBSTANCE TESTING AND INTERVENTION;
AVAILABILITY OF FUNDS**

Pub. L. 104-208, div. A, title I, §101(a) [title I], Sept. 30, 1996, 110 Stat. 3009, 3009-14, provided in part: "That beginning in fiscal year 1999, and thereafter, no funds shall be available to make grants to a State pursuant

to section 20103 or section 20104 of the Violent Crime Control and Law Enforcement Act of 1994 [42 U.S.C. 13703, 13704] unless no later than September 1, 1998, such State has implemented a program of controlled substance testing and intervention for appropriate categories of convicted offenders during periods of incarceration and criminal justice supervision, with sanctions including denial or revocation of release for positive controlled substance tests, consistent with guidelines issued by the Attorney General".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13702, 13705, 13706, 13708, 13709, 13712, 14214 of this title.

§ 13704. Truth-in-sentencing incentive grants**(a) Eligibility**

To be eligible to receive a grant award under this section, a State shall submit an application to the Attorney General that demonstrates that—

(1)(A) such State has implemented truth-in-sentencing laws that—

- (i) require persons convicted of a part 1 violent crime to serve not less than 85 percent of the sentence imposed (without counting time not actually served, such as administrative or statutory incentives for good behavior); or
- (ii) result in persons convicted of a part 1 violent crime serving on average not less than 85 percent of the sentence imposed (without counting time not actually served, such as administrative or statutory incentives for good behavior);

(B) such State has truth-in-sentencing laws that have been enacted, but not yet implemented, that require such State, not later than 3 years after such State submits an application to the Attorney General, to provide that persons convicted of a part 1 violent crime serve not less than 85 percent of the sentence imposed (without counting time not actually served, such as administrative or statutory incentives for good behavior); or

(C) in the case of a State that on April 26, 1996, practices indeterminate sentencing with regard to any part 1 violent crime—

- (i) persons convicted of a part 1 violent crime on average serve not less than 85 percent of the prison term established under the State's sentencing and release guidelines; or
- (ii) persons convicted of a part 1 violent crime on average serve not less than 85 percent of the maximum prison term allowed under the sentence imposed by the court (not counting time not actually served such as administrative or statutory incentives for good behavior); and

(2) such State has provided assurances that it will follow guidelines established by the Attorney General in reporting, on a quarterly basis, information regarding the death of any person who is in the process of arrest, is en route to be incarcerated, or is incarcerated at a municipal or county jail, State prison, or other local or State correctional facility (including any juvenile facility) that, at a minimum, includes—

- (A) the name, gender, race, ethnicity, and age of the deceased;

(B) the date, time, and location of death; and

(C) a brief description of the circumstances surrounding the death.

(b) Exception

Notwithstanding subsection (a) of this section, a State may provide that the Governor of the State may allow for the earlier release of—

(1) a geriatric prisoner; or

(2) a prisoner whose medical condition precludes the prisoner from posing a threat to the public, but only after a public hearing in which representatives of the public and the prisoner's victims have had an opportunity to be heard regarding a proposed release.

(Pub. L. 103-322, title II, §20104, as added Pub. L. 104-134, title I, §101[(a)] [title I, §114(a)], Apr. 26, 1996, 110 Stat. 1321, 1321-16; renumbered title I, Pub. L. 104-140, §1(a), May 2, 1996, 110 Stat. 1327; amended Pub. L. 106-297, §2, Oct. 13, 2000, 114 Stat. 1045.)

PRIOR PROVISIONS

A prior section 13704, Pub. L. 103-322, title II, §20104, Sept. 13, 1994, 108 Stat. 1818, related to Federal share matching requirement prior to the general amendment of this part by Pub. L. 104-134.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106-297 redesignated par. (1) as subpar. (A) and former subpars. (A) and (B) as cls. (i) and (ii), respectively, redesignated par. (2) as subpar. (B), redesignated par. (3) as subpar. (C) and former subpars. (A) and (B) as cls. (i) and (ii), respectively, and added par. (2).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13702, 13705, 13706, 13708, 13709, 13712, 14214 of this title.

§ 13705. Special rules

(a) Sharing of funds with counties and other units of local government

(1) Reservation

Each State shall reserve not more than 15 percent of the amount of funds allocated in a fiscal year pursuant to section 13706 of this title for counties and units of local government to construct, develop, expand, modify, or improve jails and other correctional facilities.

(2) Factors for determination of amount

To determine the amount of funds to be reserved under this subsection, a State shall consider the burden placed on a county or unit of local government that results from the implementation of policies adopted by the State to carry out section 13703 or 13704 of this title.

(b) Use of truth-in-sentencing and violent offender incarceration grants

Funds provided under section 13703 or 13704 of this title may be applied to the cost of—

(1) altering existing correctional facilities to provide separate facilities for juveniles under the jurisdiction of an adult criminal court who are detained or are serving sentences in adult prisons or jails;

(2) providing correctional staff who are responsible for supervising juveniles who are detained or serving sentences under the jurisdic-

tion of an adult criminal court with orientation and ongoing training regarding the unique needs of such offenders; and

(3) providing ombudsmen to monitor the treatment of juveniles who are detained or serving sentences under the jurisdiction of an adult criminal court in adult facilities, consistent with guidelines issued by the Assistant Attorney General.

(c) Funds for juvenile offenders

Notwithstanding any other provision of this part, if a State, or unit of local government located in a State that otherwise meets the requirements of section 13703 or 13704 of this title, certifies to the Attorney General that exigent circumstances exist that require the State to expend funds to build or expand facilities to confine juvenile offenders other than juvenile offenders adjudicated delinquent for an act which, if committed by an adult, would be a part 1 violent crime, the State may use funds received under this part to build or expand juvenile correctional facilities or pretrial detention facilities for juvenile offenders.

(d) Private facilities

A State may use funds received under this part for the privatization of facilities to carry out the purposes of section 13702 of this title.

(e) "Part 1 violent crime" defined

For purposes of this part, "part 1 violent crime" means a part 1 violent crime as defined in section 13701(3)¹ of this title, or a crime in a reasonably comparable class of serious violent crimes as approved by the Attorney General.

(Pub. L. 103-322, title II, §20105, as added Pub. L. 104-134, title I, §101[(a)] [title I, §114(a)], Apr. 26, 1996, 110 Stat. 1321, 1321-17; renumbered title I, Pub. L. 104-140, §1(a), May 2, 1996, 110 Stat. 1327; amended Pub. L. 105-277, div. E, §3, Oct. 21, 1998, 112 Stat. 2681-760; Pub. L. 107-273, div. A, title III, §307, Nov. 2, 2002, 116 Stat. 1783.)

PRIOR PROVISIONS

A prior section 13705, Pub. L. 103-322, title II, §20105, Sept. 13, 1994, 108 Stat. 1818, related to rules and regulations prior to the general amendment of this part by Pub. L. 104-134.

AMENDMENTS

2002—Subsec. (b). Pub. L. 107-273 substituted "Use of truth-in-sentencing and violent offender incarceration grants" for "Additional requirements" in heading and amended text generally, substituting provisions relating to use of funds for juveniles in adult prisons or under the jurisdiction of an adult criminal court for provisions relating to additional requirements for grant eligibility.

1998—Subsec. (b). Pub. L. 105-277 amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: "To be eligible to receive a grant under section 13703 or 13704 of this title, a State shall provide assurances to the Attorney General that the State has implemented or will implement not later than 18 months after April 26, 1996, policies that provide for the recognition of the rights and needs of crime victims."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

¹ So in original. Probably should be section "13701(2)".

§ 13706. Formula for grants**(a) Allocation of violent offender incarceration grants under section 13703****(1) Formula allocation**

85 percent of the amount available for grants under section 13703 of this title for any fiscal year shall be allocated as follows (except that a State may not receive more than 9 percent of the total amount of funds made available under this paragraph):

(A) 0.75 percent shall be allocated to each State that meets the requirements of section 13703(a) of this title, except that the United States Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands, if eligible under section 13703(a) of this title, shall each be allocated 0.05 percent.

(B) The amount remaining after application of subparagraph (A) shall be allocated to each State that meets the requirements of section 13703(b) of this title, in the ratio that the number of part 1 violent crimes reported by such State to the Federal Bureau of Investigation for the 3 years preceding the year in which the determination is made, bears to the average annual number of part 1 violent crimes reported by all States that meet the requirements of section 13703(b) of this title to the Federal Bureau of Investigation for the 3 years preceding the year in which the determination is made.

(2) Additional allocation

15 percent of the amount available for grants under section 13703 of this title for any fiscal year shall be allocated to each State that meets the requirements of section 13703(c) of this title as follows:

(A) 3.0 percent shall be allocated to each State that meets the requirements of section 13703(c) of this title, except that the United States Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands, if eligible under such subsection, shall each be allocated 0.03 percent.

(B) The amount remaining after application of subparagraph (A) shall be allocated to each State that meets the requirements of section 13703(c) of this title, in the ratio that the number of part 1 violent crimes reported by such State to the Federal Bureau of Investigation for the 3 years preceding the year in which the determination is made, bears to the average annual number of part 1 violent crimes reported by all States that meet the requirements of section 13702(c) of this title to the Federal Bureau of Investigation for the 3 years preceding the year in which the determination is made.

(b) Allocation of truth-in-sentencing grants under section 13704

The amounts available for grants for section 13704 of this title shall be allocated to each State that meets the requirements of section 13704 of this title in the ratio that the average annual number of part 1 violent crimes reported by such State to the Federal Bureau of Invest-

igation for the 3 years preceding the year in which the determination is made bears to the average annual number of part 1 violent crimes reported by States that meet the requirements of section 13704 of this title to the Federal Bureau of Investigation for the 3 years preceding the year in which the determination is made, except that a State may not receive more than 25 percent of the total amount available for such grants.

(c) Unavailable data

If data regarding part 1 violent crimes in any State is substantially inaccurate or is unavailable for the 3 years preceding the year in which the determination is made, the Attorney General shall utilize the best available comparable data regarding the number of violent crimes for the previous year for the State for the purposes of allocation of funds under this part.

(d) Regional compacts

In determining the amount of funds that States organized as a regional compact may receive, the Attorney General shall first apply the formula in either subsection (a) or (b) and (c) of this section to each member State of the compact. The States organized as a regional compact may receive the sum of the amounts so determined.

(Pub. L. 103-322, title II, §20106, as added Pub. L. 104-134, title I, §101[(a)] [title I, §114(a)], Apr. 26, 1996, 110 Stat. 1321, 1321-18; renumbered title I, Pub. L. 104-140, §1(a), May 2, 1996, 110 Stat. 1327.)

PRIOR PROVISIONS

A prior section 13706, Pub. L. 103-322, title II, §20106, Sept. 13, 1994, 108 Stat. 1818, related to technical assistance and training prior to the general amendment of this part by Pub. L. 104-134.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13705, 14214 of this title.

§ 13707. Accountability**(a) Fiscal requirements**

A State that receives funds under this part shall use accounting, audit, and fiscal procedures that conform to guidelines prescribed by the Attorney General, and shall ensure that any funds used to carry out the programs under section 13702(a) of this title shall represent the best value for the State governments at the lowest possible cost and employ the best available technology.

(b) Administrative provisions

The administrative provisions of sections 3782 and 3783 of this title shall apply to the Attorney General under this part in the same manner that such provisions apply to the officials listed in such sections.

(Pub. L. 103-322, title II, §20107, as added Pub. L. 104-134, title I, §101[(a)] [title I, §114(a)], Apr. 26, 1996, 110 Stat. 1321, 1321-19; renumbered title I, Pub. L. 104-140, §1(a), May 2, 1996, 110 Stat. 1327.)

PRIOR PROVISIONS

A prior section 13707, Pub. L. 103-322, title II, §20107, Sept. 13, 1994, 108 Stat. 1818, related to evaluation of

programs prior to the general amendment of this part by Pub. L. 104-134.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 13708. Authorization of appropriations

(a) In general

(1) Authorizations

There are authorized to be appropriated to carry out this part—

- (A) \$997,500,000 for fiscal year 1996;
- (B) \$1,330,000,000 for fiscal year 1997;
- (C) \$2,527,000,000 for fiscal year 1998;
- (D) \$2,660,000,000 for fiscal year 1999; and
- (E) \$2,753,100,000 for fiscal year 2000.

(2) Distribution

(A) In general

Of the amounts remaining after the allocation of funds for the purposes set forth under sections 13710, 13711, and 13709 of this title, the Attorney General shall, from amounts authorized to be appropriated under paragraph (1) for each fiscal year, distribute 50 percent for incarceration grants under section 13703 of this title, and 50 percent for incentive grants under section 13704 of this title.

(B) Distribution of minimum amounts

The Attorney General shall distribute minimum amounts allocated for section 13703(a) of this title to an eligible State not later than 30 days after receiving an application that demonstrates that such State qualifies for a Violent Offender Incarceration grant under section 13703 of this title or a Truth-in-Sentencing Incentive grant under section 13704 of this title.

(b) Limitations on funds

(1) Uses of funds

Except as provided in section¹ 13710 and 13711 of this title, funds made available pursuant to this section shall be used only to carry out the purposes described in section 13702(a) of this title.

(2) Nonsupplanting requirement

Funds made available pursuant to this section shall not be used to supplant State funds, but shall be used to increase the amount of funds that would, in the absence of Federal funds, be made available from State sources.

(3) Administrative costs

Not more than 3 percent of the funds that remain available after carrying out sections 13709, 13710, and 13711 of this title shall be available to the Attorney General for purposes of—

- (A) administration;
- (B) research and evaluation, including assessment of the effect on public safety and other effects of the expansion of correctional capacity and sentencing reforms implemented pursuant to this part;

(C) technical assistance relating to the use of grant funds, and development and implementation of sentencing reforms implemented pursuant to this part; and

(D) data collection and improvement of information systems relating to the confinement of violent offenders and other sentencing and correctional matters.

(4) Carryover of appropriations

Funds appropriated pursuant to this section during any fiscal year shall remain available until expended.

(5) Matching funds

The Federal share of a grant received under this part may not exceed 90 percent of the costs of a proposal as described in an application approved under this part.

(Pub. L. 103-322, title II, §20108, as added Pub. L. 104-134, title I, §101[(a)] [title I, §114(a)], Apr. 26, 1996, 110 Stat. 1321, 1321-19; renumbered title I, Pub. L. 104-140, §1(a), May 2, 1996, 110 Stat. 1327.)

PRIOR PROVISIONS

A prior section 13708, Pub. L. 103-322, title II, §20108, Sept. 13, 1994, 108 Stat. 1818, defined terms in this part prior to the general amendment of this part by Pub. L. 104-134.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13709, 13710, 13711, 14214 of this title.

§ 13709. Payments for incarceration on tribal lands

(a) Reservation of funds

Notwithstanding any other provision of this part other than section 13708(a)(2) of this title, from amounts appropriated to carry out sections 13703 and 13704 of this title, the Attorney General shall reserve, to carry out this section—

- (1) 0.3 percent in each of fiscal years 1996 and 1997; and
- (2) 0.2 percent in each of fiscal years 1998, 1999, and 2000.

(b) Grants to Indian tribes

From the amounts reserved under subsection (a) of this section, the Attorney General may make grants to Indian tribes for the purposes of constructing jails on tribal lands for the incarceration of offenders subject to tribal jurisdiction.

(c) Applications

To be eligible to receive a grant under this section, an Indian tribe shall submit to the Attorney General an application in such form and containing such information as the Attorney General may by regulation require.

(Pub. L. 103-322, title II, §20109, as added Pub. L. 104-134, title I, §101[(a)] [title I, §114(a)], Apr. 26, 1996, 110 Stat. 1321, 1321-20; renumbered title I, Pub. L. 104-140, §1(a), May 2, 1996, 110 Stat. 1327.)

PRIOR PROVISIONS

A prior section 13709, Pub. L. 103-322, title II, §20109, Sept. 13, 1994, 108 Stat. 1818, authorized appropriations to carry out this part prior to the general amendment of this part by Pub. L. 104-134.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13708, 14214 of this title.

¹ So in original. Probably should be "sections".

§ 13710. Payments to eligible States for incarceration of criminal aliens

(a) In general

The Attorney General shall make a payment to each State which is eligible under section 1252(j)¹ of title 8 in such amount as is determined under section 1252(j)¹ of title 8, and for which payment is not made to such State for such fiscal year under such section.

(b) Authorization of appropriations

Notwithstanding any other provision of this part, there are authorized to be appropriated to carry out this section from amounts authorized under section 13708 of this title, an amount which when added to amounts appropriated to carry out section 1252(j)¹ of title 8 for fiscal year 1996 equals \$500,000,000 and for each of the fiscal years 1997 through 2000 does not exceed \$650,000,000.

(c) Administration

The amounts appropriated to carry out this section shall be reserved from the total amount appropriated for each fiscal year and shall be added to the other funds appropriated to carry out section 1252(j)¹ of title 8 and administered under such section.

(d) Report to Congress

Not later than May 15, 1999, the Attorney General shall submit a report to the Congress which contains the recommendation of the Attorney General concerning the extension of the program under this section.

(Pub. L. 103-322, title II, § 20110, as added Pub. L. 104-134, title I, § 101[(a)] [title I, § 114(a)], Apr. 26, 1996, 110 Stat. 1321, 1321-21; renumbered title I, Pub. L. 104-140, § 1(a), May 2, 1996, 110 Stat. 1327.)

REFERENCES IN TEXT

Section 1252(j) of title 8, referred to in subsecs. (a) to (c), was redesignated section 1231(i) of title 8 by Pub. L. 104-208, div. C, title III, § 306(a)(1), Sept. 30, 1996, 110 Stat. 3009-607.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13708 of this title.

§ 13711. Support of Federal prisoners in non-Federal institutions

(a) In general

The Attorney General may make payments to States and units of local government for the purposes authorized in section 4013 of title 18.

(b) Authorization of appropriations

Notwithstanding any other provision of this part other than section 13708(a)(2) of this title, there are authorized to be appropriated from amounts authorized under section 13708 of this title for each of fiscal years 1996 through 2000 such sums as may be necessary to carry out this section.

(Pub. L. 103-322, title II, § 20111, as added Pub. L. 104-134, title I, § 101[(a)] [title I, § 114(a)], Apr. 26, 1996, 110 Stat. 1321, 1321-21; renumbered title I, Pub. L. 104-140, § 1(a), May 2, 1996, 110 Stat. 1327.)

¹ See References in Text note below.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13708 of this title.

§ 13712. Report by Attorney General

Beginning on October 1, 1996, and each subsequent July 1 thereafter, the Attorney General shall report to the Congress on the implementation of this part, including a report on the eligibility of the States under sections 13703 and 13704 of this title, and the distribution and use of funds under this part.

(Pub. L. 103-322, title II, § 20112, as added Pub. L. 104-134, title I, § 101[(a)] [title I, § 114(a)], Apr. 26, 1996, 110 Stat. 1321, 1321-21; renumbered title I, Pub. L. 104-140, § 1(a), May 2, 1996, 110 Stat. 1327.)

§ 13713. Aimee's Law

(a) Short title

This section may be cited as "Aimee's Law".

(b) Definitions

In this section:

(1) Dangerous sexual offense

The term "dangerous sexual offense" means any offense under State law for conduct that would constitute an offense under chapter 109A of title 18 had the conduct occurred in the special maritime and territorial jurisdiction of the United States or in a Federal prison.

(2) Murder

The term "murder" has the meaning given the term in part I of the Uniform Crime Reports of the Federal Bureau of Investigation.

(3) Rape

The term "rape" has the meaning given the term in part I of the Uniform Crime Reports of the Federal Bureau of Investigation.

(c) Penalty

(1) Single State

In any case in which a State convicts an individual of murder, rape, or a dangerous sexual offense, who has a prior conviction for any one of those offenses in a State described in paragraph (3), the Attorney General shall transfer an amount equal to the costs of incarceration, prosecution, and apprehension of that individual, from Federal law enforcement assistance funds that have been allocated to but not distributed to the State that convicted the individual of the prior offense, to the State account that collects Federal law enforcement assistance funds of the State that convicted that individual of the subsequent offense.

(2) Multiple States

In any case in which a State convicts an individual of murder, rape, or a dangerous sexual offense, who has a prior conviction for any one or more of those offenses in more than one other State described in paragraph (3), the Attorney General shall transfer an amount equal to the costs of incarceration, prosecution, and apprehension of that individual, from Federal law enforcement assistance funds that have been allocated to but not distributed to each

State that convicted such individual of the prior offense, to the State account that collects Federal law enforcement assistance funds of the State that convicted that individual of the subsequent offense.

(3) State described

A State is described in this paragraph if—

(A) the average term of imprisonment imposed by the State on individuals convicted of the offense for which the individual described in paragraph (1) or (2), as applicable, was convicted by the State is less than the average term of imprisonment imposed for that offense in all States; or

(B) with respect to the individual described in paragraph (1) or (2), as applicable, the individual had served less than 85 percent of the term of imprisonment to which that individual was sentenced for the prior offense.

For purposes of subparagraph (B), in a State that has indeterminate sentencing, the term of imprisonment to which that individual was sentenced for the prior offense shall be based on the lower of the range of sentences.

(d) State applications

In order to receive an amount transferred under subsection (c) of this section, the chief executive of a State shall submit to the Attorney General an application, in such form and containing such information as the Attorney General may reasonably require, which shall include a certification that the State has convicted an individual of murder, rape, or a dangerous sexual offense, who has a prior conviction for one of those offenses in another State.

(e) Source of funds

(1) In general

Any amount transferred under subsection (c) of this section shall be derived by reducing the amount of Federal law enforcement assistance funds received by the State that convicted such individual of the prior offense before the distribution of the funds to the State. The Attorney General shall provide the State with an opportunity to select the specific Federal law enforcement assistance funds to be so reduced (other than Federal crime victim assistance funds).

(2) Payment schedule

The Attorney General, in consultation with the chief executive of the State that convicted such individual of the prior offense, shall establish a payment schedule.

(f) Construction

Nothing in this section may be construed to diminish or otherwise affect any court ordered restitution.

(g) Exception

This section does not apply if the individual convicted of murder, rape, or a dangerous sexual offense has been released from prison upon the reversal of a conviction for an offense described in subsection (c) of this section and subsequently been convicted for an offense described in subsection (c) of this section.

(h) Report

The Attorney General shall—

(1) conduct a study evaluating the implementation of this section; and

(2) not later than October 1, 2006, submit to Congress a report on the results of that study.

(i) Collection of recidivism data

(1) In general

Beginning with calendar year 2002, and each calendar year thereafter, the Attorney General shall collect and maintain information relating to, with respect to each State—

(A) the number of convictions during that calendar year for—

(i) any dangerous sexual offense;

(ii) rape; and

(iii) murder; and

(B) the number of convictions described in subparagraph (A) that constitute second or subsequent convictions of the defendant of an offense described in that subparagraph.

(2) Report

Not later than March 1, 2003, and on March 1 of each year thereafter, the Attorney General shall submit to Congress a report, which shall include—

(A) the information collected under paragraph (1) with respect to each State during the preceding calendar year; and

(B) the percentage of cases in each State in which an individual convicted of an offense described in paragraph (1)(A) was previously convicted of another such offense in another State during the preceding calendar year.

(j) Effective date

This section shall take effect on January 1, 2002.

(Pub. L. 106-386, div. C, §2001, Oct. 28, 2000, 114 Stat. 1539.)

CODIFICATION

Section was enacted as Aimee's Law and also as part of the Victims of Trafficking and Violence Protection Act of 2000, and not as part of the Violent Crime Control and Law Enforcement Act of 1994 which enacted this chapter.

PART B—MISCELLANEOUS PROVISIONS

§ 13721. Task force on prison construction standardization and techniques

(a) Task force

The Director of the National Institute of Corrections shall, subject to availability of appropriations, establish a task force composed of Federal, State, and local officials expert in prison construction, and of at least an equal number of engineers, architects, and construction experts from the private sector with expertise in prison design and construction, including the use of cost-cutting construction standardization techniques and cost-cutting new building materials and technologies.

(b) Cooperation

The task force shall work in close cooperation and communication with other State and local

officials responsible for prison construction in their localities.

(c) Performance requirements

The task force shall work to—

(1) establish and recommend standardized construction plans and techniques for prison and prison component construction; and

(2) evaluate and recommend new construction technologies, techniques, and materials,

to reduce prison construction costs at the Federal, State, and local levels and make such construction more efficient.

(d) Dissemination

The task force shall disseminate information described in subsection (c) of this section to State and local officials involved in prison construction, through written reports and meetings.

(e) Promotion and evaluation

The task force shall—

(1) work to promote the implementation of cost-saving efforts at the Federal, State, and local levels;

(2) evaluate and advise on the results and effectiveness of such cost-saving efforts as adopted, broadly disseminating information on the results; and

(3) to the extent feasible, certify the effectiveness of the cost-savings efforts.

(Pub. L. 103-322, title II, §20406, Sept. 13, 1994, 108 Stat. 1826.)

§ 13722. Efficiency in law enforcement and corrections

(a) In general

In the administration of each grant program funded by appropriations authorized by this Act or by an amendment made by this Act, the Attorney General shall encourage—

(1) innovative methods for the low-cost construction of facilities to be constructed, converted, or expanded and the low-cost operation of such facilities and the reduction of administrative costs and overhead expenses; and

(2) the use of surplus Federal property.

(b) Assessment of construction components and designs

The Attorney General may make an assessment of the cost efficiency and utility of using modular, prefabricated, precast, and pre-engineered construction components and designs for housing nonviolent criminals.

(Pub. L. 103-322, title II, §20407, Sept. 13, 1994, 108 Stat. 1826.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a), is Pub. L. 103-322, Sept. 13, 1994, 108 Stat. 1796, known as the Violent Crime Control and Law Enforcement Act of 1994. For complete classification of this Act to the Code, see Short Title note set out under section 13701 of this title and Tables.

§ 13723. Congressional approval of any expansion at Lorton and congressional hearings on future needs

(a) Congressional approval

Notwithstanding any other provision of law, the existing prison facilities and complex at the

District of Columbia Corrections Facility at Lorton, Virginia, shall not be expanded unless such expansion has been approved by the Congress under the authority provided to Congress in section 446 of the District of Columbia Home Rule Act.

(b) Senate hearings

The Senate directs the Subcommittee on the District of Columbia of the Committee on Appropriations of the Senate to conduct hearings regarding expansion of the prison complex in Lorton, Virginia, prior to any approval granted pursuant to subsection (a) of this section. The subcommittee shall permit interested parties, including appropriate officials from the County of Fairfax, Virginia, to testify at such hearings.

(c) “Expanded” and “expansion” defined

For purposes of this section, the terms “expanded” and “expansion” mean any alteration of the physical structure of the prison complex that is made to increase the number of inmates incarcerated at the prison.

(Pub. L. 103-322, title II, §20410, Sept. 13, 1994, 108 Stat. 1828; Pub. L. 105-33, title XI, §11717(b), Aug. 5, 1997, 111 Stat. 786.)

REFERENCES IN TEXT

Section 446 of the District of Columbia Home Rule Act, referred to in subsec. (a), is section 446 of Pub. L. 93-198, title IV, Dec. 24, 1973, 87 Stat. 801, as amended, which is not classified to the Code.

AMENDMENTS

1997—Subsec. (a). Pub. L. 105-33 substituted “District of Columbia Home Rule Act” for “District of Columbia Self-Government and Governmental Reorganization Act”.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-33 effective Oct. 1, 1997, except as otherwise provided in title XI of Pub. L. 105-33, see section 11721 of Pub. L. 105-33, set out as a note under section 4246 of Title 18, Crimes and Criminal Procedure.

§ 13724. Conversion of closed military installations into Federal prison facilities

(a) Study of suitable bases

The Secretary of Defense and the Attorney General shall jointly conduct a study of all military installations selected before September 13, 1994, to be closed pursuant to a base closure law for the purpose of evaluating the suitability of any of these installations, or portions of these installations, for conversion into Federal prison facilities. As part of the study, the Secretary and the Attorney General shall identify the military installations so evaluated that are most suitable for conversion into Federal prison facilities.

(b) Suitability for conversion

In evaluating the suitability of a military installation for conversion into a Federal prison facility, the Secretary of Defense and the Attorney General shall consider the estimated cost to convert the installation into a prison facility and such other factors as the Secretary and the Attorney General consider to be appropriate.

(c) Time for study

The study required by subsection (a) of this section shall be completed not later than the date that is 180 days after September 13, 1994.

(d) Construction of Federal prisons**(1) In general**

In determining where to locate any new Federal prison facility, and in accordance with the Department of Justice's duty to review and identify a use for any portion of an installation closed pursuant to title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526) and the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510), the Attorney General shall—

(A) consider whether using any portion of a military installation closed or scheduled to be closed in the region pursuant to a base closure law provides a cost-effective alternative to the purchase of real property or construction of new prison facilities;

(B) consider whether such use is consistent with a reutilization and redevelopment plan; and

(C) give consideration to any installation located in a rural area the closure of which will have a substantial adverse impact on the economy of the local communities and on the ability of the communities to sustain an economic recovery from such closure.

(2) Consent

With regard to paragraph (1)(B), consent must be obtained from the local re-use authority for the military installation, recognized and funded by the Secretary of Defense, before the Attorney General may proceed with plans for the design or construction of a prison at the installation.

(3) Report on basis of decision

Before proceeding with plans for the design or construction of a Federal prison, the Attorney General shall submit to Congress a report explaining the basis of the decision on where to locate the new prison facility.

(4) Report on cost-effectiveness

If the Attorney General decides not to utilize any portion of a closed military installation or an installation scheduled to be closed for locating a prison, the report shall include an analysis of why installations in the region, the use of which as a prison would be consistent with a reutilization and redevelopment plan, does not provide a cost-effective alternative to the purchase of real property or construction of new prison facilities.

(e) "Base closure law" defined

In this section, "base closure law" means—

(1) the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note); and

(2) title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526; 10 U.S.C. 2687 note).

(Pub. L. 103-322, title II, §20413, Sept. 13, 1994, 108 Stat. 1829.)

REFERENCES IN TEXT

The Defense Authorization Amendments and Base Closure and Realignment Act, referred to in subssecs. (d)(1) and (e)(2), is Pub. L. 100-526, Oct. 24, 1988, 102 Stat. 2623, as amended. Title II of the Act is set out as a note under section 2687 of Title 10, Armed Forces. For complete classification of this Act to the Code, see Short Title of 1988 Amendment note set out under section 2687 of Title 10 and Tables.

The Defense Base Closure and Realignment Act of 1990, referred to in subssecs. (d)(1) and (e)(1), is part A of title XXIX of div. B of Pub. L. 101-510, Nov. 5, 1990, 104 Stat. 1808, which is set out as a note under section 2687 of Title 10. For complete classification of this Act to the Code, see Tables.

§ 13725. Correctional job training and placement**(a) Purpose**

It is the purpose of this section to encourage and support job training programs, and job placement programs, that provide services to incarcerated persons or ex-offenders.

(b) Definitions

As used in this section:

(1) Correctional institution

The term "correctional institution" means any prison, jail, reformatory, work farm, detention center, or halfway house, or any other similar institution designed for the confinement or rehabilitation of criminal offenders.

(2) Correctional job training or placement program

The term "correctional job training or placement program" means an activity that provides job training or job placement services to incarcerated persons or ex-offenders, or that assists incarcerated persons or ex-offenders in obtaining such services.

(3) Ex-offender

The term "ex-offender" means any individual who has been sentenced to a term of probation by a Federal or State court, or who has been released from a Federal, State, or local correctional institution.

(4) Incarcerated person

The term "incarcerated person" means any individual incarcerated in a Federal or State correctional institution who is charged with or convicted of any criminal offense.

(c) Establishment of Office**(1) In general**

The Attorney General shall establish within the Department of Justice an Office of Correctional Job Training and Placement. The Office shall be headed by a Director, who shall be appointed by the Attorney General.

(2) Timing

The Attorney General shall carry out this subsection not later than 6 months after September 13, 1994.

(d) Functions of Office

The Attorney General, acting through the Director of the Office of Correctional Job Training and Placement, in consultation with the Secretary of Labor, shall—

(1) assist in coordinating the activities of the Federal Bonding Program of the Depart-

ment of Labor, the activities of the Department of Labor related to the certification of eligibility for targeted jobs credits under section 51 of title 26 with respect to ex-offenders, and any other correctional job training or placement program of the Department of Justice or Department of Labor;

(2) provide technical assistance to State and local employment and training agencies that—

(A) receive financial assistance under this Act; or

(B) receive financial assistance through other programs carried out by the Department of Justice or Department of Labor, for activities related to the development of employability;

(3) prepare and implement the use of special staff training materials, and methods, for developing the staff competencies needed by State and local agencies to assist incarcerated persons and ex-offenders in gaining marketable occupational skills and job placement;

(4) prepare and submit to Congress an annual report on the activities of the Office of Correctional Job Training and Placement, and the status of correctional job training or placement programs in the United States;

(5) cooperate with other Federal agencies carrying out correctional job training or placement programs to ensure coordination of such programs throughout the United States;

(6) consult with, and provide outreach to—

(A) State job training coordinating councils, administrative entities, and private industry councils, with respect to programs carried out under this Act; and

(B) other State and local officials, with respect to other employment or training programs carried out by the Department of Justice or Department of Labor;

(7) collect from States information on the training accomplishments and employment outcomes of a sample of incarcerated persons and ex-offenders who were served by employment or training programs carried out, or that receive financial assistance through programs carried out, by the Department of Justice or Department of Labor; and

(8)(A) collect from States and local governments information on the development and implementation of correctional job training or placement programs; and

(B) disseminate such information, as appropriate.

(Pub. L. 103-322, title II, § 20418, Sept. 13, 1994, 108 Stat. 1835.)

REFERENCES IN TEXT

This Act, referred to in subsec. (d)(2)(A), (6)(A), is Pub. L. 103-322, Sept. 13, 1994, 108 Stat. 1796, known as the Violent Crime Control and Law Enforcement Act of 1994. For complete classification of this Act to the Code, see Short Title note set out under section 13701 of this title and Tables.

§ 13726. Findings

Congress finds the following:

(1) Increasingly, States are turning to private prisoner transport companies as an alternative to their own personnel or the United

States Marshals Service when transporting violent prisoners.

(2) The transport process can last for days if not weeks, as violent prisoners are dropped off and picked up at a network of hubs across the country.

(3) Escapes by violent prisoners during transport by private prisoner transport companies have occurred.

(4) Oversight by the Attorney General is required to address these problems.

(5) While most governmental entities may prefer to use, and will continue to use, fully trained and sworn law enforcement officers when transporting violent prisoners, fiscal or logistical concerns may make the use of highly specialized private prisoner transport companies an option. Nothing in sections 13726 to 13726c of this title should be construed to mean that governmental entities should contract with private prisoner transport companies to move violent prisoners; however when a government entity opts to use a private prisoner transport company to move violent prisoners, then the company should be subject to regulation in order to enhance public safety.

(Pub. L. 106-560, § 2, Dec. 21, 2000, 114 Stat. 2784.)

REFERENCES IN TEXT

Sections 13726 to 13726c of this title, referred to in par. (5), was in the original “this Act”, meaning Pub. L. 106-560, Dec. 21, 2000, 114 Stat. 2784, known as the Interstate Transportation of Dangerous Criminals Act of 2000 or Jeanna’s Act, which enacted this section and sections 13726a to 13726c of this title and provisions set out as a note under section 13701 of this title. For complete classification of this Act to the Code, see Short Title of 2000 Amendments note set out under 13701 of this title and Tables.

CODIFICATION

This section was enacted as part of the Interstate Transportation of Dangerous Criminals Act of 2000 or Jeanna’s Act, and not as part of the Violent Crime Control and Law Enforcement Act of 1994 which enacted this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13726a, 13726b, 13726c of this title.

§ 13726a. Definitions

In sections 13726 to 13726c of this title:

(1) Crime of violence

The term “crime of violence” has the same meaning as in section 924(c)(3) of title 18.

(2) Private prisoner transport company

The term “private prisoner transport company” means any entity, other than the United States, a State, or an inferior political subdivision of a State, which engages in the business of the transporting for compensation, individuals committed to the custody of any State or of an inferior political subdivision of a State, or any attempt thereof.

(3) Violent prisoner

The term “violent prisoner” means any individual in the custody of a State or an inferior political subdivision of a State who has previously been convicted of or is currently

charged with a crime of violence or any similar statute of a State or the inferior political subdivisions of a State, or any attempt thereof.

(Pub. L. 106-560, §3, Dec. 21, 2000, 114 Stat. 2784.)

REFERENCES IN TEXT

Sections 13726 to 13726c of this title, referred to in text, was in the original "this Act", meaning Pub. L. 106-560, Dec. 21, 2000, 114 Stat. 2784, known as the Interstate Transportation of Dangerous Criminals Act of 2000 or Jeanna's Act, which enacted this section and sections 13726, 13726b, and 13726c of this title and provisions set out as a note under section 13701 of this title. For complete classification of this Act to the Code, see Short Title of 2000 Amendments note set out under 13701 of this title and Tables.

CODIFICATION

This section was enacted as part of the Interstate Transportation of Dangerous Criminals Act of 2000 or Jeanna's Act, and not as part of the Violent Crime Control and Law Enforcement Act of 1994 which enacted this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13726, 13726b, 13726c of this title.

§ 13726b. Federal regulation of prisoner transport companies

(a) In general

Not later than 180 days after December 21, 2000, the Attorney General, in consultation with the American Correctional Association and the private prisoner transport industry, shall promulgate regulations relating to the transportation of violent prisoners in or affecting interstate commerce.

(b) Standards and requirements

The regulations shall include the following:

(1) Minimum standards for background checks and preemployment drug testing for potential employees, including requiring criminal background checks, to disqualify persons with a felony conviction or domestic violence conviction as defined by section 921 of title 18 for eligibility for employment. Preemployment drug testing will be in accordance with applicable State laws.

(2) Minimum standards for the length and type of training that employees must undergo before they can transport prisoners not to exceed 100 hours of preservice training focusing on the transportation of prisoners. Training shall be in the areas of use of restraints, searches, use of force, including use of appropriate weapons and firearms, CPR, map reading, and defensive driving.

(3) Restrictions on the number of hours that employees can be on duty during a given time period. Such restriction shall not be more stringent than current applicable rules and regulations concerning hours of service promulgated under the Federal Motor Vehicle Safety Act.¹

(4) Minimum standards for the number of personnel that must supervise violent prisoners. Such standards shall provide the trans-

port entity with appropriate discretion, and, absent more restrictive requirements contracted for by the procuring government entity, shall not exceed a requirement of 1 agent for every 6 violent prisoners.

(5) Minimum standards for employee uniforms and identification that require wearing of a uniform with a badge or insignia identifying the employee as a transportation officer.

(6) Standards establishing categories of violent prisoners required to wear brightly colored clothing clearly identifying them as prisoners, when appropriate.

(7) Minimum requirements for the restraints that must be used when transporting violent prisoners, to include leg shackles and double-locked handcuffs, when appropriate.

(8) A requirement that when transporting violent prisoners, private prisoner transport companies notify local law enforcement officials 24 hours in advance of any scheduled stops in their jurisdiction.

(9) A requirement that in the event of an escape by a violent prisoner, private prisoner transport company officials shall immediately notify appropriate law enforcement officials in the jurisdiction where the escape occurs, and the governmental entity that contracted with the private prisoner transport company for the transport of the escaped violent prisoner.

(10) Minimum standards for the safety of violent prisoners in accordance with applicable Federal and State law.

(c) Federal standards

Except for the requirements of subsection (b)(6) of this section, the regulations promulgated under sections 13726 to 13726c of this title shall not provide stricter standards with respect to private prisoner transport companies than are applicable, without exception, to the United States Marshals Service, Federal Bureau of Prisons, and the Immigration and Naturalization Service when transporting violent prisoners under comparable circumstances.

(Pub. L. 106-560, §4, Dec. 21, 2000, 114 Stat. 2785.)

REFERENCES IN TEXT

No act with the title Federal Motor Vehicle Safety Act, referred to in subsec. (b)(3), has been enacted. Provisions authorizing the Secretary of Transportation to prescribe requirements relating to hours of service of employees of a motor carrier are contained in chapter 315 (§31501 et seq.) of Title 49, Transportation.

Sections 13726 to 13726c of this title, referred to in subsec. (c), was in the original "this Act", meaning Pub. L. 106-560, Dec. 21, 2000, 114 Stat. 2784, known as the Interstate Transportation of Dangerous Criminals Act of 2000 or Jeanna's Act, which enacted this section and sections 13726, 13726a, and 13726c of this title and provisions set out as a note under section 13701 of this title. For complete classification of this Act to the Code, see Short Title of 2000 Amendments note set out under 13701 of this title and Tables.

CODIFICATION

This section was enacted as part of the Interstate Transportation of Dangerous Criminals Act of 2000 or Jeanna's Act, and not as part of the Violent Crime Control and Law Enforcement Act of 1994 which enacted this chapter.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related

¹ See References in Text note below.

references, see note set out under section 1551 of Title 8, Aliens and Nationality.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13726, 13726a, 13726c of this title.

§ 13726c. Enforcement

Any person who is found in violation of the regulations established by sections 13726 to 13726c of this title shall—

(1) be liable to the United States for a civil penalty in an amount not to exceed \$10,000 for each violation and, in addition, to the United States for the costs of prosecution; and

(2) make restitution to any entity of the United States, of a State, or of an inferior political subdivision of a State, which expends funds for the purpose of apprehending any violent prisoner who escapes from a prisoner transport company as the result, in whole or in part, of a violation of regulations promulgated pursuant to section 13726b(a) of this title.

(Pub. L. 106-560, §5, Dec. 21, 2000, 114 Stat. 2786.)

REFERENCES IN TEXT

Sections 13726 to 13726c of this title, referred to in text, was in the original “this Act”, meaning Pub. L. 106-560, Dec. 21, 2000, 114 Stat. 2784, known as the Interstate Transportation of Dangerous Criminals Act of 2000 or Jeanna’s Act, which enacted this section and sections 13726 to 13726b of this title and provisions set out as a note under section 13701 of this title. For complete classification of this Act to the Code, see Short Title of 2000 Amendments note set out under 13701 of this title and Tables.

CODIFICATION

This section was enacted as part of the Interstate Transportation of Dangerous Criminals Act of 2000 or Jeanna’s Act, and not as part of the Violent Crime Control and Law Enforcement Act of 1994 which enacted this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13726, 13726a, 13726b of this title.

SUBCHAPTER II—CRIME PREVENTION

PART A—OUNCE OF PREVENTION COUNCIL

§ 13741. Ounce of Prevention Council

(a) Establishment

(1) In general

There is established an Ounce of Prevention Council (referred to in this subchapter as the “Council”), the members of which—

(A) shall include the Attorney General, the Secretary of Education, the Secretary of Health and Human Services, the Secretary of Housing and Urban Development, the Secretary of Labor, the Secretary of Agriculture, the Secretary of the Treasury, the Secretary of the Interior, and the Director of the Office of National Drug Control Policy; and

(B) may include other officials of the executive branch as directed by the President.

(2) Chair

The President shall designate the Chair of the Council from among its members (referred to in this subchapter as the “Chair”).

(3) Staff

The Council may employ any necessary staff to carry out its functions, and may delegate any of its functions or powers to a member or members of the Council.

(b) Program coordination

For any program authorized under the Violent Crime Control and Law Enforcement Act of 1994, the Ounce of Prevention Council Chair, only at the request of the Council member with jurisdiction over that program, may coordinate that program, in whole or in part, through the Council.

(c) Administrative responsibilities and powers

In addition to the program coordination provided in subsection (b) of this section, the Council shall be responsible for such functions as coordinated planning, development of a comprehensive crime prevention program catalogue, provision of assistance to communities and community-based organizations seeking information regarding crime prevention programs and integrated program service delivery, and development of strategies for program integration and grant simplification. The Council shall have the authority to audit the expenditure of funds received by grantees under programs administered by or coordinated through the Council. In consultation with the Council, the Chair may issue regulations and guidelines to carry out this part and programs administered by or coordinated through the Council.

(Pub. L. 103-322, title III, §30101, Sept. 13, 1994, 108 Stat. 1836.)

REFERENCES IN TEXT

This subchapter, referred to in subsec. (a)(1), (2), was in the original “this title”, meaning title III of Pub. L. 103-322, Sept. 13, 1994, 108 Stat. 1836, which enacted this subchapter, sections 3796ff to 3796ff-4 of this title, and sections 6701 to 6720 of Title 31, Money and Finance, amended sections 3791, 3793, and 3797 of this title, sections 2502 to 2504, 2506, and 2512 of Title 16, Conservation, and section 3621 of Title 18, Crimes and Criminal Procedure, and enacted provisions set out as notes under section 13701 of this title and sections 6701 and 6702 of Title 31. For complete classification of title III to the Code, see Tables.

The Violent Crime Control and Law Enforcement Act of 1994, referred to in subsec. (b), is Pub. L. 103-322, Sept. 13, 1994, 108 Stat. 1796. For complete classification of this Act to the Code, see Short Title note set out under section 13701 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 13742. Ounce of prevention grant program

(a) In general

The Council may make grants for—

(1) summer and after-school (including weekend and holiday) education and recreation programs;

(2) mentoring, tutoring, and other programs involving participation by adult role models (such as D.A.R.E. America);

(3) programs assisting and promoting employability and job placement; and

(4) prevention and treatment programs to reduce substance abuse, child abuse, and adoles-

cent pregnancy, including outreach programs for at-risk families.

(b) Applicants

Applicants may be Indian tribal governments, cities, counties, or other municipalities, school boards, colleges and universities, private non-profit entities, or consortia of eligible applicants. Applicants must show that a planning process has occurred that has involved organizations, institutions, and residents of target areas, including young people, and that there has been cooperation between neighborhood-based entities, municipality-wide bodies, and local private-sector representatives. Applicants must demonstrate the substantial involvement of neighborhood-based entities in the carrying out of the proposed activities. Proposals must demonstrate that a broad base of collaboration and coordination will occur in the implementation of the proposed activities, involving cooperation among youth-serving organizations, schools, health and social service providers, employers, law enforcement professionals, local government, and residents of target areas, including young people. Applications shall be geographically based in particular neighborhoods or sections of municipalities or particular segments of rural areas, and applications shall demonstrate how programs will serve substantial proportions of children and youth resident in the target area with activities designed to have substantial impact on their lives.

(c) Priority

In making such grants, the Council shall give preference to coalitions consisting of a broad spectrum of community-based and social service organizations that have a coordinated team approach to reducing gang membership and the effects of substance abuse, and providing alternatives to at-risk youth.

(d) Federal share

(1) In general

The Federal share of a grant made under this part¹ may not exceed 75 percent of the total costs of the projects described in the applications submitted under subsection (b) of this section for the fiscal year for which the projects receive assistance under this subchapter.

(2) Waiver

The Council may waive the 25 percent matching requirement under paragraph (1) upon making a determination that a waiver is equitable in view of the financial circumstances affecting the ability of the applicant to meet that requirement.

(3) Non-Federal share

The non-Federal share of such costs may be in cash or in kind, fairly evaluated, including plant, equipment, and services.

(4) Nonsupplanting requirement

Funds made available under this subchapter to a governmental entity shall not be used to supplant State or local funds, or in the case of Indian tribal governments, funds supplied by

the Bureau of Indian Affairs, but shall be used to increase the amount of funds that would, in the absence of Federal funds received under this subchapter, be made available from State or local sources, or in the case of Indian tribal governments, from funds supplied by the Bureau of Indian Affairs.

(5) Evaluation

The Council shall conduct a thorough evaluation of the programs assisted under this subchapter.

(Pub. L. 103-322, title III, §30102, Sept. 13, 1994, 108 Stat. 1837.)

REFERENCES IN TEXT

This part, referred to in subsec. (d)(1), appearing in the original is unidentifiable because subtitle A of title III of Pub. L. 103-322 does not contain parts.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 13743. "Indian tribe" defined

In this part, "Indian tribe" means a tribe, band, pueblo, nation, or other organized group or community of Indians, including an Alaska Native village (as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.),¹ that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(Pub. L. 103-322, title III, §30103, Sept. 13, 1994, 108 Stat. 1838.)

REFERENCES IN TEXT

The Alaska Native Claims Settlement Act, referred to in text, is Pub. L. 92-203, §2, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 13744. Authorization of appropriations

There are authorized to be appropriated to carry out this part—

- (1) \$1,500,000 for fiscal year 1995;
- (2) \$14,700,000 for fiscal year 1996;
- (3) \$18,000,000 for fiscal year 1997;
- (4) \$18,000,000 for fiscal year 1998;
- (5) \$18,900,000 for fiscal year 1999; and
- (6) \$18,900,000 for fiscal year 2000.

(Pub. L. 103-322, title III, §30104, Sept. 13, 1994, 108 Stat. 1838.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

¹ See References in Text note below.

¹ So in original. A closing parenthesis probably should precede the comma.

PART B—LOCAL CRIME PREVENTION BLOCK
GRANT PROGRAM

§ 13751. Payments to local governments

(a) Payment and use

(1) Payment

The Attorney General,¹ shall pay to each unit of general local government which qualifies for a payment under this part an amount equal to the sum of any amounts allocated to the government under this part for each payment period. The Attorney General shall pay such amount from amounts appropriated under section 13752 of this title.

(2) Use

Amounts paid to a unit of general local government under this section shall be used by that unit for carrying out one or more of the following purposes:

(A) Education, training, research, prevention, diversion, treatment, and rehabilitation programs to prevent juvenile violence, juvenile gangs, and the use and sale of illegal drugs by juveniles.

(B) Programs to prevent crimes against the elderly based on the concepts of the Triad model.

(C) Programs that prevent young children from becoming gang involved, including the award of grants or contracts to community-based service providers that have a proven track record of providing services to children ages 5 to 18.

(D) Saturation jobs programs, offered either separately or in conjunction with the services provided for under the Youth Fair Chance Program, that provide employment opportunities leading to permanent unsubsidized employment for disadvantaged young adults 16 through 25 years of age.

(E) Midnight sports league programs that shall require each player in the league to attend employment counseling, job training, and other educational classes provided under the program, which shall be held in conjunction with league sports games at or near the site of the games.

(F) Supervised sports and recreation programs, including Olympic Youth Development Centers established in cooperation with the United States Olympic Committee, that are offered—

(i) after school and on weekends and holidays, during the school year; and

(ii) as daily (or weeklong) full-day programs (to the extent available resources permit) or as part-day programs, during the summer months.

(G) Prevention and enforcement programs to reduce—

(i) the formation or continuation of juvenile gangs; and

(ii) the use and sale of illegal drugs by juveniles.

(H) Youth anticrime councils to give intermediate and secondary school students a

structured forum through which to work with community organizations, law enforcement officials, government and media representatives, and school administrators and faculty to address issues regarding youth and violence.

(I) Award of grants or contracts to the Boys and Girls Clubs of America, a national nonprofit youth organization, to establish Boys and Girls Clubs in public housing.

(J) Supervised visitation centers for children who have been removed from their parents and placed outside the home as a result of abuse or neglect or other risk of harm to them and for children whose parents are separated or divorced and the children are at risk because—

(i) there is documented sexual, physical, or emotional abuse as determined by a court of competent jurisdiction;

(ii) there is suspected or elevated risk of sexual, physical, or emotional abuse, or there have been threats of parental abduction of the child;

(iii) due to domestic violence, there is an ongoing risk of harm to a parent or child;

(iv) a parent is impaired because of substance abuse or mental illness;

(v) there are allegations that a child is at risk for any of the reasons stated in clauses (i), (ii), (iii), and (iv), pending an investigation of the allegations; or

(vi) other circumstances, as determined by a court of competent jurisdiction, point to the existence of such a risk.

(K) Family Outreach Teams which provide a youth worker, a parent worker, and a school-parent organizer to provide training in outreach, mentoring, community organizing and peer counseling and mentoring to locally recruited volunteers in a particular area.

(L) To establish corridors of safety for senior citizens by increasing the numbers, presence, and watchfulness of law enforcement officers, community groups, and business owners and employees.

(M) Teams or units involving both specially trained law enforcement professionals and child or family services professionals that on a 24-hour basis respond to or deal with violent incidents in which a child is involved as a perpetrator, witness, or victim.

(N) Dwelling units to law enforcement officers without charge or at a substantially reduced rent for the purpose of providing greater security for residents of high crime areas.

(b) Timing of payments

The Attorney General shall pay each amount allocated under this part to a unit of general local government for a payment period by the later of 90 days after the date the amount is available or the first day of the payment period if the unit of general local government has provided the Attorney General with the assurances required by section 13753(d) of this title.

(c) Adjustments

(1) In general

Subject to paragraph (2), the Attorney General shall adjust a payment under this part to

¹ So in original. The comma probably should not appear.

a unit of general local government to the extent that a prior payment to the government was more or less than the amount required to be paid.

(2) Considerations

The Attorney General may increase or decrease under this subsection a payment to a unit of general local government only if the Attorney General determines the need for the increase or decrease, or the unit requests the increase or decrease, within one year after the end of the payment period for which the payment was made.

(d) Reservation for adjustments

The Attorney General may reserve a percentage of not more than 2 percent of the amount under this section for a payment period for all units of general local government in a State if the Attorney General considers the reserve is necessary to ensure the availability of sufficient amounts to pay adjustments after the final allocation of amounts among the units of general local government in the State.

(e) Repayment of unexpended amounts

(1) Repayment required

A unit of general local government shall repay to the Attorney General, by not later than 15 months after receipt from the Attorney General, any amount that is—

(A) paid to the unit from amounts appropriated under the authority of this section; and

(B) not expended by the unit within one year after receipt from the Attorney General.

(2) Penalty for failure to repay

If the amount required to be repaid is not repaid, the Attorney General shall reduce payments in future payment periods accordingly.

(3) Deposit of amounts repaid

Amounts received by the Attorney General as repayments under this subsection shall be deposited in a designated fund for future payments to units of general local government.

(f) Nonsupplanting requirement

Funds made available under this part to units of local government shall not be used to supplant State or local funds, but will be used to increase the amount of funds that would, in the absence of funds under this part, be made available from State or local sources.

(Pub. L. 103-322, title III, §30201, Sept. 13, 1994, 108 Stat. 1838.)

NATIONAL POLICE ATHLETIC LEAGUE YOUTH
ENRICHMENT

Pub. L. 106-367, Oct. 27, 2000, 114 Stat. 1412, provided that:

“SECTION 1. SHORT TITLE.

“This Act may be cited as the ‘National Police Athletic League Youth Enrichment Act of 2000’.

“SEC. 2. FINDINGS.

“Congress makes the following findings:

“(1) The goals of the Police Athletic League are to—

“(A) increase the academic success of youth participants in PAL programs;

“(B) promote a safe, healthy environment for youth under the supervision of law enforcement personnel where mutual trust and respect can be built;

“(C) increase school attendance by providing alternatives to suspensions and expulsions;

“(D) reduce the juvenile crime rate in participating designated communities and the number of police calls involving juveniles during nonschool hours;

“(E) provide youths with alternatives to drugs, alcohol, tobacco, and gang activity;

“(F) create positive communications and interaction between youth and law enforcement personnel; and

“(G) prepare youth for the workplace.

“(2) The Police Athletic League, during its 55-year history as a national organization, has proven to be a positive force in the communities it serves.

“(3) The Police Athletic League is a network of 1,700 facilities serving over 3,000 communities. There are 320 PAL chapters throughout the United States, the Virgin Islands, and the Commonwealth of Puerto Rico, serving 1,500,000 youths, ages 5 to 18, nationwide.

“(4) Based on PAL chapter demographics, approximately 82 percent of the youths who benefit from PAL programs live in inner cities and urban areas.

“(5) PAL chapters are locally operated, volunteer-driven organizations. Although most PAL chapters are sponsored by a law enforcement agency, PAL chapters receive no direct funding from law enforcement agencies and are dependent in large part on support from the private sector, such as individuals, business leaders, corporations, and foundations. PAL chapters have been exceptionally successful in balancing public funds with private sector donations and maximizing community involvement.

“(6) Today’s youth face far greater risks than did their parents and grandparents. Law enforcement statistics demonstrate that youth between the ages of 12 and 17 are at risk of committing violent acts and being victims of violent acts between the hours of 3 p.m. and 8 p.m.

“(7) Greater numbers of students are dropping out of school and failing in school, even though the consequences of academic failure are more dire in 1999 than ever before.

“(8) Many distressed areas in the United States are still underserved by PAL chapters.

“SEC. 3. PURPOSE.

“The purpose of this Act is to provide adequate resources in the form of—

“(1) assistance for the 320 established PAL chapters to increase of services to the communities they are serving; and

“(2) seed money for the establishment of 250 (50 per year over a 5-year period) additional local PAL chapters in public housing projects and other distressed areas, including distressed areas with a majority population of Native Americans, by not later than fiscal year 2006.

“SEC. 4. DEFINITIONS.

“In this Act:

“(1) ASSISTANT ATTORNEY GENERAL.—The term ‘Assistant Attorney General’ means the Assistant Attorney General for the Office of Justice Programs of the Department of Justice.

“(2) DISTRESSED AREA.—The term ‘distressed area’ means an urban, suburban, or rural area with a high percentage of high-risk youth, as defined in section 509A of the Public Health Service Act (42 U.S.C. 290aa-8(f)) [now 42 U.S.C. 290bb-23(g)].

“(3) PAL CHAPTER.—The term ‘PAL chapter’ means a chapter of a Police or Sheriff’s Athletic/Activities League.

“(4) POLICE ATHLETIC LEAGUE.—The term ‘Police Athletic League’ means the private, nonprofit, national representative organization for 320 Police or

Sheriff's Athletic/Activities Leagues throughout the United States (including the Virgin Islands and the Commonwealth of Puerto Rico).

“(5) PUBLIC HOUSING; PROJECT.—The terms ‘public housing’ and ‘project’ have the meanings given those terms in section 3(b) of the United States Housing Act of 1937 (42 U.S.C. 1437a(b)).

“SEC. 5. GRANTS AUTHORIZED.

“(a) IN GENERAL.—Subject to appropriations, for each of fiscal years 2001 through 2005, the Assistant Attorney General shall award a grant to the Police Athletic League for the purpose of establishing PAL chapters to serve public housing projects and other distressed areas, and expanding existing PAL chapters to serve additional youths.

“(b) APPLICATION.—

“(1) SUBMISSION.—In order to be eligible to receive a grant under this section, the Police Athletic League shall submit to the Assistant Attorney General an application, which shall include—

“(A) a long-term strategy to establish 250 additional PAL chapters and detailed summary of those areas in which new PAL chapters will be established, or in which existing chapters will be expanded to serve additional youths, during the next fiscal year;

“(B) a plan to ensure that there are a total of not less than 570 PAL chapters in operation before January 1, 2004;

“(C) a certification that there will be appropriate coordination with those communities where new PAL chapters will be located; and

“(D) an explanation of the manner in which new PAL chapters will operate without additional, direct Federal financial assistance once assistance under this Act is discontinued.

“(2) REVIEW.—The Assistant Attorney General shall review and take action on an application submitted under paragraph (1) not later than 120 days after the date of such submission.

“SEC. 6. USE OF FUNDS.

“(a) IN GENERAL.—

“(1) ASSISTANCE FOR NEW AND EXPANDED CHAPTERS.—Amounts made available under a grant awarded under this Act shall be used by the Police Athletic League to provide funding for the establishment of PAL chapters serving public housing projects and other distressed areas, or the expansion of existing PAL chapters.

“(2) PROGRAM REQUIREMENTS.—Each new or expanded PAL chapter assisted under paragraph (1) shall carry out not less than four programs during nonschool hours, of which—

“(A) not less than two programs shall provide—

“(i) mentoring assistance;

“(ii) academic assistance;

“(iii) recreational and athletic activities; or

“(iv) technology training; and

“(B) any remaining programs shall provide—

“(i) drug, alcohol, and gang prevention activities;

“(ii) health and nutrition counseling;

“(iii) cultural and social programs;

“(iv) conflict resolution training, anger management, and peer pressure training;

“(v) job skill preparation activities; or

“(vi) Youth Police Athletic League Conferences or Youth Forums.

“(b) ADDITIONAL REQUIREMENTS.—In carrying out the programs under subsection (a), a PAL chapter shall, to the maximum extent practicable—

“(1) use volunteers from businesses, academic communities, social organizations, and law enforcement organizations to serve as mentors or to assist in other ways;

“(2) ensure that youth in the local community participate in designing the after-school activities;

“(3) develop creative methods of conducting outreach to youth in the community;

“(4) request donations of computer equipment and other materials and equipment; and

“(5) work with State and local park and recreation agencies so that activities funded with amounts made available under a grant under this Act will not duplicate activities funded from other sources in the community served.

“SEC. 7. REPORTS.

“(a) REPORT TO ASSISTANT ATTORNEY GENERAL.—For each fiscal year for which a grant is awarded under this Act, the Police Athletic League shall submit to the Assistant Attorney General a report on the use of amounts made available under the grant.

“(b) REPORT TO CONGRESS.—Not later than May 1 of each fiscal year for which amounts are made available to carry out this Act, the Assistant Attorney General shall submit to the Committees on the Judiciary of the Senate and the House of Representatives a report that details the progress made under this Act in establishing and expanding PAL chapters in public housing projects and other distressed areas, and the effectiveness of the PAL programs in reducing drug abuse, school dropouts, and juvenile crime.

“SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

“(a) IN GENERAL.—There are authorized to be appropriated to carry out this Act \$16,000,000 for each of fiscal years 2001 through 2005.

“(b) FUNDING FOR PROGRAM ADMINISTRATION.—Of the amount made available to carry out this Act in each fiscal year—

“(1) not less than 2 percent shall be used for research and evaluation of the grant program under this Act;

“(2) not less than 1 percent shall be used for technical assistance related to the use of amounts made available under grants awarded under this Act; and

“(3) not less than 1 percent shall be used for the management and administration of the grant program under this Act, except that the total amount made available under this paragraph for administration of that program shall not exceed 6 percent.”

KIDS 2000 CRIME PREVENTION AND COMPUTER EDUCATION INITIATIVE

Pub. L. 106-313, title I, §112, Oct. 17, 2000, 114 Stat. 1260, provided that:

“(a) SHORT TITLE.—This section may be cited as the ‘Kids 2000 Act’.

“(b) FINDINGS.—Congress makes the following findings:

“(1) There is an increasing epidemic of juvenile crime throughout the United States.

“(2) It is well documented that the majority of juvenile crimes take place during after-school hours.

“(3) Knowledge of technology is becoming increasingly necessary for children in school and out of school.

“(4) The Boys and Girls Clubs of America have 2,700 clubs throughout all 50 States, serving over 3,000,000 boys and girls primarily from at-risk communities.

“(5) The Boys and Girls Clubs of America have the physical structures in place for immediate implementation of an after-school technology program.

“(6) Building technology centers and providing integrated content and full-time staffing at those centers in the Boys and Girls Clubs of America nationwide will help foster education, job training, and an alternative to crime for at-risk youth.

“(7) Partnerships between the public sector and the private sector are an effective way of providing after-school technology programs in the Boys and Girls Clubs of America.

“(8) PowerUp: Bridging the Digital Divide is an entity comprised of more than a dozen nonprofit organizations, major corporations, and Federal agencies that have joined together to launch a major new initiative to help ensure that America’s underserved young people acquire the skills, experiences, and resources they need to succeed in the digital age.

“(9) Bringing PowerUp into the Boys and Girls Clubs of America will be an effective way to ensure that our youth have a safe, crime-free environment in which to learn the technological skills they need to close the divide between young people who have access to computer-based information and technology-related skills and those who do not.

“(c) AFTER-SCHOOL TECHNOLOGY GRANTS TO THE BOYS AND GIRLS CLUBS OF AMERICA.—

“(1) PURPOSES.—The Attorney General shall make grants to the Boys and Girls Clubs of America for the purpose of funding effective after-school technology programs, such as PowerUp, in order to provide—

“(A) constructive technology-focused activities that are part of a comprehensive program to provide access to technology and technology training to youth during after-school hours, weekends, and school vacations;

“(B) supervised activities in safe environments for youth; and

“(C) full-time staffing with teachers, tutors, and other qualified personnel.

“(2) SUBAWARDS.—The Boys and Girls Clubs of America shall make subawards to local boys and girls clubs authorizing expenditures associated with providing technology programs such as PowerUp, including the hiring of teachers and other personnel, procurement of goods and services, including computer equipment, or such other purposes as are approved by the Attorney General.

“(d) APPLICATIONS.—

“(1) ELIGIBILITY.—In order to be eligible to receive a grant under this section, an applicant for a subaward (specified in subsection (c)(2)) shall submit an application to the Boys and Girls Clubs of America, in such form and containing such information as the Attorney General may reasonably require.

“(2) APPLICATION REQUIREMENTS.—Each application submitted in accordance with paragraph (1) shall include—

“(A) a request for a subgrant to be used for the purposes of this section;

“(B) a description of the communities to be served by the grant, including the nature of juvenile crime, violence, and drug use in the communities;

“(C) written assurances that Federal funds received under this section will be used to supplement and not supplant, non-Federal funds that would otherwise be available for activities funded under this section;

“(D) written assurances that all activities funded under this section will be supervised by qualified adults;

“(E) a plan for assuring that program activities will take place in a secure environment that is free of crime and drugs;

“(F) a plan outlining the utilization of content-based programs such as PowerUp, and the provision of trained adult personnel to supervise the after-school technology training; and

“(G) any additional statistical or financial information that the Boys and Girls Clubs of America may reasonably require.

“(e) GRANT AWARDS.—In awarding subgrants under this section, the Boys and Girls Clubs of America shall consider—

“(1) the ability of the applicant to provide the intended services;

“(2) the history and establishment of the applicant in providing youth activities; and

“(3) the extent to which services will be provided in crime-prone areas and technologically underserved populations, and efforts to achieve an equitable geographic distribution of the grant awards.

“(f) AUTHORIZATION OF APPROPRIATIONS.—

“(1) IN GENERAL.—There is authorized to be appropriated \$20,000,000 for each of the fiscal years 2001 through 2006 to carry out this section.

“(2) SOURCE OF FUNDS.—Funds to carry out this section may be derived from the Violent Crime Reduction Trust Fund.

“(3) CONTINUED AVAILABILITY.—Amounts made available under this subsection shall remain available until expended.”

ESTABLISHMENT OF BOYS AND GIRLS CLUBS

Pub. L. 104-294, title IV, §401, Oct. 11, 1996, 110 Stat. 3496, as amended by Pub. L. 105-133, §1, Dec. 2, 1997, 111 Stat. 2568; Pub. L. 107-273, div. B, title I, §1101, Nov. 2, 2002, 116 Stat. 1791, provided that:

“(a) FINDINGS AND PURPOSE.—

“(1) FINDINGS.—The Congress finds that—

“(A) the Boys and Girls Clubs of America, chartered by an Act of Congress on December 10, 1991 [Pub. L. 102-199, see Tables for classification], during its 90-year history as a national organization, has proven itself as a positive force in the communities it serves;

“(B) there are 1,810 Boys and Girls Clubs facilities throughout the United States, Puerto Rico, and the United States Virgin Islands, serving 2,420,000 youths nationwide;

“(C) 71 percent of the young people who benefit from Boys and Girls Clubs programs live in our inner cities and urban areas;

“(D) Boys and Girls Clubs are locally run and have been exceptionally successful in balancing public funds with private sector donations and maximizing community involvement;

“(E) Boys and Girls Clubs are located in 289 public housing sites across the Nation;

“(F) public housing projects in which there is an active Boys and Girls Club have experienced a 25 percent reduction in the presence of crack cocaine, a 22 percent reduction in overall drug activity, and a 13 percent reduction in juvenile crime;

“(G) these results have been achieved in the face of national trends in which overall drug use by youth has increased 105 percent since 1992 and 10.9 percent of the Nation’s young people use drugs on a monthly basis; and

“(H) many public housing projects and other distressed areas are still underserved by Boys and Girls Clubs.

“(2) PURPOSE.—The purpose of this section is to provide adequate resources in the form of seed money for the Boys and Girls Clubs of America to establish 1,200 additional local clubs where needed, with particular emphasis placed on establishing clubs in public housing projects and distressed areas, and to ensure that there are a total of not less than 4,000 Boys and Girls Clubs of America facilities in operation not later than December 31, 2005, serving not less than 5,000,000 young people.

“(b) DEFINITIONS.—For purposes of this section—

“(1) the terms ‘public housing’ and ‘project’ have the same meanings as in section 3(b) of the United States Housing Act of 1937 [42 U.S.C. 1437a(b)]; and

“(2) the term ‘distressed area’ means an urban, suburban, rural area, or Indian reservation with a population of high risk youth as defined in section 517 of the Public Health Service Act (42 U.S.C. 290bb-23) of sufficient size to warrant the establishment of a Boys and Girls Club.

“(c) ESTABLISHMENT.—

“(1) IN GENERAL.—For each of the fiscal years 2002, 2003, 2004, 2005, and 2006, the Director of the Bureau of Justice Assistance of the Department of Justice shall make a grant to the Boys and Girls Clubs of America for the purpose of establishing and extending Boys and Girls Clubs facilities where needed, with particular emphasis placed on establishing clubs in and extending services to public housing projects and distressed areas.

“(2) APPLICATIONS.—The Attorney General shall accept an application for a grant under this subsection if submitted by the Boys and Girls Clubs of America, and approve or deny the grant not later than 90 days after the date on which the application is submitted, if the application—

“(A) includes a long-term strategy to establish 1,200 additional Boys and Girls Clubs and detailed

summary of those areas in which new facilities will be established, or in which existing facilities will be expanded to serve additional youths, during the next fiscal year;

“(B) includes a plan to ensure that there are a total of not less than 4,000 Boys and Girls Clubs of America facilities in operation before January 1, 2007;

“(C) certifies that there will be appropriate coordination with those communities where clubs will be located; and

“(D) explains the manner in which new facilities will operate without additional, direct Federal financial assistance to the Boys and Girls Clubs once assistance under this subsection is discontinued.

“(d) REPORT.—Not later than May 1 of each fiscal year for which amounts are made available to carry out this Act [see Tables for classification], the Attorney General shall submit to the Committees on the Judiciary of the Senate and the House of Representatives a report that details the progress made under this Act in establishing Boys and Girls Clubs in public housing projects and other distressed areas, and the effectiveness of the programs in reducing drug abuse and juvenile crime.

“(e) AUTHORIZATION OF APPROPRIATIONS.—

“(1) IN GENERAL.—There are authorized to be appropriated to carry out this section—

“(A) \$70,000,000 for fiscal year 2002;

“(B) \$80,000,000 for fiscal year 2003;

“(C) \$80,000,000 for fiscal year 2004; and

“(D) \$80,000,000 for fiscal year 2005.

“(2) Repealed. Pub. L. 107-273, div. B, title I, § 1101(3), Nov. 2, 2002, 116 Stat. 1791.]

“(f) ROLE MODEL GRANTS.—Of amounts made available under subsection (e) for any fiscal year—

“(1) not more than 5 percent may be used to provide a grant to the Boys and Girls Clubs of America for administrative, travel, and other costs associated with a national role-model speaking tour program; and

“(2) no amount may be used to compensate speakers other than to reimburse speakers for reasonable travel and accommodation costs associated with the program described in paragraph (1).”

[Effective Aug. 1, 2000, all functions of Director of Bureau of Justice Assistance, other than those enumerated in section 3742(3) to (6) of this title, transferred to Assistant Attorney General for Office of Justice Programs, see section 1000(a)(1) [title I, § 108(b)] of Pub. L. 106-113, set out as a note under section 3741 of this title.]

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13753, 13755, 14214 of this title.

§ 13752. Authorization of appropriations

(a) Authorization of appropriations

There are authorized to be appropriated to carry out this part—

(1) \$75,940,000 for fiscal year 1996;

(2) \$75,940,000 for fiscal year 1997;

(3) \$75,940,000 for fiscal year 1998;

(4) \$75,940,000 for fiscal year 1999; and

(5) \$73,240,000 for fiscal year 2000.

Such sums are to remain available until expended.

(b) Administrative costs

Up to 2.5 percent of the amount authorized to be appropriated under subsection (b)¹ of this section is authorized to be appropriated for the period fiscal year 1995 through fiscal year 2000 to

¹ So in original. Probably should be subsection “(a)”.

be available for administrative costs by the Attorney General in furtherance of the purposes of the program. Such sums are to remain available until expended.

(Pub. L. 103-322, title III, § 30202, Sept. 13, 1994, 108 Stat. 1841.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13751, 13754, 14214 of this title.

§ 13753. Qualification for payment

(a) In general

The Attorney General shall issue regulations establishing procedures under which eligible units of general local government are required to provide notice to the Attorney General of the units' proposed use of assistance under this part.

(b) General requirements for qualification

A unit of general local government qualifies for a payment under this part for a payment period only after establishing to the satisfaction of the Attorney General that—

(1) the government will establish a trust fund in which the government will deposit all payments received under this part;

(2) the government will use amounts in the trust fund (including interest) during a reasonable period;

(3) the government will expend the payments so received, in accordance with the laws and procedures that are applicable to the expenditure of revenues of the government;

(4) if at least 25 percent of the pay of individuals employed by the government in a public employee occupation is paid out of the trust fund, individuals in the occupation any part of whose pay is paid out of the trust fund will receive pay at least equal to the prevailing rate of pay for individuals employed in similar public employee occupations by the government;

(5) the government will use accounting, audit, and fiscal procedures that conform to guidelines which shall be prescribed by the Attorney General. As applicable, amounts received under this part shall be audited in compliance with the Single Audit Act of 1984 [31 U.S.C. 7501 et seq.];

(6) after reasonable notice to the government, the government will make available to the Attorney General and the Comptroller General of the United States, with the right to inspect, records the Attorney General reasonably requires to review compliance with this part or the Comptroller General of the United States reasonably requires to review compliance and operations;

(7) the government will make reports the Attorney General reasonably requires, in addition to the annual reports required under this part; and

(8) the government will spend the funds only for the purposes set forth in section 13751(a)(2) of this title.

(c) Review by Governors

A unit of general local government shall give the chief executive officer of the State in which the government is located an opportunity for review and comment before establishing compliance with subsection (d) of this section.

(d) Sanctions for noncompliance**(1) In general**

If the Attorney General decides that a unit of general local government has not complied substantially with subsection (b) of this section or regulations prescribed under subsection (b) of this section, the Attorney General shall notify the government. The notice shall state that if the government does not take corrective action by the 60th day after the date the government receives the notice, the Attorney General will withhold additional payments to the government for the current payment period and later payment periods until the Attorney General is satisfied that the government—

(A) has taken the appropriate corrective action; and

(B) will comply with subsection (b) of this section and regulations prescribed under subsection (b) of this section.

(2) Notice

Before giving notice under paragraph (1), the Attorney General shall give the chief executive officer of the unit of general local government reasonable notice and an opportunity for comment.

(3) Payment conditions

The Attorney General may make a payment to a unit of general local government notified under paragraph (1) only if the Attorney General is satisfied that the government—

(A) has taken the appropriate corrective action; and

(B) will comply with subsection (b) of this section and regulations prescribed under subsection (b) of this section.

(Pub. L. 103-322, title III, §30203, Sept. 13, 1994, 108 Stat. 1841; Pub. L. 104-316, title I, §122(u), Oct. 19, 1996, 110 Stat. 3838.)

REFERENCES IN TEXT

The Single Audit Act of 1984, referred to in subsec. (b)(5), is Pub. L. 98-502, Oct. 19, 1984, 98 Stat. 2327, as amended, which is classified generally to chapter 75 (§7501 et seq.) of Title 31, Money and Finance. For complete classification of this Act to the Code, see Short Title note set out under section 7501 of Title 31 and Tables.

AMENDMENTS

1996—Subsec. (b)(5). Pub. L. 104-316 struck out “after consultation with the Comptroller General of the United States” after “Attorney General”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13751, 14214 of this title.

§ 13754. Allocation and distribution of funds**(a) State distribution**

For each payment period, the Attorney General shall allocate out of the amount appropriated for the period under the authority of section 13752 of this title—

(1) 0.25 percent to each State; and

(2) of the total amount of funds remaining after allocation under paragraph (1), an amount that is equal to the ratio that the

number of part 1 violent crimes reported by such State to the Federal Bureau of Investigation for 1993 bears to the number of part 1 violent crimes reported by all States to the Federal Bureau of Investigation for 1993.

(b) Local distribution

(1) The Attorney General shall allocate among the units of general local government in a State the amount allocated to the State under paragraphs (1) and (2) of subsection (a) of this section.

(2) The Attorney General shall allocate to each unit of general local government an amount which bears the ratio that the number of part 1 violent crimes reported by such unit to the Federal Bureau of Investigation for 1993 bears to the number of part 1 violent crimes reported by all units in the State in which the unit is located to the Federal Bureau of Investigation for 1993 multiplied by the ratio of the population living in all units in the State in which the unit is located that reported part 1 violent crimes to the Federal Bureau of Investigation for 1993 bears to the population of the State; or if such data are not available for a unit, the ratio that the population of such unit bears to the population of all units in the State in which the unit is located for which data are not available multiplied by the ratio of the population living in units in the State in which the unit is located for which data are not available bears to the population of the State.

(3) If under paragraph (2) a unit is allotted less than \$5,000 for the payment period, the amount allotted shall be transferred to the Governor of the State who shall equitably distribute the allocation to all such units or consortia thereof.

(4) If there is in a State a unit of general local government that has been incorporated since the date of the collection of the data used by the Attorney General in making allocations pursuant to this section, the Attorney General shall allocate to this newly incorporated local government, out of the amount allocated to the State under this section, an amount bearing the same ratio to the amount allocated to the State as the population of the newly incorporated local government bears to the population of the State. If there is in the State a unit of general local government that has been annexed since the date of the collection of the data used by the Attorney General in making allocations pursuant to this section, the Attorney General shall pay the amount that would have been allocated to this local government to the unit of general local government that annexed it.

(c) Unavailability of information

For purposes of this section, if data regarding part 1 violent crimes in any State for 1993 is unavailable or substantially inaccurate, the Attorney General shall utilize the best available comparable data regarding the number of violent crimes for 1993 for such State for the purposes of allocation of any funds under this part.

(Pub. L. 103-322, title III, §30204, Sept. 13, 1994, 108 Stat. 1842.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13758, 14214 of this title.

§ 13755. Utilization of private sector

Funds or a portion of funds allocated under this part may be utilized to contract with private, nonprofit entities or community-based organizations to carry out the uses specified under section 13751(a)(2) of this title.

(Pub. L. 103-322, title III, §30205, Sept. 13, 1994, 108 Stat. 1843.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 13756. Public participation

A unit of general local government expending payments under this part shall hold at least one public hearing on the proposed use of the payment in relation to its entire budget. At the hearing, persons shall be given an opportunity to provide written and oral views to the governmental authority responsible for enacting the budget and to ask questions about the entire budget and the relation of the payment to the entire budget. The government shall hold the hearing at a time and a place that allows and encourages public attendance and participation.

(Pub. L. 103-322, title III, §30206, Sept. 13, 1994, 108 Stat. 1843.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 13757. Administrative provisions

The administrative provisions of part H of the Omnibus Crime Control and Safe Streets Act of 1968 [42 U.S.C. 3781 et seq.], shall apply to the Attorney General for purposes of carrying out this part.

(Pub. L. 103-322, title III, §30207, Sept. 13, 1994, 108 Stat. 1844.)

REFERENCES IN TEXT

The Omnibus Crime Control and Safe Streets Act of 1968, referred to in text, is Pub. L. 90-351, June 19, 1968, 82 Stat. 197, as amended. The reference to part H of the Act probably means part H of title I of the Act which is classified principally to subchapter VIII (§3781 et seq.) of chapter 46 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3711 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 13758. Definitions

For purposes of this part:

(1) The term “unit of general local government” means—

(A) a county, township, city, or political subdivision of a county, township, or city, that is a unit of general local government as determined by the Secretary of Commerce for general statistical purposes; and

(B) the District of Columbia and the recognized governing body of an Indian tribe or Alaskan Native village that carries out substantial governmental duties and powers.

(2) The term “payment period” means each 1-year period beginning on October 1 of the years 1995 through 2000.

(3) The term “State” means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands, except that American Samoa, Guam, and the Northern Mariana Islands shall be considered as one State and that, for purposes of section 13754(a) of this title, 33 per centum of the amounts allocated shall be allocated to American Samoa, 50 per centum to Guam, and 17 per centum to the Northern Mariana Islands.

(4) The term “children” means persons who are not younger than 5 and not older than 18 years old.

(5) The term “part 1 violent crimes” means murder and non-negligent manslaughter, forcible rape, robbery, and aggravated assault as reported to the Federal Bureau of Investigation for purposes of the Uniform Crime Reports.

(Pub. L. 103-322, title III, §30208, Sept. 13, 1994, 108 Stat. 1844.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

PART C—MODEL INTENSIVE GRANT PROGRAMS

§ 13771. Grant authorization**(a) Establishment****(1) In general**

The Attorney General may award grants to not more than 15 chronic high intensive crime areas to develop comprehensive model crime prevention programs that—

(A) involve and utilize a broad spectrum of community resources, including nonprofit community organizations, law enforcement organizations, and appropriate State and Federal agencies, including the State educational agencies;

(B) attempt to relieve conditions that encourage crime; and

(C) provide meaningful and lasting alternatives to involvement in crime.

(2) Consultation with the Ounce of Prevention Council

The Attorney General may consult with the Ounce of Prevention Council in awarding grants under paragraph (1).

(b) Priority

In awarding grants under subsection (a) of this section, the Attorney General shall give priority to proposals that—

(1) are innovative in approach to the prevention of crime in a specific area;

(2) vary in approach to ensure that comparisons of different models may be made; and

(3) coordinate crime prevention programs funded under this program with other existing Federal programs to address the overall needs of communities that benefit from grants received under this subchapter.

(Pub. L. 103-322, title III, §30301, Sept. 13, 1994, 108 Stat. 1844.)

REFERENCES IN TEXT

This subchapter, referred to in subsec. (b)(3), was in the original “this title”, meaning title III of Pub. L.

103-322, Sept. 13, 1994, 108 Stat. 1836, which enacted this subchapter, sections 3796ff to 3796ff-4 of this title, and sections 6701 to 6720 of Title 31, Money and Finance, amended sections 3791, 3793, and 3797 of this title, sections 2502 to 2504, 2506, and 2512 of Title 16, Conservation, and section 3621 of Title 18, Crimes and Criminal Procedure, and enacted provisions set out as notes under section 13701 of this title and sections 6701 and 6702 of Title 31. For complete classification of title III to the Code, see Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 13772. Uses of funds

(a) In general

Funds awarded under this part may be used only for purposes described in an approved application. The intent of grants under this part is to fund intensively comprehensive crime prevention programs in chronic high intensive crime areas.

(b) Guidelines

The Attorney General shall issue and publish in the Federal Register guidelines that describe suggested purposes for which funds under approved programs may be used.

(c) Equitable distribution of funds

In disbursing funds under this part, the Attorney General shall ensure the distribution of awards equitably on a geographic basis, including urban and rural areas of varying population and geographic size.

(Pub. L. 103-322, title III, §30302, Sept. 13, 1994, 108 Stat. 1845.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 13773. Program requirements

(a) Description

An applicant shall include a description of the distinctive factors that contribute to chronic violent crime within the area proposed to be served by the grant. Such factors may include lack of alternative activities and programs for youth, deterioration or lack of public facilities, inadequate public services such as public transportation, street lighting, community-based substance abuse treatment facilities, or employment services offices, and inadequate police or public safety services, equipment, or facilities.

(b) Comprehensive plan

An applicant shall include a comprehensive, community-based plan to attack intensively the principal factors identified in subsection (a) of this section. Such plans shall describe the specific purposes for which funds are proposed to be used and how each purpose will address specific factors. The plan also shall specify how local nonprofit organizations, government agencies, private businesses, citizens groups, volunteer organizations, and interested citizens will cooperate in carrying out the purposes of the grant.

(c) Evaluation

An applicant shall include an evaluation plan by which the success of the plan will be meas-

ured, including the articulation of specific, objective indicia of performance, how the indicia will be evaluated, and a projected timetable for carrying out the evaluation.

(Pub. L. 103-322, title III, §30303, Sept. 13, 1994, 108 Stat. 1845.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 13774. Applications

To request a grant under this part the chief local elected official of an area shall—

(1) prepare and submit to the Attorney General an application in such form, at such time, and in accordance with such procedures, as the Attorney General shall establish; and

(2) provide an assurance that funds received under this part shall be used to supplement, not supplant, non-Federal funds that would otherwise be available for programs funded under this part.

(Pub. L. 103-322, title III, §30304, Sept. 13, 1994, 108 Stat. 1845.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 13775. Reports

Not later than December 31, 1998, the Attorney General shall prepare and submit to the Committees on the Judiciary of the House and Senate an evaluation of the model programs developed under this part and make recommendations regarding the implementation of a national crime prevention program.

(Pub. L. 103-322, title III, §30305, Sept. 13, 1994, 108 Stat. 1846.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 13776. Definitions

In this part—

“chief local elected official” means an official designated under regulations issued by the Attorney General. The criteria used by the Attorney General in promulgating such regulations shall ensure administrative efficiency and accountability in the expenditure of funds and execution of funded projects under this part.

“chronic high intensity crime area” means an area meeting criteria adopted by the Attorney General by regulation that, at a minimum, define areas with—

(A) consistently high rates of violent crime as reported in the Federal Bureau of Investigation’s “Uniform Crime Reports”, and

(B) chronically high rates of poverty as determined by the Bureau of the Census.

“State” means a State, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

(Pub. L. 103-322, title III, §30306, Sept. 13, 1994, 108 Stat. 1846.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 13777. Authorization of appropriations

There are authorized to be appropriated to carry out this part—

- (1) \$100,000,000 for fiscal year 1996;
- (2) \$125,100,000 for fiscal year 1997;
- (3) \$125,100,000 for fiscal year 1998;
- (4) \$125,100,000 for fiscal year 1999; and
- (5) \$150,200,000 for fiscal year 2000.

(Pub. L. 103-322, title III, §30307, Sept. 13, 1994, 108 Stat. 1846.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

PART D—FAMILY AND COMMUNITY ENDEAVOR
SCHOOLS GRANT PROGRAM

§ 13791. Community schools youth services and supervision grant program

(a) Short title

This section may be cited as the “Community Schools Youth Services and Supervision Grant Program Act of 1994”.

(b) Definitions

In this section—

“child” means a person who is not younger than 5 and not older than 18 years old.

“community-based organization” means a private, locally initiated, community-based organization that—

(A) is a nonprofit organization, as defined in section 5603(23) of this title; and

(B) is operated by a consortium of service providers, consisting of representatives of 5 or more of the following categories of persons:

- (i) Residents of the community.
- (ii) Business and civic leaders actively involved in providing employment and business development opportunities in the community.
- (iii) Educators.
- (iv) Religious organizations (which shall not provide any sectarian instruction or sectarian worship in connection with an activity funded under this subchapter).
- (v) Law enforcement agencies.
- (vi) Public housing agencies.
- (vii) Other public agencies.
- (viii) Other interested parties.

“eligible community” means an area identified pursuant to subsection (e) of this section.

“Indian tribe” means a tribe, band, pueblo, nation, or other organized group or community of Indians, including an Alaska Native village (as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

“poverty line” means the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 9902(2) of this title¹ applicable to a family of the size involved.

“public school” means a public elementary school, as defined in section 1001(i)² of title 20, and a public secondary school, as defined in section 1001(d)² of title 20.

“Secretary” means the Secretary of Health and Human Services, in consultation and coordination with the Attorney General.

“State” means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, and the United States Virgin Islands.

(c) Program authority

(1) In general

(A) Allocations for States and Indian country

For any fiscal year in which the sums appropriated to carry out this section equal or exceed \$20,000,000, from the sums appropriated to carry out this subsection, the Secretary shall allocate, for grants under subparagraph (B) to community-based organizations in each State, an amount bearing the same ratio to such sums as the number of children in the State who are from families with incomes below the poverty line bears to the number of children in all States who are from families with incomes below the poverty line. In view of the extraordinary need for assistance in Indian country, an appropriate amount of funds available under this part shall be made available for such grants in Indian country.

(B) Grants to community-based organizations from allocations

For such a fiscal year, the Secretary may award grants from the appropriate State or Indian country allocation determined under subparagraph (A) on a competitive basis to eligible community-based organizations to pay for the Federal share of assisting eligible communities to develop and carry out programs in accordance with this section.

(C) Reallocation

If, at the end of such a fiscal year, the Secretary determines that funds allocated for community-based organizations in a State or Indian country under subparagraph (B) remain unobligated, the Secretary may use such funds to award grants to eligible community-based organizations in another State or Indian country to pay for such Federal share. In awarding such grants, the Secretary shall consider the need to maintain geographic diversity among the recipients of such grants. Amounts made available through such grants shall remain available until expended.

(2) Other fiscal years

For any fiscal year in which the sums appropriated to carry out this section are less than

¹So in original. Probably should be followed by a closing parenthesis.

²See References in Text note below.

\$20,000,000, the Secretary may award grants on a competitive basis to eligible community-based organizations to pay for the Federal share of assisting eligible communities to develop and carry out programs in accordance with this section.

(3) Administrative costs

The Secretary may use not more than 3 percent of the funds appropriated to carry out this section in any fiscal year for administrative costs.

(d) Program requirements

(1) Location

A community-based organization that receives a grant under this section to assist in carrying out such a program shall ensure that the program is carried out—

(A) when appropriate, in the facilities of a public school during nonschool hours; or

(B) in another appropriate local facility in a State or Indian country, such as a college or university, a local or State park or recreation center, church, or military base, that is—

(i) in a location that is easily accessible to children in the community; and

(ii) in compliance with all applicable local ordinances.

(2) Use of funds

Such community-based organization—

(A) shall use funds made available through the grant to provide, to children in the eligible community, services and activities that—

(i)³ shall include supervised sports programs, and extracurricular and academic programs, that are offered—

(I) after school and on weekends and holidays, during the school year; and

(II) as daily full-day programs (to the extent available resources permit) or as part-day programs, during the summer months;

(B) in providing such extracurricular and academic programs, shall provide programs such as curriculum-based supervised educational, work force preparation, entrepreneurship, cultural, health programs, social activities, arts and crafts programs, dance programs, tutorial and mentoring programs, and other related activities;

(C) may use—

(i) such funds for minor renovation of facilities that are in existence prior to the operation of the program and that are necessary for the operation of the program for which the organization receives the grant, purchase of sporting and recreational equipment and supplies, reasonable costs for the transportation of participants in the program, hiring of staff, provision of meals for such participants, provision of health services consisting of an initial basic physical examination, provision of first aid and nutrition guidance, family counselling, parental training, and sub-

stance abuse treatment where appropriate; and

(ii) not more than 5 percent of such funds to pay for the administrative costs of the program; and

(D) may not use such funds to provide sectarian worship or sectarian instruction.

(e) Eligible community identification

(1) Identification

To be eligible to receive a grant under this section, a community-based organization shall identify an eligible community to be assisted under this section.

(2) Criteria

Such eligible community shall be an area that meets such criteria with respect to significant poverty and significant juvenile delinquency, and such additional criteria, as the Secretary may by regulation require.

(f) Applications

(1) Application required

To be eligible to receive a grant under this section, a community-based organization shall submit an application to the Secretary at such time, in such manner, and accompanied by such information, as the Secretary may reasonably require, and obtain approval of such application.

(2) Contents of application

Each application submitted pursuant to paragraph (1) shall—

(A) describe the activities and services to be provided through the program for which the grant is sought;

(B) contain an assurance that the community-based organization will spend grant funds received under this section in a manner that the community-based organization determines will best accomplish the objectives of this section;

(C) contain a comprehensive plan for the program that is designed to achieve identifiable goals for children in the eligible community;

(D) set forth measurable goals and outcomes for the program that—

(i) will—

(I) where appropriate, make a public school the focal point of the eligible community; or

(II) make a local facility described in subsection (d)(1)(B) of this section such a focal point; and

(ii) may include reducing the percentage of children in the eligible community that enter the juvenile justice system, increasing the graduation rates, school attendance, and academic success of children in the eligible community, and improving the skills of program participants;

(E) provide evidence of support for accomplishing such goals and outcomes from—

(i) community leaders;

(ii) businesses;

(iii) local educational agencies;

(iv) local officials;

³ So in original. No cl. (ii) has been enacted.

- (v) State officials;
- (vi) Indian tribal government officials; and
- (vii) other organizations that the community-based organization determines to be appropriate;

(F) contain an assurance that the community-based organization will use grant funds received under this section to provide children in the eligible community with activities and services that shall include supervised sports programs, and extracurricular and academic programs, in accordance with subparagraphs (A) and (B) of subsection (d)(2) of this section;

(G) contain a list of the activities and services that will be offered through the program for which the grant is sought and sponsored by private nonprofit organizations, individuals, and groups serving the eligible community, including—

- (i) extracurricular and academic programs, such as programs described in subsection (d)(2)(B) of this section; and
- (ii) activities that address specific needs in the community;

(H) demonstrate the manner in which the community-based organization will make use of the resources, expertise, and commitment of private entities in carrying out the program for which the grant is sought;

(I) include an estimate of the number of children in the eligible community expected to be served pursuant to the program;

(J) include a description of charitable private resources, and all other resources, that will be made available to achieve the goals of the program;

(K) contain an assurance that the community-based organization will use competitive procedures when purchasing, contracting, or otherwise providing for goods, activities, or services to carry out programs under this section;

(L) contain an assurance that the program will maintain a staff-to-participant ratio (including volunteers) that is appropriate to the activity or services provided by the program;

(M) contain an assurance that the program will maintain an average attendance rate of not less than 75 percent of the participants enrolled in the program, or will enroll additional participants in the program;

(N) contain an assurance that the community-based organization will comply with any evaluation under subsection (m)⁴ of this section, any research effort authorized under Federal law, and any investigation by the Secretary;

(O) contain an assurance that the community-based organization shall prepare and submit to the Secretary an annual report regarding any program conducted under this section;

(P) contain an assurance that the program for which the grant is sought will, to the maximum extent possible, incorporate serv-

ices that are provided solely through non-Federal private or nonprofit sources; and

(Q) contain an assurance that the community-based organization will maintain separate accounting records for the program.

(3) Priority

In awarding grants to carry out programs under this section, the Secretary shall give priority to community-based organizations who submit applications that demonstrate the greatest effort in generating local support for the programs.

(g) Eligibility of participants

(1) In general

To the extent possible, each child who resides in an eligible community shall be eligible to participate in a program carried out in such community that receives assistance under this section.

(2) Eligibility

To be eligible to participate in a program that receives assistance under this section, a child shall provide the express written approval of a parent or guardian, and shall submit an official application and agree to the terms and conditions of participation in the program.

(3) Nondiscrimination

In selecting children to participate in a program that receives assistance under this section, a community-based organization shall not discriminate on the basis of race, color, religion, sex, national origin, or disability.

(h) Peer review panel

(1) Establishment

The Secretary may establish a peer review panel that shall be comprised of individuals with demonstrated experience in designing and implementing community-based programs.

(2) Composition

A peer review panel shall include at least 1 representative from each of the following:

- (A) A community-based organization.
- (B) A local government.
- (C) A school district.
- (D) The private sector.
- (E) A charitable organization.
- (F) A representative of the United States Olympic Committee, at the option of the Secretary.

(3) Functions

A peer review panel shall conduct the initial review of all grant applications received by the Secretary under subsection (f) of this section, make recommendations to the Secretary regarding—

- (A) grant funding under this section; and
- (B) a design for the evaluation of programs assisted under this section.

(i) Investigations and inspections

The Secretary may conduct such investigations and inspections as may be necessary to ensure compliance with the provisions of this section.

⁴So in original. Probably should be subsection "(k)".

(j) Payments; Federal share; non-Federal share**(1) Payments**

The Secretary shall, subject to the availability of appropriations, pay to each community-based organization having an application approved under subsection (f) of this section the Federal share of the costs of developing and carrying out programs described in subsection (c) of this section.

(2) Federal share

The Federal share of such costs shall be no more than—

- (A) 75 percent for each of fiscal years 1995 and 1996;
- (B) 70 percent for fiscal year 1997; and
- (C) 60 percent for fiscal year 1998 and thereafter.

(3) Non-Federal share**(A) In general**

The non-Federal share of such costs may be in cash or in kind, fairly evaluated, including plant, equipment, and services (including the services described in subsection (f)(2)(P) of this section), and funds appropriated by the Congress for the activity of any agency of an Indian tribal government or the Bureau of Indian Affairs on any Indian lands may be used to provide the non-Federal share of the costs of programs or projects funded under this part.

(B) Special rule

At least 15 percent of the non-Federal share of such costs shall be provided from private or nonprofit sources.

(k) Evaluation

The Secretary shall conduct a thorough evaluation of the programs assisted under this section, which shall include an assessment of—

- (1) the number of children participating in each program assisted under this section;
- (2) the academic achievement of such children;
- (3) school attendance and graduation rates of such children; and
- (4) the number of such children being processed by the juvenile justice system.

(Pub. L. 103-322, title III, §30401, Sept. 13, 1994, 108 Stat. 1846; Pub. L. 105-244, title I, §102(a)(13)(N), Oct. 7, 1998, 112 Stat. 1621.)

REFERENCES IN TEXT

This subchapter, referred to in subsec. (b), was in the original “this title”, meaning title III of Pub. L. 103-322, Sept. 13, 1994, 108 Stat. 1836, which enacted this subchapter, sections 3796ff to 3796ff-4 of this title, and sections 6701 to 6720 of Title 31, Money and Finance, amended sections 3791, 3793, and 3797 of this title, sections 2502 to 2504, 2506, and 2512 of Title 16, Conservation, and section 3621 of Title 18, Crimes and Criminal Procedure, and enacted provisions set out as notes under section 13701 of this title and sections 6701 and 6702 of Title 31. For complete classification of title III to the Code, see Tables.

The Alaska Native Claims Settlement Act, referred to in subsec. (b), is Pub. L. 92-203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

Section 1001 of title 20, referred to in subsec. (b), does not have a subsec. (d) or (i) and does not define “elementary school” or “secondary school”. However, such terms are defined in section 1003 of Title 20, Education.

AMENDMENTS

1998—Subsec. (b). Pub. L. 105-244 substituted “section 1001(i)” for “section 1141(i)” and “section 1001(d)” for “section 1141(d)” in definition for “public school”.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see section 3 of Pub. L. 105-244, set out as a note under section 1001 of Title 20, Education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13793, 14214 of this title.

§ 13792. Repealed. Pub. L. 105-277, div. A, § 101(f) [title VIII, § 301(d)], Oct. 21, 1998, 112 Stat. 2681-337, 2681-410

Section, Pub. L. 103-322, title III, §30402, Sept. 13, 1994, 108 Stat. 1852, related to family and community endeavor schools grant program.

§ 13793. Authorization of appropriations**(a) In general**

There are authorized to be appropriated to carry out this part—

- (1) \$37,000,000 for fiscal year 1995;
- (2) \$103,500,000 for fiscal year 1996;
- (3) \$121,500,000 for fiscal year 1997;
- (4) \$153,000,000 for fiscal year 1998;
- (5) \$193,500,000 for fiscal year 1999; and
- (6) \$201,500,000 for fiscal year 2000.

(b) Programs

Of the amounts appropriated under subsection (a) of this section for any fiscal year—

- (1) 70 percent shall be made available to carry out section 13791 of this title; and
- (2) 30 percent shall be made available to carry out section 13792¹ of this title.

(Pub. L. 103-322, title III, §30403, Sept. 13, 1994, 108 Stat. 1855.)

REFERENCES IN TEXT

Section 13792 of this title, referred to in subsec. (b)(2), was repealed by Pub. L. 105-277, div. A, §101(f) [title VIII, §301(d)], Oct. 21, 1998, 112 Stat. 2681-337, 2681-410.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

PART E—ASSISTANCE FOR DELINQUENT AND AT-RISK YOUTH**§ 13801. Grant authority****(a) Grants****(1) In general**

In order to prevent the commission of crimes or delinquent acts by juveniles, the Attorney General may make grants to public or private nonprofit organizations to support the development and operation of projects to provide residential services to youth, aged 11 to 19, who—

¹ See References in Text note below.

- (A) have dropped out of school;
- (B) have come into contact with the juvenile justice system; or
- (C) are at risk of dropping out of school or coming into contact with the juvenile justice system.

(2) Consultation with the Ounce of Prevention Council

The Attorney General may consult with the Ounce of Prevention Council in making grants under paragraph (1).

(3) Services

Such services shall include activities designed to—

- (A) increase the self-esteem of such youth;
- (B) assist such youth in making healthy and responsible choices;
- (C) improve the academic performance of such youth pursuant to a plan jointly developed by the applicant and the school which each such youth attends or should attend; and
- (D) provide such youth with vocational and life skills.

(b) Applications

(1) In general

A public agency or private nonprofit organization which desires a grant under this section shall submit an application at such time and in such manner as the Attorney General may prescribe.

(2) Contents

An application under paragraph (1) shall include—

- (A) a description of the program developed by the applicant, including the activities to be offered;
- (B) a detailed discussion of how such program will prevent youth from committing crimes or delinquent acts;
- (C) evidence that such program—
 - (i) will be carried out in facilities which meet applicable State and local laws with regard to safety;
 - (ii) will include academic instruction, approved by the State, Indian tribal government, or local educational agency, which meets or exceeds State, Indian tribal government, and local standards and curricular requirements; and
 - (iii) will include instructors and other personnel who possess such qualifications as may be required by applicable State or local laws; and
- (D) specific, measurable outcomes for youth served by the program.

(c) Consideration of applications

Not later than 60 days following the submission of applications, the Attorney General shall—

- (1) approve each application and disburse the funding for each such application; or
- (2) disapprove the application and inform the applicant of such disapproval and the reasons therefor.

(d) Reports

A grantee under this section shall annually submit a report to the Attorney General that

describes the activities and accomplishments of such program, including the degree to which the specific youth outcomes are met.

(e) Definitions

In this part—

“Indian tribe” means a tribe, band, pueblo, nation, or other organized group or community of Indians, including Alaska Native village (as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

“State” means a State, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

(Pub. L. 103-322, title III, §30701, Sept. 13, 1994, 108 Stat. 1855.)

REFERENCES IN TEXT

The Alaska Native Claims Settlement Act, referred to in subsec. (e), is Pub. L. 92-203, §2, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13802, 14214 of this title.

§ 13802. Authorization of appropriations

There are authorized to be appropriated for grants under section 13801 of this title—

- (1) \$5,400,000 for fiscal year 1996;
- (2) \$6,300,000 for fiscal year 1997;
- (3) \$7,200,000 for fiscal year 1998;
- (4) \$8,100,000 for fiscal year 1999; and
- (5) \$9,000,000 for fiscal year 2000.

(Pub. L. 103-322, title III, §30702, Sept. 13, 1994, 108 Stat. 1856.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

PART F—POLICE RECRUITMENT

§ 13811. Grant authority

(a) Grants

(1) In general

The Attorney General may make grants to qualified community organizations to assist in meeting the costs of qualified programs which are designed to recruit and retain applicants to police departments.

(2) Consultation with the Ounce of Prevention Council

The Attorney General may consult with the Ounce of Prevention Council in making grants under paragraph (1).

(b) Qualified community organizations

An organization is a qualified community organization which is eligible to receive a grant

under subsection (a) of this section if the organization—

- (1) is a nonprofit organization; and
- (2) has training and experience in—
 - (A) working with a police department and with teachers, counselors, and similar personnel,
 - (B) providing services to the community in which the organization is located,
 - (C) developing and managing services and techniques to recruit individuals to become members of a police department and to assist such individuals in meeting the membership requirements of police departments,
 - (D) developing and managing services and techniques to assist in the retention of applicants to police departments, and
 - (E) developing other programs that contribute to the community.

(c) Qualified programs

A program is a qualified program for which a grant may be made under subsection (a) of this section if the program is designed to recruit and train individuals from underrepresented neighborhoods and localities and if—

- (1) the overall design of the program is to recruit and retain applicants to a police department;
- (2) the program provides recruiting services which include tutorial programs to enable individuals to meet police force academic requirements and to pass entrance examinations;
- (3) the program provides counseling to applicants to police departments who may encounter problems throughout the application process; and
- (4) the program provides retention services to assist in retaining individuals to stay in the application process of a police department.

(d) Applications

To qualify for a grant under subsection (a) of this section, a qualified organization shall submit an application to the Attorney General in such form as the Attorney General may prescribe. Such application shall—

- (1) include documentation from the applicant showing—
 - (A) the need for the grant;
 - (B) the intended use of grant funds;
 - (C) expected results from the use of grant funds; and
 - (D) demographic characteristics of the population to be served, including age, disability, race, ethnicity, and languages used; and
- (2) contain assurances satisfactory to the Attorney General that the program for which a grant is made will meet the applicable requirements of the program guidelines prescribed by the Attorney General under subsection (i) of this section.

(e) Action by Attorney General

Not later than 60 days after the date that an application for a grant under subsection (a) of this section is received, the Attorney General shall consult with the police department which will be involved with the applicant and shall—

- (1) approve the application and disburse the grant funds applied for; or

(2) disapprove the application and inform the applicant that the application is not approved and provide the applicant with the reasons for the disapproval.

(f) Grant disbursement

The Attorney General shall disburse funds under a grant under subsection (a) of this section in accordance with regulations of the Attorney General which shall ensure—

- (1) priority is given to applications for areas and organizations with the greatest showing of need;
- (2) that grant funds are equitably distributed on a geographic basis; and
- (3) the needs of underserved populations are recognized and addressed.

(g) Grant period

A grant under subsection (a) of this section shall be made for a period not longer than 3 years.

(h) Grantee reporting

(1) For each year of a grant period for a grant under subsection (a) of this section, the recipient of the grant shall file a performance report with the Attorney General explaining the activities carried out with the funds received and assessing the effectiveness of such activities in meeting the purpose of the recipient's qualified program.

(2) If there was more than one recipient of a grant, each recipient shall file such report.

(3) The Attorney General shall suspend the funding of a grant, pending compliance, if the recipient of the grant does not file the report required by this subsection or uses the grant for a purpose not authorized by this section.

(i) Guidelines

The Attorney General shall, by regulation, prescribe guidelines on content and results for programs receiving a grant under subsection (a) of this section. Such guidelines shall be designed to establish programs which will be effective in training individuals to enter instructional programs for police departments and shall include requirements for—

- (1) individuals providing recruiting services;
- (2) individuals providing tutorials and other academic assistance programs;
- (3) individuals providing retention services; and
- (4) the content and duration of recruitment, retention, and counseling programs and the means and devices used to publicize such programs.

(Pub. L. 103-322, title III, §30801, Sept. 13, 1994, 108 Stat. 1857.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13812, 14214 of this title.

§ 13812. Authorization of appropriations

There are authorized to be appropriated for grants under section 13811 of this title—

- (1) \$2,000,000 for fiscal year 1996;
- (2) \$4,000,000 for fiscal year 1997;
- (3) \$5,000,000 for fiscal year 1998;
- (4) \$6,000,000 for fiscal year 1999; and

(5) \$7,000,000 for fiscal year 2000.

(Pub. L. 103-322, title III, §30802, Sept. 13, 1994, 108 Stat. 1858.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

PART G—NATIONAL COMMUNITY ECONOMIC PARTNERSHIP

SUBPART 1—COMMUNITY ECONOMIC PARTNERSHIP INVESTMENT FUNDS

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in sections 13841, 13852 of this title.

§ 13821. Purpose

It is the purpose of this subpart to increase private investment in distressed local communities and to build and expand the capacity of local institutions to better serve the economic needs of local residents through the provision of financial and technical assistance to community development corporations.

(Pub. L. 103-322, title III, §31111, Sept. 13, 1994, 108 Stat. 1882.)

SHORT TITLE

For short title of this part as the “National Community Economic Partnership Act of 1994”, see section 31101 of Pub. L. 103-322, set out as a note under section 13701 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13824, 13825, 14214 of this title.

§ 13822. Provision of assistance

(a) Authority

The Secretary of Health and Human Services (referred to in this part as the “Secretary”) may, in accordance with this subpart, provide nonrefundable lines of credit to community development corporations for the establishment, maintenance or expansion of revolving loan funds to be utilized to finance projects intended to provide business and employment opportunities for low-income, unemployed, or underemployed individuals and to improve the quality of life in urban and rural areas.

(b) Revolving loan funds

(1) Competitive assessment of applications

In providing assistance under subsection (a) of this section, the Secretary shall establish and implement a competitive process for the solicitation and consideration of applications from eligible entities for lines of credit for the capitalization of revolving funds.

(2) Eligible entities

To be eligible to receive a line of credit under this subpart an applicant shall—

(A) be a community development corporation;

(B) prepare and submit an application to the Secretary that shall include a strategic investment plan that identifies and describes the economic characteristics of the

target area to be served, the types of business to be assisted and the impact of such assistance on low-income, underemployed, and unemployed individuals in the target area;

(C) demonstrate previous experience in the development of low-income housing or community or business development projects in a low-income community and provide a record of achievement with respect to such projects; and

(D) have secured one or more commitments from local sources for contributions (either in cash or in kind, letters of credit or letters of commitment) in an amount that is at least equal to the amount requested in the application submitted under subparagraph (B).

(3) Exception

Notwithstanding the provisions of paragraph (2)(D), the Secretary may reduce local contributions to not less than 25 percent of the amount of the line of credit requested by the community development corporation if the Secretary determines such to be appropriate in accordance with section 13826 of this title.

(Pub. L. 103-322, title III, §31112, Sept. 13, 1994, 108 Stat. 1882.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13823, 13824, 13825, 14214 of this title.

§ 13823. Approval of applications

(a) In general

In evaluating applications submitted under section 13822(b)(2)(B) of this title, the Secretary shall ensure that—

(1) the residents of the target area to be served (as identified under the strategic development plan) would have an income that is less than the median income for the area (as determined by the Secretary);

(2) the applicant community development corporation possesses the technical and managerial capability necessary to administer a revolving loan fund and has past experience in the development and management of housing, community and economic development programs;

(3) the applicant community development corporation has provided sufficient evidence of the existence of good working relationships with—

(A) local businesses and financial institutions, as well as with the community the corporation proposes to serve; and

(B) local and regional job training programs;

(4) the applicant community development corporation will target job opportunities that arise from revolving loan fund investments under this subpart so that 75 percent of the jobs retained or created under such investments are provided to—

(A) individuals with—

(i) incomes that do not exceed the Federal poverty line; or

(ii) incomes that do not exceed 80 percent of the median income of the area;

(B) individuals who are unemployed or underemployed;

(C) individuals who are participating or have participated in job training programs authorized under title I of the Workforce Investment Act of 1998 [29 U.S.C. 2801 et seq.] or the Family Support Act of 1988 (Public Law 100-485);

(D) individuals whose jobs may be retained as a result of the provision of financing available under this subpart; or

(E) individuals who have historically been underrepresented in the local economy; and

(5) a representative cross section of applicants are approved, including large and small community development corporations, urban and rural community development corporations and community development corporations representing diverse populations.

(b) Priority

In determining which application to approve under this subpart the Secretary shall give priority to those applicants proposing to serve a target area—

(1) with a median income that does not exceed 80 percent of the median for the area (as determined by the Secretary); and

(2) with a high rate of unemployment, as determined by the Secretary or in which the population loss is at least 7 percent from April 1, 1980, to April 1, 1990, as reported by the Bureau of the Census.

(Pub. L. 103-322, title III, §31113, Sept. 13, 1994, 108 Stat. 1883; Pub. L. 105-277, div. A, §101(f) [title VIII, §405(d)(44), (f)(35)], Oct. 21, 1998, 112 Stat. 2681-337, 2681-428, 2681-434.)

REFERENCES IN TEXT

The Workforce Investment Act of 1998, referred to in subsec. (a)(4)(C), is Pub. L. 105-220, Aug. 7, 1998, 112 Stat. 936, as amended. Title I of the Act is classified principally to chapter 30 (§2801 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

The Family Support Act of 1988, referred to in subsec. (a)(4)(C), is Pub. L. 100-485, Oct. 13, 1988, 102 Stat. 2343, as amended. For complete classification of this Act to the Code, see Short Title of 1988 Amendments note set out under section 1305 of this title and Tables.

AMENDMENTS

1998—Subsec. (a)(4)(C). Pub. L. 105-277, §101(f) [title VIII, §405(f)(35)], struck out “the Job Training Partnership Act or” after “authorized under”.

Pub. L. 105-277, §101(f) [title VIII, §405(d)(44)], substituted “authorized under the Job Training Partnership Act or title I of the Workforce Investment Act of 1998” for “authorized under the Job Training Partnership Act (29 U.S.C. 1501 et seq.)”.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 101(f) [title VIII, §405(d)(44)] of Pub. L. 105-277 effective Oct. 21, 1998, and amendment by section 101(f) [title VIII, §405(f)(35)] of Pub. L. 105-277 effective July 1, 2000, see section 101(f) [title VIII, §405(g)(1), (2)(B)] of Pub. L. 105-277, set out as a note under section 3502 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13824, 14214 of this title.

§ 13824. Availability of lines of credit and use

(a) Approval of application

The Secretary shall provide a community development corporation that has an application approved under section 13823 of this title with a line of credit in an amount determined appropriate by the Secretary, subject to the limitations contained in subsection (b) of this section.

(b) Limitations on availability of amounts

(1) Maximum amount

The Secretary shall not provide in excess of \$2,000,000 in lines of credit under this subpart to a single applicant.

(2) Period of availability

A line of credit provided under this subpart shall remain available over a period of time established by the Secretary, but in no event shall any such period of time be in excess of 3 years from the date on which such line of credit is made available.

(3) Exception

Notwithstanding paragraphs (1) and (2), if a recipient of a line of credit under this subpart has made full and productive use of such line of credit, can demonstrate the need and demand for additional assistance, and can meet the requirements of section 13822(b)(2) of this title, the amount of such line of credit may be increased by not more than \$1,500,000.

(c) Amounts drawn from line of credit

Amounts drawn from each line of credit under this subpart shall be used solely for the purposes described in section 13821 of this title and shall only be drawn down as needed to provide loans, investments, or to defray administrative costs related to the establishment of a revolving loan fund.

(d) Use of revolving loan funds

Revolving loan funds established with lines of credit provided under this subpart may be used to provide technical assistance to private business enterprises and to provide financial assistance in the form of loans, loan guarantees, interest reduction assistance, equity shares, and other such forms of assistance to business enterprises in target areas and who are in compliance with section 13823(a)(4) of this title.

(Pub. L. 103-322, title III, §31114, Sept. 13, 1994, 108 Stat. 1884.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 13825. Limitations on use of funds

(a) Matching requirement

Not to exceed 50 percent of the total amount to be invested by an entity under this subpart may be derived from funds made available from a line of credit under this subpart.

(b) Technical assistance and administration

Not to exceed 10 percent of the amounts available from a line of credit under this subpart shall be used for the provision of training or technical assistance and for the planning, devel-

opment, and management of economic development projects. Community development corporations shall be encouraged by the Secretary to seek technical assistance from other community development corporations, with expertise in the planning, development and management of economic development projects. The Secretary shall assist in the identification and facilitation of such technical assistance.

(c) Local and private sector contributions

To receive funds available under a line of credit provided under this subpart, an entity, using procedures established by the Secretary, shall demonstrate to the community development corporation that such entity agrees to provide local and private sector contributions in accordance with section 13822(b)(2)(D) of this title, will participate with such community development corporation in a loan, guarantee or investment program for a designated business enterprise, and that the total financial commitment to be provided by such entity is at least equal to the amount to be drawn from the line of credit.

(d) Use of proceeds from investments

Proceeds derived from investments made using funds made available under this subpart may be used only for the purposes described in section 13821 of this title and shall be reinvested in the community in which they were generated.

(Pub. L. 103-322, title III, §31115, Sept. 13, 1994, 108 Stat. 1884.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 13826. Program priority for special emphasis programs

(a) In general

The Secretary shall give priority in providing lines of credit under this subpart to community development corporations that propose to undertake economic development activities in distressed communities that target women, Native Americans, at risk youth, farmworkers, population-losing communities, very low-income communities, single mothers, veterans, and refugees; or that expand employee ownership of private enterprises and small businesses, and to programs providing loans of not more than \$35,000 to very small business enterprises.

(b) Reservation of funds

Not less than 5 percent of the amounts made available under section 13822(a)(2)(A)¹ of this title may be reserved to carry out the activities described in subsection (a) of this section.

(Pub. L. 103-322, title III, §31116, Sept. 13, 1994, 108 Stat. 1885.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13822, 14214 of this title.

SUBPART 2—EMERGING COMMUNITY DEVELOPMENT CORPORATIONS

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in section 13852 of this title.

¹ So in original. Probably should be section “13852(b)(1)”.

§ 13841. Community development corporation improvement grants

(a) Purpose

It is the purpose of this section to provide assistance to community development corporations to upgrade the management and operating capacity of such corporations and to enhance the resources available to enable such corporations to increase their community economic development activities.

(b) Skill enhancement grants

(1) In general

The Secretary shall award grants to community development corporations to enable such corporations to attain or enhance the business management and development skills of the individuals that manage such corporations to enable such corporations to seek the public and private resources necessary to develop community economic development projects.

(2) Use of funds

A recipient of a grant under paragraph (1) may use amounts received under such grant—

(A) to acquire training and technical assistance from agencies or institutions that have extensive experience in the development and management of low-income community economic development projects; or

(B) to acquire such assistance from other highly successful community development corporations.

(c) Operating grants

(1) In general

The Secretary shall award grants to community development corporations to enable such corporations to support an administrative capacity for the planning, development, and management of low-income community economic development projects.

(2) Use of funds

A recipient of a grant under paragraph (1) may use amounts received under such grant—

(A) to conduct evaluations of the feasibility of potential low-income community economic development projects that address identified needs in the low-income community and that conform to those projects and activities permitted under subpart 1;¹

(B) to develop a business plan related to such a potential project; or

(C) to mobilize resources to be contributed to a planned low-income community economic development project or strategy.

(d) Applications

A community development corporation that desires to receive a grant under this section shall prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

(e) Amount available for community development corporation

Amounts provided under this section to a community development corporation shall not ex-

¹ See References in Text note below.

ceed \$75,000 per year. Such corporations may apply for grants under this section for up to 3 consecutive years, except that such corporations shall be required to submit a new application for each grant for which such corporation desires to receive and compete on the basis of such applications in the selection process.

(Pub. L. 103-322, title III, §31121, Sept. 13, 1994, 108 Stat. 1885.)

REFERENCES IN TEXT

Subpart 1, referred to in subsec. (c)(2)(A), was in the original "subtitle A", and was translated as reading "chapter 1", meaning chapter 1 of subtitle K of title III of Pub. L. 103-322, to reflect the probable intent of Congress.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 13842. Emerging community development corporation revolving loan funds

(a) Authority

The Secretary may award grants to emerging community development corporations to enable such corporations to establish, maintain or expand revolving loan funds, to make or guarantee loans, or to make capital investments in new or expanding local businesses.

(b) Eligibility

To be eligible to receive a grant under subsection (a) of this section, an entity shall—

(1) be a community development corporation;

(2) have completed not less than one nor more than two community economic development projects or related projects that improve or provide job and employment opportunities to low-income individuals;

(3) prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including a strategic investment plan that identifies and describes the economic characteristics of the target area to be served, the types of business to be assisted using amounts received under the grant and the impact of such assistance on low-income individuals; and

(4) have secured one or more commitments from local sources for contributions (either in cash or in kind, letters of credit, or letters of commitment) in an amount that is equal to at least 10 percent of the amounts requested in the application submitted under paragraph (2).¹

(c) Use of revolving loan fund

(1) In general

A revolving loan fund established or maintained with amounts received under this section may be utilized to provide financial and technical assistance, loans, loan guarantees or investments to private business enterprises to—

(A) finance projects intended to provide business and employment opportunities for

low-income individuals and to improve the quality of life in urban and rural areas; and

(B) build and expand the capacity of emerging community development corporations and serve the economic needs of local residents.

(2) Technical assistance

The Secretary shall encourage emerging community development corporations that receive grants under this section to seek technical assistance from established community development corporations, with expertise in the planning, development and management of economic development projects and shall facilitate the receipt of such assistance.

(3) Limitation

Not to exceed 10 percent of the amounts received under this section by a grantee shall be used for training, technical assistance and administrative purposes.

(d) Use of proceeds from investments

Proceeds derived from investments made with amounts provided under this section may be utilized only for the purposes described in this part and shall be reinvested in the community in which they were generated.

(e) Amounts available

Amounts provided under this section to a community development corporation shall not exceed \$500,000 per year.

(Pub. L. 103-322, title III, §31122, Sept. 13, 1994, 108 Stat. 1886.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

SUBPART 3—MISCELLANEOUS PROVISIONS

§ 13851. Definitions

As used in this part:

(1) Community development corporation

The term "community development corporation" means a private, nonprofit corporation whose board of directors is comprised of business, civic and community leaders, and whose principal purpose includes the provision of low-income housing or community economic development projects that primarily benefit low-income individuals and communities.

(2) Local and private sector contribution

The term "local and private sector contribution" means the funds available at the local level (by private financial institutions, State and local governments) or by any private philanthropic organization and private, nonprofit organizations that will be committed and used solely for the purpose of financing private business enterprises in conjunction with amounts provided under this part.

(3) Population-losing community

The term "population-losing community" means any county in which the net population loss is at least 7 percent from April 1, 1980 to April 1, 1990, as reported by the Bureau of the Census.

¹ So in original. Probably should be paragraph "(3)".

(4) Private business enterprise

The term “private business enterprise” means any business enterprise that is engaged in the manufacture of a product, provision of a service, construction or development of a facility, or that is involved in some other commercial, manufacturing or industrial activity, and that agrees to target job opportunities stemming from investments authorized under this part to certain individuals.

(5) Target area

The term “target area” means any area defined in an application for assistance under this part that has a population whose income does not exceed the median for the area within which the target area is located.

(6) Very low-income community

The term “very low-income community” means a community in which the median income of the residents of such community does not exceed 50 percent of the median income of the area.

(Pub. L. 103-322, title III, §31131, Sept. 13, 1994, 108 Stat. 1887.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 13852. Authorization of appropriations**(a) In general**

There are authorized to be appropriated to carry out subparts 1 and 2—

- (1) \$45,000,000 for fiscal year 1996;
- (2) \$72,000,000 for fiscal year 1997;
- (3) \$76,500,000 for fiscal year 1998; and
- (4) \$76,500,000 for fiscal year 1999.

(b) Earmarks

Of the aggregate amount appropriated under subsection (a) of this section for each fiscal year—

- (1) 60 percent shall be available to carry out subpart 1; and
- (2) 40 percent shall be available to carry out subpart 2.

(c) Amounts

Amounts appropriated under subsection (a) of this section shall remain available for expenditure without fiscal year limitation.

(Pub. L. 103-322, title III, §31132, Sept. 13, 1994, 108 Stat. 1888.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13826, 14214 of this title.

§ 13853. Prohibition

None of the funds authorized under this part shall be used to finance the construction of housing.

(Pub. L. 103-322, title III, §31133, Sept. 13, 1994, 108 Stat. 1888.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

PART H—COMMUNITY-BASED JUSTICE GRANTS
FOR PROSECUTORS**§ 13861. Grant authorization****(a) In general**

The Attorney General may make grants to State, Indian tribal, or local prosecutors for the purpose of supporting the creation or expansion of community-based justice programs.

(b) Consultation

The Attorney General may consult with the Office of Prevention Council in making grants under subsection (a) of this section.

(Pub. L. 103-322, title III, §31701, Sept. 13, 1994, 108 Stat. 1890.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 13862. Use of funds

Grants made by the Attorney General under this section shall be used—

(1) to fund programs that require the cooperation and coordination of prosecutors, school officials, police, probation officers, youth and social service professionals, and community members in the effort to reduce the incidence of, and increase the successful identification and speed of prosecution of, young violent offenders;

(2) to fund programs in which prosecutors focus on the offender, not simply the specific offense, and impose individualized sanctions, designed to deter that offender from further antisocial conduct, and impose increasingly serious sanctions on a young offender who continues to commit offenses;

(3) to fund programs that coordinate criminal justice resources with educational, social service, and community resources to develop and deliver violence prevention programs, including mediation and other conflict resolution methods, treatment, counseling, educational, and recreational programs that create alternatives to criminal activity; and

(4) in rural States (as defined in section 3796bb(b) of this title), to fund cooperative efforts between State and local prosecutors, victim advocacy and assistance groups, social and community service providers, and law enforcement agencies to investigate and prosecute child abuse cases, treat youthful victims of child abuse, and work in cooperation with the community to develop education and prevention strategies directed toward the issues with which such entities are concerned.

(Pub. L. 103-322, title III, §31702, Sept. 13, 1994, 108 Stat. 1890.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13863, 14214 of this title.

§ 13863. Applications**(a) Eligibility**

In order to be eligible to receive a grant under this part¹ for any fiscal year, a State, Indian

¹ See References in Text note below.

tribal, or local prosecutor, in conjunction with the chief executive officer of the jurisdiction in which the program will be placed, shall submit an application to the Attorney General in such form and containing such information as the Attorney General may reasonably require.

(b) Requirements

Each applicant shall include—

- (1) a request for funds for the purposes described in section 13862 of this title;
- (2) a description of the communities to be served by the grant, including the nature of the youth crime, youth violence, and child abuse problems within such communities;
- (3) assurances that Federal funds received under this part¹ shall be used to supplement, not supplant, non-Federal funds that would otherwise be available for activities funded under this section; and
- (4) statistical information in such form and containing such information that the Attorney General may require.

(c) Comprehensive plan

Each applicant shall include a comprehensive plan that shall contain—

- (1) a description of the youth violence or child abuse crime problem;
- (2) an action plan outlining how the applicant will achieve the purposes as described in section 13862 of this title;
- (3) a description of the resources available in the community to implement the plan together with a description of the gaps in the plan that cannot be filled with existing resources; and
- (4) a description of how the requested grant will be used to fill gaps.

(Pub. L. 103-322, title III, §31703, Sept. 13, 1994, 108 Stat. 1891.)

REFERENCES IN TEXT

This part, referred to in subsecs. (a) and (b)(3), appearing in the original is unidentifiable because subtitle Q of title III of Pub. L. 103-322 does not contain parts.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13864, 13865, 13866, 14214 of this title.

§ 13864. Allocation of funds; limitations on grants

(a) Administrative cost limitation

The Attorney General shall use not more than 5 percent of the funds available under this program for the purposes of administration and technical assistance.

(b) Renewal of grants

A grant under this part¹ may be renewed for up to 2 additional years after the first fiscal year during which the recipient receives its initial grant under this part,¹ subject to the availability of funds, if—

- (1) the Attorney General determines that the funds made available to the recipient during the previous years were used in a manner required under the approved application; and

- (2) the Attorney General determines that an additional grant is necessary to implement the community prosecution program described in the comprehensive plan required by section 13863 of this title.

(Pub. L. 103-322, title III, §31704, Sept. 13, 1994, 108 Stat. 1891.)

REFERENCES IN TEXT

This part, referred to in subsec. (b), appearing in the original is unidentifiable because subtitle Q of title III of Pub. L. 103-322 does not contain parts.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 13865. Award of grants

The Attorney General shall consider the following facts in awarding grants:

- (1) Demonstrated need and evidence of the ability to provide the services described in the plan required under section 13863 of this title.
- (2) The Attorney General shall attempt, to the extent practicable, to achieve an equitable geographic distribution of grant awards.

(Pub. L. 103-322, title III, §31705, Sept. 13, 1994, 108 Stat. 1891.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 13866. Reports

(a) Report to Attorney General

State and local prosecutors that receive funds under this part shall submit to the Attorney General a report not later than March 1 of each year that describes progress achieved in carrying out the plan described under section 13863(c) of this title.

(b) Report to Congress

The Attorney General shall submit to the Congress a report by October 1 of each year in which grants are made available under this part which shall contain a detailed statement regarding grant awards, activities of grant recipients, a compilation of statistical information submitted by applicants, and an evaluation of programs established under this part.

(Pub. L. 103-322, title III, §31706, Sept. 13, 1994, 108 Stat. 1892.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 13867. Authorization of appropriations

There are authorized to be appropriated to carry out this part—

- (1) \$7,000,000 for fiscal year 1996;
- (2) \$10,000,000 for fiscal year 1997;
- (3) \$10,000,000 for fiscal year 1998;
- (4) \$11,000,000 for fiscal year 1999; and
- (5) \$12,000,000 for fiscal year 2000.

(Pub. L. 103-322, title III, §31707, Sept. 13, 1994, 108 Stat. 1892.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

¹ See References in Text note below.

§ 13868. Definitions

In this part—

“Indian tribe” means a tribe, band, pueblo, nation, or other organized group or community of Indians, including an Alaska Native village (as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

“State” means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, and the United States Virgin Islands.

“young violent offenders” means individuals, ages 7 through 22, who have committed crimes of violence, weapons offenses, drug distribution, hate crimes and civil rights violations, and offenses against personal property of another.

(Pub. L. 103-322, title III, §31708, Sept. 13, 1994, 108 Stat. 1892.)

REFERENCES IN TEXT

The Alaska Native Claims Settlement Act, referred to in text, is Pub. L. 92-203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

PART I—FAMILY UNITY DEMONSTRATION PROJECT

§ 13881. Purpose

The purpose of this part is to evaluate the effectiveness of certain demonstration projects in helping to—

- (1) alleviate the harm to children and primary caretaker parents caused by separation due to the incarceration of the parents;
- (2) reduce recidivism rates of prisoners by encouraging strong and supportive family relationships; and
- (3) explore the cost effectiveness of community correctional facilities.

(Pub. L. 103-322, title III, §31902, Sept. 13, 1994, 108 Stat. 1892.)

SHORT TITLE

For short title of this part as the “Family Unity Demonstration Project Act”, see section 31901 of Pub. L. 103-322, set out as a note under section 13701 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13893, 14214 of this title.

§ 13882. Definitions

In this part—

“child” means a person who is less than 7 years of age.

“community correctional facility” means a residential facility that—

(A) is used only for eligible offenders and their children under 7 years of age;

(B) is not within the confines of a jail or prison;

(C) houses no more than 50 prisoners in addition to their children; and

(D) provides to inmates and their children—

(i) a safe, stable, environment for children;

(ii) pediatric and adult medical care consistent with medical standards for correctional facilities;

(iii) programs to improve the stability of the parent-child relationship, including educating parents regarding—

- (I) child development; and
- (II) household management;

(iv) alcoholism and drug addiction treatment for prisoners; and

(v) programs and support services to help inmates—

(I) to improve and maintain mental and physical health, including access to counseling;

(II) to obtain adequate housing upon release from State incarceration;

(III) to obtain suitable education, employment, or training for employment; and

(IV) to obtain suitable child care.

“eligible offender” means a primary caretaker parent who—

(A) has been sentenced to a term of imprisonment of not more than 7 years or is awaiting sentencing for a conviction punishable by such a term of imprisonment; and

(B) has not engaged in conduct that—

- (i) knowingly resulted in death or serious bodily injury;
- (ii) is a felony for a crime of violence against a person; or
- (iii) constitutes child neglect or mental, physical, or sexual abuse of a child.

“primary caretaker parent” means—

(A) a parent who has consistently assumed responsibility for the housing, health, and safety of a child prior to incarceration; or

(B) a woman who has given birth to a child after or while awaiting her sentencing hearing and who expresses a willingness to assume responsibility for the housing, health, and safety of that child,

a parent who, in the best interest of a child, has arranged for the temporary care of the child in the home of a relative or other responsible adult shall not for that reason be excluded from the category “primary caretaker”.

“State” means a State, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

(Pub. L. 103-322, title III, §31903, Sept. 13, 1994, 108 Stat. 1893.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 13883. Authorization of appropriations**(a) Authorization**

There are authorized to be appropriated to carry out this part—

- (1) \$3,600,000 for fiscal year 1996;
- (2) \$3,600,000 for fiscal year 1997;
- (3) \$3,600,000 for fiscal year 1998;
- (4) \$3,600,000 for fiscal year 1999; and
- (5) \$5,400,000 for fiscal year 2000.

(b) Availability of appropriations

Of the amount appropriated under subsection (a) of this section for any fiscal year—

- (1) 90 percent shall be available to carry out subpart 1; and
- (2) 10 percent shall be available to carry out subpart 2.

(Pub. L. 103-322, title III, §31904, Sept. 13, 1994, 108 Stat. 1894.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13901, 14214 of this title.

SUBPART 1—GRANTS TO STATES

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in sections 13883, 13901 of this title.

§ 13891. Authority to make grants**(a) General authority**

The Attorney General may make grants, on a competitive basis, to States to carry out in accordance with this part family unity demonstration projects that enable eligible offenders to live in community correctional facilities with their children.

(b) Preferences

For the purpose of making grants under subsection (a) of this section, the Attorney General shall give preference to a State that includes in the application required by section 13892 of this title assurances that if the State receives a grant—

- (1) both the State corrections agency and the State health and human services agency will participate substantially in, and cooperate closely in all aspects of, the development and operation of the family unity demonstration project for which such a grant is requested;
- (2) boards made up of community members, including residents, local businesses, corrections officials, former prisoners, child development professionals, educators, and maternal and child health professionals will be established to advise the State regarding the operation of such project;
- (3) the State has in effect a policy that provides for the placement of all prisoners, whenever possible, in correctional facilities for which they qualify that are located closest to their respective family homes;
- (4) unless the Attorney General determines that a longer timeline is appropriate in a particular case, the State will implement the project not later than 180 days after receiving a grant under subsection (a) of this section

and will expend all of the grant during a 1-year period;

(5) the State has the capacity to continue implementing a community correctional facility beyond the funding period to ensure the continuity of the work;

(6) unless the Attorney General determines that a different process for selecting participants in a project is desirable, the State will—

(A) give written notice to a prisoner, not later than 30 days after the State first receives a grant under subsection (a) of this section or 30 days after the prisoner is sentenced to a term of imprisonment of not more than 7 years (whichever is later), of the proposed or current operation of the project;

(B) accept at any time at which the project is in operation an application by a prisoner to participate in the project if, at the time of application, the remainder of the prisoner's sentence exceeds 180 days;

(C) review applications by prisoners in the sequence in which the State receives such applications; and

(D) not more than 50 days after reviewing such applications approve or disapprove the application; and

(7) for the purposes of selecting eligible offenders to participate in such project, the State has authorized State courts to sentence an eligible offender directly to a community correctional facility, provided that the court gives assurances that the offender would have otherwise served a term of imprisonment.

(c) Selection of grantees

The Attorney General shall make grants under subsection (a) of this section on a competitive basis, based on such criteria as the Attorney General shall issue by rule and taking into account the preferences described in subsection (b) of this section.

(Pub. L. 103-322, title III, §31911, Sept. 13, 1994, 108 Stat. 1894.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13892, 14214 of this title.

§ 13892. Eligibility to receive grants

To be eligible to receive a grant under section 13891 of this title, a State shall submit to the Attorney General an application at such time, in such form, and containing such information as the Attorney General reasonably may require by rule.

(Pub. L. 103-322, title III, §31912, Sept. 13, 1994, 108 Stat. 1895.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13891, 14214 of this title.

§ 13893. Report**(a) In general**

A State that receives a grant under this subpart¹ shall, not later than 90 days after the 1-

¹ See References in Text note below.

year period in which the grant is required to be expended, submit a report to the Attorney General regarding the family unity demonstration project for which the grant was expended.

(b) Contents

A report under subsection (a) of this section shall—

(1) state the number of prisoners who submitted applications to participate in the project and the number of prisoners who were placed in community correctional facilities;

(2) state, with respect to prisoners placed in the project, the number of prisoners who are returned to that jurisdiction and custody and the reasons for such return;

(3) describe the nature and scope of educational and training activities provided to prisoners participating in the project;

(4) state the number, and describe the scope of, contracts made with public and nonprofit private community-based organizations to carry out such project; and

(5) evaluate the effectiveness of the project in accomplishing the purposes described in section 13881 of this title.

(Pub. L. 103-322, title III, §31913, Sept. 13, 1994, 108 Stat. 1895.)

REFERENCES IN TEXT

This subpart, referred to in subsec. (a), was in the original “this title” and was translated as reading “this chapter”, meaning chapter 1 of subtitle S of title III of Pub. L. 103-322, to reflect the probable intent of Congress.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

SUBPART 2—FAMILY UNITY DEMONSTRATION PROJECT FOR FEDERAL PRISONERS

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in section 13883 of this title.

§ 13901. Authority of Attorney General

(a) In general

With the funds available to carry out this part for the benefit of Federal prisoners, the Attorney General, acting through the Director of the Bureau of Prisons, shall select eligible prisoners to live in community correctional facilities with their children.

(b) General contracting authority

In implementing this part,¹ the Attorney General may enter into contracts with appropriate public or private agencies to provide housing, sustenance, services, and supervision of inmates eligible for placement in community correctional facilities under this part.¹

(c) Use of State facilities

At the discretion of the Attorney General, Federal participants may be placed in State projects as defined in subpart 1. For such participants, the Attorney General shall, with funds available under section 13883(b)(2) of this

title, reimburse the State for all project costs related to the Federal participant’s placement, including administrative costs.

(Pub. L. 103-322, title III, §31921, Sept. 13, 1994, 108 Stat. 1896.)

REFERENCES IN TEXT

This part, referred to in subsec. (b), was in the original “this title” and was translated as reading “this subtitle”, meaning subtitle S of title III of Pub. L. 103-322, to reflect the probable intent of Congress.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13902, 14214 of this title.

§ 13902. Requirements

For the purpose of placing Federal participants in a family unity demonstration project under section 13901 of this title, the Attorney General shall consult with the Secretary of Health and Human Services regarding the development and operation of the project.

(Pub. L. 103-322, title III, §31922, Sept. 13, 1994, 108 Stat. 1896.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

PART J—PREVENTION, DIAGNOSIS, AND TREATMENT OF TUBERCULOSIS IN CORRECTIONAL INSTITUTIONS

§ 13911. Prevention, diagnosis, and treatment of tuberculosis in correctional institutions

(a) Guidelines

The Attorney General, in consultation with the Secretary of Health and Human Services and the Director of the National Institute of Corrections, shall develop and disseminate to appropriate entities, including State, Indian tribal, and local correctional institutions and the Immigration and Naturalization Service, guidelines for the prevention, diagnosis, treatment, and followup care of tuberculosis among inmates of correctional institutions and persons held in holding facilities operated by or under contract with the Immigration and Naturalization Service.

(b) Compliance

The Attorney General shall ensure that prisons in the Federal prison system and holding facilities operated by or under contract with the Immigration and Naturalization Service comply with the guidelines described in subsection (a) of this section.

(c) Grants

(1) In general

The Attorney General shall make grants to State, Indian tribal, and local correction authorities and public health authorities to assist in establishing and operating programs for the prevention, diagnosis, treatment, and followup care of tuberculosis among inmates of correctional institutions.

(2) Federal share

The Federal share of funding of a program funded with a grant under paragraph (1) shall not exceed 50 percent.

¹ See References in Text note below.

(3) Authorization of appropriations

There are authorized to be appropriated to carry out this section—

- (A) \$700,000 for fiscal year 1996;
- (B) \$1,000,000 for fiscal year 1997;
- (C) \$1,000,000 for fiscal year 1998;
- (D) \$1,100,000 for fiscal year 1999; and
- (E) \$1,200,000 for fiscal year 2000.

(d) Definitions

In this section—

“Indian tribe” means a tribe, band, pueblo, nation, or other organized group or community of Indians, including an Alaska Native village (as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.),¹ that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

“State” means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, and the United States Virgin Islands.

(Pub. L. 103-322, title III, §32201, Sept. 13, 1994, 108 Stat. 1901.)

REFERENCES IN TEXT

The Alaska Native Claims Settlement Act, referred to in subsec. (d), is Pub. L. 92-203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of Title 8, Aliens and Nationality.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

PART K—GANG RESISTANCE EDUCATION AND TRAINING

§ 13921. Gang Resistance Education and Training projects**(a) Establishment of projects****(1) In general**

The Attorney General shall establish not less than 50 Gang Resistance Education and Training (GREAT) projects, to be located in communities across the country, in addition to the number of projects currently funded.

(2) Selection of communities

Communities identified for such GREAT projects shall be selected by the Attorney General on the basis of gang-related activity in that particular community.

(3) Amount of assistance per project; allocation

The Attorney General shall make available not less than \$800,000 per project, subject to

the availability of appropriations, and such funds shall be allocated—

- (A) 50 percent to the affected State and local law enforcement and prevention organizations participating in such projects; and
- (B) 50 percent to the Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice for salaries, expenses, and associated administrative costs for operating and overseeing such projects.

(b) Authorization of appropriations

There is authorized to be appropriated to carry out this section—

- (1) \$9,000,000 for fiscal year 1995;
- (2) \$7,200,000 for fiscal year 1996;
- (3) \$7,200,000 for fiscal year 1997;
- (4) \$7,200,000 for fiscal year 1998;
- (5) \$7,200,000 for fiscal year 1999; and
- (6) \$7,720,000 for fiscal year 2000.

(Pub. L. 103-322, title III, §32401, Sept. 13, 1994, 108 Stat. 1902; Pub. L. 107-296, title XI, §1112(p), Nov. 25, 2002, 116 Stat. 2278.)

AMENDMENTS

2002—Subsec. (a). Pub. L. 107-296, §1112(p)(1), substituted “Attorney General” for “Secretary of the Treasury” wherever appearing.

Subsec. (a)(3)(B). Pub. L. 107-296, §1112(p)(2), substituted “Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice” for “Bureau of Alcohol, Tobacco and Firearms”.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107-296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

SUBCHAPTER III—VIOLENCE AGAINST WOMEN

PART A—SAFE STREETS FOR WOMEN

SUBPART 1—SAFETY FOR WOMEN IN PUBLIC TRANSIT

§ 13931. Grants for capital improvements to prevent crime in public transportation**(a) General purpose**

There is authorized to be appropriated not to exceed \$10,000,000, for the Secretary of Transportation (referred to in this section as the “Secretary”) to make capital grants for the prevention of crime and to increase security in existing and future public transportation systems. None of the provisions of this Act may be construed to prohibit the financing of projects under this section where law enforcement responsibilities are vested in a local public body other than the grant applicant.

(b) Grants for lighting, camera surveillance, and security phones

(1) From the sums authorized for expenditure under this section for crime prevention, the Secretary is authorized to make grants and loans to States and local public bodies or agencies for the purpose of increasing the safety of public transportation by—

¹ So in original. A closing parenthesis probably should precede the comma.

(A) increasing lighting within or adjacent to public transportation systems, including bus stops, subway stations, parking lots, or garages;

(B) increasing camera surveillance of areas within and adjacent to public transportation systems, including bus stops, subway stations, parking lots, or garages;

(C) providing emergency phone lines to contact law enforcement or security personnel in areas within or adjacent to public transportation systems, including bus stops, subway stations, parking lots, or garages; or

(D) any other project intended to increase the security and safety of existing or planned public transportation systems.

(2) From the sums authorized under this section, at least 75 percent shall be expended on projects of the type described in subsection (b)(1)(A) and (B) of this section.

(c) Reporting

All grants under this section are contingent upon the filing of a report with the Secretary and the Department of Justice, Office of Victims of Crime, showing crime rates in or adjacent to public transportation before, and for a 1-year period after, the capital improvement. Statistics shall be compiled on the basis of the type of crime, sex, race, ethnicity, language, and relationship of victim to the offender.

(d) Increased Federal share

Notwithstanding any other provision of law, the Federal share under this section for each capital improvement project that enhances the safety and security of public transportation systems and that is not required by law (including any other provision of this Act) shall be 90 percent of the net project cost of the project.

(e) Special grants for projects to study increasing security for women

From the sums authorized under this section, the Secretary shall provide grants and loans for the purpose of studying ways to reduce violent crimes against women in public transit through better design or operation of public transit systems.

(f) General requirements

All grants or loans provided under this section shall be subject to the same terms, conditions, requirements, and provisions applicable to grants and loans as specified in section 5321 of title 49.

(Pub. L. 103-322, title IV, §40131, Sept. 13, 1994, 108 Stat. 1916.)

REFERENCES IN TEXT

This Act, referred to in subsecs. (a) and (d), is Pub. L. 103-322, Sept. 13, 1994, 108 Stat. 1796, known as the Violent Crime Control and Law Enforcement Act of 1994. For complete classification of this Act to the Code, see Short Title note set out under section 13701 of this title and Tables.

SUBPART 2—ASSISTANCE TO VICTIMS OF SEXUAL ASSAULT

§ 13941. Training programs

(a) In general

The Attorney General, after consultation with victim advocates and individuals who have ex-

pertise in treating sex offenders, shall establish criteria and develop training programs to assist probation and parole officers and other personnel who work with released sex offenders in the areas of—

- (1) case management;
- (2) supervision; and
- (3) relapse prevention.

(b) Training programs

The Attorney General shall ensure, to the extent practicable, that training programs developed under subsection (a) of this section are available in geographically diverse locations throughout the country.

(c) Authorization of appropriations

There are authorized to be appropriated to carry out this section—

- (1) \$1,000,000 for fiscal year 1996; and
- (2) \$1,000,000 for fiscal year 1997.

(Pub. L. 103-322, title IV, §40152, Sept. 13, 1994, 108 Stat. 1920.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14071, 14214 of this title.

§ 13942. Confidentiality of communications between sexual assault or domestic violence victims and their counselors

(a) Study and development of model legislation

The Attorney General shall—

(1) study and evaluate the manner in which the States have taken measures to protect the confidentiality of communications between sexual assault or domestic violence victims and their therapists or trained counselors;

(2) develop model legislation that will provide the maximum protection possible for the confidentiality of such communications, within any applicable constitutional limits, taking into account the following factors:

(A) the danger that counseling programs for victims of sexual assault and domestic violence will be unable to achieve their goal of helping victims recover from the trauma associated with these crimes if there is no assurance that the records of the counseling sessions will be kept confidential;

(B) consideration of the appropriateness of an absolute privilege for communications between victims of sexual assault or domestic violence and their therapists or trained counselors, in light of the likelihood that such an absolute privilege will provide the maximum guarantee of confidentiality but also in light of the possibility that such an absolute privilege may be held to violate the rights of criminal defendants under the Federal or State constitutions by denying them the opportunity to obtain exculpatory evidence and present it at trial; and

(C) consideration of what limitations on the disclosure of confidential communications between victims of these crimes and their counselors, short of an absolute privilege, are most likely to ensure that the counseling programs will not be undermined, and specifically whether no such disclosure should be allowed unless, at a minimum,

there has been a particularized showing by a criminal defendant of a compelling need for records of such communications, and adequate procedural safeguards are in place to prevent unnecessary or damaging disclosures; and

(3) prepare and disseminate to State authorities the findings made and model legislation developed as a result of the study and evaluation.

(b) Report and recommendations

Not later than the date that is 1 year after September 13, 1994, the Attorney General shall report to the Congress—

(1) the findings of the study and the model legislation required by this section; and

(2) recommendations based on the findings on the need for and appropriateness of further action by the Federal Government.

(c) Review of Federal evidentiary rules

The Judicial Conference of the United States shall evaluate and report to Congress its views on whether the Federal Rules of Evidence should be amended, and if so, how they should be amended, to guarantee that the confidentiality of communications between sexual assault victims and their therapists or trained counselors will be adequately protected in Federal court proceedings.

(Pub. L. 103-322, title IV, §40153, Sept. 13, 1994, 108 Stat. 1921.)

REFERENCES IN TEXT

The Federal Rules of Evidence, referred to in subsec. (c), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

§ 13943. Information programs

The Attorney General shall compile information regarding sex offender treatment programs and ensure that information regarding community treatment programs in the community into which a convicted sex offender is released is made available to each person serving a sentence of imprisonment in a Federal penal or correctional institution for a commission of an offense under chapter 109A of title 18 or for the commission of a similar offense, including halfway houses and psychiatric institutions.

(Pub. L. 103-322, title IV, §40154, Sept. 13, 1994, 108 Stat. 1922.)

PART B—SAFE HOMES FOR WOMEN

SUBPART 1—CONFIDENTIALITY FOR ABUSED PERSONS

§ 13951. Confidentiality of abused person's address

(a) Regulations

Not later than 90 days after September 13, 1994, the United States Postal Service shall promulgate regulations to secure the confidentiality of domestic violence shelters and abused persons' addresses.

(b) Requirements

The regulations under subsection (a) of this section shall require—

(1) in the case of an individual, the presentation to an appropriate postal official of a valid, outstanding protection order; and

(2) in the case of a domestic violence shelter, the presentation to an appropriate postal authority of proof from a State domestic violence coalition that meets the requirements of section 10410 of this title verifying that the organization is a domestic violence shelter.

(c) Disclosure for certain purposes

The regulations under subsection (a) of this section shall not prohibit the disclosure of addresses to State or Federal agencies for legitimate law enforcement or other governmental purposes.

(d) Existing compilations

Compilations of addresses existing at the time at which order is presented to an appropriate postal official shall be excluded from the scope of the regulations under subsection (a) of this section.

(Pub. L. 103-322, title IV, §40281, Sept. 13, 1994, 108 Stat. 1938.)

SUBPART 2—DATA AND RESEARCH

§ 13961. Research agenda

(a) Request for contract

The Attorney General shall request the National Academy of Sciences, through its National Research Council, to enter into a contract to develop a research agenda to increase the understanding and control of violence against women, including rape and domestic violence. In furtherance of the contract, the National Academy shall convene a panel of nationally recognized experts on violence against women, in the fields of law, medicine, criminal justice, and direct services to victims and experts on domestic violence in diverse, ethnic, social, and language minority communities and the social sciences. In setting the agenda, the Academy shall focus primarily on preventive, educative, social, and legal strategies, including addressing the needs of underserved populations.

(b) Declination of request

If the National Academy of Sciences declines to conduct the study and develop a research agenda, it shall recommend a nonprofit private entity that is qualified to conduct such a study. In that case, the Attorney General shall carry out subsection (a) of this section through the nonprofit private entity recommended by the Academy. In either case, whether the study is conducted by the National Academy of Sciences or by the nonprofit group it recommends, the funds for the contract shall be made available from sums appropriated for the conduct of research by the National Institute of Justice.

(c) Report

The Attorney General shall ensure that no later than 1 year after September 13, 1994, the study required under subsection (a) of this section is completed and a report describing the findings made is submitted to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives.

(Pub. L. 103-322, title IV, § 40291, Sept. 13, 1994, 108 Stat. 1939.)

DEVELOPMENT OF RESEARCH AGENDA IDENTIFIED BY
THE VIOLENCE AGAINST WOMEN ACT OF 1994

Pub. L. 106-386, div. B, title IV, § 1404, Oct. 28, 2000, 114 Stat. 1514, provided that:

“(a) IN GENERAL.—The Attorney General shall—

“(1) direct the National Institute of Justice, in consultation and coordination with the Bureau of Justice Statistics and the National Academy of Sciences, through its National Research Council, to develop a research agenda based on the recommendations contained in the report entitled ‘Understanding Violence Against Women’ of the National Academy of Sciences; and

“(2) not later than 1 year after the date of the enactment of this Act [Oct. 28, 2000], in consultation with the Secretary of the Department of Health and Human Services, submit to Congress a report which shall include—

“(A) a description of the research agenda developed under paragraph (1) and a plan to implement that agenda; and

“(B) recommendations for priorities in carrying out that agenda to most effectively advance knowledge about and means by which to prevent or reduce violence against women.

“(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.”

§ 13962. State databases

(a) In general

The Attorney General shall study and report to the States and to Congress on how the States may collect centralized databases on the incidence of sexual and domestic violence offenses within a State.

(b) Consultation

In conducting its study, the Attorney General shall consult persons expert in the collection of criminal justice data, State statistical administrators, law enforcement personnel, and non-profit nongovernmental agencies that provide direct services to victims of domestic violence. The final report shall set forth the views of the persons consulted on the recommendations.

(c) Report

The Attorney General shall ensure that no later than 1 year after September 13, 1994, the study required under subsection (a) of this section is completed and a report describing the findings made is submitted to the Committees on the Judiciary of the Senate and the House of Representatives.

(d) Authorization of appropriations

There are authorized to be appropriated to carry out this section \$200,000 for fiscal year 1996.

(Pub. L. 103-322, title IV, § 40292, Sept. 13, 1994, 108 Stat. 1939.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 13963. Number and cost of injuries

(a) Study

The Secretary of Health and Human Services, acting through the Centers for Disease Control

Injury Control Division, shall conduct a study to obtain a national projection of the incidence of injuries resulting from domestic violence, the cost of injuries to health care facilities, and recommend health care strategies for reducing the incidence and cost of such injuries.

(b) Authorization of appropriations

There are authorized to be appropriated to carry out this section—\$100,000 for fiscal year 1996.

(Pub. L. 103-322, title IV, § 40293, Sept. 13, 1994, 108 Stat. 1940.)

CHANGE OF NAME

Centers for Disease Control changed to Centers for Disease Control and Prevention by Pub. L. 102-531, title III, § 312, Oct. 27, 1992, 106 Stat. 3504.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

SUBPART 3—RURAL DOMESTIC VIOLENCE AND
CHILD ABUSE ENFORCEMENT

§ 13971. Rural domestic violence and child abuse enforcement assistance

(a) Grants

The Attorney General may make grants to States, Indian tribal governments, and local governments of rural States, and to other public or private entities of rural States—

(1) to implement, expand, and establish cooperative efforts and projects between law enforcement officers, prosecutors, victim advocacy groups, and other related parties to investigate and prosecute incidents of domestic violence and dating violence (as defined in section 3796gg-2 of this title) and child abuse;

(2) to provide treatment, counseling, and assistance to victims of domestic violence and child abuse, including in immigration matters; and

(3) to work in cooperation with the community to develop education and prevention strategies directed toward such issues.

(b) Definitions

In this section—

“Indian tribe” means a tribe, band, pueblo, nation, or other organized group or community of Indians, including an Alaska Native village (as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.),¹ that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

“rural State” has the meaning stated in section 3796bb(b) of this title.

(c) Authorization of appropriations

(1) In general

There is authorized to be appropriated to carry out this section \$40,000,000 for each of fiscal years 2001 through 2005.

(2) Additional funding

In addition to funds received under a grant under subsection (a) of this section, a law en-

¹ So in original. A closing parenthesis probably should precede the comma.

forcement agency may use funds received under a grant under section 103² to accomplish the objectives of this section.

(3) Allotment for Indian tribes

Not less than 5 percent of the total amount made available to carry out this section for each fiscal year shall be available for grants to Indian tribal governments.

(Pub. L. 103-322, title IV, §40295, Sept. 13, 1994, 108 Stat. 1940; Pub. L. 106-386, div. B, title I, §§1105, 1109(d), title V, §1512(c), Oct. 28, 2000, 114 Stat. 1497, 1503, 1533.)

REFERENCES IN TEXT

The Alaska Native Claims Settlement Act, referred to in subsec. (b), is Pub. L. 92-203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

Section 103, referred to in subsec. (c)(2), probably was intended to be a reference to "section 10003", meaning section 10003 of Pub. L. 103-322, title I, Sept. 13, 1994, 108 Stat. 1807, which enacted subchapter XII-E (§3796dd et seq.) of chapter 46 of this title and amended sections 3793 and 3797 of this title.

AMENDMENTS

2000—Subsec. (a)(1). Pub. L. 106-386, §1109(d)(1), inserted "and dating violence (as defined in section 3796gg-2 of this title)" after "domestic violence".

Subsec. (a)(2). Pub. L. 106-386, §1512(c), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "to provide treatment and counseling to victims of domestic violence and dating violence (as defined in section 3796gg-2 of this title) and child abuse; and".

Pub. L. 106-386, §1109(d)(2), inserted "and dating violence (as defined in section 3796gg-2 of this title)" after "domestic violence".

Subsec. (c)(1). Pub. L. 106-386, §1105(1), added par. (1) and struck out heading and text of former par. (1). Text read as follows: "There are authorized to be appropriated to carry out this section—

“(A) \$7,000,000 for fiscal year 1996;

“(B) \$8,000,000 for fiscal year 1997; and

“(C) \$15,000,000 for fiscal year 1998.”

Subsec. (c)(3). Pub. L. 106-386, §1105(2), added par. (3).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

SUBPART 4—TRANSITIONAL HOUSING ASSISTANCE GRANTS FOR CHILD VICTIMS OF DOMESTIC VIOLENCE, STALKING, OR SEXUAL ASSAULT

§ 13975. Transitional housing assistance grants for child victims of domestic violence, stalking, or sexual assault

(a) In general

The Attorney General, acting in consultation with the Director of the Violence Against Women Office of the Department of Justice, shall award grants under this section to States, units of local government, Indian tribes, and other organizations (referred to in this section as the "recipient") to carry out programs to provide assistance to minors, adults, and their dependents—

(1) who are homeless, or in need of transitional housing or other housing assistance, as

a result of fleeing a situation of domestic violence; and

(2) for whom emergency shelter services or other crisis intervention services are unavailable or insufficient.

(b) Grants

Grants awarded under this section may be used for programs that provide—

(1) short-term housing assistance, including rental or utilities payments assistance and assistance with related expenses such as payment of security deposits and other costs incidental to relocation to transitional housing for persons described in subsection (a) of this section; and

(2) support services designed to enable a minor, an adult, or a dependent of such minor or adult, who is fleeing a situation of domestic violence to—

(A) locate and secure permanent housing; and

(B) integrate into a community by providing that minor, adult, or dependent with services, such as transportation, counseling, child care services, case management, employment counseling, and other assistance.

(c) Duration

(1) In general

Except as provided in paragraph (2), a minor, an adult, or a dependent, who receives assistance under this section shall receive that assistance for not more than 18 months.

(2) Waiver

The recipient of a grant under this section may waive the restriction under paragraph (1) for not more than an additional 6 month period with respect to any minor, adult, or dependent, who—

(A) has made a good-faith effort to acquire permanent housing; and

(B) has been unable to acquire permanent housing.

(d) Application

(1) In general

Each eligible entity desiring a grant under this section shall submit an application to the Attorney General at such time, in such manner, and accompanied by such information as the Attorney General may reasonably require.

(2) Contents

Each application submitted pursuant to paragraph (1) shall—

(A) describe the activities for which assistance under this section is sought; and

(B) provide such additional assurances as the Attorney General determines to be essential to ensure compliance with the requirements of this section.

(3) Application

Nothing in this subsection shall be construed to require—

(A) victims to participate in the criminal justice system in order to receive services; or

(B) domestic violence advocates to breach client confidentiality.

² See References in Text note below.

(e) Report to the Attorney General**(1) In general**

A recipient of a grant under this section shall annually prepare and submit to the Attorney General a report describing—

- (A) the number of minors, adults, and dependents assisted under this section; and
- (B) the types of housing assistance and support services provided under this section.

(2) Contents

Each report prepared and submitted pursuant to paragraph (1) shall include information regarding—

- (A) the amount of housing assistance provided to each minor, adult, or dependent, assisted under this section and the reason for that assistance;
- (B) the number of months each minor, adult, or dependent, received assistance under this section;
- (C) the number of minors, adults, and dependents who—
 - (i) were eligible to receive assistance under this section; and
 - (ii) were not provided with assistance under this section solely due to a lack of available housing; and
- (D) the type of support services provided to each minor, adult, or dependent, assisted under this section.

(f) Report to Congress**(1) Reporting requirement**

The Attorney General, with the Director of the Violence Against Women Office, shall annually prepare and submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a report that contains a compilation of the information contained in the report submitted under subsection (e) of this section.

(2) Availability of report

In order to coordinate efforts to assist the victims of domestic violence, the Attorney General, in coordination with the Director of the Violence Against Women Office, shall transmit a copy of the report submitted under paragraph (1) to—

- (A) the Office of Community Planning and Development at the United States Department of Housing and Urban Development; and
- (B) the Office of Women's Health at the United States Department of Health and Human Services.

(g) Authorization of appropriations**(1) In general**

There are authorized to be appropriated to carry out this section \$30,000,000 for each of the fiscal years 2004 through 2008.

(2) Limitations

Of the amount made available to carry out this section in any fiscal year, not more than 3 percent may be used by the Attorney General for salaries and administrative expenses.

(3) Minimum amount**(A) In general**

Except as provided in subparagraph (B), unless all eligible applications submitted by any States, units of local government, Indian tribes, or organizations within a State for a grant under this section have been funded, that State, together with the grantees within the State (other than Indian tribes), shall be allocated in each fiscal year, not less than 0.75 percent of the total amount appropriated in the fiscal year for grants pursuant to this section.

(B) Exception

The United States Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands shall each be allocated not less than 0.25 percent of the total amount appropriated in the fiscal year for grants pursuant to this section.

(Pub. L. 103-322, title IV, § 40299, as added Pub. L. 108-21, title VI, § 611, Apr. 30, 2003, 117 Stat. 693.)

PART C—CIVIL RIGHTS FOR WOMEN**§ 13981. Civil rights****(a) Purpose**

Pursuant to the affirmative power of Congress to enact this part under section 5 of the Fourteenth Amendment to the Constitution, as well as under section 8 of Article I of the Constitution, it is the purpose of this part to protect the civil rights of victims of gender motivated violence and to promote public safety, health, and activities affecting interstate commerce by establishing a Federal civil rights cause of action for victims of crimes of violence motivated by gender.

(b) Right to be free from crimes of violence

All persons within the United States shall have the right to be free from crimes of violence motivated by gender (as defined in subsection (d) of this section).

(c) Cause of action

A person (including a person who acts under color of any statute, ordinance, regulation, custom, or usage of any State) who commits a crime of violence motivated by gender and thus deprives another of the right declared in subsection (b) of this section shall be liable to the party injured, in an action for the recovery of compensatory and punitive damages, injunctive and declaratory relief, and such other relief as a court may deem appropriate.

(d) Definitions

For purposes of this section—

- (1) the term “crime of violence motivated by gender” means a crime of violence committed because of gender or on the basis of gender, and due, at least in part, to an animus based on the victim's gender; and
- (2) the term “crime of violence” means—¹

- (A) an act or series of acts that would constitute a felony against the person or that

¹So in original. The word “means” probably should appear after “(A)” below.

would constitute a felony against property if the conduct presents a serious risk of physical injury to another, and that would come within the meaning of State or Federal offenses described in section 16 of title 18, whether or not those acts have actually resulted in criminal charges, prosecution, or conviction and whether or not those acts were committed in the special maritime, territorial, or prison jurisdiction of the United States; and

(B) includes an act or series of acts that would constitute a felony described in subparagraph (A) but for the relationship between the person who takes such action and the individual against whom such action is taken.

(e) Limitation and procedures

(1) Limitation

Nothing in this section entitles a person to a cause of action under subsection (c) of this section for random acts of violence unrelated to gender or for acts that cannot be demonstrated, by a preponderance of the evidence, to be motivated by gender (within the meaning of subsection (d) of this section).

(2) No prior criminal action

Nothing in this section requires a prior criminal complaint, prosecution, or conviction to establish the elements of a cause of action under subsection (c) of this section.

(3) Concurrent jurisdiction

The Federal and State courts shall have concurrent jurisdiction over actions brought pursuant to this part.

(4) Supplemental jurisdiction

Neither section 1367 of title 28 nor subsection (c) of this section shall be construed, by reason of a claim arising under such subsection, to confer on the courts of the United States jurisdiction over any State law claim seeking the establishment of a divorce, alimony, equitable distribution of marital property, or child custody decree.

(Pub. L. 103-322, title IV, §40302, Sept. 13, 1994, 108 Stat. 1941.)

REFERENCES IN TEXT

This part, referred to in subsecs. (a) and (e)(3), was in the original “this subtitle”, meaning subtitle C of title IV of Pub. L. 103-322, Sept. 13, 1994, 108 Stat. 1941, which enacted this part, amended section 1988 of this title and section 1445 of Title 28, Judiciary and Judicial Procedure, and enacted provisions set out as a note under section 13701 of this title. For complete classification of this subtitle to the Code, see Short Title note set out under section 13701 of this title and Tables.

CODIFICATION

Section is comprised of section 40302 of Pub. L. 103-322. Subsec. (e)(5) of section 40302 of Pub. L. 103-322 amended section 1445 of Title 28, Judiciary and Judicial Procedure.

SHORT TITLE

For short title of this part as the “Civil Rights Remedies for Gender-Motivated Violence Act”, see section 40301 of Pub. L. 103-322, set out as a note under section 13701 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1988 of this title; title 28 section 1445.

PART D—EQUAL JUSTICE FOR WOMEN IN COURTS

SUBPART 1—EDUCATION AND TRAINING FOR JUDGES AND COURT PERSONNEL IN STATE COURTS

§ 13991. Grants authorized

The State Justice Institute may award grants for the purpose of developing, testing, presenting, and disseminating model programs to be used by States (as defined in section 10701 of this title) in training judges and court personnel in the laws of the States and by Indian tribes in training tribal judges and court personnel in the laws of the tribes on rape, sexual assault, domestic violence, dating violence, and other crimes of violence motivated by the victim's gender. Nothing shall preclude the attendance of tribal judges and court personnel at programs funded under this section for States to train judges and court personnel on the laws of the States.

(Pub. L. 103-322, title IV, §40411, Sept. 13, 1994, 108 Stat. 1942; Pub. L. 106-386, div. B, title IV, §1406(c)(2), (d)(1), Oct. 28, 2000, 114 Stat. 1516.)

AMENDMENTS

2000—Pub. L. 106-386 inserted “dating violence,” after “domestic violence,” and “Nothing shall preclude the attendance of tribal judges and court personnel at programs funded under this section for States to train judges and court personnel on the laws of the States.” at end.

SHORT TITLE

For short title of this part as the “Equal Justice for Women in the Courts Act of 1994”, see section 40401 of Pub. L. 103-322, set out as a note under section 13701 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 13992. Training provided by grants

Training provided pursuant to grants made under this part may include current information, existing studies, or current data on—

- (1) the nature and incidence of rape and sexual assault by strangers and nonstrangers, marital rape, and incest;
- (2) the underreporting of rape, sexual assault, and child sexual abuse;
- (3) the physical, psychological, and economic impact of rape and sexual assault on the victim, the costs to society, and the implications for sentencing;
- (4) the psychology of sex offenders, their high rate of recidivism, and the implications for sentencing;
- (5) the historical evolution of laws and attitudes on rape and sexual assault;
- (6) sex stereotyping of female and male victims of rape and sexual assault, racial stereotyping of rape victims and defendants, and the impact of such stereotypes on credibility of witnesses, sentencing, and other aspects of the administration of justice;
- (7) application of rape shield laws and other limits on introduction of evidence that may

subject victims to improper sex stereotyping and harassment in both rape and nonrape cases, including the need for sua sponte judicial intervention in inappropriate cross-examination;

(8) the use of expert witness testimony on rape trauma syndrome, child sexual abuse accommodation syndrome, post-traumatic stress syndrome, and similar issues;

(9) the legitimate reasons why victims of rape, sexual assault, and incest may refuse to testify against a defendant;

(10) the nature and incidence of domestic violence and dating violence (as defined in section 3796gg-2 of this title);

(11) the physical, psychological, and economic impact of domestic violence and dating violence on the victim, the costs to society, and the implications for court procedures and sentencing;

(12) the psychology and self-presentation of batterers and victims and the implications for court proceedings and credibility of witnesses;

(13) sex stereotyping of female and male victims of domestic violence and dating violence, myths about presence or absence of domestic violence and dating violence in certain racial, ethnic, religious, or socioeconomic groups, and their impact on the administration of justice;

(14) historical evolution of laws and attitudes on domestic violence;

(15) proper and improper interpretations of the defenses of self-defense and provocation, and the use of expert witness testimony on battered woman syndrome;

(16) the likelihood of retaliation, recidivism, and escalation of violence by batterers, and the potential impact of incarceration and other meaningful sanctions for acts of domestic violence including violations of orders of protection;

(17) economic, psychological, social and institutional reasons for victims' inability to leave the batterer, to report domestic violence or dating violence or to follow through on complaints, including the influence of lack of support from police, judges, and court personnel, and the legitimate reasons why victims of domestic violence or dating violence may refuse to testify against a defendant;

(18) the need for orders of protection, and the implications of mutual orders of protection, dual arrest policies, and mediation in domestic violence and dating violence cases;

(19) recognition of and response to gender-motivated crimes of violence other than rape, sexual assault and domestic violence, such as mass or serial murder motivated by the gender of the victims;

(20) the issues raised by domestic violence in determining custody and visitation, including how to protect the safety of the child and of a parent who is not a predominant aggressor of domestic violence, the legitimate reasons parents may report domestic violence, the ways domestic violence may relate to an abuser's desire to seek custody, and evaluating expert testimony in custody and visitation determinations involving domestic violence;

(21) the issues raised by child sexual assault in determining custody and visitation, includ-

ing how to protect the safety of the child, the legitimate reasons parents may report child sexual assault, and evaluating expert testimony in custody and visitation determinations involving child sexual assault, including the current scientifically-accepted and empirically valid research on child sexual assault;¹

(22) the extent to which addressing domestic violence and victim safety contributes to the efficient administration of justice;²

(Pub. L. 103-322, title IV, §40412, Sept. 13, 1994, 108 Stat. 1943; Pub. L. 106-386, div. B, title IV, §1406(a)(1), (d)(2), Oct. 28, 2000, 114 Stat. 1515, 1517.)

AMENDMENTS

2000—Par. (10). Pub. L. 106-386, §1406(d)(2)(A), inserted “and dating violence (as defined in section 3796gg-2 of this title)” before the semicolon.

Par. (11). Pub. L. 106-386, §1406(d)(2)(B), inserted “and dating violence” after “domestic violence”.

Par. (13). Pub. L. 106-386, §1406(d)(2)(C), inserted “and dating violence” after “domestic violence” in two places.

Par. (17). Pub. L. 106-386, §1406(d)(2)(D), inserted “or dating violence” after “domestic violence” in two places.

Par. (18). Pub. L. 106-386, §1406(d)(2)(E), inserted “and dating violence” after “domestic violence”.

Par. (20) to (22). Pub. L. 106-386, §1406(a)(1), added paras. (20) to (22).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14001, 14214 of this title.

§ 13993. Cooperation in developing programs in making grants under this part

The State Justice Institute shall ensure that model programs carried out pursuant to grants made under this part are developed with the participation of law enforcement officials, public and private nonprofit victim advocates, including national, State, tribal, and local domestic violence and sexual assault programs and coalitions, legal experts, prosecutors, defense attorneys, and recognized experts on gender bias in the courts.

(Pub. L. 103-322, title IV, §40413, Sept. 13, 1994, 108 Stat. 1944; Pub. L. 106-386, div. B, title IV, §1406(c)(1), Oct. 28, 2000, 114 Stat. 1516.)

AMENDMENTS

2000—Pub. L. 106-386 inserted “, including national, State, tribal, and local domestic violence and sexual assault programs and coalitions” after “victim advocates”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 13994. Authorization of appropriations

(a) In general

There are authorized to be appropriated to carry out this subpart \$600,000 for fiscal year 1996 and \$1,500,000 for each of the fiscal years 2001 through 2005.

(b) Model programs

Of amounts appropriated under this section, the State Justice Institute shall expend not less

¹ So in original. Probably should be followed by “and”.

² So in original. The semicolon probably should be a period.

than 40 percent on model programs regarding domestic violence and not less than 40 percent on model programs regarding rape and sexual assault.

(c) State Justice Institute

The State Justice Institute may use up to 5 percent of the funds appropriated under this section for annually compiling and broadly disseminating (including through electronic publication) information about the use of funds and about the projects funded under this section, including any evaluations of the projects and information to enable the replication and adoption of the projects.

(Pub. L. 103-322, title IV, §40414, Sept. 13, 1994, 108 Stat. 1944; Pub. L. 106-386, div. B, title IV, §1406(a)(2), (c)(3), Oct. 28, 2000, 114 Stat. 1516.)

AMENDMENTS

2000—Subsec. (a). Pub. L. 106-386, §1406(a)(2), inserted “and \$1,500,000 for each of the fiscal years 2001 through 2005” after “1996”.

Subsec. (c). Pub. L. 106-386, §1406(c)(3), added subsec. (c).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

SUBPART 2—EDUCATION AND TRAINING FOR JUDGES AND COURT PERSONNEL IN FEDERAL COURTS

§ 14001. Authorization of circuit studies; education and training grants

(a) Studies

In order to gain a better understanding of the nature and the extent of gender bias in the Federal courts, the circuit judicial councils are encouraged to conduct studies of the instances, if any, of gender bias in their respective circuits and to implement recommended reforms.

(b) Matters for examination

The studies under subsection (a) of this section may include an examination of the effects of gender on—

(1) the treatment of litigants, witnesses, attorneys, jurors, and judges in the courts, including before magistrate and bankruptcy judges;

(2) the interpretation and application of the law, both civil and criminal;

(3) treatment of defendants in criminal cases;

(4) treatment of victims of violent crimes in judicial proceedings;

(5) sentencing;

(6) sentencing alternatives and the nature of supervision of probation and parole;

(7) appointments to committees of the Judicial Conference and the courts;

(8) case management and court sponsored alternative dispute resolution programs;

(9) the selection, retention, promotion, and treatment of employees;

(10) appointment of arbitrators, experts, and special masters;

(11) the admissibility of the victim's past sexual history in civil and criminal cases; and

(12) the aspects of the topics listed in section 13992 of this title that pertain to issues within the jurisdiction of the Federal courts.

(c) Clearinghouse

The Administrative Office of the United States Courts shall act as a clearinghouse to disseminate any reports and materials issued by the gender bias task forces under subsection (a) of this section and to respond to requests for such reports and materials. The gender bias task forces shall provide the Administrative Office of the Courts of the United States¹ with their reports and related material.

(d) Continuing education and training programs

The Federal Judicial Center, in carrying out section 620(b)(3) of title 28, shall include in the educational programs it prepares, including the training programs for newly appointed judges, information on the aspects of the topics listed in section 13992 of this title that pertain to issues within the jurisdiction of the Federal courts, and shall prepare materials necessary to implement this subsection.

(Pub. L. 103-322, title IV, §40421, Sept. 13, 1994, 108 Stat. 1944; Pub. L. 106-386, div. B, title IV, §1406(b)(1), Oct. 28, 2000, 114 Stat. 1516.)

AMENDMENTS

2000—Subsec. (d). Pub. L. 106-386 amended heading and text of subsec. (d) generally, substituting provisions relating to continuing education and training programs for provisions relating to model programs.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14002, 14214 of this title.

§ 14002. Authorization of appropriations

There are authorized to be appropriated—

(1) to the Salaries and Expenses Account of the Courts of Appeals, District Courts, and other Judicial Services to carry out section 14001(a) of this title \$500,000 for fiscal year 1996;

(2) to the Federal Judicial Center to carry out section 14001(d) of this title \$100,000 for fiscal year 1996 and \$500,000 for each of the fiscal years 2001 through 2005; and

(3) to the Administrative Office of the United States Courts to carry out section 14001(c) of this title \$100,000 for fiscal year 1996.

(Pub. L. 103-322, title IV, §40422, Sept. 13, 1994, 108 Stat. 1945; Pub. L. 106-386, div. B, title IV, §1406(b)(2), Oct. 28, 2000, 114 Stat. 1516.)

AMENDMENTS

2000—Par. (2). Pub. L. 106-386 inserted “and \$500,000 for each of the fiscal years 2001 through 2005” after “1996”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

¹ So in original. Probably should be “Administrative Office of the United States Courts”.

PART E—VIOLENCE AGAINST WOMEN ACT
IMPROVEMENTS

§ 14011. Payment of cost of testing for sexually transmitted diseases

(a) Omitted

(b) Limited testing of defendants

(1) Court order

The victim of an offense of the type referred to in subsection (a)¹ of this section may obtain an order in the district court of the United States for the district in which charges are brought against the defendant charged with the offense, after notice to the defendant and an opportunity to be heard, requiring that the defendant be tested for the presence of the etiologic agent for acquired immune deficiency syndrome, and that the results of the test be communicated to the victim and the defendant. Any test result of the defendant given to the victim or the defendant must be accompanied by appropriate counseling.

(2) Showing required

To obtain an order under paragraph (1), the victim must demonstrate that—

(A) the defendant has been charged with the offense in a State or Federal court, and if the defendant has been arrested without a warrant, a probable cause determination has been made;

(B) the test for the etiologic agent for acquired immune deficiency syndrome is requested by the victim after appropriate counseling; and

(C) the test would provide information necessary for the health of the victim of the alleged offense and the court determines that the alleged conduct of the defendant created a risk of transmission, as determined by the Centers for Disease Control, of the etiologic agent for acquired immune deficiency syndrome to the victim.

(3) Follow-up testing

The court may order follow-up tests and counseling under paragraph (1) if the initial test was negative. Such follow-up tests and counseling shall be performed at the request of the victim on dates that occur six months and twelve months following the initial test.

(4) Termination of testing requirements

An order for follow-up testing under paragraph (3) shall be terminated if the person obtains an acquittal on, or dismissal of, all charges of the type referred to in subsection (a)¹ of this section.

(5) Confidentiality of test

The results of any test ordered under this subsection shall be disclosed only to the victim or, where the court deems appropriate, to the parent or legal guardian of the victim, and to the person tested. The victim may disclose the test results only to any medical professional, counselor, family member or sexual partner(s) the victim may have had since the

attack. Any such individual to whom the test results are disclosed by the victim shall maintain the confidentiality of such information.

(6) Disclosure of test results

The court shall issue an order to prohibit the disclosure by the victim of the results of any test performed under this subsection to anyone other than those mentioned in paragraph (5). The contents of the court proceedings and test results pursuant to this section shall be sealed. The results of such test performed on the defendant under this section shall not be used as evidence in any criminal trial.

(7) Contempt for disclosure

Any person who discloses the results of a test in violation of this subsection may be held in contempt of court.

(c) Penalties for intentional transmission of HIV

Not later than 6 months after September 13, 1994, the United States Sentencing Commission shall conduct a study and prepare and submit to the committees² on the Judiciary of the Senate and the House of Representatives a report concerning recommendations for the revision of sentencing guidelines that relate to offenses in which an HIV infected individual engages in sexual activity if the individual knows that he or she is infected with HIV and intends, through such sexual activity, to expose another to HIV.

(Pub. L. 103-322, title IV, §40503, Sept. 13, 1994, 108 Stat. 1946; Pub. L. 104-294, title VI, §604(b)(1), Oct. 11, 1996, 110 Stat. 3506.)

CODIFICATION

Section is comprised of section 40503 of Pub. L. 103-322. Subsec. (a) of section 40503 of Pub. L. 103-322 amended section 10607 of this title. Subsec. (c) of section 40503 of Pub. L. 103-322 also enacted provisions listed in a table of provisions for review, promulgation, or amendment of Federal sentencing guidelines relating to specific offenses set out under section 994 of Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

1996—Subsec. (b)(3). Pub. L. 104-294 substituted “paragraph (1)” for “paragraph (b)(1)”.

CHANGE OF NAME

Centers for Disease Control changed to Centers for Disease Control and Prevention by Pub. L. 102-531, title III, §312, Oct. 27, 1992, 106 Stat. 3504.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-294 effective Sept. 13, 1994, see section 604(d) of Pub. L. 104-294, set out as a note under section 13 of Title 18, Crimes and Criminal Procedure.

§ 14012. National baseline study on campus sexual assault

(a) Study

The Attorney General, in consultation with the Secretary of Education, shall provide for a national baseline study to examine the scope of the problem of campus sexual assaults and the effectiveness of institutional and legal policies in addressing such crimes and protecting vic-

¹ See Codification note below.

² So in original. Probably should be capitalized.

tims. The Attorney General may utilize the Bureau of Justice Statistics, the National Institute of Justice, and the Office for Victims of Crime in carrying out this section.

(b) Report

Based on the study required by subsection (a) of this section and data collected under the Student Right-To-Know and Campus Security Act (20 U.S.C. 1001 note; Public Law 101-542) and amendments made by that Act, the Attorney General shall prepare a report including an analysis of—

(1) the number of reported allegations and estimated number of unreported allegations of campus sexual assaults, and to whom the allegations are reported (including authorities of the educational institution, sexual assault victim service entities, and local criminal authorities);

(2) the number of campus sexual assault allegations reported to authorities of educational institutions which are reported to criminal authorities;

(3) the number of campus sexual assault allegations that result in criminal prosecution in comparison with the number of non-campus sexual assault allegations that result in criminal prosecution;

(4) Federal and State laws or regulations pertaining specifically to campus sexual assaults;

(5) the adequacy of policies and practices of educational institutions in addressing campus sexual assaults and protecting victims, including consideration of—

(A) the security measures in effect at educational institutions, such as utilization of campus police and security guards, control over access to grounds and buildings, supervision of student activities and student living arrangements, control over the consumption of alcohol by students, lighting, and the availability of escort services;

(B) the articulation and communication to students of the institution's policies concerning sexual assaults;

(C) policies and practices that may prevent or discourage the reporting of campus sexual assaults to local criminal authorities, or that may otherwise obstruct justice or interfere with the prosecution of perpetrators of campus sexual assaults;

(D) the nature and availability of victim services for victims of campus sexual assaults;

(E) the ability of educational institutions' disciplinary processes to address allegations of sexual assault adequately and fairly;

(F) measures that are taken to ensure that victims are free of unwanted contact with alleged assailants, and disciplinary sanctions that are imposed when a sexual assault is determined to have occurred; and

(G) the grounds on which educational institutions are subject to lawsuits based on campus sexual assaults, the resolution of these cases, and measures that can be taken to avoid the likelihood of lawsuits and civil liability;

(6) in conjunction with the report produced by the Department of Education in coordina-

tion with institutions of education under the Student Right-To-Know and Campus Security Act (20 U.S.C. 1001 note; Public Law 101-542) and amendments made by that Act, an assessment of the policies and practices of educational institutions that are of greatest effectiveness in addressing campus sexual assaults and protecting victims, including policies and practices relating to the particular issues described in paragraph (5); and

(7) any recommendations the Attorney General may have for reforms to address campus sexual assaults and protect victims more effectively, and any other matters that the Attorney General deems relevant to the subject of the study and report required by this section.

(c) Submission of report

The report required by subsection (b) of this section shall be submitted to the Congress no later than September 1, 1996.

(d) "Campus sexual assaults" defined

For purposes of this section, "campus sexual assaults" includes sexual assaults occurring at institutions of postsecondary education and sexual assaults committed against or by students or employees of such institutions.

(e) Authorization of appropriations

There are authorized to be appropriated to carry out the study required by this section—\$200,000 for fiscal year 1996.

(Pub. L. 103-322, title IV, §40506, Sept. 13, 1994, 108 Stat. 1948.)

REFERENCES IN TEXT

The Student Right-To-Know and Campus Security Act, referred to in subsec. (b), is Pub. L. 101-542, Nov. 8, 1990, 104 Stat. 2381, as amended, which amended sections 1085, 1092, 1094, and 1232g of Title 20, Education, and enacted provisions set out as notes under sections 1001 and 1092 of Title 20. For complete classification of this Act to the Code, see Short Title of 1990 Amendments note set out under section 1001 of Title 20 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 14013. Report on battered women's syndrome

(a) Report

Not less than 1 year after September 13, 1994, the Attorney General and the Secretary of Health and Human Services shall transmit to the House Committee on Energy and Commerce, the Senate Committee on Labor and Human Resources, and the Committees on the Judiciary of the Senate and the House of Representatives a report on the medical and psychological basis of "battered women's syndrome" and on the extent to which evidence of the syndrome has been considered in criminal trials.

(b) Components

The report under subsection (a) of this section shall include—

(1) medical and psychological testimony on the validity of battered women's syndrome as a psychological condition;

(2) a compilation of State, tribal, and Federal court cases in which evidence of battered women's syndrome was offered in criminal trials; and

(3) an assessment by State, tribal, and Federal judges, prosecutors, and defense attorneys of the effects that evidence of battered women's syndrome may have in criminal trials.

(Pub. L. 103-322, title IV, §40507, Sept. 13, 1994, 108 Stat. 1949.)

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 14014. Report on confidentiality of addresses for victims of domestic violence

(a) Report

The Attorney General shall conduct a study of the means by which abusive spouses may obtain information concerning the addresses or locations of estranged or former spouses, notwithstanding the desire of the victims to have such information withheld to avoid further exposure to abuse. Based on the study, the Attorney General shall transmit a report to Congress including—

(1) the findings of the study concerning the means by which information concerning the addresses or locations of abused spouses may be obtained by abusers; and

(2) analysis of the feasibility of creating effective means of protecting the confidentiality of information concerning the addresses and locations of abused spouses to protect such persons from exposure to further abuse while preserving access to such information for legitimate purposes.

(b) Use of components

The Attorney General may use the National Institute of Justice and the Office for Victims of Crime in carrying out this section.

(Pub. L. 103-322, title IV, §40508, Sept. 13, 1994, 108 Stat. 1950.)

§ 14015. Report on recordkeeping relating to domestic violence

Not later than 1 year after September 13, 1994, the Attorney General shall complete a study of, and shall submit to Congress a report and recommendations on, problems of recordkeeping of criminal complaints involving domestic violence. The study and report shall examine—

(1) the efforts that have been made by the Department of Justice, including the Federal Bureau of Investigation, to collect statistics on domestic violence; and

(2) the feasibility of requiring that the relationship between an offender and victim be reported in Federal records of crimes of aggravated assault, rape, and other violent crimes.

(Pub. L. 103-322, title IV, §40509, Sept. 13, 1994, 108 Stat. 1950.)

§ 14016. Enforcement of statutory rape laws

(a) Sense of Senate

It is the sense of the Senate that States and local jurisdictions should aggressively enforce statutory rape laws.

(b) Justice Department program on statutory rape

Not later than January 1, 1997, the Attorney General shall establish and implement a program that—

(1) studies the linkage between statutory rape and teenage pregnancy, particularly by predatory older men committing repeat offenses; and

(2) educates State and local criminal law enforcement officials on the prevention and prosecution of statutory rape, focusing in particular on the commission of statutory rape by predatory older men committing repeat offenses, and any links to teenage pregnancy.

(c) Violence against women initiative

The Attorney General shall ensure that the Department of Justice's Violence Against Women initiative addresses the issue of statutory rape, particularly the commission of statutory rape by predatory older men committing repeat offenses.

(Pub. L. 104-193, title IX, §906, Aug. 22, 1996, 110 Stat. 2349.)

CODIFICATION

Section was enacted as part of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, and not as part of the Violent Crime Control and Law Enforcement Act of 1994 which enacted this chapter.

PART F—NATIONAL STALKER AND DOMESTIC VIOLENCE REDUCTION

§ 14031. Grant program

(a) In general

The Attorney General is authorized to provide grants to States and units of local government to improve and implement processes for entering data regarding stalking and domestic violence into local, State, and national crime information databases.

(b) Eligibility

To be eligible to receive a grant under subsection (a) of this section, a State or unit of local government shall certify that it has or intends to establish a program that enters into the National Crime Information Center records of—

(1) warrants for the arrest of persons violating protection orders intended to protect victims from stalking or domestic violence;

(2) arrests or convictions of persons violating protection¹ or domestic violence; and

(3) protection orders for the protection of persons from stalking or domestic violence.

¹So in original. Probably should be followed by "orders intended to protect victims from stalking".

(Pub. L. 103-322, title IV, §40602, Sept. 13, 1994, 108 Stat. 1951; Pub. L. 106-386, div. B, title I, §1106(b), Oct. 28, 2000, 114 Stat. 1497.)

AMENDMENTS

2000—Subsec. (a). Pub. L. 106-386 inserted “and implement” after “improve”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 14032. Authorization of appropriations

There is authorized to be appropriated to carry out this part \$3,000,000 for each of fiscal years 2001 through 2005.

(Pub. L. 103-322, title IV, §40603, Sept. 13, 1994, 108 Stat. 1951; Pub. L. 106-386, div. B, title I, §1106(a), Oct. 28, 2000, 114 Stat. 1497.)

REFERENCES IN TEXT

This part, referred to in text, was in the original “this subtitle”, meaning subtitle F of title IV of Pub. L. 103-322, Sept. 13, 1994, 108 Stat. 1950, which enacted this part, amended section 534 of Title 28, Judiciary and Judicial Procedure, and enacted provisions set out as a note under section 534 of Title 28.

AMENDMENTS

2000—Pub. L. 106-386 reenacted section catchline without change and amended text generally. Prior to amendment, text read as follows: “There are authorized to be appropriated to carry out this part—

- “(1) \$1,500,000 for fiscal year 1996;
- “(2) \$1,750,000 for fiscal year 1997; and
- “(3) \$2,750,000 for fiscal year 1998.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 14033. Application requirements

An application for a grant under this part shall be submitted in such form and manner, and contain such information, as the Attorney General may prescribe. In addition, applications shall include documentation showing—

- (1) the need for grant funds and that State or local funding, as the case may be, does not already cover these operations;
- (2) intended use of the grant funds, including a plan of action to increase record input; and
- (3) an estimate of expected results from the use of the grant funds.

(Pub. L. 103-322, title IV, §40604, Sept. 13, 1994, 108 Stat. 1951.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 14034. Disbursement

Not later than 90 days after the receipt of an application under this part, the Attorney General shall either provide grant funds or shall inform the applicant why grant funds are not being provided.

(Pub. L. 103-322, title IV, §40605, Sept. 13, 1994, 108 Stat. 1952.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 14035. Technical assistance, training, and evaluations

The Attorney General may provide technical assistance and training in furtherance of the purposes of this part, and may provide for the evaluation of programs that receive funds under this part, in addition to any evaluation requirements that the Attorney General may prescribe for grantees. The technical assistance, training, and evaluations authorized by this section may be carried out directly by the Attorney General, or through contracts or other arrangements with other entities.

(Pub. L. 103-322, title IV, §40606, Sept. 13, 1994, 108 Stat. 1952.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 14036. Training programs for judges

The State Justice Institute, after consultation with nationally recognized nonprofit organizations with expertise in stalking and domestic violence cases, shall conduct training programs for State (as defined in section 10701¹ of this title) and Indian tribal judges to ensure that a judge issuing an order in a stalking or domestic violence case has all available criminal history and other information, whether from State or Federal sources.

(Pub. L. 103-322, title IV, §40607, Sept. 13, 1994, 108 Stat. 1952.)

REFERENCES IN TEXT

Section 10701 of this title, referred to in text, was in the original “section 202 of the State Justice Institute Authorization Act of 1984”, and was translated as reading “section 202 of the State Justice Institute Act of 1984”, which is section 202 of Pub. L. 98-620, to reflect the probable intent of Congress.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 14037. Recommendations on intrastate communication

The State Justice Institute, after consultation with nationally recognized nonprofit associations with expertise in data sharing among criminal justice agencies and familiarity with the issues raised in stalking and domestic violence cases, shall recommend proposals regarding how State courts may increase intrastate communication between civil and criminal courts.

(Pub. L. 103-322, title IV, §40608, Sept. 13, 1994, 108 Stat. 1952.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 14038. Inclusion in National Incident-Based Reporting System

Not later than 2 years after September 13, 1994, the Attorney General, in accordance with the

¹ See References in Text note below.

States, shall compile data regarding domestic violence and intimidation (including stalking) as part of the National Incident-Based Reporting System (NIBRS).

(Pub. L. 103-322, title IV, §40609, Sept. 13, 1994, 108 Stat. 1952.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 14039. Report to Congress

The Attorney General shall submit to the Congress an annual report, beginning one year after September 13, 1994, that provides information concerning the incidence of stalking and domestic violence, and evaluates the effectiveness of State antistalking efforts and legislation.

(Pub. L. 103-322, title IV, §40610, Sept. 13, 1994, 108 Stat. 1952.)

REPORT RELATING TO STALKING LAWS

Pub. L. 105-119, title I, §115(b)(2), Nov. 26, 1997, 111 Stat. 2467, provided that: "The Attorney General shall include in an annual report under section 40610 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14039) information concerning existing or proposed State laws and penalties for stalking crimes against children."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 14040. Definitions

As used in this part—

(1) the term "national crime information databases" refers to the National Crime Information Center and its incorporated criminal history databases, including the Interstate Identification Index; and

(2) the term "protection order" includes an injunction or any other order issued for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with or physical proximity to, another person, including temporary and final orders issued by civil or criminal courts (other than support or child custody orders) whether obtained by filing an independent action or as a pendente lite order in another proceeding so long as any civil order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection.

(Pub. L. 103-322, title IV, §40611, Sept. 13, 1994, 108 Stat. 1952.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

PART G—ELDER ABUSE, NEGLECT, AND EXPLOITATION, INCLUDING DOMESTIC VIOLENCE AND SEXUAL ASSAULT AGAINST OLDER OR DISABLED INDIVIDUALS

CODIFICATION

This part was, in the original, subtitle H of title IV of Pub. L. 103-322, as added by Pub. L. 106-386, and has been redesignated as part G of this subchapter for purposes of codification.

§ 14041. Definitions

In this part:

(1) In general

The terms "elder abuse, neglect, and exploitation", and "older individual" have the meanings given the terms in section 3002 of this title.

(2) Domestic violence

The term "domestic violence" has the meaning given such term by section 3796gg-2 of this title.

(3) Sexual assault

The term "sexual assault" has the meaning given the term in section 3796gg-2 of this title.

(Pub. L. 103-322, title IV, §40801, as added Pub. L. 106-386, div. B, title II, §1209(a), Oct. 28, 2000, 114 Stat. 1508.)

§ 14041a. Training programs for law enforcement officers

The Attorney General may make grants for training programs to assist law enforcement officers, prosecutors, and relevant officers of Federal, State, tribal, and local courts in recognizing, addressing, investigating, and prosecuting instances of elder abuse, neglect, and exploitation and violence against individuals with disabilities, including domestic violence and sexual assault, against older or disabled individuals.

(Pub. L. 103-322, title IV, §40802, as added Pub. L. 106-386, div. B, title II, §1209(a), Oct. 28, 2000, 114 Stat. 1509.)

§ 14041b. Authorization of appropriations

There are authorized to be appropriated to carry out this part \$5,000,000 for each of fiscal years 2001 through 2005.

(Pub. L. 103-322, title IV, §40803, as added Pub. L. 106-386, div. B, title II, §1209(a), Oct. 28, 2000, 114 Stat. 1509.)

PART H—DOMESTIC VIOLENCE TASK FORCE

CODIFICATION

This part was, in the original, subtitle I of title IV of Pub. L. 103-322, as added by Pub. L. 106-386, and has been redesignated as part H of this subchapter for purposes of codification.

§ 14042. Task force

(a) Establish

The Attorney General, in consultation with national nonprofit, nongovernmental organizations whose primary expertise is in domestic violence, shall establish a task force to coordinate research on domestic violence and to report to Congress on any overlapping or duplication of efforts on domestic violence issues. The task force shall be comprised of representatives from all Federal agencies that fund such research.

(b) Uses of funds

Funds appropriated under this section shall be used to—

(1) develop a coordinated strategy to strengthen research focused on domestic violence education, prevention, and intervention strategies;

(2) track and report all Federal research and expenditures on domestic violence; and

(3) identify gaps and duplication of efforts in domestic violence research and governmental expenditures on domestic violence issues.

(c) Report

The Task Force shall report to Congress annually on its work under subsection (b) of this section.

(d) Definition

For purposes of this section, the term “domestic violence” has the meaning given such term by section 3796gg-2 of this title.

(e) Authorization of Appropriations

There is authorized to be appropriated to carry out this section \$500,000 for each of fiscal years 2001 through 2004.

(Pub. L. 103-322, title IV, § 40901, as added Pub. L. 106-386, div. B, title IV, § 1407, Oct. 28, 2000, 114 Stat. 1517.)

STUDY OF STATE LAWS REGARDING INSURANCE DISCRIMINATION AGAINST VICTIMS OF VIOLENCE AGAINST WOMEN

Pub. L. 106-386, div. B, title II, § 1206, Oct. 28, 2000, 114 Stat. 1507, provided that:

“(a) IN GENERAL.—The Attorney General shall conduct a national study to identify State laws that address discrimination against victims of domestic violence and sexual assault related to issuance or administration of insurance policies.

“(b) REPORT.—Not later than 1 year after the date of the enactment of this Act [Oct. 28, 2000], the Attorney General shall submit to Congress a report on the findings and recommendations of the study required by subsection (a).”

STUDY OF WORKPLACE EFFECTS FROM VIOLENCE AGAINST WOMEN

Pub. L. 106-386, div. B, title II, § 1207, Oct. 28, 2000, 114 Stat. 1507, provided that: “The Attorney General shall—

“(1) conduct a national survey of plans, programs, and practices developed to assist employers and employees on appropriate responses in the workplace related to victims of domestic violence, stalking, or sexual assault; and

“(2) not later than 18 months after the date of the enactment of this Act [Oct. 28, 2000], submit to Congress a report describing the results of that survey, which report shall include the recommendations of the Attorney General to assist employers and employees affected in the workplace by incidents of domestic violence, stalking, and sexual assault.”

STUDY OF UNEMPLOYMENT COMPENSATION FOR VICTIMS OF VIOLENCE AGAINST WOMEN

Pub. L. 106-386, div. B, title II, § 1208, Oct. 28, 2000, 114 Stat. 1508, provided that: “The Secretary of Labor, in consultation with the Attorney General, shall—

“(1) conduct a national study to identify State laws that address the separation from employment of an employee due to circumstances directly resulting from the experience of domestic violence by the employee and circumstances governing that receipt (or nonreceipt) by the employee of unemployment compensation based on such separation; and

“(2) not later than 1 year after the date of the enactment of this Act [Oct. 28, 2000], submit to Congress a report describing the results of that study, together with any recommendations based on that study.”

DEFINITIONS OF TERMS IN PUB. L. 106-386

For definitions of “domestic violence” and “sexual assault” as used in sections 1206, 1207, and 1208 of Pub.

L. 106-386, set out above, see section 1002 of Pub. L. 106-386, set out as a note under section 3796gg-2 of this title.

SUBCHAPTER IV—DRUG CONTROL

§ 14051. Increased penalties for drug-dealing in “drug-free” zones

Pursuant to its authority under section 994 of title 28, the United States Sentencing Commission shall amend its sentencing guidelines to provide an appropriate enhancement for a defendant convicted of violating section 860 of title 21.

(Pub. L. 103-322, title IX, § 90102, Sept. 13, 1994, 108 Stat. 1987.)

CODIFICATION

Section is comprised of section 90102 of Pub. L. 103-322 which is also listed in a table of provisions for review, promulgation, or amendment of Federal sentencing guidelines relating to specific offenses set out under section 994 of Title 28, Judiciary and Judicial Procedure.

§ 14052. Enhanced penalties for illegal drug use in Federal prisons and for smuggling drugs into Federal prisons

(a) Declaration of policy

It is the policy of the Federal Government that the use or distribution of illegal drugs in the Nation’s Federal prisons will not be tolerated and that such crimes shall be prosecuted to the fullest extent of the law.

(b) Sentencing guidelines

Pursuant to its authority under section 994 of title 28, the United States Sentencing Commission shall amend its sentencing guidelines to appropriately enhance the penalty for a person convicted of an offense—

(1) under section 844 of title 21 involving simple possession of a controlled substance within a Federal prison or other Federal detention facility; or

(2) under section 841(b) of title 21 involving the smuggling of a controlled substance into a Federal prison or other Federal detention facility or the distribution or intended distribution of a controlled substance within a Federal prison or other Federal detention facility.

(c) No probation

Notwithstanding any other law, the court shall not sentence a person convicted of an offense described in subsection (b) of this section to probation.

(Pub. L. 103-322, title IX, § 90103, Sept. 13, 1994, 108 Stat. 1987.)

CODIFICATION

Section is comprised of section 90103 of Pub. L. 103-322. Subsec. (b) of section 90103 of Pub. L. 103-322 is also listed in a table of provisions for review, promulgation, or amendment of Federal sentencing guidelines relating to specific offenses set out under section 994 of Title 28, Judiciary and Judicial Procedure.

§ 14053. Violent crime and drug emergency areas

(a) Definitions

In this section—

“major violent crime or drug-related emergency” means an occasion or instance in which violent crime, drug smuggling, drug trafficking, or drug abuse violence reaches such levels, as determined by the President, that Federal assistance is needed to supplement State and local efforts and capabilities to save lives, and to protect property and public health and safety.

“State” means a State, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

(b) Declaration of violent crime and drug emergency areas

If a major violent crime or drug-related emergency exists throughout a State or a part of a State, the President may declare the State or part of a State to be a violent crime or drug emergency area and may take appropriate actions authorized by this section.

(c) Procedure

(1) In general

A request for a declaration designating an area to be a violent crime or drug emergency area shall be made, in writing, by the chief executive officer of a State or local government, respectively (or in the case of the District of Columbia, the mayor), and shall be forwarded to the Attorney General in such form as the Attorney General may by regulation require. One or more cities, counties, States, or the District of Columbia may submit a joint request for designation as a major violent crime or drug emergency area under this subsection.

(2) Finding

A request made under paragraph (1) shall be based on a written finding that the major violent crime or drug-related emergency is of such severity and magnitude that Federal assistance is necessary to ensure an effective response to save lives and to protect property and public health and safety.

(d) Irrelevancy of population density

The President shall not limit declarations made under this section to highly populated centers of violent crime or drug trafficking, drug smuggling, or drug use, but shall also consider applications from governments of less populated areas where the magnitude and severity of such activities is beyond the capability of the State or local government to respond.

(e) Requirements

As part of a request for a declaration under this section, and as a prerequisite to Federal violent crime or drug emergency assistance under this section, the chief executive officer of a State or local government shall—

(1) take appropriate action under State or local law and furnish information on the nature and amount of State and local resources that have been or will be committed to alleviating the major violent crime- or drug-related emergency;

(2) submit a detailed plan outlining that government’s short- and long-term plans to re-

spond to the violent crime or drug emergency, specifying the types and levels of Federal assistance requested and including explicit goals (including quantitative goals) and timetables; and

(3) specify how Federal assistance provided under this section is intended to achieve those goals.

(f) Review period

The Attorney General shall review a request submitted pursuant to this section, and the President shall decide whether to declare a violent crime or drug emergency area, within 30 days after receiving the request.

(g) Federal assistance

The President may—

(1) direct any Federal agency, with or without reimbursement, to utilize its authorities and the resources granted to it under Federal law (including personnel, equipment, supplies, facilities, financial assistance, and managerial, technical, and advisory services) in support of State and local assistance efforts; and

(2) provide technical and advisory assistance, including communications support and law enforcement-related intelligence information.

(h) Duration of Federal assistance

(1) In general

Federal assistance under this section shall not be provided to a violent crime or drug emergency area for more than 1 year.

(2) Extension

The chief executive officer of a jurisdiction may apply to the President for an extension of assistance beyond 1 year. The President may extend the provision of Federal assistance for not more than an additional 180 days.

(i) Regulations

Not later than 120 days after September 13, 1994, the Attorney General shall issue regulations to implement this section.

(j) No effect on existing authority

Nothing in this section shall diminish or detract from existing authority possessed by the President or Attorney General.

(Pub. L. 103-322, title IX, §90107, Sept. 13, 1994, 108 Stat. 1988.)

SUBCHAPTER V—CRIMINAL STREET GANGS

§ 14061. Juvenile anti-drug and anti-gang grants in federally assisted low-income housing

Grants authorized in this Act to reduce or prevent juvenile drug and gang-related activity in “public housing” may be used for such purposes in federally assisted, low-income housing.

(Pub. L. 103-322, title XV, §150007, Sept. 13, 1994, 108 Stat. 2035.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 103-322, Sept. 13, 1994, 108 Stat. 1796, known as the Violent Crime Control and Law Enforcement Act of 1994. For complete classification of this Act to the Code, see Short Title note set out under section 13701 of this title and Tables.

§ 14062. Gang investigation coordination and information collection

(a) Coordination

The Attorney General (or the Attorney General's designee), in consultation with the Secretary of the Treasury (or the Secretary's designee), shall develop a national strategy to coordinate gang-related investigations by Federal law enforcement agencies.

(b) Data collection

The Director of the Federal Bureau of Investigation shall acquire and collect information on incidents of gang violence for inclusion in an annual uniform crime report.

(c) Report

The Attorney General shall prepare a report on national gang violence outlining the strategy developed under subsection (a) of this section to be submitted to the President and Congress by January 1, 1996.

(d) Authorization of appropriations

There are authorized to be appropriated to carry out this section \$1,000,000 for fiscal year 1996.

(Pub. L. 103-322, title XV, § 150008, Sept. 13, 1994, 108 Stat. 2036.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

SUBCHAPTER VI—CRIMES AGAINST CHILDREN

§ 14071. Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program

(a) In general

(1) State guidelines

The Attorney General shall establish guidelines for State programs that require—

(A) a person who is convicted of a criminal offense against a victim who is a minor or who is convicted of a sexually violent offense to register a current address for the time period specified in subparagraph (A) of subsection (b)(6) of this section; and

(B) a person who is a sexually violent predator to register a current address unless such requirement is terminated under subparagraph (B) of subsection (b)(6) of this section.

(2) Determination of sexually violent predator status; waiver; alternative measures

(A) In general

A determination of whether a person is a sexually violent predator for purposes of this section shall be made by a court after considering the recommendation of a board composed of experts in the behavior and treatment of sex offenders, victims' rights advocates, and representatives of law enforcement agencies.

(B) Waiver

The Attorney General may waive the requirements of subparagraph (A) if the Attor-

ney General determines that the State has established alternative procedures or legal standards for designating a person as a sexually violent predator.

(C) Alternative measures

The Attorney General may also approve alternative measures of comparable or greater effectiveness in protecting the public from unusually dangerous or recidivistic sexual offenders in lieu of the specific measures set forth in this section regarding sexually violent predators.

(3) Definitions

For purposes of this section:

(A) The term "criminal offense against a victim who is a minor" means any criminal offense in a range of offenses specified by State law which is comparable to or which exceeds the following range of offenses:

(i) kidnapping of a minor, except by a parent;

(ii) false imprisonment of a minor, except by a parent;

(iii) criminal sexual conduct toward a minor;

(iv) solicitation of a minor to engage in sexual conduct;

(v) use of a minor in a sexual performance;

(vi) solicitation of a minor to practice prostitution;

(vii) any conduct that by its nature is a sexual offense against a minor;

(viii) production or distribution of child pornography, as described in section 2251, 2252, or 2252A of title 18; or

(ix) an attempt to commit an offense described in any of clauses (i) through (vii), if the State—

(I) makes such an attempt a criminal offense; and

(II) chooses to include such an offense in those which are criminal offenses against a victim who is a minor for the purposes of this section.

For purposes of this subparagraph conduct which is criminal only because of the age of the victim shall not be considered a criminal offense if the perpetrator is 18 years of age or younger.

(B) The term "sexually violent offense" means any criminal offense in a range of offenses specified by State law which is comparable to or which exceeds the range of offenses encompassed by aggravated sexual abuse or sexual abuse (as described in sections 2241 and 2242 of title 18 or as described in the State criminal code) or an offense that has as its elements engaging in physical contact with another person with intent to commit aggravated sexual abuse or sexual abuse (as described in such sections of title 18 or as described in the State criminal code).

(C) The term "sexually violent predator" means a person who has been convicted of a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses.

(D) The term “mental abnormality” means a congenital or acquired condition of a person that affects the emotional or volitional capacity of the person in a manner that predisposes that person to the commission of criminal sexual acts to a degree that makes the person a menace to the health and safety of other persons.

(E) The term “predatory” means an act directed at a stranger, or a person with whom a relationship has been established or promoted for the primary purpose of victimization.

(F) The term “employed, carries on a vocation” includes employment that is full-time or part-time for a period of time exceeding 14 days or for an aggregate period of time exceeding 30 days during any calendar year, whether financially compensated, volunteered, or for the purpose of government or educational benefit.

(G) The term “student” means a person who is enrolled on a full-time or part-time basis, in any public or private educational institution, including any secondary school, trade, or professional institution, or institution of higher education.

(b) Registration requirement upon release, parole, supervised release, or probation

An approved State registration program established under this section shall contain the following elements:

(1) Duties of responsible officials

(A) If a person who is required to register under this section is released from prison, or placed on parole, supervised release, or probation, a State prison officer, the court, or another responsible officer or official, shall—

(i) inform the person of the duty to register and obtain the information required for such registration;

(ii) inform the person that if the person changes residence address, the person shall report the change of address as provided by State law;

(iii) inform the person that if the person changes residence to another State, the person shall report the change of address as provided by State law and comply with any registration requirement in the new State of residence, and inform the person that the person must also register in a State where the person is employed, carries on a vocation, or is a student;

(iv) obtain fingerprints and a photograph of the person if these have not already been obtained in connection with the offense that triggers registration; and

(v) require the person to read and sign a form stating that the duty of the person to register under this section has been explained.

(B) In addition to the requirements of subparagraph (A), for a person required to register under subparagraph (B) of subsection (a)(1) of this section, the State prison officer, the court, or another responsible officer or official, as the case may be, shall obtain the name of the person, identifying factors, anticipated

future residence, offense history, and documentation of any treatment received for the mental abnormality or personality disorder of the person.

(2) Transfer of information to State and FBI; participation in national sex offender registry

(A) State reporting

State procedures shall ensure that the registration information is promptly made available to a law enforcement agency having jurisdiction where the person expects to reside and entered into the appropriate State records or data system. State procedures shall also ensure that conviction data and fingerprints for persons required to register are promptly transmitted to the Federal Bureau of Investigation.

(B) National reporting

A State shall participate in the national database established under section 14072(b) of this title in accordance with guidelines issued by the Attorney General, including transmission of current address information and other information on registrants to the extent provided by the guidelines.

(3) Verification

(A) For a person required to register under subparagraph (A) of subsection (a)(1) of this section, State procedures shall provide for verification of address at least annually.

(B) The provisions of subparagraph (A) shall be applied to a person required to register under subparagraph (B) of subsection (a)(1) of this section, except that such person must verify the registration every 90 days after the date of the initial release or commencement of parole.

(4) Notification of local law enforcement agencies of changes in address

A change of address by a person required to register under this section shall be reported by the person in the manner provided by State law. State procedures shall ensure that the updated address information is promptly made available to a law enforcement agency having jurisdiction where the person will reside and entered into the appropriate State records or data system.

(5) Registration for change of address to another State

A person who has been convicted of an offense which requires registration under this section and who moves to another State, shall report the change of address to the responsible agency in the State the person is leaving, and shall comply with any registration requirement in the new State of residence. The procedures of the State the person is leaving shall ensure that notice is provided promptly to an agency responsible for registration in the new State, if that State requires registration.

(6) Length of registration

A person required to register under subsection (a)(1) of this section shall continue to comply with this section, except during ensuing periods of incarceration, until—

(A) 10 years have elapsed since the person was released from prison or placed on parole, supervised release, or probation; or

(B) for the life of that person if that person—

(i) has 1 or more prior convictions for an offense described in subsection (a)(1)(A) of this section; or

(ii) has been convicted of an aggravated offense described in subsection (a)(1)(A) of this section; or

(iii) has been determined to be a sexually violent predator pursuant to subsection (a)(2) of this section.

(7) Registration of out-of-State offenders, Federal offenders, persons sentenced by courts martial, and offenders crossing State borders

As provided in guidelines issued by the Attorney General, each State shall include in its registration program residents who were convicted in another State and shall ensure that procedures are in place to accept registration information from—

(A) residents who were convicted in another State, convicted of a Federal offense, or sentenced by a court martial; and

(B) nonresident offenders who have crossed into another State in order to work or attend school.

(c) Registration of offender crossing State border

Any person who is required under this section to register in the State in which such person resides shall also register in any State in which the person is employed, carries on a vocation, or is a student.

(d) Penalty

A person required to register under a State program established pursuant to this section who knowingly fails to so register and keep such registration current shall be subject to criminal penalties in any State in which the person has so failed.

(e) Release of information

(1) The information collected under a State registration program may be disclosed for any purpose permitted under the laws of the State.

(2) The State or any agency authorized by the State shall release relevant information that is necessary to protect the public concerning a specific person required to register under this section, except that the identity of a victim of an offense that requires registration under this section shall not be released. The release of information under this paragraph shall include the maintenance of an Internet site containing such information that is available to the public and instructions on the process for correcting information that a person alleges to be erroneous.

(f) Immunity for good faith conduct

Law enforcement agencies, employees of law enforcement agencies and independent contractors acting at the direction of such agencies, and State officials shall be immune from liability for good faith conduct under this section.

(g) Compliance

(1) Compliance date

Each State shall have not more than 3 years from September 13, 1994, in which to implement this section, except that the Attorney General may grant an additional 2 years to a State that is making good faith efforts to implement this section.

(2) Ineligibility for funds

(A) A State that fails to implement the program as described in this section shall not receive 10 percent of the funds that would otherwise be allocated to the State under section 3756 of this title.

(B) REALLOCATION OF FUNDS.—Any funds that are not allocated for failure to comply with this section shall be reallocated to States that comply with this section.

(h) Fingerprints

Each requirement to register under this section shall be deemed to also require the submission of a set of fingerprints of the person required to register, obtained in accordance with regulations prescribed by the Attorney General under section 14072(h) of this title.

(i) Grants to States for costs of compliance

(1) Program authorized

(A) In general

The Director of the Bureau of Justice Assistance (in this subsection referred to as the “Director”) shall carry out a program, which shall be known as the “Sex Offender Management Assistance Program” (in this subsection referred to as the “SOMA program”), under which the Director shall award a grant to each eligible State to offset costs directly associated with complying with this section.

(B) Uses of funds

Each grant awarded under this subsection shall be—

(i) distributed directly to the State for distribution to State and local entities; and

(ii) used for training, salaries, equipment, materials, and other costs directly associated with complying with this section.

(2) Eligibility

(A) Application

To be eligible to receive a grant under this subsection, the chief executive of a State shall, on an annual basis, submit to the Director an application (in such form and containing such information as the Director may reasonably require) assuring that—

(i) the State complies with (or made a good faith effort to comply with) this section; and

(ii) where applicable, the State has penalties comparable to or greater than Federal penalties for crimes listed in this section, except that the Director may waive the requirement of this clause if a State demonstrates an overriding need for assistance under this subsection.

(B) Regulations**(i) In general**

Not later than 90 days after October 30, 1998, the Director shall promulgate regulations to implement this subsection (including the information that must be included and the requirements that the States must meet) in submitting the applications required under this subsection. In allocating funds under this subsection, the Director may consider the annual number of sex offenders registered in each eligible State's monitoring and notification programs.

(ii) Certain training programs

Prior to implementing this subsection, the Director shall study the feasibility of incorporating into the SOMA program the activities of any technical assistance or training program established as a result of section 13941 of this title. In a case in which incorporating such activities into the SOMA program will eliminate duplication of efforts or administrative costs, the Director shall take administrative actions, as allowable, and make recommendations to Congress to incorporate such activities into the SOMA program prior to implementing the SOMA program.

(3) Authorization of appropriations

There is authorized to be appropriated for each of the fiscal years 2004 through 2007 such sums as may be necessary to carry out the provisions of section 3796dd(d)(10) of this title, as added by the PROTECT Act.

(j) Notice of enrollment at or employment by institutions of higher education**(1) Notice by offenders****(A) In general**

In addition to any other requirements of this section, any person who is required to register in a State shall provide notice as required under State law—

(i) of each institution of higher education in that State at which the person is employed, carries on a vocation, or is a student; and

(ii) of each change in enrollment or employment status of such person at an institution of higher education in that State.

(B) Change in status

A change in status under subparagraph (A)(ii) shall be reported by the person in the manner provided by State law. State procedures shall ensure that the updated information is promptly made available to a law enforcement agency having jurisdiction where such institution is located and entered into the appropriate State records or data system.

(2) State reporting

State procedures shall ensure that the registration information collected under paragraph (1)—

(A) is promptly made available to a law enforcement agency having jurisdiction where such institution is located; and

(B) entered into the appropriate State records or data system.

(3) Request

Nothing in this subsection shall require an educational institution to request such information from any State.

(Pub. L. 103-322, title XVII, §170101, Sept. 13, 1994, 108 Stat. 2038; Pub. L. 104-145, §2, May 17, 1996, 110 Stat. 1345; Pub. L. 104-236, §§3-7, Oct. 3, 1996, 110 Stat. 3096, 3097; Pub. L. 105-119, title I, §115(a)(1)-(5), Nov. 26, 1997, 111 Stat. 2461-2463; Pub. L. 105-314, title VI, §607(a), Oct. 30, 1998, 112 Stat. 2985; Pub. L. 106-386, div. B, title VI, §1601(b)(1), Oct. 28, 2000, 114 Stat. 1537; Pub. L. 108-21, title VI, §§604(a), 605(a), 606, Apr. 30, 2003, 117 Stat. 688.)

REFERENCES IN TEXT

Section 3796dd(d)(10) of this title, as added by the PROTECT Act, referred to in subsec. (i)(3), means section 3796dd(d)(10) of this title, as added by Pub. L. 108-21.

AMENDMENTS

2003—Pub. L. 108-21, §605(a)(1), substituted “Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program” for “Establishment of Program” in section catchline.

Subsec. (a)(3)(A)(viii), (ix). Pub. L. 108-21, §605(a)(2), added cl. (viii) and redesignated former cl. (viii) as (ix).

Subsec. (e)(2). Pub. L. 108-21, §604(a), inserted at end “The release of information under this paragraph shall include the maintenance of an Internet site containing such information that is available to the public and instructions on the process for correcting information that a person alleges to be erroneous.”

Subsec. (i)(3). Pub. L. 108-21, §606, amended heading and text of par. (3) generally. Prior to amendment, text read as follows: “There is authorized to be appropriated to carry out this subsection, \$25,000,000 for each of fiscal years 1999 and 2000.”

2000—Subsec. (j). Pub. L. 106-386 added subsec. (j).

1998—Subsecs. (g), (h). Pub. L. 105-314, §607(a)(1), which directed the amendment of this section by redesignating the second subsection designated as subsection (g) as subsection (h), was executed by redesignating subsec. (g), relating to fingerprints, as (h) to reflect the probable intent of Congress.

Subsec. (i). Pub. L. 105-314, §607(a)(2), added subsec. (i).

1997—Subsec. (a)(1)(A), (B). Pub. L. 105-119, §115(a)(1)(A), struck out “with a designated State law enforcement agency” after “current address”.

Subsec. (a)(2). Pub. L. 105-119, §115(a)(1)(B), added par. (2) and struck out heading and text of former par. (2). Text read as follows: “A determination that a person is a sexually violent predator and a determination that a person is no longer a sexually violent predator shall be made by the sentencing court after receiving a report by a State board composed of experts in the field of the behavior and treatment of sexual offenders, victim rights advocates, and representatives from law enforcement agencies.”

Subsec. (a)(3)(A). Pub. L. 105-119, §115(a)(1)(C)(i), substituted “in a range of offenses specified by State law which is comparable to or which exceeds the following range of offenses:” for “that consists of—” in introductory provisions.

Subsec. (a)(3)(B). Pub. L. 105-119, §115(a)(1)(C)(ii), substituted “in a range of offenses specified by State law which is comparable to or which exceeds the range of offenses encompassed by” for “that consists of”.

Subsec. (a)(3)(F), (G). Pub. L. 105-119, §115(a)(1)(D), added subpars. (F) and (G).

Subsec. (b)(1). Pub. L. 105-119, §115(a)(2)(A)(i), substituted “Duties of responsible officials” for “Duty of State prison official or court” in heading.

Subsec. (b)(1)(A). Pub. L. 105-119, § 115(a)(2)(A)(ii)(I), substituted “the court, or another responsible officer or official” for “or in the case of probation, the court” in introductory provisions.

Subsec. (b)(1)(A)(ii). Pub. L. 105-119, § 115(a)(2)(A)(ii)(II), substituted “report the change of address as provided by State law” for “give the new address to a designated State law enforcement agency in writing within 10 days”.

Subsec. (b)(1)(A)(iii). Pub. L. 105-119, § 115(a)(2)(A)(ii)(III), substituted “shall report the change of address as provided by State law and comply with any registration requirement in the new State of residence, and inform the person that the person must also register in a State where the person is employed, carries on a vocation, or is a student” for “shall register the new address with the law enforcement agency with whom the person last registered, and the person is also required to register with a designated law enforcement agency in the new State not later than 10 days after establishing residence in the new State, if the new State has a registration requirement”.

Subsec. (b)(1)(B). Pub. L. 105-119, § 115(a)(2)(A)(iii), substituted “, the court, or another responsible officer or official” for “or the court”.

Subsec. (b)(2). Pub. L. 105-119, § 115(a)(2)(B), added par. (2) and struck out heading and text of former par. (2). Text read as follows: “The officer, or in the case of a person placed on probation, the court, shall, within 3 days after receipt of information described in paragraph (1), forward it to a designated State law enforcement agency. The State law enforcement agency shall immediately enter the information into the appropriate State law enforcement record system and notify the appropriate law enforcement agency having jurisdiction where the person expects to reside. The State law enforcement agency shall also immediately transmit all information described in paragraph (1) to the Federal Bureau of Investigation for inclusion in the FBI database described in section 14072 of this title.”

Subsec. (b)(3)(A). Pub. L. 105-119, § 115(a)(2)(C)(i), in introductory provisions, substituted “State procedures shall provide for verification of address at least annually.” for “on each anniversary of the person’s initial registration date during the period in which the person is required to register under this section the following applies:”.

Subsec. (b)(3)(A)(i) to (iv). Pub. L. 105-119, § 115(a)(2)(C)(ii), which directed the amendment of par. (3)(A) by striking out cls. (i) through (v), was executed by striking out cls. (i) through (iv) to reflect the probable intent of Congress because no cl. (v) had been enacted. Prior to amendment, cls. (i) through (iv) read as follows:

“(i) The designated State law enforcement agency shall mail a nonforwardable verification form to the last reported address of the person.

“(ii) The person shall mail the verification form to the designated State law enforcement agency within 10 days after receipt of the form.

“(iii) The verification form shall be signed by the person, and state that the person still resides at the address last reported to the designated State law enforcement agency. The person shall include with the verification form, fingerprints and a photograph of that person.

“(iv) If the person fails to mail the verification form to the designated State law enforcement agency within 10 days after receipt of the form, the person shall be in violation of this section unless the person proves that the person has not changed the residence address.”

Subsec. (b)(4). Pub. L. 105-119, § 115(a)(2)(D), substituted “section shall be reported by the person in the manner provided by State law. State procedures shall ensure that the updated address information is promptly made available to a law enforcement agency having jurisdiction where the person will reside and entered into the appropriate State records or data system” for “section reported to the designated State law enforcement agency shall be immediately reported to the ap-

propriate law enforcement agency having jurisdiction where the person is residing. The designated law enforcement agency shall, if the person changes residence to another State, notify the law enforcement agency with which the person must register in the new State, if the new State has a registration requirement”.

Subsec. (b)(5). Pub. L. 105-119, § 115(a)(2)(E), substituted “and who moves to another State, shall report the change of address to the responsible agency in the State the person is leaving, and shall comply with any registration requirement in the new State of residence. The procedures of the State the person is leaving shall ensure that notice is provided promptly to an agency responsible for registration in the new State, if that State requires registration” for “shall register the new address with a designated law enforcement agency in another State to which the person moves not later than 10 days after such person establishes residence in the new State, if the new State has a registration requirement”.

Subsec. (b)(7). Pub. L. 105-119, § 115(a)(2)(F), added par. (7).

Subsec. (c). Pub. L. 105-119, § 115(a)(3), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 105-119, § 115(a)(3), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 105-119, § 115(a)(3), (4), redesignated subsec. (d) as (e) and in par. (2) substituted “The State or any agency authorized by the State” for “The designated State law enforcement agency and any local law enforcement agency authorized by the State agency”. Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 105-119, § 115(a)(3), (5), redesignated subsec. (e) as (f) and substituted “and independent contractors acting at the direction of such agencies, and State officials” for “, and State officials”. Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 105-119, § 115(a)(3), redesignated subsec. (f), relating to compliance, as (g).

1996—Subsec. (a)(2). Pub. L. 104-236, § 4, inserted before period at end “, victim rights advocates, and representatives from law enforcement agencies”.

Subsec. (b)(2). Pub. L. 104-236, § 7, amended heading and text of par. (2) generally. Prior to amendment, text read as follows: “The officer, or in the case of a person placed on probation, the court, shall, within 3 days after receipt of information described in paragraph (1), forward it to a designated State law enforcement agency. The State law enforcement agency shall immediately enter the information into the appropriate State law enforcement record system and notify the appropriate law enforcement agency having jurisdiction where the person expects to reside. The State law enforcement agency shall also immediately transmit the conviction data and fingerprints to the Federal Bureau of Investigation.”

Subsec. (b)(3)(A)(iii). Pub. L. 104-236, § 6, inserted at end “The person shall include with the verification form, fingerprints and a photograph of that person.”

Subsec. (b)(6). Pub. L. 104-236, § 3, amended heading and text of par. (6) generally. Prior to amendment, text read as follows:

“(A) A person required to register under subparagraph (A) of subsection (a)(1) of this section shall continue to comply with this section until 10 years have elapsed since the person was released from prison, placed on parole, supervised release, or probation.

“(B) The requirement of a person to register under subparagraph (B) of subsection (a)(1) of this section shall terminate upon a determination, made in accordance with paragraph (2) of subsection (a) of this section, that the person no longer suffers from a mental abnormality or personality disorder that would make the person likely to engage in a predatory sexually violent offense.”

Subsec. (d). Pub. L. 104-145 amended heading and text of subsec. (d) generally. Prior to amendment, text read as follows: “The information collected under a State registration program shall be treated as private data except that—

“(1) such information may be disclosed to law enforcement agencies for law enforcement purposes;

“(2) such information may be disclosed to government agencies conducting confidential background checks; and

“(3) the designated State law enforcement agency and any local law enforcement agency authorized by the State agency may release relevant information that is necessary to protect the public concerning a specific person required to register under this section, except that the identity of a victim of an offense that requires registration under this section shall not be released.”

Subsec. (g). Pub. L. 104-236, § 5, added subsec. (g).

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108-21, title VI, § 604(b), Apr. 30, 2003, 117 Stat. 688, provided that: “Each State shall implement the amendment made by this section [amending this section] within 3 years after the date of enactment of this Act [Apr. 30, 2003], except that the Attorney General may grant an additional 2 years to a State that is making a good faith effort to implement the amendment made by this section.”

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-386, div. B, title VI, § 1601(b)(2), Oct. 28, 2000, 114 Stat. 1537, provided that: “The amendment made by this subsection [amending this section] shall take effect 2 years after the date of the enactment of this Act [Oct. 28, 2000].”

EFFECTIVE DATE OF 1997 AMENDMENT

Section 115(c) of Pub. L. 105-119 provided that: “This section [amending this section, section 14072 of this title, and sections 3521, 3563, 3583, 4042, and 4209 of Title 18, Crimes and Criminal Procedure, enacting provisions set out as notes under section 14039 of this title and section 951 of Title 10, Armed Forces, and amending provisions set out as a note under this section] shall take effect on the date of the enactment of this Act [Nov. 26, 1997], except that—

“(1) subparagraphs (A), (B), and (C) of subsection (a)(8) [amending sections 3563, 3583, 4042, and 4209 of Title 18, Crimes and Criminal Procedure, and enacting provisions set out as a note under section 951 of Title 10, Armed Forces] shall take effect 1 year after the date of the enactment of this Act; and

“(2) States shall have 3 years from such date of enactment to implement amendments made by this Act [probably should be “this section”] which impose new requirements under the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act [42 U.S.C. 14071 et seq.], and the Attorney General may grant an additional 2 years to a State that is making good faith efforts to implement these amendments.”

EFFECTIVE DATE OF 1996 AMENDMENT

Section 10 of Pub. L. 104-236, as amended by Pub. L. 105-119, title I, § 115(a)(7), Nov. 26, 1997, 111 Stat. 2464, provided that:

“(a) IN GENERAL.—This Act [enacting sections 14072 and 14073 of this title, amending this section, and enacting provisions set out as notes under this section and section 13701 of this title] and the amendments made by this Act shall become effective 1 year after the date of enactment of this Act [Oct. 3, 1996].

“(b) COMPLIANCE BY STATES.—Each State shall implement the amendments made by sections 3, 4, 5, 6, and 7 of this Act [amending this section] not later than 3 years after the date of enactment of this Act, except that the Attorney General may grant an additional 2 years to a State that is making good faith efforts to implement such amendments.

“(c) INELIGIBILITY FOR FUNDS.—

“(1) A State that fails to implement the program as described in sections 3, 4, 5, 6, and 7 of this Act [amending this section] shall not receive 10 percent of

the funds that would otherwise be allocated to the State under section 506 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3756).

“(2) Any funds that are not allocated for failure to comply with section 3, 4, 5, 6, or 7 of this Act shall be reallocated to States that comply with these sections.

“(d) EFFECTIVE DATE.—States shall be allowed the time specified in subsection (b) to establish minimally sufficient sexual offender registration programs for purposes of the amendments made by section 2 [enacting section 14072 of this title]. Subsections (c) and (k) of section 170102 of the Violent Crime Control and Law Enforcement Act of 1994 [42 U.S.C. 14072(c), (k)], and any requirement to issue related regulations, shall take effect at the conclusion of the time provided under this subsection for the establishment of minimally sufficient sexual offender registration programs.”

REGULATIONS

Section 9 of Pub. L. 104-236 provided that: “Not later than 1 year after the date of enactment of this Act [Oct. 3, 1996], the Attorney General shall issue regulations to carry out this Act [see Effective Date of 1996 Amendment note above] and the amendments made by this Act.”

SEVERABILITY

Section 11 of Pub. L. 104-236 provided that: “If any provision of this Act [see Effective Date of 1996 Amendment note above], an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.”

TRANSFER OF FUNCTIONS

Effective Aug. 1, 2000, all functions of Director of Bureau of Justice Assistance, other than those enumerated in section 3742(3) to (6) of this title, transferred to Assistant Attorney General for Office of Justice Programs, see section 1000(a)(1) [title I, § 108(b)] of Pub. L. 106-113, set out as a note under section 3741 of this title.

NATIONAL INTERNET SITE

Pub. L. 108-21, title VI, § 604(c), Apr. 30, 2003, 117 Stat. 688, provided that: “The Crimes Against Children Section of the Criminal Division of the Department of Justice shall create a national Internet site that links all State Internet sites established pursuant to this section [amending this section and enacting provisions set out as a note under this section].”

STUDY OF SEX OFFENDER MANAGEMENT ASSISTANCE PROGRAM

Pub. L. 105-314, title VI, § 607(b), Oct. 30, 1998, 112 Stat. 2986, provided that: “Not later than March 1, 2000, the Director shall conduct a study to assess the efficacy of the Sex Offender Management Assistance Program under section 170101(i) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14071(i)), as added by this section, and submit recommendations to Congress.”

STUDY OF HOTLINES

Pub. L. 105-314, title IX, § 902, Oct. 30, 1998, 112 Stat. 2991, provided that:

“(a) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act [Oct. 30, 1998], the Attorney General shall conduct a study in accordance with subsection (b) and submit to Congress a report on the results of that study.

“(b) CONTENTS OF STUDY.—The study under this section shall include an examination of—

“(1) existing State programs for informing the public about the presence of sexual predators released

from prison, as required in section 170101 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14071), including the use of CD-ROMs, Internet databases, and Sexual Offender Identification Hotlines, such as those used in the State of California; and

“(2) the feasibility of establishing a national hotline for parents to access a Federal Bureau of Investigation database that tracks the location of convicted sexual predators established under section 170102 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14072) and, in determining that feasibility, the Attorney General shall examine issues including the cost, necessary changes to Federal and State laws necessitated by the creation of such a hotline, consistency with Federal and State case law pertaining to community notification, and the need for, and accuracy and reliability of, the information available through such a hotline.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14072 of this title; title 18 sections 3563, 3583; title 20 sections 1092, 1232g.

§ 14072. FBI database

(a) Definitions

For purposes of this section—

(1) the term “FBI” means the Federal Bureau of Investigation;

(2) the terms “criminal offense against a victim who is a minor”, “sexually violent offense”, “sexually violent predator”, “mental abnormality”, “predatory”, “employed, carries on a vocation”, and “student” have the same meanings as in section 14071(a)(3) of this title; and

(3) the term “minimally sufficient sexual offender registration program” means any State sexual offender registration program that—

(A) requires the registration of each offender who is convicted of an offense in a range of offenses specified by State law which is comparable to or exceeds that described in subparagraph (A) or (B) of section 14071(a)(1) of this title;

(B) participates in the national database established under subsection (b) of this section in conformity with guidelines issued by the Attorney General;

(C) provides for verification of address at least annually;¹

(D) requires that each person who is required to register under subparagraph (A) shall do so for a period of not less than 10 years beginning on the date that such person was released from prison or placed on parole, supervised release, or probation.

(b) Establishment

The Attorney General shall establish a national database at the Federal Bureau of Investigation to track the whereabouts and movement of—

(1) each person who has been convicted of a criminal offense against a victim who is a minor;

(2) each person who has been convicted of a sexually violent offense; and

(3) each person who is a sexually violent predator.

(c) Registration requirement

Each person described in subsection (b) of this section who resides in a State that has not established a minimally sufficient sexual offender registration program shall register a current address, fingerprints of that person, and a current photograph of that person with the FBI for inclusion in the database established under subsection (b) of this section for the time period specified under subsection (d) of this section.

(d) Length of registration

A person described in subsection (b) of this section who is required to register under subsection (c) of this section shall, except during ensuing periods of incarceration, continue to comply with this section—

(1) until 10 years after the date on which the person was released from prison or placed on parole, supervised release, or probation; or

(2) for the life of the person, if that person—
(A) has 2 or more convictions for an offense described in subsection (b) of this section;

(B) has been convicted of aggravated sexual abuse, as defined in section 2241 of title 18 or in a comparable provision of State law; or

(C) has been determined to be a sexually violent predator.

(e) Verification

(1) Persons convicted of an offense against a minor or a sexually violent offense

In the case of a person required to register under subsection (c) of this section, the FBI shall, during the period in which the person is required to register under subsection (d) of this section, verify the person’s address in accordance with guidelines that shall be promulgated by the Attorney General. Such guidelines shall ensure that address verification is accomplished with respect to these individuals and shall require the submission of fingerprints and photographs of the individual.

(2) Sexually violent predators

Paragraph (1) shall apply to a person described in subsection (b)(3) of this section, except that such person must verify the registration once every 90 days after the date of the initial release or commencement of parole of that person.

(f) Community notification

(1) In general

Subject to paragraph (2), the FBI may release relevant information concerning a person required to register under subsection (c) of this section that is necessary to protect the public.

(2) Identity of victim

In no case shall the FBI release the identity of any victim of an offense that requires registration by the offender with the FBI.

(g) Notification of FBI of changes in residence

(1) Establishment of new residence

For purposes of this section, a person shall be deemed to have established a new residence during any period in which that person resides for not less than 10 days.

¹ So in original. Probably should be followed by “and”.

(2) Persons required to register with the FBI

Each establishment of a new residence, including the initial establishment of a residence immediately following release from prison, or placement on parole, supervised release, or probation, by a person required to register under subsection (c) of this section shall be reported to the FBI not later than 10 days after that person establishes a new residence.

(3) Individual registration requirement

A person required to register under subsection (c) of this section or under a State sexual offender offender² registration program, including a program established under section 14071 of this title, who changes address to a State other than the State in which the person resided at the time of the immediately preceding registration shall, not later than 10 days after that person establishes a new residence, register a current address, fingerprints, and photograph of that person, for inclusion in the appropriate database, with—

(A) the FBI; and

(B) the State in which the new residence is established.

(4) State registration requirement

Any time any State agency in a State with a minimally sufficient sexual offender registration program, including a program established under section 14071 of this title, is notified of a change of address by a person required to register under such program within or outside of such State, the State shall notify—

(A) the law enforcement officials of the jurisdiction to which, and the jurisdiction from which, the person has relocated; and

(B) the FBI.

(5) Verification**(A) Notification of local law enforcement officials**

The FBI shall ensure that State and local law enforcement officials of the jurisdiction from which, and the State and local law enforcement officials of the jurisdiction to which, a person required to register under subsection (c) of this section relocates are notified of the new residence of such person.

(B) Notification of FBI

A State agency receiving notification under this subsection shall notify the FBI of the new residence of the offender.

(C) Verification**(i) State agencies**

If a State agency cannot verify the address of or locate a person required to register with a minimally sufficient sexual offender registration program, including a program established under section 14071 of this title, the State shall immediately notify the FBI.

(ii) FBI

If the FBI cannot verify the address of or locate a person required to register under

subsection (c) of this section or if the FBI receives notification from a State under clause (i), the FBI shall—

(I) classify the person as being in violation of the registration requirements of the national database; and

(II) add the name of the person to the National Crime Information Center Wanted person file and create a wanted persons record: *Provided*, That an arrest warrant which meets the requirements for entry into the file is issued in connection with the violation.

(h) Fingerprints**(1) FBI registration**

For each person required to register under subsection (c) of this section, fingerprints shall be obtained and verified by the FBI or a local law enforcement official pursuant to regulations issued by the Attorney General.

(2) State registration systems

In a State that has a minimally sufficient sexual offender registration program, including a program established under section 14071 of this title, fingerprints required to be registered with the FBI under this section shall be obtained and verified in accordance with State requirements. The State agency responsible for registration shall ensure that the fingerprints and all other information required to be registered is registered with the FBI.

(i) Penalty

A person who is—

(1) required to register under paragraph (1), (2), or (3) of subsection (g) of this section and knowingly fails to comply with this section;

(2) required to register under a sexual offender registration program in the person's State of residence and knowingly fails to register in any other State in which the person is employed, carries on a vocation, or is a student;

(3) described in section 4042(c)(4) of title 18, and knowingly fails to register in any State in which the person resides, is employed, carries on a vocation, or is a student following release from prison or sentencing to probation; or

(4) sentenced by a court martial for conduct in a category specified by the Secretary of Defense under section 115(a)(8)(C) of title I of Public Law 105-119, and knowingly fails to register in any State in which the person resides, is employed, carries on a vocation, or is a student following release from prison or sentencing to probation, shall, in the case of a first offense under this subsection, be imprisoned for not more than 1 year and, in the case of a second or subsequent offense under this subsection, be imprisoned for not more than 10 years.

(j) Release of information

The information collected by the FBI under this section shall be disclosed by the FBI—

(1) to Federal, State, and local criminal justice agencies for—

(A) law enforcement purposes; and

(B) community notification in accordance with section 14071(d)(3)³ of this title; and

² So in original.

³ See References in Text note below.

(2) to Federal, State, and local governmental agencies responsible for conducting employment-related background checks under section 5119a of this title.

(k) Notification upon release

Any State not having established a program described in subsection (a)(3) of this section must—

(1) upon release from prison, or placement on parole, supervised release, or probation, notify each offender who is convicted of an offense described in subparagraph (A) or (B) of section 14071(a)(1) of this title of their duty to register with the FBI; and

(2) notify the FBI of the release of each offender who is convicted of an offense described in subparagraph (A) or (B) of section 14071(a)(1) of this title.

(Pub. L. 103-322, title XVII, §170102, as added Pub. L. 104-236, §2(a), Oct. 3, 1996, 110 Stat. 3093; amended Pub. L. 105-119, title I, §115(a)(6), Nov. 26, 1997, 111 Stat. 2463; Pub. L. 105-277, div. A, §101(b) [title I, §123], Oct. 21, 1998, 112 Stat. 2681-50, 2681-72.)

REFERENCES IN TEXT

Section 115(a)(8)(C) of title I of Public Law 105-119, referred to in subsec. (i)(4), is set out as a note under section 951 of Title 10, Armed Forces.

Section 14071(d)(3) of this title, referred to in subsec. (j)(1)(B), was redesignated section 14071(e)(3) of this title by Pub. L. 105-119, title I, §115(a)(3), Nov. 26, 1997, 111 Stat. 2463.

AMENDMENTS

1998—Subsec. (a)(2). Pub. L. 105-277, §101(b) [title I, §123(1)], struck out “or” after “‘employed.’”

Subsec. (g)(3). Pub. L. 105-277, §101(b) [title I, §123(2)], substituted “State sexual offender” for “minimally sufficient” in introductory provisions.

Subsec. (i). Pub. L. 105-277, §101(b) [title I, §123(3)], amended heading and text of subsec. (i) generally. Prior to amendment, text read as follows: “A person required to register under paragraph (1), (2), or (3) of subsection (g) of this section or pursuant to section 14071(b)(7) of this title who knowingly fails to comply with this section shall—

“(1) in the case of a first offense—

“(A) if the person has been convicted of 1 offense described in subsection (b) of this section, be fined not more than \$100,000; or

“(B) if the person has been convicted of more than 1 offense described in subsection (b) of this section, be imprisoned for up to 1 year and fined not more than \$100,000; or

“(2) in the case of a second or subsequent offense, be imprisoned for up to 10 years and fined not more than \$100,000.”

1997—Subsec. (a)(2). Pub. L. 105-119, §115(a)(6)(A), substituted “‘predatory’, ‘employed, or carries on a vocation’, and ‘student’” for “‘and ‘predatory’”.

Subsec. (a)(3)(A). Pub. L. 105-119, §115(a)(6)(B)(i), inserted “in a range of offenses specified by State law which is comparable to or exceeds that” before “described”.

Subsec. (a)(3)(B). Pub. L. 105-119, §115(a)(6)(B)(ii), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “requires that all information gathered under such program be transmitted to the FBI in accordance with subsection (g) of this section;”.

Subsec. (a)(3)(C). Pub. L. 105-119, §115(a)(6)(B)(iii), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: “meets the requirements for verification under section 14071(b)(3) of this title; and”.

Subsec. (i). Pub. L. 105-119, §115(a)(6)(C), inserted “or pursuant to section 14071(b)(7) of this title” after “subsection (g) of this section” in introductory provisions.

EFFECTIVE DATE

For effective date of section, see section 10 of Pub. L. 104-236, as amended, set out as an Effective Date of 1996 Amendment note under section 14071 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14071 of this title.

§ 14073. Immunity for good faith conduct

State and Federal law enforcement agencies, employees of State and Federal law enforcement agencies, and State and Federal officials shall be immune from liability for good faith conduct under section 14072¹ of this title.

(Pub. L. 104-236, §8, Oct. 3, 1996, 110 Stat. 3097.)

REFERENCES IN TEXT

Section 14072 of this title, referred to in text, was in the original “section 170102”, which was translated as meaning section 170102 of Pub. L. 103-322, as added by Pub. L. 104-236, to reflect the probable intent of Congress. Pub. L. 104-236, which enacted this section, contains no section 170102.

CODIFICATION

Section was enacted as part of the Pam Lychner Sexual Offender Tracking and Identification Act of 1996, and not as part of the Violent Crime Control and Law Enforcement Act of 1994 which enacted this chapter.

EFFECTIVE DATE

Section effective one year after Oct. 3, 1996, see section 10(a) of Pub. L. 104-236, set out as an Effective Date of 1996 Amendment note under section 14071 of this title.

SUBCHAPTER VII—RURAL CRIME

§ 14081. Rural Crime and Drug Enforcement Task Forces

(a) Establishment

The Attorney General, in consultation with the Governors, mayors, and chief executive officers of State and local law enforcement agencies, may establish a Rural Crime and Drug Enforcement Task Force in judicial districts that encompass significant rural lands. Assets seized as a result of investigations initiated by a Rural Crime and Drug Enforcement Task Force and forfeited under Federal law shall be used, consistent with the guidelines on equitable sharing established by the Attorney General and of the Secretary of the Treasury, primarily to enhance the operations of the task force and its participating State and local law enforcement agencies.

(b) Task force membership

The Task Forces¹ established under subsection (a) of this section shall be carried out under policies and procedures established by the Attorney General. The Attorney General may deputize State and local law enforcement officers and may cross-designate up to 100 Federal law enforcement officers, when necessary to un-

¹ See References in Text note below.

¹ So in original. Probably should not be capitalized.

dertake investigations pursuant to section 873(a) of title 21 or offenses punishable by a term of imprisonment of 10 years or more under title 18. The task forces—

(1) shall include representatives from—

(A) State and local law enforcement agencies;

(B) the office of the United States Attorney for the judicial district; and

(C) the Federal Bureau of Investigation, the Drug Enforcement Administration, the Immigration and Naturalization Service, and the United States Marshals Service; and

(2) may include representatives of other Federal law enforcement agencies, such as the United States Customs Service, United States Park Police, United States Forest Service, Bureau of Alcohol, Tobacco, and Firearms, and Bureau of Land Management.

(Pub. L. 103–322, title XVIII, §180102, Sept. 13, 1994, 108 Stat. 2045.)

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

For transfer of authorities, functions, personnel, and assets of the Bureau of Alcohol, Tobacco and Firearms, including the related functions of the Secretary of the Treasury, to the Department of Justice, see section 531(c) of Title 6, Domestic Security.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of Title 8, Aliens and Nationality.

§ 14082. Rural drug enforcement training

(a) Specialized training for rural officers

The Director of the Federal Law Enforcement Training Center shall develop a specialized course of instruction devoted to training law enforcement officers from rural agencies in the investigation of drug trafficking and related crimes.

(b) Authorization of appropriations

There are authorized to be appropriated to carry out subsection (a) of this section—

- (1) \$1,000,000 for fiscal year 1996;
- (2) \$1,000,000 for fiscal year 1997;
- (3) \$1,000,000 for fiscal year 1998;
- (4) \$1,000,000 for fiscal year 1999; and
- (5) \$1,000,000 for fiscal year 2000.

(Pub. L. 103–322, title XVIII, §180103, Sept. 13, 1994, 108 Stat. 2046.)

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Federal Law Enforcement Training Center of the Department of the Treasury to the Secretary of Homeland Security, and for treatment of related references, see sections 203(4), 551(d), 552(d), and 557 of

Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 14083. More agents for Drug Enforcement Administration

There are authorized to be appropriated for the hiring of additional Drug Enforcement Administration agents—

- (1) \$12,000,000 for fiscal year 1996;
- (2) \$20,000,000 for fiscal year 1997;
- (3) \$30,000,000 for fiscal year 1998;
- (4) \$40,000,000 for fiscal year 1999; and
- (5) \$48,000,000 for fiscal year 2000.

(Pub. L. 103–322, title XVIII, §180104, Sept. 13, 1994, 108 Stat. 2046.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

SUBCHAPTER VIII—POLICE CORPS AND LAW ENFORCEMENT OFFICERS TRAINING AND EDUCATION

PART A—POLICE CORPS

§ 14091. Purposes

The purposes of this part are to—

- (1) address violent crime by increasing the number of police with advanced education and training on community patrol; and
- (2) provide educational assistance to law enforcement personnel and to students who possess a sincere interest in public service in the form of law enforcement.

(Pub. L. 103–322, title XX, §200102, Sept. 13, 1994, 108 Stat. 2049.)

SHORT TITLE

For short title of this part as the “Police Corps Act”, see section 200101 of Pub. L. 103–322, set out as a note under section 13701 of this title.

§ 14092. Definitions

In this part—

“academic year” means a traditional academic year beginning in August or September and ending in the following May or June.

“dependent child” means a natural or adopted child or stepchild of a law enforcement officer who at the time of the officer’s death—

(A) was no more than 21 years old; or

(B) if older than 21 years, was in fact dependent on the child’s parents for at least one-half of the child’s support (excluding educational expenses), as determined by the Director.

“Director” means the Director of the Office of the Police Corps and Law Enforcement Education appointed under section 14093¹ of this title.

“educational expenses” means expenses that are directly attributable to a course of edu-

¹ So in original. Section 14093 of this title does not provide for the appointment of a Director.

cation leading to the award of either a baccalaureate or graduate degree in a course of study which, in the judgment of the State or local police force to which the participant will be assigned, includes appropriate preparation for police service including the cost of tuition, fees, books, supplies, transportation, room and board and miscellaneous expenses.

“institution of higher education” has the meaning stated in the first sentence of section 1001 of title 20.

“participant” means a participant in the Police Corps program selected pursuant to section 14095² of this title.

“State” means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands.

“State Police Corps program” means a State police corps program that meets the requirements of section 14099 of this title.

(Pub. L. 103-322, title XX, §200103, Sept. 13, 1994, 108 Stat. 2049; Pub. L. 104-134, title I, §101(a) [title I, §121], Apr. 26, 1996, 110 Stat. 1321, 1321-22; renumbered title I, Pub. L. 104-140, §1(a), May 2, 1996, 110 Stat. 1327; Pub. L. 105-244, title I, §102(a)(13)(O), Oct. 7, 1998, 112 Stat. 1621.)

AMENDMENTS

1998—Subsec. (b). Pub. L. 105-244 substituted “section 1001” for “section 1141(a)” in par. defining “institution of higher education”.

1996—Pub. L. 104-134 amended generally par. defining “education expenses”. Prior to amendment, par. read as follows: “‘educational expenses’ means expenses that are directly attributable to—

“(A) a course of education leading to the award of the baccalaureate degree in legal- or criminal justice-related studies; or

“(B) a course of graduate study legal or criminal justice studies following award of a baccalaureate degree,

including the cost of tuition, fees, books, supplies, transportation, room and board and miscellaneous expenses.”

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see section 3 of Pub. L. 105-244, set out as a note under section 1001 of Title 20, Education.

§ 14093. Establishment of Office of the Police Corps and Law Enforcement Education

There is established in the Department of Justice, under the general authority of the Attorney General, an Office of the Police Corps and Law Enforcement Education.

(Pub. L. 103-322, title XX, §200104, Sept. 13, 1994, 108 Stat. 2050.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14092, 14111 of this title.

§ 14094. Designation of lead agency and submission of State plan

(a) Lead agency

A State that desires to participate in the Police Corps program under this part shall des-

ignate a lead agency that will be responsible for—

- (1) submitting to the Director a State plan described in subsection (b) of this section; and
- (2) administering the program in the State.

(b) State plans

A State plan shall—

(1) contain assurances that the lead agency shall work in cooperation with the local law enforcement liaisons, representatives of police labor organizations and police management organizations, and other appropriate State and local agencies to develop and implement inter-agency agreements designed to carry out the program;

(2) contain assurances that the State shall advertise the assistance available under this part;

(3) contain assurances that the State shall screen and select law enforcement personnel for participation in the program; and

(4) meet the requirements of section 14099 of this title.

(Pub. L. 103-322, title XX, §200105, Sept. 13, 1994, 108 Stat. 2050.)

§ 14095. Scholarship assistance

(a) Scholarships authorized

(1) The Director may award scholarships to participants who agree to work in a State or local police force in accordance with agreements entered into pursuant to subsection (d) of this section.

(2)(A) Except as provided in subparagraph (B), each scholarship payment made under this section for each academic year shall not exceed—

(i) \$10,000; or

(ii) the cost of the educational expenses related to attending an institution of higher education.

(B) In the case of a participant who is pursuing a course of educational study during substantially an entire calendar year, the amount of scholarship payments made during such year shall not exceed \$13,333.

(C) The total amount of scholarship assistance received by any one student under this section shall not exceed \$40,000.

(3) Recipients of scholarship assistance under this section shall continue to receive such scholarship payments only during such periods as the Director finds that the recipient is maintaining satisfactory progress as determined by the institution of higher education the recipient is attending.

(4)(A) The Director shall make scholarship payments under this section directly to the institution of higher education that the student is attending.

(B) Each institution of higher education receiving a payment on behalf of a participant pursuant to subparagraph (A) shall remit to such student any funds in excess of the costs of tuition, fees, and room and board payable to the institution.

(b) Reimbursement authorized

(1) The Director may make payments to a participant to reimburse such participant for the

² So in original. Probably should be section “14096”.

costs of educational expenses if the student agrees to work in a State or local police force in accordance with the agreement entered into pursuant to subsection (d) of this section.

(2)(A) Each payment made pursuant to paragraph (1) for each academic year of study shall not exceed—

(i) \$10,000; or

(ii) the cost of educational expenses related to attending an institution of higher education.

(B) In the case of a participant who is pursuing a course of educational study during substantially an entire calendar year, the amount of scholarship payments made during such year shall not exceed \$13,333.

(C) The total amount of payments made pursuant to subparagraph (A) to any 1 student shall not exceed \$40,000.

(c) Use of scholarship

Scholarships awarded under this subsection¹ shall only be used to attend a 4-year institution of higher education, except that—

(1) scholarships may be used for graduate and professional study; and

(2) if a participant has enrolled in the program upon or after transfer to a 4-year institution of higher education, the Director may reimburse the participant for the participant's prior educational expenses.

(d) Agreement

(1)(A) Each participant receiving a scholarship or a payment under this section shall enter into an agreement with the Director.

(B) An agreement under subparagraph (A) shall contain assurances that the participant shall—

(i) after successful completion of a baccalaureate program and training as prescribed in section 14097 of this title, work for 4 years in a State or local police force without there having arisen sufficient cause for the participant's dismissal under the rules applicable to members of the police force of which the participant is a member;

(ii) complete satisfactorily—

(I) an educational course of study and receipt of a baccalaureate degree (in the case of undergraduate study) or the reward of credit to the participant for having completed one or more graduate courses (in the case of graduate study); and

(II) Police Corps training and certification by the Director that the participant has met such performance standards as may be established pursuant to section 14097 of this title; and

(iii) repay all of the scholarship or payment received plus interest at the rate of 10 percent if the conditions of clauses (i) and (ii) are not complied with.

(2)(A) A recipient of a scholarship or payment under this section shall not be considered to be in violation of the agreement entered into pursuant to paragraph (1) if the recipient—

(i) dies; or

(ii) becomes permanently and totally disabled as established by the sworn affidavit of a qualified physician.

(B) If a scholarship recipient is unable to comply with the repayment provision set forth in paragraph (1)(B)(ii)² because of a physical or emotional disability or for good cause as determined by the Director, the Director may substitute community service in a form prescribed by the Director for the required repayment.

(C) The Director shall expeditiously seek repayment from a participant who violates an agreement described in paragraph (1).

(e) Dependent child

A dependent child of a law enforcement officer—

(1) who is a member of a State or local police force or is a Federal criminal investigator or uniformed police officer,

(2) who is not a participant in the Police Corps program, but

(3) who serves in a State for which the Director has approved a Police Corps plan, and

(4) who is killed in the course of performing police duties,

shall be entitled to the scholarship assistance authorized in this section for any course of study in any accredited institution of higher education. Such dependent child shall not incur any repayment obligation in exchange for the scholarship assistance provided in this section.

(f) Application

Each participant desiring a scholarship or payment under this section shall submit an application as prescribed by the Director in such manner and accompanied by such information as the Director may reasonably require.

(Pub. L. 103-322, title XX, §200106, Sept. 13, 1994, 108 Stat. 2050; Pub. L. 107-273, div. C, title I, §11006(1), Nov. 2, 2002, 116 Stat. 1817.)

AMENDMENTS

2002—Subsecs. (a)(2), (b)(2). Pub. L. 107-273 substituted “\$10,000” for “\$7,500” in subpar. (A)(i), “\$13,333” for “\$10,000” in subpar. (B), and “\$40,000” for “\$30,000” in subpar. (C).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14098 of this title.

§ 14096. Selection of participants

(a) In general

Participants in State Police Corps programs shall be selected on a competitive basis by each State under regulations prescribed by the Director.

(b) Selection criteria and qualifications

(1) In order to participate in a State Police Corps program, a participant shall—

(A) be a citizen of the United States or an alien lawfully admitted for permanent residence in the United States;

(B) meet the requirements for admission as a trainee of the State or local police force to which the participant will be assigned pursu-

¹ So in original. Probably should be “section”.

² So in original. Probably should be paragraph “(1)(B)(iii)”.

ant to section 14099(5) of this title, including achievement of satisfactory scores on any applicable examination, except that failure to meet the age requirement for a trainee of the State or local police shall not disqualify the applicant if the applicant will be of sufficient age upon completing an undergraduate course of study;

(C) possess the necessary mental and physical capabilities and emotional characteristics to discharge effectively the duties of a law enforcement officer;

(D) be of good character and demonstrate sincere motivation and dedication to law enforcement and public service;

(E) in the case of an undergraduate, agree in writing that the participant will complete an educational course of study leading to the award of a baccalaureate degree and will then accept an appointment and complete 4 years of service as an officer in the State police or in a local police department within the State;

(F) in the case of a participant desiring to undertake or continue graduate study, agree in writing that the participant will accept an appointment and complete 4 years of service as an officer in the State police or in a local police department within the State before undertaking or continuing graduate study;

(G) contract, with the consent of the participant's parent or guardian if the participant is a minor, to serve for 4 years as an officer in the State police or in a local police department, if an appointment is offered; and

(H) except as provided in paragraph (2), be without previous law enforcement experience.

(2)(A) Until the date that is 5 years after September 13, 1994, up to 10 percent of the applicants accepted into the Police Corps program may be persons who—

(i) have had some law enforcement experience; and

(ii) have demonstrated special leadership potential and dedication to law enforcement.

(B)(i) The prior period of law enforcement of a participant selected pursuant to subparagraph (A) shall not be counted toward satisfaction of the participant's 4-year service obligation under section 14098 of this title, and such a participant shall be subject to the same benefits and obligations under this part as other participants, including those stated in section¹ (b)(1)(E) and (F) of this section.

(ii) Clause (i) shall not be construed to preclude counting a participant's previous period of law enforcement experience for purposes other than satisfaction of the requirements of section 14098 of this title, such as for purposes of determining such a participant's pay and other benefits, rank, and tenure.

(3) It is the intent of this part that there shall be no more than 20,000 participants in each graduating class. The Director shall approve State plans providing in the aggregate for such enrollment of applicants as shall assure, as nearly as possible, annual graduating classes of 20,000. In a year in which applications are received in a number greater than that which will produce, in

the judgment of the Director, a graduating class of more than 20,000, the Director shall, in deciding which applications to grant, give preference to those who will be participating in State plans that provide law enforcement personnel to areas of greatest need.

(c) Recruitment of minorities

Each State participating in the Police Corps program shall make special efforts to seek and recruit applicants from among members of all racial, ethnic or gender groups. This subsection does not authorize an exception from the competitive standards for admission established pursuant to subsections (a) and (b) of this section.

(d) Enrollment of applicant

(1) An applicant shall be accepted into a State Police Corps program on the condition that the applicant will be matriculated in, or accepted for admission at, a 4-year institution of higher education—

(A) as a full-time student in an undergraduate program; or

(B) for purposes of taking a graduate course.

(2) If the applicant is not matriculated or accepted as set forth in paragraph (1), the applicant's acceptance in the program shall be revoked.

(e) Leave of absence

(1) A participant in a State Police Corps program who requests a leave of absence from educational study, training or service for a period not to exceed 1 year (or 18 months in the aggregate in the event of multiple requests) due to temporary physical or emotional disability shall be granted such leave of absence by the State.

(2) A participant who requests a leave of absence from educational study, training or service for a period not to exceed 1 year (or 18 months in the aggregate in the event of multiple requests) for any reason other than those listed in paragraph (1) may be granted such leave of absence by the State.

(3) A participant who requests a leave of absence from educational study or training for a period not to exceed 30 months to serve on an official church mission may be granted such leave of absence.

(f) Admission of applicants

An applicant may be admitted into a State Police Corps program either before commencement of or during the applicant's course of educational study.

(Pub. L. 103-322, title XX, §200107, Sept. 13, 1994, 108 Stat. 2052.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14092, 14099 of this title.

§ 14097. Police Corps training

(a) In general

(1) The Director shall establish programs of training for Police Corps participants. Such programs may be carried out at up to 3 training centers established for this purpose and administered by the Director, or by contracting with existing State training facilities. The Director

¹ So in original. Probably should be "subsection".

shall contract with a State training facility upon request of such facility if the Director determines that such facility offers a course of training substantially equivalent to the Police Corps training program described in this part.

(2) The Director may enter into contracts with individuals, institutions of learning, and government agencies (including State and local police forces) to obtain the services of persons qualified to participate in and contribute to the training process.

(3) The Director may enter into agreements with agencies of the Federal Government to utilize on a reimbursable basis space in Federal buildings and other resources.

(4) The Director may authorize such expenditures as are necessary for the effective maintenance of the training centers, including purchases of supplies, uniforms, and educational materials, and the provision of subsistence, quarters, and medical care to participants.

(b) Training sessions

A participant in a State Police Corps program shall attend up to 24 weeks, but no less than 16 weeks, of training at a training center. The Director may approve training conducted in not more than 3 separate sessions.

(c) Further training

The Police Corps training authorized in this section is intended to serve as basic law enforcement training but not to exclude further training of participants by the State and local authorities to which they will be assigned. Each State plan approved by the Director under section 14099¹ of this title shall include assurances that following completion of a participant's course of education each participant shall receive appropriate additional training by the State or local authority to which the participant is assigned. The time spent by a participant in such additional training, but not the time spent in Police Corps training, shall be counted toward fulfillment of the participant's 4-year service obligation.

(d) Course of training

The training sessions at training centers established under this section shall be designed to provide basic law enforcement training, including vigorous physical and mental training to teach participants self-discipline and organizational loyalty and to impart knowledge and understanding of legal processes and law enforcement.

(e) Evaluation of participants

A participant shall be evaluated during training for mental, physical, and emotional fitness, and shall be required to meet performance standards prescribed by the Director at the conclusion of each training session in order to remain in the Police Corps program.

(f) Stipend

The Director shall pay participants in training sessions a stipend of \$400 a week during training. (Pub. L. 103-322, title XX, §200108, Sept. 13, 1994, 108 Stat. 2054; Pub. L. 105-277, div. C, title I,

§138(a), Oct. 21, 1998, 112 Stat. 2681-597; Pub. L. 107-273, div. C, title I, §11006(2), Nov. 2, 2002, 116 Stat. 1817.)

REFERENCES IN TEXT

Section 14099 of this title, referred to in subsec. (c), was in the original "section 10", and was translated as reading "section 200110", meaning section 200110 of Pub. L. 103-322, to reflect the probable intent of Congress, because Pub. L. 103-322 does not contain a section 10, and section 14099 of this title relates to requirements for State Police Corps plans.

AMENDMENTS

2002—Subsec. (f). Pub. L. 107-273 substituted "\$400" for "\$250".

1998—Subsec. (b). Pub. L. 105-277, §138(a)(1), added subsec. (b) and struck out heading and text of former subsec. (b). Text read as follows: "A participant in a State Police Corps program shall attend two 8-week training sessions at a training center, one during the summer following completion of sophomore year and one during the summer following completion of junior year. If a participant enters the program after sophomore year, the participant shall complete 16 weeks of training at times determined by the Director."

Subsec. (c). Pub. L. 105-277, §138(a)(2), substituted "The Police Corps" for "The 16 weeks of Police Corps".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14095, 14098 of this title.

§ 14098. Service obligation

(a) Swearing in

Upon satisfactory completion of the participant's course of education and training program established in section 14097 of this title and meeting the requirements of the police force to which the participant is assigned, a participant shall be sworn in as a member of the police force to which the participant is assigned pursuant to the State Police Corps plan, and shall serve for 4 years as a member of that police force.

(b) Rights and responsibilities

A participant shall have all of the rights and responsibilities of and shall be subject to all rules and regulations applicable to other members of the police force of which the participant is a member, including those contained in applicable agreements with labor organizations and those provided by State and local law.

(c) Discipline

If the police force of which the participant is a member subjects the participant to discipline such as would preclude the participant's completing 4 years of service, and result in denial of educational assistance under section 14095 of this title, the Director may, upon a showing of good cause, permit the participant to complete the service obligation in an equivalent alternative law enforcement service and, if such service is satisfactorily completed, section 14095(d)(1)(B)(iii) of this title shall not apply.

(d) Layoffs

If the police force of which the participant is a member lays off the participant such as would preclude the participant's completing 4 years of service, and result in denial of educational assistance under section 14095 of this title, the Director may permit the participant to complete

¹ See References in Text note below.

the service obligation in an equivalent alternative law enforcement service and, if such service is satisfactorily completed, section 14095(d)(1)(B)(iii) of this title shall not apply.

(Pub. L. 103-322, title XX, §200109, Sept. 13, 1994, 108 Stat. 2055.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14096 of this title.

§ 14099. State plan requirements

A State Police Corps plan shall—

(1) provide for the screening and selection of participants in accordance with the criteria set out in section 14096 of this title;

(2) state procedures governing the assignment of participants in the Police Corps program to State and local police forces (except with permission of the Director, no more than 25 percent of all the participants assigned in each year by each State to be assigned to a statewide police force or forces);

(3) provide that participants shall be assigned to those geographic areas in which—

(A) there is the greatest need for additional law enforcement personnel; and

(B) the participants will be used most effectively;

(4) provide that to the extent consistent with paragraph (3), a participant shall be assigned to an area near the participant's home or such other place as the participant may request;

(5) provide that to the extent feasible, a participant's assignment shall be made at the time the participant is accepted into the program, subject to change—

(A) prior to commencement of a participant's fourth year of undergraduate study, under such circumstances as the plan may specify; and

(B) from commencement of a participant's fourth year of undergraduate study until completion of 4 years of police service by participant, only for compelling reasons or to meet the needs of the State Police Corps program and only with the consent of the participant;

(6) provide that no participant shall be assigned to serve with a local police force—

(A) whose size has declined by more than 5 percent since June 21, 1989; or

(B) which has members who have been laid off but not retired;

(7) provide that participants shall be placed and to the extent feasible kept on community and preventive patrol;

(8) ensure that participants will receive effective training and leadership;

(9) provide that the State may decline to offer a participant an appointment following completion of Federal training, or may remove a participant from the Police Corps program at any time, only for good cause (including failure to make satisfactory progress in a course of educational study) and after following reasonable review procedures stated in the plan; and

(10) provide that a participant shall, while serving as a member of a police force, be compensated at the same rate of pay and benefits and enjoy the same rights under applicable agreements with labor organizations and under State and local law as other police officers of the same rank and tenure in the police force of which the participant is a member.

(Pub. L. 103-322, title XX, §200110, Sept. 13, 1994, 108 Stat. 2056; Pub. L. 107-273, div. C, title I, §11006(3), Nov. 2, 2002, 116 Stat. 1817.)

AMENDMENTS

2002—Par. (2). Pub. L. 107-273 substituted “except with permission of the Director, no more than 25 percent” for “no more than 10 percent”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14092, 14094, 14096, 14097 of this title.

§ 14100. Repealed. Pub. L. 107-273, div. C, title I, § 11006(4), Nov. 2, 2002, 116 Stat. 1817

Section, Pub. L. 103-322, title XX, §200111, Sept. 13, 1994, 108 Stat. 2056, provided assistance to States and localities employing Police Corps officers.

§ 14101. Authorization of appropriations

There are authorized to be appropriated to carry out this part \$50,000,000 for fiscal year 1999, \$70,000,000 for fiscal year 2000, \$90,000,000 for fiscal year 2001, and \$90,000,000 for each of fiscal years 2002 through 2005.

(Pub. L. 103-322, title XX, §200112, Sept. 13, 1994, 108 Stat. 2057; Pub. L. 105-277, div. C, title I, §138(b), Oct. 21, 1998, 112 Stat. 2681-597; Pub. L. 107-273, div. C, title I, §11006(5), Nov. 2, 2002, 116 Stat. 1817.)

AMENDMENTS

2002—Pub. L. 107-273 substituted “each of fiscal years 2002 through 2005” for “fiscal year 2002”.

1998—Pub. L. 105-277 substituted “\$50,000,000 for fiscal year 1999, \$70,000,000 for fiscal year 2000, \$90,000,000 for fiscal year 2001, and \$90,000,000 for fiscal year 2002” for “\$20,000 for each of the fiscal years 1996 through 2000”.

§ 14102. Reports to Congress

(a) In general

Not later than April 1 of each year, the Director shall submit a report to the Attorney General, the President, the Speaker of the House of Representatives, and the President of the Senate.

(b) Contents

A report under subsection (a) of this section shall—

(1) state the number of current and past participants in the Police Corps program, broken down according to the levels of educational study in which they are engaged and years of service they have served on police forces (including service following completion of the 4-year service obligation);

(2) describe the geographic, racial, and gender dispersion of participants in the Police Corps program; and

(3) describe the progress of the Police Corps program and make recommendations for changes in the program.

(Pub. L. 103-322, title XX, §200113, Sept. 13, 1994, 108 Stat. 2057.)

PART B—LAW ENFORCEMENT SCHOLARSHIP PROGRAM

§ 14111. Definitions

In this part—

“Director” means the Director of the Office of the Police Corps and Law Enforcement Education appointed under section 14093¹ of this title.

“educational expenses” means expenses that are directly attributable to—

- (A) a course of education leading to the award of an associate degree;
- (B) a course of education leading to the award of a baccalaureate degree; or
- (C) a course of graduate study following award of a baccalaureate degree,

including the cost of tuition, fees, books, supplies, and related expenses.

“institution of higher education” has the meaning stated in the first sentence of section 1001 of title 20.

“law enforcement position” means employment as an officer in a State or local police force, or correctional institution.

“State” means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands.

(Pub. L. 103-322, title XX, §200202, Sept. 13, 1994, 108 Stat. 2057; Pub. L. 105-244, title I, §102(a)(13)(P), Oct. 7, 1998, 112 Stat. 1621.)

AMENDMENTS

1998—Pub. L. 105-244 substituted “section 1001” for “section 1141(a)” in par. defining “institution of higher education”.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see section 3 of Pub. L. 105-244, set out as a note under section 1001 of Title 20, Education.

SHORT TITLE

For short title of this part as the “Law Enforcement Scholarships and Recruitment Act”, see section 200201 of Pub. L. 103-322, set out as a note under section 13701 of this title.

§ 14112. Allotment

From amounts appropriated under section 14119 of this title, the Director shall allot—

- (1) 80 percent of such amounts to States on the basis of the number of law enforcement officers in each State compared to the number of law enforcement officers in all States; and
- (2) 20 percent of such amounts to States on the basis of the shortage of law enforcement personnel and the need for assistance under this part in the State compared to the shortage of law enforcement personnel and the need for assistance under this part in all States.

¹ So in original. Section 14093 of this title does not provide for the appointment of a Director.

(Pub. L. 103-322, title XX, §200203, Sept. 13, 1994, 108 Stat. 2058.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14113, 14116 of this title.

§ 14113. Establishment of program

(a) Use of allotment

(1) In general

A State that receives an allotment pursuant to section 14112 of this title shall use the allotment to pay the Federal share of the costs of—

- (A) awarding scholarships to in-service law enforcement personnel to enable such personnel to seek further education; and
- (B) providing—
 - (i) full-time employment in summer; or
 - (ii) part-time (not to exceed 20 hours per week) employment for a period not to exceed 1 year.

(2) Employment

The employment described in paragraph (1)(B)—

- (A) shall be provided by State and local law enforcement agencies for students who are juniors or seniors in high school or are enrolled in an institution of higher education and who demonstrate an interest in undertaking a career in law enforcement;
- (B) shall not be in a law enforcement position; and
- (C) shall consist of performing meaningful tasks that inform students of the nature of the tasks performed by law enforcement agencies.

(b) Payments; Federal share; non-Federal share

(1) Payments

Subject to the availability of appropriations, the Director shall pay to each State that receives an allotment under section 14112 of this title the Federal share of the cost of the activities described in the application submitted pursuant to section 14116¹ of this title.

(2) Federal share

The Federal share shall not exceed 60 percent.

(3) Non-Federal share

The non-Federal share of the cost of scholarships and student employment provided under this part shall be supplied from sources other than the Federal Government.

(c) Responsibilities of Director

The Director shall be responsible for the administration of the programs conducted pursuant to this part and shall, in consultation with the Assistant Secretary for Postsecondary Education, issue rules to implement this part.

(d) Administrative expenses

A State that receives an allotment under section 14112 of this title may reserve not more than 8 percent of the allotment for administrative expenses.

(e) Special rule

A State that receives an allotment under section 14112 of this title shall ensure that each

¹ See References in Text note below.

scholarship recipient under this part be compensated at the same rate of pay and benefits and enjoy the same rights under applicable agreements with labor organizations and under State and local law as other law enforcement personnel of the same rank and tenure in the office of which the scholarship recipient is a member.

(f) Supplementation of funding

Funds received under this part shall only be used to supplement, and not to supplant, Federal, State, or local efforts for recruitment and education of law enforcement personnel.

(Pub. L. 103-322, title XX, §200204, Sept. 13, 1994, 108 Stat. 2058.)

REFERENCES IN TEXT

Section 14116 of this title, referred to in subsec. (b)(1), was in the original "section 200203", and was translated as reading "section 200207", meaning section 200207 of Pub. L. 103-322, to reflect the probable intent of Congress, because section 200203 of Pub. L. 103-322, which is classified to section 14112 of this title, does not provide for submission of applications, and section 14116 does so provide.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14119 of this title.

§ 14114. Scholarships

(a) Period of award

Scholarships awarded under this part shall be for a period of 1 academic year.

(b) Use of scholarships

Each individual awarded a scholarship under this part may use the scholarship for educational expenses at an institution of higher education.

(Pub. L. 103-322, title XX, §200205, Sept. 13, 1994, 108 Stat. 2059.)

§ 14115. Eligibility

(a) Scholarships

A person shall be eligible to receive a scholarship under this part if the person has been employed in law enforcement for the 2-year period immediately preceding the date on which assistance is sought.

(b) Ineligibility for student employment

A person who has been employed as a law enforcement officer is ineligible to participate in a student employment program carried out under this part.

(Pub. L. 103-322, title XX, §200206, Sept. 13, 1994, 108 Stat. 2059.)

§ 14116. State application

(a) In general

Each State desiring an allotment under section 14112 of this title shall submit an application to the Director at such time, in such manner, and accompanied by such information as the Director may reasonably require.

(b) Contents

An application under subsection (a) of this section shall—

(1) describe the scholarship program and the student employment program for which assistance under this part is sought;

(2) contain assurances that the lead agency will work in cooperation with the local law enforcement liaisons, representatives of police labor organizations and police management organizations, and other appropriate State and local agencies to develop and implement inter-agency agreements designed to carry out this part;

(3) contain assurances that the State will advertise the scholarship assistance and student employment it will provide under this part and that the State will use such programs to enhance recruitment efforts;

(4) contain assurances that the State will screen and select law enforcement personnel for participation in the scholarship program under this part;

(5) contain assurances that under such student employment program the State will screen and select, for participation in such program, students who have an interest in undertaking a career in law enforcement;

(6) contain assurances that under such scholarship program the State will make scholarship payments to institutions of higher education on behalf of persons who receive scholarships under this part;

(7) with respect to such student employment program, identify—

(A) the employment tasks that students will be assigned to perform;

(B) the compensation that students will be paid to perform such tasks; and

(C) the training that students will receive as part of their participation in the program;

(8) identify model curriculum and existing programs designed to meet the educational and professional needs of law enforcement personnel; and

(9) contain assurances that the State will promote cooperative agreements with educational and law enforcement agencies to enhance law enforcement personnel recruitment efforts in institutions of higher education.

(Pub. L. 103-322, title XX, §200207, Sept. 13, 1994, 108 Stat. 2059.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14113 of this title.

§ 14117. Local application

(a) In general

A person who desires a scholarship or employment under this part shall submit an application to the State at such time, in such manner, and accompanied by such information as the State may reasonably require.

(b) Contents

An application under subsection (a) of this section shall describe—

(1) the academic courses for which a scholarship is sought; or

(2) the location and duration of employment that is sought.

(c) Priority

In awarding scholarships and providing student employment under this part, each State shall give priority to applications from persons who are—

- (1) members of racial, ethnic, or gender groups whose representation in the law enforcement agencies within the State is substantially less than in the population eligible for employment in law enforcement in the State;
- (2) pursuing an undergraduate degree; and
- (3) not receiving financial assistance under the Higher Education Act of 1965 [20 U.S.C. 1001 et seq.].

(Pub. L. 103-322, title XX, §200208, Sept. 13, 1994, 108 Stat. 2060.)

REFERENCES IN TEXT

The Higher Education Act of 1965, referred to in subsec. (c)(3), is Pub. L. 89-329, Nov. 8, 1965, 79 Stat. 1219, as amended, which is classified principally to chapter 28 (§1001 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

§ 14118. Scholarship agreement**(a) In general**

A person who receives a scholarship under this part shall enter into an agreement with the Director.

(b) Contents

An agreement described in subsection (a) of this section shall—

- (1) provide assurances that the scholarship recipient will work in a law enforcement position in the State that awarded the scholarship in accordance with the service obligation described in subsection (c) of this section after completion of the scholarship recipient's academic courses leading to an associate, bachelor, or graduate degree;
- (2) provide assurances that the scholarship recipient will repay the entire scholarship in accordance with such terms and conditions as the Director shall prescribe if the requirements of the agreement are not complied with, unless the scholarship recipient—
 - (A) dies;
 - (B) becomes physically or emotionally disabled, as established by the sworn affidavit of a qualified physician; or
 - (C) has been discharged in bankruptcy; and
- (3) set forth the terms and conditions under which the scholarship recipient may seek employment in the field of law enforcement in a State other than the State that awarded the scholarship.

(c) Service obligation**(1) In general**

Except as provided in paragraph (2), a person who receives a scholarship under this part shall work in a law enforcement position in the State that awarded the scholarship for a period of 1 month for each credit hour for which funds are received under the scholarship.

(2) Special rule

For purposes of satisfying the requirement of paragraph (1), a scholarship recipient shall

work in a law enforcement position in the State that awarded the scholarship for not less than 6 months but shall not be required to work in such a position for more than 2 years.

(Pub. L. 103-322, title XX, §200209, Sept. 13, 1994, 108 Stat. 2060.)

§ 14119. Authorization of appropriations**(a) General authorization of appropriations**

There are authorized to be appropriated to carry out this part—

- (1) \$20,000,000 for fiscal year 1996;
- (2) \$20,000,000 for fiscal year 1997;
- (3) \$20,000,000 for fiscal year 1998;
- (4) \$20,000,000 for fiscal year 1999; and
- (5) \$20,000,000 for fiscal year 2000.

(b) Uses of funds

Of the funds appropriated under subsection (a) of this section for a fiscal year—

- (1) 80 percent shall be available to provide scholarships described in section 14113(a)(1)(A) of this title; and
- (2) 20 percent shall be available to provide employment described in sections 14113(a)(1)(B) and 14113(a)(2) of this title.

(Pub. L. 103-322, title XX, §200210, Sept. 13, 1994, 108 Stat. 2061.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14112 of this title.

SUBCHAPTER IX—STATE AND LOCAL LAW ENFORCEMENT

PART A—DNA IDENTIFICATION

§ 14131. Quality assurance and proficiency testing standards**(a) Publication of quality assurance and proficiency testing standards**

(1)(A) Not later than 180 days after September 13, 1994, the Director of the Federal Bureau of Investigation shall appoint an advisory board on DNA quality assurance methods from among nominations proposed by the head of the National Academy of Sciences and professional societies of crime laboratory officials.

(B) The advisory board shall include as members scientists from State, local, and private forensic laboratories, molecular geneticists and population geneticists not affiliated with a forensic laboratory, and a representative from the National Institute of Standards and Technology.

(C) The advisory board shall develop, and if appropriate, periodically revise, recommended standards for quality assurance, including standards for testing the proficiency of forensic laboratories, and forensic analysts, in conducting analyses of DNA.

(2) The Director of the Federal Bureau of Investigation, after taking into consideration such recommended standards, shall issue (and revise from time to time) standards for quality assurance, including standards for testing the proficiency of forensic laboratories, and forensic analysts, in conducting analyses of DNA.

(3) The standards described in paragraphs (1) and (2) shall specify criteria for quality assur-

ance and proficiency tests to be applied to the various types of DNA analyses used by forensic laboratories. The standards shall also include a system for grading proficiency testing performance to determine whether a laboratory is performing acceptably.

(4) Until such time as the advisory board has made recommendations to the Director of the Federal Bureau of Investigation and the Director has acted upon those recommendations, the quality assurance guidelines adopted by the technical working group on DNA analysis methods shall be deemed the Director's standards for purposes of this section.

(b) Administration of advisory board

(1) For administrative purposes, the advisory board appointed under subsection (a) of this section shall be considered an advisory board to the Director of the Federal Bureau of Investigation.

(2) Section 14 of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply with respect to the advisory board appointed under subsection (a) of this section.

(3) The DNA advisory board established under this section shall be separate and distinct from any other advisory board administered by the FBI, and is to be administered separately.

(4) The board shall cease to exist on the date 5 years after the initial appointments are made to the board, unless the existence of the board is extended by the Director of the Federal Bureau of Investigation.

(c) Proficiency testing program

(1) Not later than 1 year after the effective date of this Act,¹ the Director of the National Institute of Justice shall certify to the Committees on the Judiciary of the House and Senate that—

(A) the Institute has entered into a contract with, or made a grant to, an appropriate entity for establishing, or has taken other appropriate action to ensure that there is established, not later than 2 years after September 13, 1994, a blind external proficiency testing program for DNA analyses, which shall be available to public and private laboratories performing forensic DNA analyses;

(B) a blind external proficiency testing program for DNA analyses is already readily available to public and private laboratories performing forensic DNA analyses; or

(C) it is not feasible to have blind external testing for DNA forensic analyses.

(2) As used in this subsection, the term "blind external proficiency test" means a test that is presented to a forensic laboratory through a second agency and appears to the analysts to involve routine evidence.

(3) Notwithstanding any other provision of law, the Attorney General shall make available to the Director of the National Institute of Justice during the first fiscal year in which funds are distributed under this subtitle up to \$250,000 from the funds available under part X of Title I of the Omnibus Crime Control and Safe Streets Act of 1968 [42 U.S.C. 3796kk et seq.] to carry out this subsection.

(Pub. L. 103-322, title XXI, §210303, Sept. 13, 1994, 108 Stat. 2068.)

REFERENCES IN TEXT

Section 14 of the Federal Advisory Committee Act, referred to in subsec. (b)(2), is section 14 of Pub. L. 92-463, which is set out in the Appendix to Title 5, Government Organization and Employees.

The effective date of this Act, referred to in subsec. (c)(1), probably means the date of enactment of Pub. L. 103-322, which was approved Sept. 13, 1994.

This subtitle, referred to in subsec. (c)(3), is subtitle C (§§210301-210306) of title XXI of Pub. L. 103-322, Sept. 13, 1994, 108 Stat. 2065, known as the DNA Identification Act of 1994, which enacted this part and sections 3796kk to 3796kk-6 of this title, amended sections 3751, 3753, 3793, and 3797 of this title, and enacted provisions set out as notes under sections 3751 and 13701 of this title. For complete classification of this subtitle to the Code, see Short Title note set out under section 13701 of this title and Tables.

The Omnibus Crime Control and Safe Streets Act of 1968, referred to in subsec. (c)(3), is Pub. L. 90-351, June 19, 1968, 82 Stat. 197, as amended. Part X of title I of the Act is classified generally to subchapter XII-L (§3796kk et seq.) of chapter 46 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3711 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3753, 3796kk-2, 14132, 14133, 14134, 14214 of this title.

§ 14132. Index to facilitate law enforcement exchange of DNA identification information

(a) Establishment of index

The Director of the Federal Bureau of Investigation may establish an index of—

(1) DNA identification records of persons convicted of crimes;

(2) analyses of DNA samples recovered from crime scenes;

(3) analyses of DNA samples recovered from unidentified human remains; and

(4) analyses of DNA samples voluntarily contributed from relatives of missing persons.

(b) Information

The index described in subsection (a) of this section shall include only information on DNA identification records and DNA analyses that are—

(1) based on analyses performed by or on behalf of a criminal justice agency (or the Secretary of Defense in accordance with section 1565 of title 10) in accordance with publicly available standards that satisfy or exceed the guidelines for a quality assurance program for DNA analysis, issued by the Director of the Federal Bureau of Investigation under section 14131 of this title;

(2) prepared by laboratories, and DNA analysts, that undergo semiannual external proficiency testing by a DNA proficiency testing program meeting the standards issued under section 14131 of this title; and

(3) maintained by Federal, State, and local criminal justice agencies (or the Secretary of Defense in accordance with section 1565 of title 10) pursuant to rules that allow disclosure of stored DNA samples and DNA analyses only—

(A) to criminal justice agencies for law enforcement identification purposes;

¹ See References in Text note below.

(B) in judicial proceedings, if otherwise admissible pursuant to applicable statutes or rules;

(C) for criminal defense purposes, to a defendant, who shall have access to samples and analyses performed in connection with the case in which such defendant is charged; or

(D) if personally identifiable information is removed, for a population statistics database, for identification research and protocol development purposes, or for quality control purposes.

(c) Failure to comply

Access to the index established by this section is subject to cancellation if the quality control and privacy requirements described in subsection (b) of this section are not met.

(d) Expungement of records

(1) By Director

(A) The Director of the Federal Bureau of Investigation shall promptly expunge from the index described in subsection (a) of this section the DNA analysis of a person included in the index on the basis of a qualifying Federal offense or a qualifying District of Columbia offense (as determined under sections 14135a and 14135b of this title, respectively) if the Director receives, for each conviction of the person of a qualifying offense, a certified copy of a final court order establishing that such conviction has been overturned.

(B) For purposes of subparagraph (A), the term “qualifying offense” means any of the following offenses:

(i) A qualifying Federal offense, as determined under section 14135a of this title.

(ii) A qualifying District of Columbia offense, as determined under section 14135b of this title.

(iii) A qualifying military offense, as determined under section 1565 of title 10.

(C) For purposes of subparagraph (A), a court order is not “final” if time remains for an appeal or application for discretionary review with respect to the order.

(2) By States

(A) As a condition of access to the index described in subsection (a) of this section, a State shall promptly expunge from that index the DNA analysis of a person included in the index by that State if the responsible agency or official of that State receives, for each conviction of the person of an offense on the basis of which that analysis was or could have been included in the index, a certified copy of a final court order establishing that such conviction has been overturned.

(B) For purposes of subparagraph (A), a court order is not “final” if time remains for an appeal or application for discretionary review with respect to the order.

(Pub. L. 103-322, title XXI, § 210304, Sept. 13, 1994, 108 Stat. 2069; Pub. L. 106-113, div. B, § 1000(a)(1) [title I, § 120], Nov. 29, 1999, 113 Stat. 1535, 1501A-23; Pub. L. 106-546, § 6(b), Dec. 19, 2000, 114 Stat. 2733.)

AMENDMENTS

2000—Subsec. (b)(1). Pub. L. 106-546, § 6(b)(1), inserted “(or the Secretary of Defense in accordance with section 1565 of title 10)” after “criminal justice agency”.

Subsec. (b)(2). Pub. L. 106-546, § 6(b)(2), substituted “semiannual” for “, at regular intervals of not to exceed 180 days.”.

Subsec. (b)(3). Pub. L. 106-546, § 6(b)(3), inserted “(or the Secretary of Defense in accordance with section 1565 of title 10)” after “criminal justice agencies” in introductory provisions.

Subsec. (d). Pub. L. 106-546, § 6(b)(4), added subsec. (d).

1999—Subsec. (a)(4). Pub. L. 106-113 added par. (4).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14134, 14135, 14135e, 14214 of this title; title 10 section 1565.

§ 14133. Federal Bureau of Investigation

(a) Proficiency testing requirements

(1) Generally

(A) Personnel at the Federal Bureau of Investigation who perform DNA analyses shall undergo semiannual external proficiency testing by a DNA proficiency testing program meeting the standards issued under section 14131 of this title.

(B) Within 1 year after September 13, 1994, the Director of the Federal Bureau of Investigation shall arrange for periodic blind external tests to determine the proficiency of DNA analysis performed at the Federal Bureau of Investigation laboratory.

(C) In this paragraph, “blind external test” means a test that is presented to the laboratory through a second agency and appears to the analysts to involve routine evidence.

(2) Report

For 5 years after September 13, 1994, the Director of the Federal Bureau of Investigation shall submit to the Committees on the Judiciary of the House and Senate an annual report on the results of each of the tests described in paragraph (1).

(b) Privacy protection standards

(1) Generally

Except as provided in paragraph (2), the results of DNA tests performed for a Federal law enforcement agency for law enforcement purposes may be disclosed only—

(A) to criminal justice agencies for law enforcement identification purposes;

(B) in judicial proceedings, if otherwise admissible pursuant to applicable statutes¹ or rules; and

(C) for criminal defense purposes, to a defendant, who shall have access to samples and analyses performed in connection with the case in which such defendant is charged.

(2) Exception

If personally identifiable information is removed, test results may be disclosed for a population statistics database, for identification research and protocol development purposes, or for quality control purposes.

(c) Criminal penalty

(1) A person who—

¹ So in original. Probably should be “statutes”.

(A) by virtue of employment or official position, has possession of, or access to, individually identifiable DNA information indexed in a database created or maintained by any Federal law enforcement agency; and

(B) knowingly discloses such information in any manner to any person or agency not authorized to receive it,

shall be fined not more than \$100,000.

(2) A person who, without authorization, knowingly obtains DNA samples or individually identifiable DNA information indexed in a database created or maintained by any Federal law enforcement agency shall be fined not more than \$100,000.

(Pub. L. 103-322, title XXI, § 210305, Sept. 13, 1994, 108 Stat. 2070; Pub. L. 106-546, § 8(c), Dec. 19, 2000, 114 Stat. 2735.)

AMENDMENTS

2000—Subsec. (a)(1)(A). Pub. L. 106-546 substituted “semiannual” for “, at regular intervals of not to exceed 180 days.”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14134, 14214 of this title.

§ 14134. Authorization of appropriations

There are authorized to be appropriated to the Federal Bureau of Investigation to carry out sections 14131, 14132, and 14133 of this title—

- (1) \$5,500,000 for fiscal year 1996;
- (2) \$8,000,000 for fiscal year 1997;
- (3) \$8,000,000 for fiscal year 1998;
- (4) \$2,500,000 for fiscal year 1999; and
- (5) \$1,000,000 for fiscal year 2000.

(Pub. L. 103-322, title XXI, § 210306, Sept. 13, 1994, 108 Stat. 2071.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

§ 14135. Authorization of grants

(a) Authorization of grants

The Attorney General may make grants to eligible States for use by the State for the following purposes:

(1) To carry out, for inclusion in the Combined DNA Index System of the Federal Bureau of Investigation, DNA analyses of samples taken from individuals convicted of a qualifying State offense (as determined under subsection (b)(3) of this section).

(2) To carry out, for inclusion in such Combined DNA Index System, DNA analyses of samples from crime scenes.

(3) To increase the capacity of laboratories owned by the State or by units of local government within the State to carry out DNA analyses of samples specified in paragraph (2).

(b) Eligibility

For a State to be eligible to receive a grant under this section, the chief executive officer of the State shall submit to the Attorney General an application in such form and containing such information as the Attorney General may require. The application shall—

(1) provide assurances that the State has implemented, or will implement not later than 120 days after the date of such application, a comprehensive plan for the expeditious DNA analysis of samples in accordance with this section;

(2) include a certification that each DNA analysis carried out under the plan shall be maintained pursuant to the privacy requirements described in section 14132(b)(3) of this title;

(3) include a certification that the State has determined, by statute, rule, or regulation, those offenses under State law that shall be treated for purposes of this section as qualifying State offenses;

(4) specify the allocation that the State shall make, in using grant amounts to carry out DNA analyses of samples, as between samples specified in subsection (a)(1) of this section and samples specified in subsection (a)(2) of this section; and

(5) specify that portion of grant amounts that the State shall use for the purpose specified in subsection (a)(3) of this section.

(c) Crimes without suspects

A State that proposes to allocate grant amounts under paragraph (4) or (5) of subsection (b) of this section for the purposes specified in paragraph (2) or (3) of subsection (a) of this section shall use such allocated amounts to conduct or facilitate DNA analyses of those samples that relate to crimes in connection with which there are no suspects.

(d) Analysis of samples

(1) In general

The plan shall require that, except as provided in paragraph (3), each DNA analysis be carried out in a laboratory that satisfies quality assurance standards and is—

(A) operated by the State or a unit of local government within the State; or

(B) operated by a private entity pursuant to a contract with the State or a unit of local government within the State.

(2) Quality assurance standards

(A) The Director of the Federal Bureau of Investigation shall maintain and make available to States a description of quality assurance protocols and practices that the Director considers adequate to assure the quality of a forensic laboratory.

(B) For purposes of this section, a laboratory satisfies quality assurance standards if the laboratory satisfies the quality control requirements described in paragraphs (1) and (2) of section 14132(b) of this title.

(3) Use of vouchers for certain purposes

A grant for the purposes specified in paragraph (1) or (2) of subsection (a) of this section may be made in the form of a voucher for laboratory services, which may be redeemed at a laboratory operated by a private entity approved by the Attorney General that satisfies quality assurance standards. The Attorney General may make payment to such a laboratory for the analysis of DNA samples using amounts authorized for those purposes under subsection (j) of this section.

(e) Restrictions on use of funds**(1) Nonsupplanting**

Funds made available pursuant to this section shall not be used to supplant State funds, but shall be used to increase the amount of funds that would, in the absence of Federal funds, be made available from State sources for the purposes of this Act.

(2) Administrative costs

A State may not use more than 3 percent of the funds it receives from this section for administrative expenses.

(f) Reports to the Attorney General

Each State which receives a grant under this section shall submit to the Attorney General, for each year in which funds from a grant received under this section is expended, a report at such time and in such manner as the Attorney General may reasonably require, which contains—

(1) a summary of the activities carried out under the grant and an assessment of whether such activities are meeting the needs identified in the application; and

(2) such other information as the Attorney General may require.

(g) Reports to Congress

Not later than 90 days after the end of each fiscal year for which grants are made under this section, the Attorney General shall submit to the Congress a report that includes—

(1) the aggregate amount of grants made under this section to each State for such fiscal year; and

(2) a summary of the information provided by States receiving grants under this section.

(h) Expenditure records**(1) In general**

Each State which receives a grant under this section shall keep records as the Attorney General may require to facilitate an effective audit of the receipt and use of grant funds received under this section.

(2) Access

Each State which receives a grant under this section shall make available, for the purpose of audit and examination, such records as are related to the receipt or use of any such grant.

(i) Definition

For purposes of this section, the term “State” means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

(j) Authorization of appropriations

Amounts are authorized to be appropriated to the Attorney General for grants under subsection (a) of this section as follows:

(1) For grants for the purposes specified in paragraph (1) of such subsection—

(A) \$15,000,000 for fiscal year 2001;

(B) \$15,000,000 for fiscal year 2002; and

(C) \$15,000,000 for fiscal year 2003.

(2) For grants for the purposes specified in paragraphs (2) and (3) of such subsection—

(A) \$25,000,000 for fiscal year 2001;

(B) \$50,000,000 for fiscal year 2002;

(C) \$25,000,000 for fiscal year 2003; and

(D) \$25,000,000 for fiscal year 2004.

(Pub. L. 106-546, § 2, Dec. 19, 2000, 114 Stat. 2726.)

REFERENCES IN TEXT

This Act, referred to in subsec. (e)(1), is Pub. L. 106-546, Dec. 19, 2000, 114 Stat. 2726, known as the DNA Analysis Backlog Elimination Act of 2000. For complete classification of this Act to the Code, see Short Title of 2000 Amendments note set out under section 13701 of this title and Tables.

CODIFICATION

Section was enacted as part of the DNA Analysis Backlog Elimination Act of 2000, and not as part of the Violent Crime Control and Law Enforcement Act of 1994 which enacted this chapter.

SENSE OF CONGRESS REGARDING THE OBLIGATION OF GRANTEE STATES TO ENSURE ACCESS TO POST-CONVICTION DNA TESTING AND COMPETENT COUNSEL IN CAPITAL CASES

Pub. L. 106-561, § 4, Dec. 21, 2000, 114 Stat. 2791, provided that:

“(a) FINDINGS.—Congress finds that—

“(1) over the past decade, deoxyribonucleic acid testing (referred to in this section as ‘DNA testing’) has emerged as the most reliable forensic technique for identifying criminals when biological material is left at a crime scene;

“(2) because of its scientific precision, DNA testing can, in some cases, conclusively establish the guilt or innocence of a criminal defendant;

“(3) in other cases, DNA testing may not conclusively establish guilt or innocence, but may have significant probative value to a finder of fact;

“(4) DNA testing was not widely available in cases tried prior to 1994;

“(5) new forensic DNA testing procedures have made it possible to get results from minute samples that could not previously be tested, and to obtain more informative and accurate results than earlier forms of forensic DNA testing could produce, resulting in some cases of convicted inmates being exonerated by new DNA tests after earlier tests had failed to produce definitive results;

“(6) DNA testing can and has resulted in the post-conviction exoneration of more than 75 innocent men and women, including some under sentence of death;

“(7) in more than a dozen cases, post-conviction DNA testing that has exonerated an innocent person has also enhanced public safety by providing evidence that led to the apprehension of the actual perpetrator;

“(8) experience has shown that it is not unduly burdensome to make DNA testing available to inmates in appropriate cases;

“(9) under current Federal and State law, it is difficult to obtain post-conviction DNA testing because of time limits on introducing newly discovered evidence;

“(10) the National Commission on the Future of DNA Evidence, a Federal panel established by the Department of Justice and comprised of law enforcement, judicial, and scientific experts, has urged that post-conviction DNA testing be permitted in the relatively small number of cases in which it is appropriate, notwithstanding procedural rules that could be invoked to preclude such testing, and notwithstanding the inability of an inmate to pay for the testing;

“(11) only a few States have adopted post-conviction DNA testing procedures;

“(12) States have received millions of dollars in DNA-related grants, and more funding is needed to improve State forensic facilities and to reduce the

nationwide backlog of DNA samples from convicted offenders and crime scenes that need to be tested or retested using upgraded methods;

“(13) States that accept such financial assistance should not deny the promise of truth and justice for both sides of our adversarial system that DNA testing offers;

“(14) post-conviction DNA testing and other post-conviction investigative techniques have shown that innocent people have been sentenced to death in this country;

“(15) a constitutional error in capital cases is incompetent defense lawyers who fail to present important evidence that the defendant may have been innocent or does not deserve to be sentenced to death; and

“(16) providing quality representation to defendants facing loss of liberty or life is essential to fundamental due process and the speedy final resolution of judicial proceedings.

“(b) SENSE OF CONGRESS.—It is the sense of Congress that—

“(1) Congress should condition forensic science-related grants to a State or State forensic facility on the State’s agreement to ensure post-conviction DNA testing in appropriate cases; and

“(2) Congress should work with the States to improve the quality of legal representation in capital cases through the establishment of standards that will assure the timely appointment of competent counsel with adequate resources to represent defendants in capital cases at each stage of the proceedings.”

Pub. L. 106-546, §11, Dec. 19, 2000, 114 Stat. 2735, enacted provisions substantially identical to those enacted by Pub. L. 106-561, §4, set out above.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14135e of this title.

§ 14135a. Collection and use of DNA identification information from certain Federal offenders

(a) Collection of DNA samples

(1) From individuals in custody

The Director of the Bureau of Prisons shall collect a DNA sample from each individual in the custody of the Bureau of Prisons who is, or has been, convicted of a qualifying Federal offense (as determined under subsection (d) of this section) or a qualifying military offense, as determined under section 1565 of title 10.

(2) From individuals on release, parole, or probation

The probation office responsible for the supervision under Federal law of an individual on probation, parole, or supervised release shall collect a DNA sample from each such individual who is, or has been, convicted of a qualifying Federal offense (as determined under subsection (d) of this section) or a qualifying military offense, as determined under section 1565 of title 10.

(3) Individuals already in CODIS

For each individual described in paragraph (1) or (2), if the Combined DNA Index System (in this section referred to as “CODIS”) of the Federal Bureau of Investigation contains a DNA analysis with respect to that individual, or if a DNA sample has been collected from that individual under section 1565 of title 10, the Director of the Bureau of Prisons or the probation office responsible (as applicable)

may (but need not) collect a DNA sample from that individual.

(4) Collection procedures

(A) The Director of the Bureau of Prisons or the probation office responsible (as applicable) may use or authorize the use of such means as are reasonably necessary to detain, restrain, and collect a DNA sample from an individual who refuses to cooperate in the collection of the sample.

(B) The Director of the Bureau of Prisons or the probation office, as appropriate, may enter into agreements with units of State or local government or with private entities to provide for the collection of the samples described in paragraph (1) or (2).

(5) Criminal penalty

An individual from whom the collection of a DNA sample is authorized under this subsection who fails to cooperate in the collection of that sample shall be—

(A) guilty of a class A misdemeanor; and

(B) punished in accordance with title 18.

(b) Analysis and use of samples

The Director of the Bureau of Prisons or the probation office responsible (as applicable) shall furnish each DNA sample collected under subsection (a) of this section to the Director of the Federal Bureau of Investigation, who shall carry out a DNA analysis on each such DNA sample and include the results in CODIS.

(c) Definitions

In this section:

(1) The term “DNA sample” means a tissue, fluid, or other bodily sample of an individual on which a DNA analysis can be carried out.

(2) The term “DNA analysis” means analysis of the deoxyribonucleic acid (DNA) identification information in a bodily sample.

(d) Qualifying Federal offenses

(1) The offenses that shall be treated for purposes of this section as qualifying Federal offenses are the following offenses under title 18, as determined by the Attorney General:

(A) Murder (as described in section 1111 of such title), voluntary manslaughter (as described in section 1112 of such title), or other offense relating to homicide (as described in chapter 51 of such title, sections 1113, 1114, 1116, 1118, 1119, 1120, and 1121).

(B) An offense relating to sexual abuse (as described in chapter 109A of such title, sections 2241 through 2245), to sexual exploitation or other abuse of children (as described in chapter 110 of such title, sections 2251 through 2252), or to transportation for illegal sexual activity (as described in chapter 117 of such title, sections 2421, 2422, 2423, and 2425).

(C) An offense relating to peonage and slavery (as described in chapter 77 of such title).

(D) Kidnapping (as defined in section 3559(c)(2)(E) of such title).

(E) An offense involving robbery or burglary (as described in chapter 103 of such title, sections 2111 through 2114, 2116, and 2118 through 2119).

(F) Any violation of section 1153 involving murder, manslaughter, kidnapping, maiming,

a felony offense relating to sexual abuse (as described in chapter 109A), incest, arson, burglary, or robbery.

(G) Any attempt or conspiracy to commit any of the above offenses.

(2) In addition to the offenses described in paragraph (1), the following offenses shall be treated for purposes of this section as qualifying Federal offenses, as determined by the Attorney General:

(A) Any offense listed in section 2332b(g)(5)(B) of title 18.

(B) Any crime of violence (as defined in section 16 of title 18).

(C) Any attempt or conspiracy to commit any of the above offenses.

(e) Regulations

(1) In general

Except as provided in paragraph (2), this section shall be carried out under regulations prescribed by the Attorney General.

(2) Probation officers

The Director of the Administrative Office of the United States Courts shall make available model procedures for the activities of probation officers in carrying out this section.

(f) Commencement of collection

Collection of DNA samples under subsection (a) of this section shall, subject to the availability of appropriations, commence not later than the date that is 180 days after December 19, 2000.

(Pub. L. 106-546, §3, Dec. 19, 2000, 114 Stat. 2728; Pub. L. 107-56, title V, §503, Oct. 26, 2001, 115 Stat. 364.)

CODIFICATION

Section was enacted as part of the DNA Analysis Backlog Elimination Act of 2000, and not as part of the Violent Crime Control and Law Enforcement Act of 1994 which enacted this chapter.

AMENDMENTS

2001—Subsec. (d)(2). Pub. L. 107-56 amended par. (2) generally. Prior to amendment, par. (2) read as follows: “The initial determination of qualifying Federal offenses shall be made not later than 120 days after December 19, 2000.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14132, 14135c, 14135e of this title; title 10 section 1565; title 18 sections 3563, 3583, 4209.

§ 14135b. Collection and use of DNA identification information from certain District of Columbia offenders

(a) Collection of DNA samples

(1) From individuals in custody

The Director of the Bureau of Prisons shall collect a DNA sample from each individual in the custody of the Bureau of Prisons who is, or has been, convicted of a qualifying District of Columbia offense (as determined under subsection (d) of this section).

(2) From individuals on release, parole, or probation

The Director of the Court Services and Offender Supervision Agency for the District of

Columbia shall collect a DNA sample from each individual under the supervision of the Agency who is on supervised release, parole, or probation who is, or has been, convicted of a qualifying District of Columbia offense (as determined under subsection (d) of this section).

(3) Individuals already in CODIS

For each individual described in paragraph (1) or (2), if the Combined DNA Index System (in this section referred to as “CODIS”) of the Federal Bureau of Investigation contains a DNA analysis with respect to that individual, the Director of the Bureau of Prisons or Agency (as applicable) may (but need not) collect a DNA sample from that individual.

(4) Collection procedures

(A) The Director of the Bureau of Prisons or Agency (as applicable) may use or authorize the use of such means as are reasonably necessary to detain, restrain, and collect a DNA sample from an individual who refuses to cooperate in the collection of the sample.

(B) The Director of the Bureau of Prisons or Agency, as appropriate, may enter into agreements with units of State or local government or with private entities to provide for the collection of the samples described in paragraph (1) or (2).

(5) Criminal penalty

An individual from whom the collection of a DNA sample is authorized under this subsection who fails to cooperate in the collection of that sample shall be—

- (A) guilty of a class A misdemeanor; and
- (B) punished in accordance with title 18.

(b) Analysis and use of samples

The Director of the Bureau of Prisons or Agency (as applicable) shall furnish each DNA sample collected under subsection (a) of this section to the Director of the Federal Bureau of Investigation, who shall carry out a DNA analysis on each such DNA sample and include the results in CODIS.

(c) Definitions

In this section:

(1) The term “DNA sample” means a tissue, fluid, or other bodily sample of an individual on which a DNA analysis can be carried out.

(2) The term “DNA analysis” means analysis of the deoxyribonucleic acid (DNA) identification information in a bodily sample.

(d) Qualifying District of Columbia offenses

The government of the District of Columbia may determine those offenses under the District of Columbia Code that shall be treated for purposes of this section as qualifying District of Columbia offenses.

(e) Commencement of collection

Collection of DNA samples under subsection (a) of this section shall, subject to the availability of appropriations, commence not later than the date that is 180 days after December 19, 2000.

(f) Authorization of appropriations

There are authorized to be appropriated to the Court Services and Offender Supervision Agency for the District of Columbia to carry out this

section such sums as may be necessary for each of fiscal years 2001 through 2005.

(Pub. L. 106-546, §4, Dec. 19, 2000, 114 Stat. 2730.)

CODIFICATION

Section was enacted as part of the DNA Analysis Backlog Elimination Act of 2000, and not as part of the Violent Crime Control and Law Enforcement Act of 1994 which enacted this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14132, 14135c, 14135e of this title; title 10 section 1565; title 18 section 4209.

§ 14135c. Conditions of release generally

If the collection of a DNA sample from an individual on probation, parole, or supervised release is authorized pursuant to section 14135a or 14135b of this title or section 1565 of title 10, the individual shall cooperate in the collection of a DNA sample as a condition of that probation, parole, or supervised release.

(Pub. L. 106-546, §7(d), Dec. 19, 2000, 114 Stat. 2734.)

CODIFICATION

Section was enacted as part of the DNA Analysis Backlog Elimination Act of 2000, and not as part of the Violent Crime Control and Law Enforcement Act of 1994 which enacted this chapter.

§ 14135d. Authorization of appropriations

There are authorized to be appropriated to the Attorney General to carry out this Act (including to reimburse the Federal judiciary for any reasonable costs incurred in implementing such Act, as determined by the Attorney General) such sums as may be necessary.

(Pub. L. 106-546, §9, Dec. 19, 2000, 114 Stat. 2735.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 106-546, Dec. 19, 2000, 114 Stat. 2726, known as the DNA Analysis Backlog Elimination Act of 2000. For complete classification of this Act to the Code, see Short Title of 2000 Amendments note set out under section 13701 of this title and Tables.

CODIFICATION

Section was enacted as part of the DNA Analysis Backlog Elimination Act of 2000, and not as part of the Violent Crime Control and Law Enforcement Act of 1994 which enacted this chapter.

§ 14135e. Privacy protection standards

(a) In general

Except as provided in subsection (b) of this section, any sample collected under, or any result of any analysis carried out under, section 14135, 14135a, or 14135b of this title may be used only for a purpose specified in such section.

(b) Permissive uses

A sample or result described in subsection (a) of this section may be disclosed under the circumstances under which disclosure of information included in the Combined DNA Index System is allowed, as specified in subparagraphs (A) through (D) of section 14132(b)(3) of this title.

(c) Criminal penalty

A person who knowingly—

(1) discloses a sample or result described in subsection (a) of this section in any manner to any person not authorized to receive it; or

(2) obtains, without authorization, a sample or result described in subsection (a) of this section,

shall be fined not more than \$100,000.

(Pub. L. 106-546, §10, Dec. 19, 2000, 114 Stat. 2735.)

CODIFICATION

Section was enacted as part of the DNA Analysis Backlog Elimination Act of 2000, and not as part of the Violent Crime Control and Law Enforcement Act of 1994 which enacted this chapter.

PART B—POLICE PATTERN OR PRACTICE

§ 14141. Cause of action

(a) Unlawful conduct

It shall be unlawful for any governmental authority, or any agent thereof, or any person acting on behalf of a governmental authority, to engage in a pattern or practice of conduct by law enforcement officers or by officials or employees of any governmental agency with responsibility for the administration of juvenile justice or the incarceration of juveniles that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States.

(b) Civil action by Attorney General

Whenever the Attorney General has reasonable cause to believe that a violation of paragraph (1)¹ has occurred, the Attorney General, for or in the name of the United States, may in a civil action obtain appropriate equitable and declaratory relief to eliminate the pattern or practice.

(Pub. L. 103-322, title XXI, §210401, Sept. 13, 1994, 108 Stat. 2071.)

§ 14142. Data on use of excessive force

(a) Attorney General to collect

The Attorney General shall, through appropriate means, acquire data about the use of excessive force by law enforcement officers.

(b) Limitation on use of data

Data acquired under this section shall be used only for research or statistical purposes and may not contain any information that may reveal the identity of the victim or any law enforcement officer.

(c) Annual summary

The Attorney General shall publish an annual summary of the data acquired under this section.

(Pub. L. 103-322, title XXI, §210402, Sept. 13, 1994, 108 Stat. 2071.)

¹So in original. Probably should be "subsection (a) of this section".

PART C—IMPROVED TRAINING AND TECHNICAL
AUTOMATION

§ 14151. Improved training and technical automa-
tion

(a) Grants

(1) In general

The Attorney General shall, subject to the availability of appropriations, make grants to State, Indian tribal, and local criminal justice agencies and to nonprofit organizations for the purposes of improving criminal justice agency efficiency through computerized automation and technological improvements.

(2) Types of programs

Grants under this section may include programs to—

- (A) increase use of mobile digital terminals;
- (B) improve communications systems, such as computer-aided dispatch and incident reporting systems;
- (C) accomplish paper-flow reduction;
- (D) establish or improve ballistics identification programs;
- (E) increase the application of automated fingerprint identification systems and their communications on an interstate and intra-state basis; and
- (F) improve computerized collection of criminal records.

(3) Funding

No funds under this part may be used to implement any cryptographic or digital telephony programs.

(b) Training and investigative assistance

(1) In general

The Attorney General shall, subject to the availability of appropriations—

- (A) expand and improve investigative and managerial training courses for State, Indian tribal, and local law enforcement agencies; and
- (B) develop and implement, on a pilot basis with no more than 10 participating cities, an intelligent information system that gathers, integrates, organizes, and analyzes information in active support of investigations by Federal, State, and local law enforcement agencies of violent serial crimes.

(2) Improvement of facilities

The improvement described in subsection (a) of this section shall include improvements of the training facilities of the Federal Bureau of Investigation Academy at Quantico, Virginia.

(3) Intelligent information system

The intelligent information system described in paragraph (1)(B) shall be developed and implemented by the Federal Bureau of Investigation and shall utilize the resources of the Violent Criminal Apprehension Program.

(c) Authorization of appropriations

There are authorized to be appropriated—

- (1) to carry out subsection (a) of this section—
 - (A) \$10,000,000 for fiscal year 1996;

- (B) \$20,000,000 for fiscal year 1997;
- (C) \$23,000,000 for fiscal year 1998;
- (D) \$23,000,000 for fiscal year 1999; and
- (E) \$24,000,000 for fiscal year 2000.¹

(2) to carry out subsection (b)(1) of this section—

- (A) \$4,000,000 for fiscal year 1996;
- (B) \$2,000,000 for fiscal year 1997;
- (C) \$3,000,000 for fiscal year 1998;
- (D) \$5,000,000 for fiscal year 1999; and
- (E) \$6,000,000 for fiscal year 2000; and

(3) to carry out subsection (b)(2) of this section—

- \$10,000,000 for fiscal year 1996.

(d) Definitions

In this section—

“Indian tribe” means a tribe, band, pueblo, nation, or other organized group or community of Indians, including an Alaska Native village (as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.),² that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

“State” means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, and the United States Virgin Islands.

(Pub. L. 103-322, title XXI, §210501, Sept. 13, 1994, 108 Stat. 2072.)

REFERENCES IN TEXT

The Alaska Native Claims Settlement Act, referred to in subsec. (d), is Pub. L. 92-203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

PART D—OTHER STATE AND LOCAL AID

§ 14161. Federal assistance to ease increased burdens on State court systems

(a) In general

The Attorney General shall, subject to the availability of appropriation, make grants for States and units of local government to pay the costs of providing increased resources for courts, prosecutors, public defenders, and other criminal justice participants as necessary to meet the increased demands for judicial activities resulting from the provisions of this Act and amendments made by this Act.

(b) Applications

In carrying out this section, the Attorney General may make grants to, or enter into contracts with public or private agencies, institutions, or organizations or individuals to carry

¹ So in original. The period probably should be a semicolon.

² So in original. A closing parenthesis probably should precede the comma.

out any purpose specified in this section. The Attorney General shall have final authority over all funds awarded under this section.

(c) Records

Each recipient that receives a grant under this section shall keep such records as the Attorney General may require to facilitate an effective audit.

(d) Authorization of appropriations

There are authorized to be appropriated to carry out this section—

- (1) \$23,000,000 for fiscal year 1996;
- (2) \$30,000,000 for fiscal year 1997;
- (3) \$30,000,000 for fiscal year 1998;
- (4) \$32,000,000 for fiscal year 1999; and
- (5) \$35,000,000 for fiscal year 2000,

to remain available for obligation until expended.

(Pub. L. 103-322, title XXI, § 210602, Sept. 13, 1994, 108 Stat. 2073.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a), is Pub. L. 103-322, Sept. 13, 1994, 108 Stat. 1796, known as the Violent Crime Control and Law Enforcement Act of 1994. For complete classification of this Act to the Code, see Short Title note set out under section 13701 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

SUBCHAPTER X—MOTOR VEHICLE THEFT PREVENTION

§ 14171. Motor vehicle theft prevention program

(a) In general

Not later than 180 days after September 13, 1994, the Attorney General shall develop, in cooperation with the States, a national voluntary motor vehicle theft prevention program (in this section referred to as the "program") under which—

(1) the owner of a motor vehicle may voluntarily sign a consent form with a participating State or locality in which the motor vehicle owner—

(A) states that the vehicle is not normally operated under certain specified conditions; and

(B) agrees to—

(i) display program decals or devices on the owner's vehicle; and

(ii) permit law enforcement officials in any State to stop the motor vehicle and take reasonable steps to determine whether the vehicle is being operated by or with the permission of the owner, if the vehicle is being operated under the specified conditions; and

(2) participating States and localities authorize law enforcement officials in the State or locality to stop motor vehicles displaying program decals or devices under specified conditions and take reasonable steps to determine whether the vehicle is being operated by or with the permission of the owner.

(b) Uniform decal or device designs

(1) In general

The motor vehicle theft prevention program developed pursuant to this section shall include a uniform design or designs for decals or other devices to be displayed by motor vehicles participating in the program.

(2) Type of design

The uniform design shall—

(A) be highly visible; and

(B) explicitly state that the motor vehicle to which it is affixed may be stopped under the specified conditions without additional grounds for establishing a reasonable suspicion that the vehicle is being operated unlawfully.

(c) Voluntary consent form

The voluntary consent form used to enroll in the program shall—

(1) clearly state that participation in the program is voluntary;

(2) clearly explain that participation in the program means that, if the participating vehicle is being operated under the specified conditions, law enforcement officials may stop the vehicle and take reasonable steps to determine whether it is being operated by or with the consent of the owner, even if the law enforcement officials have no other basis for believing that the vehicle is being operated unlawfully;

(3) include an express statement that the vehicle is not normally operated under the specified conditions and that the operation of the vehicle under those conditions would provide sufficient grounds for a prudent law enforcement officer to reasonably believe that the vehicle was not being operated by or with the consent of the owner; and

(4) include any additional information that the Attorney General may reasonably require.

(d) Specified conditions under which stops may be authorized

(1) In general

The Attorney General shall promulgate rules establishing the conditions under which participating motor vehicles may be authorized to be stopped under this section. These conditions may not be based on race, creed, color, national origin, gender, or age. These conditions may include—

(A) the operation of the vehicle during certain hours of the day; or

(B) the operation of the vehicle under other circumstances that would provide a sufficient basis for establishing a reasonable suspicion that the vehicle was not being operated by the owner, or with the consent of the owner.

(2) More than one set of conditions

The Attorney General may establish more than one set of conditions under which participating motor vehicles may be stopped. If more than one set of conditions is established, a separate consent form and a separate design for program decals or devices shall be established for each set of conditions. The Attorney General may choose to satisfy the require-

ment of a separate design for program decals or devices under this paragraph by the use of a design color that is clearly distinguishable from other design colors.

(3) No new conditions without consent

After the program has begun, the conditions under which a vehicle may be stopped if affixed with a certain decal or device design may not be expanded without the consent of the owner.

(4) Limited participation by States and localities

A State or locality need not authorize the stopping of motor vehicles under all sets of conditions specified under the program in order to participate in the program.

(e) Motor vehicles for hire

(1) Notification to lessees

Any person who is in the business of renting or leasing motor vehicles and who rents or leases a motor vehicle on which a program decal or device is affixed shall, prior to transferring possession of the vehicle, notify the person to whom the motor vehicle is rented or leased about the program.

(2) Type of notice

The notice required by this subsection shall—

- (A) be in writing;
- (B) be in a prominent format to be determined by the Attorney General; and
- (C) explain the possibility that if the motor vehicle is operated under the specified conditions, the vehicle may be stopped by law enforcement officials even if the officials have no other basis for believing that the vehicle is being operated unlawfully.

(3) Fine for failure to provide notice

Failure to provide proper notice under this subsection shall be punishable by a fine not to exceed \$5,000.

(f) Notification of police

As a condition of participating in the program, a State or locality must agree to take reasonable steps to ensure that law enforcement officials throughout the State or locality are familiar with the program, and with the conditions under which motor vehicles may be stopped under the program.

(g) Regulations

The Attorney General shall promulgate regulations to implement this section.

(h) Authorization of appropriations

There are authorized to carry out this section.¹

- (1) \$1,500,000 for fiscal year 1996;
- (2) \$1,700,000 for fiscal year 1997; and
- (3) \$1,800,000 for fiscal year 1998.

(Pub. L. 103-322, title XXII, §220002, Sept. 13, 1994, 108 Stat. 2074.)

SHORT TITLE

For short title of this subchapter as the "Motor Vehicle Theft Prevention Act", see section 220001 of Pub. L.

¹ So in original. The period probably should be a dash.

103-322, set out as a note under section 13701 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

SUBCHAPTER XI—PROTECTIONS FOR THE ELDERLY

§ 14181. Missing Alzheimer's Disease Patient Alert Program

(a) Grant

The Attorney General shall, subject to the availability of appropriations, award a grant to an eligible organization to assist the organization in paying for the costs of planning, designing, establishing, and operating a Missing Alzheimer's Disease Patient Alert Program, which shall be a locally based, proactive program to protect and locate missing patients with Alzheimer's disease and related dementias.

(b) Application

To be eligible to receive a grant under subsection (a) of this section, an organization shall submit an application to the Attorney General at such time, in such manner, and containing such information as the Attorney General may require, including, at a minimum, an assurance that the organization will obtain and use assistance from private nonprofit organizations to support the program.

(c) Eligible organization

The Attorney General shall award the grant described in subsection (a) of this section to a national voluntary organization that has a direct link to patients, and families of patients, with Alzheimer's disease and related dementias.

(d) Authorization of appropriations

There are authorized to be appropriated to carry out this section—

- (1) \$900,000 for fiscal year 1996;
- (2) \$900,000 for fiscal year 1997; and
- (3) \$900,000 for fiscal year 1998.

(Pub. L. 103-322, title XXIV, §240001, Sept. 13, 1994, 108 Stat. 2080.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

SUBCHAPTER XII—PRESIDENTIAL SUMMIT ON VIOLENCE AND NATIONAL COMMISSION ON CRIME PREVENTION AND CONTROL

§ 14191. Presidential summit

Congress calls on the President to convene a national summit on violence in America prior to convening the Commission established under this subchapter.

(Pub. L. 103-322, title XXVII, §270001, Sept. 13, 1994, 108 Stat. 2089.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14198 of this title.

§ 14192. Establishment; committees and task forces; representation

(a) Establishment and appointment of members

There is established a commission to be known as the "National Commission on Crime Control and Prevention". The Commission shall be composed of 28 members appointed as follows:

(1) 10 persons by the President, not more than 6 of whom shall be of the same major political party.

(2) 9 persons by the President pro tempore of the Senate, 5 of whom shall be appointed on the recommendation of the Majority Leader of the Senate and the chairman of the Committee on the Judiciary of the Senate, and 4 of whom shall be appointed on the recommendation of the Minority Leader of the Senate and the ranking minority member of the Committee on the Judiciary of the Senate.

(3) 9 persons appointed by the Speaker of the House of Representatives, in consultation with the chairman of the Committee on the Judiciary of the House of Representatives, and 4 of whom shall be appointed on the recommendation of the Minority Leader of the House of Representatives, in consultation with the ranking member of the Committee on the Judiciary.

(b) Committees and task forces

The Commission shall establish committees or task forces from among its members for the examination of specific subject areas and the carrying out of other functions or responsibilities of the Commission, including committees or task forces for the examination of the subject areas of crime and violence generally, the causes of the demand for drugs, violence in schools, and violence against women, as described in subsections (b) through (e) of section 14194 of this title.

(c) Representation

(1) At least 1 member of the Commission appointed by the President, at least 2 members of the Commission appointed by the President pro tempore of the Senate, and at least 2 members of the Commission appointed by the Speaker of the House of Representatives shall be persons well-qualified to participate in the Commission's examination of the subject area of crime and violence generally, with education, training, expertise, or experience in such areas as law enforcement, law, sociology, psychology, social work, and ethnography and urban poverty (including health care, housing, education, and employment).

(2) At least 1 member of the Commission appointed by the President, at least 2 members of the Commission appointed by the President pro tempore of the Senate, and at least 2 members of the Commission appointed by the Speaker of the House of Representatives shall be persons well-qualified to participate in the Commission's examination of the subject area of the causes of the demand for drugs, with education, training, expertise, or experience in such areas as addiction, biomedicine, sociology, psychology, law, and ethnography and urban poverty (including health care, housing, education, and employment).

(3) At least 1 member of the Commission appointed by the President, at least 2 members of the Commission appointed by the President pro tempore of the Senate, and at least 2 members of the Commission appointed by the Speaker of the House of Representatives shall be persons well-qualified to participate in the Commission's examination of the subject area of violence in schools, with education, training, expertise, or experience in such areas as law enforcement, education, school governance policy and teaching, law, sociology, psychology, and ethnography and urban poverty (including health care, housing, education, and employment).

(4) At least 1 member of the Commission appointed by the President, at least 2 members of the Commission appointed by the President pro tempore of the Senate, and at least 2 members of the Commission appointed by the Speaker of the House of Representatives shall be persons well-qualified to participate in the Commission's examination of the subject area of violence against women, as survivors of violence, or as persons with education, training, expertise, or experience in such areas as law enforcement, law, judicial administration, prosecution, defense, victim services or advocacy in sexual assault or domestic violence cases (including medical services and counseling), and protection of victims' rights.

(Pub. L. 103-322, title XXVII, §270002, Sept. 13, 1994, 108 Stat. 2089.)

§ 14193. Purposes

The purposes of the Commission are as follows:

(1) To develop a comprehensive proposal for preventing and controlling crime and violence in the United States, including cost estimates for implementing any recommendations made by the Commission.

(2) To bring attention to successful models and programs in crime prevention and crime control.

(3) To reach out beyond the traditional criminal justice community for ideas for controlling and preventing crime.

(4) To recommend improvements in the coordination of local, State, Federal, and international crime control and prevention efforts, including efforts relating to crime near international borders.

(5) To make a comprehensive study of the economic and social factors leading to or contributing to crime and violence, including the causes of illicit drug use and other substance abuse, and to develop specific proposals for legislative and administrative actions to reduce crime and violence and the factors that contribute to it.

(6) To recommend means of utilizing criminal justice resources as effectively as possible, including targeting finite correctional facility space to the most serious and violent offenders, and considering increased use of intermediate sanctions for offenders who can be dealt with adequately by such means.

(7) To examine distinctive crime problems and the impact of crime on members of minority groups, Indians living on reservations, and

other groups defined by race, ethnicity, religion, age, disability, or other characteristics, and to recommend specific responses to the distinctive crime problems of such groups.

(8) To examine the problem of sexual assaults, domestic violence, and other criminal and unlawful acts that particularly affect women, and to recommend Federal, State, and local strategies for more effectively preventing and punishing such crimes and acts.

(9) To examine the treatment of victims in Federal, State, and local criminal justice systems, and to develop recommendations to enhance and protect the rights of victims.

(10) To examine the ability of Federal, State, and local criminal justice systems to administer criminal law and criminal sanctions impartially without discrimination on the basis of race, ethnicity, religion, gender, or other legally proscribed grounds, and to make recommendations for correcting any deficiencies in the impartial administration of justice on these grounds.

(11) To examine the nature, scope, causes, and complexities of violence in schools and to recommend a comprehensive response to that problem.

(Pub. L. 103-322, title XXVII, §270003, Sept. 13, 1994, 108 Stat. 2091.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14194 of this title.

§ 14194. Responsibilities of Commission

(a) In general

The responsibilities of the Commission shall include such study and consultation as may be necessary or appropriate to carry out the purposes set forth in section 14193 of this title, including the specific measures described in subsections (b) through (e) of this section in relation to the subject areas addressed in those subsections.

(b) Crime and violence generally

In addressing the subject of crime and violence generally, the activities of the Commission shall include the following:

(1) Reviewing the effectiveness of traditional criminal justice approaches in preventing and controlling crime and violence.

(2) Examining the impact that changes in Federal and State law have had in controlling crime and violence.

(3) Examining the impact of changes in Federal immigration laws and policies and increased development and growth along United States international borders on crime and violence in the United States, particularly among the Nation's youth.

(4) Examining the problem of youth gangs and providing recommendations as to how to reduce youth involvement in violent crime.

(5) Examining the extent to which the use of dangerous weapons in the commission of crime has contributed to violence and murder in the United States.

(6) Convening field hearings in various regions of the country to receive testimony from

a cross section of criminal justice professionals, business leaders, elected officials, medical doctors, and other persons who wish to participate.

(7) Reviewing all segments of the Nation's criminal justice systems, including the law enforcement, prosecution, defense, judicial, and corrections components in developing the crime control and prevention proposal.

(c) Causes of demand for drugs

In addressing the subject of the causes of the demand for drugs, the activities of the Commission shall include the following:

(1) Examining the root causes of illicit drug use and abuse in the United States, including by compiling existing research regarding those root causes, and including consideration of the following factors:

(A) The characteristics of potential illicit drug users and abusers or drug traffickers, including age and social, economic, and educational backgrounds.

(B) Environmental factors that contribute to illicit drug use and abuse, including the correlation between unemployment, poverty, and homelessness and drug experimentation and abuse.

(C) The effects of substance use and abuse by a relative or friend in contributing to the likelihood and desire of an individual to experiment with illicit drugs.

(D) Aspects of, and changes in cultural values, attitudes and traditions that contribute to illicit drug use and abuse.

(E) The physiological and psychological factors that contribute to the desire for illicit drugs.

(2) Evaluating Federal, State, and local laws and policies on the prevention of drug abuse, control of unlawful production, distribution and use of controlled substances, and the efficacy of sentencing policies with regard to those laws.

(3) Analyzing the allocation of resources among interdiction of controlled substances entering the United States, enforcement of Federal laws relating to the unlawful production, distribution, and use of controlled substances, education with regard to and the prevention of the unlawful use of controlled substances, and treatment and rehabilitation of drug abusers.

(4) Analyzing current treatment and rehabilitation methods and making recommendations for improvements.

(5) Identifying any existing gaps in drug abuse policy that result from the lack of attention to the root causes of drug abuse.

(6) Assessing the needs of government at all levels for resources and policies for reducing the overall desire of individuals to experiment with and abuse illicit drugs.

(7) Making recommendations regarding necessary improvements in policies for reducing the use of illicit drugs in the United States.

(d) Violence in schools

In addressing the subject of violence in schools, the activities of the Commission shall include the following:

(1) Defining the causes of violence in schools.

(2) Defining the scope of the national problem of violence in schools.

(3) Providing statistics and data on the problem of violence in schools on a State-by-State basis.

(4) Investigating the problem of youth gangs and their relation to violence in schools and providing recommendations on how to reduce youth involvement in violent crime in schools.

(5) Examining the extent to which dangerous weapons have contributed to violence and murder in schools.

(6) Exploring the extent to which the school environment has contributed to violence in schools.

(7) Reviewing the effectiveness of current approaches in preventing violence in schools.

(e) Violence against women

In addressing the subject of sexual assault, domestic violence, and other criminal and unlawful acts that particularly affect women, the activities of the Commission shall include the following:

(1) Evaluating the adequacy of, and making recommendations regarding, current law enforcement efforts at the Federal, State, and local levels to reduce the incidence of such crimes and acts, and to punish those responsible for such crimes and acts.

(2) Evaluating the adequacy of, and making recommendations regarding, the responsiveness of prosecutors and courts to such crimes and acts.

(3) Evaluating the adequacy of rules of evidence, practice, and procedure to ensure the effective prosecution and conviction of perpetrators of such crimes and acts and to protect victims of such crimes and acts from abuse in legal proceedings, making recommendations, where necessary, to improve those rules.

(4) Evaluating the adequacy of pretrial release, sentencing, incarceration, and post-conviction release in relation to such crimes and acts.

(5) Evaluating the adequacy of, and making recommendations regarding, the adequacy of Federal and State laws on sexual assault and the need for a more uniform statutory response to sex offenses, including sexual assaults and other sex offenses committed by offenders who are known or related by blood or marriage to the victim.

(6) Evaluating the adequacy of, and making recommendations regarding, the adequacy of Federal and State laws on domestic violence and the need for a more uniform statutory response to domestic violence.

(7) Evaluating the adequacy of, and making recommendations regarding, the adequacy of current education, prevention, and protective services for victims of such crimes and acts.

(8) Assessing the issuance, formulation, and enforcement of protective orders, whether or not related to a criminal proceeding, and making recommendations for their more effective use in domestic violence and stalking cases.

(9) Assessing the problem of stalking and recommending effective means of response to the problem.

(10) Evaluating the adequacy of, and making recommendations regarding, programs for public awareness and public dissemination of information to prevent such crimes and acts.

(11) Evaluating the treatment of victims of such crimes and acts in Federal, State, and local criminal justice systems, and making recommendations designed to improve such treatment.

(Pub. L. 103-322, title XXVII, §270004, Sept. 13, 1994, 108 Stat. 2092.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14192 of this title.

§ 14195. Administrative matters

(a) Chair

The President shall designate a member of the Commission to chair the Commission.

(b) No additional pay or benefits; per diem

Members of the Commission shall receive no pay or benefits by reason of their service on the Commission, but shall receive travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under sections 5702 and 5703 of title 5.

(c) Vacancies

Vacancies on the Commission shall be filled in the same manner as initial appointments.

(d) Meetings open to public

The Commission shall be considered to be an agency for the purposes of section 552b of title 5 relating to the requirement that meetings of Federal agencies be open to the public.

(Pub. L. 103-322, title XXVII, §270005, Sept. 13, 1994, 108 Stat. 2094.)

§ 14196. Staff and support services

(a) Director

With the approval of the Commission, the chairperson shall appoint a staff director for the Commission.

(b) Staff

With the approval of the Commission, the staff director may appoint and fix the compensation of staff personnel for the Commission.

(c) Civil service laws

The staff of the Commission shall be appointed without regard to the provisions of title 5 governing appointments in the competitive service. Staff compensation may be set without regard to the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates, but in no event shall any such personnel be compensated at a rate greater than the rate of basic pay for level ES-4 of the Senior Executive Service Schedule under section 5382 of that title. The staff director shall be paid at a rate not to exceed the rate of basic pay for level V of the Executive Schedule.

(d) Consultants

With the approval of the Commission, the staff director may procure temporary and intermittent services under section 3109(b) of title 5.

(e) Staff of Federal agencies

Upon the request of the Commission, the head of any Federal agency may detail, on a reimbursable basis, personnel of that agency to the Commission to assist in carrying out its duties.

(f) Physical facilities

The Administrator of the General Service Administration shall provide suitable office space for the operation of the Commission. The facilities shall serve as the headquarters of the Commission and shall include all necessary equipment and incidentals required for proper functioning.

(Pub. L. 103-322, title XXVII, §270006, Sept. 13, 1994, 108 Stat. 2094.)

REFERENCES IN TEXT

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (c), are classified generally to section 3301 et seq. of Title 5, Government Organization and Employees.

Level V of the Executive Schedule, referred to in subsec. (c), is set out in section 5316 of Title 5.

§ 14197. Powers**(a) Hearings**

For the purposes of carrying out this subchapter, the Commission may conduct such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Commission considers appropriate. The Commission may administer oaths before the Commission.

(b) Delegation

Any committee, task force, member, or agent, of the Commission may, if authorized by the Commission, take any action that the Commission is authorized to take under this subchapter.

(c) Access to information

The Commission may request directly from any Federal agency or entity in the executive or legislative branch such information as is needed to carry out its functions.

(d) Mail

The Commission may use the United States mails in the same manner and under the same conditions as other Federal agencies.

(Pub. L. 103-322, title XXVII, §270007, Sept. 13, 1994, 108 Stat. 2095.)

§ 14198. Report; termination

Not later than 2 years after the date on which the Commission is fully constituted under section 14191 of this title, the Commission shall submit a detailed report to the Congress and the President containing its findings and recommendations. The Commission shall terminate 30 days after the submission of its report.

(Pub. L. 103-322, title XXVII, §270008, Sept. 13, 1994, 108 Stat. 2095.)

§ 14199. Authorization of appropriations

There are authorized to be appropriated to carry out this subchapter—

- (1)¹ \$1,000,000 for fiscal year 1996.

¹ So in original. No par. (2) has been enacted.

(Pub. L. 103-322, title XXVII, §270009, Sept. 13, 1994, 108 Stat. 2095.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

SUBCHAPTER XIII—VIOLENT CRIME
REDUCTION TRUST FUND**§ 14211. Creation of Violent Crime Reduction Trust Fund****(a) Violent Crime Reduction Trust Fund**

There is established a separate account in the Treasury, known as the “Violent Crime Reduction Trust Fund” (referred to in this section as the “Fund”) into which shall be transferred, in accordance with subsection (b) of this section, savings realized from implementation of section 5 of the Federal Workforce Restructuring Act of 1994 (5 U.S.C. 3101 note; Public Law 103-226).

(b) Transfers into Fund

On the first day of the following fiscal years (or as soon thereafter as possible for fiscal year 1995), the following amounts shall be transferred from the general fund to the Fund—

- (1) for fiscal year 1995, \$2,423,000,000;
- (2) for fiscal year 1996, \$4,287,000,000;
- (3) for fiscal year 1997, \$5,000,000,000;
- (4) for fiscal year 1998, \$5,500,000,000;
- (5) for fiscal year 1999, \$6,500,000,000; and
- (6) for fiscal year 2000, \$6,500,000,000.

(c) Appropriations from Fund

(1) Amounts in the Fund may be appropriated exclusively for the purposes authorized in this Act and for those expenses authorized by any Act enacted before this Act that are expressly qualified for expenditure from the Fund.

(2) Amounts appropriated under paragraph (1) and outlays flowing from such appropriations shall not be taken into account for purposes of any budget enforcement procedures under the Balanced Budget and Emergency Deficit Control Act of 1985 except section 251A¹ of that Act as added by subsection (g), or for purposes of section 665d(b)¹ of title 2. Amounts of new budget authority and outlays under paragraph (1) that are included in concurrent resolutions on the budget shall not be taken into account for purposes of sections 665(b), 665e(b), and 665e(c) of title 2,¹ or for purposes of section 24 of House Concurrent Resolution 218 (One Hundred Third Congress).

(Pub. L. 103-322, title XXXI, §310001(a)–(c), Sept. 13, 1994, 108 Stat. 2102, 2103.)

REFERENCES IN TEXT

This section, referred to in subsec. (a), is section 310001 of Pub. L. 103-322, which enacted this section and section 901a of Title 2, The Congress, and amended sections 665a and 904 of Title 2 and sections 1105 and 1321 of Title 31, Money and Finance.

This Act, referred to in subsec. (c)(1), is Pub. L. 103-322, Sept. 13, 1994, 108 Stat. 1796, known as the Violent Crime Control and Law Enforcement Act of 1994. For complete classification of this Act to the Code, see Short Title note set out under section 13701 of this title and Tables.

¹ See References in Text note below.

The Balanced Budget and Emergency Deficit Control Act of 1985, referred to in subsec. (c)(2), is title II of Pub. L. 99-177, Dec. 12, 1985, 99 Stat. 1038, as amended, which enacted chapter 20 (§900 et seq.) and sections 654 to 656 of Title 2, The Congress, amended section 911 of this title, sections 602, 622, 631 to 642, and 651 to 653 of Title 2, and sections 1104 to 1106, and 1109 of Title 31, Money and Finance, repealed section 661 of Title 2, enacted provisions set out as notes under section 911 of this title and section 900 of Title 2, and amended provisions set out as a note under section 621 of Title 2. Section 251A of the Act was classified to section 901a of Title 2 and was repealed by Pub. L. 105-33, title X, §10204(a)(1), Aug. 5, 1997, 111 Stat. 702. For complete classification of this Act to the Code, see Short Title note set out under section 900 of Title 2 and Tables.

Sections 665, 665d, and 665e of title 2, referred to in subsec. (c)(2), were repealed by Pub. L. 105-33, title X, §10118(a), Aug. 5, 1997, 111 Stat. 695.

House Concurrent Resolution 218, referred to in subsec. (c)(2), is H. Con. Res. 218, May 12, 1994, 108 Stat. 5075, which is not classified to the Code.

§ 14212. Repealed. Pub. L. 105-33, title X, § 10204(b), Aug. 5, 1997, 111 Stat. 702

Section, Pub. L. 103-322, title XXXI, §310002, Sept. 13, 1994, 108 Stat. 2105, related to conforming reduction in discretionary spending limits.

§ 14213. Extension of authorizations of appropriations for fiscal years for which full amount authorized is not appropriated

If, in making an appropriation under any provision of this Act or amendment made by this Act that authorizes the making of an appropriation for a certain purpose for a certain fiscal year in a certain amount, the Congress makes an appropriation for that purpose for that fiscal year in a lesser amount, that provision or amendment shall be considered to authorize the making of appropriations for that purpose for later fiscal years in an amount equal to the difference between the amount authorized to be appropriated and the amount that has been appropriated.

(Pub. L. 103-322, title XXXI, §310003, Sept. 13, 1994, 108 Stat. 2105.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 103-322, Sept. 13, 1994, 108 Stat. 1796, known as the Violent Crime Control and Law Enforcement Act of 1994. For complete classification of this Act to the Code, see Short Title note set out under section 13701 of this title and Tables.

§ 14214. Flexibility in making of appropriations

(a) Federal law enforcement

In the making of appropriations under any provision of this Act or amendment made by this Act that authorizes the making of an appropriation for a Federal law enforcement program for a certain fiscal year in a certain amount out of the Violent Crime Reduction Trust Fund, not to exceed 10 percent of that amount is authorized to be appropriated for that fiscal year for any other Federal law enforcement program for which appropriations are authorized by any other Federal law enforcement provision of this Act or amendment made by this Act. The aggregate reduction in the authorization for any particular Federal law enforcement program may not exceed 10 percent of the total amount au-

thorized to be appropriated from the Violent Crime Reduction Trust Fund for that program in this Act or amendment made by this Act.

(b) State and local law enforcement

In the making of appropriations under any provision of this Act or amendment made by this Act that authorizes the making of an appropriation for a State and local law enforcement program for a certain fiscal year in a certain amount out of the Violent Crime Reduction Trust Fund, not to exceed 10 percent of that amount is authorized to be appropriated for that fiscal year for any other State and local law enforcement program for which appropriations are authorized by any other State and local law enforcement provision of this Act or amendment made by this Act. The aggregate reduction in the authorization for any particular State and local law enforcement program may not exceed 10 percent of the total amount authorized to be appropriated from the Violent Crime Reduction Trust Fund for that program in this Act or amendment made by this Act.

(c) Prevention

In the making of appropriations under any provision of this Act or amendment made by this Act that authorizes the making of an appropriation for a prevention program for a certain fiscal year in a certain amount out of the Violent Crime Reduction Trust Fund, not to exceed 10 percent of that amount is authorized to be appropriated for that fiscal year for any other prevention program for which appropriations are authorized by any other prevention provision of this Act or amendment made by this Act. The aggregate reduction in the authorization for any particular prevention program may not exceed 10 percent of the total amount authorized to be appropriated from the Violent Crime Reduction Trust Fund for that program in this Act or amendment made by this Act.

(d) Definitions

In this section—“Federal law enforcement program” means a program authorized in any of the following sections:

- (1) section 190001(a);
- (2) section 190001(b);
- (3) section 190001(c);
- (4) section 190001(d);
- (5) section 190001(e);
- (6) section 320925;¹
- (7) section 14062 of this title;
- (8) section 14171 of this title;
- (9) section 130002;
- (10) section 130005;
- (11) section 130006;
- (12) section 130007;
- (13) section 250005;
- (14) sections 14131-14134 of this title;
- (15) section 14083 of this title; and
- (16) section 14199 of this title.

“State and local law enforcement program” means a program authorized in any of the following sections:

- (1) sections 10001-10003;
- (2) section 210201;

¹So in original. Pub. L. 103-322 does not contain a section 320925.

- (3) section 210603;
- (4) section 180101;
- (5) section 14082 of this title;
- (6) sections 13861–13868 of this title;
- (7) section 14161 of this title;
- (8) sections 13811–13812 of this title;
- (9) section 210302;
- (10) section 14151 of this title;
- (11) section 210101;
- (12) section 320930;²
- (13) sections 13701–13709 of this title;
- (14) section 20301;
- (15) section 13911 of this title; and
- (16) section 20201.

“prevention program” means a program authorized in any of the following sections:

- (1) section 50001;
- (2) sections 13741–13744 of this title;
- (3) sections 13751–13758 of this title;
- (4) sections 13771–13777 of this title;
- (5) sections 13791–13793 of this title;
- (6) sections 13801–13802 of this title;
- (7) chapter 67 of title 31;
- (8) section 31101 and sections 13821–13853 of this title;
- (9) sections 31501–31505;
- (10) section 31901 and sections 13881–13902 of this title;
- (11) section 32001;
- (12) section 32101;
- (13) section 13921 of this title;
- (14) section 40114;
- (15) section 40121;
- (16) section 300w–10³ of this title;
- (17) section 13941 of this title;
- (18) section 5712d of this title;
- (19) section 40156;
- (20) section 10416 of this title;
- (21) section 40231;
- (22) section 40241;
- (23) section 10417³ of this title;
- (24) section 10418 of this title;
- (25) section 13962 of this title;
- (26) section 13963 of this title;
- (27) section 13971 of this title;
- (28) sections 13991–13994 of this title;
- (29) sections 14001–14002 of this title;
- (30) section 14012 of this title;
- (31) section 40601 and sections 14031–14040 of this title; and
- (32) section 14181³ of this title.

(Pub. L. 103–322, title XXXI, §310004, Sept. 13, 1994, 108 Stat. 2106.)

REFERENCES IN TEXT

This Act, referred to in subsections (a) to (c), is Pub. L. 103–322, Sept. 13, 1994, 108 Stat. 1796, known as the Violent Crime Control and Law Enforcement Act of 1994. For complete classification of this Act to the Code, see Short Title note set out under section 13701 of this title and Tables.

Section 190001, referred to in subsection (d), is section 190001 of Pub. L. 103–322, 108 Stat. 2048, which is not classified to the Code.

Section 130002, referred to in subsection (d), is section 130002 of Pub. L. 103–322, 108 Stat. 2023, which is set out as a note under section 1226 of Title 8, Aliens and Nationality.

²So in original. Pub. L. 103–322 does not contain a section 320930.

³See References in Text note below.

Section 130005, referred to in subsection (d), is section 130005 of Pub. L. 103–322, 108 Stat. 2028, which amended section 1158 of Title 8 and enacted provisions set out as a note under section 1158 of Title 8.

Section 130006, referred to in subsection (d), is section 130006 of Pub. L. 103–322, 108 Stat. 2028, which is set out as a note under section 1101 of Title 8.

Section 130007, referred to in subsection (d), is section 130007 of Pub. L. 103–322, 108 Stat. 2029, which is set out as a note under section 1228 of Title 8.

Section 250005, referred to in subsection (d), is section 230005 of Pub. L. 103–322, 108 Stat. 2086, which is not classified to the Code.

Sections 10001–10003, referred to in subsection (d), are sections 10001–10003 of Pub. L. 103–322, 108 Stat. 1807, which enacted subchapter XII–E (§3796dd et seq.) of chapter 46 of this title, amended sections 3793 and 3797 of this title, and enacted provisions set out as notes under sections 3711 and 3796dd of this title.

Section 210201, referred to in subsection (d), is section 210201 of Pub. L. 103–322, 108 Stat. 2062, which enacted subchapter XII–K (§3796jj et seq.) of chapter 46 of this title and amended sections 3793 and 3797 of this title.

Section 210603, referred to in subsection (d), is section 210603 of Pub. L. 103–322, 108 Stat. 2074, which enacted provisions set out as a note under section 922 of Title 18, Crimes and Criminal Procedure, and amended provisions set out as notes under section 922 of Title 18.

Section 180101, referred to in subsection (d), is section 180101 of Pub. L. 103–322, 108 Stat. 2045, which amended sections 3793 and 3796bb of this title.

Section 210302, referred to in subsection (d), is section 210302 of Pub. L. 103–322, 108 Stat. 2065, which enacted subchapter XII–L (§3796kk et seq.) of chapter 46 of this title, amended sections 3751, 3753, 3793, and 3797 of this title, and enacted provisions set out as a note under section 3751 of this title.

Section 210101, referred to in subsection (d), is section 210101 of Pub. L. 103–322, 108 Stat. 2061, which is not classified to the Code.

Section 20301, referred to in subsection (d), is section 20301 of Pub. L. 103–322, 108 Stat. 1823, which amended section 1252 of Title 8, Aliens and Nationality, and enacted provisions set out as notes under sections 1231 and 1252 of Title 8.

Section 20201, referred to in subsection (d), is section 20201 of Pub. L. 103–322, 108 Stat. 1819, which enacted subchapter XII–F (§3796ee et seq.) of chapter 46 of this title and amended sections 3791, 3793, and 3797 of this title.

Section 50001, referred to in subsection (d), is section 50001 of Pub. L. 103–322, 108 Stat. 1955, which enacted former subchapter XII–J (§3796ii et seq.) of chapter 46 of this title and amended sections 3793 and 3797 of this title.

Section 31101, referred to in subsection (d), is section 31101 of Pub. L. 103–322, 108 Stat. 1882, which is set out as a note under section 13701 of this title.

Sections 31501–31505, referred to in subsection (d), are sections 31501–31505 of Pub. L. 103–322, 108 Stat. 1888, 1889, which amended sections 2502 to 2504, 2506, and 2512 of Title 16, Conservation.

Section 31901, referred to in subsection (d), is section 31901 of Pub. L. 103–322, 108 Stat. 1892, which enacted provisions set out as a note under section 13701 of this title.

Section 32001, referred to in subsection (d), is section 32001 of Pub. L. 103–322, 108 Stat. 1896, which amended section 3621 of Title 18, Crimes and Criminal Procedure.

Section 32101, referred to in subsection (d), is section 32101 of Pub. L. 103–322, 108 Stat. 1898, which enacted subchapter XII–G (§3796ff et seq.) of chapter 46 of this title and amended sections 3791, 3793, and 3797 of this title.

Section 40114, referred to in subsection (d), is section 40114 of Pub. L. 103–322, 108 Stat. 1910, which is not classified to the Code.

Section 40121, referred to in subsection (d), is section 40121 of Pub. L. 103–322, 108 Stat. 1910, which enacted subchapter XII–H (§3796gg et seq.) of chapter 46 of this title and amended sections 3793 and 3797 of this title.

Section 300w-10 of this title, referred to in subsec. (d), was repealed by Pub. L. 106-386, div. B, title IV, §1401(b), Oct. 28, 2000, 114 Stat. 1513.

Section 40156, referred to in subsec. (d), is section 40156 of Pub. L. 103-322, 108 Stat. 1922, which amended sections 3793, 3796aa-1 to 3796aa-3, 3796aa-5, 3796aa-6, 13012, 13014, 13021, and 13024 of this title and repealed sections 3796aa-4 and 3796aa-7 of this title.

Section 40231, referred to in subsec. (d), is section 40231 of Pub. L. 103-322, 108 Stat. 1932, which enacted subchapter XII-I (§3796hh et seq.) of chapter 46 of this title and amended sections 3782, 3783, 3793, and 3797 of this title.

Section 40241, referred to in subsec. (d), is section 40241 of Pub. L. 103-322, 108 Stat. 1934, which amended section 10409 of this title.

Section 10417 of this title, referred to in subsec. (d), was repealed by Pub. L. 108-36, title IV, §412, June 25, 2003, 117 Stat. 829.

Section 40601, referred to in subsec. (d), is section 40601 of Pub. L. 103-322, 108 Stat. 1950, which amended section 534 of Title 28, Judiciary and Judicial Procedure, and enacted provisions set out as a note under section 534 of Title 28.

Section 14181 of this title, referred to in subsec. (d), was in the original "section 24001" and was translated as reading "section 240001", meaning section 240001 of Pub. L. 103-322, to reflect the probable intent of Congress, because Pub. L. 103-322 does not contain a section 24001.

SUBCHAPTER XIV—MISCELLANEOUS

§ 14221. Task force relating to introduction of nonindigenous species

(1) In general

The Attorney General is authorized to convene a law enforcement task force in Hawaii to facilitate the prosecution of violations of Federal laws, and laws of the State of Hawaii, relating to the wrongful conveyance, sale, or introduction of nonindigenous plant and animal species.

(2) Membership

(A) The task force shall be composed of representatives of—

- (i) the Office of the United States Attorney for the District of Hawaii;
- (ii) the United States Customs Service;
- (iii) the Animal and Plant Health Inspection Service;
- (iv) the Fish and Wildlife Service;
- (v) the National Park Service;
- (vi) the United States Forest Service;
- (vii) the Military Customs Inspection Office of the Department of Defense;
- (viii) the United States Postal Service;
- (ix) the office of the Attorney General of the State of Hawaii;
- (x) the Hawaii Department of Agriculture;
- (xi) the Hawaii Department of Land and Natural Resources; and
- (xii) such other individuals as the Attorney General deems appropriate.

(B) The Attorney General shall, to the extent practicable, select individuals to serve on the task force who have experience with the enforcement of laws relating to the wrongful conveyance, sale, or introduction of nonindigenous plant and animal species.

(3) Duties

The task force shall—

- (A) facilitate the prosecution of violations of Federal and State laws relating to the convey-

ance, sale, or introduction of nonindigenous plant and animal species into Hawaii; and

(B) make recommendations on ways to strengthen Federal and State laws and law enforcement strategies designed to prevent the introduction of nonindigenous plant and animal species.

(4) Report

The task force shall report to the Attorney General, the Secretary of Agriculture, the Secretary of the Interior, and to the Committee on the Judiciary and Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on the Judiciary, Committee on Agriculture, and Committee on Merchant Marine and Fisheries of the House of Representatives on—

- (A) the progress of its enforcement efforts; and
- (B) the adequacy of existing Federal laws and laws of the State of Hawaii that relate to the introduction of nonindigenous plant and animal species.

Thereafter, the task force shall make such reports as the task force deems appropriate.

(5) Consultation

The task force shall consult with Hawaii agricultural interests and representatives of Hawaii conservation organizations about methods of preventing the wrongful conveyance, sale, or introduction of nonindigenous plant and animal species into Hawaii.

(Pub. L. 103-322, title XXXII, §320108(a), Sept. 13, 1994, 108 Stat. 2111.)

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

ABOLITION OF HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES

Committee on Merchant Marine and Fisheries of House of Representatives abolished and its jurisdiction transferred by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995. For treatment of references to Committee on Merchant Marine and Fisheries, see section 1(b)(3) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

§ 14222. Coordination of substance abuse treatment and prevention programs

The Attorney General shall consult with the Secretary of the Department of Health and Human Services in establishing and carrying out the substance abuse treatment and prevention components of the programs authorized under this Act, to assure coordination of programs, eliminate duplication of efforts and enhance the effectiveness of such services.

(Pub. L. 103-322, title XXXII, §320401, Sept. 13, 1994, 108 Stat. 2114.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 103-322, Sept. 13, 1994, 108 Stat. 1796, known as the Violent Crime Con-

trol and Law Enforcement Act of 1994. For complete classification of this Act to the Code, see Short Title note set out under section 13701 of this title and Tables.

§ 14223. Edward Byrne Memorial Formula Grant Program

Nothing in this Act shall be construed to prohibit or exclude the expenditure of appropriations to grant recipients that would have been or are eligible to receive grants under subpart 1 of part E of the Omnibus Crime Control and Safe Streets Act of 1968 [42 U.S.C. 3751 et seq.].

(Pub. L. 103-322, title XXXII, § 320919, Sept. 13, 1994, 108 Stat. 2130.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 103-322, Sept. 13, 1994, 108 Stat. 1796, known as the Violent Crime Control and Law Enforcement Act of 1994. For complete classification of this Act to the Code, see Short Title note set out under section 13701 of this title and Tables.

The Omnibus Crime Control and Safe Streets Act of 1968, referred to in text, is Pub. L. 90-351, June 19, 1968, 82 Stat. 197, as amended. The reference to subpart 1 of part E of the Act probably means subpart 1 of part E of title I of the Act which is classified generally to part A (§3751 et seq.) of subchapter V of chapter 46 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3711 of this title and Tables.

CHAPTER 137—MANAGEMENT OF RECHARGEABLE BATTERIES AND BATTERIES CONTAINING MERCURY

SUBCHAPTER I—GENERALLY

- Sec. 14301. Findings.
- 14302. Definitions.
- 14303. Information dissemination.
- 14304. Enforcement.
 - (a) Civil penalty.
 - (b) Contents of order.
 - (c) Considerations.
 - (d) Finality of order; request for hearing.
 - (e) Hearing.
 - (f) Subpoena power.
 - (g) Continued violation after expiration of period for compliance.
 - (h) Savings provision.
- 14305. Information gathering and access.
 - (a) Records and reports.
 - (b) Access and copying.
 - (c) Confidentiality.
- 14306. State authority.
- 14307. Authorization of appropriations.

SUBCHAPTER II—RECYCLING OF RECHARGEABLE BATTERIES

- 14321. Purpose.
- 14322. Rechargeable consumer products and labeling.
 - (a) Prohibition.
 - (b) Labeling.
 - (c) Existing or alternative labeling.
 - (d) Rulemaking authority of Administrator.
 - (e) Uniformity.
 - (f) Exemptions.
- 14323. Requirements.
 - (a) Batteries subject to certain regulations.
 - (b) Enforcement under Solid Waste Disposal Act.

SUBCHAPTER III—MANAGEMENT OF BATTERIES CONTAINING MERCURY

- 14331. Purpose.

- Sec. 14332. Limitations on sale of alkaline-manganese batteries containing mercury.
- 14333. Limitations on sale of zinc-carbon batteries containing mercury.
- 14334. Limitations on sale of button cell mercuric-oxide batteries.
- 14335. Limitations on sale of other mercuric-oxide batteries.
 - (a) Prohibition.
 - (b) Application of section.
- 14336. New product or use.

SUBCHAPTER I—GENERALLY

§ 14301. Findings

The Congress finds that—

- (1) it is in the public interest to—
 - (A) phase out the use of mercury in batteries and provide for the efficient and cost-effective collection and recycling or proper disposal of used nickel cadmium batteries, small sealed lead-acid batteries, and other regulated batteries; and
 - (B) educate the public concerning the collection, recycling, and proper disposal of such batteries;
- (2) uniform national labeling requirements for regulated batteries, rechargeable consumer products, and product packaging will significantly benefit programs for regulated battery collection and recycling or proper disposal; and
- (3) it is in the public interest to encourage persons who use rechargeable batteries to participate in collection for recycling of used nickel-cadmium, small sealed lead-acid, and other regulated batteries.

(Pub. L. 104-142, § 2, May 13, 1996, 110 Stat. 1329.)

SHORT TITLE

Section 1 of Pub. L. 104-142 provided that: “This Act [enacting this chapter] may be cited as the ‘Mercury-Containing and Rechargeable Battery Management Act.’”

Section 101 of title I of Pub. L. 104-142 provided that: “This title [enacting subchapter II of this chapter] may be cited as the ‘Rechargeable Battery Recycling Act.’”

Section 201 of title II of Pub. L. 104-142 provided that: “This title [enacting subchapter III of this chapter] may be cited as the ‘Mercury-Containing Battery Management Act.’”

§ 14302. Definitions

For purposes of this chapter:

(1) Administrator

The term “Administrator” means the Administrator of the Environmental Protection Agency.

(2) Button cell

The term “button cell” means a button- or coin-shaped battery.

(3) Easily removable

The term “easily removable”, with respect to a battery, means detachable or removable at the end of the life of the battery—

(A) from a consumer product by a consumer with the use of common household tools; or

(B) by a retailer of replacements for a battery used as the principal electrical power source for a vehicle.

(4) Mercuric-oxide battery

The term “mercuric-oxide battery” means a battery that uses a mercuric-oxide electrode.

(5) Rechargeable battery

The term “rechargeable battery”—

(A) means 1 or more voltaic or galvanic cells, electrically connected to produce electric energy, that is designed to be recharged for repeated uses; and

(B) includes any type of enclosed device or sealed container consisting of 1 or more such cells, including what is commonly called a battery pack (and in the case of a battery pack, for the purposes of the requirements of easy removability and labeling under section 14322 of this title, means the battery pack as a whole rather than each component individually); but

(C) does not include—

(i) a lead-acid battery used to start an internal combustion engine or as the principal electrical power source for a vehicle, such as an automobile, a truck, construction equipment, a motorcycle, a garden tractor, a golf cart, a wheelchair, or a boat;

(ii) a lead-acid battery used for load leveling or for storage of electricity generated by an alternative energy source, such as a solar cell or wind-driven generator;

(iii) a battery used as a backup power source for memory or program instruction storage, timekeeping, or any similar purpose that requires uninterrupted electrical power in order to function if the primary energy supply fails or fluctuates momentarily; or

(iv) a rechargeable alkaline battery.

(6) Rechargeable consumer product

The term “rechargeable consumer product”—

(A) means a product that, when sold at retail, includes a regulated battery as a primary energy supply, and that is primarily intended for personal or household use; but

(B) does not include a product that only uses a battery solely as a source of backup power for memory or program instruction storage, timekeeping, or any similar purpose that requires uninterrupted electrical power in order to function if the primary energy supply fails or fluctuates momentarily.

(7) Regulated battery

The term “regulated battery” means a rechargeable battery that—

(A) contains a cadmium or a lead electrode or any combination of cadmium and lead electrodes; or

(B) contains other electrode chemistries and is the subject of a determination by the Administrator under section 14322(d) of this title.

(8) Remanufactured product

The term “remanufactured product” means a rechargeable consumer product that has been altered by the replacement of parts, repackaged, or repaired after initial sale by the original manufacturer.

(Pub. L. 104-142, § 3, May 13, 1996, 110 Stat. 1329.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14323 of this title.

§ 14303. Information dissemination

The Administrator shall, in consultation with representatives of rechargeable battery manufacturers, rechargeable consumer product manufacturers, and retailers, establish a program to provide information to the public concerning the proper handling and disposal of used regulated batteries and rechargeable consumer products with nonremovable batteries.

(Pub. L. 104-142, § 4, May 13, 1996, 110 Stat. 1330.)

§ 14304. Enforcement**(a) Civil penalty**

When on the basis of any information the Administrator determines that a person has violated, or is in violation of, any requirement of this chapter (except a requirement of section 14323 of this title) the Administrator—

(1) in the case of any violation, may issue an order assessing a civil penalty of not more than \$10,000 for each violation, or requiring compliance immediately or within a reasonable specified time period, or both; or

(2) in the case of any violation or failure to comply with an order issued under this section, may commence a civil action in the United States district court in the district in which the violation occurred or in the district in which the violator resides for appropriate relief, including a temporary or permanent injunction.

(b) Contents of order

An order under subsection (a)(1) of this section shall state with reasonable specificity the nature of the violation.

(c) Considerations

In assessing a civil penalty under subsection (a)(1) of this section, the Administrator shall take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

(d) Finality of order; request for hearing

An order under subsection (a)(1) of this section shall become final unless, not later than 30 days after the order is served, a person named in the order requests a hearing on the record.

(e) Hearing

On receiving a request under subsection (d) of this section, the Administrator shall promptly conduct a hearing on the record.

(f) Subpoena power

In connection with any hearing on the record under this section, the Administrator may issue subpoenas for the attendance and testimony of witnesses and for the production of relevant papers, books, and documents.

(g) Continued violation after expiration of period for compliance

If a violator fails to take corrective action within the time specified in an order under sub-

section (a)(1) of this section, the Administrator may assess a civil penalty of not more than \$10,000 for the continued noncompliance with the order.

(h) Savings provision

The Administrator may not take any enforcement action against a person for selling, offering for sale, or offering for promotional purposes to the ultimate consumer a battery or product covered by this chapter that was—

- (1) purchased ready for sale to the ultimate consumer; and
- (2) sold, offered for sale, or offered for promotional purposes without modification.

The preceding sentence shall not apply to a person—

- (A) who is the importer of a battery covered by this chapter, and
- (B) who has knowledge of the chemical contents of the battery

when such chemical contents make the sale, offering for sale, or offering for promotional purposes of such battery unlawful under subchapter III of this chapter.

(Pub. L. 104-142, § 5, May 13, 1996, 110 Stat. 1331.)

§ 14305. Information gathering and access

(a) Records and reports

A person who is required to carry out the objectives of this chapter, including—

- (1) a regulated battery manufacturer;
- (2) a rechargeable consumer product manufacturer;
- (3) a mercury-containing battery manufacturer; and
- (4) an authorized agent of a person described in paragraph (1), (2), or (3),

shall establish and maintain such records and report such information as the Administrator may by regulation reasonably require to carry out the objectives of this chapter.

(b) Access and copying

The Administrator or the Administrator's authorized representative, on presentation of credentials of the Administrator, may at reasonable times have access to and copy any records required to be maintained under subsection (a) of this section.

(c) Confidentiality

The Administrator shall maintain the confidentiality of documents and records that contain proprietary information.

(Pub. L. 104-142, § 6, May 13, 1996, 110 Stat. 1332.)

§ 14306. State authority

Nothing in this chapter shall be construed to prohibit a State from enacting and enforcing a standard or requirement that is identical to a standard or requirement established or promulgated under this chapter. Except as provided in sections 14322(e) and 14323 of this title, nothing in this chapter shall be construed to prohibit a State from enacting and enforcing a standard or requirement that is more stringent than a standard or requirement established or promulgated under this chapter.

(Pub. L. 104-142, § 7, May 13, 1996, 110 Stat. 1332.)

§ 14307. Authorization of appropriations

There are authorized to be appropriated such sums as are necessary to carry out this chapter.

(Pub. L. 104-142, § 8, May 13, 1996, 110 Stat. 1332.)

SUBCHAPTER II—RECYCLING OF RECHARGEABLE BATTERIES

§ 14321. Purpose

The purpose of this subchapter is to facilitate the efficient recycling or proper disposal of used nickel-cadmium rechargeable batteries, used small sealed lead-acid rechargeable batteries, other regulated batteries, and such rechargeable batteries in used consumer products, by—

- (1) providing for uniform labeling requirements and streamlined regulatory requirements for regulated battery collection programs; and
- (2) encouraging voluntary industry programs by eliminating barriers to funding the collection and recycling or proper disposal of used rechargeable batteries.

(Pub. L. 104-142, title I, § 102, May 13, 1996, 110 Stat. 1332.)

§ 14322. Rechargeable consumer products and labeling

(a) Prohibition

(1) In general

No person shall sell for use in the United States a regulated battery that is ready for retail sale or a rechargeable consumer product that is ready for retail sale, if such battery or product was manufactured on or after the date 12 months after May 13, 1996, unless the labeling requirements of subsection (b) of this section are met and, in the case of a regulated battery, the regulated battery—

- (A) is easily removable from the rechargeable consumer product; or
- (B) is sold separately.

(2) Application

Paragraph (1) does not apply to any of the following:

- (A) The sale of a remanufactured product unit unless paragraph (1) applied to the sale of the unit when originally manufactured.
- (B) The sale of a product unit intended for export purposes only.

(b) Labeling

Each regulated battery or rechargeable consumer product without an easily removable battery manufactured on or after the date that is 1 year after May 13, 1996, whether produced domestically or imported shall bear the following labels:

- (1) 3 chasing arrows or a comparable recycling symbol.
- (2)(A) On each regulated battery which is a nickel-cadmium battery, the chemical name or the abbreviation "Ni-Cd" and the phrase "BATTERY MUST BE RECYCLED OR DISPOSED OF PROPERLY."
- (B) On each regulated battery which is a lead-acid battery, "Pb" or the words "LEAD",

“RETURN”, and “RECYCLE” and if the regulated battery is sealed, the phrase “BATTERY MUST BE RECYCLED.”.

(3) On each rechargeable consumer product containing a regulated battery that is not easily removable, the phrase “CONTAINS NICKEL-CADMIUM BATTERY. BATTERY MUST BE RECYCLED OR DISPOSED OF PROPERLY.” or “CONTAINS SEALED LEAD BATTERY. BATTERY MUST BE RECYCLED.”, as applicable.

(4) On the packaging of each rechargeable consumer product, and the packaging of each regulated battery sold separately from such a product, unless the required label is clearly visible through the packaging, the phrase “CONTAINS NICKEL-CADMIUM BATTERY. BATTERY MUST BE RECYCLED OR DISPOSED OF PROPERLY.” or “CONTAINS SEALED LEAD BATTERY. BATTERY MUST BE RECYCLED.”, as applicable.

(c) Existing or alternative labeling

(1) Initial period

For a period of 2 years after May 13, 1996, regulated batteries, rechargeable consumer products containing regulated batteries, and rechargeable consumer product packages that are labeled in substantial compliance with subsection (b) of this section shall be deemed to comply with the labeling requirements of subsection (b) of this section.

(2) Certification

(A) In general

On application by persons subject to the labeling requirements of subsection (b) of this section or the labeling requirements promulgated by the Administrator under subsection (d) of this section, the Administrator shall certify that a different label meets the requirements of subsection (b) or (d) of this section, respectively, if the different label—

- (i) conveys the same information as the label required under subsection (b) or (d) of this section, respectively; or
- (ii) conforms with a recognized international standard that is consistent with the overall purposes of this subchapter.

(B) Constructive certification

Failure of the Administrator to object to an application under subparagraph (A) on the ground that a different label does not meet either of the conditions described in subparagraph (A)(i) or (ii) within 120 days after the date on which the application is made shall constitute certification for the purposes of this chapter.

(d) Rulemaking authority of Administrator

(1) In general

If the Administrator determines that other rechargeable batteries having electrode chemistries different from regulated batteries are toxic and may cause substantial harm to human health and the environment if discarded into the solid waste stream for land disposal or incineration, the Administrator may, with the advice and counsel of State reg-

ulatory authorities and manufacturers of rechargeable batteries and rechargeable consumer products, and after public comment—

(A) promulgate labeling requirements for the batteries with different electrode chemistries, rechargeable consumer products containing such batteries that are not easily removable batteries, and packaging for the batteries and products; and

(B) promulgate requirements for easy removability of regulated batteries from rechargeable consumer products designed to contain such batteries.

(2) Substantial similarity

The regulations promulgated under paragraph (1) shall be substantially similar to the requirements set forth in subsections (a) and (b) of this section.

(e) Uniformity

After the effective dates of a requirement set forth in subsection (a), (b), or (c) of this section or a regulation promulgated by the Administrator under subsection (d) of this section, no Federal agency, State, or political subdivision of a State may enforce any easy removability or environmental labeling requirement for a rechargeable battery or rechargeable consumer product that is not identical to the requirement or regulation.

(f) Exemptions

(1) In general

With respect to any rechargeable consumer product, any person may submit an application to the Administrator for an exemption from the requirements of subsection (a) of this section in accordance with the procedures under paragraph (2). The application shall include the following information:

(A) A statement of the specific basis for the request for the exemption.

(B) The name, business address, and telephone number of the applicant.

(2) Granting of exemption

Not later than 60 days after receipt of an application under paragraph (1), the Administrator shall approve or deny the application. On approval of the application the Administrator shall grant an exemption to the applicant. The exemption shall be issued for a period of time that the Administrator determines to be appropriate, except that the period shall not exceed 2 years. The Administrator shall grant an exemption on the basis of evidence supplied to the Administrator that the manufacturer has been unable to commence manufacturing the rechargeable consumer product in compliance with the requirements of this section and with an equivalent level of product performance without the product—

(A) posing a threat to human health, safety, or the environment; or

(B) violating requirements for approvals from governmental agencies or widely recognized private standard-setting organizations (including Underwriters Laboratories).

(3) Renewal of exemption

A person granted an exemption under paragraph (2) may apply for a renewal of the ex-

emption in accordance with the requirements and procedures described in paragraphs (1) and (2). The Administrator may grant a renewal of such an exemption for a period of not more than 2 years after the date of the granting of the renewal.

(Pub. L. 104-142, title I, §103, May 13, 1996, 110 Stat. 1332.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14302, 14306 of this title.

§ 14323. Requirements

(a) Batteries subject to certain regulations

The collection, storage, or transportation of used rechargeable batteries, batteries described in section 14302(5)(C) of this title or in subchapter III of this chapter, and used rechargeable consumer products containing rechargeable batteries that are not easily removable rechargeable batteries, shall, notwithstanding any law of a State or political subdivision thereof governing such collection, storage, or transportation, be regulated under applicable provisions of the regulations promulgated by the Environmental Protection Agency at 60 Fed. Reg. 25492 (May 11, 1995), as effective on May 11, 1995, except as provided in paragraph (2) of subsection (b) of this section and except that—

(1) the requirements of 40 CFR 260.20, 260.40, and 260.41 and the equivalent requirements of an approved State program shall not apply, and

(2) this section shall not apply to any lead acid battery managed under 40 CFR 266 subpart G or the equivalent requirements of an approved State program.

(b) Enforcement under Solid Waste Disposal Act

(1) Any person who fails to comply with the requirements imposed by subsection (a) of this section may be subject to enforcement under applicable provisions of the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.].

(2) States may implement and enforce the requirements of subsection (a) of this section if the Administrator finds that—

(A) the State has adopted requirements that are identical to those referred to in subsection (a) of this section governing the collection, storage, or transportation of batteries referred to in subsection (a) of this section; and

(B) the State provides for enforcement of such requirements.

(Pub. L. 104-142, title I, §104, May 13, 1996, 110 Stat. 1335.)

REFERENCES IN TEXT

The Solid Waste Disposal Act, referred to in subsec. (b)(1), is title II of Pub. L. 89-272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§6901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14304, 14306 of this title.

SUBCHAPTER III—MANAGEMENT OF BATTERIES CONTAINING MERCURY

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 14304, 14323 of this title.

§ 14331. Purpose

The purpose of this subchapter is to phase out the use of batteries containing mercury.

(Pub. L. 104-142, title II, §202, May 13, 1996, 110 Stat. 1336.)

§ 14332. Limitations on sale of alkaline-manganese batteries containing mercury

No person shall sell, offer for sale, or offer for promotional purposes any alkaline-manganese battery manufactured on or after May 13, 1996, with a mercury content that was intentionally introduced (as distinguished from mercury that may be incidentally present in other materials), except that the limitation on mercury content in alkaline-manganese button cells shall be 25 milligrams of mercury per button cell.

(Pub. L. 104-142, title II, §203, May 13, 1996, 110 Stat. 1336.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14333 of this title.

§ 14333. Limitations on sale of zinc-carbon batteries containing mercury

No person shall sell, offer for sale, or offer for promotional purposes any zinc-carbon battery manufactured on or after May 13, 1996, that contains mercury that was intentionally introduced as described in section 14332 of this title.

(Pub. L. 104-142, title II, §204, May 13, 1996, 110 Stat. 1336.)

§ 14334. Limitations on sale of button cell mercuric-oxide batteries

No person shall sell, offer for sale, or offer for promotional purposes any button cell mercuric-oxide battery for use in the United States on or after May 13, 1996.

(Pub. L. 104-142, title II, §205, May 13, 1996, 110 Stat. 1336.)

§ 14335. Limitations on sale of other mercuric-oxide batteries

(a) Prohibition

On or after May 13, 1996, no person shall sell, offer for sale, or offer for promotional purposes a mercuric-oxide battery for use in the United States unless the battery manufacturer, or the importer of such a battery—

(1) identifies a collection site in the United States that has all required Federal, State, and local government approvals, to which persons may send used mercuric-oxide batteries for recycling or proper disposal;

(2) informs each of its purchasers of mercuric-oxide batteries of the collection site identified under paragraph (1); and

(3) informs each of its purchasers of mercuric-oxide batteries of a telephone number

that the purchaser may call to get information about sending mercuric-oxide batteries for recycling or proper disposal.

(b) Application of section

This section does not apply to a sale or offer of a mercuric-oxide button cell battery.

(Pub. L. 104-142, title II, §206, May 13, 1996, 110 Stat. 1336.)

§ 14336. New product or use

On petition of a person that proposes a new use for a battery technology described in this subchapter or the use of a battery described in this subchapter in a new product, the Administrator may exempt from this subchapter the new use of the technology or the use of such a battery in the new product on the condition, if appropriate, that there exist reasonable safeguards to ensure that the resulting battery or product without an easily removable battery will not be disposed of in an incinerator, composting facility, or landfill (other than a facility regulated under subtitle C of the Solid Waste Disposal Act (42 U.S.C. 6921 et seq.)).

(Pub. L. 104-142, title II, §207, May 13, 1996, 110 Stat. 1336.)

REFERENCES IN TEXT

The Solid Waste Disposal Act, referred to in text, is title II of Pub. L. 89-272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2795. Subtitle C of the Act is classified generally to subchapter III (§6921 et seq.) of chapter 82 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

CHAPTER 138—ASSISTED SUICIDE FUNDING RESTRICTION

Sec.	
14401.	Findings and purpose. (a) Findings. (b) Purpose.
14402.	Restriction on use of Federal funds under health care programs. (a) Restriction on Federal funding of health care services. (b) Construction and treatment of certain services. (c) Limitation on Federal facilities and employees. (d) List of programs to which restrictions apply.
14403.	Restriction on use of Federal funds under certain grant programs.
14404.	Restriction on use of Federal funds by advocacy programs. (a) In general. (b) List of programs to which restrictions apply.
14405.	Restriction on use of other Federal funds. (a) In general. (b) Nonduplication.
14406.	Clarification with respect to advance directives.
14407.	Application to District of Columbia.
14408.	Relation to other laws.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 2380, 701, 1395y, 1396b, 1397d, 2996f of this title; title 5 section 8902; title 10 section 1073; title 18 section 4005; title 22 section 2504; title 25 section 1621x; title 38 section 1707.

§ 14401. Findings and purpose

(a) Findings

Congress finds the following:

(1) The Federal Government provides financial support for the provision of and payment for health care services, as well as for advocacy activities to protect the rights of individuals.

(2) Assisted suicide, euthanasia, and mercy killing have been criminal offenses throughout the United States and, under current law, it would be unlawful to provide services in support of such illegal activities.

(3) Because of recent legal developments, it may become lawful in areas of the United States to furnish services in support of such activities.

(4) Congress is not providing Federal financial assistance in support of assisted suicide, euthanasia, and mercy killing and intends that Federal funds not be used to promote such activities.

(b) Purpose

It is the principal purpose of this chapter to continue current Federal policy by providing explicitly that Federal funds may not be used to pay for items and services (including assistance) the purpose of which is to cause (or assist in causing) the suicide, euthanasia, or mercy killing of any individual.

(Pub. L. 105-12, §2, Apr. 30, 1997, 111 Stat. 23.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original "this Act", meaning Pub. L. 105-12, Apr. 30, 1997, 111 Stat. 23, known as the Assisted Suicide Funding Restriction Act of 1997. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

EFFECTIVE DATE

Section 11 of Pub. L. 105-12 provided that:

"(a) IN GENERAL.—The provisions of this Act [see Short Title note below] (and the amendments made by this Act) take effect upon its enactment [Apr. 30, 1997] and apply, subject to subsection (b), to Federal payments made pursuant to obligations incurred after the date of the enactment of this Act for items and services provided on or after such date.

"(b) APPLICATION TO CONTRACTS.—Such provisions shall apply with respect to contracts entered into, renewed, or extended after the date of the enactment of this Act [Apr. 30, 1997] and shall also apply to a contract entered into before such date to the extent permitted under such contract."

SHORT TITLE

Section 1(a) of Pub. L. 105-12 provided that: "This Act [enacting this chapter, section 2380 of this title, section 1621x of Title 25, Indians, and section 1707 of Title 38, Veterans' Benefits, amending sections 295, 701, 1395y, 1395cc, 1396a, 1396b, 1397d, 2996f, 6022, 6042, 6062, 6082, and 10805 of this title, section 8902 of Title 5, Government Organization and Employees, section 1073 of Title 10, Armed Forces, section 4005 of Title 18, Crimes and Criminal Procedure, section 2504 of Title 22, Foreign Relations and Intercourse, and section 794e of Title 29, Labor, and enacting provisions set out as notes under this section and section 295 of this title] may be cited as the 'Assisted Suicide Funding Restriction Act of 1997'."

CONSTRUCTION OF CONFORMING AMENDMENTS

Section 9(p) of Pub. L. 105-12 provided that: "The fact that a law is not amended under this section [enacting

section 2380 of this title, section 1621x of Title 25, Indians, and section 1707 of Title 38, Veterans' Benefits, amending sections 701, 1395y, 1395cc, 1396a, 1396b, 1397d, 2996f, 6022, 6042, 6062, 6082, and 10805 of this title, section 8902 of Title 5, Government Organization and Employees, section 1073 of Title 10, Armed Forces, section 4005 of Title 18, Crimes and Criminal Procedure, section 2504 of Title 22, Foreign Relations and Intercourse, and section 794e of Title 29, Labor] shall not be construed as indicating that the provisions of this Act [see Short Title note above] do not apply to such a law."

§ 14402. Restriction on use of Federal funds under health care programs

(a) Restriction on Federal funding of health care services

Subject to subsection (b) of this section, no funds appropriated by Congress for the purpose of paying (directly or indirectly) for the provision of health care services may be used—

- (1) to provide any health care item or service furnished for the purpose of causing, or for the purpose of assisting in causing, the death of any individual, such as by assisted suicide, euthanasia, or mercy killing;
- (2) to pay (directly, through payment of Federal financial participation or other matching payment, or otherwise) for such an item or service, including payment of expenses relating to such an item or service; or
- (3) to pay (in whole or in part) for health benefit coverage that includes any coverage of such an item or service or of any expenses relating to such an item or service.

(b) Construction and treatment of certain services

Nothing in subsection (a) of this section, or in any other provision of this chapter (or in any amendment made by this chapter), shall be construed to apply to or to affect any limitation relating to—

- (1) the withholding or withdrawing of medical treatment or medical care;
- (2) the withholding or withdrawing of nutrition or hydration;
- (3) abortion; or
- (4) the use of an item, good, benefit, or service furnished for the purpose of alleviating pain or discomfort, even if such use may increase the risk of death, so long as such item, good, benefit, or service is not also furnished for the purpose of causing, or the purpose of assisting in causing, death, for any reason.

(c) Limitation on Federal facilities and employees

Subject to subsection (b) of this section, with respect to health care items and services furnished—

- (1) by or in a health care facility owned or operated by the Federal government, or
- (2) by any physician or other individual employed by the Federal government to provide health care services within the scope of the physician's or individual's employment,

no such item or service may be furnished for the purpose of causing, or for the purpose of assisting in causing, the death of any individual, such as by assisted suicide, euthanasia, or mercy killing.

(d) List of programs to which restrictions apply

(1) Federal health care funding programs

Subsection (a) of this section applies to funds appropriated under or to carry out the following:

(A) Medicare program

Title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.].

(B) Medicaid program

Title XIX of the Social Security Act [42 U.S.C. 1396 et seq.].

(C) Title XX social services block grant

Title XX of the Social Security Act [42 U.S.C. 1397 et seq.].

(D) Maternal and child health block grant program

Title V of the Social Security Act [42 U.S.C. 701 et seq.].

(E) Public Health Service Act

The Public Health Service Act [42 U.S.C. 201 et seq.].

(F) Indian Health Care Improvement Act

The Indian Health Care Improvement Act [25 U.S.C. 1601 et seq.].

(G) Federal employees health benefits program

Chapter 89 of title 5.

(H) Military health care system (including Tricare and CHAMPUS programs)

Chapter 55 of title 10.

(I) Veterans medical care

Chapter 17 of title 38.

(J) Health services for Peace Corps volunteers

Section 2504(e) of title 22.

(K) Medical services for Federal prisoners

Section 4005(a) of title 18.

(2) Federal facilities and personnel

The provisions of subsection (c) of this section apply to facilities and personnel of the following:

(A) Military health care system

The Department of Defense operating under chapter 55 of title 10.

(B) Veterans medical care

The Veterans Health Administration of the Department of Veterans Affairs.

(C) Public Health Service

The Public Health Service.

(3) Nonexclusive list

Nothing in this subsection shall be construed as limiting the application of subsection (a) of this section to the programs specified in paragraph (1) or the application of subsection (c) of this section to the facilities and personnel specified in paragraph (2).

(Pub. L. 105-12, § 3, Apr. 30, 1997, 111 Stat. 23.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (d)(1)(A)–(D), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as

amended. Titles V, XVIII, XIX, and XX of the Act are classified generally to subchapters V (§701 et seq.), XVIII (§1395 et seq.), XIX (§1396 et seq.), and XX (§1397 et seq.), respectively, of chapter 7 of this title, respectively. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Public Health Service Act, referred to in subsec. (d)(1)(E), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended, which is classified generally to chapter 6A (§201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

The Indian Health Care Improvement Act, referred to in subsec. (d)(1)(F), is Pub. L. 94-437, Sept. 30, 1976, 90 Stat. 1400, as amended, which is classified principally to chapter 18 (§1601 et seq.) of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 25 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14403, 14404, 14405, 14406 of this title.

§ 14403. Restriction on use of Federal funds under certain grant programs

Subject to section 14402(b) of this title (relating to construction and treatment of certain services), no funds appropriated by Congress to carry out subtitle B, D, or E of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 [42 U.S.C. 15021 et seq., 15061 et seq., 15081 et seq.] may be used to support or fund any program or service which has a purpose of assisting in procuring any item, benefit, or service furnished for the purpose of causing, or the purpose of assisting in causing, the death of any individual, such as by assisted suicide, euthanasia, or mercy killing.

(Pub. L. 105-12, §4, Apr. 30, 1997, 111 Stat. 25; Pub. L. 106-402, title IV, §401(b)(15)(A), Oct. 30, 2000, 114 Stat. 1740.)

REFERENCES IN TEXT

The Developmental Disabilities Assistance and Bill of Rights Act of 2000, referred to in text, is Pub. L. 106-402, Oct. 30, 2000, 114 Stat. 1677. Subtitles B, D, and E of the Act probably mean subtitles B, D, and E of title I of the Act, which are classified generally to parts B [§15021 et seq.], D [§15061 et seq.], and E [§15081 et seq.], respectively, of subchapter I of chapter 144 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 15001 of this title and Tables.

AMENDMENTS

2000—Pub. L. 106-402, §401(b)(15)(A)(i), substituted “Restriction on use of Federal funds under certain grant programs” for “Restriction on use of Federal funds under certain grant programs under the Developmental Disabilities Assistance and Bill of Rights Act” in section catchline.

Pub. L. 106-402, §401(b)(15)(A)(ii), substituted “subtitle B, D, or E of the Developmental Disabilities Assistance and Bill of Rights Act of 2000” for “part B, D, or E of the Developmental Disabilities Assistance and Bill of Rights Act”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6062, 6082, 14405 of this title.

§ 14404. Restriction on use of Federal funds by advocacy programs

(a) In general

Subject to section 14402(b) of this title (relating to construction and treatment of certain

services), no funds appropriated by Congress may be used to assist in, to support, or to fund any activity or service which has a purpose of assisting in, or to bring suit or provide any other form of legal assistance for the purpose of—

(1) securing or funding any item, benefit, program, or service furnished for the purpose of causing, or the purpose of assisting in causing, the suicide, euthanasia, or mercy killing of any individual;

(2) compelling any person, institution, governmental entity¹ to provide or fund any item, benefit, program, or service for such purpose; or

(3) asserting or advocating a legal right to cause, or to assist in causing, the suicide, euthanasia, or mercy killing of any individual.

(b) List of programs to which restrictions apply

(1) In general

Subsection (a) of this section applies to funds appropriated under or to carry out the following:

(A) Protection and advocacy systems under the Developmental Disabilities Assistance and Bill of Rights Act of 2000

Subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 [42 U.S.C. 15041 et seq.].

(B) Protection and advocacy systems under the Protection and Advocacy for Mentally Ill Individuals Act

The Protection and Advocacy for Mentally Ill Individuals Act of 1986² [42 U.S.C. 10801 et seq.].

(C) Protection and advocacy systems under the Rehabilitation Act of 1973

Section 509 of the Rehabilitation Act of 1973 (29 U.S.C. 794e).

(D) Ombudsman programs under the Older Americans Act of 1965

Ombudsman programs under the Older Americans Act of 1965 [42 U.S.C. 3001 et seq.].

(E) Legal assistance

Legal assistance programs under the Legal Services Corporation Act [42 U.S.C. 2996 et seq.].

(2) Nonexclusive list

Nothing in this subsection shall be construed as limiting the application of subsection (a) of this section to the programs specified in paragraph (1).

(Pub. L. 105-12, §5, Apr. 30, 1997, 111 Stat. 25; Pub. L. 106-402, title IV, §401(b)(15)(B), Oct. 30, 2000, 114 Stat. 1740.)

REFERENCES IN TEXT

The Developmental Disabilities Assistance and Bill of Rights Act of 2000, referred to in subsec. (b)(1)(A), is Pub. L. 106-402, Oct. 30, 2000, 114 Stat. 1677. Subtitle C of the Act probably means subtitle C of title I of the Act, which is classified generally to part C (§15041 et seq.) of subchapter I of chapter 144 of this title. For

¹ So in original. Probably should be “or governmental entity”.

² See References in Text note below.

complete classification of this Act to the Code, see Short Title note set out under section 15001 of this title and Tables.

The Protection and Advocacy for Mentally Ill Individuals Act of 1986, referred to in subsec. (b)(1)(B), was Pub. L. 99-319, May 23, 1986, 100 Stat. 478, as amended. Pub. L. 99-319 was renamed the Protection and Advocacy for Individuals with Mental Illness Act by Pub. L. 106-310, div. B, title XXXII, §3206(a), Oct. 17, 2000, 114 Stat. 1193, and is classified generally to chapter 114 (§10801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 10801 of this title and Tables.

The Older Americans Act of 1965, referred to in subsec. (b)(1)(D), is Pub. L. 89-73, July 14, 1965, 79 Stat. 218, as amended, which is classified generally to chapter 35 (§3001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

The Legal Services Corporation Act, referred to in subsec. (b)(1)(E), is title X of Pub. L. 88-452, as added by Pub. L. 93-355, §2, July 25, 1974, 88 Stat. 378, as amended, which is classified generally to subchapter X (§2996 et seq.) of chapter 34 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

AMENDMENTS

2000—Subsec. (b)(1)(A). Pub. L. 106-402 added subpar. (A) and struck out heading and text of former subpar. (A). Text read as follows: “Part C of the Developmental Disabilities Assistance and Bill of Rights Act.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6042, 10805, 14405, 15044 of this title.

§ 14405. Restriction on use of other Federal funds

(a) In general

Subject to section 14402(b) of this title (relating to construction and treatment of certain services) and subsection (b) of this section, no funds appropriated by the Congress shall be used to provide, procure, furnish, or fund any item, good, benefit, activity, or service, furnished or performed for the purpose of causing, or assisting in causing, the suicide, euthanasia, or mercy killing of any individual.

(b) Nonduplication

Subsection (a) of this section shall not apply to funds to which section 14402, 14403, or 14404 of this title applies, except that subsection (a) of this section, rather than section 14402 of this title, shall apply to funds appropriated to carry out title 10 (other than chapter 55), title 18 (other than section 4005(a)), and chapter 37 of title 28.

(Pub. L. 105-12, §6, Apr. 30, 1997, 111 Stat. 25.)

§ 14406. Clarification with respect to advance directives

Subject to section 14402(b) of this title (relating to construction and treatment of certain services), sections 1395cc(f) and 1396a(w) of this title shall not be construed—

(1) to require any provider or organization, or any employee of such a provider or organization, to inform or counsel any individual regarding any right to obtain an item or service furnished for the purpose of causing, or the purpose of assisting in causing, the death of the individual, such as by assisted suicide, euthanasia, or mercy killing; or

(2) to apply to or to affect any requirement with respect to a portion of an advance directive that directs the purposeful causing of, or the purposeful assisting in causing, the death of any individual, such as by assisted suicide, euthanasia, or mercy killing.

(Pub. L. 105-12, §7, Apr. 30, 1997, 111 Stat. 26.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1395cc, 1396a of this title.

§ 14407. Application to District of Columbia

For purposes of this chapter, the term “funds appropriated by Congress” includes funds appropriated to the District of Columbia pursuant to an authorization of appropriations under title V of the District of Columbia Home Rule Act and the term “Federal government” includes the government of the District of Columbia.

(Pub. L. 105-12, §8, Apr. 30, 1997, 111 Stat. 26; Pub. L. 105-33, title XI, §11717(b), Aug. 5, 1997, 111 Stat. 786.)

REFERENCES IN TEXT

The District of Columbia Home Rule Act, referred to in text, is Pub. L. 93-198, Dec. 24, 1973, 87 Stat. 774, as amended. Title V of the Act was classified to the District of Columbia Code prior to repeal by Pub. L. 105-33, title XI, §11601, Aug. 5, 1997, 111 Stat. 777.

AMENDMENTS

1997—Pub. L. 105-33 substituted “District of Columbia Home Rule Act” for “District of Columbia Self-Government and Governmental Reorganization Act”.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-33 effective Oct. 1, 1997, except as otherwise provided in title XI of Pub. L. 105-33, see section 11721 of Pub. L. 105-33, set out as a note under section 4246 of Title 18, Crimes and Criminal Procedure.

§ 14408. Relation to other laws

The provisions of this chapter supersede other Federal laws (including laws enacted after April 30, 1997) except to the extent such laws specifically supersede the provisions of this chapter.

(Pub. L. 105-12, §10, Apr. 30, 1997, 111 Stat. 29.)

CHAPTER 139—VOLUNTEER PROTECTION

Sec.

- | | |
|--------|---|
| 14501. | Findings and purpose. <ul style="list-style-type: none"> (a) Findings. (b) Purpose. |
| 14502. | Preemption and election of State nonapplicability. <ul style="list-style-type: none"> (a) Preemption. (b) Election of State regarding nonapplicability. |
| 14503. | Limitation on liability for volunteers. <ul style="list-style-type: none"> (a) Liability protection for volunteers. (b) Concerning responsibility of volunteers to organizations and entities. (c) No effect on liability of organization or entity. (d) Exceptions to volunteer liability protection. (e) Limitation on punitive damages based on actions of volunteers. (f) Exceptions to limitations on liability. |
| 14504. | Liability for noneconomic loss. <ul style="list-style-type: none"> (a) General rule. |

Sec.

(b) Amount of liability.
14505. Definitions.

§ 14501. Findings and purpose

(a) Findings

The Congress finds and declares that—

(1) the willingness of volunteers to offer their services is deterred by the potential for liability actions against them;

(2) as a result, many nonprofit public and private organizations and governmental entities, including voluntary associations, social service agencies, educational institutions, and other civic programs, have been adversely affected by the withdrawal of volunteers from boards of directors and service in other capacities;

(3) the contribution of these programs to their communities is thereby diminished, resulting in fewer and higher cost programs than would be obtainable if volunteers were participating;

(4) because Federal funds are expended on useful and cost-effective social service programs, many of which are national in scope, depend heavily on volunteer participation, and represent some of the most successful public-private partnerships, protection of volunteerism through clarification and limitation of the personal liability risks assumed by the volunteer in connection with such participation is an appropriate subject for Federal legislation;

(5) services and goods provided by volunteers and nonprofit organizations would often otherwise be provided by private entities that operate in interstate commerce;

(6) due to high liability costs and unwarranted litigation costs, volunteers and nonprofit organizations face higher costs in purchasing insurance, through interstate insurance markets, to cover their activities; and

(7) clarifying and limiting the liability risk assumed by volunteers is an appropriate subject for Federal legislation because—

(A) of the national scope of the problems created by the legitimate fears of volunteers about frivolous, arbitrary, or capricious lawsuits;

(B) the citizens of the United States depend on, and the Federal Government expends funds on, and provides tax exemptions and other consideration to, numerous social programs that depend on the services of volunteers;

(C) it is in the interest of the Federal Government to encourage the continued operation of volunteer service organizations and contributions of volunteers because the Federal Government lacks the capacity to carry out all of the services provided by such organizations and volunteers; and

(D)(i) liability reform for volunteers, will promote the free flow of goods and services, lessen burdens on interstate commerce and uphold constitutionally protected due process rights; and

(ii) therefore, liability reform is an appropriate use of the powers contained in article 1, section 8, clause 3 of the United States Constitution, and the fourteenth amendment to the United States Constitution.

(b) Purpose

The purpose of this chapter is to promote the interests of social service program beneficiaries and taxpayers and to sustain the availability of programs, nonprofit organizations, and governmental entities that depend on volunteer contributions by reforming the laws to provide certain protections from liability abuses related to volunteers serving nonprofit organizations and governmental entities.

(Pub. L. 105-19, § 2, June 18, 1997, 111 Stat. 218.)

EFFECTIVE DATE

Section 7 of Pub. L. 105-19 provided that:

“(a) IN GENERAL.—This Act [enacting this chapter] shall take effect 90 days after the date of enactment of this Act [June 18, 1997].

“(b) APPLICATION.—This Act applies to any claim for harm caused by an act or omission of a volunteer where that claim is filed on or after the effective date of this Act but only if the harm that is the subject of the claim or the conduct that caused such harm occurred after such effective date.”

SHORT TITLE

Section 1 of Pub. L. 105-19 provided that: “This Act [enacting this chapter] may be cited as the ‘Volunteer Protection Act of 1997.’”

§ 14502. Preemption and election of State nonapplicability

(a) Preemption

This chapter preempts the laws of any State to the extent that such laws are inconsistent with this chapter, except that this chapter shall not preempt any State law that provides additional protection from liability relating to volunteers or to any category of volunteers in the performance of services for a nonprofit organization or governmental entity.

(b) Election of State regarding nonapplicability

This chapter shall not apply to any civil action in a State court against a volunteer in which all parties are citizens of the State if such State enacts a statute in accordance with State requirements for enacting legislation—

(1) citing the authority of this subsection;

(2) declaring the election of such State that this chapter shall not apply, as of a date certain, to such civil action in the State; and

(3) containing no other provisions.

(Pub. L. 105-19, § 3, June 18, 1997, 111 Stat. 219.)

§ 14503. Limitation on liability for volunteers

(a) Liability protection for volunteers

Except as provided in subsections (b) and (d) of this section, no volunteer of a nonprofit organization or governmental entity shall be liable for harm caused by an act or omission of the volunteer on behalf of the organization or entity if—

(1) the volunteer was acting within the scope of the volunteer’s responsibilities in the nonprofit organization or governmental entity at the time of the act or omission;

(2) if appropriate or required, the volunteer was properly licensed, certified, or authorized by the appropriate authorities for the activities or practice in the State in which the harm occurred, where the activities were or practice

was undertaken within the scope of the volunteer's responsibilities in the nonprofit organization or governmental entity;

(3) the harm was not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed by the volunteer; and

(4) the harm was not caused by the volunteer operating a motor vehicle, vessel, aircraft, or other vehicle for which the State requires the operator or the owner of the vehicle, craft, or vessel to—

- (A) possess an operator's license; or
- (B) maintain insurance.

(b) Concerning responsibility of volunteers to organizations and entities

Nothing in this section shall be construed to affect any civil action brought by any nonprofit organization or any governmental entity against any volunteer of such organization or entity.

(c) No effect on liability of organization or entity

Nothing in this section shall be construed to affect the liability of any nonprofit organization or governmental entity with respect to harm caused to any person.

(d) Exceptions to volunteer liability protection

If the laws of a State limit volunteer liability subject to one or more of the following conditions, such conditions shall not be construed as inconsistent with this section:

(1) A State law that requires a nonprofit organization or governmental entity to adhere to risk management procedures, including mandatory training of volunteers.

(2) A State law that makes the organization or entity liable for the acts or omissions of its volunteers to the same extent as an employer is liable for the acts or omissions of its employees.

(3) A State law that makes a limitation of liability inapplicable if the civil action was brought by an officer of a State or local government pursuant to State or local law.

(4) A State law that makes a limitation of liability applicable only if the nonprofit organization or governmental entity provides a financially secure source of recovery for individuals who suffer harm as a result of actions taken by a volunteer on behalf of the organization or entity. A financially secure source of recovery may be an insurance policy within specified limits, comparable coverage from a risk pooling mechanism, equivalent assets, or alternative arrangements that satisfy the State that the organization or entity will be able to pay for losses up to a specified amount. Separate standards for different types of liability exposure may be specified.

(e) Limitation on punitive damages based on actions of volunteers

(1) General rule

Punitive damages may not be awarded against a volunteer in an action brought for harm based on the action of a volunteer acting within the scope of the volunteer's responsibilities to a nonprofit organization or govern-

mental entity unless the claimant establishes by clear and convincing evidence that the harm was proximately caused by an action of such volunteer which constitutes willful or criminal misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed.

(2) Construction

Paragraph (1) does not create a cause of action for punitive damages and does not preempt or supersede any Federal or State law to the extent that such law would further limit the award of punitive damages.

(f) Exceptions to limitations on liability

(1) In general

The limitations on the liability of a volunteer under this chapter shall not apply to any misconduct that—

(A) constitutes a crime of violence (as that term is defined in section 16 of title 18) or act of international terrorism (as that term is defined in section 2331 of title 18) for which the defendant has been convicted in any court;

(B) constitutes a hate crime (as that term is used in the Hate Crime Statistics Act (28 U.S.C. 534 note));

(C) involves a sexual offense, as defined by applicable State law, for which the defendant has been convicted in any court;

(D) involves misconduct for which the defendant has been found to have violated a Federal or State civil rights law; or

(E) where the defendant was under the influence (as determined pursuant to applicable State law) of intoxicating alcohol or any drug at the time of the misconduct.

(2) Rule of construction

Nothing in this subsection shall be construed to effect subsection (a)(3) or (e) of this section.

(Pub. L. 105-19, § 4, June 18, 1997, 111 Stat. 219.)

REFERENCES IN TEXT

The Hate Crime Statistics Act, referred to in subsec. (f)(1)(B), is Pub. L. 101-275, Apr. 23, 1990, 104 Stat. 140, which is set out as a note under section 534 of Title 28, Judiciary and Judicial Procedure.

§ 14504. Liability for noneconomic loss

(a) General rule

In any civil action against a volunteer, based on an action of a volunteer acting within the scope of the volunteer's responsibilities to a nonprofit organization or governmental entity, the liability of the volunteer for noneconomic loss shall be determined in accordance with subsection (b) of this section.

(b) Amount of liability

(1) In general

Each defendant who is a volunteer, shall be liable only for the amount of noneconomic loss allocated to that defendant in direct proportion to the percentage of responsibility of that defendant (determined in accordance with paragraph (2)) for the harm to the claimant with respect to which that defendant is liable.

The court shall render a separate judgment against each defendant in an amount determined pursuant to the preceding sentence.

(2) Percentage of responsibility

For purposes of determining the amount of noneconomic loss allocated to a defendant who is a volunteer under this section, the trier of fact shall determine the percentage of responsibility of that defendant for the claimant's harm.

(Pub. L. 105-19, § 5, June 18, 1997, 111 Stat. 221.)

§ 14505. Definitions

For purposes of this chapter:

(1) Economic loss

The term "economic loss" means any pecuniary loss resulting from harm (including the loss of earnings or other benefits related to employment, medical expense loss, replacement services loss, loss due to death, burial costs, and loss of business or employment opportunities) to the extent recovery for such loss is allowed under applicable State law.

(2) Harm

The term "harm" includes physical, non-physical, economic, and noneconomic losses.

(3) Noneconomic losses

The term "noneconomic losses" means losses for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation and all other nonpecuniary losses of any kind or nature.

(4) Nonprofit organization

The term "nonprofit organization" means—

(A) any organization which is described in section 501(c)(3) of title 26 and exempt from tax under section 501(a) of such title and which does not practice any action which constitutes a hate crime referred to in subsection (b)(1) of the first section of the Hate Crime Statistics Act (28 U.S.C. 534 note); or

(B) any not-for-profit organization which is organized and conducted for public benefit and operated primarily for charitable, civic, educational, religious, welfare, or health purposes and which does not practice any action which constitutes a hate crime referred to in subsection (b)(1) of the first section of the Hate Crime Statistics Act (28 U.S.C. 534 note).

(5) State

The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, any other territory or possession of the United States, or any political subdivision of any such State, territory, or possession.

(6) Volunteer

The term "volunteer" means an individual performing services for a nonprofit organiza-

tion or a governmental entity who does not receive—

(A) compensation (other than reasonable reimbursement or allowance for expenses actually incurred); or

(B) any other thing of value in lieu of compensation,

in excess of \$500 per year, and such term includes a volunteer serving as a director, officer, trustee, or direct service volunteer.

(Pub. L. 105-19, § 6, June 18, 1997, 111 Stat. 221.)

REFERENCES IN TEXT

The Hate Crime Statistics Act, referred to in par. (4), is Pub. L. 101-275, Apr. 23, 1990, 104 Stat. 140, which is set out as a note under section 534 of Title 28, Judiciary and Judicial Procedure.

CHAPTER 140—CRIMINAL JUSTICE IDENTIFICATION, INFORMATION, AND COMMUNICATION

SUBCHAPTER I—CRIME IDENTIFICATION TECHNOLOGY

Sec.

14601. State grant program for criminal justice identification, information, and communication.

- (a) In general.
- (b) Use of grant amounts.
- (c) Assurances.
- (d) Matching funds.
- (e) Authorization of appropriations.
- (f) Grants to Indian tribes.

SUBCHAPTER II—EXCHANGE OF CRIMINAL HISTORY RECORDS FOR NONCRIMINAL JUSTICE PURPOSES

- 14611. Findings.
- 14612. Definitions.
- 14613. Enactment and consent of the United States.
- 14614. Effect on other laws.
 - (a) Privacy Act of 1974.
 - (b) Access to certain records not affected.
 - (c) Authority of FBI under Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1973.
 - (d) Federal Advisory Committee Act.
 - (e) Members of Council not Federal officers or employees.
- 14615. Enforcement and implementation.
- 14616. National Crime Prevention and Privacy Compact.

SUBCHAPTER I—CRIME IDENTIFICATION TECHNOLOGY

§ 14601. State grant program for criminal justice identification, information, and communication

(a) In general

Subject to the availability of amounts provided in advance in appropriations Acts, the Office of Justice Programs relying principally on the expertise of the Bureau of Justice Statistics shall make a grant to each State, in a manner consistent with the national criminal history improvement program, which shall be used by the State, in conjunction with units of local government, State and local courts, other States, or combinations thereof, to establish or upgrade an integrated approach to develop information and identification technologies and systems to—

- (1) upgrade criminal history and criminal justice record systems, including systems operated by law enforcement agencies and courts;
- (2) improve criminal justice identification;
- (3) promote compatibility and integration of national, State, and local systems for—
 - (A) criminal justice purposes;
 - (B) firearms eligibility determinations;
 - (C) identification of sexual offenders;
 - (D) identification of domestic violence offenders; and
 - (E) background checks for other authorized purposes unrelated to criminal justice; and
- (4) capture information for statistical and research purposes to improve the administration of criminal justice.

(b) Use of grant amounts

Grants under this section may be used for programs to establish, develop, update, or upgrade—

- (1) State centralized, automated, adult and juvenile criminal history record information systems, including arrest and disposition reporting;
- (2) automated fingerprint identification systems that are compatible with standards established by the National Institute of Standards and Technology and interoperable with the Integrated Automated Fingerprint Identification System (IAFIS) of the Federal Bureau of Investigation;
- (3) finger imaging, live scan, and other automated systems to digitize fingerprints and to communicate prints in a manner that is compatible with standards established by the National Institute of Standards and Technology and interoperable with systems operated by States and by the Federal Bureau of Investigation;
- (4) programs and systems to facilitate full participation in the Interstate Identification Index of the National Crime Information Center;
- (5) systems to facilitate full participation in any compact relating to the Interstate Identification Index of the National Crime Information Center;
- (6) systems to facilitate full participation in the national instant criminal background check system established under section 103(b) of the Brady Handgun Violence Prevention Act (18 U.S.C. 922 note) for firearms eligibility determinations;
- (7) integrated criminal justice information systems to manage and communicate criminal justice information among law enforcement agencies, courts, prosecutors, and corrections agencies;
- (8) noncriminal history record information systems relevant to firearms eligibility determinations for availability and accessibility to the national instant criminal background check system established under section 103(b) of the Brady Handgun Violence Prevention Act (18 U.S.C. 922 note);
- (9) court-based criminal justice information systems that promote—
 - (A) reporting of dispositions to central State repositories and to the Federal Bureau of Investigation; and

(B) compatibility with, and integration of, court systems with other criminal justice information systems;

(10) ballistics identification and information programs that are compatible and integrated with the National Integrated Ballistics Network (NIBN);

(11) the capabilities of forensic science programs and medical examiner programs related to the administration of criminal justice, including programs leading to accreditation or certification of individuals or departments, agencies, or laboratories, and programs relating to the identification and analysis of deoxyribonucleic acid;

(12) sexual offender identification and registration systems;

(13) domestic violence offender identification and information systems;

(14) programs for fingerprint-supported background checks capability for noncriminal justice purposes, including youth service employees and volunteers and other individuals in positions of responsibility, if authorized by Federal or State law and administered by a government agency;

(15) criminal justice information systems with a capacity to provide statistical and research products including incident-based reporting systems that are compatible with the National Incident-Based Reporting System (NIBRS) and uniform crime reports;

(16) multiagency, multijurisdictional communications systems among the States to share routine and emergency information among Federal, State, and local law enforcement agencies;

(17) the capability of the criminal justice system to deliver timely, accurate, and complete criminal history record information to child welfare agencies, organizations, and programs that are engaged in the assessment of risk and other activities related to the protection of children, including protection against child sexual abuse, and placement of children in foster care; and

(18) notwithstanding subsection (c) of this section, antiterrorism purposes as they relate to any other uses under this section or for other antiterrorism programs.

(c) Assurances

(1) In general

To be eligible to receive a grant under this section, a State shall provide assurances to the Attorney General that the State has the capability to contribute pertinent information to the national instant criminal background check system established under section 103(b) of the Brady Handgun Violence Prevention Act (18 U.S.C. 922 note).

(2) Information sharing

Such assurances shall include a provision that ensures that a statewide strategy for information sharing systems is underway, or will be initiated, to improve the functioning of the criminal justice system, with an emphasis on integration of all criminal justice components, law enforcement, courts, prosecution, corrections, and probation and parole. The

strategy shall be prepared after consultation with State and local officials with emphasis on the recommendation of officials whose duty it is to oversee, plan, and implement integrated information technology systems, and shall contain—

(A) a definition and analysis of “integration” in the State and localities developing integrated information sharing systems;

(B) an assessment of the criminal justice resources being devoted to information technology;

(C) Federal, State, regional, and local information technology coordination requirements;

(D) an assurance that the individuals who developed the grant application took into consideration the needs of all branches of the State Government and specifically sought the advice of the chief of the highest court of the State with respect to the application;

(E) State and local resource needs;

(F) the establishment of statewide priorities for planning and implementation of information technology systems; and

(G) a plan for coordinating the programs funded under this subchapter with other federally funded information technology programs, including directly funded local programs such as the Local Law Enforcement Block Grant program (described under the heading “Violent Crime Reduction Programs, State and Local Law Enforcement Assistance” of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998 (Public Law 105-119)) and the M.O.R.E. program established pursuant to part Q of title I of the Omnibus Crime Control and Safe Streets Act of 1968 [42 U.S.C. 3796dd et seq.].

(d) Matching funds

The Federal share of a grant received under this subchapter may not exceed 90 percent of the costs of a program or proposal funded under this subchapter unless the Attorney General waives, wholly or in part, the requirements of this subsection.

(e) Authorization of appropriations

(1) In general

There is authorized to be appropriated to carry out this section \$250,000,000 for each of fiscal years 2002 through 2007.

(2) Limitations

Of the amount made available to carry out this section in any fiscal year—

(A) not more than 3 percent may be used by the Attorney General for salaries and administrative expenses;

(B) not more than 5 percent may be used for technical assistance, training and evaluations, and studies commissioned by Bureau of Justice Statistics of the Department of Justice (through discretionary grants or otherwise) in furtherance of the purposes of this section; and

(C) the Attorney General shall ensure the amounts are distributed on an equitable geographic basis.

(f) Grants to Indian tribes

Notwithstanding any other provision of this section, the Attorney General may use amounts made available under this section to make grants to Indian tribes for use in accordance with this section.

(Pub. L. 105-251, title I, §102, Oct. 9, 1998, 112 Stat. 1871; Pub. L. 106-177, title I, §102, Mar. 10, 2000, 114 Stat. 35; Pub. L. 106-561, §2(c)(4), Dec. 21, 2000, 114 Stat. 2791; Pub. L. 107-56, title X, §1015, Oct. 26, 2001, 115 Stat. 400.)

REFERENCES IN TEXT

Section 103(b) of the Brady Handgun Violence Prevention Act, referred to in subsecs. (b)(6), (8) and (c)(1), is section 103(b) of Pub. L. 103-159, as amended, which is set out as a note under section 922 of Title 18, Crimes and Criminal Procedure.

The Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998, referred to in subsec. (c)(2)(G), is Pub. L. 105-119, Nov. 26, 1997, 111 Stat. 2440. Provisions described under the heading “Violent Crime Reduction Programs, State and Local Law Enforcement Assistance” appear at 111 Stat. 2452, and are not classified to the Code.

The Omnibus Crime Control and Safe Streets Act of 1968, referred to in subsec. (c)(2)(G), is Pub. L. 90-351, June 19, 1968, 82 Stat. 197, as amended. Part Q of title I of the Act is classified generally to subchapter XII-E (§3796dd et seq.) of chapter 46 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3711 of this title and Tables.

AMENDMENTS

2001—Subsec. (b)(18). Pub. L. 107-56, §1015(1), added par. (18).

Subsec. (e)(1). Pub. L. 107-56, §1015(2), substituted “this section \$250,000,000 for each of fiscal years 2002 through 2007” for “this section \$250,000,000 for each of fiscal years 1999 through 2003”.

2000—Subsec. (b)(17). Pub. L. 106-177 added par. (17).

Subsec. (e)(2)(B) to (D). Pub. L. 106-561 inserted “and” after semicolon in subpar. (B), redesignated subpar. (D) as (C), and struck out former subpar. (C) which read as follows: “not less than 20 percent shall be used by the Attorney General for the purposes described in paragraph (1) of subsection (b) of this section; and”.

SHORT TITLE

Pub. L. 105-251, title I, §101, Oct. 9, 1998, 112 Stat. 1871, provided that: “This title [enacting this subchapter] may be cited as the ‘Crime Identification Technology Act of 1998’.”

Pub. L. 105-251, title II, §201, Oct. 9, 1998, 112 Stat. 1874, provided that: “This title [enacting subchapter II of this chapter, amending sections 5119a and 5119b of this title, and enacting provisions set out as a note under section 5101 of this title] may be cited as the ‘National Criminal History Access and Child Protection Act’.”

Pub. L. 105-251, title II, §211, Oct. 9, 1998, 112 Stat. 1874, provided that: “This subtitle [subtitle A (§§211-217) of title II of Pub. L. 105-251, enacting subchapter II of this chapter] may be cited as the ‘National Crime Prevention and Privacy Compact Act of 1998’.”

SUBCHAPTER II—EXCHANGE OF CRIMINAL HISTORY RECORDS FOR NONCRIMINAL JUSTICE PURPOSES

§ 14611. Findings

Congress finds that—

(1) both the Federal Bureau of Investigation and State criminal history record repositories maintain fingerprint-based criminal history records;

(2) these criminal history records are shared and exchanged for criminal justice purposes through a Federal-State program known as the Interstate Identification Index System;

(3) although these records are also exchanged for legally authorized, noncriminal justice uses, such as governmental licensing and employment background checks, the purposes for and procedures by which they are exchanged vary widely from State to State;

(4) an interstate and Federal-State compact is necessary to facilitate authorized interstate criminal history record exchanges for non-criminal justice purposes on a uniform basis, while permitting each State to effectuate its own dissemination policy within its own borders; and

(5) such a compact will allow Federal and State records to be provided expeditiously to governmental and nongovernmental agencies that use such records in accordance with pertinent Federal and State law, while simultaneously enhancing the accuracy of the records and safeguarding the information contained therein from unauthorized disclosure or use.

(Pub. L. 105-251, title II, §212, Oct. 9, 1998, 112 Stat. 1874.)

§ 14612. Definitions

In this subchapter:

(1) Attorney General

The term “Attorney General” means the Attorney General of the United States.

(2) Compact

The term “Compact” means the National Crime Prevention and Privacy Compact set forth in section 14616 of this title.

(3) Council

The term “Council” means the Compact Council established under Article VI of the Compact.

(4) FBI

The term “FBI” means the Federal Bureau of Investigation.

(5) Party State

The term “Party State” means a State that has ratified the Compact.

(6) State

The term “State” means any State, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(Pub. L. 105-251, title II, §213, Oct. 9, 1998, 112 Stat. 1874.)

§ 14613. Enactment and consent of the United States

The National Crime Prevention and Privacy Compact, as set forth in section 14616 of this title, is enacted into law and entered into by the Federal Government. The consent of Congress is given to States to enter into the Compact.

(Pub. L. 105-251, title II, §214, Oct. 9, 1998, 112 Stat. 1875.)

§ 14614. Effect on other laws

(a) Privacy Act of 1974

Nothing in the Compact shall affect the obligations and responsibilities of the FBI under section 552a of title 5 (commonly known as the “Privacy Act of 1974”).

(b) Access to certain records not affected

Nothing in the Compact shall interfere in any manner with—

(1) access, direct or otherwise, to records pursuant to—

(A) section 9101 of title 5;

(B) the National Child Protection Act [42 U.S.C. 5119 et seq.];

(C) the Brady Handgun Violence Prevention Act (Public Law 103-159; 107 Stat. 1536);

(D) the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103-322; 108 Stat. 2074) or any amendment made by that Act;

(E) the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.); or

(F) the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.); or

(2) any direct access to Federal criminal history records authorized by law.

(c) Authority of FBI under Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1973

Nothing in the Compact shall be construed to affect the authority of the FBI under the Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1973 (Public Law 92-544 (86 Stat. 1115)).

(d) Federal Advisory Committee Act

The Council shall not be considered to be a Federal advisory committee for purposes of the Federal Advisory Committee Act (5 U.S.C. App.).

(e) Members of Council not Federal officers or employees

Members of the Council (other than a member from the FBI or any at-large member who may be a Federal official or employee) shall not, by virtue of such membership, be deemed—

(1) to be, for any purpose other than to effect the Compact, officers or employees of the United States (as defined in sections 2104 and 2105 of title 5); or

(2) to become entitled by reason of Council membership to any compensation or benefit payable or made available by the Federal Government to its officers or employees.

(Pub. L. 105-251, title II, §215, Oct. 9, 1998, 112 Stat. 1875.)

REFERENCES IN TEXT

The Privacy Act of 1974, referred to in subsec. (a), is Pub. L. 93-579, Dec. 31, 1974, 88 Stat. 1896, as amended, which enacted section 552a of Title 5, Government Organization and Employees, and provisions set out as notes under section 552a of Title 5. For complete classification of this Act to the Code, see Short Title note set out under section 552a of Title 5 and Tables.

The National Child Protection Act, referred to in subsec. (b)(1)(B), probably means the National Child Protection Act of 1993, Pub. L. 103-209, Dec. 20, 1993, 107 Stat. 2490, as amended, which is classified principally

to subchapter VI (§5119 et seq.) of chapter 67 of this title. For complete classification of this Act to the Code, see Short Title of 1993 Amendment note set out under section 5101 of this title and Tables.

The Brady Handgun Violence Prevention Act, referred to in subsec. (b)(1)(C), is title I of Pub. L. 103-159, Nov. 30, 1993, 107 Stat. 1536, which enacted section 925A of Title 18, Crimes and Criminal Procedure, amended section 3759 of this title and sections 921, 922, and 924 of Title 18, and enacted provisions set out as notes under sections 921 and 922 of Title 18. For complete classification of this Act to the Code, see Short Title of 1993 Amendment note set out under section 921 of Title 18 and Tables.

The Violent Crime Control and Law Enforcement Act of 1994, referred to in subsec. (b)(1)(D), is Pub. L. 103-322, Sept. 13, 1994, 108 Stat. 1796, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 13701 of this title and Tables.

The United States Housing Act of 1937, referred to in subsec. (b)(1)(E), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93-383, title II, §201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§1437 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of this title and Tables.

The Native American Housing Assistance and Self-Determination Act of 1996, referred to in subsec. (b)(1)(F), is Pub. L. 104-330, Oct. 26, 1996, 110 Stat. 4016, as amended, which is classified principally to chapter 43 (§4101 et seq.) of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of Title 25 and Tables.

The Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1973, referred to in subsec. (c), is Pub. L. 92-544, Oct. 25, 1972, 86 Stat. 1109, as amended. For complete classification of this Act to the Code, see Tables.

The Federal Advisory Committee Act, referred to in subsec. (d), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

§ 14615. Enforcement and implementation

All departments, agencies, officers, and employees of the United States shall enforce the Compact and cooperate with one another and with all Party States in enforcing the Compact and effectuating its purposes. For the Federal Government, the Attorney General shall make such rules, prescribe such instructions, and take such other actions as may be necessary to carry out the Compact and this subchapter.

(Pub. L. 105-251, title II, §216, Oct. 9, 1998, 112 Stat. 1875.)

§ 14616. National Crime Prevention and Privacy Compact

The Contracting Parties agree to the following:

OVERVIEW

(a) In general

This Compact organizes an electronic information sharing system among the Federal Government and the States to exchange criminal history records for noncriminal justice purposes authorized by Federal or State law, such as background checks for governmental licensing and employment.

(b) Obligations of parties

Under this Compact, the FBI and the Party States agree to maintain detailed databases of

their respective criminal history records, including arrests and dispositions, and to make them available to the Federal Government and to Party States for authorized purposes. The FBI shall also manage the Federal data facilities that provide a significant part of the infrastructure for the system.

ARTICLE I—DEFINITIONS

In this Compact:

(1) Attorney General

The term “Attorney General” means the Attorney General of the United States.

(2) Compact officer

The term “Compact officer” means—

(A) with respect to the Federal Government, an official so designated by the Director of the FBI; and

(B) with respect to a Party State, the chief administrator of the State’s criminal history record repository or a designee of the chief administrator who is a regular full-time employee of the repository.

(3) Council

The term “Council” means the Compact Council established under Article VI.

(4) Criminal history records

The term “criminal history records”—

(A) means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, or other formal criminal charges, and any disposition arising therefrom, including acquittal, sentencing, correctional supervision, or release; and

(B) does not include identification information such as fingerprint records if such information does not indicate involvement of the individual with the criminal justice system.

(5) Criminal history record repository

The term “criminal history record repository” means the State agency designated by the Governor or other appropriate executive official or the legislature of a State to perform centralized recordkeeping functions for criminal history records and services in the State.

(6) Criminal justice

The term “criminal justice” includes activities relating to the detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The administration of criminal justice includes criminal identification activities and the collection, storage, and dissemination of criminal history records.

(7) Criminal justice agency

The term “criminal justice agency”—

(A) means—

(i) courts; and

(ii) a governmental agency or any subunit thereof that—

(I) performs the administration of criminal justice pursuant to a statute or Executive order; and

(II) allocates a substantial part of its annual budget to the administration of criminal justice; and

(B) includes Federal and State inspectors general offices.

(8) Criminal justice services

The term “criminal justice services” means services provided by the FBI to criminal justice agencies in response to a request for information about a particular individual or as an update to information previously provided for criminal justice purposes.

(9) Criterion offense

The term “criterion offense” means any felony or misdemeanor offense not included on the list of nonserious offenses published periodically by the FBI.

(10) Direct access

The term “direct access” means access to the National Identification Index by computer terminal or other automated means not requiring the assistance of or intervention by any other party or agency.

(11) Executive order

The term “Executive order” means an order of the President of the United States or the chief executive officer of a State that has the force of law and that is promulgated in accordance with applicable law.

(12) FBI

The term “FBI” means the Federal Bureau of Investigation.

(13) Interstate Identification System

The term “Interstate Identification Index System” or “III System”—

(A) means the cooperative Federal-State system for the exchange of criminal history records; and

(B) includes the National Identification Index, the National Fingerprint File and, to the extent of their participation in such system, the criminal history record repositories of the States and the FBI.

(14) National Fingerprint File

The term “National Fingerprint File” means a database of fingerprints, or other uniquely personal identifying information, relating to an arrested or charged individual maintained by the FBI to provide positive identification of record subjects indexed in the III System.

(15) National Identification Index

The term “National Identification Index” means an index maintained by the FBI consisting of names, identifying numbers, and other descriptive information relating to record subjects about whom there are criminal history records in the III System.

(16) National indices

The term “National indices” means the National Identification Index and the National Fingerprint File.

(17) Nonparty State

The term “Nonparty State” means a State that has not ratified this Compact.

(18) Noncriminal justice purposes

The term “noncriminal justice purposes” means uses of criminal history records for purposes authorized by Federal or State law other than purposes relating to criminal justice activities, including employment suitability, licensing determinations, immigration and naturalization matters, and national security clearances.

(19) Party State

The term “Party State” means a State that has ratified this Compact.

(20) Positive identification

The term “positive identification” means a determination, based upon a comparison of fingerprints or other equally reliable biometric identification techniques, that the subject of a record search is the same person as the subject of a criminal history record or records indexed in the III System. Identifications based solely upon a comparison of subjects’ names or other nonunique identification characteristics or numbers, or combinations thereof, shall not constitute positive identification.

(21) Sealed record information

The term “sealed record information” means—

(A) with respect to adults, that portion of a record that is—

(i) not available for criminal justice uses;

(ii) not supported by fingerprints or other accepted means of positive identification; or

(iii) subject to restrictions on dissemination for noncriminal justice purposes pursuant to a court order related to a particular subject or pursuant to a Federal or State statute that requires action on a sealing petition filed by a particular record subject; and

(B) with respect to juveniles, whatever each State determines is a sealed record under its own law and procedure.

(22) State

The term “State” means any State, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

ARTICLE II—PURPOSES

The purposes of this Compact are to—

(1) provide a legal framework for the establishment of a cooperative Federal-State system for the interstate and Federal-State exchange of criminal history records for non-criminal justice uses;

(2) require the FBI to permit use of the National Identification Index and the National Fingerprint File by each Party State, and to provide, in a timely fashion, Federal and State criminal history records to requesting States, in accordance with the terms of this Compact and with rules, procedures, and standards established by the Council under Article VI;

(3) require Party States to provide information and records for the National Identifica-

tion Index and the National Fingerprint File and to provide criminal history records, in a timely fashion, to criminal history record repositories of other States and the Federal Government for noncriminal justice purposes, in accordance with the terms of this Compact and with rules, procedures, and standards established by the Council under Article VI;

(4) provide for the establishment of a Council to monitor III System operations and to prescribe system rules and procedures for the effective and proper operation of the III System for noncriminal justice purposes; and

(5) require the FBI and each Party State to adhere to III System standards concerning record dissemination and use, response times, system security, data quality, and other duly established standards, including those that enhance the accuracy and privacy of such records.

ARTICLE III—RESPONSIBILITIES OF COMPACT PARTIES

(a) FBI responsibilities

The Director of the FBI shall—

(1) appoint an FBI Compact officer who shall—

(A) administer this Compact within the Department of Justice and among Federal agencies and other agencies and organizations that submit search requests to the FBI pursuant to Article V(c);

(B) ensure that Compact provisions and rules, procedures, and standards prescribed by the Council under Article VI are complied with by the Department of Justice and the Federal agencies and other agencies and organizations referred to in Article III(1)(A); and

(C) regulate the use of records received by means of the III System from Party States when such records are supplied by the FBI directly to other Federal agencies;

(2) provide to Federal agencies and to State criminal history record repositories, criminal history records maintained in its database for the noncriminal justice purposes described in Article IV, including—

(A) information from Nonparty States; and

(B) information from Party States that is available from the FBI through the III System, but is not available from the Party State through the III System;

(3) provide a telecommunications network and maintain centralized facilities for the exchange of criminal history records for both criminal justice purposes and the noncriminal justice purposes described in Article IV, and ensure that the exchange of such records for criminal justice purposes has priority over exchange for noncriminal justice purposes; and

(4) modify or enter into user agreements with Nonparty State criminal history record repositories to require them to establish record request procedures conforming to those prescribed in Article V.

(b) State responsibilities

Each Party State shall—

(1) appoint a Compact officer who shall—

(A) administer this Compact within that State;

(B) ensure that Compact provisions and rules, procedures, and standards established by the Council under Article VI are complied with in the State; and

(C) regulate the in-State use of records received by means of the III System from the FBI or from other Party States;

(2) establish and maintain a criminal history record repository, which shall provide—

(A) information and records for the National Identification Index and the National Fingerprint File; and

(B) the State's III System-indexed criminal history records for noncriminal justice purposes described in Article IV;

(3) participate in the National Fingerprint File; and

(4) provide and maintain telecommunications links and related equipment necessary to support the services set forth in this Compact.

(c) Compliance with III System standards

In carrying out their responsibilities under this Compact, the FBI and each Party State shall comply with III System rules, procedures, and standards duly established by the Council concerning record dissemination and use, response times, data quality, system security, accuracy, privacy protection, and other aspects of III System operation.

(d) Maintenance of record services

(1) Use of the III System for noncriminal justice purposes authorized in this Compact shall be managed so as not to diminish the level of services provided in support of criminal justice purposes.

(2) Administration of Compact provisions shall not reduce the level of service available to authorized noncriminal justice users on the effective date of this Compact.

ARTICLE IV—AUTHORIZED RECORD DISCLOSURES

(a) State criminal history record repositories

To the extent authorized by section 552a of title 5, United States Code (commonly known as the "Privacy Act of 1974"), the FBI shall provide on request criminal history records (excluding sealed records) to State criminal history record repositories for noncriminal justice purposes allowed by Federal statute, Federal Executive order, or a State statute that has been approved by the Attorney General and that authorizes national indices checks.

(b) Criminal justice agencies and other governmental or nongovernmental agencies

The FBI, to the extent authorized by section 552a of title 5, United States Code (commonly known as the "Privacy Act of 1974"), and State criminal history record repositories shall provide criminal history records (excluding sealed records) to criminal justice agencies and other governmental or nongovernmental agencies for noncriminal justice purposes allowed by Federal statute, Federal Executive order, or a State statute that has been approved by the Attorney

General, that authorizes national indices checks.

(c) Procedures

Any record obtained under this Compact may be used only for the official purposes for which the record was requested. Each Compact officer shall establish procedures, consistent with this Compact, and with rules, procedures, and standards established by the Council under Article VI, which procedures shall protect the accuracy and privacy of the records, and shall—

- (1) ensure that records obtained under this Compact are used only by authorized officials for authorized purposes;
- (2) require that subsequent record checks are requested to obtain current information whenever a new need arises; and
- (3) ensure that record entries that may not legally be used for a particular noncriminal justice purpose are deleted from the response and, if no information authorized for release remains, an appropriate “no record” response is communicated to the requesting official.

ARTICLE V—RECORD REQUEST PROCEDURES

(a) Positive identification

Subject fingerprints or other approved forms of positive identification shall be submitted with all requests for criminal history record checks for noncriminal justice purposes.

(b) Submission of State requests

Each request for a criminal history record check utilizing the national indices made under any approved State statute shall be submitted through that State’s criminal history record repository. A State criminal history record repository shall process an interstate request for noncriminal justice purposes through the national indices only if such request is transmitted through another State criminal history record repository or the FBI.

(c) Submission of Federal requests

Each request for criminal history record checks utilizing the national indices made under Federal authority shall be submitted through the FBI or, if the State criminal history record repository consents to process fingerprint submissions, through the criminal history record repository in the State in which such request originated. Direct access to the National Identification Index by entities other than the FBI and State criminal history records repositories shall not be permitted for noncriminal justice purposes.

(d) Fees

A State criminal history record repository or the FBI—

- (1) may charge a fee, in accordance with applicable law, for handling a request involving fingerprint processing for noncriminal justice purposes; and
- (2) may not charge a fee for providing criminal history records in response to an electronic request for a record that does not involve a request to process fingerprints.

(e) Additional search

(1) If a State criminal history record repository cannot positively identify the subject of a

record request made for noncriminal justice purposes, the request, together with fingerprints or other approved identifying information, shall be forwarded to the FBI for a search of the national indices.

(2) If, with respect to a request forwarded by a State criminal history record repository under paragraph (1), the FBI positively identifies the subject as having a III System-indexed record or records—

(A) the FBI shall so advise the State criminal history record repository; and

(B) the State criminal history record repository shall be entitled to obtain the additional criminal history record information from the FBI or other State criminal history record repositories.

ARTICLE VI—ESTABLISHMENT OF COMPACT COUNCIL

(a) Establishment

(1) In general

There is established a council to be known as the “Compact Council”, which shall have the authority to promulgate rules and procedures governing the use of the III System for noncriminal justice purposes, not to conflict with FBI administration of the III System for criminal justice purposes.

(2) Organization

The Council shall—

- (A) continue in existence as long as this Compact remains in effect;
- (B) be located, for administrative purposes, within the FBI; and
- (C) be organized and hold its first meeting as soon as practicable after the effective date of this Compact.

(b) Membership

The Council shall be composed of 15 members, each of whom shall be appointed by the Attorney General, as follows:

(1) Nine members, each of whom shall serve a 2-year term, who shall be selected from among the Compact officers of Party States based on the recommendation of the Compact officers of all Party States, except that, in the absence of the requisite number of Compact officers available to serve, the chief administrators of the criminal history record repositories of Nonparty States shall be eligible to serve on an interim basis.

(2) Two at-large members, nominated by the Director of the FBI, each of whom shall serve a 3-year term, of whom—

(A) 1 shall be a representative of the criminal justice agencies of the Federal Government and may not be an employee of the FBI; and

(B) 1 shall be a representative of the noncriminal justice agencies of the Federal Government.

(3) Two at-large members, nominated by the Chairman of the Council, once the Chairman is elected pursuant to Article VI(c), each of whom shall serve a 3-year term, of whom—

(A) 1 shall be a representative of State or local criminal justice agencies; and

(B) 1 shall be a representative of State or local noncriminal justice agencies.

(4) One member, who shall serve a 3-year term, and who shall simultaneously be a member of the FBI's advisory policy board on criminal justice information services, nominated by the membership of that policy board.

(5) One member, nominated by the Director of the FBI, who shall serve a 3-year term, and who shall be an employee of the FBI.

(c) Chairman and Vice Chairman

(1) In general

From its membership, the Council shall elect a Chairman and a Vice Chairman of the Council, respectively. Both the Chairman and Vice Chairman of the Council—

(A) shall be a Compact officer, unless there is no Compact officer on the Council who is willing to serve, in which case the Chairman may be an at-large member; and

(B) shall serve a 2-year term and may be reelected to only 1 additional 2-year term.

(2) Duties of Vice Chairman

The Vice Chairman of the Council shall serve as the Chairman of the Council in the absence of the Chairman.

(d) Meetings

(1) In general

The Council shall meet at least once each year at the call of the Chairman. Each meeting of the Council shall be open to the public. The Council shall provide prior public notice in the Federal Register of each meeting of the Council, including the matters to be addressed at such meeting.

(2) Quorum

A majority of the Council or any committee of the Council shall constitute a quorum of the Council or of such committee, respectively, for the conduct of business. A lesser number may meet to hold hearings, take testimony, or conduct any business not requiring a vote.

(e) Rules, procedures, and standards

The Council shall make available for public inspection and copying at the Council office within the FBI, and shall publish in the Federal Register, any rules, procedures, or standards established by the Council.

(f) Assistance from FBI

The Council may request from the FBI such reports, studies, statistics, or other information or materials as the Council determines to be necessary to enable the Council to perform its duties under this Compact. The FBI, to the extent authorized by law, may provide such assistance or information upon such a request.

(g) Committees

The Chairman may establish committees as necessary to carry out this Compact and may prescribe their membership, responsibilities, and duration.

ARTICLE VII—RATIFICATION OF COMPACT

This Compact shall take effect upon being entered into by 2 or more States as between those

States and the Federal Government. Upon subsequent entering into this Compact by additional States, it shall become effective among those States and the Federal Government and each Party State that has previously ratified it. When ratified, this Compact shall have the full force and effect of law within the ratifying jurisdictions. The form of ratification shall be in accordance with the laws of the executing State.

ARTICLE VIII—MISCELLANEOUS PROVISIONS

(a) Relation of Compact to certain FBI activities

Administration of this Compact shall not interfere with the management and control of the Director of the FBI over the FBI's collection and dissemination of criminal history records and the advisory function of the FBI's advisory policy board chartered under the Federal Advisory Committee Act (5 U.S.C. App.) for all purposes other than noncriminal justice.

(b) No authority for nonappropriated expenditures

Nothing in this Compact shall require the FBI to obligate or expend funds beyond those appropriated to the FBI.

(c) Relating to Public Law 92-544

Nothing in this Compact shall diminish or lessen the obligations, responsibilities, and authorities of any State, whether a Party State or a Nonparty State, or of any criminal history record repository or other subdivision or component thereof, under the Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1973 (Public Law 92-544), or regulations and guidelines promulgated thereunder, including the rules and procedures promulgated by the Council under Article VI(a), regarding the use and dissemination of criminal history records and information.

ARTICLE IX—RENUNCIATION

(a) In general

This Compact shall bind each Party State until renounced by the Party State.

(b) Effect

Any renunciation of this Compact by a Party State shall—

(1) be effected in the same manner by which the Party State ratified this Compact; and

(2) become effective 180 days after written notice of renunciation is provided by the Party State to each other Party State and to the Federal Government.

ARTICLE X—SEVERABILITY

The provisions of this Compact shall be severable, and if any phrase, clause, sentence, or provision of this Compact is declared to be contrary to the constitution of any participating State, or to the Constitution of the United States, or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person, or circumstance shall not

be affected thereby. If a portion of this Compact is held contrary to the constitution of any Party State, all other portions of this Compact shall remain in full force and effect as to the remaining Party States and in full force and effect as to the Party State affected, as to all other provisions.

ARTICLE XI—ADJUDICATION OF DISPUTES

(a) In general

The Council shall—

(1) have initial authority to make determinations with respect to any dispute regarding—

- (A) interpretation of this Compact;
- (B) any rule or standard established by the Council pursuant to Article V; and
- (C) any dispute or controversy between any parties to this Compact; and

(2) hold a hearing concerning any dispute described in paragraph (1) at a regularly scheduled meeting of the Council and only render a decision based upon a majority vote of the members of the Council. Such decision shall be published pursuant to the requirements of Article VI(e).

(b) Duties of FBI

The FBI shall exercise immediate and necessary action to preserve the integrity of the III System, maintain system policy and standards, protect the accuracy and privacy of records, and to prevent abuses, until the Council holds a hearing on such matters.

(c) Right of appeal

The FBI or a Party State may appeal any decision of the Council to the Attorney General, and thereafter may file suit in the appropriate district court of the United States, which shall have original jurisdiction of all cases or controversies arising under this Compact. Any suit arising under this Compact and initiated in a State court shall be removed to the appropriate district court of the United States in the manner provided by section 1446 of title 28, United States Code, or other statutory authority.

(Pub. L. 105-251, title II, §217, Oct. 9, 1998, 112 Stat. 1876.)

REFERENCES IN TEXT

The Privacy Act of 1974, referred to in Article IV(a), (b), is Pub. L. 93-579, Dec. 31, 1974, 88 Stat. 1896, as amended, which enacted section 552a of Title 5, Government Organization and Employees, and provisions set out as notes under section 552a of Title 5. For complete classification of this Act to the Code, see Short Title note set out under section 552a of Title 5 and Tables.

The Federal Advisory Committee Act, referred to in Article VIII(a), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

The Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1973, referred to in Article VIII(c), is Pub. L. 92-544, Oct. 25, 1972, 86 Stat. 1109, as amended. For complete classification of this Act to the Code, see Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14612, 14613 of this title.

CHAPTER 140A—JENNIFER'S LAW

Sec.
14661. Program authorized.

Sec.
14662. Eligibility.
 (a) Application.
 (b) Contents.
14663. Uses of funds.
14664. Authorization of appropriations.
14665. Grants for the assistance of organizations to find missing adults.
 (a) In general.
 (b) Regulations.

§ 14661. Program authorized

The Attorney General is authorized to provide grant awards to States to enable States to improve the reporting of unidentified and missing persons.

(Pub. L. 106-177, title II, §202, Mar. 10, 2000, 114 Stat. 36.)

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106-468, §1, Nov. 9, 2000, 114 Stat. 2027, provided that: "This Act [enacting section 14665 of this title and provisions set out as a note under section 14665 of this title] may be cited as 'Kristen's Act'."

SHORT TITLE

Pub. L. 106-177, title II, §201, Mar. 10, 2000, 114 Stat. 36, provided that: "This title [enacting this chapter] may be cited as 'Jennifer's Law'."

§ 14662. Eligibility

(a) Application

To be eligible to receive a grant award under this chapter, a State shall submit an application at such time and in such form as the Attorney General may reasonably require.

(b) Contents

Each such application shall include assurances that the State shall, to the greatest extent possible—

- (1) report to the National Crime Information Center and when possible, to law enforcement authorities throughout the State regarding every deceased unidentified person, regardless of age, found in the State's jurisdiction;
- (2) enter a complete profile of such unidentified person in compliance with the guidelines established by the Department of Justice for the National Crime Information Center Missing and Unidentified Persons File, including dental records, DNA records, x-rays, and fingerprints, if available;
- (3) enter the National Crime Information Center number or other appropriate number assigned to the unidentified person on the death certificate of each such unidentified person; and
- (4) retain all such records pertaining to unidentified persons until a person is identified.

(Pub. L. 106-177, title II, §203, Mar. 10, 2000, 114 Stat. 36.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14663 of this title.

This section is referred to in sections 14612, 14613 of this title.

This section is referred to in sections 14612, 14613 of this title.

(Pub. L. 106-177, title II, §203, Mar. 10, 2000, 114 Stat. 36.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14663 of this title.

§ 14663. Uses of funds

A State that receives a grant award under this chapter may use such funds received to establish or expand programs developed to improve the re-

porting of unidentified persons in accordance with the assurances provided in the application submitted pursuant to section 14662(b) of this title.

(Pub. L. 106-177, title II, § 204, Mar. 10, 2000, 114 Stat. 36.)

§ 14664. Authorization of appropriations

There are authorized to be appropriated to carry out this chapter \$2,000,000 for each of fiscal years 2000, 2001, and 2002.

(Pub. L. 106-177, title II, § 205, Mar. 10, 2000, 114 Stat. 37.)

§ 14665. Grants for the assistance of organizations to find missing adults

(a) In general

The Attorney General may make grants to public agencies or nonprofit private organizations, or combinations thereof, for programs—

- (1) to assist law enforcement and families in locating missing adults;
- (2) to maintain a national, interconnected database for the purpose of tracking missing adults who are determined by law enforcement to be endangered due to age, diminished mental capacity, or the circumstances of disappearance, when foul play is suspected or circumstances are unknown;
- (3) to maintain statistical information of adults reported as missing;
- (4) to provide informational resources and referrals to families of missing adults;
- (5) to assist in public notification and victim advocacy related to missing adults; and
- (6) to establish and maintain a national clearinghouse for missing adults.

(b) Regulations

The Attorney General may make such rules and regulations as may be necessary to carry out this Act.

(Pub. L. 106-468, § 2, Nov. 9, 2000, 114 Stat. 2027.)

REFERENCES IN TEXT

This Act, referred to in subsec. (b), is Pub. L. 106-468, Nov. 9, 2000, 114 Stat. 2027, known as Kristen's Act, which enacted this section and provisions set out as notes under this section and section 14661 of this title. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was enacted as part of Kristen's Act, and not as part of Jennifer's Law which comprises this chapter.

AUTHORIZATION OF APPROPRIATIONS

Pub. L. 106-468, § 3, Nov. 9, 2000, 114 Stat. 2028, provided that: "There are authorized to be appropriated to carry out this Act [enacting this section and provisions set out as a note under section 14661 of this title] \$1,000,000 each year for fiscal years 2001 through 2004."

CHAPTER 141—COMMERCIAL SPACE OPPORTUNITIES AND TRANSPORTATION SERVICES

Sec.

14701. Definitions.

SUBCHAPTER I—PROMOTION OF COMMERCIAL SPACE OPPORTUNITIES

14711. Commercialization of Space Station.

Sec.

- (a) Policy.
- (b) Reports.
- 14712. Promotion of United States Global Positioning System standards.
 - (a) Finding.
 - (b) International cooperation.
- 14713. Acquisition of space science data.
 - (a) Acquisition from commercial providers.
 - (b) Treatment of space science data as commercial item under acquisition laws.
 - (c) Definition.
 - (d) Safety standards.
 - (e) Limitation.
- 14714. Administration of commercial space centers.
- 14715. Sources of Earth Science data.
 - (a) Acquisition.
 - (b) Treatment as commercial item under acquisition laws.
 - (c) Study.
 - (d) Safety standards.
 - (e) Administration and execution.

SUBCHAPTER II—FEDERAL ACQUISITION OF SPACE TRANSPORTATION SERVICES

- 14731. Requirement to procure commercial space transportation services.
 - (a) In general.
 - (b) Exceptions.
 - (c) Delayed effect.
 - (d) Historical purposes.
- 14732. Acquisition of commercial space transportation services.
 - (a) Treatment of commercial space transportation services as commercial item under acquisition laws.
 - (b) Safety standards.
- 14733. Shuttle privatization.
 - (a) Policy and preparation.
 - (b) Feasibility study.
 - (c) Report to Congress.
- 14734. Use of excess intercontinental ballistic missiles.
 - (a) In general.
 - (b) Authorized Federal uses.
 - (c) Missiles referred to.
- 14735. National launch capability study.
 - (a) Findings.
 - (b) Definitions.
 - (c) Report.
 - (d) Recommendations.

SUBCHAPTER III—COMMERCIAL REUSABLE IN-SPACE TRANSPORTATION

- 14751. Findings.
- 14752. Loan guarantees for production of commercial reusable in-space transportation.
 - (a) Authority to make loan guarantees.
 - (b) Eligible United States commercial providers.
 - (c) Limitation on loans guaranteed.
 - (d) Credit subsidy.
 - (e) Other terms and conditions.
 - (f) Enforcement of rights.
 - (g) Credit instruments.
- 14753. Definitions.

§ 14701. Definitions

For purposes of this Act—

(1) the term "Administrator" means the Administrator of the National Aeronautics and Space Administration;

(2) the term "commercial provider" means any person providing space transportation services or other space-related activities, primary control of which is held by persons other

than Federal, State, local, and foreign governments;

(3) the term “payload” means anything that a person undertakes to transport to, from, or within outer space, or in suborbital trajectory, by means of a space transportation vehicle, but does not include the space transportation vehicle itself except for its components which are specifically designed or adapted for that payload;

(4) the term “space-related activities” includes research and development, manufacturing, processing, service, and other associated and support activities;

(5) the term “space transportation services” means the preparation of a space transportation vehicle and its payloads for transportation to, from, or within outer space, or in suborbital trajectory, and the conduct of transporting a payload to, from, or within outer space, or in suborbital trajectory;

(6) the term “space transportation vehicle” means any vehicle constructed for the purpose of operating in, or transporting a payload to, from, or within, outer space, or in suborbital trajectory, and includes any component of such vehicle not specifically designed or adapted for a payload;

(7) the term “State” means each of the several States of the Union, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other commonwealth, territory, or possession of the United States; and

(8) the term “United States commercial provider” means a commercial provider, organized under the laws of the United States or of a State, which is—

(A) more than 50 percent owned by United States nationals; or

(B) a subsidiary of a foreign company and the Secretary of Transportation finds that—

(i) such subsidiary has in the past evidenced a substantial commitment to the United States market through—

(I) investments in the United States in long-term research, development, and manufacturing (including the manufacture of major components and subassemblies); and

(II) significant contributions to employment in the United States; and

(ii) the country or countries in which such foreign company is incorporated or organized, and, if appropriate, in which it principally conducts its business, affords reciprocal treatment to companies described in subparagraph (A) comparable to that afforded to such foreign company’s subsidiary in the United States, as evidenced by—

(I) providing comparable opportunities for companies described in subparagraph (A) to participate in Government sponsored research and development similar to that authorized under this Act;

(II) providing no barriers, to companies described in subparagraph (A) with respect to local investment opportunities, that are not provided to foreign companies in the United States; and

(III) providing adequate and effective protection for the intellectual property rights of companies described in subparagraph (A).

(Pub. L. 105-303, § 2, Oct. 28, 1998, 112 Stat. 2843.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 105-303, Oct. 28, 1998, 112 Stat. 2843, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

SHORT TITLE

Pub. L. 105-303, § 1(a), Oct. 28, 1998, 112 Stat. 2843, provided that: “This Act [enacting this section, subchapters I and II of this chapter, and sections 70120 and 70121 of Title 49, Transportation, amending sections 2465c and 2465f of this title, sections 5621, 5622, and 5803 of Title 15, Commerce and Trade, and sections 70101 to 70106, 70108 to 70113, 70115, 70117, and 70119 of Title 49, repealing sections 2465b, 2465d, and 2465e of this title, and enacting provisions set out as a note under section 70105 of Title 49] may be cited as the ‘Commercial Space Act of 1998’.”

Pub. L. 107-248, title IX, § 901, Oct. 23, 2002, 116 Stat. 1573, provided that: “This title [enacting subchapter III of this chapter] may be cited as the ‘Commercial Reusable In-Space Transportation Act of 2002’.”

SUBCHAPTER I—PROMOTION OF COMMERCIAL SPACE OPPORTUNITIES

§ 14711. Commercialization of Space Station

(a) Policy

The Congress declares that a priority goal of constructing the International Space Station is the economic development of Earth orbital space. The Congress further declares that free and competitive markets create the most efficient conditions for promoting economic development, and should therefore govern the economic development of Earth orbital space. The Congress further declares that the use of free market principles in operating, servicing, allocating the use of, and adding capabilities to the Space Station, and the resulting fullest possible engagement of commercial providers and participation of commercial users, will reduce Space Station operational costs for all partners and the Federal Government’s share of the United States burden to fund operations.

(b) Reports

(1) The Administrator shall deliver to the Committee on Science of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, within 90 days after October 28, 1998, a study that identifies and examines—

(A) the opportunities for commercial providers to play a role in International Space Station activities, including operation, use, servicing, and augmentation;

(B) the potential cost savings to be derived from commercial providers playing a role in each of these activities;

(C) which of the opportunities described in subparagraph (A) the Administrator plans to make available to commercial providers in fiscal years 1999 and 2000;

(D) the specific policies and initiatives the Administrator is advancing to encourage and facilitate these commercial opportunities; and

(E) the revenues and cost reimbursements to the Federal Government from commercial users of the Space Station.

(2) The Administrator shall deliver to the Committee on Science of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, within 180 days after October 28, 1998, an independently conducted market study that examines and evaluates potential industry interest in providing commercial goods and services for the operation, servicing, and augmentation of the International Space Station, and in the commercial use of the International Space Station. This study shall also include updates to the cost savings and revenue estimates made in the study described in paragraph (1) based on the external market assessment.

(3) The Administrator shall deliver to the Congress, no later than the submission of the President's annual budget request for fiscal year 2000, a report detailing how many proposals (whether solicited or not) the National Aeronautics and Space Administration received during calendar years 1997 and 1998 regarding commercial operation, servicing, utilization, or augmentation of the International Space Station, broken down by each of these four categories, and specifying how many agreements the National Aeronautics and Space Administration has entered into in response to these proposals, also broken down by these four categories.

(4) Each of the studies and reports required by paragraphs (1), (2), and (3) shall include consideration of the potential role of State governments as brokers in promoting commercial participation in the International Space Station program.

(Pub. L. 105-303, title I, §101, Oct. 28, 1998, 112 Stat. 2845.)

SPACE STATION COMMERCIAL DEVELOPMENT
DEMONSTRATION PROGRAM

Pub. L. 106-74, title IV, §434, Oct. 20, 1999, 113 Stat. 1097, as amended by Pub. L. 106-391, title II, §204, Oct. 30, 2000, 114 Stat. 1590, provided that:

“(a) PURPOSE.—The purpose of this section is to establish a demonstration regarding the commercial feasibility and economic viability of private sector business operations involving the International Space Station and its related infrastructure. The goal will be furthered by the early use of the International Space Station by United States commercial entities committing private capital to commercial enterprises on the International Space Station. In conjunction with this demonstration program, the National Aeronautics and Space Administration (NASA) shall establish and publish a price policy designed to eliminate price uncertainty for those planning to utilize the International Space Station and its related facilities for United States commercial use.

“(b) USE OF RECEIPTS FOR COMMERCIAL USE.—Any receipts collected by NASA from the commercial use of the International Space Station shall first be used to offset any costs incurred by NASA in support of the United States commercial use of the International Space Station. Any receipts collected in excess of the costs identified pursuant to the prior sentence may be retained by NASA for use without fiscal year limitation in promoting the commercial use of the International Space Station.

“(c) REPORT.—NASA shall submit an annual report to the Congress that identifies all receipts that are collected under this section, the use of the receipts and

the status of the demonstration. NASA shall submit a final report on the status of the demonstration, including any recommendation for expansion, within 120 days of the completion of the assembly of the International Space Station or the end of fiscal year 2002, whichever is earlier.

“(d) DEFINITIONS.—As used in this section, the term ‘United States commercial use’ means private commercial projects that are designed to benefit the United States through the sales of goods or services or the creation of jobs, or both.

“(e) TERMINATION.—The demonstration program established under this section shall apply to United States commercial use agreements that are entered into prior to the date of the completion of the International Space Station or the end of fiscal year 2002, whichever is earlier.”

§ 14712. Promotion of United States Global Positioning System standards

(a) Finding

The Congress finds that the Global Positioning System, including satellites, signal equipment, ground stations, data links, and associated command and control facilities, has become an essential element in civil, scientific, and military space development because of the emergence of a United States commercial industry which provides Global Positioning System equipment and related services.

(b) International cooperation

In order to support and sustain the Global Positioning System in a manner that will most effectively contribute to the national security, public safety, scientific, and economic interests of the United States, the Congress encourages the President to—

(1) ensure the operation of the Global Positioning System on a continuous worldwide basis free of direct user fees;

(2) enter into international agreements that promote cooperation with foreign governments and international organizations to—

(A) establish the Global Positioning System and its augmentations as an acceptable international standard; and

(B) eliminate any foreign barriers to applications of the Global Positioning System worldwide; and

(3) provide clear direction and adequate resources to the Assistant Secretary of Commerce for Communications and Information so that on an international basis the Assistant Secretary can—

(A) achieve and sustain efficient management of the electromagnetic spectrum used by the Global Positioning System; and

(B) protect that spectrum from disruption and interference.

(Pub. L. 105-303, title I, §104, Oct. 28, 1998, 112 Stat. 2852.)

§ 14713. Acquisition of space science data

(a) Acquisition from commercial providers

The Administrator shall, to the extent possible and while satisfying the scientific or educational requirements of the National Aeronautics and Space Administration, and where appropriate, of other Federal agencies and scientific researchers, acquire, where cost effec-

tive, space science data from a commercial provider.

(b) Treatment of space science data as commercial item under acquisition laws

Acquisitions of space science data by the Administrator shall be carried out in accordance with applicable acquisition laws and regulations (including chapters 137 and 140 of title 10). For purposes of such law and regulations, space science data shall be considered to be a commercial item. Nothing in this subsection shall be construed to preclude the United States from acquiring, through contracts with commercial providers, sufficient rights in data to meet the needs of the scientific and educational community or the needs of other government activities.

(c) Definition

For purposes of this section, the term “space science data” includes scientific data concerning—

- (1) the elemental and mineralogical resources of the moon, asteroids, planets and their moons, and comets;
- (2) microgravity acceleration; and
- (3) solar storm monitoring.

(d) Safety standards

Nothing in this section shall be construed to prohibit the Federal Government from requiring compliance with applicable safety standards.

(e) Limitation

This section does not authorize the National Aeronautics and Space Administration to provide financial assistance for the development of commercial systems for the collection of space science data.

(Pub. L. 105-303, title I, §105, Oct. 28, 1998, 112 Stat. 2852.)

§ 14714. Administration of commercial space centers

The Administrator shall administer the Commercial Space Center program in a coordinated manner from National Aeronautics and Space Administration headquarters in Washington, D.C.

(Pub. L. 105-303, title I, §106, Oct. 28, 1998, 112 Stat. 2853.)

§ 14715. Sources of Earth Science data

(a) Acquisition

The Administrator shall, to the extent possible and while satisfying the scientific or educational requirements of the National Aeronautics and Space Administration, and where appropriate, of other Federal agencies and scientific researchers, acquire, where cost-effective, space-based and airborne Earth remote sensing data, services, distribution, and applications from a commercial provider.

(b) Treatment as commercial item under acquisition laws

Acquisitions by the Administrator of the data, services, distribution, and applications referred to in subsection (a) of this section shall be carried out in accordance with applicable acquisition laws and regulations (including chapters 137

and 140 of title 10). For purposes of such law and regulations, such data, services, distribution, and applications shall be considered to be a commercial item. Nothing in this subsection shall be construed to preclude the United States from acquiring, through contracts with commercial providers, sufficient rights in data to meet the needs of the scientific and educational community or the needs of other government activities.

(c) Study

(1) The Administrator shall conduct a study to determine the extent to which the baseline scientific requirements of Earth Science can be met by commercial providers, and how the National Aeronautics and Space Administration will meet such requirements which cannot be met by commercial providers.

(2) The study conducted under this subsection shall—

(A) make recommendations to promote the availability of information from the National Aeronautics and Space Administration to commercial providers to enable commercial providers to better meet the baseline scientific requirements of Earth Science;

(B) make recommendations to promote the dissemination to commercial providers of information on advanced technology research and development performed by or for the National Aeronautics and Space Administration; and

(C) identify policy, regulatory, and legislative barriers to the implementation of the recommendations made under this subsection.

(3) The results of the study conducted under this subsection shall be transmitted to the Congress within 6 months after October 28, 1998.

(d) Safety standards

Nothing in this section shall be construed to prohibit the Federal Government from requiring compliance with applicable safety standards.

(e) Administration and execution

This section shall be carried out as part of the Commercial Remote Sensing Program at the Stennis Space Center.

(Pub. L. 105-303, title I, §107, Oct. 28, 1998, 112 Stat. 2853.)

CODIFICATION

Section is comprised of section 107 of Pub. L. 105-303. Subsec. (f) of section 107 of Pub. L. 105-303 amended sections 5621 and 5622 of Title 15, Commerce and Trade.

SUBCHAPTER II—FEDERAL ACQUISITION OF SPACE TRANSPORTATION SERVICES

§ 14731. Requirement to procure commercial space transportation services

(a) In general

Except as otherwise provided in this section, the Federal Government shall acquire space transportation services from United States commercial providers whenever such services are required in the course of its activities. To the maximum extent practicable, the Federal Government shall plan missions to accommodate the space transportation services capabilities of United States commercial providers.

(b) Exceptions

The Federal Government shall not be required to acquire space transportation services under subsection (a) of this section if, on a case-by-case basis, the Administrator or, in the case of a national security issue, the Secretary of the Air Force, determines that—

- (1) a payload requires the unique capabilities of the Space Shuttle;
- (2) cost effective space transportation services that meet specific mission requirements would not be reasonably available from United States commercial providers when required;
- (3) the use of space transportation services from United States commercial providers poses an unacceptable risk of loss of a unique scientific opportunity;
- (4) the use of space transportation services from United States commercial providers is inconsistent with national security objectives;
- (5) the use of space transportation services from United States commercial providers is inconsistent with international agreements for international collaborative efforts relating to science and technology;
- (6) it is more cost effective to transport a payload in conjunction with a test or demonstration of a space transportation vehicle owned by the Federal Government; or
- (7) a payload can make use of the available cargo space on a Space Shuttle mission as a secondary payload, and such payload is consistent with the requirements of research, development, demonstration, scientific, commercial, and educational programs authorized by the Administrator.

Nothing in this section shall prevent the Administrator from planning or negotiating agreements with foreign entities for the launch of Federal Government payloads for international collaborative efforts relating to science and technology.

(c) Delayed effect

Subsection (a) of this section shall not apply to space transportation services and space transportation vehicles acquired or owned by the Federal Government before October 28, 1998, or with respect to which a contract for such acquisition or ownership has been entered into before October 28, 1998.

(d) Historical purposes

This section shall not be construed to prohibit the Federal Government from acquiring, owning, or maintaining space transportation vehicles solely for historical display purposes.

(Pub. L. 105-303, title II, §201, Oct. 28, 1998, 112 Stat. 2854.)

§ 14732. Acquisition of commercial space transportation services**(a) Treatment of commercial space transportation services as commercial item under acquisition laws**

Acquisitions of space transportation services by the Federal Government shall be carried out in accordance with applicable acquisition laws and regulations (including chapters 137 and 140 of title 10). For purposes of such law and regula-

tions, space transportation services shall be considered to be a commercial item.

(b) Safety standards

Nothing in this section shall be construed to prohibit the Federal Government from requiring compliance with applicable safety standards.

(Pub. L. 105-303, title II, §202, Oct. 28, 1998, 112 Stat. 2855.)

§ 14733. Shuttle privatization**(a) Policy and preparation**

The Administrator shall prepare for an orderly transition from the Federal operation, or Federal management of contracted operation, of space transportation systems to the Federal purchase of commercial space transportation services for all nonemergency space transportation requirements for transportation to and from Earth orbit, including human, cargo, and mixed payloads. In those preparations, the Administrator shall take into account the need for short-term economies, as well as the goal of restoring the National Aeronautics and Space Administration's research focus and its mandate to promote the fullest possible commercial use of space. As part of those preparations, the Administrator shall plan for the potential privatization of the Space Shuttle program. Such plan shall keep safety and cost effectiveness as high priorities. Nothing in this section shall prohibit the National Aeronautics and Space Administration from studying, designing, developing, or funding upgrades or modifications essential to the safe and economical operation of the Space Shuttle fleet.

(b) Feasibility study

The Administrator shall conduct a study of the feasibility of implementing the recommendation of the Independent Shuttle Management Review Team that the National Aeronautics and Space Administration transition toward the privatization of the Space Shuttle. The study shall identify, discuss, and, where possible, present options for resolving, the major policy and legal issues that must be addressed before the Space Shuttle is privatized, including—

- (1) whether the Federal Government or the Space Shuttle contractor should own the Space Shuttle orbiters and ground facilities;
- (2) whether the Federal Government should indemnify the contractor for any third party liability arising from Space Shuttle operations, and, if so, under what terms and conditions;
- (3) whether payloads other than National Aeronautics and Space Administration payloads should be allowed to be launched on the Space Shuttle, how missions will be prioritized, and who will decide which mission flies and when;
- (4) whether commercial payloads should be allowed to be launched on the Space Shuttle and whether any classes of payloads should be made ineligible for launch consideration;
- (5) whether National Aeronautics and Space Administration and other Federal Government payloads should have priority over non-Federal payloads in the Space Shuttle launch as-

signments, and what policies should be developed to prioritize among payloads generally;

(6) whether the public interest requires that certain Space Shuttle functions continue to be performed by the Federal Government; and

(7) how much cost savings, if any, will be generated by privatization of the Space Shuttle.

(c) Report to Congress

Within 60 days after October 28, 1998, the National Aeronautics and Space Administration shall complete the study required under subsection (b) of this section and shall submit a report on the study to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science of the House of Representatives.

(Pub. L. 105-303, title II, §204, Oct. 28, 1998, 112 Stat. 2856.)

§ 14734. Use of excess intercontinental ballistic missiles

(a) In general

The Federal Government shall not—

(1) convert any missile described in subsection (c) of this section to a space transportation vehicle configuration; or

(2) transfer ownership of any such missile to another person, except as provided in subsection (b) of this section.

(b) Authorized Federal uses

(1) A missile described in subsection (c) of this section may be converted for use as a space transportation vehicle by the Federal Government if, except as provided in paragraph (2) and at least 30 days before such conversion, the agency seeking to use the missile as a space transportation vehicle transmits to the Committee on Armed Services and the Committee on Science of the House of Representatives, and to the Committee on Armed Services and the Committee on Commerce, Science, and Transportation of the Senate, a certification that the use of such missile—

(A) would result in cost savings to the Federal Government when compared to the cost of acquiring space transportation services from United States commercial providers;

(B) meets all mission requirements of the agency, including performance, schedule, and risk requirements;

(C) is consistent with international obligations of the United States; and

(D) is approved by the Secretary of Defense or his designee.

(2) The requirement under paragraph (1) that the certification described in that paragraph must be transmitted at least 30 days before conversion of the missile shall not apply if the Secretary of Defense determines that compliance with that requirement would be inconsistent with meeting immediate national security requirements.

(c) Missiles referred to

The missiles referred to in this section are missiles owned by the United States that—

(1) were formerly used by the Department of Defense for national defense purposes as intercontinental ballistic missiles; and

(2) have been declared excess to United States national defense needs and are in compliance with international obligations of the United States.

(Pub. L. 105-303, title II, §205, Oct. 28, 1998, 112 Stat. 2857; Pub. L. 106-65, div. A, title X, §1067(21), Oct. 5, 1999, 113 Stat. 775.)

AMENDMENTS

1999—Subsec. (b)(1). Pub. L. 106-65 substituted “transmits to the Committee on Armed Services” for “transmits to the Committee on National Security” in introductory provisions.

§ 14735. National launch capability study

(a) Findings

Congress finds that a robust satellite and launch industry in the United States serves the interest of the United States by—

(1) contributing to the economy of the United States;

(2) strengthening employment, technological, and scientific interests of the United States; and

(3) serving the foreign policy and national security interests of the United States.

(b) Definitions

In this section:

(1) Secretary

The term “Secretary” means the Secretary of Defense.

(2) Total potential national mission model

The term “total potential national mission model” means a model that—

(A) is determined by the Secretary, in consultation with the Administrator, to assess the total potential space missions to be conducted in the United States during a specified period of time; and

(B) includes all launches in the United States (including launches conducted on or off a Federal range).

(c) Report

(1) In general

Not later than 180 days after October 28, 1998, the Secretary shall, in consultation with the Administrator and appropriate representatives of the satellite and launch industry and the governments of States and political subdivisions thereof—

(A) prepare a report that meets the requirements of this subsection; and

(B) submit that report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science of the House of Representatives.

(2) Requirements for report

The report prepared under this subsection shall—

(A) identify the total potential national mission model for the period beginning on the date of the report and ending on December 31, 2007;

(B) identify the resources that are necessary or available to carry out the total potential national mission model described in subparagraph (A), including—

(i) launch property and services of the Department of Defense, the National Aeronautics and Space Administration, and non-Federal facilities; and

(ii) the ability to support commercial launch-on-demand on short notification, taking into account Federal requirements, at launch sites or test ranges in the United States;

(C) identify each deficiency in the resources referred to in subparagraph (B); and

(D) with respect to the deficiencies identified under subparagraph (C), include estimates of the level of funding necessary to address those deficiencies for the period described in subparagraph (A).

(d) Recommendations

Based on the reports under subsection (c) of this section, the Secretary, after consultation with the Secretary of Transportation, the Secretary of Commerce, and representatives from interested private sector entities, States, and local governments, shall—

(1) identify opportunities for investment by non-Federal entities (including States and political subdivisions thereof and private sector entities) to assist the Federal Government in providing launch capabilities for the commercial space industry in the United States;

(2) identify one or more methods by which, if sufficient resources referred to in subsection (c)(2)(D) of this section are not available to the Department of Defense and the National Aeronautics and Space Administration, the control of the launch property and launch services of the Department of Defense and the National Aeronautics and Space Administration may be transferred from the Department of Defense and the National Aeronautics and Space Administration to—

(A) one or more other Federal agencies;

(B) one or more States (or subdivisions thereof);

(C) one or more private sector entities; or

(D) any combination of the entities described in subparagraphs (A) through (C); and

(3) identify the technical, structural, and legal impediments associated with making launch sites or test ranges in the United States viable and competitive.

(Pub. L. 105-303, title II, §206, Oct. 28, 1998, 112 Stat. 2857.)

SUBCHAPTER III—COMMERCIAL REUSABLE IN-SPACE TRANSPORTATION

CODIFICATION

This subchapter was enacted as part of the Commercial Reusable In-Space Transportation Act of 2002, and also as part of the Department of Defense Appropriations Act, 2003, and not as part of the Commercial Space Act of 1998, which comprises subchapters I and II of this chapter.

§ 14751. Findings

Congress makes the following findings:

(1) It is in the national interest to encourage the production of cost-effective, in-space transportation systems, which would be built

and operated by the private sector on a commercial basis.

(2) The use of reusable in-space transportation systems will enhance performance levels of in-space operations, enhance efficient and safe disposal of satellites at the end of their useful lives, and increase the capability and reliability of existing ground-to-space launch vehicles.

(3) Commercial reusable in-space transportation systems will enhance the economic well-being and national security of the United States by reducing space operations costs for commercial and national space programs and by adding new space capabilities to space operations.

(4) Commercial reusable in-space transportation systems will provide new cost-effective space capabilities (including orbital transfers from low altitude orbits to high altitude orbits and return, the correction of erroneous satellite orbits, and the recovery, refurbishment, and refueling of satellites) and the provision of upper stage functions to increase ground-to-orbit launch vehicle payloads to geostationary and other high energy orbits.

(5) Commercial reusable in-space transportation systems can enhance and enable the space exploration of the United States by providing lower cost trajectory injection from earth orbit, transit trajectory control, and planet arrival deceleration to support potential National Aeronautics and Space Administration missions to Mars, Pluto, and other planets.

(6) Satellites stranded in erroneous earth orbit due to deficiencies in their launch represent substantial economic loss to the United States and present substantial concerns for the current backlog of national space assets.

(7) Commercial reusable in-space transportation systems can provide new options for alternative planning approaches and risk management to enhance the mission assurance of national space assets.

(8) Commercial reusable in-space transportation systems developed by the private sector can provide in-space transportation services to the National Aeronautics and Space Administration, the Department of Defense, the National Reconnaissance Office, and other agencies without the need for the United States to bear the cost of production of such systems.

(9) The availability of loan guarantees, with the cost of credit risk to the United States paid by the private-sector, is an effective means by which the United States can help qualifying private-sector companies secure otherwise unattainable private financing for the production of commercial reusable in-space transportation systems, while at the same time minimizing Government commitment and involvement in the development of such systems.

(Pub. L. 107-248, title IX, §902, Oct. 23, 2002, 116 Stat. 1573.)

SHORT TITLE

For short title of this subchapter as the ‘‘Commercial Reusable In-Space Transportation Act of 2002’’, see section 901 of Pub. L. 107-248, set out as a note under section 14701 of this title.

§ 14752. Loan guarantees for production of commercial reusable in-space transportation

(a) Authority to make loan guarantees

The Secretary may guarantee loans made to eligible United States commercial providers for purposes of producing commercial reusable in-space transportation services or systems.

(b) Eligible United States commercial providers

The Secretary shall prescribe requirements for the eligibility of United States commercial providers for loan guarantees under this section. Such requirements shall ensure that eligible providers are financially capable of undertaking a loan guaranteed under this section.

(c) Limitation on loans guaranteed

The Secretary may not guarantee a loan for a United States commercial provider under this section unless the Secretary determines that credit would not otherwise be reasonably available at the time of the guarantee for the commercial reusable in-space transportation service or system to be produced utilizing the proceeds of the loan.

(d) Credit subsidy

(1) Collection required

The Secretary shall collect from each United States commercial provider receiving a loan guarantee under this section an amount equal to the amount, as determined by the Secretary, to cover the cost, as defined in section 502(5) of the Federal Credit Reform Act of 1990 [2 U.S.C. 661a(5)], of the loan guarantee.

(2) Periodic disbursements

In the case of a loan guarantee in which proceeds of the loan are disbursed over time, the Secretary shall collect the amount required under this subsection on a pro rata basis, as determined by the Secretary, at the time of each disbursement.

(e) Other terms and conditions

(1) Prohibition on subordination

A loan guaranteed under this section may not be subordinated to another debt contracted by the United States commercial provider concerned, or to any other claims against such provider.

(2) Restriction on income

A loan guaranteed under this section may not—

(A) provide income which is excluded from gross income for purposes of chapter 1 of title 26; or

(B) provide significant collateral or security, as determined by the Secretary, for other obligations the income from which is so excluded.

(3) Treatment of guarantee

The guarantee of a loan under this section shall be conclusive evidence of the following:

(A) That the guarantee has been properly obtained.

(B) That the loan qualifies for the guarantee.

(C) That, but for fraud or material misrepresentation by the holder of the loan, the guarantee is valid, legal, and enforceable.

(4) Other terms and conditions

The Secretary may establish any other terms and conditions for a guarantee of a loan under this section, as the Secretary considers appropriate to protect the financial interests of the United States.

(f) Enforcement of rights

(1) In general

The Attorney General may take any action the Attorney General considers appropriate to enforce any right accruing to the United States under a loan guarantee under this section.

(2) Forbearance

The Attorney General may, with the approval of the parties concerned, forbear¹ from enforcing any right of the United States under a loan guaranteed under this section for the benefit of a United States commercial provider if such forbearance will not result in any cost, as defined in section 502(5) of the Federal Credit Reform Act of 1990 [2 U.S.C. 661a(5)], to the United States.

(3) Utilization of property

Notwithstanding any other provision of law and subject to the terms of a loan guaranteed under this section, upon the default of a United States commercial provider under the loan, the Secretary may, at the election of the Secretary—

(A) assume control of the physical asset financed by the loan; and

(B) complete, recondition, reconstruct, renovate, repair, maintain, operate, or sell the physical asset.

(g) Credit instruments

(1) Authority to issue instruments

Notwithstanding any other provision of law, the Secretary may, subject to such terms and conditions as the Secretary considers appropriate, issue credit instruments to United States commercial providers of in-space transportation services or systems², with the aggregate cost (as determined under the provisions of the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.)) of such instruments not to exceed \$1,500,000,000, but only to the extent that new budget authority to cover such costs is provided in subsequent appropriations Acts or authority is otherwise provided in subsequent appropriations Acts.

(2) Credit subsidy

The Secretary shall provide a credit subsidy for any credit instrument issued under this subsection in accordance with the provisions of the Federal Credit Reform Act of 1990.

(3) Construction

The eligibility of a United States commercial provider of in-space transportation services or systems for a credit instrument under this subsection is in addition to any eligibility of such provider for a loan guarantee under other provisions of this section.

¹ So in original. Probably should be “forbear”.

² So in original. Probably should be “systems”.

(Pub. L. 107-248, title IX, §903, Oct. 23, 2002, 116 Stat. 1574.)

REFERENCES IN TEXT

The Federal Credit Reform Act of 1990, referred to in subsec. (g)(1), (2), is title V of Pub. L. 93-344, as added by Pub. L. 101-508, title XIII, §13201(a), Nov. 5, 1990, 104 Stat. 1388-609, as amended, which is classified generally to subchapter III (§661 et seq.) of chapter 17A of Title 2, The Congress. For complete classification of this Act to the Code, see Short Title note set out under section 621 of Title 2 and Tables.

SHORT TITLE

For short title of this subchapter, as the “Commercial Reusable In-Space Transportation Act of 2002”, see section 901 of Pub. L. 107-248, set out as a note under section 14701 of this title.

§ 14753. Definitions

In this subchapter:

(1) Secretary

The term “Secretary” means the Secretary of Defense.

(2) Commercial provider

The term “commercial provider” means any person or entity providing commercial reusable in-orbit space transportation services or systems, primary control of which is held by persons other than the Federal Government, a State or local government, or a foreign government.

(3) In-space transportation services

The term “in-space transportation services” means operations and activities involved in the direct transportation or attempted transportation of a payload or object from one orbit to another by means of an in-space transportation vehicle.

(4) In-space transportation system

The term “in-space transportation system” means the space and ground elements, including in-space transportation vehicles and support space systems, and ground administration and control facilities and associated equipment, necessary for the provision of in-space transportation services.

(5) In-space transportation vehicle

The term “in-space transportation vehicle” means a vehicle designed—

- (A) to be based and operated in space;
- (B) to transport various payloads or objects from one orbit to another orbit; and
- (C) to be reusable and refueled in space.

(6) United States commercial provider

The term “United States commercial provider” means any commercial provider organized under the laws of the United States that is more than 50 percent owned by United States nationals.

(Pub. L. 107-248, title IX, §904, Oct. 23, 2002, 116 Stat. 1576.)

CHAPTER 142—POISON CONTROL CENTER ENHANCEMENT AND AWARENESS

§§ 14801 to 14805. Repealed. Pub. L. 108-194, § 4, Dec. 19, 2003, 117 Stat. 2891

Section 14801, Pub. L. 106-174, §2, Feb. 25, 2000, 114 Stat. 18, related to congressional findings regarding

poison control centers. See provisions set out as a note under section 300d-71 of this title.

Section 14802, Pub. L. 106-174, §3, Feb. 25, 2000, 114 Stat. 18, defined “Secretary”.

Section 14803, Pub. L. 106-174, §4, Feb. 25, 2000, 114 Stat. 18, established a national toll-free number to be used to access regional poison control centers. See section 300d-71 of this title.

Section 14804, Pub. L. 106-174, §5, Feb. 25, 2000, 114 Stat. 19, established a nationwide media campaign to educate the public and health care providers about poison prevention and the availability of poison control resources in local communities. See section 300d-72 of this title.

Section 14805, Pub. L. 106-174, §6, Feb. 25, 2000, 114 Stat. 19, related to the award of grants to certified regional poison control centers. See section 300d-73 of this title.

SHORT TITLE

Pub. L. 106-174, §1, Feb. 25, 2000, 114 Stat. 18, which provided that Pub. L. 106-174, enacting this chapter, could be cited as the “Poison Control Center Enhancement and Awareness Act”, was repealed by Pub. L. 108-194, §4, Dec. 19, 2003, 117 Stat. 2891.

CHAPTER 143—INTERCOUNTRY ADOPTIONS

Sec.

14901. Findings and purposes.

- (a) Findings.
- (b) Purposes.

14902. Definitions.

SUBCHAPTER I—UNITED STATES CENTRAL AUTHORITY

14911. Designation of central authority.

- (a) In general.
- (b) Performance of central authority functions.
- (c) Authority to issue regulations.

14912. Responsibilities of the Secretary of State.

- (a) Liaison responsibilities.
- (b) Information exchange.
- (c) Accreditation and approval responsibilities.
- (d) Additional responsibilities.
- (e) Establishment of registry.
- (f) Methods of performing responsibilities.

14913. Responsibilities of the Attorney General.

14914. Annual report on intercountry adoptions.

- (a) Reports required.
- (b) Report elements.

SUBCHAPTER II—PROVISIONS RELATING TO ACCREDITATION AND APPROVAL

14921. Accreditation or approval required in order to provide adoption services in cases subject to the Convention.

- (a) In general.
- (b) Exceptions.

14922. Process for accreditation and approval; role of accrediting entities.

- (a) Designation of accrediting entities.
- (b) Duties of accrediting entities.
- (c) Remedies for adverse action by accrediting entity.
- (d) Fees.

14923. Standards and procedures for providing accreditation or approval.

- (a) In general.
- (b) Minimum requirements.
- (c) Temporary registration of community based agencies.

14924. Secretarial oversight of accreditation and approval.

- (a) Oversight of accrediting entities.
- (b) Suspension or cancellation of accreditation or approval.

Sec.

- (c) Debarment.
- (d) Judicial review.
- (e) Failure to ensure a full and complete home study.

SUBCHAPTER III—RECOGNITION OF CONVENTION ADOPTIONS IN THE UNITED STATES

- 14931. Adoptions of children immigrating to the United States.
 - (a) Legal effect of certificates issued by the Secretary of State.
 - (b) Legal effect of Convention adoption finalized in another Convention country.
 - (c) Condition on finalization of Convention adoption by State court.
- 14932. Adoptions of children emigrating from the United States.
 - (a) Duties of accredited agency or approved person.
 - (b) Conditions on State court orders.
 - (c) Duties of the Secretary of State.
 - (d) Filing with registry regarding non-Convention adoptions.

SUBCHAPTER IV—ADMINISTRATION AND ENFORCEMENT

- 14941. Access to Convention records.
 - (a) Preservation of Convention records.
 - (b) Access to Convention records.
 - (c) Access to non-Convention records.
- 14942. Documents of other Convention countries.
- 14943. Authorization of appropriations; collection of fees.
 - (a) Authorization of appropriations.
 - (b) Assessment of fees.
 - (c) Restriction.
- 14944. Enforcement.
 - (a) Civil penalties.
 - (b) Civil enforcement.
 - (c) Criminal penalties.

SUBCHAPTER V—GENERAL PROVISIONS

- 14951. Recognition of Convention adoptions.
- 14952. Special rules for certain cases.
 - (a) Authority to establish alternative procedures for adoption of children by relatives.
 - (b) Waiver authority.
- 14953. Relationship to other laws.
 - (a) Preemption of inconsistent State law.
 - (b) Applicability of the Indian Child Welfare Act.
 - (c) Relationship to other laws.
- 14954. No private right of action.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 8 section 1154.

§ 14901. Findings and purposes

(a) Findings

Congress recognizes—

- (1) the international character of the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (done at The Hague on May 29, 1993); and
- (2) the need for uniform interpretation and implementation of the Convention in the United States and abroad,

and therefore finds that enactment of a Federal law governing adoptions and prospective adoptions subject to the Convention involving United States residents is essential.

(b) Purposes

The purposes of this chapter are—

(1) to provide for implementation by the United States of the Convention;

(2) to protect the rights of, and prevent abuses against, children, birth families, and adoptive parents involved in adoptions (or prospective adoptions) subject to the Convention, and to ensure that such adoptions are in the children’s best interests; and

(3) to improve the ability of the Federal Government to assist United States citizens seeking to adopt children from abroad and residents of other countries party to the Convention seeking to adopt children from the United States.

(Pub. L. 106–279, § 2, Oct. 6, 2000, 114 Stat. 825.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original “this Act”, meaning Pub. L. 106–279, Oct. 6, 2000, 114 Stat. 825, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

EFFECTIVE DATES; TRANSITION RULE

Pub. L. 106–279, title V, § 505, Oct. 6, 2000, 114 Stat. 844, provided that:

“(a) EFFECTIVE DATES.—

“(1) PROVISIONS EFFECTIVE UPON ENACTMENT.—Sections 2, 3, 101 through 103, 202 through 205, 401(a), 403, 503, and 505(a) [enacting this section and sections 14902, 14911 to 14913, 14922 to 14924, 14941(a), 14943, and 14953 of this title and amending section 622 of this title] shall take effect on the date of the enactment of this Act [Oct. 6, 2000].

“(2) PROVISIONS EFFECTIVE UPON THE ENTRY INTO FORCE OF THE CONVENTION.—Subject to subsection (b), the provisions of this Act not specified in paragraph (1) [enacting sections 14914, 14921, 14931, 14932, 14941(b), (c), 14942, 14944, 14951, 14952, and 14954 of this title, amending sections 1101 and 1154 of Title 8, Aliens and Nationality, and enacting provisions set out as notes under this section] shall take effect upon the entry into force of the Convention for the United States pursuant to Article 46(2)(a) of the Convention.

“(b) TRANSITION RULE.—The Convention and this Act [see Short Title note below] shall not apply—

“(1) in the case of a child immigrating to the United States, if the application for advance processing of an orphan petition or petition to classify an orphan as an immediate relative for the child is filed before the effective date described in subsection (a)(2); or

“(2) in the case of a child emigrating from the United States, if the prospective adoptive parents of the child initiated the adoption process in their country of residence with the filing of an appropriate application before the effective date described in subsection (a)(2).”

SHORT TITLE

Pub. L. 106–279, § 1(a), Oct. 6, 2000, 114 Stat. 825, provided that: “This Act [enacting this chapter and amending section 622 of this title and sections 1101 and 1154 of Title 8, Aliens and Nationality] may be cited as the ‘Intercountry Adoption Act of 2000’.”

§ 14902. Definitions

As used in this chapter:

(1) Accredited agency

The term “accredited agency” means an agency accredited under subchapter II of this chapter to provide adoption services in the United States in cases subject to the Convention.

(2) Accrediting entity

The term “accrediting entity” means an entity designated under section 14922(a) of this title to accredit agencies and approve persons under subchapter II of this chapter.

(3) Adoption service

The term “adoption service” means—

(A) identifying a child for adoption and arranging an adoption;

(B) securing necessary consent to termination of parental rights and to adoption;

(C) performing a background study on a child or a home study on a prospective adoptive parent, and reporting on such a study;

(D) making determinations of the best interests of a child and the appropriateness of adoptive placement for the child;

(E) post-placement monitoring of a case until final adoption; and

(F) where made necessary by disruption before final adoption, assuming custody and providing child care or any other social service pending an alternative placement.

The term “providing”, with respect to an adoption service, includes facilitating the provision of the service.

(4) Agency

The term “agency” means any person other than an individual.

(5) Approved person

The term “approved person” means a person approved under subchapter II of this chapter to provide adoption services in the United States in cases subject to the Convention.

(6) Attorney General

Except as used in section 14944 of this title, the term “Attorney General” means the Attorney General, acting through the Commissioner of Immigration and Naturalization.

(7) Central authority

The term “central authority” means the entity designated as such by any Convention country under Article 6(1) of the Convention.

(8) Central authority function

The term “central authority function” means any duty required to be carried out by a central authority under the Convention.

(9) Convention

The term “Convention” means the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, done at The Hague on May 29, 1993.

(10) Convention adoption

The term “Convention adoption” means an adoption of a child resident in a foreign country party to the Convention by a United States citizen, or an adoption of a child resident in the United States by an individual residing in another Convention country.

(11) Convention record

The term “Convention record” means any item, collection, or grouping of information contained in an electronic or physical document, an electronic collection of data, a pho-

tograph, an audio or video tape, or any other information storage medium of any type whatever that contains information about a specific past, current, or prospective Convention adoption (regardless of whether the adoption was made final) that has been preserved in accordance with section 14941(a) of this title by the Secretary of State or the Attorney General.

(12) Convention country

The term “Convention country” means a country party to the Convention.

(13) Other Convention country

The term “other Convention country” means a Convention country other than the United States.

(14) Person

The term “person” shall have the meaning provided in section 1 of title 1 and shall not include any agency of government or tribal government entity.

(15) Person with an ownership or control interest

The term “person with an ownership or control interest” has the meaning given such term in section 1320a-3(a)(3) of this title.

(16) Secretary

The term “Secretary” means the Secretary of State.

(17) State

The term “State” means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, and the Virgin Islands.

(Pub. L. 106-279, § 3, Oct. 6, 2000, 114 Stat. 826.)

REFERENCES IN TEXT

Subchapter II of this chapter, referred to in pars. (1), (2), and (5), was in the original “title II”, meaning title II of Pub. L. 106-279, Oct. 6, 2000, 114 Stat. 830, which enacted subchapter II of this chapter and amended section 622 of this title. For complete classification of title II to the Code, see Tables.

EFFECTIVE DATE

Section effective Oct. 6, 2000, with transition rule, see section 505(a)(1), (b) of Pub. L. 106-279, set out as an Effective Dates; Transition Rule note under section 14901 of this title.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of Title 8, Aliens and Nationality.

SUBCHAPTER I—UNITED STATES CENTRAL AUTHORITY

§ 14911. Designation of central authority**(a) In general**

For purposes of the Convention and this chapter—

(1) the Department of State shall serve as the central authority of the United States; and

(2) the Secretary shall serve as the head of the central authority of the United States.

(b) Performance of central authority functions

(1) Except as otherwise provided in this chapter, the Secretary shall be responsible for the performance of all central authority functions for the United States under the Convention and this chapter.

(2) All personnel of the Department of State performing core central authority functions in a professional capacity in the Office of Children's Issues shall have a strong background in consular affairs, personal experience in international adoptions, or professional experience in international adoptions or child services.

(c) Authority to issue regulations

Except as otherwise provided in this chapter, the Secretary may prescribe such regulations as may be necessary to carry out central authority functions on behalf of the United States.

(Pub. L. 106-279, title I, §101, Oct. 6, 2000, 114 Stat. 827.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (b)(1), and (c), was in the original "this Act", meaning Pub. L. 106-279, Oct. 6, 2000, 114 Stat. 825, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 14901 of this title and Tables.

EFFECTIVE DATE

Section effective Oct. 6, 2000, with transition rule, see section 505(a)(1), (b) of Pub. L. 106-279, set out as an Effective Dates; Transition Rule note under section 14901 of this title.

§ 14912. Responsibilities of the Secretary of State

(a) Liaison responsibilities

The Secretary shall have responsibility for—

(1) liaison with the central authorities of other Convention countries; and

(2) the coordination of activities under the Convention by persons subject to the jurisdiction of the United States.

(b) Information exchange

The Secretary shall be responsible for—

(1) providing the central authorities of other Convention countries with information concerning—

(A) accredited agencies and approved persons, agencies and persons whose accreditation or approval has been suspended or canceled, and agencies and persons who have been temporarily or permanently debarred from accreditation or approval;

(B) Federal and State laws relevant to implementing the Convention; and

(C) any other matters necessary and appropriate for implementation of the Convention;

(2) not later than the date of the entry into force of the Convention for the United States (pursuant to Article 46(2)(a) of the Convention) and at least once during each subsequent calendar year, providing to the central authority of all other Convention countries a notice requesting the central authority of each such country to specify any requirements of such

country regarding adoption, including restrictions on the eligibility of persons to adopt, with respect to which information on the prospective adoptive parent or parents in the United States would be relevant;

(3) making responses to notices under paragraph (2) available to—

(A) accredited agencies and approved persons; and

(B) other persons or entities performing home studies under section 14921(b)(1) of this title;

(4) ensuring the provision of a background report (home study) on prospective adoptive parent or parents (pursuant to the requirements of section 14923(b)(1)(A)(ii) of this title), through the central authority of each child's country of origin, to the court having jurisdiction over the adoption (or, in the case of a child emigrating to the United States for the purpose of adoption, to the competent authority in the child's country of origin with responsibility for approving the child's emigration) in adequate time to be considered prior to the granting of such adoption or approval;

(5) providing Federal agencies, State courts, and accredited agencies and approved persons with an identification of Convention countries and persons authorized to perform functions under the Convention in each such country; and

(6) facilitating the transmittal of other appropriate information to, and among, central authorities, Federal and State agencies (including State courts), and accredited agencies and approved persons.

(c) Accreditation and approval responsibilities

The Secretary shall carry out the functions prescribed by the Convention with respect to the accreditation of agencies and the approval of persons to provide adoption services in the United States in cases subject to the Convention as provided in subchapter II of this chapter. Such functions may not be delegated to any other Federal agency.

(d) Additional responsibilities

The Secretary—

(1) shall monitor individual Convention adoption cases involving United States citizens; and

(2) may facilitate interactions between such citizens and officials of other Convention countries on matters relating to the Convention in any case in which an accredited agency or approved person is unwilling or unable to provide such facilitation.

(e) Establishment of registry

The Secretary and the Attorney General shall jointly establish a case registry of all adoptions involving immigration of children into the United States and emigration of children from the United States, regardless of whether the adoption occurs under the Convention. Such registry shall permit tracking of pending cases and retrieval of information on both pending and closed cases.

(f) Methods of performing responsibilities

The Secretary may—

(1) authorize public or private entities to perform appropriate central authority functions for which the Secretary is responsible, pursuant to regulations or under agreements published in the Federal Register; and

(2) carry out central authority functions through grants to, or contracts with, any individual or public or private entity, except as may be otherwise specifically provided in this chapter.

(Pub. L. 106-279, title I, §102, Oct. 6, 2000, 114 Stat. 828.)

REFERENCES IN TEXT

Subchapter II of this chapter, referred to in subsec. (c), was in the original "title II", meaning title II of Pub. L. 106-279, Oct. 6, 2000, 114 Stat. 830, which enacted subchapter II of this chapter and amended section 622 of this title. For complete classification of title II to the Code, see Tables.

EFFECTIVE DATE

Section effective Oct. 6, 2000, with transition rule, see section 505(a)(1), (b) of Pub. L. 106-279, set out as an Effective Dates; Transition Rule note under section 14901 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14923, 14932 of this title.

§ 14913. Responsibilities of the Attorney General

In addition to such other responsibilities as are specifically conferred upon the Attorney General by this chapter, the central authority functions specified in Article 14 of the Convention (relating to the filing of applications by prospective adoptive parents to the central authority of their country of residence) shall be performed by the Attorney General.

(Pub. L. 106-279, title I, §103, Oct. 6, 2000, 114 Stat. 829.)

EFFECTIVE DATE

Section effective Oct. 6, 2000, with transition rule, see section 505(a)(1), (b) of Pub. L. 106-279, set out as an Effective Dates; Transition Rule note under section 14901 of this title.

§ 14914. Annual report on intercountry adoptions

(a) Reports required

Beginning 1 year after the date of the entry into force of the Convention for the United States and each year thereafter, the Secretary, in consultation with the Attorney General and other appropriate agencies, shall submit a report describing the activities of the central authority of the United States under this chapter during the preceding year to the Committee on International Relations, the Committee on Ways and Means, and the Committee on the Judiciary of the House of Representatives and the Committee on Foreign Relations, the Committee on Finance, and the Committee on the Judiciary of the Senate.

(b) Report elements

Each report under subsection (a) of this section shall set forth with respect to the year concerned, the following:

(1) The number of intercountry adoptions involving immigration to the United States, re-

gardless of whether the adoption occurred under the Convention, including the country from which each child emigrated, the State to which each child immigrated, and the country in which the adoption was finalized.

(2) The number of intercountry adoptions involving emigration from the United States, regardless of whether the adoption occurred under the Convention, including the country to which each child immigrated and the State from which each child emigrated.

(3) The number of Convention placements for adoption in the United States that were disrupted, including the country from which the child emigrated, the age of the child, the date of the placement for adoption, the reasons for the disruption, the resolution of the disruption, the agencies that handled the placement for adoption, and the plans for the child, and in addition, any information regarding disruption or dissolution of adoptions of children from other countries received pursuant to section 622(b)(14) of this title.

(4) The average time required for completion of a Convention adoption, set forth by country from which the child emigrated.

(5) The current list of agencies accredited and persons approved under this chapter to provide adoption services.

(6) The names of the agencies and persons temporarily or permanently debarred under this chapter, and the reasons for the debarment.

(7) The range of adoption fees charged in connection with Convention adoptions involving immigration to the United States and the median of such fees set forth by the country of origin.

(8) The range of fees charged for accreditation of agencies and the approval of persons in the United States engaged in providing adoption services under the Convention.

(Pub. L. 106-279, title I, §104, Oct. 6, 2000, 114 Stat. 829.)

EFFECTIVE DATE

Section effective upon entry into force for the United States of the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, pursuant to Article 46(2)(a) of the Convention, with transition rule, see section 505(a)(2), (b) of Pub. L. 106-279, set out as an Effective Dates; Transition Rule note under section 14901 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14923, 14953 of this title.

SUBCHAPTER II—PROVISIONS RELATING TO ACCREDITATION AND APPROVAL

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 14902, 14912, 14944 of this title.

§ 14921. Accreditation or approval required in order to provide adoption services in cases subject to the Convention

(a) In general

Except as otherwise provided in this subchapter, no person may offer or provide adoption

services in connection with a Convention adoption in the United States unless that person—

- (1) is accredited or approved in accordance with this subchapter; or
- (2) is providing such services through or under the supervision and responsibility of an accredited agency or approved person.

(b) Exceptions

Subsection (a) of this section shall not apply to the following:

(1) Background studies and home studies

The performance of a background study on a child or a home study on a prospective adoptive parent, or any report on any such study by a social work professional or organization who is not providing any other adoption service in the case, if the background or home study is approved by an accredited agency.

(2) Child welfare services

The provision of a child welfare service by a person who is not providing any other adoption service in the case.

(3) Legal services

The provision of legal services by a person who is not providing any adoption service in the case.

(4) Prospective adoptive parents acting on own behalf

The conduct of a prospective adoptive parent on his or her own behalf in the case, to the extent not prohibited by the law of the State in which the prospective adoptive parent resides.

(Pub. L. 106-279, title II, §201, Oct. 6, 2000, 114 Stat. 830.)

REFERENCES IN TEXT

This subchapter, referred to in subsec. (a), was in the original “this title”, meaning title II of Pub. L. 106-279, Oct. 6, 2000, 114 Stat. 830, which enacted this subchapter and amended section 622 of this title. For complete classification of title II to the Code, see Tables.

EFFECTIVE DATE

Section effective upon entry into force for the United States of the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, pursuant to Article 46(2)(a) of the Convention, with transition rule, see section 505(a)(2), (b) of Pub. L. 106-279, set out as an Effective Dates; Transition Rule note under section 14901 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14912, 14944 of this title.

§ 14922. Process for accreditation and approval; role of accrediting entities

(a) Designation of accrediting entities

(1) In general

The Secretary shall enter into agreements with one or more qualified entities under which such entities will perform the duties described in subsection (b) of this section in accordance with the Convention, this subchapter, and the regulations prescribed under section 14923 of this title, and upon entering into each such agreement shall designate the qualified entity as an accrediting entity.

(2) Qualified entities

In paragraph (1), the term “qualified entity” means—

(A) a nonprofit private entity that has expertise in developing and administering standards for entities providing child welfare services and that meets such other criteria as the Secretary may by regulation establish; or

(B) a public entity (other than a Federal entity), including an agency or instrumentality of State government having responsibility for licensing adoption agencies, that—

(i) has expertise in developing and administering standards for entities providing child welfare services;

(ii) accredits only agencies located in the State in which the public entity is located; and

(iii) meets such other criteria as the Secretary may by regulation establish.

(b) Duties of accrediting entities

The duties described in this subsection are the following:

(1) Accreditation and approval

Accreditation of agencies, and approval of persons, to provide adoption services in the United States in cases subject to the Convention.

(2) Oversight

Ongoing monitoring of the compliance of accredited agencies and approved persons with applicable requirements, including review of complaints against such agencies and persons in accordance with procedures established by the accrediting entity and approved by the Secretary.

(3) Enforcement

Taking of adverse actions (including requiring corrective action, imposing sanctions, and refusing to renew, suspending, or canceling accreditation or approval) for noncompliance with applicable requirements, and notifying the agency or person against whom adverse actions are taken of the deficiencies necessitating the adverse action.

(4) Data, records, and reports

Collection of data, maintenance of records, and reporting to the Secretary, the United States central authority, State courts, and other entities (including on persons and agencies granted or denied approval or accreditation), to the extent and in the manner that the Secretary requires.

(c) Remedies for adverse action by accrediting entity

(1) Correction of deficiency

An agency or person who is the subject of an adverse action by an accrediting entity may re-apply for accreditation or approval (or petition for termination of the adverse action) on demonstrating to the satisfaction of the accrediting entity that the deficiencies necessitating the adverse action have been corrected.

(2) No other administrative review

An adverse action by an accrediting entity shall not be subject to administrative review.

(3) Judicial review

An agency or person who is the subject of an adverse action by an accrediting entity may petition the United States district court in the judicial district in which the agency is located or the person resides to set aside the adverse action. The court shall review the adverse action in accordance with section 706 of title 5, and for purposes of such review the accrediting entity shall be considered an agency within the meaning of section 701 of such title.

(d) Fees

The amount of fees assessed by accrediting entities for the costs of accreditation shall be subject to approval by the Secretary. Such fees may not exceed the costs of accreditation. In reviewing the level of such fees, the Secretary shall consider the relative size of, the geographic location of, and the number of Convention adoption cases managed by the agencies or persons subject to accreditation or approval by the accrediting entity.

(Pub. L. 106-279, title II, §202, Oct. 6, 2000, 114 Stat. 831.)

EFFECTIVE DATE

Section effective Oct. 6, 2000, with transition rule, see section 505(a)(1), (b) of Pub. L. 106-279, set out as an Effective Dates; Transition Rule note under section 14901 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14902, 14924, 14953 of this title.

§ 14923. Standards and procedures for providing accreditation or approval**(a) In general****(1) Promulgation of regulations**

The Secretary, shall, by regulation, prescribe the standards and procedures to be used by accrediting entities for the accreditation of agencies and the approval of persons to provide adoption services in the United States in cases subject to the Convention.

(2) Consideration of views

In developing such regulations, the Secretary shall consider any standards or procedures developed or proposed by, and the views of, individuals and entities with interest and expertise in international adoptions and family social services, including public and private entities with experience in licensing and accrediting adoption agencies.

(3) Applicability of notice and comment rules

Subsections (b), (c), and (d) of section 553 of title 5 shall apply in the development and issuance of regulations under this section.

(b) Minimum requirements**(1) Accreditation**

The standards prescribed under subsection (a) of this section shall include the requirement that accreditation of an agency may not

be provided or continued under this subchapter unless the agency meets the following requirements:

(A) Specific requirements

(i) The agency provides prospective adoptive parents of a child in a prospective Convention adoption a copy of the medical records of the child (which, to the fullest extent practicable, shall include an English-language translation of such records) on a date which is not later than the earlier of the date that is 2 weeks before: (I) the adoption; or (II) the date on which the prospective parents travel to a foreign country to complete all procedures in such country relating to the adoption.

(ii) The agency ensures that a thorough background report (home study) on the prospective adoptive parent or parents has been completed in accordance with the Convention and with applicable Federal and State requirements and transmitted to the Attorney General with respect to each Convention adoption. Each such report shall include a criminal background check and a full and complete statement of all facts relevant to the eligibility of the prospective adopting parent or parents to adopt a child under any requirements specified by the central authority of the child's country of origin under section 14912(b)(3) of this title, including, in the case of a child emigrating to the United States for the purpose of adoption, the requirements of the child's country of origin applicable to adoptions taking place in such country. For purposes of this clause, the term "background report (home study)" includes any supplemental statement submitted by the agency to the Attorney General for the purpose of providing information relevant to any requirements specified by the child's country of origin.

(iii) The agency provides prospective adoptive parents with a training program that includes counseling and guidance for the purpose of promoting a successful intercountry adoption before such parents travel to adopt the child or the child is placed with such parents for adoption.

(iv) The agency employs personnel providing intercountry adoption services on a fee for service basis rather than on a contingent fee basis.

(v) The agency discloses fully its policies and practices, the disruption rates of its placements for intercountry adoption, and all fees charged by such agency for intercountry adoption.

(B) Capacity to provide adoption services

The agency has, directly or through arrangements with other persons, a sufficient number of appropriately trained and qualified personnel, sufficient financial resources, appropriate organizational structure, and appropriate procedures to enable the agency to provide, in accordance with this chapter, all adoption services in cases subject to the Convention.

(C) Use of social service professionals

The agency has established procedures designed to ensure that social service func-

tions requiring the application of clinical skills and judgment are performed only by professionals with appropriate qualifications and credentials.

(D) Records, reports, and information matters

The agency is capable of—

(i) maintaining such records and making such reports as may be required by the Secretary, the United States central authority, and the accrediting entity that accredits the agency;

(ii) cooperating with reviews, inspections, and audits;

(iii) safeguarding sensitive individual information; and

(iv) complying with other requirements concerning information management necessary to ensure compliance with the Convention, this chapter, and any other applicable law.

(E) Liability insurance

The agency agrees to have in force adequate liability insurance for professional negligence and any other insurance that the Secretary considers appropriate.

(F) Compliance with applicable rules

The agency has established adequate measures to comply (and to ensure compliance of their agents and clients) with the Convention, this chapter, and any other applicable law.

(G) Nonprofit organization with state license to provide adoption services

The agency is a private nonprofit organization licensed to provide adoption services in at least one State.

(2) Approval

The standards prescribed under subsection (a) of this section shall include the requirement that a person shall not be approved under this subchapter unless the person is a private for-profit entity that meets the requirements of subparagraphs (A) through (F) of paragraph (1) of this subsection.

(3) Renewal of accreditation or approval

The standards prescribed under subsection (a) of this section shall provide that the accreditation of an agency or approval of a person under this subchapter shall be for a period of not less than 3 years and not more than 5 years, and may be renewed on a showing that the agency or person meets the requirements applicable to original accreditation or approval under this subchapter.

(c) Temporary registration of community based agencies

(1) One-year registration period for medium community based agencies

For a 1-year period after the entry into force of the Convention and notwithstanding subsection (b) of this section, the Secretary may provide, in regulations issued pursuant to subsection (a) of this section, that an agency may register with the Secretary and be accredited to provide adoption services in the United

States in cases subject to the Convention during such period if the agency has provided adoption services in fewer than 100 intercountry adoptions in the preceding calendar year and meets the criteria described in paragraph (3).

(2) Two-year registration period for small community-based agencies

For a 2-year period after the entry into force of the Convention and notwithstanding subsection (b) of this section, the Secretary may provide, in regulations issued pursuant to subsection (a) of this section, that an agency may register with the Secretary and be accredited to provide adoption services in the United States in cases subject to the Convention during such period if the agency has provided adoption services in fewer than 50 intercountry adoptions in the preceding calendar year and meets the criteria described in paragraph (3).

(3) Criteria for registration

Agencies registered under this subsection shall meet the following criteria:

(A) The agency is licensed in the State in which it is located and is a nonprofit agency.

(B) The agency has been providing adoption services in connection with intercountry adoptions for at least 3 years.

(C) The agency has demonstrated that it will be able to provide the United States Government with all information related to the elements described in section 14914(b) of this title and provides such information.

(D) The agency has initiated the process of becoming accredited under the provisions of this chapter and is actively taking steps to become an accredited agency.

(E) The agency has not been found to be involved in any improper conduct relating to intercountry adoptions.

(Pub. L. 106-279, title II, §203, Oct. 6, 2000, 114 Stat. 832.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (b)(1)(B), (D)(iv), (F) and (c)(3)(D) was in the original “this Act”, meaning Pub. L. 106-279, Oct. 6, 2000, 114 Stat. 825, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 14901 of this title and Tables.

EFFECTIVE DATE

Section effective Oct. 6, 2000, with transition rule, see section 505(a)(1), (b) of Pub. L. 106-279, set out as an Effective Dates; Transition Rule note under section 14901 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14912, 14922, 14924 of this title.

§ 14924. Secretarial oversight of accreditation and approval

(a) Oversight of accrediting entities

The Secretary shall—

(1) monitor the performance by each accrediting entity of its duties under section 14922 of this title and its compliance with the requirements of the Convention, this chapter, other

applicable laws, and implementing regulations under this chapter; and

(2) suspend or cancel the designation of an accrediting entity found to be substantially out of compliance with the Convention, this chapter, other applicable laws, or implementing regulations under this chapter.

(b) Suspension or cancellation of accreditation or approval

(1) Secretary's authority

The Secretary shall suspend or cancel the accreditation or approval granted by an accrediting entity to an agency or person pursuant to section 14922 of this title when the Secretary finds that—

(A) the agency or person is substantially out of compliance with applicable requirements; and

(B) the accrediting entity has failed or refused, after consultation with the Secretary, to take appropriate enforcement action.

(2) Correction of deficiency

At any time when the Secretary is satisfied that the deficiencies on the basis of which an adverse action is taken under paragraph (1) have been corrected, the Secretary shall—

(A) notify the accrediting entity that the deficiencies have been corrected; and

(B)(i) in the case of a suspension, terminate the suspension; or

(ii) in the case of a cancellation, notify the agency or person that the agency or person may re-apply to the accrediting entity for accreditation or approval.

(c) Debarment

(1) Secretary's authority

On the initiative of the Secretary, or on request of an accrediting entity, the Secretary may temporarily or permanently debar an agency from accreditation or a person from approval under this subchapter, but only if—

(A) there is substantial evidence that the agency or person is out of compliance with applicable requirements; and

(B) there has been a pattern of serious, willful, or grossly negligent failures to comply or other aggravating circumstances indicating that continued accreditation or approval would not be in the best interests of the children and families concerned.

(2) Period of debarment

The Secretary's debarment order shall state whether the debarment is temporary or permanent. If the debarment is temporary, the Secretary shall specify a date, not earlier than 3 years after the date of the order, on or after which the agency or person may apply to the Secretary for withdrawal of the debarment.

(3) Effect of debarment

An accrediting entity may take into account the circumstances of the debarment of an agency or person that has been debarred pursuant to this subsection in considering any subsequent application of the agency or person, or of any other entity in which the agency or person has an ownership or control interest, for accreditation or approval under this subchapter.

(d) Judicial review

A person (other than a prospective adoptive parent), an agency, or an accrediting entity who is the subject of a final action of suspension, cancellation, or debarment by the Secretary under this subchapter may petition the United States District Court for the District of Columbia or the United States district court in the judicial district in which the person resides or the agency or accrediting entity is located to set aside the action. The court shall review the action in accordance with section 706 of title 5.

(e) Failure to ensure a full and complete home study

(1) In general

Willful, grossly negligent, or repeated failure to ensure the completion and transmission of a background report (home study) that fully complies with the requirements of section 14923(b)(1)(A)(ii) of this title shall constitute substantial noncompliance with applicable requirements.

(2) Regulations

Regulations promulgated under section 14923 of this title shall provide for—

(A) frequent and careful monitoring of compliance by agencies and approved persons with the requirements of section 14923(b)(A)(ii)¹ of this title; and

(B) consultation between the Secretary and the accrediting entity where an agency or person has engaged in substantial noncompliance with the requirements of section 14923(b)(A)(ii)¹ of this title, unless the accrediting entity has taken appropriate corrective action and the noncompliance has not recurred.

(3) Repeated failures to comply

Repeated serious, willful, or grossly negligent failures to comply with the requirements of section 14923(b)(1)(A)(ii) of this title by an agency or person after consultation between Secretary and the accrediting entity with respect to previous noncompliance by such agency or person shall constitute a pattern of serious, willful, or grossly negligent failures to comply under subsection (c)(1)(B) of this section.

(4) Failure to comply with certain requirements

A failure to comply with the requirements of section 14923(b)(1)(A)(ii) of this title shall constitute a serious failure to comply under subsection (c)(1)(B) of this section unless it is shown by clear and convincing evidence that such noncompliance had neither the purpose nor the effect of determining the outcome of a decision or proceeding by a court or other competent authority in the United States or the child's country of origin.

(Pub. L. 106-279, title II, §204, Oct. 6, 2000, 114 Stat. 835.)

EFFECTIVE DATE

Section effective Oct. 6, 2000, with transition rule, see section 505(a)(1), (b) of Pub. L. 106-279, set out as an Ef-

¹ So in original. Probably should be section "14923(b)(1)(A)(ii)".

fective Dates; Transition Rule note under section 14901 of this title.

SUBCHAPTER III—RECOGNITION OF CONVENTION ADOPTIONS IN THE UNITED STATES

§ 14931. Adoptions of children immigrating to the United States

(a) Legal effect of certificates issued by the Secretary of State

(1) Issuance of certificates by the Secretary of State

The Secretary of State shall, with respect to each Convention adoption, issue a certificate to the adoptive citizen parent domiciled in the United States that the adoption has been granted or, in the case of a prospective adoptive citizen parent, that legal custody of the child has been granted to the citizen parent for purposes of emigration and adoption, pursuant to the Convention and this chapter, if the Secretary of State—

(A) receives appropriate notification from the central authority of such child's country of origin; and

(B) has verified that the requirements of the Convention and this chapter have been met with respect to the adoption.

(2) Legal effect of certificates

If appended to an original adoption decree, the certificate described in paragraph (1) shall be treated by Federal and State agencies, courts, and other public and private persons and entities as conclusive evidence of the facts certified therein and shall constitute the certification required by section 1154(d)(2) of title 8.

(b) Legal effect of Convention adoption finalized in another Convention country

A final adoption in another Convention country, certified by the Secretary of State pursuant to subsection (a) of this section or section 14932(c) of this title, shall be recognized as a final valid adoption for purposes of all Federal, State, and local laws of the United States.

(c) Condition on finalization of Convention adoption by State court

In the case of a child who has entered the United States from another Convention country for the purpose of adoption, an order declaring the adoption final shall not be entered unless the Secretary of State has issued the certificate provided for in subsection (a) of this section with respect to the adoption.

(Pub. L. 106-279, title III, § 301, Oct. 6, 2000, 114 Stat. 837.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(1), was in the original "this Act", meaning Pub. L. 106-279, Oct. 6, 2000, 114 Stat. 825, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 14901 of this title and Tables.

EFFECTIVE DATE

Section effective upon entry into force for the United States of the Convention on Protection of Children and

Co-operation in Respect of Intercountry Adoption, pursuant to Article 46(2)(a) of the Convention, with transition rule, see section 505(a)(2), (b) of Pub. L. 106-279, set out as an Effective Dates; Transition Rule note under section 14901 of this title.

§ 14932. Adoptions of children emigrating from the United States

(a) Duties of accredited agency or approved person

In the case of a Convention adoption involving the emigration of a child residing in the United States to a foreign country, the accredited agency or approved person providing adoption services, or the prospective adoptive parent or parents acting on their own behalf (if permitted by the laws of such other Convention country in which they reside and the laws of the State in which the child resides), shall do the following:

(1) Ensure that, in accordance with the Convention—

(A) a background study on the child is completed;

(B) the accredited agency or approved person—

(i) has made reasonable efforts to actively recruit and make a diligent search for prospective adoptive parents to adopt the child in the United States; and

(ii) despite such efforts, has not been able to place the child for adoption in the United States in a timely manner; and

(C) a determination is made that placement with the prospective adoptive parent or parents is in the best interests of the child.

(2) Furnish to the State court with jurisdiction over the case—

(A) documentation of the matters described in paragraph (1);

(B) a background report (home study) on the prospective adoptive parent or parents (including a criminal background check) prepared in accordance with the laws of the receiving country; and

(C) a declaration by the central authority (or other competent authority) of such other Convention country—

(i) that the child will be permitted to enter and reside permanently, or on the same basis as the adopting parent, in the receiving country; and

(ii) that the central authority (or other competent authority) of such other Convention country consents to the adoption, if such consent is necessary under the laws of such country for the adoption to become final.

(3) Furnish to the United States central authority—

(A) official copies of State court orders certifying the final adoption or grant of custody for the purpose of adoption;

(B) the information and documents described in paragraph (2), to the extent required by the United States central authority; and

(C) any other information concerning the case required by the United States central authority to perform the functions specified

in subsection (c) of this section or otherwise to carry out the duties of the United States central authority under the Convention.

(b) Conditions on State court orders

An order declaring an adoption to be final or granting custody for the purpose of adoption in a case described in subsection (a) of this section shall not be entered unless the court—

(1) has received and verified to the extent the court may find necessary—

(A) the material described in subsection (a)(2) of this section; and

(B) satisfactory evidence that the requirements of Articles 4 and 15 through 21 of the Convention have been met; and

(2) has determined that the adoptive placement is in the best interests of the child.

(c) Duties of the Secretary of State

In a case described in subsection (a) of this section, the Secretary, on receipt and verification as necessary of the material and information described in subsection (a)(3) of this section, shall issue, as applicable, an official certification that the child has been adopted or a declaration that custody for purposes of adoption has been granted, in accordance with the Convention and this chapter.

(d) Filing with registry regarding non-Convention adoptions

Accredited agencies, approved persons, and other persons, including governmental authorities, providing adoption services in an intercountry adoption not subject to the Convention that involves the emigration of a child from the United States shall file information required by regulations jointly issued by the Attorney General and the Secretary of State for purposes of implementing section 14912(e) of this title.

(Pub. L. 106-279, title III, § 303, Oct. 6, 2000, 114 Stat. 839.)

EFFECTIVE DATE

Section effective upon entry into force for the United States of the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, pursuant to Article 46(2)(a) of the Convention, with transition rule, see section 505(a)(2), (b) of Pub. L. 106-279, set out as an Effective Dates; Transition Rule note under section 14901 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14931, 14953 of this title.

SUBCHAPTER IV—ADMINISTRATION AND ENFORCEMENT

§ 14941. Access to Convention records

(a) Preservation of Convention records

(1) In general

Not later than 180 days after October 6, 2000, the Secretary, in consultation with the Attorney General, shall issue regulations that establish procedures and requirements in accordance with the Convention and this section for the preservation of Convention records.

(2) Applicability of notice and comment rules

Subsections (b), (c), and (d) of section 553 of title 5 shall apply in the development and issuance of regulations under this section.

(b) Access to Convention records

(1) Prohibition

Except as provided in paragraph (2), the Secretary or the Attorney General may disclose a Convention record, and access to such a record may be provided in whole or in part, only if such record is maintained under the authority of the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] and disclosure of, or access to, such record is permitted or required by applicable Federal law.

(2) Exception for administration of the Convention

A Convention record may be disclosed, and access to such a record may be provided, in whole or in part, among the Secretary, the Attorney General, central authorities, accredited agencies, and approved persons, only to the extent necessary to administer the Convention or this chapter.

(3) Penalties for unlawful disclosure

Unlawful disclosure of all or part of a Convention record shall be punishable in accordance with applicable Federal law.

(c) Access to non-Convention records

Disclosure of, access to, and penalties for unlawful disclosure of, adoption records that are not Convention records, including records of adoption proceedings conducted in the United States, shall be governed by applicable State law.

(Pub. L. 106-279, title IV, § 401, Oct. 6, 2000, 114 Stat. 841.)

REFERENCES IN TEXT

The Immigration and Nationality Act, referred to in subsec. (b)(1), is act June 27, 1952, ch. 477, 66 Stat. 163, as amended, which is classified principally to chapter 12 (§ 1101 et seq.) of Title 8, Aliens and Nationality. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of Title 8 and Tables.

This chapter, referred to in subsec. (b)(2), was in the original “this Act”, meaning Pub. L. 106-279, Oct. 6, 2000, 114 Stat. 825, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 14901 of this title and Tables.

EFFECTIVE DATE

Subsec. (a) of this section effective Oct. 6, 2000, and subsecs. (b) and (c) of this section effective upon entry into force for the United States of the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, pursuant to Article 46(2)(a) of the Convention, with transition rule, see section 505 of Pub. L. 106-279, set out as an Effective Dates; Transition Rule note under section 14901 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14902 of this title.

§ 14942. Documents of other Convention countries

Documents originating in any other Convention country and related to a Convention adoption case shall require no authentication in order to be admissible in any Federal, State, or local court in the United States, unless a spe-

cific and supported claim is made that the documents are false, have been altered, or are otherwise unreliable.

(Pub. L. 106-279, title IV, § 402, Oct. 6, 2000, 114 Stat. 841.)

EFFECTIVE DATE

Section effective upon entry into force for the United States of the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, pursuant to Article 46(2)(a) of the Convention, with transition rule, see section 505(a)(2), (b) of Pub. L. 106-279, set out as an Effective Dates; Transition Rule note under section 14901 of this title.

§ 14943. Authorization of appropriations; collection of fees

(a) Authorization of appropriations

(1) In general

There are authorized to be appropriated such sums as may be necessary to agencies of the Federal Government implementing the Convention and the provisions of this chapter.

(2) Availability of funds

Amounts appropriated pursuant to paragraph (1) are authorized to remain available until expended.

(b) Assessment of fees

(1) The Secretary may charge a fee for new or enhanced services that will be undertaken by the Department of State to meet the requirements of this chapter with respect to intercountry adoptions under the Convention and comparable services with respect to other intercountry adoptions. Such fee shall be prescribed by regulation and shall not exceed the cost of such services.

(2) Fees collected under paragraph (1) shall be retained and deposited as an offsetting collection to any Department of State appropriation to recover the costs of providing such services. Such fees shall remain available for obligation until expended.

(c) Restriction

No funds collected under the authority of this section may be made available to an accrediting entity to carry out the purposes of this chapter.

(Pub. L. 106-279, title IV, § 403, Oct. 6, 2000, 114 Stat. 841; Pub. L. 107-228, div. A, title II, § 211(a), Sept. 30, 2002, 116 Stat. 1365.)

AMENDMENTS

2002—Subsec. (b)(2). Pub. L. 107-228, § 211(a)(1), inserted “Such fees shall remain available for obligation until expended.” at end.

Subsec. (b)(3). Pub. L. 107-228, § 211(a)(2), struck out par. (3) which read as follows: “Fees authorized under this section shall be available for obligation only to the extent and in the amount provided in advance in appropriations Acts.”

EFFECTIVE DATE

Section effective Oct. 6, 2000, with transition rule, see section 505(a)(1), (b) of Pub. L. 106-279, set out as an Effective Dates; Transition Rule note under section 14901 of this title.

§ 14944. Enforcement

(a) Civil penalties

Any person who—

(1) violates section 14921 of this title;

(2) makes a false or fraudulent statement, or misrepresentation, with respect to a material fact, or offers, gives, solicits, or accepts inducement by way of compensation, intended to influence or affect in the United States or a foreign country—

(A) a decision by an accrediting entity with respect to the accreditation of an agency or approval of a person under subchapter II of this chapter;

(B) the relinquishment of parental rights or the giving of parental consent relating to the adoption of a child in a case subject to the Convention; or

(C) a decision or action of any entity performing a central authority function; or

(3) engages another person as an agent, whether in the United States or in a foreign country, who in the course of that agency takes any of the actions described in paragraph (1) or (2),

shall be subject, in addition to any other penalty that may be prescribed by law, to a civil money penalty of not more than \$50,000 for a first violation, and not more than \$100,000 for each succeeding violation.

(b) Civil enforcement

(1) Authority of Attorney General

The Attorney General may bring a civil action to enforce subsection (a) of this section against any person in any United States district court.

(2) Factors to be considered in imposing penalties

In imposing penalties the court shall consider the gravity of the violation, the degree of culpability of the defendant, and any history of prior violations by the defendant.

(c) Criminal penalties

Whoever knowingly and willfully violates paragraph (1) or (2) of subsection (a) of this section shall be subject to a fine of not more than \$250,000, imprisonment for not more than 5 years, or both.

(Pub. L. 106-279, title IV, § 404, Oct. 6, 2000, 114 Stat. 842.)

REFERENCES IN TEXT

Subchapter II of this chapter, referred to in subsec. (a)(2)(A), was in the original “title II”, meaning title II of Pub. L. 106-279, Oct. 6, 2000, 114 Stat. 830, which enacted subchapter II of this chapter and amended section 622 of this title. For complete classification of title II to the Code, see Tables.

EFFECTIVE DATE

Section effective upon entry into force for the United States of the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, pursuant to Article 46(2)(a) of the Convention, with transition rule, see section 505(a)(2), (b) of Pub. L. 106-279, set out as an Effective Dates; Transition Rule note under section 14901 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14902 of this title.

SUBCHAPTER V—GENERAL PROVISIONS

§ 14951. Recognition of Convention adoptions

Subject to Article 24 of the Convention, adoptions concluded between two other Convention countries that meet the requirements of Article 23 of the Convention and that became final before the date of entry into force of the Convention for the United States shall be recognized thereafter in the United States and given full effect. Such recognition shall include the specific effects described in Article 26 of the Convention. (Pub. L. 106-279, title V, §501, Oct. 6, 2000, 114 Stat. 843.)

EFFECTIVE DATE

Section effective upon entry into force for the United States of the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, pursuant to Article 46(2)(a) of the Convention, with transition rule, see section 505(a)(2), (b) of Pub. L. 106-279, set out as an Effective Dates; Transition Rule note under section 14901 of this title.

§ 14952. Special rules for certain cases**(a) Authority to establish alternative procedures for adoption of children by relatives**

To the extent consistent with the Convention, the Secretary may establish by regulation alternative procedures for the adoption of children by individuals related to them by blood, marriage, or adoption, in cases subject to the Convention.

(b) Waiver authority**(1) In general**

Notwithstanding any other provision of this chapter, to the extent consistent with the Convention, the Secretary may, on a case-by-case basis, waive applicable requirements of this chapter or regulations issued under this chapter, in the interests of justice or to prevent grave physical harm to the child.

(2) Nondelegation

The authority provided by paragraph (1) may not be delegated.

(Pub. L. 106-279, title V, §502, Oct. 6, 2000, 114 Stat. 843.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b)(1), was in the original “this Act”, meaning Pub. L. 106-279, Oct. 6, 2000, 114 Stat. 825, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 14901 of this title and Tables.

EFFECTIVE DATE

Section effective upon entry into force for the United States of the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, pursuant to Article 46(2)(a) of the Convention, with transition rule, see section 505(a)(2), (b) of Pub. L. 106-279, set out as an Effective Dates; Transition Rule note under section 14901 of this title.

§ 14953. Relationship to other laws**(a) Preemption of inconsistent State law**

The Convention and this chapter shall not be construed to preempt any provision of the law of

any State or political subdivision thereof, or prevent a State or political subdivision thereof from enacting any provision of law with respect to the subject matter of the Convention or this chapter, except to the extent that such provision of State law is inconsistent with the Convention or this chapter, and then only to the extent of the inconsistency.

(b) Applicability of the Indian Child Welfare Act

The Convention and this chapter shall not be construed to affect the application of the Indian Child Welfare Act of 1978 (25 U.S.C. 1901 et seq.).

(c) Relationship to other laws

Sections 3506(c), 3507, and 3512 of title 44 shall not apply to information collection for purposes of sections 14914, 14922(b)(4), and 14932(d) of this title or for use as a Convention record as defined in this chapter.

(Pub. L. 106-279, title V, §503, Oct. 6, 2000, 114 Stat. 843.)

REFERENCES IN TEXT

The Indian Child Welfare Act of 1978, referred to in subsec. (b), is Pub. L. 95-608, Nov. 8, 1978, 92 Stat. 3069, as amended, which is classified principally to chapter 21 (§1901 et seq.) of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 1901 of Title 25 and Tables.

EFFECTIVE DATE

Section effective Oct. 6, 2000, with transition rule, see section 505(a)(1), (b) of Pub. L. 106-279, set out as an Effective Dates; Transition Rule note under section 14901 of this title.

§ 14954. No private right of action

The Convention and this chapter shall not be construed to create a private right of action to seek administrative or judicial relief, except to the extent expressly provided in this chapter.

(Pub. L. 106-279, title V, §504, Oct. 6, 2000, 114 Stat. 843.)

EFFECTIVE DATE

Section effective upon entry into force for the United States of the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, pursuant to Article 46(2)(a) of the Convention, with transition rule, see section 505(a)(2), (b) of Pub. L. 106-279, set out as an Effective Dates; Transition Rule note under section 14901 of this title.

CHAPTER 144—DEVELOPMENTAL DISABILITIES ASSISTANCE AND BILL OF RIGHTS**SUBCHAPTER I—PROGRAMS FOR INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES****PART A—GENERAL PROVISIONS**

Sec.	
15001.	Findings, purposes, and policy. <ul style="list-style-type: none"> (a) Findings. (b) Purpose. (c) Policy.
15002.	Definitions.
15003.	Records and audits. <ul style="list-style-type: none"> (a) Records. (b) Access.
15004.	Responsibilities of the Secretary. <ul style="list-style-type: none"> (a) Program accountability. (b) Time line for regulations. (c) Interagency committee.
15005.	Reports of the Secretary.

- Sec. 15006. State control of operations.
- 15007. Employment of individuals with disabilities.
- 15008. Construction.
- 15009. Rights of individuals with developmental disabilities.
 - (a) In general.
 - (b) Clarification.

PART B—FEDERAL ASSISTANCE TO STATE COUNCILS ON DEVELOPMENTAL DISABILITIES

- 15021. Purpose.
- 15022. State allotments.
 - (a) Allotments.
 - (b) Unobligated funds.
 - (c) Obligation of funds.
 - (d) Cooperative efforts between States.
 - (e) Reallotments.
- 15023. Payments to the States for planning, administration, and services.
 - (a) State plan expenditures.
 - (b) Designated State agency expenditures.
- 15024. State plan.
 - (a) In general.
 - (b) Planning cycle.
 - (c) State plan requirements.
 - (d) Public input and review, submission, and approval.
- 15025. State Councils on Developmental Disabilities and designated State agencies.
 - (a) In general.
 - (b) Council membership.
 - (c) Council responsibilities.
 - (d) Designated State agency.
- 15026. Federal and non-Federal share.
 - (a) Aggregate cost.
 - (b) Nonduplication.
 - (c) Non-Federal share.
- 15027. Withholding of payments for planning, administration, and services.
- 15028. Appeals by States.
 - (a) Appeal.
 - (b) Filing.
 - (c) Jurisdiction.
 - (d) Findings and remand.
 - (e) Finality.
 - (f) Effect.
- 15029. Authorization of appropriations.
 - (a) Funding for State allotments.
 - (b) Reservation for technical assistance.

PART C—PROTECTION AND ADVOCACY OF INDIVIDUAL RIGHTS

- 15041. Purpose.
- 15042. Allotments and payments.
 - (a) Allotments.
 - (b) Payment to systems.
 - (c) Unobligated funds.
- 15043. System required.
 - (a) System required.
 - (b) American Indian consortium.
 - (c) Record.
- 15044. Administration.
 - (a) Governing board.
 - (b) Legal action.
 - (c) Disclosure of information.
 - (d) Public notice of Federal onsite review.
 - (e) Reports.
- 15045. Authorization of appropriations.

PART D—NATIONAL NETWORK OF UNIVERSITY CENTERS FOR EXCELLENCE IN DEVELOPMENTAL DISABILITIES EDUCATION, RESEARCH, AND SERVICE

- 15061. Grant authority.
 - (a) National network.
 - (b) National training initiatives.
 - (c) Technical assistance.

- Sec. 15062. Grant awards.
 - (a) Existing Centers.
 - (b) Adjustments.
 - (c) National training initiatives on critical and emerging needs.
 - (d) Additional grants.
- 15063. Purpose and scope of activities.
 - (a) National network of University Centers for Excellence in Developmental Disabilities Education, Research, and Service.
 - (b) National training initiatives on critical and emerging needs.
 - (c) Technical assistance.
- 15064. Applications.
 - (a) Applications for core Center grants.
 - (b) Supplemental grant applications pertaining to national training initiatives in critical and emerging needs.
 - (c) Peer review.
 - (d) Federal share.
 - (e) Annual report.
- 15065. Definition.
- 15066. Authorization of appropriations.
 - (a) Authorization and reservations.
 - (b) Limitation.

PART E—PROJECTS OF NATIONAL SIGNIFICANCE

- 15081. Purpose.
- 15082. Grant authority.
 - (a) In general.
 - (b) Federal interagency initiatives.
- 15083. Authorization of appropriations.
 - (a) In general.
 - (b) Use of funds.
 - (c) Technical assistance for Councils and Centers.
 - (d) Technical assistance on electronic information sharing.
 - (e) Limitation.

SUBCHAPTER II—FAMILY SUPPORT

- 15091. Findings, purposes, and policy.
 - (a) Findings.
 - (b) Purposes.
 - (c) Policy.
- 15092. Definitions and special rule.
 - (a) Definitions.
 - (b) Special rule.
- 15093. Grants to States.
 - (a) In general.
 - (b) Award period and grant limitation.
 - (c) Amount of grants.
 - (d) Priority for previously participating States.
 - (e) Priorities for distribution.
- 15094. Application.
- 15095. Designation of the lead entity.
 - (a) Designation.
 - (b) Qualifications.
- 15096. Authorized activities.
 - (a) In general.
 - (b) Special rule.
- 15097. Reporting.
- 15098. Technical assistance.
 - (a) In general.
 - (b) Purpose.
 - (c) Reports to the Secretary.
- 15099. Evaluation.
 - (a) In general.
 - (b) Purpose.
 - (c) Report to Congress.
- 15100. Projects of national significance.
 - (a) Study by the Secretary.
 - (b) Projects of national significance.
- 15101. Authorization of appropriations.
 - (a) In general.
 - (b) Reservation.

SUBCHAPTER III—PROGRAM FOR DIRECT SUPPORT WORKERS WHO ASSIST INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES

- 15111. Findings.

- Sec.
 15112. Definitions.
 15113. Reaching up scholarship program.
 (a) Program authorization.
 (b) Eligible entity.
 (c) Application requirements.
 (d) Selection criteria.
 (e) Federal share.
 15114. Staff development curriculum authorization.
 (a) Funding.
 (b) Application requirements.
 15115. Authorization of appropriations.
 (a) Scholarships.
 (b) Staff development curriculum.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 300a-7, 3013, 14404 of this title; title 20 section 1444; title 29 section 762, 781, 794e, 3012; title 40 section 14502.

SUBCHAPTER I—PROGRAMS FOR INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 15114 of this title.

PART A—GENERAL PROVISIONS

§ 15001. Findings, purposes, and policy

(a) Findings

Congress finds that—

(1) disability is a natural part of the human experience that does not diminish the right of individuals with developmental disabilities to live independently, to exert control and choice over their own lives, and to fully participate in and contribute to their communities through full integration and inclusion in the economic, political, social, cultural, and educational mainstream of United States society;

(2) in 1999, there were between 3,200,000 and 4,500,000 individuals with developmental disabilities in the United States, and recent studies indicate that individuals with developmental disabilities comprise between 1.2 and 1.65 percent of the United States population;

(3) individuals whose disabilities occur during their developmental period frequently have severe disabilities that are likely to continue indefinitely;

(4) individuals with developmental disabilities often encounter discrimination in the provision of critical services, such as services in the areas of emphasis (as defined in section 15002 of this title);

(5) individuals with developmental disabilities are at greater risk than the general population of abuse, neglect, financial and sexual exploitation, and the violation of their legal and human rights;

(6) a substantial portion of individuals with developmental disabilities and their families do not have access to appropriate support and services, including access to assistive technology, from generic and specialized service systems, and remain unserved or underserved;

(7) individuals with developmental disabilities often require lifelong community services, individualized supports, and other forms of assistance, that are most effective when provided in a coordinated manner;

(8) there is a need to ensure that services, supports, and other assistance are provided in a culturally competent manner, that ensures that individuals from racial and ethnic minority backgrounds are fully included in all activities provided under this subchapter;

(9) family members, friends, and members of the community can play an important role in enhancing the lives of individuals with developmental disabilities, especially when the family members, friends, and community members are provided with the necessary community services, individualized supports, and other forms of assistance;

(10) current research indicates that 88 percent of individuals with developmental disabilities live with their families or in their own households;

(11) many service delivery systems and communities are not prepared to meet the impending needs of the 479,862 adults with developmental disabilities who are living at home with parents who are 60 years old or older and who serve as the primary caregivers of the adults;

(12) in almost every State, individuals with developmental disabilities are waiting for appropriate services in their communities, in the areas of emphasis;

(13) the public needs to be made more aware of the capabilities and competencies of individuals with developmental disabilities, particularly in cases in which the individuals are provided with necessary services, supports, and other assistance;

(14) as increasing numbers of individuals with developmental disabilities are living, learning, working, and participating in all aspects of community life, there is an increasing need for a well trained workforce that is able to provide the services, supports, and other forms of direct assistance required to enable the individuals to carry out those activities;

(15) there needs to be greater effort to recruit individuals from minority backgrounds into professions serving individuals with developmental disabilities and their families;

(16) the goals of the Nation properly include a goal of providing individuals with developmental disabilities with the information, skills, opportunities, and support to—

(A) make informed choices and decisions about their lives;

(B) live in homes and communities in which such individuals can exercise their full rights and responsibilities as citizens;

(C) pursue meaningful and productive lives;

(D) contribute to their families, communities, and States, and the Nation;

(E) have interdependent friendships and relationships with other persons;

(F) live free of abuse, neglect, financial and sexual exploitation, and violations of their legal and human rights; and

(G) achieve full integration and inclusion in society, in an individualized manner, consistent with the unique strengths, resources, priorities, concerns, abilities, and capabilities of each individual; and

(17) as the Nation, States, and communities maintain and expand community living op-

tions for individuals with developmental disabilities, there is a need to evaluate the access to those options by individuals with developmental disabilities and the effects of those options on individuals with developmental disabilities.

(b) Purpose

The purpose of this subchapter is to assure that individuals with developmental disabilities and their families participate in the design of and have access to needed community services, individualized supports, and other forms of assistance that promote self-determination, independence, productivity, and integration and inclusion in all facets of community life, through culturally competent programs authorized under this subchapter, including specifically—

(1) State Councils on Developmental Disabilities in each State to engage in advocacy, capacity building, and systemic change activities that—

(A) are consistent with the purpose described in this subsection and the policy described in subsection (c) of this section; and

(B) contribute to a coordinated, consumer- and family-centered, consumer- and family-directed, comprehensive system that includes needed community services, individualized supports, and other forms of assistance that promote self-determination for individuals with developmental disabilities and their families;

(2) protection and advocacy systems in each State to protect the legal and human rights of individuals with developmental disabilities;

(3) University Centers for Excellence in Developmental Disabilities Education, Research, and Service—

(A) to provide interdisciplinary pre-service preparation and continuing education of students and fellows, which may include the preparation and continuing education of leadership, direct service, clinical, or other personnel to strengthen and increase the capacity of States and communities to achieve the purpose of this subchapter;

(B) to provide community services—

(i) that provide training and technical assistance for individuals with developmental disabilities, their families, professionals, paraprofessionals, policymakers, students, and other members of the community; and

(ii) that may provide services, supports, and assistance for the persons described in clause (i) through demonstration and model activities;

(C) to conduct research, which may include basic or applied research, evaluation, and the analysis of public policy in areas that affect or could affect, either positively or negatively, individuals with developmental disabilities and their families; and

(D) to disseminate information related to activities undertaken to address the purpose of this subchapter, especially dissemination of information that demonstrates that the network authorized under this part is a national and international resource that in-

cludes specific substantive areas of expertise that may be accessed and applied in diverse settings and circumstances; and

(4) funding for—

(A) national initiatives to collect necessary data on issues that are directly or indirectly relevant to the lives of individuals with developmental disabilities;

(B) technical assistance to entities who engage in or intend to engage in activities consistent with the purpose described in this subsection or the policy described in subsection (c) of this section; and

(C) other nationally significant activities.

(c) Policy

It is the policy of the United States that all programs, projects, and activities receiving assistance under this subchapter shall be carried out in a manner consistent with the principles that—

(1) individuals with developmental disabilities, including those with the most severe developmental disabilities, are capable of self-determination, independence, productivity, and integration and inclusion in all facets of community life, but often require the provision of community services, individualized supports, and other forms of assistance;

(2) individuals with developmental disabilities and their families have competencies, capabilities, and personal goals that should be recognized, supported, and encouraged, and any assistance to such individuals should be provided in an individualized manner, consistent with the unique strengths, resources, priorities, concerns, abilities, and capabilities of such individuals;

(3) individuals with developmental disabilities and their families are the primary decisionmakers regarding the services and supports such individuals and their families receive, including regarding choosing where the individuals live from available options, and play decisionmaking roles in policies and programs that affect the lives of such individuals and their families;

(4) services, supports, and other assistance should be provided in a manner that demonstrates respect for individual dignity, personal preferences, and cultural differences;

(5) specific efforts must be made to ensure that individuals with developmental disabilities from racial and ethnic minority backgrounds and their families enjoy increased and meaningful opportunities to access and use community services, individualized supports, and other forms of assistance available to other individuals with developmental disabilities and their families;

(6) recruitment efforts in disciplines related to developmental disabilities relating to pre-service training, community training, practice, administration, and policymaking must focus on bringing larger numbers of racial and ethnic minorities into the disciplines in order to provide appropriate skills, knowledge, role models, and sufficient personnel to address the growing needs of an increasingly diverse population;

(7) with education and support, communities can be accessible to and responsive to the

needs of individuals with developmental disabilities and their families and are enriched by full and active participation in community activities, and contributions, by individuals with developmental disabilities and their families;

(8) individuals with developmental disabilities have access to opportunities and the necessary support to be included in community life, have interdependent relationships, live in homes and communities, and make contributions to their families, communities, and States, and the Nation;

(9) efforts undertaken to maintain or expand community-based living options for individuals with disabilities should be monitored in order to determine and report to appropriate individuals and entities the extent of access by individuals with developmental disabilities to those options and the extent of compliance by entities providing those options with quality assurance standards;

(10) families of children with developmental disabilities need to have access to and use of safe and appropriate child care and before-school and after-school programs, in the most integrated settings, in order to enrich the participation of the children in community life;

(11) individuals with developmental disabilities need to have access to and use of public transportation, in order to be independent and directly contribute to and participate in all facets of community life; and

(12) individuals with developmental disabilities need to have access to and use of recreational, leisure, and social opportunities in the most integrated settings, in order to enrich their participation in community life.

(Pub. L. 106-402, title I, §101, Oct. 30, 2000, 114 Stat. 1678.)

SHORT TITLE

Pub. L. 106-402, §1(a), Oct. 30, 2000, 114 Stat. 1677, provided that: "This Act [see Tables for classification] may be cited as the 'Developmental Disabilities Assistance and Bill of Rights Act of 2000'."

Pub. L. 106-402, title II, §201, Oct. 30, 2000, 114 Stat. 1728, provided that: "This title [enacting subchapter II of this chapter] may be cited as the 'Families of Children With Disabilities Support Act of 2000'."

EX. ORD. NO. 12994. PRESIDENT'S COMMITTEE ON MENTAL RETARDATION

Ex. Ord. No. 12994, Mar. 21, 1996, 61 F.R. 13047, as amended by Ex. Ord. No. 13309, July 25, 2003, 68 F.R. 44851, provided:

The President's Committee on Mental Retardation, established by Executive Order No. 11280 [former 42 U.S.C. note prec. 2661] on May 11, 1966, as superseded by Executive Order No. 11776 on March 28, 1974, has organized national planning, stimulated development of plans, policies and programs, and advanced the concept of community participation in the field of intellectual disabilities.

National goals have been established to:

(1) promote full participation of people with intellectual disabilities in their communities;

(2) provide all necessary supports to people with intellectual disabilities and their families for such participation;

(3) reduce the occurrence and severity of intellectual disabilities by one-half by the year 2010;

(4) assure the full citizenship rights of all people with intellectual disabilities, including those rights secured by such landmark statutes as the Americans with Dis-

abilities Act of 1990, Public Law 101-336 (42 U.S.C. 12101 *et seq.*);

(5) recognize the right of all people with intellectual disabilities to self-determination and autonomy, to be treated in a nondiscriminatory manner, and to exercise meaningful choice, with whatever supports are necessary to effectuate these rights;

(6) recognize the right of all people with intellectual disabilities to enjoy a quality of life that promotes independence, self-determination, and participation as productive members of society; and

(7) promote the widest possible dissemination of information on models, programs, and services in the field of intellectual disabilities.

The achievement of these goals will require the most effective possible use of public and private resources.

NOW, THEREFORE, by the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App.), it is hereby ordered as follows:

SECTION 1. *Committee Continued and Responsibilities Expanded.* The President's Committee on Mental Retardation, with expanded membership and expanded responsibilities, and renamed the President's Committee for People with Intellectual Disabilities (the "Committee"), is hereby continued in operation.

SEC. 2. *Composition of Committee.* (a) The Committee shall be composed of the following members:

(1) The Secretary of Health and Human Services;

(2) The Secretary of Education;

(3) The Attorney General;

(4) The Secretary of Labor;

(5) The Secretary of Housing and Urban Development;

(6) The Secretary of Commerce;

(7) The Secretary of Transportation;

(8) The Secretary of the Interior;

(9) The Secretary of Homeland Security;

(10) The Chief Executive Officer of the Corporation for National and Community Service (formerly ACTION);

(11) The Commissioner of Social Security;

(12) The Chair of the Equal Employment Opportunity Commission;

(13) The Chairperson of the National Council on Disability;

(10)[sic] No more than 21 other members who shall be appointed to the Committee by the President. These citizen members shall consist of individuals who represent a broad spectrum of perspectives, experience, and expertise on intellectual disabilities, and shall include self-advocates with intellectual disabilities and members of families with a child or adult with intellectual disabilities, and persons employed in either the public or the private sector. Except as the President may from time to time otherwise direct, appointees under this paragraph shall have two-year terms, except that an appointment made to fill a vacancy occurring before the expiration of a term shall be made for the balance of the unexpired term.

(b) The President shall designate the Chair of the Committee from the 21 citizen members. The Chair shall advise and counsel the Committee and represent the Committee on appropriate occasions.

SEC. 3. *Functions of the Committee.* (a) The Committee shall provide such advice and assistance in the area of intellectual disabilities as the President or Secretary of Health and Human Services may request, and particularly shall advise with respect to the following areas:

(1) evaluating and monitoring the national efforts to establish appropriate policies and supports for people with intellectual disabilities;

(2) providing suggestions for improvement in the delivery of intellectual disabilities services, including preventive services, the promulgation of effective and humane policies, and the provision of necessary supports;

(3) identifying the extent to which various Federal and State programs achieve the national goals in intel-

lectual disabilities described in the preamble to this order and have a positive impact on the lives of people with intellectual disabilities;

(4) facilitating liaison among Federal, State, and local governments, foundations, nonprofit organizations, other private organizations, and citizens concerning intellectual disabilities;

(5) developing and disseminating such information as will tend to reduce the incidence and severity of intellectual disabilities; and

(6) promoting the concept of community participation and development of community supports for citizens with intellectual disabilities.

(b) The Committee shall make an annual report, through the Secretary of Health and Human Services, to the President concerning intellectual disabilities. Such additional reports may be made as the President may require or as the Committee may deem appropriate.

SEC. 4. *Cooperation by Other Agencies.* To assist the Committee in providing advice to the President, Federal departments and agencies requested to do so by the Committee shall designate liaison officers to the Committee. Such officers shall, on request by the Committee, and to the extent permitted by law, provide the Committee with information on department and agency programs that do contribute to or could contribute to achievement of the President's goals in the field of intellectual disabilities.

SEC. 5. *Administration.* (a) The Department of Health and Human Services shall, to the extent permitted by law, provide the Committee with necessary staff, administrative services, and facilities and funding.

(b) Each member of the Committee, except any member who receives other compensation from the United States Government, may receive compensation for each day he or she is engaged in the work of the Committee, as authorized by law (5 U.S.C. 3109), and may also receive travel expenses, including per diem in lieu of subsistence, as authorized by law (5 U.S.C. 5701-5707), for persons employed intermittently in the Government service. Committee members with disabilities may be compensated for attendant expenses, consistent with Government procedures and practices.

(c) The Secretary of Health and Human Services shall perform such other functions with respect to the Committee as may be required by the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), except that of reporting to the Congress.

SEC. 6. *Construction.* Nothing in this order shall be construed as subjecting any Federal agency, or any function vested by law in, or assigned pursuant to law to, any Federal agency, to the authority of the Committee or as abrogating or restricting any such function in any manner.

SEC. 7. *Superseded Authority.* Executive Order No. 11776 is hereby superseded.

EXTENSION OF TERM OF PRESIDENT'S COMMITTEE ON MENTAL RETARDATION

Term of the President's Committee on Mental Retardation extended until Dec. 31, 1982, by Ex. Ord. No. 12258, Dec. 31, 1980, 46 F.R. 1251, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

Term of the President's Committee on Mental Retardation extended until Sept. 30, 1984, by Ex. Ord. No. 12399, Dec. 31, 1982, 48 F.R. 379, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Committee on Mental Retardation extended until Sept. 30, 1985, by Ex. Ord. No. 12489, Sept. 28, 1984, 49 F.R. 38927, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Committee on Mental Retardation extended until Sept. 30, 1987, by Ex. Ord. No. 12534, Sept. 30, 1985, 50 F.R. 40319, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Committee on Mental Retardation extended until Sept. 30, 1989, by Ex. Ord. No. 12610, Sept. 30, 1987, 52 F.R. 36901, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Committee on Mental Retardation extended until Sept. 30, 1991, by Ex. Ord. No. 12692, Sept. 29, 1989, 54 F.R. 40627, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Committee on Mental Retardation extended until Sept. 30, 1993, by Ex. Ord. No. 12774, Sept. 27, 1991, 56 F.R. 49835, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Committee on Mental Retardation extended until Sept. 30, 1995, by Ex. Ord. No. 12869, Sept. 30, 1993, 58 F.R. 51751, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Committee on Mental Retardation extended until Sept. 30, 1997, by Ex. Ord. No. 12974, Sept. 29, 1995, 60 F.R. 51875, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Committee on Mental Retardation extended until Sept. 30, 1999, by Ex. Ord. No. 13062, §1(k), Sept. 29, 1997, 62 F.R. 51755, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Committee on Mental Retardation extended until Sept. 30, 2001, by Ex. Ord. No. 13138, Sept. 30, 1999, 64 F.R. 53879, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Committee on Mental Retardation extended until Sept. 30, 2003, by Ex. Ord. No. 13225, Sept. 28, 2001, 66 F.R. 50291, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

EX. ORD. NO. 13309. AMENDMENTS TO EXECUTIVE ORDER 12994, AND RENAMING THE PRESIDENT'S COMMITTEE ON MENTAL RETARDATION AS THE PRESIDENT'S COMMITTEE FOR PEOPLE WITH INTELLECTUAL DISABILITIES

Ex. Ord. No. 13309, July 25, 2003, 68 F.R. 44851, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to change the name of the "President's Committee on Mental Retardation" to the "President's Committee for People with Intellectual Disabilities" (the "Committee") and expand the membership of the Committee, it is hereby ordered as follows:

SECTION 1. The President's Committee on Mental Retardation is hereby renamed the President's Committee for People with Intellectual Disabilities.

[SECS. 2 to 4. Amended Ex. Ord. No. 12994, set out above.]

SEC. 5. The Committee is continued until September 30, 2005.

GEORGE W. BUSH.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 15004, 15009, 15021, 15025, 15064, 15114 of this title.

§ 15002. Definitions

In this subchapter:

(1) American Indian Consortium

The term "American Indian Consortium" means any confederation of 2 or more recognized American Indian tribes, created through the official action of each participating tribe, that has a combined total resident population of 150,000 enrolled tribal members and a con-

tiguous territory of Indian lands in 2 or more States.

(2) Areas of emphasis

The term “areas of emphasis” means the areas related to quality assurance activities, education activities and early intervention activities, child care-related activities, health-related activities, employment-related activities, housing-related activities, transportation-related activities, recreation-related activities, and other services available or offered to individuals in a community, including formal and informal community supports, that affect their quality of life.

(3) Assistive technology device

The term “assistive technology device” means any item, piece of equipment, or product system, whether acquired commercially, modified or customized, that is used to increase, maintain, or improve functional capabilities of individuals with developmental disabilities.

(4) Assistive technology service

The term “assistive technology service” means any service that directly assists an individual with a developmental disability in the selection, acquisition, or use of an assistive technology device. Such term includes—

(A) conducting an evaluation of the needs of an individual with a developmental disability, including a functional evaluation of the individual in the individual’s customary environment;

(B) purchasing, leasing, or otherwise providing for the acquisition of an assistive technology device by an individual with a developmental disability;

(C) selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing or replacing an assistive technology device;

(D) coordinating and using another therapy, intervention, or service with an assistive technology device, such as a therapy, intervention, or service associated with an education or rehabilitation plan or program;

(E) providing training or technical assistance for an individual with a developmental disability, or, where appropriate, a family member, guardian, advocate, or authorized representative of an individual with a developmental disability; and

(F) providing training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of, an individual with developmental disabilities.

(5) Center

The term “Center” means a University Center for Excellence in Developmental Disabilities Education, Research, and Service established under part D of this subchapter.

(6) Child care-related activities

The term “child care-related activities” means advocacy, capacity building, and sys-

temic change activities that result in families of children with developmental disabilities having access to and use of child care services, including before-school, after-school, and out-of-school services, in their communities.

(7) Culturally competent

The term “culturally competent”, used with respect to services, supports, or other assistance, means services, supports, or other assistance that is conducted or provided in a manner that is responsive to the beliefs, interpersonal styles, attitudes, language, and behaviors of individuals who are receiving the services, supports, or other assistance, and in a manner that has the greatest likelihood of ensuring their maximum participation in the program involved.

(8) Developmental disability

(A) In general

The term “developmental disability” means a severe, chronic disability of an individual that—

(i) is attributable to a mental or physical impairment or combination of mental and physical impairments;

(ii) is manifested before the individual attains age 22;

(iii) is likely to continue indefinitely;

(iv) results in substantial functional limitations in 3 or more of the following areas of major life activity:

(I) Self-care.

(II) Receptive and expressive language.

(III) Learning.

(IV) Mobility.

(V) Self-direction.

(VI) Capacity for independent living.

(VII) Economic self-sufficiency; and

(v) reflects the individual’s need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated.

(B) Infants and young children

An individual from birth to age 9, inclusive, who has a substantial developmental delay or specific congenital or acquired condition, may be considered to have a developmental disability without meeting 3 or more of the criteria described in clauses (i) through (v) of subparagraph (A) if the individual, without services and supports, has a high probability of meeting those criteria later in life.

(9) Early intervention activities

The term “early intervention activities” means advocacy, capacity building, and systemic change activities provided to individuals described in paragraph (8)(B) and their families to enhance—

(A) the development of the individuals to maximize their potential; and

(B) the capacity of families to meet the special needs of the individuals.

(10) Education activities

The term “education activities” means advocacy, capacity building, and systemic

change activities that result in individuals with developmental disabilities being able to access appropriate supports and modifications when necessary, to maximize their educational potential, to benefit from lifelong educational activities, and to be integrated and included in all facets of student life.

(11) Employment-related activities

The term “employment-related activities” means advocacy, capacity building, and systemic change activities that result in individuals with developmental disabilities acquiring, retaining, or advancing in paid employment, including supported employment or self-employment, in integrated settings in a community.

(12) Family support services

(A) In general

The term “family support services” means services, supports, and other assistance, provided to families with members who have developmental disabilities, that are designed to—

- (i) strengthen the family’s role as primary caregiver;
- (ii) prevent inappropriate out-of-the-home placement of the members and maintain family unity; and
- (iii) reunite families with members who have been placed out of the home whenever possible.

(B) Specific services

Such term includes respite care, provision of rehabilitation technology and assistive technology, personal assistance services, parent training and counseling, support for families headed by aging caregivers, vehicular and home modifications, and assistance with extraordinary expenses, associated with the needs of individuals with developmental disabilities.

(13) Health-related activities

The term “health-related activities” means advocacy, capacity building, and systemic change activities that result in individuals with developmental disabilities having access to and use of coordinated health, dental, mental health, and other human and social services, including prevention activities, in their communities.

(14) Housing-related activities

The term “housing-related activities” means advocacy, capacity building, and systemic change activities that result in individuals with developmental disabilities having access to and use of housing and housing supports and services in their communities, including assistance related to renting, owning, or modifying an apartment or home.

(15) Inclusion

The term “inclusion”, used with respect to individuals with developmental disabilities, means the acceptance and encouragement of the presence and participation of individuals with developmental disabilities, by individuals without disabilities, in social, educational, work, and community activities, that enables

individuals with developmental disabilities to—

- (A) have friendships and relationships with individuals and families of their own choice;
- (B) live in homes close to community resources, with regular contact with individuals without disabilities in their communities;
- (C) enjoy full access to and active participation in the same community activities and types of employment as individuals without disabilities; and
- (D) take full advantage of their integration into the same community resources as individuals without disabilities, living, learning, working, and enjoying life in regular contact with individuals without disabilities.

(16) Individualized supports

The term “individualized supports” means supports that—

- (A) enable an individual with a developmental disability to exercise self-determination, be independent, be productive, and be integrated and included in all facets of community life;
- (B) are designed to—
 - (i) enable such individual to control such individual’s environment, permitting the most independent life possible;
 - (ii) prevent placement into a more restrictive living arrangement than is necessary; and
 - (iii) enable such individual to live, learn, work, and enjoy life in the community; and
- (C) include—
 - (i) early intervention services;
 - (ii) respite care;
 - (iii) personal assistance services;
 - (iv) family support services;
 - (v) supported employment services;
 - (vi) support services for families headed by aging caregivers of individuals with developmental disabilities; and
 - (vii) provision of rehabilitation technology and assistive technology, and assistive technology services.

(17) Integration

The term “integration”, used with respect to individuals with developmental disabilities, means exercising the equal right of individuals with developmental disabilities to access and use the same community resources as are used by and available to other individuals.

(18) Not-for-profit

The term “not-for-profit”, used with respect to an agency, institution, or organization, means an agency, institution, or organization that is owned or operated by 1 or more corporations or associations, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

(19) Personal assistance services

The term “personal assistance services” means a range of services, provided by 1 or more individuals, designed to assist an indi-

vidual with a disability to perform daily activities, including activities on or off a job that such individual would typically perform if such individual did not have a disability. Such services shall be designed to increase such individual's control in life and ability to perform everyday activities, including activities on or off a job.

(20) Prevention activities

The term "prevention activities" means activities that address the causes of developmental disabilities and the exacerbation of functional limitation, such as activities that—

(A) eliminate or reduce the factors that cause or predispose individuals to developmental disabilities or that increase the prevalence of developmental disabilities;

(B) increase the early identification of problems to eliminate circumstances that create or increase functional limitations; and

(C) mitigate against the effects of developmental disabilities throughout the lifespan of an individual.

(21) Productivity

The term "productivity" means—

(A) engagement in income-producing work that is measured by increased income, improved employment status, or job advancement; or

(B) engagement in work that contributes to a household or community.

(22) Protection and advocacy system

The term "protection and advocacy system" means a protection and advocacy system established in accordance with section 15043 of this title.

(23) Quality assurance activities

The term "quality assurance activities" means advocacy, capacity building, and systemic change activities that result in improved consumer- and family-centered quality assurance and that result in systems of quality assurance and consumer protection that—

(A) include monitoring of services, supports, and assistance provided to an individual with developmental disabilities that ensures that the individual—

(i) will not experience abuse, neglect, sexual or financial exploitation, or violation of legal or human rights; and

(ii) will not be subject to the inappropriate use of restraints or seclusion;

(B) include training in leadership, self-advocacy, and self-determination for individuals with developmental disabilities, their families, and their guardians to ensure that those individuals—

(i) will not experience abuse, neglect, sexual or financial exploitation, or violation of legal or human rights; and

(ii) will not be subject to the inappropriate use of restraints or seclusion; or

(C) include activities related to inter-agency coordination and systems integration that result in improved and enhanced services, supports, and other assistance that

contribute to and protect the self-determination, independence, productivity, and integration and inclusion in all facets of community life, of individuals with developmental disabilities.

(24) Recreation-related activities

The term "recreation-related activities" means advocacy, capacity building, and systemic change activities that result in individuals with developmental disabilities having access to and use of recreational, leisure, and social activities, in their communities.

(25) Rehabilitation technology

The term "rehabilitation technology" means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of, and address the barriers confronted by, individuals with developmental disabilities in areas that include education, rehabilitation, employment, transportation, independent living, and recreation. Such term includes rehabilitation engineering, and the provision of assistive technology devices and assistive technology services.

(26) Secretary

The term "Secretary" means the Secretary of Health and Human Services.

(27) Self-determination activities

The term "self-determination activities" means activities that result in individuals with developmental disabilities, with appropriate assistance, having—

(A) the ability and opportunity to communicate and make personal decisions;

(B) the ability and opportunity to communicate choices and exercise control over the type and intensity of services, supports, and other assistance the individuals receive;

(C) the authority to control resources to obtain needed services, supports, and other assistance;

(D) opportunities to participate in, and contribute to, their communities; and

(E) support, including financial support, to advocate for themselves and others, to develop leadership skills, through training in self-advocacy, to participate in coalitions, to educate policymakers, and to play a role in the development of public policies that affect individuals with developmental disabilities.

(28) State

The term "State", except as otherwise provided, includes, in addition to each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(29) State Council on Developmental Disabilities

The term "State Council on Developmental Disabilities" means a Council established under section 15025 of this title.

(30) Supported employment services

The term "supported employment services" means services that enable individuals with

developmental disabilities to perform competitive work in integrated work settings, in the case of individuals with developmental disabilities—

(A)(i) for whom competitive employment has not traditionally occurred; or

(ii) for whom competitive employment has been interrupted or intermittent as a result of significant disabilities; and

(B) who, because of the nature and severity of their disabilities, need intensive supported employment services or extended services in order to perform such work.

(31) Transportation-related activities

The term “transportation-related activities” means advocacy, capacity building, and systemic change activities that result in individuals with developmental disabilities having access to and use of transportation.

(32) Unserved and underserved

The term “unserved and underserved” includes populations such as individuals from racial and ethnic minority backgrounds, disadvantaged individuals, individuals with limited English proficiency, individuals from underserved geographic areas (rural or urban), and specific groups of individuals within the population of individuals with developmental disabilities, including individuals who require assistive technology in order to participate in and contribute to community life.

(Pub. L. 106-402, title I, §102, Oct. 30, 2000, 114 Stat. 1682.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1437a, 1471, 8013, 9877, 11382, 15001, 15112, 15461 of this title; title 25 section 4103; title 29 section 794e.

§ 15003. Records and audits

(a) Records

Each recipient of assistance under this subchapter shall keep such records as the Secretary shall prescribe, including—

(1) records that fully disclose—

(A) the amount and disposition by such recipient of the assistance;

(B) the total cost of the project or undertaking in connection with which such assistance is given or used; and

(C) the amount of that portion of the cost of the project or undertaking that is supplied by other sources; and

(2) such other records as will facilitate an effective audit.

(b) Access

The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipients of assistance under this subchapter that are pertinent to such assistance.

(Pub. L. 106-402, title I, §103, Oct. 30, 2000, 114 Stat. 1688.)

§ 15004. Responsibilities of the Secretary

(a) Program accountability

(1) In general

In order to monitor entities that received funds under this chapter to carry out activities under parts B, C, and D of this subchapter and determine the extent to which the entities have been responsive to the purpose of this subchapter and have taken actions consistent with the policy described in section 15001(c) of this title, the Secretary shall develop and implement an accountability process as described in this subsection, with respect to activities conducted after October 1, 2001.

(2) Areas of emphasis

The Secretary shall develop a process for identifying and reporting (pursuant to section 15005 of this title) on progress achieved through advocacy, capacity building, and systemic change activities, undertaken by the entities described in paragraph (1), that resulted in individuals with developmental disabilities and their families participating in the design of and having access to needed community services, individualized supports, and other forms of assistance that promote self-determination, independence, productivity, and integration and inclusion in all facets of community life. Specifically, the Secretary shall develop a process for identifying and reporting on progress achieved, through advocacy, capacity building, and systemic change activities, by the entities in the areas of emphasis.

(3) Indicators of progress

(A) In general

In identifying progress made by the entities described in paragraph (1) in the areas of emphasis, the Secretary, in consultation with the Commissioner of the Administration on Developmental Disabilities and the entities, shall develop indicators for each area of emphasis.

(B) Proposed indicators

Not later than 180 days after October 30, 2000, the Secretary shall develop and publish in the Federal Register for public comment proposed indicators of progress for monitoring how entities described in paragraph (1) have addressed the areas of emphasis described in paragraph (2) in a manner that is responsive to the purpose of this subchapter and consistent with the policy described in section 15001(c) of this title.

(C) Final indicators

Not later than October 1, 2001, the Secretary shall revise the proposed indicators of progress, to the extent necessary based on public comment, and publish final indicators of progress in the Federal Register.

(D) Specific measures

At a minimum, the indicators of progress shall be used to describe and measure—

(i) the satisfaction of individuals with developmental disabilities with the advocacy, capacity building, and systemic change activities provided under parts B, C, and D of this subchapter;

(ii) the extent to which the advocacy, capacity building, and systemic change activities provided through parts B, C, and D of this subchapter result in improvements in—

(I) the ability of individuals with developmental disabilities to make choices and exert control over the type, intensity, and timing of services, supports, and assistance that the individuals have used;

(II) the ability of individuals with developmental disabilities to participate in the full range of community life with persons of the individuals' choice; and

(III) the ability of individuals with developmental disabilities to access services, supports, and assistance in a manner that ensures that such an individual is free from abuse, neglect, sexual and financial exploitation, violation of legal and human rights, and the inappropriate use of restraints and seclusion; and

(iii) the extent to which the entities described in paragraph (1) collaborate with each other to achieve the purpose of this subchapter and the policy described in section 15001(c) of this title.

(4) Time line for compliance with indicators of progress

The Secretary shall require entities described in paragraph (1) to meet the indicators of progress described in paragraph (3). For fiscal year 2002 and each year thereafter, the Secretary shall apply the indicators in monitoring entities described in paragraph (1), with respect to activities conducted after October 1, 2001.

(b) Time line for regulations

Except as otherwise expressly provided in this subchapter, the Secretary, not later than 1 year after October 30, 2000, shall promulgate such regulations as may be required for the implementation of this subchapter.

(c) Interagency committee

(1) In general

The Secretary shall maintain the interagency committee authorized in section 6007 of this title as in effect on the day before October 30, 2000, except as otherwise provided in this subsection.

(2) Composition

The interagency committee shall be composed of representatives of—

(A) the Administration on Developmental Disabilities, the Administration on Children, Youth, and Families, the Administration on Aging, and the Health Resources and Services Administration, of the Department of Health and Human Services; and

(B) such other Federal departments and agencies as the Secretary of Health and Human Services considers to be appropriate.

(3) Duties

Such interagency committee shall meet regularly to coordinate and plan activities conducted by Federal departments and agencies

for individuals with developmental disabilities.

(4) Meetings

Each meeting of the interagency committee (except for any meetings of any subcommittees of the committee) shall be open to the public. Notice of each meeting, and a statement of the agenda for the meeting, shall be published in the Federal Register not later than 14 days before the date on which the meeting is to occur.

(Pub. L. 106-402, title I, §104, Oct. 30, 2000, 114 Stat. 1688.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(1), was in the original "this Act", meaning Pub. L. 106-402, Oct. 30, 2000, 114 Stat. 1677, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 15001 of this title and Tables.

Section 6007 of this title, referred to in subsec. (c)(1), was repealed by Pub. L. 106-402, title IV, §401(a), Oct. 30, 2000, 114 Stat. 1737.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 15024, 15025, 15026, 15064 of this title.

§ 15005. Reports of the Secretary

At least once every 2 years, the Secretary, using information submitted in the reports and information required under parts B, C, D, and E of this subchapter, shall prepare and submit to the President, Congress, and the National Council on Disability, a report that describes the goals and outcomes of programs supported under parts B, C, D, and E of this subchapter. In preparing the report, the Secretary shall provide—

(1) meaningful examples of how the councils, protection and advocacy systems, centers, and entities funded under parts B, C, D, and E of this subchapter, respectively—

(A) have undertaken coordinated activities with each other;

(B) have enhanced the ability of individuals with developmental disabilities and their families to participate in the design of and have access to needed community services, individualized supports, and other forms of assistance that promote self-determination, independence, productivity, and integration and inclusion in all facets of community life;

(C) have brought about advocacy, capacity building, and systemic change activities (including policy reform), and other actions on behalf of individuals with developmental disabilities and their families, including individuals who are traditionally unserved or underserved, particularly individuals who are members of ethnic and racial minority groups and individuals from underserved geographic areas; and

(D) have brought about advocacy, capacity building, and systemic change activities that affect individuals with disabilities other than individuals with developmental disabilities;

(2) information on the extent to which programs authorized under this subchapter have addressed—

(A) protecting individuals with developmental disabilities from abuse, neglect, sexual and financial exploitation, and violations of legal and human rights, so that those individuals are at no greater risk of harm than other persons in the general population; and

(B) reports of deaths of and serious injuries to individuals with developmental disabilities; and

(3) a summary of any incidents of non-compliance of the programs authorized under this subchapter with the provisions of this subchapter, and corrections made or actions taken to obtain compliance.

(Pub. L. 106-402, title I, §105, Oct. 30, 2000, 114 Stat. 1690.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10824, 15004 of this title.

§ 15006. State control of operations

Except as otherwise specifically provided, nothing in this subchapter shall be construed as conferring on any Federal officer or employee the right to exercise any supervision or control over the administration, personnel, maintenance, or operation of any programs, services, and supports for individuals with developmental disabilities with respect to which any funds have been or may be expended under this subchapter.

(Pub. L. 106-402, title I, §106, Oct. 30, 2000, 114 Stat. 1691.)

§ 15007. Employment of individuals with disabilities

As a condition of providing assistance under this subchapter, the Secretary shall require that each recipient of such assistance take affirmative action to employ and advance in employment qualified individuals with disabilities on the same terms and conditions required with respect to the employment of such individuals under the provisions of title V of the Rehabilitation Act of 1973 (29 U.S.C. 791 et seq.) and the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), that govern employment.

(Pub. L. 106-402, title I, §107, Oct. 30, 2000, 114 Stat. 1691.)

REFERENCES IN TEXT

The Rehabilitation Act of 1973, referred to in text, is Pub. L. 93-112, Sept. 26, 1973, 87 Stat. 355, as amended. Title V of the Act is classified generally to subchapter V (§790 et seq.) of chapter 16 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

The Americans with Disabilities Act of 1990, referred to in text, is Pub. L. 101-336, July 26, 1990, 104 Stat. 327, as amended, which is classified principally to chapter 126 (§12101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of this title and Tables.

§ 15008. Construction

Nothing in this subchapter shall be construed to preclude an entity funded under this sub-

chapter from engaging in advocacy, capacity building, and systemic change activities for individuals with developmental disabilities that may also have a positive impact on individuals with other disabilities.

(Pub. L. 106-402, title I, §108, Oct. 30, 2000, 114 Stat. 1692.)

§ 15009. Rights of individuals with developmental disabilities

(a) In general

Congress makes the following findings respecting the rights of individuals with developmental disabilities:

(1) Individuals with developmental disabilities have a right to appropriate treatment, services, and habilitation for such disabilities, consistent with section 15001(c) of this title.

(2) The treatment, services, and habitation¹ for an individual with developmental disabilities should be designed to maximize the potential of the individual and should be provided in the setting that is least restrictive of the individual's personal liberty.

(3) The Federal Government and the States both have an obligation to ensure that public funds are provided only to institutional programs, residential programs, and other community programs, including educational programs in which individuals with developmental disabilities participate, that—

(A) provide treatment, services, and habilitation that are appropriate to the needs of such individuals; and

(B) meet minimum standards relating to—

(i) provision of care that is free of abuse, neglect, sexual and financial exploitation, and violations of legal and human rights and that subjects individuals with developmental disabilities to no greater risk of harm than others in the general population;

(ii) provision to such individuals of appropriate and sufficient medical and dental services;

(iii) prohibition of the use of physical restraint and seclusion for such an individual unless absolutely necessary to ensure the immediate physical safety of the individual or others, and prohibition of the use of such restraint and seclusion as a punishment or as a substitute for a habilitation program;

(iv) prohibition of the excessive use of chemical restraints on such individuals and the use of such restraints as punishment or as a substitute for a habilitation program or in quantities that interfere with services, treatment, or habilitation for such individuals; and

(v) provision for close relatives or guardians of such individuals to visit the individuals without prior notice.

(4) All programs for individuals with developmental disabilities should meet standards—

(A) that are designed to assure the most favorable possible outcome for those served; and

¹ So in original. Probably should be "habilitation".

(B)(i) in the case of residential programs serving individuals in need of comprehensive health-related, habilitative, assistive technology or rehabilitative services, that are at least equivalent to those standards applicable to intermediate care facilities for the mentally retarded, promulgated in regulations of the Secretary on June 3, 1988, as appropriate, taking into account the size of the institutions and the service delivery arrangements of the facilities of the programs;

(ii) in the case of other residential programs for individuals with developmental disabilities, that assure that—

(I) care is appropriate to the needs of the individuals being served by such programs;

(II) the individuals admitted to facilities of such programs are individuals whose needs can be met through services provided by such facilities; and

(III) the facilities of such programs provide for the humane care of the residents of the facilities, are sanitary, and protect their rights; and

(iii) in the case of nonresidential programs, that assure that the care provided by such programs is appropriate to the individuals served by the programs.

(b) Clarification

The rights of individuals with developmental disabilities described in findings made in this section shall be considered to be in addition to any constitutional or other rights otherwise afforded to all individuals.

(Pub. L. 106-402, title I, § 109, Oct. 30, 2000, 114 Stat. 1692.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 15024, 15114 of this title.

PART B—FEDERAL ASSISTANCE TO STATE COUNCILS ON DEVELOPMENTAL DISABILITIES

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 14403, 15004, 15005, 15043, 15081, 15083 of this title.

§ 15021. Purpose

The purpose of this part is to provide for allotments to support State Councils on Developmental Disabilities (referred to individually in this part as a “Council”) in each State to—

(1) engage in advocacy, capacity building, and systemic change activities that are consistent with the purpose described in section 15001(b) of this title and the policy described in section 15001(c) of this title; and

(2) contribute to a coordinated, consumer- and family-centered, consumer- and family-directed, comprehensive system of community services, individualized supports, and other forms of assistance that enable individuals with developmental disabilities to exercise self-determination, be independent, be productive, and be integrated and included in all facets of community life.

(Pub. L. 106-402, title I, § 121, Oct. 30, 2000, 114 Stat. 1693.)

§ 15022. State allotments

(a) Allotments

(1) In general

(A) Authority

For each fiscal year, the Secretary shall, in accordance with regulations and this paragraph, allot the sums appropriated for such year under section 15029 of this title among the States on the basis of—

(i) the population;

(ii) the extent of need for services for individuals with developmental disabilities; and

(iii) the financial need,

of the respective States.

(B) Use of funds

Sums allotted to the States under this section shall be used to pay for the Federal share of the cost of carrying out projects in accordance with State plans approved under section 15024 of this title for the provision under such plans of services for individuals with developmental disabilities.

(2) Adjustments

The Secretary may make adjustments in the amounts of State allotments based on clauses (i), (ii), and (iii) of paragraph (1)(A) not more often than annually. The Secretary shall notify each State of any adjustment made under this paragraph and the percentage of the total sums appropriated under section 15029 of this title that the adjusted allotment represents not later than 6 months before the beginning of the fiscal year in which such adjustment is to take effect.

(3) Minimum allotment for appropriations less than or equal to \$70,000,000

(A) In general

Except as provided in paragraph (4), for any fiscal year the allotment under this section—

(i) to each of American Samoa, Guam, the United States Virgin Islands, or the Commonwealth of the Northern Mariana Islands may not be less than \$210,000; and

(ii) to any State not described in clause (i) may not be less than \$400,000, the amount received by the State for the previous year, or the amount of Federal appropriations received in fiscal year 2000, 2001, or 2002, whichever is greater.

(B) Reduction of allotment

Notwithstanding subparagraph (A), if the aggregate of the amounts to be allotted to the States pursuant to subparagraph (A) for any fiscal year exceeds the total amount appropriated under section 15029 of this title for such fiscal year, the amount to be allotted to each State for such fiscal year shall be proportionately reduced.

(4) Minimum allotment for appropriations in excess of \$70,000,000

(A) In general

In any case in which the total amount appropriated under section 15029 of this title

for a fiscal year is more than \$70,000,000, the allotment under this section for such fiscal year—

(i) to each of American Samoa, Guam, the United States Virgin Islands, or the Commonwealth of the Northern Mariana Islands may not be less than \$220,000; and

(ii) to any State not described in clause (i) may not be less than \$450,000, the amount received by the State for the previous year, or the amount of Federal appropriations received in fiscal year 2000, 2001, or 2002, whichever is greater.

(B) Reduction of allotment

The requirements of paragraph (3)(B) shall apply with respect to amounts to be allotted to States under subparagraph (A), in the same manner and to the same extent as such requirements apply with respect to amounts to be allotted to States under paragraph (3)(A).

(5) State supports, services, and other activities

In determining, for purposes of paragraph (1)(A)(ii), the extent of need in any State for services for individuals with developmental disabilities, the Secretary shall take into account the scope and extent of the services, supports, and assistance described, pursuant to section 15024(c)(3)(A) of this title, in the State plan of the State.

(6) Increase in allotments

In any year in which the total amount appropriated under section 15029 of this title for a fiscal year exceeds the total amount appropriated under such section (or a corresponding provision) for the preceding fiscal year by a percentage greater than the most recent percentage change in the Consumer Price Index published by the Secretary of Labor under section 720(c)(1) of title 29 (if the percentage change indicates an increase), the Secretary shall increase each of the minimum allotments described in paragraphs (3) and (4). The Secretary shall increase each minimum allotment by an amount that bears the same ratio to the amount of such minimum allotment (including any increases in such minimum allotment under this paragraph (or a corresponding provision) for prior fiscal years) as the amount that is equal to the difference between—

(A) the total amount appropriated under section 15029 of this title for the fiscal year for which the increase in the minimum allotment is being made; minus

(B) the total amount appropriated under section 15029 of this title (or a corresponding provision) for the immediately preceding fiscal year,

bears to the total amount appropriated under section 15029 of this title (or a corresponding provision) for such preceding fiscal year.

(b) Unobligated funds

Any amount paid to a State for a fiscal year and remaining unobligated at the end of such year shall remain available to such State for the next fiscal year for the purposes for which such amount was paid.

(c) Obligation of funds

For the purposes of this part, State Inter-agency Agreements are considered valid obligations for the purpose of obligating Federal funds allotted to the State under this part.

(d) Cooperative efforts between States

If a State plan approved in accordance with section 15024 of this title provides for cooperative or joint effort between or among States or agencies, public or private, in more than 1 State, portions of funds allotted to 1 or more States described in this subsection may be combined in accordance with the agreements between the States or agencies involved.

(e) Reallotments

(1) In general

If the Secretary determines that an amount of an allotment to a State for a period (of a fiscal year or longer) will not be required by the State during the period for the purpose for which the allotment was made, the Secretary may reallocate the amount.

(2) Timing

The Secretary may make such a reallocation from time to time, on such date as the Secretary may fix, but not earlier than 30 days after the Secretary has published notice of the intention of the Secretary to make the reallocation in the Federal Register.

(3) Amounts

The Secretary shall reallocate the amount to other States with respect to which the Secretary has not made that determination. The Secretary shall reallocate the amount in proportion to the original allotments of the other States for such fiscal year, but shall reduce such proportionate amount for any of the other States to the extent the proportionate amount exceeds the sum that the Secretary estimates the State needs and will be able to use during such period.

(4) Reallocation of reductions

The Secretary shall similarly reallocate the total of the reductions among the States whose proportionate amounts were not so reduced.

(5) Treatment

Any amount reallocated to a State under this subsection for a fiscal year shall be deemed to be a part of the allotment of the State under subsection (a) of this section for such fiscal year.

(Pub. L. 106-402, title I, §122, Oct. 30, 2000, 114 Stat. 1693; Pub. L. 108-154, §3(a), Dec. 3, 2003, 117 Stat. 1934.)

AMENDMENTS

2003—Subsec. (a)(3)(A)(ii), (4)(A)(ii). Pub. L. 108-154 inserted before period at end “, the amount received by the State for the previous year, or the amount of Federal appropriations received in fiscal year 2000, 2001, or 2002, whichever is greater”.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108-154, §3(b), Dec. 3, 2003, 117 Stat. 1934, provided that: “The amendments made by subsection (a) [amending this section] shall take effect on October 1,

2003 and apply to allotments beginning in fiscal year 2004.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 15023, 15024, 15026, 15027, 15029, 15042 of this title.

§ 15023. Payments to the States for planning, administration, and services

(a) State plan expenditures

From each State’s allotments for a fiscal year under section 15022 of this title, the Secretary shall pay to the State the Federal share of the cost, other than the cost for construction, incurred during such year for activities carried out under the State plan approved under section 15024 of this title. The Secretary shall make such payments from time to time in advance on the basis of estimates by the Secretary of the sums the State will expend for the cost under the State plan. The Secretary shall make such adjustments as may be necessary to the payments on account of previously made underpayments or overpayments under this section.

(b) Designated State agency expenditures

The Secretary may make payments to a State for the portion described in section 15024(c)(5)(B)(vi) of this title in advance or by way of reimbursement, and in such installments as the Secretary may determine.

(Pub. L. 106-402, title I, §123, Oct. 30, 2000, 114 Stat. 1696.)

§ 15024. State plan

(a) In general

Any State desiring to receive assistance under this part shall submit to the Secretary, and obtain approval of, a 5-year strategic State plan under this section.

(b) Planning cycle

The plan described in subsection (a) of this section shall be updated as appropriate during the 5-year period.

(c) State plan requirements

In order to be approved by the Secretary under this section, a State plan shall meet each of the following requirements:

(1) State Council

The plan shall provide for the establishment and maintenance of a Council in accordance with section 15025 of this title and describe the membership of such Council.

(2) Designated State agency

The plan shall identify the agency or office within the State designated to support the Council in accordance with this section and section 15025(d) of this title (referred to in this part as a “designated State agency”).

(3) Comprehensive review and analysis

The plan shall describe the results of a comprehensive review and analysis of the extent to which services, supports, and other assistance are available to individuals with developmental disabilities and their families, and the extent of unmet needs for services, supports, and other assistance for those individuals and

their families, in the State. The results of the comprehensive review and analysis shall include—

(A) a description of the services, supports, and other assistance being provided to individuals with developmental disabilities and their families under other federally assisted State programs, plans, and policies under which the State operates and in which individuals with developmental disabilities are or may be eligible to participate, including particularly programs relating to the areas of emphasis, including—

(i) medical assistance, maternal and child health care, services for children with special health care needs, children’s mental health services, comprehensive health and mental health services, and institutional care options;

(ii) job training, job placement, worksite accommodation, and vocational rehabilitation, and other work assistance programs; and

(iii) social, child welfare, aging, independent living, and rehabilitation and assistive technology services, and such other services as the Secretary may specify;

(B) a description of the extent to which agencies operating such other federally assisted State programs, including activities authorized under section 3011 or 3012 of title 29, pursue interagency initiatives to improve and enhance community services, individualized supports, and other forms of assistance for individuals with developmental disabilities;

(C) an analysis of the extent to which community services and opportunities related to the areas of emphasis directly benefit individuals with developmental disabilities, especially with regard to their ability to access and use services provided in their communities, to participate in opportunities, activities, and events offered in their communities, and to contribute to community life, identifying particularly—

(i) the degree of support for individuals with developmental disabilities that are attributable to either physical impairment, mental impairment, or a combination of physical and mental impairments;

(ii) criteria for eligibility for services, including specialized services and special adaptation of generic services provided by agencies within the State, that may exclude individuals with developmental disabilities from receiving services described in this clause;

(iii) the barriers that impede full participation of members of unserved and underserved groups of individuals with developmental disabilities and their families;

(iv) the availability of assistive technology, assistive technology services, or rehabilitation technology, or information about assistive technology, assistive technology services, or rehabilitation technology to individuals with developmental disabilities;

(v) the numbers of individuals with developmental disabilities on waiting lists

for services described in this subparagraph;

(vi) a description of the adequacy of current resources and projected availability of future resources to fund services described in this subparagraph;

(vii) a description of the adequacy of health care and other services, supports, and assistance that individuals with developmental disabilities who are in facilities receive (based in part on each independent review pursuant to section 1396a(a)(3)(C) of this title) of an Intermediate Care Facility (Mental Retardation) within the State, which the State shall provide to the Council not later than 30 days after the availability of the review); and

(viii) to the extent that information is available, a description of the adequacy of health care and other services, supports, and assistance that individuals with developmental disabilities who are served through home and community-based waivers (authorized under section 1396n(c) of this title) receive;

(D) a description of how entities funded under parts C and D of this subchapter, through interagency agreements or other mechanisms, collaborated with the entity funded under this part in the State, each other, and other entities to contribute to the achievement of the purpose of this part; and

(E) the rationale for the goals related to advocacy, capacity building, and systemic change to be undertaken by the Council to contribute to the achievement of the purpose of this part.

(4) Plan goals

The plan shall focus on Council efforts to bring about the purpose of this part, by—

(A) specifying 5-year goals, as developed through data driven strategic planning, for advocacy, capacity building, and systemic change related to the areas of emphasis, to be undertaken by the Council, that—

(i) are derived from the unmet needs of individuals with developmental disabilities and their families identified under paragraph (3); and

(ii) include a goal, for each year of the grant, to—

(I) establish or strengthen a program for the direct funding of a State self-advocacy organization led by individuals with developmental disabilities;

(II) support opportunities for individuals with developmental disabilities who are considered leaders to provide leadership training to individuals with developmental disabilities who may become leaders; and

(III) support and expand participation of individuals with developmental disabilities in cross-disability and culturally diverse leadership coalitions; and

(B) for each year of the grant, describing—

(i) the goals to be achieved through the grant, which, beginning in fiscal year 2002, shall be consistent with applicable indica-

tors of progress described in section 15004(a)(3) of this title;

(ii) the strategies to be used in achieving each goal; and

(iii) the method to be used to determine if each goal has been achieved.

(5) Assurances

(A) In general

The plan shall contain or be supported by assurances and information described in subparagraphs (B) through (N) that are satisfactory to the Secretary.

(B) Use of funds

With respect to the funds paid to the State under section 15022 of this title, the plan shall provide assurances that—

(i) not less than 70 percent of such funds will be expended for activities related to the goals described in paragraph (4);

(ii) such funds will contribute to the achievement of the purpose of this part in various political subdivisions of the State;

(iii) such funds will be used to supplement, and not supplant, the non-Federal funds that would otherwise be made available for the purposes for which the funds paid under section 15022 of this title are provided;

(iv) such funds will be used to complement and augment rather than duplicate or replace services for individuals with developmental disabilities and their families who are eligible for Federal assistance under other State programs;

(v) part of such funds will be made available by the State to public or private entities;

(vi) at the request of any State, a portion of such funds provided to such State under this part for any fiscal year shall be available to pay up to ½ (or the entire amount if the Council is the designated State agency) of the expenditures found to be necessary by the Secretary for the proper and efficient exercise of the functions of the designated State agency, except that not more than 5 percent of such funds provided to such State for any fiscal year, or \$50,000, whichever is less, shall be made available for total expenditures for such purpose by the designated State agency; and

(vii) not more than 20 percent of such funds will be allocated to the designated State agency for service demonstrations by such agency that—

(I) contribute to the achievement of the purpose of this part; and

(II) are explicitly authorized by the Council.

(C) State financial participation

The plan shall provide assurances that there will be reasonable State financial participation in the cost of carrying out the plan.

(D) Conflict of interest

The plan shall provide an assurance that no member of such Council will cast a vote

on any matter that would provide direct financial benefit to the member or otherwise give the appearance of a conflict of interest.

(E) Urban and rural poverty areas

The plan shall provide assurances that special financial and technical assistance will be given to organizations that provide community services, individualized supports, and other forms of assistance to individuals with developmental disabilities who live in areas designated as urban or rural poverty areas.

(F) Program accessibility standards

The plan shall provide assurances that programs, projects, and activities funded under the plan, and the buildings in which such programs, projects, and activities are operated, will meet standards prescribed by the Secretary in regulations and all applicable Federal and State accessibility standards, including accessibility requirements of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), section 794d of title 29, and the Fair Housing Act (42 U.S.C. 3601 et seq.).

(G) Individualized services

The plan shall provide assurances that any direct services provided to individuals with developmental disabilities and funded under the plan will be provided in an individualized manner, consistent with the unique strengths, resources, priorities, concerns, abilities, and capabilities of such individual.

(H) Human rights

The plan shall provide assurances that the human rights of the individuals with developmental disabilities (especially individuals without familial protection) who are receiving services under programs assisted under this part will be protected consistent with section 15009 of this title (relating to rights of individuals with developmental disabilities).

(I) Minority participation

The plan shall provide assurances that the State has taken affirmative steps to assure that participation in programs funded under this part is geographically representative of the State, and reflects the diversity of the State with respect to race and ethnicity.

(J) Employee protections

The plan shall provide assurances that fair and equitable arrangements (as determined by the Secretary after consultation with the Secretary of Labor) will be provided to protect the interests of employees affected by actions taken under the plan to provide community living activities, including arrangements designed to preserve employee rights and benefits and provide training and retraining of such employees where necessary, and arrangements under which maximum efforts will be made to guarantee the employment of such employees.

(K) Staff assignments

The plan shall provide assurances that the staff and other personnel of the Council,

while working for the Council, will be responsible solely for assisting the Council in carrying out the duties of the Council under this part and will not be assigned duties by the designated State agency, or any other agency, office, or entity of the State.

(L) Noninterference

The plan shall provide assurances that the designated State agency, and any other agency, office, or entity of the State, will not interfere with the advocacy, capacity building, and systemic change activities, budget, personnel, State plan development, or plan implementation of the Council, except that the designated State agency shall have the authority necessary to carry out the responsibilities described in section 15025(d)(3) of this title.

(M) State quality assurance

The plan shall provide assurances that the Council will participate in the planning, design or redesign, and monitoring of State quality assurance systems that affect individuals with developmental disabilities.

(N) Other assurances

The plan shall contain such additional information and assurances as the Secretary may find necessary to carry out the provisions (including the purpose) of this part.

(d) Public input and review, submission, and approval

(1) Public input and review

The plan shall be based on public input. The Council shall make the plan available for public review and comment, after providing appropriate and sufficient notice in accessible formats of the opportunity for such review and comment. The Council shall revise the plan to take into account and respond to significant comments.

(2) Consultation with the designated State agency

Before the plan is submitted to the Secretary, the Council shall consult with the designated State agency to ensure that the State plan is consistent with State law and to obtain appropriate State plan assurances.

(3) Plan approval

The Secretary shall approve any State plan and, as appropriate, amendments of such plan that comply with the provisions of subsections (a), (b), and (c) of this section and this subsection. The Secretary may take final action to disapprove a State plan after providing reasonable notice and an opportunity for a hearing to the State.

(Pub. L. 106-402, title I, §124, Oct. 30, 2000, 114 Stat. 1696.)

REFERENCES IN TEXT

The Americans with Disabilities Act of 1990, referred to in subsec. (c)(5)(F), is Pub. L. 101-336, July 26, 1990, 104 Stat. 327, as amended, which is classified principally to chapter 126 (§12101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of this title and Tables.

The Fair Housing Act, referred to in subsec. (c)(5)(F), is title VIII of Pub. L. 90-284, Apr. 11, 1968, 82 Stat. 81,

as amended, which is classified principally to subchapter I (§3601 et seq.) of chapter 45 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 15022, 15023, 15025, 15026, 15027, 15028, 15044, 15064 of this title.

§ 15025. State Councils on Developmental Disabilities and designated State agencies

(a) In general

Each State that receives assistance under this part shall establish and maintain a Council to undertake advocacy, capacity building, and systemic change activities (consistent with subsections (b) and (c) of section 15001 of this title) that contribute to a coordinated, consumer- and family-centered, consumer- and family-directed, comprehensive system of community services, individualized supports, and other forms of assistance that contribute to the achievement of the purpose of this part. The Council shall have the authority to fulfill the responsibilities described in subsection (c) of this section.

(b) Council membership

(1) Council appointments

(A) In general

The members of the Council of a State shall be appointed by the Governor of the State from among the residents of that State.

(B) Recommendations

The Governor shall select members of the Council, at the discretion of the Governor, after soliciting recommendations from organizations representing a broad range of individuals with developmental disabilities and individuals interested in individuals with developmental disabilities, including the non-State agency members of the Council. The Council may, at the initiative of the Council, or on the request of the Governor, coordinate Council and public input to the Governor regarding all recommendations.

(C) Representation

The membership of the Council shall be geographically representative of the State and reflect the diversity of the State with respect to race and ethnicity.

(2) Membership rotation

The Governor shall make appropriate provisions to rotate the membership of the Council. Such provisions shall allow members to continue to serve on the Council until such members' successors are appointed. The Council shall notify the Governor regarding membership requirements of the Council, and shall notify the Governor when vacancies on the Council remain unfilled for a significant period of time.

(3) Representation of individuals with developmental disabilities

Not less than 60 percent of the membership of each Council shall consist of individuals who are—

(A)(i) individuals with developmental disabilities;

(ii) parents or guardians of children with developmental disabilities; or

(iii) immediate relatives or guardians of adults with mentally impairing developmental disabilities who cannot advocate for themselves; and

(B) not employees of a State agency that receives funds or provides services under this part, and who are not managing employees (as defined in section 1126(b) of the Social Security Act (42 U.S.C. 1320a-5(b)) of any other entity that receives funds or provides services under this part.

(4) Representation of agencies and organizations

(A) In general

Each Council shall include—

(i) representatives of relevant State entities, including—

(I) State entities that administer funds provided under Federal laws related to individuals with disabilities, including the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.), the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.), the Older Americans Act of 1965 (42 U.S.C. 3001 et seq.), and titles V and XIX of the Social Security Act (42 U.S.C. 701 et seq. and 1396 et seq.);

(II) Centers in the State; and

(III) the State protection and advocacy system; and

(ii) representatives, at all times, of local and nongovernmental agencies, and private nonprofit groups concerned with services for individuals with developmental disabilities in the State in which such agencies and groups are located.

(B) Authority and limitations

The representatives described in subparagraph (A) shall—

(i) have sufficient authority to engage in policy planning and implementation on behalf of the department, agency, or program such representatives represent; and

(ii) recuse themselves from any discussion of grants or contracts for which such representatives' departments, agencies, or programs are grantees, contractors, or applicants and comply with the conflict of interest assurance requirement under section 15024(c)(5)(D) of this title.

(5) Composition of membership with developmental disabilities

Of the members of the Council described in paragraph (3)—

(A) $\frac{1}{3}$ shall be individuals with developmental disabilities described in paragraph (3)(A)(i);

(B) $\frac{1}{3}$ shall be parents or guardians of children with developmental disabilities described in paragraph (3)(A)(ii), or immediate relatives or guardians of adults with developmental disabilities described in paragraph (3)(A)(iii); and

(C) $\frac{1}{3}$ shall be a combination of individuals described in paragraph (3)(A).

(6) Institutionalized individuals**(A) In general**

Of the members of the Council described in paragraph (5), at least 1 shall be an immediate relative or guardian of an individual with a developmental disability who resides or previously resided in an institution or shall be an individual with a developmental disability who resides or previously resided in an institution.

(B) Limitation

Subparagraph (A) shall not apply with respect to a State if such an individual does not reside in that State.

(c) Council responsibilities**(1) In general**

A Council, through Council members, staff, consultants, contractors, or subgrantees, shall have the responsibilities described in paragraphs (2) through (10).

(2) Advocacy, capacity building, and systemic change activities

The Council shall serve as an advocate for individuals with developmental disabilities and conduct or support programs, projects, and activities that carry out the purpose of this part.

(3) Examination of goals

At the end of each grant year, each Council shall—

(A) determine the extent to which each goal of the Council was achieved for that year;

(B) determine to the extent that each goal was not achieved, the factors that impeded the achievement;

(C) determine needs that require amendment of the 5-year strategic State plan required under section 15024 of this title;

(D) separately determine the information on the self-advocacy goal described in section 15024(c)(4)(A)(ii) of this title; and

(E) determine customer satisfaction with Council supported or conducted activities.

(4) State plan development

The Council shall develop the State plan and submit the State plan to the Secretary after consultation with the designated State agency under the State plan. Such consultation shall be solely for the purposes of obtaining State assurances and ensuring consistency of the plan with State law.

(5) State plan implementation**(A) In general**

The Council shall implement the State plan by conducting and supporting advocacy, capacity building, and systemic change activities such as those described in subparagraphs (B) through (L).

(B) Outreach

The Council may support and conduct outreach activities to identify individuals with developmental disabilities and their families who otherwise might not come to the attention of the Council and assist and enable the

individuals and families to obtain services, individualized supports, and other forms of assistance, including access to special adaptation of generic community services or specialized services.

(C) Training

The Council may support and conduct training for persons who are individuals with developmental disabilities, their families, and personnel (including professionals, paraprofessionals, students, volunteers, and other community members) to enable such persons to obtain access to, or to provide, community services, individualized supports, and other forms of assistance, including special adaptation of generic community services or specialized services for individuals with developmental disabilities and their families. To the extent that the Council supports or conducts training activities under this subparagraph, such activities shall contribute to the achievement of the purpose of this part.

(D) Technical assistance

The Council may support and conduct technical assistance activities to assist public and private entities to contribute to the achievement of the purpose of this part.

(E) Supporting and educating communities

The Council may support and conduct activities to assist neighborhoods and communities to respond positively to individuals with developmental disabilities and their families—

(i) by encouraging local networks to provide informal and formal supports;

(ii) through education; and

(iii) by enabling neighborhoods and communities to offer such individuals and their families access to and use of services, resources, and opportunities.

(F) Interagency collaboration and coordination

The Council may support and conduct activities to promote interagency collaboration and coordination to better serve, support, assist, or advocate for individuals with developmental disabilities and their families.

(G) Coordination with related councils, committees, and programs

The Council may support and conduct activities to enhance coordination of services with—

(i) other councils, entities, or committees, authorized by Federal or State law, concerning individuals with disabilities (such as the State interagency coordinating council established under subtitle C¹ of the Individuals with Disabilities Education Act (20 U.S.C. 1431 et seq.), the State Rehabilitation Council and the Statewide Independent Living Council established under the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.), the State mental health planning council established

¹ See References in Text note below.

under subtitle B¹ of title XIX of the Public Health Service Act [42 U.S.C. 300x et seq.], and the activities authorized under section 3011 or 3012 of title 29, and entities carrying out other similar councils, entities, or committees);

(ii) parent training and information centers under part D of the Individuals with Disabilities Education Act (20 U.S.C. 1451 et seq.) and other entities carrying out federally funded projects that assist parents of children with disabilities; and

(iii) other groups interested in advocacy, capacity building, and systemic change activities to benefit individuals with disabilities.

(H) Barrier elimination, systems design and redesign

The Council may support and conduct activities to eliminate barriers to access and use of community services by individuals with developmental disabilities, enhance systems design and redesign, and enhance citizen participation to address issues identified in the State plan.

(I) Coalition development and citizen participation

The Council may support and conduct activities to educate the public about the capabilities, preferences, and needs of individuals with developmental disabilities and their families and to develop and support coalitions that support the policy agenda of the Council, including training in self-advocacy, education of policymakers, and citizen leadership skills.

(J) Informing policymakers

The Council may support and conduct activities to provide information to policymakers by supporting and conducting studies and analyses, gathering information, and developing and disseminating model policies and procedures, information, approaches, strategies, findings, conclusions, and recommendations. The Council may provide the information directly to Federal, State, and local policymakers, including Congress, the Federal executive branch, the Governors, State legislatures, and State agencies, in order to increase the ability of such policymakers to offer opportunities and to enhance or adapt generic services to meet the needs of, or provide specialized services to, individuals with developmental disabilities and their families.

(K) Demonstration of new approaches to services and supports

(i) In general

The Council may support and conduct, on a time-limited basis, activities to demonstrate new approaches to serving individuals with developmental disabilities that are a part of an overall strategy for systemic change. The strategy may involve the education of policymakers and the public about how to deliver effectively, to individuals with developmental disabilities and their families, services, supports,

and assistance that contribute to the achievement of the purpose of this part.

(ii) Sources of funding

The Council may carry out this subparagraph by supporting and conducting demonstration activities through sources of funding other than funding provided under this part, and by assisting entities conducting demonstration activities to develop strategies for securing funding from other sources.

(L) Other activities

The Council may support and conduct other advocacy, capacity building, and systemic change activities to promote the development of a coordinated, consumer- and family-centered, consumer- and family-directed, comprehensive system of community services, individualized supports, and other forms of assistance that contribute to the achievement of the purpose of this part.

(6) Review of designated State agency

The Council shall periodically review the designated State agency and activities carried out under this part by the designated State agency and make any recommendations for change to the Governor.

(7) Reports

Beginning in fiscal year 2002, the Council shall annually prepare and transmit to the Secretary a report. Each report shall be in a form prescribed by the Secretary by regulation under section 15004(b) of this title. Each report shall contain information about the progress made by the Council in achieving the goals of the Council (as specified in section 15024(c)(4) of this title), including—

(A) a description of the extent to which the goals were achieved;

(B) a description of the strategies that contributed to achieving the goals;

(C) to the extent to which the goals were not achieved, a description of factors that impeded the achievement;

(D) separate information on the self-advocacy goal described in section 15024(c)(4)(A)(ii) of this title;

(E)(i) as appropriate, an update on the results of the comprehensive review and analysis described in section 15024(c)(3) of this title; and

(ii) information on consumer satisfaction with Council supported or conducted activities;

(F)(i) a description of the adequacy of health care and other services, supports, and assistance that individuals with developmental disabilities in Intermediate Care Facilities (Mental Retardation) receive; and

(ii) a description of the adequacy of health care and other services, supports, and assistance that individuals with developmental disabilities served through home and community-based waivers (authorized under section 1915(c) of the Social Security Act (42 U.S.C. 1396n(c)) receive;

(G) an accounting of the manner in which funds paid to the State under this part for a fiscal year were expended;

(H) a description of—

(i) resources made available to carry out activities to assist individuals with developmental disabilities that are directly attributable to Council actions; and

(ii) resources made available for such activities that are undertaken by the Council in collaboration with other entities; and

(I) a description of the method by which the Council will widely disseminate the annual report to affected constituencies and the general public and will assure that the report is available in accessible formats.

(8) Budget

Each Council shall prepare, approve, and implement a budget using amounts paid to the State under this part to fund and implement all programs, projects, and activities carried out under this part, including—

(A)(i) conducting such hearings and forums as the Council may determine to be necessary to carry out the duties of the Council; and

(ii) as determined in Council policy—

(I) reimbursing members of the Council for reasonable and necessary expenses (including expenses for child care and personal assistance services) for attending Council meetings and performing Council duties;

(II) paying a stipend to a member of the Council, if such member is not employed or must forfeit wages from other employment, to attend Council meetings and perform other Council duties;

(III) supporting Council member and staff travel to authorized training and technical assistance activities including in-service training and leadership development activities; and

(IV) carrying out appropriate subcontracting activities;

(B) hiring and maintaining such numbers and types of staff (qualified by training and experience) and obtaining the services of such professional, consulting, technical, and clerical staff (qualified by training and experience), consistent with State law, as the Council determines to be necessary to carry out the functions of the Council under this part, except that such State shall not apply hiring freezes, reductions in force, prohibitions on travel, or other policies to the staff of the Council, to the extent that such policies would impact the staff or functions funded with Federal funds, or would prevent the Council from carrying out the functions of the Council under this part; and

(C) directing the expenditure of funds for grants, contracts, interagency agreements that are binding contracts, and other activities authorized by the State plan approved under section 15024 of this title.

(9) Staff hiring and supervision

The Council shall, consistent with State law, recruit and hire a Director of the Council, should the position of Director become vacant, and supervise and annually evaluate the Di-

rector. The Director shall hire, supervise, and annually evaluate the staff of the Council. Council recruitment, hiring, and dismissal of staff shall be conducted in a manner consistent with Federal and State nondiscrimination laws. Dismissal of personnel shall be conducted in a manner consistent with State law and personnel policies.

(10) Staff assignments

The staff of the Council, while working for the Council, shall be responsible solely for assisting the Council in carrying out the duties of the Council under this part and shall not be assigned duties by the designated State agency or any other agency or entity of the State.

(11) Construction

Nothing in this subchapter shall be construed to authorize a Council to direct, control, or exercise any policymaking authority or administrative authority over any program assisted under the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.) or the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.).

(d) Designated State agency

(1) In general

Each State that receives assistance under this part shall designate a State agency that shall, on behalf of the State, provide support to the Council. After April 6, 1994, any designation of a State agency under this paragraph shall be made in accordance with the requirements of this subsection.

(2) Designation

(A) Type of agency

Except as provided in this subsection, the designated State agency shall be—

(i) the Council if such Council may be the designated State agency under the laws of the State;

(ii) a State agency that does not provide or pay for services for individuals with developmental disabilities; or

(iii) a State office, including the immediate office of the Governor of the State or a State planning office.

(B) Conditions for continuation of State service agency designation

(i) Designation before April 6, 1994

If a State agency that provides or pays for services for individuals with developmental disabilities was a designated State agency for purposes of part B of the Developmental Disabilities Assistance and Bill of Rights Act on April 6, 1994, and the Governor of the State (or the legislature, where appropriate and in accordance with State law) determines prior to June 30, 1994, not to change the designation of such agency, such agency may continue to be a designated State agency for purposes of this part.

(ii) Criteria for continued designation

The determination, at the discretion of the Governor (or the legislature, as the case may be), shall be made after—

(I) the Governor has considered the comments and recommendations of the general public and a majority of the non-State agency members of the Council with respect to the designation of such State agency; and

(II) the Governor (or the legislature, as the case may be) has made an independent assessment that the designation of such agency will not interfere with the budget, personnel, priorities, or other action of the Council, and the ability of the Council to serve as an independent advocate for individuals with developmental disabilities.

(C) Review of designation

The Council may request a review of and change in the designation of the designated State agency by the Governor (or the legislature, as the case may be). The Council shall provide documentation concerning the reason the Council desires a change to be made and make a recommendation to the Governor (or the legislature, as the case may be) regarding a preferred designated State agency.

(D) Appeal of designation

After the review is completed under subparagraph (C), a majority of the non-State agency members of the Council may appeal to the Secretary for a review of and change in the designation of the designated State agency if the ability of the Council to serve as an independent advocate is not assured because of the actions or inactions of the designated State agency.

(3) Responsibilities

(A) In general

The designated State agency shall, on behalf of the State, have the responsibilities described in subparagraphs (B) through (G).

(B) Support services

The designated State agency shall provide required assurances and support services as requested by and negotiated with the Council.

(C) Fiscal responsibilities

The designated State agency shall—

(i) receive, account for, and disburse funds under this part based on the State plan required in section 15024 of this title; and

(ii) provide for such fiscal control and fund accounting procedures as may be necessary to assure the proper disbursement of, and accounting for, funds paid to the State under this part.

(D) Records, access, and financial reports

The designated State agency shall keep and provide access to such records as the Secretary and the Council may determine to be necessary. The designated State agency, if other than the Council, shall provide timely financial reports at the request of the Council regarding the status of expenditures, obligations, and liquidation by the agency or the Council, and the use of the

Federal and non-Federal shares described in section 15026 of this title, by the agency or the Council.

(E) Non-Federal share

The designated State agency, if other than the Council, shall provide the required non-Federal share described in section 15026(c) of this title.

(F) Assurances

The designated State agency shall assist the Council in obtaining the appropriate State plan assurances and in ensuring that the plan is consistent with State law.

(G) Memorandum of understanding

On the request of the Council, the designated State agency shall enter into a memorandum of understanding with the Council delineating the roles and responsibilities of the designated State agency.

(4) Use of funds for designated State agency responsibilities

(A) Condition for Federal funding

(i) In general

The Secretary shall provide amounts to a State under section 15024(c)(5)(B)(vi) of this title for a fiscal year only if the State expends an amount from State sources for carrying out the responsibilities of the designated State agency under paragraph (3) for the fiscal year that is not less than the total amount the State expended from such sources for carrying out similar responsibilities for the previous fiscal year.

(ii) Exception

Clause (i) shall not apply in a year in which the Council is the designated State agency.

(B) Support services provided by other agencies

With the agreement of the designated State agency, the Council may use or contract with agencies other than the designated State agency to perform the functions of the designated State agency.

(Pub. L. 106-402, title I, §125, Oct. 30, 2000, 114 Stat. 1701.)

REFERENCES IN TEXT

The Rehabilitation Act of 1973, referred to in subsecs. (b)(4)(A)(i)(I) and (c)(5)(G)(i), (11), is Pub. L. 93-112, Sept. 26, 1973, 87 Stat. 355, as amended, which is classified generally to chapter 16 (§701 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

The Individuals with Disabilities Education Act, referred to in subsecs. (b)(4)(A)(i)(I) and (c)(5)(G)(i), (ii), (11), is title VI of Pub. L. 91-230, Apr. 13, 1970, 84 Stat. 175, as amended, which is classified generally to chapter 33 (§1400 et seq.) of Title 20, Education. The reference to subtitle C of the Act probably means part C of the Act which is classified generally to subchapter III (§1431 et seq.) of chapter 33 of Title 20. Part D of the Act is classified generally to subchapter IV (§1451 et seq.) of chapter 33 of Title 20. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

The Older Americans Act of 1965, referred to in subsec. (b)(4)(A)(i)(I), is Pub. L. 89-73, July 14, 1965, 79 Stat.

218, as amended, which is classified generally to chapter 35 (§3001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

The Social Security Act, referred to in subsec. (b)(4)(A)(i)(I), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles V and XIX of the Act are classified generally to subchapters V (§701 et seq.) and XIX (§1396 et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Public Health Service Act, referred to in subsec. (c)(5)(G)(i), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended. The reference to subtitle B of title XIX of the Act probably means part B of title XIX of the Act which is classified generally to part B (§300x et seq.) of subchapter XVII of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

The Developmental Disabilities Assistance and Bill of Rights Act, referred to in subsec. (d)(2)(B)(i), is title I of Pub. L. 88-164, as added by Pub. L. 98-527, §2, Oct. 19, 1984, 98 Stat. 2662, as amended, which was repealed by Pub. L. 106-402, title IV, §401(a), Oct. 30, 2000, 114 Stat. 1737. Part B of the Act was classified generally to subchapter II (§6021 et seq.) of chapter 75 of this title. For complete classification of this Act to the Code, see Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1396u, 15002, 15024, 15026, 15027 of this title; title 29 section 725.

§ 15026. Federal and non-Federal share

(a) Aggregate cost

(1) In general

Except as provided in paragraphs (2) and (3), the Federal share of the cost of all projects in a State supported by an allotment to the State under this part may not be more than 75 percent of the aggregate necessary cost of such projects, as determined by the Secretary.

(2) Urban or rural poverty areas

In the case of projects whose activities or products target individuals with developmental disabilities who live in urban or rural poverty areas, as determined by the Secretary, the Federal share of the cost of all such projects may not be more than 90 percent of the aggregate necessary cost of such projects, as determined by the Secretary.

(3) State plan activities

In the case of projects undertaken by the Council or Council staff to implement State plan activities, the Federal share of the cost of all such projects may be not more than 100 percent of the aggregate necessary cost of such activities.

(b) Nonduplication

In determining the amount of any State's Federal share of the cost of such projects incurred by such State under a State plan approved under section 15024 of this title, the Secretary shall not consider—

(1) any portion of such cost that is financed by Federal funds provided under any provision of law other than section 15022 of this title; and

(2) the amount of any non-Federal funds required to be expended as a condition of receipt

of the Federal funds described in paragraph (1).

(c) Non-Federal share

(1) In-kind contributions

The non-Federal share of the cost of any project supported by an allotment under this part may be provided in cash or in kind, fairly evaluated, including plant, equipment, or services.

(2) Contributions of political subdivisions and public or private entities

(A) In general

Contributions to projects by a political subdivision of a State or by a public or private entity under an agreement with the State shall, subject to such limitations and conditions as the Secretary may by regulation prescribe under section 15004(b) of this title, be considered to be contributions by such State, in the case of a project supported under this part.

(B) State contributions

State contributions, including contributions by the designated State agency to provide support services to the Council pursuant to section 15025(d)(4) of this title, may be counted as part of such State's non-Federal share of the cost of projects supported under this part.

(3) Variations of the non-Federal share

The non-Federal share required of each recipient of a grant from a Council under this part may vary.

(Pub. L. 106-402, title I, §126, Oct. 30, 2000, 114 Stat. 1710.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 15025 of this title.

§ 15027. Withholding of payments for planning, administration, and services

Whenever the Secretary, after providing reasonable notice and an opportunity for a hearing to the Council and the designated State agency, finds that—

(1) the Council or agency has failed to comply substantially with any of the provisions required by section 15024 of this title to be included in the State plan, particularly provisions required by paragraphs (4)(A) and (5)(B)(vii) of section 15024(c) of this title, or with any of the provisions required by section 15025(b)(3) of this title; or

(2) the Council or agency has failed to comply substantially with any regulations of the Secretary that are applicable to this part,

the Secretary shall notify such Council and agency that the Secretary will not make further payments to the State under section 15022 of this title (or, in the discretion of the Secretary, that further payments to the State under section 15022 of this title for activities for which there is such failure), until the Secretary is satisfied that there will no longer be such failure. Until the Secretary is so satisfied, the Secretary shall make no further payments to the State

under section 15022 of this title, or shall limit further payments under section 15022 of this title to such State to activities for which there is no such failure.

(Pub. L. 106-402, title I, §127, Oct. 30, 2000, 114 Stat. 1711.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 15028 of this title.

§ 15028. Appeals by States

(a) Appeal

If any State is dissatisfied with the Secretary's action under section 15024(d)(3) or 15027 of this title, such State may appeal to the United States court of appeals for the circuit in which such State is located, by filing a petition with such court not later than 60 days after such action.

(b) Filing

The clerk of the court shall transmit promptly a copy of the petition to the Secretary, or any officer designated by the Secretary for that purpose. The Secretary shall file promptly with the court the record of the proceedings on which the Secretary based the action, as provided in section 2112 of title 28.

(c) Jurisdiction

Upon the filing of the petition, the court shall have jurisdiction to affirm the action of the Secretary or to set the action aside, in whole or in part, temporarily or permanently. Until the filing of the record, the Secretary may modify or set aside the order of the Secretary relating to the action.

(d) Findings and remand

The findings of the Secretary about the facts, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may remand the case involved to the Secretary for further proceedings to take further evidence. On remand, the Secretary may make new or modified findings of fact and may modify the previous action of the Secretary, and shall file with the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(e) Finality

The judgment of the court affirming or setting aside, in whole or in part, any action of the Secretary shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(f) Effect

The commencement of proceedings under this section shall not, unless so specifically ordered by a court, operate as a stay of the Secretary's action.

(Pub. L. 106-402, title I, §128, Oct. 30, 2000, 114 Stat. 1711.)

§ 15029. Authorization of appropriations

(a) Funding for State allotments

Except as described in subsection (b) of this section, there are authorized to be appropriated

for allotments under section 15022 of this title \$76,000,000 for fiscal year 2001 and such sums as may be necessary for each of fiscal years 2002 through 2007.

(b) Reservation for technical assistance

(1) Lower appropriation years

For any fiscal year for which the amount appropriated under subsection (a) of this section is less than \$76,000,000, the Secretary shall reserve funds in accordance with section 15083(c) of this title to provide technical assistance to entities funded under this part.

(2) Higher appropriation years

For any fiscal year for which the amount appropriated under subsection (a) of this section is not less than \$76,000,000, the Secretary shall reserve not less than \$300,000 and not more than 1 percent of the amount appropriated under subsection (a) of this section to provide technical assistance to entities funded under this part.

(Pub. L. 106-402, title I, §129, Oct. 30, 2000, 114 Stat. 1712.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 15022, 15081, 15083 of this title.

PART C—PROTECTION AND ADVOCACY OF INDIVIDUAL RIGHTS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 1396r, 1396u, 3058g, 10802, 14404, 15004, 15005, 15024, 15083, 15461, 15462 of this title; title 29 section 794e, 1396r, 3002.

§ 15041. Purpose

The purpose of this part is to provide for allotments to support a protection and advocacy system (referred to in this part as a "system") in each State to protect the legal and human rights of individuals with developmental disabilities in accordance with this part.

(Pub. L. 106-402, title I, §141, Oct. 30, 2000, 114 Stat. 1712.)

§ 15042. Allotments and payments

(a) Allotments

(1) In general

To assist States in meeting the requirements of section 15043(a) of this title, the Secretary shall allot to the States the amounts appropriated under section 15045 of this title and not reserved under paragraph (6). Allotments and reallocations of such sums shall be made on the same basis as the allotments and reallocations are made under subsections (a)(1)(A) and (e) of section 15022 of this title, except as provided in paragraph (2).

(2) Minimum allotments

In any case in which—

(A) the total amount appropriated under section 15045 of this title for a fiscal year is not less than \$20,000,000, the allotment under paragraph (1) for such fiscal year—

(i) to each of American Samoa, Guam, the United States Virgin Islands, and the

Commonwealth of the Northern Mariana Islands may not be less than \$107,000; and

(ii) to any State not described in clause (i) may not be less than \$200,000; or

(B) the total amount appropriated under section 15045 of this title for a fiscal year is less than \$20,000,000, the allotment under paragraph (1) for such fiscal year—

(i) to each of American Samoa, Guam, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands may not be less than \$80,000; and

(ii) to any State not described in clause (i) may not be less than \$150,000.

(3) Reduction of allotment

Notwithstanding paragraphs (1) and (2), if the aggregate of the amounts to be allotted to the States pursuant to such paragraphs for any fiscal year exceeds the total amount appropriated for such allotments under section 15045 of this title for such fiscal year, the amount to be allotted to each State for such fiscal year shall be proportionately reduced.

(4) Increase in allotments

In any year in which the total amount appropriated under section 15045 of this title for a fiscal year exceeds the total amount appropriated under such section (or a corresponding provision) for the preceding fiscal year by a percentage greater than the most recent percentage change in the Consumer Price Index published by the Secretary of Labor under section 720(c)(1) of title 29 (if the percentage change indicates an increase), the Secretary shall increase each of the minimum allotments described in subparagraphs (A) and (B) of paragraph (2). The Secretary shall increase each minimum allotment by an amount that bears the same ratio to the amount of such minimum allotment (including any increases in such minimum allotment under this paragraph (or a corresponding provision) for prior fiscal years) as the amount that is equal to the difference between—

(A) the total amount appropriated under section 15045 of this title for the fiscal year for which the increase in the minimum allotment is being made; minus

(B) the total amount appropriated under section 15045 of this title (or a corresponding provision) for the immediately preceding fiscal year.

bears to the total amount appropriated under section 15045 of this title (or a corresponding provision) for such preceding fiscal year.

(5) Monitoring the administration of the system

In a State in which the system is housed in a State agency, the State may use not more than 5 percent of any allotment under this subsection for the costs of monitoring the administration of the system required under section 15043(a) of this title.

(6) Technical assistance and American Indian consortium

In any case in which the total amount appropriated under section 15045 of this title for

a fiscal year is more than \$24,500,000, the Secretary shall—

(A) use not more than 2 percent of the amount appropriated to provide technical assistance to eligible systems with respect to activities carried out under this part (consistent with requests by such systems for such assistance for the year); and

(B) provide a grant in accordance with section 15043(b) of this title, and in an amount described in paragraph (2)(A)(i), to an American Indian consortium to provide protection and advocacy services.

(b) Payment to systems

Notwithstanding any other provision of law, the Secretary shall pay directly to any system in a State that complies with the provisions of this part the amount of the allotment made for the State under this section, unless the system specifies otherwise.

(c) Unobligated funds

Any amount paid to a system under this part for a fiscal year and remaining unobligated at the end of such year shall remain available to such system for the next fiscal year, for the purposes for which such amount was paid.

(Pub. L. 106-402, title I, §142, Oct. 30, 2000, 114 Stat. 1712.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 15043, 15045 of this title.

§ 15043. System required

(a) System required

In order for a State to receive an allotment under part B of this subchapter or this part—

(1) the State shall have in effect a system to protect and advocate the rights of individuals with developmental disabilities;

(2) such system shall—

(A) have the authority to—

(i) pursue legal, administrative, and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of such individuals within the State who are or who may be eligible for treatment, services, or habilitation, or who are being considered for a change in living arrangements, with particular attention to members of ethnic and racial minority groups; and

(ii) provide information on and referral to programs and services addressing the needs of individuals with developmental disabilities;

(B) have the authority to investigate incidents of abuse and neglect of individuals with developmental disabilities if the incidents are reported to the system or if there is probable cause to believe that the incidents occurred;

(C) on an annual basis, develop, submit to the Secretary, and take action with regard to goals (each of which is related to 1 or more areas of emphasis) and priorities, developed through data driven strategic planning, for the system's activities;

(D) on an annual basis, provide to the public, including individuals with developmental disabilities attributable to either physical impairment, mental impairment, or a combination of physical and mental impairment, and their representatives, and as appropriate, non-State agency representatives of the State Councils on Developmental Disabilities, and Centers, in the State, an opportunity to comment on—

(i) the goals and priorities established by the system and the rationale for the establishment of such goals; and

(ii) the activities of the system, including the coordination of services with the entities carrying out advocacy programs under the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.), the Older Americans Act of 1965 (42 U.S.C. 3001 et seq.), and the Protection and Advocacy for Mentally Ill Individuals Act of 1986¹ (42 U.S.C. 10801 et seq.), and with entities carrying out other related programs, including the parent training and information centers funded under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.), and activities authorized under section 3011 or 3012 of title 29;

(E) establish a grievance procedure for clients or prospective clients of the system to ensure that individuals with developmental disabilities have full access to services of the system;

(F) not be administered by the State Council on Developmental Disabilities;

(G) be independent of any agency that provides treatment, services, or habilitation to individuals with developmental disabilities;

(H) have access at reasonable times to any individual with a developmental disability in a location in which services, supports, and other assistance are provided to such an individual, in order to carry out the purpose of this part;

(I) have access to all records of—

(i) any individual with a developmental disability who is a client of the system if such individual, or the legal guardian, conservator, or other legal representative of such individual, has authorized the system to have such access;

(ii) any individual with a developmental disability, in a situation in which—

(I) the individual, by reason of such individual's mental or physical condition, is unable to authorize the system to have such access;

(II) the individual does not have a legal guardian, conservator, or other legal representative, or the legal guardian of the individual is the State; and

(III) a complaint has been received by the system about the individual with regard to the status or treatment of the individual or, as a result of monitoring or other activities, there is probable cause to believe that such individual has been subject to abuse or neglect; and

(iii) any individual with a developmental disability, in a situation in which—

(I) the individual has a legal guardian, conservator, or other legal representative;

(II) a complaint has been received by the system about the individual with regard to the status or treatment of the individual or, as a result of monitoring or other activities, there is probable cause to believe that such individual has been subject to abuse or neglect;

(III) such representative has been contacted by such system, upon receipt of the name and address of such representative;

(IV) such system has offered assistance to such representative to resolve the situation; and

(V) such representative has failed or refused to act on behalf of the individual;

(J)(i) have access to the records of individuals described in subparagraphs (B) and (I), and other records that are relevant to conducting an investigation, under the circumstances described in those subparagraphs, not later than 3 business days after the system makes a written request for the records involved; and

(ii) have immediate access, not later than 24 hours after the system makes such a request, to the records without consent from another party, in a situation in which services, supports, and other assistance are provided to an individual with a developmental disability—

(I) if the system determines there is probable cause to believe that the health or safety of the individual is in serious and immediate jeopardy; or

(II) in any case of death of an individual with a developmental disability;

(K) hire and maintain sufficient numbers and types of staff (qualified by training and experience) to carry out such system's functions, except that the State involved shall not apply hiring freezes, reductions in force, prohibitions on travel, or other policies to the staff of the system, to the extent that such policies would impact the staff or functions of the system funded with Federal funds or would prevent the system from carrying out the functions of the system under this part;

(L) have the authority to educate policymakers; and

(M) provide assurances to the Secretary that funds allotted to the State under section 15042 of this title will be used to supplement, and not supplant, the non-Federal funds that would otherwise be made available for the purposes for which the allotted funds are provided;

(3) to the extent that information is available, the State shall provide to the system—

(A) a copy of each independent review, pursuant to section 1396a(a)(30)(C) of this title, of an Intermediate Care Facility (Mental Retardation) within the State, not later than

¹ See References in Text note below.

30 days after the availability of such a review; and

(B) information about the adequacy of health care and other services, supports, and assistance that individuals with developmental disabilities who are served through home and community-based waivers (authorized under section 1396n(c) of this title) receive; and

(4) the agency implementing the system shall not be redesignated unless—

(A) there is good cause for the redesignation;

(B) the State has given the agency notice of the intention to make such redesignation, including notice regarding the good cause for such redesignation, and given the agency an opportunity to respond to the assertion that good cause has been shown;

(C) the State has given timely notice and an opportunity for public comment in an accessible format to individuals with developmental disabilities or their representatives; and

(D) the system has an opportunity to appeal the redesignation to the Secretary, on the basis that the redesignation was not for good cause.

(b) American Indian consortium

Upon application to the Secretary, an American Indian consortium established to provide protection and advocacy services under this part, shall receive funding pursuant to section 15042(a)(6) of this title to provide the services. Such consortium shall be considered to be a system for purposes of this part and shall coordinate the services with other systems serving the same geographic area. The tribal council that designates the consortium shall carry out the responsibilities and exercise the authorities specified for a State in this part, with regard to the consortium.

(c) Record

In this section, the term “record” includes—

(1) a report prepared or received by any staff at any location at which services, supports, or other assistance is provided to individuals with developmental disabilities;

(2) a report prepared by an agency or staff person charged with investigating reports of incidents of abuse or neglect, injury, or death occurring at such location, that describes such incidents and the steps taken to investigate such incidents; and

(3) a discharge planning record.

(Pub. L. 106-402, title I, §143, Oct. 30, 2000, 114 Stat. 1714.)

REFERENCES IN TEXT

The Rehabilitation Act of 1973, referred to in subsec. (a)(2)(D)(ii), is Pub. L. 93-112, Sept. 26, 1973, 87 Stat. 355, as amended, which is classified generally to chapter 16 (§701 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

The Older Americans Act of 1965, referred to in subsec. (a)(2)(D)(ii), is Pub. L. 89-73, July 14, 1965, 79 Stat. 218, as amended, which is classified generally to chapter 35 (§3001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

The Protection and Advocacy for Mentally Ill Individuals Act of 1986, referred to in subsec. (a)(2)(D)(ii), was Pub. L. 99-319, May 23, 1986, 100 Stat. 478, as amended. Pub. L. 99-319 was renamed the Protection and Advocacy for Individuals with Mental Illness Act by Pub. L. 106-310, div. B, title XXXII, §3206(a), Oct. 17, 2000, 114 Stat. 1193, and is classified generally to chapter 114 (§10801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 10801 of this title and Tables.

The Individuals with Disabilities Education Act, referred to in subsec. (a)(2)(D)(ii), is title VI of Pub. L. 91-230, Apr. 13, 1970, 84 Stat. 175, as amended, which is classified generally to chapter 33 (§1400 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 15002, 15042, 15044, 15064 of this title.

§ 15044. Administration

(a) Governing board

In a State in which the system described in section 15043 of this title is organized as a private nonprofit entity with a multimember governing board, or a public system with a multimember governing board, such governing board shall be selected according to the policies and procedures of the system, except that—

(1)(A) the governing board shall be composed of members who broadly represent or are knowledgeable about the needs of the individuals served by the system;

(B) a majority of the members of the board shall be—

(i) individuals with disabilities, including individuals with developmental disabilities, who are eligible for services, or have received or are receiving services through the system; or

(ii) parents, family members, guardians, advocates, or authorized representatives of individuals referred to in clause (i); and

(C) the board may include a representative of the State Council on Developmental Disabilities, the Centers in the State, and the self-advocacy organization described in section 15024(c)(4)(A)(ii)(I) of this title;

(2) not more than 1/3 of the members of the governing board may be appointed by the chief executive officer of the State involved, in the case of any State in which such officer has the authority to appoint members of the board;

(3) the membership of the governing board shall be subject to term limits set by the system to ensure rotating membership;

(4) any vacancy in the board shall be filled not later than 60 days after the date on which the vacancy occurs; and

(5) in a State in which the system is organized as a public system without a multimember governing or advisory board, the system shall establish an advisory council—

(A) that shall advise the system on policies and priorities to be carried out in protecting and advocating the rights of individuals with developmental disabilities; and

(B) on which a majority of the members shall be—

(i) individuals with developmental disabilities who are eligible for services, or

have received or are receiving services, through the system; or

(ii) parents, family members, guardians, advocates, or authorized representatives of individuals referred to in clause (i).

(b) Legal action

(1) In general

Nothing in this subchapter shall preclude a system from bringing a suit on behalf of individuals with developmental disabilities against a State, or an agency or instrumentality of a State.

(2) Use of amounts from judgment

An amount received pursuant to a suit described in paragraph (1) through a court judgment may only be used by the system to further the purpose of this part and shall not be used to augment payments to legal contractors or to award personal bonuses.

(3) Limitation

The system shall use assistance provided under this part in a manner consistent with section 14404 of this title.

(c) Disclosure of information

For purposes of any periodic audit, report, or evaluation required under this part, the Secretary shall not require an entity carrying out a program to disclose the identity of, or any other personally identifiable information related to, any individual requesting assistance under such program.

(d) Public notice of Federal onsite review

The Secretary shall provide advance public notice of any Federal programmatic or administrative onsite review of a system conducted under this part and solicit public comment on the system through such notice. The Secretary shall prepare an onsite visit report containing the results of such review, which shall be distributed to the Governor of the State and to other interested public and private parties. The comments received in response to the public comment solicitation notice shall be included in the onsite visit report.

(e) Reports

Beginning in fiscal year 2002, each system established in a State pursuant to this part shall annually prepare and transmit to the Secretary a report that describes the activities, accomplishments, and expenditures of the system during the preceding fiscal year, including a description of the system's goals, the extent to which the goals were achieved, barriers to their achievement, the process used to obtain public input, the nature of such input, and how such input was used.

(Pub. L. 106-402, title I, §144, Oct. 30, 2000, 114 Stat. 1717.)

§ 15045. Authorization of appropriations

For allotments under section 15042 of this title, there are authorized to be appropriated \$32,000,000 for fiscal year 2001 and such sums as may be necessary for each of fiscal years 2002 through 2007.

(Pub. L. 106-402, title I, §145, Oct. 30, 2000, 114 Stat. 1718.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 15042 of this title.

PART D—NATIONAL NETWORK OF UNIVERSITY CENTERS FOR EXCELLENCE IN DEVELOPMENTAL DISABILITIES EDUCATION, RESEARCH, AND SERVICE

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 14403, 15002, 15004, 15005, 15024, 15081, 15083, 15114 of this title.

§ 15061. Grant authority

(a) National network

From appropriations authorized under section 15066(a)(1) of this title, the Secretary shall make 5-year grants to entities in each State designated as University Centers for Excellence in Developmental Disabilities Education, Research, and Service to carry out activities described in section 15063(a) of this title.

(b) National training initiatives

From appropriations authorized under section 15066(a)(1) of this title and reserved under section 15066(a)(2) of this title, the Secretary shall make grants to Centers to carry out activities described in section 15063(b) of this title.

(c) Technical assistance

From appropriations authorized under section 15066(a)(1) of this title and reserved under section 15066(a)(3) of this title (or from funds reserved under section 15083 of this title, as appropriate), the Secretary shall enter into 1 or more cooperative agreements or contracts for the purpose of providing technical assistance described in section 15063(c) of this title.

(Pub. L. 106-402, title I, §151, Oct. 30, 2000, 114 Stat. 1719.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 15062, 15063, 15064 of this title.

§ 15062. Grant awards

(a) Existing Centers

(1) In general

In awarding and distributing grant funds under section 15061(a) of this title for a fiscal year, the Secretary, subject to the availability of appropriations and the condition specified in subsection (d) of this section, shall award and distribute grant funds in equal amounts of \$500,000 (adjusted in accordance with subsection (b) of this section), to each Center that existed during the preceding fiscal year and that meets the requirements of this part, prior to making grants under subsection (c) or (d) of this section.

(2) Reduction of award

Notwithstanding paragraph (1), if the aggregate of the funds to be awarded to the Centers pursuant to paragraph (1) for any fiscal year exceeds the total amount appropriated under section 15066 of this title for such fiscal year, the amount to be awarded to each Center for such fiscal year shall be proportionately reduced.

(b) Adjustments

Subject to the availability of appropriations, for any fiscal year following a year in which each Center described in subsection (a) of this section received a grant award of not less than \$500,000 under subsection (a) of this section (adjusted in accordance with this subsection), the Secretary shall adjust the awards to take into account the most recent percentage change in the Consumer Price Index published by the Secretary of Labor under section 720(c)(1) of title 29 (if the percentage change indicates an increase), prior to making grants under subsection (c) or (d) of this section.

(c) National training initiatives on critical and emerging needs

Subject to the availability of appropriations, for any fiscal year in which each Center described in subsection (a) of this section receives a grant award of not less than \$500,000, under subsection (a) of this section (adjusted in accordance with subsection (b) of this section), after making the grant awards, the Secretary shall make grants under section 15061(b) of this title to Centers to pay for the Federal share of the cost of training initiatives related to the unmet needs of individuals with developmental disabilities and their families, as described in section 15063(b) of this title.

(d) Additional grants

For any fiscal year in which each Center described in subsection (a) of this section receives a grant award of not less than \$500,000 under subsection (a) of this section (adjusted in accordance with subsection (b) of this section), after making the grant awards, the Secretary may make grants under section 15061(a) of this title for activities described in section 15063(a) of this title to additional Centers, or additional grants to Centers, for States or populations that are unserved or underserved by Centers due to such factors as—

- (1) population;
- (2) a high concentration of rural or urban areas; or
- (3) a high concentration of unserved or underserved populations.

(Pub. L. 106-402, title I, §152, Oct. 30, 2000, 114 Stat. 1719.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 15066 of this title.

§ 15063. Purpose and scope of activities**(a) National network of University Centers for Excellence in Developmental Disabilities Education, Research, and Service****(1) In general**

In order to provide leadership in, advise Federal, State, and community policymakers about, and promote opportunities for individuals with developmental disabilities to exercise self-determination, be independent, be productive, and be integrated and included in all facets of community life, the Secretary shall award grants to eligible entities designated as Centers in each State to pay for the

Federal share of the cost of the administration and operation of the Centers. The Centers shall be interdisciplinary education, research, and public service units of universities (as defined by the Secretary) or public or not-for-profit entities associated with universities that engage in core functions, described in paragraph (2), addressing, directly or indirectly, 1 or more of the areas of emphasis.

(2) Core functions

The core functions referred to in paragraph (1) shall include the following:

(A) Provision of interdisciplinary pre-service preparation and continuing education of students and fellows, which may include the preparation and continuing education of leadership, direct service, clinical, or other personnel to strengthen and increase the capacity of States and communities to achieve the purpose of this subchapter.

(B) Provision of community services—

(i) that provide training or technical assistance for individuals with developmental disabilities, their families, professionals, paraprofessionals, policymakers, students, and other members of the community; and

(ii) that may provide services, supports, and assistance for the persons described in clause (i) through demonstration and model activities.

(C) Conduct of research, which may include basic or applied research, evaluation, and the analysis of public policy in areas that affect or could affect, either positively or negatively, individuals with developmental disabilities and their families.

(D) Dissemination of information related to activities undertaken to address the purpose of this subchapter, especially dissemination of information that demonstrates that the network authorized under this part is a national and international resource that includes specific substantive areas of expertise that may be accessed and applied in diverse settings and circumstances.

(b) National training initiatives on critical and emerging needs**(1) Supplemental grants**

After consultation with relevant, informed sources, including individuals with developmental disabilities and their families, the Secretary shall award, under section 15061(b) of this title, supplemental grants to Centers to pay for the Federal share of the cost of training initiatives related to the unmet needs of individuals with developmental disabilities and their families. The Secretary shall make the grants on a competitive basis, and for periods of not more than 5 years.

(2) Establishment of consultation process by the Secretary

Not later than 1 year after October 30, 2000, the Secretary shall establish a consultation process that, on an ongoing basis, allows the Secretary to identify and address, through supplemental grants authorized under paragraph (1), training initiatives related to the

unmet needs of individuals with developmental disabilities and their families.

(c) Technical assistance

In order to strengthen and support the national network of Centers, the Secretary may enter into 1 or more cooperative agreements or contracts to—

(1) assist in national and international dissemination of specific information from multiple Centers and, in appropriate cases, other entities whose work affects the lives of individuals with developmental disabilities;

(2) compile, analyze, and disseminate state-of-the-art training, research, and demonstration results policies, and practices from multiple Centers and, in appropriate cases, other entities whose work affects the lives of persons with developmental disabilities;

(3) convene experts from multiple Centers to discuss and make recommendations with regard to national emerging needs of individuals with developmental disabilities;

(4)(A) develop portals that link users with every Center's website; and

(B) facilitate electronic information sharing using state-of-the-art Internet technologies such as real-time online discussions, multi-point video conferencing, and web-based audio/video broadcasts, on emerging topics that impact individuals with disabilities and their families;

(5) serve as a research-based resource for Federal and State policymakers on information concerning and issues impacting individuals with developmental disabilities and entities that assist or serve those individuals; or

(6) undertake any other functions that the Secretary determines to be appropriate;

to promote the viability and use of the resources and expertise of the Centers nationally and internationally.

(Pub. L. 106-402, title I, §153, Oct. 30, 2000, 114 Stat. 1720.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 15061, 15062, 15064, 15066, 15083 of this title.

§ 15064. Applications

(a) Applications for core Center grants

(1) In general

To be eligible to receive a grant under section 15061(a) of this title for a Center, an entity shall submit to the Secretary, and obtain approval of, an application at such time, in such manner, and containing such information, as the Secretary may require.

(2) Application contents

Each application described in paragraph (1) shall describe a 5-year plan, including a projected goal related to 1 or more areas of emphasis for each of the core functions described in section 15063(a) of this title.

(3) Assurances

The application shall be approved by the Secretary only if the application contains or is supported by reasonable assurances that the entity designated as the Center will—

(A) meet regulatory standards as established by the Secretary for Centers;

(B) address the projected goals, and carry out goal-related activities, based on data driven strategic planning and in a manner consistent with the objectives of this part, that—

(i) are developed in collaboration with the consumer advisory committee established pursuant to subparagraph (E);

(ii) are consistent with, and to the extent feasible complement and further, the Council goals contained in the State plan submitted under section 15024 of this title and the system goals established under section 15043 of this title; and

(iii) will be reviewed and revised annually as necessary to address emerging trends and needs;

(C) use the funds made available through the grant to supplement, and not supplant, the funds that would otherwise be made available for activities described in section 15063(a) of this title;

(D) protect, consistent with the policy specified in section 15001(c) of this title (relating to rights of individuals with developmental disabilities), the legal and human rights of all individuals with developmental disabilities (especially those individuals under State guardianship) who are involved in activities carried out under programs assisted under this part;

(E) establish a consumer advisory committee—

(i) of which a majority of the members shall be individuals with developmental disabilities and family members of such individuals;

(ii) that is comprised of—

(I) individuals with developmental disabilities and related disabilities;

(II) family members of individuals with developmental disabilities;

(III) a representative of the State protection and advocacy system;

(IV) a representative of the State Council on Developmental Disabilities;

(V) a representative of a self-advocacy organization described in section 15024(c)(4)(A)(ii)(I) of this title; and

(VI) representatives of organizations that may include parent training and information centers assisted under section 1482 or 1483 of title 20, entities carrying out activities authorized under section 3011 or 3012 of title 29, relevant State agencies, and other community groups concerned with the welfare of individuals with developmental disabilities and their families;

(iii) that reflects the racial and ethnic diversity of the State; and

(iv) that shall—

(I) consult with the Director of the Center regarding the development of the 5-year plan, and shall participate in an annual review of, and comment on, the progress of the Center in meeting the projected goals contained in the plan,

and shall make recommendations to the Director of the Center regarding any proposed revisions of the plan that might be necessary; and

(II) meet as often as necessary to carry out the role of the committee, but at a minimum twice during each grant year;

(F) to the extent possible, utilize the infrastructure and resources obtained through funds made available under the grant to leverage additional public and private funds to successfully achieve the projected goals developed in the 5-year plan;

(G)(i) have a director with appropriate academic credentials, demonstrated leadership, expertise regarding developmental disabilities, significant experience in managing grants and contracts, and the ability to leverage public and private funds; and

(ii) allocate adequate staff time to carry out activities related to each of the core functions described in section 15063(a) of this title; and

(H) educate, and disseminate information related to the purpose of this subchapter to, the legislature of the State in which the Center is located, and to Members of Congress from such State.

(b) Supplemental grant applications pertaining to national training initiatives in critical and emerging needs

To be eligible to receive a supplemental grant under section 15061(b) of this title, a Center may submit a supplemental application to the Secretary at such time, in such manner, and containing such information as the Secretary may require, pursuant to the terms and conditions set by the Secretary consistent with section 15063(b) of this title.

(c) Peer review

(1) In general

The Secretary shall require that all applications submitted under this part be subject to technical and qualitative review by peer review groups established under paragraph (2). The Secretary may approve an application under this part only if such application has been recommended by a peer review group that has conducted the peer review required under this paragraph. In conducting the review, the group may conduct onsite visits or inspections of related activities as necessary.

(2) Establishment of peer review groups

(A) In general

The Secretary, acting through the Commissioner of the Administration on Developmental Disabilities, may, notwithstanding—

(i) the provisions of title 5 concerning appointments to the competitive service; and

(ii) the provisions of chapter 51, and subchapter III of chapter 53 of title 5 concerning classification and General Schedule pay rates;

establish such peer review groups and appoint and set the rates of pay of members of such groups.

(B) Composition

Each peer review group shall include such individuals with disabilities and parents, guardians, or advocates of or for individuals with developmental disabilities, as are necessary to carry out this subsection.

(3) Waivers of approval

The Secretary may waive the provisions of paragraph (1) with respect to review and approval of an application if the Secretary determines that exceptional circumstances warrant such a waiver.

(d) Federal share

(1) In general

The Federal share of the cost of administration or operation of a Center, or the cost of carrying out a training initiative, supported by a grant made under this part may not be more than 75 percent of the necessary cost of such project, as determined by the Secretary.

(2) Urban or rural poverty areas

In the case of a project whose activities or products target individuals with developmental disabilities who live in an urban or rural poverty area, as determined by the Secretary, the Federal share of the cost of the project may not be more than 90 percent of the necessary costs of the project, as determined by the Secretary.

(3) Grant expenditures

For the purpose of determining the Federal share with respect to the project, expenditures on that project by a political subdivision of a State or by a public or private entity shall, subject to such limitations and conditions as the Secretary may by regulation prescribe under section 15004(b) of this title, be considered to be expenditures made by a Center under this part.

(e) Annual report

Each Center shall annually prepare and transmit to the Secretary a report containing—

(1) information on progress made in achieving the projected goals of the Center for the previous year, including—

(A) the extent to which the goals were achieved;

(B) a description of the strategies that contributed to achieving the goals;

(C) to the extent to which the goals were not achieved, a description of factors that impeded the achievement; and

(D) an accounting of the manner in which funds paid to the Center under this part for a fiscal year were expended;

(2) information on proposed revisions to the goals; and

(3) a description of successful efforts to leverage funds, other than funds made available under this part, to pursue goals consistent with this part.

(Pub. L. 106-402, title I, §154, Oct. 30, 2000, 114 Stat. 1722.)

REFERENCES IN TEXT

Provisions of title 5 governing appointments in competitive service, referred to in subsec. (c)(2)(A)(i), are

classified to section 3301 et seq. of Title 5, Government Organization and Employees.

(Pub. L. 106-402, title I, §156, Oct. 30, 2000, 114 Stat. 1725.)

§ 15065. Definition

In this part, the term “State” means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, and Guam.

(Pub. L. 106-402, title I, §155, Oct. 30, 2000, 114 Stat. 1725.)

§ 15066. Authorization of appropriations

(a) Authorization and reservations

(1) Authorization

There are authorized to be appropriated to carry out this part (other than section 15063(c)(4) of this title) \$30,000,000 for fiscal year 2001 and such sums as may be necessary for each of fiscal years 2002 through 2007.

(2) Reservation for training initiatives

From any amount appropriated for a fiscal year under paragraph (1) and remaining after each Center described in section 15062(a) of this title has received a grant award of not less than \$500,000, as described in section 15062 of this title, the Secretary shall reserve funds for the training initiatives authorized under section 15063(b) of this title.

(3) Reservation for technical assistance

(A) Years before appropriation trigger

For any covered year, the Secretary shall reserve funds in accordance with section 15083(c) of this title to fund technical assistance activities under section 15063(c) of this title (other than section 15063(c)(4) of this title).

(B) Years after appropriation trigger

For any fiscal year that is not a covered year, the Secretary shall reserve not less than \$300,000 and not more than 2 percent of the amount appropriated under paragraph (1) to fund technical assistance activities under section 15063(c) of this title (other than section 15063(c)(4) of this title).

(C) Covered year

In this paragraph, the term “covered year” means a fiscal year prior to the first fiscal year for which the amount appropriated under paragraph (1) is not less than \$20,000,000.

(b) Limitation

The Secretary may not use, for peer review or other activities directly related to peer review conducted under this part—

(1) for fiscal year 2001, more than \$300,000 of the funds made available under subsection (a) of this section; and

(2) for any succeeding fiscal year, more than the amount of funds used for the peer review and related activities in fiscal year 2001, adjusted to take into account the most recent percentage change in the Consumer Price Index published by the Secretary of Labor under section 720(c)(1) of title 29 (if the percentage change indicates an increase).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 15061, 15062, 15081, 15083 of this title.

PART E—PROJECTS OF NATIONAL SIGNIFICANCE

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 14403, 15004, 15005 of this title.

§ 15081. Purpose

The purpose of this part is to provide grants, contracts, or cooperative agreements for projects of national significance that—

(1) create opportunities for individuals with developmental disabilities to directly and fully contribute to, and participate in, all facets of community life; and

(2) support the development of national and State policies that reinforce and promote, with the support of families, guardians, advocates, and communities, of individuals with developmental disabilities, the self-determination, independence, productivity, and integration and inclusion in all facets of community life of such individuals through—

(A) family support activities;

(B) data collection and analysis;

(C) technical assistance to entities funded under parts B and D of this subchapter, subject to the limitations described in sections 15029(b), 15066(a)(3), and 15083(c) of this title; and

(D) other projects of sufficient size and scope that hold promise to expand or improve opportunities for such individuals, including—

(i) projects that provide technical assistance for the development of information and referral systems;

(ii) projects that provide technical assistance to self-advocacy organizations of individuals with developmental disabilities;

(iii) projects that provide education for policymakers;

(iv) Federal interagency initiatives;

(v) projects that enhance the participation of racial and ethnic minorities in public and private sector initiatives in developmental disabilities;

(vi) projects that provide aid to transition youth with developmental disabilities from school to adult life, especially in finding employment and postsecondary education opportunities and in upgrading and changing any assistive technology devices that may be needed as a youth matures;

(vii) initiatives that address the development of community quality assurance systems and the training related to the development, implementation, and evaluation of such systems, including training of individuals with developmental disabilities and their families;

(viii) initiatives that address the needs of aging individuals with developmental

disabilities and aging caregivers of adults with developmental disabilities in the community;

(ix) initiatives that create greater access to and use of generic services systems, community organizations, and associations, and initiatives that assist in community economic development;

(x) initiatives that create access to increased living options;

(xi) initiatives that address the challenging behaviors of individuals with developmental disabilities, including initiatives that promote positive alternatives to the use of restraints and seclusion; and

(xii) initiatives that address other areas of emerging need.

(Pub. L. 106-402, title I, §161, Oct. 30, 2000, 114 Stat. 1725.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 15082, 15083 of this title.

§ 15082. Grant authority

(a) In general

The Secretary shall award grants, contracts, or cooperative agreements to public or private nonprofit entities for projects of national significance relating to individuals with developmental disabilities to carry out activities described in section 15081(2) of this title.

(b) Federal interagency initiatives

(1) In general

(A) Authority

The Secretary may—

(i) enter into agreements with Federal agencies to jointly carry out activities described in section 15081(2) of this title or to jointly carry out activities of common interest related to the objectives of such section; and

(ii) transfer to such agencies for such purposes funds appropriated under this part, and receive and use funds from such agencies for such purposes.

(B) Relation to program purposes

Funds transferred or received pursuant to this paragraph shall be used only in accordance with statutes authorizing the appropriation of such funds. Such funds shall be made available through grants, contracts, or cooperative agreements only to recipients eligible to receive such funds under such statutes.

(C) Procedures and criteria

If the Secretary enters into an agreement under this subsection for the administration of a jointly funded project—

(i) the agreement shall specify which agency's procedures shall be used to award grants, contracts, or cooperative agreements and to administer such awards;

(ii) the participating agencies may develop a single set of criteria for the jointly funded project, and may require applicants to submit a single application for joint review by such agencies; and

(iii) unless the heads of the participating agencies develop joint eligibility requirements, an applicant for an award for the project shall meet the eligibility requirements of each program involved.

(2) Limitation

The Secretary may not construe the provisions of this subsection to take precedence over a limitation on joint funding contained in an applicable statute.

(Pub. L. 106-402, title I, §162, Oct. 30, 2000, 114 Stat. 1727.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 15083 of this title.

§ 15083. Authorization of appropriations

(a) In general

There are authorized to be appropriated to carry out the projects specified in this section \$16,000,000 for fiscal year 2001, and such sums as may be necessary for each of fiscal years 2002 through 2007.

(b) Use of funds

(1) Grants, contracts, and agreements

Except as provided in paragraph (2), the amount appropriated under subsection (a) of this section for each fiscal year shall be used to award grants, or enter into contracts, cooperative agreements, or other agreements, under section 15082 of this title.

(2) Administrative costs

Not more than 1 percent of the amount appropriated under subsection (a) of this section for each fiscal year may be used to provide for the administrative costs (other than compensation of Federal employees) of the Administration on Developmental Disabilities for administering this part and parts B, C, and D of this subchapter, including monitoring the performance of and providing technical assistance to, entities that receive funds under this subchapter.

(c) Technical assistance for Councils and Centers

(1) In general

For each covered year, the Secretary shall expend, to provide technical assistance for entities funded under part B or D of this subchapter, an amount from funds appropriated under subsection (a) of this section that is not less than the amount the Secretary expended on technical assistance for entities funded under that part (or a corresponding provision) in the previous fiscal year.

(2) Covered year

In this subsection, the term "covered year" means—

(A) in the case of an expenditure for entities funded under part B of this subchapter, a fiscal year for which the amount appropriated under section 15029(a) of this title is less than \$76,000,000; and

(B) in the case of an expenditure for entities funded under part D of this subchapter, a fiscal year prior to the first fiscal year for

which the amount appropriated under section 15066(a)(1) of this title is not less than \$20,000,000.

(3) References

References in this subsection to part D of this subchapter shall not be considered to include section 15063(c)(4) of this title.

(d) Technical assistance on electronic information sharing

In addition to any funds reserved under subsection (c) of this section, the Secretary shall reserve \$100,000 from the amount appropriated under subsection (a) of this section for each fiscal year to carry out section 15063(c)(4) of this title.

(e) Limitation

For any fiscal year for which the amount appropriated under subsection (a) of this section is not less than \$10,000,000, not more than 50 percent of such amount shall be used for activities carried out under section 15081(2)(A) of this title.

(Pub. L. 106-402, title I, §163, Oct. 30, 2000, 114 Stat. 1727.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 15029, 15061, 15066, 15081 of this title.

SUBCHAPTER II—FAMILY SUPPORT

§ 15091. Findings, purposes, and policy

(a) Findings

Congress makes the following findings:

(1) It is in the best interest of our Nation to preserve, strengthen, and maintain the family.

(2) Families of children with disabilities provide support, care, and training to their children that can save States millions of dollars. Without the efforts of family caregivers, many persons with disabilities would receive care through State-supported out-of-home placements.

(3) Most families of children with disabilities, especially families in unserved and underserved populations, do not have access to family-centered and family-directed services to support such families in their efforts to care for such children at home.

(4) Medical advances and improved health care have increased the life span of many people with disabilities, and the combination of the longer life spans and the aging of family caregivers places a continually increasing demand on the finite service delivery systems of the States.

(5) In 1996, 49 States provided family support initiatives in response to the needs of families of children with disabilities. Such initiatives included the provision of cash subsidies, respite care, and other forms of support. There is a need in each State, however, to strengthen, expand, and coordinate the activities of a system of family support services for families of children with disabilities that is easily accessible, avoids duplication, uses resources efficiently, and prevents gaps in services to families in all areas of the State.

(6) The goals of the Nation properly include the goal of providing to families of children

with disabilities the family support services necessary—

(A) to support the family;

(B) to enable families of children with disabilities to nurture and enjoy their children at home;

(C) to enable families of children with disabilities to make informed choices and decisions regarding the nature of supports, resources, services, and other assistance made available to such families; and

(D) to support family caregivers of adults with disabilities.

(b) Purposes

The purposes of this subchapter are—

(1) to promote and strengthen the implementation of comprehensive State systems of family support services, for families with children with disabilities, that are family-centered and family-directed, and that provide families with the greatest possible decisionmaking authority and control regarding the nature and use of services and support;

(2) to promote leadership by families in planning, policy development, implementation, and evaluation of family support services for families of children with disabilities;

(3) to promote and develop interagency coordination and collaboration between agencies responsible for providing the services; and

(4) to increase the availability of, funding for, access to, and provision of family support services for families of children with disabilities.

(c) Policy

It is the policy of the United States that all programs, projects, and activities funded under this subchapter shall be family-centered and family-directed, and shall be provided in a manner consistent with the goal of providing families of children with disabilities with the support the families need to raise their children at home.

(Pub. L. 106-402, title II, §202, Oct. 30, 2000, 114 Stat. 1728.)

SHORT TITLE

For short title of this subchapter as the “Families of Children With Disabilities Support Act of 2000”, see section 201 of Pub. L. 106-402, set out as a note under section 15001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 15098, 15100 of this title.

§ 15092. Definitions and special rule

(a) Definitions

In this subchapter:

(1) Child with a disability

The term “child with a disability” means an individual who—

(A) has a significant physical or mental impairment, as defined pursuant to State policy to the extent that such policy is established without regard to type of disability; or

(B) is an infant or a young child from birth through age 8 and has a substantial develop-

mental delay or specific congenital or acquired condition that presents a high probability of resulting in a disability if services are not provided to the infant or child.

(2) Family

(A) In general

Subject to subparagraph (B), for purposes of the application of this subchapter in a State, the term “family” has the meaning given the term by the State.

(B) Exclusion of employees

The term does not include an employee who, acting in a paid employment capacity, provides services to a child with a disability in an out-of-home setting such as a hospital, nursing home, personal care home, board and care home, group home, or other facility.

(3) Family support for families of children with disabilities

The term “family support for families of children with disabilities” means supports, resources, services, and other assistance provided to families of children with disabilities pursuant to State policy that are designed to—

(A) support families in the efforts of such families to raise their children with disabilities in the home;

(B) strengthen the role of the family as primary caregiver for such children;

(C) prevent involuntary out-of-the-home placement of such children and maintain family unity; and

(D) reunite families with children with disabilities who have been placed out of the home, whenever possible.

(4) Secretary

The term “Secretary” means the Secretary of Health and Human Services.

(5) State

The term “State” means each of the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(6) Systems change activities

The term “systems change activities” means efforts that result in laws, regulations, policies, practices, or organizational structures—

(A) that are family-centered and family-directed;

(B) that facilitate and increase access to, provision of, and funding for, family support services for families of children with disabilities; and

(C) that otherwise accomplish the purposes of this subchapter.

(b) Special rule

References in this subchapter to a child with a disability shall be considered to include references to an individual who is not younger than age 18 who—

(1) has a significant impairment described in subsection (a)(1)(A) of this section; and

(2) is residing with and receiving assistance from a family member.

(Pub. L. 106-402, title II, § 203, Oct. 30, 2000, 114 Stat. 1729.)

§ 15093. Grants to States

(a) In general

The Secretary shall make grants to States on a competitive basis, in accordance with the provisions of this subchapter, to support systems change activities designed to assist States to develop and implement, or expand and enhance, a statewide system of family support services for families of children with disabilities that accomplishes the purposes of this subchapter.

(b) Award period and grant limitation

No grant shall be awarded under this section for a period of more than 3 years. No State shall be eligible for more than 1 grant under this section.

(c) Amount of grants

(1) Grants to States

(A) Federal matching share

From amounts appropriated under section 15101(a) of this title, the Secretary shall pay to each State that has an application approved under section 15094 of this title, for each year of the grant period, an amount that is—

(i) equal to not more than 75 percent of the cost of the systems change activities to be carried out by the State; and

(ii) not less than \$100,000 and not more than \$500,000.

(B) Non-Federal share

The non-Federal share of the cost of the systems change activities may be in cash or in kind, fairly evaluated, including plant, equipment, or services.

(2) Calculation of amounts

The Secretary shall calculate a grant amount described in paragraph (1) on the basis of—

(A) the amounts available for making grants under this section; and

(B) the child population of the State concerned.

(d) Priority for previously participating States

For the second and third fiscal years for which amounts are appropriated to carry out this section, the Secretary, in providing payments under this section, shall give priority to States that received payments under this section during the preceding fiscal year.

(e) Priorities for distribution

To the extent practicable, the Secretary shall award grants to States under this section in a manner that—

(1) is geographically equitable;

(2) distributes the grants among States that have differing levels of development of statewide systems of family support services for families of children with disabilities; and

(3) distributes the grants among States that attempt to meet the needs of unserved and un-

derserved populations, such as individuals from racial and ethnic minority backgrounds, disadvantaged individuals, individuals with limited English proficiency, and individuals from underserved geographic areas (rural or urban).

(Pub. L. 106-402, title II, §204, Oct. 30, 2000, 114 Stat. 1730.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 15095, 15096 of this title.

§ 15094. Application

To be eligible to receive a grant under this subchapter, a State shall submit an application to the Secretary at such time, in such manner, and containing such information and assurances as the Secretary may require, including information about the designation of a lead entity, a description of available State resources, and assurances that systems change activities will be family-centered and family-directed.

(Pub. L. 106-402, title II, §205, Oct. 30, 2000, 114 Stat. 1731.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 15093, 15095 of this title.

§ 15095. Designation of the lead entity

(a) Designation

The Chief Executive Officer of a State that desires to receive a grant under section 15093 of this title, shall designate the office or entity (referred to in this subchapter as the “lead entity”) responsible for—

- (1) submitting the application described in section 15094 of this title on behalf of the State;
- (2) administering and supervising the use of the amounts made available under the grant;
- (3) coordinating efforts related to and supervising the preparation of the application;
- (4) coordinating the planning, development, implementation (or expansion and enhancement), and evaluation of a statewide system of family support services for families of children with disabilities among public agencies and between public agencies and private agencies, including coordinating efforts related to entering into interagency agreements;
- (5) coordinating efforts related to the participation by families of children with disabilities in activities carried out under a grant made under this subchapter; and
- (6) submitting the report described in section 15097 of this title on behalf of the State.

(b) Qualifications

In designating the lead entity, the Chief Executive Officer may designate—

- (1) an office of the Chief Executive Officer;
- (2) a commission appointed by the Chief Executive Officer;
- (3) a public agency;
- (4) a council established under Federal or State law; or
- (5) another appropriate office, agency, or entity.

(Pub. L. 106-402, title II, §206, Oct. 30, 2000, 114 Stat. 1731.)

§ 15096. Authorized activities

(a) In general

A State that receives a grant under section 15093 of this title shall use the funds made available through the grant to carry out systems change activities that accomplish the purposes of this subchapter.

(b) Special rule

In carrying out activities authorized under this subchapter, a State shall ensure that such activities address the needs of families of children with disabilities from unserved or underserved populations.

(Pub. L. 106-402, title II, §207, Oct. 30, 2000, 114 Stat. 1732.)

§ 15097. Reporting

A State that receives a grant under this subchapter shall prepare and submit to the Secretary, at the end of the grant period, a report containing the results of State efforts to develop and implement, or expand and enhance, a statewide system of family support services for families of children with disabilities.

(Pub. L. 106-402, title II, §208, Oct. 30, 2000, 114 Stat. 1732.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 15095 of this title.

§ 15098. Technical assistance

(a) In general

The Secretary shall enter into contracts or cooperative agreements with appropriate public or private agencies and organizations, including institutions of higher education, with documented experience, expertise, and capacity, for the purpose of providing technical assistance and information with respect to the development and implementation, or expansion and enhancement, of a statewide system of family support services for families of children with disabilities.

(b) Purpose

An agency or organization that provides technical assistance and information under this section in a State that receives a grant under this subchapter shall provide the technical assistance and information to the lead entity of the State, family members of children with disabilities, organizations, service providers, and policymakers involved with children with disabilities and their families. Such an agency or organization may also provide technical assistance and information to a State that does not receive a grant under this subchapter.

(c) Reports to the Secretary

An entity providing technical assistance and information under this section shall prepare and submit to the Secretary periodic reports regarding Federal policies and procedures identified within the States that facilitate or impede the delivery of family support services to families of children with disabilities. The report shall in-

clude recommendations to the Secretary regarding the delivery of services, coordination with other programs, and integration of the policies described in section 15091 of this title in Federal law, other than this subchapter.

(Pub. L. 106-402, title II, §209, Oct. 30, 2000, 114 Stat. 1732.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 15101 of this title.

§ 15099. Evaluation

(a) In general

The Secretary shall conduct a national evaluation of the program of grants to States authorized by this subchapter.

(b) Purpose

(1) In general

The Secretary shall conduct the evaluation under subsection (a) of this section to assess the status and effects of State efforts to develop and implement, or expand and enhance, statewide systems of family support services for families of children with disabilities in a manner consistent with the provisions of this subchapter. In particular, the Secretary shall assess the impact of such efforts on families of children with disabilities, and recommend amendments to this subchapter that are necessary to assist States to accomplish fully the purposes of this subchapter.

(2) Information systems

The Secretary shall work with the States to develop an information system designed to compile and report, from information provided by the States, qualitative and quantitative descriptions of the impact of the program of grants to States authorized by this subchapter on—

- (A) families of children with disabilities, including families from unserved and underserved populations;
- (B) access to and funding for family support services for families of children with disabilities;
- (C) interagency coordination and collaboration between agencies responsible for providing the services; and
- (D) the involvement of families of children with disabilities at all levels of the statewide systems.

(c) Report to Congress

Not later than 2½ years after October 30, 2000, the Secretary shall prepare and submit to the appropriate committees of Congress a report concerning the results of the evaluation conducted under this section.

(Pub. L. 106-402, title II, §210, Oct. 30, 2000, 114 Stat. 1733.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 15101 of this title.

§ 15100. Projects of national significance

(a) Study by the Secretary

The Secretary shall review Federal programs to determine the extent to which such programs

facilitate or impede access to, provision of, and funding for family support services for families of children with disabilities, consistent with the policies described in section 15091 of this title.

(b) Projects of national significance

The Secretary shall make grants or enter into contracts for projects of national significance to support the development of national and State policies and practices related to the development and implementation, or expansion and enhancement, of family-centered and family-directed systems of family support services for families of children with disabilities.

(Pub. L. 106-402, title II, §211, Oct. 30, 2000, 114 Stat. 1733.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 15101 of this title.

§ 15101. Authorization of appropriations

(a) In general

There are authorized to be appropriated to carry out this subchapter such sums as may be necessary for each of fiscal years 2001 through 2007.

(b) Reservation

(1) In general

The Secretary shall reserve for each fiscal year 10 percent, or \$400,000 (whichever is greater), of the amount appropriated pursuant to subsection (a) of this section to carry out—

- (A) section 15098 of this title (relating to the provision of technical assistance and information to States); and
- (B) section 15099 of this title (relating to the conduct of evaluations).

(2) Special rule

For each year that the amount appropriated pursuant to subsection (a) of this section is \$10,000,000 or greater, the Secretary may reserve 5 percent of such amount to carry out section 15100 of this title.

(Pub. L. 106-402, title II, §212, Oct. 30, 2000, 114 Stat. 1734.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 15093 of this title.

SUBCHAPTER III—PROGRAM FOR DIRECT SUPPORT WORKERS WHO ASSIST INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES

§ 15111. Findings

Congress finds that—

- (1) direct support workers, especially young adults, have played essential roles in providing the support needed by individuals with developmental disabilities and expanding community options for those individuals;
- (2) 4 factors have contributed to a decrease in the available pool of direct support workers, specifically—

- (A) the small population of individuals who are age 18 through 25, an age group that

has been attracted to direct support work in the past;

(B) the rapid expansion of the service sector, which attracts individuals who previously would have elected to pursue employment as direct support workers;

(C) the failure of wages in the human services sector to keep pace with wages in other service sectors; and

(D) the lack of quality training and career advancement opportunities available to direct support workers; and

(3) individuals with developmental disabilities benefit from assistance from direct support workers who are well trained, and benefit from receiving services from professionals who have spent time as direct support workers.

(Pub. L. 106-402, title III, §301, Oct. 30, 2000, 114 Stat. 1734.)

§ 15112. Definitions

In this subchapter:

(1) Developmental disability

The term “developmental disability” has the meaning given the term in section 15002 of this title.

(2) Institution of higher education

The term “institution of higher education” has the meaning given the term in section 1141¹ of title 20.

(3) Secretary

The term “Secretary” means the Secretary of Health and Human Services.

(Pub. L. 106-402, title III, §302, Oct. 30, 2000, 114 Stat. 1734.)

REFERENCES IN TEXT

Section 1141 of title 20, referred to in par. (2), was repealed by Pub. L. 105-244, §3, title I, §101(b), title VII, §702, Oct. 7, 1998, 112 Stat. 1585, 1616, 1803, effective Oct. 1, 1998. However, the term “institution of higher education” is defined in section 1001 of Title 20, Education.

§ 15113. Reaching up scholarship program

(a) Program authorization

The Secretary may award grants to eligible entities, on a competitive basis, to enable the entities to carry out scholarship programs by providing vouchers for postsecondary education to direct support workers who assist individuals with developmental disabilities residing in diverse settings. The Secretary shall award the grants to pay for the Federal share of the cost of providing the vouchers.

(b) Eligible entity

To be eligible to receive a grant under this section, an entity shall be—

(1) an institution of higher education;

(2) a State agency; or

(3) a consortium of such institutions or agencies.

(c) Application requirements

To be eligible to receive a grant under this section, an eligible entity shall submit to the

Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including a description of—

(1) the basis for awarding the vouchers;

(2) the number of individuals to receive the vouchers; and

(3) the amount of funds that will be made available by the eligible entity to pay for the non-Federal share of the cost of providing the vouchers.

(d) Selection criteria

In awarding a grant under this section for a scholarship program, the Secretary shall give priority to an entity submitting an application that—

(1) specifies that individuals who receive vouchers through the program will be individuals—

(A) who are direct support workers who assist individuals with developmental disabilities residing in diverse settings, while pursuing postsecondary education; and

(B) each of whom verifies, prior to receiving the voucher, that the worker has completed 250 hours as a direct support worker in the past 90 days;

(2) states that the vouchers that will be provided through the program will be in amounts of not more than \$2,000 per year;

(3) provides an assurance that the eligible entity (or another specified entity that is not a voucher recipient) will contribute the non-Federal share of the cost of providing the vouchers; and

(4) meets such other conditions as the Secretary may specify.

(e) Federal share

The Federal share of the cost of providing the vouchers shall be not more than 80 percent.

(Pub. L. 106-402, title III, §303, Oct. 30, 2000, 114 Stat. 1735.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 15115 of this title.

§ 15114. Staff development curriculum authorization

(a) Funding

(1) In general

The Secretary shall award funding, on a competitive basis, through a grant, cooperative agreement, or contract, to a public or private entity or a combination of such entities, for the development, evaluation, and dissemination of a staff development curriculum, and related guidelines, for computer-assisted, competency-based, multimedia, interactive instruction, relating to service as a direct support worker.

(2) Participants

The curriculum shall be developed for individuals who—

(A) seek to become direct support workers who assist individuals with developmental disabilities or are such direct support workers; and

¹ See References in Text note below.

(B) seek to upgrade their skills and competencies related to being a direct support worker.

(b) Application requirements

To be eligible to receive an award under this section, an entity shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including—

(1) a comprehensive analysis of the content of direct support roles;

(2) information identifying an advisory group that—

(A) is comprised of individuals with experience and expertise with regard to the support provided by direct support workers, and effective ways to provide the support, for individuals with developmental disabilities in diverse settings; and

(B) will advise the entity throughout the development, evaluation, and dissemination of the staff development curriculum and guidelines;

(3) information describing how the entity will—

(A) develop, field test, and validate a staff development curriculum that—

(i) relates to the appropriate reading level for direct service workers who assist individuals with disabilities;

(ii) allows for multiple levels of instruction;

(iii) provides instruction appropriate for direct support workers who work in diverse settings; and

(iv) is consistent with subsections (b) and (c) of section 15001 of this title and section 15009 of this title;

(B) develop, field test, and validate guidelines for the organizations that use the curriculum that provide for—

(i) providing necessary technical and instructional support to trainers and mentors for the participants;

(ii) ensuring easy access to and use of such curriculum by workers that choose to participate in using, and agencies that choose to use, the curriculum;

(iii) evaluating the proficiency of the participants with respect to the content of the curriculum;

(iv) providing necessary support to the participants to assure that the participants have access to, and proficiency in using, a computer in order to participate in the development, testing, and validation process;

(v) providing necessary technical and instructional support to trainers and mentors for the participants in conjunction with the development, testing, and validation process;

(vi) addressing the satisfaction of participants, individuals with developmental disabilities and their families, providers of services for such individuals and families, and other relevant entities with the curriculum; and

(vii) developing methods to maintain a record of the instruction completed, and

the content mastered, by each participant under the curriculum; and

(C) nationally disseminate the curriculum and guidelines, including dissemination through—

(i) parent training and information centers funded under part D of the Individuals with Disabilities Education Act (20 U.S.C. 1451 et seq.);

(ii) community-based organizations of and for individuals with developmental disabilities and their families;

(iii) entities funded under subchapter I of this chapter;

(iv) centers for independent living;

(v) State educational agencies and local educational agencies;

(vi) entities operating appropriate medical facilities;

(vii) postsecondary education entities; and

(viii) other appropriate entities; and

(4) such other information as the Secretary may require.

(Pub. L. 106-402, title III, §304, Oct. 30, 2000, 114 Stat. 1735.)

REFERENCES IN TEXT

The Individuals with Disabilities Education Act, referred to in subsec. (b)(3)(C)(i), is title VI of Pub. L. 91-230, Apr. 13, 1970, 84 Stat. 175, as amended. Part D of the Act is classified generally to subchapter IV (§1451 et seq.) of chapter 33 of Title 20, Education. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 15115 of this title.

§ 15115. Authorization of appropriations

(a) Scholarships

There are authorized to be appropriated to carry out section 15113 of this title \$800,000 for fiscal year 2001 and such sums as may be necessary for each of fiscal years 2002 through 2007.

(b) Staff development curriculum

There are authorized to be appropriated to carry out section 15114 of this title \$800,000 for fiscal year 2001 and such sums as may be necessary for each of fiscal years 2002 and 2003.

(Pub. L. 106-402, title III, §305, Oct. 30, 2000, 114 Stat. 1737.)

**CHAPTER 145—PUBLIC SAFETY OFFICER
MEDAL OF VALOR AND TRIBUTES**

Sec.	
15201.	Authorization of medal.
15202.	Medal of Valor Board.
	(a) Establishment of Board.
	(b) Membership.
	(c) Duties.
	(d) Hearings.
	(e) Information from Federal agencies.
	(f) Information to be kept confidential.
15203.	Board personnel matters.
	(a) Compensation of members.
	(b) Travel expenses.
15204.	Definitions.
15205.	Authorization of appropriations.

- Sec.
 15206. National Medal of Valor Office.
 15207. Consultation requirement.
 15208. Law enforcement tribute acts.
 (a) Short title.
 (b) Findings.
 (c) Program authorized.
 (d) Uses of funds.
 (e) \$150,000 limitation.
 (f) Matching funds.
 (g) Applications.
 (h) Annual report to Congress.
 (i) Authorization of appropriations.

§ 15201. Authorization of Medal

After September 1, 2001, the President may award, and present in the name of Congress, a Medal of Valor of appropriate design, with ribbons and appurtenances, to a public safety officer who is cited by the Attorney General, upon the recommendation of the Medal of Valor Review Board, for extraordinary valor above and beyond the call of duty. The Public Safety Medal of Valor shall be the highest national award for valor by a public safety officer.

(Pub. L. 107-12, §2, May 30, 2001, 115 Stat. 20.)

SHORT TITLE

Pub. L. 107-12, §1, May 30, 2001, 115 Stat. 20, provided that: "This Act [enacting this chapter and amending section 2214 of Title 15, Commerce and Trade] may be cited as the 'Public Safety Officer Medal of Valor Act of 2001'."

§ 15202. Medal of Valor Board

(a) Establishment of Board

There is established a Medal of Valor Review Board (hereinafter in this chapter referred to as the "Board"), which shall be composed of 11 members appointed in accordance with subsection (b) of this section and shall conduct its business in accordance with this chapter.

(b) Membership

(1) Members

The members of the Board shall be individuals with knowledge or expertise, whether by experience or training, in the field of public safety, of which—

- (A) two shall be appointed by the majority leader of the Senate;
- (B) two shall be appointed by the minority leader of the Senate;
- (C) two shall be appointed by the Speaker of the House of Representatives;
- (D) two shall be appointed by the minority leader of the House of Representatives; and
- (E) three shall be appointed by the President, including one with experience in fire-fighting, one with experience in law enforcement, and one with experience in emergency services.

(2) Term

The term of a Board member shall be 4 years.

(3) Vacancies

Any vacancy in the membership of the Board shall not affect the powers of the Board and shall be filled in the same manner as the original appointment.

(4) Operation of the Board

(A) Chairman

The Chairman of the Board shall be elected by the members of the Board from among the members of the Board.

(B) Meetings

The Board shall conduct its first meeting not later than 90 days after the appointment of the last member appointed to the initial group of members appointed to the Board. Thereafter, the Board shall meet at the call of the Chairman of the Board. The Board shall meet not less often than twice each year.

(C) Voting and rules

A majority of the members shall constitute a quorum to conduct business, but the Board may establish a lesser quorum for conducting hearings scheduled by the Board. The Board may establish by majority vote any other rules for the conduct of the Board's business, if such rules are not inconsistent with this chapter or other applicable law.

(c) Duties

The Board shall select candidates as recipients of the Medal of Valor from among those applications received by the National Medal of Valor Office. Not more often than once each year, the Board shall present to the Attorney General the name or names of those it recommends as Medal of Valor recipients. In a given year, the Board shall not be required to select any recipients but may not select more than 5 recipients. The Attorney General may in extraordinary cases increase the number of recipients in a given year. The Board shall set an annual timetable for fulfilling its duties under this chapter.

(d) Hearings

(1) In general

The Board may hold such hearings, sit and act at such times and places, administer such oaths, take such testimony, and receive such evidence as the Board considers advisable to carry out its duties.

(2) Witness expenses

Witnesses requested to appear before the Board may be paid the same fees as are paid to witnesses under section 1821 of title 28. The per diem and mileage allowances for witnesses shall be paid from funds appropriated to the Board.

(e) Information from Federal agencies

The Board may secure directly from any Federal department or agency such information as the Board considers necessary to carry out its duties. Upon the request of the Board, the head of such department or agency may furnish such information to the Board.

(f) Information to be kept confidential

The Board shall not disclose any information which may compromise an ongoing law enforcement investigation or is otherwise required by law to be kept confidential.

(Pub. L. 107-12, §3, May 30, 2001, 115 Stat. 20.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (b)(4)(C), and (c), was in the original “this Act”, meaning Pub. L. 107-12, May. 30, 2001, 115 Stat. 20, which enacted this chapter and amended section 2214 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 15201 of this title and Tables.

§ 15203. Board personnel matters**(a) Compensation of members**

(1) Except as provided in paragraph (2), each member of the Board shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5 for each day (including travel time) during which such member is engaged in the performance of the duties of the Board.

(2) All members of the Board who serve as officers or employees of the United States, a State, or a local government, shall serve without compensation in addition to that received for those services.

(b) Travel expenses

The members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, while away from their homes or regular places of business in the performance of service for the Board.

(Pub. L. 107-12, § 4, May 30, 2001, 115 Stat. 21.)

§ 15204. Definitions

In this chapter:

(1) Public safety officer

The term “public safety officer” means a person serving a public agency, with or without compensation, as a firefighter, law enforcement officer, or emergency services officer, as determined by the Attorney General. For the purposes of this paragraph, the term “law enforcement officer” includes a person who is a corrections or court officer or a civil defense officer.

(2) State

The term “State” means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(Pub. L. 107-12, § 5, May 30, 2001, 115 Stat. 22.)

§ 15205. Authorization of appropriations

There are authorized to be appropriated to the Attorney General such sums as may be necessary to carry out this chapter.

(Pub. L. 107-12, § 6, May 30, 2001, 115 Stat. 22.)

§ 15206. National Medal of Valor Office

There is established within the Department of Justice a National Medal of Valor Office. The Office shall provide staff support to the Board to establish criteria and procedures for the submis-

sion of recommendations of nominees for the Medal of Valor and for the final design of the Medal of Valor.

(Pub. L. 107-12, § 7, May 30, 2001, 115 Stat. 22.)

§ 15207. Consultation requirement

The Board shall consult with the Institute of Heraldry within the Department of Defense regarding the design and artistry of the Medal of Valor. The Board may also consider suggestions received by the Department of Justice regarding the design of the medal, including those made by persons not employed by the Department.

(Pub. L. 107-12, § 9, May 30, 2001, 115 Stat. 22.)

§ 15208. Law enforcement tribute acts**(a) Short title**

This section may be cited as the “Law Enforcement Tribute Act”.

(b) Findings

Congress finds the following:

(1) The well-being of all citizens of the United States is preserved and enhanced as a direct result of the vigilance and dedication of law enforcement and public safety personnel.

(2) More than 700,000 law enforcement officers, both men and women, at great risk to their personal safety, serve their fellow citizens as guardians of peace.

(3) Nationwide, 51 law enforcement officers were killed in the line of duty in 2000, according to statistics released by the Federal Bureau of Investigation. This number is an increase of 9 from the 1999 total of 42.

(4) In 1999, 112 firefighters died while on duty, an increase of 21 deaths from the previous year.

(5) Every year, 1 in 9 peace officers is assaulted, 1 in 25 is injured, and 1 in 4,400 is killed in the line of duty.

(6) In addition, recent statistics indicate that 83 officers were accidentally killed in the performance of their duties in 2000, an increase of 18 from the 65 accidental deaths in 1999.

(7) A permanent tribute is a powerful means of honoring the men and women who have served our Nation with distinction. However, many law enforcement and public safety agencies lack the resources to honor their fallen colleagues.

(c) Program authorized

From amounts made available to carry out this section, the Attorney General may make grants to States, units of local government, and Indian tribes to carry out programs to honor, through permanent tributes, men and women of the United States who were killed or disabled while serving as law enforcement or public safety officers.

(d) Uses of funds

Grants awarded under this section shall be distributed directly to the State, unit of local government, or Indian tribe, and shall be used for the purposes specified in subsection (c) of this section.

(e) \$150,000 limitation

A grant under this section may not exceed \$150,000 to any single recipient.

(f) Matching funds

(1) The Federal portion of the costs of a program provided by a grant under this section may not exceed 50 percent.

(2) Any funds appropriated by Congress for the activities of any agency of an Indian tribal government or the Bureau of Indian Affairs performing law enforcement or public safety functions on any Indian lands may be used to provide the non-Federal share of a matching requirement funded under this subsection.

(g) Applications

To request a grant under this section, the chief executive of a State, unit of local government, or Indian tribe shall submit an application to the Attorney General at such time, in such manner, and accompanied by such information as the Attorney General may require.

(h) Annual report to Congress

Not later than November 30 of each year, the Attorney General shall submit a report to the Congress regarding the activities carried out under this section. Each such report shall include, for the preceding fiscal year, the number of grants funded under this section, the amount of funds provided under those grants, and the activities for which those funds were used.

(i) Authorization of appropriations

There are authorized to be appropriated to carry out this section \$3,000,000 for each of fiscal years 2002 through 2006.

(Pub. L. 107-273, div. C, title I, §11001, Nov. 2, 2002, 116 Stat. 1815.)

CODIFICATION

Section was enacted as the Law Enforcement Tribute Act, and also as part of the 21st Century Department of Justice Appropriations Authorization Act, and not as part of the Public Safety Officer Medal of Valor Act of 2001 which comprises this chapter.

CHAPTER 146—ELECTION ADMINISTRATION IMPROVEMENT

SUBCHAPTER I—PAYMENTS TO STATES FOR ELECTION ADMINISTRATION IMPROVEMENTS AND REPLACEMENT OF PUNCH CARD AND LEVER VOTING MACHINES

- Sec.
- 15301. Payments to States for activities to improve administration of elections.
 - (a) In general.
 - (b) Use of payment.
 - (c) Use of funds to be consistent with other laws and requirements.
 - (d) Amount of payment.
- 15302. Replacement of punch card or lever voting machines.
 - (a) Establishment of program.
 - (b) Eligibility.
 - (c) Amount of payment.
 - (d) Repayment of funds for failure to meet deadlines.
 - (e) Punch card voting system defined.
- 15303. Guaranteed minimum payment amount.
 - (a) In general.
 - (b) Pro rata reductions.
- 15304. Authorization of appropriations.
 - (a) In general.
 - (b) Continuing availability of funds after appropriation.
 - (c) Use of returned funds and funds remaining unexpended for requirements payments.

- Sec.
- (d) Deposit of amounts in State election fund.
- (e) Authorization of appropriations for Administrator.
- 15305. Administration of programs.
- 15306. Effective date.

SUBCHAPTER II—COMMISSION

PART A—ESTABLISHMENT AND GENERAL ORGANIZATION

SUBPART 1—ELECTION ASSISTANCE COMMISSION

- 15321. Establishment.
- 15322. Duties.
- 15323. Membership and appointment.
 - (a) Membership.
 - (b) Term of service.
 - (c) Chair and vice chair.
 - (d) Compensation.
- 15324. Staff.
 - (a) Executive Director, General Counsel, and other staff.
 - (b) Experts and consultants.
 - (c) Staff of Federal agencies.
 - (d) Arranging for assistance for Board of Advisors and Standards Board.
 - (e) Consultation with Board of Advisors and Standards Board on certain matters.
- 15325. Powers.
 - (a) Hearings and sessions.
 - (b) Information from Federal agencies.
 - (c) Postal services.
 - (d) Administrative support services.
 - (e) Contracts.
- 15326. Dissemination of information.
- 15327. Annual report.
- 15328. Requiring majority approval for actions.
- 15329. Limitation on rulemaking authority.
- 15330. Authorization of appropriations.

SUBPART 2—ELECTION ASSISTANCE COMMISSION STANDARDS BOARD AND BOARD OF ADVISORS

- 15341. Establishment.
- 15342. Duties.
- 15343. Membership of Standards Board.
 - (a) Composition.
 - (b) Procedures for notice and certification of appointment.
 - (c) Executive Board.
- 15344. Membership of Board of Advisors.
 - (a) In general.
 - (b) Manner of appointments.
 - (c) Term of service; vacancy.
 - (d) Chair.
- 15345. Powers of Boards; no compensation for service.
 - (a) Hearings and sessions.
 - (b) Information from Federal agencies.
 - (c) Postal services.
 - (d) Administrative support services.
 - (e) No compensation for service.
- 15346. Status of Boards and members for purposes of claims against Board.
 - (a) In general.
 - (b) Exception for criminal acts and other willful conduct.

SUBPART 3—TECHNICAL GUIDELINES DEVELOPMENT COMMITTEE

- 15361. Technical Guidelines Development Committee.
 - (a) Establishment.
 - (b) Duties.
 - (c) Membership.
 - (d) No compensation for service.
 - (e) Technical support from National Institute of Standards and Technology.

- Sec. (f) Publication of recommendations in Federal Register.
15362. Process for adoption.
- (a) General requirement for notice and comment.
- (b) Consideration of recommendations of Development Committee; submission of proposed guidelines to Board of Advisors and Standards Board.
- (c) Review.
- (d) Final adoption.
- (e) Special rule for initial set of guidelines.
- PART B—TESTING, CERTIFICATION, DECERTIFICATION, AND RECERTIFICATION OF VOTING SYSTEM HARDWARE AND SOFTWARE
15371. Certification and testing of voting systems.
- (a) Certification and testing.
- (b) Laboratory accreditation.
- (c) Continuing review by National Institute of Standards and Technology.
- (d) Transition.
- PART C—STUDIES AND OTHER ACTIVITIES TO PROMOTE EFFECTIVE ADMINISTRATION OF FEDERAL ELECTIONS
15381. Periodic studies of election administration issues.
- (a) In general.
- (b) Election administration issues described.
- (c) Reports.
15382. Study, report, and recommendations on best practices for facilitating military and overseas voting.
- (a) Study.
- (b) Report and recommendations.
15383. Report on human factor research.
15384. Study and report on voters who register by mail and use of Social Security information.
- (a) Registration by mail.
- (b) Use of Social Security information.
15385. Study and report on electronic voting and the electoral process.
- (a) Study.
- (b) Report.
15386. Study and report on free absentee ballot postage.
- (a) Study on the establishment of a free absentee ballot postage program.
- (b) Report.
- (c) Postal Service defined.
15387. Consultation with Standards Board and Board of Advisors.
- PART D—ELECTION ASSISTANCE
- SUBPART 1—REQUIREMENTS PAYMENTS
15401. Requirements payments.
- (a) In general.
- (b) Use of funds.
- (c) Retroactive payments.
- (d) Adoption of Commission guidelines and guidance not required to receive payment.
- (e) Schedule of payments.
- (f) Limitation.
15402. Allocation of funds.
- (a) In general.
- (b) State allocation percentage defined.
- (c) Minimum amount of payment.
- (d) Pro rata reductions.
- (e) Continuing availability of funds after appropriation.
15403. Condition for receipt of funds.
- (a) In general.
- (b) State plan requirement; certification of compliance with applicable laws and requirements.
- Sec. (c) Methods of compliance left to discretion of State.
- (d) Timing for filing of certification.
- (e) Chief State election official defined.
15404. State plan.
- (a) In general.
- (b) Requirements for election fund.
- (c) Protection against actions based on information in plan.
15405. Process for development and filing of plan; publication by Commission.
- (a) In general.
- (b) Publication of plan by Commission.
15406. Requirement for public notice and comment.
15407. Authorization of appropriations.
- (a) In general.
- (b) Availability.
15408. Reports.
- SUBPART 2—PAYMENTS TO STATES AND UNITS OF LOCAL GOVERNMENT TO ASSURE ACCESS FOR INDIVIDUALS WITH DISABILITIES
15421. Payments to States and units of local government to assure access for individuals with disabilities.
- (a) In general.
- (b) Use of funds.
- (c) Schedule of payments.
15422. Amount of payment.
- (a) In general.
- (b) Continuing availability of funds after appropriation.
15423. Requirements for eligibility.
- (a) Application.
- (b) Contents of application.
- (c) Protection against actions based on information in application.
15424. Authorization of appropriations.
- (a) In general.
- (b) Availability.
15425. Reports.
- (a) Reports by recipients.
- (b) Report by Secretary to Committees.
- SUBPART 3—GRANTS FOR RESEARCH ON VOTING TECHNOLOGY IMPROVEMENTS
15441. Grants for research on voting technology improvements.
- (a) In general.
- (b) Eligibility.
- (c) Applicability of regulations governing patent rights in inventions made with Federal assistance.
- (d) Recommendation of topics for research.
- (e) Provision of information on projects.
15442. Report.
- (a) In general.
- (b) Deadline.
15443. Authorization of appropriations.
- (a) In general.
- (b) Availability of funds.
- SUBPART 4—PILOT PROGRAM FOR TESTING OF EQUIPMENT AND TECHNOLOGY
15451. Pilot program.
- (a) In general.
- (b) Eligibility.
- (c) Recommendation of topics for pilot programs.
- (d) Provision of information on projects.
15452. Report.
- (a) In general.
- (b) Deadline.
15453. Authorization of appropriations.
- (a) In general.
- (b) Availability of funds.
- SUBPART 5—PROTECTION AND ADVOCACY SYSTEMS
15461. Payments for protection and advocacy systems.

- Sec. (a) In general.
 (b) Minimum grant amount.
 (c) Training and technical assistance program.
15462. Authorization of appropriations.
 (a) In general.
 (b) Availability.

SUBPART 6—NATIONAL STUDENT AND PARENT MOCK ELECTION

15471. National student and parent mock election.
 (a) In general.
 (b) Requirement.
15472. Authorization of appropriations.

SUBCHAPTER III—UNIFORM AND NONDISCRIMINATORY ELECTION TECHNOLOGY AND ADMINISTRATION REQUIREMENTS

PART A—REQUIREMENTS

15481. Voting systems standards.
 (a) Requirements.
 (b) Voting system defined.
 (c) Construction.
 (d) Effective date.
15482. Provisional voting and voting information requirements.
 (a) Provisional voting requirements.
 (b) Voting information requirements.
 (c) Voters who vote after the polls close.
 (d) Effective date for provisional voting and voting information.
15483. Computerized statewide voter registration list requirements and requirements for voters who register by mail.
 (a) Computerized statewide voter registration list requirements.
 (b) Requirements for voters who register by mail.
 (c) Permitted use of last 4 digits of social security numbers.
 (d) Effective date.
15484. Minimum requirements.
15485. Methods of implementation left to discretion of State.

PART B—VOLUNTARY GUIDANCE

15501. Adoption of voluntary guidance by Commission.
 (a) In general.
 (b) Deadlines.
 (c) Quadrennial update.
15502. Process for adoption.

SUBCHAPTER IV—ENFORCEMENT

15511. Actions by the Attorney General for declaratory and injunctive relief.
15512. Establishment of State-based administrative complaint procedures to remedy grievances.
 (a) Establishment of State-based administrative complaint procedures to remedy grievances.
 (b) Requiring Attorney General approval of compliance plan for States not receiving funds.

SUBCHAPTER V—HELP AMERICA VOTE COLLEGE PROGRAM

15521. Establishment of program.
 (a) In general.
 (b) Purposes of Program.
15522. Activities under Program.
 (a) In general.
 (b) Requirements for grant recipients.
 (c) Coordination with institutions of higher education.
15523. Authorization of appropriations.

SUBCHAPTER VI—TRANSFER TO COMMISSION OF FUNCTIONS UNDER CERTAIN LAWS

15531. Transfer of functions of Office of Election Administration of Federal Election Commission.

- Sec. 15532. Transfer of functions.
15533. Transfer of property, records, and personnel.
 (a) Property and records.
 (b) Personnel.
15534. Effective date; transition.
 (a) Effective date.
 (b) Transition.
 (c) No effect on authorities of Office of Election Administration prior to appointment of members of Commission.

SUBCHAPTER VII—MISCELLANEOUS PROVISIONS

15541. State defined.
15542. Audits and repayment of funds.
 (a) Recordkeeping requirement.
 (b) Audits and examinations.
 (c) Recoupment of funds.
15543. Review and report on adequacy of existing electoral fraud statutes and penalties.
 (a) Review.
 (b) Report.
15544. Other criminal penalties.
 (a) Conspiracy to deprive voters of a fair election.
 (b) False information in registering and voting.
15545. No effect on other laws.
 (a) In general.
 (b) No effect on preclearance or other requirements under Voting Rights Act.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 1973ff-1 of this title.

SUBCHAPTER I—PAYMENTS TO STATES FOR ELECTION ADMINISTRATION IMPROVEMENTS AND REPLACEMENT OF PUNCH CARD AND LEVER VOTING MACHINES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 15404, 15545 of this title.

§ 15301. Payments to States for activities to improve administration of elections

(a) In general

Not later than 45 days after October 29, 2002, the Administrator of General Services (in this subchapter referred to as the "Administrator") shall establish a program under which the Administrator shall make a payment to each State in which the chief executive officer of the State, or designee, in consultation and coordination with the chief State election official, notifies the Administrator not later than 6 months after October 29, 2002, that the State intends to use the payment in accordance with this section.

(b) Use of payment

(1) In general

A State shall use the funds provided under a payment made under this section to carry out one or more of the following activities:

- (A) Complying with the requirements under subchapter III of this chapter.
 (B) Improving the administration of elections for Federal office.
 (C) Educating voters concerning voting procedures, voting rights, and voting technology.

(D) Training election officials, poll workers, and election volunteers.

(E) Developing the State plan for requirements payments to be submitted under subpart 1 of part D of subchapter II of this chapter.

(F) Improving, acquiring, leasing, modifying, or replacing voting systems and technology and methods for casting and counting votes.

(G) Improving the accessibility and quantity of polling places, including providing physical access for individuals with disabilities, providing nonvisual access for individuals with visual impairments, and providing assistance to Native Americans, Alaska Native citizens, and to individuals with limited proficiency in the English language.

(H) Establishing toll-free telephone hotlines that voters may use to report possible voting fraud and voting rights violations, to obtain general election information, and to access detailed automated information on their own voter registration status, specific polling place locations, and other relevant information.

(2) Limitation

A State may not use the funds provided under a payment made under this section—

(A) to pay costs associated with any litigation, except to the extent that such costs otherwise constitute permitted uses of a payment under this section; or

(B) for the payment of any judgment.

(c) Use of funds to be consistent with other laws and requirements

In order to receive a payment under the program under this section, the State shall provide the Administrator with certifications that—

(1) the State will use the funds provided under the payment in a manner that is consistent with each of the laws described in section 15545 of this title, as such laws relate to the provisions of this chapter; and

(2) the proposed uses of the funds are not inconsistent with the requirements of subchapter III of this chapter.

(d) Amount of payment

(1) In general

Subject to section 15303(b) of this title, the amount of payment made to a State under this section shall be the minimum payment amount described in paragraph (2) plus the voting age population proportion amount described in paragraph (3).

(2) Minimum payment amount

The minimum payment amount described in this paragraph is—

(A) in the case of any of the several States or the District of Columbia, one-half of 1 percent of the aggregate amount made available for payments under this section; and

(B) in the case of the Commonwealth of Puerto Rico, Guam, American Samoa, or the United States Virgin Islands, one-tenth of 1 percent of such aggregate amount.

(3) Voting age population proportion amount

The voting age population proportion amount described in this paragraph is the product of—

(A) the aggregate amount made available for payments under this section minus the total of all of the minimum payment amounts determined under paragraph (2); and

(B) the voting age population proportion for the State (as defined in paragraph (4)).

(4) Voting age population proportion defined

The term “voting age population proportion” means, with respect to a State, the amount equal to the quotient of—

(A) the voting age population of the State (as reported in the most recent decennial census); and

(B) the total voting age population of all States (as reported in the most recent decennial census).

(Pub. L. 107–252, title I, §101, Oct. 29, 2002, 116 Stat. 1668.)

REFERENCES IN TEXT

Subchapter III of this chapter, referred to in subsecs. (b)(1)(A) and (c)(2), was in the original “title III”, meaning title III of Pub. L. 107–252, Oct. 29, 2002, 116 Stat. 1704, which enacted subchapter III of this chapter and amended section 405 of this title. For complete classification of title III to the Code, see Tables.

This chapter, referred to in subsec. (c)(1), was in the original “this Act”, meaning Pub. L. 107–252, Oct. 29, 2002, 116 Stat. 1666, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

SHORT TITLE

Pub. L. 107–252, §1(a), Oct. 29, 2002, 116 Stat. 1666, provided that: “This Act [enacting this chapter and chapter 1526 of Title 36, Patriotic And National Observances, Ceremonies, and Organizations, amending sections 405, 1973ff, 1973ff-1, 1973ff-3, 1973gg-6, and 1973gg-7 of this title, section 438 of Title 2, The Congress, sections 3132 and 7323 of Title 5, Government Organization and Employees, section 8G of the Inspector General Act of 1978, Pub. L. 95–452, set out in the Appendix to Title 5, and section 1566 of Title 10, Armed Forces, and enacting provisions set out as notes under sections 1973ff-1 and 1973ff-3 of this title and section 8G of the Inspector General Act of 1978, Pub. L. 95–452, set out in the Appendix to Title 5] may be cited as the ‘Help America Vote Act of 2002’.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 15303, 15304 of this title.

§ 15302. Replacement of punch card or lever voting machines

(a) Establishment of program

(1) In general

Not later than 45 days after October 29, 2002, the Administrator shall establish a program under which the Administrator shall make a payment to each State eligible under subsection (b) of this section in which a precinct within that State used a punch card voting system or a lever voting system to administer the regularly scheduled general election for Federal office held in November 2000 (in this section referred to as a “qualifying precinct”).

(2) Use of funds

A State shall use the funds provided under a payment under this section (either directly or

as reimbursement, including as reimbursement for costs incurred on or after January 1, 2001, under multiyear contracts) to replace punch card voting systems or lever voting systems (as the case may be) in qualifying precincts within that State with a voting system (by purchase, lease, or such other arrangement as may be appropriate) that—

(A) does not use punch cards or levers;

(B) is not inconsistent with the requirements of the laws described in section 15545 of this title; and

(C) meets the requirements of section 15481 of this title.

(3) Deadline

(A) In general

Except as provided in subparagraph (B), a State receiving a payment under the program under this section shall ensure that all of the punch card voting systems or lever voting systems in the qualifying precincts within that State have been replaced in time for the regularly scheduled general election for Federal office to be held in November 2004.

(B) Waiver

If a State certifies to the Administrator not later than January 1, 2004, that the State will not meet the deadline described in subparagraph (A) for good cause and includes in the certification the reasons for the failure to meet such deadline, the State shall ensure that all of the punch card voting systems or lever voting systems in the qualifying precincts within that State will be replaced in time for the first election for Federal office held after January 1, 2006.

(b) Eligibility

(1) In general

A State is eligible to receive a payment under the program under this section if it submits to the Administrator a notice not later than the date that is 6 months after October 29, 2002 (in such form as the Administrator may require) that contains—

(A) certifications that the State will use the payment (either directly or as reimbursement, including as reimbursement for costs incurred on or after January 1, 2001, under multiyear contracts) to replace punch card voting systems or lever voting systems (as the case may be) in the qualifying precincts within the State by the deadline described in subsection (a)(3) of this section;

(B) certifications that the State will continue to comply with the laws described in section 15545 of this title;

(C) certifications that the replacement voting systems will meet the requirements of section 15481 of this title; and

(D) such other information and certifications as the Administrator may require which are necessary for the administration of the program.

(2) Compliance of states that require changes to State law

In the case of a State that requires State legislation to carry out an activity covered by

any certification submitted under this subsection, the State shall be permitted to make the certification notwithstanding that the legislation has not been enacted at the time the certification is submitted and such State shall submit an additional certification once such legislation is enacted.

(c) Amount of payment

(1) In general

Subject to paragraph (2) and section 15303(b) of this title, the amount of payment made to a State under the program under this section shall be equal to the product of—

(A) the number of the qualifying precincts within the State; and

(B) \$4,000.

(2) Reduction

If the amount of funds appropriated pursuant to the authority of section 15304(a)(2) of this title is insufficient to ensure that each State receives the amount of payment calculated under paragraph (1), the Administrator shall reduce the amount specified in paragraph (1)(B) to ensure that the entire amount appropriated under such section is distributed to the States.

(d) Repayment of funds for failure to meet deadlines

(1) In general

If a State receiving funds under the program under this section fails to meet the deadline applicable to the State under subsection (a)(3) of this section, the State shall pay to the Administrator an amount equal to the non-compliant precinct percentage of the amount of the funds provided to the State under the program.

(2) Noncompliant precinct percentage defined

In this subsection, the term “noncompliant precinct percentage” means, with respect to a State, the amount (expressed as a percentage) equal to the quotient of—

(A) the number of qualifying precincts within the State for which the State failed to meet the applicable deadline; and

(B) the total number of qualifying precincts in the State.

(e) Punch card voting system defined

For purposes of this section, a “punch card voting system” includes any of the following voting systems:

- (1) C.E.S.
- (2) Datavote.
- (3) PBC Counter.
- (4) Pollstar.
- (5) Punch Card.
- (6) Vote Recorder.
- (7) Votomatic.

(Pub. L. 107-252, title I, §102, Oct. 29, 2002, 116 Stat. 1670.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 15303, 15304 of this title.

§ 15303. Guaranteed minimum payment amount

(a) In general

In addition to any other payments made under this subchapter, the Administrator shall make a

payment to each State to which a payment is made under either section 15301 or 15302 of this title and with respect to which the aggregate amount paid under such sections is less than \$5,000,000 in an amount equal to the difference between the aggregate amount paid to the State under sections 15301 and 15302 of this title and \$5,000,000. In the case of the Commonwealth of Puerto Rico, Guam, American Samoa, and the United States Virgin Islands, the previous sentence shall be applied as if each reference to “\$5,000,000” were a reference to “\$1,000,000”.

(b) Pro rata reductions

The Administrator shall make such pro rata reductions to the amounts described in sections 15301(d) and 15302(c) of this title as are necessary to comply with the requirements of subsection (a) of this section.

(Pub. L. 107-252, title I, §103, Oct. 29, 2002, 116 Stat. 1672.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 15301, 15302 of this title.

§ 15304. Authorization of appropriations

(a) In general

There are authorized to be appropriated for payments under this subchapter \$650,000,000, of which—

- (1) 50 percent shall be for payments under section 15301 of this title; and
- (2) 50 percent shall be for payments under section 15302 of this title.

(b) Continuing availability of funds after appropriation

Any payment made to a State under this subchapter shall be available to the State without fiscal year limitation (subject to subsection (c)(2)(B) of this section).

(c) Use of returned funds and funds remaining unexpended for requirements payments

(1) In general

The amounts described in paragraph (2) shall be transferred to the Election Assistance Commission (established under subchapter II of this chapter) and used by the Commission to make requirements payments under subpart 1 of part D of subchapter II of this chapter.

(2) Amounts described

The amounts referred to in this paragraph are as follows:

- (A) Any amounts paid to the Administrator by a State under section 15302(d)(1) of this title.
- (B) Any amounts appropriated for payments under this subchapter which remain unobligated as of September 1, 2003.

(d) Deposit of amounts in State election fund

When a State has established an election fund described in section 15404(b) of this title, the State shall ensure that any funds provided to the State under this subchapter are deposited and maintained in such fund.

(e) Authorization of appropriations for Administrator

In addition to the amounts authorized under subsection (a) of this section, there are author-

ized to be appropriated to the Administrator such sums as may be necessary to administer the programs under this subchapter.

(Pub. L. 107-252, title I, §104, Oct. 29, 2002, 116 Stat. 1672.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 15302, 15407 of this title.

§ 15305. Administration of programs

In administering the programs under this subchapter, the Administrator shall take such actions as the Administrator considers appropriate to expedite the payment of funds to States.

(Pub. L. 107-252, title I, §105, Oct. 29, 2002, 116 Stat. 1673.)

§ 15306. Effective date

The Administrator shall implement the programs established under this subchapter in a manner that ensures that the Administrator is able to make payments under the program not later than the expiration of the 45-day period which begins on October 29, 2002.

(Pub. L. 107-252, title I, §106, Oct. 29, 2002, 116 Stat. 1673.)

SUBCHAPTER II—COMMISSION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 15304, 15481, 15545 of this title.

PART A—ESTABLISHMENT AND GENERAL ORGANIZATION

SUBPART 1—ELECTION ASSISTANCE COMMISSION

§ 15321. Establishment

There is hereby established as an independent entity the Election Assistance Commission (hereafter in this subchapter referred to as the “Commission”), consisting of the members appointed under this subpart. Additionally, there is established the Election Assistance Commission Standards Board (including the Executive Board of such Board) and the Election Assistance Commission Board of Advisors under subpart 2 of this part (hereafter in this subpart referred to as the “Standards Board” and the “Board of Advisors”, respectively) and the Technical Guidelines Development Committee under subpart 3 of this part.

(Pub. L. 107-252, title II, §201, Oct. 29, 2002, 116 Stat. 1673.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 15531, 15532 of this title.

§ 15322. Duties

The Commission shall serve as a national clearinghouse and resource for the compilation of information and review of procedures with respect to the administration of Federal elections by—

- (1) carrying out the duties described in subpart 3 of this part (relating to the adoption of

voluntary voting system guidelines), including the maintenance of a clearinghouse of information on the experiences of State and local governments in implementing the guidelines and in operating voting systems in general;

(2) carrying out the duties described in part B of this subchapter (relating to the testing, certification, decertification, and recertification of voting system hardware and software);

(3) carrying out the duties described in part C of this subchapter (relating to conducting studies and carrying out other activities to promote the effective administration of Federal elections);

(4) carrying out the duties described in part D of this subchapter (relating to election assistance), and providing information and training on the management of the payments and grants provided under such part;

(5) carrying out the duties described in part B of subchapter III of this chapter (relating to the adoption of voluntary guidance); and

(6) developing and carrying out the Help America Vote College Program under subchapter V of this chapter.

(Pub. L. 107-252, title II, §202, Oct. 29, 2002, 116 Stat. 1673.)

§ 15323. Membership and appointment

(a) Membership

(1) In general

The Commission shall have four members appointed by the President, by and with the advice and consent of the Senate.

(2) Recommendations

Before the initial appointment of the members of the Commission and before the appointment of any individual to fill a vacancy on the Commission, the Majority Leader of the Senate, the Speaker of the House of Representatives, the Minority Leader of the Senate, and the Minority Leader of the House of Representatives shall each submit to the President a candidate recommendation with respect to each vacancy on the Commission affiliated with the political party of the Member of Congress involved.

(3) Qualifications

Each member of the Commission shall have experience with or expertise in election administration or the study of elections.

(4) Date of appointment

The appointments of the members of the Commission shall be made not later than 120 days after October 29, 2002.

(b) Term of service

(1) In general

Except as provided in paragraphs (2) and (3), members shall serve for a term of 4 years and may be reappointed for not more than one additional term.

(2) Terms of initial appointees

As designated by the President at the time of nomination, of the members first appointed—

(A) two of the members (not more than one of whom may be affiliated with the same political party) shall be appointed for a term of 2 years; and

(B) two of the members (not more than one of whom may be affiliated with the same political party) shall be appointed for a term of 4 years.

(3) Vacancies

(A) In general

A vacancy on the Commission shall be filled in the manner in which the original appointment was made and shall be subject to any conditions which applied with respect to the original appointment.

(B) Expired terms

A member of the Commission shall serve on the Commission after the expiration of the member's term until the successor of such member has taken office as a member of the Commission.

(C) Unexpired terms

An individual appointed to fill a vacancy shall be appointed for the unexpired term of the member replaced.

(c) Chair and vice chair

(1) In general

The Commission shall select a chair and vice chair from among its members for a term of 1 year, except that the chair and vice chair may not be affiliated with the same political party.

(2) Number of terms

A member of the Commission may serve as the chairperson and vice chairperson for only 1 term each during the term of office to which such member is appointed.

(d) Compensation

(1) In general

Each member of the Commission shall be compensated at the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5.

(2) Other activities

No member appointed to the Commission under subsection (a) of this section may engage in any other business, vocation, or employment while serving as a member of the Commission and shall terminate or liquidate such business, vocation, or employment before sitting as a member of the Commission.

(Pub. L. 107-252, title II, §203, Oct. 29, 2002, 116 Stat. 1674.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 15534 of this title.

§ 15324. Staff

(a) Executive Director, General Counsel, and other staff

(1) Executive Director

The Commission shall have an Executive Director, who shall be paid at a rate not to exceed the rate of basic pay for level V of the Executive Schedule under section 5316 of title 5.

(2) Term of service for Executive Director

The Executive Director shall serve for a term of 4 years. An Executive Director may serve for a longer period only if reappointed for an additional term or terms by a vote of the Commission.

(3) Procedure for appointment**(A) In general**

When a vacancy exists in the position of the Executive Director, the Standards Board and the Board of Advisors shall each appoint a search committee to recommend at least three nominees for the position.

(B) Requiring consideration of nominees

Except as provided in subparagraph (C), the Commission shall consider the nominees recommended by the Standards Board and the Board of Advisors in appointing the Executive Director.

(C) Interim service of General Counsel

If a vacancy exists in the position of the Executive Director, the General Counsel of the Commission shall serve as the acting Executive Director until the Commission appoints a new Executive Director in accordance with this paragraph.

(D) Special rules for interim Executive Director**(i) Convening of search committees**

The Standards Board and the Board of Advisors shall each appoint a search committee and recommend nominees for the position of Executive Director in accordance with subparagraph (A) as soon as practicable after the appointment of their members.

(ii) Interim initial appointment

Notwithstanding subparagraph (B), the Commission may appoint an individual to serve as an interim Executive Director prior to the recommendation of nominees for the position by the Standards Board or the Board of Advisors, except that such individual's term of service may not exceed 6 months. Nothing in the previous sentence may be construed to prohibit the individual serving as the interim Executive Director from serving any additional term.

(4) General Counsel

The Commission shall have a General Counsel, who shall be appointed by the Commission and who shall serve under the Executive Director. The General Counsel shall serve for a term of 4 years, and may serve for a longer period only if reappointed for an additional term or terms by a vote of the Commission.

(5) Other staff

Subject to rules prescribed by the Commission, the Executive Director may appoint and fix the pay of such additional personnel as the Executive Director considers appropriate.

(6) Applicability of certain civil service laws

The Executive Director, General Counsel, and staff of the Commission may be appointed without regard to the provisions of title 5 gov-

erning appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates, except that an individual so appointed may not receive pay in excess of the annual rate of basic pay for level V of the Executive Schedule under section 5316 of that title.

(b) Experts and consultants

Subject to rules prescribed by the Commission, the Executive Director may procure temporary and intermittent services under section 3109(b) of title 5 by a vote of the Commission.

(c) Staff of Federal agencies

Upon request of the Commission, the head of any Federal department or agency may detail, on a reimbursable basis, any of the personnel of that department or agency to the Commission to assist it in carrying out its duties under this chapter.

(d) Arranging for assistance for Board of Advisors and Standards Board

At the request of the Board of Advisors or the Standards Board, the Commission may enter into such arrangements as the Commission considers appropriate to make personnel available to assist the Boards with carrying out their duties under this subchapter (including contracts with private individuals for providing temporary personnel services or the temporary detailing of personnel of the Commission).

(e) Consultation with Board of Advisors and Standards Board on certain matters

In preparing the program goals, long-term plans, mission statements, and related matters for the Commission, the Executive Director and staff of the Commission shall consult with the Board of Advisors and the Standards Board.

(Pub. L. 107-252, title II, §204, Oct. 29, 2002, 116 Stat. 1675.)

REFERENCES IN TEXT

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (a)(6), are classified generally to section 3301 et seq. of Title 5, Government Organization and Employees.

This chapter, referred to in subsec. (c), was in the original "this Act", meaning Pub. L. 107-252, Oct. 29, 2002, 116 Stat. 1666, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 15301 of this title and Tables.

§ 15325. Powers**(a) Hearings and sessions**

The Commission may hold such hearings for the purpose of carrying out this chapter, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out this chapter. The Commission may administer oaths and affirmations to witnesses appearing before the Commission.

(b) Information from Federal agencies

The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry

out this chapter. Upon request of the Commission, the head of such department or agency shall furnish such information to the Commission.

(c) Postal services

The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(d) Administrative support services

Upon the request of the Commission, the Administrator of General Services shall provide to the Commission, on a reimbursable basis, the administrative support services that are necessary to enable the Commission to carry out its duties under this chapter.

(e) Contracts

The Commission may contract with and compensate persons and Federal agencies for supplies and services without regard to section 5 of title 41.

(Pub. L. 107-252, title II, §205, Oct. 29, 2002, 116 Stat. 1677.)

§ 15326. Dissemination of information

In carrying out its duties, the Commission shall, on an ongoing basis, disseminate to the public (through the Internet, published reports, and such other methods as the Commission considers appropriate) in a manner that is consistent with the requirements of chapter 19 of title 44 information on the activities carried out under this chapter.

(Pub. L. 107-252, title II, §206, Oct. 29, 2002, 116 Stat. 1677.)

§ 15327. Annual report

Not later than January 31 of each year (beginning with 2004), the Commission shall submit a report to the Committee on House Administration of the House of Representatives and the Committee on Rules and Administration of the Senate detailing its activities during the fiscal year which ended on September 30 of the previous calendar year, and shall include in the report the following information:

(1) A detailed description of activities conducted with respect to each program carried out by the Commission under this chapter, including information on each grant or other payment made under such programs.

(2) A copy of each report submitted to the Commission by a recipient of such grants or payments which is required under such a program, including reports submitted by States receiving requirements payments under subpart 1 of part D of this subchapter, and each other report submitted to the Commission under this chapter.

(3) Information on the voluntary voting system guidelines adopted or modified by the Commission under subpart 3 of this part and information on the voluntary guidance adopted under part B of subchapter III of this chapter.

(4) All votes taken by the Commission.

(5) Such other information and recommendations as the Commission considers appropriate.

(Pub. L. 107-252, title II, §207, Oct. 29, 2002, 116 Stat. 1677.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 15441, 15451 of this title.

§ 15328. Requiring majority approval for actions

Any action which the Commission is authorized to carry out under this chapter may be carried out only with the approval of at least three of its members.

(Pub. L. 107-252, title II, §208, Oct. 29, 2002, 116 Stat. 1678.)

§ 15329. Limitation on rulemaking authority

The Commission shall not have any authority to issue any rule, promulgate any regulation, or take any other action which imposes any requirement on any State or unit of local government, except to the extent permitted under section 1973gg-7(a) of this title.

(Pub. L. 107-252, title II, §209, Oct. 29, 2002, 116 Stat. 1678.)

§ 15330. Authorization of appropriations

In addition to the amounts authorized for payments and grants under this subchapter and the amounts authorized to be appropriated for the program under section 15523 of this title, there are authorized to be appropriated for each of the fiscal years 2003 through 2005 such sums as may be necessary (but not to exceed \$10,000,000 for each such year) for the Commission to carry out this subchapter.

(Pub. L. 107-252, title II, §210, Oct. 29, 2002, 116 Stat. 1678.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 15523 of this title.

SUBPART 2—ELECTION ASSISTANCE COMMISSION STANDARDS BOARD AND BOARD OF ADVISORS

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in section 15321 of this title.

§ 15341. Establishment

There are hereby established the Election Assistance Commission Standards Board (hereafter in this subchapter referred to as the “Standards Board”) and the Election Assistance Commission Board of Advisors (hereafter in this subchapter referred to as the “Board of Advisors”).

(Pub. L. 107-252, title II, §211, Oct. 29, 2002, 116 Stat. 1678.)

§ 15342. Duties

The Standards Board and the Board of Advisors shall each, in accordance with the procedures described in subpart 3 of this part, review the voluntary voting system guidelines under such subpart, the voluntary guidance under subchapter III of this chapter, and the best practices recommendations contained in the report submitted under section 15382(b) of this title.

(Pub. L. 107-252, title II, §212, Oct. 29, 2002, 116 Stat. 1678.)

§ 15343. Membership of Standards Board

(a) Composition

(1) In general

Subject to certification by the chair of the Federal Election Commission under subsection (b) of this section, the Standards Board shall be composed of 110 members as follows:

(A) Fifty-five shall be State election officials selected by the chief State election official of each State.

(B) Fifty-five shall be local election officials selected in accordance with paragraph (2).

(2) List of local election officials

Each State's local election officials, including the local election officials of Puerto Rico and the United States Virgin Islands, shall select (under a process supervised by the chief election official of the State) a representative local election official from the State for purposes of paragraph (1)(B). In the case of the District of Columbia, Guam, and American Samoa, the chief election official shall establish a procedure for selecting an individual to serve as a local election official for purposes of such paragraph, except that under such a procedure the individual selected may not be a member of the same political party as the chief election official.

(3) Requiring mix of political parties represented

The two members of the Standards Board who represent the same State may not be members of the same political party.

(b) Procedures for notice and certification of appointment

(1) Notice to chair of Federal Election Commission

Not later than 90 days after October 29, 2002, the chief State election official of the State shall transmit a notice to the chair of the Federal Election Commission containing—

(A) the name of the State election official who agrees to serve on the Standards Board under this subchapter; and

(B) the name of the representative local election official from the State selected under subsection (a)(2) of this section who agrees to serve on the Standards Board under this subchapter.

(2) Certification

Upon receiving a notice from a State under paragraph (1), the chair of the Federal Election Commission shall publish a certification that the selected State election official and the representative local election official are appointed as members of the Standards Board under this subchapter.

(3) Effect of failure to provide notice

If a State does not transmit a notice to the chair of the Federal Election Commission under paragraph (1) within the deadline described in such paragraph, no representative

from the State may participate in the selection of the initial Executive Board under subsection (c) of this section.

(4) Role of Commission

Upon the appointment of the members of the Election Assistance Commission, the Election Assistance Commission shall carry out the duties of the Federal Election Commission under this subsection.

(c) Executive Board

(1) In general

Not later than 60 days after the last day on which the appointment of any of its members may be certified under subsection (b) of this section, the Standards Board shall select nine of its members to serve as the Executive Board of the Standards Board, of whom—

(A) not more than five may be State election officials;

(B) not more than five may be local election officials; and

(C) not more than five may be members of the same political party.

(2) Terms

Except as provided in paragraph (3), members of the Executive Board of the Standards Board shall serve for a term of 2 years and may not serve for more than 3 consecutive terms.

(3) Staggering of initial terms

Of the members first selected to serve on the Executive Board of the Standards Board—

(A) three shall serve for 1 term;

(B) three shall serve for 2 consecutive terms; and

(C) three shall serve for 3 consecutive terms,

as determined by lot at the time the members are first appointed.

(4) Duties

In addition to any other duties assigned under this subchapter, the Executive Board of the Standards Board may carry out such duties of the Standards Board as the Standards Board may delegate.

(Pub. L. 107-252, title II, §213, Oct. 29, 2002, 116 Stat. 1678.)

§ 15344. Membership of Board of Advisors

(a) In general

The Board of Advisors shall be composed of 37 members appointed as follows:

(1) Two members appointed by the National Governors Association.

(2) Two members appointed by the National Conference of State Legislatures.

(3) Two members appointed by the National Association of Secretaries of State.

(4) Two members appointed by the National Association of State Election Directors.

(5) Two members appointed by the National Association of Counties.

(6) Two members appointed by the National Association of County Recorders, Election Administrators, and Clerks.

(7) Two members appointed by the United States Conference of Mayors.

(8) Two members appointed by the Election Center.

(9) Two members appointed by the International Association of County Recorders, Election Officials, and Treasurers.

(10) Two members appointed by the United States Commission on Civil Rights.

(11) Two members appointed by the Architectural and Transportation Barrier Compliance Board under section 792 of title 29.

(12) The chief of the Office of Public Integrity of the Department of Justice, or the chief's designee.

(13) The chief of the Voting Section of the Civil Rights Division of the Department of Justice or the chief's designee.

(14) The director of the Federal Voting Assistance Program of the Department of Defense.

(15) Four members representing professionals in the field of science and technology, of whom—

(A) one each shall be appointed by the Speaker and the Minority Leader of the House of Representatives; and

(B) one each shall be appointed by the Majority Leader and the Minority Leader of the Senate.

(16) Eight members representing voter interests, of whom—

(A) four members shall be appointed by the Committee on House Administration of the House of Representatives, of whom two shall be appointed by the chair and two shall be appointed by the ranking minority member; and

(B) four members shall be appointed by the Committee on Rules and Administration of the Senate, of whom two shall be appointed by the chair and two shall be appointed by the ranking minority member.

(b) Manner of appointments

Appointments shall be made to the Board of Advisors under subsection (a) of this section in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States.

(c) Term of service; vacancy

Members of the Board of Advisors shall serve for a term of 2 years, and may be reappointed. Any vacancy in the Board of Advisors shall be filled in the manner in which the original appointment was made.

(d) Chair

The Board of Advisors shall elect a Chair from among its members.

(Pub. L. 107-252, title II, §214, Oct. 29, 2002, 116 Stat. 1680.)

§ 15345. Powers of Boards; no compensation for service

(a) Hearings and sessions

(1) In general

To the extent that funds are made available by the Commission, the Standards Board (acting through the Executive Board) and the

Board of Advisors may each hold such hearings for the purpose of carrying out this chapter, sit and act at such times and places, take such testimony, and receive such evidence as each such Board considers advisable to carry out this subchapter, except that the Boards may not issue subpoenas requiring the attendance and testimony of witnesses or the production of any evidence.

(2) Meetings

The Standards Board and the Board of Advisors shall each hold a meeting of its members—

(A) not less frequently than once every year for purposes of voting on the voluntary voting system guidelines referred to it under section 15362 of this title;

(B) in the case of the Standards Board, not less frequently than once every 2 years for purposes of selecting the Executive Board; and

(C) at such other times as it considers appropriate for purposes of conducting such other business as it considers appropriate consistent with this subchapter.

(b) Information from Federal agencies

The Standards Board and the Board of Advisors may each secure directly from any Federal department or agency such information as the Board considers necessary to carry out this chapter. Upon request of the Executive Board (in the case of the Standards Board) or the Chair (in the case of the Board of Advisors), the head of such department or agency shall furnish such information to the Board.

(c) Postal services

The Standards Board and the Board of Advisors may use the United States mails in the same manner and under the same conditions as a department or agency of the Federal Government.

(d) Administrative support services

Upon the request of the Executive Board (in the case of the Standards Board) or the Chair (in the case of the Board of Advisors), the Administrator of the General Services Administration shall provide to the Board, on a reimbursable basis, the administrative support services that are necessary to enable the Board to carry out its duties under this subchapter.

(e) No compensation for service

Members of the Standards Board and members of the Board of Advisors shall not receive any compensation for their service, but shall be paid travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, while away from their homes or regular places of business in the performance of services for the Board.

(Pub. L. 107-252, title II, §215, Oct. 29, 2002, 116 Stat. 1681.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1) and (b), was in the original "this Act", meaning Pub. L. 107-252, Oct. 29, 2002, 116 Stat. 1666, which is classified principally to this chapter. For complete classification of

this Act to the Code, see Short Title note set out under section 15301 of this title and Tables.

§ 15346. Status of Boards and members for purposes of claims against Board

(a) In general

The provisions of chapters 161 and 171 of title 28 shall apply with respect to the liability of the Standards Board, the Board of Advisors, and their members for acts or omissions performed pursuant to and in the course of the duties and responsibilities of the Board.

(b) Exception for criminal acts and other willful conduct

Subsection (a) of this section may not be construed to limit personal liability for criminal acts or omissions, willful or malicious misconduct, acts or omissions for private gain, or any other act or omission outside the scope of the service of a member of the Standards Board or the Board of Advisors.

(Pub. L. 107-252, title II, §216, Oct. 29, 2002, 116 Stat. 1681.)

SUBPART 3—TECHNICAL GUIDELINES DEVELOPMENT COMMITTEE

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in sections 15321, 15322, 15327, 15342, 15371, 15441, 15451 of this title.

§ 15361. Technical Guidelines Development Committee

(a) Establishment

There is hereby established the Technical Guidelines Development Committee (hereafter in this subpart referred to as the “Development Committee”).

(b) Duties

(1) In general

The Development Committee shall assist the Executive Director of the Commission in the development of the voluntary voting system guidelines.

(2) Deadline for initial set of recommendations

The Development Committee shall provide its first set of recommendations under this section to the Executive Director of the Commission not later than 9 months after all of its members have been appointed.

(c) Membership

(1) In general

The Development Committee shall be composed of the Director of the National Institute of Standards and Technology (who shall serve as its chair), together with a group of 14 other individuals appointed jointly by the Commission and the Director of the National Institute of Standards and Technology, consisting of the following:

(A) An equal number of each of the following:

- (i) Members of the Standards Board.
- (ii) Members of the Board of Advisors.
- (iii) Members of the Architectural and Transportation Barrier Compliance Board under section 792 of title 29.

(B) A representative of the American National Standards Institute.

(C) A representative of the Institute of Electrical and Electronics Engineers.

(D) Two representatives of the National Association of State Election Directors selected by such Association who are not members of the Standards Board or Board of Advisors, and who are not of the same political party.

(E) Other individuals with technical and scientific expertise relating to voting systems and voting equipment.

(2) Quorum

A majority of the members of the Development Committee shall constitute a quorum, except that the Development Committee may not conduct any business prior to the appointment of all of its members.

(d) No compensation for service

Members of the Development Committee shall not receive any compensation for their service, but shall be paid travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, while away from their homes or regular places of business in the performance of services for the Development Committee.

(e) Technical support from National Institute of Standards and Technology

(1) In general

At the request of the Development Committee, the Director of the National Institute of Standards and Technology shall provide the Development Committee with technical support necessary for the Development Committee to carry out its duties under this part.

(2) Technical support

The technical support provided under paragraph (1) shall include intramural research and development in areas to support the development of the voluntary voting system guidelines under this subpart, including—

(A) the security of computers, computer networks, and computer data storage used in voting systems, including the computerized list required under section 15483(a) of this title;

(B) methods to detect and prevent fraud;

(C) the protection of voter privacy;

(D) the role of human factors in the design and application of voting systems, including assistive technologies for individuals with disabilities (including blindness) and varying levels of literacy; and

(E) remote access voting, including voting through the Internet.

(3) No private sector intellectual property rights in guidelines

No private sector individual or entity shall obtain any intellectual property rights to any guideline or the contents of any guideline (or any modification to any guideline) adopted by the Commission under this chapter.

(f) Publication of recommendations in Federal Register

At the time the Commission adopts any voluntary voting system guideline pursuant to sec-

tion 15362 of this title, the Development Committee shall cause to have published in the Federal Register the recommendations it provided under this section to the Executive Director of the Commission concerning the guideline adopted.

(Pub. L. 107-252, title II, §221, Oct. 29, 2002, 116 Stat. 1682.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (e)(3), was in the original “this Act”, meaning Pub. L. 107-252, Oct. 29, 2002, 116 Stat. 1666, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 15301 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 15362 of this title.

§ 15362. Process for adoption

(a) General requirement for notice and comment

Consistent with the requirements of this section, the final adoption of the voluntary voting system guidelines (or modification of such a guideline) shall be carried out by the Commission in a manner that provides for each of the following:

- (1) Publication of notice of the proposed guidelines in the Federal Register.
- (2) An opportunity for public comment on the proposed guidelines.
- (3) An opportunity for a public hearing on the record.
- (4) Publication of the final guidelines in the Federal Register.

(b) Consideration of recommendations of Development Committee; submission of proposed guidelines to Board of Advisors and Standards Board

(1) Consideration of recommendations of Development Committee

In developing the voluntary voting system guidelines and modifications of such guidelines under this section, the Executive Director of the Commission shall take into consideration the recommendations provided by the Technical Guidelines Development Committee under section 15361 of this title.

(2) Board of Advisors

The Executive Director of the Commission shall submit the guidelines proposed to be adopted under this subpart (or any modifications to such guidelines) to the Board of Advisors.

(3) Standards Board

The Executive Director of the Commission shall submit the guidelines proposed to be adopted under this subpart (or any modifications to such guidelines) to the Executive Board of the Standards Board, which shall review the guidelines (or modifications) and forward its recommendations to the Standards Board.

(c) Review

Upon receipt of voluntary voting system guidelines described in subsection (b) of this sec-

tion (or a modification of such guidelines) from the Executive Director of the Commission, the Board of Advisors and the Standards Board shall each review and submit comments and recommendations regarding the guideline (or modification) to the Commission.

(d) Final adoption

(1) In general

A voluntary voting system guideline described in subsection (b) of this section (or modification of such a guideline) shall not be considered to be finally adopted by the Commission unless the Commission votes to approve the final adoption of the guideline (or modification), taking into consideration the comments and recommendations submitted by the Board of Advisors and the Standards Board under subsection (c) of this section.

(2) Minimum period for consideration of comments and recommendations

The Commission may not vote on the final adoption of a guideline described in subsection (b) of this section (or modification of such a guideline) until the expiration of the 90-day period which begins on the date the Executive Director of the Commission submits the proposed guideline (or modification) to the Board of Advisors and the Standards Board under subsection (b) of this section.

(e) Special rule for initial set of guidelines

Notwithstanding any other provision of this subpart, the most recent set of voting system standards adopted by the Federal Election Commission prior to October 29, 2002, shall be deemed to have been adopted by the Commission as of October 29, 2002, as the first set of voluntary voting system guidelines adopted under this subpart.

(Pub. L. 107-252, title II, §222, Oct. 29, 2002, 116 Stat. 1683.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 15345, 15361 of this title.

PART B—TESTING, CERTIFICATION, DECERTIFICATION, AND RECERTIFICATION OF VOTING SYSTEM HARDWARE AND SOFTWARE

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 15322 of this title.

§ 15371. Certification and testing of voting systems

(a) Certification and testing

(1) In general

The Commission shall provide for the testing, certification, decertification, and recertification of voting system hardware and software by accredited laboratories.

(2) Optional use by States

At the option of a State, the State may provide for the testing, certification, decertification, or recertification of its voting system hardware and software by the laboratories accredited by the Commission under this section.

(b) Laboratory accreditation**(1) Recommendations by National Institute of Standards and Technology**

Not later than 6 months after the Commission first adopts voluntary voting system guidelines under subpart 3 of part A of this subchapter, the Director of the National Institute of Standards and Technology shall conduct an evaluation of independent, non-Federal laboratories and shall submit to the Commission a list of those laboratories the Director proposes to be accredited to carry out the testing, certification, decertification, and recertification provided for under this section.

(2) Approval by Commission**(A) In general**

The Commission shall vote on the accreditation of any laboratory under this section, taking into consideration the list submitted under paragraph (1), and no laboratory may be accredited for purposes of this section unless its accreditation is approved by a vote of the Commission.

(B) Accreditation of laboratories not on Director list

The Commission shall publish an explanation for the accreditation of any laboratory not included on the list submitted by the Director of the National Institute of Standards and Technology under paragraph (1).

(c) Continuing review by National Institute of Standards and Technology**(1) In general**

In cooperation with the Commission and in consultation with the Standards Board and the Board of Advisors, the Director of the National Institute of Standards and Technology shall monitor and review, on an ongoing basis, the performance of the laboratories accredited by the Commission under this section, and shall make such recommendations to the Commission as it considers appropriate with respect to the continuing accreditation of such laboratories, including recommendations to revoke the accreditation of any such laboratory.

(2) Approval by Commission required for revocation

The accreditation of a laboratory for purposes of this section may not be revoked unless the revocation is approved by a vote of the Commission.

(d) Transition

Until such time as the Commission provides for the testing, certification, decertification, and recertification of voting system hardware and software by accredited laboratories under this section, the accreditation of laboratories and the procedure for the testing, certification, decertification, and recertification of voting system hardware and software used as of October 29, 2002, shall remain in effect.

(Pub. L. 107-252, title II, §231, Oct. 29, 2002, 116 Stat. 1684.)

PART C—STUDIES AND OTHER ACTIVITIES TO PROMOTE EFFECTIVE ADMINISTRATION OF FEDERAL ELECTIONS**PART REFERRED TO IN OTHER SECTIONS**

This part is referred to in section 15322 of this title.

§ 15381. Periodic studies of election administration issues**(a) In general**

On such periodic basis as the Commission may determine, the Commission shall conduct and make available to the public studies regarding the election administration issues described in subsection (b) of this section, with the goal of promoting methods of voting and administering elections which—

(1) will be the most convenient, accessible, and easy to use for voters, including members of the uniformed services and overseas voters, individuals with disabilities, including the blind and visually impaired, and voters with limited proficiency in the English language;

(2) will yield the most accurate, secure, and expeditious system for voting and tabulating election results;

(3) will be nondiscriminatory and afford each registered and eligible voter an equal opportunity to vote and to have that vote counted; and

(4) will be efficient and cost-effective for use.

(b) Election administration issues described

For purposes of subsection (a) of this section, the election administration issues described in this subsection are as follows:

(1) Methods and mechanisms of election technology and voting systems used in voting and counting votes in elections for Federal office, including the over-vote and under-vote notification capabilities of such technology and systems.

(2) Ballot designs for elections for Federal office.

(3) Methods of voter registration, maintaining secure and accurate lists of registered voters (including the establishment of a centralized, interactive, statewide voter registration list linked to relevant agencies and all polling sites), and ensuring that registered voters appear on the voter registration list at the appropriate polling site.

(4) Methods of conducting provisional voting.

(5) Methods of ensuring the accessibility of voting, registration, polling places, and voting equipment to all voters, including individuals with disabilities (including the blind and visually impaired), Native American or Alaska Native citizens, and voters with limited proficiency in the English language.

(6) Nationwide statistics and methods of identifying, deterring, and investigating voting fraud in elections for Federal office.

(7) Identifying, deterring, and investigating methods of voter intimidation.

(8) Methods of recruiting, training, and improving the performance of poll workers.

(9) Methods of educating voters about the process of registering to vote and voting, the operation of voting mechanisms, the location

of polling places, and all other aspects of participating in elections.

(10) The feasibility and advisability of conducting elections for Federal office on different days, at different places, and during different hours, including the advisability of establishing a uniform poll closing time and establishing—

(A) a legal public holiday under section 6103 of title 5 as the date on which general elections for Federal office are held;

(B) the Tuesday next after the 1st Monday in November, in every even numbered year, as a legal public holiday under such section;

(C) a date other than the Tuesday next after the 1st Monday in November, in every even numbered year as the date on which general elections for Federal office are held; and

(D) any date described in subparagraph (C) as a legal public holiday under such section.

(11) Federal and State laws governing the eligibility of persons to vote.

(12) Ways that the Federal Government can best assist State and local authorities to improve the administration of elections for Federal office and what levels of funding would be necessary to provide such assistance.

(13)(A) The laws and procedures used by each State that govern—

(i) recounts of ballots cast in elections for Federal office;

(ii) contests of determinations regarding whether votes are counted in such elections; and

(iii) standards that define what will constitute a vote on each type of voting equipment used in the State to conduct elections for Federal office.

(B) The best practices (as identified by the Commission) that are used by States with respect to the recounts and contests described in clause (i).

(C) Whether or not there is a need for more consistency among State recount and contest procedures used with respect to elections for Federal office.

(14) The technical feasibility of providing voting materials in eight or more languages for voters who speak those languages and who have limited English proficiency.

(15) Matters particularly relevant to voting and administering elections in rural and urban areas.

(16) Methods of voter registration for members of the uniformed services and overseas voters, and methods of ensuring that such voters receive timely ballots that will be properly and expeditiously handled and counted.

(17) The best methods for establishing voting system performance benchmarks, expressed as a percentage of residual vote in the Federal contest at the top of the ballot.

(18) Broadcasting practices that may result in the broadcast of false information concerning the location or time of operation of a polling place.

(19) Such other matters as the Commission determines are appropriate.

(c) Reports

The Commission shall submit to the President and to the Committee on House Administration

of the House of Representatives and the Committee on Rules and Administration of the Senate a report on each study conducted under subsection (a) of this section together with such recommendations for administrative and legislative action as the Commission determines is appropriate.

(Pub. L. 107-252, title II, §241, Oct. 29, 2002, 116 Stat. 1686.)

§ 15382. Study, report, and recommendations on best practices for facilitating military and overseas voting

(a) Study

(1) In general

The Commission, in consultation with the Secretary of Defense, shall conduct a study on the best practices for facilitating voting by absent uniformed services voters (as defined in section 1973ff-6(1) of this title) and overseas voters (as defined in section 1973ff-6(5) of this title).

(2) Issues considered

In conducting the study under paragraph (1) the Commission shall consider the following issues:

(A) The rights of residence of uniformed services voters absent due to military orders.

(B) The rights of absent uniformed services voters and overseas voters to register to vote and cast absentee ballots, including the right of such voters to cast a secret ballot.

(C) The rights of absent uniformed services voters and overseas voters to submit absentee ballot applications early during an election year.

(D) The appropriate preelection deadline for mailing absentee ballots to absent uniformed services voters and overseas voters.

(E) The appropriate minimum period between the mailing of absentee ballots to absent uniformed services voters and overseas voters and the deadline for receipt of such ballots.

(F) The timely transmission of balloting materials to absent uniformed services voters and overseas voters.

(G) Security and privacy concerns in the transmission, receipt, and processing of ballots from absent uniformed services voters and overseas voters, including the need to protect against fraud.

(H) The use of a single application by absent uniformed services voters and overseas voters for absentee ballots for all Federal elections occurring during a year.

(I) The use of a single application for voter registration and absentee ballots by absent uniformed services voters and overseas voters.

(J) The use of facsimile machines and electronic means of transmission of absentee ballot applications and absentee ballots to absent uniformed services voters and overseas voters.

(K) Other issues related to the rights of absent uniformed services voters and overseas voters to participate in elections.

(b) Report and recommendations

Not later than the date that is 18 months after October 29, 2002, the Commission shall submit to the President and Congress a report on the study conducted under subsection (a)(1) of this section together with recommendations identifying the best practices used with respect to the issues considered under subsection (a)(2) of this section.

(Pub. L. 107-252, title II, §242, Oct. 29, 2002, 116 Stat. 1688.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 15342 of this title.

§ 15383. Report on human factor research

Not later than 1 year after October 29, 2002, the Commission, in consultation with the Director of the National Institute of Standards and Technology, shall submit a report to Congress which assesses the areas of human factor research, including usability engineering and human-computer and human-machine interaction, which feasibly could be applied to voting products and systems design to ensure the usability and accuracy of voting products and systems, including methods to improve access for individuals with disabilities (including blindness) and individuals with limited proficiency in the English language and to reduce voter error and the number of spoiled ballots in elections.

(Pub. L. 107-252, title II, §243, Oct. 29, 2002, 116 Stat. 1688.)

§ 15384. Study and report on voters who register by mail and use of Social Security information**(a) Registration by mail****(1) Study****(A) In general**

The Commission shall conduct a study of the impact of section 15483(b) of this title on voters who register by mail.

(B) Specific issues studied

The study conducted under subparagraph (A) shall include—

(i) an examination of the impact of section 15483(b) of this title on first time mail registrant voters who vote in person, including the impact of such section on voter registration;

(ii) an examination of the impact of such section on the accuracy of voter rolls, including preventing ineligible names from being placed on voter rolls and ensuring that all eligible names are placed on voter rolls; and

(iii) an analysis of the impact of such section on existing State practices, such as the use of signature verification or attestation procedures to verify the identity of voters in elections for Federal office, and an analysis of other changes that may be made to improve the voter registration process, such as verification or additional information on the registration card.

(2) Report

Not later than 18 months after the date on which section 15483(b)(2) of this title takes ef-

fect, the Commission shall submit a report to the President and Congress on the study conducted under paragraph (1)(A) together with such recommendations for administrative and legislative action as the Commission determines is appropriate.

(b) Use of Social Security information

Not later than 18 months after the date on which section 15483(a)(5) of this title takes effect, the Commission, in consultation with the Commissioner of Social Security, shall study and report to Congress on the feasibility and advisability of using Social Security identification numbers or other information compiled by the Social Security Administration to establish voter registration or other election law eligibility or identification requirements, including the matching of relevant information specific to an individual voter, the impact of such use on national security issues, and whether adequate safeguards or waiver procedures exist to protect the privacy of an individual voter.

(Pub. L. 107-252, title II, §244, Oct. 29, 2002, 116 Stat. 1689.)

REFERENCES IN TEXT

For the effective dates of subsecs. (a)(5) and (b)(2) of section 15483 of this title, referred to in subsecs. (a)(2) and (b), see section 15483(d) of this title.

§ 15385. Study and report on electronic voting and the electoral process**(a) Study****(1) In general**

The Commission shall conduct a thorough study of issues and challenges, specifically to include the potential for election fraud, presented by incorporating communications and Internet technologies in the Federal, State, and local electoral process.

(2) Issues to be studied

The Commission may include in the study conducted under paragraph (1) an examination of—

(A) the appropriate security measures required and minimum standards for certification of systems or technologies in order to minimize the potential for fraud in voting or in the registration of qualified citizens to register and vote;

(B) the possible methods, such as Internet or other communications technologies, that may be utilized in the electoral process, including the use of those technologies to register voters and enable citizens to vote online, and recommendations concerning statutes and rules to be adopted in order to implement an online or Internet system in the electoral process;

(C) the impact that new communications or Internet technology systems for use in the electoral process could have on voter participation rates, voter education, public accessibility, potential external influences during the elections process, voter privacy and anonymity, and other issues related to the conduct and administration of elections;

(D) whether other aspects of the electoral process, such as public availability of can-

didate information and citizen communication with candidates, could benefit from the increased use of online or Internet technologies;

(E) the requirements for authorization of collection, storage, and processing of electronically generated and transmitted digital messages to permit any eligible person to register to vote or vote in an election, including applying for and casting an absentee ballot;

(F) the implementation cost of an online or Internet voting or voter registration system and the costs of elections after implementation (including a comparison of total cost savings for the administration of the electoral process by using Internet technologies or systems);

(G) identification of current and foreseeable online and Internet technologies for use in the registration of voters, for voting, or for the purpose of reducing election fraud, currently available or in use by election authorities;

(H) the means by which to ensure and achieve equity of access to online or Internet voting or voter registration systems and address the fairness of such systems to all citizens; and

(I) the impact of technology on the speed, timeliness, and accuracy of vote counts in Federal, State, and local elections.

(b) Report

(1) Submission

Not later than 20 months after October 29, 2002, the Commission shall transmit to the Committee on House Administration of the House of Representatives and the Committee on Rules and Administration of the Senate a report on the results of the study conducted under subsection (a) of this section, including such legislative recommendations or model State laws as are required to address the findings of the Commission.

(2) Internet posting

In addition to the dissemination requirements under chapter 19 of title 44, the Election Administration Commission shall post the report transmitted under paragraph (1) on an Internet website.

(Pub. L. 107-252, title II, §245, Oct. 29, 2002, 116 Stat. 1690.)

§ 15386. Study and report on free absentee ballot postage

(a) Study on the establishment of a free absentee ballot postage program

(1) In general

The Commission, in consultation with the Postal Service, shall conduct a study on the feasibility and advisability of the establishment of a program under which the Postal Service shall waive or otherwise reduce the amount of postage applicable with respect to absentee ballots submitted by voters in general elections for Federal office (other than balloting materials mailed under section 3406 of title 39) that does not apply with respect to

the postage required to send the absentee ballots to voters.

(2) Public survey

As part of the study conducted under paragraph (1), the Commission shall conduct a survey of potential beneficiaries under the program described in such paragraph, including the elderly and disabled, and shall take into account the results of such survey in determining the feasibility and advisability of establishing such a program.

(b) Report

(1) Submission

Not later than the date that is 1 year after October 29, 2002, the Commission shall submit to Congress a report on the study conducted under subsection (a)(1) of this section together with recommendations for such legislative and administrative action as the Commission determines appropriate.

(2) Costs

The report submitted under paragraph (1) shall contain an estimate of the costs of establishing the program described in subsection (a)(1) of this section.

(3) Implementation

The report submitted under paragraph (1) shall contain an analysis of the feasibility of implementing the program described in subsection (a)(1) of this section with respect to the absentee ballots to be submitted in the general election for Federal office held in 2004.

(4) Recommendations regarding the elderly and disabled

The report submitted under paragraph (1) shall—

(A) include recommendations on ways that program described in subsection (a)(1) of this section would target elderly individuals and individuals with disabilities; and

(B) identify methods to increase the number of such individuals who vote in elections for Federal office.

(c) Postal Service defined

The term “Postal Service” means the United States Postal Service established under section 201 of title 39.

(Pub. L. 107-252, title II, §246, Oct. 29, 2002, 116 Stat. 1691.)

§ 15387. Consultation with Standards Board and Board of Advisors

The Commission shall carry out its duties under this part in consultation with the Standards Board and the Board of Advisors.

(Pub. L. 107-252, title II, §247, Oct. 29, 2002, 116 Stat. 1692.)

PART D—ELECTION ASSISTANCE

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 15322 of this title.

SUBPART 1—REQUIREMENTS PAYMENTS

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in sections 15301, 15304, 15327 of this title.

§ 15401. Requirements payments**(a) In general**

The Commission shall make a requirements payment each year in an amount determined under section 15402 of this title to each State which meets the conditions described in section 15403 of this title for the year.

(b) Use of funds**(1) In general**

Except as provided in paragraph (2), a State receiving a requirements payment shall use the payment only to meet the requirements of subchapter III of this chapter.

(2) Other activities

A State may use a requirements payment to carry out other activities to improve the administration of elections for Federal office if the State certifies to the Commission that—

(A) the State has implemented the requirements of subchapter III of this chapter; or

(B) the amount expended with respect to such other activities does not exceed an amount equal to the minimum payment amount applicable to the State under section 15402(c) of this title.

(c) Retroactive payments**(1) In general**

Notwithstanding any other provision of this part, including the maintenance of effort requirements of section 15404(a)(7) of this title, a State may use a requirements payment as a reimbursement for costs incurred in obtaining voting equipment which meets the requirements of section 15481 of this title if the State obtains the equipment after the regularly scheduled general election for Federal office held in November 2000.

(2) Special rule regarding multiyear contracts

A State may use a requirements payment for any costs for voting equipment which meets the requirements of section 15481 of this title that, pursuant to a multiyear contract, were incurred on or after January 1, 2001, except that the amount that the State is otherwise required to contribute under the maintenance of effort requirements of section 15404(a)(7) of this title shall be increased by the amount of the payment made with respect to such multiyear contract.

(d) Adoption of Commission guidelines and guidance not required to receive payment

Nothing in this subpart may be construed to require a State to implement any of the voluntary voting system guidelines or any of the voluntary guidance adopted by the Commission with respect to any matter as a condition for receiving a requirements payment.

(e) Schedule of payments

As soon as practicable after the initial appointment of all members of the Commission (but in no event later than 6 months thereafter), and not less frequently than once each calendar year thereafter, the Commission shall make requirements payments to States under this subpart.

(f) Limitation

A State may not use any portion of a requirements payment—

(1) to pay costs associated with any litigation, except to the extent that such costs otherwise constitute permitted uses of a requirements payment under this subpart; or

(2) for the payment of any judgment.

(Pub. L. 107-252, title II, §251, Oct. 29, 2002, 116 Stat. 1692.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 15403, 15404, 15406, 15408, 15542 of this title.

§ 15402. Allocation of funds**(a) In general**

Subject to subsection (c) of this section, the amount of a requirements payment made to a State for a year shall be equal to the product of—

(1) the total amount appropriated for requirements payments for the year pursuant to the authorization under section 15407 of this title; and

(2) the State allocation percentage for the State (as determined under subsection (b) of this section).

(b) State allocation percentage defined

The “State allocation percentage” for a State is the amount (expressed as a percentage) equal to the quotient of—

(1) the voting age population of the State (as reported in the most recent decennial census); and

(2) the total voting age population of all States (as reported in the most recent decennial census).

(c) Minimum amount of payment

The amount of a requirements payment made to a State for a year may not be less than—

(1) in the case of any of the several States or the District of Columbia, one-half of 1 percent of the total amount appropriated for requirements payments for the year under section 15407 of this title; or

(2) in the case of the Commonwealth of Puerto Rico, Guam, American Samoa, or the United States Virgin Islands, one-tenth of 1 percent of such total amount.

(d) Pro rata reductions

The Administrator shall make such pro rata reductions to the allocations determined under subsection (a) of this section as are necessary to comply with the requirements of subsection (c) of this section.

(e) Continuing availability of funds after appropriation

A requirements payment made to a State under this subpart shall be available to the State without fiscal year limitation.

(Pub. L. 107-252, title II, §252, Oct. 29, 2002, 116 Stat. 1693.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 15401 of this title.

§ 15403. Condition for receipt of funds**(a) In general**

A State is eligible to receive a requirements payment for a fiscal year if the chief executive officer of the State, or designee, in consultation and coordination with the chief State election official, has filed with the Commission a statement certifying that the State is in compliance with the requirements referred to in subsection (b) of this section. A State may meet the requirement of the previous sentence by filing with the Commission a statement which reads as follows: “_____ hereby certifies that it is in compliance with the requirements referred to in section 253(b) of the Help America Vote Act of 2002.” (with the blank to be filled in with the name of the State involved).

(b) State plan requirement; certification of compliance with applicable laws and requirements

The requirements referred to in this subsection are as follows:

(1) The State has filed with the Commission a State plan covering the fiscal year which the State certifies—

(A) contains each of the elements described in section 15404 of this title with respect to the fiscal year;

(B) is developed in accordance with section 15405 of this title; and

(C) meets the public notice and comment requirements of section 15406 of this title.

(2) The State has filed with the Commission a plan for the implementation of the uniform, nondiscriminatory administrative complaint procedures required under section 15512 of this title (or has included such a plan in the State plan filed under paragraph (1)), and has such procedures in place for purposes of meeting the requirements of such section. If the State does not include such an implementation plan in the State plan filed under paragraph (1), the requirements of sections 15405(b) and 15406 of this title shall apply to the implementation plan in the same manner as such requirements apply to the State plan.

(3) The State is in compliance with each of the laws described in section 15545 of this title, as such laws apply with respect to this chapter.

(4) To the extent that any portion of the requirements payment is used for activities other than meeting the requirements of subchapter III of this chapter—

(A) the State’s proposed uses of the requirements payment are not inconsistent with the requirements of subchapter III of this chapter; and

(B) the use of the funds under this paragraph is consistent with the requirements of section 15401(b) of this title.

(5) The State has appropriated funds for carrying out the activities for which the requirements payment is made in an amount equal to 5 percent of the total amount to be spent for such activities (taking into account the requirements payment and the amount spent by the State) and, in the case of a State that uses a requirements payment as a reimbursement

under section 15401(c)(2) of this title, an additional amount equal to the amount of such reimbursement.

(c) Methods of compliance left to discretion of State

The specific choices on the methods of complying with the elements of a State plan shall be left to the discretion of the State.

(d) Timing for filing of certification

A State may not file a statement of certification under subsection (a) of this section until the expiration of the 45-day period (or, in the case of a fiscal year other than the first fiscal year for which a requirements payment is made to the State under this part, the 30-day period) which begins on the date the State plan under this part is published in the Federal Register pursuant to section 15405(b) of this title.

(e) Chief State election official defined

In this part, the “chief State election official” of a State is the individual designated by the State under section 10 of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-8) to be responsible for coordination of the State’s responsibilities under such Act.

(Pub. L. 107-252, title II, §253, Oct. 29, 2002, 116 Stat. 1693.)

REFERENCES IN TEXT

Section 253(b) of the Help America Vote Act of 2002, referred to in subsec. (a), is classified to subsec. (b) of this section.

The National Voter Registration Act of 1993, referred to in subsec. (e), is Pub. L. 103-31, May 20, 1993, 107 Stat. 77, as amended, which is classified principally to subchapter I-H (§1973gg et seq.) of chapter 20 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1971 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 15401 of this title.

§ 15404. State plan**(a) In general**

The State plan shall contain a description of each of the following:

(1) How the State will use the requirements payment to meet the requirements of subchapter III of this chapter, and, if applicable under section 15401(a)(2) of this title, to carry out other activities to improve the administration of elections.

(2) How the State will distribute and monitor the distribution of the requirements payment to units of local government or other entities in the State for carrying out the activities described in paragraph (1), including a description of—

(A) the criteria to be used to determine the eligibility of such units or entities for receiving the payment; and

(B) the methods to be used by the State to monitor the performance of the units or entities to whom the payment is distributed, consistent with the performance goals and measures adopted under paragraph (8).

(3) How the State will provide for programs for voter education, election official education

and training, and poll worker training which will assist the State in meeting the requirements of subchapter III of this chapter.

(4) How the State will adopt voting system guidelines and processes which are consistent with the requirements of section 15481 of this title.

(5) How the State will establish a fund described in subsection (b) of this section for purposes of administering the State's activities under this subpart, including information on fund management.

(6) The State's proposed budget for activities under this subpart, based on the State's best estimates of the costs of such activities and the amount of funds to be made available, including specific information on—

(A) the costs of the activities required to be carried out to meet the requirements of subchapter III of this chapter;

(B) the portion of the requirements payment which will be used to carry out activities to meet such requirements; and

(C) the portion of the requirements payment which will be used to carry out other activities.

(7) How the State, in using the requirements payment, will maintain the expenditures of the State for activities funded by the payment at a level that is not less than the level of such expenditures maintained by the State for the fiscal year ending prior to November 2000.

(8) How the State will adopt performance goals and measures that will be used by the State to determine its success and the success of units of local government in the State in carrying out the plan, including timetables for meeting each of the elements of the plan, descriptions of the criteria the State will use to measure performance and the process used to develop such criteria, and a description of which official is to be held responsible for ensuring that each performance goal is met.

(9) A description of the uniform, nondiscriminatory State-based administrative complaint procedures in effect under section 15512 of this title.

(10) If the State received any payment under subchapter I of this chapter, a description of how such payment will affect the activities proposed to be carried out under the plan, including the amount of funds available for such activities.

(11) How the State will conduct ongoing management of the plan, except that the State may not make any material change in the administration of the plan unless the change—

(A) is developed and published in the Federal Register in accordance with section 15405 of this title in the same manner as the State plan;

(B) is subject to public notice and comment in accordance with section 15406 of this title in the same manner as the State plan; and

(C) takes effect only after the expiration of the 30-day period which begins on the date the change is published in the Federal Register in accordance with subparagraph (A).

(12) In the case of a State with a State plan in effect under this part during the previous

fiscal year, a description of how the plan reflects changes from the State plan for the previous fiscal year and of how the State succeeded in carrying out the State plan for such previous fiscal year.

(13) A description of the committee which participated in the development of the State plan in accordance with section 15405 of this title and the procedures followed by the committee under such section and section 15406 of this title.

(b) Requirements for election fund

(1) Election fund described

For purposes of subsection (a)(5) of this section, a fund described in this subsection with respect to a State is a fund which is established in the treasury of the State government, which is used in accordance with paragraph (2), and which consists of the following amounts:

(A) Amounts appropriated or otherwise made available by the State for carrying out the activities for which the requirements payment is made to the State under this subpart.

(B) The requirements payment made to the State under this subpart.

(C) Such other amounts as may be appropriated under law.

(D) Interest earned on deposits of the fund.

(2) Use of fund

Amounts in the fund shall be used by the State exclusively to carry out the activities for which the requirements payment is made to the State under this subpart.

(3) Treatment of States that require changes to State law

In the case of a State that requires State legislation to establish the fund described in this subsection, the Commission shall defer disbursement of the requirements payment to such State until such time as legislation establishing the fund is enacted.

(c) Protection against actions based on information in plan

(1) In general

No action may be brought under this chapter against a State or other jurisdiction on the basis of any information contained in the State plan filed under this subpart.

(2) Exception for criminal acts

Paragraph (1) may not be construed to limit the liability of a State or other jurisdiction for criminal acts or omissions.

(Pub. L. 107-252, title II, §254, Oct. 29, 2002, 116 Stat. 1694.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (c)(1), was in the original "this Act", meaning Pub. L. 107-252, Oct. 29, 2002, 116 Stat. 1666, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 15301 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 15304, 15401, 15403, 15408 of this title.

§ 15405. Process for development and filing of plan; publication by Commission

(a) In general

The chief State election official shall develop the State plan under this part through a committee of appropriate individuals, including the chief election officials of the two most populous jurisdictions within the States, other local election officials, stake holders (including representatives of groups of individuals with disabilities), and other citizens, appointed for such purpose by the chief State election official.

(b) Publication of plan by Commission

After receiving the State plan of a State under this part, the Commission shall cause to have the plan published in the Federal Register.

(Pub. L. 107-252, title II, §255, Oct. 29, 2002, 116 Stat. 1697.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 15403, 15404 of this title.

§ 15406. Requirement for public notice and comment

For purposes of section 15401(a)(1)(C) of this title, a State plan meets the public notice and comment requirements of this section if—

- (1) not later than 30 days prior to the submission of the plan, the State made a preliminary version of the plan available for public inspection and comment;
- (2) the State publishes notice that the preliminary version of the plan is so available; and
- (3) the State took the public comments made regarding the preliminary version of the plan into account in preparing the plan which was filed with the Commission.

(Pub. L. 107-252, title II, §256, Oct. 29, 2002, 116 Stat. 1697.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 15403, 15404 of this title.

§ 15407. Authorization of appropriations

(a) In general

In addition to amounts transferred under section 15304(c) of this title, there are authorized to be appropriated for requirements payments under this subpart the following amounts:

- (1) For fiscal year 2003, \$1,400,000,000.
- (2) For fiscal year 2004, \$1,000,000,000.
- (3) For fiscal year 2005, \$600,000,000.

(b) Availability

Any amounts appropriated pursuant to the authority of subsection (a) of this section shall remain available without fiscal year limitation until expended.

(Pub. L. 107-252, title II, §257, Oct. 29, 2002, 116 Stat. 1697.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 15402 of this title.

§ 15408. Reports

Not later than 6 months after the end of each fiscal year for which a State received a require-

ments payment under this subpart, the State shall submit a report to the Commission on the activities conducted with the funds provided during the year, and shall include in the report—

- (1) a list of expenditures made with respect to each category of activities described in section 15401(b) of this title;
- (2) the number and type of articles of voting equipment obtained with the funds; and
- (3) an analysis and description of the activities funded under this subpart to meet the requirements of this chapter and an analysis and description of how such activities conform to the State plan under section 15404 of this title.

(Pub. L. 107-252, title II, §258, Oct. 29, 2002, 116 Stat. 1697.)

SUBPART 2—PAYMENTS TO STATES AND UNITS OF LOCAL GOVERNMENT TO ASSURE ACCESS FOR INDIVIDUALS WITH DISABILITIES

§ 15421. Payments to States and units of local government to assure access for individuals with disabilities

(a) In general

The Secretary of Health and Human Services shall make a payment to each eligible State and each eligible unit of local government (as described in section 15423 of this title).

(b) Use of funds

An eligible State and eligible unit of local government shall use the payment received under this subpart for—

- (1) making polling places, including the path of travel, entrances, exits, and voting areas of each polling facility, accessible to individuals with disabilities, including the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters; and
- (2) providing individuals with disabilities and the other individuals described in paragraph (1) with information about the accessibility of polling places, including outreach programs to inform the individuals about the availability of accessible polling places and training election officials, poll workers, and election volunteers on how best to promote the access and participation of individuals with disabilities in elections for Federal office.

(c) Schedule of payments

As soon as practicable after October 29, 2002 (but in no event later than 6 months thereafter), and not less frequently than once each calendar year thereafter, the Secretary shall make payments under this subpart.

(Pub. L. 107-252, title II, §261, Oct. 29, 2002, 116 Stat. 1698.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 15425 of this title.

§ 15422. Amount of payment

(a) In general

The amount of a payment made to an eligible State or an eligible unit of local government for

a year under this subpart shall be determined by the Secretary.

(b) Continuing availability of funds after appropriation

A payment made to an eligible State or eligible unit of local government under this subpart shall be available without fiscal year limitation. (Pub. L. 107-252, title II, §262, Oct. 29, 2002, 116 Stat. 1698.)

§ 15423. Requirements for eligibility

(a) Application

Each State or unit of local government that desires to receive a payment under this subpart for a fiscal year shall submit an application for the payment to the Secretary at such time and in such manner and containing such information as the Secretary shall require.

(b) Contents of application

Each application submitted under subsection (a) of this section shall—

(1) describe the activities for which assistance under this section is sought; and

(2) provide such additional information and certifications as the Secretary determines to be essential to ensure compliance with the requirements of this subpart.

(c) Protection against actions based on information in application

(1) In general

No action may be brought under this chapter against a State or unit of local government on the basis of any information contained in the application submitted under subsection (a) of this section.

(2) Exception for criminal acts

Paragraph (1) may not be construed to limit the liability of a State or unit of local government for criminal acts or omissions.

(Pub. L. 107-252, title II, §263, Oct. 29, 2002, 116 Stat. 1698.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (c)(1), was in the original “this Act”, meaning Pub. L. 107-252, Oct. 29, 2002, 116 Stat. 1666, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 15301 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 15421 of this title.

§ 15424. Authorization of appropriations

(a) In general

There are authorized to be appropriated to carry out the provisions of this subpart the following amounts:

(1) For fiscal year 2003, \$50,000,000.

(2) For fiscal year 2004, \$25,000,000.

(3) For fiscal year 2005, \$25,000,000.

(b) Availability

Any amounts appropriated pursuant to the authority of subsection (a) of this section shall remain available without fiscal year limitation until expended.

(Pub. L. 107-252, title II, §264, Oct. 29, 2002, 116 Stat. 1699.)

§ 15425. Reports

(a) Reports by recipients

Not later than the¹ 6 months after the end of each fiscal year for which an eligible State or eligible unit of local government received a payment under this subpart, the State or unit shall submit a report to the Secretary on the activities conducted with the funds provided during the year, and shall include in the report a list of expenditures made with respect to each category of activities described in section 15421(b) of this title.

(b) Report by Secretary to Committees

With respect to each fiscal year for which the Secretary makes payments under this subpart, the Secretary shall submit a report on the activities carried out under this subpart to the Committee on House Administration of the House of Representatives and the Committee on Rules and Administration of the Senate.

(Pub. L. 107-252, title II, §265, Oct. 29, 2002, 116 Stat. 1699.)

SUBPART 3—GRANTS FOR RESEARCH ON VOTING TECHNOLOGY IMPROVEMENTS

§ 15441. Grants for research on voting technology improvements

(a) In general

The Commission shall make grants to assist entities in carrying out research and development to improve the quality, reliability, accuracy, accessibility, affordability, and security of voting equipment, election systems, and voting technology.

(b) Eligibility

An entity is eligible to receive a grant under this subpart if it submits to the Commission (at such time and in such form as the Commission may require) an application containing—

(1) certifications that the research and development funded with the grant will take into account the need to make voting equipment fully accessible for individuals with disabilities, including the blind and visually impaired, the need to ensure that such individuals can vote independently and with privacy, and the need to provide alternative language accessibility for individuals with limited proficiency in the English language (consistent with the requirements of the Voting Rights Act of 1965 [42 U.S.C. 1973 et seq.]); and

(2) such other information and certifications as the Commission may require.

(c) Applicability of regulations governing patent rights in inventions made with Federal assistance

Any invention made by the recipient of a grant under this subpart using funds provided under this subpart shall be subject to chapter 18 of title 35 (relating to patent rights in inventions made with Federal assistance).

¹ So in original.

(d) Recommendation of topics for research**(1) In general**

The Director of the National Institute of Standards and Technology (hereafter in this section referred to as the “Director”) shall submit to the Commission an annual list of the Director’s suggestions for issues which may be the subject of research funded with grants awarded under this subpart during the year.

(2) Review of grant applications received by Commission

The Commission shall submit each application it receives for a grant under this subpart to the Director, who shall review the application and provide the Commission with such comments as the Director considers appropriate.

(3) Monitoring and adjustment of grant activities at request of Commission

After the Commission has awarded a grant under this subpart, the Commission may request that the Director monitor the grant, and (to the extent permitted under the terms of the grant as awarded) the Director may recommend to the Commission that the recipient of the grant modify and adjust the activities carried out under the grant.

(4) Evaluation of grants at request of Commission**(A) In general**

In the case of a grant for which the Commission submits the application to the Director under paragraph (2) or requests that the Director monitor the grant under paragraph (3), the Director shall prepare and submit to the Commission an evaluation of the grant and the activities carried out under the grant.

(B) Inclusion in reports

The Commission shall include the evaluations submitted under subparagraph (A) for a year in the report submitted for the year under section 15327 of this title.

(e) Provision of information on projects

The Commission may provide to the Technical Guidelines Development Committee under subpart 3 of part A of this subchapter such information regarding the activities funded under this subpart as the Commission deems necessary to assist the Committee in carrying out its duties.

(Pub. L. 107-252, title II, §271, Oct. 29, 2002, 116 Stat. 1699.)

REFERENCES IN TEXT

The Voting Rights Act of 1965, referred to in subsec. (b)(1), is Pub. L. 89-110, Aug. 6, 1965, 79 Stat. 437, as amended, which is classified generally to subchapters I-A (§1973 et seq.), I-B (§1973aa et seq.), and I-C (§1973bb et seq.) of chapter 20 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1971 of this title and Tables.

§ 15442. Report**(a) In general**

Each entity which receives a grant under this subpart shall submit to the Commission a report

describing the activities carried out with the funds provided under the grant.

(b) Deadline

An entity shall submit a report required under subsection (a) of this section not later than 60 days after the end of the fiscal year for which the entity received the grant which is the subject of the report.

(Pub. L. 107-252, title II, §272, Oct. 29, 2002, 116 Stat. 1700.)

§ 15443. Authorization of appropriations**(a) In general**

There are authorized to be appropriated for grants under this subpart \$20,000,000 for fiscal year 2003.

(b) Availability of funds

Amounts appropriated pursuant to the authorization under this section shall remain available, without fiscal year limitation, until expended.

(Pub. L. 107-252, title II, §273, Oct. 29, 2002, 116 Stat. 1700.)

SUBPART 4—PILOT PROGRAM FOR TESTING OF EQUIPMENT AND TECHNOLOGY

§ 15451. Pilot program**(a) In general**

The Commission shall make grants to carry out pilot programs under which new technologies in voting systems and equipment are tested and implemented on a trial basis so that the results of such tests and trials are reported to Congress.

(b) Eligibility

An entity is eligible to receive a grant under this subpart if it submits to the Commission (at such time and in such form as the Commission may require) an application containing—

- (1) certifications that the pilot programs funded with the grant will take into account the need to make voting equipment fully accessible for individuals with disabilities, including the blind and visually impaired, the need to ensure that such individuals can vote independently and with privacy, and the need to provide alternative language accessibility for individuals with limited proficiency in the English language (consistent with the requirements of the Voting Rights Act of 1965 [42 U.S.C. 1973 et seq.] and the requirements of this chapter); and
- (2) such other information and certifications as the Commission may require.

(c) Recommendation of topics for pilot programs**(1) In general**

The Director of the National Institute of Standards and Technology (hereafter in this section referred to as the “Director”) shall submit to the Commission an annual list of the Director’s suggestions for issues which may be the subject of pilot programs funded with grants awarded under this subpart during the year.

(2) Review of grant applications received by Commission

The Commission shall submit each application it receives for a grant under this subpart to the Director, who shall review the application and provide the Commission with such comments as the Director considers appropriate.

(3) Monitoring and adjustment of grant activities at request of Commission

After the Commission has awarded a grant under this subpart, the Commission may request that the Director monitor the grant, and (to the extent permitted under the terms of the grant as awarded) the Director may recommend to the Commission that the recipient of the grant modify and adjust the activities carried out under the grant.

(4) Evaluation of grants at request of Commission

(A) In general

In the case of a grant for which the Commission submits the application to the Director under paragraph (2) or requests that the Director monitor the grant under paragraph (3), the Director shall prepare and submit to the Commission an evaluation of the grant and the activities carried out under the grant.

(B) Inclusion in reports

The Commission shall include the evaluations submitted under subparagraph (A) for a year in the report submitted for the year under section 15327 of this title.

(d) Provision of information on projects

The Commission may provide to the Technical Guidelines Development Committee under subpart 3 of part A of this subchapter such information regarding the activities funded under this subpart as the Commission deems necessary to assist the Committee in carrying out its duties.

(Pub. L. 107-252, title II, § 281, Oct. 29, 2002, 116 Stat. 1701.)

REFERENCES IN TEXT

The Voting Rights Act of 1965, referred to in subsec. (b)(1), is Pub. L. 89-110, Aug. 6, 1965, 79 Stat. 437, as amended, which is classified generally to subchapters I-A (§ 1973 et seq.), I-B (§ 1973aa et seq.), and I-C (§ 1973bb et seq.) of chapter 20 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1971 of this title and Tables.

This chapter, referred to in subsec. (b)(1), was in the original "this Act", meaning Pub. L. 107-252, Oct. 29, 2002, 116 Stat. 1666, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 15301 of this title and Tables.

§ 15452. Report

(a) In general

Each entity which receives a grant under this subpart shall submit to the Commission a report describing the activities carried out with the funds provided under the grant.

(b) Deadline

An entity shall submit a report required under subsection (a) of this section not later than 60

days after the end of the fiscal year for which the entity received the grant which is the subject of the report.

(Pub. L. 107-252, title II, § 282, Oct. 29, 2002, 116 Stat. 1702.)

§ 15453. Authorization of appropriations

(a) In general

There are authorized to be appropriated for grants under this subpart \$10,000,000 for fiscal year 2003.

(b) Availability of funds

Amounts appropriated pursuant to the authorization under this section shall remain available, without fiscal year limitation, until expended.

(Pub. L. 107-252, title II, § 283, Oct. 29, 2002, 116 Stat. 1702.)

SUBPART 5—PROTECTION AND ADVOCACY SYSTEMS

§ 15461. Payments for protection and advocacy systems

(a) In general

In addition to any other payments made under this part, the Secretary of Health and Human Services shall pay the protection and advocacy system (as defined in section 102 of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15002)) of each State to ensure full participation in the electoral process for individuals with disabilities, including registering to vote, casting a vote and accessing polling places. In providing such services, protection and advocacy systems shall have the same general authorities as they are afforded under subtitle C of title I of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15041 et seq.).

(b) Minimum grant amount

The minimum amount of each grant to a protection and advocacy system shall be determined and allocated as set forth in subsections (c)(3), (c)(4), (c)(5), (e), and (g) of section 794e of title 29, except that the amount of the grants to systems referred to in subsections (c)(3)(B) and (c)(4)(B) of that section shall be not less than \$70,000 and \$35,000, respectively.

(c) Training and technical assistance program

(1) In general

Not later than 90 days after the date on which the initial appropriation of funds for a fiscal year is made pursuant to the authorization under section 15462 of this title, the Secretary shall set aside 7 percent of the amount appropriated under such section and use such portion to make payments to eligible entities to provide training and technical assistance with respect to the activities carried out under this section.

(2) Use of funds

A recipient of a payment under this subsection may use the payment to support training in the use of voting systems and technologies, and to demonstrate and evaluate the use of such systems and technologies, by indi-

viduals with disabilities (including blindness) in order to assess the availability and use of such systems and technologies for such individuals. At least one of the recipients under this subsection shall use the payment to provide training and technical assistance for non-visual access.

(3) Eligibility

An entity is eligible to receive a payment under this subsection if the entity—

(A) is a public or private nonprofit entity with demonstrated experience in voting issues for individuals with disabilities;

(B) is governed by a board with respect to which the majority of its members are individuals with disabilities or family members of such individuals or individuals who are blind; and

(C) submits to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

(Pub. L. 107-252, title II, §291, Oct. 29, 2002, 116 Stat. 1702.)

REFERENCES IN TEXT

The Developmental Disabilities Assistance and Bill of Rights Act of 2000, referred to in subsec. (a), is Pub. L. 106-402, Oct. 30, 2000, 114 Stat. 1677. Subtitle C of title I of the Act is classified generally to part C (§15041 et seq.) of subchapter I of chapter 144 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 15001 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 15462 of this title.

§ 15462. Authorization of appropriations

(a) In general

In addition to any other amounts authorized to be appropriated under this part, there are authorized to be appropriated \$10,000,000 for each of the fiscal years 2003, 2004, 2005, and 2006, and for each subsequent fiscal year such sums as may be necessary, for the purpose of making payments under section 15461(a) of this title; except that none of the funds provided by this subsection shall be used to initiate or otherwise participate in any litigation related to election-related disability access, notwithstanding the general authorities that the protection and advocacy systems are otherwise afforded under subtitle C of title I of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15041 et seq.).

(b) Availability

Any amounts appropriated pursuant to the authority of this section shall remain available until expended.

(Pub. L. 107-252, title II, §292, Oct. 29, 2002, 116 Stat. 1703.)

REFERENCES IN TEXT

The Developmental Disabilities Assistance and Bill of Rights Act of 2000, referred to in subsec. (a), is Pub. L. 106-402, Oct. 30, 2000, 114 Stat. 1677. Subtitle C of title I of the Act is classified generally to part C (§15041 et seq.) of subchapter I of chapter 144 of this title. For

complete classification of this Act to the Code, see Short Title note set out under section 15001 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 15461 of this title.

SUBPART 6—NATIONAL STUDENT AND PARENT MOCK ELECTION

§ 15471. National student and parent mock election

(a) In general

The Election Assistance Commission is authorized to award grants to the National Student and Parent Mock Election, a national nonprofit, nonpartisan organization that works to promote voter participation in American elections to enable it to carry out voter education activities for students and their parents. Such activities may—

(1) include simulated national elections at least 5 days before the actual election that permit participation by students and parents from each of the 50 States in the United States, its territories, the District of Columbia, and United States schools overseas; and

(2) consist of—

(A) school forums and local cable call-in shows on the national issues to be voted upon in an “issues forum”;

(B) speeches and debates before students and parents by local candidates or stand-ins for such candidates;

(C) quiz team competitions, mock press conferences, and speech writing competitions;

(D) weekly meetings to follow the course of the campaign; or

(E) school and neighborhood campaigns to increase voter turnout, including newsletters, posters, telephone chains, and transportation.

(b) Requirement

The National Student and Parent Mock Election shall present awards to outstanding student and parent mock election projects.

(Pub. L. 107-252, title II, §295, Oct. 29, 2002, 116 Stat. 1703.)

§ 15472. Authorization of appropriations

There are authorized to be appropriated to carry out the provisions of this part \$200,000 for fiscal year 2003 and such sums as may be necessary for each of the 6 succeeding fiscal years.

(Pub. L. 107-252, title II, §296, Oct. 29, 2002, 116 Stat. 1704.)

SUBCHAPTER III—UNIFORM AND NON-DISCRIMINATORY ELECTION TECHNOLOGY AND ADMINISTRATION REQUIREMENTS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 15301, 15342, 15401, 15403, 15404, 15512 of this title.

PART A—REQUIREMENTS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 15501 of this title.

§ 15481. Voting systems standards

(a) Requirements

Each voting system used in an election for Federal office shall meet the following requirements:

(1) In general

(A) Except as provided in subparagraph (B), the voting system (including any lever voting system, optical scanning voting system, or direct recording electronic system) shall—

(i) permit the voter to verify (in a private and independent manner) the votes selected by the voter on the ballot before the ballot is cast and counted;

(ii) provide the voter with the opportunity (in a private and independent manner) to change the ballot or correct any error before the ballot is cast and counted (including the opportunity to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error); and

(iii) if the voter selects votes for more than one candidate for a single office—

(I) notify the voter that the voter has selected more than one candidate for a single office on the ballot;

(II) notify the voter before the ballot is cast and counted of the effect of casting multiple votes for the office; and

(III) provide the voter with the opportunity to correct the ballot before the ballot is cast and counted.

(B) A State or jurisdiction that uses a paper ballot voting system, a punch card voting system, or a central count voting system (including mail-in absentee ballots and mail-in ballots), may meet the requirements of subparagraph (A)(iii) by—

(i) establishing a voter education program specific to that voting system that notifies each voter of the effect of casting multiple votes for an office; and

(ii) providing the voter with instructions on how to correct the ballot before it is cast and counted (including instructions on how to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error).

(C) The voting system shall ensure that any notification required under this paragraph preserves the privacy of the voter and the confidentiality of the ballot.

(2) Audit capacity

(A) In general

The voting system shall produce a record with an audit capacity for such system.

(B) Manual audit capacity

(i) The voting system shall produce a permanent paper record with a manual audit capacity for such system.

(ii) The voting system shall provide the voter with an opportunity to change the ballot or correct any error before the permanent paper record is produced.

(iii) The paper record produced under subparagraph (A) shall be available as an offi-

cial record for any recount conducted with respect to any election in which the system is used.

(3) Accessibility for individuals with disabilities

The voting system shall—

(A) be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters;

(B) satisfy the requirement of subparagraph (A) through the use of at least one direct recording electronic voting system or other voting system equipped for individuals with disabilities at each polling place; and

(C) if purchased with funds made available under subchapter II of this chapter on or after January 1, 2007, meet the voting system standards for disability access (as outlined in this paragraph).

(4) Alternative language accessibility

The voting system shall provide alternative language accessibility pursuant to the requirements of section 1973aa-1a of this title.

(5) Error rates

The error rate of the voting system in counting ballots (determined by taking into account only those errors which are attributable to the voting system and not attributable to an act of the voter) shall comply with the error rate standards established under section 3.2.1 of the voting systems standards issued by the Federal Election Commission which are in effect on October 29, 2002.

(6) Uniform definition of what constitutes a vote

Each State shall adopt uniform and non-discriminatory standards that define what constitutes a vote and what will be counted as a vote for each category of voting system used in the State.

(b) Voting system defined

In this section, the term “voting system” means—

(1) the total combination of mechanical, electromechanical, or electronic equipment (including the software, firmware, and documentation required to program, control, and support the equipment) that is used—

(A) to define ballots;

(B) to cast and count votes;

(C) to report or display election results; and

(D) to maintain and produce any audit trail information; and

(2) the practices and associated documentation used—

(A) to identify system components and versions of such components;

(B) to test the system during its development and maintenance;

(C) to maintain records of system errors and defects;

(D) to determine specific system changes to be made to a system after the initial qualification of the system; and

(E) to make available any materials to the voter (such as notices, instructions, forms, or paper ballots).

(c) Construction

(1) In general

Nothing in this section shall be construed to prohibit a State or jurisdiction which used a particular type of voting system in the elections for Federal office held in November 2000 from using the same type of system after the effective date of this section, so long as the system meets or is modified to meet the requirements of this section.

(2) Protection of paper ballot voting systems

For purposes of subsection (a)(1)(A)(i) of this section, the term “verify” may not be defined in a manner that makes it impossible for a paper ballot voting system to meet the requirements of such subsection or to be modified to meet such requirements.

(d) Effective date

Each State and jurisdiction shall be required to comply with the requirements of this section on and after January 1, 2006.

(Pub. L. 107-252, title III, §301, Oct. 29, 2002, 116 Stat. 1704.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 15302, 15401, 15404, 15501, 15511 of this title.

§ 15482. Provisional voting and voting information requirements

(a) Provisional voting requirements

If an individual declares that such individual is a registered voter in the jurisdiction in which the individual desires to vote and that the individual is eligible to vote in an election for Federal office, but the name of the individual does not appear on the official list of eligible voters for the polling place or an election official asserts that the individual is not eligible to vote, such individual shall be permitted to cast a provisional ballot as follows:

(1) An election official at the polling place shall notify the individual that the individual may cast a provisional ballot in that election.

(2) The individual shall be permitted to cast a provisional ballot at that polling place upon the execution of a written affirmation by the individual before an election official at the polling place stating that the individual is—

- (A) a registered voter in the jurisdiction in which the individual desires to vote; and
- (B) eligible to vote in that election.

(3) An election official at the polling place shall transmit the ballot cast by the individual or the voter information contained in the written affirmation executed by the individual under paragraph (2) to an appropriate State or local election official for prompt verification under paragraph (4).

(4) If the appropriate State or local election official to whom the ballot or voter information is transmitted under paragraph (3) determines that the individual is eligible under State law to vote, the individual’s provisional

ballot shall be counted as a vote in that election in accordance with State law.

(5)(A) At the time that an individual casts a provisional ballot, the appropriate State or local election official shall give the individual written information that states that any individual who casts a provisional ballot will be able to ascertain under the system established under subparagraph (B) whether the vote was counted, and, if the vote was not counted, the reason that the vote was not counted.

(B) The appropriate State or local election official shall establish a free access system (such as a toll-free telephone number or an Internet website) that any individual who casts a provisional ballot may access to discover whether the vote of that individual was counted, and, if the vote was not counted, the reason that the vote was not counted.

States described in section 1973gg-2(b) of this title may meet the requirements of this subsection using voter registration procedures established under applicable State law. The appropriate State or local official shall establish and maintain reasonable procedures necessary to protect the security, confidentiality, and integrity of personal information collected, stored, or otherwise used by the free access system established under paragraph (5)(B). Access to information about an individual provisional ballot shall be restricted to the individual who cast the ballot.

(b) Voting information requirements

(1) Public posting on election day

The appropriate State or local election official shall cause voting information to be publicly posted at each polling place on the day of each election for Federal office.

(2) Voting information defined

In this section, the term “voting information” means—

- (A) a sample version of the ballot that will be used for that election;
- (B) information regarding the date of the election and the hours during which polling places will be open;
- (C) instructions on how to vote, including how to cast a vote and how to cast a provisional ballot;
- (D) instructions for mail-in registrants and first-time voters under section 15483(b) of this title;
- (E) general information on voting rights under applicable Federal and State laws, including information on the right of an individual to cast a provisional ballot and instructions on how to contact the appropriate officials if these rights are alleged to have been violated; and
- (F) general information on Federal and State laws regarding prohibitions on acts of fraud and misrepresentation.

(c) Voters who vote after the polls close

Any individual who votes in an election for Federal office as a result of a Federal or State court order or any other order extending the time established for closing the polls by a State law in effect 10 days before the date of that elec-

tion may only vote in that election by casting a provisional ballot under subsection (a) of this section. Any such ballot cast under the preceding sentence shall be separated and held apart from other provisional ballots cast by those not affected by the order.

(d) Effective date for provisional voting and voting information

Each State and jurisdiction shall be required to comply with the requirements of this section on and after January 1, 2004.

(Pub. L. 107-252, title III, §302, Oct. 29, 2002, 116 Stat. 1706.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 15483, 15501, 15511 of this title.

§ 15483. Computerized statewide voter registration list requirements and requirements for voters who register by mail

(a) Computerized statewide voter registration list requirements

(1) Implementation

(A) In general

Except as provided in subparagraph (B), each State, acting through the chief State election official, shall implement, in a uniform and nondiscriminatory manner, a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the State level that contains the name and registration information of every legally registered voter in the State and assigns a unique identifier to each legally registered voter in the State (in this subsection referred to as the “computerized list”), and includes the following:

(i) The computerized list shall serve as the single system for storing and managing the official list of registered voters throughout the State.

(ii) The computerized list contains the name and registration information of every legally registered voter in the State.

(iii) Under the computerized list, a unique identifier is assigned to each legally registered voter in the State.

(iv) The computerized list shall be coordinated with other agency databases within the State.

(v) Any election official in the State, including any local election official, may obtain immediate electronic access to the information contained in the computerized list.

(vi) All voter registration information obtained by any local election official in the State shall be electronically entered into the computerized list on an expedited basis at the time the information is provided to the local official.

(vii) The chief State election official shall provide such support as may be required so that local election officials are able to enter information as described in clause (vi).

(viii) The computerized list shall serve as the official voter registration list for

the conduct of all elections for Federal office in the State.

(B) Exception

The requirement under subparagraph (A) shall not apply to a State in which, under a State law in effect continuously on and after October 29, 2002, there is no voter registration requirement for individuals in the State with respect to elections for Federal office.

(2) Computerized list maintenance

(A) In general

The appropriate State or local election official shall perform list maintenance with respect to the computerized list on a regular basis as follows:

(i) If an individual is to be removed from the computerized list, such individual shall be removed in accordance with the provisions of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.), including subsections (a)(4), (c)(2), (d), and (e) of section 8 of such Act (42 U.S.C. 1973gg-6).

(ii) For purposes of removing names of ineligible voters from the official list of eligible voters—

(I) under section 8(a)(3)(B) of such Act (42 U.S.C. 1973gg-6(a)(3)(B)), the State shall coordinate the computerized list with State agency records on felony status; and

(II) by reason of the death of the registrant under section 8(a)(4)(A) of such Act (42 U.S.C. 1973gg-6(a)(4)(A)), the State shall coordinate the computerized list with State agency records on death.

(iii) Notwithstanding the preceding provisions of this subparagraph, if a State is described in section 4(b) of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-2(b)), that State shall remove the names of ineligible voters from the computerized list in accordance with State law.

(B) Conduct

The list maintenance performed under subparagraph (A) shall be conducted in a manner that ensures that—

(i) the name of each registered voter appears in the computerized list;

(ii) only voters who are not registered or who are not eligible to vote are removed from the computerized list; and

(iii) duplicate names are eliminated from the computerized list.

(3) Technological security of computerized list

The appropriate State or local official shall provide adequate technological security measures to prevent the unauthorized access to the computerized list established under this section.

(4) Minimum standard for accuracy of State voter registration records

The State election system shall include provisions to ensure that voter registration records in the State are accurate and are updated regularly, including the following:

(A) A system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters. Under such system, consistent with the National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.), registrants who have not responded to a notice and who have not voted in 2 consecutive general elections for Federal office shall be removed from the official list of eligible voters, except that no registrant may be removed solely by reason of a failure to vote.

(B) Safeguards to ensure that eligible voters are not removed in error from the official list of eligible voters.

(5) Verification of voter registration information

(A) Requiring provision of certain information by applicants

(i) In general

Except as provided in clause (ii), notwithstanding any other provision of law, an application for voter registration for an election for Federal office may not be accepted or processed by a State unless the application includes—

(I) in the case of an applicant who has been issued a current and valid driver's license, the applicant's driver's license number; or

(II) in the case of any other applicant (other than an applicant to whom clause (i) applies), the last 4 digits of the applicant's social security number.

(ii) Special rule for applicants without driver's license or social security number

If an applicant for voter registration for an election for Federal office has not been issued a current and valid driver's license or a social security number, the State shall assign the applicant a number which will serve to identify the applicant for voter registration purposes. To the extent that the State has a computerized list in effect under this subsection and the list assigns unique identifying numbers to registrants, the number assigned under this clause shall be the unique identifying number assigned under the list.

(iii) Determination of validity of numbers provided

The State shall determine whether the information provided by an individual is sufficient to meet the requirements of this subparagraph, in accordance with State law.

(B) Requirements for State officials

(i) Sharing information in databases

The chief State election official and the official responsible for the State motor vehicle authority of a State shall enter into an agreement to match information in the database of the statewide voter registration system with information in the database of the motor vehicle authority to the

extent required to enable each such official to verify the accuracy of the information provided on applications for voter registration.

(ii) Agreements with Commissioner of Social Security

The official responsible for the State motor vehicle authority shall enter into an agreement with the Commissioner of Social Security under section 405(r)(8) of this title (as added by subparagraph (C)).

(C) Omitted

(D) Special rule for certain States

In the case of a State which is permitted to use social security numbers, and provides for the use of social security numbers, on applications for voter registration, in accordance with section 7 of the Privacy Act of 1974 (5 U.S.C. 552a note), the provisions of this paragraph shall be optional.

(b) Requirements for voters who register by mail

(1) In general

Notwithstanding section 6(c) of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-4(c)) and subject to paragraph (3), a State shall, in a uniform and nondiscriminatory manner, require an individual to meet the requirements of paragraph (2) if—

(A) the individual registered to vote in a jurisdiction by mail; and

(B)(i) the individual has not previously voted in an election for Federal office in the State; or

(ii) the individual has not previously voted in such an election in the jurisdiction and the jurisdiction is located in a State that does not have a computerized list that complies with the requirements of subsection (a) of this section.

(2) Requirements

(A) In general

An individual meets the requirements of this paragraph if the individual—

(i) in the case of an individual who votes in person—

(I) presents to the appropriate State or local election official a current and valid photo identification; or

(II) presents to the appropriate State or local election official a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter; or

(ii) in the case of an individual who votes by mail, submits with the ballot—

(I) a copy of a current and valid photo identification; or

(II) a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter.

(B) Fail-safe voting

(i) In person

An individual who desires to vote in person, but who does not meet the require-

ments of subparagraph (A)(i), may cast a provisional ballot under section 15482(a) of this title.

(ii) By mail

An individual who desires to vote by mail but who does not meet the requirements of subparagraph (A)(ii) may cast such a ballot by mail and the ballot shall be counted as a provisional ballot in accordance with section 15482(a) of this title.

(3) Inapplicability

Paragraph (1) shall not apply in the case of a person—

(A) who registers to vote by mail under section 6 of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-4) and submits as part of such registration either—

(i) a copy of a current and valid photo identification; or

(ii) a copy of a current utility bill, bank statement, government check, paycheck, or government document that shows the name and address of the voter;

(B)(i) who registers to vote by mail under section 6 of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-4) and submits with such registration either—

(I) a driver's license number; or

(II) at least the last 4 digits of the individual's social security number; and

(ii) with respect to whom a State or local election official matches the information submitted under clause (i) with an existing State identification record bearing the same number, name and date of birth as provided in such registration; or

(C) who is—

(i) entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act [42 U.S.C. 1973ff et seq.];

(ii) provided the right to vote otherwise than in person under section 1973ee-1(b)(2)(B)(ii) of this title; or

(iii) entitled to vote otherwise than in person under any other Federal law.

(4) Contents of mail-in registration form

(A) In general

The mail voter registration form developed under section 6 of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-4) shall include the following:

(i) The question "Are you a citizen of the United States of America?" and boxes for the applicant to check to indicate whether the applicant is or is not a citizen of the United States.

(ii) The question "Will you be 18 years of age on or before election day?" and boxes for the applicant to check to indicate whether or not the applicant will be 18 years of age or older on election day.

(iii) The statement "If you checked 'no' in response to either of these questions, do not complete this form.'"

(iv) A statement informing the individual that if the form is submitted by mail and the individual is registering for the

first time, the appropriate information required under this section must be submitted with the mail-in registration form in order to avoid the additional identification requirements upon voting for the first time.

(B) Incomplete forms

If an applicant for voter registration fails to answer the question included on the mail voter registration form pursuant to subparagraph (A)(i), the registrar shall notify the applicant of the failure and provide the applicant with an opportunity to complete the form in a timely manner to allow for the completion of the registration form prior to the next election for Federal office (subject to State law).

(5) Construction

Nothing in this subsection shall be construed to require a State that was not required to comply with a provision of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.) before October 29, 2002, to comply with such a provision after October 29, 2002.

(c) Permitted use of last 4 digits of social security numbers

The last 4 digits of a social security number described in subsections (a)(5)(A)(i)(II) and (b)(3)(B)(i)(II) of this section shall not be considered to be a social security number for purposes of section 7 of the Privacy Act of 1974 (5 U.S.C. 552a note).

(d) Effective date

(1) Computerized statewide voter registration list requirements

(A) In general

Except as provided in subparagraph (B), each State and jurisdiction shall be required to comply with the requirements of subsection (a) of this section on and after January 1, 2004.

(B) Waiver

If a State or jurisdiction certifies to the Commission not later than January 1, 2004, that the State or jurisdiction will not meet the deadline described in subparagraph (A) for good cause and includes in the certification the reasons for the failure to meet such deadline, subparagraph (A) shall apply to the State or jurisdiction as if the reference in such subparagraph to "January 1, 2004" were a reference to "January 1, 2006".

(2) Requirement for voters who register by mail

(A) In general

Each State and jurisdiction shall be required to comply with the requirements of subsection (b) of this section on and after January 1, 2004, and shall be prepared to receive registration materials submitted by individuals described in subparagraph (B) on and after the date described in such subparagraph.

(B) Applicability with respect to individuals

The provisions of subsection (b) of this section shall apply to any individual who registers to vote on or after January 1, 2003.

(Pub. L. 107-252, title III, §303, Oct. 29, 2002, 116 Stat. 1708.)

REFERENCES IN TEXT

The National Voter Registration Act of 1993, referred to in subsecs. (a)(2)(A)(i), (4)(A) and (b)(5), is Pub. L. 103-31, May 20, 1993, 107 Stat. 77, as amended, which is classified principally to subchapter I-H (§1973gg et seq.) of chapter 20 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1971 of this title and Tables.

Section 7 of the Privacy Act of 1974, referred to in subsecs. (a)(5)(D) and (c), is section 7 of Pub. L. 93-579, which is set out as a note under section 552a of Title 5, Government Organization and Employees.

The Uniformed and Overseas Citizens Absentee Voting Act, referred to in subsec. (b)(3)(C)(i), is Pub. L. 99-410, Aug. 28, 1986, 100 Stat. 924, as amended, which is classified principally to subchapter I-G (§1973ff et seq.) of chapter 20 of this title. For complete classification of this Act to the Code, see Short Title of 1986 Amendment note set out under section 1971 of this title and Tables.

CODIFICATION

Section is comprised of section 303 of Pub. L. 107-252. Subsec. (a)(5)(C) of section 303 of Pub. L. 107-252 amended section 405 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 15361, 15384, 15482, 15501, 15511, 15545 of this title.

§ 15484. Minimum requirements

The requirements established by this subchapter are minimum requirements and nothing in this subchapter shall be construed to prevent a State from establishing election technology and administration requirements that are more strict than the requirements established under this subchapter so long as such State requirements are not inconsistent with the Federal requirements under this subchapter or any law described in section 15545 of this title.

(Pub. L. 107-252, title III, §304, Oct. 29, 2002, 116 Stat. 1714.)

§ 15485. Methods of implementation left to discretion of State

The specific choices on the methods of complying with the requirements of this subchapter shall be left to the discretion of the State.

(Pub. L. 107-252, title III, §305, Oct. 29, 2002, 116 Stat. 1714.)

PART B—VOLUNTARY GUIDANCE

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 15322, 15327 of this title.

§ 15501. Adoption of voluntary guidance by Commission

(a) In general

To assist States in meeting the requirements of part A of this subchapter, the Commission shall adopt voluntary guidance consistent with such requirements in accordance with the procedures described in section 15502 of this title.

(b) Deadlines

The Commission shall adopt the recommendations under this section not later than—

(1) in the case of the recommendations with respect to section 15481 of this title, January 1, 2004;

(2) in the case of the recommendations with respect to section 15482 of this title, October 1, 2003; and

(3) in the case of the recommendations with respect to section 15483 of this title, October 1, 2003.

(c) Quadrennial update

The Commission shall review and update recommendations adopted with respect to section 15481 of this title no less frequently than once every 4 years.

(Pub. L. 107-252, title III, §311, Oct. 29, 2002, 116 Stat. 1715.)

§ 15502. Process for adoption

The adoption of the voluntary guidance under this part shall be carried out by the Commission in a manner that provides for each of the following:

(1) Publication of notice of the proposed recommendations in the Federal Register.

(2) An opportunity for public comment on the proposed recommendations.

(3) An opportunity for a public hearing on the record.

(4) Publication of the final recommendations in the Federal Register.

(Pub. L. 107-252, title III, §312, Oct. 29, 2002, 116 Stat. 1715.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 15501 of this title.

SUBCHAPTER IV—ENFORCEMENT

§ 15511. Actions by the Attorney General for declaratory and injunctive relief

The Attorney General may bring a civil action against any State or jurisdiction in an appropriate United States District Court for such declaratory and injunctive relief (including a temporary restraining order, a permanent or temporary injunction, or other order) as may be necessary to carry out the uniform and non-discriminatory election technology and administration requirements under sections 15481, 15482, and 15483 of this title.

(Pub. L. 107-252, title IV, §401, Oct. 29, 2002, 116 Stat. 1715.)

§ 15512. Establishment of State-based administrative complaint procedures to remedy grievances

(a) Establishment of State-based administrative complaint procedures to remedy grievances

(1) Establishment of procedures as condition of receiving funds

If a State receives any payment under a program under this chapter, the State shall be required to establish and maintain State-based administrative complaint procedures which meet the requirements of paragraph (2).

(2) Requirements for procedures

The requirements of this paragraph are as follows:

(A) The procedures shall be uniform and nondiscriminatory.

(B) Under the procedures, any person who believes that there is a violation of any provision of subchapter III of this chapter (including a violation which has occurred, is occurring, or is about to occur) may file a complaint.

(C) Any complaint filed under the procedures shall be in writing and notarized, and signed and sworn by the person filing the complaint.

(D) The State may consolidate complaints filed under subparagraph (B).

(E) At the request of the complainant, there shall be a hearing on the record.

(F) If, under the procedures, the State determines that there is a violation of any provision of subchapter III of this chapter, the State shall provide the appropriate remedy.

(G) If, under the procedures, the State determines that there is no violation, the State shall dismiss the complaint and publish the results of the procedures.

(H) The State shall make a final determination with respect to a complaint prior to the expiration of the 90-day period which begins on the date the complaint is filed, unless the complainant consents to a longer period for making such a determination.

(I) If the State fails to meet the deadline applicable under subparagraph (H), the complaint shall be resolved within 60 days under alternative dispute resolution procedures established for purposes of this section. The record and other materials from any proceedings conducted under the complaint procedures established under this section shall be made available for use under the alternative dispute resolution procedures.

(b) Requiring Attorney General approval of compliance plan for States not receiving funds

(1) In general

Not later than January 1, 2004, each nonparticipating State shall elect—

(A) to certify to the Commission that the State meets the requirements of subsection (a) of this section in the same manner as a State receiving a payment under this chapter; or

(B) to submit a compliance plan to the Attorney General which provides detailed information on the steps the State will take to ensure that it meets the requirements of subchapter III of this chapter.

(2) States without approved plan deemed out of compliance

A nonparticipating State (other than a State which makes the election described in paragraph (1)(A)) shall be deemed to not meet the requirements of subchapter III of this chapter if the Attorney General has not approved a compliance plan submitted by the State under this subsection.

(3) Nonparticipating State defined

In this section, a “nonparticipating State” is a State which, during 2003, does not notify any office which is responsible for making payments to States under any program under

this chapter of its intent to participate in, and receive funds under, the program.

(Pub. L. 107-252, title IV, §402, Oct. 29, 2002, 116 Stat. 1715.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1) and (b)(1)(A), (3), was in the original “this Act”, meaning Pub. L. 107-252, Oct. 29, 2002, 116 Stat. 1666, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 15301 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 15403, 15404 of this title.

SUBCHAPTER V—HELP AMERICA VOTE COLLEGE PROGRAM

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 15322 of this title.

§ 15521. Establishment of program

(a) In general

Not later than 1 year after the appointment of its members, the Election Assistance Commission shall develop a program to be known as the “Help America Vote College Program” (hereafter in this subchapter referred to as the “Program”).

(b) Purposes of Program

The purpose of the Program shall be—

(1) to encourage students enrolled at institutions of higher education (including community colleges) to assist State and local governments in the administration of elections by serving as nonpartisan poll workers or assistants; and

(2) to encourage State and local governments to use the services of the students participating in the Program.

(Pub. L. 107-252, title V, §501, Oct. 29, 2002, 116 Stat. 1717.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 15522 of this title.

§ 15522. Activities under Program

(a) In general

In carrying out the Program, the Commission (in consultation with the chief election official of each State) shall develop materials, sponsor seminars and workshops, engage in advertising targeted at students, make grants, and take such other actions as it considers appropriate to meet the purposes described in section 15521(b) of this title.

(b) Requirements for grant recipients

In making grants under the Program, the Commission shall ensure that the funds provided are spent for projects and activities which are carried out without partisan bias or without promoting any particular point of view regarding any issue, and that each recipient is governed in a balanced manner which does not reflect any partisan bias.

(c) Coordination with institutions of higher education

The Commission shall encourage institutions of higher education (including community colleges) to participate in the Program, and shall make all necessary materials and other assistance (including materials and assistance to enable the institution to hold workshops and poll worker training sessions) available without charge to any institution which desires to participate in the Program.

(Pub. L. 107-252, title V, §502, Oct. 29, 2002, 116 Stat. 1717.)

§ 15523. Authorization of appropriations

In addition to any funds authorized to be appropriated to the Commission under section 15330 of this title, there are authorized to be appropriated to carry out this subchapter—

(1) \$5,000,000 for fiscal year 2003; and

(2) such sums as may be necessary for each succeeding fiscal year.

(Pub. L. 107-252, title V, §503, Oct. 29, 2002, 116 Stat. 1717.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 15330 of this title.

SUBCHAPTER VI—TRANSFER TO COMMISSION OF FUNCTIONS UNDER CERTAIN LAWS

§ 15531. Transfer of functions of Office of Election Administration of Federal Election Commission

There are transferred to the Election Assistance Commission established under section 15321 of this title all functions which the Office of Election Administration, established within the Federal Election Commission, exercised before October 29, 2002.

(Pub. L. 107-252, title VIII, §801(a), Oct. 29, 2002, 116 Stat. 1725.)

§ 15532. Transfer of functions

There are transferred to the Election Assistance Commission established under section 15321 of this title all functions which the Federal Election Commission exercised under section 1973gg-7(a) of this title before October 29, 2002.

(Pub. L. 107-252, title VIII, §802(a), Oct. 29, 2002, 116 Stat. 1726.)

§ 15533. Transfer of property, records, and personnel

(a) Property and records

The contracts, liabilities, records, property, and other assets and interests of, or made available in connection with, the offices and functions of the Federal Election Commission which are transferred by this subchapter are transferred to the Election Assistance Commission for appropriate allocation.

(b) Personnel

(1) In general

The personnel employed in connection with the offices and functions of the Federal Elec-

tion Commission which are transferred by this subchapter are transferred to the Election Assistance Commission.

(2) Effect

Any full-time or part-time personnel employed in permanent positions shall not be separated or reduced in grade or compensation because of the transfer under this subsection during the 1-year period beginning on October 29, 2002.

(Pub. L. 107-252, title VIII, §803, Oct. 29, 2002, 116 Stat. 1726.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original “this subtitle”, meaning subtitle A (§§801-804) of title VIII of Pub. L. 107-252, Oct. 29, 2002, 116 Stat. 1725, which enacted this subchapter and amended section 1973gg-7 of this title and section 438 of Title 2, The Congress. For complete classification of subtitle A to the Code, see Tables.

§ 15534. Effective date; transition

(a) Effective date

This subchapter and the amendments made by this subchapter shall take effect upon the appointment of all members of the Election Assistance Commission under section 15323 of this title.

(b) Transition

With the consent of the entity involved, the Election Assistance Commission is authorized to utilize the services of such officers, employees, and other personnel of the entities from which functions have been transferred to the Election Assistance Commission under this subchapter or the amendments made by this subchapter for such period of time as may reasonably be needed to facilitate the orderly transfer of such functions.

(c) No effect on authorities of Office of Election Administration prior to appointment of members of Commission

During the period which begins on October 29, 2002, and ends on the effective date described in subsection (a) of this section, the Office of Election Administration of the Federal Election Commission shall continue to have the authority to carry out any of the functions (including the development of voluntary standards for voting systems and procedures for the certification of voting systems) which it has the authority to carry out as of October 29, 2002.

(Pub. L. 107-252, title VIII, §804, Oct. 29, 2002, 116 Stat. 1726.)

REFERENCES IN TEXT

This subchapter, referred to in subsecs. (a) and (b), was in the original “this title”, meaning title VIII of Pub. L. 107-252, Oct. 29, 2002, 116 Stat. 1725, which enacted this subchapter, amended section 1973gg-7 of this title, section 438 of Title 2, The Congress, sections 3132 and 7323 of Title 5, Government Organization and Employees, and section 8G of the Inspector General Act of 1978, Pub. L. 95-452, set out in the Appendix to Title 5, and enacted provisions set out as a note under section 8G of the Inspector General Act of 1978, Pub. L. 95-452, set out in the the Appendix to Title 5. For complete classification of title VIII to the Code, see Tables.

SUBCHAPTER VII—MISCELLANEOUS
PROVISIONS

§ 15541. State defined

In this chapter, the term “State” includes the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, and the United States Virgin Islands.

(Pub. L. 107-252, title IX, §901, Oct. 29, 2002, 116 Stat. 1727.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 107-252, Oct. 29, 2002, 116 Stat. 1666, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 15301 of this title and Tables.

§ 15542. Audits and repayment of funds

(a) Recordkeeping requirement

Each recipient of a grant or other payment made under this chapter shall keep such records with respect to the payment as are consistent with sound accounting principles, including records which fully disclose the amount and disposition by such recipient of funds, the total cost of the project or undertaking for which such funds are used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(b) Audits and examinations

(1) Audits and examinations

Except as provided in paragraph (5), each office making a grant or other payment under this chapter, or any duly authorized representative of such office, may audit or examine any recipient of the grant or payment and shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient which in the opinion of the entity may be related or pertinent to the grant or payment.

(2) Recipients of assistance subject to provisions of section

The provisions of this section shall apply to all recipients of grants or other payments under this chapter, whether by direct grant, cooperative agreement, or contract under this chapter or by subgrant or subcontract from primary grantees or contractors under this chapter.

(3) Mandatory audit

In addition to audits conducted pursuant to paragraph (1), all funds provided under this chapter shall be subject to mandatory audit by the Comptroller General at least once during the lifetime of the program involved. For purposes of an audit under this paragraph, the Comptroller General shall have access to books, documents, papers, and records of recipients of funds in the same manner as the office making the grant or payment involved has access to such books, documents, papers, and records under paragraph (1).

(4) Special rule for payments by General Services Administration

With respect to any grant or payment made under this chapter by the Administrator of

General Services, the Election Assistance Commission shall be deemed to be the office making the grant or payment for purposes of this section.

(5) Special rule

In the case of grants or payments made under section 15401 of this title, audits and examinations conducted under paragraph (1) shall be performed on a regular basis (as determined by the Commission).

(6) Special rules for audits by the Commission

In addition to the audits described in paragraph (1), the Election Assistance Commission may conduct a special audit or special examination of a recipient described in paragraph (1) upon a vote of the Commission.

(c) Recoupment of funds

If the Comptroller General determines as a result of an audit conducted under subsection (b) of this section that—

(1) a recipient of funds under this chapter is not in compliance with each of the requirements of the program under which the funds are provided; or

(2) an excess payment has been made to the recipient under the program,

the recipient shall pay to the office which made the grant or payment involved a portion of the funds provided which reflects the proportion of the requirements with which the recipient is not in compliance, or the extent to which the payment is in excess, under the program involved.

(Pub. L. 107-252, title IX, §902, Oct. 29, 2002, 116 Stat. 1727.)

§ 15543. Review and report on adequacy of existing electoral fraud statutes and penalties

(a) Review

The Attorney General shall conduct a review of existing criminal statutes concerning election offenses to determine—

(1) whether additional statutory offenses are needed to secure the use of the Internet for election purposes; and

(2) whether existing penalties provide adequate punishment and deterrence with respect to such offenses.

(b) Report

The Attorney General shall submit a report to the Committees on the Judiciary of the Senate and House of Representatives, the Committee on Rules and Administration of the Senate, and the Committee on House Administration of the House of Representatives on the review conducted under subsection (a) of this section together with such recommendations for legislative and administrative action as the Attorney General determines appropriate.

(Pub. L. 107-252, title IX, §904, Oct. 29, 2002, 116 Stat. 1729.)

§ 15544. Other criminal penalties

(a) Conspiracy to deprive voters of a fair election

Any individual who knowingly and willfully gives false information in registering or voting in violation of section 1973i(c) of this title, or

conspires with another to violate such section, shall be fined or imprisoned, or both, in accordance with such section.

(b) False information in registering and voting

Any individual who knowingly commits fraud or knowingly makes a false statement with respect to the naturalization, citizenry, or alien registry of such individual in violation of section 1015 of title 18 shall be fined or imprisoned, or both, in accordance with such section.

(Pub. L. 107-252, title IX, §905, Oct. 29, 2002, 116 Stat. 1729.)

§ 15545. No effect on other laws

(a) In general

Except as specifically provided in section 15483(b) of this title with regard to the National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.), nothing in this chapter may be construed to authorize or require conduct prohibited under any of the following laws, or to supersede, restrict, or limit the application of such laws:

- (1) The Voting Rights Act of 1965 (42 U.S.C. 1973 et seq.).
- (2) The Voting Accessibility for the Elderly and Handicapped Act (42 U.S.C. 1973ee et seq.).
- (3) The Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff et seq.).
- (4) The National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.).
- (5) The Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).
- (6) The Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.).

(b) No effect on preclearance or other requirements under Voting Rights Act

The approval by the Administrator or the Commission of a payment or grant application under subchapter I or subchapter II of this chapter, or any other action taken by the Commission or a State under such subchapter, shall not be considered to have any effect on requirements for preclearance under section 5 of the Voting Rights Act of 1965 (42 U.S.C. 1973c) or any other requirements of such Act [42 U.S.C. 1973 et seq.].

(Pub. L. 107-252, title IX, §906, Oct. 29, 2002, 116 Stat. 1729.)

REFERENCES IN TEXT

The National Voter Registration Act of 1993, referred to in subsec. (a), is Pub. L. 103-31, May 20, 1993, 107 Stat. 77, as amended, which is classified principally to subchapter I-H (§1973gg et seq.) of chapter 20 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1971 of this title and Tables.

The Voting Rights Act of 1965, referred to in subsecs. (a)(1) and (b), is Pub. L. 89-110, Aug. 6, 1965, 79 Stat. 437, as amended, which is classified generally to subchapters I-A (§1973 et seq.), I-B (§1973aa et seq.), and I-C (§1973bb et seq.) of chapter 20 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1971 of this title and Tables.

The Voting Accessibility for the Elderly and Handicapped Act, referred to in subsec. (a)(2), is Pub. L. 98-435, Sept. 28, 1984, 98 Stat. 1678, as amended, which is classified generally to subchapter I-F (§1973ee et seq.)

of chapter 20 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1971 of this title and Tables.

The Uniformed and Overseas Citizens Absentee Voting Act, referred to in subsec. (a)(3), is Pub. L. 99-410, Aug. 28, 1986, 100 Stat. 924, as amended, which is classified principally to subchapter I-G (§1973ff et seq.) of chapter 20 of this title. For complete classification of this Act to the Code, see Short Title of 1986 Amendment note set out under section 1971 of this title and Tables.

The Americans with Disabilities Act of 1990, referred to in subsec. (a)(5), is Pub. L. 101-336, July 26, 1990, 104 Stat. 327, as amended, which is classified principally to chapter 126 (§12101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of this title and Tables.

The Rehabilitation Act of 1973, referred to in subsec. (a)(6), is Pub. L. 93-112, Sept. 26, 1973, 87 Stat. 355, as amended, which is classified generally to chapter 16 (§701 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 15301, 15302, 15403, 15484 of this title.

CHAPTER 147—PRISON RAPE ELIMINATION

Sec.	
15601.	Findings.
15602.	Purposes.
15603.	National prison rape statistics, data, and research.
	(a) Annual comprehensive statistical review.
	(b) Review Panel on Prison Rape.
	(c) Reports.
	(d) Contracts and grants.
	(e) Authorization of appropriations.
15604.	Prison rape prevention and prosecution.
	(a) Information and assistance.
	(b) Reports.
	(c) Authorization of appropriations.
15605.	Grants to protect inmates and safeguard communities.
	(a) Grants authorized.
	(b) Use of grant amounts.
	(c) Grant requirements.
	(d) Applications.
	(e) Reports by grantee.
	(f) State defined.
	(g) Authorization of appropriations.
15606.	National Prison Rape Reduction Commission.
	(a) Establishment.
	(b) Members.
	(c) Operation.
	(d) Comprehensive study of the impacts of prison rape.
	(e) Recommendations.
	(f) Consultation with accreditation organizations.
	(g) Hearings.
	(h) Information from Federal or State agencies.
	(i) Personnel matters.
	(j) Contracts for research.
	(k) Subpoenas.
	(l) Authorization of appropriations.
	(m) Termination.
	(n) Exemption.
15607.	Adoption and effect of national standards.
	(a) Publication of proposed standards.
	(b) Applicability to Federal Bureau of Prisons.
	(c) Eligibility for Federal funds.
15608.	Requirement that accreditation organizations adopt accreditation standards.
	(a) Eligibility for Federal grants.

Sec.

(b) Requirements.

15609. Definitions.

§ 15601. Findings

Congress makes the following findings:

(1) 2,100,146 persons were incarcerated in the United States at the end of 2001: 1,324,465 in Federal and State prisons and 631,240 in county and local jails. In 1999, there were more than 10,000,000 separate admissions to and discharges from prisons and jails.

(2) Insufficient research has been conducted and insufficient data reported on the extent of prison rape. However, experts have conservatively estimated that at least 13 percent of the inmates in the United States have been sexually assaulted in prison. Many inmates have suffered repeated assaults. Under this estimate, nearly 200,000 inmates now incarcerated have been or will be the victims of prison rape. The total number of inmates who have been sexually assaulted in the past 20 years likely exceeds 1,000,000.

(3) Inmates with mental illness are at increased risk of sexual victimization. America's jails and prisons house more mentally ill individuals than all of the Nation's psychiatric hospitals combined. As many as 16 percent of inmates in State prisons and jails, and 7 percent of Federal inmates, suffer from mental illness.

(4) Young first-time offenders are at increased risk of sexual victimization. Juveniles are 5 times more likely to be sexually assaulted in adult rather than juvenile facilities—often within the first 48 hours of incarceration.

(5) Most prison staff are not adequately trained or prepared to prevent, report, or treat inmate sexual assaults.

(6) Prison rape often goes unreported, and inmate victims often receive inadequate treatment for the severe physical and psychological effects of sexual assault—if they receive treatment at all.

(7) HIV and AIDS are major public health problems within America's correctional facilities. In 2000, 25,088 inmates in Federal and State prisons were known to be infected with HIV/AIDS. In 2000, HIV/AIDS accounted for more than 6 percent of all deaths in Federal and State prisons. Infection rates for other sexually transmitted diseases, tuberculosis, and hepatitis B and C are also far greater for prisoners than for the American population as a whole. Prison rape undermines the public health by contributing to the spread of these diseases, and often giving a potential death sentence to its victims.

(8) Prison rape endangers the public safety by making brutalized inmates more likely to commit crimes when they are released—as 600,000 inmates are each year.

(9) The frequently interracial character of prison sexual assaults significantly exacerbates interracial tensions, both within prison and, upon release of perpetrators and victims from prison, in the community at large.

(10) Prison rape increases the level of homicides and other violence against inmates and staff, and the risk of insurrections and riots.

(11) Victims of prison rape suffer severe physical and psychological effects that hinder their ability to integrate into the community and maintain stable employment upon their release from prison. They are thus more likely to become homeless and/or require government assistance.

(12) Members of the public and government officials are largely unaware of the epidemic character of prison rape and the day-to-day horror experienced by victimized inmates.

(13) The high incidence of sexual assault within prisons involves actual and potential violations of the United States Constitution. In *Farmer v. Brennan*, 511 U.S. 825 (1994), the Supreme Court ruled that deliberate indifference to the substantial risk of sexual assault violates prisoners' rights under the Cruel and Unusual Punishments Clause of the Eighth Amendment. The Eighth Amendment rights of State and local prisoners are protected through the Due Process Clause of the Fourteenth Amendment. Pursuant to the power of Congress under Section Five of the Fourteenth Amendment, Congress may take action to enforce those rights in States where officials have demonstrated such indifference. States that do not take basic steps to abate prison rape by adopting standards that do not generate significant additional expenditures demonstrate such indifference. Therefore, such States are not entitled to the same level of Federal benefits as other States.

(14) The high incidence of prison rape undermines the effectiveness and efficiency of United States Government expenditures through grant programs such as those dealing with health care; mental health care; disease prevention; crime prevention, investigation, and prosecution; prison construction, maintenance, and operation; race relations; poverty; unemployment and homelessness. The effectiveness and efficiency of these federally funded grant programs are compromised by the failure of State officials to adopt policies and procedures that reduce the incidence of prison rape in that the high incidence of prison rape—

(A) increases the costs incurred by Federal, State, and local jurisdictions to administer their prison systems;

(B) increases the levels of violence, directed at inmates and at staff, within prisons;

(C) increases health care expenditures, both inside and outside of prison systems, and reduces the effectiveness of disease prevention programs by substantially increasing the incidence and spread of HIV, AIDS, tuberculosis, hepatitis B and C, and other diseases;

(D) increases mental health care expenditures, both inside and outside of prison systems, by substantially increasing the rate of post-traumatic stress disorder, depression, suicide, and the exacerbation of existing mental illnesses among current and former inmates;

(E) increases the risks of recidivism, civil strife, and violent crime by individuals who have been brutalized by prison rape; and

(F) increases the level of interracial tensions and strife within prisons and, upon release of perpetrators and victims, in the community at large.

(15) The high incidence of prison rape has a significant effect on interstate commerce because it increases substantially—

(A) the costs incurred by Federal, State, and local jurisdictions to administer their prison systems;

(B) the incidence and spread of HIV, AIDS, tuberculosis, hepatitis B and C, and other diseases, contributing to increased health and medical expenditures throughout the Nation;

(C) the rate of post-traumatic stress disorder, depression, suicide, and the exacerbation of existing mental illnesses among current and former inmates, contributing to increased health and medical expenditures throughout the Nation; and

(D) the risk of recidivism, civil strife, and violent crime by individuals who have been brutalized by prison rape.

(Pub. L. 108-79, §2, Sept. 4, 2003, 117 Stat. 972.)

SHORT TITLE

Pub. L. 108-79, §1(a), Sept. 4, 2003, 117 Stat. 972, provided that: “This Act [enacting this chapter] may be cited as the ‘Prison Rape Elimination Act of 2003’.”

§ 15602. Purposes

The purposes of this chapter are to—

(1) establish a zero-tolerance standard for the incidence of prison rape in prisons in the United States;

(2) make the prevention of prison rape a top priority in each prison system;

(3) develop and implement national standards for the detection, prevention, reduction, and punishment of prison rape;

(4) increase the available data and information on the incidence of prison rape, consequently improving the management and administration of correctional facilities;

(5) standardize the definitions used for collecting data on the incidence of prison rape;

(6) increase the accountability of prison officials who fail to detect, prevent, reduce, and punish prison rape;

(7) protect the Eighth Amendment rights of Federal, State, and local prisoners;

(8) increase the efficiency and effectiveness of Federal expenditures through grant programs such as those dealing with health care; mental health care; disease prevention; crime prevention, investigation, and prosecution; prison construction, maintenance, and operation; race relations; poverty; unemployment; and homelessness; and

(9) reduce the costs that prison rape imposes on interstate commerce.

(Pub. L. 108-79, §3, Sept. 4, 2003, 117 Stat. 974.)

§ 15603. National prison rape statistics, data, and research

(a) Annual comprehensive statistical review

(1) In general

The Bureau of Justice Statistics of the Department of Justice (in this section referred to

as the “Bureau”) shall carry out, for each calendar year, a comprehensive statistical review and analysis of the incidence and effects of prison rape. The statistical review and analysis shall include, but not be limited to the identification of the common characteristics of—

(A) both victims and perpetrators of prison rape; and

(B) prisons and prison systems with a high incidence of prison rape.

(2) Considerations

In carrying out paragraph (1), the Bureau shall consider—

(A) how rape should be defined for the purposes of the statistical review and analysis;

(B) how the Bureau should collect information about staff-on-inmate sexual assault;

(C) how the Bureau should collect information beyond inmate self-reports of prison rape;

(D) how the Bureau should adjust the data in order to account for differences among prisons as required by subsection (c)(3);

(E) the categorization of prisons as required by subsection (c)(4); and

(F) whether a preliminary study of prison rape should be conducted to inform the methodology of the comprehensive statistical review.

(3) Solicitation of views

The Bureau of Justice Statistics shall solicit views from representatives of the following: State departments of correction; county and municipal jails; juvenile correctional facilities; former inmates; victim advocates; researchers; and other experts in the area of sexual assault.

(4) Sampling techniques

The review and analysis under paragraph (1) shall be based on a random sample, or other scientifically appropriate sample, of not less than 10 percent of all Federal, State, and county prisons, and a representative sample of municipal prisons. The selection shall include at least one prison from each State. The selection of facilities for sampling shall be made at the latest practicable date prior to conducting the surveys and shall not be disclosed to any facility or prison system official prior to the time period studied in the survey. Selection of a facility for sampling during any year shall not preclude its selection for sampling in any subsequent year.

(5) Surveys

In carrying out the review and analysis under paragraph (1), the Bureau shall, in addition to such other methods as the Bureau considers appropriate, use surveys and other statistical studies of current and former inmates from a sample of Federal, State, county, and municipal prisons. The Bureau shall ensure the confidentiality of each survey participant.

(6) Participation in survey

Federal, State, or local officials or facility administrators that receive a request from the Bureau under subsection (a)(4) or (5) will be required to participate in the national survey

and provide access to any inmates under their legal custody.

(b) Review Panel on Prison Rape

(1) Establishment

To assist the Bureau in carrying out the review and analysis under subsection (a), there is established, within the Department of Justice, the Review Panel on Prison Rape (in this section referred to as the “Panel”).

(2) Membership

(A) Composition

The Panel shall be composed of 3 members, each of whom shall be appointed by the Attorney General, in consultation with the Secretary of Health and Human Services.

(B) Qualifications

Members of the Panel shall be selected from among individuals with knowledge or expertise in matters to be studied by the Panel.

(3) Public hearings

(A) In general

The duty of the Panel shall be to carry out, for each calendar year, public hearings concerning the operation of the three prisons with the highest incidence of prison rape and the two prisons with the lowest incidence of prison rape in each category of facilities identified under subsection (c)(4). The Panel shall hold a separate hearing regarding the three Federal or State prisons with the highest incidence of prison rape. The purpose of these hearings shall be to collect evidence to aid in the identification of common characteristics of both victims and perpetrators of prison rape, and the identification of common characteristics of prisons and prison systems with a high incidence of prison rape, and the identification of common characteristics of prisons and prison systems that appear to have been successful in deterring prison rape.

(B) Testimony at hearings

(i) Public officials

In carrying out the hearings required under subparagraph (A), the Panel shall request the public testimony of Federal, State, and local officials (and organizations that represent such officials), including the warden or director of each prison, who bears responsibility for the prevention, detection, and punishment of prison rape at each entity, and the head of the prison system encompassing such prison.

(ii) Victims

The Panel may request the testimony of prison rape victims, organizations representing such victims, and other appropriate individuals and organizations.

(C) Subpoenas

(i) Issuance

The Panel may issue subpoenas for the attendance of witnesses and the production of written or other matter.

(ii) Enforcement

In the case of contumacy or refusal to obey a subpoena, the Attorney General

may in a Federal court of appropriate jurisdiction obtain an appropriate order to enforce the subpoena.

(c) Reports

(1) In general

Not later than June 30 of each year, the Attorney General shall submit a report on the activities of the Bureau and the Review Panel, with respect to prison rape, for the preceding calendar year to—

(A) Congress; and

(B) the Secretary of Health and Human Services.

(2) Contents

The report required under paragraph (1) shall include—

(A) with respect to the effects of prison rape, statistical, sociological, and psychological data;

(B) with respect to the incidence of prison rape—

(i) statistical data aggregated at the Federal, State, prison system, and prison levels;

(ii) a listing of those institutions in the representative sample, separated into each category identified under subsection (c)(4) and ranked according to the incidence of prison rape in each institution; and

(iii) an identification of those institutions in the representative sample that appear to have been successful in deterring prison rape; and

(C) a listing of any prisons in the representative sample that did not cooperate with the survey conducted pursuant to this section.

(3) Data adjustments

In preparing the information specified in paragraph (2), the Attorney General shall use established statistical methods to adjust the data as necessary to account for differences among institutions in the representative sample, which are not related to the detection, prevention, reduction and punishment of prison rape, or which are outside the control of the State, prison, or prison system, in order to provide an accurate comparison among prisons. Such differences may include the mission, security level, size, and jurisdiction under which the prison operates. For each such adjustment made, the Attorney General shall identify and explain such adjustment in the report.

(4) Categorization of prisons

The report shall divide the prisons surveyed into three categories. One category shall be composed of all Federal and State prisons. The other two categories shall be defined by the Attorney General in order to compare similar institutions.

(d) Contracts and grants

In carrying out its duties under this section, the Attorney General may—

(1) provide grants for research through the National Institute of Justice; and

(2) contract with or provide grants to any other entity the Attorney General deems appropriate.

(e) Authorization of appropriations

There are authorized to be appropriated \$15,000,000 for each of fiscal years 2004 through 2010 to carry out this section.

(Pub. L. 108-79, §4, Sept. 4, 2003, 117 Stat. 975.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 15607 of this title.

§ 15604. Prison rape prevention and prosecution**(a) Information and assistance****(1) National clearinghouse**

There is established within the National Institute of Corrections a national clearinghouse for the provision of information and assistance to Federal, State, and local authorities responsible for the prevention, investigation, and punishment of instances of prison rape.

(2) Training and education

The National Institute of Corrections shall conduct periodic training and education programs for Federal, State, and local authorities responsible for the prevention, investigation, and punishment of instances of prison rape.

(b) Reports**(1) In general**

Not later than September 30 of each year, the National Institute of Corrections shall submit a report to Congress and the Secretary of Health and Human Services. This report shall be available to the Director of the Bureau of Justice Statistics.

(2) Contents

The report required under paragraph (1) shall summarize the activities of the Department of Justice regarding prison rape abatement for the preceding calendar year.

(c) Authorization of appropriations

There are authorized to be appropriated \$5,000,000 for each of fiscal years 2004 through 2010 to carry out this section.

(Pub. L. 108-79, §5, Sept. 4, 2003, 117 Stat. 978.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 15605 of this title.

§ 15605. Grants to protect inmates and safeguard communities**(a) Grants authorized**

From amounts made available for grants under this section, the Attorney General shall make grants to States to assist those States in ensuring that budgetary circumstances (such as reduced State and local spending on prisons) do not compromise efforts to protect inmates (particularly from prison rape) and to safeguard the communities to which inmates return. The purpose of grants under this section shall be to provide funds for personnel, training, technical assistance, data collection, and equipment to prevent and prosecute prisoner rape.

(b) Use of grant amounts

Amounts received by a grantee under this section may be used by the grantee, directly or

through subgrants, only for one or more of the following activities:

(1) Protecting inmates

Protecting inmates by—

(A) undertaking efforts to more effectively prevent prison rape;

(B) investigating incidents of prison rape;

or

(C) prosecuting incidents of prison rape.

(2) Safeguarding communities

Safeguarding communities by—

(A) making available, to officials of State and local governments who are considering reductions to prison budgets, training and technical assistance in successful methods for moderating the growth of prison populations without compromising public safety, including successful methods used by other jurisdictions;

(B) developing and utilizing analyses of prison populations and risk assessment instruments that will improve State and local governments' understanding of risks to the community regarding release of inmates in the prison population;

(C) preparing maps demonstrating the concentration, on a community-by-community basis, of inmates who have been released, to facilitate the efficient and effective—

(i) deployment of law enforcement resources (including probation and parole resources); and

(ii) delivery of services (such as job training and substance abuse treatment) to those released inmates;

(D) promoting collaborative efforts, among officials of State and local governments and leaders of appropriate communities, to understand and address the effects on a community of the presence of a disproportionate number of released inmates in that community; or

(E) developing policies and programs that reduce spending on prisons by effectively reducing rates of parole and probation revocation without compromising public safety.

(c) Grant requirements**(1) Period**

A grant under this section shall be made for a period of not more than 2 years.

(2) Maximum

The amount of a grant under this section may not exceed \$1,000,000.

(3) Matching

The Federal share of a grant under this section may not exceed 50 percent of the total costs of the project described in the application submitted under subsection (d) for the fiscal year for which the grant was made under this section.

(d) Applications**(1) In general**

To request a grant under this section, the chief executive of a State shall submit an application to the Attorney General at such time, in such manner, and accompanied by

such information as the Attorney General may require.

(2) Contents

Each application required by paragraph (1) shall—

(A) include the certification of the chief executive that the State receiving such grant—

(i) has adopted all national prison rape standards that, as of the date on which the application was submitted, have been promulgated under this chapter; and

(ii) will consider adopting all national prison rape standards that are promulgated under this chapter after such date;

(B) specify with particularity the preventive, prosecutorial, or administrative activities to be undertaken by the State with the amounts received under the grant; and

(C) in the case of an application for a grant for one or more activities specified in paragraph (2) of subsection (b)—

(i) review the extent of the budgetary circumstances affecting the State generally and describe how those circumstances relate to the State's prisons;

(ii) describe the rate of growth of the State's prison population over the preceding 10 years and explain why the State may have difficulty sustaining that rate of growth; and

(iii) explain the extent to which officials (including law enforcement officials) of State and local governments and victims of crime will be consulted regarding decisions whether, or how, to moderate the growth of the State's prison population.

(e) Reports by grantee

(1) In general

The Attorney General shall require each grantee to submit, not later than 90 days after the end of the period for which the grant was made under this section, a report on the activities carried out under the grant. The report shall identify and describe those activities and shall contain an evaluation of the effect of those activities on—

(A) the number of incidents of prison rape, and the grantee's response to such incidents; and

(B) the safety of the prisons, and the safety of the communities in which released inmates are present.

(2) Dissemination

The Attorney General shall ensure that each report submitted under paragraph (1) is made available under the national clearinghouse established under section 15604 of this title.

(f) State defined

In this section, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States.

(g) Authorization of appropriations

(1) In general

There are authorized to be appropriated for grants under this section \$40,000,000 for each of fiscal years 2004 through 2010.

(2) Limitation

Of amounts made available for grants under this section, not less than 50 percent shall be available only for activities specified in paragraph (1) of subsection (b).

(Pub. L. 108-79, § 6, Sept. 4, 2003, 117 Stat. 978.)

§ 15606. National Prison Rape Reduction Commission

(a) Establishment

There is established a commission to be known as the National Prison Rape Reduction Commission (in this section referred to as the "Commission").

(b) Members

(1) In general

The Commission shall be composed of 9 members, of whom—

(A) 3 shall be appointed by the President;

(B) 2 shall be appointed by the Speaker of the House of Representatives, unless the Speaker is of the same party as the President, in which case 1 shall be appointed by the Speaker of the House of Representatives and 1 shall be appointed by the minority leader of the House of Representatives;

(C) 1 shall be appointed by the minority leader of the House of Representatives (in addition to any appointment made under subparagraph (B));

(D) 2 shall be appointed by the majority leader of the Senate, unless the majority leader is of the same party as the President, in which case 1 shall be appointed by the majority leader of the Senate and 1 shall be appointed by the minority leader of the Senate; and

(E) 1 member appointed by the minority leader of the Senate (in addition to any appointment made under subparagraph (D)).

(2) Persons eligible

Each member of the Commission shall be an individual who has knowledge or expertise in matters to be studied by the Commission.

(3) Consultation required

The President, the Speaker and minority leader of the House of Representatives, and the majority leader and minority leader of the Senate shall consult with one another prior to the appointment of the members of the Commission to achieve, to the maximum extent possible, fair and equitable representation of various points of view with respect to the matters to be studied by the Commission.

(4) Term

Each member shall be appointed for the life of the Commission.

(5) Time for initial appointments

The appointment of the members shall be made not later than 60 days after September 4, 2003.

(6) Vacancies

A vacancy in the Commission shall be filled in the manner in which the original appointment was made, and shall be made not later

than 60 days after the date on which the vacancy occurred.

(c) Operation

(1) Chairperson

Not later than 15 days after appointments of all the members are made, the President shall appoint a chairperson for the Commission from among its members.

(2) Meetings

The Commission shall meet at the call of the chairperson. The initial meeting of the Commission shall take place not later than 30 days after the initial appointment of the members is completed.

(3) Quorum

A majority of the members of the Commission shall constitute a quorum to conduct business, but the Commission may establish a lesser quorum for conducting hearings scheduled by the Commission.

(4) Rules

The Commission may establish by majority vote any other rules for the conduct of Commission business, if such rules are not inconsistent with this chapter or other applicable law.

(d) Comprehensive study of the impacts of prison rape

(1) In general

The Commission shall carry out a comprehensive legal and factual study of the penological, physical, mental, medical, social, and economic impacts of prison rape in the United States on—

(A) Federal, State, and local governments; and

(B) communities and social institutions generally, including individuals, families, and businesses within such communities and social institutions.

(2) Matters included

The study under paragraph (1) shall include—

(A) a review of existing Federal, State, and local government policies and practices with respect to the prevention, detection, and punishment of prison rape;

(B) an assessment of the relationship between prison rape and prison conditions, and of existing monitoring, regulatory, and enforcement practices that are intended to address any such relationship;

(C) an assessment of pathological or social causes of prison rape;

(D) an assessment of the extent to which the incidence of prison rape contributes to the spread of sexually transmitted diseases and to the transmission of HIV;

(E) an assessment of the characteristics of inmates most likely to commit prison rape and the effectiveness of various types of treatment or programs to reduce such likelihood;

(F) an assessment of the characteristics of inmates most likely to be victims of prison rape and the effectiveness of various types of

treatment or programs to reduce such likelihood;

(G) an assessment of the impacts of prison rape on individuals, families, social institutions and the economy generally, including an assessment of the extent to which the incidence of prison rape contributes to recidivism and to increased incidence of sexual assault;

(H) an examination of the feasibility and cost of conducting surveillance, undercover activities, or both, to reduce the incidence of prison rape;

(I) an assessment of the safety and security of prison facilities and the relationship of prison facility construction and design to the incidence of prison rape;

(J) an assessment of the feasibility and cost of any particular proposals for prison reform;

(K) an identification of the need for additional scientific and social science research on the prevalence of prison rape in Federal, State, and local prisons;

(L) an assessment of the general relationship between prison rape and prison violence;

(M) an assessment of the relationship between prison rape and levels of training, supervision, and discipline of prison staff; and

(N) an assessment of existing Federal and State systems for reporting incidents of prison rape, including an assessment of whether existing systems provide an adequate assurance of confidentiality, impartiality and the absence of reprisal.

(3) Report

(A) Distribution

Not later than 2 years after the date of the initial meeting of the Commission, the Commission shall submit a report on the study carried out under this subsection to—

(i) the President;

(ii) the Congress;

(iii) the Attorney General;

(iv) the Secretary of Health and Human Services;

(v) the Director of the Federal Bureau of Prisons;

(vi) the chief executive of each State; and

(vii) the head of the department of corrections of each State.

(B) Contents

The report under subparagraph (A) shall include—

(i) the findings and conclusions of the Commission;

(ii) recommended national standards for reducing prison rape;

(iii) recommended protocols for preserving evidence and treating victims of prison rape; and

(iv) a summary of the materials relied on by the Commission in the preparation of the report.

(e) Recommendations

(1) In general

In conjunction with the report submitted under subsection (d)(3), the Commission shall

provide the Attorney General and the Secretary of Health and Human Services with recommended national standards for enhancing the detection, prevention, reduction, and punishment of prison rape.

(2) Matters included

The information provided under paragraph (1) shall include recommended national standards relating to—

(A) the classification and assignment of prisoners, using proven standardized instruments and protocols, in a manner that limits the occurrence of prison rape;

(B) the investigation and resolution of rape complaints by responsible prison authorities, local and State police, and Federal and State prosecution authorities;

(C) the preservation of physical and testimonial evidence for use in an investigation of the circumstances relating to the rape;

(D) acute-term trauma care for rape victims, including standards relating to—

(i) the manner and extent of physical examination and treatment to be provided to any rape victim; and

(ii) the manner and extent of any psychological examination, psychiatric care, medication, and mental health counseling to be provided to any rape victim;

(E) referrals for long-term continuity of care for rape victims;

(F) educational and medical testing measures for reducing the incidence of HIV transmission due to prison rape;

(G) post-rape prophylactic medical measures for reducing the incidence of transmission of sexual diseases;

(H) the training of correctional staff sufficient to ensure that they understand and appreciate the significance of prison rape and the necessity of its eradication;

(I) the timely and comprehensive investigation of staff sexual misconduct involving rape or other sexual assault on inmates;

(J) ensuring the confidentiality of prison rape complaints and protecting inmates who make complaints of prison rape;

(K) creating a system for reporting incidents of prison rape that will ensure the confidentiality of prison rape complaints, protect inmates who make prison rape complaints from retaliation, and assure the impartial resolution of prison rape complaints;

(L) data collection and reporting of—

(i) prison rape;

(ii) prison staff sexual misconduct; and

(iii) the resolution of prison rape complaints by prison officials and Federal, State, and local investigation and prosecution authorities; and

(M) such other matters as may reasonably be related to the detection, prevention, reduction, and punishment of prison rape.

(3) Limitation

The Commission shall not propose a recommended standard that would impose substantial additional costs compared to the costs presently expended by Federal, State, and local prison authorities.

(f) Consultation with accreditation organizations

In developing recommended national standards for enhancing the detection, prevention, reduction, and punishment of prison rape, the Commission shall consider any standards that have already been developed, or are being developed simultaneously to the deliberations of the Commission. The Commission shall consult with accreditation organizations responsible for the accreditation of Federal, State, local or private prisons, that have developed or are currently developing standards related to prison rape. The Commission will also consult with national associations representing the corrections profession that have developed or are currently developing standards related to prison rape.

(g) Hearings

(1) In general

The Commission shall hold public hearings. The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out its duties under this section.

(2) Witness expenses

Witnesses requested to appear before the Commission shall be paid the same fees as are paid to witnesses under section 1821 of title 28. The per diem and mileage allowances for witnesses shall be paid from funds appropriated to the Commission.

(h) Information from Federal or State agencies

The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out its duties under this section. The Commission may request the head of any State or local department or agency to furnish such information to the Commission.

(i) Personnel matters

(1) Travel expenses

The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5 while away from their homes or regular places of business in the performance of service for the Commission.

(2) Detail of Federal employees

With the affirmative vote of $\frac{2}{3}$ of the Commission, any Federal Government employee, with the approval of the head of the appropriate Federal agency, may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status, benefits, or privileges.

(3) Procurement of temporary and intermittent services

Upon the request of the Commission, the Attorney General shall provide reasonable and appropriate office space, supplies, and administrative assistance.

(j) Contracts for research

(1) National Institute of Justice

With a $\frac{2}{3}$ affirmative vote, the Commission may select nongovernmental researchers and

experts to assist the Commission in carrying out its duties under this chapter. The National Institute of Justice shall contract with the researchers and experts selected by the Commission to provide funding in exchange for their services.

(2) Other organizations

Nothing in this subsection shall be construed to limit the ability of the Commission to enter into contracts with other entities or organizations for research necessary to carry out the duties of the Commission under this section.

(k) Subpoenas

(1) Issuance

The Commission may issue subpoenas for the attendance of witnesses and the production of written or other matter.

(2) Enforcement

In the case of contumacy or refusal to obey a subpoena, the Attorney General may in a Federal court of appropriate jurisdiction obtain an appropriate order to enforce the subpoena.

(3) Confidentiality of documentary evidence

Documents provided to the Commission pursuant to a subpoena issued under this subsection shall not be released publicly without the affirmative vote of $\frac{2}{3}$ of the Commission.

(l) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out this section.

(m) Termination

The Commission shall terminate on the date that is 60 days after the date on which the Commission submits the reports required by this section.

(n) Exemption

The Commission shall be exempt from the Federal Advisory Committee Act.

(Pub. L. 108-79, §7, Sept. 4, 2003, 117 Stat. 980.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (n), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 15607 of this title.

§ 15607. Adoption and effect of national standards

(a) Publication of proposed standards

(1) Final rule

Not later than 1 year after receiving the report specified in section 15606(d)(3) of this title, the Attorney General shall publish a final rule adopting national standards for the detection, prevention, reduction, and punishment of prison rape.

(2) Independent judgment

The standards referred to in paragraph (1) shall be based upon the independent judgment

of the Attorney General, after giving due consideration to the recommended national standards provided by the Commission under section 15606(e) of this title, and being informed by such data, opinions, and proposals that the Attorney General determines to be appropriate to consider.

(3) Limitation

The Attorney General shall not establish a national standard under this section that would impose substantial additional costs compared to the costs presently expended by Federal, State, and local prison authorities. The Attorney General may, however, provide a list of improvements for consideration by correctional facilities.

(4) Transmission to States

Within 90 days of publishing the final rule under paragraph (1), the Attorney General shall transmit the national standards adopted under such paragraph to the chief executive of each State, the head of the department of corrections of each State, and to the appropriate authorities in those units of local government who oversee operations in one or more prisons.

(b) Applicability to Federal Bureau of Prisons

The national standards referred to in subsection (a) shall apply to the Federal Bureau of Prisons immediately upon adoption of the final rule under subsection (a)(4).

(c) Eligibility for Federal funds

(1) Covered programs

(A) In general

For purposes of this subsection, a grant program is covered by this subsection if, and only if—

- (i) the program is carried out by or under the authority of the Attorney General; and
- (ii) the program may provide amounts to States for prison purposes.

(B) List

For each fiscal year, the Attorney General shall prepare a list identifying each program that meets the criteria of subparagraph (A) and provide that list to each State.

(2) Adoption of national standards

For each fiscal year, any amount that a State would otherwise receive for prison purposes for that fiscal year under a grant program covered by this subsection shall be reduced by 5 percent, unless the chief executive of the State submits to the Attorney General—

(A) a certification that the State has adopted, and is in full compliance with, the national standards described in subsection (a); or

(B) an assurance that not less than 5 percent of such amount shall be used only for the purpose of enabling the State to adopt, and achieve full compliance with, those national standards, so as to ensure that a certification under subparagraph (A) may be submitted in future years.

(3) Report on noncompliance

Not later than September 30 of each year, the Attorney General shall publish a report

listing each grantee that is not in compliance with the national standards adopted pursuant to subsection (a).

(4) Cooperation with survey

For each fiscal year, any amount that a State receives for that fiscal year under a grant program covered by this subsection shall not be used for prison purposes (and shall be returned to the grant program if no other authorized use is available), unless the chief executive of the State submits to the Attorney General a certification that neither the State, nor any political subdivision or unit of local government within the State, is listed in a report issued by the Attorney General pursuant to section 15603(c)(2)(C) of this title.

(5) Redistribution of amounts

Amounts under a grant program not granted by reason of a reduction under paragraph (2), or returned by reason of the prohibition in paragraph (4), shall be granted to one or more entities not subject to such reduction or such prohibition, subject to the other laws governing that program.

(6) Implementation

The Attorney General shall establish procedures to implement this subsection, including procedures for effectively applying this subsection to discretionary grant programs.

(7) Effective date

(A) Requirement of adoption of standards

The first grants to which paragraph (2) applies are grants for the second fiscal year beginning after the date on which the national standards under subsection (a) are finalized.

(B) Requirement for cooperation

The first grants to which paragraph (4) applies are grants for the fiscal year beginning after September 4, 2003.

(Pub. L. 108-79, §8, Sept. 4, 2003, 117 Stat. 985.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 15608 of this title.

§ 15608. Requirement that accreditation organizations adopt accreditation standards

(a) Eligibility for Federal grants

Notwithstanding any other provision of law, an organization responsible for the accreditation of Federal, State, local, or private prisons, jails, or other penal facilities may not receive any new Federal grants during any period in which such organization fails to meet any of the requirements of subsection (b).

(b) Requirements

To be eligible to receive Federal grants, an accreditation organization referred to in subsection (a) must meet the following requirements:

(1) At all times after 90 days after September 4, 2003, the organization shall have in effect, for each facility that it is responsible for accrediting, accreditation standards for the detection, prevention, reduction, and punishment of prison rape.

(2) At all times after 1 year after the date of the adoption of the final rule under section 15607(a)(4) of this title, the organization shall, in addition to any other such standards that it may promulgate relevant to the detection, prevention, reduction, and punishment of prison rape, adopt accreditation standards consistent with the national standards adopted pursuant to such final rule.

(Pub. L. 108-79, §9, Sept. 4, 2003, 117 Stat. 987.)

§ 15609. Definitions

In this chapter, the following definitions shall apply:

(1) Carnal knowledge

The term “carnal knowledge” means contact between the penis and the vulva or the penis and the anus, including penetration of any sort, however slight.

(2) Inmate

The term “inmate” means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program.

(3) Jail

The term “jail” means a confinement facility of a Federal, State, or local law enforcement agency to hold—

(A) persons pending adjudication of criminal charges; or

(B) persons committed to confinement after adjudication of criminal charges for sentences of 1 year or less.

(4) HIV

The term “HIV” means the human immunodeficiency virus.

(5) Oral sodomy

The term “oral sodomy” means contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus.

(6) Police lockup

The term “police lockup” means a temporary holding facility of a Federal, State, or local law enforcement agency to hold—

(A) inmates pending bail or transport to jail;

(B) inebriates until ready for release; or

(C) juveniles pending parental custody or shelter placement.

(7) Prison

The term “prison” means any confinement facility of a Federal, State, or local government, whether administered by such government or by a private organization on behalf of such government, and includes—

(A) any local jail or police lockup; and

(B) any juvenile facility used for the custody or care of juvenile inmates.

(8) Prison rape

The term “prison rape” includes the rape of an inmate in the actual or constructive control of prison officials.

(9) Rape

The term “rape” means—

(A) the carnal knowledge, oral sodomy, sexual assault with an object, or sexual fondling of a person, forcibly or against that person’s will;

(B) the carnal knowledge, oral sodomy, sexual assault with an object, or sexual fondling of a person not forcibly or against the person’s will, where the victim is incapable of giving consent because of his or her youth or his or her temporary or permanent mental or physical incapacity; or

(C) the carnal knowledge, oral sodomy, sexual assault with an object, or sexual fondling of a person achieved through the exploitation of the fear or threat of physical violence or bodily injury.

(10) Sexual assault with an object

The term “sexual assault with an object” means the use of any hand, finger, object, or other instrument to penetrate, however slightly, the genital or anal opening of the body of another person.

(11) Sexual fondling

The term “sexual fondling” means the touching of the private body parts of another person (including the genitalia, anus, groin, breast, inner thigh, or buttocks) for the purpose of sexual gratification.

(12) Exclusions

The terms and conditions described in paragraphs (9) and (10) shall not apply to—

(A) custodial or medical personnel gathering physical evidence, or engaged in other legitimate medical treatment, in the course of investigating prison rape;

(B) the use of a health care provider’s hands or fingers or the use of medical devices in the course of appropriate medical treatment unrelated to prison rape; or

(C) the use of a health care provider’s hands or fingers and the use of instruments to perform body cavity searches in order to maintain security and safety within the prison or detention facility, provided that the search is conducted in a manner consistent with constitutional requirements.

(Pub. L. 108-79, §10, Sept. 4, 2003, 117 Stat. 987.)